IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

HONORABLE TOMAR MASON, JUDGE PRESIDING

DEPARTMENT 606

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PAUL EDGAR GORDON, JR., et al.,	)	
	)	
Plaintiffs,	)	CASE NUMBER
	)	CGC-07-274076
versus	)	
	)	
FORD MOTOR COMPANY, et al.,	)	
	)	
Defendants.	)	
	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, SEPTEMBER 8, 2008 (MORNING SESSION)

JURY TRIAL

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A P P E A R A N C E S

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MONDAY, SEPTEMBER 8, 2008

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(Proceedings commenced at 9:49 a.m. in the presence of the jury.)

THE COURT: We're ready to proceed again in the matter of Gordon versus Ford, Chrysler, and General Motors.

May I have the appearances.

MR. LANGDOC: Good morning, your Honor. Denyse Clancy and John Langdoc on behalf of the Gordon family.

MR. OSTERTAG: Good morning, your Honor. Good morning, folks. Jim Ostertag and Lauren Michals on behalf of Chrysler LLC and Ford Motor Company.

MR. BROWN: Good morning, your Honor. Good morning, everyone. Gene Brown appearing on behalf of General Motors Corporation.

THE COURT: Thank you. All right. We are in the plaintiffs' case.

How do you wish to proceed?

MR. LANGDOC: Your Honor, I believe that Mr. Gordon was on the stand and was being cross-examined by General Motors.

THE COURT: Mr. Gordon, would you please take the stand again. I remind you, of course, you're still under oath. And once you have settled in, cross-examination will continue.

//

TESTIMONY OF

PAUL EDGAR GORDON, JR.,

one of the plaintiffs herein, having been previously duly and regularly sworn, resumed the witness stand and testified as follows:

CROSS-EXAMINATION (Resumed)

BY EUGENE BROWN, JR.:

Q Good morning, Mr. Gordon.

A Good morning.

Q How are we doing this morning?

A Okay.

Q Good. Okay. I think that the last question I asked you on Friday -- I was about to ask you about personal vehicles that you had performed maintenance and repair on, including brake work, that you had owned.

Can you tell us how many cars that you have owned in your lifetime?

A Oh, it would be hard to put an exact number on it. Probably, oh, 15, 20 cars.

Q Okay. And of those 15 or 20 cars, how many of them did you purchase new?

A None of them.

Q None of them.

And in terms of those 15 or 20 cars, if we look at the maintenance history of them, before you purchased the cars are you able to tell us what the maintenance history on any of those vehicles were?

A The ones that I purchased from the San Diego

Zoo I knew the maintenance history, but -- I think that was two. The rest of them was pretty much a mystery.

Q Okay. You say pretty much a mystery.

A Yeah. I don't know.

Q You didn't own it, so you don't know what it was?

A I didn't have it before; I didn't buy it new.

Q Okay. Now, of the 15 or so vehicles that you purchased and owned, how many of those did you perform a brake repair to?

A Gee. Probably half of them.

Q And of the 15 or so, on how many of them did you perform a clutch replacement?

A Oh, probably about four or five of them.

Q And on how many of them did you do any engine work where you had to remove gaskets?

A Probably four or five of them.

Q Now, in terms of the brakes that were removed from these vehicles, do you know who installed them? The brakes that you removed -- do you know who installed them?

A Other than the two that we discussed from the San Diego Zoo, I don't know who installed the other brakes.

Q All right. Do you know who manufactured the brakes that you removed?

A No, sir.

Q So in terms of the brakes that you removed on

the seven brake jobs -- well, let me back up.

On how many of the vehicles did you perform more than one brake replacement?

A Maybe two of them.

Q Okay. Now, so as you sit here now, in terms of the vehicles that you owned that you performed brake replacement to, you're not claiming exposure to asbestos as a result of the conduct of General Motors; correct?

A No.

Q Is that correct?

A Yes, that's correct.

Q Okay. I'm sorry. That was a double negative, and I apologize for doing that.

Now, in terms of the clutches that you replaced, do you know who installed the clutch?

A No.

Q Do you know who manufactured the clutches that you removed?

A No.

Q So as you sit here now, you're not claiming exposure to asbestos from removing clutches in personal vehicles as a result of the conduct of General Motors; is that correct?

A That's correct.

Q Now, in terms of the engine gaskets that you had to remove and replace, you talked to us a little bit before about taking something and scraping a gasket off. Do you recall that on the engines on the hydrofoils?

A Yes.
Q When you removed engine gaskets did you also have to clean the surface before installing the new gasket?
A Yes.
Q And did you do it in generally the same way that you have described for us before?
A Yes.
Q Now, do you know who manufactured the gaskets that you removed?
MS. CLANCY: Objection; vague.
THE COURT: Overruled.
You may answer and explain your answer.
THE WITNESS: A No.
MR. BROWN: Q Okay. Would you like to explain something?
A Well, I don't know. Maybe you better repeat the question. I got confused with --
Q Okay. You told us that you had removed some engine gaskets on some of the vehicles that you owned; correct?
A Yes.
Q All right. Now, do you know who, first off, manufactured the gaskets that you removed?
A No, I don't.
Q Do you know who installed the gaskets that you removed?
A No.

Q So as you sit here now, in terms of the gaskets that you removed on your personal vehicles, you're not claiming exposure to asbestos as a result of the conduct of General Motors; correct?

A Correct.

Q Now, in terms of the brakes that you got and replaced in the vehicles that you owned that you did brake work to, where did you obtain the replacement brakes?

A There would have been several places I would have -- one of them would have been NAPA, and another one would have been Auto Zone.

Q Right. And --

THE COURT: Excuse me. Mr. Gordon, just for clarity of the record, when you use the term "NAPA" answering this question, what do you mean? Is that a store?

THE WITNESS: That's a -- it's an auto parts store called NAPA. I'm not sure exactly what the acronym is for.

THE COURT: Thank you.

MR. BROWN: Q Yeah. And that's -- NAPA is spelled all in caps; correct?

A Yes.

Q N-A-P-A; correct?

A Correct.

Q Okay. And how about Auto Zone? Did you get brakes from Auto Zone?

A Yes.
Q Did you get brakes from Checker Auto Parts?
A Yes.
Q Did you get brakes from Pep Boys?
A Yes, I have.
Q Now, the replacement brakes that you got from those suppliers -- did you sand them?
A Yes.
Q And did the sanding of those brakes that you got for the vehicles that you were repairing -- did that create any dust?
A Yes.
Q And in terms of the dust from the sanding of those brakes, did you -- were you in proximity to them so that you would breathe that dust?
A Yes.
Q Now, in terms of the brakes that you got and used on your personal vehicles that you purchased from the suppliers that you've talked about here, those brakes were not supplied by General Motors; is that correct?
A Not to my knowledge.
Q Do you recall using brakes that were manufactured by Raybestos?
A Yes. Not on my personal vehicles, though.
Q All right. But do you know who manufactured the brakes that were used on your personal vehicles?
A No.

Q But as you sit here now, you're not claiming it was General Motors; correct?
A That's correct.
Q Now, in terms of the clutches, did you also get replacement clutches at the suppliers that you have told us about earlier?
A For my personal vehicles.
Q For your personal vehicles.
A Yes.
Q Okay. And you're not telling the jury that General Motors provided those clutches to you; are you?
A No, I'm not.
Q And in terms of the engine gaskets that you obtained and used for your personal vehicles, you got those from the same suppliers; correct?
A Correct.
Q And you used those and you installed them in your vehicles; correct?
A That's correct.
Q Now, General Motors didn't provide those; did they?
A Not to my knowledge.
Q So if you were exposed to asbestos in your own personal vehicles from brakes, clutches, and gaskets, it wasn't because of General Motors; correct?
A Correct.
Q And when did you first perform brake repair to a personal vehicle?

A Probably as a young man, about 17.
Q And when did you last do it? That is, I shouldn't say "do it." I should say when did you last perform a brake repair to a personal vehicle.
A Four years ago.
Q And when did you last replace a clutch in a personal vehicle?
A I can't remember.
Q That's okay. How about an engine gasket? When did you last replace an engine gasket?
A Again, probably four years ago.
Q Now, in terms of the engine gaskets, do you think that any of those engine gaskets that you replaced contained asbestos?
A Yes.
Q Do you think that any of them did not contain asbestos?
A Possibly.
Q Now, you went to and you worked at the San Diego Zoo; correct?
A That's correct.
Q And that is after you came back from Australia.
A Yes.
Q Now, when you were in Australia, did you work?
A Yes.
Q Would you tell the jury what type of work you did in Australia when you went between the time that you

left Sea World and returned and went to work at the zoo.
A I worked on a farm in Australia.
Q And as I understand it, you repaired equipment there; is that correct?
A Yes. I helped -- I actually did farm work, and I also did repair equipment.
Q Did you do brake replacement there?
A I don't recall doing brake replacement.
Q Did you do any clutch work there?
A I did do a clutch repair job on an automatic transmission, and that was called a Muir Hill. It was a large tractor. The friction clutches in it ran in oil.
Q Did you do any engine gasket work there?
A Yes, I did.
Q And were these -- what types of engines were you doing this engine work on?
A The one I'm thinking of is -- the only one I recall really doing engine or gasket replacement on would have been a Toyota.
Q Do you think that those gaskets contained asbestos?
A I would think so.
Q Did you remove those gaskets?
A Yes, I did.
Q And then you replaced the gaskets; correct?
A Yes.
Q Where did you get the replacement gaskets from?

A The replacement store that we bought gaskets and parts from was called Repco, R-e-p-c-o.
Q Now, in terms of the Toyota vehicle that you were working on, did you see any -- and the replacement gaskets that you used, were there any warnings on those gaskets?
A Not that I recall.
Q And did you get any warning from Repco about any of the gaskets?
A No, I didn't.
Q If could I digress for a minute, going back to the work that you did on your personal vehicles, when you were working with the parts that you obtained from Big A, NAPA, Auto Zone, Checker, and Pep Boys, did you see any warnings on the brakes, for instance, that you got from any of those folks?
A No.
Q Did you see any warnings on any of the clutches that you got from any of those dealers?
A No.
Q Did you see any information -- any warnings on any of the gaskets that you got from any of those dealers?
A No.
Q Now, you returned from Australia and you worked for a brief period again back at Sea World; then you went to the San Diego Zoo. Correct?
A That's correct.

Q Now, and how long -- what year did you first work at the San Diego Zoo?
A I believe it was 1976 I went to work.
Q 1976. And you worked there until -- what? -- 19 --
A Eighty.
Q Eighty? Do you know when you started in 1976?
A Gee, I can't recall right now.
Q Okay. Do you know when you last worked there in 1980, what month, for instance?
A It would have been in June or July. I left there in the summer of 1980.
Q Okay. Now, how many new pickup trucks did the zoo buy in 1976?
A I don't know.
Q Did they buy any?
A I suppose they did. They brought them, as I mentioned before, on a regular basis, but I don't recall.
Q Okay. Do you know how many they bought in 1975?
A I don't have the number.
Q All right. Now, in terms of your work at the zoo, do you recall -- or did you -- strike that.
Did you remove originally installed brakes from any pickup truck at the San Diego Zoo?
A Yes.
Q How do you know that?

A Because the equipment was purchased new.
Q All right. As you sit here now, do you know the date of purchase of any of the pickup trucks at San Diego Zoo?
A No. I just know they were purchased new; they didn't buy used equipment.
Q I understand. And how long did they keep the pickup trucks at San Diego Zoo when you were there?
A About four or five years.
Q All right. So in that four or five years, how many brake jobs would be accomplished on a pickup truck?
A A pickup truck would have a brake job done about every 30,000 miles or so. Or actually, we did inspections on a monthly type of basis. About every -- about twice a year would be the inspections, and then generally about every third time we would end up changing the brakes by the time we did the inspections.
Q All right. Well, can you -- are you telling us that you changed the brakes on a pickup truck at the San Diego Zoo once a year?
A No. I would -- it's hard -- the way you're phrasing it, it's difficult for me, but I would say that I did two brake jobs per month on pickup trucks.
Q All right. My question -- and I don't mean to make this difficult. I'm just trying to understand.
Of the two brake jobs that you did per month, how many of those involved removing originally installed brakes?

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A All of them. It would have either been originally installed brakes or they would have been manufacturer brakes, Ford or GM --

Q All right. Well, let's --

A -- or Dodge.

Q First off, I just want to know which ones were the originally installed brakes that you were removing. Can you tell us that?

A All I can tell you is that they were manufacturer brakes when they were installed originally or put on later. They were original equipment manufactured brakes.

Q Okay. Now, if they were just original equipment manufacture, it may have been something that you put on; correct?

A Yes.

Q Or one of the other mechanics at Sea World; correct?

A Yes.

Q All right. And what I'm interested in knowing is which of the brakes that you removed were installed, for instance, by General Motors. Do you know?

A No; it's been 30 years.

Q I understand. If you don't know, that's fine, and you can say, "I don't know."

A Okay. I don't know.

Q Okay. So what you're telling the jury is what you did is you used replacement brakes which may have

been supplied by General Motors; is that correct?
A Yes.
Q And how many other mechanics did this brake replacement work?
A There was another mechanic. And our supervisor would work sometimes, but not generally.
Q And did you order replacement brake parts?
A No. That was done by the shop supervisor, Mr. Coble.
Q All right. Did you go to pick up replacement brake products?
A No.
Q And was there a warehouse or storehouse where replacement products were maintained?
A There was a storeroom.
Q And is that where you maintained your supply of replacement parts?
A That's where Mr. Coble did.
Q You did not?
A No.
Q All right. Now, if I could move to another topic here.
When you went to work at Sea World -- and you worked there during 1972; is that correct?
A Yes.
Q If a safety issue arose at Sea World, who would you consult?
A A safety issue?

Q Yes.
A Probably my immediate supervisor.
Q All right. Someone who was employed by Sea World; correct?
A That's correct.
Q And at Sea World, if you know, was there anyone who was responsible for the implementation and enforcement of OSHA regulations?
A I don't know who it was. I had my supervisor; then there was a department head over that. I'm not sure exactly who was involved with what -- I guess what we would call today risk management.
Q All right. But in terms of the OSHA regulations, you don't know who at Sea World was responsible for implementing and enforcing those; is that correct?
A No.
Q Is that correct?
A That's correct.
Q Do you think it was someone at Sea World?
A I would assume so.
Q And, in fact, when you're doing work at Sea World -- and I'm just specifically talking about Sea World right now -- you would expect that your employer would look out for your safety there; correct?
A Yes.
Q Now, when you went to the San Diego Zoo, was there anyone there who was responsible for OSHA

compliance and implementation?
A I'm sure there was.
Q Do you know who that was?
A I would assume it was my supervisor.
Q And again, would you expect that your employer, that is, the zoo, would adhere to the OSHA requirements and take appropriate steps to protect you in the workplace?
A I would hope so.
Q You worked for the zoo; right?
A That's correct.
Q Okay. And as far as you know, if you know, did you find the zoo to be law-abiding?
A As far as I know.
Q Okay. Now, did you have a shop there at the zoo that you worked in? You told us before about doing work in --
A Yes, I did tell you before that we had a shop that we worked in.
Q All right. And sometimes -- I know where I work there's a board in the lunchroom and they put stuff up there from, you know, OSHA and the industrial safety commission. Did you have anything like that at the zoo?
A I don't recall at the zoo. As a matter of fact, my first recollection of that sort of OSHA regulations or the need-to-know box and things were later on at Yavapai County.
Q All right. But you don't recall that at the

zoo?
A No.
Q Or at Sea World; is that correct?
A No, I don't.
Q Okay. Now, when you were in the Navy, did anyone in the Navy ever tell you that being aboard the Oriskany might result in exposure to asbestos to you?
A Not that I recall.
Q Did you ever see any warnings on board the Oriskany in any of the passages that you walked through -- you did walk through passages on the ship; correct?
A Yes, I did.
Q Well, I mean, you would have to.
A I didn't fly; I walked.
Q I understand. I understand. But you know, we have this record here, and if the record, you know, is not complete, then it leaves a gap and creates problems.
A I understand.
Q And I'm not trying to be funny or flip. Okay?
Now, in terms of -- and you did see piping on board this vessel; correct?
A Yes, I did.
Q And you saw piping that was insulated with thermal insulation; correct?
A That's correct.
Q And this vessel also had -- the Oriskany had the steam-powered catapults; correct?

A Yes, it did.
Q All right. Now, the catapults are used for what purpose?
A For launching aircraft. Within a short distance they can get an aircraft up to air speed.
Q Okay. And the catapult operates on a track or something on board the Oriskany?
A Yes.
Q And -- what? You attach the catapult to the aircraft, and it actually sends it down the flight deck and launches it, like you say?
A Correct.
Q Now, the catapults on board this vessel were steam powered; correct?
A To my knowledge, they were. I didn't work on the catapults, and that wasn't my area of responsibility, but I'm fairly certain they were steam catapults.
Q All right. And did you ever see any piping leading from, for instance, a boiler to the catapults?
A No. That would have all been below deck.
Q Now, in your living quarters on board this vessel there were insulated pipes; correct?
A I believe so.
Q And in the -- what do you call it? The mess hall or --
A That's correct; mess hall.
Q Okay. All right. Going to and from that

facility you would see steam pipes; correct?
A Probably so.
Q Okay. As a matter of fact, there were pipes all over this vessel, correct, except on the flight deck itself.
A That's correct.
Q Now, when you boarded the Oriskany at Hunters Point, a lot of work was going on; correct?
A Yes.
Q And isn't it true that a lot of refuse was stored in the flight deck?
A I don't know if it was refuse or equipment that they were using to make repairs on the vessel. I'm not even sure exactly what kind of repairs they were doing.
Q Now, moving on to Yavapai -- is it Yavapai?
A Yavapai.
Q Yavapai County, you went there in -- what? -- 1980 or '81?
A Yes, '81.
Q And who was responsible at Yavapai County for OSHA compliance?
A It would have been the shop supervisor.
Q All right. Now, was there someone who was over the shops, like a director of transportation or someone in that type capacity?
A Yes. There was a Road Department director who was over Merle Clark, who happened to be my immediate

supervisor, who was over the shop.
Q All right. And this was just the -- in the County; correct?
A That's correct.
Q Yavapai County?
A That's correct.
Q Now, was there a board of supervisors there?
A Yes.
Q And did Yavapai County have any hospitals?
A Hospitals? Yes.
Q All right. And do they have physicians in those hospitals?
A Yes.
Q All right. And at the County did they have any person who was assigned the task of overseeing worker safety?
A I suppose they did, yes.
Q Did you ever see that person?
A That's hard to say. We're talking about a 27-year work span. In the early years I wouldn't have known who it was. Of course, later I did.
Q Okay. And who was that person?
A I don't know who it was.
Q Well, you said, "Later I did."
A Oh, it would have been a risk manager later on.
Q Okay. Now, the buildings that you worked in at Yavapai County -- there were a couple shops; correct?

A Well, it was all one shop, yes.
Q Did it have an exhaust or HVAC system?
A No, it didn't.
Q There was no HVAC?
A No.
Q How was the building heated?
A The building had an oil burner heater in it. It was a -- it wasn't forced air; it was just a standing heater.
Q Oh.
Now, when you were in the Navy did you receive training on diesel engine repair?
A Yes.
Q And where did you get that training?
A Memphis, Tennessee.
Q And did you do any classroom training?
A Very much.
Q You had books; correct?
A Yes.
Q Who taught the class?
A They were taught by other Navy instructors.
Q Now, did any of those Navy instructors talk to you -- and let me ask you this. Diesel engines are not insulated on the exterior; correct?
A No.
Q Is that correct?
A That's correct.
Q Okay. And what you were told was -- and

taught to do was how to perform various repairs to not only diesel engines, but gasoline engines; correct?
A That's correct.
Q Compressors; correct?
A That's correct.
Q And various other types of equipment; correct?
A Correct.
Q Okay. And were you taught how to perform overhauls?
A Yes.
Q Were you taught how to perform oil changes?
A Correct.
Q You were taught how to change a water pump?
A Yes.
Q And how to change fuel pumps; correct?
A Correct.
Q And you took that and you went and you did work on board the Oriskany; correct?
A Correct.
Q And then through the rest of your career; right?
A Yes.
Q Now, in terms of products that you used in Yavapai County, do you recall using Raybestos products?
A Yes.
Q And what is Raybestos?
A Raybestos were brake blocks.
Q What is a brake block?

A On larger brakes it's the brake lining itself. It comes in pieces and is attached to the brake shoe.
Q All right. And so were these -- you were involved in relining of the brake shoes?
A Occasionally, yes.
Q And in order to size the block, what did you have to do? Did you have to cut it?
A No. The brakes were -- the blocks were made for the shoes.
Q All right. Did you have to rivet them?
A Yes. They're -- rivet them or bolt them together.
Q Okay. And did you have to sand them to put them on?
A Occasionally, again, you have to arc them.
Q All right. Now, did anybody at Yavapai County come to you and say don't do that?
A No.
Q Now, looking at your deposition, Page 65 -- is it still there?
A No.
Q No? Okay.
Page 65, right here.
A Okay.
MR. BROWN: Sorry, your Honor.
THE COURT: Which volume?
MR. BROWN: Volume One.
THE COURT: Thank you.

MR. BROWN: Q And you did work there on heavy trucks and pickups; correct?
A That's correct.
Q And in terms of the heavy trucks, beginning at Page 65, Line 4 through Line 19:

"Do you recall the manufacturer of the brake products that were used on the heavier trucks? Question.

"Answer: Yes. We -- we used a number of different products. Bendix is one. Raybestos was some. We used to buy Raybestos brake --"

it says "box," but I think it meant "block"; correct?
A I would -- yeah, that would be more blocks.
Q Okay.

"BorgWarner. Dana we do -- I guess I'm jumping ahead of you. I'm talking about clutches there. We have used a lot of BorgWarner clutches.

"Question: Let me go back for just a moment to the brakes. You mentioned Bendix, Raybestos, brake block, BorgWarner. Any other brake materials?

"Yes.

"Answer: Yes. We have used Wagner. I'm sure we've used others.

I can't think of them at this moment."

Page 67, Lines 7 through 20, still in Volume One.

"Do you recall the brand names of the clutches that were used while you were in the County between '81 and '89?

"Answer: Many of them were bought directly --

"Answer: -- and I really can't tell you except that we did use a lot of parts from NAPA and Big A.

"Question: You mentioned the name BorgWarner earlier. Do you recall using any BorgWarner products while working for the County?

"Answer: Yes.

"Answer: We purchased and installed BorgWarner.

"Question: What type of product was that?

"Answer: It would have been clutch disk."

Now, on these products that we have just talked about, the BorgWarner, the Raybestos, the things that you got -- and this is at Yavapai County from these dealers -- did you observe any warnings on any of those

vehicles -- on any of those products?
A No.
Q Did anyone from Yavapai County come and tell you that there might be a potential hazard with exposure to asbestos?
A No.
Q Now, you showed us a photograph that was taken in the garage at Yavapai County from you -- I guess you and your lawyers; right? Correct?
A That's in the welding shop at Yavapai County.
Q That's in the welding shop?
A Well, there's several different bays. That's on the welders' table there.
Q Okay. Now, where is auto repair done?
A Well, they can repair autos there, as well, but just to the right of that there's a welding machine, so that why we call it the welding shop. It's -- if you -- where the picture was taken, there's another bay, and so repairs could be made anywhere in there.
Q Okay. Do you have any lifts there, hydraulics lifts?
A No.
Q No?
A Not in that shop. There's an automotive shop down at the end that has hydraulic lifts, but this is the heavy equipment side.
Q Okay. And is this a welding truck?
A Yes, that's a welding truck.

Q Okay. And is it a pickup truck?
A No. It's a one-ton truck with a weld -- with a chassis -- a body on the chassis. It's bigger than a pickup.
Q Okay. And were all of the pickup trucks at Yavapai County equipped with welding equipment?
A No; they've got two of them that are.
Q All right. Now, there's a dustpan here, and it has some residue in it. Do you see that?
A Yes.
Q Okay. You're not telling the jury that's asbestos; are you?
A No.
Q Do you know what that is?
A Probably slag.
Q Okay. Do you know who put it there?
A Yeah; the welder.
Q Okay. And is this how the shop is typically left on a weekend?
A Yes. That's the way it was when we walked into it.
Q Okay. And then we have material all over the floor here. Do you see where I'm pointing to, this white material?
A Well, I don't think that's a floor. That's a steel table.
Q Oh. This is a table?
A Yes.

Q Okay. Then this stuff is not on the floor; it's all --
A No; it's --
Q -- sitting on a table.
A That's sitting on a welding table, a steel table. That's not laying on the floor.
Q Okay. Because the floor is over here.
A That's right.
Q Right? Okay. So these brushes and this little -- what do you call this?
A That's a chipping hammer.
Q A chipping hammer are on a table.
A Those things that are shiny things is where the welder had ground off some weld and it splattered on the table, and he's cleaning it off.
Q These areas here?
A Yeah.
Q This? Okay. So you're not telling the jury that that's dust; right?
A No. That's -- whatever was swept up on the floor obviously didn't make it to the trash bin.
Q Okay. And so I just want to be clear, because when I look at the photograph, I see all this down here and I say, "My gosh. Is that dust?" But that's not dust; is it?
A No; that's a steel welding table.
Q Okay. And there's no asbestos in this photograph; is there?

A Not to my knowledge.
Q Okay. All right, Mr. Gordon. Last question for you. I'm going to ask you to take a look at what's been marked as Chrysler --
THE COURT: Can I have a stipulation in the record as to the photograph number that was just utilized?
MR. BROWN: Yes. I'm sorry. Yeah. That's Plaintiffs' 842.
THE COURT: Plaintiffs' 842 was utilized in these last set of questions. Thank you, counsel.
MR. BROWN: So this would be Chrysler Exhibit T.
THE COURT: Chrysler T now marked for identification. Oh; I'm sorry. Chrysler T was previously utilized; is that correct?
MR. BROWN: I don't think so, your Honor.
THE COURT: So it's being utilized by GM. That's agreeable to counsel for Chrysler?
MR. OSTERTAG: Oh, sure, your Honor.
THE COURT: All right. Chrysler T now marked for identification.
MR. BROWN: Q Mr. Gordon, I ask you to take a look at what's been marked as Exhibit T. Just flip through that quickly. Flip to the fourth page back. Now, the first page indicates that this is a Celotex asbestos form; is that correct?
A Yes.

Q An individualized review claim form. Do you see that?
A No.
Q Right in the top.
A Oh. Okay. I'm sorry.
Q It's -- you know --
THE COURT: So is that correct? Is this -- this document is an individualized review claim form related -- may I go on?
MR. BROWN: Yeah. I would read it, but you can go ahead.
THE COURT: Okay. Go ahead.
MR. BROWN: Q Okay. And do you see where it says Part Four?
A Yes.
Q And it says occupational exposure to Celotex or Carey Canada products or operations. Do you see that?
A Yes.
Q And then down below it has year exposure began, 1966. Do you see that?
A Yes.
Q And the next -- it says year exposure ended, 1970. Is that correct?
A Yes.
Q And that's when you were in the Navy; correct?
A Yes.
Q And you see down about a third of the way it

says occupation? Do you see that?
A Yes.
Q And it says aviation support equipment mechanic. Do you see that?
A Yes.
Q And then down below there's a box there. Do you see that box?
A Yes.
Q And it says -- below that it says describe how and why asbestos products were used at this site. Do you see that?
A Yes.
Q And then it says all over site; correct?
A Yes.
Q And then it says employer, U.S. Navy; correct?
A Yes.
Q Site or location of exposure, U.S.S. Oriskany. Do you see that?
A Yes.
Q Location at plant or site where exposure occurred. Do you see that?
A Yes.
Q And it says all over site; correct?
A Yes.
Q And then the last line says name of Celotex or Carey Canada products or operations to which injured party was exposed. Do you see that?
A Yes.

Q And it says Carey cement; correct?
A Yes.
Q Now, if you would flip back another five pages, and do you see where it says Part Ten, signature page?
A Part Ten? Yes, I've got it.
Q And it says all claims must be signed by the claimant or the person filing on his or her behalf, such as the personal representative or attorney. And then it says I have reviewed the information submitted on this claim form and all documents submitted in support of this claim. To the best of my knowledge, under penalty of perjury, the information submitted is accurate and complete.
Did I read that right?
A Yes.
Q And it's got a signature, signature of claimant or representative. Do you see that?
A Yes.
Q And do you know whose signature that is?
A No.
Q And this form is being submitted on behalf of you; is that correct?
A I don't know. I've never seen this form before.
Q Okay. Well, if you look at Page 2, see where it says Part One?
A Yes.

Q Injured party information?
A Yes.
Q And what is the name there?
A Paul E. Gordon, Jr.
Q All right. And do you see a Social Security number?
A Yes.
Q And is that your Social Security number?
A Yes.
Q And do you see the birth date, date of birth?
A Yes.
Q That's got 3-11-46; correct?
A Yes.
Q And that's your birth date; right?
A That's correct.
Q Right. So would you agree with me that this form is being submitted on behalf of you? Correct?
A It appears to be, yes.
Q Now, Mr. Gordon, are you currently working still?
A Yes.
Q And when you're not here in court do you work every -- five days a week?
A Yes; four days a week.
Q I'm sorry?
A I work four days a week.
Q Okay. You've got a flex schedule?
A Yes.

Q Okay. And you were telling us before that when you and your wife met, you met through your church; correct?
A Yes.
Q Okay. And do you still participate in church activities?
A Yes, I do.
Q Okay. And what is your position?
A What's my position?
Q Do you have a position in the church?
A I work on what's called the High Council.
Q Okay. And what is that, just briefly?
A I help some of the wards -- the church is organized into wards under the state, and I've been given responsibility to help the bishop and some of the groups in one of the wards.
Q All right. This sounds like Latter Day Saints.
A Yes.
Q All right. And you still carry out that function?
A Yes.
Q All right. And you still attend to your -- well, you attend to those functions and you attend to your other ministerial functions?
A Yes.
Q Okay. And in terms of your family, do you still see your family when you're not here? Do you

still have family functions?
A Yes.
Q You still participate in those family functions?
A Whenever I can.
Q All right. For instance, if you're not here and you were having a family function, you'd be able to do that; right?
A Yes.
Q Okay. And in terms of things that you do, your doctors have told you that you should do everything that you feel that you can do; correct?
A Yes.
Q Okay. And when is the last time that you traveled outside the United States?
A We went -- late last year. Late last year -- I think it was November, October, November -- we went to New Zealand.
Q And how long were you there?
A We were there about ten days.
Q Okay. And -- oh. That's when you went in the cavern and the cave and --
A Yes.
Q -- did that kind of thing.
Okay. And so you've done that. And do you have another trip planned?
A I haven't got anything planned, no.
Q Okay. Now, you said the other day something

about two years. Has any doctor told you that you have a life expectancy of two years?

A Actually, Dr. Lindquist mentioned that I would only have six months, so I guess I've surprised her and myself. And we're grateful every time that I'm still going.

Q And when did she tell you that?

A Oh, that was about a year or so go.

Q A year or so go. And you still eat regularly?

A Yes.

Q And your appetite is fine?

A Yes.

Q And you talked a little bit before, too, about this motorcycle that you have. I think it's a motorcycle.

A Yes.

Q Okay. And do you still get a chance to take that out?

A I think I've ridden it twice since I've been ill.

Q Okay.

A For just down the road and back.

MR. BROWN: Okay. All right. Mr. Gordon, I want to thank you for your time. I appreciate it.

Thank you, your Honor.

THE COURT: Redirect. We're going to go on until quarter till the hour.

MS. CLANCY: Very brief, your Honor.

REDIRECT EXAMINATION

BY DENYSE CLANCY:

Q Mr. Gordon, are you dying of cancer?

A Yes.

Q Would you wish your condition on anyone?

A Yes.

Q Do you wish your condition on anyone?

A Would I wish it on -- I thought you said would I blame on it anyone. No, I wouldn't wish it on anybody.

Q Are you grateful for every meal you can eat now?

A Absolutely.

Q The jury has now heard four days of your testimony, so I'm going to be extremely brief and just ask one question.

You've testified for four days here. They've even gotten into your personal car use, as opposed to your years as a lifetime mechanic. You've had hundreds of written questions. You've had over 28 hours --

MR. OSTERTAG: Judge, this is argumentative.

MS. CLANCY: Q -- of deposition questions.

I'll get to my question.

THE COURT: Sustained.

MS. CLANCY: Q Is there anything -- Mr. Gordon, you're closer right now to seeing our maker than any one of us in this room.

MR. OSTERTAG: Objection again; argumentative.

MR. BROWN: And also calls for speculation.

MS. CLANCY: Q As you sit here, tell us -- look at this jury and -- I'm rephrasing. Look at this jury --

THE COURT: Counsel, I'm just going to make clear that the last question was stricken from the record and this is a new question.

MS. CLANCY: Thank you.

THE COURT: Thank you.

MS. CLANCY: Q Look at this jury in the eye and tell them is there anything that you would like to correct or explain from your years as a lifetime mechanic based on the questions asked to you in the last few days.

A Yes, I guess there is. I'm not a -- this is all new to me. I've never been on a witness stand before.

We're very private people. We don't share our business with other people. I've worked 40 years as a mechanic. And during that time, I've been exposed hundreds and hundreds of times to asbestos. I've used the products manufactured by Ford, GM, and Chrysler.

I know some of the testimony I've given has been twisted around and maybe misconstrued, but I want you to know that I've answered everything the very best that I possibly could. There may have been times I've been confused, and if there are, I want you to know it wasn't because I was being dishonest. I've tried to be

as honest as I possibly can.

I don't know that I'll be here next year. I'm going to be standing in front of my maker before you. At least I hope none of you have to go before I do. But I've tried to be as honest as I possibly can.

I want you to know there's one thing that I really have trouble coming to grips with.

MR. OSTERTAG: Judge, I think it's beyond the scope of the question now.

MR. BROWN: It's a narrative.

THE COURT: Sustained. Next question.

MS. CLANCY: Yes.

Q Mr. Gordon, is there anything that you're having trouble coming to grips with with respect to your testimony here?

A Yes, there is.

Q Could you explain.

A Well, over the years I've brought home to my family asbestos on my clothing and my hair.

MR. OSTERTAG: Objection; this is beyond the scope of direct and cross was about. I'd like to approach on this.

THE COURT: Overruled.

You may answer.

THE WITNESS: My wife has washed my clothing. I've held my babies wearing my work clothes. And my worst nightmare is that what I've gone through, that they might one day have to experience because of what I

worked in. There are those who knew that this stuff was dangerous --

MR. OSTERTAG: Objection, your Honor. Beyond the scope of what the question was.

MR. BROWN: It's also argumentative.

THE COURT: Sustained. Next question.

MS. CLANCY: Q Mr. Gordon, what troubles you about your condition today?

MR. BROWN: I'm going to object; exceeds the scope of the cross-examination.

MR. OSTERTAG: Exactly, your Honor.

THE COURT: Overruled.

You may answer.

THE WITNESS: A Leaving my wife behind with no one to care for her. Leaving her with a cloud over her head and over the heads of our children that they might suffer the very thing that I'm going through at this time.

MS. CLANCY: No further questions, your Honor.

THE COURT: Recross.

MR. BROWN: Just a couple of questions.

THE COURT: Mr. Brown.

MR. BROWN: Thank you, your Honor.

RECROSS-EXAMINATION

BY EUGENE BROWN, JR.:

Q Mr. Gordon, your lawyer pointed to this stack of answers to interrogatories here. And you sued a bunch of people in this case; right?

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A Yes.
Q Okay. And you sued them because you thought that those people had caused your exposure to asbestos; correct?
A Those that might have caused it were sued. A lot of those were dismissed because there was no exposure.
Q That's fine. But you sued them, and then they asked you to answer these interrogatories; correct?
A That's correct.
Q Okay. And your lawyers also propounded interrogatories on your behalf to all these other people; correct?
A That's correct.
Q Okay. Now, in terms of just going forward -- right? -- we all bring something to the table. In other words, you've had several family members who have passed away as a result of cancer; correct?
MS. CLANCY: Objection, your Honor; beyond the scope of redirect.
MR. BROWN: It's not beyond the scope, your Honor.
THE COURT: It's been opened up. Overruled.
You may answer. Do you have the question?
Restate the question.
MR. BROWN: Yes.
Q Do you have family members who have had cancer and died from that condition?

A Yes; none of them with asbestos poisoning.
Q I understand, sir. But -- and do you understand -- you've had uncles who have died from cancer; correct?
A Yes.
Q And you've had aunts who have died from cancer; correct?
A That's correct.
Q And all those people are tied together by heredity; right?
A That's correct.
MR. BROWN: Okay. Thank you.
THE COURT: Further redirect? I mean recross.
MS. CLANCY: No further questions.
MR. OSTERTAG: No further questions.
THE COURT: Okay. I said we were going to break now, but I -- ladies and gentlemen, this is your opportunity to present to the Court written questions of the witness. Are there any written questions of the jury to Mr. Gordon?
My choice is always to review the written questions with counsel before the witness leaves the stand and then direct them to the witness, but if you -- so I'm trying to assess -- it's possible that I can do that review during the break and give all of you a break, but first I need to know are there going to be any written questions to the jury of Mr. Gordon. Anyone?

All right. No.

Then we're taking a 15-minute recess. We'll start on the hour.

Thank you, Mr. Gordon. You may step down.

THE WITNESS: Thank you.

(A recess was taken from 10:46 a.m. until 11:10 a.m.)

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THE COURT: Ready to proceed in the plaintiffs' case. Plaintiffs' next witness.

MR. LANGDOC: Yes, your Honor. Plaintiffs call Dr. Barry Castleman.

THE COURT: Dr. Castleman to the stand.

(Barry Castleman was duly and regularly sworn by the courtroom clerk.)

THE WITNESS: Yes.

THE CLERK: Please be seated. State and spell your name for the record.

THE WITNESS: My name is Barry Castleman, C-a-s-t-l-e-m-a-n.

THE COURT: Counsel may proceed.

TESTIMONY OF

BARRY CASTLEMAN,

called as a witness by the plaintiffs, having been first duly and regularly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY JOHN LANGDOC:

Q Dr. Castleman, what type of work do you do for a living, sir?

A I'm an independent consultant in the field of toxic substances control, basically science and engineering profession.

Q We've got two pictures on the screen. Are these you, sir?

A Yes.

Q Have you been asked to provide assistance to the United States Senate --

A Yes.

Q -- and the EPA with respect to the hazards of asbestos?

A Yes, I have.

Q Have you been asked to provide assistance with respect to the hazards to brake mechanics from asbestos?

A Yes, I have.

Q And sir, have you been asked to provide assistance to the U.S. Senate and the EPA and others with respect to Ford, General Motors, and Chrysler and their attempts to alter the scientific literature and regulations?

MR. OSTERTAG: Objection, your Honor. May we approach briefly on this?

THE COURT: You may.

(An off-the-record sidebar discussion

was conducted from 11:12 a.m. until 11:13 a.m.)

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q Okay. Have you provided testimony to the United States Senate and the EPA with respect to Ford, General Motors, and Chrysler and their involvement in funding scientific literature and influencing regulations?

A Yes.

Q Will you provide the same testimony today for this jury that you have to our government and to the EPA?

A I'm certainly ready to do that, yes.

Q Dr. Castleman, were you being paid by any groups, any organizations, for your testimony any of the times that you've gone before the United States Senate or before the EPA with respect to these issues?

MR. BROWN: Objection; relevance.

THE COURT: Just a minute.

Overruled.

You may answer. Were you being paid by any groups or organizations for your testimony when you went before the United States Senate or before the EPA with respect to these issues?

THE WITNESS: What you're asking covers a period of 35 years or so, and the only example I can think of where I was being paid by anyone was in 1986 when the EPA held a week of hearings on issues relating

to regulation or banning of asbestos products. And I represented the Natural Resources Defense Council at those hearings, a nongovernmental environmental group.

MR. LANGDOC: Q And so two questions, then. First, what is the National Resources Defense Organization with respect to that 1986 EPA hearing?

A The NRDC is -- was and remains one of the leading environmental groups in the United States on issues having to do with -- a full range of issues having to do with toxic substances in the environment in particular, as well as other environmental issues. And so I was working for them as a consultant in 1986 at the time of those hearings.

But for the most part I've appeared at many hearings, Senate hearings, House hearings, governmental administrative hearings, and most of the time I'm not paid by anybody. I do this as a citizen and a person with some professional background that's of relevance to the issues discussed.

Q Dr. Castleman, are you provided hourly compensation when you testify in lawsuits like this?

A Yes.

Q And how much is that?

A $300 an hour.

Q Dr. Castleman, I want to talk to you some -- and the jury's heard how this goes with an expert -- about qualifications, period. And I want to talk with you about how it came to be that you were the person

that the government calls on to provide assistance with respect to asbestos and asbestos brakes and issues like this. Where do we start?

A I guess you want to know my professional training and education.

Q Please.

A My bachelor's degree is in chemical engineering from Johns Hopkins university in 1968.

My master's degree is in environmental engineering, air pollution control, also from Johns Hopkins.

And then I was away from school about ten years and went back in the 1980s and got a doctorate in occupational and environmental health policy from the Johns Hopkins School of Public Health.

Q What was your doctoral thesis on?

A It was called Asbestos and Historical Case Study of Corporate Response to an Industrial Health Hazard. It examined the background of what was in the public domain as a kind of a stage setting, if you will, and illustrated frequently with documentation relating to what actually had been known by individual companies along the way and what they had done about the issue of asbestos as a health hazard both within their manufacturing operations, as well as in their business activities relating to the general public and the sale of their products.

Q Sir, how did you become interested in studying

for your doctoral thesis how companies and their internal files and their internal workings were dealing with issues relating to asbestos health hazards?

A Well, about ten years earlier I had written my master's thesis about the health hazards of asbestos back in 1970 and '71. And so I was working as a public health official and later with environmental groups, nongovernmental organizations, in the 1970s, and then as a consultant, an independent consultant for different federal agencies off and on with issues having to do with asbestos and regulations having to do with asbestos.

Sorry. I forgot what you were asking.

Q Let's jump forward.

What am I holding here?

A That's -- my doctoral thesis was identical to the first edition of the book "Asbestos: Medical and Legal Aspects." It's now in its fifth edition. It's about twice the size of my doctoral thesis.

And what I was starting to explain before is how I got interested in the corporate response. And that was because sometime in the 1970s I was approached by attorneys and asked to do research on what was known back in the 1940s and '50s and '60s about the hazards of asbestos, and they explained product liability to me. And so I started looking much more closely at the historical documents.

And at the same time, the lawyers started to

come up with internal corporate documents and trade association minutes through the legal discovery process that's unique to the American judicial system. And so I started to see both the -- what was in the public domain from my research in libraries and kind of the inside story revealed in the corporate documents.

And so I put these things together in a unified analysis in my doctoral thesis, an analysis of an overall public health failure to prevent preventable disease.

Q Is there a chapter in your book regarding asbestos disease in brake repair workers?

A Yes. That's been a special interest of mine.

Q Tell us some more about that and that chapter.

A Well, my interest derived from --

MR. BROWN: Excuse me, your Honor. I'm going to object to the question; it calls for a narrative.

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q Could you tell us about the chapter you wrote in your published book, "Asbestos Disease in Repair Workers."

A Yes. This basically is an annotated bibliography of things that have been published about the hazards of asbestos in -- both in the manufacture of brake linings, grinding of brake linings, and the work that brake mechanics do. Literature that was relevant to that is included in that chapter.

Q For how long have we as a society understood

through the medical literature that people who work with asbestos brakes can be at risk for developing cancers and disease?

MR. BROWN: The question is vague and overbroad; calls for speculation.

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q What did you write in your book about how long and how extensive we as a society have known about the hazards of asbestos from brakes, clutches, and car parts?

MR. BROWN: Same objection.

THE COURT: Overruled.

You may answer.

THE WITNESS: A Well, I found that there were numerous reports of asbestosis in workers manufacturing brake linings back in the 1930s and '40s, mainly the early 1940s, in this country, and that there were plenty of other articles that referred to the grinding of brakes both in -- sometimes in a setting described as a manufacturing setting, sometimes not so described, going back to the 1940s. Going back to 1930s, actually. And that individual reports of actual cases among brake repair workers, reports of mesothelioma, first started showing up in 1965.

MR. LANGDOC: Q Where did you go, sir, to find the documents that you relied on to write your chapter about asbestos disease in brake repair workers regarding what was out in our medical literature?

A Well, most of the stuff is available in medical libraries. These are public libraries at major, you know, hospitals and medical education centers around the country in major cities all over the country.

Q Sir, do you also have a chapter in your book with sections in the company knowledge chapter regarding your research and your understanding of General Motors, Chrysler, and Ford Company and their internal documents and decisions regarding asbestos and asbestos health hazards?

A Yes, to the extent that such information has been disclosed and to the extent that I considered it significant enough to include in the book. I didn't reference every single document I've ever seen for each of these companies, but basically the highlights.

Q Could you tell the jury some about how you reviewed documents from inside the Ford, General Motors, and Chrysler Corporation files.

A Well, documents might consist of such things as reports of air sampling for asbestos and other toxic dusts inside of a manufacturing plant at, say, General Motors in 1939. It might reflect concerns about measurement of exposures where people are grinding or using compressed air to blow out brakes in a manufacturing setting or a testing department of a manufacturer.

And so from these kind of reports, one gets information not only about what the exposures are that

were measured, but about the recognition and the awareness of the company about the hazards attendant upon such exposures.

Q Sir, with respect to this qualifications part, you're not a medical doctor; are you?

A No. My field is public health.

Q And you're not a pathologist or a microscopist or an industrial hygienist. You're a doctor who focuses on public health; is that right?

A Yes, although I have some training in industrial hygiene, one of the fields you mentioned.

Q And I want to talk about the last part of your -- you know, what you're going to talk to the jury about, what you talked to Congress and the EPA about, and that is the recent development of company-sponsored science and company-sponsored requests for regulation changes. Could you tell us some about that and your investigations relating to those topics.

A Yes. Well, I've been involved in activities relating to the government's regulation and publication of information for many years. And so, for example, the government published a report warning -- the EPA published a report warning brake mechanics about the hazards attendant upon their work from asbestos and means to minimize those hazards. And this was back in 1986. And I was involved at the time that that report was published.

And then 17 years later I get a call from a

guy at the EPA who was principally involved in --

MR. OSTERTAG: Objection; calls for hearsay.

THE COURT: And are you about to say what he said, which you're not permitted to do, or are you going to say that he said something and you did something on account of it, which is permitted? The latter?

THE WITNESS: I think it's the latter.

THE COURT: The latter is permitted.

THE WITNESS: He told me there had been a --

MR. OSTERTAG: Excuse me. That's the hearsay, your Honor. He's just about to say it.

THE COURT: Sustained. You can't say what he said.

THE WITNESS: I'm not giving his exact words. He informed me of something that was happening over there that I hadn't known about.

THE COURT: Offered not for the truth, but to explain what he did next?

MR. LANGDOC: Yes, your Honor.

THE COURT: You may paraphrase, and for that purpose it's accepted.

There are certain rules, ladies and gentlemen, about what is said outside of court that may be permissibly presented to the jury, and so it's quite complicated. I'm just trying to keep us on the straight and narrow here.

Counsel, if your witness has the question in mind. Okay.

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THE WITNESS: A The -- this gentleman from the EPA informed me that there had been an effort to get the EPA to withdraw its publication from -- to basically say that this publication is no longer valid, that there's no hazard to brake repair workers from asbestos. And this was prompted by a --

MR. OSTERTAG: Objection; calls for hearsay.

THE COURT: Overruled. For the purpose stated, it may be offered.

THE WITNESS: A This was prompted by a ten-page letter from a big law firm informing the EPA that this -- the use of this EPA publication in litigation, among other things, was causing problems for some parties and that new research had been published in the last few years that showed that brake mechanics were not at risk of any asbestos disease, and so therefore, the law firm was asking the EPA to withdraw this publication. That was what it was based on, this new research, and they -- and in this letter they neglected to mention who their clients were.

MR. LANGDOC: Q Did the EPA publication warn mechanics that they could get mesothelioma from working with brakes?

A It did.

Q And what was your reaction and your response to learning that a law firm had petitioned the EPA and asked them to take the document that was warning workers about mesothelioma and withdraw it?

MR. OSTERTAG: Objection; relevance what his reaction was.

MR. LANGDOC: His professional response.

THE COURT: As rephrased, you may answer.

THE WITNESS: A Well, I submitted comments of my own to the EPA, and I also got in touch with other people who were authorities in the field of asbestos and disease and had published on brake repair hazards, Dr. James Lee from Australia, who was a leading authority and had published about the mesothelioma register data on occupations of people dying of mesothelioma in Australia, the largest such register in the world, and Dr. Richard Lemmon and others, who then commented to the EPA saying that there is a continuing hazard of asbestos exposure to these brake repair workers, and high levels of asbestos dust have been measured, and so on, and that the EPA should not do what the lawyer's letter was asking them to do.

MR. LANGDOC: Q Now, Dr. Castleman, so that we can get up to this point where the science begins to change --

MR. OSTERTAG: Objection; argumentative.

THE COURT: Overruled.

You may answer this question.

MR. LANGDOC: Q The funding of the scientific papers begins to change --

MR. OSTERTAG: Argumentative; and it's -- the preface to the question is counsel testifying. Just ask

the question.

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q So that we can get up to this point in our history where everything changes, can you talk some with the jury about what the universal consensus was, medical literature, industry, internal files, about whether asbestos workers who worked with asbestos brakes were at risk for developing cancer.

MR. BROWN: Objection; no foundation; calls for speculation; assumes facts not in evidence, that there's any such universal thing.

THE COURT: Sustained. Rephrase. Lay the foundation.

MR. LANGDOC: Q Dr. Castleman, talk with us about the 1960s and '70s before we get to now, when things start changing.

MR. BROWN: Object, your Honor; there's no question pending; it calls for a narrative; its unintelligible.

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q Dr. Castleman, 1960s. From your review of the internal documents of these companies, from your review of the medical literature, what did we know about asbestos brake worker mechanics and their risk for developing cancers?

A Well, we knew that breathing asbestos could cause asbestosis, lung cancer, and mesothelioma. That was well established by the 1960s. We knew that

grinding breaks and blow-out of brake assemblies could produce high levels of asbestos-containing airborne dust exposures to workers.

There had been a conference just about brake repair hazards held in Britain by Ford in 1969, published in 1970 in a journal, in which some of the exposure levels that had been measured were reported. It was -- in some of the -- in at least one of the articles by one of the Ford experts it was commented that, of course, grinding of the brakes would be very dangerous.

MR. BROWN: Your Honor, that's hearsay again.

MR. OSTERTAG: Join.

MR. LANGDOC: It's not the statement; he says it was reported.

MR. BROWN: That's hearsay.

THE COURT: He's permitted to testify about the historical development in this area, so I'll permit it for that purpose.

MR. LANGDOC: Q Please continue.

A What wasn't happening as a response to this published medical and scientific information was government regulation in the United States, and the reason for that is because in the 1960s there was no Environmental Protection Agency; there was no Occupational Safety and Health Administration; there was no National Institute for Occupational Safety and Health; and there was no Consumer Product Safety

Commission. These governmental agencies were created by acts of Congress between 1970 and 1972, and so only then did things start to change.

Q Dr. Castleman, what's the very first new standard that OSHA addressed when it came into business, into existence?

A The first new standard that the Occupational Safety and Health Administration issued was an emergency temporary standard for asbestos exposure. This then started a clock that the government had to six months later go through full rule-making and issue a so-called permanent standard, which OSHA did do.

Q Dr. Castleman, when did you first become involved in concerns about whether or not -- not the people who work in the factories at Ford and GM and Chrysler, but the mechanics who bought and were using the products as the end users -- when did you first become involved in concerns about whether they were being warned properly?

A I had read about this in the publication I referred to of the Ford conference in 1970. But I was a public health official in the Baltimore County Division of Air Pollution and Industrial Hygiene in 1972, and one day I saw a mechanic -- I just happened to be walking by with a coworker, and some mechanic was taking a compressed air hose to a wheel of a truck, and just a massive plume of dust was coming up, and I was horrified. And I thought, "My gosh. These people

obviously have no idea there's any danger to them from this dust, and they need to be warned."

And so I drafted a one-page notice that ultimately went out on the letterhead of the Baltimore County Health Department, signed by my boss's boss, and it warned mechanics not to use compressed air hoses, told them to use vacuum devices to remove that kind of dust, and warned that they could get cancer from breathing the dust.

Q What research did you do at that point to determine whether or not the people who were supplying the asbestos-containing brakes were warning the people who were working with them as end users?

A I didn't make a specific effort to look at each and every one of these products these people were using, but I got the impression that warning labels were not being provided to these mechanics, and that was one of the things that I put in the article that I published about this in 1975, was that it would be a simple thing for the manufacturers to place warning labels on these products as one way of limiting the dangers associated with hundreds of thousands of workers doing regular brake repairs all over the country every day.

Q Where do we go from there when you first make your first public publication asking for people who are working with brakes, mechanics, to please be warned about the potential for disease and being overexposed to asbestos?

MR. OSTERTAG: I'm sorry. The question is vague. Where do we go from there?

THE COURT: Sustained.

MR. LANGDOC: Q What's the next step, Dr. Castleman?

MR. OSTERTAG: Same objection.

THE COURT: Are you asking the opinion of this witness what the next step is, in his view?

MR. LANGDOC: Yes.

THE COURT: You may answer that question.

THE WITNESS: A Well, the government put out warnings of its own a month after my article appeared, just by coincidence. The National Institute for Occupational Safety and Health issued an alert bulletin warning about the hazards of brake repair work and citing measurement data published by Dr. Selikoff and his associates at the Mount Sinai School of Medicine in New York, leading authorities on asbestos in the country.

MR. LANGDOC: Q Now, Dr. Castleman, I want to later on today go through with more specific detail about what the companies were doing inside, what they were being told from the government, and I just want to kind of give a thumbnail picture of where we are.

We're at 1975. And at this point in time, in your opinion, sir, was there a consensus that working with asbestos-containing brakes and other asbestos-containing products by mechanics was

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potentially hazardous to their health?
A I think it was something approaching a consensus, certainly. The -- some of the companies were already putting warnings labels on their products in accordance with the OSHA standard. Some of the brake lining manufacturers started doing that in 1973.
Q And when you say that some of the companies that were making asbestos-containing brakes were warning, were any of those companies Ford, GM, or Chrysler?
A No.
MR. OSTERTAG: That's hearsay, your Honor.
THE COURT: Overruled. You're offering that as opinion; correct?
THE WITNESS: Yes.
THE COURT: It's permitted in that form.
THE WITNESS: A No, Ford, GM, and Chrysler were not putting warnings on their products at that time.
MR. LANGDOC: Q What type of companies were putting warnings on the asbestos-containing brakes?
A Companies that were manufacturers of the brake linings and clutch facings, companies -- Maremont Corporation; another one called Raybestos-Manhattan.
Q From your review of the internal company documents, were there any concerns that if you put warnings on, it could affect your sales and your profitability?

MR. OSTERTAG: Objection; that calls for hearsay, your Honor.

MR. BROWN: It's also irrelevant.

MR. LANGDOC: Q In your opinion.

THE COURT: As rephrased, it's permitted.

THE WITNESS: A Yes. There was a vigorous discussion after the OSHA standard came out --

MR. OSTERTAG: Objection. He's testifying as to what's contained in statements contained in out-of-court documents, your Honor. That's exactly what the ruling was.

MR. LANGDOC: And I can clarify.

Q In your opinion, from your review of what's in the company files, from your review of what's in the medical literature, from your being in existence at this time as someone important in public health and asbestos exposures, what's your opinion as to whether or not there were any discussions about whether or not putting warnings on could affect the profitability and sales of these products?

MR. OSTERTAG: Objection; "discussions" means statements, out-of-court statements.

THE COURT: Overruled.

You may answer.

THE WITNESS: A Yes, there were vigorous discussions after the OSHA standard was published in 1972 among companies that were in the Friction Materials Standards Institute, the trade association of companies

making asbestos-containing -- or nonasbestos, eventually -- brake linings and brake shoes.

MR. LANGDOC: Q Just so we get some language, some vocabulary, right, what do you mean when you say a trade association like the FMSI?

A A trade association is like the American Petroleum Institute. It's a trade association of companies -- an association of companies that are in the same line of business.

And they'll have different committees. You know, they might -- like if they're talking about oil products, they might have a committee just for standardizing the terminology they use to describe the different fractions of refined oil products they're selling to the public so they all mean the same thing when they say number two heating oil. And then there will be other common issues that trade associations will take up, such as health hazards associated with the manufacture and sale and use of their products. These are also things that typically will surface in the discussions of industry trade associations.

Q What was the purpose of the FMSI, the Friction Materials Standard Institute?

A Basically --

MR. OSTERTAG: Objection; no foundation.

THE COURT: Sustained. Lay the foundation.

MR. LANGDOC: Q Have you reviewed countless internal documents from the FMSI trade organization?

A Yes.
Q Do you have an understanding as to what the purpose of the trade organization was?
A Yes.
Q What was that, sir?
MR. OSTERTAG: Calls for hearsay based on review of out-of-court statements.
MR. LANGDOC: Q What is your opinion as to what the purpose was of the FMSI?
A It was basically to represent the industry in matters having to do with government regulation, public information, to represent the consensus of industry desires in dealing with outside parties of all kinds that might affect the business of the individual members of the trade association.
Q Was the problem of asbestos brakes causing cancer something, in your opinion, the FMSI addressed consistently?
A In the 1970s, yes. Up until then they didn't have to -- they didn't have any outside pressure, so they didn't have to deal with it.
Q And what do you mean when you say "outside pressure"?
A There was no EPA, no OSHA, et cetera. There were no government regulations that were putting the industry in a position of having to respond and defend itself.
Q What do you mean when you say no government

regulations that would put the industry in a position to defend itself?

A Well, when the government creates -- when Congress created the EPA, this was done through the enactment of laws that specified that the EPA was authorized to enforce the Clean Air Act and the Safe Drinking Water Act and other laws that specifically said what the EPA was authorized to do by the Congress and how they were supposed to do it.

So this whole overall process of governmental regulation and rule-making was set out in the laws that created these agencies. So when I -- I'm not just saying -- when I say Congress created these agencies, they didn't just do that by writing a one-line sentence that said there will now be an EPA. They created whole legislative authority in the process of saying there will be an EPA, and this is what they're going to do. This is how they're going to protect us from air pollution, and these are the factors they're going do weigh. These are little procedures they're going to follow, and so on, in terms of how the governmental agencies will carry out their mission that the Congress is assigning them.

Q And how do those regulations -- I think your word was put pressure on companies who made asbestos brakes to defend themselves.

MR. BROWN: Calls for speculation; there's no foundation.

MR. LANGDOC: I'll ask the question again.

THE COURT: Good. Thank you.

MR. LANGDOC: Q In your opinion, how did the creation of these regulations by the government force the companies that made asbestos brakes to, in your words, defend themselves?

MR. BROWN: Objection; no foundation; calls for speculation; it's also irrelevant.

MR. OSTERTAG: It's argumentative, as well, as framed.

THE COURT: Complex. It's compound. Sustained; compound. Break it down.

MR. LANGDOC: Q In your opinion, how did the regulations end up forcing these companies to react to the regulations?

MR. BROWN: Calls for speculation.

THE COURT: Sustained.

MR. LANGDOC: Q Based upon your review of the countless FMSI documents and you being there at the time as a public health servant to this country in the '75s, in the 1970s, involved in asbestos health issues --

MR. OSTERTAG: Your Honor, may we approach real briefly on something? I'm sorry. I didn't mean to interrupt.

MR. LANGDOC: There's not even a question out.

THE COURT: Just one moment.

All right. Counsel, please approach.

(An off-the-record sidebar discussion

was conducted from 11:45 a.m. until 11:47 a.m.)

THE COURT: All right. Counsel, with that guidance, could you go on.

MR. LANGDOC: Yes, your Honor.

Q Dr. Castleman, from your review of these documents, what were the manufacturers of these brake products that had asbestos -- through the FMSI, what was the response to these regulations?

A Well, the whole process of government regulation is kind of a long process, involving numerous involvement of parties that are going to be affected by the regulation. Typically the government proposes --

MR. BROWN: Excuse me, your Honor. I'm going to object. Move to strike. The answer is not responsive to the question.

THE COURT: Could the court reporter read back the last question, please.

(The question contained herein at Page 1426, Lines 6 through 9, inclusive, was read by the court reporter.)

THE COURT: The question really is from your review of these documents, what was the response of manufacturers? And the objection is that the answer was not responsive?

MR. BROWN: The answer is not responsive.

THE COURT: Sustained. I mean, you can ask

him to explain the process, but this is not specifically an answer to your question.

What was the response of the manufacturers, based on your review?

THE WITNESS: They commented when the regulations were first proposed. They testified at hearings when the regulations were discussed. And then there were posthearing comments and there were additional opportunities for manufacturers to comment, and then the regulations would come out. So I'm just saying that through the trade association, the manufacturers were continuously informed as this process was going forward and invited and, in fact, coordinated in making their response as an industry.

MR. LANGDOC: Q Was General Motors a key member of the FMSI?

A They were a member of the FMSI at the time this was going on, and the OSHA standard, 1972, 1973.

Q Was Ford ever a member of the FMSI?

A No.

Q What about Chrysler?

A Yes.

Q At this point in time, 1975, what is the consensus from the FMSI with respect to whether or not people who were using the asbestos brakes are at risk for getting cancers like mesothelioma?

A Some of the members were putting warnings on the products, OSHA warnings by that time. Some of them

were not yet doing so. So I wouldn't say there was a consensus within the industry yet. Outside the industry, it was certainly a consensus or something approaching that.

Q Does the FMSI eventually reach a consensus position with respect to this issue?

A Yes. In 1978 they published a booklet, a guidance document, where the industry trade association itself, with numerous cartoons in the document -- it was written at a very simple level -- warned that you could get cancer --

MR. OSTERTAG: Objection; calls for hearsay. He's reciting hearsay now, what's in the document.

MR. LANGDOC: Q Not specific sentences, but what you've relied on and what your opinion is --

THE COURT: Sustained.

MR. LANGDOC: Q -- to what the industry organizations themselves are of the consensus of in 1978.

THE COURT: That's prohibited.

MR. LANGDOC: Okay.

THE COURT: Rephrase.

MR. LANGDOC: Q What's your opinion as to what by '78 the FMSI consensus was, without quoting specific language?

A That you should use a respirator if you were doing certain kinds of things around brakes; that you should use local exhaust ventilation on grinding wheels,

that is, to have them set up with a dust catcher hood and exhaust duct and a fan to draw the dust-laden air away from the breathing zone of the worker; that you could get lung disease and cancer if you didn't apply these kinds of safeguards that were shown in the cartoons in this document.

Q 1978. Any internal disagreement that mechanics who work with asbestos brakes are at risk for getting cancer?

A No. There seemed to be a social consensus by the time the industry trade association threw in the towel, so to speak, on this argument.

Q Any internal disagreement by GM in the 1970s, 1978, that mechanics who worked with asbestos are at risk for cancer?

MR. BROWN: Calls for speculation; no foundation.

MR. OSTERTAG: That also violates the rule.

THE COURT: Madam Court Reporter, would you read back the question.

(The question contained herein at Page 1429, Lines 13 through 15, inclusive, was read by the court reporter.)

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q I'm not asking for a statement. In your opinion, from your review of the internal General Motors confidential files, is there any

disagreement at that point in time that asbestos workers who worked with asbestos brakes are at risk for getting cancer?

MR. BROWN: Same objection.

THE COURT: Sustained.

MR. LANGDOC: Q Your review of the documents for Ford, GM, Chrysler, and FMSI -- by 1978 what's the consensus, in your opinion?

A Brake repair is a hazard; and absent the application of safeguards to limit the exposure of mechanics to the dust, that some of them are going to be likely to develop asbestosis or cancer as a result.

Q Any reports of -- to these companies of brake mechanics who are getting mesothelioma?

A Reports to the companies? Yes. Dr. Selikoff had met with all three of the auto manufacturers in 1975, just prior to the release of his data by the National Institute for Occupational Safety and Health later that summer -- later that year in this alert bulletin and told the companies about the exposures measured from beveling, grinding, and blow-out of brakes. And Selikoff also told them that there had been cases of mesothelioma reported among mechanics in the literature.

Q Any disagreement by our scientific and regulatory agencies, EPA, OSHA, NIOSH -- any disagreement there in the 1970s, 1978, that brake mechanics who work with asbestos brakes are at risk for

getting cancer?

MR. BROWN: Calls for speculation; there's no foundation.

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q Have you reviewed from the 1970s and were you there in the 1970s and do you have an understanding as to what OSHA, EPA, and other scientific and regulatory agencies were discussing with respect to asbestos brake repair and the risk of getting cancer?

A To the extent that they were discussing that, yes, I think I'm generally aware of it. I was professionally active at the time, and this was an interest of mine.

Q And what was that consensus?

A That brake repair work is a hazard to your health, at least from the asbestos exposure, and that safeguards are warranted and very much needed.

Q Dr. Castleman, let's move now into the 1980s. In the 1980s, were you involved in any way with debates between General Motors and the EPA regarding asbestos and safety?

MR. OSTERTAG: Objection, your Honor. May we approach?

THE COURT: You're asking -- is this an objection?

MR. OSTERTAG: This is something we talked about Friday.

THE COURT: Overruled.

You may answer this one question: Were you involved in any way with debates between General Motors and the EPA regarding asbestos and safety?

THE WITNESS: Yes.

THE COURT: Next question.

MR. LANGDOC: Q At that point in time what was your opinion as to what the EPA's position was regarding asbestos exposures to brake mechanics and the risk for developing cancer?

A Well, the EPA at that time -- this was 1986 -- was either in the process of publishing or had published -- I guess the EPA had published -- a month before the time of this discussion you're referring to with General Motors had published the brake guidance document warning about the hazards of brake repair work, so the EPA position was very clear and extensively discussed in that document.

Q Dr. Castleman, when did the consensus -- the scientific, the regulatory, the industry consensus -- that people who worked with asbestos brakes were at risk for cancer begin to change?

A Not until the -- within the last ten years with the consensus, in that there were voices now appearing in published scientific articles saying hold it, maybe asbestos is not a hazard to brake repair workers; we've reanalyzed the earlier publications and have come to that conclusion.

Q Did you do any investigations about what's

happened here, what are these new publications that are popping up, who's funding them, and what are they about?

A That's the first thing I wanted to know. Just follow the money is how you figure out a lot of things in this field of occupational health.

Q What did you find out when you followed the money?

MR. BROWN: Objection; relevance.

MR. LANGDOC: I can rephrase, your Honor.

THE COURT: All right.

MR. LANGDOC: Q What did you find out then?

MR. BROWN: Objection; relevance.

THE COURT: Overruled.

THE WITNESS: A That General Motors, Ford, and Chrysler had spent a small fortune on consultants that were publishing these articles and were starting to use these consultants as expert witnesses, even though most of them had -- or at least some of them were people I'd never seen named as the authors of articles having to do with asbestos and disease, but in these analyses they were now publishing within the last seven or eight years, they are analyzing the work that others have published before them. They're not really contributing new epidemiological investigations, new primary studies of their own; they're reanalyzing stuff that's already been published.

MR. LANGDOC: Q Tell the jury some about the first time it popped up to you as a public health

consultant that something was changing here and there were new authors with new funding regarding this specific area, asbestos brake workers and cancer.

MR. OSTERTAG: Objection; relevance.

MR. BROWN: It's argumentative; assumes facts not in evidence; lacks foundation.

THE COURT: Sustained. Compound.

MR. LANGDOC: Q Approximately what year was this?

A In 2003 I have a vivid recollection of becoming very concerned about this.

Q And what was that recollection?

MR. BROWN: Objection; relevance.

THE COURT: Sustained; ambiguous. Rephrase. Are you asking about --

MR. LANGDOC: He said in 2003 he had a recollection, and I was just asking him to continue and tell us what that was.

THE COURT: Well, you're asking him to recollect, or are you asking him to describe his concern?

MR. LANGDOC: Well, I was going to ask for the recollection and then to describe his concern.

THE COURT: You may do so.

MR. LANGDOC: Q What was the recollection, and then can you go on and describe to the jury what your concern was.

A My apprehension was raised by getting this

call from the EPA about the effort to get the EPA to withdraw the brake guidance document that had been published in 1986, the letter from the lawyer. And --

MR. BROWN: Well, then I'm going to object, your Honor; it's been asked and answered; it's cumulative.

THE COURT: Overruled. This is complicated enough so that some repetition is in order for everyone to understand what is being testified about. Overruled.

You may answer.

THE WITNESS: A And the letter cited as its primary basis the publication of these new articles that were suddenly starting to appear reanalyzing earlier work and proclaiming brake repair work safe.

MR. LANGDOC: Q What was your opinion as to who was funding the articles?

MR. OSTERTAG: Objection; foundation; speculation.

THE COURT: Sustained. Rephrase.

MR. LANGDOC: Q Did you perform an investigation to see who's funding these new articles?

A Well, it said so on some of the articles, that a lot of the -- some of these articles disclosed that funding had been received from General Motors, Ford, and Chrysler.

Q And did you undertake an investigation to see who it was that, through this law firm, was asking for the EPA to make the document warning brake mechanics of

mesothelioma go away?

A Yes, of course. I've never seen a case where lawyers had written to a federal government agency --

MR. BROWN: Excuse me, your Honor. I'm going to move to strike the answer; it's nonresponsive and argumentative.

THE COURT: Sustained. It goes beyond the scope of the question, which was did you undertake an investigation to see who it was that was asking the EPA to make this document warning go away. What's the answer? Yes?

THE WITNESS: Yes.

THE COURT: Next question.

MR. LANGDOC: Q And what is your opinion, after your investigation, as to who it was that was asking the EPA to make the document that warned brake mechanics about cancer and mesothelioma go away?

A General Motors.

MR. OSTERTAG: Speculation; foundation.

THE COURT: Sustained. Foundation.

MR. LANGDOC: Q Dr. Castleman, did you make phone calls to people within the EPA?

A Yes. I made phone calls to EPA, congressional offices. I spoke with journalists. The journalists and the congressional offices tried to find out who the lawyers had been hired by. The law firm wouldn't tell them.

Q Did you make your own personal investigation

into the law firm and who its clients were?

A Yes.

Q And what is your opinion, sir, based upon that investigation, as to who tried to make the mesothelioma and brake mechanics warning document go away?

A General Motors, Ford, and Chrysler are clearly implicated by the billing of a consulting firm that was involved in this activity.

MR. LANGDOC: I think this is a good time to break for lunch.

THE COURT: 1:30, ladies and gentlemen, is when we'll start up again. And you are now beginning your lunch recess with the same admonition not to speak about the case or research it in any way, as I've described many times before. The jurors are excused.

Do counsel need to address the Court at this time?

MR. LANGDOC: No, your Honor.

THE COURT: May I see counsel at sidebar.

(An off-the-record sidebar discussion was conducted from 12:04 p.m. until 12:07 p.m., at which time a lunch recess was taken.)

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E X H I B I T S

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W I T N E S S E S

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FOR THE PLAINTIFFS:	DIRECT	CROSS
GORDON, Paul	1396	1360/1399
CASTLEMAN, Barry	1403	---

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STATE OF CALIFORNIA)

) ss:

COUNTY OF SAN FRANCISCO)

I, DENISE L. DOUCETTE, CSR 5963, RDR, CMR, FAPR, an official court reporter of the Superior Court of the State of California, County of San Francisco, do hereby certify that the foregoing is a full, true, and correct transcription of the shorthand notes taken by me of the proceedings had in the above-entitled matter.

I have hereunto set my hand this 8th day of September, 2008, at San Francisco, California.

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DENISE L. DOUCETTE, CSR 5963

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