FILE NAME: .ƛℕŘ ó.Lw5ú

DATE: мффр Wl·y˝ом

DOC#: .Lw5ллр

DOCUMENT DESCRIPTION: [ŜƎl·f π 5ŜLJƨăƛűƛƨy˝ƨ₮ [Ŝƨyl·ℕŘ ² Ŝl·ØŜℕ

PAGES 1 - 70
(NO EXHIBITS)

CAUSE NO. B-143,539 — IN THE DISTRICT COURT OF JEFFERSON COUNTY, TEXAS 60TH JUDICIAL DISTRICT

SHARON BOWEN ELLIS, individually and as Administratrix of the Estate of Thomas Ray Ellis, deceased; and Alicia D. Ellis, surviving child of deceased
vs.
A. C. & S., et al.

CAUSE NO. B-940,195-C — IN THE DISTRICT COURT OF ORANGE COUNTY, TEXAS 163RD JUDICIAL DISTRICT

DOY DIGGS and VELMA DIGGS
vs.
A. C. & S., et al.

Deposition of Leonard Weaver
Tuesday, January 31, 1995
Holiday Inn
55 Ariadena Road
Dedham, Massachusetts 02026

****

J. EDWARD VARALLO, RPR/RMR
FRITZ & SHEEHAN ASSOCIATES, INC.
295 DEVONSHIRE STREET - BOSTON, MASS. 02110
(617) 423-0500 FAX 423-0501

APPEARANCES:

J. Donald Carona, Jr., Esq.
Law Offices of Martin Dies
1009 West Green Avenue
Orange, Texas 77630-5697
for Plaintiffs Ellis

Paul D. Henderson, Esq.
Law Offices of Martin Dies
1009 West Green Avenue
Orange, Texas 77630-5697
for Plaintiffs Diggs

Brian S. Clary, Esq.
Livingston & Markle
55 Waugh Drive, Suite 1200
Houston, Texas 77007
for Bird Corporation and the deponent

Gwen Frost, Esq.
Powers & Frost, L.L.P.
24 Greenway Plaza, Suite 2020
Houston, Texas 77046
for Fibreboard Corporation

Holly Hartow, Esq.
Law Offices of Nelson G. Zeidman
1900 W. Loop South, Suite 700
Houston, Texas 77027
for Mine Safety Appliances

Claude R. LeMasters, Esq.
Orgain Bell & Tucker, L.L.P.
470 Orleans Street
Beaumont, Texas 77701
for 3M Corporation

David D. Reynard, Jr., Esq.
Rienstra Dowell & Flatten
470 Orleans Building, Suite 1010
Beaumont, Texas 77701
for American Optical (Diggs case);
Kansas City Southern (Ellis case)

Theodore F. Roberts, Esq.
Peabody & Arnold
50 Rowes Wharf
Boston, Massachusetts 02110
for Center for Claims Resolution

Paul T. Edwards, Esq.
Danaher Tedford Lagnese & Neal, P.C.
700 Capitol Place
21 Oak Street
Hartford, Connecticut 06106-8000
for Pittsburgh Corning

ALSO PRESENT:

Frank S. Anthony,
Vice President and General Counsel
Bird, Incorporated

-- -- -- --

P R O C E E D I N G S

3:45 p.m.

LEONARD WEAVER,

having been first duly sworn on oath,

was examined and testified as follows:

MR. CARONA: I believe in regard to the last deposition, Brian, you wanted to reserve the right to read and sign the deposition. Is that right?

MR. CLARY: I don't think we addressed it.

MR. CARONA: We're addressing it now.

MR. CLARY: In the last one I don't think we addressed it.

Mr. Weaver, you have a right once this deposition is transcribed into booklet form to read that deposition and to check it for mistakes, misprints, misspellings, any errors that you want to correct, and you can correct those before it becomes a final part of the record in this case.

You don't have to do that. It is completely up to you. It will require you to look at the deposition and probably go to this man's office and sign that deposition transcript, or you can waive that and just let the record be as it is today.

THE WITNESS: I think it will depend mostly on the outcome of our conversation here. If I feel that I might have said things I didn't intend to say or something of that sort, I might ask to read the transcript. Otherwise I'll waive that right.

MR. CLARY: Why don't we waive it and if at some point in time you change your mind, we can do that. Okay?

THE WITNESS: Okay.

EXAMINATION

BY MR. CARONA:

Q. Mr. Weaver, my name is Don Carona and I represent Sharon and Alicia Ellis in regard to a lawsuit that is pending against Bird, Incorporated, and other defendants arising out of the death of their husband/father Thomas Ellis. Today is the first day that you and I have ever met. Is that right?

A. That's correct.

Q. Have you ever given a deposition before?

A. No.

Q. The court reporter is writing or typing everything that's being said, and accordingly I'm going to try to wait until you finish your response before I ask you another question, and if you would do likewise, we would all appreciate it so that he can hear everything that is being said.

It is very important in this deposition that you understand the questions that are being asked and that we know that you understand the questions that are being asked, so can we have an agreement that if at any time you think that you might not understand the question,

you will let us know that immediately?

A. Certainly.

Q. Thank you.

Where do you reside, Mr. Weaver?

A. Presently?

Q. Yes, sir.

A. In Walpole, Massachusetts.

Q. Is Walpole a suburb of Boston?

A. Loosely speaking, yes. It's about 20 miles from downtown Boston. It's two towns south of here.

Q. You are currently retired from Bird, Incorporated. Is that correct?

A. Yes.

Q. When did you retire?

A. February 1982.

Q. What is your age, Mr. Weaver?

A. I'll be 78 in August of this year.

Q. Where were you born?

A. In Boston.

Q. Have you lived in the Boston area all of your life?

A. Yes.

Q. Did you graduate from high school?

A. Yes.

Q. Did you attend college?

A. Yes.

Q. Where did you go to college at?

A. M.I.T.

Q. Did you graduate?

A. Yes.

Q. And what degree did you obtain?

A. Bachelor's degree.

Q. In engineering?

A. In geology.

Q. Do you have any additional college education?

A. I went for one year following that, a graduate year of half-time studies which would have led to a master's degree, but I quit after the first year and went to work for Bird. That was 1941 and the world conditions were a little uncertain at the time.

Q. Did you ever serve in the armed forces?

A. No. I was 4F, being asthmatic, so I never served.

Q. Explain that to me, please.

A. I was asthmatic. I was turned down.

I had a classification of 4F.

Q. I understand.

So you were hired by Bird in 1941?

A. Right.

Q. When you went to work for Bird in 1941 at what location did you work?

A. In the Norwood roofing plant.

Q. When you joined the company in 1941 what was your position?

A. Geologist.

Q. What function did you perform as a geologist for Bird Roofing at that time?

A. My first assignment was to look around the area within a reasonable distance from the company to find a source of rock suitable for roofing granules.

Q. And the roofing granules, they would be used on a shingle?

A. Yes. Those little, little particles that you see that are colored and embedded into the surface of the shingle.

Q. As a geologist were you within a particular division or department of the roofing division such as the research and development

division?

A. Well, we didn't have a division which was specifically that. I was attached to the roofing laboratory, which indulged in any business which was pertinent to the control of the roofing shingles as they were made. And in that respect sooner or later I branched out from geology because there were other functions pertaining to the technical end which I was required to do, like the coloring of the granules, the techniques of coloring the granules and stuff like that.

Q. When do you think generally did you branch out from your role as a geologist?

A. Almost immediately, because the first thing I did was to find a source of rock which they are still using, so consequently I did myself out of a job. So I had to do other things as well.

Q. After that project wherein you found the rock for the granules, you continued as a part of did you say research lab?

A. Yes, we'll call it that for the sake of simplicity. They called it a laboratory without any qualifications at that time.

Q. Okay. And did you have a general job

description? Tell me what it was.

A. That's so long ago, I forget what the specifics might have been. It was really to do whatever was required, whether it was working with the granule manufacturing, whether it was to test asphalt products, whether it was to look at complaints on roofing which might have come in that were not performing properly. It was spread out. It was a widely diversified bit of business.

Q. When did the lab begin to be called a research and development department or lab?

A. Well, I don't want to go into a great deal of detail, but there were four separate groups within the company at the time. Each of the plants in the East Walpole area had its own laboratory: the paper division, floor covering division, and the roofing division. Separate from that, there was a research director who had a few employees working for him as well and then when he retired and they merged the groups, subsequently what happened was the paper division was no longer part of the company and the floor covering division was no longer a part of the company, and the laboratory I worked for was consolidated into one organization

which ultimately wound up being called the technical center, which probably describes it as well as anything else.

Q. Do you know approximately when that consolidation occurred so that this technical center came into being?

A. About 1971 or thereabouts. At that time the laboratory was moved from its location in the area of the roofing mill to a location in East Walpole in an old box manufacturing facility.

Q. Prior to the move in 1971, the lab was located on the third floor of a building wherein asbestos cements and coatings were made. Is that correct?

A. Right. When I first went to work there was another laboratory on the second floor of that same building, and it continued as a quality control laboratory, and on the third floor we were classified as research and development.

Q. In 1971 when this consolidation occurred, what would your position have been?

A. Well, at that time my title was product development manager.

Q. As product development manager you would

have been Mr. Patenaude's immediate boss?

A. I hired him, yes.

Q. From the time that you began working for Bird in 1941 till your retirement in 1982, was there ever a time when you were not working for Bird?

A. No.

Q. When you retired in 1982 what was your position?

A. Well, they changed the title from product development manager to technical center manager because we felt that more properly described the function of the department.

Q. When did that change occur?

A. Oh, I would guess '75, thereabouts.

Q. Are you currently a member of any professional associations?

A. No. When I retired, I retired, period.

Q. Prior to retirement did you belong to such associations such as RSIA?

A. I was a delegate on the part of the company to the Asphalt Roofing Manufacturers Association and the Society of the Plastics Industry. I think that's all. We were members of

this ASTM but I was not the Bird delegate to that.

Q. The same would hold true for the National Roofing Contractors Association? You weren't the Bird delegate?

A. I was not a delegate to that because it was a manufacturers' association and not a technical group.

Q. When you joined the company in 1941 did Bird have a company doctor?

A. There was a doctor on call at all times. I don't think there was ever a company doctor in residence.

Q. Who was the doctor on call at all times when you joined the company in 1941?

A. Oh, boy! I couldn't say. I didn't have occasion to use his services, so....

Q. Do you recall a Dr. McDonald that was on call for Bird?

A. The name is familiar. I think that was more recent years that he was associated with the company. I don't know him personally.

Q. What about Dr. Eugene Doherty in Norwood? Are you familiar with that doctor?

A. No.

Q. In preparation for your deposition have you reviewed any documents?

A. The only document I saw was one that was showed to me yesterday which happened to be a copy of a letter that I had written to a plastics magazine.

Q. Have you visited or talked with anyone in preparation for your deposition --

A. Yes.

Q. -- or about your deposition other than Mr. Clary?

A. And Mr. Anthony.

Q. No one other than those two?

A. No one else.

Q. Do you currently own any stock of Bird, Incorporated?

A. No.

Q. Are you receiving retirement benefits?

A. Yes.

Q. When you joined the company in 1941 Bird was manufacturing certain asbestos-containing products.

A. Yes.

Q. Specifically at that time Bird was

manufacturing and selling asbestos-containing roof cements and coatings?

A. Yes.

Q. Did Bird have the Shreveport facility in existence in 1941?

A. Yes.

Q. And were those asbestos-containing cements and coatings being made at Shreveport back then?

MR. CLARY: Objection, calls for speculation.

A. I don't know. My guess would be yes, but I can't -- I'm not sure.

Q. Certainly at Norwood in 1941 Bird was making and selling asbestos-containing cements and coatings?

A. Yes.

MR. CLARY: And we are taking this pursuant to the same stipulations that we had in the deposition earlier of Mr. Patenaude?

MR. CARONA: Yes.

MR. CLARY: Okay.

BY MR. CARONA:

Q. A little earlier we talked about the fact

that prior to 1971 you were working in the lab located on the third floor of this building, the first floor of which was devoted to making roofing cements and coatings.

A. Right.

Q. When did you begin working in that building?

A. 1941. Actually I worked the summer of 1940 between college terms but at that time I was out in the field hunting for rock all the time so I was only in that building a few minutes out of the time and the rest of the time I was on the road. But starting permanently it was 1941. And at that time the laboratory was on the second floor, not the third floor.

Q. So for basically thirty years you were working in the same building where Bird made asbestos-containing roofing cements and coatings?

A. Yes.

Q. Would it be correct that on numerous occasions you had occasion to view and observe the manufacturing process of those products?

A. Yes.

Q. Were you ever involved in the decision as

to who would be the supplier of asbestos fibers?

A. No.

Q. From what you have read and heard and been told, do you understand today that the inhalation of asbestos fibers can cause such injuries as asbestosis and cancer?

A. Yes.

Q. Now, in 1941 when you began working in this building where Bird was making these asbestos-containing roofing cements and coatings, did the employees of Bird who were actually working with the bags of asbestos, opening the bags up, pouring them into the vat, were they wearing any sort of protective equipment?

A. They were issued dust masks, yes.

Q. In 1941?

A. Yes.

Q. Generally did the employees wear the dust masks?

A. I was not watching them so I've got to admit I don't know. They were not within view of where we worked, so it was up to them to decide whether to wear them or not. But presumably that's what they were supposed to do.

Q. Did you ever see the bags of asbestos?

A. Yes.

Q. Was there a particular location within that building where the bags of asbestos were stored?

A. Now, you're asking me to go back fifty years. But most of the storage was on the bottom floor where the tank was, where the vat was where the mixing was taking place. Then to feed them into the vat they had to transport them by elevator up to the third floor of the building and dump them down through a hole into the vat.

Q. And is it correct that the employees would take the bag of asbestos, cut it open and pour it into that hole that you're talking about?

A. Yes.

Q. In 1941 did you have an understanding that the inhalation of asbestos fibers could cause personal injury?

MR. CLARY: Objection, vague.

THE WITNESS: Did I hear somebody say objection?

MR. CLARY: Yes. From time to time I'm going to make an objection for the purposes of

protecting some issues on the record that we will take up with the court at a later date. It is not intended to interrupt you or to influence what you say or do. Concentrate on his questions, ignore my objections, and answer to the extent that you can throughout this deposition.

A. In answer to your question I was aware at the time I went to work for Bird that asbestos fibers were not healthy to breathe.

Q. Mr. Weaver, how did you come about having this knowledge that the inhalation of asbestos fibers could be harmful?

A. Reading trade journals including reports from the Bureau of Mines and other organizations, and I took mineralogy at M.I.T. as part of the geology course and it was brought up at that time too. So it was not news to me.

Q. In 1941 when you joined Bird you had heard of the term asbestosis. Is that correct?

A. Yes.

Q. When you were working in this laboratory in 1941 in this building that we have described, who was your immediate supervisor?

A. The supervisor's name at the time I was

hired was Frank Reynolds.

Q. What would his title have been?

A. Chief chemist.

Q. And Mr. Reynolds, who would have been his supervisor?

A. He reported to, well, his allegiance was split. There was a director of research called Edward Lines and also I think he took his orders from Milton Beasley, who was the plant superintendent.

Q. Based upon your communications with Mr. Reynolds, your immediate supervisor, back in the 1941 time period did he have an understanding that the inhalation of asbestos fibers could cause personal injury?

A. I don't --

MR. CLARY: Let me object to that as calling for speculation. But you may answer.

A. I don't know.

Q. As you sit here today you don't have any recollection of conversations that you may have had?

A. I do not have any, no.

Q. At what point in time did you become the

leader in that laboratory?

A. On the death of the man who was my supervisor and after Frank Reynolds left, he was replaced by a Stanley Sallie. And his title at that time was product development manager and I was his assistant. On Stanley Sallie's death in 1966 I was given that title and kept it until it became technical center manager later on.

Q. Now, when you became the head of the laboratory in 1966 who did you report to?

A. At that time I think it might have been directly to Robert Jenkins, the president of the company. There were several changes of position amongst the corporate executives at that time. I'll take it back; it was not. It was the executive vice president whose name was Bernard Soward.

Q. Was he the president of the roofing division?

A. No. He was the vice president of manufacturing of the whole company.

Q. Did you continue to receive these journals, these trade journals that you referenced earlier, while you were employed by Bird?

A. Yes. The nature of them changed, of course, with time but we received a large variety of trade journals all pertaining to the roofing business and ultimately to the vinyl siding business too.

Q. Did Bird receive the trade journal for the Bureau of Mines and Minerals?

A. No. I don't even think there is one.

Q. When did you first learn that the inhalation of asbestos fibers could cause cancer?

A. I can't answer that. I don't know.

Q. Did Bird have a policy in 1941 when you joined the company that its employees must wear dust masks when working with asbestos?

A. No. They gave the employees the dust masks but nobody sat around and drove them or insisted, you know, that they do so.

Q. Did you ever wear a dust mask when you were in the area where the asbestos-containing roofing cements and coatings were being made?

A. No. I wasn't there at all. Actually, we had a closed door between that part of the building and where we worked.

Q. Did you ever have any conversations with

any of your Bird co-employees as to whether Bird should require that any of its employees wear dust masks?

A. I don't remember.

Q. As far as you were concerned, the Bird employee if he wanted to, that is, the Bird employee who was working with asbestos, could wear a dust mask which was provided by Bird so as to protect him from some of these diseases that we've talked about associated with asbestos?

A. Right. Pardon? Well, let's put it more accurately. It was given to him to protect him from inhaling the dust. The consequential diseases we didn't take the trouble to -- Nobody knew for sure what they were then.

Q. But you need to correct me if I misunderstood you earlier. You did understand in 1941 that the inhalation of asbestos fibers could cause a disease called asbestosis?

A. Yes.

Q. In the 1940s or the 1950s or the 1960s did you ever have any communications with any competitors of Bird in terms of the use of asbestos as a part of roofing products?

A. No.

Q. Do you recall a Bird employee by the name of George Angus?

A. No.

Q. When you became the leader of the laboratory for Bird in 1966, did you have any communications with any of your superiors in terms of whether Bird should eliminate the use of asbestos from any of the products that it made or sold because of this health hazard associated with the inhalation of asbestos?

A. No.

Q. To your knowledge, for as long as you were employed by Bird, did Bird ever perform or have performed on its behalf any studies or tests on any asbestos-containing products for the purpose of determining the asbestos fiber release that may occur due to the normal and foreseeable use of those products?

A. No.

MR. CLARY: Let me just object to the form of the question as being vague. It is not time-specific, calls for speculation, and calls for a legal conclusion to the extent of the use of the

word foreseeability.

You're going to need to give me an opportunity when I'm gesturing to you to make an objection on the record, Mr. Weaver. Okay?

THE WITNESS: Yes.

BY MR. CARONA:

Q. The answer to my question is no. Is that correct?

A. That's right.

Q. To your knowledge at any time while you were employed by Bird, did Bird conduct or have conducted on its behalf any dust studies or tests to determine the asbestos fiber count in the air in any of the Bird facilities?

MR. CLARY: Let me object to this as calling for speculation. It is vague and ambiguous as to time and there has been no proper foundation laid for this witness to have that knowledge.

A. Do you still want me to answer?

Q. Yes.

A. The laboratory I worked for had a small dust counter with which we sampled dust in the area of the cement kettle at certain intervals and reported to the management.

Q. Did this dust counter exist in 1941?

A. Yes. My first assignment was to use it at the granule plant, not at the cement manufacturing process.

Q. Was the dust counter used in 1941 by Bird to take a test or sample of the asbestos dust count in the area where asbestos was used in the manufacture of roofing cements and coatings?

A. Yes.

Q. And did you personally perform that test?

A. Rarely, but I believe I did once or twice.

Q. When this test was performed on the asbestos dust, would it be performed while the asbestos was being poured into the vat?

A. Yes. At the time they felt the concentration was the greatest.

Q. And did you indicate earlier that the test results were then given to Bird management?

A. Right.

Q. I assume that the test results were reduced to writing.

A. Yes.

Q. And were the written test results given

to Bird management?

A. Yes, right.

Q. Do you have any recall today as to what the test results were?

A. Only that they fell within the limits that were set at the time, but I can't recall what the specific limits were.

Q. What limits are you referring to?

A. The dust is counted in particles per cubic foot.

Q. In terms of the limits, are you referring to a limit created by Bird or are you referring to a limit created by some other entity?

A. My recollection -- and I've got to admit I don't want to be held to it because that's too far back -- but I believe the standards that we used were issued by the Bureau of Mines in Washington.

Q. Were the test results concerning the asbestos dust in the area where the asbestos was being used in the manufacture of cements and coatings ever outside the limit so that modifications would have to be made?

A. Not to my knowledge.

Q. How frequent were these asbestos dust tests performed?

A. I don't remember.

Q. Did there ever come a time when these types of asbestos dust tests were stopped in terms of being performed?

A. I don't remember. The responsibility for that fell to the quality control department and not to the product development department that I was associated with.

Q. Considering what you just stated in terms of whose responsibility this fell upon in subsequent years, do you have any recall as to whether these asbestos dust samples were taken in the 1950s or 1960s?

A. I don't remember.

Q. Did you ever visit the Shreveport plant?

A. Yes.

Q. Generally on how many occasions?

A. Probably no more than half a dozen.

Q. On any of the occasions when you visited the Shreveport plant, did you observe the manufacture of asbestos-containing cements or coatings?

A. No.

Q. Do you recall to any extent the layout of the Shreveport facility where the roofing cements and coatings that contained asbestos were made?

A. No.

Q. Do you recall to any extent whether there was any sort of ventilation in that area of the Shreveport facility where asbestos-containing cements or coatings were made?

A. I don't recall, no.

Q. Has Bird ever employed, to your knowledge, an industrial hygienist?

A. No.

Q. At any time during your tenure with the company did Bird ever employ a safety director or some other person --

A. Yes.

Q. -- whose sole responsibility was safety?

A. Yes.

Q. Did that position exist with the company when you joined it in 1941?

A. Yes.

Q. Do you recall who was safety director in 1941?

A. Yes.

Q. Who was it?

A. It was a man named Frank Eisenhauer, spelled a-u-e-r, not like the President; E-i-s-e-n-h-a-u-e-r. He was replaced in later years by a man named Roby, Bob Roby, and I don't know how long he worked for the company.

Q. In 1941 did Frank Eisenhauer have an understanding that the inhalation of asbestos fibers could cause injury to the body?

A. I have no --

MR. CLARY: Whoa, whoa. You've got to give me a chance to object. Objection, speculation. Now you can answer.

A. I don't know.

Q. Do you recall when Bob Roby became the safety director?

A. I assume it was on the retirement of Eisenhauer but I don't know the dates.

Q. Would you happen to know the decade in which that occurred?

A. The '60s or the '70s, but I don't know. I wasn't involved in that work.

Q. What was the general job description or

duties of the safety director for Bird?

A. I don't know.

Q. During your tenure with Bird, did Bird ever perform or have performed on its behalf any tests or studies in regard to the running of asbestos felts in a mill --

A. I don't know.

Q. -- in the manufacturing process? I'm going to start all over and ask both of you to wait until I finish my question. Okay?

MR. CLARY: When I do that, I want you to just give me a pause before you respond. And you're even responding to him before he's finishing his question. I understand you know the course of the question before it's completed. But please wait and give me my opportunity.

BY MR. CARONA:

Q. During your entire tenure with Bird, did Bird ever perform or have performed on its behalf any studies or tests as to the running of asbestos felts through the machines in the Bird plants for the purpose of determining the amount of asbestos fiber release occurring as a result of that process?

MR. CLARY: Let me object to it as calling for speculation. It is overbroad, vague and general; it is not time-specific and there has been no foundation laid for this witness's knowledge of that subject.

A. I don't know the answer to your question.

Q. Was it ever a part of your job to respond to consumer complaints about Bird products?

A. Occasionally.

Q. And would that include Bird cements and coatings?

A. No.

Q. Would it include Bird builtup roofs?

A. Only once or twice in my whole career.

Q. What products did the complaints normally pertain to?

A. Shingles.

Q. From what I understand, Bird at one time made an asbestos-containing shingle called Fire Screen. Do you recall that?

A. Yes.

Q. Do you know why the asbestos was removed from that product?

A. The product did not perform

satisfactorily so it was discontinued.

Q. In regard to performance, what was wrong with the product?

A. It failed prematurely on the roof.

Q. Was there any conclusion reached in terms of the mode or cause of failure?

A. Yes.

Q. What was it?

A. The reason that it was made fire resistant was they had a roofing granule and it was coated in a special way that caused it to expand when it was exposed to heat, and the manufacturing process left that granule in an unstable condition so subsequent weathering caused the roof shingle to come apart within a matter of a very few years. So we discontinued it.

Q. Was the mode of failure in regard to this asbestos-containing shingle in any way related to the asbestos fibers?

A. No. If anything, the asbestos improved the weather resistance of the asphalt.

Q. Why was the asbestos taken out then?

A. The shingles were discontinued.

Q. Was Bird experiencing failure of the

shingles out in the field in terms of shingles actually being installed on jobs?

A. The failures occurred within two or three years after the roof was applied and the frequency of failures was so great that Bird saw there was no point in continuing manufacturing the product.

Q. Did Bird not test this asbestos-containing fire shingle prior to putting it out on the market to determine whether it had stability?

A. We tested it, but the particular types of tests that we ran did not forecast the problems.

Q. Back at the time that the Fire Screen asbestos-containing shingle was being made and marketed by Bird, were there any types of tests that could be performed by Bird that could simulate a weathering of the product?

A. Yes.

Q. Tell me what those types of tests are.

A. There are two kinds. We had an outdoor test rack facing south at a 45-degree angle or thereabouts.

Q. Facing south?

A. South. In other words, they were out there, well, they weren't quite 45 degrees, about

30 degrees, and samples of the material to be tested were installed on the racks and observed periodically, and the exposure conditions gave a little bit of a forecast as to how durable the product was but not much faster than it would deteriorate in real life. But we had to do that in order to give ourselves an idea under controlled conditions because we didn't know what became of the shingles after they were sold and it was hard to evaluate them until a complaint came in. So we exposed them on these test decks. And the other test was an accelerated test indoors in a container with artificial illumination and other components of the weather.

Q. Bird knew at the time that it was marketing these asbestos-containing shingles that the shingles would be exposed to the rain, the wind, and the ultraviolet rays from the sun?

A. Yes.

Q. All three of which can weather the product?

A. Yes. Temperature change also.

Q. Expansion and contraction within the product itself?

A. (Witness nodded.)

Q. Is that right?

A. Yes.

Q. In terms of the accelerated test, let me make sure I understand this. Would Bird subject the shingle to a degree of illumination that would simulate the amount of, say, ultraviolet rays that the product would receive over an extended period of time?

A. On a greatly accelerated basis. They used a mercury arc lamp for the source of ultraviolet light.

Q. Is it correct that the ultraviolet rays degrade the asphalt?

A. It is.

Q. And that degradation of the asphalt manifests itself in a hardening, cracking, and otherwise deterioration of the product?

A. Yes.

Q. And did Bird witness that phenomenon of the deterioration of these felts as a result of the accelerated test?

A. Now, are you referring to the specific product you've been talking about or any product in

general?

Q. Any product.

A. Yes. That's the purpose of them. The machine was in the laboratory and there was one person assigned to the job of monitoring it and putting samples in and taking them out and reporting on their condition.

Q. Where was the accelerated testing equipment located?

A. In the laboratory.

Q. In this same building that we've been talking about where you worked at?

A. Yes.

Q. Prior to putting that Fire Screen asbestos-containing shingle out on the market, did Bird perform the accelerated test on the Fire Screen shingle?

A. Yes.

Q. Did the accelerated test show to Bird that there would be a premature deterioration of the product?

A. Obviously it couldn't have or we wouldn't have put it out.

Q. Tell me some of the other types of

products other than the Fire Screen shingle that Bird tested either by way of the outdoor test or the accelerated test?

A. Well, the main purpose of the accelerated testing was for the evaluation of asphalt itself without protection from the UV. In other words, that is where the accelerated weathering worked the fastest and we could evaluate one asphalt versus another, and that was the primary purpose. Then virtually everything that we needed to test or to subsequently put out to the weather was at one time or another subjected to that test.

Q. Did Bird ever test any of its asbestos-containing roof cements or coatings by either the outdoor test or the accelerated test?

A. No. In the first place, they weren't exposed to the weather; they were always covered up by another piece of roofing so there would be no point in it.

Q. We have three cans with us that have been marked in the deposition of Mr. Patenaude that we took earlier today. Patenaude Exhibit No. 5 is Neponset cold cement. Exhibit No. 6 is roof coating asphalt asbestos Fibred. And Exhibit 7 is

Fibred roof coating. By the way, in terms of Exhibit 7, does the use of the word Fibred indicate to you that this product contains asbestos?

A. Not necessarily.

Q. These cans would indicate to me that one of their uses is to be used as a surface material. Am I misreading it?

A. The roof coating, it probably tells you right on the side what it's used for, and I do believe that is mostly intended to be used for patchup jobs temporarily, not for a permanent installation.

Q. Not original installation?

A. No, no. If you had a partially weathered builtup roof and you wanted to extend its life for a year or two, you'd put the roof coating on it and smear it around and hope.

Q. Now, that smeared roof coating, that would be exposed to the ultraviolet rays of the sun?

A. Yes.

Q. One of the uses set forth on Exhibit 5 in regard to the Neponset cold cement is for repairing roll roofing laps that are leaking. Is it your

understanding in part that this product also, if used for repair purposes, can be exposed to the ultraviolet rays of the sun?

A. Only insofar as a little of it might have leaked out under the edge of the product to be laid down. But that was for the express purpose of cementing two layers together.

Q. All three of these cans of products, Patenaude Exhibits 5, 6 and 7, they're used primarily for repair purposes. Is that correct?

A. Not necessarily, no. The cold cement was used for the installation of a two-ply builtup roof, which is the economy type roof, but it's used for farm buildings and stuff like that.

Q. The Neponset cold cement would never be used on a three- or four-ply builtup roof as the interply bitumen, would it?

A. No.

Q. To your knowledge, has Bird ever performed or had performed on its behalf any test or study to determine the amount of asbestos fiber release that occurs as a result of the weathering or deterioration of any of its asbestos-containing cements or coatings?

A. I don't know. I doubt it.

Q. Were you ever involved at any time in the creation or implementation of any sort of respiratory protection program on behalf of Bird?

A. Not directly; only insofar as I ran these dust counts at the granule plant and a few at the cement plant.

Q. Do you know whether any of these types of asbestos dust counts were ever taken at the Shreveport plant?

A. No.

Q. Was it ever your practice at any time in your tenure at Bird to attend board meetings?

A. Corporate board meetings?

Q. Yes, sir.

A. I don't think I ever did. Even towards the time of my retirement I don't think I then got into the board meetings, no. They were sort of a select club. You can keep that off the record!

Q. Were you ever involved on behalf of Bird in terms of its sales and marketing of its products?

A. Marketing?

Q. Yes, sir.

A. Yes.

Q. In what way did you have involvement in marketing?

A. It primarily involved telling the salesmen about the qualities of the product they should know in order to more properly merchandise it.

Q. Your involvement in terms of marketing was to educate the salesmen so that they could better promote the products?

A. Right.

Q. Did you have any other involvement in marketing?

A. Well, we conducted a few market research studies of plastics products.

Q. What types of plastics products?

A. Vinyl siding and related products.

Q. Did any of these market studies pertain to any asbestos-containing products?

A. No.

Q. Did you ever have any involvement on behalf of Bird in determining what type of warnings, if any, should be placed on the containers of Bird's asbestos-containing products?

A. No.

(In recess 4:55 p.m. to 5:35 p.m.)

BY MR. CARONA:

Q. Mr. Weaver, in terms of that dust counter that you mentioned earlier, do you recall what that device was called?

A. It was made by Bausch & Lomb and I can't tell you specifically what the title of it was, but it was a small unit with a built-in magnifier and a suction pump which enabled you to go to the source where the dust was being generated, and you had a little translucent disk that you made a quick pull on the suction device and that dust sample was impinged upon the glass, which was ruled off into rectangular grids. Then you put a light under it and looked at it through the microscope and counted the little grains that you saw in those grids.

Q. If I understood you correctly, you're saying that in 1941 when you first joined the company Bird was using this dust counter. Is that correct?

A. That's correct.

Q. And in 1941 Bird was providing to its employees dust masks?

A. Yes.

Q. You indicated earlier that you worked with salesmen in terms of educating them about the Bird products.

A. Yes.

Q. Did you ever discuss with the Bird salesmen the issue of asbestos as contained in the products?

A. No.

Q. The limits that you referred to earlier that the asbestos dust samples were compared to, do you recall what the limits were?

A. No.

Q. You indicated earlier that you personally participated in taking some of these asbestos dust samples in the very beginning of your career with Bird.

A. Yes.

Q. Which meant early 1940s. Right?

A. Right.

Q. Now, beyond that time period do you know whether anyone with Bird had any responsibility for continuing to take those types of asbestos dust samples?

A. I can't answer that question honestly. I don't know. It was out of my jurisdiction.

MR. CLARY: I think he said earlier that it went to quality control at a later date. He's saying he didn't know who within quality control.

BY MR. CARONA:

Q. And you don't know whether anyone within quality control continued to take such asbestos dust samples, do you?

A. I don't know.

Q. Is it correct that you stopped taking the asbestos dust samples in the early 1940s?

A. Probably by the mid 1940s it was turned over to other people.

Q. I am going to ask that you look at what has been marked as Hartnett Exhibit No. 3, the first page of which is a letter dated February 2, 1979, from Edwin Haffner of Haffner Industries, Inc. to yourself, Leonard Weaver. Is that correct?

A. Mm-hmm, yes.

Q. And the third page of which is a copy of a page out of Plastics Design Forum which contains your letter to the editor of that magazine. Is

that right?

A. Oh, yes, yes. This is continued from another page which is not here. Here is my letter.

MR. CLARY: It is the complete text, though.

BY MR. CARONA:

Q. The last page of Hartnett Exhibit 3 is your letter to the editor of Plastics Design Forum?

A. This is it, yes. That is what Mr. Clary showed me yesterday. He did not show me this.

Q. Your letter which is Bates-stamped 1056, dated November 16, 1978, to the editor of Plastics Design Forum, it was actually printed and published in Plastics Design Forum. Is that right?

A. I had forgotten it but it obviously was. Here it is, yes.

Q. Is Plastics Design Forum a periodical that you subscribed to?

A. Yes. As soon as we got involved with vinyl siding, which was about in 1960, much of my attention went in that direction, in that family of plastics. And the plastics industry has a lot of trade journals which people who are connected with

the business can get free subscriptions to, and so we got half a dozen different copies of different trade journals on the basis of that and read them quite thoroughly for what we could learn.

Q. In your letter to the editor of Plastics Design Forum you were obviously responding to discussions of asbestos that had previously appeared in that periodical?

A. Yes.

Q. And from your letter it would appear to me as if generally you were stating that although that periodical was somehow indicating that the hazards of asbestos was something that was kind of new and on the forefront, that was not true, that it had been well-known for quite some time?

A. My main thesis was the fact that there was a hysteria being generated about asbestos fibers and a large amount of public opinion directed to eliminating it from everything, and I was trying to point out that there are certain places where asbestos has some valuable uses and by proper handling of it, it could be used without hazard. And that was the sum and substance of that letter.

Q. In your letter to Plastics Design Forum you state in part, quote, "In the first place, the recognition of the hazardous nature of asbestos is belated to say the least. It was back in the 1930s that public health officials identified most of the problems related to asbestos fiber and the more enlightened industrial firms took steps to protect the health of the workers."

A. Yes.

Q. You were attending college in the late 1930s at M.I.T. --

A. Yes.

Q. -- and you learned therein about some of the health hazards associated with the use of asbestos?

A. Yes.

Q. And you also learned in the late 1930s that there were some companies who dealt with asbestos regularly who were taking some steps to protect their employees against the inhalation of asbestos?

A. This was information I was getting in lectures by the professors at M.I.T. It wasn't a direct contact, but that's where I got the

information.

Q. And also through the trade journals that you read?

A. Before I went to work for Bird I had no contact with trade journals.

Q. Then the trade journals that you referenced earlier wherein you continued to learn about the hazards of asbestos, those were journals that you received while working for Bird?

A. Right.

Q. Now, you know that Bird was using asbestos fibers in its roofing cements and coatings in the 1930s. Right?

A. Yes.

Q. All throughout the '30s?

A. Yes.

Q. And even in the 1920s?

A. I don't know. I didn't have any copies of the formulations then; I don't know what they used.

Q. In 1941 when you joined the company, was Bird taking steps to protect the health of its employees against exposure to asbestos?

A. Yes.

Q. What steps did it take?

A. The issuance of dust masks.

BY MR. CLARY:

Q. And the dust sampling?

A. Pardon me?

Q. And the dust sampling you talked about earlier?

A. Oh, yes. Well, they had to find out whether there was any hazard involved so they did the sampling of the dust. But the issuance of dust masks was the direct protection that the employees were getting.

BY MR. CARONA:

Q. Did you ever have any discussions with any Bird employees about the need or desire to remove asbestos from any of its products other than the asbestos-containing Fire Screen shingle previously discussed?

A. No.

Q. Did you ever attend any meetings of any professional associations or organizations wherein discussions were had concerning the applicability of OSHA regulations to asbestos-containing roofing products?

A. No.

Q. Did you have any involvement on behalf of Bird in determining the applicability of OSHA regulations to Bird's asbestos-containing roofing products?

A. No.

Q. Are you familiar with the fiber types of asbestos used by Bird in its cements and coatings?

A. Only vaguely.

Q. What do you recall, if anything, about the fiber types used?

A. There were different fibers and I don't remember their designations, but they mostly involved different fiber length, and by controlling the length of the fiber involved you got different effects on the viscosity of the product you were making.

Q. Do you have any recollection of the fiber lengths that were used?

A. Specifically, no.

Q. There was a range of fiber lengths that were used in the various products. Right?

A. They were controlled by the manufacturer of the fiber itself and classified by designations,

depending on who the particular outfit was. But they had certain specifications of screen analysis and things like that that they had to meet. So our quality control people would test that screen analysis and they had a property that they measured, the absorption of an amount of kerosene under certain controlled conditions which measured some of the characteristics of the fiber that we were getting. And those tests were used to make sure that the particular fiber that was being sent to us met those specifications.

Q. But, again, in terms of the lengths of the fibers you don't have any recall?

A. (Witness shook head.)

Q. Is that correct?

A. That's right. I don't know.

Q. Is it correct that you don't know what type of fiber was used?

A. By type, what do you mean?

Q. Are there types of asbestos fibers?

A. Yes, there are several, depending upon the mineral that was used to make the asbestos fiber, but I'm not conversant with those. I mean, I learned them on an academic basis in school and

promptly forgot them after that.

Q. You can't tell us today what types of asbestos fibers were used by Bird in its products?

A. No.

Q. Did you ever see, Mr. Weaver, any warnings placed on the bags of asbestos fibers received by Bird from asbestos suppliers concerning the health hazards associated with asbestos?

A. No.

Q. Did you know Mr. Fred Turco?

A. Yes.

Q. What was Mr. Turco's job?

A. Most of the time that I knew him he was foreman of a machine which manufactured insulating siding, brick or stone pattern siding.

Q. Do you recall Dr. Peter Lambert?

A. No. I have heard the name but that's all.

Q. Have you ever been advised as to whether Mr. Turco was diagnosed with asbestosis?

A. No.

Q. We're just about through, sir. (Pause)

Just to be clear, I understand from what you've testified to that you were never

involved in any discussions with anyone about the need or desire to remove asbestos from any of Bird's asbestos-containing products for the purpose of reducing its liability exposure?

A. That's right.

Q. During your entire tenure with Bird from 1941 to 1982, did Bird ever warn by way of its container labels or its literature or in any other way purchasers or users of its asbestos-containing products about the hazards associated with the inhalation of asbestos fibers?

A. Not to my knowledge.

Q. During your entire tenure with Bird from 1941 to 1982, did Bird ever instruct purchasers or users of its asbestos-containing cements and coatings, shingles or felts as to how to protect him or herself from exposure to asbestos fibers when using, repairing, or removing those products?

MR. CLARY: Let me just object that it calls for speculation and that it is vague as to the time specificity and assumes facts that are not in evidence. Go ahead.

A. The answer is no.

MR. CARONA: Mr. Weaver, I reserve

all other questions until the time of trial, and I thank you for your time. I'll pass the witness.

MR. CLARY: Paul?

MR. HENDERSON: Can we take about a two-minute break? I'd like to talk to Don. I may have some questions.

MR. CLARY: Sure.

(Pause)

EXAMINATION

BY MR. HENDERSON:

Q. Mr. Weaver, my name is Paul Henderson and I have just a couple of questions that I wanted to ask you. Were you ever involved in any research or testing of your competitors' products during the years you were with Bird?

A. Yes.

Q. Was that part of your job?

A. Only peripherally, but I did a bit of it.

Q. Would that have started like in 1941 or soon thereafter?

A. Probably.

Q. Did that continue on up into '82 or thereabouts?

A. If it did it was because people who were

working with me were doing it under my direction. I wasn't personally doing it.

Q. When you would do this testing and examination of your competitors' products, would that involve the shingle line of products as we've talked about, the three-tab shingles or the regular roofing shingles as well as the roof coatings and cements?

A. The shingles almost exclusively. The roof coatings and cements were such a standardized product line that nobody really paid much attention to them.

Q. Would you agree with me -- and I believe the testimony today and through the testimony of some other people that we've heard -- that as to the shingles, basically there was only one Fire Screen type that they used that contained asbestos?

A. That is correct.

Q. You may can help me pinpoint the time frames a little better, but I understand they stopped using asbestos in that particular Fire Screen shingle in around 1972. If you know.

A. I don't know.

Q. Let me work backwards then. Do you

recall when they started using asbestos in that particular Fire Screen shingle?

A. My guess would be -- and I would have to guess -- several years prior to discontinuing it and that initial stage involving some test runs of trial lots and testing them in Underwriters for flammability before it was put on the market. And I don't know the dates and I don't know how long it was on the market before it was discontinued.

Q. But basically Bird made quite a number and a large part of their shingle production were non-asbestos roofing shingles?

A. I would say 99 percent.

Q. And those all performed over the years up to expectations that y'all at least had, the standards y'all had, and if they didn't they were pulled off the market. Is that right?

A. Yes. Anything that didn't perform correctly, the buyer, if they complained, it was satisfied by remaking them.

Q. Right. But I mean the non-asbestos shingles, as I understand, performed up to your standards all those years that y'all were manufacturing them at least from the time you

started until the time you left?

A. Yes.

Q. In that same time frame, as I understand, the roof cements and the roof coatings were available at least through Bird or through the people you arranged with to manufacture them for you in a Fibred or an un-Fibred formula. Is that correct?

A. Correct.

Q. And likewise, as I understand, your competitors would have non-asbestos roof coatings and cements and asbestos-containing roof coatings and cements as well?

A. I believe the products were interchangeable.

Q. And that was my question. Basically, as I understand -- and correct me if I'm wrong -- generally the non-asbestos-containing roof coatings and cements performed at least equal to or substantially equivalent to the asbestos-containing roof coatings and cements?

MR. CLARY: Let me just first interpose, and I'm sorry I cut you off a little bit. That question calls for speculation. It is

certainly vague as to time specificity and which products are being referred to. Based on that objection, you can answer.

A. I have no way of knowing, because the removal of the fibers from the cement took place on or about the time I retired and the whole product was out of my jurisdiction so I wasn't really concerned with it.

Q. Is it correct you indicated earlier, as I understood, that the asbestos-containing and the non-asbestos-containing roof coatings and cements were used interchangeably. Is that correct?

A. That's wrong.

Q. That's wrong? All right.

A. While we were making asbestos fiber coatings and cements we made a certain percentage of coatings which contained no asbestos. Now, each one had its own specified use and they were not interchangeable. Subsequently when Bird purchased for resale cements that didn't contain asbestos fiber, I don't know what happened, what the performance was.

Q. Did you ever hear any complaints at least in your position in the company or even since

you've left the company from people who were still working for Bird about the non-asbestos-containing cements and coatings?

A. No.

Q. You're not aware of any performance complaints anyway as you sit here today?

A. I knew nothing of its performance properties whatever.

Q. Likewise, am I correct, no one ever received any complaints or became aware of any complaints of the non-asbestos-containing products?

A. That's right.

Q. By the way, going back into 1982 and let's kind of work back, were there companies who made roof coatings and roof cements that you tested or were aware of that did not contain asbestos?

A. I don't know.

Q. You don't know either way?

A. No.

Q. Do you know who may know one way or the other concerning that?

A. Most of my associates at the time are dead right now. So I tell you I don't think you could find the records of what went on and what

happened.

Q. Let me ask you one other thing. Is it your understanding at least that around 1982, around that time, that Bird was beginning to produce and arrange for the purchase for resale of these type of products that were asbestos-free?

A. I don't know.

Q. Well, I thought you indicated earlier that they were producing or beginning to produce or buying for resale when you left non-asbestos-containing cements and coatings.

A. Any information I had on that subject was strictly hearsay from the people who were involved in it and I don't want to go on record as knowing anything about it.

Q. Okay. Let me ask you this: Going to your letter of November 16th of '78 you indicate -- Well, before I ask you that, during the years you were at Bird did you come to learn when fiberglass became commercially available?

A. I was aware of its introduction, yes.

Q. Do you recall that being sometime around the 1938 era?

A. Sounds early to me. Well, for house

insulation it might have been, but for roofing products it was much later than that, to my knowledge.

Q. Do you recall what year they may have started using asbestos insulation or -- excuse me -- fiberglass in roofing products?

A. In shingles it would have been in the 1970s, I believe.

Q. What did they use prior to 1970 in place of fiberglass?

A. The standard basic for shingles was a felt, a so-called felt made of paper fibers and organic materials and it was gradually replaced by a fiberglass mat at about that time.

Q. Sometime in the 1970s?

A. I think so.

Q. In your letter of November 16, 1978, you indicate that there is a disproportionate amount of pride in people discussing them eliminating asbestos fiber from their products. Do you recall writing that in that letter?

A. Yes. I have it right here.

Q. Okay. Let me ask you: At least from your perspective and in your experience, isn't the

most acceptable way to deal with a substance that's hazardous in a product is to first try and see if it can somehow be eliminated or find a substitute for that product?

A. Oh, you can do research on it to find out whether there are any acceptable substitutes. But in the meantime the onus is on the manufacturer to find the most satisfactory ways of handling it with the least amount of hazard to the people who are in contact with it.

Q. And that would be all people, the employees and also the people who may be exposed otherwise. Is that correct?

A. Yes.

Q. But in answer to my question, the first line of safety is to eliminate the hazardous product if at all possible. Is that correct?

A. If possible. But that big "if" is it. There are many hazardous materials in the world right now that if you were eliminating them all, like radioactive substances, for instance, you would do a lot of damage to civilization.

Q. Of course I'm going to object to that as being nonresponsive. I specifically asked you as

to safety of products such as removal of asbestos.

A. Well, if I had a say in the matter, I would stick to the principle I put out here. The first onus is to treat it safely. The second onus is to look for satisfactory substitutes if you can find a satisfactory substitute without damaging the characteristics of the product you make. If you cannot, then somebody's got to make a decision as to where we go from there.

Q. But replacement again is replacement of the product either by substitution or either it can be eliminated if it's not necessary. Is that right?

A. If possible.

MR. CLARY: Objection, asked and answered.

MR. HENDERSON: That's all I have.

EXAMINATION

BY MR. CLARY:

Q. Let me ask you a question. During your time at Bird did you test the cements and coatings that did not contain asbestos?

A. Now, in reference to that, are you talking about the material that was made following

the elimination of asbestos from the coatings?

Q. Let me ask you, for example, during the 1970s did Bird make some coatings and cements that did not contain asbestos?

A. I don't know. I was not involved with it.

Q. Let me ask you this: In your 41-year career with Bird did you get a chance to meet and get to know numerous employees of Bird?

A. At the company?

Q. Yes.

A. Oh, yes.

Q. Have you in your 41 years with Bird and your 14 years of retirement from Bird been made aware of anyone who has ever claimed that they contracted cancer from working at a Bird facility?

A. No.

Q. Have you in your 41-year tenure with Bird and your years of retirement since that time heard of any allegation that anyone contracted any form of cancer from using a Bird product?

A. No.

Q. In your 41-year tenure with Bird and your years of retirement since then, have you ever heard

of anyone alleging that a Bird product or asbestos-containing Bird products led to a mesothelioma?

A. The term is not familiar to me.

MR. CLARY: That's all I have.

MR. CARONA: Does anyone else have any questions? I have just a few follow-up.

FURTHER EXAMINATION

BY MR. CARONA:

Q. Mr. Roby that you referenced earlier who was director of safety, where is he located?

A. I don't know. He may be retired by now. He was probably working out of the corporate office in East Walpole at the time he was working.

Q. You referenced the quality control department earlier. Who was head of quality control?

MR. CLARY: What time period?

Q. Let's just start from the beginning, 1941.

A. From the beginning it was one laboratory and all the functions were carried on under this Mr. Reynolds whose name I gave you earlier. His successor, Stanley Sallie, was also what they called chief chemist, and everything we did,

product development or quality control or anything else involving technical things, were under his jurisdiction. And then sometime in the early 1960s, I would say, two assistant chief chemists were appointed, one in charge of quality control and the other in charge of product development. I was the one who was put in charge of product development and another chap, who died last January, was in charge of quality control.

Now, a few years later there was a complete split and Mr. Sallie was made product development manager and I was given the title of his assistant and the other chap was made quality control manager and he took care of all the aspects of that. And then after Mr. Sallie died I inherited his position and so forth, and you know that history.

Q. Have you been advised as to the contentions of the Ellises in regard to this case?

A. Only just by mere suggestion from Mr. Clary.

Q. Let me ask you to look at what's been marked as Hartnett Exhibit 46, which is a memo dated September 2, 1982, from Mr. Jackson to

Mr. Wood concerning, quote, "substitute for asbestos fiber in Bird cements and roof coatings." Have you ever seen that document before?

A. No. That came about after I retired. Mr. Jackson was my assistant, inherited the job after I retired.

Q. In this document Mr. Jackson states in part, quote, "While I'm sure that our manufacturing operation meets all OSHA requirements for employee safety, I am wondering if some smart customer might pick up the fact that as our roof coatings weather they can possibly release some asbestos to the atmosphere." Do you know what information Mr. Jackson had that gave him the understanding that as these coatings and cements weathered they could release asbestos fibers?

MR. CLARY: I am going to object to the form of the question as calling for speculation. It also calls for facts that are not in evidence.

A. I would say it was strictly guesswork on his part. We never conducted any studies on the subject.

MR. CARONA: Thank you. I have no

further questions on the subject. Pass the witness.

MR. CLARY: You're done.

MR. CARONA: Thank you for your time, sir.

(Deposition concluded at 6:20 p.m.)

Commonwealth of Massachusetts)
)
Suffolk County)

CERTIFICATE OF REPORTER

I, J. Edward Varallo, Registered Professional Reporter and Notary Public in the Commonwealth of Massachusetts, do hereby certify that there came before me on January 31, 1995, at the time and place specified above, Leonard Weaver, the deponent herein, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype shorthand notes and thereafter transcribed and printed under my direction by use of computer-aided transcription.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said deponent.

I further certify that reading and signing of the deposition were waived by the deponent and counsel.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

J. Edward Varallo
MY COMMISSION EXPIRES: 2/3/95

DATED: Feb. 7, 1995

Proofreader: Laura Graf

I N D E X

DEPONENT: Leonard Weaver	PAGE
Examination by Mr. Carona	5 and 66
Examination by Mr. Henderson	55
Examination by Mr. Clary	64

(There were no exhibits marked for identification.)

CERTIFICATE OF REPORTER PAGE 70