

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KLAUS BRAUCH AND SUSAN BRAUCH)
-vs-) No. BC 258 492
BONDEX INTERNATIONAL, INC.,)
ET_AL_____)

VIDEOTAPED

D E P O S I T I O N ,

-of-

EDWARD W. DEBOR

As recorded on Tuesday, March 26, 2002,
at 11:26 a.m., at the offices of
Proximity, South Burlington, Vermont.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

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**** APPEARANCES CONTINUED ON THE NEXT PAGE ****

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DEPOSITION
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1 THE VIDEOGRAPHER: we're on the record at
2 approximately 11:21 a.m. This is the videotaped
3 deposition of Edward W. DeBor taken by the Plaintiff
4 in the matter of Klaus Brauch and Susan Brauch,

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5 Plaintiffs, versus Bondex International, Inc., et
6 al., Defendants. The case is in the Superior Court
7 of the State of California for the County of Los
8 Angeles, Case No. BC 258492. The deposition is being
9 held at the offices of Proximity in South Burlington,
10 Vermont, on March 26th, 2002, at the time indicated
11 on the video screen.

12 The court reporter is Tammy Martell representing
13 the firm of Court Reporters Associates, Burlington,
14 Vermont. My name is William Perkins and I am the
15 videographer associated with A Plus Video Tech
16 Services, Middlebury, Vermont.

17 Counsel will now introduce themselves.

18 MS. HUART: My name is Holly Huart, I
19 represent the Brauchs, and I am here on behalf of
20 Waters and Kraus, and for the record I need to state
21 that while this deposition is going forward certainly
22 with respect to the Brauch case counsel for
23 Plaintiffs has likewise cross-noticed this deposition
24 for purposes of cases in Texas. They are the Cipov
25 C-I-P-O-V case, the Pecukonis case P-E-C-U-K-O-N-I-S,

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1 the Gravitt G-R-A-V-I-T-T case, and the Cales
2 C-A-L-E-S case. It is my understanding that a motion
3 to quash was filed by certain counsel for Union
4 Carbide. I cannot make any representations about the
5 effect of that motion, I have not seen the motion,
6 and it is my understanding that there may be some

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7 question about which depositions that specific motion
8 to quash sought to quash for today.

9 MR. JUDY: This is J. Lawrence Judy for the
10 Flintkote Company. I have no notice of any of those
11 proceedings in Texas and do not appear for the
12 Flintkote Company with respect to any of those
13 matters. I appear at this deposition for the
14 Flintkote Company solely with respect to the
15 California case filed for Klaus and Susan Brauch, and
16 I object to this proceeding with respect to any Texas
17 proceeding to which the Flintkote Company may be a
18 party and of which I have no notice.

19 THE VIDEOGRAPHER: Do you wish to identify
20 yourself?

21 MR. GLASSER: Oh, yes, Jonathan Glasser,
22 Kelley, Drye & Warren, for Union Carbide.

23 THE VIDEOGRAPHER: Are there other counsel
24 in Los Angeles to be identified?

25 MS. NICOL: Yes, Farah Nicol also for Union

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1 Carbide, and just in further response to the Texas
2 supposed notices of deposition that I believe were
3 received just Friday of last week I am also under the
4 information that motions to quash were filed with
5 regards to those matters and therefore this
6 deposition of Mr. DeBor is proceeding only in the
7 Brauch case as is captioned, and specifically
8 pursuant to the letter agreement of March 22nd signed

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9 between myself and Mike Armitage of Waters and Kraus,
10 and only as to those -- scope of that agreement
11 outlined.

12 MS. KING: This is Lisa King, and I
13 represent Bondex, and I am appearing for Bondex only
14 in the Brauch case and join with the other counsel's
15 statements concerning the cross-notice of this
16 deposition in Texas cases.

17 MR. BEVEL: This is Greg Bevel on behalf of
18 Georgia Pacific, and I also join in the objections.
19 With respect to Plaintiff counsel can we stipulate at
20 this point that an objection with one Defendant will
21 be good for all for the remainder of the deposition.

22 THE VIDEOGRAPHER: The court reporter will
23 now swear in the witness.

24 EDWARD DEBOR,
25 having been duly sworn by the Notary, deposes and

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1 says as follows:

2 EXAMINATION BY HOLLY HUART, ESQUIRE:

3 Q. Good morning, Mr. DeBor. My name is Holly Huart.
4 I represent the Plaintiffs in this case and I am
5 going to be asking you some questions today
6 concerning your work and the work that you do for
7 Union Carbide in your capacity as a records
8 custodian, is that your understanding?

9 A. Yes, it is.

10 Q. Okay.

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- 11 A. Nice to meet you.
- 12 Q. It is good to meet you, too. Now, will you
- 13 please state your name and address for the record?
- 14 MS. NICOL: I am going to object to his
- 15 address. He can be reached through counsel since he
- 16 is a current employee of Union Carbide, but
- 17 certainly, Mr. DeBor, go ahead and give them your
- 18 full name.
- 19 A. Edward W. DeBor, D-E-B-O-R.
- 20 Q. And what is your business address, sir?
- 21 A. 579 LaPorte L-A-P-O-R-T-E Road, Morrisville,
- 22 Vermont.
- 23 Q. How far is Morrisville from here?
- 24 A. About 50 minutes. About 10 miles due north of
- 25 Stowe.

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- 1 Q. Is that the office where you work as the records
- 2 custodian for Union Carbide?
- 3 A. Yes.
- 4 Q. What is your date of birth, sir?
- 5 A. 7-12-1949.
- 6 Q. And please state for the record the corporate
- 7 name of the entity that employs you?
- 8 A. Union Carbide Corporation.
- 9 Q. Are you employed by any other law firm or entity?
- 10 A. No.
- 11 Q. Is Mr. Glasser here as your personal counsel?
- 12 A. No.

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13 Q. I take it then that you don't have personal
14 counsel here representing you today; is that correct?

15 A. That's correct.

16 MS. NICOL: I am going to object as
17 confusing. He is certainly here produced as a person
18 most knowledgeable on certain categories for Union
19 Carbide as a Union Carbide employee, and counsel are
20 here representing those interests.

21 Q. Have you ever been deposed before?

22 A. Yes.

23 Q. And what -- what type of case was that in?

24 A. I have been deposed in an asbestos case --

25 Q. Mm-hmm.

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1 A. -- by telephone, and I believe the court reporter
2 did the transcribing in that case; I have also been
3 deposed in a superfund case or two; and I believe a
4 benzene case.

5 Q. So I take it these three or four depositions, is
6 that correct, that you have given have been in -- on
7 behalf of Union Carbide, correct?

8 A. That's correct, yes.

9 Q. In the asbestos case that you were deposed in,
10 how long ago did that occur?

11 A. I am not sure of the exact time, six months,
12 eight months.

13 Q. I will assume from that that you are familiar
14 with the way depositions are conducted. That I as

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15 the questioning party will be asking questions,
16 counsel for Union Carbide will be stating their
17 objections, you will be answering unless they
18 instruct you not to answer. If you don't understand
19 my question you can tell me and I will try to ask it
20 in a way that you do understand it. If you answer my
21 question I will assume that you understood my
22 question the way that I asked it. And I guess at the
23 end you will be able to read and sign your deposition
24 and make corrections if for some reason things were
25 not recorded the way that you intended, but should

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1 you change or make some correction that changes your
2 answer substantively then I would have an opportunity
3 to take your deposition again concerning those
4 changes, do you understand that?

5 A. Yes, I do.

6 Q. Okay. Now, you are here with respect to the
7 notice of deposition of the person most knowledgeable
8 concerning certain subject matter areas and an
9 agreement that was entered into by and between
10 counsel, is that your understanding?

11 A. Yes.

12 Q. Okay. Well, for the record I would like to
13 attach as exhibits to the deposition the documents
14 that reflect the deposition notices and the
15 agreements of counsel, and for the record I am going
16 to start with the notice of taking videotaped

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17 deposition of person most knowledgeable of Union
18 Carbide Corporation dated March the 13th as
19 Plaintiffs' Exhibit A; a -- an amended notice of
20 taking the videotaped deposition of person most
21 knowledgeable of Union Carbide Corporation dated
22 March the 26th, which will be Plaintiffs' Exhibit B;
23 and the letter dated March 22nd, 2002, signed by both
24 Ms. Nicol -- did I pronounce your name correctly,
25 Farah?

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1 MS. NICOL: You have perfectly.

2 Q. Ms. Nicol and Mr. Armitage, counsel for
3 Plaintiffs and counsel for Defense have signed a
4 letter agreement concerning the conditions under
5 which this deposition is going forward in the Brauch
6 case. That will be Plaintiffs' Exhibit No. C. And I
7 would also like to add to it the letter dated March
8 the 8th which includes objections to this
9 deposition -- I beg your pardon, March 8th letter
10 from counsel for Union Carbide which is the cover
11 letter to the objections that Union Carbide had to
12 the deposition going forward. That will be
13 Plaintiffs' Exhibit D.

14 MS. NICOL: And just for clarification are
15 you attaching the objections as well because if not
16 we would like to have those attached.

17 MS. HUART: Plaintiffs' Exhibit D.

18 MS. NICOL: Does the Exhibit D include the

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19 letter and the objections that are attached or just
20 the letter?

21 MS. HUART: It is all stapled together as
22 one document, it is the way it came to me.

23 MS. NICOL: Okay, great. I just want to
24 make sure the objections are attached to the
25 transcript as well.

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1 (Exhibits A - D marked for identification.)

12

2 MS. NICOL: I don't want to interrupt what
3 you are doing, but if you don't mind I just want to
4 make a brief statement for the record, and if you
5 have attached all the documents you are going to
6 attach at this point it may be an appropriate time
7 for me to do that.

8 MS. HUART: Actually there is -- why don't
9 I give you an opportunity to do that in a moment
10 because I have got a follow-up piece of
11 correspondence that I -- I need to refer to as --

12 MS. NICOL: Certainly.

13 MS. HUART: -- Plaintiffs' Exhibit E.

14 (Deposition Exhibit E marked for identification.)

15 Q. Mr. DeBor, I have in front of me a series of
16 three letters which all reference the taking of your
17 deposition, and these letters are going to counsel
18 for Union Carbide on March the 15th. One is under
19 the caption of the Pecukonis case, one of the Cipov
20 case, and the other of the Gravitt case. And these

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21 three letters are letters -- I will go ahead and give
22 you an opportunity to look at those, are letters
23 going to counsel for Union Carbide requesting that we
24 be given dates in March for your deposition. I would
25 like to give you an opportunity to look at those and

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1 you can tell me if you have seen those before.

2 MS. NICOL: I am going to object that this
3 is regarding Texas matters and Texas actions
4 specifically that are not the subject of this
5 deposition and are clearly not the subject of this
6 deposition and therefore this is an inappropriate
7 question to ask, beyond the scope of the deposition.

8 A. No, I have not seen these letters.

9 Q. Okay. Sir, has -- has anybody from Union Carbide
10 or counsel for Union Carbide's office called you and
11 asked you if you were available for deposition to
12 testify in any Texas cases -- I am not done with my
13 question yet. To testify in any cases during the
14 month of March?

15 MS. NICOL: Same objection. And this is
16 probably going to be the last question you get to ask
17 on this topic since it is not covered by our
18 agreement for this deposition, and I know you are
19 well aware of that.

20 Q. Do you need me to -- do you want me to restate
21 the question since I was interrupted?

22 A. Specifically regarding March, no. I had heard

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23 that I had been subpoenaed in the Texas cases and
24 that's the extent of it.
25 Q. When -- when did you hear that?

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1 MS. NICOL: Same objections, beyond the
2 scope of the deposition notice and outside of the
3 Brauch case that we are all here for.

4 A. Yesterday.

5 Q. Thank you. I take it then that that was the
6 first time that you had heard about a desire to want
7 to take your deposition in any Texas cases?

8 MS. NICOL: Same objection.

9 A. Yes.

10 Q. Thank you. One last question concerning the
11 Plaintiffs' attempts to try to get your deposition
12 scheduled for the Texas cases. Can I assume from
13 your prior answer that you haven't been showed any
14 other documents or notices of deposition with respect
15 to records custodians for Texas cases? Strike that.

16 MS. NICOL: Same --

17 Q. Strike that, I am withdrawing the question.

18 Am I correct that you had not previously been
19 shown any notices to depose records custodians for
20 the purposes of any Texas cases?

21 MS. NICOL: Asked and answered, beyond the
22 scope of the deposition, and I think you have had
23 your opportunity to ask all the irrelevant questions
24 that you can about that.

25 Mr. DeBor, you don't need to answer any further

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1 with regards to these Texas actions that have nothing
2 to do with the deposition you are here for and are
3 prepared to give today.

4 MS. HUART: Are you instructing the witness
5 not to answer?

6 MS. NICOL: That's correct.

7 MS. HUART: Would you mark that question,
8 please. At the end of the deposition I would like to
9 make a request to get an indexed set of the marked
10 questions.

11 THE REPORTER: Okay.

12 MS. HUART: Thank you.

13 Q. In the asbestos case that you were deposed in by
14 telephone six or eight months ago was that a case
15 involving an allegation of exposure to asbestos
16 from -- strike that.

17 Was that an allegation from exposure to asbestos
18 supplied by the Union Carbide Company?

19 MR. GLASSER: Objection as to form.

20 A. No.

21 Q. What -- what type of asbestos case were you
22 deposed in six or eight months ago?

23 A. It was a premise case involving a former employee
24 of a facility that Union Carbide no longer owns.

25 Q. And which facility was that?

1 A. I believe it was Elk Grove, California.

2 Q. Do you recall who the attorney was that took your
3 deposition?

4 A. No, I do not.

5 Q. Do you recall the name of the plaintiff?

6 A. I believe it was the Frye case.

7 Q. And that would be F-R-Y or F-R-Y-E?

8 A. I am not sure of the spelling.

9 Q. Do you have a copy of that deposition?

10 A. I am not sure if I have one back at the office.

11 I know that I did go through the typed testimony, and

12 I am not sure whether I kept it or not to be honest
13 with you.

14 MS. HUART: I would like to make a request
15 on the record for the production of Mr. DeBor's prior
16 testimony in the Frye case.

17 MS. NICOL: And I just want to preserve an
18 objection that we again think that that's a topic not
19 covered by the scope of our agreement with Plaintiffs
20 with regards to this deposition.

21 Q. How long did that deposition last?

22 A. Oh, it always seems longer and -- an hour or two.

23 Q. In our world that's a pretty short deposition.

24 Okay. Probably seemed like an eternity I am sure.

25 were you asked to provide -- strike that.

1 Did your testimony concern documents and records
2 that pertained to the Elk Grove facility?

3 MS. NICOL: I am going to also object
4 beyond the scope of the deposition. Certainly I have
5 allowed you some leeway to ask about his prior
6 depositions because that is relevant to whether he is
7 comfortable with the deposition process and
8 understands the ground rules for a deposition. The
9 detail you are getting into again are matters and
10 subjects not covered by our agreement for this
11 deposition.

12 Q. Mr. DeBor, were you testifying in your capacity
13 as the records custodian for Union Carbide?

14 A. Yes, I was.

15 Q. And were you testifying concerning the existence,
16 extent and location of Union Carbide records that
17 were pertinent to that action?

18 MS. NICOL: Same objections plus compound,
19 calls for speculation, lacks foundation.

20 A. Could you repeat the question?

21 MS. HUART: Could you read the question
22 back.

23 (The reporter read back the requested matter.)

24 A. As a records custodian the records issue was what
25 I was testifying to.

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1 Q. okay.

2 A. Yes.

3 Q. Were you asked to authenticate any documents in
4 that deposition?

5 MS. NICOL: Calls for a legal conclusion.

6 A. I don't believe that I was. I don't recall that
7 I was.

8 Q. Were you asked to give testimony concerning the
9 creation of Union Carbide documents pertinent to that
10 action?

11 A. If you are asking if the documents were
12 maintained in the normal course of business for Union
13 Carbide, yes, I was.

14 Q. That would be the --

15 MS. NICOL: Same objection to that
16 question.

17 Q. Were you shown Union Carbide documents and then
18 asked if they were retained in the normal course of
19 business of Union Carbide?

20 MS. NICOL: Same objections.

21 A. Again, I don't recall specifically. This was a
22 telephone deposition and I don't recall the context
23 of the document issue.

24 Q. Mm-hmm. Have you ever provided a declaration or
25 an affidavit concerning authenticity of Union Carbide

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1 documents?

2 MS. NICOL: Beyond the scope of this
3 deposition and our agreement and irrelevant to the
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4 matters that are the subject upon which he is going
5 to speak about today as a person most knowledgeable
6 on certain categories only.

7 A. Yes.

8 Q. Approximately how many occasions have you done
9 that?

10 A. A number of occasions, I have no idea. I have
11 worked for Union Carbide Corporation in the corporate
12 records center for 26 years, and in the course of the
13 normal activities in that job it happens
14 occasionally.

15 Q. Would you be able to provide some estimate of the
16 number of times or --

17 MS. NICOL: Same objections. I am going to
18 permit just a slight more amount of leeway. There is
19 no basis to go into this questioning based on the
20 scope, which you are very well aware of, at this
21 deposition per our agreement dated March 22nd and
22 signed by Mike Armitage of your office.

23 A. I would hesitate to give a number. It is -- it
24 is a number. I have done this a -- a few times in
25 the course of business.

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1 Q. And that would be say less than six?

20

2 A. Oh --

3 MS. NICOL: Same objection.

4 A. More than that certainly.

5 Q. Less than a dozen?

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6 MS. NICOL: Calls for speculation. He has
7 already told you he can't be more precise, same
8 objection.

9 MS. HUART: I am going to object to the
10 speaking objections being placed on the record based
11 on my understanding of the California procedural
12 rules.

13 Q. Mr. DeBor, have you given trial testimony before?

14 A. Yes.

15 Q. Has that been in connection with any case
16 involving allegations of asbestos exposure?

17 A. Yes.

18 Q. When did you testify at trial?

19 A. I believe it was December of last year.

20 Q. Were you called by Union Carbide as a witness?

21 A. I am not sure what you mean in the distinction.
22 I was --

23 Q. Okay. I will ask it a different way. Were you
24 testifying on behalf of Union Carbide?

25 MS. NICOL: Objection vague.

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1 A. I was representing Union Carbide in an asbestos
2 case in Texas.

3 Q. And where in Texas was this trial?

4 A. Brazoria County.

5 Q. Do you recall the name of the Plaintiff involved
6 in that case?

7 A. No, I do not.

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8 Q. Do you recall the name of the Plaintiff's
9 attorney that was involved in that case?

10 A. Yes, Mark Lanier.

11 Q. He is hard to forget, isn't he. You don't have
12 to -- that wasn't a question calling for a response.

13 Was -- what were the allegations -- strike that.

14 Was that a case involving exposure to asbestos
15 on a facility owned by Union Carbide?

16 A. No.

17 Q. What was the issue in that case concerning --
18 strike that.

19 Were you -- strike that.

20 Was Union Carbide involved in this -- involved
21 in that case as a supplier of calidria fiber to
22 another entity?

23 MS. NICOL: Calls for speculation, lacks
24 foundation.

25 A. Again, I am not sure exactly what you are asking.

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1 Q. I will ask it another way. What kind of
2 testimony were you giving in that case concerning
3 Union Carbide's records, do you recall that? What
4 the -- what the general nature of your testimony was?

5 A. Again, Mr. Lanier called me early, and the issues
6 revolved around documents on their exhibit list.

7 Q. Were you asked to provide testimony concerning
8 your knowledge of whether the documents were records
9 kept in the ordinary course of business?

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10 A. Yes, I believe there was some questions to that
11 effect.

12 Q. Do you recall whether there were any documents
13 that you were asked to testify about where your
14 response was -- was that to your knowledge those were
15 not documents kept in the ordinary course of
16 business?

17 MS. NICOL: Calls for speculation, lacks
18 foundation, improper hypothetical.

19 A. Could you repeat the question.

20 MS. NICOL: And again beyond the scope of
21 this deposition.

22 MS. HUART: I think this witness's testimony
23 concerning the authentication of documents falls
24 clearly under category three. My last question was
25 taken from -- taken verbatim out of the text of

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1 category three. And I don't want to take up time on
2 the record with colloquy, but we have agreed that
3 that is an appropriate area to go into, and if this
4 witness has given prior testimony concerning
5 knowledge of whether documents or any of them are
6 kept in the ordinary course of business I am
7 certainly entitled to go into that.

8 Q. Sir, did you have a copy --

9 MS. NICOL: Category three of the
10 deposition notice regards the creation, storage,
11 retention and authenticity of the documents listed on

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12 Plaintiffs' Union Carbide exhibit list attached as
13 Exhibit B. It does not ask about him as an
14 authenticator of any document in any litigation but
15 in fact is limited to the documents listed on Exhibit
16 B that Plaintiffs have produced in connection with
17 this deposition notice, so I disagree with you.

18 MS. HUART: Well, Ms. Nicol, I would be
19 shocked if there wasn't an overlap between the
20 documents that were utilized in Mark Lanier's case
21 and the documents that are listed on Exhibit B, and I
22 am certain that there is some overlap between those
23 documents and Exhibit B, but once we find out what
24 that is we can certainly go into it more, and if you
25 are agreeing at this point to put him up for

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1 deposition one more time to testify about that I
2 am -- we'll -- we'll do it again, that's fine. I am
3 trying to save time.

4 MS. NICOL: And you and I can't -- you and
5 I can't try to speculate and then have Mr. DeBor
6 speculate about what each and every document he was
7 asked about in his dep and if that's covered on
8 exhibit list. We don't intend to put him up for
9 deposition again. This is your opportunity to ask
10 him the items that are covered by the scope of the
11 deposition that we have agreed to do. Category three
12 is in fact agreed to that he will be produced as a
13 person most knowledgeable, and again I have read

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14 category three and as it is stated in Plaintiffs own
15 notice it is limited to Exhibit B.

16 Q. Mr. DeBor, how long were you on the witness stand
17 in Mr. Lanier's case testifying concerning records
18 kept in the ordinary course of business at Union
19 Carbide?

20 MS. NICOL: Same objections.

21 A. I was on the stand for about an hour and a half.

22 Q. Were you subpoenaed to testify by Mr. Lanier or
23 were you asked to testify by Union Carbide?

24 MS. NICOL: Same objection.

25 A. I am not sure; but I believe I was not

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1 subpoenaed, I was asked.

2 Q. Do you have any knowledge concerning the outcome
3 of the case in which you testified concerning your
4 knowledge of whether the documents were kept in the
5 ordinary course of business?

6 MR. GLASSER: Objection.

7 MS. NICOL: Beyond the --

8 Q. Did you have any discussions with counsel for
9 Union Carbide prior to this deposition?

10 A. Yes.

11 Q. And when were you first contacted concerning
12 testifying in the -- strike that.

13 When were you first contacted concerning the
14 Brauch case?

15 MS. NICOL: Beyond the scope of the
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16 deposition categories we have agreed to. You know,
17 this might be an appropriate time for me to make that
18 introductory statement unless you feel you are still
19 doing background information that -- we keep on
20 getting into areas that are not covered by our
21 agreement, and I am just wondering if maybe it will
22 behoove us for me to make that introductory statement
23 on the record at this time.

24 MS. HUART: Well, I think that I am
25 certainly entitled to -- to ask questions concerning

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1 the events leading up to the -- to the deposition
2 and -- and I -- what I would like to know is, Mr.
3 DeBor, when -- do you recall when the first time was
4 that you were contacted concerning the case?

5 MS. NICOL: Same objection, it is beyond
6 the scope of the deposition. The deposition notice
7 Plaintiffs sought to have someone testify on events
8 that occurred more than 30 years ago. As we have
9 made very clear throughout the entire time that we
10 have attempted to meet and confer with Plaintiff with
11 regards to the scope of this deposition Mr. DeBor
12 himself has no substantive personal knowledge with
13 regards to the categories upon which Plaintiffs have
14 sought him to testify upon; however, in his records
15 capacity or his records custodian capacity he has
16 attempted to make himself knowledgeable simply by
17 review of the documents and only by review of the

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18 documents and can only state basically what the
19 documents say.

20 With that clear understanding with Plaintiff and
21 as specifically stated in our March 22nd letter that
22 is a signed agreement on the scope of this deposition
23 we have agreed to produce Mr. DeBor specifically as a
24 person most knowledgeable on only categories three
25 and category six, nine -- six, seven, eight, nine and

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1 10 of the deposition notice only. And, again, it was
2 agreed by counsel before the deposition began here
3 that Plaintiffs' amended notice of this deposition in
4 no way altered the categories from the original
5 deposition notice and so that this letter agreement
6 applies with full force and effect to the categories
7 upon which we have stated he will testify.

8 We have further specifically agreed that all
9 questioning will be limited to the relevant time
10 period in this case, and in particular prior to and
11 including September 1968 only.

12 We have further agreed in allowing good faith
13 discovery to Plaintiffs, despite the fact that it has
14 not been alleged in Plaintiffs' case report against
15 Union Carbide, that we will allow Mr. DeBor to speak
16 on the categories three and six through 10 as
17 concerns United States Gypsum Company, National
18 Gypsum Company, Georgia Pacific, Kelly-Moore and
19 Flintkote to the extent he has reviewed any of these

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20 documents relevant to those manufacturers.

21 And finally we have agreed to allow a deposition
22 to go forward of Mr. DeBor on categories 12, 15, 16
23 and 17 with the very clear understanding that he is
24 not being produced as the person most knowledgeable
25 on that category. There is not an employee person

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1 most knowledgeable on those categories, but we are
2 again in the spirit of cooperation and discovery
3 allowing him to testify to whatever extent he may
4 have personal knowledge on those categories.

5 MS. HUART: So it is -- it is your position
6 that I am not even entitled to ask him questions
7 concerning his employment history at Union Carbide
8 since that is not --

9 MS. NICOL: Right.

10 MS. HUART: Since that is not in the
11 deposition notice your -- your position is that I am
12 not permitted to ask him any questions concerning
13 what he has done at Union Carbide; is that correct?

14 MS. NICOL: Ms. Huart, you haven't been
15 prevented from asking him any background information
16 which we all understand and agree appropriate
17 background information about the witness can be
18 allowed. I have not stopped you from asking those
19 questions, so I suggest that you go ahead and proceed
20 with the deposition. Just simply reminding you of
21 the scope because many questions have been asked thus

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22 far that are beyond the scope even though I have been
23 giving liberty in allowing those questions to go
24 forward.

25 MS. HUART: Well, I would disagree. I

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1 think this witness's history in providing testimony
2 both by deposition and at trial concerning, and I
3 quote from category three, creation meaning knowledge
4 of whether documents or any of them are a record kept
5 in the ordinary course of business and whether it was
6 the regular course of business of Union Carbide for
7 an employee or a representative of Union Carbide
8 etcetera, etcetera, to make that record. I think
9 that my questions have -- have been appropriate, and
10 I would simply disagree with you that we have gone
11 outside that scope; but I am going to go ahead and
12 ask him, you know, the questions that I feel are
13 necessary to place his testimony into context, and
14 that will include his background and the work that he
15 has done on other cases.

16 MS. NICOL: And as I stated you -- you have
17 been allowed to ask those questions. I have a right
18 and the client has a right to be able to make
19 objections because clearly many of your questions
20 have gone beyond that scope. You and I don't need to
21 debate that issue. You have been asking the
22 questions and you have been getting answers to them.

23 MS. HUART: Except for the ones that you
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24 have instructed him not to answer.

25 MS. NICOL: That would be one and it had

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1 nothing to do with Texas testimony.

2 Q. According to the March 22nd letter of counsel,
3 Mr. DeBor, you have been described as an individual
4 employed with Union Carbide in a records custodian
5 capacity for approximately 26 years; is that correct?

6 A. Yes, ma'am.

7 Q. Okay. When did you start working for Union
8 Carbide?

9 A. Oh, it was June 1976.

10 Q. And what was your first position with Union
11 Carbide in June of '76?

12 A. It was information analyst.

13 Q. And what is the -- what were your duties and
14 responsibilities as an information analyst?

15 A. I have always worked at the corporate records
16 center in Morrisville, Vermont, starting from 1976 to
17 the present. Typical of that duties there is really
18 a two prong focus. One is to maintain and organize
19 using appropriate corporate policies all the records
20 that are archived at the corporate records center,
21 the second responsibility is to respond to requests
22 and need for information that are made by various
23 components of the corporation regarding those
24 records.

25 Q. So you -- you spent your entire Union Carbide
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1 career in this one facility; is that correct?

2 A. That's correct.

3 Q. Okay. How large a facility is the Morrisville
4 facility?

5 A. We currently have capacity to store 78,000
6 cartons of records. Right now I believe we have
7 73,000 cartons of records. And in the records
8 management world, if you will, you tend to equate
9 that to cubic feet so many, many documents.

10 Q. Does the records center in Morrisville also house
11 computerized records?

12 A. If you are talking about data, yes, we do have a
13 component whereby we store computer tapes, CDs and
14 other format as it develops or as it has been in the
15 past.

16 Q. Microfiche?

17 A. Again, microfiche, microfilm is a different
18 modality from hard copy or a paper format, but
19 essentially that is not a computerized form but --

20 Q. So in the Morrisville facility where you work
21 there is -- there are both hard copies of documents,
22 paper records, as well as computerized types of data,
23 documents stored on CD ROM and other formats; is that
24 correct?

25 A. That's correct, yes.

1 Q. Okay. Any other formats besides microfiche,
2 microfilm, CD ROM?

3 A. In specifically as far as modality and data we
4 have tape which is both reel and cassette, and I
5 believe that's the extent of it, yes.

6 Q. How many individuals work with you at this
7 records facility in Morrisville, Vermont?

8 MS. NICOL: Vague.

9 Q. How many individuals are employed at this records
10 center in Morrisville?

11 A. Six. We have a staff of three full-time and
12 three half-time employees.

13 Q. And what is your title?

14 A. Assistant manager corporate records center for
15 Union Carbide.

16 Q. So when you started with Union Carbide in June of
17 1976 Union Carbide was already -- had already begun
18 involvement in asbestos-related litigation; is that
19 correct?

20 MR. GLASSER: Objection. It is beyond the
21 scope.

22 A. I can't answer that specifically.

23 Q. When you started in 1976 were you aware of Union
24 Carbide being involved in asbestos cases?

25 MR. GLASSER: Same objection.

1 A. No, I was not.

2 Q. Do you archive records that are related to
3 matters other than asbestos?

4 A. Absolutely. Again, the corporate facility at
5 Union Carbide is the corporate records center for
6 Union Carbide, it houses all types mixed and
7 multiple, if you will, of business records created in
8 the normal course of business; and, again, we
9 generally maintain those based on a corporate
10 retention schedule.

11 Q. So Union Carbide has a policy for document
12 retention?

13 A. Yes. Actually our policy goes back far beyond my
14 time. It is my understanding that our records
15 retention policies and procedures were one of the
16 first in the chemical industry.

17 MS. HUART: I would like to make a request
18 on the record for production of those.

19 Q. With respect to the --

20 MS. NICOL: I just want to make a statement
21 in response to that again is beyond the scope of the
22 deposition.

23 Q. Who is in the -- in the hierarchy at the records
24 center, who do you report to?

25 A. Phillip Fournier, that's F-O-U-R-N-I-E-R. He is

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1 the manager of the records center.

2 Q. Are there any other assistant managers?

3 A. No.

4 Q. That's not a title you share?

5 A. No.

6 Q. Now, to whom does Mr. Fournier report? Who is
7 above him or does he report to corporate?

8 MS. NICOL: Beyond the scope.

9 Q. Does he report to the corporate --

10 MS. NICOL: Beyond the scope.

11 Q. I apologize, did you get your objection finished?

12 MS. NICOL: Beyond the scope of the
13 deposition notice.

14 Q. To whom does your boss, Mr. Fournier, report?

15 MS. NICOL: Same objection.

16 A. Greg Growchoski, and I will make an attempt at
17 the spelling. It is G-R-O-W-C-H-O-S-K-I.

18 Q. And what's -- I won't even attempt a
19 pronunciation. What is his title?

20 A. I believe --

21 MS. NICOL: Same objection.

22 A. I believe as far as his involvement with records
23 is corporate records manager, I believe, but I am not
24 sure.

25 Q. Now, you mentioned that this corporate records

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1 center in Morrisville is the corporate records center
2 for the company; is that correct?

3 A. Yes, that's correct.

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4 Q. There are, however, other locations where Union
5 Carbide records are stored and maintained, correct?

6 A. That's correct.

7 Q. Now, there are -- and I understand there are
8 various offices of the Kelley, Drye & Warren firm
9 that also maintain and store Union Carbide records;
10 is that correct?

11 MS. NICOL: Calls for speculation, lacks
12 foundation.

13 A. Are you referring to the asbestos repository?

14 Q. Yes.

15 A. Yes, we do maintain an asbestos repository at the
16 offices of Kelley, Drye & Warren.

17 Q. Now, is this asbestos repository in -- is this
18 the one in New York, the one in New Jersey or the one
19 in Connecticut or all three?

20 A. As far as I am aware New York.

21 Q. This is Park Avenue?

22 A. Yes, 101 Park Avenue.

23 Q. What is your relationship or oversight
24 responsibility with respect to the documents that are
25 maintained at Park Avenue?

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1 A. None.

2 Q. Who is in charge of the records at Park Avenue?

3 A. The --

4 MS. NICOL: Calls for speculation.

5 A. The custodian of those records are Virginia --

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6 Virginia Ruszczyk. You could help me with the
7 spelling.

8 MR. GLASSER: R-U-S-Z-C-Z-Y-K.

9 Q. Is that -- are you -- do you have personal
10 knowledge concerning the fact that Miss -- how do you
11 pronounce it?

12 A. Ruszczyk.

13 Q. Ruszczyk. Do you have personal knowledge that
14 Miss Ruszczyk is the records custodian at the Park
15 Avenue facility?

16 A. Again, in this particular case we have included
17 that in our interrogatory responses, and I have
18 certainly seen that there, yes.

19 Q. Do you know -- strike that.

20 Are the records stored at Park Avenue copies of
21 records that you have in Morrisville or is that a
22 completely separate set of documents?

23 A. I am not sure.

24 Q. Okay. You know what, I was going to withdraw
25 that question anyway. Let me start over.

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1 Do you know the difference just generally by
2 description of what is maintained in Morrisville
3 versus what is maintained in the Park Avenue asbestos
4 repository? Am I calling that the right thing? What
5 do you call the Park Avenue location, what's --

6 A. Yes, the asbestos repository of Kelley, Drye.

7 Q. That's what you call it, okay. Well, I am going

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8 to call it the same thing that you call it so we're
9 on the same page here.

10 Can you -- can you tell me or just describe for
11 me what the relationship is between the asbestos
12 repository at Kelley, Drye and the records that you
13 are in charge of in Morrisville?

14 A. Certainly. Again, as I indicated, the corporate
15 records center maintains the business documents, all
16 types of documents sent to us from various
17 departments and divisions within Union Carbide over
18 the years. Starting in I believe 1980 outside
19 counsel started to collect asbestos-related documents
20 and in the course of the last 20 years the
21 repository -- asbestos repository at Kelley, Drye has
22 grown, and probably will continue to grow to some
23 degree as documents are discovered in the normal
24 course of discovery and business. There has been a
25 number of times that Kelley, Drye people as well as

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1 Union Carbide people have traveled to Vermont as well
2 as all other locations within Union Carbide to
3 collect asbestos documents for inclusion into the
4 repository.

5 Q. And who makes the -- strike that.

6 How do they know that those -- strike that.

7 Do they come to Vermont to get documents because
8 you have told them that something has come to your
9 attention and this is asbestos related and you --

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10 they need to know about it, is that how that happens?

11 MS. NICOL: Objection, vague and ambiguous,
12 overbroad and as to time and scope.

13 A. Say again, please.

14 Q. How does it happen that the -- how do the people
15 from Kelley, Drye know to come to Morrisville to in
16 your words collect asbestos-related documents?

17 A. Okay, again --

18 MS. NICOL: Same objection.

19 A. -- there has been major reviews and major
20 initiatives to collect these documents, and obviously
21 we have maintained records that are asbestos related
22 from various departments and divisions within Union
23 Carbide and their investigations have been extensive.

24 Q. When you say we have maintained records that are
25 asbestos related are you talking specifically about

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1 your group at Morrisville or do you mean we meaning
2 the royal we Union Carbide?

3 A. No, I meant the corporate records center.

4 Q. Okay.

5 A. Again if you were talking about how do they come
6 to Vermont within the broad scope of the 73,000 boxes
7 there are obviously or have been documents related to
8 asbestos, and we have done a complete and thorough
9 investigation to a level that -- actually in the last
10 26 years compared to any litigation this is obviously
11 a huge issue. It is unprecedented I know for a fact

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12 because as part of my duties in the records
13 management group that I have traveled to other
14 locations, identified areas where our counsel should
15 go review and search for asbestos documents. I also
16 know for a fact that these documents have been
17 collected and have been reviewed and are being
18 reviewed by our attorneys and are being included in
19 the asbestos repository.

20 Q. Is this an ongoing effort? I mean when you say
21 are being reviewed you mean literally ongoing in the
22 present?

23 A. Yes, it is, absolutely, yes, it is. In the
24 course of our merger with Dow Chemical Corporation
25 Union Carbide's records policies, per se, are

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1 different from Dow's records retention policies, and
2 as part of my job responsibility last year as a
3 matter of fact I have traveled to all the domestic
4 Union Carbide major sites, done training for what the
5 Dow Chemical people called records coordinators in
6 their system, and as part of that training we have
7 indicated that there is this asbestos issue, when you
8 are looking -- when you are reviewing your documents
9 look for this, keep this in mind, do not destroy any
10 documents, because of course we have a hold order;
11 and, yes, documents have been located in the last
12 year and have been included in the repository for
13 sure.

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- 14 Q. Mm-hmm. Okay. Let me just go back to one of my
15 earlier questions. So when you have got that overall
16 corporate records center and then Miss Ruszczyk?
17 A. Ruszczyk.
18 Q. Ruszczyk, pardon me, Miss Ruszczyk is in charge
19 of the asbestos repository. When -- when you have
20 something that pertains to asbestos does Ms. Ruszczyk
21 just come and take it and put it in hers or does she
22 make a copy so that she has got a special asbestos
23 subset of your overall larger set?
24 A. Both have occurred, actually, copies have been
25 made -- been made. Again, with this Dow initiative

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- 1 what I have suggested is that originals if it is not
2 needed at the sites for whatever reason, for example
3 ongoing asbestos remediation at a production
4 facility. If there is some state regulation, which
5 Texas does, by the way, have where you have to
6 maintain it on-site for X amount of years.
7 Q. Mm-hmm.
8 A. Then a copy is made in those cases. So the short
9 answer to your question is both copies and originals
10 have been included in the repository.
11 Q. Well, I take it from that then that there may be
12 records that Ms. Ruszczyk has that you -- that you as
13 records custodian in Morrisville no longer have
14 because that actually has been physically removed
15 from Vermont to Park Avenue; is that right?

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16 A. Absolutely.

17 Q. Do you maintain a separate grouping of asbestos-
18 related documents at the records center in
19 Morrisville?

20 A. No, we do not. As a matter of fact, it is my
21 hope that all or as many documents as these extensive
22 reviews are made are no longer at the corporate
23 records center but are in the asbestos repository.

24 Q. Mm-hmm. Mm-hmm. Who conducts the reviews for
25 these asbestos-related documents?

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1 MS. NICOL: Vague, overbroad as to time and
2 scope.

3 Q. The reviews that you told me were ongoing you
4 have indicated that in -- that there have been
5 extensive investigations and that the people come --
6 travel to the corporate records center and review
7 documents --

8 A. That has occurred, yes.

9 Q. -- is that correct? Okay. Who are these people
10 that do that, who -- where do they fit in this?

11 A. Over the last 20 years you are asking?

12 Q. No. I am not asking you -- and I am certainly
13 not asking you names of individuals. What I am
14 trying to understand is -- well, let me ask it a
15 different way.

16 Do you have personal knowledge of how the
17 asbestos repository came to be created?

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18 MS. NICOL: Asked and answered. I think
19 that's what he has been talking about for the last 15
20 minutes. Vague.
21 A. Are you talking about the point in time in 1980?
22 Q. Well, let me be more specific. You said that in
23 1980 outside counsel started to collect asbestos-
24 related documents, correct?
25 A. That's correct.

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1 Q. Okay. So are the people that come to Vermont for
2 this purpose to check these documents, are these to
3 your knowledge either attorneys or members of their
4 staff?
5 A. Again we have had attorneys, paralegals from
6 outside counsel, we have had paralegals, clerks and
7 attorneys from inside Union Carbide.
8 Q. As I understand it Union Carbide was no longer
9 selling calidria after 1985, correct?
10 A. As I understand that is correct.
11 Q. Okay. So presumably then there would not be new
12 documents being generated -- new currently dated
13 documents being generated concerning calidria,
14 correct?
15 MS. NICOL: Lacks foundation, calls for
16 speculation, vague and overbroad.
17 A. That's -- that is a vague question I think. I am
18 not sure what you are asking.
19 Q. Are -- is the records collection as you

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20 indicated -- strike that.

21 Is the asbestos repository growing and

22 continuing to grow because you -- because Union

23 Carbide is finding old documents they hadn't

24 previously found or is it continuing to grow because

25 asbestos-related documents continue to be generated

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1 on an ongoing basis?

2 A. I think the answer to that is both. Again, as I
3 indicated under Dow Chemical they have a different
4 set of parameters. They are very cognizant of old
5 records being stored in file cabinets not under
6 custodianship particularly, so there is that
7 wonderful effort kind of going on from a records
8 point of view; and there is certainly new records
9 being generated. We have asbestos at our production
10 facilities that are currently being remediated and
11 that those are also being captured.

12 Q. when you say that you traveled to locations --
13 all the domestic major sites for purposes of training
14 people?

15 A. Yes.

16 Q. Concerning document reviews; is that correct?

17 A. Yes.

18 Q. Are documents coming -- as a result of that
19 training and as a result of what you had done are
20 documents from these locations continuing to filter
21 back to your records center?

1 March 8th, 2002, to a number of different attorneys
2 by Jeffrey Simon, so that might help you to know to
3 whom to provide corrected copies.

4 MS. HUART: Okay. Thank you.

5 A. Yes.

6 Q. Does that appear to be a business record of Union
7 Carbide?

8 A. Yes, it is.

9 Q. Maintained in the ordinary course of business?

10 A. Yes. Yes, ma'am.

11 Q. Thank you. I would like to hand you what's been
12 marked Plaintiffs' Exhibit 5068 and ask you to review
13 that. Thank you. Does that appear to be a record
14 kept in the ordinary course of business as a business
15 record of Union Carbide?

16 A. Yes, it does.

17 Q. I would like to show you Plaintiffs' Exhibit 5086
18 and ask you if that appears to be a business record
19 maintained in the ordinary course of business of
20 Union Carbide?

21 A. Yes, it does.

22 Q. Thank you. I would like to hand you Exhibit 5527
23 and ask you if that appears to be a business record
24 maintained in the ordinary course of business of
25 Union Carbide?

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24 differences are between the two? I mean not -- not
25 specifically paragraph by paragraph but overall?

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1 MS. NICOL: Beyond the scope of the
2 deposition.
3 A. As far as program we are -- we are very similar.
4 Again, they have a retention manual, they have a
5 schedule of retention policies based on type of
6 document. Some of the differences in terminology by
7 type obviously had to be meshed. Some of their
8 retention policies are shorter. We have been
9 grappling with that obviously as we have mapped ours
10 to theirs. And some of theirs are longer, and a
11 number are the same. They have freeze letters which
12 is our old generic hold orders. Again, the freeze
13 letters currently are specific to Union Carbide.
14 The training that we did with all the Union
15 Carbide employees pointed them toward the Dow records
16 retention and information web site that we're
17 cognizant and ahead of that. So there is some minor
18 differences but overall similar programs.
19 Q. Mm-hmm. Do you coordinate with anyone affiliated
20 with Dow in connection with these records -- this
21 effort to merge the efforts?
22 A. Okay, again, they have a records organization
23 like we have. Actually I extensively traveled with
24 their Canadian records manager to the Union Carbide
25 sites so again we could introduce the Dow folks to

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1 Union Carbide, and they of course taught me as well
2 as teaching the new Dow procedures and policies.

3 Q. Okay. Who is the Canadian records manager that
4 you traveled with?

5 A. Ray Morgan. And we also interfaced with a Don
6 Fillemore who is their global records manager.

7 MS. NICOL: Since you are -- we have been
8 going about an hour and a half are you coming close
9 to closing this area so that we can take a break
10 sometime soon?

11 MS. HUART: Yeah, I can.

12 Q. You told me that your first -- your first
13 position was -- was as an information analyst and
14 what that involved, and I have some idea of what you
15 do now. Can you tell me what the next position was
16 that you held after information analyst?

17 A. Oh, as far as the specific job title, no, I
18 cannot. Again, in form and fashion my job has really
19 not changed over the years.

20 Q. The technology, however, I will bet has. I mean
21 I guess the technology has probably changed the way
22 you do your job I would assume?

23 A. Not substantially. As far as the elements of
24 technology, and, again, researching and maintaining
25 information, yes, that has; but, again, documents are

1 documents, records are records, and the extraction
2 and synthesization of information is basically the
3 same.

4 Q. Is -- is Mr. Growchoski?

5 A. Growchoski.

6 Q. Growchoski, pardon me, is his office physically
7 located at the Morrisville center?

8 A. No, he is in Midland, Michigan.

9 Q. And that you indicated to me was the Dow -- that
10 is the Dow headquarters for their records?

11 A. That is the Dow world headquarters, Midland,
12 Michigan.

13 Q. The -- of the six people that are at the
14 Morrisville facility then are you the most senior
15 person there?

16 A. No. Again, I report to Phil Fournier.

17 Q. Okay. Is he located in that facility?

18 A. Yes.

19 Q. He is one of the six?

20 A. Yes.

21 Q. Okay. And so would you identify for me the other
22 individuals at that facility?

23 A. Yes, Lisa May, M-A-Y; Erik with a K, E-R-I-K,
24 Olesen, O-L-E-S-E-N; James Lane, L-A-N-E; and Ken
25 Freer, F-R-E-E-R.

1 Q. Are all of the records being managed at the
2 corporate records center located on-site at that
3 particular facility or do you have documents that are
4 sent off-site as well?

5 A. No.

6 MS. NICOL: Vague.

7 A. Everything is housed on-site within one building.

8 Q. Do you have a -- an estimate or some -- can you
9 give me some idea of the sort of the size or square
10 footage of that building, just roughly?

11 A. No, I don't recall the exact square footage.
12 Again, it is a pretty large building to house 75,000
13 boxes of records.

14 Q. I would think. Is it multistory?

15 A. One story.

16 Q. Okay. Do Ms. May and Mr. Olesen and Lane and
17 Mr. -- Mr. Lane and Mr. Freer, do they have different
18 job duties or various job duties or do they all
19 report to you? Strike that, that wasn't --

20 Do -- do Ms. May and Messrs. Olesen, Lane and
21 Freer report directly to you?

22 A. Through me to the manager. We work together.

23 MS. HUART: I am at a point where we could
24 stop if you would like to take a break.

25 THE VIDEOGRAPHER: We're off the record at

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1 approximately 12:41 p.m.

2 (A lunch break was taken.)
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3 THE VIDEOGRAPHER: One moment, please.
4 We're back on the record at approximately 1:22 p.m.
5 Q. Mr. DeBor, I would like to hand you what's been
6 marked as Deposition Exhibit A and ask you to review
7 paragraph three in that document. Which for the
8 record is the notice of deposition.
9 A. Paragraph starting with pursuant to?
10 Q. I'm sorry, the paragraph numbered three.
11 A. Oh, I'm sorry.
12 Q. For the record the witness is reviewing paragraph
13 three which commences on page two and continues to
14 page three of Exhibit A.
15 A. Yes.
16 Q. Sir, are you prepared to give testimony today
17 concerning paragraph -- in response to paragraph
18 three?
19 A. Yes.
20 Q. And specifically if you need a moment to look at
21 it paragraph three concerns the documents that are
22 listed on Exhibit B to this particular document which
23 is Deposition Exhibit A. I apologize if that's
24 confusing and I am going to open that -- open to that
25 page for you.

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1 Have you had an opportunity to see this document
2 before?
3 A. Yes, I have.
4 Q. Are you prepared to give testimony today

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5 concerning the documents listed on Exhibit B that are
6 authentic business records of the Union Carbide
7 Company?

8 MS. NICOL: Objection, calls for a legal
9 conclusion. I would also at this time since we're
10 now talking specifically about the documents on
11 Exhibit B make a reservation of rights with regards
12 to any documents that are on that exhibit list that
13 in fact are privileged documents. It -- it has come
14 to our attention that certain privileged documents
15 may have inadvertently been produced, and we retain
16 the right to claim the privilege associated with
17 those documents, attorney/client and work product
18 privileges, and I will cite in particular four
19 documents on Plaintiffs' exhibit list, but this is
20 not an inclusive listing, Document No. 5031, Document
21 No. 5215, 5237 and 5378.

22 MS. HUART: well, we certainly reserve the
23 right to argue that privileges have been waived with
24 respect to those -- those documents and any others
25 that have been produced previously.

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1 Q. With respect to -- well, actually I am glad that
2 the issue of privilege has been brought up.

3 As the records custodian of Union Carbide can
4 you tell me where the -- the privileged documents are
5 housed?

6 MS. NICOL: Assumes facts not in evidence,
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7 calls for speculation, lacks foundation, vague.

8 MR. GLASSER: Also calls for a legal
9 conclusion.

10 Q. Are you aware of -- of any existence -- strike
11 that.

12 Can you answer the question that -- as I have
13 asked it?

14 MS. NICOL: Same objections.

15 A. No, I cannot.

16 Q. Do you have any knowledge concerning documents of
17 Union Carbide Corporation which the lawyers have
18 determined cannot be produced in litigation?

19 MS. NICOL: Seeks attorney/client work
20 product privilege information, calls for a legal
21 conclusion.

22 A. No, I do not. That is the lawyer's bailiwick,
23 not mine.

24 Q. So sitting here today you actually don't know
25 where documents are kept that attorneys have

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1 determined are not to be produced; is that correct?

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2 MS. NICOL: Same objections, plus
3 argumentative, misstates testimony.

4 A. Again, I am not sure, privileged documents are
5 varied. What case, what --

6 Q. I apologize, I didn't mean to speak over your
7 answer. Did you have a chance to finish your answer?

8 A. Yeah.

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9 Q. Okay. When a document is located that is
10 relevant -- strike that.

11 When a document is located and identified as
12 being related to asbestos, and I think as you have
13 testified that is something that is earmarked for the
14 asbestos repository; is that correct?

15 A. For review by counsel.

16 Q. What is your understanding of the purpose of
17 their review?

18 MS. NICOL: Beyond the scope of his
19 deposition, seeks attorney/client work product
20 information, improper hypothetical and legal
21 conclusion.

22 Q. Do you have any idea why they review them?

23 MS. NICOL: Same objections, calls for
24 speculation, lacks foundation.

25 A. Again, as a records custodian we identify the

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1 documents and turn it over to counsel. They make
2 whatever determination they need to make.

3 Q. Do you have any knowledge concerning whether any
4 given document that you turn over actually makes it
5 to the asbestos repository --

6 MS. NICOL: Same objections.

7 Q. -- once you turn it over?

8 A. I know in some specific cases they certainly
9 have, yes.

10 Q. I am not sure I understand your answer. Are you
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11 saying that in some specific cases they do make it to
12 the asbestos repository or that they don't?

13 A. Again --

14 MS. NICOL: Same objections.

15 A. Many, many documents in the course of the last 20
16 years have been turned over to our attorneys for
17 review. I do know for a fact that some of those
18 because I have seen at the back end, if you will,
19 that they have been included in the repository.

20 MS. HUART: I would like to make a request
21 on the record for any log of privileged documents
22 that counsel for Union Carbide maintains. And, by
23 the way, my requests also pertain to any of the cases
24 in which Waters and Kraus is representing Plaintiffs
25 against Union Carbide.

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1 MS. NICOL: And I respond to your request
2 the way that I have all the others, that that's
3 beyond the scope of the deposition that you have
4 noticed and we have agreed to take place in this
5 case.
6 Q. If you would turn back to this category No. 3
7 that I had previously asked you to look at on page
8 two of Plaintiffs' exhibit -- Deposition Exhibit A is
9 there anybody at Union Carbide who is more
10 knowledgeable than you are concerning the creation,
11 storage, retention and authenticity of documents
12 listed on Exhibit B?

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13 A. I don't believe so, no.

14 Q. Are you prepared to give testimony today as to
15 whether -- strike that.

16 Are you prepared to give testimony today as to
17 which documents listed on Exhibit B are not records
18 kept in the ordinary course of business of Union
19 Carbide?

20 MS. NICOL: Calls for a legal conclusion.

21 A. Again, I am not sure what you are asking.

22 Q. Have you -- as I understand your prior testimony
23 you have reviewed that list; is that correct?

24 A. Correct.

25 Q. Have you made an attempt to -- strike that.

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1 Have you or are you aware that counsel for
2 Plaintiffs produced to counsel for Union Carbide the
3 documents that are listed on Exhibit B, or at least
4 most of them, did you -- are you aware of that, that
5 hard copies of those documents were given to counsel?

6 A. Again, I -- I don't know how you got those
7 documents.

8 Q. Okay. Are you -- objection nonresponsive.

9 Are you aware that the copies that we have --
10 that Plaintiffs' counsel has were actually copied and
11 sent to counsel for Union Carbide, did you know that?

12 MS. NICOL: Why don't you just ask him if
13 he has seen copies of these documents that Plaintiffs
14 have provided.

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15 MS. HUART: I am going to -- I am really
16 formulating my questions the way I need and want to,
17 Ms. Nicol, but thank you for the tip.
18 A. No, I have no knowledge as to how you received
19 these documents.
20 Q. Objection nonresponsive. Have you reviewed any
21 documents that were provided by counsel for
22 Plaintiffs to counsel for Union Carbide?
23 A. Again, I am not sure what you are asking.
24 Q. Okay. The documents that are listed on Exhibit
25 B --

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1 A. Yes.
2 Q. Strike that. Counsel for -- are you aware that
3 counsel for Plaintiffs provided to counsel for Union
4 Carbide the documents that they had that are listed
5 on Exhibit B, are you aware of that?
6 MS. NICOL: Unintelligible, vague,
7 overbroad.
8 A. Again, are you asking if I know that this entire
9 list was provided to you from our attorneys?
10 Q. No, the -- I am asking you the question are you
11 aware that we, counsel for Plaintiffs, provided to
12 counsel for Union Carbide hard copies of all of those
13 documents that you have in front of you?
14 A. Yes, I'm sorry, yes.
15 Q. Okay.
16 A. Yes, I am.

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17 Q. All right. And have you had an opportunity to
18 review those documents?

19 A. Yes, I have.

20 Q. Have you reviewed every document that was
21 provided to your knowledge?

22 MS. NICOL: I am going to object as beyond
23 the scope since questioning is to be limited to prior
24 to and including 19 -- September 1968.

25 A. Yes, I have reviewed the documents on this list.

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1 Q. When you say you have reviewed the documents on
2 the list do you mean each one; is that correct?

3 MS. NICOL: Same objection.

4 A. To the best of my recollection yes.

5 Q. Did you attempt to retrieve from the Union Car --
6 any Union Carbide repository documents matching the
7 description of the documents listed on Exhibit B?

8 A. No, I did not.

9 Q. Did anyone under your super -- did you ask anyone
10 under your supervision to do so, to -- strike that.

11 MS. NICOL: Beyond the scope.

12 Q. Did you -- I am rephrasing it.

13 Did you ask anyone under your supervision to
14 locate or attempt to retrieve the documents described
15 on Exhibit B to Deposition Exhibit A?

16 MS. NICOL: Beyond the scope of the
17 deposition, vague, overbroad, not something he was
18 required to do.

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19 MS. HUART: And I am going to object to any
20 more speaking objections that are providing anything
21 more than a form objection to the question.

22 A. No, I did not.

23 Q. Am I correct, then, that you did not -- strike
24 that.

25 Am I correct that you reviewed the documents

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1 that Plaintiffs' counsel provided to Union Carbide
2 but did not compare them with documents in the
3 possession of Union Carbide at the repositories?

4 MS. NICOL: Same objections.

5 A. That is correct.

6 Q. Are you prepared to testify -- having seen all
7 the documents that were provided to Union Carbide
8 listed in Exhibit B with respect to those documents
9 are you prepared to testify as to whether any of
10 those documents are authentic business records of
11 Union Carbide? Strike that.

12 MS. NICOL: Vague, overbroad.

13 MS. HUART: Strike that, I am rephrasing my
14 question.

15 Q. Having reviewed the documents that were provided
16 by Plaintiffs' counsel to Union Carbide that are
17 listed on Exhibit B are you prepared to testify as to
18 whether any of those documents are records kept in
19 the ordinary course of business of Union Carbide?

20 A. Yes, certainly.

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21 Q. Are you prepared to testify -- to identify those
22 documents for me at this time?

23 A. Certainly.

24 Q. Is it your -- strike that.

25 Are you prepared to testify as to whether any of

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1 the documents that you have reviewed are not
2 authentic business records of Union Carbide? Strike
3 that.

4 Are you prepared to testify as to whether any of
5 the documents that you have reviewed that are listed
6 on Exhibit B are not documents kept in the ordinary
7 course of business of Union Carbide?

8 MS. NICOL: Calls for speculation.

9 A. Yes, I believe there are a number of documents
10 that are not Union Carbide documents.

11 Q. Are you able -- strike that.

12 Do you have a list or did you make a list --
13 strike that.

14 Did you make a list of documents that in your
15 opinion are not documents that are records kept in
16 the ordinary course of business of Union Carbide from
17 among these records that you reviewed?

18 A. No.

19 Q. When did you undertake this review of documents
20 that are listed on Exhibit B?

21 A. On Sunday and Monday of this week.

22 Q. So that would be March the 23rd and March the
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23 24th; is that correct?
24 A. I will let you decide the date.
25 Q. Was that the first time that you had ever seen

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1 the documents that Plaintiffs provided to counsel
2 that are listed on Exhibit B?
3 MR. GLASSER: Objection, vague.
4 MS. NICOL: Beyond the scope of the notice,
5 harassing.
6 A. Had I seen some of these documents previously or
7 this --
8 Q. This particular collection? Can we call this --
9 instead of using so many words to try to describe
10 this can you and I agree that we'll call it the --
11 can we just agree to call it the March 4th collection
12 since that was the day it went to counsel, is that --
13 can we call it that? Is that all right with you?
14 MS. NICOL: Why don't you just call it
15 Plaintiffs' production.
16 MS. HUART: Well, because it is not really
17 our production. I mean we produced it, we didn't --
18 it was produced as a courtesy and --
19 MR. GLASSER: How about Plaintiffs'
20 exhibits?
21 MS. NICOL: Yeah, it is --
22 MS. HUART: Well, if I say Plaintiffs'
23 exhibits you are going to object that that's vague
24 and overbroad. So I just want to make sure we just
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25 have some shorthand way of referring to the -- okay,

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1 why don't we call it the Plaintiffs' Union Carbide
2 collection, all right? Is that all right with
3 everybody, Plaintiffs' Union Carbide collection?

4 Okay. Was March the 23rd the -- is your nod of
5 the head a yes to --

6 A. Yes.

7 Q. -- to my -- I'm sorry.

8 A. Okay.

9 Q. Is March the 23rd the first time that you saw the
10 Plaintiffs' Union Carbide collection?

11 MS. NICOL: Beyond the scope of the
12 deposition questioning, unclear -- may be unclear to
13 him whether documents he saw was or was not part of
14 that collection so it -- it assumes facts not in
15 evidence, and it lacks foundation, and most
16 definitely calls for his speculation, and more than
17 that it is irrelevant.

18 MR. GLASSER: And I would also like to just
19 add one thing, if you want to handle this as a group,
20 which it seems like you are trying to do, then maybe
21 we can work this out between the lawyers without
22 taking up the time of the testimony.

23 MS. HUART: Can we go off the record,
24 please.

25 THE VIDEOGRAPHER: Off the record at

1 approximately 1:42 p.m.

2 (A break was taken.)

3 MS. NICOL: In terms of resolving this
4 issue or question about the witness going through
5 Exhibit B what we have been talking about for the
6 last 30 minutes, and we have Plaintiffs' counsel from
7 waters and Kraus in Long Beach, Michael Armitage, on
8 the phone as well who was involved in this
9 discussion. What -- what we are saying on behalf of
10 Union Carbide is consistent with paragraph one of our
11 letter agreement of March 22nd. Mr. DeBor is here
12 being produced as is the person most knowledgeable on
13 category three, and that he will need to be shown the
14 specific document that Plaintiffs request that he
15 give testimony about consistent with category three
16 simply because there is hundreds of documents on the
17 Exhibit B listing. Exhibit B listing is not entirely
18 accurate in terms of describing what document is
19 actually in the boxes that we received from
20 Plaintiff, and he -- there is no way he could
21 possibly have retained a memory of all the hundreds
22 of documents; however, in preparation for this effort
23 he has taken the time, and I might say considerable
24 time, and reviewed each of the documents Plaintiffs
25 produced in the boxes, the three boxes; however, the

1 only documents he was not able to review are the
2 documents on Plaintiffs' exhibit list starting at
3 5700 all the way through the end because those were
4 never provided by Plaintiffs to us, and we have
5 requested them on multiple occasions and never
6 received them. And it is my understanding from Mr.
7 Armitage that Plaintiffs do not intend to use the
8 exhibits listed on the -- their list of 5700 to the
9 end. However, what we ask at this point rather than
10 waste any more time is we have offered him for this
11 category, he would be allowed to testify on this
12 category; however, what we did say in the deposition
13 agreement was that all questioning will be limited to
14 September '68 or prior.

15 To the extent that Plaintiffs seek to ask him
16 about documents post '68, which they may do, we are
17 not going to prevent them from doing that, it is
18 outside of the scope of our agreement for this
19 deposition in this case.

20 And additionally if they do decide to do that we
21 are not going to produce him for another day because
22 we have yet after all these hours of deposition to
23 have him asked a single question on a substantive
24 category that directly deals with the issues posted
25 in the motion for summary judgment that's pending,

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1 and until that's done that's at Plaintiffs' peril if
2 they don't get to ask everything they want to in this
3 deposition if they elect to ask him about documents
4 in years past September 1968.

5 With that said I have also told Mr. Armitage,
6 and confirmed what he and I have talked about, that
7 in fact this deposition and its narrowed scope is
8 specifically for the Brauch case. We have not
9 noticed or accepted a notice in this case, and we
10 have an agreement with Plaintiffs' counsel that this
11 deposition is not for any other case but the Brauch
12 case. And that is in fact why the questioning is
13 limited to September '68 and prior to, because that
14 is all that's relevant as to the claims against Union
15 Carbide in the Brauch case.

16 To the extent Plaintiffs seek a deposition of
17 Union Carbide in the Naughton case then that
18 deposition notice will be separately responded to
19 and -- and whoever we produce and whoever is
20 responsive to the categories will be a separate
21 deposition that takes place in that case or any other
22 litigation, and the only objection we may have to
23 burdensome and harassing is to the extent that there
24 is a deposition questioning gone over in those cases
25 that has already been covered in this case; however,

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1 we agree that there will be a separate deposition
2 responsive in the Naughton case in particular I can

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3 speak to because that's one that -- that Mr. Armitage
4 and I are working on together.

5 MR. ARMITAGE: Okay. Well, just addressing
6 one of the things that you said there last, this is
7 Mike Armitage on behalf of the Plaintiffs, we have
8 agreed that the case -- this deposition has been
9 noticed in the Brauch case. Obviously any party is
10 free to use the deposition for any -- any reason
11 under the California evidence code as former
12 testimony or for whatever other purposes it may be
13 used. We are not agreeing that it may only be used
14 in the Brauch case, we are simply agreeing that it is
15 being noticed in the Brauch case only.

16 And I want to make very clear that because we
17 are agreeing to go forward and ask limited questions
18 about authenticity of documents and we will not have
19 time, from the conditions you have imposed, to ask
20 about all of the documents on our exhibit list that
21 we are ready to ask about today that there will be no
22 further argument or no further objection to do
23 another deposition of Mr. DeBor being burdensome and
24 harassing based solely on the fact that his
25 deposition was already taken in the Brauch case.

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1 I understand that's what you are -- you are
2 saying or what you have just said in connection with
3 the upcoming Naughton deposition and other cases that
4 we may choose to notice the deposition of Union

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5 Carbide's person most knowledgeable.

6 I cannot agree that we will be limited in the
7 future deposition of this witness or of a person most
8 knowledgeable of Union Carbide to just ask questions
9 that weren't asked in this deposition because we have
10 the problem that I alluded to off the record that
11 other Defendants may be present in that case who may
12 have objections to documents and we will therefore
13 need to ask authenticity questions at least of Mr.
14 DeBor or whoever the person most knowledgeable is
15 unless those issues can be addressed. I simply want
16 to make it clear that by agreeing to go forward we
17 are not agreeing that this is our only chance to
18 depose Mr. DeBor in any Waters and Kraus litigation.

19 I also want to object very strenuously to any
20 time limit being imposed on this deposition. There
21 was no time limit discussed. We obviously have
22 inherent time pressures of attempting to get this
23 deposition completed so we can respond to the motion
24 for summary judgment, we also have trial coming up.
25 we are being placed in an unenviable position of

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1 being forced to limit questioning that we would
2 otherwise ask of Mr. DeBor in order to get done in
3 time to oppose your motion for summary judgment but
4 at the same time we are being told this is your one
5 shot at Mr. DeBor in this case.

6 So with that being said we are willing to go

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7 forward and ask limited questioning about documents
8 in the case, but we are -- we are clearly not waiving
9 our right to redepose Mr. DeBor or -- in a future
10 case either individually or as a person most
11 knowledgeable, and we do not agree to any time
12 limits, and we reserve the right to make all
13 appropriate arguments with the court if we do not
14 finish this deposition today or whatever time limit
15 you intend to impose.

16 MS. HUART: I would just like to -- I would
17 like to append to Mr. Armitage's statement also the
18 clarification that there has been no agreement
19 reached between counsel concerning the depositions
20 that were cross-noticed in the Texas cases today, and
21 to the extent that your comments might have been
22 interpreted otherwise I wanted to make clear that
23 there has -- there was no agreement concerning those
24 cross-notices and those cross-notices have -- were
25 not withdrawn in any way. I understand that there

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1 has been a motion to quash.

2 And also with respect to the time pressures that
3 we're under I also want to -- and I am not sure that
4 this was on the record or off the record, but we did
5 receive the supplemental responses to discovery at
6 seven p.m. California time last night, and there has
7 not been an ample time to review those responses.
8 Mr. DeBor, as I understand it, verified those

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9 responses, and that issue has got to wait for -- that
10 issue cannot be addressed in the context of this
11 deposition today as there has not been sufficient
12 time for counsel to compare and contrast the
13 different discovery responses and whatever role Mr.
14 DeBor played in verifying those responses. So that
15 is -- that is something that is -- that we are not
16 going to have an opportunity or we -- and we
17 strenuously object to being forced to -- to having
18 asked those questions having not been given those
19 responses until very late last night.

20 MR. ARMITAGE: You should just add that
21 those responses total 201 pages.

22 MS. HUART: Yes, thank you.

23 MS. NICOL: Just in response to -- to all
24 this to deal with the latest thing of the amended
25 discovery responses they were attempted to be faxed

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1 earlier and the Plaintiffs' counsel's fax machine was
2 busy for a little bit of time and I think that's why
3 it reached later. I had alerted Mr. Armitage
4 yesterday to the fact that they were coming, and I
5 further provided a cover letter to Mr. Armitage
6 outlining the small amount of discovery requests that
7 in fact were amended so that it could be very easy to
8 go through and see each discovery request or
9 discovery items that in fact had been amended. And
10 the only reason it totaled 210 pages was so that we

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11 could give you a complete set of the discovery so
12 there would be no argument that you didn't have a
13 complete set, that you just got the amended, but I
14 did highlight in the cover letter the selected items
15 that in fact were amended.

16 To the extent that you elect not to ask him
17 questions about the amended responses, that's your
18 choice. The only thing that I point out is again
19 this is discovery -- these discovery responses are
20 not contained within the scope of the deposition
21 notice anyway. You noticed a person most
22 knowledgeable deposition notice and the discovery
23 requests and the responses don't exactly fall
24 squarely.

25 To the extent that you want to ask him questions

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1 about that today, you are more than welcome to ask
2 him questions about it. I would just put on the
3 record the fact that to the extent that you have some
4 continuing right to take a further deposition based
5 on getting amended responses that's really not
6 covered by your notice that you served. I know you
7 would like your notice to say more than it does, but
8 it doesn't.

9 Additionally Mr. Armitage and Andy Waters and
10 myself did have a discussion specifically last
11 Tuesday about this deposition, and I did at that time
12 indicate this deposition would not go beyond one day,

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13 there was no reason it had to go beyond one day, and
14 the only reason we started at 11 a.m. is because
15 Plaintiffs' counsel wanted to make sure that everyone
16 in this case, the Defendants, had a right to come and
17 do anything at the deposition they thought they
18 needed to preserve their rights, and calling a
19 deposition for a case that's venued in Los Angeles at
20 any earlier than 8:00 a.m. was not considered to be
21 reasonable, and it was agreed to by the three of us
22 on the phone at the time that 8:00 a.m. was the best
23 we could do in terms of noticing it for a West Coast
24 case which we're governed by the time frame.
25 Additionally I have agreed that we will respond

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1 to the person most knowledgeable deposition notice
2 that we have in another case. I want to make sure
3 that we're very clear I am not agreeing to any
4 separate deposition notice that Plaintiffs have
5 served with regards to seeking to take Mr. DeBor's
6 deposition individually separate and apart from
7 asking for a person most knowledgeable deposition.
8 That deposition notice for his deposition
9 individually as an employee I will tell you right now
10 you will have serious problems with that deposition
11 because it is not -- the category beyond person most
12 knowledgeable that he would be responsive to are well
13 beyond the scope of what you would be entitled to
14 get, and it is burdensome, harassing and that's all

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15 that it is about. So I want to be clear that when we
16 talk about a deposition in another case I am not in
17 any way stipulating that Plaintiffs' individual
18 notice of Mr. DeBor is in fact appropriate or
19 reasonable in any way.

20 MR. ARMITAGE: Well, the issue of whether
21 you can prevent an individual deposition of Mr. DeBor
22 is a totally different issue that's not covered by
23 our discussions here and has not been noticed in this
24 case. We'll address that in Naughton. I don't think
25 there is any way that you can prevent that

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1 deposition, but again that's a discussion for another
2 day. But I just want to again object very
3 strenuously to the manner in which this deposition
4 has been made available to us. On one hand we were
5 given one day -- less than one day, about two thirds
6 of a day, not even including breaks and time for
7 discussion, to complete a discovery deposition of a
8 witness that you are telling us to ask all your
9 questions, so you have set the deposition up to fail.
10 You have set it up so we can't possibly achieve what
11 we need to achieve. I disagree that it has been a
12 meaningful or reasonable opportunity to depose this
13 individual. I reserve all rights to make those
14 arguments to the court in this case and in any future
15 case, and I again want to make abundantly clear that
16 by agreeing to go forward today and ask the limited

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17 questions about documents that we -- that you have
18 represented that you will not take the position that
19 further depositions of Mr. DeBor or as a person most
20 knowledgeable in other cases cannot go forward
21 because it would be burdensome and harassing based on
22 the fact that he has been recently produced in the
23 Brauch case.

24 MS. NICOL: I have already --

25 MR. ARMITAGE: If you have issue with that

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1 I would like to hear about it now because I am -- I
2 am concerned that that objection will be raised and
3 that you will point to this one deposition, limited
4 as it was, and argue to the court that was their
5 shot, judge, any further attempts at deposing Mr.
6 DeBor as a PMK are burdensome and harassing, so I
7 want to make sure that we're clear about that. You
8 have indicated to me that you will be producing a
9 person most knowledgeable in the Naughton case,
10 whether it is Mr. DeBor or someone else, and that you
11 will not be taking the position that well they have
12 already had a person most knowledgeable deposition in
13 the Brauch case two weeks ago or three weeks ago,
14 they can't possibly need another one.

15 MS. NICOL: I think I have very clearly
16 stated on the record that that would happen, and you
17 and I have talked about that happening. What I did
18 say is I would not agree to an individual deposition

19 of Mr. DeBor, and what I did say is the only claim of
20 burden and oppression with regard to prior testimony
21 would simply be questions that he has been asked in
22 this deposition.

23 MR. ARMITAGE: And I explained to you what
24 our concerns were about that, but we can deal with
25 that as they come up in that case if it means getting

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1 the court involved, but as I understand you you are
2 agreeing that a person most knowledgeable deposition
3 will take place in the Naughton case and that you
4 will not be pointing to this deposition as our -- our
5 chance at doing a person most knowledgeable
6 deposition of a Union Carbide employee in Waters &
7 Kraus cases.

8 MS. NICOL: I have said it now about three
9 different times exactly what my agreement is in that
10 regard, and I am not going to go through it again.
11 That's -- it is now four hours after this deposition
12 was noticed to start and we have not yet had a
13 substantive question directed to the summary
14 judgment. This has been a colossal waste of time so
15 far, I suggest you move on. And I want one last
16 thing put on the record. The deposition scope is
17 exactly what we agreed upon painstakingly after a
18 week and a half of negotiations, and we are not
19 preventing you from asking anything that was agreed
20 upon in that scope of that deposition.

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21 MR. ARMITAGE: As long as we can ask the
22 questions in the two thirds of the day before breaks
23 that you have allotted us.

24 MS. HUART: Well, you know, I have also --
25 as long as we're going to -- you know, if we're going

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1 to be limited, and clearly that's what this
2 deposition notice does, and there was an agreement,
3 it says shall continue from day to day excluding
4 Saturdays and holidays until completed. So if we're
5 not done by 5:30 today, which is the time as I
6 understand it that this building closes down, this
7 deposition continues from day to day excluding
8 Saturdays and holidays until it is completed. There
9 is -- there is no other way around that, and there is
10 nothing in the letter agreement that alters that,
11 that's what it says.

12 MS. NICOL: And what I said is you will
13 need to take that up with the court, and the very
14 first thing the court will review is the E-transcript
15 from this deposition where not a substantive question
16 relating to the summary judgment opposition has been
17 asked after four hours into the deposition. So I am
18 telling you right now that will be an issue for the
19 court to resolve, it will not go beyond today.
20 Plaintiffs have wasted too much time not getting at
21 the core issues and that's not our problem.

22 MS. HUART: The issues are the creation,

23 storage and retention of -- and authenticity of these
24 documents. That is what is in the notice. That has
25 been the subject of my questions. His testimony --

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1 MS. NICOL: The last four hours.

2 MS. HUART: His testimony -- oh, and I
3 suppose I asked him questions during lunch. I don't
4 think so, Farah, I don't think so.

5 MS. NICOL: There was a 30 minute lunch
6 break. The record should reflect there was a 30
7 minute lunch break that was taken, not your standard
8 lunch break.

9 MS. HUART: Well, you know, this is --

10 MS. NICOL: We are wasting more time.

11 MS. HUART: This is really not productive,
12 it really isn't.

13 MS. NICOL: I agree. Let's move on with
14 your next question.

15 MS. HUART: I think the notices stand for
16 themselves, this deposition continues from day to day
17 until completed. He is done when he is done.

18 MR. ARMITAGE: Okay, I am -- with that said
19 I am -- I am signing off.

20 MS. HUART: Thanks, Mike.

21 MS. NICOL: Just so you know, Mike, that
22 will be taken up with the court. He will not be
23 produced beyond today. I made clear of that in our
24 discussion. And additionally the colossal waste of

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25 time we have had happen so far will not inure to

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1 Plaintiffs' benefit before the court in trying to get
2 an extra deposition, so I want to be clear he will
3 not be here tomorrow.

4 MR. ARMITAGE: Well, okay, yeah, I hear
5 you say that. I don't recall us discussing that, it
6 is not in the agreement, I never remember you saying
7 it was a one -- one day limit. Clearly we had all
8 hoped to get it done in one day. I was led to
9 believe there was some limitations about what his
10 knowledge was, and in fact the parties argued and
11 included in the agreement agreeing to disagree as to
12 whether Union Carbide has fully complied with
13 responding to this category, that being category
14 three of the deposition notice, because there was
15 some concerns about the witness having limited
16 knowledge which led us to believe that he would have
17 limited knowledge and would not be able to testify
18 about all of the documents. Now we're finding out
19 that's not true, he actually has all the knowledge
20 that we need, but we better ask our questions quickly
21 because we have less than one day to do it, so I
22 don't agree that that's reasonable. Any time limit
23 is not stated in the -- in the agreement that we
24 signed and as you said we very meticulously agreed
25 to, so I disagree that there is any time limit been

1 imposed and I think that we are entitled to ask the
2 questions, and the record will speak for itself as
3 far as whether we have, you know, engaged in the
4 colossal waste of time as you suggest.

5 I think we're entitled to ask foundational
6 questions and background questions about the
7 witness's knowledge and nowhere in the code of civil
8 procedure am I aware that Defendant gets to dictate
9 what -- what questions the Plaintiff may ask as far
10 as background of a witness and trying to establish
11 what the witness in fact does and doesn't know; but,
12 again, that's an issue for the court to resolve.

13 MS. NICOL: One -- one clarification is
14 that Mr. DeBor is being produced as the current
15 employee of Union Carbide who is most knowledgeable
16 on category three. That does not mean that he knows
17 everything and every answer to every question that
18 you may ask with regard to the category three. His
19 knowledge here today that he will give, when he is
20 finally asked the first question with regards to
21 these exhibits, will show you that his knowledge is
22 exactly as has been represented to you all along, but
23 you are never going to find that out if you don't ask
24 the questions.

25 MS. HUART: Actually, Farah, that question

1 was asked, and in response to my question Mr. DeBor
2 testified under oath that there is no one that has
3 more knowledge on category three than he does, he is
4 it as far as the Union Carbide Company is concerned,
5 and that is his testimony, and that is what's in the
6 record. So you can --

7 MS. NICOL: That's 100 percent accurate.

8 MS. HUART: You can try to diminish that,
9 but that's what this record reflects as we sit here
10 right now. No one knows more about the creation,
11 storage, retention and authenticity of documents
12 listed on Exhibit B than the gentleman seated to my
13 right. He is here --

14 MS. NICOL: We both agree. We both agree
15 100 percent with that statement. The question is,
16 what knowledge does he have. The fact that someone
17 is the most knowledgeable in Union Carbide's current
18 employment on that issue does not mean he has the
19 knowledge to answer every question. No one else has
20 the knowledge to answer every question, but he is the
21 most knowledgeable. You have to explore what that
22 knowledge is. You haven't done that yet.

23 MS. HUART: I know what my purpose here is,
24 and I am attempting to get this deposition moving.

25 MS. NICOL: Let's move on.

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1 MR. ARMITAGE: Let's move on. I am going
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2 to sign off.

3 MS. HUART: Thank you, Mike.

4 MR. ARMITAGE: Okay. Holly, call me
5 separately if you need to discuss anything about
6 scope or documents, but I assume you --

7 MS. HUART: Thank you, I will.

8 MR. ARMITAGE: Thank you.

9 THE VIDEOGRAPHER: We're back on the record
10 approximately 3:09 p.m. This is the start of tape
11 two.

12 Q. Hello again, Mr. DeBor.

13 A. Good afternoon.

14 Q. I believe the -- the last question that I asked
15 you was whether you were prepared to offer testimony
16 concerning whether the documents that you reviewed
17 Sunday and Monday were business records of Union
18 Carbide. Is that -- I believe that's -- I believe
19 that was the last question that I asked you.

20 A. Correct, maintaining --

21 MS. NICOL: Calls for a legal conclusion.

22 Q. I'm sorry?

23 A. Maintained in the normal course of business.

24 Q. Yes.

25 A. That's correct.

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1 Q. And you indicated to me that -- that you could in
2 fact do that with respect to some documents but I --
3 but in order for you to do that is it -- am I correct

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4 that I have to show you the document?

5 A. Yes, that is correct.

6 Q. Okay. I would like to then show you the document
7 that's been marked Plaintiffs' Exhibit 5378 and ask
8 you if this is a document maintained in the ordinary
9 course of business?

10 MS. NICOL: I am going to renew my
11 objection that I previously made with regards to that
12 specific document as being a privileged and
13 confidential document.

14 Q. Have you seen that document before?

15 MS. NICOL: As long as we can have an
16 understanding I am going to have a continuing
17 objection to all the questions surrounding this
18 document based on attorney -- attorney/client work
19 product privileges that I asserted at the beginning
20 of this line of questioning.

21 MS. HUART: And I am going to have --

22 MS. NICOL: Is that agreeable?

23 MS. HUART: And I am going to have a
24 continuing reservation of our rights to argue that
25 all attorney/client privilege and work product

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1 doctrine privileges have been waived.

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2 MS. NICOL: That's fine as long as we have
3 an understanding it is continuing with regards to all
4 questions on this document.

5 MS. HUART: I understand that, Ms. Nicol.

6 A. Again, I don't remember the document
7 specifically. In the last two days' review there
8 were three entire boxes, I believe you indicated 878
9 or thereabouts documents -- items, and, again, as far
10 as the creation of the documents I really have to say
11 that in 1975 I was not working for the corporation.
12 I certainly do not have any direct knowledge about
13 the asbestos business or any other business that
14 Union Carbide conducted other than through my records
15 involvement. This does appear to be a document
16 created in the normal course of business at Union
17 Carbide. I am certainly familiar with the names
18 involved and the people that are copied on this
19 document. Thank you.

20 Q. Thank you. Can you tell me, sir, is there
21 anything about that document that gives any pause or
22 hesitation or question in your mind concerning the
23 fact that that is a business record of Union Carbide?

24 MS. NICOL: Vague, ambiguous, asked and
25 answered, calls for speculation beyond what he has

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1 already told you.

2 A. Yeah, I believe the attachments are referenced in
3 the letter, and, again, the receiver of this letter
4 presumably was Bill Thurber. That is a name familiar
5 to me as well as a number of the other people that
6 were copied on this document.

7 Q. I take it then that that -- that means that your

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8 response is no there isn't anything about this
9 document that raised a question in your mind?

10 A. No, there is not.

11 MS. NICOL: Same objections plus
12 argumentative.

13 Q. With respect to the Roderman case -- strike that.

14 With respect to litigation in which Union
15 Carbide is involved am I correct that there is a
16 repository of documents that relate to cases in which
17 Union Carbide is involved?

18 MS. NICOL: Vague, unintelligible, beyond
19 the scope.

20 A. I really don't understand that question.

21 Q. Okay. I would like to hand you what is
22 Plaintiffs' Exhibit 5246 and ask you to look at the
23 answer to Interrogatory No. 15 which begins on page
24 26.

25 MS. NICOL: Ms. Huart, I just want to have a

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1 clear understanding. You understand we have a
2 continuing objection for documents that are post
3 September '68 but of course I am letting you ask the
4 questions about. Do we have that understanding?

5 MS. HUART: I understand that you have a
6 continuing objection to probably just about anything
7 I want to ask this witness, and you are free to make
8 whatever objections --

9 MS. NICOL: Well, if you like I can object
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10 to every --

11 MS. HUART: You are free to object --

12 MS. NICOL: I can object to every single

13 question --

14 MS. HUART: You are free to object --

15 MS. NICOL: -- if you like.

16 MS. HUART: You can object however you

17 would like to.

18 A. Is that page 15?

19 Q. Yes. No, sir, I'm sorry, it is -- this is -- do

20 you have 5246? Did I hand you the right one? I did,

21 okay. Can you find -- it starts on page 26 actually.

22 It is Interrogatory Answer No. 15, and it starts on

23 page -- starts on page 26 at the top of the page.

24 A. Item 16, Interrogatory No. 16.

25 Q. It is at the -- it is the answer to Interrogatory

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1 No. 15 and it starts at the top of page 26. At the

2 bottom of page 25 are objections to that

3 interrogatory and at the top of page 26 is the

4 responsive answer of Union Carbide.

5 MS. NICOL: What's the question?

6 MS. HUART: There is no question pending

7 right now. I have asked him to turn to the page.

8 Q. At the top of page 26, and if you read along with

9 me, Mr. DeBor, it says, quote, Union Carbide was

10 first named in a personal injury suit alleging

11 asbestos exposure in 1972, many if not most cases

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12 which named Union Carbide turned out not to involve
13 any Union Carbide products at all, such claims are
14 maintained alphabetically by Plaintiffs' name not by
15 state, upon Plaintiffs' request Union Carbide will
16 make its list available for Plaintiffs for review and
17 replication at a suitable time and place.

18 Did I read that correctly?

19 A. Yes, you did.

20 Q. Okay. What -- my question for you as the
21 individual most knowledgeable about storage and
22 retention of documents can you tell me where those
23 claims and where those types of litigation documents
24 are stored?

25 MS. NICOL: I will --

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1 A. Again I think the response references a list.

2 Q. Mm-hmm.

3 A. They do not reference claims and files I don't
4 believe.

5 Q. Okay.

6 MS. NICOL: I am just going to --

7 Q. Is --

8 A. I'm sorry.

9 MS. NICOL: I am just trying to work in an
10 objection here without stepping on Ms. Huart's toes
11 and stepping on your toes, so the objection is that
12 that question goes beyond the scope of category three
13 which asks about documents that are specifically

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14 listed on Exhibit B and not about other documents
15 that are not listed on Exhibit B which are being
16 asked about here.

17 Q. So I guess my -- my question is do you -- do you
18 have a -- do you know what my question is or do I
19 need to have it read back?

20 A. Could you read both questions back.

21 (The reporter read back the requested matter.)

22 A. And so are you asking about the list?

23 Q. I was asking about the claims and the list and
24 you can -- why don't you answer it separately for
25 each.

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1 MS. NICOL: Same objection.

2 A. Okay. I am aware of a number of claims that are
3 maintained at the corporate records center, and I am
4 not aware of where the list resides.

5 Q. Do you know who would know where this list
6 resides? I mean who -- strike that.

7 who would you go to to find out?

8 A. Our counsel.

9 Q. So if a -- if an individual wanted to obtain
10 documents or litigation-related documents relevant to
11 the Roderman case which is the subject of -- of
12 Exhibit 5378 is there anyplace specific in the Union
13 Carbide records retention center where they would go
14 to see the documents pertaining to the Roderman
15 R-O-D-E-R-M-A-N case?

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16 MR. GLASSER: Objection, vague.

17 MS. KING: Beyond the scope of the
18 deposition notice. It is getting to the point of
19 harassing and burdensome. This is just so not
20 relevant to what we're here for, and this is Lisa
21 King.

22 A. Again in the normal course of business one of our
23 clients or users within the corporate records center
24 is the corporate law department. They do store files
25 in Vermont, and we would get a request from the law

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1 department and we would do a search on in this case I
2 presume a litigation file by that name.

3 MS. HUART: Okay. I am making a request
4 that that be done. Thank you.

5 MS. NICOL: Same object -- same response to
6 all your other requests, that they are beyond the
7 scope of the deposition notice in this Brauch case.
8 Q. You can go ahead and put that back together,
9 thank you. I would like to hand you Plaintiffs'
10 Exhibit 5423 and ask you to take a look at this
11 document.

12 A. Again, I can't attest as to the completeness of
13 this document, the number of the pages are not
14 marked, but certainly in form or fashion again this
15 appears to be a Union Carbide document that was
16 maintained in the course of normal business.

17 Q. Okay. With respect to the -- one of the
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18 attachments in this document that's entitled 1969
19 Calidria Asbestos Business Plan is that -- can I ask
20 you, sir, whether that is a document that you recall
21 having seen before prior to this past Sunday or
22 Monday when you reviewed Plaintiffs' documents, if
23 you recall?
24 A. Specifically no.
25 Q. Is there any way that you could -- just from

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1 looking at that document is there any way that you
2 could provide any testimony concerning when that
3 document was created, the -- the 19 -- if you would
4 turn back to the business plan, the 1969 business
5 plan.

6 MS. NICOL: Lack of foundation, calls for
7 speculation.

8 A. Again, as far as actual creation I had no
9 involvement in these -- in the business at that point
10 in time. It does appear to be. I would have no
11 indication from the face of the document that it was
12 produced at any other time than at around the time
13 when it is dated, but that would be pure speculation.

14 Q. Do you see a date on the document?

15 MS. NICOL: Other than in the text of the
16 document? You mean a dating of the document?

17 Q. Do you see a -- do you see anywhere that --
18 that -- where that document is -- bears -- bears a
19 date such as, you know, a date of its creation or

20 drafting?

21 MS. NICOL: Asked and answered, calls for
22 speculation, lacks foundation, vague.

23 A. As far as a date that's attributable in the
24 normal sense of the word, no, there is not.

25 Q. And I am -- as I understand it you in your

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1 capacity really can't offer any testimony that goes
2 beyond that in terms of dating that particular
3 document, is that true?

4 A. That's correct.

5 Q. Thank you. For the purposes of this deposition
6 now as I understand it before we go -- before we go
7 further and review more of these records your
8 testimony is that the -- this particular document,
9 the 5423 that I just showed you, appears to be a
10 document that was maintained in the regular course of
11 business of Union Carbide; is that correct?

12 A. That's correct, yes.

13 Q. And as far as your testimony here today is -- am
14 I correct that you are not able to offer testimony as
15 to whether it was the regular course of business of
16 Union Carbide for an employee or representative of
17 Union Carbide with knowledge of the act, event,
18 condition, opinion recorded on the document to make
19 the record or to transmit information thereof to be
20 included in such a record, am I correct that you are
21 not able to actually make -- testify on that?

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22 MS. NICOL: Beyond the scope, vague,
23 overbroad.
24 A. Again what -- what I am unable to do was
25 authenticate the creation of the document.

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1 Q. Okay. Am I also correct that you are unable to
2 testify as to whether this record was made at or near
3 the time of the act, event, condition, opinion, or
4 reasonably soon thereafter, that's reflected in this
5 document?

6 MS. NICOL: Calls for speculation, asked
7 and answered.

8 A. I am not sure what your distinction is.

9 Q. There are certain acts and events and conditions
10 and opinions reflected in these documents, and what I
11 am trying to get at is whether or not you as the
12 records custodian here in category three can offer an
13 opinion as to whether this particular record 5423 and
14 including its attachments were made at or near the
15 time of the events recorded in this document?

16 A. Again, I would have no reason to believe, and as
17 a records custodian I have never been asked the
18 question once a document appears to be a Union
19 Carbide document if you are asking was this -- is
20 this a legal document, is this a copy, is this -- was
21 this forged, was this -- again, it -- I have no
22 reason to disbelieve that it is not a Union Carbide
23 document, I have no reason to disbelieve that it was

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24 not created in the normal course of business, but I
25 can't authenticate that.

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1 Q. Okay.

2 A. That's where we stand. And, again, I don't
3 believe -- this is a business, this is 1969, 30 some
4 years ago. This was a small piece of our business of
5 a -- of a larger piece of our business, and, again,
6 a -- a few pages from many, many documents that were
7 created many years ago.

8 MR. GLASSER: I would like to move to
9 strike the answer to the extent Mr. DeBor was using
10 the term authenticate in a nonlegal sense.

11 THE DEPONENT: Right.

12 MS. HUART: But Mr. DeBor is here to
13 authenticate these documents.

14 MR. GLASSER: He is not saying that he
15 can't authenticate them, he is saying that he
16 couldn't authenticate what was done when it was
17 created which he was using the term in a --

18 MS. HUART: In a lay sense.

19 MR. GLASSER: In a lay sense.

20 MS. HUART: Okay. So for purposes of
21 authenticating the documents for this particular case
22 is that what is -- is that not what Mr. DeBor is here
23 to do?

24 MR. GLASSER: Yes, it is.

25 MS. HUART: Assuming that he can do so.

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1 MR. GLASSER: The ones that he can
2 authenticate he will.

3 MS. HUART: Okay. So --

4 MS. NICOL: And, Ms. Huart, just -- Ms.
5 Huart, you just need to be real clear with Mr. DeBor
6 because authenticate is technically a legal term.
7 The only thing that I would ask, and I think you just
8 saw that a few minutes ago where -- where what we
9 understand is authenticate may be different than what
10 he was saying in his response, if you could maybe
11 just ask him instead of using the legal term
12 authenticate what specifically you are asking about
13 with regards to the document. I think that way we'll
14 have a clear record and he will have a clear
15 understanding about what you are asking in that
16 regard.

17 Q. If I ask you whether or not this -- does this
18 record appear to you to be a copy -- a true and
19 correct copy of a Union Carbide business record would
20 you be able to testify as to that?

21 A. Yes, it does appear to be a accurate copy, again,
22 without comparing it to the original; but we will
23 certainly indicate that this is a -- appears to be a
24 Union Carbide document maintained in the normal
25 course of business.

1 Q. If you had to find your -- your copy -- a copy at
2 the records center of 5423, Plaintiffs' Exhibit ?
3 5423 --

4 A. Correct.

5 Q. First of all, I mean as I understand your
6 testimony you haven't actually tried to do that, you
7 haven't tried to go and find the documents that are
8 on our list, correct?

9 A. That's correct.

10 Q. Okay. If you were to try to do that, and let's
11 just take this document as an example, what would you
12 need to do to find a document that would match this
13 description in your records center so that you could
14 look at them side by side?

15 A. Again, it would vary document by document. It --
16 depending on the exhibit, depending on the total
17 context of the document, we might have to go through
18 a folder that's a few inches thick, we might have to
19 go through an entire box to locate something like
20 that, so it would be a long and laborious process to
21 compare your exhibit to what we currently have in our
22 files.

23 Q. Okay. And am I correct that the description of
24 5423 as provided on Plaintiffs' exhibit list, from
25 that description alone you would not be able to

1 locate the Union Carbide version of that document?

2 A. In some cases we could, yes, in some cases we
3 could not. Some cases we would need to look at the
4 document and make some other distinctions.

5 Q. With respect to looking you said you would need
6 to look in some folders. Is there not a computerized
7 system that would enable you to for example do a date
8 search to pull up documents dated -- or collections
9 of documents with a cover sheet dated October 15th,
10 1969, is that not a searchable type of thing to do?

11 A. No, I am sorry to say that it is not.

12 Q. Mm-hmm. Are your documents organized by date or
13 subject matter or author?

14 A. The documents are organized by sending unit.
15 Again, the department and divisions that I have
16 already indicated. The key to that system is a
17 records transfer memo date as to how they sent it to
18 the corporate records center, and depending upon the
19 level of detail that is on the original transmittal
20 from the material it would make it easy or more
21 difficult depending on how detailed that original
22 entry was from the sender.

23 Q. What about Ms. Ruszczyk's collection, the
24 asbestos repository, wouldn't she have a way of
25 finding the Union Carbide -- the record at Union

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1 Carbide that is Plaintiffs' Exhibit 5423?

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2 A. Again, it is my understanding that the repository
3 is not indexed in that manner. It is indexed by
4 maybe subject matter.

5 Q. It is not searchable via computer database?

6 A. Not that I am aware, no.

7 Q. Do you know whether Ms. Ruszczyk has made any
8 attempt to try to locate or match up Union Carbide
9 documents with those listed on Exhibit B?

10 A. I am not aware --

11 MS. NICOL: Beyond the scope -- beyond the
12 scope of his deposition, calls for speculation on his
13 part, and I would just simply add that Plaintiffs
14 have been invited to go to the document repository
15 and review the documents there and have so far not
16 taken us up on that offer.

17 MS. KING: Ms. Huart, this is Lisa King,
18 and I am sorry to interrupt you but I just want to
19 ask you that pretty soon we need to be able to take a
20 break because we have another depo taking place in
21 this case at one and I am going to have to find
22 someone else to cover that deposition.

23 MS. HUART: Yeah, well if we have to -- if
24 we have to break I mean it is -- you know, as long as
25 you people are not going to make this argument that

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1 we just didn't use all the time we had. I mean I
2 would like to be as reasonable as I can, and under
3 ordinary circumstances I try to always work things

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4 out with counsel. So how long a break do you need?

5 We were probably going to be taking a break, I would

6 assume Mr. DeBor might -- might want a break at some

7 point, just -- you know, but how long -- do you need

8 to break right now?

9 MS. KING: I just need to do it before --

10 before 1:00, probably before quarter till.

11 MS. HUART: Okay. Well, that's -- by my

12 watch I have got -- I have got 3:40 eastern time --

13 3:42 eastern time right now. Do we need to stop now

14 and break?

15 MS. KING: Since we have stopped the flow of

16 questioning we might as well just stop now if that's

17 okay with you.

18 MS. NICOL: We can -- we can do it in a

19 short break, a 10 minute break, so we can get back

20 and complete the deposition.

21 MS. HUART: We can -- we can take a short

22 break for the purposes of accommodating the requests

23 of counsel for --

24 MS. KING: Bondex.

25 MS. HUART: Bondex. Okay.

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1 MS. KING: Thank you, I appreciate that.

2 MS. HUART: Okay.

3 THE VIDEOGRAPHER: Off the record 3:38 p.m.

4 (A break was taken.)

5 THE VIDEOGRAPHER: Back on the record 4:01

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6 p.m.

7 Q. Mr. DeBor, I would like to hand you what's been
8 marked as Plaintiffs' Exhibit 5421, and if you would,
9 please, can you turn to the -- the third page of that
10 exhibit, and for the record these appear to be
11 computerized printouts -- pardon me, these for the
12 record appear to be a printout of a computerized data
13 with the names of various companies listed?

14 MS. KING: Excuse me, counsel, did you say
15 5241?

16 MS. HUART: Yes.

17 MS. KING: Thank You.

18 A. Yes.

19 Q. Okay. You have had an opportunity to review
20 those?

21 A. Yes.

22 Q. I don't believe these pages are numbered, so if I
23 could please just simply hand to you the -- it is a
24 difficult page to find because they are not numbered,
25 but there is a page in your set that looks like the

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1 page that I am handing you from 5241, and at the top
2 of that page is a line that reads year '66 and then
3 under ship name U.S. Gypsum. I am going to leave
4 that in front of you so you can find the page in your
5 set that matches that unless you would like for me to
6 find it for you. Do you have it, sir?

7 A. I believe I have it here, yes.

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8 Q. okay.

9 MS. NICOL: This is, Farah, can you just
10 guide me in the attachment like how far down that
11 might be so I can locate it as well?

12 MS. HUART: It appears to be roughly
13 halfway.

14 MS. NICOL: Okay. And it -- the first year
15 at the top is 1966 you said?

16 MS. HUART: Yes, it is -- there is a line
17 that says INVC NUM which I presume means invoice
18 number, I don't know.

19 MS. NICOL: Okay.

20 MS. HUART: Another column entitle ship
21 name, another column entitled ship date, ship STAT
22 and then QTOT, and then beneath that it says year
23 '66, and beneath that there is the number I believe
24 7-27, under the column ship name it says U.S. Gypsum
25 Company, the ship date is six six oh seven oh eight

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1 the ship STAT is TX Texas and the QTOT column
2 reflects 4,000.

3 Did I read that correctly?

4 A. Correct.

5 Q. Okay.

6 MS. NICOL: Okay, I think that I have
7 located it.

8 MS. HUART: Okay.

9 Q. Have you ever seen, sir, computerized printouts

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10 either similar to or identical to the attachment to
11 5241 that I have shown you?

12 MS. NICOL: Overbroad.

13 A. Again, I would like to indicate first if I could
14 that your first two pages of this exhibit appear to
15 be unrelated to the following pages --

16 Q. Mm-hmm.

17 A. -- at all, would you agree with that?

18 Q. Actually, no, I -- I don't -- I can't really --
19 well, I can't actually answer questions.

20 A. Okay. Well, it --

21 Q. In the context of a deposition.

22 A. It appears to me that it is unrelated. The first
23 page obviously continues to a second page which is
24 not here. Again, the final page is page 40 and page
25 one. I don't believe that this material is related

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1 directly as far as being page two through page 39
2 here. As far as this particular document --

3 Q. And the particular document, just for the record,
4 bears a sticker on the bottom that says Defendant's
5 Exhibit A, is that correct, on the first page of the
6 computerized printouts?

7 A. Correct.

8 Q. Okay. And I -- and I understand it that you are
9 not willing to or in your opinion you don't -- you
10 can't -- you are not expressing an opinion as to
11 whether this document is in fact an attachment to

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12 the -- to the two pages that are marked 5241; is that
13 correct?

14 A. Correct.

15 Q. Okay. Can you offer any testimony --

16 MS. NICOL: I think he was also -- I think
17 he was also stating that it is not a complete
18 document as best as he can tell because the first
19 page is numbered one and the second page is numbered
20 40.

21 MS. HUART: I think his testimony speaks
22 for itself.

23 Q. With respect to -- so can you answer my questions
24 then with respect to the document that has the
25 sticker Defendant's Exhibit A?

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1 MS. NICOL: Overbroad, lacks foundation,
2 calls for speculation, depends what your question is.

3 A. What is your question, please.

4 Q. What the question that is pending is have you
5 seen documents that are identical to or similar to
6 Exhibit A?

7 A. I have not seen an identical document other than
8 in review of your exhibits within the last two days.
9 I did take note of this as I reviewed the documents.
10 Again, I have never seen for the metals business a
11 document like this and in form or fashion I believe
12 that we would categorize this as a distribution
13 document.

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14 Q. As a -- is it your testimony that it is a
15 distribution document of the Union Carbide?

16 MS. NICOL: Misstates his testimony,
17 assumes facts not in evidence, calls for speculation,
18 his answer speaks for itself.

19 A. Again, based on you asked for similar documents.

20 Q. Mm-hmm.

21 A. Within Union Carbide I have seen similar
22 documents that -- of a distribution nature.

23 Q. Okay. Those similar documents of a distribution
24 nature that you have seen, do -- do you know from
25 what database those documents were prepared?

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1 MS. NICOL: Vague.

2 A. For the chemicals and plastics division there was
3 a system called the shipments database, and as to the
4 exact name of the database itself I do not know. The
5 system was called the shipments database.

6 Q. Okay. Does that database exist today?

7 A. No, actually the database was -- or that system
8 was decommissioned in the late 1990s.

9 Q. What happened to the data that was in that
10 system?

11 A. Union Carbide went through a system of archiving
12 that material. The system itself was brought down,
13 but the data that existed within the system was moved
14 to a archiving format which I can't speak
15 specifically to; but that system is called AMI,

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16 A-M-I, Archiving Master Index.

17 Q. Who is in charge of the Archiving Master Index?

18 MS. NICOL: Beyond the scope of the
19 deposition.

20 A. I do not know.

21 Q. Who would you go to to find out?

22 MS. NICOL: Same objection.

23 A. I would go to the IT or the information
24 technology group in South Charleston, West Virginia.

25 Q. Do you know who is in charge of that group?

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1 A. No, I do not at this juncture.

2 Q. In connection with that document, and you can
3 keep that one open where it is, I would like to show
4 you Plaintiffs' Exhibit 5245 and specifically turn
5 your attention to page 35 that reflects paragraph H
6 of a response to Interrogatory No. 29. And just to
7 kind of speed this along paragraph H refers to a
8 computer database of sales and copies of invoices of
9 calidria sales. And just to speed this along I am
10 going to go ahead and read that into the record,
11 quote, Union Carbide possesses copies of invoices of
12 calidria sales made by Union Carbide to calidria
13 customers, Union Carbide also maintains a computer
14 database of such sales. Since Union Carbide sold its
15 calidria business in 1985 Union Carbide at present
16 can make no representation as to the completeness of
17 its records. And then I guess it goes on to talk

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18 about the records of sales.
19 My question to you, sir, is, is the computer
20 database referenced in that interrogatory response in
21 5245 the computer database that you just gave
22 testimony on or would you --
23 MS. NICOL: Beyond the scope. I'm sorry,
24 go ahead.
25 Q. Or do you --

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1 MS. NICOL: Are you done with your --
2 Q. Or -- or -- or do you understand that to be a
3 different database?
4 MS. NICOL: Beyond the scope of the
5 deposition, agreed upon deposition, calls for
6 speculation, lacks foundation.
7 A. Again, I am unfamiliar with what is referenced in
8 this item as far as a computer database of such
9 sales, I am not sure what that is referring to. I am
10 familiar with this, the shipment database, I can't
11 say whether it is one and the same.
12 Q. Okay. Just for the record who verified the
13 response to 5245? And that would be on page two of
14 that document.
15 A. Oh, John McDonald.
16 Q. Yes. Do you -- is Mr. McDonald employed with the
17 Union Carbide Company?
18 A. No, he is not.
19 Q. Is he still alive?

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- 20 A. Yes, I believe he is.
21 Q. Do you know where he is located?
22 A. Yes, he lives in Connecticut.
23 Q. Danbury?
24 A. I don't believe Danbury.
25 Q. Do you know where in Connecticut?

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- 1 A. I don't know where his home address is.
2 Q. Do you know what city he lives in?
3 A. Sorry, I don't.
4 Q. Okay. Do you know who the records custodian is
5 for the sales records referred to in -- on page 35 of
6 Plaintiffs' Exhibit 5245?
7 MS. NICOL: Calls for speculation, lacks
8 foundation, beyond the scope.
9 A. Again what page was that, please?
10 Q. Page 35.
11 A. Again item eight refers to copies of invoices of
12 the calidria sales made by Union Carbide to calidria
13 customers, I know that they are maintained within the
14 asbestos repository.
15 Q. Okay. So that would be Miss Ruszczyk -- Rus --
16 A. That's correct, Ruszczyk.
17 Q. Ruszczyk.
18 MS. NICOL: The same place where Plaintiffs
19 have been invited to go view those documents.
20 Q. And this is the -- strike that.
21 Let me just leave these here. With respect to

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22 Defendant's Exhibit A that had been attached to the
23 5241 document, sir, am I correct then that you cannot
24 offer any testimony concerning the fact that that is
25 or is not a record maintained in the ordinary course

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1 of business of Union Carbide?
2 MS. NICOL: Asked and answered.
3 A. Again, I think that I indicated that this
4 specific document I was unfamiliar with.
5 Q. Mm-hmm.
6 A. In form or fashion I have seen other similar
7 documents.
8 Q. Mm-hmm. So with respect to -- so it is similar
9 to other documents that you have seen which in fact
10 are business records of Union Carbide?
11 A. Correct.
12 MS. NICOL: Same objection.
13 Q. I would like to show you what's been marked as
14 Plaintiffs' Exhibit 5040 and ask you to look at that.
15 A. Yes.
16 Q. Is that document familiar -- strike that.
17 Does that document appear to be a record kept in
18 the ordinary course of business of Union Carbide?
19 A. Yes.
20 Q. I take it you have seen this document before
21 prior to this weekend?
22 A. Yes.
23 Q. Have you provided authentication testimony

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24 concerning this document before?

25 MS. NICOL: Calls for a legal conclusion.

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1 Q. Have you provided testimony concerning this
2 document before?

3 A. I don't believe so.

4 Q. I would like to hand you what's been marked
5 Plaintiffs' Exhibit 5502.

6 A. Yes.

7 Q. Can you provide testimony as to whether that is a
8 business record maintained in the ordinary course of
9 business of Union Carbide?

10 A. Yes, I believe that it is.

11 Q. Mr. DeBor, I apologize to you, I intended to ask
12 you a follow-up question concerning those sales
13 records, and this is really specific to the new
14 interrogatory requests that we received at seven p.m.
15 last night, and which of course I -- I do not have in
16 front of me in their entirety and certainly have not
17 had an adequate opportunity to review.

18 I am going to ask you a question about them
19 while you are here because it is relevant to this
20 sales issues without -- certainly without waiving any
21 position that we have already taken that we have
22 really not had an adequate time to review these.

23 Can I just ask you did you participate at all in
24 the information that was reviewed in order to amend
25 the responses to discovery served last night?

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1 MS. NICOL: I just want to reassert our
2 position that that's beyond the scope of the
3 deposition, but as I indicated previously I will let
4 you have leeway into asking him questions about the
5 amended responses.

6 A. I believe the answer to that is yes.

7 Q. Mm-hmm. And what -- what did you do in order --
8 what was your role in -- in participating in what
9 culminated in the amendment of these responses?

10 MS. NICOL: Vague.

11 A. What was my role?

12 Q. Mm-hmm. What did you do? How is that?

13 MS. NICOL: Overbroad.

14 A. I reviewed documents that were produced from the
15 asbestos repository for my review based on learning
16 the sales to the five companies in question in this
17 case.

18 Q. Who asked for the documents from the repository,
19 do you know?

20 MS. NICOL: Attorney/client work product,
21 privileged.

22 A. Again the documents were provided to me by
23 counsel.

24 Q. Were they provided to you in response to your
25 specific request?

1 MS. NICOL: Same objection.

2 A. A specific request, no.

3 Q. Were they provided to you in response to a
4 request --

5 MS. NICOL: The same objection.

6 Q. -- from you?

7 A. Again to prepare for this deposition those
8 documents were provided by counsel. I spent a lot of
9 time thoroughly reviewing those documents and
10 analyzing those documents.

11 Q. And these are documents that -- these are
12 documents beyond those Plaintiffs' Union Carbide
13 collection, correct?

14 A. Beyond your exhibits?

15 Q. Yes.

16 A. Yes, they are.

17 Q. Okay. So I understand that you reviewed the
18 Plaintiffs' Union Carbide collection, I understand
19 that there were documents that you reviewed that came
20 from the asbestos repository and you haven't --
21 strike that.

22 And based on your review of those documents --
23 strike that.

24 You reviewed those documents and then verified
25 interrog -- amended interrogatory answers concerning

1 your review; is that correct?

2 MS. NICOL: Misstates his testimony.

3 A. I did review the documents and I did verify the
4 amended response, that's correct.

5 Q. Did you play any role in drafting the language to
6 be used in the amended responses?

7 A. No, I did not.

8 Q. Do you know who -- strike that.

9 Were the doc -- did you review any sales records
10 of Union Carbide in connection with the review that
11 occurred this weekend?

12 A. Yes. Again, the -- I had no direct knowledge of
13 the business. My knowledge comes strictly from the
14 documents and, therefore, a review of the documents
15 was the only way that I could become educated to
16 respond to your questions.

17 Q. Do you know how -- strike that.

18 In response to -- and I don't know which --
19 which response this is because I don't have a full
20 set in front of me, again, I am not -- I am not
21 really prepared to -- to do a full-blown examination
22 concerning the differences between the two sets at
23 this point, but did you review a document that,
24 quote, indicated a sale of 42,000 pounds of asbestos
25 in June of 1968 to U.S. Gypsum, South Gate,

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1 California, facility?

2 A. I can't remember the exact figure --
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3 Q. Mm-hmm.

4 A. -- as far as months; but, yes, I believe that is
5 the case.

6 Q. What was -- what document did -- or what type of
7 document were you looking at that indicated that
8 sale?

9 A. The 1968 --

10 Q. Mm-hmm.

11 A. -- sale? It was a sales analysis report.

12 Q. And who generated that?

13 A. That particular report was generated by the
14 chemicals division.

15 Q. Was it generated at this point in time for
16 purposes of this litigation or --

17 A. Oh, no.

18 Q. -- is this something historical?

19 A. No, this is something historical, and actually
20 something that is -- has been under our custody for a
21 number of years.

22 MS. HUART: Oh. I am going to make a
23 request on the record for documents that -- on which
24 the amended interrogatory answers were based.

25 MS. NICOL: And I have the same response

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1 with regards to all of the other requests, that it is
2 beyond the scope of the deposition notice. Plaintiff
3 had an opportunity to request documents in the
4 deposition notice and in our agreement and we didn't

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5 have any of those requests.

6 MS. HUART: I think that all the sales
7 records pertaining to sales to these particular
8 Defendants were definitely referenced, but we won't
9 take up any more time on the record.

10 MS. NICOL: Actually the deposition notice
11 simply asks in terms of a production of documents for
12 the originals listed in Exhibit B which in my
13 confirming letter with Mr. Armitage we agreed did not
14 produce the originals, and then Union Carbide's
15 documents in possession, custody -- the second group
16 of documents and the only other group of documents
17 Plaintiffs' requested in the deposition notice were
18 any and all documents in Union Carbide's possession,
19 custody or control setting forth and/or referring to
20 Union Carbide's profits or financial conditions in
21 which it was also agreed was an issue that would
22 later be dealt with if in fact they there was a --
23 that need came at the end of trial in this matter.
24 So in fact Plaintiffs have not requested any
25 documents that could conceivably be responsive to all

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1 the requests that you have made during the course of
2 this deposition.

3 MS. HUART: I am not going to let my --
4 certainly wouldn't want to let my silence and lack of
5 point by point response be misconstrued as any
6 agreement that I might have with any position that

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7 you have taken. I am just trying to move this
8 deposition along.

9 Q. With respect to sales of -- strike that.

10 Did you refer -- did you review any documents in
11 preparation for your -- for the amended responses and
12 in preparation for this deposition did you review any
13 documents pertaining to sales of calidria fiber to
14 Kelly-Moore Company in the years prior to and
15 including 1968?

16 MS. NICOL: Just as long as we have a
17 continuing understanding or objection to questions
18 beyond National Gypsum and United States Gypsum to
19 the extent that they go beyond the issues of the
20 summary judgment, but certainly as part of our
21 agreement we have allowed questions regarding the
22 other three manufacturers to be asked as well, but
23 we're not waiving our right based on the fact that
24 Plaintiffs have not properly amended to include those
25 claims against Union Carbide in this case.

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1 MS. HUART: I think the agreement says what
2 it says.

3 Q. Mr. DeBor, can you answer my question?

4 A. Yes, I did.

5 Q. Do you recall what types of documents you
6 reviewed pertaining to sales of calidria to Kelly-
7 Moore prior to and including 1968?

8 A. As a general term call reports, invoices, dust
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9 counts and sales reports.

10 MS. HUART: I would like to make a request
11 on the record that they be produced.

12 MS. NICOL: Respond the same as with the
13 others.

14 Q. Based on your review of those documents is -- is
15 it your understanding that Union Carbide sold
16 calidria fiber to Kelly-Moore prior to and during the
17 year 1968?

18 MS. NICOL: I want to be very clear what
19 entity are you asking about, Kelly-Moore Paint
20 Company, Inc.?

21 MS. HUART: To either Kelly-Moore or the
22 Paco Textures section of Kelly-Moore.

23 MS. NICOL: I am going to object as being
24 speculative and --

25 MS. HUART: That's my --

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1 MS. NICOL: -- calling for speculation and
2 lacking foundation and confusing in terms of relating
3 the two prior to a certain time period when they were
4 in fact separate entities.

5 MS. HUART: Objection to --

6 MS. NICOL: So if you want to ask the
7 questions separately as to each entity you are more
8 than welcome to.

9 MS. HUART: Objection. I am going to
10 object to the speaking nature of the objection that

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11 provides testimony in the context of the objection.

12 Q. Can you answer my question, Mr. DeBor?

13 A. Yes, in 1968 --

14 MS. NICOL: Same objection.

15 A. -- again I found references in documents -- in

16 sales documents that would indicate sales to Kelly-

17 Moore but on Paco Textures.

18 Q. Mm-hmm. Do you have any -- I understand that you

19 are here to testify concerning matters within your

20 personal knowledge in the limited categories that

21 that is provided for in the -- in the letter

22 agreement. Do you have personal knowledge

23 concerning -- concerning the existence of sales

24 records that show that calidria fiber was sold by

25 distributors to Kelly-Moore and/or Paco Textures?

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1 MS. NICOL: Just object to the extent that
2 you are asking for his personal knowledge. Obviously
3 he has no knowledge beyond the contents of the
4 records and what those records in fact say
5 themselves.

6 A. Again, to reiterate that, no, I have no personal
7 knowledge beyond the review of the documents
8 regarding this business or -- and based on my review
9 of the documents for the time frame in this case so
10 no reference to distributor sales.

11 Q. Are you familiar with the name Harrisons and
12 Crossfield?

13 A. Yes.

14 Q. What is your understanding of Harrisons and
15 Crossfield?

16 A. Again, it is -- a review of the documents
17 indicate that they were a distributor for calidria.

18 Q. Do you know which companies purchased calidria
19 for use -- strike that.

20 Do you know which joint compound manufacturing
21 companies purchased calidria from --

22 MS. KING: Overbroad, ambiguous, lacks
23 foundation and calls for speculation, and this is
24 Lisa King.

25 MS. HUART: I have not finished my question

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1 so --

2 MS. KING: Pardon me.

3 MS. HUART: That's okay. Just give me a
4 chance to ask it and then I will let you jump in.
5 Q. Do you have any knowledge, whether it comes from
6 documents or otherwise, concerning the companies to
7 whom Harrisons and Crossfields sold calidria for use
8 in joint compound or tape joint products?

9 MS. KING: Same objection.

10 MS. NICOL: I will join in those
11 objections. Did the court reporter get those
12 objections down?

13 THE REPORTER: Yes, I did.

14 MS. NICOL: Thank you.

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15 A. Again, based on my review of the records there
16 was absolutely no indication of sales by any
17 distributor to the five companies referenced in your
18 notes.

19 Q. Is your testimony -- strike that.

20 I would like to hand you what's been marked as
21 Plaintiff's Exhibit 5516. Have you had an -- have
22 you had an opportunity to review that?

23 A. Yes.

24 Q. Does that appear to you to be a record maintained
25 in the ordinary course of business of Union Carbide?

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1 A. Yes, it does.

2 Q. I would like to hand you what's been marked as
3 Plaintiffs' Exhibit 5254.

4 Unfortunately I have got these documents in
5 boxes behind me and --

6 THE VIDEOGRAPHER: I know.

7 MS. HUART: -- I am going to have to be
8 ambulatory to ask these questions.

9 A. Yes.

10 Q. Does that document appear to be a record
11 maintained in the ordinary course of business of
12 Union Carbide?

13 MS. NICOL: Asked and answered.

14 MS. KING: Vague and ambiguous.

15 A. Yes.

16 Q. And by that document I am referring to 5254.

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17 MS. NICOL: Did you move off of 5516?

18 MS. HUART: Yes, I did.

19 MS. NICOL: You are now on to 5214?

20 MS. HUART: No. The document was 5254.

21 Just for the record Mr. DeBor has in front of him
22 5516 and 5254, just so we're clear.

23 MS. NICOL: Thank you.

24 Q. Are both of these documents in your opinion and
25 in your testimony records maintained in the ordinary

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1 course of business of Union Carbide?

2 A. Yes, again I believe in form and fashion they
3 are. I just would like to make a note that Exhibit
4 5254 again the pages are not sequential although it
5 does appear that the subject matter does relate.

6 Q. With respect to 5254 when you say the pages are
7 not sequential is it your testimony here that the
8 document that is stapled to the top page is not the
9 attached -- excuse me is not the attachment
10 referenced in the memorandum?

11 A. Again without comparing this to the original it
12 does reference a sales performance for '72 to '74
13 which is the attachment here. As a matter of fact,
14 the attachment here indicates '72 to '75 not '72 to
15 '74, and the prospect list and comments on the
16 prospect list I don't believe is referenced in that
17 paper.

18 Q. Would you need more time to look at the document
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19 or is that -- I don't want to rush you.
20 A. I'm sorry, it does reference prospects in the
21 body there.
22 Q. Okay. Does that change your opinion as to
23 whether that is a --
24 A. Again, I --
25 Q. -- a business record of Union Carbide?

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1 A. I can't attest as to its completeness without
2 comparing it to the original, but it certainly in
3 form or fashion I would agree that it is a Union
4 Carbide document --
5 Q. Okay.
6 A. -- maintained in the course of normal business.
7 Q. Thank you. Let me take that back. And when you
8 say -- the document that you are referring to by "it"
9 is the 5254; is that correct?
10 A. Correct.
11 Q. Okay.
12 A. Again just note within the scope that it is '72
13 and '76, the dates on that -- on those documents.
14 Q. For the record Plaintiff's 5254 is dated 1975
15 and -- pardon me, is dated May 22nd, 1975. I would
16 like to hand you what's been marked as Plaintiffs'
17 Exhibit 5648. For the -- for the record, Mr. DeBor,
18 I notice that you are referring to the Exhibit B to
19 the deposition notice. Does that assist you in
20 identifying -- or maybe I should just ask you I

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21 notice that when I ask you to look at a document and
22 I hand it to you the first thing that you look at is
23 the reference on Exhibit B. Is there a reason for
24 that?
25 A. No. Again, as far as the index or what's here as

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1 far as what's here --
2 Q. Mm-hmm.
3 A. -- I think it will be some help if there is any
4 discrepancies.
5 Q. Oh, I see, I understand. I mean I don't have a
6 problem with you --
7 MS. NICOL: Just to be clear here does your
8 copy of Exhibit B in fact have a page that has
9 Exhibit 5648 listed?
10 THE DEPONENT: No.
11 MS. HUART: Well, Mr. --
12 MS. NICOL: Or exhibit --
13 MS. HUART: -- DeBor has my copy so --
14 MS. NICOL: Our Exhibit B ends with the
15 bottom of one page is UC 5582 and the next page jumps
16 to UC 5653.
17 MS. KING: And actually mine is different
18 than that, this is Lisa King, mine ends at 5641 and
19 starts at 5675.
20 MS. NICOL: To the extent that this is not
21 listed on Exhibit B we would obviously object to its
22 use.

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23 MS. HUART: well, if there was a document
24 jam when this was copied I mean I -- that I can't
25 speak to. I know that these documents were numbered

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1 sequentially and I know that this exhibit has been
2 attached to other documents. The Plaintiff -- the
3 witness has the document itself in front of him so --

4 MS. NICOL: That's fine, he can answer your
5 questions about it. I am just making an objection
6 that to the extent it is not on Exhibit B it goes
7 beyond the scope of category three.

8 MS. KING: And Lisa King, counsel, if you
9 could please just for our reference give a title or
10 some sort of reference to what the document is since
11 it isn't listed on anything we have here and I don't
12 have anything to look at that would be helpful.

13 MS. HUART: I will do that. Bear with me.

14 MS. KING: Thank you.

15 MS. HUART: 5648 is a document dated
16 November 30, 1971, report of call at Glidden Durkee
17 Cleveland by J.L. Myers, B.L. Ingalls and G.
18 Blancard, purpose discuss toxicological aspects of
19 calidria asbestos products and their safe handling.

20 I will make sure that the -- whatever pages are
21 missing or were resulted from a document jam
22 certainly will be provided to -- to everyone. Just
23 so I understand, Ms. Nicol, is this attachment
24 Exhibit B is that the first and only time that you

25 have ever received this document? Do you not have

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1 any other copies?

2 MS. NICOL: Exhibit B?

3 MS. HUART: Yes.

4 MS. NICOL: Yes, I only -- Exhibit B was
5 produced to us in connection with an attachment to
6 the deposition notice, and actually I think there was
7 an additional copy placed -- well, I think, I am not
8 positive, an additional copy may have previously been
9 sent with the boxes, but I see here that other
10 counsel who did not get a copy from us but in fact
11 got it from Plaintiffs are similarly missing pages.

12 MS. HUART: Well, I am sure that is just an
13 administrative -- administrator error. We'll get it
14 corrected. Thank you for bringing it to my attention
15 all.

16 MS. KING: Thank you.

17 Q. Sir, does that appear to be a document maintained
18 in the ordinary course of business as a business
19 record of Union Carbide?

20 A. Yes, it does.

21 Q. Thank you. I would like to hand you what's been
22 marked Plaintiffs' Exhibit 5066, and if you will take
23 a moment to review that.

24 MS. KING: Ms. Huart, just to help you out
25 the exhibit list was produced from your office on

1 March 8th, 2002, to a number of different attorneys
2 by Jeffrey Simon, so that might help you to know to
3 whom to provide corrected copies.

4 MS. HUART: Okay. Thank you.

5 A. Yes.

6 Q. Does that appear to be a business record of Union
7 Carbide?

8 A. Yes, it is.

9 Q. Maintained in the ordinary course of business?

10 A. Yes. Yes, ma'am.

11 Q. Thank you. I would like to hand you what's been
12 marked Plaintiffs' Exhibit 5068 and ask you to review
13 that. Thank you. Does that appear to be a record
14 kept in the ordinary course of business as a business
15 record of Union Carbide?

16 A. Yes, it does.

17 Q. I would like to show you Plaintiffs' Exhibit 5086
18 and ask you if that appears to be a business record
19 maintained in the ordinary course of business of
20 Union Carbide?

21 A. Yes, it does.

22 Q. Thank you. I would like to hand you Exhibit 5527
23 and ask you if that appears to be a business record
24 maintained in the ordinary course of business of
25 Union Carbide?

1 A. Yes, it does.

2 Q. And your testimony is with respect to 5527,
3 correct?

4 A. Correct.

5 Q. Okay. I would like to hand you what's been
6 marked Plaintiffs' Exhibit 5190. Does that appear to
7 be a business record of the Union Carbide
8 Corporation?

9 A. Yes, it does. Again, I would just like to point
10 out that there is some handwriting and notation on
11 here which we certainly can't attest to but.

12 Q. Mm-hmm. And I take it also that you would not be
13 able to identify whose handwriting that is on 5190;
14 is that correct?

15 A. As far as the marginalia.

16 Q. The marginalia at the top portion of the first
17 page of 5190?

18 A. No, I cannot. It appears different than the
19 signature which was Dr. Lincoln.

20 Q. I would like to hand you what's been marked
21 Plaintiffs' Exhibit 5179.

22 MS. NICOL: Is there a question pending?

23 MS. HUART: Nope. No, the witness is
24 reviewing the document.

25 A. I am a little uncomfortable with the order on

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1 this for as far as where your exhibit sticker is
2 placed. This item was last. Certainly this is a
3 Union Carbide document.

4 Q. Mm-hmm.

5 A. This particular item I don't recall. Again,
6 based on the date this is 1979, and I -- it appears
7 to be though without some further investigations a
8 slight reservation.

9 Q. Okay. Can you tell me whether -- what it is --
10 sir, with respect to 5179, and as I understand it you
11 have a reservation about authenticating this as a
12 business record of Union Carbide, can you -- can you
13 explain what it is about this document that causes
14 you to reserve judgment pending a further
15 investigation?

16 A. Yeah. Again, it is totally unattributed, I saw
17 no names, there is no letterhead at all whatsoever.
18 Certainly the sum and substance of the document
19 appears to be Union Carbide asbestos; but, again, on
20 a note of caution I just have a reservation about
21 that particular document.

22 Q. Did you have an opportunity to review I believe
23 the -- the document that's contained within 5179 that
24 is a memorandum dated May 10th, 1979, providing the
25 subject asbestos strategic planning?

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1 A. Yes, absolutely.

2 Q. Okay.

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3 A. It does seem related, and as I indicated the --
4 that page is definitely. Again, I had some concern
5 that it was on the back of the document.

6 Q. Mm-hmm. What kind of investigation would you
7 need to undertake to satisfy yourself that 5179 is a
8 business record of Union Carbide or not?

9 A. Again I would like to confirm it with the
10 material that's in the asbestos repository.

11 MS. HUART: Mm-hmm. Okay. I would like to
12 make a request on the record that that be done.

13 MS. NICOL: Same response, plus I would add
14 to the record at this point we're 20 minutes away
15 from the facility there closing and it being 5:30 --
16 20 minutes away from 5:30 eastern time. I will note
17 for the record that of all the documents that you
18 have asked about only one covers the time frame that
19 is the scope of this deposition. So I don't know if
20 it is intentional or otherwise that you have not
21 asked about documents relevant to the time period in
22 the scope of the deposition, but to the extent it is
23 intentional I will reassert what I had said several
24 hours ago and what I had told Mr. Waters and Mr.
25 Armitage last Tuesday about this deposition and that

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1 it will not go past today. So to the extent you are
2 not asking the questions that you need to ask for the
3 summary judgment I would suggest it behooves you to
4 do so. If you have asked all the questions that you

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5 need to in that regard, then that's fine; but I just
6 once again reassert that it is at Plaintiffs' peril
7 if they try to slippery slope in terms of not asking
8 relevant questions, asking about documents from '79
9 and the 70s instead of anything else that they may
10 think is necessary in terms of opposing summary
11 judgment.

12 MS. HUART: With respect to the
13 availability of the facility we got good news during
14 one of the breaks and our court reporter very kindly
15 checked with the people downstairs and found out that
16 the facility is in fact open until 8:00, so I was
17 mistaken regarding the closing of the facility. So
18 we are -- you know, we certainly can stay here and I
19 am prepared to continue to stay here until the -- and
20 continue the deposition. If -- if we finish prior to
21 that time, then we finish, and if not then I guess
22 we -- and I don't want to get into another 15 minute
23 colloquy about what's going to happen then, so I just
24 wanted you to be aware that we are not being kicked
25 out at 5:30 as we initially suspected.

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1 MS. NICOL: well, that's the first time
2 that I am hearing that, so thank you.
3 Q. I would like to hand you what's been marked
4 Plaintiff's 5192.
5 A. Yes, that does appear to be a Union Carbide
6 document.

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7 Q. Okay. And by Union Carbide document is it your
8 testimony that it is in fact a record kept in the
9 ordinary course of business of Union Carbide?

10 A. Yes, I believe so.

11 Q. Thank you. I would like to hand you what's been
12 marked Plaintiff's 5650 and ask you if you can
13 authenticate that document as a business record of
14 Union Carbide?

15 MS. KING: Counsel, could you just please
16 read the title of that document. We're back into the
17 place where we don't have the list.

18 THE DEPONENT: This is a call report done
19 by Harrison on 12-31-71 to Glidden Durkee in Atlanta,
20 Georgia.

21 MS. KING: Thank you.

22 A. And, yes, that does appear to be a Union Carbide
23 document.

24 MS. HUART: For purposes of this deposition
25 can counsel agree that when the witness states on the

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1 record that this does in fact appear to be a Union
2 Carbide document we interpret that to mean it is in
3 fact an authenticated business record or would you
4 like me to ask the -- would you like me to ask the --
5 reask the question so that the business record
6 authentication language is in the transcript?

7 MR. GLASSER: I think what you are doing is
8 agreeable. Farah, do you have any problems with

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9 that?

10 MS. NICOL: Yeah, that's fine. That's
11 fine.

12 MS. HUART: I just want to make sure that
13 we don't get down the road or have another problem
14 and then we look at the transcript and people say
15 well that wasn't authenticated because he didn't
16 actually say it was authenticated, he said it was a
17 Union Carbide document. So since that -- I think the
18 witness understands that's what he is here to do and
19 I think we all do and --

20 MS. NICOL: Yeah, I just want to be clear,
21 we mix up the term authentication and business
22 record. Clearly they are two separate things. So I
23 just -- I just want to be clear, those terms get
24 muddled up a little bit in this deposition.

25 MS. HUART: Okay.

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1 MS. NICOL: Because I think he -- he has
2 clearly testified to the -- almost all the documents
3 that he can say they appear to be, based on his
4 experience and his knowledge of the repository,
5 documents maintained by Union Carbide in the normal
6 course of his business.

7 MS. HUART: And that they -- whether they
8 appear to be what they in fact are -- whether they
9 appear to be true and correct copies of documents at
10 Union Carbide, you know, as long as -- if, Mr. DeBor,

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11 if there is anything on the face of the document that
12 causes you to dispute or have some question in your
13 mind as to whether it is what it purports to be, for
14 example a memorandum of Union Carbide or a letter
15 from a Union Carbide individual, I assume that you
16 will tell me that when you look at the document,
17 okay, can we have that understanding?

18 A. Yes.

19 Q. Okay. So if you don't tell me that there is
20 something fishy about the document that makes you
21 think it is not what it purports to be you are going
22 to let me know?

23 A. I certainly will.

24 Q. Okay. I have lost my train of thought. Have I
25 handed you 5650 yet? I don't believe that I have. I

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1 did. Pardon me, I have lost my train. So that -- we
2 have established that one as a business record. 5659
3 Plaintiffs' Exhibit I am handing you, and for the
4 record this is a September 13th, 1971, report of call
5 at American Cyanamid.

6 A. Yes. Again, that appears to be a calidria call
7 report.

8 Q. Thank you. And that does -- as a calidria call
9 report that appears to be a business record of Union
10 Carbide, correct?

11 A. That's correct, yes.

12 Q. Okay. I would like to hand you Plaintiffs'

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13 Exhibit 5044, sir, thank you.

14 A. Sorry for the delay.

15 Q. That's okay.

16 A. That does appear to be a Union Carbide record
17 maintained in the normal course of business.

18 Q. Thank you. And that is Exhibit 5044. I would
19 like to hand you both 5056 and 5005 simultaneously
20 and ask you to look at those.

21 MS. NICOL: Is that 5005?

22 MR. GLASSER: Right now he is looking at
23 5056.

24 MS. NICOL: Right. 5005 was one of the
25 other documents pulled, though, correct?

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1 MR. GLASSER: Right.

2 MS. NICOL: If Plaintiffs' counsel could
3 please describe that to us. It doesn't appear to be
4 in our box of documents copied and given to us by
5 Plaintiffs' counsel.

6 MS. HUART: Okay. I would, but right now
7 the witness has the document. As soon as he is done
8 reviewing it I will be happy to describe it to you.

9 MS. KING: Okay. Thanks.

10 THE VIDEOGRAPHER: This might be a good
11 time to change the tape, I am going to have to within
12 10 minutes. Do you want to go off the record now and
13 do it?

14 MS. HUART: Sure. We're going off the

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15 record to change the tape.
16 THE VIDEOGRAPHER: Off the record
17 approximately 5:22 p.m., end tape two.
18 (A break was taken.)
19 THE VIDEOGRAPHER: One moment, please.
20 Back on the record 5:48 p.m., start tape three.
21 Q. Did you need additional time to review?
22 A. No. Regarding Exhibit 5005 I believe that that
23 appears to be a Union Carbide document maintained in
24 the course of normal business. I do, however, have
25 some problems as far as the chronology and

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1 description on 5056, and I am sure this is actually
2 multiple documents.
3 Q. Mm-hmm.
4 A. The commonality between the documents is an old
5 Bates stamp 9744 through 9800, it seems to be the
6 commonality only. 9744 through 9782 does appear to
7 be a technical literature on new additives induced
8 toxitrophy provides SAG and viscosity control
9 authored by John Myers; however, when you get to
10 Bates stamp 9783 this appears to be a totally
11 unrelated document indicating status summary mid
12 1970s asbestos toxicology.
13 Q. As an unrelated document can you offer an opinion
14 as to whether it appears to be a business record of
15 Union Carbide?
16 A. Again, as far as its sum total it is somewhat

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17 difficult to do that, but I believe that it is.
18 Q. Okay. So the --
19 A. Bates stamp --
20 Q. I'm sorry, let me just -- let me just identify it
21 for the record. This would be the document entitled
22 Status Summary - Mid 1970 Asbestos Toxicology With
23 Calidria Asbestos Union Carbide Corporation provided
24 on the front page, and the Bates numbers of this
25 document extend from 809783 through eight -- A,

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1 pardon me, the letter A09788, and for the record that
2 document has been testified to as a business record
3 of Union Carbide.

4 MS. NICOL: And you are referring to 5056,
5 counsel?

6 MS. HUART: These various documents
7 apparently comprise --

8 A. 5056.

9 MS. HUART: -- Plaintiffs' Exhibit 5056.
10 Thank you.

11 MS. NICOL: Thank you. There is some
12 confusion between that and 5005 so I appreciate it.

13 A. Again the items with the only differentiation of
14 the Bates stamp of 9789 through 9796 appears to be
15 reprints of articles that are certainly not Union
16 Carbide produced documents, and actually a couple
17 pages from the Federal Registry, three pages from the
18 Federal Registry, and that's those items.

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19 Q. And this is the document the Bates Nos. 09789
20 through 9796 my understanding is you are indicating
21 are not business records of Union Carbide. Is that
22 your testimony or are you -- I am not sure I
23 understand what your testimony is with respect to
24 this.
25 A. Again, these are reprints of articles and other

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1 material that was not obviously produced by Union
2 Carbide.
3 Q. Can you offer any testimony as to whether it was
4 kept or maintained in the ordinary course of business
5 to the extent that Union Carbide did in fact keep
6 reprints of articles and various medical journal
7 articles and other technical journal articles?
8 MS. NICOL: Calls for speculation.
9 A. Again, these particular articles do not ring a
10 bell with me, but Union Carbide certainly kept
11 articles, and there are a number of outside articles
12 within the asbestos repository.
13 Q. Mm-hmm. Does that Bates numbering system have
14 any significance for you?
15 A. No, it does not.
16 Q. Mm-hmm.
17 A. Bates No. 9797 and 8 is a Union Carbide document.
18 Q. And that is the document, for the record,
19 entitled Asbestos Toxicology Report, it is dated May
20 the 8th, 1969, and is a two page document?

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21 A. Correct. And though I am not personally familiar
22 with it the last two pages under this Exhibit 9799
23 and 9800 as far as the Bates number appears to be
24 asbestos press release done by J.M. Mathis, Inc.,
25 (phonetically) with a bottom line Union Carbide

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1 Corporation and Chemicals, so yes that is a press
2 release that is ours.

3 Q. Okay. So that portion you can --

4 A. Yes.

5 Q. -- testify to as being a business record. Thank
6 you. Okay. That I believe concludes the discussion
7 of 5056.

8 A. Yes.

9 Q. Okay. I would like to hand you Plaintiffs'
10 Exhibit 5164.

11 A. Yes, that does appear to be a Union Carbide
12 document.

13 Q. Thank you. Plaintiffs' Exhibit 5006?

14 A. Yes, that is also.

15 Q. Thank you. Appear to be a Union Carbide
16 document?

17 A. Union Carbide document.

18 Q. Okay. Plaintiffs' Exhibit 5116, appreciate it if
19 you could look at that.

20 MS. NICOL: Did you say 5156?

21 MS. HUART: No, I'm sorry, I believe I said

22 5 --

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23 THE DEPONENT: 116.
24 MS. HUART: 116, thank you.
25 MS. NICOL: Thank you.

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1 A. This is a call report dated 2-7-75 by Harrison
2 Rhodes, the customer is Gypsum Dry Wall Contractors
3 International in Washington DC, and in this case I am
4 not sure that they were in fact a customer. Yes, I
5 believe that is a Union Carbide document.
6 Q. Okay. I am handing you Plaintiffs' Exhibit 5117
7 which appears to be a duplicate copy of Plaintiff's
8 5116 with I guess some slight variation?
9 A. It appears that the difference is the placement
10 of a previous Plaintiffs' exhibit sticker.
11 Q. Mm-hmm. Other than that you have no -- pardon
12 me, other than that your testimony is that this
13 similarly -- 5117 is similarly a business record of
14 Union Carbide?
15 A. Yes.
16 Q. Thank you. I have previously asked you to look
17 at Exhibit 5040 and I would like to hand you now
18 Exhibit 5041, which appears to be another copy of it
19 with some slight variation, and ask you if you can
20 likewise authenticate or testify with respect to the
21 business record nature of 5041, both of those?
22 MS. NICOL: Vague and overbroad.
23 Q. Can you testify as to whether that is a business
24 record of Union Carbide?

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25 A. Yes, I believe that it is.

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1 Q. Okay. Thank you. Plaintiffs' Exhibit 5395 is
2 the next exhibit.

3 A. Yes, I believe that to be a Union Carbide
4 document.

5 Q. Thank you. I would like to hand you what's been
6 marked Plaintiffs' Exhibit 5391.

7 A. Yes, I am familiar with that document, that is a
8 Union Carbide document.

9 Q. Okay. Can I ask you, sir, to compare that to the
10 document that's attached to Defendant Union Carbide's
11 Response To Plaintiffs' Requests For Admission and
12 ask you -- did you need something?

13 A. This back for me to compare it.

14 Q. Ask you to compare it to Plaintiffs' Exhibit 5391
15 which is the exhibit you just looked at and
16 identified as a business record of Union Carbide?

17 A. We refer to this as the attachment?

18 Q. Yes, we -- we can refer to that as the attachment
19 to Defendant's Request For Admissions.

20 A. The attachment does appear to be the same basic
21 document as Exhibit 5391. There are some differences
22 in that there is a stamp indicating received April
23 8th, 1971, Building 701 library that is missing from
24 the other one, and there is some marginalia
25 highlighted and written dated apparently 1-28-84.

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- 1 Q. For the record the marginalia is on the copy
2 that's attached to the discovery --
3 A. On the attachment, that's correct.
4 Q. -- request, correct?
5 A. The -- again, the Exhibit 5391 has a stamp
6 outdated, and the item that's attached again based on
7 my experience in the business appears to be a copy
8 done with a lower grade copier than this was copied
9 with.
10 Q. Okay.
11 A. And again this is a technical literature put out
12 by Union Carbide, the F number kind of indicates
13 that, and in form and fashion they are the same
14 document.
15 Q. Okay. Do you know whose handwriting is in the
16 marginalia on the top of that document -- the
17 brochure that is attached to the discovery responses?
18 A. No, I do not.
19 Q. Do you recognize those initials?
20 A. Could it be John Myers? That would be --
21 MS. NICOL: Calls for speculation.
22 A. Yeah, that would be a pure guess.
23 Q. Do those initials -- just from your reading do
24 that -- do those initials appear to be JBM, is that
25 what it looks like to you?

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1 A. I am not sure that's the case. I think I would

2 go JG possibly. It is J something M.

3 Q. Are you familiar with Mr. Myers' handwriting?

4 A. No, I am not.

5 Q. Okay. Do you know Mr. Myers?

6 A. Personally I do not.

7 Q. You have never met him?

8 A. I have never met him.

9 Q. Do you know who placed the -- well, strike that.

10 what does the reference on the left-hand margin

11 file K-1 mean to you, if anything? And again I am

12 referring to the brochure that is attached to

13 Defendant's discovery responses which is essentially

14 the same as 5391 which is a business record according

15 to Mr. DeBor.

16 A. It would be speculation, but K1 was a unit or a

17 pod within corporate headquarters, and I can't

18 remember what organization was there.

19 Q. Okay. Are you familiar with any similar kinds of

20 calidria asbestos sales brochures for the standard

21 grade products 130 and 210 that are dated prior to

22 October 1968?

23 MS. NICOL: Could I have that question read

24 back, please.

25 (The reporter read back the requested matter.)

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1 MS. NICOL: Thank you.

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2 A. No. Again, based on my review of the documents
3 and preparation for this deposition I found no
4 literature or marketing items prior to that regarding
5 130 and 210.

6 Q. Is the document collection that you -- strike
7 that.

8 what document collection did you go to to
9 determine whether there were such pre October 1968
10 sales brochures?

11 A. Again, the documents that were provided me by
12 counsel from the asbestos repository included that
13 particular document.

14 Q. well, okay, who reviewed the documents at the
15 asbestos repository out of which the document
16 attached to the discovery requests emerged?

17 MS. NICOL: Asked and answered.

18 A. Counsel.

19 Q. Is the document collection of marketing and
20 advertising materials for calidria at the asbestos
21 repository full and complete, and by that I mean
22 containing all of the advertising materials that
23 existed?

24 A. I could never characterize any collection as full
25 and complete. Again, discovery is ongoing. It is --

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1 based on 20 years of review of documents I have every
2 confidence that it is an excellent collection.

3 Q. But you certainly can't testify under oath today

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4 that it is a -- it is a complete collection with
5 respect to Union Carbide advertising and marketing
6 materials, correct?

7 MS. NICOL: Argumentative, misstates his
8 testimony. He is giving you a very clear answer in
9 that regard and to push it any further is being
10 argumentative and harassing.

11 A. Again the asbestos repository, based on the
12 previous collections and efforts to collect
13 documents, is as complete a collection as we have
14 access to. Should additional material be located it
15 will be included in the repository.

16 Q. I would like to hand you Plaintiffs' Exhibit
17 5393.

18 A. I am familiar with this document. I really
19 cannot recall whether all the pages are what was
20 attached in the original material from the
21 repository, but I certainly have a recollection of
22 seeing a similar -- similar document.

23 Q. Okay. Is there some way that you could verify by
24 comparing this particular Exhibit 5393 with the
25 document that you have seen or documents that you

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1 have seen at the asbestos repository?

2 A. Yes, I believe we could do that.

3 MS. HUART: Okay. I am going to make a
4 request on the record that if there is something that
5 you would feel you would need to do in order to say

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6 one way or the other whether this is a business
7 record of Union Carbide that you undertake to do so
8 prior to the --

9 MS. NICOL: I'm sorry, with all that
10 shuffling of paper I completely missed what you said.
11 Could the court reporter read that back, please.

12 MS. HUART: I actually didn't finish my
13 sentence.

14 (The reporter read back the requested matter.)

15 MS. HUART: Prior to -- what I am
16 requesting is that you undertake to do so within some
17 reasonable time before the Plaintiffs' response to
18 the summary judgment motion is due, and certainly
19 that request is as to any of the other requests that
20 I have made on the record for any kind of
21 verification that needs to happen we have a -- strike
22 that. That that request applies to those as well.

23 MS. NICOL: I don't know that you have
24 fully fleshed out with him if there wouldn't be
25 anything more that he would need. There is a limit

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1 to what he knows because again he wasn't around here
2 at these times that you are seeking to find out
3 about, so the best that he can say is whether it
4 appears to him to have been maintained in the normal
5 course of business.

6 MS. HUART: Ms. Nicol, you are continuing
7 to --

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8 MS. NICOL: You can't -- you can't --

9 MS. HUART: Your objections that are -- are
10 stating and circumscribing and talking about what
11 this witness knows and what he doesn't know I really
12 think we're getting -- you know, you are really kind
13 of getting over the line here in terms of what you
14 are permitted to do in the context of your objection.
15 Now --

16 MS. NICOL: I am responding to your request
17 on the record, and what I am saying is we're not
18 going to do anything of the kind. This is your
19 opportunity to ask him all of the questions you can
20 think of that relate to category three with regard to
21 these documents, and to the extent that you haven't
22 fleshed out all you need to flesh out, that's
23 Plaintiffs' problem. It is not our problem to go
24 beyond that.

25 He is the most knowledgeable on this category

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1 and he has been produced for that. To the extent
2 that he can answer the question you can clearly see
3 Mr. DeBor will make every effort to do that. So if
4 you have some question or some confusion or still
5 some open issue with regards to any of these
6 documents, I suggest you ask the question.

7 MS. HUART: Ms. Nicol, I am going to phrase
8 these questions. I am the person who is asking the
9 questions, and I am going to phrase these questions

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10 in the way that I think is the most productive, and
11 when I need your input and advice and counsel I will
12 be sure to stop the deposition and ask you to -- to
13 assist me. I don't anticipate that happening, I
14 appreciate your offer; however, I really don't need
15 your assistance, and at this point I am making my
16 requests on the record. What you do in response to
17 my requests is entirely up to you so --

18 MS. NICOL: Well, that's my response.

19 MS. HUART: I am going to go ahead --

20 MS. NICOL: My response -- my response is
21 you need to ask the questions that go to this
22 category. He is here for the deposition to go
23 forward, he has been produced to the responsive
24 categories, you have your option to go forward. If
25 you don't ask the questions that get you to the right

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1 place you want to get at, all the reserving on the
2 record that you want to do about asking for
3 additional information is your own desire but it will
4 not go any farther than that.

5 MS. HUART: I am not reserving anything on
6 the record. What I am asking is I am asking for this
7 witness to do -- and when we do resume this
8 deposition I frankly think it ought to be resumed at
9 the asbestos repository or at Morrisville or either
10 one of those places or any place where these
11 documents exist so that we can say you know what, Mr.

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12 DeBor, I understand you feel you need to compare this
13 to another document, well by golly let's just go down
14 the hall and do that, and let's -- let's have this
15 deposition at a place where this witness has access
16 to the documents that will enable him to authenticate
17 them or not, I am happy to. If you want to get
18 quote --

19 MS. NICOL: I think --

20 MS. HUART: If you would like to get,
21 quote, in your words, to that place, closed quote,
22 that is the place I would like to get to. Now, I
23 would like to continue to ask my questions of this
24 witness, and I will continue to make whatever
25 requests on the record that I feel are appropriate,

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1 and I will continue to ask these questions in the
2 format that I think is appropriate. You are -- you
3 may object --

4 MS. NICOL: I suggest you listen to Mr.
5 DeBor's answer because what he has told you when he
6 has answered these questions is that they appear to
7 look like Union Carbide documents or they don't
8 appear to look like Union Carbide documents. That's
9 simply all he is obligated to tell you, and if you
10 ask another question that asks him something else he
11 will answer that as well.

12 MS. HUART: He has testified as to what he
13 would need to do to satisfy himself that these are or
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14 are not business records, and I am asking that he do
15 that. That is what I am asking.

16 MS. NICOL: Oh, no, no, no, don't
17 misunderstand.

18 MS. HUART: That's what I am --

19 MS. NICOL: Don't misunderstand.

20 MS. HUART: I understand.

21 MS. NICOL: Comparing the two documents did
22 not go to business records, comparing the two
23 documents went to true and correct copies. Comparing
24 the two documents would not change anything about a
25 business record and whether he believes they appear

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1 to be maintained in the normal course of business, so
2 you should be very clear in understanding the
3 distinction. You have confused them during the
4 course of this deposition, but they are two different
5 things.

6 MS. HUART: I am perfectly aware of what
7 the difference is between a business record and
8 authentication, and this witness has told me that he
9 will be sure to alert me as to any document that he
10 feels is not what it purports to be. Now, he hasn't
11 done that except on very limited occasions. And I
12 think Mr. DeBor understands what he is here to do,
13 and I understand what he is here to do, and I don't
14 think there is any question in anybody's mind what he
15 is doing.

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16 Now, I would like to continue. I would like to
17 proceed. It is getting late. If you would like to
18 continue to -- to have a speech I suggest you might
19 want to wait until we're done and then you can put
20 whatever you want on the record after we can move --
21 move forward.

22 MS. NICOL: Responding just to your
23 question and proposal on the record I think I am
24 entitled to do that, so if you don't have anything
25 more to put on the record then I don't have anything

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1 more to say about it.

2 MS. HUART: Ms. Nicol, it is not a
3 proposal, it is a request. I am making a request.
4 This is discovery, we're in a discovery deposition, I
5 am making a request. Now, you can --

6 MS. NICOL: You have my response.

7 MS. HUART: -- do whatever you would like
8 to do with my request, I invite you to do so.

9 MS. NICOL: You have my response.

10 MS. HUART: And I will let you know one
11 more time that this poor court reporter cannot take
12 the both of us talking at one time, so if you'd do me
13 the courtesy of waiting until I finish before you
14 start speaking I think this court reporter would
15 appreciate that courtesy. I know I would.

16 Q. I would like to hand you Plaintiffs' Exhibit 5270
17 which is a reprint from the Journal of Paint

18 Technology of an article written by Mr. John Myers,
19 and the date of that is December 1975 issue.
20 A. And this appears to be a technical article
21 written by John Myers during his course of employment
22 at -- while he was employed at Union Carbide, excuse
23 me. In the purest sense of the word because this is
24 reprinted from a publication I can't characterize
25 this as a Union Carbide document, per se. This

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1 document is in the asbestos repository and --
2 Q. And so you recognize it as being a document
3 maintained in the --
4 A. Yes, I do.
5 Q. -- in the course of business of --
6 A. Yes, I do.
7 Q. -- the corporate -- thank you. With respect to
8 this document, sir, I would like you to just turn
9 your attention to the right-hand margin on the first
10 page, and it appears that there is -- there were some
11 numbers that were cut off. Do you see that in the
12 lower right-hand corner?
13 A. I see it.
14 Q. Okay.
15 A. I can't say what that is.
16 Q. Okay. You don't recognize that as being any kind
17 of Bates numbering system of Union Carbide or perhaps
18 a -- a frame on a microfilm or microfiche?
19 A. No, I can't say what that is.

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20 Q. Okay. Thank you. Have you seen those kinds of
21 identifying marks in other Union Carbide documents?

22 MS. NICOL: Vague.

23 A. Again, I can't make out what this is at all, it
24 is just kind of cut off, so I really can't say if I
25 have seen that.

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1 Q. Thank you. I would like to hand you what's been
2 marked as 5237.

3 MS. NICOL: I am going to lodge again my
4 objection that this is an attorney/client work
5 product privilege document, we're not waiving that
6 privilege.

7 MS. HUART: Okay. As you know our position
8 is it is a little late, it has already been waived.

9 A. I have seen that document in the review of your
10 exhibits in the last couple of days, I am not
11 familiar with that document. In the strict sense it
12 does appear to be correspondence to Allen Gerson
13 G-E-R-S-O-N of Kelley, Drye and Warren.

14 Q. And for the record Kelley, Drye and Warren is
15 counsel for Union Carbide to your knowledge?

16 A. Yes, it is.

17 Q. Okay. And do you know Mr. Gerson?

18 A. Yes, I do.

19 Q. Mm-hmm. Thank you. Do you know who Terry
20 McGeever is?

21 A. I know he is an attorney, beyond that I don't

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22 know any specifics.
23 Q. I apologize, I didn't mean to cut you off. Is
24 Mr. McGeever to your knowledge an attorney
25 representing Union Carbide?

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1 A. I can't recall.
2 Q. Okay. I would like to hand you Exhibit 5504,
3 please, and ask you to look at that.
4 MS. NICOL: I'm sorry, counsel, we couldn't
5 hear you over the --
6 MS. HUART: Sorry, 5504.
7 MR. GLASSER: Sorry, my fault, I knocked
8 over a cup.
9 MS. NICOL: Thank you.
10 MS. KING: You are in trouble now.
11 MR. GLASSER: Yeah. It was empty thank
12 goodness.
13 A. Again, this is a delivery and call report dated
14 10-23-75 by EJ Kleber K-L-E-B-E-R to General Electric
15 in Louisville, Kentucky.
16 Q. Does that appear to be a business record of Union
17 Carbide?
18 A. Yes, it does.
19 Q. Does it appear to be what it purports to be which
20 is a call report?
21 A. Yes, I believe so.
22 Q. You have seen many such call reports I would
23 assume in your career?

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- 24 A. Have I seen many call reports? Yes, I have.
25 Q. I would like to hand you Plaintiffs' Exhibit 5058

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- 1 which is another version of the -- another document
2 entitled asbestos toxicology report.
3 A. Although the copy is somewhat poor on this one,
4 this is a Union Carbide document, we have seen that
5 before.
6 Q. Okay. I would like to hand you 5061, and while
7 that is -- while that particular exhibit number is on
8 the top page you may want to review the various pages
9 that comprise 5061 and tell me if perhaps there is --
10 whether you can discuss the business record nature of
11 this as one singular document or as individual
12 documents?
13 A. Okay, could you ask the question again, please.
14 Q. Sure. Can you provide testimony concerning
15 whether 5061 is a business record of Union Carbide as
16 a single document or do you need to discuss that
17 document in its various component parts? I will be
18 happy to take your testimony any way you would like
19 to provide it.
20 A. Okay. I believe that it is three separate
21 documents. I am familiar with the first one, the
22 letter from Dr. Dernehl on March 21st, 1970.
23 Q. For the record that is the one that bears the
24 Bates number letter A03158.
25 A. I have seen, I am not sure where, the letter from

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1 Union Carbide Belgium offered by Thomas J. Hall.

2 Again, that appears to be a business record though
3 unrelated to the Dernehl document directly.

4 Q. For the record that would be the document Bates
5 numbered letter A03160 and 3161.

6 A. And it appears that the third or final item which
7 is correspondence to Peter Cheston C-H-E-S-T-O-N
8 dated February 8th, 1966. I cannot interpret the
9 signature. It is on Mining and Metals Division 270
10 Park Avenue letterhead. I am familiar with a couple
11 of the names that are copied so I believe that is a
12 Union Carbide document.

13 Q. Okay.

14 THE VIDEOGRAPHER: Excuse me, Mr. DeBor,
15 your mike seems to have gotten a little --

16 Q. I take it then that the -- all of the pages that
17 comprise 5061 have been stated by you to be business
18 records of Union Carbide?

19 A. Yes.

20 Q. And that they are what they purport to be,
21 letters?

22 A. Again the documents speak for themselves.

23 Q. Thank you.

24 MS. NICOL: Beyond the scope of his
25 testimony.

1 Q. I would like to hand you Plaintiffs' Exhibit

2 5393. Strike that, we have already done this one.

3 If I could get everybody's indulgence one moment

4 I believe that I have already had you look at 5373.

5 (Discussion off the record.)

6 Q. 5393, sir, if I have shown this to you before, I

7 apologize, I am not trying to extend this deposition,

8 but --

9 MR. GLASSER: Could we have a short break?

10 MS. HUART: Certainly, but before we do let

11 me just let the court reporter know if I misspoke I

12 intended to say 5393.

13 THE VIDEOGRAPHER: Off the record

14 approximately 6:33 p.m. One moment, wait a minute.

15 (A break was taken.)

16 THE VIDEOGRAPHER: Back on the record 6:34.

17 Q. I would like to hand you Plaintiffs' Exhibit

18 5340. I realize that that's not a document that was

19 generated by the Union Carbide Corporation but am

20 asking whether you know this document to be a

21 document that was maintained in the ordinary course

22 of business of Union Carbide?

23 A. No, I do not.

24 Q. Okay. Do you recognize this document?

25 A. No, I do not.

1 Q. Okay. Do the -- either the Bates numbers or the
2 letter designations beneath the Bates numbers have
3 any significance for you? And by that I mean the
4 letter designations HCL or 019089, that sequence of
5 numbers?

6 A. No. I have seen an awful lot of Bates numbers in
7 my day and I can't say that it rings a bell at all,
8 I'm sorry.

9 Q. With respect to documents -- or let me just ask
10 you specifically with respect to 5340 I believe as
11 you have testified there are areas of Union
12 Carbide -- and correct me if I am wrong, I believe
13 you said the asbestos repository --

14 A. Yes.

15 Q. -- where reprints and articles may be -- may be
16 kept and maintained at this point; is that correct?

17 A. That's correct.

18 Q. Okay. If you wanted to find out whether or not
19 this particular document 5340 was among those
20 reprints and articles maintained at the asbestos
21 repository, how could you go about doing that?

22 A. Again, as I have indicated before, depending on
23 the type of document that can be a very laborious
24 process. I am familiar with a number of cartons of
25 this type of document that would have to be searched.

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1 And incidentally it did occur to me when you asked me

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2 about the HCL that it could be Hilton Lewinsohn's
3 initials, I am not sure what his middle initial is.

4 MS. HUART: Okay. Well, I am making a
5 request on the record that we determine whether 5340
6 is among the documents that are maintained at Union
7 Carbide.

8 MS. NICOL: And I have the same response.
9 The witness says -- if he can't say it is familiar to
10 him, and that's what he is called here to do, that's
11 what he is responsive to in the category, and he has
12 been asked a question, and he has been given -- he
13 has given the answer, so you have the same response
14 we went through about 20 minutes ago in that regards.
15 Q. If we were sitting, Mr. DeBor, right now at -- at
16 the office on Park Avenue is that where you would
17 have to look to be able to determine whether or not
18 that document is in the asbestos repository?

19 MS. NICOL: That's not the question that's
20 the subject of the deposition notice. It is whether
21 it is authentic and whether it is maintained in the
22 normal course of business, not whether it is in the
23 asbestos repository. I object to the question as
24 being beyond the scope of the deposition.

25 MS. HUART: Well, I mean I object again to

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1 the speaking objection and particularly since you
2 have completely mischaracterized your own witness's
3 prior testimony because he has told me that this is

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4 exactly how those documents get to the asbestos
5 repository, and in fact he has coordinated the effort
6 to gather them up and send them there. So this
7 witness has -- is on the record as testifying where
8 those documents came from, and they did come from the
9 corporate -- various corporate offices of Union
10 Carbide.

11 Q. So, Mr. DeBor, if we were sitting on Park -- in
12 the office on Park Avenue right now is that where you
13 would be able to at least look and determine whether
14 or not this document is among the business records
15 maintained by Union Carbide?

16 MS. NICOL: Same objection, that's beyond
17 the scope of deposition category three as currently
18 phrased.

19 A. Yes.

20 Q. Thank you. Well, hopefully, sir, when we resume
21 your deposition we might have the opportunity to do
22 that. I am going to hand you Exhibit 5039 which I
23 believe is another version of 5393, and if you would
24 like I can hand you back 5393 so you can compare
25 them.

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1 A. No, they are not identical.

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2 Q. You can go ahead and explain that. I believe --
3 is that document 5039 lacking pages that are in the
4 5393 document?

5 A. Yes.

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6 Q. Okay. Can you express any opinion concerning
7 whether that document in that -- in the format that
8 it is in in 5039 is a business record of Union
9 Carbide?
10 A. Again, I think we went over this before.
11 Q. Mm-hmm.
12 A. A couple of reprints.
13 Q. Mm-hmm.
14 A. The last two pages though unsigned is a document
15 of the Union Carbide. I think this is the fifth time
16 we have seen this document.
17 Q. Mm-hmm.
18 A. And the front page the memorandum is clearly a
19 Union Carbide document.
20 Q. Okay. Thank you. I would like to hand you 5036.
21 A. Yes, that is a Union Carbide document.
22 Q. Okay. That is -- I'm sorry, I don't know if your
23 testimony was recorded. That is this is a business
24 record of Union Carbide?
25 A. Yes.

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1 Q. Thank you. I would like to hand you 5037.
2 A. Am I getting tired or have we seen all these
3 before?
4 Q. No, that's -- there are duplications. I have to
5 apologize, there is -- some records appear under more
6 than one exhibit number and some of them are slightly
7 different than others. I am sorry, I need to ask you

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8 to authenticate them and review them and testify
9 concerning the business record nature of them in
10 their various iterations.

11 A. Again these appear to be all Union Carbide
12 business documents with the proviso that there are
13 some reprints of public articles.

14 Q. I would like to hand you Exhibit No. 5017.

15 A. Again, the first page of Exhibit 5017 has
16 extensive writing marginalia which is unattributed,
17 the letterhead Calidria Asbestos Union Carbide. The
18 basic document certainly is a Union Carbide document.
19 The attachment appears to be again a Federal Registry
20 or some sort of government publication, and as far as
21 the attachment to the original I can't say whether
22 that's connected or not.

23 Q. Okay. Sir, can you identify the handwriting
24 that's in the marginalia on 5017?

25 A. No, I cannot. It is -- I was trying to find the

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1 date or time frame again. It appears to be a
2 relatively old document as far as certainly 17 years
3 old plus, and, no, that's -- I have no knowledge of
4 that handwriting at all.

5 Q. Okay. I would like to hand you 5012, which is a
6 different version of the Asbestos Toxicology Report
7 and just ask you if you can identify that document?

8 A. Again, it does appear to be a slightly longer
9 version again without comparing it word --

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10 Q. Mm-hmm.

11 A. -- for word with the previous version; but,
12 again, based on the Industrial Medicine and
13 Toxicology Department Union Carbide tag line on the
14 final page it appears to be consistent with being a
15 Union Carbide document.

16 Q. And whose name is at the bottom of this document?
17 Is there a -- strike that.

18 This document is simply listed as being -- the
19 tag line being the Industrial Medicine and Toxicology
20 Department of Union Carbide without reference to a
21 specific individual, correct?

22 A. Correct.

23 Q. And for the record this is a four page or three
24 and 1/3 page version of the asbestos toxicology
25 report. I would like to hand you what's been marked

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1 as Plaintiff's 5407.

2 A. Yes, that does appear to be a Union Carbide
3 document.

4 Q. And the format of a -- pardon me, this appears to
5 be a business record of Union Carbide?

6 A. Yes.

7 THE VIDEOGRAPHER: Off the record at
8 approximately 6:52 p.m.

9 (A break was taken due to a lost connection.)

10 THE VIDEOGRAPHER: Back on the record 7:11
11 p.m.

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12 MR. GLASSER: Okay. Just want to put on
13 the record that Greg Bevel of Bailey Crowe has been
14 dropped off the call either -- I guess there was a
15 disconnect. We attempted to make a call to his
16 office and we are -- we were unable to reach him.

17 MS. NICOL: This is Farah. The only thing
18 else I would add is we're unclear, he may have
19 voluntarily dropped off the call sometime in the last
20 several hours. We just don't know if he was on at
21 the time we got disconnected or not.

22 MR. GLASSER: Yeah. Okay.

23 MS. HUART: Okay.

24 Q. Mr. DeBor, I would like to hand you Plaintiffs'
25 Exhibit 5049.

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1 A. Yes, I am familiar with that document, and that
2 is a Union Carbide document.

3 Q. Thank you. Okay. I would like to hand you
4 Plaintiffs' Exhibit 5169.

5 A. Yes, that document is also a Union Carbide
6 document and I am familiar with that document.

7 Q. Okay. I would like to hand you 5500.

8 A. Again, this is a call report dated 11-6-74 by EJ
9 Kleber, and the customer is U.S. Gypsum in South
10 Gate, California, as I indicated dated '74.

11 MS. NICOL: I'm sorry, what number is that
12 again, please.

13 MS. HUART: 5500.

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14 MS. NICOL: Oh, five five.
15 Q. Does this -- I think you indicated this appears
16 to be a report of call. Is this a business record of
17 Union Carbide?
18 A. Yes.
19 Q. Thank you. 5327, can you tell me if this is a
20 business record of Union Carbide? And unless you
21 tell me otherwise I will assume it is what it appears
22 to be.
23 A. Again, this is a partial document, just one page,
24 it has continued at the bottom. It is dated 1976 and
25 references U.S. Gypsum, but a partial document, and

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1 that one page is a Union Carbide document.

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2 MS. NICOL: Just for clarification of the
3 record I think part of your question also told him
4 that you would assume unless he told you otherwise
5 that the document is what it says, and just to repeat
6 what we have said all along he can't obviously
7 testify as to the accuracy or veracity of the
8 contents of any of these documents because he has no
9 personal knowledge. He can certainly tell you, as he
10 has all along, whether or not they are records
11 maintained in Union Carbide's normal course of
12 business.

13 Q. Well, where would you go to find the remainder of
14 this document that appears to be missing, and by this
15 document I am referring, sorry, to 5327?

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16 MS. NICOL: Calls for speculation because
17 this document was produced by Plaintiffs.
18 A. Let me see the document again, please. Again, I
19 have no direct recollection of this document;
20 therefore, I would go to the asbestos repository.
21 MS. HUART: Okay. I would like to make a
22 request on the record that a full and complete copy
23 of 5327 be produced.
24 Q. With respect to 5497 can you tell me whether this
25 is a report of call -- excuse me, whether it appears

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1 to be a report of call and whether it is a business
2 record of Union Carbide?
3 A. Yes, again, this is a calidria report of call
4 dated 4-17-74, and it is TP Norris and J. Rittenberg,
5 R-I-T-T-E-N-B-E-R-G, the customer is U.S. Gypsum in
6 South Gate, California, and again I have seen many
7 documents similar to this.
8 Q. And you have seen the similar documents in the
9 business records of Union Carbide; is that correct?
10 MS. NICOL: Vague and ambiguous, overbroad.
11 Q. Where have you seen these similar documents, sir?
12 A. Again, as I indicated earlier --
13 MS. NICOL: Vague.
14 A. I'm sorry. As I indicated earlier I was provided
15 numerous copies of sales material regarding sales to
16 the five companies at issue here. That did include
17 material that was beyond the scope, and I saw many,

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18 many call reports just in the review in the last week
19 specifically. I have seen many of course in the
20 course of my 26 years with Union Carbide.

21 Q. I would like to hand you what's been marked 5620.

22 A. Again, this appears to be a call report dated
23 March 3rd, the call -- I'm sorry, the call was on
24 March 3rd, 1977, the date of the report is March 7th,
25 1977, it is authored by -- presumably authored by WD

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1 Massey, and it is a call on customer National Gypsum
2 in Buffalo, New York, and it does appear to be a
3 Union Carbide document.

4 MS. NICOL: I am not sure if we gave the
5 date, the date of the report is March 7, 1977.

6 THE DEPONENT: The date of the report March
7 7, 1977, correct.

8 Q. I would like to hand you 5515.

9 MS. NICOL: I'm sorry, we can't hear you,
10 counsel, could you please speak up.

11 MS. HUART: I'm sorry, yes, my voice is
12 starting to go. 5515.

13 MS. KING: Thank you.

14 A. Again, this is a call -- again a call report
15 dated 4-28-75 authored by Harrison Rhodes, the
16 customer is National Gypsum, and this is a Union
17 Carbide document.

18 Q. Thank you. 5514?

19 A. Again a call report by Harrison Rhodes dated

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20 4-16-75 to National Gypsum, Buffalo, New York.
21 Q. Is that a Union Carbide business record, too?
22 A. Yes, it is.
23 Q. Okay. How about 5513?
24 A. Again a report of call dated -- actually the date
25 is difficult to read, 7-9-76 as a guess. It is a

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1 call to National Gypsum Company in Westwego,
2 Louisiana. That does appear to be a Union Carbide
3 document.
4 Q. I would like to hand you 5253.
5 A. Yes, this is a relatively thick exhibit, and it
6 does appear to be a Union Carbide document.
7 Q. I would like to hand you 5102.
8 A. This does appear to be a Union Carbide document.
9 Q. Thank you. I would like to hand you 5271.
10 A. Yes, this does appear to be a Union Carbide
11 document.
12 Q. 5272, thank you.
13 A. Yes, that does appear to be a Union Carbide
14 document.
15 Q. 5097?
16 A. As does this document.
17 Q. Thank you. 5501?
18 A. Yes, this document is -- appears to be a Union
19 Carbide document.
20 Q. 5392?
21 A. Yeah, and this document is unattributed in any

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22 way as far as author and date though the title was
23 1977 Customer Application List. Certainly the
24 products referenced on the left-hand side are Union
25 Carbide products or designated as Union Carbide

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1 products, and again without greater specificity I am
2 a little reluctant to indicate that that is a Union
3 Carbide document.

4 Q. would sales records such as you have before you
5 in 5302 be retained by Union Carbide at the asbestos
6 repository or would they be somewhere else?

7 MS. NICOL: Calls for speculation.

8 MS. KING: Overbroad.

9 A. Again, if this is a Union Carbide document I
10 would strongly suspect that that would be in the
11 repository in New York.

12 Q. Do you recall seeing customer application lists
13 for any years other than 1977 in the documents that
14 you reviewed at Union Carbide?

15 A. what did you mean by customer applications lists?

16 Q. well, do you recall seeing documents similar to
17 5392 similar in format or similar in content?

18 MS. NICOL: Vague, overbroad.

19 A. I can't say as far as format. Yes, I have
20 certainly seen documents that indicate customers and
21 the type of application that they would be
22 purchasing.

23 MS. HUART: And do those documents -- strike

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24 that. I would like to make a request on the record
25 that those be produced. I would like --

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1 MS. NICOL: Same response.

2 Q. I would like you to take a look at 5503, please.
3 And can you tell me whether that is a two page
4 version of the earlier document that had continued on
5 the bottom where you -- pardon me, where your
6 testimony was that it was incomplete, is that then a
7 complete version of --

8 A. Yes, I believe that it is.

9 Q. -- the memo which is -- I don't recall.

10 MR. GLASSER: 5327.

11 Q. 5327. So 5503 is a complete version of 5327.
12 Can you -- can you testify as to whether 5503 is a
13 business record?

14 A. Yes, I believe that it is.

15 Q. Thank you. I would like to hand you Plaintiff's
16 5495. I hope I am not handing you that again. Have
17 you seen that one yet? I have got my piles mixed up,
18 I don't --

19 A. I don't believe so.

20 Q. Okay.

21 A. Again this is a call report dated 9-7-71 by TP
22 Norris to United States Gypsum, and, yes, I believe
23 that it is a Union Carbide document.

24 Q. I would like to also hand you Plaintiff's 5430.

25 A. Again, this appears to be a Union Carbide

1 document.

2 Q. Thank you. I would like to hand you Plaintiffs'
3 Exhibit 5452.

4 A. Yes, this appears to be a Union Carbide document.

5 Q. In that connection can you -- is there any way
6 that you can identify where these airborne dust
7 counts were performed since this document appears to
8 be redacted with respect to the location where those
9 dust counts were performed?

10 First of all, sir, can you -- do you agree with
11 me that the name of the company has been redacted out
12 in both the first and the second pages?

13 MS. NICOL: The document speaks for itself,
14 calls for speculation.

15 A. And that actually I am going to say no I can't
16 tell that it is redacted here, and again the document
17 is what the document is.

18 MS. HUART: Okay. I would like to make a
19 request on the record for a complete unredacted copy
20 of 5452.

21 MS. NICOL: Same response, especially since
22 this is Plaintiffs' document. I also want to refer
23 you again to the letter agreement at the end of
24 paragraph one, last sentence, Plaintiff understands
25 Mr. DeBor will not have the original documents

1 referred to in Exhibit B of the deposition notice.

2 Q. I would like to hand you Plaintiff's 5349 --
3 strike that.

4 well, let me go ahead and do it. Let me show
5 you Plaintiff's 5349, and can you tell me whether
6 this is a document that is a duplicate of another
7 exhibit number that you have already looked at today?
8 If not you can just go ahead and look at it, testify
9 with respect to whether it is a business record?

10 A. I think we'll stick with the business record.
11 Again in form and fashion this could well be a
12 duplicate, but I think it would be more expeditious
13 to just say that it is a call report and does appear
14 to be a Union Carbide document.

15 Q. I would like to hand you Plaintiffs' Exhibit
16 5541.

17 A. Again this is a call reported by JA walsh
18 W-A-L-S-H dated 2-18-75, the customer is Georgia
19 Pacific. This does appear to be a Union Carbide
20 document.

21 Q. Thank you. Plaintiffs' Exhibit 5072.

22 A. Yes, these do appear to be Union Carbide
23 documents, and again as far as invoices as we have
24 indicated previously there is many, many, many in the
25 asbestos repository.

1 Q. And those invoices, sir, are organized by company
2 name; is that correct?

3 A. By customer, that's correct.

4 Q. Are distributor invoices similarly organized by
5 distributor name?

6 A. I am not aware of that distinction. Again, as we
7 have responded in the interrogatories the total
8 nature of sales to distributors are not always known.
9 There are indications, as you may have seen in some
10 of your own exhibits, that the invoice references
11 that it was a distributor sale.

12 Q. Mm-hmm. I would like to hand you Plaintiffs'
13 Exhibit 5333.

14 A. And, yes, that does appear to be a Union Carbide
15 document. Oh, regarding this there is correspondence
16 attached from Goldbond Building Products, but I would
17 assume that that is part of the repository.

18 Q. Okay. Plaintiff's 5496?

19 A. Again a call report dated 5-8-73 to United States
20 Gypsum by TP Norris, N-O-R-R-I-S.

21 MS. NICOL: Mr. DeBor, what's the date on
22 that?

23 THE DEPONENT: I believe it is either 5-8
24 or 6-8-1973.

25 MS. NICOL: Thank you.

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1 THE DEPONENT: It is somewhat obliterated.

2 Q. I would like to hand you a --
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3 MS. NICOL: Have we gotten a further update
4 or is it -- the facility now going to close at eight
5 p.m. eastern time?

6 MS. HUART: I haven't obtained --

7 MS. NICOL: I assume that's correct still?

8 MS. HUART: I have not obtained any further
9 update, I am not aware of one.

10 MS. NICOL: Okay. Well, we're about 15
11 minutes away from that, so once again I would urge
12 counsel to complete the questioning because there
13 will be no further deposition. We have gone for nine
14 hours today of Mr. DeBor, and the record will speak
15 for itself if Plaintiff has not been able in those
16 eight hours, taking out breaks, to get everything
17 they need to oppose the summary judgment.

18 MS. HUART: I would like to hand you
19 Plaintiffs' exhibit -- I'm sorry, one second. Before
20 I hand you Plaintiffs' exhibit as we have stated
21 repeatedly this deposition continues from day to day
22 until completed. We are not completed now and it is
23 quarter to eight, we will not be completed, and we
24 could have avoided all of this if counsel for Union
25 Carbide had simply responded to our requests in

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1 numerous cases to -- to agree with us and work with
2 us toward getting a records custodian available to
3 authenticate records or to do it by business record
4 affidavit, which my request went out back in

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5 February, and here we are, you know, trying to do
6 this and get it done before the motion for summary
7 judgment. I mean I -- it is -- this was completely
8 avoidable so --

9 MS. NICOL: Well, it is clear you are
10 citing Texas litigation of which this case has
11 nothing to do with, and we have worked towards
12 agreement and reached an agreement on this case, and
13 there has been eight hours of testimony -- or there
14 will be by the time we finish eight hours of
15 testimony barely touching on any topics with regards
16 to the summary judgment. I think the court -- should
17 you wish to pursue trying to take a further
18 deposition of Mr. DeBor on these categories in the
19 Brauch case the court will be very interested to see
20 the transcript and see that if you truly did have
21 questions for your summary judgment and the file
22 opposition by this Friday it would have behooved
23 counsel to ask somewhere along the third, fourth,
24 fifth or sixth hour of this deposition.

25 MS. HUART: We are going to continue with

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1 this deposition and we're going to stay until I guess
2 we can't stay in this room and then we will take up
3 the remaining matters in the appropriate tribunals
4 including but not limited to California.
5 Q. I would like to hand you 5047.

6 MR. GLASSER: I would like to suggest we --
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7 we quit at eight.

8 MS. HUART: Well --

9 MR. GLASSER: You know, whether --

10 MS. HUART: I don't want to have a mis-
11 understanding about what, quote, quit means, closed
12 quote.

13 MR. GLASSER: Well, I -- I understand that
14 you are going to reserve your rights to say that it
15 should continue, and we're going to reserve our
16 rights to say that it won't.

17 MS. HUART: It shouldn't, I understand.

18 MR. GLASSER: But I would like to stop
19 tonight at eight.

20 MS. HUART: I can accommodate that.

21 MS. NICOL: Well, we have all had the
22 understanding at least hours ago that we were going
23 to stop at 5:30, so the fact that Plaintiffs' counsel
24 got until 8:00 was an additional two and a half hours
25 to hopefully close the -- close the questions out

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1 that she needed for her opposition, so to the extent
2 that she needs beyond 8:00 she will need to take it
3 up with the court.

4 MS. HUART: And furthermore we have
5 additional testimony that we intend to seek from this
6 witness that is absolutely related to category three
7 which is the extent, and there has -- there has been
8 very little testimony on the record.

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9 We are having to authenticate documents one by
10 one as a result of the inability of counsel to simply
11 work with us and get a deposition and get these --
12 get these records authenticated ahead of time, so
13 having to go through them one by one -- and I am not
14 finished. Having to go through them one by one is --
15 rests on your shoulders, not ours, and that's what
16 we're doing because that's the only choice we have at
17 this point. That is what is taking so long. Now --

18 MS. NICOL: Well, what --

19 MS. HUART: There is still -- there is
20 still additional testimony that I intend to elicit
21 from this witness that is absolutely covered under
22 category three. I have not had an opportunity to do
23 this and I will have an opportunity to do so.

24 Q. Now, sir, have you had a chance to look at 5047?

25 MS. NICOL: If you would like me to wait

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1 until you are done maybe you would afford me the
2 courtesy not to run right into a question when you
3 know I have a response to make on the record in that
4 regard.

5 You have gone through pages and pages and pages
6 of documents less than 10 of which deal with the time
7 period in question that was the designated and agreed
8 to time frame for the scope of this deposition. As I
9 said to you and Mr. Armitage nearly five hours ago
10 should Plaintiffs choose to choose the course of

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11 delaying out this deposition purposefully by asking
12 about documents post September '68 and not asking
13 about questions that they felt were vital for
14 opposition to the summary judgment they did so at
15 their peril.

16 So the fact that you have chosen to spend all
17 this time authenticating documents post September '68
18 beyond the scope of our agreement and the fact that I
19 allowed you to do that I made clear was with peril
20 for Plaintiffs, that they would not get to ask the
21 other questions if they couldn't somehow do it today
22 and ask those questions first; but of course we
23 purposefully asked questions about documents all in
24 the 70s and 80s having nothing to do with the scope
25 of this deposition and the time period involved just

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1 so we could come to this point after eight hours of
2 testimony later and say gee I didn't get to ask my
3 questions regarding the summary judgment. You should
4 have asked those questions right at the beginning.

5 Q. Have you had an opportunity to review 5047, sir?

6 A. No.

7 Q. I will try to alert you next time there is going
8 to be a lengthy speech so perhaps you could utilize
9 the time to review the documents.

10 A. This document on the first page does appear to be
11 Union Carbide Belgium correspondence from Thomas J.
12 Hall. There is in the handwriting in marginalia I

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13 cannot interpret the initials on that. The sticker
14 does indicate during Dernehl deposition in 1984. The
15 attachment is a printed four or five lines that the
16 printing is different, and I can't see whether the
17 old Bates stamp is sequential. So, again, the first
18 page certainly is a Union Carbide document with notes
19 about the marginalia, and the second page I can't
20 tell you.

21 Q. Do you recognize whose handwriting --

22 A. No, I do not.

23 Q. -- is the marginalia?

24 A. No, I do not.

25 Q. I would like to hand you Exhibit 5322 which I am

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1 sure -- perhaps you can tell me have you seen that
2 document?

3 A. Yes, I have.

4 Q. Frequently? Well, strike that. You have seen
5 that document before?

6 A. Yes, I have.

7 Q. Is this a business record of Union Carbide?

8 A. I believe that it is, yes.

9 Q. I would like to hand you Exhibit 51 -- pardon me,
10 yes, 5125.

11 A. This is a multi call report, call the numerous
12 customers apparently. Again, the document speaks for
13 itself. There is -- in the usual place there is not
14 a customer. It is dated 8-11-75 but -- by TP Norris,

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15 and again references various customers.

16 Q. Okay. Thank you. Well, I have a stack of
17 documents that I still need to have authenticated,
18 and I am not sure it looks like I have time for one
19 more. It is hard to pick which one should be the --
20 the one remaining one for --

21 THE VIDEOGRAPHER: It won't be too long
22 before we run out of videotape I might add.

23 Q. Let me hand you 5266, I guess it doesn't matter.

24 A. Again this document is unattributed. It does
25 list Union Carbide products or calidria products, but

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1 as far as determining the author whether this was in
2 fact a Union Carbide document I cannot tell.

3 Q. Again, is this something that you would be able
4 to tell by going to the asbestos repository to see --

5 MS. NICOL: Calls for speculation.

6 Q. -- whether there is a document similar to this or
7 documents similar to these in the repository?

8 A. Again I think that that presumes that the
9 document is there. If the document is not there it
10 would be difficult to --

11 Q. Mm-hmm.

12 A. -- define the negative.

13 MS. HUART: Okay. Well, I would like to
14 make a request on the record that that be done.
15 That's with respect to 5266.

16 MS. NICOL: Same response to the request.
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17 MS. HUART: We have -- pardon me, sorry.
18 It is now 8:00 and we are, as I have stated before,
19 reserving the right to resume this deposition to
20 finish our questioning concerning the categories in
21 which this witness is being made available; and I
22 understand that that's subject to dispute, but that's
23 our position. I think we already know your position.
24 And thank you, Mr. DeBor, for your cooperation.
25 MS. NICOL: Yes, thank you, Mr. DeBor,

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1 appreciate your time and patience over the last nine
2 hours.

3 MR. GLASSER: Thanks to everybody actually.
4 I think that this was a difficult situation and
5 actually I think everybody was pretty good.

6 THE VIDEOGRAPHER: That's the end of the
7 deposition approximately 7:57 p.m.

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1 I have carefully read the foregoing deposition
2 and the answers made by me are true.

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EDWARD W. DeBor

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STATE OF VERMONT
COUNTY OF

12 At in said county this
13 day of , 20 personally appeared the
14 above-named EDWARD W. DeBor, and made oath that the
15 foregoing answers, subscribed by him, are true.

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Before Me,

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Notary Public

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C E R T I F I C A T E

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TAMMY L. MARTELL, RPR

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