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NO. 88-C-0615

SHERMAN A. SEARLS, JR.] IN THE DISTRICT COURT OF
VS.] BRAZORIA COUNTY, TEXAS
OWENS-CORNING FIBERGLAS]
CORPORATION, ET AL] 23RD JUDICIAL DISTRICT

NO. 87-C-1934

TOMMIE L. HEATHMAN, ET UX] IN THE DISTRICT COURT OF
VS.] BRAZORIA COUNTY, TEXAS
OWENS-CORNING FIBERGLAS]
CORPORATION, ET AL] 23RD JUDICIAL DISTRICT

IN RE: CONSOLIDATED NO. 87-37068

RICHARD B. JACKSON, ET UX] IN THE DISTRICT COURT OF
VS.] HARRIS COUNTY, T E X A S
OWENS-CORNING FIBERGLAS]
CORPORATION, ET AL] 165th JUDICIAL DISTRICT

NO. 90-20663

GLADYS LORETTA STEELE, ET AL.] IN THE DISTRICT COURT OF
VS.] HARRIS COUNTY, T E X A S
FISCHBACH & MOORE, INC.,]
ET AL.] 55TH JUDICIAL DISTRICT

NO. 89-053547

HAZEL WILKENING, ET AL.] IN THE DISTRICT COURT OF
VS.] HARRIS COUNTY, T E X A S
FORD, BACON AND DAVIS]
CONSTRUCTION CORP., ET AL.] 334TH JUDICIAL DISTRICT

NO. 91-002902

LORETTA TURNER] IN THE DISTRICT COURT OF
VS.] HARRIS COUNTY, T E X A S
ARMSTRONG WORLD INDUSTRIES,]
INC., ET AL.] 189TH JUDICIAL DISTRICT

VIDEOTAPE DEPOSITION OF

HARVEY G. LEWIS

May 19, 1992

Between the hours of 10:00 a.m. and 2:30 p.m.

800 Commerce

Houston, Texas

Wanda Kelley, Texas CSR No. 2007

Nell McCallum & Associates

2900 Smith, Suite 104

Houston, Texas 77006 (713) 523-3767

COPY

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Also present: Ray Blackstone - Legal Media

1 [EXHIBIT NO. 1 MARKED]

2 VIDEOGRAPHER: Today is May 19th, 1992. The
3 time is 10:05 a.m. On the record.

4
5 *start*

6 HARVEY G. LEWIS,

7 being duly sworn, testified as follows:

8
9 EXAMINATION BY

10 MR. MADEKSHO:

11 Q Would you state your full name for the
12 record, please, sir?

13 A Harvey G. Lewis.

14 Q Mr. Lewis, how are you doing this morning so
15 far?

16 A Fine. Thank you.

17 Q Mr. Lewis, in regard to today's proceedings,
18 we have noticed the deposition of Commercial Union
19 Insurance Company concerning certain areas of inquiry.
20 And you understand that, sir?

21 A I do.

22 Q And you have been designated by Commercial
23 Union to make an appearance for that testimony here this
24 morning?

25 A Yes, sir.

1 Q Mr. Lewis, if we could back up for just a
2 second and if you would please give us the benefit of
3 your educational background, we would appreciate that.

4 MR. MARTINSON: Mr. Madeksho, if I might
5 interrupt just for a second. We were noticed in Cause
6 No. 88-C-0615, which is the only case we're a party to.
7 We're not taking a position regarding these other
8 depositions, but I wanted you to know that's the only
9 case in which we're a party and that we know that we're
10 here.

11 MR. MADEKSHO: We understand that.

12 A I'm a 1966 graduate of Northeastern
13 University in Boston, Massachusetts; a 1969 graduate of
14 Suffolk University Law School in Boston, Massachusetts,
15 where I received a J.D. degree.

16 Q And in 1969, after you received your law
17 degree, did you take the bar exam there in the state of
18 Massachusetts?

19 A I did, sir.

20 Q Are you a practicing lawyer at this time?

21 A I am admitted before the Bar of the
22 Commonwealth of Massachusetts and the United States
23 District Court for the First Circuit.

24 Q Are you admitted to practice in the courts of
25 any other state besides the state of Massachusetts?

1 A No, sir, I am not.

2 Q In 1969, upon receiving your law degree --
3 did you receive your license in the same year?

4 A 1970.

5 Q 1970. Upon receiving your law degree and
6 your license in 1970, could you tell us what your work
7 history has been since that time?

8 A Prior to being admitted to the bar, I was an
9 employee of the Massachusetts Defenders Committee and
10 continued on after being admitted into the bar. In
11 1970, I left the Massachusetts Defenders Committee and
12 went on active duty in the United States Army until the
13 middle of January 1972, when I was relieved of military
14 service.

15 I then became an associate in a small defense
16 firm in Boston, Massachusetts. The name of the firm was
17 Galvin, Smith & Nordlinger. I practiced with that firm
18 until sometime in 1976. I left that firm and for a
19 period of approximately three years practiced as a sole
20 practitioner in Boston and then became associated with
21 Commercial Union Insurance Company in June of 1979.

22 Q And since June of 1979, in your employment
23 with Commercial Union Insurance Company, could you give
24 us the various positions and duties and responsibilities
25 you have held up to the present time?

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1 A In June of 1979, upon my first employment, I
2 was a Fidelity Surety claim attorney in the home office
3 claim department until approximately 1981, when I
4 transferred to the claims counsel's office of the home
5 office claims department.

6 In 1984, I officially transferred into the
7 environmental issues area and remained in environmental
8 issues in one capacity or another until the present
9 time.

10 Q And when is the first time that you became
11 involved with the asbestos litigation on behalf of
12 Commercial Union?

13 A Approximately the spring and summer of 1983,
14 I was asked to participate with other personnel at
15 Commercial Union involved in a document production that
16 arose out of the California coordinated asbestos
17 proceedings.

18 Q Okay. And we're talking about the California
19 insurance litigation between Commercial Union and a
20 number of asbestos manufacturers and then also some
21 other insurance companies besides Commercial Union?

22 A That's correct, sir.

23 Q And do you have a specific title with
24 Commercial Union at this time?

25 A I do.

1 Q And what is that title, sir?

2 A I am vice president of specialty litigation.

3 Q And as vice president of specialty litigation
4 for Commercial Union Insurance Company, what do you do?

5 A My responsibility is the management and
6 supervision of three areas which primarily involve the
7 handling of environmental claim matters and all
8 litigation involving environmental claims.

9 Q So basically your sole expertise and your
10 sole duties and responsibilities surround the
11 environmental arena?

12 A That is correct.

13 Q And in regard to the environmental arena,
14 as the -- in your position that you presently hold,
15 approximately how much of your time do you spend in the
16 asbestos litigation?

17 A By virtue of my management responsibilities
18 and administrative responsibilities, only a small
19 portion of my current time is involved with asbestos
20 litigation.

21 Q Could you give us an idea in regard to a
22 percentage of that time or how many days a week or a
23 month or anything of that nature?

24 A My sense would be approximately 10 percent
25 of my time is involved in direct involvement with the

1 negotiations that are ongoing, I can't state.

2 Q Okay. We'll get to some of that information
3 in just a little bit that I believe that you had covered
4 and responded to concerning the answers to
5 interrogatories that Commercial Union had filed in this
6 case?

7 A Yes, sir.

8 Q Have you had an opportunity, Mr. Lewis, to
9 review the answers to interrogatories that Commercial
10 Union had filed in these cases?

11 A I did.

12 Q Could you tell us what else that you have had
13 the opportunity to review preparatory for your testimony
14 here this morning?

15 A I reviewed the deposition notice and the
16 items that were to be covered. I reviewed the answers
17 to interrogatories, supplemental answers to
18 interrogatories, briefly reviewed the testimony of
19 Arthur Lynn with reference to the deposition notice. I
20 believe I reviewed some of the responses to notices to
21 produce involved in this litigation as well.

22 Q And that's all that you have reviewed that
23 you can recall at this time?

24 A Yes, sir, that's correct.

25 Q In regard to area of inquiry number one to

1 today's notice of deposition, Mr. Lewis, we had
2 requested that Commercial Union produce someone to
3 discuss the corporate history of Commercial Union. And
4 could you briefly tell us as to when Commercial Union
5 was first -- when it first came into existence?

6 A Perhaps I can explain it to you in this
7 fashion, sir. In approximately 1968 or '69, Commercial
8 Union and the Employers group of insurance companies,
9 which are both United States groups of companies, merged
10 and ultimately the end result was the Commercial Union
11 Insurance Companies of today.

12 Prior to that time the Employers group of
13 insurance companies went back into the early 1900s with
14 Employers Liability Assurance Corporation Limited. The
15 United States branch of that operation was operating in
16 this country from the early 1900s on.

17 During the 1920s, Thirties and Forties, there
18 were other companies as part of the Employers group,
19 including American Employers Insurance Company,
20 Employers Fire Insurance Company.

21 In 1957, there was incorporated the Employers
22 Surplus Lines Insurance Company, all part of the
23 Employers group. The Northern Assurance Company of
24 America.

25 And then, as I said, in 1968 or 1969, there

1 was a merger with the Commercial Union group of
2 companies. I have much less information as to the
3 origins of Commercial Union in the United States than I
4 do with the Employers group. Suffice it to say that as
5 of 1968 or '69, during the merger, Commercial Union was
6 the end result of that merger along with all the
7 subsidiary companies and that remains today.

8 Q At the time that the merger occurred between ^{27,6}
9 Commercial Union and a number of these companies that
10 you had just mentioned from the Employers group, did
11 Commercial Union assume the assets and the liabilities
12 of those insurance companies?

13 A It did, sir.

14 Q And Commercial Union, their origination, was
15 it in England?

16 A There is a Commercial Union in England which
17 is the parent company. There was a United States branch
18 of Commercial Union which was the branch that ultimately
19 became domesticated as a United States based operation
20 and ultimately merged with the Employers group in the
21 late Sixties.

22 Q In regard to Commercial Union's origination
23 in England, was that sometime in the 1800s?

24 A I couldn't tell you the exact date, sir.

25 Q Are you familiar with an individual by the

1 A Yes, sir.

2 Q Can you think of any other companies at this
3 time other than those five that we just went over?

4 A No, sir. Those are the five that I'm
5 familiar with.

6 MR. MADEKSHO: Mr. Lewis, another area of
7 inquiry for today's testimony surrounded the answers to
8 interrogatories that Commercial Union had filed in these
9 cases.

10 And let me ask this to be marked as
11 plaintiffs' next in order.

12 [EXHIBIT NO. 3 MARKED]

13 MR. MADEKSHO:

14 Q Mr. Lewis, let me hand you what has been
15 marked as Exhibit 3 to your testimony here this morning,
16 sir, and see if that is the same set of interrogatories
17 that you have previously answered and previously
18 reviewed prior to today's testimony.

19 A It is, sir.

20 Q That's one of the sets that you reviewed?

21 A That's correct.

22 Q Mr. Lewis, in regard to Interrogatory Nos. 1
23 and 2 and 3, these are the interrogatories that related
24 to Commercial Union's participation as far as having
25 insurance coverage for asbestos products manufacturers

5/21

1 Q Would they also have been an additional named
2 insured under the policies of Corning Glass Works,
3 Corning Glass?

4 A No, sir.

5 Q It was simply limited to PPG?

6 A That's my recollection.

7 Q Now, has Commercial Union Insurance Company
8 ever prepared or made any calculations or come up with
9 any figures in regard to the total amount of defense
10 costs and the total amount that was actually paid to the
11 asbestos victims, say as far as up to the year around
12 1985?

13 MR. MARTINSON: Are you asking that question
14 as to all insureds, all circumstances?

15 MR. MADEKSHO: As to all insureds, including
16 the ones we had talked about a little bit earlier:
17 Armstrong World Industries, Armstrong Cork, GAF
18 Corporation, right on down the line.

19 A I can't recall seeing any document that would
20 have a summary such as that.

21 Q Now, could you tell the court and jury as to
22 when Commercial Union either first knew or alleged that
23 there was an industry-wide scheme on the part of
24 Pittsburgh Corning and the other manufacturers of
25 asbestos products to deliberately conceal facts of what

1 the manufacturers actually knew about the risks to the
2 users of the asbestos products in order that the
3 manufacturers could go into courts all over the country
4 and argue a state-of-the-art defense that the
5 manufacturers didn't know of the risks to the users and
6 that's why they didn't put on warning labels? Could you
7 tell us as to when Commercial Union first knew or
8 alleged that?

9 MR. MARTINSON: I'm going to object to the
10 form of the question. It assumes facts that he's not
11 testified to.

12 A I don't recall Commercial Union ever taking
13 that position as you stated.

14 MR. MADEKSHO: Let me hand you and ask to be
15 marked as plaintiffs' next in order.

16 [EXHIBIT NO. 9 MARKED]

17 MR. MADEKSHO:

18 Q This is a portion -- and there again, I have
19 got the entire hearing, transcript from this entire
20 hearing, if you need to refer to it, Mr. Lewis -- but
21 what has been handed to you and marked as plaintiffs'
22 next in order is a portion of the transcript from June
23 24, 1982, in the Federal Court in the Eastern District
24 of Pennsylvania in the case styled Commercial Union
25 Insurance Company v. Pittsburgh Corning, PPG Industries,

C.

1 Corning Glass Works and Travelers Indemnity Company,
2 et cetera.

3 Now, there again, if you would look to the
4 counsel page in regard to who's representing whom at
5 this hearing and in this litigation. Do you see the
6 name James Lewis Griffith?

7 A I do.

8 Q That's the same Mr. Griffith that we had
9 talked about a little bit earlier?

10 A Yes, sir.

11 Q Do you know Mr. Griffith personally?

12 A I do.

13 Q Have you dealt with him on a regular basis
14 over a period of years?

15 A I did.

16 Q Did he represent Commercial Union? Did he
17 have the authority to represent Commercial Union in this
18 litigation?

19 A He did, sir.

20 Q Now, if you would, turn to Mr. Griffith's,
21 Commercial Union's statements, the representative of
22 Commercial Union. See on Page 187?

23 A Yes, sir.

24 Q Do you see where Mr. Griffith was telling the
25 court, the Federal Court in Philadelphia, that: For

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1 years, Johns-Manville, PC and all these manufacturers
2 have been going into courts all over the country
3 standing before the court and arguing a state-of-the-art
4 defense based upon the fact that they did not know that
5 this product was a risk to the individual in the
6 capacity of a third-party user and that's why they
7 didn't put labels on their bags and they didn't put
8 other kinds of warnings? Do you see those statements?

9 A I see statements similar to that. I'm
10 reading them exactly as they appear on the record right
11 now, sir.

12 Q What I just recited, was that accurate?

13 A Yes, sir.

14 Q Do you also see that Mr. Griffith, on behalf
15 of Commercial Union, is alleging that there was in fact
16 on the part of many of these manufacturers a deliberate
17 attempt to conceal the fact that they knew that those
18 third-party users were at risk? Do you see those
19 statements?

20 A I see them, sir.

21 Q And if you would turn over to the two pages
22 over from where you are.

23 MR. MARTINSON: What page is that?

24 MR. MADEKSHO:

25 Q It would be the last page, where Commercial

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1 Union's representative, Mr. Griffith, was telling the
2 court also that there was an industry-wide scheme not to
3 tell the people about what they knew of a risk, not just
4 to their employees, which is what they have been
5 contending, but of what they actually knew to the people
6 who were going to use the product? Do you see those
7 statements?

8 A I see them.

9 Q And isn't it true that these statements were
10 made by Commercial Union's representative in the Federal
11 Court in Philadelphia on June 24, 1982?

12 A That appears to be the case. I do not know
13 what context they were made in from this copy.

14 Q Do you have any doubt in your mind that
15 Commercial Union's representative, Mr. Griffith,
16 Commercial Union's lawyer, made those statements to that
17 Federal Court in 1982?

18 A Sir, I have no doubt that that's what the
19 attorney said, according to this exhibit; but again, I
20 don't know in what context that was said.

21 Q There is no question as to what those words
22 are, though, is there?

23 A No, sir. They are very apparent on the
24 record.

25 Q Do you know that as of 1991 that of course

60,13

1 Commercial Union's representative's statements.

2 MR. MARTINSON: Mr. Madeksho, what do you
3 want the witness to do?

4 MR. MADEKSHO: Basically we need to
5 straighten up the situation concerning as to whether or
6 not I have taken something out of context concerning
7 Commercial Union's representative's statements to the
8 Federal Court in Philadelphia in 1982.

9 MR. MARTINSON: It will not suffice for Mr.
10 Lewis to acknowledge that the statements that you read
11 from the Exhibit No. 9 were correctly read?..

12 MR. MADEKSHO:

13 Q Well, let's go back to Exhibit No. 9 right
14 quick, Mr. Lewis.

15 A Yes, sir.

16 Q Let's get No. 9 before you. There again, I
17 think we had a little bit earlier agreed that Mr.
18 Griffith, the representative of Commercial Union, the
19 lawyer for Commercial Union, had represented to the
20 court that the manufacturers had been going into the
21 courts all over the country standing before the court
22 and arguing a state-of-the-art defense based upon the
23 fact they did not know that this product was a risk to
24 an individual in the capacity of a third-party user and
25 that's why they didn't put labels on their bags and

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1 that's why they didn't put other kinds of warnings. And
2 then he also told the Federal Court that there was in
3 fact on the part of many of the manufacturers a
4 deliberate attempt to conceal the fact that they knew
5 that those third-party users were at risk. Now, aren't
6 those the exact words of Commercial Union's
7 representatives?

8 A Yes, sir. During the argument in this
9 matter, I agree with you, that those are the exact
10 words.

11 Q And there again, in regard to the last page
12 of that exhibit, Mr. Griffith told the Federal Court
13 again that the industry-wide scheme not to tell the
14 people about what they knew of the risk, not just to
15 their employees, which is what they have been
16 contending, but of what they actually knew to the people
17 who were going to use the products. Isn't that exactly
18 what he said to the Federal Court?

19 A It is, sir.

20 Q In 1982?

21 A Yes, sir.

22 Q Thank you.

23 Now, is it also your understanding that
24 Commercial Union was a party to the other action that
25 was filed in the Federal Court in Philadelphia in the

70,22

1 A Yes, sir, I do.

2 Q And is today the first time that you have had
3 an opportunity to review this consented-to protective
4 order concerning the exchange of confidential
5 information?

6 A Yes, sir, it is.

7 Q Now, of course, you are also familiar with
8 the attempts by Commercial Union and Pittsburgh Corning
9 to get an injunction in that same Federal Court in
10 Philadelphia to prevent the production of the 1937
11 Commercial Union engineering manual to the plaintiffs,
12 are you not?

13 A Yes, sir.

14 Q As a matter of fact, I believe that you had
15 executed an affidavit for that purpose. Is that
16 correct?

17 A Yes, sir.

18 MR. MADEKSHO: Let me ask that this be marked
19 as plaintiffs' next in order.

20 [EXHIBIT NO. 15 MARKED]

21 MR. MADEKSHO:

22 Q Mr. Lewis, I would ask you to look at Exhibit
23 15 to your testimony and see if you recognize that
24 affidavit that you signed on February 28, 1991. Do you
25 recognize that?

1 A Yes, I do, sir.

2 Q Now, in regard to the purpose for executing
3 this affidavit was to get the Federal Court there in
4 Philadelphia to issue an injunction prohibiting the
5 production of Commercial Union's 1937 engineering
6 manual. Is that correct?

7 A Yes, sir.

8 Q And, of course, the reason that Commercial 74,22
9 Union did not want that 1937 engineering manual produced
10 is because it felt like it could be damaging evidence in
11 cases against Commercial Union's insureds in the
12 asbestos litigation. Correct?

13 A No, sir.

14 Q Let's take a look at your affidavit. Let's
15 look at Item No. 3. Item No. 3 that you filed in that
16 affidavit is -- and see if this is a correct recitation
17 of your affidavit that you executed: The discovery
18 sought -- now, the discovery sought, of course, we know
19 that's the 1937 engineering manual. Correct?

20 A I can't recall if that was the only thing
21 that was sought through Pittsburgh Corning. I'm not --
22 I can't recall that.

23 MR. MADEKSHO: Okay. Let's do this then.
24 Let's back up just a hair then. Let me ask that this be
25 marked as plaintiffs' next in order..

1 Commercial Union had in 1937 concerning the hazards of
2 exposure to asbestos. Correct?

3 A That was not my reason for approving counsel
4 to seek the injunction in this case.

5 Q Is there any doubt in your mind that you had
6 authorized the efforts to seek the permanent injunction
7 in the Federal Court there in Philadelphia to prevent
8 the plaintiffs from getting their hands on the 1937
9 engineering manual?

10 A To the extent that that was the subject of a
11 protective order entered by a Federal Court judge, I
12 believe in 1981 or 1982, to which I was not a party and
13 privy, based upon the fact that that protective order
14 had been entered by the parties at the time, I was
15 reluctant to do anything that would be in violation of
16 that protective order.

17 Q In other words, you knew that the Commercial
18 Union 1937 engineering manual had been placed under seal
19 and made part of a protective order in that case in the
20 Federal Court in Philadelphia. Correct?

21 A Yes, sir, I was aware of that fact.

22 Q And then when you found out or Commercial
23 Union found out that the plaintiffs wanted to get the
24 information contained in that 1937 engineering manual,
25 Commercial Union, along with Pittsburgh Corning, went to

1 the Federal Court to see about getting an injunction to
2 keep the plaintiffs from getting it. Correct?

3 A That's my understanding.

4 Q Now, of course, the 1937 engineering manual,
5 that clearly demonstrated that an asbestos hazard was to
6 be looked for wherever asbestos dust is created.
7 Correct?

8 A I recall reading words similar to that in the
9 manual, but I can't -- I'm not sure if you are quoting
10 it correctly. If you have a copy, I'll be more than
11 happy to verify that that's what it did say, sir.

12 Q Yes, sir. Let's take a look at the answers
13 to interrogatories that you filed in this case. And if
14 you would, Mr. Lewis, turn to Interrogatory No. 14.
15 And, of course, you have a sworn affidavit attached to
16 these answers to the interrogatories on behalf of
17 Commercial Union Insurance Company as the vice president
18 of specialty litigation. Correct?

19 A Yes, sir.

20 Q In regard to Interrogatory No. 14, the
21 question is: Is it true that this defendant, being
22 Commercial Union Insurance Company, knew by no later
23 than 1937 that a potential asbestosis hazard was to be
24 looked for wherever asbestos dust was created?

25 Correct? And tell us what your answer was.



1 A My answer was yes, sir.

2 Q Now, of course, that 1937 engineering manual
3 told us a little bit more than just simply that
4 asbestos -- that an asbestos hazard could be looked for
5 wherever asbestos dust was created, didn't it?

6 A Yes, sir.

7 Q As a matter of fact, it told us that anytime
8 that there was a visible concentration of dust, it was a
9 hazardous situation and that if you couldn't see the
10 dust that you needed to take dust counts. Correct?

11 A I can't recall that specifically being
12 stated.

13 MR. MADEKSHO: Let me hand you a copy of that
14 1937 engineering manual, those portions of it. And I've
15 got the entire manual here for you, Mr. Lewis, if you
16 need it. And ask that this be marked as plaintiffs'
17 next in order.

18 [EXHIBIT NO. 17 MARKED]

19 MR. MADEKSHO:

20 Q Mr. Lewis, do you recognize that as the 1937
21 engineering manual that we've been discussing?

22 A I recognize this as a portion of it, sir,
23 yes.

24 Q Yes, sir. And like I said, I've got the
25 entire thing here, if you need it. But the portions

1 that we're concerned about relate to the occupational
2 disease hazards in 1937 and under the heading of
3 Asbestosis. Do you see that?

4 A I do, sir.

5 Q And, of course, we've already discussed a
6 little bit earlier about the potential asbestosis hazard
7 is to be looked for wherever asbestos dust is created.
8 And, of course, under that same section it mentions
9 various industries, including brake lining and gaskets
10 and insulation. Correct?

11 A Yes, sir.

12 Q And also, in regard to the portion -- if you
13 would turn over to the next to the last page where it
14 talks about dust control. Are you under that section?

15 A I am, sir.

16 Q And at the bottom of the left-hand column
17 there, as a matter of fact, where it starts at, "A dust
18 cloud may be composed," do you see the start of that
19 sentence?

20 A Yes, sir.

21 Q Where it states that, "A dust cloud may be
22 composed of billions of particles of varying sizes and
23 shapes." Correct?

24 A Yes, sir.

25 Q And then at the bottom of that page on the

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1 right-hand side, do you see that statement by Commercial
2 Union in 1937 that, "When dust in the area is visible,
3 we know a hazard exists, when not visible, dust counts
4 should be employed." Correct?

5 A Yes, sir.

6 Q And this was known in 1937 by Commercial
7 Union. Correct?

8 A This was the manual that the loss prevention
9 engineering department utilized in workers' compensation
10 type loss reports.

11 Q And that information was known in 1937.
12 Correct?

13 A Yes, it was.

14 MR. MADEKSHO: Did you want to take a quick
15 break, or do you want to keep marching on?

16 MR. MARTINSON: We're going to break at lunch
17 in the next 30 minutes. We might as well go on, unless
18 you wanted to take a break.

19 THE WITNESS: No, I'm fine.

20 MR. MADEKSHO:

21 Q In regard to discussing some of the -- pardon
22 me. Strike that.

23 Now, another portion of these interrogatories
24 related to the meetings of the American Insurance
25 Association back in 1976. Is that correct?

1 A I believe so.

2 MR. MADEKSHO: Do you remember that?

3 Let me hand you and ask that this be marked
4 as next in order and ask you to take a look at that.

5 [EXHIBIT NO. 18 MARKED]

6 MR. MADEKSHO:

7 Q Mr. Lewis, you recall in the answers to
8 interrogatories that there were some questions asked of
9 Commercial Union relating to these minutes from these
10 minutes of the American Insurance Association back in
11 1976? Do you remember those interrogatories?

12 A I recall them, sir.

13 Q And if you would turn over to the second page
14 of that exhibit and you will see that that's entitled
15 that Minutes of the Enterprise Liability Discussion
16 Group, November 10, 1976, American Insurance Association
17 in New York City. Right?

18 A Yes, sir.

19 Q And present at this meeting there were
20 representatives from the Commercial Union Insurance
21 Companies. Correct?

22 A That's correct.

23 Q And they had two representatives there?

24 A I believe so.

25 Q And also present were other insurance

1 companies, the Aetna and the Travelers Insurance
2 companies?

3 MR. GEORGE: I'll object to the form of
4 the question to the extent this witness has personal
5 knowledge of who was present and who wasn't present. I
6 don't believe the witness has testified that he knows
7 who was there and who wasn't there.

8 MR. MADEKSHO:

9 Q Does the document reflect, Mr. Lewis, that
10 Travelers Insurance Company had a representative at that
11 meeting of the American Insurance Association in
12 November of 1976?

13 A The document indicates that, sir.

14 Q And if you recall in regard to the
15 interrogatories, we were wanting to find out what
16 Commercial Union's position was concerning the
17 information in these minutes? Do you remember that?

18 A I recall the question in the interrogatories
19 about this.

20 Q As a matter of fact, we had asked Commercial
21 Union if they had agreed or not concerning the
22 information about when the dangers of asbestos were
23 known. Do you recall that?

24 A Yes, sir.

25 Q And if you would, turn over to Page 3 of this

1 particular document, where Commercial Union had two
2 representatives at this 1976 meeting, and you see under
3 the section Asbestosis Medical Program?

4 A I do, sir.

5 Q And do you see there that where it's stated
6 that, "In 1900 medical research linked the mineral
7 asbestos with asbestosis and 1935 brought the first
8 direct linkage of asbestos to cancer"?

9 A I see where it says that.

10 Q And do you have any reason to dispute this
11 information from the American Insurance Association, of
12 which Commercial Union was a member?

13 A I have no reason one way or another.

14 Q Now, also, we had asked Commercial Union
15 about some of the asbestos lawsuits that were filed
16 by -- filed against manufacturers of asbestos products
17 in the 1920s. Do you remember that interrogatory?

18 A Yes, sir, I do.

19 Q And, of course, Johns-Manville was one of the
20 insureds of Commercial Union. Correct?

21 A It was.

22 Q And have you since had the opportunity to go
23 back and see some of the lawsuits that were filed
24 against Johns-Manville in the 1920s and concerning
25 asbestos diseases?

1 A We were unable to locate any that go back to
2 the 1920s. I believe in responses to the discovery we
3 did provide information on a 1949, I believe, workers'
4 comp claim.

5 Q Were you aware that there were asbestos
6 disease claims alleging malignancies in the 1920s
7 against manufacturers of asbestos products?

8 A No, I wasn't.

9 MR. MADEKSHO: Let me ask that -- and see if
10 we can speed this up just a little bit. I'm going to
11 ask that these two be marked consecutively as
12 plaintiffs' next in order, these two exhibits.

13 [EXHIBIT NO. 19 MARKED]

14 [EXHIBIT NO. 20 MARKED]

15 MR. MADEKSHO:

16 Q I believe the first exhibit that you have
17 before you is a lawsuit styled Robert Marshall,
18 Administrator of the Helen Marshall -- of Helen Marshall
19 deceased?

20 A Yes, sir.

21 Q Filed in the New Jersey Supreme Court against
22 Johns-Manville?

23 A Yes, sir.

24 Q Do you see that where it's alleged that Helen
25 Marshall was the employee of the defendant corporation,

1 under Allegation No. 1, and that under Allegation No. 2
2 that the defendant corporation was engaged in the
3 manufacture of asbestos products?

4 A Yes, sir.

5 Q And also, in regard to -- in Allegation No.
6 3, that the defendant employed the intestate, being the
7 deceased Ms. Marshall, in its manufacture of asbestos
8 products and that the said defendant not only knew but
9 should have known that the said asbestos products
10 contained certain dangerous, insidious and harmful
11 agencies composed of asbestos fibers and other particles
12 that were destructive to life and health in the human
13 body?

14 A I see that in Paragraph 3.

15 Q Is this the first time that you have become
16 aware of this particular lawsuit that was filed against
17 Johns-Manville in 1929?

18 A Yes, sir, it is.

19 Q Take a look at the next exhibit, if you
20 would, please. This is a 1929 lawsuit, is it not?

21 A Yes, sir, it's dated 1929.

22 Q And this is a lawsuit that's filed in the
23 United States District Court for the District of New
24 Jersey, styled Anna Pirskowski, P-i-r-s-k-o-w-s-k-i, v.
25 Johns-Manville?

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1 A Yes, sir.

2 Q And in regard to this lawsuit in the 19 -- in
3 1929, do you see that the allegation is made against
4 Johns-Manville that Anna Pirsowski, that she was in the
5 employ of the defendant, under No. 2?

6 A Yes, sir.

7 Q And that defendant was engaged in the
8 manufacture of asbestos, and particles of asbestos and
9 other dangerous articles used in its business of
10 manufacture were inhaled by her, that she became
11 diseased, sick and poisoned, that her body became
12 infected and weakened so as to cause her to suffer
13 permanently with a malignant disease?

14 A That's what it says.

15 Q Is this the first time that it's come to your
16 attention that asbestos lawsuits were filed against
17 manufacturers for malignant diseases in the 1920s?

18 A Yes, sir.

19 Q Now, in regard -- let me back up for just 102,16
20 one second, if I could, please, Mr. Lewis. There was
21 another insured that we perhaps didn't touch on that was
22 on that list, that Mr. Michael Sommerville's Commercial
23 Union claims handling manual concerning asbestos-related
24 diseases. Do you remember that list we had looked at?

25 A Yes, I do.

1 Q Are you familiar with this gentleman?

2 A I have heard the name years ago.

3 Q And if you -- would you notice in the top
4 paragraph where there is a mention of the Borel case?

5 A Yes, sir, in the second sentence.

6 Q Where there is a mention of the Borel case
7 where the manufacturers in the asbestos products are
8 liable inasmuch as they put a dangerous product on the
9 market without adequate warning? Is that correct?

10 A That's what this statement does say.

11 Q And you have had an opportunity to read the
12 Borel decision or memos concerning the Borel decision
13 yourself?

14 A Over the years. I'm not currently familiar
15 with exactly what the holdings were on it.

16 Q Now, you have also seen documents in the
17 files of Commercial Union relating to the state-of-the-
18 art defense, have you not, sir?

19 A I have seen mention in documents of the
20 state-of-the-art defense.

21 Q And, of course, the state-of-the-art defense
22 is that the manufacturers, they just didn't know and it
23 couldn't have been known about the dangers of the
24 asbestos products that they put on the market, and so
25 therefore they had no duty to warn the users and the

1 consumers of those products. Is that in essence what
2 the state-of-the-art defense is?

3 A I guess that could be one interpretation of
4 it.

5 Q In your involvement with the Pittsburgh
6 Corning account, were you aware of Pittsburgh Corning's
7 defense, that they alleged that the state of the medical
8 and scientific knowledge prior to the late 1960s, as it
9 related to the exposure of the asbestos insulation
10 worker to asbestos dust, was such that the medical and
11 scientific community were of the opinion that the
12 exposures to which the asbestos insulation workers was
13 subjected was safe and that the asbestos insulation
14 occupation was a reasonably safe occupation and as a
15 result the manufacturers of asbestos insulation products
16 were charged with no greater knowledge than that of the
17 medical and scientific community and such manufacturers
18 had no reason to reasonably foresee injury to insulators
19 or other workers from application of their insulation
20 products which contained asbestos and therefore had no
21 duty to warn regarding their products prior to such
22 time? Are you familiar generally with that type of
23 defense statements by Pittsburgh Corning?

24 A No, I'm not, sir.

25 Q Are you aware that they are alleging that

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1 defense in this case?

2 MR. MARTINSON: Searls?

3 MR. MADEKSHO:

4 Q In the Searls case?

5 A Not particularly.

6 Q Are you also aware of Pittsburgh Corning's
7 statements in regard to the allegations against
8 Commercial Union back in June of 1982, where they were
9 telling -- where Pittsburgh Corning was telling the
10 Federal Court that it couldn't have been more clear by
11 the year 1937 that an asbestos hazard was to be looked
12 for wherever asbestos dust was created?

13 A My recollection is that those were some of
14 the allegations by Pittsburgh Corning.

15 Q Do you have any understanding, in the 109,2
16 position of a supervisor or a supervisory position with
17 Commercial Union Insurance Company and your experience
18 in the asbestos litigation, as to why they would allege
19 in this case that these dangers were not known until the
20 late 1960s or early 1970s, and they were telling the
21 Federal Court in Philadelphia in 1982 that it couldn't
22 have been more clear in 1937?

23 MR. WALZEL: Object to the question. I
24 believe his previous testimony was he was not involved
25 in the defense of Pittsburgh Corning.

1 MR. MADEKSHO:

2 Q Mr. Lewis, if you would, turn over -- you
3 are already turning over to the first and second pages,
4 et cetera. There again, this is a portion of the
5 transcript from the hearing of June 24, 1982, in the
6 case styled Commercial Union Insurance Company v.
7 Pittsburgh Corning in the Federal Court in Philadelphia.
8 Correct?

9 A Yes, sir.

10 Q And in regard to the appearances, as far as
11 the lawyers representing the various parties, of course
12 we have earlier discussed that James Lewis Griffith was
13 representing Commercial Union. Right?

14 A Yes, sir.

15 Q And do you also see that in regard to the
16 representation of Pittsburgh Corning Corporation, there
17 was a lawyer representing them by the name of Mr. John
18 McN.Cramer?

19 A Yes, sir, I see that.

20 Q And if you would, turn to the -- you are
21 already looking at it.

22 A Yes, sir.

23 Q Do you see the underscored portions of that
24 transcript in regard to the representations that were
25 made by the Pittsburgh Corning lawyer to the Federal

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1 Court there in June of 1982?

2 A I note what's on Page 173 here, yes, sir.

3 Q And in regard to what is in the transcript,
4 that is all put on that first page of that exhibit?

5 A Well, I think you have taken some statements
6 partially out and put them on this summary exhibit on
7 the top.

8 Q The statements by the lawyers for Pittsburgh
9 Corning from that June 1982 hearing?

10 A Yes, I presume so, sir.

11 Q Now, for the benefit of the court and jury,
12 is it a correct recitation that the statements made by
13 the lawyer for Pittsburgh Corning in June of 1982 was
14 that: "First, Commerical Union had knowledge that
15 exposure to asbestos could produce asbestos-related
16 disease."

17 "Commercial Union's own 1937 engineering
18 manual states, quote, 'Asbestosis is a disease caused
19 by the inhalation of asbestos fibers,' close quote.

20 "Commercial Union's own 1937 engineering
21 manual states, quote, 'A potential asbestos hazard is to
22 be looked for wherever asbestos dust is created,' close
23 quote, and finally that same manual states, 'Industries
24 which have this exposure to asbestos dust include
25 insulation,' close quote."

1 And then the lawyer states to the court, does
2 he not, that: "Now, it's all there, all you need to
3 know"... "and it could not be more clear that Commercial
4 Union knew that an asbestos hazard was to be looked for
5 wherever asbestos dust was created, and that insulation
6 was an industry in which the exposure existed."

7 Is that correct? Is that in that 1982
8 hearing before the Federal Court?

9 A These are apparently representations of
10 counsel. They do appear in the transcript.

11 Q Now, based upon Commercial Union's experience
12 in the asbestos litigation, do you have any idea as to
13 why Pittsburgh Corning states, in cases filed against
14 Pittsburgh Corning by asbestos victims, that these
15 dangers could not be known until the late 1960s, and why
16 Pittsburgh Corning's representatives were telling the
17 Federal Court in Philadelphia in 1982 that these hazards
18 were known by 1937?

19 A You would have to ask the attorneys for
20 Pittsburgh Corning, sir. I don't know why they made the
21 statements as they did.

22 Q You are familiar with Pittsburgh Corning's --
23 I mean -- pardon me. Strike that.

24 You are familiar with Commercial Union's own
25 Asbestos Related Disease Claim Handling Procedures

1 manual by Mr. Sommerville?

2 A I am familiar with the fact that Mr.
3 Sommerville issued such a document.

4 MR. MADEKSHO: Let me ask that this be marked
5 as next in order.

6 [EXHIBIT NO. 27 MARKED]

7 MR. MADEKSHO:

8 Q Does this appear to be the same claim
9 handling procedures manual that you have reviewed
10 previously?

11 A Yes, sir.

12 Q And it appears that on the bottom right-hand
13 column, or the right-hand corner, that there's a
14 Pittsburgh Corning exhibit sticker of August 13, 1981?

15 A I have no idea that that's Pittsburgh Corning
16 or otherwise.

17 Q Let's turn over to the first page of
18 Commercial Union's asbestos claims handling manual, in
19 regard to the introduction. Do you recall reading the
20 introduction before, Mr. Lewis?

21 A Quite a while ago, yes, sir.

22 Q With your experience in the environmental
23 claims section which included -- which includes
24 asbestos, have you formed the opinion that scientific
25 studies have demonstrated that asbestos creates an

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1 especially high risk of lung cancer and other serious
2 lung disease for workers who have been heavily exposed
3 to this toxic substance, as Commercial Union's manual
4 states?

5 A I am not a medical person, sir. I have never
6 formed that opinion. I don't have the ability to form
7 that opinion.

8 Q Now, this was prepared by a representative of
9 Commercial Union, though. Correct?

10 A Apparently so.

11 Q Mr. Sommerville?

12 A Yes, sir.

13 Q Could you turn to the next page, please, and
14 under the section "A Hazard to Human Health"?

15 A Yes, sir.

16 Q Do you recall Mr. Sommerville discussing with
17 you the fact that Commercial Union's own manual stated
18 that asbestos is a hazard to man's health and this was
19 recognized quite early?

20 A I don't believe he ever discussed that with
21 me.

22 Q Have you reviewed other documents in the
23 files that have been prepared by Commercial Union
24 stating that the cancer producing potential of asbestos
25 was not established until 1949?

1 A I haven't read that anywhere else.

2 Q Do you recall the other documents that we had
3 reviewed earlier today that the first direct link to
4 asbestos and cancer was 1935?

5 A There were documents that had statements in
6 it of that nature.

7 Q And for how many decades had Commercial Union
8 Insurance Company been in effect prior to 1935?

9 A I believe you indicated at least three
10 decades before that, sir.

11 Q Have you had the opportunity to become
12 familiar with allegations made by Commercial Union in
13 regard to Pittsburgh Corning other than what we
14 discussed earlier today about Mr. Griffith's allegation
15 about the scheme and the concealing of the facts --

16 A No, sir, I have not.

17 Q -- by the manufacturers?

18 A I'm sorry. No, sir, I have not.

19 Q Has Commercial Union ever taken the position
20 that the asbestos products manufacturers have
21 deliberately concealed facts and evidence from
22 Commercial Union?

23 A Yes, sir, I believe there have been positions
24 like that asserted in the past.

25 Q And could you tell us as to whom, which

1 manufacturers that Commercial Union has alleged that
2 those particular asbestos products manufacturers
3 concealed, deliberately concealed facts and evidence
4 from Commercial Union?

5 A Facts in evidence? I'm sorry.

6 Q Facts and evidence.

7 A Oh, facts and evidence? My understanding was
8 that those were some allegations that were made in
9 Pittsburgh Corning, and I believe they were also made in
10 litigation involving Eagle Picher.

11 Q So the only ones that you are familiar with
12 is in regard to those allegations being made by
13 Commercial Union against Pittsburgh Corning and Eagle
14 Picher?

15 A That's my recollection.

16 Q And when the answers to interrogatories were
17 filed initially by Commercial Union, there was no
18 mention, I don't believe, about the coverage that was in
19 effect for Armstrong World Industries, Armstrong Cork,
20 and we discussed that a little bit earlier today
21 concerning the California litigation?

22 A Yes, sir. I don't believe that -- if they
23 weren't one of the individuals mentioned in your
24 complaint, that's what you referred to.

25 Q Right. Armstrong is a party to this

1 litigation.

2 A Okay. Then the reason Armstrong World
3 Industries is not mentioned, I believe, is because no
4 payments have been made to or on behalf of Armstrong.

5 Q Okay. Now, of course, we have determined
6 that Commercial Union had coverage for Armstrong -- do
7 you recall exactly how many years back that the coverage
8 by Commercial Union goes for Armstrong Cork, now known
9 as Armstrong World Industries?

10 A I believe it was a three-year period in the
11 mid Sixties. It was an excess cover.

12 Q Are you familiar with the allegations by
13 Commercial Union that Armstrong produced highly
14 dangerous asbestos-containing products as early as the
15 1940s, which gave rise to injury and death among its
16 employees and third-party users?

17 A That may have been an allegation or an answer
18 in response to the original complaint in Armstrong. I
19 don't believe it went much further than a defense that
20 was asserted.

21 Q Let me ask you if you're familiar with this
22 allegation by Commercial Union against Armstrong Cork,
23 now known as Armstrong World Industries: Armstrong was
24 acutely aware of the deadly propensities of asbestos as
25 early as 1952 and increasingly thereafter but took



1 absolutely no substantive steps to protect its own
2 workers or third parties or to in any way curtail its
3 own use of asbestos products. Are you familiar with
4 those allegations by Commercial Union?

5 A No, I'm not, sir.

6 MR. MADEKSHO: Let me ask you to take a look
7 at this particular document and have that marked as next
8 in order.

9 [EXHIBIT NO. 28 MARKED]

10 MR. MADEKSHO:

11 Q Mr. Lewis, what you presently have before you -
12 is Commercial Union Insurance Company's post trial brief
13 that was filed in the Superior Court of the State of
14 California during the trial of the California insurance
15 litigation?

16 A Yes, sir.

17 MR. MARTINSON: Mr. Madeksho, if I might
18 intercede just for a moment, certainly you are welcome
19 to question the witness on this area, but the specifics
20 about allegations against or in favor of specific
21 companies did not include Armstrong, so for that reason
22 we were not prepared.

23 MR. MADEKSHO: That's fine. He can take his
24 time. But Armstrong wasn't answered on the
25 interrogatories and I've since determined that there was

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1 coverage by Commercial Union and that's the reason.

2 MR. MARTINSON: I have no quarrel with it. I
3 have no quarrel with you asking. I want you to be aware
4 that we weren't prepared to answer that because, again,
5 it's not a specific item on your topic of inquiry.

6 MR. MADEKSHO: All right. It would have
7 been if they had been answered in the interrogatories.

8 MR. MARTINSON: Right.

9 MR. MADEKSHO:

10 Q Let me ask you to turn to Page 19 of
11 Commercial Union's allegations against Armstrong and the
12 trial court there in California. Do you see the section
13 there where Commercial Union states that, "Armstrong
14 intended to cause injury when they purposefully employed
15 men to work with products they knew would result in
16 asbestos-related disease and death"?

17 A Yes, sir, I do.

18 Q And do you also see further, starting
19 approximately Line 18 -- the lines are numbered on the
20 left-hand side -- where it states that, "From the early
21 1940s through the early 1970s, Armstrong continued a
22 course of conduct which was unrelenting in its quest for
23 profit over the health concerns of its employees or
24 third parties"?

25 A The trial brief does so state.

1 Q Do you have any reason to dispute Commercial
2 Union's allegations that were filed in the trial court
3 in California?

4 A Sir, I cannot recall what the testimony was
5 that gave rise to this statement in the trial brief.

6 Q What I'm asking you about are the allegations
7 that you have before you right now.

8 MR. MARTINSON: What is the question again?

9 MR. MADEKSHO: If you will just read back the
10 exact question for Mr. Lewis.

11 COURT REPORTER: "Do you have any reason to
12 dispute Commercial Union's allegations that were filed
13 in the trial court in California?"

14 A The document does indicate that these
15 statements were made.

16 MR. MADEKSHO:

17 Q And let's turn over to Page 21, in regard to
18 the allegations made by Commercial Union, starting on
19 Line 6. Do you see there where it states that --
20 Commercial Union states that: Wegman admits that
21 documents refreshed his recollection that he was aware,
22 in the early 1950s, that Armstrong products could
23 contribute to asbestos-related diseases?

24 A Yes, sir, it is so stated.

25 Q Do you have any reason to dispute Commercial

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1 Union's allegations concerning that particular bit of
2 information?

3 A No, sir, I don't.

4 Q Do you see the next sentence there concerning
5 Commercial Union's allegation that, "George W. Nichol,
6 who was a plant chemist for Armstrong during the mid
7 1950s likewise admits that he understood sometime
8 between 1956 and 1957 that asbestos was a toxic
9 material"?

10 And would you have any reason to disagree
11 with Commercial Union's allegations concerning that
12 information?

13 A No, sir.

14 Q Have you become aware, during the course of
15 your duties with Commercial Union, that one of
16 Commercial Union's insureds, Johns-Manville, had claims
17 by the users of asbestos products that were filed
18 against them by no later than 1935?

19 A No, I was not personally aware of that.

20 Q And you have been following this case fairly
21 closely?

22 A The Johns-Manville case, sir?

23 Q No, this case here.

24 A No, I haven't. I have not been following the
25 underlying matter at all.

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1 then didn't?

2 A And then did not?

3 Q And then did not.

4 A No, I don't recall that.

5 Q Now, of course, another one of Commercial
6 Union's insureds has been Union Carbide. Correct?

7 A Yes, sir.

8 Q And during the course of your activities and
9 involvement with the asbestos litigation on behalf of
10 Commercial Union, have you become aware of when Union
11 Carbide states that the dangers of asbestos were known? -

12 A No, sir.

13 MR. MADEKSHO: Let me have this marked as
14 plaintiffs' next in order.

15 [EXHIBIT NO. 29 MARKED]

16 MR. MADEKSHO:

17 Q Mr. Lewis, I've got the entire document, if
18 you need to refer to it. But the section I want to ask
19 you about is in regard to this document that was
20 prepared by Mr. I. C. Sayers entitled "Asbestos as a
21 Health Hazard in the United Kingdom." And have you
22 turned over to that chart there?

23 A I have.

24 Q Do you see the perspectives and the
25 associated diseases relating to the asbestos industry?

1 A Yes, sir.

2 Q And do you see that date 1900 when asbestosis
3 was known?

4 A I do, sir.

5 Q And that's the same date that we saw a little
6 bit earlier in regard to the American Insurance
7 Association documents, 1900. Correct?

8 A There was a reference made to the year 1900.

9 Q And do you also see, in regard to the
10 association of asbestosis and lung cancer, approximately
11 1935?

12 A Yes, sir, I see it on here.

13 Q And is that the same date of 1935 that we saw
14 in the American Insurance Association documents that we
15 looked at earlier?

16 A My recollection is it is the same date.

17 Q And do you also see in regard to the
18 associated diseases relating to asbestos concerning
19 insulation workers?

20 A Yes, sir.

21 Q And do you see when it was known in regard to
22 insulation workers, looks like around 1930, '31?

23 A That's what the graph indicates.

24 Q And you are aware that Union Carbide mined
25 asbestos, was a miner of asbestos, are you not?

End