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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
BEFORE THE HONORABLE LESLIE NICHOLS, JUDGE
DEPARTMENT 9

PAMELA J. O'BRYAN,

PLAINTIFF,

vs.

A.H. VOSS COMPANY (sued individually
and as successor-in-interest to
VOSS INTERNATIONAL CORPORATION), et
al.,

DEFENDANTS.

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) No. C13-01926
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, APRIL 16, 2014

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I N D E X

WITNESS	PAGE
MASAHIKO UCHINO	
Direct Examination (776) by MARK BRATT ..	680
Redirect Examination by MS. GAMBINO . . .	707

E X H I B I T S

Exhibit No.	Exhibit Description	Offered	Admitted
500		693	
501		694	
7010	Monthly newsletter 62.12	728	
7011	Monthly newsletter 64.10	736	
7015	Certificate of inespection	740	
7016	Inspection 1-31-64	742	
7017	Voss-Kubota ACP Brochure	745	

1 WEDNESDAY, APRIL 16, 23014

9:30 A.M.

2 --oOo--

3
4 THE COURT: We're together out of the presence
5 of the jury, just about to get started with the Voss
6 opening statement. Counsel are present.

7 And I think, Mr. Berfield, did you want to say
8 something briefly?

9 MR. BERFIELD: Yes, your Honor. During opening
10 statement yesterday by Mr. Bratt, he mentioned on two
11 different times, within a very short span of time, that
12 Lloyd Ambler was going to be here, and he was going to --
13 and it was going to be clear that he had been deposed many
14 times, and he had been in many different lawsuits for
15 CertainTeed over the years.

16 One of the motions in limine was a motion in
17 limine to keep out reference to other asbestos cases. We
18 agreed that expert witnesses were fair game to talk about
19 other asbestos cases that they had been testifying in, but
20 there's no ground to suggest that a PMK who's been deposed
21 in cases that resulted in summary judgments in favor of
22 the company, and deposed in cases that went to verdict
23 against the company, merely suggesting that he had been
24 deposed a lot of times was unfair and 356.

25 THE COURT: 352.

26 MR. BERFIELD: 352, yes, sir. It happened
27 twice yesterday. I looked up at the Court, but I wasn't
28 going to object because it was just going to highlight. I

1 would just like it made clear that the motion in limine is
2 still in effect, and that Mr. Bratt should not violate it
3 again.

4 THE COURT: Okay. I'll say nothing further
5 except I established eye contact with you while it was
6 happening. I acknowledged that, and keep alert to my
7 surroundings, but I felt that not to interrupt sua
8 esponte, so I did not do that. And it's just -- you're
9 reminding us of the agreement.

10 MR. BERFIELD: Thank you very much, your Honor.

11 MR. BRATT: Your Honor, obviously an
12 agreement -- I wouldn't say an agreement, but what we
13 discussed before was that I would be perfectly able to use
14 past depositions to impeach him. So this is why when we
15 talked about it, I said this under Kelly v. New West, this
16 motion is overly restrictive and overbroad.

17 THE COURT: You said what he said, but if you
18 examine him you need to take care, because it's not the
19 idea that his deposition was taken on many occasions. If
20 there's admissible deposition transcripts to read from,
21 then that will be fine, because that's one way to impeach
22 through prior testimony. But the idea that your
23 deposition has been taken on many occasions, it can be
24 established -- I think I said at the time -- he's a
25 long-time employee, that can be established for the
26 purposes of bias. I'll just interrupt if we get into that
27 and say, we don't care how many depositions were taken at
28 all, we just let in admissible evidence. We don't need to

1 spend additional time on that.

2 MR. BRATT: There is an issue on Mr. Ambler.

3 THE COURT: I was told that I should read these
4 and be available at noontime when Mr. Wood is here.

5 MR. BRATT: Yes, your Honor, that's for the
6 deposition. When the deposition was rescheduled at the
7 request of defense counsel, for a date that was relatively
8 close to trial to take Mr. Ambler's deposition, it was
9 then suspended by Ms. Votaw and we talked about that.

10 I have since asked on several occasions for an
11 opportunity to ask Mr. Ambler questions; and it can be
12 done by me at morning before the court, at lunch or on the
13 weekend, and Mr. Jones is also available. And the reason
14 that we need to talk to him is because I expect him to
15 come in here and basically support what Mr. Berfield said,
16 that my client is a liar, or that my client's step-father
17 is a liar.

18 THE COURT: Excuse me. Mr. Berfield didn't say
19 that. He said credibility would be an issue. Memories
20 will be tested, documents will be looked at. So let's
21 bring the heat down on the stove right now, and tell me
22 what you want to say.

23 MR. BRATT: I need his deposition to be able to
24 fairly proceed in this case. The deposition didn't occur.
25 I need it. I need the ability to ask what search he did
26 as foundation for anything that he might say. Because
27 he -- when he comes to court live, number one, he's not
28 the corporate representative, that's a discovery tool.

1 The person most qualified where someone's designated to
2 speak on behalf of a corporation, that's a discovery tool;
3 that is not a tool that they can affirmatively use in
4 court. He has to have foundation for what he says. He
5 has to show that foundation, and I need the ability to ask
6 him questions to figure out what that foundation was or is
7 in this case.

8 So, I'm just asking for an opportunity to
9 complete the deposition that was rescheduled, admittedly
10 late to trial. We're all working under the gun here, and
11 I'm not throwing anyone under the bus for that.

12 THE COURT: Have you talked to counsel?

13 MR. BRATT: I've asked several times, and also
14 I've asked the national counsel who is present here, about
15 scheduling for that, and I have been told -- they
16 basically said, well we'd like to take a shot at the Court
17 to get that excluded. And I'm asking the Court now to
18 give me that opportunity.

19 MR. BERFIELD: Your Honor, the date for the
20 deposition that was ultimately suspended by Westburne was
21 a date that was picked by plaintiff's counsel. We were
22 ready to present him in due course. They rescheduled it
23 because they had scheduling problems, number one. Number
24 two, the deposition did not go forward, although we were
25 ready and willing and able to do so and produce documents
26 and so forth, because of the plaintiff's counsel's fault
27 in not notifying the other side of the deposition date and
28 presenting documents to them. And you'll recall he said,

1 well I have to fall on my sword.

2 After that deposition was suspended, no effort
3 was made by them, until a couple days ago, oh, now we need
4 to take his deposition. In fact they have made
5 representations up until a couple days ago that they
6 didn't need his deposition. Now they say that they want
7 his deposition. It's not fair. And another thing is,
8 your Honor, Mr. --

9 THE COURT: Well, excuse me. When was -- what
10 was the date of the deposition that was suspended?

11 MR. BERFIELD: April 1st, your Honor.

12 THE COURT: All right. Please continue.

13 MR. BERFIELD: Another thing is, your Honor,
14 Mr. Ambler, we want him to testify live, but I'm informed
15 that he has some problems with his wife; she's been
16 hospitalized a couple times. He's not -- he's healthy,
17 but it is hard on him to come out here. The deposition
18 that was scheduled for April 1st was to take place in
19 Philadelphia. Mr. Bratt appeared by phone, and we were
20 all ready to go, and so that he wouldn't have to travel
21 far from his home.

22 What we propose is with all this electronic
23 gear, that Mr. Ambler testify live by video conference,
24 and whatever documents they want to present him with,
25 cross-examination, they can have somebody in the room with
26 him in Philadelphia and do that.

27 THE COURT: We don't have time to resolve this
28 issue now, as it's seven minutes after the time we are

1 supposed to begin opening statements, and so I'll deal
2 with it when we have time to do it.

3 MR. BERFIELD: Thank you very much, your Honor.

4 THE COURT: We do need to proceed, and we'll
5 call the jury.

6 Is there any witness that's going to testify
7 this morning whose first language is -- native language is
8 Japanese?

9 MS. GAMBINO: Yes, your Honor.

10 THE COURT: Is that witness going to be called
11 by the plaintiffs?

12 MS. GAMBINO: Yes.

13 THE COURT: Just a heads up. Just a
14 suggestion. Of course if it's a company representative
15 it's a 776 exam, under Evidence Code section 776 where
16 leading questions can be asked. But my view is, under 765
17 of the Evidence Code, I'm just making a suggestion,
18 avoid -- take special care to avoid compound or, you know,
19 other than very direct questions, because the primary
20 obligation is to ascertain the truth, and that can be
21 difficult in the best of circumstances, especially with an
22 interpreter.

23 MS. GAMBINO: That will be no problem, your
24 Honor.

25 THE COURT: That's fine, that's just a
26 suggestion.

27 MS. GAMBINO: I would like to use two exhibits
28 in my opening statement, and I understand that the

1 plaintiff's attorneys are objecting to that. They were
2 exhibits used yesterday. I did not realize Mr. Bratt was
3 not the one who used them.

4 MR. BRATT: I did not put up any documents in
5 my opening. I should have probably objected, but I didn't
6 want to draw, you know --

7 THE COURT: Is this something that's going to
8 come -- the jury is walking in. May I see them?

9 MS. GAMBINO: Yes, your Honor.

10 THE COURT: Counsel has shown me two matters,
11 says they're the custodian of record?

12 MS. GAMBINO: Yes.

13 THE COURT: Accepting that -- and you want to
14 use them on overhead?

15 MS. GAMBINO: Yes.

16 THE COURT: I'll say this is to illustrate --
17 I'll note any objection, overrule it, and you may refer to
18 it.

19 MS. GAMBINO: Thank you.

20 THE COURT: Two items.

21 MS. GAMBINO: Two items.

22 THE COURT: Give it a once over, and we'll move
23 right along. Thank you. You may bring in the jury.

24 (The jury enters the courtroom.)

25 THE COURT: Good morning, everybody. Nice to
26 see you. We'll proceed.

27 And Ms. Gambino will address you on behalf of
28 Voss Corporate.

1 MS. GAMBINO: Thank you, your Honor.

2 Good morning, ladies and gentlemen. Once
3 again, my name is Mary Ellen Gambino, and I'm speaking to
4 you this morning on behalf of my clients, Kubota
5 Corporation and two entities that are related, Voss
6 International Corporation and A.H. Voss Company.

7 Later this morning, hopefully this morning, you
8 will meet a gentleman by the name of Masahiko Uchino. Mr.
9 Uchino, until recently, was the manager of the legal
10 department for Kubota Corporation. His current title is
11 Manager of General Affairs.

12 Later in this trial you will also meet Ms.
13 Stephanie Voss, whose father, Arthur H. Voss was the
14 founder of the Voss companies.

15 Kubota Corporation is a Japanese company that
16 was established sometime in the late 1800s. Originally it
17 was a founding company they manufactured cast iron pipe
18 used for water supply, and today they mainly manufacture
19 small agricultural equipment and construction equipment,
20 and the engines that are used in that equipment. But over
21 the years, Kubota Corporation has manufactured a variety
22 of industrial products, and one of those products was
23 asbestos cement pressure pipe. They began manufacturing
24 that product in 1954, and they stopped manufacturing it in
25 1975. As a matter of fact, they closed down the asbestos
26 cement pressure pipe plant on November 2nd, 1975.

27 During the time that they were manufacturing
28 the pipe, they exported it to the United States. This

1 occurred between 1962 and about 1975. In the United
2 States, the Kubota pipe was distributed in California and
3 some other western states, and it was distributed by the
4 Voss companies. Voss Company, those Voss companies were
5 essentially the exclusive distributor of Kubota pipe in
6 California. And they, of course, were the companies that
7 were founded by Mr. Voss.

8 Now Mr. Voss moved to California from the
9 Midwest. He settled in Southern California, and he
10 started a small plumbing supply business. That business
11 eventually grew, and became Voss International
12 Corporation. They, the Voss companies, they came into
13 existence -- it's a little unclear, there may be some
14 conflicting testimony, but basically either in the late
15 1940s or in the 1950s. They started winding down their
16 business, and they eventually closed sometime in the
17 1990s.

18 You'll hear testimony that by 1997, the company
19 was practically defunct. And, yes, by that time they had
20 discarded their records in the normal course of business
21 of winding down a business.

22 Now as you heard, the Voss companies sold
23 Kubota pipe between 1962 and 1975.

24 You're going to hear in this trial that Ms.
25 O'Bryan is a woman who, sadly, has a very serious illness;
26 it's a terminal illness, and that fact is undisputed. And
27 as jurors, it would be a challenge to remain objective
28 about the facts and impartial toward the parties in spite

1 of Ms. O'Bryan's condition. But as the Judge has advised
2 you, that's your duty as jurors, and that's what the
3 parties are asking you to do. And if you do that, the
4 evidence will show you that my client's products were not
5 the cause of Ms. O'Bryan's illness.

6 There are two questions that you're going to be
7 asked to decide: First is the question of medical
8 causation, and second is the question of liability. On
9 the medical causation question, you'll see that there's no
10 clinical evidence of Ms. O'Bryan ever having exposure to
11 asbestos. You will see that on pathology, there are no
12 asbestos bodies, and the radiographs, there are no plural
13 plaques, which we'll talk about a little bit more in the
14 trial, and there's no asbestosis, which Mr. Bratt
15 explained to you yesterday, is scarring of the actual
16 tissue of the lungs.

17 But the evidence will show that Ms. O'Bryan has
18 been diagnosed with mesothelioma, and this is a disease
19 that has been linked to asbestos as a cause. You will
20 also see that not all mesotheliomas are caused by asbestos
21 exposure. The doctors and the scientists, who are very
22 experienced in this rare disease, you will see evidence
23 that in women especially, mesotheliomas are often
24 idiopathic, and that means that there's no defined cause.
25 In this case, the evidence will show that Ms. O'Bryan's
26 mesothelioma probably is an idiopathic mesothelioma.

27 On the liability question, the evidence will
28 show that Ms. O'Bryan's stepfather, Kenneth O'Bryan,

1 worked with asbestos products. Ms. O'Bryan believes that
2 her father's work caused her to be exposed to asbestos,
3 and that's why she's bringing this lawsuit. But you will
4 also see that there's no credible evidence that Ms.
5 O'Bryan was ever exposed to a single fiber from Kubota
6 asbestos pipe, or from any other product manufactured by
7 Kubota, or sold by the Voss companies.

8 The evidence will show that the available
9 public records that are from the relevant time period,
10 from the counties where Mr. O'Bryan worked, that there
11 will be no evidence that Kubota pipe was ever used. Now,
12 you will see records that make reference to Japanese pipe,
13 or to foreign pipe.

14 THE COURT: Or to what? I just didn't hear.

15 MS. GAMBINO: To Japanese pipe or to foreign
16 pipe.

17 THE COURT: I didn't hear it. Thank you.

18 MS. GAMBINO: But only in the Calaveras Water
19 District record, where it was considered whether they
20 would use Japanese pipe, and then later it was determined
21 that as long as the Buy-America Act was in place, that
22 they would not buy foreign pipe. And this occurred in the
23 1960s, and I'm going to show you those minutes. You can
24 read these minutes from the board of directors meeting,
25 Calaveras County Water District December 6th, 1967.

26 THE COURT: I have permitted these blow ups on
27 the representation that there will be an appropriate basis
28 to admit them into evidence. They're not in evidence now,

1 just to illustrate the opening statement.

2 And the date of that, again?

3 MS. GAMBINO: The date is December 6th, 1967.

4 THE COURT: Thank you.

5 MS. GAMBINO: And on page three of that
6 document, which has been marked for identification only as
7 Exhibit 7049 through Bate stamp number 0548.

8 And this document says:

9 "Under district specifications and
10 amendments, Engineer Weatherby reported
11 that several problems have arisen which
12 are either not fully covered or need
13 revising in," and it's cut off, "District
14 specifications such as storage requirements
15 not being fully spelled out, reconsideration
16 of various plastic pipe requirements and
17 the possibility of using Japanese made cement
18 asbestos pipe. Mr. Weatherby requested
19 consideration be given to these matters for
20 possible revision of the specifications
21 prior to start of the next construction
22 season."

23 Another date in the minutes of the board of
24 director meetings, Calaveras County Water District, March
25 6th, 1968, marked for identification as Exhibit 7049
26 through Bate stamp 0544. And on the second page of that
27 document, under the heading "Foreign Pipe Use and
28 Construction for" Contra Costa County -- I'm sorry --

1 "Calaveras County Water District M and O." And the part
2 that's highlighted.

3 "Following lengthy discussion joined
4 in by representatives of firms,
5 manufacturing both foreign and domestic
6 pipe, district representatives maintain
7 that until evidence is shown by attorney
8 Albert E. Sheets that the Buy-American Act
9 has been changed, this district will not
10 use foreign-made materials, other than
11 specified in the Act. Upon motion by
12 Director Hart, seconded by Director McCombs,
13 and unanimously passed and adopted, the
14 Board's decision was to leave the district
15 specifications as is and deny the use of
16 foreign pipe."

17 You'll also see evidence that Johns Manville,
18 the company that had an asbestos pipe manufacturing plant
19 in Stockton, that was visited and toured by Mr. O'Bryan,
20 made a concerted, and apparently successful effort to keep
21 foreign pipe out of the Calaveras County -- I'm sorry --
22 the El Dorado County Water District jobs.

23 With respect to the Kubota Corporation, you
24 will hear that Kubota in the early 1970s, Kubota's share
25 of the United States asbestos cement pressure pipe market
26 was minimal, it was about two to three percent as compared
27 to the other -- to the American manufacturers in that
28 market.

1. The records from Johns Manville Company will
2 also reveal the extent of their business dealings with
3 Mr. O'Bryan -- and you've heard of some of this yesterday
4 so I'm not going to repeat it. You will hear that Mr.
5 O'Bryan was a frequent customer of the Stockton Johns
6 Manville plant, and that in fact John -- that plant
7 supplied hundreds of thousands of feet of pipe to Mr.
8 O'Bryan when he owned the Concord Engineering.

9 The evidence is also going to show that, and
10 this is important, that Kubota Corporation only
11 manufactured asbestos cement pressure pipe that's
12 different from sewer pipe and different from asbestos
13 non-cement pipe; they did not manufacture those latter
14 types of pipe. And you will hear that on Mr. O'Bryan's
15 job sites, many of them called for sewer pipe or
16 irrigation pipe, which was non-pressure pipe, as well as
17 the asbestos cement pressure pipe. And you will also hear
18 testimony, as Mr. Bratt referred to yesterday, that on a
19 job, it was desired to use all the same type of pipe, but
20 those pipes would be compatible with each other.

21 The evidence will show that Kubota Corporation
22 was a responsible company; they followed the laws and
23 regulations of the time when they sold these asbestos
24 cement pipes. The Kubota cement pressure pipe was
25 manufactured in accordance with the industry and
26 governmental standards of the day; and was tested by
27 various organizations, including the American Society for
28 Testing and Materials, ASTM, and the AWWWA, which is the

1 American Water Works Association. United -- I'm sorry --
2 Underwriters Laboratories, and INTECO, which is
3 International Inspection and Testing Corporation.

4 Kubota pipe was also sold to several
5 governmental entities in the United States, including East
6 Bay Mud, and also the City of Santa Monica, the City of
7 Santa Cruz, and the Los Angeles Department of Water and
8 Power. And you will see no evidence that any of those
9 entities ever advised Kubota Corporation that there was
10 any danger involved in working with asbestos cement
11 pressure pipe. In fact, some representatives from the
12 East Bay Mud went over to Japan and toured the corporation
13 and facility, and you'll see evidence that they approved
14 of what they saw.

15 The evidence will show that there are no
16 warnings accompanying the Johns Manville asbestos fiber
17 that was sold to Kubota Corporation for their asbestos
18 cement pipe manufacturing.

19 THE COURT: Excuse me, counsel. I just didn't
20 know if you misspoke. I have no opinion. Did you say
21 John Mansville sold to Kubota?

22 MS. GAMBINO: Yes, your Honor.

23 THE COURT: Thank you. I was uncertain.

24 MS. GAMBINO: Thank you.

25 THE COURT: Excuse the interruption.

26 MS. GAMBINO: Excuse me if I was unclear. The
27 evidence will show that the Johns Manville was the company
28 that supplied raw asbestos fiber to Kubota Corporation for

1 production of their asbestos cement pressure pipe, and
2 there will be no evidence that they ever provided a
3 warning to Kubota Corporation about that asbestos.

4 As for Kubota Corporation, the pertinent
5 Japanese laws did not mention the cancer risk that was
6 posed by asbestos until sometime in 1975, and this in fact
7 occurred after Kubota Corporation had already made the
8 decision to stop manufacturing asbestos cement pipe
9 because it was unprofitable. Specifically, on September
10 30th, 1975, the Japanese law was changed to identify the
11 risk of cancer in asbestos. Kubota learned of this
12 upcoming change shortly before it occurred, but after it
13 had already decided to close the asbestos cement pipe
14 plant.

15 Given the factors which had made the asbestos
16 cement pipe unprofitable, and the fact that now they had
17 been warned of this cancer hazard, they closed the pipe
18 very promptly. I'm sorry, they closed the plant very
19 promptly on November 2nd, 1975. So it was just about a
20 month after the law came into effect.

21 Now, as the jury, you will have the chance to
22 weigh and consider all of the evidence, and you'll be able
23 to decide if Ms. O'Bryan has satisfied her burden of proof
24 to show that my client had a duty that was breached. But
25 I think you will see that based on the knowledge of the
26 time, when Kubota was manufacturing asbestos cement
27 pressure pipe, and Voss companies were selling this
28 product, pipe, that none of my clients, none of my three

1 clients breached any duty to Ms. O'Bryan.

2 In conclusion, I'm just going to remind you
3 that the plaintiff, as is their right, she will put on her
4 case first, and then the defendants will have the chance
5 to put on their case. That's why it's so important for
6 you to keep an open mind. Defer your judgement until
7 after you have heard and seen all of the evidence, and
8 then at that time you will then make a decision. And I
9 thank you very much for your time.

10 THE COURT: Thank you very much, counsel.

11 MS. GAMBINO: Thank you, your Honor.

12 THE COURT: We'll turn to Ms. Votaw for the
13 defendant, Westburne.

14 MS. VOTAW: Good morning, ladies and gentlemen.
15 I'm going to use a manual digital word processing device,
16 so if you'll just give me a minute to set it up here.

17 THE COURT: Take your time. No hurry.

18 MS. VOTAW: There are a few dates with some
19 spellings of the names that I'm going to put up on the
20 board for you, I'm not going to write too much.

21 My purpose in doing opening statement is to
22 give you what I believe will be an overview of the case.
23 The reason for this is because evidence goes in in little
24 pieces; it's almost like having a jigsaw puzzle where you
25 don't know what the big picture looks like, and you're
26 trying to guess as you get the little pieces. So if we
27 can give you a sense of what we think the big picture is
28 going to look like as the testimony comes in, you can

1 better evaluate where you think it's going to go and how
2 it's going to fit into the whole thing.

3 As Judge Nichols will tell you, nothing I say
4 is evidence, so all the evidence that goes into the case
5 will have to come from the witnesses and the documents.
6 But what I'm trying to do here is to give you an overview.

7 I want to first kind of talk a bit about my
8 client, which is Westburne Supply. And as I mentioned
9 during jury selection, the company that we'll be talking
10 about most of the time is a company called P.E. O'Hair.
11 And how that's spelled is, P.E. O-h-a-i-r.

12 I have to go back to the 1890s to give you a
13 bit of a history lesson. Patrick Edward O'Hair was an
14 Irishman who settled in San Francisco in the 1890s and
15 opened a hardware store. As fate would have it, a couple
16 three years after he opened his hardware store there was
17 an earthquake, and the earthquake destroyed his hardware
18 business and his home. But what happened at that point
19 was that, as the old Chinese proverb goes, with crisis is
20 opportunity. All of a sudden there was a huge need for
21 building materials.

22 And so what we know is that by 1907, Patrick
23 Edward O'Hair was in business with a plumbing supply
24 company in San Francisco, and we know also that by 1908,
25 Patrick's son, Donald, was involved in that business. And
26 as the business expanded and grew, various of Patrick's
27 family members got involved with the business, so the
28 business prospered, and ultimately in the 1930s, it was

1 incorporated as P.E. O'Hair and Company, and that's the
2 corporation that existed throughout the existence of that
3 business.

4 Now, fast forward to the 1930s. Actually fast
5 forward to the 1940s, and various of Patrick's family
6 members went off and started plumbing supply businesses in
7 various locations. And in the 1940s Patrick's
8 granddaughter, whose name was Patrice O'Hair, married a
9 guy named Walter Krausgrill, and they moved to Sacramento
10 and they bought into an existing plumbing supply company
11 that was called J.R. Deterding. And I'll write that one
12 down for you too. J period, R period, Deterding,
13 D-e-t-e-r-d-i-n-g. His partner was a guy named Russ
14 Deterding.

15 So they built the Sacramento business; they
16 expanded it, and they had some kids, and one of their
17 children was a son, Kevin, and he's the guy whose going to
18 be here next week, or the week after to testify in this
19 case.

20 So going all the way back to Patrick, Kevin is
21 the great grandson of Patrick Edward O'Hair, who was the
22 patriarch who started the company.

23 By the 1930s when P.E. O'Hair was fully in
24 business and incorporated, they had pretty much
25 established the model for their plumbing supply stores.
26 They sold anything that could be used or needed in the
27 plumbing trade. They sold thousands of products. They
28 sold products from hundreds of manufacturers. They had no

1 particular relationship with any manufacturer or any
2 product line, other than they sold what was demanded in
3 whatever market they were working in. And this varied
4 from store to store, so that the Sacramento store, for
5 example, might not sell the same materials as the
6 San Francisco store, because the plumbing demands were
7 different in those different areas.

8 There was -- they were not centralized, and
9 whatever was sold was determined by the particular owners
10 and manufactures of that particular location. It was what
11 the customers demanded, what was used, what was on the
12 market at the time.

13 And indeed, some of the products they sold
14 contained asbestos, because that's what was used; that was
15 demanded at the time. And one of the products that was
16 sold at some of the branches, during some years, was
17 asbestos cement pipe, that's not in dispute.

18 Another branch that I want to mention, because
19 it will become an issue in this case for you, is the
20 Stockton branch. So just about the same time the
21 Sacramento branch was being -- I should call it a store,
22 because it wasn't a branch at that point. At the same
23 time that store was being opened by the Krausgrill family,
24 another son-in-law and his family, with some unrelated
25 people, opened a plumbing supply store in Stockton, and
26 that one was Western Plumbing Supply. And it, just like
27 all of the other stores, whatever they sold there was what
28 was in demand in the Stockton area; it may have been

1 different manufacturers, different products. The only
2 thing that was related with these, all these different
3 stores was that they were all generally members of the
4 O'Hair family, and they were all in the plumbing supply
5 business; those are the only two factors.

6 So, what happened then, over time, American
7 business changed. And it became obvious that
8 centralization was beneficial to everyone, and so in 1975
9 P.E. O'Hair, the P.E. O'Hair Corporation invited all of
10 the family members with all of their different stores to
11 become part of the P.E. O'Hair Corporation, and this
12 transaction took place somewhere in 1975. These various
13 stores around Northern California all became P.E. O'Hair
14 stores. And so that date is 1975. I just want to get
15 this down here for you.

16 One more date that I wanted to give you for the
17 Deterding branch, that's the Sacramento branch, and that
18 happened in 1971. And what happened in 1971 was that
19 Patrice Krausgrill and Walter Krausgrill bought out Russ
20 Deterding, so the store at that point in time became
21 exclusively owned by the Krausgrill family. And when that
22 occurred, they changed the name of that store from J.R.
23 Deterding to O'Hair Supply. That's important too. And
24 that happened in 1971.

25 Kevin Krausgrill, who you'll hear from, started
26 working in the J.R. Deterding branch when he was old
27 enough to pick up a box, and he then continued to work in
28 that branch summers, weekends, off and on, working with

1 his dad, worked with Russ Deterding until he left to go to
2 college, and then ultimately was in the service, and then
3 came back to the P.E. O'Hair Company and became a --
4 ultimately he became the president of the whole
5 corporation in the 1980s.

6 But in the late 1970s, Kevin opened a branch of
7 what was then the whole P.E. O'Hair Company in Pittsburgh,
8 and he has since that time, maintained a residence in
9 Clayton, where he and his wife currently live today.
10 You'll get some more history from him.

11 He left -- let me give you one more piece of
12 history before I move on, and that is that in 1988 the
13 entire P.E. O'Hair Company was sold to a Canadian
14 corporation called Westburne Supply. So 1988 sale -- this
15 is way past the exposure period in this case, so it really
16 doesn't have all that much bearing -- but it became
17 Westburne Supply.

18 And Kevin at that point was the president of
19 P.E. O'Hair. He stayed on for a few years with Westburne,
20 and then he left completely. He no longer has any
21 association. He's off doing his own business, and I'm
22 sure he'll be happy to tell you about that.

23 Westburne Supply ultimately divested itself of
24 all the plumbing supply business in the United States, so
25 that one of the reasons that I won't have a company
26 representative here is because we don't have one; there
27 isn't one.

28 So that in a nutshell is a bit of history about

1 the P.E. O'Hair Corporation and what you will be learning.

2 So what does all this have to do with Pamela
3 O'Bryan? Well, as other counsel have told you, when we
4 received this lawsuit, we did our own investigation. And
5 essentially we did all of the same kinds of things: We
6 took depositions, we subpoenaed records, we interviewed
7 people. We went out and, you know, talked to custodians
8 of records. We did all of the work we could do to
9 evaluate this case. And the conclusion that was reached
10 by Westburne was that neither P.E. O'Hair, nor any
11 predecessor of P.E. O'Hair was a supplier of any asbestos
12 cement pipe to Concord Engineering that Mr. O'Bryan could
13 have been exposed to. We simply think that you will
14 conclude, after the evidence is in, that there's just no
15 evidence of that.

16 So, what do we know? We know that Mr. O'Bryan
17 gave testimony, and we asked him questions. And what he
18 testified to, and what the evidence will show, is that he
19 personally never went to a P.E. O'Hair location. Now when
20 I'm using the term P.E. O'Hair, I want you to keep in mind
21 that I'm using the term P.E. O'Hair collectively to refer
22 to both P.E. O'Hair and the companies that preceded it
23 during this period of time.

24 And here's why the dates are important.
25 Mr. O'Bryan claimed that he was exposed to asbestos from
26 1962 to 1977 -- I'm sorry. And in fact his last possible
27 exposure to any P.E. O'Hair product would have been 1976,
28 because in 1976 he went to work for -- he testified that

1 he went to work for a refinery, and after that he only did
2 one more job involving asbestos cement pipe, and he knew
3 that that pipe was supplied by the developer, so there's
4 absolutely no evidence that it came from P.E. O'Hair. So
5 the last possible date for P.E. O'Hair could be 1976.

6 So what did Mr. O'Bryan testify to? He
7 testified that he never went to a P.E. O'Hair location
8 anywhere -- anywhere. He never went to the Stockton
9 store, he never went to the Sacramento store. He said he
10 was driven by the Sacramento store one time by his
11 brother, and his brother pointed it out and said, that's
12 P.E. O'Hair. He never ordered any materials of any kind
13 from P.E. O'Hair or anybody else. He didn't see any
14 markings or logos on any of the trucks that delivered any
15 material. He didn't recall the name of any other
16 supplier, including the names of the predecessors.

17 And we asked him. We asked him several times,
18 you know, can you remember the names of any other
19 suppliers that supplied materials to Concord Engineering,
20 and his response was that he knew there were other
21 suppliers, but he couldn't remember any of their names.

22 So, given all this, we asked him, well since
23 you can't remember any of this, how is it that you believe
24 that P.E. O'Hair provided any of these materials? And
25 what he told us in his deposition was, because he saw the
26 name P.E. O'Hair on the paperwork that was given to him by
27 the truck driver.

28 Now, significantly, when we also asked him

1 whether Concord Engineering had purchased any materials
2 directly from Johns Manville, he didn't recall that. And
3 that's going to become a big issue, because as you've
4 seen, there are lots and lots of documents that concern
5 that.

6 So then after we took Mr. O'Bryan's deposition
7 we talked to Kevin Krausgrill and tried to find out what
8 he would say about this. And what we believe he's going
9 to testify to is that Mr. O'Bryan could not have seen P.E.
10 O'Hair, the name P.E. O'Hair, or that logo that Mr. Bratt
11 showed you, on any of the paperwork prior to 1975, because
12 the stores weren't P.E. O'Hair stores prior to 1975. So
13 prior to 1975, any of the invoices that came from any of
14 these locations, any of the purchase orders, any of the
15 documents, any of the bills, would have had the name of
16 the store that they were at that time, which was Western
17 Plumbing Supply or J.R. Deterding; or, from 1971 to '75,
18 O'Hair Supply.

19 Kevin Krausgrill will also testify that when
20 Mr. O'Bryan said that he saw these pipes being delivered
21 by semis, they couldn't have come from P.E. O'Hair because
22 P.E. O'Hair didn't have any semi trucks during this period
23 of time, nor did Western Plumbing Supply, nor did O'Hair
24 Supply, or J.R. Deterding. It wasn't until much later,
25 after the consolidation in 1975, that P.E. O'Hair began to
26 acquire that type of equipment that it could have
27 delivered that quantity of materials.

28 Kevin Krausgrill will testify that P.E. O'Hair

1 could never have matched the price for this pipe that
2 Concord Engineering was getting from Johns Manville
3 directly. If they had purchased it through P.E. O'Hair,
4 there would have been an additional charge beyond the
5 charge that Johns Manville was giving them. And Johns
6 Manville, according to the documents that you will see,
7 was giving them the best possible price they could have,
8 because of the huge quantity of pipe Concord Engineering
9 was buying from Johns Manville.

10 Finally, Kevin Krausgrill will testify that he
11 worked in the Sacramento branch; he knew the customers in
12 the Sacramento branch; his dad was in the Sacramento
13 branch; they had regular family dinners, and he never
14 heard of Concord Engineering. He did hear of a whole lot
15 of other contractors who were installing asbestos cement
16 pipe up in the Gold Country where Mr. O'Bryan's company
17 was working, but he never heard of that one.

18 Now, on the Johns Manville issue. Again, I'm
19 not going to go into that in any detail, because you know,
20 Mr. Berfield has already pretty well discussed that for
21 you. But I do want to mention one additional thing, which
22 is that in addition to evaluating the quantity of the pipe
23 that Johns Manville sold to -- directly to Concord
24 Engineering, one of the projects that we undertook was to
25 look at the location where Johns Manville direct
26 deliveries were made of that pipe; in other words, when it
27 left the plant, where did they take it to. And we were
28 able to take the list of job sites that Mr. O'Bryan

1 testified that he recalled working, and match them up to
2 the records from Johns Manville directly, and we
3 determined that every single job site Mr. O'Bryan
4 testified where he worked, whether it was Big Trees or
5 Pollock Pines, or wherever it was, every single one of
6 those there are documents showing that Johns Manville
7 directly delivered that pipe to those job sites.

8 P.E. O'Hair does not have any records. I
9 talked during voir dire briefly, and you may recall,
10 about, you know, putting yourself back into those times
11 and ages. During the 1970s and 1980s, Kevin Krausgrill
12 will tell you P.E. O'Hair didn't have computers, so any
13 kind of a sales record that was done from a P.E. O'Hair
14 store would have been handwritten. It would have been
15 handwritten either by the counter guy or handwritten by
16 the salesman, and there would have been hundreds of
17 thousands of them and they were routinely destroyed.

18 So, can P.E. O'Hair disprove that it sold
19 anything to Concord Engineering? No. But we can
20 establish that P.E. O'Hair was never a major supplier of
21 asbestos cement pipe to Concord Engineering, and in fact
22 there's really no evidence, no credible evidence that P.E.
23 O'Hair ever sold any asbestos cement pipe to Concord
24 Engineering at all.

25 So, as Ms. Gambino pointed out there's a
26 liability issue here, there's a causation issue. We
27 believe that once all that evidence is before you, and it
28 will be before you, that you will conclude, as we have,

1 that P.E. O'Hair has no responsibility for selling any
2 product to Concord Engineering that could possibly have
3 allowed Ms. O'Bryan to have been exposed to asbestos
4 fibers.

5 So then the next issue that we move onto is the
6 cause of the plaintiff's mesothelioma, and Ms. Gambino
7 will mentioned this. We will put on expert testimony on
8 the issue of other causes of mesothelioma. We believe
9 that the experts the plaintiffs put on will admit that
10 there is a significant percentage of mesotheliomas in
11 women where there's no known relationship to asbestos, and
12 they're called idiopathologic. And the studies will show
13 that that number ranges anywhere from 10 percent in women
14 all the way up to 60 percent in women.

15 In addition to that, there are other potential
16 causes of asbestos that are unrelated to the occupational
17 exposures that Mr. Bratt is going to talk about, and those
18 would include exposure to ambient asbestos. There's
19 asbestos that occurs naturally in the ground, because it's
20 a mineral, and there are known to be outcroppings of this
21 naturally occurring asbestos in El Dorado County where the
22 O'Bryan family lived and worked. And you saw
23 Mr. Berfield's picture of the trenches yesterday. So,
24 there's also -- I'm sorry -- that's naturally occurring
25 asbestos.

26 There's also ambient asbestos, which is just in
27 the air; everybody breathes it. The experts will talk
28 about this. And then there's another product that's

1 called erionite, which is known to cause mesothelioma,
2 which has absolutely nothing to do with asbestos, it's
3 another mineral that -- and there are deposits of this
4 particular mineral in South Dakota where Ms. O'Bryan was
5 born and raised until she was a child.

6 So what you're going to find is that when we
7 asked the experts whether they can rule out any of these
8 as potential causes of Ms. O'Bryan's mesothelioma, they're
9 going to say they cannot. So, that's going to be the
10 evidence that we anticipate you will get on causation.

11 Finally, I want to talk just very briefly about
12 the evidence that we anticipate you will see with regard
13 to what P.E. O'Hair knew about the hazards of asbestos at
14 various points in time. P.E. O'Hair was a supplier,
15 didn't manufacture anything, it didn't install anything,
16 all it was a store. And the evidence will be that P.E.
17 O'Hair learned about asbestos about the same time that
18 Mr. O'Bryan did. And they learned about the hazards of
19 asbestos through public media, magazines and newspapers,
20 like pretty much everyone else.

21 And with regard to the specific issue of
22 asbestos cement pipe, you'll learn that the very first
23 studies that implicated asbestos cement pipe as the
24 potentially troublesome product were done in 1977 after
25 the last year that Mr. O'Bryan could possibly have been
26 exposed to asbestos from P.E. O'Hair. And because prior
27 to that, essentially, I'm sure many of you have heard the
28 terms that -- encapsulated -- it was believed that because

1 asbestos cement pipe enclosed, the asbestos fibers with
2 cement, that this was not a product that anybody had to be
3 concerned about.

4 It wasn't until 1977 that the realization came
5 that it was potentially a problem that people had to be
6 concerned about, and we will present -- we're going to
7 present an expert on the state of the art who will talk to
8 you about how that whole process developed, and how after
9 that period of time, after 1977, when this became known,
10 warnings developed, materials developed that said, don't
11 cut it with a power saw, all of that happened. But during
12 this period of time that Mr. O'Bryan claims his exposure
13 that knowledge was simply not known.

14 So we believe that once you hear all this
15 evidence, you will conclude that P.E. O'Hair has no
16 liability in this case, and while we sincerely sympathize
17 with the fact that Ms. O'Bryan has this disease, and is
18 undoubtedly extremely ill, there's no reason for assessing
19 any part of that responsibility to the P.E. O'Hair
20 company.

21 One thing I just want to caution you, as Ms.
22 Gambino did. There will be a lot of dates, a lot of
23 specific facts in this case. At the end of the case I
24 will probably put up a timeline for you, giving you, you
25 know, dates when P.E. O'Hair did things and dates when the
26 plaintiff did things. Please try and keep an open mind
27 until the end of the case. The plaintiffs go first, and
28 then after that, we get to put our case on. We're going

1 to kind of do it alphabetically, I think, so Westburne
2 will probably be at the end. So please don't make any
3 conclusions until you have heard all the evidence.

4 THE COURT: Thank you very much, Ms. Votaw.

5 I think it's appropriate now to take a
6 15-minute recess, and then we'll begin with our first
7 witness after the recess. First stretch break. Please
8 remember the continuing admonition not to discuss the
9 case, form or express an opinion, do any research, that
10 kind of thing. Thanks a lot.

11 (A recess was taken. End Section A)

1 APRIL 16, 2014

10:46 A.M.

2 ----oOo----

3 THE COURT: We are all together.

4 Mr. Bratt, whenever you are ready to call a
5 witness?

6 MR. BRATT: Before we call our first live
7 witness, I would like to read a few interrogatory
8 responses that were filed and sworn and verified by the
9 Defendant Kubota Corporation.

10 THE COURT: Now let me just ask, just for record
11 keeping, are these in the -- one of the exhibits just so
12 that we -- I don't know if they are or not? Just to
13 maintain a proper record.

14 MR. BRATT: They may or may not be. I
15 apologize, Your Honor.

16 THE COURT: Why don't you just identify them,
17 clearly, the interrogatories and the dates --

18 MR. BRATT: Sure.

19 THE COURT: -- so that counsel can dig them out
20 and look at them.

21 MR. BRATT: I exchanged these with counsel
22 yesterday.

23 THE COURT: Oh, I see. Why don't you proceed?

24 MR. BRATT: Sure. And, Your Honor, did you read
25 the jury instruction for the --

26 THE COURT: Yes, I'll just indicates its
27 preface, and counsel can set this up.

28 During the course of litigation, during

1 the life of this litigation, the attorneys were able to
2 send to parties interrogatories. They are on standard
3 Judicial Counsel form, and they have certain definitions
4 and questions, and then the party to the litigation can
5 sit down and go over what the appropriate answers are.
6 And so those are to be treated just as if someone was
7 here testifying in life. It helps for pretrial
8 preparation, and it is otherwise admissible, can be used
9 at trial.

10 So, if you'll identify who was -- this
11 will be the first time we'll hear this. We'll find out
12 who is the propounding party, the person who sent them
13 off. Who is the responding parties, and each party has
14 to be evaluated on its own facts. So as it relates to
15 the propounding party and responding party. We'll find
16 out who they are and when the answers were provided.

17 MR. BRATT: Thank you, Your Honor. The
18 responses that I'll be reading to you are Defendant
19 Kubota Corporation's Amended Responses to General Order
20 129 Interrogatories to Defendants, and they are from a
21 group of cases in San Francisco, and the group was
22 called in re --

23 MS. GAMBINO: Excuse me, Your Honor. May we
24 approach, please?

25 THE COURT: Yes. Come on up here.

26 (Sidebar discussion had, not reported.)

27 MR. BRATT: Your Honor, in re, r-e., Complex
28 Asbestos Litigation. The interrogatories were signed on

1. July 27th, 1998, and they were verified by an
2 individual, Takashi Arimori, T-a-k-a-s-h-i,
3 A-r-i-m-o-r-i, solemnly affirm under penalty of perjury,
4 that I am the manager of the International Legal Section
5 of Kubota Corporation, and I verify the foregoing
6 amended responses to general responses to General Order
7 129 Interrogatories to Defendants on its behalf; that
8 the matters stated therein have been assembled by
9 authorized employees, and counsel of Kubota Corporation,
10 and I'm informed the facts stated therein are true.

11 It was executed on July 22nd, 1998 in
12 Osaka, Japan. And I will read just a few of these, and
13 then we'll do our first witness.

14 The first one is Interrogatory Number 30
15 (reading):

16 Between 1930 and 1985, did you ever engage in
17 any of the activities listed below with regard to
18 asbestos-containing products? If so, state the
19 inclusive dates of such activity:

- 20 (a) Supply;
- 21 (b) Importing;
- 22 (c) Distribution;
- 23 (d) Marketing;
- 24 (e) Sale;
- 25 (f) Labeling;
- 26 (g) Manufacturing; and
- 27 (h) Brokering.

28 As to (a) for Supply: Yes. 1960 to

1 1975.

2 As to (b) for Importing: No.

3 As for (c) for Distribution. No. Kubota
4 distributed most of its asbestos pipes into the United
5 States through a distributorship agreement with Marubeni
6 and Voss. Voss solicited customers in the United States
7 and sold directly to those customers. Kubota did not
8 keep any records of the sales from Voss to its
9 customers.

10 (d) Marketing: No. Kubota distributed
11 most of its asbestos pipes into the United States
12 through a distributorship agreement with Marubeni and
13 Voss. Voss solicited customers in the United States and
14 sold directly to those customers. Kubota did not keep
15 any records of sales from Voss to its customers.

16 Under (e) Sale: No. Kubota distributed
17 most of its asbestos pipes into the United States
18 through a distributorship agreement with Marubeni and
19 Voss. Voss solicited customers in the United States and
20 sold directly to those customers. Kubota did not keep
21 any records of sales to Voss to its customer.

22 (f) Labeling: No.

23 (g) Manufacturing: Yes. From 1954 to
24 1975.

25 (h) Brokering: No.

26 MR. BRATT: And that is the only one I want to
27 read now, Your Honor. We'll call our first witness.

28 THE COURT: That completes that reading. You may

1 call your first witness.

2 MR. BRATT: We would like to call Mr. Uchino.

3 THE COURT: Please come forward. And we'll have
4 the oath administered.

5 Will Mr. Uchino be aided by an
6 interpreter?

7 MR. BRATT: He will.

8 THE COURT: We'll give the oath to interpret.

9 THE CLERK: Are you interpreting Japanese?

10 THE INTERPRETER: Yes.

11 THE COURT: Thank you.

12 (Whereupon, the Japanese interpreter was
13 sworn to interpret for the witness from English to
14 Japanese and from Japanese to English the following
15 proceedings.) THE CLERK: May I have your first
16 and last name, please?

17 THE INTERPRETER: My first name, Masako,
18 M-a-s-a-k-o; last name is Houston, as in Whitney.

19 THE CLERK: Houston. Got it.

20 THE COURT: And we'll have the oath administered
21 to this gentleman.

22 THE CLERK: Would you raise your right hand?
23 - - -

24 MASAHIKO UCHINO,

25 Having been called as a witness on behalf of the
26 Plaintiffs under Evidence Code 776, was first duly
27 sworn, examined and testified as follows:

28 THE WITNESS: Yes, I do.

1 THE CLERK: Thank you. Would you please be
2 seated. State your first and last name for the record,
3 and spell each, please.

4 THE WITNESS: My first name is Masahiko,
5 M-a-s-a-h-i-k-o. My last name is Uchino, U-c-h-i-n-o.

6 THE CLERK: Thank you.

7 THE COURT: Ladies and gentlemen, it may be that
8 we'll have an interpreter with other witnesses, I don't
9 know, but I want to make a brief statement to explain
10 how we will proceed.

11 Are you calling this witness under 776?

12 MR. BRATT: Yes, Your Honor.

13 THE COURT: The law permits a party to a lawsuit
14 to examine an opposing party or opposing party
15 representative in a little different way than if they
16 call their own party or witness; in other words, there
17 is more leeway in it.

18 THE COURT: The question can proceed in the
19 nature of cross-examination, which in some way allows
20 leading questions and the like, something not permitted
21 when one calls its own witness or party. But the law
22 also prescribes a function for me in every case under
23 765 of the Evidence Code, which is to prescribe the mode
24 and manner of interrogation as to avoid confusion and
25 elicit truthful testimony accurately. What I will say
26 now is a little bit more extensive than I would with
27 other witnesses, but it really goes as follows.

28 First, good morning, sir.

1 THE WITNESS: Good morning.

2 THE COURT: Every witness is treated with
3 respect. These are fine lawyers. It would be helpful,
4 sir, if you if you pause for just a moment, and it helps
5 because there is an interpreter, after the question is
6 asked. If you do not understand the question through
7 the interpreter, make it clear through the interpreter.
8 Would you do that?

9 THE WITNESS: Yes.

10 THE COURT: Also, even assuming we have the very
11 finest interpreter, you know the phrase, "something lost
12 in translation." So we want to take care even though
13 some leading is permitted to make sure that the
14 questions are direct and straightforward. And for
15 example, counsel asked you one question after the other
16 and they won't be several grouped all together. That
17 serves two functions. One is to be clear. But the
18 second is, that if the question is clear, and a single
19 question, and you can answer it "yes" or "no," do so.
20 Sometimes the question of this kind is a direct question
21 that calls for a "yes" or "no" answer and the witness
22 feels there is a lot more I could say. But the general
23 counsel would be that unless it is necessary to give an
24 accurate answer, just wait because in this case other
25 counsel will be able to ask questions on the same
26 subject matter to flesh it out should they choose to do
27 so. Do you have any questions?

28 THE WITNESS: No, thank you, Your Honor.

1 THE COURT: Thank you. I just extended these
2 courtesies to everybody, but I think with an
3 interpreter, it may be helpful to get through things in
4 a clear manner.

5 Mr. Bratt, you may go forward.

6 MR. BRATT: Thank you, Your Honor.

7 - - -

8 DIRECT EXAMINATION (under 776)

9 BY MR. BRATT:

10 Q Good morning, sir. How are you?

11 THE INTERPRETER: Hold on. I'm sorry. I
12 apologize.

13 THE WITNESS: Good morning. Actually, I feel
14 great. I slept well last night.

15 MR. BRATT: Q Wonderful. I have some
16 questions for you. And there is about an inch worth of
17 questions in these folders, and I will try to move
18 through them quickly.

19 Mr. Uchino, you have traveled all the way
20 from Japan to testify in this case; is that correct?

21 A Yes, that is correct.

22 Q How long was the flight?

23 A It was about ten-hour long.

24 Q And where do you live in Japan?

25 A I live in the City of Kyoto, which is
26 near Osaka, Japan.

27 Q And you work for Kubota Corporation; is
28 that true?

1 A Yes, that's correct.

2 Q And Kubota is based in Osaka, Japan; is
3 that true?

4 A Yes, that is correct.

5 Q Have you ever had to come to the United
6 States to testify before?

7 A No. Never before. This is my very first
8 time.

9 Q How old are you, sir?

10 A Fifty-one.

11 Q And what's the date of your birth?

12 A My birthday is February the 15th, 1963.

13 Q How long have you worked for Kubota?

14 A Twenty-nine years.

15 Q Are you Kubota's expert with respect to
16 asbestos?

17 A No. I wouldn't consider myself as
18 Kubota's expert.

19 Q Do you have any formal training in
20 asbestos?

21 A No, I did not receive any formal
22 trainings with regard to asbestos.

23 Q What is your job title currently with
24 Kubota?

25 A I am a manager of a General Affairs
26 Department.

27 Q Can I have that read back?

28 THE COURT: The Manager of the General Affairs

1 Department.

2 MR. BRATT: Q Is it true you did not work for
3 Kubota when it manufactured asbestos cement pipe from
4 1954 to 1975?

5 A That is true.

6 Q Let me backup and ask you what the
7 General Affairs Department does? What is it?

8 A General Affairs Department takes care of
9 general business affairs, including sales part of
10 business, marketing -- excuse me, engineering part of
11 business or manufacturing part of business, and research
12 and development part of business. Specifically, General
13 Affairs Department is responsible for human recourse
14 issues, finance issues, any other management issues.
15 Also, we are responsible for operating and facilitating
16 shareholders' meeting. We also are responsible for
17 management real estates we have, and any other issues
18 that needs to be facilitated in the office.

19 Q You've been with Kubota for 29 years.
20 So, you started in 1985; is that correct?

21 A Yes. I joined Kubota Corporation on
22 April the 1st, 1985.

23 Q And you would agree you have no personal
24 knowledge about anything that happened at Kubota prior
25 to the date that you started with the company in 1985?

26 A If you are asking me if that is something
27 I have seen -- I have seen and heard directly, you are
28 right. No, I did not.

1 Q Now it's true that you and I have never
2 met before. Am I right about that?

3 A Correct.

4 Q And you've never met my client,
5 Ms. Pamela O'Bryan; is that true?

6 A That is correct. . I have not met her
7 before.

8 Q And you understand that you flew over
9 from Japan to testify in this lawsuit because
10 Ms. O'Bryan has been diagnosed with mesothelioma; is
11 that correct?

12 A My understanding of her condition is so,
13 yes.

14 Q And you are aware that mesothelioma is an
15 asbestos-related cancer; is that right?

16 A I am not a medical doctor, so I really
17 don't know the details, but, in general, I understand
18 that is what people are talking about.

19 Q Not just people, but that is what Kubota
20 is talking about, correct?

21 MS. GAMBINO: Objection.

22 THE COURT: Sustained. It is a little confusing
23 here unless you are asking for expert. So I would
24 suggest you be a little more direct as to avoid
25 confusion.

26 Ask another question.

27 MR. BRATT: Q Kubota, as a company, is aware
28 that asbestos causes mesothelioma; is that true?

1. A I apologize by repeating the similar
2 answer. I am here as Kubota Corporation's
3 representative; however, I don't know whether or not
4 Kubota knows whether mesothelioma is caused by asbestos,
5 that is something beyond my knowledge.

6 Q Is there someone at Kubota, besides you,
7 that is a better person to talk about in regards to what
8 Kubota knows about asbestos and mesothelioma?

9 A No, I don't believe so.

10 Q Who makes the decisions at Kubota about
11 what to put into various documents like annual reports?

12 THE COURT: Let me just pause for a moment.
13 Because there is such a range of business documents, are
14 you focusing now on the annual reports?

15 MR. BRATT: Yes, Your Honor.

16 THE COURT: Thank you.

17 THE WITNESS: The annual report is prepared by
18 one of our departments called, CSR Management
19 Department.

20 MR. BRATT: Q And is there someone within
21 the -- strike that.

22 CSR stands for what?

23 A It stands for Corporate Social
24 Responsibilities.

25 Q Is there someone at Kubota within the CSR
26 Department that has knowledge about asbestos and
27 mesothelioma?

28 A We are manufactures. No matter who you

1 ask, I don't think there is anyone that knows more than
2 I do.

3 Q Well, you are aware, sir, that Kubota
4 files an annual report every single year to communicate
5 information to its shareholders, correct?

6 A Yes. That is correct.

7 Q And Kubota's honest when it files those
8 annual reports, correct?

9 A Yes.

10 Q They don't want to mislead their
11 investors, correct?

12 A Correct. We don't do that.

13 Q The annual reports of Kubota are
14 available on Kubota's website, correct?

15 A Yes.

16 MS. GAMBINO: Excuse me, counsel. I'm sorry.
17 Your Honor, may we approach the bench?

18 THE COURT: Yes. We'll take a little stretch
19 here.

20 (Sidebar discussion had, not reported.)

21 THE COURT: Okay. We took a little break. Sweet
22 reason works, and I think we have an agreed way to go
23 forward.

24 MR. BRATT: Thank you, Your Honor.

25 MR. BRATT: Q Mr. Uchino, has Kubota
26 Corporation, in its annual reports, acknowledged that
27 there is an association between asbestos and
28 mesothelioma?

1 A I believe it stated in its annual report
2 that asbestos might be a cause of mesothelioma. I think
3 that something along that line, that thing is stated in
4 the annual report.

5 THE COURT: Thank you.

6 MR. BRATT: Q You will agree with me that the
7 annual reports since 2006, up until present day, 2013,
8 had all had a section related to asbestos health
9 hazards?

10 MS. GAMBINO: Objection, calls for speculation.

11 THE COURT: As you sit here, do you have in mind
12 the content of the annual reports between 2006 and 2013,
13 on whether there is a relationship between asbestos and
14 mesothelioma?

15 THE WITNESS: I have a vague recollection
16 something in that nature might have been stated in the
17 annual reports, but I do not remember it clearly.

18 THE COURT: Thank you.

19 MR. BRATT: Q Has Kubota acknowledged that
20 some of its employees that were exposed to asbestos in
21 the asbestos cement pipe that it made have been
22 diagnosed with mesothelioma?

23 A Yes, it has.

24 Q Has Kubota acknowledged in its annual
25 reports that people that lived within the neighborhood,
26 in the vicinity of its asbestos cement pipe plant, have
27 been diagnosed with mesothelioma?

28 A Unfortunately, I don't have a clear

1 recollection of that type of statement has been made in
2 any of our then annual report clearly.

3 MR. BRATT: Your Honor, I would like to pull up
4 the 2010 --

5 THE COURT: Before you show -- publish, do you
6 want to show him something to refresh his recollection?

7 MR. BRATT: Sure.

8 THE COURT: Show it to counsel.

9 MR. BRATT: Your Honor, may I approach?

10 THE COURT: Something to refresh recollection, it
11 is treated differently.

12 MS. GAMBINO: Your Honor, maybe we need another
13 sidebar.

14 THE COURT: Okay.

15 (Sidebar discussion had, not reported.)

16 THE COURT: Mr. Bratt, you may approach the
17 witness.

18 MR. BRATT: Thank you, Your Honor.

19 THE COURT: Show him the document and then ask
20 the interpreter to quietly read it to him to see if it
21 refreshes his recollection.

22 MR. BRATT: For the record, Your Honor, I've
23 handed the witness an excerpt --

24 THE COURT: It is a page that you believe comes
25 from the annual reports?

26 MR. BRATT: Yes.

27 THE WITNESS: (Reviewing.) Thank you. I
28 understand.

1 THE COURT: Counsel may inquire.

2 MR. BRATT: Q Have you had an opportunity to
3 review the document in front of you?

4 A Yes, I just read it.

5 Q Does the document refresh your
6 recollection as to Kubota's acknowledgement that people
7 that lived in the neighborhood, in the vicinity of the
8 asbestos cement pipe plant, have been diagnosed with
9 mesothelioma?

10 A Yes, I do.

11 Q And so you would agree that in April
12 2005, Kubota was advised that some residents who lived
13 near the former plant suffered from mesothelioma, a form
14 of cancer caused by asbestos?

15 THE COURT: Were you reading that that was said
16 to be mainly caused by the aspiration of asbestos?

17 MR. BRATT: I wasn't quoting, Your Honor, but I
18 can.

19 MR. BRATT: Q You would agree, sir, that the
20 company was advised some residents who lived near the
21 former plant suffered from mesothelioma, a form of
22 cancer, that is said to be mainly caused by the
23 aspiration of asbestos?

24 A Yes, I agree with you, because that is
25 exactly what is written here as you read it.

26 Q Do you know who wrote this for Kubota?

27 A No, I don't. Because this is not a
28 document responsible under the department I was with.

1 Q Would you agree that in June of 2005,
2 Kubota made a decision to act seriously and faithfully
3 concerning the issues of asbestos hazards?

4 A Yes. Yes, it did.

5 Q And this is Kubota's view under the CSR,
6 the Corporate Social Responsibility, that you talked
7 about because it was once a company that made
8 asbestos-containing products for a long time; is that
9 true?

10 A Yes, as a company which once dealt with
11 asbestos, and from the viewpoint of Corporate Social
12 Responsibility, we made this announcement in June of
13 2005 to announce that we are going to deal with this
14 issue.

15 Q What do you mean, "deal with this issue"?

16 A I am sure you have heard the term, "a
17 corporate citizen." Corporate is a citizen in terms of
18 the people who is living around the corporation. What
19 we meant by deals with this issue was, if there are
20 people who actually suffered from our plant then we
21 wanted to compensate their suffering by possibly
22 providing them with some money so that they can use it
23 as a part of their treatment.

24 Q Has Kubota come up with a plan under CSR
25 to deal with people that have been injured -- that have
26 used the asbestos cement pipe?

27 A No, I didn't make a plan. The people who
28 are applicable for our measure were those used to live

1 near our plant.

2 Q Why not product users? People that used
3 the asbestos cement pipe?

4 MS. GAMBINO: Objection; lacks foundation.

5 THE COURT: Sustained. I think the activities in
6 2005, and thereafter, are somewhat collateral to the
7 issues that are relevant, counsel.

8 MS. GAMBINO: Thank you, Your Honor.

9 MR. BRATT: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 MR. BRATT: Q And you would agree that Kubota
12 in its annual reports needs to continue this problem
13 with sincerity in the future?

14 MS. GAMBINO: Objection; lacks foundation.

15 THE COURT: Are you asking -- repeating what was
16 said there (indicating)?

17 MR. BRATT: Your Honor, it is not from that
18 document. I'm asking him the question, and if he
19 doesn't acknowledge that or remember that, then we'll
20 deal with it then.

21 THE COURT: The question is, lack of foundation.
22 If he has knowledge, and if that's the only objection,
23 then I'm permit him to answer.

24 THE WITNESS: Excuse me, what was the question?

25 MR. BRATT: Well, I'll probably screw it up. So
26 can I have it read back, please?

27 (Whereupon, the question was read in open
28 court by the Certified Court Reporter.)

1 THE WITNESS: Yes.

2 MR. BRATT: Q Do you know where the former
3 Kubota asbestos cement pipe plant is located?

4 A Yes, I do.

5 Q And where is it?

6 A It was located, the City of Amagaski in
7 Hyogo Prefecture in Japan.

8 THE COURT: Can you spell that?

9 THE INTERPRETER: Of course, Your Honor. Hold
10 on, please.

11 The City of Amagaski, A-m-a-g-a-s-a-k-i; Hyogo
12 Prefecture Japan, H-y-o-g-o.

13 THE COURT: Thank you.

14 THE INTERPRETER: Thank you.

15 MR. BRATT: Q And do you have an address for
16 the former plant location in mind? Do you know where
17 to -- that is a bad question. Let me just make it
18 clearer. Strike it.

19 Do you have an address of the former
20 plant location?

21 A No, I don't.

22 Q Have you been there?

23 A The plant is no longer there; however,
24 the same exact location, now we have an office. So I've
25 been to the office, but when it was occupied by our
26 plant, no, I did not go there.

27 Q Would you agree that the location of the
28 office, which used to be the location of the plant, is

1 at Hama, H-a-m-a, 1-1-1 Amagasaki Hyogo 6618567?

2 A Although I don't remember the exact
3 street address, it sounds familiar. Most likely be so.

4 Q If I showed you a map of Amagasaki, do
5 you think you could put an "X" to approximate where the
6 plant used to be located, and where the office is now?

7 A Not knowing what map you are going to
8 show me, I cannot know for certain. But I would like to
9 give my best shot.

10 MR. BRATT: Your Honor, may I approach?

11 THE COURT: Yes.

12 MR. BRATT: (Items proffered.)

13 THE WITNESS: (Reviewing.)

14 THE COURT: Are you asking the witness to put a
15 mark, as his best approximation, of the location on that
16 map?

17 MR. BRATT: Yes, please.

18 THE COURT: On the office, and also the site of
19 the former plant?

20 THE WITNESS: I think it is here (indicating). I
21 remember it was near Amagasaki train station.

22 MR. BRATT: Your Honor, may I approach?

23 THE COURT: Sure.

24 MR. BRATT: For the record, a black dot was
25 placed on here, and if I can mark it as exhibit --

26 THE COURT: We'll mark it for identification.

27 MR. BRATT: Exhibit 500. And if I can put it on
28 the ELMO, please?

1 THE COURT: Marked for identification. You may
2 publish it.

3 (Plaintiff's Exhibit No. 500 marked for
4 identification.)

5 MR. BRATT: Q Sir, if you stand up and make
6 it clear to the jury where your black dot is? If you
7 could stand up and just point it out?

8 A It is right there (indicating).

9 Q Just to make it more clear, can we put an
10 "X" on it so it sticks out a little more (indicating)?

11 THE COURT: Counsel put an "X." "X" marks the
12 spot.

13 MR. BRATT: Thank you, Your Honor.

14 MR. BRATT: Q Sir, have you ever seen any
15 aerial photographs of the plant when it was in operation
16 in making the asbestos cement pipe?

17 A Yes. I have seen an aerial photograph
18 before.

19 THE INTERPRETER: Counsel, this is Officer
20 Interpreter speak. Just wanted to let you know, in
21 Japanese language there is no difference between plural
22 and singular. So when witness said, I have seen
23 pictures in Japanese, there is no way of me knowing if
24 it is one picture or more than one picture. So if
25 quantity is important in your question, please clarify
26 him.

27 MR. BRATT: Yes. Sure.

28 MR. BRATT: Q Have you seen just one picture

1 or have you seen multiple, more than one pictures, of
2 the plant?

3 A The pictures I have seen -- because
4 actually two, maybe three, and it was not directly above
5 the factory, rather it was an aerial picture of the city
6 including the factory.

7 MR. BRATT: Your Honor, may I approach? I have
8 an aerial picture.

9 MR. BRATT: Q I want to know if this is one
10 that you've seen before or something similar (item
11 proffered)?

12 A (Reviewing.) Pictures I have seen were
13 much wider. I remember seeing a plant, but I also
14 remember I was able to see wider range of the city.

15 Q Based upon the pictures you have seen,
16 does that picture appear to be an accurate picture of
17 the plant?

18 A Yes. I think this is an accurate
19 picture.

20 MR. BRATT: Your Honor, may I approach? And for
21 the record, we'll mark this as 501.

22 THE COURT: That is fine.

23 (Plaintiff's Exhibit No. 501 marked for
24 identification.)

25 MR. BRATT: And if we can display it to the
26 jury?

27 THE COURT: No objection, you can show that out
28 in the open. So that is an aerial view, you agree,

1 counsel?

2 MR. BRATT: Yes. This is an aerial view.

3 MR. BRATT: Q Now, sir, this is the Kubota
4 asbestos cement pipe plant, and Kubota stopped making
5 asbestos cement pipe at this plant in 1975; is that
6 true?

7 A Yes. That's correct.

8 Q The plant, itself, did it continue to
9 make other asbestos-containing products after 1975?

10 A That's correct. We stopped manufacturing
11 asbestos cement pipe in November of 1975; however, we
12 continued to manufacture roofing materials and siding
13 materials containing asbestos.

14 Q As a company, Kubota kept making asbestos
15 products up until 2001; is that true?

16 A Yes, that is true.

17 Q And are you aware of any scientific
18 studies that have been performed related to the
19 neighborhood around the asbestos cement pipe plant
20 focusing on asbestos and asbestos diseases?

21 A Yes, I am.

22 Q And is Kubota aware of those medical and
23 scientific studies related to the neighborhood around
24 the plant, and asbestos diseases?

25 A Kubota is aware that there are studies
26 done in those subject.

27 Q And is Kubota aware that the studies have
28 shown that the people living within a 1,500 meter radius

1 of the pipe plant have an increased risk for developing
2 mesothelioma?

3 A Kubota is aware that there are some
4 studies that concluded, as you described, as their
5 studies; however, with regards to the contents of these
6 studies, there are several different opinions.

7 Q I want to shift gears slightly and ask
8 about anything that you might know related to Kubota's
9 selling of their asbestos cement pipe in the United
10 States, okay.

11 A Yes.

12 Q Kubota sold pipe in the United States
13 through a company called Voss, correct?

14 A Yes.

15 Q And Kubota imported the pipe into
16 California, correct?

17 A No.

18 Q Kubota --

19 THE INTERPRETER: Counsel, because you said
20 "imported."

21 MR. BRATT: It's been a long morning.

22 THE COURT: Be alert, counsel.

23 MR. BRATT: Thank you.

24 MR. BRATT: Q Kubota exported asbestos cement
25 pipe into the United States, and it came into the ports
26 of California, correct?

27 A I guess that is how it is done, but we
28 were not exporting our product directly to California or

1 to Voss. We had a train company called Marubeni. So
2 they were exporting our products on behalf of us. Then
3 Marubeni would export our products to Marubeni USA and
4 then Marubeni USA brought the product to Voss. That is
5 how it was done contractually. I don't know how it was
6 actually done.

7 THE COURT: We are going to take our lunch and
8 recess now. Please remember at 1:30 to come back. Not
9 to discuss the case or form or express any opinions.
10 Thank you so much.

11 (Whereupon, the noon recess was had. This
12 ends Section B.)

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1:30 P.M.

1
2 THE COURT: Everybody is so careful. Thank
3 you. Mr. Wood disclosed he was going to get a cup of
4 coffee, and a person said can you tell me where Main
5 Street is, and he pointed, and it turned out that it was a
6 juror. He disclosed that to plaintiff's counsel. Thank
7 you. These things can happen. We appreciate people
8 bending over backward.

9 Anything?

10 MR. BERFIELD: One request would be for
11 counsel to move the book entitled "Asbestos Disaster."

12 MR. BRATT: I just set it there before lunch,
13 or after lunch.

14 THE COURT: It wasn't there before.

15 Let me indicate that I worked through lunch
16 with counsel, and they're going to -- they have the
17 deposition of Mr. Ambler that they'll edit. I'm told that
18 we'll continue with the witness this afternoon, and
19 probably have sometime for some deposition work this
20 afternoon.

21 MR. BRATT: And for the record as well, I've
22 spoke with Mr. Wood about this. After a deposition is
23 read or played, via video, we will be filing some sort of
24 pleading to the record for -- to establish what the record
25 is as to what the jury has seen.

26 THE COURT: Very good. You do that in --
27 either by way of in connection with the text that is
28 there, or in some manner acceptable to our clerk, that's

1 the important thing; recognizing that if there's a request
2 for read back, that transcript does not go into the jury
3 room, right? There would be -- it would just be played
4 back, read back in some manner.

5 Do you agree that every time the deposition is
6 shown on a video, and the transcript is lodged that we may
7 go off record, indicating that the video deposition is now
8 being displayed, counsel know what portions it will be
9 that's presented as their testimony, without the court
10 reporter taking it down again. Is that agreeable?

11 MR. BRATT: Yes.

12 MS. GAMBINO: Yes.

13 MS. VOTAW: Yes.

14 MR. BERFIELD: Yes.

15 THE COURT: I have been provided with more
16 documents. And this is only with a sense of humor, that
17 they are all marked "courtesy copies." Large volumes of
18 cases that claim some sort of an alarm. I will read them
19 all with care, and deal with you in due course on that.

20 As to the deposition, there was a brief
21 reference earlier with Mr. Trey Jones, something about a
22 deposition. I pointed you all back to the statute.
23 Satisfy yourself on what the transcript says and what the
24 statute says. If there's an issue for me to decide, I
25 will decide it. But at least when I last looked at it, it
26 did not appear to me that that witness could be called in
27 the plaintiff's case, on the basis that he was within the
28 subpoena power, living locally. But a new point was

1. raised by Mr. Jones. After you have met and conferred, if
2. somebody wants to argue that issue, we can do that.

3. MR. JONES: We'll look at the transcript and
4. discuss it before we bring it back to your attention.

5. THE COURT: Okay. Are we ready to call in the
6. jury? Okay, thank you. We should be going forward, okay.

7. (The jury enters the courtroom.)

8. THE COURT: Good afternoon. We're all
9. together. We'll come to order now. We're going to
10. continue with the direct examination, in progress in just
11. a moment. And once we're -- if we have time this
12. afternoon, there will probably be some deposition
13. presentations, either by reading out loud or through video
14. presentation, however that works out.

15. Just a reminder on the preliminary
16. instructions -- these things can whistle by real fast --
17. and so I'll just repeat something I said before.
18. Recognizing I urged consideration of being cautious about
19. asking questions for the reasons that I had indicated,
20. nonetheless, if a juror asks a question, the procedure
21. would be to simply write it out, legibly, signing your
22. name and putting the time and date, so we can read the
23. name, and just raising your hand, and our bailiff would
24. pick it up. I would look at it, at some convenient time I
25. would show it to counsel. If it's incorporated into
26. questioning, then you just deal with it.

27. But do not discuss with fellow jurors the fact
28. that you wrote a note, or whether you're satisfied with

1 the answer, or that type of thing. And please, for the
2 reasons I suggested earlier, be sure it's something to the
3 point that asks a question, and in no way comments or
4 offers an opinion on the case, because that would be
5 something that we're obliged not to do. And then I would
6 show the note, if any, to counsel, of course. And it
7 takes a little while to do that. We might not just
8 interrupt at the moment, but I would certainly show it to
9 him.

10 We are ready to go forward with the direct
11 exam.

12 MR. BRATT: Thank you. Thank you, your Honor.

13 BY MR. BRATT:

14 Q. I only have six more folders for you.

15 When we broke for lunch, we were talking about
16 Kubota's sales of asbestos pipe in America. And I have a
17 follow-up question. Is it true that all of Kubota's
18 asbestos cement pipe was shipped into California?

19 A. My understanding is that almost all of the
20 pipes we made were shipped to California, but some smaller
21 portion of our products were also shipped to somewhere
22 outside of California. But if you ask me specifically
23 where or how much, I don't know the details.

24 Q. So it's fair to say that you're not aware,
25 specifically, of any other states within America that
26 Kubota shipped its asbestos pipe?

27 A. Yes, that is correct.

28 Q. And Kubota shipped its asbestos cement pipe to

1 Northern California, to the East Bay Municipal Water
2 District, is that true?

3 A. Yes, they were shipped for East Bay.

4 Q. And the East Bay was the first place that
5 Kubota was shipping and marketing its asbestos cement pipe
6 in America, true?

7 A. I don't know if they were the first one.

8 Q. But you would agree that throughout the time
9 frame that Kubota was shipping pipe to America to be sold,
10 that it was consistently, throughout that time being
11 shipped to the East Bay?

12 A. No, I wouldn't, because I don't know whether
13 or not we sold our pipes to East Bay continuously without
14 any breaks.

15 Q. And Kubota has no records about those sales
16 one way or the other today; is that correct?

17 A. Correct. We don't have any of these records
18 currently.

19 Q. And this asbestos cement pipe that was shipped
20 into California for sale in America, it was the same pipe
21 that came from the Amagasaki plant that we were talking
22 about earlier, correct?

23 A. These pipes were made at Amagasaki plant.

24 Q. Now, counsel for Kubota said in her opening
25 that Kubota only had a two percent market share in the
26 United States. You would agree that all of the pipe that
27 was sold in the United States came through California?

28 A. I wouldn't say all of them. I think it's fair

1 to say almost all of them came into the United States
2 through California; however, I don't know the details.

3 Q. The Kubota pipe that was exported and shipped
4 over to America was sold in California for 15 years,
5 correct?

6 A. Well, we were talking about from '62 to '75,
7 isn't it? If so, that's for 13 years. However, even
8 though in theory we had the presence in 13 years, after
9 1972 our sales was practically next to none.

10 Q. Now, Kubota does business all over the world;
11 they have factories in other countries other than Japan
12 today; isn't that true?

13 A. That is true. We have offices in North
14 America, Asia and Europe. And we have our factories
15 outside of Japan too.

16 Q. And Kubota, as a company, they stay abreast of
17 the laws and the regulations of the companies in which
18 they do business -- or the countries in which they do
19 business; is that true?

20 A. That is correct. If you want to do a business
21 at a certain country, I think that it is our
22 responsibility to obey and comply with the laws of the
23 particular country, and that's what we have been doing.

24 Q. And before Kubota began selling asbestos
25 cement pipe and shipping it to America, did Kubota look
26 into the asbestos laws in America?

27 A. I don't know.

28 Q. Did Kubota ever investigate the laws and

1 regulations promulgated under the Occupational Safety and
2 Health Administration in 1972 related to asbestos
3 products?

4 A. I don't know the details, but I don't think we
5 did, because OSHA regulations are rules that are
6 fundamentally to protect workers working at the factory.
7 We were not doing that. We were just a company whose
8 products were being exported, so I don't think it is that
9 strange that we didn't investigate OSHA regulations.

10 Q. Did Kubota look into any American laws related
11 to workers that were being exposed to asbestos?

12 THE COURT: One second, please. Would you
13 clarify the time period once again, as to which your
14 question relates?

15 MR. BRATT: Prior to or during the time that
16 they made and sold and shipped asbestos pipe into America.

17 THE COURT: Thank you.

18 THE WITNESS: Although I don't know the
19 details, I don't think any such investigations were done
20 at that time.

21 BY MR. BRATT:

22 Q. And so was Kubota aware that there were laws
23 that required warnings to be put on asbestos products?

24 A. Counsel, you are asking up to '75?

25 Q. Yes.

26 A. We were not aware of any laws requiring me to
27 place warnings on the products before 1975.

28 THE COURT: This is just one illustration. I

1 would make the point regardless of who asked it, to
2 illustrate a preliminary instruction that I provided to
3 you. A question of any one of these fine lawyers that
4 suggests the state of affairs is not evidence itself. So
5 we've not yet heard evidence about the content of any OSHA
6 regulation, but it was a perfectly appropriate question to
7 find out what the witness knew in fact. Thank you.

8 BY MR. BRATT:

9 Q. Did Kubota choose to make asbestos pipe in
10 Japan and ship it over to California and sell it in
11 America, without investigating laws related to asbestos
12 dangers?

13 MS. GAMBINO: Objection, argumentative.

14 THE COURT: Sustained.

15 MR. BRATT: Thank you, your Honor.

16 BY MR. BRATT:

17 Q. Did Kubota ever place any warnings on the
18 asbestos cement pipe that it sold in the United States?

19 A. No, we didn't.

20 Q. Was Kubota aware of Japanese laws in 1960 that
21 addressed lung diseases in workers exposed to mineral
22 dust?

23 A. If you are referring to the ordinance on the
24 prevention of the hazards due to the specified chemical
25 substances, yes we were aware of that.

26 Q. And one of those substances was asbestos,
27 true?

28 THE INTERPRETER: This is the interpreter

1 speaking. I'm sorry, I misspoke. What the counsel was
2 originally referring to is not the ordinance, I apologize.
3 It is Pneumoconiosis Act in 1960. I apologize. Therefore
4 the previous statement by the witness should have been, if
5 you are referring to the Pneumoconiosis Act in 1960, yes,
6 we were aware of it. I apologize.

7 BY MR. BRATT:

8 Q. And pneumoconiosis is lung disease, correct?

9 A. Correct, yes.

10 Q. And asbestos is a mineral dust that causes
11 pneumoconiosis, correct?

12 A. Yes, they say it is possible for it to cause
13 lung disease.

14 Q. Now, did -- strike that.

15 Sir, would you agree that a responsible
16 company test products before it puts them on the market?

17 MS. VOTAW: Objection; your Honor. Overbroad.

18 THE COURT: Sustained.

19 BY MR. BRATT:

20 Q. Did Kubota ever test its asbestos cement pipe
21 before it was put on the market in 1954 in Japan?

22 MS. GAMBINO: Objection. Overbroad.

23 MR. BRATT: I'll clarify.

24 THE COURT: I was going to overrule, because
25 you'd moved from the general to the specific, I'm sure.

26 MR. BRATT: Yes.

27 BY MR. BRATT:

28 Q. Let me clarify. Did Kubota, before it started

1 selling asbestos cement pipe, ever in 1954, did it ever
2 test to determine if there were any health hazards
3 associated with the use of that product?

4 A. If you are asking prior to 1954, although I
5 don't know the details, I don't think it was done.

6 Q. Did the -- did Kubota ever test, before it put
7 asbestos cement pipe on the market, as to whether there
8 was a potential hazard associated with installing or
9 cutting the pipe?

10 A. No, we didn't. The reason is because we did
11 not anticipate these asbestos cement pipes to be cut at
12 work location. Because that was something we didn't
13 anticipate, we didn't test it.

14 Q. Did Kubota ever do any tests to determine if
15 asbestos was hazardous to human health, ever?

16 A. I don't think we have conducted any such tests
17 prior to 1975.

18 Q. So between 1960 and all the way up through
19 when the pipe was sold in the United States, through 1975,
20 Kubota never once tested for health hazards associated
21 with asbestos; is that true?

22 A. All I can say is I don't recall that we have
23 done that type of test.

24 Q. Thank you very much, sir.

25 MR. BRATT: I will pass the witness, your
26 Honor?

27 THE COURT: Thank you. And we'll turn now to
28 other questions. Let me ask, we may have discussed this.

1 There's no secret here. May the exam go beyond the scope
2 of the direct for the purpose of completing this witness
3 before the defense presentation in a couple weeks?

4 MR. BRATT: Certainly.

5 THE COURT: So, here, this gentleman might
6 have been called by the defense after the plaintiff had
7 completed their case. But by agreement, since he's flown
8 here from Japan, the examination may be more comprehensive
9 and broader than the limited scope of his direct
10 examination, so as to present facts that the defense might
11 think would be helpful. And then, of course, permit the
12 plaintiff to examine on that as well. We get him all done
13 and on his way home and with everything being heard. So,
14 thank you. And sometimes that's not the way it works out
15 because a witness is close and we just call him back. But
16 in this case, there's an accommodation, I'm sure everybody
17 appreciates.

18 Counsel, if you wish to go forward.

19 MS. GAMBINO: Thank you, your Honor.

20 REDIRECT EXAMINATION

21 BY MS. GAMBINO:

22 Q. Good afternoon, Mr. Uchino. Mr. Uchino, when
23 Mr. Bratt was questioning you, he asked you if Kubota
24 continued to sell asbestos-containing products or
25 continued to manufacture asbestos-containing products
26 after 1975 and you answered that, yes, they continued to
27 manufacture roofing and siding materials. Why did Kubota
28 Corporation continue to manufacture products that

1 **contained asbestos after they learned of the association**
2 **between asbestos and cancer?**

3 A. That roofing and the siding materials, which
4 were sold by Kubota after 1975, contained little amounts
5 of asbestos. Why did we use asbestos? There are many
6 reasons, some of them are the excellent characteristics of
7 the asbestos which were appealing to the products,
8 including excellent heat resistance is one of them. In
9 addition, we realized that because this roofing and siding
10 materials are in general hardly ever being cut, therefore
11 as long as we manage our working environment and workers'
12 conditions in an excellent manner at the factory, we
13 thought that we would be able to prevent any of these
14 health hazard situations. That is the reason why we
15 continued to sell these products even after we realized
16 there was some correlation between cancer and asbestos in
17 1975.

18 Again, our thinking was because they were not
19 going to be cut at work site, hardly ever. Only thing we
20 need to make sure to do is to control our workers'
21 environment at the factory, then we should be able to
22 avoid any problems. That was our thinking.

23 Q. Mr. Uchino, do you know if the same type of
24 asbestos was used in the asbestos cement pipe as was used
25 in the roofing material and siding?

26 A. Different types of asbestos was actually used
27 for asbestos cement pipes. We used both blue asbestos and
28 white asbestos, also known as crocidolite and chrysotile;

1 however, for roofing and siding materials, we only used
2 chrysotile.

3 Q. Mr. Uchino, you were also asked if you were
4 aware of scientific studies that were done in the
5 neighborhood of the Amagasaki plant, that determined that
6 there was an increased risk to people who lived within
7 1,500, a 1,500 meter radius of that plant. You responded
8 that with respect to the content of the studies there were
9 several different opinions. Can you tell us what those
10 different opinions were?

11 A. Thank you. I would like to explain to you
12 several different opinions. One of the very basic we had
13 was the pre-conditions used for the study. There were
14 something, which didn't make sense, and I would like to
15 explain that to you using the photograph, if I may. Or
16 that the map that was shown to the jury during the morning
17 session, please.

18 THE COURT: Thank you. We'll let counsel
19 follow up on that as she chooses, and we'll see what
20 happens now.

21 THE WITNESS: Okay. Then I'd like to explain
22 to you without a map or a picture. As I said, the big
23 fact that the pre-conditions of this study is not making
24 sense, but contradicting the fact that this study somehow
25 thinks that there is only one factory. Couple of factory
26 existed in this area, and the reality was, there were over
27 40 factories in the neighborhood. The city of Amagasaki,
28 where our factory was located, was the industry of city.

1 There were nothing but plants and the numerous amounts of
2 chimneys releasing anything that you can imagine from the
3 chimney.

4 And there are some residential area throughout
5 the city, but more were plants, factories and so forth.
6 Including us, there are over 40 locations, 40 factories in
7 this area, and they were all equally using asbestos. But
8 this study somehow picked us and made it sound like as if
9 we were the only factory in the city, and we were only
10 factory using asbestos, which is not the truth. That's
11 why when this study was released, we thought this
12 condition is not reflecting the accurate situation.

13 BY MS. GAMBINO:

14 Q. Thank you, Mr. Uchino.

15 Do you know if back in -- prior to 1954, or any
16 time through 1975, whether Kubota Corporation had a
17 separate department for medical -- a medical director?

18 THE INTERPRETER: Counsel, excuse me, from
19 when? To '75?

20 MS. GAMBINO: From prior to 1954 through 1975.

21 THE WITNESS: No, we didn't have a medical
22 director. As a matter of fact, I don't believe there is
23 vocation or title, medical director, existed in the
24 Japanese company.

25 THE COURT: I have a question to clarify,
26 that's the only reason. I didn't know if the gentleman
27 meant to say that there is no such title at that company,
28 or more generally that there is no such recognized

1 position in Japanese companies in general.

2 THE WITNESS: I appreciate the clarification,
3 your Honor. I meant was generally amongst the Japanese
4 corporation, there is no such title recognized throughout
5 the Japanese corporations. There are some companies who
6 has in-house physician, who may administer some health
7 examination to the employees. Sometimes these in-house
8 physicians are having their offices in the factory,
9 sometimes it's headquarter's offices, but there is no
10 medical director or directors, in general, amongst any
11 Japanese companies.

12 THE COURT: Thank you for that clarification.
13 BY MS. GAMBINO:

14 Q. Mr. Uchino, during that same period of time,
15 from, you know, before 1954 through 1975, do you know if
16 Kubota had any employee that would have been qualified to
17 conduct testing to determine the hazards of asbestos?

18 A. No, we didn't have any of those.

19 Q. Mr. Uchino, when did Kubota Corporation come
20 into business?

21 A. 19 -- excuse me, 1890.

22 Q. And do you know what they -- what type of
23 business they were when they started?

24 A. Yes. When we first started we were making
25 cast metal object for weights or measures. Then
26 immediately after we started making water pipes.

27 Q. And can you tell us what type of products does
28 Kubota Corporation manufacture today?

1 THE COURT: I would like to confer with
2 counsel at sidebar for just a moment. It will just take a
3 second.

4 (Counsel approach the bench.)

5 THE COURT: Just one little tip. Should there
6 be any questions, in addition to not discussing them with
7 your colleagues or anything, just address them to the
8 Court. There's no note that I would give to just one
9 lawyer or the other. We wouldn't address a question to
10 one advocate as opposed to another that way. I share
11 everything, just to let you know.

12 Okay, we'll continue.

13 THE INTERPRETER: Your Honor, may I interpret
14 the answer to the very last question?

15 THE COURT: And let's have the question
16 re-read, because I conferred with counsel and I don't want
17 the jury to forget the underlying question.

18 (Record read.)

19 THE WITNESS: Currently we are producing
20 agricultural machineries, engines, construction
21 machineries. We also manufacture iron pipes for water.
22 Also we produce PVC pipes for water, and also we produce
23 some water treatment equipment for water.

24 BY MS. GAMBINO:

25 Q. Thank you, Mr. Uchino.

26 Just getting back to the asbestos-containing
27 roofing and siding materials that we talked about a few
28 minutes ago. Can you tell me, did Kubota Corporation take

1 any precautions to protect the consumer of the finished
2 product?

3 MR. BRATT: Objection, your Honor, vague as to
4 time frame.

5 THE COURT: Maybe just refine the question a
6 little, because are you referring to siding and roofing as
7 opposed to other products? Maybe make that --

8 BY MS. GAMBINO:

9 Q. Yes, I'm specifically talking about the siding
10 and roofing products.

11 At any time did Kubota Corporation do anything
12 to protect the consumer, or the end user of that product,
13 or those products? Excuse me.

14 A. Yes, we did. Although I can't be for sure
15 about the year we started, right around 1979 we started to
16 warn, using our manuals.

17 Q. And with respect to the roofing material in
18 particular, did Kubota Corporation provide the end user
19 with anything that would help them protect themselves from
20 the asbestos?

21 A. Yes, we did. With regards to the roofing
22 materials, the end users are the roofers, those are who
23 are going to install roofs for their own -- their
24 customers. Although we didn't think it was going to be
25 done, many times we anticipated that sometimes roofing
26 materials may need to be cut, therefore we provided an
27 exclusive tool to cut roofing materials for the end users.

28 Q. Mr. Uchino, can you describe that tool for us?

1 A. To make it very simple, this was a cutter,
2 which doesn't allow asbestos powder or particles to be
3 scattered around in the air.

4 Q. Was this tool a power tool or a manual tool?

5 A. It was a manual tool.

6 Q. Mr. Uchino, did Kubota Corporation ever export
7 either the siding or the roofing product to the United
8 States?

9 A. No, never.

10 Q. Were those products only sold in Japan?

11 A. Yes, it was solely for the domestic Japanese
12 market.

13 Q. All right. I'm going to change gears just a
14 little bit here and ask you a little bit about your
15 background.

16 Can you tell me, did you attend college?

17 A. Yes, I did.

18 Q. And where did you go to college?

19 A. I went to a university called Keio University
20 in Tokyo. Keio is K-e-i-o. Gijuku is G-i-j-u-k-u. Keio
21 Gijuku University.

22 BY MS. GAMBINO:

23 Q. Did you receive a degree from that university?

24 A. Yes, I did.

25 Q. And what was that degree in?

26 A. I received my Bachelor of Arts degree in
27 economics.

28 Q. And what year did you graduate?

1 A. March, 1985.

2 Q. Now you told us that you started working for
3 Kubota in 1985. Did you go directly to Kubota after
4 graduating from college?

5 A. Yes, that's correct.

6 Q. What was your first position at Kubota?

7 A. The department I started working at was called
8 Education Department.

9 Q. And how long did you work there?

10 A. Education Department later changed its name
11 from Education Department to Human Resource Department.
12 So, combining both times, meaning that both -- under both
13 names I worked at -- for six years, and did human resource
14 related works.

15 Q. And then what was your next position at
16 Kubota?

17 A. After that I moved to a department which
18 handled legal type of works, although the department name
19 wasn't legal department back then, it was called
20 Operations Management Department. And my group was also
21 called overseas contract department.

22 Q. And I guess that your you handled contracts
23 for overseas transactions; is that correct?

24 A. Yes, that is correct. We handled not only
25 overseas contracts, but we also handled contracts
26 domestic, Japan; however, if these products were somewhat
27 related to exporting, in addition our department handled
28 litigation works.

1 Q. How long were you in the Operations Management
2 Department?

3 A. For seven years.

4 Q. And then what was your next position?

5 A. Actually they continued -- I continued to work
6 at this department, but the department name changed from
7 Operations Management Department to Legal Department. So
8 udder our new department name, I continued to do the same
9 work.

10 THE COURT: Was that within the seven-year
11 period, or an additional period of time?

12 THE WITNESS: It was in addition to my first
13 seven years. The department name was changed to Legal
14 Department. So after I finished my first seven years at
15 Operation Management Department, I worked at Legal
16 Department for 16 years.

17 THE COURT: By the way, we'll go until about
18 ten minutes before the hour, and then take our afternoon
19 recess for 15 minutes, just so you know.

20 BY MS. GAMBINO:

21 Q. Now Mr. Uchino, I've lost track of time. You
22 said you were in the Legal Department for 16 years. Maybe
23 you could just tell us when -- what year did you leave the
24 Legal Department?

25 A. I left Legal Department April of this year.

26 THE COURT: I was assuming that, because that
27 added up to about 29 years.

28 BY MS. GAMBINO:

1 Q. And Mr. Uchino, your current position you told
2 us was manager of the General Affairs Department, correct?

3 A. Yes, that's correct.

4 Q. And when was your first day as manager of the
5 General Affairs Department?

6 A. April 1st, 2014.

7 Q. So until recently, you were still in the legal
8 department, correct?

9 A. That's true.

10 Q. And what was your title as of March 30th,
11 2014?

12 A. General Manager of Legal Department.

13 Q. Can you tell me what your job duties were as
14 general manager for the Legal Department?

15 A. My department was responsible for important
16 contractual agreements, handling works, as well as working
17 on litigations and claims.

18 Q. Now, Mr. Uchino, you said you were manager of
19 the Legal Department. Are you a lawyer?

20 A. No. If you ask me if I have a license to
21 practice law, no, I do not.

22 Q. Well, I don't want to ask you if you've
23 practiced law without a license.

24 THE COURT: You may be assuming a fact not in
25 evidence; the job requires you to practice law.

26 BY MS. GAMBINO:

27 Q. Seriously, Mr. Uchino, can you tell us how
28 were you able to be head of the Legal Department without

1 **being a lawyer?**

2 A. Well, I needed to explain to you a little --
3 the differences between the situation in United States and
4 Japan. In Japan, it is very difficult to pass the Bar
5 exams. There are a very small number of lawyers existing
6 in Japan. Bar exam is probably one of the most difficult
7 exams to pass, so it is not surprising that most of the
8 legal departments located in any corporations in Japan,
9 and if their head's a lawyer, that's very rare. The
10 majority of the time they are not lawyers at all.
11 Reflecting this situation, the Japanese Bar Association
12 started to relax the passing rate just a little bit, but
13 still, the number of lawyers in Japan is far less than the
14 number of lawyers in the United States.

15 In addition, we have a different system. In
16 the U.S. you may have to be an attorney at law to practice
17 law, but in Japan we have a different system. The first
18 one is same as United States, but the second one called
19 Shiho Shoshi, these are the people equally required to
20 pass the exams, and have a license to practice law, on the
21 Shiho Shoshi capacity. I was able to pass the Shiho
22 Shoshi examination, so I have license to practice law, but
23 in a different capacity compared to attorneys at law.
24 That's how I became head of the Legal Department for
25 Kubota Corporation.

26 THE REPORTER: Can you spell that?

27 THE INTERPRETER: Shiho is spelled S-h-i-h-o.
28 Shoshi is spelled, S-h-o-s-h-i.

1. BY MS. GAMBINO:

2 Q. Mr. Uchino, have you done any research into
3 the history of Kubota's manufacture of asbestos cement
4 pressure pipe?

5 A. Yes, I have.

6 Q. Okay. And can you tell me what you have done?

7 A. I think it was either 1995 or 1996, an
8 asbestos-related litigation was brought against us, so I
9 decided to interview with people who were working at
10 asbestos -- manufacturing of asbestos cement pipe
11 manufacturing plant back long ago. Also, I decided to
12 interview with people who were involved with asbestos
13 cement pipe, exporting work to the United States back
14 then, back long ago. In addition, just so that I was able
15 to find any documents still remaining at Kubota relating
16 to asbestos, I thoroughly checked warehouses located at
17 both our headquarter's office and factory.

18 MR. BRATT: Your Honor, may I have a sidebar,
19 please?

20 THE COURT: We'll just take a recess now, it's
21 right about time. We'll take a recess until five after
22 the hour, thereabouts. Please remember not to discuss the
23 matter or form or express any opinion until the matter is
24 finally submitted to you. Thank you, very much.

25 (A recess was taken. End section C.)
26
27
28

1 APRIL 16, 2014

3:10 P.M.

2 ---oOo---

3 THE COURT: We are all together. Counsel is
4 making a note, and we'll continue with Ms. Gambino's
5 inquiry. Thank you very much. We will continue.

6 MS. GAMBINO: Yes, thank you, Your Honor.

7 THE COURT: You're welcome.

8 MS. GAMBINO: Q Mr. Uchino, there is one area
9 that I meant to cover, just a little preliminary matter.
10 We all see that you have an interpreter here today. Do
11 you speak English?

12 A Yes. I had a total of 80-years-old
13 English education, starting from middle school and then
14 high school, and then college. So if you ask me if I
15 can have everyday conversation or can travel throughout
16 the U.S. without much difficulty, yes, I can speak
17 English.

18 Q So why do you need an interpreter here
19 today?

20 A My English skill level is limited to,
21 maybe, I can travel without much difficulty for
22 vacation, but I am here today to understand the
23 questions very clearly and express myself very clearly.
24 I don't have English understanding to do that, so I
25 asked an interpreter to assist me today.

26 Q Thank you, sir.

27 Before we went on our break, you were
28 testifying about some former Kubota employees that you

1 had spoken to and some records that you had located or
2 reviewed and located. With regard to those former
3 employees, can you tell me their names?

4 A There are two people whom I had a chance
5 to speak with, both males. The first person is Junichi,
6 J-u-n-i-c-h-i; Koyke, K-o-y-k-e. Second person is
7 Yoshiya, Y-o-s-h-i-y-a; Sayto, S-a-y-t-o.

8 Q And starting with Mr. Koyke, can you tell
9 me what was his position with Kubota Corporation?

10 A He's last position was General Manager of
11 Business of Housing Construction Material Technology
12 Department.

13 Q And did he work in the asbestos cement
14 pipe plant?

15 A Yes, we started to manufacture asbestos
16 cement pipe in 1954. That is the year when Mr. Koyke
17 joined Kubota Corporation. Immediately after he was
18 hired, he was sent to Kanzaki Plant where asbestos
19 cement pipes were manufactured. He continued to work at
20 Kanzaki Plant until the plant was closed in 1975.
21 Throughout those years, he continued to be involved with
22 asbestos cement pipe manufacturing from the viewpoint of
23 engineering and manufacturing engineering. I believe
24 his last title at the Zanzaki Plant was Department
25 Manager.

26 Q And is Mr. Koyke still alive?

27 A No, I think it was about the year 2000,
28 he has passed away.

1 Q And Mr. Sayto, did he work at the
2 asbestos cement pipe manufacturing plant -- pipe
3 manufacturing plant?

4 A Actually, Mr. Sayto was dealing with
5 export business of asbestos cement pipes for a few
6 years.

7 Q And is Mr. Sayto still alive?

8 A We don't know whether or not he's still
9 alive and well or he has passed away. It's been a long
10 time since we lost contact with him.

11 Q And just to clarify, you spoke to him
12 sometime in the 1995 or 1996 period; is that correct?

13 A Yes, that's correct.

14 Q Do you know if anyone else, any employee
15 or former employee with the company, who would have any
16 information regarding the asbestos cement pipe
17 manufacturing plant?

18 A No, I don't. And I really don't believe
19 there are anybody else besides these two gentlemen I
20 have already named. When I needed to talk to someone
21 who knew of asbestos cement pipe manufacturing or its
22 plant in 1995, 1996 time frame, is what I do is go to
23 human resource department and give me some names that
24 could possibly help me in that manner. Only two names
25 were given to me, and these were the only names. So to
26 the best of our knowledge, those were the only two.
27 There were nobody else whom we could talk to.

28 Q Do you know what -- strike that.

1 Do you know if Kubota Corporation had a
2 document retention policy back in 1975?

3 A Yes, I think that there was a document
4 retention policy available in 1975 time frame. I
5 searched it very hard, but I couldn't find it.

6 Q So that would mean that you don't know
7 what the policy was back in 1975; is that correct?

8 A That's correct.

9 Q And does Kubota have a current document
10 retention policy?

11 A Yes, it does.

12 Q Can you tell me what that is?

13 A What would you like me to tell you?

14 Q How long certain documents are required
15 to be kept without being destroyed?

16 A Depending upon the type of documents, we
17 have several different document retention policies. The
18 categories are eternal, ten years, five years and three
19 years and one years. Which means if you are dealing
20 with the record of somebody being newly hired, has
21 different retention time compared to company newsletter,
22 for example, our company document retention policy
23 states that we must keep our eternal newsletters
24 eternally.

25 Q Can you tell me what the policy -- strike
26 that.

27 How long has the current policy been in
28 effect, if you know?

1 A I don't know exactly when it became
2 effective, but I think it was two-to-three years ago.

3 Q Does Kubota have a specific policy for
4 retaining documents that may be related to litigation?

5 A Yes. In current document retention
6 policy has rules for litigation-related documents.

7 Q And do you know what the rule is?

8 A Yes. The policy is after the litigation
9 is closed you must keep the documents for three years.

10 Q Mr. Uchino, we talked about Kubota
11 manufacturing asbestos cement pipe, more specifically,
12 do you know if they manufactured asbestos cement
13 pressure pipe?

14 A Yes, we used to make asbestos cement
15 pressure pipes.

16 Q Do you know if Kubota ever manufactured
17 asbestos cement sewer pipe?

18 A I don't think so. At least, we never
19 exported them to the United States.

20 Q Do you know if Kubota Corporation ever
21 manufactured asbestos cement non-pressure pipe?

22 A My recollection is vague, but I don't
23 think so. I don't think we have ever made known
24 pressure asbestos cement pipes.

25 Q Mr. Uchino, do you know if Kubota's
26 asbestos cement pressure pipe was manufactured in
27 accordance with the industry and governmental standards
28 of the day?

1 MR. BRATT: Objection, Your Honor. Calls for
2 expert testimony. Lacks foundation.

3 THE COURT: As a preliminary, you may ask
4 questions on that. Subject -- that is the basis for
5 expressing an answer.

6 So we'll pause and wait for the next
7 question.

8 MS. GAMBINO: I'm sorry, Your Honor, is it
9 sustained?

10 THE COURT: I sustained the objection in order to
11 allow you to lay a foundation to elicit that testimony.
12 He could answer "yes." But before he told us about
13 those policies he would have to --

14 MS. GAMBINO: Q Mr. Uchino, do you know what
15 the industry and governmental standards for the
16 manufacture of asbestos cement pipe were back in the
17 period of 1954 through 1975?

18 MR. BRATT: And, Your Honor, it is vague as to
19 industry standards.

20 THE COURT: I'll allow that question, but before
21 talking about the content of those standards, let's find
22 out if the answer is "yes" or "no." Then you may ask
23 other questions.

24 MS. GAMBINO: Thank you.

25 THE INTERPRETER: Officer Interpreter has a
26 question. Counsel, that first question whose objection
27 was sustained, you asked asbestos cement pressure pipe.
28 After Your Honor is supporting the objection, he simply

1 said, asbestos cement pipe. Would you like to change it
2 or would you like to say asbestos cement pressure pipe?

3 MS. GAMBINO: I will stick with my question.
4 Thank you, Madam Interpreter.

5 THE COURT: Which question?

6 MS. GAMBINO: Okay. Why don't I just rephrase
7 it. I'm sorry. If I can remember it?

8 MS. GAMBINO: Q Mr. Uchino, are you familiar
9 with the industry and governmental standards for
10 manufacturing asbestos cement pressure pipe back in the
11 period of time between 1954 and 1975?

12 A I know some of the standards and their
13 names. If you ask me if I can name all of them, I don't
14 think I can.

15 Q And how did you become familiar with the
16 standards that you do know?

17 A I became familiar with these standards by
18 reviewing the product catalogs available back at that
19 time for those products. Also at that time, we had to
20 attach so-called certificate of passing, basically, this
21 was a piece of paper telling that this particular
22 product satisfied specifications required for the
23 product by reviewing this certificate. I also learned
24 these standards.

25 MS. GAMBINO: I apologize, I did not hear the
26 first part of that answer. May I have it read back?

27 THE COURT: We'll have it read back.

28 (Whereupon, the answer was read back in.

1 open court by the Certified Court Reporter.)

2 MS. GAMBINO: Q Did you do this review or
3 research as part of your job duties while you were in
4 the legal department of Kubota?

5 A Yes. That's correct.

6 Q Mr. Uchino, I would like you to take a
7 look at what's been marked as Exhibit 7010.

8 THE COURT: Would you like, in due course, our
9 Court Clerk, Chandra, to mark that for identification?

10 MS. GAMBINO: Yes.

11 THE COURT: With that same number?

12 MS. GAMBINO: Yes. Thank you.

13 THE COURT: We'll make note of that.

14 (Defendant Kubota's Exhibit 7010 marked
15 for identification.)

16 MS. GAMBINO: Your Honor, I believe there are
17 translations in the back of each.

18 THE COURT: Yes. Thank you. I see words in
19 English, and then I see some symbols that, I assume, you
20 will establish are in Japanese?

21 MS. GAMBINO: Yes, Your Honor. Thank you. Your
22 Honor, unfortunately, I have to refer to the English
23 translations, if that is all right?

24 THE COURT: That is all right. I think we all
25 do. Most of us.

26 MS. GAMBINO: Just to be clear.

27 MS. GAMBINO: Q Mr. Uchino, have you found
28 Exhibit 7010?

1 A Yes. It is in front of me.

2 Q Okay. Thank you. And can you tell me
3 what that document is?

4 A This is Kubota's monthly newsletter, and
5 the date is November 1961.

6 Q Mr. Uchino, could you check the date
7 again, and tell me if you are sure it is November 1961?

8 A I apologize. It is December, not
9 November.

10 Q Thank you.
11 Have you seen this document before?

12 A Yes, I have.

13 Q And where have you seen this document?

14 A At my office.

15 Q Did you find this document in the course
16 of your researching the asbestos cement pipe?

17 A Yes. I think I found this document.

18 Q And do you know where you found the
19 document?

20 A Yes, I do. There was department called,
21 Public Relations Department, which was the department
22 handling this Kubota monthly newsletters or monthly
23 reports. That is where I found this document, among the
24 piles they had.

25 Q And were there any other documents with
26 this document? Any surrounding documents?

27 A No. The file contained nothing but a
28 series of Kubota monthly newsletters.

1 Q You found this document -- this
2 newsletter amongst a file of Kubota monthly newsletters;
3 is that correct?

4 A Yes, that's correct.

5 Q Do you know if this document was prepared
6 within the regular course of Kubota's business?

7 A Yes, I do. This was prepared every month
8 as a normal course of business back then.

9 Q And how do you know that?

10 A I can say that because I was actually a
11 part of this. If you recall, I once worked at Education
12 Department at Kubota Corporation. One specific time, my
13 department, Education Department, was responsible for
14 preparing this monthly report. That is how I know.

15 Q So preparing -- was preparing this
16 monthly report one of your jobs when you were in the
17 Education Department?

18 A I wouldn't say my work. My colleague was
19 assigned to do this.

20 Q Do you know if this newsletter was
21 drafted at or near the time of the events that are
22 reported in the newsletter?

23 MR. BRATT: Objection, Your Honor. Calls for
24 speculation; lacks foundation.

25 THE COURT: Overruled.

26 THE WITNESS: Yes. Maybe there was a slight time
27 lag, maybe a month or sometimes two months; but
28 nonetheless, the purpose of this newsletter was to

1 provide information regarding events happening at the
2 office, business and plants.

3 THE COURT: Was it issued, did you say, monthly?

4 THE WITNESS: Yes. It is monthly.

5 THE COURT: That I think answers the question I
6 had about foundation. It was regularly performed. So a
7 sufficient basis for the foundation.

8 MS. GAMBINO: Your Honor, may I offer it into
9 evidence?

10 THE COURT: I do have a question. It's mainly
11 for counsel at this point. I see a document that
12 appears to have Japanese symbols, but in the page just
13 proceeding that, there is a document. And I can just
14 show it to you, just see if it is part of the exhibit.
15 Would you like to see it? Are you familiar with it?

16 MS. GAMBINO: I am familiar with that document.
17 It is a an uncertified translation.

18 THE COURT: You are not arguing that?

19 MS. GAMBINO: No. I think we now have a
20 certified translation. We just got this.

21 THE COURT: There was one page with three
22 paragraphs on it. What you've done is you will not
23 publish that because you have the Japanese document with
24 the certified interpretation?

25 MS. GAMBINO: That's correct, Your Honor.

26 THE COURT: Good. With that clarification, you
27 may publish that.

28 MS. GAMBINO: Thank you.

1 THE COURT: I take it these are issues -- I
2 haven't done the fine print, but it is not issues in
3 dispute, correct?

4 MS. GAMBINO: Correct.

5 THE COURT: That is fine.

6 MS. GAMBINO: There was a discussion of putting
7 it on the overhead.. Since it is in Japanese, I will not
8 do that.

9 THE COURT: Since there is an English translation
10 attached; isn't that right?

11 MS. GAMBINO: Yes.

12 THE COURT: If you want to refer to any part of
13 that it is relevant. We've explained the first page.
14 She is not offering, but all of the attachments of the
15 certification of interpreter, she is asking to be
16 referred to. If there is some question about that you
17 can take that up during the recess.

18 When you are ready, counsel.

19 MS. GAMBINO: Thank you, Your Honor.

20 MS. GAMBINO: Q Mr. Uchino, do you have Exhibit
21 Number 7010?

22 A Yes, I do.

23 Q And there's a certified translation that
24 goes along with that that the interpreter has. And if I
25 can direct your attention to the seventh page, there is
26 a paragraph that is numbered number 5, and it is page 3
27 in the Japanese version.

28 THE COURT: I think if you would like to approach

1 and put your finger on the portion of it, that is
2 satisfactory, and then show Plaintiff's counsel as well.

3 MR. BRATT: I'm okay with this, Your Honor. But
4 I think the challenge is having the witness know -- the
5 Japanese page is different than the translated page.

6 THE COURT: Yes. If you want to help out, you
7 can direct him to the portion of it.

8 MS. GAMBINO: All right.

9 THE COURT: Is it some page after the declaration
10 and certification signed by the translator?

11 MS. GAMBINO: Yes, it is.

12 THE COURT: And if you would like to come up and
13 guide him to the appropriate portion that is okay.

14 MS. GAMBINO: Thank you, Your Honor.

15 MR. BRATT: And, Your Honor, to save time, I'm
16 happy to stipulate all of these come in.

17 THE COURT: That is fine. We appreciate that.
18 But you may elicit questions. Ask questions and
19 answers.

20 MS. GAMBINO: Thank you. (Indicating.)

21 THE COURT: Are you directing his attention now
22 to a Japanese language portion so the interpreter is
23 being utilized?

24 MS. GAMBINO: Yes, Your Honor.

25 THE COURT: And does that correspond to exact
26 English translation?

27 MS. GAMBINO: Yes. To be specific, the
28 interpreter is actually directing him to the portion

1 because I don't know exactly which portion which --

2 THE COURT: I appreciate that. Once you are
3 ready, why don't you go forward.

4 MS. GAMBINO: Q Mr. Uchino, can you please
5 read paragraph 5 on that page?

6 A And you are referring to the paragraph
7 starting with number 5?

8 Q That's correct.

9 A Talking about UL standards?

10 Q Yes.

11 A (Reading.) By passing on the UL
12 standard. Today, it is just a matter of time before
13 waves of free trade comes to hit shores of industries of
14 our country. Asbestos pipes are not immune to them
15 either.

16 THE COURT: Excuse me, can you hear?

17 Would you begin the reading again, and
18 just project your voice a little more. Just start over,
19 "by passing of the UL standard." Read that, please.

20 THE INTERPRETER: (Reading.) Number 5, passing of
21 the UL standard. Today, it is just a matter of time
22 before waves of free trade come to hit shores of
23 industries of our country. Asbestos pipes are not
24 immune to them either.

25 A prerequisite for our advancing into the
26 international markets and an urgent task to show what
27 quantity Kubota's asbestos pipes comprise was to pass
28 the UL standard of the United States as international

1 measure. Very stringent tests were conducted in the
2 presence of Mr. Koskinan from UL organization for about
3 a month in May. In this manner, our asbestos pipes
4 passed the standard with respect to various categories,
5 including ruptures connections, [joints?], dimensions,
6 and bending, and they were granted a certification as
7 product meeting the international standard.

8 Asbestos pipes are paving a way for
9 Kubota to go from Kubota of Japan to Kubota of the
10 world.

11 THE INTERPRETER: This is Officer Interpreter
12 speaking. Just so you know, I have this very clearly
13 copy. Very easy to read. He's original Japanese is
14 very difficult to read because it is so old, prints our
15 smeared, collapsed, some of the pages are like this
16 (indicating). He was struggling to read that part. Not
17 because he's a terrible reader. It is just a bad copy.

18 MS. GAMBINO: Your Honor, may we have a sidebar?

19 THE COURT: Yes.

20 (Sidebar discussion had, not reported.)

21 THE COURT: I appreciate that courtesies.

22 Ms. Gambino was -- because it was painfully
23 slowed, When you have an additional certification, we
24 appreciate the courtesies. Without any objection, the
25 question will be directed to the official interpreter to
26 simply look at the official translation and read it, and
27 it will save us time and all be in evidence. You may go
28 forward. Because the foundation for doing that has been

1 established for the actual witness talked about the
2 preparation of these newsletters. You can see it is a
3 pretty careful process to try to get evidence that is
4 proper before you. But this is the speed along the road
5 a little. You may go forward.

6 MR. JONES: We wouldn't object to counsel just
7 publish them and read them herself.

8 THE COURT: Whichever she wants to do.

9 MR. BRATT: Thank you.

10 MS. GAMBINO: Your Honor, I would like to read
11 from number 7011.

12 THE COURT: All right. Is that another
13 newsletter?

14 MS. GAMBINO: Yes. It is another newsletter. I
15 understand the Plaintiffs have stipulated to the
16 admissibility.

17 (Defendant Kubota's Exhibit No. 7011 was
18 admitted into evidence.)

19 THE COURT: If you'll identify the month and year
20 of the newsletter, and then read the relevant portion,
21 the jury will see that when it is received into
22 evidence. This is number 7011.

23 MS. GAMBINO: This is another Kubota monthly
24 report. It is dated October 1964. And on what's
25 numbered page 62, about the middle of the page, it
26 begins, water department general manager.

27 THE COURT: Just call it out loud so everybody
28 can hear. You have to belt it right out.

1 MS. GAMBINO: (Reading): Water Department
2 General Manager from a U.S. East Bay M-U-D Comes to
3 Visit.

4 As part of [our] efforts to export
5 Japanese technology overseas [our] Kanzaki Plant is
6 emphasizing export of [its] asbestos cement pipes, a
7 series of their tests were conducted in the presence [of
8 our visitors] at the plant.

9 Vice President Geis, that's G-e-i-s, from
10 the inspection division of the UL in the U.S. came to
11 visit the plant on September 2nd and on September 3rd.
12 Division Manager Adelman from East Bay Municipal Utility
13 District in the U.S. came to visit.

14 Both came to visit the plant for testing
15 of asbestos cement pipes in accordance with the U.S.
16 AWWA standard, and they observed production facilities
17 of the plant, and discussed stringent product testing
18 and quality control methods et cetera with interest.

19 [We] received a rating of excellence from
20 each of them, thus proving excellence of the Kubota
21 technology.

22 Now I would like to direct the Court's
23 attention --

24 THE COURT: I'm sorry, she was reading from page
25 62 of number 7011. By agreement counsel, just read
26 that. She'll ask you a question in a moment.

27 MS. GAMBINO: Directing the Court's attention to
28 Exhibit 7012, a Kubota monthly report dated March 1966.

1 And what is numbered page 60 under the subheading.

2 (Reading): Kanzaki plant inspectors from
3 East Bay came to visit the plant. [We] have been
4 supplying asbestos pipes from the year before last to
5 East Bay Municipal District, [EBMUD] in the State of
6 California the United States. On January 19,
7 Mr. R.T. Tylotson, Manager of Design Engineering
8 Department of the same utility district, [EBMUD] visited
9 [our] plant for visual inspection of the products in the
10 production processes.

11 Utility District [EBMUD] is a large-scale
12 provider of clean water to the City of Oakland and its
13 neighboring cities in California.

14 During the plant tour, he seems to have
15 been very impressed with excellent manufacturing and
16 testing facilities of the Kanzaki plant. Also [our]
17 product inspections during which he was present showed
18 excellent results, proving a high level of our quality
19 control and reliability.

20 It is projected that further export of
21 asbestos pipes will enhance our overseas reputation in
22 the future.

23 And now, I would like to direct the
24 Court's attention to Exhibit 7013. And again, it is a
25 Kubota monthly report. This one is dated May 1966, what
26 is numbered page 74. Under the heading, (reading):

27 Kanzaki Plant, UL Inspector Visits the
28 Plant.

1 Kanzaki Plant is being inspected under
2 the stringent UL standard in order to export asbestos
3 cement pipes to the United States.

4 On April 5, a regularly scheduled
5 inspection for a UL standard certified plant was
6 conducted as usual. The inspector was Mr. Hanegar from
7 UL. He came to our plant two years ago too, and it was
8 his third visit to Kanzaki Plant all together. Since he
9 is a familiar face to those of us who are involved, the
10 entire staff at the plant welcomed him. He was very
11 surprised at advancement of various facilities and
12 equipment in two years. He scrutinized carefully
13 details regarding manufacturing and testing facilities
14 and equipment, quality control status as well as
15 inspection records. The results were all good as
16 expressed by his word, "Yoroshii" [goood]! The
17 inspections continued all the way and finished in an
18 amicable ambiance. Those of us who are involved are all
19 the more confident about export of asbestos pipes.

20 MS. GAMBINO: Q Mr. Uchino, will you please
21 look at Exhibit Number 7015.

22 A Yes.

23 Q Have you seen that document before?

24 A Yes, I have.

25 Q When have you seen it?

26 A I seen this right around the 1995.

27 Remember, I was searching documents and this document
28 was one of the documents I found during my search.

1 Q So did you find this document among
2 Kubota's business records?

3 A Yes, this was one of the documents kept
4 or left as the litigation documents.

5 Q Can you identify this document for me,
6 please?

7 A This is a certification issued by a third
8 party called ITCO (phonetically spelled). It stands for
9 International Inspection Company Limited. Each time, if
10 we were going to ship our products to the U.S. market we
11 have ITCO inspect our products to make sure that our
12 products were satisfying U.S. Standards and rules
13 required at that time, including, ASTEM standards. Make
14 sure that the volume was just about to be shipped out
15 were meeting with the required amount, appearance
16 quality, everything else were matching through the
17 requirements. Once these were confirmed, ITCO would
18 issue a certification and this is one certifications
19 issued by ITCO to our products.

20 MS. GAMBINO: Your Honor, I would like to offer
21 this document into evidence, please.

22 THE COURT: Admitted.

23 (Defendant's Exhibit No. 7015 admitted
24 into evidence.)

25 MS. GAMBINO: Thank you.

26 THE COURT: You may publish it, if you wish.

27 Published in this context just means
28 display it. Put it up on the overhead.

1 MS. GAMBINO: May I just read this one?

2 THE COURT: Well, that is fine. If you want to
3 read part of it, fine. The jury will get the whole
4 document.

5 MS. GAMBINO: And this document is entitled,
6 ITCO International Inspection Company Limited. About
7 halfway down, there is the word, "certificate."

8 THE COURT: This is May 26th, 1970, is that the
9 date?

10 MS. GAMBINO: Yes. Thank you.

11 (Reading): We certify the following material
12 has been inspected and in accordance with our opinions
13 based upon the report of our inspectors and our
14 experience and judgment has been accepted under the
15 instructions provided.

16 THE COURT: And I think it would be helpful to --
17 because there has been a lot of discussion "commodity"
18 to which that refers, can you do that?

19 MS. GAMBINO: Yes, Your Honor, I meant to do
20 that. Kubota asbestos cement pressure pipes Class 152,
21 it is illegible, C400 dash 64T specifications complete
22 with Type II couplings and rubber rings.

23 Thank you, Your Honor. And now I would
24 like to turn the Court's attention to Exhibit 7016.

25 Mr. Uchino, will you please look at
26 Exhibit 7016?

27 A Yes.

28 Q Can you identify that document, please?

1 A This is a very similar document compared
2 to the one you just introduced. This is also a
3 certification. The difference between the first one and
4 this one is that this is done by us. I assume that
5 before we hired a third party, such as ITCO, we must
6 have conducted the shipping verification confirmation
7 and other works by ourselves because if I go through
8 this document, I see the line confirming the volume, the
9 contents, and where it is going to be shipped and sold
10 for, very similar contents compared to the certification
11 issued by ITCO. So I think the only difference is who
12 has done it; either did it, yourself, or had somebody
13 else do it for you.

14 Q Mr. Uchino, have you seen this document
15 before?

16 A Yes, I have.

17 Q And when have you seen it?

18 A The same time frame where I found and saw
19 ITCO document which was around 1995.

20 Q And is this the type of document that's
21 kept -- that is maintained as a business record at
22 Kubota Corporation?

23 A Yes. The same as the previous document.

24 MS. GAMBINO: Your Honor, I would like to admit
25 this document into evidence.

26 THE COURT: Admitted.

27 (Defendant's Exhibit No. 7016 admitted
28 into evidence.)

1 MS. GAMBINO: Thank you. May I publish it?

2 THE COURT: Yes.

3 MS. GAMBINO: Thank you. Title of this document
4 is Kubota Iron and Machine Works Limited, dated January
5 31, 1964, Mill Test Certificate.

6 (Reading): This is to certify that the
7 following commodities have been duly inspected and
8 tested in accordance with the specification AWWA
9 C-400-53F and with Kubota Iron and Machinery Works
10 Limited's drawings and specifications.

11 Inspection date: 15-25, January 1964.

12 Purchaser: East Bay Utility.

13 Destination: San Francisco.

14 Commodity: Pipe, water, asbestos cement,
15 Class 150 (150 psi working pressure.)

16 THE BAILIFF: (Document proffered.)

17 THE COURT: (Reviewing.) All of the exhibits
18 admitted into evidence, as I indicated in
19 pre-instruction would be delivered into the jury room
20 for your consideration. Also, at the appropriate time
21 when lawyers are done with the case, if they wish to
22 refer them in closing arguments to be some assistance,
23 it might get into the document intensive, and of course,
24 they will try to focus on the documents they feel are
25 most helpful and persuasive in prospective cases. In
26 order to read them all out loud page after page, they
27 are admitted as business records at this time and
28 counsel will be free to show them, and you will be able

1 to inspect them if you choose to do so.

2 MS. GAMBINO: Thank you.

3 MS. GAMBINO: Q Mr. Uchino, I forgot to ask you
4 what is Kubota Iron and Machinery Works Limited?

5 A It is the same as Kubota Corporation. Up
6 until 1970, our company name was Kubota Iron Works --
7 excuse me, Kubota Iron and Machinery Works Limited.

8 Q When you were doing your research on the
9 history of the Kubota pipe manufacturing plant, did you
10 come across any sales or marketing brochures regarding
11 Kubota pipe?

12 A Yes. I found some of them.

13 Q Did you find more than one?

14 A I found only one. It was a catalog
15 titled Kubota Voss catalog.

16 Q I would like to address your attention,
17 Mr. Uchino, what has been marked as Exhibit 7017. Is
18 that the -- is that the sales literature you are
19 referring to?

20 A Yes, it is.

21 Q And where did you find this document?

22 A The same location where I found other
23 documents including ITCO certification and others.

24 Q Is this the kind of document that is
25 regularly maintained as a business record by Kubota
26 Corporation?

27 A Yes.

28 MS. GAMBINO: Your Honor, I would like to offer

1 this document into evidence.

2 THE COURT: Admitted.

3 (Defendant's Exhibit 7017, admitted into
4 evidence.)

5 MS. GAMBINO: Thank you, Your Honor. May I
6 publish it?

7 THE COURT: Yes, you may.

8 MS. GAMBINO: Q And on page Bate stamp 717003
9 under the heading, Approved. Kubota asbestos cement
10 pressure pipe is manufactured in Japan to rigid American
11 standards. It meets all the requirements of the
12 American Water Works Association; American Society for
13 Testing Materials, and all pertinent U.S. Federal
14 specifications. It is listed with Underwriters
15 Laboratories, Inc. Each length of pipe and coupling is
16 inspected at our Long Beach and Oakland facilities and
17 subjected to the hydraulic test. Each standard length
18 of pipe in size 3 inch and up is subjected to a flexural
19 test. Accepted Kubota asbestos cement pressure pipe is
20 inspected and used by organizations such as the East Bay
21 Municipal Water District; City of Modesto; Los Angeles
22 Department of Water and Power; City of Santa Cruz; City
23 of Santa Monica; Pacific Gas and Electric Company; Lake
24 Los Angeles; Salton Sea City and many other locations,
25 serves all potable water transmission needs.

26 Mr. Uchino, if you look on the first page
27 of this document it is titled, Voss/Kubota Pressure
28 Pipe?

1 A Yes.

2 Q Do you know who prepared this brochure?

3 A I don't know for sure, but I think this
4 was prepared jointly between Voss and Kubota.

5 THE COURT: It has such a symbol on it, doesn't
6 it, showing the name both Voss and Kubota?

7 THE WITNESS: Yes.

8 THE COURT: Thank you. You are right, sir.
9 Thank you.

10 MS. GAMBINO: Q Mr. Uchino, do you know the
11 length that the Kubota asbestos cement pipe came in?

12 A Yes, I do. We offered three different
13 lengths, a standard length, which were full length, half
14 length and quarter length, and under full length. And
15 under full length, we offered 8 feet, 10 feet, and 13
16 feet. So, if you wanted to have, let's say, half length
17 of 8 feet, you get 4 feet. If you wanted to have
18 quarter length or 10 feet, then you would get to .5
19 feet. That's how it goes.

20 THE COURT: Counsel, is this an appropriate time?
21 We were going to take up some matters before the jury
22 comes in tomorrow.

23 MS. GAMBINO: Yes, Your Honor.

24 THE COURT: And we'll resume with this witness
25 tomorrow.

26 MS. GAMBINO: Yes, thank you.

27 THE COURT: We will take a recess now and excuse
28 the jury, do a little bit of work more. And we'll ask

1 that you be available by 9:30 tomorrow morning. The
2 jury will come at 9:30 to continue with your
3 examination. Thank you. Thank you, very much. We'll
4 be in recess. Thank you for your careful attention
5 throughout the day. Leave your notes there and we'll
6 see you tomorrow morning. Please remember the
7 continuing admonition. Very grateful for your service.

8 (Whereupon, the jury exits courtroom.)

9 (Whereupon, the following proceedings
10 held outside the presence and hearing of the jury.)

11 THE COURT: As the record suggested, a note was
12 handed to me, and the question was: Are we going to get
13 a chance to see that exhibit prior to deliberation?
14 Thanks.

15 It wasn't signed, but I wrote this note.
16 I wrote this response for the note. I'll give these to
17 the clerk to keep the notes as part of the record. I
18 didn't need to confer with counsel. I wrote on my note
19 (reading):

20 April 16, 2014, 4:05 p.m., the Court,
21 upon receipt of this question by Jury Number 12, Marie
22 Ellis, explained to the jury and reminded the jury that
23 all exhibits admitted into evidence would be submitted
24 to the jury for it's consideration during jury.

25 L.C. Nichols, Judge.

26 I thought it would be best to read it out
27 loud since my handwriting is not the clearest. I'll
28 give that to Chandra.

1 And you can be seated. At least,
2 initially, we can take up a discussion of the two sets
3 of papers that were delivered very courteously to me.
4 One is Defendant Westburne Supply Inc.'s individually
5 and as successor interest to P.E. O'Hair objection to
6 late disclosed witnesses, and supporting declarations,
7 with attachments. Oh, know, I'm sorry, with the
8 declaration which-- yes it had attachments. And also,
9 CertainTeed Corporation's motion to exclude witness
10 disclosed after discovery cutoff, and attachment of
11 declaration of Andrea J. Kessetlate (phonetically
12 spelled) in support of CertainTeed Corporation's motion
13 to exclude witnesses disclosed after discovery cutoff.
14 The gist of each of these is that -- by way of
15 attachment, it referencing the fact that this was a
16 priority set because of the terminal condition of the
17 Plaintiff, set over objection of the Defendants. The
18 supervising Judge at the time set forth a joint trial
19 setting order which indicated a date for disclosure of
20 information including witness lists and the -- the gist
21 of this is that the third amended list was made known to
22 counsel on Sunday.
23 Today is Wednesday, and that objects to these additional
24 names on the grounds stated, for the reasons stated.
25 And I'll ask if Plaintiff has anything to say about
26 that? So, on the face of it, it is pretty
27 straightforward.

28 MR. JONES: Yes. We'll withdraw a majority of

1 those witnesses. Really the only witness that we would
2 like to seek is Mr. Jaime Vargas. And I've discussed
3 this with counsel. In opening statements by every
4 party --

5 THE COURT: That's J-a-i-m-e; Vargas,
6 V-a-r-g-a-s, out of the list of six names this is the
7 only one in question?

8 MR. JONES: Yes, Your Honor.

9 THE COURT: Tell us about that.

10 MR. JONES: Mr. Vargas is one of the
11 individuals that went to Mr. O'Bryan, Kenneth O'Bryan's
12 home, the Plaintiff's father, and removed asbestos
13 cement pipe that was in the backyard, provided some of
14 that asbestos cement pipe to experts retained by the
15 Defendants and has retained the rest of the asbestos
16 cement pipe; is that right?

17 MS. VOTAW: My understanding it was all abated
18 except for the stuff -- my office had an agreement with
19 Mr. Jones, Your Honor, that we wanted to sample this
20 pipe. And we wanted to have it sent down to our
21 industrial hygienist in Long Beach.

22 THE COURT: This was the pipe that was shown in
23 the opening statements?

24 MR. JONES: Yes. The photographs shown in
25 CertainTeed's opening statement. I believe this is the
26 gentleman that took the photograph. If he is not that
27 gentleman, he is one of the people that were there
28 abating the pipe.

1. THE COURT: And it was said to be Johns Manville
2 pipe?

3 MR. JONES: That's the representation made to
4 the jury.

5 MS. VOTAW: The representation --

6 THE COURT: One at a time.

7 MR. JONES: I'm sorry.

8 THE COURT: I think Mr. Berfield said it had
9 distinctive coloration that it was a Johns Manville.

10 MR. BERFIELD: Distinct appearance.

11 MR. JONES: I believe this gentleman only became
12 involved in this case after the witness lists were
13 exchanged, that is my recollection, and we had an
14 agreement that this gentleman would do chain of custody,
15 and that's what he's going to testify about.

16 MS. VOTAW: Actually, that is not the case.
17 What happened was that Mr. Jones and I had that
18 agreement, and then Mr. Jones turned the case over to
19 Mr. Bratt. And after that, we were advised, not by
20 Mr. Bratt, but by the abatement company, that they would
21 not do the chain of custody work. So we sent our
22 industrial hygiene team all the way from Long Beach up
23 to Mr. O'Bryan's residence, and they are prepared,
24 should we choose to offer them, to do the chain of
25 custody evaluation. There was never any discussion
26 about the abatement company doing that. In fact, the
27 abatement company told our expert that he wouldn't do
28 it. So I had no knowledge that this was in the works or

1 that -- I don't know what they are going to offer.

2 THE COURT: Let me just ask this question.

3 MR. JONES: Yes.

4 THE COURT: Assume that Mr. O'Bryan comes here
5 and consistent -- I think, at this hour, I don't want to
6 say something that would be argumentative. It may be
7 consistent with what Plaintiff's counsel said, in other
8 words, that only recently, you know, that Mr. O'Bryan
9 was alerted in some manner so that the pipe was removed.
10 I think it was referred to, by Mr. Bratt, with
11 protective gear and so forth. Mr. O'Bryan will testify,
12 right? And Mr. O'Bryan didn't he say that pipe was
13 there and the circumstance under which it was there, and
14 it was taken away. And isn't that all that -- and he
15 saw people with -- wearing certain apparel, offer a lay
16 opinion on that. That was taken away. And that is what
17 we had in opening statement. Later when we close off
18 the Plaintiff's case, the Defendant wants to talk about
19 that pipe. That is their business. Isn't that the way
20 it would go? In other words, why do I have to resolve
21 this dispute? Why is it necessary to call some person,
22 I think Ms. Votaw said that was some preliminary
23 agreement, but later they had to go to some expense to
24 do something on the defense side, whatever their
25 understanding was, it was not fulfilled. She is not
26 here to point fingers, I gather, just to explain, no,
27 there was no agreement, and it is a late disclosure.

28 MR. JONES: I don't think she is saying there is

1 no agreement. There was an agreement that these
2 people --

3 THE COURT: She said she worked something out
4 with you and then later, you know, trial counsel came in
5 on the case and then when they learned that -- she said
6 what she said.

7 MR. JONES: Okay.

8 THE COURT: She wasn't disparaging anybody.

9 MR. JONES: She was not. And I don't think she
10 would.

11 THE COURT: No. No.

12 MR. JONES: We get along famously, myself and
13 Ms. Votaw.

14 THE COURT: In other words, I would say it is a
15 late disclosure, can't call that person. We'll get to
16 it in due course if the defense puts anybody on.
17 Mr. O'Bryan can talk about what he talks about.

18 MR. JONES: Then we may call him in rebuttal if
19 the subjects are -- come out in this case. Perhaps
20 there will be rebuttal witness.

21 THE COURT: We'll see what you do if you choose
22 to put up a rebuttal claim.

23 MR. JONES: We'll jump off that bridge when we
24 come to it.

25 MR. BERFIELD: I have an issue. Lloyd Ambler.

26 THE COURT: Let's just go off record.

27 (Whereupon, discussions held off the
28 record.)

1 (Whereupon, proceedings were concluded
2 and continued to April 17, 2014 at 9:30 a.m.)

3 (Whereupon, Section D has ended.)

4 ---oOo---

1 STATE OF CALIFORNIA)
2 COUNTY OF MARIN) ss
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4

5 CERTIFICATE OF OFFICIAL REPORTER
6
7

8 I, BARRIE L. HART, C.S.R. #6954, hereby
9 certify:

10 THAT on Tuesday, January 16, 2014, at the hour
11 of 9:30 a.m thereof, I reported in shorthand writing the
12 proceeding had in the matter of Pamela J. O'Bryan versus
13 A.H. Voss Company, et al., No. MSC13-01926.

14 THAT I thereafter caused my said shorthand
15 writing to be transcribed into longhand typewriting.

16 THAT the foregoing pages 638-671 and 697-719
17 constitute and are a full, true, correct and accurate
18 transcription of my said shorthand writing and a correct
19 and verbatim record of the proceedings so had and taken,
20 as aforesaid.

21 DATED this 17th day of April, 2014.
22
23

24 BARRIE L. HART, CSR 6954
25
26
27
28

1 CERTIFICATE OF REPORTER
2 STATE OF CALIFORNIA)
3 COUNTY OF SONOMA) ss

4 I, JENNIFER MOSER ROUX, a Certified Shorthand
5 Reporter, CSR NO. 11003, within and for the State of
6 California, do hereby certify that the testimony and
7 proceedings in the foregoing, April 16, 2014, Volume VII-B,
8 pages 672-696 and Volume VII-D, pages 720-752, were taken
9 before me at the time and place therein set forth;

10 That the testimony of the witness, the questions
11 propounded, and all objections and statements made at
12 the time of the examination were recorded
13 stenographically by me and were thereafter transcribed.

14 That the foregoing is a true and correct
15 transcript of my shorthand notes so taken.

16 I further certify that I am not a relative or
17 employee of any attorney of the parties, nor financially
18 interested in the action or the outcome thereof.

19 IN WITNESS WHEREOF, I have subscribed my name
20 this 16th day of April, 2014.

21
22
23
24 Jennifer Moser Roux NO.11033