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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MIDDLESEX COUNTY
Docket No. MID-L-2706-03 AS

ESTATE OF PETER S. MIRSCH. :

Plaintiff, : CIVIL ACTION

-vs- : Deposition of:

GEORGIA PACIFIC, INC.; : JOHN W. KELSE, JR.
HAMMILL & GILLESPIE, INC.; (Volume I)
R.T. VANDERBILT COMPANY, :
INC., :

Defendants.

X-----X

TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before HOLLY JOHNSON KOVALENKO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, held at the offices of HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, L.L.P., 40 Paterson Street, New Brunswick, New Jersey, on Wednesday, December 1, 2004, commencing at approximately 10:15 in the forenoon.



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WITNESS

DIRECT

John W. Kelse, Jr.

By Mr. Moshe: 7

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<u>I N D E X O F R E Q U E S T S</u> 1. Copy of transcript from prior deposition of Kelse in New Jersey - Pg. 11 2. Copies of reports Kelse sent to Vanderbilt for inspections of Gouverneur talc facility while employed at Hartford - Pg. 45 3. All NYTAL 100 MSD sheets in Kelse's file - Pg. 95 4. Film entitled "A Matter of Fact" - Pg. 120 5. Brochure entitled "A Matter of Fact" - Pg. 125	5 J. Kelse - direct - Mr. Maimon 7 1 and Mr. Kelse has produced today here at the 2 deposition those documents which form his file as 3 an expert witness in this case, so we believe that 4 we have been responsive to the Notice as it relates 5 to him as an expert witness. 6 I presume that, similar to Dr. Abraham, 7 Mr. Kelse will be treated as an expert witness and 8 will be compensated as such for his appearance here 9 today; and we will be providing you with a bill for 10 his hourly time, as well as his expenses in having 11 to stay at the hotel. I believe we have discussed 12 the hourly rate at 250 an hour. 13 So with that in mind, we're ready to 14 proceed. 15 MR. MAIMON: Well, I'll certainly pay any 16 expert fee and the reasonable hourly fees. I don't 17 know that I have ever paid hotel bills for an 18 expert to stay over, but I'm sure we can work 19 something out in that regard. 20 MR. GAFFREY: Okay. 21 22 DIRECT EXAMINATION BY MR. MAIMON: 23 Q Good morning, Mr. Kelse. 24 A Good morning. 25 Q My name is Moshe Maimon, and I
6 1 (The below-described two-page Notice of 2 Deposition was received and marked Kelse-1 for 3 Identification.) 4 (The below-described two-page Resume of John 5 W. Kelse, Jr., was received and marked Kelse-2 for 6 Identification.) 7 8 J O H N W. K E L S E, J R., having his office 9 at 30 Winfield Street, Norwalk, Connecticut, 10 is duly sworn and testifies on his oath as 11 follows: 12 13 MR. GAFFREY: Just before you begin, I just 14 want to put a short statement on the record. 15 We have marked as Kelse-1 for Identification 16 the Deposition Notice of Mr. Maimon from Levy 17 Phillips. In reading the Notice, we wanted to 18 respond to it literally; and it speaks in terms of 19 Mr. Kelse being produced as an expert witness; and 20 he is, in fact, being produced as an expert witness 21 today, not as a corporate witness or not as a 22 consultant, because we have used him as all three 23 categories in this case, but purely as an expert 24 witness. 25 We have reviewed the listings for documents,	8 J. Kelse - direct - Mr. Maimon 1 represent the Estate of Peter Hirsch in this case, 2 and I'm here to take your deposition. 3 You have been designated as an expert for 4 R.T. Vanderbilt Company, and you are aware of that; 5 are you not? 6 A Yes. 7 Q Let me ask you a few questions, first 8 of all. 9 Have you ever had your deposition taken 10 before? 11 A Yes, I have. 12 Q On how many prior occasions have you 13 had your deposition taken? 14 A I believe once. 15 Q And do you recall when that was? 16 A I believe it was here in New Jersey, and I 17 believe it was - gee, eight years ago or so. It's 18 quite a while. 19 Q And in connection with - in what type 20 of proceeding did that deposition take place? 21 Was that a lawsuit? Was that a Workers' 22 Compensation hearing? Was it a regulatory hearing? 23 A No. It was a lawsuit. 24 Q And were you personally involved in 25 that lawsuit, or was that a lawsuit involving your

J. Kelse - direct - Mr. Maimon 9 1 employer? 2 A My employer. 3 Q That's the R.T. Vanderbilt Company, 4 right? 5 A Yes. 6 Q And do you recall if that was a case 7 that was filed here in New Jersey, or was it filed 8 somewhere else and you simply appeared in New 9 Jersey? 10 A I don't recall. 11 Q Do you recall what the subject matter 12 of that lawsuit was? 13 A Well, it was a health claim from exposure to 14 talc product. 15 Q Do you recall what the claimed injury 16 was in that case? 17 A I better say I don't remember. I think it 18 was lung cancer, but I'm not sure. 19 Q Do you recall what the product at 20 issue was as far as your employer, the R.T. 21 Vanderbilt Company, was in that case? 22 A Well, it was the industrial talc, Vanderbilt 23 talc. 24 Q Was it under the NYTAL trademark? 25 A I don't recall.	J. Kelse - direct - Mr. Maimon 11 1 firm for the plaintiff that took your deposition 2 was? 3 A No, I'm afraid not. I didn't review that. 4 Q Do you maintain a file in your office 5 concerning that case or the testimony that you gave 6 in that case? 7 A I don't know. 8 Q Do you maintain a copy of the 9 deposition that you gave in that case? 10 A I'm sure there - there is one available 11 probably at our corporate counsel, or Dennis Race 12 will probably have a copy. 13 MR. GAFFREY: Just listen to the question he 14 asks you. 15 A Do I have a copy? No. 16 MR. MAIMON: Okay. I'm going to make a 17 demand for a copy of the transcript if it exists. 18 MR. GAFFREY: Okay. We'll consider the 19 request. 20 MR. MAIMON: Thank you. 21 Q Do you recall whether that case went 22 to trial or not? 23 A I don't believe it did. 24 Q Now, aside from giving deposition 25 testimony in that case - some of the materials
J. Kelse - direct - Mr. Maimon 10 1 Q Do you recall what the occupation was 2 of the claimant in that case? 3 A No, I don't. 4 Q Did you appear as an expert witness in 5 that case or as a fact witness? 6 A I don't recall. 7 Q Were you represented by counsel in 8 that case at the deposition? 9 A Yes, defending Vanderbilt. 10 Q Right. 11 And do you recall who the attorneys for 12 Vanderbilt were that appeared with you at that 13 deposition? 14 A No, I don't. 15 Q Do you recall what the outcome of 16 that lawsuit was as far as your employer, R.T. 17 Vanderbilt, was concerned? 18 MR. GAFFREY: Just note my objection to the 19 question. It goes beyond his scope, but you can 20 answer the question. 21 A I don't recall. 22 Q Do you recall where in New Jersey that 23 deposition took place? 24 A I'm not sure. 25 Q Do you recall what the name of the law	J. Kelse - direct - Mr. Maimon 12 1 that you have produced here reflect some of the 2 testimony that you have given at regulatory 3 hearings or other types of hearings, and you have 4 given such testimony in the past; correct? 5 A Yes. 6 Q Have you ever given testimony at any 7 trials for lawsuits? 8 A No. 9 Q Aside from this case, the Hirsch case, 10 to the best of your knowledge and recollection, 11 have you ever been designated as an expert witness 12 in any other litigation? 13 A No. 14 Q We have marked as Exhibit 1 for this 15 deposition the Notice of Deposition in this case, 16 and I'd just like to go through it with you. 17 The first item that's requested on the 18 Notice of Deposition is your entire file concerning 19 this case, and you indeed have a folder file that's 20 titled "Hirsch Case File"; is that correct? 21 A Yes. 22 Q And does this file contain all of the 23 materials specific to the Hirsch case that you have 24 assembled in your work on this case? 25 A Yes.

J. Kelse - direct - Mr. Maimon 13 1 Q I'm going to skip around only to try 2 and make it easier. 3 No. 4 requests all submissions by you to any 4 governmental agency concerning the issues of 5 whether or not Vanderbilt talc contains asbestos, 6 and you have a file that you have produced here 7 today concerning exactly those submissions; is that 8 correct? 9 A Yes. 10 Q And does that file, to the best of 11 your knowledge, contain all of the submissions that 12 you have made? 13 A Yeah, yes. 14 Q Okay. No. 5 requests correspondence, 15 reports, or documents that you have ever exchanged 16 or shared with or received from a certain other 17 number of people, and I noticed in looking through 18 some of your file that you do have correspondence 19 from Ann Wylie; is that correct? 20 A Yes. 21 Q And you do have some materials from 22 Arthur Langer; is that correct? 23 A Yes. 24 Q I'm not talking about things that were 25 provided to you by somebody else, the attorneys for	J. Kelse - direct - Mr. Maimon 15 1 Grimbergen at the firm of Hoagland, Longo, Moran, 2 Dunst & Doukas? 3 A Yes. 4 Q Okay. In that report you refer to 5 various MSHA, which is Mine Safety & Health 6 Administration, documents; is that correct? 7 A Yes. 8 Q Have you brought with you all of the 9 MSHA documents that were referred to in your 10 report? 11 A Yes. They're in the data. 12 Q Okay. They're in one of the files, 13 right? 14 A Yes, the analytical reports. 15 Q Item No. 7 requests all documents, 16 reports, studies, and articles that you relied upon 17 in your March 19, 2004, letter/report, and you have 18 those with you today; correct? 19 A Yes. 20 Q Item No. 8 asks for all documents that 21 support the allegation that "Vanderbilt talc has 22 been injected and implanted into the pleural 23 cavities of rats and hamsters in two independent 24 studies". 25 Do you see that?
J. Kelse - direct - Mr. Maimon 14 1 Vanderbilt in this case or something else. 2 Do you have any correspondence, documents, 3 or reports that you have received from William 4 Dyson ever? 5 A I don't recall. 6 Q What about Victor Roggli? 7 A Not that I have received from him, no. 8 Q What about John Craighead? 9 A None that I have received from him. 10 Q And what about Sheldon Rabinovitz? 11 A Same thing. 12 Q Okay. Item No. 2 requests articles, 13 publications, reports, tests, and studies that form 14 the basis for your opinions in this case; and you 15 have brought those with you, correct? 16 A Yes. All the analytical reports in 17 chronological order, all the summary reports that 18 have been prepared on this issue. 19 Q And we'll go through those by category 20 and then some in detail later on. 21 A Okay. 22 Q You wrote a report in this case dated 23 March 19, 2004; is that correct? 24 A Yes. 25 Q And it was addressed to Nora	J. Kelse - direct - Mr. Maimon 16 1 A Yes. 2 Q That quote comes from your report, 3 right? 4 A Yes. 5 Q And that's an accurate quote from your 6 March 19, 2004, letter/report; correct? 7 A Yes. 8 Q Do you have documents that support 9 that allegation? 10 A Yes. 11 Q Okay. And which file would those be 12 contained in? 13 A It would be in the file labeled "Health 14 Studies Human, Animal & Cell". 15 Q Item 9 requests all records, either 16 mortality records or Workers' Compensation records, 17 of mesotheliomas diagnosed in current or former 18 Vanderbilt employees. 19 I want to ask you, does Vanderbilt maintain 20 mortality records itemizing the cause of death of 21 current and/or former employees? 22 MR. GAFFREY: I want to just interject an 23 objection. This was a request on the Notice that 24 I in particular had problems with. 25 Number 1, it does not fall within his

J. Kelse - direct - Mr. Maimon 17 1 position here as an expert in this case. I saw 2 that request more directed towards a corporate 3 witness or custodian of records of R.T. Vanderbilt, 4 which the Deposition Notice does not request. 5 Number 2, it's been well established here 6 in Middlesex County under Judge Keefe that Workers' 7 Compensation records of this type, requests for 8 this, need not be produced; and it's something that 9 Judge Keefe passed judgment on several times 10 between 1978 and 1986, and we have an objection to 11 it on that basis as well. 12 So for those two reasons -- Number 1, it 13 goes beyond the scope of the Deposition Notice 14 and, Number 2, it flies in the face of Judge 15 Keefe's prior rulings -- we have an objection to 16 that request, and we also have an objection to any 17 questions with respect to that category. 18 MR. MAIMON: Well, I understand your 19 objection to the request. 20 To the extent that this witness, as an 21 expert witness, is relying on the health experience 22 of Vanderbilt workers, I think that it's -- I 23 believe that he's representing in his expert report 24 that he is relying on that history. 25 I think that it's directly relevant to the	J. Kelse - direct - Mr. Maimon 19 1 40 years within the typical latency for 2 mesothelioma." 3 Q And in some of those studies you 4 personally were involved in providing data and 5 information to the researchers who were conducting 6 those studies; is that correct? 7 A Not mortality data. They go for that 8 themselves. That's separate. 9 Q Okay. But, for instance, the company 10 itself opened up some of its mortality data to 11 various researchers who were looking at past and 12 present workers; is that correct? 13 A No. That is done separately. 14 The way in which mortality studies are done 15 is that they ascertain the vital status of each 16 employee and then they track down the death 17 certificates and information from the counties and 18 states. They don't collect it from the company. 19 See, it's independently -- 20 Q My question is does the company 21 maintain such records itself. 22 A I have to say I'm not sure. 23 Q Who would be the best person to find 24 that out from? 25 A Probably the general counsel.
J. Kelse - direct - Mr. Maimon 18 1 testimony that he is being offered to give. 2 MR. GAFFREY: If you lay that foundation the 3 way you just posed it, arguably it does fall within 4 the Deposition Notice; and I can give you some 5 latitude. 6 As it's posed on this Notice, it's not 7 clear; and as it's posed here, I have an objection 8 to it. 9 So if you want to establish that foundation, 10 go ahead and do that. 11 Q Take a look at Page 3 of your report, 12 Mr. Kelse, the large paragraph there. 13 A Oh, the long one? 14 Q Yes. 15 Do you make a statement there concerning 16 whether there have been mesotheliomas, and 17 specifically mesothelioma deaths, attributable to 18 Vanderbilt talc, exposure to Vanderbilt talc, 19 there? 20 A Yes. The actual statement -- shall I read 21 it? 22 Q Please. 23 A "No mesothelioma deaths attributable to 24 exposure to Vanderbilt talc were reported in any of 25 these mortality studies. Studies span greater than	J. Kelse - direct - Mr. Maimon 20 1 Q And who is that? 2 A That's Betty Lynn White. 3 Q So putting Workers' Compensation 4 records aside for a moment and just looking at Item 5 No. 9, you don't know whether or not Vanderbilt 6 maintains mortality records which would reflect 7 whether or not mesotheliomas had been diagnosed in 8 current or former Vanderbilt employees; is that 9 fair to say? 10 A Yes. 11 Q And are you involved in any way in 12 reviewing Workers' Compensation claims or records 13 made against the company for work-related injuries? 14 MR. GAFFREY: I'm going to object to that. 15 Again, it falls outside the scope of the Deposition 16 Notice; but I'll give you some latitude. 17 You can answer that question if you 18 understand it. 19 A I do get inquiries on my opinion as to 20 whether a Comp case seems legitimate or not. To 21 that extent, yes. 22 Q Is there someone within the company 23 whose responsibility it is to keep track of all 24 Workers' Compensation cases filed against R.T. 25 Vanderbilt?

J. Kelse - direct - Mr. Maimon 21 1 MR. GAFFREY: Same objection. You can 2 answer the question. 3 A Yes. It's a shared responsibility. 4 Q And who's that shared responsibility 5 between? 6 A The insurance is typically handled by the 7 chief financial officer, Joe DeNaro, D-e-N-a-r-o. 8 Q You said it's shared between two 9 people. 10 One would be Mr. DeNaro, and the other? 11 A Jim McDonald. 12 Q And what's his position? 13 A He works for Joe DeNaro. 14 And I would see general Workmen's Comp 15 frequency in data so that I could compare it with 16 loss trends by plant and things of that nature, but 17 I'm not involved in individual Comp cases. 18 MR. GAFFREY: Remember to just answer the 19 question. 20 THE WITNESS: Okay. 21 Q The data that you receive in the 22 normal course of your responsibilities within the 23 company, those would just simply be trends or raw 24 data; it would not reflect the various types of 25 claims that are brought or the various injuries	J. Kelse - direct - Mr. Maimon 23 1 MR. MAIMON: I understand that. However, 2 his expertise, I think, to a large extent is based 3 on his factual experience within the company. 4 In fact, I don't think he has any expertise 5 outside of that. 6 MR. GAFFREY: But you're not establishing 7 the proper foundation; but if you do, I'll 8 certainly determine whether or not I can have him 9 answer that question; but without that foundation 10 it's beyond the scope of this Notice. 11 MR. MAIMON: I understand that, but I don't 12 think that it's incumbent on me under the rules to 13 establish foundations before I ask questions in a 14 discovery deposition of an expert witness of this 15 type, but I'll respect the instruction. 16 MR. GAFFREY: That's not correct because 17 here, as I've established at the outset of this 18 deposition, Mr. Kelse has three roles in this case 19 with respect to the defense. He's an expert, he's 20 an employee of R.T. Vanderbilt and he's been a 21 consultant for us; and I made it clear at the 22 outset that your Deposition Notice, at least the 23 way we read it – and I think it's very clear on 24 its face – that you're requesting him as an 25 expert, not with respect to the other two
J. Kelse - direct - Mr. Maimon 22 1 that were being claimed within the context of those 2 Compensation claims; is that correct? 3 MR. GAFFREY: Do you understand the 4 question? 5 THE WITNESS: No, I don't. 6 Q Okay. I think you told us that on 7 occasion you are asked about particular Workers' 8 Compensation claims. 9 Is that correct? 10 A Yes. 11 Q Aside from that, could you simply 12 describe for me in general terms what your 13 responsibility is as it deals with Workers' 14 Compensation claims made against Vanderbilt? 15 MR. GAFFREY: I'm going to object, Moshe, 16 unless you can establish that the area of 17 questioning is part of what formed the basis for 18 his opinions as an expert in this case. I think 19 it's beyond the scope of the Deposition Notice. 20 MR. MAIMON: Well, I don't think I have to 21 establish that. 22 MR. GAFFREY: Then I'm going to instruct the 23 client not to answer because the Deposition Notice 24 is clear that he's here as an expert, not as a 25 corporate representative.	J. Kelse - direct - Mr. Maimon 24 1 categories. 2 Certainly as a consultant there's a work 3 product privilege; and as such, we've prepared him 4 as an expert to testify here today. We have 5 reviewed or had him review his files with respect 6 to an expert witness. 7 I think it's unfair of you now to ask him 8 questions related to any other position that he may 9 have held with respect to the defense in this case. 10 If you can establish that any of this area 11 of questioning pertained to the basis of his 12 opinions in this case, perhaps we can go further; 13 but without that, it's unfair to the witness and 14 unfair to us. 15 MR. MAIMON: I respect your position. I 16 disagree with it. 17 I think that the arbitrary decisions by 18 defense counsel for an expert witness that they're 19 offering to designate part of what they have to say 20 as expert, part of what they say as fact, and make 21 those determinations by themselves – and 22 specifically with regard to this witness and the 23 report that he has rendered in this case, which 24 deals specifically with the health of Vanderbilt 25 workers throughout the body of the report – and

J. Kelse - direct - Mr. Maimon 25 1 we'll mark it in a few minutes. 2 I think that - I haven't asked him 3 substantive questions about these issues. 4 I'm simply asking about what the realm of 5 his responsibility is with regard to it, but I'll 6 respect your instruction to him not to answer that 7 question, and I'll take my remedy to the Court with 8 an application afterwards, but I am not going to 9 conduct my deposition to satisfy your requirements 10 of foundation on any issue. 11 I'm going to ask my questions. I'll do it 12 in the way that I'm used to doing it and the way 13 that I choose to. 14 If the judge agrees with you, she'll deny my 15 motion. If she agrees with me, she'll grant my 16 motion. 17 MR. GAFFREY: Okay. Just to respond, we're 18 not making any arbitrary decisions. We got served 19 with a Deposition Notice which lists certain 20 categories. 21 You made the decision. We're following the 22 decision. We produced him according to the 23 Deposition Notice. He prepared himself according 24 to the Deposition Notice, and if you want to ask 25 him questions that go beyond his scope - and I'll	J. Kelse - direct - Mr. Maimon 27 1 that clearly states what his role is today for 2 today's proceeding, and that's how he was prepared, 3 and that's how he's being produced. 4 Questions regarding factual background of 5 the company, you had the option to serve the 6 appropriate Notice. You chose not to, for whatever 7 reason. 8 He's here as an expert witness pursuant to 9 this Notice. We are producing him for nine out of 10 the ten categories. One category, we believe, goes 11 beyond the scope of his position here as an expert. 12 MR. MAIMON: And I think we have both put 13 our positions on the record, and we can go forward 14 and deal with it later on. 15 Q We have marked as - oh, finally, Item 16 No. 10 on the Notice of Deposition is your current 17 CV, your resume. 18 A Right. 19 Q And I see a resume in the Hirsch Case 20 File. 21 Is that a current resume, Mr. Kelse? 22 A Yes. I've updated it. 23 Q I'd like to go through it. We have 24 marked this as Kelse-2 for today's deposition. 25 You attended Wagner College in Staten
J. Kelse - direct - Mr. Maimon 26 1 read it into the record. 2 "Testimony will be taken by deposition upon 3 oral examination of John Kelse, an expert witness 4 for defendant R.T. Vanderbilt Company." 5 It doesn't say "30B6 corporate witness". 6 It just says "expert witness". That's what we 7 prepared him for, he prepared himself for, he 8 reviewed his file for; and anything beyond that 9 I think is unfair and beyond the scope of this 10 deposition. 11 MR. MAIMON: And I'm willing to abide by 12 your decision to limit the deposition as such. 13 However, I'm telling you right now that I'm 14 going to move to limit his testimony at trial to 15 preclude him referring to any factual elements as 16 part of the expert testimony that he's going to 17 give in this case, so if he's going to base a 18 single opinion in this case about the health 19 experience of Vanderbilt workers I'm going to move 20 to preclude that because I was prevented from going 21 forward about it in this expert deposition; and I'm 22 here to take an expert deposition, not a 30B6 23 deposition. 24 MR. GAFFREY: Well, if you wanted a 30B6, 25 you should have requested one. You served a Notice	J. Kelse - direct - Mr. Maimon 28 1 Island, New York? 2 A Uh-huh, yes. 3 Q And when was that? 4 A Through 1968. 5 Q You received a BA in Experimental 6 Psychology? 7 A Yes. 8 Q And you had a minor in Biology; is 9 that correct? 10 A Yes. 11 Q After you graduated from Wagner, did 12 you go directly into the Air Force? 13 A Yes. 14 Q And you served there between 1968 and 15 1972; is that correct? 16 A Yes. 17 Q Where were you stationed? 18 A One year in Texas, Blackland and Brooks Air 19 Force Base; a year in California, Vandenberg Air 20 Force Base; and two years in Anderson Air Force 21 Base in Guam. 22 Q Now, I think you list three medical 23 courses or three courses of training that you had 24 while you were in the Air Force. 25 One is Basic Medical Course, second is

J. Kelse - direct - Mr. Maimon 29 1 Preventive Medicine and Industrial Hygiene Course, 2 and third is Supervised OJTIH Training; is that 3 correct? 4 A Yes. 5 Q The basic medical course, how long was 6 that? 7 A I think it was three weeks. 8 Q And what topics were covered in that 9 basic medical course that took three weeks? 10 A That was a general medic, so general 11 medical, you know, caring for people who would be 12 injured on a battlefield or something of that 13 nature. 14 Q So emergency medical treatment? 15 A Emergency, right, triage type facts. 16 Q Is that type of course required for 17 all - 18 A Yes. 19 To do the preventive medicine and industrial 20 hygiene you had to first go through this medical. 21 Then you were part of the medical group. 22 Q The preventive medicine and industrial 23 hygiene course that you took, that was a six-month 24 course? 25 A I believe so.	J. Kelse - direct - Mr. Maimon 31 1 related diseases? 2 A I don't believe so. 3 Q What other aspects of industrial 4 hygiene were dealt with in that course? 5 A Basically we touched upon all the categories 6 under industrial hygiene, which are quite broad. 7 There were courses in general analytical 8 techniques, how - you know, what type of equipment 9 is used for what type of - like for gas monitoring 10 and gas chromatograph and what the function of 11 those machines are and what you do with it. 12 There were issues of control technology; 13 namely, ventilation engineering aspects, isolation, 14 administrative controls, personal protective 15 equipment, like respirators and things of that 16 nature. 17 The typical industrial hygiene gamut of, 18 you know, how to monitor, how to use the data, what 19 does it mean, how to control the exposure. 20 Q Was this what would be known as an 21 introductory course to industrial hygiene? 22 A Certainly it would be, yeah. 23 Q And then you spent - you had a year 24 and a half of supervised OJTIH training, right? 25 A Yes. As part of the program you would work
J. Kelse - direct - Mr. Maimon 30 1 Q And where was it that you took that 2 course? 3 A It was at Brooks Air Force Base. 4 Q That's in Texas? 5 A San Antonio. 6 Q Was the subject of asbestos or 7 asbestos-related diseases dealt with during that 8 six-month course? 9 A Monitoring or sampling of asbestos was 10 covered, along with every other substance that you 11 might monitor a sample for. 12 Q When you're talking about "sampling", 13 are you talking about sampling procedures? 14 A Yes, air monitoring. 15 Q Okay. Did you actually do actual air 16 monitoring, or did you learn how to do it? 17 A Both. 18 Q And was there air monitoring done 19 specifically for asbestos within that six-month 20 course, or was it just a general learn-how-to-do? 21 A It was a general learn-how-to-do. 22 Q Okay. Aside from that sampling issue, 23 air sampling issue, were there any other parts of 24 the preventive medicine and industrial hygiene 25 course that dealt with asbestos and/or asbestos-	J. Kelse - direct - Mr. Maimon 32 1 under another hygienist for about a year and a 2 half. You would be supervised, and that was an 3 extension of the training. It was actually 4 hands-on. 5 Q What does "OJT" stand for? 6 A On-the-job training. 7 Q Now, when you say "supervised OJTIH 8 training," does that mean that you supervised 9 others or you were part of the group that was being 10 supervised? 11 A That you were being supervised. 12 Q Okay. So you were being supervised 13 by trained industrial hygienists and received 14 on-the-job training for about a year and a half? 15 A Yes. 16 Q Was that separate and apart from the 17 six-month course? 18 A I would say it's an extension of it. 19 Q When you on your resume counted a year 20 and a half, did that include the six months, or was 21 that supposed to be in addition to it? 22 A I think it probably included it because we 23 were supervised during that six months, so it 24 probably included it. 25 Q Okay. During the on-the-job training,

J. Kelse - direct - Mr. Maimon 33 1 aside from the air sampling that we talked about 2 already, was there anything else dealing with 3 asbestos and/or asbestos-related diseases? 4 A I don't believe so. 5 Q Okay. That on-the-job training that 6 you received in industrial hygiene, did that 7 include both your time in Texas as well as 8 California? 9 A Yes. 10 Q What about the two years that you 11 spent in Guam? Did you do any industrial 12 hygiene-type work or training while you were 13 stationed there? 14 A Yes. At that point I wasn't supervised; and 15 I basically ran the industrial hygiene program for 16 the site, for the base. 17 Q What type of industrial hygiene 18 concerns did you deal with in your capacity in 19 Guam? 20 A Well, like most Air Force bases it's like a 21 micro industrial community. There were carpenter 22 shops and welding shops and maintenance shops for 23 the air - you know, for the jet engines, so it was 24 an industrial complex. 25 So my responsibilities were to essentially	J. Kelse - direct - Mr. Maimon 35 1 Obviously a lot of noise work on the flight 2 line in jet engine areas. 3 That - just general industrial hygiene, 4 broad-scope monitoring, and control systems. 5 Q Did you monitor for asbestos dust? 6 A I don't believe I did. 7 Q Okay. 8 A I don't recall doing it. 9 Q Aside from hearing conservation, what 10 type of medical surveillance programs did you 11 assist in in setting up in Guam? 12 A Principally the hearing conservation 13 program. 14 Q Under your education listed on your 15 resume you have a miscellaneous section with 16 assorted safety courses and training; is that 17 correct? 18 A Yes. 19 Q Could you point to me which, if any, 20 of these dealt with asbestos and/or asbestos- 21 related diseases? 22 A I can't say that any specifically would 23 have. 24 Q Okay. After your discharge from the 25 Air Force you joined The Hartford Insurance Group
J. Kelse - direct - Mr. Maimon 34 1 monitor the exposures in these operations in these 2 industrial facilities, determine whether or not 3 these exposures were adequately protective. If 4 they were not, to devise control mechanisms to 5 provide proper protection for the employees. 6 And I also worked under the flight surgeon, 7 a physician at the hospital - we were all part of 8 a medical group - in terms of setting up medical 9 surveillance programs, like hearing conservation 10 programs. 11 With the Air Force a lot of the work was 12 excess noise, so noise issues. 13 Q Would that be part of the exposure 14 monitoring that you did, noise levels? 15 A Sure, yes. 16 Q What other types of exposure levels 17 were you monitoring while you were in charge of 18 industrial monitoring in Guam? 19 A Very wide range. All the way from taking 20 general dust samples in the carpenter shop that 21 dealt with material called pentachlorophenol, which 22 was used in the wood that was imported to Guam to 23 protect against termites, to various solvents that 24 were used in the machine shops, like 25 trichloroethylene and so forth.	J. Kelse - direct - Mr. Maimon 36 1 in 1973? 2 A Yes. 3 Q And you stayed there for about 12 4 years? 5 A Yes. 6 Q You list as your prior position The 7 Hartford Insurance Group, and I think the title 8 would be industrial hygienist? 9 A Principally, yes. 10 Q Okay. What other titles did you have 11 while you were with Hartford? 12 A I think industrial hygienist throughout 13 under what was referred to as the Loss Control 14 Department, which would include safety and 15 environmental, product risk, things of that nature. 16 Q Industrial hygiene was part of the 17 Loss Control Department? 18 A Yes. 19 Q I'm not sure I understood your answer. 20 Aside from the title of industrial 21 hygienist, did you hold any other titles or 22 positions while you were with The Hartford 23 Insurance Group? 24 A I did general risk assessment work in terms 25 of catastrophic risk for chemical plants. I did

J. Kelse - direct - Mr. Maimon 37 1 evaluations on medical facilities, hospitals, for 2 professional liability coverages. 3 I did a little bit of property work, very 4 little, fire; and most of it was Compensation, 5 employee safety and health, and the health part 6 went into the industrial hygiene, and occasionally 7 companies would contract with Hartford to have 8 industrial hygiene work done, and typically I would 9 be the person who would do that work. 10 Q Was there a staff of industrial 11 hygienists at Hartford while you were there? 12 A In the office in New York there were three. 13 Q Among those three, what were you? 14 Was there a pecking order of them? 15 A No. 16 Q You were just all part of a team? 17 A Yes. 18 Q Okay. During the time that you - 19 okay. 20 Aside from industrial hygienist, I just want 21 to know, did you hold any other title while you 22 were with Hartford? 23 A No. Just Loss Control industrial hygienist. 24 It was a broad - fairly broad category, but 25 that was the principal focus of my work.	J. Kelse - direct - Mr. Maimon 39 1 A Typically the NIOSH. There's a 7400 method. 2 This is the 1970's, I think. 3 Q Going into the 1980's? 4 A Yeah, early 80's; and that was predominantly 5 - the 7400 method was the one that was typically 6 used, you know. 7 Q Aside from air monitoring for asbestos 8 at the request of various insureds, did any of your 9 other work at The Hartford Insurance Group cause 10 you to deal with asbestos and/or asbestos-related 11 diseases? 12 A No. 13 Q While you were with Hartford, did you 14 in any way deal with the issue of the health 15 effects of exposure to talc and any of its 16 contaminants? 17 A No. 18 Q While you were with The Hartford 19 Insurance Group, were you familiar with any of the 20 health studies that had been conducted concerning 21 New York Talc and New York Talc miners and millers? 22 A Yes. 23 Q And how did you gain that awareness 24 while you were at Hartford? 25 A I was asked to do industrial hygiene work on
J. Kelse - direct - Mr. Maimon 38 1 Q And during the time that you were with 2 Hartford, did any of your responsibilities bring 3 you to deal with any issues relating to asbestos 4 and/or asbestos-related diseases? 5 A I did asbestos sampling monitoring on a 6 number of occasions. 7 Q What types of situations would bring 8 you to conduct asbestos monitoring while you were 9 with Hartford? 10 A Typical would be - it would be an insured, 11 an account of the insurance company, that wanted 12 air sampling done to identify an asbestos exposure 13 that they suspected may or may not have existed; 14 and I would do that monitoring. 15 Q Did you do that monitoring yourself, 16 or did you contract out work for others to do it 17 and supervise that work? 18 A I believe I did it when it was done. 19 Q In doing so, did you follow any type 20 of standards for conducting air sampling for 21 asbestos and taking measurements for asbestos in 22 air sampling? 23 A Yes. 24 Q Could you tell me what those standards 25 were that you followed?	J. Kelse - direct - Mr. Maimon 40 1 a contract basis for Vanderbilt in the early 80's, 2 and one of the plants was the talc facility in New 3 York; and prior to doing the air sampling at that 4 facility I collected information that was pertinent 5 to that facility and what existed in 1982 or '83, 6 which would have included, I think, the NIOSH 7 report that we've been - Technical Report that was 8 put out in 1980, I believe. 9 Q That was the one by Dement and 10 Zumwalde? 11 A Yes. I saw that when I worked for Hartford. 12 Q Aside from that, did you gain any 13 other familiarity with the studies that had been 14 conducted about the health effects of exposure to 15 talc? 16 While you were with Hartford. 17 A Other than that, no. 18 Q Okay. I'm sorry if I didn't catch 19 everything you said. 20 You did some air sampling at a talc facility 21 in New York for R.T. Vanderbilt in the 1980's; is 22 that correct? 23 A Yes. 24 Q And that was by contract from 25 Hartford, right?

J. Kelse - direct - Mr. Maimon 41 1 A Yes. 2 Q What facility was that? 3 A That was the Gouverneur talc mine and mill. 4 Q And how long of a project was that 5 timewise? 6 A I did noise and dust sampling. I would – 7 it was at least twice, maybe three times. 8 Each survey would take two to three days. 9 Q Aside from the Gouverneur talc 10 facility in New York, did you do any other work, 11 contract work, for R.T. Vanderbilt while you were 12 employed at Hartford? 13 A For their other facilities, chemical 14 facilities, and other mines I did, yes. 15 Q And approximately how many other 16 projects did you work on aside from the Gouverneur 17 talc facility for Vanderbilt while an employee of 18 Hartford? 19 A At least for two years. I would have 20 visited each site at least twice, maybe three 21 times. 22 Q Was that all part of a larger – of 23 one contract that Vanderbilt and Hartford entered 24 into for Hartford to provide industrial hygiene 25 services?	J. Kelse - direct - Mr. Maimon 43 1 Q Okay. 2 A It was an annual – annual monitoring that 3 was provided. 4 Q Aside from the work that you've 5 described at the talc facility in New York for 6 Vanderbilt, during the time that you were employed 7 at The Hartford Insurance Group did you have any 8 other experience or involvement in looking at talc 9 facilities? 10 A No. 11 Q Was there anyone at Vanderbilt – 12 specifically, at the Gouverneur talc facility – 13 that you dealt with during the time that you did 14 work there while employed at Hartford? 15 MR. GAFFREY: Just for clarification, what 16 do you mean, "dealt with"? 17 Q Was there a contact that you had that 18 provided you access or you had to report to or you 19 would report to in the normal course? 20 A It would be the plant manager. 21 I mean, you would have to – you would have 22 to get permission to be on the site through the 23 plant manager; and at that time the plant manager 24 was George Erdman. 25 E-r-d-m-a-n, I believe.
J. Kelse - direct - Mr. Maimon 42 1 A Yes. The way that works is Vanderbilt was 2 an insured of the Hartford, and when you're an 3 insured you pay a premium, and a certain part of 4 their premium was devoted to loss control services 5 in those years. 6 What that meant was that you were provided 7 someone who would help you with your safety 8 programs and evaluate your risks at your 9 facilities. 10 I was not the representative that 11 represented Hartford for Vanderbilt; but because I 12 did industrial hygiene work, I was used to do that 13 aspect of the service. 14 Q This two-year period of time that 15 you're talking about, did that immediately precede 16 the time that you left Hartford and went to work 17 for Vanderbilt? 18 A Well, I went to work for Vanderbilt in 1985, 19 so it was a couple years before. 20 Q What I'm asking you is – let's say at 21 the time that you left Hartford. 22 Were you still conducting these types of 23 surveys for Vanderbilt in connection with that 24 contract work? 25 A Yes, I believe I did.	J. Kelse - direct - Mr. Maimon 44 1 Q I think you said that you did dust 2 sampling there approximately two to three times; 3 is that correct? 4 A Yes. 5 Q The results of your dust sampling, 6 were they put into a report? 7 A Yes. 8 Q And who were they – who was that 9 report given to? 10 A It was sent to the – to the company, to 11 Vanderbilt. 12 Q Did you draft the report that went to 13 Vanderbilt, or did you provide a part of that and 14 somebody else from Hartford put it into a larger 15 report? 16 A Generally it was my report separate. 17 Sometimes it may have been combined with other 18 safety-type reports. 19 MR. GAFFREY: When you say in general, are 20 you speaking specifically with regard to the report 21 to Vanderbilt or just reports in general that you 22 did for clients? 23 I just want the clarification. 24 THE WITNESS: Oh, it would be a specific 25 report on that monitoring effort for Vanderbilt.

J. Kelse - direct - Mr. Maimon 45 1 Q So, to the best of your recollection, 2 did you submit reports to Vanderbilt concerning 3 your findings of the air sampling? 4 A Yes. 5 Q Okay. And are those reports within 6 the documents that you've brought with you today? 7 A No. 8 Q Do you know if those reports exist? 9 A I believe they do. 10 MR. MAIMON: I'm going to request copies of 11 all reports that Mr. Kelse sent to Vanderbilt for 12 his inspections of the Gouverneur talc facility 13 while he was employed at Hartford. 14 Q Do you recall whether those reports 15 noted the presence of asbestos in the air sampling? 16 A They didn't. 17 Q While you were doing that air 18 sampling, did you follow the NIOSH 7400 method? 19 A Yes, for fiber sampling. 20 Q For fiber sampling. 21 A Right. Did a lot of other sampling. 22 Q For instance, you did noise levels? 23 A Did noise, general dust, talc, respirable 24 dust. 25 Q Okay. But you used the NIOSH 7400	J. Kelse - direct - Mr. Maimon 47 1 you recall what it is that you were asked to do? 2 A I was -- it would be the typical request for 3 any industrial hygiene survey, which was to 4 ascertain the amount of, you know, dust exposure 5 and determine whether that was a safe limit and, if 6 not, recommend controls to reduce the exposure. 7 Q At that time what did you refer to to 8 determine whether or not the amount of dust that 9 you had sampled was safe or not? 10 A Well, for general fiber there was no 11 standard, so it was just basically almost a bench- 12 marking exercise. 13 I was familiar with the NIOSH study; and 14 part of the effort was to see whether my data was 15 similar to theirs, which it was. In terms of total 16 fiber counts, very similar. 17 In terms of the total respirable in talc 18 dust specifically, there are specific standards for 19 those; and those I would compare to specific 20 standards and determine whether they were within 21 safe ranges or not. 22 Q What was the benchmark that you used 23 for general fiber? 24 A There is no benchmark. It was just a matter 25 of this is high or low and -- but there is no
J. Kelse - direct - Mr. Maimon 46 1 method for fiber reporting, correct? 2 A On one occasion I did, yes. 3 Q This is while you were employed at 4 Hartford, right? 5 A Right, yes. 6 Q What definition did you use at that 7 time for fibers or an asbestos fiber? 8 A I wasn't sampling for asbestos. I was just 9 sampling fibers per cc, whatever they were. 10 Q And did you report the -- did you 11 report your findings as to how many fibers per cc 12 you found in the air that you had sampled? 13 A Yes. 14 Q Okay. Do you recall whether or not 15 that was above or below any OSHA limits at the 16 time? 17 A There are no OSHA limits or any other 18 standard for fibers per cc in general, no. 19 Q Within the context of the testing, air 20 sampling testing, that you did at R.T. Vanderbilt 21 while employed at Hartford, were you asked to 22 determine whether or not there was any asbestos in 23 the air that you were sampling? 24 A No. 25 Q With regard to the talc facility, do	J. Kelse - direct - Mr. Maimon 48 1 benchmark. There is no standard for it. 2 Q When you say it's high or low, those 3 are relative terms. 4 What did you measure that qualitative 5 assessment in relation to? 6 A It was like an internal comparison. 7 In other words, we would see more particles, 8 elongated particles, under the NIOSH 7400 method, 9 meaning particles that had an aspect ratio length- 10 to-width ratio of three to one and a length of at 11 least five micrometers. 12 So what you do is you collect all of those 13 on an open-face filter -- in those days I think it 14 was at two liters per minute -- and you simply 15 count them and then divide by the air flow to get 16 so many fibers per cc. 17 But that's all that is. It's a total. It 18 could be anything. If camel hair was in there, it 19 would be on the filter; and you would count. 20 Q And when you were making the 21 assessment of whether it was high or low, you were 22 comparing it to other sampling that had taken place 23 on prior occasions? 24 A Yes. The NIOSH data in the NIOSH report did 25 have total fiber counts, and you could compare it

J. Kelse - direct - Mr. Maimon 49 1 with that. You could say, well, it was about the 2 same or more or less. 3 If it wasn't significant in terms of health 4 risks, you wouldn't comment on it because there is 5 no standard for it. 6 What I did comment on mostly was total dust, 7 respirable dust, and how those fit, because there 8 were standards for those. 9 Q And when you're talking about the 10 NIOSH report, that was the 1980 - 11 A Technical. 12 Q - Technical Report? 13 A Right. 14 Q Did the 1980 Technical Report say that 15 it measured asbestos fibers in the air? 16 A It reported that. 17 Q Did you make any attempt to do so in 18 your work? 19 A No, because - I was familiar with the issue 20 because, you know, at that time I did speak with 21 Dr. Thompson, C.S. Thompson, who is a mineralogist. 22 Q Dr. Thompson was a mineralogist at 23 Vanderbilt at the time? 24 A Yes. 25 Q And your familiarity with the issue	J. Kelse - direct - Mr. Maimon 51 1 Hartford or anyone was at that level of mineral 2 expertise, so we just kept it at that. 3 Q I think you told us before that you 4 did do asbestos monitoring on a number of occasions 5 while employed at the Hartford; is that correct? 6 A Yes. Not - not very often, but I did a 7 couple, I think. 8 Q And those were circumstances where an 9 insured wanted some air sampling done because of 10 potential asbestos exposures, correct? 11 A Yes. 12 Q Did you follow the same procedures on 13 those air sampling projects as you did when you 14 went to the Gouverneur talc facility? 15 A In terms of collecting and counting, yes. 16 Q Okay. In the context of the air 17 monitoring that you did aside from Vanderbilt, did 18 you in your reports make an effort to quantify 19 asbestos fibers per cc? 20 A For Vanderbilt? 21 Q No, not Vanderbilt. 22 The other asbestos air monitoring that you 23 did, did you report asbestos fibers per cc after 24 having conducted the sampling? 25 A I reported what the lab sent back; and
J. Kelse - direct - Mr. Maimon 50 1 came from speaking with him? 2 A Yes. 3 Q On how many occasions did you speak 4 with him during the time that you were doing this 5 work while employed at Hartford? 6 A I believe it was just once. 7 Q And do you recall the sum and 8 substance of that conversation? 9 A Basically, I believe, I asked to speak with 10 him because I had read the NIOSH report and I had 11 heard from the other Loss Control representative 12 who, what they call, serviced the account that 13 there was an issue on identifying asbestos 14 definitions and so forth; and, so, I asked to speak 15 to somebody at Vanderbilt that could help me 16 understand what that was about, if I was going to 17 take air samples specifically, if it had to do with 18 that issue; and it was explained to me the 19 difference between cleavage fragments and actual 20 asbestos and what was present at the Vanderbilt 21 talc mine, the fact that it was an issue at the 22 time; and it was at that point that I decided to 23 take fiber counts and not to get into the issue of 24 identification. 25 I didn't think that the laboratory at	J. Kelse - direct - Mr. Maimon 52 1 whatever that was, that's what I reported. 2 Q Okay. That's because you didn't do 3 the counting yourself? 4 A Analyze, no. 5 Q You did the - 6 A Collection. 7 Q - collection, right? 8 A Yes. 9 Q And after you collected the samples, 10 you sent it to the laboratory and they sent a 11 report back to you with the results? 12 A Yes. 13 Q The same would be true with the work 14 you did at Vanderbilt? You collected the sample, 15 sent it to the lab, and the lab sent you back the 16 results; correct? 17 A In fibers per cc, yes. 18 Q Right. 19 In 1985 you joined the R.T. Vanderbilt 20 Company? 21 A Yes. 22 Q How was it that you became employed at 23 Vanderbilt? 24 Was it through your contact with them having 25 done this other type of industrial hygiene work for

J. Kelse - direct - Mr. Maimon 53 1 them over the last several years? 2 A Yes. They were familiar with me. 3 Q I'd like you to trace your employment 4 at R.T. Vanderbilt for me from 1985 to the present; 5 and let's just break it down as to the positions 6 that you've held and the years that those positions 7 encompassed, please. 8 A Okay. I'll try. Let's see. 9 I was hired to basically establish a health 10 safety environmental program for the corporation. 11 At the time there was no one at Vanderbilt that 12 held that position. 13 The first year, 1985, I believe I spent the 14 majority of my time writing material safety data 15 sheets. The company produces somewhere in the area 16 of 6 or 700 products, so lots of sheets. 17 I worked for an individual, Alan Harvey, 18 H-a-r-v-e-y. Then Harvey, I think a couple of 19 years later, retired; and we began to change - we 20 began to establish a department. 21 It took five or six years; but eventually 22 we got health and safety people in the plant, 23 particularly the chemical plant. We were able to 24 hire in the last 10 years an environmental 25 engineer/toxicologist that's used for product risk	J. Kelse - direct - Mr. Maimon 55 1 Q And most of your involvement, hands-on 2 involvement, would be in health and safety? 3 A Yes. 4 Q What is product risk? 5 A Well, again, the company is mainly a 6 chemical company, not - and, so, when you produce 7 a new chemical you have to determine its risks, 8 sometimes with animal testing and studies. 9 You then have to have it registered if 10 you're going to sell it in certain jurisdictions - 11 Europe, Canada, and so forth - and those 12 registrations require certain data that you have to 13 produce. If you don't have it, then you have to 14 test and get the data. That's why a toxicologist 15 is very often used for that. 16 If we are going to introduce a new product, 17 we have to review it in terms of its potential 18 liability aspects, what it's going to be used for, 19 what are its risks, is it going to be safe or not, 20 and how are we going to - on material safety data 21 sheets we produce, that's part of product risk, 22 where we have to relay the product risk to the best 23 of our ability, be sure that everyone gets those 24 sheets and is properly informed of the risks of the 25 products. There's a whole system for that.
J. Kelse - direct - Mr. Maimon 54 1 and product registration issues. I continued to 2 handle the health and safety end. 3 So that was continuous from the very 4 beginning to present day. I just - today I just 5 have more people and more help. 6 So, in effect, my responsibilities really 7 did not change. They just grew, and then I got 8 more assistance; and then I broke out the 9 environmental and the toxicology and the product 10 risk to people who had more expertise in those 11 areas than I did, do. 12 Q On your resume you list your position 13 as the manager of the Corporate Risk Management 14 Department; is that correct? 15 A Yes. 16 Q Could you tell me what the Corporate 17 Risk Management Department is at R.T. Vanderbilt? 18 A It's broken into the three segments that 19 I mentioned to you; Health and Safety that I'm 20 predominantly involved in, Product Risk, and 21 Environmental. 22 I oversee all three aspects. 23 Q When you talk about - you oversee all 24 three, right? 25 A Yes.	J. Kelse - direct - Mr. Maimon 56 1 There's a lot in that area, in developing a 2 new product. Part of that is the product risk. 3 Q Within your Product Risk Department, 4 do you have people on-staff that do animal testing 5 and studies, or do you contract that work out? 6 A They oversee and contract it out. 7 Q And Environmental, what is that 8 section? 9 A That would deal with air issues, air 10 emissions from plants, RCRA - Resource 11 Conservation Recovery Act - effluent from the 12 plants, resource reclamation issues, things of that 13 nature. 14 Q Would this generally deal with 15 emissions from R.T. Vanderbilt facilities? 16 A Environmental? 17 Q Yes. 18 A Yes. 19 Q Okay. Now, when you talk about health 20 and safety - and that's your main hands-on area - 21 are you talking about health and safety of 22 Vanderbilt employees? 23 A Yes. 24 Q When you joined Vanderbilt in 1985, 25 was there a Corporate Risk Management Department?

J. Kelse - direct - Mr. Maimon 57 1 A No. 2 Q When was that formed? 3 A I think I used that one for the first time 4 in 1989 or 1990. 5 Q During the entire time that there has 6 been a Corporate Risk Management Department at R.T. 7 Vanderbilt, have you been the manager of it? 8 A Yes. 9 Q Prior to the formation of the 10 Corporate Risk Management Department at R.T. 11 Vanderbilt, what was your title there? 12 A Corporate industrial hygienist. 13 I think it was interchanged with manager of 14 Health and Safety as well. 15 Q Now, you mentioned that while you 16 worked for Hartford you did air monitoring and 17 noise sampling at the Gouverneur talc mine and mill 18 facility in New York; is that correct? 19 A Yes. 20 Q Now, what's the corporate name of that 21 facility? 22 Is that the Gouverneur Talc Company or 23 Corporation? Do you know? 24 A It's called Gouverneur Talc Company, Inc. 25 Q For purposes of today's deposition,	J. Kelse - direct - Mr. Maimon 59 1 Another one of the files that you brought 2 with you today is called "Health Study Critiques", 3 right? 4 A Yes. 5 Q And the documents in this file deal 6 with critiques of various health studies that have 7 been done; is that right? 8 A Yes. 9 Q And is this something that you 10 maintain in the ordinary course of your business? 11 A Yes. 12 Q And you maintain it in the folder that 13 you have brought with you today; is that correct? 14 What I'm trying to find out is if the 15 contents of this file is -- is this a file that you 16 maintain; or is it something that you have put 17 together specifically for this deposition, to 18 comply with the Notice of Deposition? 19 MR. GAFFREY: Do you understand his 20 question? 21 A Oh, I put the information together in one 22 place, in that file, yeah. 23 Q But did you do that for purposes of 24 this deposition and to comply with the Notice, or 25 is that something that you just already had
J. Kelse - direct - Mr. Maimon 58 1 I'm going to refer to it as "GTC". 2 Is that okay? 3 A Yes. 4 MR. GAFFREY: Before we move on to a 5 different topic beyond his CV, why don't we just 6 take five. 7 MR. MAIMON: Fine. 8 (At this point a short recess was taken.) 9 (The below-described eight-page document was 10 received and marked Kelse-3 for identification.) 11 Q Mr. Kelse, I wanted to talk about some 12 of the papers that you brought with you today; but 13 before we do that I just want to, for the record, 14 talk about the files because you've brought various 15 file folders with you today. 16 We've discussed one of them, which is your 17 Hirsch Case File; correct? 18 A Yes. 19 Q And I want to ask you, is this 20 something that you maintained throughout your 21 involvement in the Hirsch case, or is this 22 something that you have put together for purposes 23 of this deposition? 24 A No. I maintained it. 25 Q Okay. That's fine.	J. Kelse - direct - Mr. Maimon 60 1 together in one place? 2 A To comply with the Notice. 3 Q Okay. 4 A They were in different files. 5 Q So these were documents that you had 6 within your files elsewhere and you assembled them 7 and put them together under the category of "Health 8 Study Critiques"; is that right? 9 A Yes, as documents that I relied upon. 10 Q Okay. That's fine. 11 Another one of the files is titled "General 12 Reference Documents Fiber Sizes Meso Lung Burden", 13 correct? 14 A Yes. 15 Q And is this also a file that you put 16 together for purposes of complying with the Notice 17 of Deposition, taking materials from other sources 18 and now putting them together in this file? 19 A Yes. 20 Q Okay. Another file is called "Human, 21 Animal & Cell Studies RTV Talc Specifically"; and 22 again, is this a file that you put together for 23 purposes of this deposition, taking materials from 24 other sources within your office and then 25 assembling them in this folder?

J. Kelse - direct - Mr. Maimon 61 1 A Yes. 2 Q You have another one titled "NIOSH 3 Correspondence"; and again, is this material that 4 you put together for this deposition? 5 A Yes. 6 Q You also have something called "OSHA 7 NTP Submissions Testimony MSHA"; and again, this is 8 something you put together for purposes of this 9 deposition? 10 A Yes. 11 MR. GAFFREY: Just off the record. 12 (Discussion held off the record.) 13 Q You have another file entitled 14 "Mineralogy Key Papers", and that's something you 15 put together for today's deposition? 16 A Yes. 17 Q You have another file titled 18 "Overviews Health & Mineralogy", and that's 19 something you put together for today's deposition? 20 A Yes. 21 Q Okay. And then the final folder that 22 you brought with you is called "Analytical 23 Reports", and that's something you put together for 24 today's deposition, right? 25 A Yes.	J. Kelse - direct - Mr. Maimon 63 1 information and the composition - the geology of 2 that region. 3 Q Is this a document that you generated? 4 A One that, yeah, we searched for just to get 5 an idea of how variable the mineral composition in 6 that area may or may not be. 7 Q Okay. The first page of this document 8 is a map, correct? 9 A Yes. 10 Q Pages 2 through 5 of the exhibit seems 11 to be information extracted from Dana System of 12 Mineralogy, the Sixth Edition, 1894, which is a 13 catalog of American localities of minerals for New 14 York State, which lists various counties; is that 15 correct? 16 A Yes. 17 Q Who generated these pages? 18 A I asked one of my co-workers to do a search; 19 and that's what was brought to me, so... 20 Q When did you ask for this work to be 21 done? 22 A Oh, probably - I think about a month ago. 23 Q And what was the purpose for you doing 24 this? Was it related to this case? 25 A Yes.
J. Kelse - direct - Mr. Maimon 62 1 Q Okay. Then you have a spiral-bound 2 pictorial presentation, and that is contained in 3 the "Overviews Health & Mineralogy"; right? 4 A Yes. 5 Q We just had it out. 6 And then you have a three-ring binder of 7 various studies, published studies - 8 A Right. 9 Q - that were referred to in the 10 pictorial presentation, right? 11 A Yes. 12 Q The contents of this binder, that's 13 not something that you put together for today's 14 deposition, but that is as you maintain it in your 15 office; correct? 16 A Yes. 17 Q Okay. From the file titled 18 "Mineralogy Key Papers" - I've marked one of those 19 documents as an exhibit, Exhibit No. 3; and I'd ask 20 you if you can tell us what this document is. 21 A This exhibit lists by various counties in 22 upstate New York various mineral composition by 23 county and area. 24 This was taken from, I think, a computer 25 search, you know, data available on mineral	J. Kelse - direct - Mr. Maimon 64 1 Q Okay. The final two pages - I'm 2 sorry. 3 The sixth page of this document is titled - 4 I think it's titled "Minerals in the New York State 5 Mineral Catalog Internet Source", correct? 6 A That's what it says, yes. 7 Q And is that also information that one 8 of your co-workers assembled for you? 9 A Yes. That's what he had received from his 10 query, I guess. 11 Q And the final two pages seem to just 12 be artifact from what was - 13 A Yes. 14 Q - on the sixth page, correct? 15 A Yes. 16 Q Okay. Let's talk about - do you know 17 where the map comes from that's Page 1? 18 A No, I don't. 19 Q What was the project that you gave 20 this co-worker to do? 21 How did you define it for him that resulted 22 in Exhibit 3 being generated? 23 A I told him I was interested in some 24 background information, whatever might be available 25 on the variability of the geology of that area; and

J. Kelse - direct - Mr. Maimon 65 1 I thought maybe a computer search, you know, might 2 generate something along that line, you know, could 3 he help me; and that's what he produced. 4 Q What area were you concerned with or 5 were you interested in to look at the variability 6 of the geology within it? 7 A Well the counties within - the St. Lawrence 8 and Jefferson County predominantly. Certainly the 9 area associated with the Gouverneur Talc Company. 10 Q How would you define the area 11 associated with the Gouverneur Talc Company? 12 A I'm sorry. I don't understand. 13 Q You just indicated - or you just used 14 the phrase "the area associated with the Gouverneur 15 Talc Company", and I'm asking you what do you 16 consider to be the area associated with the 17 Gouverneur Talc Company. 18 A It would be the, you know, Balmat mining 19 area, which I think is Jefferson County. 20 Q The map on Page 1 of Exhibit 3, is 21 that, do you know, a download from the Internet? 22 A I believe that's where it came from. 23 Q Okay. The extract from Dana System 24 of Mineralogy, this again is a download from an 25 Internet search conducted by your co-worker;	J. Kelse - direct - Mr. Maimon 67 1 areas in that region that I have heard, you know, 2 referred to, some - specifically, obviously, our 3 own mine in Balmat and the Wollastonite mine in 4 Harrisville. 5 The other areas are, you know, Talcville and 6 Fullerville; and these are areas - were towns that 7 I had heard that were mining regions, you know, in 8 the past. 9 Q On the map there is circled the name 10 "Gouverneur", right? 11 A Yes. 12 Q And then below that there is Balmat, 13 right? 14 A Yes. 15 Q What is Gouverneur, as it is circled 16 on the map? 17 A Oh, it's just the town, the nearest town, 18 the largest town. 19 Q Okay. The mine that produces the talc 20 that goes into the NYTAL products, is that in 21 Balmat? 22 A Yes. 23 Q Aside from - is that one mine or 24 several mines? 25 A It's one mine. It's one mine. I would
J. Kelse - direct - Mr. Maimon 66 1 correct? 2 A Yes. 3 Q And, in fact, it gives the page 4 numbers for the information contained in it; right? 5 A Yes. 6 Q Okay. And then the final substantive 7 page of the document lists various localities 8 within St. Lawrence County and minerals, correct? 9 A Yes. 10 Q Do you know if this, as we have it on 11 the document, is the format in which it was 12 responded to by the Internet query, or was this 13 reformatted and abstracted by the co-worker who you 14 gave this project to? 15 A I don't know. 16 Q Okay. On the map there are various 17 names of either areas or towns - I'm not sure what 18 they are - that are circled. 19 Do you see that? 20 A Yes. 21 Q Do you know who circled those? 22 A I believe I circled them. 23 Q And what was the significance of 24 circling any particular name? 25 A These are areas that are typically mining	J. Kelse - direct - Mr. Maimon 68 1 characterize it as one mine now. 2 At one time it was an underground mine and 3 an open pit; and they have been joined, so it's one 4 mine now. 5 Q Are you familiar with a company that 6 was known as International Talc? 7 A Yes. 8 Q Was that bought out by Vanderbilt or 9 GTC at any point in time? 10 A Yes. 11 Q When was that? 12 A I believe 1974. 13 Q And who bought it? 14 A R.T. Vanderbilt Company. 15 Q Do you know where the talc mines that 16 supplied the talc for the International Talc 17 products were? 18 A I know of two locations. 19 Q Where? 20 A Well, one is the Balmat, the main open pit 21 mine, which we, you know, mined. Another was 22 Talcville, which is not - no longer mined; and 23 they may have had a couple of other locations. 24 I'm not sure where they were. 25 Q Okay. Is the Balmat mine, the

J. Kelse - direct - Mr. Maimon 69 1 International Talc mine, from the same or a 2 different mine than the talc mine used by GTC for 3 NYTAL products? 4 A There was only one GTC mine up until 1974, 5 and that was an underground mine in Balmat. 6 When they purchased International Talc they 7 began to mine an adjacent mine called the Arnold 8 Pit, which has subsequently expanded; and now it 9 actually has gotten into the underground mine 10 workings. It's no longer an underground mine. 11 Q So prior to 1974 there was an 12 underground mine that GTC used and there was an 13 open pit mine that International used and since 14 they have kind of been merged together; is that 15 right? 16 A Yes. 17 Q The mineral catalogs, the Internet 18 download, for the minerals in the New York State 19 Mineral Catalog on Exhibit 3 list Balmat as the 20 first listed locality in St. Lawrence County; 21 right? 22 A Yes. 23 Q And it lists the minerals found in 24 that region; is that correct? 25 A On this listing, yes.	J. Kelse - direct - Mr. Maimon 71 1 in 1974? 2 A Yes, I believe so. 3 Q And I believe you told us that that's 4 since closed down. 5 A Yes. 6 Q When was that? 7 A That was only a couple years after the 8 purchase, I think, '75 or '76. 9 Q Do you know why it closed down? 10 A I think it was a sales issue, that the grade 11 of talc was not selling very well. 12 Q At the time that Vanderbilt bought out 13 International Talc, do you know how many - 14 withdrawn. 15 After Vanderbilt bought out International 16 Talc, were there workers who had worked for 17 International Talc that came over and worked for 18 Vanderbilt? 19 A Yes. 20 Q Were there miners and millers who did 21 so? 22 A Yes. 23 MR. GAFFREY: I'm just going to caution. 24 I think we may be getting beyond the scope of the 25 Deposition Notice. You can ask a few more
J. Kelse - direct - Mr. Maimon 70 1 Q And would that be - withdrawn. 2 This does not distinguish between the 3 underground mine or the open pit mine; is that 4 correct? 5 A I would say it would probably just refer to 6 the area. I have no idea - 7 MR. GAFFREY: Do you know that? 8 I mean, are you guessing, or do you know 9 that based upon your own personal knowledge? 10 THE WITNESS: I have no - I don't know what 11 it would be referred to as. 12 I'm just - I shouldn't assume, so I don't 13 know. 14 Q You don't know. Okay. 15 Do you know if there are any differences in 16 the constituent minerals between the underground 17 mine that GTC used and the open pit mine that 18 International Talc used prior to 1974? 19 A I don't believe there was a difference, a 20 significant difference. 21 Q You mentioned that International Talc 22 had done some mining over in Talcville; is that 23 correct? 24 A Yes. 25 Q Was that purchased also by Vanderbilt	J. Kelse - direct - Mr. Maimon 72 1 questions. If I feel you are, I'll interpose that 2 objection again. 3 Q GTC is a wholly-owned subsidiary of 4 Vanderbilt; is it not? 5 A Yes. 6 Q And do you know when that relationship 7 was formed? 8 MR. GAFFREY: Objection. 9 Q That it became a wholly-owned 10 subsidiary. 11 MR. GAFFREY: It goes beyond the scope of 12 the deposition. 13 If you want a corporate rep dep, then serve 14 the proper - 15 Q Some of these studies you have looked 16 at have been of Vanderbilt employees, correct? 17 A Say it again. 18 Q Some of the studies that you brought 19 with you today and that you relied upon are health 20 studies of R.T. Vanderbilt employees, correct? 21 A Yes. 22 Q Are some of those employees employees 23 who had worked for International Talc prior to the 24 takeover by Vanderbilt in 1974? 25 A They would be included, yes.

J. Kelse - direct - Mr. Maimon 73 1 Q Okay. Was there ever a time when GTC 2 was operating mines and/or mills in Balmat when it 3 was not owned by R.T. Vanderbilt? 4 A Could you repeat that? I'm sorry. 5 Q Sure. 6 MR. MAIMON: Could you read that back. 7 (At this point the pending question was read 8 back by the reporter as follows: 9 "Was there ever a time when GTC was 10 operating mines and/or mills in Balmat when it was 11 not owned by R.T. Vanderbilt?") 12 A I don't know, no. 13 Q Okay. Fair enough. 14 Now, earlier on in the deposition I think 15 you told us that you did not know whether or not 16 there were mortality records which would reflect 17 whether or not any Vanderbilt employees had been 18 diagnosed and/or died of mesothelioma; is that 19 correct? 20 MR. GAFFREY: Object to form. I don't 21 believe that was his testimony. 22 A There is mortality studies that reflect - 23 Q I'm not talking about the studies done 24 by others. I'm talking about internal company 25 records, mortality records.	J. Kelse - direct - Mr. Maimon 75 1 A Yes. 2 Q Prior to that time, were there MSD 3 sheets that had been - 4 A There were. 5 Q There were. 6 Who was responsible for the MSD sheets 7 before you joined Vanderbilt? 8 A That was overseen by Alan Harvey. 9 Q Harvey? 10 A Harvey, H-a-r-v-e-y. 11 Q That was your superior you told us 12 about who had retired - 13 A Yes. 14 Q - a few years after you joined the 15 company, right? 16 A Yes. 17 Q Did I cut you off? I'm sorry. 18 A That's okay. 19 Q Do you know when - withdrawn. 20 Talc is still mined at the Balmat mine; is 21 that correct? 22 A Yes. 23 Q And the company that mines it, is that 24 GTC? 25 A Yes.
J. Kelse - direct - Mr. Maimon 74 1 Do you know if such records exist? 2 A I'm not sure. 3 Q Okay. Do you know whether such 4 records existed for International Talc employees 5 at any time? 6 A I don't know. 7 MR. MAIMON: Let's mark this as 4. 8 (The below-described six-page Material 9 Safety Data Sheet was received and marked Kelse-4 10 for Identification.) 11 Q Mr. Kelse, I have marked as Exhibit 4 12 a material safety data sheet for NYTAL 100. 13 Are you familiar with this document? 14 A Yes. 15 Q Is this a document that you had input 16 into the generation of? 17 A Yes. 18 Q And what responsibility did you have 19 for the contents of this document? 20 A I wrote it. 21 Q Okay. We talked about the - you told 22 us that the first year that you were at Vanderbilt 23 one of your primary responsibilities was for 24 writing material safety data sheets, such as this 25 one; is that correct?	J. Kelse - direct - Mr. Maimon 76 1 Q Do you know how long GTC has been 2 mining talc at the Balmat mine? 3 A 1948 it started. 4 Q After the talc is mined out of the 5 ground, it's then milled; is that correct? 6 A Crushed, then milled. 7 Q What company does the crushing? 8 A GTC. 9 Q And who does the milling? What 10 company? Is that GTC also? 11 A Yes. 12 Q Prior to 1948 - withdrawn. 13 Who owns the mine? Is that GTC? Is that 14 the owner of the mine, as far as you know? 15 A I don't know what the relationship - you 16 know, the official relationship is. 17 It's a wholly-owned subsidiary, so... 18 Q GTC is a wholly-owned subsidiary of - 19 A Of R.T. Vanderbilt Company. 20 Q Has it been since 1948, as far as you 21 know? 22 A As far as I know. 23 Q Prior to 1948, was there mining done 24 in that mine? 25 A It didn't exist.

J. Kelse - direct - Mr. Maimon 77	J. Kelse - direct - Mr. Maimon 79
1 Q NYTAL is a registered trademark of 2 Vanderbilt; is it not? 3 A Yes. 4 Q There are different grades of the 5 NYTAL industrial talc sold by Vanderbilt; is that 6 correct? 7 A Yes. 8 Q The MSD sheet that you have is for 9 NYTAL 100, right? 10 A Yes. 11 Q And how many different grades are 12 there of this talc, NYTAL? 13 A There are at least a dozen. 14 Q In general terms, could you describe 15 what differentiates one grade from another? 16 A Yes. As a general rule, the higher the 17 number – we have NYTAL 100 all the way up to NYTAL 18 200. 19 The higher the number, the finer the 20 particle size. There are also some minor 21 differences in the percentage composition of the 22 various minerals. Some may have more talc and less 23 amphibole, for example. 24 Q Is the difference in composition of 25 the minerals, the difference in percentage	1 Q What does the "HR" stand for? 2 A I think it's High Hagman, which is a grind. 3 Q High what? 4 A High Hagman, it's called. 5 Q How do you spell "Hagman"? 6 A Well, H-a-g-m-a-n, I think. 7 Q And what does that signify? 8 A It signifies a certain type of milling or 9 grinding as a little finer than that NYTAL would 10 typically be ground to. 11 Q And what's the difference – 12 withdrawn. 13 Is NYTAL 100 HR and NYTAL 100 from the same 14 ore? 15 A It's from the same mine; but it may be, 16 you know, in a different area of the mine or a 17 different depth of the mine. It may be a little 18 bit different. 19 These blends are partially dictated by the 20 area in which it's mined. They're partially 21 dictated by materials that are put in silos that 22 are quality-tested to have – this one has a little 23 more talc; this one has a little more amphibole. 24 So if we want to make this product, we may 25 have to take some from this silo to add it to, you
J. Kelse - direct - Mr. Maimon 78	J. Kelse - direct - Mr. Maimon 80
1 composition of the minerals, a result of having a 2 finer product, or is that by design that the 3 different grades have purposely different 4 percentage composition of minerals? 5 A It's a function of both. 6 You know, the other can be milled, ground, 7 you know, to different sizes; and then depending 8 upon where in the mine – you know, there may be 9 more amphibole and more talc; and certain grades, 10 you know, will be taken from certain areas of the 11 mine. Certain grades will be taken from different 12 areas of the mine because they more closely 13 approximate the composition for that use. 14 NYTAL 100 is a ceramic grade, and it 15 typically has more grade than – more amphibole, 16 actually, than talc; and the particles are larger. 17 Q And based on the experience that the 18 company has gained over the years, it knows where 19 in the mine there are greater concentrations of 20 various minerals; is that correct? 21 A Yes. 22 Q Okay. Now, I have seen reference to 23 not only NYTAL 100 but NYTAL 100 HR. 24 Are you familiar with that? 25 A Yes.	1 know, increase the amphibole content or increase 2 the talc content; and then the adjustments are made 3 in terms of the milling process, and the material 4 is then quality-tested for things like oil 5 absorption and things of that nature. 6 Q If I understand correctly, various 7 parts of the mine, whether it's locations or depths 8 within the mine, are mined and the ore that's taken 9 from there is placed in various silos for further 10 processing; is that correct? 11 A To some degree, yes. 12 Q Okay. And then the next step would be 13 the crushing of that material; is that correct? 14 A It's usually crushed before it's brought 15 over. 16 Q To the silos? 17 A To the mills, yeah, to the silos, because 18 the boulders are too big. 19 Q And then, depending on what product 20 is going to be sold, a different silo will be the 21 source for the talc or the product going out and 22 sometimes you'll take mixtures from different 23 silos; correct? 24 A Yes. 25 Q Okay. In the MSD sheet – withdrawn.

J. Kelse - direct - Mr. Maimon 81 1 Do you know what the difference in 2 percentage composition of the various minerals 3 there is between NYTAL 100 and NYTAL 100 HR? 4 A I think it's more of the grind, the particle 5 sizing, than it is the mixture. 6 Q Just as an example, the tremolite 7 component of NYTAL 100 is listed as between 30 to 8 50 percent by weight. 9 A Uh-huh. 10 Q Is that correct? 11 A Yes. 12 Q What will determine that variability, 13 whether it's 30 percent or 50 percent, in any one 14 batch of NYTAL 100? 15 A The quality tests I think that are run will 16 typically have to do with its ends application. 17 So, for example, oil absorption is very 18 important for a paint grade; and if it doesn't 19 absorb, you know, at a certain rate it may be that 20 it doesn't have the right mineral blend; and then 21 before that batch or that group is processed 22 further you may add, you know, more material to get 23 those qualities that we need for that grade. 24 Q Is NYTAL 100 an off-the-shelf type of 25 product that's sold widely by Vanderbilt around the	J. Kelse - direct - Mr. Maimon 83 1 One looks to me like a recommendation for 2 safety eyewear - 3 A Yes. 4 Q - and one - is that a dust mask? 5 A Yeah, respiratory protection. 6 Q Is there a specific type of 7 respiratory protection that's suggested here, or 8 is this the icon for just general respiratory 9 protection? 10 A It's a general icon; but I believe, if I'm 11 not mistaken, it says "NIOSH approved respirator 12 for dust". 13 Q Okay. And then in the "Material Uses" 14 section it says that NYTAL 100 is used as an 15 additive in paints and ceramics. 16 A Yes. 17 Q And those are the uses that it's sold 18 for, correct? 19 A Yes. 20 Q Now, in this case you've reviewed the 21 testimony of Mr. Hirsch concerning his use of NYTAL 22 100; correct? 23 A Yes. 24 Q And did you review the purposes that 25 Mr. Hirsch indicated he was using the talc for?
J. Kelse - direct - Mr. Maimon 82 1 country? 2 A Very common, yes. 3 Q Okay. And for any bag, let's say, of 4 NYTAL 100, will there be in general between 30 to 5 50 percent tremolite? 6 A In that range, yes. 7 Q And 20 to 40 percent talc? 8 A Yes. 9 Q And whether the bag of NYTAL 100 that 10 I go out and buy has 20, 30, or 40 percent talc in 11 it is just a random function of how much talc was 12 in - or coming out of the silo in that batch? 13 Is that right? 14 A It would meet the specifications for that 15 product, whatever those were. 16 Q Okay. But everything sold under the 17 label NYTAL 100 is generically sold as such; it's 18 not specially extra high in talc for this one or 19 low in tremolite for that one; right? 20 A That's right. 21 Q On the MSD sheet there is a section 22 for "Protective Clothing". 23 Do you see that? 24 A Yes. 25 Q And there are two icons there.	J. Kelse - direct - Mr. Maimon 84 1 A To make a glaze. 2 Q You did? 3 A That's what he said. 4 MR. GAFFREY: Just listen to his question. 5 Q You did review that, right? You did 6 review that testimony; didn't you? 7 A Not - 8 MR. GAFFREY: Can you just repeat the 9 question? I think there's some confusion. 10 MR. MAIMON: Sure. 11 Q Did you review the purposes that 12 Mr. Hirsch testified he was using the NYTAL 100 13 for? 14 A Yes. 15 Q Okay. Based on your experience and 16 your knowledge of the product, were the uses that 17 he was putting - withdrawn. 18 Mr. Kelse, based on your experience and 19 knowledge of the product, were the uses that 20 Mr. Hirsch was putting the NYTAL 100 to the normal 21 foreseeable uses of that product? 22 MR. GAFFREY: Objection to form. You can 23 answer the question. 24 A I'm not - I would say yes, but I would 25 defer to like a ceramics engineer or someone who

J. Kelse - direct - Mr. Maimon 85 1 had more knowledge of the application than I would. 2 Q Based on your experience within the 3 R.T. Vanderbilt Company, if someone had indicated 4 that he used the NYTAL 100 in a manner described by 5 Mr. Hirsch in his testimony, would that be 6 something that you would consider to be unexpected? 7 MR. GAFFREY: Same objection. You can 8 answer. 9 A No. 10 Q Okay. There is a section when it 11 breaks down the constituent parts of the product by 12 percentage weight for TLV/PEL. 13 Do you see that? 14 A Yes. 15 Q And then there's an acronym in here, 16 "PNOR". 17 A Yes. 18 Q What is that? 19 A Particles not otherwise regulated. 20 Q Okay. Section 3 is the "Hazard 21 Identification" section of the MSD sheet. 22 A Yes. 23 Q And were you also responsible for the 24 contents of this section? 25 A Yes.	J. Kelse - direct - Mr. Maimon 87 1 A Predominantly it would be talc. 2 Q In writing this, did you consider 3 whether any of the other constituent parts aside 4 from the talc would be responsible for causing the 5 lung injury that you described in Section 3? 6 A Well, the data that exists on the 7 nonasbestiform amphiboles treats it as particles 8 not otherwise regulated or nuisance dust; and 9 that's essentially a catchall that the regulatory 10 agencies use for anything that they don't have a 11 specific exposure limit for, and the general catch 12 for mineral dust is that you shouldn't exceed a 13 certain overall level of that dust. 14 The assumption is if you do, all mineral 15 dust, whatever it is, you know, can cause lung 16 injury if you're overexposed to it; but they don't 17 have a specific study or data on that particular, 18 you know, material, so it's kind of a catchall. 19 Q Okay. I'm asking about when you wrote 20 the phrase, "Prolonged inhalation may cause lung 21 injury." 22 Did you consider whether or not any of the 23 constituent parts of the product, aside from the 24 talc, might be contributing to talcosis? 25 A Certainly looked at the health data that
J. Kelse - direct - Mr. Maimon 86 1 Q Okay. In the "Emergency Overview" of 2 Section 3 it says, "Prolonged inhalation may cause 3 the lung injury." 4 Do you see that? 5 A Yes. 6 Q I'd like to talk - ask you a few 7 questions about that. 8 What lung injury were you referring to when 9 you wrote that? 10 A Talcosis. 11 Q And how do you define talcosis? 12 A Well, it's a pneumoconiosis, a term that 13 just simply means dusty lung; and it's 14 characterized by interstitial fibrosis, similar to 15 any other type of pneumoconiosis. 16 Depending upon the dust that produced it - 17 if it was calon, it would be calonosis. If it's 18 talc, it's talcosis. If it's asbestos, it's 19 asbestosis; and that's what it means. 20 Q So would you consider talcosis to be 21 an interstitial fibrosis caused by talc? 22 A Certainly. 23 Q Okay. What constituent part listed in 24 Section 2 do you consider to be the causative agent 25 of talcosis?	J. Kelse - direct - Mr. Maimon 88 1 existed on nonasbestiform amphiboles. There didn't 2 seem to be much - you know, most of that data 3 dealt with its carcinogenic potential, whether it 4 did or didn't. 5 In terms of its anomaly of a respiratory 6 disease, there wasn't a lot of data available on 7 it. 8 I think from an industrial hygiene 9 standpoint you should treat it like any other 10 mineral dust, where you want to keep the levels 11 low. 12 We see - in our talc workers who are over- 13 exposed to the dust you can see, in talc workers, 14 talcosis, as you can see in any talc operation. 15 You don't seem to see it in any more prevalence 16 than anywhere else. In fact, less. 17 So to be able to separate this from that, 18 I don't know that we can do that. 19 Q In a talc worker overexposed to 20 Vanderbilt talc who develops talcosis, you would 21 consider the talc to be a contributing agent, 22 causative agent, of that talcosis? 23 A Yes. 24 Q And if I understand you correctly, you 25 don't know whether or not the tremolite or

J. Kelse - direct - Mr. Maimon 89 1 anthrophyllite would also be contributing agents to 2 that talcosis? 3 A I wouldn't be certain. 4 Q Okay. Getting back to the statement 5 in the MSD sheet that says, "Prolonged inhalation 6 may cause lung injury." 7 What did you consider to be prolonged 8 inhalation here? 9 A Well, basically there's, you know, acute and 10 chronic. An acute risk, whether it's dust or any 11 other exposure, is immediate, like an acid, 12 immediately have upper respiratory or immediately 13 have a skin problem. Chronic would be, as the word 14 infers, over a period of time; and that's basically 15 it. 16 Q Okay. Now, you have stated here that 17 NYTAL 100 is not an acute hazard; correct? 18 A It wouldn't be an acute hazard, no. 19 Q What do you mean -- how long of a 20 period is "prolonged", as you used the term here? 21 A Well, it would be dictated by -- you know, 22 the exposure risk to anything -- vapors, mist, dust 23 -- is dictated by the conservation and the 24 duration. 25 Obviously, you know, if you have a short	J. Kelse - direct - Mr. Maimon 91 1 You always like it as low as possible, but 2 it seems to be adequately protective. 3 I also compare that level against any 4 established level, you know, that has been set up 5 by the government; like OSHA, for example. 6 There is a permissible exposure limit for 7 talc itself. I believe it's two milligrams per 8 cubic meter of respirable dust, so I want to be 9 sure that the exposure at that plant is well below 10 that. 11 So I use both, those standards that are out 12 there plus what we see in medical surveillance, to 13 be able to gauge whether or not those dust 14 exposures are unsafe. 15 Q Who is the reader that the MSD sheet 16 is intended for? 17 A The user of the product. 18 Q When you're talking about "prolonged 19 inhalation" in Section 3 of the MSD sheet, are you 20 trying to give the reader a sense of concentration 21 or duration of exposure that might be injurious? 22 A Well, it reads, "Prolonged inhalation may 23 cause lung injury." 24 The word "may", qualifying term "may", 25 refers to the variables of concentration, which I
J. Kelse - direct - Mr. Maimon 90 1 period of time but a very high concentration, that 2 poses a risk that's different than a long period of 3 time in a low concentration; and these can vary by 4 various materials, vary by individual 5 susceptibility, all these variables, so you have to 6 talk in sort of generally speaking. 7 You have to take into consideration type of 8 material, the concentration, exposure level, and 9 the duration of the exposure. 10 Q Okay. I'm referring specifically to 11 the MSD sheet for NYTAL 100 that you told us you 12 wrote. 13 When you used the term "prolonged", what 14 period of time were you referring to? 15 A It would depend on -- well, it would depend 16 -- it depends on the exposure level. 17 In the case of Vanderbilt, one of the 18 reasons I take air samples is to gauge the overall 19 exposure level of the dust, whatever it is; and 20 then we have a medical surveillance to be sure that 21 the pulmonary functions and the -- you know, the 22 lung x-rays do not show evidence of a dust disease; 23 and when I don't see evidence of a dust disease, 24 then I know that the dust exposure level, you know, 25 seems to be adequate.	J. Kelse - direct - Mr. Maimon 92 1 cannot -- I don't know what a user is going to use. 2 I don't know what his exposure is going to be. 3 Q The term "prolonged", that refers to 4 duration; does it not? 5 A Right. 6 Q Okay. What duration did you mean to 7 impart to your reader when you used the term 8 "prolonged"? 9 A Well, the typical interpretation of a 10 material safety data sheet is when you have 11 permissible exposure limits that are given up here 12 as they're listed; and what is being said here is 13 that prolonged exposure to dust levels above these 14 permissible limits are -- you know, may cause lung 15 injury is essentially what that says. 16 Q And assuming a level above the PEL, 17 how long of a period is covered under the term 18 "prolonged"? 19 A It depends on how much over the PEL. 20 Q Is there anything in this MSD sheet 21 that gives the reader that information? 22 A Well, the typical expectation of a material 23 safety data sheet is to tell the user of your 24 product what the risks are and to give them to the 25 best of your ability what the safe limits are. It

J. Kelse - direct - Mr. Maimon 93 1 is then up to that person to determine whether or 2 not he's satisfying those safe limits. 3 So if I were using this talc as a customer 4 and I wanted to know whether my use was an over- 5 exposure or might place me at undue risk, it would 6 be incumbent upon me to see whether or not those 7 levels that I was exposed to exceeded these 8 established safe limits or not. 9 Our role is to just give the information. 10 Q And the information - 11 MR. GAFFREY: Listen to his question and 12 answer his question. 13 Q The information that you're giving on 14 duration, how much duration does the word 15 "prolonged" - or was the word "prolonged" intended 16 to convey to the reader? 17 A It was intended to convey a chronic versus 18 acute hazard. 19 Q And what period of time was intended 20 by you to differentiate between chronic and acute? 21 A "Prolonged" would refer to anything that is 22 not an immediate risk. 23 Q Who is Sue Kelly? 24 A She's my secretary. 25 Q Your secretary?	J. Kelse - direct - Mr. Maimon 95 1 I... 2 Q In the normal course of your work, are 3 you responsible for updating the MSD sheets on 4 Vanderbilt products? 5 A Yes. 6 Q Okay. And have the NYTAL products 7 undergone revisions of their MSD sheets during the 8 time that you have been responsible for them? 9 A Yes. 10 Q Do you maintain a file of the MSD 11 sheets for the NYTAL products - 12 A Yes. 13 Q - in their various forms? 14 A Yes. 15 MR. MAIMON: I'm going to request the MSD 16 sheets for NYTAL 100 that Mr. Kelse has in his file 17 historically going back. 18 Q I'm going to show you what we've 19 marked as Exhibit 5. 20 Is this a copy of your report in this case, 21 the Hirsch case? 22 A Yes. 23 Q The copy that I have has a bar code on 24 the bottom of the front page. 25 A Yes.
J. Kelse - direct - Mr. Maimon 94 1 A Yes. 2 MR. MAIMON: Okay. You can mark this as the 3 next one. 4 (The below-described five-page letter/ 5 report was received and marked Kelse-5 for 6 Identification.) 7 Q Exhibit 4, which is the MSD sheet - 8 if you could just take a look at it and see if this 9 is, as best you can tell in looking at it, the most 10 current MSD sheet for NYTAL 100. 11 A No, I don't think it is. 12 Q That shows you how good the Internet 13 is. 14 A Exactly. 15 Q Do you know if your company posts the 16 most current MSD sheet on the Internet? 17 A They are supposed to. 18 Q Okay. Do you know - can you tell me, 19 in looking at this document, what, if any, material 20 changes have been made to it in its most current 21 form? 22 A I don't believe anything as of now. I just 23 looked at the date. 24 Q What's the date on this one? 25 A Oh, it was printed 5/18/2000. That's why	J. Kelse - direct - Mr. Maimon 96 1 MR. GAFFREY: I'll represent to you that 2 that's our internal scanning code. Every document 3 that comes into the office is scanned. 4 MR. MAIMON: I'm duly impressed. 5 Q I'm looking at the first paragraph, 6 the last sentence says, "I have participated 7 extensively in evaluations of the health of the 8 Gouverneur Talc employees and have participated in 9 federal rule-making as it relates to the Vanderbilt 10 Talc products." 11 Did I read that correctly? 12 A Yes. 13 Q Can you tell me what has been your 14 participation in evaluations of the health of GTC 15 employees? 16 A Well, I helped to coordinate the medical 17 surveillance program in which we review the 18 pulmonary function and chest x-rays of these talc 19 workers every two years. 20 Q Anything else? 21 A Well, I've certainly assisted in providing 22 available exposure information, available work site 23 information to researchers who have done mortality 24 and morbidity studies on these workers. 25 Q Anything else?

J. Kelse - direct - Mr. Maimon 97 1 A No. That pretty much sums it up. 2 Q Okay. The Gouverneur Talc employees 3 that are referred to in the last sentence of 4 Paragraph 1 of your report, do those include former 5 International Talc employees who came over to GTC 6 when International Talc was bought out in 1974? 7 A Yes, they would. 8 Q The medical surveillance program that 9 you're discussing, who is covered under that 10 medical surveillance program? Which employees? 11 A All. 12 Q Every two years there is a chest x-ray 13 and a pulmonary function study done? 14 A And hearing test, yes. 15 MR. GAFFREY: I'm going to interpose an 16 objection. 17 I think you're coming full circle back to 18 the issue that I objected to initially at this 19 deposition. I think you're getting into areas now 20 that are more inclusive of Mr. Kelse's 21 responsibility as industrial hygiene as it is - as 22 opposed to his position as an expert in this case. 23 I don't think you've laid a proper 24 foundation. I'll let you go a little bit further; 25 but I just want to put my objection on the record	J. Kelse - direct - Mr. Maimon 99 1 Whether or not it overlaps with factual 2 information or not, I am - and I believe I'm 3 entitled to - and I think that it's an adoptive 4 statement by you in amending your Answers to 5 Interrogatories to serve this expert report. 6 I'm asking simply about what the content of 7 his expert report is in this case. 8 MR. GAFFREY: I don't read his report the 9 same as you do. I believe what he's doing here is 10 detailing his area of employment at R.T. 11 Vanderbilt. 12 You haven't yet established if the area of 13 your questioning and his responses form the basis 14 of his expert opinions in this case; and that's the 15 issue that I'm raising here, is he serves not dual 16 roles in this case, but tri roles in this case as 17 an expert, a corporate fact witness, and as a 18 consultant; and to the extent that your Deposition 19 Notice narrowly defined the purpose of this 20 deposition, we're relying upon that; and we have 21 prepared him as such. 22 So, again, you defined the categories here, 23 not us; and we're merely abiding by what you 24 defined. 25 MR. MAIMON: Yes, and you defined this as
J. Kelse - direct - Mr. Maimon 98 1 that I think it's going beyond the scope of the 2 Deposition Notice at this time, calling for him as 3 a fact witness and employee of R.T. Vanderbilt, as 4 opposed to an expert in this case. 5 Go ahead and ask your questions, but I'm 6 going to put you on a short leash in terms of what 7 I'm going to allow Mr. Kelse to testify to. 8 MR. MAIMON: I believe it's improper for you 9 to determine the scope of the deposition as such. 10 I'm asking - 11 MR. GAFFREY: I'm not. You have by virtue 12 of the Deposition Notice that you served on us, and 13 we've prepared Mr. Kelse by virtue of what you've 14 requested us to produce him as; and again, as I 15 indicated at the outset, you've asked us to produce 16 him as an expert, not as a corporate witness or as 17 a fact witness, in his job capacity of industrial 18 hygiene, so you defined the scope of this 19 deposition, not us; and we're abiding by the Notice 20 that you submitted to us. 21 MR. MAIMON: I understand that; and this is 22 his expert report, Exhibit 5, that you served as 23 his expert report in this case; and the questions 24 that I'm asking are based on the expert report that 25 I was served in this case.	J. Kelse - direct - Mr. Maimon 100 1 his expert report in this case, and that's what I'm 2 asking questions about. 3 MR. GAFFREY: Well, my position is that you 4 haven't laid the proper foundation. 5 MR. MAIMON: And I don't think I have to 6 satisfy you with asking certain questions first 7 when I'm just asking questions about the expert 8 report that was served upon me in this case. 9 MR. GAFFREY: Okay. Well, ask your 10 questions; and to the extent that I have a problem 11 with you going forward, I'll note it on the record. 12 MR. MAIMON: Could I just have his last 13 answer back. 14 (At this point the previous answer was read 15 back by the reporter as follows: 16 "And hearing test, yes.") 17 Q Aside from pulmonary function study, 18 chest x-ray, and hearing test, are there any other 19 parts of the medical surveillance program? 20 A I believe they're given another - height, 21 weight, blood pressure by the coordinating 22 physician at the hospital; and then they're - then 23 the surveillance testing is over, and the employee 24 is given a report as to what the results of his 25 medical evaluation were.

J. Kelse - direct - Mr. Maimon 101 1 Q When did this medical surveillance – 2 withdrawn. 3 When was this medical surveillance program 4 established? 5 A The records I have seen is that chest x-rays 6 were taken from Day 1, 1948; and then a more 7 formalized medical surveillance program was set up, 8 I believe, in the mid 1970's that established these 9 every-two-year studies. 10 Q The sentence before that you talk 11 about, "Based on my training and this experience". 12 Do you see that? 13 The second-to-the-last sentence of the 14 paragraph. 15 A Sorry. I don't know where – oh, okay. 16 Yes. 17 Q Okay. The training, is that what we 18 talked about when we discussed your resume? 19 A General industrial hygiene, yes. 20 Q And this experience, you're talking 21 about working over the last 18 years in the 22 capacity as industrial hygienist and manager of 23 the Corporate Risk Management Department for R.T. 24 Vanderbilt; is that correct? 25 A Yes.	J. Kelse - direct - Mr. Maimon 103 1 In the second full paragraph, which starts, 2 "Based on my understanding of Mr. Hirsch's usage" 3 – do you see that? 4 A Yes. 5 Q You make reference in here to 6 Gouverneur talc miners and millers. 7 Do you see that? 8 A Yes. 9 Q And you also make reference in here to 10 Vanderbilt talc workers. 11 A Yes. 12 Q Is that the same? 13 A Yes. 14 Q Okay. I think you state in here that 15 it's your belief that the health experience of 16 Vanderbilt talc workers, both past and present, 17 directly bears on the reasonableness of the causal 18 association claimed in this case; right? 19 A Yes. 20 Q What do you mean by that? 21 A My main meaning to that is that I don't see 22 excess lung cancer and mesothelioma being causally 23 linked to exposure to this talc in the mine and 24 mill, and that exposure is considerably greater 25 than the plaintiff's exposure would be.
J. Kelse - direct - Mr. Maimon 102 1 Q And you refer to a familiarity that 2 you have gained concerning a number of medical, 3 mineralogical, and other studies that relate to 4 Vanderbilt talc; right? 5 A Yes. 6 Q Okay. Aside from – I just want to 7 talk about types. 8 Aside from medical studies and aside from 9 mineralogical studies, what types of studies did 10 you intend the term "other" to encompass? 11 A Well, certainly the mortality studies of 12 these workers. 13 Q So you would include mortality under 14 the "other" category, as opposed to the medical? 15 A I would include mortality studies as 16 speaking to medical conditions associated with. 17 Q Okay. What other types of studies did 18 you intend to be included in the term "other"? 19 A I just answered that. 20 Q Okay. I just wanted to make sure that 21 there wasn't anything that I was missing. 22 A I don't think so. 23 Q If you could turn to Page 2. Let me 24 ask you this question, and I think it's probably a 25 good time to break for lunch.	J. Kelse - direct - Mr. Maimon 104 1 It also suggests that the studies that have 2 been done on this talc were that animal studies and 3 cell studies don't support that kind of association 4 either. 5 Q Where in this sentence is there any 6 reference to animal studies? 7 A Well, there isn't. It just says "health 8 experience". 9 Q Let's talk about this sentence. 10 You talk about the health experience of 11 Vanderbilt talc workers, right? 12 A Yes. 13 Q The information that you have about 14 the health experience of Vanderbilt talc workers, 15 if I understand correctly, comes from two sources, 16 one from the results of the medical surveillance 17 program and one from the mortality studies that 18 have been done by people outside of the company; 19 is that correct? 20 A That is correct. 21 Q And you believe that that health 22 experience has a direct bearing on the claim of 23 causation in this case, correct? 24 A Yes. 25 MR. MAIMON: I think that it's a good time

J. Kelse - direct - Mr. Maimon 105 1 to break for lunch, but I'll just state for the 2 record that I've satisfied with those two questions 3 every foundational objection that you have raised 4 to this point. 5 MR. GAFFREY: Well, we'll go further; and 6 we'll see. 7 (At this point a short recess was taken.) 8 MR. MAIMON: Let's mark this as 6. 9 (The below-described document was received 10 and marked Kelse-6 for Identification.) 11 Q Mr. Kelse, I'm going to hand you 12 what's been marked as Exhibit 6 for today's 13 deposition. 14 A Uh-huh. 15 Q And I'm going to first ask you, are 16 you familiar with that document? 17 A I have seen it. I don't know if I studied 18 it. 19 Q Do you recognize this as a publication 20 put out by the R.T. Vanderbilt Company in 1966 21 titled "NYTAL"? 22 A Yes, that's what it says. 23 Q And this obviously predates your 24 employment with the company by almost 20 years, 25 right?	J. Kelse - direct - Mr. Maimon 107 1 Do you see that? 2 A Yes, yes. 3 Q Okay. Do you know what area of mining 4 here the GTC mining was conducted in? 5 MR. GAFFREY: Just simply, are you asking 6 him, using the contour map in the middle of that 7 page, if he could identify it within that map? 8 MR. MAIMON: Yes. 9 MR. GAFFREY: Okay. 10 A I don't think that I could do that. I'm 11 sure there are people who could. I can't. 12 Q Okay. And if you could turn to Page 13 6. 14 A Yes. 15 Q This has listed here six different 16 grades of NYTAL talc, correct? 17 A Yes. 18 Q And the graph on Figure 8, is that 19 what you were referring to as far as the particle 20 size distribution, how fine they are? 21 Is that a representation of that? 22 A Yes. 23 Q Do you know whether or not this 24 publication, the NYTAL publication, has gone 25 through various reprintings?
J. Kelse - direct - Mr. Maimon 106 1 A Yes. 2 Q But you nonetheless recognize this as 3 a publication put out by the company, correct? 4 A Yes. 5 Q Okay. If you look at Page 3 - well, 6 actually, turn back to Page 2. 7 There is a Figure 1 shading in the St. 8 Lawrence County New York talc area, correct? 9 A Yes. 10 Q Okay. And then if you look at Page 3 11 that has a title of, Section 3, "Geology and 12 Mineralogy", correct? 13 A Yes. 14 Q And then there are two figures there, 15 contour maps of the talc belts in the Balmat area; 16 is that correct? 17 A Yes. 18 Q Okay. There is a reference here to 19 the Arnold Mine. 20 Do you see that? 21 In both of those figures. 22 A Oh, yes. 23 Q And then there are other names of 24 mines there also; the Wight Mine, W-i-g-h-t, 25 Woodcock, American Mine, Balmat Zinc Mine.	J. Kelse - direct - Mr. Maimon 108 1 A I wouldn't know. 2 Q Okay. Let's go on to the next. 3 MR. MAIMON: This will be 7. 4 (The below-described NIOSH 1980 Technical 5 Report was received and marked Kelse-7 for 6 Identification.) 7 Q I'll show you what was marked as 8 Exhibit 7 for today's deposition. 9 Do you recognize this to be a copy of the 10 NIOSH 1980 Technical Report that we have been 11 making reference to? 12 A It appears to be the industrial hygiene 13 section. 14 Q Okay. What other sections of this 15 report were there? 16 A I don't know that there were other sections. 17 Q Okay. Is this what you have been 18 referring to as the 1980 Technical Report for 19 NIOSH? 20 A Part. 21 Q Okay. What other parts are there? 22 A The mortality and morbidity study itself. 23 Q Do you have that in the studies that 24 you've brought with you? 25 A Yes.

J. Kelse - direct - Mr. Maimon 109 1 Q Okay. Could you dig that out for us. 2 Is that this? 3 A No. This is the health study critiques. 4 It was the actual health studies themselves. 5 Here we go. It would be that one. 6 Q Can you just compare the two, just to 7 see if they're different. 8 A This is all the industrial hygiene section, 9 you know, the air sampling and analysis part, which 10 is reproduced in this portion of the report. 11 Q That's the complete report, correct? 12 A Yes. What you have here would be this part. 13 Q Okay. Do you mind if we mark this? 14 A No. 15 MR. MAIMON: Okay. We'll mark this as 8. 16 (The above- and below-described document was 17 received and marked Kelse-8 for Identification.) 18 Q So we've marked as Exhibit 8 the 1980 19 OSHA Technical Report that you have been making 20 reference to, correct? 21 A NIOSH. 22 Q The NIOSH, right? 23 A Yes. 24 Q And this is titled "Occupational 25 Exposure to Talc Containing Asbestos"; is that	J. Kelse - direct - Mr. Maimon 111 1 him afterwards? 2 A I don't recall. 3 Q Okay. You have a file titled 4 "Analytical Reports", correct? 5 A Yes. 6 Q And within this file did you attempt 7 to assemble all of the analyses of Vanderbilt talc 8 that you had? 9 A Yeah, I - yes, I tried to do that. 10 I should ask, analyses for what? 11 Q Analyses for Vanderbilt talc. 12 A For? 13 Q Well, what did you intend to assemble 14 in this file titled "Analytical Reports"? 15 A Those would be reports that speak to 16 asbestos. 17 Q Speak to asbestos? 18 A Yeah. 19 Q Whether it's present in Vanderbilt 20 talc or not, correct? 21 A Yes. 22 Q Okay. So they're all analytical 23 reports of analyses of Vanderbilt talc, correct? 24 A In that regard, yes. 25 Q Okay. Prior to coming over to work
J. Kelse - direct - Mr. Maimon 110 1 right? 2 A Yes. 3 Q When is the first time you saw that 4 report? 5 A When I was still working for Hartford. 6 Q And would that have been in connection 7 with the contract work that you were doing at the 8 Gouverneur facility before you went over there? 9 A Yes. I think I referenced it myself. I dug 10 it out. 11 Q Now, when you say you dug it out, how 12 did you find it? 13 A I really don't recall exactly how I found 14 it. I really don't recall. 15 I know I had it. I got it. I don't 16 remember how. 17 Q You mentioned earlier that you had 18 had a conversation or you had heard from the loss 19 representative at Hartford that there was an issue 20 about the definition of asbestos within the 1980 21 Technical Report? 22 A I believe that's what I referred to, yes. 23 Q And do you recall whether it was the 24 loss representative who gave you a copy of that or 25 whether you had it and had your conversation with	J. Kelse - direct - Mr. Maimon 112 1 for Vanderbilt from Hartford, aside from the 1980 2 Technical Report did you review any other written 3 materials concerning the question of whether the 4 talc mined at Gouverneur contains asbestos or not? 5 A I don't recall. I don't think so. 6 Q And I think you told us that within 7 the context of the work that you did for Vanderbilt 8 while you were employed by Hartford you had a 9 conversation with Dr. Thompson about that issue, 10 correct? 11 A Yes. 12 Q Did he provide you with any written 13 materials at that time? 14 A I recall sitting down with him and going 15 through the report because I was concerned, 16 obviously, about the report and I was looking for 17 an explanation for the data in the back; and 18 Dr. Thompson provided me an explanation in regard 19 to counting cleavage fragments and particle sizes 20 and definitions and many of the issues that 21 subsequently formed, you know, the basis of my own 22 understanding of the exposure. 23 Q Okay. When you say "of the 24 exposure", what exposure are you referring to? 25 A The dust exposure at that Vanderbilt mine.

J. Kelse - direct - Mr. Maimon 113 1 Q What data in the back of the 1980 2 report did you ask Dr. Thompson to give you an 3 explanation of? 4 A Well, I was particularly concerned about 5 percentage of what was referred to as tremolite 6 asbestos. 7 Q What page specifically, if you can 8 find it? 9 A This may take a while. I know it's -- well, 10 this would be an example. 11 Q What page are you referring to, if you 12 can just tell us? 13 A This is in the Abstract, Roman Numeral IV, 14 under the section "Industrial Hygiene". 15 "Time weighted average, TWA, exposures to 16 asbestiform amphiboles, anthrophyllite and 17 tremolite" -- calling them asbestiform just means 18 it's asbestos -- "were found to be in excess of 19 present U.S. Occupational Health & Safety and Mine 20 Safety & Health Administration exposure standards." 21 I believe in 1980 that was something like 22 one or two fibers per cc, before they reduced it 23 to .1. Pretty high. 24 Q That's in the Abstract you're pointing 25 to, right?	J. Kelse - direct - Mr. Maimon 115 1 If I'm in error, please tell me. 2 A All right. 3 (Discussion held off the record.) 4 5 (Witness excused.) 6 (At this point the luncheon recess was 7 taken.) 8 9 10 AFTERNOON SESSION 11 12 (The below-described Final Report was 13 received and marked Kelse-9 for Identification.) 14 15 JOHN W. KELSE, JR., having been 16 previously sworn, resumed the stand and 17 testified further as follows: 18 19 CONTINUED DIRECT EXAMINATION BY MR. MAIMON: 20 Q Before we broke for lunch, Mr. Kelse, 21 we had been discussing your conversation with 22 Dr. Thompson at the time that you came to the 23 Gouverneur talc facility to conduct air sampling; 24 and I believe you told us that you had questions 25 about some of the data in the 1980 NIOSH Technical
J. Kelse - direct - Mr. Maimon 114 1 A Yeah. 2 Q Where in the report -- what was the 3 data that you told us you asked Dr. Thompson for 4 explanation of? 5 A Well, they appeared at the time to be using 6 the fiber data, you know, the NIOSH 7400 method, 7 three to one longer than five, and counting 8 anything that was three to one longer than five, 9 that they identified as tremolite or an amphibole 10 and essentially characterizing those fibers 11 asbestos; and it was very worrisome. 12 If that was actually asbestos, that would be 13 an extremely high exposure level. 14 Q Okay. I had asked you to point me to 15 the data that you asked Dr. Thompson for an 16 explanation of. 17 A Well, certainly that type of -- you know, is 18 this actually asbestos amphibole? 19 Q You're referring again into the 20 Abstract. 21 I had understood -- maybe I understood 22 incorrectly, Mr. Kelse -- that there was some data 23 in the report, as opposed to a summary statement in 24 the Abstract, that you had asked Dr. Thompson for 25 an explanation of.	J. Kelse - direct - Mr. Maimon 116 1 Report and asked for explanation of that data; and 2 I asked you to please, in reference to the report 3 itself, show us what data it was that you had asked 4 for explanation on. 5 Have you been able to locate it over the 6 lunch period? 7 A Yes. 8 Q Please show us. 9 A Okay. Well, my first concern was it says, 10 "Occupational exposure to talc containing 11 asbestos". Up until I saw this it was my 12 understanding that there was no asbestos in that 13 talc deposit. 14 So, Number 1, I had that concern. 15 Q Let me just stop you there. 16 That understanding, that there was no 17 asbestos in that talc deposit, was based on what? 18 A Based on what I had understood from the 19 file, you know, on that account. 20 So the guy that coordinated the account 21 never suggested to me that this was an asbestos 22 exposure situation. I don't know whether he was 23 familiar with this or not; but I never saw, you 24 know, that reference until I saw this report. 25 Q You're talking about the fellow over

J. Kelse - direct - Mr. Maimon 117 1 at Hartford, right? 2 A Yeah, the person who would have been, you 3 know, basically in control of that account, 4 Vanderbilt. 5 I was just contracting to work for them. 6 Q Okay. 7 A So, you know, I saw this myself. I don't 8 recall exactly how I got it, but I got it; and, of 9 course, it raised red flags. 10 Just the title raised red flags; and some 11 other examples in the air analysis section, let's 12 say - I think it's Page 7. 13 You know, it will say TWA, time weighted 14 average, exposure to asbestos fibers greater than 15 five micrometers in length exceeded five fibers per 16 cc for three of the six job categories, five fibers 17 per cc of asbestos. 18 If you look back at the tables, if you look 19 at some of these job titles and you look at fiber 20 counts greater than - 21 Q Where are we? Table? 22 A This would be Table 4. 23 Q Does it give a page corresponding? 24 A I think - yeah, Page 38. 25 Q Okay.	J. Kelse - direct - Mr. Maimon 119 1 A Yes, right. 2 And I expressed these concerns. I went over 3 this report, and that was actually the first time 4 that I heard this issue raised about cleavage 5 fragments and dimensions and using fiber counting 6 dimensions as part of a definition of asbestos; and 7 that's what was happening in this report, according 8 to Dr. Thompson; and that's when I decided that, 9 you know, this issue was over my head at the time 10 certainly in terms of mineralogy and that if I were 11 to take any fiber samples it would be just that, 12 just fiber samples. 13 I would not attempt at that point with 14 Hartford to get into, you know, what's asbestos and 15 not asbestos. It seemed it was beyond us at the 16 time. 17 Q Okay. 18 A And that's pretty much why the samples that 19 I took were just straight fiber samples, and I 20 could compare them with some of the straight fiber 21 samples in here, but I certainly - you know, we 22 did not identify them one way or the other. 23 Q Okay. I think you told us before that 24 the sampling that you took was consistent for total 25 fiber in the air with the numbers that were given
J. Kelse - direct - Mr. Maimon 118 1 A This would be one table where you would see 2 numbers like 9.8 fibers per cc longer than five 3 micrometers. This is all fibers. It doesn't tell 4 me what ones, but it tells me this. 5 And then there is another table - if you go 6 to - again, I'm looking for fibers longer than 7 five micrometers, based on the NIOSH 7400 method; 8 and I see the NIOSH data and I see these numbers, 9 you know, for these activities; and these numbers, 10 when you compare them against the standard, which 11 at the time, I think, was one or two fibers per cc, 12 these kind of average like five - you know, five 13 times, so that's clearly what's being referred to 14 here. 15 Well, these are huge exposures. I mean, 16 they're great; and I know enough about asbestos to 17 know that those were very high exposures, and this 18 would be a serious concern, and I wanted to know 19 more about it, and I spoke to the person who was 20 working on the Vanderbilt account; and he set up an 21 appointment, you know, for Dr. Thompson to come to 22 New York and sit down with me and go over this 23 report, which he did. 24 Q So Dr. Thompson came to the Hartford 25 offices to go over this?	J. Kelse - direct - Mr. Maimon 120 1 by the NIOSH Technical Report, total fibers; right? 2 A They were; and in other papers, you know, 3 there were tables that showed some of this data 4 that - when you just looked at five to one longer 5 than five micrometers, these were all within the 6 same ballpark. 7 Q Okay. But your sampling, your air 8 monitoring, showed numbers for total fibers 9 consistent with what NIOSH found in the 1980 10 report; right? 11 A Yeah, yes. 12 Q Okay. 13 A Can I pull these out? 14 Q Go ahead. Take those out. 15 At the time that you met with Dr. Thompson, 16 did Dr. Thompson give you any written materials 17 concerning analyses of the material sampled at the 18 GTC facility? 19 A What he did was he actually showed me a film 20 that explained the cleavage fragment asbestos, what 21 was referred to as the issue at the time. 22 It was a film that Vanderbilt had very 23 recently produced, and I found that quite helpful 24 and eye-opening because I had never heard some of 25 these things before.

J. Kelse - direct - Mr. Maimon 121	J. Kelse - direct - Mr. Maimon 123
1 Q Do you know if that film is still in 2 existence in one form, whether it's electronic or 3 still on film? 4 A Yes, it is. 5 Q And do you have that film? 6 A Yes, I have that film. 7 MR. MAIMON: That's another thing that I'm 8 going to make a request for. 9 Q Have you ever used that film in any 10 of the presentations on the subject that you have 11 made? 12 A Yes, I have. 13 Q Okay. Let me show you what we've 14 marked as Exhibit 9, and I'll ask you if you 15 recognize this as the NIOSH report of the bulk 16 sampling taken of the GTC talc that formed the 17 basis for the analysis contained in Exhibit 8. 18 A Yes. That's what it's listed as, bulk talc 19 sample analysis. 20 Q And you have seen this document 21 before? 22 A Oh, yes. 23 Q This talks about No. 1 mine and mill. 24 Do you see that in the title? 25 A Yes.	1 paper, correct? 2 A Yes. 3 Q It lists NYTAL 300 and 400, and we 4 have spoken about the NYTAL products and that the 5 numbers reflect just a different fineness of the 6 particle and perhaps different percentage 7 constituents of the minerals depending on where it 8 was mined out of the mine; correct? 9 A Yes. 10 Q The other grades here - 5x, 325x, 11 FT, and 3x - are you familiar with those grades? 12 A Yes. 13 Q Are those NYTAL products? 14 A Well, they - I think these would be out of 15 the Arnold Pit. 16 They are typically - I think these were 17 products that, because they came out of the Arnold 18 Pit, would have been International Talc, so they 19 may have been preceded by IT 3x or IT 325. 20 Q This is dated 1976, which would have 21 been after Vanderbilt had taken over the 22 International Talc facility; correct? 23 A Yes. 24 Q Okay. But that nomenclature might 25 have referred back to old International Talc
J. Kelse - direct - Mr. Maimon 122	J. Kelse - direct - Mr. Maimon 124
1 Q It's entitled "Industrial Hygiene 2 Study of the Gouverneur Talc Company No. 1 Mine 3 and Mill". 4 A Yes. 5 Q Is that the underground Arnold Pit 6 that we were talking about? Do you know? 7 A It's the underground mine, not the Arnold 8 Pit. 9 Q So it's the underground mine and the 10 mill that milled the ore coming out of the 11 underground mine, correct? 12 A Yes. 13 Q The NIOSH 1980 Technical Report dealt 14 exclusively with GTC and its facilities; is that 15 correct? 16 A Yes. 17 Q Okay. Not any other talc mines 18 operating in the region, correct? 19 A That's correct, yeah. 20 Q If you can take a look at Exhibit 9, 21 specifically Page 3, with Table i on it. 22 Do you see that? 23 A Yes. 24 Q This talks about different grades of 25 talc that were the subjects of the analyses in this	1 nomenclature, right? 2 A I probably shouldn't say. I don't know for 3 sure. 4 Q If you don't know an answer, please 5 feel free to tell me; okay? 6 A All right. 7 Q This document contains the 1976 report 8 by Arthur Rohl at Mount Sinai to Dr. Dement, who 9 put the NIOSH report together; correct? 10 A Yes. 11 Q And the Rohl April 29, 1976, letter 12 is part of your file here within the analytical 13 reports; correct? 14 A Yes. 15 Q In addition, it contains - I'm 16 talking about Exhibit 9 - a report from the 17 Walter C. McCrone Associates Company in Chicago, 18 Illinois, dated 12 December, 1975, of an 19 examination of the same samples; is that correct? 20 A Yes. 21 Q I don't know - and I'm going to give 22 you back your file on analytical reports. 23 Is the McCrone report contained in your 24 file? 25 A These are in chronological order, so if it's

J. Kelse - direct - Mr. Maimon 125 1 not where it's supposed to be I would have to say 2 no. 3 No, this particular report is not in here. 4 Q I just wanted to make sure if I missed 5 something. 6 A No. No, I did. 7 Q Now, you told us that when you met 8 with Dr. Thompson he showed you that film. 9 A Yes. 10 Q And I think you answered that in 11 response to a question that I asked you as to 12 whether or not he had given you any written 13 material, and I know that he gave you - showed you 14 the film. 15 Did he give you any written material? 16 A There was a brochure, as I recall, that went 17 with it. It was a mimic of the film. With the 18 same title, matter of fact. Essentially the same 19 exhibits as what was seen in the film. 20 Q Okay. Do you remember the title? 21 A It was called "A Matter of Fact", same as 22 the film. 23 Q Do you know if that brochure still 24 exists? 25 A Sure. Yes, it does.	J. Kelse - direct - Mr. Maimon 127 1 showed you in that meeting? 2 A I don't recall. 3 Q Okay. 4 A Those are the ones that stick out in my 5 memory. 6 Q If you go back to Exhibit 9, the NIOSH 7 report, which includes the Rohl letter and the 8 McCrone report, this talks about various 9 methodologies that were used in the analysis 10 itself; is that correct? 11 A Yes. 12 Q Now, utilizing these types of 13 methodologies to identify particles, substances, 14 that's not something you do as an industrial 15 hygienist; but when you want something like that 16 done, you refer the materials out to other people 17 to do; correct? 18 A Yes. 19 Q For instance, there's something called 20 x-ray diffraction that's done here. 21 A Yes. 22 Q Are you qualified to do x-ray 23 diffraction? 24 A No. 25 Q Are you qualified to use an electron
J. Kelse - direct - Mr. Maimon 126 1 MR. MAIMON: Okay. I'm also going to ask 2 for the production of that brochure. 3 Q Any other written materials that 4 Dr. Thompson shared with you in that meeting? 5 A I remember he brought the NIOSH 7400 method 6 with him; and he showed me at the bottom of the 7 method, which I had seen before, the precautionary 8 statement that NIOSH made in the method; that this 9 was a general fiber counting method, it is not 10 specific, you know, to asbestos; and there was 11 dialogue that ensued from that, the fact that this 12 method is typically used for asbestos sampling and 13 it's fine, you know, works well, if you know what 14 asbestos is and that's what you're sampling. 15 If you don't know what asbestos is and 16 you're sampling in a mixed dust environment or 17 you're not sure, you can't use these fiber counting 18 dimensions as a definition of asbestos. It was 19 never intended that way. That's not what the 20 method's for. Unfortunately, that's what it's 21 become. 22 Q Was that printed on the document that 23 he showed you, or is this what he explained to you? 24 A That's what he explained. 25 Q Okay. Any other documents that he	J. Kelse - direct - Mr. Maimon 128 1 microscope? 2 A No. 3 Q Okay. I don't know if I asked you 4 this. 5 When did you first see a copy of what we've 6 marked as Exhibit 9 or any of its constituent 7 parts, either the Rohl letter or the McCrone 8 report? 9 A I don't recall seeing these in 1982 or '83. 10 I do recall seeing them in the late 80's - '87, 11 '88 - when I was focused more on these issues and 12 I actually worked for Vanderbilt. 13 Q Okay. The information or the 14 conclusions expressed in Exhibit 9 are reflected in 15 the Technical Report that we've marked as Exhibit 16 8; is that correct? 17 A That's correct. 18 Q The analysis of the fibers found in 19 the talc analyzed here as given in Exhibit 8, as 20 reported in Exhibit 8, that was the earliest such 21 analysis that you had actually read; is that 22 correct? 23 A In terms of? 24 Q Chronology. 25 A Well, yeah, this is the first, so that would

J. Kelse - direct - Mr. Maimon 129 1 have been '82, '83, or something. 2 Q You had not seen anything prior to 3 that, correct? 4 A No. 5 Q And have you seen -- even when you 6 started looking into the issue more closely, did 7 you see any analyses that had predated the analyses 8 referred to in Exhibit 8? 9 A After I started working for Vanderbilt, 10 yeah. I had privy to the files, and I did see 11 earlier reports. I think they were in the -- 12 around '75, '76. 13 Q I'm just looking at your file of 14 analytical reports, Mr. Kelse. 15 I have seen four reports that predate the 16 Rohl report to Dr. Dement. I'll just ask you to 17 confirm that those are the ones that you're 18 referring to. 19 A They would predate October, 1976, yes. 20 Q Okay. There's one of January 30, 21 1976, from Dr. Dement to MSA, whatever that acronym 22 stands for, correct? 23 A Yes, Mine Safety Administration. 24 I think it predated the Mine Safety & Health 25 Administration. Sort of an earlier version.	J. Kelse - direct - Mr. Maimon 131 1 A Yes. 2 Q Okay. When you met with Dr. Thompson 3 in 1982 or '83, whenever it was, did he tell you 4 that the McCrone Laboratory had done analytical 5 work on Vanderbilt talc for Vanderbilt? 6 A I don't recall him mentioning that. 7 Q Okay. This refers to some analytical 8 work that the McCrone Laboratory had done for 9 Vanderbilt; is that correct? 10 A Yes. 11 Q And specifically, if I understand 12 correctly, is it your understanding that McCrone's 13 charge in this matter was to try and see if there 14 was chrysotile asbestos in the samples that they 15 were analyzing? 16 A The letter suggests that, yes. 17 Q And I think it's talking about two 18 different samples of materials that they analyzed; 19 is that correct? 20 A Samples, plural. Six samples were examined. 21 Q Okay. And they were labeled CPS-206-1 22 through -6; is that correct? 23 A Yes. 24 Q Do you have an understanding of what 25 that nomenclature refers to with respect to
J. Kelse - direct - Mr. Maimon 130 1 Q Did you understand that to be simply 2 referring to the same database and same analyses 3 that are contained in Exhibits 9 and 8 and not an 4 independent analysis? 5 A As I look at it now, that's what I would -- 6 that's how I would interpret it, but I can't say 7 for sure. 8 Actually, it looks like the same type of 9 table, so yeah. 10 Q And then there's one dated December 11 23, 1975, on the letterhead of the U.S. Department 12 of the Interior, and that's one of those as well; 13 is that correct? 14 A Yes. These are a list of fiber counts. 15 Q And that again is simply fiber counts 16 and no analysis as to whether or not the fibers are 17 asbestos fibers or other types of fibers, correct? 18 A That's correct. 19 Q Okay. The one before that is in June, 20 June 9th, of 1975, from the McCrone Laboratory in 21 Chicago to Dr. Thompson at Vanderbilt; correct? 22 A Yes. 23 Q And that predates the report that that 24 same laboratory did for the NIOSH study; is that 25 correct?	J. Kelse - direct - Mr. Maimon 132 1 specific grades of Vanderbilt talc? 2 A No, I wouldn't. 3 Q Okay. The McCrone report here 4 indicated to Dr. Thompson that they did not find 5 chrysotile fibers present; is that correct? 6 A That's correct. 7 Q Nor did they find chrysotile fibrils; 8 is that correct? 9 A That's correct. 10 Q There's an indication, however, here 11 that they found the -- the fibers that they found 12 were amphiboles; is that correct? 13 A Yes. 14 Q It doesn't distinguish here what 15 variety of amphibole was found upon analysis, 16 correct? 17 A That's correct. 18 Q Do you have any data that would shed 19 light on the identification of the samples that the 20 McCrone Laboratory analyzed and reported to 21 Dr. Thompson in this June 9, 1975, letter? 22 A I don't. 23 Q Okay. The final -- this is a June 1, 24 1975, letter from the EMVentions Inc. Microanalysis 25 Laboratory in Rockville, Maryland, to Dr. Thompson;

J. Kelse - direct - Mr. Maimon 133 1 is that correct? 2 A Yes. 3 Q And it refers to an analysis that they 4 did for Vanderbilt of six talc samples, correct? 5 A Yes. 6 Q Is there any identification within the 7 letter that you can find to identify what those 8 talc samples were? 9 A Not that I can identify. 10 Q Is Dr. Thompson still living? 11 A Yes. 12 Q Do you know where he lives? 13 A Yes. 14 Q Is he still employed by Vanderbilt? 15 A No. 16 Q Where does he live? 17 A He's in Norwalk, Connecticut. 18 Q Okay. This report also, like the 19 McCrone report, reports as to finding no chrysotile 20 asbestos fibers in the samples that had been 21 submitted by Dr. Thompson; is that correct? 22 A That's correct. 23 Q Mr. Kelse, are you familiar with the 24 term "product audit"? 25 A Just in a general sense.	J. Kelse - direct - Mr. Maimon 135 1 analysis of asbestos content? 2 A I don't know for sure. 3 Q Okay. Do you know whether in the 4 course of its business Vanderbilt ever conducted 5 comparison studies of its own talc products against 6 competitors in the market to see what their 7 products were like compared to the brands and 8 grades of talc that Vanderbilt was selling? 9 MR. GAFFREY: Object to form. I think it's 10 a little bit broad. 11 You can answer if you can. 12 A You'd probably have to be more descriptive 13 in terms of their - the composition, in terms of 14 - 15 Q Yes, composition. 16 A I can't - again, I can't say for sure - 17 Q Okay. 18 A - you know. 19 Q If you don't know, just tell me you 20 don't know. 21 A No. 22 Q Okay. I think that we have talked - 23 I think we have said that you yourself have not 24 personally done an analysis of Vanderbilt talc to 25 determine whether or not there's asbestos in it; is
J. Kelse - direct - Mr. Maimon 134 1 Q The contents of the file that you have 2 here entitled "Analytical Reports", I think we have 3 talked about them as being reports of analyses of 4 Vanderbilt talc at various points in time; right? 5 A For? 6 Q For asbestos content. 7 Correct? 8 A Yes. 9 Q Okay. And some of these analyses have 10 been done at your request, correct? 11 A Yes. 12 Q Some of these have been done at the 13 request of attorneys for Vanderbilt; is that 14 correct? 15 A Yes. 16 Q Some of these have been done in the 17 scope of research studies, correct? 18 A Yes. 19 Q Okay. Have you ever been involved in 20 requesting an analysis of talc samples for asbestos 21 content other than Vanderbilt talc? 22 A No. 23 Q Do you know if Vanderbilt has ever 24 conducted any type of analysis of talc samples that 25 are not Vanderbilt talc but other talc samples for	J. Kelse - direct - Mr. Maimon 136 1 that correct? 2 A That's correct. 3 Q And we can agree you're not qualified 4 to do so, correct? 5 A Yes. 6 Q You've read reports of others who have 7 done such analyses, correct? 8 A Yes. 9 Q And it's fair to say that in addition 10 to the written reports that you have read you've 11 probably received oral reports of such analyses as 12 well, correct? 13 MR. GAFFREY: Object to form. You can 14 answer. 15 A I'm not sure what you mean by "oral 16 reports". 17 Q In other words, something that wasn't 18 eventually reduced to writing but someone reported 19 to you, "I analyzed Vanderbilt talc and found X, Y, 20 and Z." 21 A I don't recall that I've ever gotten just a 22 verbal report without a paper report. 23 Q Okay. Then that's fine. 24 Would it be fair to say, Mr. Kelse, that on 25 the question of whether Vanderbilt talc contains

J. Kelse - direct - Mr. Maimon 137 1 asbestos or not, that's a matter that is beyond 2 your expertise and would be something that another 3 specialty of expert would be qualified to give an 4 opinion on? 5 MR. GAFFREY: Objection to form. You can 6 answer. 7 A Yes. 8 Q Okay. If you can go to Page 2 of your 9 report. 10 A Yes. 11 Q At the bottom of the page there are 12 two sentences that read as follows: 13 "MSHA, the U.S. Department of Labor's Mine 14 Safety & Health Administration, periodically tests 15 Vanderbilt talc for asbestos content in the 16 workplace air and occasionally obtains bulk samples 17 for analysis. MSHA does not find asbestos in 18 Vanderbilt talc or in the workplace air." 19 Do you see that? 20 A That's correct. 21 Q I have read it correctly, right? 22 A Yes, you have. 23 Q You mentioned, I think, earlier in 24 response to some questions that I had about the 25 Notice of Deposition that you do have documents	J. Kelse - direct - Mr. Maimon 139 1 Q Mr. Kelse, in addition to the 2 documents that you had given me out of your file, 3 which we marked as Exhibit 10, we now have two more 4 documents that we've marked collectively as Exhibit 5 11, which are more MSHA analysis reports; correct? 6 A Yes. 7 Q Do these two exhibits contain all of 8 the MSHA reports that you have that you are 9 referring to on the bottom of Page 2 of your expert 10 report? 11 A I believe so. 12 I would have been referring to the more 13 recent ones, but I think this is everything. I'm 14 pretty sure it's everything. 15 Q Okay. The most recent ones, which are 16 Exhibit 11, are dated October 22, 2001, and 17 November 1, 2001, respectively; is that correct? 18 A Yes. 19 Q One is a bulk sampling and one is an 20 air sampling, correct? 21 A Yes. 22 Q And both of them report no detection 23 of asbestos in the samples taken, correct? 24 A Yes. 25 Q I've looked at Exhibit 10, and I did
J. Kelse - direct - Mr. Maimon 138 1 concerning MSHA tests of Vanderbilt talc for 2 asbestos content in bulk sample analysis; correct? 3 A Yes. 4 Q Could you show me where those are, and 5 we'll discuss them. 6 A Surely. 7 Q This is in the file entitled 8 "Analytical Reports"? 9 A Yeah, it would be in there. 10 The most recent one, I think, is maybe 11 earlier. I don't know if that's in here too. Let 12 me see. 13 These are the type of reports that you have 14 over a period of time. 15 Q Okay. You have given me a group of 16 documents stapled together. 17 MR. MAIMON: I'd like to mark these 18 separately as Exhibit 10. 19 (The above- and below-described documents 20 were received and marked Kelse-10 for 21 Identification.) 22 (At this point a short recess was taken.) 23 (The below-described two Analytical Reports 24 were received and marked Kelse-11 for 25 Identification.)	J. Kelse - direct - Mr. Maimon 140 1 not find any reports of sampling by the MSHA during 2 the 1990's in this list of documents. 3 Is that correct? 4 A That's correct. 5 Q Is there a reason why MSHA didn't do 6 any testing or analyses of Vanderbilt talc during 7 the 1990's? 8 A I'll probably have to say I don't know for 9 sure. I have a good inkling, but it's an inkling. 10 Q Why don't you share that inkling with 11 us. 12 A Because I think by the end of the 1980's it 13 seemed clear to MSHA that this was not an asbestos- 14 containing or an asbestos exposure, so they didn't 15 monitor for it anymore. 16 Q And what is that inkling based on? 17 A It's just my guess. Typically you don't 18 sample for something that's not there. 19 Q Do you know what led to the sampling 20 that's contained in Exhibit 11? 21 A Yes, I do. 22 Q Tell me what, please. 23 A There was an issue where a vermiculite mine 24 in Libby, Montana, did actually contain some trace 25 amphibole asbestos, which did produce some excess

J. Kelse - direct - Mr. Maimon 141 1 cancers among the workers. The mine was owned by 2 W.R. Grace. 3 It ended up a major news story even though 4 mortality studies had that been done in the mid 5 80's that showed that there was an asbestos 6 contamination, a real asbestos contamination, and 7 showed an excess of lung cancer in that group; but 8 apparently, you know, the material was dispersed 9 throughout the town for various reasons and there 10 was an environmental concern about the exposure to 11 this material, this vermiculite with the 12 contamination; and this then became the source of 13 a, you know, major news story; and part of the news 14 story had - was asking how come the government, 15 meaning essentially the EPA and Mine Safety & 16 Health Administration, who is responsible for 17 regulating mines, didn't protect people better; and 18 as a result of those news stories and that 19 pressure, the assistant secretary for MSHA 20 essentially set out to monitor all the mines under 21 their privity that they were supposed to regulate to 22 do another round of sampling to be sure there were 23 no other mines like Libby where there was this 24 background level and that they wouldn't - and 25 that's why the sampling was done at Vanderbilt.	J. Kelse - direct - Mr. Maimon 143 1 accurate, I don't know. 2 Q Well, for instance, there is a 3 sampling dated March 8, 1983, which reports 4 detecting asbestos fibers; is that correct? 5 A Yeah. There's a reference to asbestiform 6 anthrophyllite. 7 Q And asbestiform asbestos tremolite; is 8 that correct? 9 A Yes. 10 Q And chrysotile as well; is that 11 correct? 12 A Right. 13 Q Now, this particular sampling date, 14 March 8, 1983, was in the No. 1 mine and No. 1 15 mill. 16 A Right. 17 Q That's where the sample was taken, 18 right? 19 A Yeah. 20 Q Now, there is a 1989 sample taken in 21 what's called the No. 2 mine. 22 Do you see that? 23 A Right. 24 Q What's the No. 2 mine? 25 A That was the Arnold Pit, the adjacent Arnold
J. Kelse - direct - Mr. Maimon 142 1 It was done at many other mines as well. 2 Q Okay. Do you know the - the 3 contaminants of the vermiculite at Libby, Montana, 4 that was an amphibole contaminant; is that correct? 5 A Amphibole asbestos? 6 Q Yes. 7 A Yes. 8 Q Do you know whether or not that 9 amphibole was a regulated fiber, asbestos fiber, 10 under OSHA? 11 A Some of it was. 12 Q And what was the regulated fiber? 13 A It was tremolite asbestos. 14 Q Now, as I look over the reports from 15 MSHA in Exhibit 10 I see reports going back as far 16 as 1979 and as late as 1989, so about a 10-year 17 period of time. 18 Fair to say? 19 A That's what they show. 20 Q And the reports in the early 1980's 21 report the presence of asbestos in the sampling; is 22 that correct? 23 A It may. 24 In the early reports from a lot of people 25 it was sometimes reported. Whether or not it's	J. Kelse - direct - Mr. Maimon 144 1 Pit. 2 Q In 1989 were they still separate, an 3 open pit and an underground mine, or had they been 4 merged by that point in time? 5 A No. They were still separate. 1995 is when 6 they shut the underground mine down. 7 Q So after 1995 mining has only been 8 done in the open pit and not from the underground 9 mine? 10 A That's correct. 11 Q There are some bulk samples that are 12 reported in here in the 1980's, mid-1980's, that 13 are reported as showing no asbestos fibers found. 14 You're familiar with those, right? 15 A I've familiar with the report. I couldn't 16 tell you what the bulks were. 17 Q Okay. There are several reports in 18 here addressed to you from the R.J. Lee Group; is 19 that correct? 20 A That's correct. 21 Q And in connection with those there are 22 sample analyses of talc that you had sent to the 23 R.J. Lee Group for analysis; is that correct? 24 A That's correct. 25 Q If you sent a sample of a NYTAL

J. Kelse - direct - Mr. Maimon 145 1 product to one of these analysts in, say, the year 2 2000, how reliable would the analysis be, in your 3 opinion, concerning that same product line and 4 grade that had been sold, say, in the 1980's, as 5 far as matching apples to apples? 6 A My opinion is they would be very - very 7 similar, I mean, if not exactly the same, because 8 these products have certain parameters, you know, 9 like I said, oil absorption and brightness and a 10 host of other criteria that are needed for them to 11 function in a certain way; and if they don't meet 12 those functions, you know, they're not going to be 13 used. 14 In order to meet those functions, those 15 blends have to be the same. They have to be 16 similar. 17 Q So with regard to NYTAL 100 - as an 18 example, would an analysis of NYTAL 100 bought off 19 the shelf in, say, the year 1997 have any relevance 20 to understanding the constituent components of 21 NYTAL 100 that was sold in 1975, say? 22 A I believe it would, yes. 23 Q And would the constituent components 24 and relative proportions of those components for 25 NYTAL 100 have been the same in 1975 as they are,	J. Kelse - direct - Mr. Maimon 147 1 Q Were you involved in any alterations 2 or upgrades of that program? 3 A Yes. 4 Q And could you describe for me your 5 role in that regard? 6 A In the 1990's I wanted better dust control 7 on the packers, packing machines, because that's 8 where I was getting my highest dust levels. 9 Historically that's where most of the high dust 10 levels were, so I wanted more capture velocity. 11 So they had to upgrade the air movers. We 12 needed to do some redesign on what's known as the 13 nozzle cowls that - these machines have these four 14 nozzles on. 15 Put the bags on the nozzles. They fill to 16 50 pounds, and then they drop down. They go down a 17 conveyor, and part of the issue was that - around 18 that nozzle there's a cowl, and part of the 19 ventilation system is hooked up to that, and, so, 20 you have a narrow area, so you pull more velocity 21 through, so you can catch more particles and pull 22 them into the system. 23 I wanted that expanded so that I had more 24 velocity; and then I wanted adjustments to the bag 25 pressure so that we wouldn't build up so much air
J. Kelse - direct - Mr. Maimon 146 1 say, today? 2 A I believe they would. 3 Q And the mine ore that's being used for 4 - let's use NYTAL 100 as an example. 5 Is it your understanding that it's basically 6 the same as it was back in the 1970's and 1960's? 7 A It's my understanding. 8 Q Yes? 9 A Yes. 10 Q Okay. I saw a reference in one of 11 these documents to various dust control programs 12 that were put into place at the Gouverneur talc 13 facility. 14 A Yes. 15 Q When were those put into place? Do 16 you recall? 17 A It was over a period of years. 18 More controls were put into the mill, since 19 it's a fixed facility as opposed to a mine, which 20 is not more flexible. 21 Q And what span of years did the dust 22 control program encompass in the mill? 23 A I would think they probably would work on 24 improvements from Day 1 probably, from 1948 on, 25 some more than others.	J. Kelse - direct - Mr. Maimon 148 1 pressure in the bag so that when they released you 2 didn't get as much dust, you know, coming out of 3 the bag. 4 So those were some of the things that - 5 Q Anything else that you would call 6 major endeavors on your part with regard to the 7 dust control program? 8 A Beyond that, no. 9 They continue to maintain their maintenance 10 programs and their housekeeping, which is very 11 important in keeping dust levels down, so you want 12 to make sure the conveyors and things of that sort 13 are tightly sealed and that they're constantly 14 collecting materials so that the vibration in the 15 plant doesn't regenerate it into the air. 16 These are the typical types of dust controls 17 anyone would use. 18 Q Is respirator use mandatory in the 19 mill? 20 A Yes, and mine as well. 21 Q And has that always been the case 22 during the time period that you've been with 23 Vanderbilt? 24 A Yes. 25 Q Take a look back at your report.

J. Kelse - direct - Mr. Maimon 149 1 Also in the last paragraph there – 2 MR. GAFFREY: Page 2. 3 Q Yes, Page 2. 4 The fourth sentence of that paragraph, which 5 starts with the words "Most importantly". 6 A Uh-huh. 7 Q It says – and I'll read the whole 8 sentence – "Most importantly this talc has not 9 been shown to cause a health risk similar in 10 magnitude or scope to that of asbestos including 11 mesothelioma in animals or man regardless of 12 exposure level or duration." 13 I read that correctly? 14 A That's right. 15 Q What do you mean by the word 16 "magnitude"? 17 A The principal meaning of that is associated 18 with the fact that overexposure to talc and most 19 other mineral dust – actually, exposure to any 20 mineral dust – can produce, you know, pulmonary 21 impairment. 22 Some dusts are more risky than others, like 23 asbestos or crystalline silica, so smaller amounts 24 or levels of exposure may result in an effect, 25 whereas another material that may not be as risky	J. Kelse - direct - Mr. Maimon 151 1 report in a bit; but the term "scope" here, what do 2 you mean by that? 3 A Scope has to do with the types of disease. 4 Although overexposure to this talc can cause 5 a pneumoconiosis, we don't believe that it's linked 6 to carcinogenicity either, lung cancer or 7 mesothelioma. 8 Q The next sentence says, "It is 9 commonly understood that asbestos is the only 10 mineral dust that has been linked to asbestos as 11 a causative agent, plaintiff's claimed" – 12 MR. GAFFREY: Mesothelioma. 13 Q – "linked to mesothelioma as a 14 causative agent, plaintiff's claimed condition in 15 this case." 16 Do you see that? 17 A Yes. 18 Q And you understand that Mr. Hirsch 19 made a claim for having suffered from mesothelioma, 20 correct? 21 A Yes. 22 Q You are not a doctor; are you? 23 A No. 24 Q And you're not qualified, can we 25 agree, to either confirm or dispute the diagnosis
J. Kelse - direct - Mr. Maimon 150 1 you might be able to have more of an exposure 2 before you saw an effect. 3 So you can get this pneumoconiosis from your 4 exposure to asbestos or you can also get it through 5 overexposure to talc, our talc or anyone else's 6 talc, or to talc or mica or any other mineral 7 dust. 8 So when I use the word "magnitude", that's 9 what I mean; that the type of pulmonary impairment, 10 you know, that we have seen among talc workers, 11 ours and others – and we do see them with people 12 who are overexposed to high dust levels – are not 13 the same. 14 You know, they don't appear as frequently 15 and at the dust levels that you see them in 16 asbestos-exposed worker populations. 17 I think in the medical review you have a 18 summary by Dr. Boehleche, who really oversees the 19 pulmonary program for the last 18 years – I think 20 he summarizes that, almost these very words. 21 I don't know the type of effects in these 22 talc workers that you would see in asbestos, where 23 people who are actually exposed to asbestos would 24 have. 25 Q Okay. We're going to get to his	J. Kelse - direct - Mr. Maimon 152 1 of mesothelioma in Mr. Hirsch or anyone else; 2 right? 3 A That's correct. 4 Q Do you consider yourself to be an 5 expert in the causes of mesothelioma? 6 MR. GAFFREY: Can I just maybe ask you to 7 clarify? 8 Are you asking him in a legal sense or in a 9 factual sense? 10 MR. MAIMON: I'm asking – 11 A Causes? 12 Q Yes, what causes mesothelioma. 13 Do you consider yourself to be an expert in 14 that subject? 15 MR. GAFFREY: I'm going to object to form. 16 You can answer if you can. 17 A Well, you know, I have an opinion based on 18 everything that I have read; and however valid or 19 invalid it is, the material that I have read would 20 be reflective. 21 My understanding is that the general 22 consensus seems to be that 70 to 80 percent of 23 mesotheliomas are associated with asbestos 24 exposure. There are people who say it's a higher 25 percent, and there are people who say it is a lower

J. Kelse - direct - Mr. Maimon 153 1 percent. In general it seems to be that range. 2 There have been other causes that I have 3 read that have either been confirmed or debated – 4 radiation is one. 5 There was an issue with a vaccine, you know, 6 that for a while seemed – a monkey vaccine or 7 something or other that seemed that it might be; 8 and most recently it appears that it's not. 9 There are certain metal salts – nickel, I 10 think, has been implicated at one point. 11 Whether these are valid or not, I don't 12 know; but I do know that these – there have been 13 other causes discussed. 14 Q Okay. What you know about 15 mesothelioma and its causes is based on the 16 materials that you've read; is that correct? 17 A Yes; and I wouldn't say it's an exhaustive, 18 you know, reading. 19 Q But it's not based on any independent 20 research that you have done; is that correct? 21 A No, it's not. 22 Q It's not based on any personal 23 knowledge that you have; is that correct? 24 MR. GAFFREY: I'm going to object. If you 25 understand that – you may want to –	J. Kelse - direct - Mr. Maimon 155 1 lengths, at least 10 micrometer lengths. 2 That's what I get from the literature. 3 Q I understand that you have read some 4 of this material. 5 What I'm talking about is whether or not as 6 a professional you feel that you're qualified to 7 give an expert opinion judgment on those questions 8 about what types of asbestos are capable of causing 9 mesothelioma. 10 A To the extent that I can refer to papers 11 that I think are pretty authoritative on it. To 12 that extent, but only to that extent. 13 Q In other words, you would be quoting 14 the works of others? 15 A Yes. 16 Q Okay. I don't know if I asked you 17 this. 18 Do you consider yourself qualified to render 19 an expert opinion as to what levels of asbestos 20 exposure are capable of causing mesothelioma? 21 A No. 22 Q Okay. Are there grades of Vanderbilt 23 talc which by design contain less than 50 percent 24 amphiboles? 25 A By design?
J. Kelse - direct - Mr. Maimon 154 1 MR. MAIMON: Let me rephrase it. It's a 2 poorly-phrased question. I appreciate that. 3 Q You don't have any professional 4 training in determining the causes of diseases such 5 as mesothelioma; do you? 6 A No. 7 Q You talked about various materials 8 other than asbestos that have been discussed as 9 possible causes of mesothelioma. 10 Do you consider yourself qualified to 11 analyze whether or not those indeed are causative 12 agents of mesothelioma or not? 13 A No. 14 Q Okay. Do you consider yourself 15 qualified to render an expert opinion as to the 16 amount of asbestos required to cause mesothelioma? 17 A No. 18 Q Do you consider yourself qualified 19 to render an opinion as to the type of asbestos 20 capable of causing mesothelioma? 21 A I hesitate only because, you know, I have 22 read enough; and what I've read suggests that 23 amphibole asbestos, asbestiform amphiboles, are 24 more commonly implicated in mesothelioma, 25 particularly those of very thin widths and long	J. Kelse - direct - Mr. Maimon 156 1 Q I say "by design" because I realize 2 that there's a range in which they run. 3 A Right. I can't say for sure. I doubt it. 4 I can't say for sure. 5 I can direct you to an analytical report of 6 various, you know, grades that break down, you 7 know, percentages; but other than that – 8 Q Well, the MSD sheets would reflect for 9 every grade of your products what the constituent 10 ranges are; is that correct? 11 A That's correct, yes. 12 Q Okay. A major component of Vanderbilt 13 talc is tremolite; is that correct? 14 A Yes. 15 Q And there's also a component of 16 anthrophyllite within Vanderbilt talc; is that 17 correct? 18 A Yes. 19 Q The analyses that are contained in 20 your file titled "Analytical Reports" have – those 21 that have looked to distinguish different 22 constituent talc have all identified both tremolite 23 and anthrophyllite in the talc; is that correct? 24 A Certainly the vast majority. I don't know 25 if they all do, but yes.

J. Kelse - direct - Mr. Maimon 157 1 Q All right. Aside from simply doing 2 the mineralogical identification of either 3 tremolite as a constituent part or anthrophyllite 4 as a constituent part, some of these analyses have 5 been determining whether or not the tremolite and/ 6 or anthrophyllite within the talc is asbestiform or 7 nonasbestiform; is that correct? 8 A That's right. 9 Q One of the things I think you made 10 reference to in your resume as part of your job 11 responsibility has been appearance at NIOSH, OSHA, 12 and such regulatory body hearings on regulation 13 issues on behalf of the company; is that correct? 14 A What regulations? 15 Q Regulations dealing with the 16 definition of asbestos. 17 A Yeah, yes. 18 Q And you have appeared at NIOSH and 19 OSHA hearings on behalf of R.T. Vanderbilt to 20 express the view held by the company on those 21 issues; is that correct? 22 A OSHA hearings. There are no NIOSH hearings. 23 Q Okay. I'm sorry. 24 So you have appeared at OSHA hearings, 25 correct?	J. Kelse - direct - Mr. Maimon 159 1 that correct? 2 A Yes. 3 Q Do you know how much money in grants 4 R.T. Vanderbilt has given to Dr. Wylie over the 5 years? 6 A No, I don't. 7 Q In addition to money in grants, has 8 Dr. Wylie been retained as an expert or an expert 9 consultant by Vanderbilt in various legal settings? 10 A Yes. We have asked her to, yes. 11 Q And in conjunction with that she has 12 written expert reports for Vanderbilt in 13 litigation; is that correct? 14 A Yes. 15 Q And in conjunction with that she has 16 executed affidavits; is that correct? 17 A Yes. 18 Q Do you know how much money Vanderbilt 19 or those representing Vanderbilt have paid 20 Dr. Wylie over the years in connection with her 21 consultation work for the company? 22 A No, I don't know exactly. 23 Q Do you have a ballpark figure? 24 A I know it's not much. In some cases we paid 25 nothing.
J. Kelse - direct - Mr. Maimon 158 1 A Yes. 2 Q When you have appeared at OSHA 3 hearings, you have appeared on behalf of the 4 company and not as an individual citizen; is that 5 correct? 6 A That's correct. 7 Q And you have expressed at those 8 hearings the company's position that the tremolite 9 and anthrophyllite that are part of the talc mined 10 at the Gouverneur facility are non-asbestiform; is 11 that correct? 12 A That's correct. 13 (At this point a short recess was taken.) 14 Q As one of the bases for that position 15 you have relied on the work of Ann Wylie; is that 16 correct? 17 A That's correct. 18 Q And some of her publications and some 19 of her affidavits and some of her letter/reports 20 are contained in the materials that you have 21 brought with you today; is that correct? 22 A Yes. 23 Q Now, some of her publications and the 24 research that she has done have been supported by 25 grants provided by the R.T. Vanderbilt Company; is	J. Kelse - direct - Mr. Maimon 160 1 Q Do you know how many cases there have 2 been brought against Vanderbilt, lawsuits filed 3 against Vanderbilt, claiming asbestos-related 4 injuries resulting from exposure to Vanderbilt 5 talc? 6 A No, I don't. 7 Q There was a litigation in upstate New 8 York - I think it was the Baker case. 9 Do you recall that? 10 A The name is familiar, yes. 11 Q The Setright firm was the plaintiff's 12 firm handling that. 13 Do you recall that? 14 A Seabright? 15 Q Setright. 16 A Setright. It doesn't sound familiar to me. 17 It could have been. 18 Q Aside from this case, the Hirsch case, 19 have you provided any consultation services to 20 Vanderbilt in connection with any other lawsuits 21 that have been brought against it claiming 22 asbestos-related diseases as a result of exposure 23 to Vanderbilt talc? 24 MR. GAFFREY: Can you reread that question, 25 please.

J. Kelse - direct - Mr. Maimon 161 1 (At this point the pending question was read 2 back by the reporter as follows: 3 "Aside from this case, the Hirsch case, have 4 you provided any consultation services to 5 Vanderbilt in connection with any other lawsuits 6 that have been brought against it claiming 7 asbestos-related diseases as a result of exposure 8 to Vanderbilt talc?") 9 MR. GAFFREY: Do you understand the question 10 is consultation to Vanderbilt, not to counsel? 11 Consultation to Vanderbilt. 12 THE WITNESS: Oh, internally? 13 MR. GAFFREY: Yes. With respect to third- 14 party actions filed against Vanderbilt. 15 Do you understand that? 16 THE WITNESS: I'm not sure of the term 17 "consultation". 18 MR. GAFFREY: Then if you don't understand 19 the term, ask him to clarify. 20 Q If you don't understand the question, 21 just tell me. 22 A Yeah. I'm hung up on the word 23 "consultation". 24 Q Okay. I think you have told us before 25 that you've not been - you've not served in the	J. Kelse - direct - Mr. Maimon 163 1 Is there a standard procedure in place in 2 Vanderbilt for responding to customer inquiries 3 concerning the subject of whether the Vanderbilt 4 talc has asbestos in it? 5 A Yes. 6 Q And describe that procedure for me. 7 A customer makes an inquiry, and what 8 happens then? 9 A It's rather simple. If it has to do with 10 that subject, the talc and whether it contains 11 asbestos or not, the question goes to me. 12 Q If the inquiry is made in writing, do 13 you generally respond in writing? 14 A I would say more often than not there will 15 be some response, yes. 16 Q Are there occasions where the inquiry 17 is made by phone? 18 A Yes. 19 Q If it is, do you generally respond in 20 kind, or do you again respond in writing? 21 A Both, depending upon the nature of the 22 inquiry. 23 More often than not they will ask for data, 24 you know, that pertains to whether it contains 25 asbestos or not and why do we say it doesn't and
J. Kelse - direct - Mr. Maimon 162 1 capacity as an expert witness in any case for 2 Vanderbilt in the past before this one; is that 3 correct? 4 A Yes. 5 Q In connection with the issue of 6 whether Vanderbilt talc does or does not contain 7 asbestos in it, has Vanderbilt been approached by 8 any of its customers seeking information on that 9 subject? 10 A Yes. 11 Q And in the course of your employment 12 at Vanderbilt, have you had any responsibility for 13 responding to customer inquiries into that subject? 14 A Yes. 15 Q And could you tell me what your 16 responsibility has been? 17 A Essentially to direct them to the MSDS, 18 which I think is an honest and straight-forward 19 characterization of the material in terms of what 20 it contains and in terms of its risks. 21 I will also point out the published studies, 22 you know, that exist on the material. On occasion 23 I'll supply them if they ask me to. 24 Q Is there a normal procedure - 25 withdrawn.	J. Kelse - direct - Mr. Maimon 164 1 what do we have to show; and I provide this type of 2 information. 3 Q If you could turn to Page 3 of your 4 report. 5 In the first full paragraph, which starts 6 with the words "Vanderbilt talc" - 7 A Yes. 8 Q The second sentence reads as follows: 9 "Vanderbilt talc has been injected and 10 implanted into the pleural cavities of rats and 11 hamsters in two independent studies." 12 Do you see that? 13 A Yes. 14 Q First of all, I read that correctly; 15 did I not? 16 A Yes, you do. 17 Q Could you identify the studies that 18 you're referring to? 19 A The Smith study and the Stanton study. 20 Q And if you could take those out. 21 Those are in the folder titled what? 22 A This is titled "Human, Animal & Cell 23 Studies". 24 Q Okay. 25 A Okay. This is the Smith study, along with

J. Kelse - direct - Mr. Maimon 165 1 an earlier report on one of the samples; and this 2 is the Stanton study, along with an affidavit from 3 Dr. Wylie on the identification of what the samples 4 are. 5 Q Okay. Within the body of the Stanton 6 published article, which you have in here, is there 7 any -- withdrawn. 8 Within the published article by Stanton, 9 which you have here, is there any identification of 10 any of the talc that was used as being Vanderbilt 11 talc? 12 A No. 13 Q You have two reports here by William 14 E. Smith, correct? 15 A Yes. 16 Q Okay. One is published and printed in 17 the text "Dusts and Disease", is that correct, 18 1979? 19 A Yes. 20 Q And the other is a private report to 21 the R.T. Vanderbilt Company, correct? 22 A Yes. 23 Q Okay. In the published paper by 24 Smith, is there an identification of any of the 25 talc tested as being Vanderbilt talc?	J. Kelse - direct - Mr. Maimon 167 1 A No, I don't. 2 Q You don't? 3 A I don't. 4 Q Okay. The published Smith paper 5 refers to Sample No. FD 14 as coming from 6 Whittiker, Clark & Daniels in New York City; is 7 that correct? 8 A That's right. 9 Q And it was labeled No. 13 talc, as 10 referenced by Smith in the article; right? 11 A Yes, if that's what it says. 12 Q Okay. Do you have any documents which 13 cross-reference Whittiker, Clark & Daniels No. 13 14 talc to any grades of Vanderbilt talc? 15 A I don't know for sure. I think we do. I 16 think probably I will find them. 17 Q There's also a reference in the 18 published Smith paper to Vanderbilt providing 19 preparations -- or a preparation of tremolitic ore, 20 correct? 21 A Yes. 22 Q Do you have any internal or have 23 access to any internal Vanderbilt documents which 24 would document what they sent Smith in connection 25 with this paper?
J. Kelse - direct - Mr. Maimon 166 1 A Not specific to Vanderbilt, no. 2 Q The Smith experiments predate your 3 employment with Vanderbilt; is that correct? 4 A That's correct. 5 Q Would it be fair to say, Mr. Kelse, 6 that you have no firsthand knowledge concerning the 7 talc used by William Smith in his tremolite 8 testing? 9 A Yeah. Other than the documents in the file, 10 you know. 11 Q You have no personal knowledge; is 12 that correct? 13 I'm not talking something that you have 14 read. I'm talking about personal knowledge. 15 You know, you saw, you were there. 16 A No. This is before my time. 17 Q Okay. The report to R.T. -- 18 withdrawn. 19 The report or paper "Dusts and Disease" by 20 Smith was supported by a grant from the R.T. 21 Vanderbilt Company; is that correct? 22 A I believe so, yes. 23 Q Do you know how much money R.T. 24 Vanderbilt gave to Dr. Smith in connection with 25 this study?	J. Kelse - direct - Mr. Maimon 168 1 A I believe I could get those, yeah. 2 Q Those exist? 3 A I believe they do. 4 You know, I can't swear to it; but I'm 5 rather certain -- you know, we never questioned it; 6 but we can dig it up. 7 Q But those are not in the materials 8 that you produced; is that correct? 9 A No, they are not. 10 Q The unpublished report to R.T. 11 Vanderbilt refers to a sample of the tremolitic 12 portion of a typical New York State talc ore, which 13 is given a designation of CPS-275-1. 14 A Uh-huh. 15 Q Do you see that? 16 A Yes. 17 Q Do you know what that designation 18 signifies? 19 A CPS and CPSC, as you saw some other samples 20 in other documents, are code numbers that 21 Dr. Thompson would put on samples that were sent 22 out. He had cross-references to those numbers. 23 It's one of the indications that it's our material. 24 Q Do you know what "CPS" stands for? 25 A Not offhand, no. I think he told me once,

J. Kelse - direct - Mr. Maimon 169	J. Kelse - direct - Mr. Maimon 171
1 but... 2 Q Is it your understanding, Mr. Kelse, 3 that the contents of the unpublished report by 4 Smith to R.T. Vanderbilt are contained within the 5 published paper titled "Biologic Tests of Tremolite 6 in Hamsters"? 7 A I believe so, yes. 8 Q Okay. I think you made reference also 9 to the affidavit of Ann Wylie, which is dated 10 November 1, 1984; right? 11 A Yes. 12 Q And in this I believe Dr. Wylie 13 asserts that some of the talc used by Dr. Stanton 14 in his study was Vanderbilt talc; is that correct? 15 A That's correct. 16 Q Aside from Dr. Wylie's affidavit, do 17 you have any other basis for the assertion that the 18 Stanton - any of the Stanton materials tested were 19 Vanderbilt talc? 20 A No. 21 Q Just so I understand correctly, the 22 only documents that you have brought with you today 23 in response to the Notice of Deposition, 24 specifically Item No. 8, which support the 25 allegation that Vanderbilt talc has been injected	1 Are you familiar with that article? 2 A Yes, I am. 3 Q This is the publication by Kleinfeld 4 in 1967 entitled "Mortality Among Talc Miners and 5 Millers in New York State". It was published in 6 the "Archives of Environmental Health". 7 Is that correct? 8 A That's correct. 9 Q And when was it that you first saw a 10 copy of this article? 11 A Certainly not before I started working for 12 Vanderbilt, so it would have been shortly 13 thereafter; probably '85, '86. 14 Q This is referenced in the 1980 NIOSH 15 Technical Report that we have marked as Exhibit 8, 16 correct? 17 A Yes. 18 Q When you first looked at the NIOSH 19 1980 Technical Report, did you look at any of the 20 references that were cited by those researchers 21 concerning the talc workers in the region that you 22 were going to do air sampling in? 23 A No. I was predominantly, almost 24 exclusively, focused on the industrial hygiene 25 part, the position - or the industrial hygiene
J. Kelse - direct - Mr. Maimon 170	J. Kelse - direct - Mr. Maimon 172
1 and implanted into the pleural cavities of rats and 2 hamsters in two independent studies is the Wylie 3 affidavit; correct? 4 A For Stanton. 5 Q For Stanton. 6 A Yes. 7 And for Smith the CPSC and references to the 8 Vanderbilt sample or Gouverneur material would be 9 all that I have. 10 We'll find something more specific for you. 11 Q So with regard to Stanton you have the 12 Wylie affidavit. 13 Do you believe you have anything else in 14 your files on that subject aside from the Wylie 15 affidavit? 16 A No. I don't believe there was any other 17 data, you know, that identified these materials. 18 MR. MAIMON: Okay. Let's mark this as the 19 next. 20 (The below-described article, entitled 21 "Mortality Among Talc Miners and Millers in New 22 York State", was received and marked Kelse-12 for 23 Identification.) 24 Q I'll show you what we've marked as 25 Exhibit 12.	1 part of the NIOSH work, not the health part. 2 Q The Kleinfeld article reported a four- 3 fold increase in lung cancer among the talc miners 4 and millers that were studied in that group; is 5 that correct? 6 A 221, yes. 7 Q The NIOSH report - do you recall what 8 percentage increase was reported by the NIOSH 1980 9 Technical Report? 10 A A little lower. It was similar. It was 11 about two and a half, three times, something like 12 that. 13 I think I actually have that listed 14 somewhere. 15 Q If you want to check that out. 16 A Sure. 270. 17 Q The NIOSH Technical Report had about 18 400 subjects; is that correct? 19 A I believe so, yes. 20 Q One of the materials that you brought 21 with you is the spiral-bound pictorial presentation 22 that you prepared; is that correct? 23 A That's correct. 24 Q Okay. And in it you list some of the 25 health studies, correct, some of the health studies

J. Kelse - direct - Mr. Maimon 173 1 related to talc mining? 2 A Just Vanderbilt. 3 Q Just Vanderbilt. 4 You did not cite to the Kleinfeld study in 5 this document; is that correct? 6 A That's correct. 7 Q Is the reason that you did not is 8 because Kleinfeld encompassed more than just 9 Vanderbilt talc miners and millers, but talc miners 10 and millers employed by other companies as well in 11 the region? 12 A No. The reason is because they didn't 13 incorporate Vanderbilt at all. 14 Q There were no employees of Vanderbilt 15 included in the Kleinfeld study? 16 A No. 17 If you look at the years of study and the 18 criteria for being entered into the cohort, you 19 had to work X number of years and you had to begin 20 before a certain year; and when you subtract those 21 years you see that it comes out before 1948. 22 In 1948 - prior to 1948 there was no 23 Vanderbilt talc. 24 Q All right. If you could show me in 25 the article where that is or how you figure that	J. Kelse - direct - Mr. Maimon 175 1 the first sentence of "Materials and Methods" it 2 says, "All talc miners and millers employed in 1940 3 who had 15 or more years of exposure to talc dust". 4 That's the first phrase there, right? 5 A Yes. 6 Q Therefore, you'd have to have somebody 7 who was employed as a talc miner or miller in 1940 8 and who had 15 or more years of exposure; correct? 9 A That's - yes. 10 Q To qualify under that phrase, correct? 11 A That's how I read it. 12 Q The next phrase says, "As well as 13 those who achieved a minimum of 15 years of such 14 exposure between 1940 and 1965". 15 So people who - 16 A Right. 17 Q - were exposed for 15 years during 18 the time period 1940 to 1965 were also included in 19 the study; is that correct? 20 A Yes. 21 Q Okay. Is there anything in the 22 "Materials or Methods" or the procedures used here 23 to require employment by the same employer during 24 the years of exposure? 25 A No.
J. Kelse - direct - Mr. Maimon 174 1 out, I'd appreciate it. 2 A Sure. Let's see. 3 Okay. Under "Materials and Methods" on Page 4 664. 5 Q I'm with you. 6 A Okay. This would have included people who 7 would have been employed in 1940 and who had had 8 15 or more years of exposure, as well as those who 9 achieved a minimum of 15 years between 1940 and 10 1965. 11 If you subtract - 12 Q So that if someone were employed from 13 1950 to 1965 they could be included in this study; 14 is that correct? 15 A I don't - from 1950? 16 Q That would be a minimum of 15 years - 17 A Yeah, yeah. I think that - 18 Q - during that period, right? 19 A That's true. 20 So you did have two-year time period, but - 21 although they would have had to work, you know - 22 you know, they would have had to work 15 years. 23 They would have had to have been employed in 24 1940. No one was employed in 1940. 25 Q Well, no. I think if you take - in	J. Kelse - direct - Mr. Maimon 176 1 Q So that for the 15 years of exposure 2 a talc miner or miller could have spent five years 3 with one company, another five years with a second 4 company, and five years with a third company; 5 correct? 6 A Certainly. 7 Q And you said that the GTC mine was 8 opened when? 9 A 1948. I think they actually started moving 10 ore, you know, early in 1949 or something. 11 Q Okay. So at least for the period of 12 1950 through 1965, which would be the inclusive 13 years within this study, there were workers working 14 in the Gouverneur talc mine; is that correct? 15 A Between what years? 16 Q '50 and '65. 17 A Sure. 18 Q And if somebody was working for GTC 19 for that entire period of time as a talc miner, 20 theoretically they would have qualified to be part 21 of this study; is that correct? 22 A Fifteen years? They may have. 23 Q And if they had worked for, let's say, 24 seven years before 1950 for another talc mine and 25 then moved over to Gouverneur and did another eight

J. Kelse - direct - Mr. Maimon 177 1 years for Gouverneur between 1950 and 1960, they 2 would have qualified to be in this study; is that 3 correct? 4 A I would think. I would have to look at this 5 a little more closely, but it sounds right. 6 Q Okay. So can you say with any 7 certainty that this study did not include GTC 8 employees? 9 A I would say if it did it had to be minimal. 10 Q And why is that? 11 A It couldn't have been that many people - 12 Q Why is that? 13 A - who qualified for those years. 14 Also, in terms of lung cancer, there is a 15 latency attached to that as well, so you may wonder 16 - you almost have to have exposures, you know, in 17 the 40's - 30's, 40's, 50's. 18 I don't - 19 Q Well, that would be talking about the 20 contribution of any exposure at GTC. I'm talking 21 about whether or not GTC employees were included in 22 this study or not. 23 A I probably couldn't say for certain that 24 they were not. 25 Q Do you know, when GTC opened its mine	179 1 brought with him today, and let's mark as Exhibit 2 Kelse-13 the three-ring binder entitled "The 3 Asbestiform and Nonasbestiform Mineral Growth Habit 4 and the Relationship to Cancer Studies". 5 (The above-described binder was received and 6 marked Kelse-13 for Identification.) 7 MR. MAIMON: The next folder that we'll mark 8 - and this will be Exhibit 14 - is the file 9 titled "Human, Animal & Cell Studies RTV Talc 10 Specifically". 11 (The above-described folder was received and 12 marked Kelse-14 for Identification.) 13 MR. MAIMON: Exhibit 15 we'll mark as the 14 file titled "Mineralogy Key Papers". 15 (The above-described file was received and 16 marked Kelse-15 for Identification.) 17 MR. MAIMON: Exhibit 16 will be the file 18 titled "General Reference Documents Fiber Sizes 19 Meso Lung Burden". 20 (The above-described folder was received and 21 marked Kelse-16 for Identification.) 22 MR. MAIMON: 17 will be the file titled 23 "Overviews Health and Mineralogy". 24 (The above-described folder was received and 25 marked Kelse-17 for Identification.)
J. Kelse - direct - Mr. Maimon 178 1 in 1948 and then was employing a work force, 2 whether or not that work force had experience in 3 general in the talc mining industry? 4 A I would say there's a high probability that 5 many of them would because you would want to hire 6 people who had experience. 7 Q And do you know what the mean or 8 average number of years in the industry was for the 9 workers who joined GTC when it opened its mines in 10 1948? 11 MR. GAFFREY: These questions answer from 12 personal knowledge. Don't guess. 13 A I don't know. 14 Q Okay. Do you have any documents or 15 does the company have any documents that would help 16 you in answering that question? 17 A Not to my knowledge. 18 Q Have you seen - withdrawn. 19 Do you know what mines the workers involved 20 in the Kleinfeld study were working at? 21 A No, I don't. 22 MS. GRIMBERGEN: Off the record. 23 (Discussion held off the record.) 24 MR. MAIMON: We're going to go back on the 25 record and mark the various items that Mr. Kelse	180 1 MR. MAIMON: Exhibit 18, we're going to mark 2 the file entitled "Health Study Critiques." 3 (The above-described folder was received and 4 marked Kelse-18 for Identification.) 5 MR. MAIMON: Exhibit 19 will be the file 6 entitled "NIOSH correspondence". 7 (The above-described folder was received and 8 marked Kelse-19 for Identification.) 9 MR. MAIMON: Exhibit 20 will be the file 10 titled "OSHA NTP Submissions Testimony MSHA". 11 (The above-described folder was received and 12 marked Kelse-20 for Identification.) 13 MR. MAIMON: Exhibit 21 will be the file 14 entitled "Hirsch Case File". 15 (The above-described folder was received and 16 marked Kelse-21 for Identification.) 17 MR. MAIMON: And Exhibit 22 will be the file 18 entitled "Analytical Reports". 19 (The above-described folder was received and 20 marked Kelse-22 for Identification.) 21 MR. MAIMON: We're going to adjourn the 22 deposition and agree upon a date after 23 Oconferencing next week. 24 (Witness excused.) 25 (The deposition was concluded at 4:30 p.m.)

CERTIFICATE OF OFFICER

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I, HOLLY JOHNSON KOWALENKO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness was duly sworn by me.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcription of the testimony as taken stenographically by and before me on the date, time, and place aforementioned.

I DO FURTHER CERTIFY that I am neither a relative, employee, attorney, nor counsel to any parties involved; that I am neither related to nor employed by any such attorney or counsel; and that I am not financially interested in the outcome of this action.

Holly Johnson Kowalenko

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182 SUPERIOR COURT OF NEW JERSEY LAW DIVISION : MIDDLESEX COUNTY Docket No. MID-L-2706-03 AS ESTATE OF PETER S. HIRSCH, : Plaintiff, : <u>CIVIL ACTION</u> -vs- : Deposition of: GEORGIA PACIFIC, INC. : JOHN W. KELSE, JR. HAMMILL & GILLESPIE, INC. : (Volume II) R.T. VANDERBILT COMPANY, : INC., : Defendants. X-----X TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before HOLLY JOHNSON KOWALENKO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, held at the offices of HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, L.L.P., 40 Paterson Street, New Brunswick, New Jersey, on Tuesday, April 12, 2005, commencing at approximately 10:20 in the forenoon.	184 <u>INDEX OF WITNESSES</u> <u>WITNESS</u> <u>DIRECT</u> John W. Kelse, Jr. By Mr. Eschleman: 185 <u>INDEX OF EXHIBITS</u> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Exhibit</u></th> <th style="text-align: left;"><u>Description</u></th> <th style="text-align: left;"><u>For Identification</u></th> </tr> </thead> <tbody> <tr> <td>Kelse-23</td> <td>File folder entitled "Stanton Study Sample Source"</td> <td>185</td> </tr> <tr> <td>Kelse-24</td> <td>File folder entitled "Smith Study Samples-Sources"</td> <td>185</td> </tr> <tr> <td>Kelse-25</td> <td>File folder entitled "Kleinfeld-Follow-up"</td> <td>185</td> </tr> <tr> <td>Kelse-26</td> <td>File folder entitled "Insurance Monitoring Fiber"</td> <td>185</td> </tr> <tr> <td>Kelse-27</td> <td>File folder entitled "NYTAL MSDS History"</td> <td>210</td> </tr> </tbody> </table>  H-PRIZE-2 printed 4/19/05	<u>Exhibit</u>	<u>Description</u>	<u>For Identification</u>	Kelse-23	File folder entitled "Stanton Study Sample Source"	185	Kelse-24	File folder entitled "Smith Study Samples-Sources"	185	Kelse-25	File folder entitled "Kleinfeld-Follow-up"	185	Kelse-26	File folder entitled "Insurance Monitoring Fiber"	185	Kelse-27	File folder entitled "NYTAL MSDS History"	210
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183 APPEARANCES: LEVY, PHILLIPS & KONIGSBERG, L.L.P. Attorneys for the Plaintiff 101 Grovers Mill Road Suite 105 Lawrenceville, New Jersey 06648 By: THOMAS W. ESCHLEMAN, ESQUIRE HARKS, O'NEILL, O'BRIEN & COURTNEY, P.C. Attorneys for the Defendant Georgia-Pacific Corporation Cooper River West 6981 North Park Drive Suite 300 Pennsauken, New Jersey 08109 By: SEAN X. KELLY, ESQUIRE McGIVNEY, KLUGER & GAMMON, P.C. Attorneys for the Defendant Hamill & Gillespie 23 Vreeland Road Florham Park, New Jersey 07932 By: NICHOLAS DeMATTHEIS, ESQUIRE HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, L.L.P. Attorneys for the Defendant R.T. Vanderbilt Company, Inc. 40 Paterson Street New Brunswick, New Jersey 08903 By: NORA J. GRIMBERGEN, ESQUIRE	185 1 (The below-described four file folders were 2 received and marked Kelse-23 through Kelse-26 for 3 Identification.) 4 5 MS. GRIMBERGEN: Before we start I just want 6 to put a statement on the record that is going to 7 follow the statement that we put on the record the 8 first time when we were here back on December 1st; 9 that Mr. Kelse is being produced here today as an 10 expert witness pursuant to the Deposition Notice 11 and not being produced in any other capacity. 12 13 14 JOHN W. KELSE, 152 Pulaski Highway, 15 Ansonia, Connecticut, is duly sworn and 16 testifies on his oath as follows: 17 18 CONTINUED DIRECT EXAMINATION BY MR. ESCHLEMAN: 19 Q Good morning, Mr. Kelse. 20 A Hello. 21 Q My name is Tom Eschleman. I'm from 22 the firm of Szaferman Lakind. I represent the 23 plaintiffs in this case, the Estate of Mr. Hirsch. 24 I am going to continue the deposition of Moshe 25 Maimon, which began on December 1, 2004. I just																		

J. Kelse - cont'd direct - Mr. Eschleman 186 1 have a few brief instructions for you. 2 Obviously you've had your deposition taken 3 before. If I ask you a question and you don't 4 understand the question for whatever reason, please 5 let me know; okay? 6 A Yes. 7 Q All right, because if you answer the 8 question without letting me know we'll assume that 9 you understood the question; okay? 10 A (No audible response.) 11 Q If I ask a question to which you don't 12 know the answer, the proper answer would be, "I 13 don't know." 14 Do you understand? 15 A Yes. 16 Q Okay. You can estimate and 17 approximate; but if you're going to do that, just 18 let us know that this is an estimation or 19 approximation; okay? 20 A Yes. 21 Q I assume you're under no medications 22 or intoxicant that would lead you to be unable to 23 understand my questions or answer my questions; is 24 that correct? 25 A Not beyond the two coffees, no.	J. Kelse - cont'd direct - Mr. Eschleman 188 1 Do you recall? 2 A In a - like a gel; and it actually involved 3 72 different samples, of which there were seven 4 talcs. 5 Q Okay. Now, what type of animals were 6 used in the study? 7 A I believe these were rats. 8 Q What were the results of the studies, 9 if you recall? 10 A The purpose of the study was to test a 11 hypothesis that certain dimensions of durable 12 fibers were more carcinogenic than other dimensions 13 or to test the theory that those fibers that were 14 long and thin would more likely be fibers, if they 15 were durable, that would produce more tumors than 16 fibers that were short and fat. 17 And to do that he took 72 different samples, 18 many of which were asbestos samples; and he 19 carefully measured the sizes of the particles in 20 each sample, and then he injected them into the 21 pleural cavities of these rats and later counted 22 the number of tumors that were produced by each 23 sample and correlated those to the size of the 24 particles in each sample to see whether or not 25 there was a correlation between the size and the
J. Kelse - cont'd direct - Mr. Eschleman 187 1 Q Okay. The first thing I'd like to 2 cover are documents which you've brought here today 3 which were not provided during the first 4 deposition. I believe we've marked the files 5 containing these documents. 6 The first file that I want to bring to your 7 attention is what's been marked as Kelse-23, and it 8 says "Stanton Study", and underneath that it says 9 "Sample Source". 10 Are you familiar with this folder? 11 A Yes. 12 Q And did you bring it here today? 13 A Yes. 14 Q And why did you bring it here today? 15 A In response to questions as to the origin of 16 samples that were associated with this study by 17 Merle Stanton, National Cancer Institute. 18 Q All right. And just briefly, the 19 Stanton study dealt with - it was a study of 20 animals, correct? 21 A Yes. 22 Q And it dealt with the injection of 23 these animals with talc; is that correct? 24 A Implantation. 25 Q Okay. How was the talc implanted?	J. Kelse - cont'd direct - Mr. Eschleman 189 1 number of tumors produced in the experiment. 2 And essentially he found that samples that 3 contained a high proportion of fibers that were 4 less than a quarter micrometer thick and longer 5 than eight micrometers long seemed to produce the 6 most tumors. 7 Many of these samples were asbestos samples, 8 and among these 72 samples he tested seven talcs; 9 and of the seven talcs, two of the talcs turned out 10 to be Vanderbilt talcs. 11 Q Okay. 12 A And at the last deposition there was some 13 question as to how did we know that these samples 14 - these talcs - they were listed Talc 1 through 15 7; they weren't designated by name - how did we 16 know two of these talcs were Vanderbilt talcs. 17 That was the - an issue. 18 Q All right. So just for my 19 understanding, the study concluded that the thinner 20 and longer the fibers, the more carcinogenic they 21 were? 22 A Samples that contained a higher proportion 23 of those types of fibers tended to be. There were 24 some exceptions. 25 Q All right.

J. Kelse - cont'd direct - Mr. Eschleman 190 1 A The talc samples didn't produce any tumors. 2 Q The seven talcs samples – none of the 3 seven produced any tumors? 4 A The two that – Talc 6 and 7, which were 5 Vanderbilt talcs, produced no tumors. 6 A couple of the other talcs, the platy 7 talcs, just produced a background, one or two 8 tumors that were just background, and are not 9 considered... 10 Q Okay. Could you point to me in the 11 study where it identifies 6 and 7 as Vanderbilt 12 talcs? 13 A Well, that was the issue. It didn't. 14 Q Okay. 15 A And the reason we knew that these were 16 Vanderbilt talcs was that Ann Wylie, Dr. Wylie, a 17 mineralogist, professor of mineralogy at University 18 of Maryland, knew Dr. Stanton; and Dr. Stanton 19 died; and he actually willed Dr. Wylie his records 20 from this study, as well as the samples themselves. 21 So she actually went to his home, in his 22 attic, and got the data from – the background data 23 from the study that indicated the origin of the 24 samples, most of the samples, as well as some of 25 the samples themselves; and this is an affidavit	J. Kelse - cont'd direct - Mr. Eschleman 192 1 question you did some research, correct? 2 A Yes. I think we mentioned this affidavit at 3 the last – you know, at the last deposition; and I 4 don't know that that – you know, it didn't sound 5 like that seemed to be sufficient; but at this 6 point that's all we have. 7 Q When you say "this affidavit", you're 8 talking about the August 1, 1984, letter; correct? 9 A Yes. 10 Q It's not an affidavit, correct? You 11 recognize that? 12 A Okay, letter. 13 Q But just so I'm clear, that's what 14 you're referring to, is the August 1, 1982, letter? 15 That's what you're referring to when you say 16 "affidavit"? 17 A That's right. 18 Q Okay. So obviously this letter was 19 not produced in response to the questions at the 20 last deposition, correct? 21 A No. 22 Q All right. I note that the letter 23 says, "In some cases the information is 24 incomplete." 25 Did you see that sentence in the letter?
J. Kelse - cont'd direct - Mr. Eschleman 191 1 that she produced identifying, you know, the origin 2 of some of these samples. 3 You see some wollastonite in talc samples. 4 These were the names of the samples. 6 and 7 is 5 NYTAL. It's a typical Vanderbilt. There was 6 actually one Asbestine – poor name, but that's 7 what it was named, and that was actually the 8 Vanderbilt name at one point. 9 She also analyzed those talcs and said, 10 "Yes, this is the typical, you know, Vanderbilt 11 type tremolitic talc." 12 So that's why we know these weren't those – 13 those two samples weren't. 14 Q Let me just take a look at this. 15 Now, included in this folder is a letter 16 from Ann Wylie from August 1, 1982; is that 17 correct? 18 A Yes. 19 Q All right. Did you say – when did 20 she – strike that. 21 At the last deposition there was a question 22 about whether any of the talcs used in the study 23 were Vanderbilt talcs; is that correct? 24 A Yes. 25 Q All right. In response to that	J. Kelse - cont'd direct - Mr. Eschleman 193 1 A Yes, I did. 2 Q Do you know what that refers to? 3 A No, I don't. 4 Q Okay. And do you know how Ms. Wylie 5 identified Talc 6 and 7 as Vanderbilt talcs? 6 A I believe she had records that identified 7 the name, you know, the brand name; and I believe 8 she actually analyzed the talc. 9 Q All right. 10 A Looked at it. 11 Q Do you know where the records are from 12 this study that identifies the Talc 6 and 7 as 13 Vanderbilt talc? 14 A Her records, no. 15 Q Do you know where any records are that 16 would identify Vanderbilt talc as Talc 6 and 7, 17 other than this letter? 18 A No. That's something we'll have to get. 19 MR. ESCHLEMAN: I'd ask that be produced. 20 Q And you indicated that you believe she 21 analyzed the talc herself, correct? 22 A Yes, I believe she did. 23 Q All right. You're not sure, though; 24 correct? 25 A No. You would have to ask her.

J. Kelse - cont'd direct - Mr. Eschleman 194 1 Q And do you know whether or not any 2 records regarding her analysis of the Talc 6 and 3 7 - 4 A I don't have them. 5 Q Do you know whether she does? 6 A I don't know. 7 Q Have you spoken to Ms. Wylie about 8 this since the deposition of - 9 A No, I haven't. 10 Q All right. Have you ever spoken to 11 Ms. Wylie about this? 12 A Over the years, yeah. She's always referred 13 to these as Vanderbilt talcs. 14 Q But you never spoke to her 15 specifically in relation to this - the question 16 asked at the last deposition? 17 A No. 18 Q Okay. So other than this August 1, 19 1984, letter from Ms. Wylie you have no other 20 records or data in your possession that identifies 21 Talc 6 and 7 as Vanderbilt talc? 22 A Right now, no. 23 Q And again, in the actual Stanton study 24 itself there is no indication where Talc 6 and 7 25 came from; correct?	J. Kelse - cont'd direct - Mr. Eschleman 196 1 marked as Plaintiff's Exhibit Kelse-24. 2 It says on it - it's a file again. It says 3 "Smith Study", and then underneath that it says 4 "Samples-Sources". 5 You have produced this document in response 6 to questions asked by Mr. Maimon during the last 7 deposition? 8 A Yes. 9 Q Okay. Could you please just briefly 10 tell me, the Smith study also concerned animal 11 studies as well; is that correct? 12 A Yes, it did. 13 Q Okay. What type of animals in the 14 Smith study were used? Do you recall? 15 A This was an injection study into hamsters 16 that involved five samples. Sample 14 and Sample 17 275 were Vanderbilt talc samples. Sample 14 was an 18 off-the-shelf product talc, Vanderbilt talc; and 19 Sample 275 was the tremolite concentrate from the 20 talc, pure tremolite from the talc, from Vanderbilt 21 talc. 22 Q All right. What was the conclusion of 23 the Smith study? 24 A That the samples 31 and 72 and 72N, which 25 were high-fiber tremolite, tremolite asbestos,
J. Kelse - cont'd direct - Mr. Eschleman 195 1 A I don't believe so, no. 2 Q I just notice on the Stanton study 3 itself Talc 6 and 7 are circled and then underneath 4 there is the letters "RTV talc", which I assume 5 stands for Vanderbilt talc; correct? 6 A Yes. 7 Q Who made that notation? 8 A Oh, I did. 9 Q Okay. And when did you make that 10 notation? 11 A A number of years ago. 12 Whenever we used this study I wanted to 13 indicate which talcs were Vanderbilt, and that's 14 why I put that on. 15 Q All right. And what information did 16 you use to identify it as Vanderbilt talc? 17 A Well, the letter from Dr. Wylie. 18 Q So I assume you have been in 19 possession of the letter from Dr. Wylie for a 20 number of years? 21 A The date is '84? 22 Q Yes. 23 A Yes. It was in the files when I arrived at 24 Vanderbilt. I began work there in '85. 25 Q Okay. I'll show you what's been	J. Kelse - cont'd direct - Mr. Eschleman 197 1 produced tumors at both those levels and that 2 neither 14, product per se, or 275, the 3 concentrated tremolite from Vanderbilt talc, 4 produced any tumors at either dose level on the 5 pleura. 6 Q Now, you indicate that Samples 14 and 7 275 were Vanderbilt talc samples; is that correct? 8 A Yes. 9 Q Now, just so I understand, 14 was an 10 off-the-shelf product of Vanderbilt talc? 11 A Yes. 12 Q Okay. Do you know whether that was 13 NYTAL? 14 A This is the description. FD 14 is from 15 Whittaker, Clark & Daniels. That's the 16 distributor. It is known as 3X, which is now 17 similar - the same as NYTAL 200. 18 Q Okay. 19 A And 275 is the tremolite. 20 So that's a description there, plus some 21 correspondence from Dr. Smith in terms of - and 22 here's the IT 3X technical data sheet in Vanderbilt 23 that identifies - you know, correlates these 24 numbers. 25 Q Okay. Let me back up to make it

J. Kelse - cont'd direct - Mr. Eschleman 198 1 simpler for myself. 2 How did you identify that the Talc 14 and 3 Talc 275 were, in fact, Vanderbilt talcs? 4 A Well, they're obtained through the 5 distributor, and that was the product name, and 6 that's what the researcher said the product name 7 was. 8 Q All right. It's my understanding - 9 did the study itself mention where the talc came 10 from? 11 A I think it said the Gouverneur district. It 12 didn't specifically say Vanderbilt. 13 Q And now you've come to believe that it 14 was, in fact, Vanderbilt; correct? 15 A Based on these documents, yes. 16 Q All right. 17 A And we know the tremolite for sure because 18 we gave it to them. 19 Q All right. Show me the document that 20 indicates that Vanderbilt gave the tremolite for 21 the study. 22 A Okay. This is an internal Vanderbilt 23 document dated 1978. 24 Q All right. And it's to A.M. Harvey 25 from a K.C. Rieger.	J. Kelse - cont'd direct - Mr. Eschleman 200 1 assigned to that sample or - that was obtained 2 from the mine that Mr. Rieger worked on to extract 3 the tremolite, which he then provided to Dr. Smith. 4 Q All right. 5 A I think that's all that it is. 6 It's fairly descriptive in the paper. I'm 7 not going to sit and read this word-for-word, but 8 it's available to you to do that, and you can - 9 Q Do you know, is there any indication 10 in that document or any of the documents you have 11 that that particular Sample 275 was delivered from 12 Mr. Rieger to Mr. Smith? 13 A This sample was submitted to William Smith 14 on March 31, 1976. 15 As I say, it's in the documents. 16 Q Okay. 17 A I think, in looking at these documents, 18 probably this internal memo is probably the most 19 descriptive. 20 Q Okay. 21 A There are other references to, "I got this 22 sample from Mr. Harvey", and that sort of thing. 23 This is probably the best document in terms 24 of the origin of these samples. 25 Q Does that document also speak to the
J. Kelse - cont'd direct - Mr. Eschleman 199 1 A Rieger. 2 Q Is that correct? 3 A Correct. 4 Q All right. 5 A And what Mr. Rieger is doing is he is 6 explaining to Mr. Harvey how he prepared or took 7 out the tremolite from the talc. 8 This is what this preparation description is 9 all about. 10 Q Now, Mr. Rieger's connection to the 11 Smith study was what? 12 A Well, he is a ceramics engineer, so he has 13 the equipment, you know, to separate out some of 14 these mineral components, which he did in our 15 research and development laboratory. 16 Q So when it says "CPS 75-1" in the 17 preparation, that refers to the sample that was 18 used in the Smith study? 19 A That would be like an internal Vanderbilt 20 identification of a sample. 21 Q I'm sorry. 22 Is that particular designation the same 23 sample that was given to Smith, or was that just a 24 generic name for it, 275? 25 A It's probably a generic. It's just a number	J. Kelse - cont'd direct - Mr. Eschleman 201 1 origin of Sample No. 14? 2 A Yes. It states in origin, FD 14 is No. 13 3 talc from Whittaker, Clark & Daniels, a 4 distributor. This 3X product was produced by the 5 former International Talc that Vanderbilt 6 purchased. The similar grade produced today would 7 be NYTAL 200. 8 Q Do you have the Smith study in front 9 of you? 10 Okay. Thank you. 11 A I want to point out this additional 12 correspondence by Dr. Smith dated - 13 Q November 21, 1986? 14 A 1986, in which Dr. Smith is describing the 15 origin of these samples as well. 16 So here he's talking about Sample 14, 17 Paragraph 3 of that letter, and in Paragraph 4 of 18 that letter, Sample 275, that being a sample 19 provided to him by Allen Harvey at Vanderbilt; and 20 that had been prepared in our laboratory from a 21 tremolitic talc. 22 So you got, I think, three documents that 23 you can put together to see where these samples 24 came from. 25 Q Did you see whether there's any

J. Kelse - cont'd direct - Mr. Eschleman 202 1 indication regarding what mine the 275 talc came 2 from? 3 A No. I would assume it would come from the 4 - the ore that we were mining, you know; and I 5 think at that time we only had - what year was 6 this? 7 Q 1978. 8 A '78? 9 It could have been from the - there was 10 only two mines. One was an open pit mine, known as 11 the Arnold Pit, and the other is an underground 12 mine, the original underground mine, that 13 Vanderbilt had, both located pretty much next to 14 each other. It would have come from either of 15 those two, one or the other. 16 And this is just a - this other document in 17 the folder is just a technical data sheet that 18 identifies IT 3X as a Vanderbilt product. 19 Q I show you what's been marked 20 Kelse-25. It says - again it's another folder. 21 It contains numerous documents. The folder itself 22 is labeled "Kleinfeld-Follow-up". 23 Why did you produce these documents? 24 In response to what question were these documents 25 produced?	J. Kelse - cont'd direct - Mr. Eschleman 204 1 Vanderbilt employees included in the Kleinfeld 2 study. 3 I don't know how many or if any, but they 4 could have been. Could have been some. 5 So that was pretty much what that discussion 6 was towards the end of that deposition. 7 So I went back and I pulled out, you know, 8 the Kleinfeld study; and, actually - I think we 9 were talking about the Kleinfeld study that was 10 dated 1967; but, actually, the Kleinfeld did an 11 update on that study - I have included that in 12 here - which was actually published in 1974, where 13 he actually had this cutoff date at '69 versus - I 14 think it was 1965 originally when we were talking 15 about it. 16 So I put the update study in here. I think 17 this is the one you were operating off, but this 18 one was newer; okay? 19 Q Okay. 20 A It had the same criteria in it, so that 21 didn't change. It just included another couple of 22 years. 23 So I looked at that, and I still feel that 24 this - that the Kleinfeld study - because the 25 original question was when I produced health
J. Kelse - cont'd direct - Mr. Eschleman 203 1 A At the very end of the last deposition there 2 was a discussion on the Kleinfeld study. 3 Q Okay. 4 A And there was some confusion on my part as 5 to whether or not Vanderbilt employees would have 6 been included in the Kleinfeld study, and my 7 original feeling was that there would not have been 8 Vanderbilt employees involved in the study because 9 of the criteria for inclusion in the study. 10 Q What was the criteria for inclusion in 11 the study? 12 A Well, there were two criteria; and, 13 unfortunately, I was just thinking of the first 14 one, which I have listed here, which would have 15 been all talc workers that were employed in 1940 16 that would have had accumulated 15 or more years of 17 exposure; and since the Vanderbilt mine opened in 18 1948, that first criteria would not have been met, 19 so you would not have had Vanderbilt employees. 20 However, there was a second criteria; and 21 that second criteria was that those that had 22 achieved a minimum of 15 years of exposure between 23 1940 and 1969 could have been included as well; and 24 if you do the math, then you know that there is a 25 period of time where there could have been	J. Kelse - cont'd direct - Mr. Eschleman 205 1 studies that, to the best of my knowledge, 2 addressed Vanderbilt workers - and I produced 3 those in chronological order - I didn't produce 4 the Kleinfeld study; and the reason for that is 5 that I didn't feel that the Kleinfeld study 6 addressed Vanderbilt Talc workers. 7 There were studies that did, about six of 8 them specific to Vanderbilt. This one didn't. 9 This was generalized north country talc workers, 10 and I wasn't sure that there were any of our 11 workers even involved in this study, but I went 12 back and looked at it, and one of the things that 13 - one of the reasons I never really paid much 14 attention to the Kleinfeld study was that the lung 15 cancers that he reported, which I think were very 16 few - it was 11. 17 He had a very small group of people that he 18 looked at that met this criteria, 15 years or more. 19 I think it was only 260. 20 Actually, in the '74 study they published it 21 was only a total of 260 talc workers who met that 22 15-year criteria. In '60 or '67 study I think it 23 was 230, so a little bit bigger. 24 Any rate, he noted that when he broke down 25 the lung cancers by years - you know, five-year

J. Kelse - cont'd direct - Mr. Eschleman 206 1 intervals – that the group of people who showed 2 the most lung cancers were the older group; and 3 based on the latency – he was talking about 4 exposures that occurred in the 30's and the 40's. 5 Again, that predated Vanderbilt, so these 6 would have been exposures linked to the lung 7 cancers that were really linked to exposures of 8 Vanderbilt. Another reason I felt that. 9 The other item was that we did have, as you 10 know, mortality studies done on our own workers 11 just specific to Vanderbilt, so I went back and I 12 looked at the most recent one that we had that was 13 published in 2002. It actually took everything up 14 through 1990, and I had a preliminary report by the 15 authors of that study. 16 That study was done at the University of 17 Alabama. Elizabeth Delzell was the author at the 18 time. When it was published it was published under 19 Honda, and in that preliminary report she produced 20 a table of the lung cancer deaths of Vanderbilt 21 workers who worked for any period of time; and 22 unlike the published Honda study, in this 23 preliminary report the table was a little more 24 expansive. It gave us more information about the 25 lung cancer cases.	J. Kelse - cont'd direct - Mr. Eschleman 208 1 International Talc and the time they worked at 2 Vanderbilt or just the time they worked for 3 Vanderbilt? 4 A Just the time they worked for Vanderbilt. 5 There were – I noticed there were two 6 deaths that did precede 1969; but the time at 7 Vanderbilt was three years, so they were included 8 in the Kleinfeld – if those individuals were 9 included in the Kleinfeld study, they would have 10 had to have worked at another talc mine for like – 11 let's say it was three years. They would have had 12 to work somewhere else for 12. 13 Q They could have worked for 14 International Talc, which would be the same mine; 15 would it not be? 16 A It could have. We don't know. 17 Q All right. So at least the criteria 18 used by Kleinfeld – at least one of the criteria 19 used by Kleinfeld could possibly include Vanderbilt 20 workers within the study? 21 A Yes, it could have included some. 22 So I tried to lay this out in a single sheet 23 to be clearer than me stumbling through the 24 explanation; but to the best of my ability this is, 25 you know, how I interpret, you know, Kleinfeld and
J. Kelse - cont'd direct - Mr. Eschleman 207 1 So I went back and I looked at the date of 2 death, you know; and on the table she also 3 indicates the number of years that they worked at 4 Vanderbilt, and what I was interested in doing was 5 to see how many of the lung cancer deaths at 6 Vanderbilt are people that had had more than 15 7 years of exposure at Vanderbilt, and there were 8 only a couple, and their dates of death were after 9 1969, so – which was the cutoff date for 10 Kleinfeld. 11 So, in other words, Kleinfeld's lung cancers 12 that he reported on could not have included any 13 Vanderbilt lung cancers for people who worked at 14 Vanderbilt for more than 15 years. 15 Q When you say – just so I'm clear, 16 when you say "Vanderbilt", are you talking about 17 just Vanderbilt as its name now, or are you talking 18 about also prior companies which Vanderbilt took 19 over, like International Talc? 20 A It would be – it would be everyone that 21 worked for Vanderbilt, which would include any 22 properties that we would have purchased, so, yes, 23 it would have included International. 24 Q And when you're talking about the 15 25 years, you're talking about the time they worked at	J. Kelse - cont'd direct - Mr. Eschleman 209 1 its relationship to Vanderbilt. 2 Q All right. So this one-page typed 3 sheet, single-spaced, that says "Workers Exposed 4 Only To R.T. Vanderbilt Talc Would Not Have Been 5 Among Excess Pulmonary Cancers Observed By 6 Kleinfeld For The Following Reasons", that title, 7 for lack of a better term, that appears on the top 8 of that document is your notes of – 9 A It's what I believe, yes. 10 Q All right. And when was this 11 prepared? 12 A Oh, about a week ago. 13 Q Okay. Thank you. 14 Then, finally, I show you a folder that's 15 been marked Kelse-26, which again is a folder which 16 contains numerous documents. The title of this 17 folder is "Insurance Monitoring Fiber". 18 Can you tell me why you produced this folder 19 today? 20 A Yes. At the last deposition I was asked if 21 the folder I produced of all of the asbestos 22 sampling that had been done at Vanderbilt over the 23 years was complete; and I believe I said yes, to 24 the best of my knowledge, it was complete. 25 There had been some other samples, some

J. Kelse - cont'd direct - Mr. Eschleman 210 1 fiber samples, and things of that nature, but they 2 weren't specific to asbestos; and, in fact, I had 3 done that myself when I had worked at Hartford, the 4 insurance company; and my recollection was that I 5 was asked, "Well, you know, could we get those 6 reports", or "Could they be produced"; and so I 7 produced them. 8 (The below-described file folder was 9 received and marked Kelse-27 for identification.) 10 Q I'm showing you what's been marked 11 Plaintiff's Exhibit Kelse-27. Again, it's a folder 12 containing numerous documents. The folder is 13 entitled "NYTAL MSDS History". 14 What does this folder contained? 15 A It contains some historical records of 16 material safety data sheets that I could find in my 17 files that I felt were pertinent to NYTAL 100 18 product grade. 19 Q How did you determine whether they 20 were pertinent to the NYTAL 100 product grade? 21 A Under the product identification it could 22 indicate - it should indicate what the product 23 grade is. 24 Q Looking through the material safety 25 data sheets, were there any differences in the data	J. Kelse - cont'd direct - Mr. Eschleman 212 1 A You notice that? 2 You see 100 and 200 because they all are 3 the same; and from a material safety data sheet 4 standpoint, where you're trying to reflect to a 5 person using your product what the composition of 6 that product is and what the risks are that are 7 associated with that product, a combined MSDS for 8 all these NYTAL's is sufficient. 9 A number of years ago, five or six years 10 ago, we separated these into individual ones for 11 individual grades, predominantly to reflect quartz 12 level; and the reason for that was that the 13 standard for quartz was dropped, and people were 14 paying more attention to quartz levels in products, 15 and they varied - the quartz level varied a little 16 bit in each of these products; and whereas we used 17 to say like bulk less than 1 percent, which was 18 true for all these grades, people wanted to know, 19 well, is it .5, is it .3, is it .6; and what would 20 happen is we would send these samples - these 21 products out and have them analyzed for quartz, and 22 we would have some specific quartz data for 23 specific grades, and they all were under 1 percent, 24 but there was a variation. 25 At one time no one cared about that. Then
J. Kelse - cont'd direct - Mr. Eschleman 211 1 sheets from, say, the most recent to the oldest? 2 A In my opinion, no. They reflect the same 3 composition. They reflect the same basic warnings. 4 Q Are the compositions identical? 5 A The mineral blend for all of our Vanderbilt 6 industrial-grade talcs at the mine milled in 7 upstate New York are essentially the same. 8 The difference between the names is 9 essentially particle size and slight variations in 10 mineral blend. There may be more talc in some, 11 there may be more amphibole in others; but they're 12 all - they all contain the same basic four or five 13 mineral components. 14 Q The mineral blend just in the NYTAL 15 100's, are they identical throughout? 16 A You mean, in other words, all NYTAL 100's 17 would have the same exact mineral blend? 18 Q Right. 19 My understanding is the material safety data 20 sheets which you provided us deal with NYTAL 100. 21 Correct? 22 A Yes. 23 At one time, if you look back, you'll see 24 they were composites. 25 Q Okay.	J. Kelse - cont'd direct - Mr. Eschleman 213 1 quartz became something that everyone was concerned 2 about; and people who bought our talc wanted to 3 know more specifically, by specific grade, exactly 4 how much - how much quartz was there, even though 5 it was less than 1 percent, so we broke them out 6 into individual grades and put the specific number 7 based on the last analysis that we had for quartz. 8 So if you bought my talc and you were 9 putting it in a paint and you knew that you had to 10 report quartz on your MSDS or your label at greater 11 than .1 percent by weight, you would have a number. 12 In my product - I might take your talc and 13 I might take some silica, I might take some other 14 material, whatever it is, and then I add up all 15 that crystalline silicate content, and I come up 16 with a percent, and that tells me whether or not I 17 have to warn for that on my MSDS; or purchasers of 18 our product or any other mineral filler want to 19 know how much quartz, you know, is in that product. 20 Q So the individual - 21 A So that's why we broke them out. 22 Q So the individual MSDS sheets, as 23 opposed to the composite sheets, came into use 24 because of the quartz contents. 25 A Yes.

J. Kelse - cont'd direct - Mr. Eschleman 214 1 Q Correct? 2 A Yes. 3 Q Is that the only reason why it came 4 into - 5 A Yeah, it is. 6 Q And you say that started approximately 7 five, six years ago? 8 A Five, six years ago. 9 Q Again, Mr. Kelse, for my 10 understanding, it is your opinion that Vanderbilt 11 talc does not contain asbestos; correct? 12 A Based on the data that we have seen, yes. 13 Q And it's your opinion that Vanderbilt 14 talc does not cause lung cancer? 15 A That's my opinion, yes. 16 Q And is it also your opinion that 17 Vanderbilt talc does not cause any non-malignant - 18 A Non-malignant respiratory disease? 19 Q Yes. 20 MS. GRIMBERGEN: Let him ask the questions. 21 MR. ESCHLEMAN: But that was the question. 22 Q That's also your opinion as well? 23 A Yeah. 24 Actually, the MSDS does a pretty good job of 25 describing the risk. If you really look through	J. Kelse - cont'd direct - Mr. Eschleman 216 1 you know, investigated. 2 Q So it is at least your belief that 3 prolonged exposure to Vanderbilt talc causes 4 different types of lung injury, correct? 5 A Excessive exposure, yes. 6 Q And you have denoted some of these 7 lung injuries as pleural thickening? 8 A It's an abnormality. I wouldn't call it an 9 injury. 10 Q All right. What is pneumoconiosis? 11 A It just means dusty lung. 12 Q All right. But you don't - but you 13 don't believe prolonged exposure or excessive 14 exposure would cause lung cancer? 15 A I don't believe so. 16 There are some studies, some animal studies, 17 that show that you can produce tumors from fairly 18 inert dusts, carbon black and several other 19 examples, if you overload - it's called particle 20 overloading, where you basically overwhelm the 21 lungs' ability to clear the dust or take care of 22 it; and so you can get tumors - they've gotten 23 tumors in animal experiments in just about anything 24 if you overload the lung. 25 MS. GRIMBERGEN: Just to clarify, are you
J. Kelse - cont'd direct - Mr. Eschleman 215 1 the MSDS, you'll see it does say that overexposure 2 to our talc or any talc or any mineral dust is 3 capable of producing, you know, adverse pulmonary 4 effects, pneumoconiosis. 5 If it's talc, it's talcosis. If it's talc, 6 it's talcosis. If it's asbestos, it's asbestosis. 7 It's - any mineral dust, if you breathe enough of 8 it, is not good. 9 Some of it is more virulent or more - you 10 know, takes less of it to produce an adverse affect 11 than other dust does. 12 Like crystalline silica is considered 13 something where you want to have less exposure to 14 it because lower exposure could cause an adverse 15 effect than some other dust; but any dust, if it's 16 durable and respirable, you breathe enough of it, 17 you will have, you know, an adverse affect to it; 18 and it's true of our mineral dust, and it's true of 19 any mineral dust. 20 So - and we indicate that on the material 21 safety data sheet. There's no question about it. 22 We also, I think, indicate on the material 23 safety data sheet that data has been, you know - 24 under the discussion of health effects is a pretty 25 long description that says that; that it's been,	J. Kelse - cont'd direct - Mr. Eschleman 217 1 talking about Vanderbilt talc, or are you talking 2 about any? 3 THE WITNESS: No. Any, any particles. 4 Q Are there any other folders or 5 documents that you have brought here today that we 6 haven't marked? 7 A No. 8 Q Okay. Now, going to your expert 9 report - you read the deposition testimony of 10 Mr. Hirsch; is that correct? 11 A Yes. 12 Q Okay. And you've also read the report 13 of a Gerald - a Dr. Gerald Abraham; is that 14 correct? 15 A The whole paper? 16 Q A report of a Dr. Gerald Abraham. 17 A Report? I'm sorry. 18 Q Do you have your - 19 A State it again? 20 Q Do you have your report in front of 21 you? 22 A My report? 23 Q Yes. 24 MS. GRIMBERGEN: May I? 25 MR. ESCHLEMAN: Yes.

J. Kelse - cont'd direct - Mr. Eschleman 218 1 MS. GRIMBERGEN: It's the report that 2 Dr. Abraham rendered in this case with regard to 3 Mr. Hirsch. 4 A Oh, yes. Yes, I did read it. It's been a 5 while. 6 Q That's okay. 7 Now, in Mr. Hirsch's deposition he 8 identified that he used NYTAL 100; is that correct? 9 Is that your understanding? 10 A That's my understanding. 11 Q All right. And he indicated that 12 NYTAL 100 came in 50-pound brown bags with black 13 lettering. 14 Is that your understanding? 15 A Yes. 16 Q All right. Is that how NYTAL 100 is 17 packaged? 18 A Yes. 19 Q So that's an accurate description of 20 how that product's packaged? 21 A Yes. 22 Q How long has it been packaged that 23 way? 24 A I believe from the start. 25 Q Now, are you familiar with	J. Kelse - cont'd direct - Mr. Eschleman 220 1 glazes in his pottery business. 2 Are you familiar with that testimony? 3 A Yes. 4 Q Is it your understanding that that's 5 a proper use of Vanderbilt talc? 6 A Yes, it is. 7 Q At the time Mr. Hirsch was using 8 Vanderbilt talc, the material safety data sheet 9 that was in use at that time would have been the 10 composite sheet; is that correct? 11 A Yes. 12 Q All right. What type of respiratory 13 protection do Vanderbilt Talc workers wear, if you 14 know? 15 MS. GRIMBERGEN: Objection. That goes 16 beyond the scope of the Deposition Notice. 17 Q Well, in your report you indicate - 18 I know you don't have your report in front of you. 19 MS. GRIMBERGEN: It's in there somewhere. 20 THE WITNESS: I can probably get it. I have 21 it in here. 22 (At this point a short recess was taken.) 23 Q Looking at Page 2 of your report, the 24 first full paragraph, second sentence, it says, 25 "The mixing process was said to be very dusty and
J. Kelse - cont'd direct - Mr. Eschleman 219 1 Dr. Abraham? 2 A Yes. 3 Q How are you familiar with him? 4 A Dr. Abraham has participated in a number of 5 - participated in the OSHA rule-making, has 6 submitted comments to other agencies, like the 7 Consumer Products Safety Commission, on play sand 8 and issues of that sort that have to do with 9 amphibole cleavage fragments; and he has made his 10 opinion known in terms of what he believes the 11 composition of Vanderbilt talc is. 12 Q Now, in his deposition Mr. Hirsch 13 indicated that he bought the Vanderbilt talc from 14 Hamill & Gillespie. 15 Do you recall that testimony? 16 A Yes. 17 Q Okay. Do you know whether Hamill & 18 Gillespie distributed NYTAL 100? 19 A I don't know. 20 Q Have you reviewed any documents 21 indicating whether they did, in fact, distribute 22 NYTAL 100? 23 A No, I haven't. 24 Q Mr. Hirsch indicated in his deposition 25 testimony that he used that talc for specific	J. Kelse - cont'd direct - Mr. Eschleman 221 1 he did not wear respiratory protection", referring 2 to Mr. Hirsch." 3 Correct? 4 A That's my recollection of his documents. 5 Q Did you find it significant that he 6 didn't wear respiratory protection? 7 A It depends on the exposure level. If it was 8 a very high dust exposure level - I would 9 recommend that anybody wear respiratory protection 10 in any dusty environment; but what's high and 11 what's not is variable, depending upon people's 12 opinions. 13 That's why we take air samples, to quantify 14 it. 15 Q In the second full paragraph of that 16 page, about three-quarters of the way down, you 17 indicate that, "I believe the health experience of 18 Vanderbilt Talc workers, past and present, directly 19 bears on the reasonableness of the causal 20 association claimed in this case." 21 Do you see that? 22 That's a correct reading of that sentence, 23 correct? 24 A That's right. 25 Q And the health experience of the

J. Kelse - cont'd direct - Mr. Eschleman 222 1 Vanderbilt Talc workers is impacted by whether or 2 not they wear protective clothing, correct? 3 A You mean respirators? 4 Q Correct? 5 A Yes, to some extent. 6 Q And do Vanderbilt workers wear 7 respirators? 8 A They have religiously since 1975. 9 MS. GRIMBERGEN: I was going to say, clarify 10 what time period you are talking about. 11 THE WITNESS: Since 1975. 12 MS. GRIMBERGEN: Are you talking now, or are 13 you talking - 14 Q Since 1975 Vanderbilt Talc workers 15 have worn respiratory protection? 16 A It's improved over time. I would say - 17 around 1975 would have been the year that I would 18 say most did and up through the years more and more 19 until, I would say, the last 10 years I can say 20 with some confidence that it's used properly. 21 Q All right. And 1975 was approximately 22 10 years before you began working at Vanderbilt, 23 correct? 24 A Yes. 25 Q All right. How did you determine that	J. Kelse - cont'd direct - Mr. Eschleman 224 1 determine that these workers began wearing 2 respiratory protection in 1975, since you joined 3 the company in 1985. 4 A Well, you saw from the air monitoring data 5 from Hartford there were samples that I took in, 6 you know, 1983, '82; and I know in the early 80's, 7 when I visited the facilities - I would see talc 8 workers. 9 Some would wear respirators and some would 10 not, so I knew that there was some use; and I had 11 known from asking questions that respiratory 12 protection was something that had been encouraged, 13 you know, in - from about the mid 70's on. 14 I think it probably was encouraged even 15 before then, but I don't know what its use was. 16 I can't tell you specifically how religious it was, 17 but I do know that in the early 80's I could see 18 some use. 19 Q Okay. So the early 80's you visited 20 the Vanderbilt talc mines while employed by 21 Hartford, correct? 22 A Yes. 23 Q All right. And during that time you 24 personally saw workers wearing some sort of 25 respiratory protection, correct?
J. Kelse - cont'd direct - Mr. Eschleman 223 1 respiratory protection was being worn 10 years 2 before you joined the company? 3 MS. GRIMBERGEN: This doesn't address his 4 expert role in this case. 5 MR. ESCHLEMAN: Sure it does. 6 I mean, his conclusion is that the health 7 experience of Vanderbilt Talc workers directly 8 bears on the reasonableness of these claims. 9 The - 10 MS. GRIMBERGEN: You're asking how he knows 11 that, and that's going a little into a different 12 area of his capability in this particular 13 deposition. 14 MR. ESCHLEMAN: Well, I'm exploring the 15 facts upon which his premise is based. I have to 16 explore the facts. 17 MS. GRIMBERGEN: But you're on the border, 18 so... 19 MR. ESCHLEMAN: I just can't be left with 20 a conclusion without exploring the facts. 21 MS. GRIMBERGEN: All right. Just note my 22 objection. 23 MR. ESCHLEMAN: I know the objection. I 24 appreciate it. 25 Q I guess the question was how did you	J. Kelse - cont'd direct - Mr. Eschleman 225 1 A Some. 2 Q And what type of respiratory 3 protection did you see them wearing? 4 A At that time most were cartridge filters. 5 Q And that was in the early 80's, 6 cartridge filters? 7 A Predominantly, yes. 8 Q Okay. 9 A I saw some with what's referred to as 10 surgical masks, just dust masks. 11 Q How about in the mid 80's? Was it the 12 same cartridge filters and surgical masks? 13 A Around the mid 80's, after I joined the 14 company - I think it was '86 or '87 - they moved 15 to what's known as Racel Air Supply airstream 16 respirators. Those are positive pressure 17 respirators. 18 If you've ever seen them, they're on a 19 hardhat - 20 Q Okay. 21 A - and then there's a plastic shield that 22 comes down over your face. 23 The air is pulled in the back, it goes 24 through a filter, and then blown across your face 25 and out.

J. Kelse - cont'd direct - Mr. Eschleman 226 1 Q And these - I'm sorry. 2 You said these type of respirators came into 3 vogue - in the mid 80's did you say? 4 A Yes. I believe that's when they started 5 purchasing them. 6 Q And obviously that was a more advanced 7 type of respiratory protection, correct, from what 8 you had witnessed previously? 9 A Yes. You don't have to worry about fit 10 testing. 11 Earlier respiratory protectors, you had to 12 - you know, if they didn't fit properly they 13 weren't of much use. 14 Q Why was the change made to the more 15 advanced respirators? 16 MS. GRIMBERGEN: To the extent that he knows 17 this. This is not part of his expert knowledge 18 because he was not - you know, you can ask him if 19 he was involved in the process; and if his answer 20 is yes, you know - 21 MR. ESCHLEMAN: If he doesn't know why the 22 change is made, he doesn't know. 23 Q Do you know why? 24 A Yeah. They're better respirators. 25 Q Okay. And are those the same type of	J. Kelse - cont'd direct - Mr. Eschleman 228 1 federal regulatory agency considered Vanderbilt 2 talc to be an asbestos-containing material." 3 Is that a fair reading of that sentence? 4 A That's correct. 5 Q Okay. Which specific federal 6 regulatory agencies are you referring to, though, 7 that have studied Vanderbilt talc? 8 A Well, the regulatory agency that has direct 9 responsibility for mines, including ours, is Mine 10 Safety & Health Administration, MSHA. They do not 11 regulate any of the minerals in Vanderbilt talc 12 asbestos (sic). 13 OSHA does not. The EPA does not. 14 Q Are those the agencies to which you 15 refer? 16 A I think they're the only three - 17 Q Okay. 18 A - that are regulatory agencies. 19 Q So MSHA - is that right? 20 A Yeah, Mine Safety & Health Administration. 21 Q - OSHA and the EPA? 22 A Yes. 23 Q Are there other federal or state 24 non-regulatory agencies that consider Vanderbilt 25 talc to be asbestos-containing material?
J. Kelse - cont'd direct - Mr. Eschleman 227 1 respirators that are being used today? 2 A Yes. 3 Q Were you involved in the decision to 4 go to the more advanced respirators? 5 A No. 6 Q You weren't asked for your opinion 7 regarding the - 8 A No. They were already moving in that 9 direction when I joined the company, and I - I was 10 happy about that. 11 Q Why were you happy about that? 12 A They're better respirators. 13 Q Did you feel better respiratory 14 protection was needed at that time? 15 A I think in any dusty environment, you know, 16 the better the respirator, you know, the more 17 desirable it is. 18 These types of respirators, because they're 19 positive pressure, eliminates questions about fit, 20 which is a big issue. 21 Q And both miners and millers wear the 22 respirators? 23 A Yes. 24 Q Now, going down to the last paragraph 25 of Page 2 of your report, you indicate that, "No	J. Kelse - cont'd direct - Mr. Eschleman 229 1 A Agencies? 2 Q Or bodies. 3 MS. GRIMBERGEN: Do you understand the 4 question? 5 THE WITNESS: Yes. I'm not sure how to 6 answer it. 7 A There's debate with some, NIOSH in 8 particular; but I don't know if they would define 9 the material asbestos. 10 Q Has NIOSH, to your knowledge, ever 11 defined the material asbestos? 12 A They did, yes. 13 Q And that was in 1980? 14 A Yes. 15 Q Has NIOSH, to your knowledge, 16 published anything since 1980 indicating that 17 Vanderbilt talc is not asbestos, does not contain 18 asbestos? 19 A No, they haven't. 20 Q So it's your understanding that NIOSH 21 still considers Vanderbilt talc to contain 22 asbestos? 23 A I don't know. 24 Q At least you're aware of no opinion 25 from NIOSH that would indicate that they no longer

J. Kelse - cont'd direct - Mr. Eschleman 230 1 feel that Vanderbilt talc contains asbestos? 2 A I believe what NIOSH's position is today is 3 that they believe that amphibole cleavage fragments 4 that meet a certain dimension should be regulated 5 in the same way as asbestos, as a generic policy. 6 To the extent that that would apply to 7 Vanderbilt, it would apply to Vanderbilt, or 8 aggregates or any other, you know, mineral dust 9 that that would apply to. 10 I believe that's not NIOSH's current 11 position. 12 Q And how do you arrive at that belief? 13 A They testified to that position to OSHA. 14 Q And when was that? 15 A In 1990. 16 Q You indicate in your report that many 17 highly-regarded mineral scientists further confirm 18 this finding, that Vanderbilt talc does not contain 19 asbestos; is that correct? 20 A That's right. 21 Q Do you also recognize that many 22 highly-regarded mineral scientists believe that 23 Vanderbilt talc does contain asbestos? 24 A I'm not sure that that's true. 25 Q So you're not aware that other	J. Kelse - cont'd direct - Mr. Eschleman 232 1 A Yes, of course. 2 Q Okay. Now, you indicate that MSHA 3 periodically tests Vanderbilt talc for asbestos 4 content in the workplace air and occasionally 5 obtains bulk samples for analysis. 6 Is that a correct reading of that sentence? 7 A Yes. 8 Q All right. How often does MSHA 9 periodically test Vanderbilt talc for asbestos 10 content in the workplace air? 11 A Not that often. I think the most recent was 12 actually in 2000, and then prior to that it was 13 actually quite a while; seven, eight, ten years. 14 There was a period of time, I believe, based 15 on the data sheets that I have in the analytical 16 folder, in the early 80's, some in the late 70's, 17 I believe. They were a little more active at that 18 time. 19 Q Who determines when MSHA tests the 20 workplace air at Vanderbilt? 21 A Well, the typical approach would be - they 22 continue to test the dust - I do this every year 23 myself - but they will not always test for 24 asbestos, just as I would not always test for 25 crystalline silica.
J. Kelse - cont'd direct - Mr. Eschleman 231 1 scientists believe that Vanderbilt talc contains 2 asbestos? 3 A I believe there are some analysts that have 4 felt that there was asbestos in it. 5 Q Just so I'm clear, so you are aware 6 that other scientists - that some scientists do 7 believe that Vanderbilt talc contains asbestos? 8 A Well, it's a complex mineral mix. All of 9 the information I've provided you explains why 10 people have confused this for years; but in my 11 statement I say that the mineral scientists that, 12 I think, studied this material more, more 13 extensively, than anyone else, and probably have 14 the best credentials and background, have reported 15 numerous times in the documents I provided to you 16 that they feel it does not contain asbestos, and 17 they have gone to great lengths to explain why and 18 why others have said otherwise; and that's what I 19 know. 20 Q All right. I understand that. 21 I guess just - what I'm trying to establish 22 is just whether you're aware - not whether you 23 agree, but whether you are aware and whether you 24 will concede that other scientists believe that 25 Vanderbilt talc contains asbestos.	J. Kelse - cont'd direct - Mr. Eschleman 233 1 If I don't pick up any on my air samples and 2 I do it over a period of time, what's the point of 3 continuing to take samples for crystalline silica 4 if I know it's not there? 5 So what I will do is continue to take 6 samples for talc and total dust and things of that 7 nature that - I want to see whether it's higher or 8 lower and control for that, but I'm not going to 9 take samples for substances that I already see 10 aren't there. 11 So that would dictate to a large measure how 12 often you take samples for materials. 13 Q I guess my question's more - does 14 MSHA determine whether they test for asbestos 15 content in the workplace air, or does Vanderbilt 16 determine whether MSHA - strike that. 17 Does Vanderbilt request that MSHA come to 18 their mines and test the workplace air for 19 asbestos? 20 A No. They do it themselves. 21 Q Okay. And, to your recollection, the 22 last time they did it themselves was in 2000, you 23 believe? 24 A I believe so. 25 Q And before that you believe the last

J. Kelse - cont'd direct - Mr. Eschleman 234 1 time was between seven to ten years ago, correct? 2 A I believe so. 3 Q So it's very infrequently that this 4 type of testing is done, correct? 5 A Yes. 6 Q Again, you indicate that MSHA 7 occasionally obtains bulk samples for analysis. 8 Could you define "occasionally"? 9 A Well, they did in the last effort in 2000. 10 I know that. 11 Q They did or they didn't? 12 I'm sorry. 13 A They did. I think there were five bulk 14 samples that they took. 15 Q Prior to that, do you know when they 16 took bulk samples? 17 A No, not specifically. 18 I believe they have done that, but I can't 19 say for certain what date or time. 20 Q Other than the 2000 bulk samples that 21 MSHA took, can you recall approximately how many 22 times during your course of employment with 23 Vanderbilt that MSHA took bulk samples? 24 A No, not specifically. 25 Q So when you use the word	J. Kelse - cont'd direct - Mr. Eschleman 236 1 that correct? 2 A Yes, about two and a half times. 3 Q The earliest studies were first what? 4 A Well, it certainly would include - I would 5 view this first NIOSH technical report that was 6 issued in 1980 as the earliest study specific to 7 Vanderbilt. 8 Q Is there any other studies that you 9 include in that earliest studies category? 10 A No. Specific to Vanderbilt, I would say it 11 would be the NIOSH study. 12 Q All right. And you indicate that the 13 moderately elevated risk that the NIOSH study found 14 was two and a half times; is that correct? 15 A I believe that that's what it was, something 16 in that range. 17 Q And you consider that a moderately 18 elevated risk? 19 A I would. 20 I've heard others refer to it as moderate. 21 I've others say that they felt it was probably - 22 they consider it a little more significant than 23 moderate. 24 It depends on what you consider, you know, 25 significant and moderate.
J. Kelse - cont'd direct - Mr. Eschleman 235 1 "occasionally", you're just referring to the 2000 2 sample? 3 A Specifically, yeah. 4 I had heard that they had in the past, but 5 I couldn't - 6 Q You couldn't verify whether they had 7 in the past? 8 A Yeah. I couldn't put my finger on it. 9 I would have to go back. It might be in some of 10 these reports. 11 Q Do you recall who you heard from 12 regarding the occasional obtaining of the bulk 13 samples? 14 A No, not offhand. 15 Q You indicate on Page 3 of your report, 16 the third - the second full paragraph, I should 17 say, that you looked at human cancer studies of 18 Vanderbilt Talc workers; is that correct? 19 A Yes. 20 Q Okay. And looking at these cancer 21 studies helps form your opinion regarding the 22 nature of Mr. Hirsch's claim; is that correct? 23 A Yes. 24 Q You indicate that the earliest studies 25 found a moderately elevated risk of lung cancer; is	J. Kelse - cont'd direct - Mr. Eschleman 237 1 Q Okay. 2 A I think for a study population of that size, 3 small one, that that would be, I would say, you 4 know, moderate. 5 Significant, you know, would be significant; 6 but I don't think it would be - if it was five 7 times or seven times or something like that, I 8 would call that significant. 9 Q So five times you would consider 10 significant risk in a population study such as - 11 A Of that size, yes. 12 You probably could find epidemiologists that 13 would classify it, you know, differently. 14 Q Now, was there an elevated risk for 15 non-malignant respiratory problems? 16 A Yes. 17 Q What was the elevated risk for those 18 types of problems? 19 A Well, that would be, you know, the 20 pneumoconiosis that we talked about before. 21 Again, overexposure to any mineral dust can 22 produce that; and that's certainly true of excess 23 exposure to Vanderbilt talc or any talc or... 24 Q What was the elevated risk for that? 25 Do you recall?

J. Kelse - cont'd direct - Mr. Eschleman 238 1 A Well, in mortality studies it would be 2 deaths that might be associated with pneumoconiosis 3 or talcosis, which is sometimes a little hard to 4 separate these out; but if you had - pneumo- 5 coniosis is a dusty lung, so it's a fibrosis of the 6 lung. 7 So as your lung develops fibrotic lesions 8 it basically decreases the elasticity of the lung 9 and decreases the amount of oxygen that can get 10 into your blood. So the more pneumoconiosis that 11 you have, the more strain it puts on your heart, 12 your cardiovascular system. 13 So if you have someone who has talcosis or 14 asbestosis or calcosis or any of these 15 pneumoconioses from overexposure to dust, you know, 16 you can have people that that will contribute to 17 their death through heart failure and - you know, 18 predominantly heart failure. 19 And, unfortunately, it's not always a clear- 20 cut issue as to what was the main contributor to 21 that mortality; but certainly if there's an 22 indication that a person had a dust disease - in 23 other words, if you saw interstitial fibrosis in 24 their x-ray and you knew that their pulmonary 25 function test tended to be - tended to be more	J. Kelse - cont'd direct - Mr. Eschleman 240 1 Q Okay. And that study found that 2 Vanderbilt talc contained asbestos, correct? 3 A That's what it reported. 4 Q But that's what their conclusion was, 5 correct? 6 A That's what they reported, yes. 7 Q And they found that the talc itself 8 caused the elevated risk of cancer in the 9 employees, correct? 10 A I think they referred to it as it appeared 11 to be the principal suspect or etiologic agent for 12 the excess lung cancers observed. 13 I think that's how they put it, appeared to 14 be. 15 Q In 1988 NIOSH issued a Health Hazard 16 Evaluation regarding the Vanderbilt talc mine; is 17 that correct? 18 A Yeah. They called it a technical report, 19 HHE, yeah. I think that's how that's referred to. 20 Q HHE? 21 A I believe so, yeah, Health Hazard 22 Evaluation. 23 Q Have you read that HHE from 1980? 24 A Yes. 25 Q All right. And you've read the NIOSH
J. Kelse - cont'd direct - Mr. Eschleman 239 1 restrictive versus obstructive - obstructive is 2 the type where your airway is - like emphysema, 3 you know, typically associated with smoking - 4 versus restrictive, which is typically associated 5 with you can't expand your lungs to the degree they 6 should be - they're not as flexible as they should 7 be because of the scarring and the fibrosis, and so 8 the air exchange is restrictive. 9 So when you take these pulmonary function 10 tests you can get an indication as to what the 11 adverse respiratory effect is. Does it tend to be 12 more obstructive or more restrictive? If it tends 13 to be a restrictive, that's an indicator of a dust 14 disease. If you then link that to radiographic 15 evidence on an x-ray of interstitial fibrosis and 16 then with an exposure to dust, mineral dust, 17 whatever it may be, those three things together 18 would suggest to you that that individual, you 19 know, had a dust-linked, non-malignant respiratory 20 disease that may have contributed to his death. 21 Q Okay. Now, the 1980 NIOSH technical 22 report, that dealt exclusively with Vanderbilt Talc 23 workers; correct? 24 A Anyone that had ever worked at Vanderbilt 25 for any period of time, yes.	J. Kelse - cont'd direct - Mr. Eschleman 241 1 technical report as well from 1980? 2 A Yeah, yes. 3 Q Okay. And have you used those reports 4 in forming your opinion in this case? 5 A Yes. 6 Q All right. And how have those reports 7 and NIOSH's investigation in 1980 in total affected 8 your opinion in this case? 9 A Very significantly. 10 Q How so? 11 A Well, I learned a lot from this entire 12 episode, this entire investigation of NIOSH. I 13 learned that it takes more than just gauging the 14 amount of lung cancer deaths and then saying 15 because we have excess lung cancer that's obviously 16 caused by this exposure, I learned that you have to 17 be more discriminating than that, draw causal 18 connections. 19 I learned that if you're going to call 20 substances things they're not it impacts the causal 21 association. If you call crushed-up cleavage 22 fragments asbestos when they're not and then you 23 have excess lung cancer, you're more likely to say 24 A caused B than if you characterize the exposure 25 properly in the first place.

J. Kelse - cont'd direct - Mr. Eschleman 242 1 These are things I learned, rather important 2 things. 3 One of the issues with the NIOSH technical 4 report was that it did not adequately address that 5 causal connection. No one argued that there was an 6 excess lung cancer. The issue was was it caused by 7 this dust and did they show that it was caused by 8 this dust, yes or no. 9 Vanderbilt felt they didn't. A lot of other 10 researchers felt they didn't. In fact, some of 11 them within NIOSH itself; and that's why subsequent 12 studies were done to get at that question, did that 13 dust exposure, whatever it was, cause that excess 14 lung cancer, yes or no. 15 Q So in forming your opinion in this 16 case you discounted the findings of the 1980 NIOSH 17 study, correct? 18 A No. We built upon them. We used it as a 19 beginning. This is what it said. These are the 20 questions we had. Now we needed to address those 21 questions. 22 MS. GRIMBERGEN: He was talking about 23 forming your opinion in this report, whether or not 24 you discounted that in formulating your opinion. 25 Is that a fair -	J. Kelse - cont'd direct - Mr. Eschleman 244 1 Q All right. You indicate in your 2 report that a series of additional studies were 3 undertaken to address certain lapses, using your 4 terminology, in the 1980 NIOSH report; is that 5 correct? 6 A Yes. 7 Q What additional studies are you 8 referring to? 9 A Should we pull out the folder? 10 Q Have they been marked already? 11 A Yes. 12 Q Okay. Why don't you just pull them 13 out. 14 MS. GRIMBERGEN: Off the record. 15 (Discussion held off the record.) 16 Q My question was - you identified in 17 your expert report a series of additional studies 18 which were undertaken to address certain lapses, as 19 you termed them, in the 1980 NIOSH technical 20 report; is that correct? 21 A That's correct. 22 Q And you relied on these additional 23 studies in forming your conclusion in this case? 24 A Yes, I did. 25 Q What studies did you rely upon in
J. Kelse - cont'd direct - Mr. Eschleman 243 1 MR. ESCHLEMAN: Yes. 2 A I guess the problem I have is that I don't 3 know that I discount things, like, "Oh, that's 4 nothing." 5 There's data in here that's useful, and I 6 wouldn't discount everything that this did. 7 There's dust exposure information, overall 8 dust exposure information, that's perfectly fine, 9 valid. The mortality breakdown is perfectly fine. 10 In fact, the database that this was built was 11 continued on by other researchers. 12 So this is - it's not that I would 13 discount. It's that I - I wouldn't agree with the 14 suggested causal association that was made in this 15 paper. 16 Q So you have no dispute then with the 17 study itself as it was conducted, just with its 18 conclusion? 19 A I have a dispute with the characterization 20 of the exposure as being non-asbestos exposure when 21 they characterize it as the opposite, as being 22 asbestos exposure; and I have a problem with their 23 suggesting that that dust exposure was responsible 24 for the excess lung cancers that they observed. 25 That's what I have a problem with.	J. Kelse - cont'd direct - Mr. Eschleman 245 1 forming your opinion in this report? 2 A Okay. Begin with the two animals studies 3 that we discussed earlier, Stanton - 4 Q Stanton and Smith? 5 A Stanton and Smith. 6 Q And just for Stanton and Smith, did 7 Vanderbilt have any participation in those studies? 8 A For Smith, yes. For Stanton, no. 9 Q Okay. What type of participation in 10 the Smith study? 11 A We contracted the study with Smith to test 12 the tremolite concentration. 13 Q So you paid him to conduct the study? 14 A Yes. 15 Q Other than that, other than paying 16 him, did you have any participation in that study? 17 A No. He saw from the file - he got the 18 product sample through a distributor, and he got 19 the tremolite concentrate from us. 20 Q Okay. So you also provided some of 21 the samples, correct? 22 A The pure tremolite, yes. 23 Q And you indicate the Stanton study - 24 you guys had no - saying "you guys" meaning 25 Vanderbilt -

J. Kelse - cont'd direct - Mr. Eschleman 246 1 A Yes. 2 Q - had no participation in that study? 3 A No. 4 Q Okay. 5 A There's also a cell study - do you want to 6 read the whole thing into the - 7 Q Not really. 8 A I don't blame you. 9 This study was done by Ann Wylie and Brooke 10 Mossman, University of Vermont. 11 Q All right. 12 A That was basically on-site cytotoxic and 13 proliferative effects of fibrous talc, concentrated 14 talc fiber from our - 15 Q What sort of participation did 16 Vanderbilt have in that study? 17 A Provided the fiber concentrate, talc fiber 18 concentrate. 19 Q So provided samples for the study? 20 A Yes. Not all of them, just those they 21 tested against asbestos; and they had standard, you 22 know, they have in their lab. 23 Q How about funding? 24 A Yes. We - we did fund some of this. 25 Q How do you know that? Is that just	J. Kelse - cont'd direct - Mr. Eschleman 248 1 A Well, this is mortality studies. 2 Q I guess you didn't then. 3 A I was going to say. 4 Then there were two studies, one - both of 5 them by Steve Lamm, L-a-m-m. One was published in 6 1988, and another - 7 Q What sort of participation did 8 Vanderbilt have in that study by Mr. Lamm? 9 MS. GRIMBERGEN: Objection to form. 10 A Well, this was another study we asked to 11 have done, so we contracted with Dr. Lamm, 12 mortality study. 13 There was another study by Lamm - same time 14 period, 1988, I believe - that was a comparison of 15 mortality patterns between Vanderbilt Talc workers 16 and Vermont Talc workers. 17 Q Again, Vanderbilt funded that study? 18 MS. GRIMBERGEN: Objection to form because 19 you're going on an assumption. 20 A Yeah, I believe they did. 21 Q All right. 22 A There was a nested case control study done 23 by John Gamble. Actually, he was with NIOSH at the 24 time. That was not funded by Vanderbilt. 1993 25 published.
J. Kelse - cont'd direct - Mr. Eschleman 247 1 from your own recollection, or is there something 2 within the document itself which makes you 3 recollect that? 4 A No. It's from my own recollection. I know. 5 Q Okay. 6 A It might say at the bottom. I remember it 7 was a joint effort supported in part, yeah. 8 I know we didn't fund the whole thing, but 9 we did fund part of it. 10 Q Okay. 11 A Okay. So that's the animal and the - the 12 two animals and the cell study. 13 Then there were a series of mortality 14 studies after the 1980 NIOSH study. The first 15 of those was a study by Stille and Tabershaw, 16 T-a-b-e-r-s-h-a-w. It was published in 1982. 17 Q And what sort of involvement did 18 Vanderbilt have with that study? 19 A We - 20 MS. GRIMBERGEN: Objection to the form. 21 Q You can still answer if you'd like. 22 A Oh. We - we asked for the study to be 23 done, so we funded it. 24 Q Did you provide the samples for that 25 study as well?	J. Kelse - cont'd direct - Mr. Eschleman 249 1 Then there was the final one that was 2 published in 2002, Honda, H-o-n-d-a, Elizabeth 3 Delzell, D-e-l-z-e-l-l, that was Vanderbilt-funded. 4 Q What type of study was that? 5 A Well, it was the latest updated mortality 6 study. 7 Q Okay. Are those all the studies you 8 relied upon in forming your opinions in this case? 9 A Yes, specific to Vanderbilt. 10 Q So other than the Stanton study and 11 the study done by Mr. Gamble in 1993, the remaining 12 of those studies which you relied upon specific to 13 Vanderbilt were funded by Vanderbilt itself. 14 A Yes. 15 Q Correct? 16 A Yes. 17 MR. ESCHLEMAN: Off the record. 18 (Discussion held off the record.) 19 Q Now, you indicated that you relied - 20 this is one of the studies you relied upon in 21 forming your opinion; correct? 22 Referring to the Gamble study. 23 A Yes. 24 Q Now, you indicated that the Gamble 25 study was published while Mr. Gamble was at NIOSH;

J. Kelse - cont'd direct - Mr. Eschleman 250 1 is that correct? 2 A I assume that. It's listed. 3 Q Was it published - if you could keep 4 that out just for a second. 5 A Sure. 6 Q Was that study published by NIOSH? 7 A I don't know. 8 Q Do you know whether it was published 9 by Mr. Gamble in his individual capacity, as 10 opposed to a representative of NIOSH? 11 A Probably - I shouldn't speculate on it, so 12 I'll just say I don't know. 13 Q Okay. What involvement did Vanderbilt 14 have with the publishing of the John Gamble study? 15 MS. GRIMBERGEN: If you know. 16 Q If you know. 17 A Of the publishing of it? 18 Q Yes. 19 A None. 20 Q They didn't provide any of the 21 information which forms the basis of the study? 22 A Well, Dr. Gamble was the - an 23 epidemiologist that was assigned to do the updated 24 mortality study of Vanderbilt Talc miners and 25 millers; and he worked on that, I believe, for a	J. Kelse - cont'd direct - Mr. Eschleman 252 1 available from earlier NIOSH data, dust data, that 2 was available from the - from MSHA when they had 3 taken samples, dust data that was available from 4 the insurance company, like my own, dust data that 5 was done by the company, me, later on. 6 All of that was assembled in, you know, one 7 big database. All the information on where people 8 worked and what years and which departments was all 9 assembled in one big database. 10 That's just what you go through when you do 11 these studies. 12 Q All right. So Vanderbilt had contact 13 with Mr. Gamble while he was employed by NIOSH, 14 correct? 15 A Of course, sure. 16 Q And the contact related to the 17 updating of the NIOSH mortality study in 1980, 18 correct? 19 A Yes. The company asked that it be updated. 20 Q When, if you know, did the company ask 21 that the 1980 NIOSH report be updated? 22 A I believe the company began asking NIOSH to 23 go back and look at some of these issues and 24 update, you know, the issues that were raised. 25 When I joined the company in 1985 there was
J. Kelse - cont'd direct - Mr. Eschleman 251 1 couple of years, collected the underlying, you 2 know, mortality data, was trying to do what's known 3 as an exposure assessment. He was in the process 4 of trying to do that. 5 So he had worked with Vanderbilt for a 6 couple years, as any researcher would have to 7 to get into the personnel records and the work 8 histories and all these other documents that you 9 need to do these types of studies. 10 So to that extent, of course, he was 11 involved, you know, with the company, as any 12 researcher would be; and I believe that, you know, 13 he used that data that he had collected during that 14 couple-year process to produce that study. 15 Q Well, was the data provided by 16 Vanderbilt, if you know? 17 A The - like the work exposure data, you 18 know, where people worked and what periods of time, 19 that data, the stuff from the personnel records 20 that, you know, you have to do, yes. That's where 21 it would come from. 22 Q Any other type of data provided by 23 Vanderbilt, to your knowledge? 24 A There was - there was exposure data, you 25 know, overall dust exposure data, that was	J. Kelse - cont'd direct - Mr. Eschleman 253 1 - you know, they were asking then. 2 Q Why were they asking for the update? 3 A Because they felt that the original 4 technical report was not complete. 5 You know, it didn't - it didn't address 6 certain things that would have - that would have 7 established or not established the causal 8 association that was being suggested in the 9 original report; and we needed those things 10 addressed. 11 Q And those things which Vanderbilt 12 wanted addressed by the future reports are the role 13 of smoking - correct? 14 A Among others, yes. 15 (Discussion held off the record.) 16 Q The shortcomings which Vanderbilt saw 17 in the 1980 report when you joined the company in 18 1985 were the fact that the earlier report did not 19 consider the role of smoking, correct? 20 A Among other things. 21 Q Another shortcoming that Vanderbilt 22 saw in the early 1980's was that - a shortcoming 23 was that it involved a small population of workers, 24 correct? 25 A Yes.

254 1 (Discussion held off the record.) 2 3 (Witness excused.) 4 (At this point the luncheon recess was 5 taken.) 6 7 8 AFTERNOON SESSION 9 10 THOMAS W. KELSE, having been 11 previously sworn, resumed the stand and 12 testified further as follows: 13 14 CONTINUED DIRECT EXAMINATION BY MR. ESCHLEMAN: 15 Q Another shortcoming of the report 16 identified by Vanderbilt was the failure to address 17 worker histories; is that correct? 18 A Yes. 19 Q And, finally, Vanderbilt felt that the 20 report did not adequately address the causal 21 connection inconsistencies within the report 22 itself; is that correct? 23 A Yeah, a couple things specifically relative 24 to that; but yes. 25 Q Okay. And those are -- that was the	J. Kelse - cont'd direct - Mr. Eschleman 256 1 A Yes. 2 Q All right. And that updated study was 3 done by Mr. Gamble; is that correct? 4 A He was the lead, yeah, epidemiologist that 5 was assigned to that update study eventually. 6 Q Do you consider this nested control 7 study by Mr. Gamble to be the updated study? 8 A He used the data that he collected for the 9 data that he used for that report, but NIOSH 10 published an update by -- I think it was Brown, and 11 that was NIOSH's official update. 12 Q All right. So the official update to 13 the 1980 report is not the nested control study, 14 correct? 15 A No. It's a separate. The update was just a 16 straightforward mortality, you know, SMR study. 17 Q And I believe NIOSH came out with an 18 updated -- is it HHE in 1990 regarding the 1980 19 study? 20 A Yes. 21 Q All right. But, nonetheless, you 22 indicate that the information which you provided 23 Mr. Gamble during his time with NIOSH in this time 24 frame that we're talking about formed the nested 25 control study report; correct?
J. Kelse - cont'd direct - Mr. Eschleman 255 1 position of Vanderbilt back in the early 80's when 2 you joined Vanderbilt, correct? 3 A Yes. 4 Q And those are also the same subject 5 matters that you address in your expert report in 6 this case, correct? 7 A Yes. 8 In the submissions there's a folder marked 9 "Reviews", I believe; and my -- when I arrived at 10 Vanderbilt, Vanderbilt had asked other 11 epidemiologists to review the NIOSH work and advise 12 them as to the veracity of the study in their 13 opinion; and so there had been a number of efforts 14 on the part of the company to get other opinions 15 from other -- you know, from qualified 16 epidemiologists as to whether they felt the NIOSH 17 report was strong or weak or whatever. 18 Q But just so I understand, the same 19 concerns that Vanderbilt had in 1985 regarding the 20 1980 NIOSH report are the same concerns that you 21 list in your expert report in this case; correct? 22 A Yes. 23 Q All right. And based on those 24 concerns, Vanderbilt contacted NIOSH to ask for an 25 updated study of the 1980 report; correct?	J. Kelse - cont'd direct - Mr. Eschleman 257 1 A Certainly some of it would have been. 2 Probably the majority. 3 Q All right. 4 A Not all of it. 5 Q Did you have personal contact with 6 Mr. Gamble? 7 A Of course. 8 Q Okay. On how many occasions? 9 A Quite a few. Probably at least a half- 10 dozen. 11 Q And what time period are we talking 12 about? 13 A Probably -- I'd have to say it was over a 14 period of time, and it would have to have been from 15 -- around either like late 1986 through early 1987 16 through 1989, something like that, a couple years. 17 Q And you quantify that as perhaps a 18 half a dozen contacts? 19 A Yes. Sometimes at Morgantown and at least 20 once and maybe twice at the mine itself in New 21 York. 22 Q Okay. So you're talking about 23 personal meetings with Mr. Kelse? 24 I'm sorry. With Mr. Gamble. 25 A Yeah. Data, exposure data, stuff like that.

J. Kelse - cont'd direct - Mr. Eschleman 258 1 Q All right. Did you communicate with 2 him also via letter? 3 A Sure, quite a few times. Send him 4 information and... 5 Q Can you quantify how many times you 6 sent information to Dr. Gamble regarding this 7 mortality study? 8 A A general estimate, probably at least a half 9 a dozen times. 10 Q Now, the original 1980 NIOSH report 11 which you took a look at was conducted by NIOSH 12 investigators from what part of the country? 13 From Cincinnati, correct? 14 A Actually, Dr. Gamble's name is on that '80 15 report as well. He participated in that, and he 16 was from Morgantown. There may have been one or 17 two others from Morgantown. 18 The hygiene work and, I think, the mortality 19 portion of it was done in Cincinnati. 20 I think Dr. Gamble did the more - the non- 21 malignant respiratory disease portion of that early 22 report. 23 Q Now, at the time Dr. Gamble was 24 contacted he was working for Morgantown, correct, 25 the Morgantown facility?	J. Kelse - cont'd direct - Mr. Eschleman 260 1 agree that these were lapses, that these were areas 2 that needed to be addressed, that needed to be 3 studied and, you know, tested, you know, that they 4 were more likely to pay attention to these other 5 variables than the original - you know, than some 6 of the folks in Cincinnati. 7 So there was some internal disagreement in 8 NIOSH at the time. 9 Q Let me show you what's marked as 10 Exhibit 14. It's a NIOSH Health Hazard Evaluation 11 Report from 1990, I believe. 12 Are you familiar with this report? 13 A Oh, yes. 14 Q All right. How are you familiar with 15 this report? 16 A Well, I've read it; and whenever NIOSH does 17 a report, you know, you, as a company - they 18 submit this to you as a company. 19 You have to share it with your employees, 20 and obviously you're going to read it. 21 Q All right. And this is the updated 22 Health Hazard Evaluation report to the original 23 NIOSH 1980 study at Vanderbilt, correct? 24 A Yes. 25 Q All right. And what did this Health
J. Kelse - cont'd direct - Mr. Eschleman 259 1 A He worked there, yes. 2 Q All right. Why was contact made with 3 the Morgantown facility, as opposed to the 4 Cincinnati? 5 A The Morgantown facility did a lot of work on 6 mines. They had more of a relationship with the 7 mining industry, you know, being in West Virginia 8 and coal and so forth. 9 Cincinnati office predominantly did mostly 10 chemical-type, you know, exposures and risks; and 11 it was mostly the folks in Morgantown, the ones 12 that had the experience more with the mining 13 operations, that tended to agree with some of the 14 critiques that had appeared on the original NIOSH 15 report. 16 Some of them - some of the - Dr. Gamble 17 for one, a couple others, felt that there were 18 weaknesses in the original NIOSH report in terms of 19 the cancer portion of it, the lung cancer portion 20 of it, that they felt needed to be addressed. 21 Q So you felt the Morgantown 22 investigators shared a similar point of view with 23 Vanderbilt, as opposed to the Cincinnati 24 investigators? 25 A We felt that because they seemed to be -	J. Kelse - cont'd direct - Mr. Eschleman 261 1 Hazard Evaluation report find in regards to the 2 1980 study? 3 A Well, it found the same elevated excess lung 4 cancer, the same rate that all the other studies 5 showed. 6 So, in other words, the excess lung cancer 7 persisted over this period of time. 8 Q And reaffirmed the findings of the 9 1980 study; is that correct? 10 A There was excessive lung cancer in that 11 group of miners and millers, as did all the other 12 studies. 13 Q So you don't dispute that there was 14 excessive lung cancer - 15 A Oh, no. 16 Q - among Vanderbilt miners and 17 millers, correct? 18 A Excessive lung cancer among the people who 19 had worked at Vanderbilt for any period of time. 20 In that group I don't dispute that there was 21 excessive lung cancer, no. 22 Q And it also found, did it not, that 23 smoking or excessive smoking was not the cause of 24 the lung cancer, the excess lung cancer? 25 A Well, that's not how it's expressed. It's

J. Kelse - cont'd direct - Mr. Eschleman 262 1 expressed as it's unlikely to account for the – 2 all the excess lung cancer, especially among the 3 miners. 4 Dr. Gamble disagreed with that. 5 Q Okay. It finds, does it not, that 6 possible compounding factors, such as cigarette 7 smoking and other occupational exposure or 8 employment elsewhere, may have contributed to these 9 risks as well, including – which mentions the risk 10 for both lung cancer and non-malignant respiratory 11 disease; correct? 12 A Right. So they are recognizing that 13 there are these other possibilities, which is 14 appropriately so. 15 Q They go on to say that, "Although the 16 contribution of these compounding factors could not 17 be totally quantified in the study it is unlikely 18 that they alone could account for the observed 19 excess risks." 20 A Uh-huh. 21 Q Did I properly read that? 22 A Yes. That's their opinion. 23 Q Okay. And that conclusion to you 24 means what? 25 A It means that this researcher and whatever	J. Kelse - cont'd direct - Mr. Eschleman 264 1 the people who had the lung cancer tended to be 2 people who were least exposed to the dust – in 3 other words, in this case he used tenure, which 4 would argue against the dust as the etiologic agent 5 for the lung cancer. 6 That's part of the issue with NIOSH, is that 7 they did not explain why it is that the lung cancer 8 cases were concentrated among the people who were 9 least exposed, whereas the non-malignant 10 respiratory disease, which is associated with the 11 exposure to the dust, was exactly the opposite; 12 that it's not what you should see if the dust 13 caused the lung cancer. You should see the two 14 should be the same. 15 Q Mr. Kelse, let me direct your 16 attention to a document found in Plaintiff's 17 Exhibit 19, which is a letter dated January 23, 18 1986, from you to John Gamble. 19 Is this a letter you wrote? 20 A Yes. 21 Q All right. You recognize the letter? 22 A Sure. 23 Q All right. The first sentence of the 24 letter indicates as follows: 25 "Attached please find follow up work on" –
J. Kelse - cont'd direct - Mr. Eschleman 263 1 statistical table he used for his smoking data 2 concludes that he didn't think that these other 3 variables – other work, smoking – would have been 4 sufficient to explain all the excess lung cancer. 5 That's what he means. Other researchers 6 feel differently. 7 Q Including Mr. Gamble, correct? 8 A Including, yes. 9 Q All right. So NIOSH's formal position 10 in 1990 is that cigarette smoking could not account 11 for the observed excess risks in lung cancer and 12 non-respiratory disease? 13 A Couldn't account for all of it. That's 14 their position. 15 They will grant you that it contributed. 16 They don't know how much. They just don't feel 17 that it would explain all of it. 18 Q Is it your understanding that 19 Mr. Gamble's opinion is that cigarette smoking 20 accounts for all the excess risks of lung cancer 21 and non-respiratory diseases? 22 A Yeah. If you read his conclusion, he says 23 that the excess lung cancer fits a smoking etiology 24 better than it does a dust etiology. 25 And it's not just smoking. The fact that	J. Kelse - cont'd direct - Mr. Eschleman 265 1 "please find follow up on the work history gaps, 2 comment and data regarding fiber samples and 3 analysis." 4 Is that a fair reading of that statement? 5 A Yes. 6 Q Now, was this information that you 7 were providing for Mr. Gamble's report? 8 A Yes. Typical type of role that I would play 9 in a – 10 Q Okay. Explain to me the type of 11 information that you were provided. 12 A Well, when someone does a mortality study 13 like this one of the things they're going to do 14 is – they want to do what I call an exposure 15 assessment, okay? 16 I mean, there are two ways to gauge 17 exposure. One is by tenure. You know, I worked 18 a year, I worked ten years. So the guy who worked 19 ten years is generally to be considered a person 20 who is exposed more than a person who worked one 21 year, just by tenure. 22 The other measure is by actual dust levels, 23 because you can always say, well, the person who 24 only worked a year may have had an awfully high 25 dust exposure, okay, as opposed to somebody who

J. Kelse - cont'd direct - Mr. Eschleman 266 1 worked ten years, and maybe that's short; but high 2 dust exposure may have contributed, you know, to 3 some end point disease. 4 So if you don't have actual dust exposure, 5 you're always subject to someone questioning you on 6 that, if you just use tenure as a surrogate for 7 exposure; okay? 8 Q Okay. 9 A And that was one of the issues in the 10 studies, was that it's very hard to get dust 11 exposure data, you know, historically that goes 12 back, you know, long enough and to have that dust 13 exposure correlated, you know, with the disease end 14 points. This is a horrendous undertaking, to see 15 if you got enough data and how it all matched up. 16 So this is what - part of what was 17 happening with NIOSH. They knew that one of the 18 criticisms of the original NIOSH report, not only 19 by Vanderbilt but other people that criticized it, 20 was that the lung cancer cases tended to be among 21 the people who were least exposed. I mean, over 22 half the cases were people who worked less than 23 half a year. Something's fishy about that. 24 And part of the argument was, well, maybe 25 those people, short-term workers, just had a lot of	J. Kelse - cont'd direct - Mr. Eschleman 268 1 had data from that, and they had historic, and they 2 put all of that together. 3 And then you have to match that with up with 4 the different jobs. You know, people who worked 5 underground, you know, what jobs did they have. 6 Five or six categories in the mill, what jobs did 7 they have. Then you have people who moved from one 8 job to the other, and you have to figure out how 9 long they worked in this job and that job; and then 10 you had to figure out of the people who died, you 11 know, the deaths, where did they all work and how 12 did all this dust data, you know, link. 13 You see how horrendous a task this is? 14 And this is what was going on, because it 15 was important to try to get at least a sense of, in 16 addition to tenure as the exposure, what was the 17 actual dust levels. 18 In other words, where the people who had the 19 lung cancer were the people who had the actual dust 20 exposure or not, because from the tenure it didn't 21 look that way. It looked like it was the opposite; 22 but we'd always get an argument that, "Well, you 23 don't know for sure because you don't have the 24 data." 25 So that's the sort of thing that that's
J. Kelse - cont'd direct - Mr. Eschleman 267 1 dust exposure and maybe that overdid it, you know; 2 but it ran counter to the typical thing you would 3 see, let's say, in an asbestos-exposed group. You 4 see people who worked the longest tended to have 5 the most disease, the most exposure. 6 So this is what we were trying to get at; 7 and in order to get at that, they wanted to get 8 dust data. They wanted to find out how much dust 9 data there was, what type it was. Was it just 10 total dust, respirable dust, fiber counts? You 11 know, what was it? Who did it? How descriptive 12 was this information? How historical was it? How 13 far back did it go? 14 And in order to get that information they - 15 you know, whether it's our company or - whoever is 16 doing the study will work with a company and say, 17 you know, "We want you to go back to your records, 18 pull out all the dust data that you have records 19 of, whether you did it, whether a regulatory agency 20 did it, like MSHA, or like a state health 21 department did, or wherever it came from, an 22 insurance company. We want all of that; and then 23 anything that NIOSH had in its file from its 24 original, you know, study in 1980, all that." 25 They took their own air samples, and they	J. Kelse - cont'd direct - Mr. Eschleman 269 1 referring to, and that's what was going on. We 2 were correlating jobs, you know, job categories, 3 because NIOSH was not going to know, you know, who 4 worked at the mill and who packed and who worked at 5 the slusher and - they don't know. 6 Q Just to slow you down for a second. 7 So you provided Mr. Gamble with the 8 information regarding what workers worked what type 9 of jobs? 10 A Yeah, and dust exposure information that we 11 had that would be related to those jobs. 12 Q So you provided that information to 13 Mr. Gamble? 14 A Whatever we had, yes. 15 Q Okay. What other type of information 16 did you provide? 17 A They wanted to - one of the exercises in 18 this was they wanted to test the reliability of the 19 dust data; and what that meant was when they got 20 all this dust data from various sources and they 21 assigned the dust data to various job categories, 22 could they independently separate from the dust 23 data, have another test to see if what they have in 24 their database matched up with this other test, an 25 independent test.

J. Kelse - cont'd direct - Mr. Eschleman 270 1 And what they did for that was they set up 2 like a questionnaire for long-term workers, both 3 hourly and salary; and they broke it into these job 4 categories and then over time blocks of - say a 5 person worked in the mill from 1948 through 1990, 6 or whatever the cutoff date was, '85. 7 During this time span in the mill how many, 8 you know, ventilation improvements were made, how 9 many - you know, when did the things happen, 10 engineering controls, that might have affected the 11 dust levels; and then in the mine, what went on 12 there over a period of time; and then, in addition 13 to that, how would these individuals characterize 14 the overall dust levels for these various areas 15 from 1 to 10; 1 being a low, 10 being the high. 16 Do this independent of the actual dust data; 17 and then if these estimates correlated with the 18 engineering controls and they correlated with the 19 actual dust data, then the dust data would have a 20 higher level of reliability; okay? 21 MS. GRIMBERGEN: I'm just going to - we're 22 going to get through this a lot quicker if you just 23 answer the question. 24 THE WITNESS: How do you want this simply 25 put?	J. Kelse - cont'd direct - Mr. Eschleman 272 1 particles per cubic foot; and the old Mine Safety 2 Administration used to take air samples using that; 3 and health departments, like New York State Health 4 Department, did this; and all that is, they used to 5 pull air into this little tube, and it had a little 6 bit of water in the bottom, and the dust would 7 collect in the water, and then they'd get rid of 8 the water, and you'd only have the particles left. 9 That would be put on a slide. The slide 10 would be put under a microscope, and you would 11 literally count the particles; and they knew the 12 volume of air that they pulled, you know, through 13 this solution; and then they would divide that by 14 the volume, and then you get so many millions of 15 particles per cubic foot of air, and that was just 16 an indicator of total dustiness, and that was 17 everything - everything out there in the air is 18 collected, and they count millions of particles per 19 cubic foot. 20 And there were actually standards for this. 21 You couldn't have more than 200 million particles 22 per cubic foot in your workplace and you couldn't 23 have this or that, whatever that was; okay? 24 Then, as the technology improved in air 25 sampling and counting, it moved from a particle
J. Kelse - cont'd direct - Mr. Eschleman 271 1 Q It's not a simple subject. 2 A It's a big exercise. 3 Q Let me ask you this. I may regret 4 asking this. 5 How did you compile dust data? 6 A Well, you saw that there was insurance data. 7 You saw the company - 8 MS. GRIMBERGEN: To the extent that this 9 question refers only to the information that he 10 provided to Dr. Gamble for this particular exercise 11 that NIOSH was undertaking - 12 MR. ESCHLEMAN: That's all I'm asking. 13 MS. GRIMBERGEN: All right. 14 Q How did you compile the dust data for 15 Mr. Gamble for this particular report? 16 A I would - whatever copies of reports I had 17 I'd give him. 18 Q But, I mean, how was dust data 19 quantified? How did you quantify dust data? 20 A Well, we had it - that was part of the 21 problem. 22 We had it in - prior to around 1975 - and 23 this - data, dust data, was typically reflected in 24 what's known as particle counts. 25 It used to be referred to as million	J. Kelse - cont'd direct - Mr. Eschleman 273 1 count against particles per cubic foot to 2 gravimetric, milligrams of dust per cubic meter 3 there; and instead of sucking it into a little tube 4 with water on the bottom and then sticking it under 5 a microscope and counting it, you'd have these 6 little cellulose paper filters in little cassettes, 7 plastic cassettes; and you drew the air through the 8 cassette, because the cassette was preweighed, what 9 it weighed; and then you'd draw the air through the 10 cassette, and it's going to collect all the dust. 11 You weigh it against. The difference is 12 what? Is the total dust. Now you have milligrams 13 per cubic meter. 14 Then they get, you know, even fancier. You 15 get prefilters over this that would only suck in or 16 take the particles at or below 10 micrometers in 17 size, which is considered respirable particles that 18 would get into your air exchange region, and only 19 collect those. 20 So these are all the ways you collect it. 21 If you're going to do fiber sampling, as you 22 would if you were going to do an asbestos sample - 23 it's the same time of filter, open face. 24 Collect the dust; but instead of weighing 25 it, they take the filters, almost like the old

J. Kelse - cont'd direct - Mr. Eschleman 274 1 thing when they used to collect it in a tube and 2 count the particles, and you put that - you 3 dissolve the thing, and you put it under the 4 microscope, and you actually measure and count the 5 fibers, and that's fibers per cubic centimeter 6 there. 7 So this is all the ways; and any one of 8 those methods, any one of those that I just 9 described to you, was done at Vanderbilt, as has 10 been done in most mines. 11 So when you go back and you look at that 12 database of air samples you get all these different 13 samples; and so you have to decide, all right, 14 which one do we have the most of? 15 You know, like if you have a total dust 16 sample, that gives you an idea of what - whatever 17 is in the dust, whatever it may be. 18 You know, fibers, not fibers, different 19 size, whatever it is, it's at least an indicator 20 that this is dustier than that. So whatever it is, 21 there's more of it there than over here. 22 And for the purposes of a causal association 23 epidemiologic study that is going to use exposure 24 data, that's usually sufficient. You don't have to 25 necessarily to get into issues so much of what it	J. Kelse - cont'd direct - Mr. Eschleman 276 1 Q Well, in addition to that information 2 you provided, at least according to this letter, 3 Mr. Gamble with an abbreviated copy of the intended 4 OSHA asbestos standard; is that correct? 5 A That's right. 6 Q Why did you do that? 7 A Well, at that time - I think it was 198 - 8 '86 - 9 MS. GRIMBERGEN: I'm going to stop you 10 right here because this - why he did or didn't do 11 something in 1986 does not in any way bear upon 12 what his expert opinion is in his report in this 13 case. 14 MR. ESCHLEMAN: Well, it may bear upon the 15 report issued by Mr. Gamble, which he bases his 16 expert opinion upon. 17 MS. GRIMBERGEN: To the extent that he is 18 here as an expert witness - this is the kind of 19 thing that - what he did in 1986, he didn't do it 20 as an expert. He did it in a different capacity. 21 MR. ESCHLEMAN: I realize that; but if he 22 had contact with Mr. Gamble in the formation of a 23 report upon which he bases his expert opinion, I 24 mean, that is certainly within the scope of the 25 deposition, because the facts and the information
J. Kelse - cont'd direct - Mr. Eschleman 275 1 is, but we know there's more of it. 2 So typically what happened here was they 3 picked total dust data as the one because that's 4 what they had the most of and that's what went back 5 the longest, and they could even take the old 6 million-particles-per-cubic-foot count, and you 7 could take them into areas; and you run another 8 sample next to it, you know, for gravimetric 9 weight; and then you could have a correlation, say, 10 well, X number of million parts per cubic foot that 11 was taken by New York State Department in 1968 or 12 1970 would be equal to so many milligrams per cubic 13 meter, you know, by gravimetric; and you have to 14 take them parallel because humidity and other 15 things would affect. It's not like one formula. 16 So - everybody's eyes are glazing. See how 17 complicated this stuff gets? 18 Well, if you're really to do this, this is 19 the level at which you have to work; and this is 20 what was going on, and this is what we were doing. 21 So it's a long, exhaustive description; but 22 I'm giving you this because you need to appreciate 23 how tough and how difficult a rigorous and proper 24 analysis is if you're going to talk about causal 25 associations.	J. Kelse - cont'd direct - Mr. Eschleman 277 1 which surrounds a report upon which he bases his 2 opinion is relevant. 3 MS. GRIMBERGEN: I'm not going to instruct 4 him not to answer, but just note my objection 5 because I think we're getting close to out of the 6 scope of the Deposition Notice. 7 A Actually, I have no problem answering. I'd 8 be happy to answer. 9 Yeah. At that time there was a major 10 rule-making afoot with OSHA as to whether or not 11 they would regulate amphibole cleavage fragments, 12 tremolite being one of them - 13 Q Which is contained in Vanderbilt talc? 14 A Yeah, at 40 to 50 percent, so we are the 15 poster child for cleavage fragments; okay? 16 So, of course, people are going to be paying 17 attention to us. We probably have the biggest 18 exposure to amphibole cleavage fragments than any 19 other working population in the world, so we are 20 going to be looked at. 21 And OSHA, you know, for years had heard 22 discussions, you know, from the mineral folks that, 23 look, you know, there's a difference between 24 cleavage fragments and asbestiform growth and this 25 and that; and OSHA eventually published - and it's

J. Kelse - cont'd direct - Mr. Eschleman 278 1 in these files - yeah, you know, we're going to 2 try to straighten out our definition, make sure 3 everybody knows how we're regulating asbestos; but 4 in around 1986 they published a proposed - a 5 proposal that they were going to update their 6 asbestos standard and they were going to - true to 7 their word, they were going to make clear the 8 distinction between cleavage fragments and real 9 asbestos; but in the same vein they also said, 10 "We're going to regulate the cleavage fragments the 11 same way as asbestos anyway"; and we said, "Well, 12 why"; and the answer was, "Well, see, the 13 Vanderbilt studies show excess lung cancer and, you 14 know, NIOSH tells us that they think those cleavage 15 fragments act in the same way, and that's why we're 16 going to do it." 17 So once again Vanderbilt was the poster 18 child for a regulation that would have impacted - 19 not just Vanderbilt, but whole segments of the 20 mining industry that have similar types of cleavage 21 fragments - waste materials from copper and 22 taconite - huge, huge issue - all based on 23 basically this 1980 technical report. 24 And because there were so many folks, 25 including Dr. Gamble and a couple others in NIOSH,	J. Kelse - cont'd direct - Mr. Eschleman 280 1 A Yeah, and its use in the way that OSHA, you 2 know, looked as though OSHA was going to use it. 3 Q You include in here to Mr. Gamble a 4 sentence that says, "Please feel free to share any 5 of all this material with Bob Rieger and/or Bob 6 Glenn but please avoid further distribution". 7 Why did you include that sentence? 8 A Well, Dr. Rieger and Glenn were researchers 9 at NIOSH who felt that there were deficiencies in 10 the original NIOSH work, agreed that the update 11 needed to be looked at closer. 12 I knew that there were people within NIOSH 13 who felt differently, which they had a right to; 14 but I also worried that their opinion, these three 15 researchers - that they would be, you know, told 16 basically to shut up and not say anything; and 17 that's what I was alluding to. 18 You know, in hindsight that wasn't very 19 bright of me to say that. I don't know whether 20 they would have spoken up whether I asked them to 21 or not, but I did. That's why I did it. 22 Q Well, why do you say in hindsight it 23 wasn't very bright to - 24 A Because you're using it now to suggest that 25 I'm encouraging someone to say something that they
J. Kelse - cont'd direct - Mr. Eschleman 279 1 who essentially said, "Look, we think there's some 2 real problems with that. We don't know that that 3 really does establish that link. That's why we're 4 trying to do this update study. We got some real 5 issues" - and so I was basically telling 6 Dr. Gamble that, "Hey, to the extent that you 7 honestly believe that that study, that original 8 study, would not justify a regulation like that, 9 I would appreciate it if you'd speak up and, you 10 know, I know there's others that would disagree 11 with you and might, you know, not want you to speak 12 up but they're certainly being heard. You should 13 have the same right." 14 And that's what I did, and I'd do it again. 15 Q You indicate in the letter itself that 16 the best way to prohibit this proposed OSHA 17 regulation, as you've described it, was to plead 18 the inadequacy of the 1980 report; is that correct? 19 A Well, I wouldn't say prohibit. I would say 20 that if people had doubts, as I knew they did, that 21 they should honestly speak up and express their 22 doubts so that OSHA would have, you know, the whole 23 story, not just part of a story. 24 Q Doubts as to the validity of the 1980 25 study?	J. Kelse - cont'd direct - Mr. Eschleman 281 1 don't believe. 2 Q Do you recognize it as being 3 appropriate to ask him not to share it with other 4 researchers - 5 MS. GRIMBERGEN: Objection to the form of 6 the question. 7 Q - other than Bob Rieger and Bob 8 Glenn? 9 MS. GRIMBERGEN: Objection. What's the 10 relevance whether he considers it appropriate or 11 not? 12 Q Well, you wrote the letter. 13 You didn't want this information shared with 14 anybody else at NIOSH other than Mr. Gamble, 15 Mr. Rieger, or Mr. Glenn; correct? 16 MS. GRIMBERGEN: He's already testified to 17 that. 18 Q I'll ask you to answer the question. 19 A Yes, because I wanted them, if they felt 20 that the original NIOSH work was inadequate, not to 21 base a major regulation on it, when they were in 22 the midst of doing an update, that I wanted them to 23 say so. 24 I wanted them to speak up; and I didn't want 25 their voices suppressed by those who felt

J. Kelse - cont'd direct - Mr. Eschleman 282 1 otherwise, because those who felt otherwise had no 2 problem expressing their opinion. 3 Q So you just wanted the information 4 shared with researchers who you believe supported 5 the position of Vanderbilt regarding the 1980 6 report? 7 A I wanted OSHA to know that there were people 8 other than Vanderbilt that thought that what they 9 were proposing to do was premature and 10 inappropriate. 11 MS. GRIMBERGEN: At this point I'm going to 12 reserve my right for a motion to strike all the 13 testimony with regard to Dr. Gamble as outside the 14 scope of the deposition. 15 MR. ESCHLEMAN: Okay. 16 Q Did Vanderbilt's contacts with 17 Dr. Gamble during this time period lead to an 18 internal investigation by NIOSH? 19 A Yeah. Yes, it did. 20 Q And were you part of that internal 21 investigation? 22 A I was never - no one spoke to me. 23 Q Did you know what the findings of that 24 internal investigation were? 25 A Just generally. There was an issue about	J. Kelse - cont'd direct - Mr. Eschleman 284 1 Q Stille and Tabershaw? 2 A Right. 3 Q All right. That mortality study was 4 exclusive to Vanderbilt talc? 5 A Yes. 6 Q Okay. And how big was the population 7 of that study? 8 A I'd have to look. It wasn't much larger 9 than NIOSH's. Might have been the same size. 10 So it would suffer from the small numbers as 11 well. 12 Q What's the problem with small numbers 13 of population as far as the reliability of a 14 report? 15 A Well, it sort of gets into - I'm not a 16 statistician or epidemiologist. 17 You should talk to, you know, an 18 epidemiologist or statistician, who's very good on 19 statistics; but, in general, the lower - the fewer 20 people you have in a group that you study - and 21 then you're trying to say they have a higher 22 frequency of some disease, whatever it is, compared 23 to some reverent group. In this case, the U.S. 24 population or maybe New York State or County. 25 Whatever the reference is, the smaller that
J. Kelse - cont'd direct - Mr. Eschleman 283 1 whether or not the Morgantown office had properly 2 gotten authorization to do the update, and I know 3 there are differences of opinion about that; and 4 I don't know, you know, what the resolution of that 5 was. 6 Q Have you ever seen the internal report 7 regarding Vanderbilt's contacts with Mr. Gamble 8 during this time period? 9 A I know - I heard that in the report there 10 were suggestions, you know, that because I visited 11 there, you know, so often that, I guess, the 12 inference was that I influenced them or something 13 of that sort, or could have. 14 Q All right. You have testified that 15 one of the problems you believed with the 1980 16 NIOSH study was it involved a small population of 17 workers, correct? 18 A Yes. 19 Q I want to go to the mortality studies 20 that you have reviewed in connection with forming 21 your opinion in this case. 22 The first mortality study that you mentioned 23 was by a Stillingham? 24 A A Stille, S-t-i-l-l-e, I believe, and 25 Tabershaw.	J. Kelse - cont'd direct - Mr. Eschleman 285 1 pool of people that you study, the bigger the 2 impact would be for what they call confounding 3 variables, you know, other causative things, like 4 smoking or like other work. 5 When you have a larger and larger group, it 6 tends to even out those variables. Some of them go 7 in one direction, some of them in the other; and 8 the bigger the number of these people, the less 9 likely those confounding variables interfere, you 10 know, with that final number. 11 So you always want to have the biggest 12 population as possible to help, you know, make that 13 - make those confounding variables not as intense. 14 When you look at like the original NIOSH 15 report, I think it was maybe nine lung cancer 16 cases, and then in another one there's eleven; and 17 here you are basing, for example, a whole federal 18 OSHA standard on nine lung cancer cases? It's 19 pretty touchy. 20 You got to be really careful when you do 21 that sort of thing, and that's the problem with 22 these small - small groups. 23 Q All right. So this particular study 24 was also a small group, if not smaller than the 25 NIOSH 1980 group; correct?

J. Kelse - cont'd direct - Mr. Eschleman 286 1 A Yeah, I don't know the number. 2 There's no -- no question that all of these 3 studies -- you know, if they're really good 4 studies, all mortality and epidemiology studies 5 will generally tell you what the strengths and 6 weaknesses of their study is. 7 They should say, "We did this and this and 8 that but we couldn't cover that and that and that, 9 so here's the strengths and here's the weaknesses." 10 And then, you know, in some of the studies 11 -- I think the Tabershaw people criticized aspects 12 of that study, and rightfully so. They also didn't 13 have smoking histories either. 14 You know, many of the criticisms that were 15 leveled against NIOSH could be leveled against 16 Tabershaw. 17 Q And that Tabershaw study was conducted 18 when, that mortality study? 19 A I would have to look. 20 It was published in 1982; and I believe they 21 used a lot of the database that NIOSH had put 22 together, database meaning the death -- you know, 23 the death records that they -- you know, they 24 wouldn't go back and do all that again. 25 They wouldn't go and search death	J. Kelse - cont'd direct - Mr. Eschleman 288 1 maybe smoking, maybe -- whatever; but if you saw a 2 difference, that would suggest that to you; and 3 that's what the Tabershaw report did, but it had 4 small numbers; and, you know, it could be 5 criticized for some of the reasons that the NIOSH 6 report was. 7 Q Do you know what the numbers of the 8 Tabershaw report were? 9 A You can -- they -- what they found -- you 10 can read -- I mean, that's fair findings. 11 All I would tell you is what their findings 12 were and -- correct me if I'm wrong; but they found 13 that there was not excess lung cancer among the 14 people who only worked for Vanderbilt, that it was 15 concentrated only among the people who had worked 16 elsewhere. 17 Q Do you know how they defined a 18 Vanderbilt worker? 19 For instance, did it include someone who 20 also worked for International Talc or -- 21 A Yeah, I don't know. 22 I think it would, and that was one of the -- 23 that was an issue, and a correct one to raise too. 24 Q All right. You think it would include 25 but you're not certain if it did off the top of
J. Kelse - cont'd direct - Mr. Eschleman 287 1 certification for people in various states. That 2 was done. Use that database and update it. 3 So they actually would work with NIOSH for 4 this. 5 Q So Tabershaw did not include -- they 6 did not consider the role of smoking in their 7 study? 8 A No. The purpose of their -- you remember 9 I told you there were issues about how you make a 10 causal association? 11 One of them was did you control adequately 12 for other exposures besides just this talc, you 13 know, like prior exposures; and so they undertook 14 this study to look at that issue, and so they 15 stratified or broke the group into people who 16 worked elsewhere and just people who worked at 17 Vanderbilt. 18 Well, were the lung cancers both for the 19 same groups, which would suggest -- you know, argue 20 for it was the talc; or is it only here and not 21 there? 22 You know, if there's a difference, then this 23 would suggest, suggest, that it might not be the 24 dust exposure at Vanderbilt; it might have been 25 dust exposure somewhere else or some other thing --	J. Kelse - cont'd direct - Mr. Eschleman 289 1 your head? 2 A My guess is it would have in '82. 3 Well, it depends on the vital status cut- 4 off, you know, when they stopped recording the 5 deaths. 6 Remember that they purchased International 7 Talc in 1974, so, for example, if they had the 8 vital status cutoff in 1978, which they may have 9 done, you know, you're talking four years, so I 10 don't know how significant that would be. 11 Q Then there were two mortality studies 12 that you relied upon in 1988 by the same author, I 13 believe. 14 A Lamm, yes. 15 Q Okay. 16 A And what Dr. Lamm did is he looked at 17 another couple -- a couple of -- what he -- again, 18 this is also -- remember, a lot of these are 19 responding to the original questions that were 20 raised about the NIOSH study; how come, you know, 21 it seems like most of the lung cancers are among 22 the people who worked for the least amount of time; 23 and that's what Dr. Lamm took a look at. 24 His title suggests it, "Analysis of Excess 25 Lung Cancer Risk in Short Term Employees".

J. Kelse - cont'd direct - Mr. Eschleman 290 1 So what he's doing here really is he's 2 pointing out, you know, that when you include 3 workers who worked in an environment for less than 4 a year you might be -- you might be putting a bias 5 in your study. 6 A lot of -- a lot of mortality studies -- 7 most epidemiologists will tell you that when they 8 do studies they would like to eliminate short-term 9 workers. 10 You know, some of them will say, "I won't" 11 -- just like Kleinfeld said, "I'm not including 12 anybody who didn't work 15 years"; or somebody else 13 may say, "I'm not including anybody who worked for 14 less than a year." 15 In the case of Vanderbilt, because we didn't 16 have that many people, NIOSH started down this road 17 of including everybody no matter how long they 18 worked. If he was there a day, he was in that 19 group. 20 Q Do you know whether that was a day for 21 Vanderbilt Talc, or could it have been an employee 22 from International Talc? 23 A It could have been. 24 It could have been. You'd have to look at 25 the dates, and you'd have to look back in the	J. Kelse - cont'd direct - Mr. Eschleman 292 1 mortality report that you relied upon? 2 A The most recent, yes; and that's the most 3 critical. That's this one. 4 Q Okay. 5 A This one is very important because 6 Dr. Gamble did an internal review of Vanderbilt 7 workers. That's why he called it case control. 8 He did that to try to get at the issue of 9 smoking and at the issue of whether outside 10 employment or inside employment, you know, may or 11 may not have had a bearing on this lung cancer. 12 You know, Lamm felt that it did or Tabershaw 13 felt that it did. Lamm was concerned about the 14 short term -- you know, confounding short-term 15 workers in the group. 16 Gamble took the internal control to see if 17 the smoking and some of these other issues could 18 be, you know, looked at more carefully without 19 confounding from outside exposures and get full 20 smoking histories at least for the controls and the 21 cases. 22 What the last report did was it actually 23 ended up doing that cumulative dust exposure that 24 I went on and on about a little while ago, where 25 instead of using the short duration or the tenure
J. Kelse - cont'd direct - Mr. Eschleman 291 1 records, and it probably was a little bit of both. 2 It probably was short term, who are people 3 who might have had other talc exposures in other 4 areas, including International or any number of any 5 other talc mines that may have been up there in 6 other regions, or it may just have been Vanderbilt 7 Talc. 8 So the answer would be it would probably be 9 both. 10 Q Okay. And did the 1988 mortality 11 reports by Dr. Lamm -- would they consist of a 12 different population, or was it just an analysis of 13 the 1980 report? 14 A Pretty much an analysis of that same 15 database. 16 He added, I think, some years; and you can 17 find -- I know we have some files where you will -- 18 and I'm sure Dr. Lamm has even more extensive files 19 of correspondence between himself and NIOSH, you 20 know, trying to figure out the deaths. 21 You know, do we have the same number of 22 deaths? Did we record them properly? Did I miss 23 some? Did you miss some? 24 You know, that kind of stuff back and forth. 25 Q You indicate that there was a 2002	J. Kelse - cont'd direct - Mr. Eschleman 293 1 as a surrogate of exposure it actually used the 2 dust data that was there, correlated it to the lung 3 cancer cases and to the non-cases; and the issue 4 was the lung cancers, no matter how long they 5 worked, did they have a cumulative dust exposure 6 that was higher than the non-cases; and the answer 7 was no, they didn't, about 30 percent lower, which 8 is consistent with the tenure, you know, which was 9 not a surprise, but it confirms something that had 10 been only talked about for almost 10 years; that, 11 you know, no one could explain why it was that you 12 would have this excess lung cancer among the people 13 who, you know, worked the shortest period of time; 14 and the only explanation, if you wanted to link 15 those up, was they must have been exposed to a lot 16 of dust. It just overwhelmed them. 17 And the argument is, well, even long-term 18 workers when they started were short term and they 19 all had similar jobs and it's not logical to think 20 that someone worked for six months or a year -- 21 that somehow they were selected out to have this 22 huge dust exposure, and that's what the actual dust 23 data shows. 24 So that was very important. So what you had 25 was an inverse dose response, and that's about as

J. Kelse - cont'd direct - Mr. Eschleman 294 1 conclusive a thing as you can pretty much say in a 2 mortality study. 3 Q What was the population used in this 4 study? 5 A I think for the lung cancer part it was 6 something like 800, or something like that, about 7 two or three times the size of the original NIOSH. 8 Again, that's not a huge number. You know, 9 there are studies with thousands of - a couple 10 thousand - 5,000, 10,000 - people. Those are 11 good, big, full studies. 12 So even here the number is not huge, but 13 it's certainly larger than the ones that preceded 14 it. 15 Q And you said you think it's two to 16 three times larger than the 1980 NIOSH? 17 A I think so. 18 What did it say? Let's look and see what 19 the numbers were. It should give it up in the 20 front. 21 MS. GRIMBERGEN: Off the record. 22 (Discussion held off the record.) 23 A It's certainly larger. Exactly how much 24 larger - let me look. 25 I can point out that - you know, if you	J. Kelse - cont'd direct - Mr. Eschleman 296 1 Mortality During the Period 1950 Through 89 (809 2 Subjects) and Non-Cancer Mortality During 1960 3 Through 1989 (782 Subjects)". 4 So for the two portions of the study they 5 had, you know, slightly different numbers. 6 Q Okay. It's my recollection - I don't 7 know if it's yours - that the 1980 NIOSH 8 investigation involved a little over 700. 9 A The update? 10 Q No. The original 1980 study itself. 11 A This one? Well, if that's what it says. 12 I thought it was - I thought it was fewer 13 than that, but whatever it is it is. 14 (At this point a short recess was taken.) 15 Q Referring back to your report for a 16 minute, you indicate in your report the following 17 sentence in the second full paragraph, two-thirds 18 of the way down, "No mesothelioma deaths 19 attributable to exposure to Vanderbilt talc were 20 reported in any of these mortality studies." 21 Is that a correct reading of that sentence? 22 A That's correct. 23 Q Were there any mesothelioma deaths 24 reported in the mortality studies? 25 A Yes. NIOSH reported one in the 1980; and
J. Kelse - cont'd direct - Mr. Eschleman 295 1 look through this Honda study, you will see it says 2 somewhere in there that what they saw in the study 3 was not, you know, very different than what 4 everybody else has seen. 5 Even though the numbers were a little 6 larger, that the characteristics of that population 7 were no different, there still was excess lung 8 cancer at roughly about the same rate, excess lung 9 cancer is still concentrated among the miners and 10 not the millers when the dust levels in both areas 11 are about the same, that the people who worked for 12 the least amount of time were the most exposed, 13 and, on top of everything else, the overall dust 14 levels showed that the lung cancer cases were 15 actually exposed to less dust than the non-cases. 16 That's what the study shows. 17 Q Okay. And according to the 2002 18 study, it appears that 782 men were included in 19 that study. 20 A They had two numbers. They had one for - 21 they did - part of their study was non-malignant 22 respiratory disease, and the numbers were a little 23 different for - I think up here it says - let me 24 see. 25 Yeah. It says, "Analysis Assessed Cancer	J. Kelse - cont'd direct - Mr. Eschleman 297 1 then there was a second one reported, which made 2 two, in the most recent, which is the Honda study. 3 Q So the 2002 study includes a 4 Vanderbilt Talc worker's death from mesothelioma; 5 is that correct? 6 A A person that worked at Vanderbilt that was 7 diagnosed as having mesothelioma and died, yes. 8 Q And how long had that person worked at 9 Vanderbilt? 10 A The more recent one, the second one? I 11 think it was reported in the mortality study that 12 it was like five or six months. 13 I had originally heard that it was even 14 shorter than that and more a matter of weeks, but 15 we'll go with the five or six months in 1948. 16 Q So the death that's referenced in the 17 mortality study in 2002 occurred in 1948? 18 A No. That's when his exposure - he was a 19 draftsman; and he was - he was surveying property, 20 you know, to build, for some construction on the 21 property. 22 Q Okay. I just got lost. 23 You said in the 2002 mortality study one of 24 the deaths reported was due to mesothelioma, 25 correct?

J. Kelse - cont'd direct - Mr. Eschleman 298 1 A Yeah. There were two reported, one from the 2 original NIOSH report - 3 Q And that was from 1948? 4 A No. I don't know what that - that 5 individual's - it was discounted by NIOSH because 6 the latency was too short. 7 In other words, the time from his employment 8 at Vanderbilt and the time, you know, that he died 9 of mesothelioma was too short a span of time for 10 the exposure at Vanderbilt to have caused the 11 mesothelioma. 12 Q And do you recall how long that 13 exposure was? 14 A I think it was 15 years. 15 Q While employed at Vanderbilt 15 years, 16 correct? 17 A Well, the span of time between his first 18 exposure at Vanderbilt and his death. 19 Q Okay. And the second death? 20 A That was a fellow, as I said, that - I 21 think in the report they said he worked several 22 months - I heard he worked several weeks, but 23 we'll go with several months - in 1948 as a 24 surveyor; and then, I believe, he died in the 25 mid 80's, '84 or '85. I'm not sure.	J. Kelse - cont'd direct - Mr. Eschleman 300 1 A Yes. 2 Q Okay. Is there some sort of study 3 upon which you base that opinion? 4 A I think I described my rationale for that. 5 You want me to read it? 6 Q No. I understand that you described 7 your rationale for believing that. 8 My question to you is was there any study 9 that supports that rationale. 10 A Not that I'm familiar with, although it's a 11 generally-recognized concept. 12 Q In the next sentence of that page you 13 indicate that the non-asbestiform amphibole 14 minerals most at question in Vanderbilt talc are 15 also present in other mining environments. 16 What minerals are you specifically referring 17 to? 18 A Predominantly a mineral known as cummerit- 19 grunerite (sic), and that is the non-asbestiform 20 variety of amphycte. 21 Q And what other mining environments is 22 that found in? 23 A Well, it was a huge - two big - unlike 24 Vanderbilt, small study - two huge studies, one 25 done on taconite miners in Minnesota, I believe,
J. Kelse - cont'd direct - Mr. Eschleman 299 1 Q All right. And just so I understand 2 correctly, he worked at Vanderbilt from 1948 for a 3 couple months and then died in the 1980's? 4 A Yes. 5 Q Can you show me in the report where it 6 references that particular individual? 7 A Sure. 8 MS. GRIMBERGEN: I think you have it. 9 THE WITNESS: Is it here? 10 A Actually, there's a little discussion about 11 it. I think it's - here you go. 12 It begins here and it goes through here, so 13 down there. 14 Q The report indicates that the death of 15 the draftsman - strike that. 16 The report indicates the draftsman who died 17 - they could not find any history of asbestos 18 exposure; is that correct? 19 A That's what they said. 20 Q Okay. In your report, on the fourth 21 page, you indicate that, "An elevated smoking 22 prevalence in an asbestos-exposed group is, 23 therefore, likely to enhance the potential of 24 mesothelioma in that group." 25 Is that a correct reading of that sentence?	J. Kelse - cont'd direct - Mr. Eschleman 301 1 in the 1970's and another study of Homestate gold 2 miners in North Dakota, both of which groups were 3 exposed to waste material that contained quite a 4 bit of amphibole cleavage fragment, known as 5 cummerit-grunerite. 6 Q Are these studies included in the 7 documents that have been marked already? 8 A They're not in the studies that are specific 9 to Vanderbilt. I think I included them in another 10 folder, though, in support documents, so I think 11 they are in here. 12 Q And one study was from Minnesota, and 13 the other study was from? 14 A Homestate Mining in Leeds, North Dakota. 15 Q So when you say studies of these other 16 mining environments do not reflect excess pulmonary 17 cancers, you're referring to just those two 18 studies, the one in Minnesota and the one in North 19 Dakota? 20 A Yes. 21 Q The doctor which Vanderbilt employed 22 to review the x-rays of lungs, his name is 23 Dr. Brian - is it Boehlecke? 24 A Boehlecke. 25 Q Boehlecke?

J. Kelse - cont'd direct - Mr. Eschleman 302 1 A Boehlecke, B-o-e-h-l-e-c-k-e. 2 Q And Dr. Boehlecke has been working in 3 the capacity of reviewing x-rays of the lungs of 4 these employees for the last 17 years? 5 A Yes. I believe the first reference to him 6 looking at radiographs were in 1985. 7 Q And you indicate that he has found no 8 support for an asbestos-like risk based upon his 9 review of the x-rays; is that correct? 10 A That's correct. 11 Q All right. Are Dr. Boehlecke's 12 reports included? 13 A Yes, here. 14 Q All right. What folder are they 15 marked in? 16 A This is in the Vanderbilt Health Study 17 folder, 14. 18 Q All right. You indicate that 70 19 percent of the work force has been exposed to 20 Vanderbilt talc in excess of 15 years and 21 approximately 50 percent in excess of 20 years. 22 Is that correct? 23 A Yes. 24 What's the date on that? Is it 2004? 25 Q Yes.	J. Kelse - cont'd direct - Mr. Eschleman 304 1 indicate that in general talc exposure causes 2 mesothelioma? 3 A I don't know that any study says it causes 4 it. There are some that - they are suggestive 5 that it does. 6 Q Are any of those studies included in 7 any of the reports that you have provided? 8 A No, because it's not specific to Vanderbilt. 9 Q How many studies are you aware of that 10 makes that causal connection between generically 11 talc and mesothelioma? 12 A I'm sorry? Generically talc or talc from 13 upstate New York? 14 Q Well, are you aware of studies 15 regarding talc from upstate New York that indicate 16 that it causes or contributes to mesothelioma? 17 A That it may cause or contribute to? 18 Q Yes. 19 A Yeah. Dr. Abraham did a case control - 20 actually, just a case study - in which he suggests 21 that. 22 Q Are there any other studies besides 23 Dr. Abraham regarding talc from upstate New York? 24 A There are - you know, there is - there was 25 an assessment of mesothelioma mortality rates in
J. Kelse - cont'd direct - Mr. Eschleman 303 1 A Yeah. I probably checked the - the medical 2 surveillance table that I have for that. 3 Q How many in excess of 40 years? 4 A I don't know. 5 Q And 40 years is the usual latency 6 period for mesothelioma? 7 A Typically. 8 Some typically between 30 to 40. It depends 9 on the exposure and the type of asbestos. 10 Q You indicate in your report, "The 11 scientific evidence that deals specifically with 12 Vanderbilt talc", and then parenthesis, "not mixed 13 or unknown exposures does not associate Vanderbilt 14 talc as a causative factor for mesothelioma." 15 Is that a proper reading of that sentence? 16 A That's what I believe, yes. 17 Excuse me. Could I take that back if you're 18 done? 19 Q Sure. 20 Are you aware of studies regarding mixed 21 talc use which shows something to the contrary? 22 A I'm aware of studies that suggest something 23 to the contrary for general talc exposure. That's 24 what I'm aware of. 25 Q Okay. So you're aware of studies that	J. Kelse - cont'd direct - Mr. Eschleman 305 1 New York State done by - I think it was Nicholas 2 Vianna, I believe, part of the New York State 3 Health Department, in which he showed excess 4 mesothelioma rates in some counties in New York; 5 and I believe, you know, he mentioned - I think 6 it's Jefferson County, which is, you know, south 7 of St. Lawrence County. St. Lawrence is where the 8 talc mines are. 9 I think in his paper he suggested that might 10 be - offer an explanation for. 11 All the researchers who are careful will 12 usually say could or may, you know; and 13 appropriately so. It's okay to speculate on those 14 things. 15 Q You indicate that miners and millers 16 are exposed to talc in different forms. 17 A Vanderbilt miners and millers? 18 Q Yes. 19 A They have - basically their exposure is the 20 same in the sense that the mineral exposures they 21 have are the same, though obviously the millers 22 will be exposed to more processed talc. 23 In other words, the material will be milled. 24 It will be smaller particles and it will be closer 25 to the final product, you know, that somebody

J. Kelse - cont'd direct - Mr. Eschleman 306 1 ultimately uses, whereas in the mine they will be 2 exposed to the same types of dusts, same mineral 3 types of dusts, and anything else that may be, you 4 know, waste material that someone in the mine or in 5 the mill would not be exposed to. 6 So, for example, if they had silica 7 exposures - talc has little or no silica in it; 8 but there may be silica in the mine, you know, 9 lying around. 10 Q Are dust exposures the same for miners 11 and millers at Vanderbilt Talc? 12 A Overall dust exposures were very similar, 13 and it's very - you know, in the early years the 14 data showed that the dust levels tended to be 15 higher in the mill. 16 You could almost predict where they would 17 be, because smaller particles and - and then, as 18 time went on, and more and more dust controls went 19 on in the mill. 20 The levels in the mines tended to stay the 21 same over time, whereas in the mill they tended to 22 go down; but in general they were very similar in 23 terms of overall dust. 24 Q Are you familiar with a company called 25 Loomis Talc?	J. Kelse - cont'd direct - Mr. Eschleman 308 1 Vanderbilt acquired. 2 Q And do you know if they used any other 3 suppliers of talc, other than the companies they 4 acquired? 5 A Oh, that we would sell from other - 6 Q Or that you would take talc from other 7 mines. 8 MS. GRIMBERGEN: Wait, wait, wait. I'm 9 confused by the question. 10 MR. ESCHLEMAN: Okay. 11 MS. GRIMBERGEN: You want to know if they 12 resold talc that was mined elsewhere? 13 Q Have they ever used - have they ever 14 themselves, Vanderbilt, used talc mined elsewhere? 15 It could be either milled or, I guess, 16 milled. 17 A Sort of like a toller operation, where 18 somebody will send you their ore and you mill it 19 for them, something like that? 20 Q Right, yes. 21 A To the best of my knowledge, no. 22 Q Any of the mortality studies upon 23 which you based your opinion, did they define both 24 the duration of exposure and the exposure dose? 25 A Yes. We talked about that at some length.
J. Kelse - cont'd direct - Mr. Eschleman 307 1 A I'm not intimately familiar with it. 2 I know that was a talc company that was in 3 that area that operated earlier than Vanderbilt. 4 Other than that, I don't know. 5 Q Did Vanderbilt acquire Loomis Talc? 6 A I don't believe they acquired any of their 7 property. 8 Q Did they use Loomis Talc as any type 9 of supplier? 10 MS. GRIMBERGEN: I'm just curious. 11 How does this fit into his testimony as an 12 expert witness? 13 MR. ESCHLEMAN: I just want to know if those 14 workers were included in any of the studies. 15 We talked about International Talc workers 16 being included in some of the studies because that 17 was a predecessor to Vanderbilt. I don't know if 18 there are any other predecessors to Vanderbilt. 19 MS. GRIMBERGEN: You can ask him that. 20 If you know. 21 A No, I - only International. That's the 22 only. 23 Q So, to your knowledge, International 24 Talc was the only predecessor to Vanderbilt Talc? 25 A Yeah, the only other talc operation that	309 1 MR. ESCHLEMAN: I don't have anything else. 2 MS. GRIMBERGEN: I have nothing. 3 MR. DeMATTHEIS: I have nothing. 4 5 (Witness excused.) 6 (Whereupon, the deposition was concluded at 7 2:45 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

CERTIFICATE OF OFFICER

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I, HOLLY JOHNSON KOWALENKO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness was duly sworn by me.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcription of the testimony as taken stenographically by and before me on the date, time, and place aforementioned.

I DO FURTHER CERTIFY that I am neither a relative, employee, attorney, nor counsel to any parties involved; that I am neither related to nor employed by any such attorney or counsel; and that I am not financially interested in the outcome of this action.

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