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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HERMAN YANDLE, et al.,

Plaintiffs

vs.

PPG INDUSTRIES, INC., et al.,

Defendants

Civil Action No. TY-74-3-CA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LESTER KAY (And all Intervening
Plaintiffs)

vs.

PPG INDUSTRIES, INC., et al.

Civil Action No. TY-74-13-CA

Deposition of RICHARD GATE, produced, sworn and
examined the 4th and 5th days of June, 1975, at the offices of
Messrs Davies, Arnold & Cooper, 4/7, Salisbury Court, London,
EC4Y 8AD, England, pursuant to a Notice.

Walter H. Clark, of Harry Counsell & Co., 61, Carey
Street, London, WC2A 2JG, England acted as Reporter.

APPEARANCES:

YANDLE et al. vs. PPG INDUSTRIES, INC., et al.

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By: RICHARD BERNAYS

For Defendants PPG Industries, Inc. and Dr. Grant:

JOHN P.S. O'CONNOR,
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LESTER KAY, et al. vs. PPG INDUSTRIES, INC., et al

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For Defendants PPG Industries, Inc. and Dr. Grant:

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Also present:

Mr A.J. PENNA
Mr H. KAYE
Mr D.A. McINTOSH (Part of time)

RICHARD GAZE,
having been duly and publicly
sworn, testified as follows:
DIRECT EXAMINATION by MR BALDWIN

Q Would you give us your name, please?

A Richard Gaze.

Q What is your full name, your complete name?

A Richard Gaze.

Q And you have no other name?

A No, I have no other name.

Q And your address?

A 37, Farley Court, Melbury Road, W.14.

Q London?

A Yes.

Q Do you have a telephone number?

A I do.

Q Would you give us that?

A 602-2275.

Q May I ask your age?

A 57.

Q What is your present employment?

A I am an executive director of Cape Industries.

Q How long have you been employed with Cape Industries?

A Since 1947.

Q In what capacity did you come to Cape Industries?

A As a research chemist.

Q May I ask where you got your schooling?

A I went to school at a place called Brigg in Lincolnshire.

Q What is the extent of your schooling?

2 A When you say "schooling", you mean of my education?

3 Q All right.

4 A After I left school I joined the Gas Light & Coke Company
5 in London as a laboratory assistant, and I studied chemistry
6 part-time at the University of London, where I got my first
7 degree, my Bachelor's degree.

8 Q In chemistry?

9 A In chemistry.

10 Q When did you obtain your Bachelor's degree?

11 A 1940.

12 Q Did you continue your education after that?

13 A I did, but not immediately.

14 Q When did you go back to your education?

15 A 1948 or 1949.

16 Q After the war?

17 A Yes.

18 Q And where did you go to school?

19 A London University.

20 Q What degree did you get next?

21 A The degree of a Doctorate of Philosophy in Chemistry.

22 Q Does that complete your education?

23 A Yes.

24 Q What year was this; 1949?

25 A I started in 1949; I completed in 1953/54.

26 Q Have you had any particular sphere of interest?

27 A Generally in inorganic chemistry.

28 Q What would that involve?

29 A Aside from my interest in asbestos, I have been interested in
30 titanium.

2 Q When did you first do any work in connection with
3 A When I joined Cape Asbestos, as it was in those days.
4 Q You had done none before then?
5 A No.
6 Q You came there when, now?
7 A I came to Cape Asbestos in 1943.
8 Q And have you been with them continuously from that time to now?
9 A Yes.
10 Q At that time how many companies were involved in the corporate
11 set-up of Cape Asbestos?
12 A I can't tell you.
13 Q Have companies been added from then till now?
14 A Yes.
15 Q Has Cape Asbestos become Cape Asbestos Industries, Limited?
16 A Yes.
17 Q Did it change its name?
18 A Yes.
19 Q When was this?
20 A Approximately a year ago.
21 Q Until it changed its name approximately a year ago, what was
22 the name of it?
23 A The Cape Asbestos Company Limited.
24 Q Were you in the service during the war years?
25 A I was not.
26 Q Have you been in London the entire time that you have been
27 with Cape Asbestos Limited?
28 A Yes.
29 Q I mean by that that you resided in London.
30 A Or immediately outside London.

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A Cape Industries.

Q Is it Cape Industries?

A Cape Industries; not "Asbestos".

Q -- has a number of subsidiaries?

A That is right.

Q That are wholly owned?

A That is right.

Q And if I understand correctly, you and Mr Higham serve on the Board of each of these companies?

A No, I am not on the Board of all of the subsidiary companies.

Q Which ones are you not on the Board of?

A I am not on the Board of Kismet Limited; I am not on the Board of the Hairfield Lime Company Limited; I am not on the Board of Trist Draper.

Q Certainly all of the companies that have to do with the mining, manufacture and sale of asbestos you are on the Board of?

A No, I am not. I am on the Board of Cape Asbestos (South Africa) but I am not on the Board of the mining companies.

Q You are not on the Board of EGNEP?

A No.

Q So you are on the Board of Cape Asbestos (South Africa), but not on the Board of the subsidiaries of that company; is that the way it is?

A That is correct.

Q Were you in any way connected with a transaction between Cape Industries and Johns Manville where they were engaged in a joint venture?

A That was Marinite, the formation of Marinite Limited; is that

to what you are referring:

2

Q Yes.

3

A At the time of the formation of this company I was not involved.

4

Q Well, were you since?

5

A Yes, I have been on the Board of Marinite Limited.

6

Q What did that company sell, or what did that company do?

7

A It manufactured and sold a product called Marinite.

8

Q Which is a ship board?

9

A Yes.

10

Q Where did it sell it?

11

A Throughout the world, apart from, I believe, the North American continent.

13

Q You say "Apart from"?

14

A Yes.

15

Q They did not sell it in the United States?

16

A I don't believe so. I was not involved in the formation of this company. I can't remember the exact terms of the agreement.

18

Q The agreement you speak of is between who?

19

A Of any agreement. I don't know the terms of any agreement.

20

Q There was an agreement between Cape Asbestos and Johns Manville, wasn't there?

22

A I am assuming so for the purpose of answering your question, but I have no knowledge of it.

24

Q You have never seen it?

25

A No.

26

MR BALDWIN: Incidentally, at this point we will ask for that agreement, take the agreement between Johns Manville and Cape Industries or any of its subsidiaries, about any joint ventures that they were engaged in between the years 1962 and 1972.

30

2 1943 and you have been with them down to the present time?

3 A That is correct.

4 Q And your present position is what?

5 A I am executive director of Cape Industries and chief scientist.

6 Q When did you become executive director of Cape Industries?

7 A 1961.

8 Q When did you become chief scientist?

9 A During the 1950's.

10 Q When did you get on the Board of the Cape South African companies

11 A I became an alternate director very soon after I joined the

12 Cape Asbestos Board.

13 Q When did you get on the Cape Asbestos Board?

14 A Well, when you say "Cape Industries", I take that as being the

15 same thing as Cape Asbestos for our present purposes.

16 Q Was that 1961?

17 A Yes.

18 Q You also are a member of the Board of Directors of Cape Asbestos

19 Fibres?

20 A That is so.

21 Q When did you become a member of the Board of that company?

22 A That was 1958 or 1959.

23 Q Are you on the Board of North American Asbestos Corporation?

24 A I am.

25 Q When?

26 A I believe it was in the late 1960's.

27 Q As I understand it, you are not now and have never been on the

28 Board of Directors of EGNEP?

29 A I have been on the Board of Directors of EGNEP.

30 Q When were you on the Board of EGNEP?

1 I came off that Board in the beginning of 1974, I believe I
2 was. So I would have been on that Board from approximately
3 1969 to 1974.
4

5 Q When did you go on the Board of Cape Asbestos (South Africa)?

6 A I thought you just asked me that.

7 Q I thought I did, too, but I can't see where I wrote it down.

8 A Yes, that is right; I went on as an alternate director in
9 about 1961/62.

10 Q Has there been a change in the relationship of EGNEP to any
11 of these companies?

12 A No.

13 Q Has EGNEP always been a subsidiary of Cape Asbestos (South
14 Africa)?

15 A Within my recollection, yes. I believe there were different
16 arrangements going back into the early 1930's, but.....

17 Q But since recent years...?

18 A Since my period of experience, there has been no change.

19 Q Cape Asbestos Industries is simply a holding company?

20 MR BERNAYS: Cape Industries.

21 MR BALDWIN: Cape Industries; I am sorry.

22 A Yes, that is correct.

23 Q It manufactures nothing; it sells nothing; it simply holds
24 these subsidiaries which are engaged in the various activities?

25 A That is correct.

26 Q One of the activities is the mining and the sale of asbestos?

27 A Yes.

28 Q And the mining and the sale of asbestos, if I understand it
29 correctly, is done through the corporate arm of Cape Asbestos
30 (South Africa) and its subsidiaries?

2 Q North American Asbestos Corporation does play a part in the
3 sale of asbestos?
4 A Yes.
5 Q And Cape Asbestos Fibres likewise does; is that correct?
6 A Yes.
7 Q But the way that Cape Industries, Inc. makes a profit for its
8 shareholders is that it receives dividends from these
9 subsidiaries?
10 A That is so.
11 Q And it makes an allocation each year for these subsidiaries
12 to pay?
13 A No. The subsidiaries declare a dividend.
14 Q Well, is there not an allocation made each year of what portion
15 of the Cape Industries corporate expense that each subsidiary
16 will pay?
17 MR BERNAYS: Services.
18 A Oh, the service charge? That is correct.
19 MR BALDWIN: I call it an allocation. What do you call it?
20 A I call it a service charge.
21 Q Or an assessment?
22 A No, a service charge. It performs certain services.
23 Q Whatever you call it, it is a charge that is made to the
24 companies?
25 A That is correct.
26 Q The subsidiaries?
27 A Yes.
28 Q And Cape Industries, Inc. owns all of the stock in these
29 companies; is that right?
30 A That is right.

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A That is correct.

Q The Board of Directors elects or appoints the officers of the company, is this true, of the various companies?

A When you say "the officers"....

Q The managers.

A The managers, that is right.

Q What I am really saying is that the companies are run through the Board of Directors?

A The companies are run through their own Boards of Directors.

Q Who in turn serve at the sufferance of the stockholders?

A That is right.

Q So it is, on the other end of the coin, the stockholder that has the ultimate say as to how the company, one of your subsidiary companies, is conducting its business?

A I am sorry; was that a question?

Q Yes. Is that correct?

A Would you repeat the question, please?

Q I said. In the final analysis it is the stockholders who determine how the company is run?

A As with any business, yes.

MR HERNAYS: You are talking about in general terms, aren't you, not the specific details?

MR BALDWIN: I think the question is clear enough.

Q Now, all of these companies were formed at the instance of Cape Industries?

A Yes.

Q That is the way they chose to operate?

A Yes.

it wanted to?

A I assume so.

Q But it chose to do it through subsidiary holding companies?

A That is so.

Q And I believe EGNEP, for example, has no selling personnel?

A No.

Q Again, the incident of selling - marketing, if you please - your asbestos product is done through another subsidiary of Cape Industries?

A Partially, yes.

Q What do you mean when you say "partially"?

A EGNEP will sell some of its asbestos directly to consumers. It sells some of its asbestos directly to a merchant or to merchants.

Q What part does Cape Asbestos Fibres play in marketing of the asbestos?

A Cape Asbestos Fibres is essentially a selling company. It purchases asbestos from, among other suppliers, EGNEP, and it sells it to consumers of asbestos.

Q Why was the separate company of Fibres set up to handle the sale aspect of the marketing of asbestos, rather than doing it directly from EGNEP?

A There are two reasons for this. The first is that EGNEP is remotely situated geographically, and consequently it is not in a position to conduct a marketing organization with the parts of the world where asbestos is used. Secondly, for tax reasons it is desirable that it should be clearly demonstrable, clearly shown to be the fact, that EGNEP is a separate mining organization; it is quite separate from the organizations

2 Q Why is that?
3 A I am not a tax expert.
4 Q What is your understanding, as an official of Cape Industries,
5 is the reason for this?
6 A The reason for this is that there would be a possibility that,
7 for example, Cape Industries could pay tax twice.
8 Q How would they pay tax twice?
9 A There might be a possibility of -- or put it this way: Cape
10 Industries could pay tax in respect of the profits of EGNEP
11 as declared in South Africa.
12 Q What you are saying is that your South African operations might
13 be taxed under the British set-up?
14 A That is right.
15 Q And that is undesirable; is that correct?
16 A Yes.
17 Q So that is one of the reasons for the creation of this separate
18 entity to handle the sale of asbestos?
19 A I think this is the case. I don't speak with great authority
20 here because it was done before I came ----
21 Q That was my next question. When was it done?
22 A EGNEP?
23 Q No, Cape Fibres.
24 A Cape Fibres was formed in 1958 or 1959.
25 Q So that was the reason for the creation of Cape Fibres, is what
26 you have just explained?
27 A Yes.
28 Q Now, you have another company, North American Asbestos Corporation
29 that was created in the United States - when?
30 A I believe it was 1953. The answer to your question is: 1953

2 Q About the same time that Cape Fibres was?

3 A Oh, no, before that.

4 MR BAFON: 1958.

5 MR BALDWIN: I thought he said "1953".

6 MR KAYE: 1958/59.

7 MR BALDWIN: I misunderstood him. I thought he said earlier
8 "1953".

9 Q Cape Fibres came after North American?

10 A Yes.

11 Q What was the North American company? Why was it created?

12 A I can't tell you. I wasn't involved with the management of
13 the company at that time.

14 Q Do any of these subsidiaries manufacture any product which is
15 sold in the United States other than the asbestos?

16 A Manufacture any product, no. When you say "these subsidiaries",
17 no, not that I am aware of.

18 MR BERNAYS: Are you referring to any of the subsidiaries
19 of Cape Industries?

20 MR BALDWIN: Any.

21 A I can't answer that.

22 Q What part, in the marketing of asbestos, does North American
23 Asbestos Corporation play?

24 A NAAC (I will call it that) purchases asbestos from the mining
25 companies and sells it to customers within its area.

26 Q What does its area include?

27 A The North American continent, including Mexico and the
28 Caribbean.

29 Q What is your role as executive director of Cape Industries?

30 A In connection with....?

2 A I am chief scientist.

3 MR BALDWIN: You are also an executive director?

4 A Of Cape Industries, yes, that is right.

5 Q What does that role require you to do? What are your duties
6 and your responsibilities?

7 A In my capacity as chief scientist I have an overall concern
8 with any technical or scientific question that arises in the
9 widest sphere of our business.

10 Q You are the top man with reference to scientific questions?

11 A That is so.

12 Q You don't go any further above you in your company?

13 A I answer to the Board of Cape Industries for all scientific
14 questions.

15 Q What are your duties and responsibilities with reference to
16 your job as executive director?

17 A I serve on a number of the subsidiary Boards.

18 Q And help in the management of the company in that manner?

19 A In the management of Cape Industries in that manner.

20 Q And the various subsidiaries?

21 A I am non-executive on these Boards, with the exception of
22 Cape Asbestos Fibres.

23 Q You are executive on that Board?

24 A Yes.

25 Q So you do participate in the day-to-day handling of the affairs
26 of Cape Asbestos Fibres?

27 A I do.

28 Q You have been made aware, have you not, that EGNEP has
29 manufactured asbestos which has been purchased by Pittsburgh
30 Corning and used in the plant in Tyler, Texas?

Q Could you tell us how that transaction

the sale of this asbestos?

A Yes. There was an agreement between Pittsburgh Corning and EGNEP.

Q I will hand you what has already been identified as Exhibit P.1, dated 5.20.75 with the initial M.F.B. and ask you to look at it and tell me if that is a copy of the agreement?

A Yes, that seems to be it. It is this to which I was referring.

Q That is the agreement you were referring to?

A Yes.

Q Under the terms of that agreement asbestos was sold from EGNEP to Pittsburgh Corning?

A Yes.

Q How long did this relationship last?

A EGNEP sold asbestos to Pittsburgh Corning until Pittsburgh Corning -- well, "How long did it last?" - until 1971 or 1972.

Q The agreement, I believe, is dated what, 1965?

A 1962.

Q August of 1962?

A That's right.

Q So would it be fair to say, then, that from August of 1962 to the time whatever your records show that you quit selling to Pittsburgh Corning asbestos was sold to Pittsburgh Corning under the agreement that you have just looked at?

A Yes.

Q That would be sometime in 1971 or 1972?

A Yes, that is right.

Q What part would Cape Fibres play in this transaction?

A Cape Fibres played a liaison role in this transaction.

2 A Cape Fibres, as part of its duties, is responsible for the
3 general promotion of the products of the mining companies.
4 Q Does that include advertising?
5 A It does.
6 Q And various usual incidents of promotion and promoting a
7 product on the world market?
8 A That is so.
9 Q What activities does it do other than advertise in the
10 promotion of this product?
11 A It has a co-ordinating role.
12 Q Explain that, if you would.
13 A As I explained a little while ago, because of the geographical
14 location of the asbestos mines in South Africa, it was
15 considered that the co-ordination of sales would best be done
16 by Cape Fibres.
17 Q Who made that determination?
18 A I don't know.
19 Q Someone with Cape Industries?
20 A I don't know. I have no knowledge of how the decision was
21 reached. I wasn't a party to it.
22 Q It would be a decision of Cape Industries, wouldn't it?
23 A I don't know.
24 Q What other activities does Cape Fibres do to promote the sale
25 of asbestos, other than advertise?
26 A It has this co-ordination function to which I have referred.
27 It advises the mines on marketing questions.
28 Q How is it paid?
29 A It is paid a commission for this service.

2 A The commission varies depending upon the area that is involved.
3 Q Well, let's take the United States.
4 A The United States, it is paid 3%. I was hesitating because
5 I wasn't sure whether it was 3 or 3½. I feel sure it is 3%.
6 Q Of the gross sale?
7 A Of the gross sale.
8 Q And who pays that?
9 A I am sorry, it isn't the gross sale; it is the f.c.b. sales
10 value from South Africa.
11 Q What would that be, the sale less the freight?
12 A That is right. It is the value of the sale at port. You
13 asked me who pays that. That is paid by the mining company.
14 Q EGNEP?
15 A In this case, EGNEP.
16 Q Now North American Asbestos is likewise paid a commission?
17 A It is.
18 Q Of 3%?
19 A No. The North American Asbestos commission in this case
20 would be 3½%.
21 Q And that is paid by who?
22 A By the mining company.
23 Q By EGNEP?
24 A That is right.
25 Q In a typical sale of goods that would go to the Tyler plant,
26 let's just suppose, starting on the Tyler end of it, could
27 you tell me how a typical transaction would take place?
28 Someone at the Tyler plant would say "We need 50 tons"?
29 A Yes. I would have no knowledge of this until we received --
30 when I say "we", let us go back to North American Asbestos:

(9)
2 would be that the purchasing office in Pittsburgh would give
3 a message which would be relayed through NAAC that they wanted
4 500 tons of their 1970 allocation delivered during March.
5 This information would be passed to Cape Asbestos Fibres,
6 who would check this as part of their co-ordinating function.

7 Q Check it with what?

8 A The availability of asbestos at that time. They would then
9 relay this information to EGNEP with a recommendation that
10 all of it, part of it, let us say all of it, 500 tons, should
11 be shipped at a particular time.

12 Q To a particular place?

13 A To a particular place, because the place would have been
14 notified by Pittsburgh's purchasing office.

15 Q How is payment made from Pittsburgh to EGNEP?

16 A This is all in the past, of course. There is no payment now.
17 This is all finished a number of years ago. Payment was made
18 by letter of credit.

19 Q Explain how that would work.

20 A Pittsburgh Corning would open an account with a bank in
21 South Africa. It would have what we call a blanket letter of
22 credit. In other words, it would keep a sum of money, an
23 account topped up. The mining company, when the material was
24 placed on the ship, would get shipping documents to present
25 to the bank in South Africa.

26 Q Then on that authority the bank would pay?

27 A Would pay.

28 Q Then there would be a transfer of funds between the bank
29 in the United States to the bank in South Africa?

30 A A transfer of funds from the United States, from Pittsburgh,

Q I understand that; it was between the banks?

A Between the banks.

Q How would Cape Industries benefit from such a sale?

A Eventually through the dividends it received from the operating companies.

Q And the ability of the operating companies to pay their service charge or assessment?

A Yes, that is so.

Q What does the parent corporation do if operations such as this become unprofitable, if there are such?

A In these situations they would, through their representation on the Boards of Directors of the subsidiary companies, ask for explanations.

Q Or direct changes?

A Or changes.

Q To be conducted. In other words. they would try to find out the problem?

A That's right.

Q And then they would give instructions as to how to correct the problem?

A When you say "they", you mean the Board of Directors of the subsidiary company concerned?

Q I mean the parent company.

A No, the parent company would only be involved to the extent that it had directors on the subsidiary company Boards.

Q Whereas a company that is wholly owned - let's say you have one of these wholly owned companies that has a problem; it is no longer making a profit. When you nod, he can't get whether you are saying Yes or No.

2 Q If it has a problem where it no longer
3 can't pay the all-important dividend or the service charge
4 or assessment?
5 A Exactly the same thing would happen as would happen on any
6 company which has a Board of Directors.
7 Q The shareholders would go to the directors and say "What's the
8 problem?"
9 A That's right.
10 Q "Let's find out the problem and let's correct it?"
11 A That is right. Exactly the same thing would happen with the
12 subsidiary companies.
13 Q And the shareholders would see that the problem was corrected
14 or eradicated?
15 A That's right.
16 Q And give whatever instructions were necessary to correct the
17 problem?
18 A I don't know whether shareholders give instructions.
19 Q They would give instructions to the Board, wouldn't they?
20 A In so far as they elect the Board, they do.
21 Q They elect the Board to carry out the instructions necessary?
22 A Yes.
23 Q And again the shareholders is Cape Industries?
24 A Yes.
25 Q So what we are really saying is that Cape Industries' whole
26 reason for existence is to give the guidance for the subsidiary
27 companies to operate and function and make a profit?
28 A Yes.
29 Q And if one of these subsidiary companies fails to function
30 and fails to be profitable, then Cape Industries is going to

2 A As any shareholder would be expected to do.

3 Q I am not criticizing. I am just trying to find out how
4 it does it.

5 A Yes, I understand.

6 Q Because really the only reason for Cape Industries to exist
7 is to make a profit to pay its shareholders and to perform
8 whatever services it can and give guidance to its subsidiary
9 companies?

10 A To see that any subsidiary companies in which it has
11 shareholdings perform in a proper manner.

12 Q Proper manner means profitable?

13 A Exactly.

14 Q And Cape Industries can and will do what is necessary to
15 see that this is done?

16 A As would any shareholder.

17 Q In this instance, the way it operates is through its vote
18 as a shareholder and through the naming of the directors and
19 through the officers or officials that the directors appoint?

20 A That's right.

21 Q You did tell me that there were some direct sales by Cape
22 Fibres.

23 A Yes.

24 Q Which would be apart from the arrangement we have just talked
25 about?

26 A That is so.

27 Q Were any direct sales ever made to Pittsburgh Corning, to your
28 knowledge?

29 A No.

were made to -----
2 A Pittsburgh Corning by Cape Fibres, Inc.

3 Q Were any direct sales made by North American Asbestos to
4 Pittsburgh Corning during this period of time?

5 A The only sale which is different from that to which we have
6 referred was the stockpile transaction that NAAC entered into
7 with Pittsburgh Corning.

8 Q The Army surplus transaction?

9 A Yes. I believe it is called the G.S.A. stockpile.

10 Q How much was sold under that arrangement?

11 A I don't know.

12 Q And when did it take place?

13 A I don't know. I could tell you approximately within three or
14 four years.

15 Q Do that.

16 A It was towards the end of the period that we are discussing.

17 Q Toward the end of 1971?

18 A Yes.

19 Q Well, that is the best way to put it.

20 A It is somewhere there, because it was at the time that the
21 asbestos mines had difficulty in supplying. That is how I know.

22 Q How much, in round figures?

23 A I don't know. I was not involved in that transaction.

24 Q Who was?

25 A North American Asbestos.

26 Q If the purchaser had a problem with the quality of the asbestos
27 say in the United States, what would be done to correct this?

28 A Do you mean specifically Pittsburgh Corning?

Corning.

2
3 A If Pittsburgh Corning had problems with quality, what it would
4 normally do would be that the buyer in the Pittsburgh office
5 would telephone NAAC and say "We have got a problem with
6 fibre. It is this".

7 Q And what would you do?

8 A What NAAC would do is they would relay this to Cape Asbestos
9 Fibres.

10 Q And then what would be done?

11 A Cape Asbestos Fibres would investigate it.

12 Q Who would they have investigate it?

13 A When I say "investigate it" I mean they would call probably
14 (we are talking of something hypothetical here) for a sample.

15 Q Have there not been actual cases of problems?

16 A Yes.

17 Q Let's talk about how they were handled.

18 A This procedure has happened: There has been a complaint about
19 a delivery of asbestos on quality. The buyer in
20 Pittsburgh would telephone NAAC and say there was a problem,
21 and NAAC would say "Send a sample".

22 Q Then what?

23 A The sample would be transmitted to Cape Asbestos Fibres,
24 who would examine it in their laboratory, and they would then
25 transmit this to ECNEP with a report.

26 Q And then what?

27 A ECNEP would say "There is no foundation in this", or they
28 would say "We agree that there is a quality complaint here, or
29 this is justified", in which case Cape Asbestos Fibres would
30 then transmit the information to NAAC, who would in turn

who had originated the complaint.

2
3 Q Have you had occasion to send anyone from Cape Fibres to the
4 United States in connection with any complaint on the sale
5 of asbestos during the 1962-72 year period?

6 A With a complaint on quality of fibre?

7 Q Take that first.

8 A Yes. There was an occasion in 1964 when we sent an engineer
9 and a technician to Pittsburgh to deal with a complaint.

10 Q Who did you send?

11 A The scientist, or the technician, was Dr. Hodgson, and the
12 engineer was Mr White.

13 Q Who did they meet with?

14 A They met with a number of the technical and administrative
15 and purchasing people. I can't remember exactly the names.

16 MR O'CONNOR: Of who?

17 A Of Pittsburgh Corning. Did I say "1964"?

18 MR BALDWIN: Yes.

19 A This is not right. It was 1970.

20 Q 1970?

21 A Yes.

22 Q How was the problem resolved?

23 A It was resolved satisfactorily from Pittsburgh Corning's
24 point of view.

25 Q What was satisfactory? What was done?

26 A Advice was given on how the material should be handled.

27 Q Like what?

28 A Engineering advice.

29 Q What was the defect that was being complained about?

30 A The defect was that the fibre was shorter. What it came to was

Q Shorter than they wanted?

A Yes.

Q Did you agree to furnish them with longer fibre or did you tell them how to use this shorter fibre and then prevail on them to use it?

A We showed them how to use the shorter fibre.

Q Did you continue to send the short fibre?

A Yes.

Q Now were there any other complaints about defective material?

A Yes, there were.

Q Tell us about that.

A They were of a relatively small nature and I can't remember very much of the detail. There were occasional complaints of foreign matter in the asbestos; there were complaints about discoloration of the asbestos; and possibly one or two others that I don't recall now of a relatively insignificant nature.

MR O'CONNOR: Who were these fellows Dr. Hodgson and Mr White with?

A Who are they employed by? Cape Fibres. In fact, Mr White was not, but Cape Fibres had him seconded from another company.

Q From where?

A From a company called Cape Universal Building Products.

MR BALDWIN: Which belongs in the family?

A That is right.

Q Have you been to the United States in connection with the sale of asbestos or any of your duties with these companies?

A Yes, I have been to the United States, and in a general sense in connection with the sale of asbestos.

Q Have you had any dealings with the sale of the asbestos for use in the Tyler plant?

2 Q You know and knew, of course, that asbestos was sold to
3 Pittsburgh Corning?

4 A Yes.

5 Q For use in the United States?

6 A Yes.

7 Q And that that would likely take it to any one of the given
8 States?

9 A Yes.

10 Q Including Texas?

11 A Yes.

12 Q Who in your company would have knowledge of the sale of this
13 asbestos for use in the Tyler plant?

14 A For use specifically in the Tyler plant? I would like to
15 make it clear that we sold asbestos to Pittsburgh Corning.
16 We had no knowledge of whether it was going to the Tyler plant
17 or to any other plant.

18 Q You knew where it was being shipped to?

19 A We knew that it was going to a particular port, yes, but
20 that is as far as our knowledge would go.

21 Q Well, you told me you have had complaints of the quality of
22 the asbestos, I think?

23 A Yes.

24 Q And I thought I understood you to mean or say that the
25 complaint dealt with asbestos in the Tyler plant.

26 A I was speaking generally of Pittsburgh Corning.

27 Q Then is it your testimony that nobody in any of your
28 corporations ever knew that any asbestos was being sold to be
29 used in the Tyler plant?

question. You asked me, I believe, who in our organization knew that asbestos was being used in the Tyler plant.

I did myself, of course, and so would some of the employees of Cape Fibres. I don't believe anyone would in South Africa.

Q Certainly the North American?

A Oh, yes, the North American Asbestos.

Q Who negotiated this contract?

A The contract was negotiated between Pittsburgh Corning and EGNEP.

Q Who for EGNEP?

A It was signed by Justin McKeurtan, who was the chief executive.

Q He would know that some of that asbestos was going to be used in the Tyler plant during the period of force of that agreement, wouldn't he?

A I don't know.

Q But in any event during a number of the years a number of people in your corporate set-up knew that Pittsburgh were purchasing large amounts of asbestos from you to be used in the Tyler plant, among other places?

A There would be a number of people who would know.

Q That would go through the range of companies; officials with North American Asbestos, officials with Cape Fibres and officials with Cape Industries?

A That is so.

Q You can't tell us as you sit there now what officials with EGNEP knew this?

A The answer is: I don't know.

Q You were an official with EGNEP until when?

A 1973/4.

2 A I had the knowledge, yes.

3 Q So then there is another company that would know. Would I
4 be correct in enumerating the companies who knew that asbestos
5 was being sold to Pittsburgh in large quantities to be used
6 in the Tyler plant would be officials with the following
7 subsidiaries: EGNEP, CASAP, Asbestos Fibres, North American
8 Asbestos and Cape Industries?

9 A Yes.

10 Q And would these companies that I have just named be the only
11 companies in the corporate set-up that would have any relation
12 to the marketing of asbestos which might go to the Tyler plant,
13 or would there be another one?

14 A No.

15 Q These would be the ones?

16 A No-one else would have anything to do with this.

17 Q This sale of asbestos is just one of the incidents of the
18 varied interests of Cape Industries?

19 A Yes.

20 Q But it would be an incident that Cape Industries would be
21 vitally interested in, that is the sale of asbestos for profit,
22 so that the subsidiary would have a profit in its till?

23 A Putting it strictly, Cape Industries had a vital interest
24 in the companies who were undertaking this operation.

25 Q And they had also a vital interest in the sale of asbestos?

26 A Indirectly, yes.

27 Q Because that is the sole manner in which these companies
28 made a profit?

29 A Yes.

1 A Not appreciable, no.

2 Q We can take them one by one. EGNEP had no interest?

3 A No, EGNEP's only interest is to mine and sell asbestos.

4 Q North American Asbestos' only interest is to promote the sale
5 of asbestos; isn't that right?

6 A Yes. They purchase a little asbestos manufacturing materials
7 for resale, but that would be the only exception to what you
8 are saying.

9 Q And the same would be true of Cape Fibres?

10 A Yes.

11 Q And CASAF is simply a holding company?

12 A Yes.

13 Q So really the sole interest of these companies as they relate
14 to Cape Asbestos Industries would be the sale of asbestos?

15 A Yes.

16 Q Cape Industries, as it related to those companies, would be
17 interested solely through the sale of what profit might be
18 realized through the sale of asbestos?

19 A The interest of Cape Industries was in the profit.

20 Q So it was the interest of Cape Industries, and is, to see that
21 asbestos is sold profitably?

22 A Indirectly so, yes.

23 Q Sometimes we don't have pity on witnesses, and it is hard
24 on you to just keep being asked questions. Do you need a
25 drink of water or a break?

26 A I am getting a little hoarse, to be quite honest, Mr Baldwin,
27 as no doubt you have noticed.

28 (A short recess was then taken)

2 Q I would like to ask you a little bit more about this Mr White.
3 What company did you say he was with?
4 A Cape Universal Building Products.
5 Q We have gotten a list this morning of companies, and it wasn't -
6 A I was hesitating because that company has now been split into
7 two operating companies. It no longer exists, that company.
8 Q Why does it no longer exist?
9 A Because it has been divided into two companies which are now
10 Cape Universal Claddings and Cape Boards and Panels.
11 Q That was a judgment that was made by the parent company?
12 A In fact it was a judgment made by the Chairman of the Board.
13 Q Who is that?
14 A Mr Doughty.
15 Q Chairman of the Board of what?
16 A Cape Universal Building Products, as it was.
17 Q He also served on Cape Industries?
18 A He does.
19 Q In what capacity?
20 A As an executive director.
21 Q That judgment was made because it was felt that the best
22 interests of running Cape Industries would demand that the
23 company be split into two?
24 A No, it wasn't in fact in this particular case. I know,
25 because I was on the Board at the time.
26 Q Go ahead.
27 A He felt that it was too big a company to operate in the way
28 it was working; so he decided it would be better to split it,
29 and he got the Board to agree.
30 Q What Board?

2 Q Was Cape Industries consulted about this?
3 A Well, he would report it, and no-one objected.
4 Q Now, were you on the Board of that company? You said you were?
5 A Yes.
6 Q When Mr White did this work, how was that company paid .
7 for his services?
8 A I don't recall exactly.
9 Q Was it paid?
10 A I can't recall.
11 Q Who made the judgment to get Mr White to come over and look
12 into the problem?
13 A Someone in Cape Fibres would have done this.
14 Q Would that be you?
15 A No. As I recall, I was consulted, because it was a technical
16 matter.
17 Q But anyway somebody in Cape Fibres -----
18 A Somebody in Cape Fibres said "We need a man with experience
19 of such, such, such and such" and said "White - can we get him?"
20 Q So then what? This was made known to the company that White
21 worked for?
22 A That is right; their permission was asked for him to go.
23 This would only be for two or three days.
24 Q So he was made available?
25 A "Can he be made available?".
26 Q And he was?
27 A And he was.
28 Q Was this done frequently within your corporate set-up, that
29 you interchange people?
30 A It is done not frequently; occasionally.

2 A When necessary, but not frequently.
3 Q It is done when necessary, would be a better way of putting it?
4 A Yes.
5 Q Do you know whether there was any accounting between the
6 companies for White's services?
7 A I can't recall now.
8 Q You don't know this?
9 A I can't recall now.
10 Q How, as a matter of fact, is Cape Fibres paid their 3%
11 commission?
12 A They are paid by EGNEF.
13 Q How?
14 A Well, the Cape Industries, as part of the services it provides
15 for the subsidiary companies, has a central banking account.
16 Q So it was done by a requisition and voucher, or what?
17 A Yes.
18 Q Is that how all of the financial arrangements of these
19 companies are handled, by a requisition and voucher for a central
20 account?
21 A No, not all of them, but, for example, specifically Cape
22 Fibres' commission would be paid through this central banking
23 operation. You would appreciate there is a substantial flow of
24 funds between London and South Africa one way or the other.
25 Q Tell me how this operates, the central banking.
26 A I am not a financial expert, as you will have gathered.
27 Q Who is the man that is in charge of the finance, the central
28 banking?
29 A We have someone on our main Board who is our financial director.
30 Q And who is that?

2 how it works, of course.

3 Q Give me your knowledge of how it works.

4 A All transactions between London and South Africa would be
5 paid by cheque either from London on Cape Industries' paper
6 or from South Africa to London on Cape Asbestos (South Africa)
7 paper.

8 Q That is what it was set up for, then, to handle the money
9 transactions?

10 A No. This came in much later as a convenient service that
11 could be performed centrally.

12 Q I still don't understand this service. Let's go back to this
13 transaction and say that Cape Fibres is entitled to £100,000
14 as a commission from EGNEP. Now how does it get the £100,000
15 in its London account?

16 A Cape Fibres will get the £100,000 from Cape Industries.

17 Q By a voucher? What does it do; make a requisition for £100,000
18 and show on the requisition what it is for?

19 A No. I can't give you the detail of how this would work, but
20 what it will come to is that Cape Fibres will receive £100,000
21 from Cape Industries, who will in turn, as part of their
22 accounting with South Africa, have received the money from
23 South Africa.

24 Q How will Cape Industries get the £100,000 from EGNEP?

25 A For example, as a dividend.

26 Q As a dividend?

27 A Yes. I am sorry; from Cape Asbestos (South Africa). You said
28 EGNEP, didn't you?

29 Q Yes.

30 A Yes; well, it would come through Cape Asbestos (South Africa)

2 Q Wait a minute. Let's take this thing a little bit slower,
3 because you are about to lose me. Let's take a transaction
4 where you have got the man from Tyler involved, a sale of
5 asbestos to the Tyler plant; that Cape Asbestos Fibres
6 performed whatever services they performed, and they were
7 entitled to a 3% commission.

8 A That is right.

9 Q On this imaginary sale, let us say the commission is \$100,000.
10 That commission is going to be paid by EGNEP, isn't it?
11 That is who owes the commission?

12 A Yes, that's right.

13 Q Now are you telling me - and I follow you to an extent - that
14 Cape Fibres gets the \$100,000 from Cape Industries, the
15 parent company? Is that right?

16 A In fact, yes.

17 Q Then that means that EGNEP owes Cape Industries \$100,000,
18 doesn't it? So they haven't paid anybody yet? They are
19 getting a free ride up to now?

20 A Yes. But, you see, at the same time while all this is
21 happening, Cape Fibres will have purchased from EGNEP, or
22 from the other mining companies in South Africa, perhaps
23 \$1 million worth of asbestos for resale. So that has to be
24 paid for. So that means \$1 million is going from London to
25 South Africa and \$100,000 is coming from South Africa to
26 London in order to pay Cape Fibres. What would happen in fact
27 is \$900,000 would go from London to South Africa.

28 MR BERLAYS: A kind of a clearing house balancing?

29 A "clearing house" is the expression I think that is used for
30 that.

2 all that we are talking about now is getting the \$100,000 from
3 EGNEP to Cape Fibres. Surely this can be done?

4 A If this were the only transaction involved, yes.

5 Q How would that be done? EGNEP pays who?

6 A EGNEP will pay Cape Asbestos (South Africa).

7 Q \$100,000?

8 A \$100,000.

9 Q For what?

10 A This is the commission which is going to find its way
11 ultimately to Cape Asbestos Fibres.

12 Q Why does it pay Cape Asbestos (South Africa) anything? It hadn'
13 performed any service?

14 A No, it performs no service except that it is running the
15 clearing house in South Africa.

16 Q So it pays that money to Cape Asbestos (South Africa), which is
17 acting in this instant as an agent for Cape Industries?

18 A As an agent? No.

19 Q What part does it play?

20 A It is acting, as Mr Bernays says, as a clearing house in
21 South Africa for the money transaction.

22 Q It gets the money and sends it on to Cape Industries; is
23 that what you are telling me?

24 A Yes. But in any month there may be twenty or thirty of these
25 transactions taking place one way or the other. It would be
26 unbusinesslike for everyone to be sending cheques to everybody
27 else. So it is done centrally through these two clearing house

28 Q Well, in that sense, then, Cape Asbestos is receiving money
29 that really should go to Cape Industries, isn't it?

30 A No; it is acting as a clearing house.

Q Whatever term you want to give it, it is acting on behalf of Cape Industries?

A It is acting on behalf of Cape Industries?

Q Yes. It is going to receive money.

A No. Cape Industries is providing a service to Cape Fibres.

Q I understand that.

A And the service that it is providing is handling its commission. It is providing a channel through which this money can flow to Cape Fibres.

Q Why can't it just go direct?

A It could. In fact we used to do this. We used to have this money going directly.

Q Why doesn't it go direct now? Why doesn't Cape Fibres simply bill -----

A Because it would mean hundreds of cheques going one way and going the other way every month, which is an expensive and laborious procedure. It saves a good deal of time and money to do it centrally.

Q It is a bookkeeping thing?

A Right.

Q So really what it does, it keeps money from changing hands and allows you to effect these transfers through bookkeeping entries to a large extent?

A Yes, I suppose you would call it bookkeeping entries, that is right.

MR BERNAYS: I still like the term "clearing house operation".

MR BALDWIN: Oh, you do?

Q Does Cape Industries receive any compensation for this transaction, or do they do it just as a Good Samaritan?

A No. We have already referred to this.

2 A Well, there is this service charge that they receive from each
3 one of the subsidiaries for providing services of this kind.
4 Q This is one of the service charges?
5 A It is one of the services for which the charges are made.
6 Q Does Cape Asbestos (South Africa) likewise make a charge?
7 A I believe that is so, but I am not sure of this.
8 Q How much is the charge?
9 A I can't tell you the figure.
10 Q Is it a percentage?
11 A Yes.
12 Q A percentage of the money handled?
13 A No.
14 Q A percentage of what?
15 A It would be based upon the capital employed on the assets
16 of the subsidiary companies.
17 Q In the meantime, Cape Industries has control of the money,
18 doesn't it?
19 A No.
20 Q Well, it is in a bank account with its name on it, isn't it?
21 A Oh, I see what you mean. It has control of the money in
22 that sense, yes.
23 Q Now are all of these subsidiaries charged in a similar
24 fashion?
25 A All subsidiaries pay a service charge.
26 Q Well, do all subsidiaries act through this accounting
27 procedure?
28 A No, I don't believe that NAAC would pay EGNE² through this
29 procedure. In fact it doesn't.
30 Q Where are these records kept that you are describing?

1 A The records being the accounting related to the central
2 service?

3 Q Yes.

4 A These would be kept in London and in Johannesburg.

5 Q And who is in charge of the London end?

6 A Cape Industries would be in charge of the London end.

7 Q What is the man's name?

8 A This would come under the direction of Mr Stevenson, the
9 financial director.

10 Q Now are your dividends handled in the same way?

11 A Yes.

12 Q In other words, at the end of the year there is just again
13 an accounting, an adjustment of the books?

14 A Mr Bernays says I have got to say "clearing house", and this
15 is what I prefer to say, yes.

16 Q At the end of the year the clearing house, then, makes an
17 adjustment of the books and deducts the dividends that is
18 owed -----

19 A The dividend would be taken into account, as would all of the
20 other payments, and a transfer of funds made.

21 Q When and how are the dividends determined?

22 A The dividends are determined annually and declared by the
23 Board of Directors.

24 Q Is that on a fiscal year?

25 A Yes.

26 Q How do they determine how much dividend should be paid? Is it
27 based on need?

28 A It is based upon the performance of the company and what
29 profit can be transferred, or what sum, I should say, can be
30 transferred.

2 Cape Industries?

3 A Yes.

4 MR BERNAYS: Which Board are you talking about?

5 MR BALDWIN: Of the company that declares a dividend.

6 Q Is that right?

7 A Yes.

8 MR PENNA: Ultimately. I think there is some confusion here.

9 Could you repeat that?

10 A I am sorry, perhaps I misunderstood the question.

11 MR BERNAYS: Which Board are you talking about, please, because

12 I think the witness is confused on that?

13 MR BALDWIN: I was just saying: We are getting down to the point
14 of how you determine the dividends.

15 A Yes.

16 MR BERNAYS: Who do you mean by "you"?

17 MR BALDWIN: Cape Asbestos Industries.

18 MR BERNAYS: Cape Industries.

19 MR BALDWIN: Cape Industries. I keep wanting to stick "Asbestos"
20 in there.

21 Q Do you follow me?

22 A Yes, I do. Of course, it is not true that -- Cape Industries
23 don't declare a dividend.

24 Q What I mean is the dividends that are paid to Cape Industries.

25 A The dividends are declared by the Boards of Directors of
26 the subsidiary companies.

27 Q Precisely. That is the way I had understood you.

28 A I am sorry; I didn't make that clear.

29 Q That is what I had understood; and those Boards of Directors
30 are made up of people who occupy positions with Cape Industries

1 A Not entirely, no.

2 Q Can you name me a Board of any subsidiary that is not
3 controlled or does not have the majority of its members on it
4 that are people of Cape Industries? Can you name me one?

5 A I would have to go through all the Boards in detail to do this.

6 Q Let's do that. Sit there and think and see if you can name me
7 one Board of a subsidiary that is not made up by a majority
8 of directors who are otherwise connected with Cape Industries.

9 A Perhaps we are saying the same thing, but when you say
10 "directors who are not connected with Cape Industries".....

11 Q Or any of its subsidiaries.

12 A I see what you mean. No, all of our subsidiary Boards
13 have a preponderance of either directors of Cape Industries
14 or full-time employees of the subsidiary concerned; but not
15 entirely.

16 Q Name me one that has a majority of people who are not ----

17 A I can't.

18 Q There is none, is there?

19 A No. This was not quite the question that you asked me before.

20 Q To get to the point simply, none of your Boards are composed
21 of a majority of people who are not otherwise associated with
22 Cape Industries?

23 A That is true.

24 Q And the majority, of course, controls, doesn't it?

25 A Yes.

26 Q So then if Cape Industries or its people compose a majority of
27 the Boards they compose control of whether dividends are paid
28 and how they are paid and when they will be paid: isn't this
29 true?
30

2 for a moment, you are trying to reach towards here, Mr Baldwin,
3 but let me make this quite clear. If you take, for example,
4 the Board of Cape Asbestos (South Africa), on that Board
5 there are I believe three directors of Cape Industries.

6 Q That is right.

7 A There are four or five people who are not directors of Cape
8 Industries but who, it is true, are employees of one or other
9 South African companies. There is also one director who is
10 what you would call an outside director who is not involved
11 in any way with any of the Cape companies. That is a typical
12 arrangement for any of the Boards of the subsidiary companies.
13 Was that the question you were asking? Does that answer it?

14 Q I think it does. In other words, what you are telling me is th
15 using that company as an example, you have only one person
16 on the Board of how many?

17 A I can't remember exactly how many there are.

18 Q Twelve or thirteen?

19 A Something of that order.

20 Q Don't we have it written down somewhere about the Board of
21 Cape Asbestos (South Africa)?

22 MR KAYE: I have got nine names.

23 A Of those, I believe three are executive directors of Cape
24 Industries. Is that right?

25 MR KAYE: I have Higham, Gaze and Dougherty.

26 A No, Dougherty is not a director. Doughty, isn't it?

27 MR KAYE: Doughty; I beg your pardon. I meant Doughty.

28 A Higham, Gaze and Doughty are directors of Cape Industries.

29 There is a director whose name is Reunert who is not in any of
30 the Cape companies.

2 dividend of Cape (South Africa), you have one man who is not
3 otherwise connected?

4 A That is correct; but the reason I was ----

5 MR BERNAYS: Now wait a minute. Excuse me. The question is
6 ambiguous. Not otherwise connected with what?

7 MR BALDWIN: Cape Industries or one of its subsidiaries. It is
8 simple.

9 MR BERNAYS: There are three directors, or four, whatever it is,
10 who are also directors of Cape Industries; the others are not.

11 MR BALDWIN: My question is this: Out of the nine directors of
12 Cape Asbestos (South Africa), which you have used as a typical
13 company, you have one person who is not directly connected
14 to Cape Industries or one of its subsidiaries?

15 A That is true. That was not the question you asked me originally

16 Q Well, I am asking it now, so there won't be any misunderstanding
17 Is that right?

18 A I am sorry; is what right? I was just laughing at Mr O'Connor.

19 Q That out of the nine people on that Board you have only one
20 that is not connected in one way or another with Cape Industries

21 A Who is not either an executive director of Cape Industries or
22 an employee of one of the subsidiary companies. That is the
23 fact.

24 Q All right; and an employee of that company is hired and fired
25 by the company that it works for, isn't it? Isn't that true?

26 A You mean who will hire and fire the employees of Cape Asbestos
27 (South Africa)?

28 Q Yes.

29 A Well, the managers would be hired by the executive directors
30 of the Board.

2 which is a matter to go through the clearing house or the
3 procedure of Cape Industries, these are the people that are
4 going to vote on it?

5 (Off the record discussion)

6 The people that are going to vote on that dividend are
7 Mr McKeurtan, who is Chairman of the Board of what company?

8 A Cape Asbestos (South Africa).

9 Q What position does he hold with Cape Industries?

10 A He is Chairman of the Board. He has no other responsibility.

11 Q Of what?

12 A Of Cape Asbestos (South Africa).

13 Q Does he work for any other company?

14 A I don't know.

15 Q You are going to have Mr Higham, who we know is Managing
16 Director of Cape Industries?

17 A That's right

18 Q You are going to have Mr Dougherty, who is ----

19 A He is Managing Director of Cape Asbestos (South Africa).

20 Q What capacity does he have with Cape Industries or one of its
21 subsidiaries?

22 A As I have just said, he is Managing Director of Cape Asbestos
23 (South Africa).

24 Q He is also on the Board, isn't he?

25 MR KAYE: That is Doughty, not Dougherty.

26 A There are two people; one is Doughty and the other is
27 Dougherty.

28 MR BALDWIN: Does Dougherty have any other position with any of
29 the Cape companies?

30

2 of the mining companies.

3 Q And Mr O'Connor, who is technical director to EGNEP?

4 A Yes.

5 Q And you have Mr Frost, who is industrial manager?

6 A Yes, that is right.

7 Q What other companies is he with?

8 A I believe he is Managing Director of the two industrial
9 companies. He may be General Manager, but I believe he is
10 Managing Director.

11 Q You have Mr Wilson, who is your financial man on the Board of
12 Cape Industries?

13 A That is right, yes.

14 Q And you have Mr Reunert, who is an outsider?

15 A He is an outside director.

16 Q And you have yourself and Mr Dougherty, who is also on the
17 Board of Cape Industries?

18 A That is right.

19 Q Those are the people that are going to determine the dividend?

20 A That is correct.

21 MR PENNA: Wilson is not on the Board of Cape Industries.

22 MR O'CONNOR: He didn't say he was.

23 MR PENNA: Yes, he did. It is on the record.

24 MR KAYE: Yes, you did just say Wilson was on the Board, but that
25 is wrong.

26 A I am sorry.

27 MR BALDWIN: I stand corrected. Mr Wilson is not on the Board
28 of Cape Industries. Does he occupy any dual position with
29 any of the other companies?

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recall.

Q He is on EGNEP, isn't he? He is also on the Board and financial director of EGNEP?

A That may be so.

Q When they vote this dividend, do they take into consideration any communication from Cape Industries with reference to how much it should be or should not be from the standpoint of taxes?

A Not that I am aware of.

Q Is there any liaison between Cape Industries and this Board here when they vote?

A To the extent that there are three members of the Board of Cape Industries.

Q Now what companies are you on the Board of Directors of?

A I am on the Board of Cape Industries, I am on the Board of Small & Parfres Limited, Cape Asbestos Fibres, Cape Boards and Panels, Cape Asbestos (South Africa).

Q North American?

A North American Asbestos Corporation. Those are all that I recall at the moment.

Q That is six?

A That sounds right.

Q When does the Board of North American Asbestos Corporation meet?

A Quarterly, as I recall.

Q Where does it meet?

A Chicago.

Q Do you go there each quarter?

A No.

2 meeting there?

3 A Last November or thereabouts. Perhaps it was December.

4 Q How many would you make a year?

5 A One or two.

6 Q Cape Asbestos (South Africa). How often does it meet?

7 A Quarterly.

8 Q And were you present at the last meeting of that?

9 A No.

10 Q How long has it been since you have been there?

11 A I was there April, or was it August? Can I say sometime

12 last year, in the first half of last year? I can't remember

13 now whether it was April or August.

14 Q Do you make that meeting once a year?

15 A I don't have a specific time for ----

16 Q What would you average?

17 A Average once or twice a year in the last ten years.

18 Q Cape Boards and Panels?

19 A Forgive me; what is the question?

20 Q When is the last time you were at a meeting of the Board of

21 Directors of Cape Boards and Panels?

22 A Two months ago.

23 Q How often does it meet?

24 A Every two months.

25 Q Do you go there each two months?

26 A Yes. Not infallibly, but usually I am present at every

27 meeting.

28 Q That is a new company getting off the ground, isn't it?

29 A Yes.

2 A Also every two months.

3 Q Do you make that one every two months?

4 A Yes.

5 Q And Small & Parkes?

6 A Yes, every two months.

7 Q And Cape Industries?

8 A Yes.

9 Q What does Small & Parkes do?

10 A I have missed one out: Cape Insulation. That is one I remember

11 Q Small & Parkes?

12 A It manufactures friction materials.

13 Q How often does Cape Industries meet?

14 A Every month.

15 Q Where? In London?

16 A In London.

17 Q And you control those monthly?

18 A Yes.

19 Q Getting back to this so-called clearing house, is there one

20 clearing house, or is there one above another, or are there

21 two on equal footing?

22 A I don't think the question of footing arises. It is a

23 geographical situation.

24 Q The London clearing house is for the English companies?

25 A It deals with the English end, and the Johannesburg clearing

26 house deals with the South African end.

27 Q Does the North American Asbestos Corporation go through the

28 same clearing house?

29 A No.

30

2 A No.

3 Q What you are doing is, to keep from having a constant flow of

4 money between the countries, you have one place to have an

5 accounting for all of these various transactions involving

6 inter-company accounting, dividend and service charges?

7 A Yes, and payment for supplies.

8 Q Do you have central purchasing, central payment for supplies?

9 A No, only an advisory service.

10 Q How does that function?

11 A A director on the Cape Insulation Board has responsibility for

12 answering for purchasing, in the same sense that I have

13 responsibility for scientific questions.

14 Q But you don't purchase centrally?

15 A No.

16 Q Now is there a safety department of EGNEP as such?

17 A I can't answer that for certain.

18 Q Is there a safety department or corresponding department for

19 CASAP?

20 A Obviously there is great concern about safety in South Africa,

21 but exactly how the responsibility is allocated, I can't answer.

22 Q Well, aren't you on the Board of Directors of CASAP?

23 A Yes, I am.

24 Q Can you tell me whether or not your company has a safety

25 department?

26 A You embarrass me, because I ought to know and I don't know.

27 Q Is there a safety department in Cape Fibres?

28 A We have a director who is designated as being responsible for

29 safety questions.

30

2 and employees under him who have no responsibility except
3 that of safety?
4 A Not in Cape Fibres.
5 Q Do you in any of your companies?
6 A Yes.
7 Q Which ones?
8 A We have a safety officer, an officer responsible for safety,
9 I believe in all of the operating companies in the United
10 Kingdom.
11 Q And do you have a person whose sole duty is that of safety,
12 with no other obligations, in each of the companies?
13 A I can't answer this positively. I am not sufficiently aware
14 of exactly how the companies are organized, but each company
15 has by law now to have someone responsible for safety.
16 Q When did this law take effect?
17 A Relatively recently, within the last twelve months.
18 Q And before that did you have such a person or position?
19 A There were people to whom specific safety duties were
20 assigned, but I cannot give you the details of these.
21 Q You are a scientist, and you have studied asbestos, you said,
22 since the 1940's?
23 A Yes.
24 Q And you have become aware that asbestos in various forms is
25 dangerous to the human health, have you not?
26 A Yes.
27 Q When did you first become aware of that?
28 A The day I was employed.
29 Q How did you become aware of it?
30

2 precautions had to be taken in handling asbestos.

3 Q What were the dangers that you were advised of?

4 A The dangers associated with breathing asbestos dust.

5 Q What were you told that it would cause?

6 A I can't remember now. It is a long time ago.

7 Q Well, do you know now what it will cause?

8 A Yes.

9 Q What will it cause?

10 A Breathing asbestos dust can cause asbestosis.

11 Q Can it cause mesothelioma?

12 A Yes.

13 Q When did you acquire this knowledge? The day you came to

14 work with the company?

15 A I acquired the knowledge that there were hazards in breathing

16 asbestos, and I believe through subsequent enquiry I found out

17 about asbestosis within a relatively short time. My knowledge

18 of mesothelioma was obviously derived at a much later date.

19 Q When did you first become acquainted with the fact that asbestos

20 could cause mesothelioma?

21 A Somewhere around 1960.

22 Q Did you keep abreast of the literature?

23 A Yes.

24 Q Wasn't there a writing before 1960 suggesting this?

25 A As I recall, not very much before, and the writing was of a

26 tentative nature.

27 Q Asbestosis is a disease of the lung?

28 A Yes.

29 Q It is progressive?

30 A Yes.

2 A Yes.

3 Q There is no known treatment for it?

4 A There is no known treatment. I say it is irreversible; I

5 agreed when you said it is irreversible. Many authorities

6 believe that removal from exposure to asbestos at a very early

7 stage can result in cessation of the progressive nature of the

8 disease.

9 Q If you are removed early enough?

10 A That is correct.

11 Q What is early enough?

12 A I can't be specific, but I would say what I said was true:

13 At a very early stage.

14 Q What is a very early stage?

15 A Well, I find that difficult to answer precisely. It is a

16 question of degree.

17 Q And if it is not, then it is and can be terminal, can it not?

18 A That is correct.

19 Q When did you first acquire this knowledge that asbestosis

20 was this serious a problem, could be this serious a problem

21 as we have just described?

22 A I acquired this knowledge slowly over the years. Your

23 question was "this serious". In other words, you are saying

24 that it was an irreversible and terminal condition.

25 Q When did you first become aware of that?

26 A I became aware of that within the first few years of my

27 association with asbestos.

28 Q Would you not describe that as a serious condition?

29 A Oh, yes.

2 knowledge that asbestosis could be progressive, irreversible
3 and terminal in your early years?

4 A Yes, that is true.

5 Q That would be in the 1950's, certainly?

6 A Yes.

7 Q With your position with Cape Industries you have authority
8 to recommend that these companies create various departments
9 or divisions that you are associated with, don't you?

10 A I have power to make recommendations, yes, that is true.

11 Q I get the feeling that you are the scientific director of all
12 of the subsidiaries. Is this right?

13 A Those that I have mentioned. I am using "director" in the
14 English sense. In other words, I am a member of the Board,
15 as you say, "director".

16 Q No, I am talking about: you are the man in the corporate set-up
17 for these companies that has the expertise in science?

18 A I answer to the Cape Industries Board on all scientific
19 questions, yes.

20 Q As it affects any of its subsidiaries?

21 A As it affects any of its operations, subsidiaries or what
22 have you.

23 (Off the record discussion)

24 Q Dr. Gaze, where we were was that you are the man in the
25 corporate set-up that has the scientific knowledge?

26 A Yes.

27 Q So naturally you are looked to with scientific problems that
28 crop up in any of the subsidiary companies?

29 A Not necessarily, no. I am looked to by my colleagues on the
30

2 companies are largely self-contained in these questions.
3 When I say 'these questions', I mean scientific matters
4 where they are concerned with scientific matters.
5 Q Are your colleagues on the Board of Cape Industries conscious
6 of safety matters?
7 A Yes.
8 Q And are they desirous of providing the safest working
9 conditions possible?
10 A Yes.
11 Q And are they keenly aware, or try to be keenly aware, of
12 any dangers?
13 A Yes.
14 Q They are quick to take whatever steps are necessary to see
15 that the safest course is followed in your corporate set-up?
16 A Yes.
17 Q This would include the activities of your subsidiaries?
18 A Yes.
19 Q Have you ever suggested as a member of that Board to any
20 of your colleagues that you set-up or recommend that any of
21 your subsidiaries, specifically your mining companies, set
22 up any safety standards to be followed?
23 A This would normally happen at Board level at the subsidiary
24 companies.
25 Q You leave it to the subsidiaries?
26 A When you say "you", do you mean I personally?
27 Q Cape Industries.
28 A Cape Industries would leave this essentially to the
29 subsidiaries, who have a direct responsibility in these
30 questions.

2 dangerous situation in EGNEP, for example, to advise them
3 of that?

4 A Yes. To advise....?

5 Q EGNEP.

6 A I wouldn't advise EGNEP unless it were a matter of tremendous
7 urgency. I would bring this to the attention of my colleagues
8 on the Board of Cape Asbestos (South Africa).

9 Q For what purpose?

10 A This would be one reason why I would be appointed to the Board.

11 Q What would you hope that they would do? Why would you tell
12 them about it?

13 A I would tell them about it because I was concerned about
14 a hypothetical safety situation.

15 Q Would you tell them about it in an effort to get it corrected?

16 A Of course.

17 Q Otherwise you would be wasting your breath?

18 A Exactly.

19 Q You would tell them about it with the knowledge that they
20 would take what steps necessary to correct it. Is this true?

21 A Yes; and I would go to the lengths of ensuring that they had
22 taken the necessary steps.

23 Q Suppose they failed to correct it; ignored your recommendation?

24 A Then I would raise it again with members of the Board, and I
25 would do so very strongly.

26 Q And you would continue to do so until it was done?

27 A That is so, yes.

28 Q Now do you, as a member of the Board of Cape Industries,
29 feel that if you have knowledge of a dangerous condition that
30 exists in EGNEP, for example, that you should advise them of

2 A This has never occurred. To my memory, I have never specificall
3 advised the Board of Cape Industries of a safety question,
4 and I would normally only expect to do this if I was not
5 able to obtain satisfaction in my capacity as a director of
6 the subsidiary company concerned.

7 Q But you would if you could?

8 A We are getting a little hypothetical here.

9 Q I am just trying to ----

10 A What is behind your question?

11 Q Another question. I am asking you if you feel any sense
12 of urgency or duty as a member of the Board of Cape Industries
13 to see that your subsidiary companies are advised of
14 dangerous conditions that you have knowledge of.

15 A Yes. I find it difficult to answer that particular question
16 precisely. The fact of the matter is I am very conscious
17 of safety questions. I regard it as being my duty to take
18 these up at Board level in the companies on which I serve;
19 and it is true to say (I will go along with you on the
20 speculation) if I was not satisfied with what had been done,
21 I would report this to my colleagues on the Cape Industries
22 Board at Board level.

23 Q And what would be the reason for doing that?

24 A Again, hypothetically, if I were not able to achieve
25 satisfaction at the level at which I would normally operate
26 in these circumstances.

27 Q You would do it with the hope that you would achieve satisfacti

28 A This is hypothetical. The fact is, Mr Baldwin, when a safety
29 question comes up, it is not a question of hope; it is a
30 question of determination: and this is expressed with the

2 Q If you did not get satisfaction, you might go to the Board
3 of the company involved, and you say you would go to the Board
4 of the parent company. Why would you go to this Board?
5 A This is a very hypothetical situation that you are asking me
6 to describe, frankly. It is something that has never arisen.
7 Q Now answer my question.
8 A Well, I suppose because as the principal shareholders they have
9 the ultimate authority. That was the answer you wanted me to
10 give, wasn't it? That is the truth.
11 Q It is good enough if it is the true one.
12 A That is the truth, yes.
13 Q So what you are saying, then, is that you would get the safety
14 practices carried out through going to the Board of the
15 parent company if necessary because you know they have the
16 authority to have your directions carried out by shareholders'
17 action, and this is why you would go to them?
18 A Yes.
19 Q In other words, it is the ultimate way to get a problem
20 handled if all else failed?
21 A If all else failed, that would be true.
22 Q Whatever the vehicle, you do have a vehicle at your disposal
23 to see that safety practices are followed in your subsidiary
24 companies?
25 A Yes.
26 Q And you do feel a sense of duty to see that safe practices
27 are carried out by your subsidiaries as a member of the Board
28 of Cape Industries, the parent company?
29 A Yes.

2 aware of safety practices?

3 A Yes.

4 Q And so it is within your wherewithal to see that these.
5 safety practices are followed and carried out in your various
6 companies?

7 A Yes.

8 Q Now did you make any effort, with this knowledge that you had
9 of asbestos, to see that any precaution was taken for the people
10 who would be expected to work around asbestos?

11 A Yes.

12 Q What did you do?

13 A Since I have been concerned with these questions, I have
14 satisfied myself that the subsidiary companies who are using
15 asbestos are using it in conformity with the law and with what
16 I regard as being safe practices.

17 Q You have seen that what you regard as safe practices have been
18 carried out in your subsidiary companies?

19 A That is so.

20 Q And you, of course, have the authority to do this by the various
21 channels?

22 A By virtue of my presence on the Board of the subsidiary
23 company.

24 Q And have you made any effort, with this knowledge, to warn
25 or advise the people who would be purchasing this material
26 from your companies of the potential hazards?

27 A I have on occasions done this, yes.

28 Q When?

29 A I can't recall specific occasions, because this happens
30 rarely.

2 be expected to purchase asbestos that it might be dangerous to
3 those working on it.

4 A I can't recall specific occasions.

5 Q What is the earliest that you remember advising anyone?

6 A This seldom arises.

7 Q Then are you telling me that you do not ----

8 A No. I can remember conversations, but I can't put a name to
9 them or put a year to them.

10 Q Would you say the 1960's; 1970's; could you give us a decade?

11 A Yes. I am trying to answer your question, but my memory
12 here is ----

13 Q Don't let me rush you.

14 A My memory here is difficult, and your questions are somewhat
15 difficult. You frame it in rather a difficult way.

16 MR BERNAYS: Are you referring to ever at any time, or in
17 connection with Pittsburgh Corning, or is it just a broad ----

18 MR BALDWIN: Any time, anybody.

19 A I do recall warning, or talking to, the directors of
20 Pittsburgh Corning in this connection. I mean this may be
21 in your mind in this particular case.

22 Q It is.

23 A Yes.

24 Q When was that?

25 A I have discussed this with them on a number of occasions.

26 Q The first?

27 A The first time I met them.

28 Q When was that?

29 A 1961.

2 a purchaser or prospective purchaser of your asbestos
3 that it was potentially dangerous?

4 A That's right. What I would have said to them is that
5 precautions had to be taken in its use.

6 Q And you did this with the full knowledge that you told me
7 that you had earlier, back in the 1950's, that it could cause
8 asbestosis?

9 A That is so.

10 Q Which you have characterized as a disease that can be
11 progressive, irreversible and terminal?

12 A That is right; with the small qualification that I made
13 in that connection.

14 Q But in any event when you talked to this prospective purchaser
15 in 1960 you had in your mind at least that dangerous
16 characteristic of asbestos?

17 A Yes.

18 Q And you would agree with me that that is a serious danger?

19 A Yes.

20 Q A gravely serious danger, isn't it?

21 A We are discussing words now on rather a serious subject.

22 Q I know.

23 A It is a very serious situation, yes; a very serious danger.

24 Q You would characterize it as very serious danger?

25 A Yes.

26 Q And you wanted it to be made known to these people at P.C.?

27 A Yes.

28 Q And that was in the year 1961 that you can remember was the
29 first time that you discussed this?

30 A With Pittsburgh Corning.

2 to?

3 A Yes, I can.

4 Q Who were they?

5 A I discussed this with Mr Russell Brittingham, Mr Frank Maston,
6 Mr Robert Buckley, Dr. D Eustacio.

7 Q Is that all?

8 A No, one more: Carl Baumler.

9 Q Where was this meeting?

10 A In Pittsburgh.

11 Q What was the occasion for it?

12 A The occasion was the first interest that Pittsburgh had to
13 manufacture Unibestos.

14 Q What is that?

15 A It is a high temperature insulating material which is made from
16 Amosite asbestos, bonded with sodium silicate.

17 Q What did you tell them?

18 A They asked me to tell them generally what was involved in the
19 manufacture of Unibestos and the technical characteristics
20 of the product. They asked me to give them a little
21 dissertation on this question.

22 Q And what did you tell them?

23 A I can't remember exactly.

24 Q In substance?

25 A In substance, I told them how the material was made, what the
26 raw materials are or were, what precautions had to be taken
27 in the handling of the raw materials and what were the
28 characteristics of the end product.

29 Q What company were you representing when you met with these
30 people?

2 chief scientist of Cape Industries, and I was also a director
3 of Cape Fibres.
4 Q You were talking to them in your capacity as chief scientist
5 for what is now Cape Industries?
6 A What is now Cape Industries. I wouldn't say exactly which hat
7 I had on at the time, but I had authority in both of those
8 connections.
9 Q One or both?
10 A In both of those connections.
11 Q Cape Fibres was in the business of selling?
12 A But not in the United States. They had a general marketing
13 advisory capacity.
14 Q So Cape Fibres as such would receive no benefit from this
15 transaction in the United States?
16 A Oh, yes. It would receive 3% on the sales.
17 Q I see. That is when P.C. was beginning to buy this material?
18 A They hadn't considered buying it at that stage. As I told
19 you just now, this was their first interest in the process
20 and in the product.
21 Q But in making the product they would require them to purchase
22 asbestos in the raw form from you, or someone?
23 A From someone.
24 Q And hopefully you?
25 A Yes.
26 Q So that is why you were there kind of in your capacity as a
27 safety director of Cape Industries and generally promoting
28 one of your products which would be to the betterment ----
29 A No. You said "safety director".
30 Q Isn't that what you said?

2 Q I am sorry. Chief scientist of Cape Industries?
3 A Yes.
4 Q To explain to them the hazards of asbestos?
5 A That was included in one of the things that I explained.
6 Q And at least one of the hats that you had on was your hopes
7 that they would buy asbestos from your EGKEP corporation?
8 A Yes.
9 Q So you were representing the Board of Cape Industries in that
10 capacity at least, weren't you? You had that hat on?
11 A I wouldn't have said so, no. I went there as a scientist,
12 as the person qualified and equipped with the knowledge to
13 pass on to them that they required on a technical question.
14 Q You undertook to advise them on a technical question in your
15 capacity as director of Cape Industries?
16 A Yes.
17 Q Were you paid for this?
18 A It was part of my job, and I receive my salary from Cape
19 Industries for doing that job. In that sense I was paid for it.
20 Q Were you on a salary from Cape Industries as - what is the job?
21 A Chief scientist.
22 Q Do you still retain that?
23 A Yes.
24 Q May I ask what your salary is for being chief scientist?
25 A \$15,000 a year.
26 Q And how long have you had this job title?
27 A Chief scientist?
28 Q Yes.
29 A I have had that title before I was on the Board. You asked me
30 this before, and I couldn't really remember when it was. I said

2 Q So you have been chief scientist and on the payroll of Cape
3 Industries since the 1950's in that capacity?
4 A Yes.
5 Q Now my question was: You told us that you were talking to
6 Pittsburgh Corning as chief scientist for Cape Industries.
7 That was at least one of your hats?
8 A That was one of my hats.
9 Q Another hat was that you were on the Board of Cape Asbestos
10 Fibres?
11 A That is so.
12 Q And if you were to sell asbestos they would receive a
13 commission. So that was another hat you were wearing?
14 A Yes.
15 Q The inducement there being that it would add to the
16 profitability of a company that you were on the Board of?
17 A Yes.
18 Q And, of course, still another collateral benefit would be that if
19 they bought asbestos from your EGNEP corporation, it would
20 make a profit and could pay a dividend to the company concerned?
21 A And the stockholders would benefit.
22 Q So that is still a third hat that you were wearing in your
23 capacity as director for Cape Industries. The general welfare
24 of that company was to the benefit of it and to you to see
25 that asbestos was sold?
26 A Yes. I was concerned as a director of Cape Fibres. Cape
27 Fibres had a responsibility to promote the sale of asbestos
28 throughout the world.
29 Q That was the hat that you were wearing?
30 A Yes.

2 asbestos EGNEP would make a profit, which would in turn
3 enable it to pay a dividend to Cape Industries, which was a
4 company that you were on the Board of and keenly aware of?
5 A Yes. I didn't have it in mind at the time, but nevertheless
6 what you say is true.
7 Q So that is still another hat or another inducement for you
8 to be in Pittsburgh, another reason you were there?
9 A Yes. You are over-emphasizing the significance of it.
10 Q Possibly. Now, my question was earlier: Were you paid for
11 this service that you rendered to Pittsburgh Corning by
12 Pittsburgh Corning?
13 A No.
14 Q I asked you that question earlier, and you said you drew
15 your salary, and we got off on that.
16 A I am sorry; I didn't realize that you asked me whether I had
17 been paid by Pittsburgh Corning. Did you mean that?
18 Q I didn't make it clear. I wanted to know: Did they pay you ---
19 A Did Pittsburgh Corning pay me personally anything for this?
20 No.
21 Q Or any of your companies?
22 A No.
23 Q This was simply a service that you provided to a prospective
24 customer?
25 A That is right.
26 Q In the hopes that it would do business with one of your
27 companies?
28 A That is right.
29 Q In other words, if I understand it, you were there then as
30 chief scientist, being sent by Cape Industries to provide

2 A Yes.

3 Q At that time did you advise them that asbestos could cause
4 asbestosis to those people?

5 A Among other things, I told them that.

6 Q Did you advise them that it could cause that to people who
7 worked around it?

8 A Yes.

9 Q Did you advise them that the sacks and containers of the
10 asbestos contained no labels or warnings?

11 A No, there was no warning on the sacks.

12 Q Did you tell Pittsburgh Corning that there was no warning?

13 A I didn't say that specifically as I recall, but I don't
14 recall the details of the conversation.

15 Q There were no warnings, were there?

16 A There were no warnings on the sacks.

17 Q Did you ever in any of your capacities with these companies
18 seek to have a warning put on these sacks?

19 A No.

20 Q It was never done until the Government regulation was
21 brought in?

22 A That is so.

23 Q As far as asbestosis is concerned, you make no distinction
24 between the types of asbestos, do you, in your mind, as to
25 what is dangerous and what is not dangerous?

26 A No.

27 Q In other words, for the three principal kinds. Amosite,
28 Crocidolite and Chrysotile?

29 A All of these can cause asbestosis.

30

2 cause asbestosis?

3 A No.

4 Q And have never advocated that?

5 A No.

6 Q As far as advising people of these dangers and this disease that

7 you characterized a moment ago as "this very serious problem",

8 that would apply to Amosite asbestos?

9 A Yes.

10 Q Did you ever go to P.C. again in your capacity as scientific

11 director?

12 A Yes.

13 Q I am going to write it down, "Chief scientist". Did you

14 ever go to P.C. again in your capacity as chief scientist

15 for Cape Industries?

16 A Yes, I did.

17 Q When was this?

18 A I went approximately every year. I may have missed one or

19 two years, but I went every year.

20 Q And each time would you advise them of these dangers?

21 A I would discuss the hazards of asbestos with them, yes.

22 Q You and your people in your organization knew full well

23 the hazards of asbestos by this time?

24 A We knew that precautions had to be taken when asbestos is

25 handled.

26 Q And this knowledge that you had of the dangers of asbestos that

27 you have described previously was available to the people in

28 EGNEP?

29 A In EGNEP? Oh, yes.

30

2 middle 1950's on down to now?

3 A Yes.

4 Q So it is not a case of saying that EGNEP was not advised
5 of the potential dangers of asbestos?

6 A No.

7 Q The principal officers and managers of EGNEP at all times
8 from the middle 1950's until right now have known of this
9 very serious problem of asbestosis which was caused by the
10 very type of asbestos they were mining and selling?

11 A Yes.

12 Q So you don't mean to imply or even suggest that there was
13 a lack of knowledge on the part of EGNEP of any dangerous
14 potentiality of asbestos?

15 A No.

16 Q Your position is that you met with Pittsburgh Corning
17 beginning in 1960?

18 A 1961.

19 Q And you met, you think, probably yearly after that?

20 A Yes.

21 Q And discussed ----

22 A Among other things, this question.

23 Q Fix your mind, if you will, back to 1961 and tell me what
24 positions you held in the Cape Industries. You were on the
25 Board of Cape Industries?

26 A Which Boards I was on, do you mean, in 1961?

27 Q Yes.

28 A I was on the Board of Cape Industries, Cape Insulation,
29 Cape Asbestos Fibres, whether I was on the Boards of any
30 of the South African companies as an alternate director or not

2 that time.

3 Q Anyway, you were closely associated with these South African

4 companies during this period of time?

5 A This was the beginning. When I went on to the Cape Industries

6 Board was the beginning of my association with South Africa.

7 Q So you have been familiar with them since that time?

8 A Yes.

9 Q To now?

10 A Yes.

11 Q And you went on that Board when, you tell me?

12 A Which Board?

13 Q Cape Industries.

14 A Cape Industries Board, 1961.

15 Q Who told you to go to Pittsburgh?

16 A No-one told me to go. If I answer the question why did I go,

17 will that be satisfactory?

18 Q Yes.

19 A I went to North American Asbestos Corporation for a Board

20 meeting or at the time of a Board meeting. Although I don't

21 think I was actually on the Board, I attended the Board meeting.

22 Q Why did you do that?

23 A I can't remember. Perhaps I didn't. Perhaps it is not true.

24 I went to NAAC for some reason that I am a little vague about.

25 While I was there, the President, whose name was Robert Cryor,

26 told me that he had had a visit from someone from Pittsburgh

27 Corning (I think it was Robert Buckley) who had told him (Cryor)

28 that Pittsburgh were anxious to acquire -- let me say this,

29 that Pittsburgh were anxious to have a high temperature insulati

30 material on their range of products. They had surveyed the

(12)
2 product they wished to manufacture was Unibestos. They had
3 enquired of Cryor and they were enquiring of Cryor whether
4 there was any possibility of their obtaining access to
5 manufacturing knowhow and a supply of raw material, and they
6 went on to say "Could someone come and talk to us about this?".

7 Q Did you do that while you were there?

8 A Yes. The next day I went to Pittsburgh and had the meeting
9 that I have described.

10 Q And was it your purpose to answer both of those questions?

11 A Well, I wasn't really in a position to answer either of them,
12 but I was in a position to explore the possibilities.

13 Q And did you?

14 A Yes.

15 Q And that is the meeting that you have ----

16 A That I have referred to.

17 Q You attended that in your capacity as chief scientist?

18 A That is right.

19 Q Did you attempt to give them any information or help in the area
20 of manufacturing knowhow?

21 A Yes, I did.

22 Q What did you do in that regard?

23 A I decided that it would be helpful to them to see a
24 manufacturing operation of the type that would be involved.
25 They had asked me, of course, "What is involved in the
26 manufacture and in the precautions that you have to take?",
27 so I decided that it would be advisable for them to see a
28 manufacturing operation, and I arranged then and there to
29 take them the next day or the day after to a plant in Canada
30 which was manufacturing this product.

Q And who owned it?

A The company in Canada was owned by Holmes Foundry.

Q To which you sold asbestos?

A Yes.

Q From Johannesburg?

A Yes.

Q Did you pursue it any further?

A Did I personally pursue it any further? Was that your question, Mr Baldwin?

Q Yes.

A Yes, I showed them this plant. I took them round this plant, or I asked the management to take them round the plant, put it that way, and left them to think about it.

Q Did they contact you after that?

A They did.

Q What was done then?

A Russell Brittingham wrote to me and said he was interested and he would like to find an opportunity to discuss this further in London.

Q Did he come to London?

A He did.

Q And did you discuss it further?

A We did.

Q And is that what precipitated this contract that we had here a little earlier?

A That is right. That set up a chain of events which resulted in that contract.

Q Who got ahold of the EGNEP name?

A I believe I did, but it may have been my colleague who was in Cape Asbestos Fibres at the time.

2 then to Pittsburgh and then to Canada?

3 A In fact Mr Brittingham didn't come on the Canadian visit.

4 The other gentleman whose name I mentioned went to Canada;

5 Mr Brittingham didn't.

6 Q In any event, how long after that was it that they sent a

7 representative to London, or came to London?

8 A A relatively short time, a matter of months as I recall.

9 Q Who did they meet with in London?

10 A With me and with the Chairman of Cape Asbestos Fibres.

11 Q Who you had advised to be present?

12 A Yes.

13 Q Is that when the contract was signed?

14 A No.

15 Q What happened following that meeting?

16 A Well, a number of things happened. Pittsburgh's main concern

17 was to get the knowhow to manufacture the product, and much

18 of the conversation was centred around this aspect of their

19 concern.

20 Q Were you able to assist them in this any more?

21 A We began to set up the machinery to do this.

22 Q What did you do?

23 A They sent their engineer; they sent someone; they sent a

24 deputation to see our manufacturing plant in England.

25 Q What were you manufacturing?

26 A We were manufacturing a comparable product. I say "we were

27 manufacturing"; a subsidiary company called Cape Insulation

28 were manufacturing a product called Caposite, which is analogous

29 to Unibestos.

30

2 A They came to inspect this. We helped them to that extent.
3 In very general terms, I discussed the scientific and technical
4 problems relating to the manufacture. These then tapered
5 off because it became clear that Pittsburgh were intent to
6 purchase the Unibestos business from Union Asbestos who were
7 operating it at that time. Consequently, they would no longer
8 require knowhow.
9 Q Technology?
10 A The technology. Their only concern then was a supply of
11 raw material.
12 Q You were the one that opened the door to their visit to your
13 plant here?
14 A I was the catalyst.
15 Q Then they did in fact purchase the Unarco plant in Tyler?
16 A Yes.
17 Q To set up to go into business?
18 A That's right.
19 Q When did they contact you next?
20 A I can't remember. When I say I can't remember, I can't
21 remember dates. The next stage was the agreement that you have
22 shown me.
23 Q Who prepared that?
24 A As I recall, Pittsburgh Corning prepared that.
25 Q Where was it signed?
26 A It was signed in Pittsburgh and in South Africa.
27 Q Did your attorneys look at it before it was signed?
28 A You say Cape Insulation. Not as I recall.
29 Q Did any of the attorneys for any of the Cape Industries ----
30 A I imagine no Cape Industries attorneys -----

2 it was signed?

3 A Its subsidiary, yes, I am sure. I am answering your question
4 without really knowing for a fact what happened in South Africa.

5 Q In the normal course of business it would have been done?

6 A It would have been examined in South Africa by a lawyer.

7 Q Did any of the lawyers here in London?

8 A Not that I recall.

9 Q It was signed there and in South Africa?

10 A That's right.

11 Q Did you ever consult with them again after the agreement about
12 the hazards or dangers of Amosite asbestos?

13 A Continually.

14 Q Continually?

15 A Yes.

16 Q What prompted the continual discussion or dialogue?

17 A Both Pittsburgh and ourselves were concerned about asbestos
18 and health questions and we exchanged views and information
19 on the occasions of my visits.

20 Q And how long did this discussion or dialogue continue?

21 A For as long as I was visiting Pittsburgh.

22 Q Was that until the time they quit buying from you?

23 A Yes. My last visit to Pittsburgh would be in 1970 or 1971;
24 I am not sure.

25 Q Would it be fair, then, to say, Dr. Gaze, that you discussed
26 this asbestos and the potential hazards of it with Pittsburgh
27 from 1961 down to about 1971?

28 A Yes.

29 Q And in all that period of time you, of course, realized the
30 dangers, as you have previously explained?

2 Q And all of these discussions were being held in your capacity
3 as chief scientific adviser?
4 A Chief scientist. Also to some degree in my capacity as a
5 director of Cape Fibres.
6 Q But at any rate these discussions were held in a dual capacity?
7 A Yes.
8 Q And all during that period of time you had the knowledge
9 that Amosite asbestos was dangerous?
10 A Yes.
11 Q Did you make any other effort, other than these discussions
12 that you had with the Pittsburgh officials, to warn or advise
13 the people who would be expected to work around asbestos of its
14 dangers?
15 A Could you reframe your question to the extent of implying
16 where? Are you talking about Pittsburgh?
17 Q No. My question is: Did you make any efforts, other than
18 the discussions that you have talked about, to warn or advise
19 any person who would be expected to work around your product
20 of its dangers?
21 A You mean any employee of Pittsburgh's?
22 Q Or any other person. Yes, let's just take Pittsburgh.
23 A I was going to say... No, I confined my conversations to the
24 persons I met, the officials of Pittsburgh that I met, during
25 my visits to the Pittsburgh head office.
26 Q Did you ever at any time recommend that a label be placed on the
27 containers?
28 A No.
29 Q Advising of dangers?
30 A No.

2 a container?

3 A No.

4 Q It just simply wasn't done?

5 A No.

6 Q The sum total of what you did in connection with advising
7 Pittsburgh of the dangers of asbestos between the period 1961
8 and 1971 in your capacity as chief scientist was these
9 discussions that you had with the officials in Pittsburgh?

10 A That is so.

11 Q You knew during this period of time that they were purchasing
12 asbestos from you?

13 A Yes.

14 Q To be used by workmen in the manufacturing of this product?

15 A Yes.

16 Q Did you know it was being sent to Tyler?

17 A Yes.

18 Q I believe you have told me you have never been to Texas?

19 A No. I spent one night in El Paso.

20 Q You have never been to Texas! I guess that is a good quitting
21 point.

22 (Off the record discussion)

23 MR O'CONNOR: Dr. Gaze, you said that no warnings were ever placed
24 on any of the products mined by Cape Industries or any of
25 the subsidiaries until the "Government regulations" went into
26 effect. What Government regulations were you referring to
27 in that answer?

28 A I can't answer that specifically, but there was a requirement
29 by some official organization in the United States that asbestos
30 should be labelled. It was, I thought, a Government requirement.

capacities that you held, and particularly that of chief scientist for Cape Industries, you could have seen that a label was placed on these containers?

A Yes.

(At 4.50 p.m. the taking of testimony was adjourned until 9.30 tomorrow morning)

London, England,
June 5, 1975,
9.45 a.m.

Q Dr. Gaze, do you know whether anybody with any of the Cape companies ever went to Tyler, Texas?

A The only people I am aware of who ever went to Tyler were the manager of a plant at Barking, whose name was Mendelle, who went in 1964, and Mr White, who went in 1970.

Q What was the purpose of Mr Mendelle's visit in 1964?

A This was to acquire some information, some technical knowhow, from Pittsburgh Corning, at our request.

Q What did he want to know?

A There was a product manufactured by Pittsburgh Corning that had in fact a higher temperature resistance than the equivalent product that we manufactured in this country. Pittsburgh Corning were prepared to give us the technical information on the make-up and the manufacture of this product, and Mendelle went to Tyler in order to study this.

Q How long was he there?

A A day.

2 English Government?

3 A Right, yes.

4 MR BALDWIN: And that was in the early 1970's, wasn't it?

5 A That's right.

6 MR O'CONNOR: Would that be something like Ocean -- but at any
7 rate it was the U.S. Government?

8 A There was a requirement that if asbestos was to be shipped
9 into the United States a warning label should be placed upon
10 the bags.

11 Q And you had no warnings prior to the passage of that Government
12 regulation?

13 A That is correct.

14 Q But subsequent thereto you have had warnings?

15 A That's right.

16 Q All I am trying to do is find out which Government you are
17 referring to. You mean the U.S. Government?

18 A There has never been a requirement in any country in the
19 world to label apart from the United States.

20 MR BALDWIN: I wanted to ask you this: During that period of
21 time 1961 thru 1971, taking into consideration your position
22 on the Board of Cape Industries and your position as chief
23 scientist and the other various positions that you held,
24 you could have caused a label to be put on these asbestos
25 containers?

26 A I could have recommended it.

27 Q And you could have seen that it had been done had you seen
28 fit to do so?

29 A Yes.

30

2 ever have a joint venture?

3 A No.

4 Q Did Mr Mendelle report to you the working conditions of the
5 plant there when he came back?

6 A Not as far as I recall. He came back and said he didn't feel
7 he had much to learn. That is the only comment I recollect
8 his making.

9 Q In this visit did you instruct him to advise any of the
10 Pittsburgh officials or any of the employees of the plant
11 there of the potential hazards of working around asbestos?

12 A No, this was in no way the purpose of the visit.

13 Q Who did you say went in 1970?

14 A Mr White. We referred to him yesterday.

15 Q Yes, I remember his name. He was not the man that you
16 seconded from this other firm?

17 A Yes, he was.

18 Q What was the purpose of that visit?

19 A Pittsburgh Corning had told us that a delivery of asbestos
20 that we had made was not satisfactory for manufacturing
21 the product they made, and there was some discussion about
22 this which resulted in Pittsburgh Corning specifically asking
23 NAAC if an expert could be provided to assist them.

24 Q What was the problem?

25 A The problem was the density of the product. If the product
26 is too heavy, its efficiency as an insulating material becomes
27 below standard. Equally, it becomes less economic to manufacture
28 because it contains more material.

29 Q When you say "the product", you mean the asbestos?

30

2 Q How could Mr White help in this area?

3 A He had, in the course of his career, worked in this

4 particular process.

5 Q It wasn't in connection with a complaint of the quality

6 of the asbestos, then?

7 A Not specifically, no, although naturally Pittsburgh had

8 attributed the problem to the quality; not unnaturally they

9 had done this.

10 Q They thought the fibres were too big or too small?

11 A Yes.

12 Q Was this the same problem we were talking about yesterday?

13 A It is.

14 Q They thought the fibres were too small?

15 A That's right.

16 Q And Mr White was able to show them that they were not too

17 small to be used in the way that he suggested?

18 A If you adjusted the machinery in the correct fashion, it

19 was possible to make a product to the required specification.

20 Q Did Dr. White on this visit -----

21 A I think you are perhaps confusing Dr. Hodgson with Mr White.

22 Both of them went to Port Allegheny to conduct this

23 investigation, and after this was completed Dr. Hodgson

24 returned to London. Someone from Pittsburgh at that time invite

25 Mr White to go to Tyler in order also to ensure that the

26 machinery adjustments were made there.

27 Q When Mr White went to Tyler, did he confer with any of the

28 officials or employees of the plant in connection with the

29 proper precautions to take in the use of asbestos, working

30 around it?

2 Q At least he had no instructions from you to do it?
3 A No.
4 Q What did you tell me yesterday that Mr White's field of
5 expertise is?
6 A He is an engineer.
7 Q And what company was he with?
8 A He was with Cape Universal Building Products.
9 Q Were you the one that requested him to go to Tyler?
10 A Possibly, but not necessarily. It might have been one of my
11 colleagues in Cape Fibres who did this. No, I am sorry, I
12 haven't answered your question properly. I didn't request
13 him to go to Tyler. I requested him to go to Pittsburgh.
14 Q Were you the one that requested him to do that, then?
15 A Either I or one of my colleagues; this I can't remember.
16 We didn't request him to go to Tyler. This was the point
17 I wanted to establish.
18 Q When he came back, you learned that he had been to Tyler?
19 A That is correct.
20 Q And when Mr Mendelle came back you learned that he had been
21 to Tyler?
22 A Yes.
23 Q So you knew then that at least by 1964 there was a Tyler plant?
24 A Yes.
25 Q In connection with that, were you the one that made Pittsburgh
26 Corning aware of Unarco?
27 A No.
28 Q How did they become aware that Unarco was operating this
29 plant, if you know?

2 be aware, because Unibestos was a well-known product in the
3 United States.

4 Q What I am getting at is I believe you told us yesterday
5 that your first contact with Pittsburgh Corning revealed
6 that they were interested in making this product and
7 obtaining the technical knowhow to do it?

8 A That is so.

9 Q And you were in the process of attempting to give them the
10 technical knowhow when you found that they no longer had an
11 interest because they changed their mind and decided to
12 acquire plant?

13 A That is so, yes.

14 Q I was wondering if you were familiar with the circumstances
15 as to how they happened to determine to acquire this Tyler
16 plant. Did they make that known to you?

17 A No.

18 Q You weren't the one, then?

19 A No.

20 Q Were any of the Cape companies selling Unarco at the time
21 or prior to the time that F.C. took it over?

22 A Yes.

23 Q How long had you been selling Unarco?

24 A Since the mid-1930's.

25 Q Were you familiar with the fact that they had a Tyler plant?

26 A I knew a plant existed at Tyler. I was familiar with the
27 expression "the Tyler plant".

28 Q That would be since your coming with the company?

29 A Yes.

30

2 expression 'the Tyler plant of Unarco since the 1950's:
3 A Yes, I think the Tyler plant opened in 1954, 1953, something
4 of this order. I would have become aware of this at some
5 later date in the 1950's.
6 Q So you knew from some time in the 1950's that you were selling
7 asbestos to the Tyler plant?
8 A I knew that asbestos that was being sold by EGNEP to
9 Pittsburgh Corning was being processed in the Tyler plant.
10 Q Well, of course, Pittsburgh Corning didn't run the plant.
11 A I am sorry; Pittsburgh Corning's predecessor.
12 Q Unarco, I believe.
13 A Yes.
14 Q I don't know if I am making myself clear. Possibly I am, but
15 I will ask you again just to make sure that we are all clear.
16 You knew from the middle 1950's at least on down to the time
17 that P.C. took the plant over that EGNEP was selling asbestos
18 to Unarco and it was being processed in the Tyler plant?
19 A Yes.
20 Q This, of course, was Amocite?
21 A Yes.
22 Q Is there any other firm that sells Amocite asbestos?
23 A Yes.
24 Q Who is that?
25 A A company in South Africa whose name I don't recall. I am
26 genuine; this is genuinely so; and the reason I don't recall
27 it is that EGNEP sells 90 to 95% of the world's supply of
28 Amocite. So this other 5% is of relatively small companies
29 who actually appear and disappear and come into the scene.
30 Dublin Asbestos at that time was selling Amocite asbestos.

2 Amosite asbestos?

3 A Since the mine opened. It is the only geographical location
4 in which Amosite asbestos is found in the world.

5 Q And that is South Africa?

6 A Yes.

7 Q You told us yesterday that you came over here and discussed
8 this matter with the Pittsburgh Corning people possibly once
9 a year from the time that you first came in I believe 1961?

10 A Yes.

11 Q During any of those visits did you ever meet Dr. Grant?

12 A No.

13 Q Have you ever met Dr. Grant?

14 A No.

15 Q Have you ever corresponded with Dr. Grant?

16 A Not directly, no.

17 Q What do you mean when you say "directly"?

18 A At one point in my discussions with Mr Brittingham I had
19 advised him to seek the services of a medical consultant or
20 adviser. I did this in the light of the fact that he had asked
21 me what our experience was in Britain with these problems.
22 It was a question which he frequently asked me. I had told
23 him that we had found this a very helpful and useful thing
24 to do. I was just going to complete that. Whether it was
25 a result of this conversation I had with Mr Brittingham that
26 he got in touch with Dr. Grant, I have no idea, but the
27 next that I heard of it was that Mr Brittingham wrote to me
28 and told me that he had engaged Dr. Grant in some capacity
29 and he enclosed some of Dr. Grant's papers and letters for
30 me to read. He concludes his letter or wrote another letter to

in Britain, and if so would I please give him the name of our medical officer with whom Dr. Grant could correspond? This I did.

Q Who is your medical officer in Britain that you gave?

A Dr. Smither.

Q Could you give us his initial and address?

A His initial is W. His address is the same as the address of Cape Industries.

Q Is he a full-time employee of Cape Industries?

A He is not. He is a consultant.

Q Does he do anything else?

A Not now.

Q Did he then?

A He had a practice of his own.

Q When did he retire from his practice?

A Within the last year.

Q But during the time that he was consulting with you did he have a practice?

A Yes.

Q Is he full-time with the Cape companies now?

A He has retired from his practice and he has no other occupation apart from his consultancy with the Cape companies.

Q How long has he maintained an office at that address?

A I gave you that address for convenience, but he has been a consultant with Cape, if that is your question, since 1954 or thereabouts.

Q Have you provided him an office?

A We have, yes.

2 A Yes.

3 Q At the address that you gave?

4 A Not at that address. He has been moved from various addresses.

5 Q But he has been on the payroll, then, of one of the Cape

6 companies since the 1950's as a medical consultant?

7 A As a consultant. I am not familiar with the exact meaning

8 of the word "payroll", but if you mean they have paid him as

9 a consultant, the answer is Yes.

10 Q I mean they have paid him as a consultant on a regular basis?

11 A The only qualification I am wanting to make is that he has

12 not been a full-time employee.

13 Q But he has been paid on a regular basis?

14 A Yes.

15 Q From the 1950's?

16 A Yes.

17 Q Which company does he work for?

18 A He works at present for three companies: for Cape Industries,

19 for Cape Universal Claddings and for Cape Boards and Panels.

20 Q Why do you single out those three companies for him to work for?

21 A He works for Cape Industries as a general adviser on asbestos

22 and health questions. He actually consults with the other

23 companies, by which I mean he attends on a regular basis in

24 order to conduct medical examination of workpeople. Every

25 factory has a medical officer. It is convenient for him

26 to be the medical officer at the factories of the two companies

27 that I have mentioned.

28 Q How long have you had a medical officer for every factory,

29 or every company?

30

2 for as long as I can recall; 20 years or more.

3 Q The reason I ask you that, I thought I understood you to say

4 yesterday that there had been recently a law passed making

5 certain requirements.

6 A That was in connection with safety.

7 Q That was not in connection with a medical officer?

8 A No.

9 Q How long has - what did you say his name was?

10 A Dr. Walter Smither.

11 Q How long has Dr. Smither worked for Cape Industries?

12 A I believe for as long as he has been employed by the group.

13 Q That would be the 1950's?

14 A Yes.

15 Q So when you were talking yesterday about your knowledge of the

16 dangers of asbestos to the human being, you were able to do

17 that with the knowledge that you had received from Dr. Smithers,

18 your medical consultant?

19 A Yes.

20 Q And colleague on the Board of Cape Industries?

21 A No, he is not on the Board of Cape Industries.

22 Q Excuse me; colleague as medical consultant to Cape Industries.

23 A Yes.

24 Q What is his function as a consultant to Cape Industries?

25 A He keeps in touch with and advises us on all questions in

26 relation to asbestos and health and any other medical questions

27 that arise in the general course of our business.

28 Q When you say "our business" you mean all the Cape companies?

29 A The group's business, yes.

30

2 companies?

3 A "We" refersto the Cape group. When I say "we", I usually mean
4 the Cape group.

5 Q And when you say "group", you are referring to all of the
6 Cape companies that we talked about yesterday?

7 A That's right.

8 Q Is he the senior medical consultant for the group?

9 A He is.

10 Q So if I understand it, his role from the 1950's to now has been
11 that of a medical adviser on health problems in connection with
12 asbestos to all of the companies?

13 A That is so.

14 Q And his advice and counsel has been available to you as a
15 member of the Board of Cape Industries and in your other
16 capacities?

17 A Yes.

18 Q Was it his experience that you were drawing on when we were
19 talking yesterday about the dangers of asbestos to the human
20 being?

21 A Among others, yes.

22 Q How many employees does Cape Industries have?

23 A I would think probably about 70 or 80.

24 Q Could you break it down into classes of employees, just
25 describe them by groups or classes?

26 A I would like a little notice of that question to recollect
27 exactly, or I can give you a very approximate indication from
28 memory.

29 Q All right, if you would.

30

2 people, including Mr Penna.

3 Q You wouldn't class Mr Penna as a secretary, would you?

4 A I am shaking my head. There are, of course, the executive

5 directors and their secretaries. There is the Accounts

6 Department, consisting of 10/15 people, including secretaries.

7 There is the personnel department, consisting of 10 people,

8 including secretaries. There may be one or two others, but

9 that is approximately it.

10 Q If I understand it, then, the make-up of employees of Cape

11 Industries is managerial, secretaries, the Accounts Department.

12 Now what does that do?

13 A Well, it is responsible for preparing the accounts of Cape

14 Industries.

15 Q Does that have to do with the clearing house operation?

16 A Part of its job would be to supervize and control the clearing

17 system for payments, yes.

18 Q The major part of the accounts for Cape Industries is their

19 accounting in between the various companies in the group, isn't

20 it?

21 A When you say "in between the various companies", no. For

22 example, there is no great measure of accounting between the

23 individual subsidiary companies, unless one happens to sell

24 something to another, and then this would be a transaction

25 between the two. I don't think that was perhaps your question.

26 Q My question is: Why is the accounts group such a large group

27 when Cape Industries really doesn't engage in any real active

28 business of selling any product or service?

29 A I don't know. I wouldn't have considered it was a particularly

30 large group.

2 A Approximately, yes. That is an approximation.

3 Q At any rate, they are what the Americans would call accountants

4 that would keep up with bookkeeping figures?

5 A That is right.

6 Q And then the other group is personnel?

7 A And then, of course, there are tax considerations, too,

8 which come in. These days there are one or two forms to be

9 filled in in operations in the United Kingdom.

10 Q They will use three or four forms where one will do, from what

11 you told me?

12 A Yes.

13 Q The other group is personnel?

14 A Yes.

15 Q And that is composed of about 10?

16 A I would think probably less than 10, but certainly no more

17 than 10.

18 Q Why would you have 10 people to ----

19 A Part of the service that Cape Industries supplies to the

20 subsidiary companies is an advisory service on personnel

21 questions.

22 Q What is this advisory service?

23 A Well, one of the other blessings which we have in the United

24 Kingdom is the amount of negotiation over wages that takes

25 place with the trade unions.

26 Q So the personnel department of Cape Industries handles the ----

27 A It doesn't handle it, but it gives advice on the question,

28 because clearly a measure of standardization is advisable in

29 dealing with wage questions.

30

2 A No, it doesn't negotiate at all.
3 Q It just gives advice?
4 A It gives advice.
5 Q Or co-ordinates information?
6 A That is right, and gives advice on employment selection
7 and this kind of question.
8 Q Now is there any other group of employees in Cape Industries
9 than you have told us about?
10 A No. Myself and Dr. Smither I didn't include.
11 Q I was about to ask you: Where would Dr. Smither fit into
12 the picture?
13 A Dr. Smither reports to me.
14 Q To you directly?
15 A Yes.
16 Q How long has he reported to you?
17 A Since approximately 1962/63.
18 Q Am I correct, then, in the description of the hierarchy of the
19 group in so far as medical questions are concerned that Dr.
20 Smither is the medical consultant for the entire group?
21 A No, he is not the medical consultant for the entire group,
22 because individual companies would have their own medical
23 consultant to deal with individual medical questions within
24 their own plant's operations. Dr. Smither is medical
25 consultant to Cape Industries, but in that capacity he is
26 expected to keep an eye on and to keep me informed on medical
27 questions which may arise in any of the subsidiary companies.
28 Q That is what I mean. Dr. Smither is the clearing house for the
29 medical problems in connection with the group?
30 A Yes.

2 Q And his function, in part at least, is to co-ordinate the
3 various medical problems that crop up within the group?
4 A Yes.
5 Q But if there is any problem of a serious nature anywhere in
6 the group, then his services would be available and would be
7 used?
8 A Yes.
9 Q I take it from the fact that you told me he reports to you
10 on this that that falls within your responsibility?
11 A Yes.
12 Q In your capacity as a member of Cape Industries Board?
13 A That is right.
14 Q So would that be an accurate description also of your duties,
15 that in your capacity with Cape Industries you oversee the
16 medical problems of the entire group and co-ordinate the
17 activities of the various doctors?
18 A Yes. This applies within the United Kingdom.
19 Q It would also apply with reference to your South African
20 companies?
21 A Not to the same extent. I don't expect Dr. Smithers will make
22 frequent visits to South Africa.
23 Q I understand that. He is not unmindful of the problems in
24 South Africa?
25 A Exactly; that is right.
26 Q And anything of a serious nature in the South African group
27 not only you but he would be consulted?
28 A That would be so.
29 Q Does not the South African group also fall within your sphere
30 of responsibility, in Cape Industries that is, the medical
problem?

1 100. The connection there is more tenuous, simply because of
2 the geographical distance involved. Basically, the South
3 African group looks after its own medical affairs, but I am
4 kept informed.

5 Q You are kept informed and advised in your capacity with Cape
6 Industries?

7 A That is right.

8 Q That is another one of the services that Cape Industries
9 furnishes, the co-ordination of the medical problems?

10 A That is so.

11 Q And you have, of course, along with the responsibility, the
12 authority to see that whatever procedures as are necessary
13 are followed in connection with medical problems?

14 A Yes. I explained that in some detail yesterday.

15 Q And that would extend throughout the group?

16 A Yes.

17 Q Do you know whether Dr. Smithers was ever in contact with
18 Dr. Grant?

19 A No, he was never in contact with Dr. Grant. Dr. Grant never
20 wrote to him.

21 Q He did not?

22 A No.

23 Q I have forgotten; did you tell me this morning that you saw
24 some letters or papers that Dr. Grant had written?

25 A Yes.

26 Q I thought you did. What is your feeling as to Dr. Grant's
27 understanding of the medical problems in relation to the use
28 of asbestos or working around asbestos?

29 A I have not met Dr. Grant, and apart from these one or two letters
30 that I have seen I have no knowledge of any of his work or of

Q From these letters did you get any kind of feeling or knowledge?

A The feeling I had was that he was expressing concern to Mr Brittingham about the general asbestos and health situation.

Q Did you get the feeling from his letters that he did realise the seriousness of the problems associated with working around asbestos, or did you get the feeling that he minimized them?

A No. As I recall, he attempted to give in these letters a survey of current knowledge of the asbestos and health situation, and I had the feeling that he was expressing concern.

Q Certainly in the 1950's and 1960's there was an abundance of literature available on the problem of asbestos in the medical field?

A Yes.

Q And that would be world-wide?

A Yes.

Q I realise it has been a number of years and that you made a number of trips, but would you please try to tell me as nearly as you can everything that you told the Pittsburgh Corning people with reference to the safety precautions that should be taken in working around asbestos?

A As you say, it is difficult to be specific over such a long period of time. I first of all felt that the correct thing to do was to demonstrate the precautions that needed to be taken in handling asbestos by showing them a working operation which to the best of our knowledge at that time was as good a plant, or as modern a plant, as existed. By showing them this operation, I was showing them exactly the extent of the care and the precautions one had to take in handling this

2 Q What plant did you show them?

3 A That was the plant which was being operated by Holmes Insulation
4 in Canada.

5 Q Go ahead.

6 A Subsequently, there was a visit to London by the engineers
7 and technical people of Pittsburgh Corning, and on the occasion
8 of this visit the engineering factors were explained in
9 considerable detail to Mr Baumler, who was the works director
10 (I use the expression "director" in the English sense)
11 of Pittsburgh Corning. He was shown the operation that we
12 had working at Barking, which was at that time, in our view,
13 a good operation. He was shown, for example, the methods
14 of exhausting air in the plant from the more dangerous or the
15 more hazardous operations, the more potentially hazardous
16 operations. The question of calculating the correct air
17 volumes which should be used at this point is clearly an
18 important one. On this occasion Mr Baumler was given that
19 information.

20 Q Was this in the 1960's?

21 A Yes; and on the occasion of this same visit I was not so much
22 concerned personally with that aspect of it, but I did spend
23 a good deal of time with Dr. D'Eustacio, who was their research
24 director, and I explained to him at that time some of the more
25 scientific aspects of the situation. It is likely at that
26 time, although I can't remember, that they would meet Dr. Smith
27 who was stationed at Barking at the time.

28 Q What were the more scientific aspects of the matter that you
29 explained to Dr. D'Eustacio?

1 Amosite asbestos.

2 Q Is there anything else you told him that we haven't discussed
3 here?

4 A In relation to asbestos and health?

5 Q The precautions to be taken.

6 A Not that I can recall.

7 Q Did you advise him to have the people to wear respirators,
8 or was that discussed?

9 A Not that I recall. You will appreciate -- No, I don't recall
10 that there was any conversation about respirators at that stage.

11 Q You said "at that stage". What time reference are we in?

12 A We are discussing conversations I had with Pittsburgh Corning
13 in the early 1960's.

14 Q Did you at any time after that period of time have any
15 conversation with him about the use of respirators, or have
16 you ever?

17 A Quite possibly, but I don't recall an occasion. It is very
18 possible, and I would say even likely, because we discussed
19 the subject extensively.

20 Q But you can't recall specifically whether you ever suggested
21 that?

22 A No, I cannot recall.

23 Q Based on your knowledge of asbestos, and based on your consultation
24 with your medical consultants, would you consider it to be
25 a safe practice for one to be working around asbestos by
26 digging in the bags with their hands and picking it up and
27 putting it in a feeder? Would you consider that to be a safe
28 practice with this type asbestos?

29 A I think you would have to be very much more specific about the
30 nature of the process that you are enquiring about.

1 Q You know what asbestos looks like in a sack. I am talking
2 about workmen digging it out of the sack with their hands.
3 A I would never advocate anyone to handle asbestos in the way
4 that you have approximately described.
5 Q With or without respirators?
6 A In my view - you have asked me my opinion, I think, here -
7 I am not in favor of wearing respirators unless it is
8 absolutely necessary to do so. The correct method of handling
9 asbestos is to provide working conditions so that it is not
10 necessary for anyone to wear a respirator.
11 Q Did you advise P.C. of this?
12 A Yes.
13 Q To press the matter, you would not suggest the handling of
14 asbestos as I have described by digging it out with your
15 hands in close proximity to your face, even with the use of
16 respirators, would you?
17 A I would not advise doing this without a respirator. I would
18 not advise doing it at all. If for some unspecified reason
19 it was essential to do this, then it would be necessary to
20 wear a respirator.
21 Q Would it be helpful to wear a respirator?
22 A Oh, yes, it is helpful to wear a respirator. There are
23 occasions when wearing respirators is necessary and advisable.
24 Q What I am saying, and possibly not making myself clear,
25 is: Do you agree with me that it would not be advisable for
26 a person to handle asbestos as I have described to you, even
27 with the use of a respirator?
28 A I am going to answer your question by putting it the other
29 way round, Mr Baldwin. If you had to do that, you should wear
30 a respirator.

1 Q By the wearing of the respirator, will that process
2 eliminate any danger involved in such a process?
3 A If the respirator is an adequate one, the answer is Yes.
4 Q Would you say that one should be required to work under those
5 conditions for five, six, eight hour periods; would that be
6 safe working conditions?
7 A I would not regard those as being desirable working conditions.
8 Q That is whether or not you wear a respirator?
9 A Without a respirator, I would put it more strongly.
10 Q The point I am making is that a respirator is not foolproof;
11 I mean it isn't absolutely preventive?
12 A A good respirator is foolproof.
13 Q And what is a good respirator?
14 A To take an extreme case, a good respirator would be an
15 air-line respirator in which air is supplied to the facepiece
16 under pressure from outside.
17 Q That is the type respirator that you are saying -----
18 A That is an example of a foolproof respirator.
19 Q Do you know of any industry that employs those?
20 A Yes.
21 Q In how recent years?
22 A Within the last four years.
23 Q But prior to that do you know of any industry that ever used
24 those?
25 A No.
26 Q Is that the type respirator that you were referring to a moment
27 ago when you said if you work in a sack with the use of a
28 respirator it might ----
29 A No, there are other types of respirator which also could be
30 used.

1 Q But there are some respirators that are good, some that are
2 not so good and some that are bad?

3 A That is true. That is exactly right. The example I gave you
4 was an example of what I would consider to be virtually a
5 foolproof respirator.

6 Q It becomes a matter of degree?

7 A Yes.

8 Q Why do you advocate that no respirator should be used in
9 proper working conditions?

10 A The answer to the question is contained in the question you
11 have asked me, Mr Baldwin. If there are proper working
12 conditions, it is not necessary to use a respirator.

13 Q Maybe I was wrong, but I thought I understood you earlier
14 to say that you for one don't advocate the use of respirators.

15 A I don't advocate creating working conditions in which respirators
16 are necessary.

17 Q Is there some reason not to use a respirator, or some
18 disadvantage to using a respirator?

19 A Yes, there is a disadvantage.

20 Q Tell us that.

21 A The disadvantage of creating conditions in which a respirator
22 is necessary is that men are apt to become careless and not
23 wear it.

24 Q Men are fallible?

25 A Yes.

26 Q And there are not many men that are going to wear respirators
27 every minute of an eight hour day, are there?

28 A It is impractical to maintain supervision to this degree, in
29 my opinion.

1 Q It is impossible to expect reasonable men to work with
2 respirators and wear them all day long on an eight hour shift?
3 A Yes; and it is only, in my opinion, in exceptional
4 circumstances.
5 Q Would you consider working conditions where the asbestos fibres
6 are of such a thick nature that one cannot see from one end
7 of the room to another over a 20 or 30 ft. space because of the
8 asbestos dust in the air as safe working conditions?
9 A No.
10 MR O'CONNOR: I object to that question as being leading.
11 MR BALDWIN: Are you familiar with the term "feeder" in a process
12 such as P.C. -----
13 A In general terms I know what you mean.
14 Q Do you know what is required of the people that work around
15 the feeder, the feeder operation?
16 A Could you describe it more closely?
17 Q The operation where the raw asbestos fibres are fed into the
18 machine.
19 A The type of machine that is used for the manufacture of
20 Unibestos, for example. I have never seen the Tyler plant,
21 so I am not aware of the exact design of the feeder that was
22 used. Feeders were used at the Barking plant for a similar
23 purpose.
24 Q Well, if a person who was working at the feeder was required
25 to handle the asbestos with his hands to some degree, picking it
26 up, putting it in the feeder, getting it on his clothes,
27 would that be calculated to cause this condition of asbestosis
28 that you have described?
29 A I would regard that as being an undesirable practice in the
30 industry.

1 Q Would you regard that as being a practice which would be
2 calculated to cause one to contract the disease of asbestosis
3 or its associated difficulties?

4 A I am going to leave it, Mr Baldwin, by saying it was an
5 undesirable practice.

6 Q Undesirable from what standpoint?

7 A On health grounds.

8 Q For the reason that it would be harmful to the body, would cause
9 the problems that asbestos would cause to the human body?

10 A It would be undesirable on health grounds.

11 Q Would the same be true of the situation that I described
12 to you of working conditions where asbestos is in the air so
13 thick that it can be seen, where it looks like dust?

14 A As you describe it, Mr Baldwin, it sounds an undesirable
15 condition on health grounds, too.

16 (A short recess was then taken)

17 Q I have a few questions about the clearing house operation in
18 so far as your knowledge is concerned. Can you tell me the
19 practice that is followed with reference to Federal tax forms
20 for your various companies in the group? Does the clearing house
21 prepare the figures for that?

22 A No. Tax returns would be made by the individual companies,
23 and they would pay their tax themselves.

24 Q There is no kind of group return filed?

25 A Not so far as I am aware, although, of course, the Cape
26 Industries itself will pay a tax.

27 Q I understand that, yes; but the tax will not be paid on a
28 group form, one form covering all of the subsidiaries of Cape
29 Industries, or do you know?

30 A Cape Industries will pay a tax on its profits which are
acquired as a result of its shareholdings in the subsidiary

1 companies.

2 Q Is there any consolidation of tax forms within the group?

3 A I don't know.

4 Q Do you have the comparable of the American social security

5 in England?

6 A Yes, I believe so, but if you pursue your questions

7 Q A wage withholding kind of program that is sponsored by the

8 Government.

9 A That's right, yes.

10 Q How is that handled for the group?

11 A Each company handles its own affairs here.

12 Q Each company handles its own withholding?

13 A Yes. Each company handles its own wage bill, and that is

14 where the withholding takes place.

15 Q That is my next question. Payrolls are not prepared in a

16 central place?

17 A No.

18 Q What about your insurance? Do you purchase your insurance

19 under what we would call a group policy?

20 A So far as I am aware, insurance is handled individually.

21 Q Do you have what we Americans refer to as workmen's compensation

22 insurance, that is covering on the job injuries for employees?

23 A Yes, we do.

24 MR BERNAYS: Excuse me; you are using the term in a different

25 sense. As I understand it, here it is employers' liability;

26 there is no workmen's compensation insurance per se.

27 A It would be covered by the withholding that you referred to in

28 your earlier question.

29 MR BALDWIN: The same withholding as to your retirement would cover

30 your employers' liability insurance claims?

1 A It would be done in the same manner. I am using the word
2 "withholding" in the same sense that I understood Mr Baldwin
3 was.
4 Q I can understand that.
5 A I wanted to make sure I am not in trouble with Mr Bernays,
6 Mr Baldwin.
7 Q That is not important.
8 A When I say "withholding", I mean that the company has the
9 authority to retain something from the wages that it pays
10 an employee. That is what I mean by withholding. Am I in
11 trouble over saying that?
12 MR PENNA: No. It is the National Insurance for pensions and
13 so forth, not for employers' liability.
14 A I didn't think Mr Baldwin was referring to employers' liability
15 insurance.
16 MR BERNAYS: That is what he was referring to when he calls it
17 workmen's compensation. We have a distinction.
18 A We need an interpreter, don't we?
19 MR BERNAYS: Yes. It is almost the same language, but not quite.
20 Now if you want to go ahead and clarify that....
21 A Have I said something that is inaccurate?
22 MR BERNAYS: No, only in connection with Mr Baldwin's question.
23 Workmen's compensation, in so far as it affects employers'
24 liability, there is a distinction in this country.
25 A I see what you mean, yes.
26 MR BERNAYS: I didn't want to mislead him.
27 MR BALDWIN: Doctor, we will straighten it out. What you have
28 just told me is that this insurance charge that is
29 withheld from the employees' wages applies to your National
30 Insurance.

1 A That's right.

2 Q Which is a kind of sick and health insurance?

3 A It was that that I assumed you were referring to.

4 Q That is what you were referring to?

5 A Yes.

6 Q Now I want to ask you: That is done on an individual basis

7 with each company?

8 A Yes.

9 Q Now, as to your employers' liability insurance, that covers

10 on the job injuries to employees?

11 A Yes.

12 Q Is that bought through a private insurance company?

13 A I believe so.

14 Q My question there is: Is this one policy that handles all

15 employees for the group within England, or is this a separate

16 policy for each company?

17 A So far as I am aware - is this right, Tony? - each company

18 handles this individually.

19 MR. PENNA: Yes, as far as I am aware.

20 MR. BALDWIN: All separate policies. Well, the general insurance

21 scheme with reference to any type of insurance that any of

22 your companies have is that each company buys individual

23 policies depending upon their needs?

24 A That's right.

25 Q In other words, there is no central purchasing of insurance?

26 A No.

27 MR. BALDWIN: Would you like to ask me any questions?

28 MR. BERNAYS: Later.

29 A That is the most difficult question you have asked me. I feel

30 that the answer is Yes, but I don't know what questions to ask you.

1 MR BALDWIN: I think if you give us about five minutes to confer
2 with each other, possibly we have finished.

3 MR O'CONNOR: Could I ask you one question, Doctor, please?

4 I think you have told us that Cape Asbestos Fibres and North
5 American Asbestos are the selling arms for EGNEP or for
6 Cape Asbestos (South Africa)?

7 A They are two of the selling arms.

8 Q What are the other selling arms?

9 A There is one other merchant to whom asbestos is sold directly
10 by EGNEP, and he sells asbestos in another area.

11 Q Is he related to Cape Industries in any way?

12 A No, in no way at all.

13 Q Does Cape Industries do any selling for EGNEP or for Cape
14 Asbestos (South Africa)?

15 A No.

16 (A short recess was then taken)

17 THE WITNESS: I felt that it was perhaps desirable that I should
18 amplify one point about which you questioned me yesterday,
19 and that concerns the extent of knowledge that existed in the
20 scientific and medical community about the hazards associated
21 with breathing asbestos dust. You asked me yesterday when
22 I first was told or first realised that there were hazards
23 associated with the use of asbestos, and I told you, quite
24 correctly, that this was on the first day that I was interviewed
25 or employed by Cape Asbestos as it was then. I think perhaps
26 I should make it clear that this is a question very much of
27 degree of knowledge of these hazards and their extent from a
28 medical point of view. The real knowledge of the hazards
29 associated with asbestos and health really had an impact upon
30 the industry 10 years before I joined it. 1935 is the date of

1 the first regulations referring to the use of asbestos in
2 country. I joined Cape 10 years later than this, and at this
3 time clearly there was a knowledge of the hazards associated
4 with asbestos about which I enquired, and the people for whom
5 I worked, the senior people in the company at that time, told
6 me - and I am satisfied that they were answering honestly -
7 that the hazards had been largely overcome as a result of the
8 precautions which were being taken in the light of the new
9 regulations. I first walked through the factory at Barking
10 where these products were being made 10 years after this in
11 1943. I do know something about handling hazardous materials.
12 In all my career I have been concerned with hazardous materials.
13 In fact most of my experience in this direction has been handling
14 far more hazardous materials than asbestos. I was employed
15 during the war in the production of chemical warfare agents
16 which were, as I say, a great deal more hazardous than asbestos.
17 When I first walked through the plant at Barking I certainly
18 did not get the impression from a subjective point of view
19 that there was any hazard for people working in those plants,
20 and I would quite happily have worked for long hours in those
21 plants myself.

22 If we go on 10 years from that to the 1950's, the
23 period between 1940 and 1950, there was very considerable
24 activity in the asbestos industry, and this was largely
25 concerned with modernising plants which had been clapped out
26 (if you are familiar with the expression) during the war,
27 when there were long working hours involved. The plants were
28 reconditioned, they were extended, and much better equipment
29 became available for exhausting air from the plants.

consequently, by the time we came to 1963 we had much better working conditions. There is now no question of that; and I would have said, if you had been questioning me in 1953 or 1950, "Our plants are now in very good shape indeed". But I think the period between 1953 - let's take 10 year intervals - and 1963 was a period of much more intensive and medical research, and the great progress that was made in this industry during the 1960's was in medical questions and in diagnosis. Vast strides forward were made then in acquiring new knowledge. This is the reason why I formed the view at the time and advised many people that they should get medical consultants, because this is where the knowledge and the expertise would come. This would be the sharp end.

The result of this is that by the 1960's we were a great deal more knowledgeable about working conditions. We in the industry - when I say "we", I mean the industry as a whole - did have the difficulty, from a scientist's point of view the extreme difficulty, of having to deal with a situation which had been caused perhaps 15 or 20 years before. So to some extent when we got a case of asbestosis - I say "to some extent"; when we got a case of asbestosis - this would be as a result of working conditions some 15 years before, and this has been, I believe, the great difficulty in our industry, that we have not known, when we have taken a step, the extent to which it was going to be effective.

In consequence of this, our knowledge has increased slowly, and as a result of, I believe, the work which has been carried out in most recent years, we have now got epidemiological

1 information, and we now have got more accurate methods of
2 measuring dust concentrations in the air, and we have at last
3 achieved the possibility of a much better system of control.
4 It is always possible, of course, that our knowledge is still
5 not complete by any means, and it is possible that if I had
6 been speaking to you here 10 years ago I would have said
7 something very much the same as what I am saying now; but
8 I do want to make it quite clear to you that our knowledge
9 of this very serious regrettable situation has only increased
10 slowly.

11 MR BALDWIN: Have you finished?

12 A Thank you.

13 Q Along those lines, you said that in England the impact of
14 the problems with asbestos really came to the front in the
15 1950's.

16 A That's right.

17 Q And largely as a result of medical work done by and reports
18 written by Dr. Merewether?

19 A That's right.

20 Q You are familiar with those?

21 A Yes.

22 Q And have been familiar with those reports of Dr. Merewether
23 since the 1950's. Is this true?

24 A Yes.

25 Q Regardless of the strides that have been made, it has been
26 known to you and to the others in the industry that asbestos
27 and working around asbestos can cause a condition of asbestosis?

28 A This is true; but I wanted to emphasize that this is a
29 question of degree.

1 Q And I just wanted to make it clear that by what you said
2 you don't want to imply that you didn't have the knowledge in
3 the 1950's.

4 A We had a certain amount of knowledge. Regrettably, we didn't
5 have enough.

6 Q Regardless of the amount that you had, you knew ----

7 A There were elements of knowledge, clearly, es.

8 Q I am talking about you now.

9 A Which were available to me and were available to the industry
10 and available to everyone who used the product.

11 Q I am talking about your knowledge.

12 A Yes.

13 Q In the 1950's you had the knowledge, you as an individual,
14 that asbestos could cause to people who were required to work
15 around it the condition of asbestosis, didn't you?

16 A What I will say, Mr Baldwin, is that I was aware that
17 precautions had to be taken in the handling of asbestos.
18 What I did not know at that time - let's say in the mid-1950's -
19 is that I did not know anything like as well as I do know
20 now what the extent of those precautions should be or should
21 have been.

22 Q I am not talking about precautions now. I am talking about
23 the effect of asbestos. You knew then that it could cause the
24 disease of asbestosis?

25 A I knew then that inhaling asbestos dust could cause asbestosis.

26 Q We have previously described asbestosis yesterday, haven't we,
27 without having to go back through that?

28 A Yes.

29 Q And you had that knowledge then?

30

1 A Yes, but I would repeat that what I did not know, as I know
2 today, was the extent or the concentrations of asbestos dust which
3 could be regarded as hazardous.

4 Q But you did know that ----

5 A I knew, for example, that the kinds of condition that my
6 colleagues at that time who had worked before the 1933
7 regulations described to me as being the conditions in the
8 industry, I knew, I could see, that these conditions could
9 cause asbestosis.

10 Q So, then, you knew that the conditions as they existed then,
11 if not corrected, could cause asbestosis?

12 A The conditions as they existed before 1933, yes, of which
13 I had no experience, but which had been described to me very
14 clearly.

15 Q What were those conditions?

16 A The descriptions that were given to me in a general sense
17 were conditions in which the asbestos dust around some
18 machines was so thick that you could not see your hand
19 stretched out in front of your face. This was the kind of
20 description that was given to me of the conditions existing.

21 Q And unfortunately you knew that these working conditions would
22 continue to exist throughout the world for a period of time,
23 that they wouldn't be changed overnight?

24 A No, but this was 10 years later that it was described to me,
25 and, of course, there were war-time conditions, too, involved
26 here, where there were very long working hours. I know now
27 with hindsight that there were people exposed during the war
28 who were being subjected to as much danger as people who were
29 in the firing line.

1 Q People exposed to asbestos?
2 A That's right.
3 Q But the point I am making, and I want to make it clear,
4 is the extent of your knowledge as to the effects of asbestos
5 was such that beginning with the 1950's and through the 1960's
6 and into the 1970's you realised that it was a dangerous
7 material to work around?
8 A Yes, but I want to make my position quite clear on this,
9 Mr Baldwin. I realised that precautions needed to be taken
10 in the handling of this material. What I realise now I was
11 in error about was the extent of the precautions which needed
12 to be taken.
13 Q What precautions do you feel should have been taken that
14 were not when you look back?
15 A With hindsight, I believe that our siting of dust exhaust
16 machinery was not sufficient to reduce the concentration of
17 asbestos dust in the atmosphere to a sufficiently low level.
18 Q But what I am asking you is that you don't intend to imply
19 that you have just recently come upon the knowledge that
20 asbestos can cause the condition of asbestosis?
21 A No. I knew that asbestos, improperly handled, could cause
22 asbestosis, or breathing asbestos dust at too high quantities
23 for too long a time could cause asbestosis. I have known this
24 since the first day I was employed.
25 Q All right. You have defined asbestosis yesterday, haven't you?
26 You don't intend to change that definition?
27 A No.
28 MR BALDWIN: I have nothing else.
29 MR BERNAYS: Are you through?
30 MR O'CONNOR: Yes.

THIS IS THE CASE
Affidavit of Anthony John Penna sworn before me
the Eight day of August 1975

Antony J. Penna
Notary

.....

A Notary Public

ADMINISTRATIVE DIVISION

NOTARY PUBLIC OF LONDON ENGLAND

My Commission expires with Life.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

----- x
HERMAN YANDLE, et al., :
Plaintiffs :
vs. : Civil Action No. TY-74-5-CA
PPG INDUSTRIES INC., et al., :
Defendants :
----- x

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

----- x
LESTER KAY (And all Intervening :
Plaintiffs) :
vs. : Civil Action No. TY-74-15-CA
PPG INDUSTRIES, INC., et al. :
----- x



1 Q Dr. Gaze, I believe you mentioned the British regulations on
2 asbestosis as having been promulgated in 1933?

3 A Yes.

4 Q Could it possibly have been 1931 that they were promulgated?

5 A It could be, yes.

6 Q You are not certain about that?

7 A I am not certain. 1931. Thank you.

8 MR BERNAYS: That's all we have.

9 A But, of course, in the light of later knowledge they were
10 revised in 1969.

11 MR. BALDWIN: Dr. Gaze, thank you for letting us impose upon your
12 time. You were very co-operative.

13 A Not at all. Thank you for being so considerate.

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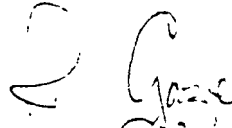
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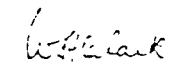
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The foregoing deposition
having been taken down in shorthand,
and afterwards transcribed, was
read over by the witness and
subscribed to on the 6th day
of August, 1975.


Witness.

I, Walter H. Clark, of Harry Counsell & Co.,
61, Carey Street, London, WC2A 2JG, England, a Member of
the Institute of Shorthand Writers, hereby certify that the
foregoing deposition of RICHARD GAZE is a true and correct record
of all questions asked and answers made of the said witness.


W.H. Clark.