

FILE NAME: Eagle-Picher (EP)

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DOCUMENT DESCRIPTION: Legal - Direct Examination of Glen Christner with BC Notes

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began w/E.P 1931

ret. as VP of E.P in charge of
insulation div in 1963

6-7

asb. was added to get product
to pass Navy's Tumbling/abrasion/shrinkage test
inhibitor used in ~~Super~~ Eagle 66 to prevent
underlying pipe from rusting, since
the insulating cement was applied wet
asbestos was 2½ to 4% in Eagle 66.

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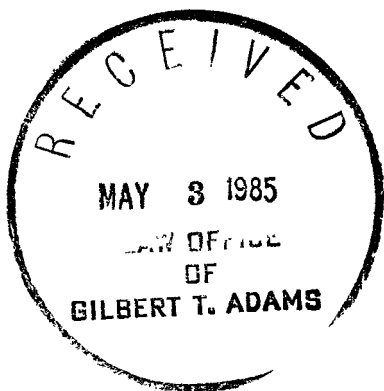
used medium grades of fiber, shorts wouldn't
pass the Navy's test. Navy approved product
"w/asbestos". (J-M given some credit for that.)

48 "I heard it discussed out at the plant" - 1932
report from Bureau of Mines

5) E.P went into insulation wfg in 1929 or 1930

Super 66 was 8.5-10% asbestos

115 He also received documents from Allen



1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KITSAP

3
4 KITSAP COUNTY ASBESTOS CASES OF)

) NO. 81-2-00669-0

5 SCHROETER, GOLDMARK & BENDER)

6
7 TESTIMONY OF GLEN J. CHRISTNER

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12 BE IT REMEMBERED, that the above entitled
13 and numbered cause came on for hearing before the HONORABLE
14 TERENCE HANLEY on Thursday, the first day of November, 1984,
15 at the Kitsap County Courthouse, Port Orchard, Washington.

16 WHEREUPON, the testimony was taken of GLEN
17 J. CHRISTNER as follows, to-wit:

18 * * * * *

19 GLEN J. CHRISTNER, called as a witness on behalf of
20 the defense, was first duly sworn,
and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SPRIGGS:

23 Q Mr. Christner, would you state your full name for the
24 record, and also spell your last name, please?

25 A Glen J. Christner; C-H-R-I-S-T-N-E-R.

CHRISTNER - Direct

-1-

1 but she has to have a nurse with her at this time.

2 Q All right. Let's talk about your educational background.
3 Did you go to college?

4 A Yes.

5 Q Did you obtain a degree?

6 A I graduated with a B.S. Degree in Mining Engineering.

7 Q From?

8 A Missouri School of Mines.

9 Q And what year?

10 A 1922.

11 Q And what did you do after that?

12 A I, as a student engineer, I went with the Ingersoll-Rand
13 Company in New York City in Phillipsburg, New Jersey.

14 Q How long were you with Ingersoll-Rand?

15 A I was with them eight years.

16 Q And then what did you do?

17 A Then I went with the Eagle-Picher Lead Company, or
18 Eagle-Picher Industries.

19 Q And approximately what year was that?

20 A 1951.

21 Q 1951? No. Is that right?

22 A No, 1931. Excuse me.

23 Q And what was your position when you started with
24 Eagle-Picher?

25 A I was Eastern Sales Manager, the first insulation
engineer that they had hired east of the Mississippi

1 River, and I was in charge of, oh, insulation sales
2 from the Atlantic Ocean as far west as Pittsburgh and
3 Cleveland.

4 Q All right. How long did you hold that position,
5 approximately?

6 A Well, I held that position until, well, I was in that
7 position, but I was -- had different titles.

8 Q How long did you stay in New York City?

9 A I stayed in New York City from 1921, when I went with
10 Eagle-Picher, until 1950, when I was transferred to
11 Cincinnati as General Manager of the Insulation Division.

12 Q And then you stayed in Cincinnati how long?

13 A I stayed in Cincinnati until I retired in '63.

14 Q And what was your position when you retired?

15 A I was Vice President of Eagle-Picher Company in charge
16 of the insulation division.

17 Q All right. Let's go back to 1931, is when you joined
18 the company; is that correct?

19 A That is right.

20 Q Tell the jury what your principle duty was when you
21 joined the company in 1931?

22 A Well, in 1931, of course, I was the only employee, and
23 I was the Eastern Manager of the Insulation Division;
24 and one of the main assignments I had was to have the
25 materials approved so we could sell to the United

1 States navy shipyards throughout the country.

2 Q What did you do?

3 A In order to do that, I had to go to Washington to the
4 Bureau of Ships, and I was advised that in order to have
5 product approval --

6 MR. WITHEY: Objection. Hearsay, Your
7 Honor.

8 THE COURT: Sustained.

9 THE WITNESS: In order --

10 THE COURT: Just a moment.

11 THE WITNESS: To have our products tested --

12 MR. WITHEY: Objection.

13 BY MR. SPRIGGS:

14 Q The objection was sustained. What did you do when you
15 were attempting to market your products to the
16 government?

17 A We took the product to Annapolis, Maryland, to the
18 experimental station and had it tested.

19 Q And what were the results of this test, or testing?

20 MR. WITHEY: Objection. Beyond his
21 qualifications. Also hearsay. The document speaks for
22 itself as well.

23 THE COURT: What was the question?

24 BY MR. SPRIGGS:

25 Q What were the results of the tests that were performed?

1 THE COURT: You may answer.

2 THE WITNESS: May I answer that?

3 BY MR. SPRIGGS:

4 Q Yes, you may.

5 A The results of the first tests that were run were
6 unsatisfactory.

7 Q Why?

8 A They -- the materials making up our product, which was
9 Eagle 66 insulating cement, did not stand up under the
10 tumbling test, primarily; and, in order for you to know
11 what the tumbling test is, why, may I...

12 Q I want you to describe that to the jury.

13 A They mix this material and put it in a pan one-inch
14 thick and eight inches wide, and twenty-four inches
15 long. As it is dried, after it is dried, they cut this
16 up into cubes one-inch square, and they put these cubes
17 in a tumbling machine which revolves around, oh, I would
18 say fifteen times a minute, and then they measure the
19 cubes after that to see what the shrinkage was in the
20 cubes, and that was the abrasion test for the product.
21 The abrasion test showed that our material had greater
22 abrasion than their specification allowed.

23 Q So what happened then, what did you do then?

24 A Well, in order to correct that, why, I asked the
25 Superintendent of the Experimental Station, for his

1 Q Where do you live?

2 A Venice, Florida.

3 Q What is your address there?

4 A 555 Viestplinod, Apartment 203.

5 Q You are going to have to not move around in that chair,

6 I am afraid, because...

7 A I have a little cold.

8 Q Are you retired?

9 A I am retired, yes.

10 Q When did you retire?

11 A 1963.

12 Q How old are you?

13 A I am 86 years old.

14 Q Are you married?

15 A Yes, sir.

16 Q How long have you been married?

17 A 57 years.

18 Q How is your wife doing?

19 A She is in poor health. She has had two operations this
20 year, internal.

21 Q Is she all right now?

22 A Well, she is under the care of a nurse.

23 Q Now you are going to have to settle down now and relax
24 and don't move the chair around.

25 A Okay. She is in -- well, she is in fairly good health,

1 advice, and he said that --

2 MR. WITHEY: Objection as to what he said
3 as hearsay.

4 MR. SPRIGGS: All right.

5 BY MR. SPRIGGS:

6 Q What did you do, what did Eagle-Picher do when you failed
7 the test?

8 A Well, when we failed the test, why, I went to Joplin
9 myself where our product was manufactured, and I gave
10 them the whole picture and story that I had witnessed
11 the test at Annapolis; so we added asbestos fiber to
12 our product, long fiber asbestos.

13 Q You added asbestos?

14 A We added asbestos.

15 Q Why.

16 A To give it strength, to give it strength enough to pass
17 the cohesive test. Little fibers of asbestos entwined
18 with the mineral wool balls held it together so that
19 it would pass the tumbling test.

20 Q All right. Let's interrupt this for just a minute. We
21 will come back to what Eagle-Picher did after you failed
22 the test; but let's interrupt for just a minute. Would
23 you describe to the jury what Eagle 66, what the product
24 is like, what it consists of and how it was made?

25 A Very happy to. Eagle 66 insulating cement is

1 constituted of little mineral balls of mineral wool that
2 have been tumbled in a rotary screen.

3 Q Where did the mineral wool come from?

4 A The mineral wool came from Joplin, Missouri where we had
5 lead slag over our lead smelting processes years ago,
6 and this lead slag has a content of iron, lead and zinc
7 and silica. And, in order to use up these thousands
8 and thousands of tons of slag we had, we arrived at the
9 idea of making it into mineral wool, and we found that
10 we had a mineral wool of a consistency superior to rock
11 wool which is made from limestone. This mineral wool
12 is made, well, the constituents are iron, zinc and
13 silica. So we had a mineral wool that was unusually
14 adapted to be made into other products.

15 Q What were the other ingredients of the Eagle 66?

16 A Eagle 66?

17 Q The other ingredients.

18 A The other ingredients, besides mineral wool, are
19 bentonite clay, rust inhibitor, and asbestos.

20 Q Why asbestos?

21 A Asbestos? Well, I will have to say this, that when we
22 decided to use our slag pile to make insulation out of
23 it, we found that there were other mineral wool
24 insulating cements on the market, and they were primarily
25 made from rock wool which is limestone which is melted

1 and then blown into fibers. They, of course, are, the
2 limestone fiber is subject to deterioration under moist
3 or wet conditions, while mineral wool made from lead
4 slag and iron slag was much more stable, and lended
5 itself to be rolled into small, what we call spring-
6 evolved particles; and, then, after rolling this mineral
7 fiber into minute, I say "minute," about the size of
8 a pea, or even smaller, why, we added to that asbestos
9 cement, I mean asbestos fiber, bentonite clay and an
10 inhibitor, because it had to be put on wet.

11 Q Why did you include the ingredient of asbestos?

12 A Well --

13 MR. WITHEY: He just answered that, Your
14 Honor.

15 MR. SPRIGGS: I asked him, and I don't think
16 he did, Your Honor.

17 THE COURT: He may answer.

18 BY MR. SPRIGGS:

19 Q Why did you add the ingredient of asbestos?

20 A We added the ingredient of asbestos to start with
21 primarily because Johns-Manville and Baldwin -- not
22 Baldwin Hill, but, whoever 48, who originally came out
23 with the product, they had asbestos in their product, and
24 we put asbestos in ours knowing that it aided, added
25 to the strength of the product when it was dried.

1 Q Where did the asbestos come from?

2 A The asbestos that we had -- we had no asbestos mines,
3 and we had to import our asbestos from Canada, Canadian
4 Asbestos Company.

5 Q Now you were in the -- directly involved in the
6 insulation division of Eagle-Picher, from like '31 to
7 1950; right?

8 A Correct.

9 Q Is that what you testified?

10 A (Nods head affirmatively)

11 Q During that period of time, to the best of your
12 knowledge, where did the asbestos come from during
13 that entire period of time, 1931 to 1950?

14 A Nearly all the asbestos that we knew about came from
15 Canada. Johns-Manville has large asbestos mines in
16 Canada, and today's asbestos company also had mines; and
17 Johns-Manville being a competitor, we couldn't buy from
18 them, so we bought from Canadian Asbestos.

19 Q Okay. Now I want you to describe to the jury how this
20 cement was mixed, going back to 1931. Tell them about
21 Joplin, Missouri, the plant there, and how this, these
22 ingredients were mixed up together?

23 A In the first place, mineral wool, I think most of you
24 have seen fiberglass and rock wool, mineral wool is a
25 fiber type of material. It comes out of the blow

1 chamber in big globs, felt; and that is fed up into
2 tufts, and these tufts are put into a rolling, tumbling
3 screen and tumbled until they are little balls,
4 circular-shaped balls of mineral wool. That is the wool
5 that we use in our cement. Then we, in order to make
6 Eagle insulation, Eagle 66 insulation, which is a
7 monolithic insulation, we, in proper proportions, we
8 put this granulated wool into a revolving, like a
9 concrete mixer, and we put in a certain amount of
10 bentonite clay as a cohesive material when it is dried,
11 and we put in a certain amount of asbestos fiber in
12 the mixture along with an inhibitor, because this
13 material is applied wet, and if you apply it wet, it
14 takes some time to dry, and we needed an inhibitor to
15 prevent rusting of the equipment on which it was
16 installed.

17 Q What percentage of the ingredients in Eagle 66 was
18 asbestos, what was the percentage?

19 A Oh, from two and a half to three and a half, maybe as
20 high as four percent.

21 Q And what was the greatest percentage of the ingredients
22 among mineral wool and bestonite clay and...

23 A Well, the greatest percentage, of course, was mineral
24 wool. That is what we manufactured ourselves, and that
25 really was the insulation value of the cement, little

1 springy balls of mineral wool which have very, very good
2 insulation qualities, again, for the transfer of heat.

3 Q Why is that?

4 A These little balls of mineral wool contain millions of
5 miniature dead air cells, and the asbestos cement had
6 no insulation value to speak of at all, of the asbestos
7 fiber. It was the mineral wool fiber that was the only
8 ingredient in the product that had insulation value.

9 Q What happened to the mineral wool and the asbestos
10 fiber when they got mixed up, what happened to them?

11 A Well --

12 MR. WITHEY: Objection, Your Honor.

13 MR. SPRIGGS: I am asking him what happened
14 during the mixing process, Your Honor. I don't think
15 there is anything objectionable about that.

16 THE COURT: He may answer.

17 THE WITNESS: May I answer that?

18 BY MR. SPRIGGS:

19 Q Yes, you may.

20 A When the asbestos fiber is introduced into the mixer
21 with the little springy balls of mineral wool, there
22 was a tendency, a very definite tendency for the asbestos
23 fiber to cling to the little springy balls of mineral
24 wool; and, in clinging to the springy balls of mineral
25 wool, why, it became a homogenous part of the springy

1 ball. Does that answer your question?

2 Q Yes. Was this a dusty operation when -- well, tell the
3 jury how they, at the plant in Joplin, when they were
4 mixing these ingredients together in this cement mixer,
5 I think you testified, was it dusty?

6 A Well, at the time you dump the material into the mixer,
7 why, you dump, of course, you dump the mineral wool
8 fiber in first, and then you put in the asbestos fiber
9 in next, and then you put in the bentonite clay and the
10 inhibitor in next, and then you start revolving the
11 mixer until you get a homogenous mixture of the material
12 you put in there. Now if you are putting the bentonite
13 clay, dumping it out of fifty pound bags into the
14 mixer and you held the bags high above the mixer, you
15 would get some bentonite clay dust. If you are putting
16 in asbestos and you held the bags -- we did this in
17 bag batches. It wasn't done with mechanical equipment,
18 it wasn't fed mechanically, it was all fed by putting
19 in a certain number of pounds, so many number of bags of
20 mineral wool, a certain number of bags of asbestos
21 fiber, and a certain number of bags of bentonite clay.
22 And if you would dump the asbestos fiber in from higher
23 elevation than normal, why, you could get a little dust
24 from that. The only place you got any dust was when you
25 put the bentonite clay in, and that is a dusty material.

1 Q Were there measures that you took to control the dust
2 and try to eliminate it at the plant in Joplin?

3 A Oh yes. As a matter of fact, all operators of
4 Eagle 66 insulation manufacturing were required to wear
5 face masks over their nose, and most of them did. It
6 was dusty because you were dumping dry material into a
7 vessel. They were required officially to wear a face
8 mask.

9 Q Well, during the time that you were in charge of the
10 insulation division, from 1931 to 1950, were there
11 improvements made, and, if so, what kind of improvements
12 were made at Joplin to protect the workers?

13 A Well, yes, there was improvements made, because a lot
14 of the fellows wouldn't wear their masks in the mineral
15 wool plant. You're talking about the mineral wool
16 plant itself?

17 Q Yes.

18 A So the company spent a lot of money building a wired
19 cage, approximately the size of this whole room, on top
20 of our plant, where they circulated the air from the
21 plant through this caged area which was sprayed with
22 water, and the water would wet down the fiber in the
23 air, and out of this caged area would come clean air
24 without fiber in it. It cost a lot of money. It was
25 effective; and unless you had a hole in the screen, why,

1 then of course some of the fiber would get out into the
2 air outside. It had no effect on the vehicles in the
3 plant.

4 Q All right. Now we have interrupted the conversation here
5 to talk about the plant in Joplin. Let's go back to the
6 resubmission of the product to the navy in Annapolis.
7 In other words, I think you testified earlier that your
8 product failed initially. So what happened when you --
9 or did you send a new product back to the navy?

10 A The first batch of material that we submitted to the
11 navy for approval did not pass, and I explained to you
12 why. One of the main reasons it didn't pass is it didn't
13 have cohesion in the little blocks of --

14 MR. WITHEY: Objection.

15 MR. SPRIGGS: Your Honor, I would ask counsel
16 not to --

17 THE COURT: What was your objection?

18 MR. WITHEY: My objection was on the grounds
19 of not being responsive. I think he is going back
20 to the first time, and I think the question asked was
21 did he resubmit it.

22 BY MR. SPRIGGS:

23 Q What happened, if I may, Your Honor.

24 THE COURT: All right.

25 BY MR. SPRIGGS:

1 Q What happened when you resubmitted the product to the
2 navy in Annapolis, what happened then?

3 A Well, when we resubmitted the product to the navy in
4 Annapolis, I personally was there when the product was
5 tested; and on the next, on this retest of the
6 material, why, we passed the specification requirement,
7 because we had, at their suggestion --

8 MR. WITHEY: Objection, Your Honor. Both
9 hearsay and going beyond -- it is nonresponsive, and
10 I also have an objection to his qualifications as to
11 what the testing called for, getting into a conclusionary
12 and opinion area.

13 MR. SPRIGGS: I will withdraw the question,
14 or reask it, or whatever.

15 BY MR. SPRIGGS:

16 Q What happened when you resubmitted the product?

17 A Our product was approved.

18 MR. PETTY: Your Honor, Mr. Christner,
19 there is some water there and a cup, if you would like
20 some.

21 THE WITNESS: Thank you.

22 MR. SPRIGGS: Here, I will get you some.

23 THE WITNESS: I shouldn't say why our product
24 was approved?

25 BY MR. SPRIGGS:

1 Q It was approved, though, right? All right, Mr. Christner,
2 we have in evidence an exhibit numbered Eagle-Picher
3 17032. If I can be permitted to do so, I will describe
4 to you, because I understand your eyesight isn't all
5 that great these days, it purports to be a certificate
6 of approval. It is dated, by the way, September 19,
7 1933. The product involved is Eagle 66. There is a
8 reference to a Governing Navy Department Specifications
9 32P5. "ACTION APPROVED- Registered on Acceptable List of
10 Approved Materials." Do you recognize that document?

11 A I certainly do. That was the one we were trying to obtain.

12 Q What does this mean here, "Registered on Acceptable List
13 of Approved Materials."?

14 A Well, the navy is different from any other segment of
15 the government that I ever had anything to do with. The
16 navy had to test and approve all the materials used by
17 the navy, whether they were packing materials for
18 valves, or what have you. And they were the only outfit
19 that I knew of that tested insulation materials for
20 acceptance and approval. Matter of fact, there was a
21 certification of your product if the navy tested it and
22 approved it.

23 Q Okay. Now this document, which is also in evidence as
24 17041.1, it says 32-P-5, which I believe was referred
25 to back here as a specification, and it refers to

1 various types of materials, Type C cement, detailed
2 requirements, cement, Type C. Does that look familiar
3 to you?

4 A It surely does. That is the specification form.

5 Q When did you first see that specification? Do you
6 recall approximately?

7 A Oh, when I first went to the experimental station in
8 1931.

9 Q Is that, you know, do you recall this language, "Cement
10 Shall be Composed of Asbestos Fiber." Do you remember
11 that?

12 A Oh, absolutely. Our predecessor, of course, was
13 the Johns-Manville Company.

14 MR. WITHEY: Objection, Your Honor. Not
15 responsive. He already answered the question.

16 THE COURT: I think he has.

17 MR. SPRIGGS: Okay.

18 THE WITNESS: We had --

19 MR. SPRIGGS: No, wait a minute. I am
20 sorry.

21 MR. WITHEY: I move to strike whatever the
22 answer was, attempted to be said.

23 THE COURT: So ordered.

24 BY MR. SPRIGGS:

25 Q Okay, so you were approved. Well, what year approximately

1 was it that you were -- your product was approved?

2 A Well, I guess approval came out in '33, but we were
3 approved in '32.

4 Q Okay. What problems do you recall, if any, that you
5 had with getting this approval?

6 MR. WITHEY: Objection. It may call for
7 hearsay. It seems to. I am not sure what he is going
8 to say.

9 MR. SPRIGGS: It doesn't call for hearsay,
10 Your Honor.

11 THE COURT: He may answer.

12 BY MR. SPRIGGS:

13 Q What problems, if any, did you have getting this
14 approval, that you just testified to here?

15 A We had no problems except to furnish a product that would
16 meet the navy specification.

17 Q And did you have any -- well, did you have any difficulties
18 in doing that?

19 MR. WITHEY: That question was just asked
20 and answered.

21 THE COURT: Overruled.

22 BY MR. SPRIGGS:

23 Q You may answer. Do you recall any difficulties in
24 getting your product approved at Annapolis, I mean, or
25 was it, you know...

1 A Well, in order to get your product approved at
2 Annapolis, you had to follow their routine. That was
3 it. And you had to submit your material sample, and it
4 had to be authenticated, and it was difficult. You
5 couldn't just send any material down to Annapolis and
6 have it approved under the specification of a mineral
7 wool insulating cement.

8 Q Did you -- well, were there any problems at all in
9 meeting the details of this specification?

10 A Oh, of course there was.

11 MR. WITHEY: Objection. Asked and answered.

12 THE COURT: Overruled.

13 BY MR. SPRIGGS:

14 Q Now what were they?

15 A Well, the first test we had made was, of course, didn't
16 meet their approval.

17 Q Why?

18 A And the second test we had made did meet their approval,
19 because we added longer fiber asbestos cement.

20 Q Why did you do that?

21 A We had to do that in order to meet the specifications
22 physically. Primarily, it was the physical requirement
23 of the cement.

24 Q Well, tell the jury exactly what you had to do. You
25 said something about longer fiber cement, or fiber

1 asbestos in the cement?

2 A Well, of course, to start with, not being producers
3 of asbestos cement, such as the Johns-Manville
4 Corporation was, we had to buy all of our materials
5 from Canada, ship them all the way from Canada down
6 to Joplin, Missouri, and we bought the cheapest product
7 they had, thinking that that would be sufficient to
8 pass the test.

9 Q How much did the asbestos cost that you started with?

10 A The asbestos that we were using was what they call
11 shorts, and it was about half the price of the asbestos
12 that we finally put into the product, the longer fibers
13 that we eventually put in the product in order to meet
14 the navy qualifications for the product.

15 Q Well, now, what was the new fiber that you used? You
16 say "longer," what does that mean?

17 A Well, asbestos fiber.

18 Q Describe that.

19 A Long asbestos fiber. And, of course, all this asbestos
20 fiber at that time, to my knowledge, came from Canada.
21 Now there were some other asbestos fibers from Europe,
22 and some from Mexico, and then I think there were a
23 few mines in California, but weren't satisfactory in
24 type of material to be used in this kind of a product.

25 Q So you say you substituted or you changed the type of

1 fiber in the material that you resubmitted to the
2 navy. Is that what you are saying?

3 A Well, we -- yes, we changed the type of fiber, much
4 more, almost twice as expensive as the fibers that we
5 were originally using.

6 Q And why did you do that?

7 MR. WITHEY: The question has been asked and
8 answered, Your Honor. It also calls for hearsay, a
9 hearsay response.

10 MR. SPRIGGS: Okay, I will withdraw it.

11 BY MR. SPRIGGS:

12 Q Now after you received the approval of the product,
13 did you attempt to sell it then to the government?

14 A Well, as soon as the product is tested and approved
15 by the U.S. Navy Experimental Station, a copy of that
16 approval is sent to all of their purchasing departments.
17 Now some of those were shipyards, Washington office,
18 and anyplace where approval to purchase materials for
19 the navy were being made, why, they were notified that
20 this product had met their specification and was
21 approved and was, they could send their inquiries to
22 us, the same as they were to our competitors.

23 Q Did you ever sell any of the product to the Puget Sound
24 Naval Shipyard?

25 A Yes, sir, we sold considerable to the Puget Sound

1 Shipyard.

2 Q When?

3 A During the war.

4 Q Well, did you sell any after the war?

5 A No, during the war.

6 Q What happened after the war? Did you ever have any sales
7 out here after the war?

8 A After the war, why, the ship building industry was
9 practically nill, and even the conditioning of
10 ships was at a very low pace. And most of the shipyards
11 throughout the United States had supplies of insulating
12 materials, and we, of course, not very few inquires
13 for insulation materials for shipyards after the war.

14 Q Okay. Let's talk about the sale to the Puget Sound
15 Naval Shipyard during the war. How were those sales
16 transacted? That is, what -- how did those sales come
17 about?

18 MR. WITHEY: Objection. It calls for hearsay.
19 Not the best evidence.

20 MR. SPRIGGS: Your Honor, we are back to our
21 prior argument, I guess. I don't know that we need to
22 repeat it.

23 THE COURT: Does he have actual knowledge?
24 Did he handle the sale?

25 MR. SPRIGGS: Yes.

1 THE COURT: He may answer.

2 BY MR. SPRIGGS:

3 Q Mr. Christner, just tell the jury what, how these sales
4 were transacted, what happened?

5 A Well, I don't like to say it braggingly, but it was my
6 responsibility to have the product approved, if possible,
7 for use on navy ships and procurement by the United
8 States navy. After going through the tests at
9 Annapolis, I was successful in having our product
10 approved. Then it, of course, as I said before, the
11 information was transmitted to all of their purchasing
12 departments all across the country, including Washington
13 D.C. And I being the prime mover in having this
14 material tested and approved, and being manager of the
15 New York office, so far as the insulation division was
16 concerned, why, we had all inquiries, if possible, come
17 to the New York office for quotation. Therefore, when
18 any shipyards throughout the United States wanted to
19 requisition a product as approved by this navy approval,
20 they sent the inquiry to the New York office for me to
21 quote and to handle the inquiry. If we were successful,
22 of course, we handled the entire transaction.

23 Q Well, who signed those documents?

24 MR. WITHEY: Objection, Your Honor. There
25 is no testimony as to those documents.

1 BY MR. SPRIGGS:

2 Q Were there any documents memorializing this transaction?

3 MR. WITHEY: Same objection. The documents
4 speak for themselves and are the best evidence.

5 THE COURT: Sustained.

6 MR. SPRIGGS: Okay.

7 BY MR. SPRIGGS:

8 Q What did you do after, I think you said that the product
9 was then supplied, like to the Puget Sound Naval Shipyard.
10 How was it supplied here, I mean what -- how was it
11 shipped?

12 A It was, the order, after being verified, was sent to
13 Joplin, Missouri, and they shipped it by freight,
14 freight car to the shipyard out here.

15 Q Okay.

16 A It was shipped in fifty pound bags, carload quantity.

17 Q Did you ever visit the Puget Sound Naval Shipyard
18 yourself?

19 A Yes, sir. As soon as we received their order, why, I came
20 out here myself personally to see that those who would
21 be applying the product would know how to apply it to get
22 the best results from it.

23 Q When was that?

24 A In '43.

25 Q How many times did you come out here?

1 A I came out here twice.

2 Q In '43?

3 A No, I was down here when the ships sailed down the
4 harbor.

5 Q Which ship was that?

6 A The Lexington.

7 Q Were you onboard the Lexington?

8 A I was onboard, and they took us off on a lighter after
9 about a half hour sail down the bay.

10 Q Did you observe the condition with regard to mixing
11 of Eagle 66 cement?

12 A I did observe.

13 Q What did you see when you were here in 1943?

14 A Well, as soon as the material arrived down here, why,
15 I came out here to be sure that they knew how to
16 apply the material for best advantage. The material
17 was mixed on deck, on top deck. This was an airplane
18 carrier, as you know, and a lot of room up there, and
19 all the mixing was done on the top deck, and it was
20 carried down below to where it was used on the pipes,
21 fittings, vessels, and so forth. It was carried down
22 there in what appeared to be five-gallon pails and was
23 dumped onto a mixing board and applied from there.

24 Q Well, how was it mixed? I mean describe to the jury in
25 detail how they mixed this cement.

1 A Yes. The product was mixed on top deck and in a mortar
2 box, mortar box, it averaged about five, six feet
3 wide, and about eighteen feet long, and they dumped eight
4 to ten bags of material into the mortar box; and, then,
5 with a hose, they would wet it down, come in with a
6 hose with, well, you had to hose it twice, one with a
7 water hose, and the other with a hose mixing material.
8 They would mix it and they would add more water until
9 they got it to the consistency that was required for
10 application. They then would put it in these five-gallon
11 drums or buckets and carry it down to where it was
12 being applied.

13 Q Did you go down into the ship?

14 A I went down all over the ship, from one end to the other.
15 I applied a lot of it myself.

16 Q Well, have you, throughout your career, I guess, from
17 1931 to 1950, did you, were you around the mixing and
18 application of Eagle Super 66 often?

19 A I was around it at our plant. I was at our plant at
20 least three to four times a year. And I spent my time
21 in the plant, because I always wanted to -- the product
22 made better than they were doing it, and I thought maybe
23 I could be of some help to them.

24 Q Better than what?

25 A Well, everybody has a specification for a manufacturing

1 -- the manufacturing of their product; and if you could
2 come up with something, maybe the mixing was too
3 strenuous, sometimes the springy balls were squashed down
4 a little smaller than they should be, and if you mix it
5 to the right consistency, those springy balls of
6 mineral wool, which really made up the substance of the
7 product, if you would tumble them to the right consistency
8 and not break down the fiber too much, why, then their
9 resilience would be greater, and you would get more
10 coverage per hundred pounds of material, and the more
11 coverage you got, why, the more dead air spaces you
12 had in the little springy balls of mineral wool, and the
13 better insulation value that you had from it.

14 Q Now, Mr. Christner, would you explain to the jury what
15 the purpose and function of this cement was. In other
16 words, what was its purpose and function in terms of
17 insulation?

18 A Very happy to. Of course, aboard ship, all ships are
19 steam. Well, today, some of them are atomic driven.
20 But in those days, why, they all had boilers, and those
21 boilers were oil-fired boilers, and they had to be
22 insulated in order for them to operate efficiently.
23 The boilers had to be insulated, and all the pipes that
24 ran from the boilers throughout the entire ship for
25 heating, or whatever purpose they were, they all had to

1 be insulated. Therefore, the navy was interested in
2 a material, any material that would give them the best
3 economy of insulation on these heated lines.

4 Q What do you mean "economy."?

5 A Well, it cost them money to buy oil to generate steam.
6 And, also, in some areas, why, the atmosphere, the heat in
7 the rooms was important too. And, also, if they weren't
8 insulated, why, people would burn themselves on these
9 pipes, because they were very, very hot. So they all
10 had to be insulated, and the navy was very meticulous,
11 compared with other industries, about insulating all of
12 their equipment and insulating it well. While the
13 industrial plants, they insulated wherever they had
14 to, lots of places they didn't think it was too important
15 for the comfort of the people, and they didn't insulate
16 it. But in the navy, why, everything is confined, and
17 everybody lives so close together, that they insulated
18 their specifications for insulating surfaces and
19 pipes was much greater than any other industry that we
20 ever served.

21 Q How was the product -- of course, we probably confused
22 the jury here. I have said Eagle 66 and Super 66. What
23 is the difference or similarity?

24 A Well, Eagle 66 was the first product that we brought out
25 and was approved by the United States Navy.

1 Q And what is Super 66?

2 A And Super 66, like any manufacturing concern, they always
3 try to improve their product over a period of time, not
4 just let it go on. So Super 66 was an improved product
5 in manufacture, in insulating value, and when we brought,
6 what we call Super 66 out and we had perfected the
7 springy ball construction much more than we had
8 originally, we called it Eagle Super 66, instead of
9 Eagle 66. Therefore, we had to have it tested, retested
10 by the navy under a new name.

11 Q And what year did the name change?

12 A I am not too sure of what year it was.

13 Q Approximately?

14 A Approximately '45.

15 Q Okay. All right, in, let's say during the war out here
16 at the Puget Sound Naval Shipyard, how was -- and when
17 you were out here on the Lexington, I guess, in 1943;
18 right?

19 A Yes.

20 Q Where was Eagle 66 used, and how was it applied? I am
21 sorry, compound. Where was it used?

22 A It was used on fittings. I assume you all know what
23 pipe fittings are, valves, nipples, L's, T's, and so
24 forth. It was used on all fittings. Primarily, not on
25 the straight runs of the pipe, that was, they used pipe

1 covering, but it was used on a lot of vessels on
2 irregularly shaped objects that were heated and had to
3 be insulated. And I might say that Eagle 66 cement,
4 due to its ease of application and cohesive strength,
5 was used on a lot of small vessels, anywhere from
6 two or three feet in diameter, up to eighteen feet in
7 diameter, because it didn't require the reinforcing
8 that block type insulation, like you see, magnesia
9 block, and so forth, it didn't require the reinforcement
10 that these other types required. So they used monolithic,
11 as we called it, monolithic cement, because when it
12 adhered to the vessel and would stick to its shape, why,
13 it didn't have to be reinforced like other types of
14 block or board material.

15 Q All right. During World War 2, did you have occasion
16 to compare Eagle 66 to other products, other thermal
17 insulating cements?

18 A Well, I had one very interesting experience. We had
19 captured some German vessels off of the East Coast, and
20 they were brought in to Newport News Shipbuilding &
21 Drydock and --

22 MR. WITHEY: Objection. Relevancy. Pardon
23 me for interrupting.

24 THE COURT: What is the relevancy?

25 MR. SPRIGGS: I was asking the witness to

1 compare the product to other products that he observed,
2 and I was about to lay a little bit more foundation.
3 He kind of jumped ahead of me, frankly.

4 MR. WITHEY: Well, I would object to that
5 line of questioning. I don't think there is any problem
6 about comparing to other products. We are getting a
7 little far afield of other products.

8 MR. PETTY: Your Honor, may we have a brief
9 side bar?

10 (Side bar discussion.)

11 THE COURT: I will overrule the objection.

12 BY MR. SPRIGGS:

13 Q Mr. Christner, I think you were interrupted in midstream.
14 Can you continue with your answer to the question?

15 A Would you please repeat the question.

16 Q Well, we were talking about comparing Eagle Super 66
17 or Eagle 66 to other insulation products during World
18 War 2.

19 A Well, thank you. Yes. Of course, I was a regular
20 caller at the Newport News Shipbuilding & Drydock
21 facilities. They built a lot of ships during the
22 war, and they used a lot of insulation. And when I was
23 down there on one of my trips, why, they had two vessels
24 in port that had been captured, German vessels had been
25 captured on the Eastern Seaboard, and they wanted to

1 know if I would be interested in going aboard these
2 German vessels to see what type of insulation they had
3 on their equipment as compared to what we were putting
4 on ours at the Newport News Shipbuilding & Drydock.
5 And it was amazing. Of course, these ships had been
6 made, I assumed, during the war by German shipyards; but
7 their insulation on their equipment was asbestos pads
8 sewed together with asbestos twine, and then tied around
9 the equipment, banded around the equipment with asbestos
10 bands, and sewed together as they could at the seams.
11 The material was very inadequate. Matter of fact, we
12 wouldn't think of using that kind of material on our
13 equipment over here. And it was loose. It wasn't tied
14 together so that on a pipe line as long as this room, why,
15 there would be spaces of an inch and a half to two inches
16 between two sections of the covering that they had on
17 it. This was, of course, fiber asbestos. It made into
18 pads, and sewed onto the pipes. It was unbelievable
19 that they would -- of course they had to insulate these
20 pipes with something, and they didn't have much to do
21 it with, but that was the type they used. And I had
22 the opportunity of going aboard two of the captured
23 ships and seeing what they were doing. Of course,
24 there wasn't anything that we would want to follow at all.
25 Q Well, now, just so the jury completely understands it,

1 compare what you just described to the type of
2 insulation that you saw on our ships?

3 A Well, in comparison, it was, I think, it would be quite
4 obvious. Theirs were blanket type material wrapped
5 around a pipe, and then held on with bands, with maybe
6 an inch to an inch and a half or two inches of space
7 between two sections of the material.

8 Q Compared to our?

9 A Compared to ours, which is Eagle 66. Eagle 66 is a
10 homogenous mass. If you covered a vessel as long as
11 this room, it would be like one piece of insulation
12 material around the entire vessel without any cracks or
13 crevices whatsoever. Therefore, you would have no heat
14 loss except that transmitted through the material itself,
15 and it was a very highly efficient insulating material
16 against the transmission of heat. Of course, this other
17 was absolutely, well, it kept people from burning
18 themselves in some places, and I imagine a lot of people
19 got burned, but they didn't have any material at all,
20 and the heat escaping from that would be terrific.
21 Our methods of insulation are much, much superior,
22 I mean, the United State's methods of insulation.

23 Q All right. Well, we talked about the Puget Sound Naval
24 Shipyard. Did you sell the product elsewhere in the
25 country? Or to the government, I mean?

1 A We sold through the United States government as an
2 accepted and approved material. We sold -- we shipped
3 our material on requisition to practically all the
4 shipyards on the West Coast and the East Coast; and we
5 also -- many ships, when picking up supplies to take
6 to sea with them, they would requisition our product
7 to take aboard along with their supplies and apply the
8 material while they were enroute from one place to
9 another.

10 Q How were these requisitions made?

11 MR. WITHEY: Objection. Lack of foundation.
12 Best evidence rule. Calls for hearsay.

13 THE COURT: Overruled.

14 BY MR. SPRIGGS:

15 Q You may answer.

16 A These requisitions were made primarily by the
17 procurement department.

18 Q Where was that?

19 A In Washington or, in many cases, the ships themselves
20 sent in requisitions to Washington which were transmitted
21 to me in New York.

22 Q Now we were looking a little while ago at this
23 specification, 32-P-5. Do you remember that?

24 A Yes.

25 Q Now this was dated 1933. Were there other specifications
as you remember?

CHRISTNER - Direct

1 A Well, this was the only one for our type of product at
2 that time.

3 Q But through the years, from 1931 to 1950, were there
4 revisions or changes to that specification?

5 A Yes. When we brought out Eagle Super 66, why, they
6 changed their specifications to some extent.

7 Q What did the changed specification say about material
8 requirements to the best of your recollection?

9 MR. WITHEY: Your Honor, I think that document
10 should be in evidence, and it speaks for itself.

11 MR. SPRIGGS: I am asking him about his
12 recollection, Your Honor. I can show him the document.

13 MR. WITHEY: I will withdraw the objection.

14 THE COURT: All right.

15 BY MR. SPRIGGS:

16 Q The question, Mr. Christner, was do you recall, as the
17 specification was changed, or when it was changed, what
18 the material requirements were as compared to the
19 material requirements here in this one, 32-P-5?

20 A The material requirements were not changed. Asbestos
21 cement was, it was mineral wool nodules, asbestos
22 cement, bentonite clay were still the requirements,
23 basically.

24 Q Was there ever any inspection of your product by the
25 government to see if it complied with this material

1 requirement. Do you recall that?

2 A We were requested periodically to send in a bag of our
3 material for recheck by the experimental station in
4 Annapolis. We didn't know when we were going to --
5 every so often, why, they would say we better check our
6 suppliers; and when they would request that, why, I would
7 send requests to our factory in Joplin to send them a
8 representative bag of our product at that time, and
9 it was sent through the routine way to Annapolis, and
10 at Annapolis they would test it to see if it met the
11 specifications that it was supposed to. This was
12 rechecked maybe, oh, every six to nine months. So
13 you couldn't ship them one thing one time and something
14 else the next. The only procurement agency that I ever
15 had anything to do with that had a close check on
16 their suppliers as the United States Navy.

17 Q Who were your other customers?

18 A Our other customers were industries, such as oil
19 refineries and power plants, and so forth. Oil
20 refineries in particular. They were a large user
21 of this type of material.

22 MR. SPRIGGS: I have a few more questions,
23 Your Honor, but I think it will take us into our
24 lunch hour.

25 THE COURT: I would like to work a little bit

1 into the lunch hour because I have a meeting, and I
2 won't be back right at 1:30.

3 MR. SPRIGGS: Okay.

4 BY MR. SPRIGGS:

5 Q Mr. Christner, I know -- I, with the Court's permission,
6 and the indulgence of counsel, I am going to refer you
7 to some documents which I am not going to require you to
8 read. They are in evidence. They are Plaintiff's
9 exhibits, or in Plaintiff's Exhibit 1882; and in that
10 package, as I understand it, they are two documents, one
11 dated July 16, 1942, addressed to you, Mr. Glen J.
12 Christner from a Douglas Via, it looks like.

13 A Via.

14 Q Via. All right. He says, if I may be permitted,
15 he says --

16 MR. WITHEY: If I could just look at this
17 real quick. No problem.

18 BY MR. SPRIGGS:

19 Q The cover memo is from Mr. Via. It says, "Attached
20 is a photostat of correspondence between Humble Oil
21 Refining Company and the Texas State Board of Health
22 in connection with Supertemp block." I am going to go
23 ahead and read it. "I believe that the latter signed
24 by Doctor Cox dated April 11 gives us a clean bill of
25 health, and inasmuch as there is a possibility that

1 you may hear something about this situation, we though
2 you should like to have a copy of the correspondence,
3 and attached is a letter from George W. Cos, M.D., State
4 Health Officer, Texas State Board of Health." Dated
5 April 11, 1942. Do you remember having seen those
6 documents back in 1942?

7 A They might have come to my attention at that time, but
8 it was of no significance, so I have not definite
9 recollection; but I am sure that they were submitted
10 to me.

11 Q Do you have any recollection as to what this situation
12 was all about in Texas in 1942? Do you recall anything
13 about that?

14 A No, because it was out of my -- the area was out of
15 my jurisdiction. I was in charge of the Eastern Division
16 of the United States, and what they did in Texas is not
17 of a serious consequence, as far as I am concerned,
18 except that we did sell in New York, most of the big
19 oil refineries, oil refinery outfits had their
20 engineering and purchasing departments in New York,
21 and we did sell Humble, and we sold Shell. We sold all
22 of them, through our New York office, we sold them our
23 materials to be applied in their refineries, wherever
24 they were building refineries, anywhere in the United
25 States, and sometimes foreign countries.

1 Q Mr. Christner, the plaintiffs have made a big thing
2 about the so-called Aber file. You have heard about
3 that, haven't you?

4 A Yeah.

5 MR. WITHEY: I object to the form of the
6 question as to it being a big deal.

7 MR. SPRIGGS: Okay, all right, I apologize
8 to the Court.

9 BY MR. SPRIGGS:

10 Q You have heard about the Aber file; right?

11 A Oh yeah, yeah.

12 Q Did you have any -- have you any recollection about the
13 Aber documents back in 1940, the 1940's, any of them?
14 There are a bunch of them here.

15 A No, I do not, because, as I mentioned before, that was
16 out of my bailiwick, and I had no responsibility for
17 anything they did down there.

18 Q Okay. I am going to refer you to Plaintiff's Exhibit
19 nine thousand --

20 THE COURT: Before you do that, maybe
21 if you are going to go on to something else, this is
22 a good time to break.

23 MR. SPRIGGS: Fine.

24 THE COURT: As I indicated, ladies and
25 gentlemen, I have a commitment. I won't be available

1 until 1:30; so please come back just at a few minutes
2 before that so we can start at 1:30. Thank you.

3 (Court was at recess, and then
4 reconvened in the absence of the
jury.)

5 (Colloquy)

6 (Jury was summoned and returned to the
7 jury box.)

8 BY MR. SPRIGGS: (Continuing Direct Examination)

9 Q Mr. Christner, there is one thing I would like to clear
10 up, I would for you to clear it up for the jury; when
11 you were testifying this morning, you talked about having
12 submitted the product to, the product being Eagle 66, to
13 the navy?

14 A That is right.

15 Q In, like, nineteen, what?

16 A '31.

17 Q '31. And it was rejected; right?

18 A That is right.

19 Q Why was the product rejected?

20 MR. WITHEY: Objection. Hearsay.

21 THE COURT: Overruled.

22 THE WITNESS: It was rejected because it didn't
23 meet the bureau's specifications for, not adhesiveness,
24 but tumbling strength.

25 Q Well, can you describe to the jury a little more

1 specifically what was wrong with the product and why
2 it was rejected?

3 A Well, they tried to -- I tried to before. It was mixed
4 to a mud consistency and put into a drying pan one-inch
5 thick; and after this material had been thoroughly dried,
6 then it is cut up into one-inch square cubes, and it is
7 put in a tumbling machine, revolving, I don't know how
8 many revolutions a minute, but it is a tumbling machine.
9 And then they measure the amount of each cube that went
10 in there, after it had been tumbled for a short period
11 of time in the tumbling machine. What this does, if the
12 product doesn't have sufficient cohesiveness which the
13 asbestos fiber gives it, why, then the corners will
14 break off and finally the entire one-inch square cube be-
15 comes a round ball; and if material has cohesiveness
16 from the asbestos fiber, then it retains its shape.

17 Q Your accompaniment is...

18 THE COURT: They are working on the roof.

19 MR. SPRIGGS: Oh, they are working on the
20 roof. I thought you had drums, or something. I am
21 sorry.

22 BY MR. SPRIGGS:

23 Q Well, continue, but let's get to the point now, Mr.
24 Christner. Why was the product rejected?

25 MR. WITHEY: I thought the question was asked
and answered, Your Honor.

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MR. SPRIGGS: Well, I am just trying to...

THE COURT: He was interrupted. He may answer.

THE WITNESS: The main reason why the product was rejected on the first test was that it didn't have enough fiber, asbestos fiber in it to make it stand up in the tumbling test.

BY MR. SPRIGGS:

Q What was wrong with the asbestos fiber?

MR. WITHEY: I would object to beyond his qualifications as well as hearsay.

MR. SPRIGGS: Well, we've been through the hearsay, Mr. Withey.

BY MR. SPRIGGS:

Q What were you told was wrong with the asbestos fiber?

THE COURT: Excuse.

MR. WITHEY: Objection.

THE COURT: Ladies and gentlemen, I agreed to caution you here. As you may know, and certainly probably are learning during this trial, normally somebody cannot relate what somebody else told them to prove the truth of the matter that was told to them, and that is where we are here; so you can consider this answer, not as to the truth of the matter which was asserted by the statement that is going to be referred to, but rather that the statement was made.

1 BY MR. SPRIGGS:

2 Q What were you told was the problem with the product?

3 A The head of the testing department of the experimental
4 station at Annapolis told me that we didn't have enough
5 long fiber asbestos in our cement to stand the abrasion
6 test. That is what this test was, the abrasion test.

7 Q Who told you that?

8 A The head of the test department of the United States
9 Navy Experimental Station in Annapolis.

10 Q So what did you do then?

11 A I went to Joplin and gave them a full report on the
12 tests and why our product was not approved, and they
13 formulated another product, or similar product using
14 more asbestos fiber, with longer-length fibers, as well
15 as the other; and we made tests ourselves, and we
16 probably had a product that meets the navy specification.
17 So that product, we notified the navy that we were ready
18 to send them another improved product and they issued
19 instructions where to send it. We sent it to Annapolis,
20 Maryland. When it arrived, they called me on the phone
21 and told me it was there, would I like to come down and
22 observe the test, and I of course went down and observed
23 the test; and in this case, why, we came out even better
24 than they had expected we would, and, as compared to
25 others, why, we were equal to or superior.

1 Q Now I am not sure the jury understands when you talk
2 about long and short fibers. Could you explain that to
3 the jury?

4 A Well, asbestos fiber, asbestos is a fibrous material
5 that has been formed by nature through a period of some
6 time, millions of years in the interior of the earth;
7 and these fibers, this asbestos fiber, it looks like
8 stone, just like a rock, sometimes it is three inches
9 thick, sometimes it is six inches thick, sometimes
10 the vein will be one-inch thick. Anyway, that is the
11 way it occurs in the earth. So, in order to use the
12 asbestos for the many purposes that it is adaptable
13 to, they, of course, shread the asbestos from its
14 original form, and it is sort of fibrous, and so they can
15 peel it off as thick as fibers as they want. Of
16 course, they can't use these because they are like rock,
17 so they shave those fibers finer and finer, and sometimes
18 they are short fibers that break off, and sometimes they
19 are long fibers. The fibers that give you the best
20 cohesion entwine themselves around these little spring
21 balls of mineral wool, or fibers around, oh, I would say
22 from an eighth to three-eighths of an inch in length.
23 They have an infinity for this mineral wool fiber, and
24 they cling to it; and these asbestos fibers, therefore,
25 with their cohesive strength, give you the cohesion
that you need to have a monolithic mass when you mix it

1 with water, dry it, and it is in service then as an
2 insulation material.

3 Q How long were the short fibers, the short fibers that you
4 used initially before you changed to long fibers, how
5 long were the short fibers?

6 A The short fibers are commonly known in the trade as
7 "shorts." They are not very long fibers, I would say
8 an eighth of an inch, sixteenth to an eighth of an
9 inch in length; and the reason why they are --

10 Q Well, -- excuse me, go ahead.

11 A The reason why they are used is because these little
12 fibers cling together themselves, and you get a certain
13 amount of cohesion from the clinging of the little
14 fibers to each other. And in the mass, why, you get a
15 cohesive strength.

16 Q Why did you use the short fibers initially when you
17 submitted your product?

18 A We used the short fibers initially, because the price
19 of asbestos is very, very high, and we didn't have
20 asbestos mines. Johns-Manville company had asbestos
21 mines in Canada. And there is another asbestos company,
22 it is known as the Canadian Asbestos Limited, that had
23 mines, and we could buy products from them. We didn't
24 buy it from a competitor. But there was no asbestos,
25 there wasn't any asbestos produced in the United States

1 of any commercial quality.

2 Q And why did you go to the long fibers?

3 A So we would have greater strength of employment of the
4 fibers around the -- those string balls of mineral
5 wool; and, then, in the tumbling test, in the abrasive
6 test, why, the cubes that I just described stood up very
7 much better, and, also, the vibration on a ship is very
8 severe, as some of you might imagine, and the product that
9 you put on a vessel will -- had to withstand a lot of
10 vibration, all throughout of the service of the ship, so
11 any product aboard ship, when the pipes or the vessels
12 had to stand continuous vibration, from the time the
13 ship was put into service, until it was taken out.

14 Q Okay. And who asked you to use the long fibers versus
15 the short fibers?

16 MR. WITHEY: Objection. Hearsay as well as
17 already testified to.

18 THE COURT: Sustained.

19 BY MR. SPRIGGS:

20 Q Mr. Christner, before the lunch break, I had started
21 to ask you about Plaintiff's Exhibit 9001. That
22 doesn't mean anything to you, but, for the record, that
23 is 9001; and, again, to avoid you having to read this,
24 I am going to, with permission of counsel, tell you what
25 it is. It consists of a letter from Doctor Meriwether,

1 I think F. W. Meriwether, M-E-R-I-W-E-T-H-E-R, Surgeon
2 in Charge, to Doctor Sayers, S-A-Y-E-R-S, dated March
3 11, 1932, enclosing a report of an investigation of
4 Eagle-Picher Company's rock wool plant in Joplin. And
5 then the second page of this exhibit is a letter dated
6 March 21, 1932, which is a letter to a Mr. Erbon, E-R-B-
7 O-N Mabon, M-A-B-O-N at Eagle-Picher, enclosing a
8 report about the dust conditions at Joplin. I am going
9 to go ahead and show you this, and, I am sorry, I have
10 gotten a marked up copy here, and ask you if you have
11 ever seen this document before?

12 A I heard of this document. They didn't send me a copy of
13 it, no.

14 Q What do you mean? Have you heard of it?

15 A No, I heard it discussed out at the plant, that they
16 had such a piece of correspondence, but there -- it was
17 no concern of mine, because it -- I had nothing to do with
18 the plant operations.

19 Q When was this document dated?

20 A 1932.

21 Q It talks about dusty conditions in the plant. Do you
22 know of your own knowledge whether anything was done
23 after 1932 to improve the condition at the plant?

24 A Well, anyone that has been around mineral wool, a
25 mineral wool plant knows that it is very dusty. There

1 isn't any mineral wool plant in the world that isn't
2 dusty. Now ours was dusty to start with, and the
3 workers complained about it, and of course we visited
4 the plant to verify their complaint. We put in
5 dust-collecting equipment costing several hundred thousand
6 dollars, where we collected the flying wool from the air
7 and put it through a collecting chamber which was a
8 screened room, maybe as big or larger than this entire
9 room, and there was, the air in there, the dust was
10 settled by spraying water, and it collected in a wetted
11 stage and returned to the plant.

12 Q If I may interrupt for just a minute. The jury has
13 heard a lot of testimony about dust. Now what kind of
14 dust are you talking about?

15 A Well, this dust, when you blow, when you manufacture
16 mineral wool, whether it is rock wool or mineral wool,
17 when you blow that, when you manufacture it, you hit a
18 stream of molten slag with a jet of steam. In most
19 cases, the air has been used, but a jet of steam is the
20 normal method; and you fiberize this molten mass into
21 long and short fibers which are collected in a collecting
22 chamber, and there is always small fibers flying around
23 the air. There is no question about it.

24 Q Now just -- excuse me. Just so the jury understands.
25 What kind of fibers are they?

1 A They are mineral wool fibers. They are flying around
2 the air, and there is nothing that can be done about
3 it but to collect them by a dust-collecting system. And
4 we installed a dust-collecting system at our Joplin
5 plant, and we, as I mentioned, the collecting room was
6 as large as this room here, and it was sprayed with
7 water spray to -- so that the material, dust was
8 collected in the form of mud or mineral wool that
9 looked like mud. But any mineral wool plant is a
10 dusty operation. There is no question about that.

11 Q All right. Let's -- while we are talking about dust,
12 and so we can wrap this up so you can get back to see
13 Unice, let's talk about mixing cement. One thing we
14 want to clear up from this morning, you were telling the
15 jury about the way that the product, the Eagle 66 cement
16 was mixed at Joplin, and you were also talking about
17 the way it was mixed out here at the Puget Sound Naval
18 Shipyard. Remember that?

19 A Yes.

20 Q Now would you tell the jury, would you compare the way
21 it was done at the plant, and then the way it was mixed,
22 the cement was mixed out here when you visited in 1943?

23 A When we are manufacturing Eagle 66, or Eagle Super 66
24 at the plant, it is manufactured in a vessel quite
25 similar to a concrete mixer; and when you put the

1 nodulated wool into the mixer, why, that goes in first.
2 Then you put in the asbestos fiber, and that goes in
3 in measured proportions. Then you put in the bentonite
4 clay and inhibitor, and then you start this concrete
5 mixing type of machine going; and, as I said, you put in
6 the mineral wool first, and you put in the clay second,
7 because the clay has an affinity for the little balls of
8 mineral wool. And the bentonite clay has no affinity
9 for anything, it is apt to fly around the air if
10 you let it escape; but when this is mixed for a certain
11 period of time, why, it is known to be proper mixing
12 time and you have the proper mixing of the nodulated
13 mineral wool, the asbestos fiber, the bentonite clay and
14 the inhibitor. Now on the job --

15 Q Not that "on the job," is out here at the Shipyard?
16 Is that what you are saying?

17 A Out here at the Bremerton Shipyard.

18 Q And what you observed in 1943?

19 A Oh, yes, I was out here in -- and helped them, tried to
20 show them how they could mix the material to get the best
21 coverage out of it, best application, best trowelability.
22 So out here on the upper deck of the airplane carrier,
23 they had mixing boxes, oh, about six feet wide and a
24 foot, by eighteen inches deep, and one end is open. They
25 put in about six bags of Eagle 66 cement, just slit the

1 bag and open it up and dump it in. Then they bring on
2 the water hose, and they wet it down to a certain
3 consistency, and then with a hoe, then they will get
4 in there with a hoe and their boots on, get in there with
5 the hoe and they mix the water with the granulated
6 wool and this cement as we shipped it. When they get
7 it to a certain consistency, the applicator comes along
8 and he tells them when they've got it into the right
9 consistency of mud that he can apply it and make it
10 and it will stick, it will adhere to the surface. If
11 you make -- put too much water in it, why, it is no
12 good at all. So it has to be mixed to the right
13 consistency; and when it does, why, you can throw
14 it up against the ceiling and it will stick to the ceiling.
15 When you put it on the vessel, it has an adhesion
16 sufficiently that you can trowel it into place or to the
17 thickness that you want, and there is a difference
18 between mixing it in the plant and mixing it on the job.

19 Q Okay. I have couple of final questions. During your
20 career with Eagle-Picher, Mr. Christner, what, if any,
21 knowledge did you gain or obtain about the hazards
22 of the use of asbestos?

23 A I'll tell you. When I was with Eagle-Picher, I had
24 no knowledge, there wasn't any knowledge transmitted to
25 me of the dangers of Eagle 66 cement whatsoever. Now

1 in our plants, mineral wool plants, it was common
2 knowledge that an excess breathing of mineral wool could
3 be hazardous to your breathing and was unpleasant; but,
4 as far as the insulating cement was concerned, why, there
5 was no concern whatsoever. It was always mixed outside,
6 very seldom mixed in confined quarters, and it was
7 always mixed with water, almost immediately as soon as
8 it was put into the mixing troff or compartment. So,
9 in other words, there was no chance for dust of any
10 consequence at all, any more than when you squirt the
11 hose on a dry material, some dry material, why, you
12 might fluff up a little dust, maybe of a half a foot
13 from the surface. But I had no knowledge of any
14 possible physical difficulty with the use of the
15 material.

16 Q My final question is, what, if anything, did the Public
17 Health Service, the Department of Labor, the Bureau of
18 Mines, or the United States Navy tell you about the
19 hazards of asbestos during your career with Eagle-Picher?

20 A Well, let's start with the United States Navy. They
21 were great advocates of this type of a material,
22 because of the irregular shapes of, so many parts of the
23 ship.

24 MR. WITHEY: I will object as nonresponsive.

25 I don't want him to be asked this type of question if he

1 is going to be nonresponsive.

2 THE COURT: Sustained.

3 BY MR. SPRIGGS:

4 Q What, if anything, did any of these agencies of the
5 government tell you about the hazards of asbestos?

6 A They did not tell me anything, anything whatsoever
7 about the hazards of the product which we were making
8 to their specifications.

9 Q All right.

10 MR. SPRIGGS: If I may, Your Honor, I have
11 one last question.

12 BY MR. SPRIGGS:

13 Q When you were testifying about having mixed or observed
14 the mixing of the cement out here at the Puget Sound
15 Naval Shipyard, was there dust created at all during
16 that mixing process?

17 A There is no dust -- there isn't any dust of any
18 consequence created when you mix this product with
19 water anyplace, and this was mixed outdoors, so if there
20 was any, the only chance of any dust being created would
21 be when you squirt the hose onto the dry material.

22 Q Okay. There is a chance for dust. What kind of dust,
23 what would be created in the way of dust?

24 A In my opinion, the only thing that could be created
25 would be diatomaceous -- not diatomaceous earth, but

1 the clay, bentonite clay that is put into the product
2 for cohesion purposes. That is a light fluffy material;
3 and if you hit it with a hose, why, it might fly up a little
4 big. But that is the only thing. I might state, I
5 would like to also state that the asbestos fiber, as
6 soon as it comes in contact with the little pellets
7 of mineral wool, there is a definite cohesion between
8 the two products, and they immediately stick together;
9 so that you never could get the asbestos off of the
10 mineral wool.

11 Q So what conclusion do you draw from that?

12 MR. WITHEY: Objection. Foundation.

13 THE COURT: Sustained.

14 MR. SPRIGGS: All right. No questions.

15 CROSS EXAMINATION

16 BY MR. WITHEY:

17 Q Mr. Christner, I just want to go back through a few
18 questions that you answered about your position. I
19 take it you started out in sales with Eagle-Picher in
20 what year was it again, sir?

21 A 1931.

22 Q And when you were in -- you headed up the national sales;
23 is that correct, later?

24 A Later, I headed up national sales, that is right.

25 Q Where was that headquartered, sir?

1 Q Well, the first place, my office was in New York.

2 Q Was that at 420 Lexington Avenue?

3 A 420 Lexington Avenue. The Graybar Building.

4 Q Okay.

5 A And when I was made General Manager of the division,
6 I objected to being transferred to Cincinatti, because
7 New York was where I had all my contacts, where I had
8 -- the nucleus of the business we was doing was in the
9 New York area, on the Eastern Seaboard; so I resisted
10 being transferred to the Cincinatti office for that
11 reason.

12 Q But you did go to Cincinatti. In what year, sir?

13 A I went to Cincinatti in the fall of 1950.

14 Q When did you become Vice President of Eagle-Picher?

15 A In the fall of 1950.

16 Q Now did you have any training when you first entered
17 the Eagle-Picher's sales force?

18 A I was a mining engineer by graduation from the Missouri
19 School of Mines.

20 Q Wasn't your B.S., Bachelor of Science in mining?

21 A Yes.

22 Q Okay. Now did you have any -- I am talking about training
23 when you entered Eagle-Picher. Did you get any training
24 at any of their facilities?

25 A When I entered Eagle-Picher, I had no training in their

1 insulation facility, no. As a matter of fact, Eagle-
2 Picher had just gone into the insulation manufacturing
3 in about 1929 or '30.

4 Q But you didn't do some training in Picher, Oklahoma?

5 A Training?

6 Q Training, yes, in Picher, Oklahoma as a trainee?

7 A No. When I was in college, I worked as an engineer in
8 Picher, Oklahoma.

9 Q Did you ever visit the plant at Picher, Oklahoma,
10 Eagle-Picher facilities?

11 A Only the mining facility.

12 Q And what year was that then?

13 A 1920. In 1920, I started with the Missouri School of
14 Mines in January of 1919, right after the war was over;
15 and the next summer I worked for Eagle-Picher in the
16 -- their mines down at Picher, Oklahoma.

17 Q Now when you were hired then, I take it you frequently
18 visited the Joplin plant quite frequently?

19 A I didn't visit the Joplin plant until I was hired by the
20 insulation division in 1931.

21 Q All right. Now how many times a year did you visit
22 Joplin?

23 A Oh, I would say on the average of four or five times
24 a year.

25 Q Was that throughout your tenure in sales at Eagle-Picher?

1 A Yes.

2 Q Now could you tell the jury where the plant is located
3 in relationship to the business office at the Eagle-Picher
4 plant?

5 A The plant in Joplin?

6 Q Yes.

7 A Well, the business office of Eagle-Picher was at the
8 plant in Joplin.

9 Q Okay. And were there separate buildings?

10 A Well, there were many separate buildings at our
11 Eagle-Picher plant in Joplin. It was made up of different
12 departments, and they all had different buildings.

13 Q Do you know where the president's office was?

14 A The president was in Cincinnati.

15 Q Well, was there a company office there, the headquarters
16 to the plant in Joplin?

17 A The -- no, the headquarters of the company was in
18 Cincinnati, Ohio.

19 Q Okay. But I am just talking about the Joplin plant.
20 Was there a place where you came to meet the plant
21 manager?

22 A Oh yes. He had a place right at the plant.

23 Q All right. Do you know the general layout of the
24 plant there?

25 A Well, generally, yes.

1 Q You were there four or five times a year for --

2 A Oh yeah, sure.

3 Q Could you tell the jury where the library was?

4 A No. Matter of fact, I never was in the library. I
5 had no occasion to go to the library.

6 Q You don't recall where the library was?

7 A No, I don't. I had no occasion to go there. My
8 business was with production and testing.

9 Q Now, in fact, Mr. Christner, it is true, is it not,
10 that Eagle-Picher had asbestos in their product before
11 you took it to the navy?

12 A Yes.

13 Q Well, is that true or not?

14 A That is true.

15 Q All right.

16 A We had asbestos in the product before we took it to
17 the navy.

18 Q In fact, you tried to copy the cements that had been
19 produced -- were being produced by other asbestos
20 cement manufacturers; isn't that correct?

21 A We formulated our product something along the lines of
22 Webers 48, if you are familiar with that. It is a
23 mineral wool cement, and Johns-Manville 450 mineral
24 wool cement.

25 Q So you are not trying to testify or tell us that the

1 United States Navy Bureau of Ships wrote a specification
2 and then you decided to make the product, you are not
3 trying to say that, are you?

4 A I want to say very definitely that the specification of
5 the navy was written before we ever made our product.

6 Q I thought you just testified you had asbestos in the
7 product before you went to the navy; isn't that true,
8 to test?

9 A Yes, but the navy specification included that before
10 we ever started, before we ever thought about making any
11 product.

12 Q All right. Now you put asbestos in your product well
13 before World War 2?

14 A Well, I told you when we put it in the product, was in
15 1931.

16 Q Okay. In fact, the reason, Mr. Christner, that you
17 took your product to the Bureau of Ships for their
18 approval was related to economics, was it not?

19 A Well, we knew that the navy used considerable quantities
20 of what we call monolithic cement.

21 Q Even in 1931, 1932?

22 A Why, sure, for repairs. It was a great insulation
23 material for repairs on their ships, because they could
24 take a bag, use it, mix it with water when they wanted,
25 apply it with their own crews while they were at sea,

1 and it was an ideal type of insulation to have. They
2 didn't have to buy it to size for pipe covering. The
3 pipe covering, they had to buy, for three-inch pipe, or
4 four-inch pipe, or six-inch pipe. With Eagle 66, all
5 you had to do was buy, take aboard six or eight bags
6 and then apply it with their crews while they were enroute.

7 Q Mr. Christner, isn't it true that you had competitors
8 in the market who had naval approval that were selling
9 to private industry and you wanted to increase your sales
10 to private industry, and for that reason went to the
11 navy?

12 A I would say that because this -- this is my opinion,
13 because I was the manager of the New York office and
14 the entire Eastern Division of the United States, I
15 wanted to sell to the navy because I had more navy
16 yards on the East Coast that were functioning in those
17 days than we -- they had on the West Coast.

18 Q So you went to the navy to develop a customer to increase
19 your sales; is that true?

20 A I went to the navy to -- sure, to be competitive with
21 Johns-Manville and Weber 48.

22 Q That wasn't just competitive with the navy, it was
23 also competitive in private industry in your sales
24 of cement to private industries; isn't that a fair
25 statement?

1 A Well, private industry didn't pay much attention to what
2 the navy did. Private industry, in those days, was when
3 the oil refineries were being constructed, and that was
4 the big outlet, for insulation was in the new construction
5 of oil refineries. We sold a lot more material to the
6 oil refineries than we sold to the United States Navy
7 in those days, I would assure you.

8 Q Right. So you were trying to get a market for your
9 product in the industry; right?

10 A That is right.

11 Q All right. And that is why you took it to the navy, so
12 you would be on a par basis with Johns-Manville and
13 Weber 48 in the industry; isn't that a fact?

14 A Well, you can't help it be a fact, because --

15 Q Okay, thank you.

16 A If you are going to be competitive, you have to have a
17 product that is as good as anybody elses.

18 Q That is right. Thank you. In fact, isn't it true
19 that the navy was no great admirer of insulation
20 products in those early 1930 years?

21 A I don't get the question.

22 Q Wasn't it true that the navy was no great admirer
23 of insulation products, that they didn't particularly
24 admire purchasing insulation products back in those
25 early 1930's?

1 A You mean did they admire it?

2 Q That they didn't admire the insulation products. Isn't
3 that a fact?

4 A Well, I don't know whether they ever admired insulation
5 products or not. To me, no one ever bought insulation
6 because they admired it, they bought it because they
7 had to have it.

8 Q Do you recall your deposition, Mr. Christner, on February
9 1st, 1983, do you recall giving a deposition?

10 A What deposition is this?

11 Q Well, it was a deposition in a lawsuit that was filed?

12 A By whom?

13 Q Well, by a number of people. Would you like to review
14 your deposition to refresh your recollection of the
15 deposition you gave at that time, Mr. Christner, would
16 that help you?

17 A When was this given, and by whom?

18 Q February 1st, 1983, in Venice, Florida. Is that where
19 you live?

20 A Yeah, that is right.

21 Q Did they come down there and ask you some questions on
22 deposition when you were under oath?

23 A That is right.

24 Q Okay. Do you recall giving that deposition?

25 A Sure.

1 Q Okay.

2 A I was very happy to.

3 Q Thank you. I just wanted to ask you if you recall being
4 asked this question. The question was at page 22, line
5 24: "Question: You say you were involved in sales, to
6 what naval installations or shipyards did you sell
7 in the 1930's? Answer: Well, we canvassed -- the navy
8 wasn't great admirers of insulation to start with in the
9 '30's, and so of course we -- it was my duty to contact
10 the shipyard and I did from New Hampshire to Newport
11 News, Charleston, South Carolina, Bremerton Yard in
12 Seattle, Washington." Do you recall that answer?

13 A Well, in similar respects.

14 Q Is that a true statement?

15 A Well, now, I don't know what you're talking about. What
16 part do you mean is true?

17 Q Well, was there any of it that wasn't?

18 A Well, I don't know what you are relating to as being
19 true or not true.

20 Q Let me just ask you this. Isn't it true that your
21 biggest business, the major portion of your business in
22 the thirties was in fact to industrial use?

23 A The biggest portion of our business in the thirties?

24 Q Yes.

25 A Well, until we were approved by the navy, the largest

1 portion of our business in the thirties was industrial
2 use. That is right.

3 Q How about in 1935? Isn't it fair to state that that is
4 when you were approved by the navy, wasn't it, in
5 '35?

6 A Well, I don't have the record; but in 1935 to 1940,
7 we were doing a big business with the oil refineries
8 throughout the United States.

9 Q Okay. And you were selling the same Eagle 66 to the
10 oil refineries and the other buyers of your product as you
11 were to the navy; isn't that true?

12 A That is right.

13 Q All right. Now who else did you sell to other than the
14 oil refineries?

15 A We sold to industry generally and the power plants, all
16 power plants, whether they were local power plants or
17 generators of steam for utilities. We sold insulation
18 to all requirements for high temperature insulation.

19 Q All right, contractors and subcontractors that would
20 install it?

21 A Well, we bid jobs direct in many cases, and if there was
22 a small contractor that had a job and he wanted to use
23 our materials, we sold him too.

24 Q All right, you sold to suppliers and other companies in
25 the industry generally?

1 A Buyers?

2 Q Yes.

3 A Well, we sold to anyone that wanted to buy it, yes.

4 Q All right. And after it left your hands, if it went to
5 these kinds of contractors or oil industries, these kinds
6 of people, after it left your hands, you didn't have
7 anything else to do with it; is that right?

8 A I had nothing to do with it.

9 Q You didn't know what happened to the product after that?

10 A No, no, no, unless --

11 Q All right, thank you.

12 A If we had trouble with it, then we heard about it.

13 Q I will get into that in a minute or two. Now I take
14 it it is fair to state the United States Navy wasn't in
15 the business of manufacturing products. I think that is
16 fairly obvious. Isn't that a true statement, Mr.
17 Christner, would you agree with that?

18 A They were not in the business of manufacturing products.

19 Q All right.

20 A No.

21 Q Isn't it true that the main thing that they wanted out
22 of the product that -- the products that they were
23 getting on the private market was performance?

24 A That is true, and that is why they wrote all the
25 specifications for it.

1 Q All right.

2 A You couldn't sell the navy a product unless it met
3 their specification. Not ours.

4 Q Okay. But the performance was the main thing; right?

5 A That was -- their specification was written around
6 performance.

7 Q All right. Thank you.

8 A Physical as well as thermal.

9 Q Now you testified that you met, when you first went
10 to the Bureau of Ships, is that right, with a Mr.
11 Sinclair?

12 A He was at the experimental station plant in Annapolis,
13 Maryland. He was in charge of insulation tests as well
14 as tests on many other products.

15 Q All right. Now, in fact, Mr. Christner, it wasn't
16 Mr. Sinclair who told you to put longer fibers, it was
17 in fact your own research and your own product develop-
18 ment department that came up with the idea of putting longer
19 asbestos fibers in; isn't that a fact, Mr. Christner?

20 A No, it is not a fact. Matter of fact, Sinclair, who
21 was the, I forget what his title was down there, but
22 it was top rank in the experimental station.

23 Q All right. Thank you.

24 A He told me that.

25 Q He told you that, that is your testimony, he told you that?

A He told -- he suggested that that was one of the

1 weaknesses that we had.

2 Q Okay. And do you recall your deposition again from
3 February 1st, 1983, the same one I just showed you,
4 the time they came down to Venice, Florida and asked
5 you some questions?

6 A Well, show me what it is.

7 Q All right. On pages 16 and 17. Do you recall this
8 question? Excuse me, on the top of page 17.

9 "Question: Did Mr. Sinclair suggest an addition of
10 asbestos?" And your answer: "Answer: No, he didn't
11 suggest anything, he says go back and try again. And we
12 had our own testing laboratories in Joplin and I
13 personally witnessed the navy experimental tests so I
14 knew just what portions of the test we were delinquent
15 or inefficient in. And when we in our own laboratories
16 at the factory had a product that we thought would meet
17 all these, why, then we resubmitted it to the experimental
18 station for approval." Do you recall that question
19 and answer, Mr. Christner?

20 A Yes, I do.

21 Q Well, did you -- you were under oath. Did you tell the
22 truth in this deposition?

23 A Of course I did.

24 Q Okay, you did tell the truth then?

25 A I told the truth, but there is a lot more to it besides

1 that.

2 Q Well, that is -- well, maybe counsel will ask you that.
3 That is not my question.

4 A All right.

5 Q So was Mr. -- it wasn't Mr. Sinclair in fact, it was
6 your own experimental and yourself that came up with
7 the idea of more asbestos; isn't that correct?

8 A May I say this?

9 Q You can answer the question, if you don't mind.

10 A Well, I would like to say this in defense of what you
11 have said.

12 MR. WITHEY: Well, Your Honor, I would ask...

13 THE COURT: You should just answer his
14 question as directly as you can, and you will have a
15 chance to explain your answer in your redirect.

16 THE WITNESS: Well, let's don't forget that.

17 THE COURT: Keep that in mind.

18 THE WITNESS: Thank you.

19 THE COURT: Do you remember the question?

20 MR. WITHEY: I think I got an answer.

21 BY MR. WITHEY:

22 Q Now, in fact, Mr. Christner, isn't it true, as a general
23 sense, that the U.S. Navy Bureau of Ships had a lot of
24 different products that they had to write specifications
25 for?

1 A Oh, of course they did.

2 Q All right. And didn't they tend to have to write a
3 specification for what actually already existed on the
4 marketplace in order to fulfill their needs?

5 A Well, I wouldn't say that that is true at all.

6 Q All right. In fact, isn't it true the U.S. Navy pretty
7 much had to put up with what the manufacturers could
8 produce?

9 A They did to start with way back when, and that is the
10 reason why they created this department at Annapolis.
11 They tested all packing materials. They tested all,
12 practically everything that the navy used; and they, over
13 a period of time, those specifications for those. Now
14 that is the only thing the department that -- the only
15 department of the government I ever heard of that had
16 detailed specifications and wouldn't buy that which was
17 on the market was standard products.

18 Q So, in other words, isn't it true, in a general sense,
19 that they had to write specifications to comply with
20 what was available on the market?

21 A No, that is not -- that is not true, because if they
22 did, they -- anyone that had a product would be approved
23 by the navy. And to be approved by the navy, you had
24 to have a product that was superior to most of the
25 products that were on the market at that time. That is

1 the reason they had their own specifications and their
2 own testing, periodic testing of the products that
3 they specified.

4 Q Okay. And you are saying that -- let me have one moment,
5 please. You are saying that it is not true that the
6 government generally came to the industry and the navy
7 in particular, the navy didn't come to the industry to
8 find out if the industry had a product that fulfilled
9 its needs. Is that your testimony, you are saying
10 that?

11 A No, I wouldn't say --

12 Q All right. Let me --

13 A The navy had need for all of those products, but they
14 set up their own standards for the products as they
15 wanted to use.

16 Q All right. Well, let me just ask you. Do you recall
17 saying that statement on your deposition as well?

18 A I don't know. If I didn't, I should have.

19 Q Do you recall saying on page 52 that the government
20 sometimes had a need to fulfill, and then they would
21 come to the industry to decide whether or not the
22 industry had a product that will fulfill that need. Do
23 you recall that testimony?

24 A That might be true in regard to some other products, but
25 not insofar as insulation is concerned.

1 Q That is not your product?

2 A No, sir.

3 Q All right.

4 A You see, the navy --

5 Q Mr. Christner, I am sorry, there is no question pending.

6 A Okay.

7 Q Do you mind. Thank you. But I take it Eagle-Picher
8 had, actually had its own research and product
9 development plan; isn't that true?

10 A I don't -- would you repeat that question?

11 Q Eagle-Picher had a research and development branch in
12 Joplin; isn't that right?

13 A Oh yes, yes, we did.

14 Q All right. Okay, now, as far as you know for the asbestos
15 insulation cement, the government didn't have a research
16 and development in order to develop a product, did they?

17 A Oh yes, they did.

18 Q They only had their testing stations?

19 A Well, listen, at Annapolis, they, as a research and
20 development company, department at Annapolis.

21 Q That was to test the products that were brought in,
22 though, not to develop their own products; isn't that
23 true?

24 A Oh, they -- they tested products that came in, and if
25 they found them insufficient, why, they made

1 recommendations to manufacturers how they could improve
2 their products for the navy use. That would happen in
3 many cases.

4 Q But it is true, is it not, Mr. Christner, that just
5 because, let's say in your example in Eagle 66, just
6 because you had asbestos in the product didn't mean it
7 would be approved by the navy?

8 A I might say this. If we didn't have asbestos --

9 Q Is that true or not, that just because it had asbestos --

10 A No.

11 Q -- in it, doesn't mean it would be approved by the navy?

12 A Oh no.

13 Q That is right, it depended on a lot of different
14 performance qualifications. Isn't that a fair statement?

15 A I can tell you this, that if we --

16 Q well --

17 A -- if we hadn't had the amount of asbestos in there that
18 was required --

19 MR. WITHEY: Your Honor, I am going to ask
20 the witness to answer the question. He was trying to
21 answer something else, and I think it is not the
22 right...

23 THE WITNESS: I don't understand your
24 question as being relevant to the case.

25 MR. WITHEY: Okay.

1 BY MR. WITHEY:

2 Q But, at any rate, for instance, you testified about the
3 German boats, vessels that you saw at Newport News.

4 A Yeah.

5 Q They had asbestos on their boats, didn't they?

6 A They had asbestos pads.

7 Q Right. But they submitted that, it wasn't because they
8 had -- strike that. I take it you felt that was very
9 inadequate insulation?

10 A Well, they were --

11 Q Compared to Eagle-Picher.

12 A They were pads laced around the pipes.

13 Q Right.

14 A With gaps of anywhere from an inch to an inch and a half
15 between the different sections of insulation.

16 Q So it wasn't the fact they had asbestos --

17 A No, no.

18 Q -- or didn't have asbestos, it was the fact they hadn't
19 developed a product like Eagle-Picher 66; isn't that
20 true?

21 A Well, they hadn't developed it and they still haven't.

22 Q All right. But it wasn't because it didn't have asbestos
23 in it?

24 A No, oh no.

25 Q All right.

1 A The asbestos they used was very, very low-grade,
2 brittle inefficient type.

3 Q Thank you. Now, in fact, isn't it true, Mr. Christner,
4 that during your tenure at Eagle-Picher, that the
5 company regularly made comments and suggestions and
6 even detailed criticisms to the United States Bureau
7 of Ships regarding their specifications?

8 A We made criticisms?

9 Q And comments and suggestions to the navy regarding their
10 specifications during your tenure?

11 A Well, being honest people, we tried to improve our
12 product whenever we could, even beyond that which might
13 be required to meet their specifications. That is the
14 reason why we brought out Eagle Supper 66 cement, and
15 went to all the trouble of having our cement retried
16 again, and they then called in the other competitive
17 products and had them retested to equal our Super 66
18 cement.

19 Q Okay. I don't think I made my question clear. My
20 question is, isn't it true that Eagle-Picher made
21 comments, suggestions and even criticisms to the Bureau of
22 Ships regarding their specifications. I am not talking
23 about your product, but regarding their specifications
24 during your tenure at Eagle-Picher?

25 A I don't know who you would criticise down there. Walter

- 1 Sinclair was the head of it, and he was pretty, a pretty
- 2 strong character.
- 3 Q You are testifying that your company never made that
- 4 comment or suggestion or criticism to --
- 5 A Well, no. Of course, we made those to everybody that
- 6 bought our product.
- 7 Q And including the military specification writers?
- 8 Isn't that true?
- 9 A Well, if we -- if we thought that their specifications
- 10 wouldn't give us a product as good as we could make, why,
- 11 we would recommend that they write a better spec.
- 12 Q Right.
- 13 A Sure.
- 14 Q It was a back and forth between industry and the
- 15 government to cooperate?
- 16 A Well, there always has been. There always should be.
- 17 Always will be.
- 18 Q Right, including in the writing of a military
- 19 specification; isn't that true?
- 20 A Including anything. You mean...
- 21 Q Right.
- 22 A The government is part of the people, and we are part of
- 23 the government.
- 24 Q And you exercised your right to suggest and criticize
- 25 the writing of the military specification, just like any

1 other citizen?

2 A Why of course. You bet your neck I did.

3 Q All right. Thank you.

4 A Lots of times.

5 Q And they responded to you too, they took you seriously,
6 didn't they?

7 A Lots of times they did, yes.

8 Q Including on how the specifications should be drafted?

9 A No, not how they should be drafted, but...

10 Q What they should include?

11 A What the result that they got from it.

12 Q The performance?

13 A The performance.

14 Q Thank you.

15 A That is right.

16 Q Thank you.

17 A Everybody in industry --

18 Q That is right, Mr. Christner.

19 A Everybody in the industry does that today.

20 Q And that is understood.

21 A Right.

22 Q And that was true back in the -- let me ask you this,
23 Mr. Christner.

24 A Yes.

25 Q Was the name of your product, Eagle 66 or Super 66, on

1 the cement bag when they left Joplin?

2 A Yes, sir.

3 Q Okay. And did you have to get any military specification
4 saying what your bags should look like?

5 A Not to my knowledge.

6 Q All right.

7 A No, sir.

8 Q In fact, Eagle 66, did Eagle 66 ever have any warning
9 on its package or its product from 1931 until 1963 when
10 you left?

11 A Yes, they did, they did have. I left in 1963, and there
12 was a warning on the bag.

13 Q In '64, that was the first warning?

14 A '64, I guess.

15 Q All right. But you left in '63?

16 A '63, yes.

17 Q So from '31 to '63, there wasn't any warnings; isn't
18 that true?

19 A I don't recall any.

20 Q All right. Now did any of the military specifications
21 prevent you from putting a warning on your package?

22 A I don't know whether any of them asked us to or asked us
23 not to.

24 Q So you weren't prohibited from putting a warning on
25 your package if you wanted to by any military specification;

1 isn't that a fact?

2 d No, no one ever talked to me about it.

3 Q And when they put it on in 1964, they didn't go to the
4 military and say, "Is it okay we put this warning on,"
5 did they?

6 A I had nothing to do with that, sir.

7 Q And, as far as you know, during '31 to '63, nothing, or,
8 even beyond that, nothing in the specification prohibited
9 you from warning the ultimate user, the people that you
10 saw in the shipyards of your product; isn't that a fact
11 as well?

12 A I don't follow that question, sir. I am sorry.

13 Q Nothing prohibited, no military specification prohibited
14 you from warning the ultimate user, in other words, the
15 person who works with your product?

16 A Not to my knowledge, no.

17 MR. MALONEY: I would object to that, because
18 it calls for a legal conclusion, and we haven't
19 established whether the navy would allow any company to
20 warn a ship fitter or a boxman or naval architect --

21 MR. WITHEY: I am asking this witness, Your
22 Honor, first of all, it is a contract --

23 THE WITNESS: I have no knowledge of --

24 THE COURT: Just a minute, Mr. Christner.

25 MR. JOHNSON: Your Honor, I would join

1 in the objection to the extent that Mr. Withey is
2 purporting to use some term of art to get the witness
3 to -- in terms of who the relevant user of the consumer
4 is in this case without --

5 MR. WITHEY: Maybe I can restate the
6 question, Your Honor.

7 THE COURT: All right.

8 BY MR. WITHEY:

9 Q When we talked about an ultimate user, you know the
10 people who were using your products, you saw them
11 applying the product?

12 A Oh yeah, sure.

13 Q All right. Now was there anything, as far as you know,
14 in the military specifications that prevented you from
15 putting a warning that these users could see on your
16 product?

17 MR. PETTY: Asked and answered.

18 THE WITNESS: I don't know anything about
19 that.

20 BY MR. WITHEY:

21 Q All right. Now, in fact, to your knowledge, doesn't
22 Eagle-Picher still have asbestos in Eagle 66 after the
23 navy no longer specified asbestos?

24 A I, as long as I am affiliated with sales to the navy,
25 their specification called for asbestos.

1 Q Well, have you ever heard of the product One-Coat?

2 A Yes. That is not a mineral wool product.

3 Q Okay. But who manufactured One-Coat?

4 A Eagle-Picher manufactured One-Coat.

5 Q All right. And did it have any asbestos in it when it
6 was first produced?

7 A Really, that was a finishing cement which was brought
8 out by the company, not at my instigation at all. I
9 didn't like it. It was hard to apply. It set up fast.
10 I don't know what it had in it, really.

11 Q Wasn't a big seller then, was it?

12 A It wasn't a big seller. I never sold any of it. I
13 didn't like it.

14 Q Compared to Eagle-Picher 66, I would take it that that
15 sold a lot better than One-Coat?

16 A Oh, there is no comparison at all.

17 Q Including to the naval shipyard?

18 MR. PETTY: What time period, counsel?

19 BY MR. WITHEY:

20 Q Well, at any time period.

21 A Well, Eagle 66 was a common word in the shipyard.

22 Q All right, everybody knew about it; right?

23 A Everybody knew about it. And I don't know who knew about
24 One-Coat. I never quoted One-Coat to a shipyard, and
25 I never advocated they use it. I didn't think --

1 Johns-Manville didn't have a good product of that
2 type either. It was very questionable, as a matter of
3 fact. I was -- I went against we even having that product.

4 Q Okay. But, at any rate, do you recall, when One-Coat
5 first came out, did it have any asbestos in it?

6 A I don't know what was in it, no.

7 Q Well, do you recall --

8 A If it had asbestos in it, it didn't have very much,
9 I can tell you that.

10 Q Okay. In fact, isn't it true that Eagle-Picher went to
11 the navy and got them to write a specification allowing
12 One-Coat to be naval approved, and it didn't have
13 asbestos in it, and the navy in fact did write a
14 specification for One-Coat that didn't have asbestos
15 in it?

16 MR. PETTY: Objection, Your Honor.

17 THE WITNESS: Well, if that was done, it was
18 done after I left New York, the New York office and
19 the navy contacts were taken over by somebody else. I
20 had nothing whatsoever to do with that. I wouldn't
21 have.

22 MR. WITHEY: Okay. I would like to have --
23 this would be a good time to break at this point.

24 THE COURT: All right. We will take our
25 afternoon recess.

(Court was at recess, and then reconvened.)

BY MR. WITNEY:

Q So, Mr. Christner, if I understand what you are saying, you didn't really feel the One-Coat story, with its approval, even though it was asbestos-free...

A Well, as I said about One-Coat, I never promoted the sale of One-Coat.

Q All right.

A I didn't like the product, and --

Q Okay.

A -- if you don't like the product, you can't promote a sale very well.

Q And I believe you -- well, were you involved in receiving any of the letters between the Eagle-Picher Company and the Navy Bureau of Ships regarding the attempt to gain a naval specification for One-Coat?

A An attempt to gain a substitution for One-Coat?

Q Naval specifications, right?

A No, sir, I was not.

Q I take it then that -- well, do you know who Mr. Paul Lose is?

A Lose?

Q Lose.

A He was in our research department.

1 Q Okay. And was he there, he worked for Eagle-Picher
2 then back in the fifties?

3 A Yes, he was.

4 Q Okay. I will hand you what has been marked as
5 Plaintiff's Exhibit No. 1886-I. See if you recognize
6 that, and particularly, do you recognize your name as
7 getting a copy of that?

8 A (No response)

9 Q Do you see if your name is on that letter, sir?

10 A Yes, it is, uh-huh.

11 Q Is the top a list of the distribution?

12 A That is right.

13 Q Okay. Do you have any present recollection then of
14 getting that letter back in 1942?

15 A That is a long time for me to remember, sir.

16 Q That is fair. Let me hand you what has been marked as
17 Plaintiff's Exhibit 1886-J of November 9th, 1953, and
18 see if you recall that letter and your name as getting
19 a copy of it?

20 MR. MALONEY: I'm sorry, counsel. What
21 number?

22 MR. WITHEY: 1886-J.

23 THE COURT: What was the first one?

24 MR. WITHEY: 1886-I. The second one was
25 1886-J.

1 BY MR. WITHEY:

2 Q Do you see your name as getting a copy of that letter,
3 Mr. Christner?

4 A Yes, sir.

5 Q But you don't, do you recall --

6 A I recall something about the discussion; but, like I
7 said, sir, I never promoted the sale of this.

8 Q I understand.

9 A If it was one of those things that comes out of the
10 research department, sometimes they may not be on the
11 right track when they come out.

12 Q Okay. So --

13 A I didn't --

14 Q Is it your testimony that you weren't aware that you
15 were trying to get a naval specification through these
16 letters?

17 A Oh, I am aware that they were. I was not.

18 Q Okay. Mr. Lose was?

19 A Mr. Lose was.

20 Q And you were aware of that fact?

21 A I was aware of that fact, but I had nothing to do with
22 it.

23 Q Okay.

24 A I was against...

25 Q And were you also aware of the fact that later

1 the navy did in fact approve a specification for
2 Eagle-Picher One-Coat without asbestos?

3 A I want -- I paid no attention to One-Coat cement
4 at all. I didn't sell it. I didn't promote it. To
5 me, it was a product that they were trying to compete
6 with Johns-Manville --

7 Q The only question I have is whether you understood the
8 navy did approve a specification for asbestos-free
9 cement for One-Coat?

10 A Yes.

11 MR. PETTY: Your Honor, I will have to object
12 to the relevancy of this line of questioning. Mr.
13 Eostrom had no conceivable exposure to One-Coat that
14 ever contained asbestos.

15 MR. WITHEY: This is on the government
16 specification defense, Your Honor.

17 MR. PETTY: It goes to One-Coat.

18 MR. WITHEY: It goes to support what Mr.
19 Christner has already testified to about the interchange
20 between --

21 MR. PETTY: Maybe we need a side bar to try
22 to clarify it.

23 MR. WITHEY: I only have one other question.

24 MR. PETTY: Well, it doesn't matter.

25 MR. WITHEY: Okay.

(Side bar discussion)

THE COURT: I will overrule the objection.

MR. WITHEY: Thank you, Your Honor.

BY MR. WITHEY:

Q Now my last question, Mr. Christner, is, are you aware, and I could hand you Plaintiff's Exhibit 1875, if it may help you refresh your recollection, that One-Coat cement did not contain asbestos prior to 1960, but did contain asbestos after 1960?

MR. PETTY: Objection. Beyond the scope, Your Honor. Also, the document speaks for itself.

THE COURT: I will overrule the objection.

THE WITNESS: I have to say that everything I know about that is hearsay. I personally had nothing to do with it. I understood that we didn't have any in it to start with, and later we did, and I don't know of that.

BY MR. WITHEY:

Q All right. And would the date 1960, would that more or less ring a bell as to when asbestos was put in One-Coat cement?

A It wouldn't ring a bell with me, because at that time I was building a diatomaceous earth plant out in Nevada.

Q Would you defer to Plaintiff's Exhibit 1875 in this matter then, I take it. If you want to look at it.

1 It is a list of --

2 MR. PETTY: Well, Your Honor, I will --

3 MR. WITHEY: Well, I will withdraw the
4 question.

5 THE WITNESS: It wouldn't make any difference.
6 I wouldn't recognize it if I saw it.

7 BY MR. WITHEY:

8 Q Now you testified, did you not, that Eagle-Picher 66
9 had -- what percentage of asbestos fibers?

10 A Again, I really don't recall.

11 Q I don't recall your testimony. Was it --

12 A I don't know. It is a matter of record in the formulation
13 of the product. I don't know that my recollection would
14 be accurate or not.

15 Q Did you testify, when Mr. Spriggs asked you the question,
16 that it was around four percent?

17 A I would say --

18 Q Two to four percent?

19 A Two to four percent.

20 MR. PETTY: What time frame, counsel?

21 BY MR. WITHEY:

22 Q What time frame, Mr. Christner?

23 A Sir?

24 Q When did it have two to four percent?

25 A I don't know. I didn't measure. I don't know.

1 Q Okay. I will hand you what has been marked as
2 Plaintiff's Exhibit 1876 and see if this refreshes
3 your recollection as to how much asbestos content by
4 weight of Super 66 insulating cement had?

5 MR. PETTY: For what time period?

6 MR. WITHEY: The first --

7 MR. PETTY: 1931 to 1935?

8 MR. WITHEY: Yes, 1931 to 1935.

9 THE WITNESS: There is no date on here.

10 BY MR. WITHEY:

11 Q Well, right here. Isn't it a fact that from 1935 until
12 1963 it had 8.5 to 10 percent asbestos by weight?

13 A I wouldn't know.

14 Q All right.

15 A I was the research department.

16 Q That is right.

17 MR. PETTY: Your Honor, we would stipulate
18 the percentage of asbestos contained in this document,
19 right here...

20 MR. WITHEY: Well, it is admitted as well.

21 MR. PETTY: I don't think it is, counsel. We
22 would be glad to stipulate to its admission as to Super
23 66, One-Coat, and any products that are identified
24 in this trial in connection with Mr. Bostrom's --

25 MR. WITHEY: I will take a look. We can

1 resolve that.

2 MR. PETTY: All right.

3 BY MR. WITHEY:

4 Q Mr. Christner.

5 A Uh-huh.

6 Q Just in response to 1876, which I believe is admitted,
7 states what I just read to Mr. Christner, that 8.5 to
8 10 percent asbestos by weight of super insulating
9 cement, and --

10 MR. PETTY: Again, Your Honor, I would so
11 stipulate.

12 MR. WITHEY: Okay. Thank you.

13 MR. PETTY: He has already testified he doesn't
14 know, and I would stipulate to the percentages and time
15 frames of Super 66 and One-Coat which has a product
16 that has been identified in this lawsuit.

17 MR. WITHEY: Thank you.

18 THE COURT: Thank you.

19 BY MR. WITHEY:

20 Q Now, Mr. Christner, you are, when you went about trying
21 to create a market for your product, I am talking about
22 Eagle-Picher 66, you were aware there was other
23 products on the market, were you not?

24 A Yes, sir.

25 Q And one of those included Baldwin Hill, wasn't it?

1 A Baldwin Hill.

2 Q All right.

3 A Webers 48. Johns-Manville 450.

4 Q Thank you. Now when you went to the shipyards to --
5 I take it was for the purpose of promoting sales of
6 Eagle 66 to the shipyards; is that correct?

7 MR. PETTY: Objection, Your Honor. Asked
8 and answered.

9 THE COURT: Overruled.

10 THE WITNESS: If they had purchased our
11 product, why, it wasn't sales, it was to see that it was
12 properly used.

13 Q But you are also out in the shipyards to make sure people
14 knew about Eagle 66?

15 A I did.

16 Q And that the reason why you wanted them to know about it
17 was so that they might purchase it; isn't that correct?

18 A Well, it was on the specification list, and if they didn't
19 specify it, why, of course we couldn't sell it.

20 Q All right. Now you contacted many of the shipyards
21 coast-to-coast, did you not?

22 A Yes, I did.

23 Q And did you --you visited the Bremerton Shipyard?

24 A Yes, sir.

25 Q Did you also visit Newport News on a number of occasions?

- 1 A Yes, sir.
- 2 Q How many times did you go to Newport News?
- 3 A Oh, I don't know. Probably three times a year.
- 4 Q All right. And that was in Virginia?
- 5 A Yes. Newport, Virginia.
- 6 Q All right. Three times a year. During what years?
- 7 A Three times a year every year the yard was open when
- 8 I was in New York.
- 9 Q Well, that would have been what years then?
- 10 A Oh, from '32 until, I left New York in '50.
- 11 Q All right. So did you happen to see any of the
- 12 vessels, the ships in Newport News?
- 13 A Oh yes. Lots of them.
- 14 Q Okay. And was Eagle-Picher cement used on those vessels?
- 15 A Yes, sir. A lot of them.
- 16 Q All right. Do you recall the Essex, by any chance?
- 17 It was launched 31, July, 1942 at Newport News.
- 18 A No. I recall the name, but...
- 19 Q You recall the name of the Essex?
- 20 A Yes. I never was aboard the Essex.
- 21 Q Okay. And during that time period, was Newport News
- 22 using Eagle-Oicher 66 cement?
- 23 MR. PETTY: During what time period, counsel?
- 24 BY MR. WITHEY:
- 25 Q Well, '31, before July of 1942?

1 A Oh yes, surely.

2 Q Okay. And how about the Enterprise. Do you recall that
3 when you were there at Newport News sometime in the mid
4 thirties?

5 A I don't recall the Enterprise. I know of it, but I
6 don't -- I never was aboard the Enterprise.

7 Q How about the Yorktown?

8 A No, sir.

9 Q But if -- I take it, then, you were at Newport News
10 and were able to observe Eagle-Picher on any number of
11 naval vessels; is that correct?

12 A That is right.

13 MR. PETTY: Objection. Form of the question
14 as vague, Your Honor, "any number of vessels."

15 THE COURT: Sustained.

16 MR. WITHEY: Your Honor, is the Court's ruling
17 that Mr. Petty, rather than Mr. Spriggs, would make
18 the appropriate-- could make the objection?

19 MR. PETTY: I thought we crossed that bridge,
20 Your Honor.

21 THE COURT: He may.

22 MR. PETTY: Thank you, Your Honor.

23 BY MR. WITHEY:

24 Q Well, in your work, when you went down to Newport News
25 on three or four times a year during these years, were

1 there -- was Eagle-Picher 66 just used on one kind of
2 vessel in particular, or all kinds of naval ships?

3 A No, they bought it for the Yard. We never knew what
4 veesel it was going aboard.

5 Q All right, unless you happened to be down at the ship
6 yourself?

7 A That is right.

8 Q Did you visit the ships at Newport News?

9 A Occasionally. They would let me go aboard and witness
10 the application.

11 Q What other shipyards have you visted on the East Coast?

12 A Oh, I visited from vessels in the shipyards from
13 Newport News Shipbuilding & Drydock. There is one in
14 Georgia. There is one in New Hampshire. There is one
15 -- all of them up and down the East Coast.

16 Q All right.

17 A I was in practically in all of them.

18 Q All right. And what you already testified to about
19 your experience in these shipyards in terms of Eagle-
20 Picher 66, did that apply generally to all the shipyards
21 you visited?

22 A I didn't get the last question.

23 Q That was a little confusing. I am sorry. You already
24 testified about what you did at the shipyards.

25 A Yes.

1 Q Including visiting the ships, including being sure they
2 had Eagle-Picher 66, and actually watching people
3 apply it?

4 A That is right.

5 Q Now is that applied to all the shipyards?

6 A It applies to all of the shipyards at some time, yes.

7 Q All right. Well, the time you were there?

8 A Yes, when I was there.

9 Q Now isn't it fair to say that Bremerton was the primary
10 purchaser of Eagle 66 for this area out here on the West
11 Coast?

12 MR. PETTY: What time period, counsel?

13 MR. WITHEY: During the time period Mr.
14 Christner was in sales.

15 MR. PETTY: Your Honor, I will --

16 MR. WITHEY: '32 to 1950.

17 MR. PETTY: I think it has been asked and
18 answered.

19 THE WITNESS: I have no way of --

20 THE COURT: Excuse me. He may answer.

21 THE WITNESS: -- telling you that.

22 BY MR. WITHEY:

23 Q Okay. Do you recall, in your deposition, at page 82,
24 stating that --

25 MR. PETTY: Just a minute, counsel.

1 MR. WITHEY: Certainly.

2 MR. PETTY: Which date? The 1st or the 3rd?

3 BY MR. WITHEY:

4 Q On the 1st at lines 7 through 15. Do you recall being
5 asked the question: "Question: Did you sell to any
6 shipyards, other shipyards out in Washington State?"

7 MR. PETTY: Your Honor, I would object to the
8 question, simply because it is not inconsistent with
9 what Mr. Christner testified to on direct, that there
10 were sales during World War 2 to the Bremerton Shipyard.

11 MR. WITHEY: I am asking whether it was the
12 primary purchaser, and Mr. Christner doesn't recall, and
13 I would like to test his recollection.

14 THE WITNESS: I indicate -- can't indicate any
15 practice as to percentage of our product that went to
16 any certain Yard.

17 BY MR. WITHEY:

18 Q Okay. Do you recall being asked this question, Mr.
19 Christner, on your deposition on February 1: "Question:
20 Did you sell to any other shipyards out in Washington
21 State?" And your answer: "Answer: The Bremerton Yard
22 was the -- well, it was not navy Yard, it was Keiser
23 Shipyards-- and I don't remember the name of the town
24 out there, near San Francisco. But Bremerton was the
25 primary purchaser of insulation for that area."

1 Do you recall that?

2 A Well, Bremerton at that time, when they had the carriers
3 here that they were reconstructing, it was the primary
4 one at that particular time.

5 Q You are talking about the aircraft carriers?

6 A Yes.

7 Q They were being converted?

8 A Yes.

9 Q From the hydraulic to the steam?

10 A I don't know what they had, what they --

11 Q How many carriers do you recall in Bremerton during that
12 time?

13 A I don't recall.

14 Q It was -- were there quite a few, did you bring Eagle-Picher
15 products, or was Eagle-Picher products used on the
16 carriers?

17 a I know the Lexington was here at that time.

18 Q The Lexington. Any others that you recall?

19 A Yeah, I think there was another one here, but I don't
20 recall the name of it.

21 Q All right. Do you recall whether Eagle-Picher was used
22 on those naval vessels?

23 A It was used on the Lexington, yes.

24 MR. PETTY: Your Honor, objection. Vague.
25 "naval vessels."

1 THE COURT: He may answer.

2 MR. PETTY: Well, I think that it would be
3 fairer if he identifies the ship, what he is talking
4 about.

5 THE WITNESS: Which ship?

6 BY MR. WITHEY:

7 Q The carrier conversions that you have already testified
8 to when you came out here?

9 A Well, I didn't -- I didn't know which -- it was either
10 -- Bremerton ordered for the ships out here in Bremerton,
11 the Bremerton area, and what they did with it in all
12 cases, I have no way of knowing at all.

13 Q I am just talking about when you were out here?

14 A Oh.

15 Q Do you recall being out here?

16 A Oh yes, I remember.

17 Q At Bremerton over at the Shipyard over here?

18 A Oh yes, I was over here twice.

19 Q When do you recall -- do you recall the years when you
20 over here?

21 A No, I don't recall the years, because I have no way of
22 marking them down as to what year I was here; but when-
23 ever it was, they were under reconstruction, was when
24 I was here.

25 Q All right. Now what did you do on that trip when those

1 carriers were being reconstructed?

2 A I went aboard to see that they were applying our product
3 in the proper manner.

4 Q And did they have your product there?

5 A Yes.

6 Q Which product was that?

7 A Eagle 66, Super 66.

8 Q Okay. And they had stock on hand?

9 A Oh yes, it had been shipped.

10 Q And did they have plenty of Eagle-Picher 66?

11 A Oh, they were applying it. I don't know how much they
12 had.

13 Q All right.

14 A I assumed they had all they needed.

15 Q Did you see any Baldwin Hill?

16 A No, sir.

17 MR. PETTY: Objection. This is beyond the
18 scope.

19 THE COURT: Sustained.

20 MR. MALONEY: They have had their product
21 I.D. witnesses, and they --

22 THE WITNESS: I wasn't looking for --

23 MR. WITHEY: I move to strike Mr. Maloney's
24 testifying.

25 THE COURT: So ordered.

1 MR. WITHEY: Thank you.

2 BY MR. WITHEY:

3 Q Now how many days were you in Bremerton on your visits out
4 here?

5 A Oh, two days.

6 Q Okay. And you went down on some of the ships?

7 A Yes.

8 Q And what locations on the ships did you visit?

9 A What locations?

10 Q Yes.

11 A Wherever they were applying Eagle 66, if they would let
12 me go down there.

13 Q Was that including the boiler rooms?

14 A Oh yes.

15 Q How about the engine spaces?

16 A Boiler rooms. As far as --

17 Q Okay.

18 A I don't know -- when you say engine stations...

19 Q Yes, how about on the steam lines. Were they applying
20 Eagle 66 on those?

21 A Oh, sure, they were applying it on it, the fittings,
22 and --

23 Q Anywhere else that you recall?

24 A Well, I don't know. They applied it wherever they
25 wanted monolithic cement is where they were applying it.

1 I didn't question them on that.

2 Q Including a number of different places onboard the ship;
3 isn't that correct?

4 A Oh yes, sure.

5 Q And you went to a number of different locations
6 yourself?

7 A Yeah, I went to about ten or twelve different locations
8 on the ship.

9 Q All right. And would that be true on both times you
10 were out at Bremerton?

11 A Well, the last time I was out here, why, the ship was
12 ready to sail.

13 Q Okay. Now when you say you were out here at Bremerton,
14 was it the first time you were out here, was that in the
15 forties, mid forties during the war?

16 A During the war, yes.

17 Q Do you recall any vessels that were here from Pearl
18 Harbor that had been hit?

19 A No.

20 Q Hit at Pearl Harbor?

21 A Oh, no, no, no. I didn't see any of them.

22 Q All right.

23 A I don't recall any of them. They didn't show me any of
24 them.

25 Q Okay.

1 A If they were insulating any of them, I didn't know it.

2 Q Now, in fact, were you able to observe the bags of
3 Eagle-Picher on the ships that you saw?

4 A Yes.

5 Q Okay. And that was where they were applying it?

6 A Were they what?

7 Q You are talking about, when you saw the bags of
8 Eagle-Picher, is where they were applying it in the
9 locations on the ship?

10 A Oh yes, yes. I saw them mixing it and applying it,
11 uh-huh.

12 Q And how did they -- what did the insulators do with the
13 bags when they were mixing it there at the work site?

14 A Well, a lot of it was mixed up on the deck. They
15 brought it down in buckets.

16 MR. PETTY: I object to the form of the
17 question, "mixed on the work site." I think it is
18 vague and mischaracterizes the witness' testimony who
19 said it was mixed on the flight deck and carried down
20 below; and I wish counsel wouldn't misstate the
21 testimony.

22 THE COURT: I will sustain the objection.

23 BY MR. WITHEY:

24 Q Well, Mr. Christner, didn't in fact, when you -- during
25 this time period, didn't you see that they had plenty of

1 room on the navy ships to mix the cement adjacent to
2 where they were going to use it?

3 A In some cases. It depended on where they were going to
4 use it and how much of it they were going to use at the
5 time. If they were going to use a lot of it, why, they
6 tried to mix it where they had room to mix it and
7 had it carried to the point of use. But if they were
8 just going to mix for a few fittings, why, they might
9 mix it right close to where they were going to use it.

10 Q Do you recall in your deposition, on page 59, from,
11 again, February 1st, 1983, being asked this question?

12 "Question: --

13 MR. PETTY: What page, counsel?

14 MR. WITHEY: Page 59, line 2. "Question:
15 Was the cement mixed up on the spot down there or was it
16 mixed up outside the ship and then brought in?

17 Answer: Well, it would all depend upon where the
18 ship was. Usually it was mixed up on the ship
19 because if it was in dry dock, why, it would be silly
20 to mix it up on shore somewhere and bring it aboard.
21 They always had plenty of room on a navy ship to mix the
22 cement adjacent to where they're going to use it."

23 Do you recall that answer?

24 THE WITNESS: Well, that is logical.

25 BY MR. WITHEY:

1 Q Okay. Now when you say you made certain suggestions
2 to them on the use of the product to the insulators...
3 A Yes, whenever I thought it would be to their advantage
4 and our advantage, I did.
5 Q So you could talk directly to the men right there
6 in front of the insulators?
7 A Sir?
8 Q When you got down there, they let you go down right
9 into the compartments of the ship?
10 A Oh of course they did.
11 Q Who let you in there?
12 A Well, the foreman, the insulation foreman.
13 Q You could talk to the men right when they were making
14 the applications of the cement?
15 A I don't talk to them while they are making the
16 application. I watch them prepare it.
17 Q All right, and you make suggestions so they could be
18 more economical and speed up the process?
19 A That is right.
20 Q All right. Now I take it that -- did you see any of
21 the insulators use any respirators, Mr. Christner,
22 during those visits?
23 A Well, I don't -- they didn't use many respirators
24 aboard ships during reconstruction. I will have to say
25 that. I don't know whether --

1 Q Now was there anything that would, anything you observed
2 about the way they were applying it, or the fact that they
3 didn't have respirators on that surprised you in any
4 way?

5 A No. Matter of fact, when you are applying Eagle 66
6 cement, it is a mud. Actually, there is no dust
7 whatsoever by any stretch of the imagination. The only
8 dust there might be would be on the top of the -- of the
9 lower side of the deck as they were applying it on the
10 pipes. It is a wet material.

11 Q So there wasn't anything, insofar as you could see, that
12 was, in any way, unexpected about the way in which your
13 product was being used at these shipyards; is that a
14 fair statement?

15 A That is a fair statement, yes. They used it in the
16 regular way, the way we would recommend it. It is a
17 mud type of material, and you apply it on with a trowel,
18 and it stays in place when you put it in place.

19 Q All right. Now, Mr. Christner, on your direct
20 examination, I have a note, and I want to make sure I
21 had it right, that you said if you power a bag of cement
22 into a vessel, or a bag of loose material, homogenous
23 material into a bucket or vessel, that some dust will
24 rise. Did I mistake your testimony?

25 A No. I think what I said was that if you are going to

1 mix six or eight bags of cement, you would have it in a
2 mixing trough.

3 Q All right.

4 A Maybe four or five feet wide, and a foot deep.

5 Q All right. Is it your testimony, sir, that you saw them
6 mix six or eight bags of cement at a time at PSNS
7 during the two visits that you made?

8 A I have seen them mix cement up all over. Everywhere.

9 Q Are you trying to say, is it your testimony that you
10 hold the bag of cement up and pour it into a trough
11 and there is no dust at all?

12 A Oh no, no. They don't do that. They slit the bag,
13 turn it over and pull the bag apart and let the cement
14 fall into the floor.

15 Q And when the cement falls on the floor, there is no
16 dust? Is that what you are saying?

17 A Practically none at all. If they empty the bag, they
18 lift the empty bag up and that is it.

19 Q Why don't you tell the jury how you saw them lift the
20 bag up?

21 A The slit the bag in the center, carried it over,
22 pulled the bag apart, the cement falls out, and then
23 they lift up the empty bag.

24 Q Do they lift it up like this?

25 A Well, I don't know whether they lifted it up like that

1 or not. They lift it up.

2 Q All right.

3 A They have to dispose of it, and the only way they
4 can dispose of it is to lift it up. They don't throw
5 it around in the air to create a lot of dust.

6 Q What do they do with the bags?

7 A I don't know what they do with it. Pile them up
8 and then dispose of them somewhere.

9 Q You never saw any cement on anybody that was working with
10 the bags after pouring it?

11 A Oh, they might have spilled some on their shoes.

12 Q Okay.

13 A I didn't see anybody covered with any of the bentonite
14 clay. That was the only material that was -- that
15 might be flying around.

16 Q Did you yourself -- I take it you yourself never tried
17 to do any more scientific studies on the kind of dust
18 that is created by mixing cement, did you?

19 A I didn't try to do any scientific -- I never knew anyone
20 who had any problem with emptying a bag of 66 and
21 wetting it down with water and applying it. It was a very
22 simple process.

23 Q Okay. You were aware of the fact that -- were you
24 aware of the fact that the shipyard did a scientific
25 study, studies on mixing cement in 1970 and found

1 something like 47.5 million particles per cubic foot
2 of dust that was created by that process?

3 A I don't know what they did with it, whether they
4 threw it up in the air and let it fall.

5 Q Well, the only way that -- I take it your testimony
6 is the only way that anybody would ever breathe any of
7 the dust from your cement was if they picked it up in
8 the air and threw it around; is that your testimony?

9 A Well, I say that is a little exaggerated, but if you
10 opened up the bag right, the way most of them do, you
11 split it and pull the bag apart and drop the cement out
12 of the bag right where you wanted it. Then, if you
13 took that empty bag and threw it over here into a
14 pile, you might have some dust. That dust would be
15 primarily betonite clay.

16 Q Well, do you -- but you didn't do any scientific
17 analysis to find out whether it was clay or just these
18 small asbestos fibers; isn't that true?

19 A No, but --

20 Q All right.

21 A -- the clay is the most volatile of any ingrient that
22 is there.

23 Q Well, isn't true, you testified, that once the cement
24 was mixed up, it was homogenous?

25 A That is when you mixed it up with water.

1 Q No, I am talking about when you mixed it at the
2 Eagle-Picher plant in Joplin, Missouri, and they put it
3 in the bags; wasn't it homogenous?

4 A What do you mean "homogenous"? No, it is a powdered
5 material.

6 Q Right, but it has an equal consistency; doesn't it?

7 A Uh-huh.

8 Q Are you trying to say that if you mixed the bag, you could
9 tell which dust is the fibers and which one is the clay;
10 is that your testimony?

11 A I don't know if you could.

12 Q Okay.

13 A Maybe if you had proper instruments you could tell,
14 but I couldn't.

15 Q All right. I take it, when the asbestos fibers were
16 put into the mixer, that they were no longer than
17 one-inch, you know, long; is that a fair statement?

18 A It was a mixture of fibers.

19 MR. PETTY: I would just object unless
20 counsel is clear we are talking about mixing in two
21 places, mixing with raw asbestos used in the factory,
22 mixing a product which stipulated has anywhere from two
23 to ten percent asbestos mixed in it to stringy balls in
24 the ship. I think counsel should make it clear.

25 THE COURT: Would you reask your question.

1 BY MR. WITHEY:

2 Q I was talking about mixing at the plant.

3 A At the plant? Oh, see, I am not -- I wasn't a plant
4 man, I just -- what I know about the plant is what I
5 observed when I happened to be there.

6 Q Now, Mr. Christner, what is the National Insulators
7 Manufacturers Association?

8 MR. PETTY: Objection, Your Honor. Beyond
9 the scope of direct examination.

10 THE COURT: Sustained.

11 BY MR. WITHEY:

12 Q Was Eagle-Picher a member of the National --

13 MR. PETTY: Objection.

14 MR. WITHEY: Maybe I could ask a preliminary
15 question to lay a foundation.

16 MR. PETTY: Same objection, Your Honor.

17 BY MR. WITHEY:

18 Q Did you attend a meeting in which the subject of a
19 safety or health committee of NIMA was discussed in
20 1960?

21 A You needn't ask me about any particular meeting.
22 NIMA discussed a lot of things at a lot of different
23 meetings, and I don't remember whether this was one
24 particular meeting where it was discussed or not.

25 Q Okay. If I showed you the minutes of a meeting on

1 January 13th, 1960 of NIMA. That might maybe refresh
2 your memory if you see your name as being present?

3 A If I could see my name as being present. I might
4 not have been listening, but I will look at it.

5 Q Do you see your name here in the list of directors?

6 A Oh yes, uh-huh.

7 Q Okay. And that is January 13th, 1960?

8 A That is right.

9 Q And the minutes of that reflect that NIMA at that time
10 was considering creating a health committee, did it
11 not?

12 MR. PETTY: Objection, Your Honor. The
13 document speaks for itself.

14 THE COURT: He may answer.

15 THE WITNESS: It says here in the document
16 what they did. Matter of fact, they weren't very --
17 they weren't very positive about it then.

18 MR. WITHEY: All right. And, in fact, on
19 May 6th, 1960, NIMA decided that the establishment
20 of a NIMA safety program with respect to health should
21 be dropped; did it not?

22 A I don't recall.

23 Q Well, does this reflect, are these the minutes of the
24 NIMA meeting in May, May, 1960?

25 A They didn't send me a copy of it. I guess I wasn't

1 there.

2 Q Well, do the minutes reflect that?

3 A It doesn't include my name.

4 MR. PETTY: Objection, Your Honor. The
5 document speaks for itself. It doesn't refresh the
6 witness' recollection. I think we should get on with
7 it.

8 THE COURT: I think he indicated that.

9 THE WITNESS: My name isn't on there.

10 BY MR. WITHEY:

11 Q You weren't present at that meeting as far as you recall?

12 A No, I don't recall it.

13 Q All right. Now, Mr. --

14 MR. PETTY: Counsel, may I see the document?

15 BY MR. WITHEY:

16 Q Now, Mr. Christner, you were asked some questions by Mr.
17 Spriggs about your knowledge of the dangers of asbestos,
18 and I just have a few questions.

19 A Uh-huh.

20 Q Is it still your contention that breathing asbestos
21 fibers or dust is not harmful to human health?

22 A Well, I wouldn't think it would be a smart thing to
23 breathe any kind of fibers.

24 Q All right. Did you ever testify you thought it would be
25 ridiculous to think it was harmful to human health?

1 A I don't think I ever testified to that. I don't know
2 why anyone would ever ask me a question like that.

3 MR. PETTY: Your Honor, I am going to object
4 as beyond the scope. I didn't ask him what he may have
5 said about the company or what his opinion may have
6 been two years ago. It is entirely irrelevant to this
7 lawsuit.

8 MR. JOHNSON: Your Honor, I will join in
9 that objection to the extent that we are going to have a
10 whole bunch of testimony now as to what anybody might
11 know today. I don't understand that to be relevant
12 from this witness or any of the other witnesses.

13 MR. WITHEY: I think it colors his prior
14 testimony and his recollection of his memory, and I
15 am testing his memory.

16 MR. PETTY: I don't think so, Your Honor.

17 MR. WITHEY: If he thinks it is ridiculous
18 now, then he might very well have a memory problem about
19 things he meant earlier, Your Honor.

20 MR. PETTY: I think that is farfetched. I
21 think the scope of the examination is what he learned
22 in his capacity with Eagle-Picher.

23 THE COURT: I will sustain the objection.

24 MR. PETTY: Thank you.

25 MR. WITHEY: Thank you, Your Honor.

1 BY MR. WITHEY:

2 Q Now, Mr. Christner, in fact, Eagle-Picher did have
3 information back in the thirties and forties that
4 asbestos dust was dangerous to health, did it not?

5 MR. PETTY: Objection, Your Honor.

6 THE WITNESS: I don't know anything about what
7 Eagle-Picher had. I didn't have it, no.

8 MR. PETTY: Thank you. I think the witness
9 has pointed out that is what he was asked, is what he
10 knew. He is not here as the marketing agent of the
11 company, he is here to testify as to what he knew.

12 MR. WITHEY: So you are withdrawing your
13 objection, counsel, will the answer stand then?

14 THE COURT: Yes.

15 MR. PETTY: I didn't hear the answer. His
16 answer was that he didn't know about them, he doesn't
17 know what other people knew about them. Is that the
18 extent of his answer?

19 THE COURT: Is that your answer?

20 THE WITNESS: That is right. I didn't know
21 about it. I didn't know what everybody else knew about
22 it.

23 BY MR. WITHEY:

24 Q Now Mr. Spriggs showed you a copy of a letter from
25 Mr. Douglas Via to yourself. Do you recall that

1 today, dated July 16th?

2 A Yeah, uh-huh.

3 Q And then that letter states that there is an attached
4 letter of Doctor Cox -- or, excuse me, there is an
5 attached letter of -- regarding Humble Oil. Do you
6 recall that testimony?

7 A Yeah, I remember.

8 Q All right. Now isn't it fair to state that back when
9 you received the copy of that letter, that you knew
10 there was some problems regarding a potential health
11 hazard of asbestos in the Humble Oil Company and some
12 workers had complained about it?

13 A Well --

14 MR. PETTY: Objection, Your Honor. I think
15 the document speaks for itself.

16 THE WITNESS: They just sent this to me.
17 They didn't ask me anything about it. I don't know
18 anything about it.

19 BY MR. WITHEY:

20 Q Well, don't you recall the accompanying letter saying
21 there are letters about -- from the Texas State Board
22 of Health regarding the application of Supertemp
23 creating a health hazard?

24 MR. PETTY: Mineral health hazard, counsel.

25 THE WITNESS: That was mineral wool, or was

1 asbestos?

2 BY MR. WITHEY:

3 Q Do you recall that?

4 A Well, it doesn't make any difference to me. It wasn't
5 my customer complaining.

6 Q I thought you said Humble Oil was your company, your
7 customer?

8 A No. We shipped to them, but I mean I didn't contact
9 Humble Oil.

10 Q Well, you had responsibility for Humble Oil during that
11 period, didn't you?

12 A No, our distributor down in Texas sold Humble Oil.

13 Q So it was your belief then, is that you knew it may have
14 been dangerous to Humble Oil workers but it wouldn't
15 have been dangerous to some of the people that might
16 have been using your product in your area; is that
17 what you are saying?

18 MR. PETTY: Objection.

19 THE WITNESS: I don't know the source of
20 the complaint.

21 MR. PETTY: Your Honor, counsel is simply
22 arguing with the witness. The document says nothing
23 about asbestos health hazards. That is what was
24 inquired of the witness. If he wants to produce a
25 different document that went to Mr. Christner to

1 impeach him, that is fine, but that is not what counsel
2 is doing.

3 MR. WITHEY: Your Honor, by way of the
4 objection, Mr. Petty is doing what Mr. Johnson had
5 been complaining about all the time.

6 MR. JOHNSON: I was not complaining about
7 what Mr. Petty --

8 THE COURT: Will you ask your question,
9 please.

10 MR. WITHEY: All right. Thank you.

11 THE COURT: Don't answer the question until
12 we sort this out.

13 THE WITNESS: I don't think I will.

14 MR. WITHEY: No matter what I ask, Mr.
15 Christner?

16 THE WITNESS: Well, I think you all ought
17 to get together on the questions.

18 BY MR. WITHEY:

19 Q Is it your testimony that even though there may have been
20 a problem of some health hazards in Humble Oil in Texas,
21 that was no concern of you, because it was outside of
22 your sales territory?

23 A I didn't have any specific information as to the
24 complaint. I couldn't become involved with everybody
25 that wrote a memorandum that they heard someone didn't

1 like our product, or something.

2 Q Well, did you ask?

3 A No, I didn't ask. I mean it wasn't my responsibility
4 to follow it up anyway.

5 Q All right. So -- do you know who Mr. T. V. Carter is?

6 A Yes, sir.

7 Q How long have you -- did you know Mr. Carter?

8 A As long as he was with Eagle-Picher, in mean in the
9 insulation division.

10 Q And was he your subordinate, or supervisor?

11 A He was my supervisor until he left the company.

12 Q All right. Do you recall what year he left?

13 A No, I don't.

14 MR. PETTY: Your Honor, I will have to object
15 as being beyond the scope. I would like very much to get
16 this witness out of here today.

17 THE COURT: Sustained.

18 MR. WITHEY: Maybe if I could pose the
19 question, the relevancy will be clear, Your Honor.

20 THE COURT: All right.

21 MR. WITHEY: I am almost done. I only have a
22 few more questions. I don't want to delay Mr.
23 Christner.

24 BY MR. WITHEY:

25 Q Did Mr. Carter ever tell you that there was a salesman

1 named Aber who wrote him a memorandum saying that
2 he thinks mineral wool is dangerous, you should read this
3 about asbestos and how dangerous it is?

4 MR. PETTY: Objection, Your Honor.

5 THE WITNESS: No, I --

6 THE COURT: Just a minute, Mr. Christner.

7 MR. PETTY: That is not what the document says,
8 Your Honor. Counsel is --

9 THE WITNESS: I don't recognize Mr. T. V.
10 Carter questioning me about it or telling me about it.

11 MR. WITHEY: All right.

12 MR. PETTY: I guess that is fine. I just
13 object to counsel misquoting and mischaracterizing what
14 is in the document that he wants to read.

15 MR. WITHEY: Well, Your Honor, in that
16 case, I would like to show the witness the document,
17 and the document will speak for itself, and I would like
18 to ask him whether he had any information relayed
19 to him about it. I have it here.

20 THE COURT: I think he has answered.

21 MR. PETTY: I think it is beyond the scope.

22 MR. WITHEY: Okay.

23 BY MR. WITHEY:

24 Q Now, another question, Mr. Christner. Were you aware
25 that in 1941, Metropolitan Life Insurance and Eagle-Picher,

1 as a mine operator in the public health service, did a
2 study on the workers in Picher, Oklahoma?

3 MR. PETTY: Objection, Your Honor.

4 THE WITNESS: I don't know.

5 BY MR. WITHEY:

6 Q That was in 1931?

7 A Picher, Oklahoma had nothing to do with our insulation
8 division at all. That was a mining area.

9 Q Okay. And, so, I take it, you did not know?

10 A I knew nothing about it, no.

11 Q And no one told you about it?

12 A No, huh-uh.

13 Q And did you ever hear anything called the Picher
14 Clinic out there in Picher, Oklahoma?

15 MR. PETTY: Again, Your Honor, beyond the
16 scope.

17 THE WITNESS: No.

18 THE COURT: I will overrule the objection.

19 THE WITNESS: I had nothing to do with
20 Picher, Oklahoma. That was a mining area.

21 MR. WITHEY: Okay.

22 BY MR. WITHEY:

23 Q And I take it you never went there?

24 A I had no occasion to go there. The mines were shut
25 down, and I don't know why I would ever go down there.

1 Q Okay. Now the last series of questions, Mr. Christner,
2 is that Mr. Spriggs showed you an exhibit marked
3 Plaintiff's 9001, the one I just handed to you. I've
4 got my own copy, and I would like you to take a look
5 at that, and I have a few questions on this subject.
6 First of all, do you recognize, on the front page, some
7 of the initials that are located on that document?

8 MR. MALONEY: Objection to the scope. This
9 seems to be beyond direct examination.

10 MR. PETTY: Your Honor, I think on direct
11 examination the witness was confronted with the
12 document and he said that he did not recognize the
13 document. I don't see how he can be asked to recognize
14 that which he didn't recognize on direct.

15 MR. WITHEY: Wait. I am just trying to find
16 out if he recognized any of the initials on it.

17 THE COURT: All right, he may answer.

18 THE WITNESS: I don't recognize any of
19 them.

20 MR. WITHEY: Okay.

21 THE WITNESS: They didn't send this to me.

22 BY MR. WITHEY:

23 Q Well, my question is -- first of all, I would like
24 you to turn to page 3.

25 A On this letter?

1 Q No, of the report, the Bureau of Mines report.

2 MR. PETTY: Your Honor, again, I will object.

3 This is --

4 THE WITNESS: I don't have a copy of the
5 Bureau of Mines Report.

6 MR. PETTY: I object to counsel reading from a
7 document that is in evidence as the witness cannot shed
8 any light upon it.

9 MR. WITHEY: Well, it deals with -- the
10 letter deals with certain facts involving Joplin, the
11 Joplin Plant that Mr. Christner has already testified
12 about, and I want to ask him about some of these
13 statements, if it doesn't conform with his recollection.

14 MR. PETTY: He doesn't have to refer to the
15 document to ask him.

16 MR. WITHEY: I was just going to be -- to
17 read from the document and ask him to read along.

18 BY MR. WITHEY:

19 Q Make up your own mind, either read along with me or not,
20 Mr. Christner, it is up to you.

21 A Where is the document?

22 Q Page 3. Right here. I will show you -- first of all,
23 in the front of this, this deals with the report of a
24 dust investigation at Joplin, Missouri, at the
25 Eagle-Picher Rockwell Plant, does it not?

1 A Yes, uh-huh, that is what it says, uh-huh.

2 Q And it is dated 1932; is that right?

3 A Yeah.

4 Q Now here is the part I am going to ask you to comment
5 on, statements made in the report, that based on
6 chemical analysis of dust and evidence of such
7 peribronchial thickening in the men who have been
8 exposed, according to the history, only a relatively
9 short period of time to the dust, it is very likely that
10 the dust is harmful to breathe over a relatively long
11 period of time. This is particularly true in the mixing
12 room where it is stated by the employees that rockwool
13 is mixed with asbestos in various mixtures ranging
14 from 10 to 75 percent. This is a particularly dusty
15 place and it is now known definitely that asbestos --

16 MR. PETTY: Your Honor, I have --

17 BY MR. WITHEY:

18 Q -- is one of the most dangerous dusts to which man is
19 exposed.

20 MR. PETTY: This is such an obvious ploy of
21 counsel to read the document that the witness has no
22 knowledge of, there can be no proper purpose for it.

23 MR. WITHEY: Your Honor, I am going to ask
24 him if these statements are true.

25 THE WITNESS: I haven't seen this document,

1 and who wrote it, I don't know; and, whether it is
2 true or not, I am not in a position to comment.

3 BY MR. WITHEY:

4 A But didn't you previously testify, Mr. Christner, that
5 when the mixing went on in the mixing room there wasn't
6 very much dust in the Joplin Eagle-Picher Plant?

7 A Well, when I have been there, there wasn't very much dust,
8 no. Now when somebody else was there, there might have
9 been more dust.

10 MR. PETTY: What time frame, counsel?

11 The document relates to 1931.

12 MR. WITHEY: 1932, Your Honor.

13 MR. PETTY: Okay. And he is testifying
14 that dust control procedures --

15 MR. WITHEY: Your Honor, I will object to
16 counsel's restating the testimony. I have another
17 question, if I could ask it.

18 THE WITNESS: Of course there was dust.
19 If you've ever been at a mineral wool plant, it is
20 dusty.

21 BY MR. WITHEY:

22 Q And it says here, according to the study done by the
23 Bureau of Mines, this is particularly true when they
24 mixed mineral wool and asbestos, doesn't it?

25 MR. PETTY: Your Honor, I --

1 THE WITNESS: Well, I don't know anything
2 about that, but a mineral wool plant is dusty.

3 BY MR. WITHEY:

4 Q All right. And that includes asbestos dust, doesn't
5 it?

6 A I don't know anything about asbestos.

7 THE COURT: For all the good I am doing, I
8 think I will leave. You just go ahead.

9 (laughter)

10 BY MR. WITHEY:

11 Q Now when you -- last question, last two or three
12 questions. I promise.

13 A Uh-huh.

14 Q Did you ever tell Mr. Sinclair that the Bureau of Ships,
15 anything about the dust conditions or the hazards of
16 dust in the plant of Eagle-Picher?

17 MR. PETTY: I will object to the relevance
18 of this, Your Honor, unless --

19 THE WITNESS: No. Mr. Sinclair --

20 THE COURT: Just a minute.

21 MR. PETTY: I will object to the relevance.

22 MR. WITHEY: It is a yes or no question, Your
23 Honor.

24 THE WITNESS: I don't know why I should ever
25 tell Walter C. Sinclair about anything outside of his

1 own department there when he was testing our materials.

2 Q All right. So the answer is no?

3 A Yes, sir.

4 MR. PETTY: Your Honor --

5 BY MR. WITHEY:

6 Q Now my last question is, in fact --

7 MR. PETTY: Your Honor, Mr. Withey is just
8 arguing with the witness, and he is trying to testify
9 himself. If he would make his questions clear as
10 to whether we are talking about asbestos dust, mineral
11 wool dust, and what hazards he wants the witness to
12 address.

13 THE COURT: Okay.

14 MR. WITHEY: I believe I asked the question
15 that would allow for a yes or no answer, Your Honor.

16 MR. PETTY: A very big question as to the
17 hazards of dust in Eagle-Picher plants.

18 MR. WITHEY: Maybe I could restate it somewhat.

19 BY MR. WITHEY:

20 Q In fact, Mr. Sinclair, to your knowledge, did not know of
21 any health hazards of asbestos himself, did he?

22 A I don't know what -- anything about what Mr. Sinclair
23 knew. All I know is about what he told me.

24 Q Do you recall stating in your deposition, on page 97,
25 that as far as you knew, Mr. Sinclair did not know of

1 any health hazards himself and it never entered his
2 mind relating to asbestos?

3 MR. PETTY: Your Honor, that is entirely
4 consistent with what --

5 THE WITNESS: I don't know --

6 MR. PETTY: -- this witness said.

7 THE WITNESS: That would be my opinion of
8 what he knew or thought, but...

9 BY MR. WITHEY:

10 Q That would be your opinion?

11 A I say it could be my opinion, but that don't mean
12 anything. I -- everybody is entitled to an opinion,
13 and it might be entirely wrong.

14 Q But that was your opinion and still is?

15 A No, I didn't say it was my opinion; but if I said it
16 had have been, it wouldn't mean anything, because what
17 would I know about it.

18 Q No one from Eagle-Picher told Mr. Sinclair that
19 asbestos was one of the most dangerous dusts known to
20 man?

21 MR. PETTY: Objection, Your Honor.

22 THE COURT: Sustained.

23 THE WITNESS: I didn't know -- I never
24 told Walter Sinclair anything like that in my life.

25 MR. WITHEY: I have no further questions.

1 MR. PETTY: Your Honor, I would ask that
2 counsel's statement, or his own testimony there in the
3 form of a question be stricken.

4 MR. WITHEY: I don't think there is any
5 authority to strike a question. I asked the question.

6 MR. PETTY: That was a question that never
7 should have been asked in the first place, and I would
8 ask the jury to --

9 THE COURT: The jury should disregard the
10 question, colloquy.

11 MR. WITHEY: Your Honor, I thought Mr. Petty
12 would be doing this. I didn't understand the Court's
13 ruling that they could switch back and forth.

14 THE COURT: I thought the ruling was that
15 I wouldn't object to Mr. Petty making objections.

16 MR. WITHEY: Okay.

17 MR. JOHNSON: I think that was Mr. Whelan's
18 question.

19 MR. SPRIGGS: We are just about through.

20 REDIRECT EXAMINATION

21 BY MR. SPRIGGS:

22 Q Do you remember, in Florida, that in February of 1983
23 there were two depositions taken, the first was the one --

24 A Yes, uh-huh.

25 Q -- that Mr. Withey talked about, and the second was on

1 video tape; do you remember that?

2 A That is right, uh-huh.

3 Q And do you remember that during the second deposition
4 the attorney for the plaintiffs, Mr. Patrick, he was
5 the fellow who was in the room asking questions after I
6 asked you questions?

7 A Uh-huh.

8 Q Do you remember him asking you if you had a chance --
9 I am on page 48 of the February 3 deposition. Do you
10 remember him asking you: "Question: Now, have you had
11 a chance to review your deposition that was given on
12 Tuesday?" You said: "Answer: No, no, I" --

13 MR. WITHEY: Objection as leading and an
14 improper use of a deposition, Your Honor.

15 MR. PETTY: Your Honor, I think, under the
16 rules, we are entitled to --

17 MR. WITHEY: Just a minute. He is capable of
18 responding himself. I can't -- I mean this is
19 double barrel here.

20 MR. PETTY: What this is, Your Honor, is
21 Mr. Spriggs is not admitted to practice in this State.
22 I am charged with the familiarity with Washington State
23 evidence rules, and I am also charged with supervising
24 the application of those evidence rules, and I have to
25 object, counsel should know that the rules allow that

1 when he reads in a part of the deposition, ourselves,
2 to read in other parts that he neglected to read
3 for the jury is appropriate for consideration, to,
4 number one, to make sure that is done.

5 MR. WITHEY: Mr. Spriggs, being allowed to
6 appear in this Court, is charged with knowledge of the
7 rules of evidence and the rules of this Court. I don't
8 see any reason to be double barreled; and I also think
9 it is an improper question. It is leading. It is
10 improper use of the deposition.

11 MR. PETTY: Do you recall this question
12 being asked is leading?

13 THE COURT: I will overrule the objection.

14 BY MR. SPRIGGS:

15 Q Do you recall, during the second deposition, you were
16 asked whether Mr. Sinclair had suggested that you change
17 the asbestos fibers? Do you recall that during the
18 second deposition?

19 A Yes, I do, uh-huh.

20 Q And I believe, or -- well, did you, during the second
21 deposition, correct your testimony from two days
22 before; do you recall that?

23 A That is right, uh-huh.

24 Q Do you recall what you said?

25 A Yes, I do, essentially what I said.

1 Q About what Mr. Sinclair had told you?

2 A Yeah. Mr. Sinclair who was head of the experimental
3 department of the station down in Annapolis pertaining
4 to insulation and packing and a lot of other things,
5 well, he naturally was interested in having another
6 competitive material on their approved list, which I
7 appreciated, and he naturally indicated to me what
8 we should do to make our product acceptable on this
9 product list, and I appreciated him doing it, put in
10 more long fiber asbestos. I told him it cost too
11 much money.

12 Q And do you recall, during my examination of you down in
13 Florida --

14 A Yes.

15 Q -- before Mr. Patrick --

16 A Yes.

17 Q -- questioned you, what you said about what Mr. Sinclair
18 told you. Do you recall that?

19 A Well, not off the bottom -- no, I can't remember.

20 Q But was it essentially what you just told the jury?

21 A Yes.

22 MR. WITHEY: Objection. Leading.

23 THE WITNESS: It was what I just told the
24 jury that he said, that we would have to have longer fiber
25 asbestos in there inorder to meet specifications.

1 There wasn't any secret about that. He wanted us to
2 meet the specs, and we wanted to meet them.

3 BY MR. SPRIGGS:

4 Q Okay. I have one last question, Mr. Christner. You
5 testified that the navy specification requiring the use
6 of asbestos predated, that is, came before the development
7 of Eagle 66, did you not, on cross examination?

8 MR. WITHEY: Objection. Leading.

9 THE COURT: He may answer.

10 THE WITNESS: It is a fact, I don't know
11 whether I should answer.

12 BY MR. SPRIGGS:

13 Q Whether I should ask you?

14 A I mean whether I should answer or not as a fact. It
15 called for use of asbestos in their formula before I
16 ever went down to see him.

17 Q Okay. I am going to show you what is marked for
18 identification as Defendant's Exhibit ET 17150. This
19 is very hard to read, very small print; but I would like
20 for you to take a look at it.

21 MR. WITHEY: It hasn't been admitted, Your
22 Honor.

23 MR. SPRIGGS: I understand that. I am asking
24 him to identify it, if he can.

25 THE WITNESS: This is pertaining to asbestos.

1 BY MR. SPRIGGS:

2 Q Can you identify that document, have you seen it before?

3 A I can't identify it, no. I mean I don't know who -- how
4 I would identify it. I just know of it being...

5 Q Okay.

6 MR. SPRIGGS: No further questions.

7 THE WITNESS: It didn't pertain to any of
8 our products.

9 RECROSS EXAMINATION

10 BY MR. WITHEY:

11 Q That one didn't?

12 A No.

13 Q Okay. Well, now Mr. Spriggs asked you about the
14 February 3rd deposition as to the February 1st.

15 A Uh-huh.

16 Q And I want to ask you if you recall explaining how you
17 happened to remember, on February 3rd, what you had
18 apparently testified to differently on February 1st,
19 as follows.

20 A Uh-huh.

21 Q Quote --

22 MR. PETTY: What page, counsel?

23 MR. WITHEY: Page 48.

24 BY MR. WITHEY:

25 Q When asked, didn't you state on February 1st that

1 Mr. Sinclair didn't suggest anything to you, and the
2 attorney asked you the question, and you answered,
3 explained as follows: "Answer: All right. Let me
4 answer it to that. This is years ago, you're going back
5 fifty some years. And as soon as these gentlemen
6 from Eagle-Picher and their attorneys came down here
7 to talk with me about all of this, why, it begin to come
8 back to me." Do you recall that testimony, Mr.
9 Christner?

10 A That sounds logical.

11 Q Who were the gentlemen from Eagle-Picher that came
12 down and talked to you?

13 A At what time?

14 Q Well, that you referred to. You said some gentlemen
15 from Eagle-Picher and their attorneys came down to
16 talk to me about all this and it begin to come back to
17 me. I am asking you who from Eagle-Picher came down?

18 A Well, the only one from Eagle-Picher that came down
19 was Mr. Bockstahler.

20 Q Is he present in Court today?

21 A No, no. Is he what? He is present, yes.

22 Q Is that him at counsel table?

23 A He is present.

24 Q Okay. Anybody else from Eagle-Picher came down to talk
25 to you about it?

1 A No one came down to talk to me about it.

2 Q How about the attorneys that you referred to. Was that
3 Mr. Spriggs?

4 A Mr. Spriggs, yeah. Let me say something.

5 Q Well, I will ask you questions, and you can answer them.
6 Maybe your counsel will ask you something, if you don't
7 mind, sir.

8 A Okay.

9 Q Now did they come down there to Florida to remind you
10 about this, to refresh your recollection on this matter?

11 A No, sir.

12 Q Where did you meet with them?

13 A Well, they were in Florida. They didn't come down
14 for that purpose.

15 Q Okay. They were there in Florida in Venice, Florida?

16 A Yes.

17 Q And was that before or after the deposition?

18 A It was after the deposition, I guess, if that is what
19 you're talking about.

20 Q You are testifying that they came down and talked to you
21 after the first deposition, or after the second
22 deposition?

23 A No, not after the second. After the first, I think it
24 was.

25 Q So it was between the first and the second deposition

1 that they came down and talked to you, and it all began to
2 come back to you; is that your testimony, sir?

3 A Well, listen, may I...

4 Q You can answer the question first. Was it between the
5 first and second deposition?

6 A I don't recall.

7 Q In fact, isn't it true, Mr. Christner --

8 MR PETTY: Your Honor, maybe counsel could
9 go ahead and read the rest of Mr. Christner's
10 answer, and it would become crystal clear for the jury
11 as to how --

12 THE COURT: You can read it.

13 MR. WITHEY: You can read it.

14 BY MR. WITHEY:

15 Q So they came down between the first and second
16 deposition; is that your testimony, sir?

17 A Listen, you are talking about a very, very hairline
18 case here, and, at my age, I don't remember all these
19 details; but...

20 Q Was it Mr. Spriggs at the first deposition?

21 MR. PETTY: Your Honor, if he could be
22 allowed to complete his answer.

23 MR. WITHEY: I apologize. I am sorry, Mr.
24 Christner. Were you completed?

25 THE WITNESS: I don't know what you are trying

1 to get at, sir.

2 BY MR. WITHEY:

3 Q I am just trying to find out when these gentlemen from
4 Eagle-Picher and Mr. Spriggs met with you?

5 A Well, their travel schedule will tell you that better
6 than I can.

7 Q Didn't they meet with you before the first deposition,
8 Mr. Christner?

9 A No. Listen, I don't remember that kind of detail.
10 Good night.

11 Q Do you recall whether Mr. Spriggs and Mr. Bockstahler
12 were actually present at your first deposition?

13 A My first deposition? You mean -- you don't mean the
14 visual deposition?

15 Q No, I am talking about the first one?

16 A Oh, I don't know whether they were both present or
17 not. Whatever I said was true; and, you see, after --

18 Q Wait a minute. I don't have a question pending. I am
19 sorry.

20 A After you've been out of the picture for fifty years,
21 why, your recollections are just a little bit fuzzy
22 right off the bat, see.

23 Q All right. So you needed Mr. Bockstahler and Mr. Spriggs
24 to refresh your memory?

25 A No, they didn't refresh my memory. I knew more about it

1 than they did.

2 Q Okay. How about on February 1st, 1983, at page 71. I
3 will ask you to read the deposition and see whether, at
4 line 25, it indicates that Mr. Bockstahler made an
5 answer to inquiry you had about a particular name?

6 A Have somebody else read it. I can't see very good.

7 MR. PETTY: Your Honor --

8 MR. WITHEY: Can we stipulate that Mr.
9 Bockstahler and Mr. Spriggs were present at the first
10 deposition?

11 MR. PETTY: Well, we are going far afoul
12 of the purpose of this deposition, in the first place,
13 which was to perpetuate Mr. Christner's testimony that
14 he gave. Counsel is now trying to raise all kinds of
15 implications, yet he is not letting the witness
16 answer the questions as to why he -- his testimony
17 changed at this point from the first to the third.

18 MR. WITHEY: Well, Your Honor, he can
19 bring that out.

20 MR. PETTY: And counsel is raising all sorts of
21 collateral issues. All he has to do is ask the witness
22 did anybody put these words in your mouth, and the
23 witness can respond.

24 MR. WITHEY: I will move to strike Mr.
25 Petty's remarks. Mr. Petty can do what he wants to on

1 redirect.

2 MR. PETTY: I can't wait.

3 BY MR. WITHEY:

4 Q In fact, in your first deposition, you said Mr. Sinclair
5 didn't tell you to change that. In your second, he said
6 that he did. Isn't that true?

7 A Well, it is -- I get your point. At the first
8 deposition, I didn't recall everything that went on;
9 and, my God, after all these years, why, after all these
10 years, you can't remember everything that went on in
11 the sequence that it happened.

12 MR. PETTY: Your Honor, we will stipulate
13 that at the first deposition he didn't so state, and
14 at the second deposition he did, and we would be glad
15 to read to the jury what Mr. Christner at that time, when
16 it was fresh on his mind, stated as his explanation.

17 MR. WITHEY: I am trying to find out when it
18 was that Mr. Spriggs and Mr. Bockstahler talked to him,
19 because if it was before the first deposition, obviously
20 he then testified that Mr. Sinclair didn't tell him.

21 MR. PETTY: Why don't you read the deposition
22 about it.

23 THE COURT: Excuse me. Go ahead and
24 ask the question.

25 MR. WITHEY: All right.

1 BY MR. WITHEY:

2 Q Do you recall Mr. Spriggs and Mr. Bockstahler being
3 present at the first deposition?

4 A Yes.

5 Q Okay, they were there?

6 A Uh-huh.

7 Q And that was at Venice, Florida?

8 A Right.

9 Q Did you meet with them before the deposition?

10 A I don't know. What date? I don't know what date the
11 deposition was or what hour of the day. I don't have
12 any record of that. They came down to talk with me,
13 and I took them out on the lanai so they could see the
14 Gulf of Mexico, and we talked and we talked a lot. And
15 I had information that was of interest to them.

16 MR. WITHEY: I have no further questions.
17 Thank you.

18 MR. PETTY: Your Honor, to expedite
19 things, may I simply go ahead and read the two pages
20 of the deposition and ask the witness if he recalls
21 this?

22 THE COURT: Okay, go ahead.

23 REDIRECT EXAMINATION

24 BY MR. PETTY:

25 Q Mr. Christner, I don't want you to answer until I am

1 done reading you all this.

2 A Yes, sir.

3 Q But I am reading from your transcript of the deposition
4 that we are talking about on February 3rd, two days
5 after you were deposed. Okay? And when I am done,
6 I am just going to ask you if you remember this
7 dialogue, this question and answer.

8 A Okay.

9 Q And the attorney that was asking you these questions
10 was a Mr. Patrick who represented the plaintiffs. Do
11 you remember him?

12 A Uh-huh.

13 Q Okay. The questions and answers were as follows:

14 "Question: Now have you had a chance to review your
15 deposition that was given on Tuesday?" Your answer:

16 "Answer: No, no, I have never read it." "Question:
17 All right. Do you" -- and this is on page 17 of the

18 discovery deposition, do you remember me asking you
19 this question: "Question: Did Mr. Sinclair suggest

20 an addition of asbestos?" And your answer was:

21 "Answer: No, he didn't suggest anything, he says go
22 back and try again. And we had our own testing

23 laboratories in Joplin and I personally witnessed the
24 navy experimental tests so I knew just what portions

25 of the test we were delinquent or inefficient in. And

1 when we in our own laboratories at the factory had a
2 product that we thought would meet all these, why,
3 then we resubmitted it to the experimental station for
4 approval." And your answer: "Answer: All right. Let
5 me answer as to that. This is some years ago. You are
6 going back fifty some years, and as soon as these
7 gentlemen from Eagle-Picher and their attorneys came
8 down here to talk with me about all of this, why, it
9 begin to come back to me. My memory over a period
10 of time has always been very excellent, but you can't
11 remember everything; and after we got into this thing
12 in more detail, I begin to relive the situation that
13 existed down there. And on second thought, recon-
14 structing the situation as it existed, why, I would like
15 to correct a statement that is made there, because he
16 did -- and I can see him" . . . referring to Mr.
17 Sinclair . . . "sitting there now telling me, he says,
18 I don't think the asbestos fiber you are using is as
19 long as that in the other products. Now I didn't think
20 of that when I made this statement, but I have given
21 it a whole lot of thought since then and everything
22 that has been asked of me, and I relived the situation,
23 and I would say that my memory today is better than it
24 was last Tuesday." Mr. Patrick then goes on:
25 "Question: All right, so last Tuesday you made this

1 statement, you say your memory was not as good; and
2 then after, and we've had a day in between, yesterday,
3 you have had a chance to review your testimony of this
4 deposition? "Answer: I didn't review that. I have
5 never seen it." "Question: But you have had a chance
6 to talk to your lawyers and talk about it? Answer:
7 No, no, I have had time to think. The lawyers don't have
8 no influence on my memory as to what I did. I just
9 relived the situations as they existed, and they were
10 quite important at that time, and what I said today is
11 factual. Now I didn't remember that he had done that,
12 made that comment. It is pretty hard for you to
13 remember everything that everybody says to you fifty
14 years ago." "Question: Nevertheless, you did say
15 that on asbestos then on Tuesday?" You answered:
16 "Answer: I remember." Then Mr. Patrick says:
17 "Question: You said that he didn't suggest anything,
18 and you are saying today that he did suggest something?"
19 And your answer: "Answer: I recall now that he made
20 that one suggestion, and that is the only thing that he
21 made." Do you recall those questions and answers,
22 Mr. Christner?

23 A I do, yes.

24 Q Thank you.

25 MR. MALONEY: I have no questions, Your

1 Honor.

2 MR. WITHEY: I have no further questions.

3 THE COURT: Thank you, Mr. Christner, you
4 may be excused. Have a nice trip back to Florida. I
5 wish I were going with you.

6 THE WITNESS: I can hardly wait to get back.

7 THE COURT: Ladies and gentlemen, we will
8 be at recess until 9:30 tomorrow morning. Thank you.

9 (Colloquy)

C E R T I F I C A T E

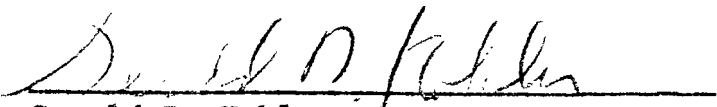
STATE OF WASHINGTON)

County of Kitsap) ss
)

I, Gerald D. Kohler, Court Reporter in and for
the State of Washington, do hereby certify:

That I was present in Court and reported the
foregoing proceedings on the first day of November, 1984,
before the HONORABLE TERENCE HANLEY, and have caused to be
transcribed from the same the testimony of GLEN J. CHRISTNER.

I further certify that the foregoing is a full,
true and correct transcription of my machine shorthand
notes.


Gerald D. Kohler, Court Reporter