FILE NAME: Maryland Casualty Company (MCC)

DATE: 19ϕн a l·è мϕ

DOC#: MCC0мy

5OCUMENT DESCRIPTION: [ŜƎl·f π 5ŜLJƨăλύλƨy˝ƨ⊤ I l·ℕØŜè Dϕ [Ŝøλă

Commercial Union Insurance Co.

NO. 88-C-0615

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

NO. 87-C-1934

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

IN RE: CONSOLIDATED NO. 87-37068

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

NO. 90-20663

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

NO. 89-053547

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

NO. 91-002902

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

VIDEOTAPE DEPOSITION OF

HARVEY G. LEWIS

May 19, 1992
Between the hours of 10:00 a.m. and 2:30 p.m.
800 Commerce
Houston, Texas

Wanda Kelley, Texas CSR No. 2007
Nell McCallum & Associates
2900 Smith, Suite 104
Houston, Texas 77006 (713) 523-3767

COPY

APPEARANCES

For the Plaintiffs:

MR. LAWRENCE MADEKSHO
Attorney at Law
Law Offices of Lawrence Madeksho
8320 Gulf Freeway, Suite 218
Houston, Texas 77017-4598

MR. ROBERT E. BALLARD
Attorney at Law
Abraham, Watkins, Nichols, Ballard & Friend
800 Commerce Street
Houston, Texas 77002

For the Defendant Commercial Union Insurance Company, appearing for the Sherman S. Searls, Jr. lawsuit:

MR. DON MARTINSON
Attorney at Law
Fanning, Harper & Martinson
8117 Preston Road, Third Floor
Dallas, Texas 75225

APPEARANCES

For the Defendant Owens-Corning Fiberglas Corporation, appearing for the Tommie L. Heathman and Sherman A. Searls, Jr. lawsuits:

MR. RICK THAMM
Attorney at Law
Bean & Manning
5847 San Felipe, Suite 1500
Houston, Texas 77056

For the Defendant Pittsburgh Corning Corporation, appearing for the Sherman A. Searls, Jr., Tommie L. Heathman, Richard B. Jackson Consolidation and Gladys Loretta Steele lawsuits:

MR. MIKE WALZEL
Attorney at Law
Weller, Wheelus & Green
Fifth Floor, Petroleum Tower
550 Fannin Street
Beaumont, Texas 77704

APPEARANCES

For the Defendant ACandS, Inc., appearing for the Sherman A. Searls, Jr.; Tommie L. Heathman; Juanita Simpson, which is part of the Richard Jackson Consolidation; and Loretta Turner lawsuits:

MR. KEN RHODES
Attorney at Law
Dunn, Kacal, Adams, Pappas & Law
2600 America Tower
2929 Allen Parkway
Houston, Texas 77019

For the Defendant Allied Signal, Inc.:

MS. LYNN G. HAUFRECT
Attorney at Law
Vinson & Elkins
3300 First City Tower
1001 Fannin
Houston, Texas 77002

APPEARANCES

For the Defendant Aetna Casualty and Surety, appearing for the Sherman A. Searls, Jr., lawsuit; and for the Defendant Ford Bacon & Davis Construction Corporation, appearing for the Hazel Wilkening lawsuit:

MS. BARCLAY MANLEY
Attorney at Law
Fulbright & Jaworski
1301 McKinney
Houston, Texas 77010

For the Defendant Travelers Insurance Company and Travelers Indemnity Company, appearing for the Sherman A. Searls, Jr. lawsuit:

MR. J. WILEY GEORGE
Attorney at Law
Strasburger & Price
4300 NCNB Plaza
901 Main Street
Dallas, Texas 75202

APPEARANCES

For the Defendant Owens Illinois, Inc., appearing for the Richard B. Jackson Consolidation and the Tommie L. Heathman lawsuit:

MR. MARK D. RAYBURN
Attorney at Law
Strong, Pipkin, Nelson & Bissell
1400 San Jacinto Building
595 Orleans
Beaumont, Texas 77701

For the Defendant Foster Wheeler Corporation, appearing for the Gladys Loretta Steele and Hazel Wilkening lawsuits:

MR. JAMES M. RILEY, JR.
Attorney at Law
Holmes, Ryman & Lee
800 First City Tower
1001 Fannin
Houston, Texas 77002

APPEARANCES

For the Defendant M. W. Kellog Company, appearing for the Hazel Wilkening lawsuit:

MR. DOUG S. GRIFFITH
Attorney at Law
Hutcheson & Grundy
3300 Citicorp Center
1200 Smith Street
Houston, Texas 77002-4579

For the Defendant Brown & Root, Inc., appearing for the Loretta Turner lawsuit:

MS. CYNTHIA HOOPER INGLET
Attorney at Law
Alenik & Associates
12 Greenway Plaza, Suite 1200
Houston, Texas 77046

Also present: Ray Blackstone - Legal Media

[EXHIBIT NO. 1 MARKED]

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

start

HARVEY G. LEWIS,

being duly sworn, testified as follows:

EXAMINATION BY

MR. MADEKSHO:

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

A Harvey G. Lewis.

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

A Fine. Thank you.

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

A I do.

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

A Yes, sir.

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

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

MR. MADEKSHO: We understand that.

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

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

A I did, sir.

Q Are you a practicing lawyer at this time?

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

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

A No, sir, I am not.

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

A 1970.

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

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

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

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

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

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

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

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

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

A That's correct, sir.

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

A I do.

Q And what is that title, sir?

A I am vice president of specialty litigation.

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

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

19,12

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

A That is correct.

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

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

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

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

negotiations that are ongoing, I can't state.

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

A Yes, sir.

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

A I did.

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

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

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

A Yes, sir, that's correct.

Q In regard to area of inquiry number one to

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

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

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

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

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

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

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

Q At the time that the merger occurred between Commercial Union and a number of these companies that you had just mentioned from the Employers group, did Commercial Union assume the assets and the liabilities of those insurance companies?

A It did, sir.

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

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

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

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

Q Are you familiar with an individual by the

A Yes, sir.

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

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

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

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

[EXHIBIT NO. 3 MARKED]

MR. MADEKSHO:

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

A It is, sir.

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

A That's correct.

5/21

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

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

A No, sir.

Q It was simply limited to PPG?

A That's my recollection.

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

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

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

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

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

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

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

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

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

[EXHIBIT NO. 9 MARKED]

MR. MADEKSHO:

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

Corning Glass Works and Travelers Indemnity Company, et cetera.

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

A I do.

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

A Yes, sir.

Q Do you know Mr. Griffith personally?

A I do.

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

A I did.

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

A He did, sir.

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

A Yes, sir.

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

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

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

Q What I just recited, was that accurate?

A Yes, sir.

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

A I see them, sir.

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

MR. MARTINSON: What page is that?

MR. MADEKSHO:

Q It would be the last page, where Commercial

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

A I see them.

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

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

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

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

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

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

60,13

Q Do you know that as of 1991 that of course

Commercial Union's representative's statements.

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

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

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

MR. MADEKSHO:

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

A Yes, sir.

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

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

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

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

A It is, sir.

Q In 1982?

A Yes, sir.

Q Thank you.

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

70,22

A Yes, sir, I do.

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

A Yes, sir, it is.

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

A Yes, sir.

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

A Yes, sir.

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

[EXHIBIT NO. 15 MARKED]

MR. MADEKSHO:

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

A Yes, I do, sir.

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

A Yes, sir.

74,22

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

A No, sir.

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

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

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

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

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

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

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

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

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

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

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

A That's my understanding.

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

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

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

A Yes, sir.

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

Correct? And tell us what your answer was.

A My answer was yes, sir.

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

A Yes, sir.

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

A I can't recall that specifically being stated.

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

[EXHIBIT NO. 17 MARKED]

MR. MADEKSHO:

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

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

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

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

A I do, sir.

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

A Yes, sir.

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

A I am, sir.

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

A Yes, sir.

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

A Yes, sir.

Q And then at the bottom of that page on the

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

A Yes, sir.

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

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

Q And that information was known in 1937. Correct?

A Yes, it was.

MR. MADEKSHO: Did you want to take a quick break, or do you want to keep marching on? 79,7

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

THE WITNESS: No, I'm fine.

MR. MADEKSHO:

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

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

A I believe so.

MR. MADEKSHO: Do you remember that?

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

[EXHIBIT NO. 18 MARKED]

MR. MADEKSHO:

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

A I recall them, sir.

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

A Yes, sir.

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

A That's correct.

Q And they had two representatives there?

A I believe so.

Q And also present were other insurance

80,14

companies, the Aetna and the Travelers Insurance companies?

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

MR. MADEKSHO:

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

A The document indicates that, sir.

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

A I recall the question in the interrogatories about this.

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

A Yes, sir.

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

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

A I do, sir.

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

A I see where it says that.

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

A I have no reason one way or another.

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

A Yes, sir, I do.

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

A It was.

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

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

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

A No, I wasn't.

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

[EXHIBIT NO. 19 MARKED]

[EXHIBIT NO. 20 MARKED]

MR. MADEKSHO:

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

A Yes, sir.

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

A Yes, sir.

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

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

A Yes, sir.

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

A I see that in Paragraph 3.

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

A Yes, sir, it is.

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

A Yes, sir, it's dated 1929.

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

A Yes, sir.

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

A Yes, sir.

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

A That's what it says.

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

A Yes, sir.

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

A Yes, I do.

102,16

Q Are you familiar with this gentleman?

A I have heard the name years ago.

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

A Yes, sir, in the second sentence.

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

A That's what this statement does say.

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

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

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

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

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

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

A I guess that could be one interpretation of it.

1046

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

A No, I'm not, sir.

Q Are you aware that they are alleging that

defense in this case?

MR. MARTINSON: Searls?

MR. MADEKSHO:

Q In the Searls case?

A Not particularly.

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

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

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

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

1092

MR. MADEKSHO:

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

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir, I see that.

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

A Yes, sir.

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

Court there in June of 1982?

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

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

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

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

A Yes, I presume so, sir.

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

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

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

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

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

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

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

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

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

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

manual by Mr. Sommerville?

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

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

[EXHIBIT NO. 27 MARKED]

MR. MADEKSHO:

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

A Yes, sir.

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

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

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

A Quite a while ago, yes, sir.

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

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

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

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

A Apparently so.

Q Mr. Sommerville?

A Yes, sir.

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

A Yes, sir.

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

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

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

A I haven't read that anywhere else.

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

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

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

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

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

A No, sir, I have not.

Q -- by the manufacturers?

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

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

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

Q And could you tell us as to whom, which

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

A Facts in evidence? I'm sorry.

Q Facts and evidence.

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

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

A That's my recollection.

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

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

Q Right. Armstrong is a party to this

litigation.

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

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

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

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

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

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

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

A No, I'm not, sir.

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

118, 10

[EXHIBIT NO. 28 MARKED]

MR. MADEKSHO:

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

A Yes, sir.

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

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

coverage by Commercial Union and that's the reason.

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

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

MR. MARTINSON: Right.

MR. MADEKSHO:

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

A Yes, sir, I do.

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

A The trial brief does so state.

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

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

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

MR. MARTINSON: What is the question again?

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

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

A The document does indicate that these statements were made.

MR. MADEKSHO:

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

A Yes, sir, it is so stated.

Q Do you have any reason to dispute Commercial

Union's allegations concerning that particular bit of information?

A No, sir, I don't.

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

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

A No, sir.

122, 8

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

A No, I was not personally aware of that.

Q And you have been following this case fairly closely?

A The Johns-Manville case, sir?

Q No, this case here.

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

then didn't?

A And then did not?

Q And then did not.

A No, I don't recall that.

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

A Yes, sir.

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

A No, sir.

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

[EXHIBIT NO. 29 MARKED]

MR. MADEKSHO:

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

A I have.

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

A Yes, sir.

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

A I do, sir.

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

A There was a reference made to the year 1900.

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

A Yes, sir, I see it on here.

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

A My recollection is it is the same date.

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

A Yes, sir.

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

A That's what the graph indicates.

End

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