

1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 PENNSYLVANIA DEPARTMENT OF GENERAL: NO. 284
 SERVICES, PENNSYLVANIA : M.D. 1990
 3 DEPARTMENT OF TRANSPORTATION, :
 PENNSYLVANIA PUBLIC UTILITY :
 4 COMMISSION, PENNSYLVANIA EMERGENCY:
 MANAGEMENT AGENCY, and :
 5 PENNSYLVANIA DEPARTMENT OF STATE :
 Plaintiffs :
 6 Vs. :
 UNITED STATES MINERAL PRODUCTS :
 7 COMPANY, CERTAINTIED CORPORATION, :
 COURTAULDS AEROSPACE, INC., :
 8 CHEMREX, INC., PHILIPS ELECTRONICS:
 NORTH AMERICA CORPORATION, :
 9 ADVANCE TRANSFORMER COMPANY and :
 MONSANTO COMPANY :
 10 Defendants :

11 BEFORE THE HONORABLE CHARLES P. MIRARCHI, JR.

12 January 28, 2000

13 Trial testimony in the above-captioned
 14 matter, held at the Commonwealth Court of
 15 Pennsylvania, City Hall, Courtroom 453,
 16 Philadelphia, Pennsylvania, on Friday,
 17 January 28, 1999, at 10:10 a.m., before
 18 John W. Begley, a Registered
 19 Professional Reporter - Notary Public there
 20 being present.

21 ESQUIRE DEPOSITION SERVICES

22 1880 JFK BOULEVARD - 15TH FLOOR

23 PHILADELPHIA, PENNSYLVANIA

24 215 - 988-9191

2 1 APPEARANCES: 2 HUMPHREY, FARRINGTON & MC CLAIN, P.C. 3 BY: KENNETH B. MC CLAIN, ESQUIRE 4 JAMES ZIEGLER, ESQUIRE 5 221 West Lexington - Suite 400 6 Independence, Missouri 64051 7 Phone: 816 - 836-5050 8 Representing the Plaintiffs 9 10 LAW OFFICES OF THOMAS W. HENDERSON 11 BY: THOMAS W. HENDERSON, ESQUIRE 12 One Oxford Center 13 Pittsburgh, PA 15219 14 Phone: 412 - 394-1298 15 Representing the Plaintiffs 16 17 MONTGOMERY, MC CRACKEN, 18 WALKER & RHOADS, LLP 19 BY: JOYCE S. MEYERS, ESQUIRE 20 123 South Broad Street 21 Philadelphia, PA 19109 22 Phone: 215 - 772-7452 23 Representing the Defendant Courtaulds 24 Aerospace, Inc.	4 1 HOYLE, MORRIS & KERR 2 BY: SUSAN K. HERSCHEL, ESQUIRE 3 One Liberty Place - Suite 4900 4 1650 Market Street 5 Philadelphia, PA 19103-7397 6 Phone: 215 - 981-5770 7 Representing the Defendant CertainTeed 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24
3 1 WHITE & WILLIAMS 2 BY: THOMAS M. GOUTMAN, ESQUIRE 3 KATHY A. O'NEILL, ESQUIRE 4 WILLIAM SCHMIDT, ESQUIRE 5 WILLIAM YOUNGBLOOD, ESQUIRE 6 One Liberty Place - 18th Floor 7 1650 Market Street 8 Philadelphia, PA 19102 9 Phone: 215 - 864-7000 10 Representing the Defendant Monsanto 11 Corporation 12 13 DANAHER, TEDFORD, LAGNESE & NEAL, PC 14 BY: KENNETH R. NEAL, ESQUIRE 15 Capitol Place 16 21 Oak Street 17 Hartford, Connecticut 06106 18 Phone: 860-247-3666 19 Representing the Defendant U.S. 20 Mineral Company 21 22 23 24	5 1 INDEX 2 Testimony of: John P. Woodward PAGE 3 By Mr. Goutman 7 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

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1
2 MR. EDGE: In the name of the
3 Commonwealth of Pennsylvania, this
4 Commonwealth Court is now declared open, the
5 Honorable Charles P. Mirarchi, Jr.,
6 presiding.
7 Please be seated.
8 Good morning.
9 MR. GOUTMAN: May I proceed,
10 Your Honor?
11 THE COURT: Mr. Goutman, you
12 may proceed.
13 MR. GOUTMAN: Mr. Woodyard.
14 ---
15 JOHN P. WOODYARD, recalled to
16 testify.
17 ---
18 MR. EDGE: Sir, state your
19 full name for the record, please.
20 THE WITNESS: John Woodyard.
21 MR. EDGE: I remind you that
22 you are still under oath.
23 MR. GOUTMAN: Good morning.
24 (Jury responds good morning)

7

1 Your Honor, picking up where we
2 left off, I believe I proffered Mr.
3 Woodyard as an expert in PCB cleanup,
4 source and origin of PCBs, PCB testing,
5 PCB regulations, the physical and chemical
6 properties of PCBs, and the costs of
7 asbestos abatement.
8 THE COURT: That's correct.
9 MR. GOUTMAN: And The Court
10 has ruled --
11 THE COURT: And The Court has
12 found that Mr. Woodyard is an expert in
13 these fields and may so testify as an
14 expert in Court.
15 Of course, you remember that
16 an expert is a person that has specific
17 training and knowledge in a particular
18 science or field of endeavor that permits
19 him to give opinion testimony. The
20 average person can't give opinion
21 testimony; only fact testimony.
22 BY MR. GOUTMAN:
23 Q. Good morning, Mr. Woodyard.
24 A. Good morning.

8

1 Q. Mr. Woodyard, have you ever
2 testified in Court before?
3 A. No, this is the first time.
4 Q. Welcome to Court.
5 Mr. Woodyard, did you have a
6 chance to inspect the T&S Building before it
7 was blown up?
8 A. Yes, I did.
9 Q. And how many times did you do
10 that?
11 A. Twice.
12 Q. And can you tell us about those
13 two visits.
14 A. The first time I toured what we
15 are calling the occupied floors, the floors
16 away from the fire. And the second time I
17 actually went on the sixth floor, the fire
18 floor, and inspected that floor as well as
19 some of the garbage and debris that was left
20 behind from the fire.
21 Q. Were you able to see above the
22 drop ceiling to where the duct is?
23 A. Yes, I was. On several of the
24 floors, maybe three, during the occupied

9

1 floor inspection I poked my head up above
2 ceiling tiles and looked around.
3 Q. By occupied floors do you mean
4 floors other than floors four through seven?
5 A. Exactly.
6 Q. And were you able to see in the
7 electrical trenches on the floors?
8 A. Yes, I was. One of the things
9 we also did, and I did, personally, was to
10 take the tops off of some of these troughs
11 which run right down the center of the
12 hallway and look inside.
13 Q. Did you have a chance to review
14 the test data of surface and air tests taken
15 at the T&S Building?
16 A. Yes, I did.
17 Q. Can you give us an idea of the
18 volume of testing that was done and that you
19 reviewed?
20 A. There were thousands of samples
21 taken. The material that I have has filled
22 boxes and occupies a good part of my office
23 back home.
24 Q. And have you read and

10

1 familiarized yourself with those boxes of
2 test data?
3 A. Yes, I have.
4 Q. And as part of your job as a PCB
5 specialist do you normally review test data
6 like that?
7 A. Yes.
8 MR. MC CLAIN: Objection, Your
9 Honor. It is leading.
10 MR. GOUTMAN: I'll rephrase
11 it, Your Honor.
12 THE COURT: Rephrase it.
13 BY MR. GOUTMAN:
14 Q. What do you normally do with
15 test data as part of your job as a PCB
16 specialist?
17 A. I review it routinely as part of
18 every project.
19 Q. Sir, were you able to reach any
20 conclusions about the PCB levels found in
21 that building after the fire?
22 A. Yes, in general the air data
23 showed that there was almost no measurable
24 PCB in the building at all, and the surface

11

1 wipe samples that were collected throughout
2 the building showed that the levels were well
3 below the EPA safe standard.
4 MR. GOUTMAN: Can members of
5 the jury see this?
6 (Jury responds they can).
7 BY MR. GOUTMAN:
8 Q. You mentioned the EPA standard.
9 You call it the EPA safe standard?
10 A. Yes, sir.
11 Q. And what is the EPA safe
12 standard? What are the levels?
13 A. The levels? The levels, for
14 solid surfaces it is ten micrograms per 100
15 squared centimeters.
16 Q. For what surfaces?
17 A. For solid surfaces.
18 Q. Are there any other levels that
19 the EPA stipulates?
20 A. Yes, there's another level of
21 100 micrograms per 100 squared centimeters.
22 Q. Now, what surfaces does the ten
23 microgram level apply to?
24 A. The ten microgram level is what

12

1 we commonly term a high contact level.
2 That's the level you would apply to things
3 that might be touched in the course of a
4 normal day, work or at home.
5 Q. And does the EPA set forth what
6 types of locations that the ten microgram
7 level is applied to?
8 A. In the regulations they list a
9 number of situations that they consider high
10 contact type situations: Day care centers,
11 residential homes, schools. Places like
12 that.
13 Q. Would the ten microgram level
14 apply to the T&S Building?
15 A. Absolutely.
16 Q. Now, what is the 100 microgram
17 level?
18 A. The 100 microgram level would be
19 what would be termed as a low contact area.
20 Kind of the opposite of a high contact.
21 Q. Based upon your review of these
22 reams of data, after the fire on average did
23 the occupied floors of the T&S Building
24 comply or not comply with the EPA

13

1 regulations?
2 A. Yes, they did. On average they
3 were well below the ten microgram standard.
4 Q. Now, sir, you also mentioned a
5 risk assessment in your report that was
6 performed by Dr. James. What level was that?
7 MR. MC CLAIN: Your Honor, I
8 object to him reciting what Dr. James did.
9 MR. GOUTMAN: It is in his
10 report and he relied upon it.
11 MR. MC CLAIN: Your Honor, it
12 doesn't matter. It is the Primavera
13 problem. He can't get up here and recite
14 what another expert said.
15 MR. GOUTMAN: Your Honor, it
16 is in his report. Primavera pertains to
17 out of court statements. This is already
18 a matter of record and under 703 he can
19 rely upon it. It is in his report.
20 MR. MC CLAIN: Your Honor,
21 relying upon it in rendering his opinion
22 is one matter; simply to get up here and
23 say what Dr. James said is not permitted.
24 MR. GOUTMAN: He is not simply

1 going to say that; he is going to testify
2 concerning the implications of that, Your
3 Honor.

4 THE COURT: Overruled.
5 BY MR. GOUTMAN:

6 Q. What level, risk assessment
7 level, did Dr. James come up with?

8 A. Dr. James' risk assessment came
9 up with a level of 19.8 micrograms per 100
10 centimeters squared for high contact.

11 Q. Based upon your review of these
12 reams of test data from the T&S Building,
13 could you tell us whether the building
14 complied with the risk assessment cleanup
15 level?

16 A. Oh, yes. Absolutely.

17 Q. After the fire?

18 A. Yes.

19 Q. Now, sir, you use a term in your
20 report called PCB fire; is that correct?

21 MR. MC CLAIN: Objection, Your
22 Honor. It is leading.

23 MR. GOUTMAN: I'm referring
24 him to a term in his report, Your Honor.

1 MR. MC CLAIN: It is leading.
2 What difference does it make if he says it
3 in his report? We are here to hear him
4 testify.

5 THE COURT: Overruled.
6 BY MR. GOUTMAN:

7 Q. What do PCB specialists such as
8 yourself mean by the phrase PCB fire?

9 A. Well, the term PCB fire is kind
10 of a term of art that we use to refer
11 specifically to transformer fires.

12 Q. Let me stop you. Transformer.
13 What is a transformer?

14 A. A transformer is an electrical
15 device. You probably have seen them around
16 town. They are used to convert voltage in
17 electrical systems.

18 Q. A PCB transformer, what kind of
19 fluid is in a PCB transformer?

20 A. Two kinds. One is, of course,
21 PCB, and the second, in some cases almost
22 half or an equal quantity of PCB is what is
23 called trichlorobenzene.

24 Q. Now, I don't believe the jury

1 has heard that term before. What is the
2 significance of trichlorobenzene in terms of
3 PCB transformer fires?

4 A. Well, scientists have found that
5 trichlorobenzene, if it is burned under the
6 right conditions, can create dioxin
7 compounds.

8 Q. Can PCBs alone, when they are
9 burned, cause dioxins to form?

10 A. No, sir.

11 Q. What is it, then, in
12 transformers that causes dioxin to form?

13 A. The trichlorobenzene.

14 Q. And, sir, what is the
15 significance of that, in terms of cleanup
16 levels?

17 A. Well, these dioxin compounds,
18 which you may have heard about during the
19 course of trial or otherwise, are considered
20 by EPA and others to be of much greater
21 concern than PCB, so in a case of a PCB fire,
22 as we are calling it, if these dioxins are
23 formed, they become the chemical that people
24 are concerned about and the ones that they

1 test for and they drive the cleanup level.

2 Q. And which way do they drive the
3 cleanup level?

4 A. Way down.

5 Q. Now, sir, we have heard about
6 the NIOSH guideline. What is the application
7 of the NIOSH guideline to transformer fires
8 or PCB fires as you call a transformer fire?

9 A. Well, NIOSH typically --

10 MR. MC CLAIN: Your Honor, I
11 object. He testified he never worked for
12 NIOSH. He was not involved in the
13 regulations. He didn't have anything to
14 do with them. I object to him speaking in
15 regard to NIOSH. We have heard from two
16 people that were direct employees of NIOSH
17 and Dr. Woodyard is not qualified in that
18 area.

19 MR. GOUTMAN: Your Honor, he's
20 been dealing with PCB regulations for 20
21 odd years, including transformer fires
22 and --

23 THE COURT: It would be
24 appropriate to lay a foundation for his

1 knowledge in this area.
 2 BY MR. GOUTMAN:
 3 Q. What is your background with
 4 respect to dealings with NIOSH and the NIOSH
 5 guidelines?
 6 A. As part of my experience, I
 7 think, as we discussed yesterday, I worked on
 8 a number of what we are calling PCB fires,
 9 where a transformer fire actually resulted in
 10 the release and formation of these dioxin
 11 compounds. On a number of those projects
 12 NIOSH has been directly involved in that work
 13 and has participated in the standard setting
 14 process for dioxin.
 15 Q. Have you published any papers on
 16 NIOSH's involvement in those transformer
 17 fires?
 18 A. Yes, I have.
 19 Q. Now, what is NIOSH's guideline
 20 with respect to these transformer fires?
 21 MR. MC CLAIN: Objection, Your
 22 Honor.
 23 THE COURT: Overruled.
 24 THE WITNESS: Guideline

1 regarding PCBs?
 2 BY MR. GOUTMAN:
 3 Q. Yes.
 4 A. Because NIOSH's focus on these
 5 fires has been the dioxin levels, because
 6 there may also be PCBs present and
 7 released during that fire but of lesser
 8 concern than a dioxin, NIOSH will set a
 9 PCB standard as part of setting the dioxin
 10 standard, I guess what I would call a
 11 surrogate.
 12 Probably the best way to
 13 explain that is PCB lab work is a lot
 14 cheaper than dioxin lab work and it is a
 15 lot faster, and if you are doing cleanup,
 16 like I have done many times, speed is
 17 important, so you don't want to wait four
 18 days to get your lab results back every
 19 time you take a sample, so in these kinds
 20 of projects, and NIOSH is involved in
 21 this, you try to relate somehow the dioxin
 22 concentration to the PCBs so you can stop
 23 analyzing for dioxin all the time; you can
 24 just start using your PCB data to

1 determine whether the cleanup should be
 2 done or not.
 3 Q. And what is the PCB surrogate
 4 level that NIOSH uses?
 5 A. It really varies all over the
 6 place, depending on the project, but I
 7 think the level we have been citing for
 8 this case is one microgram.
 9 Q. Now, Mr. Woodyard, were there
 10 any transformers involved in the T&S
 11 Building fire?
 12 A. No, sir.
 13 Q. Was there any trichlorobenzene
 14 involved in the T&S Building fire?
 15 A. No, there were not.
 16 Q. In the sense that you use and
 17 PCB specialists use PCB fire to mean
 18 transformer fire, was this a PCB fire?
 19 A. No, it was not.
 20 Q. Would the NIOSH transformer
 21 fire guideline be applicable to the T&S
 22 Building?
 23 MR. MC CLAIN: Your Honor, I
 24 object. To characterize the NIOSH level

1 as a transformer standard is false.
 2 MR. GOUTMAN: Your Honor,
 3 that's a --
 4 MR. MC CLAIN: I need to
 5 approach side bar, Your Honor.
 6 (Side bar discussion).
 7 MR. GOUTMAN: Your Honor, I
 8 object to counsel making objections like
 9 that. That is not appropriate.
 10 THE COURT: First of all,
 11 explosive statements that that's false
 12 have no place for the jury, have no place
 13 in front of the jury.
 14 MR. MC CLAIN: We need to be
 15 in chambers because this is going to go on
 16 and I need to state --
 17 THE COURT: We will go in
 18 chambers, but you must contain yourself.
 19 MR. MC CLAIN: All right. I
 20 will. I cannot tell The Court how angry I
 21 am about this testimony which is knowingly
 22 false. I'm saying that to The Court in
 23 The Court's presence and I need to go in
 24 chambers so I can express myself politely.

22 1 THE COURT: Frank, tell the 2 jurors we are going to take a short 3 recess. 4 (Side bar discussion). 5 MR. MC CLAIN: Your Honor, The 6 Court has heard extensive testimony and 7 reviewed the NIOSH documents. Never 8 before, and it is unsupported in the 9 record and in the documents that The Court 10 has seen, in regard to the NIOSH standard 11 is it referred to as a transformer 12 standard, and counsel has represented it 13 now to the jury that the NIOSH standard is 14 a transformer standard and only applies to 15 transformer fires and this witness has 16 said so as well without training and 17 background in regard to NIOSH. The Court 18 heard from Dr. Lemen and Dr. Melius, both 19 direct employees of NIOSH, who testified 20 that it applied to buildings contaminated 21 with PCBs; not to transformer fires, and 22 putting this testimony on, I believe, is 23 putting on knowingly false testimony, and 24 I feel very strongly about that. It is	24 1 The fact of the matter is, 2 Your Honor, that all of NIOSH's work has 3 dealt with transformer fires. All of the 4 instances where Dr. Melius was involved 5 were transformer fires and in fact the 6 CIB, the Current Intelligence Bulletin 7 that they introduced into evidence, 1986, 8 dealt specifically with transformer fires, 9 so it is an absolutely accurate statement. 10 This witness has published papers on it 11 and, again, there was not, I believe, an 12 evidentiary objection made other than my 13 witness apparently disagrees with your 14 witness; therefore, your witness can't 15 testify. 16 MR. MC CLAIN: No, it was the 17 disagreement to the characterization of 18 the NIOSH standard as the NIOSH 19 transformer standard, which counsel has to 20 know is untrue. 21 MR. GOUTMAN: With all due 22 respect, counsel, I don't think you know 23 what you are talking about. I believe 24 Mr. Woodyard does and I think we should
23 1 one thing to say in his opinion it ought 2 not to be applied outside situations of 3 transformers; it is another to say that 4 the NIOSH standard is a transformer 5 standard. It's not. And to represent it 6 as such I believe violates our obligation 7 of candor with The Court and the jury. It 8 goes beyond advocacy. 9 MR. GOUTMAN: Your Honor, I 10 don't think that objection is even worth 11 responding to. I really don't. I suppose 12 counsel is saying that because my evidence 13 is different than your evidence, you can't 14 put your evidence in. I guess that's what 15 it amounts to or he is saying that my 16 witnesses are better than your witnesses 17 or is the objection I know more than 18 Mr. Woodyard about it? 19 MR. MC CLAIN: You have to 20 cite -- 21 MR. GOUTMAN: The fact of the 22 matter is -- I don't have to cite anything 23 to you. The fact of the matter is that -- 24 it is discussed, Your Honor, at page 19.	25 1 get on with his testimony. 2 MR. MC CLAIN: Merely because 3 the witness is willing to say it -- 4 MR. GOUTMAN: And not be 5 burdened by these frivolous objections, 6 particularly since counsel has expressed 7 his desire that we get on with this trial. 8 MR. MC CLAIN: That is true. 9 Nonetheless, it is one thing to advocate a 10 position; it is another to represent 11 something which we have extensive evidence 12 on and presented in a way that you have to 13 know is not true. 14 MR. GOUTMAN: That's just 15 ridiculous. 16 THE COURT: Wait a minute. 17 Somewhere along the line I'm missing 18 something. Let's kind of back up a 19 minute. The extensive evidence, as I 20 understand it we have, came from the 21 Plaintiff, and that is a very important, 22 integral part of this case. However, if 23 the evidence of the Plaintiff differs 24 from the evidence of the Defendant, and

1 apparently according to the report it
2 does, and according to the report it has
3 been known that it does for a longer
4 period of time than these moments that we
5 have had in Court, that Mr. Woodyard was
6 going to testify as to dioxin levels
7 and --

8 MR. GOUTMAN: Transformer
9 fires.

10 THE COURT: Transformer fires,
11 and apparently there was no motion to
12 preclude this report for any reason. I
13 don't know that it would have been
14 sustained, but there was nothing before us
15 to preclude it, and now, in front of the
16 jury, to have an outburst of that nature
17 is more than offensive. It could be very
18 damaging. I think that we have to contain
19 ourselves. Now, the fact is I didn't
20 expect, I didn't know what course or
21 avenue the defendants would take, but I'm
22 sure, I was sure that it would certainly
23 not be in accordance or agreement with the
24 Plaintiff anymore than I expected the

1 Plaintiff to be in accord with the
2 Defendants' side of the case. We
3 probably would not have had a trial if
4 that were not so.

5 MR. MC CLAIN: Your Honor, to
6 suggest to the jury -- I didn't object
7 that he's talking about dioxins or that
8 he's talking about transformer fires. You
9 are right. It is in the report. So be
10 it. He may believe that NIOSH only
11 applies, but they can't represent it as
12 the NIOSH transformer standard. They
13 can't stand up and say that to the jury.
14 There is nowhere in NIOSH's own documents
15 that The Court has before them that say
16 that it is a transformer standard and to
17 suggest that -- it is one thing to say
18 that it is my opinion that this only
19 applies to transformers; it is another
20 thing to call it the NIOSH transformer
21 standard. It is not.

22 MR. GOUTMAN: Your Honor, this
23 witness can call it whatever he wants to.
24 He is one of the leading PCB experts in

1 the world. He has published on NIOSH
2 standards, he has published on development
3 of the NIOSH standard, he has published
4 papers on how NIOSH developed its
5 standard, and, in fact, Your Honor, they
6 moved into evidence and relied upon the
7 1986 Current Intelligence Bulletin titled
8 transformer fires in PCBs, and they are
9 saying that was the reestablishment of the
10 NIOSH standard, and that makes clear what
11 they are talking about is transformer
12 fires. That's when NIOSH gets called in.

13 But, in any event, Plaintiffs
14 apparently disagree with Mr. Woodyard.
15 And that's fine. But that is not an
16 evidentiary objection.

17 Your Honor, I ask that an
18 admonishing instruction be given in front
19 of the jury because that objection,
20 frankly, I have never heard in court. I
21 object. That's false. I have never heard
22 that. And that's inappropriate. If
23 counsel were disturbed by it he could have
24 said, I object, Your Honor. I would like

1 to go to side bar. That is very damaging,
2 very prejudicial, and, frankly, Plaintiff
3 is not entitled to let the jury know, as
4 my evidence comes in, whether he thinks it
5 is true or false. He is entitled to make
6 an objection that this Court can rule
7 upon. And that was frankly an outrageous
8 thing for counsel to do and I believe an
9 admonishment is appropriate.

10 MR. MC CLAIN: Your Honor, I
11 believe that there is no evidence in the
12 record that NIOSH has ever called this a
13 transformer standard and to represent that
14 NIOSH calls it a transformer standard is
15 false. The witness ought not to be
16 allowed to say that NIOSH calls it a
17 transformer standard.

18 THE COURT: Isn't this where
19 Cross examination comes in?

20 MR. MC CLAIN: Your Honor has
21 stopped several witnesses of mine and
22 questioned them about things to clarify
23 to be sure that the jury was not misled,
24 and has been very careful about that.

1 THE COURT: Yes, we have.

2 MR. MC CLAIN: And has not
3 waited for Cross to do it, and has been
4 very careful to be sure --

5 THE COURT: Those, I don't
6 believe, were of the same vein.

7 MR. MC CLAIN: Boy, Judge, I
8 thought you have been very meticulous
9 about this.

10 THE COURT: I think so, too.

11 MR. MC CLAIN: And stopped
12 witnesses when you thought they were
13 overstating or misstating something and
14 tried to clarify and correct things and
15 not waited for Cross, and it was in that
16 vein that I made the objection. I don't
17 think we ought to allow these things to be
18 perpetuated and just simply wait for Cross
19 to take care of it, and The Court hasn't
20 done that to date and it was in that sense
21 that I made my objection. It was only in
22 that sense because The Court has been so
23 meticulous about such things, so if they
24 want to characterize it as their witness's

1 opinion it applies to transformers I would
2 not object and I have not objected, but to
3 call it by counsel the NIOSH transformer
4 standard is not correct.

5 THE COURT: Let me ask this:
6 Is there a NIOSH transformer standard?

7 MR. GOUTMAN: Yes.

8 MR. HENDERSON: No.

9 MS. HERSCHEL: Guideline.
10 There is no standard.

11 MR. GOUTMAN: There is a
12 guideline, Your Honor, that was developed
13 in response to a series of transformer
14 fires.

15 THE COURT: All right. Those
16 guidelines deal with transformer fires?

17 MR. GOUTMAN: Yes, that's what
18 they were based upon, transformer fires,
19 and as we were going to develop further
20 until counsel's outburst, on the projects
21 that he has been involved in, NIOSH isn't
22 called in unless there's a transformer
23 fire.

24 MR. HENDERSON: Your Honor,

1 that's incorrect. The whole criteria
2 document, which is some 150 pages long,
3 there may be a few pages in the back that
4 refers to the history of transformer
5 fires, but I'm not even sure that those
6 occurred by 1977, because my recollection
7 is that the first significant one occurred
8 in Albany or Binghamton in about 1980 or
9 1981. And that's what the CIB bulletin in
10 1986 pertained to. It pertained to that
11 plus some others, but the criteria
12 document that forms the basis for the
13 NIOSH standard of one microgram in the air
14 and one microgram on surface came out of
15 the criteria document in 1977 before there
16 was first known of a PCB fire.

17 MR. GOUTMAN: Your Honor, that
18 might be interesting Cross examination.
19 This witness will say that NIOSH's
20 involvement in PCBs, in terms of cleanup,
21 has been restricted to transformer fires.
22 And the fact that counsel, counsel
23 disagrees with this witness and then would
24 stand up and say that's false, that's

1 never happened to me in court, and that's,
2 frankly, outrageous. That is not an
3 evidentiary objection. Your Honor, I ask
4 that counsel be admonished before the
5 jury.

6 MR. MC CLAIN: Your Honor, as
7 Mr. Henderson pointed out, the 1977
8 criteria document that establishes the
9 NIOSH standard is not restricted to
10 transformers. The first transformer fire
11 was not even until 1981. Now, the witness
12 may have an opinion that NIOSH not be
13 called in unless there's a transformer
14 fire. I can Cross examine that. That's
15 his opinion. But for counsel to stand up
16 and represent that the standard is called
17 a transformer standard is not true. It is
18 just not true. And it goes beyond
19 argument.

20 THE COURT: We have heard that
21 NIOSH has promulgated certain standard --

22 MS. HERSCHEL: Guidelines,
23 Your Honor. There's a difference, sir.

24 THE COURT: Guidelines. Had

1 published certain guidelines. In fact,
2 that makes it even better or more clear
3 because if NIOSH hasn't developed certain
4 standards, then it would be a
5 misrepresentation for him to say a NIOSH
6 standard because they haven't developed or
7 promulgated a standard, as I understand
8 it. They were a series of guidelines.

9 MR. GOUTMAN: Correct.

10 THE COURT: Which may have had
11 the effect of establishing a standard,
12 but, nevertheless, they were guidelines.
13 Now, for him then to say something about
14 NIOSH's standard, if they haven't
15 published them, that would be totally
16 inaccurate.

17 MR. GOUTMAN: Well, I don't
18 believe he -- I thought we were talking
19 about guidelines, Your Honor; I didn't
20 think we were talking about standards. We
21 can correct that mischaracterization.

22 THE COURT: First of all, I
23 want to go back over Mr. Woodyard's
24 testimony. Right before the recess it

1 would have been. Where the question of
2 standard, I believe, came in.

3 MR. GOUTMAN: If it was, I
4 misspoke. It's not a standard.

5 THE COURT: I would like to be
6 sure.

7 MR. HENDERSON: Could I say
8 something before you start searching,
9 John, because I think it needs to be said.
10 The 1977 criteria document was a
11 recommended standard for one microgram in
12 air. From that a surface contamination
13 became what was called a guideline, so
14 there are two different aspects of this
15 and I believe that Mr. Goutman is now
16 correct when he says that he intended to
17 say it was a guideline and not standard.

18 MR. GOUTMAN: Well, Your
19 Honor, I'm glad counsel brought that up
20 because the 1977 criteria document didn't
21 say anything about surface guidelines.
22 That didn't happen until 1986 with the CIB
23 which talked about transformer fires.

24 THE COURT: If I may be bold

1 enough to interject, in Plaintiffs'
2 Exhibit Pen 2754.07 the publication is
3 called Criteria for a Recommended
4 Standard.

5 MR. GOUTMAN: It was never
6 adopted.

7 THE COURT: And it is a NIOSH
8 publication. So I thought I did hear the
9 word "standard", although I kept being
10 corrected that it was guidelines.

11 MS. HERSCHEL: That's what
12 NIOSH does, Your Honor. They recommend to
13 the regulatory agencies. It just was
14 never adopted.

15 THE COURT: Right, but they
16 recommended a standard.

17 MR. GOUTMAN: Right.

18 THE COURT: I'm limiting this
19 to the use of the word in conjunction with
20 the area that we are talking about.

21 MR. MC CLAIN: Judge, can I
22 make a suggestion so we don't have -- it
23 is a suggestion. We frequently come,
24 after we let our tempers cool, come to a

1 suggested approach. I would not object to
2 counsel talking about this as being
3 NIOSH's standard which Mr. Woodyard
4 believes should only be applied in
5 transformers but not representing that
6 NIOSH says that. That would get us over
7 my objection and that solves it.

8 MR. GOUTMAN: Yesterday we had
9 Mr. McClain wanting to rewrite my
10 exhibits; not he wants to rewrite my
11 Direct testimony and, indeed, my witness's
12 testimony. I think my witness believes
13 that it is a transformer standard --
14 excuse me. Guideline. Your Honor, the
15 second package is, by the way, the 1986
16 CIB. Right behind that. And if you can
17 just, what is it called?

18 THE COURT: Current
19 Intelligence Bulletin 45.

20 MR. GOUTMAN: And I think the
21 title of it is electrical equipment
22 failures.

23 THE COURT: "Potential Health
24 Hazards from Electrical Equipment Fires or

1 Failures".

2 MR. GOUTMAN: Exactly.

3 THE COURT: And that's

4 Plaintiffs' Exhibit 3234.01.

5 MR. GOUTMAN: And according to
6 Plaintiffs' own evidence, that was where
7 they got this surface guideline of one
8 microgram.

9 THE COURT: I think the
10 forward is very illustrative of what we
11 are talking about. I'm quoting, "Current
12 Intelligent Bulletins (CIB's) are reports
13 issued by the National Institute for
14 Occupational Safety and Health, (NIOSH),
15 Centers for Disease Control, Atlanta,
16 Georgia, for the purpose of disseminating
17 new scientific information about
18 occupational hazards.

19 "And these CIB's are prepared
20 by the staff of the Division of Standards
21 Development and Technology Transfer,
22 NIOSH."

23 MR. GOUTMAN: Then the third
24 paragraph, where they talk about, "Because

1 a transformer fire, they surely should
2 have anticipated this testimony.

3 MR. MC CLAIN: It's not stated
4 in your report anywhere that he was going
5 to characterize the NIOSH standard as a
6 the NIOSH transformer standard. It is one
7 thing that he believes that the standard
8 only applies when there's a transformer
9 fire. We will deal with that on Cross.
10 But it was the representation of counsel
11 that it is the NIOSH transformer fire
12 standard, which was adopted by our
13 Department of Health in this circumstance
14 as the correct standard. NIOSH wrote a
15 report for this building and didn't say we
16 don't have authority here because there
17 was no transformer fire, so NIOSH
18 apparently didn't know that it was only a
19 transformer standard because they wrote a
20 report here to us about it and said to
21 apply their standard, so --

22 THE COURT: It sounds like it
23 would be very interesting Cross
24 examination.

1 of the recent attention given to human
2 exposure of Polychlorinated Biphenyls,
3 (PCBs), Polychlorinated Dibenzofurans,
4 (PCDFs), and Polychlorinated
5 Dibenzo-P-Dioxins (PCDDs), and related
6 compounds resulting from electrical
7 equipment fires or failures", etc..
8 That's what this is about, Your Honor.
9 So --

10 MR. HENDERSON: Your Honor --

11 MR. GOUTMAN: Frankly -- I'm
12 not done.

13 Frankly, Your Honor, what
14 plaintiffs want right now is a mini
15 hearing for this Court to decide whether
16 my witness is right or wrong, and that's
17 not appropriate. If they thought my
18 witness's statements in his report were
19 unscientific they could have filed last
20 March when they were told to do so a
21 Motion in Limine and challenged him on Fry
22 grounds. If they, indeed, I'm sure they
23 had read his report where he said NIOSH
24 shouldn't have been consulted if it is not

1 MR. MC CLAIN: Yes, it would,
2 and I plan to do that on the substance; it
3 is just the characterization, Judge, of
4 it. It is one thing to say, Do you
5 believe, Mr. Woodyard, that this should
6 only apply to transformer fires. Yes,
7 that's my belief and then state why? It
8 was developed out of transformer fires,
9 but to say that NIOSH characterized it as
10 a transformer standard belies the facts as
11 we know them in this case, including their
12 own involvement where they wrote a letter
13 and a report about our fire knowing that
14 there was no transformer involved.

15 MR. GOUTMAN: Suggesting they
16 look at the EPA standard.

17 In any event, Your Honor,
18 counsel has made his position clear. We
19 believe the objection is frivolous. It
20 has had the effect of disrupting this
21 testimony ten or 15 minutes into it with a
22 shout of, I object. That's false. That
23 was an outrageous statement of counsel and
24 we ask that an admonishing instruction be

1 given. Perhaps that might deter counsel
2 in the future.

3 THE COURT: Well, The Court
4 has to correct the atmosphere created by
5 the outburst. As much as we have
6 refrained from bringing it to the
7 attention of the jury, nevertheless where
8 the jury is exposed to an outburst that is
9 potentially damaging to the trial, The
10 Court has no alternative but to give its
11 instruction in the presence of the jury to
12 advise them that they cannot accept
13 statements made spontaneously of that
14 nature, because they are the finders of
15 fact.

16 MR. MC CLAIN: That's fine,
17 Your Honor.

18 MR. GOUTMAN: Your Honor, I
19 request that they be told that the
20 objection was inappropriate and that they
21 disregard Plaintiffs' counsel's statement
22 concerning his views on Mr. Woodyard's
23 testimony.

24 MR. MC CLAIN: Your Honor,

1 that goes farther than you were
2 suggesting. I will state that -- that
3 won't help. I think the Court's
4 suggestion remedies whatever. I doubt
5 that it had much impact, frankly, at this
6 point, but, nevertheless, I think The
7 Court can handle this.

8 THE COURT: See, the problem
9 is that we only learn by hindsight.

10 MR. MC CLAIN: Absolutely.

11 THE COURT: And consequently I
12 don't know that it had any damage or I
13 don't know that it had great damage. The
14 important thing is that we make the
15 corrections as we proceed to avoid it
16 simmering unknown and come out maybe in a
17 deliberation room, so this way we correct
18 the record when we can as speedily as we
19 can. That's one of the things that we
20 have tried to do continuously here.

21 With that, I don't know if
22 Mr. Woodyard is right or wrong, but the
23 point is he has exhibited credentials to
24 cause The Court to find him to be an

1 expert and truly believes that he is an
2 expert, and it may be that your theories
3 are contrary to his position and may try
4 to survive Cross examination, and that's
5 the way this is played out without making
6 factual remarks that could be
7 misconstrued.

8 MR. MC CLAIN: Your Honor, I
9 should have approached you about it, but I
10 was reminded of The Court's scrupulous
11 attempt to be sure that people don't
12 overstate even on Direct testimony the
13 positions that The Court has already
14 received substantial evidence on.

15 THE COURT: As I say, we have
16 so many documents here and we have used
17 the English language somewhat loosely, but
18 there are words like guidelines and
19 standards used and consequently, when a
20 person is giving an opinion, he may avail
21 himself to the same rights to be more free
22 with the use of the English language
23 rather than as precise as you want, which
24 opens the door, as I say, for the

1 examination of him on Cross.

2 MR. MC CLAIN: Your Honor,
3 remember, you were going to look at this
4 issue. He did say it was a standard.

5 THE COURT: I didn't forget
6 that we were going to go back and look at
7 that, but I didn't want to leave the
8 additional comments that were being made
9 to go unheard by The Court.

10 MS. HERSCHEL: Your Honor,
11 while we are on the subject of the
12 instruction, I believe that whether or not
13 you characterize what Mr. McClain says as
14 spontaneous, I think that you need, if you
15 will, to communicate to the jury is that
16 it shouldn't have been said and that they
17 cannot consider it.

18 MR. MC CLAIN: Your Honor,
19 that's designed to be punitive to me and
20 The Court understands the nature of my
21 comment, and the --

22 MS. HERSCHEL: Mr. McClain --

23 MR. MC CLAIN: Excuse me.
24 I'm not finished.

1 No matter what you say that is
2 what it is designed to do, and the reality
3 is, the reality is, I have explained it to
4 The Court and I think The Court
5 understands my motivation in responding
6 the way that I did and the Court's
7 suggested approach, I think, takes care of
8 it without being punitive to me, which is
9 what I think The Court was intending to
10 do, but that's what you want The Court to
11 do, so that the jury will think I'm a bad
12 guy, and only The Court can make me look
13 that way, and that's what you want to have
14 happen, and I object to it.

15 MR. GOUTMAN: But your
16 explanation doesn't go to why you said, I
17 object. That's false. You just should
18 have said, Your Honor, I need to go to
19 side bar. Instead, you intentionally
20 communicated to the jury your own view of
21 this witness's testimony, and that's
22 absolutely inappropriate. Absolutely
23 inappropriate. That violates every rule.

24 MR. MC CLAIN: My response was

1 spontaneous to what I heard which appears
2 to me to be an intentional attempt to
3 mislead the jury. That's what it appeared
4 to me at the time. And I still believe
5 that it is misleading. And so it was not
6 an attempt to do anything except my
7 reaction to what I was hearing, which was
8 clearly an overstatement at the very least
9 of what the evidence would show. And so
10 to suggest to the jury that I ought to be
11 punished is really inappropriate.

12 THE COURT: I don't want to
13 use the word "punished", but I think you
14 have to be called to task in the presence
15 of the jury so that the jury cannot get
16 the impression that the Court is putting
17 its imprimatur on the falsity of the
18 subject matter.

19 MR. MC CLAIN: Likewise, The
20 Court should not weigh-in that the jury
21 believes that this testimony has to be
22 believed either, and I thought the Court's
23 suggestion --

24 THE COURT: I never suggested

1 that.

2 MR. MC CLAIN: And that's why
3 I thought that the Court's suggestion made
4 sense, that you, ladies and gentlemen, are
5 the fact finders and only you can
6 determine what is false or not, and the
7 opinion of counsel or even the witness are
8 not determinative; you have to make those
9 decisions. I thought a statement to that
10 effect, which is what you said you were
11 going to do, would cure the problem.

12 MR. GOUTMAN: Your Honor, at
13 this point, then, The Court is saying
14 that, Yes, Plaintiffs' counsel might be
15 right here. It might be false. That's
16 not right either. Interjecting at this
17 point either the Court's or counsel's
18 belief as to whether the testimony is true
19 or false is inappropriate.

20 MR. MC CLAIN: I do believe it
21 is false, Your Honor.

22 MR. GOUTMAN: And I suppose
23 you think you had every right to tell the
24 jury that.

1 MR. MC CLAIN: I believe that
2 my reaction was justified under the
3 circumstances. The next time I will
4 approach side bar, but I was --

5 THE COURT: I don't think the
6 action was justified. You cannot justify
7 the action, to be frank with you,
8 Mr. McClain.

9 MR. MC CLAIN: Okay.

10 THE COURT: We have had
11 innumerable numbers of side bars where we
12 have encouraged everybody to contain
13 themselves and to avoid the use of
14 extemporaneous epitaphs which would be
15 clouding of the issue.

16 I want to go back now and have
17 read that those few questions.

18 (The following questions and
19 answers were read back by The Court
20 Reporter:

21 "Q. And what is the PCB
22 surrogate level that NIOSH uses?

23 "A. It really varies all over
24 the place, depending on the project, but I

1 think the level we have been citing for
2 this case is one microgram.

3 "Q. Now, Mr. Woodyard, were
4 there any transformers involved in the T&S
5 Building fire?

6 "A. No, sir.

7 "Q. Was there any
8 tricholorbenzene involved in the T&S
9 Building fire?

10 "A. No, there was not.

11 "Q. In the sense that you
12 used and PCB specialists use PCB fire to
13 mean transformer fire, was this a PCB
14 fire?

15 "A. No, it was not.

16 "Q. Would the NIOSH
17 transformer fire guideline be applicable
18 to the T&S Building? "

19 MS. HERSCHEL: The term we
20 used was guideline and that's why I
21 focused on it, Your Honor.

22 THE COURT: That's what I
23 heard read back, but I didn't hear the use
24 of the words "electrical standard".

1 MR. GOUTMAN: He's talking
2 about transformers, which is electrical.

3 THE COURT: Or transformer
4 standard.

5 MR. GOUTMAN: I said
6 transformer -- I said what I said. I
7 can't recall the quotation exactly, but
8 The Court just heard it.

9 THE COURT: But I heard the
10 guidelines and, in other words, I have
11 heard a number of expressions discoursing
12 on this area.

13 MR. HENDERSON: My notes
14 reflect that the witness was referring to
15 a PCB standard, but I didn't hear that in
16 John's read backs of the various questions
17 and answers.

18 THE COURT: I didn't hear it
19 here. Did you?

20 MR. GOUTMAN: He referred to
21 the PCB standard by the EPA, which is a
22 standard.

23 MR. HENDERSON: No, in
24 connection with NIOSH. NIOSH's standard

1 guideline focused on dioxin levels, sets
2 PCB standard and the PCB surrogate level.
3 I don't know. I can't --

4 MR. GOUTMAN: Any --

5 THE COURT: In the beginning I
6 heard that the levels were well below the
7 EPA standard.

8 MR. GOUTMAN: Right. Your
9 Honor, if there's any confusion, I don't
10 know that there is, but if there is any I
11 will certainly ask this witness whether
12 NIOSH is a standard or guideline. I think
13 he knows the answer to that question.

14 THE COURT: Sometimes I think
15 my watch runs away with itself. Before we
16 break for lunch, I want to instruct the
17 jury and, frankly, I want to take some
18 more questions to diffuse the atmosphere,
19 and then we will break for lunch in about
20 a half-hour.

21 MR. GOUTMAN: We do have some
22 time. It is only 11 o'clock.

23 THE COURT: I thought that
24 said 12 o'clock.

1 All right. Let's go back.

2 MR. EDGE: Jurors, you may be
3 seated. This Court is reconvened.

4 THE COURT: Members of the
5 jury, sometimes it pays to go back over
6 some of the basic and fundamental rules of
7 what a trial is and what we are doing
8 here, and what we are doing here is trying
9 a case involving two different points of
10 law. The Plaintiff thinks that they were
11 damaged by some things that the Defendant
12 did; the Defendant said, Hey, we didn't do
13 anything. And that's not unusual and this
14 is why we have jurors, who will determine
15 the facts because what happens in these
16 cases is that we must get to the facts.
17 Only the facts can come from the evidence
18 that is admitted and the testimony that we
19 receive and the credibility that you give
20 to each of the witnesses.

21 Now, you are the sole judges
22 of the facts, and during the course of
23 trial an attorney may have occasion to
24 object, and we talked about that, and

1 offer an objection and The Court will
 2 rule. The Court has the last say, so to
 3 speak, in that respect. And if we make an
 4 error then, of course, the appellate
 5 courts will correct us, but we have the
 6 last word in that type of situation, and
 7 it is incumbent on an attorney that he
 8 should object if he feels that the
 9 evidence is not appropriately admissible
 10 at this point, but when the attorney goes
 11 beyond that and states that's false, that
 12 is a factual situation. Attorneys have no
 13 right to tell you what the facts are. You
 14 will determine what the facts are. And
 15 consequently Mr. McClain was in error when
 16 he went beyond objecting and stated, as he
 17 did, that's false. I told that to
 18 Mr. McClain and I'm telling that to you,
 19 so that will play no part in your
 20 deliberation and your consideration or in
 21 your handling of this matter as you have
 22 been so attentive right along.
 23 Now that we have stated that,
 24 as I say, I'm sure Mr. McClain realizes

1 that that is not the appropriate way to
 2 put forth reasons for an objection, and we
 3 can go forward now.
 4 MR. MC CLAIN: Thank you, Your
 5 Honor. I appreciate your admonition.
 6 THE COURT: I would just like
 7 to add that over the thousands of cases
 8 that I have tried never have I had a group
 9 of attorneys, both for the plaintiffs and
 10 the Defendants', who are so devoted to
 11 their respective sides that they are
 12 constantly keeping us up to date in our
 13 work, and they are learned, so I have the
 14 highest respect for them, but just as if
 15 one of our children were to do something
 16 wrong, we would tell them and we would be
 17 remiss if we didn't.
 18 MR. MC CLAIN: Thank you, Your
 19 Honor.
 20 MR. GOUTMAN: May I proceed,
 21 Your Honor?
 22 THE COURT: Yes.
 23 MR. GOUTMAN: Can you read
 24 back our last question.

1 (The following question was
 2 read back by The Court Reporter: "Would
 3 the NIOSH transformer fire guideline be
 4 applicable to the T&S Building?")
 5 BY MR. GOUTMAN:
 6 Q. Would the NIOSH transformer PCB
 7 fire guideline be applicable to the T&S
 8 Building?
 9 A. No, it would not.
 10 Q. And why not, sir?
 11 A. As I said, in my experience the
 12 one microgram standard is always driven by a
 13 PCB transformer fire having occurred and the
 14 corresponding dioxin levels that we talked
 15 about.
 16 Q. And was there a transformer
 17 involved in the fire at the T&S Building?
 18 A. No, there was not.
 19 Q. Sir, your 20 plus years working
 20 on PCB projects, absent a transformer fire,
 21 what standards are used?
 22 A. The EPA safe standard that I
 23 have alluded to before.
 24 Q. You mentioned risk assessments.

1 What role does that play in setting cleanup
 2 standards or cleanup levels, I should say?
 3 A. Understand first that the EPA
 4 safe standard is based upon kind of a generic
 5 risk assessment, if you will. It is designed
 6 to be safe enough to be applied to any
 7 situation. In reality, of course, whenever
 8 you have a release and you are doing cleanup
 9 the situation might be a little different.
 10 Maybe the occupancy is different. Maybe the
 11 expected life of the facility is different.
 12 There are things that will change. The
 13 exposure which change the risk, so in those
 14 situations it is common to do a risk
 15 assessment.
 16 Q. Was a risk assessment done by
 17 anyone on behalf of the state here?
 18 A. No.
 19 Q. In your 20 plus years of
 20 experience, sir, if there is not a
 21 transformer fire which is followed; the NIOSH
 22 guideline or the PCB standard?
 23 MR. MC CLAIN: Objection, Your
 24 Honor. It is leading.

1 MR. GOUTMAN: Which is
2 followed?
3 THE COURT: Which of two is
4 not leading. Overruled.
5 THE WITNESS: The EPA safe
6 standard or standard developed as part of
7 a risk assessment.
8 BY MR. GOUTMAN:
9 Q. Now, sir, were there dioxins
10 found in the T&S Building?
11 A. Yes, there were.
12 Q. Where did they come from?
13 A. Probably from burning of other
14 materials that were burned up in the fire.
15 Plastics, things like that.
16 Q. Did you observe the debris on
17 the sixth floor of the T&S Building?
18 A. Yes, I did.
19 Q. Did you observe, in those bags
20 of debris, anything that would produce dioxin
21 if it were burned?
22 A. Certainly. Again, a lot of the
23 building contents were made of plastic.
24 Desks and office equipment and things of that

1 nature. That was contained in that debris.
2 Q. Can PCBs, when burned, produce
3 dioxin?
4 A. No.
5 THE COURT: What was the
6 answer?
7 THE WITNESS: No, the science
8 is clear on that.
9 BY MR. GOUTMAN:
10 Q. Now, sir, getting back to where
11 we started, based upon the EPA safe standard
12 and the risk assessments, where did the
13 thousands and thousands of tests that you
14 reviewed fall?
15 A. The average for the floors in
16 that building were well below the EPA safe
17 standard.
18 Q. And where did they fall with
19 respect to the risk assessment level?
20 A. Likewise. They were well below
21 that 19.8 standard held by Dr. James.
22 Q. By the way, sir, in your 20 plus
23 years of PCB work are you involved with
24 setting up cleanup levels?

1 A. Yes, I am.
2 Q. Now, sir, you mentioned, while
3 we were asking about your credentials, about
4 what you do on a PCB job site, you mentioned
5 something about finding the source and origin
6 of PCBs. Could you tell us, and I think you
7 referred to it as detective work, could you
8 tell us what you mean by that?
9 A. Well, one of the first things
10 you want to do, of course, when you are
11 involved in cleaning up a release is define
12 where it came from because you want to make
13 sure that you remove that high concentration
14 source material and that you don't create
15 cross contamination and things like that, so
16 you are mainly looking at sources. You are
17 immediately trying to look at the sources of
18 your lab work and somehow tie that back to
19 what the source might have been.
20 Q. And have you done that detective
21 work in this case?
22 A. Yes, I have.
23 Q. Were PCBs found in the T&S
24 Building after the fire?

1 A. Yes, they were.
2 Q. Mr. Woodyard, based upon your
3 PCB specialist's experience all over the
4 world could you tell the jury where they came
5 from?
6 MR. MC CLAIN: Objection, Your
7 Honor. It is leading.
8 MR. GOUTMAN: I asked him
9 where they came from.
10 MR. MC CLAIN: No, the wind up
11 is what I object to, Your Honor.
12 THE COURT: Overruled.
13 BY MR. GOUTMAN:
14 Q. Sir, based upon your experience
15 of 20 odd years all over the world in PCB
16 work, could you tell the jury where the PCBs
17 came from in the T&S Building?
18 A. The PCBs came from
19 PCB-containing building products that were
20 burned up during the fire.
21 Q. And could you tell the jury how
22 that happened?
23 A. The fire occurred on the sixth
24 floor, as you have seen. The products were

1 burned on the sixth floor. The smoke from
2 the fire, including the PCB building
3 products, was distributed throughout the
4 building.

5 Q. What products contained PCBs
6 that were burned on the sixth floor?

7 A. The light fixtures, which
8 contained small PCB capacitors in the light
9 ballasts, and the ductboard.

10 Q. And the light ballast --

11 A. Right, the fluorescent light
12 fixtures.

13 Q. And what else?

14 A. And the ductwork that was burned
15 in the fire area.

16 Q. And how is it that the PCBs,
17 once subjected to this fire, how is it that
18 they were distributed throughout the
19 building?

20 A. As I mentioned, they were part
21 of the smoke that was generated and
22 distributed throughout the whole building.
23 They were distributed by water, by tracking,
24 through conduits, other holes in the floor,

1 and other ways that the smoke could have
2 moved around the building.

3 Q. Do you have an opinion as to
4 whether or not PCBs were a constituent or
5 part of that smoke that circulated throughout
6 the building?

7 A. Yes, they were. Where there's
8 smoke there's PCB, as far as I'm concerned.

9 Q. And did you also review, as part
10 of your review of test data, tests taken of
11 asbestos taken out of the building before the
12 fire but analyzed for PCB content after the
13 fire?

14 A. Yes, I did.

15 Q. Sir, did you submit those
16 samples to a laboratory?

17 A. Yes, I did.

18 Q. And what were the results?

19 A. Of the samples taken before the
20 fire?

21 Q. Yes.

22 A. The results showed extremely low
23 levels of PCB present in the fireproofing.

24 Q. Sir, have you assisted us in

1 preparing an exhibit illustrating that data?

2 A. Yes, I have.

3 MR. GOUTMAN: Your Honor, for
4 the record, we are showing the witness and
5 the jury Exhibit 3156.

6 With the Court's permission,
7 could the witness perhaps approach the
8 exhibit?

9 THE COURT: Yes.

10 MR. MC CLAIN: Your Honor,
11 yesterday we had a substantial discussion
12 about each of these on the record. Is it
13 necessary to restate all of that at this
14 time or are the positions of the parties
15 well enough known to The Court that we
16 don't have to restate objections to
17 positions on these exhibits? In other
18 words, I don't want to have to go back
19 through the hearing that we had yesterday
20 on each of these exhibits.

21 THE COURT: The objections you
22 made yesterday are preserved.

23 MR. NEAL: All of the parties'
24 objections, Your Honor?

1 THE COURT: Yes.

2 BY MR. GOUTMAN;

3 Q. Mr. Woodyard, you have got a
4 fancy pointer, I see.

5 A. Yes, I never leave home without
6 it.

7 Q. As long as it's not one of those
8 laser pointers.

9 Could you explain to the jury
10 what this exhibit shows.

11 A. Yes, sir, this exhibit is
12 entitled, "PCBs in Asbestos Fireproofing".
13 It is designed to show you two things.

14 MR. MC CLAIN: Your Honor, do
15 you have these exhibits on the bench? Do
16 you have these?

17 THE COURT: Yes.

18 THE WITNESS: Again, this
19 exhibit is entitled, "PCBs in Asbestos
20 Fireproofing", and it is intended to show
21 you two things in particular.

22 BY MR. GOUTMAN:

23 Q. Well, first of all, what is this
24 axis --

1 A. Axis. The line going up and
2 down shows you the relative concentration of
3 PCBs.

4 Q. So from zero to 20?

5 A. Yes, the higher up on the chart
6 the higher the level of PCBs.

7 Q. And it shows what; PCBs in the
8 asbestos fireproofing?

9 A. Yes, sir.

10 Q. Now, can you explain what this
11 all means?

12 A. Okay. There's two bars here.
13 This one on the left, going back to the
14 discussion we were having a moment ago, this
15 represents the samples taken from the T&S
16 Building before the fire. These were
17 collected in 1992.

18 Q. So about two years before the
19 fire?

20 A. Exactly.

21 Q. When were they analyzed by your
22 lab?

23 A. They were analyzed, I believe,
24 in 1998 or early 1999.

1 Q. And what did that analysis show?

2 A. Well, it showed that on average
3 the levels found in that fireproofing was
4 about three parts per million. Again, this
5 is PCB that was in the fireproofing samples
6 that were taken before the fire ever
7 occurred.

8 So this illustrates that there was
9 what I would term as background level or a
10 low level of PCB already present in that
11 building before the fire ever occurred.

12 Q. You just used the word
13 "background". What does background mean?

14 A. Well, background, background in
15 this context is the level of PCBs that are
16 present in the Harrisburg area. The term
17 background, you might be familiar with
18 background noise. If you were talking on the
19 phone, you hear chatter in the background,
20 you can tell somebody is in a train station
21 or airport or something like that. It is the
22 same concept, basically.

23 This second item over here, the
24 second bar, is called T&S Building after the

1 fire. This refers to the analysis that Mr.
2 Kominsky did of fireproofing samples that
3 were collected several years after the fire
4 had occurred. His results showed that on
5 average for the building the PCB
6 concentration was 17.7 parts per million in
7 the fireproofing, more than five times the
8 level that pre-existed or before the fire
9 occurred.

10 Q. What, if any, significant
11 conclusions did you draw from that data?

12 A. Well, it is clear from these
13 results that almost all of the PCB in that
14 building was deposited by the fire.

15 Q. And where did the rest of it
16 come from?

17 A. It came from pre-existing
18 background levels in the Harrisburg area.

19 Q. Did you review data from
20 asbestos taken in other buildings in the
21 Harrisburg area?

22 A. Yes, I did.

23 Q. And did you prepare or assist us
24 in preparing an exhibit which shows that

1 data?

2 A. Yes, I did.

3 MR. MC CLAIN: Your Honor,
4 just so we have some foundation, so that I
5 know where --

6 THE COURT: What number is
7 this?

8 MR. GOUTMAN: I'm handing him
9 back the same one.

10 THE COURT: It is the same
11 one.

12 MR. GOUTMAN: Yes, because I
13 forgot to ask a question. Ms. Herschel
14 told me I forgot to ask a question and I
15 do whatever Ms. Herschel tells me.
16 BY MR. GOUTMAN:

17 Q. Just so that we are clear, you
18 were talking about air samples and wipe
19 samples before. What kind of samples are we
20 talking about here?

21 A. These are what we would call
22 bulk samples of fireproofing specifically.
23 Somebody grabbed a bunch of fireproofing and
24 took it and put it in a sample container and

1 analyzed it.
 2 Q. Now, sir, the standard that you
 3 were talking about earlier, the EPA standard,
 4 is that the same as the bulk standard or is
 5 it something else?
 6 A. It is something else entirely.
 7 That standard applies to hard surfaces that
 8 you might come in contact with. Here we are
 9 talking about the results in fireproofing.
 10 The standard is a completely different thing.
 11 It is unrelated.
 12 Q. This would apply to wipe
 13 samples?
 14 A. Yes.
 15 Q. And that's --
 16 A. Bulk samples.
 17 Q. At this level is there any
 18 standard that says this is unsafe?
 19 A. No, there's not.
 20 Q. At this level, 17.7, is there
 21 any standard that says this is unsafe in
 22 terms of bulk concentrations?
 23 A. No, there's not.
 24 Q. Your Honor, before we get to the

1 next exhibit, where, picking up, and please
 2 stay there because we are about to put up the
 3 next exhibit, where was the asbestos taken
 4 from in those other buildings? What
 5 buildings?
 6 A. The other buildings?
 7 Q. In Harrisburg.
 8 A. The samples were taken in two
 9 other buildings in Harrisburg; one is the
 10 Milton Hershey School and one is the South
 11 Office Building, owned by the state of
 12 Pennsylvania.
 13 Q. And at whose request were the
 14 samples taken?
 15 A. They were taken by the state or
 16 for the state by Mr. Cocciardi.
 17 Q. And, sir, you have reviewed the
 18 results of those tests?
 19 A. Absolutely. Yes.
 20 Q. I'm showing the witness and the
 21 jury DM 3157.
 22 MR. MC CLAIN: Your Honor, I
 23 just need further background as is he
 24 relying on the results of these tests and

1 the proper foundation for the witness,
 2 since he didn't perform the tests.
 3 BY MR. GOUTMAN:
 4 Q. Are you relying upon the results
 5 of these tests?
 6 A. Yes, I am.
 7 Q. What are we looking at here?
 8 A. This is also entitled, "PCBs in
 9 Asbestos Fireproofing", and part of this is
 10 the same as the diagram you just saw. It
 11 shows on the far left that 3.0 parts per
 12 million background level that we talked
 13 about. Way over here on the right side is
 14 that 17.7 average that Mr. Kominsky did after
 15 he did his sampling. What we also see on
 16 here is two other bars. I mentioned before
 17 that samples were taken for the state in the
 18 Milton Hershey School and the South Office
 19 Building, which is, again, a state building.
 20 Q. And samples of what?
 21 A. Samples of fireproofing, just
 22 like in the other situations.
 23 Q. Asbestos fireproofing?
 24 A. Exactly. So these samples were

1 taken by Mr. Cocciardi, analyzed, and the
 2 results from those buildings showed, in the
 3 case of the Milton Hershey School, an average
 4 of four-and-a-half parts per million; in the
 5 case of the South Office Building an average
 6 of seven parts per million in the
 7 fireproofing.
 8 Q. What did that tell you?
 9 A. Well, these buildings
 10 represented more of a true background for the
 11 Harrisburg area. They were unaffected by the
 12 fire. And they showed me a number of
 13 different things. Clearly the fireproofing
 14 in the T&S Building before the fire is
 15 consistent with what we found in these other
 16 locations. In fact, it is lower than what we
 17 found in these other locations as background
 18 source. There's no real surprise there.
 19 Q. You are familiar with the theory
 20 advanced by the government in this case that
 21 PCBs came out of the ductboard during the
 22 normal operation of the building?
 23 MR. MC CLAIN: Your Honor, it
 24 is leading. It is a leading question.

1 THE COURT: You didn't hear
2 the question?

3 MR. MC CLAIN: No, it was
4 leading.

5 MR. GOUTMAN: Your Honor, it
6 was a preparatory statement about the
7 theory and I was going to ask him to
8 comment on it.

9 THE COURT: Overruled.

10 BY MR. GOUTMAN:

11 Q. I think my question was, sir,
12 are you familiar with the government's theory
13 on PCBs coming out of the ductboard during
14 the normal operation of the HVAC system?

15 A. Yes, I am.

16 Q. Does this, can you tell us
17 whether or not this exhibit lends any insight
18 for you as a PCB specialist concerning that
19 theory?

20 A. Yes, it does. In addition, as I
21 said before, to showing that the T&S Building
22 pre-fire levels were consistent with other
23 background in the Harrisburg area, if the
24 state's theory were true and in this

1 particular building the PCBs were flying out
2 of the ductwork and around the building and
3 depositing them in the fireproofing, the
4 levels in this building would be higher than
5 the background we are finding in the
6 Harrisburg area. In other words, that this
7 three would have been much higher because it
8 it is specific to the T&S Building.

9 Q. Sir, what conclusion did you
10 draw, then, from the fact that before the
11 fire there was three parts per million and
12 after the fire there was 17.7 parts per
13 million found in the asbestos?

14 A. Again, almost all of the PCB
15 found in the building after the fire was due
16 to the fire. It was deposited by PCBs and
17 PCB products that were burned during the
18 fire.

19 Q. And those PCB products were
20 the --

21 A. Were, again, the ductboard
22 containing 1262 and the light ballasts, light
23 fixtures, that contained the Aroclor 1242.

24 Q. Sir, did you review -- you

1 mentioned Mr. Kominsky's data. Did you
2 review his data?

3 A. Yes, I did.

4 Q. And what significant findings
5 did you make from that data?

6 A. There were a number of things of
7 interest to me from Mr. Kominsky's data.
8 First, and I don't know if you have seen
9 this, but the vast majority of samples where
10 he found Aroclor 1262 --

11 Q. Samples in what are we talking
12 about?

13 A. We are talking about, again,
14 fireproofing.

15 Q. The asbestos fireproofing.

16 A. Just to refresh, Mr. Kominsky
17 took, I believe it was, in 30 different
18 locations samples where he sampled the
19 outside exposed parts of the fireproofing and
20 then the inside portion that is up against
21 the building, itself. And so he had 60
22 results; 30 locations. Each location had two
23 samples. One of the results of his findings
24 that was interesting, most of the Aroclor

1 1262 results from the PCBs that were burned
2 up in the ductboard were found on the outer
3 surface, the exposed surface of the
4 fireproofing, which is completely consistent
5 with what we are talking about here, the idea
6 that PCBs were deposited during the fire.

7 THE COURT: May I ask if
8 counsel can hear Mr. Woodyard?

9 MR. MC CLAIN: I can't hear
10 him at all, Your Honor. I didn't want to
11 interrupt, but I'm not --

12 THE COURT: Use the
13 microphone.

14 MR. GOUTMAN: We don't want
15 Mr. McClain to miss anything.

16 MR. MC CLAIN: You don't want
17 me taking a nap or anything.

18 THE WITNESS: So, again, the
19 first points of note for Mr. Kominsky's
20 result is that for most of the samples
21 where he found the PCB that was originally
22 contained in the ductboard before it was
23 burned up, he found that PCB on the outer
24 surface of the fireproofing, which is

1 completely consistent with it being
 2 deposited as a result of smoke being
 3 distributed through the building.
 4 BY MR. GOUTMAN:
 5 Q. How about the levels that he
 6 found?
 7 A. The levels of the 60 samples
 8 that he collected, only one of those samples
 9 came up above 50 parts per million.
 10 Q. So what?
 11 A. Well, 50 parts per million in a
 12 different context, it is a very important
 13 meaning with EPA because it is the cut-off
 14 for disposal; deciding where you can dispose
 15 of the waste if you happen to take it away.
 16 Q. And of Mr. Kominsky's 60 samples
 17 how many were over this EPA 50 part per
 18 million cut-off?
 19 A. Just one, on the 11th floor.
 20 Q. What, if any, significance does
 21 that have to you as a PCB specialist in terms
 22 of the disposal of the asbestos in the T&S
 23 Building?
 24 A. Well, what it tells me is that

1 there may have been a small area that the
 2 levels were above 50 parts per million, but
 3 the vast majority of the building was below
 4 50 parts per million, and that material, at
 5 50 parts per million, a landfill is permitted
 6 to accept those PCB.
 7 Q. Where did the state dispose of
 8 the asbestos?
 9 A. The state disposed of all of the
 10 asbestos from the abatement project in a TSCA
 11 landfill.
 12 Q. What is more expensive; a TSCA
 13 landfill or an asbestos landfill?
 14 A. A TSCA landfill is much more
 15 expensive.
 16 Q. Under EPA regulations did the
 17 state have to do that?
 18 A. No.
 19 Q. By the way, you are talking
 20 about the levels that Mr. Kominsky found?
 21 What, again, was his average found in the
 22 asbestos?
 23 A. 17.7 after the fire.
 24 Q. One more point, sir. What kind

1 of PCBs are we finding in the Hershey School
 2 and the South Office Building?
 3 A. If I remember correctly, I
 4 believe they were Aroclor 1260.
 5 Q. One more question about Mr.
 6 Kominsky's data. Did he find any other
 7 Aroclors in the asbestos?
 8 A. Yes, he did.
 9 Q. What other kind of Aroclor?
 10 A. He found specifically Aroclor
 11 1254.
 12 Q. And what, if any, significance
 13 was that for you as a PCB specialist?
 14 A. Well, as I'm sure you have
 15 heard, there are different kinds of Aroclors
 16 that are used for different things. Aroclor
 17 1254, while being found in the fireproofing,
 18 had no defined source in the building. In
 19 other words, there was no place in the
 20 building that this could have come from which
 21 to me is completely consistent with the whole
 22 idea of background. In other words, there is
 23 some low PCB level there, but we don't know
 24 where it came from.

1 MR. MC CLAIN: Your Honor,
 2 could we approach at side bar on this.
 3 THE COURT: Yes.
 4 (Side bar discussion).
 5 MR. MC CLAIN: Your Honor, I
 6 object and ask that that question and
 7 answer be stricken. That's not in his
 8 report. What he says in his report is
 9 that that demonstrates that PCBs came in
 10 with the fireproofing. That was the
 11 opinion that he expressed in his report.
 12 And so now to say that that's background
 13 is not consistent with the report and so I
 14 think that we need a correction.
 15 MR. GOUTMAN: Your Honor, he
 16 says it was part of the original
 17 fireproofing installation.
 18 THE COURT: What page?
 19 MR. GOUTMAN: I'm sorry, Your
 20 Honor. Page 30. That is consistent with
 21 background. He can explore that on Cross
 22 examination.
 23 MR. MC CLAIN: No, no, no.
 24 MR. GOUTMAN: That's an aspect

1 of background. Background is wherever it
2 came from. It was there. If you want to
3 explore what that means on Cross, that is
4 fine.

5 MR. MC CLAIN: No, I don't
6 want to wait to do that. Mr. Goutman is
7 being very careful not to tread on
8 Mr. Neal's toes and say it was in the
9 fireproofing when it was installed, but
10 that's what the witness said in his
11 opinion. If that's the opinion that he
12 wants to express he can do that, and then
13 Mr. Neal's ox is being gored; not mine,
14 but to suggest that it is just in the air
15 when what he said there was that it was
16 there at the installation is not fair, and
17 it is not his opinion that he expressed in
18 his report. That it was installed in the
19 building is one thing; to suggest that it
20 is just floating in the air and therefore
21 no one is responsible for it is another.
22 MR. NEAL: Your Honor, I'm a
23 little perplexed now. He said my ox is
24 being gored. That's what Mr. McClain

1 says. It seems to me that it is
2 consistent with, in the sense with what
3 Mr. Ewing said. I don't know why Mr.
4 McClain is objecting to a situation where
5 the witness is saying it didn't come from
6 the fireproofing. That's been our
7 position and, as I understood it, the
8 state's position all along.

9 MR. MC CLAIN: It has never
10 been my position that it was in the air
11 and that it is background, and to let the
12 witness say that that's a new, to express
13 a new opinion that it is from background
14 in the fireproofing would be
15 inappropriate.

16 MR. GOUTMAN: That's Mr.
17 McClain's interpretation of what the word
18 "background" is. I believe that this
19 witness explained this is what we find in
20 products in buildings around the country,
21 whether it came at the manufacture or some
22 other time, but it is background. If he
23 wants to explore that on Cross
24 examination, fine.

1 MR. MC CLAIN: Excuse me, Your
2 Honor, but that's not what he says. In
3 his report his says, it is his opinion,
4 that some, if not all, came at the time of
5 the original installation of the
6 fireproofing, meaning that it came in with
7 the fireproofing. Not that it was
8 floating around in the air as background.

9 MR. GOUTMAN: You characterize
10 it as floating around the air. Background
11 means that's what is in products. Whether
12 it got there 20 years ago, ten years ago,
13 five years ago, it is background.

14 MR. MC CLAIN: That's not what
15 background means to me.

16 THE COURT: What is the
17 question that we have that is the
18 substance of the objection?

19 MR. GOUTMAN: He's objecting
20 to the answer, Your Honor; not the
21 question.

22 MR. MC CLAIN: That the answer
23 was not found in the report.

24 THE COURT: Read back the last

1 question and answer.

2 (The last question and answer
3 were read back by The Court Reporter).

4 THE COURT: I heard him say
5 that it came from the fireproofing, that
6 there was identity with it in the
7 fireproofing.

8 MR. MC CLAIN: He never said
9 that.

10 THE COURT: Isn't that what he
11 just read?

12 MR. GOUTMAN: It was
13 background und in the fireproofing.

14 MR. MC CLAIN: There was no
15 defined place where it came from. There
16 was no defined place where it came from.
17 Where in the world is the building? What
18 is being suggested --

19 MR. COURT: Let me hear the
20 question and answer again.

21 (The last question and answer
22 were read back by The Court Reporter)

23 MR. MC CLAIN: He said it is
24 found in the fireproofing and there's no

1 other source in the building, so this had
2 to be background. Where does this say
3 anything about background? It says it was
4 clearly present with the original
5 installation. Now he is saying it is
6 background as if it is floating around in
7 the air. That is not consistent with his
8 report.

9 MR. GOUTMAN: Your Honor, if
10 he wants to fight with this witness on
11 Cross examination about the meaning of
12 background, fine, but it is, I think,
13 consistent with everything he said and it
14 is in his report.

15 THE COURT: Overruled.

16 MR. GOUTMAN: Your Honor, I'm
17 about to start a new line of questioning.
18 I can proceed or we can stop for lunch,
19 whatever your pleasure is.

20 THE COURT: We are going to
21 take our lunch recess at this point. I
22 want to point out now that one of our
23 jurors has a commitment for medical
24 reasons for Monday and consequently we

1 would be unable to have our trial commence
2 on Monday. Now, it may be that we may not
3 be able to do it for other reasons
4 climatewise, but that's another story.
5 Right now I'm concerned about our juror
6 and so that our next day of trial would be
7 Tuesday, February first, but right now we
8 are just taking a lunch recess to 1:30.

9 MR. EDGE: This Court will
10 take a lunch recess to 1:30 p.m. Everyone
11 remained seated until the jury leaves the
12 room.

13 (Court recessed for lunch)

14 MR. EDGE: This Court is now
15 reconvened. Please be seated.

16 Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. GOUTMAN: May I proceed,
19 Your Honor?

20 THE COURT: Yes.

21 Mr. Woodyard.

22 MR. GOUTMAN: Your Honor,
23 before we start, during our last side bar
24 I could see the jurors motioning and I

1 didn't know whether that meant that they
2 could hear us or not. Perhaps The Court
3 could just find out and inform me whether
4 I was incorrect.

5 MR. MC CLAIN: One of the
6 jurors needed to go to the bathroom.

7 MR. GOUTMAN: Then I did
8 misinterpret.

9 THE COURT: I'm sorry.

10 MR. MC CLAIN: We had a juror
11 that needed a comfort break at the time.

12 THE COURT: I would say
13 there's no appeal from that.

14 BY MR. GOUTMAN:

15 Q. Good afternoon.

16 Just going back, with respect to
17 Mr. Kominsky's asbestos samples, did he find
18 1260 on each and every one of the outer
19 samples?

20 A. No, he did not.

21 Q. What conclusions, if any, do you
22 draw from that?

23 A. Well, going back to the theory
24 we talked about that the state has put forth

1 about how the 1262 PCBs were flying off the
2 ductboard and redistributing themselves for
3 30 years or more in this building, you would
4 expect, if that were true, that the
5 distribution of that PCB would be pretty
6 uniform. You would find it everywhere. The
7 fact that Mr. Kominsky's samples you didn't
8 find it everywhere, that a number of the
9 samples contained no 1262, to me was pretty
10 telling.

11 Q. Telling of what?

12 A. Indicative that it was more like
13 smoke. It was a random or chaotic c
14 distribution instead of something nice and
15 uniform and the product of ten or 20 or 30
16 years of what the state is claiming.

17 Q. Now, you have just described the
18 state's claim about the ductboard and PCBs
19 flying off it. Do you agree with that
20 theory?

21 A. No, not at all.

22 Q. Did you prepare an exhibit, sir,
23 which describes your views with respect to
24 that theory?

1 A. Yes, I did.
 2 MR. GOUTMAN: We are going to
 3 show the witness and the jury DM 3121 as
 4 covered by the Court's instructions.
 5 MR. MC CLAIN: Fine.
 6 MR. GOUTMAN: Your Honor,
 7 could the witness come down from the
 8 witness stand?
 9 THE COURT: Yes, you may step
 10 down, Mr. Woodyard.
 11 BY MR. GOUTMAN:
 12 Q. Now, Mr. Woodyard, I think, just
 13 to go back, do you have an opinion with
 14 respect to whether the government's theory is
 15 correct that PCBs were flying off this
 16 ductboard during the normal operation of the
 17 HVAC system in the building?
 18 MR. MC CLAIN: Objection, Your
 19 Honor. It's leading and argumentative.
 20 We have a way to do this that The Court
 21 instructed us.
 22 MR. GOUTMAN: I'm doing it
 23 that way, Your Honor.
 24 MR. MC CLAIN: I thought The

1 Court had a more general way that the
 2 subject was to be introduced.
 3 THE COURT: Overruled.
 4 BY MR. GOUTMAN:
 5 Q. Do you have an opinion on that,
 6 sir?
 7 A. Yes, as I said before, I
 8 disagree with the state's opinion. I think
 9 there are a lot of things wrong with it.
 10 Q. Could you tell the jury what you
 11 think is wrong with it?
 12 A. This slide lists some of the
 13 major areas that I think have problems.
 14 (Indicating)
 15 number one, going back to the
 16 slide, this slide illustrates the things that
 17 are wrong with the state's theory, as they
 18 put it out here, this theory that the PCBs
 19 are flying out of the ductwork over 30 years
 20 or so. Number one on the list is what I have
 21 termed stability. Aroclor 1262, and you have
 22 heard some of this already, Aroclor 1262 is
 23 very stable. It is a sticky resin. It is a
 24 solid at room temperature. It has almost no

1 vapor pressure. On top of that, in the
 2 ductboard as you may recall, this 1262 is
 3 mixed in with an adhesive. In other words,
 4 it is a small percentage of a mixture, glue,
 5 that is used to attach this fiberglass to
 6 this aluminum foil and then it is cured, it
 7 solidifies, basically when it is made and
 8 then manufactured and sent back out. This
 9 isn't going anywhere. This is not, just
 10 Aroclor 1262, which normally has almost no
 11 mobility at all, but it is locked into this
 12 matrix that I'm talking about in this
 13 ductwork, so it is extremely stable.
 14 Q. You mentioned virtually no vapor
 15 pressure. Does that have any relationship to
 16 the concept of vaporization?
 17 A. Yes, it does.
 18 Q. And could you explain that to
 19 the jury, please.
 20 A. Well, vapor pressure is a
 21 measure, if you will, of how readily
 22 something evaporates. It is really that
 23 simple. And the higher the vapor pressure is
 24 the more likely it is to evaporate. The

1 lower the vapor pressure is the less likely
 2 it is to evaporate. Aroclor 1262 has,
 3 perhaps, the lowest vapor pressure of any
 4 chemical, any organic chemical compound, so
 5 it is real little. And that, as I said,
 6 throw on top of that the fact it is mixed in,
 7 cured into a glue mixture, it's not going to
 8 go out there.
 9 Number two, air testing. Let's
 10 go back to the state's theory that over 30
 11 years the PCBs are coming out of this
 12 ductboard as the ventilation system is
 13 operated. During the course of the
 14 two-and-a-half years after the fire that the
 15 building was reoccupied and used the
 16 ventilation system was on. During that time
 17 over 5,000 air tests were done throughout
 18 this building. An air test is, I don't know
 19 if you have heard much of this before, it is
 20 a very precise method of collecting a certain
 21 volume of air on a filter and also on a
 22 little vapor cartridge and that data is used
 23 to determine whether in this case PCBs are
 24 present in the air.

1 Q. Over what period of time does
2 this air testing run? Is it like a second?
3 How does it work?

4 A. The standard test is about three
5 hours or so. It takes that long for the
6 little pump to draw enough air to reach the
7 standard level according to the test
8 protocol.

9 Q. About how many air tests were
10 done in the year 1994 alone?

11 A. Well, the six months right after
12 the fire, which is really the rest of 1994,
13 there were almost 4,000 of these 5,000 air
14 tests taken.

15 Q. And what does that work out to?

16 A. It is, if you do the math, it
17 means that there's probably three air tests
18 going on at any one time 24 hours a day.
19 Rather than just being a snapshot of what the
20 PCB levels might be, it was like a motion
21 picture. There was always air testing going
22 on for six months.

23 Q. And what did those air tests
24 find with respect to the specific Aroclor

1 that the government claims was in the
2 ductboard?

3 A. These air tests found virtually
4 no Aroclor 1260 or 1262 in the air samples.

5 Q. What is the significance of
6 that?

7 A. It just wasn't there. If it was
8 there these air tests would have seen it
9 repeatedly over and over again, and as it was
10 there were, I think, out of the almost 4,000
11 samples in that six months maybe 18 actually
12 found any detectable Aroclor 1260 or 1262,
13 and of those 18 15 of them were on the fire
14 floor. So there were only three other
15 samples out of almost 4,000.

16 Q. If, in fact, this PCB Aroclor
17 1262 was flying out of the ductboard, what
18 would you have expected to find on those
19 4,000 to 5,000 air tests?

20 A. You would have found it
21 everywhere. You would have found it in most,
22 if not all, of those tests because they were
23 taken throughout the building. They were
24 taken everywhere.

1 Q. How sensitive are these tests?

2 A. Extremely. The typical
3 detection limit was less than half a
4 microgram per cubic meter. In some cases it
5 was as low as one tenth microgram per 100, so
6 it could have been as much as ten times below
7 what anyone would consider a guideline or
8 action mark.

9 Q. Number three.

10 A. Number three, the PCB levels on
11 the building surfaces were extremely low
12 based on the surface test results. Keep in
13 mind this building was reoccupied shortly
14 after the fire. The ventilation system was
15 turned back on again. There were thousands
16 of surface tests being taken during the
17 course of this reoccupation period, and the
18 PCB levels that were found on the surfaces in
19 the building: Desks, office equipment, etc.,
20 were extremely low, which is totally
21 inconsistent with the idea that the duct is
22 spewing out this PCB day after day after day.

23 Q. What would you expect to find if
24 the state's theory were correct?

1 A. You would definitely find
2 elevated levels. In fact, that goes to my
3 fourth point here, no PCB increase. If the
4 government's theory had any truth to it at
5 all, you not only would be finding PCBs on
6 surfaces, but for two-and-a-half years the
7 system is operating and spewing out PCBs
8 according to the government's theory, the
9 levels would be going up and people were
10 taking these surface tests for two-and-a-half
11 years during this period that the building
12 was reoccupied. They weren't going up; they
13 were staying the same at best. Even more
14 telling I think is the air testing results.
15 These air tests that I was talking about here
16 were going on for that two-and-a-half year
17 period as well. I mentioned in the first six
18 months there were some 1262 measurements
19 actually detected below the action level, but
20 down at some low --

21 Q. 1260 or 1262?

22 A. Actually, I think it was 1260 at
23 the time. For the two years after that, from
24 1995 and 1996, this air testing continued and

1 there were no detectable levels of this
 2 Aroclor found in any of those air tests. In
 3 other words, we found it, the state found a
 4 little bit of it right after the fire at
 5 extremely low levels and that was it. For
 6 the next couple of years the ventilation
 7 system continued to operate just like it
 8 always did. The levels would have gone up.
 9 You would have seen them in the air and there
 10 was no measurable PCB in the air.

11 Q. What does that tell you?

12 A. It tells me that the
 13 government's theory is wrong. The PCBs, if
 14 they were coming out of the ductboard, you
 15 would have found them and they would have
 16 been rising.

17 Q. Number five, PCBs were still in
 18 the ductboard.

19 A. The last point on the list, the
 20 PCBs were an integral part. As a plasticizer
 21 they are part of this adhesive, they are part
 22 of this glue, and they are part of what makes
 23 the duct work. If the glue fails the duct
 24 falls apart. All of the evidence that you

1 have seen shows that the system worked just
 2 fine. The ductwork was intact. I observed
 3 it myself. The building HVAC manager
 4 testified that --

5 MR. MC CLAIN: Objection, Your
 6 Honor --

7 THE COURT: Sustained.

8 THE WITNESS: If the PCBs were
 9 flying out of the ductboard, after 30
 10 years at least at the levels the state is
 11 talking about, the ductboard would have
 12 started to fall apart. There would have
 13 been all kinds of evidence of that.

14 BY MR. GOUTMAN:

15 Q. Let me back up a step. What
 16 role did the PCBs play in the glue?

17 A. The PCBs served as a
 18 plasticizer.

19 Q. What does that mean?

20 A. That means that it was the
 21 additive that helped keep the adhesive
 22 pliable or somewhat flexible so you could
 23 bend the duct a little.

24 Q. If the PCBs were flying out of

1 that glue what would happen to that rigid
 2 ductboard?

3 MR. MC CLAIN: Your Honor, I
 4 object to the question. I don't think
 5 that we have ever posited that PCBs were
 6 flying out. We didn't posit that.

7 MR. GOUTMAN: Your Honor,
 8 respectfully, that's what I take to be
 9 their theory, but in any event, I think it
 10 is a speaking objection.

11 MR. MC CLAIN: It is
 12 argumentative as phrased.

13 THE COURT: Overruled.

14 MR. GOUTMAN: Could you read
 15 the question back.

16 (The last question was read
 17 back by The Court Reporter)

18 BY MR. GOUTMAN:

19 Q. If PCBs were flying, walking,
 20 crawling, coming out of that ductboard, what
 21 would happen to that rigid ductboard?

22 MR. MC CLAIN: Your Honor, I
 23 object. We have never posited that they
 24 were walking or crawling out of the

1 ductboard.

2 MR. GOUTMAN: Your Honor,
 3 respectfully --

4 MR. MC CLAIN: I'm sorry.
 5 That was the question as you phrased it.

6 THE COURT: Overruled.

7 BY MR. GOUTMAN:

8 Q. Limping, hobbling, what would
 9 happen to that ductboard that was rigid at
 10 the time it was put in that building?

11 A. It would collapse. Adhesive is
 12 part of what keeps it rigid.

13 Q. Did you see that ductboard?

14 A. Yes, I did.

15 Q. Did you see photographs taken by
 16 Mr. Kominsky?

17 A. Yes, I have.

18 Q. Was that ductboard all collapsed
 19 in a heap?

20 A. No.

21 Q. Could you tell us whether there
 22 were still PCBs in that ductboard?

23 A. Yes, absolutely. There had to
 24 be.

1 Q. If the state's theory were
2 correct would there still have been PCBs in
3 that ductboard?

4 A. No.

5 Q. Sir, are there any other reasons
6 for your conclusion that the government's
7 theory on PCBs in the ductboard is wrong?

8 A. Based on what I have just
9 explained to you here, if you take this a
10 step further and try to create the theory
11 that the government created, it just creates
12 this incredibly unlikely story, which I would
13 like to walk you through, if I could.

14 Q. Your Honor, could I now take
15 this off the board?

16 THE COURT: Yes.

17 BY MR. GOUTMAN:

18 Q. Number six says, sir, what?

19 A. It says an unlikely story.

20 Q. And what does that refer to?

21 A. That refers to the theory that
22 the government has put forth about how the
23 PCBs flew out of the ductboard.

24 Q. Did you create some exhibits,

1 sir, that illustrates what you term the
2 unlikely story?

3 A. Yes, I did.

4 Q. Why don't we take a look at them
5 one by one. The first one is DM 3123 B, Your
6 Honor. It looks like 3132 B. It is titled
7 "Step one". Perhaps it is marked differently
8 on yours.

9 3123 B

10 BY MR. GOUTMAN:

11 Q. Now, sir, could you just take us
12 through this exhibit.

13 A. Yes. Again, what we are talking
14 about here, trying to explain is the state's
15 theory about how the PCBs were distributed.
16 Step one in their theory is that --

17 Q. Let me interrupt. Can the jury
18 see this?

19 A. Step one, PCBs break out of the
20 glue bond. This picture is intended to be a
21 cut away view. If you looked, if you took a
22 piece of the ductboard and you sliced it and
23 looked at the side of it it gives you an idea
24 of roughly what it looks like in terms of

1 proportion. I won't vouch for the scale, but
2 it is pretty close. This lower level down
3 here, it is grayish, it represents the
4 aluminum foil that is on the outside. This
5 orange color here, that represents the
6 adhesive layer that has been applied to the
7 aluminum, and then on top of that you see
8 here this gold colored layer is the
9 fiberglass insulation that is then attached
10 to this glue. (Indicating).

11 Q. By the way, have you seen this
12 ductboard?

13 A. Yes, I have.

14 Q. What is the color of the
15 fiberglass?

16 A. It is a gold color. Not unlike
17 that. (Indicating).

18 Q. I believe Mr. Kominsky referred
19 to it as pink. Is it pink?

20 A. No, he was referring to
21 something else.

22 The theory again, step one, PCBs
23 break out of the glue bond. What does that
24 mean in this picture? What that means is

1 that this material here, which is the
2 adhesive, in order for the state's theory to
3 work, this material, which is a solid, would
4 have to be allowing PCB molecules to
5 essentially vaporize, somehow escape from
6 this glue, but as I was saying before when I
7 was talking about the stability, this glue is
8 a solid. It is made up of a number of things
9 with PCBs in it. The 1262 are extremely
10 stable. They have almost no vapor pressure.
11 They are a sticky resin. On top of that this
12 material is cured, it is heated during
13 manufacture to between two and 400 degrees to
14 dry it and by drying it I'm talking about
15 driving off water. The material, as it is
16 blended, is about 60 percent solid, so it is
17 a solid material. The state is claiming that
18 PCBs are coming out of this glue bond and
19 getting into the fiberglass. There's no way
20 that can happen.

21 Q. Did you see any evidence, sir,
22 that the glue was failing in this ductboard?

23 A. No, not at all.

24 Q. Did you see any evidence, sir,

1 that the PCBs were breaking out of this glue
2 bond?

3 A. No, no, I did not.

4 Q. Sir, how likely is this first
5 step in the government's theory?

6 A. This, as I said, this isn't
7 happening. It is extremely unlikely that
8 this is going on.

9 MR. MC CLAIN: Your Honor, I
10 would like -- I didn't hear any foundation
11 for that opinion of the witness. Is that
12 his opinion or is it based on data? I
13 didn't hear any foundation.

14 THE COURT: Mr. Goutman?

15 MR. GOUTMAN: I believe he
16 just gave the foundation. He just spent,
17 I think, five minutes explaining this
18 answer and why he reached that conclusion.

19 MR. MC CLAIN: But I didn't
20 hear whether it was based on any data.

21 MR. GOUTMAN: Your Honor,
22 could we go to side bar, please?

23 THE COURT: Yes.

24 (Side bar discussion).

1 MR. GOUTMAN: Your Honor, this
2 is another speaking objection.
3 Plaintiffs' counsel wants to make a point
4 and he should make any point he wishes to
5 make on Cross examination that there is
6 "no data" upon which this is based. This
7 witness has just spent five minutes
8 explaining the basis for it. If he wants
9 to make a point like that there is no data
10 there is a right way and a wrong way to do
11 it, and the wrong way is to say I want to
12 hear if there's any data. I want to know
13 if there's any data, Your Honor. That's
14 an inappropriate objection.

15 MR. MC CLAIN: I objected on
16 foundation and The Court asked what my
17 objection was. I said it lacks foundation
18 and I want to know whether it is data or
19 his opinion, and then Mr. Goutman
20 continued the colloquy; I didn't.

21 MR. GOUTMAN: Frankly, Your
22 Honor, he just explained for five minutes
23 the basis for his opinion. Now, counsel
24 wants to make a point with the jury that

1 he doesn't think there's data that
2 supports it. Let him make it on Cross
3 examination and not under the guise of an
4 objection that there's no data.

5 MR. MC CLAIN: I'm sorry, Your
6 Honor. I thought I got to make
7 objections. I said objection, foundation.
8 That's a proper objection.

9 MR. GOUTMAN: That isn't what
10 you said.

11 MR. MC CLAIN: I don't think
12 that he has laid a foundation for this
13 opinion.

14 MR. GOUTMAN: Well, then, you
15 can bring that up on Cross.

16 MR. MC CLAIN: And if he does
17 then I would like to know what the
18 foundation is because as far as I know he
19 doesn't have any foundation.

20 MR. GOUTMAN: Your Honor --

21 MR. MC CLAIN: That's my view.
22 I objected on foundation.

23 MR. GOUTMAN: This, again, he
24 disagrees with Mr. Woodyard. Mr. Woodyard

1 just explained his foundation, the
2 foundation that the glue could not have
3 left. The bonding, the stability, etc.,
4 etc. He went on and on. Now counsel
5 wants to make a point with the jury. An
6 objection is not the proper way to make a
7 point with a jury.

8 MR. MC CLAIN: I objected on
9 the basis of foundation. How does he know
10 that it doesn't come out? On what basis
11 do you make that? By saying I'm an
12 expert? He is not an expert in glue. So
13 how do you make that judgment, Judge? I
14 don't think there's foundation for this
15 opinion. Even though you qualified him as
16 an expert in PCBs on this building. He's
17 not an expert on glue, so the issue is how
18 does he make that determination?

19 THE COURT: Well, I'm not
20 going to profess to be the expert, but I
21 do know that glue has one quality of
22 adherence between two particular objects.
23 I'm sure you can ask him how they can
24 separate or not separate as the case may

1 be.

2 MS. MYERS: Your Honor, before
3 we proceed, I would like to raise one
4 other thing while we are at side bar. I
5 didn't want to interrupt the examination,
6 but I am sitting near the jury box to see
7 the witness and to see the exhibits, and I
8 heard Mr. McClain make some very audible,
9 sarcastic comments about Mr. Woodward's
10 testimony. I was able to hear them very
11 clearly, and I suspect some of the jury
12 could hear them also.

13 MR. MC CLAIN: Once again we
14 have Ms. Meyers' supersonic hearing at
15 work. Whatever comments I make to
16 Mr. Henderson, sarcastic or not, I don't
17 believe I made any sarcastic comments,
18 however, once again, Ms. Myers continues
19 to do this kind of thing throughout the
20 trial.

21 THE COURT: What did you hear?

22 MS. MEYERS: I'll put on the
23 record what I heard. When Mr. Woodyard
24 testified that the government's theory was

1 THE COURT: First of all --

2 MR. MC CLAIN: Whenever I
3 speak to Mr. Henderson it is inappropriate
4 for her to be overhearing anything we say.

5 THE COURT: Let's not be
6 ridiculous. If one speaks loud enough one
7 does not invite someone to hear the
8 conversation; one hears automatically, and
9 that is improper. I don't want to make
10 another issue out of it, but I don't have
11 any problem about that. You can't speak
12 loud enough so that a jury can hear you.
13 Now, if Ms. Meyers can hear from where she
14 is postured, it's not her fault that she
15 heard; it is the fault of the one who is
16 speaking, who is speaking loud enough for
17 her to hear at the jury box.

18 MR. MC CLAIN: I will whisper
19 softer to Mr. Henderson, Your Honor, but
20 Ms. Meyers has specifically done this
21 throughout the trial and made issue of
22 it --

23 THE COURT: I haven't noticed
24 anything like this.

1 an unlikely story, Mr. McClain said, I
2 thought very loudly, how coincidental.

3 MR. GOUTMAN: Or what a
4 coincidence. I heard the same thing.

5 MS. MEYERS: And then he said
6 it again. He said it twice. He was
7 facing the jury. I heard it extremely
8 clearly and you can see that I'm sitting
9 close to the jury box. I just wanted to
10 raise it so that it doesn't happen again.

11 THE COURT: For purposes of
12 the record, let The Court lay out the
13 courtroom. The easel is postured near the
14 jury box. Mr. Woodyard has been asked to
15 come down and speak and offer his
16 testimony from the exhibit on the easel
17 and as a result the attorneys who would
18 not otherwise been able to hear have been
19 authorized to find positions in and around
20 the jury box to be able to observe what is
21 happening and hear what is happening, and
22 consequently it was during this incident
23 that you heard this?

24 MS. MEYERS: Yes.

1 MR. MC CLAIN: I can point out
2 to The Court at least on four occasions
3 where she has done this in this kind of
4 fashion. I could point them out to The
5 Court and I will if you would like me to
6 over the weekend.

7 THE COURT: Let me put it this
8 way: If there were three or four other
9 incidents it should have been brought to
10 The Court's attention. There should be no
11 incidents like that.

12 MR. MC CLAIN: Yes, if they
13 were, in fact, true. That's true, Your
14 Honor, but we have dealt with them
15 previously. I will try to whisper to
16 Mr. Henderson more softly. I understand
17 the point, not conceding whether
18 Ms. Meyers is accurate or not.

19 MR. GOUTMAN: I heard the same
20 thing, Ken, and you are not denying that
21 you said it, but you probably, I guess,
22 did not realize how loudly you were
23 speaking.

24 MR. MC CLAIN: I will whisper

1 to Mr. Henderson softer, Your Honor.
 2 THE COURT: This has been a
 3 very long and tedious trial. Nerves can
 4 get frayed, but that is not a substitute
 5 for proper procedure and conduct.
 6 MR. MC CLAIN: I understand.
 7 MR. GOUTMAN: Your Honor, the
 8 next exhibit is DM 3123 C.
 9 BY MR. GOUTMAN:

10 Q. Mr. Woodyard, could you take us
 11 through this exhibit.

12 A. With some trepidation. This
 13 exhibit is the next one in the sequence. It
 14 is entitled, "Step two. PCBs March Through
 15 the Fire Ducts". Keep in mind what we are
 16 doing is trying to walk you through what the
 17 state is theorizing. Let's assume just for
 18 discussion that a molecule of PCB gets out of
 19 this glue. The next thing it comes in
 20 contact with is this fiberglass material that
 21 we are talking about, and somehow not just
 22 comes in contact with it, but somehow works
 23 its way through that fiberglass. That
 24 fiberglass is at or close to room temperature

1 at which point this PCB is a sticky resin.
 2 So if it hits something it is going to stop.
 3 It's not going to find its way through here.
 4 Certainly not as a vapor because it's not a
 5 vapor at room temperature.
 6 Q. What is it?
 7 A. It is solid. It is a sticky
 8 resin type of material. On top of that, just
 9 to kind of illustrate, you have heard about,
 10 we have been talking about air testing. Part
 11 of the air test involves the use of glass
 12 fibers, essentially fiberglass, in the sense
 13 that that glass fiber is used to collect
 14 particles in the air test. In other words,
 15 the air test is supposed to catch the
 16 particle. That's why they use glass fibers.
 17 So the thought of PCBs somehow deciding to
 18 work their way through fiberglass in this
 19 case and not get caught every time if they
 20 are there at all in an air test is totally
 21 inconsistent.

22 Looking at it another way, this
 23 is a great collector of particles, so if
 24 there's a particle or molecule that somehow

1 makes its way out of that glue it is going to
 2 stop dead.

3 Q. The next exhibit, sir, is DM
 4 3123 D.

5 MR. MC CLAIN: Before we put
 6 that up, could I raise a specific -- go
 7 ahead. You do it.

8 MR. GOUTMAN: Your Honor, this
 9 one is entitled, "Step Three. Duct
 10 Exposed to Oven Like Heat"

11 BY MR. GOUTMAN:

12 Q. Could you take us through that,
 13 sir.

14 A. Okay. Now, again, somehow we
 15 got through step one, where the molecule
 16 breaks out of the glue. Step two, the
 17 molecule has worked its way through the
 18 fiberglass. Part of the state's theory
 19 depends on the fiberglass surface here being
 20 exposed to what I would call oven-like heat.
 21 Again, the evidence is clear that the inside
 22 of that ductboard is typically very close, at
 23 or close to room temperature. Mechanically
 24 it could never have gone above 85 degrees.

1 We have testimony that it would not evaporate
 2 below 102.5 from even Mr. Ewing. This is not
 3 oven-like heat to me and certainly to a
 4 molecule of PCBs is not going to be oven-like
 5 heat. That PCB is not going to come off of
 6 that fiberglass. It is stuck to it. It is a
 7 solid and it wants to be a solid at that
 8 temperature.

9 Q. Step four. This is DM 3123 E.
 10 Step four of what you have called an unlikely
 11 story.

12 A. Step four, this is entitled,
 13 "PCBs Volatilize". Like I said, if that
 14 molecule somehow worms its way past all of
 15 those fibers, gets to the surface, in order
 16 for it to somehow enter the building it has
 17 to come off as a vapor. It has to somehow
 18 vaporize. As I said, the state is claiming
 19 that it was exposed to oven-like heat, the
 20 kind of heat it would take to volatilize. We
 21 have seen from science that's not the case.
 22 The temperatures are not high enough to make
 23 it go anywhere. So this just isn't going to
 24 happen.

1 Q. Your Honor, the next exhibit is
2 3123 F.

3 What is the next step in this
4 unlikely story?

5 A. The next step in this theory
6 that the state has is that this molecule
7 jumps off the PCB off the ductboard and
8 enters the air stream. This is kind of a cut
9 away view of what a piece of ductboard looks
10 like. Those arrows represent how the air is
11 flowing through the duct. In order for the
12 state's theory to work the PCBs have to enter
13 this air stream as a vapor and stay as a
14 vapor moving on down the air stream. Now,
15 like I said before, the evidence is clear
16 that the air in this duct is around room
17 temperature. And PCBs at around room
18 temperature are a solid, sticky resin type
19 material. So the whole idea of them not only
20 evaporating but traveling without even
21 condensing makes no sense at all. It would
22 never leave the side of the duct if that
23 molecule made it there in the first place.
24 (Indicating).

1 Q. And by condensing or
2 condensation you mean what?

3 A. Condensing is turning into a
4 liquid or solid from a gas. It is the
5 opposite of vaporization, so in order for
6 that to happen, you have to already be in a
7 vapor and you have to get cool enough to make
8 it a liquid or solid again. And this just
9 isn't going to happen.

10 Q. Your Honor, this is step six, DM
11 3123 G.

12 What is the next step in the
13 unlikely story?

14 A. Well, the next step in the
15 theory is that essentially this PCB enters
16 the occupied work space, moves around through
17 the occupied work space and somehow escapes
18 detection. As I discussed before, for
19 two-and-a-half years while the building was
20 reoccupied and the ventilation system was
21 doing what it does, working just fine, there
22 were over 5,000 air tests, almost none of
23 which found any of this material, which makes
24 absolutely no sense. You would have expected

1 to find it all the time if what the state is
2 suggesting is true. Even beyond that, in
3 order for the state's theory to work, you
4 would have to have PCBs entering the air
5 space as a vapor and, again, the air space is
6 roughly the same temperature as what's in the
7 ductboard, so the temperature is not really
8 changing, it is room temperature, deciding to
9 condense on a desk or floor or partition and
10 then on its own deciding to evaporate again
11 and go back, move around this air space
12 again, without the temperature changing to
13 any great extent. It would not be
14 evaporating and condensing, evaporating and
15 condensing. This just makes no sense. It
16 couldn't happen this way.

17 Q. Now, you have testified that you
18 studied, published, and lectured on the
19 physical and chemical properties of PCBs?

20 A. Yes, sir.

21 Q. Based upon that background, sir,
22 why would a PCB molecule, once it decides to
23 condense, then all of a sudden decide to
24 volatilize at the same temperature?

1 MR. MC CLAIN: I'm sorry, Your
2 Honor. The foundation, I know
3 specifically what articles -- if you want
4 me to come to side bar to make it
5 specific. I don't think there's enough
6 foundation on this subject that has been
7 made out.

8 THE COURT: Let's go to side
9 bar.

10 (Side bar discussion).

11 MR. MC CLAIN: His question
12 included that he has written on the
13 subject of volatilization of PCBs. I have
14 read all of his articles. I have never
15 seen it, so I would like to know where
16 that is.

17 MR. GOUTMAN: Maybe
18 Mr. McClain didn't hear my question. My
19 question was he's written, published, and
20 studied chemical and physical properties
21 of PCBs. That was all established. Now I
22 have asked him a question concerning the
23 chemical and physical properties of PCBs.

24 MR. MC CLAIN: Well, the

1 question is that he's written about this
2 subject and I don't believe that he has.

3 MR. GOUTMAN: Well, once
4 again, Your Honor --

5 THE COURT: Well, then, I
6 think that might be best reserved for
7 Cross examination, and it may be that he
8 has not written on this particular topic
9 and you will, I'm sure, elicit it.

10 MR. MC CLAIN: Okay. Without
11 a foundation I thought the question was
12 objectionable, suggesting to the jury that
13 he has when there's no foundation that he
14 has.

15 MR. GOUTMAN: I just laid the
16 foundation. I said that he has written,
17 published, and studied the physical
18 chemical properties of PCBs. He said yes.
19 He said that yesterday, he said it today.
20 That's the foundation.

21 THE COURT: Overruled.

22 BY MR. GOUTMAN:

23 Q. I think my question was, sir,
24 you had testified earlier that you had

1 stayed about the same.

2 Q. Can you tell me whether the
3 state's theory assumes that this is going on,
4 this constant vaporization and volatilization
5 and condensation?

6 A. Absolutely. Absolutely.
7 Because in order -- it is kind of like snow
8 falling away. If the temperature stays the
9 same and this material is condensing as we
10 put it on to somebody's desk or computer,
11 what have you, it is going to accumulate.
12 The levels are actually going to go up like
13 we were saying before. The state's theory
14 depends on that happening, but in reality it
15 would condense if it was coming out of the
16 duct. We don't see data to support that.
17 It's not happening.

18 Q. You compared it to snow
19 accumulating on a desk. Based upon the test
20 results that you have analyzed, the thousands
21 of test results that you analyzed, was there
22 an ongoing accumulation of PCBs going on in
23 this building?

24 A. No, absolutely not.

1 written, studied, published over these last
2 20 odd years on the physical and chemical
3 properties of PCBs. Do you recall that
4 testimony?

5 A. Yes, sir.

6 Q. And my question was, sir, if
7 PCBs, for some reason, decided to volatilize,
8 and then even though at the same temperature
9 entered a work surface -- first of all, if it
10 is at the same temperature why would it then
11 condense on the work surface?

12 A. It wouldn't. The PCBs don't
13 make these decisions on their own; they are
14 either a vapor or a solid and it is going to
15 depend on what temperature you are at. The
16 temperature goes up it might be more inclined
17 to be a vapor, but room temperature it is
18 going to be a sticky resin. Essentially a
19 solid material.

20 Q. Now, if the PCBs then condense,
21 based upon what you know about the physical
22 and chemical properties of PCBs, why would
23 they then suddenly volatilize and evaporate?

24 A. They wouldn't if the temperature

1 Q. Where do the PCBs come from
2 then?

3 A. They were all deposited as a
4 direct result of the fire.

5 Q. Your Honor, the next exhibit is
6 DM 3123H, as in Harry.

7 Step seven of the government's
8 unlikely story, could you explain that?

9 A. Yes, step seven, as I call it
10 here, PCBs, they have been in the occupied
11 space where we showed that guide on his desk.
12 They decide at some point to travel up into
13 the air plenum, which is that space, you may
14 have heard about, it is between the ceiling
15 tiles and the fireproofing or the next floor.
16 Maybe a couple feet wide. PCBs travel up
17 into that air plenum along with the return
18 air supply, and then they condense at the
19 very moment they hit the asbestos.

20 Q. Can you orient us in terms of
21 what we are looking at here?

22 A. Yes, that might help you. This
23 is the first real complicated cut away we
24 have shown here. This is a cut away view of

1 what it looks like above the ceiling tiles,
2 basically. It looks sideways at the round
3 duct. It has got this flexible duct that
4 connects it to the fluorescent light fixtures
5 on one side and that's how the air comes into
6 the room, and then it goes back out on the
7 other side and back into this space where it
8 gets sent back for heating or conditioning.
9 (Indicating)

10 This shows, these little arrows
11 show what would have to happen in order for
12 these PCBs to make their way out of this
13 office space, back up into the air plenum and
14 also we said, this is at the same temperature
15 as that room that you just saw, which is the
16 same temperature as that ductboard we were
17 talking about. The air hasn't really changed
18 temperature in this process, but somehow the
19 PCBs decide, in this particular place above
20 the air space, to condense again. To defy
21 gravity, to fly up against this fireproofing
22 and stay there, which makes no sense. It's
23 not going to happen.

24 Q. You have gone through seven

1 steps now of the government's theory on this
2 ductboard. I think you have called it
3 unlikely. If you take all of these unlikely
4 steps together, what do you, as a PCB
5 specialist, conclude or make of it?

6 A. Well, it is more as an engineer
7 and part of it is common sense. If you
8 string together what I have shown you to be
9 six or seven steps that are almost
10 impossible, I mean, the combination of all of
11 those things happening is impossible. It
12 makes no sense at all.

13 Q. Now, sir, taking you back
14 briefly through this exhibit, could you
15 briefly summarize again your reasoning behind
16 your opinions and then, sir, tell us what
17 your bottom line conclusion is.

18 A. Sure. Again, the things that
19 are flawed in the government's theory, number
20 one, they are assuming that PCBs are
21 unstable, meaning that they are going to fly,
22 they are going to evaporate readily. What
23 the physical chemical data on PCBs,
24 particularly Aroclor 1262 shows, is that it

1 is essentially a solid resin-like material at
2 room temperature. It has almost no vapor
3 pressure. In this adhesive it is blended in,
4 it is cured, it is locked in a solid
5 material. It's not going anywhere.

6 Step two in the air tests, if it
7 were, in fact, coming out of the ductboard
8 and entering the work space where all of this
9 air sampling is being done, there were over
10 5,000 air tests taken over two-and-a-half
11 years. Those tests found almost no Aroclor
12 1262. And these are extremely sensitive
13 tests. If it were there it would have been
14 found.

15 Three, surface tests, PCB levels
16 on building surfaces were extremely low. As
17 we were just talking about, if PCBs were
18 coming out of the ductboard as we have
19 described and condensing in the office space
20 and accumulating, snowing, if you will, on
21 someone's desk, you would be seeing
22 measurable levels, and under number four you
23 would expect to see an increase in level.
24 You would keep going back. You would expect

1 to see the levels go up and up and up and up.
2 The same thing with air. The data shows
3 conclusively that the air levels were
4 declining during the year, two,
5 two-and-a-half years after the fire, which
6 makes sense because it was put into the air
7 space by the fire. If the state's theory
8 were true you would expect to see the air
9 levels coming back up again and accumulating
10 over time, and that's not the case at all.

11 And, last, PCBs were still found
12 in the ductboard. The ductboard worked just
13 fine. It was still rigid. The PCBs had not
14 gone away as the state's theory would
15 suggest; therefore, it just doesn't make any
16 sense.

17 Q. What is your conclusion?

18 A. My conclusion is that the
19 government was wrong about the ductboard.

20 Q. And the title of this exhibit is

21 --

22 A. The title is, "Why the
23 Government is Wrong About the Ductboard".

24 Q. And does that summarize your

1 views on why the government is wrong about
 2 the ductboard?
 3 A. Yes, it does. Yes, it does.
 4 Q. Now, sir, are you familiar with
 5 a theory advanced by Mr. Kominsky during his
 6 Cross examination concerning PCBs being
 7 released during the fabrication of this
 8 ductboard when the building was getting
 9 built?
 10 A. Yes, I am familiar with it.
 11 Q. And could you just remind the
 12 jury what that theory said?
 13 A. Keeping in mind some of the
 14 graphics I just showed you, what Mr. Kominsky
 15 suggested in testimony was that some, if not
 16 all, of the PCBs that enter the building
 17 escaped from the adhesive, from the ductboard
 18 we are talking about, during the period when
 19 the duct was being made in the building, when
 20 it was being folded up, the tape was being
 21 applied, and an iron was being applied to
 22 that tape. Run over the tape I think is what
 23 the instruction says. That is the essence of
 24 the theory that it elevated the temperature

1 of the adhesive, somehow PCBs elected at that
 2 point in time to escape the adhesive, enter
 3 the building, and stay there.
 4 Q. Now, I would like to hand you a
 5 set of exhibits.
 6 Your Honor, for the record, we
 7 have handed the witness a number of exhibits.
 8 They are marked consecutively DCT 11, DCT
 9 49 -- actually, they are not consecutive,
 10 they are not in series. DCT 11, DCT 49, DCT
 11 38, DCT 32, DCT 88, DCT 95. They are all
 12 DCT, so I won't keep on saying DCT. 103,
 13 113, 23, 137, 20, and 104.
 14 Now, Mr. Woodyard, could you
 15 tell the jury, because the jury obviously
 16 doesn't have these documents in front of
 17 them, what this set of documents consists of?
 18 A. Well, the set of documents that
 19 you are talking about includes, first of all,
 20 instructions. It is kind of a pamphlet that
 21 could come with the ductboard explaining how
 22 it is fabricated. It includes some cartoons
 23 and some additional background information
 24 sort of as a brochure that explains what the

1 product does and how it is used. It might be
 2 used for sales literature, for example.
 3 Q. And was this for the ductboard
 4 in question, ductboard in this case?
 5 A. Yes, it was.
 6 Q. And these documents are from
 7 CertainTeed?
 8 A. Yes, they are.
 9 Q. And were they the manufacturer
 10 of the ductboard in the T&S Building?
 11 A. Yes, they were.
 12 Q. And what else is in this package
 13 of documents?
 14 A. There's also an instruction, a
 15 document entitled, "Fabrication Instructions
 16 for Rectangular Duct", and that provides a
 17 little additional detail on top of the other
 18 literature that I mentioned earlier.
 19 Q. Sir, in your detective work in
 20 trying to find sources of PCBs do you ever
 21 rely upon the literature of the manufacturer
 22 of building components?
 23 A. Absolutely, yes.
 24 Q. And are you doing so in this

1 case?
 2 A. Yes, I am.
 3 Q. Sir, based upon the documents,
 4 CertainTeed's manufacturing documents, tests,
 5 and so forth, together with your background
 6 in the physical and chemical properties of
 7 PCBs, have you been able to form an opinion
 8 concerning Mr. Kominsky's theory?
 9 A. I have. I disagree with it.
 10 Q. And could you tell the jury why?
 11 A. Well, in essence, it is the same
 12 reason I just outlined to you for room
 13 temperature except now we are perhaps heating
 14 the glue to 250 degrees during that brief
 15 period during fabrication. Still, if you
 16 heat the glue to 250 degrees nothing is going
 17 to happen.
 18 Q. How do you know that?
 19 A. Well, as I mentioned before, the
 20 fabrication process for the ductboard.
 21 Q. What do you mean by fabrication
 22 process?
 23 A. How they make the duct. The way
 24 they make it includes not only putting the

1 fiberglass and the glue and the foil
 2 together, it includes heating it to 20 or 400
 3 degrees.
 4 Q. Is this back at the factory?
 5 A. Back at the factory.
 6 Q. Before it is ever shipped to
 7 Harrisburg?
 8 A. Absolutely.
 9 Q. And why are they heating it to
 10 200 to 400 degrees?
 11 A. To cure the glue, to dry it out.
 12 Q. And what, if any, significant
 13 conclusions did you draw from that, from the
 14 manufacturer's literature that says that to
 15 cure this stuff you are heating it from 200
 16 to 400 degrees?
 17 MR. MC CLAIN: Objection, Your
 18 Honor. It is leading.
 19 MR. GOUTMAN: I'm asking what
 20 conclusions he drew.
 21 THE COURT: Overruled.
 22 THE WITNESS: What I concluded
 23 is that heating this duct to 250 degrees
 24 even for that brief period of time with

1 that heating iron in that little strip
 2 would not affect the duct at all. The
 3 manufacturing process showed that. It
 4 showed through manufacturing and testing,
 5 which we didn't talk about in the lab,
 6 that heating the duct to temperatures that
 7 high or higher, the duct loses none of its
 8 integrity. It loses none of its PCB.
 9 BY MR. GOUTMAN:
 10 Q. Well, if heating it to 250
 11 degrees at the site while you are fabricating
 12 this ductboard drove off the PCBs, what would
 13 you have found back at the factory when you
 14 were heating it up to 400 degrees?
 15 MR. MC CLAIN: Objection, Your
 16 Honor.
 17 MR. GOUTMAN: Just following
 18 up, Your Honor.
 19 THE COURT: Overruled.
 20 BY MR. GOUTMAN:
 21 Q. What would you have found of the
 22 glue, when they were heating it up to 400
 23 degrees back at the factory?
 24 A. You would have found a bunch of

1 substandard duct. It would have failed the
 2 performance test.
 3 Q. Why?
 4 A. Because it had no PCBs left in
 5 the glue. The glue had deteriorated, and the
 6 duct would have fallen apart.
 7 Q. If the PCBs had left the glue
 8 what would have happened to the glue back at
 9 the plant?
 10 A. Well, the glue is the
 11 plasticizer, so it would become rigid,
 12 brittle.
 13 Q. Sir, even if one assumed that
 14 Mr. Kominsky was right and running this
 15 heating iron across an edge -- by the way,
 16 how wide is the tape?
 17 A. The tape is two inches wide.
 18 Q. Two inches wide, and it is being
 19 run along how many corners of this duct?
 20 A. Just the one corner. For about
 21 ten feet for each piece of ductboard.
 22 Q. Even if one were to assume that
 23 running a heating iron across this two inch
 24 piece of tape caused some PCBs to leave that

1 glue, what would happen to those PCBs once
 2 they left that glue?
 3 A. The fiberglass insulation that
 4 is right next to the glue is at or close to
 5 room temperature, so it is immediately going
 6 to run into a barrier that is cool, it is
 7 going to condense immediately, just like we
 8 were illustrating before in those series of
 9 slides.
 10 Q. Again, sir, referring to DM 3123
 11 B, which I will approach the witness, Your
 12 Honor, the step number one --
 13 MR. HENDERSON: Which one is
 14 that?
 15 MR. GOUTMAN: Step number one.
 16 BY MR. GOUTMAN:
 17 Q. What would happen if you are
 18 running that iron on this outer edge? Even
 19 if you got some molecules of PCBs to leave
 20 this glue, what would happen to those
 21 molecules?
 22 A. The molecules would try to enter
 23 the fiberglass and immediately, because the
 24 fiberglass is much cooler, they would

1 immediately condense out as sticky resin
2 particles like we talked about before and
3 stay right where they are.

4 Q. Would they march their way
5 through the thickness of this dense
6 fiberglass?

7 A. No.

8 Q. Would they march their way
9 through the thickness of this dense
10 fiberglass and then volatilize?

11 MR. MC CLAIN: Your Honor, this
12 is leading.

13 MR. GOUTMAN: I'm asking if they
14 would.

15 MR. MC CLAIN: It is leading.
16 Would they march through this fiberglass
17 is leading.

18 THE COURT: It doesn't suggest
19 the answer. Overruled.

20 BY MR. GOUTMAN:

21 Q. Could you tell us whether they
22 would march themselves through this
23 fiberglass and then fly off the surface
24 volatilizing?

1 A. No, they would still be right at
2 the glue and fiberglass interface.

3 Q. In your opinion, sir, did you
4 reach any conclusions, based upon your 20 odd
5 years as a PCB specialist, as to whether the
6 fabrication process, when this ductboard was
7 being formed back in the middle sixties when
8 the building was being built, whether that
9 contributed PCBs to the environment in that
10 building?

11 A. No, it did not.

12 MR. GOUTMAN: This might be a
13 good time to take our afternoon break,
14 Your Honor.

15 THE COURT: We will take a
16 brief recess.

17 MR. EDGE: We will take a
18 short recess.

19 (Court recessed).

20 THE COURT: Mary Childs, I
21 think it is, we have gotten her
22 accommodated for these two days, yesterday
23 and today. Monday we are not having court
24 because of the other chap who needs a

1 physical, but I don't know what I can do
2 as we go along for the rest of the next
3 week in accommodating her. Of course, she
4 is enjoying coming in. She enjoys the
5 attention, I'm sure.

6 MR. MC CLAIN: What is the
7 Court's, I think that The Court is wise in
8 trying to keep her. She doesn't appear to
9 be having any discomfort sitting; it is
10 all in the question of getting her here,
11 and in light of that I'm reluctant to
12 suggest that we let her go just because we
13 might lose someone that we can't afford to
14 lose.

15 THE COURT: I don't want to
16 let her go. With this 15, they have such
17 a camaraderie that it would have really an
18 effect on each of them if we lose anymore
19 of them, especially for a situation like
20 that. And I don't want to lose any of
21 them right now.

22 MR. MC CLAIN: We are in flu
23 season. You never know. We might lose
24 somebody for a week and have to let them

1 go. That would be unfortunate, but --

2 THE COURT: I was hoping, I
3 watched the weather carefully, but they
4 said 37 on Sunday. Snow, 37. That is an
5 oxymoron, snow and 37. And Monday was
6 supposed to be 40 with rain. Now, if
7 that's the case by Tuesday it should be
8 fairly decent. I was thinking of asking
9 her if she will let us know, if the
10 weather breaks, will she be able to come
11 in. So I want to call her in and do that.
12 I don't know that I want to bring her in
13 in front of everyone.

14 MR. MC CLAIN: I think you can
15 do it individually.

16 MR. NEAL: Judge, what is your
17 intention with regard to subsequent
18 Mondays? Are we still going on the four
19 day?

20 THE COURT: I'm going to leave
21 it to you guys. I could go to a five day
22 week if you want to go to a five day week.
23 I think it is stressful to go to a five
24 day week. I'm serious about that.

1 Because this isn't a two or three week
2 trial. In February we have one three day
3 holiday with President's Day, so that
4 would be out, so I think the four day week
5 is good, but I'm not going to impose my --
6 I'm not imposing it as an order.

7 MR. MC CLAIN: Your Honor, I
8 have been thinking about how we are
9 proceeding, and the way that I analyze
10 this, there's one other long witness as I
11 see it that still has to go on, and that's
12 maybe Dr. Erickson.

13 Am I wrong about that, Tom?
14 Is that your next, after this witness,
15 he's the last. The rest of them are
16 shorter witnesses, aren't they?

17 MR. GOUTMAN: We have our
18 epidemiologist, Dr. Lamm.

19 MR. MC CLAIN: Will you be
20 calling him, too, and Cohen?

21 MR. GOUTMAN: We have a few to
22 go.

23 MR. MC CLAIN: Well, maybe we
24 have to. I had set aside Sunday nights to

1 coach my AAU basketball team so I was --
2 Mondays coming back would help. I will
3 give that up, however, if it is looking
4 like we are not going to be finished. I
5 was thinking that we are going to move
6 quicker after we get done with this
7 witness, but maybe we are not, so maybe we
8 do need to go five days to get done.

9 MS. MEYERS: Your Honor, what
10 about the jury? The last time they voted
11 they voted to keep their Monday.

12 MS. MEYERS: 13 to two, I
13 believe.

14 MS. HERSCHEL: Obviously they
15 schedule things like doctor's
16 appointments, etc.

17 THE COURT: The problem is
18 that they don't have -- they got a
19 full-time job is what they have with this
20 case, and that doesn't give them time to
21 do all of the things that retired persons
22 do.

23 MS. HERSCHEL: I think we
24 ought to do what the jury wants to do with

1 respect to that issue.

2 THE COURT: Well, at a given
3 point I think I'm going to go talk with
4 them with your permission.

5 MR. GOUTMAN: Sure.

6 MR. MC CLAIN: That's fine
7 with me.

8 MR. GOUTMAN: My inclination
9 now is to keep it at four days at least
10 through February, but I would like to give
11 it some thought. We can communicate our
12 views to The Court.

13 THE COURT: At this point
14 everybody is kind of wondering what is
15 happening. I told them we are running a
16 restaurant, but we will check on those two
17 things and I will talk to Mary Childs.

18 MR. MC CLAIN: Doing that in
19 actuality is no picnic. It is much like
20 this, actually.

21 THE COURT: For other people
22 to understand, and it is very difficult
23 for other people to understand unless they
24 are actually here.

1 MR. MC CLAIN: Yes, that's
2 true.

3 THE COURT: And that goes for
4 your respective partners. I'm not
5 minimizing the toll that that takes.

6 MR. NEAL: They don't remember
7 me anymore anyway.

8 MR. MC CLAIN: They didn't
9 before you left.

10 THE COURT: The time to worry
11 is if they ask where to forward the mail.

12 MR. NEAL: The mail keeps
13 coming home.

14 MR. MC CLAIN: You remember
15 what happened to the last guy they
16 stationed here.

17 THE COURT: We don't have a
18 good track record from Connecticut.

19 MR. GOUTMAN: You are going to
20 talk to Ms. Childs now?

21 THE COURT: I'm going to talk
22 to her right now.

23 MR. MC CLAIN: Could I just
24 tell the Judge something by myself just

1 before we leave?
 2 MR. GOUTMAN: After you are
 3 done I have a personal thing I want to
 4 bring up with the Judge.
 5 (Off the record discussion).
 6 THE COURT: We spoke with Mary
 7 Childs. She is getting a ride home and
 8 she understands that next week she will be
 9 navigating on her own all things being
 10 equal. I think we are in a good position
 11 there. The jurors are in a good mood.
 12 They would like this case to come to an
 13 end some day, but I'm proud of the fact
 14 that they have all stuck with us.
 15 As far as the four days a
 16 week, to a person that wanted four days a
 17 week, because they said they need one day
 18 to do things that they otherwise can't do.
 19 The only problem we have is with one juror
 20 who in the first full week of February may
 21 require Monday and Friday, I think it was,
 22 Frank.
 23 MR. EDGE: I believe it was
 24 the 14th --

1 THE COURT: Monday and Friday.
 2 MR. MC CLAIN: That's next
 3 week?
 4 THE COURT: That would be the
 5 seventh and the 11th, and another juror
 6 has reservations for a trip, I think it is
 7 to the Holy land, in May.
 8 MR. MC CLAIN: That's correct.
 9 May 22nd, I believe.
 10 THE COURT: And she is going.
 11 If the rest of you want to go with her she
 12 will talk to you on the boat or the plane
 13 or however she's going, but whatever, but
 14 otherwise I think we are in good shape. I
 15 think that with this kind of support we
 16 could get this thing wrapped up. They
 17 wanted to know who deliberates and we told
 18 them. It will be 12, but we are not
 19 talking about who the 12 are at this
 20 point. We are not going into that
 21 conclusion. The lawyers will wrap up the
 22 case by arguing and explaining their sides
 23 to you, which will be a refresher course,
 24 The Court will give you the law, and then

1 you would be directed to deliberate, and
 2 then one wanted to know if that's when
 3 they get lunch.
 4 MR. MC CLAIN: After all this
 5 time they only want lunch?
 6 THE COURT: I think they are
 7 entitled to breakfast, lunch, and dinner,
 8 but that's another story, but, in any
 9 event, those are the questions that we had
 10 talked about in talking with the jury. We
 11 got the answers and I think they are
 12 reasonable answers. And if there's any
 13 questions I will take them now; otherwise,
 14 we will bring the jury in. We would like
 15 a convenient adjournment time.
 16 MR. GOUTMAN: Sure. I think I
 17 have, when I conclude this area, it will
 18 take about ten minutes or so, maybe 15,
 19 and that would bring us up to the
 20 bewitching hour.
 21 THE COURT: Very good.
 22 Bring the jury in.
 23 MR. EDGE: You may be seated.
 24 This Court is in session.

1 MR. GOUTMAN: May I proceed,
 2 Your Honor?
 3 THE COURT: Yes.
 4 BY MR. GOUTMAN:
 5 Q. I think where we left off,
 6 Mr. Woodyard, why the government is wrong
 7 about the ductboard and you summarized it as
 8 an unlikely story.
 9 Mr. Woodyard, what explanation
 10 to you makes scientific sense as to how PCBs
 11 came to be deposited on the surfaces of the
 12 T&S Building?
 13 A. Well, sometimes the --
 14 Q. Keep your voice up, please.
 15 A. I will. Often the most obvious,
 16 simplest answer is the truth, and having gone
 17 through all of this I quickly came to the
 18 conclusion that there was a much easier
 19 explanation for all of this.
 20 Q. And that explanation, sir, is
 21 what?
 22 A. Is that the PCBs in the T&S
 23 Building were deposited as a result of the
 24 fire.

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1 THE COURT: I sorry. I couldn't
 2 hear.
 3 THE WITNESS: The PCBs in the
 4 T&S Building were deposited as a direct
 5 result of the fire.
 6 BY MR. GOUTMAN:
 7 Q. Now, I would like to show you,
 8 again, Exhibit 3123 B, the cross section of
 9 the ductboard. What happens to the PCBs in
 10 this glue when this ductboard on the sixth
 11 floor gets hit by those flames in the, as you
 12 called it, catastrophic fire?
 13 A. The temperature of the fire that
 14 would have contacted that ductboard is in
 15 excess of 1,000 degrees. It would be
 16 incinerated. It would just be evaporated,
 17 redistributed with the smoke throughout the
 18 building.
 19 Q. What would be?
 20 A. Well, in some cases everything,
 21 but certainly the adhesive.
 22 Q. The adhesive meaning what?
 23 A. The glue that contains the PCB.
 24 Q. Now, sir, have you prepared an

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1 exhibit that summarizes the conclusions you
 2 reached in determining that the source of the
 3 PCBs on the surfaces in the building was the
 4 fire?
 5 A. Yes, I did.
 6 Q. And, Your Honor, this is DM
 7 3151, and this will be our last exhibit for
 8 today.
 9 Could you please take us through
 10 this exhibit.
 11 A. Sure. This exhibit I entitled,
 12 "How we Know PCBs in the T&S Building came
 13 from the Fire".
 14 First, again, these are facts.
 15 Number one, the building products containing
 16 PCB, the ductboard containing the 1262, and
 17 the light fixtures containing the 1242 we
 18 were hearing about, were burned, incinerated
 19 in the fire.
 20 Number two, the fire spread
 21 smoke throughout the building. You see
 22 videos of that. You know it happened. Every
 23 floor was contacted with smoke as a result of
 24 the fire that occurred in that area where the

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1 PCBs were released.
 2 Q. And what did that smoke contain?
 3 A. That smoke contained both PCBs
 4 from the ductboard and from the light
 5 fixtures.
 6 Q. Number three.
 7 A. The third point, after the fire
 8 those same PCBs, meaning the PCBs that were
 9 burned from those building products --
 10 Q. The 1262 and the 1242?
 11 A. Correct, those same PCBs were
 12 found throughout the building. They were
 13 found in every floor, just about every sample
 14 that was taken in the building.
 15 Number four, asbestos
 16 fireproofing after the fire had over five
 17 times the amount of PCBs as before the fire.
 18 Remember that bar chart I showed you a while
 19 ago that showed that real low background
 20 level and then Mr. Kominsky's results that
 21 showed that the average level was at least
 22 five times higher after the fire?
 23 Q. What did you conclude from that?
 24 A. Clearly the PCBs, most of the

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1 PCBs in that building were deposited as a
 2 direct result of the fire.
 3 Q. And what was the other source if
 4 most of it was deposited from the fire?
 5 A. Most of it was, as the data
 6 showed, there was some there prior to the
 7 fire. There was a small amount that would be
 8 attributed to background.
 9 Q. Number five.
 10 A. Number five, Aroclor 1260 was
 11 found primarily on the outer layer of the
 12 asbestos fireproofing. I emphasize outer
 13 layer in this diagram.
 14 Q. And what does that tell you as a
 15 scientist and PCB specialist?
 16 A. That the PCBs were deposited
 17 from the fire. They were deposited recently
 18 from soot or smoke or what have you. It
 19 makes perfect sense.
 20 Q. And, finally, number six.
 21 A. Number six, other explanations
 22 that the state has offered up are all
 23 contradicted by the test data. I think I
 24 showed you the slide before with all of the

1 air tests, the lack of increase in surface
2 and air levels. None of those things
3 happened.

4 Q. Specifically what test data are
5 you referring to?

6 A. The over 5,000 air tests that
7 showed virtually no 1260 or 1262.

8 Q. I think you mentioned that 4,000
9 of those occurred in 1994?

10 A. 1994, the six months immediately
11 after the fire.

12 Q. And in 1995 and 1996 that would
13 have been the other 1,000?

14 A. That's correct. And those are
15 all essentially zero or non detect as we call
16 it. Detection, keep in mind, I keep saying
17 zero or no; what I mean is below detection
18 which in most cases here is about half a
19 microgram per cubic meter.

20 Q. Do you mean to say that in 1995
21 and 1996 there were no detects?

22 A. There were no detectable air
23 results at all above a half microgram per
24 centimeter squared.

1 Q. Above one half microgram. In
2 your opinion is one half microgram
3 background? Above background? Below
4 background? What is one half microgram?

5 A. It is the detection limit for
6 the method that we are using.

7 Q. What is it in relation to
8 background?

9 A. I don't really know for air
10 samples what it would be.

11 Q. So when you say the other
12 explanations are contradicted by the test
13 data, you are referring to the air tests --

14 A. Primarily two through four. The
15 air tests are showing virtually no PCB and
16 the air samples for those two-and-a-half
17 years. The surface tests aren't showing this
18 snowing accumulating, this PCB that would
19 have to be accumulating if the state's theory
20 were true, and the fourth point, there's no
21 increase in either the surface levels or air
22 levels once the ventilation system is turned
23 back on and this material is supposedly
24 flying out of the ductboard, so this theory

1 that the state is suggesting is contradicted
2 by the facts and the data as I pointed out
3 down here. (Indicating).

4 Q. And your conclusion as to where
5 the PCBs came from --

6 A. Clearly they came from the
7 incineration of building products containing
8 PCBs during the fire.

9 MR. GOUTMAN: This might be a
10 good time to break, Your Honor.

11 THE COURT: Members of the
12 jury, we are now going to adjourn for the
13 day. In keeping with our practice, we
14 will resume trial on Tuesday, February
15 first and we wish you well Monday. Have a
16 good day.

17 MR. EDGE: This Court now
18 stands in adjournment until 9:30 a.m.
19 Tuesday morning. Everyone remain seated
20 until the jury leaves the room.

21 Okay, jurors.

22 (Witness excused.)

23 (Deposition concluded
24 at 3:50 p.m.)

1 ---
2 C E R T I F I C A T E
3 ---

4 I hereby certify that the witness
5 was duly sworn by me and that the deposition
6 is a true record of the testimony given by
7 the witness.

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John W. Begley, RPR

Dated: January 30, 2000

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1 **LAWYER'S NOTES**

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