

In The Matter Of:

*Estate of Lloyd Koons, Estate of Donald Kotay v.
Union Carbide Corporation, et al.*

*Francis A. King
December 14, 2001*

*Morse, Gantverg & Hodge, Inc.
One Bigelow Square
Suite 719
Pittsburgh, PA USA 15219
(412) 281-0189*

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Page 1

[1] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
[2] COMMONWEALTH OF PENNSYLVANIA
[3] CIVIL DIVISION
[4]

[5] RE:
[6] ALL PENDING ASBESTOS CASES
[7] ESTATE OF LLOYD KOONS,
[8] ESTATE OF DONALD KOTAY,

[9] Plaintiffs,)

[10] vs.) No. GD 99-122131

[11]) No. GD 99-10029

[12] UNION CARBIDE CORPORATION, et al.,)

[13] Defendants.)

[14] Deposition of FRANCIS A. KING
[15]

[16] Friday, December 14, 2001

[17] The deposition of FRANCIS A. KING, called as a
[18] witness by the Plaintiffs, pursuant to notice and the
[19] Pennsylvania Rules of Civil Procedure pertaining to
[20] the taking of depositions, taken before me, the
[21] undersigned, Colleen O'Brien Adams, a Notary Public in
[22] and for the Commonwealth of Pennsylvania, at the
[23] offices Goldberg, Persky, Jennings & White, 1030 Fifth
[24] Avenue, Pittsburgh, Pennsylvania 15219, commencing at
[25] 10:00 o'clock a.m., the day and date above set forth.

[26] COMPUTER-AIDED TRANSCRIPTION BY
[27] MORSE, GANTVERG & HODGE, INC.
[28] PITTSBURGH, PENNSYLVANIA
[29] 412-281-0189

[30]

Page 2

APPEARANCES:

[1] On behalf of the Plaintiffs:
[2] Goldberg, Persky, Jennings & White
[3] Aaron J. DeLuca, Esquire
[4] 1030 Fifth Avenue
[5] Pittsburgh, Pennsylvania 15219

[6] On behalf of the Witness:

[7] Eckert Seamans:
[8] Dale Hershey, Esquire
[9] USX Tower, 44th Floor
[10] 600 Grant Street
[11] Pittsburgh, Pennsylvania 15219

[12] On behalf of the Defendant UNC:

[13] Wilbraham, Lawler & Buba:
[14] Alba A. Romano, Esquire
[15] First and Market Building
[16] 100 First Avenue
[17] Pittsburgh, Pennsylvania 15222

[18] On behalf of the Defendant Klinger:

[19] Riley, McNulty, Hewitt & Sweltzer:
[20] Sandra L. Aven, Esquire
[21] 650 Washington Road, Suite 300
[22] Pittsburgh, Pennsylvania 15228

[23] ALSO PRESENT:

[24] Dr. David Egliman (via telephone)

[25]

[26]

Page 3

[1] FRANCIS A. KING
[2] called as a witness by the Plaintiffs, having been
[3] first duly sworn, as hereinafter certified, was
[4] deposed and said as follows:

[5] EXAMINATION
[6] BY MR. DELUCA:

[7] Q: Mr. King, good morning.

[8] A: Good morning.

[9] Q: My name is Aaron DeLuca and I represent a
[10] number of individuals who have claims against Union
[11] Carbide Corporation in asbestos cases. I appreciate
[12] you coming in this morning. I don't think I am going
[13] to take very much of your time. I understand that you
[14] are a lawyer?

[15] A: Correct.

[16] Q: And you are presently general counsel to
[17] Elkem Metals Company?

[18] A: Yes.

[19] Q: That being said, I am sure you are very
[20] familiar with the deposition process, just let me
[21] remind you if you don't understand one of my
[22] questions, I would ask that you tell me that and I
[23] will attempt to repeat it or rephrase it. Fair
[24] enough?

[25] A: Fair enough.

Page 4

[1] Q: I have issued a subpoena dated December 7,
[2] 2001 along with a notice of deposition, which I am
[3] going to ask be marked as Deposition Exhibit No. 1.
[4] And you have that in front of you right now; correct?
[5] A: I do.
[6] (Thereupon, Deposition Exhibit No. 1 was
[7] marked for identification.)
[8] Q: And you have had a chance to review that?
[9] A: Yes.
[10] MR. HERSHEY: I would like just to have one
[11] point of clarification and that is that the
[12] subpoena was issued on behalf of the plaintiffs
[13] in the cases that are pending against Union
[14] Carbide.
[15] MR. DELUCA: Yes, sir.
[16] MR. HERSHEY: And I would like it noted
[17] that Mr. King is here under subpoena and he is
[18] not testifying in cooperation with plaintiffs but
[19] going to respond to questions put to him under
[20] subpoena.
[21] MR. DELUCA: I agree to that.
[22] Q: Mr. King, do you recall our initial contact
[23] on December 6 when I contacted the law department of
[24] Elkem Metals?
[25] A: I remember a phone call, yes.

Page 5

[1] Q: Sure. And at that time your secretary or
[2] paralegal answered the phone. And I identified myself
[3] to her as being a plaintiff's attorney. Following
[4] that, she connected me with you, do you remember that?
[5] A: I remember being connected with you, yes.
[6] Q: What was the name of the lady who forwarded
[7] that call to you?
[8] A: Her name is Kathleen spelled with a K,
[9] Kantor, also spelled K-a-n-t-o-r.
[10] Q: Is she a paralegal with the law department
[11] at Elkem Metals?
[12] A: She is kind of a girl Friday, she does
[13] everything. She is my secretary, she's a paralegal,
[14] we have a very small department.
[15] Q: Would you describe to me your employment
[16] history with Elkem Metals as far as when you started
[17] and the positions you have held?
[18] A: I started in February, 1985 in the same
[19] position I hold today.
[20] Q: As vice president and general counsel?
[21] A: Correct.
[22] Q: You have had a chance to review the
[23] documents which were attached to the subpoena that I
[24] issued on December 7?
[25] A: Correct.

Page 6

[1] Q: Can you provide me with any information as
[2] to what, if any, business entities Elkem Metals
[3] purchased from Union Carbide in the early '80's?
[4] A: The transaction was completed in 1981. I
[5] believe the actual closing date was June 30, 1981.
[6] And by virtue of that agreement, Elkem purchased the,
[7] what was then known as the metals division of Union
[8] Carbide Corporation. It was an asset purchase and the
[9] assets - I may miss something here - but the assets,
[10] as I recall, consisted of a plant in Marietta, Ohio, a
[11] plant in Ashtabula, Ohio, a plant in Alloy, West
[12] Virginia, a plant in Alabama, I think it was
[13] Birmingham but I am not certain, and a plant in
[14] Portland, Oregon.
[15] The transaction also consisted of a lease
[16] of facilities in Niagara Falls, New York and I'm
[17] sorry, when I said Birmingham, Alabama, it was really
[18] Sheffield, Alabama, I recall it now. There was also a
[19] transaction agreed to at that time whereby Elkem would
[20] purchase two plants in Canada at a later date. And
[21] those two plants were actually purchased in 1984.
[22] Q: Can you tell me how Hawks Nest or Glen
[23] Ferris fits into these transactions that Elkem entered
[24] into with Union Carbide in 1981?
[25] A: Hawks Nest and Glen Ferris are

Page 7

[1] hydroelectric facilities that are located in proximity
[2] to the Alloy, West Virginia plant and they were part
[3] of assets of the purchase that were purchased.
[4] Q: Do I understand these to be hydroelectric
[5] power plants?
[6] A: Correct.
[7] Q: And is there one plant or are there two
[8] plants?
[9] A: There is two plants.
[10] Q: And they are known as Hawks Nest and Glen
[11] Ferris?
[12] A: Correct.
[13] MR. DELUCA: Off the record, please.
[14] (Discussion off the record.)
[15] MR. DELUCA: We are going back on the
[16] record.
[17] BY MR. DELUCA:
[18] Q: Mr. King, before we went off the record we
[19] were just talking about the Hawks Nest plant and the
[20] Glen Ferris plant which were hydroelectric power
[21] plants, which were part of the purchase by Elkem of
[22] the metals division of Union Carbide and I believe
[23] that you told me that these two power plants were
[24] associated with the facility in Alloy, West Virginia;
[25] is that correct?

Page 8

[1] A: That's correct.
[2] Q: With regard to the documents which I am
[3] seeking by the subpoena which are enumerated in the
[4] letter with enclosures dated August 17, 1981 from Mr.
[5] DeBor to Mr. Fawcett, have you undertaken a search to
[6] determine whether Elkem presently possesses those
[7] documents?
[8] A: I have done as much as I thought I could to
[9] attempt to determine if they exist.
[10] Q: And would you describe for me fully the
[11] steps that you have taken on behalf of Elkem to
[12] determine whether those documents are in existence and
[13] if so where they would be located?
[14] A: Well, the starting point was to contact the
[15] person to whom the letter of August 17 was addressed,
[16] Mr. Harry W. Fawcett. I called his home, I talked to
[17] him briefly to describe what was in the letter. I
[18] read him the letter, and then I asked him if he had
[19] any recollection at all of having received the 39
[20] cartons of documents that are identified in the
[21] letter. And the short answer is he had no
[22] recollection at all. In fact, he didn't even remember
[23] who I was, so, that was a dead end. That produced
[24] nothing.
[25] Then I went, I looked at our records

Page 9

[1] retention policy to see if there was any category of
[2] documents in that policy that might have - that these
[3] boxes might have fit into. I really didn't find
[4] anything that was relevant, in my mind, at least, as
[5] to a category that might have picked up these
[6] documents.
[7] Then I had my legal assistant, Mrs. Kantor,
[8] check our database, that is our own law department
[9] database, which includes all of our departmental
[10] records by category, and she didn't find anything in
[11] there that was applicable.
[12] And the last step was to check the manifest
[13] of retired documents that we have. We store retired
[14] documents in a mine north of Butler, Pennsylvania and
[15] the manifest categorizes those records both by the
[16] name of the person who delivers them for the storage
[17] and also by category in very broad categories. An
[18] example of the latter would be accounts receivable,
[19] for example, and under documents that I have sent for
[20] storage it comes under the heading FK, Frank King.
[21] And we looked through that and we didn't find anything
[22] that looked applicable. Those are the steps I took.
[23] Q: I would like to ask you about each one of
[24] those, if you don't mind.
[25] A: Sure.

Page 10

[1] Q: When you talked to Mr. Fawcett and you read
[2] him this letter, am I correct that he said he just
[3] didn't remember receiving these documents as opposed
[4] to telling you that he did not receive these
[5] documents?
[6] A: He said he didn't remember.
[7] Q: He couldn't tell you one way or the other?
[8] A: That's right.
[9] Q: And did Mr. Fawcett cite to you any other
[10] individuals that he thought perhaps could address your
[11] inquiry?
[12] A: No.
[13] Q: Do you know when Mr. Fawcett retired from
[14] Elkem Metals?
[15] A: Actually, I don't think he ever worked for
[16] Elkem Metals. Harry Fawcett was - I only know this
[17] by what predated my being employed by Elkem in 1985,
[18] Harry Fawcett, originally was a fairly high ranking
[19] executive at Alcoa. At the time that I knew him after
[20] I started in 1985, he was retired, and he was working,
[21] I believe, as a consultant for a sister company of
[22] Elkem called Elkem Chemicals. They were located at
[23] Building No. 1 on Cliff Mine Road in Pittsburgh. And
[24] he worked there. I met him a few times. He left the
[25] company about a year after I started.

Page 11

[1] Q: Mr. King, I note that your business card
[2] indicates that you are employed by Elkem Metals
[3] Company, LP.
[4] A: That's an old card. It's no longer true.
[5] It's now called Elkem Metals Chem, Inc. I just
[6] haven't had the cards updated.
[7] Q: I would note that both of those entities
[8] differ from the entity that's listed in this letter
[9] dated August 17, 1981.
[10] A: That's correct.
[11] Q: That was addressed to Mr. Fawcett of Elkem
[12] Management, Incorporated?
[13] A: Right.
[14] Q: Is that a different company than the Elkem
[15] Metals?
[16] A: It is. They are sister/daughter type
[17] companies. It's all one umbrella of companies under
[18] the same ultimate management ownership.
[19] Q: I am not seeking any confidential or
[20] proprietary information about the operations of Elkem,
[21] but can you tell me what relationship Elkem Management
[22] has or had with Elkem Metals?
[23] A: Well, at the time this letter was written,
[24] August 17, it would have post dated the closing on the
[25] purchase arrangement and Elkem Management, Inc. would

Page 12

[1] have been the managing partner of Elkem Metals
[2] Company. I can tell you what the structure was at
[3] that time. There were four partners, they were all
[4] ultimately owned by a Norwegian corporation called
[5] Elkem Metal Chem a/s, small a, small s, and those four
[6] partners, in turn, owned - I'm sorry, Elkem
[7] Management, Inc. is a corporation. Those four
[8] corporations that I just mentioned, owned the
[9] partnership, Elkem Metals Company.
[10] Q: Is there an entity in existence today known
[11] as Elkem Management, Incorporated?
[12] A: No.
[13] Q: Can you tell me when Elkem Management,
[14] Incorporated - well, strike that. Is there - do you
[15] know whether Elkem Management, Incorporated ceased to
[16] do business or whether it changed its name?
[17] A: Changed its name. And then it ceased to do
[18] business subsequent to that.
[19] Q: Can you tell me the name of the entity that
[20] Elkem Management, Incorporated became known as before
[21] it ceased to do business?
[22] A: Well, today, what was Elkem Management,
[23] Inc., along with several other companies are now
[24] merged together in a single company known as Elkem
[25] Investment Holdings, Inc.

Page 13

[1] Q: Where is that entity headquartered today?
[2] A: In Pittsburgh.
[3] Q: You are not employed by that company;
[4] correct?
[5] A: No.
[6] Q: You don't serve as general counsel to them?
[7] A: I do in the sense that it's a - yes, I do
[8] serve as general counsel to them.
[9] Q: Do they maintain records separate and apart
[10] from Elkem Metals?
[11] A: No.
[12] Q: Did you contact anyone at Elkem Investment?
[13] A: Could I correct that?
[14] Q: Yes, sir.
[15] A: They do maintain separate records in the
[16] sense of corporate identity type records like minute
[17] books and all the corporate documents. But as far as
[18] correspondence and that type of thing, they are all
[19] held at our offices pretty much together.
[20] Q: Did you contact anyone associated with
[21] Elkem Investment Holdings, Incorporated to determine
[22] whether or not they possessed the records which are
[23] listed in this letter of August 17, 1981?
[24] A: No.
[25] Q: Are you able to tell me - withdraw that

Page 14

[1] question.
[2] When you spoke to Mr. Fawcett, you said
[3] that he was here in the Pittsburgh area?
[4] A: Yes.
[5] Q: Does he presently live in Sewickley,
[6] Pennsylvania?
[7] A: Yes.
[8] Q: Does he work in any capacity with Elkem
[9] today, for instance, as a consultant?
[10] A: No.
[11] Q: Getting back to the four steps that you
[12] listed for me, I think the second one is that you
[13] checked your records retention policy?
[14] A: Correct.
[15] Q: You wouldn't have a copy of that with you
[16] today would you?
[17] A: I do.
[18] Q: May I mark that as Deposition Exhibit 2?
[19] (Thereupon, Deposition Exhibit No. 2 was
[20] marked for identification.)
[21] Q: Did I understand you to say that when you
[22] reviewed the records retention policy today, you
[23] didn't see any categories of documents in here which
[24] would suggest to you that the documents that I am
[25] seeking have been destroyed subject to this policy?

Page 15

[1] A: I didn't see any category of documents
[2] listed in that policy that I thought would pick up the
[3] types of documents that were in the letter that was
[4] addressed to Mr. Fawcett.
[5] Q: Okay. And then you indicated that your
[6] assistant, Ms. Kantor, checked the database that your
[7] law department maintains which covered departmental
[8] records?
[9] A: Correct.
[10] Q: Can you tell me when that database came
[11] into existence?
[12] A: Only roughly. I would say probably about
[13] 1996 or '97, I am not sure which.
[14] Q: And that was after the point in time you
[15] joined Elkem?
[16] A: Yes.
[17] Q: Is this something that was done pursuant to
[18] your instruction?
[19] A: Yes.
[20] Q: And can you tell me what efforts were made
[21] in - I'm sorry, did you say '86?
[22] A: What are you asking me, when -
[23] Q: When did the database come into existence?
[24] A: Round '96 or '97.
[25] Q: '96 or '97?

Page 16

[1] A: Right.
[2] Q: Can you tell me what efforts were made in
[3] '96 or '97, to look to see what documents were in
[4] existence for inclusion in the database?
[5] A: That would be all the legal department
[6] records, all of our files.
[7] Q: If there were files which were not
[8] generated or used by your legal department, they would
[9] not be in your database; is that correct?
[10] A: That's correct.
[11] Q: And then, finally, you indicated that you
[12] checked a manifest of retired documents?
[13] A: That's right.
[14] Q: Could you just tell me what that means so
[15] that we are clear?
[16] A: Well, when documents reach a certain point
[17] in the records retention policy that they are due to
[18] be retired, then they are cartoned up and sent off to
[19] this storage point, which is north of Butler,
[20] Pennsylvania. And then they are manifested; that is,
[21] they are marked in a certain way as to what they are.
[22] And then after they have been there for a period of
[23] time, they are supposed to be - when they reached the
[24] destruction point, they are supposed to be destroyed.
[25] And that's basically it.

Page 17

[1] Q: Is that the Iron Mountain facility?
[2] A: I don't know the name of it. I have been
[3] there but I forgot the name of it.
[4] Q: It's an old mine?
[5] A: It's an old mine, yes.
[6] Q: Just generally, can you tell me the volume
[7] of boxes that Elkem stores at that location?
[8] A: I can't tell you specifically. I know that
[9] I have been out there searching for documents on one
[10] occasion in particular, and I spent the better part of
[11] three days out there going through a definitive
[12] category of documents. I knew what I was looking for.
[13] Q: Are there thousands of boxes there?
[14] A: I think so, yes.
[15] Q: And there is some sort of index that you
[16] have created either for your own purpose or for the
[17] benefit of this facility that would tell you what is
[18] generally found in each box?
[19] A: That's the manifest that I referred to.
[20] Q: And can you just give me an example of the
[21] type of information or the quantity of information
[22] that would be located on this manifest as it would
[23] relate to describing the contents of any given box?
[24] A: It's pretty basic. It's just like I said,
[25] it's categorized by either the name of the person who

Page 18

[1] sent it or the initials of the person who sent it or a
[2] general subject matter like "accounts receivable,"
[3] that type of thing.
[4] Q: By chance, did you bring a copy of your
[5] manifest with you today?
[6] A: That, I didn't, no.
[7] Q: Is that something that you would be willing
[8] to provide?
[9] A: Sure.
[10] Q: There was no effort made to look into any
[11] boxes that are housed in that storage facility north
[12] of Pittsburgh to see whether the documents I am
[13] seeking would be located therein?
[14] A: No.
[15] Q: There was just a general effort to see who
[16] sent the boxes or whether there was any description
[17] which might match what I was looking for?
[18] A: Correct.
[19] Q: Did you look for documents that Harry
[20] Fawcett would have transferred to this facility or
[21] possibly transferred to this facility?
[22] A: Well, I looked through the manifest and
[23] Mrs. Kantor did, as well, under my direction, to see
[24] if there was anything in there that might indicate
[25] that these documents in this letter of 1981 were there

Page 19

[1] and there was no indication. There was nothing under
[2] the name, Fawcett, for example, HWE, or anything like
[3] that.
[4] Q: Were there any documents that would have
[5] pertained to Hawks Nest or Glen Ferris among these
[6] documents that are stored there based on your review
[7] of this manifest?
[8] A: There were general categories of what we
[9] call plant documents, also of boxes of what we call
[10] plant documents, okay? There were also, for example,
[11] my database, there are lots and lots of files that
[12] relate to Hawks Nest, that relate to Glen Ferris, that
[13] relate to the Alloy plant, that type of thing, but
[14] nothing that would correlate between those general
[15] categories and the documents described in the letter.
[16] Q: Mr. King, did you or anyone at your
[17] direction review the documents which you possess that
[18] pertain to Hawks Nest or Glen Ferris to see whether
[19] any of the documents that I am seeking were mixed in
[20] with them?
[21] A: Well, as far as the documents that were in
[22] storage, no, because we didn't go out to the mine. As
[23] far as the documents that are in my database, I looked
[24] at the file headings, I looked at - I mean I know
[25] these documents, and I can tell you that there's

Page 20

[1] nothing you are looking for that was in that, that
[2] were in those documents, I am sure of that.
[3] Q: You had described a certain category of
[4] documents as being plant documents. Let me ask you
[5] about the status of Elkem in regard to the Hawks Nest
[6] and the Glen Ferris plant. Does Elkem have any
[7] interest in those plants at present?
[8] A: We own them.
[9] Q: You still own them today?
[10] A: Yes.
[11] Q: Was there any effort made in response to my
[12] subpoena to contact those plants to determine whether
[13] or not they possess any of these 39 cartons of
[14] documents which I am seeking?
[15] A: No, I thought about that but then I thought
[16] "Why bother," because these documents were sent
[17] specifically to Harry Fawcett according to the letter,
[18] they weren't sent to the plant, so there is no way
[19] that I can think of that those documents would have
[20] wound up at the plant.
[21] Q: That involves an assumption on your part
[22] that Mr. Fawcett did not send them to the plants that
[23] these documents pertain to; correct?
[24] A: I guess that's right. Yes.
[25] Q: When I first spoke with Mrs. Kantor before

Page 21

[1] she transferred me to you, she had indicated that she
[2] had received a request three or four weeks earlier
[3] than the conversation I had with her on December 6, a
[4] request for these documents from someone from Texas.
[5] And she believed that that person was acting on behalf
[6] of Union Carbide.
[7] A: I don't think it was three to four weeks.
[8] Very shortly before I talked with you, I received a
[9] phone call from a law firm in Texas that represented
[10] themselves as representing Union Carbide, inquiring
[11] about the same matter. Unfortunately, I didn't write
[12] the fellow's name down. And I don't know who it was
[13] that contacted me but he did indicate that there was a
[14] trial that was imminent, and I don't remember the
[15] court in Texas, and he asked me about these documents
[16] and I said I didn't have a clue as to where they might
[17] be, and if they even existed, and that was pretty much
[18] it, the conversation.
[19] Q: Did you summarize your conversation with
[20] this person in the form of memo or did you take any
[21] notes about it?
[22] A: No.
[23] Q: Do you have any information as to the
[24] identity of the person that called you?
[25] A: I don't. I didn't go back and look at my

Page 22

[1] yellow pad or white pad that I had in front of me at
[2] the time. There may be a name there that I would
[3] recognize but I didn't look for that.
[4] Q: Did that individual ask you to make any
[5] search for these documents?
[6] A: No.
[7] Q: Is there anything else that you can recall
[8] about that conversation?
[9] A: Just what I have told you.
[10] Q: The conversation that we had on the 6th,
[11] which was before you were served with the subpoena in
[12] this matter, during that conversation, it appeared to
[13] me that I was on speakerphone and that Mrs. Kantor was
[14] in the room with you. Was that the circumstances?
[15] A: No, you were on the speakerphone but she
[16] wasn't there.
[17] Q: I heard someone talking in the background.
[18] Would that have been Mrs. Kantor?
[19] A: She might have appeared in the doorway and
[20] said something or whatever, I don't know.
[21] Q: I thought that during our conversation the
[22] name, DeBor, was raised by you as the name of somebody
[23] who may have contacted you about these documents.
[24] A: Yes. You are right. You are right. And
[25] the reason I know that is because that's a name of a

Page 23

[1] person I know here in Pittsburgh, that was
[2] coincidental. I believe his name was DeBor.
[3] Q: Was this a different conversation than the
[4] one you described to me?
[5] A: No, I think he was the - he was probably
[6] the fellow that called me representing Union Carbide.
[7] Q: Do you know whether you received more than
[8] one call from either Union Carbide or someone acting
[9] on their behalf?
[10] A: I believe just him.
[11] Q: So Mr. DeBor was the one that called you,
[12] asked you whether you knew where these documents were
[13] and Mr. DeBor was the person who did not ask you to
[14] search for them?
[15] A: I believe so, yes.
[16] Q: Do you know or did he disclose to you, Mr.
[17] DeBor, that he was the DeBor that had signed this
[18] letter addressed to Mr. Fawcett dated August 17, 1981?
[19] A: Wait a minute. Now, I am getting a little
[20] confused. DeBor is the name of the person on the
[21] letter; correct?
[22] Q: That's true.
[23] A: Maybe that's where I picked the name up.
[24] I am going to rescind my testimony that that was the
[25] name of the fellow that called me. I am not sure

Page 24

[1] about that now.
[2] Q: Did Mr. DeBor indicate to you that he was a
[3] potential witness in the Union Carbide trial which
[4] just occurred in Texas?
[5] MR. HERSHEY: You are now attributing an
[6] understanding that he has testified he doesn't
[7] have, that is he no longer -
[8] Q: Let me rephrase get. Did Mr. DeBor
[9] disclose to you that?
[10] A: I am going to back up. And now it's coming
[11] a little bit back to me. I wasn't paying a whole lot
[12] of attention to this at the time that it happened
[13] because I was working on a project when these calls
[14] came in. I do now believe there were two calls. I
[15] think there was a call from possibly a Mr. DeBor who
[16] indicated that he was calling on behalf of Union
[17] Carbide and inquiring about these documents and then I
[18] think there was a second call from a lawyer, because I
[19] asked Mr. DeBor could I speak with the counsel and
[20] then I the got a phone call from the counsel. That's
[21] the way it happened, I recall it now. Okay.
[22] Q: I didn't mean to interrupt you.
[23] A: I recall now that there were two calls; one
[24] was from a Mr. DeBor, I believe, and the second call
[25] was from a lawyer who identified himself as

Page 25

[1] representing Union Carbide in an asbestos litigation
[2] in Texas.
[3] Q: So the first call that you received about
[4] these documents was from Mr. DeBor?
[5] A: That's my recollection. Yes.
[6] Q: And then you -
[7] A: I know it was a layman; it was not a
[8] lawyer. I think his name was DeBor.
[9] Q: Is it your recollection that following or
[10] during the conversation with DeBor, you requested to
[11] speak with an attorney?
[12] A: That's correct.
[13] Q: Can you tell me - and then later, did you,
[14] in fact, speak with an attorney representing Union
[15] Carbide?
[16] A: That's correct.
[17] Q: Can you tell me how much time elapsed
[18] between the two conversations?
[19] A: Not really. I think it was the same day.
[20] Probably a couple of hours.
[21] Q: For purposes of this record, I don't want
[22] to confuse the conversations or what statements were
[23] made by what party, so I apologize but can we just get
[24] your recollection as to exactly what Mr. DeBor said to
[25] you and then we can get your recollection of what

Page 26

[1] transpired during the conversation with counsel?
[2] A: Well, I have told you just about everything
[3] I recall. But I believe Mr. DeBor identified himself
[4] said he was representing or he was working on asbestos
[5] litigation for Union Carbide, and asked about old
[6] records. I didn't have a copy of this letter
[7] obviously, in front of me at the time, asked me if we
[8] had any old records from Union Carbide relating to
[9] Hawks Nest and I said, "None that I am aware of." And
[10] then as we talked for a few minutes, I said, "Look,
[11] why don't you have your counsel call me and let's find
[12] out specifically what you are after. And if we can
[13] help you, we will. If we can't, well, we can't."
[14] Q: And then you were contacted by counsel?
[15] A: Correct.
[16] Q: And could you, as best you recall, describe
[17] the contents of that conversation?
[18] A: I believe he asked me the same question,
[19] "Do you have any of these records? We are starting an
[20] asbestos trial, Union Carbide is a defendant, do you
[21] have any knowledge of these kinds of records at all?"
[22] I said, "I don't have a clue. I wouldn't even know
[23] where to begin looking for them."
[24] Q: And am I correct, Mr. King, that neither
[25] Mr. DeBor nor Union Carbide counsel asked you to

Page 27

[1] search for them?
[2] A: I don't believe so. I don't recall them
[3] asking me to conduct any kind of search.
[4] Q: Did Mr. DeBor disclose to you his potential
[5] involvement as a witness in the Texas litigation?
[6] A: No.
[7] Q: Do you have any knowledge as to whether
[8] there was any federal laws which would have required
[9] Union Carbide to transfer these documents to Elkem in
[10] association with the purchase of the Hawks Nest and
[11] Glen Ferris facilities?
[12] A: Do I know if there were any federal laws
[13] that require that? No, I don't.
[14] Q: Do you know whether there are any federal
[15] laws that would require the retention of these
[16] records?
[17] A: No.
[18] Q: Can we go off the record, please?
[19] (Recess taken.)
[20] BY MR. DELUCA:
[21] Q: Mr. King, I do have some more questions for
[22] you. I am just looking for some general information
[23] because I am having a hard time within my own mind
[24] understanding this Hawks Nest plant and Union Carbide
[25] and Elkem's interest in it. When Elkem purchased the

Page 28

[1] Hawks Nest plant from Union Carbide, do you know
[2] whether that was a transaction that was negotiated by
[3] Elkem's legal department or whether there was outside
[4] counsel involved?

[5] A: It was outside counsel.

[6] Q: Do you possess a file on that asset
[7] purchase?

[8] A: Yes. We have - I am reasonably certain
[9] that there are files that were retired that would be
[10] out at the mine but we also have a complete set of
[11] documents in my office which are bound, all the basic
[12] documentation of the transaction was bound. I think
[13] there is like nine or ten volumes of that transaction.

[14] Q: Okay. And would that contain the purchase
[15] and sale agreement?

[16] A: Yes.

[17] Q: And the deeds, title instruments, things
[18] like that?

[19] A: Yes.

[20] Q: And I would assume that prior to Elkem
[21] purchasing that, they conducted some sort of title
[22] search to determine the legitimacy of the deed that
[23] Union Carbide was prepared to convey?

[24] A: Correct.

[25] Q: Would you have information relating to the

Page 29

[1] title search in your possession in those volumes of
[2] documents that you maintained?

[3] A: It would be in there, yes.

[4] Q: Do you know whether the Hawks Nest tunnel
[5] was part of the purchase by Elkem of assets owned by
[6] Union Carbide?

[7] A: Yes.

[8] Q: Does Elkem currently own the Hawks Nest
[9] tunnel?

[10] A: Yes.

[11] Q: And that was something that they purchased
[12] from Union Carbide?

[13] A: Yes.

[14] Q: And you have documents relating to that?

[15] A: Yes.

[16] Q: And would there be a title search for that,
[17] as well?

[18] A: I assume so.

[19] Q: Can you tell me what you know about the
[20] Hawks Nest plant and the construction of Hawks Nest
[21] tunnel, just generally?

[22] MR. HERSHEY: This goes pretty far beyond
[23] the subjects covered in the request for documents
[24] and Mr. King's search for the documents requested
[25] in the subpoena. He was asked to search and look

Page 30

[1] for documents in Exhibit A and he has done that
[2] and his familiarity with Elkem's affairs began in
[3] 1985, so he can answer your questions as fully as
[4] he is able but his understanding of the facts
[5] regarding Elkem and its properties really begins
[6] in 1985.

[7] MR. DELUCA: Let me see if I can lay a
[8] foundation. I am not trying to expand the scope
[9] of this. I think it relates to my ability to try
[10] to find documents.

[11] Q: I don't know if there are any other
[12] documents that Elkem may have which would be relevant
[13] to my cases, but upon your employment with Elkem
[14] Metals, in preparation for undertaking your job, did
[15] you have the occasion to review historical information
[16] about the Hawks Nest plant and the Hawks Nest tunnel?

[17] A: Before being employed, no.

[18] Q: From the time that you have been employed
[19] by Elkem, have you undertaken any review of documents
[20] which would give you some insight into the
[21] construction of the plant or the construction of the
[22] tunnel?

[23] A: I would answer it this way. I have learned
[24] about the asset, I would call it, the hydro facility
[25] simply by virtue of my work with the Federal Energy

Page 31

[1] Regulatory Commission, for example, FERC, that plant
[2] and that facility are licensed by FERC, so there is a
[3] great deal of information that you have to review and
[4] provide when you are relicensing, we relicensed that
[5] facility in 1987, so, I know a fair amount about it.

[6] Q: Let me see if I understand, and if I am
[7] incorrect in any regard, please let me know that.
[8] I am sure you would.

[9] A: Okay.

[10] Q: This plant, Hawks Nest plant, was regulated
[11] by the FERC?

[12] A: Correct.

[13] Q: And when Elkem purchased this plant from
[14] Union Carbide, the transaction had - the transaction
[15] was also regulated by FERC?

[16] A: Well, it was regulated in the sense that
[17] it's a licensed facility, it was a licensed facility
[18] by FERC in 1981 and that license had to be transferred
[19] from Union Carbide to Elkem. And that was done. And
[20] then - but the licence ran out in 1987, and it was
[21] relicensed in 1987 for 30 years.

[22] Q: By Elkem?

[23] A: By Elkem.

[24] Q: I apologize for asking this but licensed
[25] for what, sir?

Page 32

[1] A: Well, any hydroelectric facility in the
[2] United States that's on a navigable body of water has
[3] to be licensed by the Federal Energy Regulatory
[4] Commission and it's a very cumbersome process, it's a
[5] very time consuming process and it involves a whole
[6] lot of input from various federal agencies and it goes
[7] onto a docket for comment by the public, for comment
[8] by interested parties, for protests, for example, by
[9] interested parties, and FERC is required to conduct,
[10] do an investigation of the need for the project, the
[11] continuing need for the project, and to field input
[12] by, for example, the Fish and Natural Wildlife Agency,
[13] and all other interested parties, and conduct, really,
[14] a very, very sophisticated investigation as to the
[15] need for the project.

[16] If they are satisfied that the project
[17] represents the best and highest use for the navigable
[18] water, in this case the New River in West Virginia,
[19] then they will grant the licence for a hydro project.
[20] If they are not convinced, they will turn it down.

[21] Q: If I wanted to learn more about the
[22] obligations of the license holder, there would be a
[23] statute on point that would address that?

[24] A: Yes. There would be. There is a large
[25] body of statutory law and regulations, primarily

Page 33

[1] regulations that govern how you license a
[2] hydroelectric project. The licence, itself, that's
[3] granted by FERC is usually the document that contains
[4] all the restrictions on the use of the project.

[5] Q: Okay. And once a license has been granted,
[6] it's generally valid for 30 years?

[7] A: It depends. Ours went for 30 years. I
[8] think the norm right now for FERC is 30 years.

[9] Q: Are there ongoing inspections or
[10] responsibilities under that statute?

[11] A: Under the licence, itself?

[12] Q: Under the licence.

[13] A: Yes.

[14] Q: May I ask, sir, whether Elkem Metals
[15] currently does business with Union Carbide in any way?

[16] A: That's a good question. It's not Union
[17] Carbide anymore it's now Dow Chemical. Union Carbide
[18] was merged with Dow Chemical.

[19] Q: Yes, sir.

[20] A: But, I am sure we do. We have done
[21] business with Union Carbide over the years buying and
[22] selling different materials. I am currently in a
[23] project with Union Carbide, a legal project, involving
[24] the former Portland, Oregon facility where we share
[25] responsibility on an environmental issue. Yes. I

Page 34

[1] would have to safely say we do business with them.

[2] Q: I apologize if I covered any part of this
[3] question earlier but you had referenced that you
[4] possess files pertaining to Hawks Nest, your own
[5] personal files?

[6] A: Correct.

[7] Q: What types of documents would be contained
[8] within your Hawks Nest file?

[9] A: Mostly the licensing files with FERC, and
[10] the ongoing responsibility or compliance with that
[11] license would be in those files. We have had a couple
[12] of incidents involving the project. There was a
[13] drowning a couple years ago that resulted in a
[14] lawsuit. There would be files relating to updating
[15] the facility, itself, by you know, spending projects
[16] to refurbish turbines and that type of thing, just a
[17] whole host of different typical business projects that
[18] surround a project like that.

[19] Q: How long has Elkem been in business, sir?

[20] MR. HERSHEY: Which Elkem?

[21] Q: Well, that's a bad question.

[22] A: In the U.S. Elkem was in business in a
[23] small way prior to 1981. The main business started
[24] with the purchase of the metals division from Union
[25] Carbide in 1981.

Page 35

[1] Q: And this is a Norwegian entity, the parent
[2] company?

[3] A: Yes.

[4] Q: The parent company is from Norway?

[5] A: Correct.

[6] Q: And they have been in business for a long
[7] time?

[8] A: I think they go back to the early 1900's.

[9] MS. ROMANO: I didn't hear that.

[10] A: I think they go back to the early 1900's.

[11] Q: Would you happen to know whether Elkem has
[12] a company historian or anything like that?

[13] A: I don't know the answer. But I am certain
[14] that there is a lot of history of the company that's
[15] recorded.

[16] Q: Where would it be recorded?

[17] A: In Norway.

[18] Q: In Norway. Do you know whether Elkem has
[19] put out a brochure, commemorating an anniversary or
[20] something like that that would show its corporate
[21] history?

[22] A: I don't know.

[23] Q: Do you know whether Elkem ever published
[24] any materials such as a brochure or anything else, for
[25] that matter, specifically with regard to its purchase

Page 36

[1] of Hawks Nest from Union Carbide?
[2] **A:** I doubt that there is anything specifically
[3] related to Hawks Nest. I am not aware of any.
[4] **Q:** Finally, sir, I would like to just look at
[5] some of the different categories of documents which
[6] are described in the attachment to Mr. DeBor's letter
[7] of August 17, 1981 which is part of the subpoena which
[8] is Deposition Exhibit 1. There are some - and you
[9] have had a chance to review this, so, I think we can
[10] go through this quickly.

[11] There are some references to licenses,
[12] there are some references to land and water rights,
[13] there are some references to - I believe there were
[14] some references to deeds. Would those typically be,
[15] documents, licenses, deeds, would those be the types
[16] of documents that you would retain based upon your
[17] records retention policy?

[18] **MR. HERSHEY:** Can you point to any specific
[19] item on the list that you are referring to?

[20] **Q:** Well, sure. For instance, these documents
[21] itemize the 39 cartons referenced in Mr. DeBor's
[22] letter and then the last few pages appear to be a more
[23] in depth description of documents that were contained
[24] in carton 30 and 31. Just looking at the box No. 1,
[25] carton No. 1, it says, "Project 2512, West Virginia,

Page 37

[1] Hawks Nest, two folders." Then it says in parens,
[2] "(Federal Power Commission License.)" Would a Federal
[3] Power Commission license be the sort of document that
[4] Elkem would retain?

[5] **A:** Yes.

[6] **Q:** And there wouldn't be any set time for the
[7] disposal of those types of documents like licenses?

[8] **A:** I doubt it.

[9] **Q:** And then carton 2 says, "Application,
[10] licenses, & workpapers" and it gives a range from 1940
[11] to 1952. Again, based on your understanding, those
[12] were the types of documents that Elkem would want to
[13] retain?

[14] **A:** Probably, yes.

[15] **Q:** And that's your understanding as general
[16] counsel?

[17] **MR. HERSHEY:** Your question refers to the
[18] licences as opposed to the workpapers and so
[19] forth?

[20] **MR. DELUCA:** That's true.

[21] **A:** Probably, yes. Yes. But let me state
[22] this, if I can. I would guess, that at least the
[23] documents that are described in paragraph No. 1 there
[24] are probably in the binders that I am talking about
[25] that are in my office.

Page 38

[1] **Q:** Old licenses and things like that?

[2] **A:** Uh-huh.

[3] **Q:** That would show the history of -

[4] **A:** Well, simply because that license was in
[5] existence when the transfer took place in 1981, so
[6] obviously, it would be part of the turned over or
[7] turned over papers to us.

[8] **Q:** And sir, as far as documents like in carton
[9] 14, blueprints, and I understand that that is somewhat
[10] vague but also references to land and water rights and
[11] engineering specifications, those would also be
[12] documents that would be useful for Elkem to retain
[13] being that they purchased this power plant?

[14] **MR. HERSHEY:** Are you asking whether they
[15] were retained or whether in the abstract it would
[16] be advisable to retain them.

[17] **MR. DELUCA:** I think my question is in the
[18] abstract whether it would be advisable.

[19] **A:** Well, to the extent that these general
[20] descriptions would relate to dimensions of a project,
[21] for example, the size of the tunnel, the depth of
[22] concrete in the dam, that type of thing, certainly
[23] they are the kinds of records that Elkem would need to
[24] have in order to know what it had received and whether
[25] there were any problems with what it had received in

Page 39

[1] the way of assets. Whether those documents exist
[2] separately from this list here, I would expect that
[3] information of that type does exist separately from
[4] the 39 cartons that are described in this letter.

[5] **Q:** Would I be correct, sir, that to the extent
[6] there were any laws or regulations which would require
[7] Elkem to maintain such documents, that Elkem would in
[8] fact, comply with those laws?

[9] **A:** Sure.

[10] **Q:** Sure. Okay. And finally, sir, may I
[11] request from you that you just make a call or check at
[12] the plant level at Hawks Nest or the Glen Ferris plant
[13] for these documents, as you told me earlier that's
[14] something that you didn't do.

[15] **MR. HERSHEY:** And you are talking
[16] specifically about the 39 cartons? That's what
[17] we were asked to do.

[18] **MR. DELUCA:** Yes, sir, the 39 cartons
[19] and/or the contents thereof.

[20] **MR. HERSHEY:** Yes, well, the question is
[21] whether Mr. Fawcett might have sent any of the
[22] cartons to the plant, as opposed to disposing of
[23] them either in his office or later having them
[24] disposed of in the mine. We are looking for the
[25] 39 cartons.

Page 40

[1] **MR. DELUCA:** Are you representing your
[2] search is ongoing?
[3] **MR. HERSHEY:** No, we have made a search and
[4] the only area of search that you have suggested
[5] that Mr. King might pursue further is to check
[6] with the plants, right?
[7] **MR. DELUCA:** Yes, sir. And also to the
[8] extent that any of the documents here may have
[9] wound up in those binders, I would request those
[10] also.
[11] **MR. HERSHEY:** You want the binders? Well,
[12] the binders weren't in the cartons.
[13] **A:** The binders that I referred to, they are
[14] bound volumes of all the documents that represented
[15] the transaction between Elkem and Union Carbide that
[16] took place in 1981.
[17] **MR. HERSHEY:** They don't fall within your
[18] subpoena.
[19] **MR. DELUCA:** The reason I said that is that
[20] he earlier said as to one particular category of
[21] documents that "that's something that might be in
[22] my binders."
[23] **MR. HERSHEY:** That kind of a copy of that
[24] document might be in the binders but the binders
[25] were not in the 39 cartons which were the

Page 41

[1] documents that are the subject of your subpoena.
[2] You want the 39 cartons.
[3] **MR. DELUCA:** We can talk about the binders
[4] at a later date. I understand that he is here
[5] only in response to the subpoena.
[6] **MR. HERSHEY:** I want to make it clear that
[7] Mr. King has complied with the subpoena.
[8] **MR. DELUCA:** I don't suggest that he
[9] didn't. I am only requesting that as a final
[10] step in searching for these documents that he
[11] contact the plant level because he indicated he
[12] didn't do that.
[13] **THE WITNESS:** Right. I can do that
[14] **MR. DELUCA:** And you will agree to that?
[15] **MR. HERSHEY:** Yes. I just want to make it
[16] clear as to what he is supposed to ask when he
[17] contacts the plant. And the question he will
[18] ask, in order to comply with the subpoena, is
[19] whether to the knowledge of anybody at the plant,
[20] any of the 39 cartons wound up at the plant and
[21] if so, the documents in those cartons will be
[22] produced.
[23] **MR. DELUCA:** You know, I think that's fair
[24] but I don't want to get bogged down in a matter
[25] where due to semantics something isn't done that

Page 42

[1] I would have expected to be done. So I am simply
[2] asking that a search be made by Elkem to
[3] determine whether any of the these 39 cartons or
[4] the documents thereof might be located at the
[5] plant level. Is that fair?
[6] **MR. HERSHEY:** Yes.
[7] **MR. DELUCA:** Off the record.
[8] (Discussion off the record.)
[9] **BY MR. DELUCA:**
[10] **Q:** Just a few more questions. Mr. King. As
[11] general counsel to Elkem Metal, I am sure that one of
[12] your responsibilities is to ensure that Elkem complies
[13] with any federal or state laws that affect their
[14] business?
[15] **A:** Hopefully.
[16] **Q:** Hopefully. Certainly that would be your
[17] goal. And I would just like to turn you to the last
[18] several pages of this - actually, it's the last three
[19] pages which purports to be an itemized listing by
[20] carton of documents shipped to Elkem by Union Carbide
[21] pertaining to Hawks Nest and Glen Ferris and that
[22] would be the itemization of carton 30 and 31, the last
[23] two pages. And -
[24] **A:** Okay.
[25] **Q:** And my question to you would be, as general

Page 43

[1] counsel of Elkem Metal, are you aware of any federal
[2] or state laws that would require you to keep these
[3] specific documents, and I want to go through them
[4] category by category, very briefly.
[5] **A:** Okay.
[6] **Q:** And if there wasn't a federal requirement,
[7] then whether you would expect to have those in your
[8] files or not. The first one is 3.61, "Incorporation -
[9] Committee on New Kanawha Power Company. Affair
[10] Dissolution - Reorganization of Power Department."
[11] Are you aware of any federal or state law which would
[12] require Elkem to main those documents?
[13] **A:** No, I am not.
[14] **Q:** In the absence of such a law, those would
[15] be documents that you wouldn't necessarily keep?
[16] **A:** No. I don't know what the New Kanawha
[17] Power Company was, to be honest with you.
[18] **Q:** 3.612, "Financial estimates - 1927 through
[19] 1937. Yearly and monthly research projects. Retarded
[20] construction program. Construction budgets." Am I
[21] correct, sir, that you are not aware of any federal or
[22] state legal requirement to keep those types of
[23] records?
[24] **A:** No, I am not.
[25] **Q:** And accordingly, you wouldn't necessarily

Page 44

[1] expect to have those in your files?
[2] **A:** That's right.
[3] **Q:** 3.6120, "Invoices and Requisitions," to the
[4] extent that that identifies anything, you would be
[5] unaware of federal or state law on point that would
[6] require you to keep those?
[7] **A:** That's correct.
[8] **Q:** And again, it would appear looking at the
[9] top of this page that anything in the 3.6 range would
[10] pertain to the New Kanawha Power Company now Electro
[11] Metallurgical Company?
[12] **A:** That's correct.
[13] **Q:** As to 3.6121, "Payroll - Expense Accounts -
[14] Employment Personnel, 3.61210, Work Orders," again,
[15] you would be aware of no federal or state law which
[16] would require you to maintain those documents?
[17] **A:** No.
[18] **Q:** 3.62, "Applications for Positions.
[19] Positions in other Companies, 3.63, Weekly Reports -
[20] Construction, etc. See Book, 3.64, Plant Balance
[21] Sheet and Summary of Charges to Operation,
[22] Miscellaneous Financial. Cost of West Virginia
[23] plant. Accounting instructions. Property
[24] accounting." Again, sir, you would be unaware of any
[25] federal or state law which would require you to

Page 45

[1] maintain those documents?
[2] **A:** I don't know of any such law, no
[3] **Q:** In the absence of any such law, you would
[4] not expect to find these in your files?
[5] **A:** That's correct.
[6] **Q:** 3.69, "General - Medical Services -
[7] Sanitation. For housing see 3.90," 3.690, "Insurance
[8] - Surety Bonds, etc." Sir, are you aware of any
[9] federal or state law which would require you to
[10] maintain these documents?
[11] **A:** No.
[12] **Q:** 3.691, "Rates - Public Service Commission -
[13] Typical Rates in West Virginia - Sales of Power - Sale
[14] of Boomer Electric to Appalachian E.P. Company. (See
[15] also 3.702, 1930-34." Again, sir, you would be
[16] unaware of any federal or state law which would
[17] require you to maintain these documents?
[18] **A:** I don't know of any.
[19] **MR. HERSHEY:** Can I ask whether in this
[20] matter, it's the position of the plaintiff or any
[21] party that Elkem had an obligation to retain any
[22] category of document here? And then we can focus
[23] on that and see whether those documents have been
[24] retained.
[25] **MR. DELUCA:** I can't address that question

Page 46

[1] at this time, Mr. Hershey, but just to let you
[2] know, I am just going to go through the rest of
[3] these documents and as we get a little bit
[4] further on here, that's where my major interest
[5] lies, and then I will be finished. I am not
[6] suggesting anything at this point. I am just
[7] trying to -
[8] **MR. HERSHEY:** So it's not your position
[9] that there is a federal law that requires the
[10] retention of these documents?
[11] **MR. DELUCA:** I don't have a position on
[12] that matter. I don't have a statute to hand you
[13] right now, either.
[14] **MR. HERSHEY:** Well, your questions have
[15] that premise and -
[16] **MR. DELUCA:** I would tell you that, and I
[17] don't have the pages to give you for now, but
[18] it's my understanding that it was suggested by
[19] Union Carbide that such a statute existed. And
[20] that's all I can say at this time on the matter.
[21] I am not suggesting that that's true or false at
[22] this point. I am just trying to discover what
[23] the facts may or may not be.
[24] **BY MR. DELUCA:**
[25] **Q:** Picking right up where we left off,

Page 47

[1] 3.692, "SILICOSIS," 3.6921, "Industrial Hygiene in
[2] Tunnel Work. Mortality statistics 1936 study." Mr.
[3] King, as general counsel to Elkem Metals, are you
[4] aware of any federal or state laws or regulations
[5] which would require Elkem to maintain those documents?
[6] **A:** No, I am not.
[7] **Q:** 3.69211, "Tunnel Ventilation - Carbon
[8] Monoxide - Landis," 3.69212, "Rinehart and Dennis
[9] Fatal Accidents," 3.69213, "Non-Fatal Accidents -
[10] McClintic Marshall." Mr. King, as general counsel of
[11] Elkem Metals, are you aware of any federal or state
[12] laws or regulations which would require the
[13] maintenance of those documents?
[14] **A:** No, I am not.
[15] **Q:** 3.69214, "Insurance - Compensation,"
[16] 3.69218, "Silicosis Literature - Discussions -
[17] Addresses - Committee Societies," 3.6922, "Suits."
[18] Mr. King, as general counsel to Elkem Metals, are you
[19] aware of any federal or state laws or regulations
[20] which would require the retention or maintenance of
[21] those types of documents?
[22] **A:** No, I am not.
[23] **Q:** 3.6922), "Summons - Silicosis Suits,"
[24] 3.69221, "Attachments, Silicosis Suits," 3.69222,
[25] "Trials, Silicosis Suits -Testimony- Briefs -

Page 48

[1] Experts." Mr. King, as general counsel of Elkem
[2] Metals, are you aware of any federal or state laws or
[3] regulations which would require the retention of
[4] maintenance of those types of documents?
[5] A: No, I am not.
[6] Q: 3.62222, "Lilly & Lilly," 3.692227,
[7] "Records of Plaintiff's, Silicosis Suits. Work
[8] Records," 3.692228, "Mr. Davis' notes on Silicosis
[9] Suits." Mr. King, as general counsel of Elkem Metals,
[10] are you aware of any federal or state laws or
[11] regulations that would require the maintenance or
[12] retention of these documents?
[13] A: No, I am not.
[14] Q: We are almost done, sir. 3.692229,
[15] "General Material Under Trial of Silicosis Suits.
[16] List of Suits," 3.6928, "Insurance in Connection with
[17] Silicosis Suits. Accounting," 3.69281, "Fees, Expert
[18] Testimony, Silicosis Suits." Mr. King, as general
[19] counsel to Elkem Metals, are you aware of any federal
[20] or state laws or regulations which would require the
[21] retention or maintenance of these types of documents?
[22] A: No, I am not.
[23] Q: 3.6929, "General - Rocks Samples," 3.69291,
[24] "Newspaper Clippings, Silicosis Suits. 1936 magazine
[25] and Newspaper Publicity." Sir, as general counsel to

Page 49

[1] Elkem Metals, are you aware of any federal or state
[2] laws or regulations that would require the maintenance
[3] or retention of these types of documents?
[4] A: No, I am not.
[5] Q: Sir, those are all the questions I have for
[6] you. Thank you.
[7] MS. ROMANO: To the extent that any
[8] documents are produced by Elkem entities or any
[9] other source we assert an attorney-client
[10] privilege on behalf of Union Carbide as
[11] applicable to the documents.
[12] MR. DELUCA: I will respond to that
[13] objection or claim of privilege at the time any
[14] such documents are produced. And I would just
[15] simply state that if these documents were truly
[16] privileged you wouldn't have been giving them to
[17] other folks.
[18] MS. ROMANO: And secondly -
[19] MR. DELUCA: Excuse me, and that the
[20] production of these documents to other parties is
[21] a waiver of any privilege that attaches to them
[22] or had attached to them.
[23] MS. ROMANO: I also am assuming that the
[24] standard reservation of objections as to form are
[25] declared - any objections other than as to form

Page 50

[1] are reserved for time of trial?
[2] MR. DELUCA: That's an assumption that you
[3] made at your peril at the outset.
[4] MS. ROMANO: At this time I would object to
[5] any line of questioning that had to do with
[6] obtaining hearsay evidence, inadmissible hearsay
[7] evidence.
[8] MR. DELUCA: Anyone else? Mr. King, Mr.
[9] Hershey, thank you for coming here today.
[10] MR. HERSHEY: We'll waive signature.
[11] MS. ROMANO: I would also cite the Rules of
[12] Civil Procedure on format for depositions with
[13] regard to objections.
[14] MR. DELUCA: Which rule of civil
[15] procedure?
[16] MS. ROMANO: I don't have that with me
[17] right now. I will provide it.
[18] (Thereupon, at 11:17 o'clock a.m., the
[19] deposition was concluded and signature was
[20] waived.)

Page 51

[1] CERTIFICATE
[2] COMMONWEALTH OF PENNSYLVANIA,)
[3]) SS:
[4] COUNTY OF ALLEGHENY.)
[5] I, Colleen O'Brien Adams, do hereby certify that
[6] before me, a Notary Public in and for the Commonwealth
[7] aforesaid, personally appeared FRANCIS A. KING, who
[8] then was by me first duly cautioned and sworn to
[9] testify the truth, the whole truth, and nothing but
[10] the truth in the taking of his oral deposition in the
[11] cause aforesaid; that the testimony then given by
[12] him as above set forth was by me reduced to stenotypy
[13] in the presence of said witness, and afterwards
[14] transcribed by means of computer-aided transcription.
[15] I do further certify that this deposition was
[16] taken at the time and place in the foregoing caption
[17] specified, and was completed without adjournment.
[18] I do further certify that I am not a relative,
[19] counsel or attorney of either party, or otherwise
[20] interested in the event of this action.
[21] IN WITNESS WHEREOF, I have hereunto set my hand
[22] and affixed my seal of office at Pittsburgh,
[23] Pennsylvania, on this day of _____,
[24] 2001.
[25] Colleen O'Brien Adams, Notary Public
In and for the Commonwealth of Pennsylvania
My commission expires November 19, 2003.

Lawyer's Notes

1

1 4:3, 6; 10:23; 36:8, 24,
25; 37:23
11:17 50:18
14 38:9
17 8:4, 15; 11:9, 24;
13:23; 23:18; 36:7
1900's 35:8, 10
1927 43:18
1930-34 45:15
1936 47:2; 48:24
1937 43:19
1940 37:10
1952 37:11
1981 6:4, 5, 24; 8:4; 11:9;
13:23; 18:25; 23:18;
31:18; 34:23, 25; 36:7;
38:5; 40:16
1984 6:21
1985 5:18; 10:17, 20;
30:3, 6
1987 31:5, 20, 21
1996 15:13

2

2 14:18, 19; 37:9
2001 4:2
2512 36:25

3

3.6 44:9
3.61 43:8
3.612 43:18
3.6120 44:3
3.6121 44:13
3.61210 44:14
3.62 44:18
3.62222 48:6
3.63 44:19
3.64 44:20
3.69 45:6
3.690 45:7
3.691 45:12
3.692 47:1
3.6921 47:1
3.69211 47:7
3.69212 47:8
3.69213 47:9
3.69214 47:15
3.69218 47:16
3.6922 47:17, 23
3.69221 47:24
3.69222 47:24
3.692227 48:6
3.692228 48:8
3.692229 48:14
3.6928 48:16

3.69281 48:17
3.6929 48:23
3.69291 48:23
3.702 45:15
3.90 45:7
30 6:5; 31:21; 33:6, 7, 8;
36:24; 42:22
31 36:24; 42:22
39 8:19; 20:13; 36:21;
39:4, 16, 18, 25; 40:25;
41:2, 20; 42:3

6

6 4:23; 21:3
6th 22:10

7

7 4:1; 5:24; 15:13

8

80's 6:3
86 15:21

9

96 15:24, 25; 16:3
97 15:24, 25; 16:3

A

a.m 50:18
a/s 12:5
Aaron 3:9
ability 30:9
able 13:25; 30:4
absence 43:14; 45:3
abstract 38:15, 18
Accidents 47:9, 9
according 20:17
accordingly 43:25
Accounting 44:23, 24;
48:17
accounts 9:18; 18:2;
44:13
acting 21:5; 23:8
actual 6:5
actually 6:21; 10:15;
42:18
address 10:10; 32:23;
45:25
addressed 8:15; 11:11;
15:4; 23:18
Addresses 47:17
advisable 38:16, 18
Affair 43:9
affairs 30:2
affect 42:13

Again 37:11; 44:8, 14, 24;
45:15
against 3:10; 4:13
agencies 32:6
Agency 32:12
ago 34:13
agree 4:21; 41:14
agreed 6:19
agreement 6:6; 28:15
Alabama 6:12, 17, 18
Alcoa 10:19
Alloy 6:11; 7:2, 24; 19:13
almost 48:14
along 4:2; 12:23
among 19:5
amount 31:5
and/or 39:19
anniversary 35:19
answered 5:2
anymore 33:17
apart 13:9
apologize 25:23; 31:24;
34:2
Appalachian 45:14
appear 36:22; 44:8
appeared 22:12, 19
applicable 9:11, 22;
49:11
Application 37:9
Applications 44:18
appreciate 3:11
area 14:3; 40:4
arrangement 11:25
asbestos 3:11; 25:1;
26:4, 20
Ashtabula 6:11
assert 49:9
asset 6:8; 28:6; 30:24
assets 6:9, 9; 7:3; 29:5;
39:1
assistant 9:7; 15:6
associated 7:24; 13:20
association 27:10
assume 28:20; 29:18
assuming 49:23
assumption 20:21; 50:2
attached 5:23; 49:22
attaches 49:21
attachment 36:6
Attachments 47:24
attempt 3:23; 8:9
attention 24:12
attorney 5:3; 25:11, 14
attorney-client 49:9
attributing 24:5
August 8:4, 15; 11:9, 24;
13:23; 23:18; 36:7
aware 26:9; 36:3; 43:1,
11, 21; 44:15; 45:8; 47:4,
11, 19; 48:2, 10, 19; 49:1

B

back 7:15; 14:11; 21:25;
24:10, 11; 35:8, 10
background 22:17
bad 34:21
Balance 44:20
based 19:6; 36:16; 37:11
basic 17:24; 28:11
basically 16:25
became 12:20
began 30:2
begin 26:23
begins 30:5
behalf 4:12; 8:11; 21:5;
23:9; 24:16; 49:10
benefit 17:17
best 26:16; 32:17
better 17:10
beyond 29:22
binders 37:24; 40:9, 11,
12, 13, 22, 24, 24; 41:3
Birmingham 6:13, 17
bit 24:11; 46:3
blueprints 38:9
body 32:2, 25
bogged 41:24
Bonds 45:8
Book 44:20
books 13:17
Boomer 45:14
both 9:15; 11:7
bother 20:16
bound 28:11, 12; 40:14
box 17:18, 23; 36:24
boxes 9:3; 17:7, 13;
18:11, 16; 19:9
briefly 8:17; 43:4
Briefs 47:25
bring 18:4
broad 9:17
brochure 35:19, 24
budgets 43:20
Building 10:23
business 6:2; 11:1;
12:16, 18, 21; 33:15, 21;
34:1, 17, 19, 22, 23; 35:6;
42:14
Butler 9:14; 16:19
buying 33:21

C

call 4:25; 5:7; 19:9, 9;
21:9; 23:8; 24:15, 18, 20,
24; 25:3; 26:11; 30:24;
39:11
called 3:2; 8:16; 10:22;
11:5; 12:4; 21:24; 23:6, 11,
25
calling 24:16

calls 24:13, 14, 23
came 15:10; 24:14
Can 6:1, 22; 11:21; 12:2,
13, 19; 15:10, 20; 16:2;
17:6, 20; 19:25; 20:19;
22:7; 25:13, 17, 23, 25;
26:12; 27:18; 29:19; 30:3,
7; 36:9, 18; 37:22; 41:3,
13; 45:19, 22; 46:20
Canada 6:20
capacity 14:8
Carbide 3:11; 4:14; 6:3,
8, 24; 7:22; 21:6, 10; 23:6,
8; 24:3, 17; 25:1, 15; 26:5,
8, 20, 25; 27:9, 24; 28:1,
23; 29:6, 12; 31:14, 19;
33:15, 17, 17, 21, 23;
34:25; 36:1; 40:15; 42:20;
46:19; 49:10
Carbon 47:7
card 11:1, 4
cards 11:6
carton 36:24, 25; 37:9;
38:8; 42:20, 22
cartoned 16:18
cartons 8:20; 20:13;
36:21; 39:4, 16, 18, 22, 25;
40:12, 25; 41:2, 20, 21;
42:3
case 32:18
cases 3:11; 4:13; 30:13
categories 9:17; 14:23;
19:8, 15; 36:5
categorized 17:25
categorizes 9:15
category 9:1, 5, 10, 17;
15:1; 17:12; 20:3; 40:20;
43:4, 4; 45:22
ceased 12:15, 17, 21
certain 6:13; 16:16, 21;
20:3; 28:8; 35:13
certainly 38:22; 42:16
certified 3:3
chance 4:8; 5:22; 18:4;
36:9
changed 12:16, 17
Charges 44:21
check 9:8, 12; 39:11; 40:5
checked 14:13; 15:6;
16:12
Chem 11:5; 12:5
Chemical 33:17, 18
Chemicals 10:22
circumstances 22:14
cite 10:9; 50:11
Civil 50:12, 14
claim 49:13
claims 3:10
clarification 4:11
clear 16:15; 41:6, 16
Cliff 10:23
Clippings 48:24
closing 6:5; 11:24
clue 21:16; 26:22

coincidental 23:2
coming 3:12; 24:10; 50:9
commemorating 35:19
comment 32:7, 7
Commission 31:1; 32:4;
37:2, 3; 45:12
Committee 43:9; 47:17
companies 11:17, 17;
12:23; 44:19
Company 3:17; 10:21,
25; 11:3, 14; 12:2, 9, 24;
13:3; 35:2, 4, 12, 14; 43:9,
17; 44:10, 11; 45:14
Compensation 47:15
complete 28:10
completed 6:4
compliance 34:10
complied 41:7
complies 42:12
comply 39:8; 41:18
concluded 50:19
concrete 38:22
conduct 27:3; 32:9, 13
conducted 28:21
confidential 11:19
confuse 25:22
confused 23:20
connected 5:4, 5
Connection 48:16
consisted 6:10, 15
construction 29:20;
30:21, 21; 43:20, 20; 44:20
consultant 10:21; 14:9
consuming 32:5
contact 4:22; 8:14; 13:12,
20; 20:12; 41:11
contacted 4:23; 21:13;
22:23; 26:14
contacts 41:17
contain 28:14
contained 34:7; 36:23
contains 33:3
contents 17:23; 26:17;
39:19
continuing 32:11
conversation 21:3, 18,
19; 22:8, 10, 12, 21; 23:3;
25:10; 26:1, 17
conversations 25:18, 22
convey 28:23
convinced 32:20
cooperation 4:18
copy 14:15; 18:4; 26:6;
40:23
corporate 13:16, 17;
35:20
Corporation 3:11; 6:8;
12:4, 7
corporations 12:8
correlate 19:14
correspondence 13:18
Cost 44:22
counsel 3:16; 5:20; 13:6,

8; 24:19, 20; 26:1, 11, 14,
25; 28:4, 5; 37:16; 42:11;
43:1; 47:3, 10, 18; 48:1, 9,
19, 25
couple 25:20; 34:11, 13
court 21:15
covered 15:7; 29:23;
34:2
created 17:16
cumbersome 32:4
currently 29:8; 33:15, 22

D

dam 38:22
database 9:8, 9; 15:6, 10,
23; 16:4, 9; 19:11, 23
date 6:5, 20; 41:4
dated 4:1; 8:4; 11:9, 24;
23:18
Davis 48:8
day 25:19
days 17:11
dead 8:23
deal 31:3
DeBor 8:5; 22:22; 23:2,
11, 13, 17, 17, 20; 24:2, 8,
15, 19, 24; 25:4, 8, 10, 24;
26:3, 25; 27:4
DeBor's 36:6, 21
December 4:1, 23; 5:24;
21:3
declared 49:25
deed 28:22
deeds 28:17; 36:14, 15
defendant 26:20
definitive 17:11
delivers 9:16
DELUCA 3:6, 9; 4:15, 21;
7:13, 15, 17; 27:20; 30:7;
37:20; 38:17; 39:18; 40:1,
7, 19; 41:3, 8, 14, 23; 42:7,
9; 45:25; 46:11, 16, 24;
49:12, 19; 50:2, 8, 14
Dennis 47:8
department 4:23; 5:10,
14; 9:8; 15:7; 16:5, 8; 28:3;
43:10
departmental 9:9; 15:7
depends 33:7
deposed 3:4
deposition 3:20; 4:2, 3,
6; 14:18, 19; 36:8; 50:19
depositions 50:12
depth 36:23; 38:21
describe 5:15; 8:10, 17;
26:16
described 19:15; 20:3;
23:4; 36:6; 37:23; 39:4
describing 17:23
description 18:16; 36:23
descriptions 38:20
destroyed 14:25; 16:24

destruction 16:24
determine 8:6, 9, 12;
13:21; 20:12; 28:22; 42:3
differ 11:8
different 11:14; 23:3;
33:22; 34:17; 36:5
dimensions 38:20
direction 18:23; 19:17
disclose 23:16; 24:9;
27:4
discover 46:22
Discussion 7:14; 42:8
Discussions 47:16
disposal 37:7
disposed 39:24
disposing 39:22
Dissolution 43:10
division 6:7; 7:22; 34:24
docket 32:7
document 33:3; 37:3;
40:24; 45:22
documentation 28:12
documents 5:23; 8:2, 7,
12, 20; 9:2, 6, 13, 14, 19;
10:3, 5; 13:17; 14:23, 24;
15:1, 3; 16:3, 12, 16; 17:9,
12; 18:12, 19, 25; 19:4, 6,
9, 10, 15, 17, 19, 21, 23,
25; 20:2, 4, 4, 14, 16, 19,
23; 21:4, 15; 22:5, 23;
23:12; 24:17; 25:4; 27:9;
28:11; 29:2, 14, 23, 24;
30:1, 10, 12, 19; 34:7;
36:5, 15, 16, 20, 23; 37:7,
12, 23; 23, 24; 30:1, 10,
12, 19; 34:7; 36:5, 38:8,
12; 39:1, 7, 13; 40:8, 14,
21; 41:1, 10, 21; 42:4, 20;
43:3, 12, 15; 44:16; 45:1,
10, 17, 23; 46:3, 10; 47:5,
13, 21; 48:4, 12, 21; 49:3,
8, 11, 14, 15, 20
done 8:8; 15:17; 30:1;
31:19; 33:20; 41:25; 42:1;
48:14
doorway 22:19
doubt 36:2; 37:8
Dow 33:17, 18
down 21:12; 32:20; 41:24
drowning 34:13
due 16:17; 41:25
duly 3:3
during 22:12, 21; 25:10;
26:1

E

E.P. 45:14
earlier 21:2; 34:3; 39:13;
40:20
early 6:3; 35:8, 10
effort 18:10, 15; 20:11
efforts 15:20; 16:2
either 17:16, 25; 23:8;

39:23; 46:13
elapsed 25:17
Electric 45:14
Electro 44:10
Elkem 3:17; 4:24; 5:11,
16; 6:2, 6, 19, 23; 7:21;
8:6, 11; 10:14, 16, 17, 22,
22; 11:2, 5, 11, 14, 20, 21,
22, 25; 12:1, 5, 6, 9, 11, 13,
15, 20, 22, 24; 13:10, 12,
21; 14:8; 15:15; 17:7; 20:5,
6; 27:9, 25; 28:20; 29:5, 8;
30:5, 12, 13, 19; 31:13, 19,
22, 23; 33:14; 34:19, 20,
22; 35:11, 18, 23; 37:4, 12;
38:12, 23; 19, 22, 23;
33:14; 34:19, 20, 22;
35:11, 39:7, 7; 40:15; 42:2,
11, 12, 20; 43:1, 12; 45:21;
47:3, 5, 11, 18; 48:1, 9, 19;
49:1, 8
Elkem's 27:25; 28:3; 30:2
else 22:7; 35:24; 50:8
employed 10:17; 11:2;
13:3; 30:17, 18
employment 5:15;
30:13; 44:14
enclosures 8:4
end 8:23
Energy 30:25; 32:3
engineering 38:11
enough 3:24, 25
ensure 42:12
entered 6:23
entitles 6:2; 11:7; 49:8
entity 11:8; 12:10, 19;
13:1; 35:1
enumerated 8:3
environmental 33:25
estimates 43:18
etc 44:20; 45:8
even 8:22; 21:17; 26:22
evidence 50:6, 7
exactly 25:24
EXAMINATION 3:5
example 9:18, 19; 17:20;
19:2, 10; 31:1; 32:8, 12;
38:21
Excuse 49:19
executive 10:19
Exhibit 4:3, 6; 14:18, 19;
30:1; 36:8
exist 8:9; 39:1, 3
existed 21:17; 46:19
existence 8:12; 12:10;
15:11, 23; 16:4; 38:5
expand 30:8
expect 39:2; 43:7; 44:1;
45:4
expected 42:1
Expense 44:13
Expert 48:17
Experts 48:1
extent 38:19; 39:5; 40:8;

44:4; 49:7

F

facilities 6:16; 7:1; 27:11
facility 7:24; 17:1, 17;
18:11, 20, 21; 30:24; 31:2,
5, 17, 17; 32:1; 33:24;
34:15
fact 8:22; 25:14; 39:8
facts 30:4; 46:23
Fair 3:23, 25; 31:5; 41:23;
42:5
fairly 10:18
fall 40:17
Falls 6:16
false 46:21
familiar 3:20
familiarity 30:2
far 5:16; 13:17; 19:21, 23;
29:22; 38:8
Fatal 47:9
Fawcett 8:5, 16; 10:1, 9,
13, 16, 18; 11:11; 14:2;
15:4; 18:20; 19:2; 20:17,
22; 23:18; 39:21
February 5:18
federal 27:8, 12, 14;
30:25; 32:3, 6; 37:2, 2;
42:13; 43:1, 6, 11, 21;
44:5, 15, 25; 45:9, 16;
46:9; 47:4, 11, 19; 48:2,
10, 19; 49:1
Fees 48:17
fellow 23:6, 25
fellow's 21:12
FERC 31:1, 2, 11, 15, 18;
32:9; 33:3, 8; 34:9
Ferris 6:23, 25; 7:11, 20;
19:5, 12, 18; 20:6; 27:11;
39:12; 42:21
few 10:24; 26:10; 36:22;
42:10
field 32:11
file 19:24; 28:6; 34:8
files 16:6, 7; 19:11; 28:9;
34:4, 5, 9, 11, 14; 43:8;
44:1; 45:4
final 41:9
finally 16:11; 36:4; 39:10
Financial 43:18; 44:22
find 9:3, 10, 21; 26:11;
30:10; 45:4
finished 46:5
firm 21:9
first 3:3; 20:25; 25:3; 43:8
Fish 32:12
fit 9:3
fits 6:23
FK 9:20
focus 45:22
folders 37:1
folks 49:17

Following 5:3; 25:9
follows 3:4
forgot 17:3
form 21:20; 49:24, 25
format 50:12
former 33:24
forth 37:19
forwarded 5:6
found 17:18
foundation 30:8
four 12:3, 5, 7; 14:11;
21:2, 7
FRANCIS 3:1
Frank 9:20
Friday 5:12
front 4:4; 22:1; 26:7
fully 8:10; 30:3
further 40:5; 46:4

G

general 3:16; 5:20; 13:6;
8; 18:2, 15; 19:8, 14;
27:22; 37:15; 38:19;
42:11, 25; 45:6; 47:3, 10,
18; 48:1, 9, 15, 18, 23, 25
generally 17:6, 18;
29:21; 33:6
generated 16:8
girl 5:12
given 17:23
gives 37:10
giving 49:16
Glen 6:22, 25; 7:10, 20;
19:5, 12, 18; 20:6; 27:11;
39:12; 42:21
goal 42:17
goes 29:22; 32:6
good 3:7, 8; 33:16
govern 33:1
grant 32:19
granted 33:3, 5
great 31:3
guess 20:24; 37:22

H

hand 46:12
happen 35:11
happened 24:12, 21
hard 27:23
Harry 8:16; 10:16, 18;
18:19; 20:17
Hawks 6:22, 25; 7:10, 19;
19:5, 12, 18; 20:5; 26:9;
27:10, 24; 28:1; 29:4, 8,
20, 20; 30:16, 16; 31:10;
34:4, 8; 36:1, 3; 37:1;
39:12; 42:21
heading 9:20
headings 19:24
headquartered 13:1

hear 35:9
heard 22:17
hearsay 50:6, 6
held 5:17; 13:19
help 26:13
hereinafter 3:3
HERSHEY 4:10, 16; 24:5;
29:22; 34:20; 36:18;
37:17; 38:14; 39:15, 20;
40:3, 11, 17, 23; 41:6, 15;
42:6; 45:19; 46:1, 8, 14;
50:9, 10
high 10:18
highest 32:17
himself 24:25; 26:3
historian 35:12
historical 30:15
history 5:16; 35:14, 21;
38:3
hold 5:19
holder 32:22
Holdings 12:25; 13:21
home 8:16
honest 43:17
Hopefully 42:15, 16
host 34:17
hours 25:20
housed 18:11
housing 45:7
HWF 19:2
hydro 30:24; 32:19
hydroelectric 7:1, 4, 20;
32:1; 33:2
Hygiene 47:1

I

identification 4:7; 14:20
identified 5:2; 8:20;
24:25; 26:3
Identifies 44:4
Identity 13:16; 21:24
imminent 21:14
inadmissible 50:6
Inc 11:5, 25; 12:7, 23, 25
incidents 34:12
includes 9:9
inclusion 16:4
Incorporated 11:12;
12:11, 14, 15, 20; 13:21
Incorporation 43:8
incorrect 31:7
index 17:15
indicate 18:24; 21:13;
24:2
Indicated 15:5; 16:11;
21:1; 24:16; 41:11
Indicates 11:2
indication 19:1
individual 22:4
individuals 3:10; 10:10
Industrial 47:1

information 6:1; 11:20;
17:21, 21; 21:23; 27:22;
28:25; 30:15; 31:3; 39:3
initial 4:22
initials 18:1
input 32:6, 11
inquiring 21:10; 24:17
inquiry 10:11
insight 30:20
inspections 33:9
instance 14:9; 36:20
instruction 15:18
instructions 44:23
instruments 28:17
Insurance 45:7; 47:15;
48:16
interest 20:7; 27:25; 46:4
interested 32:8, 9, 13
interrupt 24:22
Into 6:23, 24; 9:3; 15:11,
23; 18:10; 30:20
Investigation 32:10, 14
Investment 12:25; 13:12,
21
Invoices 44:3
involved 28:4
Involvement 27:5
Involves 20:21; 32:5
Involving 33:23; 34:12
Iron 17:1
Issue 33:25
Issued 4:1, 12; 5:24
item 36:19
Itemization 42:22
itemize 36:21
itemized 42:19

J

job 30:14
joined 15:15
June 6:5

K

K 5:8
K-a-n-a-d-o-r 5:9
Kanawha 43:9, 16; 44:10
Kantor 5:9; 9:7; 15:6;
18:23; 20:25; 22:13, 18
Kathleen 5:8
keep 43:2, 15, 22; 44:6
kind 5:12; 27:3; 40:23
kinds 26:21; 38:23
KING 3:1, 7; 4:17, 22;
7:18; 9:20; 11:1; 19:16;
26:24; 27:21; 40:5; 41:7;
42:10; 47:3, 10, 18; 48:1,
9, 18; 50:8
King's 29:24
knew 10:19; 17:12; 23:12

knowledge 26:21; 27:7;
41:19
known 6:7; 7:10; 12:10,
20, 24

L

lady 5:6
land 36:12; 38:10
Landis 47:8
large 32:24
last 9:12; 36:22; 42:17,
18, 22
later 6:20; 25:13; 39:23;
41:4
latter 9:18
law 4:23; 5:10; 9:8; 15:7;
21:9; 32:25; 43:11, 14;
44:5, 15, 25; 45:2, 3, 9, 16;
46:9
laws 27:8, 12, 15; 39:6, 8;
42:13; 43:2; 47:4, 12, 19;
48:2, 10, 20; 49:2
lawsuit 34:14
lawyer 3:14; 24:18, 25;
25:8
lay 30:7
layman 25:7
learn 32:21
learned 30:23
lease 6:15
least 9:4; 37:22
left 10:24; 46:25
legal 9:7; 16:5, 8; 28:3;
33:23; 43:22
legitimacy 28:22
letter 8:4, 15, 17, 18, 21;
10:2; 11:8, 23; 13:23; 15:3;
18:25; 19:15; 20:17;
23:18, 21; 26:6; 36:6, 22;
39:4
level 39:12; 41:11; 42:5
licence 31:20; 32:19;
33:2, 11, 12
licences 37:18
license 31:18; 32:22;
33:1, 5; 34:11; 37:2, 3;
38:4
licensed 31:2, 17, 17, 24;
32:3
licenses 36:11, 15; 37:7,
10; 38:1
licensing 34:9
lies 46:5
Lilly 48:6, 6
line 50:5
list 36:19; 39:2; 48:16
listed 11:8; 13:23; 14:12;
15:2
listing 42:19
Literature 47:16
litigation 25:1; 26:5; 27:5
little 23:19; 24:11; 46:3

live 14:5
located 7:1; 8:13; 10:22;
17:22; 18:13; 42:4
location 17:7
long 34:19; 35:6
longer 11:4; 24:7
look 16:3; 18:10, 19;
21:25; 22:3; 26:10; 29:25;
36:4
looked 8:25; 9:21, 22;
18:22; 19:23, 24
looking 17:12; 18:17;
20:1; 26:23; 27:22; 36:24;
39:24; 44:8
lot 24:11; 32:6; 35:14
lots 19:11, 11
LP 11:3

M

magazine 48:24
main 34:23; 43:12
maintain 13:9, 15; 39:7;
44:16; 45:1, 10, 17; 47:5
maintained 29:2
maintains 15:7
maintenance 47:13, 20;
48:4, 11, 21; 49:2
major 46:4
Management 11:12, 18,
21, 25; 12:7, 11, 13, 15,
20, 22
managing 12:1
manifest 9:12, 15; 16:12;
17:19, 22; 18:5, 22; 19:7
manifested 16:20
Marietta 6:10
mark 14:18
marked 4:3, 7; 14:20;
16:21
Marshall 47:10
match 18:17
Material 48:15
materials 33:22; 35:24
matter 18:2; 21:11;
22:12; 35:25; 41:24;
45:20; 46:12, 20
may 6:9; 14:18; 22:2, 23;
30:12; 33:14; 39:10; 40:8;
46:23, 23
Maybe 23:23
McClintic 47:10
mean 19:24; 24:22
means 16:14
Medical 45:6
memo 21:20
mentioned 12:8
merged 12:24; 33:18
met 10:24
Metal 12:5; 42:11; 43:1
Metallurgical 44:11
Metals 3:17; 4:24; 5:11,
16; 6:2, 7; 7:22; 10:14, 16;

11:2, 5, 15, 22; 12:1, 9;
13:10; 30:14; 33:14;
34:24; 47:3, 11, 18; 48:2,
9, 19; 49:1
might 9:2, 3, 5; 18:17, 24;
21:16; 22:19; 39:21; 40:5,
21, 24; 42:4
mind 9:4, 24; 27:23
mine 9:14; 10:23; 17:4, 5;
19:22; 28:10; 39:24
minute 13:16; 23:19
minutes 26:10
Miscellaneous 44:22
miss 6:9
mixed 19:19
Monoxide 47:8
monthly 43:19
more 23:7; 27:21; 32:21;
36:22; 42:10
morning 3:7, 8, 12
Mortality 47:2
Mostly 34:9
Mountain 17:1
Mrs 9:7; 18:23; 20:25;
22:13, 18
much 3:13; 8:8; 13:19;
21:17; 25:17
myself 5:2

N

name 3:9; 5:6, 8; 9:16;
12:16, 17, 19; 17:2, 3, 25;
19:2; 21:12; 22:2, 22, 22,
25; 23:2, 20, 23, 25; 25:8
Natural 32:12
navigable 32:2, 17
necessarily 43:15, 25
need 32:10, 11, 15; 38:23
negotiated 28:2
neither 26:24
Nest 6:22, 25; 7:10, 19;
19:5, 12, 18; 20:5; 26:9;
27:10, 24; 28:1; 29:4, 8,
20, 20; 30:16, 16; 31:10;
34:4, 8; 36:1, 3; 37:1;
39:12; 42:21
New 6:16; 32:18; 43:9, 16;
44:10
Newspaper 48:24, 25
Niagara 6:16
nine 28:13
Non-Fatal 47:9
None 26:9
nor 26:25
norm 33:8
north 9:14; 16:19; 18:11
Norway 35:4, 17, 18
Norwegian 12:4; 35:1
note 11:1, 7
noted 4:16
notes 21:21; 48:8
notice 4:2

number 3:10

O

o'clock 50:18
object 50:4
objection 49:13
objections 49:24, 25;
50:13
obligation 45:21
obligations 32:22
obtaining 50:6
obviously 26:7; 38:6
occasion 17:10; 30:15
occurred 24:4
Off 7:13, 14, 18; 16:18;
27:18; 42:7, 8; 46:25
office 28:11; 37:25; 39:23
offices 13:19
Ohio 6:10, 11
old 11:4; 17:4, 5; 26:5, 8;
38:1
once 33:5
one 3:21; 4:10; 7:7; 9:23;
10:7; 11:17; 14:12; 17:9;
23:4, 8, 11; 24:23; 40:20;
42:11; 43:8
ongoing 33:9; 34:10;
40:2
only 10:16; 15:12; 40:4;
41:5, 9
onto 32:7
Operation 44:21
operations 11:20
opposed 10:3; 37:18;
39:22
order 38:24; 41:18
Orders 44:14
Oregon 6:14; 33:24
originally 10:18
Ours 33:7
out 17:9, 11; 19:22;
26:12; 28:10; 31:20; 35:19
outset 50:3
outside 28:3, 5
over 33:21; 38:6, 7
own 9:8; 17:16; 20:8, 9;
27:23; 29:8; 34:4
owned 12:4, 6, 8; 29:5
ownership 11:18

P

ped 22:1, 1
page 44:9
pages 36:22; 42:18, 19,
23; 46:17
papers 38:7
paragraph 37:23
paralegal 5:2, 10, 13
parens 37:1
parent 35:1, 4

part 7:2, 21; 17:10; 20:21;
29:5; 34:2; 36:7; 38:6
particular 17:10; 40:20
parties 32:8, 9, 13; 49:20
partner 12:1
partners 12:3, 6
partnership 12:9
party 25:23; 45:21
paying 24:11
Payroll 44:13
pending 4:13
Pennsylvania 9:14;
14:6; 16:20
perhaps 10:10
peril 50:3
period 16:22
person 8:15; 9:16; 17:25;
18:1; 21:5, 20, 24; 23:1,
13, 20
personal 34:5
Personnel 44:14
pertain 19:18; 20:23;
44:10
pertained 19:5
pertaining 34:4; 42:21
phone 4:25; 5:2; 21:9;
24:20
pick 15:2
picked 9:5; 23:23
Picking 46:25
Pittsburgh 10:23; 13:2;
14:3; 18:12; 23:1
place 38:5; 40:16
plaintiff 45:20
plaintiff's 5:3; 48:7
Plaintiffs 3:2; 4:12, 18
plant 6:10, 11, 11, 12, 13;
7:2, 7, 19, 20; 19:9, 10, 13;
20:4, 6, 18, 20; 27:24;
28:1; 29:20; 30:16, 21;
31:1, 10, 10, 13; 38:13;
39:12, 12, 22; 41:11, 17,
19, 20; 42:5; 44:20, 23
plants 6:20, 21; 7:5, 8, 9,
21, 23; 20:7, 12, 22; 40:6
please 7:13; 27:18; 31:7
point 4:11; 8:14; 15:14;
16:16, 19, 24; 32:23;
36:18; 44:5; 46:6, 22
policy 9:1, 2; 14:13, 22,
25; 15:2; 16:17; 36:17
Portland 6:14; 33:24
poskion 5:19; 45:20;
46:8, 11
positions 5:17; 44:18, 19
possess 19:17; 20:13;
28:6; 34:4
possessed 13:22
possesses 8:6
possession 29:1
possibly 18:21; 24:15
post 11:24
potential 24:3; 27:4

power 7:5, 20, 23; 37:2, 3;
38:13; 43:9, 10, 17; 44:10;
45:13
predated 10:17
premise 46:15
preparation 30:14
prepared 28:23
present 20:7
presently 3:16; 8:6; 14:5
president 5:20
pretty 13:19; 17:24;
21:17; 29:22
primarily 32:25
prior 28:20; 34:23
privilege 49:10, 13, 21
privileged 49:16
probably 15:12; 23:5;
25:20; 37:14, 21, 24
problems 38:25
Procedure 50:12, 15
process 3:20; 32:4, 5
produced 8:23; 41:22;
49:8, 14
production 49:20
program 43:20
project 24:13; 32:10, 11,
15, 16, 19; 33:2, 4, 23, 23;
34:12, 18; 36:25; 38:20
projects 34:15, 17; 43:19
properties 30:5
Property 44:23
proprietary 11:20
protests 32:8
provide 6:1; 18:8; 31:4;
50:17
proximity 7:1
public 32:7; 45:12
Publicity 48:25
published 35:23
purchase 6:8, 20; 7:3,
21; 11:25; 27:10; 28:7, 14;
29:5; 34:24; 35:25
purchased 6:3, 6, 21;
7:3; 27:25; 29:11; 31:13;
38:13
purchasing 28:21
purports 42:19
purpose 17:16
purposes 25:21
pursuant 15:17
pursue 40:5
put 4:19; 35:19

Q

quantity 17:21
quickly 36:10

R

raised 22:22
ran 31:20

range 37:10; 44:9
ranking 10:18
Rates 45:12, 13
reach 16:16
reached 16:23
read 8:18; 10:1
really 6:17; 9:3; 25:19;
30:5; 32:13
reason 22:25; 40:19
reasonably 28:8
recall 4:22; 6:10, 18;
22:7; 24:21, 23; 26:3, 16;
27:2
receivable 9:18; 18:2
receive 10:4
received 8:19; 21:2, 8;
23:7; 25:3; 38:24, 25
receiving 10:3
Recess 27:19
recognize 22:3
recollection 8:19, 22;
25:5, 9, 24, 25
record 7:13, 14, 16, 18;
25:21; 27:18; 42:7, 8
recorded 35:15, 16
records 8:25; 9:10, 15;
13:9, 15, 16, 22; 14:13, 22;
15:8; 16:6, 17; 26:6, 8, 19,
21; 27:16; 36:17; 38:23;
43:23; 48:7, 8
referenced 34:3; 36:21
references 36:11, 12, 13,
14; 38:10
referred 17:19; 40:13
referring 36:19
refers 37:17
refurbish 34:16
regard 8:2; 20:5; 31:7;
35:25; 50:13
regarding 30:5
regulated 31:10, 15, 16
regulations 32:25; 33:1;
39:6; 47:4, 12, 19; 48:3,
11, 20; 49:2
Regulatory 31:1; 32:3
relate 17:23; 19:12, 12,
13; 38:20
related 36:3
relates 30:9
relating 26:8; 28:25;
29:14; 34:14
relationship 11:21
relevant 9:4; 30:12
relicensed 31:4, 21
relicensing 31:4
remember 4:25; 5:4, 5;
8:22; 10:3, 6; 21:14
remind 3:21
Reorganization 43:10
repeat 3:23
rephrase 3:23; 24:8
Reports 44:19
represent 3:9

represented 21:9; 40:14
representing 21:10;
23:6; 25:1, 14; 26:4; 40:1
represents 32:17
request 21:2, 4; 29:23;
39:11; 40:9
requested 25:10; 29:24
requesting 41:9
require 27:13, 15; 39:6;
43:2, 12; 44:6, 16, 25;
45:9, 17; 47:5, 12, 20;
48:3, 11, 20; 49:2
required 27:8; 32:9
requirement 43:6, 22
requires 46:9
Requisitions 44:3
rescind 23:24
research 43:19
reservation 49:24
reserved 50:1
respond 4:19; 49:12
response 20:11; 41:5
responsibilities 33:10;
42:12
responsibility 33:25;
34:10
rest 46:2
restrictions 33:4
resulted 34:13
retain 36:16; 37:4, 13;
38:12, 16; 45:21
retained 38:15; 45:24
Retarded 43:19
retention 9:1; 14:13, 22;
16:17; 27:15; 36:17;
46:10; 47:20; 48:3, 12, 21;
49:3
retired 9:13, 13; 10:13,
20; 16:12, 18; 28:9
review 4:8; 5:22; 19:6, 17;
30:15, 19; 31:3; 36:9
reviewed 14:22
right 4:4; 10:8; 11:13;
16:1, 13; 20:24; 22:24, 24;
33:8; 40:6; 41:13; 44:2;
46:13, 25; 50:17
rights 36:12; 38:10
Rinehart 47:8
River 32:18
Road 10:23
Rocks 48:23
ROMANO 35:9; 49:7, 18,
23; 50:4, 11, 16
room 22:14
roughly 15:12
Round 15:24
rule 50:14
Rules 50:11

S

s 12:5
safely 34:1

sale 28:15; 45:13
Sales 45:13
same 5:18; 11:18; 21:11;
25:19; 26:18
Samples 48:23
Sanitation 45:7
satisfied 32:16
scope 30:8
search 8:5; 22:5; 23:14;
27:1, 3; 28:22; 29:1, 16,
24, 25; 40:2, 3, 4; 42:2
searching 17:9; 41:10
second 14:12; 24:18, 24
secondly 49:18
secretary 5:1, 13
seeking 8:3; 11:19;
14:25; 18:13; 19:19; 20:14
selling 33:22
semantics 41:25
send 20:22
sense 13:7, 16; 31:16
sent 9:19; 16:18; 18:1, 1,
16; 20:16, 18; 39:21
separate 13:9, 15
separately 39:2, 3
serve 13:6, 8
served 22:11
Service 45:12
Services 45:6
set 28:10; 37:6
several 12:23; 42:18
Sewickley 14:5
share 33:24
Sheet 44:21
Sheffield 6:18
shipped 42:20
short 8:21
shortly 21:8
show 35:20; 38:3
signature 50:10, 19
signed 23:17
SILICOSIS 47:1, 16, 23,
24, 25; 48:7, 8, 15, 17, 18,
24
simply 30:25; 38:4; 42:1;
49:15
single 12:24
sister 10:21
sister/daughter 11:16
size 38:21
small 5:14; 12:5, 5; 34:23
Societies 47:17
somebody 22:22
someone 21:4; 22:17;
23:8
somewhat 38:9
sophisticated 32:14
sorry 6:17; 12:6; 15:21
sort 17:15; 28:21; 37:3
source 49:9
speak 24:19; 25:11, 14
speakerphone 22:13, 15

specific 36:18; 43:3
specifically 17:8; 20:17;
26:12; 35:25; 36:2; 39:16
specifications 38:11
spelled 5:8, 9
spending 34:15
spent 17:10
spoke 14:2; 20:25
standard 49:24
started 5:16, 18; 10:20,
25; 34:23
starting 8:14; 26:19
state 37:21; 42:13; 43:2,
11, 22; 44:5, 15, 25; 45:9,
16; 47:4, 11, 19; 48:2, 10,
20; 49:1, 15
statements 25:22
States 32:2
statistics 47:2
status 20:5
statute 32:23; 33:10;
46:12, 19
statutory 32:25
step 9:12; 41:10
steps 8:11; 9:22; 14:11
still 20:9
storage 9:16, 20; 16:19;
18:11; 19:22
store 9:13
stored 19:6
stores 17:7
strike 12:14
structure 12:2
study 47:2
subject 14:25; 18:2; 41:1
subjects 29:23
subpoena 4:1, 12, 17,
20; 5:23; 8:3; 20:12; 22:11;
29:25; 36:7; 40:18; 41:1, 5,
7, 18
subsequent 12:18
suggest 14:24; 41:8
suggested 40:4; 46:18
suggesting 46:6, 21
Suits 47:17, 23, 24, 25;
48:7, 9, 15, 16, 17, 18, 24
summarize 21:19
Summary 44:21
Summons 47:23
supposed 16:23, 24;
41:16
sure 3:19; 5:1; 9:25;
15:13; 18:9; 20:2; 23:25;
31:8; 33:20; 36:20; 39:9,
10; 42:11
Surety 45:8
surround 34:18
sworn 3:3

T

talk 41:3

talked 8:16; 10:1; 21:8;
26:10
talking 7:19; 22:17;
37:24; 39:15
telling 10:4
ten 28:13
testified 24:6
testifying 4:18
testimony 23:24; 47:25;
48:18
Texas 21:4, 9, 15; 24:4;
25:2; 27:5
therein 18:13
thereof 39:19; 42:4
Thereupon 4:6; 14:19;
50:18
thought 8:8; 10:10; 15:2;
20:15, 15; 22:21
thousands 17:13
three 17:11; 21:2, 7;
42:18
times 10:24
title 28:17, 21; 29:1, 16
today 5:19; 12:10, 22;
13:1; 14:9, 16, 22; 18:5;
20:9; 50:9
together 12:24; 13:19
told 7:23; 22:9; 26:2;
39:13
took 9:22; 38:5; 40:16
top 44:9
transaction 6:4, 15, 19;
28:2, 12, 13; 31:14, 14;
40:15
transactions 6:23
transfer 27:9; 38:5
transferred 18:20, 21;
21:1; 31:18
transpired 26:1
trial 21:14; 24:3; 26:20;
48:15; 50:1
Trials 47:25
true 11:4; 23:22; 37:20;
46:21
truly 49:15
try 30:9
trying 30:8; 46:7, 22
tunnel 29:4, 9, 21; 30:16,
22; 38:21; 47:2, 7
turbines 34:16
turn 12:6; 32:20; 42:17
turned 38:6, 7
two 6:20, 21; 7:7, 9, 23;
24:14, 23; 25:18; 37:1;
42:23
type 11:16; 13:16, 18;
17:21; 18:3; 19:13; 34:16;
38:22; 39:3
types 15:3; 34:7; 36:15;
37:7, 12; 43:22; 47:21;
48:4, 21; 49:3
typical 34:17; 45:13
typically 36:14

U

U.S 34:22
ultimate 11:18
ultimately 12:4
umbrella 11:17
unaware 44:5, 24; 45:16
under 4:17, 19; 9:19, 20;
11:17; 18:23; 19:1; 33:10,
11, 12; 48:15
undertaken 8:5; 30:19
undertaking 30:14
Unfortunately 21:11
Union 3:10; 4:13; 6:3, 7,
24; 7:22; 21:6, 10; 23:6, 8;
24:3, 16; 25:1, 14; 26:5, 8,
20, 25; 27:9, 24; 28:1, 23;
29:6, 12; 31:14, 19; 33:15,
16, 17, 21, 23; 34:24; 36:1;
40:15; 42:20; 46:19; 49:10
United 32:2
up 9:5; 15:2; 16:18; 20:20;
23:23; 24:10; 40:9; 41:20;
46:25
updated 11:6
updating 34:14
upon 30:13; 36:16
use 32:17; 33:4
used 16:8
useful 38:12
usually 33:3

V

vague 38:10
valid 33:6
various 32:6
Ventilation 47:7
vice 5:20
Virginia 6:12; 7:2, 24;
32:18; 36:25; 44:22; 45:13
virtue 6:6; 30:25
volume 17:6
volumes 28:13; 29:1;
40:14

W

W 8:16
Wait 23:19
waive 50:10
waived 50:20
waiver 49:21
water 32:2, 18; 36:12;
38:10
way 10:7; 16:21; 20:18;
24:21; 30:23; 33:15;
34:23; 39:1
Weekly 44:19
weeks 21:2, 7
weren't 20:18; 40:12

West 6:11; 7:2, 24; 32:18;
36:25; 44:22; 45:13
whereby 6:19
white 22:1
whole 24:11; 32:5; 34:17
Wildlife 32:12
willing 18:7
withdraw 13:25
within 27:23; 34:8; 40:17
witness 3:2; 24:3; 27:5;
41:13
work 14:8; 30:25; 44:14;
47:2; 48:7
worked 10:15, 24
working 10:20; 24:13;
26:4
workpapers 37:10, 18
wound 20:20; 40:9; 41:20
write 21:11
written 11:23

Y

year 10:25
Yearly 43:19
years 31:21; 33:6, 7, 8,
21; 34:13
yellow 22:1
York 6:16

Lawyer's Notes
