

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. GN102642

SUSAN INGRAHAM, Individually) IN THE DISTRICT COURT
and as Personal)
Representative of the Estate)
of CARL INGRAHAM, Deceased)

Plaintiffs)

VS.)

TRAVIS COUNTY, TEXAS)

GARLOCK, INC.a/k/a Garlock)
Sealing Technologies, et)
al.,)

Defendants)

126TH JUDICIAL DISTRICT

Testimony of James E. Heffron

On the 8th day of September, 2005, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Suzanne Covington, Judge
presiding, held in Austin, Travis County, Texas;

Proceedings reported by machine shorthand.

Cynthia B. Alvarez, CSR, RMR

ORIGINAL

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1 (Jury in.)

2 THE COURT: Defendants may call the next
3 witness.

4 MR. HARRIS: Yes, Your Honor, Garlock calls
5 James Heffron.

6 (Witness sworn.)

7 JAMES HEFFRON,
8 called as a witness, having been duly sworn, testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. HARRIS:

12 Q. Please tell us your name.

13 A. James E. Heffron.

14 Q. Do you go by Jim?

15 A. Yes.

16 Q. Where are you from?

17 A. I'm from Geneva, New York.

18 Q. What do you do for work?

19 A. Well, currently, in addition to the asbestos
20 litigation, I am in marketing, and I'm involved in something
21 called "Voice of the Customer," which is technically part of
22 quality.

23 Q. So who do you work for?

24 A. I work for the vice president of marketing.

25 Q. Do you work for Garlock?

1 A. Yes. I'm sorry.

2 (Laughter.)

3 THE COURT: That was an easier question than
4 you thought.

5 THE WITNESS: I'm sorry.

6 MR. NEMEROFF: I would have stipulated to that.

7 BY MR. HARRIS:

8 Q. How long have you been with Garlock?

9 A. I started January 31st, 1972; so, approximately 33
10 years.

11 Q. What does Garlock do?

12 A. They're a manufacturer of packings and seals and
13 gaskets, something generally known as fluid sealing products.

14 Q. How long has Garlock been in this business?

15 A. Approximately -- well, about 118 years.

16 Q. Mr. Heffron, will you be able to explain to us how
17 and why Garlock made and sold asbestos gaskets and packing
18 materials?

19 A. Yes.

20 Q. Will you be able to help us understand Garlock's
21 decision-making process regarding whether to place warnings on
22 its products?

23 A. Yes.

24 Q. And will you be able to tell us when and why Garlock
25 did --

1 A. Yes.

2 Q. Will you be able to explain Garlock's search for
3 asbestos-free substitutes for its gaskets and packings?

4 A. Yes.

5 Q. And will you be able to explain the testing that
6 Garlock did on its products?

7 A. Yes.

8 Q. Is there any one else at Garlock who knows these
9 subjects more or could better explain these subjects to us?

10 MR. NEMEROFF: Objection, Your Honor,
11 speculation.

12 THE COURT: Overruled.

13 A. No, I don't believe so.

14 Q. Why?

15 A. There's no one else that has the number of years
16 experience and the breadth of experience currently employed by
17 the company as I do.

18 Q. Okay. I've projected a -- a time line that I've
19 titled "Jim Heffron's Employment History." Do you see that?

20 A. Yes, I do.

21 MR. HARRIS: Your Honor, could we turn the back
22 lights off?

23 THE COURT: Sure. Do you want to do that,
24 Mr. Schachter?

25 MR. SCHACHTER: That's --

1 THE COURT: That's fine.

2 (Off the record.)

3 BY MR. HARRIS:

4 Q. Mr. Heffron, can you tell us a little bit about your
5 experience at Garlock, what you've done?

6 A. Well, my experience can be broken down basically
7 into thirds, I suppose. About a third of my experience has
8 been in sales. Only three years of that were actually selling
9 the product, but I worked in customer service where we order
10 entry, we called it, at that point in time. That would be
11 considered sales. I was an MRO salesman. MRO stands for
12 maintenance and repair, in Upstate New York.

13 There was a period of time where I was
14 responsible for sales management as a regional manager down in
15 Houston, Texas, and then later, to OEM customers, Original
16 Equipment Manufacturers. About a third of my experience is in
17 product development and product management. That's a term
18 that they're using today. Responsible for specific
19 product -- products that we make. We call them product lines.

20 Those are a variety of products that Garlock
21 manufactures, and I've had responsibility for probably five of
22 them, perhaps, of the distinct product lines. I also spent
23 time in manufacturing or operations, both directly responsible
24 for plant operations, the manufacturing, the production,
25 inventory, control, product development.

1 I spent some time in quality, almost two years.
2 I spent some time in training. And so it's -- that's a good,
3 I think, generic description of my experience.

4 Q. On my time line here, we had the '70s, '80s, '90s
5 and 2000s, correct?

6 A. That's correct.

7 Q. And in dark blue, we've indicated this is your time
8 in sales; is that right?

9 A. Yes, that looks correct.

10 Q. So a good part of the -- of the '70s; is that
11 correct?

12 A. Yes, my early years were all basically sales.

13 Q. And then there's a break here between '74 and '75.

14 A. Yes.

15 Q. What does that represent?

16 A. At about age 25, I left Garlock for about 10 months,
17 and I worked for Met Life insurance, and then I returned to
18 Garlock.

19 Q. And then in this grayish blue, I've indicated your
20 time in what we call product development or marketing; is that
21 correct?

22 A. Yes, that's correct.

23 Q. All right. And so that was a little bit in
24 the -- in the 1980s, the early '80s and then after 2000.

25 A. That's correct.

1 Q. All right. And then plant operations is in this
2 lighter blue, and that was primarily at the -- from the end of
3 the '80s to 2000; is that correct?

4 A. Starting in about 1987 to really 1999, I think would
5 be accurate.

6 Q. And when you say plant operations, is that the
7 manufacturing of products?

8 A. Yes. I had a variety of different titles. They
9 changed, but they were all -- at that time I was responsible
10 for any of the activities associated with making our plant,
11 the inventory, production control, the actual people who
12 worked in the plant were part of my organization, the
13 engineers that supported the process, and product development,
14 so forth.

15 Q. What products were you making at the plant that you
16 were in charge of?

17 A. Well, I was responsible for molded rubber products,
18 hydraulic seals. I was responsible for what we call
19 compression packing. It's the braided packing that would be
20 used in pumps and valves. All of those products I operated.
21 I was responsible for -- for a brief time, for mechanical
22 seals; and then again later on, I was responsible for molded
23 products and hydraulic seals.

24 Q. Okay. You mentioned valve packing, compression
25 packing; is that correct?

1 A. Yes, that's correct.

2 Q. Is this the -- the type of packing that would be
3 used in the valves that Mr. Ingraham described using?

4 A. Yes, could be, yes.

5 Q. Okay. Who is the president of Garlock?

6 A. Paul Baldetti.

7 Q. How long has he been president of Garlock?

8 A. I think it will be two years this month.

9 Q. Okay, and I've indicated that here; is that correct?

10 A. Yes.

11 Q. Was he president of Garlock when Garlock was making
12 or selling asbestos products?

13 A. No, he was not.

14 Q. Okay. Who is the most senior management person at
15 Garlock?

16 A. Well, if you look at the vice president level, it
17 would be the vice president of Human Resources, the
18 personnel -- man responsible for personnel.

19 Q. And how long has that most senior person who is in
20 charge of personnel --

21 A. I think it's about three and a half years.

22 Q. Was he with -- was he a -- in senior management at
23 the time Garlock ever sold asbestos products?

24 A. No, he wasn't.

25 Q. We've heard about Ellie Houghton. Are you familiar

1 with Ellie Houghton?

2 A. Yeah, I know Ellie. I met and knew Ellie Houghton,
3 yes, sir.

4 Q. Is this a picture of Mr. Houghton?

5 A. Yes.

6 Q. Okay, is he still with Garlock?

7 A. No, sir.

8 Q. Okay, is he still alive?

9 A. No, he's deceased.

10 Q. Okay. We've heard about Alex Kuzmuk. Do you know
11 Alex Kuzmuk?

12 A. Yes.

13 Q. Is he still with Garlock?

14 A. No.

15 Q. I'd like to turn now to the subject of how and why
16 Garlock made and sold asbestos gaskets and packing. What are
17 the uses for Garlock spiral-wound gaskets and packings?

18 A. Well, there's a variety of uses that they could be
19 used in. They're designed to be used -- spiral-wounds in
20 particular are designed more for high pressure and high
21 temperature by virtue of their design and their -- depending
22 on the materials that they're constructed of, they're usually
23 compatible against just about any fluid you could think of.

24 So it would be caustics and acids and steam and
25 water and oil and all of those type of products.

1 Similar -- I think you asked me about packing.
2 Packing would be a similar situation where the material of
3 construction would -- in other words, is it made out of cotton
4 or is it made out of asbestos or is it made out of graphite.
5 That would go a long way towards determining its chemical
6 compatibility and its temperature resistance.

7 The method to use it would be the same, that
8 the braiders that you would use and so forth. So the
9 construction of it could also affect its ability to resist
10 extrusion, high pressure and so forth.

11 Q. You mentioned steam; is that correct?

12 A. Yes, I did.

13 Q. Spiral-wound gaskets and packings were used on steam
14 lines?

15 A. They could be. Depending on the material they were
16 constructed of, yes.

17 Q. Is it your understanding that it's on steam lines
18 that Mr. Ingraham was working with the Garlock or Guardian
19 spiral-wound gaskets and valve packing?

20 A. I think it's one of the services that he mentioned,
21 yes, sir.

22 Q. He also mentioned water and oil; is that correct?

23 A. Yes, he did.

24 Q. What happens if a gasket or packing fails on a steam
25 line?

1 A. Well, if it's a high pressure steam line, it could
2 actually be fatal. It's a high pressured steam and I think
3 even Mr. Ingraham had a -- you know, it's difficult.

4 MR. NEMEROFF: Excuse me, sir. Can we
5 approach, Your Honor?

6 THE COURT: Yes.

7 MR. NEMEROFF: Thank you.

8 (Bench discussion off the record.)

9 BY MR. HARRIS:

10 Q. I'm not sure where we left off, but let me re-ask my
11 question.

12 A. Yes, please.

13 Q. What happens or what could happen if a gasket or
14 packing failed on a steam line?

15 A. Well, a steam line doesn't really tell me whether
16 it's high pressure or not. I thought the first question was
17 high pressured steam line, and high pressure means different
18 things to different people. But usually in our industry, if
19 we're talking about high pressure steam, we're talking about
20 something that's hundreds of PSI and could be a thousand or
21 more degrees Fahrenheit.

22 So in a high pressure, what we would consider
23 high pressure steam, there's no moisture in it; it's just very
24 hot, and it can cut through a flange, it could cut through a
25 person's arm or hands, legs, whatever. It's very dangerous.

1 Q. Let me ask you this. I've displayed this photo of a
2 steam leak or what appears to be a steam leak; is that
3 correct?

4 A. Yes.

5 Q. We can see, just barely, a man's face back down in
6 here, correct?

7 A. Yes.

8 Q. And then what does this appear to be that's coming
9 out of this flange right here?

10 A. It appears to be very low pressure steam because
11 it's visible, so you can -- still has moisture in it, and it's
12 -- obviously, looking at it, it's -- it's kind of slowly
13 releasing.

14 Q. Okay. Now, on -- are our spiral-wound gaskets used
15 on high pressure steam lines?

16 A. Yes.

17 Q. And if a gasket, a spiral-wound gasket failed on a
18 high pressure steam line, would the situation look like this?

19 A. No. You probably wouldn't be able to see the leak.

20 Q. Okay.

21 A. And you certainly wouldn't want anybody standing in
22 that proximity.

23 Q. Are you aware of examples where gaskets have failed
24 and caused a catastrophic loss?

25 A. Yes.

1 Q. Can you give us an example?

2 A. Well, there's two that come to mind. One of them
3 was at Bayer, just a month or two ago, in Houston, Texas,
4 where an individual, as I understand it, was passing by a
5 three-inch 150-pound flange that was sealing hot phenol. The
6 flange leaked. What caused it, I don't know. And the
7 individual was sprayed with hot phenol; left that area and
8 evacuated to a safety area, you know, like one of those safety
9 showers. Unbeknownst to him, he was still being sprayed with
10 phenol, and he died, as I understand it, within about a half
11 an hour.

12 From a personal standpoint, in the 1980s, when
13 I was in Houston, Texas, I was called to Shell to the refinery
14 part of their -- to the chemical portion of their refinery.
15 That also happened to be phenol. There was a valve that was
16 sent out to be reworked. The valve rebuilder was unfamiliar
17 with the type of serrated surfaces that a valve flange would
18 normally have, and he used a grinder -- or they used a grinder
19 to grind away the rough surfaces, the serrations, and the
20 gasket again failed. Two individuals were involved. One was
21 very seriously burned, and the other individual died.

22 Q. Okay, you mentioned the serration. I've got a
23 sample of a valve here; is that correct?

24 A. Yes.

25 Q. Okay?

1 MR. HARRIS: Your Honor, may the witness step
2 down?

3 THE COURT: Yes.

4 BY MR. HARRIS:

5 Q. We can display this to the jury. You mentioned the
6 serration. Okay, this is half of a flange. If you
7 could -- maybe we can get a little closer. Can you point out
8 the serrations to us? We've got jurors over there.

9 A. Yes. If you run your finger back and forth here,
10 the slight -- I would call it a phonographic finish, only that
11 would be incorrect because the phonograph -- the circle starts
12 and it continues all the way through. You don't want to do
13 that. It's not one continuous circle. But if you run your
14 finger across it, it's an -- it's a serrated machine surface.

15 Q. And why would it be serrated?

16 A. Well, the way a gasket works is it's the -- it's the
17 friction that occurs between the flange and the gasket that
18 creates the seal. So, obviously this is a portion of the
19 flange that -- and you move -- this side more appropriately
20 shows the flange, and then another flange where the pipe would
21 come out. And you tighten these bolts and nuts and bolts and
22 you squeeze the gasket against the flanges and the frictional
23 force between the serrations and the gasket is what allows it
24 to properly do its job.

25 Q. So the serrations grip the gasket?

1 A. Yes, sir.

2 Q. There's one other thing I wanted to ask. Dr. Lemen
3 mentioned that he thought the packing sometimes went around
4 the pipe on the outside.

5 A. Uh-huh.

6 Q. Is that how valve packing is used?

7 A. Outside?

8 Q. Yeah, outside on the pipes?

9 A. No.

10 Q. Okay. Is there packing on this -- this --

11 A. Yes.

12 Q. -- flange?

13 A. This particular valve, this is what we would
14 consider the packing area, where you see the white material,
15 and this is what we would call the gland follower, and you
16 would back off the gland follower and pull the packing out,
17 and then obviously do the same thing to install it.

18 And in order -- I mentioned earlier packing is
19 often called compression packing, and the reason for that is
20 it's the compression that you're adding to the packing, by
21 tightening the gland.

22 And there's a variety of ways you can do it.
23 This is a gland nut. That's kind of unusual -- well, there's
24 different types, I should say, and that's how you would make a
25 seal. You would squeeze the packing against the stout and

1 expand it against these stuffing backs, outside diameter, and
2 that's what creates the seal.

3 Q. And so the packing is preventing liquid that may be
4 running through the pipe here from going up the valve stem?

5 A. Liquid or gas or steam.

6 Q. Liquid or gas or steam?

7 A. Yes.

8 Q. And -- you can take your seat.

9 Mr. Heffron, this is a small valve.

10 A. Yes, it's a reasonably small valve, yes.

11 Q. There are bigger valves than this, of course.

12 A. Oh, certainly.

13 Q. How big can they get, or how much can they weigh?

14 A. Well, they can weigh thousands of pounds. You know,
15 I've seen some in nuclear power plants that are just enormous.
16 But even in a chemical plant or refinery, they would -- they
17 would vary in size based on the size of the pipe that they're
18 against. So that's probably about a two-inch pipe size, maybe
19 it's a three. And obviously as the -- if you went to 16 or
20 24, the valve would be appropriately sized for that opening.

21 Q. And this is another picture -- I'm not sure if it's
22 clear -- of the serrations on the flange, correct?

23 A. Yes, that's trying to show the serrations, yes.

24 Q. Now, would a spiral-wound gasket be used on a
25 serrated flange face like that?

1 A. Routinely, yes.

2 Q. And we've used this. Can you tell us, is this a
3 spiral-wound gasket?

4 A. Yes, it is.

5 Q. Is this one that Garlock made?

6 A. Yes, it's got -- it's got the trade name that we
7 used at that point in time, Guardian, so it is a Garlock
8 spiral-wound gasket.

9 Q. Do you know how spiral-wound gaskets are made?

10 A. Yes.

11 Q. Can you tell us how?

12 A. Well, this is the -- this area from here to here
13 where you kind of see the gray interspersed with the metallic
14 color is a sealing surface, and you begin by taking what they
15 call wire, but it's -- to you and I, would look more like a
16 rectangular piece of metal, and it passes through usually a
17 series of forming dyes, and it kind of creates a "V"
18 configuration. It's really not a pure "V," it's more like
19 a -- flat goes up, comes down, like that.

20 Usually wind several metal windings around, and
21 they're welded periodically to hold it in place. And then you
22 begin to feed in between the wire, the rectangular metal
23 strips, asbestos or graphite or whatever the filler material
24 is, until it's wound to the appropriate outside dimension.

25 And then again, just prior to that, several

1 metal wraps, again, only metal are used. Again, it's welded
2 to hold it in place. And then depending on what type of seal
3 the customer needs -- this is a compression ring. If you'll
4 look at the gasket, you can see that this portion, this
5 heavier and wider metal portion, is thinner. Maybe you can't
6 tell, but the -- it's thinner than this -- the sealing
7 element. And it goes in the flange.

8 And it -- what happens is you compress down
9 until you get metal-to-metal contact. But since this is
10 wider, it gets squashed sooner and creates a seal.
11 The -- there can also be a ring on the inside. I've probably
12 gone further than you wanted me to.

13 Q. No, actually I thought that maybe you better step
14 down because our gasket is so small.

15 MR. HARRIS: Your Honor, if he may step down.

16 THE COURT: Okay.

17 BY MR. HARRIS:

18 Q. Mr. Heffron, and what you were saying was -- or let
19 me ask you this way. You're saying that something was wider
20 than the ring; is that correct?

21 A. Thicker, I should have said.

22 Q. Thicker?

23 A. This is the sealing component, and this is really
24 just to help position the gasket. In this particular case,
25 the bolts would be outside this. And when you come down and

1 compress, because this portion is thinner than this portion,
2 the flange is coming in contact with the sealing element
3 first, which is what you want to have happen. The force that
4 you apply compresses, squashes this component down. That
5 creates the seal.

6 But then to keep it from being over-compressed,
7 you have this thinner metal. It's about 125,000s of -- about
8 an eighth of an inch, and the metal flanges hit the outside
9 metal ring, it can't squash it or compress it anymore, and you
10 have a seal.

11 Q. Okay. And is the white part the asbestos?

12 A. Yes.

13 Q. Okay, and what is that asbestos -- is it just
14 asbestos or is it mixed with anything?

15 A. Well it's called asbestos paper. So, it's very
16 similar to a paper-making process. It's probably 90 percent
17 asbestos. And then there is other -- there's got to be a
18 binder to hold it together, so that's usually latex.

19 Q. Okay. And -- all right. And is there -- we can see
20 here because we're real close to it, but is there metal in
21 between the asbestos?

22 A. Yes, there's wraps of metal and there's wraps of
23 asbestos.

24 Q. Okay. We've heard the term that some asbestos
25 products were not friable or encapsulated. How does -- does

1 that apply to spiral-wound gaskets?

2 A. Spiral-wound gaskets are considered encapsulated.

3 Q. And is that because of the latex?

4 A. Yes.

5 Q. Is there any other coating that's put on the
6 asbestos?

7 A. Well, depending on the specification, it's not
8 unusual to add a paraffin to water -- to waterproof the
9 asbestos paper. So there can be a paraffin treatment as well.

10 Q. And would that be used on water and steam lines?

11 A. Yes.

12 Q. Do you know how packing is made?

13 A. Yes.

14 Q. How is packing made?

15 A. Well, packing is -- is made from yarn, so the
16 production of the yarn is really a textile operation. And
17 you're taking raw asbestos fiber. Eventually you're -- the
18 process is called carting it. There's a lot of different
19 processes, but you're basically trying to orient the fibers in
20 alignment, and then you create a -- a yarn out of it.

21 You have to have a thread of material to kind
22 of hold it all together. That's -- it could be cotton, it
23 could be Fiberglas, it could be wire. And you create a yarn,
24 and then the yarn is placed on bobbins, which are in -- in
25 turn placed on a spool. Depending on the size of the what we

1 would call cross-section, really the width of the material,
2 you may have -- you usually have more than one ply of
3 material.

4 So you first create the yarn, you then take the
5 yarn, and usually twist it together several strands together.
6 Most yarn is lubricated to some manner, so sometimes the yarn,
7 after it's produced, is dipped. Sometimes after the yarn is
8 twisted, it's dipped.

9 Then that is placed on a -- a braider spool and
10 that's a mechanical piece of equipment and it varies in design
11 depending on the complexity of the type of braid that you're
12 producing. You can produce a braid over a core, braid over
13 braid, square braid, lattice braid or interlocking braid. The
14 last two are the most common.

15 And as this -- as this equipment spins around,
16 the yarn goes through a pattern, and again, that depends on
17 whether it's a very simple square braid or a lattice braid.
18 It's under tension. It's going through a dye, and all of that
19 results in a product made basically to the -- the width and
20 thickness that you want. Usually it's square, but sometimes
21 it can be other than square.

22 And that goes through a kilning operation and
23 then the product is -- sometimes it's lubricated again, and
24 then it's placed on a spool or it's cut into rings, whatever
25 the use would be.

1 Q. And you ran a plant that made this material.

2 A. I was the -- I worked in customer service there. I
3 was the product manager, and I was the general manager at
4 various times.

5 Q. Can you tell us what this is?

6 A. This is a synthetic product. It's -- I think
7 it's -- I think it's 8922, if it's the material you showed me
8 earlier. It's an acrylic yarn. The yarn is made at our plant
9 in Sherbrooke through a special process called a draft process
10 where you can combine various types of materials together.
11 It's Teflon impregnated. It's a lattice braid construction,
12 and actually introduced into the products in the 1980s.

13 Q. Okay. Now, is packing -- so that's a nonasbestos
14 example; is that correct?

15 A. Yes, it is.

16 Q. Okay. Is -- is -- is packing not friable or
17 encapsulated?

18 A. Packing is generally considered encapsulated, yes.

19 Q. When it was made with asbestos, were the asbestos
20 fibers encapsulated?

21 A. Yes.

22 Q. How?

23 A. Well, through the lubricants. Well, there's --
24 again, packing is also available in a number of forms. I
25 described the single most common. You can actually have a

1 packing that has metal foil wrapped around it. Technically,
2 packing can be a fabric and rubber product, which is -- the
3 manufacturing process is completely different, but it was sold
4 as compression packing. Technically, packing can be dye-form
5 to graphite. So -- I forgotten your exact question. I
6 apologize.

7 Q. My question was how would the asbestos fibers be
8 encapsulated in valve packing, say, that was used in the Navy
9 in the early 1960s?

10 A. If it was valve packing, the yarn typically would be
11 lubricated prior to braiding and then the product, after
12 completion, would receive a surface treatment of -- actually
13 they call it cement, adhesive to allow the graphite and
14 whatever else the surface treatment was. It could have been
15 zinc, for instance or -- to -- to stick to the product.

16 Q. Okay. And so, there are several strands of yarn
17 that are woven together to form this braided packing, correct?

18 A. Yes, many strains in that particular case, yes.

19 Q. And every strand is dipped in a lubricant before
20 it's woven together?

21 A. Yeah, the lubricant varies depending on the style,
22 but the yarn would be lubricated, and then the -- then the
23 valve packing, since we're talking about valve packing, would
24 have a surface treatment added at the end as well.

25 Q. Okay, and what would that surface treatment be?

1 A. Well, typically it would be graphite, but it could
2 be graphite mixed with zinc. And as I mentioned, it's held in
3 place by what we call cement.

4 Q. Let's go back to your time line for a second. Does
5 Garlock sell asbestos-containing spiral-wound gaskets today?

6 A. No.

7 Q. When did Garlock stop selling spiral-wound gaskets
8 made with asbestos?

9 A. Approximately 1988.

10 Q. And that's what's indicated right here?

11 A. Yes. We stopped making -- actually in 1988 we
12 stopped making all spiral-wound gaskets for a period of time.

13 Q. Why did you stop?

14 A. Well, in the case of the spiral-wound gaskets, we
15 didn't do very much business.

16 Q. Okay. Does Garlock sell asbestos-containing packing
17 today?

18 A. No.

19 Q. When did Garlock stop selling asbestos-containing
20 packing?

21 A. Approximately 1980.

22 Q. Okay. And is that what I've indicated right here,
23 "Garlock stops making asbestos packing. 1980"?

24 A. Yes.

25 Q. Why did Garlock stop making asbestos-containing

1 packing?

2 A. Well, by 1980, packing -- we of course rely on raw
3 material suppliers to give us materials that will operate in
4 the conditions that our customers use the products in. And by
5 the time we got to 1980, between the manufacturing processes
6 that we had, like the draft process where we can make a custom
7 made yarn, if you will, and the raw materials that were
8 available and just as importantly, customer acceptance of
9 those products, they were comfortable that they could operate,
10 we felt that we had sufficient number of substitutes to
11 replace asbestos completely.

12 Q. Okay. Now, did Garlock make other types of asbestos
13 gaskets?

14 A. Yes.

15 Q. Those are referred to as compressed sheet?

16 A. Yes.

17 Q. Does Garlock sell any -- well, let me ask it this
18 way. When did Garlock stop selling the asbestos compressed
19 sheet?

20 A. I believe it was December 31st of 2000.

21 Q. Did the compressed sheet have any metal in it?

22 A. No.

23 Q. And is the -- okay. And so, as you understand
24 Mr. Ingraham's testimony, he's only identified the
25 spiral-wound gaskets and packing, true?

1 MR. NEMEROFF: Objection, Your Honor.

2 THE COURT: Overruled.

3 A. That's my understanding, yes.

4 Q. Who were Garlock's customers that were buying the
5 spiral-wound gaskets and packings?

6 A. Well, our customers, they tend not to be too much
7 different from one type of product to the next. Essentially
8 it's the process industries, so it's power plants, utilities,
9 creating electricity. It's paper mills, chemical plants,
10 refineries, a food industry, pharmaceutical. All of those
11 types of -- wastewater treatment, all those type of
12 industries.

13 Q. Did you sell to ordinary consumers like me?

14 A. No.

15 Q. Could I go to Wal-Mart and buy -- say a few years
16 ago, or back in 1988 or 1987, and buy a Garlock spiral-wound
17 gasket?

18 A. No.

19 Q. Could I go back in 1980 and buy a Garlock packing at
20 Wal-Mart or Sears or any store?

21 A. No.

22 Q. Let's move on to the next topic, and that's
23 Garlock's decision-making process regarding whether to place
24 warnings on its products. Do you know whether Garlock ever
25 placed a warning on its asbestos products?

1 A. Yes, I do.

2 Q. How do you know that?

3 A. Well, we did it -- we did it first on asbestos, dry
4 asbestos cloth in 1972. I think it was just after I started
5 with the company, so I was aware of it. And then we did it
6 for all asbestos-containing products in 1977.

7 And in 1977, I was an MRO sales representative
8 in New York State; and when we make a change like that,
9 we -- we would let our distributors and our salespeople know
10 obviously in advance.

11 Q. What's MRO?

12 A. Maintenance and repair, people who are using our
13 product in the maintenance of their plants.

14 Q. So when did Garlock place a warning on its
15 asbestos-containing spiral-wound gaskets and packings?

16 A. In 1977.

17 Q. How was the warning provided with the spiral-wound
18 gaskets and packing?

19 A. Well in the spiral-wound, it was a label that was
20 affixed to the packaging.

21 Q. Okay. And what about for packing?

22 A. Generally that would be true for packing as well.
23 In fact, yes, because the packing has got a surface lubricant,
24 so you really can't put the label on the packing, so you put
25 it on the spool in the case of packing and the box. Or if it

1 was just shipped in a box somewhere, it would simply be on the
2 box. Any plastic covering would be on there as well.

3 Q. What did the warning say?

4 A. "Caution. Contains asbestos. Avoid creating dust.
5 Breathing asbestos fibers could create serious bodily harm,"
6 or something like that. It was a standard OSHA warning.

7 Q. Okay. Now, Mr. Heffron, if you don't believe that
8 spiral-wound gaskets or packings are dangerous, why would
9 Garlock put a warning on it?

10 A. Well, by the 1970s, there was concern being
11 expressed about whether people were being exposed to asbestos
12 products, so, there was really no reason not to let people
13 know. We didn't think then and we don't think now that our
14 products pose a hazard, but there was no reason not to do it,
15 I guess.

16 Q. Are you aware of any other gasket or packing
17 manufacturer that placed a warning on its asbestos
18 spiral-wound gaskets or packing before Garlock?

19 MR. NEMEROFF: Objection, Your Honor.

20 THE COURT: I'll overrule that objection.

21 A. No, I'm not aware of anyone doing it before us, no.

22 Q. Let's -- I want to turn to the next topic, and
23 that's Garlock's search for asbestos-free substitutes for
24 gaskets and packings. Do you know whether Garlock was
25 involved in searching for asbestos-free substitutes for its

1 products?

2 A. Yes.

3 Q. How do you know?

4 A. Well, just in -- many of the jobs that I had.

5 Certainly when I was in product management or marketing, again
6 there's been a variety of terms that industry has used, that
7 was part of my primary responsibility. As part of the
8 management team, which I often was, we were familiar -- we
9 would actually call -- we -- obviously we would let any of our
10 material suppliers know that we were looking for the newest
11 raw materials, and I took part in a few meetings where we were
12 working with people who were doing a worldwide search for
13 materials.

14 And in the late '70s and '80s, we were part of
15 a -- Crucible Steel was part of Consult Industries, and they
16 had a research and development, an R & D facility in
17 Pittsburgh, Pennsylvania and representatives from that
18 location came and met with us as well. I usually participated
19 in all of those activities. That would be some of the things.

20 Q. Okay. What were the challenges that you faced in
21 finding these asbestos-free substitutes?

22 A. Well, in order to be able to produce a product in
23 the form that our customers wanted it in, or needed it in, and
24 to be able to work in the application that they were going to
25 place it in, the material had to be available in a form that

1 it would process. So, the packing part of it was,
2 comparatively speaking, easier, because yarns were typically
3 available of things like carbon and graphite, and then later
4 Kevlar, but to be able to make it into a sheet material, using
5 what we call the high pressure sheet method, the -- the
6 attribute of the product, what you're looking for in terms of
7 its diameter and its length and the ratio between those two,
8 and its ability to be processed and come out in a construction
9 that's consistent with what you need to be -- to have an
10 effective product, that was much more difficult.

11 Q. Well, for instance, there are rubber gaskets,
12 correct?

13 A. Yes, there are.

14 Q. Why couldn't you just use a rubber gasket instead of
15 an asbestos spiral-wound gasket?

16 A. Well, again, it would depend on the application. If
17 the spiral-wound was being used perhaps in just low pressure
18 water service, it might well be that rubber would work there.
19 But if you're -- if you're talking about, based on the flange
20 design, something that provided an awful lot of squeeze on the
21 gasket, in an application that was very high in either
22 temperature or pressure, a rubber gasket simply would not
23 stand up for a variety of reasons.

24 Q. What about packing? There's other packings besides
25 asbestos packing, correct?

1 A. Yes.

2 Q. Why couldn't you just use one of those instead of
3 asbestos packings for valves and pumps?

4 A. Well, again, depending on the service, in some cases
5 you might have been able to use something else, but our
6 customers used asbestos pretty universally. It had good
7 chemical resistance. So if you look at a chemical
8 compatibility chart and just reviewed the base material and
9 the media, asbestos had very, very good media resistance. It
10 could be used in acids and caustics, and it could be used
11 against water and oil and steam and solvents and so forth.

12 In addition to that, you have to look at the
13 temperature resistance. So, cotton actually has been used to
14 make packing. And it would work in some applications, but
15 obviously not above 250 degrees. So, it's the -- it's all of
16 the elements of the application: The temperature, the
17 pressure, the media, the size, the speed, the flange design,
18 if it's a gasket. All of those are elements that either help
19 a product work or result in its failure.

20 Q. When did you find asbestos-free substitutes for
21 asbestos packing?

22 A. Well, the substitute word is a hard one to -- to
23 explain simply because, for instance, in 1960, Garlock
24 introduced a graphite packing. That packing in the 1960s was
25 part of our ongoing material research, if you will, looking

1 for types of materials that had the properties that would make
2 a good seal. So we introduced some braided graphite packings
3 in the '60s that were introduced because they had a low
4 coefficient of friction, because they were normally stable,
5 and those types of things, that later customers began to use
6 as asbestos replacements.

7 But the process of really trying to take every
8 style of product that we produced with braided packings that
9 was made out of asbestos and to have a one for one replacement
10 from nonasbestos started in earnest in the late 1970s.

11 Q. In the 1970s, do you know whether other
12 manufacturers offered asbestos-free substitutes before Garlock
13 did for spiral-wound gaskets or packings or other asbestos
14 gaskets?

15 A. No. No, in the case of compressed sheet, we were
16 the first to offer a compressed nonasbestos sheet using that
17 process. I am not familiar with anyone else offering -- the
18 only thing I would say that's on spiral-wound gaskets, there
19 were -- ceramic was a material that was available prior to, I
20 think you said, the 1970s. So I think some people offered a
21 ceramic filler material for spiral-wounds.

22 Q. Was that a complete substitute for the asbestos-free
23 substitute -- I'm sorry, the asbestos spiral-wound gaskets?

24 A. No.

25 Q. When we say it's not a complete substitute, what do

1 you mean?

2 A. Well, customers want to keep it simple, if they can,
3 and they would like to have a product that they can use
4 everywhere they're using the product that they're currently
5 using in the case of asbestos. So, while some products would
6 work in fact better in some applications, nothing would work
7 in all of the same environments with the same safety and
8 effectiveness and so forth.

9 Q. Let's move to the last topic, Garlock's testing of
10 its products. Has Garlock tested its asbestos spiral-wound
11 gaskets and packings?

12 A. Yes. There's a variety of tests that we perform
13 routinely on all of our products and some special ones that we
14 only do occasionally, of course.

15 Q. What kinds of testing did Garlock do on its asbestos
16 products?

17 A. Depending again on the material, you're looking to
18 make sure that what you produce meets your own specifications.
19 So there's tensile strength tests and there's compression
20 tests. There's swell tests where you want to make sure that
21 if the material is immersed in a fluid in a beaker, that it's
22 not going to swell up or shrink. There's seal ability
23 testing, where you -- there's standard ASTM specifications,
24 primarily in gasketing, that you can run that tells you how
25 effectively it seals.

1 And then since the 1970s and '80s, there's a
2 whole host of new test methods that have been developed. So
3 you're doing both physical testing and you're doing functional
4 testing.

5 Q. Do those tests relate to safety of Garlock's
6 products?

7 A. Yes.

8 Q. How?

9 A. Well, because they relate to the product, confirming
10 that the product that you've made is manufactured properly,
11 and also that it will perform its job.

12 Q. Has Garlock also tested whether -- the extent of the
13 asbestos fiber release from the use of its products?

14 A. Yes.

15 Q. You were here for Mr. Mangold's testimony?

16 A. Yes, I was.

17 Q. Did you hear about the tests that did he on
18 spiral-wound gaskets and packings for Garlock?

19 A. Yes, I did.

20 Q. You're familiar with that test?

21 A. I've reviewed it, yes.

22 Q. Has Garlock hired other investigators to investigate
23 asbestos exposure from packings?

24 A. Yes.

25 Q. Can you tell us who?

1 A. Mr. Bolter, Mr. Spencer, those are two of the ones
2 that come to mind. I know there's -- I think there's probably
3 four or five different scientists or industrial hygienists
4 that Garlock has hired that have performed tests.

5 Q. And what is your understanding of how those -- the
6 results of those tests compare with the occupational health
7 standards even today?

8 MR. NEMEROFF: Objection, Your Honor. Can we
9 approach on this?

10 THE COURT: Yes.

11 (Bench discussion off the record.)

12 THE COURT: I'll sustain the objection.

13 BY MR. HARRIS:

14 Q. When did Garlock test its products for asbestos
15 fiber release?

16 A. I think the first such study would have been
17 approximately 1978.

18 Q. Why not earlier?

19 A. There was no belief on our part that our products
20 released fibers, if any, in any a measurable amount, but they
21 weren't hazardous.

22 Q. Mr. Heffron, we've -- the Plaintiffs have introduced
23 minutes from the Asbestos Textile Institute meetings. Are you
24 familiar with the Asbestos Textile Institute?

25 A. Yes, I am.

1 Q. What was it?

2 A. It's an association of -- it was an association. I
3 don't think it exists anymore -- of textile manufacturers or
4 people who had textile manufacturing.

5 Q. Why was Garlock a member?

6 A. Asbestos -- textile manufacturing is the method that
7 you use to produce yarn and cloth, and Garlock produced both
8 for use in its products.

9 Q. Are you aware of any records or minutes from the
10 Asbestos Textile Institute that relate to the fiber release of
11 asbestos from spiral-wound gaskets or packing materials?

12 A. No, I'm not.

13 Q. Are you aware of any records from the Asbestos
14 Textile Institute that relate to the health hazards or
15 potential health hazards of working with asbestos spiral-wound
16 gaskets or packing materials?

17 A. No.

18 Q. Or any other encapsulated products?

19 A. No.

20 Q. Do you know when Garlock was a member?

21 A. Well, I know that we were at some point in the
22 1940s. I'm not sure exactly when. It was after it was formed
23 but for a brief period of time. And then I think 1964 through
24 1982, or something like that. The answer is I -- the answers
25 are in our answers to interrogatories, and I often can't

1 remember the exact dates, but I think that's approximately
2 correct.

3 Q. And if the answers to the interrogatories and the
4 ATI meeting minutes reflect that Garlock rejoined the ATI in
5 1966, would that be consistent with your understanding?

6 A. Yes, it would be.

7 Q. Who answers the answers to interrogatories for
8 Garlock?

9 A. I sign all answers to interrogatories.

10 Q. Okay. The Plaintiffs have offered the testimony of
11 you from another trial, called Blandford. Are you familiar
12 with that testimony?

13 A. Yes. Generally, yes.

14 Q. Part of the testimony that they offered involved a
15 couple of questions about Garlock asbestos clothing. Have you
16 seen that testimony?

17 A. Yes.

18 Q. Did Garlock ever make asbestos clothing?

19 A. No, they did not.

20 Q. But you see in the transcript it says "asbestos
21 clothing."

22 A. I did see that.

23 Q. Now, were you given an opportunity to read and sign
24 this transcript?

25 A. No, I was not.

1 Q. Okay. Could you have just misspoke?

2 A. Well either that or I misheard, because it's -- it's
3 obvious that clothing is mentioned but clothing would not be
4 accurate.

5 Q. Okay. So you're not necessarily disputing that the
6 court reporter took it down accurately; is that fair to say?

7 A. I don't know. All I know is that we didn't make
8 clothing, and I don't know why I would answer yes. Perhaps I
9 confused it with cloth.

10 Q. Garlock did make and sell asbestos cloth, correct?

11 A. Yes, we did.

12 Q. Who bought asbestos cloth from Garlock?

13 A. Well, the product was sold to our distributor, and
14 they in turn would sell it to the end user. But cloth was one
15 of those items that we also sold to other manufacturers, and
16 often they -- they -- one of the uses for the cloth might have
17 been for them to treat the material and make gaskets out of
18 it.

19 Q. They'd take the cloth, encapsulate the asbestos and
20 then make gaskets, correct?

21 A. Yes. Garlock also made asbestos cloth, treated it
22 with what we called neoprene cement, but essentially rubber,
23 and made gaskets out of it. We sold that material to other
24 people who did the same type of thing.

25 Q. Okay. And the customers who bought asbestos cloth

1 from Garlock, would they use it to make other products?

2 A. They could, sure.

3 Q. We've heard about a workers compensation claim filed
4 by Vera Clemons, are you aware of her claim?

5 A. Yes, I am.

6 Q. Now, I've projected a document that appears to be a
7 Garlock employee record; is that correct?

8 A. Yes.

9 Q. And are you familiar with this document?

10 A. I've seen it several times in the past, yes, sir.

11 Q. Okay, and it says date -- well, first of all, it
12 says Mrs. Vera Smith Clemons, correct?

13 A. Yes.

14 Q. It says, Date Hired: 5-20-18?

15 A. That's correct, 1918.

16 Q. Would that be May 20, 1918?

17 A. Yes, that's my understanding.

18 Q. And it lists that the department worked in was the
19 textile department; is that correct?

20 A. That's correct.

21 Q. And type of work, it says "loom operator."

22 A. Yes.

23 Q. Correct?

24 A. Yes, it is.

25 Q. And again, May 20, 1918, correct?

1 A. That's correct.

2 Q. And so, can you tell us how you would interpret this
3 record to understand what her job was when she first started
4 working at Garlock?

5 A. Well, a loom operator would be a job making woven
6 asbestos cloth. So, Vera Clemons would -- well, there's a
7 photograph of it, from 1922. So, Mrs. Clemons would have
8 worked in that environment producing asbestos cloth in an
9 asbestos textile facility within Garlock.

10 Q. Now, would this cloth have been encapsulated at the
11 time that she was working with it in the late 19 teens or
12 early 1920s?

13 A. No, that part of the process produces a dry cloth.

14 Q. You're familiar with Grace Baylord?

15 A. Yes, sir.

16 Q. It's another worker's compensation claim that was
17 filed against Garlock; is that correct?

18 A. Yes, sir.

19 Q. Do you know when Ms. Baylord started working for
20 Garlock?

21 A. I believe it was about 1922.

22 Q. And do you recall what her first job was, based on
23 your review of the employment records?

24 A. She was also a loom operator in the textile
25 department.

1 Q. So, she would be doing the same type of work that
2 Ms. -- Mrs. Clemons was doing, correct?

3 A. That's my understanding, yes.

4 Q. I believe that Mr. Houghton testified that
5 Ms. Clemons and Mrs. Baylord might have been doing other work
6 than working on a loom. When did Mr. Houghton join Garlock?

7 A. I'm not sure of the exact date, but it was in the
8 late 1930s.

9 Q. So he joined Garlock after they had worked at
10 Garlock for many years, correct?

11 A. Yes.

12 Q. Mr. -- well, the Plaintiffs have projected for the
13 jury a Garlock advertisement that had a headline, something of
14 the effect that "It's time to stop using asbestos and Garlock
15 knows it," or "No one knows it better than Garlock." Are you
16 familiar with that advertisement?

17 A. Yes, I am.

18 Q. How are you familiar with it?

19 A. I was part of a small group of people who developed
20 that ad. There were several ads, and that was one of them.

21 Q. And when was -- when did had that ad -- when was
22 that placed?

23 A. Well, I'm not absolutely certain, but it was in the
24 late 1980s. I want to say 1988, and I think that's accurate.

25 Q. That's the same year that Garlock stopped making

1 spiral-wound gaskets?

2 A. Yes.

3 Q. Does that ad have anything to do with spiral-wound
4 gaskets?

5 A. No, it's -- it talks about packing and gasketing.

6 Q. And at that point in time, had Garlock already
7 stopped making asbestos packings?

8 A. Yes.

9 Q. For how many years?

10 A. Well, we -- we ceased manufacturing in 1980, so
11 about eight years, if my memory serves me right.

12 MR. HARRIS: I'll pass the witness, Your Honor.

13 THE COURT: Okay.

14 MR. NEMEROFF: If I can have just one moment.

15 (Pause.)

16 MR. HARRIS: Excuse me, Your Honor, I forgot to
17 confer with counsel before I passed the witness.

18 MR. NEMEROFF: That's okay.

19 MR. HARRIS: May I ask a couple more questions.

20 THE COURT: Yes, sir, you may.

21 MR. NEMEROFF: Good, that will give me some
22 time. Thanks.

23 BY MR. HARRIS:

24 Q. We also heard the name George Abbott. Are you
25 familiar with that name?

1 A. Yeah, I've heard the name. I don't know him. I
2 didn't know Mr. Abbott, I don't believe. Well, was
3 it -- there were many Abbotts that worked for Garlock. Was he
4 a safety manager of safety programs.

5 Q. Attended ATI meetings?

6 A. Oh, no, that would be a different individual.
7 I -- the name is familiar. I really didn't know Mr. Abbott.

8 Q. Is he still, to your knowledge, still with the
9 company?

10 A. No, I don't believe he's alive.

11 Q. Would graphite work as a substitute for asbestos in
12 high pressure, high temperature steam lines?

13 A. Well, depends on what time line you associate with
14 that. Graphite -- and are we talking about spiral-wound
15 gaskets or --

16 Q. For packings.

17 A. I'm sorry. Yes, graphite packings would work in
18 high temperature steam lines, yes.

19 Q. Was that available in that form in the 1960s?

20 A. Well, graphite packings were first introduced in the
21 1960s, yes.

22 Q. As a complete substitute for asbestos packings?

23 A. Well, as I mentioned earlier, I don't think we
24 talked about them as a substitute at that point in time. They
25 were just a new type of material that was available that had a

1 lot of positive attributes.

2 Q. Okay. Thank you, Mr. Heffron. That's all.

3 CROSS-EXAMINATION

4 BY MR. NEMEROFF:

5 Q. All right. Hi, Mr. Heffron, how are you?

6 A. Good. How are you?

7 Q. And in that case Blandford vs. Garlock in Cleveland,
8 Ohio, it was me asking you those questions that you were
9 referring to with counsel before in the transcript; is that
10 correct?

11 A. I believe that's correct, yes.

12 Q. And -- and Mr. Blandford, as --

13 MR. HARRIS: Objection, Your Honor. If he's
14 going to get into the details of Mr. -- of another case,
15 that's not relevant.

16 MR. NEMEROFF: I'll be -- I won't get into the
17 facts of the case, Your Honor.

18 THE COURT: All right.

19 BY MR. NEMEROFF:

20 Q. It was an asbestos case that you were testifying in
21 on behalf of Garlock.

22 A. That's correct.

23 Q. Okay. So, when you were asked questions in that
24 transcript which I read to the jury, the issues that you were
25 being asked had to do with asbestos-containing products

1 manufactured by Garlock.

2 A. That's correct.

3 Q. Okay. Now, you would agree with me that as far as
4 your personal knowledge goes, that you have none with respect
5 to Garlock prior to your joining the company on January 31st,
6 1972.

7 A. That's correct.

8 Q. And you are here today as the voice of Garlock.

9 A. I'm here as the corporate representative, yes.

10 Q. Okay. The jury has -- you weren't here for jury
11 selection, were you?

12 A. No.

13 Q. You weren't here for the first week of trial, were
14 you?

15 A. No.

16 Q. You weren't here for the first -- when did you get
17 here, by the way?

18 A. I arrived yesterday.

19 Q. So, for close to five, six, seven, eight days in
20 this -- of this trial where Garlock is a Defendant in a
21 multi-million dollar lawsuit, you're --

22 MR. HARRIS: Objection, Your Honor.

23 BY MR. NEMEROFF:

24 Q. -- just showing up here first time now.

25 THE COURT: All right. I think it actually

1 misstates the number of days, Mr. Nemeroff.

2 MR. NEMEROFF: It seems so long, Judge.

3 (Laughter.)

4 BY MR. NEMEROFF:

5 Q. I'll ask it a different way.

6 THE COURT: Restate your question, please.

7 MR. HARRIS: Then I would also object that it's
8 asked-and-answered. He's already testified when he arrived.

9 MR. NEMEROFF: I'll move on.

10 THE COURT: All right.

11 BY MR. NEMEROFF:

12 Q. Now, sir, I want to talk about some things that
13 perhaps I think we can agree on. If I get any of these wrong,
14 you let me know.

15 You would agree that at all times before 1965,
16 Garlock never placed any warning on any of its
17 asbestos-containing products; is that correct?

18 A. I would agree.

19 Q. That Garlock, prior to 1965, never tested any of its
20 asbestos-containing products for asbestos dust release.

21 A. That's correct.

22 Q. Garlock never did any studies or dust counts of
23 asbestos dust released from its asbestos products being used
24 in the field.

25 A. Before 1965, that's correct, yes.

1 Q. Garlock had no knowledge of asbestos causing lung
2 cancer before 1965.

3 A. I don't believe so.

4 Q. Garlock had no knowledge of asbestos causing
5 mesothelioma before 1965.

6 A. I believe that's correct.

7 Q. Had no medical or scientific articles on asbestos in
8 its possession that you can tell us about.

9 A. Not that I can tell you about, no.

10 Q. You would agree that Garlock, prior to 1965, had
11 what it referred to as a modern research facility.

12 A. It had a research and development facility, yes, it
13 did.

14 Q. And this is from what is in evidence.

15 (Off the record.)

16 MR. NEMEROFF: The catalog is 43. Your Honor,
17 to the extent we haven't offered Plaintiffs' 43, that was the
18 big catalog we were making some edits on, we would offer
19 Plaintiffs' 43 at this time.

20 MR. HARRIS: I think that may be one of those
21 documents that we were going to talk about. These pictures
22 are fine to this point.

23 MR. NEMEROFF: Okay.

24 THE COURT: I'll withhold ruling on that offer.

25 MR. NEMEROFF: Thank you, Your Honor.

1 BY MR. NEMEROFF:

2 Q. This is from a catalog from 1952, and it says with
3 respect to a research -- let's see, how do you guys talk
4 about -- you have a test department certainly by 1952; is that
5 correct?

6 A. That's correct.

7 Q. You have machines and instruments for testing
8 packing. What else? You have an engineering department?

9 A. Yes.

10 Q. And you're able to conduct thousands of tests on
11 every known type of packing material; is that right?

12 A. That's what it says.

13 Q. And here's a picture. Linked with the -- "Linked
14 with research is the engineering department. Improvements and
15 refinements to production," et cetera. And this has to do
16 with your Chevron sealing elements and so forth; is that
17 correct?

18 A. Yes.

19 Q. And this over here, that's actually gasket material
20 that he's looking at?

21 A. No, it's actually a lip-type oil seal, but --

22 Q. Oh, okay. And down here we have -- this is the
23 chemical laboratory. You actually had a chemical laboratory?

24 A. Yes, we did.

25 Q. Did you hire really smart people who knew a lot

1 about chemical composition and how chemicals would interact
2 with each other?

3 A. I have no idea what type of people they hired at
4 that point in time, but --

5 Q. Okay. And oh, here it is. Here's your "Modern
6 building provides facilities for Garlock's chemical
7 laboratories, physical laboratories, rubber compounding
8 laboratories, test department, and pilot plant." And these
9 were all in existence at least by 1952 and certainly before
10 1965.

11 A. That's correct.

12 Q. In fact, it would stand to reason, if they were in
13 1952, they were also up and running before 1961.

14 A. I think that building was built in 1945 or something
15 like that.

16 Q. And here's your test department. I want to show the
17 jury a picture of this. This is the "Test room where rods,
18 pistons and valve stem packings, gaskets, diagrams, valve
19 disks, oil seals and other Garlock products are tested under
20 operating conditions approximating those in actual service.
21 Means are provided for accurate" -- means are provided for
22 accurate quantitative measurements of results." I read that
23 all right?

24 A. Yes, you did.

25 Q. Okay. And you'd agree with me that Garlock

1 certainly had the ability, if it wanted to, based on all of
2 the -- of these test materials and testing facilities and
3 these pictures of valves and use of gaskets, to test their
4 products to see if removing them, after being in operation for
5 a long period under actual conditions, would give off asbestos
6 dust into the air.

7 A. I don't think Garlock had that capability. It
8 didn't have industrial hygienists on staff, and I'm not sure
9 if those tests existed at the time that you're referring to,
10 but no, we wouldn't have the ability to do that kind of
11 testing.

12 Q. So you're telling this jury that Garlock couldn't
13 test its products before sale to the public -- excuse me, to
14 consumers as to whether or not their products which contained
15 asbestos could release dust into the air?

16 MR. HARRIS: Objection, argumentative.

17 THE COURT: Overruled.

18 MR. HARRIS: And lack of foundation.

19 THE COURT: Overruled.

20 A. What I'm saying is Garlock didn't have the internal
21 capability to perform those tests.

22 Q. Sir, do you think it is a good thing for a
23 manufacturer of a product to sell its product without testing
24 it before -- well, let me rephrase that.

25 Do you think it's a good and reasonable thing

1 for a company to do with respect to selling its product to
2 sell it first and test it later?

3 A. I think Garlock performed many tests on its product
4 before it sold it.

5 Q. Sure, and you test it to make sure the product
6 worked, meaning the seals were kept, the product didn't fail,
7 and that consumers, when they got the product, got what they
8 thought they were -- they were buying.

9 A. Yes, we wanted to make sure the product was made
10 according to specification.

11 Q. And there was no prohibition -- oh, excuse me,
12 that's right. And you'd agree with me, sir, that asbestos,
13 with respect to the asbestos-containing gasket material and
14 packing material that Garlock was making, that was an
15 important part of the product.

16 A. What was an important part?

17 Q. The asbestos, using -- whatever products that had
18 the asbestos, you were using asbestos because it was an
19 important part of the product.

20 A. Yes, in order to get the performance of the product,
21 you -- yes, it was an important part of the product,
22 certainly, yes.

23 Q. And you -- even though you weren't there in the
24 1960s or 1950s or 1940s, you've seen gaskets being removed
25 where it's been in service on a high pressure steam line for

1 quite awhile. You've seen that operation before, haven't you?

2 A. Well, it's -- it's my belief that I wouldn't know
3 how long it had been in service. It's certainly my belief
4 that when people have removed asbestos-containing products,
5 often they've been in service for a long time, if that's your
6 question.

7 Q. Sure, and have you personally observed the removal
8 of gaskets from high pressure steam lines or high temperature
9 steam lines that you believe were in service for a pretty long
10 time?

11 A. Yeah, I believe so.

12 Q. Well --

13 A. On a limited basis, yeah.

14 Q. Okay. Well, on this limited basis, did you ever see
15 any visible dust created by the removal of these gaskets that
16 had asbestos in it that had been on steam lines for a long
17 period?

18 A. I don't recall seeing visible dust, no.

19 Q. That really -- would it be fair to say that that
20 probably wasn't even your focus when you were observing it?

21 A. No. Usually when I was observing it, if it wasn't
22 done in our own lab where we were trained on how to remove and
23 install products, if I was at the customer -- typically the
24 customer would have removed whatever they were using as
25 sealing material, packing or gaskets, whatever it was,

1 generally prior to my arrival.

2 Q. Now, you knew before 1965 that Garlock employees had
3 died from asbestos exposure in its manufacturing facilities;
4 is that correct?

5 A. Before 1965, Garlock had employees that filed
6 workman's compensation cases that involved asbestos-related
7 disease, yes.

8 Q. Now, you manufactured -- you had more than one
9 manufacturing facility while you were with Garlock; is that
10 correct?

11 A. Yes.

12 Q. And the jury heard that Palmyra up in New York was
13 your main facility?

14 A. That's correct.

15 Q. And that's right -- so the jury knows -- I don't
16 know if everybody knows where --

17 A. If you know where Rochester, New York is, or Kodak,
18 it's close to that area.

19 Q. Close to Canada?

20 A. Yes.

21 Q. Close to the Canadian mines that mined asbestos?

22 A. Reasonably close, yes.

23 Q. And you would get your asbestos right from Canada.

24 A. Generally, that's true, yes.

25 Q. Where else did you get your asbestos from if not

1 Canada?

2 A. I don't recall specifically, but I think some forms
3 of asbestos -- I don't know that it was Canada. It was the
4 only country that we got yarn from. I would say that was
5 generally where most asbestos fiber came from.

6 Q. And you didn't just -- when you say yarn, you also
7 got raw asbestos fiber.

8 A. If I said yarn, I apologize. I should have said raw
9 asbestos fiber.

10 Q. That's how we wound up with these transcripts.

11 A. Exactly.

12 Q. Now, sir, the jury saw a picture yesterday of -- of
13 some raw asbestos fiber, and this would be one of the ways in
14 which it came to Garlock. I'll see if I can pull this up.
15 You've seen this picture before.

16 A. Yes.

17 Q. And one of the pictures that counsel just showed you
18 was I think one -- I don't know which one of these. Either
19 this one or this one or -- this has to do with asbestos yarn
20 on large package spinning frames. That's over here. Then
21 we've got one.

22 Then we've got looms weaving asbestos cloth
23 over here. In fairness, sir, it was probably asbestos cloth
24 that you were talking about when I asked you questions in
25 Ohio.

1 A. I assume so.

2 Q. Okay. And down here we've got making plied asbestos
3 yarn on ring twisters, all this.

4 A. Yes, sir.

5 Q. And you'd agree with me that these pictures all come
6 from a 1952 catalog.

7 A. Yes. They appeared in catalogs prior to 1952, but I
8 agree that it is in a 1952 catalog as well.

9 Q. Sir, would you agree with me that if a customer were
10 to pick up an asbestos -- let's say they pick up one of your
11 catalogs and their concern -- and not even concern, if they're
12 just wanting to know about Garlock products and they take a
13 look at this picture in 1952, that this is conveying to a
14 customer that asbestos is just so safe that a guy in the fiber
15 mixing picker plant could just be in bales of raw asbestos, no
16 protection, just load it up and that's fine?

17 A. I don't think it's attempting to convey any of that.
18 I don't know when that photograph was taken, and I don't know
19 what environmental protection may be associated in that area.
20 So I don't know that it's depicting anything about the safety
21 of raw asbestos fiber.

22 Q. Well, sir, we're all looking at that same picture.
23 Maybe I can -- maybe I can make it bigger. Can you -- do you
24 see a mask on this guy?

25 A. No, I do not.

1 Q. And you'd agree with me that by 1952, Garlock
2 internally was requiring respirators on workers who would be
3 in similar situations to this gentleman which was working with
4 raw asbestos fiber.

5 A. Well, I don't know -- again, I don't know the date
6 of that photograph. So, what was required specifically at the
7 time of this photograph, I have no idea.

8 Q. My question was by 1952, whenever this picture was
9 taken, by 1952, this kind of work with raw asbestos fiber at
10 Garlock was prohibited without respiratory protection.

11 A. I don't know.

12 Q. You've read Mr. Houghton's prior testimony when he
13 talks about the -- the ventilation and the hoods and all the
14 things that went on at Garlock before you got there, haven't
15 you?

16 A. I've reviewed his depositions previously, yes, sir.

17 Q. And certainly Mr. Houghton discusses how this kind
18 of operation would have -- at Garlock -- required respiratory
19 protection where raw asbestos fibers were being used.

20 A. I couldn't add to what Mr. Houghton said.

21 Q. Okay. You testified moments ago that there was no
22 industrial hygienist employed by Garlock prior to 1965; is
23 that correct?

24 A. That's correct.

25 Q. You would agree with me that industrial hygienists

1 were available to be hired by Garlock prior to 1965 who would
2 know something about asbestos.

3 A. I don't know.

4 Q. Well, you've reviewed before the report from the
5 Industrial Hygiene Foundation from Mr. Hemeon, the head
6 engineer at the Industrial Hygiene Foundation that came into
7 the Garlock plant and did tests? I mean there were people
8 like that out there who could help Garlock with dust control,
9 correct?

10 A. I think we used those people. We participated in
11 that study.

12 Q. And one of the things that you participated in that
13 study was to also provide information to the Industrial
14 Hygiene Foundation about any incidences of disease in the
15 plant; isn't that correct?

16 A. I don't know -- I don't know that that was part of
17 the study. I'm not saying it wasn't. I'm familiar with it
18 because it was an -- it was a study of fibers in the air,
19 asbestos fibers. That's my familiarity with it.

20 Q. And you'd agree with me that there was no medical
21 director prior to 1965 employed by Garlock.

22 A. That's correct.

23 Q. I want to turn now to warnings and no more asbestos.
24 Now, you said earlier that warnings went on -- and I was
25 careful to listen to this and watch on the screen. Warnings

1 went on all asbestos-containing products that Garlock was
2 manufacturing in 1977. Is that your testimony?

3 A. Yes, I believe that's correct, yes.

4 Q. Sir, isn't it true that Garlock in Mexico -- Garlock
5 Mexico didn't start warning until 1997?

6 MR. HARRIS: Objection. May we approach, Your
7 Honor?

8 (Bench discussion off the record.)

9 THE COURT: Sustained.

10 BY MR. NEMEROFF:

11 Q. Now, sir, you'd agree with me that when Garlock made
12 its decision to stop selling asbestos products, it was not
13 done for safety reasons or health concerns.

14 A. That's correct.

15 Q. Sir, I want to talk with you about the two plants
16 that the jury heard about, Palmyra and Camden, New Jersey.
17 Now, Camden, New Jersey was the facility where Garlock made
18 its spiral-wound gaskets; is that correct?

19 A. During a period of time, yes.

20 Q. During the period of time that -- where -- do you
21 know what period of time that was?

22 A. No, I'm not certain what years the product was
23 produced in Camden, New Jersey, but it was first produced in
24 Camden, New Jersey. I know that for certain.

25 Q. If we read answers to interrogatories that said

1 Garlock manufactured spiral-wound gaskets at the former United
2 States gasket plant in Camden, New Jersey from 1955 to 1964
3 and that a plant in Gastonia, North Carolina from 1965 to
4 1987, would that be correct?

5 A. I believe so, yes, sir.

6 Q. Sir, how many workers compensation claims for
7 asbestos exposure were filed against Garlock out of the
8 Camden, New Jersey plant?

9 MR. HARRIS: Objection, Your Honor. May we
10 approach.

11 THE COURT: Yes.

12 (Bench discussion off the record.)

13 THE COURT: Members of the jury, we'll recess
14 for lunch at this time. Please be back in the jury room at
15 1:30. Thank you.

16 (Jury out.)

17 THE COURT: All right. Mr. Nemeroff, what
18 evidence are you seeking to ask about at this time?

19 MR. NEMEROFF: Your Honor, I seek to discuss
20 the workers compensation claims that Garlock is aware of that
21 came out of its Camden, New Jersey plants. Specifically,
22 there are the cases of Mr. Stefano, there's -- DiStefano,
23 Hutchinson, and Gross. I am perplexed that counsel wouldn't
24 know about this because Garlock, in other cases, in other
25 interrogatories around the country, have so admitted to these

1 claims out of this plant.

2 So, for counsel for -- Texas Garlock lawyers to
3 stand up and say -- and I have to say this for the record,
4 that they are so surprised by these workers compensation
5 claims is, quite frankly, gamesmanship.

6 MR. HARRIS: Your Honor -- first of all, Your
7 Honor, in my discussion with the Court, he said or my -- what
8 I heard him say is that Garlock doesn't admit to these claims,
9 but I've got them, and that suggested to me that he's got some
10 claims that I wouldn't necessarily know about.

11 There were other workers compensation claims
12 filed against Garlock after Vera Clemons and Grace Baylord.
13 Our position, and why we brought it up on Motion in Limine,
14 and he agreed to the Motion in Limine before the trial
15 started, was that workers compensation claims, if -- if at all
16 relevant may go to notice, to put Garlock on notice that -- of
17 certain diseases. And you know -- and the Court overruled our
18 objections to that.

19 After that, anything beyond what we're talking
20 about in terms of notice is -- is not relevant and is highly
21 prejudicial. These people were involved in manufacturing of
22 asbestos products. They were not involved in using the
23 asbestos products. And it forces us -- the position we're in,
24 and we're scrambling right now, is to try to understand what
25 the other work histories were. What we have identified for

1 some -- all of -- lot of these people filed claims against
2 product manufacturers. I mean, Garlock's facilities were
3 industrial facilities.

4 And so we have pipe insulation, and these
5 people filed claims against Owens-Corning and Johns-Manville
6 and UNR, because they used those pipe insulations at Garlock's
7 facility. But that doesn't have anything to do with
8 Mr. Ingraham getting sick from allegedly working with our
9 products or have anything to do with how bad Garlock
10 is -- this whole idea that Garlock's a bad company.

11 I mean we're talking about there was a -- there
12 was no question, there was a period of time in this country
13 where asbestos products were used uncontrolled because people
14 didn't understand. Dr. Lemen testified about this.

15 THE COURT: Well, Mr. Nemeroff, do these claims
16 go to the notice issues?

17 MR. NEMEROFF: They go directly to the
18 credibility that this company -- that the Defendant put at
19 issue in this trial about this good responsible company, that
20 did all the right things to take asbestos out of its products.
21 This witness has just made Garlock out to be the best
22 corporate citizen. Yet, in their plants, they've got people
23 who were dying, they're over-exposing workers, and it
24 continued. It wasn't just in the 1920s. It was all through
25 the 1950s.

1 THE COURT: Would you answer my question,
2 please?

3 MR. NEMEROFF: As to notice?

4 THE COURT: Yes.

5 MR. NEMEROFF: From mesotheliomas -- well, no,
6 because the claims were filed after the exposure periods; in
7 some cases, during exposure periods. But as to the company's
8 conduct and over-exposing, I think we're seeing here two
9 stories, Judge. We're seeing the story of good corporate
10 citizen in dust control. Then we've got brochures, we've got
11 pictures, we've got this entire side of the case that's coming
12 out, which is they didn't -- weren't doing the things they
13 said they were supposed to be doing in their own plants and
14 people were getting sick. How could we presume then that they
15 were doing the right thing when it comes to workers.

16 MR. HARRIS: Workers compensation claims are no
17 fault. It's -- there's no -- doesn't necessarily -- just
18 because someone developed -- develops a disease from working
19 with pipe covering in our plant, replacing pipe covering, and
20 maintenance or working with -- developing asbestosis from
21 working with the raw asbestos fiber, it doesn't mean that we
22 were at fault. But that's not how the jury's going to
23 understand it.

24 There may only be one juror who would
25 understand that workers compensation claims are no fault. The

1 the fact that someone's disease -- all these people worked
2 elsewhere. Their only job in their life was not just at
3 Garlock. They have may have had asbestos exposure everywhere.
4 But how do we defend all those claims in this case?

5 If he -- he's trying to say we must be a bad
6 company by introducing these other -- this other litigation.
7 But how do we defend all that? That's impossible.

8 So, we -- we object under Rule 402 because it's
9 not relevant, 403 -- it's not relevant. Also it's not
10 scientific evidence that our asbestos caused the disease.
11 It's results of litigation and that's not evidence of
12 causation. If anything, that's like case reports. I think
13 the Court may have made some comment about Mr. Mangold
14 testifying about ambient air exposure. Well, those are
15 basically case reports in some other city that the Plaintiff
16 may or may not have been exposed to. Mr. Mangold wasn't
17 allowed to testify to that. That's all this -- that's all
18 these compensation claims are.

19 THE COURT: And just so that I'm clear on your
20 objections, are there also issues about disclosure in this?

21 MR. HARRIS: To my knowledge -- I don't want to
22 make hard and fast representations. And I just inquire of
23 counsel whether they ever put these on their exhibit list.

24 MR. HENDLER: Excuse me, Your Honor, let me
25 address this, if I may.

1 THE COURT: All right.

2 MR. HENDLER: This is specifically requested in
3 the Travis County Discovery. This isn't a failure of
4 disclosure on the Plaintiffs' part. This is a failure of
5 disclosure on the Defendant's part, particularly because
6 they've disclosed it in other litigation in other parts of the
7 country. So there can be no question that they were in
8 possession of the information, their corporate entity.

9 The fact that these lawyers may be different
10 from the lawyers in North Carolina or the lawyers in Chicago
11 is immaterial to this inquiry. The fact of the matter that
12 this witness on behalf of Garlock has signed interrogatories
13 in other places, he signed interrogatories in Travis County,
14 they specifically request and require Defendants to produce
15 that information. That has not been disclosed.

16 So the fact that they're claiming surprise as a
17 basis for excluding this is really kind of turned on its head.

18 MR. HARRIS: It's not on their exhibit list,
19 and I think on their disclosure part, Your Honor, I'd like to
20 see where -- exactly what is the request we supposedly didn't
21 respond to.

22 MR. HENDLER: It's in the Travis County
23 interrogatories.

24 MR. HARRIS: Well, what's the question or
25 what's the specific document?

1 MR. NEMEROFF: While they're asking that,
2 Judge, I'm just curious, would I have to disclose evidence on
3 my case-in-chief that I have intend to use on
4 cross-examination?

5 THE COURT: Evidence that is going to be used
6 for impeachment does not necessarily have to be included in
7 the exhibit list.

8 MR. SCHACHTER: They're not impeaching.

9 THE COURT: Well, I think he is for --

10 MR. NEMEROFF: I'm trying to get the answer to
11 the question to know how to impeach him or not. I needed to
12 know if he had knowledge about it before I knew --

13 THE COURT: Mr. Hendler, which item are you
14 referring to in the standard Travis County --

15 MR. HENDLER: Yes, I'm trying to find it very
16 quickly, Your Honor.

17 MR. NEMEROFF: While he's looking, Your Honor,
18 I do apologize for the --

19 THE COURT: If you have any doubt about whether
20 it's covered by a Limine, approach first,

21 MR. NEMEROFF: And I'm sorry. I got carried
22 away at the moment and it was in error and I apologize for
23 that. It was not intended, and I apologize to counsel,
24 because I've been to trial with them before and we have enough
25 of a history to not do that, so I do apologize.

1 THE COURT: Do y'all want to take this up at
2 the end of the lunch break to --

3 MR. HENDLER: Yeah.

4 THE COURT: -- to give you a chance to retrieve
5 all the possible information on it?

6 MR. NEMEROFF: Certainly, Your Honor.

7 THE COURT: All right. We'll recess until
8 1:20.

9 (Recess.)

10 (Jury out.)

11 THE COURT: Good afternoon. I believe
12 Mr. Hendler was looking for standard interrogatories in
13 asbestos cases.

14 MR. NEMEROFF: Your Honor, we're going to
15 withdraw the question, withdraw the issue. I'm -- like I
16 said, I'm sort of tired of fighting about it, so I'm going to
17 go into two different topics, both of which, however, are
18 covered by Motion in Limine rulings that we need to bring up
19 with the Court.

20 THE COURT: All right.

21 MR. NEMEROFF: The first has to do with
22 crocidolite gasket products or crocidolite manufactured
23 products that the Court has, up until now, not permitted the
24 Plaintiffs' counsel to discuss. And then the secondary has to
25 do with the OSHA violations from 2001 and 2000, which the

1 Court -- if I'm incorrect in this -- seemed to indicate at the
2 close of Plaintiffs' evidence would be relevant or -- if I'm
3 getting this wrong -- relevant or admissible with a witness
4 who could talk about them but not standing alone as just
5 documentary evidence to put in. So the Court --

6 THE COURT: Well, I did indicate that they
7 couldn't come in as stand-alone documents. I didn't rule one
8 way or the other on that.

9 MR. NEMEROFF: Okay. With that understanding,
10 we didn't press the issue at the end of Plaintiffs' case and
11 informed the Court that with an appropriate witness -- and I
12 think that in light of Dr. Man -- Mr. Mangold's testimony
13 about what the OSHA 200 logs are, for what the purpose is, and
14 now with Garlock on the witness stand, I think it would be
15 appropriate to bring to the jury's attention that this company
16 has been --

17 THE COURT: And Mr. Nemeroff, you think that
18 that evidence of those reporting violations goes to what
19 issues?

20 MR. NEMEROFF: It goes to Garlock's conduct
21 insofar as protecting its workers, it directly attacks the
22 credibility of their position that they protected their own
23 workers. Mr. Houghton actually said that they had all this
24 ventilation controls and all this other stuff. Mr. Heffron
25 has said what a good company it is, how they're interested in

1 safety and so forth.

2 The fact that they were cited in 1999 or 2000,
3 I forget the exact year, for over-exposing workers to
4 asbestos, even at greatly reduced levels, and most importantly
5 since we established, with respect to Mr. Mangold, the
6 importance of the OSHA 200 logs, it certainly bears on the
7 issues of causation, that this company got caught not
8 reporting all the diseases that are in their plants.

9 Certainly the jury can infer from that that
10 this company is not a -- as good a company as Mr. Heffron
11 said, and certainly this company -- the jury will then be able
12 to evaluate with a mesothelioma out of the Palmyra plant the
13 issue of whether or not their asbestos, which they claim is
14 impossible to cause mesothelioma, in fact did.

15 So I think for those reasons, Your Honor,
16 certainly it's -- it would be like prior -- other evidence of
17 crimes committed, or something along those lines. This is
18 asbestos. We're not talking about a violation for
19 over-exposure to some other substance. We're not talking
20 about failure to report diseases, you know, falling off
21 ladders. These are issues germane to Plaintiffs' case.

22 This Defendant has put its credibility at
23 issue, its interrogatory responses at issue, all of its
24 statements at issue. And the way they got caught, and they
25 know they got caught, is because of a litigation related

1 expert filing the complaint with OSHA. They didn't
2 voluntarily -- they got more or less -- and for lack of a
3 better word, they got busted. They had no intention of
4 getting caught until they got caught.

5 MR. HARRIS: Your Honor, we believe that Rule
6 404b speaks directly to this, and it excludes evidence of
7 other crimes, wrongs or acts, is not admissible -- or evidence
8 of other crimes, wrongs or acts is not admissible to prove the
9 character of a person in order to show action in conformity
10 therewith.

11 These OSHA violations have nothing to do with
12 Mr. Ingraham getting -- getting sick, and their -- they're
13 offering them for the sole purpose, as he says, almost every
14 other word, to show what a bad company we are. Now, I don't
15 know -- well, we believe we're a good company. I don't know
16 that we asked Mr. Heffron or tried to portray Garlock in
17 anything other than what it is.

18 I mean we didn't say Garlock's a great company
19 or a better company than somebody else or anything like that.
20 So I don't know how we -- how we put this in issue.

21 But these -- these OSHA violations
22 are -- appear to be clearly just evidence of other crimes or
23 wrongs. They're being offered to show that we acted in -- to
24 show our character is such that --

25 THE COURT: Okay. Well, I agree that they

1 cannot be used to show causation. However, if we go on a
2 little further in that rule, we find that such evidence can
3 come in for other reasons, and I am wondering if it goes to
4 the exemplary damages claim.

5 MR. SCHACHTER: Well, on that point, Your
6 Honor, the exemplary damages have to be related to the conduct
7 that injured the wrong -- the party. You couldn't introduce
8 -- in a case against Ford Motor Company for a rollover that
9 they're now -- or that 20 years later they produced another
10 car and at another place and that car was bad, that doesn't go
11 into their punitive damages, or that they made Edsels in the
12 past. It has to have a really strong nexus to the case at
13 issue here, and I think that's what Volkswagen stands for.

14 You just can't show, oh, this is a bad company
15 even today because they're doing -- they're not making
16 reporting requirements. It's so tangential. And even if it
17 were somehow relevant, it is so highly prejudicial, because
18 under Rule 403, that makes it objectionable, because then we
19 have to go into explaining that this is no fault allegations
20 of mesothelioma, that we didn't keep a record of, a no fault
21 allegation of -- we have to go through the facts of each of
22 those cases to show that these people were exposed to Kaylo.

23 There are all these overwhelmingly prejudicial
24 aspects of it and confusing aspects for a \$200 fine from not
25 making a -- a reporting violation.

1 THE COURT: Very briefly.

2 MR. NEMEROFF: Judge, I guess I'm just -- I'm
3 more bothered by the argument that this is a poor little
4 reporting violation, violating OSHA, when the whole point of
5 self reporting is that workers would be protected, so that the
6 OSHA could -- could determine whether or not the regulations
7 are effective or not, and just to write off a \$200 fine is no
8 big deal is exactly the point. This company didn't really
9 care. And the issues, as opposed to a Ford rollover case, are
10 very different. Here we have over-exposures to asbestos, we
11 have a continuing over-exposures to asbestos.

12 We're seeing that as a pattern in this case. I
13 mean, all the conduct that we're talking about is all relevant
14 to this.

15 THE COURT: I'm going to sustain the objection.
16 I don't think it's closely enough connected with the issues in
17 this case to come in.

18 MR. HARRIS: Thank you, Your Honor.

19 THE COURT: And there's another issue. Do you
20 want to argue that one?

21 MR. NEMEROFF: Your Honor, I think --

22 THE COURT: Or I can let them start, if you
23 prefer.

24 MR. NEMEROFF: Well, Your Honor, do you need to
25 hear argument on this from us?

1 MR. HARRIS: She's ruled -- I'm sorry, Your
2 Honor.

3 THE COURT: If you want to change my mind.

4 MR. NEMEROFF: Oh, sure. First off,
5 they've -- I believe that Mr. Heffron has put at issue the
6 type of products they've made, the various locations, and acid
7 lines and so forth. He's put into effect that they were the
8 first to warn or no one else was warning but them.

9 I think it's proper at this time, with Garlock,
10 to ask the question: With respect to the most dangerous fiber
11 of all, did you do anything different? And the answer is no.
12 They did not treat crocidolite any differently than they did
13 chrysotile. And this whole defense of chrysotile is somehow
14 not -- not causative of mesothelioma or is crocidolite so much
15 worse, it's 500 times more potent, here is Garlock to tell us
16 they didn't treat this evidence any different. They warned no
17 earlier, they warned no -- no better, they warned not at all.

18 THE COURT: Mr. Harris?

19 MR. HARRIS: I was real careful not to talk
20 about fiber type with Mr. Heffron, so I feel like we stayed
21 completely out of that -- that area with him. And so I -- I
22 don't have anything else to add in response, Your Honor.

23 THE COURT: All right. My former ruling will
24 remain in place, and the objection is sustained.

25 MR. HARRIS: Your Honor, we'll move real

1 quickly after Mr. -- my understanding is Mr. Nemeroff may have
2 up to 30 minutes of cross. My redirect might be a few
3 minutes, and then we'll move into our next witness, Dr.
4 Thomas.

5 There are a couple of issues I think they
6 wanted to raise before Dr. Thomas testified on direct. I
7 don't know if you want to take a break after --

8 THE COURT: Well, let's see if we can take
9 those up now.

10 MR. NEMEROFF: Your Honor, if I can excuse
11 myself for one moment. Mr. Hartley is going to argue that.

12 THE COURT: Certainly.

13 MR. HARTLEY: Your Honor, the first thing that
14 we were taking up, I think we have resolved before we ever got
15 here, which is whether or not the witness is going to offer
16 specific causation testimony. Have you agreed --

17 MR. HARRIS: That's correct. We believe the
18 toxicologist can, but it's not important to his testimony
19 today.

20 THE COURT: All right. So he will not be
21 offering that.

22 MR. HARTLEY: Okay. There -- at the
23 deposition, and also I think in the designations, it's been
24 indicated that he would talk about thresholds for causation of
25 mesothelioma. That testimony would be, number one, I don't

1 believe that he can support it scientifically; but number two,
2 that would be irrelevant because we don't have -- we don't
3 have any exposure information for our Plaintiff that they
4 could tie the exposure to these purported thresholds.

5 Also he did not -- he can't -- he can't come up
6 with a scientific basis to support his thresholds. The fact
7 that the very documents that he relies upon say just the
8 opposite, that there is no threshold. But if they're not
9 going -- they may not -- I didn't see slides on that, so they
10 may not be going there as well.

11 MR. HARRIS: And I don't want to
12 prejudice -- prevent myself from bringing it up, but I would
13 note that their expert said there is a threshold, they just
14 don't know what it is. They testified that every exposure
15 contributes above background without any scientific basis or
16 publications or anything else to back that up. And so, to the
17 extent -- but again, we're not going to give a specific
18 threshold.

19 THE COURT: Okay.

20 MR. HARTLEY: Then I don't think we need to
21 worry about that one.

22 MR. HARRIS: Or if we did, then I'll bring it
23 up outside -- or I'll approach.

24 THE COURT: Okay.

25 MR. HARTLEY: Again, this -- although he was

1 allowed to stay for Mr. Mangold's testimony, he didn't, but I
2 want to make sure that he's not relying on things that
3 Mr. Mangold said, because as I told you, before Mr. Mangold
4 started today, I asked him questions. He didn't even know who
5 he was. I had to spell the name for him, or maybe
6 Mr. Schachter did. So I believe that it's inappropriate for
7 him to be building his case on things that I couldn't
8 cross-examine him on.

9 THE COURT: Well, it's been represented to me
10 that no new opinions will be given based on any testimony of
11 Mr. Mangold.

12 MR. HARRIS: No, but I will ask him to make
13 some calculations based upon what Dr. -- or what Mr. Mangold
14 reported as the result of his study on spiral-wound gaskets,
15 the .004. These are just mathematical calculations in
16 compare --

17 THE COURT: If they are simply mathematical
18 calculations, that's fine.

19 MR. HARTLEY: Again, Your Honor, I'd have to
20 object because it wasn't disclosed in the expert disclosure,
21 and I didn't -- I spent substantial time with the man. He's
22 very smart, but that wasn't one -- he didn't know who
23 Mr. Mangold was and he wasn't offered for those opinions, and
24 I again would have to object.

25 THE COURT: Well, you know, I think whether the

1 witness was present during Mr. Mangold's testimony or not, he
2 can be asked to assume that testimony has been given in this
3 trial, that blah, blah, and then he can make mathematical
4 calculations based on that. That's what I understand they're
5 going to ask.

6 MR. HARTLEY: That may be, but that doesn't
7 address the issue of the disclosure. I mean, what -- I mean
8 there's several pages of -- of disclosure here, but none of
9 them says that he's going to be doing calculations based on
10 exposure limits from gaskets that I see, and I think that it's
11 a surprise and unfair in this situation, Your Honor.

12 THE COURT: The objection is overruled.

13 MR. HARTLEY: He's going to do some
14 calculations. Then there was one last --

15 MR. HARRIS: I did show them my slides I was
16 going to use with Dr. Thomas, but I forgot to mention these
17 three articles, and I want to show them now, so if he's got
18 objections to them --

19 THE COURT: All right.

20 MR. HARTLEY: Do you anticipate -- do we
21 anticipate hearing about Berman and Crump here?

22 MR. HARRIS: No.

23 MR. HARTLEY: Okay. Fair enough. That's good.
24 And that's it, Your Honor. Thank you.

25 THE COURT: Okay. Thank you.

1 MR. HARRIS: Your Honor, real quick, at
2 Mr. -- Dr. Thomas' deposition, they brought up -- they kept
3 referring to transcripts from years ago about what he -- what
4 opinions he had about tobacco and lung cancer and when he was
5 going -- acting as a consultant for a tobacco companies, and
6 they didn't -- Mr. Hartley represented that he did not have a
7 transcript. We filed a motion to compel at the pretrial to
8 get these transcripts that he specifically referenced. Judge
9 Livingston denied our request for that.

10 But -- and she didn't explain why she just gave
11 us the order on that point. But one of the reasons why -- and
12 we found this case that we didn't know about before -- was
13 that it's an asbestos case where the plaintiffs called a
14 witness and the defendants tried to cross-examine him about
15 some opinions he expressed about beryllium and the Court
16 excluded it. The Dallas Court of Appeals affirmed and said
17 that's a collateral matter that you can't examine the witness
18 about.

19 I'm not going to ask Dr. Thomas to talk about
20 tobacco and cigarettes or lung cancer and cigarette-smoking,
21 and so that would be an issue that we would ask the Court to
22 exclude in Limine for -- during the cross-examination.

23 MR. NEMEROFF: Your Honor, cross is limited
24 to -- well, actually it's wide open cross, and I'm going to
25 ask the witness questions. If he deviates from prior

1 testimony in other cases, I'll impeach as appropriate. I may
2 not ask about beryllium, but smoking is an issue in this case.
3 And if he's got some cockamamie story about when he was
4 testifying for big tobacco, well, you know, you find your
5 experts as you find them, and if they've got some baggage, you
6 kind of live with the baggage.

7 MR. HARRIS: I don't know if it does, but Your
8 Honor, if I may show you this case involving asbestos exposure
9 and Plaintiffs' expert witnesses.

10 MR. NEMEROFF: And certainly, Your Honor, I
11 would -- I think it may go without saying, but I perhaps
12 should say it for the record. It bears directly on
13 credibility if a witness were to say something as -- as
14 outlying as smoking doesn't cause lung cancer and then today,
15 while testifying for big tobacco, that perhaps would change
16 their opinion when testifying for asbestos companies a couple
17 of years later, that certainly bears on credibility.

18 THE COURT: Let me just point out that this
19 case that Mr. Harris has given me doesn't involve prior
20 testimony of a witness. He was -- they wanted to critique him
21 with some criticisms of some of his writings on a different
22 subject. I'm going to overrule that objection.

23 MR. HARRIS: Could we ask that they show us the
24 transcript before they ask these questions?

25 THE COURT: Yes,

1 MR. HARRIS: I don't know that there's a basis
2 for it. He doesn't recall expressing any opinions that they
3 characterized.

4 MR. NEMEROFF: We will impeach properly.

5 THE COURT: With page and line numbers.

6 MR. NEMEROFF: I will give counsel a copy and
7 the witness a copy. He may not change his testimony. I may
8 not have to get into a lot of issues.

9 MR. HARRIS: Thank you, Your Honor.

10 THE COURT: All right. Okay.

11 (Jury in.)

12 THE COURT: Mr. Nemeroff, you may proceed.

13 MR. NEMEROFF: Thank you.

14 CROSS-EXAMINATION (Continued)

15 BY MR. NEMEROFF:

16 Q. Good afternoon, everybody. And good afternoon,
17 Mr. Heffron.

18 A. Good afternoon.

19 Q. It's been so long ago I forget where we left off, so
20 I'll go into another topic.

21 I want to talk with you a little bit about the
22 use of gaskets, and one of the things I heard you tell the
23 jury about earlier was in describing how a spiral-wound gasket
24 is made, you described the asbestos within the ring of the
25 metal?

1 A. Yes.

2 Q. Is that right?

3 A. Yes.

4 Q. And that is an -- I think you said 90 percent
5 asbestos and then 10 percent what was the other material?

6 A. The -- if you're talking about the inclusion of the
7 asbestos paper with the metal linings --

8 Q. Yeah.

9 A. -- the -- the asbestos paper is not a hundred
10 percent asbestos. It's 90 percent asbestos. There's latex
11 rubber used. It's basically a paper making process that they
12 use to make -- or used, I should say, to make asbestos paper.

13 Q. And you'd agree with me that if you were to shred
14 that asbestos paper, that would release asbestos fibers?

15 A. I don't know.

16 Q. You've never done that kind of test?

17 A. I've never done that kind of test, no. I've never
18 seen any information on it.

19 Q. Okay. Now, when we talk about an encapsulated
20 product versus a friable product, the definition really is
21 intended to mean just grabbing something in your hand that can
22 crumble, can release dust. That's friable.

23 A. That's my understanding. I'm not an industrial
24 hygienist, of course.

25 Q. Okay, and something that's hard that you can't just,

1 with your hand pressure, that's your understanding of
2 encapsulation.

3 A. No. My understanding of encapsulation is that the
4 product is manufactured so that the -- it's a composite of
5 material and that the asbestos is encapsulated somehow in the
6 structure of the material. That's what encapsulation means to
7 me.

8 Q. Now, you're not telling this jury that encapsulated
9 products when they are removed, gasket material is removed
10 can't release asbestos fibers, are you?

11 A. No. I'm not an expert in that area.

12 Q. Okay. So, with respect to the ability for
13 spiral-wound gaskets that may remain adhered to a flange once
14 you pull the metal off, if you were to get in there with
15 mechanical abrading, you don't have any knowledge about
16 whether that releases asbestos dust or not.

17 A. I would only know what I've read from studies that
18 have been done.

19 Q. Okay. And you'd agree with me that using a wire
20 brush like this is a foreseeable way in which gaskets
21 or -- gasket residue is taken off of a flange.

22 A. Yes.

23 Q. And would using tools like this, with what's called
24 a cup brush, also be a foreseeable way in which it would be
25 taken off?

1 A. I hadn't experienced it personally, but I certainly
2 heard about it in testimony in other trials.

3 Q. Okay. And I think I may have even shown you similar
4 things in other trials, to like get in and -- again, not using
5 a grinder to grind because you wouldn't want to score
6 the -- you wouldn't want to score the facing of the flange,
7 right?

8 A. That's correct.

9 Q. Because if you score the facing of the flange with a
10 hard grinder, that would most likely lead to a failure because
11 you couldn't get -- you couldn't get the gasket material to
12 fill that space and you'd have a -- a weakness in the flange.

13 A. That's certainly possible, yes, sir.

14 Q. Okay, so you -- as you've heard and you've seen
15 before, they would use a cup brush in a circular motion to go
16 with the grooves to remove gaskets or residue material in a
17 way that wouldn't score the -- in a straight line. It would
18 go with the grooves.

19 A. I've not witnessed it. I've not seen it happen, but
20 I've certainly heard testimony that does occur or has
21 occurred.

22 Q. And you certainly would agree that -- that that
23 procedure of using brushes and power tools is something that
24 was a common -- at least to your knowledge, it was a common
25 way in which I guess stubborn gasket material would be removed

1 from a flange.

2 A. Well, the recommended practice is to try to use a --
3 like a putty knife to begin with and certainly use a wire
4 brush, and then after that, if it's not very specific, other
5 than to say that care needs to be taken not to damage the
6 sealing surface, not to remove the serrations and so forth.

7 Q. Okay. But you would -- you wouldn't be telling the
8 jury or arguing -- or suggesting to the jury that to use a
9 power tool to remove flange -- to remove asbestos gasket
10 material wasn't a foreseeable or normal use.

11 A. I don't know. I don't -- no, I don't believe so.

12 Q. Okay. Now, the latex that you say was in the paper,
13 you'd agree with me that that latex would melt and cause the
14 asbestos paper to adhere to a flange surface when you've got
15 that, you know, multi hundred, perhaps thousand plus degree
16 steam going through the pipe.

17 A. I don't know what effect it would have on making the
18 asbestos stick, I think is what you said, but certainly latex
19 rubber would only be good to probably about 250 degrees. Then
20 it would begin to soften, and then depending on how long, it
21 would harden.

22 Q. And you'd agree with me that spiral-wound asbestos
23 gaskets, Garlock gaskets, would be used on pipes that would be
24 transporting material that would be in excess of 200 degrees.

25 A. I certainly would expect it and certainly in a lot

1 of applications, yes.

2 Q. Okay.

3 MR. NEMEROFF: Mr. Heffron, I appreciate your
4 time. Thank you very much.

5 MR. SCHACHTER: May we have just a second?

6 THE COURT: Yes.

7 (Pause.)

8 REDIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q. Mr. Heffron, but you're not saying that this -- with
11 respect to Mr. Nemeroff's last series of questions about the
12 asbestos and the latex binder, you're not saying that this all
13 melts away, right, or are you? Are you saying that?

14 A. No, I'm saying that the latex rubber would not
15 survive 250 degrees or more without changing its composition.

16 Q. Unless it's mixed with asbestos; is that right?

17 A. Yes. It's a composite. It's a composite structure.
18 It's a structure that has rubber and asbestos mixed together.

19 Q. Okay.

20 MR. HARRIS: Mr. Nemeroff, do you have -- do
21 you have the catalog that you used?

22 MR. NEMEROFF: Sure. Which one?

23 MR. HARRIS: The one with all the pictures.
24 Could you put all those pictures up from that page.

25 MR. NEMEROFF: The one -- sure, I'll put that

1 up for you. Okay. It's -- I think this is --

2 THE COURT: Exhibit 43.

3 MR. NEMEROFF: -- 43, yes. Tell me which one
4 you want blown up.

5 MR. HARRIS: All of these.

6 BY MR. HARRIS:

7 Q. Okay, this is the picture of the picker; is that
8 correct?

9 A. Yes, that's what it identifies.

10 Q. And he's surrounded by this asbestos fiber?

11 A. Yes, sir.

12 Q. And then we have a woman working -- spinning yarn;
13 is that correct?

14 A. That's correct.

15 Q. And then the looms; is that correct?

16 A. Yes.

17 Q. And then she is doing something else, it's hard to
18 see that. Twister -- this is a twister machine; is that
19 right?

20 A. If you're talking about the photo on the left,
21 that's plying up asbestos yarns together to make thicker yarn
22 strands.

23 Q. It says "making plied asbestos yarn on ring
24 twistors".

25 A. Yes, that's right.

1 MR. HARRIS: If you can go back to the big
2 picture.

3 Q. Mr. Heffron have you recently come across the
4 originals of these photographs?

5 A. Yes.

6 Q. Is this one dated?

7 A. No.

8 Q. Is this one dated?

9 A. I'm certain that the one on the right is dated. I'm
10 not sure if all of them are dated or not.

11 Q. Okay. Do these same pictures appear in earlier
12 catalogs of Garlock?

13 A. Well, I know -- I know for instance the one at the
14 top appears in a 1947 catalog. It may appear -- they may
15 appear in earlier catalogs as well, yes, sir.

16 Q. Okay. And so we know that at least -- let me ask it
17 this way. Do you have an earlier catalog before 1947?

18 A. Not with me, no, sir.

19 Q. Okay. Okay. We -- do we know then that this
20 photograph must be at least before 1947?

21 A. Yes.

22 Q. Okay. And it could be earlier?

23 A. I think it is earlier, but I -- I don't have any
24 proof to that.

25 Q. All right. I believe Mr. Nemeroff asked you if

1 Garlock had stopped selling asbestos gaskets and packings for
2 health or safety reasons. Do you recall that?

3 A. Yes, I do.

4 Q. Okay. And your answer was that Garlock didn't stop
5 selling them for that.

6 A. That's correct.

7 Q. Did Garlock or does Garlock believe that the gaskets
8 and packing posed a health hazard?

9 A. No.

10 MR. HARRIS: That's all I have, Your Honor.

11 THE COURT: Anything else?

12 MR. NEMEROFF: Nothing, Your Honor.

13 THE COURT: Thank you, sir. You may step down.

14
15 (End of testimony.)
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25

1 THE STATE OF TEXAS)
2 COUNTY OF TRAVIS)

3 I, Cynthia B. Alvarez, Official Court Reporter in and
4 for the 201st District Court of Travis County, State of Texas,
5 do hereby certify that the above and foregoing contains a true
6 and correct transcription of all portions of evidence and
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11 I further certify that this Reporter's Record of the
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