

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

GILBERT CARRIZALES,

Plaintiff,

-vs-

Case No. 07-L-287

A.W. CHESTERTON, INC., et al.,

Defendants.

Discovery Video examination of KIM ANDERSON, M.D.,
taken at the instance of the Plaintiff, under and
pursuant to all applicable rules, before JESSICA R.

WAACK, Registered Merit Reporter, Certified Realtime

Reporter and Notary Public in and for the State of

Wisconsin, at GeoEnvironmental, 20900 Swenson Drive,

Suite 150, Waukesha, Wisconsin, on October 31, 2007,

commencing at 9:29 a.m. and concluding at 4:06 p.m.

A P P E A R A N C E S

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A P P E A R A N C E S C O N T ' D

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Carbide Corporation.

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appeared telephonically on behalf of Washington Group
International, Inc.

CRIVELLO, CARLSON, S.C. by
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HERZOG CREBS, LLP, by
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appeared telephonically on behalf of 84 Lumber Company
and Borg Warner Corporation by its successor in
interest Borg Warner Morse TEC, Inc.

POLSINELLI, Flanigan, Suelthaus, P.C., by
MR. LUKE MANGAN,
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appeared telephonically on behalf of Honeywell
International, Inc.

A P P E A R A N C E S C O N T ' D

LATHROP & GAGE, LC, by
 MR. JOHN WENDLER,
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 appeared telephonically on behalf of T.H. Agriculture &
 Nutrition, L.L.C.

A L S O P R E S E N T

Dean Van Hoogen, videographer

* * * * *

I N D E X

Examination: Page

By Mr. Shrader..... 8

By Mr. Tomaska..... 241

Exhibit Identified: Page

No. 1 - Amended Notice to Take Videotape
 Discovery Deposition of Dr. Kim Anderson.. 8

No. 2 - Dr. Anderson's Report Dated October 17,
 2007..... 8

No. 3 - Dr. Anderson's Curriculum Vitae..... 9

No. 4 - Listing of Depositions and Trial
 Testimony..... 9

No. 5 - List of References Used By Dr. Anderson... 9

No. 6 - List of References Used By Dr. Anderson... 9

No. 7 - Cover Letter to a Fax and an Attached
 Affidavit of Frederick M. Durand..... 9

No. 8 - Case Materials and Introductory
 Information From the Hepler Broom Law
 Firm to Dr. Anderson Dated October 3,
 2007..... 9

No. 9 - Letter From the Hepler Broom Law Firm
 Providing Two Deposition Transcripts..... 9

No. 10 - Notes and the Plaintiff's Answer to
 Madison County Interrogatories Dated May
 23, 2007..... 9

I N D E X C O N T ' D

Exhibit Identified:	Page
No. 11 - Dr. Anderson's Notes and the Videotape Discovery Deposition of Gilbert Carrizales, Volume I.	9
No. 12 - Dr. Anderson's Notes and the Videotape Discovery Deposition of Gilbert Carrizales, Volume II.....	9
No. 13 - Dr. Anderson's Notes and Videotape Discovery Deposition of Gilbert Carrizales, Volume III.....	9
No. 14 - Dr. Anderson's Notes and the Videotape Discovery Deposition of Gilbert Carrizales, Volume IV.....	9
No. 15 - Videotaped Evidence Deposition of Gilbert Carrizales and Dr. Anderson's Notes.....	10
No. 16 - Discovery Deposition of Gilbert Carrizales, Jr. Dated August 23, 2007 and Dr. Anderson's Notes.....	10
No. 17 - June 9, 2003 Deposition Transcript and Dr. Anderson's Notes Related to Gilbert Carrizales' Testimony.....	10
No. 18 - Discovery Deposition of Michelle Maitz and Dr. Anderson's Notes.....	10
No. 19 - Condensation of the Notes For Other Case Materials.....	10
No. 20 - Two Pages Regarding Extracted Testimony From Deposition Transcripts.....	10
No. 21 - Condensation of Information From Transcripts Related to Asbestos-Containing Materials.....	10
No. 22 - Further Condensation of the Respective Case Material.....	10
No. 23 - Dr. Anderson's Report Dated October 15, 2007.....	139

Disposition Of Original Exhibit/s:

Exhibit Nos. 2 through 7 and 23 were included in the original transcript. All other original exhibits were retained by Dr. Anderson with a copy of each included with the original transcript.

1	Requests:	Page	Line
2	By Mr. Shrader - Copy of Any PowerPoint		
	Slides Used At Trial.....	14	19
3	By Mr. Shrader - Dr. Anderson's Billing		
	Records For This Case.....	18	20
4	By Mr. Shrader - References Regarding the		
	Bibliography Or Footnotes to		
5	Dr. Anderson's Report and		
	Exhibits 5 and 6.....	19	10
6	By Mr. Shrader - Copy of the Mowat Study		
	Dr. Anderson Referenced.....	221	12
7	By Mr. Shrader - Copy of the 1991 American		
	Association of Occupational		
8	Health Nurses Article.....	238	10
	By Mr. Shrader - Copy of the Pollution		
9	Engineering Article From		
	1989.....	238	14
10	By Mr. Shrader - Copy of the Professional		
	Safety Article From March		
11	1988.....	238	16
	By Mr. Shrader - Copy of Fundamentals of		
12	Industrial Toxicology.....	238	21

13	Marked Testimony:	Page	Line
14	By Mr. Shrader -	169	6

15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS.

(Exhibit Nos. 1 through 22 were marked.)

VIDEOGRAPHER: This is the videotape deposition of Dr. Kim Anderson. Today's date is October 31, 2007, and the time is 9:29 a.m. This is the case of Gilbert Carrizales versus A.W. Chesterton, Incorporated, et al., the Case No. 07 L 287 in the Circuit Court, Third Judicial Circuit, Madison County, Illinois.

My name is Dean Van Hoogen. I'm a videographer representing Pohlman Reporting Company located at 211 North Broadway, St. Louis, Missouri. Counselors, will you state your appearance.

MR. SHRADER: Justin Shrader for the Carrizales family.

MR. HUELSMANN: Brian Huelsmann for Georgia-Pacific.

VIDEOGRAPHER: Will the court reporter swear in the witness, please.

* * * * *

KIM ANDERSON, M.D., called as a witness herein, having been first duly sworn on oath, was examined and testified as follows:

EXAMINATION

1 BY MR. SHRADER:

2 Q Good morning, Dr. Anderson.

3 A Good morning. How are you doing?

4 Q I'm okay. How are you, sir?

5 A Very good. Thank you.

6 Q Good. The first question I have is, how do you
7 want to be addressed? Do you want Dr. Anderson,
8 Mr. Anderson, Kim, your royal majesty? What would
9 you prefer?

10 A Dr. Anderson will be fine.

11 Q Dr. Anderson. You got it. The first thing I need
12 you to do, Dr. Anderson, is go through your file.
13 And we premarked exhibits that are in front of
14 you, correct?

15 A Yes, sir.

16 Q Okay. Why don't you go through each exhibit, tell
17 us what exhibit it's labeled, and -- so the court
18 reporter doesn't kick me and -- you know, and
19 we'll attach those to the deposition.

20 A Very good.

21 Q Okay.

22 A Exhibit 1 is the amended notice to take videotape
23 discovery deposition of Dr. Kim Anderson.
24 Exhibit 2 is my report in the case dated
25 October 17, 2007. Exhibit 3 is a copy of my

1 curriculum vitae dated April 2007.

2 Attachment -- excuse me, Exhibit 4 is a
3 listing of depositions and trial testimony for me.
4 Exhibits 5 and 6 are references that I used in
5 addition to the references cited in my report that
6 I previously described.

7 Exhibit 7 is a cover letter to a fax and
8 an attached affidavit of Frederick M. Durand.

9 Exhibit 8 is a report providing me case materials
10 and introductory information from the Hepler Broom
11 law firm dated October 3, 2007.

12 Exhibit 9 is a second letter from the
13 Hepler Broom law firm providing two additional
14 deposition transcripts, one of Michelle Maitz, and
15 the second of a prior asbestos matter deposition
16 of Mr. Carrizales.

17 Exhibit 10 are my notes and the
18 plaintiff's answer to Madison County
19 interrogatories dated May 23, 2007. Exhibit 11
20 are, again, my notes and videotape discovery
21 deposition of Gilbert Carrizales, volume I.
22 Exhibit 12 much of the same but volume II.
23 Exhibit 13, volume III. Exhibit 14, volume IV.

24 Q Of?

25 A The same, Mr. Carrizales' discovery deposition.

1 Exhibit 15 is video evidence -- videotaped
2 evidence deposition of Gilbert Carrizales and my
3 notes. Exhibit 16 is a videotape discovery
4 deposition of -- excuse me, just a discovery
5 deposition of Gilbert Carrizales, Jr. dated
6 August 23, 2007.

7 Exhibit 17 is a June 9, 2003 deposition
8 transcript and my notes related to Gilbert
9 Carrizales' testimony. Exhibit 18 is a discovery
10 deposition of Michelle Maitz and my notes.
11 Exhibit 19 are a condensation of the notes that I
12 previously described for the other case materials
13 specifically related to potential exposures to
14 drywall joint compounds.

15 Exhibit 20 are two pages that relate to
16 extracted testimony from deposition transcripts
17 with page 1 related to U.S. Gypsum, page 2 related
18 to Bondex and others. Exhibit 21 is a
19 condensation of information from the respective
20 deposition transcripts -- transcripts related to
21 asbestos-containing materials.

22 Then the final exhibit, No. 22, is what
23 I would term as facts, that is a further
24 condensation of the respective case material,
25 information and testimony related to

1 Mr. Carrizales and his potential exposure to
2 Georgia-Pacific joint compound.

3 Q And that's all the stuff that you brought with you
4 today, right, Doctor?

5 A Yes, sir.

6 Q Will you take a look at Deposition Exhibit No. 1
7 for me? If you don't mind flipping all that stuff
8 back over.

9 A Not a problem, yes, sir.

10 Q Have you seen that document before today, Doctor?

11 A I received it yesterday, I believe.

12 Q Okay. Do you feel like you've complied with all
13 of the things that we've asked you to do in
14 Exhibit A?

15 A I was not able to produce billing records, because
16 I do not find any bills that have been submitted
17 as of yet. So that's what I believe would be a
18 deficiency from what's termed as Schedule A.

19 Secondly, I did not provide all of the
20 references, rather, I provided the citations. And
21 if you need the actual references, I can pull
22 every reference that I use either as a reference
23 in Exhibit 2, which is my report dated October 17,
24 2007, or the references that are specified in
25 Exhibits 5 and 6.

1 Q And Exhibits 5 and 6, just for the record, Doctor,
2 would be which?

3 A That's the list of other references that I
4 utilized in review of the scientific literature
5 and then preparation of my report dated
6 October 17, 2007.

7 Q Okay. Just so I'm clear, Exhibits 5 and 6, the
8 other references, did you use those in conjunction
9 with Mr. Carrizales' report?

10 A They were reviewed. And to the extent that the
11 review was pertinent, yes, sir, they would be
12 used.

13 Q Okay. Is there a reason why you didn't attach
14 those references as references to your report that
15 was dated, what, October 17, 2007?

16 A Yes, sir.

17 Q What is that?

18 A For those references that aren't cited in the
19 report, I did not utilize a specific portion of
20 those references and cited that in the report
21 itself, but rather it was used as background
22 information in preparation of the report.

23 Q Besides not providing all the references and no
24 billing statements, is there anything else that
25 you have to produce that you've left off

1 Schedule A that you can't give us today or don't
2 have with you currently, I should say?

3 A I believe No. 16, again, on Schedule A of
4 Exhibit 1 talks about, "Demonstrative exhibits
5 including PowerPoint slides previously used of any
6 nature which deponent may use in his testimony."

7 Q Yes, sir.

8 A I could not provide that, because I haven't been
9 instructed by counsel exactly what will be
10 included in all of my testimony at the trial. So
11 I couldn't contemplate what would be required of
12 my testimony, so I couldn't provide such slides.

13 Q Okay. Have you ever used PowerPoint slides before
14 in asbestos cases either whether by deposition or
15 in trial?

16 A In one trial, yes.

17 Q Is it the Kaiser Gypsum trial that was out in
18 California?

19 A That's correct.

20 Q Do you have a copy of those PowerPoint slides here
21 in the office with you?

22 A No, sir, I do not.

23 Q Okay. Where are those?

24 A The attorney for Kaiser Gypsum retained that
25 PowerPoint presentation on his computer, and I

1 haven't been able to obtain a copy from him.

2 Q Okay. And were those slides that the attorney --
3 do you remember the name of the attorney, just out
4 of curiosity?

5 A Yes, sir.

6 Q What is it?

7 A Christopher Marks.

8 Q Yes. Mr. Marks, did he make that PowerPoint
9 presentation, or did you make it?

10 A I made it, and we inserted it on his computer.

11 Q So did you make it here in this office, GZA --
12 GeoEnvironmental?

13 A No, sir. I made it in California when I arrived
14 for the trial.

15 Q I see, okay. Well, to the degree that you're
16 going to testify, we'll just make a request on the
17 record, and we can take it up later with Judge
18 Stack or whoever hears this, that we be provided a
19 copy of those PowerPoints.

20 But that's none of your concern right
21 now. But what you're telling me is there's no
22 PowerPoints that you have in this office right now
23 that you would use to testify in the asbestos
24 trial as far as you know?

25 A I might use portions of other PowerPoint

1 presentations that I've utilized for training of
2 our staff.

3 Q Okay.

4 MR. HUELSMANN: And I'll state for the
5 record, we will agree if we intend to use any
6 slides with Dr. Anderson, we'll provide those to
7 you prior to trial and allow you to depose him
8 regarding those slides if needed.

9 MR. SHRADER: Done.

10 BY MR. SHRADER:

11 Q Next topic. It's lawyers like that, that you
12 ought to thank your lucky stars that you get to
13 work for.

14 A I do every day. Thank you.

15 Q Good. Schedule A, anything else off of
16 Schedule A, our document request to you, that we
17 don't have with us today?

18 A No, sir, I don't believe so.

19 Q Okay. And before I keep going, I introduced
20 myself to you before we started the deposition,
21 correct?

22 A Yes, sir, you did.

23 Q My name's Justin Shrader. You know that, don't
24 you?

25 A I do now.

1 Q Okay. And you know I represent the Carrizales
2 family, do you not?

3 A Yes, sir, that's my understanding.

4 Q Right. You know I'm not your lawyer, correct?

5 A That's correct.

6 Q All right. And I'm not looking out for your
7 interest. You probably know that, don't you?

8 A Yes, sir.

9 Q As we say down in Texas, and you were in Texas
10 once upon a time, this is not your first rodeo.
11 Do you know what that expression means?

12 A I believe so.

13 Q You've been through the deposition process before?

14 A Yes, sir, I have.

15 Q Okay. And not to put too fine a point on it, but
16 you have a pretty extensive scientific background,
17 do you not, sir?

18 A I believe so.

19 Q You have -- you even have a doctorate, don't you?

20 A Yes, sir.

21 Q Okay. I was a government major that graduated
22 from law school when his professors were looking
23 the other way, okay? So there's a wide gap in
24 what you know and what I know. And the only thing
25 I'm going to ask of you today is if you don't

1 understand my question, let me know, because I
2 need to understand your answers, okay?

3 A Yes, sir.

4 Q Okay. Because if I don't get the full extent of
5 your opinions or your opinions somehow change or
6 something like that at trial, I may argue to the
7 judge or jury that you weren't his expert as I
8 thought or the opinions weren't complete at the
9 deposition. I'm here today basically to -- so
10 that I won't be unfairly surprised at trial. You
11 probably knew that before I even said that, didn't
12 you?

13 A I believe so.

14 Q Okay. Good. Let's back up to the bills for a
15 minute. Now, how do you bill your clients? Do
16 you keep them hourly? Do you keep timesheets? Do
17 you have a piece of computer software? How do you
18 do it?

19 A As a firm, we maintain electronic timesheets. The
20 timesheets then download to our billing people who
21 are in the Boston, Massachusetts area.

22 Q Right.

23 A They then prepare out of Boston a draft invoice
24 that specifies the charges including labor, any
25 additional costs or other costs that might be

1 associated. I would then review the draft
2 invoice. That invoice would then be itemized and
3 sent to the client.

4 Q Have you reviewed the draft invoice for your bills
5 in this case yet?

6 A I don't recall.

7 Q Is the electronic timesheet that you keep saved on
8 a server here in this building?

9 A I don't believe so. I think everything goes to
10 our Boston home office.

11 Q The only reason I'm asking is we usually are
12 entitled to get bills of the experts and see, you
13 know, what they've charged. I think I know your
14 hourly rate. We're gonna get to that in a minute.
15 But I like to see the actual document. Is there
16 any way that could be provided today?

17 A I can try.

18 Q Okay. Then we'll try on a break. And I always
19 write these things and forget, so you may get off
20 scot-free. You never know. All right. And is
21 there a way that we could get -- do you have your
22 references in digital format? A lot of people
23 have PDFs these days.

24 A We maintain a library of -- I believe it's over
25 700 references that relate to the asbestos world.

1 Those are all electronic. And if need be, I could
2 pull each and every one of those references that
3 are cited in these exhibits or in my report, if
4 need be.

5 Q Okay. Good. Then I guess what I'm getting to is
6 if there -- is there a way that the ones -- I
7 don't need your whole asbestos library, but I do
8 need the three sets of references that you
9 reference.

10 I need kind of the bibliography or
11 footnotes to your report and then the Exhibits 5
12 and 6 which are your references that you say, I
13 guess, may have provided some support or were
14 important in drawing your conclusions in this
15 case. Is that fair to say, Doctor?

16 A Yes, sir.

17 Q Okay. That's what I'd ask for in lieu of
18 downloading your entire library, because I'm sure
19 my staff would really enjoy that.

20 MR. HUELSMANN: Do you want those today,
21 or something that I can forward to you prior to
22 trial?

23 MR. SHRADER: Can you forward -- the
24 only thing I ask -- because we have to
25 authenticate those somehow is that they be

1 attached to a cover letter that the doctor signs
2 that says, find enclosed herewith CD No. X, that
3 these are the -- you know, Exhibit 5, 6 and
4 whatever.

5 That's the only thing I'd ask. Unless
6 you're willing to stipulate or waive that those
7 are, in fact, the same references, in which we
8 would not need a letter from the doctor.

9 MR. HUELSMANN: We can do a letter.
10 That way we know who it's from and you got it.

11 MR. SHRADER: Totally fine.

12 MR. HUELSMANN: Okay.

13 BY MR. SHRADER:

14 Q All right. Now, Doctor, when was the file opened
15 with GZA in this case?

16 A I'm making a note of exactly what you need. The
17 file would have been shortly after I received a
18 communication from the Hepler firm.

19 Q And --

20 A And --

21 Q I'm sorry, go ahead.

22 A And that initial communication, Justin, was dated
23 October 3, 2007 and forwarded to me via overnight
24 mail. So I would assume I opened the file on
25 October 4, 2007.

1 Q Okay. And you issued your report on what day?

2 A There were two reports. The first report, I
3 believe, was dated October 17, 2007. Initial
4 report preceded that, I believe, two days.

5 Because on October 16, we received two
6 additional deposition transcripts, one of
7 Mr. Carrizales' June 9, 2003 deposition and a
8 second deposition transcript of his daughter,
9 Michelle Maitz, dated August 27, 2007.

10 Q Okay. Where is that prior report, that draft? Or
11 was it a report that was sent to Burroughs.

12 A To Hepler?

13 Q Yeah, I'm sorry. That used to be called
14 Burroughs.

15 A Yes, sir. I did not retain a copy. As a company,
16 we would use that report, and the additions would
17 have been made based on the receipt of these two
18 additional deposition transcripts.

19 Q So I understand what you're saying, Doctor, there
20 was a report that was completed what, October 14
21 or October 15 --

22 A I believe it was --

23 Q -- and it was sent to the Hepler Broom firm?

24 A Yes, sir.

25 Q Okay.

1 A And I believe it was October 15.

2 Q So they presumably have a copy of that. Did you
3 send that in electronic format, or did you mail it
4 or did you fax it? Or what did you do?

5 A I'm sure it was sent electronically.

6 Q Okay. Who was that sent to?

7 A Attorney Eric Hall.

8 Q I know that guy. Now, that brings up a good
9 point. Have you corresponded with the Hepler
10 Broom firm by e-mail in this case?

11 A No, sir, I don't believe so.

12 Q All right. Has someone from your office
13 communicated with their office?

14 A No, sir, I don't believe so.

15 Q How did they get the October 14 or 15 report
16 electronically if it wasn't sent by e-mail?

17 A It wasn't sent by me. It would have been sent by
18 the word processor, Christy Rosenberger.

19 Q All right. Then let me change my question. Has
20 GZA, GeoEnvironmental, a company that you work for
21 and you're a shareholder, have they e-mailed with
22 the lawyers for Georgia-Pacific, for lack of a
23 better term?

24 A Yes, sir. It would have been at -- that initial
25 report, which I believe was dated October 15, and

1 then the final report that's been provided and
2 attached as Exhibit 2 dated October 17, 2007.

3 Q Okay. Do you have copies of those e-mails that
4 you could provide, sir?

5 A Ms. Rosenberger may have both of those e-mails.

6 Q Okay. And if those two e-mails exist, there's a
7 good chance that the draft either Microsoft Word
8 or WordPerfect document still exists, correct?

9 A I need to clarify that the October 15 was not a
10 draft report. It was a final report. The
11 October 17 report then was a revised final based
12 on the two additional deposition transcripts that
13 I just described.

14 Q Okay. And if it wasn't a draft, you would keep a
15 copy, would you not?

16 A Again, my process is I would have taken that
17 October 15, 2007 final report and incorporated the
18 additions that I described from the two additional
19 deposition transcripts that I received on
20 October 16, 2007.

21 Q Okay.

22 A My recollection, Justin, is none of the
23 calculations, none of the substance changed. The
24 two deposition transcripts only augmented the
25 testimony and expanded the testimony by including

1 the daughter's testimony of not recognizing
2 Georgia-Pacific as being used and the fact that
3 during the June 9, 2003 deposition of
4 Mr. Carrizales, he did not provide any testimony
5 related to his use of Georgia-Pacific materials.

6 Q Okay. Were you in receipt of those deposition
7 materials before you did what I'm gonna call the
8 second report?

9 A The final report dated October 17, 2007 was
10 predicated upon the receipt of those two final
11 deposition transcripts.

12 Q Okay. In other words, when you wrote the
13 October 15 report, you didn't have those two
14 depositions?

15 A Right. As noted on the report, there's a phrase
16 and subparagraph entitled, "Additionally, I
17 reviewed the following."

18 Q Right.

19 A So the initial report would have had the
20 additional deposition transcripts of
21 Mr. Carrizales, the plaintiff's response to
22 Madison County interrogatories. Then to modify or
23 revise the October 15 report, I included the two
24 additional deposition transcripts and then a minor
25 amount of verbiage related to Mr. Carrizales'

1 June 9, 2003 testimony and the testimony of his
2 daughter.

3 Q I appreciate that, Doctor. But my simple question
4 is, when you wrote the October 15, 2007 report,
5 you did not at that time have the two deposition
6 transcripts that you referenced in the October 17
7 report, correct?

8 A That's correct.

9 Q Okay. And who suggested that you review those two
10 transcripts before sending out your October 17,
11 2007 transcript -- or report, that is?

12 A As we discussed earlier, Exhibit 9 is a letter
13 dated October 15, 2007 from the Hepler firm which
14 I was provided via overnight mail, the two
15 additional deposition transcripts that I've
16 described. So I believe I would have received
17 those on October --

18 MR. HUELSMANN: Can we go off the record
19 for a second?

20 MR. SHRADER: Take a break. Go off the
21 record.

22 VIDEOGRAPHER: We are off the record at
23 9:54 a.m.

24 (Break taken.)

25 VIDEOGRAPHER: We are back on the record

1 at 10:04 a.m.

2 BY MR. SHRADER:

3 Q Doctor, are you ready to keep going?

4 A Yes, sir, I am.

5 Q Are you full with coffee, ready with water?

6 A I believe so.

7 MR. SHRADER: And just before we go on,
8 do you want to agree that an objection made by one
9 defendant is good for all defendants present?

10 MR. HUELSMANN: Yes.

11 MR. SHRADER: Everybody on the phone
12 hear that?

13 DEFENSE COUNSEL: Yes.

14 BY MR. SHRADER:

15 Q Doctor, we were talking about the two reports.
16 And just to catch everybody up to speed on the
17 home game, there was an October 15 report that was
18 sent electronically to the Georgia-Pacific
19 lawyers, true?

20 A Yes, sir.

21 Q There was also an October 17 report that was
22 produced by you, correct?

23 A With one exception. It was a revision to
24 incorporate the two additional deposition
25 transcripts that I received --

1 Q Okay.

2 A -- to the October 15, 2007 report.

3 Q Okay. So let's back up. Does that October 15,
4 2007 report still exist?

5 A That, as I discussed, is I don't know.

6 Q That report, was that signed by you and saved as a
7 PDF?

8 A I don't know.

9 Q Okay. You don't know if you signed that report or
10 not?

11 A I don't recall specifically signing that report.

12 Q All right. Then let's take both examples. If it
13 was signed or if it was unsigned -- let's start
14 with the signed one. If there was a copy that was
15 signed, is there a problem with us looking -- or
16 you giving a report so we can take a look at it of
17 what was attached and sent to the lawyers on
18 October the 15th? Is that a problem for you
19 personally?

20 A Oh, no, sir.

21 Q And if the report was unsigned, it would be a
22 draft in your mind, I guess?

23 A I do not issue draft reports to the Hepler law
24 firm.

25 Q Which you would always sign your reports, would

1 you not, if they're not drafts?

2 A I'm sure I would. I just don't recall signing
3 this particular report.

4 Q Okay. Let's examine the circumstances under which
5 you sent the October 15, 2007 report. And you
6 indicated to me that the difference to me between
7 the October 15 report and the October 17 report is
8 the addition of two additional testimonies, one of
9 Mr. Carrizales' daughter and the other one was
10 another transcript of Mr. Carrizales' deposition,
11 correct?

12 A That's correct.

13 Q All right. Now, you were in receipt of both of
14 those depositions on October the 9th, were you
15 not?

16 A No, sir.

17 Q When did you get those two transcripts?

18 A As we were discussing before we broke to get the
19 other parties on the phone, I received, I believe,
20 on October 16, because I have an October 15 letter
21 from the Hepler firm, describing that via
22 overnight mail they were sending me those two
23 additional deposition transcripts.

24 Q And that was on what date, I'm sorry, Doctor?

25 A October 15 is the date on the letter, so I believe

1 I would have received them on October 16.

2 Q Okay. So I guess what happened was you sent it to
3 Georgia-Pacific's counsel, the report on October
4 the 15th, correct?

5 A I believe that's the date, yes, sir.

6 Q All right. And on that date, the lawyer who read
7 that report said, I'd like for you to include
8 these two transcripts in your discussion, you
9 included those and issued a new report on October
10 the 17th, 2007, is that correct?

11 MR. HUELSMANN: Objection, speculation.

12 THE WITNESS: Yeah, I have no idea if
13 anyone even reviewed the October 15 report.

14 BY MR. SHRADER:

15 Q Uh-huh.

16 A And the October 17 report, again, only included
17 the testimony of these two additional deposition
18 transcripts, none of the factual basis of the
19 report changed.

20 Q Okay. Well, October 15 was about two weeks ago,
21 correct?

22 A About, yes, sir.

23 Q Fairly recent in time, all things considered, in
24 the scope of things we're discussing today?

25 A I would agree.

1 Q What was your understanding on October the 15th as
2 to why you had just sent a report to the lawyers,
3 and you were getting new materials on that same
4 client the same day?

5 A I can only make an assumption.

6 Q And what was your assumption that you made?

7 A My assumption is they noticed at the Hepler firm
8 they did not provide me initially those two
9 deposition transcripts.

10 Q Right. Your understanding was they wanted those
11 two transcripts included in your discussion of
12 Mr. Carrizales' asbestos exposures, true?

13 A Again, I don't know the rationale or their thought
14 process.

15 Q I'm not asking their thought process. I'm asking
16 about your understanding, Doctor. Not to
17 interrupt you, but your understanding was that the
18 reason you were getting those was because those
19 two depositions weren't included in the October 15
20 report, and they wanted them included, correct?

21 A Perhaps it's better if I just read their letter.

22 Q Okay.

23 A It's only one paragraph in length.

24 Q Go ahead.

25 A It's addressed to me, again, on the date,

1 October 15, 2007. It was sent to me via overnight
2 mail. And it says, "Please find enclosed the
3 deposition of plaintiff's daughter, Michelle
4 Maitz, taken on 8/22/07 and the deposition of
5 plaintiff taken on a prior asbestos matter on
6 6/9/03."

7 "Please review these documents and issue
8 a supplemental report if you deem one necessary.
9 Thank you very much for your assistance in this
10 matter. Please do not hesitate to contact Emily
11 Lungwitz or myself if you have any questions.
12 Very truly yours, Eric P. Hall."

13 Q Okay. Mr. Hall wanted a supplemental report
14 tendered based on these two depositions, correct?

15 A No, sir. As I read, he wanted me to review those
16 two deposition transcripts and decide if I deemed a
17 supplemental report was necessary.

18 Q Okay. And it's your testimony that there were no
19 phone calls between the lawyer's offices and
20 yourself and no e-mail correspondence between the
21 time that you issued the October 15 report and the
22 October 17 report?

23 A Yes, sir, that's my testimony.

24 Q Okay. And hopefully leaving this subject, but as
25 you sit here today, you don't know if the

1 October 15, 2007 report exists?

2 A I would have to ask our word processing person.

3 Q All right. And is it normal for you not to save

4 different versions of your report?

5 A Again, for my work product, Justin, that initial

6 report was utilized to issue the supplemental

7 report. So personally, no, sir, I don't save

8 them.

9 Q Okay.

10 A If she does electronically -- I've never asked

11 that question of her.

12 Q Okay. All right. Are you still billing 210 an

13 hour for the research and the writing?

14 A I believe I'm at 225 an hour as of the start of

15 our fiscal year which would have been March 1,

16 2007.

17 Q Okay. And testimony like the one you're giving

18 today is extra, right?

19 A Our company procedure is that for sworn testimony,

20 it's at two times the fee schedule rate.

21 Q So --

22 A Including depositions or trial. Excuse me.

23 Q No, I did that. That's my fault. So it's 450 an

24 hour when you're giving testimony under oath?

25 A Yes, sir.

1 Q And 225 per hour when you're researching the
2 reports and writing the reports, correct?

3 A Yes, sir.

4 Q All right. Do you have a retainer letter in these
5 cases that you send out, or would the Burroughs
6 firm -- is it just kind of presumed since you've
7 done work for them before?

8 A Again, it's now the Hepler firm.

9 Q The Hepler firm, I'm sorry. I keep doing that.

10 A And the Hepler firm sends me a letter of
11 engagement when they want me to review a case.

12 And the letter of engagement is attached as
13 Exhibit 8. And it was dated October 3, 2007.

14 Q Let me take a gander, because I may have skipped
15 that one if you don't mind, Doctor.

16 A Excuse me.

17 Q Thank you. Okay. Did you talk to the
18 Georgia-Pacific lawyers before you got this letter
19 that's Exhibit 8?

20 MR. HUELSMANN: Objection, vague.

21 THE WITNESS: I don't recall talking to
22 the Hepler firm before, but often Ms. Lungwitz
23 will call and say, would you take a case. And I
24 just don't recall, Justin, if we talked on this
25 case or not.

1 BY MR. SHRADER:

2 Q Okay.

3 A I would assume we probably did.

4 Q Because the first sentence of that letter says,
5 "Thank you for agreeing to look at this case,"
6 right?

7 A Yes, sir.

8 Q Paraphrasing?

9 A Yes, sir.

10 Q All right.

11 A That's why I assume we did chat.

12 Q Okay. Fair enough. You have a written
13 confidentiality agreement with the Hepler firm,
14 Doctor?

15 A I don't know. I don't recall such.

16 Q Okay. How would we find out if such a thing
17 exists?

18 A I could look at our billing file with the Hepler
19 law firm.

20 Q Okay. Need to know that, if there's a written
21 confidentiality agreement between you and the
22 Hepler firm, need to know about the existence of
23 that document. Is that something we can find out
24 today?

25 A I believe so.

1 Q Okay. Good. I'll write that down. I'll forget
2 that, too. And these depositions, what you say
3 frequently is, I can't talk about that particular
4 subject, because I have a confidentiality
5 agreement with that person, correct?

6 A My recollection is only having provided that
7 testimony related to my former employer, A.O.
8 Smith Corporation.

9 Q Okay. Well, let me just ask you like this,
10 Doctor. Do you have written confidentiality
11 agreements with the defense lawyers that you work
12 for on asbestos cases?

13 A I don't believe so.

14 Q Okay. Great. That makes it easy. What is your
15 understanding as to which defendant has retained
16 you in this case?

17 A I've been retained by the Hepler firm to represent
18 Georgia-Pacific.

19 Q I thought so. Now, I just need to ask you this,
20 because I need to know the whole world of universe
21 of questions I gotta ask you. Because if you're
22 coming for Kroger or Mom & Pop's Candy Store, I
23 need to know that. Have you been retained as far
24 as you know by any other company or sets of
25 lawyers besides Georgia-Pacific?

- 1 A Not at this time, no, sir.
- 2 Q Okay. And the reason I'm asking you that is I
3 need to know what to prepare for as far as your
4 science goes. In other words, you're not coming
5 to trial for anybody but Georgia-Pacific in this
6 case, correct?
- 7 A Again, at this time my representation relates to
8 Georgia-Pacific.
- 9 Q Right. And I just need to be positive, because
10 sometimes things change. You're not prepared to
11 discuss any other defendant in this case vis-a-vis
12 Mr. Carrizales besides Georgia-Pacific, correct?
- 13 A As we sit here today, that is correct, yes, sir.
- 14 Q Right. In order to testify for any other
15 defendant in this case, you would have to do some
16 additional research and some additional work,
17 correct?
- 18 A That is correct, sir.
- 19 Q All right. And you would, of course, hopefully
20 allow me to come back and visit you assuming you
21 did that, correct?
- 22 A Yes, sir.
- 23 Q All right. Fair enough. Now, I was gonna ask you
24 if you ever testified live in an asbestos case
25 before, but I think the answer to that question is

1 yes, correct?

2 A In a case meaning in a lawsuit that has gone to

3 trial?

4 Q Yeah. In front of a jury.

5 A Yes, sir. One time.

6 Q Right. The Kaiser Gypsum case in California,

7 correct?

8 A Yes, sir.

9 Q When did that case go to trial?

10 A I don't recall.

11 Q Sometime in the last two years I'm assuming?

12 A Oh, yes, sir. Within the last year.

13 Q Do you know if it was the year 2006 or 2007?

14 A I believe it was in 2007.

15 Q Okay. Do you remember the facts and circumstances

16 underlying that case? And let me be real specific

17 so I don't draw an objection. Was that a

18 mesothelioma case you were testifying in?

19 A Yes, sir.

20 Q Do you remember the name of the plaintiff's lawyer

21 that you were testifying against?

22 A No, sir.

23 Q Do you remember if it was a man or a woman?

24 A Oh, it was a man.

25 Q Was it in Northern California or Southern

1 California?

2 A San Francisco.

3 Q That would be Northern. I can narrow it down from
4 there. Thank you very much. Do you remember the
5 exposure facts or at least a thumbnail sketch of
6 the exposure facts in that case?

7 A Again, the plaintiff had been engaged in some
8 incidental usage of joint compound. His regular
9 employment did not involve the use of drywall
10 accessory products, but rather it was incidental
11 use. Other than that, I don't recall the facts,
12 Justin.

13 Q Okay. Did you opine in that case as far as you
14 remember that the use of Kaiser Gypsum's joint
15 compound did not contribute to the development of
16 that man's mesothelioma?

17 A Yes, sir, that's my recollection.

18 Q Okay. And the bases for that were similar to
19 those in this case as far as the literature goes?

20 A Yes, sir.

21 Q All right. Did you use the same references?

22 A In that case, I would have used additional
23 references, because the information I had on
24 Kaiser Gypsum joint compound was more extensive
25 with respect to the type of chrysotile asbestos

1 that is included in their product.

2 Q The grade and what mine and that kind of thing?

3 A Yes, sir.

4 Q All right. And when I say "what mine," just for

5 the people playing the home game, we're talking

6 about what mine it came from, from Canada or if it

7 was Union Carbide asbestos, it came from a mine in

8 California, correct?

9 A Yes, sir.

10 Q And Georgia-Pacific hasn't supplied you with that

11 information in this case, is that correct?

12 A That's right.

13 Q Have you ever reviewed information from

14 Georgia-Pacific as from which mines their asbestos

15 came from?

16 A No, sir, I have not been provided such

17 information.

18 Q Okay. And in the Kaiser Gypsum trial, was there

19 an outcome of that case? Did the jury get the

20 case ever?

21 A I believe so.

22 Q Do you know if there was a verdict rendered in

23 that case?

24 A I'm sorry, I don't know.

25 Q That's fine. Other than that one Kaiser Gypsum

1 case out in California, have you ever testified
2 live in front of a jury in an asbestos case?

3 A No, sir.

4 Q All right. Have you ever been excluded or
5 prohibited from testifying in an asbestos case?

6 A No, sir.

7 Q Have you ever been excluded or prohibited from
8 testifying in any case?

9 A No, sir.

10 Q Have you ever had your testimony limited, that is
11 things you can and cannot talk about when you're
12 testifying?

13 A No, sir.

14 Q All right. Is that something that you would know?

15 A Yes, sir.

16 Q Is it something you keep track of?

17 A Oh, yes, sir, I try to.

18 Q Why is that?

19 A Essentially it's for me very important to know in
20 the various jurisdictions or various courts how as
21 a practicing toxicologist my testimony, I guess,
22 can be presented.

23 Q And why is that important to know to you, Doctor?

24 A Well, as -- again, as a toxicologist, I believe my
25 role is not only to look at the dose or exposure

1 parameters to establish the dose but rather look
2 at that dose and that relationship or association
3 of that dose with some type of physical anomaly.

4 Q What does that have to do with being admitted to
5 testify in court?

6 A I don't understand the question. I'm sorry.

7 Q You said it would be important for you to know
8 whether you've been struck or excluded or
9 prohibited from testimony or limited by some
10 court, correct?

11 A I said it's important to me to know how the
12 court's gonna look at my testimony with respect to
13 those two facets.

14 Q Right.

15 A One, exposure or dose, and two, the outcome of
16 that dose in any physical anomaly.

17 Q Uh-huh. And why is that important to you?

18 A Because while I practice as an industrial
19 hygienist, my education and experience go beyond
20 that. And it's important to me that the various
21 triers of fact are able to make that distinction
22 and understand that I can opine on matters beyond
23 just the exposure parameters and dose.

24 Q For your livelihood, right? That's why it's
25 really important for you to know whether or not a

1 judge has limited or excluded you, because this is
2 part of your livelihood, right, testifying in
3 depositions and testifying in court?

4 A I guess I'd rather look at it, it's what I've been
5 trained to do. And there's few toxicologists out
6 there that are actually practicing with respect to
7 human health. And I'm glad that the courts are
8 understanding that we are a different breed of
9 cats than industrial hygienists.

10 Q Okay, Doctor. But with all due respect, that
11 doesn't have anything to do with testifying in
12 court, does it?

13 A Oh, yeah.

14 Q You can be a toxicologist, you can do human
15 toxicology and you don't ever have to step foot in
16 a courtroom, correct?

17 A Oh, there's some that -- toxicologists that
18 practice human health toxicology that are just
19 engaged in what I'd call, you know, research
20 toxicology.

21 Q Right. And there's toxicologists, even practicing
22 toxicologists who spend their entire lives working
23 on toxicology and do not set foot in a courtroom
24 and do not set foot in a deposition, correct?

25 A I would assume so, yes, sir.

1 Q Okay. Do you know any of those people?

2 A I believe I could name very few.

3 Q Okay. Well, I guess what I'm getting to is, the
4 interplay, as you say on human toxicology and
5 dosages and this kind of thing, that doesn't
6 necessarily have anything to do with testifying
7 live in a courtroom, does it?

8 A Oh, certainly.

9 Q You can practice that sort of medicine or
10 toxicology without setting foot in a courtroom,
11 correct?

12 A Oh, sure, you could do that.

13 Q Okay. So the only reason it would be important to
14 know whether or not you got struck or limited or
15 had your testimony excluded in a court of law
16 would be for your livelihood, not for the science,
17 correct?

18 MR. HUELSMANN: I'm just going to
19 object, vague, form.

20 THE WITNESS: No, I disagree, Justin,
21 that it's important to me as a scientist and as a
22 practicing toxicologist that there is a
23 distinction between what toxicologists can perform
24 and industrial hygienists perform.

25 And it's important to me that the courts

and folks like you folks and the folks on the phone understand there is a -- a marked difference between industrial hygiene and toxicology.

BY MR. SHRADER:

Q Okay. What does the difference between toxicology and industrial hygiene, that whatever semantic or real distinction, have to do with testifying live in a courtroom?

MR. HUELSMANN: Asked and answered.

THE WITNESS: Again, to me it's important, and it's more than semantics. It's education and training and experience. And the education that I have as a toxicologist not only incorporates the aspects of being able to calculate dose based on exposure parameters, but then determining and relating that dose to some physical anomaly, being able then to look at that physical anomaly and going through a rigid criteria to see if it's either associated or related to that physical anomaly at that dose.

BY MR. SHRADER:

Q What does any of that have to do with the importance of finding out whether your testimony has been limited or excluded in a court of law?

MR. HUELSMANN: Same objection, asked

1 and answered.

2 THE WITNESS: Again, my concern is there
3 are so few of us engaged in this type of work that
4 I think it's vitally important that, again, folks
5 like you, folks on the phone and triers of fact
6 understand that we are different. We are not
7 medical, you know, practitioners and we're not
8 industrial hygienists.

9 We're essentially filling the void
10 between the two, that not only can we look again
11 at the dose, but we have the experience, training
12 and education to opine on that dose and either the
13 relationship or association of that dose and some
14 physical anomaly.

15 BY MR. SHRADER:

16 Q Okay. So the reason that it's important for you
17 to learn from lawyers whether or not you've been
18 excluded or limited in courts of law is to make
19 the important distinction between practicing
20 toxicology and practicing industrial hygiene?

21 A That's part of it, yes, sir.

22 Q Okay. Are there any other reasons why you would
23 expect a lawyer to tell you whether or not you've
24 been excluded from a court of law or limited in
25 some way?

1 A I don't know. I guess I never contemplated that.

2 Q Okay. I'm asking you to do it now kinda. Are
3 there any other reasons that you would expect a
4 lawyer to tell you whether or not you've been
5 limited or struck?

6 A I can think of no others at this time.

7 Q No other motivations in your mind?

8 A No, sir.

9 Q All right. And as far as you know, you've never
10 been struck or limited? Is that your testimony
11 today?

12 A Yes, sir.

13 Q All right. Some easy questions. Your work
14 address, I guess, is on the deposition notice,
15 yes? Anybody? Lawyers can even tell me.

16 A Yes, sir, it is.

17 Q So we can skip that one. What's your work
18 telephone number?

19 A (262) 754-2561 is my direct dial.

20 Q Driver's license number?

21 A I have no idea.

22 Q You don't know?

23 A I can look.

24 Q Yeah. Good.

25 A A536-5055-0406-04.

1 Q Okay. And your social security number, sir?

2 A Last four digits, 6847.

3 Q Okay. Ever convicted of a crime, sir?

4 A No, sir.

5 Q Ever been arrested?

6 A No, sir.

7 Q Ever been convicted of a felony or a crime

8 involving moral turpitude?

9 A No, sir.

10 Q All right. Let's talk about some agreements.

11 Let's get some basic agreements on science, if you

12 don't mind. You ready?

13 A I'm ready.

14 Q See if you and I can agree. People dedicated to

15 science must be objective. Do you agree with

16 that?

17 A Yes, sir.

18 Q All right. It's important for scientists to be

19 honest about the shortcomings in their research.

20 Do you agree?

21 A Yes, sir.

22 Q All right. Scientists also should disclose the

23 biases that they have and the biases of the

24 studies that they rely on. Do you agree about

25 that?

1 A I believe so.

2 Q In other words, if you're an expert in the Ford
3 rollover litigation and you've worked for Ford for
4 30 years and make 80 percent of your income from
5 Ford and you write a peer reviewed article in some
6 journal about the incidents of Ford rollover
7 crashes, you should probably include when you
8 submit a paper to the editor that you take a fair
9 amount of compensation from Ford, correct?

10 A I believe so.

11 Q Do you agree on that?

12 A I believe so.

13 Q Okay. That's important for people in science to
14 know how objective the person is they're reading,
15 correct?

16 A Yes, sir.

17 Q And also, you don't want what's called science
18 laundering. Are you familiar with that concept?

19 A I believe so.

20 Q Right. That's where the same guy from Ford has
21 come up with all this objective data, right, he's
22 published a paper and then somebody not really
23 concerned or at least paid directly by Ford, they
24 may be paid by a third-party company, has another
25 author publish findings based on all this other

1 data of the guy who was employed directly by Ford,
2 correct? That's one instance of science
3 laundering, correct?

4 A Could be.

5 Q And it's important for the guy writing that second
6 article to point out to the extent that he knows
7 the biases of that earlier author when he cites
8 him, correct?

9 A I believe so.

10 Q Right. All right. Doctor, here's an easy one.
11 Do you consider yourself a scientist?

12 A Yes, sir.

13 Q All right. And did you mean for the report that
14 you generated in this case, the October 17, 2007
15 report dealing with Mr. Carrizales, did you intend
16 for that report to be published to the jury in
17 this case?

18 A Yes, sir.

19 Q All right. This is probably not the first time
20 that you've had one of your reports published to a
21 jury, correct?

22 A I know for sure in the one case that we discussed.

23 Q Okay. Do you believe that you have reported to
24 the jury all the shortcomings that may be incident
25 to your report?

1 A I believe so.

2 Q And your report is not perfect, is it, sir?

3 MR. HUELSMANN: Object, vague.

4 THE WITNESS: The -- I guess any
5 shortcomings that I can contemplate at this time
6 are predicated upon the lack of definitive
7 testimony or facts of which I use to reach any
8 conclusions.

9 BY MR. SHRADER:

10 Q Okay. Go ahead. Let's just do it now. Tell me
11 all the reasons why your report may not be a
12 hundred percent accurate or may have some
13 shortcomings in science.

14 A If I look at the report, the testimony of
15 Mr. Carrizales was limited related to his
16 potential exposures to Georgia-Pacific material in
17 that he discussed at one location four different
18 brands by name of joint compound that were used
19 and said additional joint compound materials were
20 utilized.

21 I assumed that just the four materials
22 were utilized. And even though he said one
23 particular brand, not Georgia-Pacific was his
24 favorite brand, I nonetheless used a direct split
25 between the four.

1 Therefore, I gave Georgia-Pacific 25
2 percent of the exposure duration; therefore, they
3 received 25 percent of the dose, which is likely
4 an overestimation based on his testimony.

5 Secondly, Justin, I utilized in that one
6 residence that the -- for lack of a better
7 description, turnover rate in the apartments was
8 an annual turnover where he also said in his
9 testimony it was normally a two-year turnover
10 period. So I likely inflated that exposure
11 duration perhaps as much as two-fold based on
12 that.

13 Thirdly, I had to estimate the time that
14 he did the patching repairs. I established what I
15 believe was a very extensive time period for these
16 repairs at that first property of which I utilized
17 essentially two hours per project.

18 Which, again, I believe is a very
19 inflated duration to conduct a patching project
20 where he said that for the repairs, he would use a
21 different patching compound for the first coat and
22 only use a joint compound for the second and third
23 coats. And often he didn't even sand.

24 So then that comes into play when
25 nonetheless I used the exposure parameter and

1 exposure concentration specified in Verma and
2 Middleton for premixed joint compound that
3 includes sanding of the compound.

4 So with all of that, I believe I used a
5 number of overestimates to calculate his dose from
6 that first rental property, which was at 945
7 Niedringhaus house.

8 For the second unit which would have
9 been 2337 and 23 -- 2239 Delmar, in that unit he,
10 again, stated he used Georgia-Pacific and one
11 other brand. The one other brand again was the
12 one that he classified as his favorite.
13 Nonetheless, I used an equal split between
14 Georgia-Pacific and this other brand.

15 More importantly is he acquired this
16 property, as I recall, in August of 1978, which
17 was likely at the time or after the time that
18 asbestos had been removed from Georgia-Pacific
19 joint compound.

20 He stated as soon as he learned from an
21 auctioneer where he purchased his joint compound
22 that Georgia-Pacific may have contained asbestos,
23 that he quit using that compound. Nonetheless, I
24 included a full year in the calculations.

25 And during the year, in spite of the

1 fact that he may have had a two-year turnover and
2 may not have even conducted a project during that
3 time, I still included a project for a duration of
4 four hours, which is an extremely long time to
5 conduct some patching.

6 And again, I utilized 50 percent of the
7 time related to Georgia-Pacific even though the
8 other brand of joint compound was, quote/unquote,
9 his favorite. Again, with that, I utilized the
10 exposure concentration specified in Verma and
11 Middleton for premixed joint compound including
12 sanding, again, with the same limitation that he
13 may not have sanded the final two coats that he
14 placed over the initial patching compound.

15 And then for both of these sites,
16 Justin, he had testified that he used a
17 respiratory protective device, and for that I
18 applied the lowest protection factor for that
19 device and then calculated the doses for both.

20 Q Okay. I think I missed something. I think the
21 original question was, I want you to tell me for
22 your protection now -- because you're coming live
23 to trial, right?

24 A Yes, sir.

25 Q Do you know when trial is in this case?

1 A I don't recall.

2 Q Okay. Do you know if it's this year or next year?

3 A It's on my schedule. I don't recall.

4 Q Okay. Fair enough. For your protection at trial,
5 I want you to get it all out, sort of to tell me
6 all the shortcomings that are in your report.
7 Okay. So you can say to the jury, look, I told
8 you, these are my shortcomings, this isn't
9 anything I'm hiding from you.

10 And so far I'm hearing from you, and I
11 want you to correct me if I'm wrong, is No. 1
12 shortcoming is I've overestimated Mr. Carrizales'
13 exposure to asbestos from Georgia-Pacific
14 products. Is that a fair characterization of what
15 you've told us?

16 A Yes, sir, that's correct.

17 Q And I understand the basis for that, and your
18 lawyer will give you an opportunity on these two
19 properties that you've discussed so far and the
20 mass protection and that kind of thing. But in
21 your mind, is that the only shortcoming that's
22 incident to your report, sir?

23 A I guess if there's other shortcomings, it would
24 relate to whether or not he actually used the
25 material, Georgia-Pacific joint compound, whether

1 or not the use of that was incidental to the time
2 in which Georgia-Pacific may have contained short
3 fiber chrysotile. And then predicated on all the
4 above, whether or not the dose should even be
5 considered with respect to any, I guess,
6 asbestos-related disease, much less mesothelioma.

7 Q And I don't understand. What do you mean by that?
8 Is this part of the amphibole hypothesis? Is that
9 what you're telling me?

10 A In my belief, any exposure that is less than or
11 equal to background concentration is not relevant
12 to any disease process, much less mesothelioma.

13 Q Right.

14 A Then when we get to mesothelioma, short fiber
15 chrysotile, in my opinion, is not a causative
16 agent at least at doses that we've seen in
17 lifelong drywall workers.

18 Q But don't you say that in your report? How is
19 that a shortcoming in your report?

20 A I don't know if -- if those of us who don't work
21 in this understand all of those fine distinctions.

22 Q Okay.

23 A And I appreciate those fine distinctions, Justin.

24 Q Okay. Let me see if I understand. You say one of
25 the shortcomings in your report is that you could

1 have said in your report, in your opinion, short
2 fiber chrysotile asbestos is not a causative agent
3 in the development of human mesothelioma, correct?

4 A At least at the doses that we've seen in lifelong
5 drywall workers.

6 Q Okay. And what are the doses, the typical doses
7 for lifelong drywall workers in fiber CC years or
8 however you want to do it?

9 A Yeah, I'm comfortable in dose calculations and
10 looking at lifetime drywall workers of having
11 doses that might approach 100 fiber years per CC.

12 Q Okay. And I'm not picking with you. It's your
13 opinion that lifetime drywall workers may be
14 exposed to up to 100 fiber per CC years, correct?

15 A Fiber years per CC.

16 Q Fiber years per CC, thank you. And in your
17 opinion, that level of exposure, the 100 fibers
18 per CC year, is not enough exposure for someone to
19 develop mesothelioma as far as chrysotile is
20 concerned?

21 A What I'm saying is I don't know. What I'm saying
22 is at doses of up to 100 fibers per CC in drywall
23 workers who are exposed to short fiber chrysotile,
24 meaning grade 7 chrysotile --

25 Q Right.

1 A -- we have not seen cases of mesothelioma in that
2 cohort.

3 Q Okay. So your -- if I understand you correctly,
4 there's no proven association between chrysotile
5 exposure, lifelong drywallers and mesothelioma,
6 correct?

7 A If the drywall workers only performed drywall
8 work --

9 Q Right.

10 A -- and they weren't exposed to other sources of
11 asbestos -- for example, many drywall workers back
12 in the early years may have also been plasterers.
13 They may have been engaged in spraying spray-on
14 fire protection, fireproofing. They may have been
15 engaged in doing some decorative work that may
16 have included, you know, some amphibolic
17 exposures.

18 Again, other joint compounds, if those
19 joint compounds came from, let's say, Bells Mine
20 or Thetfort where we may have had tremolite
21 contamination, then that's a different ball game.
22 But if it's true chrysotile that's uncontaminated,
23 then yes, that's my opinion that 100 fiber years
24 per CC doesn't seem to have causation of
25 mesothelioma as a relationship.

1 Q Well, I'm going to come back to the shortcomings,
2 but I want to break this down. I want to call
3 this what it is. There are scientists who have
4 researched what are called the amphibole
5 hypothesis camp, correct?

6 A Yes, sir.

7 Q You've heard that term before?

8 A Yes, sir.

9 Q And those scientists, there's people like Bruce
10 Case, you've heard of him before? You've heard of
11 Bruce Case before, Doctor?

12 A Yes, sir.

13 Q All right. And Wayne Berman, have you heard of
14 him before?

15 A Yes, I have.

16 Q And Kenny Crump, you've heard of him before?

17 A I have.

18 Q All right. Those people believe that chrysotile,
19 as we generally call it, just assume there's no
20 tremolite contamination right now, is not a proven
21 agent that causes human mesothelioma, correct?

22 A With one exception. There's many others --

23 Q Okay.

24 A -- that I can include in -- if you want to call it
25 that camp.

1 Q Oh, I know -- okay. You can put all the people in
2 that boat you want to put, but that's what they
3 believe, right?

4 A That non-contaminated short fiber chrysotile is
5 not related to pleural, or for that matter
6 peritoneal, mesothelioma.

7 Q It's not related to mesothelioma at all; that's
8 their opinion, right?

9 A That's correct.

10 Q And not to pick with you, but these dose estimates
11 are all fine and good. But it's the general
12 concept among the amphibole hypothesis camp that
13 there's no proven scientific link between exposure
14 to chrysotile asbestos, no matter what the fiber
15 level, and human mesothelioma, true?

16 A It's much more complicated than that, but yes,
17 sir. The result is with exposures to short fiber
18 chrysotile that is not contaminated at doses that
19 any of us could contemplate from a cohort,
20 especially that cohort involved in drywall work,
21 we have not seen the incidence of mesothelioma.

22 Q Okay. And just so I know what camp you're in,
23 you're in that camp, too. And I'll give you all
24 the friends you want to talk about at trial. But
25 you're in that camp that says, I don't think

1 exposure to chrysotile causes human mesothelioma
2 in man if that chrysotile doesn't have tremolite
3 in it, right?

4 A With one specificity. My work, my research has
5 been related to short fiber chrysotile. I have
6 not looked at some of the other grades of
7 chrysotile. But my belief is at least grade 7,
8 from my research at this time, short fiber
9 chrysotile is not causative at doses that we could
10 expect as I described earlier in the contraction
11 of mesothelioma.

12 Q Okay. And just so we're clear and we have some --
13 have a bow wrapped on this so I know how you feel,
14 if the fiber is less than 10 microns in length and
15 it's a chrysotile fiber, you, Dr. Anderson, you
16 say that fiber does not cause mesothelioma in man,
17 correct?

18 A Again, at doses that we can contemplate and have
19 seen in worker cohorts, especially that worker
20 cohort engaged in drywall work using accessory
21 drywall compounds.

22 Q Including and up to 100 fiber CC years, correct?

23 A That's my calculation of an exposure that a
24 lifetime drywall worker may have.

25 Q Let me do it like this. I think this is earlier.

1 Doctor, do you believe that tremolite-free
2 chrysotile can cause mesothelioma in man?

3 A The best way I can answer it, Justin, is that my
4 work centers on short fiber chrysotile. And that
5 short fiber chrysotile that's not contaminated
6 with an amphibole at exposure concentrations that
7 one might contemplate especially for drywall
8 workers, then I don't see the relationship between
9 that and the contraction of mesothelioma.

10 Q Okay. I hear your caveats, and obviously it's in
11 the record now, so this can be repeated at trial.
12 But I'm not as smart as you. My question is
13 simply, do you think based on the literature that
14 you've reviewed, that chrysotile asbestos,
15 tremolite-free, let's assume that exists for a
16 minute, chrysotile asbestos can cause mesothelioma
17 in man?

18 MR. HUELSMANN: Object, asked and
19 answered. You asked it five different ways, and
20 he's given you the same -- he gives his
21 clarification of his answer. But you can answer
22 again, Doctor.

23 THE WITNESS: Again, Justin, I have not
24 looked at all of the literature to the longer
25 grades of chrysotile.

1 BY MR. SHRADER:

2 Q Okay.

3 A So I'm much more comfortable with shorter grades,
4 especially grade 7, of saying grade 7 what I call
5 short fiber chrysotile that's not contaminated
6 with an amphibole is not related at the exposure
7 concentration that we could expect resulting in
8 doses that we could expect with mesothelioma.

9 Q Okay. Well, I don't want to ask the same question
10 again. I don't want to make your lawyer mad. You
11 read epidemiological studies to come to these
12 conclusions, correct, the stuff about chrysotile
13 causing or not causing mesothelioma?

14 A I guess there's a greater array of research data
15 other than the epidemiological data that I've
16 reviewed to come to this conclusion.

17 Q Okay. Can you name me one epidemiological study
18 that makes the distinction that you're making on
19 the 7 series of chrysotile?

20 A There are many studies that relate to chrysotile,
21 in general, and make the distinction that you're
22 saying. You know, you can look at Craighead's
23 work, you can look some of Roggli's work, you can
24 look at Bernstein, you can look at Wagner, you can
25 look at Robinson and essentially go through their

1 studies. They don't provide the specificity of
2 fiber grade.

3 But my -- again, my experience is
4 dealing with the short fiber. From the short
5 fiber work, I know that drywall joint compound
6 contained the grade 7 or short fiber. Thus, I
7 feel much more confident. Because I've not only
8 look at that epidemiological data, but then I've
9 looked at exposure criteria and exposure studies.

10 Then I've looked at, you know, Stern,
11 I've looked at the NIOSH mortality studies that
12 show we do not have drywall worker cohorts with
13 mesothelioma. So that's how I can wrap it in the
14 package for you, Justin.

15 Q Okay. Can you name me one epidemiological study
16 that was solely concerned with grade 7 chrysotile
17 asbestos?

18 A No, sir. As I said, they are much more general in
19 dealing with chrysotile.

20 Q Okay.

21 A But --

22 Q Can you name --

23 MR. HUELSMANN: Let him finish his
24 answer.

25 BY MR. SHRADER:

1 Q Sure. I'm just trying to go ahead.

2 A Again, my work is concentrated on the short fiber.
3 So I feel much more confident in dealing with
4 that, again, because I've not researched not only
5 the epidemiological studies but the other portions
6 of the exposure criteria.

7 Q What are the other portions of the exposure
8 criteria?

9 A Oh, the resulting dosages that one could get from
10 this drywall work. Therefore, I can tie the dose
11 with the outcome of the epidemiological studies.
12 Then I can look, as I stated at Stern and NIOSH,
13 where they were looking at mortality and tie it
14 all together, Justin.

15 Q Doctor, look, I asked you if you had an opinion on
16 whether or not chrysotile could cause mesothelioma
17 in man. I think you said generally no, but you
18 would caveat that by saying you're most
19 comfortable with talking about grade 7 chrysotile
20 asbestos. Is that fair?

21 A Yes, sir.

22 Q All right. Your lawyer keeps objecting to me,
23 because I want a general answer to the chrysotile,
24 whether or not in your mind chrysotile asbestos
25 can cause mesothelioma. And you keep caveating

1 and telling me that you're only comfortable
2 talking about grade 7 chrysotile asbestos.

3 We talked about epidemiology. You're
4 not aware of one specific epidemiologic study that
5 only discusses grade 7 chrysotile asbestos,
6 correct?

7 A That's correct.

8 Q All right. What study in particular that you rely
9 on for this distinction between grade 7 chrysotile
10 asbestos and all other things would you rely on?
11 Can you give me that study?

12 A Well, I went through several that, again, look at
13 chrysotile that perhaps has some longer fibers. I
14 haven't looked at a worker cohort then, Justin,
15 that may have been engaged in the longer fiber
16 usage and, thus, exposure.

17 Therefore, I just don't feel comfortable
18 opining on every fiber known to man that could be
19 classified as chrysotile as not having the
20 relationship.

21 Q Okay. So as far as I understand your opinion, if
22 it's grade 7 chrysotile, your opinion is grade 7
23 chrysotile cannot cause mesothelioma in man,
24 correct?

25 A Again, at the doses --

1 Q Okay.

2 A -- that one could expect, especially from a
3 drywall worker, where I've spent most of my
4 research.

5 Q Uh-huh. And if it's anything other than grade 7
6 chrysotile, you don't feel comfortable opining on
7 whether or not that fiber can cause mesothelioma
8 in man, true?

9 A What I can do is I could opine on the studies that
10 I just referenced, do not believe it does, but I
11 haven't looked at all the cohorts to feel as
12 comfortable with that opinion across the board
13 that all chrysotile does as I do with the short
14 fiber.

15 Q Okay. In other words, if the exposure involves
16 anything that's in the chrysotile field besides
17 grade 7 chrysotile, Dr. Anderson doesn't feel
18 comfortable opining to a reasonable degree of
19 scientific certainty if those fibers are outside
20 the grade 7 class, whether or not those fibers
21 cause mesothelioma in man, correct?

22 A No. I guess my comfort with my opinion as I've
23 stated it is I feel very comfortable with the
24 caveat that I provided. The literature that I
25 described and other epidemiological studies state

1 across the board that chrysotile doesn't cause it.

2 I'm not as comfortable giving you a
3 carte blanche, I guess, answer that I agree with
4 all of that until I look at exposure cohorts to
5 some of the longer fibers.

6 Q Okay. Let me try again. Take grade 7 chrysotile
7 and put it aside in your mind, okay? Because I
8 really want to move on. Can you do that for me?
9 Just take chrysotile grade 7 and put it in a box
10 over here, okay? Okay.

11 A Okay.

12 Q All other chrysotile asbestos, what you're saying
13 is you have not reviewed enough literature in your
14 mind on all the other grades of chrysotile, except
15 in grade 7, to feel comfortable opining whether or
16 not these other types of chrysotile fiber can
17 cause mesothelioma in man, correct?

18 A Again, I don't know how to better answer it. I
19 haven't looked at dosages to make that opinion.
20 And I believe if we looked at the dose loading
21 studies, all the literature, all the
22 epidemiological studies that I cited have the same
23 caveats on exposures and doses related to that.

24 So I don't know how to better -- how to
25 better define it. I'm not so naive as a scientist

1 to say some -- some dose beyond expectation might
2 have some interaction at the genetic level that
3 none of us have looked at. Therefore, that's why
4 I give the caveats to the grade 7. I have looked
5 at that with as much detail as I know how to give
6 it.

7 Q And you haven't looked at the others with as much
8 detail as you know how to give it?

9 A That's correct.

10 Q And, therefore, you would not be comfortable
11 opining on the other grades without further
12 research on whether or not the other grades could
13 cause mesothelioma to man, correct?

14 A I believe so.

15 Q Okay. In other words, if it's grade 7 chrysotile,
16 where does that come from? Canada?

17 A Oh, you get grade 7 from a number of places.

18 Q Okay.

19 A But the grade 7 which my research is centered has
20 either been Union Carbide Calidria, and
21 particularly from the North and Northeastern mines
22 of Quebec, Canadian Carey type stuff.

23 Q If it's chrysotile asbestos that comes from Canada
24 or chrysotile asbestos that comes from the King
25 City mine in California, the Union Carbide mine,

1 you believe globally that asbestos is incapable of
2 causing human mesothelioma?

3 A You're taking part of my answer. There are
4 several mines in Quebec. I would not include that
5 -- Canadian mines of Thetfort or the Bells mines.

6 Q Okay.

7 A But I am comfortable with Canadian Carey and the
8 type of product that was mined and then when they
9 went through the grading system, through the four
10 sieves and ended up with grade 7 of making the
11 opinion that I've just described.

12 Q Okay. Let me do it like this. I'll make a list.
13 Tell me all of the fiber under grade 7 that you
14 feel comfortable on opining whether or not it
15 causes mesothelioma in man.

16 A I don't know how to answer that, because I'd need
17 to see the criteria. I mean, there's grade 7
18 that's come -- it's been imported. There's
19 grade 7 that's from other locations in the United
20 States.

21 And there's grade 7 perhaps from other
22 mines in Canada that I don't know about. So I
23 don't know how to start doing some sort of
24 categorical, I guess, classification that you're
25 asking me to do.

1 Q Okay. What's your definition of the grade 7
2 chrysotile that you feel comfortable opining on?
3 Just give me some mines.

4 A Well, it would be any grade 7 that's not tremolite
5 contaminated. And if I look at Canadian Carey,
6 you know, we have the research from Dr. Brody and
7 the recent research from Gunther & Sanchez, I
8 believe, from -- I believe they're from the
9 University of New Mexico that have stated there is
10 not tremolite contamination in Canadian Carey. So
11 I'm very comfortable in opining of that.

12 As we relate to Kings mines -- Kings
13 County mines that you described for Union Carbide
14 Calidria, I'm very comfortable, because of
15 Dr. Gibbs' work in opining that there's not
16 tremolite contamination, in that setting of
17 opining that.

18 I can't recall off the top of my head,
19 but I know there's other mines that have been
20 associated with a tremolite-free chrysotile that
21 then goes through the milling process to provide
22 grade 7.

23 Q Okay. How about the Jeffrey mine? Are you
24 familiar with the Jeffrey mine?

25 A I've heard of it. I don't recall.

1 Q Okay. You don't have an opinion as you sit here
2 today on whether or not Canadian chrysotile from
3 the Thetfort mine is capable of inducing
4 mesothelioma in man?

5 A From the Thetfort mine?

6 Q Correct.

7 A My understanding, they have found tremolite
8 contamination of the chrysotile from the Thetfort
9 mine. So I would have concern because of the
10 amphibole exposure.

11 Q Okay. And what level of exposure is necessary to
12 that Thetfort mine asbestos to induce mesothelioma
13 in man? You can do it in fiber per CC years if
14 you'd like.

15 A I guess I'd be more comfortable talking about
16 amphiboles as a grouping. And if we look at
17 amphiboles, I believe I would concur with some of
18 the research that is shown perhaps as little as
19 five fiber years per CC from amphiboles and the
20 causation of mesothelioma.

21 Q Okay.

22 A I think if you relate it to tremolite, amosite and
23 crocidolite, I guess I would concur with the work
24 of others who have described potency factors that
25 ascend perhaps up to 500 times more potent than

1 chrysotile or crocidolite, perhaps a hundred times
2 more potent for amosite than chrysotile, and
3 tremolite something less. I've seen some studies
4 that I believe -- I've noted as low as 14 times
5 potency factor for tremolite as compared to
6 chrysotile.

7 Q Yes, sir. And I think the question I was asking
8 was about Thetfort chrysotile asbestos. Do you
9 know the relative percentage of tremolite in
10 Thetfort chrysotile asbestos?

11 A The work I've seen, it varies depends on which
12 sample location and that sample location in
13 comparison to the geologic vein of the tremolite
14 that went through the area. In looking at some of
15 the data, I've seen as little as I believe a
16 couple percent. I've seen as high as six or seven
17 percent.

18 Q As you sit here today without doing further
19 research, do you have an opinion on how much
20 Thetfort chrysotile asbestos is necessary to cause
21 mesothelioma in man?

22 A Again, I'm not dealing with the chrysotile. I'm
23 dealing with the contaminant. And I think I
24 answered what I believe would be a reasonable
25 cancer effect level which essentially is the

1 dosage that relates to the amphibole contaminant.

2 And, again, I believe that is something in the
3 neighborhood of five fiber years per CC.

4 Q So five fiber years per CC of Thetfort chrysotile
5 asbestos can cause mesothelioma in man?

6 A No, sir. Justin, you're playing with me a bit.
7 You know --

8 Q I'm not -- here's the question.

9 A What I said, it was the amphibole exposure from
10 that chrysotile.

11 Q Right. And so to be able to answer the question,
12 you need to know the relative percentage of
13 tremolite within that Canadian chrysotile, true?

14 A I believe that would be beneficial.

15 Q Right. The only way you'll know if you hit five
16 fiber per CC years for an amphibole, and I'm
17 assuming tremolite is in that category for you, is
18 if you know how much was in the dose that he was
19 exposed to, correct?

20 A That would be beneficial, yes, sir.

21 Q Right. It would be extremely necessary, wouldn't
22 it, not just beneficial?

23 A It's the only way you could actually do the dose
24 from the amphibole is to know the concentration of
25 the amphibole.

1 Q There we go. So -- and you don't know the
2 relative percentage of tremolite within Thetfort
3 chrysotile, do you?

4 A I described some ranges that I've seen from the
5 cohort study of the miners in and around the area.

6 Q Okay. And that's based on a fiber burden analysis
7 of their lungs, correct?

8 A That's my recollection.

9 Q What I'm asking you about is a geologic sample or
10 a sample of the asbestos itself. Have you seen
11 estimates, and they're out there, trust me, on
12 bags of Thetfort chrysotile asbestos, how much of
13 that bag contains tremolite?

14 A I'm sure I've seen it. I don't recall as I sit
15 here, Justin.

16 Q Okay. And as you sit here today, there's no way
17 for you to opine what the level of exposure to
18 Thetfort chrysotile asbestos is to induce
19 mesothelioma in man, because you can't get to your
20 five fiber per CC estimate, correct?

21 A I don't understand the question. I'm sorry.

22 Q Okay. When we were talking before, you said you
23 needed five fibers per CC of tremolite for the
24 induction of mesothelioma in man, correct?

25 A No. I said five fiber years per CC of amphiboles.

1 Q Right. And I'm assuming tremolite was part of
2 that group?

3 A Yes, sir.

4 Q And there's no way for you to know if some
5 particular person has exposure to five fiber CC
6 years without knowing what they were exposed to,
7 correct?

8 A That's correct.

9 Q All right. And the only way to know what they
10 were exposed to is to know who the product
11 manufacturer was, correct? I'm going to go down a
12 list.

13 A Sure.

14 Q All right. And to know what was included in that
15 product that they were exposed to, correct?

16 A Correct.

17 Q And know the duration of time that they were
18 exposed to that product, correct?

19 A Correct.

20 Q And the, you know, relative differences in the
21 exposures, whether it was ventilated, whether it
22 was not ventilated, how the product was applied,
23 correct?

24 A I would call it exposure concentration.

25 Q Right. But before you even get to those other

1 things, you've got to know what was in the
2 product, correct?

3 A That's an important parameter, yes, sir.

4 Q Right. It's not just important. It's the No. 1
5 parameter? You can't get there from here if you
6 don't know what was contained in the product that
7 the person was exposed to, correct?

8 A With one disagreement.

9 Q Okay.

10 A And that disagreement, Justin, if the overall
11 dose, regardless of any contaminant, is much less
12 than that five fiber year per CC dose, it doesn't
13 matter. If the total exposure is so much less,
14 then I'm not worried about some minuscule
15 percentage of the amphibole contaminant that might
16 exist within that exposure array.

17 Q I'm just talking generally, actually. There's no
18 way for you to do a risk estimate with regard to
19 somebody suffering from mesothelioma unless you
20 know what's in that product, correct?

21 A No. I think my previous answer is where I would
22 come down on that. If I do a worst case
23 evaluation and the exposure resulting in the dose
24 is so low, then it essentially becomes less
25 important to ascertain if that exposure and

1 resulting dose had a minor amount of amphibole in
2 the composition.

3 Q Okay. And back to the original question. Do you
4 have an opinion as you sit here today on whether
5 or not Thetfort chrysotile asbestos can produce
6 mesothelioma in man?

7 A My opinion relates, as I've answered two other
8 times, I do believe there is a relationship
9 between amphiboles, proper doses and the
10 contraction of mesothelioma. The work I've seen
11 is that Thetfort mine does have a vein of
12 tremolite.

13 So that may have -- that chrysotile,
14 excuse me, may have a tremolite contaminant in it.
15 So there is a relationship that could be
16 established at the proper dose between Thetfort
17 tremolite contaminated chrysotile and
18 mesothelioma.

19 Q Okay. How much Thetfort chrysotile would you need
20 to associate the exposures with human
21 mesothelioma? What would it take for you to give
22 causation?

23 MR. HUELSMANN: I'll object as to vague
24 and asked and answered.

25 BY MR. SHRADER:

1 Q Not how much of the tremolite. How much of the
2 chrysotile itself, Thetfort chrysotile with the
3 tremolite in it?

4 A I don't know. I would have to -- I'd have to
5 contemplate and do calculations.

6 Q Thank you. As you sit here today, you don't have
7 an opinion as to how much Thetfort chrysotile
8 asbestos it would take to induce mesothelioma in
9 man, correct?

10 A With one caveat. If, in fact, it's from a
11 location at Thetfort that does contain tremolite
12 contamination.

13 Q And you don't know the answer to that question
14 right now, because as you sit here today, you're
15 unfamiliar with the research that has been done or
16 at least any authors that are pointing me to any
17 papers as to the relevant concentration of
18 tremolite in Thetfort Mine chrysotile asbestos,
19 correct?

20 A No, my answer earlier was that I looked at it. I
21 don't recall it precisely as I sit here today.

22 Q Okay. So with that one caveat, you don't have an
23 opinion as you sit here today as to how much
24 chrysotile asbestos it would take from the
25 Thetfort mines to cause mesothelioma in man?

1 A I guess the only way I know how to answer it,
2 again, it's a function of if that Thetfort
3 chrysotile had amphibole contaminants. Then if
4 that's the case, then I could do a calculation
5 based on exposure dose and opine whether or not
6 that employee, that worker, that individual may be
7 at risk for mesothelioma. There's too many
8 unknowns.

9 MR. SHRADER: Objection, nonresponsive.

10 BY MR. SHRADER:

11 Q As you sit here today, Doctor, do you have an
12 opinion on whether or not -- strike that. As you
13 sit here today, Doctor, do you have an opinion on
14 how much Thetfort mine chrysotile would be
15 necessary to induce mesothelioma in man?

16 MR. HUELSMANN: Object, asked and
17 answered.

18 THE WITNESS: I don't know how to answer
19 it any other way.

20 MR. SHRADER: Objection, nonresponsive.

21 BY MR. SHRADER:

22 Q The way to answer it is a yes or no pretty much.
23 Doctor, as you sit here today, do you have an
24 opinion on how much Thetfort mine chrysotile it
25 would take to induce mesothelioma in man?

1 MR. HUELSMANN: Same objection. You can
2 state your answer, Doctor, and clarify your
3 answers or explain your answers as you need
4 necessary to voice your opinions.

5 MR. SHRADER: And I'm going to keep
6 asking it until I get an answer. And that's fine.

7 THE WITNESS: My answer is my answer,
8 Justin.

9 BY MR. SHRADER:

10 Q Is it yes or is it no, Doctor?

11 A It's yes and no.

12 Q Okay. How long did you work for McLaren-Hart,
13 Doctor?

14 A May I look at my CV?

15 Q Sure.

16 MR. HUELSMANN: If we're going into a
17 new area, do you want to take a break for 10
18 minutes or use the restroom?

19 MR. SHRADER: That's fine with me.

20 MR. HUELSMANN: All right.

21 VIDEOGRAPHER: We are off the record at
22 11:14 a.m.

23 (Break taken.)

24 VIDEOGRAPHER: We are back on the record
25 at 11:21 a.m.

1 BY MR. SHRADER:

2 Q Doctor, we're back on the record after a short
3 break. Are you ready to continue?

4 A Yes, sir.

5 Q Good. How long did you work at McLaren-Hart?

6 A From 1996 through two sales that then would have
7 been to August of 2002.

8 Q Were you the one that was involved in selling that
9 company?

10 A Yes.

11 Q Taking it into bankruptcy or at least seeing it
12 through bankruptcy?

13 A I'm afraid so.

14 Q So if you were there in that time period, you were
15 there when they were doing work with the Chrome
16 Coalition?

17 A Yes, sir.

18 Q Okay. And did you work on any of that Chrome
19 Coalition stuff?

20 A No, sir.

21 Q You didn't?

22 A No, sir.

23 Q What do you think about that controversy? Do you
24 think what McLaren-Hart did with the Chrome
25 Coalition was ethical?

1 A Well, first I have to clarify. It was a division
2 of McLaren-Hart by the name of Chem Risk.

3 Q Right.

4 A And the Chem Risk division was headed by another
5 individual who essentially, I guess, worked on the
6 project and has now been criticized. After the
7 bankruptcy, he retained the name Chem Risk and has
8 now started his own business using that same name.

9 Q Right. But the work on the Chrome Coalition stuff
10 that's drawn the scorn and ire of some was done
11 while Chem Risk was still a division of
12 McLaren-Hart, correct?

13 A During part of the time, yes, sir.

14 Q And do you think -- my question was, do you think
15 what Chem Risk did, what McLaren-Hart did for the
16 Chrome Coalition was moral and ethical?

17 A I'm not familiar with all the work that Chem Risk
18 did for the Chrome Coalition. What I've read
19 seems, I guess, to be -- not to be trite, I don't
20 like everything I read.

21 Q It's pretty nasty, isn't it?

22 A Well, I've seen both sides. And I assume
23 somewhere in the middle is reality. But if you
24 look at some of those that are taking shots at the
25 Chem Risk group, it's not real pretty.

1 If you look at how Chem Risk and some of
2 the others engaged in it have responded, it
3 appears it's not as bad as those that are taking
4 shots at it have first offered.

5 Q How many total years were you at McLaren-Hart?

6 A I believe six.

7 Q Okay.

8 A Little more.

9 Q Have you ever, like, tried to find out the truth?

10 Let's back up. Let's explain to everybody what
11 we're talking about. This is the controversy that
12 involved hexavalent chromium?

13 A Yes, sir.

14 Q In particular, chromium six and seven, right?

15 A Well, chromium six is hexavalent chromium.

16 Q Right.

17 A It's primary -- chrome six hexavalent.

18 Q And there was a study that was commissioned in
19 China, correct, that Chem Risk was in charge of,
20 that McLaren-Hart was in charge of commissioning
21 in China?

22 A I believe we had a contract at McLaren-Hart for
23 Chem Risk to do some work in China. One of the
24 studies of which the Chinese had conducted then
25 was reviewed by McLaren-Hart.

- 1 Q Up to that time --
- 2 A Excuse me, was reviewed by Chem Risk.
- 3 Q Right. Well, and Chem Risk was a part of
- 4 McLaren-Hart while this was all going on, right?
- 5 A The early stuff, yes. It was a division of
- 6 McLaren-Hart.
- 7 Q And before you -- before you spun off Chem Risk,
- 8 while Chem Risk was still a part of McLaren-Hart,
- 9 they had the re-study of chromium six that was
- 10 published, correct?
- 11 A I'd have to look at the time. I don't recall the
- 12 exact dates, Justin.
- 13 Q You've never looked into the truth -- you really
- 14 have no opinion on whether or not what happened
- 15 was ethical or unethical?
- 16 A I've never had a reason to look at it, because by
- 17 the time this was evident, the Chem Risk division
- 18 had been, I guess, moved to the founder of Chem
- 19 Risk, and he continued all the work of Chem Risk.
- 20 Q And that man's name is Dennis Paysterbach,
- 21 correct?
- 22 A Dr. Paysterbach, yes, sir.
- 23 Q Are you a friend of Dennis Paysterbach's?
- 24 A We are cohorts.
- 25 Q How do you -- what do you mean by "cohorts"?

1 A As we were going through the bankruptcy, Dennis
2 and I ended up on different sides. And I can't
3 necessarily say that we've had any communication
4 except we had an e-mail just a few weeks ago about
5 his involvement. And I never really sought out to
6 find out what, you know, Dennis was involved in in
7 this time.

8 Q Okay. He sent you an e-mail a couple weeks ago,
9 is that what you're telling me?

10 A Yes, sir.

11 Q And his involvement in what, I'm sorry?

12 A In the overall bankruptcy and the reasons for the
13 bankruptcy.

14 Q Okay. I guess what I'm asking you is, do you have
15 an opinion on whether or not what he did and what
16 Chem Risk did -- what really McLaren-Hart did and
17 its involvement with the Chrome Coalition was
18 moral or ethical, or do you have no opinion?

19 A I guess the clarification I'd like to make, it
20 wasn't McLaren-Hart. It was a privately operated
21 division of McLaren-Hart by the name of Chem Risk.
22 Chem Risk was started by Dennis Paysterbach,
23 continued under his guidance, left with him after
24 the bankruptcy.

25 And all of the work was independent of

1 McLaren-Hart. During that time, I can't say that
2 any of us who were officers of McLaren-Hart really
3 had any intimate understanding of what Dennis was
4 engaged. And since we got rid of the division as
5 part of the settlement of the bankruptcy, I never
6 really engaged in any quest to find out in what
7 Dennis was involved.

8 Q Is that because you didn't want to know?

9 A I had too many other fish to fry, and that was one
10 that really wasn't on the radar screen for me,
11 Justin.

12 Q And with all due respect, Doctor, that really
13 wasn't what I asked you. What I really asked you
14 is as you sit here today, whether or not what Chem
15 Risk and McLaren-Hart, no matter how we fold it,
16 what they did was right or wrong, or do you have
17 no opinion?

18 A I don't really know all the facts, so I guess I
19 don't have an opinion.

20 Q Okay. Thank you. Have you reviewed the testimony
21 of Dr. Badrozian in this case, in the Carrizales
22 case?

23 A No, sir.

24 Q All right. If his deposition was taken, that
25 would be news to you as you sit here, correct?

- 1 A I'm not familiar with it at all, so yes, sir.
- 2 Q Do you know whether Dr. Badrozian was testifying
3 for the defense or the plaintiff in this case?
- 4 A No, sir, I do not.
- 5 Q Have you ever met Dr. Badrozian before?
- 6 A No, sir.
- 7 Q Then I think it would be fair to say that you
8 don't have any reason as you sit here today to
9 affirm or deny any of the opinions that
10 Dr. Badrozian may have in this case, correct?
- 11 A That's correct.
- 12 Q Do you know who Dr. Hammer is?
- 13 A Yes, sir, I believe I do.
- 14 Q Okay. Who's Dr. Hammer?
- 15 A My understanding is Dr. Hammer is a pathologist, I
16 believe, in the Seattle area.
- 17 Q That's correct. Have you ever read any
18 publications by Dr. Hammer?
- 19 A Yes, sir.
- 20 Q Is Dr. Hammer a well-respected expert in the area
21 of asbestos and health?
- 22 A I believe he would be classified as a respected
23 pathologist who's performed various work in
24 asbestos.
- 25 Q Okay. Can you tell me anybody in the United

1 States that's more qualified to talk on asbestos
2 exposure and mesothelioma than Dr. Hammer?

3 MR. HUELSMANN: Just object as to vague.

4 THE WITNESS: Yeah, I guess I've never
5 put together a score card. You know, there's
6 others who have done as much or probably more work
7 on asbestos and mesothelioma as Dr. Hammer, and I
8 just don't know how to score people.

9 BY MR. SHRADER:

10 Q Okay. Tell me who's done as much work as
11 Dr. Hammer on asbestos and mesothelioma.

12 A I would suggest Roggli's done perhaps more. I
13 would suggest Bernstein's done a goodly amount of
14 work.

15 Q I'm making a list. So go ahead. Tell me who's
16 done as much as he has.

17 A I guess probably Brody. And I don't know how to
18 classify, you know, as much work, are we talking
19 about number of publications? You know, there's a
20 goodly number of researchers. You know, Craighead
21 has devoted most of his work and life in studying
22 asbestos and disease. Again -- so I don't know
23 how to do a score card on this.

24 Q Are you talking about John Craighead?

25 A Yes, sir.

1 Q When is the last time that John Craighead
2 published a book or article or anything on
3 asbestos?

4 A I think he's still working on one, to be honest.

5 Q Okay. When's the last time in the last, say, 20
6 years that John Craighead has published an article
7 on asbestos?

8 A I couldn't tell you the exact date, but I know
9 there's been something within 20 years that
10 Craighead has published.

11 Q Okay. How many articles in the last 20 years do
12 you feel like John Craighead has published on
13 asbestos?

14 A See, that's part of my problem. I don't think
15 just turning out articles is the only criteria of
16 which I would judge someone for their work and
17 their contributions to studying asbestos and the
18 relationship between asbestos and mesothelioma.
19 So that's why I'm very uncomfortable doing this
20 score card thing that I think I've been asked to
21 do.

22 Q Okay. Well, let me just go one by one. Is it
23 your opinion that Dr. Victor Roggli has published
24 as much literature on the incidence of
25 asbestos-related disease as Sam Hammer?

1 A Again, I'm very uncomfortable trying to categorize
2 these guys on a number of studies. And I don't
3 know that I could tell you precisely how many
4 studies any one of these individuals has
5 published.

6 Q Uh-huh, okay. Let me just make the list, though.
7 And I'm talking about general asbestos-related
8 work, however you define it. The people that you
9 would rank up there with Sam Hammer in terms of
10 knowledge and work on asbestos-related diseases,
11 specifically mesothelioma and asbestos exposure
12 are Victor Roggli, Bernstein, Brody -- are you
13 talking about Arnold Brody?

14 A Yes, sir.

15 Q Okay. And John Craighead, correct? Anybody else
16 that's in that league?

17 A Churg has done a goodly amount of work, Darnton's
18 done a goodly amount of work, Platek has done a
19 goodly amount of work. I guess I just have to go
20 through and try to categorically list people.

21 Q No, that's okay. Craighead. You said you don't
22 know how many articles he's published in the last
23 two decades, correct?

24 A That's correct.

25 Q All right. Tell me what he's done in the last two

1 decades that you think has contributed to the
2 knowledge base on asbestos and mesothelioma.

3 A I believe he has a text or a chapter in a text
4 that is in the works.

5 Q Have you read it?

6 A No. I said it's in the works.

7 Q Okay.

8 A I believe I read the testimony of his in a case
9 that he actually mentioned that. And I would
10 classify him as a more hands-on patient-type
11 person than someone like Brody who I classify as
12 just a true research person.

13 Q Dr. Craighead meets with patients?

14 A He did. He's now -- I believe he's in retirement
15 now.

16 Q Okay. And when's the last time to your
17 understanding from the testimony that you read
18 that Dr. Craighead met with a patient?

19 A I don't recall date and verse.

20 Q Okay. I was asking you a simple question before
21 when I asked who do you think compares to Sam
22 Hammer in terms of work on asbestos and
23 mesothelioma, and one of the people that you
24 mentioned was John Craighead?

25 A Correct.

1 Q And I said, do you think he's published any papers
2 in the last two decades, and you said, I think so,
3 but I don't think it -- your work on asbestos and
4 mesothelioma should be limited just to what you
5 publish, correct?

6 A That's correct.

7 Q Okay. And what I'm asking now is, what has John
8 Craighead done in your mind to contribute to the
9 body of knowledge on asbestos and mesothelioma,
10 and your answer is?

11 A Again, he has published, he has seen patients, he
12 has, I guess, provided a goodly amount of
13 information to relate it to the database that we
14 now use in evaluating exposures to asbestos.

15 Q Okay. And how many times do you think
16 Dr. Craighead has been published since, let's just
17 say, '87?

18 A I don't know without looking, Justin.

19 Q What would you guess? Give me your best estimate.

20 A Oh, I wouldn't -- I wouldn't offer a guess.

21 Q Do you think he's been published at all in the
22 last 20 years?

23 A Yes, sir.

24 Q Okay. And patients, which patients does
25 Dr. Craighead see?

1 A I believe his testimony was while he was at the
2 University of Vermont, he was reviewing case files
3 and seeing patients during his tenure when he was
4 still actively engaged.

5 Q And how long ago was Dr. Craighead at the
6 University of Vermont?

7 A Again, I don't recall without reading his
8 testimony again.

9 Q And that database that you're talking about, the
10 third thing that Dr. Craighead has given us, the
11 database that you're talking about, what
12 information has he given us in the last 20 years
13 to add to that database?

14 A Again, his evaluation of patients. I believe he
15 did some work comparing exposures to the Helsinki
16 criteria and looking at the incidents of pleural
17 plaques, I believe some fiber burden work,
18 mesothelioma as criterion to be used for
19 verification of mesothelioma.

20 Q Really. Dr. Craighead did that?

21 A I believe so.

22 Q Okay. Do you have an article that you can cite
23 me?

24 A Not sitting here, no.

25 Q Okay. Would they be part of the 700 articles that

1 you guys have in-house?

2 A They may be.

3 Q Okay. Then I'm going to have to make my scope a
4 little bit broader, I'm afraid. Let me back up to
5 Dr. Hammer for a minute. Do you have anything but
6 the upmost professional respect for Dr. Hammer?

7 A Oh, no.

8 Q Do you have --

9 A I don't necessarily agree with all of his
10 opinions, but I do believe he deserves respect.

11 Q That was my next question. What opinions of
12 Dr. Hammers do you disagree with?

13 A I believe in the near past I read some of his work
14 where he was -- I don't remember if it was a study
15 or testimony in a case, Justin, where he noted an
16 asbestos dose, my recollection is of less than one
17 fiber year per CC, as being related to the
18 causation of mesothelioma. And I just haven't
19 seen that from any other researcher.

20 Q Okay. Let me back up. How did you get a copy of
21 Dr. Craighead's court testimony?

22 A I don't know. I'm sure it was in one of -- one of
23 the cases I worked on. It may have been
24 deposition testimony instead of court testimony.

25 Q Okay. One of the cases you worked in,

1 Dr. Craighead testified and the defense lawyer
2 said that to you?

3 A I don't remember how I got it, but yes. I recall
4 having a deposition transcript of Dr. Craighead.

5 Q If a defense lawyer didn't give it to you, how
6 would you know how to get it?

7 A My testimony was I don't know how I got it.

8 Q Dr. Hyers, do you know Dr. Hyers?

9 A No, sir, I do not.

10 Q As you sit here today, is there any reason --
11 anything about Dr. Hyers or his opinions that you
12 know you disagree with?

13 A No, sir, I do not.

14 Q In other words, you won't be offering any opinions
15 in trial that at least as far as you sit here
16 today, that Dr. Hyers has been wrong about
17 anything, correct?

18 A I don't know the gentleman. I assume it's a man.

19 Q It is.

20 A Don't mean to be --

21 Q Correct, correct.

22 A Okay.

23 Q Do you know who Dr. Lemon is, Dr. Richard Lemon?

24 A Yes, I do.

25 Q When you were at OSHA, was he at NIOSH?

1 A I believe so.

2 Q Do you have respect for Dr. Lemon?

3 A I've read a very limited amount of his
4 epidemiological work. I guess I have no reason to
5 have any opinion other than he's probably a fine
6 gentleman.

7 Q Okay. He's pretty well credentialed, isn't he?

8 A I don't recall.

9 Q Okay. Do you recall that Dr. Lemon was the former
10 assistant surgeon of the United States?

11 A That I do.

12 Q Do you recall that Dr. Lemon was the acting head
13 of NIOSH for a period of time?

14 A That's my understanding.

15 Q Do you recall that Dr. Lemon received medals and
16 service awards from the U.S. Public Health
17 Service?

18 A No, that I don't recall.

19 Q Okay. Did you ever receive any medals or awards
20 from the U.S. Public Health Service?

21 A I never worked for the U.S. Public Health Service.
22 I did receive a grant to graduate school from the
23 Public Health Service.

24 Q Okay. Good. Any publications that you've read of
25 Dr. Lemon's that you disagree with?

1 A I recall one study that he did a retrospective
2 evaluation of a cohort and then opined that
3 asbestos, period, is a causative factor in
4 mesothelioma and didn't quantify or qualify how
5 much or the location or type of that asbestos. So
6 it's hard for me to understand the study without
7 that kind of specificity, Justin.

8 Q All right. Do you remember the name of that
9 article or the study that you're talking about?

10 A Not off the top of my head, no, sir.

11 Q Do you know how many articles Dr. Lemon has
12 published, even a ballpark figure?

13 A No, sir, I don't.

14 Q All right. Have you, sir, published ever on the
15 incidents of asbestos-related disease?

16 A No, sir.

17 Q Dr. Castleman, do you know who he is?

18 A Yes, sir, I do.

19 Q All right. Do you have any professional
20 disrespect for Dr. Castleman?

21 A No, sir, I do not.

22 Q Any opinions of Dr. Castleman's that you know of
23 that you disagree with as you sit here today?

24 A No, I do not.

25 Q All right. Dr. Eagleman, do you know who

1 Dr. David Eagleman is?

2 A No, sir, I do not.

3 Q You don't know Dr. David Eagleman?

4 A No, sir.

5 Q Have you ever read any published literature by

6 Dr. Eagleman before?

7 A I don't recall.

8 Q Okay. That's interesting. That's a first. I'm

9 going to check you down for that. All right.

10 What's the average latency for the induction of

11 human mesothelioma?

12 A Well, I guess I could bifurcate that. Essentially

13 if you look at the Helsinki criteria, if you look

14 at other studies, essentially we need a 10-year

15 period after which then we may have the

16 contraction with the overall latency being 20 to

17 30 years.

18 Q Okay. If I understand you -- and you have felt

19 free to correct me when I'm wrong, so we'll try it

20 again. Your opinion, Doctor, is that the minimum

21 latency period necessary for an asbestos exposure

22 to induce mesothelioma in man is 10 years, but it

23 may be as long as 20 or 30 years?

24 A Perhaps I didn't answer that properly.

25 Q No problem. Correct me.

1 A In general, we think that the last 10 years of
2 exposure in a 20- to 30-year latency is probably
3 less important, if that helps.

4 Q Okay. In other words, exposures in the last 10
5 years aren't contributory to the mesothelioma
6 process, in your mind?

7 A Did you say "are" or "are not"?

8 Q Are not.

9 A In general, that's what some believe.

10 Q Right. Is that what you believe, though?

11 A I don't know.

12 Q Do you have an opinion on the average latency that
13 it takes to induce mesothelioma in man?

14 A I believe the 20- to 30-year latency appears to be
15 valid.

16 Q All right. And just for everybody playing the
17 home game, the "average latency" means from the
18 time of the exposure to the development of the
19 disease, correct?

20 A To contraction of symptoms of which you can
21 diagnose the disease.

22 Q Okay. In other words, the disease may have
23 already been manifesting itself before that 30
24 years, but it doesn't manifest itself enough to
25 get diagnosed, because there aren't any symptoms?

1 Is that what you're saying?

2 A Yes, sir.

3 Q All right. What is the minimum and maximum
4 latency period, in your mind, from exposure to
5 disease?

6 A You know, that's very difficult, because we have
7 idiopathic, we have spontaneous mesotheliomas that
8 have been noted. We have mesotheliomas that have
9 been noted in children if not infants.

10 Q Then let me change the question, if you don't
11 mind.

12 A Okay.

13 Q What's the minimum and maximum latency period on
14 an asbestos-caused mesothelioma?

15 A I believe if you look at the studies, you may see
16 something in the neighborhood of 15 years, perhaps
17 a little less from exposure to contraction to
18 symptomatology.

19 And, you know, I've seen cases where the
20 allegation is the exposure occurred 40 to 50 years
21 prior to the contraction of the symptoms. So
22 somewhere -- I believe you could be as low as 15
23 years, perhaps even a little bit less or as long
24 as 40 years or longer.

25 Q In other words, without knowing more, fiber type

1 or anything like that, just all things being
2 equal, an exposure -- you might call an exposure
3 contributory if it was between 15 and 50 years ago
4 from the development or onset of the disease and
5 symptomology?

6 A I believe so.

7 Q Okay. Let's talk about -- and I don't want to
8 open up a wound again, but I need to ask you some
9 questions about the level of exposure necessary to
10 induce mesothelioma in humans, and I'm going to
11 start with crocidolite, because that seems to be
12 an easy one for the amphibole hypothesis camp.

13 How many fiber per CC years -- let me
14 just ask you. Let me back up. Do you have an
15 opinion on whether or not there is a safe level of
16 exposure to chrysotile asbestos?

17 A Again, if you can define safe, are we talking
18 pleural plaque, asbestosis, lung cancer --

19 Q Anything.

20 A Sir?

21 Q Anything. By "safe" I mean you won't get hurt at
22 all.

23 A I guess if we look at minimum risk levels, that
24 essentially is the lowest exposure that one may
25 have that could result in some type of adverse

1 physical anomaly. Generally, in an animal, if you
2 look at that data specifically what ATSDR has
3 published, you might find MRLs as low as five to
4 10 fiber years per CC.

5 Q Five to 10 fibers -- so five fibers per CC is a
6 safe limit of exposure to chrysotile asbestos in
7 your mind?

8 A Are we talking dose or are we talking exposure
9 concentration? Because you just gave me an
10 exposure concentration.

11 Q Either way. It's up to you. I want what the safe
12 level of exposure to chrysotile.

13 A I believe with the OSHA PEL, as it exists now,
14 they were meeting the objectives of protecting our
15 workforce regardless of the type of asbestos. So
16 I would include that as far as an exposure
17 concentration one may have over their working life
18 of .1 fiber per CC. Which if you got a 50-year
19 working life, that would relate to five fiber
20 years per CC.

21 Q Okay. So in your estimation, a safe level of
22 exposure to chrysotile is five fiber per CC years?

23 A Yes, sir.

24 Q At an average concentration of .1 fiber per CC
25 exposure?

1 A Correct.

2 Q Let's back up to crocidolite now, blue African
3 crocidolite. What is the safe level of exposure
4 to blue African crocidolite to human beings?

5 A I guess I would put it in the same range, that
6 again --

7 Q .1?

8 A Again, the OSHA PEL seems to be effective as we
9 move forward with respect to employee exposures
10 over a working life time.

11 Q Okay. So same answer for crocidolite, correct?

12 A Yes, sir.

13 Q How about for amosite? Would the safe level in
14 Dr. Anderson's world be the same?

15 A Yes, sir.

16 Q All right.

17 A Again, that safe level can result in different
18 physical anomalies --

19 Q I'm getting to that, I promise.

20 A Okay.

21 Q I didn't mean to interrupt you, but -- tremolite,
22 same safe level in Dr. Anderson's world, five
23 fibers per CC years, .1 is your PEL as a safe
24 level for exposure?

25 A .1 fiber per CC PEL.

1 Q Okay. And I promised you we'd get there, and now
2 we're getting there. What is the level where you
3 can be safe from mesothelioma, okay? And I'll
4 start with crocidolite. What is the level of
5 exposure that's safe to be exposed to crocidolite
6 where you won't see any mesotheliomas?

7 A I guess if we look at the respective data out
8 there, it appears that for amphiboles with the
9 fiber dimension, with the fiber durability, then
10 the resulting dose is likely five fiber years per
11 CC again.

12 That's predicated, again, on the ATSDRs
13 toxological profile. It's based on an expansion
14 of the OSHA PEL, the ACGIH TLV. And if we looked
15 more appropriately, perhaps even at the Helsinki
16 criteria, it might even be higher. But I think to
17 be precautionous, I would establish the five fiber
18 year per CC.

19 Q I'll get to the sources for all this information
20 in a second. But what is the level at which --
21 below which you won't see any mesotheliomas in man
22 for amosite? What's the level? Same level?

23 A Well, I have a problem with the question.

24 Q Okay.

25 A Which regardless I think we're going to see

1 idiopathic meso's in man. I guess it depends who
2 you read. It may say that, you know, 10 to 20
3 percent of the meso's in men and up to 50 percent
4 of the meso's in women are idiopathic.

5 Q Uh-huh.

6 A So your question to say we won't see any, I don't
7 know how to answer that.

8 Q Okay. Your idiopathic caveat is noted, as it
9 always is, okay? And idiopathic would mean it
10 wouldn't have anything to do with asbestos,
11 correct?

12 A That's correct.

13 Q All right. What is the -- what is the safe level
14 of exposure to amosite below which the amosite
15 exposures won't cause mesothelioma in man?

16 A I guess I would rely on the five fiber year per CC
17 again dose.

18 Q And again, .1 --

19 A Yes, sir.

20 Q -- fiber per CC is your PEL, would protect you
21 from mesothelioma?

22 A Yes, sir.

23 Q Okay.

24 A Well, over a working lifetime.

25 Q Yes, sir.

1 A Okay.

2 Q Tremolite, same question. What is the safe level
3 of exposure to tremolite where you will not see
4 any asbestos-induced mesotheliomas?

5 A With the same caveat about idiopathic?

6 Q Yes, sir.

7 A I guess I'm comfortable again with the OSHA PEL.

8 Q Of .1 fiber per CC?

9 A Yes, sir, I'm sorry.

10 Q That's okay.

11 A Over a working lifetime.

12 Q And over a working lifetime, that would be five
13 fiber per CC years --

14 A Yes, sir.

15 Q -- as the safe level of exposure to tremolite,
16 correct?

17 A Correct.

18 Q Last question with regard to chrysotile. What is
19 the safe level of exposure to chrysotile below
20 which you will not see any asbestos-induced
21 mesotheliomas?

22 A Again, with the idiopathic caveat?

23 Q Right.

24 A My answer is I don't know.

25 Q Don't know what the safe level is?

1 A No. It appears, again, with my work on short
2 fiber, it's in all likelihood far above the OSHA
3 PEL --

4 Q Oh, okay.

5 A -- expanded a working lifetime. With short fiber,
6 I would have concern as you approach the 100 fiber
7 years per CC provided it's short fiber and it's
8 not contaminated with an amphibole.

9 Q Okay. I need a number. For lack of a better
10 term -- and when I'm asking the question, make
11 sure you hear me say asbestos-induced
12 mesotheliomas. Because I thought that cured your
13 idiopathic problem. Maybe not. You can answer
14 how you want to.

15 But for the purposes of chrysotile-
16 induced human mesotheliomas, your opinion is that
17 a safe level of exposure is up to a hundred fiber
18 per CC years of exposure?

19 A No. My answer is, at a hundred fiber years per CC
20 for short fiber not contaminated with tremolite, I
21 would have concerns.

22 Q At a hundred?

23 A Yes, sir. Approximately a hundred. I mean --

24 Q Right.

25 A -- I've done a -- more or less a modeling of what

1 a drywall worker will get over a working
2 lifetime --

3 Q Uh-huh, yes, sir.

4 A -- and that's something close to a hundred fiber
5 years per CC.

6 Q In other words, under a hundred fiber per CC
7 years, you think somebody is -- an exposure to
8 chrysotile, is safe from getting asbestos-induced
9 mesothelioma?

10 A Provided it's short fiber and it's not
11 contaminated with tremolite or any other
12 amphibole.

13 Q Okay. You just said "provided," and then would
14 your answer be yes?

15 A I said provided it's not contaminated with the
16 amphibole. If it's contaminated with the
17 amphibole, then you have to look at the
18 amphibole --

19 Q Okay. And I'm -- I'm sorry.

20 A -- the amphibole toxicity in and of itself.

21 Q I'm just having trouble with the transcript here.
22 You can say provided whatever you want. I just
23 need a yes or no on the end so I can know what you
24 said. Is your opinion, Doctor, that human beings
25 are safe from asbestos-induced mesothelioma if

1 their fiber per CC year concentration is below a
2 hundred provided that the chrysotile is free of
3 tremolite?

4 A And my answer was as it was an hour ago. I don't
5 know. But at around a hundred fiber years I would
6 have concern.

7 Q Okay. Below a hundred fibers per CC years, would
8 you have concern that that person is at risk for
9 developing mesothelioma, asbestos-induced
10 mesothelioma?

11 MR. HUELSMANN: Objection, vague. Which
12 fiber type are you talking about?

13 MR. SHRADER: Chrysotile. He knows
14 that.

15 THE WITNESS: Without amphibole
16 contamination?

17 BY MR. SHRADER:

18 Q Right.

19 A My answer would be I wouldn't have as much concern
20 as I would above, because we don't see workers in
21 those type of cohorts with that kind of exposure
22 that have contracted mesothelioma.

23 Q Okay. Would you have any concern below a hundred
24 fiber CC years when somebody's been exposed to
25 chrysotile asbestos without amphiboles in it,

1 let's just say, that that person below a hundred
2 fiber per CC years, do you have concerns, is that
3 person at risk for getting mesothelioma?

4 A I don't believe so.

5 Q Okay. If you were in charge of OSHA and NIOSH and
6 the EPA, what would the permissible exposure limit
7 be for chrysotile asbestos?

8 A The dilemma is we're not just looking at -- excuse
9 me, not just looking at protecting the workforce
10 from mesothelioma. We're talking about the
11 incidents of other disease. Simply stated,
12 pneumoconiosis or a lung cancer.

13 Q Uh-huh.

14 A I think the PEL has been effective in trying to
15 trifurcate and have one PEL for chrysotile, one
16 for amosite and one for crocidolite and perhaps a
17 fourth for tremolite. I don't think is
18 reasonable.

19 So I think we group it as a -- as a
20 mineral together and then establish the lowest
21 PEL. And we don't have to worry about
22 contamination of the chrysotile with the amphibole
23 and we don't have to worry about differentiation.
24 So I believe OSHA's done a reasonably good job
25 with the .1 fiber per CC PEL.

1 Q Okay. Are you ready for the cellular biology
2 exam?

3 A I'll do my best.

4 Q Wait, wait. Are you a cellular biologist?

5 A No, sir.

6 Q Do you -- do you intend to offer opinions in this
7 case as to cellular biology?

8 A I don't know.

9 Q Okay. Well, we have to take the test then. Let's
10 just start with DNA translocations. First of all,
11 have you -- have you been offered any tissue in
12 the Carrizales case to look at?

13 A No, sir.

14 Q Are you qualified to look under a microscope and
15 look at any tissue?

16 A No, sir.

17 Q All right. Are you qualified to take a look at
18 the recombinant DNA of asbestos plaintiffs?

19 A I don't believe so.

20 Q All right. Are you well versed in the literature
21 on DNA translocations in human beings who have
22 been exposed to asbestos fibers?

23 A I believe reasonably so.

24 Q Okay. Do you know all the steps incident from the
25 first genetic damage, no matter where that allele

1 may be to the last genetic damage necessary for
2 the induction of mesothelioma in man?

3 A No, sir, I don't think I could recite such.

4 Q Okay. Would you also agree that as far as
5 mesothelioma goes, that you can't know what
6 specific fibers caused the specific genetic damage
7 that led to the disease?

8 A I don't believe so.

9 Q Right. And we don't know what exact changes are
10 necessary, all of them at least in sequence? We
11 know some of them, but we don't know all of the
12 different changes that are necessary to cause
13 mesothelioma, do we?

14 A I would agree.

15 Q All right. And are you saying -- let me ask you
16 this. Are you saying that chrysotile asbestos
17 exposures could not have possibly been involved in
18 any of the genetic mutations necessary for the
19 induction of mesothelioma in Mr. Carrizales?

20 A This may require a narrative.

21 Q Well, you've done it before, so go ahead.

22 A Okay. Thank you.

23 Q Go ahead.

24 A You're not too bad for a long horn.

25 Q Go ahead.

1 A I guess I ascribe to in all likelihood it takes
2 five to perhaps as many as fourteen hits to cause
3 genetic damage that can result in a mesothelial
4 cell becoming aberrant.

5 Q Excuse me. I didn't understand what you said,
6 five to fourteen --

7 A Hits.

8 Q Right, okay. And by "hits," what do you mean?
9 Because we have to have that first.

10 A If we have to look at the cells going through the
11 cellular cell -- mesothelial cell, let's say, is
12 going to live 30 to -- I don't know, 90 days,
13 probably more likely 30.

14 That if you have that initial hit, that
15 you're causing the damage perhaps at the, you
16 know, P53 locale and that cell then goes through
17 the cellular division because of adhesion of the
18 fiber or reaction of reactive oxygen species or
19 perhaps even reactive nitrogen species. I don't
20 think we understand that pathway completely.

21 Then as you duplicate that cell, it may
22 have the initial error. It appears it's gonna
23 take multiple hits. I guess if you look at Brody,
24 you know, Brody says five to 14. And I haven't
25 seen anybody counter that.

1 So then you're gonna have to have a
2 fiber base, a fiber burden that is persistent
3 cells that perhaps -- excuse me, persistent
4 fibers, perhaps the proper type that can produce
5 the reactive oxygen species and perhaps the
6 reactive nitrogen species.

7 So that tells me in all likelihood
8 you're going to have to have something that's not
9 going to leach apart. And the low pH lung tissue
10 fluids, 4.5 or less. The chrysotile fiber,
11 because of the magnesium, will leach. Therefore,
12 I don't think you have the biopersistence. And I
13 think other authors will agree with that,
14 researchers would agree with that.

15 Secondly, then you're going to have to
16 have the ability, perhaps, for the reactive oxygen
17 species. Therefore, in all likelihood, you'll
18 need a higher content of iron. Iron obviously is
19 not included in the composition of magnesium
20 hydrated silicate such as chrysotile, but it is an
21 amosite and crocidolite.

22 So I guess my answer is, I haven't seen
23 anything to indicate that a chrysotile fiber
24 impacting a mesothelial cell may result in the
25 genetic damage that I just described.

1 Q Well, let's back up. You rely on Dr. Brody's work
2 to answer that question, right, the five to 14
3 changes or hits as you call them, genetic damage
4 necessary to induce mesothelioma, correct?

5 A He's one of the authors that opines on that, yes,
6 sir.

7 Q Right. What does Dr. Brody say as to whether or
8 not chrysotile is capable of causing those genetic
9 changes?

10 A Well, he's changed his opinion over the years.

11 Q He has?

12 A Well, initially he agreed with Roggli in a study
13 they co-authored that chrysotile is not a
14 causative factor. Now in some of the latest
15 testimony I've read of Dr. Brody, his opinion is
16 that it takes exposures well above background over
17 a longer period of time, that chrysotile may have
18 a role, in his opinion, in some of the
19 transcription errors that could result.

20 Q Okay. Since Dr. Brody's gonna testify at trial
21 before you are, do you mind if I show him this
22 part of the video live to the jury?

23 MR. HUELSMANN: I'm going to object to
24 that.

25 BY MR. SHRADER:

1 Q He can have all the objections he wants. I'm
2 asking you, do you have a problem if I show this
3 portion of the video to Dr. Brody?

4 A I rely on my client.

5 Q You rely on your client?

6 A I'm -- my work is for them.

7 Q Right. And what I'm asking you -- and he's gonna
8 be able to approach the judge and say whatever he
9 wants. What I'm asking you personally,
10 Dr. Anderson, is, do you mind if I play you
11 personally -- do you personally mind if I play
12 this portion of the video for the jury while
13 Dr. Brody's in the box?

14 A Again, I'll rely on my client. My relationship is
15 with them, and I don't know what their strategy is
16 nor should I know.

17 Q Okay. Do you think your client knows whether you
18 have a personal problem or not?

19 A I think this is out of order to ask me in this
20 venue without any discussion with my client to
21 know what their preference is. I don't believe
22 it's fair.

23 Q It's out of order? It's out of order?

24 A Yeah. I don't think it's fair.

25 Q Here's why I'm asking. Do you have any evidence

1 as you sit here today or can you tell me any
2 article where Dr. Brody in the past didn't think
3 that chrysotile asbestos was capable of causing a
4 cellular change necessary to induce mesothelioma
5 in man?

6 A Yeah. He did an article with Roggli.

7 Q Okay. And is it your opinion that Dr. Roggli
8 feels today that chrysotile asbestos cannot cause
9 mesothelioma in man?

10 A I hate to quote what Dr. Roggli would say, but I
11 think he believes it plays a much less significant
12 role, if any, in the causation of mesothelioma.

13 Q That brings up a good point. Would you defer to
14 Dr. Roggli on questions of causation? Do you
15 respect what he has to say?

16 A I believe I respect Dr. Roggli. I believe he
17 would rely on others such as myself with respect
18 to the doses and how those doses were derived.

19 Q Okay. And if Dr. Roggli has previously looked at
20 joint compound estimates that are a lot different
21 than the numbers you come up with and has relied
22 on those, you would beg to differ with Dr. Roggli,
23 I guess?

24 A Again, Dr. Roggli, in the testimony I've read, has
25 never opined on whether or not the joint compound

1 contained a tremolite contaminant or did not.

2 Q Okay.

3 A My recollection from Dr. Roggli's testimony is
4 rather he relied on work that showed that Thetfort
5 and Bells' chrysotile is amphibole contaminated,
6 and he based his opinions on joint compound
7 predicated on that.

8 Q And back to my original question. What evidence
9 do you have, what cellular molecular biology
10 studies do you have that say that chrysotile
11 cannot cause the genetic damage necessary to
12 induce mesothelioma in man?

13 A I base it on my earlier answer. I don't have
14 studies.

15 Q Uh-huh.

16 A I'm basing it on the fact of the lack of
17 biopersistence, the different chemistry and the
18 overall lack of durability of chrysotile fibers.

19 Q And are you talking about their durability in the
20 lung or their durability in the pleura?

21 A Both.

22 Q Okay.

23 A Because they have to have durability in the lung
24 to make it to the pleura.

25 Q They do? How do fibers get from the lung to the

1 pleura, Doctor?

2 A By at least three mechanisms.

3 Q And those are?

4 A If we look at longer amphibole fibers, I guess the
5 first is easy, and that's the transmigration.

6 Secondly, the fibers through phagocytosis
7 depending on the fiber size. You may have some
8 type of macrophage and phagocytic movement that
9 results in vascular transfer.

10 Thirdly, you can have straight vascular
11 transfer that may end up in the pleura. Then
12 fourth, the old sewage plant of the body, you can
13 actually have lymphatic transfer of the fibers
14 through the lymphatic system to the lymph nodes in
15 and around the pleura area.

16 Q And the first one, transmigration, is just a
17 general term. What do you mean by that if not
18 through the vascular and lymphatics?

19 A If they're actually rigid fibers, they can
20 actually move through the lung tissue through the
21 alveoli in and of themselves and make it into the
22 pleura area.

23 Q All right. So it's your testimony that the
24 asbestos fibers pierce the Parenchymal pleural
25 wall?

- 1 A Yes, they can.
- 2 Q What scientific research do you have for that
3 research?
- 4 A Oh, I've read it several times.
- 5 Q In what exactly, Doctor?
- 6 A I have to pull the references. But
7 transmigration -- well, I know for one that's
8 Craighead's work.
- 9 Q Okay. Dr. Craighead you're saying now has
10 published something that shows that asbestos
11 fibers pierce the Parenchymal pleural wall?
- 12 A Either he's published or he's testified such.
- 13 Q And if he's just testified as such, it would be in
14 that deposition transcript that you're talking
15 about?
- 16 A Yes, sir.
- 17 Q All right. And would that be something that we
18 could look at?
- 19 A I believe I can find it.
- 20 Q Okay. And other than Dr. Craighead, who may or
21 may not have published in the last 20 years, do
22 you have any other support for the proposition
23 that asbestos fibers pierce the Parenchymal
24 pleural wall?
- 25 A I believe I've also read it in Bernstein's work.

1 Q Bernstein, okay. And which work by Dr. Bernstein
2 in particular?

3 A I'd have to pull the exact reference, Justin.

4 Q All right. Is that something we can do today as
5 well?

6 A I can try.

7 Q Okay. Dr. Craighead and Dr. Bernstein, and the
8 stuff by Craighead was either something in a
9 deposition or it was something that he published,
10 correct?

11 A Yes, sir.

12 Q And Dr. Bernstein, did he testify to this or did
13 he write this in literature?

14 A I thought it was in a study of his.

15 Q Okay. And I guess the only way to see that is to
16 see an asbestos fiber actually going through the
17 pleural Parenchymal wall, correct?

18 A Yes, sir.

19 Q That's the only way to verify that type of
20 translocation, correct?

21 A I believe so.

22 Q Okay. Is there any other way that you can think
23 of?

24 A No, sir.

25 Q All right. And the vascular transfer, explain

1 that to the jury. How does that happen? How do
2 fibers get transported to the pleura through the
3 vascular system?

4 A I guess the easiest way is through phagocytosis,
5 that when you have the fibers actually embodied in
6 a phagocytic or macrophage, then they can actually
7 be moved by that mechanism and end up, for lack of
8 a better description, in and around the pleura.

9 Q How does it get there, though? Tell us.

10 A Well, the phagocytes are exactly as described.
11 They're one of the body's primary self-defense
12 mechanisms. I guess depending on who you read, a
13 general macrophage is maybe as low as seven, as
14 large as 14 microns. So they have the ability to
15 engulf a fiber.

16 The fiber then is moved, again, to the
17 vascular flow through the barrier. An alveoli is
18 a -- I guess a three-layer membrane that's rich in
19 vascular flow. It moves the membrane -- or excuse
20 me, moves the fiber into the vascular area and
21 then it's moved on to the circulatory system.

22 Q Oh, okay. You're saying that the phagocytes that
23 contain an asbestos fiber get into the human
24 bloodstream?

25 A That's one of the ways, yes.

1 Q Okay. Who says that?

2 A It's the mechanism of how some of the phagocytes
3 actually move throughout the body.

4 Q Through the bloodstream?

5 A Through the -- what I'd call the vascular flow.

6 Q But you're talking about the human circulatory
7 system, the bloodstream, right?

8 A Yes, sir.

9 Q Okay. Tell me who says, which authors say that
10 asbestos fibers are transported from the lung into
11 the human bloodstream back out to the pleura.

12 A That's not what I'm -- that's not what I'm saying.

13 Q Okay. What are you saying?

14 A I'm saying they can end up in the triple -- it's a
15 three layer wall in and around the alveoli that
16 are -- that's blood rich.

17 Q Uh-huh.

18 A In that area you can have the fibers with the
19 phagocytes move into that area, and it's adjacent
20 to the pleura. Some end up there.

21 Q Okay. Does it get into the human bloodstream?

22 A Well, it's all blood rich. I don't know how
23 better to describe it, Justin.

24 Q All right. Here's an easy way to do it. The
25 phagocyte that's engulfed in asbestos fiber --

1 A Yes, sir.

2 Q -- when you say it enters the vascular system, is
3 it in blood? Are there white platelets and red
4 platelets next to that phagocyte?

5 A It's not in classic vascular flow back to the
6 heart.

7 Q Okay.

8 A And if I misled you on that, I'm sorry.

9 Q Okay. What did you mean then?

10 A There is a blood rich area throughout the alveoli
11 area as it connects with the pleura area. So you
12 have some movement in that regard.

13 Q I don't understand that then. Where is that
14 little area? I know where the alveoli are, know
15 where the Parenchymal wall is, know where the
16 pleura is know, know all about hilar lymphatics.
17 What vascular system are you talking about?

18 A It's -- I don't know how better to describe it as
19 far as vascular flow.

20 Q Is there a name for the tunnel or channel that
21 that phagocyte -- phagocytized asbestos fiber is
22 in?

23 A I believe there is.

24 Q What is that called?

25 A I don't recall at this time.

1 Q Okay. Who supports the proposition that phagocyte
2 asbestos fibers come into contact with human blood
3 between their transport from the lung to the
4 pleura?

5 A I don't know if it's termed exactly that way.

6 Q Okay. What author says these things that you're
7 talking about?

8 A That you have vascular flow? I think several
9 authors.

10 Q That says that a phagocytized asbestos fiber gets
11 into or touches human blood.

12 A It's vascular flow.

13 Q Okay. Vascular flow. Are you talking about
14 veins?

15 A No.

16 Q Okay. What are you talking about?

17 A It's the connection between the vascular
18 constituents and the channel that it goes through
19 to make it to the pleura.

20 Q Okay. And what's that called?

21 A That's what I said, I don't recall as I sit here.

22 Q Does it have blood in it?

23 A No. It has vascular fluid that will include the
24 transferring products that come out of the alveoli
25 in the walls.

- 1 Q Okay. And you said this vascular process of some
2 sort was separate and apart from the lymphatics,
3 because it was your No. 2 and No. 3 respectively,
4 right? Lymphatics was No. 4?
- 5 A Right.
- 6 Q And the piercing the Parenchymal wall was No. 1,
7 right?
- 8 A Yeah.
- 9 Q So this vascular system that you're talking about
10 isn't a lymphatic system and isn't necessarily I'm
11 hearing now a system that contains human blood?
- 12 A No. It ties in with the lymphatic system.
- 13 Q Oh.
- 14 A As it moves -- I'm sorry if I misled you.
- 15 Q Oh, no problem.
- 16 A It will move those products into the lymphatic
17 from the vascular flow and then into the lymph
18 node areas in and around the pleura.
- 19 Q So No. 2 and No. 3 were just your way of
20 describing the lymphatic system?
- 21 A It's my way of differentiating between a true
22 straight lymphatic flow that we might get and
23 lymphatic flow that we might get from
24 phagocytosis, because you may well have frustrated
25 phagocytosis on some of the longer, more rigid

1 amphibole fibers.

2 Q So all this time, Doctor, that we've been talking
3 about this mysterious vascular process, you've, in
4 fact, just been trying to describe the process of
5 the hilar lymphatic that drains asbestos fibers or
6 not -- or un-phagocyte asbestos fibers from the
7 lung to the pleura?

8 A I believe so.

9 Q That's what you were aiming at this whole time?

10 A Yes, sir.

11 Q Okay. Back to my original question on whether or
12 not chrysotile can cause one or more of the hits,
13 as you say, to induce mesothelioma in man. What
14 literature support do you have for your position
15 that chrysotile asbestos is incapable of causing
16 any of the changes necessary to induce
17 mesothelioma in man?

18 A I don't think we have anyone that has looked at
19 whether or not an asbestos fiber that is of the
20 chrysotile chemistry, excuse me, does not reach
21 that mesothelial cell. But I have read and -- you
22 know, Bernstein, in particular, has done a
23 significant amount of work with respect to the
24 lack of biopersistence, the lack of fiber
25 durability, if we want to classify it as that as

1 well, and fiber morphology, that the fibers do not
2 reside long enough at those mesothelial cells to
3 cause the genetic damage over time.

4 I don't think anyone has done the
5 research, including Brody, really to say, we have
6 fiber studies that show chrysotile has bound, and
7 that's the problem. But we do have studies that
8 say, we know that the amphiboles can cause
9 reactive oxygen species that can cause the hits.

10 Q Okay. I'm going to do a favor for you. At any --
11 I'm going to keep going with this, because this is
12 interesting with me. At any time, you can raise
13 your hand and say, I give up on cellular biology,
14 okay? You can do that at any time, and then I
15 have four questions that I'll ask, bam, bam, bam,
16 and we'll move on to another subject.

17 But I'd love to explore this further
18 with you, but you have that right, okay? I want
19 to be fair with you, and I want you to be able to
20 pull the plug when you want to.

21 The question you're answering is not the
22 question I asked. I didn't ask you about
23 biopersistence. I didn't ask you about
24 Bernstein's work. I asked you what study do you
25 have that shows chrysotile in contact with

1 recombiant DNA is incapable of causing the same
2 changes necessary to induce mesothelioma in man?

3 A And I stated no one has done that type of work.

4 Q Okay.

5 A Brody's work has been at passive doses, as he
6 describes. And he has seen some cellular change.

7 Q Okay.

8 A I don't believe anyone else has done any work to
9 evaluate those type of changes, Justin.

10 Q Okay. Before you mentioned the P53 translocation.
11 Do you recall doing that?

12 A Yes, sir.

13 Q Okay. Haven't there, in fact, been studies done
14 on human mesothelial cells that show that
15 chrysotile is capable of causing that
16 translocation?

17 A Again, if we look at the tumor necrosis factor,
18 we're talking about massive doses that have been
19 used in vivo -- in vitro, excuse me, to show type
20 of changes. And I don't believe those exposures
21 are realistic to the type of exposures that we see
22 in the real world.

23 Q Passive exposures --

24 A They've taken --

25 Q Those cellular studies, some of those P53

1 translocation studies have been done with single
2 chrysotile fibers, have they not?

3 A I haven't seen that one.

4 Q Okay. Tell me the articles, the cellular biology
5 articles that you've read on DNA translocations --
6 actually, any mutanogenic activity, we'll make it
7 bigger. Tell me any of the cellular biology
8 papers that you've read on chrysotile asbestos. I
9 just want to make a list. Any that you can name
10 off the top of your head.

11 A Again, some of the stuff by Brody. Brody's had, I
12 don't know. In his, what, 150 studies he's had in
13 the last, gosh, half decade, various studies about
14 his cellular work and his work with, you know, P53
15 and how that translates. And some of his work has
16 been with massive doses. I don't recall the
17 single fiber dosing that you're talking about,
18 Justin.

19 Q Okay. Other -- I'll get back to Brody in a
20 second, because Arnie's a good friend. Besides
21 Dr. Brody's work, do you know of any other
22 articles out there that discuss the cellular
23 studies that have been done with chrysotile fibers
24 and its mutanogenic potential, either in vivo or
25 in vitro?

1 A And my recollection is that the guy at U.T.

2 Tyler --

3 Q Ron Dodson?

4 A -- he's done some work with his electron

5 microscope looking at cellular changes.

6 Q Okay. And so you are now, I guess, quoting Ron
7 Dodson for the proposition that chrysotile fibers
8 are incapable of causing the genetic changes
9 necessary to induce mesothelioma in man? Is that
10 what I'm getting?

11 A No, no. You're taking my answer to your
12 question --

13 Q Okay.

14 A -- and using that answer on another question, and
15 now you've just presented --

16 Q No problem. And you're right. I wasn't following
17 you, but now I think I am. Can you name me one
18 study for the proposition that chrysotile asbestos
19 can't cause the necessary changes in cells to
20 induce mesothelioma in man?

21 A No. As I answered earlier, I know of no such
22 studies --

23 Q Okay.

24 A -- but the studies that I'm familiar with were at
25 much higher dosages than we would expect from a

1 drywall worker.

2 Q The studies that were done in vivo and in vitro
3 were done at much higher dosages?

4 A I don't recall the one fiber study at all.

5 Q Any of these Dr. Brody studies that you're talking
6 about that have been done in vivo or in vitro, how
7 high are the dosages of chrysotile?

8 A I don't recall as we sit here.

9 Q Okay. Do you know approximately how big they are?

10 A As I sit here, no, I don't.

11 Q Doctor, is it fair to say that you are not as
12 familiar as you perhaps could be with the cellular
13 studies that have been done with chrysotile
14 asbestos?

15 A I don't know how to answer that.

16 Q Okay. Do you think -- can you show me evidence
17 that chrysotile asbestos can induce changes in
18 human mesothelial cells?

19 A Can or can't?

20 Q Cannot. Can you show me any evidence of that?

21 A Again, the work by others that discuss the lack of
22 biopersistence, the lack of fiber durability, the
23 fiber morphology and the fiber chemistry
24 differences.

25 Q Are you familiar with the works done by Suzuki?

1 A Yes, sir.

2 Q What did Suzuki study as far as biopersistence
3 goes?

4 A I guess Suzuki's work looked at cross-sections, as
5 I recall, of like 25 microns. He looked at
6 different fiber burdens and was unable to identify
7 all the fibers. He looked at fibers all the way
8 down to less than a micron in length, and I
9 believe even your Dr. Hammer has been critical of
10 Suzuki's work and has essentially stated that he's
11 going to try to replicate the work to see if he
12 gets the same outcomes of Dr. Suzuki.

13 MR. SHRADER: Okay. Objection to the
14 nonresponsive portion.

15 BY MR. SHRADER:

16 Q You mentioned that Dr. Suzuki was looking at fiber
17 burdens, correct?

18 A That was part of his work, as I remember.

19 Q Where were the fiber burdens?

20 A He was doing cross-sections in and around -- in
21 and around the pleura area, as I recall.

22 Q Okay.

23 A And again, in 25 micron cross-sections, as I
24 recall.

25 Q Can it even be on the human pleura?

- 1 A That's what I tried to state, if I was wrong.
- 2 Q Okay. No problem.
- 3 A Okay.
- 4 Q And what was the average size, if you recall -- in
- 5 fact, let's just do this. What percentage of
- 6 fibers that Suzuki found in the human pleura was
- 7 less than five microns in length?
- 8 A Oh, many. I don't recall the percentage.
- 9 Q Give me a ballpark.
- 10 A Most.
- 11 Q Would you be surprised if it was up to 95 percent?
- 12 A I recall it being a high proportion, but all the
- 13 way down to very, very, very small fibers.
- 14 Q If 95 percent of all the fibers on the human
- 15 pleura were less than five microns in length, that
- 16 would jive particularly well with what you told us
- 17 before, would it?
- 18 A Yeah --
- 19 Q That the chrysotile fibers have a hard time bio --
- 20 which means to me just staying alive, staying on
- 21 the pleura and causing genetic damage?
- 22 A Well, one, they're not alive, so --
- 23 Q You know what I mean, staying where they are
- 24 pretty much?
- 25 A No. Depending on his cross-sections, depending on

1 the -- you know, the fact that, I believe, both
2 Roggli and both Hammer both say he didn't have
3 controls, excuse me, so the concern is there's
4 also ambient exposure to the actual tissue
5 cultures.

6 Q Okay.

7 A So I just -- you know there's been many criticisms
8 of Suzuki's work.

9 Q Let me see if I can short cut this for you. Would
10 you agree that you don't know which fibers cause
11 the genetic damage that is necessary to give
12 Mr. Carrizales his cancer?

13 A I --

14 MR. HUELSMANN: I believe -- objection.
15 I mean, I believe we've asked an answered this,
16 and, I don't know, go off the record once you've
17 had an opportunity to answer here.

18 BY MR. SHRADER:

19 Q That's fine. Go ahead, Doctor. What's your
20 answer?

21 A Did you have another question.

22 MR. HUELSMANN: Well, he had a question
23 pending.

24 BY MR. SHRADER:

25 Q Yeah. My question was --

1 A I mean, you gave me a hand gesture at some time.

2 I was trying to --

3 Q It wasn't a hand gesture to you at all, and it
4 certainly wasn't meant to be rude to you in any
5 kind. And we're on videotape here, so I hope
6 you're not implying that I was being rude to you
7 there.

8 A I was afraid I thought you did.

9 Q No, not to you. Definitely not.

10 A Okay. Thank you.

11 Q Sure. Do you know the necessary genetic changes
12 that occurred in Mr. Carrizales' DNA that caused
13 his mesothelioma?

14 A No, sir.

15 Q All right. And I think I can wrap this up. Maybe
16 not. But take a break at any time you want. You
17 agree with me, Doctor, do you not, since you've
18 read Dr. Brody's and Dr. Dodson's work that
19 chrysotile in vivo and in vitro has been shown to
20 cause the same genetic changes necessary to induce
21 mesothelioma in man, correct?

22 A That's what I've heard.

23 Q And that's what Dr. Brody and Dr. Dodson said,
24 correct?

25 A Yes, sir.

1 Q All right.

2 MR. HUELSMANN: Can we take a break?

3 MR. SHRADER: That's fine.

4 MR. HUELSMANN: Can we go off the

5 record?

6 MR. SHRADER: Yeah, that's fine.

7 VIDEOGRAPHER: We're off the record at

8 12:33 p.m.

9 (Break taken.)

10 (Exhibit No. 23 was marked.)

11 VIDEOGRAPHER: We are back on the record

12 at 1:33 p.m.

13 BY MR. SHRADER:

14 Q All right, Doctor. We're back on the record after

15 about an hour break. Are you okay to continue?

16 A Yes, sir.

17 Q And once again, if you guys need a break, you feel

18 free to tell me. It's not an endurance contest by

19 any stretch of the imagination, all right?

20 A Thank you.

21 Q Okay. Before we broke, we were talking about

22 damage that happens to human cells at the genetic

23 level, specifically mesothelial cells on the human

24 pleura, right?

25 A Yes, sir.

1 Q All right. And when we broke, I think we may have
2 been cutting this off, but I don't know. You told
3 me that you don't know the exact changes -- a guy
4 in your profession, no disrespect intended,
5 doesn't know the exact changes that happen in
6 human DNA, the mesothelial cell to cause human
7 mesothelioma, is that correct?

8 A That's correct.

9 Q In fact, not everybody, not even the cellular
10 biologists know all the individual cell mutations
11 that it takes to go from a normal human
12 mesothelial cell in the pleura to mesothelioma,
13 correct?

14 A Couldn't agree more.

15 Q And you are not saying, are you, sir, that
16 chrysotile did not cause any of the genetic
17 changes necessary to induce mesothelioma in
18 Mr. Carrizales, are you?

19 A I'm saying I don't know.

20 Q Okay. In other words, you will not come to trial
21 and testify that Georgia-Pacific products did not
22 cause any of the changes, one through 14 or
23 however many there were, in Mr. Carrizales' DNA
24 that ultimately led to his mesothelioma, are you?

25 A I'm having trouble following the question, but I'm

1 not --

2 Q That's not a problem. It was probably poor. I
3 have some quesadillas in me, and that might be
4 doing it. You cannot opine to a reasonable degree
5 of scientific certainty, can you, sir, that
6 Georgia-Pacific products did not cause any of the
7 changes necessary for Mr. Carrizales to develop
8 mesothelioma, can you?

9 A That's correct.

10 Q You're just saying, and I know there's other
11 things you say, I'm not trying to pin you down
12 there, but what you say from an epidemiological
13 perspective and from the cohorts that you study on
14 drywallers and chrysotile workers or the like,
15 that -- you know what, I'll just leave it at that,
16 because all I'll do is complicate it now. So I'll
17 just withdraw the question, if it's all the same
18 to you?

19 A Very good.

20 Q All right. I asked you that. Okay. Oh, can you
21 take a look at Exhibit 23 for me, please, Doctor?

22 A Yes, sir.

23 Q And do you recognize that document?

24 A It's what I handed you a few minutes ago which was
25 the, I guess, original final report dated

1 October 15, 2007.

2 Q I thought you'd probably know. You gave me that
3 about five minutes ago, two minutes ago, something
4 like that?

5 A Yes, sir.

6 Q Okay. That's the October 15 report that we were
7 talking about this morning that you sent to Hepler
8 Broom, correct?

9 A Yes, sir.

10 Q All right. And just for purposes of the
11 deposition record, that's Exhibit No. 23. We can
12 keep going. How much time have you spent on this
13 case, Doctor?

14 A I don't know. I haven't had a chance to pull any
15 of our billing records yet.

16 Q Okay. Can you give me a ballpark so we can start?

17 A I would suggest that I've probably spent
18 personally 10 to 15 hours.

19 Q Okay. Which leads me to another point, did your
20 staff work on this case at all?

21 A Yes, sir.

22 Q All right. Who worked on this case besides you?

23 A Mike McCoy.

24 Q Can you spell the last name so I'll earn points
25 with our deposition queen?

- 1 A M-C capital C-O-Y.
- 2 Q C-C-O-Y?
- 3 A Yes, sir.
- 4 Q And what does Mike McCoy do here at GZA?
- 5 A He's a project manager toxicologist.
- 6 Q And what does he do -- or what has he done with
- 7 regard to the Carrizales case?
- 8 A He reviewed a lot of the documents.
- 9 Q Okay. Which documents -- is some of that
- 10 handwriting on top of the sheets his handwriting?
- 11 A Yes, sir.
- 12 Q Is all of it his handwriting?
- 13 A All except the breakdown to the fax. And I would
- 14 take his fax -- excuse me, I would take his review
- 15 and review the pages that relate to
- 16 Georgia-Pacific material.
- 17 Q Okay. In other words, Mr. McCoy was the one that
- 18 read the depos?
- 19 A He did the initial review, made the notes. And I
- 20 take his notes -- or took his notes on this case,
- 21 and I reviewed those pages of which there was
- 22 joint compound and specifically
- 23 Georgia-Pacific-related Georgia-Pacific joint
- 24 compound testimony.
- 25 Q But just so I understand, you haven't read any of

1 these depositions cover to cover?

2 A I reviewed -- yes, I have.

3 Q Which depositions have you read cover to cover,

4 sir?

5 A I believe it was the discovery deposition dated

6 5 -- excuse me, 6/6/07.

7 Q You read Mr. Carrizales' discovery deposition of

8 June 6, '07?

9 A Yes, sir.

10 Q Have you read any other depositions cover to

11 cover, Doctor?

12 A No, sir.

13 Q All right. Now, did Mr. McCoy -- is it Mr. or

14 Dr. McCoy? Which do you want to say?

15 A He's Mr.

16 Q Okay. Is Mr. McCoy -- did he dictate any of this

17 report that you have here?

18 A Did he draft any of the report?

19 Q Yeah.

20 A No, sir.

21 Q Okay. You did that?

22 A Yes, sir.

23 Q Is it normal in your practice to have somebody

24 else review the deposition testimony?

25 A Occasionally, yes, sir.

1 Q That happens around here?

2 A Yes, sir.

3 Q How often do you sign a report that somebody else
4 -- based on deposition testimony that somebody
5 else read before you?

6 A As I stated, if someone else reviews deposition or
7 other case materials, I review all of their notes.
8 Then I review the pages that relate to the client
9 information and often related to other asbestos
10 exposures or potential exposures. Then I draft
11 the reports.

12 Q Right. And I hear ya' on that. There's no way
13 for you to know that you've read all of the
14 Georgia-Pacific or whoever client it is, all of
15 that specific stuff in umpteen volumes of
16 deposition testimony if you're not the one that
17 read the deposition testimony cover to cover,
18 correct?

19 A I'm very comfortable with the notes that are made
20 and my review then of the initial deposition.

21 MR. SHRADER: Objection, nonresponsive.

22 BY MR. SHRADER:

23 Q No disrespect intended, Doctor, at all, but if you
24 are not the one reading the depositions cover to
25 cover, there's no way for you to personally know

1 that all of the Georgia-Pacific specific testimony
2 has been covered by somebody else, correct?

3 A If he would make an error, then I might miss
4 something.

5 Q Okay. Is the answer to my question yes?

6 A I believe so.

7 Q How often -- let me back up. How many of these
8 reports, these asbestos kind of -- what do you
9 call them, dose reconstruction reports?

10 A Yes, sir.

11 Q How many of these asbestos dose reconstruction
12 reports have you issued in the last five years,
13 give or take?

14 A 115, 120 reports I would suggest.

15 Q And do you think that's a pretty fair estimate?

16 A Yes, sir.

17 Q Okay. How many of those 115 or 120 reports has
18 somebody else done the actual reading of the
19 deposition?

20 A Very few.

21 Q Okay. So it's not normal in your practice to have
22 somebody else review this deposition testimony?

23 A No. As we have expanded our practice here, other
24 staff members could be assigned cases to do some
25 of the review of materials.

1 Q Okay. So now it is becoming more common here at
2 GZA now that your asbestos practice is growing for
3 you to have other people beside yourself and other
4 people besides who sign the actual report actually
5 read the depositions?

6 A With one exclusion. Most of the asbestos work is
7 my practice, and I do the review. We do other
8 things in our practice above and beyond asbestos
9 cases.

10 Q I'm sorry, sir. I still don't understand if it's
11 common or uncommon for these asbestos reports, the
12 depositions to be read by somebody else.

13 A It's probably less common.

14 Q So this is an unusual case in that regard, this
15 Carrizales case?

16 A No. It's a case where the facts were limited, the
17 discussion of joint compound and specifically
18 Georgia-Pacific joint compound were scant.

19 Q And that's -- you say that on the basis of what
20 somebody else read, right?

21 A And my review of the initial testimony of
22 Mr. Carrizales, my review of the interrogatories
23 and then my review of Mr. McCoy's notes as well as
24 then looking at the indexes to see if there were
25 any additional joint compound drywall or

1 Georgia-Pacific or other joint compound
2 manufacturer references.

3 Q I'm not trying to put too fine a point on it, but
4 again, your belief that the Georgia-Pacific
5 exposure is somewhat limited is based -- majority
6 of that is based on work that somebody else read,
7 isn't it?

8 A No, sir, I don't agree.

9 Q Okay. Do you -- you personally reviewed the
10 interrogatories and the June 6, '07 deposition,
11 correct?

12 A Part of what I reviewed, yes, sir.

13 Q And those -- okay. What else did you personally
14 read all the way through?

15 A Again, I reviewed his notes. After I reviewed the
16 notes, I had the individual pages noted that had
17 any discussion related to drywall, joint compound,
18 Georgia-Pacific, USG and the other two joint
19 compound manufacturers. Then I overlapped with
20 any index discussion of any of the above, drywall
21 and joint compound.

22 Q So I guess I'll just do that part in trial. Yeah,
23 that's okay. All right. Let me just make sure I
24 have this somewhere. You said you're charging
25 Georgia-Pacific 225 bucks an hour for reading,

1 writing and researching these reports, right?

2 A Yes, sir.

3 Q And 450 an hour to give testimony under oath, is
4 that correct?

5 A Yes, sir.

6 Q All right. How much are you making a year right
7 now?

8 A My salary?

9 Q Yes, sir. Plus bonus.

10 A I believe my salary is 175,000 per year, and my
11 bonus is a function of the performance of the
12 company. I also serve as one of two regional
13 operating officers for the company with my
14 responsibility being what we call our Great Lakes
15 region. So it's half the company. So my bonus is
16 a function of how the company does, not my
17 practice, per se.

18 Q The only thing I was trying to ask in that
19 question, Doctor, is if you took your salary and
20 added your bonus together, how much money was that
21 for '06.

22 A Oh, for '06, 215, 225,000. That's the best
23 estimate I can come up with.

24 Q Do you think your compensation has gone down since
25 2005?

- 1 A Since 2005?
- 2 Q Uh-huh.
- 3 A I think it's been pretty flat.
- 4 Q Okay. How much of your time that you spend on a
5 weekly or yearly basis, what percentage of your
6 time is spent doing this asbestos-type work?
- 7 A Probably half.
- 8 Q Half of your time?
- 9 A Yes, sir.
- 10 Q Ever turned a case down?
- 11 A Oh, yes, sir.
- 12 Q Any asbestos cases you've turned down?
- 13 A Yes, sir.
- 14 Q Tell me about those, will you? What were the
15 circumstances under which you turned somebody
16 down? Did you not like the case? Did you think
17 it was unethical? Did they not have good credit?
18 What happened?
- 19 A The cases I recall not accepting were of products
20 of which I was not familiar, with law firms of
21 which I wasn't familiar. And then I reviewed one
22 case preliminarily, and didn't believe I could
23 offer any opinions that would be of benefit to the
24 client.
- 25 Q What was that one? Tell me about it. What kind

1 of exposure was it?

2 A It was an insulation worker for a company in
3 Wisconsin, and I didn't believe, again, I could
4 have any benefit to the case.

5 Q Was he a lifelong insulator or something?

6 A I don't remember all the facts. I just
7 remember --

8 Q Best estimate.

9 A There was substantial exposure, and I just, again,
10 didn't believe there was anything that I could add
11 to the benefit of the client.

12 Q You felt like they probably killed him, right?

13 A I didn't say that. I just said there was nothing
14 I believe I could add to the benefit of the
15 client.

16 Q They probably went on to somebody else, didn't
17 they?

18 A I --

19 Q You don't know. Forget about it.

20 A I wouldn't know.

21 Q I'll withdraw that. Take me back to the day that
22 you first broke into this asbestos work. Did
23 Paysterbach get you involved? Who got you
24 involved in the first place? I know you worked at
25 A.O. Smith. I know you worked on a bunch of

1 litigation-related stuff over there, worker's comp
2 and safety policies and such?

3 A Yes, sir.

4 MR. PEEK: Objection.

5 BY MR. SHRADER:

6 Q How did you break into consulting and writing
7 these reports in the litigation business? How did
8 you do it?

9 A I worked on asbestos projects going back to the
10 Johnson Space Center, and then especially through
11 my employment at OSHA, since at that time asbestos
12 was a target health hazard. While at A.O. Smith,
13 we had selected facilities of which we performed
14 asbestos abatement.

15 So I'd had experience when I joined the
16 consulting industry in 1990 with the Earth
17 Technology Corporation. I was engaged for a few
18 asbestos projects at that time. I then joined
19 McLaren-Hart and had a managerial role as well as
20 a practice role. I did a few asbestos cases at
21 that time.

22 Then as I stated, I took McLaren-Hart
23 through the bankruptcy and selling the company
24 twice after bankruptcy. Joined GZA in August 2002
25 and then, gosh, was approached by a firm in

1 Milwaukee about performing some toxicology work
2 and specifically on asbestos cases. So I started
3 the work, and I've been contacted by law firms
4 thereafter.

5 Q I think we can put aside the NASA and the OSHA,
6 right, because you weren't doing that for
7 litigation, were you?

8 A Some of the OSHA stuff would end up being
9 contested cases. So I worked on two or three
10 contested cases.

11 Q Right. On an OSHA document or something like
12 that?

13 A Yes, sir.

14 Q I'm talking about people who got hurt.

15 DEFENSE COUNSEL: Am I on mute?

16 MR. SHRADER: No.

17 DEFENSE COUNSEL: Sorry.

18 BY MR. SHRADER:

19 Q Third party -- let me back up. I'm not talking
20 about regulatory or administrative courts, okay?
21 I'm talking about somebody who got hurt, where a
22 business got sued by somebody with mesothelioma,
23 asbestosis, lung cancer. You understand what I'm
24 talking about, right?

25 A Yeah, I do.

1 Q When was the first place, the first time that you
2 did that work? Was it when you were at the Earth
3 Technologies or when you're at McLaren-Hart or
4 after that?

5 A I believe it would go all the way back to Earth
6 Technology.

7 Q Okay. Who was the first asbestos defendant that
8 came to you at Earth Technology to say, can you
9 help us with this case?

10 A I believe it would have been Cook & Franke law
11 firm in Milwaukee.

12 Q Who do they represent?

13 A At that time, it was a foundry, I believe, in West
14 Allis, Wisconsin.

15 Q All right. And how did they know to come see you?
16 They showed up at your doorstep? Did you ask
17 them, like, hey, how did you think to come here?

18 A Well, obviously I've been in the Milwaukee area
19 for an excess of 20-some years. I was recognized
20 through my work at A.O. Smith, and I think I'd
21 done other project work for Cook & Franke. So I
22 think it just developed that way.

23 Q I don't understand. When you were at A.O. Smith,
24 was Cook & Franke the defense firm for A.O. Smith?

25 A No, sir.

1 Q Did you meet any of the Earth Technologies people
2 while you were at A.O. Smith?

3 A Yes, sir.

4 Q Okay. All right. Did Earth Technologies people,
5 did they do litigation support or project reports
6 or something like that for A.O. Smith?

7 A They worked on a couple of Superfund sites.

8 Q And you saw an opportunity to get a better job by
9 moving over to the sort of support end of the
10 business, and you moved from A.O. Smith to Earth
11 Technologies, is that right?

12 A Well, I'd been at A.O. Smith for 12 years and kind
13 of done everything that I could do.

14 Q Right.

15 A And I always thought the consulting practice was
16 appealing, so I joined a consulting practice with
17 Earth Technology.

18 Q Okay. And did you -- you knew before you went
19 over to Earth Technologies that they were kind of
20 providing this litigation support/consulting, that
21 type of thing before you went, correct?

22 A Oh, yes, sir.

23 Q Okay. And you knew that they had done asbestos
24 work and environmental-type Superfund work because
25 you were over at A.O. Smith and had to use their

1 services, correct?

2 A Correct.

3 Q Did the law firm that you guys retained while you
4 were at A.O. Smith, did they retain the Earth
5 Technical Services, and forgive me for butchering
6 the name?

7 A I got lost. Did --

8 Q Right. Did you contact Earth Technical
9 Services --

10 A Earth Technology.

11 Q Thank you. Did you, while you were at A.O. Smith,
12 contact Earth Technology? Did you reach out to
13 them? Did they reach out to you? Or did somebody
14 pull you guys together?

15 A You mean initially?

16 Q Yes, sir.

17 A How did we start doing work?

18 Q Yes, sir.

19 A If you'd been through the Superfund process at
20 that area -- excuse me, at that time, once a site
21 was named on the NPL, the National Priorities
22 List, and a 104 order was issued, you were
23 generally besieged with letters introducing
24 different consulting firms saying, we'd love to
25 work on this case with you.

1 Q Why is that?

2 A It was very good projects with probably the
3 largest volume of revenues that we've ever seen in
4 this business.

5 Q Lucrative, I would imagine?

6 A It was the largest volume of revenues we'd ever
7 seen in this business.

8 Q Yeah.

9 A Whether or not you made any money off of it was a
10 function of how well you managed your business.

11 Q Yeah, but I mean, come on, some of these firms
12 like Exponent made millions and millions of
13 dollars off of NPL sites, right?

14 A I don't know.

15 Q Did McLaren-Hart have Superfund sites?

16 A Yes, sir.

17 Q They did very well in the beginning, didn't they?

18 A Yes, sir.

19 Q All right. So I think I understand how you got
20 involved. In other words -- sometimes I lose my
21 train of thought, as you probably noticed. The
22 Earth Technology people, they were doing -- they
23 were in asbestos litigation before you got there,
24 correct?

25 A I don't know that.

- 1 Q Okay. Then I don't understand.
- 2 A They sent a letter of introduction saying, Dear
- 3 A.O. Smith --
- 4 Q Okay. I think you misunderstood me. Were they
- 5 doing, the Earth Technology people, the company
- 6 that you went to, were they doing the asbestos
- 7 consultations, litigation support before you went
- 8 there?
- 9 A I believe some of the work, yes, sir.
- 10 Q I got it. All right. These are easy. Are you a
- 11 mathematician, sir?
- 12 A No, sir.
- 13 Q Are you a practicing epidemiologist?
- 14 A No, sir.
- 15 Q Have you had any formal work as a practicing
- 16 epidemiologist?
- 17 A No, sir.
- 18 Q You a pathologist?
- 19 A No, sir.
- 20 Q You aren't even a medical doctor, are you?
- 21 A I am not.
- 22 Q Have you ever published on the incidents of
- 23 asbestos-related disease in any publication?
- 24 A No, sir.
- 25 Q Okay. And by that I assume that you've never

1 published on the incidents of mesothelioma in any
2 publication, correct?

3 A That's correct.

4 Q All right. Never in a scientific journal, a
5 magazine or a newspaper, correct?

6 A That's correct.

7 Q All right. You've never conducted an
8 epidemiological study on mesothelioma, have you?

9 A That's correct.

10 Q All right. And you certainly never conducted an
11 epidemiological study on mesothelioma for drywall
12 people, people who use drywall products, have you?

13 A That's correct.

14 Q You've never conducted a meta analysis for
15 asbestos-related disease, have you?

16 A No, sir.

17 Q That's one of the things that's real popular is
18 the meta analysis, right?

19 A I understand.

20 Q Have you ever conducted asbestos sampling for
21 joint compound exposure before?

22 A Yes, sir.

23 Q All right. When did you do that?

24 A Again, I've been asked previously in depositions,
25 and the best I can recall would have been the

1 early 1970s when I was with OSHA. I can only
2 recall two or three locations that were
3 construction sites of which I conducted personal
4 and ambient -- or area sampling for asbestos
5 exposure while joint compound was being used.

6 Q Do you remember which plants?

7 A The best I can recall, one facility was in Fort
8 Smith, Arkansas, which I believe was a Whirlpool
9 facility. The second was a university in
10 Arkadelphia, Arkansas, which I believe was
11 Henderson State University. I recall doing
12 sampling in a third location, and I cannot recall
13 where it was.

14 Q That's okay. But they were using drywall joint
15 compound at these three places?

16 A They were doing drywall work including applying
17 and sanding drywall joint compound. So, yes, sir,
18 I guess is the best answer.

19 Q All right. Do you remember what your results
20 were?

21 A I recall I did not issue citations on any of the
22 three. So depending if it was before 1976,
23 obviously the time weighted average exposures were
24 less than five fibers per CC, and then after
25 '76 --

1 Q Two?

2 A -- two fibers per CC as far as the time weighted
3 average.

4 Q And were you using -- when you monitored those
5 places, do you remember if you were using a midget
6 impinger, whether you had a monitor actually on
7 the collar of the workers? Do you remember what
8 you actually did?

9 A We never used midget impingers. By then we were
10 doing, you know, PCM type of work and using mixed
11 cellulose ester filters. I believe it was .8
12 micron, if I recall.

13 Q And you were just using optimal microscopy at that
14 point?

15 A Yes, sir.

16 Q You were --

17 A I didn't. OSHA had a contract lab at that time in
18 Salt Lake City of which all of our samples went to
19 including asbestos samples.

20 Q Certainly no transmission electron microscopy,
21 correct?

22 A Not in that era.

23 Q Right. You don't remember the specific fiber per
24 CC levels that they were using?

25 A No, sir.

1 Q Do you remember if they were hand sanding or pole
2 sanding at those locations?

3 A No, sir, I don't.

4 Q Do you remember if you monitored while they were
5 sweeping?

6 A I don't recall.

7 Q Do you remember if they were using ready mix or
8 mix joint compound?

9 A No, sir, I don't.

10 Q All right. Fair enough. I'm assuming then that
11 you don't rely on those experiences in formulating
12 your opinions for this case, correct? You don't
13 use any data or lack thereof in those three other
14 experiences when formulating your opinions in the
15 Carrizales case, do you?

16 A Oh, no, sir.

17 Q Okay. In fact, the data that you use in this case
18 comes from two sources, right? At least as far as
19 joint compound goes, correct?

20 A Well, the two I've referenced are included in the
21 report plus in the references I go through -- I go
22 through about three or four other references as
23 well.

24 Q Okay. But at least for the purposes of this
25 report, you used the Verma and Middleton article

1 from 1980, correct?

2 A That's correct.

3 Q And you use a -- is it Rhodes?

4 A Yes, sir.

5 Q Okay.

6 A Rhodes and Ingallas -- Ingallas.

7 Q What year?

8 A '75 and '76.

9 Q Okay.

10 A I believe. Yes, sir. The actual numerical

11 numbers come from Verma and Middleton.

12 Q Okay. Wait. Do you get the -- do you get the

13 TWA -- back up. Do you get the time weighted

14 averages that you use from Verma and Middleton?

15 A Yes, sir.

16 Q So why is this '76 paper even in there? What do

17 you use it for?

18 A Comparative purposes.

19 Q What does that mean?

20 A The '75-'76 article of Rhodes and Ingallas

21 conducted a shorter term sample, but the materials

22 that they used were closer in composition. And

23 they didn't necessarily differentiate between all

24 work practices involved in drywall work that Verma

25 and Middleton -- so I find Verma and Middleton a

1 better study because they look at all work
2 practices and differentiate between dry powder and
3 premix. And then Verma and Middleton also
4 calculate the time weighted average.

5 Q And I'm still lost on -- I understand you use
6 Verma and Middleton. What did you use the '75
7 paper for?

8 A Again, for comparative purposes and for a
9 description of how the process is performed of
10 drywall work.

11 Q Okay.

12 A You'll note in my report, Justin, when he gets
13 into the numerical limits, in the references used
14 is just the Verma and Middleton reference.

15 Q There are three, right? Yeah.

16 A And I actually notice a typographical on page 8.
17 The paragraph starting "in order." It shows for
18 hand sanding --

19 Q Yeah. You reference --

20 A That one is correct. The preceding one, I'm
21 sorry, that notes for the premix, that should
22 be -- the footnote should be two as opposed to
23 three after 4.5 fibers per CC.

24 Q Okay. Well, then, now I understand. But you see
25 how I was confused?

1 A And I apologize.

2 Q No, no apologies necessary. Just making sure that
3 I'm not completely out of my mind. That's always
4 helpful. All right. Then I understand. So just
5 to put -- do you depend on this '75-'76 article
6 for any of the data in this paper?

7 A No, sir.

8 Q You depend basically on one paper for the exposure
9 estimates and time weighted averages that you use
10 in coming up with Mr. Carrizales' dose, correct?

11 A No, sir. I reviewed the other references noted in
12 the references I provided you that include Langer,
13 Fischbein, and a third study that escapes me at
14 this moment for comparative purposes.

15 But again, Rhodes and Langer -- excuse
16 me, Verma and Middleton are the only references
17 that go into detail about the respective
18 operations that are conducted by drywall workers
19 and then the resulting exposures and then
20 calculated TWA. In fact, on Exhibit 6, there are
21 five different references for drywall articles.

22 Q Okay. Let's take a break. I trust ya'. Or you
23 can just hand it to me while we take a break.

24 MR. SHRADER: Go off the record, will
25 ya'?

1 VIDEOGRAPHER: We are off the record at
2 2:08 p.m.
3 (Break taken.)
4 VIDEOGRAPHER: We are back on the record
5 at 2:12 p.m.
6 BY MR. SHRADER:
7 Q Doctor, are you ready?
8 A Yes, sir.
9 Q Okay. The data that you used for your time
10 weighted averages and for your exposures to come
11 up with Mr. Carrizales' lifetime dose comes from
12 just one article, right?
13 A The actual exposure concentration comes from Verma
14 and Middleton of 1980, but I compared their data
15 to four other references.
16 MR. SHRADER: Objection, nonresponsive.
17 BY MR. SHRADER:
18 Q Doctor, the actual data that you used for exposure
19 estimates in Mr. Carrizales' report comes from one
20 article, correct?
21 A As I stated, from Verma and Middleton, 1980.
22 Q Correct?
23 A Correct.
24 Q How did you get that article, Doctor, the Verma
25 and Middleton?

1 A How did I get it?

2 Q Yes, sir.

3 A I got it from the literature.

4 Q Okay. How did you get it from the literature?

5 A We pulled the reference related to drywall

6 workers.

7 Q Who pulled it, sir?

8 A One of our researchers.

9 Q One of your researchers here at GZA?

10 A Yes, sir.

11 Q And how did you know to go pull that article in

12 particular?

13 A My recollection, it was noted in ATSDR's

14 toxological profiles when it talked about drywall

15 worker exposures.

16 Q Verma's quoted by the newest ATSDR, the 144 -- I'm

17 sorry, 414 page long one?

18 A The toxological profile?

19 Q Yes, sir.

20 A Of 2000?

21 Q Yes, sir.

22 A Yes, sir.

23 Q Huh, okay. Have you ever done your own research

24 here at GZA on the level of asbestos exposures

25 incident to joint compound work?

1 A I believe so.

2 Q And what were your results?

3 A If we look at the other four references I cited,
4 if you look at some of them --

5 Q I don't mean to cut you off, but that's not what
6 I'm asking.

7 A Okay.

8 Q Have you at GZA, Doctor, ever gotten a bag or a
9 bucket of Georgia-Pacific joint compound and
10 sanded the walls to see how much asbestos comes
11 out?

12 A Oh, I'm sorry, I misunderstood. No, sir, we have
13 not.

14 Q No, don't be sorry. I probably was wrong. That's
15 something you could do, correct?

16 A Yes, sir.

17 Q All right. Why haven't you done that?

18 A I guess, one, I wasn't sure we could get product
19 that related to pre-1978 material that still had
20 asbestos as a component. And two, there were,
21 again, the references in the literature that I
22 thought were most reflective of drywall worker
23 exposure. Therefore, I didn't think a simulation
24 would do any -- any benefit and would probably be
25 less accepted by folks like you and other

1 recognized literature.

2 Q Folks like me? What are you saying? I'm
3 unwashed? I'm only kidding. Have you ever asked
4 Georgia-Pacific to see if there's any of that
5 pre-'78 material available to you?

6 A I know we've had discussions about some of their
7 products. I know with other joint compound
8 clients I've asked -- I just don't recall for
9 Georgia-Pacific.

10 Q Okay. You don't recall ever asking
11 Georgia-Pacific to test their products, if they
12 had any of it to test, correct?

13 A I don't recall asking, I don't recall not asking.

14 Q Have you ever tried to get it on eBay?

15 A Really?

16 Q You know eBay, don't you?

17 A I know eBay. But no, I've never tried to get --

18 Q Okay. Are you aware that other people have gotten
19 Georgia-Pacific products off of eBay, or is that
20 news to you?

21 A No, that's news to me.

22 Q Check out the eBay, all right?

23 A Will do.

24 Q Like the Google or whatever he said. The
25 president I'm talking about. Not you, no personal

1 slight. Let me ask you this. Have you ever asked
2 Georgia-Pacific whether they've conducted their
3 own dust studies on their own products?

4 A Yes, sir.

5 Q And what did they tell you?

6 A I don't recall specifically how they responded to
7 that request.

8 Q That's pretty important, isn't it?

9 A Again, the Verma and Middleton had about the same
10 percentage composition of chrysotile. Verma and
11 Middleton had gone through essentially all work
12 practices for both dry powder and premix. So I
13 thought that was a very representative sample as
14 well as the other four references. So I didn't
15 see having anything additional was advantageous.

16 Q Okay. You're not telling me if the -- have you
17 ever seen Georgia-Pacific's dust monitoring with
18 regard to their product?

19 A No, sir.

20 Q All right. Have you ever asked them to see it?

21 A That's what I said, I don't recall asking, and I
22 don't recall not asking.

23 Q Okay. That might be a little bit more accurate
24 than these general joint compounds and the
25 Fischbein article or in the Rohl article or in the

1 Verma and Middleton article, correct?

2 A I can't say that.

3 Q Well, different asbestos binders have different
4 respirable properties, would you agree?

5 A They could.

6 Q Okay. The difference in how respirable an
7 asbestos fiber can be is based in large part on
8 what the binder is, correct?

9 A I don't know that for sure.

10 Q All right.

11 MR. SHRADER: Mark that.

12 BY MR. SHRADER:

13 Q Can you -- can you tell me which would be more
14 accurate, Georgia-Pacific specific sampling on the
15 ready mix compound in a case where it's alleged
16 that a plaintiff worked with Georgia-Pacific ready
17 mix compound or a general article by Verma and
18 Middleton on unknown joint compound? Which is
19 more accurate in your mind?

20 A Provided all the use parameters were the same and
21 we went through on the Georgia-Pacific study all
22 work practices, then I would suspect that that
23 would be more accurate.

24 Q Okay. Did you ask for -- start over. Sorry. Did
25 you ask Georgia-Pacific for their batch formulas

1 on these products?

2 A I've asked Georgia-Pacific for information about
3 their products. I don't specifically recall
4 asking for batch formulations.

5 Q That's something industrial hygienists do, don't
6 they, when they're studying a retrospective
7 analysis of exposures? They go back and look at
8 what the actual ingredients of the products were?

9 A In absence of exposure criteria, then I would go
10 to the composition of that material with greater
11 specificity than I did.

12 Q That's not what I asked you.

13 MR. SHRADER: Objection, nonresponsive.

14 BY MR. SHRADER:

15 Q Doctor, that's something other industrial
16 hygienists do when they're doing a retrospective
17 study, isn't it? They go back and look at the
18 actual batch formulas of the actual product,
19 correct?

20 A Some do, some don't.

21 Q Okay. Do you think it would be wise industrial
22 hygiene practice to go back and look at the actual
23 batch formulas on a given product?

24 A I was provided by Georgia-Pacific the asbestos
25 composition. And again, that asbestos composition

1 was consistent with the literature. So while it
2 might be interesting to look at those batch
3 formulations, I felt we had a close enough
4 comparison between the two.

5 MR. SHRADER: Objection, nonresponsive.

6 BY MR. SHRADER:

7 Q Doctor, would you agree it would be wise as an
8 industrial hygienist to go back and look at the
9 batch formulas?

10 A Again, it may, it may not.

11 Q How would it not be wise?

12 A Again, especially in a premix, because the primary
13 exposure of which we're concerned is likely not
14 mixing but rather would relate to the sanding
15 operation and perhaps the cleanup, then I felt
16 that was more important.

17 And I believed that the Verma and
18 Middleton did have studies that related to
19 materials that have had a consistent asbestos
20 composition. So I felt it was a good surrogate of
21 that exposure.

22 MR. SHRADER: Objection, nonresponsive.

23 BY MR. SHRADER:

24 Q Doctor, are you going to answer my question? My
25 question is simply, is it wise or not wise for an

1 industrial hygienist to go back and look at the
2 actual batch formulas of the asbestos product
3 they're studying?

4 MR. HUELSMANN: Object to asked and
5 answered. He's given an answer to your question.

6 MR. SHRADER: No, he hasn't.

7 MR. HUELSMANN: You just don't like it.

8 MR. SHRADER: He just hasn't.

9 THE WITNESS: My answer is it could be.
10 But again, I felt like I had a surrogate that was
11 consistent with the asbestos composition of the
12 Georgia-Pacific compound, so I felt comfortable
13 with it.

14 BY MR. SHRADER:

15 Q How do you know that Georgia-Pacific's description
16 of their asbestos content and their products and
17 their interrogatories in a lawsuit was the same as
18 what Verma and Middleton described if you didn't
19 verify it by looking at the batch formulas?

20 A I guess if I was lied to, then it could be
21 erroneous.

22 Q Okay. What is your understanding based on looking
23 at the Georgia-Pacific interrogatories as to what
24 their asbestos content was in their joint
25 compounds?

1 A Okay. And I didn't say I looked at the
2 Georgia-Pacific interrogatories. But I was --

3 Q Okay. How did you find out what the asbestos
4 content was of Georgia-Pacific's joint compounds?

5 A I was advised by counsel.

6 Q This is just a verbal discussion?

7 A Yes, sir.

8 Q Who was this with?

9 A I believe Eric Hall.

10 Q What did Mr. Hall tell you was the percentage of
11 asbestos in Georgia-Pacific joint compounds?

12 A They varied, as stated in my report, between two
13 and a half and seven percent chrysotile.

14 Q Okay. Were there any other specific types of
15 asbestos contained in Georgia-Pacific joint
16 compound?

17 A None that I was advised of.

18 Q Okay.

19 A And I believe -- maybe I can help. I think I'm
20 misstating. Also in the cover letter, Justin, on
21 the last paragraph of the first page.

22 Q Uh-huh.

23 A It says, "Please assume that these products may
24 have contained two and a half - seven percent
25 chrysotile." So it's more than just a verbal

1 representation by Mr. Hall.

2 Q Okay. You would agree with me that the only way
3 to make sure whether or not a given product has a
4 given percentage of joint compound in it would be
5 to go back and look at the actual batch formulas
6 during the time that product was being
7 manufactured, correct?

8 A Could be, yes, sir.

9 Q Did you ask Mr. Hall when he made that verbal
10 representation to you whether or not he's gone
11 back and read the actual batch formulas?

12 A And, again, it just wasn't a verbal
13 representation. It was in the letter --

14 Q I understand.

15 A -- I described as well. And I don't recall.
16 We've had discussion about Georgia-Pacific joint
17 compound, and I don't recall as I sit here, I
18 guess, the sum and substance of that conversation.

19 Q Do you know whether or not Mr. Hall may have
20 gotten his information from another
21 Georgia-Pacific lawyer?

22 A You'd have to ask Mr. Hall. I don't know.

23 Q Yeah, okay. And you don't know whether or not the
24 lawyer that Mr. Hall may have gotten that
25 information from got it from somebody at

1 Georgia-Pacific who got it from somebody else who
2 used to work there, right?

3 A Again, as I stated, I got it from Mr. Hall. The
4 chain of events leading to Mr. Hall providing that
5 verbally and in written form, I don't know.

6 Q Yes, sir. In a normal industrial hygiene study
7 where you were doing a retrospective asbestos
8 analysis or any kind of analysis, are you telling
9 me that you wouldn't rather have the batch
10 formula?

11 A Oh, I'm telling you it might be beneficial. The
12 problem on any material like joint compound, the
13 batch can vary. And that's why companies save
14 splits of materials they make to go back if there
15 is a problem with that material to look at the
16 exact composition. The likelihood of having the
17 exact batch that Mr. Carrizales used is something
18 close to, you know, zero.

19 Q Okay. Do you know what mine Georgia-Pacific
20 bought their asbestos from?

21 A No, sir.

22 Q Do you know if it was one of the mines that you
23 were talking about before that contained the
24 tremolite, whether -- the mines that you said
25 didn't contain the tremolite?

- 1 A No, sir, I do not know.
- 2 Q Do you know whether or not, for example,
3 Georgia-Pacific bought their asbestos from a mine
4 that had riebeckite contamination in it?
- 5 A I do not know.
- 6 Q Do you know what riebeckite is?
- 7 A I've read of it. I don't recall the composition
8 off the top of my head.
- 9 Q Do you know if riebeckite is capable of causing
10 mesothelioma in humans?
- 11 A My recollection is some believe it could.
- 12 Q Okay. And you don't know what riebeckite is off
13 the top of your head?
- 14 A I know it's a hydrated metallic silicate.
- 15 Q Okay.
- 16 A I don't recall all the metals that are included in
17 the composition.
- 18 Q I'm assuming then that you don't have a threshold
19 for riebeckite that you think would be safe or
20 would not cause human mesothelioma?
- 21 A No, sir, I do not.
- 22 Q Okay. Do you know what the tremolite content of
23 the asbestos is that Georgia-Pacific used in its
24 products?
- 25 A No, sir, I do not, if there was any.

1 Q And one of the things that I notice is you try to
2 compare Mr. Carrizales' background exposure level
3 to the amount of exposure he would have gotten
4 from Georgia-Pacific products, true?

5 A His back -- I didn't --

6 MR. HUELSMANN: Yeah, can you restate it
7 for me, too?

8 MR. SHRADER: I'm sorry?

9 MR. HUELSMANN: Can you restate it or
10 rephrase it?

11 MR. SHRADER: Sure.

12 BY MR. SHRADER:

13 Q I thought that you -- yeah. You -- you compare
14 Mr. Carrizales' ambient air exposure against his
15 lifetime dose of asbestos exposure from
16 Georgia-Pacific joint compounds, don't you?

17 A Now I understand. That's one of the comparisons I
18 did, yes, sir.

19 Q Okay. Where do these ambient air concentrations
20 come from?

21 A As noted, there are three references that I
22 utilize, one being Corn, one being the
23 International Program on Chemical Safety, and a
24 third being the World Health Organization report,
25 which I believe was the 203 report. So we have

1 the International Program embodied in the 53,
2 World Health Organization report, the World Health
3 Organization 203 and in Corn 1994.

4 Q But the only one of those articles that has the
5 actual figures that you quoted is Mort Corn's
6 article, right?

7 A No, sir.

8 Q Okay. You're telling me that the WHO paper, the
9 203 paper has the .14 to .7 figure in it?

10 A No, sir. What it does is noted on page 11, second
11 paragraph of my report. "These individual three
12 studies have the airborne concentration." Then
13 from that airborne concentration I derived the
14 lifetime concentrate -- lifetime doses.

15 Q Okay. The data that Mort Corn uses, is that
16 asbestos exposure that he estimates from an urban
17 area or a rural area?

18 A I believe he has tables that lists both.

19 Q Are you sure about that?

20 A I thought so.

21 Q Okay. The truth is, isn't it, that these
22 estimates are taken from places -- I mean, there's
23 four studies that they did. Mount Sinai did them
24 in New York, right? Those are the first set of
25 them, right? That's the first ambient area that

1 they did, correct?

2 A And if I can correct, as noticed in my report, I
3 do reference to urban value from Corn.

4 Q Okay.

5 A And there's another typo there, and another study
6 by -- it should be Corn before "urban airborne
7 concentrations."

8 Q Right. Well, let me put it to you like this. Do
9 you have any ambient air levels of Edwardsville,
10 Illinois at any time?

11 A No, sir.

12 Q And ambient levels of asbestos can vary
13 significantly from geographical location to
14 geographical location, true?

15 A That's why I use a range, you know, that's over a
16 magnitude different -- order of magnitude
17 different.

18 MR. SHRADER: Objection, nonresponsive.

19 BY MR. SHRADER:

20 Q Ambient air levels of asbestos can differ greatly
21 from location to location, true?

22 A They can.

23 Q Okay. And you have no evidence that -- you sit
24 here today, of what the actual ambient air
25 concentration of asbestos was in Edwardsville,

1 Illinois, true?

2 A Well, I wouldn't have been concerned about
3 Edwardsville. I would have been more concerned by
4 Granite City.

5 Q Okay. Do you know how far Edwardsville is from
6 Granite City?

7 A Yeah.

8 Q Okay. And as you sit here today, you don't have
9 any evidence of what the ambient air levels were
10 in Granite City, do you?

11 A No, sir.

12 Q All right. Let's get into the meat of it then.
13 The quickening as they say in the Highlander. Are
14 you ready? What is the Eastern Research Group?

15 A The Eastern Research Group is a consulting firm of
16 which either Berman or Crump, it escapes me now,
17 or maybe both, were associated with and obtained a
18 contract from the U.S. EPA for some of the work on
19 short fibers, on vitreous fibers and other
20 studies.

21 Q Uh-huh. Had you ever heard of the Eastern
22 Research Group before Berman and Crump and all
23 this 2003 EPA business came about?

24 A No, sir.

25 Q I hadn't either. Is that weird?

1 A I guess being a little older than you, I've seen
2 many consulting practices come in and out
3 predicated upon funding and -- so I don't find it
4 especially unusual.

5 Q No? Is it strange that they got so much work at
6 one period of time without being given little
7 projects by the government agencies first?

8 A Oh, I have no opinion on that. I don't know.
9 I've never been a government contractor, so I
10 don't understand that business.

11 Q Okay. I understand, and correct me if I'm wrong.
12 You think that the Berman and Crump study's one of
13 the best out there, right?

14 A I haven't said that. I just think it's a study
15 that's out there.

16 Q Okay. Do you think it's more credible than the
17 others?

18 A Oh, I think it's worth evaluating in the universe
19 of the studies and is noted -- and was used as a
20 reference in the preparation of my report.

21 Q Right. But when you quote the ASTD -- the ASTDR
22 disease registry, the quote you pull out of there
23 is a reference to Berman and Crump, right?

24 A First, it's ATSDR.

25 Q Thanks.

1 A And I don't recall the exact quote that you're
2 discussing.

3 Q Well, it kind of goes back to --

4 A You know, in fact, what I pull out of there is
5 factual basis information.

6 MR. HUELSMANN: Yeah, can you refer to
7 us what part of the report you are --

8 BY MR. SHRADER:

9 Q Okay. Well, let me ask you this. For this risk
10 analysis business, who do you rely on for support
11 on that?

12 A Risk analysis --

13 Q Sure. The CEL that you quote out of the ATSDR,
14 where do they get that?

15 A If you look at table 31 in figure 3.1, both of
16 those illustrate probably 30 studies, maybe even
17 more that in figure 3-1 they illustrate them
18 graphically to show the respective CELs for
19 asbestos and mesothelioma.

20 They then go as far as in table 3.1 --
21 3-1 to reduce the individual studies to the key
22 components including author, date of study,
23 findings and CEL and then as importantly, whether
24 it's chrysotile, amphibole or mixed exposure. And
25 then they present the CEL related to that anomaly

1 in that study.

2 Q Okay. Just so I understand your reliance on this
3 material, are you saying -- is Dr. Anderson saying
4 that the ATSSDR, their official position is that
5 there's a safe level of exposure to chrysotile
6 asbestos?

7 A Again, I hate to correct you. ATSDR.

8 Q That's what I said.

9 A No.

10 Q ATSDR?

11 A You had an S in there again at the first -- my
12 report says the ATSDR has established cancer
13 effect levels for exposure to amphibole,
14 serpentine or a combination of these asbestos
15 types.

16 The CEL is defined as, "The lowest
17 exposure level associated with onset of
18 carcinogenesis in experimental animals or
19 epidemiological studies." I think that's
20 testimony I gave some hours ago and is the exact
21 verbiage extracted from the toxological profile
22 for asbestos.

23 Q Do you think the ATSDR -- did I do it right that
24 time?

25 A Yes, sir.

1 Q Do you think the ATSDR is saying below the five
2 fiber per CC year threshold, there are no cases of
3 cancer that are caused by exposure to asbestos?

4 A I don't believe the ATSDR went that far. That
5 wasn't their assignment. Their assignment was to
6 review and present the data. And as I described,
7 they presented the individual CELs for all of
8 these studies. And, essentially, the study that
9 they present having the lowest cancer effect level
10 from a mixed exposure is 10 fiber years per CC.

11 Q That wasn't my question.

12 A I'm sorry.

13 Q That's all right. Does the ATSDR say that below
14 five fiber per CC years of chrysotile or any other
15 asbestos, that you are not going to have any
16 asbestos-induced mesothelioma?

17 A If I could give a narrative again.

18 Q Okay.

19 A The best I can tell you is I wasn't there when
20 they published it, but they publish CELs. They're
21 exactly as I described. And the CEL's definition
22 in the toxicological profile is it's, "the lowest
23 exposure level associated with the onset of
24 carcinogenesis in experimental animals or
25 epidemiological studies."

1 Q You've professed to be very familiar with this
2 document in this deposition and in other
3 testimonies you've given under oath, correct?

4 A I've read it numerous times. I don't know what
5 that makes me.

6 Q Okay. Is it your position that the ATSDR
7 toxological profile on asbestos makes the argument
8 that below five fibers per CC year -- or five
9 whatever it is -- that we're safe from getting
10 mesothelioma?

11 A They present the data. They then have a public
12 health section that includes, I guess their
13 opinion, that because of chrysotile and in the
14 studies they show, that there's a mixed exposure,
15 that they don't try to differentiate that.

16 So they don't isolate chrysotile in this
17 toxological study -- in the toxological profile
18 and say exactly what you say --

19 Q Okay.

20 A -- but rather they present the data exactly with
21 the CELs and then put the caveat in as I've
22 described.

23 Q Does the ATSDR ever say that there is a level of
24 asbestos exposure below which there aren't going
25 to be any meso's induced by asbestos?

1 A When this was published -- no. No is the simple
2 answer. But when this was published, we don't
3 have all the data that we have seven years later,
4 and they put the public health statement in, which
5 I believe is relevant.

6 Q Which brings me -- okay. So we're not relying on
7 the ATSDR for the proposition that there's a safe
8 level of exposure to asbestos where you won't be
9 getting mesothelioma, correct?

10 A I'm relying on the studies that they present that
11 includes a cancer effect level which I've defined
12 now a couple times as being their best
13 epidemiological studies that they presented. And
14 those epidemiological studies they showed and
15 presented do have a cancer effect level.

16 Q Okay. Is that -- so what you're saying what the
17 ATSDR says about these cancer effect levels, those
18 CELs, below these levels there's no cancer effect
19 at all from these carcinogens, is that what you're
20 saying?

21 A That the studies that they present --

22 Q Uh-huh.

23 A -- show exactly what I described.

24 Q Okay. That doesn't answer my question, so
25 objection, nonresponsive. Does the ATSDR say,

1 below the CEL, there are no cancer induced
2 abnormalities related with asbestos?

3 MR. HUELSMANN: Objection as asked and
4 answered. The doctor has tried to answer your
5 question numerous occasions.

6 MR. SHRADER: It's a yes or no question.

7 MR. HUELSMANN: Do you have anything to
8 add to your initial response?

9 MR. SHRADER: It is a yes or no question.

10 THE WITNESS: No, I don't. I don't have
11 anything else to add.

12 BY MR. SHRADER:

13 Q Doesn't, in fact, the ATSDR say, because cancer
14 effects could occur at lower exposure levels,
15 figures 3-1 and 3-4 show a range of the upper
16 bound estimated excess risk ranging from a risk of
17 one in 10,000?

18 A The reason they use the one in 10,000 is that's
19 the risk level that OSHA uses in promulgating
20 regulations.

21 Q Yeah.

22 A So --

23 Q But that's different than what you said before.
24 You said there was no risk if it was below the
25 CEL, right?

1 A I described the CEL in as great a detail, Justin,
2 as I know how to do.

3 Q Okay.

4 A And the CEL speaks for itself. Then the
5 toxological profile compiles the information, and
6 as a public health document, puts the caveats in
7 that they felt was appropriate at that time.

8 Q Okay. I'm confused, because I thought you said
9 before that the ATSDR said these CEL levels, that
10 there wasn't going to be any cancer below that?

11 A I described what a CEL is. We can go get the
12 document. They give the definition of the CEL,
13 not I.

14 Q Right.

15 A And I don't know how better to describe it.

16 Q All right. Just so I understand, does the ATSDR
17 say that you won't get asbestos-induced
18 mesothelioma below these CEL levels?

19 A They don't opine on that other than to say, these
20 are the CELs. The CELs may have some inherent
21 errors. They're not going to take obligation for
22 every study that's conducted out there.

23 Q Okay. So as far as you're concerned, the ATSDR
24 does not have an opinion, at least in that
25 asbestos toxological profile, about whether or not

1 the CEL is safe for the induction of mesothelioma
2 or not?

3 A I believe the studies speak for themselves. And
4 the ATSDR group, as with any consensus group or
5 governmental group, is gonna extract the best
6 information.

7 Q Okay.

8 A And that's what -- in my opinion, what they've
9 done through 2000.

10 Q And you would agree with me that the ATSDR has
11 never endorsed a no cancer level for asbestos,
12 have they?

13 A No cancer level for asbestos?

14 Q That's right. Where you're not going to get any
15 cases of mesothelioma.

16 A Oh, now we're talking mesothelioma?

17 Q Right.

18 A Not just cancer in general?

19 Q Right. From asbestos.

20 A Again, they publish the CELs. They show the type
21 of asbestos. I don't know how to better state it.

22 Q That's fine. Let me ask it to you like this.
23 Have you ever seen a statement from the ATSDR that
24 says, if you're at this level of asbestos
25 exposure, we don't think you're at all at risk for

1 mesothelioma?

2 A Oh, that wasn't their charge. That wasn't their
3 responsibility.

4 Q So the answer to my question would be no?

5 A No. But that's what they -- they had no intention
6 of doing that. It was to present the data.

7 Q But you agree with me, that statement's never been
8 made by the ATSDR as far as you know?

9 A As far as I know.

10 Q Okay. Who then do you rely on for the
11 proposition -- who then, Doctor, do you rely on
12 for the proposition that at X level of asbestos
13 exposure, you're not at an increased risk for
14 mesothelioma if not the ATSDR?

15 A Again, as presented on page 12, I try to summarize
16 both the U.S. EPA and ATSDR CELs both for meso and
17 for lung cancer. Then I take the ACGIH TLVs from
18 the '50s, the OSHA PEL from the '70s and currently
19 and expand that to a working lifetime based on the
20 PEL and TLV. Then I also show the ambient air
21 concentrations that we discussed earlier from the
22 three references.

23 Q We've already gone over ambient air, and I'd like
24 to leave that topic where it is. We've gone over
25 ATSDR, and we can't find a part of the ATSDR that

1 says at X level of asbestos exposure, you're not
2 at risk for asbestos-induced mesothelioma? In
3 fact, we just did that, correct?

4 A Again, my answer is as it has been. They publish
5 their CELs, which is their review of the pertinent
6 data. And I don't know how to better state it.
7 They're never going to quantify an exposure,
8 because that's not their charge.

9 Their charge is to review the data from
10 both humans and animals and deal with that from a
11 public health perspective. And that's what
12 they've done. They presented a number of studies
13 that show CELs for both mesothelioma as well as
14 lung cancer, and that's what I've tried to present
15 in this report.

16 Q Okay. One thing that you didn't put in here, in
17 your report, is the ATSDR also publishes no effect
18 levels, correct?

19 A A no observable adverse effect level is not
20 relevant to a carcinogen. If you want to talk
21 about asbestosis, you take a known observable
22 effect level --

23 Q Right.

24 A -- you subject it to uncertainty factors from
25 which you derive an MRL. So it's not even germane

1 to carcinogenic effects.

2 Q One of the things that the ATSDR publishes is a no
3 effect level, correct?

4 A For non-carcinogens.

5 Q Okay. In fact, they publish a no effect level on
6 things that are carcinogenic and are -- we'll call
7 it benign or non-cancerous, correct?

8 A If we're talking a no observable adverse effect
9 level, it's for non-carcinogens.

10 Q Okay. Let me ask you this. You and I can agree
11 that the ATSDR has not come up with a level of
12 asbestos exposure that's safe below which you will
13 not get mesothelioma, correct?

14 A My position is my position. They establish CELs.
15 I don't know how to better define it. I'm not
16 going to respond. And I'm sorry my answer isn't
17 what you want it to be, but my answer is my
18 answer.

19 Q No, I'm sorry, the question's not what you want it
20 to be. The question is, the ATSDR has not found a
21 level of asbestos exposure that will not cause
22 mesothelioma in humans, correct?

23 MR. HUELSMANN: Object to asked and
24 answered. I mean, how many times do you want him
25 to say the same thing over?

1 THE WITNESS: My answer is my answer,
2 Justin. I don't know how to better describe it.

3 BY MR. SHRADER:

4 Q You just keep -- well, they publish the CELs,
5 right? The CEL is not a level below which there
6 aren't any cancerous effects, correct?

7 A The CEL is the lowest level of either a human
8 experiment or an epidemiologic -- or animal
9 experiment, excuse me, or epidemiological study of
10 which carcinogenesis has occurred. So that is the
11 threshold.

12 That threshold may be modified if there
13 are issues in the study. The ATSDR cannot sit as
14 a governmental agency and review every study and
15 every qualifier in that study. So they publish
16 the CELs and put the disclaimers that we've
17 discussed.

18 Q Right. And you were talking about page 11 of your
19 report. You've got just two sources of support
20 for the fact that Mr. Carrizales wasn't at an
21 increased risk for mesothelioma because of his
22 exposure to GP products. You cite the ATSDR,
23 which we've been talking about ad nauseam, and the
24 U.S. EPA, correct?

25 A Those two plus the respective TLVs and PELs.

1 Q Okay. Well, let me ask you this. Who comes out
2 with the TLVs and the PELs?

3 A The TLV, threshold limit values, are published by
4 the American Conference of Governmental Industrial
5 Hygienists.

6 Q And who decides whether that PEL is low or not?

7 A Oh, no. You're -- you're mismatching. A TLV is
8 by the ACGIH which is a consensus standard. When
9 OSHA came about in '71 through the
10 Williams-Steiger Occupational Safety and Health
11 Act, they adopted the 1968 ACGIH TLVs, couldn't
12 use the term TLV, because it's copyrighted. So
13 OSHA's equivalent is a permissible exposure limit.

14 Q Here's what I want to do. We'll go start with the
15 TLVs and then we'll go to U.S. EPA and then we'll
16 go to ATSDR. In the NIOSH, the OSHA TLVs --
17 because there was a criteria document put out in
18 1971 by NIOSH, right?

19 A That sounds about right.

20 Q Okay. In that criteria document, in fact, NIOSH
21 said, these TLVs are not -- are not intended to
22 protect the general workforce from cancer; in
23 fact, we think that there will still be cancerous
24 effects because of this TLV, correct?

25 A If you'd show me the document. I don't recall

1 that.

2 Q Do you dispute that?

3 A I don't recall that.

4 Q Do you dispute it?

5 A I don't recall that. I don't know.

6 Q Okay. Can you -- can you tell me anyplace in the
7 NIOSH criteria document or any of the OSHA values
8 that have been put out where they say this level
9 is going to protect humans from mesothelioma?

10 A If we look at the 1993 OSHA -- 2003, excuse me,
11 OSHA PELs, they modified the PEL from .25 fibers
12 per CC to .15 fibers per CC. And then the
13 preamble, they went through their risk assessments
14 including showing that that level would not result
15 in any excess anomalies. And "excess" in OSHA
16 vernacular is one in 10,000.

17 They then adopted or promulgated into
18 law the .1 fiber per CC PEL. That has since been
19 challenged by Lash and Camus who basically said, I
20 believe by its order of magnitude, it has been
21 overly protective. So I don't know what --

22 MR. SHRADER: Move to strike.

23 THE WITNESS: NIOSH -- NIOSH does not
24 have regulatory authority. NIOSH is just an R&D
25 group.

1 MR. SHRADER: Objection, nonresponsive.

2 Move to strike.

3 BY MR. SHRADER:

4 Q Doctor, my question is very simple. Is there a
5 sentence or a phrase in a paragraph or paragraphs
6 in any of those NIOSH or OSHA documents that
7 establish the TLV or the permissive exposure limit
8 or even the STEL that says, this limit will
9 protect humankind from getting asbestos induced
10 mesothelioma?

11 A Within the limits of the risk assessment, that's
12 what a TLV, PEL does.

13 Q That's not what I asked you. Do you understand
14 the question?

15 A I believe I understand it, and I believe my answer
16 is responsive.

17 Q No, it's not. I asked you if there was a sentence
18 or a paragraph or a phrase in the NIOSH or OSHA
19 documents or even in the Federal Register that
20 says, these are levels that we know will protect
21 humankind from asbestos-induced mesothelioma. Do
22 you know of anything like that?

23 A No, I do not.

24 Q Thank you. So as far as you know, there has been
25 no affirmative statement by NIOSH or OSHA that

1 these limits, these TLVs or PEL or STELs, are
2 things that can protect us from mesothelioma,
3 correct?

4 A If I can make one correction. I have no idea what
5 NIOSH has said.

6 Q Correct?

7 A From the OSHA perspective, I don't recall a single
8 statement like that.

9 Q There is similarly been no statement like that
10 from the EPA that says, at this level, we will
11 protect people from getting mesothelioma, correct?

12 A I believe that's correct.

13 Q All right. And not to make too fine a point on
14 it, but there's no statement out of the ATSDR that
15 says, below this level, asbestos will not cause
16 mesothelioma, correct?

17 A With the caveats I've previously given, I don't
18 believe they've made such a statement.

19 Q Okay. You have -- put ambient air aside. You
20 have no evidence as you sit here today that
21 anybody has said -- and by "anybody" I mean
22 government body or what have you, that X amount of
23 increase in somebody's asbestos fiber intake
24 doesn't put them at a higher risk for
25 mesothelioma? There's nobody that says that, is

1 there?

2 A You know, Brody. Brody says if the exposure isn't
3 greater than ambient.

4 Q I was trying to put ambient aside. That's okay.
5 Is that the only person you can think of is
6 Dr. Brody?

7 A And Roggli says much of the same. I mean, I could
8 probably go through a list of others.

9 Q Okay. Let's do that. I want the full list of
10 people that say that there is a safe level of
11 exposure to asbestos where you will not get
12 mesothelioma because of it. Give me that list of
13 those people.

14 A Well, and again, I don't know that anyone is gonna
15 say that, because they don't know if there are
16 genetic issues that relate to that person, if that
17 person has been exposed to therapeutic radiation,
18 to the polio virus -- vaccine and the like.

19 So I don't know -- how anyone's gonna
20 make such a statement. Rather, we look at the
21 population and look at risk and advancing risk
22 around selective numbers termed CELs or by the PEL
23 being looked at. And I'm not trying to be
24 humorous.

25 Q I need to move on to a different topic, because

1 the CEL thing -- well, you've tried to explain it,
2 and I -- we come from different perspectives on
3 that, so I need to be respective -- perspective,
4 and I just need to move on.

5 But I do need to cover three things that
6 you just said. Are you aware of any epidemiologic
7 study that proves that the SV 40 virus is capable
8 of inducing mesothelioma by itself?

9 A No. Just discussions about it appears that it
10 could be a causal factor in especially idiopathic
11 mesotheliomas.

12 Q Okay. And just so I'm clear, the answer to my
13 question was no?

14 A That's correct. I'm sorry.

15 Q That's all right. Therapeutic radiation. Are you
16 aware of any therapeutic radiation that
17 Mr. Carrizales experienced or any radiation at all
18 that he's experienced aside of a chest X-ray for
19 diagnosing his meso?

20 A No, sir.

21 Q Would a chest X-ray put Mr. Carrizales at an
22 increased risk of getting mesothelioma?

23 A I would hope not.

24 Q But do you think it would --

25 A No, sir.

1 Q -- based on the studies? Okay. Now, you and I
2 agree on one thing, that there's a tremendous
3 amount of genetic susceptibility involved in the
4 likelihood that someone will get mesothelioma. Do
5 you agree with me on that?

6 A Sure seems to be, yes, sir.

7 Q And one problem with epidemiological studies is
8 that -- you can do that whenever you want. One of
9 the problems with relying solely on epidemiology
10 is that epidemiology with regard to asbestos
11 exposure does not account for different genetic
12 susceptibility to mesothelioma, true?

13 A Correct.

14 Q All right. The J.C. McDonald studies, the
15 Craighead studies that were done in Vermont, not
16 even the Berman and Crump study, which portends to
17 be a meta analysis, accounts for the genetic
18 susceptibility in mesothelioma, correct?

19 A I agree.

20 Q Okay. Can you tell me any one person or any one
21 scientific body that agrees with your statement
22 that at five fiber per CC years exposure to
23 chrysotile, you won't get meso or you're not at an
24 increased risk?

25 A Can you reread the question? I'm sorry.

1 Q Oh, no, you didn't say that, that's wrong. I
2 withdraw that question officially.

3 A Okay.

4 Q Okay. Have you read works by Dr. Selikoff before?

5 A Yes, sir.

6 Q He's pretty much the granddaddy of asbestos
7 epidemiology, would you agree? The great
8 granddaddy being Wagner?

9 A I would believe so.

10 Q Okay. And Dr. Selikoff agreed there was no safe
11 level of exposure to chrysotile, correct?

12 A He said many things. That well could be one. I
13 don't recall everything he said.

14 Q One thing you probably do recall is that
15 Dr. Selikoff felt like people who did home
16 remodeling projects with chrysotile containing
17 joint compound were at risk for mesothelioma,
18 true?

19 A Well, because at that time he did the study that
20 his cohorts did, essentially had a joint compound
21 that had a very high level of tremolite.

22 Q But that's what he said, right?

23 A Again, based on that study of which the tremolite
24 level was very high.

25 Q Okay. But he said that the people using the joint

1 compound in home remodeling projects were at an
2 increased risk for getting mesothelioma, didn't
3 he?

4 MR. HUELSMANN: Object to asked and
5 answered. I mean, he's clarifying his answer.
6 That's all he's doing.

7 MR. SHRADER: I just need a yes. He can
8 put every caveat in there he wants.

9 MR. HUELSMANN: Well, that's what he --

10 BY MR. SHRADER:

11 Q Is that what Dr. Selikoff said, sir?

12 A Yes, with my caveats.

13 Q Okay. All right. By the way, why did
14 Dr. Selikoff believe these joint compounds had a
15 high amount of tremolite in them?

16 A If you look at the initial study that was
17 performed by the -- by the guys, and I think it
18 was published in science --

19 Q You talk about Rohl, Selikoff, Langer.

20 A I want to get the order right, because the data
21 was rehashed. Rohl, Langer, Selikoff and
22 Nicholson.

23 Q Right?

24 A In '75 it was published in science.

25 Q Uh-huh.

1 A If you look at that -- that article, it goes
2 through composition. And off the top of my head,
3 I think it has like three to four percent
4 tremolite in the joint compound that they
5 conducted the sampling upon. And I have no
6 knowledge of Georgia-Pacific having three percent
7 tremolite in their materials.

8 Q But why did Dr. Selikoff say that the joint
9 compounds had such a high level of tremolite in
10 them?

11 MR. HUELSMANN: Calls for speculation.

12 BY MR. SHRADER:

13 Q What was the delivery vehicle that Dr. Selikoff
14 asked about? Was it the chrysotile asbestos or
15 was it something else?

16 A I don't recall.

17 Q You don't recall whether or not Dr. Selikoff,
18 Dr. Rohl, Dr. Fischbein and Dr. Langer indicated
19 that talc might be a suspect?

20 MR. TOMASKA: Objection, asked and
21 answered. James Tomaska.

22 MR. SHRADER: One's good for all. Just
23 put "defense attorney."

24 BY MR. SHRADER:

25 Q You don't recall that?

1 A I don't recall that discussion about talc. You.

2 Q You don't recall whether in that discussion
3 Dr. Selikoff, Dr. Langer and later the '79 paper
4 that was co-authored by Fischbein talked about the
5 presence of tremolitic talc in those samples?

6 MR. TOMASKA: Objection, asked and
7 answered, Tomaska.

8 THE WITNESS: Again, I recall the
9 tremolite being there, I recall the talc. I don't
10 recall them being called the delivery agent by
11 Selikoff.

12 BY MR. SHRADER:

13 Q And I guess that means in this case and the
14 Carrizales case, you for sure haven't asked
15 Georgia-Pacific if they use tremolitic talc in
16 their products, right?

17 A As we discussed earlier, I've had some discussions
18 with Georgia-Pacific. I don't recall all the
19 specifics at this time, Justin.

20 Q But that might be something good about the batch
21 formulas vis-a-vis just talking to a lawyer,
22 right? You could tell if there's tremolitic talc
23 in there, at least know where to start looking,
24 right?

25 A I could.

- 1 Q Right. Dr. Nicholson. Did Dr. Nicholson think
2 that low-level exposure to joint compound put
3 people at risk for mesothelioma?
- 4 A I don't recall all of his opinions.
- 5 Q Okay. How about Dr. Landgren again? Have you
6 ever read anything by him before?
- 7 A Yes, I believe I have.
- 8 Q Is he a well-respected scientist in this area?
- 9 A I believe so.
- 10 Q Does he believe that low-level exposures to
11 chrysotile asbestos put people at risk for
12 mesothelioma?
- 13 A I believe that's his opinion.
- 14 Q And you disagree with his opinion?
- 15 A Non-contaminated, as I discussed earlier at the
16 doses that we could expect a drywall worker to be
17 exposed to, no, sir, I don't agree with his
18 opinion.
- 19 Q Right. And that raises an important question.
20 Landgren, Nicholson and Dodson all say this
21 chrysotile-free asbestos stuff can all cause
22 mesothelioma at low doses, too, don't they? They
23 disagree with you?
- 24 A I don't recall.
- 25 Q Okay. If you had been at the Consumer Safety

1 Product Commission in the 1970s, and I think the
2 hearings were '76, '77 and '78, if I'm not
3 mistaken, would you have banned the use of
4 asbestos in joint compound products, or would you
5 have kept it in there?

6 A Gee, I don't know. I've never contemplated that.

7 Q Some of your narratives saved us some time. Let
8 me ask you this, Doctor. If you don't believe
9 that chrysotile asbestos can cause -- let me back
10 up. Let me strike that. I'm getting tired. I
11 can't imagine how tired you are.

12 Doctor, if you don't believe a lifelong
13 taper and floater, a guy that worked with joint
14 compound that contained chrysotile almost his
15 whole life up to 100 fiber per CC years, you don't
16 think that guy's at risk for mesothelioma -- and
17 you don't, do you? That's what you told us
18 before?

19 A Again, predicated upon NIOSH and Stern.

20 Q Right.

21 A I haven't seen mesotheliomas in that cohort.

22 Q Right. If you don't think that that person is at
23 risk, why do you write these long reports on these
24 guys?

25 A I guess as an expert, my position is to be as

1 unbiased. And I try to walk through my analysis,
2 the fact basis in which I base my analysis and
3 then my conclusions from that analysis including
4 comparison to what I believe are relevant
5 standards, for lack of a better description.
6 Therefore, I think it's only fair to go through
7 all of that information and provide the report
8 that I provide.

9 Q Okay.

10 MR. SHRADER: You're going to object,
11 but I didn't understand that.

12 BY MR. SHRADER:

13 Q You don't believe that lifelong tapers, people who
14 use these Georgia-Pacific products for their whole
15 career, from like '65 to '78 or however long, that
16 they're not at risk, right?

17 MR. HUELSMANN: Yeah, object, asked and
18 answered.

19 BY MR. SHRADER:

20 Q That's what you're saying to me?

21 A At the kind of doses that we would expect.

22 Q Right.

23 A If it's short fiber chrysotile with that tremolite
24 contamination --

25 Q Yes.

1 A -- that's my opinion.

2 Q Yes, sir. And a Georgia-Pacific lawyer calls you,
3 they pick up the phone, they say, Doctor, I got
4 another one. He used my Georgia-Pacific ready mix
5 joint compound. Just assume that for a second,
6 okay?

7 A Yes, sir.

8 Q Why can't you just write -- why do you go through
9 all this dose reconstruction and stuff? Why isn't
10 it like five sentence. I have reviewed the
11 available literature on chrysotile asbestos and
12 taping and loading in drywall workers, and I don't
13 think those exposures can cause mesothelioma. End
14 of story. Why is the rest of this necessary?

15 A I believe the plaintiff deserves my complete
16 evaluation.

17 Q Okay.

18 A And not only is it the dose reconstruction, but at
19 times perhaps it's even too long of a background
20 description of my understanding of what the
21 plaintiff has done throughout his life.

22 Q You --

23 A And I don't -- I don't --

24 Q Sorry.

25 A Not a problem. You know, I don't dry lab these.

1 I don't do the calculation, didn't write the
2 report. It's a fact sheet as you saw this
3 morning, and from that fact sheet I draft the
4 report. And the way it turns out is the way it
5 turns out.

6 Q Yeah. But, Doctor, with all due respect, these
7 are 15-page reports, give or take? I mean,
8 Mr. Carrizales' is approximately 15 pages. And
9 you say you do it for the benefit of the
10 plaintiff, that the plaintiff deserves this full
11 report?

12 A To me, the plaintiff deserves the full
13 presentation of the data as I see the data. And
14 if I'm wrong on the data, then someone like you or
15 someone like my buddy here can point that out and
16 can correct my reports.

17 Q Okay. But you don't think what you do in writing
18 these reports helps the plaintiffs, do you?

19 A My goal is to be non-partisan.

20 Q Okay.

21 A And if I presented anything wrong, please show me.

22 Q I've been trying, but you won't listen to me.

23 That was a joke. All right. You can stay mad if
24 you like. How many cases have you reviewed for
25 Georgia-Pacific so far in your career in asbestos

1 cases?

2 A I would guess maybe a dozen.

3 Q I'm sorry, just a dozen cases for Georgia-Pacific?

4 A I believe so.

5 Q And 120 total reports on asbestos cases?

6 A Yes, sir.

7 Q Has there been any time in the intervening years
8 that you've done work or been retained by a
9 plaintiff in an asbestos case?

10 A Never been asked.

11 Q All right. But you have, it seems, done
12 testifying for plaintiffs before?

13 A Yes, sir.

14 Q Can you describe that for me?

15 A I've had numerous cases where I've represented the
16 plaintiff. In fact, our friend the videographer
17 has actually videotaped at least one of those that
18 I believe was a -- I believe it was a mold case.
19 I have other cases related to chemical exposures
20 of which I've represented the plaintiff, and they
21 may well be shown on my list of cases here,
22 Justin.

23 Q Oh, that's okay. I got mold cases and what are
24 these, like Stachybotrys cases, black mold cases?

25 A You are from Texas, that's right.

1 Q Yeah.

2 A They deal with a variety of different mold and
3 fungi in species. Some are related to human
4 exposure, some are related to physical damage,
5 some are related to both.

6 Q Briefly and without going hog wild on me, can you
7 just tell me some of the things that mold exposure
8 causes in humans?

9 A Certainly.

10 Q Okay.

11 A I guess my opinion is consistent with the National
12 Academy of Science, their 2004 publication
13 entitled, Damp Indoor Environments, which I
14 believe there is sufficient data to show an
15 association between mold exposure and respiratory-
16 type ailments and impacts to those who may be
17 predisposed to asthma or may have asthma, and
18 perhaps including hypersensitive pneumonitis.

19 Q How about lung cancer?

20 A No, sir.

21 Q Mold. What other chemical -- what other
22 plaintiff's cases have you had? By the way, do
23 these mold cases come from a lawyer?

24 A Both from the individual person and from the law
25 firm that the individual person has gone to or

1 company, for that matter.

2 Q Which mold law firms use you here in town?

3 A Which mold law firm -- which law firms?

4 Q Yeah.

5 A Quarles & Brady, Whyte Hirschboeck.

6 Q I don't know how to spell that.

7 A I bet we need help on that. She's local.

8 Reinhart Boerner.

9 Q She'll know how to spell it, so just keep going.

10 A Foley & Lardner, Scott Halloin law firm, Scott R.

11 Halloin & Associates. Martin Stein that was

12 mentioned earlier in the day. I don't know,

13 probably a dozen different law firms in town.

14 Q On those mold cases, are you testifying for the
15 plaintiffs and defense equally? Do you spend more
16 time testifying for plaintiffs? Do you spend more
17 time testifying for the defense?

18 A I don't know. I would suggest maybe a little more
19 plaintiff's work.

20 Q Okay.

21 MR. HUELSMANN: If you have a lot to go,
22 I'm going to take five.

23 MR. SHRADER: Not much -- well, yeah,
24 just take five. That's cool.

25 MR. HUELSMANN: All right.

1 VIDEOGRAPHER: We are off the record at
2 3:19 p.m.
3 (Break taken.)
4 VIDEOGRAPHER: We are back on the record
5 at 3:26 p.m.
6 BY MR. SHRADER:
7 Q Doctor, are you ready to continue?
8 A Yes, sir.
9 Q I want to wrap it up, so -- I think you probably
10 want to, too.
11 A Whenever you're done, I'm done.
12 Q How many cases have you gotten from the Burroughs
13 law firm to review on mesotheliomas?
14 MR. HUELSMANN: You mean Hepler Broom,
15 right?
16 MR. SHRADER: Shoot.
17 MR. HUELSMANN: Both actually.
18 Depending on when the name change was. But for
19 clarification, both?
20 BY MR. SHRADER:
21 Q Yeah, okay. Yeah, because he -- let me ask it
22 like this. Doctor, how many mesothelioma cases
23 have you been asked to review by the
24 Georgia-Pacific lawyers?
25 A Not just Georgia-Pacific cases, all cases?

- 1 Q Yes. How many mesothelioma cases have the
2 Georgia-Pacific lawyers sent you to look at?
- 3 A Gosh, I really don't know. 50? I --
- 4 Q Okay. And all of those 50 cases, have you ever
5 told them, you know what, I think Georgia-Pacific
6 caused this one?
- 7 A Again, out of those 50, there's probably a dozen
8 or less that are Georgia-Pacific. And out of
9 those dozen or less, I don't recall any happenings
10 as you described it. I forget your verbiage.
- 11 Q Out of those 12 that they sent you, have you ever
12 said, yep, I think Georgia-Pacific actually did it
13 this time, I think they contributed to this man's
14 mesothelioma? Have you ever said that?
- 15 A No, sir, I don't recall such.
- 16 Q Okay. Out of those 50, those 50 cases that the
17 Georgia-Pacific lawyers have sent you, Burroughs,
18 Hepler Broom, whatever you like to use, out of
19 those 50 cases, have you ever said, in this case
20 right here, you, your company that you represent,
21 I think they did it, I think they contributed to
22 this man's meso or I think they killed him? Have
23 you ever said that?
- 24 A I believe there was one or two that I didn't
25 necessarily say, your product killed a guy, but

1 rather I'd say, there is some exposure of concern.

2 Q Okay. And were those Georgia-Pacific cases or
3 non-Georgia-Pacific cases?

4 A Non-Georgia-Pacific cases.

5 Q Do you remember the name of the company?

6 A I need a side bar with counsel.

7 MR. HUELSMANN: Sure.

8 THE WITNESS: Okay. I believe they were
9 Bondex cases.

10 BY MR. SHRADER:

11 Q Okay. And why -- -- why did you say on those
12 handful of Bondex cases that the Bondex people
13 caused the mesothelioma or contributed to it?

14 A Oh, and I didn't understand that part. I know one
15 of the cases was an asbestosis case.

16 Q Uh-huh.

17 A And I don't -- I believe the other case was a
18 mesothelioma case. I just don't recall all the
19 facts.

20 Q How in that instance -- if you can recall this,
21 how in that instance would the Bondex product have
22 contributed to the man's mesothelioma?

23 A My concern was a very large dose, again. And I
24 don't believe the dose was at 100 fiber years, but
25 I know it was a very high dose.

1 Q Okay. Did you issue a report in that case?

2 A No, sir.

3 Q Did they say, prank caller, prank caller and just
4 hang up the phone on you? I'm only kidding. You
5 don't have to answer that. Have you socialized
6 with the GP lawyers before, Georgia-Pacific
7 lawyers? Gone to dinner? Had drinks?

8 A No, sir.

9 Q No, okay.

10 A But I'm ready after this.

11 Q I have been known to drive people to drink before.
12 A.O. Smith, gotta ask you, did they give you any
13 industrial hygieneny -- hygieneny. Doctor, when
14 you worked at A.O. Smith, were you given any
15 industrial hygiene training there, any industrial
16 hygienist training at all, or did you have to
17 depend on what you came to the door with, your
18 OSHA experience, et cetera?

19 MR. PEEK: Objection, George Peek, form.

20 THE WITNESS: My master's degree was in
21 industrial hygiene. Then I was with the Space
22 Center and OSHA in combination over six years
23 where I practiced as an industrial hygienist, so
24 no.

25 BY MR. SHRADER:

1 Q Okay. How many comp cases did you review while
2 you were at A.O. Smith?

3 A Gosh, I have no idea.

4 Q A lot? It says that on your resume. That's why
5 I'm asking.

6 A I don't know, probably 50.

7 Q Okay. How many of those were mesothelioma cases?

8 A I can recall one.

9 Q How many of those A.O. Smith worker comp cases
10 were lung cancer cases?

11 A I don't recall.

12 Q How many of those -- can you give me a guesstimate
13 on the lung cancer, by the way, before we keep
14 moving?

15 MR. HUELSMANN: I don't want him to
16 guess, but he can give you an estimate.

17 MR. SHRADER: Yeah, estimate.

18 THE WITNESS: More than one.

19 BY MR. SHRADER:

20 Q And how many of those cases were asbestosis, those
21 A.O. Smith worker comp cases?

22 A I just recall a couple.

23 Q Okay. I guess the rest of it would be slip and
24 fall, foot injury, things like that?

25 A Yeah. We had a couple fatalities. I mean, it's

1 kind of the industrial safety and health
2 accidents.

3 Q Did you do sampling while you were there for
4 asbestos levels, or did somebody else do that?

5 A I did a majority of it. We had a large facility
6 at that time in Milwaukee, Wisconsin where we had
7 people in the welding lab who also conducted
8 sampling.

9 Q Was A.O. Smith still manufacturing boilers while
10 you were there?

11 A No, sir.

12 Q They had quit by that point?

13 A Well, we had some fast recovery water heaters.
14 That was our vernacular, and other people might
15 term that as a boiler.

16 Q Right.

17 A So I don't want to mislead you.

18 Q That's okay. Before you got there, they had as --
19 a fairly pretty big sized boiler manufacturing
20 interest. Do you recall that?

21 A That's my -- excuse me, that's my understanding.

22 Q Okay. And they used asbestos-containing products
23 over the course of that business, did they not?

24 A On the large boilers?

25 Q Yes, sir.

- 1 A I don't know.
- 2 Q Did you get an opinion or a feeling for why that
3 man ended up developing mesothelioma, that
4 worker's comp case that you looked at?
- 5 A I believe so.
- 6 Q And what was your opinion?
- 7 A The person was exposed to amphibole-type asbestos
8 during the performance of his work.
- 9 Q How was he exposed?
- 10 A I believe he operated a hydraulic power press
11 where he actually formed some selected materials
12 that included an amphibole-type asbestos in the
13 matrix of the product.
- 14 Q Okay. And what product was that?
- 15 A I'm going to refuse to answer that, because I do
16 have an agreement with A.O. Smith not to talk
17 about my specific knowledge of working there for
18 12 years of products. I can talk about
19 facilities. I can talk about other findings. But
20 I can't talk about products.
- 21 Q Okay. Do they make this amphibole asbestos
22 product anymore?
- 23 A Oh, Lord, no.
- 24 Q So it's not a trade secret by any stretch, is it?
- 25 A It may well be.

1 Q Okay.

2 A I -- I'm not gonna put myself in that predicament.

3 Q That's all right. If Judge Stack compels you to
4 answer that question when you get to Madison
5 County, will you answer it?

6 A I would really like some advanced notice, if I
7 could, because I have -- I have to talk to our
8 internal counsel on how --

9 Q I'm absolutely going to ask you that question.

10 A I will find out before.

11 Q I'm going to move on from A.O. Smith. Let me skip
12 that. I'm going to skip that. Okay. The
13 Georgia-Pacific roofing compound, you reference in
14 your report a study that studied roofing compound
15 and found low levels of asbestos exposure,
16 correct?

17 A Yes, sir.

18 Q Are you talking about Dennis Paysterbach's study?

19 A It's Mowat, Paysterbach is not even a named author
20 in the study.

21 Q Okay. I thought he formulated that. He didn't?

22 A He's not a listed author.

23 Q Then let me ask you this. We may be talking about
24 two different studies. The Mowat study, what
25 product were they studying?

1 A It was an aqueous-based heavy solid low
2 solvent-based roofing material that utilized
3 asbestos product very similar to what some or a
4 selected type of roofing product that
5 Georgia-Pacific made at one time.

6 Q Okay. Now, you've relied on that study without a
7 doubt in coming up with your report, haven't you?

8 A I relied on it without a doubt?

9 Q You relied on that study in giving your opinions
10 in Mr. Carrizales' case, didn't you?

11 A Yes, sir.

12 Q Okay. I'd ask that we be provided a copy of that,
13 because I sure don't have that study.

14 MR. HUELSMANN: That's fine. Just make
15 a note and -- before trial --

16 BY MR. SHRADER:

17 Q Doctor, do you have a problem with that?

18 A Oh, no.

19 Q You're not going to have to call anybody, are you?
20 Just kidding.

21 A You're getting surly here late in the day.

22 Q No, no. I'm just trying to be nice actually.
23 Now, your opinion, Doctor, is that Dr. Carrizales
24 only worked with Georgia-Pacific joint compound in
25 two of the properties, correct?

1 A Yes, sir.

2 Q Where in his deposition, where in Mr. Carrizales'
3 deposition does he say, these are the only two
4 places where I ever used Georgia-Pacific joint
5 compound?

6 A I wish he would have been that explicit. But
7 rather, in his deposition, he only discussed these
8 two properties where he may have used
9 Georgia-Pacific joint compound.

10 MR. SHRADER: Objection, nonresponsive.

11 BY MR. SHRADER:

12 Q Doctor, did Mr. Carrizales at his discovery or
13 evidence depos ever say, these two properties are
14 the only two properties where I ever used
15 Georgia-Pacific joint compound? Did he ever say
16 that?

17 A Not to my recollection.

18 Q Okay. You're assuming, are you not, in your
19 exposure estimate that the two places that you
20 list are the only two places where Mr. Carrizales
21 ever used the joint compound?

22 A That's correct.

23 Q All right. Do you know what kind of dust
24 respirator he used?

25 A He described it as a 3M mask, which I assume based

1 on the air was probably like an 8710 or an
2 equivalent.

3 Q Do you know if the protection factor that you used
4 in this factor was indicative of the 8710?

5 A Yes, sir, I do. And yes, it was.

6 Q Is the protection factor that you estimated the
7 actual amount of protection that someone gets from
8 the 8710 or just what people hoped and thought
9 they would get?

10 A Well, the protection factor varies from two to
11 five. And to afford, I guess, the least
12 protection, I selected on the low end, and I used
13 the two.

14 Q Yes, sir. But my question is, do you actually
15 know, have you looked at the studies they've done
16 on the 8710 to determine if it keeps any fibers
17 out at all?

18 A Yeah, I recall back when I was with OSHA at that
19 time, that's when the testing certification
20 program for respirators was coming out. And we
21 did review those type of respirators including 3M
22 8710 and 3M had another one, 8800 or something
23 like that. And I did look at that to see if
24 protection factors that came about were consistent
25 with the effectiveness of the respirator.

1 Q Are you aware of the actual failure rate of the
2 8710?

3 A No, sir. On this one it didn't matter. The dose
4 would still be so low even if I didn't factor that
5 in.

6 Q Yeah. But with all due respect, this protection
7 factor that you use is not based on any data of
8 how 3M actually performs to 8710, does it?

9 A Well, 3M doesn't provide the protection factors.
10 The NIOSH, of which you're quite familiar with,
11 provided the testing certification program. And
12 NIOSH then provided which category and which
13 protection factor would be associated with which
14 respirators. So it wasn't something that 3M
15 pulled out of the sky.

16 Q Right. But we're comparing apples to oranges,
17 right? You're talking about the protection factor
18 that NIOSH hoped it would provide the working
19 public, correct?

20 A Oh, no. NIOSH did immense studies in Morgantown,
21 West Virginia at the onset of the testing and
22 certification program. You had to submit your
23 respirators to be subjected to their fit testing
24 and the resulting qualitative and quantitative
25 performance of those respirators. And then NIOSH

1 provided the protection factor, not 3M.

2 Q We'll just do that in front of the jury. Let me
3 see if I understand what you're going to be
4 offering to the jury. You have dose
5 reconstruction and you have a review of the
6 literature, correct? You have the knowledge of
7 the ATSDR and EPA and a bunch of references you
8 put in here, correct?

9 A Yes, sir.

10 Q Is there anything else that you intend to offer
11 the jury besides the dose reconstruction and the
12 literature that puts the dose reconstruction in
13 the context of excess risk of mesothelioma?

14 A Is that your vernacular to the causation --

15 Q Yes, sir.

16 A -- potential causation?

17 Q Yes, sir.

18 A I haven't been asked to provide anything else at
19 trial at this time. I don't know if I'm going to
20 be asked to do anything more or less by Brian.

21 Q You and I both agree that you're not an
22 pneumatical expert, correct?

23 A I'm not a physician.

24 Q And you're not going to be the one that either
25 says yes or no on specific causation, correct?

1 You're going to be the general causation person,
2 are you not?

3 A I don't know what a general causation person is,
4 but I assume I would opine on -- predicated upon
5 the dose of this material. Based upon the use and
6 exposure factors, I would opine whether or not
7 that dose is associated with the causation of
8 mesothelioma.

9 Q Okay.

10 A If that's general, then I'm general. If that's
11 specific, then I'm specific.

12 Q And the dose stuff is -- with all due respect, is
13 something that is not algebra or calculus,
14 correct?

15 A Not for this study, no, sir.

16 Q Right. I mean, it's kind of like doing, how far
17 did you travel, right? You multiply how fast you
18 were going times how long you were going. If
19 you're going 50 miles an hour for half an hour,
20 you've gone 25 hours sic, right?

21 A Could I be a little more specific?

22 Q Sure, I guess.

23 A Dose is proportional to the duration or how long
24 times exposure intensity or exposure
25 concentration.

1 Q Right. I just mean that in a pinch, a lawyer
2 could draw that equation just like you did on a
3 chalkboard and do that equation, right? Couldn't
4 they?

5 A Some lawyers.

6 Q Yeah. I mean, we're not the sharpest knives in
7 the drawer, but you certainly have a good counsel.
8 Somebody from Hepler Broom could take that
9 equation and stick numbers in there and do the
10 equation, right?

11 A Yes, sir.

12 Q And they could on their own and perhaps before
13 they even met you find that Verma and Middleton
14 article, couldn't they?

15 A Oh, I think anyone who can do any basic research
16 can find it.

17 Q Right. With all due respect, this dose
18 reconstruction that you do for Mr. Carrizales
19 could be done kind of live and in person via
20 lawyer and would not need the experience of a four
21 or five time degreed individual such as yourself,
22 would you agree with that?

23 MR. HUELSMANN: Object, vague,
24 misleading. I don't know if you can answer --

25 BY MR. SHRADER:

- 1 Q Okay. Three degree. He's got three degrees, I
2 think. Would you agree with me that a lawyer
3 could handle that?
- 4 A I'd like to think I bring something to the party.
5 I know in working with others it's not always as
6 simple as it seems.
- 7 Q But in this --
- 8 A And that's what I think the beauty of my report
9 is, that it looks a helluva lot more simple than
10 it is.
- 11 Q But in this case, wouldn't you agree it's pretty
12 simple math?
- 13 A Once you derive the perimeter values, absolutely.
- 14 Q Okay. And the perimeter values are the perimeter
15 values that you took from Verma and Middleton,
16 right?
- 17 A That's half of the perimeter values. The other
18 perimeter value is the duration.
- 19 Q Right. And that's just by taking how much time he
20 said he was there, how many hours he spent doing X
21 and Y and multiplying it, right? It's all right
22 here. .081 year times 25 percent use of
23 Georgia-Pacific joint compound equals .02 year,
24 right?
- 25 A If that's your testimony. My testimony is it's a

1 little more complicated than it appears, and I'd
2 like to think that's the value my report brings.
3 It makes it look like anybody can do it.

4 Q Okay. I think you know where I'm headed now.

5 A I wish I did. No, sir.

6 Q Yeah. And as far as the literature goes, these
7 lawyers could publish this literature? And by
8 "publish" I mean show the jury. They could show
9 this literature to the jury without you, couldn't
10 they?

11 MR. HUELSMANN: Object to form, vague,
12 misleading.

13 THE WITNESS: Yeah, what literature?

14 BY MR. SHRADER:

15 Q The Verma, the Middleton, the ATSDR, the Rhodes,
16 the Corn. All these articles that you cite in
17 here the lawyer for Georgia-Pacific could publish
18 to the jury, couldn't they?

19 MR. HUELSMANN: Same objection.

20 THE WITNESS: I guess. I don't know how
21 the process works, but I guess they could.

22 BY MR. SHRADER:

23 Q Yeah. And I guess -- I guess what I'm getting to
24 is, you won't be relying on any personal
25 experience with Georgia-Pacific joint compound in

1 making your descriptions before the jury, will
2 you?

3 A I guess if I rely on personal experience, Justin,
4 it would relate to my work at OSHA, my work in
5 conducting probably thousands of personal samples
6 throughout my career.

7 Q Right.

8 A And the fact that I've worked on as many joint
9 compound cases as I have.

10 Q Yeah. But the problem with that is the experience
11 with OSHA, the joint compound work, you don't
12 remember the exposure levels for that. You've
13 already talked about that. We've went through
14 that, didn't we?

15 A Yes, sir.

16 Q And you're not going to be relying on any personal
17 experience that you had with joint compound when
18 you go testify in Madison County, correct?

19 A Again, other than if I'm asked, have you ever done
20 this before. And I've answered --

21 Q Yeah. Which is, I don't remember much, right,
22 with all due respect?

23 A I just remember the citations weren't issued.

24 Q Okay. And you're not going to be relying on any
25 material that you've actually published when you

1 testify live and in trial in this matter, are you?

2 A No, sir.

3 Q Because all these mold articles that you've
4 published on the other stuff, it's really not all
5 that applicable to the current situation, is it?

6 A I don't believe so.

7 Q Okay. And you've never looked at specific
8 Georgia-Pacific corporate documents, have you?

9 A No, sir.

10 Q There would be no way for you in an industrial
11 hygiene perspective or a toxicological perspective
12 to comment on Georgia-Pacific's behavior or lack
13 thereof, correct?

14 A Their behavior?

15 Q Yeah.

16 MR. HUELSMANN: I'm going to object to
17 form, compound, misleading.

18 THE WITNESS: I --

19 BY MR. SHRADER:

20 Q You can't comment on Georgia-Pacific corporate's
21 ethics, can you, because you're not qualified to
22 do that? And even if you would be qualified to do
23 that, you haven't read their corporate documents,
24 have you?

25 A My knowledge is, as I described, the composition

1 that was included in the letter and discussions
2 with Mr. Hall and the representations that
3 asbestos was removed in '77, '78 from their joint
4 compound.

5 Q That's not what I asked you.

6 A Well, I mean, and if I'm asked about that, then
7 sure, I opine about that. I don't know where else
8 you're going.

9 MR. SHRADER: Objection, nonresponsive.

10 BY MR. SHRADER:

11 Q Doctor, you can't comment on Georgia-Pacific's
12 corporate ethics, because you haven't read the
13 documents that they sent back and forth to each
14 other, right? You haven't even looked at their
15 batch formulas, right?

16 A I've testified to what I haven't seen, and I don't
17 know what they're sending back and forth, so I
18 can't --

19 Q Do you have an opinion as you sit here today on
20 Georgia-Pacific's corporate ethics?

21 A I haven't been asked to review such, so no, I
22 don't as we sit here today.

23 Q Okay. Are you going to have an opinion on that at
24 trial?

25 A I don't know. I haven't been asked --

1 Q All right.

2 A -- thus far.

3 Q The last thing I want -- oh, where's your resume?

4 I got two things, and then I'm done. I'm sure

5 other people will have questions. Or maybe they

6 won't. I'm looking at your CV. That's marked

7 somewhere, isn't it?

8 A Yes, sir. No. 3 exhibit?

9 Q Yes, sir. And I'm looking at research, previous

10 five years which starts on page 13.

11 A Yes, sir.

12 Q One, two, three, four, five down, April '04 to

13 April '05, do you see that?

14 A Yes, sir.

15 Q "Confidential client. Reviewed case materials and

16 conducted dose reconstruction related to alleged

17 manifestation of mesothelioma." Who was that for?

18 A It could be a number of clients including the

19 Hepler law firm.

20 Q Okay. You don't remember who in particular?

21 A Again, I've drafted a hundred and some odd

22 reports. And it's just not the Hepler law firm

23 that retains me on mesothelioma cases.

24 Q Okay. What other defendants retain you in

25 mesothelioma cases?

1 A I've worked on Kaiser Gypsum.

2 Q Yes, sir.

3 A Hanson Permanente, Sequoia Ventures, WelCote,

4 Reardon, Bondex.

5 Q Yes, sir.

6 A Building Service & Industrial Sales.

7 Q Building Services?

8 A Industrial Sales.

9 Q Industrial Sales. Is that all one?

10 A Yes, sir. Bartelt Insulation. And there may be

11 some others. That's kind of a laundry list that I

12 come up with at this time.

13 Q Was the Building Service Industrial Sales one the

14 one that you did against Steve Penn where they

15 were selling the pipe, they worked on the sewer

16 pipe in '67? Do you remember the facts under

17 which you testified for Building Services? And if

18 you don't, that's okay. I'll move on.

19 A I'm sorry, I don't remember.

20 Q That's okay. December of 2003, a couple of lines

21 down, "confidential client." Would that have been

22 one of the people that you just told me about?

23 A I believe so.

24 Q The next page, there's more confidential asbestos

25 clients. Is there any confidential asbestos

1 client listed on here that you haven't told me the
2 name of?

3 A Kelly-Moore.

4 Q Oh, yes. What did you do for Kelly-Moore?

5 A I don't remember. I know I've had a case with
6 Kelly-Moore.

7 Q Was it something similar to what we're doing here,
8 a dose reconstruction-type thing, or was it
9 something else?

10 A No, it would be very similar.

11 Q Okay.

12 A And H.P. Fuller.

13 Q When you did the pharmacokinetic study of leukemia
14 on benzene, did you find an association between
15 leukemia and benzene?

16 A Depends on what type of leukemia.

17 Q AML.

18 A No, sir.

19 Q You don't think there's an association between AML
20 and benzene exposure?

21 A I'm sorry, AML, yes. ALL, no.

22 Q Okay. And do you -- just out of curiosity, for
23 curiosity sake, and I'll move on to the next
24 topic. What level of benzene do you think you
25 need to get AML? Is there a safe level in that

1 instance?

2 MR. HUELSMANN: Is there -- there's no
3 relevance here whatsoever at all.

4 MR. SHRADER: I'm just asking him. He
5 can say yes or no or I don't remember.

6 THE WITNESS: I don't recall.

7 BY MR. SHRADER:

8 Q Okay. I just want to get a list on the record of
9 all of the things that I've asked for so that I've
10 sort of made my record, so to speak.

11 DEFENSE COUNSEL: Excuse me, sorry to
12 interrupt. Would somebody quiet their phone,
13 please?

14 BY MR. SHRADER:

15 Q I've asked you, have I not, sir, No. 1, for the
16 billing statement and if a billing statement
17 doesn't exist, your timesheet showing how much
18 time you've worked on this case, is that correct?

19 A Yes, sir.

20 Q I've also asked you for all the references that
21 you have in this case including something that's
22 not listed which is that roofing sealant article
23 that you talked about that I wasn't familiar with?

24 MR. HUELSMANN: For clarity, it is
25 listed, though.

1 MR. SHRADER: Okay. Then that's fine.

2 That's on five or six what you're looking at?

3 THE WITNESS: No. It's in the report.

4 MR. HUELSMANN: Under the references,
5 page 1.

6 BY MR. SHRADER:

7 Q So you're going to get me the articles that you
8 rely on from the bibliography or footnote list
9 from your report and Exhibits 5 and 6, correct?

10 A That's what I have down, yes, sir.

11 Q Do you believe, sir, that would be overburdensome
12 to you?

13 A It's gonna take a while, but we can do it.

14 MR. HUELSMANN: Are you talking about
15 the 12 matters that he has in his references,
16 right? Or these 12 articles --

17 MR. SHRADER: And he said that he relied
18 on those Exhibit 5 and 6, too, I thought.

19 MR. HUELSMANN: All right. I just want
20 to make sure we're clear.

21 THE WITNESS: It's every one of these?

22 MR. SHRADER: And the other thing --

23 MR. HUELSMANN: Well, then what's your
24 answer is this unduly burdensome? I'm sorry, I'm
25 asking questions. But answer his question.

1 BY MR. SHRADER:

2 Q You can go ahead.

3 A It will take a while.

4 Q How long?

5 A Two, three hours for our researcher to pull all
6 this.

7 Q And the other thing, do you still have a copy of
8 the Brownfields article that you wrote?

9 A I may.

10 Q Okay. Do you have a copy of the 1991 American
11 Association of Occupational Health Nurses that you
12 wrote?

13 A I may.

14 Q And Pollution Engineering in 1989?

15 A I may.

16 Q Okay. Professional Safety in March of '88?

17 A I may. I don't know.

18 Q What about your textbook? Do you still got that
19 from way back?

20 A Yes, sir.

21 Q Fundamentals of Industrial Toxicology?

22 A Yes.

23 Q I'd like that, too. We'll obviously pay to Xerox
24 these things. We obviously wouldn't agree to a
25 professional added cost for the services of

1 copying. But we don't mind paying for actual
2 copies.

3 A So I'm going to have somebody spend several hours
4 and I'm supposed to eat all that?

5 Q Well, I think that you can pass that on to
6 somebody. I was just trying to be agreeable with
7 opposing counsel.

8 MR. HUELSMANN: I mean, that's something
9 we can work out amongst the attorneys, and we'll
10 let you know.

11 MR. SHRADER: Yeah.

12 BY MR. SHRADER:

13 Q With that said, Doctor, have you understood all my
14 questions today?

15 A Yeah. I did find out one thing.

16 Q Go ahead.

17 A We do not have any type of written confidentiality
18 agreement with the Hepler firm.

19 Q Okay. I appreciate that. I thought that might be
20 the answer. Doctor, have you understood all my
21 questions today?

22 A I did my best.

23 Q Is there anything as you sit here right now that
24 you need clarified, asked differently, something
25 that you didn't understand?

1 A I don't believe so.

2 Q Is there an answer that you could give more fully
3 than the ones that you gave that I don't know
4 about?

5 A I don't think you'd want it.

6 0 Without it generating a wrath.

7 A No, sir.

8 Q I know that I've been strict with you today. Do
9 you feel that I've been unprofessional with you in
10 any way today?

11 A No, sir.

12 Q I appreciate your time. Those are all the
13 questions I have.

14 MR. SHRADER: I pass the witness.

15 MR. HUELSMANN: Anyone on the phone?

16 MR. TOMASKA: Yes, I have a few
17 questions for Dr. Anderson.

18 MR. HUELSMANN: Identify yourself,
19 please.

20 MR. TOMASKA: This is the Jim Tomaska on
21 behalf of R.T. Vanderbilt. Doctor, can you hear
22 me?

23 THE WITNESS: Yes, I can. Just one
24 second, please.

25 (Statements made while increasing the

1 volume on the speakerphone.)

2 EXAMINATION

3 BY MR. TOMASKA:

4 Q I'm sorry.

5 A We're working with the videographer. One second.

6 Q Just tell me when you're --

7 MR. HUELSMANN: Go ahead. Jim.

8 BY MR. TOMASKA:

9 Q Okay. Thank you. Doctor, at the outset of your
10 deposition, you testified that you're not prepared
11 to discuss any other defendant other than
12 Georgia-Pacific. Do you recall testifying to
13 that?

14 A Yes, I do.

15 Q Okay. And that being said then, you have not been
16 asked nor have you formulated any opinions
17 specific to R.T. Vanderbilt, have you?

18 A No, sir, not at all.

19 Q And you're not a mineralogist, is that correct,
20 Doctor?

21 A That's correct.

22 Q Now, Doctor, with respect to Mr. Carrizales, you
23 do not know any of the product codes or product
24 formulas of any of the joint compound that he
25 used, do you?

1 A No, sir, I do not.

2 Q You don't know which Georgia-Pacific plants any of
3 that joint compound that he used was manufactured
4 at, do you?

5 A That is correct.

6 Q And finally, Doctor, you don't know any of the
7 stores where Mr. Carrizales purchased any of that
8 joint compound, do you?

9 A My recollection is that he purchased joint
10 compounds from what he described as an auction.

11 Q Okay. But you don't know the specific locations,
12 sponsor, you know, owner of any of those auctions
13 or however he characterized it, do you?

14 A No, sir, I do not.

15 Q Just one more second here, Doctor. I think I'm
16 about done. That's all I have. Thank you,
17 Doctor.

18 A Thank you.

19 MR. HUELSMANN: Anyone else on the
20 phone? Hearing none, that concludes this
21 deposition and we're gonna go off the record.

22 MR. SHRADER: Off the record.

23 VIDEOGRAPHER: We are off the record at
24 4:02 p.m.

25 (Discussion held off the record.)

1 (The following statements were made on
2 the written record only.)

3 MR. HUELSMANN: He wants to reserve the
4 right to read and sign.

5 MR. SHRADER: I have no objection to
6 that just so long as it's done pretty quickly.

7 MR. HUELSMANN: I mean, he knows --

8 MR. SHRADER: Because trial is next
9 week.

10 (Proceedings concluded at 4:06 p.m.)

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STATE OF WISCONSIN)
) SS:

COUNTY OF MILWAUKEE)

I, JESSICA R. WAACK, a Registered Merit Reporter, Certified Realtime Reporter and Notary Public in and for the State of Wisconsin, do hereby certify that the above deposition of KIM ANDERSON, M.D. was recorded by me on October 31, 2007, and reduced to writing under my personal direction.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof I have hereunder set
my hand and affixed my seal of office at Milwaukee,
Wisconsin, on November 2, 2007.

Jessica R. Waack

Notary Public

In and for the State of Wisconsin

My Commission Expires: September 20, 2009.

STATE OF WISCONSIN)
) SS:

COUNTY OF MILWAUKEE)

I, KIM ANDERSON, M.D., do hereby certify that I have read the foregoing transcript of proceedings, taken October 31, 2007, at GeoEnvironmental, 20900 Swenson Drive, Suite 150, Waukesha, Wisconsin, and the same is true and correct except for the list of corrections noted on the annexed page.

Dated at
this _____ day of _____, 2007.

KIM ANDERSON, M.D.

Subscribed and sworn to before me

this_____day of_____, 2007.

Notary Public

My Commission Expires:

Style of case: Gilbert Carrizales v. A.W. Chesterton, Inc.,
et al.

Taken on: October 31, 2007

Reporter: Jessica R. Waack

ERRATA SHEET

2	PAGE NO.	LINE NO.	DESCRIPTION
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RE: Gilbert Carrizales v. A.W. Chesterton, Inc., et al.

Date: October 31, 2007

Reporter: Jessica R. Waack

Job: 6-53186