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JAN 12 1996

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

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IN RE: ASBESTOS LITIGATION	:	
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LIMITED TO V. AUGUST.	:	

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Deposition of WILLIAM J. NICHOLSON, as
a nonparty witness, taken by the
defendants, pursuant to notice dated
November 30, 1995, at the offices of
Heidell, Pittoni, Murphy & Bach, P.C., 99
Park Avenue, New York, New York, on
December 29, 1996 at 9:30 A.M., before
Thomas R. Nichols, a registered
professional reporter and notary public of
the State of New York.

353 LEXINGTON AVENUE NEW YORK, NEW YORK 10016

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IT IS HEREBY STIPULATED AND AGREED by
and among the attorneys for the respective
parties herein that filing, sealing and
certification be, and the same hereby are,
waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer authorized
to administer oaths with the same force and
effect as if signed and sworn to before the
court.

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W I L L I A M J . N I C H O L S O N ,

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residing at 4-02 Kenneth Avenue, Fairlawn,

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follows:

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EXAMINATION BY

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MR. DAVIES:

9

Q Please state your name for the record.

10

A Dr. William J. Nicholson.

11

Q Good morning, Dr. Nicholson. My name

12

is Ralph Davies, and I have a few questions for

13

you this morning regarding a couple of cases that

14

are pending in Delaware.

15

Let me ask you first whether you are

16

represented by counsel at the deposition today.

17

A I am being represented by Mr. Jacobs.

18

Q When did you retain Mr. Jacobs to

19

represent you at this deposition?

20

A I didn't retain him as such. I don't

21

quite understand your question. He was asking me

22

to participate --

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Q Let me try to make my question more

24

clear.

25

A -- in this case or one of these cases.

Nicholson

Q Do you have an attorney that you have retained to represent you at the deposition here this morning?

A In a specific way, no. As I understand that term.

Q As I understand it, Mr. Jacobs is representing the plaintiffs in this case and not you; is that correct?

A Yes.

Q Did you meet with Mr. Jacobs before
the deposition this morning?

A Briefly.

Q Where was that?

A Downstairs.

Q Did you discuss the cases at issue here?

A I mentioned a couple of my views to him on the elevator going up.

Q What were the general subjects that you covered on the trip from ground zero to the 7th floor?

A Exposures in different circumstances,
asbestos release in different circumstances and
mesothelioma in reports of epidemiological studies

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of welders.

Q What areas did you cover with respect to asbestos release?

A That in circumstances of embedded fiber, sawing, sanding or manipulating can readily release fibers.

Q Was that the sum and substance of the conversation that you had on that topic?

A On that topic, yes.

Q You are an experienced deposition giver, Doctor. Is that a fair statement?

A Yes.

Q I don't propose to review any ground rules with you since you have given a number of depositions.

I just want to be sure that if I ask a question which is not clear to you that you will tell me that the question is not clear so that I can try to rephrase it. Fair enough?

A Yes.

Q Can you tell me approximately how many times you have testified by way of deposition in 1995?

A It's approximately a dozen. Maybe a

2 little less. But roughly once a month

3 Q Approximately how many times in 1995
4 have you testified at trial?

5 A Three or four times.

6 Q And I know you've testified in West
7 Virginia in 1995. Can you give me any other
8 jurisdictions where you have testified at trial?

9 A In San Francisco in several cases by
10 deposition.

11 Q And deposition for use at trial.

12 A Yes, and in trial in one circumstance
13 that I recall and perhaps a second. I believe.
14 I'm not sure, but perhaps a second in San
15 Francisco.

16 I can -- no, I can't. Oh, yes, I can,
17 if we look at the list that I have on that issue.

18 Q Can you think of any other jurisdictions
19 where you have testified other than West Virginia
20 and California in 1995?

21 And I am talking about testifying at
22 trial. Please feel free to look at anything you
23 have.

24 A Let me just review what I put together
25 a day ago in an attempt to be responsive to what I

Nicholson

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have done.

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Three trials in San Francisco and one
in Charleston.

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Q Charleston, West Virginia.

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A Yes.

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Q Can you tell me, please, Doctor, what
material you have reviewed in preparation for your
deposition today?

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A I reviewed a number of articles that
were relating to welding area roughly, articles on
this list that are circled. I didn't read every
one, but I scanned them for issues that might be
of interest.

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And I reviewed partial deposition
testimony of Mr. George Hudson, Stephen Hudson,
Stephen Przybylski, Vincent August and John
Protack, Thomas Eagar and Jack Peterson.

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Q Is that the total of the materials
that you reviewed in particular for these
depositions?

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A Yes. I'm sorry. I scanned the early
part of the welding chapter on this IARC Monograph
which provided information that was of use in
terms of what was developed when and the different

Nicholson

types of welding operations.

Q Would you give us, please, the precise title of the book that you have in your hand?

A "IARC Monographs on the Evaluation of Carcinogenic Risks to Humans." The subheading "Chromium, Nickel and Welding." It's Volume 49.

Q Which pages in particular did you review or scan?

A I scanned from -- particularly from 446 -- 447. Then when I got to animal study at 476 I didn't do much more.

Q I'm sorry. I missed the pages. Could you give them to me again?

A 447 to 476. And then some of the animal studies I did not review. I did look at the case reports and epidemiological studies and carcinogenicity that begins on page 489 and continues through the summary of the chapter to 507.

Q So it is 489 to 507?

A Yes.

Q What in particular, if anything, Doctor, did you find in those pages that was germane to the issues in this case?

Nicholson

A Very little in terms of release of fibers from welding rods. That asbestos therein was mentioned, but the details of any measurements of fiber release were not measured, which is what I specifically was looking for.

But this was a quick review obviously. There's vast numbers of articles summarized in those few pages.

Q Doctor, you were kind enough to hand to me a list which consists of five pages titled, quote, Welding Rods, unquote, Reference Materials, which lists 57 publications of one variety or another; is that correct?

A Yes.

Q Would you have any objection to our making a copy of this and marking it as a deposition exhibit?

A No.

MR. JACOBS: Off the record.

(Discussion off the record.)

Q Let me just ask you a couple of questions, Doctor, about what we will mark as Nicholson Deposition Number 1.

Is this a document that you prepared?

Nicholson

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2 A No.

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Q Do you know who prepared this
4 document?

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A No.

6

Q How did you come into possession of
7 this document?

8

A It was either sent to me by Mr. Jacobs
9 or Mr. Crumplar.

10

Q When did you receive the document?

11

A Probably two to three months ago.

12

Q Have you read each of the items that
13 is mentioned on the document?

14

A No.

15

Q Is any of the writing or marking on
16 the document yours?

17

A The marking about a number is mine.
18 The other writing in terms of comments or checks
19 or stars -- I'm sorry. I should say the --

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MR. JACOBS: Off the record.

21

(Discussion off the record.)

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Q Doctor, we're making arrangements to
23 have Exhibit 1 photocopied so it will be a little
24 easier for us to talk about it. And while we're
25 waiting let me ask you a few other questions.

Nicholson

As I understand it, you have a Ph.D. in physics; is that correct?

A Yes.

Q Is it also correct that you do not have a degree in geology?

A That is correct.

Q Or mineralogy?

A Correct.

Q Or chemistry?

A Correct.

Q Or metallurgy?

A Yes.

Q Or industrial hygiene?

A That is correct.

Q Do you have an engineering degree?

A No.

Q Do you have a degree in materials sciences?

A No.

Q Are you certified in any specialty?

A No. I haven't applied for such a thing, nor found it necessary to do so for my work.

Q You say you haven't applied for

Nicholson

certification in any area of specialization.

Can you tell me if there is any area of specialization for which you could apply for certification where you are qualified to do so?

A I don't know. I haven't looked at the -- at all.

Q Fine. I just wanted to make sure that I wasn't missing something.

Do you have any formal training in epidemiology?

A I have read books on epidemiology and I've worked with some fairly noted epidemiologists that were quite helpful in educating me in the field.

Q Do you consider yourself to be an expert in the field of epidemiology?

A I don't know how you would use that term, so I don't use it. I feel I am knowledgeable to do the studies, sufficiently knowledgeable to have done the studies that I have done in that field.

Q Do you have any degree in epidemiology?

A No.

Nicholson

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Q I understand from looking at your curriculum vitae that you are a professor of community medicine at Mount Sinai; is that correct?

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A Yes, that is the department in which I am located.

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Q Can you tell me what is involved in community medicine? I am not familiar with that terminology.

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A It's a variety of activities. Some deal with health services into the community as such. We have a division that does that. I am in a division of environmental and occupational medicine, which conducts epidemiological studies among working groups, looking at cancer risk or other evidence of disease.

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Also, people in that undertake studies of the action of agents of concern in the workplace or the environment through molecular, biological or other studies.

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So it spans the gamut from social scientists to molecular biologists and their background.

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Q You are not a medical doctor; is that

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correct?

A That's correct.

Q I take it that in the department of community medicine you don't actually see patients, although there may be others who do; is that right?

A In some of our studies we would have physicians would examine them. I would participate in the studies and interview activities.

Q In addition to the studies that you have discussed do you have any other responsibilities as a professor of community medicine?

A I have assigned to me clerk -- students in a clerkship program that we have, medical students, third-year medical students, where we supervise a research project for six weeks.

I teach in the occupational medicine course particular topics, asbestos-related topics largely, for residents at -- that come to us for two to three years, and may be involved with some interns as well. But largely my activities are

Nicholson

between those two, the residents and the medical students.

Q Let me explore a little bit the two phases that you have discussed.

A As I understand it, you have some students who are assigned to you on a clerkship basis; is that correct?

A Yes.

Q And that's a six-week period?

A Yes.

Q And how often does this occur?

A It may be one or two students a year. This year it happens so far that I have not yet had one and last year I had I guess one or two. I don't remember.

Q Just so I'm clear, in 1995 there have been no clerks assigned to you; is that correct?

A In the '95-'96 academic year. I did have someone earlier in '95 to my recollection.

Q Just so I understand what you're saying, the academic year runs from September -- you tell me. When does it run?

A Roughly September through June.

Q So at least from September up until

Nicholson

December 29, 1995, you have had no clerks assigned to you to participate in this type of program.

A Yes.

Q Do you know of any that are assigned for the balance of the 1996 academic year?

A As of now, no.

Q You say you have had one or two in the '94-'95 academic year; is that correct?

A Yes.

Q Could you give me their names, please?

A No. I don't know -- remember their names.

Q During which six-week period did the clerkship program run?

A I don't remember the time.

Q Would there be records at Mount Sinai that would give us that information?

A I would imagine so.

Q And also the names of the clerks who were involved?

A Yes.

Q Can you tell me, please, what exactly you did with the clerks that you had in the 1994-'95 academic year?

Nicholson

A They would propose a project and I would be available in assisting them as to literature to review and how they might proceed.

Q Are these medical students that we're talking about?

A Yes, they are third-year medical students.

Q Do you recall the types of projects that were proposed to you during the 1994-'95 academic year?

MR. JACOBS: Object to the form of the question.

A One was a literature review and a discussion of possible research in a particular area.

Q Did that area have anything to do with asbestos?

A Not to my recollection.

Q Do you recall what it had to do with?

A At the moment I don't.

Q Is that the only project that you can recall for the clerkship program in that year?

A Yes.

Q Let me inquire about the occupational

Nicholson

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medicine course.

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Could you give me a little more detail on exactly what teaching you do in that course?

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A I would talk about exposure measurements and some past research that may have been done. And it depends upon what others have taught and the decision of the course administrator as to what topic they would wish me to speak on.

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Q What is the official title of the course?

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A I'm sorry. I don't know that title.

Q Is there a principal professor or doctor or lecturer that's involved in teaching the course?

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A Some of the younger faculty members are involved in it. There are several that might come to me.

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Q I take it from what you have said that you would not be considered the principal teacher in the course.

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A Oh, absolutely. That's correct. I am an enlisted participant as needed, and thus the details are something I don't have to bother with.

Nicholson

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Q In the 1995-'96 academic year have you lectured or taught in this particular course?

A I believe so.

Q Can you tell me how many times you have lectured?

A It probably was one time.

Q Do you recall when that was?

A No. Not the time. I believe they were wanting some information on exposure measurements relating to asbestos in different circumstances.

Q Did you lecture to a group of medical residents?

A Yes, and others that may have been interested.

Q Can you approximate for me the size of the group to whom you gave the lecture?

A Typically it's a dozen or so.

Q Was this in a formal classroom setting, a lecture hall or study hall of some type?

A It's an informal setting.

Q How long did the lecture last?

A About an hour.

Nicholson

Q Is it fair to characterize it as a lecture? I don't mean to make it something that it isn't. I would like you to describe it for me, please.

A It's a discussion. So there are some aspects of the lecturing that would perhaps produce a series of sheets with information on it or in some cases use a blackboard and in some cases we would just talk about things of interest.

Q On the one occasion when you had done that during the current academic year were there any documents or papers that were produced?

A Probably. At the moment I am uncertain because -- and I am even uncertain if it was this academic year or earlier in the summertime or in the spring. So let me not be specific about the academic year, but be specific about the calendar year that I did this.

And my recollection was that I did produce a document that would be hopefully useful for them to retain and not require them to copy a lot of things off the blackboard.

Q What was the general subject matter of the document that you produced?

Nicholson

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A It would be on exposure circumstances and asbestos risk assessment. That's what I would particularly emphasize, the relationship of disease to exposure.

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Q Can you give me the name of anyone who participated in this informal lecture, if I can call it that, besides yourself?

9

A As a faculty member?

10

Q Or as a student.

11

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A Phyllis Marino was to my recollection a person who had asked me to do this.

13

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Q Is she the course administrator that you mentioned before?

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A She would have been one of them.

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Q Was she actually a participant?

17

A Probably.

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Q Does she have a title?

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A If she does I don't know what it is. I really don't bother with the kind of things you're asking about.

22

23

Q I understand. Is she employed at Mount Sinai?

24

A Yes.

25

Q Do you know what her address is?

Nicholson

A At Sinai it would be environmental --
Environmental and Occupational Medicine, Box 1057.

Q Have you described for me, Doctor, the
sum and substance of the lecturing that you did
during calendar year 1995?

A To my best recollection, yes.

Q How about in 1994, did you participate
in this same kind of program?

A I would have participated and I don't
remember any of the details of it.

Q Are there any other responsibilities
that you have as a professor of community medicine
at Mount Sinai beyond what you have already told
us about?

A To undertake research and obtain funds
for doing so. Through soliciting grant funds.

Q Are you presently working under any
research funds or grants?

A I have a grant -- I have had one for
several years -- to conduct a study of radon
effects in northern New Jersey.

Q Are you working under any other grants
or research funds at the present time?

A Some departmental funds, some of which

Nicholson

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2 have come from insulation worker unions, and the
3 work involves looking at, analyzing data that were
4 on mortality in relationship to prior medical
5 surveys of these workers in the past where we can
6 obtain information on exposure.

7 And the health status and the particular
8 activity now is looking at the subsequent mortality
9 in relationship to the various factors that were
10 determined in examination.

11 Q I take it this is an ongoing study?

12 A It still is now. The mortality is
13 ongoing. We have an ongoing mortality study of
14 two groups of asbestos workers.

15 Q Are any of these asbestos workers
16 presently employed, if you know?

17 A I am sure many of them are.

18 Q Are they out of particular unions?

19 A One is -- the international membership
20 consists of the membership of the national union
21 in 1967, and it was a group of 17,800 that was
22 initially followed by Irving Selikoff for
23 mortality, and that study continues.

24 The other group that I mentioned in
25 which examinations were undertaken consists of

Nicholson

2,907 insulators in different locals across the United States. Hopefully all the locals would have been represented of the international, but perhaps not.

Q Can you tell me precisely what it is that you are presently doing with respect to follow-up of the Selikoff group? How do you go about that is what I am interested in.

A The union cooperates with us in that when they get a death certificate in both retired and working -- workers, when deceased, relatives rapidly send in information because there is a death benefit. So the union apprises us of that and the location of the death, and we obtain death certificates and write to individuals that may have treated these workers prior to death to obtain information that would perhaps relate to the cause of death.

So the mechanism for this follow-up which now is ongoing for thirty years has been the same over time.

Q How many reports did you receive in 1995?

A Oh, it would be something over five

Nicholson

hundred, less than a thousand.

Q I assume you have the paperwork on all of those reports at your office or --

A Not at my office. There's an office that is called the archives that maintains them. There are a group of people.

Q What do you do when you receive this information from a physician or a family?

MR. JACOBS: Objection as to form.

A Some of it is just kept available. When one wishes to do an analysis such as is being done now on mortality in relation to the factors, you bring all the files of everybody -- you review all of the files of everyone, and to assure that you have information, ummm, that's entered into a computer. Much of the information initially is entered into the computer in terms of vital statistics of the person, as some of the detailed medical material that would be received, would be retained for later use.

So depending upon the particular factor of interest, clinical factor of interest, it may be entered in due time at the time an analysis is done as opposed to the time that we

Nicholson

receive it. But when it's received, the basic data would go into a computer and is similarly retained in a file drawer.

Q When is the last time anything was published that pertained to this ongoing study that you just described?

MR. JACOBS: Objection to the form of the question. Off the record.

(Discussion off the record.)

Q We have been discussing the Selikoff study, have we not?

A Both of them would have been done by Selikoff. He organized the clinical examinations of the 2,907 -- of which 2,907 workers attended and he initiated the mortality study of the national membership.

Q Is the follow-up data that you or your group has been receiving the same for both sets of workers?

A The follow-up group in terms of what is sent to us at the time of death of a worker is. We have much more available on the group for which examinations were undertaken. And depending on the circumstances, one may write letters to

Nicholson

workers to ask further information. We haven't done that recently.

Q When is the last time that any study was published?

A There's an extensive review of the 17,800, mortality through twenty years, published in 1991.

Q Is that the last time that anything was published regarding either of these groups?

A Of a -- I believe so.

Q Let me ask you about the second group of workers where examinations were conducted.

Have serial exams been conducted on those people?

A No.

Q So it was a one-time deal with respect to each of those workers.

A Yes.

Q Do you consider yourself to be an expert in fracture mechanics, Doctor?

A No.

Q Doctor, do you read any welding publications on a regular basis?

A No, I do not.

Nicholson

Q Do you read any welding publications at all?

A I have read some material relating to welding which I have already told you about with regard to this case.

Q Would those materials be essentially those which have to do with alleged health effects from welding rather than welding itself?

A Oh, I read this book, the IARC monograph, which dealt with welding itself. That's what I was particularly interested in. Because the other materials were largely health events. Some of which I had from the material I would collect over time, but much of them I obtained from the list that you have.

Q Doctor, I want to be clear on what you did with the IARC monograph. Did you scan it or did you read it?

A I read it fairly -- well, I did more than scan the first sections. After the discussions of MIGs and MAGs and MMEs and that, I then scanned it with respect to the health effects, because of what was reported here was similar to the context of that which was available

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from the articles that I had collected.

Q Doctor, you have been kind enough to hand me the IARC Monographs book, Volume 49, to which you referred earlier.

And as I glance at the first section I see that starting on page 447 there is a chapter that is titled "Historical Perspectives and Process Description," and that chapter runs up to and including a part of page 455.

Is this the first information that you have reviewed regarding welding processes as such?

A No, there are some in the other articles that I obtained. But that was the most organized, in that it covered a variety of present and past activities and had a breadth of descriptions relating to a variety of welding, types of welding processes.

Q When was it that you reviewed this particular part of the monograph?

A Mostly yesterday.

Q That would be December 28, 1995?

A Yes.

Q If I understood you correctly, you indicate that some of the materials outlined on

Nicholson

what we are now going to mark as Nicholson
Deposition Exhibit Number 1 --

MR. JACOBS: Would you mark the copy
rather than the original.

MR. DAVIES: Sure.

Q -- discuss welding processes; is that
right?

A Some welding descriptions exist in
some of those articles.

MR. DAVIES: Let's mark a copy of this
as Deposition Exhibit 1.

(Document entitled "'Welding Rods'
Reference Materials" marked Nicholson
Exhibit 1 for identification, this date.)

Q Doctor, let me hand back to you the
original of Deposition Exhibit 1 and ask you if
you could point to which of the 57 publications
listed there discuss welding processes or types of
welding.

MR. JACOBS: Object to the form of the
question.

A I would have to look at the articles.
I don't remember article by article.

Q Is it fair to say then that the best

Nicholson

Nicholson

you can do is to say that it is your general recollection that some of these discuss welding processes and types of welding, but you can't point to a particular article?

6 A Well, there's some that particularly
7 describe the process early on. There's a Lancet
8 article by Doig, did so.

9 Q Would you give us the number of that
10 one?

11 A Number 20.

12 Q OK. Any others that spring to mind?

13 A Well, here's Investigation of Health
14 Hazards in Inert-Gas Tungsten-Arc Welding Shop. I
15 believe there was some discussion of that process.

16 Q Again, Doctor, if you would refer to
17 them by number, that would be helpful.

18 A 15. Again, I am not -- if you want me
19 to go through them article by article, I will do
20 that. But I don't remember of those that I have
21 looked at the details -- of which give specific
22 details. Several did, but others did not.

23 Q Let me ask you this, Doctor, as long
24 as we have Exhibit 1 in front of us.

25 Which of the 57 articles listed on

Nicholson

this document have you read?

A In their entirety? At some time or another? I would have read the number 12, "Shipyards During World War II." I read Doig.

Q Is that number 20?

A Number 20, because of what it had in it.

I -- well, I read number 3. I read number 9. I had that article for some time and I have gone through it. And I looked again at it.

Others -- at one time I have read 45. And I would have to look at the articles to be able to further be sure.

Q Do you have all 57 of these articles?

A No, I do not.

Q You indicated that the ones you just mentioned you had read in toto. Are there any others on this document that you may have read parts of that you can identify for me?

A Yes.

Q Which would those be?

A The majority of the ones that are circled I would have looked at to see if there was information particularly relating to exposure

Nicholson

factors. And some health outcomes of interest would have been noted in the particular articles I would have looked at.

Q Are you telling us, Doctor, that every article that is circled on this document has been read by you at least in part?

A I have looked at -- I have read some of -- I believe I probably read something in part of virtually all. There may be a couple of the industrial, early industrial hygiene articles I would not have done very much with.

Q I started to ask you --

A Such as I didn't do too much with Kleinfeld number 29, Welder's Siderosis.

Or his inert gas -- sorry. Well, and perhaps others.

Q I started to ask you before, Doctor, which of the writings on this original document are yours.

A The circles, the bars near the numbers, an X with two lines by a number, if it has more than two lines, four lines, for example, somebody else put it on.

There's an article here, lead article

Nicholson

on asbestos exposure noted at the top, and that identified such articles. That's somebody else's writing.

Q Just so I am clear, at the very top of page 1 there is an asterisk of some kind and it says: "Key early article on asbestos exposure from rod coatings."

That is not yours; is that correct?

A That's correct.

Q May I see the original for just a second, please?

There are a number of these articles which are highlighted in yellow. Is that your highlighting?

A Yes.

Q Since I'm going to let you keep the original and I will have a copy, let me indicate for the record that the articles which are highlighted in yellow -- you can check this, Doctor, if you like -- are number 1, number 11, number 19, number 24, number 28, number 29, and that's it, correct?

A Correct.

Q What is the significance of the yellow

Nicholson

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2 highlighting that you did?

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4 A On number 1 and number 11 it was to
5 get two articles that were not obtained in the
6 first go-around.

6

7 Q I'm sorry, Doctor, that isn't clear to
8 me. What do you mean by getting articles that
9 weren't obtained in the first go-around?

9

10 A I searched in our library for the
11 articles that were listed here, in one of two
12 libraries. The articles would be those that were
13 in various journals.

13

14 Q Did you not have 1 and 11?

14

15 A They were missed in the first, ummm,
16 search. I inadvertently did not circle them. I
17 mean, number 11 I knew was kind of a popular
18 journal, and I didn't circle it for that reason.
19 But then, since I was going back, I did circle it
20 to get what --

20

21 Q Have you subsequently obtained
22 articles 1 and 11?

22

23 A Yes.

23

24 Q How about the other ones that are in
25 yellow? What's the significance of that?

25

A Number 19 was highlighted because I

Nicholson

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2 did get it and it had this asterisk on it, so I
3 was noting that as a -- to be sure to read it.

4 Two others with asterisks, number 24 --
5 I'm sorry. I misspoke. So disregard what I said
6 about number 19.

7 Number 19 and number 24 were two
8 asterisked articles that, if available, I thought
9 it would be appropriate to obtain. They were only
10 of a few pages, and I called Mr. Jacobs to ask if
11 he had these articles, because Annals of
12 Occupational Hygiene in 1964 was not available to
13 me otherwise, nor was The Welding Encyclopedia
14 readily available.

15 And I called and asked if he could fax
16 these papers. He did not have the papers, so the
17 highlighting in 19 and 24 was simply to note what
18 I was going to ask for in a phone conversation.

19 Q Have you subsequently obtained and
20 read those pages?

21 A No, I have not.

22 Q Any others that are highlighted and
23 would you give us the significance of the
24 highlighting?

25 A Number 29 was inadvertently wrong

Nicholson

highlighting. I had no reason I would want -- I intended to highlight number 28, which I subsequently did.

The Kleinfeld article, which was a listing of a journal in which an article was, there was no identification of the journal and it was, if I later obtained information or if I had the time to go through some search process, obtained, I have not had that time, nor have I noted that article in the bibliography, and thus I do not have number 28. But it was a potentially obtainable article, and that's why it was highlighted.

Q So you have not read 28 either, correct?

A That's correct.

Q Are there any others that are highlighted that we have not discussed?

A No.

MR. DAVIES: Off the record.

(A recess was taken.)

Q Doctor, there are a number of other markings on the original of Deposition Exhibit number 1. I want to be sure I understand what

Nicholson

those are.

For example, there are a number of articles which are circled in green pen, correct? Green ink?

A I think every one that is circled is circled in green with this exception. I'm sorry. Those that are not x'd, the remainder do have a circle in green. It has sometimes red and it has sometimes black.

Q Is there any particular significance to the green versus the black or the red?

A That I had the article in hand. The red circle was to see see if this is in the main library.

Q And correct me if I am wrong, but articles 3, 4 and 5 are circled in red?

A Yes.

Q And that was to see if they were in the main library, correct?

A Yes.

Q Was number 3?

A Yes.

Q And you obtained that?

A Yes.

1 Nicholson

2 Q And read it.

3 A Not completely, but fairly
4 extensively.

5 Q What about 4 and 5?

6 A That was not available.

7 Q So --

8 A This -- ironically our library had a
9 gap at 35 and the main library didn't start till
10 thirty something else, so it was available in
11 neither library.

12 Q So you haven't read 4 or 5.

13 A That's correct.

14 Q Is number 12 circled in red?

15 A Yes.

16 Q Were you able to obtain that one?

17 A Yes. I had that article. But I
18 didn't want to look for it, so I got it from the
19 main library. So now I have multiple copies,
20 because I have it as "Shipyard."

21 MR. JACOBS: Objection. Only because
22 there are many others that are circled in
23 red under other circles. If you really
24 want to look closely, you will see them.

25 Q Why don't you go down the entire list,

Nicholson

Doctor, and tell us every one that is circled in red, whether it has been circled over by something else or not.

A Well, the ones that have been x'ed have not been circled over by something else. Because I didn't obtain those that had a red, ummm, two-stroke X on it, as I indicated earlier.

Q I wonder if you could read for me, please, the numbers of the articles that at any time were circled in red.

A 3, 4, 5, 6, 7, 8, 12, 15, 17, 19, 20, 21, 22, 26, 33, 35, 41, 45, 46, 47, 49, 51, 53, 56.

Q Now, of those which were circled in red, would you read the numbers of the articles which you have not obtained and have not read?

A 4, 5, 17, 19, 21, 26, 35, 49, 51, 56.

Q Article 57 is an add-on to the list; is that correct?

A Yes.

Q Is that your writing?

A No.

Q Do you know whose writing it is?

A No. I assume it probably was someone

Nicholson

opportunity to read in whole or in part, can you name for me the articles that contain any discussion regarding the release of asbestos from welding rods?

Just so we're clear, I am not talking about health effects now.

A I understand.

Q I am talking about the mechanical release of asbestos from welding rods.

A Only one could -- now it didn't talk about the release. It talks about the circumstances of asbestos use. But I don't recall it speaking directly as to fiber released from the rod or its enwrapment.

Thus, of those that I have looked at, I did not see data on fiber release per se from welding rods.

Q Are you a member of the American Welding Society, Doctor?

A No.

Q Do you know what the American Welding Society is?

A No, I don't directly. I could hazard a guess, but that's all it would be.

Nicholson

Q Are you aware of the names of the plaintiffs in whose cases this deposition is being taken today?

A One of them is, I believe, Mr. Hudson and his wife, which is listed in one deposition. I am not exactly clear on who is and who is not.

I remember there being two individuals that were mentioned in an early communication, and whether this deposition refers to either one or both I could not tell you at this time. We have not discussed extensively the plaintiffs per se.

Q When were you retained to consult in these cases, Doctor?

A I was sent a letter probably two to three months ago. If I can give you a better -- '95 -- well, I responded. It was late September.

Q 1995?

A 1995.

Q Do you have the transmittal letter with you?

A I don't believe so. Let me look. It was initially to review material which included some of these depositions and to assist in

Nicholson

preparation of an affidavit which was developed and which I signed sometime after the 22nd of September.

But I don't have a -- I don't have with me any correspondence on that.

Q Were you given at any time any type of case summary regarding the gentlemen whose cases are at issue here?

A No, I was made aware that my role would not be to deal with their health effects per se, but to deal with the issue of the potential for fiber release from the coatings about asbestos rods and wires.

Q Have you reviewed any medical records that pertain to either Mr. Przybylski or Mr. August?

A No.

Q Do you have any intention of doing that prior to the trial of this case?

A At this time I do not.

Q Do you expect to be called as a witness at the trial of the Przybylski case in January 1996?

A I have not discussed that with Mr. Jacobs.

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Q As I understand it --

A Specifically. I told you that I would be, at his wish, available to make comments relating to my views on fiber release.

Q As I understand it, the original communication with you asked you to review parts of certain depositions and to prepare an affidavit; is that correct?

A That's correct.

Q And that's what you have done.

A Yes.

Q Do you know whether or not
Mr. Przybylski was a welder?

A I believe so.

Q Do you know anything about his welding history?

A Well, let me get what I -- he was employed in various positions in the refinery from '39 to '78, a combination welder from '39 to approximately '66, performed electric arc welding on numerous occasions with his brother Stephen Przybylski.

And I am not quite sure which Przybylski, whether it's Edward or Stephen at this point, who

Nicholson

is the plaintiff. So I am reading Mr. Edward Przybylski's deposition, which goes on to describe other work that he and his brother undertook and issues with respect to the use of coated rods and the crumbling from the rods of material.

And you, I am sure, have the affidavit. So I am providing you with information you already have. If you want me to read it --

Q What I want --

A -- into the record I will, but I don't think it's productive.

Q What I want to be sure of is the source of your information. And as I understand it, anything that you know about Mr. Przybylski's welding history or the welding environment in which he worked comes from the affidavits or depositions which you have already outlined for us.

A That's correct. It's only from the selections of depositions and affidavits.

Q What about Mr. Vincent August? Do you know anything about whether he was a welder?

A Yes, he was. He describes work as a welder in Pusey and Jones shipyard during World

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Q Again, Doctor, is it fair to say that anything that you know about his welding history or the welding environments in which he worked comes from those same affidavits and depositions which you have already mentioned?

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A Yes.

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MR. JACOBS: Pusey is P-u-s-e-y.

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Q Doctor, do you know if any product manufactured by the Lincoln Electric Company ever contained asbestos?

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A It is my understanding that the welding rod, ummm, something Lincoln, something 5, which is a category 6010, did. I have been told that. I have read that in depositions that I have.

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Q Again, all I want to know is the source of your information, Doctor. And is it accurate to say that the source of your information on that subject is the affidavits or portions of deposition testimony to which you have already alluded?

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A Largely so. It was also mentioned by Mr. Jacobs to me.

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Q In writing?

A No. In a phone conversation.

Q What did Mr. Jacobs tell you in that phone conversation?

A He indicated that it was -- that was an accepted fact, that a Lincoln product, maybe multiple Lincoln products, had asbestos in the coating.

The number 5 designation was mentioned in deposition several times. In fact, in Mr., I believe Mr. Eagar's deposition he is describing quantitation of the amounts -- I believe it was his deposition -- of asbestos in different products.

There's a possibility it was Peterson, but it was one of those two, discussed that issue as well.

Q Would you tell me again which issue it is you believe either Dr. Peterson or Dr. Eagar discussed?

A He is now talking about Fleet Weld 10. This is Thomas Eagar.

It indicates -- I am just indicating.

MR. JACOBS: Just do the pages.

Nicholson

A Page 144, question, I realize that --
(reading) so Fleet Weld 5 would be a higher
asbestos.

6010 in content Fleet would be a
higher asbestos content.

6010 rods.

Right.

And he is making a comparison with
Fleet 10, Fleet Weld 10. So specifically it's
discussed that Fleet weld 5 indeed has asbestos in
a particular period of time.

Q And you're reading from page 144 of
Dr. Eagar's deposition?

A Yes.

Q Do you know if any product
manufactured by Hobart Brothers Company ever
contained asbestos?

A Hobart?

Q Hobart, yes, sir.

A I don't recall seeing Hobart in what I
have read, but I may have missed it. But I don't
know that.

Q Do you know if any product
manufactured by Westinghouse Electric ever

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A Not specifically. Unless --
apparently the 6010 item does, did have it
generally speaking, and to the extent that that
was made it would be possible. I certainly would
imagine a similarity of materials.

Q Do you have an understanding, Doctor,
what the designation 6010 means?

A Not specifically.

Q Can we agree, Doctor, that you not an
expert in welding processes?

A Yes.

Q Have you ever welded?

A No.

Q I assume --

A Yes, I might have in some little tiny
physics shop, making a little thing, but I can't
be sure.

Q Do you recall what process you used if
you welded?

A Not at all. I just remember having to
make things and having to seal them, and whether --
it would largely be soldering, but there's the
possibility I would have spot welded something.

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limited.

Q Would it be fair to say, Doctor, that any information you have regarding the manufacturing process of welding rods comes from your review of Dr. Peterson's deposition?

A Yes.

Q Do you know what is meant by the use of the word "flux" in the context of welding rods?

A I think I do.

Q Would you tell me, please?

A It's a material that enhances the -- that will melt under the high temperature of the arc or welding process and will enhance the reconstitution of a molten metal with the host metal that is being joined together. I interpret it enhances flow and it just makes the process go very smoothly, whereas without it problems develop.

And the descriptions of the -- of that is in various places. But I did not make it -- I did not make a point of understanding the welding process in detail.

Q Can we agree that you are not an expert on welding fluxes?

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A Absolutely.

Q Speaking of the heat of the welding arc, Doctor, can we agree that asbestos is destroyed or decomposed by the heat of the welding arc?

A By that temperature at that site, yes.

Q What is your understanding, Doctor, of the time period when welding rods contained asbestos?

A Well, they contained it in one form or another, sometimes simply as a wrapping in the thirties. That's described in the literature.

There's discussion as to its presence in welding rods into the seventies, and it's at that point, I guess because of concern with asbestos, it was largely removed to my understanding.

Q So just so I --

A Perhaps -- I am not being specific with respect to the seventies, but it was my understanding that it was largely gone by the end of the seventies. By some comments in passing in some of the depositions I read.

Q Do you have an understanding as to

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whether all welding rods contained asbestos at one time?

A I don't have an understanding that all did.

Q I take it from that that it is your understanding that there were some that did not.

A No, I don't have that understanding either. I don't have an understanding of the full scope of all welding rods.

So it's a question I can't answer other than to say that I don't have an understanding one way or another.

Q Thank you. Do you have any understanding, Doctor, as to whether any particular types of welding rods contained asbestos?

A I discussed my information there. Certainly Fleet Weld 5 did, according to testimony. There's likely -- it seemed likely also in Fleet Weld 10, and other rods of the 6010 classification appeared to also in terms of the context of the depositions, but that was not by brand name.

Q Is it fair to say that you are

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assuming based on what you read that other 6010 rods had asbestos in them?

A It was implied in the discussions that --

Q You don't need to quote it to me, Doctor, although you are free to do so. I would simply like you to answer my question.

Are you assuming that?

A It was more than an assumption. It was an indication in the material that they did. And that's what I am giving you.

Q So it's your reading of the material that we have already discussed that leads you to that conclusion. Is that a fair statement?

A That's correct.

Q Do you know why asbestos was used in the flux of certain welding rods at one time?

A It enhanced the properties of the flux, and in looking here as to statements therein, but, ummm, it was a desirable material and made the welding process better.

MR. JACOBS: When you say in here --
he was referring to IARC Number 49.
Volume 49.

Q If I understand what you're saying,

Nicholson

Doctor, then, the asbestos as you understand it served a purpose when it was used in the welding rods.

A Yes.

Q It wasn't just there by happenstance.

A That's correct.

Q You say it enhanced. Can you be more specific as to how it enhanced the performance of the rods?

A Without looking through a bunch of stuff, I cannot. It made the -- other than to my recollection it made the flux properties better. Thus a better weld was obtained or the welding process was expedited. I don't remember any specific details, if they were given.

Here, I will just read one.

Electrodes -- this is in the development.

Electrodes consisting of wire wrapped in paper or asbestos string were found to produce better results and a range of materials was experimented with flux coatings.

So they are describing the development, which was substantial in the thirties and especially in the forties, of the welding process

Nicholson

in this book, and great strides were made, and asbestos contributed to that process.

Q Would it be fair to say, Doctor, that in order for you to tell me precisely how it was that asbestos improved the performance of welding rods you would need to go back and do some further research?

A I would have to read much more than I have already done so.

Q Thank you.

With respect to asbestos containing welding rods, what is your understanding as to where the asbestos could be found?

A It would be in a mixture that is in a material that encases the wire or rod. That is, outside it. Over the length of the rods except for a small portion.

Q Do you have any information about the percentage of asbestos that would have been used in any welding rods in this casing that you have described?

A Some percentages are given in Eagar's deposition. I remember it being something like 1, ballpark, 1 or 2 percent by weight, or 4 or 5

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percent by volume.

Q Again, is it fair to say that any information that you have about the quantity of asbestos used in welding rods comes from what you have read in Dr. Eagar or Dr. Peterson's depositions?

A Yes.

Q Do you know what type of asbestos was used in certain welding rods?

A It wasn't -- I know in the description of the use of asbestos in the 1930s it was chrysotile. It is my assumption that it continued to be chrysotile. I saw no evidence that it was amphibole.

Q Do you have any information, Doctor, about the type of binding agent that was used to hold the materials that composed this casing together?

A Again, from the deposition, particularly of Mr. Eagar, he spoke about his work with a -- I believe some type of orthosilicate. And it was a very long name. I can look it up if you wish.

He also spoke about the use of water glass as a binding agent.

Nicholson

Q Is the sum total of the information that you have about the binding agents used in the coatings of welding rods from the deposition testimony given by Dr. Eagar?

A On terms of binding agents, I believe that's correct. I have not done a binding agent literature search.

Q Is it fair to assume from what you said, Doctor, that you do not consider yourself to be an expert in the area of binding agents?

A That's correct.

MR. JACOBS: Objection to the form of the question.

Q You mentioned water glass, Doctor. Can you tell me what that is?

A Sodium silicate.

Q Do you have any experience with sodium silicate as a binding agent?

A Not specifically as a binding agent.

Q Have you ever studied it in any way as to its binding properties?

A No.

Q Are you familiar with the term "wetting"?

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A Yes.

Q What does that mean?

A It means that water or other fluids can encompass material and, in fact, by capillary action move from the region of contact elsewhere in the material, according to a lot of complicated factors.

Q Do you know whether chrysotile asbestos will wet?

A To some extent it will, certainly.

Q What liquid agents will wet with chrysotile asbestos?

A I would expect water would, but I don't know in detail the answer to your question. It's not something I have studied.

I know that in a wet circumstance it doesn't completely wet, because when you bind the material in a wet host you get one heck of a lot of dust, when you break it apart.

Q Do you know whether sodium silicate will wet with chrysotile asbestos?

A It's so claimed by Mr. Eagar. I don't know the details of that, the extent to which it is possible.

Nicholson

Also, I do know that in contrast to water, sodium silicate is very viscous. So that the speed of wetting and the degree of wetting may be -- is quite different between the two materials.

Q Have you done any testing on any welding rods for release of asbestos?

A No.

Q Do you know of anyone who has?

A No.

Q Have you examined any welding rods, or this casing of welding rods that you described, microscopically?

A No.

Q Do you know of anyone who has?

A No. I don't recall Mr. Eagar, Dr. Eagar describing microscopic examination. He perhaps did. I would imagine that in the course of his work he would have. So I will assume that, but I can't remember, recall a specific reference to it.

Q Let me stray into the general asbestos arena for just a moment.

If an asbestos fiber is in some way

Nicholson

encapsulated or has other particulate attached to it, is it considered to be an asbestos fiber for OSHA purposes?

A I guess it would depend upon the circumstance. If you have a little tiny bit of something and the fiber is within the -- is greater than 5 micrometers and is a respirable size, it probably -- it would be counted in a routine analysis. It would be wise to do so. It would be a conservative thing to do. If it's a big block, no.

Q If a fiber has other particulate attached to it will that affect the aerodynamic diameter of the fiber?

A Yes, it will. The aerodynamic, whether it's largely the diameter of the fiber, or in this case if it is encapsulated, including the encapsulate.

Q Is aerodynamic diameter an important factor in determining whether or not particulate is respirable in the sense that it reaches the smallest recesses of the lung?

A Yes, it is an important factor in that.

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2 Q Other than what you have gleaned from
3 the affidavits or portions of depositions which
4 you have read, do you have any other information
5 regarding the types of welding rods used by
6 Mr. Przybylski or Mr. August?

7 A That is all the information I have.

8 Q Are you aware of any published studies
9 dealing with the release of respirable asbestos
10 fibers during the use or handling of welding rods?

11 A I am not aware of studies looking at
12 that issue directly, where measurements were made
13 of the aerosol released.

14 Q I touched on this subject earlier,
15 Doctor, but let me just ask a follow-up question.

16 Can we agree that there cannot be
17 asbestos fibers in the welding plume because of
18 the heat of the welding arc?

19 MR. JACOBS: Objection as to form, but
20 you can answer the question.

21 A That which is in the arc will be
22 destroyed. There can be -- I can imagine
23 processes taking place that would release, if
24 fibers are released elsewhere on the rod by its
25 bending or some abrasive action, that the

Nicholson

aerodynamics of plume formation could carry fibers into it and they could exist in the plume. But not -- their source would not be the arc itself. For that area of the molten welding pool, whatever you call it.

Q Are you aware of any medical literature which would support the proposition that one can suffer from an asbestos-related disease from exposure to welding rods alone?

MR. JACOBS: Would you read that back.

(A portion of the record was read.)

A I know of no literature that focuses on a directly observed relationship. There is medical literature that is consistent with a no threshold exposure response relationship for asbestos malignancies, and thus each exposure, even extremely small ones, can contribute to a cancer risk, and the risk for very small exposures is small.

But to the extent that fibers are released from welding rods, they can contribute to a fiber asbestos-related risk. And with enough such small exposures there could be disease from

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such multiple exposures.

Q You mentioned small exposures, Doctor. If in fact there is a release of respirable asbestos fibers from welding rods, based on what you know and have read would you expect that exposure to be very small?

A It would be much smaller than that of an insulator working in very friable -- working with very friable material and in extensive exposures, at least in the past, without controls.

So on that scale, we're certainly talking about a small exposure compared to the heavy industrial exposures of the past.

Q I take it that you can't quantify it any further than what you've just said?

A If you give me numbers of hypothetical fiber concentrations, I certainly can quantify the difference between the two.

Q I am afraid that's going to be your job rather than mine.

Are you aware of any medical literature which isolates asbestos containing welding rods as an asbestos health hazard.

MR. JACOBS: Objection to the form of

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the question.

A I don't -- I can't at the moment recall a specific statement suggesting that the asbestos rods create a health hazard as such. There may be -- and this may be simply my limitation of memory at the moment.

There may have been, and I am qualifying this, some indication that that was a consideration, so I will just give a qualified answer.

Q Prior to today have you ever testified regarding the release of asbestos from welding rods?

A No.

Q Do you know which welding rods manufactured by Lincoln Electric contained asbestos?

A The only information I have at this time are those discussed Lincoln Weld 5 and Lincoln Weld 10, with some ambiguity with the latter.

Q I apologize if I am repeating myself. Do you know of any Hobart rods which contained asbestos?

Nicholson

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2

A I'm sorry, I don't.

3

Q How about Westinghouse?

4

5

A That's the same answer, I don't. If it was mentioned I missed it. I don't recall those names being discussed in the material I had.

7

8

9

Q Doctor, I believe you list 85 publications in your current curriculum vitae; is that correct?

10

A Yes.

11

12

Q Of those 85 do any of them have as their principal focus welding or welders?

13

14

A No. Other than as shipyard workers generically. Not as welding specifically.

15

16

17

Q I think you mentioned a short time ago the ongoing study that you have been doing with respect to radon exposure.

18

Has that study been completed?

19

20

A It's soon to be completed. It's in the final stages.

21

22

Q Nothing has been published on that as yet?

23

A That's correct.

24

25

Q Is it correct, Doctor, that you have testified on other occasions about encapsulation

Nicholson

of asbestos fibers by various agents?

A Well, I talked about -- I have discussed or published on release of fibers from what might be termed "encapsulates." In particular, there is an article on the release of fibers from spackle material. And we have looked at quite a few circumstances where fibers were released from other building materials.

Those are reported in that, in the literature you're looking at, literature cited that you're looking at.

Q Other than the spackle material that you just mentioned, have you tested for or reviewed literature regarding the release of asbestos that was encapsulated in the product where it was used?

A Well, I have made measurements in homes where asbestos cement materials were utilized and found excess air concentrations in the homes from the damage and the cutting of that material. And when that material is cut in a -- other measurements by others indicate high concentrations of asbestos, so fiber released from Transite or similar -- which is a trade name

Nicholson

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2 obviously, with that type of material occurs.
3 Fiber release occurs from that during a sawing
4 process or other abrasive action.

5 Q What type of materials are you talking
6 about again?

7 A Asbestos cement products.

8 Q Cement, OK. How is asbestos
9 encapsulated in asbestos containing cement
10 materials?

11 A It's bound up in a matrix with cement
12 and other materials. I don't know the composition
13 of the material at this time.

14 Q Would it be accurate to say, Doctor,
15 that whether there is a release of asbestos fiber
16 from an encapsulated material will depend on the
17 physical activity that is involved with that
18 particular product?

19 A That's correct. Different physical
20 activities can release different amounts of
21 asbestos.

22 Q In your view, Doctor, what activities
23 engaged in by welders could theoretically cause
24 the release of asbestos fiber, respirable asbestos
25 fiber from welding rods?

Nicholson

A They described the dust that appears in boxes and cans and in your pockets which can occur from the abrasive rubbing of the surfaces of the materials, one against the other in the containers or against other tools that the worker has.

It's described, as one bends rods or wires, that the material will fracture and break away. So there are activities, particularly the abrasive action of other tools in a worker's use, that might rub against and abrade material, can be a source of fiber release.

Q Can you think of any other typical welding activities other than what you described which would result in that type of abrasive process which theoretically could release respirable asbestos fiber from the rods?

A I don't know of a welding process that would do it. Beyond the broad scope of abrasion against something that can be a totally happenstance thing or a common thing. Again, I don't know of a specific welding activity per se.

Q What is your current position, Doctor, on whether crocidolite asbestos has greater

Nicholson

potency for causing mesothelioma than chrysotile asbestos?

A I believe it does. Most data suggests that it may be two to four times greater. There are some studies that suggest a higher or even lower potency. And it is only with respect to mesothelioma.

Q Some suggest a factor of as high as 13, do they not?

A Yes, that is one study that is relative to a small group of workers in Australia.

Q Do you agree that chrysotile asbestos is subject to being dissolved in the lungs of humans?

A It's altered and it may be -- it's -- whether the word "dissolve" is appropriate or not, I will leave that aside, but it is altered with time. That does not seem to affect its role as a carcinogen relative to other asbestos fibers that are not.

Q Putting aside my choice of words so as to allow you to use yours, how is it altered?

A The fiber structure of chrysotile is changed. It is simply that. And it may be

Nicholson

sufficiently altered that you don't see a residue of a fiber is present. When you look at lung analysis, you see a lot of crap there, a lot of material there. They don't quite know what it is.

Q Is it altered in the sense that it is no longer fibrous?

A Yes. Often it is.

MR. JACOBS: Take a break?

MR. DAVIES: Fine.

(A recess was taken.)

Q Doctor, in conjunction with your deposition we prepared and served a notice of deposition duces tecum, and one of the things that we asked you to provide was a full detailed and specific narrative report outlining the expert opinions, conclusions, and expert testimony that you intend to offer at the trial of these cases.

My understanding from Mr. Jacobs' response to that notice is that there is no such report; is that correct?

A I have no report. I received that notice yesterday and I had no time to, ummm --

MR. JACOBS: There never was a report.

A (Continuing) There was never a report.

Nicholson

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Q Is it correct that there was never a
3 draft report of any kind?

4

A That's correct.

5

6

Q Let me ask you a couple of questions
about the September 26, 1995, affidavit which you
7 prepared in this case.

8

A Oh, yes.

9

Q Do you have a copy of that?

10

A I'll find it. Yes.

11

12

Q In paragraph 2, the second sentence,
you say: "In particular, he," meaning you, "has
13 studied the release of asbestos fibers during
14 normal use and handling and during application,
15 removal and replacement of asbestos-containing
16 products."

17

Correct?

18

A Yes.

19

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Q I take it from your earlier testimony
today none of the products to which you are
21 referring there are welding rods.

22

A That's correct.

23

24

Q In paragraph 3, the second and third
sentences read as follows:

25

"However, this is not true for the

Nicholson

flux coating below the arc area."

A That's what I stated. That does not decompose, at least at some distance from the arc. That's all.

Q Going on with the quotation.

"According to the literature, unless the entire welding rod is consumed during the process, the flux on the used rods is more friable and results in release of fine asbestos containing dust when the rods are handled."

All I would like to know, Doctor, is to which literature are you referring when you make that statement.

A There was discussion of the dust from rods, some used and some not, that workers described in their testimony that gets into their pockets. So it is a general statement. I mean, it would be only that.

And that's all we're talking about, deposition literature at the moment. I don't have a published -- I don't have a scientific article there.

Q That's fine. That's all I wanted to know.

Nicholson

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A OK.

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Q Going over to paragraph 4, you say in the second sentence there, "There are early reports in the 1940s showing that welders were at risk for asbestos-related disease."

7

Correct? That's what it says?

8

A Yes.

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Q Let me ask my question. Are you talking about any reports there other than those which may appear on what we have marked as Deposition Exhibit 1?

13

14

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16

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A Yeah, they would be contained in that, and there is ambiguity -- there can be argument and ambiguity as to the asbestos relatedness of the disease. They have characteristics of asbestos, pneumoconiosis, but it's --

18

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Q Here is what I am trying to find out. I just want to be sure.

20

21

22

Are there any reports that you are talking about in paragraph 4 that are not on this list that we have marked Exhibit 1?

23

A No.

24

25

Q Thank you. I am not quite finished with the affidavit yet. Let me go back to

Nicholson

paragraph 2 there, Doctor, of the affidavit.

It says in the first sentence: During the course of his, meaning your, academic career and professional training you have conducted, studied and evaluated air sampling studies performed at asbestos manufacturing plants and upon various asbestos products, correct?

A Right.

Q Do you have copies of the air sampling studies that you have conducted?

A No. At this point I have no idea where they are.

Q In which manufacturing plants did you conduct such studies?

A I conducted one at a chemical company. Amoco or Avisun. It was in Delaware. I must say I forget the exact name.

Q Is that the only one?

A I have been present while others have been conducting and evaluating air sampling, air conditions in manufacturing plants of the Johns Manville Company and Turner Newell in Great Britain, but I was not the one doing the sampling.

Q Were there particular products that

Nicholson

1
2 you were studying in these evaluations?

3 A Mostly the products were insulation
4 products.

5 Q Any others besides insulation?

6 A Oh, I don't know. Others would have
7 been considered, but at the moment I don't
8 remember specifically. The noninsulation material
9 would have been a small component of the study.

10 Q But you don't recall specifically at
11 this moment what those products were?

12 A At this moment I don't.

13 Q Looking one more time at your
14 affidavit, and again, this is the September 26,
15 1995, affidavit, at the very bottom of the first
16 page a sentence begins that reads: "It is his
17 opinion based on reasonable scientific probability
18 the handling of new and used welding rods does
19 create respirable asbestos dust."

20 Is that what it says?

21 A That's what it says.

22 Q Is there anything upon which you rely
23 to support that opinion that we have not mentioned
24 or discussed today?

25 A No, we have discussed the sources of

Nicholson

the abrasion.

Q Dr. Nicholson, Mr. Jacobs' office filed a response to our notice of deposition, attached to which is something titled "Affidavit of William J. Nicholson," which consists of --

MR. JACOBS: Affidavit or interrogatory answer?

MR. DAVIES: In the material that came to me, Bob, it is an attachment to your -- there's the title.

MR. JACOBS: Just show me the pages.

MR. DAVIES: Here is the affidavit.

MR. JACOBS: Oh, that one. OK. Those were additional affidavits I gave you, right. I was just confused about what you were talking about.

THE WITNESS: Oh, these are affidavits that I just --

MR. JACOBS: Which one are you talking about? He has copies of them.

Q Doctor, do you have in front of you a copy of an affidavit dated March 26, 1989?

A Yes.

Q And it consists of three pages?

Nicholson

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A Yes.

3

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Q And the copy that I have does not bear your signature and is not sworn before a notary public.

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A Yes. This would be a draft, but it is my recollection I would have signed it. I mean, it somehow moved from some file into another, and it was findable the day before yesterday.

10

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Q I have only two questions about the affidavit, and neither of them pertains to the substance of it.

13

14

15

If you would look on page 2, immediately above numbered paragraph 3 is a large blank space; is that correct?

16

A Yes.

17

18

Q Can you explain to me why that space is there?

19

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A I suspect it had to do with the size of the type and the typewriter copier. There is no reason for the space to be there other than I had it fit on one page and when I printed it, it didn't -- the first page didn't fit on one page and it ran over and then continued.

25

Q Paragraph 2 starts on the first page

Nicholson

MR. ROTHSCILD: No questions for you,
Doctor.

(Time noted: 12:00 noon.)

.....

Subscribed and sworn to
before me this day
of 1996.

.....

C E R T I F I C A T E

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

I, THOMAS R. NICHOLS, a shorthand
reporter and notary public within and for
the State of New York, do hereby certify:

That WILLIAM J. NICHOLSON, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me, and that this
transcript of such deposition is a true
record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this ^{10th} day of ^{JANUARY}
1996.

Thomas R. Nichols