

From: "Troy Chandler" <TChandler@robinscloud.com> | [This is](#)

Attached is a deposition of John Myers --UCC Corp Rep and manager of
The Calidria deposit and mill that processed the ore.

He states that the mining was done by CONTRACTORS -- they did not monitor or follow contractors for disease -they have no idea whether anyone has ever become sick. There are also good documents in the exhibits that state the mine/mill population is too small a population to get an adequate sampling. Additionally, other exhibits state the criteria for asbestosis is a 1/2 b-read, rales, clubbing -- no wonder no one was ever an asbestotic - they didnt count them until they got too severe.
Good Luck

1 CAUSE NO. 01CV0476

2 LAFONDA DIXON, AS PERSONAL) IN THE DISTRICT COURT OF
3 REPRESENTATIVE OF THE)
4 HEIRS AND ESTATE OF)
5 KENNETH DIXON)
6 VS.) GALVESTON COUNTY, TEXAS
7)
8 UNION CARBIDE CORPORATION,))
9 GEORGIA-PACIFIC)
10 CORPORATION, et al.) 10TH JUDICIAL DISTRICT
11

12 VIDEOTAPED ORAL DEPOSITION OF

13 JOHN L. MYERS

14 MAY 22, 2002

15

16 VIDEOTAPED AND ORAL DEPOSITION OF JOHN L. MYERS,

17 produced as a witness duly sworn by me at the instance of

18 the Plaintiffs, taken in the above styled and numbered

cause on the 22nd day of May, 2002, from 9:16 a.m. to

5:08 p.m., before Lea Dorothy Abbott, Texas Certified

Shorthand Reporter No. 6611 in and for the State of Texas,

at the Hyatt Regency Monterey, One Old Golf Course Road,

19 Monterey, California 93940-4908, pursuant to the Texas
20 Rules of Civil Procedure (and the provisions stated on the
21 record or attached therein).
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WORLDWIDE COURT REPORTERS 1-800-745-1101

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1 A P P E A R A N C E S

2 FOR THE PLAINTIFFS:

3 Mr. Troy D. Chandler
4 Robins, Cloud, Greenwood & Lubel, L.L.P.
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10 901 Main Street
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12 Dallas, Texas 75202

13 FOR THE DEFENDANTS KELLOGG BROWN & ROOT, INC. and
14 MID-VALLEY, INC.:

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16 GODWIN GRUBER, P.C.
17 Renaissance Tower
18 1201 Elm Street, Suite 1700
19 Dallas, Texas 75270

20 FOR THE DEFENDANT UNION CARBIDE CORPORATION and
21 THE WITNESS:

22 Ms. Sharla J. Frost

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2600 Two Houston Center
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Houston, Texas 77010
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20 Mr. Peter A. Bicks
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25

WORLDWIDE COURT REPORTERS 1-800-745-1101

3

1 A P P E A R A N C E S
2 (Continued)
3 ALSO PRESENT:
4 FOR INDUSTRIAL HOLDINGS:
5 Mr. J. Richard Morrissey
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8 THE VIDEOGRAPHER:
9 Mr. Michael Mack
1083 Lincoln Avenue
10 San Jose, California 95125
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WORLDWIDE COURT REPORTERS 1-800-745-1101

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1 IT IS STIPULATED and agreed by and between
2 counsel for the respective parties hereto that the
3 deposition of the witness named in the caption hereto may
4 be taken at this time and place before the officer named
5 in the caption hereto; that said deposition, or any part
6 thereof, when so taken, may be used on the trial of this
7 case with the same force and effect as if the witness were
8 present in court and testifying in person;
9 THAT the necessity for preserving objections at the
10 time of taking is waived, and that any and all legal
11 objections to this deposition, or any part thereof, may be
12 urged at the time same is sought to be offered in evidence

13 on the trial of this cause; except, however, that
14 objections to the form of the question and/or
15 responsiveness of the answer must be made at the time of
16 taking, or else such objections are waived;

17 THAT the original of this deposition shall be
18 presented to the witness for his examination and signing
19 and thereafter shall return same to the officer taking
20 this deposition;

21 THAT if the signed original is not presented to
22 Mr. Troy D. Chandler prior to the time of trial, a copy
23 may be used in lieu thereof.

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WORLDWIDE COURT REPORTERS 1-800-745-1101

5

1	INDEX	
2	ORAL DEPOSITION OF JOHN L. MYERS	
3	MAY 22, 2002	
4	Appearances.....	2
5	Stipulations.....	4
6	Examination - Mr. Chandler.....	13
7	Witness' Signature Page.....	333
8	Reporter's Certificate.....	334
9	REQUESTED DOCUMENTS/INFORMATION	
10	Number Description Pg/Ln	

11 (None)

12 CERTIFIED QUESTIONS

13 Number Pg/Ln

14 Certified Question 1 31/9

15 EXHIBIT INDEX

16 Exhibit No. Description Marked

17 Myers 1 34

18 "The Asbestos Business - 1980 & 1981" and
cover letter from John L. Myers

19 Myers 2 92

20 "A Whisker Reinforcement for Thermoplastic
Resins" by R. E. Byrne, Jr., August 25, 1967
(Union Carbide Corporation)

21 Myers 3 98

22 "New Additives Induce Thixotropy, Provide Sag
and Viscosity Control"

23 Myers 4 105

24 "New Enterprises Chemical Reactions of
Asbestos," July 7, 1964

25

WORLDWIDE COURT REPORTERS 1-800-745-1101

6

1 EXHIBIT INDEX

2 (Continued)

3 Exhibit No. Description Marked

4 Myers 5 108

5 Union Carbide Olefins Company "Research
and Development Department Monthly Report,"
May 31, 1963

6 Myers 6 109

7 Letter from T. P. Norris (Union Carbide) to
L. C. Wingerd (Chevron Asphalt Company),
April 29, 1976

8

9	Myers 7	113
10	Letter from Gordon L. Dickson (Calidria Asbestos) to Donald K. Schoepflein (B. F. Goodrich Company), January 29, 1979	
11	Myers 8	116
12	Letter from John L. Myers (Calidria Asbestos) to James Phipps, Esq. (Ross, Hardies, O'Keefe, Babcock & Parsons), August 24, 1979	
13		
14	Myers 9	118
15	"Properties of Colloidal Chrysotile Asbestos from the Coalinga Region of California"	
16	Myers 10	124
17	Letter from Harrison B. Rhodes (Union Carbide) to Craig McNey, January 24, 1978, with attachments	
18		
19	Myers 11	132
20	"Asbestos and Cancer: The International Lag" and cover letter from Harrison B. Rhodes to J. L. Myers, et al, January 11, 1979	
21	Myers 12	147
22	"Asbestos as a Health Hazard in the United Kingdom" by I. C. Sayers	
23	Myers 13	171
24	Letter from C. U. Dernehl, M.D., to T. J. Hall (Union Carbide Europa A.A.), June 7, 1967	
25		

WORLDWIDE COURT REPORTERS 1-800-745-1101

7

1 EXHIBIT INDEX

2 (Continued)

3	Exhibit No.	Description	Marked
4	Myers 14		176
5		"Asbestos Toxicology Report" (Union Carbide Corporation) with cover letter, 13 June, 1967	
6	Myers 15		180
		Letter from Thomas J. Hall to F. D. Dexter,	

7	13 September, 1967	
8	Myers 16	185
9	Letter from Thomas Hall (Union Carbide Belgium N.V.) to F. Dexter, 30 November, 1967	
10	Myers 17	190
11	"Calidria Asbestos SG-130 and SG-210 for Tape Joint Compounds"	
12	Myers 18	201
13	One page copy "Calidria Asbestos"	
14	Myers 19	201
15	"High purity and proprietary processing make Calidria Asbestos superior to any other asbestos"	
16	Myers 20	203
17	Call report, 11-30-71, Glidden-Durkee	
18	Myers 21	207
19	"The Safe Use of Calidria RG-244," February 1973	
20	Myers 22	211
21	"Asbestos Toxicology Report"	
22	Myers 23	216
23	Letter from John L. Myers to P. C. Weeks (Union Carbide Australia Ltd.), April 30, 1973	
24	Myers 24	221
25	Report of interview with Pete Herault, 5-16-73, Georgia-Pacific	

WORLDWIDE COURT REPORTERS 1-800-745-1101

1	EXHIBIT INDEX	
2	(Continued)	
3	Exhibit No. Description	Marked
4	Myers 25	226
	Report of Mailgram from Allied Resin	

5	Corporation, September 25, 1974	
6	Myers 26	228
7	Report of interview with M. K. Smith (Baker Castor Oil Co.), 4-5-71	
8	Myers 27	231
9	Customer Call Report, 4-24-81; salesman, J. E. Walsh; customer, Montello, Inc.	
10	Myers 28	240
11	Letter from John F. Finklea, M.D., to Union Carbide Corp. and memo from H. B. Rhodes to E. J. Kleber, July 6, 1977	
12	Myers 29	247
13	Report of Call by J. E. Walsh to Roach Paint, 9-30-74	
14	Myers 30	249
15	Call Report by H. B. Rhodes to National Gypsum Company, 3-26-74	
16	Myers 31	252
17	Report of interview with Sterling Clark (Georgia-Pacific), 5-19-75	
18	Myers 32	265
19	"Asbestos and Silica Dust" article and cover letter from John L. Myers, December 1, 1975	
20	Myers 33	269
21	Memorandum from B. L. Ingalls, June 22, 1972	
22	Myers 34	276
23	Report of Call by J. E. Klein and H. B. Rhodes to Marco Chemical, 4-22-71	
24		
25		

WORLDWIDE COURT REPORTERS 1-800-745-1101

3	Exhibit No.	Description	Marked
4	Myers 35		281
5		Report of interview with J. Watson and Fred Connell (Glidden-Durkee), 12-13-71	
6	Myers 36		294
7		Customer Call Report by Edward Kleber to Mortell Company, 4-14-77	
8	Myers 37		296
9		Letter from R. E. Byrne, Jr., to G. T. Dalal (B. F. Goodrich Chemical Company), August 23, 1974	
10	Myers 38		300
11		Material Safety Data sheet, September 1, 1972, product, chrysotile asbestos	
12	Myers 39		305
13		Material Safety Data Sheet; product name, Calidria Asbestos	
14			
15			
16			
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1 MR. CHANDLER: We're going to proceed this
2 morning with the deposition of John Myers in the case of
3 Lafonda Dixon, as Personal Representative of Heirs and
4 Estate of Kenneth Dixon vs. Union Carbide,
5 Georgia-Pacific, et al., only, Cause No. 01CV0476.
6 The Notice as to the Brown and the Boggs cases
7 were withdrawn on Monday the 20th. So, we're only going
8 forward in the Dixon case.
9 Taken pursuant to the Texas Rules; one objection
10 is good for all present. Anything else?
11 MS. FROST: I don't think so.
12 MR. BAILEY: (Shakes head.)
13 MR. CHANDLER: Good. Let's go on the video.
14 THE VIDEOGRAPHER: Okay. Please stand by.
15 MR. CHANDLER: Are you licensed in the state
16 of Texas, Pete?
17 MR. BICKS: No.
18 MR. CHANDLER: We'll have to put that on the
19 record, then.
20 MS. FROST: We'll be filing the appropriate
21 pro hac measures, and I am here to make sure that he will
22 adhere to all of the necessary Rules.
23 MR. CHANDLER: I assumed. Are you going to
24 show up to try the case?
25 MR. BICKS: I don't know.

1 MR. CHANDLER: Well, why do you need to get
2 pro hac'ed if he is not going to show up to trial? We
3 won't object. We would never object to an out-of-state
4 attorney.

5 (Off-the-record comments.)

6 THE VIDEOGRAPHER: Good morning. We are now
7 on the record. This is the beginning of Videotape No. 1
8 in the deposition of John Myers. Today's deposition is
9 being taken on behalf of Plaintiff Counsel Troy Chandler;
10 case name, Lafonda Dixon, as Personal Representatives of
11 the Heirs and Estate of Kenneth Dixon vs. Union Carbide
12 and Georgia-Pacific Corporations, et al.; Case
13 No. 01CV0476; venued in the 10th Judicial District Court
14 of Galveston County, Texas.

15 Today's deposition is being held at the Hyatt
16 Regency Hotel located at One Old Golf Course Road,
17 Monterey, California 93940-4908. Today's date is May 22,
18 2002; and the time is approximately 9:16. The court
19 reporter is Lea Abbott. My name is Michael Mack. I am
20 legal videographer and notary in association with
21 Advantage Reporting Services, 1083 Lincoln Avenue,
22 San Jose, California 95125.

23 I certify that I am not interested in the outcome
24 of this action; that I am neither a relative nor employee
25 of any of the parties; and that I will make a true and

1 accurate recording of these proceedings.

2 Will all counsel please state your appearance for
3 the record.

4 MR. CHANDLER: Troy Chandler for the Dixon
5 family.

6 MR. BICKS: Peter Bicks from Orrick,
7 Herrington on behalf of Mr. Myers and Union Carbide.

8 MS. FROST: Sharla Frost from Powers & Frost
9 in Houston, for Mr. Myers and Union Carbide.

10 MR. BAILEY: Mel Bailey on behalf of
11 Georgia-Pacific Corporation.

12 MR. MORRISSEY: Richard Morrissey on behalf
13 of Industrial Holdings, attending only in connection with
14 the Brown case, not having received notice that it had
15 been discontinued in that case.

16 MS. BALLI: Melinda Balli on behalf of
17 Kellogg Brown & Root, Inc., and Mid-Valley, Inc.

18 MR. CHANDLER: Thank you, everybody.

19 THE VIDEOGRAPHER: If there are no
20 stipulations, the court reporter may adm- -- the court
21 reporter may administer the oath.

22 JOHN L. MYERS,
23 having been first duly sworn to testify the truth, the
24 whole truth, and nothing but the truth, testified as
25 follows:

1 EXAMINATION

2 QUESTIONS BY MR. CHANDLER:

3 Q. Good morning, sir. My name is Troy Chandler. I
4 represent Lafonda Dixon; her little daughter Dixie; and
5 their two other children, Mr. Dixon's grown adult
6 daughters. Do you understand that?

7 A. Yes.

8 Q. Do you know Mr. Kenneth Dixon?

9 A. No, I don't.

10 Q. Okay. Mr. Dixon died at the age of 53 with
11 peritoneal mesothelioma, Mr. Myers; and this is a case
12 brought against asbestos manufacturers for that exposure.
13 Do you understand that?

14 A. Yes.

15 Q. And you understand that I represent Mr. Dixon's
16 children and his widow against your former employer, the
17 Union Carbide Corporation. Do you understand that, sir?

18 A. Yes.

19 Q. Okay. And I want to clear something up for the
20 record because I know you were concerned, as was your
21 attorney, before we started: I set the deposition up and
22 I'm sitting next to you and I know that you want the jury
23 to know that you are looking at me, just being the polite

24 man that you are; you are not trying to ignore them in the
25 video. Okay?

WORLDWIDE COURT REPORTERS 1-800-745-1101

14

1 A. Thank you.

2 Q. You're very welcome.

3 MR. BICKS: I mean, it's up to you,
4 Mr. Chandler, but because you are, in essence, sitting on
5 top of us right now, I am having in front of me all of
6 your notes and everything like that.

7 MR. CHANDLER: As Sharla can tell you, I
8 write nothing down that is of any significance.

9 MR. BICKS: Just as a professional courtesy,
10 I wanted to let you know that; and if you would like to
11 just move back maybe a little bit, all of your work
12 product will not be sitting right in front of me.

13 MR. CHANDLER: I -- doesn't bother me.

14 MR. BICKS: Okay.

15 MR. CHANDLER: I appreciate you saying that,
16 though.

17 MR. BICKS: I've let you know that.

18 MR. CHANDLER: I appreciate you saying that.

19 Q. (By Mr. Chandler) None of my work product is
20 anything that's not already in the public record many
21 times over in this case, Mr. Myers, but I appreciate your

22 attorney being as polite as he is by telling me that.

23 Mr. Myers, you are here represented today
24 personally in addition to having Union Carbide represented
25 by attorneys; is that right?

WORLDWIDE COURT REPORTERS 1-800-745-1101

15

1 A. Yes.

2 Q. How long have you been presented personally at
3 depositions in which you gave on per -- on behalf of the
4 Union Carbide Corporation?

5 A. About 20 years.

6 Q. Okay. So, over the last 20 years you've given
7 depositions, Union Carbide has sent lawyers representing
8 them; and in addition, you had your own personal lawyers
9 here. Is that true?

10 A. No, no.

11 Q. All right. It was a bad question.

12 MR. BICKS: I think you may be -- you may be
13 confusing him on what personal representation means; and
14 so, may I clarify for the record?

15 MR. CHANDLER: Please.

16 MR. BICKS: Is this a Deposition Notice that
17 is in Mr. Myers' capacity as a corporate representative?

18 MR. CHANDLER: We sent out, Peter, a
19 Deposition Notice for the corporate representative of

20 Union Carbide Corporation and that was quashed by Union
21 Carbide. We set it for a hearing, and they agreed to work
22 with us to provide a corporate representative.

23 We have been told by Union Carbide that Mr. Myers
24 is here in his capacity as a corporate representative of
25 Union Carbide. Do you know something different?

WORLDWIDE COURT REPORTERS 1-800-745-1101

16

1 MR. BICKS: I, frankly, think there is
2 ambiguity because I think you sent out a Notice --

3 MR. CHANDLER: That's correct.

4 MR. BICKS: -- that was not in his corporate
5 representative capacity. So, quite candidly, I think not
6 only have you confused the record with two different types
7 of Notices but because of that confusion, you are now
8 really building confusion into the record by asking
9 Mr. Myers whether he's represented here, quote, unquote,
10 "personally."

11 MR. CHANDLER: Okay. Peter, I'll remind you
12 that under the Texas Rules -- and I understand that you
13 are appearing in a case in which you have not been
14 admitted pro hac vice, not being a Texas lawyer in a case
15 filed in the state of Texas -- that under the Texas Rules,
16 as Sharla can tell you, you are pretty much limited in
17 what you get to do in a deposition; and the kind of

18 ranting and coaching objections that you may be used to in
19 the state of New York are not permitted in the state of
20 Texas.

21 MR. BICKS: I appreciate that.

22 MR. CHANDLER: If you want to go off the
23 record and discuss --

24 MR. BICKS: I appreciate the guidance. I'm
25 just pointing out there's a confusion that you've

WORLDWIDE COURT REPORTERS 1-800-745-1101

17

1 created.

2 MR. CHANDLER: Okay. Well, let's clear it
3 up.

4 MR. BICKS: I'm trying to allow you an
5 opportunity to clear it up.

6 MR. CHANDLER: Sharla --

7 MR. BICKS: If you want to go off the record
8 to try to clear it up.

9 MR. CHANDLER: Sharla, is Mr. Myers here
10 just as a -- an eyewitness/fact person or is he here as a
11 personal representative of Union Carbide? Because if he
12 is not here as the personal representative of Union
13 Carbide, then we need the personal representative of Union
14 Carbide after Mr. Myers.

15 MS. FROST: It is my understanding from my

16 discussions with Walter Conrad and Jim Powers, who have
17 talked with you at length about this deposition, that
18 Mr. Myers is here today sort of in both roles: that he is
19 here as the corporate representative; and in addition to
20 that, because of the discussions about how to present him,
21 to the extent that there are issues in which he has some
22 sort of personal knowledge that wouldn't necessarily be
23 that of the corporation. There may be a little bit of
24 overlap. And that's the reason why he is here both with
25 representation from the cor- -- for the corporation and on

WORLDWIDE COURT REPORTERS 1-800-745-1101

18

1 his own behalf.

2 MR. CHANDLER: Okay.

3 MS. FROST: And I think that's what
4 Mr. Bicks was trying to clarify on the record, not trying
5 to be fast or loose with anything. Just given the way
6 that this deposition --

7 MR. CHANDLER: We would never accuse you of
8 doing that.

9 MS. FROST: The way that this deposition
10 came to be, we want to make sure that, in fact, both
11 aspects are covered; and it's our understanding that there
12 may be a little bit of overlap in this deposition.

13 MR. CHANDLER: Okay. Has that cleared up

14 any confusion for you?

15 MR. BICKS: I wasn't confused at all but --

16 MR. CHANDLER: Oh.

17 MR. BICKS: I'm glad that you made that
18 clear.

19 Q. (By Mr. Chandler) So we understand, Mr. Myers,
20 that you are here in two capacities to speak to this
21 Galveston County jury today: The first capacity is as the
22 corporate representative of the Unit- -- of the Union
23 Carbide Corporation. You understand you are here to speak
24 on behalf of the company?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

19

1 Q. You are also here as -- in your personal capacity
2 just because you have a lot of knowledge about what
3 happened during the development of Union Carbide's
4 asbestos program; is that fair?

5 A. Yes.

6 Q. Is any of that misleading to you, sir?

7 A. No.

8 Q. Okay. Fair enough. What I want to do is break
9 it down into kind of three ways. I want to put the road
10 map out for you and for the jury. Okay, Mr. Myers? I
11 don't want anybody to try to claim we tried to mislead

12 you. I'm going to tell you exactly the three areas we're
13 going to talk about. Okay?

14 A. Okay.

15 Q. No. 1, I want to talk about who you are, who is
16 John Myers, and what is his experience with the Union
17 Carbide Corporation, okay?

18 A. Okay.

19 Q. The second area I want to talk to you about is
20 Union Carbide's motive for going into the asbestos
21 business, all right?

22 A. Okay.

23 Q. And the last thing I want to talk to you about
24 are certain acts or omissions of the Union Carbide
25 Corporation that we want the jury to consider when they

WORLDWIDE COURT REPORTERS 1-800-745-1101

20

1 evaluate Union Carbide's conduct as it relates to victims
2 of asbestos and, specifically, the Dixon family. Do you
3 understand that?

4 MR. BICKS: Objection to the form.

5 A. Yes.

6 Q. (By Mr. Chandler) Okay. Let's start with the
7 first one, Mr. Myers. Who is John Myers? Introduce
8 yourself for us.

9 A. That's it. "John L. Myers" I usually go by.

10 Q. And, John L. Myers, you've gone by, sir, on many
11 memorandum or -- or reports of Union Carbide Corporation
12 by your initials "J.L.M." That was quite common, sir?

13 A. Yes.

14 Q. Okay. So, if we see "J.L.M." on a marketing memo
15 or -- or document later, we can assume that's you in the
16 appropriate time frame for the job described, more likely
17 than not?

18 A. I -- I would --

19 MR. BICKS: Objection to the form.

20 A. I would like to look at what you're talking about
21 and I could tell you whether or not it's my initials.

22 Q. (By Mr. Chandler) Okay. But certainly it was
23 very common for documents and memorandum to go to you
24 under just the label "J.L.M."?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

21

1 Q. Okay. Mr. Myers, the very first job you got out
2 of college was with the Union Carbide Corporation back in
3 1951; is that right?

4 A. Yes.

5 Q. When you went to work for the Union Carbide
6 Corporation in 1951, tell us what your job was.

7 A. I was in the -- Union Carbide was operating a

8 gaseous diffusion process in Oakridge, Tennessee, and I
9 was employed as an engineer.

10 Q. Was the first job you went to for Union Carbide
11 at a nuclear facility? I've read something about it being
12 a nuclear facility. Is that right?

13 A. It was a facility for enriching uranium.

14 Q. Okay.

15 A. Yes.

16 Q. And the uranium that was enriched by Union
17 Carbide Corporation, was that for weapons; or what was it
18 for?

19 A. I really don't know. I -- I don't know. It was
20 operated by Union Carbide for the Atomic Energy
21 Commission.

22 Q. Okay. So, back in 1951, Union Carbide was a
23 contractor for the Government; is that right -- in
24 uranium?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

22

1 Q. Okay. And as far as you know, the whole time you
2 were with the Union Carbide Corporation, did Union Carbide
3 stay a contractor in some capacity for different
4 Government agencies?

5 A. I don't know.

6 Q. Okay. Certainly they were a Government
7 contractor in 1951 when you joined the uranium facility?
8 A. Yes.
9 Q. All right. Now, you understand, Mr. Myers, that
10 we want you to come to the state of Texas to talk to the
11 jury. Do you understand that?
12 A. Yes.
13 Q. And that you are invited and encouraged on behalf
14 of the Dixon family to answer questions in front of the
15 jury personally?
16 A. Yes.
17 Q. Will you do so?
18 A. It'd depend on the advice of my lawyers.
19 Q. Okay. You look like a healthy man, sir. There
20 is nothing prohibiting you, healthwise, from traveling to
21 Texas, is there?
22 A. No.
23 Q. All right. So --
24 MR. BICKS: One thing you should know is his
25 wife is ill, and I think you know that.

WORLDWIDE COURT REPORTERS 1-800-745-1101

23

1 MR. CHANDLER: I don't know that.
2 MR. BICKS: Oh.
3 MR. CHANDLER: Thanks for saying that.

4 Q. (By Mr. Chandler) What's wrong with your wife,
5 Mr. Myers?

6 A. She's had some very serious oral surgery during
7 the last six months.

8 Q. This case --

9 A. Complications and now another problem with a --
10 with a kidney or some other problem in her back.

11 Q. Sorry to hear that. I'm sorry to hear that.

12 A. Thank you.

13 Q. This case is set for October -- well, really,
14 September 30 of 2002. Do you know what your wife's
15 recovery or prognosis will be? Have the doctors told you?

16 A. No.

17 Q. Is it something that will prohibit you from
18 traveling, your wife's medical condition?

19 A. Probably not. She is having additional surgery
20 starting in September, for oral surgery.

21 Q. Good for her. So, you hope and you anticipate
22 she'll be fine?

23 A. I hope so, yes.

24 Q. Good for you, sir. Thank you for saying that.

25 So, if your plans, as they are now, is that your

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 wife's okay, as you anticipate, and your health stays the

2 way it is, there is nothing restricting you from coming
3 and talking to the Galveston County jury, that you know
4 of?

5 A. No.

6 Q. And if you don't show up in Galveston County,
7 Texas, it will be based on advice you received from your
8 lawyers?

9 MR. BICKS: Objection to the form.

10 A. Yes.

11 Q. (By Mr. Chandler) Okay. Mr. Myers, you
12 understand that the Dixon family is not suing you
13 personally?

14 A. Yes.

15 Q. Okay. Have you ever been sued personally in an
16 asbestos exposure lawsuit?

17 A. No.

18 Q. Okay. How long have you been bringing your own
19 personal attorney with you to depositions that were about
20 exposure to asbestos?

21 MR. BICKS: Objection to the form.

22 A. You mean Union Carbide attorneys?

23 Q. (By Mr. Chandler) -- who were representing you,
24 yes, sir.

25 A. Yes. Well, I can't remember the first one but at

1 least 18 years, 18 or 20 years.

2 Q. Okay. I --

3 MR. CHANDLER: (Sotto voce) What's your
4 last name? What's your last name?

5 MR. BICKS: I'm sorry?

6 MR. CHANDLER: (Sotto voce) What's your
7 last name?

8 MR. BICKS: "Bicks."

9 Q. (By Mr. Chandler) Mr. Bicks is going to claim
10 I've confused you and I'm really not trying to. Here is
11 my -- my point: Mr. Bicks has told us at the beginning of
12 this deposition that he represents Union Carbide and he
13 represents you personally. Are you aware of that?

14 A. Yes.

15 Q. Okay. Here is my question: For the last 18
16 years, have you been bringing attorneys who both represent
17 Union Carbide and you personally to your deposition?

18 A. I can't remember if it was phrased that way
19 before.

20 Q. Have you always understood when you gave
21 testimony that Union Carbide was supplying a lawyer for
22 you personally in addition to one for the company?

23 A. I haven't heard it stated that way before.

24 MR. BICKS: And I know you're -- again,
25 you're using the word "personally" for him is, I think,

1 creating unnecessary confusion. We represent him in his
2 capacity as a former employee of Union Carbide as well as
3 the corporation.

4 MR. CHANDLER: Okay. That helps.

5 MR. BICKS: He is not sued or named in any
6 of these suits, as you well know, and --

7 Q. (By Mr. Chandler) You consider the lawyer who is
8 sitting next to your left-hand side there -- well, let me
9 ask you: Do you consider Mr. Bicks who is sitting right
10 here within 1 foot of you your own personal attorney, sir?

11 A. Like I say, I've never heard it phrased that way
12 before but he is representing me as an employee of Union
13 Car- -- former employee of Union Carbide.

14 Q. That helps clear it up.

15 MR. CHANDLER: Thank you, Mr. Bicks.

16 Q. (By Mr. Chandler) Now, you -- when you got your
17 very first job out of college and you went to work for
18 Union Carbide, you were a very loyal employee and you
19 stayed there for over 34 years; is that right?

20 A. Yes.

21 Q. Now, you come, I guess, from another generation
22 where employees go with their companies; and the companies
23 remain loyal to them and you remain loyal to the company.
24 Is that a fair assessment?

25 MR. BICKS: Objection to the form.

1 A. Yes.

2 Q. (By Mr. Chandler) Okay. In over the 34 years
3 that you worked for Union Carbide, they supplied you with
4 a good living?

5 A. Yes.

6 Q. Allowed you to raise your family and put bread on
7 the table?

8 A. Yes.

9 Q. And Union Carbide is a company that you have no
10 ill will or malice against at all, is it?

11 A. No.

12 Q. It's a company that you personally have great
13 respect for, isn't it, Mr. Myers?

14 A. Yes.

15 Q. Now, I want to talk to you about the company and
16 you a little bit more but -- strike that.

17 Let's talk to you about the kind of preparation
18 you've had for today, okay, Mr. Myers? I understand that
19 you have given quite a few depositions for the Union
20 Carbide Corporation in the past; is that right?

21 A. Yes.

22 Q. I have with me 14 of your prior testimony
23 transcripts. Do you think you've given more testimony

24 than just 14 other times?

25 A. No, that's about right.

WORLDWIDE COURT REPORTERS 1-800-745-1101

28

1 Q. Okay. I know you gave one last week with some
2 lawyers from Dallas, Texas, Peter Kraus, and I don't have
3 that transcript yet. But you have given at least 15?

4 A. Yes.

5 Q. Okay. On the 15 prior occasions where the Union
6 Carbide Corporation has asked you to come represent them,
7 have they ever told you why they're asking you to come as
8 the personal representative?

9 MR. BICKS: Objection to the form of the
10 question. I'm -- were you asking what a lawyer told him?

11 MR. CHANDLER: No, no, Union Carbide.

12 MR. BICKS: A non-lawyer?

13 MR. CHANDLER: Yeah.

14 Q. (By Mr. Chandler) Has Union Carbide or anybody
15 from the company, not the company lawyers, has anybody
16 from the company ever said, "Mr. Myers, we want you to
17 represent us and this is why"?

18 A. No, I don't remember that they have, no.

19 Q. So, no one from Union Carbide has ever even told
20 you why you were being selected as a corporate
21 representative to speak to juries all over the Country?

22 A. Perhaps they did in the -- especially in the
23 early days while I was still an employee. The information
24 may have come from a Union Carbide lawyer.

25 Q. Okay. So, the only person who's ever talked to

WORLDWIDE COURT REPORTERS 1-800-745-1101

29

1 you about why it is you're representing the company is a
2 Union Carbide lawyer; is that fair?

3 A. No, I can't say that for sure.

4 Q. Well, I don't want to know what a Union Carbide
5 lawyer told you; but what is your understanding of why
6 Union Carbide has chosen you? Why are you speaking on
7 behalf of the company instead of somebody else?

8 A. Because I have had the experience in the asbestos
9 industry.

10 Q. And how much experience have you had in Union
11 Carbide's asbestos industry?

12 A. From 1966 to 1985.

13 Q. Now, 1966 postdates the beginning of Union
14 Carbide's asbestos enterprise; is that fair?

15 A. By three years, yes.

16 Q. Well, as a matter of fact, it postdates the
17 production of asbestos by three years but the Union
18 Carbide vast asbestos deposit was discovered about nine
19 years before you ever got into the asbestos business; is

20 that right?

21 MR. BICKS: Objection to the form.

22 A. Yes.

23 Q. (By Mr. Chandler) Did you understand the
24 question?

25 A. When the mine was discovered, it was in 1957.

WORLDWIDE COURT REPORTERS 1-800-745-1101

30

1 Q. And you didn't go work in the asbestos --
2 asbestos side of Union Carbide's business for nine years
3 after they discovered their deposit of asbestos?

4 A. That's right.

5 Q. Okay. Hey, let me ask you this, because I'm
6 getting some objections from Union Carbide's lawyer from
7 time to time: If I ask you a question you don't
8 understand, will you tell me?

9 A. Yes.

10 Q. And that way when we -- if you decide, on the
11 advice of your counsel, not to come to the state of Texas
12 and talk to the jury in person and I show this video to
13 the jury, they can assume Mr. Myers understood the
14 question because he answered it; is that fair?

15 MS. FROST: Objection --

16 A. Yes.

17 MS. FROST: -- form.

18 Q. (By Mr. Chandler) Okay. Now, you have two
19 attorneys here with you today, one from the state of Texas
20 and one from New York City. I assume that you've talked
21 to them -- don't tell me what they said -- but I assume
22 you've prepared to give your deposition today.

23 MR. BICKS: Objection to the form.

24 A. Yes.

25 Q. (By Mr. Chandler) Have they shown you any

WORLDWIDE COURT REPORTERS 1-800-745-1101

31

1 documents in preparation for your deposition?

2 A. Yes.

3 Q. Where are those documents, sir?

4 A. I don't know.

5 Q. And those are doc- -- how many documents did your
6 attorneys from Union Carbide Corporation show you in
7 preparation for your deposition?

8 A. I think there were four or so, three or four.

9 Q. What were they?

10 MR. BICKS: Objection to the form and
11 instruction not to answer.

12 MR. CHANDLER: So, you are asserting that
13 the documents you showed him in preparation for a
14 deposition are privileged documents?

15 MR. BICKS: Yes.

16 MR. CHANDLER: Okay. Certify the question,
17 because Sharla knows the Texas Rules when it comes to
18 that.

19 Q. (By Mr. Chandler) There are --

20 MR. BICKS: And, frankly, so there is no
21 confusion, provided there is no issue of work -- waiver of
22 any work product concern that you have, which would be my
23 concern, I have no problem telling you that I showed
24 Mr. Myers documents that you sent to Ms. Frost, a handful
25 of documents, provided there is no question about any work

WORLDWIDE COURT REPORTERS 1-800-745-1101

32

1 product issues.

2 MR. CHANDLER: Are those the ones we talked
3 over the phone about?

4 MS. FROST: Yes, sir.

5 MR. CHANDLER: Okay.

6 MR. BICKS: Is that acceptable to you?

7 MR. CHANDLER: Yeah, yeah, absolutely. But
8 do me this favor, Mr. Bicks: When you want to tell me
9 something, do it outside the presence of your witness so
10 he doesn't know what you're trying to tell me, okay,
11 because in Texas, we have a lot of lawyers -- not me,
12 because Sharla knows -- who try to coach witnesses on the
13 record and I know that's not what New York City lawyers

14 try to do.

15 MR. BICKS: And I can tell you something.

16 MR. CHANDLER: Go ahead.

17 MR. BICKS: I can tell you right now, this
18 witness doesn't need coaching.

19 MR. CHANDLER: And we're going to talk about
20 that.

21 Q. (By Mr. Chandler) You are a very experienced
22 witness and need no coaching at all when it comes to
23 giving testimony, do you, Mr. Myers?

24 A. It doesn't hurt to have some help.

25 Q. You have had help in the past. In fact, Union

WORLDWIDE COURT REPORTERS 1-800-745-1101

33

1 Carbide lawyers have coached you in the past to give your
2 depositions, haven't they?

3 A. They've --

4 MR. BICKS: Objection to the form.

5 A. They've prepared me for depositions, yes.

6 Q. (By Mr. Chandler) Well, when your lawyer tells
7 this jury that you don't need coaching, that's not always
8 been the case, has it?

9 MR. BICKS: Objection to the form.

10 A. I'm not sure I understand that question.

11 Q. (By Mr. Chandler) Well, let's -- let's show the

12 ladies and gentlemen of the jury what I'm talking about.
13 Union Carbide has sat down with you and taken you through
14 classes on how to give testimony, haven't they?

15 A. No -- well, one, yes.

16 Q. Okay. You've actually given -- you've actually
17 taken courses on how to speak effectively, haven't you?

18 A. Probably, yes. I don't recall any, but I think I
19 have.

20 Q. Do you recall a course called the Communispond
21 course that you took?

22 A. Not specifically, no.

23 Q. Okay. Well, we'll get into that because -- and I
24 don't -- hey, look, I don't expect you to remember
25 everything you've testified -- testified about on behalf

WORLDWIDE COURT REPORTERS 1-800-745-1101

34

1 of Union Carbide Corporation in the last 15 times or so.
2 So, from time to time, I will refresh your memory with
3 your prior testimony, okay?

4 A. Okay.

5 Q. I'm not trying to tell the ladies and gentlemen
6 of the jury you're trying to hide anything. I just know
7 that you've given a lot of testimony and some of it may be
8 a little fuzzy for you, okay?

9 MR. BICKS: Objection to the form.

10 A. Okay.

11 Q. (By Mr. Chandler) Now, when I say you have been
12 coached in the past, Mr. Myers, it's fair for the ladies
13 and gentlemen of the jury to know that you have sat down
14 with Union Carbide lawyers and they have prepared you on
15 the methods of giving testimony; is that -- is that right?

16 MR. BICKS: Objection to the form.

17 A. Yes.

18 Q. (By Mr. Chandler) You gave your first deposition
19 in asbestos litigation on behalf of Union Carbide
20 Corporation in the early 1980's; is that true?

21 A. Yes.

22 (Myers Exhibit No. 1 was marked.)

23 Q. (By Mr. Chandler) Let me show you what we have
24 marked as Myers Exhibit 1 and I'll ask you if you have
25 ever seen Myers Exhibit 1, dated October 28, 1980.

WORLDWIDE COURT REPORTERS 1-800-745-1101

35

1 MR. BICKS: Can I see a copy?

2 MR. CHANDLER: Yes. There is a copy for
3 your counsel.

4 MR. BICKS: Thanks.

5 MR. CHANDLER: Wait, yours may not have all
6 the pages, Mr. Bicks, because my other one doesn't. So --

7 MR. BICKS: Do you have a copy that --

8 MR. CHANDLER: I'm sorry. Obviously, I
9 don't. I copied -- I made three copies of every exhibit
10 I'm going to use; and apparently, this one has the last
11 page or two cut off. I'm sorry. I don't even have it.
12 So, I need to borrow the witness'.

13 MR. BICKS: Okay.

14 MR. CHANDLER: Sharla knows I spent all day
15 in the copy room one day getting ready for this
16 deposition.

17 Q. (By Mr. Chandler) Have you ever seen Myers
18 Exhibit 1, Mr. Myers?

19 A. Yes, uh-huh.

20 Q. Okay. Can I take a look at it, because there is
21 something I want to reference on the exhibit. I'll give
22 it right back to you. I just want to cite the page for
23 the jury.

24 Okay. On the last page of Myers Exhibit 1, we'll
25 go through this together. And it's the bottom of the

WORLDWIDE COURT REPORTERS 1-800-745-1101

36

1 first paragraph. And Myers Exhibit 1 is a memorandum that
2 at the bottom has "J.L.M." as the initials?

3 A. Yes.

4 Q. You received Myers Exhibit 1 at the time,
5 October 28, 1980, fair enough, based on the initials at

6 the bottom of it?

7 A. I wrote the letter.

8 Q. And you know what, 3 inches above that is your
9 signature. You wrote Myers Exhibit 1.

10 A. Yes.

11 Q. "The Asbestos Business - 1980 & 1981," "J.L.M.,"
12 "10-28-80." You wrote what is attached to Myers
13 Exhibit 1, fair?

14 A. I wrote it or a group of us wrote it, yes.

15 Q. Okay. On the last page of Myers Exhibit 1, it
16 cites on the last paragraph, quote: "We met with local
17 counsel from Texas earlier this month to discuss probable
18 testimony, etc.," and, in parentheses, "(JLM 'coaching'),"
19 period, end of quotes. Do you see that?

20 A. Yes.

21 Q. So, in anticipation of giving depositions, in
22 fact, Union Carbide Corporation has coached you on how to
23 do so, fair?

24 MR. BICKS: Objection to the form.

25 A. I don't remember that, but it says that I did.

WORLDWIDE COURT REPORTERS 1-800-745-1101

37

1 So --

2 Q. (By Mr. Chandler) And you wrote it and you
3 wouldn't write something that wasn't true, would you?

4 A. No.

5 Q. Okay. So, if you wrote in 1980 that you met with
6 local counsel in Texas to discuss "probable testimony"
7 and, in parentheses, "coaching," that's a fair and
8 accurate statement at the time you wrote it?

9 A. Yes. I don't know what it was in regard to.

10 Q. Well, it certainly was with regard to probable
11 testimony, wasn't it?

12 A. Yes.

13 Q. And probable testimony regarding Calidria
14 asbestos, wouldn't you assume?

15 A. No, I wouldn't --

16 MR. BICKS: Objection.

17 A. -- from -- I wouldn't assume that.

18 Q. (By Mr. Chandler) The document marked Myers
19 Exhibit 1 originates out of the Calidria asbestos
20 department, doesn't it?

21 A. Yes.

22 Q. The subject is "Revision of Asbestos Business
23 Review," isn't it?

24 A. Yes.

25 Q. And what you're telling us is you're not sure

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 whether a document entitled "The Asbestos Business" and

2 its reference to coaching was going to be about testifying
3 on asbestos?

4 A. I'm telling you I don't remember that.

5 Q. Okay. Fair enough. So, we know that you were a
6 34-year-old employee who has had coaching with respect to
7 giving testimony. Is that a fair statement?

8 MR. BICKS: Objection to the form.

9 A. Yes.

10 Q. (By Mr. Chandler) Okay. And in addition to
11 having coaching with respect to testimony, you've taken
12 courses on effective speaking, whether you remember the
13 title of the course or not?

14 A. Yes.

15 Q. Okay. One of the courses you took had as a
16 subpart of it something titled, quote, "60 Minutes: How
17 to deal with Dan Rather when he shows up at your office
18 with a microphone," unquote. Remember that part of the
19 Communispond course?

20 A. I remem- -- yes, I remember that.

21 Q. Okay. Why back in the early Eighties when you
22 were giving testimony on behalf of the Union Carbide
23 Corporation was it -- was it important to you to know how
24 to deal with Dan Rather when he shows up at your office
25 with a microphone?

1 MR. BICKS: Objection to the form.

2 A. Just general education, I guess, on -- for any
3 questions that might pop up.

4 Q. (By Mr. Chandler) Did Dan Rather from the news
5 ever show up and talk to you?

6 A. No.

7 Q. Did any news organization ever stick a microphone
8 in front of your face?

9 A. Not that I recall.

10 Q. Okay. Regardless, Union Carbide sent you to the
11 course, the Communispond course. It's not something you
12 did on your own, is it?

13 A. No.

14 Q. When Union Carbide sent you to the course
15 entitled, "60 Minutes: How to deal with Dan Rather when
16 he shows up at your office with a microphone," do you feel
17 that you learned some important tips on public speaking
18 and tips to speak to a jury?

19 A. I don't -- no, I don't remember that.

20 Q. Okay. We talked a little about your many years
21 with Union Carbide Corporation and the kind of preparation
22 you've had for giving testimony in all of the testimony
23 you've given in the past. So, I want to talk to you
24 about -- well, let's get a little more personal
25 information. Let's get the jury to know you. If you

1 decide not to show up in Texas, let's find out who you
2 are.

3 MR. BICKS: Objection to the form.

4 Q. (By Mr. Chandler) You are how old, sir?

5 A. 73.

6 Q. 73. Are -- do you have to take any medications
7 that affect your memory at all?

8 A. Only my age affects my memory.

9 Q. Certainly. You don't remember things as much
10 that happened 34 years ago as you do yesterday, do you?

11 A. Probably not.

12 Q. That's a fair statement for anybody, I think.
13 So, from time to time we'll go over documents that will,
14 hopefully, refresh your memory; and we'll review prior
15 testimony of yours that will, hopefully, do the same
16 thing.

17 But do you have any impairments, any medical
18 conditions that affect your memory today, sir?

19 A. Not that I know of.

20 Q. You are still a very sharp 73-year-old gentleman,
21 aren't you?

22 A. I hope so, yes.

23 Q. I think that's true. Otherwise, Union Carbide
24 wouldn't keep choosing you to testify on their behalf, I
25 think.

1 MR. BICKS: Objection to the form.

2 Q. (By Mr. Chandler) Mr. Myers, what was your title
3 when you left Union Carbide 34 years after you started
4 working for them?

5 A. Product and production manager.

6 Q. And when you left Union Carbide Corporation, you
7 went to go work for a company that essentially bought
8 Union Carbide's asbestos business; is that right?

9 A. Yes.

10 Q. And, in fact, when Union Carbide sold its
11 asbestos mine in the year 1985 -- is that right?

12 A. Yes.

13 Q. In 1985 when Union Carbide sold its asbestos
14 mine, you became the president of the company that bought
15 the mine; isn't that right?

16 A. Yes.

17 MR. BICKS: You just -- you were referring
18 to the mine, again, so the record is clear.

19 MR. CHANDLER: Thank you. Thank you very
20 much.

21 Q. (By Mr. Chandler) Let me clear that up -- I
22 think I said the company that bought the mine but I think
23 you've said in the past, they don't buy a mine; you lease
24 it. So, let's clear it up.

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 mill.

2 Q. (By Mr. Chandler) Mr. Myers, in 1985 Union
3 Carbide sold off its asbestos enterprise, true?

4 A. Yes.

5 Q. And when Union Carbide decided to get out of the
6 asbestos business finally in 1985 you became the president
7 of the company to whom they sold their asbestos business,
8 true?

9 A. Yes.

10 Q. In fact, when you became the president of that
11 company -- and it's called KCAC, Inc., right?

12 A. Yes.

13 Q. Now, just so the jury's not confused, that does
14 not stand for King City Asbestos Company, does it?

15 A. No, it doesn't.

16 Q. Do you know how they chose "KCAC, Inc."?

17 A. No, I don't.

18 Q. All right. It's just a coincidence that it's an
19 asbestos-mining enterprise and mill in and around King
20 City but it has nothing to do with King City Asbestos
21 Company, right?

22 A. No.

23 Q. Okay. When you became the president of King City
24 Asbestos Company, how long did you stay with -- I'm sorry.
25 I said it, didn't I?

WORLDWIDE COURT REPORTERS 1-800-745-1101

43

1 When you became the president of KCAC,
2 Incorporated, that ran the asbestos enterprise sold from
3 Union Carbide, how long did you stay with the company?

4 A. Until I retired in 1993.

5 Q. Okay. So, eight more years after you left Union
6 Carbide?

7 A. Yes.

8 Q. So, you actually have been involved in the actual
9 production of asbestos yourself longer than even the Union
10 Carbide Corporation, haven't you?

11 MR. BICKS: Objection to the form.

12 A. I don't know. From '66 to '93. 27 years.

13 Q. (By Mr. Chandler) Okay. And if we assume that
14 Union Carbide started producing asbestos in 1963 and sold
15 it off in 1985, that would be about 22 years?

16 A. Yes.

17 Q. So, your personal involvement with asbestos
18 mining and production spans even more years than Union
19 Carbide Corporation's, doesn't it?

20 A. Yes.

21 Q. And I think it's fair to say you don't ever want
22 to personally believe you were involved in a business or
23 an enterprise that hurt people, do you?

24 A. No.

25 Q. There is probably very little I could show you

WORLDWIDE COURT REPORTERS 1-800-745-1101

44

1 today that would convince you that Union Carbide
2 Corporation or KCAC went out and committed negligent acts;
3 is that right?

4 A. I don't think so.

5 Q. Okay.

6 A. I don't think you could show me anything that
7 said that, no.

8 Q. Okay. You don't think, as a person with 27 years
9 or so in the asbestos business, I could convince you that
10 Union Carbide was negligent, do you?

11 A. I don't think so.

12 Q. All right. And you don't ever want to believe
13 that you were involved in the kind of business that killed
14 people?

15 MR. BICKS: Objection to the form.

16 A. Right.

17 Q. (By Mr. Chandler) Let me reask the question
18 another way. You don't ever want to believe you were

19 involved in a business that sold a toxic product, do you?

20 MR. BICKS: Objection to the form.

21 A. Asbestos is a known cancer-causing agent.

22 Q. (By Mr. Chandler) But you don't want to believe
23 that Carbide's asbestos business was out there putting out
24 a known carcinogen, do you?

25 MR. BICKS: Objection to the form.

WORLDWIDE COURT REPORTERS 1-800-745-1101

45

1 A. I don't believe Union Carbide's asbestos causes
2 cancer but that's -- I'm not a medical doctor.

3 Q. (By Mr. Chandler) Right. And it's not -- it's
4 not even something you want to believe, is it?

5 MR. BICKS: Objection to the form.

6 A. No.

7 Q. Okay. I'm going to ask -- go ahead.

8 THE VIDEOGRAPHER: Mr. Bicks and Mr. Myers,
9 could you place your microphones on your lapels, on your
10 left lapels, please?

11 (Off the record comments.)

12 Q. (By Mr. Chandler) Mr. Myers, I'm going to ask
13 you at the end of this deposition whether, in fact, you've
14 changed your mind about whether Union Carbide Corporation
15 acted negligently, okay, and I want you to give me your
16 best professional and personal opinion about that, all

17 right?

18 A. Okay.

19 MR. BICKS: Objection to the form.

20 MR. CHANDLER: Just a second.

21 (Off the record comments.)

22 Q. (By Mr. Chandler) Mr. Myers, part of your job at
23 one point for the Union Carbide Corporation was actually
24 the development of new products into which their Calidria
25 asbestos could go; is that right?

WORLDWIDE COURT REPORTERS 1-800-745-1101

46

1 A. No.

2 Q. Oh --

3 A. Unless you can be specific, I don't know what
4 you're referring to.

5 Q. Weren't you assigned as a technical
6 superintendent at one point for Union Carbide?

7 A. At the plant, yes.

8 Q. And what is a technical superintendent?

9 A. Well, I was responsible for the laboratory part
10 of the operation and for installing a production system
11 for a new -- new product.

12 Q. What was the production -- well, strike that.
13 Didn't you work at the Research and Development part of
14 the Union Carbide business as well for awhile?

15 A. Yes.

16 Q. And when you hear "Research and Development,"
17 isn't that developing new products into which the asbestos
18 could go?

19 A. Yes.

20 Q. Okay. So, part of your job for a period of time
21 with Union Carbide was trying to develop new uses for
22 their asbestos?

23 A. I think I worked on only one use, yes.

24 Q. Okay. And what was the new use of this Union
25 Carbide asbestos that you worked on?

WORLDWIDE COURT REPORTERS 1-800-745-1101

47

1 A. It wasn't necessarily a new use. It was using
2 our asbestos in the drilling mud --

3 Q. Okay.

4 A. -- formulations.

5 Q. You understand Union Carbide did have and did
6 develop uses for their asbestos that before Union -- let
7 me reask the question.

8 New paragraph, new question. Here we go. You
9 understand that Union Carbide's asbestos -- golly, I can't
10 speak. Mr. Myers, I'm going to get it right.

11 Mr. Myers, you understand that there are uses of
12 asbestos that were created by Union Carbide that before

13 their work never existed; is that fair?

14 MR. BICKS: Objection to the form.

15 A. Yes.

16 Q. (By Mr. Chandler) So, it's fair for the jury to
17 know that Union Carbide was out there on the cutting edge
18 of asbestos research and finding new uses for asbestos
19 that were before that never created?

20 MR. BICKS: Objection, form.

21 A. Yeah, I don't know about definition of "cutting
22 edge" but we did do work, yes.

23 Q. (By Mr. Chandler) Okay. You did work on finding
24 applications for asbestos that hadn't existed before?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

48

1 Q. All right. Oh, when you became the president of
2 the company that took over Union Carbide's asbestos
3 enterprise, you actually got shares in that company,
4 didn't you?

5 A. Yes.

6 Q. Do you still own any shares in that corporation?

7 A. No.

8 Q. Do you own any shares of Union Carbide
9 Corporation?

10 A. No.

11 Q. Do you own any shares of Dow Chemical Company?
12 A. No.
13 Q. Do you have a pension from the Union Carbide
14 Corporation?
15 A. Yes.
16 Q. Okay. Your pension from the Union Carbide
17 Corporation supplies you with monthly income, doesn't it?
18 A. Yes.
19 Q. How much monthly income do you get a month from
20 Union Carbide?
21 A. Oh, well, annually -- it would be about 2,000 per
22 month.
23 Q. Okay.
24 A. \$2,000.
25 Q. So, the Union Carbide pension that you get still

WORLDWIDE COURT REPORTERS 1-800-745-1101

49

1 supplies you with \$2,000 a month, fair?
2 A. Yes.
3 Q. All right.
4 A. I'm -- don't hold me to the number, but it's in
5 that range.
6 Q. Okay. Does Union Carbide compensate you on an
7 hourly basis for your time giving depositions on their
8 behalf?

9 A. Yes.

10 Q. How much do they pay you every hour to talk to
11 juries?

12 A. \$200.

13 Q. Okay. So, last week you did a deposition with a
14 lawyer from Dallas that lasted two days; is that right?

15 A. Yes.

16 Q. And so, last week the Union Carbide Corporation
17 paid you somewhere in excess of just \$3,000 for that one
18 deposition; is that accurate?

19 A. Yes.

20 Q. All right. How long has Union Carbide been
21 paying you to testify for them?

22 A. When I was still an employee, the -- of KCAC and
23 Union Carbide, I didn't receive anything.

24 Q. Okay.

25 A. So, starting in 1994, I received, you know,

WORLDWIDE COURT REPORTERS 1-800-745-1101

50

1 reimbursement for my time and my expenses.

2 Q. And the reimbursement for your time is \$200 an
3 hour for depositions, today?

4 A. It is today, yes.

5 Q. Had you ever made \$200 an hour when you were
6 working for Union Carbide Corporation?

7 A. No.

8 Q. The only time Union Carbide Corporation ever
9 chose to pay you \$200 an hour is when you are giving
10 testimony; is that right?

11 A. Yes.

12 Q. None of the times you were doing research and
13 development on asbestos did they pay you \$200 an hour, did
14 they?

15 A. No.

16 Q. None of the times you broke your back for that
17 company for 34 years did they ever pay you anything close
18 to \$200 an hour, did they?

19 A. No.

20 Q. Have you ever asked why you are getting paid so
21 much today to give testimony on behalf of Union Carbide
22 Corporation?

23 MR. BICKS: Objection to the form.

24 A. No, I haven't.

25 Q. (By Mr. Chandler) Who set the 200-dollar-an-hour

WORLDWIDE COURT REPORTERS 1-800-745-1101

51

1 rate, you or Union Carbide?

2 A. I only got -- got -- got it through the law firms
3 I was rep- -- that was representing me.

4 Q. So, law firms who represent Union Carbide, are

5 they the ones who said, "Mr. Myers, if you testify, we'll
6 pay you \$200 an hour"?

7 MR. BICKS: Objection to the form.

8 A. I don't remember how it came about.

9 Q. (By Mr. Chandler) You certainly didn't suggest
10 \$200 an hour, did you?

11 A. No.

12 Q. Is \$200 an hour a lot of money to make,
13 Mr. Myers?

14 A. Depends on how many hours you work. If you work
15 ten hours a year, it's not a whole lot.

16 Q. How many hours a year do you work for Union
17 Carbide?

18 A. It varies from year to year. It's usually in the
19 30 or 40 hours per year, maybe 50.

20 Q. So, you work anywhere between 30 to 50 hours a
21 year with Union Carbide Corporation?

22 A. Again, I haven't kept any record.

23 Q. Just give me an estimate.

24 A. I just did.

25 Q. 30 to 50 hours a year?

WORLDWIDE COURT REPORTERS 1-800-745-1101

52

1 A. Well, I think so; but I have to look -- you know,
2 go back. I don't even know if I have the records.

3 Q. Do you anticipate this year is going to be more
4 than prior years, Mr. Myers?

5 A. It seems to be, yes.

6 Q. So, this year -- I mean, last week you worked two
7 days just giving deposition testimony, true?

8 A. Yes.

9 Q. And you probably prepared for that deposition;
10 and you charge for prep time, don't you?

11 A. Yes.

12 Q. And you are here with two lawyers today who, as
13 you've said, prepared you and showed you documents in
14 anticipation for your testimony, true?

15 A. Yes.

16 Q. And you're going to be here all day giving
17 testimony, and all of that you're going to bill to the
18 Union Carbide lawyers \$200 per hour?

19 A. Yes.

20 Q. Regardless of whether you work just one hour,
21 isn't \$200 an hour an awful lot of money to charge for one
22 hour's time?

23 A. Yes.

24 Q. All right. And that's -- that rate, what Union
25 Carbide is paying you today to speak to juries all over

1 the Country, is nothing they ever even came close to
2 paying you when you were an actual employee of the
3 company, is it?

4 A. If you put it on an annual basis. As I said, if
5 you don't work very many hours, \$200 an hour doesn't add
6 up much.

7 Q. Okay. Let me reask the question, then. The
8 hourly rate of \$200 an hour for giving testimony today is
9 nothing even close to your hourly rate that you got while
10 you were a Union Carbide employee, is it?

11 A. That's correct.

12 Q. Okay. What was your hourly rate as a Union
13 Carbide employee, or did you have one?

14 A. I started off at a dollar fifty-eight an hour.

15 Q. Okay. In 1951?

16 A. Yes.

17 Q. In 1985 when you left Union Carbide Corporation,
18 what was your salary?

19 A. I don't remember. Probably 60- or 70,000.

20 Q. Okay. If you broke it down by an hourly rate, it
21 was nowhere near \$200 an hour, at least?

22 A. No.

23 Q. Mr. Myers, did Union Carbide offer you a position
24 to stay with the company when they sold the asbestos
25 enterprise?

1 A. No.

2 Q. So, it was either go work for KCAC or retire at
3 the time?

4 A. The question didn't come up that way.

5 Q. Did -- okay. Now, I mentioned earlier -- and, in
6 fact, I invited you earlier to travel to the state of
7 Texas to Galveston to talk to this jury. Traveling for
8 Union Carbide Corporation is nothing new to you, is it?

9 A. No.

10 Q. Union Carbide Corporation sent you all over the
11 Country to speak to people on behalf of their asbestos
12 business, haven't they?

13 A. Yes.

14 Q. You've made sales calls all over the United
15 States?

16 A. Yes.

17 Q. You've made sales calls and -- and technical
18 calls all over the world on behalf of Union Carbide's
19 asbestos business, haven't you?

20 A. Yes.

21 Q. So, to come to the state of Texas wouldn't be
22 anything more than you've ever done in the past for Union
23 Carbide, is it?

24 A. Except for the difference in my age.

25 Q. Yes, sir. Now, your background, Mr. Myers, isn't

1 it in marketing or sales, is it, your formal education?

2 A. Formal education, no.

3 Q. You've certainly had -- and since going with
4 Union Carbide, you certainly had a lot of training and
5 experience in marketing and sales, haven't you?

6 A. For 11 years, yes.

7 Q. Okay. Your background, your personal background,
8 is in engineering, chemical engineering to be specific,
9 isn't it?

10 A. Yes.

11 Q. You have a bachelor's degree from Purdue
12 University?

13 A. Yes.

14 Q. Fine institution, sir. Any -- any advanced
15 degrees, any master's degrees or anything?

16 A. No.

17 Q. No degrees whatsoever in marketing?

18 A. No.

19 Q. You understand that if a com- -- you understand
20 that there are degrees that a person can get in marketing
21 and sales; is that right?

22 A. Yes.

23 Q. That's not something Union Carbide needed you to
24 have when they put you in charge of the production and

25 Marketing Department in their asbestos business, though,

WORLDWIDE COURT REPORTERS 1-800-745-1101

56

1 is it?

2 MR. BICKS: Objection to form.

3 A. They didn't. No, I didn't need that.

4 Q. (By Mr. Chandler) Okay. The mining division of
5 Union Carbide that originally had responsibility for the
6 mine and mill located out here in California was
7 originally headquartered in New York; is that right?

8 A. Yes, but they were -- the asbestos business was
9 not always under the metals division.

10 Q. Right. And we'll talk about that. At one point
11 it was under the nuclear division?

12 A. Yes.

13 Q. And the metals and mining division at one point?

14 A. Mining and metals, yes.

15 Q. Thank you. But my point is: At first Union
16 Carbide ran the asbestos business from the other side of
17 the Country, true?

18 A. Yes.

19 Q. Okay.

20 THE REPORTER: Hold on just one second. I'm
21 sorry. I'm having a little technical difficulty.

22 MR. CHANDLER: Sure.

23 (Off the record from 10:00 a.m. to 10:02 a.m.)

24 Q. (By Mr. Chandler) Mr. Myers, we've talked a
25 little about your background and we've talked about how

WORLDWIDE COURT REPORTERS 1-800-745-1101

57

1 you started in the nuclear or uranium business with Union
2 Carbide, but at some point Union Carbide transferred you
3 from nucl- -- working on nuclear material to asbestos,
4 true?

5 A. Yes.

6 Q. And you went to work for the asbestos side of
7 Union Carbide nine years after they started it in 1966?

8 A. Yes.

9 Q. In 1966 when Union Carbide transferred you to the
10 asbestos business, what did they tell you about the
11 hazards of asbestos?

12 A. I don't recall.

13 Q. Okay. Do you recall that they told you anything
14 about the hazards of asbestos in 1966 when you went to
15 work at that site?

16 A. As I said, I don't recall anything specific.

17 Q. Okay. If Union Carbide told you anything about
18 the hazards of asbestos, certainly nothing that made such
19 an impression on you that you remember it today; is that
20 fair?

21 MR. BICKS: Objection to the form.

22 A. Yeah, I said I don't recall anything specific.

23 Q. (By Mr. Chandler) Okay. And although you can't
24 recall anything specific that Union Carbide told you about
25 the hazards of asbestos in 1966, did you personally do any

WORLDWIDE COURT REPORTERS 1-800-745-1101

58

1 research or development into the hazards of asbestos when
2 you started there?

3 A. Not that I recall.

4 Q. Did you ask anybody whether there were any
5 hazards associated with asbestos in 1966?

6 A. I don't remember.

7 Q. Have you ever heard the term "selective memory,"
8 Mr. Myers?

9 A. Yes.

10 Q. Okay. You understand what I mean when I say
11 that?

12 A. I think so. You might explain it.

13 Q. Well, go ahead and tell me what you think I mean
14 by "selective memory." What does that mean to you?

15 A. I think you remember some things, and you don't
16 remember others.

17 Q. Mr. Myers, I understand from reading, oh, quite a
18 bit of your former testimony that you first became aware

19 of the hazards of asbestos in the early 1970's; is that
20 fair?

21 A. No, after reviewing documents, it's more like the
22 late Sixties.

23 Q. Okay. So, you've given at least 14 prior
24 depositions in which you've said your knowledge of
25 asbestos hazards was the early 1970's in the past, though,

WORLDWIDE COURT REPORTERS 1-800-745-1101

59

1 haven't you?

2 MR. BICKS: Objection to the form.

3 A. I have to see the documents for the -- when I --
4 or when I said that.

5 Q. (By Mr. Chandler) Okay. Well, we'll go over
6 your prior testimony. Wouldn't surprise you if on
7 numerous occasions in the past you've said your knowledge
8 of the hazards of asbestos came about in the early
9 Seventies, though, would it?

10 A. No.

11 Q. All right. Now, however, after reviewing certain
12 documents, you understand that your knowledge about the
13 hazards of asbestos came about in the late 1960's?

14 A. Yes.

15 Q. What documents have you reviewed that refreshed
16 your recollection about when you knew about the hazards of

17 asbestos?

18 A. Especially one report, the asbestos toxicology
19 report from Dr. Dernehl, and then other information that
20 we were preparing for customers or was sent to customers.

21 Q. You recall reading Dr. Dernehl's asbestos
22 toxicology report at the time he produced it?

23 A. No.

24 Q. When is your first recollection of seeing
25 Dr. Dernehl's toxicology report?

WORLDWIDE COURT REPORTERS 1-800-745-1101

60

1 A. I said I don't remember.

2 Q. But, then, how do you know it was the late 1960's
3 that you under- -- let me rephrase the question.

4 If Dr. Dernehl's toxicology report is the basis
5 for you saying you understood the hazards of asbestos in
6 the late Sixties, yet you have no recollection of when you
7 saw Dr. Dernehl's toxicology report for the first time,
8 how do you put the late Sixties with your knowledge of the
9 hazards of asbestos?

10 A. Because it was distributed to the location where
11 I was working.

12 Q. Okay. So, if a document got distributed to where
13 you were working, you would assume, "I saw that document"?

14 A. Yes.

15 Q. That's a fair assumption for the jury to take?
16 A. Yes.
17 Q. The jury can consider if a document went to where
18 Mr. Myers was working, Mr. Myers saw the document?
19 A. Yes.
20 Q. And that's true of the toxicology report. I
21 mean, it's not just true of certain documents. It's not
22 just special documents that are -- fit into that category,
23 is it?
24 A. I --
25 MR. BICKS: Objection to the form.

WORLDWIDE COURT REPORTERS 1-800-745-1101

61

1 A. I don't know what you are referring to.
2 Q. (By Mr. Chandler) All right. I think we got
3 enough.
4 When you became a research engineer, did a Union
5 Carbide medical doctor come to talk to you about what you
6 needed to be concerned about regarding asbestos?
7 A. Not that I recall.
8 Q. And you didn't stay at Niagara Falls where the
9 research department was located for very long before
10 moving somewhere else, did you?
11 A. No, I didn't.
12 Q. Where did you go?

13 A. To -- to the King City mill.

14 Q. Okay. So, you got involved in asbestos for Union
15 Carbide in '66 and then they sent you out to the mine
16 that's located -- and the mill -- here in California how
17 long after that?

18 A. In 1967.

19 Q. The very next year?

20 A. Yes.

21 Q. Okay. During the whole year that you were first
22 introduced to the asbestos business at Union Carbide, can
23 you tell the ladies and gentlemen of the jury whether
24 there was any formal introduction into the hazards of
25 asbestos during that one year?

WORLDWIDE COURT REPORTERS 1-800-745-1101

62

1 A. I don't remember.

2 Q. Okay. When you went out to the mine, do you
3 recall learning anything new about the hazards of
4 asbestos?

5 A. I don't remember, no.

6 Q. Okay. Hey, do you know Harrison Rhodes?

7 A. Yes.

8 Q. When is the last time you talked to him?

9 A. Been several years. I don't remember.

10 Q. You know he lives in Grand Junction, Colorado?

11 A. Yes.

12 MR. CHANDLER: And for the record, I'll make
13 the request of Harrison Rhodes. I called Mr. Rhodes last
14 week and Mr. Rhodes informed me he was represented by
15 counsel for Union Carbide, that he was meeting with them
16 this week and, therefore, he wouldn't speak to me. But
17 since Mr. Rhodes is obviously a person you guys have
18 talked to, I want to talk to him.

19 MS. FROST: If you will provide us with a
20 deposition notice for Mr. Rhodes, I'm sure we will act
21 accordingly.

22 MR. CHANDLER: It will be at your office
23 today.

24 MR. BICKS: I would also just encourage you
25 on the record not to be contacting witnesses represented

WORLDWIDE COURT REPORTERS 1-800-745-1101

63

1 by counsel.

2 MR. CHANDLER: Well, as soon as he told me
3 he was contacted, I didn't talk to him anymore.

4 MR. BICKS: Just as a courtesy, if you'd
5 clear it with one of us beforehand --

6 MR. CHANDLER: I will not --

7 MR. BICKS: -- I would appreciate that.

8 MR. CHANDLER: I will not call you before I

9 call fact witnesses. I will absolutely not do that. If I
10 learn that they are represented by you, I will obviously
11 quit talking to them, which is what happened with
12 Mr. Rhodes. Our conversation lasted about 60 seconds.

13 Q. (By Mr. Chandler) Do you know Mr. Marston?

14 A. Yes.

15 Q. When is the last time you talked to him?

16 A. Oh, it's been maybe a year. I see him in the
17 grocery store every once in a while.

18 Q. He lives here in the King City area?

19 A. Yes.

20 Q. How far is King City from Monterey? We're here
21 in Monterey, California, taking your deposition today.
22 How far is that?

23 A. About 65 miles.

24 Q. Why did we come to Monterey to do your
25 deposition, then?

WORLDWIDE COURT REPORTERS 1-800-745-1101

64

1 A. I -- that's where it was set up.

2 Q. You don't have anything to do with where it
3 is?

4 A. Well, I prefer it in my -- you know, where it's
5 convenient for me to get to.

6 Q. Is this convenient for you?

7 A. Yes.

8 Q. Okay. You don't recall any training Union

9 Carbide gave you when they first put you in the asbestos

10 business about the hazards of asbestos, do you?

11 A. No. I've already answered that. No, I don't --

12 Q. And the answer was --

13 A. I haven't learned anything more since --

14 Q. And you don't recall anything about the hazards

15 of asbestos being told to you when they transferred you

16 out to where the asbestos was actually produced, do you?

17 A. I don't remember anything specific.

18 Q. Okay. Do you remember anything generally?

19 A. Yes. We were using -- you know, people were

20 using respirators. We had a safety pro- -- medical

21 surveillance program. We had bags that were marked with a

22 warning label.

23 Q. When you first showed up at the mine and the

24 mill, do you recall seeing the bags marked with a warning

25 label?

WORLDWIDE COURT REPORTERS 1-800-745-1101

65

1 A. No.

2 Q. Because that didn't happen for another year or

3 so, did it?

4 A. Right.

5 Q. There was a period of five years where Union
6 Carbide put absolutely no warning at all on their asbestos
7 bags; is that true?

8 A. Yes.

9 Q. And then there was a period of four more years
10 where the only warning on the bag of a Union Carbide
11 asbestos said, "Warning: Do not breathe the dust"?

12 A. I don't remember specifically, but we have -- we
13 have, you know, information that says what it says, says
14 what that read.

15 Q. If the record reflects and the sworn answers from
16 the Union Carbide Corporation are that the only thing the
17 bag of asbestos said from the years 1968 to 1972 is,
18 "Warning: Do not breathe the dust," do you have any
19 reason to doubt that?

20 MR. BICKS: Objection to the form.

21 A. I thought it was longer than that, but I would
22 have to see it to -- to know.

23 Q. (By Mr. Chandler) Fair enough. We will get to
24 it. I promise you.

25 A. All right.

WORLDWIDE COURT REPORTERS 1-800-745-1101

66

1 Q. Now, you only stayed out there at the mine and
2 mill in California for about three years before they moved

3 you back to Niagara Falls, still in the asbestos business,
4 though?

5 A. Yes.

6 Q. And Niagara Falls, when you got transferred to
7 Niagara Falls in 1970, you were the marketing manager for
8 asbestos products; is that right?

9 A. Yes.

10 Q. What are the responsibilities of a marketing
11 manager for asbestos products for Union Carbide
12 Corporation?

13 A. To use our efforts to sell the products, to talk
14 to customers, prepare sales bulletins and budgets for
15 sales.

16 Q. Was your eval- -- did you get yearly evaluations?

17 A. Yes.

18 Q. Were your evaluations ever based on how much
19 production increased or how much sales increased over the
20 year?

21 A. I don't think so.

22 Q. Okay. So, you are telling the jury, as the
23 person responsible for marketing asbestos, Union Carbide
24 never considered how much asbestos you sold in evaluating
25 your performance?

1 A. Not that I remember.

2 Q. Okay. As the marketing manager for asbestos
3 products on -- for Union Carbide in 1970, how many people
4 worked for you?

5 A. I think about eight or so. I don't remember for
6 sure.

7 Q. What did you tell the eight people working for
8 you in 1970 about the hazards of asbestos?

9 A. I think we just reviewed whatever it was in the
10 literature or whatever was available.

11 Q. What was available to you in 1970 about the
12 hazards of asbestos that you reviewed with your eight
13 employees?

14 A. Well, again, the Union Carbide toxicology report
15 that Dr. Selikoff had issued his studies from -- back in
16 1964. I can't remember anything else specific.

17 Q. When is the first time you ever remember seeing
18 Dr. Selikoff's 1964 study?

19 A. I don't remember the time.

20 Q. You understand that that -- the study produced by
21 Dr. Selikoff in 1964 is a fairly landmark article in the
22 asbestos context?

23 A. Yes.

24 Q. Yet you don't recall the first time you ever saw
25 that landmark article on asbestos, do you?

1 A. No, I don't. That was over 30 years ago.

2 Q. Okay. And you can't tell the ladies and
3 gentlemen of the jury anything specific over and above the
4 toxicology report and Dr. Selikoff's study that you
5 reported to your eight employees on the hazards of
6 asbestos, can you?

7 A. I can't remember anything else specific, no.

8 Q. Okay. Mr. Myers, if the jury in this case finds
9 that the Union Carbide toxicology report is inaccurate,
10 then you were giving inaccurate information to your
11 employees; is that right?

12 MR. BICKS: Objection to the form.

13 A. I don't -- I wouldn't agree -- I don't -- I don't
14 understand. Maybe I don't understand the question.

15 Q. (By Mr. Chandler) Well, one of the main areas
16 you've already testified about, one of the principal
17 sources of information about the hazards of asbestos that
18 you had at Union Carbide, was Dr. Dernehl's toxicology
19 report on asbestos, true?

20 A. Yes.

21 Q. Now, if that -- if one of those -- if the
22 principal source of information on the hazards of asbestos
23 you had at Union Carbide -- and by that, I mean the
24 toxicology report -- was misleading and you relied on
25 that, the information you gave to your employees was

1 misleading. Do you agree?

2 MR. BICKS: Objection to the form.

3 A. But that wasn't -- that wasn't the only thing we
4 gave to the employees.

5 Q. (By Mr. Chandler) Okay. What else did you give
6 to the employees?

7 A. As I've said, the -- we were aware of
8 Dr. Selikoff's study, numerous newspaper articles.

9 Q. So --

10 A. I can't remember anything else specifically.

11 Q. In addition to what Union Carbide knew
12 internally, another source of information for Union
13 Carbide was what was happening in the general media about
14 the hazards of asbestos. Is that fair to say?

15 A. Yes.

16 Q. So, in addition to their own internal studies,
17 Union Carbide could look to newspaper articles about the
18 hazards of asbestos, true?

19 A. Yes.

20 Q. And you did that, didn't you?

21 A. Yes.

22 Q. You also, when it came to hazards of asbestos,
23 looked to Dr. Selikoff's landmark work in the area; is
24 that fair?

25 A. We were aware of that, yes.

1 Q. Okay. Now, this is what I want you to assume for
2 me. You gave that toxicology report to customers, didn't
3 you?

4 A. Yes.

5 Q. One of the principal means by which you tried to
6 relay the hazards of asbestos to your customers was
7 through Dr. Dernehl's toxicology report; is that fair?

8 MR. BICKS: Objection to the form.

9 A. That was one of the ways, yes.

10 Q. (By Mr. Chandler) Well, wasn't it one of the
11 principal ways?

12 A. In the beginning, yes.

13 Q. Wasn't the toxicology report something you
14 personally told your salespeople, time and time again, to
15 give to customers?

16 A. That, along with other information, yes.

17 Q. What other information?

18 A. As I said, the newspaper articles. We developed
19 a big fire -- quite a file of information on the hazards
20 of asbestos over the years.

21 MR. CHANDLER: "Big fire" was maybe a slip
22 there.

23 THE WITNESS: "File."

24 MR. BICKS: "File," he said.

25 MR. CHANDLER: Did you get "fire" or "file"

WORLDWIDE COURT REPORTERS 1-800-745-1101

71

1 the first time?

2 THE REPORTER: At first he said "fire," then
3 he --

4 MR. CHANDLER: I thought so. Okay.

5 Q. (By Mr. Chandler) You ever heard the term
6 "Freudian slip," Mr. Myers? (Laughter)

7 Mr. Myers, you would never --

8 MR. BICKS: Objection to the form.

9 Q. (By Mr. Chandler) -- instruct your employees to
10 say anything misleading to your customers when they were
11 buying asbestos, would you?

12 A. No.

13 Q. You would never instruct your employees to say
14 anything dishonest about the hazards of asbestos to their
15 customers, would you?

16 A. No.

17 Q. If that was happening, if Union Carbide
18 salespeople were giving misleading information to the
19 people who bought your asbestos, is that something that
20 would concern you?

21 A. Yes.

22 MR. BICKS: Objection to the form.

23 Q. (By Mr. Chandler) If Union Carbide was giving
24 misleading information about the hazards of asbestos, do
25 you agree that was wrong to do?

WORLDWIDE COURT REPORTERS 1-800-745-1101

72

1 MR. BICKS: Objection to the form.

2 A. If it was obviously misleading, yes.

3 Q. (By Mr. Chandler) If Union Carbide was
4 withholding information that was important for customers
5 to have about the hazard of asbestos, do you agree that
6 that is a wrong thing to do?

7 MR. BICKS: Objection to the form.

8 A. Again, it depends on whose definition of
9 "importance."

10 Q. (By Mr. Chandler) I want you to assume with me
11 that we're going to use the jury's definition of
12 "important information," something that the average person
13 would consider important, okay?

14 A. Okay.

15 Q. Considering that definition of "important,"
16 wouldn't you agree that if Union Carbide sales
17 representatives withheld important information on the
18 hazards of asbestos from its customers, that was wrong?

19 MR. BICKS: Objection to the form.

20 A. Again, I think it depends on the information. If
21 a -- depends on the information.

22 Q. (By Mr. Chandler) Is there some information
23 about the hazards of asbestos that you would consider
24 unimportant when relating to your customers?

25 A. Well, sure, if it's a -- if it's not a -- a good,

WORLDWIDE COURT REPORTERS 1-800-745-1101

73

1 scientific document or peer reviewed or if it's just
2 some -- one person's opinion that may be totally out of
3 line, I wouldn't --

4 Q. Okay.

5 A. To me, that wouldn't be important.

6 Q. I think I know where you're going with that.
7 We'll get to that Mr. Sayers in a minute.

8 But here's my question: If there was some
9 information that Union Carbide had that nobody else did
10 that you considered reliable about the hazards of asbestos
11 and you didn't pass that on to your customers, isn't that
12 wrong?

13 MR. BICKS: Objection to the form.

14 A. Yes.

15 Q. (By Mr. Chandler) If a customer who was buying
16 Union Carbide asbestos for use in an end product asked
17 you, "Do you know whether when our end product is used it

18 can be hazardous," and the Union Carbide sales
19 representative gave them an incorrect answer that he knew
20 was incorrect, isn't that wrong?

21 MR. BICKS: Objection to the form.

22 A. Yes.

23 Q. (By Mr. Chandler) Did you ever correct any of
24 your salespeople, did you ever reprimand any of your
25 salespeople for giving misleading information to the

WORLDWIDE COURT REPORTERS 1-800-745-1101

74

1 purchasers of asbestos?

2 A. I don't recall.

3 Q. Well, certainly if you had to reprimand an
4 employee for giving misleading information to asbestos
5 purchasers, do you consider that a significant event that
6 you might recall?

7 MR. BICKS: Objection to the form.

8 A. As I say, that's been 30 years ago; and I don't
9 recall anything specific.

10 Q. (By Mr. Chandler) You don't recall, as you sit
11 here today, ever reprimanding an employee for giving
12 misleading information about the hazards of asbestos, do
13 you, Mr. Myers?

14 A. That's what I just said, yes.

15 Q. Okay.

16 MR. BICKS: Why don't we take a short break.
17 We've been going for about an hour.

18 MR. CHANDLER: We will take a short break at
19 the request of your lawyers, Mr. Myers.

20 THE WITNESS: Thank you.

21 THE VIDEOGRAPHER: Going off the record, the
22 time is 10:17.

23 (Short break.)

24 THE VIDEOGRAPHER: We're now back on the
25 record at 10:30.

WORLDWIDE COURT REPORTERS 1-800-745-1101

75

1 Q. (By Mr. Chandler) Mr. Myers, you were the
2 marketing manager for Union Carbide's asbestos business
3 from 1970 to 1981, right?

4 A. Yes.

5 Q. Now, 1970, in the early 1970's, it was very
6 controversial years for the asbestos business generally.
7 Is that fair to say?

8 A. As I recall, yes.

9 Q. And they were controversial years because OSHA
10 was coming out and enforcing strict Federal guidelines
11 with respect to asbestos exposure. Do you recall all
12 that?

13 A. Yes.

14 Q. Prior to OSHA, were you ever made aware of any
15 state guidelines with respect to exposure to asbestos?

16 A. I recall there were some state regulations either
17 being promul- -- considered or promulgated. I don't
18 remember whether they preceded OSHA.

19 Q. Do you recall at the time you started in the
20 asbestos business for Union Carbide in 1966 that the State
21 of Texas already had asbestos standards on its books?

22 A. I don't recall that, no.

23 Q. Nobody from Union Carbide gave you a survey of
24 the United States and each state's breakdown, for example,
25 on what they require for exposure limits on asbestos?

WORLDWIDE COURT REPORTERS 1-800-745-1101

76

1 A. Not that I recall.

2 Q. Okay. Do you recall, though, that there were
3 certain states who did regulate exposure to asbestos even
4 prior to the involvement of the Federal Government?

5 A. No, I don't recall whether they were before or
6 after.

7 Q. Oh, okay. Your first recollection of guidelines
8 or laws with respect to exposure to asbestos came when
9 OSHA went in effect; is that fair?

10 A. Yes.

11 Q. Okay. So, if there were state guidelines or laws

12 about exposure to asbestos prior to OSHA, that's not
13 something you worried about at Union Carbide or knew
14 about?

15 A. That's something I don't remember.

16 Q. Okay. Do you remember when you shipped product
17 for Union Carbide prior to OSHA going into effect, that
18 you had to take any precautions or warnings when the
19 product or when asbestos went into different states?

20 A. No, I don't recall that.

21 Q. You didn't consider Texas different than
22 California for that purpose of warning or anything like
23 that?

24 A. I don't recall that, no.

25 Q. All right. Now, we've said that the early

WORLDWIDE COURT REPORTERS 1-800-745-1101

77

1 Seventies was a very controversial year for asbestos. In
2 fact, you have testified in front of OSHA Advisory
3 Committees on asbestos on behalf of Union Carbide, haven't
4 you?

5 A. I think so, yes.

6 Q. So, in addition to Union Carbide asking you to
7 represent them in lawsuits, Union Carbide has asked you to
8 go to the Government and talk for them about asbestos; is
9 that true?

10 A. Yeah, is that -- you're working something else in
11 there about lawsuits. I said I didn't remember Union
12 Carbide asking me to participate in lawsuits.

13 Q. Okay. You -- what I mean by "lawsuits" is giving
14 testimony like you are today in cases that are filed
15 against Union Carbide.

16 A. Yes, but I don't remember if it was Union Carbide
17 that asked me or their legal representatives.

18 Q. Okay.

19 MR. BICKS: I mean, just so we're clear, you
20 noticed his deposition today, right?

21 Q. (By Mr. Chandler) Mr. Myers, in addition to
22 Union Carbide asking you to act as their corporate
23 representative on a number of occasions, Union Carbide has
24 asked you to be their representative when speaking to
25 various government agencies?

WORLDWIDE COURT REPORTERS 1-800-745-1101

78

1 A. They have -- I have never represented the
2 corporation before.

3 Q. When you --

4 A. In response to the first part of your question.

5 Q. Thank you. When you spoke to the OSHA Advisory
6 Committee, what was your understanding of why you were
7 talking to them?

8 A. Was this the Construction Advisory Committee?

9 Q. Well, let's look it up in your -- your deposition
10 and find out, though I'm not sure that it was specific to
11 that.

12 Just to refresh your recollection, Mr. Myers,
13 I'll show you a deposition you gave in a case entitled In
14 Re Asbestos School Litigation that you gave in 1988 and
15 refer you to page 118 of that deposition where you -- the
16 question is: "Your testimony before OSHA concerned
17 asbestos?"

18 And you answer: "It was not before OSHA. It was
19 advisory committee to OSHA. The advisory committee was
20 concerned with asbestos."

21 Does that refresh your recollection at all about
22 what you testified to?

23 A. Not any more than I said that, yes, I did.

24 Q. Do you recall testifying to more than one OSHA
25 Advisory Committee?

WORLDWIDE COURT REPORTERS 1-800-745-1101

79

1 A. Not at this point in time I don't recall, no.

2 Q. Okay. Well, then, tell us what it -- what OSHA
3 Advisory Committee that you testified to, you do recall
4 testifying for.

5 A. As I say, I remember testifying before a

6 Construction Advisory Committee.

7 Q. Okay. So, OSHA or -- pardon me. So, Union
8 Carbide has asked you to be there -- at the time,
9 Mr. Myers, you gave testimony to the OSHA Advisory
10 Committee on Construction Standards, you were an employee
11 of Union Carbide, fair?

12 A. Yes.

13 Q. All right. Now, as a marketing manager one of
14 your principal responsibilities was to increase sales of
15 asbestos. Is that true?

16 A. Yes.

17 Q. Now, your sales of asbestos stretched not just
18 here in California but they stretched all over the
19 Country, didn't they?

20 A. Yes.

21 Q. And, in fact, Union Carbide sales of asbestos
22 went all over the world; is that fair?

23 A. Yes. Well, they went maybe not all over the
24 world, but to various countries in the world, yes.

25 Q. Union Carbide sold asbestos to the United

WORLDWIDE COURT REPORTERS 1-800-745-1101

80

1 Kingdom; is that right?

2 A. Yes.

3 MR. BICKS: Objection, form.

4 Q. (By Mr. Chandler) Union Car- -- not to the
5 government. Union Carbide sold asbestos to companies in
6 the United Kingdom?

7 A. Yes.

8 Q. Union Carbide sold asbestos to companies in
9 Japan?

10 A. Yes.

11 Q. Union Carbide sold asbestos to, let's just say, a
12 number of companies located in a number of countries; is
13 that fair to say?

14 A. Yes.

15 Q. All right. Now, the whole sales force for Union
16 Carbide when you were the marketing manager was only about
17 six or seven guys, wasn't it?

18 A. As I recall, yes.

19 Q. Wasn't a big, huge operation that you had to have
20 different managers for different whole departments. I
21 mean, you were the boss of just six or seven guys who were
22 responsible for selling asbestos?

23 A. It was a very small part of Union Carbide, yes.

24 Q. And part of your job as the marketing manager was
25 to train the sales force on sales techniques, for example?

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 A. Most of them had -- had -- I don't remember

2 training them specifically, no. Most of them knew what
3 they were doing.

4 Q. Part of your job was, at least, supervising your
5 salesmen?

6 A. Yes.

7 Q. Six or seven of them. Did you ever get -- all
8 get together at one time and had meetings?

9 A. Yes.

10 Q. In any meeting of your six or seven salespeople,
11 do you ever recall chewing them out for saying something
12 they weren't supposed to about the hazards of asbestos?

13 A. I -- I don't recall that.

14 Q. Okay. Didn't you actually help Union Carbide
15 develop the first asbestos product that you mentioned
16 earlier for oil well drilling mud?

17 A. No, that was -- that was not a product developed
18 for that. It was using one of our products in drilling
19 muds.

20 Q. But you actually got into the marketing part of
21 the business because you actually helped develop Union
22 Carbide's first use of their asbestos.

23 MR. BICKS: Objection.

24 Q. (By Mr. Chandler) I know you didn't develop the
25 actual drilling mud, but you helped develop application of

1 asbestos in the drilling mud for Union Carbide; is that
2 fair?

3 A. Yes. It wasn't the first use but that -- yes.

4 Q. What was the first use of Union Carbide's
5 asbestos?

6 A. As I recall, it was in the paper industry.

7 Q. I see. Thank you very much.

8 Hey, you would never instruct your salespeople to
9 embarrass your employees if they didn't want to buy your
10 asbestos, would you?

11 MR. BICKS: I'm sorry?

12 Q. (By Mr. Chandler) I'm sorry. That was the wrong
13 question.

14 You would never instruct your sales force to
15 embarrass the customer if they didn't want to buy Union
16 Carbide asbestos, would you?

17 A. Would I instruct that?

18 Q. Yes, sir.

19 A. No.

20 Q. You wouldn't tolerate your salespeople being so
21 aggressive that they wanted to embarrass the customer if
22 they refused to buy asbestos, wouldn't you?

23 A. If I knew about it, I wouldn't like it, yes.

24 Q. And if Union Carbide salespeople were so
25 aggressive that they went out to embarrass customers if

1 they didn't want to buy Union Carbide's asbestos, that's
2 something you as a responsible salesperson would have been
3 concerned about; is that fair?

4 A. I wouldn't have liked it, no.

5 Q. Okay. Hey, as part of your retirement package
6 from Union Carbide when you left to become president of
7 the company that took over the asbestos operations, you
8 actually had a consulting agreement that provided for your
9 continued service to Union Carbide; isn't that right?

10 A. Not that I recall.

11 Q. Okay. Let's -- I'll refresh your recollection --
12 I'm not trying to suggest that you are not telling the
13 truth. I know you just don't remember; so, I'm going to
14 try to refresh your memory, okay?

15 A. Okay.

16 MR. BICKS: Objection to the form.

17 MR. CHANDLER: And we can just edit that
18 out. I want to let him know I'm not trying to accuse him
19 of lying. It's okay.

20 MR. BICKS: I don't think he is worried
21 about that.

22 MR. CHANDLER: Okay. I don't think he's
23 worried about much. He's got good representation here
24 today. I'm outnumbered 2 to 1. And I certainly have
25 never been to New York City to practice law. I know they

1 are much more sophisticated there than we are in
2 Galveston.

3 MR. BICKS: Well, we'd love to have you.
4 You're welcome any time. Our Courts are very open to
5 lawyers who play by the rules.

6 MR. CHANDLER: Actually, I tried a case in
7 upstate New York once with Jordan Fox, a Garlock case. I
8 had never seen a tougher jurisdiction than -- we flew into
9 Canada and actually drove down it was that far north.

10 Q. (By Mr. Chandler) Okay. My question is this,
11 Mr. Myers: You had a consulting agreement with Union
12 Carbide at least for two years, even after becoming
13 president of KCAC; is that true?

14 A. I don't recall that, no.

15 Q. All right. I'll refer you --

16 A. I think I would remember it if I had one.

17 Q. Okay. I'll refer your attention to a lawsuit in
18 which you testified on January 25, 1995, entitled Richard
19 Arnt, et al. vs. Abex Corporation, et al.

20 Okay. You retired in what year, sir?

21 A. 1993.

22 Q. Thank you. This is where I'm confused. When you
23 left KCAC, you had a consulting agreement with that

24 company that lasted for even two years after you left that
25 company?

WORLDWIDE COURT REPORTERS 1-800-745-1101

85

1 A. Yes.

2 Q. All right. That's where I got it wrong. Thank
3 you.

4 And from time to time, though, Union Carbide --
5 oh, well, here it is. As part of the sales agreement from
6 Union Carbide to the new company who ran the asbestos
7 business, didn't KCAC agree to allow you certain number of
8 hours every year to devote to Union Carbide litigation?

9 A. Yes.

10 Q. All right. That's where I was confused. So,
11 even after you didn't work for Union Carbide anymore, the
12 new company who was mining and milling asbestos allowed
13 you to work as a consultant a certain number of hours
14 every year that was devoted to Union Carbide litigation,
15 fair?

16 A. Yes.

17 Q. All right. Was litigation something that was
18 already ongoing against Union Carbide at the time they
19 sold the mine or -- and the mill in 1985?

20 MR. BICKS: Again, you keep calling it the
21 mine and the mill.

22 Q. (By Mr. Chandler) At the time Union Carbide
23 divested its asbestos interest in 1985, had they already
24 been sued for exposure to asbestos in personal injury
25 lawsuits?

WORLDWIDE COURT REPORTERS 1-800-745-1101

86

1 A. I think so, yes.

2 Q. So, Union Carbide didn't even get rid of their
3 asbestos business until after the lawsuits started flowing
4 in; is that fair?

5 A. Yes.

6 MR. BICKS: Objection to the form.

7 Q. (By Mr. Chandler) Your pension with Union
8 Carbide is vested, isn't it?

9 A. Yes.

10 Q. Are you going to get \$2,000 a month, every month,
11 until some day when you are not around to collect it
12 anymore?

13 A. Well, depends on the medical insurance. That
14 comes out of my check and that keeps going up every year.
15 So, will it ever reach the total? I don't know.

16 Q. So, Union Carbide, as part of your pension, also
17 gives you medical insurance?

18 A. I have medical insurance through Union Carbide
19 that I pay for, yes.

20 Q. I see. And your medical insurance premiums come
21 out of the pension that Union Carbide gives you every
22 month?

23 A. Yes.

24 Q. So, as you sit here today, Mr. Myers, you were
25 compensated in at least three different respects by Union

WORLDWIDE COURT REPORTERS 1-800-745-1101

87

1 Carbide: No. 1, you have a monthly pension, true?

2 A. Yes.

3 Q. No. 2, you have health insurance premiums that
4 are provided, in part, by your Union Carbide pension,
5 true?

6 A. Yeah, I pay for the medical insurance.

7 Q. But you understand that that medical insurance is
8 something that is a benefit for your Union Carbide
9 retirement?

10 A. Yes.

11 Q. And additionally, you get paid \$200 an hour to
12 testify?

13 A. Yes.

14 Q. All right. I want to turn your attention now to
15 what I call -- we talked about you and your background and
16 that's pretty much all we're going to talk about that,
17 okay? Let's shift gears until we get to some of the

18 documents and there might be some questions I've
19 forgotten. But let's shift gears. I want you to know
20 exactly where we're going.

21 I want to talk to you about Union Carbide's
22 motive for getting into the asbestos business, okay?

23 MR. BICKS: Objection to the form.

24 A. I'll do the best I can, yes.

25 Q. (By Mr. Chandler) Union Carbide's motive for

WORLDWIDE COURT REPORTERS 1-800-745-1101

88

1 getting into the asbestos business was money, wasn't it?

2 A. I -- I don't know. I assume it was, yes.

3 Q. Union Carbide's motive for getting into the
4 asbestos business was a lot of money, wasn't it?

5 A. No.

6 Q. Okay. What was the asbestos business annual
7 dollar sales at the time Union Carbide got into the
8 asbestos business?

9 A. It was zero when they got into it.

10 Q. What were the -- what was the national market for
11 asbestos products when Union Carbide decided to get into
12 the business?

13 A. I don't have any idea.

14 Q. Okay. You understand that when Union Carbide
15 found its asbestos deposit, that it was one of the single

16 largest mineral reserves in the world; is that true?

17 A. Yes.

18 Q. Was the asbestos deposit that Union Carbide found
19 out here in California the single largest asbestos deposit
20 in the world?

21 A. It was the largest single mineral deposit.
22 That's to the best -- I mean, that's what we used to say,
23 yes.

24 Q. When Union Carbide -- and it was a Union Carbide
25 scientist who discovered the asbestos, wasn't it?

WORLDWIDE COURT REPORTERS 1-800-745-1101

89

1 A. A mineralogist.

2 Q. Who worked for Union Carbide?

3 A. Yes.

4 Q. And in 1957 a Union Carbide geologist stumbled
5 across what became the single largest mineral deposit in
6 the world.

7 MR. BICKS: Objection to the form.

8 A. Mineralogist, yes.

9 Q. (By Mr. Chandler) Now, you -- and in 1957 when
10 Union Carbide discovered its asbestos deposit out here in
11 the Coalinga Mountains of California, do you know how much
12 in annual sales the asbestos industry was doing, sir?

13 A. No, I don't.

14 Q. Okay. Now, also -- there is something unique
15 about the Coalinga deposit because in addition to being
16 the single largest mineral deposit in the world, the
17 Coalinga asbestos deposit carried a much higher percentage
18 of raw asbestos ore than asbestos being mined in Canada;
19 is that fair?

20 A. Yes.

21 Q. You could get a lot higher yield or a lot higher
22 percentage for every pound of ground that you mined out of
23 Coalinga asbestos than you could in Canada; is that right?

24 A. Yes.

25 Q. I've seen estimates from Union Carbide that up

WORLDWIDE COURT REPORTERS 1-800-745-1101

90

1 to -- for every, let's say, pound of mineral they took out
2 of the ground, 90 percent of it would be asbestos; is that
3 fair?

4 A. That sounds about right, yes.

5 Q. And when you --

6 A. That's not recoverable asbestos but that's --

7 Q. But when you compare recoverable asbestos to the
8 Canadian asbestos, it was much, much lower; is that right?

9 A. Canadian asbestos was much lower, yes.

10 Q. So the ladies and gentlemen of the jury
11 understand, if you have 1 ton of dirt taken out of the

12 ground at Coalinga and 1 ton of dirt taken out of the
13 ground in Canada, the 1 ton from the Union Carbide mine is
14 going to be a lot more asbestos, fair?

15 MR. BICKS: Objection to the form.

16 A. Yes. It's not dirt. It's rock in Canada.

17 Q. (By Mr. Chandler) Okay. Some of the estimates I
18 have seen, correct me if I'm wrong, but the yield or the
19 percentage of asbestos you could get out of the mine here
20 in California was three to four times as much as you could
21 get in Canada, given the same weight that was mined?

22 A. Yes.

23 Q. All right. So, it was a very lucrative deposit
24 for Union Carbide, wasn't it?

25 A. Not unless it was sold, yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

91

1 Q. Exactly. Unless they could find markets for it,
2 there wasn't any use, was it?

3 A. Right.

4 Q. All right. Now, when Union Carbide found its
5 asbestos deposit in 1957, had you ever seen any estimates
6 about how long that asbestos deposit could last, sir?

7 A. No, I don't think so.

8 Q. Would you be --

9 A. Eventually I would know that it was determined it

10 would be hundreds of years.

11 Q. Okay. Now, it's fair to say, though, that when
12 Union Carbide first discovered its asbestos deposit, they
13 gave estimates it last- -- of it lasting around a hundred
14 years, at the beginning. Do you even know that?

15 A. I've seen that, yes.

16 Q. Okay. And as the work on Union Carbide asbestos
17 continued, their estimate of how long the deposit would
18 last grew; is that fair?

19 A. I don't recall that, no.

20 Q. Okay. Well, we'll go over that. I want to show
21 you what I've marked as Myers Exhibit 2 -- if I can find
22 my exhibit stickers.

23 A. There is one under the coffee cup.

24 Q. There is one under the coffee cup. You, sir, are
25 an angel.

WORLDWIDE COURT REPORTERS 1-800-745-1101

92

1 (Myers Exhibit No. 2 was marked.)

2 Q. (By Mr. Chandler) Let me show you what I've
3 marked as Myers Exhibit 2. Have you ever seen Myers
4 Exhibit 2, Mr. Myers?

5 MR. BICKS: Can I have one of Myers 2?

6 MR. CHANDLER: Oh, I'm sorry. Look at this.

7 I am an incredibly prepared gentleman.

8 A. Yes, I have seen this.

9 MR. CHANDLER: He doesn't comment on

10 anything I say.

11 MR. BICKS: You're not allowed to do that,

12 in Texas.

13 MS. FROST: You told him he's not supposed

14 to under Texas.

15 (Laughter.)

16 MR. BICKS: But, yes, you are incredibly

17 prepared.

18 MR. CHANDLER: Very good.

19 Q. (By Mr. Chandler) All right. Look at page 3 of

20 Myers Exhibit -- well, first of all, have you ever seen

21 Myers Exhibit 2?

22 A. Yes.

23 Q. All right.

24 A. This is 3.

25 MR. BICKS: You want to just write "2" on it?

WORLDWIDE COURT REPORTERS 1-800-745-1101

93

1 MR. CHANDLER: No, we're going to put this

2 right over it.

3 Q. (By Mr. Chandler) Myers Exhibit 2 now. Okay,

4 sir? You have seen Myers Exhibit 2?

5 A. In the past, yes.

6 Q. Myers Exhibit 2 is a confidential business
7 memorandum of Union Carbide, isn't it?
8 A. That's stamped on there, yes.
9 Q. And it's -- and its from the, what I'll call,
10 early years of your involvement in the asbestos business
11 for Union Carbide, 1967, just a year after you got
12 involved?
13 A. Yes.
14 Q. Now, if you will flip to me -- with me to page 4
15 of Union Carbide's confidential memorandum dated
16 August 25, 1967, sir.
17 A. Okay.
18 Q. And if you will read along with me, I want to
19 know if I read this correctly. I don't want to be
20 misleading at all to the jury. And I think we're on
21 different pages. It may be labeled No. 4, but I'm
22 actually talking about the actual fourth numbered page.
23 Sorry, Mr. Myers. You went to the right page because it
24 says "4" on the bottom, but I'm talking about the actual
25 physical page number four. Just go one, two, three, four.

WORLDWIDE COURT REPORTERS 1-800-745-1101

94

1 There we go.
2 Now, Myers Exhibit 2, this confidential business
3 memorandum, was produced in Niagara Falls where the

4 Marketing Department was located, right?

5 A. No, not in 1967.

6 Q. Oh. Myers Exhibit No. 2 was produced in
7 Niagara Falls, New York, wasn't it?

8 A. Yes.

9 Q. All right. What business with respect to the
10 asbestos business was located in Niagara Falls in 1967?

11 A. I think just the R&D group.

12 Q. The Research and Development group?

13 A. Yes.

14 Q. Well, that makes sense, given this document.
15 Read along with me on the paragraph introducing Myers
16 Exhibit 2: "Introduction. While composite and fiber
17 reinforced structures are thousands of years old, only in
18 the last two decades has technology become available for
19 synthesizing and optimizing new materials from dissimilar
20 elements to tailor a material for new uses."

21 Now, here is the important paragraph -- sentence:
22 "Growth of this industry, largely in the past 10 years,
23 has resulted in total annual sales in 1966 of over
24 4 billion dollars."

25 Did I read that first paragraph correctly?

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 A. Yes.

2 Q. All right. Now, \$4 billion was the estimate of
3 composite and fiber reinforced markets in 1967, wasn't it?

4 A. It sounds like that's what he's referring to,
5 yeah, composite -- yeah, yes.

6 Q. And the purpose of Myers Exhibit 2 is to
7 introduce a specific use of Union Carbide's resin grade
8 asbestos, fair?

9 A. As I remember, yes.

10 Q. Now, a 4 billion-dollar market in 1966 dollars is
11 a fairly large market, isn't it?

12 A. For the resins? I have no idea what compares
13 to --

14 Q. Well --

15 A. It has nothing to do with asbestos sales.

16 Q. Okay. But it has to do with composite and fiber
17 reinforced structures?

18 A. Yes.

19 Q. Okay. And Union Carbide's introduction into that
20 kind of a market through its resin grade asbestos, fair?

21 A. Yes.

22 Q. All right. Now, in 1966 dollars, do you agree
23 that \$4 billion, with a "B," is a lot of money?

24 A. Yes.

25 Q. In -- in the year 2002, even today, \$4 billion is

1 a lot of money, isn't it?

2 A. Yes.

3 Q. Now, go to the summary for me on that paragraph
4 and this, I think, will drive home the point about the
5 percentage of asbestos from Union Carbide. Under the
6 Summary paragraph, it says: "UCC" -- Union Carbide
7 Corporation, true?

8 A. Yes.

9 Q. "UCC Resin-Grade 144 asbestos is hydraulically
10 refined chrysotile mineral with a purity and degree of
11 fiber liberation not previously available. It contains
12 from 2 to 3 times as much fully liberated asbestos (free
13 fibers) as does a conventional asbestos. The chrysotile
14 fibers in R-G144 are of smaller diameter and narrower
15 diameter distribution than a Canadian chrysotile."

16 Did I read that correctly?

17 A. Yes.

18 Q. So, what the jury can take away from this
19 document is, at least two to three times as much free
20 liberated asbestos is gained from the same amount of
21 mineral mined out of California asbestos that Union
22 Carbide mined as compared to the Canadian asbestos, true?

23 A. Well, I just would have to read. Two to three
24 times the amount of liberated asbestos.

25 Q. Fair enough.

1 A. That means it's not in clumps.

2 Q. Okay. All right. The ladies and gentlemen of
3 the jury, if they are sitting back there wondering, are
4 fair to assume, sir, are they not, that a 4 billion-dollar
5 market is a very large market for a company to try to tap
6 into?

7 MR. BICKS: Objection, form.

8 A. Yes, I -- as I say, I have no --

9 Q. (By Mr. Chandler) Okay.

10 A. -- idea what that is today or what it was --
11 that's what the fiber -- reinforced fiber structures.

12 Q. All right. Now, I want to go over the estimates
13 Union Carbide had for their mine, okay, Mr. Myers?

14 A. Okay.

15 Q. And how long they thought it might last. And you
16 told me you don't recall ever seeing anything in writing
17 that estimated the number of years Union Carbide thought
18 its asbestos might last. So, I want to show you
19 something, all right?

20 A. I told you I had seen figures of a hundred years.

21 Q. Oh.

22 A. You asked me if I had seen anything higher than
23 that later and I said "no."

24 Q. Oh, okay. I'm sorry. Here is Myers Exhibit 3.
25 Myers Exhibit 3 is written by you, isn't it?

1 A. It's got my name on it, yes.

2 Q. Fair to say that you wrote it?

3 A. I, at least, had a hand in writing it, yes.

4 Q. You know what, so your lawyer doesn't object to
5 documents in the record being highlighted, let me switch
6 with you. I don't want to draw unnecessary attention to
7 anything that I know your lawyer will object to. So, let
8 me give you a nonhighlighted --

9 MR. BICKS: I don't have any problem with
10 that if you would like to proceed that way, if it will
11 make it quicker, just so you know. We're here to be
12 helpful.

13 MR. CHANDLER: You're wonderful. But you
14 know what, it will be quicker if I use the highlighted
15 versions because those are the areas I want to talk about.

16 MR. BICKS: At your pleasure.

17 (Myers Exhibit No. 3 was marked.)

18 Q. (By Mr. Chandler) Myers Exhibit 3. Let me put
19 "3" on there a little better. You can't even read that.
20 Three. All right. Myers Exhibit No. 3, sir, is a
21 technical memorandum that you wrote, isn't it?

22 A. I say -- as I said, I have -- this has my name on
23 it, and I'm sure I wrote all or part of it.

24 Q. Now, if you will, flip to the third physical

25 page, the one that's labeled No. 2 in Myers Exhibit No. 3.

WORLDWIDE COURT REPORTERS 1-800-745-1101

99

1 A. Okay.

2 Q. I'm going to the first full paragraph on page 2.
3 Do you see where you, in your own writing, estimated that,
4 quote: "Based on exhaustive drilling programs, we feel
5 that we have the richest deposits and ample ore supply for
6 up to one hundred years of operation," end quote.

7 Do you see that?

8 A. Yes.

9 Q. So, I don't want to mislead this jury. There
10 were other companies mining asbestos in Coalinga other
11 than Union Carbide, weren't there?

12 A. In that same deposit?

13 Q. Yes.

14 A. Yes.

15 Q. But Union Carbide's reserves of that deposit were
16 the richest of any company?

17 A. That was the -- that was the total of the
18 deposit, these estimates were, not just what we were --
19 had claims on.

20 Q. When you -- when you wrote that, quote: "We feel
21 that we have the richest deposits and ample ore supply,"
22 does that mean that Union Carbide had the best deposits or

23 the most deposits in that mine? What does that mean?

24 A. Oh, maybe been a little poetic license but I
25 believe that would be talking about the whole deposit but

WORLDWIDE COURT REPORTERS 1-800-745-1101

100

1 I don't know that for sure.

2 Q. What did you mean when you said richest deposits?
3 Does that mean the most asbestos or does that mean the
4 best asbestos, do you know?

5 A. Again, you can't say "best" because this was all
6 short fiber, had very limited market. The richest, yes,
7 it was. This dep- -- whole deposit had more asbestos
8 fiber per ton of ore than Canadian deposits.

9 Q. But is it -- there were at least two other
10 companies, Johns-Manville and Atlas, mining asbestos out
11 of Coalinga; is that right?

12 A. Yes.

13 Q. Any others?

14 A. Not that I know.

15 Q. When did Johns-Manville and Atlas quit mining
16 asbestos out of Coalinga?

17 A. I can't remember the dates.

18 Q. It was certainly before Union Carbide, though,
19 wasn't it?

20 A. Before we started?

21 Q. Before you -- Johns-Manville and the Atlas
22 companies quit mining asbestos out of Coalinga before
23 Union Carbide did, didn't they?

24 A. Before Union Carbide did what?

25 Q. Quit mining their asbestos.

WORLDWIDE COURT REPORTERS 1-800-745-1101

101

1 A. In 1985, you mean?

2 Q. Yes.

3 A. Yeah, it was before 1985.

4 Q. So, Johns-Manville got out of the asbestos
5 business, at least in Coalinga, prior to Union Carbide,
6 true?

7 A. Yes.

8 Q. The Atlas Company, who was also mining asbestos,
9 got out of the asbestos business before Union Carbide did,
10 didn't they?

11 A. Yes.

12 Q. So, of the three companies we've talked about who
13 were the original miners, Union Carbide was the last one
14 mining asbestos of those three companies?

15 A. Yes.

16 Q. All right. And when you say "Union Carbide" or
17 "we" -- I assume you mean Union Carbide when you use the
18 term "we"?

19 A. Yes.

20 Q. When you say Union Carbide had the richest
21 deposits, does that mean that out of the three companies
22 you had the most of anybody?

23 A. No.

24 Q. What does it mean?

25 A. Compared to Canadian asbestos.

WORLDWIDE COURT REPORTERS 1-800-745-1101

102

1 Q. Okay.

2 A. Is what I -- as I remember, that's what I was
3 referring to.

4 Q. Thank you very much. Do you know what 1 gram of
5 Union Carbide asbestos looked like, how much would it
6 fill? Just 1 gram, how much in your hand if you held it
7 out, would it look like?

8 A. I have no idea.

9 Q. Have you ever -- I've heard it compared to the
10 amount of asbestos that would fit in a thimble. Is that
11 out -- out of line?

12 A. I have no idea. I've never measured a gram of
13 it.

14 Q. We will bring a scale to the trial and we'll
15 measure it out for the jury, 1 gram. But 1 gram is less
16 than an ounce, isn't it?

17 A. Yes.

18 Q. By at least half as much?

19 A. I would have to do the conversion. I don't know.

20 Q. Don't worry about it. We'll take judicial notice
21 of it at the trial.

22 Flip to what's marked as page 4, the fifth page
23 in Myers Exhibit 3, sir.

24 A. Okay.

25 Q. At the bottom of that page of this memorandum

WORLDWIDE COURT REPORTERS 1-800-745-1101

103

1 that you wrote, you estimated back in 1967 -- pardon me,
2 1969 when this was written, that 1 gram of Calidria
3 asbestos would stretch 300,000 miles; is that fair?

4 A. Yes. If the fibers were placed end to end, they
5 would --

6 Q. Just 1 gram, much -- less than an ounce. It's
7 going to go 300,000 miles if you put them end to end?

8 A. That's -- I put this in here for mathematic
9 buffs.

10 Q. I appreciate it because that's a very good
11 descriptive way to describe to the jury how long this
12 would go. Now --

13 MR. BICKS: Objection to the form.

14 Q. (By Mr. Chandler) Now, in 1969, there -- there

15 was already ready-mix tape joint compound -- and I want
16 you to understand this, Mr. Myers. You understand that
17 Mr. Dixon's exposure to Union Carbide's Calidria, if
18 any -- and I know there is going to be a dispute about
19 that -- is to joint compounds used in drywall.

20 MR. BICKS: Objection to the form.

21 Q. (By Mr. Chandler) Have you been told that?

22 A. Yes.

23 Q. You know that Mr. Dixon's case that you are here
24 to talk about is about his exposure to drywall products
25 that go on the wall and get sanded off?

WORLDWIDE COURT REPORTERS 1-800-745-1101

104

1 A. Yes.

2 Q. All right. And in 1969 there were already
3 ready-mix tape joint compounds that were utilizing Union
4 Carbide asbestos, fair?

5 A. I would have to look at sales invoices.

6 Q. Well, look at page -- what's labeled as page 6 of
7 Myers Exhibit 3.

8 MR. BICKS: Page 6?

9 MR. CHANDLER: It's marked as page 6, yeah.

10 Q. (By Mr. Chandler) If you will look at the second
11 paragraph -- and read along with me in case I'm reading
12 incorrectly -- quote: "I don't know if the tape joint, or

13 drywall industry is considered to be in the coatings
14 field; if not, it is certainly a related area. Figure 11
15 shows a typical ready-mix tape joint compound using
16 CALIDRIA S-G 210," unquote.

17 Did I read that correctly?

18 A. Yes.

19 Q. Now, S-G 210 is standard grade fiber?

20 A. Yes.

21 Q. It's asbestos, true?

22 A. Yes.

23 Q. So, it's fair to say that in 1969 there were
24 already ready-mix tape joint compounds in which Union
25 Carbide's fiber was going?

WORLDWIDE COURT REPORTERS 1-800-745-1101

105

1 A. Yes.

2 Q. And when we say ready-mix tape joint compounds,
3 that's the tape joint compound that doesn't have to be
4 mixed with water.

5 A. It's already mixed with water.

6 Q. Correct. But it comes to the work side in a
7 bucket, not powder form. It's already a paste?

8 A. Yes.

9 Q. And so, if a company was selling powdered tape
10 joint compound, certainly by 1969 anyway, there was

11 ready-mix tape joint compound but they didn't require it
12 to be mixed up at the job site, already being used?

13 MR. BICKS: Objection to the form.

14 Q. (By Mr. Chandler) Fair?

15 A. Yes.

16 (Myers Exhibit No. 4 was marked.)

17 Q. (By Mr. Chandler) All right. Let me show you
18 what we've marked as Myers Exhibit 4, sir, and I want to
19 direct your attention to, again, my estimates of how long
20 Union Carbide's asbestos deposit was going to last, okay?

21 A. Okay.

22 Q. Just to remind the jury, you have seen estimates
23 of a hundred years but don't recall estimates that Union
24 Carbide's deposit was going to last longer than that; is
25 that right?

WORLDWIDE COURT REPORTERS 1-800-745-1101

106

1 A. Yes.

2 Q. All right. Let me show you what we have marked
3 as Myers Exhibit 4, one for your attorney and one for you.

4 What is Myers Exhibit No. 4?

5 A. It is entitled "New Enterprises Chemical
6 Reactions of Asbestos."

7 Q. Because when Union Carbide found their asbestos
8 deposit, one of their principal goals was to find new uses

9 they could put the asbestos in, right?

10 A. One of the goals, yes.

11 Q. Okay. Because that richest single mineral
12 deposit in the world couldn't be sold, it wasn't worth
13 anything to Union Carbide, was it?

14 A. No.

15 Q. All right. Now, flip to page 2, for me. And I'm
16 reading in the first paragraph, quote: "Union Carbide
17 Nuclear Division has a new wet refining process capable of
18 producing high purity dispersed asbestos at a price of 80
19 to \$120 a ton or conventional short fiber grades of
20 asbestos at 50 to \$60 a ton. The Nuclear Division has at
21 least a 100 year reserve of short fiber chrysotile
22 asbestos," end quote.

23 That's consistent with the years you've seen,
24 isn't it?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

107

1 Q. All right. Now, go to the second paragraph. Oh,
2 let me finish reading, quote, "However, most short fiber
3 asbestos markets like those listed above are captive
4 markets in established product lines and either new uses
5 for asbestos or improved products employing large
6 quantities of asbestos are necessary to provide a

7 proprietary position for Union Carbide."

8 Did I read that correctly?

9 A. Yes.

10 Q. What does that mean, to the ladies and gentlemen
11 of the jury?

12 MR. BICKS: Objection to the form.

13 A. I could just -- you know, I have never -- I don't
14 think I've ever seen this before, but I would have to go
15 by what they say.

16 Q. (By Mr. Chandler) Well, let me ask you if this
17 is fair. Is it fair to say that Union Carbide realized
18 they had a very valuable asset that they needed to find a
19 market for, that asset being the single largest mineral
20 deposit in the world of Coalinga asbestos?

21 A. I think they were going to try to find markets,
22 yes.

23 Q. Okay. Now, here are some different estimates on
24 how much asbestos Union Carbide had that I don't believe
25 you've seen. Let's talk about those. I'll show you what

WORLDWIDE COURT REPORTERS 1-800-745-1101

108

1 I've marked as Myers Exhibit No. 5.

2 (Myers Exhibit No. 5 was marked.)

3 Q. (By Mr. Chandler) If you go down to the bottom
4 of the introduction and read along for me -- well, the

5 first of all, Myers Exhibit 5 is a research and
6 development report about investigating resins as binding
7 agents, or Coalinga asbestos as binding agents for resins,
8 true?

9 A. That's what the subject says, yes.

10 Q. Okay. So, this memorandum dated as early as 1963
11 is about new uses for Union Carbide's asbestos?

12 A. Not the way I read it.

13 Q. Okay. Tell me the way you read it.

14 A. It says: "Investigation of Hydrocarbon Resins as
15 Binding Agents for Coalinga Asbestos."

16 Q. So, Myers Exhibit 5 is about doing something new
17 to Union Carbide asbestos, making a binding agent there?

18 A. That's what it sounds like.

19 Q. All right. If you go to the introduction at the
20 bottom of the page, do you see where it reads, quote:
21 "Union Carbide Nuclear Company owns a large California
22 deposit of Coalinga asbestos, a short-fiber asbestos of
23 superior quality occurring in such a way as to make
24 possible very high yields and purity. This deposit is
25 large enough to supply the world for 200 years and is

WORLDWIDE COURT REPORTERS 1-800-745-1101

109

1 advantageously located for much of the U.S. market in
2 competition with Quebec asbestos, currently the leading

3 source. After two years of market studies and development
4 work, a small asbestos plant is under construction."

5 Did I read that correctly?

6 A. Yes.

7 Q. So, we know at least at one point in the early
8 Sixties Union Carbide estimated its asbestos to last now
9 up to 200 years supplying the entire world. Is that fair?

10 A. That's what these people say, yes.

11 Q. Okay. Let me show you what I've marked as Myers
12 Exhibit -- have you ever seen estimates of 200 years
13 supplied to the whole world when you were at Union
14 Carbide?

15 A. No.

16 (Myers Exhibit No. 6 was marked.)

17 Q. (By Mr. Chandler) Let me show you what I've
18 marked as Myers Exhibit No. 6, sir, and see if you'd ever
19 seen this estimate of the amount of time Union Carbide's
20 asbestos would last.

21 MR. CHANDLER: Sorry.

22 Q. (By Mr. Chandler) Now, this estimate is fast
23 forwarded at least 13 years, true?

24 A. 1976.

25 Q. And that's 13 years after Union Carbide started

1 mining asbestos.

2 A. Yes.

3 Q. Now, in 1963, if they estimated a world supply of
4 asbestos at 200 years, it's fair to say 13 years later
5 Union Carbide was mining a lot more asbestos than they
6 were in 1963.

7 A. They were -- yes. They weren't mining none in
8 196- -- not even set to get started.

9 Q. (By Mr. Chandler) So, in '76 they were mining --
10 here is my point. In 1976, sir, the estimates for
11 asbestos were based on a lot more production than they
12 were in 1963, true?

13 A. "The estimates for asbestos," what do you mean?

14 Q. The estimates for how long asbestos ore at the
15 Coalinga deposit would last would have been based on
16 production that was a lot more in 1976 than it was in
17 1963?

18 MR. BICKS: Objection to the form.

19 A. The estimates of the ore deposit would have
20 nothing to do with production.

21 Q. (By Mr. Chandler) Okay. You agree with me in
22 1976 Union Carbide was selling a lot more asbestos than
23 they were in '63?

24 A. Yes.

25 Q. Now, Myers Exhibit No. --

1 MR. BICKS: 6.

2 Q. -- 6 --

3 MR. CHANDLER: Thank you.

4 Q. (By Mr. Chandler) -- is a letter from Union
5 Carbide to the Chevron Company; is that right?

6 A. Yes.

7 Q. Chevron made an asphalt that went on roads into
8 which asbestos was put; is that right?

9 A. I don't know. I don't remember.

10 Q. When it says "Chevron Asphalt Company" at the
11 top, does that give you any indication of what they were
12 using Union Carbide's asbestos for?

13 A. No, it's not necessarily roads. It could have
14 been roof coatings or --

15 Q. Oh, okay. When you look at the bottom paragraph,
16 the third paragraph on Myers Exhibit 6, how long is the
17 estimate of ore now estimated by Union Carbide to last in
18 their communication with Chevron As- -- Chevron Asphalt
19 Company?

20 A. You want me to read that?

21 Q. Yes, sir.

22 A. "We offer a more than adequate ore reserve,
23 calculated to last some four thousand years at present
24 usage."

25 Q. And the present usage in 1976 was a lot higher

1 than it was in 1963, right?

2 A. That's still very low compared to Canadian
3 asbestos and to the U.S. usage.

4 Q. But here's my point. The estimates for how long
5 the ore would last didn't increase because the production
6 was lowered, did it?

7 MR. BICKS: Objection to form.

8 A. Sure. If you lower how much you're taking out,
9 it's going to last longer.

10 Q. (By Mr. Chandler) But they weren't taking out
11 less in 1976 than they were in 1963. They were taking a
12 lot more, weren't they?

13 A. They were taking more, yes.

14 Q. So, when we say a 4,000-year ore supply, it was
15 based on an estimate that included a lot more production
16 than there was in 1963?

17 MR. BICKS: Objection to the form.

18 A. And I don't have any idea where Mr. Norris came
19 up with 4,000 years.

20 Q. (By Mr. Chandler) He wouldn't lie to Chevron,
21 would they, about how much -- how long their asbestos
22 would last?

23 A. I said I have no idea where he came up with that.

24 Q. You don't believe a Union Carbide representative

25 would lie to its customers in their memorandum and

WORLDWIDE COURT REPORTERS 1-800-745-1101

113

1 correspondence to them, do you?

2 A. I wouldn't consider this a lie. I just said I
3 don't know where he came up with the number. I don't
4 remember seeing a number that high before.

5 Q. Okay. Well, let's talk about another number that
6 you haven't seen before.

7 MR. BICKS: Objection to the form.

8 Q. (By Mr. Chandler) You don't ever remember Union
9 Carbide telling you they had ore that would last 4,000
10 years, do you?

11 A. No, I don't remember that.

12 Q. Let's look at what we've marked as Myers
13 Exhibit 7, sir.

14 (Myers Exhibit No. 7 was marked.)

15 Q. (By Mr. Chandler) Now, Myers Exhibit 7 is a
16 letter to another company, B.F. Goodrich Company, in 1979;
17 is that right?

18 A. Yes.

19 Q. In 1979 Union Carbide was producing even more
20 fiber than they were in 1976; is that right?

21 A. I don't know without looking at numbers.

22 Q. I will find you a number that proves that later,

23 okay?

24 A. That's fine, if you can. I --

25 Q. Okay.

WORLDWIDE COURT REPORTERS 1-800-745-1101

114

1 A. -- I don't remember them.

2 Q. I want you to assume for me right now that in
3 1979, until I find the document to show the jury, that
4 Union Carbide's production of asbestos was more than it
5 was in 1976, okay?

6 A. Well, I won't assume it. I'll -- I'll let you
7 say it.

8 Q. For the purposes of this question, that's the
9 assumption I want you to make. All right? And I
10 understand that right now until I prove it to you and the
11 jury you don't agree with it. But to --

12 A. No, I don't disagree with it. I don't remember
13 the numbers.

14 Q. Okay. In 1979 -- will you look at the last
15 paragraph? Read along for me, see if I read these
16 correctly: "Finally, I think you will consider this an
17 important factor, we can offer you a reliable source of
18 supply. We have an inexhaustible ore supply, a well
19 designed manufacturing facility, and a work force
20 dedicated to producing quality products," end quote.

21 Now, is it fair to say that the only estimate of
22 Union Carbide's asbestos you recall ever seeing was a
23 hundred years?

24 A. Yes.

25 Q. You never saw the estimate at 400 years?

WORLDWIDE COURT REPORTERS 1-800-745-1101

115

1 A. 400, no.

2 Q. You never saw an estimate from Union Carbide that
3 said their asbestos would last a thousand years?

4 A. No. I've seen these. I've seen them just now.

5 Q. Okay. But prior to today?

6 A. No, I don't recall seeing any but --

7 Q. Prior to today Union Carbide never told you they
8 had an asbestos ore supply that was, quote, inexhaustible,
9 end quote?

10 A. No.

11 Q. All right. Inexhaustible is a long time, isn't
12 it, Mr. Myers?

13 A. Yes.

14 Q. I guess my point is: They had -- Union Carbide
15 had a lot of asbestos to sell, didn't they?

16 A. Depends on how much they produced, how much they
17 mined.

18 Q. The more they mined, the more Union Carbide could

19 sell, true?

20 A. No, no. We had to go in and -- and use marketing
21 or sales to see if we could replace the Canadian asbestos.

22 Q. Okay. And that was your goal as a marketing
23 manager, to try to increase your sales and try to beat out
24 the Canadians?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

116

1 Q. Now, for its, quote, inexhaustible, end quote,
2 ore supply, Union Carbide developed a number of patents to
3 try to protect their position in the asbestos market,
4 didn't they?

5 A. I don't remember a number of patents, no.

6 Q. All right. Let me show you what we have marked,
7 Mr. Myers, as Myers Exhibit No. 8.

8 (Myers Exhibit No. 8 was marked.)

9 Q. (By Mr. Chandler) Myers Exhibit No. 8, sir --
10 read along for me as I read it. It's dated August 24,
11 1979. "Dear Mr. Phipps: Per my letter of August 22,
12 1979, attached is a listing of U.S. patents concerning
13 asbestos which are assigned to Union Carbide," end quote.

14 Who wrote this document, sir?

15 A. I did.

16 Q. All right. So, it's fair to say that now after

17 looking at Myers Exhibit No. 8, that you do now recall
18 Union Carbide had a number of patents assigned to them
19 with respect to asbestos, true?

20 A. Yes.

21 Q. What's the purpose of getting a patent?

22 A. To try to maintain a position in a certain
23 market.

24 Q. I count 18 different patents that U.S. -- that
25 Union Carbide had to try to protect its position in U.S.

WORLDWIDE COURT REPORTERS 1-800-745-1101

117

1 markets. Is that a fair estimate?

2 A. No, I think you are -- some of these are for the
3 process. They are not for increasing sales.

4 Q. Okay. At least Union Carbide had 18 different
5 U.S. patents relating to asbestos and assigned to Union
6 Carbide based on your letter, true?

7 A. Yes.

8 Q. In fact, some of the patents relating to asbestos
9 and assigned to Union Carbide were yours, weren't they?

10 A. I had two, yes.

11 Q. You had two patents for different processes
12 related to asbestos, yourself?

13 A. For different products, yes.

14 Q. Okay. One of them was for use in paints, and the

15 other was for use in coating systems; is that right?

16 A. Yes.

17 Q. So, in addition to Mr. John L. Myers being the
18 marketing manager for asbestos for Union Carbide, you also
19 developed and patented new uses for asbestos that were
20 ultimately patented and assigned to Union Carbide, fair?

21 A. I didn't develop it, no. The -- the company that
22 was evaluating it did that work.

23 Q. Then let me reask the question. In addition to
24 being the marketing manager in charge of increasing sales
25 of Union Carbide asbestos, you also had two patents with

WORLDWIDE COURT REPORTERS 1-800-745-1101

118

1 your name on them?

2 A. Yes.

3 Q. All right.

4 MR. BICKS: How are you holding up?

5 MR. CHANDLER: Let me tell you, Mr. Myers,
6 any time you want to take a break, it's up to you.

7 THE WITNESS: Well, I would like to use the
8 rest room.

9 MR. BICKS: Is that okay?

10 MR. CHANDLER: Absolute -- it's okay.

11 THE WITNESS: I can probably wait a while if
12 you want to go ahead, or if you're at some point where

13 you'd like to --

14 MR. CHANDLER: Let's do one more document,
15 and we'll let you take a break. Okay?

16 THE WITNESS: Okay.

17 MR. CHANDLER: And if you don't want to,
18 tell me. I'm not your boss. You tell me when you want to
19 take a break. We're going to use six hours of testimony
20 time, and when it's done, it's done. So, we'll see.

21 THE WITNESS: All right.

22 Q. (By Mr. Chandler) Have you ever seen what I will
23 mark now as Myers Exhibit 9, Mr. Myers?

24 (Myers Exhibit No. 9 was marked.)

25 MR. CHANDLER: Keep it -- when you're done

WORLDWIDE COURT REPORTERS 1-800-745-1101

119

1 with it, rubber band so the court reporter doesn't get it
2 mixed up.

3 MR. BICKS: Thanks.

4 MR. CHANDLER: Sure.

5 A. Off of the cover, I don't remember having seen
6 it.

7 Q. (By Mr. Chandler) Okay. Myers Exhibit 9 is a
8 confidential business memorandum of the Union Carbide
9 Corporation, is it not?

10 A. Of the -- yes, uh-huh.

11 Q. Okay. Now, Myers Exhibit 9 is dated December 19,
12 1968, which would have been after you started working in
13 the asbestos group. Is that fair?

14 A. Yes. I haven't found a date on it yet, but if
15 you say so --

16 Q. Yes, sir. Go to page No. 6.

17 A. Yes.

18 Q. All right. In 1968 were you still in Niagara
19 Falls?

20 A. No.

21 Q. Were you out here in California?

22 A. Yes.

23 Q. Okay. Out here in California working on the
24 actual production of the fibers?

25 A. Helping, yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

120

1 Q. Mr. Myers, would you ever describe Union
2 Carbide's effort to market its asbestos as -- as a
3 mandate?

4 A. I don't think so. I don't know whether that -- I
5 don't know. I had never thought of it that way.

6 Q. Well, if I give somebody a mandate to do
7 something, that's kind of -- that's kind of an order to go
8 out and do something. Would you agree or you tell me what

9 you think it means?

10 MR. BICKS: Objection to the form.

11 A. Yeah, it sounds like an order.

12 Q. (By Mr. Chandler) Okay.

13 A. Yes.

14 Q. Go to page 6, then, at the bottom of the first

15 paragraph.

16 A. Is this the actual numbered page or --

17 Q. It's not numbered, sir. It's the one with the

18 date on it. Niagara Falls, New York. It's actual -- it's

19 the sixth actual page. There you go, sir.

20 A. All right.

21 Q. And you can see where I've highlighted. It's

22 going to come up there at the bottom.

23 A. Yes.

24 Q. In 1968 in Union Carbide's confidential business

25 memorandum, is it a fair -- is it a fair reading of the

WORLDWIDE COURT REPORTERS 1-800-745-1101

121

1 first paragraph down there at the bottom when I say,

2 quote: A mandate was given --

3 A. Wait a minute. I --

4 Q. I'm sorry, sir. The last sentence, first

5 paragraph.

6 A. Oh, okay. All right.

7 Q. "A mandate was given to a research and
8 development group to study the properties of this
9 chrysotile and develop new uses for colloidal products
10 made from Coalinga asbestos," unquote. Did I read that
11 correctly?

12 A. Yes.

13 MR. BICKS: Objection to form.

14 It's "col-oi-dal."

15 MR. CHANDLER: "Col-oi-dal"?

16 MR. BICKS: "Col-oi-dal," not "col-oi-dial."

17 MR. CHANDLER: Thank you.

18 Q. (By Mr. Chandler) Colloidal means kind of, what,
19 mineral products? What does that mean?

20 A. Like it's very small. Very, very tiny product or
21 material. I'm not sure exactly what it means.

22 Q. Colloidal, I thought it meant mineral. Okay.

23 So, in 1968, five -- even just five years after
24 Union Carbide started mining the asbestos, they're still
25 looking for new uses for the Coalinga asbestos and -- and,

WORLDWIDE COURT REPORTERS 1-800-745-1101

122

1 in fact, they consider it a, quote, "mandate," unquote,
2 true?

3 MR. BICKS: Objection to the form.

4 A. Well, no, this says a mandate was given. I don't

5 know when it was given.

6 Q. (By Mr. Chandler) Could have been before 1968?

7 A. I presume that it was, yes.

8 Q. The order to develop new uses was probably given
9 before 1968, true?

10 MR. BICKS: Objection to the form.

11 A. Uh, well, that's what he's -- I think he's
12 describing the history and, yes, a mandate was given.

13 Q. (By Mr. Chandler) It was a fairly serious effort
14 on behalf of Union Carbide to develop new applications for
15 use of asbestos. Is that a fair statement?

16 A. From a corporate standpoint. This was a very
17 tiny business. So, I don't think it was very high on
18 anybody in the corporate management. It was a small group
19 that were trying to develop a small business.

20 Q. Do you consider a market share of \$4 billion or
21 an existing market of \$4 billion fairly small to the Union
22 Carbide Corporation, sir?

23 MR. BICKS: Objection.

24 A. We never did have that -- we never did have that
25 market.

WORLDWIDE COURT REPORTERS 1-800-745-1101

123

1 Q. (By Mr. Chandler) Okay. I agree you didn't --

2 A. That's not asbestos. That's resins.

3 Q. I agree you never had the whole resin market but
4 a resin market -- first of all, Union Carbide's asbestos
5 was used in resins, wasn't it?

6 A. Yes.

7 Q. And if a resin market of \$4 billion existed that
8 Union Carbide could try to get a piece of, is that a
9 fairly significant dollar amount for Union Carbide back in
10 the late 1960's?

11 A. No.

12 MR. BICKS: Objection to the form.

13 Q. (By Mr. Chandler) All right. So, a market --

14 A. I don't think so. I don't -- I don't know what
15 the percentage was of asbestos. I don't know if we ever
16 even had any share in that whisker reinforcement.

17 Q. Okay.

18 A. If we did -- if we did, it was very minor.

19 THE VIDEOGRAPHER: Counsel, it is about time
20 to change tape.

21 MR. CHANDLER: All right. We can take a
22 break now.

23 THE VIDEOGRAPHER: This marks the conclusion
24 of Tape 1 in the deposition of John Myers on May 22, 2002.
25 Going off the record. The time is 11:25.

1 (Short break.)

2 THE VIDEOGRAPHER: We're going on record.

3 The time is 11:42. This marks the beginning of Videotape
4 No. 2 in the deposition of John Myers on May 22, 2002.

5 (Myers Exhibit No. 10 was marked.)

6 Q. (By Mr. Chandler) Mr. Myers, I've handed you
7 what we have marked as Myers Exhibit No. 10. At the top
8 of Myers Exhibit No. 10, there are several people under
9 the heading "BCC" and that, to your recollection, is blind
10 courtesy copy; is that right?

11 A. Yes.

12 Q. So, the person that Union Carbide was sending
13 this letter to did not know Union Carbide was forwarding
14 it to, among other people, you?

15 A. That's the way it looks, yes.

16 Q. Okay.

17 MR. BICKS: Objection to the form.

18 Q. (By Mr. Chandler) And Mr. Rhodes was at the time
19 in 1978 the technology manager for Union Carbide's
20 asbestos business?

21 A. Yes.

22 Q. The Asbestos Information Association that is
23 referenced in Myers Exhibit No. 10 was an organization
24 created by and for asbestos product manufacturers and
25 asbestos mining companies; is that true?

1 A. Yes.

2 Q. The Asbestos Information Association is an
3 organization that Union Carbide played a significant role
4 in?

5 A. Yes.

6 Q. You were the head or chairman of the Asbestos
7 Information Association at one point, weren't you?

8 A. Yes.

9 Q. The Asbestos Information Association sent
10 information to the purchasers of asbestos to try to assist
11 them in various aspects of their asbestos business; is
12 that fair?

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

14 Q. Okay. The Asbestos Information Association made
15 available to member companies information about hazards of
16 asbestos?

17 A. Member companies and the general public.

18 Q. Okay. And the Asbestos Information Association
19 actually made information available to defense attorneys
20 in asbestos lawsuits, didn't they?

21 A. I don't know that.

22 Q. Let's read the second paragraph of Myers
23 Exhibit 10, then.

24 A. You want me to read it?

25 Q. No, sir. I'll read it and you tell me if I've

1 read correctly. To Mr. Craig McNey, the Vice President of
2 Norwal, Inc., in Canoga Park, California.

3 "Dear Craig: The additional dust count
4 information that we discussed relative to drywall
5 applications is enclosed together with an authoritative
6 medical review article on asbestos-related diseases.

7 "Also enclosed is a description of the type of
8 information and services that can be made available
9 through the Asbestos Information Association/North America
10 to defense attorneys in asbestos suits. There are
11 relatively nominal charges for this information to help
12 cover the very substantial costs entailed in its
13 collection."

14 Did I read that correctly?

15 A. Yes.

16 Q. Do you agree that when Mr. Rhodes wrote to
17 Mr. McNey that, in fact, he was not being dishonest when
18 he said that the Asbestos Information Association makes
19 available to defense attorneys in asbestos suits a variety
20 of information and services?

21 MR. BICKS: Objection to the form.

22 A. Yeah, though, that information was available to
23 anybody that wanted to purchase it, yes.

24 Q. (By Mr. Chandler) And one of the sources or one
25 of the consumers of information and services of the

1 Asbestos Information Association were asbestos defense
2 lawyers, true?

3 A. I don't know if they ever purchased any of the
4 information or not.

5 Q. So, when Mr. Rhodes writes: "Enclosed is a
6 description of the type of information and services that
7 can be made available through the Asbestos Information
8 Association/North America to defense attorneys in asbestos
9 suits," you are saying you don't have any personal
10 knowledge that any of those attorneys ever took advantage
11 of it?

12 A. That's correct.

13 Q. All right. Would you flip to the second page
14 that's marked "confidential" and, actually, let's go to --

15 MR. BICKS: Just so we're clear on the
16 record, and I don't know how this got put together, but at
17 least what I have, in reading the letter with the
18 enclosures that are indicated, it's not at all clear that
19 we, one, have the correct materials that are with this
20 document. In fact, it's clear that we don't.

21 MR. CHANDLER: If you will, sir, look at the
22 bottom of the Bates stamps that are attached: A25128, the
23 very next one is A25129, the very next one is A25130. I

24 mean, we didn't do the Bates stamp. This is the way it
25 came to us.

WORLDWIDE COURT REPORTERS 1-800-745-1101

128

1 MR. BICKS: I don't know who put the Bates
2 stamps on it. I'm just -- want people to be -- know
3 exactly what's going on and make sure people have accurate
4 information and obviously we're missing some materials
5 here.

6 MR. CHANDLER: And if you have it, I would
7 love to have it produced to us. If you have the other
8 information that's referenced on Myers Exhibit No. 10 from
9 Union Carbide Company, we'd love to have it produced to us
10 but right now that's all that's been produced to us.

11 Q. (By Mr. Chandler) Mr. Myers, go to the page
12 that's marked page 3 -- pardon me, page 4.

13 A. Yeah, I don't see under the enclosures that the
14 document that is attached was one of the enclosures.

15 Q. Yes, sir. I just understand those are the Bates
16 stamps that were put on and produced to us in this manner.

17 You understand the Asbestos Information
18 Association did supply a data bank of information to its
19 members, true?

20 A. Yes.

21 Q. All right. Do you know who Dr. Philip Enterline

22 is?

23 A. I've heard the name. He was a physician, yes.

24 Q. A physician who the Asbestos Information
25 Association hired to investigate what is called the "state

WORLDWIDE COURT REPORTERS 1-800-745-1101

129

1 of the art defense" in asbestos litigation?

2 A. I don't remember the hiring but --

3 Q. But that was Mr. Enterline's position, to
4 investigate the, quote, "state of the art defense," end
5 quote, in asbestos litigation?

6 A. I don't know that.

7 Q. Okay. Well, let's go to page 4 of Myers
8 Exhibit 10. At the top of page 4 in Myers Exhibit 10, it
9 states: "The heart of the data bank consists of files
10 established covering the following subjects: No. (i)
11 individual lawsuits, including significant pleadings and
12 discovery; No. (ii) files on attorneys representing
13 plaintiffs or defendants."

14 Here is my question, Mr. Myers: Are you aware of
15 files the Asbestos Information Association kept on
16 attorneys for plaintiffs in asbestos litigation?

17 A. No, I'm not. I don't think they kept any. I
18 think this is in somebody's data bank. It wasn't -- I've
19 never seen this in any files at A.I.A., no.

20 Q. Okay. If one of the witnesses in this litigation
21 has testified that the Asbestos Information Association
22 did, in fact, keep files on plaintiff's attorneys, that's
23 not something you as the chairman or the head of the
24 Asbestos Information Association would have condoned, is
25 it?

WORLDWIDE COURT REPORTERS 1-800-745-1101

130

1 MR. BICKS: Objection to the form of the
2 question.

3 A. It depends on what the data bank consisted of.
4 If it was valuable information, then --

5 Q. (By Mr. Chandler) Do you have a file on me?

6 A. No.

7 Q. Did the Asbestos Information Association keep a
8 file on plaintiff's attorneys who represented victims of
9 asbestos?

10 MR. BICKS: Objection to the form.

11 A. Well, that's what it says here, yes.

12 Q. (By Mr. Chandler) Okay. Certainly part of the
13 information according to Mr. Rhodes that the -- and we'll
14 call it "A.I.A." for Asbestos Information Association --
15 did provide, was assistance to lawyers who defended
16 companies in asbestos lawsuits; is that fair?

17 A. As it says here, they made available -- the same

18 information was available to anyone else for a nominal
19 charge.

20 Q. And why would anybody else need information to
21 defend asbestos lawsuits other than companies involved in
22 asbestos litigation and their lawyers?

23 MR. BICKS: Objection to the form.

24 A. I'm talking about available to the -- mainly to
25 asbestos users. That's what these booklets were about and

WORLDWIDE COURT REPORTERS 1-800-745-1101

131

1 how to use asbestos safely and --

2 Q. (By Mr. Chandler) And information to, quote,
3 "defense attorneys in asbestos suits," end quote.

4 A. The information and services were available, yes.

5 Q. Okay.

6 A. And I would note that the page 5 ends in the
7 middle of a sentence and there is no additional pages.

8 Q. I would love to see the rest of it, sir, but this
9 is all that's been produced to us.

10 A. Okay.

11 Q. Do you know where the rest of the data bank
12 confidential memorandum is?

13 A. No.

14 MR. BICKS: I mean, just so we're clear
15 about "produced" to you, did you -- how did you get this

16 document?

17 MR. CHANDLER: 98 percent of our documents,
18 including this one, are Bates-stamped with a Union Carbide
19 Bates stamp that was sent to us in discovery pertaining to
20 the Texas City facility. If you want to -- I mean, you've
21 got all of our documents.

22 MR. BICKS: In other words, these are
23 documents you personally -- you specifically requested
24 from the depository?

25 MR. CHANDLER: I don't know where they came

WORLDWIDE COURT REPORTERS 1-800-745-1101

132

1 from, but we specifically requested them. I don't know
2 where you guys got them. Are you telling me --

3 MR. BICKS: It would probably be helpful to
4 you to figure out how you got them.

5 Q. (By Mr. Chandler) Dr. Philip Enterline is
6 somebody who the Asbestos Information Association hired,
7 true?

8 A. Well, that's what you say. I don't remember
9 that.

10 Q. Well, you tell me.

11 A. I don't remember that, no.

12 (Myers Exhibit No. 11 was marked.)

13 Q. Okay. If you'll look at what I will mark as

14 Myers Exhibit No. 11, sir. Myers Exhibit No. 11 is a
15 memorandum from Union Carbide that went to you, isn't it?

16 A. From Dr. Rhodes, yes.

17 Q. And its subject is "Time of Recognition of
18 Asbestos-Related Cancer," true?

19 A. Yes.

20 Q. Now, it's going to doctors in New York; is that
21 right?

22 A. One doctor. Well, one medical doctor.

23 Q. And which one, Dr. Lane or Dr. Shortsleeve is the
24 medical doctor?

25 A. Dr. Lane.

WORLDWIDE COURT REPORTERS 1-800-745-1101

133

1 Q. Now, if you will go to the second page of the
2 document, "Asbestos and Cancer: The International Lag."
3 Have you ever seen that?

4 A. I'm sure I have, yes. It was sent to me.

5 Q. Okay. When the article, "Asbestos and Cancer:
6 The International Lag," was sent to you in 1979, did you
7 ever write any memorandum saying, "I disagree with
8 whatever is in 'Asbestos and Cancer: The International
9 Lag' article or editorial"?

10 A. Not that I recall.

11 Q. Read for me or read along as I read the first

12 sentence: Quote, "By the early 1940s, the question of
13 whether asbestos caused lung cancer seemed to have been
14 settled. Asbestosis, the fibrotic changes in the lung
15 resulting from the inhalation of asbestos fibers, had been
16 recognized for more than 40 years. 1934 in England, Wood
17 and Gloyne reported 2 cases of lung carcinoma seen at
18 autopsy in 43 cases of asbestosis. In 1935 Gloyne gave a
19 complete description of the 2 cases."

20 MR. BICKS: "Of these 2 cases."

21 MR. CHANDLER: "Of these 2 cases."

22 Q. (By Mr. Chandler) Sir, is it your understanding
23 that by the early 1940's, the question whether asbestos
24 caused lung cancer seemed to have been settled?

25 A. I don't recall that, no.

WORLDWIDE COURT REPORTERS 1-800-745-1101

134

1 Q. Did you ever write to the -- to Mr. Rhodes and
2 saying, "I don't agree that the question of asbestos and
3 lung cancer had been settled by the 1940's"?

4 A. I don't remember saying that, no.

5 Q. Now, the very last paragraph of the editorial
6 written by Philip Enterline, sir, in his summary of his
7 editorial is the following: "In any event, the issue was
8 definitely settled for the United States at a conference
9 on the biologic effects of asbestos held in New York City

10 in 1964. At that conference, additional epidemiologic
11 evidence was presented, and of 20 papers presented in
12 which an opinion was expressed, none dissented from the
13 view that asb- -- that asbestos is a cause of cancer";
14 signed, Dr. Philip Enterline.

15 Did I read that correctly?

16 A. Yes.

17 Q. And that's the article you were talking about
18 earlier, the 1964 conference of Dr. Selikoff when you were
19 talking about what information you had about the hazards
20 of asbestos, isn't it?

21 A. I was talking about his study in 1964 that was
22 released to the public. I don't know whether it was at
23 this conference.

24 Q. Okay. Sir, have you ever seen Dr. Philip
25 Enterline's name listed on interrogatories of the Union

WORLDWIDE COURT REPORTERS 1-800-745-1101

135

1 Carbide Company as an expert witness on their behalf?

2 A. Not that I recall.

3 Q. Haven't you personally signed interrogatories in
4 which Philip Enterline was listed as an expert witness on
5 behalf of the Union Carbide Corporation?

6 A. Not that I remember, no.

7 Q. Okay. If you signed interrogatories with

8 Dr. Philip Enterline's name as an expert witness, would
9 you agree that Union Carbide Corporation must have put
10 some confidence in his opinion?

11 MR. BICKS: Objection to the form.

12 A. No, I don't necessarily agree to that, no.

13 Q. (By Mr. Chandler) Union Carbide would hire
14 witnesses in which they had no confidence?

15 A. I don't know whether they hired Mr. Enter- --
16 Dr. Enterline.

17 Q. Okay. And what you are telling the ladies and
18 gentlemen of the jury is, today here you don't even
19 remember signing off on any interrogatories that listed
20 Dr. Philip Enterline as an expert, do you?

21 A. That's correct.

22 Q. Okay. Now, I want to talk with you -- now, 1964,
23 when Dr. Selikoff's study came out, was just a year after
24 Union Carbide started mining asbestos, isn't it?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

136

1 Q. Have you -- and I know in many of your other
2 testimonies on behalf of Union Carbide Corporation, you
3 have heard that Dr. Dernehl who was a medical doctor for
4 Union Carbide has testified that he knew about the hazards
5 of asbestos even before Union Carbide ever started mining

6 asbestos. Is that a fair statement?

7 A. I haven't seen that statement -- or that

8 reference, no.

9 Q. You haven't seen Mr. Dernehl's testimony?

10 A. No.

11 Q. You mean to tell me no one from the Union Carbide

12 Corporation has ever shown you what Dr. Dernehl knew about

13 the hazards of asbestos, sir?

14 A. Just through his toxicology reports.

15 Q. No one showed you any sworn testimony by

16 Dr. Dernehl about what he knew of the hazards of asbestos?

17 A. Not that I recall, no.

18 Q. Dr. Dernehl is a medical doctor of Union Carbide,

19 isn't he?

20 A. He is one of them, yes.

21 Q. And would it be important to you when you're

22 selling asbestos, to know what Union Carbide's medical

23 doctors knew about the hazards of asbestos before you

24 started selling it, sir?

25 A. That's why we depended on his toxicology report.

WORLDWIDE COURT REPORTERS 1-800-745-1101

137

1 Q. Therefore, it was important for you to know what

2 Dr. Dernehl knew about the hazards of asbestos when you

3 were selling it; is that right?

4 A. By -- yes. We knew what was in his report.

5 Q. Okay. Did Union Carbide ever show you anything

6 else when you were selling asbestos -- strike that.

7 Sir, Union Carbide never showed you their

8 internal rat studies on asbestos the whole time you were

9 selling their asbestos, did they?

10 A. I don't know what rat studies you are referring

11 to.

12 Q. Okay. Well, we'll get to them. Did Union

13 Carbide ever show you any animal studies on the hazards of

14 their asbestos fiber while you were selling their fiber?

15 A. I've seen reports of studies by the Mellon

16 Institute.

17 Q. That's not my question, sir, because I know

18 you've seen reports. But here is my point: While you

19 were working for Union Carbide, you never saw rat studies

20 or animal studies on the hazards of asbestos, did you?

21 A. The Mellon reports, yes.

22 Q. While you were working for Union Carbide?

23 A. Yes.

24 Q. The first time you saw those rat studies was when

25 a lawyer for a plaintiff in asbestos litigation showed it

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 to you; isn't that true?

2 A. That's not the way I remember it.

3 Q. Okay. Well, let me find that testimony.

4 (Reading documents.)

5 All right. I'm going to find that on a break.

6 But tell me for the record, before we get into your prior
7 sworn testimony, sir: Is it your testimony here to this
8 ladies and gentlemen of the jury that when you were a
9 sales manager or a production and marketing manager for
10 Union Carbide, that Union Carbide showed you the studies
11 that they had performed -- or that the Mellon Institute
12 had performed on their behalf, of the hazards of their
13 Coalinga fibers? Is that your testimony?

14 A. To the best of my knowledge and recollection,
15 yes.

16 Q. And that would have been when, sir?

17 A. I can't remember the dates.

18 Q. Certainly into the 1980's, though, wasn't it?

19 A. Not that I recall, no.

20 Q. And if you have sworn under oath on prior
21 occasions that the first time you saw the, what I call,
22 "rat studies" for Union Carbide was when a plaintiff's
23 lawyer in an asbestos litigation showed you, is that
24 untrue?

25 MR. BICKS: Objection to the form.

1 A. To the best of my recollection, yes.

2 Q. (By Mr. Chandler) Okay.

3 A. That sounds --

4 Q. We'll get to that. Let's break for lunch because
5 I don't want to leave that point before I find it.

6 THE VIDEOGRAPHER: Going off the record.

7 The time is 12:02.

8 (Lunch break.)

9 THE VIDEOGRAPHER: We're now back on the
10 record at 12:37.

11 Q. (By Mr. Chandler) I just wasted the last ten
12 minutes of our questioning because I was talking about
13 something I -- I was thinking about something else.

14 A. Okay.

15 Q. You are aware, Mr. Myers, that Union Carbide
16 Corporation had a United Kingdom subsidiary?

17 A. Yes.

18 Q. By the name of Union Carbide U.K. Limited?

19 A. Yes.

20 Q. And Union Carbide definitely shipped asbestos
21 from Coalinga to the United Kingdom?

22 A. Yes. In small quantities but, yes.

23 Q. And you know that a Mr. I. C. Sayers was with
24 Union Carbide in the U.K.?

25 A. Yes.

1 Q. Now, you were not told in the late 1960's when
2 you were working for the asbestos business that Mr. Sayers
3 had authored a report entitled, quote, "Asbestos Health
4 Hazards in the U.K.," end quote, were you?

5 A. I don't think I was told that, no.

6 Q. Okay. And you never saw the report in the late
7 1960's after Mr. Sayers wrote it, did you?

8 A. I don't remember when I saw it for the first
9 time.

10 Q. But you do know that the first time you did see
11 it was because you were at an asbestos trial in Arkansas
12 and it was the lawyers for the plaintiffs in that case
13 that brought the Sayers report to your attention?

14 A. Yeah, after reviewing other documents, I don't
15 think that was the first time I had seen it but as far as
16 my memory at that time, that was the first time I had seen
17 it.

18 Q. Okay. What is your recollection about the first
19 time Union Carbide talked to you about Mr. Sayers' report?

20 A. I don't recall that they talked to me about it.

21 Q. Pardon me?

22 A. I don't recall that they talked to me about it.

23 Q. Okay. Is it a fair statement that you never knew
24 the Sayers report existed until a lawsuit was brought
25 against Union Carbide and you had your deposition taken?

1 Is that a fair statement?

2 A. No.

3 Q. All right. Isn't the Sayers report -- wasn't the
4 Sayers report presented to you for the first time under
5 litigation circumstances, sir?

6 A. Not -- I don't think that now, no.

7 Q. Okay. You did testify on prior occasions under
8 oath that the first time you saw the report that
9 Mr. Sayers wrote entitled "Asbestos Health Hazards in the
10 United Kingdom" was under circumstances involving
11 litigation in the past, though. You've testified to that
12 under oath?

13 A. Yes, I have.

14 Q. Okay. And now, sitting here today after having
15 prepared for your deposition, you have a different opinion
16 about when you first saw the Sayers report?

17 A. Not when I prepared for deposition. When I'd
18 been reviewing documents.

19 Q. What documents, sir?

20 A. A whole host of documents which included
21 Dr. Dernehl's comments on -- on the Sayers report and --

22 Q. When you say you have reviewed a whole host of
23 documents, when did your review of these whole host of

24 documents begin?

25 A. About one to two months ago.

WORLDWIDE COURT REPORTERS 1-800-745-1101

142

1 Q. And how much -- how many documents are in this,
2 quote, "whole host of documents" that you have begin
3 reviewing about one or two months ago?

4 A. I don't recall. You know, a good stack.

5 Q. How many inches high?

6 A. Probably 8 inches.

7 Q. What was in the 8 inches of documents that you've
8 been reviewing over the last month or two?

9 A. You mean each -- each item?

10 Q. Generally what's in it?

11 A. Just call reports, internal reports, letters to
12 cus- --

13 MR. CHANDLER: Anything that I don't have,
14 Sharla?

15 MS. FROST: I have no way of knowing that.
16 I would -- I would assume that the documents that you have
17 requested and have been provided to you include the call
18 reports and so on but --

19 Q. (By Mr. Chandler) Where are the documents you
20 have been reviewing for the last month or two?

21 A. I don't know.

22 Q. You don't have them; they are not in your
23 possession?

24 A. No.

25 Q. Okay. And -- well, in your review just over the

WORLDWIDE COURT REPORTERS 1-800-745-1101

143

1 last 30 days or so, have you come to a conclusion about
2 when the first time it is you saw the Sayers report?

3 A. Not a conclusion as far as exact time but --

4 Q. Do you have an estimate?

5 A. But I had seen it before.

6 Q. Do you have an estimate of when the first time
7 you saw the Sayers report was?

8 A. Probably in the Seventies.

9 Q. Okay. When in the Seventies, early or late?

10 A. I don't know.

11 Q. Okay. Certainly not for several years after
12 Mr. Sayers wrote it?

13 A. I don't know.

14 Q. Okay. Well, if Mr. Sayers wrote the Sayers
15 report in 1967 and you saw it in the Seventies, there had
16 been quite a lapse before it got to you; is that right?

17 A. Well, at least three years, yes. Again, I'm just
18 giving you the best estimate I can.

19 Q. And the best estimate you have given in the past

20 is that you had never seen it prior to litigation
21 circumstances. That is certainly something you testified
22 to before on a number of occasions?

23 A. Yes.

24 Q. Is it fair to say, Mr. Myers, that you did not
25 know that Dr. Hall and Dr. Mumpton were in England

WORLDWIDE COURT REPORTERS 1-800-745-1101

144

1 participating with Dr. Sayers in the study that is the
2 Sayers report, until approximately January of 1989?

3 MR. BICKS: Objection to the form.

4 A. I don't know what -- I don't know that I was ever
5 aware of that.

6 Q. (By Mr. Chandler) You can't recall ever being
7 told that there were doctors for Union Carbide working
8 with Mr. Sayers on investigating hazards of asbestos in
9 the United Kingdom; is that true?

10 A. They were not medical doctors, Mumpton and Hall.

11 Q. Mineralogist-type doctors, scientists?

12 A. I think Mumpton was a mineralogist. I don't know
13 about Hall.

14 Q. Well, let's see. I think you've said before he
15 was.

16 MR. BICKS: He is a Ph.D., chemist.

17 MR. CHANDLER: Hall is?

18 Q. (By Mr. Chandler) Dr. T. J. Hall was actually in
19 sales for Union Carbide, wasn't he?

20 A. To the best of my knowledge, yes.

21 Q. Okay. Hey, are salespeople the best people to
22 investigate hazards of a product they're trying to sell?

23 A. To investigate?

24 Q. Yes, sir.

25 A. Not necessarily, not from a scientific

WORLDWIDE COURT REPORTERS 1-800-745-1101

145

1 standpoint.

2 Q. I mean, if I'm a guy who is selling a product
3 whose job depends on selling it, are you -- am I
4 necessarily the guy you want to rely upon to tell you an
5 honest answer about whether it's a hazardous product or
6 not?

7 MR. BICKS: Objection to the form.

8 A. I would like for you to repeat the question so I
9 can make sure I can understand it.

10 Q. (By Mr. Chandler) Yes, sir. If -- you agree
11 that selling and warning of hazards can be a conflict of
12 positions. Do you agree with that?

13 MR. BICKS: Objection to the form.

14 A. It could be, but I don't -- I think you'll find
15 that all of our sales -- at least while I was involved, we

16 passed on all the asbestos -- we passed on asbestos
17 information -- asbestos health information to our
18 customers, you know, the Selikoff report, the --

19 Q. (By Mr. Chandler) And one of the groups within
20 Union Carbide who was responsible for formulating its
21 policy with respect to how they warned about the hazards
22 of asbestos was the Marketing Department, fair?

23 A. Involved with the -- I'm sorry, repeat.

24 Q. One of the groups within Union Carbide who was
25 responsible for informing or drafting their policy about

WORLDWIDE COURT REPORTERS 1-800-745-1101

146

1 what they would tell customers about the hazards of
2 asbestos, was the Marketing Department within Union
3 Carbide; is that true?

4 A. I don't remember we were involved with policy,
5 no.

6 Q. Do you recall that the Marketing Department
7 helped draft the toxicology report?

8 A. No.

9 Q. Do you recall that the Marketing Department took
10 any role in drafting the way that communication would be
11 made to its customers about the hazards of asbestos?

12 A. Yes, that's what we did.

13 Q. Okay. So, it's the people in charge of selling

14 the product who were also in charge of informing of the
15 hazards?

16 A. We were one of the sources, yes.

17 Q. Okay.

18 A. They had many other sources.

19 Q. Yes, sir. Do you agree that as people in charge
20 of selling Union Carbide asbestos, if you were not honest
21 with your customers you were doing something wrong?

22 A. Yes.

23 (Myers Exhibit No. 12 was marked.)

24 Q. (By Mr. Chandler) All right. Look at the Sayers
25 report, sir, that's -- we've marked as Myers Exhibit 12 to

WORLDWIDE COURT REPORTERS 1-800-745-1101

147

1 your deposition. The Myers Exhibit 12 entitled "Asbestos
2 as a Health Hazard in the United Kingdom" is, in fact, a
3 report drafted by Mr. Sayers, an employee of Union
4 Carbide's U.K. -- United Kingdom subsidiary, true?

5 A. Yes.

6 Q. Now, if you will flip to the fourth page of that
7 document --

8 A. Okay.

9 Q. It's entitled "Introduction" and it states -- do
10 you know when Mr. Sayers drafted his report, what year it
11 was?

12 A. No.

13 Q. Okay. Do you deny that it was 1967?

14 A. I have no idea when he drafted it. It is dated

15 1967.

16 Q. Okay. Fair enough. Mr. Sayers' report is dated

17 1967?

18 A. Yes.

19 Q. All right. And under "Introduction" where it

20 states: "Union Carbide U.K. Limited has been promoting

21 the sale of Coalinga asbestos for just over two years.

22 During this time, the public has become increasingly aware

23 of the considerable health risks associated with the use

24 of the material."

25 MR. BICKS: "Of this material."

WORLDWIDE COURT REPORTERS 1-800-745-1101

148

1 MR. CHANDLER: "Of this material."

2 Q. (By Mr. Chandler) Meaning what, Coalinga

3 asbestos or just asbestos generally?

4 A. Asbestos generally. I shouldn't say -- I don't

5 know. It doesn't say that.

6 Q. Now, Carbide's replies to customer concerns in

7 the union -- in the United Kingdom were essentially two

8 sources: One being Dr. Dernehl's asbestos toxicology

9 report, correct?

10 A. Yes.

11 MR. BICKS: Are you referring to something
12 specifically in the document?

13 MR. CHANDLER: Yes, sir.

14 Q. (By Mr. Chandler) The third paragraph, it lists,
15 quote: "Carbide's replies have been based upon the two
16 communications sent from New York Office on March 22nd,
17 1966, and October 7th, 1966, as well as Dr. Dernehl's
18 'Asbestos Toxicology Report'."

19 My question is: What are those communications
20 from New York dated 1966?

21 MR. BICKS: The other two, you mean?

22 MR. CHANDLER: Yes, sir.

23 MR. BICKS: The March 22 and October 7.

24 A. I don't know.

25 Q. (By Mr. Chandler) Okay. Whatever they are, the

WORLDWIDE COURT REPORTERS 1-800-745-1101

149

1 communications from New York alleviated some of the
2 anxiety with respect to asbestos use in the United Kingdom
3 according to Mr. Sayers; is that right?

4 A. Yes, that's what it says here, yes.

5 Q. Now, did you know in 1967 in the United Kingdom
6 where Union Carbide was supplying Calidria fiber, that
7 there was, quote, "a growing feeling that the quoted

8 threshold limit value is no longer tenable," unquote? Did
9 you know that?

10 A. No.

11 Q. You did not know when Mr. Sayers wrote his report
12 that folks in the union -- in the United Kingdom were
13 concerned that the threshold limit value for asbestos
14 wasn't accurate?

15 A. No, I did not.

16 Q. Is that something, as the marketing manager of
17 Union Carbide, would have concerned you, that folks within
18 Union Carbide didn't trust the threshold limit value?

19 A. If I had been the marketing manager. I wasn't
20 the marketing manager.

21 Q. So, if you had been the marketing manager of
22 Union Carbide in 1967, it would have concerned you if
23 somebody within the corporation had concerns themselves
24 about the reliability of the threshold limit value, fair?

25 MR. BICKS: Objection to the form.

WORLDWIDE COURT REPORTERS 1-800-745-1101

150

1 A. It's only one person. I don't know whether I
2 would take one young salesman's feelings to have any
3 effect on my feelings.

4 Q. (By Mr. Chandler) His -- is Mr. Sayers' opinion
5 that the threshold limit value was no longer tenable in

6 the United Kingdom something you would have wanted to have
7 known if you were the marketing manager in 1967?

8 MR. BICKS: Objection to the form.

9 A. No, not necessarily, no.

10 Q. (By Mr. Chandler) Okay. Fair enough. You
11 understand that in 1967 United Kingdom factories were
12 governed by guidelines that limited exposure to asbestos
13 to certain levels, correct?

14 A. I have read that in here, yes.

15 Q. Now, if you will go to the bottom of the
16 paragraph with me and read along, the bottom of the page
17 where it says: "Factories in the U.K. are at present
18 governed by outmoded Asbestos Regulations promulgated in
19 1931. Realisation that they are not entirely effective
20 was brought about figures published by the Ministry of
21 Pensions and National Insurance. These show that there
22 are an overall decrease in the number of new cases of most
23 types of pneumoconiosis, but for asbestosis the trend is
24 still upward. Shown below are the number of diagnosed
25 asbestosis cases over the years ..."

WORLDWIDE COURT REPORTERS 1-800-745-1101

151

1 Now, if you look at the number of cases for me,
2 Mr. Myers, here is my question: It's apparent to you from
3 Mr. Sayers' report, isn't it, that even though England,

4 the United Kingdom, had asbestos regulations, that more
5 people every year were getting diagnosed with asbestosis?
6 Is that a fair conclusion from Mr. Sayers' report?

7 A. That's what it says, yes.

8 Q. Even though there were regulations in place, more
9 and more people every year were getting sick from
10 asbestos?

11 MR. BICKS: Objection to the form.

12 A. Yes.

13 Q. (By Mr. Chandler) Okay. Did you know at the
14 time you were in the -- well, in 1967 when Mr. Sayers
15 wrote this report, where were you within Union Carbide's
16 asbestos program?

17 A. In King City.

18 Q. When you were in King City in 1967 when
19 Mr. Sayers wrote his report, did you know that there were
20 about 500 cases of cancer of the lung and mesothelioma
21 known to have occurred among people exposed to asbestos
22 dust in the United Kingdom, sir?

23 A. No.

24 Q. Is 500 cases of cancer of the lung and
25 mesothelioma something you would have wanted to have known

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 about as -- in your role in the Union Carbide's asbestos

2 program in 1967?

3 A. Well, not necessarily. Wouldn't have helped in
4 what we were doing at the plant as far as safety for our
5 employees.

6 Q. Okay. What about when it became your
7 responsibility to help sell asbestos for Union Carbide?
8 Is the fact that there were 500 diagnosed cases of cancer
9 and mesothelioma in United Kingdom where Union Carbide was
10 selling its asbestos, is that something that would have
11 concerned you, sir?

12 A. I don't know. Like he says here, it's a very
13 small number.

14 Q. You agree that those -- to those 500 people, it's
15 a very significant number of cancers and mesotheliomas,
16 don't you?

17 A. Yes.

18 Q. And, now, you understand that that is not
19 Mr. Sayers' opinion but that it is a hard number that
20 he -- he doesn't say, "I think there are 500 cases," or,
21 "It's my opinion there are 500 cases of cancer of lung and
22 mesothelioma"; is that right?

23 A. He says "are known to have occurred."

24 Q. And on the bottom of the same paragraph,
25 Mr. Sayers, the Union Carbide representative in the U.K.,

1 admits that there were, quote, "an inevitable number of
2 unknown cases that have escaped detection"; is that fair?

3 MR. BICKS: Objection to the form.

4 A. That's what it says, yes.

5 Q. (By Mr. Chandler) So, what Union Carbide in, at
6 least, the U.K. was acknowledging as early as 1967 is that
7 they knew of 500 cases of lung cancer and mesothelioma but
8 that they also knew that, quote, "an unknown number of
9 cases had escaped detection," unquote. Fair enough?

10 A. That's what it says, yes.

11 Q. Okay. Did you know that Union Carbide had done
12 research into health hazards in the United Kingdom in
13 1967 --

14 A. Yes.

15 Q. -- Mr. Myers? You knew that?

16 A. I knew that they had helped the -- some group
17 called Pneumoconiosis something or other.

18 Q. Pneumoconiosis Research Council?

19 A. Yes. I knew we had helped -- or not "we" but
20 Union Carbide had -- I think Dr. Mumpton had helped in
21 this.

22 Q. In the research of the Pneumoconiosis Research
23 Council?

24 A. Yes.

25 Q. And Dr. Mumpton is a Union Carbide doctor?

1 A. He is a -- he is a Ph.D.

2 Q. Okay. Dr. Mumpton participated in research for
3 the Pneumoconiosis -- meaning dust disease -- Research
4 Council in the U.K. as early as the late Sixties, true?

5 A. I don't know when it was.

6 Q. When did you become aware that Dr. Mumpton for
7 Union Carbide was researching asbestos disease in the
8 United Kingdom, sir?

9 A. I only remember becoming -- by reviewing
10 documents.

11 Q. Approximately when do you remember becoming aware
12 of that?

13 A. Within the last two months.

14 Q. Okay.

15 A. And I may have known it before but the documents
16 reminded me of it.

17 Q. You -- Mr. Sayers in 1967 writes in his report
18 that "mesothelioma of the pleura and peritoneum are
19 diseases associated with asbestos." Did you even know
20 what mesothelioma was in 1967, sir?

21 A. Probably not. But I don't know when I knew it.

22 Q. Did you know, sir, that in 1967 Mr. Sayers was
23 writing that over 50 percent of males dying with
24 asbestosis also have a cancer? Did you know in 1967 he
25 was writing that to Union Carbide?

1 A. Where are you reading from?

2 Q. I'm reading in Mr. Sayers' report, sir, under
3 Section 4.3, Bronchial Carcinoma.

4 MR. BICKS: It's page 9.

5 A. Okay. Now, where are -- where are you reading?

6 Q. (By Mr. Chandler) Under Bronchial Carcinoma,
7 Mortality Rates.

8 A. Yeah --

9 Q. "Mortality rates" to you, sir --

10 A. Oh, okay.

11 Q. "Mortality rates" to you, sir, means death rates,
12 doesn't it?

13 A. Yes.

14 Q. Number of people dying from asbestos every year,
15 correct?

16 A. I don't know what period, yes.

17 Q. Did you know that Mr. Sayers was writing to Union
18 Carbide that over half the people dying with asbestosis
19 also had cancer, sir?

20 Did you know that at the time you first became
21 marketing manager?

22 A. Not that I recall, no.

23 Q. Did anyone within Union Carbide ever tell you,
24 quote: "Even when viewed against the steadily rising

25 incidence of lung cancer in the population as a whole,

WORLDWIDE COURT REPORTERS 1-800-745-1101

156

1 there seems little doubt the increase is a real one," end
2 quote. By that, I reference increase of lung cancer.
3 Anyone ever tell you that when you first became the
4 marketing manager, sir?

5 A. This is lung cancer from cigarettes or anything
6 else? No, nobody told me that.

7 Q. No, sir. Do you see anywhere in Mr. Sayers'
8 report under Mortality Rates 4.3.2 where he mentions
9 cigarettes at all?

10 A. No. But you just quoted -- I mean, all he is
11 saying is incidence of lung cancer. It doesn't say
12 asbestos related or --

13 Q. Mr. Sayers' report is not about cigarette
14 smoking, is it?

15 A. No, it's about cancer and -- yeah.

16 Q. In fact, Mr. Sayers' report is entitled "Asbestos
17 as a Health Hazard in the United Kingdom," true?

18 A. Yes.

19 Q. And when Mr. Sayers talks about lung cancer, do
20 you assume he is talking about lung cancer from anything
21 other than asbestos?

22 A. Well, the way it reads, yes.

23 Q. Okay.

24 A. "Against steadily rising incidence of lung cancer
25 in the population as a whole."

WORLDWIDE COURT REPORTERS 1-800-745-1101

157

1 Q. Do you know what percentage of men get lung
2 cancer, sir?

3 A. No.

4 Q. Would it surprise you to learn that it is a
5 number dramatically lower than 50 percent of men get lung
6 cancer?

7 A. This is 50 percent of males dying with
8 asbestosis.

9 Q. That's right. And a number much, much lower than
10 50 percent of men without asbestosis get lung cancer. Do
11 you know anything about that?

12 A. No.

13 Q. All right. Did anyone ever tell you when you
14 were the marketing manager for Union Carbide, sir, that in
15 1967 Mr. Sayers was concerned that there were, in fact,
16 people in Britain that appeared to have been exposed only
17 to chrysotile-type asbestos that were getting
18 mesothelioma? Did anyone ever tell you that?

19 A. No.

20 Q. Did anyone at Union Carbide ever tell you in 1967

21 that they were worried that mesothelioma was a very
22 disturbing -- disturbing disease attributable to
23 asbestos, sir?

24 A. No.

25 Q. If you will go to page -- well, I don't see a

WORLDWIDE COURT REPORTERS 1-800-745-1101

158

1 page number on it but it is 4.4.3 under Experimental Work.
2 Do you see that?

3 A. Yes.

4 Q. Did anyone from Union Carbide tell you -- now,
5 here is where Dr. Wagner at the pneumoconiosis Research
6 Unit was doing work. Was that the outfit that Dr. Mumpton
7 was assisting in research with?

8 A. That sounds correct, yes.

9 Q. And no one at Union Carbide told you that as
10 early as 1964 the Pneumoconiosis Research Unit with which
11 Dr. Mumpton, the Union Carbide Ph.D., was working had
12 shown that as early as 1964 animal experimental conditions
13 showed asbestos to be a, quote, "powerful carcinogen,"
14 unquote. They didn't tell you that when you became
15 marketing manager, did they?

16 A. Not that I recall.

17 MR. BICKS: Objection to the form.

18 Q. (By Mr. Chandler) Now, under the experimental

19 work that doctors for Union Carbide were participating in
20 as early as 1964, read along and let me know if I have
21 read this correctly, sir, quote: "20 milligrams of
22 asbestos injected into the pleura of specific
23 pathogen-free strains of rats has produced mesothelioma --
24 mesothelial tumors in a high proportion of the animals.
25 This is so for Chrysotile, Amosite, and Crocidolite, both

WORLDWIDE COURT REPORTERS 1-800-745-1101

159

1 natural and after extracton -- extraction of its natural
2 oil by a single solvent."

3 Did anyone ever tell you that Dr. Mumpton was
4 involved in work that showed chrysotile had caused
5 mesothelioma, sir?

6 MR. BICKS: Objection to the form.

7 A. I don't know that Dr. Mumpton was involved
8 with -- with this study.

9 Q. (By Mr. Chandler) But you do know that
10 Dr. Mumpton was involved with the Pneumoconiosis Research
11 Unit in the United Kingdom?

12 A. Yes.

13 Q. Okay. Did anyone ever tell you that the group
14 that Dr. Mumpton was involved in was involved in research
15 that demonstrated chrysotile caused mesothelioma?

16 A. Not that I recall, no.

17 Q. All right. Now, the Union Carbide fiber mined in
18 Coalinga, California, was a smaller fiber than all other
19 types of asbestos, wasn't it?

20 A. Shorter, yes.

21 Q. Okay. And does the size of the fiber affect how
22 long the fiber stays in the ambient air or in the air or
23 around a work site, sir?

24 A. I don't know.

25 Q. All right. We'll get back to that. If the Union

WORLDWIDE COURT REPORTERS 1-800-745-1101

160

1 Carbide asbestos was, in fact, more hazardous than other
2 asbestos, is that something that would concern you, sir?

3 A. Well, that's a very big "if" but, yes, it would
4 concern me if that was a proven fact.

5 Q. And if you were the marketing manager for Union
6 Carbide and you were selling an asbestos that was known to
7 Union Carbide to be more hazardous than any other
8 asbestos, would you have sold it?

9 A. Again, that's a big "if." I -- I think you are
10 making hypothetical questions but, no, I wouldn't have
11 sold something that was more hazardous.

12 Q. And if Union Carbide sold a product they knew was
13 more hazardous than any other asbestos fiber but they
14 marketed it as something that was less hazardous, would

15 that be wrong?

16 MR. BICKS: Objection, form.

17 A. I don't remember us saying ever that it was less
18 hazardous and I don't believe it's more hazardous.

19 Q. (By Mr. Chandler) My question is this, sir.

20 A. If you go back to your "if's," yes, that would be
21 wrong.

22 Q. All right. Let me reask the question. If Union
23 Carbide sold a product they knew was more hazardous than
24 other asbestos fibers and marketed it as something that
25 was less hazardous than other types of asbestos, that

WORLDWIDE COURT REPORTERS 1-800-745-1101

161

1 would have been wrong, true?

2 MR. BICKS: Objection to form.

3 A. Yes, in somebody's opinion, yeah.

4 Q. (By Mr. Chandler) In your opinion, sir?

5 A. I think that would be wrong, yes.

6 Q. All right. Now, Mr. Sayers writes in his report
7 in 1967 under Section 4.5 entitled "Aerodynamic Behaviours
8 of Asbestos Fibres" -- and I'm going to paraphrase this
9 but you tell me if I've paraphrased it correctly. In 1967
10 Mr. Sayers was concerned that smaller asbestos fibers
11 could penetrate deeper into the lung; is that true?

12 MR. BICKS: Objection to the form.

13 A. Where are you reading from?

14 Q. (By Mr. Chandler) The last paragraph, sir.
15 Bottom half of the last paragraph.

16 A. Okay. Do you want to answer -- or ask the
17 question?

18 Q. Yes. My question is this: In 1967 when
19 Mr. Sayers for the Union Carbide Corporation in the United
20 Kingdom was writing his report, he was concerned that
21 smaller asbestos fibers, like Coalinga asbestos, could
22 penetrate deeper into the lungs than other asbestos types,
23 true?

24 A. No, he is talking about the fiber diameter.

25 Q. Okay.

WORLDWIDE COURT REPORTERS 1-800-745-1101

162

1 A. It says "very little sensitivity to length."

2 Q. All right. Well, let's read it and we'll -- I'll
3 ask you for your opinion. Quote: "If, therefore, a fibre
4 has a sufficiently small diameter, the falling speed can
5 be low enough for the fibre to escape deposition by
6 settlement and inertial precipitation mechanisms in the
7 upper part of the respiratory tract."

8 Does that mean it can get through all the defense
9 mechanisms? Is that what he is worried about?

10 A. Inertial -- I don't know what -- I don't know

11 what "inertial precipitation mechanisms" is.

12 Q. All right. Well, let's read the next line:

13 "Hence, deep penetration to the pulmonary air spaces is
14 possible," in fibers that have a small diameter. Is that
15 a fair statement?

16 A. Yeah, it sounds like it, yes.

17 Q. And, "This has been shown to occur if the fiber
18 diameter is less than about three and a half microns."
19 Union Carbide's Coalinga asbestos had fiber diameters less
20 than 3 and a half microns, didn't it?

21 A. I think so, yes.

22 Q. Now, on the next page Mr. Sayers writes that the
23 longer the fibre, the more probable it is that it's going
24 to get caught or intercepted by things like nose hairs.
25 Is that a fair assessment of Mr. Sayers' report?

WORLDWIDE COURT REPORTERS 1-800-745-1101

163

1 A. I would have to read it.

2 Q. Go ahead.

3 A. Oh, yeah, he says that in the first sentence,
4 yes.

5 Q. Well, basically what Mr. Sayers is saying is that
6 longer fibers can get trapped, shorter fibers can
7 penetrate deep into the lungs?

8 MR. BICKS: Objection to the form.

9 A. He doesn't --

10 Q. (By Mr. Chandler) Is that a fair paraphrase of

11 Mr. Sayers' report as we have just gone over it?

12 A. Well, the second sentence says: "Examination of

13 asbestos particle lengths in the lung has shown them to be

14 of the same order of magnitude as the distances between

15 nasal hairs."

16 Q. Is it a fair characterization of Mr. Sayers'

17 concerns in his report in 1967 that he was concerned that

18 the shorter and the smaller diameter fibers could do more

19 damage?

20 A. Not shorter. He is talking about diameter.

21 Q. The smaller diameter fibers could do more damage.

22 Is that a fair assessment?

23 A. Yes.

24 Q. All right.

25 A. And Calidria, the diameter is the same as

WORLDWIDE COURT REPORTERS 1-800-745-1101

164

1 Canadian --

2 Q. So, Calidria fiber had no -- was no bigger than

3 Canadian fiber with respect to the diameter. They -- they

4 acted the same with respect to diameter as all the other

5 chrysotiles, true?

6 A. Well, the only difference was the Calidria

7 fiber -- fibers were more loosely bound together.
8 Canadian fibers usually came in bunches.
9 Q. They could break apart easier?
10 A. They were already broken apart.
11 Q. So, the Coalinga fibers were more loosely bound
12 and they could break apart easier or were already broken
13 apart, more so than the bundles of fiber from the Canadian
14 asbestos?
15 MR. BICKS: Objection to form.
16 A. Well, that's pretty much generally so, yes.
17 Q. (By Mr. Chandler) Okay. Generally that's
18 accurate?
19 A. Yeah.
20 Q. All right. Now, you agree that moral issues with
21 respect to the products a company sells are important,
22 don't you?
23 A. That's a factor, yes.
24 Q. And at least a factor of whether a company should
25 sell a product is whether it poisons people?

WORLDWIDE COURT REPORTERS 1-800-745-1101

165

1 A. Well, there is a lot of poisonous products on the
2 market.
3 Q. And selling one poisonous product doesn't make it
4 okay to sell another poisonous product, does it,

5 Mr. Myers?

6 A. Again, I'm sure some companies, especially
7 pharmacies -- pharmaceuticals, sell products that can be
8 poisonous.

9 MR. CHANDLER: Objection, nonresponsive.

10 Q. (By Mr. Chandler) Is it okay for one company to
11 sell a poisonous product just because another company is
12 doing it, Mr. Myers?

13 MR. BICKS: Objection to the form.

14 A. Well, if they are in competition with this
15 company and the product can be used safely, then I would
16 have no problem with that.

17 Q. (By Mr. Chandler) And we're going to get back to
18 that very point because isn't it true that Union Carbide
19 knew that products in which its Carbide fiber were going
20 into were not being used safely? Isn't that a fact?

21 MR. BICKS: Objection to the form.

22 A. We made every effort to make sure that they were
23 used safely, yes.

24 Q. (By Mr. Chandler) And you knew that they were
25 not being used safely?

WORLDWIDE COURT REPORTERS 1-800-745-1101

166

1 A. I don't know that for a fact.

2 Q. Okay. Good. We'll get back to that.

3 Now, under the moral issues Mr. Sayers considers,
4 he writes, "There seems to be little doubt that the
5 toxi-" --

6 A. Wait a minute. Wait a minute. Let me catch up.

7 Q. 6.0 under Discussion, Moral Issues: "There seems
8 little doubt that the toxic effects of our Coalinga
9 product are still largely unknown. There is a general
10 inference that Crocidolite is more liable to produce
11 mesothelioma. Exoneration of Chrysotile has not been
12 made, however. A discussion with Dr. Taylor of the
13 Department of Social Sciences" --

14 A. Social Medicine.

15 Q. -- "Social Medicine" -- thank you -- "Queens
16 College, Dundee, two days ago, revealed that concern over
17 asbestosis is still increasing, and that Chrysotile is
18 definitely implicated with other types of asbestos.

19 "It therefore seems that on the basis of present
20 evidence, we are not entitled under any circumstances to
21 state that our material is not a health hazard. What is
22 more, if it is believed that a potential customer would
23 use our material 'dangerously', and that he is unaware of
24 the toxicity question, then it must surely be our duty to
25 caution him and point out means whereby he can hold the

1 asbestos air float concentration to a minimum."

2 Do you agree with Mr. Sayers' position that it is
3 Union Carbide's duty to caution users of asbestos not to
4 use it dangerously?

5 A. Yes.

6 Q. Did you know at any time you were the sales
7 manager that the customers you were selling asbestos to
8 did not pass along the warnings you gave them?

9 A. I don't recall that, no. I wouldn't know all of
10 the customers, what they did, no, or did not do.

11 Q. Isn't it a fact that you were copied on
12 memorandum from Union Carbide salesmen that informed you
13 the people you sold asbestos to did not pass on the
14 warnings; is that fair?

15 A. I don't recall it. I would have to see it.

16 Q. We will see it. Now, you have seen doctors --
17 you have seen Mr. Sayers' reports countless times in your
18 testimony with Union Carbide, haven't you?

19 A. I don't know about countless, but I have seen it
20 a few times, yes.

21 Q. You have seen it; at least half the times you
22 have given depositions, lawyers have gone over Mr. Sayers'
23 report?

24 A. I would have to look, and I don't know.

25 Q. How many times do you think you have had to go

1 over with lawyers Mr. Sayers', quote, "Asbestos as a
2 Health Hazard in the United Kingdom," unquote, report?
3 How many times do you think you have gone over that with
4 lawyers?

5 A. Oh, between five and ten.

6 Q. All right. In the five or ten times that you've
7 gone over it, every time a lawyer asks you questions about
8 Mr. Sayers' opinions regarding the threshold limit value,
9 don't they?

10 A. Yeah, most of the time, yes.

11 Q. And it's fair to say that in 1967 Mr. Sayers
12 wrote in his report that the threshold limit value with
13 respect to asbestos was, quote, "an arbitrary choice and
14 had no experimental foundation," true?

15 A. That's what he says, yes.

16 Q. Okay. Now, did you know that as early as 1967
17 Mr. Sayers had recommended to the United -- to the Union
18 Carbide Corporation that 5 million particles per cubic
19 foot was not an acceptable level of exposure to asbestos?
20 Did you know that?

21 A. I didn't know he recommended it to Union Carbide;
22 but he wrote it in his report, yes.

23 Q. Union Carbide never used a number of 1 million
24 particles as the TLV for exposure to asbestos until at
25 least after OSHA was passed; is that true?

1 MR. BICKS: Objection to the form.

2 A. Yes.

3 Q. (By Mr. Chandler) The toxicology reports issued
4 even after Mr. Sayers' reports reference 5 million
5 particles per cubic foot, didn't it?

6 A. For a short time, yes.

7 Q. And then it referenced 2 million particles per
8 cubic foot for a short time, didn't it?

9 A. Yes.

10 Q. Never did the toxicology reports put out by
11 Dr. Dernehl, did they ever say 1 million particles, did
12 they?

13 A. For a suggested threshold limit value?

14 Q. Yes, sir.

15 A. No.

16 Q. Mr. Sayers writes in his report about
17 Dr. Dernehl's toxicology report, doesn't he?

18 A. Yes.

19 Q. And he criticizes Dr. Dernehl's toxicology report
20 for its reference to the 5 million particles per cubic
21 foot, doesn't he?

22 MR. BICKS: Objection to the form.

23 A. He says that -- where he -- where Dr. Dernehl
24 says the TLV should be below -- at or below 5 million and

25 Mr. Sayers writes: "... is now no longer held to be true

WORLDWIDE COURT REPORTERS 1-800-745-1101

170

1 by a number of informed people."

2 Q. (By Mr. Chandler) And when Mr. Sayers wrote in
3 his report in 1967 that the threshold limit value of
4 5 million particles per cubic foot was no longer held
5 tenable by a number of informed people, he was talking
6 about the threshold limit value Dr. Dernehl was
7 recommending, wasn't he?

8 A. Yes. Well, remember that Mr. Sayers was a
9 23-year-old salesman in the U.K. He was giving his
10 opinion about the situation in the U.K.

11 Q. And isn't it true that folks for Union Carbide
12 suggested that Mr. Sayers' report was reliable? Isn't
13 that true?

14 A. I don't remember seeing that, no.

15 Q. Union Carbide has never shown you documents that
16 suggested they thought Mr. Sayers' report was reliable?

17 A. I don't remember that, no.

18 Q. If Union Carbide thought that Mr. Sayers' report
19 was reliable, is that something you think they would have
20 told you?

21 A. That's another big "if." Yes.

22 Q. Dr. Dernehl was one of the principal medical

23 doctors with respect to the hazards of asbestos, wasn't
24 he?

25 A. I think he was assistant medical director for

WORLDWIDE COURT REPORTERS 1-800-745-1101

171

1 toxicology. I can't remember.

2 Q. He was the one who put out that toxicology report
3 that Mr. Sayers criticized, didn't he -- isn't he?

4 A. Yes, yes.

5 Q. Did anyone ever tell you that the Union Carbide
6 Corporation -- at the Union Carbide that Dr. Dernehl
7 thought that Mr. Sayers' report was, quote, "reasonably
8 accurate," end quote?

9 A. I don't remember.

10 (Myers Exhibit No. 13 was marked.)

11 Q. (By Mr. Chandler) Look at what I've marked as
12 Myers Exhibit 13, sir, and read for me the very first
13 sentence of Myers Exhibit 13.

14 A. "I have reviewed the report, 'Asbestos as a
15 Health Hazard in the United Kingdom', prepared by
16 I. C. Sayers, and in general I find that it is reasonably
17 accurate."

18 Q. Who signed this document from Union Carbide
19 Corporation, dated June 7, 1967?

20 A. Do you want me to finish reading that -- what it

21 says after that or that's not pertinent?

22 Q. Right now I just -- my question is: Who signed
23 it?

24 A. Oh, Dr. Dernehl.

25 Q. Dr. Dernehl calls Mr. Sayers' report reasonably

WORLDWIDE COURT REPORTERS 1-800-745-1101

172

1 accurate, doesn't he?

2 A. Yes.

3 Q. Dr. Dernehl is the man whose toxicology report
4 Mr. Sayers was criticizing, isn't he?

5 MR. BICKS: Objection to the form.

6 A. Yes. I don't know if it's criticizing. He is
7 point out that he -- I think that it should be looked at
8 again or something like that.

9 Q. (By Mr. Chandler) Okay.

10 A. I can't remember what it said.

11 Q. You had seen this document before, haven't you,
12 Dr. Dernehl's letter that called Mr. Sayers' report
13 reasonably accurate, haven't you?

14 A. Oh, yes.

15 Q. Were you aware that in 1967 Dr. Dernehl was
16 concerned that the short fiber Coalinga products might
17 have a greater hazard than the more conventional forms of
18 asbestos because submicron silica has been known to cause

19 rapidly progressive silicosis after exceedingly brief
20 exposures? Were you concerned that Mister -- Doctor,
21 rather, Dernehl was concerned with Coalinga fiber?

22 A. Here he says: "We have been interested in the
23 possibility."

24 Q. And were you aware that Dr. Dernehl was
25 interested in the possibility that Union Carbide

WORLDWIDE COURT REPORTERS 1-800-745-1101

173

1 Corporation's -- Union Carbide Corporation's asbestos was
2 more hazardous than other forms of asbestos? When you
3 became marketing manager, did they tell you that?

4 A. It says "a possibility might have a greater
5 hazard," is what I'm reading anyway.

6 Q. And were you aware that Dr. Dernehl was concerned
7 that there was a possibility that Coalinga fiber might
8 have a greater hazard than other asbestos?

9 A. I don't remember when I became aware of that.

10 Q. Okay. Now, isn't it true Dr. Dernehl writes to
11 the Union Carbide Europe folks that he himself -- and I'm
12 in the second paragraph of the second page on the bottom
13 of it, where he writes: "The question of -- the question
14 was raised whether the 5 million particles per cubic foot
15 here was still valid, a threshold limit value. I maintain
16 that unit value is still correct in terms of preventing

17 the disease asbestosis. There is no evidence of
18 asbestosis occurring among people who have worked in
19 environments where the concentration was kept within the
20 threshold limit value. It is probable that the 5 million
21 particles per cubic foot will not be acceptable for the
22 prevention of mesothelioma. I have no idea what
23 concentration might be effective in preventing this
24 disease and I would wonder whether even a limit of 1
25 million particles per cubic foot would be effective in

WORLDWIDE COURT REPORTERS 1-800-745-1101

174

1 this regard."

2 It would appear that Dr. Dernehl agrees with that
3 23-year-old salesman with respect to the threshold limit
4 value as it causes mesothelioma, would you agree?

5 A. Well, he is talking about -- I think he is
6 talking about all kinds of asbestos, not Ca- -- not Union
7 Carbide, not Canadian, but Crocidolite which is thought
8 to --

9 Q. Where do you see Dr. Dernehl reference
10 Crocidolite anywhere in his letter, sir?

11 A. He doesn't distinguish between the types of
12 asbestos.

13 Q. That's exactly right. Late as the 1960's,
14 Dr. Dernehl made no distinction in the types of asbestos

15 with respect to their cause of mesothelioma, did he?

16 A. There wasn't enough known at that time, no, but
17 there is -- no.

18 Q. And it's your opinion as a layperson, not a
19 medical doctor, that Dr. Dernehl didn't have enough
20 information at this time?

21 MR. BICKS: Again, you are talking about
22 with this letter, not the tox reports?

23 MR. CHANDLER: Correct.

24 Q. (By Mr. Chandler) Dr. Dernehl is the guy who
25 wrote the tox reports, isn't he?

WORLDWIDE COURT REPORTERS 1-800-745-1101

175

1 A. Yes.

2 Q. Dr. Dernehl in 1967 writes that 1 million
3 particles per cubic foot might not even be safe to protect
4 from mesothelioma, doesn't he?

5 A. Yes.

6 Q. And Dr. Dernehl is the medical director of Union
7 Carbide. You never were, were you?

8 A. No, he was the associate medical director.

9 Q. And you never held any medical capacity with
10 Union Carbide, did you?

11 A. No.

12 Q. Do you suspect that Dr. Dernehl knew more about

13 you than medicine?

14 MR. BICKS: I'm sorry --

15 A. At that time, yes.

16 THE WITNESS: I'm sorry.

17 MR. CHANDLER: Sir?

18 MR. BICKS: You misspoke but --

19 A. Do you want to go ahead and maybe --

20 Q. (By Mr. Chandler) Do you suspect that
21 Dr. Dernehl knew more about medicine than you in 1967 when
22 he wrote this letter?

23 A. Yes.

24 Q. Do you suspect that Dr. Dernehl knew more about
25 medicine than you at any period of time since he was the

WORLDWIDE COURT REPORTERS 1-800-745-1101

176

1 doctor?

2 A. Yes.

3 Q. All right. Now, Mr. Sayers, this 23-year old
4 salesman you talked about, his letter actually made the
5 rounds at Union Carbide. It just wasn't passed to one
6 person, was it?

7 A. I don't know. I wasn't involved.

8 Q. A number of people in the Union Carbide
9 organization were copied on his reports, weren't they?

10 A. I have no idea.

11 Q. Weren't you shown many documents from within the
12 Union Carbide Corporation that proved to you a lot of
13 people within Union Carbide took his report very
14 seriously?

15 A. I don't remember that, no.

16 Q. You do admit now after having seen this letter
17 from Dr. Dernehl, that at least he considered Mr. Sayers'
18 report reasonably accurate, don't you?

19 A. That's what he says, yes.

20 (Myers Exhibit No. 14 was marked.)

21 Q. (By Mr. Chandler) All right. Now, let me show
22 you what we'll mark as Myers Exhibit 14. Myers Exhibit 14
23 is dated just six days after Dr. Dernehl's letter to the
24 Union Carbide Europe folks, isn't it?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

177

1 Q. Well, Myers Exhibit 13 is a letter from somebody
2 else within Union Carbide. Do you know who wrote this?

3 A. No, I don't.

4 Q. And neither do I. But whoever it is, it went to
5 Frank Dexter at Union Carbide Corporation, didn't it?

6 A. That's what it says, yes.

7 Q. Okay. And Union Carbide's memorandum dated
8 June 13, 1967, references Mr. Sayers' report, doesn't it?

9 A. Well -- oh, yes. Yeah, I found that, uh-huh.

10 Q. Who is Frank Dexter?

11 A. He was -- well, obviously he was with the

12 Chemicals and Plastics Division where the asbestos

13 business was from 1967 to 1970 and I think he was kind of

14 the manager of the asbestos business. I don't know if he

15 had any other responsibilities or not.

16 Q. And the writer of this memorandum in 1967 writes

17 to Mr. Dexter of the Union Carbide Chemicals and Plastics

18 Division in the fourth paragraph: "Mr. Sayers of the

19 asbestos group in UCL" -- United Carbide Limited, sir?

20 A. No, I don't think so. I don't know what that

21 means.

22 Q. Okay. "Mr. Sayers of the asbestos group in UCL

23 has written a report summarizing the findings and feelings

24 concerning asbestos in the U.K. I assume that you have

25 also seen a copy of the report. I am enclosing with this

WORLDWIDE COURT REPORTERS 1-800-745-1101

178

1 letter a copy of the comments Dr. Dernehl made in response

2 to this report from England."

3 Now, this letter to Mr. Dexter is dated less than

4 a week after Dr. Dernehl's comments about Mr. Sayers'

5 report, isn't it?

6 A. Yes.

7 Q. Mr. Dexter was also a gentleman, then, who had
8 Mr. Sayers' report forwarded on to him, isn't he?
9 A. Apparently, yes.
10 Q. Does it strike you as odd that -- well, does it
11 strike you that Union Carbide would take Mr. Sayers'
12 opinion fairly seriously?
13 A. Well, I'm sure Dr. Dernehl did and whoever saw it
14 probably did, yeah.
15 Q. And it wasn't something just to be discarded and
16 not considered because it went to Dr. Dernehl and to
17 Mr. Dexter, didn't it?
18 A. Yes.
19 Q. Okay. Here is my point, sir: I think that the
20 jury is going to hear from Union Carbide at this trial
21 that Mr. Sayers didn't know what he was talking about and
22 that he was a scientist who nobody's opinion within Union
23 Carbide took seriously.
24 A. He was not a scientist.
25 Q. This salesman in Europe wrote a report about the

WORLDWIDE COURT REPORTERS 1-800-745-1101

179

1 hazards of asbestos within Union Carbide, didn't he?
2 A. No.
3 MR. BICKS: We would object to your
4 description of what may or may not happen at a trial.

5 Q. (By Mr. Chandler) Go ahead, sir.

6 A. He was -- he was from the U.K. -- or he worked in
7 the U.K.

8 Q. For Union Carbide?

9 A. U.K. Limited, I think it's called.

10 Q. For Union Carbide?

11 A. Well, U.K. Limited is all I've seen on the -- his
12 report.

13 Q. You understand that Union Carbide did have a
14 subsidiary in -- well, look at the top of Mr. Sayers'
15 report. Doesn't it say "Union Carbide U.K. Limited," sir?

16 A. Yes, it does.

17 Q. All right. You don't deny that Mr. Sayers was an
18 employee of a subsidiary of Union Carbide, do you?

19 A. No, not at all.

20 Q. All right. And when this employee of a
21 subsidiary of Union Carbide in Europe wrote a report, we
22 know that that report was at least passed to the associate
23 medical director, don't we?

24 A. Yes.

25 Q. We know that it was passed to Mr. Dexter at Union

WORLDWIDE COURT REPORTERS 1-800-745-1101

180

1 Carbide Corporation in New York City on Park Avenue, don't
2 we?

3 A. Yes.

4 Q. We also know that Thomas Hall saw a report of --
5 written by Mr. Sayers, didn't he? And to demonstrate
6 that, I will show you what we've marked as Myers
7 Exhibit 15.

8 (Myers Exhibit No. 15 was marked.)

9 A. Yes.

10 Q. (By Mr. Chandler) Myers Exhibit 15 is another
11 letter to Mr. Dexter on Park Avenue in New York City,
12 isn't it?

13 A. Yes.

14 Q. And this time it's from Thomas Hall, right?

15 A. Yes.

16 Q. Thomas Hall was involved in some aspect in sales
17 at some point for Union Carbide, wasn't he?

18 A. I think so, yes.

19 MR. BICKS: Mr. Chandler, just -- and I'm
20 not doing this in a speaking way but just so you're --
21 we're not confusing -- in this letter that you have showed
22 him, okay -- and you were asking doesn't this show that
23 the Sayers report was given to Dexter and I don't think
24 anybody disputes Dexter had it but this document doesn't
25 refer to the report being given to Dexter. He says he

1 assumes he has it. And it doesn't make any difference,
2 but just so we're being clear. I think everybody will
3 agree Dexter had it but you are building error into the
4 record by mis- --

5 MR. CHANDLER: Okay. You don't disagree
6 Mr. Dexter had the report?

7 MR. BICKS: I don't think so. It says it
8 right on this document.

9 MR. CHANDLER: All right. Very good.

10 Q. (By Mr. Chandler) Mr. Hall sent to Mr. Frank
11 Dexter on September 13 of 1967 "a copy of the report made
12 by Ian Sayers, our asbestos representative in the U.K.,
13 concerning a recent meeting he attended at the Asbestos
14 Fibers Importers Committee," didn't he?

15 A. That's what it says, yes.

16 Q. All right. Now, Doctor -- or Mr. Hall was
17 actually a doctor of some type, not a medical director but
18 a Ph.D., wasn't he?

19 A. I've heard him referred to as "Doctor," yes.

20 Q. Okay. So, this is the second doctor, at least,
21 that has looked at Mr. Sayers' report within the Union
22 Carbide Corporation that we know of?

23 A. Not a medical doctor.

24 Q. Correct. But a scientist?

25 A. I don't know that.

1 Q. All right. But a Ph.D.?

2 A. I don't know that. In Europe they use the
3 "Doctor" term very loosely, I think.

4 Q. Oh.

5 A. I'm not --

6 Q. I hear they even call lawyers "doctors" in Europe
7 sometimes.

8 A. I'm not arguing it one way or the other. I
9 just -- that's --

10 Q. Mr. Hall was an educated man, wasn't he?

11 A. That, I don't know either.

12 Q. Okay. Fine. But Mr. Hall who was involved in
13 sales -- we can agree that at some point, can't we?

14 A. Yes.

15 Q. And we can agree that within Union Carbide
16 Corporation, he was referred to as "Dr. Hall"?

17 A. Yes.

18 Q. And Dr. Hall says, quote: "I believe it is
19 evident from the report that all asbestos producers are
20 facing a very serious problem in the U.K. in getting their
21 material handled on the docks. It appears that the
22 situation is not going to get any better as the popular
23 publications continue their series of expose's about the
24 dangers about asbestos," end quote.

25 Now, Dr. Hall was courteous enough to send

1 Mr. Sayers a copy of this letter, wasn't he?

2 A. Yes.

3 Q. And who is Mr. Frangos or -- how do you pronounce
4 that?

5 A. "Frain-gose."

6 Q. Who is he?

7 A. He was involved with export sales. I think he
8 was in the New York office.

9 Q. And who is Mr. Setter? Well, isn't he -- isn't
10 Mr. Setter, who is copied on this letter, the first
11 marketing manager of Calidria fiber?

12 A. He was the marketing manager when the business
13 was in Chemicals and Plastics, yes.

14 Q. And Mr. Setter, a marketing manager for Calidria;
15 Mr. Sayers; Mr. Frangos; Mr. Dexter; Mr. Dernehl; and
16 Mr. Hall, are all people within the Union Carbide
17 Corporation who we know considered, at least, Mr. Sayers'
18 report, aren't they?

19 A. They saw it, yes. I mean --

20 MR. BICKS: Again, to -- I mean, I -- the
21 report that he is talking about here appears to be
22 something different, right?

23 MR. CHANDLER: We can argue that at trial.

24 MR. BICKS: Well, that's what it says in the
25 introduction.

1 Q. (By Mr. Chandler) Do you know of any other
2 report Mr. Sayers wrote concerning the hazards of
3 asbestos, sir?

4 A. Not that I remember, no.

5 Q. Has Union Carbide ever showed you any other
6 report that Mr. Sayers wrote other than his report
7 entitled "Asbestos as a Health Hazard in the U.K."?

8 A. I just said, "Not that I remember."

9 Q. All right.

10 A. But I can read this, too --

11 MR. BICKS: I know you are not trying to be
12 deceptive or to trick anybody but you are reading this --
13 the beginning of this where it talks about a report
14 concerning a recent meeting he attended of the Asbestos
15 Fiber Importers Committee. And we know and everyone
16 with -- anyone who is conducting this in good faith knows
17 that that's a very different document.

18 MR. CHANDLER: We can argue that all week at
19 trial.

20 MR. BICKS: All right.

21 MR. CHANDLER: But we have a difference of
22 opinion about whether this references Mr. Sayers' report
23 or not.

24 MR. BICKS: Okay, okay.

25 Q. (By Mr. Chandler) Now, sir, have you seen in any

WORLDWIDE COURT REPORTERS 1-800-745-1101

185

1 of the -- any of the documents that Union Carbide has
2 shown you, at the time Mr. Sayers' report was written,
3 somebody from Union Carbide criticizing his opinion?

4 A. I haven't seen that, no, that I recall -- I
5 haven't seen anything like that that I recall, no.

6 Q. All right. Let's look at another document that
7 references Mr. Sayers' report within the Union Carbide
8 Corporation and I'll label for you a document -- Union
9 Carbide Belgium labeled -- dated November 30, 1967.

10 (Myers Exhibit No. 16 was marked.)

11 Q. (By Mr. Chandler) Now, another letter going to
12 Mr. Dexter in the New York office of Union Carbide, true?

13 A. Yes.

14 Q. Myers Exhibit No. 16 is written, again, by
15 Dr. Hall, isn't it?

16 A. Yes.

17 Q. And he writes: "Dear Frank: As you know we have
18 been trying to keep close to the asbestos toxicology work
19 in the U.K. Fred Mumpton at -- Mumpton at Niagara Falls
20 arranged for some work to be carried out on a sample and
21 gave a report on this. Ian Sayers took the report to the

22 laboratory group in the U.K. which is coordinating this
23 group. I am enclosing a copy of his hand written report
24 for your information. When they come back to us for
25 additional analytical work we will pass it on to you.

WORLDWIDE COURT REPORTERS 1-800-745-1101

186

1 There continues to be a great amount of concern about this
2 subject and we are going to have to learn to live with the
3 problem in the U.K. So far there has been no indication
4 of it being passed on to the continent." (sic)

5 Now, here is my question: Did I read it
6 correctly?

7 A. Yes.

8 Q. Are you aware that people in the United Kingdom
9 are any more protected from asbestos -- that's a bad
10 question.

11 Are people in America more susceptible to
12 asbestos disease or less susceptible than people in the
13 United Kingdom?

14 A. I wouldn't think so.

15 Q. Asbestos is asbestos. It doesn't matter if
16 you're English or American, does it, if you breathe it?

17 A. Right.

18 Q. When Mr. Hall writes: "So far there has been no
19 indication of it being passed on to the continent," what

20 continent is he talking about?

21 MR. BICKS: Objection to the form.

22 A. I don't know. He is writing from Belgium. I
23 think it would make sense that he is talking about Europe,
24 but I don't know that. I don't know that. It is just
25 what --

WORLDWIDE COURT REPORTERS 1-800-745-1101

187

1 Q. (By Mr. Chandler) Well, it would make sense that
2 they know about the problems in the U.K. but that the
3 problems aren't spreading throughout Europe, are they, the
4 knowledge of the problem?

5 MR. BICKS: Objection to the form.

6 A. I don't know whether they were spread around over
7 Europe.

8 Q. (By Mr. Chandler) Okay. Does Mr. Hall criticize
9 Mr. Sayers anywhere in this report to Mr. Dexter?

10 A. I don't see anything about criticism, no.

11 Q. All right. Mr. Myers, if Union Carbide
12 Corporation shows up to the trial of the Kenneth Dixon
13 family and criticizes Mr. Sayers as somebody who didn't
14 know what he was talking about, that is certainly not a
15 criticism you have seen substantiated in any of the
16 documents Union Carbide has shown you. Is that a fair
17 statement?

18 MR. BICKS: Objection to the form.

19 A. I haven't heard -- I don't know what you are
20 talking about "criticism." No, I haven't seen any
21 criticism, no.

22 Q. Okay.

23 MR. BICKS: Mr. Chandler, I suggest -- we've
24 been going for a little over an hour -- we just take a
25 short break.

WORLDWIDE COURT REPORTERS 1-800-745-1101

188

1 MR. CHANDLER: You got it. I might need
2 that.

3 MR. BICKS: Seems like you're changing
4 topics.

5 MR. CHANDLER: You're absolutely right. We
6 can take a break because it's a perfect time; I have to go
7 to the bathroom.

8 THE VIDEOGRAPHER: This marks the conclusion
9 of Videotape No. 2 in the deposition of John Myers on
10 May 22, 2002. Going off the record. The time is 1:37.

11 (Short break.)

12 THE VIDEOGRAPHER: We're now going on the
13 record. The time is 1:53. This marks the beginning of
14 Tape No. 3 in the deposition of John Myers on May 22,
15 2002.

16 MR. CHANDLER: Are we on the record?

17 THE VIDEOGRAPHER: We are on the record.

18 Q. (By Mr. Chandler) Mr. Myers, at no time did you
19 ever disclose the contents of the Sayers report to any of
20 the customers to whom you sold asbestos; isn't that true?

21 A. Well, probably might have had a reflection on
22 what we did pass, but we didn't copy the report.

23 Q. At no time did you ever tell any of your
24 customers that anyone within the Union Carbide
25 organization thought that the 5 million particles per

WORLDWIDE COURT REPORTERS 1-800-745-1101

189

1 cubic foot was, quote, "no longer tenable," unquote, did
2 you?

3 A. I forget how Dr. Dernehl's report was written,
4 but I think he still had a question of whether 5 million
5 was safe for all types of disease.

6 MR. CHANDLER: Objection, nonresponsive.

7 Q. (By Mr. Chandler) My question is this,
8 Mr. Myers: At no time did you ever tell any customer to
9 who you sold asbestos that anyone within Union Carbide
10 ever thought 5 million particles per cubic foot was ever
11 no longer tenable, did you?

12 A. I don't recall that, no.

13 Q. At no time did you ever tell any customer to whom

14 you sold asbestos that you thought 1 million particles per
15 cubic foot wasn't even safe, did you?

16 A. I don't recall, but we sent customers the reports
17 and OSHA standards and --

18 Q. In fact, isn't it true, sir, that even after
19 Mr. Sayers wrote his report, that the Union Carbide
20 Corporation continued informing customers that 5 million
21 particles per cubic foot was the threshold limit value
22 they could use?

23 A. 5 million or less, yes, was the way it was
24 phrased, I think.

25 Q. Isn't it true, that even after Mr. Sayers was

WORLDWIDE COURT REPORTERS 1-800-745-1101

190

1 concerned -- pardon me. Isn't it true that even after
2 Dr. Dernehl was concerned that even 1 million particles
3 per cubic foot wasn't safe with respect to cancer, that
4 Union Carbide told people it was amounts in excess of
5 5 million particles that you were to be concerned about;
6 isn't that true?

7 MR. BICKS: Objection to the form.

8 A. And Dr. Dernehl said that, you know, enough data
9 wasn't available to make a change in the -- in the
10 recommendations.

11 (Myers Exhibit No. 17 was marked.)

12 Q. (By Mr. Chandler) Let me show you what I have
13 marked as Myers Exhibit No. 17. What is Myers Exhibit
14 No. 17? We'll have to share because I only have one.

15 A. Okay. It's a -- it's a sales brochure about
16 using Calidria asbestos in tape joint compounds.

17 Q. The sales brochure about using Calidria asbestos
18 in drywall compounds is dated after Mr. Sayers' report,
19 isn't it?

20 A. It doesn't say "drywall." It says "tape joint
21 compounds."

22 Q. Tape joint compounds is drywall mud, isn't it?

23 A. I'm just telling you -- you asked me to read it.

24 Q. Here is my question: Mr. Myers, the sales
25 brochure on Calidria asbestos marked as Myers Exhibit

WORLDWIDE COURT REPORTERS 1-800-745-1101

191

1 No. 17 references Calidria for use in drywall muds,
2 doesn't it?

3 A. Well, yeah, if you can -- tape joint compounds is
4 what it says here. I don't know whether it mentions
5 drywall muds in the text or not.

6 Q. I want to make sure we're talking about the same
7 thing. You understand that Myers Exhibit No. 17 is for
8 use in plaster that goes on walls to seal two pieces of
9 drywall together, don't you?

10 A. Yes.

11 Q. And do you understand that in the industry,
12 that's commonly referred as "drywall mud," do you know
13 that?

14 A. No, I didn't. I thought --

15 Q. All right.

16 A. -- "tape joint compounds" was the standard.

17 Q. Then we'll use "tape joint compounds" for our
18 purposes. Tape joint compounds is the kind of use
19 Calidria went into for Georgia-Pacific products, isn't it?

20 A. Yes.

21 Q. And for United States Gypsum products as well?

22 A. Yes.

23 Q. All right. Now, the sales brochure for Calidria
24 asbestos is dated, in the bottom right corner, October,
25 1968, isn't it?

WORLDWIDE COURT REPORTERS 1-800-745-1101

192

1 A. Yes.

2 Q. That is after Mr. Sayers wrote his report
3 criticizing the threshold limit values as no longer
4 tenable, isn't it?

5 A. I don't know whether he referred to it as no
6 longer tenable; but, yes, that's after his report.

7 Q. Do we need to see the report again to determine

8 whether Mr. Sayers criticizes, quote, "no longer tenable,"
9 un -- end quote?

10 A. Yes --

11 MR. BICKS: Objection, form. That's not
12 what it says.

13 Q. (By Mr. Chandler) We'll let it speak for itself,
14 then.

15 A. All right.

16 Q. You understand that Dr. Dernehl in response to
17 Mr. Sayers' report admitted that 5 million particles per
18 cubic foot was not safe with respect -- might not be safe
19 with respect to cancer, don't you?

20 A. Might not be safe.

21 Q. Okay. And if Union Carbide was telling people
22 that it was a limit of exposure to asbestos that exceeds
23 5 million particles per cubic foot that you have to worry
24 about, isn't that rather misleading?

25 MR. BICKS: Objection to the form.

WORLDWIDE COURT REPORTERS 1-800-745-1101

193

1 A. They were telling customer -- or we were -- they
2 were telling customers that 5 million particles was the
3 current accepted threshold limit value for asbestos.

4 Q. (By Mr. Chandler) Here is my question,
5 Mr. Myers: If Union Carbide's own associate medical

6 director was concerned that even 1 million particles per
7 cubic foot might not be safe with respect to mesothelioma,
8 isn't it rather misleading to tell -- to tell customers
9 that a number in excess of 5 million particles per cubic
10 foot was the number to be worried about with respect to
11 cancer? Do you agree with that or not?

12 A. No, I don't.

13 Q. Okay. Let's go to the sales brochure on page 4.
14 Page 4 of Calidria's asbestos sales brochure on the second
15 paragraph states: "Several years ago, it was reported
16 that there was an increase in the incidence of cancerous
17 tumors, especially of the lung, associated with
18 asbestosis. Recently there have been reports of some
19 cancers occurring in individuals exposed to asbestos dust,
20 who have not developed clinical asbestosis. It is
21 believed by most authorities that these cases have been
22 associated with exposures significantly exceeding the
23 Threshold Limit Value."

24 Did I read that correctly?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

194

1 Q. Okay. Now, when this sales brochure states that
2 it is believed by most authorities that these cases have
3 been associated with exposure significantly exceeding the

4 threshold limit value, isn't that at odds with
5 Dr. Dernehl's letter where he states that he wonders
6 whether even 1 million particles per cubic foot is safe
7 with respect to mesothelioma?

8 MR. BICKS: Objection to the form.

9 Q. (By Mr. Chandler) Isn't that at odds with
10 Dr. Dernehl's opinion in that letter?

11 A. I don't think so.

12 Q. Okay. Well, we'll let 12 people decide whether
13 it is. Here's my question: Nowhere in the sales brochure
14 does it tell the customer that Union Carbide is concerned
15 that 1 million particles per cubic foot might not be safe
16 with respect to mesothelioma, does it?

17 A. Well, he's saying customers would have been given
18 Dr. Dernehl's report.

19 Q. Toxicology report?

20 A. Yes.

21 Q. Isn't that essentially what the sales brochure
22 is? Isn't this the toxicology report by Dr. Dernehl just
23 attached to a sales brochure?

24 A. Well, I'm not sure whether it is word for word.

25 Q. On the sales brochure, nowhere does it say to the

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 customer, "Our own associate medical director doesn't

2 believe 5 million particles per cubic foot is safe with
3 respect to cancer," does it?

4 A. No, it doesn't say that.

5 Q. In fact, it tells him the opposite, that cancer
6 is only expected in exposures far exceeding the threshold
7 limit value, does it?

8 A. Yes.

9 Q. Nowhere does it reference anywhere the number
10 Dr. Dernehl came up with, 1 million particles per cubic
11 foot, does it?

12 A. He didn't come up with it. He said that was a
13 possibility. That may not even be safe.

14 Q. Nowhere does it mention that Dr. Dernehl thought
15 that 1 million particles per cubic foot might not be safe,
16 does it?

17 A. No.

18 Q. 1 million particles per cubic foot is just a
19 fraction of the threshold limit value you were
20 recommending to your customers at the time, true?

21 MR. BICKS: Objection to the form.

22 A. One fifth.

23 Q. (By Mr. Chandler) 20 percent, isn't it?

24 A. Yes.

25 Q. But what the sales brochure of Union Carbide is

1 telling customers one year after Dr. Dernehl writes his
2 letter is that, quote: "It is believed by most
3 authorities that these cases," meaning cancer cases, "have
4 been associated with exposures significantly exceeding the
5 threshold limit value."

6 The threshold limit value at the time that Union
7 Carbide was recommending was 5 million particles per cubic
8 foot, wasn't it?

9 A. That's what was being used by the A.C.G.I.H.,
10 yes.

11 MR. CHANDLER: Objection, nonresponsive.

12 Q. (By Mr. Chandler) The threshold limit value
13 Carbide was telling its customers about was 5 million
14 particles per cubic foot, wasn't it?

15 A. Yes.

16 Q. If I'm a customer and I'm reading your sales
17 brochure, don't I get the impression that all I have to
18 worry about with respect to cancer is exposures, quote,
19 "significantly exceeding," end quote, 5 million particles
20 per cubic foot?

21 A. That's what we were telling them, yes.

22 Q. You were not telling them anything about
23 Dr. Dernehl's opinion that even 1 million particles per
24 cubic foot might not be safe, were you?

25 A. That hadn't been established, no. We didn't put

1 possibilities in here. We were trying to be as open with
2 the customer as we could.

3 MR. CHANDLER: Objection, nonresponsive.

4 Q. (By Mr. Chandler) Nowhere in your sales brochure
5 to your customers do you tell them anything about
6 Dr. Sayers' report, do you -- pardon me, Mr. Sayers'
7 report?

8 A. Not in this report.

9 Q. Nowhere in the sales brochure to customers who
10 bought Calidria asbestos do you tell them Union Carbide's
11 own associate medical director doesn't believe 5 million
12 particles per cubic safe -- per cubic foot is safe with
13 respect to cancer, do you?

14 MR. BICKS: Again, just so we're clear,
15 we're talking about this document you've put in front of
16 him that says "outdated" and not the toxicology reports
17 that he's been referring to in his answers?

18 Q. (By Mr. Chandler) We will -- we will compare it
19 to the toxicology reporters in a moment, sir.

20 A. Okay.

21 Q. Nowhere in your sales brochure do you tell
22 customers anything about 1 million particles per cubic
23 foot with respect to cancer, do you?

24 A. No.

25 Q. All right. If you're telling -- you agree that

1 the customers to whom you sold asbestos -- you agree, sir,
2 that you should have been honest to the customers to whom
3 you sold asbestos about your knowledge with respect to
4 hazards of asbestos, true?

5 A. I believe we were honest with what we knew and
6 what had been confirmed, yes.

7 Q. And you agree that companies like the
8 Georgia-Pacific Company might rely on representations made
9 by Union Carbide with respect to what they thought safe
10 levels were, don't you?

11 MR. BICKS: Objection to the form of the
12 question.

13 A. Well, they had -- I think they had been using
14 asbestos for quite some time before we became involved and
15 they probably had -- I assume they would have information
16 from their supply -- other asbestos suppliers and their
17 own internal materials.

18 Q. (By Mr. Chandler) That would be a responsibility
19 of a company like Georgia-Pacific, wouldn't it, to
20 investigate the hazards of asbestos?

21 A. I don't know. I think the -- you know, suppliers
22 of a product are -- have a responsibility and presumably
23 the customers would pick up on that, what's being told.

24 Q. So, what you are here to tell the ladies and
25 gentlemen of the jury is that suppliers of the hazardous

WORLDWIDE COURT REPORTERS 1-800-745-1101

199

1 product have the responsibility to inform the buyers of
2 the hazards, true?

3 A. Yes.

4 Q. Manufacturers of a product that have hazardous
5 materials have a responsibility to warn the users, don't
6 they?

7 A. Yes.

8 Q. Do you agree that Union Carbide -- strike that.
9 Do you agree that Union Carbide's customers had a
10 right to rely upon your representations about the hazards
11 of your fibers?

12 A. No, not necessarily, not if they had been a
13 long-time asbestos user and they may have known more about
14 asbestos than we did.

15 Q. Well, didn't you tell the customers to whom you
16 were selling your asbestos that it was different than
17 every other asbestos type?

18 A. We told them it was a short fiber, yes.

19 Q. And you told them it was superior to other
20 asbestos products, didn't you?

21 A. We let them decide that for themselves after

22 testing.

23 Q. Didn't you produce sales material that touted
24 Calidria fiber that's superior to any other asbestos
25 fiber?

WORLDWIDE COURT REPORTERS 1-800-745-1101

200

1 A. I think we showed them the data and they would
2 have to figure that out for themselves based on the cost
3 of it and -- and the performance.

4 Q. Didn't you produce sales material that let your
5 customers know that Union Carbide was superior to any
6 other asbestos fibers, sir?

7 A. I don't remember how it was worded. Maybe you
8 can show me something else.

9 Q. Maybe I can. Let's see if I can find it. I know
10 we're going to get to it at some point.

11 Didn't you produce sales brochures that touted
12 Calidria fiber as superior to any other asbestos, sir?

13 A. We probably did.

14 Q. Okay.

15 A. We left that up to the customer to decide if it
16 was superior, though.

17 Q. And didn't you tout Calidria fiber as not as
18 hazardous as other types of asbestos?

19 A. No.

20 Q. You never told customers there was another type
21 of asbestos fiber that was more hazardous than Calidria?

22 A. At some point in time we may have discussed the
23 latest evidence on crocidolite.

24 Q. And isn't it true that your customers had a right
25 to rely upon the representations you gave them about the

WORLDWIDE COURT REPORTERS 1-800-745-1101

201

1 hazards of your fiber with respect to other types of
2 asbestos?

3 MR. BICKS: Objection to the form.

4 A. It was up to them if they wanted to believe us or
5 not, if that was the question.

6 Q. (By Mr. Chandler) You don't believe your
7 customers should be lied to, though, do you?

8 A. No.

9 Q. Well, didn't you tout one of the -- ahh, we'll
10 get to that later. Here is my point, Mr. Myers: When you
11 developed your Calidria fiber out of California, you told
12 people to whom you sold it to it was different than any
13 other asbestos type that had ever been marketed, true?

14 A. No, we told them it was chrysotile, the same type
15 of asbestos as Canadian or any other chrysotile.

16 Q. Well, didn't you tell them it was unique and
17 different than other types of fiber being made?

18 A. Well, the process for making it was unique. The
19 process -- the fact we had pellets was unique.

20 MR. CHANDLER: Okay. Let's mark Myers
21 Exhibit 18, Myers Exhibit 19.

22 (Myers Exhibit Nos. 18 and 19 were marked.)

23 Q. (By Mr. Chandler) Myers Exhibit 18 is part of a
24 sales brochure of Calidria fiber, isn't it, as is Myers
25 Exhibit 19?

WORLDWIDE COURT REPORTERS 1-800-745-1101

202

1 A. It appears to be, yes, only one sheet.

2 Q. What does the sheet Myers Exhibit 18 say with
3 respect to Calidria fiber?

4 A. "A unique and versatile fiber with proven
5 applications."

6 Q. And they tout Union Carbide as "an unlimited
7 source of new ideas for utilizing asbestos," don't you?

8 A. Yes.

9 Q. Now, Myers Exhibit 19 calls Calidria asbestos
10 "superior to any other" -- oops, sorry. You got it right
11 there.

12 A. Yeah, I don't have it.

13 Q. "Superior to any other asbestos," doesn't it?

14 A. I don't have a sticker on it. Yeah, it says it.

15 Q. I'm sorry. Here it is. I'll try again.

16 Now, isn't it true you marketed Calidria fiber as
17 both superior to any other asbestos and unique among
18 fibers?

19 A. Yes.

20 Q. All right. Now, isn't it true that customers of
21 yours criticized your toxicology report because it raised
22 more questions than it even answered?

23 A. Well, I'm sure there was some criticisms, yeah.
24 I didn't think that was a general interpretation.

25 Q. And isn't one of the criticisms of the Union

WORLDWIDE COURT REPORTERS 1-800-745-1101

203

1 Carbide toxicology report that it didn't even mention its
2 own fiber type with respect to cancer? Isn't that true?

3 A. I think I remember seeing one report like that,
4 yes.

5 Q. One of your own customers had told your
6 salespeople, quote, your toxicology report is atrocious
7 because it posed more questions than it answered. Isn't
8 that true?

9 A. I think I have read that, yes.

10 (Myers Exhibit No. 20 was marked.)

11 Q. (By Mr. Chandler) Let me show you what we will
12 mark as Myers Exhibit 20. Myers Exhibit 20 is a Customer
13 Call Report, isn't it?

14 A. Yes, it is.

15 Q. That Customer Call Report references the
16 dissatisfaction by one of Union Carbide's customers with
17 respect to its toxicology report, doesn't it?

18 A. Well, like you said: "He said that our Asbestos
19 Toxicology Report he found atrocious and rather than
20 answering questions actually posed them."

21 Q. Do you agree that Union Carbide's asbestos
22 toxicology report was, quote, "atrocious"?

23 A. No.

24 Q. You got this Customer Call Report, didn't you,
25 sir, at the time it was written?

WORLDWIDE COURT REPORTERS 1-800-745-1101

204

1 A. I don't remember receiving it but, yes, I was --
2 gotten a copy of it.

3 Q. With your name on it, J. L. Myers?

4 A. Yes.

5 Q. What did you do, after receiving the Customer
6 Call Report from the Glidden-Durkee Company calling your
7 toxicology report "atrocious," to change the toxicology
8 report and make it better?

9 A. I didn't have anything to do with the toxicology
10 report.

11 Q. Weren't you the marketing manager in 1971, sir?

12 A. Yes.

13 Q. Wasn't the toxicology report part of the
14 Marketing Department's responsibility to give to
15 customers?

16 A. It was part of what we sent to them, yes.

17 Q. What did you do to tell Union Carbide your
18 customers were displeased with the Customer Call Report or
19 with the toxicology report?

20 A. You are using plural. I have only seen one. And
21 I don't know what happened after that.

22 Q. Did you do anything to tell Union Carbide that
23 their toxicology report should be more clear with respect
24 to the hazards of chrysotile versus crocidolite?

25 A. I don't recall that. That's one -- one man's

WORLDWIDE COURT REPORTERS 1-800-745-1101

205

1 opinion.

2 Q. And since Union Carbide is the one who knows
3 better than anybody else about their documents, have you
4 seen any other documents criticizing the toxicology
5 report?

6 A. Not that I recall.

7 Q. Okay. We'll get to that.

8 Now, let me read exactly what this customer of
9 Glidden-Durkee is telling you, sir. Quote: "He said that

10 our Asbestos Toxicology report he found atrocious and
11 rather than answering questions actually posed them. He
12 felt that should such a report fall into the hands of
13 their production people, it would cause considerable
14 concern to say the least. Exemplifying his point he noted
15 that we make reference only to crocidolite and yet neglect
16 to identify our own asbestos which is chrysotile. This
17 obviously on the basis of the report would be to our
18 favor. He also felt that we should be more specific in
19 our recommendations for safe practice."

20 Did you ever get more specific in your
21 recommendations for safe practice, sir?

22 A. Yeah, we had very many documents on how -- how to
23 use asbestos safely.

24 Q. And never did your toxicology reports change to
25 reflect this customer's concern about identifying

WORLDWIDE COURT REPORTERS 1-800-745-1101

206

1 chrysotile's hazards more specifically versus crocidolite,
2 did it?

3 A. I'm surprised that it doesn't say "chrysotile."
4 I would have to look at his report but I would -- Union
5 Carbide's asbestos had to be chrysotile.

6 Q. Of course. Now, the 5 million particles per
7 cubic foot that Union Carbide continued to tell its

8 customers was a safe limit even after Dr. Dernehl's letter
9 and Mr. Sayers' report, can you see that 5 million
10 particles per cubic foot in the air?

11 A. No.

12 Q. In fact, it would take a -- an exposure to
13 asbestos of at least 8 to 10 million particles per cubic
14 foot before you could even see it; isn't that fair?

15 A. That's -- yeah, that's why we did dust
16 monitoring.

17 Q. Now, you at some point issued -- rather, Union
18 Carbide issued a document entitled "The Safe Use of
19 Calidria," didn't you? And when I say "you," I mean Union
20 Carbide.

21 A. I think so, yes. If you want to show me it, I'll
22 confirm that.

23 Q. And one of the things that "The Safe Use of
24 Calidria" to your customers informed your customers about
25 was that nowhere in science was there, according to Union

WORLDWIDE COURT REPORTERS 1-800-745-1101

207

1 Carbide, an increase in mesotheliomas where exposure was
2 limited to chrysotile, true?

3 A. I don't remember if that's what it said.

4 Q. Okay. Let me show you a --

5 A. I believe that now but --

6 Q. Let me show you a communication we'll mark as
7 Myers Exhibit 21 that went to the Dow Chemical Company.
8 MR. CHANDLER: Here it is. Let's do this
9 instead.
10 (Myers Exhibit No. 21 was marked.)
11 Q. (By Mr. Chandler) Do you recognize that -- or
12 Myers Exhibit 21, sir? There is two there.
13 A. Yes.
14 Q. Now, Myers Exhibit 21 is what Union Carbide put
15 out entitled "The Safe Use of Calidria," isn't it?
16 A. It's what the Calidria asbestos group put out,
17 yes, on Calidria RG-244.
18 Q. Would Myers Exhibit 21 have gone to the
19 Georgia-Pacific Company?
20 A. No, I don't think they were using RG-244.
21 Q. Is there a similar document for "The Safe Use of
22 Calidria" that did go to companies like Georgia-Pacific
23 who manufactured joint compounds?
24 A. You know, I don't recall. I'm sure we had
25 something similar to this but --

WORLDWIDE COURT REPORTERS 1-800-745-1101

208

1 Q. Again --
2 A. -- you know, like we used to just call "The Safe
3 Use of Asbestos." I don't remember. We -- we had -- we

4 distributed documents from A.I.A. about handling asbestos
5 safely and using it safely.

6 Q. To companies like Georgia-Pacific?

7 A. Yes.

8 Q. And in -- what -- who were the customers of 244,
9 Resin Grade 244?

10 A. You want me to name some?

11 Q. Well, I assume it went into a resin.

12 A. Resins, yes.

13 Q. Companies like Dow or Celanese?

14 A. Yes.

15 Q. All right.

16 A. I don't remember that Dow was a customer but --

17 Q. Now, if you will go for me to your document
18 entitled "The Safe Use of Calidria RG-244" dated February,
19 1973, under Asbestos Toxicology, and the second paragraph
20 where it says: "It is accepted that asbestos, like many
21 other foreign bodies, can cause disabling lung damage
22 which for asbestos is commonly referred to as asbestosis.
23 It is important to note, however, that asbestosis and
24 statistical excess occurrences of bronchogenic carcinoma
25 (or lung cancer), the two most common asbestos-related

WORLDWIDE COURT REPORTERS 1-800-745-1101

209

1 disease, have occurred only in workers with long-term

2 exposure to massive concentrations of asbestos dust," end
3 quote.

4 Q. That massive long-term exposures to asbestos is
5 not what Dr. Dernehl said as early as 1967 with respect to
6 lung cancer, is it?

7 A. No, this is several years later when more
8 information was available.

9 Q. And several years earlier Dr. Dernehl was
10 commenting about how even a level 20 percent of the TLV
11 might not be a safe level with respect to cancer, wasn't
12 he?

13 MR. BICKS: Objection to the form.

14 A. I think he referred to scanty evidence at some
15 point.

16 Q. (By Mr. Chandler) Where in Dr. Dernehl's letter
17 does it say "scanty evidence"?

18 A. I would have to review the reports.

19 Q. Now, at the bottom where it says: "Where
20 asbestos exposure has been limited to chrysotile asbestos,
21 there is strong evidence that no excess mesotheliomas will
22 occur," that disagrees with Mr. Sayers' report written in
23 1967 where he says there are people in Europe who got
24 mesothelioma who were only exposed to chrysotile, doesn't
25 it?

1 MR. BICKS: Objection to form.

2 A. I don't remember it saying that, no.

3 Q. (By Mr. Chandler) Okay. We'll find it.

4 If you will look at Mr. Sayers' report where he
5 writes: "It would appear that Crocidolite is mainly
6 implicated in the development of mesothelioma. However,
7 cases have occurred in the United States (16 in number
8 between 1963 and '65) Canada (6 in number, 1952 to 1954)
9 and a few in Britain, in which people concerned appear to
10 have only been exposed to Chrysotile."

11 Now, did I read that correctly?

12 A. Yes.

13 Q. In your brochure at Union Carbide entitled "Safe
14 Use," what you tell customers is that there is no excess
15 incidence of meso in chrysotile-only exposed populations,
16 isn't it?

17 MR. BICKS: Objection to the form.

18 A. Yes.

19 Q. (By Mr. Chandler) That disagrees with
20 Mr. Sayers' report, doesn't it?

21 A. Not necessarily, because there are --

22 Q. There are inconsistencies, aren't there?

23 A. There are contaminants in Canadian chrysotile
24 that can cause the mesothelioma.

25 Q. So, if Georgia-Pacific was buying asbestos from

1 Canada, that asbestos could have been a cause, in Union
2 Carbide's opinion, of the mesothelioma in Mr. Dixon; is
3 that fair?

4 A. I don't know whether it is my opinion but there
5 has been mesotheliomas with chrysotile exposure and when
6 foreign -- and for both varieties were found in the
7 chrysotile. I don't know whether Georgia-Pacific was
8 buying those or if anybody was.

9 Q. Have you ever seen a report within the Union
10 Carbide Company that said the more severe reaction to
11 asbestos in any medical test Union Carbide did was to
12 Union Carbide's fiber, not other people's fiber? Have you
13 ever seen a report like that?

14 A. That's in the Mellon studies, yes.

15 Q. And that more severe reaction that the Mellon
16 Institute was referring to was a reaction to Calidria
17 fiber, wasn't it?

18 A. Yes.

19 (Myers Exhibit No. 22 was marked.)

20 Q. (By Mr. Chandler) Now, I'm going to show you
21 what I've marked, as Union Carbide's Asbestos Toxicology
22 Report, Myers Exhibit No. 22, okay, Mr. Myers?

23 Union Carbide's -- Myers Exhibit 22 is Union
24 Carbide's Asbestos Toxicology Report that was being issued
25 in 1969; is that right?

1 A. Yes.

2 Q. Now, in the second paragraph, it states: "It has
3 been generally accepted that a worker will not develop
4 asbestosis if he expose -- if he is exposed to no more
5 than 5 million particles per cubic foot of air, even if
6 this exposure continues for his entire working lifetime,"
7 doesn't it?

8 A. That's what it says, yes.

9 Q. When Mr. Sayers wrote that that statement was no
10 longer tenable, Union Carbide did not take it out of its
11 asbestos toxicology report, did they?

12 A. As I said before, I don't remember he said "not
13 tenable" but this has not changed from --

14 Q. Let's go back to the toxicology report, sir,
15 Mr. Sayers' toxicology report where it references the
16 threshold limit value, sir.

17 A. I don't think you can call that a toxicology
18 report.

19 Q. I'm -- thank you very much. Mr. Sayers' report
20 entitled "Asbestos as a Health Hazard in the U.K."
21 Doesn't he say, quote: "It thus appears that the sentence
22 in Dr. Dernehl's asbestos toxicology report," quote, "'is
23 now generally accepted that a man can work a 40-hour work
24 week in a lifetime without developing asbestosis if the

25 asbestos dust particle count is kept at or below 5 million

WORLDWIDE COURT REPORTERS 1-800-745-1101

213

1 particles per cubic foot of air,' unquote, "is no longer
2 held to be true by a number of informed people"?

3 Doesn't he say that "that is a number that is an
4 arbitrary choice and had no experimental foundation when
5 it was chosen"?

6 A. Yeah, I don't know "informed people." The only
7 one mentioned is a Dr. Taylor. Yeah, he does -- he
8 doesn't say it's not tenable. That's what you -- the word
9 you were using.

10 Q. Thank you. I thought I saw "tenable" in here
11 somewhere. I'm sure it is.

12 MR. BICKS: I think you were talking about
13 when Dernehl then writes back and says that Sayers was
14 wrong about what he said there.

15 MR. CHANDLER: We'll find that.

16 MR. BICKS: Okay.

17 MR. CHANDLER: We'll object to side bar, but
18 we'll find it.

19 Q. (By Mr. Chandler) So, at least let me -- let me
20 correct it. When Mr. Sayers in his report in 1967 on the
21 asbestos health hazards in the U.K. suggested that the
22 sentence in Dr. Dernehl's toxicology report was no longer

23 held to be true by any number of informed people, Union
24 Carbide did not take that sentence out of their asbestos
25 toxicology report, did they?

WORLDWIDE COURT REPORTERS 1-800-745-1101

214

1 A. No.

2 Q. Did the asbestos toxicology report have some kind
3 of a disclaimer that says although this is what we're
4 telling you there are a, quote, "number of informed people
5 who do not believe that," any kind of disclaimer at all in
6 the asbestos toxicology report that might indicate to
7 Union Carbide's customers that they had some reservations,
8 at least, about the threshold limit value?

9 MR. BICKS: Again, this is just as to
10 asbestosis, not to the meso?

11 MR. CHANDLER: Object to the side bar.

12 A. I couldn't find where you're reading.

13 Q. (By Mr. Chandler) Anywhere in the Calidria
14 asbestos toxicology report is there a disclaimer by the
15 Union Carbide Corporation that they are concerned that the
16 threshold limit value might not be reliable as held by the
17 opinion of a number of informed people?

18 MR. BICKS: Objection to the form.

19 A. Yeah, they are saying right here the A.C.G.I.H.
20 has indicated they intend to lower the TLV for asbestos to

21 2 million particles per cubic foot.

22 Q. (By Mr. Chandler) Still, twice the limit that
23 Dr. Dernehl was concerned about, isn't it?

24 MR. BICKS: Objection to the form.

25 A. Again, I don't know that you would say

WORLDWIDE COURT REPORTERS 1-800-745-1101

215

1 "concerned." Twice the level that he said was still
2 questionable, whether it would be safe or not.

3 Q. (By Mr. Chandler) Dr. Dernehl was questioning
4 whether even a million particles per cubic foot was safe,
5 wasn't he?

6 A. Questioning, yes.

7 Q. And nowhere in the Union Carbide asbestos
8 toxicology report is there a disclaimer to let the
9 customer know that even its own associate medical director
10 was concerned with the number they were telling them, is
11 there?

12 A. Well, just what I said, they are talking about
13 2 million by the air -- the Conference of Governmental
14 Industrial Hygienists of going to 2.

15 MR. CHANDLER: Objection, nonresponsive.

16 Q. (By Mr. Chandler) Here is my question, sir:
17 Nowhere in the asbestos toxicology report issued by Union
18 Carbide to its customers is there a disclaimer telling

19 them that even your own associate medical director is
20 concerned with that number with respect to mesothelioma,
21 is there?

22 A. He didn't put that in here.

23 Q. Okay. And nor did Union Carbide, did they?

24 MR. BICKS: With respect to mesothelioma?

25 You just shifted topics from what you were asking the

WORLDWIDE COURT REPORTERS 1-800-745-1101

216

1 witness about.

2 MR. CHANDLER: Object to the side bar.

3 Q. (By Mr. Chandler) Neither did Union Carbide, did
4 they, sir?

5 A. Well, Dr. Dernehl wrote this for the Calidria
6 asbestos group.

7 Q. And Dr. Dernehl nor anybody on behalf of the
8 Union Carbide Corporation suggested that they put in this
9 asbestos toxicology report, that they put a disclaimer
10 about that threshold limit value, is there?

11 A. I don't know if anyone suggested it, but it's not
12 in there.

13 (Myers Exhibit No. 23 was marked.)

14 Q. (By Mr. Chandler) Okay. Let me show you what
15 we've marked as Myers Exhibit 23, sir: Myers Exhibit 23
16 is a letter sent by Union Carbide to Union Carbide

17 division in Australia, isn't it?

18 A. No, it's sent by me.

19 Q. Oh, very good. You sent Myers Exhibit No. 23
20 yourself, didn't you?

21 A. Yes.

22 Q. And in Myers Exhibit 23, what you tell
23 Mr. P. C. Weeks of Union Carbide Australia is that
24 "asbestos can cause lung damage if you inhale large
25 quantities for many years. Chrysotile asbestos can cause

WORLDWIDE COURT REPORTERS 1-800-745-1101

217

1 lung cancer after many years of exposure to high
2 concentrations," don't you?

3 A. Yes.

4 Q. Now, if I'm the reader of your letter and I read,
5 hmm, "chrysotile asbestos can cause lung cancer after many
6 years of exposure to high concentrations," do you think I
7 might get the impression that I need to exceed the TLV for
8 there to be a hazard?

9 MR. BICKS: Objection to the form.

10 A. Well, it doesn't discuss TLV but it's in the
11 other literature we've sent them and, yes, if you exceed
12 the TLV, it could cause -- chrysotile asbestos could cause
13 lung cancer.

14 Q. (By Mr. Chandler) And by 1973, though,

15 Dr. Dernehl had already written that exposures as little
16 as 20 percent of the TLV could cause cancer, didn't he?

17 A. Again, I forget what his wording was; but he said
18 that's possible.

19 Q. Okay. But what you write to Union Carbide's own
20 people in Australia as the marketing manager of this
21 asbestos is that chrysotile can cause lung cancer after
22 many years of exposure to high concentrations. Isn't that
23 inconsistent with Dr. Dernehl's opinion that an exposure
24 as low as 1 million particles per cubic foot might be
25 hazardous?

WORLDWIDE COURT REPORTERS 1-800-745-1101

218

1 MR. BICKS: Objection to the form.

2 A. I don't see it is as inconsistent, no.

3 Q. (By Mr. Chandler) Okay. So, if I'm concerned
4 about asbestos as somebody within your own organization,
5 do you think I need to know that my own medical doctors
6 and my own company are concerned with an exposure that is
7 just one fifth of what you're recommending to them?

8 MR. BICKS: Objection to the form.

9 A. Well, Mr. Weeks would, I'm sure, have been sent a
10 copy of the toxicology report, too, which he could -- he
11 could read.

12 MR. CHANDLER: Objection, nonresponsive.

13 Q. (By Mr. Chandler) Your statement to Mr. Weeks
14 that "asbestos can cause lung cancer after many years of
15 exposure to high concentrations" is not consistent with
16 Dr. Dernehl's opinion regarding 1 million particles per
17 cubic foot, is it?

18 MR. BICKS: Objection, form.

19 A. Again, I -- I don't agree with that.

20 Q. (By Mr. Chandler) Okay. And you have a right to
21 disagree.

22 Did you ever agree to take the warnings off of
23 bags of asbestos that you were selling to people, sir?

24 A. No.

25 Q. If Union Carbide agreed to take the warnings off

WORLDWIDE COURT REPORTERS 1-800-745-1101

219

1 the bags of asbestos it was selling people, that probably
2 wouldn't be good marketing practice, would it?

3 A. It would be against the law to violate the OSHA
4 regulations.

5 Q. Did Union Carbide ever sell its asbestos in plain
6 unmarked bags without a warning?

7 A. Not -- well, before 196- -- well, no, before 1968
8 we didn't have a warning.

9 Q. After 1968 did Union Carbide ever sell its
10 asbestos in plain unmarked bags without a warning, sir?

11 A. No.

12 Q. If they had done that, is that something you
13 would have disagreed with?

14 A. If I had known about it, yes.

15 Q. And if Union Carbide had sold their asbestos in
16 plain unmarked bags after OSHA, that's something that you
17 understood would be illegal, isn't it?

18 A. Yes.

19 Q. And if the ladies and gentlemen of the jury find
20 in this case that Union Carbide sold asbestos after 1968
21 and the warnings were taken off, that would have been
22 wrong; isn't that fair?

23 A. Yeah, I don't think that happened.

24 Q. And if it did, it would have been wrong on behalf
25 of Union Carbide Corporation; isn't that true?

WORLDWIDE COURT REPORTERS 1-800-745-1101

220

1 MR. BICKS: Objection to form.

2 A. Yes, I don't think it would have been proper, no.

3 Q. (By Mr. Chandler) Okay. If one of your
4 salespeople agreed that they could provide asbestos
5 without a warning to its customers, what would you have
6 told that salesman?

7 MR. BICKS: Objection to the form.

8 A. I wouldn't have allowed it.

9 Q. (By Mr. Chandler) All right. You knew, though,
10 at some point at Union Carbide that people you were
11 selling your fiber to did not pass those warnings on;
12 isn't that true?

13 MR. BICKS: Objection to the form.

14 A. I don't know that I explicitly knew it, no.

15 Q. (By Mr. Chandler) Okay.

16 A. We made effort -- every effort to provide them
17 with materials that could be passed on, and we would have
18 no control over whether or not they did.

19 Q. And are you telling the jury that Union Carbide
20 did not have actual knowledge that its customers were not
21 passing on their warnings?

22 A. I'm saying I didn't know that we had, if we did
23 have.

24 Q. If Union Carbide did know that their customers of
25 Union Carbide, had actual knowledge that their customers

WORLDWIDE COURT REPORTERS 1-800-745-1101

221

1 were not passing on those warnings, would it have
2 concerned you?

3 A. We would have, again, made every effort to
4 provide them with materials to pass on.

5 MR. CHANDLER: Objection, nonresponsive.

6 Q. (By Mr. Chandler) If you had known that Union

7 Carbide customers were not passing on the warnings that
8 you had given them, would it have concerned you?
9 A. Yes, we would have reminded them of it.
10 (Myers Exhibit No. 24 was marked.)
11 Q. (By Mr. Chandler) Let me show you what I've
12 marked as Myers Exhibit No. 24. Myers Exhibit No. 24 is a
13 Report of Call, isn't it?
14 A. Yes.
15 Q. 1973, you were the marketing manager?
16 A. Yes.
17 Q. What's the purpose of a Report of Call?
18 A. To report the results of a visit to a customer by
19 a salesman.
20 Q. And the reports of call were something that was
21 passed up the chain so that people involved in the
22 asbestos business could know what was happening in the
23 field, right?
24 A. Yeah, the chain was very small.
25 Q. Okay. Now, Georgia-Pacific here in Columbus was

WORLDWIDE COURT REPORTERS 1-800-745-1101

222

1 a customer of Union Carbide's Calidria, weren't they?
2 A. I don't know. No, it says "introductory call."
3 So, they weren't a customer.
4 Q. So, at least in Ohio, Georgia-Pacific wasn't --

5 was just being introduced to Calidria; is that true?

6 A. That's what it says, yes.

7 Q. You know that other Georgia-Pacific locations

8 bought Calidria prior to '73, don't you?

9 A. I don't know the dates; but, yes, I think so.

10 Q. Okay. This isn't the first time Georgia-Pacific

11 Company was buying Calidria, was it, in '73?

12 A. We weren't buying. This was introductory.

13 Q. Union Carbide had sold Georgia-Pacific asbestos

14 fiber, true?

15 A. Yes.

16 Q. Union Carbide sold Georgia-Pacific asbestos fiber

17 prior to 1973, didn't they?

18 A. I think so, but I don't have any invoices to back

19 that up.

20 Q. Okay. We'll get -- we'll get into some of that.

21 THE VIDEOGRAPHER: Counsel, your microphone.

22 MR. CHANDLER: Oh, thank you.

23 Q. (By Mr. Chandler) Now, if you'll follow along

24 with me -- now, this is a document your lawyer showed you

25 in preparation for the deposition, isn't it?

WORLDWIDE COURT REPORTERS 1-800-745-1101

223

1 A. Yes.

2 Q. In fact, as a courtesy to your lawyers, I let

3 them know I was going to talk to you about this. Isn't
4 that your understanding?

5 A. Yes.

6 Q. And in preparation so you could be adequately
7 prepared to explain this to the jury, they went over it
8 with you, didn't they?

9 A. We looked at it, yes.

10 Q. This is not the first time you've seen this
11 document, is it?

12 A. No.

13 Q. You've had adequate time to read it and evaluate
14 it?

15 A. I didn't -- I don't think I read it all, no.

16 Q. Okay. Let's do that right now.

17 A. All right.

18 Q. Now, they are interviewing a Mr. Pete Herault,
19 right?

20 A. Yes.

21 Q. Now, this is not, as you have suggested, the
22 first time this location is using Calidria asbestos, is
23 it? As we read, we discover that, don't we?

24 MR. BICKS: I'm sorry. Discovered what?

25 Q. (By Mr. Chandler) Mr. Myers, it was my

1 understanding you implied to the jury that this location
2 in Ohio had not been using Union Carbide's asbestos prior
3 to this call. That's not true, is it?

4 A. I haven't seen that -- any purchase record.

5 Q. Well, let's read the report and see if we can
6 determine that. "Discussion: Georgia-Pacific has
7 developed and patented a resorcinol glue, GP-117 Resi-Lam,
8 used for laminating wooden beams, trusses, etc. They feel
9 it has very large potential. It is a two-part system
10 containing about 3 to 4% RG-244."

11 RG 244 is Union Carbide asbestos, isn't it?

12 A. Yes.

13 Q. "It is machine applied ... and 244 contributes to
14 flow control and initial tack. The likely production
15 areas for this product and contact at each location are as
16 follows: Lufkin, Texas ... Oregon ... Oregon ... Arkansas
17 ... and Ohio.

18 "All of these locations should be actively
19 pursued and all of the people listed are aware of this
20 product. A copy of their disclosure ... and it's
21 application is attached."

22 So, at least we know that prior to this call
23 Union Carbide had, at least, evaluated your asbestos?

24 A. You mean Georgia-Pacific.

25 MR. BICKS: Right.

1 Q. (By Mr. Chandler) Thank you. Georgia-Pacific.

2 A. Yes. Probably got sample quantities, yeah.

3 Q. "Pete Herault waxed poetic on the virtues of 244
4 in this application and, in fact, said it is the only
5 thixotrope which they have found to give the desired
6 combination of effects." And that means a thickener,
7 doesn't it?

8 A. It's -- it's a special kind of thickener, yes.

9 Q. "However, he did say that they are interested in
10 finding a lower cost material if possible. Should his
11 estimates for large-scale use develop, they would prefer
12 our providing RG-244 in plain unmarked bags. We said this
13 would be feasible at present only in CL quantities from
14 King City."

15 "CL" means carload quantities, doesn't it?

16 A. Yes.

17 Q. That means train car loads, right?

18 A. Yes.

19 Q. So, this -- what this Union Carbide salesperson
20 is saying is that you can provide Union Carbide asbestos
21 in plain unmarked bags if you buy a trainload? It will be
22 feasible for them to do that?

23 A. It will be feasible, yes.

24 Q. That's not something you would ever let your
25 salespeople do, is it?

1 A. No.

2 Q. Where is your document back to this salesperson
3 telling them, "No way are we selling our asbestos in plain
4 unmarked bags"?

5 A. To the best of my knowledge, we never sold any of
6 this to this company.

7 Q. Do you have any documentation reprimanding this
8 salesperson with respect to his comments that it would be
9 feasible to sell your asbestos in plain unmarked bags?

10 A. I don't have anything, no.

11 Q. And you don't ever remember reprimanding any of
12 your salesmen for doing that, do you?

13 A. No, I don't.

14 MR. BICKS: Objection, form.

15 Q. (By Mr. Chandler) You agree that if a customer
16 gets your asbestos in plain unmarked bags, people might
17 not get the warnings about whether your asbestos is
18 hazardous? Do you disagree?

19 A. That's another big "if." We don't -- we didn't
20 do that.

21 Q. You didn't deliver -- make asbestos in plain
22 unmarked bags?

23 A. No.

24 (Myers Exhibit No. 25 was marked.)

25 Q. (By Mr. Chandler) Okay. Look for me at Exhibit

WORLDWIDE COURT REPORTERS 1-800-745-1101

227

1 No. Myers 25. Myers Exhibit 25 is another Report of Call
2 to the Allied -- or from the Allied Resin Corporation,
3 isn't it?

4 A. A call on the Allied Resin Company.

5 Q. By Union Carbide, true?

6 A. Yes.

7 Q. Now, in the first sentence of Union Carbide's own
8 Report of Call where it says, quote: "Informed by Charlie
9 Howland to immediately stop production of M10605 Calidria
10 Asbestos," in parentheses, "(RG-244 in plain unmarked
11 bags) and to hold up shipment of additional material,"
12 sir, isn't it true that in order to stop production of
13 Calidria in plain brown, unmarked bags, you must have
14 started production of Calidria in plain unmarked, brown
15 bags?

16 A. Yeah, if -- and I -- I'm positive in my own mind
17 that we would have not -- they would still have had the
18 OSHA warning on these bags.

19 Q. When --

20 A. It may have been plain as far as the contents,
21 but I -- I -- I'm just totally assured in my own mind that
22 we would never have shipped these without the OSHA warning

23 label.

24 Q. When it says "plain brown unmarked bags," are you
25 telling the ladies and gentlemen of the jury it does not

WORLDWIDE COURT REPORTERS 1-800-745-1101

228

1 mean plain brown unmarked bags?

2 A. That's what I'm saying.

3 Q. Okay. And what is M10606?

4 A. I don't know.

5 Q. Well, it's clearly Calidria Asbestos, isn't it?

6 A. It's used in front of the word "Calidria," yes.

7 Q. It's Resin Grade 244 asbestos, isn't it?

8 A. Yes.

9 Q. And if we believe what this Call Report by Union
10 Carbide says, it is Resin Grade 244 asbestos in, quote,
11 "plain brown unmarked bags," end quote, true?

12 A. That's what it says, yes.

13 Q. Okay. Now, you had told me earlier that -- well,
14 tell me: Are you telling the jury that you are not aware
15 of customers who decided not to pass on your warnings to
16 their customers?

17 A. I don't remember anything specifically about
18 that --

19 Q. Okay.

20 A. -- no.

21 (Myers Exhibit No. 26 was marked.)

22 Q. (By Mr. Chandler) Let's look at what we marked
23 as Myers Exhibit 26. The Baker Castor Oil Company was, in
24 fact, a customer of Union Carbide, weren't they?

25 A. I don't remember them as a customer, but we had

WORLDWIDE COURT REPORTERS 1-800-745-1101

229

1 quite a few customers.

2 Q. Okay. They are, at least, somebody who evaluated
3 your asbestos?

4 A. That says they're using moderate quantities, yes.

5 Q. Okay. So, Baker Ast- -- Baker Castor Oil Company
6 was a company that used moderate quantities of Calidria
7 asbestos, yes?

8 A. Yes.

9 Q. On the last paragraph of Myers Exhibit 26, it
10 states: "He," meaning Mr. M. K. Smith, "informed me that
11 they had" --

12 MR. BICKS: He has a different document --

13 A. Wait a minute. I don't --

14 MR. CHANDLER: Oh, I'm sorry.

15 MR. BICKS: -- as do I.

16 MR. CHANDLER: Which document do you have?

17 Oh, that's not the one I intended to give you, then.

18 Well, that helps, though.

19 Q. (By Mr. Chandler) You know that the Baker Castor
20 Oil Company is -- was a moderate user of Union Carbide
21 asbestos, don't you?

22 A. Yes. Well, I do after seeing that.

23 Q. Right. And Baker Castor Oil Company was a
24 company who had decided not to put warnings on their
25 products; and, in their mind, they didn't think they

WORLDWIDE COURT REPORTERS 1-800-745-1101

230

1 needed it because your asbestos was being mixed with other
2 ingredients; is that right?

3 MR. BICKS: Can I see --

4 Q. (By Mr. Chandler) The bottom of the first
5 paragraph?

6 MR. CHANDLER: I'm looking for my own copy.

7 MR. BICKS: It's right there.

8 MR. CHANDLER: Oh, thank you.

9 A. Yeah. That's what they say, yes.

10 Q. (By Mr. Chandler) So, what we have here is a
11 customer of Union Carbide that was reported to Union
12 Carbide was not warning of asbestos hazards on their
13 product; isn't that right?

14 A. That's what -- that's what they're saying, yes.
15 They "decided against putting a warning" -- "putting a
16 warning label on their package in view of the fact that it

17 is mixed with other ingredients."

18 Q. So, what Union Carbide acknowledges in 1971 is
19 that there are customers they're selling to that they know
20 are not putting warnings on their own products, about
21 asbestos; isn't that fair?

22 A. That was their decision, yes.

23 Q. Okay.

24 A. And it's very likely that they did some tests to
25 determine that there wouldn't have been any excessive air

WORLDWIDE COURT REPORTERS 1-800-745-1101

231

1 contamination.

2 MR. CHANDLER: Objection, nonresponsive to
3 everything after "yes."

4 Q. (By Mr. Chandler) You have no knowledge that the
5 Baker Castor Oil Company ever did any sampling of asbestos
6 to determine whether they were exceeding safe levels, do
7 you?

8 A. No, I don't.

9 (Myers Exhibit No. 27 was marked.)

10 Q. (By Mr. Chandler) All right. Now, here's
11 another Report of Call, sir, to another Union Carbide
12 customer, that we'll call Myers Exhibit 27. And are you
13 telling the ladies and gentlemen of the jury that on Myers
14 Exhibit 27, at the bottom where it references -- first of

15 all, Myers Exhibit 27 is another Customer Call Report to a
16 Union Carbide customer, isn't it?

17 A. Yes.

18 Q. And at the very last sentence of the results of
19 call that you went on -- you went on this call, didn't
20 you?

21 A. Yes.

22 Q. And you went with Mr. Rhodes, who was another
23 fairly high person in the asbestos group at Union Carbide,
24 wasn't he?

25 A. He worked with me, yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

232

1 Q. And you and Mr. Rhodes called on the Montello
2 Company, who was a distributor of drilling mud, weren't
3 they?

4 A. They were a distributor of products for the
5 drilling mud industry.

6 Q. And at the bottom where it says -- the last
7 sentence, "The 81 tons of Supervis in plain brown bags and
8 the MT Visbestos bags, we will attempt to move to Great
9 Gulf in Houston," what you're telling this jury is that it
10 doesn't really mean plain brown bags, does it?

11 A. It -- to me, it does not.

12 Q. When you got this Call Report, did you tell the

13 salesman, Mr. Walsh, "Hey, you better clear that up. We
14 don't want any jury later seeing this and thinking that
15 really doesn't mean what it says?" Did you ever do that?

16 A. No.

17 Q. Okay. Now, you did, from time to time -- the
18 Marketing Department -- all you could do to help your
19 customers try to sell their own product that had asbestos,
20 didn't you?

21 MR. BICKS: Objection to the form.

22 A. Oh, I don't recall --

23 Q. (By Mr. Chandler) Okay.

24 A. -- anything like that, but we may have.

25 Q. Well, for example, when a customer had questions

WORLDWIDE COURT REPORTERS 1-800-745-1101

233

1 about regulations, you tried to write to them and explain
2 what the regulations meant?

3 A. We sent them copies of the regulations.

4 Q. And anywhere when you sent copies of the
5 regulations, did you tell them that Union Carbide's
6 associate medical director doesn't believe or -- or
7 doesn't agree with these TLV values in the Federal
8 regulation?

9 A. I don't know whether he agreed with them or not.

10 Q. Nowhere did you tell a customer he didn't agree

11 with it, did you?

12 A. I don't know if he disagreed with --

13 Q. And --

14 A. -- the regulations.

15 Q. And, therefore, you never told a customer about
16 Dr. Dernehl's concerns about 1 million particles per cubic
17 foot versus 5 million particles, did you?

18 MR. BICKS: Objection to the form.

19 A. No.

20 Q. (By Mr. Chandler) You understood that the
21 Government regulations in OSHA were a maximum limit and
22 that a company should really try to get their exposure as
23 low as possible?

24 A. That's what we always said.

25 Q. Okay.

WORLDWIDE COURT REPORTERS 1-800-745-1101

234

1 A. That's what Der- -- Dr. Dernehl said.

2 Q. And you understood that the OSHA regulations were
3 not a -- an acknowledgement by OSHA that they were, quote,
4 "safe levels"; isn't that right?

5 A. I don't have -- I'd have to read them to -- to
6 see what they -- the way they put it. I would think they
7 would consider it safe if that was their TLV.

8 Q. Have you ever heard from anybody that OSHA didn't

9 consider TLV's safe, that they were just a guideline to be
10 used and shouldn't be used as a cut-and-dry safe, quote,
11 un- -- quote, "safe," unquote, limit? Have you ever heard
12 that?

13 A. I have not seen that, no.

14 Q. Okay. We'll get to that.

15 Now, if -- you have seen documents to the
16 Georgia-Pacific Company responding to requests from the
17 Georgia-Pacific Company for information about threshold
18 limit values with respect to sanding of joint compounds,
19 haven't you?

20 A. Have I received those?

21 Q. Yes, sir. You've seen those?

22 A. I don't think I have, no.

23 Q. Okay. Those were some of the documents that your
24 lawyers went over with you, weren't they, in preparation
25 for your deposition today?

WORLDWIDE COURT REPORTERS 1-800-745-1101

235

1 MR. BICKS: Objection to the form.

2 A. Well, I don't remember.

3 Q. (By Mr. Chandler) Okay. Let me ask you this:
4 As the marketing manager of Union Carbide's asbestos
5 business, if a customer asked you what Union Carbide knew
6 about the release of asbestos fibers during the sanding of

7 joint compounds, you had a responsibility to answer
8 honestly, didn't you?

9 A. We -- we did a lot of tests on sanding and mixing
10 and -- and provided customers with results of those tests.

11 Q. And here's my question --

12 A. And published them, too.

13 Q. When a customer asked you about what Union
14 Carbide knew with respect to the release of respirable
15 asbestos from the sanding of a joint compound, didn't
16 Union Carbide have an obligation to be honest to that
17 company?

18 A. We -- as I say, we provided them with our dust
19 tests and with -- included in the published report
20 Dr. Nicholson's work and -- and I think referred to
21 Dr. Selikoff's work and Doctor --

22 MR. CHANDLER: Objection, nonresponsive.

23 A. And Dr. Rowell.

24 MR. CHANDLER: Objection, nonresponsive.

25 Q. (By Mr. Chandler) Mr. Myers, I -- I know what

WORLDWIDE COURT REPORTERS 1-800-745-1101

236

1 you're trying to tell the jury you provided to customers.
2 That's not my question.

3 My question is this: When a customer came right
4 out and asked a salesperson from Union Carbide, "What do

5 you know about the release of asbestos when a joint
6 compound is sanded," doesn't that Union Carbide
7 salesperson have a responsibility to report honestly?

8 MR. BICKS: Objection to the form.

9 A. Well, I wouldn't want anybody reporting
10 dishonestly, no.

11 Q. (By Mr. Chandler) Okay. And does he have a
12 responsibility to tell the truth, the whole truth, and
13 nothing but the truth when a customer inquires about the
14 hazards of your asbestos?

15 MR. BICKS: Objection, form.

16 A. I think ideally, yes, that's true.

17 Q. (By Mr. Chandler) All right. You -- as part of
18 Union Carbide's service to customers -- and this is
19 referencing Union Carbide's responsibility to report
20 honestly to its customers. That's the line of questioning
21 we're going to. I don't want you to be confused about
22 that at all, okay? That's where we're staying.

23 With respect to that responsibility, didn't Union
24 Carbide go out to jobs and plants to do air monitoring --

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

237

1 Q. -- for customers?

2 A. Yes.

3 Q. And when you did that, you understood that you
4 were checking for the customer whether dangerous levels of
5 asbestos exceeded -- whether dangerous levels of asbestos
6 existed?

7 A. No. We went out to measure what the levels were.

8 Q. What was the purpose of measuring the levels of
9 asbestos, sir?

10 A. To determine whether or not they exceeded the
11 OSHA guidelines.

12 Q. And if they exceeded OSHA guidelines, isn't that
13 a hazardous exposure?

14 A. No. It all depends on the length of exposure.

15 Q. Okay. You understand that if TLV ceiling limits
16 are eval- -- are exceeded, that just one exposure,
17 regardless of how long, in violation of the ceiling limit
18 is considered hazardous by OSHA?

19 A. I'd have to read the standard to see how that
20 read exactly.

21 Q. Do you even know the difference between a ceiling
22 limit and a time-weighted average, sir?

23 A. Yes.

24 Q. What is the difference?

25 A. Ceiling level is kind of an instantaneous

1 reading. Time-weighted average is using an eight-hour --
2 it's an eight-hour calculation of exposures.

3 Q. And when you were selling Union Carbide asbestos,
4 you understood that a ceiling limit was a limit above
5 which you -- you were never supposed to be?

6 A. Again, I'd have to read whether you could have
7 more than one in a day or --

8 Q. Do you know that, as you -- as the marketing
9 manager of Union Carbide, can you tell this jury whether
10 you ever knew that?

11 A. Whether I ever knew it? Yes.

12 Q. Okay. And it's something you as a marketing
13 manager should become very familiar with the OSHA
14 regulations, true?

15 A. I think that I was, yes.

16 Q. Okay. That was part of your job as the marketing
17 manager, to be familiar with the OSHA regs?

18 A. I took it as part of my responsibility, yes.

19 Q. And as part of your responsibility to be familiar
20 with the OSHA regulations, did you ever pass on to any
21 government agency the information you had with respect to
22 the hazards of asbestos, from Dr. Dernehl or Mr. Sayers?

23 A. Did we --

24 Q. Did you, sir?

25 A. -- give information to an agency -- government

1 agencies?

2 Q. Yes, sir.

3 A. Not that I recall, no.

4 Q. In fact, didn't you resist requests from some
5 government agencies when they asked you for information
6 about your products? Didn't the Union Carbide Marketing
7 Department resist those requests?

8 A. Not that I recall.

9 Q. If the National Institute of Occupational Safety
10 and Health wrote to Union Carbide and wanted to know what
11 they knew about the hazards of their product, would you
12 have expected a responsible company to answer them?

13 A. I think it would depend on the situation. I'd
14 like for you to describe it to me and then --

15 Q. Well, can you think of a situation where the
16 National Institute of Occupational Safety and Health might
17 request information from Union Carbide, where you would
18 tell them, "I'm not telling you"?

19 A. No, I can't think of that.

20 MR. BICKS: Objection, form.

21 Why don't we take a short break?

22 MR. CHANDLER: Let's take a short -- well,
23 wait. Hold on. Let me finish this line of questioning --

24 MR. BICKS: Okay.

25 MR. CHANDLER: -- and then we'll take a

1 break.

2 Q. (By Mr. Chandler) Mr. Myers, I'm showing you
3 what we will mark as Union Carbide next, 28.

4 (Myers Exhibit No. 28 was marked.)

5 Q. (By Mr. Chandler) Union Carbide Exhibit No. 28
6 is a document written by Mr. Rhodes that you were copied
7 on, isn't it?

8 Let me be fair and give it to you before you have
9 to answer it.

10 A. Yes.

11 Q. Now, what it states is -- now, you're copied and
12 your name's even checked off, isn't it?

13 A. Yes.

14 Q. Here is what Mr. Rhodes writes. And the subject
15 is "NIOSH Letter Requesting Information Regarding Resin
16 Grade 244 Asbestos," correct?

17 A. Yes.

18 Q. And this went to one, two, three, four, five,
19 six, seven, eight, nine people, at least, within the Union
20 Carbide asbestos group; is that fair?

21 A. Yes.

22 Q. And it states, quote: "This confirms our
23 discussion of the attached NIOSH request for information.
24 Basically, Union Carbide has decided that a response is
25 not required and has elected not to respond. If your

1 customers inquire about the letter, you may inform them of
2 the Union Carbide position. Any comments or statements
3 which would advise the customer what he should do should
4 be carefully avoided."

5 Now, if you'll look at the Bates stamps on the
6 bottom, they are, in fact, consecutive, aren't they? I
7 don't want anybody to think I slipped a document in here
8 that wasn't consistent with this. Fair?

9 A. Yes.

10 Q. Okay. Now, it is, in fact, true that on a
11 request by the National Institute of Occupational Safety
12 and Health requesting information from Union Carbide about
13 their asbestos, Union Carbide, quote, "elected not to
14 respond," end quote, true?

15 A. Yes.

16 Q. You understand that the National Institute of
17 Occupational Safety and Health is that part of the
18 government that tries to collect information about
19 hazardous products, not OSHA, that's kind of the
20 regulatory arm that enforces laws, true?

21 A. Yes.

22 Q. And that NIOSH's purpose is to get as much good
23 science as they can so that OSHA can pass the right kind

24 of regulations and not overreact or underreact with
25 respect to regulations about hazardous products.

WORLDWIDE COURT REPORTERS 1-800-745-1101

242

1 MR. BICKS: Objection to the form.

2 Q. (By Mr. Chandler) True?

3 A. Is that a que- -- yes.

4 Q. Okay. Now, the National Institute of
5 Occupational Safety and Health, did you have criticisms of
6 their work in 1977, sir?

7 A. I don't recall anything.

8 Q. You don't recall thinking, "The National
9 Institute of Occupational Safety and Health is some kind
10 of reactionary organization that we shouldn't pay
11 attention to," do you?

12 A. I don't remember.

13 Q. A national institute that deals with the
14 occupational safety and health of Americans is -- is an
15 organization or an entity that is to be admired, isn't it?

16 MR. BICKS: Objection, form.

17 A. I'd say usually, yes.

18 Q. (By Mr. Chandler) And usually, when an
19 organization responsible for the safety and health of
20 American workers asks companies who manufacture a product
21 they know can be cancer-causing asks that company for

22 information, isn't a responsible company going to respond
23 to that agency?

24 A. As I said before we looked at this, I -- that
25 would depend on what they were asking for, what the

WORLDWIDE COURT REPORTERS 1-800-745-1101

243

1 situation was.

2 Q. Then let's look at what they were asking for,
3 sir. Turn to the next page, and it is a document entitled
4 "Department of Health Education and Welfare, Public Health
5 Service, Center for Disease Control," isn't it?

6 A. Yes.

7 Q. From the National Institute for Occupational
8 Safety and Health in Rockville, Maryland, to Union Carbide
9 Corporation in Niagara Falls, true?

10 A. Yes.

11 Q. In 1977 you were at Niagara Falls, weren't you?

12 A. Yes.

13 Q. In 1977 when the National Institute of
14 Occupational Safety and Health wrote you this letter -- if
15 you'll look at the bottom paragraph, I think we'll see
16 what they're asking, okay?

17 A. I don't know when they wrote it, unless you have
18 a dated copy of something.

19 Q. Can you think of a date and time that you would

20 have ignored NIOSH with respect to any request for
21 information about the hazards of your products?

22 A. Again, it depends on the -- the situation and the
23 questions.

24 Q. All right. Well, let's see what the question is.

25 Quote: "Your product formulations" --

WORLDWIDE COURT REPORTERS 1-800-745-1101

244

1 A. Wait a minute. Where are you, on the second
2 page --

3 Q. The bottom paragraph, sir.

4 A. Okay.

5 Q. Ah, I see a date.

6 "Your product formulations on the enclosed copies
7 of response forms show the presence of one or more human
8 carcinogens." You understood that to mean things that
9 cause cancer in humans, don't you?

10 A. Yes.

11 Q. "We think that manufacturers of brand name
12 products containing OSHA-regulated carcinogens have an
13 obligation to their employees and customers." Do you
14 agree with that?

15 A. Very much so, yes.

16 Q. "Please indicate the measures you have taken to
17 ensure that people coming into contact with the product

18 will be informed regarding its carcinogenic potential and
19 advised of appropriate protective measures. Specifically,
20 we are requesting information on the procedures you have
21 developed to guarantee that employees in your plant who
22 may be engaged in formulating the product are educated
23 with respect to possible health risks and what steps have
24 been taken to design systems to reduce exposure to those
25 employees.

WORLDWIDE COURT REPORTERS 1-800-745-1101

245

1 "Additionally, we are requesting evidence of
2 whatever steps you may take to warn users of these
3 products of the presence of a carcinogenic substance and
4 guidelines to ensure safe usage of the product."

5 Are those the kind of requests that Union Carbide
6 should respond to?

7 A. Well, I can't really answer. The -- what they
8 were asking for was everything we were doing, and I don't
9 know why the decision was made not to -- not to respond.

10 Q. Did you ever write to any of the people on Myers
11 Exhibit 28 and say: "Wait a minute here. We should
12 respond to the government's request when they ask us what
13 we're doing to inform people of the cancer-causing
14 potential of our product"? Did you ever do that?

15 A. No. Not that I recall, anyway.

16 Q. Can you show me any document where you did that,
17 sir?

18 A. I said I can't recall.

19 Q. Has Union Carbide or their lawyers ever showed
20 you a document where anybody from Union Carbide did
21 respond to the request by NIOSH?

22 A. No. I haven't seen anything --

23 Q. Okay.

24 A. -- like that.

25 MR. CHANDLER: Mr. Myers, let's take a brief

WORLDWIDE COURT REPORTERS 1-800-745-1101

246

1 break, sir.

2 THE WITNESS: All right.

3 THE VIDEOGRAPHER: This marks the conclusion
4 of Videotape No. 3 in the deposition of John Myers on
5 May 22, 2002. Going off the record. The time is 3:04.

6 (Short break.)

7 THE VIDEOGRAPHER: We're going on the
8 record. The time on the screen is 3:19. This marks the
9 beginning of Videotape No. 4 in the deposition of
10 John Myers on May 22, 2002.

11 Q. (By Mr. Chandler) Mr. Myers --

12 A. Yes, sir.

13 Q. -- isn't it true that the Union Carbide

14 Corporation knew that when joint compounds were sanded,
15 the potential existed and, in fact, many times did exceed
16 the guidelines as prescribed by the Federal Government?

17 A. It was potential, yes. That's why we prescribed
18 safe work practices.

19 Q. And if the Union Carbide Corporation was asked by
20 any company whether they knew what happened when an
21 asbestos-containing joint compound was sanded, with
22 respect to the release of asbestos fibers, it is the
23 responsibility of the Union Carbide Corporation to be
24 honest about that, isn't it?

25 A. In general, I would say that, yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

247

1 Q. Um --

2 THE VIDEOGRAPHER: Counsel, your mike.

3 MR. CHANDLER: Thank you. Did you get what
4 I just said, or I --

5 THE VIDEOGRAPHER: It -- it was -- it was
6 audible.

7 MR. CHANDLER: All right.

8 Q. (By Mr. Chandler) Let me show you what we will
9 mark as Myers Exhibit 28.

10 (Discussion off the record.)

11 (Myers Exhibit No. 29 was marked.)

12 MR. CHANDLER: Myers 29. Thank you very
13 much. We will not criticize Brown & Root for showing up
14 anymore.

15 Q. (By Mr. Chandler) Myers Exhibit 29 is another
16 Report of Call, is it not?

17 A. Yes.

18 Q. It is a Report of Call that you went on, isn't
19 it?

20 A. Yes.

21 Q. Roach Paint was a customer of Union Carbide's
22 asbestos for use in drywall joint compound; isn't it true?

23 A. Yeah, they -- the Call Report says "protective
24 coatings, joint cements, and sprays."

25 Q. Okay. And one -- one of the things that you and

WORLDWIDE COURT REPORTERS 1-800-745-1101

248

1 the Union Carbide folks did when they showed up at the
2 Roach Paint facility is to take samples of sanding joint
3 cements and of spraying a textured coating, correct?

4 MR. BICKS: Can I have a copy?

5 MR. CHANDLER: Oh, I'm sorry.

6 Q. (By Mr. Chandler) It's on the second page, sir.

7 A. It says "of three samples." I don't know whether
8 they're talking about samples at this company or --

9 Q. Okay. Let's read what it says, the Report of

10 Call to the Roach Paint Company in Dallas, Texas. So, you
11 actually -- you traveled to Dallas to visit this customer,
12 from California, didn't you?

13 A. From Niagara Falls.

14 Q. Oh, from New York to Texas.

15 And what it states is that: "Of the three
16 samples taken on sanding joint cements and spraying a
17 textured coating, only one was below the TLV, at 5.2
18 fibers. The other were 15 and 21 fibers"; is that right?

19 A. Yes. I don't know whether these are ceiling
20 levels or time-weighted averages, but that's -- it just
21 says --

22 Q. Well, we know --

23 A. It says "21 fibers."

24 Q. Whatever the ceiling limit in 1974 was, if it was
25 below 15, these joint cement sandings violated even the

WORLDWIDE COURT REPORTERS 1-800-745-1101

249

1 ceiling limit, not just a time-weighted average, correct?

2 A. That's correct, yes.

3 Q. Okay. So, that is a 1974 document --
4 specifically, September 30 of 1974, the 28-year
5 anniversary of the date of the start of this trial, sir --
6 in which Union Carbide acknowledges sanding of joint
7 cement or spraying of textured coatings exceeds the TLV

8 fiber limit, at least, right?

9 A. At this location and for three samples, yes.

10 Q. Yes, sir. Two out of three, anyway?

11 A. Yes.

12 Q. And one was 5.2 fibers, which at -- in some years

13 also would have violated the TLV but not necessarily in

14 1974, fair?

15 A. Yes.

16 Q. Okay.

17 A. I think it was changed after that.

18 (Myers Exhibit No. 30 was marked.)

19 Q. (By Mr. Chandler) Let's go to Myers Exhibit

20 No. 30, which is six months before your visit to Dallas to

21 the Roach Paint Company. And this is a visit to the

22 National Gypsum Company, isn't it?

23 A. Yes.

24 Q. Or at least in a meeting of the Gyp- -- Safety

25 Committee of the Gypsum Association, right?

WORLDWIDE COURT REPORTERS 1-800-745-1101

250

1 A. Yes.

2 Q. Now, on the second page, I want to talk about

3 the general consensus that was reached at the meeting of

4 the Gypsum Association, all right?

5 MR. BICKS: The Gypsum Association?

6 MR. CHANDLER: That's what it says, "Safety
7 Committee of the Gypsum Association."

8 Q. (By Mr. Chandler) So, you as a Union Carbide
9 representative participated in safety meetings of
10 professional organizations made up of your own customers,
11 right?

12 A. Well, I wasn't there. Dr. Rhodes was there at a
13 meeting of a Safety Committee of the Gypsum Association.

14 Q. And Gypsum Association was a trade organization
15 made up of customers of Union Carbide, true?

16 A. I don't know.

17 Q. All right. Fair enough.

18 Dr. Rhodes, was he the technology manager at this
19 point?

20 A. I don't remember what --

21 Q. He worked for you, though?

22 A. Yes.

23 Q. He reported to you, didn't he?

24 A. Yes.

25 Q. All right.

WORLDWIDE COURT REPORTERS 1-800-745-1101

251

1 (Telephone interruption.)

2 MR. BAILEY: What was the date? I'm sorry.

3 MR. CHANDLER: March 26, '74.

4 Okay. Do you need to take it?

5 Q. (By Mr. Chandler) The third paragraph on Union
6 Carbide's Call Report states that, quote: "The general
7 consensus was that fiber counts could range from around 1
8 to up towards 10, depending on the type of compound
9 (general purpose or topping) being sanded, the skill with
10 which base mud job had been done, i.e., how much had to be
11 removed, and atmospheric condition. It was recognized
12 that if asbestos were not even present, they had a serious
13 silica and nuisance dust problem."

14 All right. So, the general consensus of Union
15 Carbide and the members of the Gypsum Association in March
16 of '74 was that sanding of joint compounds could be
17 upwards of 10 fibers, correct?

18 A. It doesn't --

19 MR. BICKS: Objection to the form.

20 A. It doesn't say 10 fibers, but --

21 Q. (By Mr. Chandler) What do you interpret "around
22 1 to up towards 10" being?

23 A. I would agree with -- that it was probably fibers
24 per cc.

25 Q. Okay.

WORLDWIDE COURT REPORTERS 1-800-745-1101

252

1 A. And I don't know whether -- again, whether it's

2 ceiling or time-weighted average.

3 Q. Okay. Now, let me show you what we'll mark as
4 Myers Exhibit No. 31.

5 (Myers Exhibit No. 31 was marked.)

6 Q. (By Mr. Chandler) Myers Exhibit 31 is a Report
7 of Call to the Georgia-Pacific Company, isn't it?

8 A. Yes, it is.

9 Q. And J. E. Walsh, who wrote this, was a man who
10 worked for and reported to you, isn't he?

11 A. Yes.

12 Q. The call was made on "SG-210 carload user," that
13 being Standard Grade Calidria fiber asbestos, with the
14 number 210.

15 A. Yes.

16 Q. That -- and that's open fiber. It's not pellets,
17 is it?

18 A. Right, it's open.

19 Q. It's powdery stuff.

20 A. Yeah.

21 Q. Correct? Okay.

22 And Mr. Walsh, who reports to you, writes to --
23 about his call on Georgia-Pacific in Quanah, Texas:
24 "Sterling is the first to report in this geography that
25 business so far this year is ahead of the same period last

1 year, although it is still sporadic. Howard has replaced
2 Lloyd Winter, who has gone into plant production. Howard
3 asked what, if anything, could he tell contractors
4 regarding asbestos and sandings. Advised that our -- that
5 our limited findings showed that there are regional
6 differences and dry sanding, in most cases, did show a
7 minute amount of asbestos fiber was liberated," end quote.
8 Did I read that correctly?

9 A. Yes.

10 Q. Mr. Myers, here's my question. Do you interpret
11 a, quote, "minute amount," end quote, as being a level
12 that was several times over the legal limit?

13 A. No.

14 Q. If you were a customer hearing only a, quote,
15 "minute amount," end quote, of asbestos was released,
16 that's something that would not concern you, is it?

17 MR. BICKS: Objection to the form.

18 A. Would you repeat that, please?

19 Q. Yes, sir. As a customer of Union Carbide, if you
20 had heard that only a, quote, "minute amount," end quote,
21 of asbestos was -- was released during the sanding of
22 joint compound, would that -- that's not anything that
23 would concern you, is it?

24 MR. BICKS: Objection to the form.

25 A. Well, I think you'd have to divine -- define

1 "minute." But --

2 Q. (By Mr. Chandler) "Minute" --

3 A. And dry sanding, where we -- we were recommending
4 wet sanding.

5 Q. Okay.

6 A. Go ahead.

7 Q. "Minute," to a customer, wouldn't reasonably
8 relate to that customer that Union Carbide knew Federal
9 guidelines were exceeded when sanding was done, would it?

10 MR. BICKS: Objection to the form.

11 A. They were exceeded in some cases, yes.

12 Q. (By Mr. Chandler) And when you told customers
13 that only a, quote, "minute amount," unquote, of asbestos
14 was released, does that adequately convey to the customer
15 that Union Carbide knew that on one prior occasion, two
16 out of three samples exceeded the TLV and then on
17 occasions, up to a 10 fiber count could be found?

18 MR. BICKS: Objection to the form.

19 A. No.

20 Q. (By Mr. Chandler) Okay. You agree that Union
21 Carbide has a responsibility, as a supplier of a hazardous
22 product, to accurately convey to customers information
23 about the hazards of your product, true?

24 A. Yes.

25 Q. You tried to do that, is what you're telling the

1 ladies and gentlemen of the jury?

2 A. Yes.

3 Q. Did Georgia-Pacific know everything they needed
4 to know from Union Carbide to evaluate whether asbestos
5 was hazardous for use in their joint compounds?

6 MR. BICKS: Objection to the form.

7 A. I don't know whether they had everything they
8 needed to know. We supplied them with what we had
9 available. I don't know when the -- when the -- we
10 published the results of our tape joint tests, dust
11 tests -- gust -- dust monitoring tests.

12 Q. (By Mr. Chandler) Yes, sir.

13 A. But they would have been passed on. However,
14 they would have read them in the journal that -- in which
15 they were published.

16 Q. This journal?

17 A. Yes.

18 Q. Do you know when your journal article was
19 published, sir?

20 A. No. That's why I was asking.

21 Q. Okay. We'll go over it, then.

22 You agree that in 1975, in May -- on May 19 of
23 1975, Georgia-Pacific comes right out and asks Union

24 Carbide, "What can we tell people about the release of
25 asbestos fibers," don't you? You agree that that's what

WORLDWIDE COURT REPORTERS 1-800-745-1101

256

1 they're doing?

2 A. Yeah. He asks they could -- what we -- he can
3 tell contractors regarding asbestos and sandings.

4 Q. You agree that Union Carbide does not adequately
5 convey their prior knowledge of sanding tests that
6 exceeded the TLV when they tell Georgia-Pacific, quote, "a
7 minute amount," end quote, is released.

8 MR. BICKS: Objection.

9 A. Well, I don't know the timings, whether this was
10 before we had run more extensive tests or any tests.

11 Q. (By Mr. Chandler) My --

12 MR. CHANDLER: Objection, nonresponsive.

13 Q. (By Mr. Chandler) Here's my question, sir: Do
14 you agree that what the salesperson who reported to you
15 conveyed to Union Carbide (sic) was not an adequate or
16 reasonable representation about what Union Carbide knew
17 with respect to other samples that did violate the TLV on
18 two out of three occasions, for example?

19 MR. BICKS: Objection to the form.

20 A. You -- well, you meant conveyed to
21 Georgia-Pacific --

22 Q. (By Mr. Chandler) Yes, sir.

23 A. -- in the very beginning, I think.

24 Again, I don't know what data he's referring to
25 here.

WORLDWIDE COURT REPORTERS 1-800-745-1101

257

1 Q. You agree that --

2 A. If this was after the tests that we'd run, then I
3 would say that was a misquote or a mis- -- poor statement
4 to say.

5 Q. And that document, the Report of Call on
6 Georgia-Pacific, is May of '75, isn't it?

7 A. Yes.

8 Q. The document in which Union Carbide acknowledges
9 that sanding joint compounds could be up towards 10 fibers
10 is dated over a year before that document, isn't it?

11 A. Yeah. That's not Union Carbide. It's this
12 Safety Committee of the Gypsum Association.

13 Q. The meeting at which Union Carbide learned from
14 the Gypsum Association Safety Committee that fiber counts
15 could be up to 10 when sanding joint compound was more
16 than a year before Georgia-Pacific ever asked the question
17 to Union Carbide, isn't it?

18 A. Yes.

19 Q. The samples that Union Carbide had done for

20 another joint compound customer that showed two out of
21 three samples were above the TLV was taken nine months or
22 so before Georgia-Pacific ever asked Union Carbide the
23 question referenced in Myers Exhibit 31, true?

24 A. Yes. That's what I -- and that's what I asked
25 you --

WORLDWIDE COURT REPORTERS 1-800-745-1101

258

1 Q. Okay.

2 A. -- when these --

3 Q. So, when you're looking at Myers Exhibit 29, the
4 report to Roach Paint Company, Myers Exhibit 30, the
5 report of the meeting of the Gypsum Association, those --
6 that information Union Carbide had in its possession
7 predated the inquiry from Georgia-Pacific about fiber
8 release; is that true?

9 A. Yes.

10 Q. Thank you.

11 Now, there did come a time when Mr. Rhodes and
12 Mr. Ingalls wrote a report entitled "Asbestos and Silica
13 Dust, OSHA Regulations and Exposure In Drywall
14 Operations," true?

15 A. Yes.

16 Q. Do you know whether Georgia-Pacific ever got a
17 copy of that report?

18 A. They would -- I -- I'm positive they would have
19 been members of the association that would have re- --
20 they would have received that journal, yes.

21 Q. And if you're a member of an organization, you
22 should get its journals, correct?

23 A. I would think so.

24 Q. And you're -- you're relying on the fact that
25 Georgia-Pacific was a member of the Gypsum Drywall

WORLDWIDE COURT REPORTERS 1-800-745-1101

259

1 Contractors Association, to lead yourself to the
2 conclusion that, in fact, Georgia-Pacific got a copy of
3 the article you wrote, in their journal, correct?

4 A. If they were members. I don't know if they were
5 members or not.

6 Q. Okay. But if they were members, they should have
7 got a copy.

8 MR. BICKS: Objection to the form.

9 Q. (By Mr. Chandler) True?

10 A. I would think so, yes.

11 Q. And if Union Carbide was a member of another
12 organization and they published an article, you'd expect
13 Union Carbide to get a copy of that article, true?

14 A. I would expect so, yes.

15 Q. Okay. I mean, it's not fair to hold

16 Georgia-Pacific to one standard and Union Carbide to
17 another, is it?

18 MR. BICKS: Objection to the form.

19 A. Compared to the standard of what?

20 Q. (By Mr. Chandler) Well, if you are to assume --
21 if you're going to tell the ladies and gentlemen of the
22 jury that Union Carbide got a copy of this article that
23 Union Carbide wrote because they were a member of an
24 organization in whose journal it was published, it is
25 fair, then, for the jury to consider Union Carbide must

WORLDWIDE COURT REPORTERS 1-800-745-1101

260

1 have got articles of journals published in organizations
2 they were members of; is that fair?

3 A. Well --

4 MR. BICKS: I think you misspoke.

5 A. You said "Georgia-Pacific" again --

6 Q. (By Mr. Chandler) I'm sorry.

7 A. I mean you said "Union Carbide."

8 Q. Thanks for catching me. Let me try to rephrase
9 my question.

10 The article that we will label as Myers Exhibit
11 32 is an article that Union Carbide wrote in the journal
12 of the Drywall Contractors Organization, right?

13 A. Yes.

14 Q. You're here to tell the ladies and gentlemen of
15 the jury Georgia-Pacific would have got a copy of that
16 article, fair?

17 A. I presume that they would if they were members of
18 the --

19 Q. Okay.

20 A. -- whatever it is.

21 Q. Now, when the jury considers whether Union
22 Carbide got copies of information published by other
23 organizations in their -- their journals, can we then say
24 Union Carbide should have got a copy of those journals,
25 since they were a member of those organizations, just like

WORLDWIDE COURT REPORTERS 1-800-745-1101

261

1 Georgia-Pacific should have got a copy of this journal
2 because it was published in an organization's journal to
3 which they belonged?

4 MR. BICKS: Objection to the form.

5 A. Union Carbide was a huge corporation, and I have
6 no idea what all associations they belonged to. And any
7 reports from an association, or journals, would have gone
8 to different people within the corporation.

9 Q. (By Mr. Chandler) Within Union Carbide
10 Corporation?

11 A. Yes.

12 Q. All right. Just like the article Georgia-Pacific
13 wrote would have gone -- pardon me, just like the article
14 Union Carbide wrote would have gone to the members of that
15 organization?

16 A. Yes.

17 Q. All right. Now, do you know whether
18 Georgia-Pacific was, in fact, a member of the Gypsum
19 Drywall Contractors International?

20 A. No, I don't.

21 Q. Or the Gypsum Drywall Contractors Association?
22 Do you know that?

23 A. No.

24 Q. So, did Union Carbide ever at any point mail this
25 directly to its customers, the article they wrote that

WORLDWIDE COURT REPORTERS 1-800-745-1101

262

1 appeared in that journal?

2 A. I believe that we did, yes.

3 Q. Okay. Do you have any evidence to show this jury
4 that Union Carbide mailed a copy of your article entitled
5 "Asbestos and Silica Dust, OSHA Regulations and Exposure
6 In Drywall Operations" directly to Georgia-Pacific?

7 A. I have no -- I don't -- I don't -- can't find --
8 I'm not looking for a letter to that effect, but --

9 Q. Have you ever found one?

10 A. No, no.

11 Q. Okay. So, here's my question: In your
12 experience, would it have been the standard operating
13 procedure for Union Carbide to mail a copy of "Asbestos
14 and Silica Dust" article to its customers of tape joint
15 compound asbestos?

16 A. Yes.

17 Q. All right. Now, in your article, you tell
18 everybody in the world who wants to read it that there are
19 instances in which asbestos TLV's can be violated when
20 sanding joint compounds, true?

21 A. Yes.

22 Q. You're not here to deny to the ladies and
23 gentlemen of the jury that if somebody is dry-sanding tape
24 joint compounds they're always going to be within safe
25 limits, are you?

WORLDWIDE COURT REPORTERS 1-800-745-1101

263

1 A. No.

2 Q. Can you explain for the ladies and gentlemen of
3 the jury why one year -- pardon me, in May, just several
4 months prior to Union Carbide's publication being issued,
5 or published, why Union Carbide salespeople are telling
6 its customers that, quote, "a minute amount," unquote, of
7 asbestos is -- is released during dry sanding, when

8 clearly you know that TLV's can be violated? Can you
9 explain that to us?

10 A. No. You said "salesmen." This is one salesman.

11 Q. Sure. Did you ever write to Mr. Walsh and say:
12 "Hey, why did you tell Georgia-Pacific 'a minute amount'?"

13 A. Not that I recall.

14 Q. Did you ever reprimand him for doing that?

15 A. Not that I recall.

16 MR. CHANDLER: You want a copy of this, Mel?

17 MR. BAILEY: Yeah.

18 MR. BICKS: You didn't mark that as an
19 exhibit.

20 MR. CHANDLER: I -- I --

21 MR. BAILEY: That's what I was thinking,
22 too.

23 MR. CHANDLER: Oh, I'm sorry. I did mean
24 to.

25 MR. BICKS: And I noticed that -- you

WORLDWIDE COURT REPORTERS 1-800-745-1101

264

1 obviously know that there are two studies, and I can see
2 that you just were referring to one.

3 MR. CHANDLER: Where's the other one?

4 MR. BICKS: I think if you'll read the
5 introduction, doesn't it refer to a second study that will

6 be published that details a series of results, including
7 in the state of Texas?

8 MS. FROST: Mr. Kraus had both with him the
9 other day.

10 MR. CHANDLER: Really?

11 MS. FROST: Uh-huh.

12 MR. CHANDLER: He's more prepared. He's a
13 better lawyer than I am.

14 MR. BICKS: No, he's not. He was surprised.
15 He got shown them.

16 MR. CHANDLER: Well, I'm glad to hear he
17 didn't notice them either.

18 Show me, and we'll talk about it. Do you want
19 to? I mean, it's up to you.

20 MR. BICKS: I'm just reading your exhibit.
21 I think it starts out by saying this is the first in a
22 two-part series --

23 MR. CHANDLER: Okay.

24 MR. BICKS: -- and the second one will
25 discuss detailed findings. That was my recollection of

WORLDWIDE COURT REPORTERS 1-800-745-1101

265

1 the article.

2 MR. CHANDLER: No, you're correct.

3 Well, it's a two-part article. Are you

4 suggesting there are two studies?

5 MR. BICKS: There are two articles.

6 MR. CHANDLER: Two articles. Do you have

7 the other one you want to go over? I'll be happy to do it

8 for you, if you want.

9 Don't want to be accused of hiding the ball

10 here. So, what I'm telling you is if you have it for me

11 and you want him to go over it, we're more than happy to

12 do it.

13 MR. BICKS: This is your examination.

14 MR. CHANDLER: Okay.

15 MR. BICKS: I'm just alerting you to the

16 witness --

17 MR. CHANDLER: Okay.

18 MR. BICKS: -- has been referred to a

19 study --

20 MR. CHANDLER: I did mark it as Myers

21 Exhibit 32. We'll put it right there. All right.

22 (Myers Exhibit No. 32 was marked.)

23 Q. (By Mr. Chandler) You're not here to tell the

24 ladies and gentlemen of the jury that Mr. Dixon was not

25 exposed to levels of asbestos that exceeded the TLV during

WORLDWIDE COURT REPORTERS 1-800-745-1101

266

1 his work with his father in sanding joint compounds, are

2 you?

3 A. I have no idea what he was exposed to.

4 Q. It wouldn't surprise you, consistent with the
5 material we have read, that drywallers were exposed to
6 asbestos above the TLV, would it?

7 MR. BICKS: Objection to the form.

8 A. It depends on their work practices.

9 Q. (By Mr. Chandler) It wouldn't surprise you,
10 depending on their work practices, that contractors were
11 exposed to asbestos in excess of the TLV's, would it?

12 A. Not if they had poor work practices, no.

13 Q. Did Union Carbide ever criticize Dr. Selikoff?

14 A. Oh, I don't recall that we did. We -- I'm
15 certainly had -- certain we had some questions about some
16 of his findings.

17 Q. As the representative of the Union Carbide
18 Corporation, are you telling the jury that Dr. Selikoff's
19 work was reliable or not?

20 A. I think that it was in most cases, yes.

21 Q. Thank you. You recognize Dr. Selikoff as one of
22 the -- the pioneers in the early days of informing folks
23 about the hazards of asbestos, correct?

24 A. Yes.

25 Q. Do you know how many different uses Union Carbide

1 created or put their asbestos in, how many different kinds
2 of material?

3 A. I think in some piece of literature at one point
4 we may have said 3,000. That sounds --

5 Q. Okay. There were 3,000 --

6 A. -- a bit high.

7 Q. -- different uses that Union Carbide sold its
8 asbestos for, in the life of their asbestos program?

9 A. I think that was a -- something that was said
10 in -- in a little hype, probably. I have no idea how many
11 applications were really involved.

12 Q. Well, was it common for Union Carbide to hype its
13 asbestos in an inaccurate manner?

14 A. No. Not intentionally, no.

15 Q. Okay. So, if they said 3,000 uses, we can rely
16 on --

17 A. Not necessarily.

18 Q. -- their statement?

19 A. No.

20 Q. So, Union Carbide might have said something that
21 we cannot rely upon when they were commenting on their
22 asbestos products?

23 MR. BICKS: Objection to the form.

24 A. I don't remember what the context was for saying
25 that.

1 Q. (By Mr. Chandler) At some -- let me ask you
2 this. At some point, Mr. Myers, you've seen reports by
3 Union Carbide that their asbestos was put to 3,000
4 different uses. Whether that's an accurate number or not,
5 you've seen Union Carbide report that number?

6 A. I've seen that, yes.

7 Q. Okay. Do you know when the first year Union
8 Carbide sold its asbestos to Georgia-Pacific was?

9 A. No, I don't.

10 Q. Do you know when the last year is?

11 A. No.

12 Q. You do know that at the Coalinga deposit, of the
13 three original miners, Johns-Manville, Atlas, and Union
14 Carbide, Union Carbide was the last to sell off its
15 asbestos business, correct?

16 A. Yes. We did that this morning, yeah. Yes.

17 Q. How -- do you know how long after Johns-Manville
18 quit mining asbestos in Coalinga that Union Carbide quit?

19 A. Union Carbide quit in 1985.

20 Q. Do you know when Johns-Manville got out of the
21 business in Coalinga?

22 A. No, I don't.

23 Q. Does it strike you that it was a long time before
24 or short time, do you remember?

25 A. No, I don't.

1 Q. Okay. Now, I want to reference you back to some
2 questions we asked you earlier. You would never advise
3 your salespeople, when they're selling your asbestos, to
4 be so aggressive with respect to customers so as to
5 embarrass them into buying your product, correct?

6 A. That wouldn't be my intent, no.

7 Q. Okay. Who's Mr. Ingalls, Blair Ingalls?

8 A. He was a technical person in the marketing group.

9 Q. So, he worked for you?

10 A. Yes.

11 MR. CHANDLER: I need a copy of one of these
12 before we leave. Don't leave with it. It's the, quote,
13 "Don't Tell NIOSH," unquote, article. We'll find it.

14 We'll leave it right here so we know I'm not
15 leaving with it.

16 Q. (By Mr. Chandler) All right. Let me show you,
17 Mr. Myers, what we'll mark as Myers Exhibit No. 33.

18 (Myers Exhibit No. 33 was marked.)

19 Q. (By Mr. Chandler) Myers Exhibit No. 33 is a -- a
20 memorandum that you were copied on from Mr. Ingalls, isn't
21 it?

22 A. Yes.

23 Q. Myers Exhibit No. 33 is a -- "suggested as a
24 basic format for handling inquiries from customers

25 concerning the new OSHA regulations," isn't it?

WORLDWIDE COURT REPORTERS 1-800-745-1101

270

1 A. Yes.

2 Q. Mr. Ingalls was in the Marketing Department and
3 worked for you at the time he wrote this, correct?

4 A. Yes.

5 Q. Mr. Ingalls' basic guideline for handling
6 customers' inquiries begins with, "No. I. Set the mood,"
7 correct?

8 A. Yes.

9 Q. I'm going to read this, and I want you to say
10 "Stop" when we find something that you as the marketing
11 manager found would have been an unacceptable practice for
12 Union Carbide, okay?

13 A. I'll try.

14 Q. Okay. "No. I. Set the mood. Controlling the
15 conversation is paramount. Assure that the -- assure the
16 customer that the new law is reasonable and within the
17 limits of practicality. Cite the efforts by our own plant
18 and that we have experienced no health problems with our
19 employees. The first paragraph of Bill Johnson's letter
20 to the Office of Safety and Health Standards, June 9, '72,
21 summarize our position and attitude. It also seems to
22 have a soothing effect on the emotionally irate. Point

23 out the vast numbers of customers successfully using
24 asbestos without a problem. If the customer is persistent
25 and threatens to eliminate asbestos, a certain amount of

WORLDWIDE COURT REPORTERS 1-800-745-1101

271

1 aggressiveness may be effective."

2 A. Yeah, I -- I would stop there.

3 Q. Okay. Did you ever tell Mr. Ingalls this was an
4 inappropriate letter that outlined the basic format for
5 handling inquiries from Union Carbide?

6 A. I probably did, but I can't recall that.

7 Q. Has Union Carbide ever produced to you a document
8 where you responded in writing to all of the people who
9 got this memorandum, that you, as the boss, disagreed with
10 being aggressive with respect to customers who wanted to
11 relate asbestos?

12 A. No.

13 Q. And when you left Union Carbide, did you take any
14 documents with you?

15 A. They were -- no, I didn't take any home with me.
16 They were left at the KCAC.

17 Q. But if you wrote an important memo that you
18 thought marketing people need to have seen it, you put a
19 copy in the file and you copied various of your
20 subordinates, correct?

21 A. Yes.

22 Q. And Union Carbide's never given you any memo
23 where you copied all of the people who got this letter,
24 that you thought being aggressive with customers was
25 inappropriate?

WORLDWIDE COURT REPORTERS 1-800-745-1101

272

1 A. No.

2 Q. You do today, as you sit here -- or what you're
3 telling this jury is: Being aggressive with customers who
4 threaten to eliminate asbestos is not an appropriate sales
5 method for a company who sold asbestos, true?

6 A. Yeah, I think he misused -- we used the wrong
7 word. I --

8 Q. Okay.

9 A. I wouldn't use that word.

10 Q. What word would you have used other than
11 "aggressive"?

12 A. Just -- I -- the best part is in the first of,
13 you know, describing our efforts and then what we would
14 recommend to them in order to comply with the OSHA
15 standards.

16 Q. Well, you said Mr. Ingalls, when he used the word
17 "aggressive," used the wrong word. What word would you
18 replace that with?

19 A. Well, I think just what I said. I can't put it
20 in one word.

21 Q. Okay. Let me go on and continue reading: "Words
22 and catch phrases such as 'premature,' 'irrational,' or
23 'avoiding the inevitable' will sometimes turn the table."

24 A. I think those words are inappropriate, also.

25 Q. Would you suggest other words to Mr. Ingalls to

WORLDWIDE COURT REPORTERS 1-800-745-1101

273

1 use?

2 A. No. I would go back to the same thing I just
3 said.

4 Q. Okay. "The main objective is to keep the
5 customer on the defensive, make him justify his position."

6 A. Again, I don't think that's appropriate.

7 Q. "Most customers who call are on the offensive,
8 often prepared with loaded questions and expecting an
9 argument. Change the mood before discussing anything
10 pertinent about the new regulations. Alternating between
11 an aggressive and submissive attitude is confusing and
12 allows you to bide your time. Refuse to argue, be humble,
13 and when they are sufficiently calm, sometimes even
14 embarrassed, make your point forcefully. Don't cover too
15 much ground in one confrontation. Even rabies shots are
16 spaced at moderate intervals."

17 A. I don't agree with any of that, no.

18 Q. It is not a -- an appropriate sales technique to
19 confuse customers when you're talking about something as
20 important as Federal guidelines that limited exposure to
21 cancer-causing substances, is it?

22 A. No.

23 Q. And you can't produce for us a single document
24 where you report -- where you tell these salespeople not
25 to be aggressive or confusing, can you?

WORLDWIDE COURT REPORTERS 1-800-745-1101

274

1 A. No, I can't.

2 MR. BICKS: Objection to the form.

3 A. But I think the points that you haven't read, you
4 know, refer to the regulations.

5 Q. (By Mr. Chandler) And one thing you tell the
6 customer is that the OSHA regulations should be referred
7 to and that they are, in your -- in Mr. Ingalls' words,
8 "put things in the proper perspective," don't they?

9 A. Where is that? (Reading.)

10 Q. Let me read it for you. Under II --

11 A. I think he's a left out word there or something.

12 Q. -- "Pertinent points of issue," sir. "Refer to
13 the new OSHA Regulations Section 1910 and suggest the
14 customer" --

15 A. There's a word left out.

16 Q. -- "himself with it." I assume "familiarize"?

17 A. "Acquaint" or --

18 Q. Okay. Quote: "It clarifies much of the issue
19 and put things in their proper perspective." You agree
20 with that, don't you?

21 A. Yes.

22 Q. The OSHA regulations in 1972 could be relied upon
23 by your customers to tell them the truth.

24 MR. BICKS: Objection --

25 A. To tell them what they needed to do to comply

WORLDWIDE COURT REPORTERS 1-800-745-1101

275

1 with the regulations.

2 Q. (By Mr. Chandler) Now, are there parts of the
3 OSHA regulation with which you did not agree in 1972?

4 A. Not that I recall.

5 Q. Okay. I want to give you a fair opportunity to
6 point out anything you want the jury to consider with
7 respect to Mr. Ingalls' memorandum, if you choose to.
8 Otherwise, I'm done with it.

9 A. That's okay.

10 Q. Okay.

11 (Discussion off the record.)

12 Q. (By Mr. Chandler) Can you tell this ladies and

13 gentlemen of the jury whether Georgia-Pacific was ever
14 embarrassed and confused into buying Union Carbide's
15 fiber?

16 A. Not to my knowledge.

17 Q. Okay. If -- if there were known problems,
18 health-related problems of your asbestos that you knew
19 about, you should have conveyed all of that information to
20 your customers, true?

21 A. What problems would you mean?

22 Q. Well, are there -- are there some known
23 health-related problems that you think it would be
24 appropriate not to tell customers about?

25 A. Not as long as they were proven and --

WORLDWIDE COURT REPORTERS 1-800-745-1101

276

1 Q. Okay. Would you ever recommend to your cust- --
2 to your salespeople, when it came to health hazards of
3 your fiber, that, quote, "The less said about it, the
4 better," unquote?

5 A. The less said about what?

6 Q. Health problems, whatever they were. However
7 minor or however major.

8 A. It doesn't sound like I would say that, no.

9 Q. Okay. You -- if your salespeople -- and if your
10 salespeople said -- an issue came up, and even if it was

11 just a minor one about health, "Our position was the less
12 said about it, the better," is that something you would
13 agree with?

14 A. Again, I think it --

15 MR. BICKS: Objection to the form.

16 A. I think it depends on the situation. But not
17 generally would I --

18 Q. (By Mr. Chandler) Okay.

19 A. -- agree with that.

20 Q. Let me show you what we'll mark as Myers Exhibit
21 No. 34, sir.

22 MR. CHANDLER: Am I right?

23 (Discussion off the record.)

24 (Myers Exhibit No. 34 was marked.)

25 Q. (By Mr. Chandler) Myers Exhibit No. 34 is a

WORLDWIDE COURT REPORTERS 1-800-745-1101

277

1 memorandum marked "Business Confidential" by the Calidria
2 Asbestos group, dated 1971; is that right?

3 A. Yes.

4 Q. You are copied on this report, aren't you?

5 A. Yes.

6 Q. A bunch of people are copied on this report,
7 including the "File" at King City and in Niagara Falls,
8 New York, aren't they?

9 A. Yes.

10 Q. This is a customer who was a purchaser of

11 polyester resins grade asbestos, correct?

12 A. Yes.

13 Q. In the third paragraph, the Union Carbide sales

14 folks, Mr. Klein and Mr. Rhodes now -- Mr. Rhodes and

15 Mr. Klein write --

16 A. Wait. I haven't found you yet.

17 Q. Certainly.

18 A. Third paragraph?

19 Q. Yes, sir, under "Observations" at the plant.

20 A. "Skin irritation problem"?

21 Q. Yes, sir.

22 A. Okay.

23 Q. "The skin irritation problem mentioned previously

24 has been solved by the men wearing long-sleeved shirts

25 while dumping. It is suggested that the less said about

WORLDWIDE COURT REPORTERS 1-800-745-1101

278

1 this, the better." Did I read that correctly?

2 A. Yes.

3 Q. Who's Mr. Crowe?

4 A. Mr. Crowe. I don't know -- oh, first paragraph.

5 He was the plant manager.

6 Q. He was the plant manager at your customer's

7 plant?

8 A. Yes.

9 Q. And he had mentioned a skin irritation problem
10 created when the men dumped Calidria Asbestos, right?

11 MR. BICKS: Objection to the form.

12 Q. (By Mr. Chandler) According to Mr. Rhodes and
13 Mr. Klein, at least.

14 A. I don't know whether it's while dumping asbestos
15 or dumping their resin.

16 Q. Anyway, Mr. Rhodes, who wrote the article about
17 "embarrassing and confusing customers," suggests, "The
18 less said about this, the better," end quote.

19 MR. BICKS: I'm sorry --

20 Q. (By Mr. Chandler) Correct?

21 MR. BICKS: You said "Rhodes"?

22 MR. CHANDLER: Rhodes.

23 THE WITNESS: Yeah, I don't know who wrote
24 this --

25 MR. BICKS: I thought the other document --

WORLDWIDE COURT REPORTERS 1-800-745-1101

279

1 am I wrong?

2 MR. CHANDLER: Oh, you're right.

3 Mr. Ingalls. Sorry.

4 Q. (By Mr. Chandler) Mr. Rhodes this time, not

5 Mr. Ingalls, another salesperson who worked for you,
6 suggests, "The less said about a skin irritation problem,
7 the better," right?
8 A. I don't know whether --
9 MR. BICKS: Objection, form.
10 A. I don't know whether Mr. Rhodes -- Dr. Rhodes
11 said it or Mr. Klein.
12 Q. (By Mr. Chandler) Okay. Either way, we have two
13 folks who worked for you --
14 A. No. I don't know Mr. Klein.
15 Q. Oh, okay. Mr. Klein is in Atlanta, right,
16 according to this copy that was sent around to folks?
17 A. Yeah, that's what it says here.
18 Q. And you don't know the man?
19 A. I don't remember that I know him.
20 Q. Okay. Mr. Rhodes, you certainly know?
21 A. Yes.
22 Q. Mr. Rhodes worked for you and reported to you?
23 A. Yes.
24 Q. Now, we know Mr. Ingalls you've disagreed with
25 when he talked about "confusing and embarrassing the

WORLDWIDE COURT REPORTERS 1-800-745-1101

280

1 customers." Do you also agree with either Mr. Klein or
2 Mr. Rhodes when they wrote, "The less said about a skin

3 irritation problem, the better"?

4 MR. BICKS: Objection to the form.

5 A. As I say, I don't know whether they're getting an

6 irritation from the resin or from the R-2 -- RG-244.

7 Q. (By Mr. Chandler) Okay.

8 A. And I don't know what they mean by "the less said

9 about this."

10 Q. Well, if it's the resin, it's the resin with

11 Carbide's asbestos in it, isn't it, because they were

12 making --

13 A. Not necessarily, no.

14 Q. Your customer was making their resin with your

15 asbestos, weren't they?

16 A. The finished product, yes.

17 Q. Okay. Do you think that Mr. Rhodes and Mr. Klein

18 are writing about a problem unrelated to them, that

19 considered -- concerned somebody else's product?

20 A. I really have never heard of any irritation from

21 handling asbestos; so, I don't know what they're talking

22 about.

23 Q. Is that because "The less said about the problem,

24 the better," Mr. Myers?

25 A. No, thank -- no, it isn't.

1 Q. Okay. Mr. Myers --

2 A. Yes, sir.

3 Q. -- would you ever suggest that your salespeople
4 not rock the boat with any warnings or suggestions when
5 they're trying to sell their asbestos?

6 A. No.

7 Q. And if your salespeople did it -- decided to,
8 quote, "not rock the boat with any warnings or
9 suggestions," that's something you, as the boss of all the
10 salespeople at one time, would have disagreed with,
11 correct?

12 A. Depends on the situation. I'd --

13 Q. Okay.

14 A. -- have to see what you're talking about.

15 Q. Let's see this particular situation.
16 (Myers Exhibit No. 35 was marked.)

17 Q. (By Mr. Chandler) I'll hand you what we've
18 marked as Myers Exhibit No. --

19 A. Do you want the yellow --

20 Q. -- 35. Oh, thank you, sir. I'll give your
21 lawyer this one, and I'll take this one and give you this
22 one. Musical exhibits. Thank you for doing that.

23 Have I been disrespectful to you at all today? I
24 haven't meant to, if I am. Have I been?

25 A. No.

1 Q. Good. If I get out of line, you tell me, okay?

2 There you go. Thank you.

3 A. Uh-huh.

4 Q. Now, this is another call to Glidden-Durkee
5 Company in December of '71. It's by Harrison B. Rhodes,
6 correct?

7 A. Yes.

8 Q. Mr. Rhodes writes in the second paragraph, in the
9 middle there, sir: "Considering our known problems and
10 lack of real background in gel coats and iso resins, I
11 chose not to rock the boat with any warnings or
12 suggestions," end quote. Do you see that?

13 A. Yes.

14 Q. Now, look at the bottom again, where
15 Mr. Rhides -- Rhodes writes: "In view of the toxicology
16 dis-" -- "toxicology discussions we've been having with
17 their Cleveland people, I took the opportunity to provide
18 some background and reassurances. He did not even realize
19 Calidria was asbestos," with an exclamation point after
20 it.

21 Can you believe one of your customers didn't even
22 know what you were selling them was asbestos?

23 A. I guess -- I can only read what you've read. It
24 doesn't sound likely, but --

25 Q. If, in fact, customers of yours didn't realize

1 what they were using at their facilities was even
2 asbestos, somebody is doing a bad job of relying that
3 information to them, whether it's them or Union Carbide,
4 correct?

5 Q. They --

6 MR. BICKS: Objection to the form.

7 A. They couldn't have not known about it, from any
8 of our literature, our --

9 Q. (By Mr. Chandler) Well --

10 A. -- our business cards or anything else that they
11 were exposed to as -- would have talked about Calidria
12 Asbestos.

13 Q. This is a call made on the technical director and
14 the director of purchasing for Glidden-Durkee in Atlanta,
15 right?

16 A. Yes.

17 Q. If either the technical director or the director
18 of purchasing didn't realize that Calidria was even
19 asbestos, isn't that something that would concern you?

20 A. Well, I -- as I say, he -- there's no way that he
21 could not have -- I don't know whether he's talking about
22 the purchase -- purchasing director or technical director.
23 But the purchasing director would obviously know that it
24 was asbestos that he was buying from -- and the other --

25 anybody else should, too, from all the information that

WORLDWIDE COURT REPORTERS 1-800-745-1101

284

1 was given to them -- as I say, including our business
2 cards said "Calidria Asbestos" on them.

3 Q. Was Mr. Rhodes not being accurate when he filled
4 out the Customer Call Report when he suggested the
5 customer "did not even realize Calidria was asbestos," and
6 he thought enough about that to put an exclamation point
7 on that?

8 A. I think he was very surprised, yes.

9 Q. And Mr. Rhodes didn't put things in his Customer
10 Call Reports that were misleading, did he?

11 A. I don't know. Not that I know of.

12 Q. If you -- if he had, that would be something
13 you'd have reprimanded him for, wouldn't it?

14 A. Very likely, yes.

15 Q. So, when he suggests "not to rock the boat with
16 any warnings or suggestions," that's something you, in
17 your mind, would have gone back and done something about?

18 A. I think --

19 MR. BICKS: This is the -- go ahead.

20 THE WITNESS: I'm sorry.

21 A. I think here he's talking about the fact that we
22 don't have much knowledge of gel coats or -- and that we

23 wouldn't try to give them any, I think, warning -- not
24 warnings about asbestos but warnings about gel coats
25 and -- because we didn't know enough about it.

WORLDWIDE COURT REPORTERS 1-800-745-1101

285

1 Q. (By Mr. Chandler) Well, let's read exactly what
2 it says, and you tell me where you are reading this into
3 what the document says.

4 "Considering our known problems and the lack of
5 real background in gel coats and iso resins, I chose not
6 to rock the boat with any warnings or suggestions."

7 It's not Mr. Rhodes' job to warn about iso
8 resins, is it?

9 A. Well, he chose not to warn anything about -- I
10 don't know. I don't know what he meant.

11 Q. Okay. It is not Mr. Rhodes' job to warn the
12 customer about anything other than asbestos, true?

13 A. And I believe that he would have, yes.

14 Q. Okay. Even though he writes, he "chose not to
15 rock the boat with any warnings or suggestions"?

16 A. I honestly believe he's not talking about
17 asbestos.

18 Q. It wasn't his job --

19 A. That's my interpretation --

20 Q. Okay.

21 A. -- of this.

22 Q. Can you tell me anywhere in Mr. Rhodes' Report of
23 Call that you received a copy of -- did you receive a
24 copy? I don't know. I didn't see your name on it.

25 A. Yes, I would have gotten a "File" copy.

WORLDWIDE COURT REPORTERS 1-800-745-1101

286

1 Q. The "File" copy. In King City or Niagara Falls?

2 A. Niagara Falls.

3 Q. Okay. You don't know what it means, as you sit
4 here today --

5 A. I --

6 Q. -- do you?

7 A. -- gave you my opinion.

8 Q. Okay. Did you ever call Mr. Rhodes and say,
9 "Hey, wait a minute. What exactly are you talking about
10 when you say you 'chose not to rock the boat with any
11 warnings or suggestions'?" Did you ever do that?

12 A. That was 31 years ago. I don't remember if I
13 did.

14 Q. Do you have a document in the file that can show
15 the ladies and gentlemen of the jury where you made that
16 inquiry of Mr. Rhodes?

17 A. No.

18 Q. Now, if there were Union Carbide bags that were

19 delivered in plain unmarked bags, that is certainly an
20 explanation about why a customer wouldn't know it was
21 asbestos, isn't it?

22 A. No. He would have gotten -- as I said, he would
23 have gotten business cards from the people that called on
24 him. All the literature calls it asbestos. There was
25 never any attempt to hide that it was asbestos. Never,

WORLDWIDE COURT REPORTERS 1-800-745-1101

287

1 never, never.

2 Q. Was there ever an attempt to "not rock the boat
3 with any warnings or suggestions," sir?

4 A. As I say, I don't believe that applies to
5 asbestos. Dr. Rhodes would not say that.

6 Q. You'll agree with me we should just let the jury
7 interpret for themselves what the document says, rather
8 than --

9 A. You asked -- you asked me to interpret it, and I
10 did.

11 MR. BICKS: That would have been great, but
12 you've been asking him all day about the documents.

13 MR. CHANDLER: Oh, I'm really just asking
14 him whether he agrees with what this says.

15 Q. (By Mr. Chandler) Mr. Myers, it is not good
16 sales practice to choose not to warn customers when

17 they're buying a known cancer-causing agent, is it?

18 A. No.

19 Q. If Union Carbide -- if the jury finds that Union
20 Carbide was being misleading with respect to warning their
21 customers about the toxic properties of asbestos, that --
22 they were doing something wrong, weren't they?

23 MR. BICKS: Objection to the form.

24 A. That wasn't -- that wasn't what happened. But,
25 yes, they would be doing something wrong.

WORLDWIDE COURT REPORTERS 1-800-745-1101

288

1 Q. (By Mr. Chandler) Okay. If an employee came to
2 you and wanted to see his medical records, would you let
3 him, sir?

4 A. I think so -- yeah, I think we would have allowed
5 that. At the King City plant, you mean?

6 Q. Yes, sir.

7 A. I think we allowed that, yes.

8 Q. It's good practice for companies, if their
9 employees ask to see their medical records, to let them
10 see it, right?

11 A. Yes.

12 Q. If you went to your doctor and you said, "Show me
13 my medical records," you wouldn't suspect that he would
14 try to delay you in seeing those, would you?

15 A. No, I don't think so.
16 Q. It would be something that would make you upset,
17 wouldn't it?
18 A. If he delayed?
19 Q. Yes, sir.
20 A. Unless he had a good reason for it, yes.
21 Q. What is a good reason for a doctor to delay your
22 access to your medical records, other than "I just can't
23 find them right now"?
24 A. Well, that, plus if there was something in there
25 he didn't think I should know --

WORLDWIDE COURT REPORTERS 1-800-745-1101

289

1 Q. If there -- that's a great point. Is there
2 something that you feel that me, as an employee, when I
3 inquire into you, is your right to withhold from me about
4 my own medical condition, sir?
5 A. Sir, you were talking about my doctor and me and
6 my records.
7 Q. As -- so, as the --
8 A. Go back --
9 Q. Let me reask the question. As the corporate
10 representative of the Union Carbide Corporation, can you
11 think of an appropriate circumstance with respect to an
12 employee's health where you would say, "I'm not telling

13 him that"?

14 A. I can't think of anything like that, no.

15 Q. Okay. Can you think of an appropriate
16 circumstance where you would try to delay an employee's
17 access to his medical records?

18 A. Not intentionally, no.

19 Q. Okay. If your medical records were fairly
20 detailed -- let -- let's not talk about you personally.
21 If an employee at Union Carbide's medical records were
22 fairly detailed and that employee wanted to see the
23 records, is it good practice to let that employee see
24 those records?

25 A. Well, you're talking about the whole corporation,

WORLDWIDE COURT REPORTERS 1-800-745-1101

290

1 over which I have no knowledge. The records we kept in
2 King City, I wouldn't see any reason not to show them.

3 Q. Okay. If Union Carbide was intentionally
4 delaying an employee access to his own medical records,
5 that's something that was wrong, isn't it?

6 MR. BICKS: Objection to the form.

7 A. I think we already reviewed that. I said that it
8 shouldn't be intentionally kept from somebody.

9 Q. (By Mr. Chandler) Okay. And if they were
10 intentionally delaying employees access to medical records

11 because they were concerned about something embarrassing
12 for the company coming out, that's something that's wrong,
13 isn't it?

14 MR. BICKS: Objection to the form.

15 A. I think it would depend on the situation.

16 Q. (By Mr. Chandler) Can you think --

17 A. In general, I would think it would be wrong, yes.

18 Q. Is there a circumstance in which a company could
19 deny an employee access to his medical records because
20 they were worried about being embarrassed, that would not
21 be wrong?

22 A. I think that's --

23 Q. You said it depends on the circumstances, and
24 I want to know what circumstances it would be right.

25 A. I don't know. I think -- just think there's --

WORLDWIDE COURT REPORTERS 1-800-745-1101

291

1 I can't answer for the whole corporate philosophy or
2 anything else, but I wouldn't say there would never be a
3 reason for -- for withholding information.

4 Q. Okay. You did not have a union in King City, did
5 you?

6 A. Yes.

7 Q. You did? When did your union come into play?

8 A. I don't remember. And then it was decertified,

9 but I don't remember the length of time or the years.

10 Q. Okay.

11 A. I don't even remember which union it was.

12 Q. Are you aware of whether Union Carbide ever tried

13 to research the use of crocidolite into products that

14 contained asbestos?

15 A. Not to my knowledge.

16 Q. You understand that it is Union Carbide's

17 position that it is crocidolite that causes more asbestos

18 than chrysotile, correct?

19 MR. BICKS: More -- I'm sorry, "causes more

20 asbestos," you said --

21 MR. CHANDLER: I said "more asbestos."

22 Thank you.

23 Q. (By Mr. Chandler) You understand that it is

24 Union Carbide's position that it is crocidolite that

25 causes more mesothelioma than chrysotile?

WORLDWIDE COURT REPORTERS 1-800-745-1101

292

1 A. I don't know whether there was a position.

2 That's my personal opinion.

3 Q. Okay. You've seen Dr. Dernehl's toxicology

4 report that, in fact, states that, haven't you?

5 MR. BICKS: Objection to the form.

6 A. I don't remember -- I don't remember exactly.

7 Q. (By Mr. Chandler) All right. If a company used
8 a type of asbestos that it itself thought was more likely
9 to cause mesothelioma than another type, is that something
10 that would concern you?

11 MR. BICKS: Objection to the form.

12 A. Please repeat. I --

13 Q. (By Mr. Chandler) Yes, sir.

14 A. -- missed it somewhere.

15 Q. If the Union Carbide Corporation started using
16 crocidolite asbestos or experimented with methods that
17 could be -- that could utilize crocidolite asbestos,
18 knowing your personal opinion about crocidolite, would
19 that concern you?

20 A. I -- yeah. I wouldn't think it would be a good
21 idea.

22 Q. Okay. Mr. Myers, was all of Union Carbide's --
23 what was the average length of Union Carbide Calidria
24 asbestos?

25 A. I think we usually said it was less than 5

WORLDWIDE COURT REPORTERS 1-800-745-1101

293

1 microns.

2 Q. Okay. So, what Union Carbide reported to its
3 customers was that their Calidria asbestos' average length
4 was less than 5 microns?

5 A. As I remember, that's what we said, yes.

6 Q. Union Carbide's asbestos did, in fact, range in
7 sizes greater than 5 microns though, didn't it?

8 A. There was some, yes.

9 Q. You would never represent to somebody that Union
10 Carbide asbestos was all shorter than 5 microns, would
11 you?

12 A. I -- nobody could be a hundred percent sure --

13 Q. Okay.

14 A. -- no.

15 Q. Let me show you -- do you have an idea for the
16 percentage of Union Carbide asbestos you claim was less
17 than 5 microns?

18 A. No, I don't.

19 Q. Is it the majority, or less than that?

20 A. I don't really know anymore. You know, I
21 probably knew at one time, but I don't remember.

22 Q. Okay. Mr. Kleber is also a salesman that worked
23 for you at one point, isn't he?

24 A. He was a -- our dust monitoring person. I
25 don't --

WORLDWIDE COURT REPORTERS 1-800-745-1101

294

1 Q. Okay.

2 (Myers Exhibit No. 36 was marked.)

3 Q. (By Mr. Chandler) I'm showing you what we've
4 marked as Myers Exhibit 34. Myers Exhibit 34 is another
5 Customer Call Report --
6 MS. FROST: Don't you mean 36?
7 MR. CHANDLER: Thank you. I mean 36. Did I
8 write thirty -- yeah, I do. Thank you.
9 Q. (By Mr. Chandler) Myers Exhibit 36 is another
10 Customer Call Report, isn't it?
11 A. Yes.
12 MR. BICKS: Can I have a copy?
13 MR. CHANDLER: Oh, sorry. Thank you.
14 Q. (By Mr. Chandler) Myers Exhibit No. 36 is a
15 Customer Call Report filled out by Mr. Kleber, who was a
16 salesman or -- or a -- well --
17 A. I'm not sure what he -- he probably was a
18 salesman at that time.
19 Q. All right. And when Mr. Kleber filled out this
20 Customer Call Report, it appears, at least, that he does
21 not have a lot of faith that there exists any asbestos
22 product whose fibers are all shorter than 5 microns, does
23 he?
24 A. I -- you'd have to tell me where you're reading.
25 Q. Let's read on the last paragraph, where he says,

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 quote: "Wayne then asked if we had heard about the,"
2 quote, "'new,'" unquote, "asbestos product with fibers all
3 shorter than 5 microns. He didn't know who makes it, but
4 a distributor is going to get him a sample. I mentioned
5 that this smelled an awful lot like Hedman fiber and went
6 through that saga with him. He promised to let me know
7 what the name of this magic asbestos is and said he'd get
8 with me if we wanted a sample."

9 A. "He'd get me a sample if we wanted it."

10 Q. Thank you.

11 So, Mr. Kleber doesn't have a lot of faith that
12 there exists any asbestos product whose range -- whose
13 size is all less than 5 microns, does he?

14 A. That's --

15 MR. BICKS: Objection to the form.

16 A. That's what he says here, yes.

17 Q. (By Mr. Chandler) That's your own salesman
18 selling your own product, correct?

19 A. Yes.

20 Q. Okay. And you would never suggest to anybody
21 that Union Carbide's fiber was not hazardous because it
22 was all shorter than 5 microns, would you?

23 A. Well, as I said, it was not all -- I mean, there
24 were longer fibers in there, probably up to 8 microns or
25 something like that, but --

1 MR. BICKS: Want to take a short break and
2 figure out --

3 MR. CHANDLER: Sure.

4 THE VIDEOGRAPHER: Going off the record.
5 The time is 4:19.

6 (Short break.)

7 (Myers Exhibit No. 37 was marked.)

8 THE VIDEOGRAPHER: We're now back on the
9 record. The time is 4:30.

10 Q. (By Mr. Chandler) Mr. Myers, I'm showing you
11 what we have marked as Myers Exhibit No. 37 to your
12 deposition.

13 A. All right.

14 Q. Myers Exhibit 37 is a response to a customer of
15 Union Carbide's Calidria products, isn't it?

16 A. Yes.

17 Q. Mr. Byrne was a man who worked for you at one
18 point, is he?

19 A. Yes.

20 Q. Did I -- did I pronounce it correctly?

21 A. "Burn," yes.

22 Q. Okay. From time to time, your customers would
23 send you requests for what you knew about the hazard of
24 asbestos, wouldn't they?

25 A. As I recall, yes.

1 Q. You would try to respond to them and give them
2 certain information like Dr. Dernehl's toxicology reports
3 and Material Safety Data Sheets?

4 A. And several other things. Many things.

5 Q. If you told a customer that asbestos had no acute
6 toxicity but made -- made no reference in your
7 correspondence to them about the chronic toxicity, that
8 would only be half true, wouldn't it?

9 A. No. If they asked -- well, no, it had no acute
10 toxicity.

11 Q. Correct. But --

12 A. All the literature we had talked about the
13 long-term effects of asbestos.

14 Q. Will you look at what I've marked as Myers
15 Exhibit 37? In your letter to the B.F. Goodrich Chemical
16 Company, you write that "Enclosed is a Material Safety
17 Data Sheet covering Calidria products. As explained in
18 the data sheet, chrysotile has no acute toxicity, but it
19 is covered under current OSHA regulations."

20 Now, is it your statement that that -- is it your
21 position that the statement to your customer that
22 chrysotile has no acute toxicity is a fair, accurate, and
23 complete picture of the hazards posed by exposure to
24 chrysotile asbestos?

25 A. Well, it's not covered in the letter; but it's

1 incurred -- in -- covered in the information that is sent
2 to customers.

3 Q. So, your Material Safety Sheet should tell the
4 customers about the chronic toxicity, then?

5 A. I believe it did, yes.

6 Q. Now, is it at all misleading to tell somebody
7 that there is no acute toxicity and not in the same
8 correspondence say, "Although there's no acute toxicity,
9 you should be aware that there is chronic toxicity"? Does
10 it trouble you at all?

11 A. No, I don't think so.

12 Q. As the person charged with informing customers
13 about the hazards of asbestos, what you're telling the
14 jury is it does not trouble you, as the marketing manager,
15 to tell somebody about the fact that there's no acute
16 toxicity and not in the same correspondence make sure they
17 know about the chronic toxicity. Is that what you're
18 telling us?

19 A. They may have had a question about acute toxic --
20 acute toxicity. I don't know. As I say, every -- this
21 was all included in other materials that we sent.

22 Q. The letter marked Myers 37 to your deposition to
23 the B.F. Goodrich Chemical Company only tells half the

24 story, doesn't it, Mr. Myers, about toxicity with respect
25 to chrysotile?

WORLDWIDE COURT REPORTERS 1-800-745-1101

299

1 A. The letter, yes. The other documents describe
2 it --
3 Q. Okay.
4 A. -- completely.
5 Q. Well, then, let's go over --
6 A. Have you seen --
7 Q. -- the other documents.
8 A. You called them a customer, and I'm not sure from
9 this letter that they were a customer.
10 Q. They at least wanted a sample of your asbestos,
11 correct?
12 A. Yes. That didn't make them a customer.
13 Q. Well, would it have chased them off --
14 A. It may not be important, but --
15 Q. If you had told the B.F. Goodrich Company the
16 complete story about the toxicity of asbestos, would you
17 be concerned that they wouldn't want to buy your product?
18 A. We did tell them the complete story.
19 Q. Telling them about acute toxicity but not about
20 chronic toxicity is not the complete story, is it,
21 Mr. Myers?

22 MR. BICKS: Objection to the form.

23 A. Well, I will repeat what I've said two or three
24 times: The enclosed materials contained complete
25 information about toxicity.

WORLDWIDE COURT REPORTERS 1-800-745-1101

300

1 Q. (By Mr. Chandler) Now, let's talk about some of
2 those materials. You reference in your letter the
3 Material Safety Data Sheet covering Calidria products,
4 don't you?

5 A. That's what we mention, yes.

6 (Myers Exhibit No. 38 was marked.)

7 Q. (By Mr. Chandler) And this was a 1974 document.
8 Is Myers Exhibit No. 38 the Material Safety Data Sheet
9 that existed for Calidria asbestos at the time?

10 A. I don't remember when we updated it, whether
11 there was a -- another update -- this is dated
12 September 1, 1972.

13 Q. You are aware that there were no additional
14 regulations from September of '72 to 1974, though, aren't
15 you?

16 A. I don't know that for a fact.

17 Q. Okay.

18 A. But I'm sure you --

19 Q. Can you think of any circumstance that would have

20 made you want to update your Material Safety Data Sheet
21 dated in '72?

22 A. I can't think of anything, no.

23 Q. Okay. Now, your Material Safety Data Sheet, that
24 is Union Carbide's Material Safety Data Sheet for Calidria
25 asbestos, dated in '72, at least, correct?

WORLDWIDE COURT REPORTERS 1-800-745-1101

301

1 A. Yes.

2 Q. All right. Will you look at -- under "Hazardous
3 Ingredients"? What does it say?

4 A. "Not applicable."

5 Q. Now, assume for me that I'm a contractor on the
6 job or I'm a plant manager who has a tight production
7 schedule, but I'm concerned about the hazardous products
8 that are delivered to my facility, okay? If I look at
9 this "Hazardous Ingredient" or this Material Safety Data
10 Sheet and I just go to "Hazardous Ingredients" and I see
11 "Not applicable," aren't you a little concerned that that
12 person might say, "Okay. No hazardous ingredients. Let's
13 move on"?

14 MR. BICKS: Objection to the form.

15 A. I'd say all he has to do is look at the bag and
16 see the warning label on the bag.

17 Q. (By Mr. Chandler) So, the --

18 A. And I think this was -- I don't know, but this
19 was probably completed with certain directions by -- by
20 OSHA.

21 Q. Now, OSHA did not consider asbestos not to be a
22 hazardous ingredient, did they?

23 A. That's what I say. I don't -- that -- it may be
24 that's the way that column is -- is not intended to be the
25 basic material. It's talking about ingredients --

WORLDWIDE COURT REPORTERS 1-800-745-1101

302

1 Q. You do admit today Calidria is a hazardous
2 ingredient itself, that the fiber itself is hazardous?

3 A. The fiber itself may be a hazard if inhaled over
4 long periods of time at high levels, but it's not a -- it
5 doesn't have any ingredients in it.

6 Q. It is not fair to tell your customers in your
7 Material Safety Data Sheet under "Hazardous Ingredients,"
8 that it is not applicable, is it?

9 A. It doesn't have any ingredients in it. If a --
10 if our customer was going to do one of these on his
11 product that contained asbestos, then he would put an
12 ingredient, "asbestos."

13 Q. Let me just ask your opinion about this: As the
14 person in charge of selling asbestos for Union Carbide,
15 does your Material Safety Data Sheet, when it says "Not

16 applicable" under "Hazardous Ingredients," concern you at
17 all?

18 A. No. As I explained, there's no ingredients in
19 the asbestos.

20 Q. Does it concern you that your customers might
21 look at your Material Safety Data Sheet, see where it says
22 "Hazardous Ingredients," "Not applicable," and not take
23 any precautions? Does that possibility even come to your
24 mind?

25 A. It hasn't in the past.

WORLDWIDE COURT REPORTERS 1-800-745-1101

303

1 Q. Okay. Now --

2 MR. BICKS: Stop reading?

3 MR. CHANDLER: Pardon me?

4 MR. BICKS: Stop reading?

5 Q. (By Mr. Chandler) You think that might ever
6 happen, where a production plant manager who has a tight
7 schedule would look at the Material Safety Data Sheet
8 under "Hazardous Ingredients," "Not applicable," and say,
9 "Okay. Let's move on to the next one"? You think that
10 might ever happen?

11 A. I wouldn't think so.

12 Q. Is it even possible that that might even happen?

13 A. Possible, yes.

14 Q. Okay. Now, "Effects of Overexposure." You
15 list -- "Health Hazard Data," "Effects of Overexposure:
16 Prolonged exposure may result in lung damage."

17 Pardon me. "Prolonged overexposure may result in
18 lung damage."

19 Nowhere in your Material Safety Data Sheet for
20 Calidria Asbestos do you say that you are aware that the
21 threshold limit value for asbestos is not applicable with
22 respect to cancer, is it? You don't say that anywhere
23 here, do you?

24 MR. BICKS: Objection to the form.

25 A. We just quote the asbes- -- the OSHA standards.

WORLDWIDE COURT REPORTERS 1-800-745-1101

304

1 Q. (By Mr. Chandler) And nowhere do you tell your
2 customer, when you're telling them that your asbestos
3 doesn't have any hazardous ingredients, that the TLV in
4 the OSHA standard does not apply to cancer, do you?

5 MR. BICKS: Objection to the form.

6 A. I think we're quoting the OSHA standard and --

7 MR. CHANDLER: Object to nonresponsiveness.

8 Q. (By Mr. Chandler) That's not my question, sir.

9 A. Okay.

10 Q. Here's my question: Nowhere in your Material
11 Safety Data Sheet do you advise your customers that the

12 OSHA standard was never meant to apply to whether cancer
13 is a problem, do you?

14 MR. BICKS: Objection to the form.

15 A. I thought that was the reason the OSHA standard
16 was issued, was because of determining what levels would
17 be safe.

18 Q. (By Mr. Chandler) If there are internal
19 corporate Union Carbide documents that suggest they knew
20 that the TLV was not safe for asbestos, are those anything
21 that you have seen?

22 A. "Not safe for asbestos"?

23 Q. Pardon me. Bad question.

24 If there are internal Union Carbide documents, if
25 they suggest and acknowledge the TLV was never meant to

WORLDWIDE COURT REPORTERS 1-800-745-1101

305

1 protect from cancer, have you ever seen those documents?

2 MR. BICKS: Objection to the form.

3 A. I don't know what you're referring to, no.

4 Q. (By Mr. Chandler) Okay. So, the -- the lawyer
5 who's sitting at your left-hand side has never showed you
6 documents that say Union Carbide knew TLV didn't apply to
7 cancer, has he?

8 MR. BICKS: Objection to the form.

9 A. I don't -- I don't recall anything like that, no.

10 Q. (By Mr. Chandler) Okay. Now, from time to time,
11 Union Carbide did update their Material Safety Data
12 Sheets, correct?

13 A. Yes.

14 Q. There existed at a time a company called the
15 Calidria Corporation that was a subsidiary of Union
16 Carbide, fair?

17 A. Yes.

18 (Myers Exhibit No. 39 was marked.)

19 Q. (By Mr. Chandler) And what I'm handing you is
20 Myers Exhibit No. --

21 MS. FROST: 39.

22 MR. CHANDLER: -- 39. Thank you, Sharla.

23 Q. (By Mr. Chandler) It is a copy of the Material
24 Safety Data Sheet issued by Union Carbide in 1984 under
25 the heading "Calidria Corporation," isn't it?

WORLDWIDE COURT REPORTERS 1-800-745-1101

306

1 A. Yes.

2 Q. All right. That's all I have on that.

3 A. You haven't shown me any in between, but --

4 Q. That's all I have. I just wanted to know if it
5 was --

6 A. Okay.

7 Q. -- Calidria Corporation's --

8 A. Oh, yes.

9 Q. -- MSDS sheet. And it is, correct?

10 A. Yeah.

11 Q. All right. Now, in 1984, you understand that by
12 that time, joint compounds did not have asbestos in it,
13 correct?

14 A. I don't understand that for sure, no.

15 Q. Oh. Was Union Carbide still selling asbestos for
16 use in joint compounds in 1984?

17 A. I don't recall that. I wasn't involved with
18 marketing then, but --

19 Q. I want you to assume for me that the
20 Georgia-Pacific Corporation no longer used asbestos in
21 their product in 1984, okay?

22 A. If you say so.

23 Q. All right. This Material Safety Data Sheet about
24 the hazards of asbestos would do them no good, would it?

25 A. Not unless they wanted one, no.

WORLDWIDE COURT REPORTERS 1-800-745-1101

307

1 Q. And unless they saw all of the information in it,
2 correct?

3 A. Yes.

4 Q. At the time they were using asbestos, Myers
5 Exhibit 39, the Material Safety Data Sheet, did not exist,

6 did it?

7 MR. BICKS: Objection to the form.

8 Q. (By Mr. Chandler) In the form that it is in
9 today in -- on Myers 39.

10 A. If they went --

11 MR. BICKS: This is now based on him
12 accepting your representation as to what Georgia-Pacific
13 did or didn't do?

14 MR. CHANDLER: That's not my question.

15 MR. BICKS: Okay.

16 Q. (By Mr. Chandler) My question is this: If I --

17 A. If they stopped using asbestos before 1984, then
18 they wouldn't have received one of these.

19 Q. The Calidria Corporation didn't exist until 1984,
20 did it?

21 A. That's right.

22 Q. Therefore, this Material Safety Data Sheet didn't
23 get to Georgia-Pacific prior to 1984, did it?

24 A. No.

25 Q. This Material Safety Data Sheet didn't get to

WORLDWIDE COURT REPORTERS 1-800-745-1101

308

1 anybody prior to 1984, did it?

2 A. No.

3 Q. And that is the Material Safety Data Sheet

4 identified as Myers 39?

5 A. Yes.

6 Q. All right. Sir, isn't it true that at the mine,
7 the -- the mining was done on kind of a campaign basis
8 every two or three years?

9 A. Yes.

10 Q. That -- I mean, every year, you didn't -- you
11 didn't mine asbestos there every year, did you?

12 A. No.

13 Q. Some years you didn't even mine every other year;
14 you just did it every three years?

15 A. Oh, I can't remember, but I think that's right,
16 yes.

17 Q. And what you did was you mined enough to operate
18 the mill for the -- either the two or the three years it
19 needed the capacity, right?

20 A. Yes.

21 Q. And when you did that, when you mined the
22 asbestos, subcontractors were used to mine?

23 A. Partly, yes.

24 Q. Subcontractors were used to haul the asbestos
25 down to the mill as well, right?

WORLDWIDE COURT REPORTERS 1-800-745-1101

1 A. Yes.

2 Q. Okay. And there were really only a handful of
3 employees that were ever located at the mine itself; isn't
4 that right?

5 A. Of employees?

6 Q. Yes, sir.

7 A. Yes.

8 Q. Let me find the exact number that's quoted.
9 Well, first of all, the mine is not something --
10 I don't want the jury to think you're going down into a
11 deep tunnel, because it's just a surface mine and asbestos
12 is kind of scraped off the top, right?

13 A. Yes.

14 Q. It's an open-air thing.

15 A. Yes.

16 Q. Nobody is getting into tight, confined spaces at
17 the Union Carbide mine, are they?

18 A. No.

19 Q. And, in fact, the only facilities you even had at
20 the mine were rest rooms, right?

21 A. And a lunch table.

22 Q. And a lunch table. Generally, the Union Carbide
23 employees kind of supervised the mining of the asbestos
24 that was done by subcontractors, who kind of got in there
25 with bulldozers and scraped it all up, right?

1 A. Yes. Earth-moving equipment.

2 Q. Earth-moving equipment.

3 A. Yeah.

4 Q. And, essentially, there were really only two
5 Union Carbide employees at the mine during the months of
6 the hauling season; is that fair?

7 A. Two or three, yes.

8 Q. Okay. So, when the mine -- when the asbestos was
9 actually being harvested -- can we say that term?

10 A. When it was being mined.

11 Q. Okay. When the asbestos was actually being mined
12 by earth-moving equipment, all you really had was two or
13 three Union Carbide employees out there supervising
14 subcontractors doing the work?

15 A. Generally, yes.

16 Q. Okay. And even the subcontractors who were out
17 there doing the work was very small. It was like half a
18 dozen people doing it?

19 A. I think that was about right, yeah.

20 Q. A great deal of Union Carbide asbestos could be
21 mined with just a handful of people?

22 A. Yes.

23 Q. Okay.

24 A. Depending on how long you operated --

25 Q. Yes, sir.

1 A. -- but, yes.

2 Q. And your -- your office wasn't even at the mine.
3 It was down -- 55 miles down the road at the mill, wasn't
4 it?

5 A. Yes.

6 Q. And the mill -- well, let me -- let's stay at the
7 mine. One of the things that helped reduce dust at the
8 Union Carbide mine was the fact that the mineral had a 20
9 percent moisture content when it was mined, didn't it?

10 A. That was part of it, yes.

11 Q. And that helped keep the dust down, there at the
12 mine?

13 A. Yes.

14 Q. And the mill where the asbestos was taken was a
15 wet process, wasn't it?

16 A. Yes.

17 Q. And the wetting -- the wet process was a process
18 specifically designed to keep the dust down, wasn't it?

19 A. No. It was de- -- that was de- -- it was decided
20 that was the best way to -- to get asbestos out of the
21 ore.

22 Q. Okay. One of the pleasant side-effects of the
23 wet process was that it kept dust down?

24 A. Yes.

25 Q. And there were still, even though you used a wet

1 process, areas in the mine that were "required respirator
2 use" areas?

3 A. Mill. In the mill.

4 Q. Thank you. There were still areas of the mill
5 that were "required respirator use" areas.

6 A. Yes.

7 Q. The mill itself always had very low fiber
8 contents, didn't it --

9 A. Generally.

10 Q. -- in the air?

11 A. Generally.

12 Q. The -- the amount of asbestos in the air in the
13 mill was always generally very low?

14 MR. BICKS: Objection to the form.

15 A. In -- generally in the mill, but not in the --
16 certain areas.

17 Q. (By Mr. Chandler) And in certain areas where
18 asbestos content couldn't be relied upon to be low, you
19 required your employees to wear respirators?

20 A. Yes.

21 Q. And you were strict about that policy?

22 A. Yes.

23 Q. And you did a very good job of making sure

24 employees at the mill followed their respirator policy,
25 didn't you?

WORLDWIDE COURT REPORTERS 1-800-745-1101

313

1 A. Yes.

2 Q. In fact, it was even written in safety books and
3 given to employees, what the areas where respirators were
4 required, wasn't it?

5 A. I think so.

6 Q. You'd consider your training program and
7 education, when it came to dust hazards and the need for
8 respirators at the mill, as something that was very
9 effective?

10 A. Yes.

11 Q. Your rate of usage was always very high for
12 respirators at the mill, wasn't it?

13 A. I don't know. You mean -- you mean, how many we
14 used a month?

15 Q. Yes -- no, no. No, I'm sorry.

16 The percentage of employees that used respirators
17 when they needed to was always very high?

18 A. Yes.

19 Q. Okay. In fact, you don't ever think anyone tried
20 to bypass his responsibility to wear a respirator, do you?

21 A. Well, I don't know. I don't think so.

22 Q. Okay. And you explained to your workers that
23 there could be health problems if they didn't wear
24 respirators?

25 A. Yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

314

1 Q. And, in fact, there were even areas in the mill
2 that they were "air-supplied respirators required,"
3 weren't there?

4 A. No. Usually under certain maintenance
5 operations, primarily.

6 Q. Under certain maintenance operations, employees
7 at the mill actually wore respirators that had a supply of
8 air fed into them, didn't they?

9 A. Yes.

10 Q. You had engineering systems like vacuums and --
11 and fans present to try to reduce the dust at the mill,
12 didn't you?

13 A. Yes.

14 Q. You monitored the air to make sure it was always
15 below the TLV as much as you possibly could, didn't you?

16 A. Yes.

17 Q. You had very -- you had expensive wash-down
18 facilities to wash employees down if they were ever
19 exposed to asbestos or needed to be worried about it?

20 A. Oh, I don't recall anything -- wash-down
21 facilities.

22 Q. Was there anyplace where employees could wash up
23 or take their clothes off if they needed to change at all?

24 A. Yes.

25 Q. Okay. So, there were -- there were facilities at

WORLDWIDE COURT REPORTERS 1-800-745-1101

315

1 the mill where employees could change so that asbestos
2 wasn't taken home with them and contaminate their family,
3 right?

4 A. Yes.

5 Q. When you first arrived at King City in 1967,
6 there were really only about 40 or 50 people working out
7 at King City, weren't there?

8 A. Oh, I don't remember how many there were there.
9 It varied over the years depending on our production
10 needs.

11 Q. But when you first arrived, does 40 to 50 seem
12 like a fair assessment or estimate of the number of
13 employees that were out there?

14 A. I really have no idea.

15 Q. Okay. Let me show you what you've testified to
16 in the past about -- and I know you just don't remember --
17 about the number of employees that were out there. I'm

18 not even going to reference it, because I just want to see
19 if this refreshes your recollection.

20 "QUESTION: When you arrived in 1967,
21 roughly how many folks were working out there?"

22 "Probably between 40 and 50."

23 A. That's what I said, yes.

24 Q. Okay. So, it's a fair -- it's a fair estimate,
25 isn't it, Mr. Myers, that the number of people who worked

WORLDWIDE COURT REPORTERS 1-800-745-1101

316

1 out at the mine and the mill in 1967 when you arrived was
2 between 40 to 50?

3 A. I wouldn't want to bet any money on it, no; but
4 that's what I said back then and I don't have any reason
5 to dis- -- to disagree with that.

6 Q. Very good.

7 Yet the mine itself, when you were performing --
8 when the subcontractors were performing mining operations,
9 they actually had a water truck used to spray down travel
10 paths of the mine to suppress the dust, didn't they?

11 A. Yes.

12 Q. Visible dust was very infrequently seen at the
13 mine, even where front loaders were being used; isn't that
14 true?

15 A. Yes.

16 Q. And even the grinding and packaging areas out
17 there at the mill were sealed off and ventilation was used
18 to keep negative air pressure inside the area, wasn't it?

19 A. Yes.

20 Q. And those grinding and packages areas that were
21 sealed off with negative air pressure were "required areas
22 for respirators," too, weren't they?

23 A. Yes.

24 Q. Your goal at the mine and the mill was always to
25 minimize dust exposures, wasn't it, Mr. Myers?

WORLDWIDE COURT REPORTERS 1-800-745-1101

317

1 A. Yes.

2 Q. Now, did Union Carbide utilize subcontractors on
3 a year-round basis for the mine or the mill or just when
4 there were heavy production requirements?

5 A. Just when there was ore to be mined or ore to be
6 hauled.

7 Q. Okay. And do you recall the same subcontractors
8 showing up year after year to do the mining and the
9 hauling of the mill -- of the asbestos?

10 A. No, I don't remember.

11 Q. Okay. The -- the subcontractors who did the
12 mining and the milling were not people who Union Carbide
13 x-rayed and kept -- who -- whose medical conditions were

14 kept track of, are they?
15 A. No.
16 Q. Okay. You did that with employees, monitor their
17 health conditions, but not with subcontractors, fair?
18 A. Right.
19 Q. Okay. And you haven't even kept track of all the
20 former workers of the mine and followed their health, have
21 you?
22 A. Have I followed them individually?
23 Q. Yes, sir.
24 A. No.
25 Q. Okay. You understand that the latency period for

WORLDWIDE COURT REPORTERS 1-800-745-1101

318

1 cancer can be 30 to 40 years, don't you?
2 A. I usually have read 15 to 20, up -- probab- --
3 possibly up to 40.
4 Q. Okay. Now, the mine --
5 A. Let me go back to the question about the
6 contractors. I can't remember for sure whether or not we
7 had them have medical exams.
8 Q. Okay. Doesn't --
9 A. I'm not sure.
10 Q. Doesn't sound like something that you ever
11 remember requiring subcontractors to do --

12 A. I can't remember that, no.

13 Q. Okay.

14 A. I'm sorry to butt in.

15 Q. That's all right.

16 Do you know of a single Union Carbide document
17 that reflects that they, in fact, monitored subcontractors
18 who did the mining?

19 A. No.

20 Q. Now, when the mining was happening on this
21 campaign basis every other year or every third year, it
22 was really only done during specific months of the year,
23 too, wasn't it?

24 A. Yes.

25 Q. Only for the dry months, right?

WORLDWIDE COURT REPORTERS 1-800-745-1101

319

1 A. Yes.

2 Q. Because you didn't want to mine out there with
3 all the rain because it was too muddy?

4 A. Couldn't, yes.

5 Q. Okay. So, what we're looking at is a mine that
6 was operated for the actual mining only every other year
7 or every third year, true?

8 A. Yes.

9 Q. A mine that was only operated for a few months

10 every other year or every third year, correct?

11 A. Well, about -- about six months.

12 Q. Okay. A mine that was operated only six months
13 of the year every other or every third year?

14 A. Yes.

15 Q. A mine whose mining was done and whose hauling
16 was done during the heavy production periods by
17 subcontractors?

18 A. Yes.

19 Q. A mine where you did -- you had extensive efforts
20 to control the dust levels?

21 A. Well, a water truck. That's --

22 Q. Water truck. Did the ore moisture content itself
23 help do that?

24 A. Mother Nature did that --

25 Q. Okay.

WORLDWIDE COURT REPORTERS 1-800-745-1101

320

1 A. -- yes.

2 Q. So, dust levels were never anything you were
3 concerned about at the mine, were they?

4 A. Oh, we did monitoring there, yes --

5 Q. Okay.

6 A. -- just to make sure.

7 Q. And to make sure that the asbestos levels at the

8 mine were within -- under the TLV, you did air monitoring?

9 A. Yes.

10 Q. Even outdoors in an open mine?

11 A. Yes. That's --

12 Q. Okay.

13 A. -- customary, yes.

14 Q. The word "cancer" has never been on a Union

15 Carbide bag of Calidria, has it?

16 A. Not that I recall, no.

17 Q. Now, when KCAC bought the asbestos enterprise of

18 Union Carbide, the medical records of former employees of

19 Union Carbide who did not work for Union Carbide at the

20 time were not transferred to KCAC, were they?

21 A. I don't think so.

22 Q. So, if KCAC wanted to keep track of what was

23 going on in the lives and the health of former miners and

24 millers, they wouldn't know, because they didn't get those

25 records, did they?

WORLDWIDE COURT REPORTERS 1-800-745-1101

321

1 A. Well, the records wouldn't give them any

2 continuing record of what -- what their health was.

3 Q. And they wouldn't know what their past health

4 conditions either -- were either, did -- were -- did you?

5 MR. BICKS: Objection to the form.

6 A. No, not -- not specifically, no.

7 Q. (By Mr. Chandler) And KCAC didn't know where the
8 former employees of the mine or mill, before they bought
9 the mine and the mill, were ever even located, did you?

10 MR. BICKS: Objection to the form.

11 A. Well, most of the employees stayed with KCAC.

12 Q. (By Mr. Chandler) I'm talking about employees
13 who worked for Union Carbide at the mine or the mill but
14 who no longer worked there at the time KCAC bought them,
15 okay?

16 A. Okay.

17 Q. Those employees, KCAC didn't keep track of, did
18 they?

19 A. No.

20 Q. Okay. At some point throughout Union Carbide's
21 history, you sold asbestos fiber to all of the major joint
22 compound manufacturers, didn't you?

23 A. I don't really know, without checking the
24 records.

25 Q. You know United States Gypsum was one of your

WORLDWIDE COURT REPORTERS 1-800-745-1101

322

1 customers?

2 A. Yes.

3 Q. Georgia-Pacific was one of your customers?

4 A. Yes.

5 Q. Kelly-Moore was one of your customers?

6 A. Yes.

7 Q. Proko was one of your customers?

8 A. Yes.

9 Q. Sir, you are not a scientist or a doctor of any
10 kind, are you?

11 A. No.

12 Q. Not trained in industrial hygiene?

13 A. No.

14 Q. Not trained in medicine?

15 A. No.

16 Q. You don't -- you haven't done any research on the
17 state of the art regarding asbestos and knowledge of the
18 hazards, have you?

19 A. By "research," what do you mean?

20 Q. Well --

21 A. Laboratory research?

22 Q. Sure.

23 A. No.

24 Q. You haven't made an effort to keep up with the
25 literature on asbestos diseases, have you?

WORLDWIDE COURT REPORTERS 1-800-745-1101

323

1 A. Since when? Since I retired or --

2 Q. Well, let's ask what you meant when you said it
3 in this deposition.

4 At least by 1982, when you were actually working
5 for Union Carbide, you hadn't made any effort to keep up
6 on the literature on asbestos diseases, did you?

7 A. I thought that I had.

8 Q. Okay. In 1982 you gave a deposition in the
9 Lester Rice case --

10 A. Okay.

11 Q. -- on April 9 of 1982, and in that case you were
12 asked: "Do you make an effort to keep current of all
13 medical articles being published concerning asbestos and
14 asbestos diseases presently?"

15 And your answer was: "No."

16 Is that fair?

17 MR. BICKS: "Of all medical articles."

18 Okay.

19 Q. (By Mr. Chandler) Is that -- is that fair?

20 A. If that's -- yeah. "Of all medical," no.

21 Q. So, you didn't make it a practice while you were
22 working for Union Carbide of keeping current of all the
23 medical records being published concerning asbestos and
24 asbestos diseases, did you?

25 A. The important word is "all." No, I did not keep

1 track of all the medi- -- all the articles.

2 Q. How did you discriminate about what articles you
3 would read versus what articles you would not read?

4 A. I didn't discriminate. It's what was made
5 available to me or what I happened to see, I guess.

6 Q. Made available to you by whom?

7 A. Oh, probably by the A.I.A.

8 Q. Okay. So, one of your main sources for articles
9 on asbestos information was the Asbestos Information
10 Association, made up of miners and manufacturers of
11 asbestos products; is that fair?

12 A. No. I don't know how -- what the percentage that
13 would have been.

14 Q. Well, one of your sources for medical articles on
15 the hazards of asbestos was, in fact, the Asbestos
16 Information Association, wasn't it?

17 A. One, yes.

18 Q. Okay. What were some others?

19 A. Well, probably Union Carbide medical department.
20 I don't really recall.

21 Q. Okay. Can you recall, other than the Union
22 Carbide medical department and the Asbestos Information
23 Association, any other sources for your review of medical
24 articles on asbestos diseases?

25 A. Yeah. I attended various seminars and meetings

1 on behalf of Union Carbide or A.I.A. and picked up papers
2 at the conferences.

3 Q. What conferences have you attended?

4 A. I don't really know what the --

5 Q. Any conferences of groups other than groups made
6 up of asbestos mining organizations or product
7 manufacturers?

8 A. Oh, yes, yes.

9 Q. Like who?

10 A. I told you I can't remember.

11 Q. Okay. You can't recall a single conference that
12 you went to, as you sit here today, correct, that --

13 A. No, I can't.

14 Q. Okay. But you do know that one of your sources
15 for getting medical articles was Union Carbide?

16 A. Well, yes, as far as I remember. Maybe -- maybe
17 somebody in the asbestos group would -- like Dr. Rhodes
18 was very up on -- on keeping up with literature.

19 Q. And the -- one other source of your medical
20 articles that you can recall as you sit here today is the
21 Asbestos Information Association?

22 A. I told you that, yes.

23 Q. And other than those two groups, you can't recall
24 a single source by name or -- or city of attendance where
25 you learned about the hazards of asbestos, can you?

1 MR. BICKS: Other than the conferences that
2 you asked him about.

3 Q. (By Mr. Chandler) By name or even city or even
4 when you went to those conferences, can you?

5 A. Well, I remember one was in Los Angeles when
6 Dr. Selikoff was there.

7 Q. Okay.

8 A. And I don't remember the date or the name of the
9 group.

10 Q. Where were you working when that conference
11 happened?

12 A. If I knew the date, I could tell you.

13 Q. Do you recall, "Gee, I had to leave New York to
14 fly to L.A.," or "I was in California, and I just had to
15 drive down to L.A."?

16 A. That was 30 years ago. I don't remember.

17 Q. Okay.

18 A. No.

19 Q. Okay.

20 A. Almost 30 years ago. More than 30. I don't know
21 how many. Around 30 years ago.

22 Q. It's fair to say to this jury there are certain
23 things you remember about your work with Union Carbide and
24 there are certain things that you don't remember, right?

25 A. That's true, yes.

WORLDWIDE COURT REPORTERS 1-800-745-1101

327

1 Q. Okay. Does the fact that you remember the
2 Asbestos Information Association and Union Carbide as you
3 sit here today do anything for you in assessing the -- the
4 percentage of articles or medical material they gave you
5 to review as opposed to any other?

6 A. I wasn't given any to review, no.

7 Q. Okay. Mr. Myers, if the Union Carbide Company
8 knew that 5 million particles of cub- -- per cubic foot of
9 asbestos or dust containing asbestos was not safe, but it
10 was telling people it was, were they doing something
11 wrong?

12 MR. BICKS: Objection to the form.

13 A. I think we were telling our people the best
14 information we had.

15 Q. (By Mr. Chandler) And if you knew -- if Union
16 Carbide's doctors, people other than yourself, knew that
17 5 million particles per cubic foot of dust containing
18 asbestos was not safe, but, in fact, they told people it
19 was, were they doing something wrong?

20 A. I really can't answer that. If anybody knew for
21 sure, they wouldn't have made any -- the equivocal
22 statements and -- and say we needed more data.

23 Q. Okay.

24 A. I don't think -- I think it's not a -- it's not a
25 black-and-white situation. I think we were -- I think we

WORLDWIDE COURT REPORTERS 1-800-745-1101

328

1 did a great job of informing our customers of the best
2 information we had.

3 Q. And did that include customers like
4 Georgia-Pacific?

5 A. Yes.

6 Q. And do you know of any customers who took the
7 information you gave them and failed to pass it on?

8 A. No, I don't.

9 Q. If they did -- if a customer bought your
10 asbestos, took all the knowledge you gave them about the
11 hazards, and didn't pass that information on to their
12 customers, as a marketing manager and someone who spent 11
13 years as a marketing person, would they have been doing
14 something wrong, in your opinion?

15 A. I think it was --

16 MR. BICKS: Objection to the form.

17 A. -- up to them. I don't have -- I'm not a judge
18 of other people.

19 Q. (By Mr. Chandler) Mr. Myers, you haven't seen a
20 single thing today that has changed your opinion about

21 Union Carbide and whether they were negligent with respect
22 to how they marketed their asbestos, have you?

23 A. No, I haven't.

24 Q. There's really not a single document I could show
25 you that could change your mind about Union Carbide and

WORLDWIDE COURT REPORTERS 1-800-745-1101

329

1 whether they were negligent, is there?

2 MR. BICKS: Objection to the form.

3 A. Well, you might -- if you find something that
4 incriminates me, yes, I'd love to see it.

5 Q. (By Mr. Chandler) Well, how about something that
6 incriminates the company? Have you seen anything in the
7 documents you've seen today and that the ladies and
8 gentlemen of the jury will have seen that in any way makes
9 you believe Union Carbide did anything wrong in the manner
10 in which they marketed their asbestos?

11 A. No. I believe we did a great job.

12 Q. Okay. You believe you did a great job; and
13 there's nothing you would change as you sit here today,
14 true?

15 A. No, especially not with the information that's
16 available now.

17 Q. Okay. And speaking of that information, let's
18 continue on with some of your qualifications. You don't

19 consider yourself qualified by education or training to
20 give any opinions about the capacity of different fiber
21 types to cause disease, do you?

22 A. No.

23 Q. You're not qualified to render opinions about the
24 disease processes of Calidria fiber, are you?

25 A. No.

WORLDWIDE COURT REPORTERS 1-800-745-1101

330

1 Q. Have you ever read the article entitled
2 "Chrysotile Asbestos is the Main Cause of Mesothelioma"?

3 A. No, I haven't.

4 Q. Has Union Carbide ever showed you that article?

5 A. I've never seen -- don't remember ever seeing
6 that article, no.

7 Q. Is -- is an article entitled "Chrysotile Asbestos
8 is the Main Cause of Mesothelioma," if it's published in
9 the peer-reviewed medical and scientific literature,
10 something you'd want to see?

11 A. I would like to see it, yes.

12 Q. Has Union Carbide ever showed you that document?

13 A. I said I have never seen it, to my knowledge.

14 Q. Okay. You're not trained in toxicology, are you,
15 Mr. Myers?

16 A. No, I'm not.

17 Q. You're not qualified to evaluate epidemiological
18 or medical studies about the causes of asbestos-related
19 diseases or cancer, are you?

20 A. Not qualified to what?

21 Q. To evaluate epidemiological studies or medical
22 studies about the causes of asbestos diseases or cancer.

23 A. I couldn't evaluate them, no.

24 Q. And you're not -- you don't even consider
25 yourself an expert on asbestos-related diseases, do you?

WORLDWIDE COURT REPORTERS 1-800-745-1101

331

1 A. Only by experience.

2 Q. Do you consider yourself an expert in
3 asbestos-related diseases?

4 A. No.

5 Q. Did Union Carbide ever engage in a risk/benefit
6 or a cost/benefit analysis when it considered whether to
7 market asbestos?

8 A. I don't have any idea, no.

9 Q. Did they ever consider, Union Carbide, whether
10 their asbestos would cause a, quote, "substantial number
11 of injuries," and if it wasn't substantial, to go ahead
12 and market their asbestos? Is that something you were
13 ever familiar with?

14 A. No.

15 MR. CHANDLER: I hope you come to Texas,
16 Mr. Myers. I appreciate your time. You're a very
17 pleasant gentleman.
18 THE WITNESS: Thank you.
19 MR. CHANDLER: Good luck in your next
20 campaign.
21 THE WITNESS: Thank you.
22 MR. BICKS: Mr. Chandler, just so --
23 MR. CHANDLER: Pass the witness.
24 MR. BICKS: -- the record is clear, we have
25 agreed that in light of the late day and everybody's

WORLDWIDE COURT REPORTERS 1-800-745-1101

332

1 schedule, that in the event that this case were to proceed
2 ahead and in the event that somehow Mr. Myers would be
3 unable to attend any trial, that we would agree that Union
4 Carbide would be able to continue this deposition and have
5 some direct testimony from Mr. Myers. And you and I would
6 work out a mutually convenient date for that.

7 MR. CHANDLER: As long as it's within the
8 discovery cutoff, absolutely.

9 MR. BICKS: Thank you.

10 THE VIDEOGRAPHER: This concludes Tape 4 of
11 4 and today's proceedings. The master videotapes will be
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333

1 retained by Advantage Reporting, telephone number
2 (408) 920-0222. We're now off the record at 5:08.

3 (Deposition concluded.)

4 I, JOHN L. MYERS, have read the foregoing
5 deposition and hereby affix my signature that same is true
6 and correct, except as noted on the attached Amendment
7 Sheet.

8 JOHN L. MYERS

9 Before me, , on this day
10 personally appeared , known to me
(or proved to me on the oath of
or through)

11 to be the person whose name is subscribed to the foregoing
instrument and executed the same for the purposes and
12 consideration therein expressed.

13 GIVEN UNDER my hand and seal of office this
day of , 2002.

14

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16 Notary Public in and
for the State of California

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334

1 CAUSE NO. 01CV0476

2 LAFONDA DIXON, AS PERSONAL) IN THE DISTRICT COURT OF
REPRESENTATIVE OF THE)
3 HEIRS AND ESTATE OF)
KENNETH DIXON)
4)
VS.) GALVESTON COUNTY, TEXAS
5)
UNION CARBIDE CORPORATION,))
6 GEORGIA-PACIFIC)
CORPORATION, et al.) 10TH JUDICIAL DISTRICT

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8 REPORTER'S CERTIFICATION

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TO THE ORAL DEPOSITION OF
JOHN L. MYERS
MAY 22, 2002

I, Lea Dorothy Abbott, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, JOHN L. MYERS, was duly sworn by the
officer and that the transcript of the oral deposition is
a true record of the testimony given by the witness;

That the deposition transcript was submitted on
, 2002, to the witness or to the attorney
for the witness for examination, signature, and return to
Worldwide Court Reporters, Inc., by
, 2002.

That the amount of time used by each party at the
deposition is as follows:

TROY D. CHANDLER - 06:06
SHARLA FROST/PETER A. BICKS - 00:00
MEL D. BAILEY - 00:00
MELINDA BALLI - 00:00
J. RICHARD MORRISSEY - 00:00

WORLDWIDE COURT REPORTERS 1-800-745-1101

335

1 That \$ is the deposition officer's
2 charges for preparing the original deposition transcript
3 and any copies of exhibits, charged to
4 Mr. Troy D. Chandler, TBA No. .
5
6 That pursuant to information given to the deposition
7 officer at the time said testimony was taken, the
8 following includes all parties of record:
9
10 TROY D. CHANDLER, Attorney for Plaintiffs;
11 SHARLA FROST/PETER BICKS, Attorneys

for Defendants Union Carbide Corporation
and The Witness;
MELINDA BALLI, Attorney for Defendant Kellogg
Brown & Root, Inc. and Mid-Valley, Inc.;
MEL D. BAILEY, Attorney for Defendant
Georgia-Pacific Corporation;

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rules 205 and 206 of TRCP will be certified to after they have occurred.

SUBSCRIBED AND SWORN to by me this day of
 , 2002.

Lea Dorothy Abbott
Texas CSR No.: 6611
Expiration Date: 12/31/03
3000 Wesleyan, Suite 235
Houston, Texas 77027
(713) 572-2000

WORLDWIDE COURT REPORTERS 1-800-745-1101

336

THE STATE OF TEXAS

COUNTY OF GALVESTON

5 PURSUANT TO RULES 205 AND 206 TRCP
6 REPORTER'S FURTHER CERTIFICATION TO THE
7 ORAL DEPOSITION OF
8 JOHN L. MYERS
9 TAKEN ON MAY 22, 2002
10 I, Lea Dorothy Abbott, Certified Shorthand Reporter in
11 and for the State of Texas, hereby certify to the
 following:
12 That the original deposition was /
 was not returned to the deposition officer;
13
 If returned, the attached Amendment page contains any
14 changes and the reasons therefor; If returned, the
 original deposition was delivered by to
15 for safekeeping on
 , 2002.
16
 That a copy of this certificate was served on all
17 parties shown herein.
18 WITNESS my hand this day of ,
 2002.
19
20
 Lea Dorothy Abbott
21 Texas CSR No.: 6611
 Expiration Date: 12/31/03
22 3000 Wesleyan, Suite 235
 Houston, Texas 77027
23 (713) 572-2000
24
25