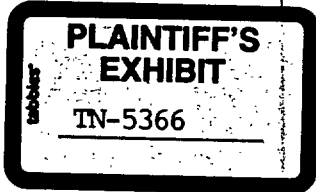


Court's Copy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA



FLETCHER MCDANIEL, ET AL)

PLAINTIFFS,)

- V-) CIVIL ACTION

) 83-3520

ARMSTRONG WORLD INDUSTRIES,)

ET AL.,)

DEFENDANTS.)

FILED

JUL 8 1986

CLERK, U. S. DISTRICT COURT,
DISTRICT OF COLUMBIA

JUNE 5, 1984

WASHINGTON, D. C.

THE ABOVE-ENTITLED MATTER CAME ON FOR MOTIONS
BEFORE THE HONORABLE THOMAS A. FLANNERY, UNITED STATES
DISTRICT JUDGE, COURTROOM NO. 5, COMMENCING AT
APPROXIMATELY 2 P.M.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

ASHCRAFT & GEREL

BY: JAMES F. GREEN, ESQ., AND

PETER T. ENSLEIN, ESQ.

ON BEHALF OF THE DEFENDANTS:

O'MALLEY, MILES, FARRINGTON & MCCARTHY

DONAHUE, EHRLMANTRAUT & MONTEDONICO

SCHNADER, HARRISON, SEGAL & LEWIS

1 APPEARANCES (CONTINUED.)

2 IN BEHALF OF DEFENDANTS:

3 BRAULT, GRAHAM, SCOTT & BRAULT

4 RICHARDS, O'NEIL & ALLEGAERT

5 KECK, MAHIN & CATE

6 JORDAN, COYNE, SAVITS & LOPATA

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12

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14 SHIRLEY THERESA POPEJOY

15 OFFICIAL COURT REPORTER

16 6812 U. S. COURTHOUSE

17 WASHINGTON, D. C., 20001

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C O N T E N T S

COUNSEL APPEARING BEFORE THE COURT: PAGE

MR. DORKEY	4, 5, AND 45
MR. DONOHUE	4, AND 19
MR. ENSLEIN	24
MR. GUZIAK	14, AND 46

P R O C E E D I N G S

THE DEPUTY CLERK: CIVIL ACTION 83-3520. FLETCHER
MCDANIEL, ET AL. VERSUS ARMSTRONG WORLD INDUSTRIES, ET AL..

THE COURT: ALL RIGHT. GENTLEMEN, WE HAVE BEFORE
THE COURT THIS AFTERNOON, SEVERAL MOTIONS TO DISMISS FILED
BY DEFENDANTS TURNER AND NEWALL, LIMITED, AND NICOLET, INC.,
AND THE MOTION OF DEFENDANT ATLAS-TURNER TO DISMISS OR IN
THE ALTERNATIVE FOR SUMMARY JUDGMENT. ALL RIGHT. HOW MUCH
TIME DO YOU WANT TO ARGUE THIS CASE?

MR. DORKEY: YOUR HONOR, MY NAME IS CHARLES
DORKEY, I REPRESENT TURNER AND NEWALL. ADMITTED TO THIS
BAR BUT I PRACTICE IN NEW YORK. AS MUCH TIME AS YOUR HONOR
THINKS. THE BEGINNING STATEMENT WOULD TAKE FIVE MINUTES OR
SO. BUT WE WOULD LIKE AS MUCH TIME TO ANSWER YOUR HONOR'S
QUESTIONS.

THE COURT: ALL RIGHT. WHY DON'T YOU GO AHEAD AND
BEGIN THEN. DO OTHER ATTORNEYS--

MR. GUZIAK: GUZIAK REPRESENTING NICOLET. I'LL NEED
APPROXIMATELY 15 MINUTES.

MR. DONOHUE: PATRICK DONOHUE, ON BEHALF OF
DEFENDANTS ATLAS-TURNER AND BELL ASBESTOS, I WOULD NEED
APPROXIMATELY FIVE.

THE COURT: ALL RIGHT. WHY DON'T YOU PROCEED.

MR. DORKEY: DO YOU WANT ME TO GO FIRST?

1 THE COURT: YOU CAN GO FIRST.

2 MR. DORKEY: YOUR HONOR, MY NAME IS CHARLES DORKEY,
3 I REPRESENT TURNER AND NEWALL.

4 WE ARE HERE BEFORE THE COURT ON A MOTION TO
5 DISMISS FOR LACK OF PERSONAL JURISDICTION. PLAINTIFF HAS
6 ARGUED SEVERAL DIFFERENT THEORIES. SOME FACTS ARE IN
7 DISPUTE. SOME FACTS ARE NOT IN DISPUTE, AND MOST OF THE
8 ARGUMENT IS ABOUT THE LEGAL SIGNIFICANCE OF FACTS THAT ARE
9 ESSENTIALLY NOT IN DISPUTE. SOME THINGS ARE CLEAR.

10 ONE IS TURNER AND NEWALL HAS HAD NO CONTACT WITH
11 THE DISTRICT OF COLUMBIA, EITHER DIRECTLY OR INDIRECTLY,
12 FOR A PERIOD OF AT LEAST 12 YEARS.

13 THE COURT: TURNER AND NEWALL HAS FILED A SUIT IN
14 THIS JURISDICTION?

15 MR. DORKEY: YES, IT HAS AGAINST AN INSURANCE
16 COMPANY.

17 THE COURT: I THINK I MAY HAVE THAT?

18 MR. DORKEY: YES, YOUR HONOR. YOU MAY HAVE THAT.
19 ASIDE FROM THAT BRIEF, IN THE BUSINESS CONTEXT, IT HAS NO
20 CONTACT. ITS AGENTS AREN'T HERE, ITS REPRESENTATIVES AREN'T
21 HERE.

22 THE COURT: ISN'T IT INCONSISTENT TO SAY THAT IT
23 WOULD BE INCONVENIENT TO DEFEND A CASE HERE WHEN YOU BRING
24 A CASE HERE FOR A CLIENT?

25 MR. DORKEY: WE ARE REALLY NOT ARGUING CONVENIENCE.

1 WE ARE ARGUING WHETHER THE PLAINTIFFS MET THE STATUTORY
2 TEST OF THE D C LONG ARMS STATUTE. AND WHETHER THEY MET THE
3 CONSTITUTIONAL STANDARDS. THAT IS NEITHER CONVENIENT OR
4 INCONVENIENT. I THINK THAT GIVEN THE FACT WE BROUGHT A
5 SUIT HERE AND CAN DEFEND THAT SUIT, AND GIVEN THE
6 STATEMENTS AND PHIL GRAHAM'S AFFIDAVIT, I DON'T THINK THERE
7 IS ANYTHING MUCH WE CAN SAY ON THAT.

8 THE COURT: YOU HAVEN'T HAD ANY CONTACT WITH THIS
9 JURISDICTION?

10 MR. DORKEY: OTHER THAN THAT LAWSUIT, WHICH, AS
11 YOUR HONOR MAY KNOW, IS BROUGHT BY VIRTUE OF AN INSURANCE
12 COMPANY REFUSING TO DEFEND TURNER & NEWALL IN CASES WITH
13 ALLEGATIONS. THEY ARE RESPONSIBLE FOR KEASBEY & MATTISON.
14 THEIR CLAIM, AS I UNDERSTAND IT, IS THAT MR. MCDANIEL,
15 DURING THE TIME PERIOD PRIOR TO 1971, WORKED FOR A VIRGINIA
16 COMPANY, KRAFFT MURPHEY, EITHER USED OR WAS EXPOSED TO --
17 IT IS NOT QUITE CLEAR -- THE PRODUCT KNOWN AS SPRAYED
18 LIMPET ASBESTOS.

19 SPRAYED LIMPET ASBESTOS WAS MANUFACTURED DURING
20 SOME OF THIS TIME PERIOD, NOT ALL OF IT, WAS MANUFACTURED
21 BY ROBERTS WHICH IS A TURNER & NEWALL COMPANY. IT WAS THEN
22 SOLD TO KEASBEY & MATTISON. AND BETWEEN '62 AND '67 TO A & S,
23 AND AFTER '67 TO ATLAS TURNER WHO HAD A DIFFERENT NAME. IT
24 WAS THEN SOLD TO ANOTHER COMPANY WHICH WAS KRAFFT MURPHEY
25 WHICH WAS LOCATED IN VIRGINIA.

1 YOUR HONOR, IT IS ALLEGED BY PLAINTIFF THAT WHILE
2 HE WAS IN THE DISTRICT OF COLUMBIA, HE WAS EXPOSED TO
3 LIMPET BY VIRTUE OF HIS EMPLOYMENT BY KRAFFT MURPHEY.

4 IT IS OUR POSITION, YOUR HONOR, PLAINTIFF SEEKS TO
5 HAVE THOSE FACTS FIT WITHIN EITHER SUBSECTION A(1) OR
6 SUBSECTION A(4) OF THE D C LONG ARM STATUTE. A(1) IS THE
7 TRANSACTING OF BUSINESS STATUTE, AND A(4) IS THE TORT
8 WITHOUT INJURY WITHIN PLUS SUBSTANTIAL CONTACTS.

9 UNDER THE TRANSACTING BUSINESS STANDARD, YOUR
10 HONOR, WE BELIEVE THAT THAT STATUTE IS NOT DESIGNED TO
11 COVER THIS TYPE OF CASE. IT IS DESIGNED FOR LAWSUITS,
12 ESSENTIALLY CONTRACT LAWSUITS, TRADEMARK INFRINGEMENT
13 LAWSUITS, SUITS TO RECOVER COMMISSIONS, SUITS -- AND IF
14 YOU LOOK AT THE CASES UNDER THAT SECTION, I THINK THEY
15 ALMOST INVARIABLY INVOLVE CONTRACTUAL TYPE OF LAWSUITS.

16 THIS IS A TORT CASE. THIS IS A CLASSIC ALLEGATION
17 OF AN ACT WITHOUT INJURY WITHIN.

18 THE PRODUCT IS MADE IN ENGLAND, SHIPPED INTO
19 FLORIDA, SHIPPED THEN TO VIRGINIA WHEN A PERSON IN VIRGINIA
20 BY HIS OWN UNILATERAL ACT BRINGS IT INTO THE DISTRICT OF
21 COLUMBIA.

22 WE THINK THE UNILATERAL ACTIVITY OF KRAFFT MURPHEY
23 IS WHAT ALSO MAKES THIS CONSTITUTIONALLY IMPERMISSIBLE TO
24 IMPOSE JURISDICTION IN THIS CASE.

25 UNDER A-4, OUR ARGUMENT THERE IS THAT -- I THINK

1 AT BEST PLAINTIFFS HAVE AN A(4) CASE WHICH IS ACT WITHOUT
2 INJURY WITHIN. BUT THAT STATUTE ALSO REQUIRES PERSISTENT
3 AND REGULAR COURSE OF CONDUCT IN THE DISTRICT OF COLUMBIA.

4 WE BELIEVE THAT THE STATUTE IS WRITTEN IN THE
5 PRESENT TENSE, AND REQUIRES PRESENT-DAY AFFILIATING
6 CONTACTS. YOUR HONOR, IN THE SECURITY BANK VERSUS TALBERT
7 CASE, ANALYZED THE REGULARLY AND PERSISTENT LANGUAGE OF
8 THAT SUBSECTION. I THINK YOUR HONOR'S REASONING WOULD
9 APPLY EQUALLY TO THE PRSENT TENSE CONTEXT OF THAT STATUTE.

10 THE COURT: WELL, HOW ABOUT THAT CASE -- I CAN'T
11 PRONOUNCE THE GERMAN WORD, I'LL CALL IT THE KAISER CASE?

12 MR.DORKEY: THE KAISER-STUHL CASE. THAT ADMITTEDLY
13 IS A DIFFICULT CASE FOR US. THAT PERTAINS TO A(1), THE
14 TRANSACTING OF BUSINESS PROVISION. I CAN SAY I BELIEVE THE
15 CASE IS WRONGLY DECIDED, BUT THAT IS NOT GOING TO HELP US
16 VERY MUCH.

17 THE COURT: THAT ISN'T GOING TO HELP YOU AT ALL.

18 MR. DORKEY: BUT I ALSO BELIEVE THAT CASE CAN BE
19 DISTINGUISHED. IT CAN BE DISTINQUISHED ON TWO DIFFERENT
20 GROUNDS. THAT CASE INVOLVED TRADEMARK INFRINGEMENT. IT IS
21 NOT A TORT CASE. IT WAS THE CONDUCT OF THE BUSINESS. THE
22 TRADEMARKING AND MARKETING LINE IN THE DISTRICT OF COLUMBIA
23 WENT HAND-IN-HAND. IT WAS NOT A CASE INVOLVING THE SENDING
24 OF A BOTTLE THAT EXPLODED IN THE DISTRICT OF COLUMBIA. THE
25 LAWSUIT WAS NOT THAT TYPE OF LAWSUIT, AND ALL THE D. C.

1 CASES -- ALL BUT ONE EXCEPTION RELIED UPON -- ALL
2 INVOLVED CONTRACT REACTIONS COMMERCIAL TYPE OF LITIGATION.

3 SECOND, THE CASE ALSO DEALT WITH PRESENT-DAY
4 TRANSACTING OF BUSINESS. ONCE AGAIN, WE ARE NOT DEALING
5 WITH THE LONG ARM STATUTE; WE ARE DEALING WITH A SITUATION
6 WHERE THE LEGISLATURE HAS DECIDED TO EXTEND THE
7 CONSTITUTION EXTREMELY FAR, AND THE THEORY OF DUE PROCESS
8 VERY FAR. AND, IN ORDER TO DO THAT WITH FOREIGN DEFENDANTS,
9 IT SEEMS TO ME YOU NEED SOME PRESENT-DAY AFFILIATION, WITH
10 THE DISTRICT OF COLUMBIA.

11 IN THE KAISER-STUHL CASE, THERE WAS PRESENT-DAY
12 ONGOING MARKETING OF THE PRODUCTS. SO, I THINK THE CASE IS
13 DISTINGUISHABLE. THIS IS ALSO IN OUR BRIEFS, BUT IT IS
14 DISTINGUISHABLE ON AT LEAST TWO GROUNDS. ONE THEORY IS
15 PRESENT-DAY ACTIVITY, AND THAT COMPORTS WITH THE STATUTORY
16 LANGUAGE OF REQUIRING THE TRANSACTING OF BUSINESS, WHICH,
17 AGAIN, IS A PRESENT TENSE TYPE OF LANGUAGE NOT THE FORMER
18 TRANSACTION OF BUSINESS. THAT IS NOT THE WAY THE STATUTE
19 IS WRITTEN.

20 AND, TWO, THE TRANSACTING OF BUSINESS IMPLIES A
21 COMMERCIAL SETTING FOR THE LAWSUIT AND THE CAUSE OF ACTION.
22 AND I THINK ALSO TO RECOGNIZE -- WITHOUT THOSE LIMITATIONS
23 ON TRANSACTING BUSINESS, THEN A(4) BECOMES IRRELEVANT. IF
24 EVERY TORT WITHOUT INJURY WITHIN CASE BE PUT IN A(1) THEN
25 THERE IS NO NEED OF A VERY IMPORTANT PROTECTION, THE

1 REGULAR CONSISTENT CONDUCT. I AM NOT QUOTING THE LANGUAGE
2 EXACTLY BUT REGULAR AND CONSISTENT IS IN THAT STATUTE, AND
3 REGULAR. IT WOULD BE MEANINGLESS IF EVERY TORT WITHOUT
4 INJURY WITHIN COULD BE MADE A TRANSACTING BUSINESS CASE.

5 THE COURT: WELL, ARE THERE ANY CASES THAT SUPPORT
6 YOUR POSITION, EXCEPT I THINK YOU CITE LOCKMAN VERSUS BANK
7 OF LOUISIANA.

8 MR. DORKEY: THE PRESENT-DAY?

9 THE COURT: THE PRESENT-DAY.

10 MR. DORKEY: THERE ARE OTHER CASES. I CAN'T THINK
11 OF THE CITE. IT IS NOT IN THE BRIEF. THERE IS A CASE, FROM
12 MEMORY, FROM THE DISTRICT OF PUERTO RICO WHERE IT IS JUDGE
13 WENFIELD SITTING BY DESIGNATION. I CAN FIND CASES FOR YOUR
14 HONOR. I WOULD NEED A LITTLE BIT OF TIME TO DO THAT. I
15 DON'T HAVE THEM OFFHAND, BUT I THINK THERE IS OTHER
16 AUTHORITY FOR THE PROPOSITION THAT YOU ARE TALKING ABOUT
17 JURISDICTION BEING MEASURED AT THE PRESENT TIME.

18 THE COURT: I WOULD LIKE TO HAVE THOSE CASES. ARE
19 THERE ANY CIRCUIT COURT CASES?

20 MR. DORKEY: OFFHAND, I CAN'T RECALL. IF YOU GIVE
21 ME A FEW DAYS.

22 THE COURT: WHY DON'T YOU SUBMIT ANY FURTHER CASES,
23 YOU HAVE ON THAT POINT WITHIN THE NEXT 3 DAYS.

24 MR. DORKEY: 3 DAYS? ALL RIGHT. WELL, TURNING
25 BACK TO THE ARGUMENT, THERE IS AGAIN TWO SUBSECTIONS, A(1)

1 AND A(4). UNDER A(1) I THINK WE JUST TALKED ABOUT. UNDER
2 A(4), I THINK THE ARGUMENT IS EVEN STRONGER. UNDER A(4),
3 WE HAVE ACT WITHOUT INJURY, PLUS SUBSTANTIAL PRESENT DAY
4 CONTACTS. HERE, THERE IS NO -- AS YOUR HONOR WROTE IN
5 SECURITY BANK, WHERE YOU INTERPRET THE LANGUAGE, "REGULARLY
6 AND CONSISTENT", HERE, THERE HAS BEEN NOTHING EXCEPT
7 AGAINST MUTUAL. THERE IS NO REGULAR ACT, ALTHOUGH
8 LITIGATION DOES TEND TO BE CONSISTENT. OTHER THAN THAT
9 THERE HAS BEEN NO CONTACT WITH THE DISTRICT FOR AT LEAST 10
10 YEARS. AND THERE IS NO SHOWING BY PLAINTIFF. THE LAST
11 ALLEGED CONTACT WITH THIS DISTRICT THE PLAINTIFF CAN COME
12 UP WITH IS 1971. SO, WE ARE TALKING ABOUT A 22, 23 HIATUS.

13 THE COURT: ' 71?

14 MR. DORKEY: EXCUSE ME. 13 YEARS. I'M DOING MY
15 ARITHMETIC WRONG. ON THE CONSTITUTIONAL ISSUE, YOUR HONOR,
16 I'D LIKE TO SUBMIT A CASE TO YOUR HONOR THAT WAS DECIDED
17 ABOUT SIX WEEKS AGO BY THE SUPREME COURT ON A SLIGHTLY
18 DIFFERENT FACTUAL CONTEXT. I GAVE MR. ENSLEIN A COPY
19 BEFORE THE HEARING. IF I COULD JUST HAND IT UP, AND I'LL
20 MAKE AVAILABLE COPIES TO THE OTHER LAWYERS HERE.

21 THE NAME OF THE CASE IS -- I SAY IT IN ENGLISH.
22 THE NATIONAL HELICOPTER OF COLUMBIA VERSUS HOWELL CASE.
23 AND WHAT THIS CASE DOES IS DISCUSS A GENERAL DOING OF
24 BUSINESS, NOT ARISING OUT OF THE DOING BUSINESS, BUT THE
25 GENERAL DOING OF BUSINESS FOLLOWING THE CASE OF PERKINS

1 VERSUS VANGUIT. IN THIS CASE, THE COURT DOES DISCUSS WHAT
2 IT MEANS WHEN IT TALKS ABOUT THE UNILATERAL ACTIVITY OF
3 ANOTHER PARTY. THIS IS WHERE WE THINK THE FACT OF THE
4 STREAM OF COMMENCE IN THIS CASE ENDED IN VIRGINIA WHEN
5 KRAFFT MURPHEY RECEIVED THE PRODUCT IN QUESTION AND IT WAS
6 ITS UNILATERAL ACT TAKEN IN THE DISTRICT THAT BROUGHT IT
7 HERE NOT THE ACT OF TURNER & NEWALL. I THINK THE REASONING
8 IN THIS CASE IS PERSUASIVE IN THIS CASE AND IT IS NOT ON
9 THE EXACT POINT. THIS IS ON PAGE 1873. IN DISCUSSING
10 ANOTHER CONTEXT, IT SAYS "SUCH UNILATERAL ACTIVITY OF
11 ANOTHER PARTY OR THIRD PERSON IS NOT AN APPROPRIATE
12 CONSIDERATION WHEN DETERMINING WHETHER A DEFENDANT HAS
13 SUFFICIENT CONTACTS WITH A FOREIGN STATE TO USE ANY
14 ASSERTING JURISDICTION". I THINK ON THAT POINT IT IS
15 RELEVANT.

16 THE COURT: BUT YOU STILL HAVE TO CONFRONT THAT
17 KAISER CASE WHICH IS A HURDLE FOR YOU TO OVERCOME.

18 MR. DORKEY: I THINK IT IS A VERY DIFFICULT CASE.
19 I HAVE MY OPINION ON THE CORRECTNESS OF IT BUT AGAIN THAT
20 IS NOT GOING TO HELP US VERY MUCH. I BUT I THINK IT CAN BE
21 DISTINGUISHED BOTH ON THE PRESENT DAY BASIS AND THE TYPE OF
22 LAWSUIT IT IS TALKING ABOUT, THE TRANSACTING OF BUSINESS AS
23 OPPOSED TO A TORT WITHOUT INJURY WITHIN.

24 THE COURT: SEVERAL OTHER JUDGES OF THIS COURT
25 HAVE HAD OCCASION TO RULE ON THIS MATTER BUT THEY HAVEN'T

1 WRITTEN ANYTHING ON IT.

2 MR. DORKEY: NO, THEY HAVEN'T, YOUR HONOR. AS
3 YOUR HONOR IS AWARE, IN MASSACHUSETTS, THE MAGISTRATE
4 RECOMMENDED THAT OUR MOTION BE DENIED. HE HAD PREVIOUSLY
5 RECOMMENDED IT BE AFFIRMED AND IT WAS GRANTED. OUR TRACK
6 RECORD AROUND THE COUNTRY IS 50/50. WE WIN SOME AND LOSE
7 SOME. FOR INSTANCE, IN MINNESOTA, WE WON IN STATE COURT
8 AND LOST IN FEDERAL COURT. EACH JURISDICTION IS BASICALLY
9 DETERMINED ON ITS OWN SET OF FACTS AND CIRCUMSTANCES,
10 ALTHOUGH I THINK THERE ARE GENERAL PRINCIPLES THAT APPLY.
11 ESPECIALLY THE UNDERLYING ISSUES LIKE OUR LIABILITY FOR THE
12 ACTIONS AND OMISSIONS OF KEASBEY AND MATTISON.

13 THE COURT: BUT YOU LOST THE CASE IN MASSACHUSETTS.

14 MR. DORKEY: YES, THE MASSACHUSETTS CASE. I THINK
15 MR. ENSLEIN SENT YOU A COPY OF THE MAGISTRATE'S
16 RECOMMENDATION. YESTERDAY, WE FILED OUR MEMORANDUM SEEKING
17 TO HAVE THE JUDGE REJECT THE DECISION OF THE MAGISTRATE.
18 WE REQUESTED AN ORAL ARGUMENT THERE. IF YOUR HONOR WOULD
19 LIKE TO GET INTO THE QUESTION OF WHETHER TURNER AND NEWALL
20 IS LIABLE FOR JURISDICTION IN THE DISTRICT OF COLUMBIA ON
21 ACCOUNT OF THE ACTIONS AND OMISSIONS OF ITS FORMER
22 SUBSIDIARY, KEASBEY & MATTISON, I WOULD BE GLAD TO DO THAT.
23 I WOULD BE GLAD TO SUBMIT ANYTHING ADDITIONAL. I DON'T
24 THINK THAT IS ALL THAT RELEVANT TO THIS CASE BUT I THINK
25 PROBABLY MR. ENSLEIN WOULD DISAGREE WITH ME AND THINK THAT

1 IS HIGHLY RELEVANT.

2 THE COURT: I'LL HEAR FROM THE OTHER LAWYERS. WHO
3 WANTS TO GO NEXT?

4 MR. GUZIAK: GOOD AFTERNOON YOUR HONOR. MY NAME
5 IS RONALD GUZIAK, AND I AM HERE ON BEHALF OF THE DEFENDANT
6 NICOLET, WHO ALSO HAS A PENDING MOTION TO DISMISS FOR LACK
7 OF PERSONAL JURISDICTION.

8 AS YOUR HONOR IS WELL AWARE, NICOLET HAS BEEN
9 BEFORE OTHER JUDGES IN THIS COURT ON A SIMILAR MOTION, AND
10 THIS MOTION HAS BEEN GRANTED IN OTHER CASES WHICH HAVE BEEN
11 CITED TO YOUR HONOR. WE WOULD SUBMIT INITIALLY, YOUR HONOR,
12 THAT THE FACTS IN THIS CASE, AND RECORD HEREIN MAKES AN
13 EVEN STRONGER CASE FOR NICOLET TO BE DISMISSED IN THIS
14 PARTICULAR CASE AS IN THE OTHER CASES. THE MOST PERTINENT,
15 AND MOST IMPORTANT FACTOR IS THE PRODUCT ITSELF. THE
16 PRODUCT THAT PLAINTIFF MCDANIEL HAS INDICATED HE HAS BEEN
17 EXPOSED TO AND INJURED BY IS A SPRAYED ASBESTOS PRODUCT
18 CALLED LIMPET. WE HAVE SUBMITTED AFFIDAVITS BY THE
19 PRESIDENT OF NICOLET AS WELL AS THE FORMER
20 SECRETARY-TREASURER THAT NICOLET HAS NEVER BEEN INVOLVED IN
21 THE MANUFACTURE, SALE, OR DISTRIBUTION OF THIS PARTICULAR
22 PRODUCT. NOW, NICOLET IS BEFORE YOUR HONOR UNDER THE
23 THEORY THAT WE ARE RESPONSIBLE AS A SUCCESSOR CORPORATION
24 FOR THOSE ACTS DONE BY A COMPANY CALLED KEASBEY AND
25 MATTISON. IN EFFECT, PLAINTIFF IS GOING TO SAY OR HAS SAID

1 IN HIS BRIEFS THAT JURISDICTION OVER NICOLET IS REALLY
2 BECAUSE OF THE FACT THAT KEASBEY AND MATTISON HAS
3 DISTRIBUTED THIS SPRAYED LIMPET ASBESTOS PRODUCT HERE IN
4 THE DISTRICT OF COLUMBIA THROUGH LOCAL DISTRIBUTORS.

5 IN REBUTTAL TO THAT, YOUR HONOR, WE HAVE ADMITTED
6 A SLIGHT CONNECTION AND THAT IS THAT KEASBEY AND MATTISON
7 WAS LIQUIDATED IN 1962. THERE WERE FIVE DIVISIONS OF
8 KEASBEY AND MATTISON, AND ONE OF THOSE DIVISIONS, THE
9 INDUSTRIAL PRODUCTS DIVISION WHICH COMPRISED ONLY 20 PER
10 CENT OF ITS ASSETS AND ONLY FIVE PER CENT OF ITS PROFITS AS
11 I RECALL WAS PURCHASED BY NICOLET.

12 THE AFFIDAVITS WE SUBMITTED, HOWEVER, YOUR HONOR,
13 SHOW THAT THE INDUSTRIAL PRODUCTS DIVISION DID NOT INCLUDE
14 THIS PARTICULAR PRODUCT INVOLVED IN THIS CASE, THAT IS, THE
15 SPRAYED LIMPET ASBESTOS.

16 THE ASSETS THEN THAT WERE PURCHASED BY NICOLET DID
17 NOT INCLUDE THIS SPRAYED LIMPET ASBESTOS PRODUCT, AND
18 NICOLET DID NOT HAVE ANYTHING TO DO WITH THE SPRAYED LIMPET
19 PRODUCT BEFORE ITS PURCHASE OR AFTER ITS PURCHASE. IT HAS
20 NEVER DISTRIBUTED, MANUFACTURED OR PRODUCED THE SPRAYED
21 LIMPET ASBESTOS PRODUCT, WHICH IS THE ONLY CONNECTION
22 BETWEEN THE PLAINTIFF, KEASBEY AND MATTISON, AND IN THIS
23 CASE, NICOLET.

24 PLAINTIFF HAS DONE US A FAVOR, AND I CITE HIS
25 OPPOSITION TO THE BRIEFS IN OPPOSITION TO TURNER & NEWALL'S

1 MOTION, SPECIFICALLY PAGES 8 AND 9, WHERE HE INDICATES THAT
2 KEASBEY AND MATTISON REALLY DID NOT MANUFACTURE THIS
3 PRODUCT INVOLVED, BUT ONLY DISTRIBUTED IT. THAT IT WASN'T
4 MANUFACTURED AND AS STATED BY COUNSEL FOR TURNER & NEWALL,
5 BY J. W. ROBERTS COMPANY IN ENGLAND, KEASBEY AND MATTISON
6 UP UNTIL 1962 WHEN IT WAS LIQUIDATED WAS DISTRIBUTING THIS
7 PARTICULAR PRODUCT.

8 IT APPEARS, HOWEVER, THAT AT THE TIME IT WAS
9 DECIDED TO LIQUIDATE KEASBEY AND MATTISON, THIS PARTICULAR
10 EXCLUSIVE LICENSING AGREEMENT WAS SOLD OR GIVEN TO ANOTHER
11 COMPANY, THAT BEING A. C. & S.. BASED UPON THAT
12 INFORMATION CONTAINED IN PLAINTIFFS' BRIEF, AND ALSO AS SET
13 FORTH IN AFFIDAVITS AND SUPPORTING DOCUMENTS WHICH WERE
14 SUPPLIED, IT WOULD APPEAR THAT THE SPRAYED LIMPET ASBESTOS
15 PRODUCT INVOLVED WAS MERELY A PRODUCT DISTRIBUTED BY
16 KEASBEY AND MATTISON AND THAT IN FACT BEFORE IT WAS
17 LIQUIDATED THIS PARTICULAR LICENSING AND DISTRIBUTING
18 AGREEMENT WAS GIVEN TO ANOTHER COMPANY.

19 THEREFORE, YOUR HONOR, AT THE TIME WHEN NICOLET
20 FINALLY GOT INVOLVED IN THIS PARTICULAR SALE, FOUR OF THE
21 OPERATING DIVISIONS OF K&M HAD BEEN SOLD OR WERE ABOUT TO
22 BE SOLD, AND THE ONLY REMAINING ONE WAS THIS INDUSTRIAL
23 PRODUCTS DIVISION.

24 AS I STATED EARLIER, THIS DISTRIBUTING LICENSING
25 AGREEMENT WAS NO LONGER AN ASSET OF K&M'S AS FAR AS WE

1 COULD TELL, AND MORE IMPORTANT, IT WAS NO LONGER AN ASSET
2 OR INCLUDED WITHIN THOSE ASSETS OF THAT ONE DIVISION THAT
3 NICOLET UNFORTUNATELY HAPPENED TO PURCHASE.

4 BASED UPON THE FACT THAT NICOLET HAS HAD NOTHING
5 TO DO WITH THIS PRODUCT, WE FEEL THAT WE REALLY NEED NOT GO
6 ANY FURTHER THAN THAT WITH OUR MOTION.

7 COUNSEL HAS URGED THE COURT THAT BECAUSE WE ARE A
8 "SUCCESSOR CORPORATION" WE SHOULD BE RESPONSIBLE FOR THE
9 TORTS OF KEASBEY AND MATTISON.

10 IN THE RECENT MOTION THAT I FILED, MY PREVIOUS
11 MOTION, THE PAPERS I FILED YESTERDAY, YOUR HONOR, WE SHOWED
12 THE COURT VARIOUS OTHER DECISIONS ACROSS THE COUNTRY TO
13 INCLUDE VARIOUS OTHER DISTRICT COURTS WHO HAVE ADDRESSED
14 THIS ISSUE BEFORE, THE SUCCESSOR CORPORATION ISSUE, AND
15 FOUND IN FAVOR OF NICOLET.

16 MORE IMPORTANT IN THIS CASE, YOUR HONOR, WE HAVE
17 THE IMPORTANT FACTOR THAT THE PRODUCT INVOLVED WAS NOT A
18 PRODUCT OF THE INDUSTRIAL PRODUCTS DIVISION, BUT SOMETHING
19 THAT APPARENTLY HAD BEEN GIVEN AWAY TO ANOTHER COMPANY
20 PRIOR TO OUR INVOLVEMENT.

21 THE CASE THAT COUNSEL CITES, THEREFORE, THE GERMAN
22 WINE CASE -- HOW I REFER TO IT -- HAS NO APPLICABILITY
23 REALLY TO NICOLET. PLAINTIFF IS TRYING TO GO TWO STEPS
24 BEYOND WHAT THAT CASE HAS STATED. FIRST OF ALL, THAT CASE
25 DOES NOT DEAL WITH AN ALLEGED SUCCESSOR CORPORATION, AND,

1 SECONDLY, IT CERTAINLY DOES NOT DEAL WITH A CORPORATION
2 THAT HAD NO INVOLVEMENT WITH THE PRODUCT IN QUESTION.

3 ANOTHER FACTOR, YOUR HONOR, IS, UNLIKE THAT
4 PARTICULAR CASE WHERE THE AUSTRALIAN WINE PRODUCER WAS
5 STILL DOING BUSINESS IN THE DISTRICT OF COLUMBIA AND
6 PUTTING THE PRODUCT ON THE SHELF, NICOLET DOES NOT HAVE ANY
7 SUBSTANTIAL BUSINESS IN THE DISTRICT OF COLUMBIA. AS SET
8 FORTH IN THE MUSSELMAN AFFIDAVIT, WE HAVEN'T HAD ANY
9 BUSINESS IN THE DISTRICT OF COLUMBIA FOR 3 YEARS NOR SALES
10 IN THE DISTRICT OF COLUMBIA FOR 3 YEARS.

11 AND MORE IMPORTANT, YOUR HONOR, THIS PRODUCT IS
12 NOT SOMETHING WE DISTRIBUTED OR HAD ANYTHING TO DO WITH.

13 I ALSO SET FORTH IN THE PAPERS THAT NICOLET HAD NO
14 CONTACT OR CONNECTION, CORPORATE OR OTHERWISE, WITH TURNER
15 & NEWALL AND HAD NO CONTACT OR CONNECTION WITH THIS
16 NATIONAL ASBESTOS COMPANY WHICH ALLEGEDLY WAS PART OF THE
17 LOCAL DISTRIBUTING PLAN FOR THIS PRODUCT IN THE AREA.

18 COUNSEL ALSO SET FORTH A BRIEF FROM SOUTH CAROLINA,
19 I BELIEVE, THE BAUMGARTNER CASE WAS MENTIONED IN THAT BRIEF.
20 IT WAS A SOUTH CAROLINA CASE WHICH WAS A COMMON PLEAS
21 DECISION, IN WHICH NICOLET WAS FOUND TO BE A SUCCESSOR
22 CORPORATION. BUT TO DISTINGUISH THAT CASE, YOUR HONOR,
23 THERE -- THE PRODUCT INVOLVED HERE, THE SPRAYED LIMPET
24 ASBESTOS, WAS NOT THE PRODUCT INVOLVED IN THAT CASE SO FAR
25 AS I KNOW. AND IN FACT, THE ORDER OF THE COURT THERE

1 CLEARLY STATED THAT NICOLET HAD CONTINUED TO PRODUCE OTHER
2 PRODUCTS WHICH APPARENTLY THAT PLAINTIFF HAD BEEN EXPOSED
3 TO, WHICH IS NOT THE CASE HERE.

4 THERE HAS ALSO BEEN, AS YOU WELL CAN TELL BY
5 LOOKING AT YOUR FILE NUMEROUS AFFIDAVITS, OTHER DOCUMENTS,
6 AND OTHER DISCOVERY WHICH HAVE BEEN DONE SINCE 1977 ALL OF
7 WHICH HAVE SIGNIFICANTLY CLEARED THE PICTURE A LOT MORE
8 THAN IT WAS APPARENTLY IN 1977.

9 IN SUMMARY, YOUR HONOR, WE WOULD CONTEND THAT
10 THERE IS NO BASIS AT ALL FOR JURISDICTION OVER NICOLET
11 UNDER THE LONG ARM STATUTE NOT ONLY BECAUSE OF THE PRODUCT,
12 BUT ALSO BECAUSE OF THE LACKMAN CASE, THE LACK OF ANY
13 PRESENT CONTEXT, BUT ALSO BECAUSE THERE IS NOTHING IN THE
14 LONG ARM STATUTE THAT STATES ANYTHING ABOUT JURISDICTION
15 OVER A SUCCESSOR CORPORATION CAN BE MADE -- PERSONAL
16 JURISDICTION OVER A SUCCESSOR CORPORATION CAN BE MADE BY
17 ALLEGING JURISDICTION OVER A PREVIOUS CORPORATION WHICH NO
18 LONGER EXISTS.

19 THE COURT: ALL RIGHT.

20 MR. GUZIAK: I WOULD THINK THAT YOU CERTAINLY WOULD
21 HAVE TO HAVE PRESENT JURISDICTION -- JURISDICTIONAL TIES
22 OVER NICOLET FOR THAT STATUTE TO APPLY.

23 THE COURT: ALL RIGHT. THANK YOU.

24 MR. DONOHUE: GOOD AFTERNOON, YOUR HONOR. PATRICK
25 DONOHUE, ON BEHALF OF THE DEFENDANTS ATLAS-TURNER AND BELL

1 ASBESTOS MINES. WE HAVE FILED MOTIONS TO DISMISS ON BEHALF
2 OF BOTH OF OUR CLIENTS, PRIMARILY ON THE SAME LEGAL BASES
3 THAT WERE PREVIOUSLY ADVANCED BY COUNSEL FOR TURNER &
4 NEWALL.

5 RATHER THAN NEEDLESSLY DUPLICATE THE COURT'S TIME
6 AT THIS POINT, WE WOULD INCORPORATE THE LEGAL ARGUMENTS
7 PREVIOUSLY ADVANCED ON BEHALF OF OUR TWO CLIENTS.

8 THE COURT: WHAT IS THE RELATIONSHIP OF YOUR TWO
9 CLIENTS TO TURNER & NEWALL?

10 MR. DONOHUE: WITH RESPECT TO SHIPMENTS INVOLVED
11 IN THIS CASE, YOUR HONOR, NONE. YEARS AGO, I BELIEVE IN
12 THE FORTIES, PERHAPS FIFTIES, THERE MAY HAVE BEEN SOME
13 CONTRACTUAL RELATIONSHIP.

14 AS FAR AS THE ALLEGATIONS IN THIS CASE ARE
15 CONCERNED THOUGH, THERE IS NO RELATIONSHIP.

16 THE COURT: ALL RIGHT.

17 MR. DONOHUE: YOUR HONOR, IN OPPOSITION TO THE
18 MOTION TO DISMISS WHICH HAS BEEN FILED ON BEHALF OF ATLAS,
19 THERE ARE TWO PRINCIPAL FACTUAL CONTENTIONS RAISED BY THE
20 PLAINTIFFS.

21 THE FIRST IS CONTAINED IN AN AFFIDAVIT WHICH HAS
22 BEEN PROVIDED BY RICHARD W. BOYLE, SECRETARY-TREASURER OF
23 KRAFFT MURPHEY COMPANY, WITH WHOM ATLAS HAD A CONTRACTUAL
24 RELATIONSHIP IN THE LATE SIXTIES, EARLY 1970'S. KRAFFT WAS
25 THE LOCAL SUPPLIER OF ASBESTOS PRODUCTS. THERE IS A

1 DISTRIBUTORSHIP AGREEMENT BETWEEN KRAFFT AND ATLAS. IN
2 PARAGRAPH 19 OF THAT AFFIDAVIT, ON PAGE FOUR, THERE IS AN
3 INDICATION BY MR. BOYLE THAT ATLAS SHIPPED SPRAYED LIMPET
4 ASBESTOS, ORDERED BY KRAFFT MURPHEY, DIRECTLY TO THE
5 DISTRICT OF COLUMBIA JOBSITES BY TRUCK FROM CANADA. THAT
6 IS THE MOST DIRECT POINT OF FACT SUGGESTED IN OPPOSITION TO
7 THE MOTION FILED BY ATLAS.

8 IN THE AFFIDAVIT WHICH HAS BEEN FILED ON BEHALF OF
9 ATLAS-TURNER, IT IS CLEARLY INDICATED THAT THERE WERE NO
10 DIRECT SALES OF ATLAS PRODUCTS IN THE DISTRICT OF COLUMBIA.
11 THERE WERE NO CONTRACTS EXECUTED IN THE DISTRICT. KRAFFT
12 MURPHY AT THIS TIME WAS BASED IN ALEXANDRIA, NOT IN THE
13 DISTRICT, AND THAT ALL SALES FROM ATLAS-TURNER WERE MADE
14 F.O.B. FROM QUEBEC, CANADA. THERE IS ABSOLUTELY NO DIRECT
15 REFUTATION OF THOSE POINTS IN THE AFFIDAVIT WHICH HAS BEEN
16 SUBMITTED ON BEHALF OF MR. BOYLE.

17 I WOULD SUBMIT TO THE COURT THAT WHAT APPEARS TO
18 BE AN INCONSISTENCY IS NOT NECESSARILY SO. THE WORD,
19 "SHIPMENT," IS A VERY BROAD TERM. IT DOES NOT NECESSARILY
20 TAKE INTO ACCOUNT THE TECHNICAL DETAILS OF LEGAL OWNERSHIP.
21 IT DOES NOT TAKE INTO ACCOUNT WHO IS RESPONSIBLE FOR THE
22 GOODS, WHO DESIGNATES THE POINT OF DELIVERY, ANYTHING OF
23 THAT NATURE.

24 AND IN THE ABSENCE OF ANY REFUTATION OF THE FACT
25 THAT ALL SALES WERE MADE F.O.B. CANADA, I WOULD SUBMIT THAT

1 THE SUGGESTION IN PARAGRAPH 19 TO THE EFFECT THAT ATLAS WAS
2 SOMEHOW RESPONSIBLE FOR THE SHIPMENT OF ASBESTOS-CONTAINING
3 PRODUCTS TO D C JOBSITES IS SIMPLY INADEQUATE TO REFUTE
4 WHAT REMAINS UNREFUTED IN THE AFFIDAVIT IN SUPPORT OF THE
5 MOTION.

6 THE SECOND PRIMARY BASIS FOR THE PLAINTIFF'S
7 OPPOSITION CONSISTS OF INTERROGATORY ANSWERS WHICH WERE
8 FILED BY ATLAS IN THE UNITED STATES DISTRICT COURT IN SOUTH
9 CAROLINA.

10 SPECIFICALLY, THE ANSWER TO INTERROGATORY 197 IN
11 THE CASE -- I BELIEVE IT IS ATTACHED TO THE EXHIBITS AS
12 EXHIBIT "A".

13 THAT ANSWER LISTS A NUMBER OF SALES OF ATLAS
14 PRODUCTS, ONLY ONE OF WHICH INVOLVES A SALE TO A PURCHASER
15 IN THE DISTRICT OF COLUMBIA. THE PURCHASER WAS THE
16 NATIONAL INSTITUTES OF HEALTH.

17 UNDER THE D C LONG ARM STATUTE, THERE IS A
18 GOVERNMENT CONTACTS EXCEPTION, WHICH EXCEPTS FOR PURPOSES
19 OF PERSONAL JURISDICTION, CONTACTS AND TRANSACTIONS WITH
20 THE FEDERAL GOVERNMENT. THE EXCEPTION IS PREMISED ON FIRST
21 AMENDMENT PRINCIPLES. IT IS BASED ON A POLICY TO PROMOTE
22 THE ORDERLY FUNCTION OF THE GOVERNMENT, AND TO ENCOURAGE
23 EFFICIENCY IN GOVERNMENT TRANSACTIONS.

24 THE COURT: THAT HAS TO DO WITH LOBBYING ACTIVITY
25 OR THINGS OF THAT NATURE, DOESN'T IT?

1 MR. DONOHUE: PARDON ME, YOUR HONOR?

2 THE COURT: THAT HAS TO DO WITH LOBBYING ACTIVITY.

3 MR. DONOHUE: THERE IS THE ROSE CASE, ROSE VERSUS
4 SILVER, WHICH I DO NOT BELIEVE RELATED TO A LOTTERY
5 SITUATION.

6 THE COURT: LOBBYING?

7 MR. DONOHUE: OH, LOBBYING? I'M SORRY.

8 THE COURT: YES. IT DOESN'T HAVE TO DO WITH SALES
9 OF GOODS.

10 MR. DONOHUE: IT RELATES TO TRANSACTIONS.

11 THE COURT: WHAT IS THAT CASE ABOUT?

12 MR. DONOHUE: ROSE VERSUS SILVER, 394. A 2D, 1968.

13 I DO NOT HAVE THE CASE HERE. I WOULD REQUEST THE COURT'S
14 PERMISSION TO SUPPLY A SUPPLEMENTAL MEMORANDUM.

15 THE COURT: ALL RIGHT. YOU CAN DO IT IN 3 DAYS.

16 MR. DONOHUE: THE ONLY CONTACT, THEN, IN THE
17 NATURE OF A SALE WHICH INVOLVES A DIRECT CONTACT WITH THE
18 DISTRICT IS A TRANSACTION IN THE EARLY SEVENTIES WITH N I H.
19 IF THAT IS THE SOLE CONTACT WHICH THE PLAINTIFFS PURPORT TO
20 RELY ON IN ASSERTING PERSONAL JURISDICTION OVER
21 ATLAS-TURNER IN THIS CASE, IT IS OUR POSITION THAT IT DOES
22 NOT SATISFY THE MINIMUM CONTACTS REQUIREMENTS.

23 THE MOTION THAT IS FILED ON BEHALF OF BELL
24 ASBESTOS RECEIVED MUCH LESS OPPOSITION THAN ATLAS'S MOTION.
25 THERE'S A VERY SIMPLE REASON. BELL HAS NO CONTACTS OF ANY

1 KIND WITH ANY CONTRACTORS, SUPPLIERS, RETAILERS OF
2 ASBESTOS-CONTAINING PRODUCTS IN THE DISTRICT, OR ANYWHERE
ELSE IN THE UNITED STATES FOR THAT MATTER.

4 NEITHER OF THE DEFENDANTS HAS ANY ASSETS, REAL
5 ESTATE HOLDINGS, BANK ACCOUNTS, NEITHER HAVE FILED SUIT IN
6 THE DISTRICT, NOR ARE INCORPORATED IN THE DISTRICT OF THE
7 THERE IS SIMPLY NO INDICIA THAT ARE SATISFIED IN ORDER TO
8 MEET THE MINIMUM CONTACTS REQUIREMENTS OR THE STATUTORY
9 REQUIREMENTS OF THE DISTRICT OF COLUMBIA LONG ARM STATUTE.

10 THE COURT: ALL RIGHT.

11 MR. ENSLEIN: YOUR HONOR, I AM PETER ENSLEIN FOR
12 THE PLAINTIFFS. YOUR HONOR, AS I HAVE LISTENED TO MY
13 BROTHERS TODAY, IT OCCURS TO ME THERE IS A GAME OF HOT
14 POTATO BEING PLAYED HERE AND THAT HOT POTATO IS CALLED
15 SPRAYED LIMPET ASBESTOS.

16 THESE DEFENDANTS HAVE DONE THEIR VERY BEST TO
17 DISTANCE THEMSELVES FROM THIS PRODUCT FOR A VERY GOOD
18 REASON. MY CLIENT FLETCHER MCDANIEL, WORKED FOR MANY YEARS
19 IN THE DISTRICT OF COLUMBIA AS A PLASTER'S HELPER.

20 THE COURT: WHO DID HE WORK FOR?

21 MR. ENSLEIN: HE WORKED IN 1959, YOUR HONOR, FOR A
22 COMPANY CALLED THE NATIONAL ASBESTOS COMPANY, AND THEN HE
23 WORKED FOR MANY YEARS FOR A COMPANY CALLED THE KRAFFT
24 MURPHEY COMPANY. HE WORKED FOR THAT COMPANY IN 1953
25 THROUGH 1963. IN 1965, AND FOR THE PERIOD OF 1967 THROUGH

1 1971. THROUGHOUT THAT PERIOD OF TIME, YOUR HONOR, HE WAS
2 CONSTANTLY EXPOSED TO SPRAYED LIMPET ASBESTOS MANUFACTURED
3 BY THESE DEFENDANTS.

4 NOW, HOW DID SPRAYED LIMPET ASBESTOS GET TO
5 FLETCHER MCDANIEL? TURNER & NEWALL'S COUNSEL SUGGESTS IT
6 IS SIMPLY THE UNILATERAL ACT OF KRAFFT MURPHY. IN FACT, IT
7 RESULTS FROM THE SYSTEMATIC DISTRIBUTION OF THIS PRODUCT BY
8 TURNER & NEWALL FOR MANY MANY YEARS.

9 THE HISTORY OF TURNER & NEWALL IS COMPLEX, EVER
10 CHANGING AND THEY HAVE, INDEED, HAD GREAT SUCCESS IN
11 AVOIDING JURISDICTION IN MANY COURTS. THEY HAVE DONE THAT
12 SIMPLY BY PLAYING IN MANY WAYS THE SAME KIND OF HOT POTATO
13 GAME THEY PLAYED HERE. " IT WASN'T US. " IT WASN'T US. "

14 THE COURT: SEVERAL JUDGES ON THIS COURT HAVE HAD
15 CASES THAT DEAL WITH ASBESTOS.

16 MR. ENSLEIN: YES, IN REGARD TO THE CATRETT CASE,
17 JUDGE RICHEY DECIDED THAT CASE AND HE DID NOT HAVE THE
18 BENEFIT OF THE COMPLETE RECORD WHICH WE HAVE HERE TODAY.
19 THAT CASE WAS DECIDED ON A VERY INCOMPLETE RECORD. AND I
20 THINK MY BROTHER, MR. DORKEY, I THINK WILL AGREE IT DID NOT
21 INCLUDE MANY OF THE MATERIALS WE HAVE HERE TODAY.

22 THE COURT: WHAT DO WE HAVE THAT JUDGE RICHEY
23 DIDN'T HAVE?

24 MR. ENSLEIN: JUDGE RICHEY WAS NOT SUPPLIED WITH
25 THE VERY DETAILED COURSE OF CONDUCT OF THE DISTRIBUTION

1 SYSTEM TRADED BY CREATED BY TURNER & NEWALL. OR THE
2 LICENSING AGREEMENTS THAT TURNER AND INFLUENCE CREATED NOR
3 WAS HE COMPLETELY PROVIDED WITH INFORMATION CONCERNING THE
4 EXTENT OF TURNER AND NEWALL'S CONTROL OVER THIS
5 DISTRIBUTION SYSTEM. NOR WAS HE PROVIDED WITH THE RECENT
6 DECISION OF MAGISTRATE DEJACOMO WHO HAD OCCASION TO REVIEW
7 THIS RECORD AND FOUND INDEED IN A FACTUAL SETTING ALMOST
8 IDENTICAL TO THE CASE HERE THAT TURNER AND NEWALL WAS
9 SUBJECT TO JURISDICTION UNDER THAT STATUTE.

10 THE COURT: WAS THE MASSACHUSETTS CASE SOMEWHAT
11 DIFFERENT FACTUALLY?

12 MR. ENSLEIN: FACTUALLY, THE MAGISTRATE IN TERMS OF
13 HIS ORDER CONCERNING THE TURNER AND NEWALL LIABILITY FOR
14 DISTRIBUTING SPRAYED LIMPET ASBESTOS WAS VERY SIMILAR. THE
15 DIFFERENCE IN PART WAS THE ACKNOWLEDGEMENT OF SOME SALES BY
16 TURNER & NEWALL OF OTHER PRODUCTS IN THEIR RECENT PAST TO
17 MASSACHUSETTS CUSTOMERS, WHICH THEY, TODAY, IN THEIR BRIEF
18 WHICH IS BEFORE YOUR HONOR, DENY OF ANY SIGNIFICANCE FOR
19 JURISDICTIONAL PURPOSE.

20 THE COURT: SO, THERE WAS SOME FAIRLY RECENT
21 ACTIVITY ON THE PART OF TURNER & NEWALL?

22 MR. ENSLEIN: YES, THERE WAS.

23 THE COURT: WE DON'T HAVE THAT HERE?

24 MR. ENSLEIN: WE HAVE THE RECENT ACTIVITY OF THIS
25 DEFENDANT FILIN A LAWSUIT BEFORE YOUR HONOR WHICH I THINK

1 CONSTITUTES TRANSACTING BUSINESS IN THIS JURISDICTION, YOUR
2 HONOR.

3 THIS PRODUCT CAME TO THE DISTRICT OF COLUMBIA IN
4 THE FOLLOWING FASHION. IN 1930, TURNER & NEWALL DEVELOPED
5 A PRODUCT CALLED SPRAYED LIMPET ASBESTOS.

6 THE COURT: LET ME ASK YOU THIS WHILE I AM
7 THINKING ABOUT IT. WAS IT BROUGHT TO JUDGE RICHEY'S
8 ATTENTION THAT TURNER & NEWALL HAD FILED A CASE IN THIS
9 COURT?

10 MR. ENSLEIN: YOUR HONOR, AT THE TIME TURNER &
11 NEWALL HAD FILED ITS ACTION, THE CASE HAD ALREADY BEEN
12 DECIDED BY JUDGE RICHEY.

13 THE COURT: HE DECIDED IT THEN SOMETIME AGO?

14 MR. ENSLEIN: SOMETIME AGO. I BELIEVE IT WAS
15 DECIDED IN APPROXIMATELY 1980. TURNER & NEWALL HAD FILED
16 ITS ACTION HERE IN 1982.

17 THE COURT: JUDGE RICHEY RULED ON HIS CASE, WHEN?

18 MR. ENSLEIN: IN 1980 I BELIEVE YOUR HONOR. I
19 DON'T HAVE THE EXACT DATE.

20 THE COURT: THE RULED IN 1980. ALL RIGHT. THANK
21 YOU.

22 MR. ENSLEIN: THE PRODUCT SPRAYED LIMPET ASBESTOS
23 WAS DISTRIBUTED BY TURNER & NEWALL THROUGHOUT THE WORLD BY
24 WAY OF A SYSTEM OF EXCLUSIVE LICENSE AGREEMENTS. UNDER THE
25 TERMS OF THESE AGREEMENTS THE LICENSES WERE REQUIRED TO

1 TAKE ALL OF THEIR ASBESTOS USED IN A SPRAYED LIMPET
2 ASBESTOS PROCESS FROM TURNER & NEWALL.

3 IN THE MID NINETEEN-FIFTIES, TURNER AND NEWALL
4 ENTERED INTO AN AGREEMENT WITH A COMPANY CALLED KEASBEY AND
5 MATTISON OF AMBLER, PENNSYLVANIA, WHICH WAS ALSO TURNER &
6 NEWALL'S WHOLLY-OWNED SUBSIDIARY.

7 UNDER THE TERMS OF TURNER & NEWALL'S LICENSING
8 AGREEMENT WITH KEASBEY AND MATTISON, KEASBEY AND MATTISON
9 WAS PERMITTED WITH THE AUTHORIZATION OF TURNER & NEWALL TO
10 ENTER INTO WHAT WERE KNOWN AS SUB-LICENSE AGREEMENTS WITH
11 LOCAL APPLICATION COMPANIES. KEASBEY AND MATTISON DID JUST
12 THAT AND ENTERED INTO AN AGREEMENT IN THE FIFTIES WITH A
13 COMPANY THAT MR. MCDANIEL WORKED FOR, THE NATIONAL ASBESTOS
14 COMPANY.

15 SHIPMENTS OF ASBESTOS WERE ORDERED THROUGH KEASBEY
16 AND MATTISON BY THE NATIONAL ASBESTOS COMPANY FROM TURNER &
17 NEWALL IN ENGLAND AND THOSE PRODUCTS WERE THEN SHIPPED AND
18 USED BY MR. MCDANIEL IN THE DISTRICT OF COLUMBIA.

19 BY 1962, TURNER & NEWALL WHICH EXERCISED PERVASIVE
20 CONTROL OVER KEASBEY AND MATTISON -- SUCH CONTROL, I
21 MIGHT ADD, YOUR HONOR, THAT THE MAGISTRATE IN MASSACHUSETTS
22 CONCLUDED THAT KEASBEY AND MATTISON WAS THE ALTER EGO OF
23 TURNER & NEWALL AND FOR JURISDICTIONAL PURPOSES, THE ACTS
24 OF KEASBEY AND MATTISON WERE THOSE OF TURNER & NEWALL ON
25 BOTH THE ALTER EGO AND AGENCY THEORY.

1 BY 1962, TURNER AND NEWALL -- BECAUSE THEY HAD
2 BEEN SUED HERE IN THE DISTRICT FOR ANTI-TRUST VIOLATION AND
3 A CRIMINAL PROCEEDING HAD BEGUN AGAINST THEM, AT LEAST, AN
4 INVESTIGATION BY THE GRAND JURY -- DECIDED TO GET RID OF
5 AND LIQUIDATE KEASBEY AND MATTISON. IN 1962, IT DID SO.

6 AND THE MOST SIGNIFICANT IN TERMS OF THE COURT'S
7 CONSIDERATION OF THESE MOTIONS ASSET THAT WAS SOLD WAS THAT
8 OF THE INDUSTRIAL PRODUCTS DIVISION WHICH WAS SOLD TO
9 DEFENDANT NICOLET.

10 I'LL RETURN TO THE QUESTION OF SUCCESSFUL
11 LIABILITY IN A MINUTE ONCE I FINISH MY REBUTTAL REGARDING
12 TURNER AND NEWALL'S AND ATLAS' MOTIONS.

13 IN 1962, BECAUSE KEASBEY AND MATTISON NO LONGER
14 EXISTED, TURNER AND NEWALL HAD TO FIND A WAY TO GET ITS
15 ASBESTOS INTO THIS COUNTRY, PARTICULARLY, ITS SPRAYED
16 LIMPET ASBESTOS. SO, IT ELECTD TO ENTER INTO A AGREEMENT
17 WITH A COMPANY CALLED A. C. AND S. , ALSO A DEFENDANT IN
18 THIS ACTION, WHICH GAVE A. C. & S. -- THEN KNOWN AS
19 ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, ALSO OF
20 PENNSYLVANIA, LANCASTER, PENNSYLVANIA, -- AUTHORIZING THAT
21 COMPANY TO SERVE AS THE EXCLUSIVE LICENSEE FOR SPRAYED
22 LIMPET ASBESTOS IN THE UNITED STATES FOR A PERIOD OF FIVE
23 YEARS.

24 UNDER THE TERMS OF THAT CONTRACT A.C.& S. WAS
25 AUTHORIZED TO ENTER INTO SUB-LICENSE AGREEMENTS -- SUBJECT

1 TO THE APPROVAL OF TURNER & NEWALL -- WITH LOCAL
2 APPLICATION COMPANIES.

3 IN 1962 A C AND S ENTERED INTO AN AGREEMENT WITH
4 MR. MCDANIEL'S EMPLOYER, KRAFFT MURPHY, WHICH PROVIDED THAT
5 KRAFFT MURPHEY UNDER THE VERY TERMS OF THAT AGREEMENT COULD
6 DISTRIBUTE AND USE SPRAYED LIMPET ASBESTOS IN THE DISTRICT
7 OF COLUMBIA.

8 NOW TURNER AND NEWALL SAYS THEY DIDN'T KNOW
9 ANYTHING ABOUT IT. THE RECORD IN THIS CASE SUGGESTS
10 OTHERWISE. BECAUSE IF YOU LOOK AT THE BOYLE AFFIDAVIT
11 WHICH IS ATTACHED TO OUR OPPOSITION TO TURNER & NEWALL'S
12 MOTION TO DISMISS, YOU WILL FIND THAT THE SUB-LICENSE
13 AGREEMENT SIGNED BY KRAFFT MURPHEY WAS SENT TO ENGLAND BY
14 A. C. & S. TO TURNER & NEWALL FOR THEIR APPROVAL.

15 YOU WILL SEE CORRESPONDENCE IN THERE BY A
16 GENTLEMEN NAMED ANDY RICHARDSON INDICATING THAT THE
17 CONTRACT HAD BEEN SENT TO ENGLAND AND HE WAS RETURNING THE
18 SIGNED COPY FROM ENGLAND FOR KRAFFT MURPHY'S FILE.

19 YOU WILL ALSO FIND ATTACHED TO THAT AFFIDAVIT OF
20 MR. BOYLE, WHO WAS THE SECRETARY-TREASURY FOR MANY YEARS OF
21 THE KRAFFT MURPHY COMPANY, COPIES OF A CABLE SENT BY TURNER
22 & NEWALL TO THE KRAFFT MURPHY COMPANY INDICATING THAT THE
23 SHIPMENT OF CERTAIN ASBESTOS, SPRAYED LIMPET ASBESTOS, FROM
24 ENGLAND TO AN ALEXANDRIA, VIRGINIA, JOBSITE.

25 SO, TURNER & NEWALL HAD CONTROL OF A SYSTEM WHICH

1 WAS DESIGNED TO TAKE ITS PRODUCT MANUFACTURED IN ENGLAND,
2 BRING IT TO THE UNITED STATES, AND ASSURE THAT IT BE
3 DISTRIBUTED NOT SIMPLY IN A REGION WHICH INCLUDED THE
4 DISTRICT OF COLUMBIA, BUT IN THE DISTRICT OF COLUMBIA
5 ITSELF.

6 THE COURT: BUT, ALL OF THIS OCCURRED AT LEAST 12
7 YEARS AGO?

8 MR. ENSLEIN: THE LAST SHIPMENT OF LIMPET OCCURRED
9 IN 1972, YOUR HONOR. I DO TAKE ISSUE WITH MY BROTHER'S
10 CHARACTERIZATION OF THE LONG ARM STATUTE AS ONE REQUIRING
11 PRESENT-DAY CONTACTS IN ORDER FOR A PLAINTIFF TO EXERCISE
12 AND BE ENTITLED TO BRING A DEFENDANT INTO COURT IN THIS
13 JURISDICTION WHERE YOU HAVE SUCH A PERSISTENT COURSE OF
14 CONDUCT BY A DEFENDANT SUCH AS WE HAVE HERE.

15 YOUR HONOR'S DECISION IN SECURITY BANK BY WAY OF
16 MY READING DID NOT HOLD OTHERWISE. AS I READ THAT DECISION,
17 THERE WAS A COMPARED AND CONTRASTED IN THAT DECISION THE
18 SUBSECTION (A)(1) OF THE LONG ARM STATUTE, TRANSACTING ANY
19 BUSINESS LANGUAGE OF THE STATUTE, AND THE A(4) SECTION
20 WHICH TALKS ABOUT PERSISTENT CONDUCT. THERE, THE IMPORTANT
21 DISTINCTION AS I SEE IT IS NOT THAT THERE BE CONSISTENT
22 CONDUCT UP UNTIL TODAY BUT AT SOME POINT IN THE PAST THE
23 DEFENDANT DID ENGAGE IN A PERSISTENT COURSE OF CONDUCT AS
24 OPPOSED TO AN ISOLATED ACT WHICH WOULD BE SOMETHING UNDER
25 CERTAIN CIRCUMSTANCES THAT THE SUBSECTION (A)(1) OF THE

1 LONG ARM STATUTE WOULD ENCOMPASS.

2 NOW, ALSO IN MY READING OF THE UNIFORM INTERSTATE
3 AND INTERNATIONAL PROCEDURE ACT UPON WHICH OUR LONG ARM
4 STATUTE IS BASED, MY RECOLLECTION IS THAT THAT STATUTE IN
5 TERMS OF THE TRANSACTING ANY BUSINESS PROVISION DOES NOT
6 SIMPLY, IS NOT SIMPLY LIMITED TO CONTRACT ACTIONS BUT
7 APPLIES TO ANY ACTION, TORT OR OTHERWISE. INDEED, MY
8 READING OF THE KAISER DECISION SUGGESTS THAT THE COURT
9 THERE CHARACTERIZED AT LEAST ONE OF THE PLAINTIFF'S CLAIMS
10 IN THAT ACTION TO BE TORT IN NATURE.

11 THE COURT: WHAT CASES DO YOU HAVE TO SUPPORT YOUR
12 POSITION?

13 MR. ENSLEIN: WELL, THE KAISER CASE --

14 THE COURT: YES, BUT THAT DIDN'T HAVE THE 12-YEAR
15 LAPSE. THAT'S THE PROBLEM. THAT'S THE PROBLEM. DO YOU HAVE
16 ANY CASES WHERE YOU HAVE A LAPSE OF TIME LIKE THIS?

17 MR. ENSLEIN: I HAVE NOT FOUND ONE.

18 THE COURT: HAVEN'T FOUND ONE?

19 MR. ENSLEIN: BUT, YOUR HONOR IN THE TOXIC COURT
20 SETTING IT SEEMS TO ME THAT PARTICULARLY HERE WHERE WE HAVE
21 A DEFENDANT WHO HAS FILED AN ACTION IN THIS COURT, AND WHO
22 HAS ASKED THIS COURT TO EXERCISE THE LAWS OF THIS
23 JURISDICTION IN AN ACTION AGAINST AN INSURANCE COMPANY FOR
24 THE CLAIMS SIMILAR TO THOSE, REALLY IDENTICAL TO THOSE OF
25 MR. MCDANIEL: EXPOSURE TO PRODUCTS DISTRIBUTED BY KEASBEY

1 AND MATTISON. THIS COURT HAS RECOGNIZED, THE CIRCUIT COURT
2 OF APPEALS OF THE DISTRICT OF COLUMBIA HAS RECOGNIZED THAT
3 IN ENVIRONMENTAL RESEARCH INTERNATIONAL VERSUS GREEN
4 ENGINEERING THAT ACTIVITIES ENTITLING THE DEFENDANT TO THE
5 PROTECTIONS OF LOCAL LAW CONSTITUTES TRANSACTING BUSINESS
6 UNDER THE TERMS OF THE LONG ARM STATUTE.

7 I MIGHT CITE YOUR HONOR TO THE CASE OF ROSS VERSUS
8 ROSS. A CASE OUT OF THE SUPREME JUDICIAL COURT OF
9 MASSACHUSETTS. 358 NORTHEAST SECOND 437, A CASE DECIDED IN
10 1976. WHERE THE SUPREME JUDICIAL COURT HELD THAT THE
11 FILING OF A LAWSUIT IN MASSACHUSETTS CONSTITUTED
12 TRANSACTING BUSINESS WITHIN THE MEANING OF THAT LONG ARM
13 STATUTE. AND MASSACHUSETTS DECISIONS ARE OF PARTICULAR
14 PRECEDENTIAL IMPORT HERE, YOUR HONOR, BECAUSE THEY, LIKE
15 OUR LONG ARM STATUTE, ARE PREDICATED ON THE UNIFORM
16 INTERSTATE AND INTERNATIONAL PROCEDURE ACT.

17 OUR COURT OF APPEALS IN "FOUNDING CHURCH OF
18 SCIENTOLOGY" NOTED THAT SUCH DECISIONS ARE ENTITLED TO, AS
19 THE COURT PUT IT, SUBSTANTIAL WEIGHT IN A D C COURT'S
20 CONSIDERATION OF JURISDICTIONAL ISSUES.

21 THE COURT: WELL, IN OUR LONG ARM STATUTE, JUST
22 LOOKING AT IT, IT SAYS AFTER ENUMERATING THE FOUR
23 SUBSECTIONS, THAT THE COURT MAY EXERCISE LONG ARM
24 JURISDICTION. IT SAYS (B) " WHEN JURISDICTION OVER A
25 PERSON IS BASED SOLELY UPON THIS SECTION, ONLY A CLAIM FOR

1 RELIEF ARISING FROM ACTION ENUMERATED IN THIS SECTION MAY
2 BE ASSERTED AGAINST IT."

3 SO, HOW WOULD FILING A SUIT IN THIS JURISDICTION
4 BRING A DEFENDANT WITHIN THE LONG ARM STATUTE?

5 MR. ENSLEIN: MY UNDERSTANDING OF SUBSECTION "B",
6 YOUR HONOR, IS THAT SECTION REQUIRES SOME RELATIONSHIP
7 BETWEEN THE CLAIM ASSERTED AGAINST THE DEFENDANT, AND THE
8 ACTIVITY.

9 AT LEAST, SUBSECTION "(A)(1)" DOES. HERE COUNSEL
10 TODAY CONCEDED THAT THERE IS A RELATIONSHIP BETWEEN THE
11 LITIGATION AT HAND AGAINST AMERICAN MUTUAL, AND THE CLAIMS
12 OF THIS PLAINTIFF.

13 THAT STATUTE IS TO BE CONSTRUED BROADLY NOT NARROWLY.
14 AND I THINK THAT INTERPRETATION OF THAT SUBSECTION (B)
15 WOULD PROVIDE FOR A RELATIONSHIP BETWEEN THIS PLAINTIFF'S
16 CLAIMS FOR INJURIES CAUSED BY KEASBEY AND MATTISON,
17 EXPOSURE, AND THIS DEFENDANT'S ACTION AGAINST AMERICAN
18 MUTUAL FOR CLAIMS ARISING OUT OF CLAIMS SUCH AS THOSE PUT
19 FORWARD BY THE PLAINTIFF HERE -- INDEED, IN MANY WAYS,
20 THE PLAINTIFF COULD BE CONSIDERED A THIRD-PARTY BENEFICIARY
21 OF THAT LITIGATION, INASMUCH AS SHOULD TURNER AND NEWALL
22 SUCCEED THEY WOULD THEN HAVE A SOURCE OF INSURANCE TO COVER
23 THE CLAIMS THAT THIS PLAINTIFF IS SETTING FORTH AGAINST
24 THEM.

25 YOUR HONOR HAS MENTIONED THE KAISER DECISION,

1 WHICH I BELIEVE IS DIRECTLY ON POINT. AND IN TERMS OF
2 WHETHER THERE WAS PRESENT-DAY CONTACT IN THAT CASE, IF
3 THERE WAS CONTACT, IT WAS, AT THAT, SPORADIC. INDEED, IN
4 THAT DECISION, IN FOOTNOTE 14, THE COURT NOTED THAT BETWEEN
5 1974 AND 1978, OF ALL THE WINE SOLD, I THINK THERE WAS ONLY
6 SOLD 7 HUNDRED AND 47 DOLLARS WORTH, 28 CASES OUT OF THE
7 SOME TWO THOUSAND CASES THAT WERE DISTRIBUTED IN THE
8 EASTERN UNITED STATES. SO, IF THERE WAS CONTACT, IT WAS
9 VERY LIMITED, AND, INDEED, THE COURT OF APPEALS DID NOT
10 DECIDE THIS CASE BASED ON WHETHER OR NOT THERE WAS ANY KIND
11 OF PRESENT-DAY CONTACT. BUT, CERTAINLY, IF THAT WAS
12 SIGNIFICANT, THE COURT CHOSE NOT TO HAVE ITS DECISION TURN
13 ON THAT ISSUE.

14 KAISER IS DIRECTLY ON POINT, AND I THINK IN MANY
15 WAYS RESOLVES THE ISSUE OF TURNER & NEWALL'S RESPONSIBILITY
16 HERE IN TERMS OF BEING SUBJECT TO THE COURT'S JURISDICTION.

17 IN THAT CASE, OUR COURT OF APPEALS HELD THAT WHERE
18 A MANUFACTURER SHIPS PRODUCTS TO AN INTERMEDIARY WITH THE
19 EXPECTATION THAT THAT INTERMEDIARY WOULD DISTRIBUTE THOSE
20 PRODUCTS WITHIN A REGION THAT INCLUDED THE DISTRICT OF
21 COLUMBIA THAT CONSTITUTES " TRANSACTING BUSINESS " WITHIN
22 THE TERMS OF OUR LONG ARM STATUTE. AND THAT IS THE EXACTLY
23 WHAT TURNER & NEWALL DID HERE. IT SHIPPED THE PRODUCTS TO
24 A.C. & S. WITH THE UNDERSTANDING THAT THOSE PRODUCTS WOULD
25 BE SHIPPED TO KRAFFT MURPHEY TO BE USED IN THE DISTRICT OF

1 COLUMBIA.

2 TURNER & NEWALL CANNOT COME BEFORE THIS COURT AND
3 SAY IT DIDN'T KNOW THIS WAS HAPPENING WHEN THEY WERE
4 PROVIDED WITH THE VERY CONTRACT WHICH BY ITS VERY TERMS
5 SAID THOSE PRODUCTS ARE AUTHORIZED AND WILL BE USED IN THE
6 DISTRICT OF COLUMBIA. THEY CERTAINLY KNEW THAT THE PRODUCTS
7 WERE COMING HERE, THEY HAD EVERY REASON TO.

8 I ALSO SUBMIT, YOUR HONOR, THAT TURNER AND NEWALL
9 HAS SATISFIED IN THIS CASE THROUGH ITS ACTIVITY, SUBSECTION
10 A 4 OF THE LONG ARM STATUTE, WHICH PROVIDES FOR
11 JURISDICTION WHERE A TORT IS COMMITTED WITHIN THE DISTRICT
12 OF COLUMBIA BY THE ACT OF THE DEFENDANT OUTSIDE OF THE
13 DISTRICT, WHERE THAT DEFENDANT HAS ENGAGED IN A PERSISTENT
14 COURSE OF CONDUCT OR REAPED SUBSTANTIAL REVENUE FROM THE
15 USE OF ITS PRODUCTS HERE. TURNER & NEWALL DOES NOT DISPUTE
16 THE FACTS SET FORTH IN MR. BOYLE'S AFFIDAVIT THAT
17 SUBSTANTIAL AMOUNTS OF ITS ASBESTOS PRODUCT WERE USED HERE.

18 INDEED, ON ONE JOBSITE ALONE 52 HUNDRED DOLLARS
19 WORTH OF ITS PRODUCTS WERE USED. WHEN YOU TAKE INTO
20 CONSIDERATION THE FACT THAT FROM THE MID-50'S THROUGH THE
21 MID-SEVENTIES, LITERALLY HUNDREDS OF BUILDINGS IN THE
22 DISTRICT OF COLUMBIA HAD THIS PRODUCT APPLIED TO IT. ONE
23 CAN ONLY CONCLUDE TURNER & NEWALL MUST HAVE REAPED
24 SUBSTANTIAL REVENUE FROM THE USE OF ITS PRODUCT HERE.

25 WITH REGARD TO THE MOTION FILED BY ATLAS, --

1 THE COURT: WELL, BEFORE WE LEAVE TURNER & NEWALL,
2 SEVERAL OTHER JUDGES, JUDGES PARKER AND GASCH ALSO
3 DISMISSED TURNER & NEWALL, DIDN'T THEY?

4 MR. ENSLEIN: WITH REGARD TO THE ORDER OF JUDGE
5 GASCH, MY UNDERSTANDING WAS THAT WAS A MOTION THAT WAS
6 UNOPPOSED.

7 THE COURT: UNOPPOSED?

8 MR. ENSLEIN: WITH REGARD TO THE ORDER OF JUDGE
9 PARKER, I DON'T DISPUTE THAT THE RECORD IN THAT CASE IS
10 VERY SIMILAR TO THE ONE HERE. A CAREFUL READING OF JUDGE
11 PARKER'S ORDER REVEALS, HOWEVER, THAT HE CITED THE CATRECT
12 CASE. HE SEEMED TO RELY HEAVILY ON THAT DECISION, A
13 DECISION I INDICATED EARLIER WAS BASED ON A RECORD WHICH
14 WAS AT BEST INCOMPLETE. AND I MIGHT ADD, MY BROTHER
15 ALLUDED TO THE DECISION OF MAGISTRATE DEJACAMO PRIOR TO THE
16 SHEEHAN DECISION, THE TERASKI DECISION, IN WHICH HE WAS
17 HELD THAT TURNER AND NEWALL WAS NOT SUBJECT TO JURISDICTION
18 IN MASSAHUSETTS.

19 WELL, THE TERASKI DECISION WAS BASED ON THE
20 IDENTICAL RECORD AS WAS THE CATRETT CASE, SO THAT SHOWS
21 THE IMPORTANCE OF THE SUPPLEMENT OF THE RECORD, WHICH AS
22 SUPPLEMENTED, THE MAGISTRATE DEJACOMO, IN MASSACHUSETTS,
23 FOUND TO BE SUFFICIENT TO SUBJECT TURNER AND NEWALL TO
24 JURISDICTION UNDER THAT STATUTE IN MASSACHUSETTS.

25 THERE IS PENDING, YOUR HONOR, A MOTION FOR

1 RECONSIDERATION BEFORE JUDGE PARKER IN WHICH WE HAVE ASKED
2 HIM TO RECONSIDER HIS DECISION BASED ON THIS NEWLY EXPANDED
3 FACTUAL RECORD AND IN LIGHT OF THE DECISION OF MAGISTRATE
4 DEJACOMO SEVERAL WEEKS AGO. AS YET THAT DECISION, THAT
5 MOTION HAS NOT BEEN RULED ON BY JUDGE PARKER.

6 THE COURT: JUDGE PARKER HAD, I TAKE IT, RULED
7 FAIRLY RECENTLY IN THIS CASE?

8 MR. ENSLEIN: YES, YOUR HONOR, I BELIEVE HIS ORDER
9 WAS IN MARCH.

10 WITH REGARD TO ATLAS AND BELL. ATLAS AND BELL
11 WERE CONTRARY TO MR. DONOHUE'S SUGGESTION OTHERWISE, DID
12 HAVE A VERY LONG AND CLOSE RELATIONSHIP WITH DEFENDANT
13 TURNER AND NEWALL. IN FACT, ATLAS AND BELL WERE BOTH
14 WHOLLY-OWNED SUBSIDIARIES OF THE DEFENDANT TURNER & NEWALL
15 FOR MANY YEARS.

16 THE RELATIONSHIP BETWEEN BELL AND ATLAS IS
17 IMPORTANT. IN THE MASSACHUSETTS LITIGATION, BELL SUBMITTED
18 AN AFFIDAVIT INDICATING THAT THEY NEVER MANUFACTURED
19 ASBESTOS-CONTAINING PRODUCTS. THEY ONLY MINED ASBESTOS.
20 HERE THEY HAVE SUBMITTED AN AFFIDAVIT SAYING WE ONLY MINED
21 ASBESTOS.

22 WELL, IN THEIR ANSWERS TO INTERROGATORIES, YOUR
23 HONOR, IN THE FARREL LITIGATION IN DELAWARE, BELL ADMITTED
24 THAT IN FACT THE ATLAS ASBESTOS COMPANY FROM THE PERIOD
25 1962 THROUGH 1977 WAS AN INTERNAL DIVISION OF THAT COMPANY,

1 AND THAT THE ATLAS ASBESTOS COMPANY MANUFACTURED AND
2 DISTRIBUTED ASBESTOS-CONTAINING PRODUCTS.

3 THE RECORD IN THIS LITIGATION -- I MIGHT ADD THAT
4 JUDGE MCNAUGHT IN MASSACHUSETTS SO FOUND IN BOTH THE MOONEY
5 AND THE SHEEHAN DECISION, THE PREVIOUS SHEEHAN DECISION IN
6 THAT LITIGATION, WHICH IS PART OF OUR BRIEF IN OPPOSITION
7 WHICH IS BEFORE YOUR HONOR.

8 THE IMPORTANT POINT IS THAT THAT FOR THE PERIOD
9 1963 THROUGH 1977 ATLAS AND BELL WERE THE SAME COMPANY.

10 NOW, ATLAS -- LET ME BACK UP. ATLAS-TURNER HAS
11 ADMITTED IN THE QUIGGLEY LITIGATION IN THIS JURISDICTION
12 THAT IT IS A SUCCESSOR IN INTEREST TO THE ATLAS ASBESTOS
13 COMPANY. SO, WHAT IS IMPORTANT HERE TO UNDERSTAND IS THAT
14 DURING THE PERIOD OF TIME THAT ATLAS ASBESTOS COMPANY WAS
15 DISTRIBUTING PRODUCTS WITHIN THE DISTRICT OF COLUMBIA. THAT
16 BEING '62 THROUGH '67, -- EXCUSE ME. '67 THROUGH 1972 WAS
17 THE PERIOD THAT ATLAS WAS DISTRIBUTING SPRAYED LIMPET
18 ASBESTOS IN THE DISTRICT OF COLUMBIA.

19 THAT, IN FACT WERE THE ACTS OF NOT ONLY THE ATLAS
20 ASBESTOS COMPANY TODAY ATLAS-TURNER, BUT ALSO THE BELL
21 ASBESTOS MINES.

22 SO, WE DO OPPOSE THE MOTION TO DISMISS OF BELL IN
23 THIS LITIGATION.

24 AGAIN, UNDER THE KAISER DECISION, ATLAS, AND
25 THEREFORE, BELL, SHIPPED ITS PRODUCT DIRECTLY INTO THE

1 DISTRICT OF COLUMBIA AS WELL AS THROUGH AN INTERMEDIARY,
2 KRAFFT MURPHEY, AND, AGAIN, UNDER THE KAISER DECISION
3 CLEARLY TRANSACTED BUSINESS IN OUR VIEW IN THE DISTRICT OF
4 COLUMBIA.

5 NOW, THEY ALSO SAY IN THEIR AFFIDAVIT THEY HAVE NO
6 RECORDS OF ANY SALES OF ASBESTOS-CONTAINING PRODUCTS IN THE
7 DISTRICT OF COLUMBIA. WELL, ATLAS, IN 1967, WHEN A C AND S
8 NO LONGER HELD THE LICENSE FOR SPRAYED LIMPET ASBESTOS HAD
9 THE A.C. & S. CONTRACT WITH KRAFFT MURPHEY ASSIGNED TO THEM.
10 THAT CONTRACT BY THE VERY TERMS PROVIDED FOR DISTRIBUTION
11 OF ITS PRODUCT IN THE DISTRICT OF COLUMBIA. INDEED, IF YOU
12 LOOK AT THEIR ANSWER TO INTERROGATORIES IN THE CASE KNOWN
13 AS "IN RE, ASBESTOSIS CASES " FROM SOUTH CAROLINA, ALSO
14 PART OF OUR RECORD HERE, THIS DEFENDANT ADMITS SALES TO THE
15 KRAFFT MURPHEY COMPANY FOR VIRTUALLY EVERY YEAR IN WHICH IT
16 SERVED AS THE EXCLUSIVE LICENSEE FOR LIMPET MANUFACTURED BY
17 ATLAS, THAT IS, THE PERIOD '67 TO 1972.

18 IN ADDITION, THOSE VERY SAME AFFIDAVITS INDICATE
19 THAT ATLAS HAS ADMITTED TO THE SALE OF THIS PRODUCT TO THE
20 BUREAU OF NATIONAL STANDARDS, NOT N I. H. BUT THE BUREAU OF
21 NATIONAL STANDARDS IN THE YEARS 1971 AND 1972, AS WELL AS
22 TO OTHER ENTITIES LOCATED AROUND THE DISTRICT OF COLUMBIA.

23 * SO, I QUESTION WHAT VALUE ONE CAN GIVE -- AND
24 WHAT BASIS SUPPORT OF THESE AFFIDAVITS WHICH I MIGHT ADD
25 JUDGE MCNAUGHT CHARACTERIZED AS CONTAINING VERY

1 QUESTIONABLE LANGUAGE. AND I THINK THAT IS RATHER
2 CHARITABLE. -- WHAT SUPPORT THESE AFFIDAVITS CAN GIVE
3 ATLAS IN ITS MOTION TO DISMISS HERE. INDEED, WHEN ONE
4 TAKES A CAREFUL LOOK AT THIS DEFENDANT'S ACTIVITIES, ONE
5 CAN FIND THAT THEY HAVE SATISFIED NOT ONLY SUBSECTION A(1)
6 OF THE LONG ARM STATUTE BUT A(4) AS WELL INASMUCH AS THEIR
7 PRODUCT WAS EXTENSIVELY USED FOR MANY YEARS IN THE DISTRICT
8 OF COLUMBIA AS EVIDENCED BY THE BOYLE AFFIDAVIT. USED ON A
9 WEEKLY BASIS.

10 THE COURT: WHAT SPECIFIC EVIDENCE IS THERE THAT
11 THESE DEFENDANTS EARNED SUBSTANTIAL REVENUE FROM THE SALE
12 OF ASBESTOS IN THE DISTRICT OF COLUMBIA?

13 MR. ENSLEIN: WELL, YOUR HONOR, WE HAVE PROPOUNDED
14 INTERROGATORIES TO THESE DEFENDANTS FOR THAT INFORMATION AS
15 TO THE EXACT REVENUE THEY GARNERED FROM THESE SALES. WE
16 HAVE NOT RECEIVED ANSWERS TO OUR INTERROGATORY ON THAT
17 POINT, BUT WE DO HAVE EVIDENCE FROM THE KRAFFT MURPHY
18 COMPANY, AND THAT IS PRIMARILY THROUGH THE BOYLE AFFIDAVIT,
19 YOUR HONOR. THE BOYLE AFFIDAVIT INDICATES THAT SPRAYED
20 LIMPET ASBESTOS THROUGHOUT THE PERIOD THAT KRAFFT MURPHY
21 SERVED AS A SUB-LICENSEE FOR SPRAYED LIMPET ASBESTOS, THE
22 MID-FIFTIES THROUGH 1971 WAS USED BY KRAFFT MURPHY ON A
23 WEEKLY BASIS IN THE DISTRICT OF COLUMBIA AND THAT SALES
24 TYPICALLY AVERAGED FROM 50 TO A HUNDRED DOLLARS PER JOB.
25 THERE WERE LITERALLY HUNDREDS OF JOBS ACCORDING TO KRAFFT

1 MURPHEY IN WHICH SPRAYED LIMPET ASBESTOS WAS USED IN THE
2 DISTRICT OF COLUMBIA. SO, ONE COULD EXTRAPOLATE FROM THAT
3 BASED ON THAT INFORMATION THAT CERTAINLY THIS WAS NOT AN
4 INSIGNIFICANT AMOUNT OF INCOME FOR THESE DEFENDANTS.

5 IN ADDITION, YOUR HONOR, I WOULD SUBMIT THAT THESE
6 DEFENDANTS HAVE ALSO ENGAGED IN A PERSISTENT COURSE OF
7 CONDUCT WITHIN THE MEANING OF SUBSECTION A(4) OF THE
8 STATUTE INASMUCH AS FOR A CONSISTENT PERIOD OF TIME ON A
9 REGULAR BASIS SHIPPED THEIR PRODUCT INTO THE DISTRICT OF
10 COLUMBIA OR FOR USE IN THE DISTRICT OF COLUMBIA AND THAT
11 THEY HAVE ALSO SATISFIED SUBSECTION (A) (4) OF THE LONG ARM
12 STATUTE FOR THAT REASON.

13 WITH REGARD TO THE MOTION TO DISMISS OF NICOLET:
14 NICOLET, AGAIN, WANTING TO DISTANCE ITSELF FROM THIS
15 PRODUCT HAS SUGGESTED THAT THEY REALLY DIDN'T HAVE MUCH OF
16 A RELATIONSHIP WITH KEASBEY AND MATTISON AT ALL. WELL, IN
17 POINT OF FACT, NICOLET ACQUIRED THE INDUSTRIAL PRODUCTS
18 DIVISION OF THE COMPANY, KEASBEY AND MATTISON. AND IT IS
19 OUR UNDERSTANDING THAT IT WAS THAT DIVISION WHICH WAS
20 RESPONSIBLE FOR THE DISTRIBUTION OF SPRAYED LIMPET ASBESTOS.
21 NOW, WHEN NICOLET ACQUIRED THOSE ASSETS, IT IMMEDIATELY
22 CONTINUED THE OPERATION OF NICOLET IN MANUFACTURING AND
23 DISTRIBUTING NOT SPRAYED LIMPET ASBESTOS, BUT ASBESTOS
24 CONTAINING PRODUCTS USING THE KEASBEY AND MATTISON LOGO,
25 IT'S ASSETS AND ITS DISTRIBUTION SYSTEM. THOSE ACTIVITIES

1 HAVE BEEN HELD BY A NUMBER OF COURTS TO CONSTITUTE
2 SUFFICIENT FACTS WARRANTING THE IMPOSITION OF SUCCESSOR
3 LIABILITY ON DEFENDANT, NICOLET, FOR THE ACTION OF KEASBEY
4 AND MATTISON. BUT NICOLET HAS NOT BRIEFED OR HAS NOT
5 RAISED BY SUMMARY JUDGMENT UP UNTIL THIS POINT OF THIS
6 LITIGATION THE QUESTION OF ITS SUCCESSOR LIABILITY FOR THE
7 ACTS OF KEASBEY AND MATTISON.

8 IN OUR COMPLAINT WE ALLEGE THAT NICOLET WAS IN
9 FACT THE SUCCESSOR TO KEASBEY AND MATTISON. IT IS THE
10 BURDEN ON NICOLET TO COME FORWARD WITH AFFIDAVIT TO DISPUTE
11 THAT ASPECT OF OUR COMPLAINT. IN A PROCEEDING SUCH AS THIS,
12 A MOTION TO DISMISS, THE FACTS ALLEGED BY PLAINTIFFS IN
13 THEIR COMPLAINT ARE ASSUMED TO BE TRUE UNLESS CONTROVERTED
14 BY THE MOVING PARTY.

15 NICOLET ONLY YESTERDAY HAS ATTEMPTED TO CONTROVERT
16 THOSE FACTS -- AND I MIGHT ADD, OUT OF RULE. THEIR TIME
17 FOR REPLY HAS LONG SINCE PASSED AND I SUBMIT, YOUR HONOR,
18 THAT IN THIS RECORD, THE RECORD PROPERLY BEFORE THIS COURT,
19 ESTABLISHES THAT, AND THIS COURT I THINK UNDER THE RULES IS
20 CONSTRAINED TO CONCLUDE FOR THE PURPOSES OF THIS MOTION
21 THAT NICOLET IS A SUCCESSOR IN INTEREST TO KEASBEY AND
22 MATTISON, AND, THEREFORE, IS SUBJECT TO THE ACTIVITY OF
23 KEASBEY AND MATTISON.

24 THOSE ACTS ARE THEN THE ACTS OF NICOLET. WHEN A
25 MERGER OCCURS, SUCCESSOR LIABILITY, THE CONCEPT OF THE

1 CORPORATE PERSON, THESE TWO COMPANIES ESSENTIALLY COME
2 TOGETHER AND THAT IS THE EFFECT OF THE MERGER OR SUCCESSOR
3 LIABILITY. ONE ASSUMES RESPONSIBILITY FOR THE ACTION OF
4 ITS PREDECESSOR.

5 NICOLET, EVEN WITHOUT CONSIDERING THE QUESTION OF
6 ITS RELATIONSHIP WITH KEASBEY AND MATTISON, ACKNOWLEDGES
7 THAT IT HAS ENGAGED IN A PERSISTENT COURSE OF CONDUCT IN
8 THE DISTRICT OF COLUMBIA. INDEED, IT HAS SHOWN SALES SINCE
9 THE SEVENTIES OF ITS PRODUCT IN THE DISTRICT OF COLUMBIA.
10 NOW, I MIGHT ADD THAT EVEN WITH THE VERY CURSORY NUMBERS
11 WHICH NICOLET HAS GIVEN US, THAT IS, OF SALES DIRECTLY INTO
12 THE DISTRICT, NICOLET HAS NOT DISCUSSED, FOR EXAMPLE, THE
13 SALE OF ITS PRODUCT TO COMPANIES SURROUNDING THE DISTRICT
14 WHICH ARE THEN LATER USED IN THE DISTRICT OF COLUMBIA. AND
15 THAT IS A PROPER ANALYSIS UNDER OUR LONG ARM STATUE, YOUR
16 HONOR, UNDER GATEWOOD VERSUS FIAT.

17 THE COURT: ALL RIGHT, I HAVE THINK YOU HAVE
18 COVERED IT VERY WELL.

19 MR. ENSLEIN: LET ME THEN CONCLUDE, YOUR HONOR. I
20 THINK EACH OF THESE DEFENDANTS IS SUBJECT TO THIS COURT'S
21 JURISDICTION BOTH UNDER SUBSECTION A(1) AND A(4) OF THE
22 LONG ARM STATUTE.

23 AND I WOULD ASK THAT THE COURT ORDER ACCORDINGLY.

24 THE COURT: ALL RIGHT. I AM GOING TO HAVE TO
25 REVIEW THESE PROCEEDINGS AGAIN AND LET YOU KNOW. DO YOU

1 WANT TO ADD ANYTHING?.

2 MR. DORKEY: YOUR HONOR, COULD I MAKE A BRIEF
QUICK CINT?

4 THE COURT: ALL RIGHT.

5 MR. DORKEY: THE FIRST POINT IS TO WHATEVER EXTENT
6 TURNER & NEWALL HAD CONTACT WITH KRAFFT MURPHEY THAT WAS
7 THROUGH KEASBEY OR A.C. & S. THROUGH THEM. AND IT WAS THE
8 KRAFFT MURPHEY IN VIRGINIA NOT THE DISTRICT OF COLUMBIA.

9 IT IS OUR POSITION THAT GIVEN THESE FACTS THE
10 STREAM OF COMMERCE ENDED IN VIRGINIA, AND IT WAS A
11 UNILATERAL ACT OF KRAFFT MURPHEY THAT BROUGHT THIS PRODUCT
12 INTO THE DISTRICT OF COLUMBIA.

13 ON THE QUESTION OF THE LAWSUIT HERE, YOUR HONOR,
14 THAT TURNER AND NEWALL FILED AGAINST AMERICAN MUTUAL, THE
15 DEFINITION OF THAT LAWSUIT MAY VERY WELL COME WITHIN THE
16 GOVERNMENT EXCEPTION OF THE DISTRICT OF COLUMBIA LONG ARM
17 STATUTE.

18 THE FOOTNOTE IN THE KAISER-STUHL CASE SAYS THAT
19 EXCEPTION HOLDS THAT THE LOCAL COURTS DO NOT EXERCISE
20 PERSONAL JURISDICTION OVER A NONRESIDENT ON THE BASIS OF
21 ACTIVITY IN THE DISTRICT RELATED SOLELY TO DEALING WITH THE
22 FEDERAL GOVERNMENT. THE FEDERAL COURTS HERE ARE CERTAINLY
23 PARTS OF THE FEDERAL GOVERNMENT, AND IF THIS IS AN ACCURATE
24 STATEMENT OF THE RULE, I THINK THE CASE THE LAWYER FOR
25 ATLAS CITED ALSO IS NOT JUST LOBBYING. IT IS A BROADER

1 EXCEPTION THAN THAT. THEN THAT EXCEPTION WOULD COVER
2 FILING OF THE AMERICAN MUTUAL LAWSUIT. THAT'S FOOTNOTE 11
3 OF THE KAISER-STUHL CASE.

4 FINALLY, YOUR HONOR, YOU GAVE ME PERMISSION TO
5 FILE PAPERS WITHIN 3 BUSINESS DAYS. I WONDER IF YOUR HONOR
6 WOULD EXTEND IT TO FIVE BUSINESS DAYS IN LIGHT OF MANY
7 ARGUMENTS HERE.

8 THE COURT: THAT WOULD BRING IT UP TO WHAT DATE?

9 MR. DORKEY: I THINK NEXT TUESDAY.

10 THE COURT: ALL RIGHT. I'LL GIVE YOU UNTIL NEXT
11 TUESDAY. DO YOU WANT TO ADD ANYTHING?

12 MR. GUZIAK: ONE POINT.

13 THE COURT: ALL RIGHT.

14 MR. GUZIAK: THE FIRST POINT BEING THAT COUNSEL
15 HAS ARGUED THAT IT BELIEVES THAT THE LIMPET PRODUCT WAS
16 PART OF THIS INDUSTRIAL PRODUCTS DIVISION PURCHASED BY
17 NICOLET. THERE IS NO EVIDENCE OF THAT IN THIS RECORD, YOUR
18 HONOR, AND IF IN FACT YOUR HONOR WOULD LOOK AT THE
19 PAPERWORK SUBMITTED BY COUNSEL FOR PLAINTIFF, I THINK IT IS
20 REFERRED TO AS NUMBER 28 IN ITS OPPOSITION OF T & L'S BRIEF,
21 THERE IS A CONTRACT THAT GRANT A.C. & S. THE EXCLUSIVE
22 LICENSING AGREEMENT TO DISTRIBUTE AND SELL LIMPET IN THIS
23 COUNTRY. THAT CONTRACT, I BELIEVE PRE-DATES THE SALE OF
24 ASSETS FROM KEASBEY AND MATTISON TO NICOLET BY SEVERAL
25 MONTHS. THERE IS ANOTHER CONTRACT THAT A.C. & S. WHO THEN

1 WAS THE EXCLUSIVE LICENSING DISTRIBUTOR LIMPET HAS WITH
2 KRAFFT MURPHEY, DATED DECEMBER 21, '62. WITHIN TWO MONTHS
3 OF THE TIME K&M BOUGHT THE INDUSTRIAL PRODUCTS DIVISION.
4 SO, AT LEAST THAT TIME CERTAINLY A C AND S AND NOT NICOLET
5 WAS DISTRIBUTING THIS PRODUCT.

6 FINALLY, COUNSEL HAS SET FORTH FROM '62 TO '67
7 A.C.& S. WAS THE EXCLUSIVE DISTRIBUTOR, AND AFTER 1967
8 ATLAS WAS. HE HAS NOT MENTIONED NICOLET EVER BEING THE
9 DISTRIBUTOR OF THIS PRODUCT. I THINK THE PUBLIC POLICY FOR
10 SUCCESSOR LIABILITY ISSUES, YOUR HONOR, IS THAT THE
11 PLAINTIFF HAS NO PLACE TO GO.

12 AND I THINK IN THIS CASE, THERE HAVE BEEN OTHER
13 CORPORATIONS MENTIONED THAT SEEM TO BE MORE INVOLVED WITH
14 THIS PRODUCT AND PERHAPS MORE SUCCESSOR CORPORATION THAN
15 NICOLET. THERE'S NO EVIDENCE IN THIS RECORD THAT WE HAD
16 ANY CORPORATE OFFICER THE SAME OR THE STOCK BEING THE SAME;
17 THAT WE CONTINUED TO SELL THE PRODUCT; WE USED THE TRADE NAME,
18 ET CETERA; OR CONTINUED TO SERVICE OR ANYTHING. ON THAT
19 BASIS, YOUR HONOR, WE SUBMIT.

20 THE COURT: ALL RIGHT.

21 I WILL LET YOU KNOW. I HAVE TO READ THESE PAPERS,
22 AND THINK ABOUT IT A LITTLE BIT.

23 THANK YOU.

24 (WHEREUPON, AT APPROXIMATELY 3:20 P.M., THE
25 ABOVE-ENTITLED MATTER WAS ADJOURNED.)

CERTIFICATE OF REPORTER

IT IS HEREBY CERTIFIED BY THE UNDERSIGNED OFFICIAL
REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIAT THAT THE FOREGOING TRANSCRIPT IS THE
OFFICIAL RECORD OF THE PROCEEDINGS INDICATED.

Shirley Popejoy
SHIRLEY POPEJOY, OFFICIAL REPORTER

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