

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

IN RE: ALL ASBESTOS LITIGATION)
FILED BY SIMMONSCOOPER, L.L.C.)
)
)

TELEPHONIC EVIDENTIARY RECORDS DEPOSITION
OF ROBERT J. MARECEK
Records Custodian for National Safety Council

Taken on behalf of the Plaintiffs

February 17, 2006

Kevin J. Weichman, CSR, CCR
ILLINOIS CSR NUMBER: 084-003189
MISSOURI CCR NUMBER: 915

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(ORIGINAL EXHIBITS RETAINED BY MR. JACKSTADT.
MR. JACKSTADT OFFERED ALL COUNSEL A CD-ROM OF THE
EXHIBITS IF THEY CONTACT HIM DIRECTLY.)

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5
6 THE TELEPHONIC EVIDENTIARY RECORDS DEPOSITION
7 OF ROBERT J. MARECEK, produced, sworn and examined on
8 behalf of Plaintiffs, on Friday, February 17, 2006,
9 between eight in the forenoon and five in the afternoon,
10 in conjunction with Call-in number 1-800-580-9381,
11 Passcode 9012031, before KEVIN J. WEICHMAN, a Certified
12 Shorthand Reporter within and for the County of St.
13 Louis, State of Missouri.

14 A P P E A R A N C E S

15 APPEARING TELEPHONICALLY: The Plaintiffs were
16 represented by Mr. Eric Jackstadt, of the law firm
17 SimmonsCooper, LLC, 707 Berkshire Boulevard, East Alton,
18 Illinois 62024.

19 APPEARING TELEPHONICALLY: The Defendant,
20 Pneumo Abex Corporation, was represented by Mr. Bryan D.
21 Nicholson, of the law firm Armstrong, Teasdale, LLP, One
22 Metropolitan Square, Suite 2600, St. Louis, Missouri
23 63102-2740.

24 APPEARING TELEPHONICALLY: The Defendant, BNSF
25 Railway, was represented by Ms. Linda R. Self, Brasher
26 Law Firm, LC, One Metropolitan Square, 211 North
27 Broadway, St. Louis, Missouri 63102.

1 APPEARING TELEPHONICALLY: The Defendants,
2 Tenneco Automotive Operating Company, Incorporated,
3 Whiting Corporation, a Delaware Corporation, Armour &
4 Company a/k/a Armour Swift-Eckrich, Con Agra Foods,
5 Incorporated, Illinois Power Company d/b/a AmerenIP,
6 Central Illinois Public Service Company d/b/a
7 AmerenCIPS, Union Electric Company d/b/a AmerenUE,
8 Central Illinois Light Company d/b/a AmerenCILCO, and
9 Ingersoll-Rand Company, were represented by Ms. Edna L.
10 McLain, of the law firm Burroughs, Hepler, Broom,
11 MacDonald, Hebrank & True, LLP, 103 West Vandalia
12 Street, Suite 300, Edwardsville, Illinois 62025-0510.

13 APPEARING TELEPHONICALLY: The Defendants,
14 Kelly-Moore Paint Company, Superior Boiler Works,
15 Incorporated, Viad, Resco Products, and George P.
16 Reintjes Company, Incorporated, were represented by
17 Mr. Joshua J. Lens, of the law firm Foley & Mansfield,
18 PLLP, 1001 Highlands Plaza Drive West, Suite 400, St.
19 Louis, Missouri 63110.

20 APPEARING TELEPHONICALLY: The Defendant,
21 Borg-Warner Corporation by its Successor in Interest,
22 BorgWarner Morse TEC, Incorporated, was represented by
23 Mr. Robert S. Sanderson, of the law firm Herzog Crebs,
24 LLP, 515 North 6th Street, Suite 2400, St. Louis,
25 Missouri 63101.

26 APPEARING TELEPHONICALLY: The Defendants,
27 CertainTeed Corporation, Cabot Corporation,
28 Parker-Hannifin Corporation, DaimlerChrysler
29 Corporation, The Boeing Company, Tyson Foods,
30 Incorporated, National Service Industries, Incorporated,
31 METSO Automation Scada Solutions, Incorporated, Bechtel
32 Corporation, CNA Holdings, Incorporated, Koch
33 Industries, Incorporated, Lennox Industries, Kohler
34 Corporation, Minteq International, Riley Stoker
35 Corporation, Wisconsin Public Service Corporation,
36 Neles, Incorporated, Neles-Jamesbury, Incorporated,
37 Neles Automation Scada Solutions, McKesson Corporation,
38 and Wolverine Proctor & Schwartz, were represented by
39 Mr. James J. Bentivoglio, of the law firm Heyl, Royster,
40 Voelker & Allen, Mark Twain Plaza II, 103 West Vandalia,
41 Suite 100, P.O. Box 467, Edwardsville, Illinois
42 62025-0467.

1 APPEARING TELEPHONICALLY: The Defendants,
2 Continental Can Company, The Stovey Company, Zenith
3 Electronics, Rockbestos-Suprenant Cable Company, Warren
4 Pumps, LLC, Dart Industries, Incorporated, Kraft Foods,
5 Incorporated, and General Foods Corporation, were
6 represented by Ms. Lisa A. LaConte, of the law firm
7 Heyl, Royster, Voelker & Allen, Suite 600, Bank One
8 Building, 124 S.W. Adams Street, Peoria, Illinois 61602.

9
10 APPEARING TELEPHONICALLY: The Defendants,
11 Corn Products International, and Corn Products Sales
12 Corporation, were represented by Ms. Monica T. Rios, of
13 the law firm Hodge Dwyer Zeman, 3150 Roland Avenue, Post
14 Office Box 5776, Springfield, Illinois 62705-5776.

15
16 APPEARING TELEPHONICALLY: The Defendants,
17 Pharmacia f/k/a Monsanto Company, Olin Corporation,
18 Occidental Corporation, ConocoPhillips Corporation, and
19 Goodrich Corporation, were represented by Mr. Steven B.
20 Beshore, of the law firm Husch & Eppenger, LLC, 190
21 Carondelet Plaza, 6th Floor, Clayton, Missouri 63105.

22
23 APPEARING TELEPHONICALLY: The Defendant, CNH
24 America, LLC, was represented by Mr. Jeffery G. Chrones,
25 of the law firm Johnson & Bell, Ltd., 33 West Monroe
Street, Suite 2700, Chicago, Illinois 60603-5404.

16
17 APPEARING TELEPHONICALLY: The Defendant, AGCO
18 Corporation, was represented by Mr. Jimmy E. Allen, Jr.,
19 of the law firm Larson & Larson, 11300 Tomahawk Creek
20 Parkway, Suite 310, Leawood, Kansas 66211.

21
22 APPEARING TELEPHONICALLY: The Defendant, T.H.
23 Agriculture & Nutrition, LLC, was represented by
24 Mr. Robert P. Marcus, of the law firm Lathrop & Gage,
25 LC, 10 South Broadway, Suite 1300, St. Louis, Missouri
63102.

1 APPEARING TELEPHONICALLY: The Defendant,
Carrier, was represented by Mr. Thomas Plunkert, of the
2 law firm Leritz, Plunkert & Bruning, PC, One City
Centre, Suite 2001, St. Louis, Missouri 63101.
3

4 APPEARING TELEPHONICALLY: The Defendants,
American Standard, Incorporated, and ITT, Incorporated,
5 were represented by Mr. Joseph J. Janatka, of the law
firm McGuireWoods, LLP, 77 West Wacker Drive, Suite
6 4100, Chicago, Illinois 60601-7567.
7

8 APPEARING TELEPHONICALLY: The Defendants,
Paul J. Krez Company, Meade Electric Company, Siemens
Energy & Automation, The Wm. Powell Company, and Nash
9 Engineering, were represented by Mr. Thomas Hayes, of
the law firm McKenna, Storer, Rowe, White & Farrug, 33
10 North LaSalle Street, Suite 1400, Chicago, Illinois
60602-2610.
11

12 APPEARING TELEPHONICALLY: The Defendants,
John Crane, Incorporated, Cleaver Brooks, Sepco, and
13 Scapa, were represented by Mr. William M. Koziol, in
association with O'Connell, Tivin, Miller & Burns, LLC,
14 645 Tollgate Road, Suite 220, Elgin, Illinois 60123.
15

16 APPEARING TELEPHONICALLY: The Defendants,
Honeywell International, Incorporated, Buffalo Pumps,
Incorporated, Nissan North America, Incorporated, and
17 Square D Company, were represented by Ms. Amy Kramer, of
the law firm Polsinelli, Shalton, Welte, Suelthaus, PC,
18 100 South Fourth Street, Suite 1100, St. Louis, Missouri
63102-1825.
19

20 APPEARING TELEPHONICALLY: The Defendants,
Ford Motor Company, and General Motors Corporation, were
21 represented by Mr. Joseph P. Sullivan, of the law firm
Sanchez, Daniels & Hoffman, LLP, 333 West Wacker Drive,
22 Suite 500, Chicago, Illinois 60606.
23
24
25

1
2 APPEARING TELEPHONICALLY: The Defendant,
3 Yarway Corporation, was represented by Ms. Nicole
4 Bolton, of the law firm Spencer, Fane, Britt & Browne
5 (STL), 1 North Brentwood, Suite 1000, St. Louis,
6 Missouri 63105.

7 APPEARING TELEPHONICALLY: The Defendant, Dana
8 Corporation, was represented by Mr. David Speziali, of
9 the law firm Speziali, Greenwald & Hawkins, 1081 Winslow
10 Road, Box 1086, Williamstown, New Jersey, 08094.

11 APPEARING TELEPHONICALLY: The Defendants,
12 Lucent, AT&T, and Red Devil, Incorporated, were
13 represented by Ms. Michelle L. Corrigan, of the law firm
14 Stinson, Morrison, Hecker, LLP, 100 South 4th Street,
15 Suite 700, St. Louis, Missouri 63102.

16 APPEARING TELEPHONICALLY: The Defendants,
17 Conwed Corporation, Corrigan Company, Gorman-Rupp,
18 Industrial Process, and Midwesco, were represented by
19 Mr. Christian Cagas, of the law firm Walker and
20 Williams, PC, 4343 West Main Street, Belleville,
21 Illinois 62226.

22 APPEARING TELEPHONICALLY: The Defendant,
23 Morrison Construction Company, Incorporated, was
24 represented by Ms. Dana Switzer of the law firm Wooden &
25 McLaughlin, LLP, One Indiana Square, Suite 1800,
Indianapolis, Indiana 46204.

ALSO PRESENT: Michael R. Noakes, Esq.

**REPORTER'S NOTE: ALL COUNSEL WERE INSTRUCTED BY THE
COURT REPORTER AS WELL AS MR. JACKSTADT AT THE BEGINNING
OF THE DEPOSITION AND AT THE CONCLUSION TO EMAIL THE
COURT REPORTER THEIR APPEARANCE AND WHO THEY
REPRESENTED.**

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between Counsel for the Plaintiff and Counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by Kevin J. Weichman, a Certified Shorthand
5 Reporter, and afterwards transcribed into typewriting,
6 and the signature of the witness is waived by agreement
7 of counsel and the witness.

8
9 * * * * *

10
11 ROBERT J. MARECEK,
12 of lawful age, being produced, sworn, and examined on
13 the part of Plaintiffs, after answering "I do" to the
14 oath administered by the court reporter, deposes and
15 says:

16
17 [EXAMINATION BY MR. JACKSTADT:]
18

19 Q. (BY MR. JACKSTADT) This is Eric Jackstadt,
20 attorney for the SimmonsCooper firm. We are taking
21 this deposition of Mr. Marecek by telephone
22 conference today. It was noticed on the POS and as a
23 custodian of records deposition.

24 At this time I would like the witness to
25 please state his full name?

1 A. My name is Robert, middle initial J., last
2 name Marecek.

3 Q. Mr. Marecek, where do you currently reside?
4 In what town?

5 A. I reside in Westchester, Illinois.

6 Q. And from what location are you giving this
7 deposition?

8 A. I am giving this deposition from the
9 National Safety Council headquarters in Itaska,
10 Illinois.

11 MR. JACKSTADT: By agreement in discussion
12 prior to the beginning of the deposition, we have
13 agreed to the stipulation that an objection lodged by
14 one of the parties opposing will be considered an
15 objection for all.

16 We also agreed that at this point in the
17 deposition, any general objections that wanted to be
18 read on the record will be done so at this time.

19 Can you please identify yourself and state
20 your objection, please.

21 MS. LaCONTE: This is Lisa LaConte. I have
22 a couple of statements.

23 Number one, we provided the court reporter
24 with our appearances today. This deposition was
25 noticed In Re: All Simmons Cases, the proof of

1 service attached, with respect to almost all of us,
2 lists numerous different defendants, many of whom
3 have no active cases pending in Madison County at
4 this time.

5 For the purposes of this deposition, I want
6 to make it clear that I am only appearing for the
7 companies that are included on my notification to the
8 court reporter and that our appearance today should
9 not be deemed to be an appearance for all of the
10 defendants who are listed in association with either
11 my name or our law firm's name on the proof of
12 service document.

13 That's all I have. Thank you.

14 MR. BENTIVOGLIO: This is Jim Bentivoglio.
15 As a general objection, I just want to state that we
16 are not waiving any objections to the adequacy of
17 foundation of the documents that will be discussed at
18 this deposition.

19 We are not waiving any other objections to
20 any of the clients listed on our proof of service
21 with respect to personal jurisdiction and notice. I
22 would like the record to reflect this objection on
23 behalf of Cabot Corporation and Wisconsin Public
24 Service Corporation.

25 And finally, we are objecting to the

1 deposition in that it was not noticed in conformance
2 with Supreme Court Rule 206(h)(2) requiring the
3 exhibits or demonstrative evidence to be presented to
4 the defendants within a reasonable time.

5 Thank you.

6 MR. NOAKES: This is Mike Noakes. I would
7 also object that we haven't been provided the
8 documents prior to the deposition so that we can
9 properly formulate any objections to the documents.
10 So we would reserve any objections to whatever is
11 produced today.

12 MR. JACKSTADT: For the record, as I
13 explained prior to the first attempt of the
14 deposition, anyone who wants copies of what we are
15 marking as exhibits, send me an e-mail or letter, and
16 we will provide those promptly upon request.

17 To have distributed these to everyone on the
18 POS who might have appeared would have been
19 impracticable, but we will provide them as soon as it
20 is requested.

21 Any other general objections?

22 Thank you.

23 Q. (BY MR. JACKSTADT) Mr. Marecek, by whom are
24 you currently employed?

25 A. I am employed by the National Safety

1 Council.

2 Q. And where is that located?

3 A. At 1121 Spring Lake Drive, Itaska, Illinois
4 60143.

5 Q. Sir, how long have you been employed by the
6 National Safety Council?

7 A. 24 years. Going on 25 this April.

8 Q. And in what capacities have you been
9 employed by them up to your current position?

10 A. I started out as a reference librarian in
11 1981. In 1986 I was promoted to manager of the
12 library, and I still maintain that position.

13 Q. Sir, could you tell us some of your
14 qualifications, academic qualifications, that you had
15 for this position?

16 A. I have a master's degree in library and
17 information science that I received from Dominican
18 University in 1977.

19 Q. And could you tell us your duties as
20 reference librarian at the National Safety Council?

21 A. My main duty is to collect, organize, and
22 disseminate information on safety and health to the
23 members of the National Safety Council.

24 The library is also open to the public, so
25 nonmembers can have access to the library; however,

1 they do pay user fees for that access, where the
2 members receive many of the library services free of
3 charge as part of their membership benefit.

4 Q. How long has the library been open to the
5 public with those qualifications?

6 A. The library had been in existence, based on
7 my research, since 1915. According to further
8 research, it appears the library was open to the
9 public, I would say, in the late 1919s or early
10 1920s. The council was formed in 1913.

11 Q. Sir, in your position as reference
12 librarian, can you tell us your familiarity with the
13 publications that are published by the NSC itself?

14 A. I am very familiar with many of the
15 publications put out by the NSC, just for the fact
16 that master copies are housed in our library in our
17 archives.

18 Q. How does that -- is that part of your
19 duties, to handle those published materials by the
20 NSC and to archive them?

21 A. Yes. Part of my duties as -- the library
22 also acts as a repository for NSC-published
23 materials.

24 (EXHIBIT NO. 1 WAS
25 MARKED FOR IDENTIFICATION.)

1 Q. (BY MR. JACKSTADT) Sir, as part of this
2 deposition, we are marking as Exhibit 1 a book
3 entitled "Fundamentals of Industrial Hygiene, 2nd
4 Edition," published in 1979 by the National Safety
5 Council. Julian B. Olishifski, O-l-i-s-h-i-f-s-k-i,
6 editor-in-chief. This is a volume of 1277 pages.

7 Are you familiar with that publication, sir?

8 A. Yes, I am.

9 Q. Is that publication -- is that volume
10 present in your library today?

11 A. Yes, it is.

12 Q. To your knowledge, sir, was Exhibit 1
13 published in the regular course of business of the
14 National Safety Council?

15 A. Yes.

16 Q. Is it being kept as a volume in the NSC
17 library in the regular course of business of the NSC?

18 A. Yes, it is.

19 Q. Sir, this volume -- is the volume that is
20 present in the NSC Library now a record of what was
21 published by the Safety Council in that volume in
22 1979?

23 A. Yes, it is.

24 Q. And would this volume have been available to
25 every member of the NSC?

1 A. Yes.

2 Q. And as you stated earlier, with certain
3 circumstances, user fees, would this have been
4 available to the general public?

5 A. Yes.

6 (EXHIBITS 2 THROUGH 8 WERE
7 MARKED FOR IDENTIFICATION.)

8 Q. (BY MR. JACKSTADT) Sir, the next seven
9 exhibits, Exhibits 2 through 8, are all volumes or
10 editions of the following book, and I am going to ask
11 you about each one and I am going to identify them
12 separately, but they are all volumes of a book called
13 Accident Prevention Manual for Industrial Operations
14 published by the National Safety Council.

15 We have marked as Exhibit 2 the 1st Edition
16 published in 1946, which is 546 pages.

17 Exhibit 3 is a 2nd Edition published in
18 1951, which is 668 pages.

19 We have marked as Exhibit 4 the 3rd Edition,
20 which was published in 1955, 1362 pages.

21 Exhibit 5 is the 4th Edition published in
22 1959, 1534 pages.

23 Exhibit 6 is the 5th Edition published in
24 1964, 1424 pages.

25 Exhibit 7 is the 6th Edition published in

1 1969, 1666 pages.

2 Exhibit 8 is the 7th Edition published in
3 1974 of 1536 pages.

4 Sir, Exhibits 2 through 8, are you familiar
5 with those publications?

6 A. Yes, I am.

7 Q. Are all those volumes present in the NSC
8 Library today?

9 A. Yes, they are.

10 Q. To your knowledge, sir, were Editions 1
11 through 7 of the Accident Prevention Manual for
12 Industrial Operations published by the National
13 Safety Council in the regular course of business?

14 A. Yes.

15 Q. And is it kept in your library? Are all 8
16 volumes kept in your library in the normal course of
17 business?

18 A. Yes, they are.

19 Q. Let me amend that.

20 Are all 7 editions that we marked as
21 Exhibits 2 through 8 kept in the normal course of
22 business in the NSC Library?

23 A. Yes, they are.

24 Q. Sir, Editions 1 through 7, are the editions
25 that are in your library the record of what was

1 published by the Safety Council in the year of their
2 publication?

3 A. Yes.

4 Q. And would these editions have been available
5 to members of the National Safety Council?

6 A. Yes.

7 Q. And pursuant to the limitations or fee
8 structures that you spoke of earlier in the
9 deposition, would they have been available to members
10 of the general public?

11 A. Yes.

12 (EXHIBIT NO. 9 WAS
13 MARKED FOR IDENTIFICATION.)

14 Q. (BY MR. JACKSTADT) Thank you, sir. The
15 next item we are marking as Group Exhibit 9. Group
16 Exhibit 9 will be 360 issues of a publication called
17 the National Safety News.

18 We have monthly publications spanning a time
19 from 1929 through and including in the year 1969.
20 For the record, I am going to read off the years and
21 the number of volumes that we have that will comprise
22 Group 9.

23 Group 9 starts with National Safety News
24 1929, 12 issues; 1930, 12 issues; 1931, 12 issues;
25 1932, 12 issues; '33, 12 issues; 1934, 12 issues;

1 1935, 12 issues; 1936, 12 issues; 1937, 12 issues;
2 1938, 12 issues; 1939, 12 issues; 1940, 12 issues;
3 1941, 12 issues; 1942, 12 issues; 1943, 12 issues;
4 1944, 12 issues; 1945, 12 issues; 1946, 12 issues;
5 1947, 12 issues; 1948, 12 issues; 1949, 12 issues;
6 1951, 12 issues; 1952, 12 issues; 1953, 12 issues;
7 1954, 12 issues; 1962, 6 issues from July to
8 December; 1963, 12 issues; 1964, 12 issues; 1965, 12
9 issues; 1967, 12 issues; 1968, 12 issues; and 1969, 6
10 issues from January to June.

11 Sir, regarding Group 9, are you familiar
12 with the publication National Safety News?

13 A. Yes, I am.

14 Q. Could you give us a brief description of
15 what that publication was?

16 A. National Safety News was the workplace
17 publication put out by the National Safety Council.
18 In about 1989 it experienced a name change. It is
19 now called Safety & Health.

20 The library has all the issues to National
21 Safety News and Safety & Health in our collection.

22 Q. And was it published monthly, to your
23 knowledge?

24 A. Yes, it was published monthly.

25 Q. Sir, regarding the volumes -- or the issues

1 that I've read off that will comprise Group 9, are
2 all those volumes present in the National Safety
3 Council's Library today?

4 A. Yes.

5 Q. To your knowledge, sir, were they published
6 in the normal course of business of the National
7 Safety Council when they were published?

8 A. Yes.

9 Q. And you're keeping them in the library today
10 as part of the regular course of business of the
11 National Safety Council; is that correct?

12 A. Yes.

13 Q. And, sir, is The National Safety News
14 volumes that are in your library a record of what was
15 published by the Safety Council at the time of the
16 date of publishing?

17 A. Yes.

18 Q. And would these volumes and issues of the
19 National Safety News that comprised Group 9 have been
20 available to members of the National Safety Council?

21 A. Yes.

22 Q. To your knowledge, would they have been
23 available to members of the general public?

24 A. Yes.

25

1 (EXHIBIT NO. 10 WAS

2 MARKED FOR IDENTIFICATION.)

3 Q. (BY MR. JACKSTADT) Sir, the next item that
4 we are going to discuss is Plaintiff's Group Exhibit
5 10, which will comprise of 35 volumes of publications
6 entitled "Transactions."

7 Are you familiar with that publication, sir?

8 A. Yes, I am.

9 Q. Did I read the name -- is that the full name
10 of these volumes?

11 A. It goes under Transactions of the National
12 Safety Council. Sometimes it is entitled
13 "Transactions of the National Safety Congress," but
14 they are all comprised -- they all represent the
15 annual meeting the National Safety Council has each
16 year.

17 Q. By purposes of identification, I will now
18 state what volumes of Transactions will comprise
19 Group 10.

20 We have 35 volumes spanning from 1930
21 through 1970, missing a few years. The Transactions
22 volumes that are included in Group 10 are
23 Transactions from 1930, 1931, 1933, 1934, 1935, 1936,
24 1937, 1939, 1940, 1941, 1942, 1943, 1944, 1946, 1948,
25 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1959,

1 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968,
2 1969, and 1970.

3 Sir, those volumes of Transactions, are
4 those volumes that I read off present in the National
5 Safety Council Library?

6 A. Yes, they are.

7 Q. And to your knowledge, sir, were those
8 volumes published in the normal course of business of
9 the National Safety Council when they were published?

10 A. Yes.

11 Q. Are they being kept in your library
12 currently in the normal course of business of the
13 National Safety Council?

14 A. Yes.

15 Q. Sir, the Transactions volumes are reports of
16 what occurred at the annual conference of the
17 National Safety Council?

18 A. Yes.

19 Q. And to your knowledge, though Group 10 is
20 missing some years between 1930 and 1970, was there
21 one published for every year in between there?

22 A. Yes. The only year that there was not one
23 published was 1945 because of World War II.

24 MR. JACKSTADT: So otherwise, we are missing
25 volumes for -- there would not be one for 1945, and

1 Group 10 is missing 1932, '38, '47, '56, and '58, for
2 those of you keeping score.

3 Q. (BY MR. JACKSTADT) Sir, are the volumes
4 that make up Group 10 a record of what transpired at
5 the Transactions -- or at the conferences -- of the
6 yearly conference of the National Safety Council at
7 the time that the matters occurred?

8 A. Yes.

9 Q. And, sir, would the volumes that make up
10 Group 10 have been available to members of the
11 National Safety Council since they were published?

12 A. Yes.

13 Q. And would they be available, with the
14 caveats that we discussed earlier in the deposition,
15 to members of the general public?

16 A. Yes.

17 MR. JACKSTADT: Sir, that's all the
18 questions that I have for you at this time.

19 Any defense counsel have any questions?

20 MR. SPEZIALI: I have a few. Dave Speziali
21 for Dana Corporation.

22

23 [EXAMINATION BY MR. SPEZIALI:]

24

25 Q. (BY MR. SPEZIALI) Can you hear me, sir?

1 A. I sure can.

2 Q. Mr. Marecek, I have in front of me, and it
3 may be -- do you have the exhibits in front of you,
4 by any chance? I know there's a lot of them.

5 A. No, I do not.

6 Q. You do not. Let me tell you what I am
7 looking at. I'm looking -- and I recognize you don't
8 have it in front of you, so this isn't a memory game.

9 But I am looking at the Accident Prevention
10 Manual for industrial operations. This would be the
11 7th Edition, which would be the 1974 Edition?

12 A. I believe that is a white cover.

13 Q. Right. But actually what I have is the 4th
14 printing, which is 1980. It is the 4th printing of
15 the 7th Edition.

16 So what happened? So did they print these
17 and then make additional copies as they ran out?

18 A. Yes. To my knowledge, yes.

19 Q. I am going to focus, and again I recognize
20 you don't have it in front of you, but there is a
21 section that talks about service organizations that
22 are out there in the public arena as sources of help
23 for industrial safety.

24 Are you familiar with what I am talking
25 about?

1 A. I believe I am familiar with that chapter,
2 yes.

3 Q. And this, actually, for the record, of the
4 edition that I am looking at, starts at -- it is
5 Chapter 23, Page 591, and it is entitled "Sources of
6 Help."

7 MR. JACKSTADT: For the record, I want to
8 state that Exhibit 8 of this deposition is the 7th
9 Edition published in 1974.

10 To the extent that you're talking about one
11 that was published in 1980, I am not sure that we are
12 talking about the same thing. I just wanted to make
13 that record. Go ahead, Dave.

14 MR. SPEZIALI: I tell you what we will do.
15 We will call this, if everybody has a problem with
16 it, it is the 7th Edition, but that is a fair
17 comment. It is a reprint in 1980. So perhaps we
18 will just designate this as another exhibit number?

19 MR. JACKSTADT: That would be fine.
20 Defendant's 1 or --

21 MR. SPEZIALI: Or Exhibit 11. You might as
22 well just call it Exhibit 11.

23 MR. JACKSTADT: That would be fine.

24 MR. SPEZIALI: And then we will get a copy
25 off to you through local counsel.

1 Q. (BY MR. SPEZIALI) What I want to talk about
2 for a second, one of the sources of help is noted as
3 the National Safety Council, and I am now on Page
4 592.

5 What they show initially are the various
6 sections for the Industrial Safety Council, starting
7 with aerospace, air transport, and it literally goes
8 all the way through wood products.

9 Are you familiar with what I am talking
10 about?

11 A. Yes.

12 Q. What were those sections? What was that?

13 A. The National Safety Council is broken up
14 into three, I guess you could say, for lack of a
15 better word, venues. We have workplace, traffic, and
16 home and community.

17 Workplace can be broken down into a number
18 of specific industries. So you would have members
19 who would belong to a section that represents their
20 industry, and they would have common safety problems
21 and issues within their industries.

22 So that section would represent that
23 particular industry, such as aerospace.

24 Aerospace section would have members in the
25 aerospace industry; therefore, they would discuss

1 various comments, safety and health issues.

2 Q. That's another question. Does the library
3 maintain -- or is there a membership list somewhere
4 going back to the inception of the National Safety
5 Council to show who was in and out during the years?

6 A. Our membership department does have a
7 membership database and they maintain membership
8 records to the best of their ability.

9 There has been a number of conversions that
10 have been done to the membership database, so I
11 cannot comment on the accuracy of some of the
12 records. But I do not have any of those kinds of
13 lists here in the library.

14 Q. So just to carry it through, if I wanted to
15 know who were members of the National Safety Council
16 in 1925, just pick a year out of the air, how would I
17 go about doing that?

18 A. You could make a request to our membership
19 department in writing, find out if they could produce
20 a list of records they currently have that shows
21 companies that were members of the National Safety
22 Council in 1925.

23 However, I do want to stipulate that they
24 have to be continuous members. If they had dropped
25 being a member anytime during that period and then

1 reupped as a member, then the current record would
2 show the date they reupped. You would lose all that
3 past information.

4 Q. I gotcha. Now, another question. Do any of
5 the publications through these years reflect who the
6 members are, other than maybe a specific author?

7 A. The National Safety Council Transactions, in
8 the Transactions, they do show the various divisions
9 or sections that comprise the National Safety
10 Council. They do list the officers of those
11 sections.

12 To be an officer in a section you had to be
13 a member of the National Safety Council. So at least
14 in that respect, anybody who is listed as an officer
15 in that section had to be a member.

16 But that wouldn't show all members within
17 the section. It would just show people who were
18 officers in the section.

19 Q. Another question, are there any documents in
20 the library which show the rules for becoming a
21 member? And I will tell you what I am referring to.

22 For example, was there a limitation that if
23 you were with a government entity, for example, you
24 couldn't be a member, or if you were with a labor
25 union, you couldn't be a member? Were there any kind

1 of limitations like that?

2 MR. JACKSTADT: Excuse me. I will object to
3 the relevance of this cross-examination.

4 Go ahead and answer, sir.

5 THE WITNESS: I am unfamiliar with that type
6 of document existing. To my knowledge, anybody can
7 become a member of the National Safety Council.

8 Q. (BY MR. SPEZIALI) Following through in this
9 section, "Sources of Help," the next section under
10 the National Safety Council is a list of
11 publications, and this is on 594 on the volume I have
12 in front of me.

13 It starts -- I will just name these and I
14 will ask you, as to each one, whether these are in
15 the library.

16 There was one called Family Safety. Is that
17 in the library?

18 A. That's a periodical dealing with home
19 safety.

20 Q. Farm Safety Review?

21 A. Yes, that's in the library.

22 Q. Industrial Supervisor?

23 A. Yes, that's in the library.

24 Q. Journal of Safety Research?

25 A. Yes, it's in the library.

1 Q. National Safety News we talked about, I
2 believe.

3 A. Uh-huh. Yes.

4 Q. Product Safety Up-To-Date, are you familiar
5 with that one?

6 A. Could you give me the title again, please?

7 Q. Yes. Product Safety Up-To-Date.

8 A. Yes, I am familiar with that. That is a
9 newsletter.

10 Q. And that, of course, Sectional Newsletters
11 is the next.

12 A. Yes, I am familiar with those.

13 Q. Safe Driver?

14 A. Yes, I am familiar with that. It is no
15 longer in print, but it was a National Safety Council
16 publication.

17 Q. And is that in the library?

18 A. Yes, it is.

19 Q. Okay. Safe Worker?

20 A. Yes, it is in the library.

21 Q. Traffic Safety?

22 A. Yes, it is in the library.

23 Q. The National Safety Council, are you
24 familiar with the poster program they had?

25 A. A little bit. I do know the National Safety

1 Council did produce posters. They did package
2 posters and make those available to the members who
3 are nonmembers who wish to purchase it.

4 MR. JACKSTADT: I will object as beyond the
5 scope of direct.

6 Go ahead, sir.

7 Q. (BY MR. SPEZIALI) Are any of those
8 contained in the library?

9 A. We do have some of the posters in the
10 library, but not all of the posters.

11 Q. And there was also -- and again, the
12 question is leading to whether it is in the library
13 or not. I believe there was also some type of
14 flip-chart program that you had for presentations
15 within the workplace?

16 MR. JACKSTADT: Same objection.

17 Go ahead, sir.

18 THE WITNESS: I have heard about the
19 flip-charts; however, I don't recall ever seeing
20 them.

21 Q. (BY MR. SPEZIALI) Let me ask you about some
22 other things, about whether they are in the library
23 or not.

24 There were also some publications, I
25 believe, that were provided to children, particularly

1 of school age, dealing with comic books and things
2 like that.

3 Are they in the library?

4 A. There were coloring books available, and we
5 do have copies of those here at the library.

6 MR. JACKSTADT: Show my objection as beyond
7 the scope.

8 Go ahead.

9 Q. (BY MR. SPEZIALI) Are you familiar with the
10 teachers' aids that were provided for classrooms for
11 teachers to teach safety to children? Are you
12 familiar with those?

13 A. I'm familiar with something called Safety
14 Education Data Sheets. That might be what you are
15 talking about.

16 Q. Yes.

17 A. Yes, I am familiar with those. Those are in
18 the library.

19 MR. JACKSTADT: Same objection.

20 Q. (BY MR. SPEZIALI) Now, again, looking at my
21 Exhibit 11, which would be the 4th printing of the
22 1974, which I believe is Exhibit 8, on the page
23 designated Roman Numeral X is a document that says
24 "National Safety Council" and it's a document from an
25 act of Congress signed by President Eisenhower.

1 Are you familiar with what I'm talking
2 about?

3 A. You are talking about the National Safety
4 Council charter. Yes, I'm familiar with it. There's
5 a copy hanging in our library.

6 Q. Now, you had said earlier -- and again, I
7 know what you are referring to, but for the record I
8 just want to establish this.

9 The National Safety Council was established,
10 as you indicated earlier, in what year?

11 A. 1913.

12 Q. And then in 1930, is it true that it was
13 incorporated in the State of Illinois?

14 A. I believe you are right. I am not sure on
15 the date, but I know it was incorporated sometime in
16 the 1930s or early 1940s.

17 Q. And that documentation would be in the
18 library?

19 A. Yes, I believe we have a copy of the
20 Articles of Incorporation.

21 Q. And then, of course, I have the advantage of
22 having it in front of me, but assume that my eyes are
23 not deceiving me and I am reading this right, but I
24 believe it is August of 1953, if I can read the small
25 print.

1 Actually, it looks like August 13th or 15th
2 of 1953, there was an act of Congress incorporating
3 the National Safety Council?

4 A. You are right on the month and the year.
5 The U.S. Congress had an act that made the
6 National -- gave the National Safety Council a
7 charter, just recognizing it as a premiere
8 organization dealing with safety and health.

9 Q. And that's signed by the President of the
10 United States at that time?

11 A. That's correct.

12 Q. And all that documentation would be in the
13 library?

14 A. Yes.

15 Q. And once that occurred, am I reading this
16 correct, that the National Safety Council then
17 functioned with some oversight by the United States
18 Government?

19 A. No, I wouldn't say that. I wouldn't say
20 with some oversight by the United States Government.

21 Q. I will tell you why I ask that, because
22 there is a section in the charter, the Congressional
23 act that I am looking at, that says "Audit
24 Congressional reports," and it says "The financial
25 transaction should be audited annually by certified

1 accountants."

2 And I am reading this now, "Each report of
3 such charter shall be made by the corporation to
4 Congress," and then they give a date by which to do
5 that.

6 Are you familiar with that?

7 A. You are saying they are submitting a 990
8 Form?

9 Q. I am only reading the language that -- here.

10 A. If you are talking about financial records,
11 I believe they are obligated to do that when they are
12 given a charter by the U.S. Congress. They have to
13 submit certain financial records, and I believe it is
14 a 990 Form.

15 Q. I see. What is the significance of that
16 charter? Maybe I should have just asked it that way.

17 A. It gives us national recognition by the
18 United States Government that they feel we are a
19 premiere safety and health organization within the
20 United States.

21 Q. Were there any members -- were unions
22 allowed to be members, or based on the documents that
23 you have seen, were unions members?

24 MR. JACKSTADT: Objection. Beyond the
25 scope.

1 Go ahead, sir.

2 THE WITNESS: Anybody can become a member of
3 the National Safety Council. Unions were and are
4 allowed to become members.

5 Q. (BY MR. SPEZIALI) "Were and are," okay.

6 And if somebody wants to get down to that
7 library, we just contact you, and subject to whatever
8 scheduling issues could be worked out, we can come
9 down there?

10 A. You sure can.

11 MR. SPEZIALI: Okay. And for the record --
12 although we'll get an appropriate letter out to
13 counsel, but Dana Corporation, through local counsel,
14 would like a copy of all the exhibits, and I will get
15 a copy of the document I'm referring to to local
16 counsel.

17 Thank you very much, sir.

18 THE WITNESS: Sure.

19 MR. JACKSTADT: Anyone else?

20 MR. NOAKES: This is Mike Noakes. I just
21 want to make an objection that since we were not
22 provided the documents before the deposition took
23 place, we have no way of knowing what questions we
24 would have asked, so we are going to reserve our
25 questioning of the witness.

1 MR. JACKSTADT: Understood.

2 MR. MARCUS: Bob Marcus, and I will join in
3 that objection.

4 MR. JACKSTADT: For the record, any
5 objection made by any single member has been
6 stipulated to be an objection for all.

7 Anyone else?

8 I have no further redirect, sir. Thank you.
9 This concludes the deposition.

10 Per discussion before the deposition, if you
11 would like a copy of what we have designated as
12 Exhibits 1 through 10, the final two being Group
13 Exhibits 9 and 10, please e-mail me or send me a
14 letter. My e-mail is Ejackstadt,
15 E-j-a-c-k-s-t-a-d-t, at SimmonsCooper.com, and we'll
16 shoot you a disk.

17 And any defense counsel that joined after we
18 started the deposition, the court reporter will give
19 you an e-mail address to send your appearance and who
20 you were appearing for. This must be done to be
21 included in the appearances.

22 (DEPOSITION ADJOURNED AT 2:30 P.M.)

23 (WHEREUPON THE SIGNATURE WAS WAIVED AND
24 THE WITNESS EXCUSED.)

25

1 CERTIFICATE

2 I, KEVIN J. WEICHMAN, CSR, CCR, do hereby certify
3 that there came before me in conjunction with Call-in
4 number 1-800-580-9381, Passcode 9012031,
5

6 ROBERT J. MARECEK,
7 who was by me first duly sworn; that the witness was
8 carefully examined, that said examination was reported
9 to myself, translated and proofread using computer-aided
10 transcription, and the above transcript of proceedings
11 is a true and accurate transcript of my notes as taken
12 at the time of the examination of this witness.

13 I further certify that I am neither attorney nor
14 counsel for nor related nor employed by any of the
15 parties to the action in which this deposition is taken;
16 further, that I am not a relative or employee of any
17 attorney or counsel employed by the parties hereto or
18 financially interested in this action.

19 Dated this 27th day of February, 2006.
20
21

22 KEVIN J. WEICHMAN, CSR, CCR
23
24
25