

1 MR. SHELLENBERGER: Start on 25?

2 MS. TOSTANOSKI: Yes. I think I had the
3 first one.

4 MR. SHELLENBERGER: Yes, you do.

5 READING OF DEPOSITION OF

6 JOHN STEPHEN MICHAEL WATERS, SR.

7 TAKEN ON FEBRUARY 14, 1991

8 (Whereupon, the questions were read by Mr.
9 Shellenberger and Ms. Tostanoski and the answers were
10 read by Mr. Ignatowski.)

11 BY MS. TOSTANOSKI:

12 Q Can you list for me the jobsites where you
13 remember working with or around asbestos-containing
14 products?

15 MR. IGNATOWSKI: What page?

16 MS. TOSTANOSKI: 25.

17 MR. IGNATOWSKI: I have you starting at page
18 10.

19 A Can you be more specific? The three jobs I
20 am here to --

21 Q First, maybe if you can just list all of the

1 jobs where you remember working with or around
2 asbestos-containing products?

3 A You know, I am not prepared to answer that.
4 If you had told me I had to answer that when I came
5 down here, I sure would have made a list.

6 Q Okay.

7 A I could run through half of this city.
8 Right now, where we are in this building I worked,
9 but, I mean, to really give you a true list, I would
10 have to sit down and think about that.

11 Q Do you have any idea of the number of
12 sites?

13 A Hundreds.

14 MR. SHELLENBERGER: Page 75.

15 BY MR. SHELLENBERGER:

16 Q You worked at the Cathedral of Mary Our
17 Queen?

18 A Yes.

19 Q Is that the proper name?

20 A Yes.

21 Q Where is that located?

1 A Charles Street.

2 Q When did you work at the Cathedral of Mary
3 Our Queen?

4 A 1957, '58, about a year.

5 Q Do you recall what part of 1957 you worked,
6 you started that job?

7 A It was in the spring. I would say April.

8 Q And you think you left approximately the
9 same time of '58?

10 A Yes. It could have been 13 or 14 months I
11 was there, but I said a year.

12 Q What was being done at the cathedral at that
13 time?

14 A Construction.

15 Q Okay.

16 A New construction.

17 Q What was being built?

18 A The cathedral itself, plus the residence,
19 the boiler rooms.

20 Q Who were you working for at that time?

21 A Wallace & Gale.

1 Q Were you still an apprentice at this time?

2 A Yes.

3 Q Do you know who the general contractor was
4 on this job?

5 A No.

6 Q Do you remember the names of any of the
7 contractors on this site other than Wallace & Gale?

8 A I remember Hampshire being there. They were
9 the plasterers.

10 I remember it was either Poole & Kent or
11 Paul Rice, I think, that was the mechanical. I really
12 don't remember.

13 Q Were you doing straight insulation work at
14 this site?

15 A Straight? What is straight?

16 Q Did you do anything other than insulation
17 work on this job?

18 A Just insulation.

19 Q Were you there during the -- continuously
20 during this time period?

21 A Yes, except for vacation.

1 Q Is that a one-week vacation?

2 A Yes.

3 Q Did you work in any locations other than in
4 the residence and in the boiler room?

5 A The church.

6 Q What were you doing in the boiler room?

7 A Breeching boilers, converters, expansion
8 tanks, air separators, valves, blocking valves,
9 piping, ductwork.

10 Q Do you recall how long you worked in the
11 boiler room?

12 A Off and on I would say a couple of months.

13 Q Do you remember the size of the boiler
14 room?

15 A Yes, it was a big one. I didn't like
16 working there.

17 Q Why is that?

18 A On account of the dust.

19 Q Did you file any complaints with anyone
20 because of the dust on this job?

21 A The carpenters and the fitters and the

1 plumbers used to complain to us and the other trades,
2 not very nicely.

3 Q Are you able to give us, in terms of feet,
4 the dimensions of the boiler room?

5 A What would that have to do with -- I mean, I
6 guess it would be 30 or 40 feet high, maybe 300 feet
7 by 400 feet, something like that. I am guessing.

8 Q How many boilers were in there?

9 A I believe that had two. Could have had
10 three, could be a standby there, too.

11 Q Was the procedure for insulating the boilers
12 on this job the same as the procedure at the Cherry
13 Hill project?

14 A Yes.

15 Q Do you know who manufactured the block that
16 you used on the boilers on this job?

17 A There was two of them on this job that I
18 remember, recall.

19 Q Okay.

20 A Baldwin-Ehret-Hill and Owens-Illinois. That
21 would go with the pipe, block and cement.

1 Q You are saying both manufacturers made all
2 three products?

3 A Yes, and all three products were on the job,
4 plus the asbestos cloth.

5 Q How is it you know the name Owens-Illinois?

6 A Because I remember it from working on the
7 job. I mean, when Angelos told me that these were the
8 three jobs, I went back and started thinking about
9 it.

10 Q Where did you see Owens-Illinois written?

11 A On the cardboard box.

12 Q Did you see it written on any bags of
13 cement?

14 A Yes, on the cement, too.

15 Q Was anything else written on any of the
16 containers that said Owens-Illinois?

17 A The weight, size asbestos, this end up,
18 fragile.

19 Q What products do you think contained
20 asbestos that you used in the church?

21 A All.

1 Q The four you have just identified?

2 A Yes.

3 Q Where did you use them in the church?

4 A Throughout, everywhere.

5 Q Where were the pipes that you insulated
6 located within the church?

7 A Everywhere.

8 Q Were there some up in the altar?

9 A Yes, it could be. You have to heat up
10 their -- you have to have water up there.

11 Q Are they in the floors or the walls?

12 A Both.

13 Q Are there any in the ceiling or the roof?

14 A No, not in that church.

15 Q Do you remember the size of the pipes that
16 you covered inside the church?

17 A In the church?

18 Q Yes.

19 A Could be a rain leader, I guess that was --
20 could be eight or 12 inches.

21 Q Do you know what the pipes you insulated

1 inside the church carried?

2 A I know that the domestic water, I know what
3 that carries, the hot and cold water in the
4 recirculating line, keeps the hot warm. As for the
5 black pipe, could be steam or hot water heating. I am
6 not sure. Two-pipe system.

7 Q What did you do with the block inside the
8 church?

9 A There was maybe a couple of valves that
10 would have to be insulated with block.

11 Q Do you remember where within the church
12 those couple of valves were located?

13 A Throughout the church.

14 Q What would you use the cement on inside the
15 church?

16 A Beg your pardon?

17 Q I said, what would you use the cement on
18 inside the church?

19 A Cement on -- what I would use the cement
20 on?

21 Q Yes.

1 A Valves, elbows, Ts, to seam the covering.

2 Q Was some of the pipe actually within the
3 walls of the church and then covered by plaster?

4 A Yes, I would say that, brick or whatever,
5 they would conceal it.

6 Q Okay. What did you do inside the
7 residence?

8 A Pipe, ductwork.

9 Q Similar to what you have already described
10 for us at the housing project?

11 A Yes, just about the same.

12 Q How many residents are located at this
13 site?

14 A One large one.

15 Q How much time did you spend working on the
16 residence?

17 A A couple of months.

18 Q How about the church?

19 A I would say that was a slow project. That
20 was six to eight.

21 Q The balance of the time was spent in the

1 boiler room?

2 A In a boiler room and down leading into the
3 boiler room.

4 Q Were there any other trades working around
5 you on this job?

6 A Yes.

7 Q Can you tell us which trades you remember
8 working around you at this job?

9 A I guess the operating engineers, masons,
10 because I imagine that is who lays those big blocks
11 there, the masons, bricklayers, carpenters, laborers.

12 The laborers used to clean up after us,
13 probably made twice as much dust as we made, plumbers,
14 fitters, sheet metal men, roofers.

15 I guess the glazers put in the stained glass
16 windows. Electricians, I guess building trades, that
17 was a big project.

18 Q Do you know who employed any of the other
19 trades who were working on this site?

20 A No.

21 Q Do you know the number of tradesmen who were

1 working on this site?

2 A A couple hundred.

3 Q Do you know individually by trade how many
4 people were there?

5 A I would be just guessing.

6 Q What is the largest number of pipefitters
7 you can remember working around on this job?

8 A They have about 10 or 15 or 20 working in
9 the boiler room, about 20 in the church, maybe 20 in
10 the residences.

11 Q How about plumbers?

12 A About the same, maybe a little bit less.

13 Q You don't know the names of any of these
14 other tradesmen that work on this jobsite, do you?

15 A No.

16 Q Do you remember how many pipecoverers
17 Wallace & Gale had on this job?

18 A I would say 60.

19 Q Who was it on the job that directed you to
20 use the various types of or the various products that
21 you used?

1 MR. SHELLENBERGER: I am sorry, page 91,
2 line 13.

3 A Job superintendent would tell the
4 pipecoverer and we would go -- the asbestos worker,
5 and we would go do whatever he told us to do.

6 Q Was there a difference between the Owens-
7 Illinois product and the BEH product?

8 A Yes, I would say there was a difference.

9 Q What was the difference?

10 A Different texture. If I saw the product, I
11 probably could tell you the difference, but right now
12 I couldn't.

13 Q In terms of the use of the product, were
14 they using one for one type of use and the other for a
15 different use?

16 A No, you could mix it.

17 Q You could use them interchangeably?

18 Do you have a sense of whether you used more
19 of one type of product than the other on this job?

20 A No, I would not know. It was a lot of it.

21 BY MS. TOSTANOSKI:

1 Q Sir, I have a few questions for you.

2 When you started working at the cathedral,
3 what phase of construction was it in?

4 A Different phases. It was out of the
5 ground.

6 Q Was it watertight?

7 A Some of it was, some of it wasn't. When you
8 were laying those blocks for the church, you had to
9 insulate the pipe before they set one of those blocks
10 because those blocks would come in by crane.

11 I mean, they would come in on a tractor and
12 trailer, but the crane would have to set the block.

13 Q What type of blocks are you talking about?

14 A I think --

15 MS. TOSTANOSKI: The attorney interjects,
16 stone blocks outside.

17 A I think they came from Italy, I am guessing
18 that. I know you heard about how it was built.

19 Q Right, but are you talking about the
20 exterior of the church?

21 A Yes.

1 Q I just want to clarify that as opposed to
2 other types of block.

3 A Right.

4 BY MR. SHELLENBERGER:

5 Q I am sorry, what other trades were creating
6 dust?

7 A The laborers.

8 Q Laborers?

9 A Yes.

10 Q How were they creating dust?

11 A Sweeping up afterwards, sweeping our
12 asbestos up.

13 Q Do you know whether there were any other
14 forms of dust present at the jobsite other than from
15 the pipecovering, cement, whatever?

16 A No, we were the worst.

17 Q But were there others?

18 A Well, there might have been others, but
19 ours was so bad that you wouldn't even notice the
20 other stuff.

21 Q Did you also unload the trucks at this

1 jobsite?

2 A Yes.

3 Q Did I understand you to say early on in your
4 testimony regarding the cathedral work that you
5 remembered that Hampshire was there as --

6 A Yes, I remember Hampshire.

7 Q How do you know that those people that you
8 saw were from Hampshire?

9 A They were union.

10 Q And how did the fact that they were union
11 indicate to you that they were Hampshire workers?

12 A Because I think that was the first union
13 plasterers that I ran up against.

14 Q And were they in this project?

15 Were these -- let me make a note here
16 first.

17 On this project did you encounter these
18 Hampshire plasterers?

19 A I would say everywhere. They were in the
20 church, they were in the residence and they most
21 likely did the boiler room ceiling.

1 Q And was Hampshire working in the boiler room
2 while you were working in there?

3 A They could have been patching the ceiling.

4 Q Could have been, you are not sure?

5 A They usually were patching the ceilings. 90
6 percent of the jobs they actually had holes to fill
7 after the plumbers or sheet metal men or the
8 ironworkers.

9 There was always patching of holes that the
10 other people would make.

11 Q All right, so the bulk of the plastering had
12 already been done --

13 A In the boiler room.

14 Q In the boiler room, the bulk of the
15 plastering had already been done by the time Wallace &
16 Gale, including you, got there?

17 A Yes, the bulk.

18 Q As I remember, the church -- the main body
19 of the church has got the stone block on the inside,
20 too.

21 I don't remember seeing any plaster in

1 there.

2 What part of the church was plastered in?

3 A Where the priests change.

4 Q Were you working in that room doing your
5 pipecovering when Hampshire was working in there?

6 A Sure, they would be throwing up their lath
7 right in back of us and starting to throw their rough
8 coat on and as soon as that dried, they could be
9 putting their finishing coat on.

10 Q How about over in the residence building?

11 A Same thing.

12 Q Same scenario?

13 A Same thing, yes.

14 Q How close to the Hampshire workers would you
15 be, how many feet away?

16 MR. IGNATOWSKI: Line 14 is a question.

17 Q When they were in there compared to where
18 you were?

19 A Same room. Could be a room like this and
20 they could be working on that wall and I could be
21 working on that wall, 20 feet, 10 feet, 5 feet.

1 BY MS. TOSTANOSKI:

2 Q Did you see what kinds of products Hampshire
3 was using at that time?

4 A You mean brand names?

5 Q Yes.

6 A No.

7 Q What kinds of product were they using?

8 A It was a cement for all I know. I mean, you
9 know, from what I can tell, the finished product was a
10 white cement. The other product was a rough-in
11 cement.

12 Q Do you have any idea whether the product
13 that they were using contained asbestos?

14 A I didn't read any labels. Only mentioned
15 the Hampshire because they were on the job. I don't
16 know what they were using.

17 MR. SHELLENBERGER: 133. Line 5.

18 BY MR. SHELLENBERGER:

19 Q Did you ever see any warning in any jobsite
20 indicating that exposure to asbestos-containing
21 products was dangerous?

1 A Absolutely not.

2 BY MS. TOSTANOSKI:

3 Q Of the trades that we talked about today
4 that would be on the job with you, did you work more
5 closely with any one particular job than any other?

6 A We would have to work with the three
7 mechanical trades. They would tell you which pipe is
8 tested and what you can cover and what you can't
9 cover.

10 Q The three mechanical trades would be the
11 sheet metal people?

12 A The steamfitters and the plumbers.

13 Q Typically the sheet metal people would be
14 building or making the ducts?

15 A Yes.

16 Q The steamfitters and the plumbers would be
17 putting in the pipe?

18 A Yes.

19 MS. TOSTANOSKI: This is a different
20 transcript, Your Honor.

21 Your Honor, ladies and gentlemen, this is an

1 earlier deposition taken of Mr. Waters. It was taken
2 on September 18th, 1985, and the caption of the case
3 was Pierce versus Johns-Manville and it was taken in
4 the Circuit Court for Baltimore County.

5 Beginning on page 7.

6 READING OF DEPOSITION OF

7 JOHN STEPHEN MICHAEL WATERS, SR.

8 TAKEN ON SEPTEMBER 18, 1985

9 (Whereupon, the questions were read by Mr.
10 Shellenberger and Ms. Tostanoski and the answers were
11 read by Mr. Ignatowski.)

12 BY MS. TOSTANOSKI:

13 Q When were your two years in the service?

14 A I guess '55 up to '57.

15 MS. TOSTANOSKI: Page 23, line 6.

16 BY MS. TOSTANOSKI:

17 Q Do you know who manufactured the calcium
18 silicate block?

19 A I would say Keene, but -- I mean, if I had
20 to state my life on it, I would be 90 percent sure it
21 was Keene.

1 Q Why would you be 90 percent sure?

2 A Because Wallace & Gale always bought Keene
3 products, they bought Baldwin-Ehret-Hill and when
4 Baldwin-Ehret-Hill switched, they went to Keene
5 products.

6 MS. TOSTANOSKI: Page 24.

7 BY MS. TOSTANOSKI:

8 Q Your guess as to the Keene products would be
9 based on your general knowledge as to the relationship
10 between Keene and Wallace & Gale?

11 A Yes, 99 percent of our materials, when we
12 got the calcium silicate, was Keene products. That
13 was Powerhouse. They had a lot of Powerhouse at the
14 time.

15 MS. TOSTANOSKI: Page 35, line 12.

16 BY MS. TOSTANOSKI:

17 Q Do you remember working with Johns-Manville
18 products?

19 A Occasionally. I think we worked with all of
20 the products.

21 Carey had a calcium silicate out, Ruberoid

1 might have had a calcium silicate out at that time.

2 Q Were these specific products that you -- I
3 understand, but from the kind of work that you do now
4 and from your years in the insulation trade that you
5 acknowledge various types of calcium silicate, and I
6 would -- specifically all kinds of asbestos products,
7 is your memory -- and let's pick Johns-Manville -- is
8 your memory regarding Johns-Manville products and your
9 use of the products based on specific recollection of
10 working with this stuff or just a general feeling that
11 you probably did it at one time or another?

12 A No, we worked with it.

13 Q You?

14 A We worked with Johns-Manville, Carey --
15 Ruberoid, I believe, had a calcium silicate, and we
16 used to get odd boxes of a lot of material.

17 Q You mentioned odd boxes; what do you mean
18 by that?

19 A If you had a calcium silicate job and you
20 needed some material on the job, 99 percent or 90
21 percent of the materials we used was Keene at that

1 time, but if Wallace & Gale didn't have the product on
2 hand, they would buy it from somebody else.

3 And everybody had a different distributor,
4 so McCormick at that time handled Johns-Manville and
5 there was Porter-Hayden, they handled another brand,
6 and there was a couple of other outfits that they
7 would go around and buy it from.

8 MS. TOSTANOSKI: Page 39.

9 BY MS. TOSTANOSKI:

10 Q I have a couple of questions.

11 Mr. Waters, your general knowledge about --
12 and you have used two percentages from time to time,
13 90 percent and 99 percent of Wallace & Gale, calcium
14 silicate and also Powerhouse Cement from BEH and then
15 from Keene -- over what period of your employment with
16 Wallace & Gale did that hold true?

17 A That would be hard to say. I think I do
18 remember a little bit of Carey material being in at
19 Wallace & Gale, but I would say the rest of it was
20 Keene or Baldwin-Ehret-Hill.

21 Q Is that relative percentage mostly Keene and

1 some Carey?

2 You also mentioned Ruberoid today.

3 Is the relative percentage true for your
4 entire employment?

5 A I would say 90 percent and I'm probably a
6 little bit light saying 90 percent. It was mostly
7 Keene. We did have the other products.

8 Q Without regard to being able to tie it to
9 any particular jobsite, do you recall any manufacturer
10 of asbestos-containing products being supplied to
11 Wallace & Gale other than the three, four, excuse me,
12 that you have mentioned here today, being Baldwin-
13 Ehret-Hill or Keene, Johns-Manville, Carey or
14 Ruberoid.

15 Do you remember the name of any other
16 manufacturer?

17 A Probably a cement.

18 Q What other manufacturers of cements do you
19 recall?

20 A Eagle-Picher.

21 Q Are you able to place Eagle-Picher cements

1 on any particular jobsites?

2 A No, I can't. I remember that product. It
3 had a slimy mixture to it. It was a lot better than
4 Powerhouse, mixing it with your hand.

5 Q Any other products, sir?

6 A There was other cements, but I don't recall
7 them now. Just if they ran out of it, they would buy
8 it from somebody else and ship it in.

9 MS. TOSTANOSKI: Your Honor, we just have
10 one additional passage from a deposition taken of Mr.
11 Waters on June 28th, 1995 in the Circuit Court for
12 Baltimore City.

13 MR. IGNATOWSKI: I don't have that.

14 MS. TOSTANOSKI: It is the one --

15 MR. IGNATOWSKI: Okay.

16 READING OF DEPOSITION OF

17 JOHN STEPHEN MICHAEL WATERS, SR.

18 TAKEN ON JUNE 28, 1995

19 (Whereupon, the questions were read by Mr.
20 Shellenberger and Ms. Tostanoski and the answers were
21 read by Mr. Ignatowski.)

1 BY MS. TOSTANOSKI:

2 Q On a commercial jobsite from your
3 observation, what was the split-up of the asbestos
4 dust created?

5 A 50-50.

6 Q Between whom?

7 A The plasterers and the pipecoverers, I
8 guess, and probably bricklayers was -- I don't recall
9 them using any asbestos on commercial sites.

10 MS. TOSTANOSKI: That is it. Thank you,
11 Your Honor.

12 THE COURT: You are welcome.

13 Next, please.

14 MR. SHELLENBERGER: Our next witness, Your
15 Honor, is Mr. Grewe's videotape. It takes 41
16 minutes.

17 THE COURT: We won't stay for the
18 completion. We will start it and resume it tomorrow
19 morning.

20 MR. IGNATOWSKI: Your Honor, we have some
21 Owens-Corning documents that we will finish.

1 MR. SHELLENBERGER: Rather than break the
2 tape up.

3 MR. IGNATOWSKI: Then we can do the tape
4 first thing in the morning, if that is okay.

5 THE COURT: That is okay.

6 (Whereupon, the documents were published to
7 the jury via the overhead projector.)

8 PRESENTATION OF DOCUMENTS

9 MR. SMITH: This first document is our OCF
10 Exhibit 319 dated April 7, 1947 on Owens-Corning
11 Fiberglas letterhead.

12 THE COURT: It will be admitted in
13 evidence.

14 (Whereupon, Plaintiffs' Exhibit Number OCF
15 319 was received into evidence.)

16 MR. SMITH: Introduction, dust counts
17 remain in the insulation cement department to
18 determine the content of an asbestos dust hazard.

19 Summary, the average concentration of
20 asbestos dust on the first floor of the cement
21 department was 7 to 12 million particles per cubic

1 foot of air. The asbestos concentration on the second
2 floor was 12 to 25 million particles per cubic foot of
3 air.

4 The Ohio Department of Health has recognized
5 five million particles of asbestos dust per cubic foot
6 of air as the maximum allowable concentration for an
7 eight-hour daily exposure.

8 Recommendations.

9 Possible solutions to the dust problem are:

10 Substitution of another material for
11 asbestos.

12 Installation of more efficient local exhaust
13 systems.

14 Furnishing suitable respirators for the
15 operators. These should be worn continuously. That
16 is 1947. Signature page is signed by the Chemistry
17 Laboratory.

18 Here we have our Exhibit OCF 659 dated May
19 5, 1955.

20 THE COURT: It will be admitted in
21 evidence.

1 (Whereupon, Plaintiffs' Exhibit Number OCF
2 659 was received into evidence.)

3 MR. SMITH: Thank you. This is to Mr. T.S.
4 Rogers who you heard about earlier. He was the
5 manager of the technical department, I believe.

6 Mr. Hugh T. Williams, he was also another
7 OCF manager.

8 Mr. Williams writes, Albany, New York,
9 Asbestos Workers union local.

10 We are attaching a copy of a letter received
11 from Bob McArthur, our Newark, New Jersey salesman.

12 Next is the attachment to this letter. It
13 is dated a week before, April 25, 1955, by Mr.
14 McArthur to Mr. Williams, Albany, New York, Asbestos
15 Workers union local.

16 It has come to our attention during the past
17 week that subject local has included a demand for a
18 premium of 50 cents an hour for handling rock or glass
19 wool, in their list of demands for the current
20 contract negotiations.

21 Part of the problem has arisen as a -- let

1 me finish, I am sorry.

2 All of the employers are standing together
3 in their opinion that not only is the demand
4 completely ridiculous, but that such a situation is
5 not a matter for local consideration, but for national
6 action if it is to be considered at all.

7 Part of the problem has arisen as a
8 consequence of a hospital report on Roy Van Alstyne,
9 the local's business agent, that he cannot work again
10 because he has asbestos poisoning.

11 Nobody is quite sure what that disease is,
12 but the men have become emotional about the problem.
13 This is dated May 18th.

14 The next document, 1955, and it is our OCF
15 Exhibit 52.

16 THE COURT: It will be admitted in
17 evidence.

18 (Whereupon, Plaintiffs' Exhibit Number OCF
19 52 was received into evidence.)

20 MR. SMITH: Follow-up to the earlier
21 document. When you answer Bob McArthur's letter of

1 April 25th, which we just saw, please minimize the
2 health angle as Ira Brought, who is the OCF private
3 investigator we talked about last week, is looking
4 into it further for me.

5 100 to 1 chances are it is asbestosis, and
6 cannot be hung on fiberglass or mineral wools. If
7 other health problems arise, please keep me posted.

8 Next is our OCF Exhibit 57.

9 THE COURT: It will be admitted in
10 evidence.

11 (Whereupon, Plaintiffs' Exhibit Number OCF
12 57 was received into evidence.)

13 MR. SMITH: It is October 1956. Asbestos
14 Workers union.

15 This week we were given a tip by John
16 Murphy, business agent of the Asbestos Workers union
17 in Hartford, Connecticut.

18 He informed us that the Boston local of the
19 Asbestos Workers union are conducting an investigation
20 into the lung conditions of their members and that
21 some of the results they found were detrimental to

1 fibrous products.

2 Yesterday we called on Mr. Abram Goldberg
3 and Mr. Henry Anderson. Mr. Goldberg is the president
4 and Mr. Anderson is the business agent of the Boston
5 local.

6 We found that Mr. Goldberg had just recently
7 undergone a lung exploratory operation.

8 Continuing down further. They also stated
9 that they recently had had X-rays of over 50 percent
10 of their members and that they found quite a few of
11 their members showed a cloudiness in the lungs.

12 The expression was that there was more
13 shadowy substance in their lungs than in the average
14 persons.

15 They claim they have another young man who
16 may have to leave the business because of this.

17 Recently one of their members died and they
18 are having an autopsy performed to determine if he
19 suffered from what they call "asbestitous."

20 They also informed us that they were working
21 with Mr. Ernest Johnson, the Labor Commissioner of the

1 State of Massachusetts on a program to determine
2 whether their industry should be classified as a
3 hazardous one.

4 During our conversation they also brought
5 out the fact that other parts of the country,
6 including Albany, New York and Syracuse are concerned
7 about this problem and they, too, are conducting this
8 investigation.

9 This is a retyped version of our OCF
10 Exhibit Number 58 dated May 9, 1957.

11 THE COURT: It will be admitted in
12 evidence.

13 (Whereupon, Plaintiffs' Exhibit Number OCF
14 58 was received into evidence.)

15 MR. SMITH: This is on the letterhead of
16 Ira Brought, the consultant, private investigator for
17 OCF addressed to the President of Owens-Corning, Mr.
18 Harold Boeschenstein.

19 Two serious blows have been dealt by the
20 Asbestos Workers union during the past several months
21 to the fiberglass industry.

1 The first blow was outlined in my letter of
2 April 25, 1957 which indicated that a wage premium had
3 been demanded by the New York local in their wage
4 negotiation agenda. This, we were successful in
5 having deleted.

6 The second blow and a more alarming one was
7 dealt recently by the union during their western
8 states conference held in Oakland, California, which
9 was attended by business agents from all over the
10 western portion of the United States.

11 In the published minutes of their meeting,
12 which was mailed to each of the 20,000 members, the
13 following statement was made:

14 "The problems of asbestosis and silicosis
15 were discussed at large, stemming from the report of
16 Local Number 16, in which it was revealed that 11
17 members passed away this year.

18 A large number of the men had definite
19 symptoms of the aforementioned hazards of our trade."

20 MR. MCGOWAN: Your Honor, may I ask him to
21 read the whole thing?

1 THE COURT: Sure.

2 MR. SMITH: That is fine.

3 MR. MCGOWAN: Thank you.

4 MR. SMITH: Most of the locals in attendance
5 spoke on this vital subject. President Sickles,
6 speaking from an international point of view, said
7 that the international is compiling facts and figures
8 on this matter.

9 President Sickles states further that the
10 regulations requiring the companies to furnish safety
11 equipment still holds.

12 The Navy yard employees explained the safety
13 precautions taken by the Navy yard in regard to this
14 matter.

15 At this time the motion was made, seconded
16 and passed that the international continue to
17 investigate the causes of asbestosis and allied lung
18 ailments caused by fibrous materials, and to determine
19 what measures can be found to combat and prevent these
20 diseases.

21 The circulation of this statement to the

1 union membership will no doubt cause an increasing
2 amount of alarm throughout the country as to the
3 health hazard.

4 All of this, in my opinion, emphasizes the
5 need for the immediate application of recommendations
6 made in our report of January 15, 1945.

7 In a nutshell, the recommendations were that
8 every branch sales office should be in intimate and
9 frequent contact with all business agents and their
10 sales territory.

11 The relationship should be sufficiently
12 close so that the branch manager or the industrial
13 salesman would require immediate knowledge of unrest
14 brewing in the local which might spread throughout the
15 United States.

16 All business agents are either sales assets
17 or sales liabilities. If the business agent is a
18 friend of the industrial salesman, he will inform him
19 of impending trouble, signed Ira Brought.

20 Are we stopping at 4:15, Your Honor?

21 THE COURT: Yes.

1 MR. SMITH: May 7, 1964. This is one of the
2 documents that Mr. Thomas talked about in his
3 deposition earlier this afternoon.

4 This is to Mr. Thomas, Mr. Boeschstein,
5 the President.

6 THE COURT: What is the number, please.

7 MR. SMITH: I am sorry, Your Honor, Exhibit
8 OCF 341.

9 THE COURT: All right, it will be admitted
10 in evidence.

11 (Whereupon, Plaintiffs' Exhibit Number OCF
12 341 was received into evidence.)

13 MR. SMITH: Asbestos workers' health
14 program, Dr. Irving J. Selikoff.

15 Mr. Edwards was the head of safety, and I am
16 not sure of his exact title.

17 He was in the personnel department and
18 ultimately became a senior vice-president of Owens-
19 Corning.

20 We now have copies of Dr. Selikoff's report
21 published in the April 6, 1964 issue of the Journal of

1 the American Medical Association describing his early
2 findings and observations after reviewing the medical
3 histories of more than 1,500 members of the Insulation
4 and Asbestos Workers union located in New York City
5 and Newark, New Jersey areas.

6 The startling part of the report is the high
7 incidence of cancer among insulation workers. Dr.
8 Selikoff's data would seem to indicate that insulation
9 workers have from six to seven times more lung cancer
10 and about three times more cancer of the stomach,
11 colon and rectum than the general male population.

12 It is our understanding that Dr. Selikoff
13 has received grants that will permit him to continue
14 his investigation on the medical history of insulation
15 workers on a nationwide scale.

16 Consequently, his activities will continue
17 to be of considerable interest to us. We are also
18 told that he will attempt to generate as much
19 publicity for this project as is possible.

20 His ability to interest the American Medical
21 Association in the current program and to get his

1 report published in their journal attests to his
2 public relations capabilities.

3 MR. McGOWAN: Keep that up there, Your
4 Honor?

5 MR. SMITH: Sure. Do you want me to read
6 the rest of it?

7 MR. McGOWAN: Let me do it, give you a
8 little break.

9 MR. SMITH: Go ahead.

10 MR. McGOWAN: Dr. Selikoff spoke before the
11 joint annual conference of AIMA and the ACGIH in
12 Philadelphia last week using the same basic data that
13 was used in the JAMA article.

14 His talk was later printed in the
15 Philadelphia newspaper.

16 (Whereupon, the documents were removed from
17 the screen of the overhead projector.)

18 THE COURT: All right, ladies and gentlemen,
19 we will --

20 MR. SMITH: I am sorry.

21 THE COURT: We will recess now and we will

1 continue tomorrow morning at 9:30.

2 Get paid. You didn't have any problem
3 getting paid this morning?

4 I am not going to ask you if you used my
5 name. You have already shown me that that doesn't
6 work.

7 Get paid tomorrow morning and when we return
8 here, we will start as close to 9:30 as possible.

9 Please do not discuss the case among
10 yourselves or with anyone else.

11 Have a good evening. See you tomorrow
12 morning.

13 (Whereupon, jury dismissed -- 4:15 p.m.)

14 THE COURT: Counsel, if you will be in your
15 seats at 9:25 tomorrow morning, we will resume at
16 9:30.

17 Have a good evening, everyone.

18 (Thereupon, at 4:16 p.m., the proceeding
19 was adjourned.)
20
21

1 State of Maryland

2 City of Baltimore

3 I, Bonnie L. Gahagan, a Notary Public of the
4 State of Maryland, City of Baltimore, do hereby
5 certify that the above-captioned case took place
6 before me at the time and place herein set out.

7 I further certify that the proceeding was
8 recorded stenographically by me and this transcript is
9 a true record of the proceedings.

10 I further certify that I am not of counsel
11 to any of the parties, nor an employee of counsel, nor
12 related to any of the parties, nor in any way
13 interested in the outcome of the action.

14 As witness my hand and seal this 29th day of
15 May, 1996.

16

17 Bonnie L. Gahagan

18 My Commission Expires 10-01-96

19

20

21

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1 IN RE: PERSONAL INJURY AND * IN THE
2 WRONGFUL DEATH * CIRCUIT COURT
3 ASBESTOS LITIGATION * FOR
4 * * * * * * BALTIMORE CITY
5 * * * * * *
6 KEITH K. GREWE, et al., * April 1996 Group
7 Plaintiffs * Cluster #96112702
8 vs. * JUDGE EDWARD J.
9 ACandS., INC., et al., * ANGELETTI
10 Defendants *
11 * * * * * * * * * *

12 OFFICIAL TRIAL TRANSCRIPT

13 Presentation of Pliantiffs' Evidence

14 continued in the above-entitled action on Tuesday, May
15 28, 1996, commencing at 9:40 a.m., before the
16 Honorable Edward Angeletti, Courtroom 3, Courthouse
17 East, Baltimore, Maryland 21202, and was reported by
18 Bonnie Gahagan, a Notary Public.

19 EVANS REPORTING SERVICE
20 2422 Southwest Road
21 Baltimore, Maryland 21234
(410) 882-0208
(800) 256-8410

1 APPEARANCES:

2 On Behalf of the Plaintiffs:

3 Gary Ignatowski, Esquire
4 Scott Shellenberger, Esquire
5 Steven Smith, Esquire
6 Deborah Hines, Esquire
7 Shepard Hoffman, Esquire

8 On Behalf of the Defendants:

9 Timothy McGowan, Esquire
10 Steven Williams, Esquire
11 Gerry Tostanoski, Esquire
12 Scott Burns, Esquire
13 Ronald Taylor, Esquire

14 Also Present: Michael Zepp, Court Clerk
15 Jill Loper, Law Clerk
16
17
18
19
20
21

P R O C E E D I N G S :

(Whereupon, in open court.)

THE COURT: Good morning.

Are we ready for the jury, counsel?

MR. SHELLENBERGER: Yes, sir.

THE COURT: Bring the jury in.

(Whereupon, jury present -- 9:41 a.m.)

THE COURT: Please be seated, ladies and gentlemen.

Good morning.

THE JURY: Good morning.

THE COURT: I trust you all had a good, safe weekend.

Alternate Number 5. We have another infusion into the candy fund from Alternate Number 5, and, let's see, good stuff.

We also have an infusion into the candy fund this morning from Mr. Ignatowski. We have enough to last at least until our midmorning break.

(Whereupon, laughter ensued.)

THE COURT: Mr. Shellenberger or Mr.

1 Ignatowski.

2 MR. SHELLENBERGER: Thank you, Your Honor.

3 THE COURT: Mr. Shellenberger, good morning,
4 sir.

5 MR. SHELLENBERGER: Good morning, Your
6 Honor. Good morning, ladies and gentlemen.

7 I would like to call Dr. John Steers to the
8 stand, please.

9 (Whereupon, witness present.)

10 WITNESS ON STAND

11 Whereupon,

12 DR. JOHN EDWARD STEERS,
13 the witness herein, being first duly sworn to testify the
14 truth, the whole truth, and nothing but the truth, was
15 examined and testified as follows:

16 THE COURT CLERK: State your name and your
17 business address for the record.

18 THE WITNESS: John Edward Steers, Suite 102,
19 Billingsly Building, Westminster, Maryland.
20 S-t-e-e-r-s.

21 DIRECT EXAMINATION

1 BY MR. SHELLENBERGER:

2 Q Good morning, Dr. Steers. Keep your voice
3 up because everybody has to hear you.

4 Doctor, where is your office located, what
5 county?

6 A Carroll County.

7 Q How long have you been practicing up there
8 in Carroll County?

9 A 1971.

10 Q Are you a medical doctor?

11 A I am.

12 Q Are you licensed to practice medicine here
13 in the State of Maryland?

14 A I am.

15 Q How long have you been licensed to practice
16 here in the State of Maryland?

17 A Since 1971.

18 Q What type of doctor are you?

19 A I am a general surgeon.

20 Q Were you, in fact, Mr. Vandergucht's
21 surgeon?

1 A I was.

2 Q Did you have an opportunity to operate on
3 Mr. Vandergucht?

4 A I did.

5 Q Were you also one of his treating
6 physicians?

7 A I was.

8 Q Sir, can you tell us a bit about your
9 educational background, where you went to college,
10 school and postgraduate work?

11 A Premed was Johns Hopkins University, medical
12 school was University of Maryland, internship and
13 residency was York Hospital in York, Pennsylvania; and
14 since 1971, I have been in Carroll County General
15 Hospital with active staff privileges.

16 Q Is that the only current hospital that you
17 currently have active privileges in?

18 A Yes.

19 Q Do you also reside up there in Carroll
20 County?

21 A I do.

1 Q Now, during your medical background, did
2 there come a time when you began to specialize in the
3 area of general surgery?

4 A That is correct.

5 Q Can you tell us just a little bit about the
6 types of surgery you perform up there at Carroll
7 County, the type of patients you see, what types of
8 surgeries you perform?

9 A Mostly abdominal surgery, surgery related to
10 the intestinal tract, the biliary tract, gallbladder,
11 hernias, which would include, with the intestinal
12 tract, certain types of cancers.

13 Q Are you a member of any professional
14 medical organizations or associations?

15 A I am a member of the Carroll County Medical
16 Society, the Med-Chi of the State of Maryland and
17 until this year was a member of the American Medical
18 Association.

19 Q Now, Doctor, I have heard it before that
20 some people are board certified in certain areas and
21 some people aren't.

1 Are you currently board certified in
2 surgery?

3 A I am not board certified.

4 Q Doctor, a number of years ago did the State
5 of Maryland institute some type of process or
6 accreditation in which surgeons could be certified who
7 weren't board certified?

8 A The Maryland Board of Quality Assurance --
9 approximately 10 years ago -- in order that certain
10 specialists who were calling themselves surgical
11 specialists were qualified, require that all nonboard
12 certified specialists submit their credentials to that
13 board.

14 That included credentials stipulating board
15 eligibility, letters of recommendation and the type of
16 practice that you participated in.

17 I did that and was given that recognition
18 approximately 10 years ago to be or to call myself a
19 surgeon specialist.

20 Q Okay. Doctor, you mentioned earlier that in
21 fact you operated on and treated Jean Vandergucht.

1 Do you recall approximately when you first
2 met Mr. Vandergucht?

3 A I first met Mr. Vandergucht in September of
4 1980. He was referred from Dr. Wilbur Foard.

5 Q What type of practice does Dr. Wilbur Foard
6 have?

7 A He is a primary physician up in Manchester,
8 Maryland.

9 Q Is Manchester up there in Carroll County?

10 A It is.

11 Q Now, during the treatment of Mr.
12 Vandergucht, did you have an opportunity to generate
13 your own medical files on what you did with Mr.
14 Vandergucht?

15 A I did.

16 Q In addition to that, did you have an
17 occasion to consult with other physicians who were
18 assisting you in treating Mr. Vandergucht?

19 A I did.

20 Q And during the course of consulting with
21 those other physicians, did you have an occasion to

1 receive copies of and review the medical records of
2 the other physicians who were treating Mr.
3 Vandergucht?

4 A I did.

5 Q And did you continue to monitor Mr.
6 Vandergucht's condition during the entire time when
7 you first met him until his death?

8 A I did.

9 Q Doctor, I am going to show you what has been
10 marked for identification in this case as VA 34.

11 MR. SHELLENBERGER: Counsel, you have a copy
12 of this.

13 Q I am going to ask you -- I asked you to look
14 at this earlier this morning.

15 If you would just glance through that and I
16 ask you if that is a copy of the medical reports
17 concerning your file regarding Mr. Vandergucht.

18 A Yes. This is the office record and the
19 hospital records on Mr. Vandergucht.

20 Q And do you, in fact, have a copy of that in
21 front of you there for your own use right here?

1 A I do.

2 MR. SHELLENBERGER: Your Honor, at this time
3 I would move to introduce into evidence VA 34 which is
4 Dr. Steers' medical record on Mr. Vandergucht.

5 MS. TOSTANOSKI: No objection, Your Honor.

6 THE COURT: Without objection, VA Exhibit 34
7 will be admitted into evidence.

8 (Whereupon, Plaintiff's Exhibit Number VA 34
9 was received into evidence.)

10 BY MR. SHELLENBERGER:

11 Q Doctor, when is it that -- I believe you
12 said you came in contact with Mr. Vandergucht in
13 September of 1980.

14 Why did Dr. Foard refer Mr. Vandergucht to
15 you?

16 A He was referred because Dr. Foard thought he
17 had and in fact he did have an incarcerated umbilical
18 hernia.

19 Q As a result of that referral for
20 incarcerated umbilical hernia, did you examine Mr.
21 Vandergucht?

1 A I did.

2 Q What did that examination reveal?

3 A A healthy male appearing to be 68. He had a
4 small incarcerated umbilical hernia approximately two
5 to three centimeters in diameter which was according
6 to the patient intermittently painful.

7 He had also admitted to approximately a 10
8 to 15 pound weight loss.

9 Q Ten to fifteen pound weight loss?

10 A Yes. Also, he had intermittent pain because
11 of the hernia.

12 Q Can you tell me what an incarcerated
13 umbilical hernia is?

14 A Small defect in the abdominal wall occurs in
15 the area of the umbilicus such that the lining of the
16 abdominal cavity is allowed to protrude through and
17 come up against the skin of the abdominal wall and
18 with time, the increased pressure, the intra-abdominal
19 contents, the fatty omentum and sometimes the
20 projection can inject into that hernia sac and cause
21 pain.

1 Q I see you holding your thumb up.

2 What did Mr. Vandergucht's umbilical region
3 look like when you examined him?

4 A He had a bulge about the size of a walnut,
5 two or three centimeters in diameter.

6 Q When you examined Mr. Vandergucht, what was
7 your plan?

8 What is it that you do to an incarcerated
9 umbilical hernia to treat it?

10 A By incarceration, it means the hernia is
11 out, fixed and can't reduce it.

12 Some hernias will slip in and out. When you
13 push them, it goes back in. And his was out and fixed
14 and could not be reduced which is why he had the
15 discomfort.

16 The plan was to take him to the hospital,
17 make an incision, reduce that hernia and remove, if
18 necessary, any contents in the hernia sac and close
19 the defect.

20 Q Prior to operating on Mr. Vandergucht, I
21 would assume that you tried to obtain some type of

1 medical history because you were about to operate on
2 him.

3 Did you do that, Doctor?

4 A I did.

5 Q In fact, what, if any, significant findings
6 did you find in his medical history when you took
7 that?

8 A Other than for prostate surgery,
9 approximately eight years prior to my first seeing
10 him, and I think he had a leg fracture sometime in the
11 past, he was in very good health.

12 Q So the prostate surgery you indicated was
13 eight years before. I guess that was about '72.

14 Was that having any impact on his health in
15 1980 when you met him?

16 A No.

17 Q The leg fracture that occurred a number of
18 years before, was that having any effect on his
19 medical health when you met him in 1980?

20 A No. No, it did not.

21 Q Now, did he also give you a history or an

1 occupational history of what he had done for a
2 living?

3 A He told me he had been a plasterer.

4 Q Was he currently working in 1980 as a
5 plasterer?

6 A I don't believe so. I think he was
7 retired.

8 Q And I think you told us earlier, but how old
9 was Mr. Vandergucht when you met him?

10 A He was 68.

11 Q Now, did you, in fact, perform a physical
12 exam on him?

13 When you did that, what was Mr.
14 Vandergucht's weight at that time?

15 A I think it was in the range of 200 to 205
16 pounds.

17 Q Did you at that point admit him to the
18 hospital for the hernia repair that you have
19 described?

20 A I did.

21 Q When did he go into the hospital for the

1 hernia repair?

2 A On October 7th and he had his surgery on
3 October 8th, 1980.

4 Q And what exactly did you do to him?

5 A Well, we repaired the incarcerated hernia
6 and in doing so removed the contents of the sac which
7 appeared to be a small knot of fat which originates
8 inside the abdominal cavity, but we noticed at the
9 time of surgery that this was unusually firm.

10 We went ahead and sent that to the
11 laboratory for examination and went on and closed the
12 hernia defect and completed the operation, and he was
13 discharged, I believe, one or two days later.

14 Q And, therefore, approximately how long did
15 Mr. Vandergucht spend in the hospital as a result of
16 the hernia operation?

17 A I believe it was three days.

18 Q And I assume when you say that you performed
19 surgery on him, you had to make an incision and
20 actually operate?

21 A That is true.

1 Q Okay. When you made the incision and
2 operated, was there something that you noticed during
3 the operation that seemed unusual compared to a normal
4 hernia operation?

5 A Only that the fatty tissue that was in the
6 sac was harder than it usually is. That sometimes is
7 not unusual.

8 If the fat has been entrapped in the sac for
9 a period of time, it becomes scarred down and becomes
10 very fibrotic and hard.

11 At that time in the operating room, there
12 was no consideration that this would be malignant in
13 any way.

14 Q But as a result of your taking -- I assume
15 you took some tissue and had it sent out?

16 A Yes.

17 Q What kind of tissue did you take and send
18 out?

19 A The projection of the fatty tissue into the
20 sac and a portion of the hernia sac.

21 Q All right. Where did you all send that?

1 A That went to the Carroll County Hospital
2 Pathology Department.

3 Q As a result of their work, what, if
4 anything, did they report back to you concerning that
5 tissue you had taken out of Mr. Vandergucht?

6 A They reported the tissue to be consistent
7 with an adenocarcinoma which is a type of cancer.

8 They were also concerned in a footnote on
9 the report that it might be a malignant mesothelioma.

10 Q Okay. Now, as a result of their concern
11 about it might be a malignant mesothelioma, was that
12 tissue sent to any other hospitals for further
13 analysis?

14 A The tissue was sent to the then Baltimore
15 County, now Northwest Hospital, Dr. Simon Cali for a
16 second opinion.

17 Q What, if any, reports were reported back to
18 you?

19 A Dr. Cali reported that he thought this was a
20 malignant mesothelioma.

21 Q When did you receive those particular

1 results?

2 A I don't remember the exact date. It takes a
3 few days, sometimes a week to get the second opinion
4 and report back.

5 Q That would have been after October of 1980
6 when you would have operated on him?

7 A That is correct.

8 Q Now, when you discharged Mr. Vandergucht,
9 was he discharged with any type of pain medication?

10 A I believe he went home with Tylenol and
11 codeine.

12 Q Now, sir, as a result of the report that
13 came back confirming the malignant mesothelioma, did
14 you have him referred for any type of outpatient
15 evaluations?

16 A Yes. He was referred to Dr. Ron Ginsberg,
17 who is a gastroenterologist, who had privileges at our
18 hospital and Northwest or Baltimore County, and
19 because there was some concern that there might be a
20 primary tumor somewhere in the abdominal cavity
21 causing this spread into the hernia, we wanted to work

1 up the intestinal tract and the abdomen on an
2 outpatient basis before any further treatment.

3 Q What were you trying to do when you did
4 these tests on an outpatient basis?

5 What were you trying to find?

6 A As I say, we were concerned that there might
7 be a primary tumor somewhere that was -- which
8 supplied the origin of what we found at surgery and,
9 therefore, we examined the large intestine, did a
10 colonoscopy and proctosigmoidoscopy, he had an upper
11 GI and small bowel which means the upper intestinal
12 tract from the esophagus to the large intestine was
13 examined, he had a kidney X-ray to clear the kidney
14 and bladder area, and a barium enema and X-ray of the
15 lower intestinal tract.

16 Q As a result of that, were you all able to
17 find the primary or what were the results of those
18 tests?

19 A Dr. Ginsberg found four small polyps which
20 he removed which were all benign, but other than that,
21 the findings were all negative, normal.

1 Q As a result of those findings being normal
2 or negative, did you make a decision to perform more
3 surgery?

4 A We decided we would do what is called a mini
5 laparotomy, make a small incision in the abdomen and
6 look inside and feel inside and see if there is
7 something that might be the source of the malignancy
8 in the umbilical hernia and also give us an
9 opportunity to feel the other organs in the abdomen
10 such as the liver or spleen.

11 Q When you say you performed a mini
12 laparotomy, was Mr. Vandergucht put on general
13 anesthesia for that?

14 A He was.

15 Q Where approximately -- would you show us on
16 your own body where you would make the incision?

17 A Small rectus incision just to the right of
18 the umbilicus approximately four inches in length.

19 Q Then what did you do?

20 A We went into the abdominal cavity and
21 drained a large amount of what we call acidic fluid

1 and examined the -- we were able to examine the small
2 bowel and the large bowel and the liver and spleen and
3 noted that the -- most of the intestine and tissues
4 that supply the intestine were covered with literally
5 hundreds or thousands of small pearl-like growths
6 varying in size from several millimeters to almost
7 half a centimeter in diameter.

8 Q I take it that these several hundred or
9 several thousand pearl-like growths are not supposed
10 to be in Mr. Vandergucht's stomach; is that correct?

11 A No. That is correct.

12 Q And what was this?

13 A This was invasive widespread malignant
14 mesothelioma.

15 Q Now, did you try and take it out and if you
16 didn't, why not?

17 A It is impossible to remove such a widespread
18 malignancy because it covers everything.

19 An analogy would be if you take a handful of
20 grass seed and throw it out on the lawn, usually
21 wherever it hits that is properly nourished, it

1 grows.

2 That is what happens. As the tumor cells
3 float around and grow to the abdominal cavity, they
4 attach and grow to the other organs.

5 Q Is this grassy seed analysis you have given
6 us, is that the way Mr. Vandergucht looked?

7 A Yes.

8 Q You mentioned also that there was some
9 acidic fluid.

10 Do you also use the word ascites?

11 A Yes.

12 Q Ascites, what is that?

13 A Ascites is an accumulation -- abnormal
14 accumulation of fluid in the abdominal cavity due to
15 the presence of malignant mesothelioma.

16 Q You were also removing the fluid when you
17 did the laparotomy on Mr. Vandergucht?

18 A That is true.

19 Q If you know, how is it that the ascites
20 builds up?

21 How does that happen?

1 A Well, depending upon the type of tumor, it
2 can obstruct the liver and cause pressure via the
3 portal vein back in the intestinal tract which causes
4 an oozing of fluid from all of the surfaces in the
5 abdominal cavity or it can grow and affect the fatty
6 of the abdominal cavity and cause this back pressure
7 and the fluid oozes out of the abdominal space.

8 Q When you had Mr. Vandergucht opened up, did
9 you insert any type of chemicals into him for possible
10 treatment?

11 A Yes. We put a chemical called
12 5-Fluorouracil into the abdominal cavity.

13 Q I am sorry?

14 A 5-Fluorouracil which is a chemotherapeutic
15 agent or chemical that was thought to inhibit the
16 further growth of a malignant tumor.

17 Q Now, at that point did you then close Mr.
18 Vandergucht up and was he eventually discharged from
19 the hospital?

20 A We took some biopsies, additional biopsies
21 of the tissue and drained the fluid and did a thorough

1 what we call run the small bowel, actually deliver the
2 small bowel out through the incision, put it all back
3 and examine the other organs and close the abdomen.

4 Q The biopsy that you took, what, if anything,
5 did you do with that?

6 A That went to the pathology department at
7 Carroll County Hospital.

8 Q What, if any, reports were reported back to
9 you?

10 A That was reported back as consistent with
11 widespread malignant mesothelioma.

12 Q How long was Mr. Vandergucht in the hospital
13 for this operation approximately?

14 A I think approximately seven or eight days.

15 Q And what was your discharge diagnosis when
16 you discharged him from the hospital?

17 A Malignant mesothelioma.

18 Q Now, Doctor, at that point and now we are
19 back in, I believe, December of 1980; is that
20 correct?

21 A That is correct.

1 Q Back in December of 1980, did you have an
2 understanding of the cause of Mr. Vandergucht's
3 malignant mesothelioma?

4 A I did not.

5 Q When is it that you learned of the cause of
6 malignant mesothelioma?

7 A I would say the first indication of the
8 relationship between malignant mesothelioma or
9 pulmonary malignant mesothelioma and any substance was
10 what I say in lay articles.

11 Q You say lay articles?

12 A Such as newspapers, magazines.

13 Q Would that have been within the last few
14 years or so?

15 A Within the last two or three.

16 Q Back in 1980 you did not have an
17 understanding of the relationship between mesothelioma
18 and asbestos?

19 A I did not.

20 Q And I assume, did you -- therefore, you had
21 no ability to communicate that to Mr. or Mrs.

1 Vandergucht; is that correct?

2 A That is correct.

3 Q Now, when you discharged Mr. Vandergucht,
4 prior to his discharge, did you enter into any kind of
5 consultations with any other doctors to try and figure
6 out a way to treat Jean Vandergucht?

7 A I talked to Dr. Meyer Heyman.

8 Q Dr. Heyman.

9 A He slipped my mind for a minute -- who is a
10 medical oncologist whose specialty is the treatment of
11 patients with this type of disease, and Dr. Heyman was
12 consulted for the purpose of considering giving Mr.
13 Vandergucht chemotherapy.

14 Q Okay. Now, did you have an understanding of
15 the potential for success of treating this kind of
16 disease with chemotherapy?

17 A It was my understanding in discussions with
18 Dr. Heyman that the outlook was extremely poor, but
19 that possibly chemotherapy could slow the progression
20 of the disease somewhat and it would be worth an
21 attempt at treating him.

1 Q Did Mr. Vandergucht actually undergo
2 chemotherapy?

3 A He did.

4 Q Now, how was the chemotherapy administered
5 back in 1980? How did they do that?

6 A If my memory serves me, I think that Heyman
7 gave him intravenous chemotherapy.

8 Q Would that have been done at the hospital at
9 Carroll County?

10 A It was, yes.

11 Q Do you just undergo that one time, or do you
12 have to go back again and again for chemotherapy?

13 A No. He had a series of treatments over
14 several months. I think it started in December of '80
15 and went into March or April of '81.

16 Q Now, chemotherapy, are there any side
17 effects to that?

18 A Side effects, clinical side effects can be
19 loss of appetite, nausea, vomiting, disruption of
20 sleep patterns and then the attendant weight loss that
21 goes along with the loss of appetite.

1 Q In fact, during the time from December until
2 March, April, May or so of 1981, did Mr. Vandergucht
3 suffer from those side effects?

4 A He did. He had episodes of nausea and
5 vomiting and loss of appetite.

6 Q In fact, did Mr. Vandergucht at some point
7 stop the chemotherapy, stop taking the treatments?

8 A The notes that Dr. Heyman sent to me would
9 indicate that sometime in March of '81 Mr. Vandergucht
10 stopped the chemotherapy because of the side effects.

11 Q Because of the side effects?

12 A Because of the side effects. And then
13 apparently resumed treatment again in April for a
14 short period of time.

15 Q Now, Doctor, in the February, March area of
16 1981, did there come a period of time where Mr.
17 Vandergucht was experiencing some problems with his
18 abdomen and the abdominal area?

19 A Yes. The fluid continued to build in the
20 abdominal cavity causing noticeable distension of the
21 abdomen.

1 Q When you say noticeable distension, what are
2 we actually seeing on Mr. Vandergucht back in that
3 time period?

4 What would you see?

5 A We would see a noticeable enlargement or
6 bulging of the whole abdominal cavity from the pelvis
7 all the way up to the rib cage.

8 Q What was that due to?

9 A That was due to the accumulation of anywhere
10 from 7 to 12 liters of fluid within the abdominal
11 cavity.

12 Q Now, as a result of that fluid buildup in
13 Mr. Vandergucht, did that increase the circumference
14 of his abdominal area?

15 A It did.

16 Q Did you also notice -- is there something
17 called a fluid wave?

18 A Well, fluid wave is something that you feel
19 or see on physical examination.

20 There is so much fluid in the abdominal
21 cavity, when you palpate firmly on one side, you can

1 actually feel the fluid move or slosh from one side of
2 the abdomen to the other.

3 Q Now, as a result of this fluid buildup, did
4 you do anything surgically again with Mr.
5 Vandergucht?

6 A Yes. There is a procedure called abdominal
7 paracentesis which involves placing some Novocain
8 under the skin of the abdominal wall and making a
9 small incision and then placing a hallow trocar,
10 forcibly puncturing the abdominal wall with the
11 trocar, and thereby draining the fluid under gravity
12 flow to a large bottle on the floor to remove the
13 intra-abdominal fluid and relieve the pressure.

14 Q Why is it that you are trying to take the
15 fluid out of Mr. Vandergucht?

16 A Well, the increase in intra-abdominal fluid
17 makes it difficult to breathe because it pushes the
18 diaphragm up against the lung and in order for us to
19 breathe, the diaphragm has to drop so that the lungs
20 can expand.

21 With anywhere from 7 to 12 liters of fluid

1 in the abdominal cavity, Mr. Vandergucht had such
2 difficulty breathing at times that he had to sit up
3 during the night to properly breathe.

4 So periodically we would drain the fluid.

5 Q And the fact that he was sitting up during
6 the night was the fluid causing discomfort and pain to
7 Mr. Vandergucht?

8 A Yes.

9 Q Was it also impacting with his breathing?

10 A Yes.

11 Q You drained fluid for the first time in May
12 of '81; is that correct?

13 A May 1st, 1981.

14 Q And in addition to draining fluid in May,
15 did you also drain fluid other times?

16 A We drained fluid June 16th, '81; July 15th,
17 '81.

18 Dr. Cho who was covering for me while I was
19 away, August 6th, 1981, drained the fluid and he,
20 again, was drained August 27th, '81; October 18th,
21 '81, and October 22nd, '81.

1 Q That was all because of the fluid buildup
2 and to relieve the pressure and the discomfort; is
3 that correct?

4 A That is correct.

5 Q Now, Doctor, in addition to the drainage of
6 the fluid, at some time did you decide to try another
7 procedure on Mr. Vandergucht to relieve the discomfort
8 he was experiencing?

9 A In September of 1981, he was referred to
10 Johns Hopkins Hospital to Dr. Hoover to place a LeVeen
11 shunt.

12 Q I am sorry. Could you give me that name
13 again?

14 A He placed a LeVeen shunt which is a
15 procedure that involves connecting the fluid in the
16 abdominal cavity via a plastic catheter that is then
17 run under the skin of the chest and into a large vein
18 up under the collarbone or in the neck so this fluid
19 could drain from the abdominal cavity back into the
20 general circulation and hopefully out through the
21 urinary tract and urinate it away.

1 fluid back into the circulation.

2 Q Now, all of this fluid buildup we have been
3 talking about, was that as a direct result of the
4 malignant mesothelioma?

5 A Yes.

6 Q Now, at this point in time we are now in the
7 area of September of 1981.

8 What, if any, symptoms or complaints was Mr.
9 Vandergucht experiencing at that time concerning his
10 weight, his appetite, his breath?

11 A Well, the fluid continued to accumulate at a
12 much more rapid rate as the tumor grew and expanded.

13 His symptoms became more noticeable, and the
14 LeVeen shunt obstructed or blocked within about
15 approximately a month, it was no longer functional.

16 He had to be readmitted into the hospital in
17 October of '81 and tapped on two occasions in the
18 hospital.

19 Q Did you do that, Doctor --

20 A No. That was done by -- I am sorry. Yes, I
21 did that. The two of October of '81.

1 Q What was Mr. Vandergucht's condition when
2 you did the two taps in October of '81?

3 A He deteriorated considerably. In fact, his
4 weight on admission was in the 198 range reflecting
5 all of the fluid he accumulated. And after the tap,
6 within a matter of a few hours, his weight dropped to
7 186.

8 Q That weight loss was attributed to your
9 tapping of fluid?

10 A That is correct.

11 Q What about his ability to breathe?

12 A Until the fluid is tapped, he has very much
13 difficulty breathing, and once it is tapped, he is
14 given a period of time where he is more comfortable
15 and he can breathe more easily.

16 Q In addition to that, what was Mr.
17 Vandergucht's appetite like in September, October of
18 1981?

19 A Generally diminished.

20 Q Now, after -- you indicated that the LeVeen
21 shunt became blocked; is that correct?

1 A That is correct.

2 Q After you performed these two paracenteses
3 where the fluid was removed in October of '81, did Mr.
4 Vandergucht remain in the hospital?

5 A No. He was discharged to home care, and I
6 believe was attended by his family doctor, Dr. Wilbur
7 Foard of Manchester.

8 Q When is it that Mr. Vandergucht died?

9 A He died November 9th, 1981 at home.

10 Q And, Doctor, what was his cause of death?

11 A Metastatic malignant mesothelioma.

12 MR. SHELLENBERGER: Your Honor, if I could
13 have the doctor step down, I need to use just a few
14 overheads, and we will be almost done.

15 THE COURT: Please.

16 MR. SHELLENBERGER: Thank you, Your Honor.

17 (Whereupon, the witness left the witness
18 stand.)

19 (Whereupon, the documents were published to
20 the jury via the overhead projector.)

21 BY MR. SHELLENBERGER:

1 Q Doctor, I believe you told us that some of
2 the side effects were that during the course of
3 chemotherapy there is some vomiting.

4 I am showing you an office visit which you
5 received a copy of in January of 1981 concerning Mr.
6 Vandergucht.

7 In fact, did Mr. Vandergucht have episodes
8 of vomiting during this period of time as a result of
9 the chemotherapy?

10 A He did. As you can see in this letter from
11 Dr. Heyman, he had two or three episodes of vomiting,
12 and he was rather nauseated for the remainder of the
13 week after the chemotherapy dose.

14 Q In fact, did that discomfort -- I believe
15 you also told us the discomfort and the side effects
16 led to Mr. Vandergucht actually ceasing the
17 chemotherapy; is that correct, Doctor?

18 A Yes. According to Dr. Heyman's note, he did
19 refuse any further chemotherapy because of the side
20 effects.

21 Q Okay. Doctor, Mr. Vandergucht underwent a

1 number of operations.

2 After those operations and during the course
3 of his treatment, was he, in fact, under some various
4 pain medications?

5 A He was. From time to time he had codeine,
6 Demerol with Vistaril. He also was given Valium by
7 Dr. Foard, I would presume, either for anxiety or for
8 some sleep.

9 Q Doctor, I am showing you the original
10 admission to Carroll County when you were going to do
11 I believe it says the incarcerated umbilical hernia
12 operation in October of 1980 and his chief complaint
13 was pain off and on for several weeks; is that
14 correct, sir?

15 A That is correct.

16 Q Doctor, I am going to show you your
17 discharge summary after that operation dated 10-10,
18 1980, if you could read the last line for us.

19 A Patient was given Tylenol Number 3, one
20 every three hours if necessary for pain.

21 That is half a grain of codeine with

1 Tylenol.

2 Q That is as a result of the original
3 operation back in 1980, isn't it, Doctor?

4 A That is correct.

5 Q As time progressed, in September of 1981,
6 what is this drug that Mr. Vandergucht was given?

7 A Demerol is a narcotic given 75 milligrams
8 with Vistaril which is an additional drug which
9 proteinate the Demerol and also is an antinausea
10 factor.

11 Q Would this have been for pain, Doctor?

12 A Yes.

13 Q In addition to that, Doctor, September 8th
14 of 1981, what drug are we looking at here?

15 A This is morphine sulfate, again, for pain, 5
16 to 10 milligrams.

17 Q Again, Doctor, September of '81, what drug
18 are we looking at here?

19 A Again, codeine which is for pain, 30 to 60
20 milligrams by mouth.

21 Q In addition, you mentioned that there was

1 some Valium that had been given; is that correct,
2 Doctor?

3 A That is correct.

4 Q And what was the findings just prior to
5 that?

6 What was the observations made of Mr.
7 Vandergucht's condition? And that would have been in
8 October of '81.

9 A This is not my writing.

10 Q Okay. I am sorry.

11 A This, I think, is Dr. Foard's writing.

12 Q Dr. Foard's?

13 A It says he would rather be in bed than up.
14 Color appears pale. Some nausea, very weak, anemic.

15 Q What is anemia, Doctor?

16 A He had a low red blood cell count probably
17 due to the effects of the malignant mesothelioma and
18 the chemotherapy.

19 Q Now, Doctor, in October of '81 you also
20 performed two of the paracenteses on Mr. Vandergucht
21 at Carroll County and on the admission note does it

1 indicate that, in fact, he was on pain medications and
2 Valium, if you can read that?

3 A I am having a little hard time reading
4 that. It looks like Valium here. Fluid pill, pain
5 pill.

6 Q And then the word Valium?

7 A And then the word Valium.

8 Q Okay.

9 A Again, that is not my writing.

10 Q Again, on October 18th of '81 around the
11 time when you performed the other paracentesis, does
12 that indicate Demerol was prescribed?

13 A That is correct.

14 Q Finally, when he was discharged in October
15 prior to going home and now we are up to October of
16 '81, which is a year after the hernia operation, what
17 medication was he sent home with at that time?

18 A He was sent home for a heart medication,
19 Lanoxin, Lasix, which is a fluid pill to help the
20 acidic fluid, vitamin with iron, and Tylenol with half
21 a grain of codeine every three hours for pain.

1 Q You mentioned Lanoxin which is a heart
2 medication.

3 Was there anything wrong with Mr.
4 Vandergucht's heart at that point?

5 A I don't know. That must have been described
6 either by Dr. -- I would think Dr. Foard, and if it
7 was, it was not, to my knowledge, described earlier in
8 his treatment. It must have come sometime later.

9 Q Could that have been a result of the fluid
10 buildup that was putting pressure on --

11 A I would defer to Dr. Foard for that.

12 Q Doctor, you referred to something called a
13 paracentesis. If you could step over to the jury.

14 That is when you drained the fluid; is that
15 correct?

16 A That is correct.

17 Q You actually did that to Mr. Vandergucht on
18 about six occasions?

19 A That is true.

20 Q Can you show me on my body where you would
21 do that and describe the type of instrument you would

1 use?

2 A What you have to do is place the patient on
3 their back on the table and it is very important to
4 feel around the abdomen because you don't want to put
5 the instrument through the abdominal wall through
6 something solid, so you feel for a soft area, and you
7 put the Novocain in the skin, and the incision would
8 be about the size diameter of this light.

9 Having done that, you take the hallow tube
10 into which you slide a spear, a pointy spear, and then
11 you take and you have the patient make their abdomen
12 rigid, tight, hold their breath and puncture into the
13 abdominal cavity and you remove the spear from the
14 inside of the tube and hook it to a catheter, take it
15 down to a large body and under gravity flow, drain the
16 fluid out of the abdominal cavity.

17 When you are finished, you remove the trocar
18 and put several sutures into the small incision so the
19 fluid doesn't continue to drain out.

20 Q Is Mr. Vandergucht awake during this
21 process?

1 A Yes, he is.

2 Q Doctor, you indicated that fluid comes out.

3 What is this fluid? What does it look

4 like?

5 A It has a pale and we call it a straw-colored
6 appearance. It has the consistency of water.

7 Sometimes a clear yellow, sometimes slightly cloudy.

8 Q Doctor, I am just going to show you a
9 general bottle here.

10 Is this bottle about a liter?

11 A Approximately one liter.

12 Q And the fluid that is in here, does this
13 appear to be the same type of color that would come
14 out?

15 A Very much, very similar.

16 Q Now, the fluid that you drained from Mr.
17 Vandergucht on each occasion, if we could just kind of
18 track that.

19 On your first operation -- excuse me, the
20 second one when you performed the laparotomy, did you,
21 in fact, remove fluid from Mr. Vandergucht?

1 A Yes. There was a large amount of this
2 fluid, acidic fluid in the abdominal cavity,
3 approximately 7,000 ccs, which would be seven of these
4 bottles.

5 Q If you could read the next section, Doctor,
6 is that where you describe the -- what you were seeing
7 when you actually looked into Mr. Vandergucht's
8 abdominal cavity?

9 A Yes. There was evidence of widespread
10 peritoneal metastases with pearly white nodules
11 varying in size from one millimeter to several
12 millimeters in diameter throughout the entire
13 abdominal cavity.

14 Q Doctor, if I could maybe write a couple of
15 these down.

16 I think you said on this one there were how
17 many ccs?

18 A 7,000.

19 Q How many ccs equal a liter?

20 A One thousand ccs to a liter.

21 Q Okay. So in this particular case, then,

1 there would have been --

2 A Seven liters.

3 Q -- seven liters. Okay.

4 Now, I believe you also testified that in
5 May of 1981 you removed additional fluid from Mr.
6 Vandergucht; is that correct?

7 A That is correct.

8 Q I am showing you Carroll County General
9 Hospital emergency services note dated 5-1-81, and
10 does that indicate how many ccs of fluid you removed
11 from Mr. Vandergucht on that date?

12 A 7,000 ccs.

13 Q Another 7,000 and, therefore, that would be
14 another seven liters; is that correct, Doctor?

15 A That is correct.

16 Q Now, in addition, I believe you told us that
17 in June you removed fluid from Mr. Vandergucht, June
18 16th of '81; is that correct?

19 A That is correct.

20 Q Approximately how many liters did you remove
21 at that time?

1 A Ten to 12 liters.

2 Q Somewhere between 10 and 12 liters?

3 A Yes.

4 Q We will just call it 10 to make it easy.

5 In addition, in July, I believe you
6 indicated, you removed fluid.

7 Does that indicate how much you removed on
8 that occasion?

9 A In July it was 9,000 liters.

10 Q 9,000 ccs or nine liters?

11 A Nine liters. It says nine plus up there.

12 Q Nine plus.

13 A Yes.

14 Q Somebody else has written nine and a half
15 quarts. About the same?

16 A Close.

17 Q I believe you told us that one time you were
18 off and Dr. Cho removed some fluid from Mr.
19 Vandergucht; is that correct?

20 A That is correct.

21 Q Does this note indicate how much fluid was

1 removed at that time? Down the bottom.

2 A Fourteen quarts.

3 Q Fourteen quarts?

4 A Fourteen quarts or approximately 13, 14
5 liters.

6 Q Thirteen or 14 liters?

7 A Yes.

8 Q Again in July, more fluid removed?

9 A Approximately 12 liters.

10 Q Twelve liters.

11 Then, again, in October you performed two
12 more of these and did you indicate on this operative
13 note discharge summary approximately how much fluid
14 you removed from Mr. Vandergucht on October 18th and
15 the 22nd?

16 A Approximately 10 liters of fluid with the
17 two taps. There were two separate paracenteses.

18 Q Okay.

19 A He had some fluid removed at Hopkins, also,
20 that you don't show there.

21 Q Okay. Doctor, the amount of fluid that you

1 removed from Mr. Vandergucht, does that add up to
2 approximately 69 liters?

3 A If your math is correct, right.

4 Q It could be wrong, believe me.

5 So you would have removed approximately 69
6 of these bottles of fluid out of Mr. Vandergucht's
7 body; is that correct?

8 A Myself and Dr. Cho over that period of
9 time.

10 Q Now, in addition to that, Doctor, there was
11 also an occasion where you told us earlier he went to
12 Hopkins; is that correct?

13 A That is correct.

14 Q And during the performance of -- I believe
15 the shunt procedure that was put in place, and that
16 was in September of '81 when Dr. Hoover worked on Mr.
17 Vandergucht, did that operative note indicate the
18 change in the weight, and I think you told us a little
19 bit about it, but does this say the patient diuresed,
20 which is the fluid came out, a large amount of fluid,
21 pre-op weight 198 and a half pounds, discharged

1 post-op 186; is that correct, Doctor?

2 A That is correct.

3 Q That would have been approximately 12 and a
4 half pounds of fluid that would have come off of him
5 at that time?

6 A That is correct.

7 Q That is in addition to the 69 bottles that
8 you and Dr. Cho removed; is that right?

9 A That is true.

10 Q Now, what kind of effect was all of this
11 fluid having on Mr. Vandergucht's body and ability to
12 function?

13 A Well, as I said before, difficulty in
14 breathing, loss of appetite, difficulty in walking,
15 having to sleep sitting up so he can breathe, loss of
16 appetite, loss of weight, loss of solid body mass
17 because he is not eating.

18 Even though his weight stayed reasonably
19 consistent over this time, most of it or a lot of it
20 was accumulation of fluid in the abdominal cavity.

21 Q Doctor, you can return to the witness

1 stand.

2 MR. SHELLENBERGER: If I can have assistance
3 with the screen.

4 (Whereupon, the witness resumed the witness
5 stand.)

6 (Whereupon, the documents were removed from
7 the screen of the overhead projector.)

8 MR. SHELLENBERGER: Those would be all of
9 the questions I have, Your Honor.

10 THE COURT: Thank you, Mr. Shellenberger.
11 Mr. McGowan, cross-examine, sir?

12 MR. MCGOWAN: Yes.

13 Good morning, Your Honor.

14 Good morning, ladies and gentlemen.

15 THE JURY: Good morning.

16 CROSS-EXAMINATION

17 BY MR. MCGOWAN:

18 Q Doctor, good morning. My name is Tim
19 McGowan.

20 Doctor, you met Mr. Vandergucht back in
21 1980.

1 Am I correct that you really don't have an
2 independent recollection of what exactly went on at
3 that time?

4 A I don't understand your question.

5 Q Throughout the course of your testimony I
6 occasionally see you looking down and reading
7 something.

8 What are you reading down there?

9 A I have a summary of events as they occurred
10 over a period of time 16 years ago.

11 Q All right. So it is really difficult for
12 you to remember without your notes what really
13 happened; am I correct?

14 A No. It is not difficult for me to
15 remember. They are just there to reassure should my
16 memory slip.

17 Q When were you notified that you may have to
18 testify in this case?

19 A I don't remember the exact date. I think it
20 was sometime in early March.

21 Q All right. March of --

1 A '96.

2 Q '96. Prior to that time had you thought
3 about Mr. Vandergucht back in, let's say, 1985?

4 A No.

5 Q Did you think about him in 1990?

6 A No.

7 Q All right. So what happened is at the time
8 of all of these procedures, there were notes taken, am
9 I correct, back in 1980, '81?

10 A That is correct.

11 Q You used that to refresh your recollection?

12 A That is true.

13 Q All right. That is the point I was trying
14 to make.

15 Doctor, how many patients do you see per
16 day?

17 A Well --

18 Q On average, Doctor.

19 A If it is an office day, I can see as many as
20 40 or 50. If it is an operating day, I might only see
21 four or five.

1 Q All right. So during the course of a year,
2 you may see thousands of patients?

3 A Yes.

4 Q So since 1981 when you last saw Mr.
5 Vandergucht, you have seen 10,000 patients possibly?

6 A Possibly.

7 Q And you don't remember everything that
8 happened with each patient, do you?

9 A I do not.

10 Q Doctor, how many patients have you seen
11 during the course of your career who have had
12 peritoneal mesothelioma?

13 A One.

14 Q And that was Mr. Vandergucht?

15 A That is correct.

16 Q Now, you were back in medical school back in
17 the late '60s?

18 A '62 through '66.

19 Q '66. Did you have any discussions back in
20 medical school about peritoneal mesothelioma?

21 A I have no recollection of that.

1 Q Back in the '70s did you know that
2 mesothelioma is most likely caused by exposure to
3 asbestos?

4 A I did not.

5 Q Did you know in the decade of the 1980s that
6 mesothelioma is most likely or more likely than not
7 caused by exposure to asbestos?

8 A I have no recollection of that at all.

9 Q During the course -- I guess of your
10 practice, do you receive medical publications?

11 A Yes.

12 Q And you try to keep up with what is going on
13 in medicine?

14 A I do.

15 Q And throughout those 10 years in the '80s
16 you saw something to do with asbestos and
17 mesothelioma?

18 A Not until the -- I would say about three
19 years ago, two or three years ago.

20 Q 1993?

21 A '93.

1 Q You learned of the association of asbestos
2 and mesothelioma?

3 A Yes.

4 Q All right. Now, Doctor, did you sit down
5 and prepare your testimony with the attorneys before
6 you took the stand today?

7 A Yes.

8 Q Was that today or last few weeks?

9 A Both.

10 Q Both, all right. Are you aware that in this
11 particular case the plaintiffs are going to be asking
12 for substantial amount of money for pain and suffering
13 that Mr. Vandergucht experienced?

14 A I am not aware of that.

15 Q Doctor, one of the lawyers told the jury
16 that people with mesothelioma are in excruciating,
17 unrelenting pain.

18 Is that what happened to Mr. Vandergucht?

19 A Well, not having been at Mr. Vandergucht's
20 side 24 hours a day over a one and a half year period,
21 I can't testify whether it was ongoing, but I am sure

1 there were times when he was in extreme discomfort and
2 pain.

3 Q And do you know for how long, by any
4 chance?

5 A Possibly for days.

6 Q All right. Doctor, am I right that you were
7 not the only health care provider to come in contact
8 with Mr. Vandergucht; am I correct?

9 A That is correct.

10 Q There were other doctors?

11 A Yes.

12 Q There were other nurses; am I right?

13 A There were nurses.

14 Q Now, in this particular case even back in
15 1980, you knew that when you opened him up the second
16 time that he had basically a terminal cancer; am I
17 correct?

18 A That is correct.

19 Q And mesothelioma is a terminal cancer,
20 correct?

21 A Correct.

1 Q And there are all forms of cancer -- there
2 are all types of cancers that are terminal, am I
3 correct, that have nothing to do with asbestos and
4 mesothelioma; am I right?

5 A Correct.

6 Q When someone comes into the hospital and you
7 or other doctors make a decision that this cancer is
8 terminal, you then switch your goals, don't you? Let
9 me back up.

10 When someone comes in, a patient, you have
11 goals for that particular patient, don't you?

12 A Yes.

13 Q All right. Some people have cancer and you
14 can resect it or take it out; is that correct?

15 A That is correct.

16 Q And your goal is to get that person healthy
17 again, isn't it?

18 A That is correct.

19 Q Someone who comes in with a terminal cancer,
20 you know you can't resect it, you as a surgeon,
21 correct?

1 A After the fact sometimes.

2 Q And am I correct the goal, then, is to make
3 that person as comfortable as possible until they,
4 unfortunately, pass away? .

5 A That is correct.

6 Q So that is why you give them pain medication
7 so they don't feel pain; is that right?

8 A That is correct.

9 Q Now, let's go back to your records in this
10 case and let's go back to, I guess, December 10th,
11 1980.

12 Do you have those records there? We talked
13 a lot about the abdominal girth. That means buildup,
14 doesn't it, abdominal girth, in medical terms?

15 A Yes.

16 Q Was he in pain back in December 1980 when he
17 started to experience this abdominal girth?

18 A Well, pain is a very subjective thing. Pain
19 is one thing to one person and something else to
20 another.

21 He was very uncomfortable. He had

1 difficulty breathing. He could not lie down, and, as
2 I said, I am sure there were times because of the
3 girth increase that he was in physical discomfort.

4 MR. MCGOWAN: Your Honor, may I approach?

5 THE COURT: Please.

6 BY MR. MCGOWAN:

7 Q Doctor, did you review all of the medical
8 records before you testified today?

9 A I believe so.

10 Q I didn't have these blown up. I am sorry.
11 Doctor, and the jury, I am sorry.

12 This is the 1980 visit, December 10th,
13 1980.

14 Did you see that one?

15 A This is Dr. Heyman's report.

16 Q Now, you used the term earlier to the jury,
17 you said an oncologist.

18 That is just a fancy way of saying a doctor
19 who specializes in cancer treatment; isn't that
20 correct?

21 A That is correct.

1 Q Does it indicate whether or not he had
2 pain?

3 A At the time Dr. Heyman examined him, he has
4 a note here and he says he has no abdominal pain.

5 Q That is what a mesothelioma would be in the
6 abdomen, wouldn't it?

7 A That is correct.

8 Q That is back in December of 1980.

9 Now, you had mentioned something to the jury
10 and I wrote it down, you were treating him and you
11 said February 1981, and it was a lot of fluid buildup
12 back then, wasn't there?

13 A The patient had just been tapped of all of
14 the fluid three days or four days before this letter
15 was dictated by Dr. Heyman.

16 Q Would you read Dr. Heyman's February 18th,
17 1981, the first paragraph for the jury?

18 A He has a feeling of tightness, but no
19 pain. He has noted a little knot in the umbilical
20 area.

21 He has noted no shortness of breath or pedal

1 edema. He thinks his appetite has decreased, but he
2 is not aware of any weight gain or loss.

3 Q Back in that particular time even though he
4 had some growth, he wasn't experiencing any pain or
5 shortness of breath; isn't that right?

6 A Yes. But that can be related to the timing
7 of the paracentesis, also.

8 Q Did you review all of the other medical
9 records, Doctor, of March of 1981?

10 A I did.

11 Q Did you note any pain notations in the
12 records?

13 A I don't recall specifically.

14 Q Did you notice anything for April of 1981?

15 A Well, there may not be a comment in the
16 medical record regarding pain, but the patient was in
17 pain because he was given not only by myself but by
18 Dr. Hoover of Hopkins and Dr. Cho and Dr. Heyman
19 Demerol, codeine, Vistaril and Valium.

20 Q When was that, Doctor?

21 A Those drugs are not given out

1 indiscriminately.

2 Q When was that, Doctor?

3 A Many intervals during the course.

4 Q March of 1981, would you read the last
5 paragraph to the jury.

6 A This is in March of 1981. Despite the
7 absence of treatment, Mr. Vandergucht's disease seems
8 to be indolent at that point.

9 Q Let me stop you right there. I didn't know
10 what that word meant when I read that, but I looked it
11 up in the dictionary and it indicates without pain.

12 Is that your understanding of what indolent
13 means?

14 A Yes.

15 Q So in March of '81 he was apparently without
16 pain according to this doctor?

17 A Yes.

18 Q He wasn't feeling any pain?

19 A Yes.

20 Q All right. Doctor, Mr. Vandergucht had a
21 reaction to the chemotherapy, didn't he?

1 A Yes.

2 Q That made him sick and nauseous and stuff
3 and things like that?

4 A Yes.

5 Q How long did that last?

6 A I would have to refer to Dr. Heyman's notes
7 because he was the oncologist giving the medication,
8 but if I recall, it was in the period of time after
9 the intravenous chemotherapy.

10 Q Doctor, that is not too unusual for people
11 who are getting chemotherapy to get sick, is it?

12 A That is true. They do get sick after
13 chemotherapy.

14 Q In fact, this case Mr. Vandergucht said
15 basically I have had enough of chemotherapy, take me
16 off it, didn't he?

17 A That is right.

18 Q He wanted no more of it.

19 Now, did you look at your medical records
20 for April 23rd, 1981? I want to move up in time.

21 A Specifically to what?

1 Q I will hand it to you. You talked about his
2 shortness of breath.

3 Would you read the first paragraph to the
4 jury what the doctor said back in April of '81.

5 A This is a note by Dr. Heyman. He thinks
6 that the abdominal girth may have increased somewhat,
7 and he thinks the umbilical nodule is larger. He
8 notices shortness of breath only with vigorous
9 exertion.

10 Do you want me to read the rest of this
11 highlighted?

12 Q If you would, please.

13 A He has invaded transient back discomfort
14 when sitting in one position for any prolonged period
15 of time.

16 He has no significant abdominal discomfort,
17 nausea, vomiting, melena, or hematochezia.

18 Q That is fine, Doctor. What does that mean?
19 What do those two terms mean you just read
20 to the jury?

21 A Which terms?

1 Q The melena?

2 A Blood in the stool.

3 Q And the last word, hematochezia?

4 A That is a blood in the stool, also.

5 Q So back in April 23rd of 1981 he had no
6 significant abdominal pain; is that what this record
7 indicates?

8 A That is what Dr. Heyman's recollection is,
9 yes.

10 Q Do you have the August 3rd, 1981, medical
11 records in front of you there, Doctor?

12 Did you review those?

13 A Are you talking about Dr. Heyman's letter?

14 Q No, the Johns Hopkins Hospital. You talked
15 about it for a little bit in front of the jury.

16 Were you shown those records?

17 A What date again?

18 Q August 3rd, 1981. That is when, I believe,
19 they took 12 pounds of fluid from him.

20 A I don't have that.

21 Q All right.

1 MR. MCGOWAN: Again, Your Honor, just to
2 expedite things.

3 For the record, Your Honor, I am handing him
4 the Johns Hopkins August 3rd, 1981 summary.

5 (Whereupon, document tendered to witness.)

6 BY MR. MCGOWAN:

7 Q What does it indicate here about the loss of
8 20 pounds, would you indicate to the jury?

9 A He has lost approximately 20 pounds over the
10 last year, other than the ascites, the patient feels
11 quite good, and he is tapped.

12 Q So the ascites is that fluid?

13 A That is right.

14 Q Other than that, he was doing okay. Feeling
15 quite well. Is that what it says?

16 A That is what he says.

17 Q That is what the doctors taking care of him
18 thought at the time?

19 A That is what it says.

20 Q The word distension, Doctor, that means
21 sticking out, isn't it?

1 Someone's stomach is distended?

2 A Generalized protrusion or extension of the
3 abdominal wall.

4 Q The reason Mr. Vandergucht kept retaining
5 fluid, even though you drain it, that is the body's
6 way of trying to fight something, keeps building up
7 fluid; is that correct?

8 A That is not correct.

9 Q Tell the jury why fluid keeps building up
10 then.

11 A As I said before, the fluid accumulates
12 because the tissues in the body which normally drain
13 their fluids through the lymphatic system or through
14 the liver can't do that anymore because it is plugged
15 full of tumor and you get a back pressure into the
16 abdominal organs and this back pressure causes an
17 oozing of tissue out into the abdominal cavity.

18 Q In this case when his stomach filled up,
19 sometimes he would feel bad, sometimes he wouldn't; is
20 that correct?

21 A Every time he was seen in the emergency room

1 for a paracentesis, he was feeling bad.

2 Q All right. Well, let's go back to September
3 1981, and I believe two months before he died.

4 Did you review this record with the
5 attorneys this morning?

6 Am I correct it says abdomen grossly
7 distended? Is that what that says?

8 A This is registered nurse's note on 9-7-81.
9 It says abdomen grossly distended, but does not
10 complain of pain.

11 Q All right. So this note indicates his
12 stomach was large, wasn't it?

13 A That is true.

14 Q That is probably because of the ascites?

15 A Correct.

16 Q Nonetheless, it was not causing him pain at
17 that time?

18 A According to her note.

19 Q Then they drained the fluid afterwards,
20 didn't they, and that is when they got the 12 pounds
21 of fluid; isn't that correct?

1 A I don't know.

2 MR. MCGOWAN: One moment, Your Honor. I
3 believe that may be all.

4 (Whereupon, pause.)

5 MR. MCGOWAN: I believe that is it. Thank
6 you, Doctor.

7 THE COURT: All right.

8 Mr. Williams, your client is not in this
9 case.

10 Do you have any questions?

11 MR. WILLIAMS: No, Your Honor.

12 THE COURT: Very well.

13 Ms. Tostanoski.

14 MS. TOSTANOSKI: Yes. Thank you, Your
15 Honor. Just a few.

16 CROSS-EXAMINATION

17 BY MS. TOSTANOSKI:

18 Q Good morning, Dr. Steers. My name is Gerry
19 Tostanoski.

20 A Good morning.

21 Q You told the jury about the initial surgery

1 that you did for the hernia and despite the fact that
2 you didn't think it was a cancer, you went ahead and
3 sent it for some pathology tests?

4 A Yes.

5 Q And --

6 A I didn't say I didn't think it was a cancer.
7 I wasn't sure at that time what it was.

8 Q Okay. Is the pathologist at Carroll County
9 Hospital, would that be Dr. Richard Jones?

10 A Yes.

11 Q Do you have a copy in front of you, and it
12 is part of that Vandergucht 34? It is Dr. Jones'
13 10-3-1980 report, about a third of the way down here.

14 A Yes.

15 MS. TOSTANOSKI: Your Honor, do you mind if
16 I look over his shoulder for a second?

17 THE COURT: Please.

18 BY MS. TOSTANOSKI:

19 Q Am I correct that Dr. Jones is the first
20 person who cited this as a potential mesothelioma?

21 A Yes.

1 Q And he makes certain requests of you in this
2 report.

3 He wants additional materials, I guess, to
4 confirm whether it is an adenocarcinoma or a meso?

5 A Yes.

6 Q All right. Here he asked you to give him a
7 call personally and let him know if anything else is
8 going to be done.

9 Did you have any conversations with Dr.
10 Jones?

11 A I don't recall specifically, but I talk
12 consistently with pathologists when there is some
13 difficulty with a diagnosis, so I am sure we talked.

14 Q If this report says give me a call, your
15 best recollection is that you probably did that?

16 A Yes.

17 Q Okay. Do you know whether Dr. Jones would
18 have been present at the mini laparotomy that you
19 talked about?

20 He indicates if more fluid or material is
21 going to be obtained, he would like to be present.

1 Do you know if he was actually present at
2 the next surgery?

3 A I doubt it very much, but I don't recall.

4 Q Did you ask -- since you had never had a
5 patient with mesothelioma before, did you ask Dr.
6 Jones what that was?

7 A What what was?

8 Q What mesothelioma was.

9 A I don't specifically recall that. He gave
10 me the diagnosis of a metastatic adenocarcinoma. And
11 in his footnote it says, on the off chance that this
12 represents mesothelioma, I would wait until he
13 confirmed that or counsel with an additional
14 pathologist.

15 Q Do you have any recollection of discussing a
16 mesothelioma and what it was with Dr. Jones?

17 A I don't have any specific recollection. You
18 are asking me to go back 16 years.

19 Q I understand.

20 A I don't recall. But it has been my practice
21 to talk with my cytology person or my pathologist when

1 there is a difficulty with the diagnosis.

2 Q Okay. Dr. Heyman in one of his reports to
3 you also goes through this lengthy discussion about
4 different stains that were needed to determine whether
5 or not Mr. Vandergucht had a mesothelioma, do you
6 recall that report?

7 A I do.

8 Q Okay. Did you ever have any discussions
9 with Dr. Heyman regarding what was he talking about,
10 what were all of these stains and what was
11 mesothelioma?

12 A I don't recall.

13 Q You just don't remember one way or another?

14 A I don't remember.

15 Q Okay. In your deposition you indicated that
16 it was your belief that you had told Mr. Vandergucht
17 about his diagnosis of mesothelioma.

18 A Yes.

19 Q But, and I guess like you just told me a few
20 minutes ago, because it was 16 years ago, you don't
21 remember any details about that conversation?

1 A I do not recall, no.

2 MS. TOSTANOSKI: Okay. Thanks a lot. That
3 is all I have, Doctor.

4 THE COURT: Thank you, Ms. Tostanoski.

5 Mr. Taylor.

6 MR. TAYLOR: Thank you, Your Honor. I have
7 no questions.

8 THE COURT: All right.

9 Mr. Shellenberger, do you have any redirect,
10 sir?

11 MR. SHELLENBERGER: Just a brief few.

12 REDIRECT EXAMINATION

13 BY MR. SHELLENBERGER:

14 Q Dr. Steers, sitting here today, do you have
15 independent recollection, without relying upon your
16 notes, of Mr. Vandergucht and what he looked like when
17 you first met him in October of 1980?

18 A He appeared to be a very strong, very
19 healthy white male.

20 To look at him, if he came before us now,
21 you would be hard pressed to feel that he had anything

1 medical.

2 Q How about a year later when you did those
3 final two paracenteses on him in October of '81, what
4 did he look like then?

5 A He looked very chronically ill.

6 Q Doctor, you were asked about whether --

7 MR. SHELLENBERGER: Permission to approach.

8 THE COURT: Please.

9 BY MR. SHELLENBERGER:

10 Q You were asked whether Dr. Jones was present
11 during the exploratory laparotomy. I am going to show
12 you the operative note on that.

13 Does this operative note have a listing of
14 the people who were present during the operation?

15 A Yes.

16 Q And is Dr. Jones' name on there?

17 A No.

18 Q Doctor, in addition to that, you were asked
19 some questions about Meyer Heyman's office visit on
20 December 10 of 1980 and the fact that he complained of
21 no abdominal pain, but was Mr. Vandergucht's mental

1 condition also discussed at that time?

2 And what did Dr. Heyman note about his
3 mental condition?

4 A Dr. Heyman said that -- I explained to him
5 that the natural history of this disease was for this
6 tumor to progress and for him to develop
7 intra-abdominal fluid or ascites.

8 Although he is quite despondent as would be
9 expected, both he and his wife seem to understand the
10 situation and are agreeable to his undergoing
11 chemotherapy.

12 Q So he was despondent at that time, right,
13 Doctor?

14 A According to Dr. Heyman's note.

15 MR. SHELLENBERGER: I have nothing further,
16 Your Honor.

17 THE COURT: Mr. McGowan, any recross.

18 RECROSS-EXAMINATION

19 BY MR. MCGOWAN:

20 Q Just on the December 4th, 1980, consultation
21 with Dr. Heyman, he asked him about asbestos exposure,

1 didn't he?

2 A I saw that, yes.

3 MR. MCGOWAN: Thank you.

4 THE COURT: Thank you, Mr. McGowan.

5 Ms. Tostanoski, any recross?

6 MS. TOSTANOSKI: No, thank you, Your Honor.

7 THE COURT: All right. Dr. Steers, thank
8 you very much. You may be excused.

9 (Whereupon, witness excused.)

10 THE COURT: Members of the jury, we will
11 take our midmorning recess at this time. Please don't
12 discuss the matter among yourselves.

13 We will return in a few moments and continue
14 with the next witness.

15 (Whereupon, jury dismissed -- 11:00 a.m.)

16 THE COURT: All right. Counsel, we will
17 take a brief recess.

18 (Whereupon, a brief recess was taken --
19 11:00 a.m.)

20 (Whereupon, after recess -- 11:36 a.m.)

21 (Whereupon, in open court.)

1 THE COURT: Ready for the jury, counsel?

2 MR. MCGOWAN: No, Your Honor.

3 MR. SMITH: Couple of quick points, Your
4 Honor.

5 When the jury comes in, we intend to read a
6 limited portion of a deposition, Mr. John McAllister
7 and Ms. Tostanoski has designated, I think, three
8 questions regarding government specifications Your
9 Honor has excluded in the past, and I guess Ms.
10 Tostanoski would like to proffer them.

11 THE COURT: Ms. Tostanoski.

12 MS. TOSTANOSKI: Your Honor, you did permit
13 them in the last group. I think it was a witness for
14 Foster Wheeler you permitted me to ask questions of
15 that nature.

16 I am not alleging there is a government
17 contractor defense in the Vandergucht case. I do
18 think the government specifications is relevant to the
19 state of the art and state of the knowledge.

20 THE COURT: I am going to sustain the
21 objection to that. Would you proffer that on the

1 record which --

2 MS. TOSTANOSKI: Your Honor, it is only a
3 couple of questions.

4 What I will do is make copies of those pages
5 of the deposition and have them marked as a Court's
6 exhibit so we don't have to take up the jury's time
7 now.

8 Your Honor, I have objections and you should
9 have copies of my objections to McAllister, and I
10 don't need to argue them, but just to let Your Honor
11 know, they are page 98, 18; 195, line 7, and 195, 16,
12 and I will say objection when we get to that point,
13 but they are all calling for an opinion from a lay
14 witness.

15 THE COURT: All right. I will rule on them
16 when we get to them.

17 Who will be doing the questioning?

18 MR. IGNATOWSKI: Mr. Smith, I am going to do
19 the answers.

20 THE COURT: Mr. Smith, the questions. Mr.
21 Ignatowski the answers.

1 Mr. McGowan, do you have any designations?

2 MR. MCGOWAN: No, Your Honor.

3 THE COURT: Mr. Williams.

4 MR. WILLIAMS: No, Your Honor.

5 THE COURT: Ms. Tostanoski will do whatever
6 she has in defense.

7 MS. TOSTANOSKI: Yes, Your Honor.

8 MR. IGNATOWSKI: Your Honor, one other
9 thing, I am going to tell the jury there is a
10 stipulation between counsel for Owens-Illinois and
11 Owens-Corning and the plaintiff in the Vandergucht
12 case with respect to the funeral expenses and that
13 they are fair and reasonable.

14 THE COURT: All right.

15 MR. MCGOWAN: Your Honor, I am sorry, one
16 other objection.

17 THE COURT: Mr. McGowan.

18 MR. MCGOWAN: Your Honor, I believe this
19 morning that the plaintiffs intend to read the
20 deposition of John Thomas by way of deposition.

21 Counsel was kind enough to tell me at the

1 break that they also intend to publish to the jury
2 certain documents in conjunction with that reading.

3 I have no objection to some of the
4 documents, but I have objection to four of them, Your
5 Honor, and three specifically. O-I-OCF-44,
6 O-I-OCF-27, and OCF-59.

7 Your Honor these are what is known as
8 Saranac Lake documents which are from the 1940s
9 through 1952.

10 Throughout the deposition Mr. Thomas is
11 asked has he ever received them, he says no. He is
12 asked does he ever remember reading them back then and
13 he says no.

14 Basically all of the questions asked are
15 well, wouldn't you like to have seen this, wouldn't
16 you like to have done this with these things and he
17 says yeah, I guess.

18 The bottom line is that he never received
19 them, he never read them and, therefore, I think it is
20 objectionable and irrelevant what he thinks should
21 have been done and not have been done.

1 Another document from Saranac Labs, February
2 6, 1956, never received this document.

3 For that reason, I would object to it.

4 THE COURT: Mr. Ignatowski or Mr. Smith.

5 MR. SMITH: Thank you, Your Honor.

6 A couple of points. One of the very issues
7 in this case is what Owens-Corning knew and should
8 have known.

9 Mr. Thomas who was the president of the
10 company for many years testified that had he known,
11 had somebody told him about some of these phrases that
12 were read to him out of these documents, it would have
13 raised a red flag that they would have done more, he
14 would have been concerned and that the information was
15 very important to him that he would have used in
16 making certain decisions.

17 THE COURT: Haven't I already ruled on these
18 documents in prior cases?

19 MR. SMITH: That is my second point, Your
20 Honor, I believe you have.

21 I think in the last job Mr. Hoffman gave the

1 jury a compilation of the document referenced in Mr.
2 Thomas' deposition testimony, and we propose to do the
3 same.

4 THE COURT: That is what I thought.

5 MR. MCGOWAN: I don't think they were these
6 documents, Your Honor and I could be wrong and I want
7 my objection on the record.

8 THE COURT: It is on the record.

9 MR. MCGOWAN: I can't recall Mr. Hoffman did
10 that.

11 THE COURT: All right. The objection will
12 be overruled.

13 MR. MCGOWAN: Thank you, Your Honor.

14 THE COURT: You are welcome.

15 MS. TOSTANOSKI: Your Honor, this will just
16 take a minute while the jury is coming in.

17 On May 22nd of this year, I filed written
18 objections to the use of the John Thomas deposition
19 against Owens-Illinois, and I just wanted to bring
20 that to Your Honor's attention.

21 I am sure you received copies of the written

1 paper, and I don't need to add anything to what has
2 been submitted.

3 THE COURT: No. As a matter of fact, I
4 handed to the Clerk this morning those written
5 objections with a note at the bottom of them that
6 after review, I overrule the objections.

7 MS. TOSTANOSKI: Thank you, Your Honor.

8 THE COURT: You are welcome.

9 (Whereupon, jury present -- 11:45 a.m.)

10 THE COURT: Please be seated, ladies and
11 gentlemen.

12 Mr. Smith, please.

13 MR. IGNATOWSKI: Your Honor, the stipulation
14 first.

15 THE COURT: Mr. Ignatowski first.

16 MR. IGNATOWSKI: Good morning, ladies and
17 gentlemen.

18 THE JURY: Good morning.

19 MR. IGNATOWSKI: There is an agreement
20 between and among counsel for Owens-Illinois and
21 Owens-Corning with the plaintiffs that the funeral

1 expenses for Mr. Jean Vandergucht in the amount of
2 \$1,176 are fair and reasonable.

3 Thank you.

4 Thank you, Your Honor.

5 THE COURT: You are welcome.

6 MR. SMITH: Your Honor, one housekeeping
7 matter before the deposition reading.

8 I would like to hand to your Clerk the
9 Owens-Illinois and Owens-Corning exhibits that we
10 presented to the jury last week that Your Honor ruled
11 admissible.

12 I have given a copy of the cover page
13 designating what those are to defense counsel.

14 THE COURT: You may.

15 MR. SMITH: Thank you.

16 At this time, Your Honor, the plaintiffs
17 propose to read limited excerpts of a deposition of an
18 individual named John McAllister, and the date of this
19 deposition is March 30, 1983, taken in the U.S.
20 District Court for the Eastern District of Virginia.

21 It has several case captions, the first of

1 which is in re: All Asbestos Cases.

2 John D. McAllister, after having first been
3 duly sworn was examined and testified as follows:

4 Page 17.

5 READING OF DEPOSITION OF JOHN D. McALLISTER

6 TAKEN ON MARCH 30, 1983

7 (Whereupon, the questions were read by Mr.
8 Smith and Ms. Tostanoski and the answers were read by
9 Mr. Ignatowski.)

10 BY MR. SMITH:

11 Q Mr. McAllister, from your resume -- excuse
12 me.

13 I understand, Mr. McAllister, from your
14 resume that you were employed by Owens-Illinois from
15 1948 to 1952?

16 A That is correct. Let us backtrack just a
17 second. The start of employment with Owens-Illinois
18 was 1947, not 1948.

19 Q Mr. McAllister, when did you first become
20 aware of the disease process asbestosis?

21 A As a possible disease process, I became

1 aware of it when I was working for Owens-Illinois as
2 an outshoot from the known hazards of silicosis
3 resulting from inhalation of crystalline silica
4 particles.

5 Q And when, if at all, did you first become
6 aware of research regarding lung diseases that were
7 done at the Saranac Laboratories in New York?

8 A In my employment at Owens-Illinois, there
9 were periodic staff meetings at which were reported
10 research and development results and findings.

11 One such report involved a brief summary of
12 an ongoing investigation involving potential
13 respiratory hazards resulting from inhaling
14 diatomaceous earth, which was one of the calcium
15 silicate raw materials used in the Berlin Kaylo
16 manufacturing operation.

17 Q What did you do while you were at Owens-
18 Illinois to familiarize yourself with the raw
19 materials used there?

20 A I was hired as a plant chemist to start up
21 the Sayreville plant at some point in the future.

1 As plant chemist, my areas of responsibility
2 were raw materials characteristics and control as they
3 might affect the process and product characteristics.

4 I made fairly extensive literature searches
5 on all raw materials used in the process.

6 Q Could you describe the nature of your
7 initial duties at Owens-Illinois?

8 I know you have touched on that before, but
9 go into a little more detail.

10 A I was hired at Owens-Illinois, as I said, to
11 be a plant chemist at the Sayreville plant when it
12 went into operation.

13 There was a period of about a year and a
14 half in which I served as a research and development
15 engineer mixing small trial batches of Kaylo, calcium
16 silicate using different raw material sources.

17 At the same time in conjunction with those
18 trial batches, the characteristics, the physical and
19 chemical characteristics of the individual raw
20 materials and raw material sources being investigated
21 were made.

1 This included materials such as quick and
2 hydrated lime, various sources of diatomaceous earth,
3 natural diatomaceous earth as opposed to calcine
4 diatomaceous earth, clay, amosite, chrysotile
5 asbestos, various finenesses of silica flour.

6 Q And where were those duties performed that
7 you described?

8 A In the Berlin plant.

9 Q Again, what products were made there at that
10 point in time?

11 A The Berlin plant at that point in time
12 produced a mix line of pipecovering, insulating block,
13 fireproof door core material, and some experimental
14 batches of roof tile.

15 Q Now, which, if any, of those products
16 contained asbestos?

17 A They all contained asbestos.

18 Q And what type of asbestos was that?

19 A It varied from time to time, but typically
20 all of the products contained both chrysotile and
21 amosite asbestos.

1 Q And --

2 A The proportions varied depending on the
3 slurring characteristics.

4 Q What about the insulation block that you
5 described? Did that contain both types?

6 A As I said earlier, all products contained
7 both types of asbestos.

8 Q And would you have any knowledge as to the
9 sources of that asbestos?

10 A The chrysotile asbestos was obtained from
11 most of the United States' Canadian sources then in
12 existence.

13 As I remember them, they were
14 Johns-Manville, National Gypsum, and Ruberoid.

15 The amosite asbestos was purchased from
16 these sources as I remember them. Union Asbestos and
17 Rubber, Turner & Newall, Cape Asbestos, and various
18 asbestos brokers.

19 Q And the name of the insulation block was
20 Kaylo?

21 A Kaylo.

1 Q Can you describe the products by which that
2 insulation block was made at the Berlin plant while
3 you were there?

4 A Typically a water slurry was formed by
5 adding asbestos, either quick or hydrated lime,
6 diatomaceous earth, and silica flour.

7 That water slurry was then pumped by hose
8 into a rectangular pan-type mold of the appropriate
9 width and length and thickness to form a product which
10 varied primarily in thickness from inch and a half
11 thick to as much as three and a half inches thick.

12 Typically the length and width dimensions
13 were 18 and a quarter inches wide by 36 and a half
14 inches long.

15 Q And what happened after that?

16 A That product, that pan, that mold containing
17 the slurry was placed on a car along with other molds
18 of similar fill and the car was pushed along with
19 other cars into an autoclave in which the product was
20 exposed to temperatures in excess of 325 degrees and
21 steam pressures in excess of 125 pounds per square

1 . inch gauge, and the lime and silicious materials were
2 reacted under those conditions to what was deemed to
3 be complete reaction.

4 Typically that time period was five to eight
5 hours at saturated steam pressure.

6 The autoclave was vented. The cars
7 containing the product were transferred from that
8 autoclave to a hot hair drier, the excess water driven
9 off to dry the product out, at which point in time the
10 product was stripped in the mold pan and finished the
11 final dimension in a finishing process involving end
12 trimming and side trimming with band saws and
13 thickness surfacing with a high speed router, after
14 which the finished and fully dimensioned product was
15 packed in cartons for sale.

16 Q Now, what, if any, equipment -- what, if
17 any, dust control equipment did you observe in
18 operation at the Berlin, New Jersey, plant of
19 Owens-Illinois at that time?

20 A On the mixing floor starting out from
21 receipt of raw materials, those men involved in

1 unloading and handling raw materials from railcar or
2 truck to storage warehouse wore pneumocononic
3 preventive respirators.

4 The material on the arresting floor for
5 batch purposes was handled by batch mixers, mixing men
6 who also wore respirators.

7 Q The same type of respirator?

8 A The same type of respirator. In those
9 instances where amosite asbestos was being used and
10 mixed, that amosite asbestos was put through an
11 attrition mill or hammer mill to open up the bundles
12 of fibers.

13 The men who serviced those mills and handled
14 and processed that asbestos wore the same type of
15 respirator.

16 In the finishing operation or as the molded
17 product was trimmed to final dimension, the men
18 operating the saws wore such respirators.

19 Additionally, in the finishing operation at
20 all cutting points, there were air handling dust
21 collecting systems installed, which took the dust kerf

1 loss from such cutting operations to a bag-type
2 collector, dust collector.

3 Q Was this a vacuum-type of dust control?

4 A Yes.

5 Q And you were at -- if I understand your
6 testimony correctly, you were at the Berlin, New
7 Jersey, plant from --

8 A 1947 through the start of the Sayreville
9 plant which, I believe, was late 1948 or early 1949.

10 Q At that point did the nature of your work
11 and duties change at that point?

12 A At what point?

13 Q I am sorry. After the startup of the
14 Sayreville plant.

15 A Yes. Upon startup of the Sayreville plant,
16 I moved from the Berlin operation to the Sayreville
17 operation and my duties changed from that of research
18 and development engineer to that of initially plant
19 chemist.

20 Subsequent to having operated as plant
21 chemist, I also became supervisor of the batching

1 department and the forming or processing departments.

2 Q Now, what products were made at Sayreville
3 while you were there?

4 A Initially roof tile and fireproof door core
5 material and light density block insulation.

6 Later on just prior to the shutdown of the
7 Sayreville plant, pipecovering was also made at
8 Sayreville in limited quantities.

9 Q Did that pipecovering have any particular
10 trade name?

11 A The entire product line, block and pipe, was
12 called Kaylo.

13 Q Now, of the products that were manufactured
14 there, which, if any, of those products contained
15 asbestos?

16 A They all did.

17 Q What type of asbestos did they contain?

18 A The same types of asbestos as reported for
19 the Berlin plant. Mixtures of chrysotile and
20 amosite.

21 Q And would the sources of that chrysotile and

1 amosite be the same as you have already testified to?

2 A Subject to market availability conditions,
3 yes.

4 BY MS. TOSTANOSKI:

5 Q Now, could you describe the process by which
6 the pipecovering block was made?

7 Well, first, insofar as the block material
8 that was made there, did that process differ from the
9 process that you had observed at Berlin?

10 A Yes. It involved an intermediate step which
11 took the slurry, the liquid slurry which had been cast
12 and panned and put it through a medium temperature
13 steam atmosphere to give it a hardening effect, after
14 which reaction the product in the mold pans was put
15 into the ware cars and subsequently processed.

16 Essentially the same as that at the Berlin
17 plant.

18 Q Did the Sayreville plant have the same dust
19 control equipment and availability of respirators as
20 you have described with respect to the Berlin plant?

21 A The Sayreville plant, because it was newer

1 and designed specifically for the purpose, had
2 additional dust collecting equipment that was not
3 available at Berlin.

4 Q What was that additional equipment?

5 A That additional equipment involved dust
6 collection systems for the raw materials storage areas
7 and bins, inasmuch as the raw materials at Sayreville
8 in main were received in bulk, rather than in bag
9 form.

10 Respirators were available of the same type
11 at Sayreville as had been made available at Berlin.

12 Q With respect to the process for
13 manufacturing pipecovering which you observed at
14 Sayreville, to what extent did that differ from the
15 process for producing the Kaylo block there, if it
16 did?

17 A Pipecovering molding operations were hand
18 operated, involving hand-held hydraulic hoses to
19 transmit the slurry to the mold forms.

20 And after indurating and drying, the product
21 was stripped from those molds by hand, whereas all of

1 the block products, all of the rectangular products
2 made at Sayreville were handled automatically by
3 equipment rather than by hand operation.

4 Q Was the finishing process for the Kaylo
5 block -- pipecovering the same as the -- similar to
6 the finishing process for the Kaylo block?

7 A Similar in that the molded pieces were ends
8 trimmed and edge trimmed to final dimensions through
9 the same general types of band saw cutting equipment.
10 Different in that the block material lost a
11 great deal more of the product in the finishing
12 operation by virtue of the routing operation that
13 brought the material to the appropriate design
14 thickness from that as molding.

15 Q Was the same dust control equipment in
16 operation with respect to the finishing operation for
17 the pipecovering as you have described with respect to
18 the finishing operation for the block?

19 A Yes.

20 MR. SMITH: Gerry, I would like to read the
21 next question and answer.

1 BY MR. SMITH:

2 Q And were the special kind of respirators
3 that you have mentioned, the pneumoconionic, if I
4 pronounced that correctly, were they also available
5 and used for that -- for the trimming and slitting and
6 the finishing of the pipecovering material?

7 A Yes, that very kind.

8 MR. SMITH: Thank you.

9 BY MS. TOSTANOSKI:

10 Q Now, when, if at all, did you first become
11 aware of any studies concerning a possible
12 relationship between exposure to asbestos and cancer?

13 A About a year prior to Selikoff's
14 publications of his findings on an investigation of
15 the asbestos workers from the New York and Brooklyn
16 shipyard area.

17 Q So that would have been approximately 1963?

18 A I believe that Selikoff published in '64 and
19 this would have been a year prior to that, if my dates
20 for Selikoff's publications is correct.

21 MR. SMITH: We would like to read a couple

1 of more questions.

2 BY MR. SMITH:

3 Q And what was your understanding as to the
4 results of that study that you mentioned?

5 A It is my understanding that Selikoff's paper
6 established the relationship between asbestos in the
7 lung and at that point in time a relatively unknown or
8 little known form of cancer called mesothelioma.

9 This was my first exposure to that term.

10 Q If I understand your answer correctly, you
11 first learned of the disease process asbestosis prior
12 to joining Ehret Magnesia in 1952?

13 MR. SMITH: Then there is an objection.

14 BY MR. SMITH:

15 Q When did you first learn of the disease
16 process asbestosis as distinguished from
17 mesothelioma?

18 A I learned of the potential for asbestosis
19 while I was with Owens-Illinois.

20 MR. SMITH: Page 76.

21 BY MR. SMITH:

1 Q Mr. McAllister, did you ever observe the
2 installation of thermal insulation material?

3 A Many times.

4 Q Where did you observe that?

5 A During the construction of the Sayreville
6 plant for Owens-Illinois, during the modification of
7 the Valley Forge plant of Ehret Magnesia, and in many,
8 many field trips and construction sites since then.

9 Q Have you ever observed the cutting of
10 pipecovering on a jobsite?

11 A Yes.

12 Q Is that part of the normal use of the
13 product?

14 A Yes.

15 MR. SMITH: Page 98.

16 MS. TOSTANOSKI: This is the first question,
17 Your Honor, that I had an objection to.

18 THE COURT: Overruled.

19 BY MR. SMITH:

20 Q Isn't it a fact that your opinion as to the
21 potential hazards of asbestos insofar as it came from

1 the literature, came from trade journals rather than
2 from medical journals?

3 A Yes.

4 Q Isn't it also true that during the period
5 prior to Dr. Selikoff's report, you had never heard of
6 a report called the Fleischer-Drinker report?

7 A That is correct.

8 MR. SMITH: Page 195, please.

9 BY MR. SMITH:

10 Q With respect to the use of the term
11 potential, or the health hazard related to asbestos --

12 A Yes.

13 Q -- are you merely referring to the specific
14 work area or the plant area of which your experiences
15 were involved?

16 MS. TOSTANOSKI: Objection.

17 THE COURT: Overruled.

18 A A potential hazard of asbestosis is not
19 geographically limited.

20 Q Are you talking about finished products?

21 A I am talking about airborne asbestos. It

1 knows no boundaries.

2 If it is, in fact, airborne asbestos, the
3 potential hazard for asbestosis is wherever it is.

4 BY MS. TOSTANOSKI:

5 Q Could you describe briefly bearing in mind
6 the hour of the day the reason why one used asbestos
7 fibers in hydrous calcium silicates?

8 A The insulation products were subject to
9 physical damage breaking, cracking.

10 Asbestos was used as a reinforcing medium in
11 the formulation of calcium silicate, and 85 percent
12 magnesium.

13 And it had superior properties in that
14 regard, in that it resisted face change to extremely
15 high temperatures.

16 Q And based upon your rather extensive
17 experience at least during the 1950s, I take it there
18 was an absence of a satisfactorily commercially
19 feasible alternative to asbestos fibers at least to
20 the high temperature insulation?

21 A That is correct, to the best of my

1 knowledge.

2 Q You were familiar with the raw materials end
3 of the production of high temperature insulation for a
4 considerable amount of time.

5 Is it correct that as among the raw
6 materials asbestos was relatively expensive?

7 A Yes.

8 Q And, in fact, as even appears on Keene
9 Exhibit 14 which is your partially completed report,
10 it is correct, isn't it, that Owens-Illinois had tried
11 without success both to use glass fiber and a gas as a
12 substitute for asbestos fibers?

13 A As well as cotton linter, l-i-n-t-e-r, corn
14 stalks, paper pulp, yes.

15 Q And regrettably, none of them worked
16 satisfactorily as well as asbestos fibers did at that
17 time?

18 A That is correct. And if I may digress
19 briefly, the original formulation for 85 percent
20 magnesia was developed in the late 1800s using silk as
21 a reinforcement fiber.

1 It was not until that silk was replaced with
2 asbestos that 85 percent magnesia was a commercially
3 acceptable product for use at temperatures above 200
4 degrees Fahrenheit.

5 Q In the period roughly 1947 to 1948 you were
6 in quality control, involved in product development of
7 hydrous calcium silicate for Owens-Illinois?

8 A That is correct.

9 Q At the Sayreville plant, the pipe insulation
10 manufacturing which you described was just prior to
11 the plant shutdown in 1952 and was rather limited in
12 time and amount?

13 A Correct.

14 Q In addition to its having certain high
15 temperature properties hydrous calcium silicate, which
16 you indeed, helped to develop, at least at AEM was
17 relatively less friable than some of the other
18 asbestos insulation materials which had been earlier
19 in use, such as 85 percent mag.

20 A Yes.

21 Q Sometime around 1958 you became familiar

1 with a concept called the threshold limit value?

2 A I was familiar with that term as applied to
3 other hazardous chemicals.

4 Q Right.

5 A Prior to 1958.

6 Q And in 1958, and I apologize because you had
7 corrected me earlier, you became familiar with it as
8 applied to asbestos particles?

9 A I became aware that a threshold limit value
10 had been established by someone for asbestos fibers
11 specifically.

12 Q And it was that TLV was then regarded as a
13 yardstick for a safe level of exposure; is that
14 correct?

15 A That is implicit in the term.

16 MS. TOSTANOSKI: Skip to 207.

17 MR. SMITH: It is 208.

18 MS. TOSTANOSKI: 208.

19 BY MS. TOSTANOSKI:

20 Q During the time you were employed by Owens-
21 Illinois, is it correct that you don't have any

1 recollection of any dust-related health problems among
2 the employees?

3 A At the time that I was employed by Owens-
4 Illinois, that is correct.

5 Q During that period of employment, if you
6 could, would you describe or characterize the
7 practices of Owens-Illinois with respect to the health
8 and safety of their workers?

9 A Owens-Illinois is a glass manufacturer who
10 was extremely cognizant of the hazards of silicosis.

11 Their company policy and practices in
12 relation to reducing exposure to silicosis hazards
13 throughout their entire corporate structure was quite
14 good and that applied to the Berlin plant and the
15 Sayreville plant as well as their glass plant.

16 MR. SMITH: That concludes the reading of
17 the deposition, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. IGNATOWSKI: Your Honor, at this time we
20 have about seven or eight Owens-Illinois documents
21 that we want to finish up.

1 Mr. Smith and I will do that.

2 (Whereupon, the documents were published to
3 the jury via the overhead projector.)

4 MR. IGNATOWSKI: Mr. Smith, is this the
5 corrected version?

6 MR. SMITH: It is.

7 MR. IGNATOWSKI: Your Honor, this is the
8 document that we showed the other day that was retyped
9 that Ms. Tostanoski was unsure about.

10 We showed her a copy of the retyped version,
11 and it is now agreed that it is correct.

12 Is that correct, Ms. Tostanoski?

13 MS. TOSTANOSKI: That is correct.

14 MR. IGNATOWSKI: The interim report
15 regarding the biological activity of Kaylo dust.

16 This is our Exhibit OI-26.

17 It is to the Illinois Glass Company, Toledo,
18 Ohio, by the Saranac Laboratory, Saranac Lake, New
19 York, October 30th, 1948, submitted by Dr. Vorwald,
20 director to the Trudeau Foundation.

21 THE COURT: That is admitted in evidence.

1 (Whereupon, Plaintiffs' Exhibit Number OI-26
2 was received into evidence.)

3 PRESENTATION OF DOCUMENTS

4 MR. IGNATOWSKI: The laboratory has
5 recently completed a large amount of work with
6 asbestos, which has been reported to certain other
7 supporting companies, but not as yet published.

8 The following discussion of the problem is
9 drawn largely from that work, and we would request
10 that those comments be considered confidential.

11 It is felt that the following information
12 may be of aid to the Owens-Illinois health department
13 in formulating a safety program which certainly is
14 necessary in view of the results of this Kaylo
15 experiment.

16 Asbestosis, both in man and animals, is a
17 chronic, slowly developing peribronchiolar fibrosis,
18 which in late stages extends from the original site of
19 localization into the surrounding alveoli.

20 Down to the last paragraph.

21 Certain investigations have indicated that a

1 seemingly negligible proportion of fibrous asbestos is
2 sufficient to produce the characteristic reaction.

3 It was found to be impossible to break up
4 all of the fibers and about 1 percent of the air
5 suspended dust consisted of fibers.

6 The characteristic peribronchiolar fibrosis
7 developed in the exposed animals after 40 months.

8 Thus it appears that very small numbers of
9 fibers are capable of producing asbestosis, although
10 the development of the lesions is delayed.

11 The present experiment with Kaylo is also an
12 example of this fact.

13 Conclusions, page 6, number 1. Kaylo,
14 because of its content of an appreciable amount of
15 fibrous chrysotile, is capable of producing asbestosis
16 and should be handled as a hazardous industrial dust.

17 The next is our Exhibit Number Owens-
18 Illinois 476. It is a special hazard survey prepared
19 for Owens-Illinois Kaylo division, Berlin, New Jersey,
20 April 28th and May 2nd, 1958, by the Aetna Life
21 affiliated companies.

1 THE COURT: It will be admitted in
2 evidence.

3 (Whereupon, Plaintiffs' Exhibit Number
4 OI-476 was received into evidence.)

5 MR. IGNATOWSKI: The purpose of this visit
6 was to determine the employee exposure to dust in
7 production operations.

8 Down to air sample number 3. Horizontal
9 splitting saw. Taken at the breathing level of the
10 operator separating the pieces as they came through
11 the saw. Taken between the user and the operator.
12 91.8 million particles per cubic foot of air.

13 Air sample number 4. Flatware finishing.
14 Charging end. Taken at breathing level of operator
15 feeding flatware to the trim saw. 46.3 million
16 particles per cubic foot of air.

17 Air sample number 6. Packaging. Taken at
18 the breathing level midway between the two men filling
19 boxes. 11.5 million particles per cubic foot of air.

20 Air sample number 3 -- and this is on page 3
21 -- shows a dangerously high count.

1 In the operation here, which is the
2 splitting of the flatware on a band saw, the men
3 removing the pieces separates the two pieces, and the
4 dust is due to this handling of the ware.

5 We feel that an exhaust system should be
6 installed which will remove this excessive dust from
7 the breathing area of the man.

8 We noted that this operator was not wearing
9 a respirator. Use of a respirator for this operation
10 should be mandatory.

11 Recommendations, Owens-Illinois Kaylo
12 division, Berlin, New Jersey.

13 A. Two respirators should be provided for
14 each employee exposed to dust so that one respirator
15 can be cleaned, checked, and sterilized while the
16 other is being used.

17 D. Respirators should be worn in all
18 dust-producing areas which include takeoff at the
19 splitter, charging at the flatware line, unloading
20 boxcars, molded stripping, between rubbers on flatware
21 line and packaging of flatware.

1 MS. TOSTANOSKI: Mr. Ignatowski, could you
2 go back and just read the introduction to number one?

3 MR. IGNATOWSKI: Right here?

4 MS. TOSTANOSKI: Yes.

5 MR. IGNATOWSKI: Number one. A review
6 should be made of the present respirator program in
7 order to bring it up to Owens-Illinois standards and
8 should include the following.

9 Is there anything else there, Ms.
10 Tostanoski?

11 MS. TOSTANOSKI: The only thing I had was in
12 the page before that which you probably don't have,
13 the last page of the report where it is signed.

14 MR. SMITH: Yes. I might have it. Hold
15 on.

16 MR. IGNATOWSKI: Which portion?

17 MS. TOSTANOSKI: The second to the last
18 paragraph.

19 MR. IGNATOWSKI: Right here?

20 MS. TOSTANOSKI: Yes.

21 MR. IGNATOWSKI: In discussing the X-ray

1 program, we find that production workers exposed to
2 dust are given X-rays once a year and for all other
3 employees once every two years.

4 X-rays are sent to Dr. Trido at Saranac Lab
5 for interpretation. There has been no reported cases
6 of either silicosis or asbestosis at this plant. J.M.
7 Robinson.

8 MS. TOSTANOSKI: Thank you.

9 MR. IGNATOWSKI: You are welcome.

10 The next is Exhibit Number OI-1065, Saranac
11 symposium, 6th, Saranac Lake, New York, 1947.

12 It is edited by Dr. Arthur J. Vorwald.
13 Pneumoconiosis. Leroy U. Gardner, Memorial Volume.

14 On page 595, it indicates Mr. Willis G.
15 Hazard of Owens-Illinois Glass Company, Toledo, Ohio,
16 as one of the participants in the 6th Saranac
17 symposium.

18 THE COURT: It will be admitted into
19 evidence.

20 (Whereupon, Plaintiffs' Exhibit Number
21 OI-1065 was received into evidence.)

1 MR. IGNATOWSKI: On page 569.

2 Maximum limits are prescribed for a great
3 variety of materials which -- with which I have no
4 familiarity, but it is my -- may I move up there, Your
5 Honor?

6 THE COURT: You may.

7 MR. IGNATOWSKI: I am having problems
8 reading this one.

9 But it is my earnest hope that these limits
10 have been arrived at on the basis of a better factual
11 and scientific background than exists in the case of
12 asbestos.

13 So far as I have ever been able to
14 ascertain, no one can state with certainty what is the
15 maximum allowable limit for asbestos dust.

16 I am certain no study has been made
17 specifically directed toward ascertaining this figure,
18 and I question whether there exists sufficient data
19 correlating the disease to the degree of exposure to
20 warrant any determination that will even approximate
21 accuracy.

1 That was presented by Mr. Vandiver Brown. I
2 just wanted that to be clear for the record from that
3 document.

4 MR. SMITH: I didn't put this on the
5 overhead, the sign-in sheet for the 7th Saranac
6 symposium.

7 MR. IGNATOWSKI: That is our Exhibit 1085,
8 7th Saranac symposium, September 24th, 1952, at the
9 Saranac Laboratory, Edward L. Trudeau Foundation,
10 Saranac, New York.

11 THE COURT: It will be admitted into
12 evidence.

13 (Whereupon, Plaintiffs' Exhibit Number 1085
14 was received into evidence.)

15 MR. SMITH: Here is the sign-in sheet for
16 the participants of the symposium. I didn't put it on
17 the overhead, but Mr. Hazard attended for
18 Owens-Illinois, and Mr. Ames, whose deposition we read
19 last week, attended for OCF.

20 MR. IGNATOWSKI: 9 a.m. to 1 p.m. and this
21 is on page 334, pneumoconiosis and pulmonary cancer,

1 chairman, Dr. Rhodes. Discussion led by E.R.A.
2 Merewether.

3 In 1948 I made a note of the deaths from
4 asbestosis, asbestosis with tuberculosis and either of
5 these with also cancer of the lung, recorded in the
6 United Kingdom from 1924 to 1947.

7 I have now brought these figures up to
8 date.

9 Our latest figures are recorded deaths from
10 asbestosis, asbestosis with tuberculosis, or either
11 complicated with cancer of the lung, with cancer, are
12 306.

13 I am excluding 10 of these where there is
14 also cancer of sites other than the lungs.

15 Our net figures are, therefore, 296 deaths
16 and of these 48 or 16.2 percent were associated with
17 cancer of the lung.

18 This shows an increase from a 13.2 percent
19 disclosed by our earlier figures. This means that, as
20 more deaths from asbestosis come to hand, the
21 cumulative percentage of deaths with complicating

1 cancer of the lung is rising rather than falling.

2 MS. TOSTANOSKI: I want to continue
3 briefly.

4 Now, where do we go from here? Are those
5 figures sufficient to indicate a causal relationship
6 between the retention of asbestos dust in the lungs
7 and subsequent cancer of the lung?

8 That is it.

9 MR. IGNATOWSKI: The small numbers certainly
10 dictate caution.

11 Nevertheless, they represent the great
12 majority of the deaths from asbestosis which have
13 occurred in the United Kingdom during the past quarter
14 of a century.

15 Anything else from that, Ms. Tostanoski?

16 MS. TOSTANOSKI: No.

17 MR. SMITH: Start on the first full
18 paragraph.

19 MR. IGNATOWSKI: Regarding these cancer
20 cases, the mean age of death I said was 53.4 years.

21 Now, the occupations involved are somewhat

1 interesting. They are always different, as you know,
2 because sometimes two occupations carried out in the
3 same room with different dust exposures or with other
4 different factors, but it is a little interesting to
5 see that the majority of these 48 cases, that the more
6 dusty the process, of course, it is most fallacious,
7 but still to watch with care, for instance, weaving.

8 Weaving is notoriously dusty. One case
9 there with 10 of these cancer lung cases. One case
10 also associated with carding and spinning that the man
11 had done and one case mixing and sorting,
12 disintegrating and mixing, either -- well, eight pipe
13 and boiler coverers, including mixing, seven, in
14 mattress making, six, and all the rest are below that
15 and all of those are dusty jobs.

16 MS. TOSTANOSKI: Continuing with the next
17 couple of sentences.

18 MR. IGNATOWSKI: Well, what, then, is the
19 etiological factor, if any here? And I would be most
20 grateful for your views.

21 MS. TOSTANOSKI: That is fine.

1 THE COURT: Is that it?

2 MR. SMITH: Yes.

3 MR. IGNATOWSKI: That is the end of the
4 documents.

5 THE COURT: All right.

6 (Whereupon, the documents were removed from
7 the screen of the overhead projector.)

8 THE COURT: Next, please.

9 MR. SMITH: Thank you, Your Honor.

10 At this time we would like to read another
11 deposition. Let me get organized here.

12 This is the deposition of John Thomas, and I
13 will hand Your Honor a copy.

14 THE COURT: Mr. Smith will be doing the
15 questions and Mr. Ignatowski the answers.

16 MR. IGNATOWSKI: Yes, sir.

17 THE COURT: And Mr. McGowan, do you have any
18 designations?

19 MR. MCGOWAN: Yes, I do, Your Honor.

20 THE COURT: All right. You will do your
21 designations.

1 MR. MCGOWAN: Yes.

2 THE COURT: Mr. Williams, do you have
3 designations?

4 MR. WILLIAMS: No, Your Honor.

5 THE COURT: Ms. Tostanoski?

6 MS. TOSTANOSKI: No, sir.

7 THE COURT: All right.

8 MR. SMITH: With the Court's permission,
9 Your Honor, we would like to give the jury a copy of
10 the documents that are referenced by Mr. Thomas in his
11 deposition.

12 THE COURT: Please.

13 MR. SMITH: We have individual folders for
14 each of the jurors.

15 THE COURT: Ladies and gentlemen, don't open
16 those until a reference is made to those specific
17 items during the course of the examination.

18 Obviously, with your notes -- leave those
19 with your notes on your seats as you leave the
20 courtroom. Don't take them out of the courtroom.

21 MR. SMITH: Thank you, Your Honor.

1 We have labeled them with each juror's
2 number. They are all identical, but apparently there
3 is some confusion.

4 Your Honor, as I mentioned, this is the
5 deposition of John Thomas. We apologize in advance.
6 This is a lengthy reading.

7 This will be our longest deposition reading,
8 I think, for the trial, so please bear with us.

9 This deposition was taken on April 3rd,
10 1991.

11 THE COURT: You didn't think we wouldn't
12 bear with you, did you?

13 (Whereupon, laughter ensued.)

14 MR. SMITH: Thank you, Your Honor, I
15 appreciate that. This one was also taken like the
16 last one in the United States District Court for the
17 Eastern District of Virginia.

18 Again, taken in the cases captioned in re:
19 All Asbestos Cases.

20 READING OF DEPOSITION OF JOHN HENRY THOMAS, II

21 TAKEN ON APRIL 3, 1991

1 (Whereupon, the questions were read by Mr.
2 Smith and Mr. McGowan and the answers were read by Mr.
3 Ignatowski.)

4 BY MR. SMITH:

5 Q Mr. Thomas, would you please state your full
6 name and address.

7 A John Henry Thomas, II. My Naples address is
8 Moorings Park, 106 Moorings Park Drive.

9 My Toledo address is --

10 Q Is that your current address?

11 A I have got two places. A summer place, we
12 live there most of the time. 296 East River Road,
13 Perrysburg, Ohio.

14 BY MR. McGOWAN:

15 Q What is your date of birth?

16 A 19th of September 1909, I guess it was.

17 Q How old are you today?

18 A Forty-three.

19 Q Eighty-three?

20 A Eighty-three. I have been 43 in the last
21 business.

1 BY MR. SMITH:

2 Q Mr. Thomas, what is your educational
3 background?

4 A University of Illinois, engineering degree
5 in ceramics, ceramics engineering actually.

6 BY MR. MCGOWAN:

7 Q When did you graduate?

8 A 1931.

9 Q At some point in time did you become
10 employed by the Owens-Corning Fiberglas Corporation?

11 A The day I graduated, 1931.

12 Q Owens-Corning?

13 A Owens-Corning. In the latter part of 1931
14 when the company was formed, Owens-Corning was
15 formed.

16 Q If the company was formed in 1938, then that
17 would be the year you became --

18 A Right. I went from Owens-Illinois right
19 into -- right from Owens-Illinois right into Owens-
20 Corning.

21 BY MR. SMITH:

1 Q Okay. I am sorry. I probably misled you
2 there.

3 After college, what was your first job?

4 A As a trainee with the Owens-Illinois Glass
5 Company.

6 Q You worked with Owens-Illinois Glass Company
7 until the Owens-Corning Fiberglas Company was formed?

8 A Right.

9 Q Do you know anything about the circumstances
10 of how the Owens-Corning company was formed?

11 A Owens-Illinois was doing research on what
12 you can make out of glass besides bottles and Corning
13 was doing research on glass, things they could make
14 other than the Pyrex and top of the stove areas and
15 specialties like Steuben and other things. They
16 wanted to expand in other markets.

17 We were doing research separately, market
18 research, some manufacturing, early manufacturing, and
19 Owens-Illinois and Corning got together and said this
20 is silly, why don't we put our heads together and
21 develop these products.

1 The same kind of research in these things,
2 why don't we go together.

3 Q This is the Owens-Illinois Glass Company and
4 the Corning Glass Company?

5 A Right.

6 Q So those two companies got together and
7 formed the Owens-Corning Fiberglas Corporation?

8 A Right.

9 Q How was it that you changed from being an
10 employee of Owens-Illinois to being an employee of
11 Owens-Corning?

12 A They said, do you want to go with us? And I
13 said, yes, with the company.

14 Q Did your place of work change?

15 A No.

16 Q Where were you working before when your job
17 was for Owens-Illinois?

18 What was the physical location of your job?

19 A I started out in Alton, Illinois, and I
20 worked -- I started on the first of July, worked until
21 the 3rd, took the 4th of July holiday and then they

1 had a four-day shutdown cleaning up the place and
2 oiling the equipment and getting everything in shape.
3 So I worked three days, had four days off, shut down
4 on the holiday, came back the following Monday.

5 So I worked about a week or so, I was
6 packing bottles as a trainee, and they said -- when
7 the guy came by the line said, when you are through,
8 go up and see Mr. Levis who was one of the top people
9 at Owens-Illinois.

10 I went up to see him and he said nice to
11 have you here, we are transferring you to Evansville,
12 Indiana, we are starting a research organization, we
13 are going to develop things out of glass other than
14 bottles, you are the first guy on the job, and if you
15 go to the third desk, the guy will give you a ticket
16 and \$100 travel expense and you are on your way, nice
17 to have you, good day.

18 Q What was the city where you were located
19 when you became employed by Owens-Corning as opposed
20 to Owens-Illinois?

21 What city was that?

1 A Newark, I think.

2 Q Have you been working for Owens-Illinois in
3 that same city?

4 A Yes.

5 Q And what were you doing for Owens-Illinois
6 in Newark? Is this Newark, New Jersey, or Newark,
7 Ohio?

8 A Ohio.

9 Q Newark, Ohio. What were you doing for
10 Owens-Illinois in Newark, Ohio, immediately when your
11 paycheck started coming from Owens-Corning?

12 A Same damn thing, doing research, same
13 location, same people, same everything, just changed
14 the name.

15 Q Now, as far as you know then, the only thing
16 that changed was the name on the paycheck that you
17 received?

18 A Right.

19 Q You continued to work with the same Owens-
20 Illinois people who now were working for Owens-
21 Corning?

1 A Right.

2 Q You were --

3 A Plus a few people who came from Corning.

4 Q Who came from Corning Glass?

5 A Yes.

6 Q So Corning Glass and Owens-Illinois Glass

7 used their own employees to form this new company

8 Owens-Corning?

9 A Yes.

10 Q Correct?

11 A Yes.

12 Q Did you know anything about the financial

13 structure of Owens-Corning as to how much of the

14 company was owned by Owens-Illinois and how much was

15 owned by Corning Glass?

16 A Half and half.

17 Q So 50 percent of the stock was owned by

18 Corning Glass?

19 A Right.

20 Q And 50 percent of the stock was owned by

21 Owens-Illinois?

1 A Right.

2 BY MR. MCGOWAN:

3 Q So 50 percent of the board of Owens-Corning
4 Fiberglas Corporation was composed of Owens-Illinois
5 Glass people?

6 A Right.

7 Q Now, do you know for how long this continued
8 in this relative percentage?

9 A As I remember, and I may not be accurate on
10 the timing, along the line the government said this is
11 a fine company and all, but our only problem in
12 improving it is that we have got the making of a
13 monopoly, we think that you ought to take the consent
14 decree, which meant that you had to license people,
15 show them, give them know-how and show them where to
16 sell it, where to market it, you know, had to give
17 free, not free licenses, but you had to give licenses
18 for competitors or for whoever wanted one.

19 Of course, quite a few people wanted one.
20 Johns-Manville, Libby Owensford and a number of other
21 people thought, well, what the hell, me, too, let's go

1 and find out about it, at least have a look.

2 That same time or shortly a little bit one
3 way or another, they said that they had to get a new
4 board, so we had to go out and get an outside board
5 and it had -- Corning people went off the board and
6 Owens-Illinois people went off the board and Owens-
7 Corning people who were on the board went off the
8 board, so we had an outside board that was not just
9 glass people, but a number of other people.

10 Q Now, while you were at Owens-Illinois in
11 the 1930s, did you ever have occasion at that time
12 dealing with the subject of asbestos?

13 A Never was a factor, never heard that.

14 Q Were you dealing with bottles at that time?

15 A We were dealing with glass. We were making
16 fibers. We were making fillers. We were making
17 insulation, everything made out of glass.

18 BY MR. SMITH:

19 Q In the 1940s -- by the 1940s, you were
20 working for Owens-Corning, correct?

21 A Right.

1 Q And you began that employment with Owens-
2 Corning in 1938?

3 A Right.

4 Q When the company was formed?

5 A The company was formed, yes.

6 BY MR. MCGOWAN:

7 Q Now in the late '30s and early '40s, what
8 was your job for Owens-Corning?

9 A What dates are we talking about?

10 Q Well, if you would review with me what your
11 jobs were for Owens-Corning from the late 1930s to the
12 late 1940s, let's take that 10-year period.

13 You have brought a document with you this
14 morning?

15 A Only yours.

16 Q You have a document, a handwritten list that
17 you are referring to.

18 A Well, this is where -- when I was in Alton,
19 Evansville, Columbus, Newark, Toledo, New York,
20 California.

21 Q Mr. Thomas, have you prepared this list

1 yourself?

2 A Yes, my bride has.

3 Q Your wife wrote down the various jobs that
4 you had at different times?

5 A No, just where I was located.

6 Q Could I see it for a moment?

7 A Sure. One of those are my diseases and the
8 others is hers, the list of medicines.

9 Q Apparently, according to the list, you were
10 in Newark, Ohio, from 1934 to 1939; is that right?

11 A Yes.

12 Q And then you were in Toledo, Ohio, from 1939
13 to 1949?

14 A Right.

15 Q And then you lived in New York City from
16 1949 to 1959?

17 A Right.

18 Q And from 1959 to 1964 you lived in
19 California?

20 A Right.

21 Q And from 1964 to 1973 you lived in Toledo,

1 Ohio?

2 A Yes.

3 BY MR. SMITH:

4 Q During the period 1939 to 1949 when you were
5 in Toledo, Ohio, what was your job?

6 A I went from the research to Toledo which was
7 headquarters and assistant to the president.

8 I did a number of jobs, but mainly as his
9 assistant.

10 Q President was located in Newark?

11 A No. He was located in Toledo, Ohio.

12 Q I am talking about -- oh, okay. He was
13 located in Toledo, Ohio. I am sorry, my confusion.

14 So the main officers of Owens-Corning
15 Fiberglas Corporation were located in Toledo, Ohio,
16 during the time period from 1939 to 1949?

17 A Right.

18 Q You worked as an assistant to the president
19 of the company during that time?

20 A Right.

21 Q When you were in New York City from 1949 to

1 1959, what was your job?

2 A We had a division called the textile
3 division, and we were developing the textile fiber.

4 Up until that time it had been -- it had all
5 been called the other insulation, which was big
6 volumes of material and handling and textiles which
7 you operated on kind of a per pound basis, so we kind
8 of split them all.

9 General products, which was the insulation
10 end of the business, and textile division, which was
11 manufacturing textiles for insulation, electrical
12 insulation, reinforced plastics, screening, you know,
13 all those things that you did with textiles which was
14 entirely separate in Toledo.

15 BY MR. MCGOWAN:

16 Q Did that include insulation products as well
17 as textiles?

18 MR. SMITH: Excuse me. You skipped over a
19 couple of lines.

20 BY MR. SMITH:

21 Q From 1969 to 1964 when you were in

1 California, what was your job?

2 A There was a West Coast division, and I ran
3 it.

4 BY MR. MCGOWAN:

5 Q Did that include insulation products as well
6 as textiles?

7 A It included insulation, right, fiberglass
8 insulation.

9 Q Did you have anything to do with the S and C
10 units?

11 A Not really. They were a separate group,
12 operated out of Toledo.

13 Those were sales and contracts. You took
14 contracts and used fiberglass and other products.

15 Q Did the Santa Clara office have an S and C
16 unit during the 1959 to 1964 time period?

17 A No. They had one in L.A., had one in
18 Seattle and had one --

19 Q San Francisco?

20 A San Francisco, of course. I think those
21 three were the major ones.

1 Q Were they under your supervision?

2 A No.

3 BY MR. SMITH:

4 Q In the 1964 to '73 time period, what was
5 your job?

6 A I went back to Toledo again as assistant to
7 the president. At that time we had a new president,
8 Norstead.

9 Q General Norstead?

10 A Right.

11 Q He is deceased?

12 A Yes. I was there roughly 10 years, a little
13 more than that, and the first part of that I was
14 assistant to the president.

15 Then I was made president and then I was
16 president for four or five years or so, whatever, and
17 then the chief executive operator.

18 BY MR. MCGOWAN:

19 Q When did you first become president of
20 Owens-Corning Fiberglas Corporation?

21 A Early -- let me see my list here. I am not

1 real sure, but I think about 1963, '64, something like
2 that.

3 Q In the mid '60s?

4 A Yes.

5 Q If you remember, just testify to what you
6 remember.

7 A Well, that is what I am trying to remember
8 for sure. Probably '65, '70, in that area.

9 BY MR. SMITH:

10 Q So from approximately 1965 to 1970, you were
11 the president of the company?

12 A Right.

13 Q And then you became the CEO, the chief
14 executive officer?

15 A No, chief operating officer, and the guy who
16 was the president was also the chairman, was the CEO,
17 that was Norstead.

18 Q That was Norstead?

19 A Right.

20 Q So from approximately 1965 to 1970 you were
21 the number one boss at Owens-Corning Fiberglas

1 Corporation?

2 A Well, except there was a CEO who was the top
3 boss, the chief executive.

4 Q You were the president?

5 A Yes.

6 Q And you reported to the CEO who was the
7 number one man?

8 A Right.

9 Q But you were the president of the company?

10 A Right.

11 BY MR. McGOWAN:

12 Q Mr. Thomas, in the 1940s did you know a man
13 named Ed Ames?

14 A Yes.

15 Q What was his job?

16 A He was kind of the promotional guy and do-
17 gooder and had a number of jobs, and I think he
18 started out having been a schoolteacher, as I
19 remember, still a little schoolteacher-ish, and in a
20 business-like, that you got a lot of people that come
21 in for one reason or another.

1 Q Did he deal with public relations for the
2 company? .

3 A Probably partly.

4 Q In the 1940s?

5 A As far as I know.

6 BY MR. SMITH:

7 Q The fiberglass pipe insulation was the
8 insulation that you were selling, correct?

9 A Right.

10 Q And during that period of time you sold that
11 insulation primarily to people who actually worked for
12 the Asbestos Workers union, correct?

13 A Well, our contractors or distributors,
14 warehouses handled it and delivered it.

15 Q The people who used the product in the
16 field, the fiberglass pipecovering, the people who
17 used that product were primarily people who were
18 members of the Asbestos Workers union, correct?

19 A As far as I know, yes.

20 Q And --

21 A Because they were applying insulation.

1 BY MR. MCGOWAN:

2 Q The Asbestos Workers union used two types of
3 products in the 1940s, they used fiberglass
4 pipecovering?

5 A Right.

6 Q And they used asbestos pipecovering,
7 correct?

8 A Right.

9 Q And the fiberglass pipecovering was what you
10 had and were interested in at the time?

11 A Right.

12 Q Now --

13 A And no interest in asbestos.

14 BY MR. SMITH:

15 Q The union in the 1940s, the Asbestos Workers
16 union, was making -- members of the union were from
17 time to time making complaints about something called
18 the itch problem with the fiberglass; is that right?

19 A Sure.

20 Q And that problem could be summarized as
21 saying that when you use the fiberglass pipecovering,

1 fiberglass that gets in the air and gets on your body,
2 apparently caused the workers to itch?

3 A Well, really handling it. It got on their
4 arms, they scratched it and it fought back.

5 Q So --

6 A But it was a problem. They didn't like to
7 handle it.

8 BY MR. MCGOWAN:

9 Q The workers didn't like to handle it and
10 they wanted to have a premium or an extra amount of
11 money paid to them when they would handle the
12 fiberglass pipecovering?

13 A I didn't realize that, but did they? Did
14 they get a premium?

15 Q They asked for it, do you remember?

16 A No, I don't, that it was any factor. They
17 were bitching about the itches and everything else, I
18 guess.

19 BY MR. SMITH:

20 Q Now, to combat the problem that the workers
21 were complaining about the fiberglass pipecovering, do

1 you recall that Owens-Corning tried to point out to
2 these asbestos workers the fact that fiberglass
3 pipecovering would not cause any lung diseases?

4 A Right, and to my knowledge, never did.

5 Q And it was a strong selling point for Owens-
6 Corning that the fiberglass pipecovering didn't cause
7 lung disease and that is what you tried to emphasize?

8 A And its temperature characteristics and
9 other things. High temperature material glass was.

10 Q Was that right?

11 A Glass was high temperature, you know.

12 Q Am I correct that one of your selling points
13 for the fiberglass pipecovering was that it didn't
14 cause lung disease?

15 A Well, going back a little bit, we were very
16 careful to -- any time we changed the fiber size or
17 anything else, to have it checked, tested, and it was
18 never ever proven or ever even further even suspected
19 that you could breathe it, that you couldn't inhale it
20 and didn't, and we had no complaints.

21 Q So in the 1940s, then, as a company, Owens-

1 Corning considered its responsibility to test the
2 fiberglass before they marketed it to determine if
3 there was any health hazard?

4 A We started that early, yes, sure.

5 Q Is that right?

6 A Yes.

7 Q In the 1940s you conducted a number of tests
8 of the products to determine whether or not it would
9 hurt people when they breathed the fiberglass?

10 A They didn't breathe it. They couldn't
11 breathe it. You can't breathe it.

12 Q In any event, you did some tests to
13 determine if there was any harmful effects of the
14 product.

15 A Because we were trying to get rid of the
16 itch. We were making finer fiber and things that
17 didn't stick in you. The reason it itches is because
18 the damn fiber would stick in you.

19 Q But you determined that that was simply a
20 nuisance and it would not really hurt something?

21 A No, we didn't feel it was a danger

1 involved.

2 Q And do you recall any tests that were done
3 at Saranac Lake in New York to determine that the
4 fiberglass -- breathing the fiberglass also would not
5 hurt you?

6 A Breathing fiberglass? You couldn't breathe
7 it. That is what I am saying.

8 Q The small fibers?

9 A No, no fibers got into your lungs. They
10 never made fine enough to breathe, and as far as I
11 know, I have been away a long time, we never had any
12 problem.

13 Q In the 1940s with regard to the fiberglass
14 pipecovering, did Owens-Corning consider it its
15 responsibility to find out about the characteristics
16 of the -- the health characteristics of fiberglass
17 before they put it on the market and started selling
18 it to people?

19 A The fiber that it was made from had all been
20 tested, and as far as we can tell, there was no --
21 nobody caught anything from it.

1 You scratched, but you never came down with
2 pox or anything.

3 Q You did that testing, though, before you
4 sent it out to the public?

5 A We tested every fiber we made.

6 Q That was because you thought ethically as a
7 company that is what you should do before you sold the
8 product, correct?

9 A I don't think we considered ethics. I think
10 we didn't want to offer anything that was a dangerous
11 material and test it.

12 Q After testing them you determined that it
13 was not dangerous and you began selling it?

14 A Right.

15 Q Now, when Owens-Corning developed other
16 products over the years, did you follow that same
17 procedure?

18 Would you test the product first to
19 determine if there was any danger before you would
20 sell it?

21 A I would say in principle, yes. Of course,

1 you have got to realize you are experimenting with
2 thousands of dollars of things.

3 Everything that comes along you test and
4 check it, see whether it is better or worse or
5 whatever.

6 Q But as a company, that was a procedure that
7 you thought was an appropriate procedure for a company
8 to follow?

9 That is, you test something before you sell
10 it?

11 A Yes.

12 Q Now, in the 1940s, am I correct that the
13 asbestos workers that you were selling the fiberglass
14 pipecovering to were also using asbestos-containing
15 pipecovering and block?

16 A I think only as a competitive material.

17 Q So the asbestos pipecovering and block was a
18 competitive product to the fiberglass that you were
19 selling?

20 A Right, a high temperature material. I mean,
21 there is lots of other insulations sold that are made

1 out of reeds and weeds and other things.

2 Q Sure. And the asbestos pipecovering
3 materials at that time included the 85 percent
4 magnesia pipecovering.

5 Do you recall that?

6 A Yep. I don't recall it really because 85
7 percent magnesium. It was a magnesium material, but
8 it never occurred to me or never a matter of question
9 whether there is asbestos in it or not.

10 Q If I tell you that the product had
11 approximately 15 percent asbestos and 85 percent
12 magnesia, would that be approximately what you
13 remember?

14 A I don't have any idea what the composition
15 was. It was a soft product that was competitive with
16 fiberglass and treated as a competitor.

17 Q That was one of the asbestos products that
18 the union used which was not a fiberglass product,
19 right?

20 A Yes.

21 Q But you didn't know how much asbestos was in

1 it?

2 A No. Right.

3 Q Now, did you know that the asbestos workers
4 were also using asbestos cement and other asbestos
5 insulation material besides the pipecovering, or did
6 you just think they used pipecovering?

7 A Right.

8 Q Pipecovering?

9 A Right.

10 Q You knew that the pipecovering was a
11 composition of asbestos and something else, but you
12 didn't know what all of the different compositions
13 were?

14 A Right.

15 Q Do you recall that there was a belief in the
16 1940s at Owens-Corning that the products that they
17 were selling to the asbestos workers had the benefit
18 of not causing any lung damage because you couldn't
19 breathe the fiberglass?

20 A Right.

21 Q My question is, did you know that one of the

1 advantages of your fiberglass pipecovering was that it
2 would not cause lung disease?

3 A I am sure we claimed that. As we claimed
4 anything else we could.

5 Q And that was an advantage that your product
6 had over the asbestos product?

7 A Right.

8 Q Let me show you a memorandum, a letter from
9 the Owens-Corning files dated January 7th, 1942. It
10 is a letter from Ed Ames to Mr. E.J. Marshall with a
11 copy to Mr. Boeschstein and Mr. Zimmerman.

12 You are not copied on the document, but I
13 wanted to ask you some questions about the document
14 that has been identified by these other people.

15 MR. SMITH: That is the first document in
16 your pack.

17 BY MR. SMITH:

18 Q Who was Mr. Marshall?

19 A Head of the legal company in Toledo, Ohio.
20 Marshall, Melhorne, et al.

21 Q Who was Mr. Boeschstein at that time?

1 A He was president at the time.

2 Q Who was Mr. Zimmerman?

3 A He was the manufacturing vice-president.

4 Q So he was writing this memorandum, the
5 people to whom this memorandum were addressed were top
6 management people?

7 A Who all got it?

8 Q Marshall, Boeschstein, and Zimmerman?

9 A Right.

10 Q Is that right, were they top management?

11 A Sure.

12 Q That was written in 1942. In 1943 I have a
13 memorandum that is dated December 27, 1943, addressed
14 to Mr. Gregory.

15 Did you know a Mr. Gregory?

16 A Yes.

17 MR. SMITH: That is the second document.

18 Q Who is he?

19 A Mr. Gregory came as sales manager when the
20 company was formed from Corning.

21 You see. Corning didn't have a very small

1 group of management. They were majoring in research
2 and great at it, so when the company was formed, they
3 got people from Owens-Illinois, Zimmerman, Winkle,
4 Slater and others. And Gregory was the one guy that
5 Corning furnished, sales manager.

6 Q This is another memorandum by Mr. Ames that
7 he has identified in his deposition.

8 A Looks like he did it with his elbow.

9 Q It is a Xerox of an old photocopy.

10 The memorandum -- this memorandum is also
11 copied over on the right-hand side to a number of
12 people. One is Mr. W.P. Zimmerman.

13 A Right.

14 Q We identified him a minute ago. The other
15 is Mr. T.S. Rogers?

16 A Yes.

17 Q Who is he?

18 A He is a technical writer and publicity guy,
19 you know.

20 Q Another is Mr. Johnson. I think it is N.O.
21 or W.O. Johnson.

1 A I am trying to place him.

2 Q And next is Mr. J.H. Thomas.

3 A I know him.

4 Q That is the same person I am talking to,
5 isn't it?

6 A Right, same guy.

7 Q At this point in time, December of 1943, you
8 were an assistant to the president of Owens-Corning at
9 that time?

10 A Yeah, I guess so.

11 Q The next is Mr. William H. Page.

12 A Don't know him.

13 BY MR. MCGOWAN:

14 Q Now, in this memorandum, which has been
15 identified by Mr. Ames, it is discussing the
16 advisability of mixing asbestos with fiberglass and
17 making a combination textile.

18 Do you --

19 A Textile?

20 Q Yes. Asbestos and fiberglass were being
21 proposed to be used with a textile.

1 A You know they used to weave asbestos.

2 Q Right.

3 A They ran cotton yarns through it and all
4 kinds of things and those didn't have any strength and
5 they took a lot of doing, but they made mittens that
6 you could pick up a hot plate or hot piece of steel or
7 something.

8 And the whole big thing I remember when I
9 was a kid, the nickelodeon in our town, when the show
10 was over, the curtain came down and said asbestos and
11 that was supposed to save us.

12 Q From a fire?

13 A Fire resistant.

14 Q So if the movie theater caught fire, at
15 least the screen wouldn't burn?

16 A Well, it would keep it behind the screen and
17 wouldn't come out and burn the audience. That's when
18 nickelodeon cost a nickel.

19 BY MR. SMITH:

20 Q Owens-Corning was investigating fiberglass
21 textile from the 1940s?

1 A Right.

2 Q So both the asbestos fiber and the
3 fiberglass fiber would both be used in the 1940s to
4 make textiles?

5 A Right.

6 Q Before I get to this, Owens-Corning was
7 still selling some asbestos yarn in the 1938 to 1952
8 time period?

9 A Not to my knowledge.

10 Q According to sworn answers they have given
11 in court, they were selling asbestos yarn.

12 Did you ever have any --

13 A No.

14 Q -- any responsibility of that?

15 A I didn't have any knowledge of that, no.

16 Q In this memorandum that you are copied with,
17 it says admixtures with asbestos in the middle of the
18 page.

19 A You got it right by your finger.

20 Q It says, in formulating our policy on
21 admixtures with asbestos, we should, the word is

1 .interfered with, we should something on the alert
2 because we should be on the alert because otherwise we
3 will run the risk of smearing fiberglass with the
4 hazards of exposure to asbestos?

5 A Never heard of it. Not to say we didn't try
6 putting glass in rayon and glass in rubber and glass
7 in everything.

8 Q In this memorandum, it says in the next
9 paragraph, fabrication of asbestos in both textile and
10 nontextile forms is a dusty process and exposure to
11 asbestos fly involves the danger of asbestosis, a
12 pathological lung condition somewhat like silicosis.

13 This hazard is minimized by the use of hoods
14 and exhaust systems and wearing of respirators.

15 Did you know that?

16 A I don't remember it, no.

17 Q Do you agree that you likely received a copy
18 of this memorandum?

19 A Could well be, yes.

20 BY MR. MCGOWAN:

21 Q Today you don't remember the document?

1 A No.

2 BY MR. SMITH:

3 Q But you agree that it is probable that you
4 received it?

5 A Could well be.

6 Q I am not asking you whether you remember it
7 at all. Excuse me.

8 I am not asking you whether you remember it
9 all, I am asking you having looked at the document,
10 the format of the document, the subject matter of the
11 document and so forth and the date, do you agree that
12 it is more likely than not that you did receive it?

13 A I can agree to that, yes.

14 BY MR. MCGOWAN:

15 Q Now, what independent recollection, if any,
16 do you have as you sit here today of any discussion of
17 asbestosis or the hazards of asbestos that may have
18 come to your attention in the 1940s?

19 A State your question again.

20 Q What recollection, if any, do you have today
21 of any discussion or information about asbestosis that

1 may have come to your attention in the 1940s?

2 A I don't have any. I don't remember anything
3 that came up.

4 Q You don't remember discussing the matter in
5 the 1940s?

6 A No.

7 BY MR. SMITH:

8 Q In this memorandum, Mr. Ames on page 2 talks
9 about the health program of Owens-Corning.

10 It says, our health program has been built
11 on these premises. And he lists five things.

12 A These are the lists.

13 Q Our health program has been built on these
14 five things.

15 Number one, find out the facts. Our files
16 have been centralized, complete related data have been
17 assembled on insurance experience, investigations have
18 been carried out and then he names several people that
19 have been involved.

20 Do you agree that the first tenant of an
21 effective health program would be for the company to

1 find out the facts about the possible hazards of a
2 particular substance?

3 A Right. I would agree.

4 Q The second thing he says, is that the second
5 part of their health program has been built on the
6 premise of getting the facts into the medical
7 literature, and he says articles have been published
8 in industrial medicine, American Journal of Surgery,
9 Journal of the American Medical Association,
10 Industrial Hygiene Digest, et cetera.

11 Do you agree that that is the second thing
12 that he has stated here, that is, to get the facts of
13 the potentially dangerous substances into the medical
14 literature is an important part of an effective health
15 program?

16 A I would think so.

17 Q The third thing he says here as part of an
18 effective health program is to, "Take the mystery out
19 of the subject by making the facts available to
20 members of our own organization and to the general
21 public. (Health aspects has been published and

1 reprints of articles and medical journals made
2 available for general distribution)."

3 Having read that, do you agree that with
4 this third tenant of an effective health program is
5 that you should, that the company, Owens-Corning,
6 should try to take the mystery out of the subject of
7 their products by making facts available to their own
8 employees and to the general public about the
9 characteristics of the products?

10 A Yeah, I would think so.

11 Q Number four is that the fourth part of an
12 effective health program is that the company handle
13 inquiries promptly and fully, all bona fide inquiries
14 have been answered with custom-made reply, forms have
15 been made available.

16 Do you agree an effective program for Owens-
17 Corning including the prompt, handling and full
18 responses to questions that were asked about the
19 potential aspects of their product?

20 A On our product?

21 Q On your products.

1 A Yes, not products we distributed or products
2 we sell for somebody or anything else.

3 Q But on products that you manufactured?

4 A And were planning to manufacture.

5 THE COURT: Counsel, we will take our lunch
6 recess at page 46, line 8. We will resume there at
7 2:30.

8 Members of the jury, we will take our lunch
9 recess. Return to the jury room about 20 after 2, and
10 we will start at 2:30.

11 Have a good lunch.

12 (Whereupon, jury dismissed -- 1:02 p.m.)

13 THE COURT: Everybody be in their seats at
14 2:25, and we will start at 2:30.

15 (Whereupon, a luncheon recess was taken --
16 1:03 p.m.)

17 (Whereupon, afternoon session -- 2:30 p.m.)

18 (Whereupon, in open court.)

19 THE COURT: Are we ready to continue with
20 this exciting issue?

21 MR. WILLIAMS: Your Honor --

1 THE COURT: The reason I say exciting, I
2 heard Mr. Thomas' testimony on at least five
3 occasions.

4 MR. McGOWAN: And that is four times too
5 many.

6 THE COURT: I didn't say that.

7 Go ahead, Mr. Williams.

8 MR. WILLIAMS: I have been apprised that Mr.
9 Grewe's videotape will be played today, and if not
10 today, certainly by tomorrow, and I just wanted to
11 remind you that I have filed written objections.

12 I don't think we came to those, but --

13 THE COURT: I have reviewed what you have
14 submitted, and I think I gave them to the Clerk. And
15 I think I overruled your objection.

16 MR. WILLIAMS: That is what I was
17 anticipating. I just wanted to take that up.

18 THE COURT: All right, sir.

19 MR. WILLIAMS: Thank you.

20 THE COURT: You are welcome.

21 (Whereupon, jury present -- 2:34 p.m.)

1 THE COURT: Please be seated, ladies and
2 gentlemen.

3 Good afternoon.

4 THE JURY: Good afternoon.

5 THE COURT: We took our lunch recess at page
6 46, line 8.

7 Mr. Smith, please.

8 MR. SMITH: Thank you, Your Honor.

9 Continuing with the deposition of John
10 Thomas.

11 READING OF DEPOSITION OF JOHN HENRY THOMAS, II

12 TAKEN ON APRIL 3, 1991

13 (Whereupon, the questions were read by Mr.
14 Smith and Mr. McGowan and the answers were read by Mr.
15 Ignatowski.)

16 (CONTINUED)

17 BY MR. SMITH:

18 Q If you sell it for somebody else, don't you
19 feel like you have to answer questions about the
20 product truthfully?

21 A You expect the product to come with the

1 proper information as to hazards or anything else.

2 Q As a seller, you would expect that from the
3 manufacturer?

4 A Yes.

5 Q And then, the fifth part of an effective
6 health program is that you concentrate on professional
7 and technical influence centers, medical groups,
8 safety engineers, industrial hygienists, physicians,
9 nurses, public health authorities.

10 These contacts have been and are being
11 cultivated, so do you agree that, in order to get out
12 the word about any potential health hazards associated
13 with a product, that an effective health program would
14 include concentration on professional and technical
15 influence centers such as stated here?

16 A I would think so, yeah. Of course, there is
17 always ways of -- if you question it, just don't do
18 it.

19 Q If there is a question about a product being
20 hazardous, the best thing to do is simply not sell it,
21 right?

1 A Either that or get somebody else to handle
2 it for you.

3 Q Now, the first document I have is dated
4 December 6th, 1955.

5 MR. SMITH: That is in your folder.

6 BY MR. SMITH:

7 Q It is to the attention of Mr.
8 Boeschenstein.

9 It is on Owens-Corning letterhead and it is
10 from Mr. Rogers that you previously identified.

11 A Yes.

12 Q Apparently, a copy of this document was sent
13 to you according to the cc.

14 A Yes.

15 Q Now, this document concerns a Dr. Schepers,
16 and certain publications that he had written about
17 fiberglass --

18 A Where was he?

19 Q Saranac Lake -- who was promoting these
20 tests and all.

21 Without getting into the substance of the

1 document, looking at the document, do you agree that
2 you likely -- that it is likely that you received a
3 copy of this document on or about the time it was
4 written in 1955 in the course of your employment at
5 Owens-Corning?

6 A Probably.

7 BY MR. MCGOWAN:

8 Q The next document?

9 A Incidentally, what does it say?

10 Q It talks about Dr. Schepers in his research
11 at Saranac.

12 A You read it.

13 THE COURT: Who is asking questions?

14 MR. MCGOWAN: The witness is asking
15 questions.

16 MR. IGNATOWSKI: It just said you read it or
17 you read it, either way.

18 MR. SMITH: Next page, page 50.

19 BY MR. SMITH:

20 Q Now, the second document is a document dated
21 August 20, 1956.

1 It purports to be from a Mr. Burch?

2 A Yep.

3 Q It is an intracompany correspondence on
4 Owens-Corning letterhead and it has your name on it as
5 receiving a copy?

6 A Yes.

7 Q Now, looking at the document, you agree
8 that, based upon the document, that you are likely to
9 have received a copy of it in the course of your
10 employment at Owens-Corning; it is probable that you
11 did?

12 A Yeah, but I don't know why, except they have
13 sent it to the president and the heads of all of the
14 divisions and then the head of the research.

15 Kessler, who was in California and Boyd,
16 who was Toledo. And, you know, they gave it pretty
17 broad coverage.

18 It says, attached is a copy of this letter
19 which we would feel -- which we feel would be most
20 helpful if we were faced with a lawsuit in which the
21 original reporter --

1 Q Do you think it is likely you received it?

2 A I think so.

3 MR. SMITH: Mr. McGowan.

4 MR. MCGOWAN: Yes.

5 BY MR. MCGOWAN:

6 Q Mr. Thomas, attached to this memorandum was
7 a letter from Dr. Schepers.

8 Did you ever meet with Dr. Schepers?

9 A Wasn't Seifert; wasn't the guy that worked
10 for fiberglass, was it?

11 Q No, this man's name was Dr. Gerrit Schepers
12 and he was from South Africa. And he was head of the
13 Saranac Research Institute in New York.

14 Do you remember him?

15 A I don't remember him.

16 Q Did your job duties ever involve
17 coordination of health research projects?

18 A Not as such. Only might have come along
19 with something else I was doing.

20 Q Did you ever have any direct contact with
21 Saranac Lake?

1 A No.

2 Q Do you know what Saranac Lake is?

3 A It is a testing laboratory, as I remember,
4 what I know of it.

5 Did we use it a lot? It is used a lot by
6 asbestos workers in trying to prove something.

7 Q In the 1950s and '40s, were you aware of
8 animal studies being done at Saranac Lake?

9 A Not that I remember.

10 Q Did you ever receive or did anyone ever
11 provide you with information about animal studies on
12 the Kaylo product?

13 A No.

14 Q Throughout the whole time that you were
15 employed by Owens-Corning Fiberglas Corporation, did
16 anyone ever show you the animal studies that had been
17 done at Saranac with the animals who were exposed to
18 breathing Kaylo dust?

19 A No, I don't remember that.

20 Q Throughout the entire time that you worked
21 for Owens-Corning Fiberglas, did you ever ask whether

1 or not any animal studies had ever been done with the
2 Kaylo product?

3 A Not to my knowledge. I don't remember any
4 requests.

5 BY MR. SMITH:

6 Q Well, let me show you a letter dated
7 November 16, 1948 to a Mr. Bowes from Dr. Vorwald at
8 the Saranac Laboratory.

9 And I understand that you have not seen
10 this, but this letter recites the fact that the
11 experimental study of the effects of inhaled Kaylo
12 dust on normal, uninfected animals is now finished and
13 the conclusions expressed on that subject are final,
14 rather than tentative.

15 It then says, in all animals sacrificed
16 after more than 30 months of exposure to Kaylo dust,
17 unmistakable evidence of asbestosis has developed
18 showing that Kaylo on inhalation is capable of
19 producing asbestosis and must be regarded as a
20 potentially hazardous material.

21 Now, was that information that I just read

1 to you ever brought to your attention at any time when
2 you were at Owens-Corning, either when you were an
3 assistant to the president or when you were president
4 of the company?

5 A I don't remember it. I knew Bowes pretty
6 well, and I don't know how asbestos got by him
7 actually.

8 Q Another paragraph as to this letter in 1948
9 says, "I realize that our findings regarding Kaylo are
10 less favorable than anticipated.

11 "However, since Kaylo is capable of
12 producing asbestosis, it is better to discover it now
13 in animals rather than later in industrial workers.

14 "Thus the company being forewarned will be
15 in a better position to institute adequate control
16 measures for safeguarding exposed employees and
17 protecting its own interests."

18 If you had known that information, Mr.
19 Thomas, would that have affected in any way whether or
20 not Owens-Corning would have sold the Kaylo product?

21 A I don't know. I think we would want more

1 information.

2 Q If you had known that the animals could get
3 asbestosis from breathing Kaylo, would you believe,
4 based upon that, that Owens-Corning, if they had known
5 it, should have put some sort of label or safety
6 instructions on the product?

7 A Should have run up a red flag, I would
8 think.

9 Q And if it had been known to you, then it
10 would have run up a red flag to you?

11 A Right.

12 Q What would you have recommended, if it had
13 been known to you, that be done about telling the
14 consuming public about this information if it was
15 known to you?

16 A Put a warning on, put a warning or something
17 and find a substitute.

18 Q How did you know Mr. Bowes? Who was the
19 person to whom this letter was written?

20 A He was in research at Owens-Illinois.

21 Q Did you have contact with him in the 1940s?

1 A When I moved to Toledo from Newark, we met
2 the Boweses and were friends with them.

3 Q You and your wife were friends with Mr.
4 Bowes and his wife?

5 A Right.

6 Q How long did you remain friends?

7 A Until he died.

8 Q When was that?

9 A Until she died, and she died last year or
10 so. He died quite a while ago.

11 Q Were you friends throughout the 1950s,
12 '60s?

13 A Well, when we went to New York, of course,
14 we didn't see them then.

15 Q That was in the period 1949 to '59?

16 A Yeah, and then we moved back to Toledo
17 finally and he was gone, I guess, by then. She just
18 died recently.

19 Q But at the time this letter was written to
20 Mr. Bowes in 1948, you knew him then?

21 A Yes.

1 Q Socially?

2 A Yes, sure.

3 Q You didn't work in the same building, did
4 you?

5 A No, no, but we always had a reasonably close
6 relation with Owens-Illinois because our people came
7 from there and they were friends.

8 Q Did the Owens-Illinois Company continue to
9 exchange information and share information with Owens-
10 Corning throughout the 1950s?

11 A Yes.

12 Q And if things were important to joint
13 ventures that they were involved with, Owens-Illinois
14 would share information with Owens-Corning?

15 A Yeah, well, I would say so, yes, sure.

16 Q In the 1950s, from 1953 to '58, Owens-
17 Illinois and Owens-Corning were working together with
18 regard to Kaylo and Owens-Illinois was manufacturing
19 it and Owens-Corning was selling it?

20 A Yeah, and were going to manufacture it.

21 Q During that period of time, do you know

1 whether or not the Owens-Illinois people worked
2 closely with the Owens-Corning people to advise them
3 about the Kaylo product?

4 A I am sure they did.

5 Q Let me show you a document from the Owens-
6 Corning depository dated February 7, 1952 which
7 concerns those same animal studies.

8 A This guy is in Saranac?

9 Q Yes, Dr. Vorwald. This has Bates number
10 015011347. And this says, "Herewith is the final
11 report of our studies concerning the capacity of
12 inhaled Kaylo dust to injure the lung."

13 The second paragraph says, "The results of
14 the investigations with animals show that Kaylo is
15 capable of producing peribronchiolar fibrosis typical
16 of asbestosis."

17 Now, am I correct that no one ever shared
18 this letter with you?

19 A I don't remember it, no. I don't remember
20 seeing it.

21 Q Do you agree that if you had seen this

1 letter, that this, again, would have been a red flag
2 to you?

3 A I think anyplace along the line, although I
4 wasn't mixed up in all of this, asbestos kind of had a
5 bad name as far as I was concerned.

6 I think mainly because the early asbestos
7 products that were on the market were soft and fuzzy
8 and floated around.

9 Q They created a lot of dust?

10 A Well, some certainly.

11 MR. IGNATOWSKI: Is there a question in
12 between there, Mr. Smith?

13 MR. SMITH: No, keep reading.

14 MR. IGNATOWSKI: On page 60?

15 MR. SMITH: Yes, please.

16 A As far as I can remember, we were -- when I
17 came back to Toledo, we were busy getting asbestos the
18 hell out of the product.

19 Q But in the 1940s, is that when you formed
20 your opinion, asbestos was a bad product?

21 A Well, I wouldn't say a bad product. I would

1 say it was questionable how you used it. It was a
2 good product as far as heat was concerned.

3 Q But it was a product that you knew could
4 create a lot of dust and could possibly cause people
5 to get sick?

6 A Right, sure.

7 BY MR. MCGOWAN:

8 Q And did you continue to have that belief
9 throughout the 1950s?

10 A Well, now, '50s, where was I?

11 Q You were in New York.

12 A Yeah, I had no occasion to. I don't think
13 fundamental feelings changed one bit, but I had no
14 information that showed one way or another what
15 happened. But people inhaled it and it never occurred
16 to me that they would go into the use of Kaylo without
17 proper tests.

18 Q So does it frankly -- is it disappointing to
19 you, Mr. Thomas, here we are in 1991 and for the first
20 time in 1991 you are learning about this animal study
21 that was done in the '40s on Kaylo and no one ever

1 told you about it before?

2 A Not this specific one. Of course, there was
3 a lot of commotion.

4 I remember when I came back from the West
5 Coast there was a lot of commotion and should have
6 been, because there was asbestos fiber floating around
7 in the plant. And, see, we went busily about getting
8 rid of it and finally did.

9 Q When you got back from the West Coast -- my
10 question to you is, Mr. Thomas, aren't you just a
11 little bit angry or annoyed you are finding out about
12 these Kaylo studies for the first time in 1991 and
13 that no one told you about this?

14 A No, I don't think so. I think this is a
15 matter of a lot of things that were going on, and I
16 didn't have any close contact with and no occasion to
17 know about them.

18 BY MR. SMITH:

19 Q If you had been present in 1952 and/or
20 received this report, this would have been a red flag
21 to you, wouldn't it?

1 A It would have probably been what I expected
2 if I knew tests were being made.

3 Q And you would have expected this because, by
4 that time, you already knew that asbestos was
5 something that could cause people to get sick?

6 A That you could inhale it.

7 Q And that it could cause this lung disease?

8 A Asbestosis, right.

9 BY MR. McGOWAN:

10 Q Even though you didn't get a copy of this
11 report in 1952 --

12 A Who did that go to?

13 Q This went to Owens-Illinois Glass Company.

14 A Who?

15 Q Bill Hazard.

16 A Okay.

17 Q Did you know him?

18 A Yes.

19 Q Who was he?

20 A This was his job, was looking for hazards.

21 Q Good name for a man named Hazard.

1 A Right.

2 Q His job was to determine whether or not
3 there were hazards with products?

4 A And where we were if there were any.

5 BY MR. SMITH:

6 Q Am I correct, that even though you didn't
7 get this report, the fact that animals could get
8 asbestosis from breathing Kaylo is not something that
9 would have surprised you in that time period?

10 A No, I would not have been surprised.

11 Q Because you already knew?

12 A At that time.

13 Q At that time, that information?

14 A Yes.

15 Q Mr. Thomas, I am going to show you another
16 document. This is dated May 23, 1957 from a Mr.
17 Johnson to a Mr. Burch from K.S. Johnson in Santa
18 Clara.

19 Do you know a Mr. Johnson?

20 A Yep, I did.

21 Q What was his job?

1 A He was a personnel guy.

2 Q Personnel?

3 A Manager, Santa Clara.

4 Q And the subject of the memorandum is

5 asbestosis and it is directed to Mr. Burch.

6 Who was Mr. Burch at that time?

7 A He was the company's personnel manager.

8 Q And this memorandum -- at the end of the
9 memorandum he says I am sure that everyone in our
10 company is conscious of the interest of the asbestos
11 workers and the problems of asbestosis and allied
12 diseases.

13 However, we feel it important to keep them
14 informed of any developments here in the West.

15 A Okay. Yeah, what about them?

16 BY MR. MCGOWAN:

17 Q My question to you is, based on what you
18 have told me this morning, you agree with Mr. Johnson
19 that everyone in the company was aware of the problems
20 that asbestos workers were having with the disease
21 asbestosis?

1 A I don't think -- I think he is just painting
2 with a broad brush and has no position to do so.

3 He was manager of personnel affairs in a
4 little plant in Santa Clara, and these products were
5 coming from the West Coast or to the West Coast from
6 the East someplace where they were manufactured.

7 Through our contracting company he
8 undoubtedly knew about then and I think he is just
9 painting with a broad brush that everybody ought to
10 know about this. Kind of a little out of his field.

11 BY MR. SMITH:

12 Q As of that time, based on what you had
13 learned in the '40s, you knew that there was a problem
14 or that the asbestos workers were interested in the
15 problem of asbestosis?

16 A Sure.

17 Q And by this time, 1957, you knew that the
18 reason these people were interested in the hazards of
19 asbestosis was because that was one of the risks of
20 working with asbestos products?

21 A Right.

1 Q And those products included the asbestos
2 insulation products which were in competition with the
3 fiberglass products of Owens-Corning?

4 A Right.

5 BY MR. McGOWAN:

6 Q And at this point in time?

7 A I don't think they were competing head to
8 head.

9 Q Different temperature ranges?

10 A Right.

11 BY MR. SMITH:

12 Q At this point in time one of those asbestos-
13 containing insulation products was the Kaylo product,
14 correct?

15 A As far as I know, yes.

16 Q And Owens-Corning had been selling that
17 product as a distributor for Owens-Illinois since
18 1953?

19 A Yep.

20 BY MR. McGOWAN:

21 Q Now, had you known since the '40s that these

1 same insulators, one of the risks of their trade was a
2 disease of asbestosis?

3 A Of course. They had no substitute. They
4 had to have something to insulate high temperature
5 pipes.

6 BY MR. SMITH:

7 Q You agreed with that, but my question was,
8 do you agree that you had known since the 1940s that
9 the asbestos workers who were using the asbestos
10 pipecovering materials were at risk of getting
11 asbestosis?

12 A No, you mean what would I have done about
13 it?

14 Q Not what you would have done. You had known
15 that that risk existed?

16 A Yeah, I think so.

17 Q And that was one that you knew during the
18 time that you were an assistant to the president of
19 Owens-Corning when you were at Toledo, correct?

20 A Right.

21 Q And that knowledge then, is consistent with

1 what Mr. Johnson is saying in 1957, that he knew at
2 that time, he was conscious at that time of the
3 interests in the asbestos workers, the people that use
4 asbestos products and the problems of asbestosis?

5 A Right.

6 Q Let me show you another document dated
7 February 6th, 1956. It is from Dr. Schepers to Mr.
8 Burch, that you had previously identified.

9 But in this letter from Dr. Schepers of
10 Saranac Lake, Dr. Schepers says, on the fourth page of
11 this letter to Mr. Burch, I suppose you already know
12 that asbestos is fairly well incriminated as a
13 carcinogen and that asbestos causes lung damage by
14 virtue of the length of its fibers.

15 Do you see that?

16 A Yes, I see it.

17 Q Now --

18 A I didn't know it had anything to do with the
19 length of the fiber or size of the dust or any of
20 those things.

21 I just thought the fact that you could

1 breathe it caused you to get in trouble.

2 Q So in that 1956 time period you knew that if
3 you inhaled asbestos-containing dust or dust that
4 contained asbestos, you could get in trouble,
5 correct? You could get sick.

6 But my question is, did you know that one of
7 the sicknesses or the possible sicknesses was cancer?

8 A No. It is -- I thought it took your lungs
9 out of circulation, parts of your lungs.

10 Q What was it that you understood that this
11 asbestosis was that the people that used asbestos
12 products could get?

13 What was this disease?

14 A If you breathe it, it went into the lungs
15 and took part of the lungs out of circulation.

16 Q It would cause the lungs to get scarred and
17 not be able to function correctly?

18 A Right, but you could live with it, as many
19 people are, I guess.

20 Aren't they?

21 Q Yes. You knew that one of the problems

1 associated with it was difficulty in breathing?

2 A Right.

3 Q Would it be consistent with your
4 understanding in 1955 that asbestosis was a risk, a
5 health risk to persons who used asbestos products, but
6 that, on the other hand, people that used fiberglass
7 products did not have any risk of contracting lung
8 disease?

9 A In my opinion, it is.

10 Q In your opinion it is?

11 A Yes.

12 Q My question to you is, with regard to this
13 disease asbestosis, did you know in the 1940s that one
14 of the ways to prevent this disease was to wear a
15 respirator?

16 A Sure.

17 Q In the 1940s and 1950s, did you know that
18 one of the ways to prevent getting the disease
19 asbestosis was to wear a respirator?

20 A Well, I knew what a respirator was for.

21 Q And you knew that if respirators were worn,

1 it would be a way to prevent people from getting
2 asbestosis?

3 A And other things, too. Now your dentist
4 wears one.

5 Q Specifically people who used asbestos-
6 containing products, pipecoverers, asbestos workers in
7 the 1940s and 1950s, you knew that if those people
8 wore a respirator, it would help to prevent the
9 disease of asbestosis?

10 You knew that, didn't you?

11 A Yes.

12 Q And do you agree that if a worker was
13 working with asbestos-containing products in the 1940s
14 and 1950s as a pipecoverer, that part of the necessary
15 education of that worker would include advising him
16 that he should wear a respirator to prevent the
17 disease of asbestosis?

18 A Yes. Now, let me ask the question, do they
19 today?

20 BY MR. MCGOWAN:

21 Q Do they today?

1 A Do they?

2 Q Yes.

3 BY MR. SMITH:

4 Q Now, throughout the time that you worked for
5 Owens-Corning, did you ever hear of something called a
6 threshold limit value?

7 A Not really, I don't think. I don't know
8 what the hell it means.

9 Q Okay. So would I be correct then, that when
10 you were president of the company, no one ever brought
11 to your attention anything of any importance about the
12 threshold limit value as it might apply to Kaylo or
13 any asbestos products?

14 A When I got to be president, we were trying
15 to get that asbestos the hell out of Kaylo just as
16 fast, by God, as we could. It took longer than we
17 hoped, but they finally got it out.

18 Q But did anybody ever suggest to you that a
19 threshold limit value was important as pertains to
20 Kaylo?

21 A It wasn't a criteria in any sense that I

1 remember. What does it mean? That you get them over
2 and above that you got problems and below that you get
3 by without any trouble?

4 MR. IGNATOWSKI: Line 17.

5 BY MR. MCGOWAN:

6 Q Are you aware of any discussion about the
7 subject at all?

8 A Never heard of it. Now, these outside
9 tests, weren't they done with that in mind, Saranac
10 and all of these?

11 Wasn't that determining what was dangerous
12 and what wasn't?

13 Q Saranac dealt with animals?

14 A Yes.

15 BY MR. SMITH:

16 Q Are you aware of any other tests ever
17 performed on the Kaylo product?

18 A Not to my knowledge.

19 Q Have you ever heard of anything called a
20 Fleischer-Drinker report?

21 A No.

1 MR. MCGOWAN: Skip 82, skip 83. Skip my
2 designations on 84.

3 MR. SMITH: Line 9 on page 84 then.

4 BY MR. SMITH:

5 Q Is it about this time period 1964 that you
6 learned about Dr. Selikoff's study of cancer and
7 asbestos workers?

8 A I didn't pay too much attention to it, I
9 remember that.
10 I just felt that we were in a dangerous area
11 and should get the asbestos the hell out of the
12 product.

13 Q Am I correct that, even prior to receiving
14 this memorandum in May, 1964, you had already decided
15 that the Kaylo product was dangerous because it had
16 asbestos in it and you ought to get the asbestos out
17 of it?

18 A Right.

19 Q Now, do you recall discussions in the 1960s
20 that related to Dr. Selikoff and his findings of
21 cancer in asbestos workers?

1 A Yeah, but I don't remember any detail. I
2 mean, it was covered.

3 Q Do you agree that you probably did receive a
4 copy of this report, but you simply don't recall it at
5 this time?

6 A Right.

7 MR. MCGOWAN: Page 86, line 8.

8 BY MR. MCGOWAN:

9 Q Mr. Thomas, do you feel all right?

10 A Fine.

11 Q Do you feel strong?

12 A Good.

13 Q We have taken a short break and marked some
14 documents.

15 A Things wouldn't be so difficult if you could
16 shut people up, would it?

17 Q Mr. Thomas, did you have any input directly,
18 yourself on what information, if any, should be put on
19 the labeling --

20 A No.

21 Q -- of the Kaylo product?

1 A Never knew they were planning on a label or
2 that they were putting one out.

3 Didn't know anything about labeling anyway,
4 except I have a hell of a time reading the caution,
5 because they got the print so goddamn fine that you
6 can't read them.

7 Q What are you talking about?

8 A My medicine mostly.

9 BY MR. SMITH:

10 Q Do you agree that if a label is in small
11 print that it is likely it is not going to be read?

12 A I would think that is a fair question.

13 Q You agree that that is a fair statement,
14 don't you?

15 A I think so, yeah.

16 Q And in order for a label to be effective, it
17 has got to be easy or conspicuously obvious to
18 somebody who is going to be using the product; do you
19 agree?

20 A It ought to grab you.

21 Q It ought to grab you?

1 A Right.

2 Q And it ought to be easy to understand,
3 right?

4 A Yes.

5 Q And it ought to convey any danger that may
6 be associated with the product, correct?

7 A As far as I am concerned.

8 Q Do you agree that the Kaylo product, in
9 order for the label to be effective, it should be in a
10 large enough place so people could see it obviously?

11 A In fact, I don't know if I have ever seen
12 one.

13 Q In order to be effective, you agree it would
14 have to be conspicuous?

15 A It would be prominent.

16 Q Do you agree that, like other labels, it
17 ought to be the kind of label that grabs you?

18 A Right.

19 Q And it ought to be a label that is easily
20 understood, correct?

21 A Yep.

1 Q It ought to be a label that, if there was
2 danger in the Kaylo product, it advises people that
3 there was a danger; do you agree?

4 A Right.

5 Q And you agree that if there were safety
6 precautions to avoid the danger, that those safety
7 precautions could be clear and understandable; do you
8 agree?

9 A Yep.

10 MR. IGNATOWSKI: Line 25, at the bottom of
11 9.

12 BY MR. MCGOWAN:

13 Q You would pay attention to it?

14 A I think that is right, but I don't know
15 anything about it, so I can speak freely.

16 If you had a group of people that were
17 trying to design a label, you would have 10 opinions
18 and you make the label, and you would have 10
19 different labels, none of which would be even noticed
20 by the others.

21 BY MR. SMITH:

1 Q With regard to the Kaylo product, by the mid
2 1950s you had come to the conclusion that because it
3 had asbestos in it, it was a dangerous product,
4 correct?

5 A Right.

6 MR. MCGOWAN: The question is read back.

7 MR. IGNATOWSKI: Which page?

8 MR. MCGOWAN: Page 90.

9 MR. IGNATOWSKI: Okay.

10 MR. MCGOWAN: The question was read back.

11 BY MR. MCGOWAN:

12 Q This is in the 1950s?

13 A Yeah, that was early.

14 Q You agree with that?

15 A No. I don't think we were aware of it
16 really.

17 MR. IGNATOWSKI: I think you are on page 92,
18 line 3.

19 MR. MCGOWAN: All right.

20 BY MR. MCGOWAN:

21 Q We are talking about Kaylo, Mr. Thomas, in

1 all honesty.

2 A No, well, I just think we were talking
3 generally.

4 BY MR. SMITH:

5 Q Kaylo was one of those asbestos-containing
6 products, correct?

7 A Right.

8 Q You and I were talking about asbestos-
9 containing products including Kaylo, correct?

10 A Generally.

11 Q Yes.

12 A All of them.

13 Q All of them were potentially dangerous?

14 A Yes.

15 MR. SMITH: Page 94.

16 BY MR. SMITH:

17 Q Mr. Thomas, you agree that a warning on the
18 product Kaylo, in order to be effective, should, in
19 the minimum, indicate that it was potentially
20 dangerous?

21 A Right.

1 BY MR. MCGOWAN:

2 Q If you put danger or warning on a box of
3 Kaylo, you agree that one of the results of that would
4 have been you would have sold less Kaylo?

5 A We had people who were label people. They
6 all took a good look at this and decided what they
7 could come up with.

8 BY MR. SMITH:

9 Q If Owens-Corning had had the word danger on
10 its Kaylo products and had other asbestos
11 manufacturers not had that on their products, you
12 agree, that would have put Owens-Corning on a
13 competitive disadvantage?

14 A You would have a little harder selling job.

15 Q Let me show you a document dated October 27,
16 1966 that, at the top, has, in handwriting, copies to
17 J.H. Thomas.

18 Do you see that?

19 A Yes.

20 Q It says copies to J.H. Thomas.

21 A Who wrote that?

1 Q I am not sure whose handwriting it is in.

2 A Who wrote it, Wayne Johnson?

3 Q This document is 010360813 and 0814.

4 It says, "Owens-Corning Fiberglas cannot
5 dissociate itself from asbestos, as we buy merely \$1
6 million worth as reinforcement for Kaylo."

7 Do you remember receiving this document in
8 the ordinary course of your employment at Owens-
9 Corning?

10 A No, I don't.

11 Q Looking at the document, the structure of
12 the document, the people to whom it is addressed and
13 so forth, do you think it is likely that you did
14 receive a copy of it?

15 A Probably, yeah.

16 Q This document says, "Surveys of union locals
17 in Cincinnati, New York and New Jersey reveal a
18 substantially higher incidence of cancer than the
19 general population, and no reason has been brought
20 forward except exposure to asbestos.

21 A Okay, I think I may have seen it.

1 Q Next document is number 13 and purports to
2 be addressed to you from Mr. Hardwick and it is dated
3 November 1, 1966, okay?

4 A I think I have seen it.

5 Q Do you think that you likely or probably
6 received a copy of this document in the ordinary
7 course of your employment in Owens-Corning?

8 A Yes, I think so.

9 MR. IGNATOWSKI: Page 105, line 5, Mr.
10 McGowan.

11 BY MR. MCGOWAN:

12 Q What was the date of retirement from Owens-
13 Corning?

14 A I guess I retired on my 65th birthday,
15 theoretically, January 1st.

16 Q That was 1973?

17 A '73, right.

18 Q Did you own stock in the company at that
19 time?

20 A Yes.

21 Q And you have continued to own stock in the

1 company?

2 A I have, yes.

3 BY MR. SMITH:

4 Q Can you tell me approximately what the stock
5 position is that you have with the company,
6 approximately how many shares you own?

7 A Mostly, when they reorganized, the stock
8 went way up and I got rid of most of it.

9 Q How much did you have at that time?

10 A I don't know exactly, but a few thousand
11 shares.

12 Q How many do you have now?

13 A A few thousand.

14 BY MR. McGOWAN:

15 Q What does a few mean?

16 A Okay, when the company was reorganized there
17 was a guy named Selikoff who was trying to buy the
18 company, kept running the price of stock up.

19 When it got up to around 100 a share and it
20 was pretty tempting, I got rid of that and put it in
21 the bond.

1 Q His name was Selikoff?

2 A Something like that.

3 MR. McGOWAN: That was by his wife, Mrs.
4 Thomas.

5 MR. IGNATOWSKI: No, the witness, something
6 like that, at line 8.

7 MR. McGOWAN: Mrs. Thomas.

8 A It was a bad name. I forget what it was.

9 MR. IGNATOWSKI: Do you want me to read
10 line 7 -- no, that wasn't it -- by Mrs. Thomas?

11 MR. McGOWAN: No, that is fine.

12 THE COURT: When was she sworn as a
13 witness?

14 MR. McGOWAN: She wasn't.

15 BY MR. SMITH:

16 Q Approximately, what is it that you own now,
17 75, 80,000?

18 A Oh, no, less than that.

19 Q 5,000?

20 A Maybe around 40, 50.

21 Q Forty or 50,000 shares?

1 A Yes.

2 Q Of Owens-Corning?

3 A Right.

4 Q What is that stock selling at today?

5 A This morning?

6 Q This morning. I am sure you have a quote.

7 A What was it, Doris?

8 THE COURT: Go to line 19, the answer.

9 A Twenty-four and three-eighths.

10 THE COURT: That was the question.

11 Q Twenty-four and three-eighths.

12 A Yes, I could have told you that before
13 lunch.

14 BY MR. McGOWAN:

15 Q In the 1930s when you were with Owens-
16 Illinois and then with Owens-Corning, you were doing
17 research of fiberglass; isn't that right?

18 A Right.

19 Q You didn't do any specific research on
20 asbestos during that time period, did you?

21 A No.

1 Q You didn't work with any asbestos-containing
2 products at that time either, did you?

3 A Not really, no. Maybe a heating pad that we
4 could put a hot burner on.

5 Q You didn't do any research on those products
6 though?

7 A No.

8 Q And then, in the 1940s when you were in --
9 let's see, '39 to '49 when you were in Toledo?

10 A We didn't have any. I don't know what you
11 want to ask.

12 Q You didn't do any specific research at that
13 time on asbestos, did you?

14 A No.

15 Q You didn't do any research on asbestos-
16 containing products?

17 A Right.

18 Q You didn't work with asbestos-containing
19 products at that time?

20 A Not really, no.

21 Q So you didn't have any opinion at that

1 time --

2 MR. McGOWAN: We will skip that.

3 Q My question was, you didn't have any reason
4 to form any opinions regarding asbestos-containing
5 products during that time period?

6 A No.

7 Q In the 1950s you were in New York working
8 with the textile group?

9 A Right.

10 Q Did you do any research at that time on
11 asbestos?

12 A None at all. Never got involved with it.

13 Q You didn't do any research on asbestos-
14 containing products at that time?

15 A No.

16 Q Did you work with asbestos-containing
17 products at that time?

18 A No.

19 Q When did you first learn that Kaylo
20 contained asbestos?

21 A Never had anything really to do with

1 asbestos and Kaylo.

2 Kaylo -- fiberglass took on Kaylo after I
3 had gone to New York and it never got to be a
4 question. And I assume it was a product they added to
5 their industrial line which I wasn't concerned of or
6 part of and really wasn't conscious of what the hell
7 was going on.

8 Q So your first involvement with Kaylo wasn't
9 until 1964, was it, when you came back to Toledo?

10 A That was when I really got concerned about
11 it.

12 Q When did you first learn that Kaylo
13 contained asbestos?

14 A I haven't any idea.

15 BY MR. SMITH:

16 Q When was your first involvement with Kaylo,
17 Mr. Thomas?

18 A When I came back in 1964, and it was obvious
19 that it was a hazard.

20 Q In 1964?

21 A In the early '60s.

1 BY MR. MCGOWAN:

2 Q Mr. Thomas, are opinions that you testified
3 to regarding asbestos in the 1940s and 1950s, were
4 they based upon any knowledge, specific knowledge that
5 you had about Kaylo?

6 A No.

7 Q So were they based on just general knowledge
8 of asbestos as a fiber?

9 A Right.

10 BY MR. SMITH:

11 Q Mr. Thomas, when you came back to Toledo in
12 the '60s, I understand you became involved in the
13 Kaylo replacement program?

14 A Yes, right.

15 Q What was your role in that program?

16 A I was the number 2 guy in the business, and
17 I was shocked by the fact that there was asbestos
18 fiber being blown around and --

19 BY MR. MCGOWAN:

20 Q Do you understand what I mean by the
21 asbestos replacement program?

1 A Yes.

2 Q What is your understanding of that?

3 A Find something to put in there instead of
4 asbestos.

5 Q To replace asbestos?

6 A Right, anything that we could, cotton or
7 wool or --

8 Q What was your role in that program?

9 A I was the boss.

10 Q Were you aware of any decisions by the
11 company to delay that program?

12 A Not the main program, no. There may have
13 been guys along the line in sales or some other area
14 that would have it go slower, faster or something.

15 Q Well, what was your opinion with regard to
16 how fast this program should go?

17 A As fast as it could go.

18 Q In your opinion, did it go as fast as it
19 could go?

20 A It was immediate. Progress was immediate.

21 BY MR. SMITH:

1 Q Mr. Thomas, you testified that you weren't
2 involved in the warning process or developing the
3 warning label for Kaylo; is that right?

4 A No. In fact, I never seen one.

5 BY MR. McGOWAN:

6 Q You were not in marketing with OCF at the
7 time; I am talking about the late '50s, mid '60s?

8 A No.

9 Q Do you consider yourself an expert in
10 drafting warnings?

11 A No.

12 Q Were you involved in the discussions
13 regarding whether to put a warning on Kaylo?

14 A Not specifically. I mean, I wasn't
15 responsible for it, but I think fiberglass felt they
16 needed a warning in relation to the other things that
17 were happening, going on at the time.

18 BY MR. SMITH:

19 Q To your knowledge, did they put a warning on
20 it?

21 A Just by -- I haven't seen it.

1 BY MR. MCGOWAN:

2 Q But you weren't involved in that process?

3 A No.

4 Q Going back to the 1950s, you testified you
5 were in New York with the textile group.

6 A Yes.

7 Q So you were not in Toledo when OCF was
8 distributing Kaylo in the 1950s?

9 A No, I wasn't.

10 Q And you weren't in Toledo when OCF bought
11 the Berlin plant in 1958?

12 A No.

13 Q You weren't involved in those negotiations?

14 A No.

15 Q Were you involved in any discussions with
16 Owens-Illinois regarding the Kaylo product at that
17 time?

18 A No.

19 Q So you don't have any specific knowledge
20 regarding the negotiations between OCF and O-I?

21 A No.

1 Q Do you have any specific knowledge of what
2 was shared between OCF and O-I during that period of
3 time?

4 A No.

5 Q As you know, I represent Owens-Illinois.

6 MR. IGNATOWSKI: What page are you on?

7 MR. MCGOWAN: 121. Let's skip to line 17.

8 BY MR. MCGOWAN:

9 Q Did you do any asbestos research --

10 MR. MCGOWAN: Excuse me. Line 12, Mr.
11 Ignatowski.

12 BY MR. MCGOWAN:

13 Q Am I correct, from having heard your prior
14 testimony, that you did not have any involvement
15 whatsoever with asbestos or asbestos-containing
16 products while you were employed by Owens-Illinois?

17 A Right.

18 Q Nor did you have any research or have any
19 involvement with asbestos-containing products while
20 you were with Owens-Corning from 1939 to 1940 in
21 Toledo?

1 A Right.

2 Q And then you went to New York to work for
3 the textile division?

4 A The textile division.

5 Q That was between 1949 and '59?

6 A Right.

7 Q And in that capacity you also had no
8 involvement with asbestos and asbestos-containing
9 products?

10 A Right.

11 Q And then you went to California in 1959 and
12 remained there until 1964?

13 A Right.

14 MR. MCGOWAN: Bottom of the page.

15 BY MR. MCGOWAN:

16 Q Am I correct that any opinions you have with
17 regard to the Kaylo product were formed after 1964
18 when you returned to Toledo?

19 A Well, I knew it was -- as a product, I knew
20 what it was as a product, and I knew we were selling
21 it to our distributors/applicators, but I had no

1 physical information about the product or anything
2 else.

3 Q Mr. Thomas, am I correct that the opinions
4 you have with regard to the product Kaylo were formed
5 after 1964 when you returned to Toledo?

6 A Specifically about Kaylo, yes.

7 Q Thank you, sir.

8 MR. McGOWAN: I believe that is it.

9 MR. SMITH: Page 125.

10 BY MR. SMITH:

11 Q To the extent there was a hazard from
12 asbestos pipecovering products, that hazard was
13 created by the fact that, when they were cut and used,
14 certain asbestos were released into the air, correct?

15 A Correct.

16 BY MR. McGOWAN:

17 Q In that sense, the Kaylo asbestos-
18 containing product is similar in its characteristics
19 to other asbestos-containing pipecovering?

20 A I don't know that. As I understand, the
21 others had a hell of a lot more asbestos in them than

1 Kaylo ever had.

2 Q If 85 percent magnesia pipecovering product
3 had 15 percent asbestos in it and Kaylo had 15 percent
4 asbestos in it, do you agree that they would be
5 comparable?

6 A Not necessarily. Depends on how much
7 tighter one held it than the other.

8 MR. McGOWAN: Page 128.

9 BY MR. McGOWAN:

10 Q In the 1950s, in the period of 1953 to 1958,
11 you knew that Owens-Corning was selling the Kaylo
12 pipecovering product, correct?

13 A Nobody ever specifically told me that.

14 Q But you knew that?

15 A Well, I assume it was a part of the line, I
16 guess, you might say.

17 Q And at the time in the 1950s when you knew
18 that Owens-Corning was selling the Kaylo product --

19 A When did Owens-Corning start selling?

20 Q 1953. During that period, 1953 to 1958, am
21 I correct that you knew that that was part of the

1 product line of Owens-Corning?

2 A What dates are we talking about?

3 Q 1953 to '58.

4 A Now, that is when I was in New York.

5 Q Right.

6 A So I had occasion to see -- so I had no
7 occasion to see it used or we didn't have warehousing
8 in New York or anything.

9 Q Your direct personal responsibility for it
10 began in the '60s, right?

11 A Right.

12 BY MR. SMITH:

13 Q But you knew that this was part of the
14 company's product line in the 1950s even though you
15 didn't have personal responsibility for it, correct?

16 A Yeah, I would say that is right.

17 MR. SMITH: Page 131.

18 BY MR. SMITH:

19 Q The opinions that you had in the '50s that
20 you previously expressed this morning were opinions
21 based upon information that was available to you at

1 the time, correct?

2 A Yes.

3 Q They are opinions that you held since the
4 1940s and 1950s, correct?

5 A Right.

6 Q Mr. Thomas, let me make sure I understand
7 the statement you just made with regard to your
8 opinions.

9 Those were opinions about asbestos in
10 general without reference to any specific asbestos-
11 containing products?

12 A Right.

13 Q When you say asbestos in general, you mean
14 asbestos-containing insulation products in general as
15 opposed to just the product Kaylo?

16 A I think, now, asbestos is asbestos, however
17 you use it.

18 Q Whether it was in asbestos products or
19 otherwise?

20 A Right.

21 MR. SMITH: That concludes our reading of

1 the John Thomas deposition, Your Honor.

2 THE COURT: Next, please.

3 MR. SHELLENBERGER: Joseph Farrell, Your

4 Honor.

5 (Whereupon, witness present.)

6 WITNESS ON STAND

7 Whereupon,

8 JOSEPH F. FARRELL,

9 the witness herein, being first duly sworn to testify the
10 truth, the whole truth, and nothing but the truth, was
11 examined and testified as follows:

12 THE COURT CLERK: State your name and your
13 address for the record.

14 THE WITNESS: Joseph F. Farrell, 2914
15 Superior Avenue, Baltimore County.

16 DIRECT EXAMINATION

17 BY MR. SHELLENBERGER:

18 Q Mr. Farrell, how long have you lived there
19 at Superior Avenue?

20 A Sixteen years.

21 Q And is that out in Baltimore County?

1 A Baltimore County.

2 Q All right.

3 Sir, are you retired?

4 A Retired? Yes, I am.

5 Q And what year did you retire?

6 A December, 1992.

7 Q And what company did you retire from?

8 A John H. Hampshire.

9 Q How long did you work for John H.

10 Hampshire?

11 A Spring of '56 until December of '92.

12 Q Okay.

13 A Thirty-six years or close to 36 years.

14 Q Thirty-six years for Hampshire Company?

15 A Yes, sir.

16 Q Now, did you work just as a plasterer for

17 Hampshire or did you have other jobs?

18 A I started out as a plasterer mechanic. I

19 guess around '59 or '60 I became a foreman. In 1968 I

20 became superintendent.

21 Q Did you remain a superintendent until you

1 retired in '92?

2 A Yes, I did.

3 Q And superintendent, that would mean you
4 would be in charge of the big jobs; is that right?

5 A Right.

6 Q Now, sir, are you a client of the Law
7 Offices of Peter Angelos?

8 A Yes, I am.

9 Q Do you have your own claim?

10 A Yes, I do.

11 Q Sir, did you know Jean Vandergucht?

12 A Yes, I did.

13 Q And do you remember about when you might
14 have met him?

15 A In the summer of '56.

16 Q All right. Do you recall the last time you
17 might have seen Jean, when that might have been?

18 A I saw him in 1974.

19 Q Would that have been the last time you saw
20 him?

21 A Probably within the springtime.

1 THE COURT: Excuse me for a moment.

2 Mr. Farrell, if you just put your arms like
3 that, you don't have to lean back and forth.

4 MR. SHELLENBERGER: Thank you, Your Honor.

5 THE COURT: Go ahead.

6 BY MR. SHELLENBERGER:

7 Q Mr. Farrell, can you describe Mr.
8 Vandergucht for us?

9 A Big stocky man. I guess he was about 5'10,
10 5'11, 200 pounds, around then.

11 Q Did you ever work with Mr. Vandergucht?

12 A Yes, I have.

13 Q Particularly I want to draw your attention
14 to the Cathedral of Mary Our Queen.

15 Did you ever work with Mr. Vandergucht on
16 that?

17 A I worked on that jobsite not as a partner
18 with him, but he was on that jobsite while I was
19 there.

20 Q Okay. Sir, do you remember when you were at
21 the Cathedral of Mary Our Queen?

1 A Summer of 1957.

2 Q Do you remember about how long you were at
3 that location?

4 A Little over three weeks, but not over four.

5 Q All right. And Mr. Vandergucht, was he
6 there before you got to that job?

7 A He was on the site when I arrived and he was
8 there when I left.

9 Q All right, so you were there somewhere for
10 three to four weeks and he was there before and after
11 you?

12 A It was in the summertime when I was there.

13 Q Okay. What kind of work were you doing
14 there?

15 A Plastering.

16 Q And can you just tell us where this church
17 is located?

18 A It is on North Charles Street, just south of
19 Northern Parkway now, but in them days I think it was
20 called Belvedere Avenue.

21 Q What kind of construction was this, sir?

1 A New cathedral, new church.

2 Q And who are you working for?

3 A John H. Hampshire Company.

4 Q And Mr. Vandergucht was working for?

5 A John H. Hampshire Company.

6 Q Now, what type of plastering were you doing
7 there; what kind of work were you doing?

8 A I was sent up there to do the finishing work
9 in the bell towers.

10 Q And the finishing work, is there some kind
11 of plastering that comes before that?

12 A Yes, the base coat.

13 Q And what kind of work was Mr. Vandergucht
14 doing?

15 A As I recall, he was working on the
16 ornamental plaster and the base coat.

17 Q Base coat?

18 A Base coat work.

19 Q Now, when does the base coat go on in
20 relation to the finishing plaster or the ornamental
21 work?

1 A The base coat is first applied and then you
2 put the finishing coat on.

3 Q And when you got to that location, was the
4 majority of the base coating already done?

5 A It was in the process of being done, but it
6 wasn't complete, no.

7 Q Now, what particular area -- since you were
8 doing the finishing coat, what particular area were
9 you working in?

10 A To the left in the bell towers.

11 Q Okay. And was Mr. Vandergucht in the bell
12 towers with you or is he elsewhere?

13 A No, he was out in the church in the back
14 area surroundings.

15 Q Now, during the three or possibly four weeks
16 that you were there, do you recall Mr. Vandergucht
17 being on the jobsite every day?

18 A Oh, yes.

19 Q Now, the plaster that you all were using, do
20 you remember the name or the type of plaster that it
21 was?

1 A Red Top, USG.

2 Q I am sorry, you said Red Top?

3 A Red Top, United States Gypsum. That was the
4 brand name. They called it Red Top, Round Top.

5 Q Now, sir, while you and Mr. Vandergucht were
6 at this jobsite at the new construction of the
7 cathedral, were there any other trades present at this
8 location?

9 A Yes, there were.

10 Q And could you tell the ladies and gentlemen
11 of the jury some of the trades that were present?

12 A Masonry, mechanical, you know, the plumbing,
13 whatever, electrical, whatever it takes to build a
14 building. Pipecoverers, plasterers, you know,
15 whatever it takes to build a building. Probably was a
16 few painters there.

17 Q A few painters. So all of the trades were
18 present?

19 A I would say yes, new construction.

20 Q Now, you mentioned pipecoverers. At this
21 particular location while you were there in 19 --

1 summer of '57 for those three to four weeks, do you
2 know who employed the pipecoverers?

3 A It was Reid-Hayden or Wallace & Gale.

4 Q You are not sure which one, but it was one
5 of them?

6 A I am now, because after I read my
7 deposition, I come up with a couple of names that I
8 remembered seeing on the site.

9 Q Okay. So it was either Reid-Hayden or
10 Wallace & Gale?

11 A Right.

12 Q Okay. Now, were the pipecoverers actually
13 working in the bell tower like where you were?

14 A No, they were not.

15 Q And where were they in the church?

16 A They were probably spread around the rest of
17 the building, you know, base coating and where the
18 lathers could be working.

19 Q Okay. And what were the pipecoverers doing
20 at this location?

21 A Covering pipe over the air ducts, the

1 air-handling ducts.

2 Q Now, when we talk about pipecovering, can
3 you describe for us what you are talking about?

4 What did it look like? What color was it?

5 A For pipes or for the duct?

6 Q For the pipes, I am sorry.

7 A For the pipes, it would be three or four
8 foot length of asbestos covering that would be split
9 in the middle and you wrap it around the pipe and then
10 they would glue it to seal it.

11 Q Okay. What color was it?

12 A Off-white, close to being white.

13 Q All right. Now, when you were at this
14 jobsite, the cathedral, three to four weeks in the
15 summer of '57, would you see the pipecoverers every
16 day?

17 A I would see them walking through the job and
18 when I was coming down off the scaffold, yes.

19 Q When they were covering their pipes, would
20 you describe for the ladies and gentlemen of the jury,
21 just so they know what they were doing, how they were

1 covering the pipes, what they were doing with it?

2 A What they would do with it?

3 Q Yes.

4 A It was so long and if they needed a piece
5 this big, they would take and cut it to fit until they
6 came to an elbow or a bell in the pipes, and then, of
7 course, that was applied by hand like an elbow. That
8 would be applied by hand.

9 Q And were the pipecoverers --

10 A Back in them days, but today it is not, it
11 comes formed now.

12 Q Okay. Were the pipecoverers covering pipe
13 and cutting pipe at the cathedral during that
14 particular time period when you were there?

15 A They were on the jobsite, yes, sir.

16 Q What did it look like when they would be
17 doing that?

18 What would the jobsite look like?

19 A Well, it could be dusty. What they would
20 create or something?

21 Q Yes, sir.

1 A They would create dust.

2 Q Was that dust in the air that you would
3 breathe?

4 A Yes, it would float through the air because
5 it was light.

6 Q Now, sir, are you able to tell us the
7 actual name, the brand name of the pipecovering that
8 was used at this particular location?

9 A No, I can't.

10 Q Okay. Now, back in the '50s and the '60s
11 when you were using plaster, the USG plaster and other
12 plasters, did you know that the plaster contained
13 asbestos?

14 A No, I did not.

15 Q Sir, during your years in the '50s and the
16 '60s and early '70s, did you ever see any warnings on
17 any of the products that you used or any of the
18 products at the jobsite?

19 A Like a mark or decal or something?

20 Q Right.

21 A No.

1 MR. SHELLENBERGER: That would be all the
2 questions I would have, Your Honor.

3 THE COURT: Thank you, Mr. Shellenberger.
4 Mr. McGowan.

5 MR. MCGOWAN: Yes, thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. MCGOWAN:

8 Q Good afternoon, Mr. Farrell. We never met
9 and my name is Tim McGowan.

10 A Good afternoon.

11 Q Just a few questions.

12 You indicated to the jury initially that you
13 first met Mr. Vandergucht in 1956; is that right?

14 A Right.

15 Q Was that when you and Mr. Vandergucht were
16 working at the Eastpoint Mall?

17 A Eastpoint Mall, that is right. Eastpoint
18 Mall was a high priority job, excuse me, and they
19 would have their own crew there during the week, and
20 on the weekends they would pull people from other jobs
21 and ask them if they wanted to work weekends. And

1 that is where I met him, on the weekend.

2 Q Do you remember even back in '56 working
3 with this thing called Cafco spray?

4 MR. SHELLENBERGER: Objection. Jobsite not
5 at issue, Your Honor.

6 MR. MCGOWAN: Your Honor, there is an issue
7 of cross-claims.

8 THE COURT: Overruled.

9 BY MR. MCGOWAN:

10 Q You can answer.

11 A I never used Cafco spray.

12 Q All right.

13 A And I know about it or I know of it.

14 Q Do you remember that Cafco spray was used on
15 the East Mall jobsite?

16 A I would say it was used in the big satellite
17 stores, yes, in the end, to fireproof beams and
18 columns.

19 Q Do you believe that you and Mr. Vandergucht
20 worked around that Cafco spray?

21 A Yes, we did.

1 Q There were other products that you used,
2 too, at that Eastpoint Mall. By the way, tell the
3 jury where that is located.

4 A Eastpoint Mall, North Point Road, Baltimore
5 County, just below the Pulaski Highway road there.

6 Q Thank you. You -- also at that jobsite, you
7 and Mr. Vandergucht used the United States Gypsum Red
8 Top cement or, I mean, plaster, didn't you?

9 A Yes, we did.

10 Q You know now in 1996 that some of those
11 products contained asbestos, don't you?

12 A What?

13 Q You know now some of those products back in
14 the '50s --

15 A Yeah, now.

16 Q You didn't know that back then, did you?

17 A I didn't learn that until the late '60s.

18 Q You also used Spraycraft at that jobsite,
19 didn't you?

20 A Spraycraft could have been specified, yes.

21 Q And Mr. Vandergucht also worked around that

1 Spraycraft back at Eastpoint Mall back in '56, didn't
2 he?

3 A If that is what we used working down there,
4 yes.

5 Q Now, let's go back in time back to the
6 church, the Cathedral of Mary Our Queen.

7 You worked there three or four weeks up in
8 the tower, didn't you?

9 A From the bottom up, yes.

10 Q How high is that tower? Can you tell the
11 jury how high?

12 A I would say about 40 feet.

13 Q Forty feet from the ground floor?

14 A I would say about 40 feet.

15 Q Am I correct there was no boilers or things
16 in that tower?

17 A Borders.

18 Q Boilers, steam boilers and things like
19 that?

20 A Nowhere I was working, but Mr. Vandergucht
21 wasn't in the towers with me. A gentleman that is

1 deceased, W.J. Brookhart and I did the towers, but Mr.
2 Vandergucht could have put the base coat on in there.

3 Q Up in the tower, right?

4 A Right.

5 Q Is that possibly before you got there?

6 A Yes, because I was a finisher.

7 Q When you say finishing, is that because the
8 church is almost complete?

9 A No, that would be the finished coat, like
10 you see a finished wall, you would have the base
11 coat -- you would have the lathe first, your base
12 coat, metal lathe, block lathe, and then you put your
13 base coat and then the finish work.

14 Q You were doing ornamental work?

15 A Ornamental work is on there, but I didn't do
16 that.

17 Q Isn't that because the church is almost
18 complete, you --

19 A You do almost all because the roof would
20 have to be on and you would have to have your
21 conditions.

1 Q The three or four weeks you were there, you
2 don't really have a specific recollection of what he
3 was actually doing at that time, do you, Mr.
4 Vandergucht?

5 A Not day in and day out, no.

6 Q Now, you mentioned this name Reid-Hayden.

7 You told the jury that they were the people
8 that you saw at the jobsite, one of the people you saw
9 at the jobsite?

10 A No, I was asked a question who I thought the
11 pipecovering contractor was, and in my deposition I
12 said Reid-Hayden or Wallace & Gale because, at that
13 time, that was the type jobs they would do. And after
14 I read my deposition, I am sure it was Wallace & Gale,
15 because I can recall who the foreman was.

16 Q Was it Reid-Hayden at all or not?

17 A Not Reid-Hayden, it was Wallace & Gale.

18 Q That was a mistake you made a few weeks
19 ago?

20 A I was down in the depo and they were
21 throwing questions at me. I couldn't think fast

1 enough.

2 I could think, but I couldn't come up with
3 the right answer.

4 Q Okay. When it comes to some of the
5 pipecovering, that was used on the jobsite, you don't
6 remember what kind of pipecovering it was?

7 A I don't know the name of it.

8 Q Is that because it really wasn't your
9 concern, you were --

10 A It wasn't my concern, exactly.

11 MR. McGOWAN: Thank you, sir, that is all I
12 have.

13 THE COURT: Thank you.

14 MR. McGOWAN: Thank you, sir.

15 THE COURT: Mr. Williams, do you have any
16 questions?

17 MR. WILLIAMS: I have no questions, Your
18 Honor.

19 THE COURT: Mr. Burns.

20 MR. BURNS: Yes, I have a few questions,
21 Your Honor.

1 THE COURT: Go ahead, sir.

2 CROSS-EXAMINATION

3 BY MR. BURNS:

4 Q Mr. Farrell, my name is Scott Burns, and
5 sorry if I am yelling at you, but the jury needs to
6 hear me.

7 A That is all right.

8 Q We met at your deposition.

9 Do you recall testifying at your deposition
10 that it was probably the summer of 1958 when you
11 worked at the cathedral?

12 A Yes. I said '57 or '58.

13 Q But you said it was probably 1958 at your
14 deposition?

15 A I said '57 or '58.

16 The reason I know, when I went to work for
17 Hampshire in the spring of '56, I worked all that year
18 at the Eastpoint Shopping Center and in January of '58
19 I was at Sinai Hospital for a little over a year on
20 Rogers Avenue, and that is when it came to my mind it
21 had to be '57.

1 I knew where I was in '56 and I knew where I
2 was in '58.

3 Q Where were the bell towers located in the
4 church?

5 Were they in the chapel area?

6 A On the altar side. I am sure if I am
7 correct, they were on the left.

8 Q When you were at the cathedral, is it fair
9 to say all of the walls were up in the building, the
10 exterior walls?

11 A Yeah, I would say so, yes.

12 Q Do you recall testifying at your deposition
13 that the walls, the exterior walls were made of
14 stone?

15 A Stone, right.

16 Q And --

17 A Limestone.

18 Q And, therefore, there weren't any pipes in
19 those walls?

20 A There could have been before the stone was
21 set.

1 Q But you have no knowledge that there were
2 any pipes there?

3 A What they do, they run a pipe up the wall
4 and then every so far they make an access for it so
5 you can get into it or an entrance that you can get
6 into the pipe.

7 Q But that work had been done before you
8 arrived there?

9 A In the particular area where I was working,
10 yes, the bell towers.

11 Q Do you recall testifying at your deposition
12 that the pipes -- you saw pipes in the boiler room at
13 this site?

14 A I was down in that boiler room, yes.

15 Q But you also testified that you never saw
16 Mr. Vandergucht work in that boiler room, right?

17 A I didn't see him working there, no.

18 Q Okay.

19 A But he could have been in there.

20 Q But you didn't see him?

21 A No, I didn't see him.

1 MR. BURNS: That is all I have. Thank you.

2 THE COURT: All right, thank you, Mr.

3 Burns.

4 Mr. Taylor, do you have any questions?

5 MR. TAYLOR: No questions, Your Honor.

6 THE COURT: All right, Mr. Shellenberger, do
7 you have any redirect?

8 MR. SHELLENBERGER: No, sir.

9 THE COURT: All right, Mr. Farrell, thank
10 you very much, sir, you may be excused.

11 THE WITNESS: Thank you.

12 (Whereupon, witness excused.)

13 THE COURT: Ladies and gentlemen, do you
14 want to take your break at the end of the day again
15 today?

16 THE JURY: Yes.

17 THE COURT: I won't ask you this question
18 beginning next week because we will be starting at the
19 normal starting time of 2 o'clock.

20 Go ahead.

21 MR. SHELLENBERGER: We have a deposition

1 that goes with Mr. Farrell and that would be the
2 deposition of Mr. Waters.

3 THE COURT: All right.

4 Mr. Shellenberger will be doing the
5 questions, Mr. Ignatowski the answers and Mr.
6 McGowan?

7 MR. MCGOWAN: I think Ms. Tostanoski will be
8 doing them for us, Your Honor.

9 THE COURT: Ms. Tostanoski, you will be
10 covering the defense designations.

11 MR. SHELLENBERGER: We are just trying to
12 organize the counter designations, Your Honor.

13 THE COURT: All right.

14 MR. SHELLENBERGER: Your Honor, we have the
15 deposition of John Stephen Michael Waters, Sr. taken
16 on Thursday, February 14th, 1991 and there will also
17 be another deposition from September of '85 and a very
18 brief reading from June of '95.

19 Mr. Ignatowski will be Mr. Waters.

20 MS. TOSTANOSKI: Mr. Shellenberger, you can
21 skip 8 and 14 and start on page 25 if you want to.

1 MR. SHELLENBERGER: Start on 25?

2 MS. TOSTANOSKI: Yes. I think I had the
3 first one.

4 MR. SHELLENBERGER: Yes, you do.

5 READING OF DEPOSITION OF

6 JOHN STEPHEN MICHAEL WATERS, SR.

7 TAKEN ON FEBRUARY 14, 1991

8 (Whereupon, the questions were read by Mr.
9 Shellenberger and Ms. Tostanoski and the answers were
10 read by Mr. Ignatowski.)

11 BY MS. TOSTANOSKI:

12 Q Can you list for me the jobsites where you
13 remember working with or around asbestos-containing
14 products?

15 MR. IGNATOWSKI: What page?

16 MS. TOSTANOSKI: 25.

17 MR. IGNATOWSKI: I have you starting at page
18 10.

19 A Can you be more specific? The three jobs I
20 am here to --

21 Q First, maybe if you can just list all of the

1 jobs where you remember working with or around
2 asbestos-containing products?

3 A You know, I am not prepared to answer that.
4 If you had told me I had to answer that when I came
5 down here, I sure would have made a list.

6 Q Okay.

7 A I could run through half of this city.
8 Right now, where we are in this building I worked,
9 but, I mean, to really give you a true list, I would
10 have to sit down and think about that.

11 Q Do you have any idea of the number of
12 sites?

13 A Hundreds.

14 MR. SHELLENBERGER: Page 75.

15 BY MR. SHELLENBERGER:

16 Q You worked at the Cathedral of Mary Our
17 Queen?

18 A Yes.

19 Q Is that the proper name?

20 A Yes.

21 Q Where is that located?

1 A Charles Street.

2 Q When did you work at the Cathedral of Mary
3 Our Queen?

4 A 1957, '58, about a year.

5 Q Do you recall what part of 1957 you worked,
6 you started that job?

7 A It was in the spring. I would say April.

8 Q And you think you left approximately the
9 same time of '58?

10 A Yes. It could have been 13 or 14 months I
11 was there, but I said a year.

12 Q What was being done at the cathedral at that
13 time?

14 A Construction.

15 Q Okay.

16 A New construction.

17 Q What was being built?

18 A The cathedral itself, plus the residence,
19 the boiler rooms.

20 Q Who were you working for at that time?

21 A Wallace & Gale.

1 Q Were you still an apprentice at this time?

2 A Yes.

3 Q Do you know who the general contractor was
4 on this job?

5 A No.

6 Q Do you remember the names of any of the
7 contractors on this site other than Wallace & Gale?

8 A I remember Hampshire being there. They were
9 the plasterers.

10 I remember it was either Poole & Kent or
11 Paul Rice, I think, that was the mechanical. I really
12 don't remember.

13 Q Were you doing straight insulation work at
14 this site?

15 A Straight? What is straight?

16 Q Did you do anything other than insulation
17 work on this job?

18 A Just insulation.

19 Q Were you there during the -- continuously
20 during this time period?

21 A Yes, except for vacation.

1 Q Is that a one-week vacation?

2 A Yes.

3 Q Did you work in any locations other than in
4 the residence and in the boiler room?

5 A The church.

6 Q What were you doing in the boiler room?

7 A Breeching boilers, converters, expansion
8 tanks, air separators, valves, blocking valves,
9 piping, ductwork.

10 Q Do you recall how long you worked in the
11 boiler room?

12 A Off and on I would say a couple of months.

13 Q Do you remember the size of the boiler
14 room?

15 A Yes, it was a big one. I didn't like
16 working there.

17 Q Why is that?

18 A On account of the dust.

19 Q Did you file any complaints with anyone
20 because of the dust on this job?

21 A The carpenters and the fitters and the

1 plumbers used to complain to us and the other trades,
2 not very nicely.

3 Q Are you able to give us, in terms of feet,
4 the dimensions of the boiler room?

5 A What would that have to do with -- I mean, I
6 guess it would be 30 or 40 feet high, maybe 300 feet
7 by 400 feet, something like that. I am guessing.

8 Q How many boilers were in there?

9 A I believe that had two. Could have had
10 three, could be a standby there, too.

11 Q Was the procedure for insulating the boilers
12 on this job the same as the procedure at the Cherry
13 Hill project?

14 A Yes.

15 Q Do you know who manufactured the block that
16 you used on the boilers on this job?

17 A There was two of them on this job that I
18 remember, recall.

19 Q Okay.

20 A Baldwin-Ehret-Hill and Owens-Illinois. That
21 would go with the pipe, block and cement.

1 Q You are saying both manufacturers made all
2 three products?

3 A Yes, and all three products were on the job,
4 plus the asbestos cloth.

5 Q How is it you know the name Owens-Illinois?

6 A Because I remember it from working on the
7 job. I mean, when Angelos told me that these were the
8 three jobs, I went back and started thinking about
9 it.

10 Q Where did you see Owens-Illinois written?

11 A On the cardboard box.

12 Q Did you see it written on any bags of
13 cement?

14 A Yes, on the cement, too.

15 Q Was anything else written on any of the
16 containers that said Owens-Illinois?

17 A The weight, size asbestos, this end up,
18 fragile.

19 Q What products do you think contained
20 asbestos that you used in the church?

21 A All.

1 Q The four you have just identified?

2 A Yes.

3 Q Where did you use them in the church?

4 A Throughout, everywhere.

5 Q Where were the pipes that you insulated
6 located within the church?

7 A Everywhere.

8 Q Were there some up in the altar?

9 A Yes, it could be. You have to heat up
10 their -- you have to have water up there.

11 Q Are they in the floors or the walls?

12 A Both.

13 Q Are there any in the ceiling or the roof?

14 A No, not in that church.

15 Q Do you remember the size of the pipes that
16 you covered inside the church?

17 A In the church?

18 Q Yes.

19 A Could be a rain leader, I guess that was --
20 could be eight or 12 inches.

21 Q Do you know what the pipes you insulated

1 inside the church carried?

2 A I know that the domestic water, I know what
3 that carries, the hot and cold water in the
4 recirculating line, keeps the hot warm. As for the
5 black pipe, could be steam or hot water heating. I am
6 not sure. Two-pipe system.

7 Q What did you do with the block inside the
8 church?

9 A There was maybe a couple of valves that
10 would have to be insulated with block.

11 Q Do you remember where within the church
12 those couple of valves were located?

13 A Throughout the church.

14 Q What would you use the cement on inside the
15 church?

16 A Beg your pardon?

17 Q I said, what would you use the cement on
18 inside the church?

19 A Cement on -- what I would use the cement
20 on?

21 Q Yes.

1 A Valves, elbows, Ts, to seam the covering.

2 Q Was some of the pipe actually within the
3 walls of the church and then covered by plaster?

4 A Yes, I would say that, brick or whatever,
5 they would conceal it.

6 Q Okay. What did you do inside the
7 residence?

8 A Pipe, ductwork.

9 Q Similar to what you have already described
10 for us at the housing project?

11 A Yes, just about the same.

12 Q How many residents are located at this
13 site?

14 A One large one.

15 Q How much time did you spend working on the
16 residence?

17 A A couple of months.

18 Q How about the church?

19 A I would say that was a slow project. That
20 was six to eight.

21 Q The balance of the time was spent in the

1 boiler room?

2 A In a boiler room and down leading into the
3 boiler room.

4 Q Were there any other trades working around
5 you on this job?

6 A Yes.

7 Q Can you tell us which trades you remember
8 working around you at this job?

9 A I guess the operating engineers, masons,
10 because I imagine that is who lays those big blocks
11 there, the masons, bricklayers, carpenters, laborers.

12 The laborers used to clean up after us,
13 probably made twice as much dust as we made, plumbers,
14 fitters, sheet metal men, roofers.

15 I guess the glazers put in the stained glass
16 windows. Electricians, I guess building trades, that
17 was a big project.

18 Q Do you know who employed any of the other
19 trades who were working on this site?

20 A No.

21 Q Do you know the number of tradesmen who were

1 working on this site?

2 A A couple hundred.

3 Q Do you know individually by trade how many
4 people were there?

5 A I would be just guessing.

6 Q What is the largest number of pipefitters
7 you can remember working around on this job?

8 A They have about 10 or 15 or 20 working in
9 the boiler room, about 20 in the church, maybe 20 in
10 the residences.

11 Q How about plumbers?

12 A About the same, maybe a little bit less.

13 Q You don't know the names of any of these
14 other tradesmen that work on this jobsite, do you?

15 A No.

16 Q Do you remember how many pipecoverers
17 Wallace & Gale had on this job?

18 A I would say 60.

19 Q Who was it on the job that directed you to
20 use the various types of or the various products that
21 you used?

1 MR. SHELLENBERGER: I am sorry, page 91,
2 line 13.

3 A Job superintendent would tell the
4 pipecoverer and we would go -- the asbestos worker,
5 and we would go do whatever he told us to do.

6 Q Was there a difference between the Owens-
7 Illinois product and the BEH product?

8 A Yes, I would say there was a difference.

9 Q What was the difference?

10 A Different texture. If I saw the product, I
11 probably could tell you the difference, but right now
12 I couldn't.

13 Q In terms of the use of the product, were
14 they using one for one type of use and the other for a
15 different use?

16 A No, you could mix it.

17 Q You could use them interchangeably?

18 Do you have a sense of whether you used more
19 of one type of product than the other on this job?

20 A No, I would not know. It was a lot of it.

21 BY MS. TOSTANOSKI:

1 Q Sir, I have a few questions for you.

2 When you started working at the cathedral,
3 what phase of construction was it in?

4 A Different phases. It was out of the
5 ground.

6 Q Was it watertight?

7 A Some of it was, some of it wasn't. When you
8 were laying those blocks for the church, you had to
9 insulate the pipe before they set one of those blocks
10 because those blocks would come in by crane.

11 I mean, they would come in on a tractor and
12 trailer, but the crane would have to set the block.

13 Q What type of blocks are you talking about?

14 A I think --

15 MS. TOSTANOSKI: The attorney interjects,
16 stone blocks outside.

17 A I think they came from Italy, I am guessing
18 that. I know you heard about how it was built.

19 Q Right, but are you talking about the
20 exterior of the church?

21 A Yes.

1 Q I just want to clarify that as opposed to
2 other types of block.

3 A Right.

4 BY MR. SHELLENBERGER:

5 Q I am sorry, what other trades were creating
6 dust?

7 A The laborers.

8 Q Laborers?

9 A Yes.

10 Q How were they creating dust?

11 A Sweeping up afterwards, sweeping our
12 asbestos up.

13 Q Do you know whether there were any other
14 forms of dust present at the jobsite other than from
15 the pipecovering, cement, whatever?

16 A No, we were the worst.

17 Q But were there others?

18 A Well, there might have been others, but
19 ours was so bad that you wouldn't even notice the
20 other stuff.

21 Q Did you also unload the trucks at this

1 jobsite?

2 A Yes.

3 Q Did I understand you to say early on in your
4 testimony regarding the cathedral work that you
5 remembered that Hampshire was there as --

6 A Yes, I remember Hampshire.

7 Q How do you know that those people that you
8 saw were from Hampshire?

9 A They were union.

10 Q And how did the fact that they were union
11 indicate to you that they were Hampshire workers?

12 A Because I think that was the first union
13 plasterers that I ran up against.

14 Q And were they in this project?

15 Were these -- let me make a note here
16 first.

17 On this project did you encounter these
18 Hampshire plasterers?

19 A I would say everywhere. They were in the
20 church, they were in the residence and they most
21 likely did the boiler room ceiling.

1 Q And was Hampshire working in the boiler room
2 while you were working in there?

3 A They could have been patching the ceiling.

4 Q Could have been, you are not sure?

5 A They usually were patching the ceilings. 90
6 percent of the jobs they actually had holes to fill
7 after the plumbers or sheet metal men or the
8 ironworkers.

9 There was always patching of holes that the
10 other people would make.

11 Q All right, so the bulk of the plastering had
12 already been done --

13 A In the boiler room.

14 Q In the boiler room, the bulk of the
15 plastering had already been done by the time Wallace &
16 Gale, including you, got there?

17 A Yes, the bulk.

18 Q As I remember, the church -- the main body
19 of the church has got the stone block on the inside,
20 too.

21 I don't remember seeing any plaster in

1 there.

2 What part of the church was plastered in?

3 A Where the priests change.

4 Q Were you working in that room doing your
5 pipecovering when Hampshire was working in there?

6 A Sure, they would be throwing up their lath
7 right in back of us and starting to throw their rough
8 coat on and as soon as that dried, they could be
9 putting their finishing coat on.

10 Q How about over in the residence building?

11 A Same thing.

12 Q Same scenario?

13 A Same thing, yes.

14 Q How close to the Hampshire workers would you
15 be, how many feet away?

16 MR. IGNATOWSKI: Line 14 is a question.

17 Q When they were in there compared to where
18 you were?

19 A Same room. Could be a room like this and
20 they could be working on that wall and I could be
21 working on that wall, 20 feet, 10 feet, 5 feet.

1 BY MS. TOSTANOSKI:

2 Q Did you see what kinds of products Hampshire
3 was using at that time?

4 A You mean brand names?

5 Q Yes.

6 A No.

7 Q What kinds of product were they using?

8 A It was a cement for all I know. I mean, you
9 know, from what I can tell, the finished product was a
10 white cement. The other product was a rough-in
11 cement.

12 Q Do you have any idea whether the product
13 that they were using contained asbestos?

14 A I didn't read any labels. Only mentioned
15 the Hampshire because they were on the job. I don't
16 know what they were using.

17 MR. SHELLENBERGER: 133. Line 5.

18 BY MR. SHELLENBERGER:

19 Q Did you ever see any warning in any jobsite
20 indicating that exposure to asbestos-containing
21 products was dangerous?

1 A Absolutely not.

2 BY MS. TOSTANOSKI:

3 Q Of the trades that we talked about today
4 that would be on the job with you, did you work more
5 closely with any one particular job than any other?

6 A We would have to work with the three
7 mechanical trades. They would tell you which pipe is
8 tested and what you can cover and what you can't
9 cover.

10 Q The three mechanical trades would be the
11 sheet metal people?

12 A The steamfitters and the plumbers.

13 Q Typically the sheet metal people would be
14 building or making the ducts?

15 A Yes.

16 Q The steamfitters and the plumbers would be
17 putting in the pipe?

18 A Yes.

19 MS. TOSTANOSKI: This is a different
20 transcript, Your Honor.

21 Your Honor, ladies and gentlemen, this is an

1 earlier deposition taken of Mr. Waters. It was taken
2 on September 18th, 1985, and the caption of the case
3 was Pierce versus Johns-Manville and it was taken in
4 the Circuit Court for Baltimore County.

5 Beginning on page 7.

6 READING OF DEPOSITION OF

7 JOHN STEPHEN MICHAEL WATERS, SR.

8 TAKEN ON SEPTEMBER 18, 1985

9 (Whereupon, the questions were read by Mr.
10 Shellenberger and Ms. Tostanoski and the answers were
11 read by Mr. Ignatowski.)

12 BY MS. TOSTANOSKI:

13 Q When were your two years in the service?

14 A I guess '55 up to '57.

15 MS. TOSTANOSKI: Page 23, line 6.

16 BY MS. TOSTANOSKI:

17 Q Do you know who manufactured the calcium
18 silicate block?

19 A I would say Keene, but -- I mean, if I had
20 to state my life on it, I would be 90 percent sure it
21 was Keene.

1 Q Why would you be 90 percent sure?

2 A Because Wallace & Gale always bought Keene
3 products, they bought Baldwin-Ehret-Hill and when
4 Baldwin-Ehret-Hill switched, they went to Keene
5 products.

6 MS. TOSTANOSKI: Page 24.

7 BY MS. TOSTANOSKI:

8 Q Your guess as to the Keene products would be
9 based on your general knowledge as to the relationship
10 between Keene and Wallace & Gale?

11 A Yes, 99 percent of our materials, when we
12 got the calcium silicate, was Keene products. That
13 was Powerhouse. They had a lot of Powerhouse at the
14 time.

15 MS. TOSTANOSKI: Page 35, line 12.

16 BY MS. TOSTANOSKI:

17 Q Do you remember working with Johns-Manville
18 products?

19 A Occasionally. I think we worked with all of
20 the products.

21 Carey had a calcium silicate out, Ruberoid

1 might have had a calcium silicate out at that time.

2 Q Were these specific products that you -- I
3 understand, but from the kind of work that you do now
4 and from your years in the insulation trade that you
5 acknowledge various types of calcium silicate, and I
6 would -- specifically all kinds of asbestos products,
7 is your memory -- and let's pick Johns-Manville -- is
8 your memory regarding Johns-Manville products and your
9 use of the products based on specific recollection of
10 working with this stuff or just a general feeling that
11 you probably did it at one time or another?

12 A No, we worked with it.

13 Q You?

14 A We worked with Johns-Manville, Carey --
15 Ruberoid, I believe, had a calcium silicate, and we
16 used to get odd boxes of a lot of material.

17 Q You mentioned odd boxes; what do you mean
18 by that?

19 A If you had a calcium silicate job and you
20 needed some material on the job, 99 percent or 90
21 percent of the materials we used was Keene at that

1 time, but if Wallace & Gale didn't have the product on
2 hand, they would buy it from somebody else.

3 And everybody had a different distributor,
4 so McCormick at that time handled Johns-Manville and
5 there was Porter-Hayden, they handled another brand,
6 and there was a couple of other outfits that they
7 would go around and buy it from.

8 MS. TOSTANOSKI: Page 39.

9 BY MS. TOSTANOSKI:

10 Q I have a couple of questions.

11 Mr. Waters, your general knowledge about --
12 and you have used two percentages from time to time,
13 90 percent and 99 percent of Wallace & Gale, calcium
14 silicate and also Powerhouse Cement from BEH and then
15 from Keene -- over what period of your employment with
16 Wallace & Gale did that hold true?

17 A That would be hard to say. I think I do
18 remember a little bit of Carey material being in at
19 Wallace & Gale, but I would say the rest of it was
20 Keene or Baldwin-Ehret-Hill.

21 Q Is that relative percentage mostly Keene and

1 some Carey?

2 You also mentioned Ruberoid today.

3 Is the relative percentage true for your
4 entire employment?

5 A I would say 90 percent and I'm probably a
6 little bit light saying 90 percent. It was mostly
7 Keene. We did have the other products.

8 Q Without regard to being able to tie it to
9 any particular jobsite, do you recall any manufacturer
10 of asbestos-containing products being supplied to
11 Wallace & Gale other than the three, four, excuse me,
12 that you have mentioned here today, being Baldwin-
13 Ehret-Hill or Keene, Johns-Manville, Carey or
14 Ruberoid.

15 Do you remember the name of any other
16 manufacturer?

17 A Probably a cement.

18 Q What other manufacturers of cements do you
19 recall?

20 A Eagle-Picher.

21 Q Are you able to place Eagle-Picher cements

1 on any particular jobsites?

2 A No, I can't. I remember that product. It
3 had a slimy mixture to it. It was a lot better than
4 Powerhouse, mixing it with your hand.

5 Q Any other products, sir?

6 A There was other cements, but I don't recall
7 them now. Just if they ran out of it, they would buy
8 it from somebody else and ship it in.

9 MS. TOSTANOSKI: Your Honor, we just have
10 one additional passage from a deposition taken of Mr.
11 Waters on June 28th, 1995 in the Circuit Court for
12 Baltimore City.

13 MR. IGNATOWSKI: I don't have that.

14 MS. TOSTANOSKI: It is the one --

15 MR. IGNATOWSKI: Okay.

16 READING OF DEPOSITION OF

17 JOHN STEPHEN MICHAEL WATERS, SR.

18 TAKEN ON JUNE 28, 1995

19 (Whereupon, the questions were read by Mr.
20 Shellenberger and Ms. Tostanoski and the answers were
21 read by Mr. Ignatowski.)

1 BY MS. TOSTANOSKI:

2 Q On a commercial jobsite from your
3 observation, what was the split-up of the asbestos
4 dust created?

5 A 50-50.

6 Q Between whom?

7 A The plasterers and the pipecoverers, I
8 guess, and probably bricklayers was -- I don't recall
9 them using any asbestos on commercial sites.

10 MS. TOSTANOSKI: That is it. Thank you,
11 Your Honor.

12 THE COURT: You are welcome.

13 Next, please.

14 MR. SHELLENBERGER: Our next witness, Your
15 Honor, is Mr. Grewe's videotape. It takes 41
16 minutes.

17 THE COURT: We won't stay for the
18 completion. We will start it and resume it tomorrow
19 morning.

20 MR. IGNATOWSKI: Your Honor, we have some
21 Owens-Corning documents that we will finish.

1 MR. SHELLENBERGER: Rather than break the
2 tape up.

3 MR. IGNATOWSKI: Then we can do the tape
4 first thing in the morning, if that is okay.

5 THE COURT: That is okay.

6 (Whereupon, the documents were published to
7 the jury via the overhead projector.)

8 PRESENTATION OF DOCUMENTS

9 MR. SMITH: This first document is our OCF
10 Exhibit 319 dated April 7, 1947 on Owens-Corning
11 Fiberglas letterhead.

12 THE COURT: It will be admitted in
13 evidence.

14 (Whereupon, Plaintiffs' Exhibit Number OCF
15 319 was received into evidence.)

16 MR. SMITH: Introduction, dust counts
17 remain in the insulation cement department to
18 determine the content of an asbestos dust hazard.

19 Summary, the average concentration of
20 asbestos dust on the first floor of the cement
21 department was 7 to 12 million particles per cubic

1 foot of air. The asbestos concentration on the second
2 floor was 12 to 25 million particles per cubic foot of
3 air.

4 The Ohio Department of Health has recognized
5 five million particles of asbestos dust per cubic foot
6 of air as the maximum allowable concentration for an
7 eight-hour daily exposure.

8 Recommendations.

9 Possible solutions to the dust problem are:

10 Substitution of another material for
11 asbestos.

12 Installation of more efficient local exhaust
13 systems.

14 Furnishing suitable respirators for the
15 operators. These should be worn continuously. That
16 is 1947. Signature page is signed by the Chemistry
17 Laboratory.

18 Here we have our Exhibit OCF 659 dated May
19 5, 1955.

20 THE COURT: It will be admitted in
21 evidence.

1 (Whereupon, Plaintiffs' Exhibit Number OCF
2 659 was received into evidence.)

3 MR. SMITH: Thank you. This is to Mr. T.S.
4 Rogers who you heard about earlier. He was the
5 manager of the technical department, I believe.

6 Mr. Hugh T. Williams, he was also another
7 OCF manager.

8 Mr. Williams writes, Albany, New York,
9 Asbestos Workers union local.

10 We are attaching a copy of a letter received
11 from Bob McArthur, our Newark, New Jersey salesman.

12 Next is the attachment to this letter. It
13 is dated a week before, April 25, 1955, by Mr.
14 McArthur to Mr. Williams, Albany, New York, Asbestos
15 Workers union local.

16 It has come to our attention during the past
17 week that subject local has included a demand for a
18 premium of 50 cents an hour for handling rock or glass
19 wool, in their list of demands for the current
20 contract negotiations.

21 Part of the problem has arisen as a -- let

1 me finish, I am sorry.

2 All of the employers are standing together
3 in their opinion that not only is the demand
4 completely ridiculous, but that such a situation is
5 not a matter for local consideration, but for national
6 action if it is to be considered at all.

7 Part of the problem has arisen as a
8 consequence of a hospital report on Roy Van Alstyne,
9 the local's business agent, that he cannot work again
10 because he has asbestos poisoning.

11 Nobody is quite sure what that disease is,
12 but the men have become emotional about the problem.
13 This is dated May 18th.

14 The next document, 1955, and it is our OCF
15 Exhibit 52.

16 THE COURT: It will be admitted in
17 evidence.

18 (Whereupon, Plaintiffs' Exhibit Number OCF
19 52 was received into evidence.)

20 MR. SMITH: Follow-up to the earlier
21 document. When you answer Bob McArthur's letter of

1 April 25th, which we just saw, please minimize the
2 health angle as Ira Brought, who is the OCF private
3 investigator we talked about last week, is looking
4 into it further for me.

5 100 to 1 chances are it is asbestosis, and
6 cannot be hung on fiberglass or mineral wools. If
7 other health problems arise, please keep me posted.

8 Next is our OCF Exhibit 57.

9 THE COURT: It will be admitted in
10 evidence.

11 (Whereupon, Plaintiffs' Exhibit Number OCF
12 57 was received into evidence.)

13 MR. SMITH: It is October 1956. Asbestos
14 Workers union.

15 This week we were given a tip by John
16 Murphy, business agent of the Asbestos Workers union
17 in Hartford, Connecticut.

18 He informed us that the Boston local of the
19 Asbestos Workers union are conducting an investigation
20 into the lung conditions of their members and that
21 some of the results they found were detrimental to

1 fibrous products.

2 Yesterday we called on Mr. Abram Goldberg
3 and Mr. Henry Anderson. Mr. Goldberg is the president
4 and Mr. Anderson is the business agent of the Boston
5 local.

6 We found that Mr. Goldberg had just recently
7 undergone a lung exploratory operation.

8 Continuing down further. They also stated
9 that they recently had had X-rays of over 50 percent
10 of their members and that they found quite a few of
11 their members showed a cloudiness in the lungs.

12 The expression was that there was more
13 shadowy substance in their lungs than in the average
14 persons.

15 They claim they have another young man who
16 may have to leave the business because of this.

17 Recently one of their members died and they
18 are having an autopsy performed to determine if he
19 suffered from what they call "asbestitous."

20 They also informed us that they were working
21 with Mr. Ernest Johnson, the Labor Commissioner of the

1 State of Massachusetts on a program to determine
2 whether their industry should be classified as a
3 hazardous one.

4 During our conversation they also brought
5 out the fact that other parts of the country,
6 including Albany, New York and Syracuse are concerned
7 about this problem and they, too, are conducting this
8 investigation.

9 This is a retyped version of our OCF
10 Exhibit Number 58 dated May 9, 1957.

11 THE COURT: It will be admitted in
12 evidence.

13 (Whereupon, Plaintiffs' Exhibit Number OCF
14 58 was received into evidence.)

15 MR. SMITH: This is on the letterhead of
16 Ira Brought, the consultant, private investigator for
17 OCF addressed to the President of Owens-Corning, Mr.
18 Harold Boeschenstein.

19 Two serious blows have been dealt by the
20 Asbestos Workers union during the past several months
21 to the fiberglass industry.

1 The first blow was outlined in my letter of
2 April 25, 1957 which indicated that a wage premium had
3 been demanded by the New York local in their wage
4 negotiation agenda. This, we were successful in
5 having deleted.

6 The second blow and a more alarming one was
7 dealt recently by the union during their western
8 states conference held in Oakland, California, which
9 was attended by business agents from all over the
10 western portion of the United States.

11 In the published minutes of their meeting,
12 which was mailed to each of the 20,000 members, the
13 following statement was made:

14 "The problems of asbestosis and silicosis
15 were discussed at large, stemming from the report of
16 Local Number 16, in which it was revealed that 11
17 members passed away this year.

18 A large number of the men had definite
19 symptoms of the aforementioned hazards of our trade."

20 MR. MCGOWAN: Your Honor, may I ask him to
21 read the whole thing?

1 THE COURT: Sure.

2 MR. SMITH: That is fine.

3 MR. MCGOWAN: Thank you.

4 MR. SMITH: Most of the locals in attendance
5 spoke on this vital subject. President Sickles,
6 speaking from an international point of view, said
7 that the international is compiling facts and figures
8 on this matter.

9 President Sickles states further that the
10 regulations requiring the companies to furnish safety
11 equipment still holds.

12 The Navy yard employees explained the safety
13 precautions taken by the Navy yard in regard to this
14 matter.

15 At this time the motion was made, seconded
16 and passed that the international continue to
17 investigate the causes of asbestosis and allied lung
18 ailments caused by fibrous materials, and to determine
19 what measures can be found to combat and prevent these
20 diseases.

21 The circulation of this statement to the

1 union membership will no doubt cause an increasing
2 amount of alarm throughout the country as to the
3 health hazard.

4 All of this, in my opinion, emphasizes the
5 need for the immediate application of recommendations
6 made in our report of January 15, 1945.

7 In a nutshell, the recommendations were that
8 every branch sales office should be in intimate and
9 frequent contact with all business agents and their
10 sales territory.

11 The relationship should be sufficiently
12 close so that the branch manager or the industrial
13 salesman would require immediate knowledge of unrest
14 brewing in the local which might spread throughout the
15 United States.

16 All business agents are either sales assets
17 or sales liabilities. If the business agent is a
18 friend of the industrial salesman, he will inform him
19 of impending trouble, signed Ira Brought.

20 Are we stopping at 4:15, Your Honor?

21 THE COURT: Yes.

1 MR. SMITH: May 7, 1964. This is one of the
2 documents that Mr. Thomas talked about in his
3 deposition earlier this afternoon.

4 This is to Mr. Thomas, Mr. Boeschenstein,
5 the President.

6 THE COURT: What is the number, please.

7 MR. SMITH: I am sorry, Your Honor, Exhibit
8 OCF 341.

9 THE COURT: All right, it will be admitted
10 in evidence.

11 (Whereupon, Plaintiffs' Exhibit Number OCF
12 341 was received into evidence.)

13 MR. SMITH: Asbestos workers' health
14 program, Dr. Irving J. Selikoff.

15 Mr. Edwards was the head of safety, and I am
16 not sure of his exact title.

17 He was in the personnel department and
18 ultimately became a senior vice-president of Owens-
19 Corning.

20 We now have copies of Dr. Selikoff's report
21 published in the April 6, 1964 issue of the Journal of

1 the American Medical Association describing his early
2 findings and observations after reviewing the medical
3 histories of more than 1,500 members of the Insulation
4 and Asbestos Workers union located in New York City
5 and Newark, New Jersey areas.

6 The startling part of the report is the high
7 incidence of cancer among insulation workers. Dr.
8 Selikoff's data would seem to indicate that insulation
9 workers have from six to seven times more lung cancer
10 and about three times more cancer of the stomach,
11 colon and rectum than the general male population.

12 It is our understanding that Dr. Selikoff
13 has received grants that will permit him to continue
14 his investigation on the medical history of insulation
15 workers on a nationwide scale.

16 Consequently, his activities will continue
17 to be of considerable interest to us. We are also
18 told that he will attempt to generate as much
19 publicity for this project as is possible.

20 His ability to interest the American Medical
21 Association in the current program and to get his

1 report published in their journal attests to his
2 public relations capabilities.

3 MR. MCGOWAN: Keep that up there, Your
4 Honor?

5 MR. SMITH: Sure. Do you want me to read
6 the rest of it?

7 MR. MCGOWAN: Let me do it, give you a
8 little break.

9 MR. SMITH: Go ahead.

10 MR. MCGOWAN: Dr. Selikoff spoke before the
11 joint annual conference of AIMA and the ACGIH in
12 Philadelphia last week using the same basic data that
13 was used in the JAMA article.

14 His talk was later printed in the
15 Philadelphia newspaper.

16 (Whereupon, the documents were removed from
17 the screen of the overhead projector.)

18 THE COURT: All right, ladies and gentlemen,
19 we will --

20 MR. SMITH: I am sorry.

21 THE COURT: We will recess now and we will

1 continue tomorrow morning at 9:30.

2 Get paid. You didn't have any problem
3 getting paid this morning?

4 I am not going to ask you if you used my
5 name. You have already shown me that that doesn't
6 work.

7 Get paid tomorrow morning and when we return
8 here, we will start as close to 9:30 as possible.

9 Please do not discuss the case among
10 yourselves or with anyone else.

11 Have a good evening. See you tomorrow
12 morning.

13 (Whereupon, jury dismissed -- 4:15 p.m.)

14 THE COURT: Counsel, if you will be in your
15 seats at 9:25 tomorrow morning, we will resume at
16 9:30.

17 Have a good evening, everyone.

18 (Thereupon, at 4:16 p.m., the proceeding
19 was adjourned.)

20

21

1 State of Maryland

2 City of Baltimore

3 I, Bonnie L. Gahagan, a Notary Public of the
4 State of Maryland, City of Baltimore, do hereby
5 certify that the above-captioned case took place
6 before me at the time and place herein set out.

7 I further certify that the proceeding was
8 recorded stenographically by me and this transcript is
9 a true record of the proceedings.

10 I further certify that I am not of counsel
11 to any of the parties, nor an employee of counsel, nor
12 related to any of the parties, nor in any way
13 interested in the outcome of the action.

14 As witness my hand and seal this 29th day of
15 May, 1996.

16

17 Bonnie L. Gahagan

18 My Commission Expires 10-01-96

19

20

21

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May 28, 1996

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