

1 IN THE DISTRICT COURT OF THE STATE OF TEXAS
2 IN AND FOR THE COUNTY OF BRAZORIA
3 23rd JUDICIAL DISTRICT
4

5 CHARLES R. LATHAM, et al.,)
6 Plaintiffs,)
7 vs.) No. 15137*BH01
8 GARLOCK, INC., et al.,)
9 Defendants.)
10
11
12
13

14 VIDEOTAPED DEPOSITION OF JOHN L. MYERS
15
16

17 Date: Thursday, November 29, 2001
18

19 Time: 9:59 A.M.
20

21 Location: Monterey Marriott
22 350 Calle Principal
23 Monterey, California
24
25

HARTSELL & OLIVIERI (831) 423-5911

DUPLICATE
FILE COPY

UCAREF00023213

deposed. V

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

2

3 For the Plaintiffs:

4 LANIER, PARKER & SULLIVAN, P.C.

5 BY: W. MARK LANIER,

6 Attorney at Law

7 1331 Lamar, Suite 1550

8 Houston, TX 77010

9 (713) 659-5200

10

11

12 For Defendant Union Carbide Corporation
13 and the Deponent:

14

15 POWERS & FROST, LLP

16 BY: JAMES H. POWERS,

17 Attorney at Law

18 909 Pannin, Suite 2600

19 Houston, TX 77010-1009

20 (713) 767-1555

21 and

22 FOLEY & LARDNER

23 BY: TREVOR J. WILL,

24 Attorney at Law

25 Firststar Center

 777 East Wisconsin Avenue

 Milwaukee, WI 53202

 (414) 297-5536

18

19

20 For Defendant Kelly-Moore Paint Company:

21

22 BROWN MCCARROLL, LLP

23 BY: SCOTT SHEPHERD,

24 Attorney at Law

25 111 Congress Avenue

 Suite 1400

 Austin, TX 78701-4043

 (512) 479-9705

24

25

John L. Myers (11-29-01)

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

2

3 The Videographer:

4 BILL KRONE
Deja View Video
5 417 S. El Dorado Street
San Mateo, CA 94402
6 (650) 343-8899

7

8
Reported By:

9 JANET T. OREB, CSR No. 5198
10 Hartsell & Olivieri
621-A Water Street
11 Santa Cruz, CA 95060
(831) 423-5911
12 (831) 423-7189 (Fax)

13

14

15

16

17

18

19

20

21

22

23

24

25

HARTSELL & OLIVIERI (831) 423-5911

John L. Myers (11-29-01)

1 I N D E X

2

3 EXAMINATIONS:

PAGE:

4

By Mr. Lanier

7

5

Further

70

Further

75

6

7

8

By Mr. Powers

65

Further

74

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

HARTSELL & OLIVIERI (831) 423-5911

4

UCAREF00023216

1 Monterey, California November 29, 2001

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

3 MR. LANIER: I understand under California
4 rules the court reporter is going to maintain the
5 original until the reading and signing period is passed.
6 I don't have any problem with that, Jim, so long as you
7 and I have an agreement that an unsigned copy can be
8 used in lieu of the original at the trial of the case.

9 MR. POWERS: If the original is not --

10 MR. LANIER: Available.

11 MR. POWERS: Well, my only qualification, I
12 want to make sure we understand, if Mr. Myers has
13 reviewed and signed it and returned it to the court
14 reporter by the date of trial, then I want the reviewed
15 and signed and possibly corrected version to be used as
16 opposed to the uncorrected version.

17 MR. LANIER: I should not be using an
18 uncorrected version if a corrected version is available.

19 MR. POWERS: Correct.

20 MR. LANIER: And I don't have any problem with
21 that.

22 I would ask in addition to sending the
23 corrections to the court reporter that you send them to
24 me so that I get them as quickly as possible.

25 MR. POWERS: Okay.

John L. Myers (11-29-01)

1 MR. LANIER: Thanks.

2 (Off the record.)

3 THE VIDEOGRAPHER: This marks the beginning of
4 tape A.

5 My name is Bill Krone. I am with Deja View
6 Video at 417 South El Dorado Street in San Mateo,
7 California.

8 This deposition is taking place at 350 Calle
9 Principal in Monterey, California, where today's date is
10 November the 29th, 2001, and the current time is 9:59
11 A.M.

12 The caption is Charles R. Latham, et al. versus
13 Union Carbide, et al., and the deponent's name is John
14 Myers. This deposition is being taken on behalf of the
15 plaintiffs in the matter.

16 Will counsel please identify themselves
17 verbally, stating who they are and whom they represent.

18 MR. LANIER: This is Mark Lanier. I'll be
19 asking the beginning questions at least, and I represent
20 the plaintiffs.

21 MR. POWERS: Jim Powers. I represent Union
22 Carbide.

23 MR. WILL: Trevor Will, and I'm here also for
24 Union Carbide and Mr. Myers.

25 MR. SHEPHERD: Scott Shepherd on behalf of

John L. Myers (11-29-01)

1 Kelly-Moore.

2 THE VIDEOGRAPHER: Madam court reporter, can
3 you please swear in the witness.

4

5 JOHN L. MYERS,
6 being duly sworn by the Certified Shorthand Reporter
7 to tell the truth, the whole truth, and nothing but
8 the truth, testified as follows:

9

10 EXAMINATION BY MR. LANIER

11 Q. Your name is John Myers, am I right?

12 A. Right.

13 Q. And I understand you live out in California?

14 A. Yes.

15 Q. And we've come out here to take your deposition
16 today. We're videotaping it for the jury. Right?

17 A. Right.

18 Q. You know you're welcome to come to Texas, but I
19 can't make you come. Do you understand that? But this
20 testimony will have the same force and effect under the
21 law as if you actually come and testify live. All
22 right?

23 A. All right.

24 Q. My intention is to play this video if you
25 choose not to come to trial, which is certainly your

HARTSELL & OLIVIERI (831) 423-5911

7

UCAREF00023219

1 right. Okay?

2 A. Yes.

3 Q. I understand you're retired at this point?

4 A. Yes.

5 Q. When did you retire from Union Carbide?

6 A. At the end of 1993.

7 MR. POWERS: Excuse me. Just so we don't have
8 an unclear record, ask your question again if you don't
9 mind, Mark.

10 And Mr. Myers, listen carefully to what he
11 asked you.

12 BY MR. LANIER:

13 Q. Yeah. I may have assumed something. Let's do
14 it this way. Why don't you tell me when you worked for
15 Union Carbide?

16 A. From 1951 till 1985.

17 Q. And when Union Carbide sold the Calidria Mine
18 in 1985, did you go with the Calidria Mine?

19 A. Yes.

20 Q. Who did you go work for then?

21 A. KCAC, Incorporated.

22 Q. Is that who bought the mine?

23 A. Yes.

24 Q. And when did you retire from KCAC,
25 Incorporated?

John L. Myers (11-29-01)

1 A. December 31st, 1993.

2 Q. During the 34 years that you worked for Union
3 Carbide, I want you to give me an idea of what kind of
4 work you did.

5 A. Well, in 1951 I started in the Oakridge,
6 Tennessee, atomic energy facility which was operated by
7 Union Carbide.

8 Q. Did you know Newell Bolton there?

9 A. No.

10 Q. This is the K-25 plant?

11 A. Yes.

12 Q. Go ahead.

13 A. And in 1952 I transferred to Paducah, Kentucky,
14 to a similar operation operated by Union Carbide for
15 AEC.

16 Q. AEC. Atomic Energy Commission.

17 A. And in 1966 I transferred to the metals
18 division of Union Carbide in Niagara Falls, New York.
19 In 1967 I transferred to the King City asbestos mine and
20 mill. In 1970 -- as technical superintendent at that
21 time. In 1970 I transferred back to Niagara Falls as
22 marketing manager for the Calidria asbestos business.
23 In 1981 I transferred back to King City as product and
24 production manager for the Calidria asbestos business.
25 And in 1985 the business was sold, and then I retired in

1 1993.

2 Q. Tell me what you did in 1967 as a technical
3 supervisor at the King City mine.

4 A. Technical superintendent --

5 Q. I'm sorry.

6 A. -- is the correct title.

7 My main responsibility was to start up a
8 production operation which was part of the plant but was
9 a separate operation for the production of a product
10 called RG-244. And I was also then supervisor of the
11 laboratory and other functions that would be of a
12 technical nature to operate the plant.

13 Q. You did that for a year. No. You did that for
14 three years?

15 A. Three years, yes.

16 Q. Then you went back to Niagara Falls where you
17 worked as a marketing manager for the Calidria?

18 A. Yes.

19 Q. And tell me in that job -- which I guess you
20 held for almost 11 years?

21 A. Yes.

22 Q. -- what you did.

23 A. I was responsible for sales activities,
24 generate sales for Calidria asbestos, preparing price
25 schedules, technical literature. Training the salesmen,

1 we -- in dealing with the hazards of asbestos and
2 providing them -- them with information regarding the
3 attributes of our product and the potential hazards of
4 asbestos for customers. That's basically it. Regular
5 marketing -- advertising, we did pretty much our own
6 advertising.

7 Q. What is your educational background?

8 A. Bachelor's of Science degree in Chemical
9 Engineering from Purdue University.

10 Q. Boilermaker?

11 A. Boilermaker, yep.

12 Q. And when did you get your Bachelor of Science
13 degree?

14 A. In January of 1951.

15 Q. What particular qualifications did you have to
16 become a marketing manager?

17 A. Really no -- no formal education in marketing.
18 Just, it was something that it seemed I was adept at
19 doing it, and I was chosen for the -- when I was in the
20 plant from 1967 to '70, I did introductory sales efforts
21 on the RG-244 product since I had helped develop it and
22 run the pilot plant in Niagara Falls and then the
23 production in King City. I was well aware of its
24 products applications, and so I did a lot of sales
25 efforts in part of the three years I was out there.

John L. Myers (11-29-01)

1 Q. RG-244, tell me what that is, please.

2 A. It's a very highly refined asbestos that is
3 then treated to put a silicate coating on the fibers so
4 that it was able to perform in applications in which
5 Cabosil was used. Cabosil is a pyrogenic silica that is
6 used to provide thixotropy and polyester and epoxy
7 resins and other resin systems.

8 Q. When you were the marketing manager, you were
9 not just a marketing manager for RG-244 but you were the
10 marketing manager for all of the Calidria asbestos
11 products?

12 A. Yes.

13 Q. And you brought to that job not a marketing
14 degree; right?

15 A. Right.

16 Q. You brought a chemical engineering degree?

17 A. Right.

18 Q. You -- we know that there are such things as
19 marketing degrees and people who have specialties in
20 marketing itself; right?

21 A. Yes.

22 Q. And those folks may know how to make pretty
23 pictures or how to make pretty slogans or how to put
24 together -- I apologize -- how to put together -- let me
25 start that out because I'll probably excise that part of

12

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023224

1 this deposition.

2 Those marketing people know how to put together
3 pretty pictures, know how to put together nice slogans,
4 things that appeal to folks for purchasing purposes.
5 That's not really your area of training; fair to say?

6 A. Right.

7 Q. I assume that somewhere in the depths of the
8 Union Carbide employment ranks there were folks who
9 could do that kind of stuff and do it well?

10 A. Yes.

11 Q. But the person that, at least in 1970, that
12 Union Carbide chose to make their marketing manager was
13 someone who had chemical knowledge and awareness of the
14 technical attributes of the asbestos; fair?

15 A. Yes.

16 Q. You had not only awareness of the chemical
17 nature of it, but evidently you had awareness of safety
18 aspects of asbestos as well?

19 A. I gained that through the years, yes.

20 Q. Is it fair to say that by 1970 there was a
21 marketing concern of asbestos that said we've got to
22 make sure folks know that this product is safe and can
23 be used safely?

24 A. Yes. Although most of our customers were
25 asbestos users already and would have been aware of the

John L. Myers (11-29-01)

1 hazards or the problems with asbestos.

2 Q. So you assume? You didn't personally deal with
3 all those customers, did you?

4 A. No.

5 Q. For example, there's one customer you had named
6 Kelly-Moore. Are you familiar with Kelly-Moore?

7 A. Yes.

8 Q. Kelly-Moore leaned on Union Carbide for that
9 knowledge and Johns Manville, I believe, did you know
10 that?

11 MR. POWERS: Object to the form.

12 THE WITNESS: No, I didn't know that.

13 (Off the record.)

14 BY MR. LANIER:

15 Q. Union Carbide had an extensive medical
16 department, hygiene department, safety department back
17 then; true?

18 MR. POWERS: Object to the form.

19 THE WITNESS: Well, I don't know how -- what
20 you mean by extensive. They had -- had those
21 departments.

22 BY MR. LANIER:

23 Q. And they didn't have like one guy in the whole
24 company in charge of safety, medical hygiene?

25 A. No.

HARTSELL & OLIVIERI (831) 423-5911

14

UCAREF00023226

John L. Myers (11-29-01)

1 Q. Or many people worked there?

2 A. I don't know how many.

3 Q. And Union Carbide belonged to a number of
4 groups that studied and dealt with issues of asbestos
5 and asbestos safety; true?

6 MR. POWERS: Object to the form.

7 THE WITNESS: I -- I don't know how many groups
8 or what groups. Our asbestos business was very small in
9 the Union Carbide hierarchy of businesses.

10 BY MR. LANIER:

11 Q. So you didn't know that Union Carbide was a
12 member of the Asbestos Information Association?

13 A. Oh, yes, I knew that.

14 Q. Did you not know that Union Carbide was a
15 founding member of the Industrial Hygiene Foundation?

16 A. No, I didn't know that.

17 Q. You didn't know of Union Carbide's affiliation
18 with the Mallon Institute and sponsors of research
19 there?

20 A. I know they had -- we had asbestos work done
21 there, yes.

22 Q. Did you know of Union Carbide's affiliation
23 with the Canadian Asbestos Information Center?

24 MR. POWERS: Object to the form.

25 THE WITNESS: No.

15

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023227

1 BY MR. LANIER:

2 Q. Did you know about Union Carbide's asbestos
3 safety work done over in the United Kingdom over in
4 Britain?

5 MR. POWERS: Object to the form.

6 THE WITNESS: No.

7 BY MR. LANIER:

8 Q. Were you even familiar with Union Carbide U.K.,
9 Limited?

10 A. Yes. I've heard of that.

11 Q. Tell me what your knowledge is of that company.

12 A. Very limited. Just that it was one of the
13 subsidiaries of Union Carbide.

14 Q. Did it surprise you that Union Carbide chose as
15 their marketing manager someone who wasn't trained in
16 marketing, but someone who was well-versed in being able
17 to talk about and how to use asbestos without getting
18 hurt?

19 MR. POWERS: Object to the form.

20 THE WITNESS: I don't remember being surprised
21 at being chosen as marketing manager, no.

22 BY MR. LANIER:

23 Q. You certainly in that role started writing some
24 booklets and some information and seeing that word got
25 out about how to, quote, safely use asbestos, close

1 quote; correct?

2 A. We tried to keep our customers informed, yes.

3 Q. Well, when you say you tried to keep them
4 informed, do you believe that Union Carbide tried to
5 tell them the whole truth?

6 A. Yes.

7 Q. So you think Union Carbide in the '60s and '70s
8 was imparting to its clients, its customers all that
9 Union Carbide knew about the hazards of asbestos and how
10 to use it safely if possible?

11 MR. POWERS: Object to the form.

12 THE WITNESS: From the late '70s, yeah. I mean
13 late '60s. Yeah, I do.

14 BY MR. LANIER:

15 Q. Did you ever read the paper prepared by Dr.
16 Sayers in 1967 from Union Carbide U.K., Limited entitled
17 "Asbestos as a Health Hazard in the United Kingdom"?

18 MR. POWERS: Object to the form.

19 THE WITNESS: I read it many years ago, yes.

20 BY MR. LANIER:

21 Q. When do you think you read it?

22 A. I -- I don't remember.

23 Q. It was written in 1967, if that helps you.

24 A. I don't remember when I read it.

25 Q. Did you read it as part of your job, or did you

John L. Myers (11-29-01)

1 read it after you quit working for Union Carbide?

2 A. I read it before I left Union Carbide, yes.

3 Q. And do you think the information that Dr.

4 Sayers had was properly passed on to the consumers of

5 Union Carbide's asbestos?

6 MR. POWERS: Object to the form.

7 THE WITNESS: I don't know that the information

8 -- I don't know what the information was, I don't

9 remember the contents of the paper.

10 BY MR. LANIER:

11 Q. Let me take a couple steps back, and we'll get

12 back to the paper in a little bit.

13 Why don't you tell me what -- when you first

14 became aware of the fact that asbestos was something

15 that could kill you?

16 MR. POWERS: Object to the form.

17 THE WITNESS: I missed -- what was the

18 question?

19 BY MR. LANIER:

20 Q. When did you, John Myers, first become aware of

21 the fact that asbestos could kill someone?

22 MR. POWERS: Object to the form.

23 THE WITNESS: I don't remember. I just gained

24 the knowledge over -- over several years probably.

25 BY MR. LANIER:

18

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023230

John L. Myers (11-29-01)

1 Q. Can you give me a range?

2 A. Probably in the late '60s.

3 Q. And it's well-known that asbestos -- strike
4 that.

5 There are a number of different ways asbestos
6 can hurt the human body, you know that as well as I do;
7 right?

8 A. Yes.

9 Q. I'd like to break down a couple of those and
10 see when you think your knowledge may have come about.

11 First there's this scarring of the lungs called
12 asbestosis, you're familiar with that?

13 A. Yes.

14 Q. When did you first become aware of the fact
15 that breathing asbestos dust can cause this scarring of
16 the lungs, asbestosis?

17 A. See, I don't remember a year or -- I'd say late
18 '60s is the best I can do.

19 Q. Fair enough.

20 There is recognition that asbestos can cause a
21 cancer of the lung itself. This is not the
22 mesothelioma. This is just plain lung cancer. When did
23 you become aware of that, the same time period?

24 A. I think generally the same time period, yes.

25 Q. The third disease I'd ask you about is the

19

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023231

1 mesothelioma cancer, the cancer of the lining of the
2 lungs or of the peritoneal area. When did you first
3 become aware of the fact that asbestos could cause that
4 cancer?

5 A. Well, first I would, in my opinion, anyway, you
6 can't include all asbestos as causing mesothelioma. I
7 don't believe that all asbestos does. And again I don't
8 -- I don't remember. Probably the early '70s.

9 Q. When did you -- what kind of asbestos do you
10 think won't cause it?

11 A. Chrysotile. Pure chrysotile.

12 Q. And when did you come up with that opinion?

13 A. Through the years. Reading --

14 Q. I'm sorry.

15 A. -- papers and reading about what workers that
16 were, had mesothelioma what kind of asbestos they -- to
17 what kinds they were exposed.

18 Q. This is a video and the jury will hear you talk
19 about chrysotile, we frequently call it chrysotile
20 asbestos. I just want to make sure since people can
21 hear this as well as read it, we're talking about the
22 same kind of asbestos, aren't we?

23 A. Yes.

24 Q. You'll excuse me if I call it chrysotile. It
25 may just be the Texas in me. But at least you and I

1 know that we're talking about the same thing?

2 A. Yes.

3 Q. And when you say you became aware or formed
4 this opinion that chrysotile does not cause mesothelioma
5 over the years reading studies, are you talking about
6 reading the studies that have been put out by the
7 chrysotile miners up in Canada?

8 A. No. No.

9 MR. POWERS: Object to the form.

10 THE WITNESS: No. No. Any studies by Selikof
11 or anyone else. I don't know of any study which show
12 that pure chrysotile exposure caused, caused
13 mesothelioma.

14 BY MR. LANIER:

15 Q. Well, do you know -- so you just decided --
16 well, let's take a step back.

17 First of all, are you arguing that or do you
18 believe that the Calidria Mine produced only pure
19 chrysotile asbestos?

20 A. Yes.

21 Q. It never had anything else there?

22 A. No. No, never.

23 Q. Do you know your -- that that viewpoint is not
24 shared by everybody?

25 A. I didn't know that.

1 Q. Okay. So you still think that someone can
2 breathe all of the Union Carbide asbestos they want to,
3 they won't get mesothelioma?

4 A. That's my personal opinion, yes.

5 Q. You wouldn't want to do it yourself, or have
6 any of your family do it, would you?

7 A. Well, I don't plan on breathing pure asbestos.
8 I don't have any occasion to do that.

9 Q. You got grandkids, don't you?

10 A. Pardon?

11 Q. You have grandkids?

12 A. What do you mean?

13 Q. Do you have grandchildren?

14 A. Oh, yes.

15 Q. You don't want them breathing it either, do
16 you?

17 A. It all depends on the situation, on the amount
18 that they breathe and the length of time that they
19 breathe it.

20 Q. So you wouldn't mind them breathing asbestos,
21 pure chrysotile Union Carbide asbestos, if they only
22 breathed it every now and then?

23 MR. POWERS: Object to the form.

24 THE WITNESS: I wouldn't see any problem with
25 that, no. We haven't had any problem with any of our

1 workers who are exposed every day to that.

2 BY MR. LANIER:

3 Q. You're not aware of that?

4 A. Aware of what?

5 Q. Are you saying that there has never been a
6 Union Carbide worker that has filed an asbestos claim?

7 MR. POWERS: Object to the form.

8 THE WITNESS: I'm saying that there has never
9 been a Calidria asbestos employee who has filed a claim.

10 BY MR. LANIER:

11 Q. I mean Union Carbide's had a lot of workers
12 file asbestos claims because of breathing asbestos at
13 Union Carbide; right?

14 MR. POWERS: Object to the form.

15 THE WITNESS: I -- I'm not a -- I'm not privy
16 to that information.

17 BY MR. LANIER:

18 Q. Okay. So you don't know one way or the other.

19 A. I'm talking about workers at the Calidria
20 asbestos mine and mill have been exposed and have never
21 -- we've never had any claims of any asbestos related
22 disease.

23 Q. That you're aware of?

24 A. Yes.

25 Q. Okay. I mean you haven't followed up with

1 everybody who has ever worked there and has left, have
2 you?

3 A. No.

4 Q. That's not even your area, is it?

5 A. What do you mean "my area"?

6 Q. Well, I mean you haven't even been working for
7 Union Carbide for the last 16 years, have you?

8 A. Right.

9 Q. You understand mesothelioma has what is called
10 a latency period, don't you?

11 A. Yes.

12 Q. And a latency period it can take 30 or 40 years
13 for that cancer to develop, can't it?

14 A. Yes.

15 Q. So folks who are working and mining your
16 asbestos in 1970 when you're the manager may not know
17 until 2000 or 2010 if there going to get mesothelioma;
18 right?

19 A. Right.

20 Q. And you haven't had anything to do with it
21 since 1985; correct?

22 A. Yes.

23 MR. POWERS: Object to the form.

24 BY MR. LANIER:

25 Q. Okay.

John L. Myers (11-29-01)

1 A. I retired in 1993. Sorry.

2 Q. Well, not with Union Carbide, though. You left
3 Union Carbide in '85.

4 A. Right.

5 Q. Or even 1993 when you left Calidria that still
6 doesn't have all that latency period built in to see
7 whether or not these people are going to die, does it?

8 A. Right.

9 Q. All right. Let's go back to the knowledge you
10 have. You said you became aware in the late '60s that
11 asbestos is bad -- can be bad for you. You became aware
12 in the early '70s of the mesothelioma. Tell me about
13 TLV. What does that mean to you?

14 A. Threshold limit value.

15 Q. Back in the '60s and into the early '70s what
16 was the threshold limit value for breathing asbestos?

17 MR. POWERS: Excuse me. Could we have the
18 question again.

19 BY MR. LANIER:

20 Q. Yeah.

21 Back in the early '60s -- or back in the '60s
22 going into the early '70s, do you remember what the
23 threshold limit value was for breathing asbestos?

24 MR. POWERS: Object to the form.

25 THE WITNESS: No. My memory -- I can't

25

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023237

1 remember for sure, no.

2 BY MR. LANIER:

3 Q. Did you believe -- let me ask it this way.

4 Did you have an idea of what a safe breathing
5 level of asbestos was back in the '60s or early '70s?

6 A. I believe it was 5 --

7 Q. 5 million parts per cubic foot. 5 MPPCF?

8 A. Yeah, I can't even remember the term. That
9 sounds right, yes.

10 Q. I think that's what the document show it was.
11 Show that at least the Union Carbide's position on it
12 was. That's why I was guessing that.

13 MR. POWERS: I'll object to that side bar for
14 whatever purpose it might serve.

15 MR. LANIER: Yeah, I couldn't play it, I just
16 wanted him to know that this wasn't like trick question
17 time. I save trick questions for the end.

18 BY MR. LANIER:

19 Q. I want to talk about duty. What was Union
20 Carbide's duty when it came to its marketing and selling
21 of its asbestos product? Are you familiar with the
22 subject I want to cover?

23 A. No.

24 Q. Okay. Let me flush it out a little bit. One
25 of the questions I have is what was Union Carbide's

John L. Myers (11-29-01)

1 responsibility to the folks that bought its asbestos for
2 use in products and ultimately to the people that then
3 used those products? What was Union Carbide's
4 responsibility toward those folks when it came to
5 telling them about asbestos and its safety? That's the
6 subject. Okay.

7 Now, would you agree with me?

8 MR. POWERS: Excuse me. Let me object to all
9 of the preamble before "Would you agree with me." I
10 appreciate the elaboration, but I think the question
11 should begin with "Would you agree with me."

12 BY MR. LANIER:

13 Q. Would you agree with me that Union Carbide had
14 a responsibility to the companies like Kelly-Moore that
15 were buying the asbestos to inform those companies of
16 the hazards that Union Carbide knew went along with the
17 asbestos?

18 MR. POWERS: Object to the form.

19 THE WITNESS: Again I think it would depend on
20 the customer. And whether you say Union Carbide had the
21 responsibility, I think it would have to come down to
22 the Calidria asbestos group. Yes, we had -- we made it
23 a practice to inform our customers of whatever we were
24 aware of, whatever we knew.

25 BY MR. LANIER:

27

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023239

John L. Myers (11-29-01)

1 Q. And you all ought to, shouldn't you?

2 A. And it depends again on the customer. If the
3 customer is a long-term user of asbestos, they may not
4 need as much information as somebody that's relatively
5 new to using asbestos.

6 Q. Yeah. And I'm not talking about the Johns
7 Manville if you decide to sell some asbestos to Johns
8 Manville. I'm talking about a company that -- like
9 Kelly-Moore that buys a drywall business in 1963 and has
10 never had any prior experience with asbestos and doesn't
11 have a hygiene department, they make paint, a small
12 private-owned company that now makes asbestos drywall
13 products. Your company is selling the asbestos to them.
14 Your company Union Carbide is doing their hygiene work
15 on the asbestos. Your company Union Carbide is testing
16 their products and their plans to see if the asbestos is
17 used safely. In a situation like that wouldn't you
18 agree with me Union Carbide has a responsibility to tell
19 that company about dangers with asbestos, at least the
20 dangers that Union Carbide knows about?

21 MR. POWERS: Wait. I'm going to object to the
22 form of that question because it's argumentative, and
23 not allow the witness to answer the way it's phrased.

24 THE WITNESS: I would agree --

25 MR. POWERS: Don't answer the question.

HARTSELL & OLIVIERI (831) 423-5911

28

UCAREF00023240

1 THE WITNESS: Sorry.

2 BY MR. LANIER:

3 Q. You would agree with me in a situation where
4 you've got a company that doesn't know about asbestos
5 beyond what they rely on the sellers of the asbestos to
6 tell them, that the sellers ought to be forthright and
7 honest and tell them the whole truth about the safety of
8 the product; right?

9 MR. POWERS: Object to the form.

10 You can answer it though.

11 THE WITNESS: The, again the -- I don't know
12 when Kelly-Moore started using asbestos.

13 BY MR. LANIER:

14 Q. 1963.

15 A. And I don't know when they started using
16 Calidria asbestos.

17 Q. Mid '60s.

18 A. But we would -- it would be the Calidria
19 asbestos responsibility, salesmen, our technical people
20 in our group to inform our customers like that, yes, of
21 any knowledge that we have.

22 Q. And it wouldn't be right for Union Carbide to
23 hide knowledge of the dangers just to sell more of the
24 product; right?

25 MR. POWERS: Object to the form.

1 THE WITNESS: I wouldn't think that would be
2 true -- right for any company, no.

3 BY MR. LANIER:

4 Q. By the same token the duty to inform the folks
5 buying the asbestos is important because those folks are
6 going to be breathing it; right?

7 MR. POWERS: Object to the form.

8 THE WITNESS: If there is any dust generated,
9 yes.

10 BY MR. LANIER:

11 Q. And that importance goes down the line because
12 that's also the company that is going to make a product
13 that some end-user somewhere is going to be using and he
14 might be breathing the dust, the end-user; right?

15 A. I don't know. It would depend on the form of
16 the product.

17 Q. If the product is one that's form that has got
18 dust and asbestos is in the dust and it's going to be
19 breathed, it's important that Union Carbide give its
20 knowledge because you can foresee there's going to be an
21 end-user that is going to need to be made aware of this;
22 right?

23 MR. POWERS: Object to the form.

24 THE WITNESS: Repeat the question.

25 BY MR. LANIER:

John L. Myers (11-29-01)

1 Q. Okay.

2 A. Repeat the question.

3 Q. Union Carbide knew that it was not selling its
4 asbestos to end-users; true?

5 A. True.

6 Q. Union Carbide knew it was selling its asbestos
7 to companies to put into products and those products
8 would then get sold to end-users; true?

9 MR. POWERS: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. LANIER:

12 Q. The duty that you and I have been talking about
13 it was important for Union Carbide to pass Union
14 Carbide's knowledge of asbestos to the companies that
15 made the products because those companies would need to
16 pass that information down to the fellows that are
17 ultimately using it; right?

18 A. Yes.

19 MR. POWERS: Object to the form.

20 Sorry.

21 BY MR. LANIER:

22 Q. And most normal everyday people that were using
23 these products back in the '60s and '70s didn't really
24 understand the hazards of asbestos, would you agree with
25 me?

31

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023243

1 MR. POWERS: Well, object to the form.

2 THE WITNESS: I would have no knowledge of
3 their -- of their knowledge.

4 BY MR. LANIER:

5 Q. Okay. You at least -- you told me that you
6 didn't feel like maybe Union Carbide had to give
7 asbestos knowledge to companies that were already aware
8 of asbestos hazards, sophisticated companies?

9 A. No. I said that they would not need the same
10 degree of knowledge if they already were familiar with
11 asbestos.

12 Q. But you didn't have any knowledge to think that
13 the ultimate guy that is drywalling his home had any
14 knowledge about the hazards of asbestos; you don't know
15 anything about that, do you?

16 A. No.

17 Q. That's why it's important to make sure that the
18 information you've got goes to the folks making that
19 drywall product so it can go to the ultimate fellow that
20 is spackling his wall; right?

21 A. Yes.

22 Q. If I find a company that knows their product is
23 hazardous and can kill people, and the company fails to
24 tell folks who are unaware of that fact, the company's
25 doing something wrong, isn't it?

1 MR. POWERS: Object to the form.
2 Don't answer it.
3 MR. LANIER: What is form of the objection?
4 MR. POWERS: It's argumentative, and that's why
5 I'm not going to let him answer it.
6 MR. LANIER: What part of it is argumentative?
7 MR. POWERS: The entirety of it.
8 MR. LANIER: He's an adverse witness.
9 MR. POWERS: It's not that it's a leading
10 question, Mark. It's an argumentative question. I
11 would make that objection to the judge, and I think he
12 would ask you to rephrase the question.
13 MR. LANIER: There are some jurisdictions and
14 some judges who argue -- who say that an argumentative
15 question to an adverse witness is not a form objection.
16 MR. POWERS: And I don't think Judge Harden is
17 one of them.
18 MR. LANIER: Okay. What portion of it do you
19 consider argumentative and how?
20 MR. POWERS: Could you read it back for us.
21 (Record read.)
22 MR. POWERS: Specifically the -- if I find a
23 company that can kill -- that has a product that can
24 kill people.
25 MR. LANIER: Well, why is that argumentative?

1 MR. POWERS: Well, I think it is. That's my
2 objection. If you don't --

3 MR. LANIER: Well, how? How am I supposed to
4 say that without -- I mean is it because kill is a bad
5 word?

6 MR. POWERS: Well, that's one.

7 MR. LANIER: I didn't use murder.

8 MR. POWERS: That's an argumentative word.

9 MR. LANIER: Kill --

10 MR. POWERS: I'm not going to let him answer it
11 the way you phrased it.

12 BY MR. LANIER:

13 Q. All right. I'll try and ask it real vanilla.

14 MR. POWERS: Thank you.

15 BY MR. LANIER:

16 Q. If the company has a product and the company
17 knows that that product can cause people to die if it's
18 ingested in a certain way, and the company doesn't tell
19 the folks that are going to be ingesting it that the
20 product can cause people to die, the company is aware of
21 the fact that the folks who are ingesting it have no
22 clue it can cause them to die, that company is doing
23 something wrong, isn't it?

24 MR. POWERS: Object to the form.

25 THE WITNESS: Well, you used the wrong word

1 there. Ingestion is not a problem with asbestos.

2 BY MR. LANIER:

3 Q. Inhalation. Let me ask that same question with
4 inhalation. Okay.

5 If a company has asbestos and knows the
6 asbestos can cause folks to die, and the company sells
7 that product to people who are unaware that the asbestos
8 can cause them to die, and the company chooses not to
9 share this private knowledge that the asbestos can cause
10 people to die, the company is doing something wrong,
11 isn't it?

12 MR. POWERS: Object to the form.

13 THE WITNESS: That company should do its best
14 to inform its customers of the hazards of the product
15 that they're selling, yes.

16 BY MR. LANIER:

17 Q. Did you know in the 1960s that Union Carbide
18 knew that TLV 5 was not a safe TLV?

19 MR. POWERS: Object to the form.

20 THE WITNESS: No.

21 BY MR. LANIER:

22 Q. If Union Carbide in fact knew that in the 1960s
23 Union Carbide ought to be telling people, shouldn't
24 they?

25 MR. POWERS: Object to the form.

1 THE WITNESS: Well, as I said, I don't know
2 that they didn't or that they didn't believe that it was
3 safe.

4 BY MR. LANIER:

5 Q. I'm going to show you Section 4.4 of Dr. Sayers
6 Union Carbide report on asbestos as a health hazard in
7 1967 and ask you to look at it with me. It deals with
8 mesothelioma. And under this section where it says
9 occurrence of disease, it says mesothelioma is the most
10 disturbing of the three diseases attributable to
11 asbestos for how many reasons?

12 A. Two.

13 MR. POWERS: Wait. Wait.

14 THE WITNESS: I'm sorry.

15 MR. POWERS: I didn't realize you were finished
16 with your question. I object to the form of the
17 question.

18 BY MR. LANIER:

19 Q. Firstly -- and help me make sure I'm reading
20 this right -- in contrast to bronchial carcinoma, it can
21 occur in people with minimal fibrosis, in other words,
22 only after a brief exposure which may be as little as
23 three months. Did I read that right?

24 A. Yes.

25 Q. And look at this next statement. Some

1 authorities even believe a single brief exposure might
2 be sufficient. Did I read that right?

3 A. Yes.

4 Q. You didn't have that kind of information in the
5 mid '60s yourself, did you?

6 A. Not that I recall.

7 Q. By the same token if we look at the moral
8 issues discussed by Dr. Sayers, Dr. Sayers writes there
9 seems little doubt that toxic effects of our Coalinga
10 product are still largely unknown. The Coalinga
11 product, that's Union Carbide's pure chrysotile
12 asbestos, isn't it?

13 A. I can only assume that. I don't know what Mr.
14 Sayers knew about Coalinga.

15 Q. He says there is a general reference
16 chrysolite --

17 A. Inference.

18 Q. I'm sorry. Thank you.

19 -- inference chrysolite is more liable to
20 produce mesothelioma. Exoneration of chrysotile has not
21 been made, however. Did I read that correctly?

22 A. Yes.

23 Q. That discussion with Dr. Taylor of the
24 Department of Social Medicine in Queens College Dundee
25 two days ago revealed concern over asbestosis is still

John L. Myers (11-29-01)

1 increasing and that chrysotile is definitely implicated
2 along with the other types of asbestos. Did I read that
3 right?

4 A. Yes.

5 Q. He continues, it therefore seems that on the
6 basis of present evidence we are not entitled under any
7 circumstances to state that our material is not a health
8 hazard. Did I read that right?

9 A. Yes.

10 Q. Did you know that your folks at Union Carbide
11 during this same time period were telling Kelly-Moore
12 and other people that the Calidria asbestos was not a
13 health hazard?

14 MR. POWERS: Object to the form.

15 THE WITNESS: No, I didn't know that.

16 BY MR. LANIER:

17 Q. What is more, if it's believed that a potential
18 customer would use our material dangerously and he's
19 unaware of the toxicity question, it must surely be our
20 duty to caution him and point out means whereby he can
21 hold the asbestos air flow concentration to a minimum.
22 Did I read that correctly?

23 A. Yes.

24 Q. Do you agree with that?

25 A. Yes, I think I would agree with that.

38

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023250

1 Q. That's certainly a moral obligation as well as
2 a legal one; right?

3 MR. POWERS: Object to the form.

4 MR. LANIER: I can't ask that question. He's
5 right. It's his first objection he's been right on all
6 day. I object to my side bar.

7 MR. POWERS: Sustained.

8 MR. LANIER: Thank you.

9 BY MR. LANIER:

10 Q. I'd like to now direct your attention to what
11 Dr. Sayers wrote about the threshold limit value. This
12 is 1967, sir. It's understood that the maximum dust
13 level of 5 million particles per cubic foot was -- and I
14 left out the parentheses here -- was proposed by an
15 engineer in 1938 as an interim guide. This figure was
16 an arbitrary choice and had no experimental foundation.
17 Did I read that right?

18 A. Yes.

19 Q. Did you know that when you were telling people
20 that that 5 million particles was safe?

21 MR. POWERS: Object to the form.

22 THE WITNESS: I don't know that I told people
23 that 5 million particles was safe. That's what the OSHA
24 came up with in their first draft as far as I remember.

25 BY MR. LANIER:

John L. Myers (11-29-01)

1 Q. Sir, you all were telling folks -- your company
2 was telling folks that 5 million particles per cubic
3 foot was safe. Even after Dr. Sayers said this is just
4 some arbitrary choice, an interim guide proposed by some
5 engineer in the '30s.

6 MR. POWERS: Object to the form.

7 BY MR. LANIER:

8 Q. Did you know that?

9 MR. POWERS: Object to the form.

10 THE WITNESS: Did I know what?

11 BY MR. LANIER:

12 Q. Did you know your company after Dr. Sayers had
13 written this and let everybody who read it know in your
14 company the truth, did you know your company was still
15 telling people 5 million particles was safe?

16 MR. POWERS: Object to the form.

17 Don't answer that.

18 BY MR. LANIER:

19 Q. Did you know your company after 1967, in spite
20 of this knowledge, was still telling people 5 million
21 particles was safe?

22 MR. POWERS: Object to the form.

23 THE WITNESS: I don't know that Mr. Sayers has
24 the background or the scientific evidence to make a
25 statement like that.

HARTSELL & OLIVIERI (831) 423-5911

40

UCAREF00023252

John L. Myers (11-29-01)

1 BY MR. LANIER:

2 Q. Do you understand that's Dr. Sayers and that he
3 works for your company? Or the company you work for,
4 Union Carbide?

5 A. Yes.

6 MR. POWERS: Object to the form.

7 BY MR. LANIER:

8 Q. Do you understand he took this and sent it not
9 only to Union Carbide, but to the Canadian Asbestos
10 Information Center? Did you know that?

11 A. No.

12 MR. POWERS: Object to the form.

13 BY MR. LANIER:

14 Q. Did you know that this paper was read by people
15 including Dr. Dernehl. Do you know Dr. Dernehl?

16 A. I've heard the name, yes.

17 Q. Have you read his depositions?

18 A. No.

19 Q. Dr. Dernehl gave a deposition in 1989 where Dr.
20 Dernehl testified about Union Carbide's knowledge of
21 this paper. Have you been made aware of that testimony
22 in any way?

23 A. No.

24 Q. Have you read, for example, Bill Harford's
25 letter about Dr. Dernehl's deposition dated March 22,

41

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023253

1 1989 where he talked about Dr. Dernehl giving testimony
2 in this case?

3 MR. POWERS: Object to the form.

4 THE WITNESS: No, I haven't read that.

5 MR. LANIER: I will let your lawyer know that
6 the deposition of Dr. Dernehl that's
7 referenced here is one of the documents we've not yet
8 been produced in this litigation that we think we're
9 entitled to.

10 MR. POWERS: Well, number one, if you don't
11 have it yet, I'll get it to you.

12 MR. LANIER: Thanks.

13 MR. POWERS: Number two, I know that Dr.
14 Egilman has it.

15 MR. LANIER: Good. The '89 one?

16 MR. POWERS: Yes. Your expert witness Dr.
17 Egilman just so people who are reading this later don't
18 know that.

19 MR. LANIER: What is his first name?

20 MR. POWERS: David.

21 MR. LANIER: Is he the guy on the East Coast?

22 BY MR. LANIER:

23 Q. Have you seen any of Dr. Dernehl's letters and
24 memos pertaining to what Dr. Sayers has -- says here?

25 A. Not that I recall.

John L. Myers (11-29-01)

1 MR. LANIER: I'm going to wait until the sirens
2 pass because of the video.

3 MR. POWERS: Do you mind if I take 30 seconds.
4 One of my children called me.

5 MR. LANIER: Absolutely.

6 THE VIDEO OPERATOR: We're going off the record
7 at 10:44 A.M.

8 (Recess.)

9 THE VIDEOGRAPHER: We are back on the record at
10 10:50 A.M.

11 BY MR. LANIER:

12 Q. Sir, as we continue to look at this threshold
13 limit value issue, you will see a reference to Dr.
14 Taylor in his report of August -- I mean of 1964 saying
15 the maximum allowable concentration of 5 million is not
16 now acceptable. Industry should aim at 1 million
17 particles and accept this figure with reservations until
18 our knowledge in this field is extended. Did I read
19 that right?

20 A. Yes.

21 Q. That knowledge that Union Carbide had in 1967
22 of Dr. Taylor saying 5 million is not acceptable,
23 industry ought to shoot for 1 and do that with
24 reservation, was that knowledge being passed on to your
25 customers?

43

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023255

John L. Myers (11-29-01)

1 MR. POWERS: Object to the form.

2 THE WITNESS: I have no idea.

3 BY MR. LANIER:

4 Q. Well, it should have been, shouldn't it?

5 MR. POWERS: Object to the form.

6 THE WITNESS: Not necessarily. This is one
7 person's opinion. I don't know that he's qualified to
8 or what his source is for saying that.

9 BY MR. LANIER:

10 Q. Well, sir, it was someone who was viewed
11 authoritative enough by Dr. Sayers to put it into a
12 report that was circulated throughout the higher levels
13 of Union Carbide. That tells you something, doesn't it?

14 MR. POWERS: Object to the form.

15 THE WITNESS: Not necessarily.

16 BY MR. LANIER:

17 Q. I mean, you don't see him quoting from the
18 National Enquirer in there, do you?

19 MR. POWERS: Object to the form.

20 THE WITNESS: No.

21 BY MR. LANIER:

22 Q. And you don't see any memos or letters saying,
23 hey, we got Dr. Sayers' report and it's got a bunch of
24 garbage in it, that that guy ought to be fired for
25 writing. You don't see any of that anywhere, do you?

44

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023256

John L. Myers (11-29-01)

1 MR. POWERS: Object to the form.

2 THE WITNESS: I haven't seen anything like
3 that.

4 BY MR. LANIER:

5 Q. In fact, what I do see is a letter from the
6 associate medical director, Mr. Dernehl, that -- or at
7 least copied to Mr. Dernehl, a letter from the Union
8 Carbide associate medical director dated June of 1967 to
9 a Dr. Hall. Do you see that?

10 A. Yes.

11 Q. Dr. Hall is with Union Carbide Europa; right?

12 A. Yes.

13 Q. And if you look he says, Dear Tom, I've
14 reviewed the report, asbestos as a -- can you read that
15 -- health -- it's whatever Sayers' report is. Asbestos
16 as a health hazard in the United Kingdom prepared by Dr.
17 Sayers, and in general, I find it's reasonably accurate.
18 Did I read that right?

19 A. Yes.

20 MR. POWERS: Object to the form.

21 BY MR. LANIER:

22 Q. So being written from Union Carbide Corporation
23 off Park Avenue in New York by the associate medical
24 director and sent to the Union Carbide Europa man over
25 in Geneva, Switzerland, Dr. Hall, we find Dr. Sayers'

45

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023257

1 paper being referenced as being reasonably accurate,
2 don't we?

3 MR. POWERS: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. LANIER:

6 Q. So now that we know it's reasonably accurate,
7 don't you figure this knowledge that industry ought to
8 aim at 1 million particles ought to be passed on to the
9 folks using this product?

10 MR. POWERS: Object to the form.

11 THE WITNESS: I don't know that it wasn't.

12 BY MR. LANIER:

13 Q. Okay.

14 A. I have no knowledge of -- and so.

15 Q. And so that's not the question. The question
16 wasn't -- is not was it passed on. The question is it
17 should have been passed on. Whether it was or was not,
18 we'll discuss later.

19 MR. POWERS: Object to the form.

20 BY MR. LANIER:

21 Q. It should have been passed on, shouldn't it?

22 A. Again I'm not sure that one person's opinion is
23 what you would base TLVs on.

24 Q. Sir, it wasn't just one person's opinion. It's
25 something that not only Dr. Sayers saw reasonably fit to

1 write up, it's something the Union Carbide Corporation
2 found reasonably accurate in New York City and something
3 that they were writing to their Dr. Hall in Union
4 Carbide Europe and Switzerland. We have more than
5 person here, don't we?

6 MR. POWERS: Object to the form.

7 THE WITNESS: Yes. Two.

8 BY MR. LANIER:

9 Q. Well, at this point -- well, three if you count
10 Dr. Sayers for including the quotation, Dr. Taylor who
11 originally said it, and this fellow with Union Carbide
12 who is the associate medical director. Don't you figure
13 at some point if all these people seem to know this
14 within Union Carbide you all ought to be telling the
15 people buying your product?

16 MR. POWERS: Object --

17 THE WITNESS: Again I don't know that it wasn't
18 told.

19 BY MR. LANIER:

20 Q. Okay. We'll figure that out later. It should
21 have been told. At least you and I can agree to that;
22 right?

23 MR. POWERS: Object to the form.

24 THE WITNESS: Again I would say not
25 necessarily. I mean the TLVs were established after --

John L. Myers (11-29-01)

1 by OSHA were established after lots of discussion and
2 hearings, and that's basically what -- as far as I can
3 remember, what we depended on for what we would tell our
4 customers, and give them copies of.

5 BY MR. LANIER:

6 Q. Sir, did you understand in 1967 there wasn't
7 even an OSHA?

8 A. Right.

9 Q. Okay. So in 1967 when you all had this
10 knowledge and chose not to pass it on, there wasn't an
11 OSHA at that time, was there?

12 MR. POWERS: Object to the form.

13 Don't answer the question the way it's phrased.

14 BY MR. LANIER:

15 Q. Sir, do you understand in 1967 when you all had
16 this knowledge there wasn't an OSHA?

17 A. Yes.

18 Q. So using OSHA as an excuse for not passing on
19 the knowledge doesn't work, does it?

20 MR. POWERS: Object to the form.

21 THE WITNESS: I'm telling you what we used in
22 our information provided to customers.

23 BY MR. LANIER:

24 Q. And that's my point. I think in 1967 you
25 should have told customers what you all knew internally

48

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023260

1 about this 5 million not being accurate. Do you agree
2 or disagree?

3 MR. POWERS: Object to the form.

4 THE WITNESS: I don't necessarily agree because
5 I don't know that it's established on good scientific
6 evidence.

7 BY MR. LANIER:

8 Q. Well, sir, look at page 2 of this associate
9 medical director's letter. Because he here gets into
10 specifically what Dr. Sayers said about the 5 million
11 particles. He says, I maintain that value as still
12 correct in terms of preventing the disease asbestosis.
13 There is no evidence of asbestosis among people who have
14 worked. Do you see that?

15 Now, drop down here, though, and look. It is
16 -- what is that word?

17 A. "Probable."

18 Q. Probable that 5 million particles per cubic
19 foot will not be acceptable for the prevention of
20 mesothelioma. Did I read that right?

21 A. Yes.

22 Q. That's the disease that the plaintiffs in this
23 case either have died or are dying from. Did you know
24 that?

25 MR. POWERS: Object to the form.

John L. Myers (11-29-01)

1 THE WITNESS: No.

2 BY MR. LANIER:

3 Q. Did you know that your company was telling the
4 Kelly-Moores of the world that that TLV was a safe level
5 in 1967?

6 MR. POWERS: Object to the form.

7 THE WITNESS: No, I didn't know that.

8 BY MR. LANIER:

9 Q. Did you know that your company was telling them
10 it was a safe level for mesothelioma?

11 A. No.

12 Q. If your company was in fact telling the
13 Kelly-Moores of the world that 5 MPPCF was a safe level
14 in 1967 for mesothelioma, your company was doing
15 something wrong, wasn't it?

16 MR. POWERS: Object to the form.

17 THE WITNESS: I still don't agree that -- that
18 the threshold levels are usually established by years of
19 scientific evidence, and I don't know whether this is
20 based on that or not.

21 BY MR. LANIER:

22 Q. Sir --

23 A. I don't know where Dr. Sayers got his
24 information, or Dr. Taylor, what studies he -- he did.

25 Q. Sir, you understand this wasn't years of

50

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023262

John L. Myers (11-29-01)

1 scientific evidence, even Dr. Sayers himself says it's
2 understood that it was just -- proposed by an engineer
3 in 1938 as an interim guide as an arbitrary choice, it
4 had no experimental foundation. Do you understand that?

5 MR. POWERS: Object to the form.

6 THE WITNESS: Yeah, I read the first part. He
7 understood that.

8 BY MR. LANIER:

9 Q. Okay. Now, the associate medical director for
10 the entire company is telling everybody that it's
11 probable 5 million particles per cubic foot will not be
12 acceptable for the prevention of mesothelioma. If your
13 associate medical director for the whole company
14 believes that in addition to Dr. Sayers and everybody
15 else, don't you think your company ought to be being
16 honest about that point?

17 MR. POWERS: Object to the form.

18 THE WITNESS: I don't -- again, I just don't
19 agree with -- he said it's probable. Again that leaves
20 room for doubt.

21 BY MR. LANIER:

22 Q. So unless it's 100 percent -- all right.

23 A. I don't know whether we told Kelly-Moore or
24 what we told Kelly-Moore or didn't tell them.

25 Q. Okay. Did you know back then in the '60s while

51

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023263

1 you all were selling your Calidria and in the '70s --

2 you all sold it in the '60s and '70s; right?

3 A. Yes.

4 Q. You started in 1963 selling it?

5 A. Yes.

6 Q. Did you know back then that there was a concern

7 about whether or not your Calidria had the same degree

8 of danger as other asbestos?

9 A. I didn't know that, no, not then.

10 Q. Did you know the concern was that your Calidria

11 which had, what, short fibers -- it's a short fiber;

12 right?

13 A. Yes.

14 Q. There was a concern that your Calidria was even

15 more dangerous than the other kinds of chrysotile, did

16 you know that?

17 A. No.

18 MR. POWERS: Object to the form.

19 THE WITNESS: No, I didn't know that.

20 BY MR. LANIER:

21 Q. That would be important to know, wouldn't it?

22 A. Well, perhaps. I don't know. What's the

23 question?

24 Q. Look at this June 7th, 1967 letter from your

25 associate medical director to the Dr. Hall with the

1 Union Carbide Europe. The second paragraph he says, we
2 had been interested in the possibility that the short
3 fiber Coalinga product might have a greater hazard than
4 the more conventional form of -- I can't read that on
5 this copy. Upside down. Can you read it?

6 A. It looks like "asbestos."

7 Q. Asbestos something submicron silica has been
8 known to cause. In other words, the shorter fiber might
9 be more dangerous. Did you know about that concern?

10 MR. POWERS: Wait. Object to the form. I just
11 objected.

12 Don't answer the way it's asked.'

13 MR. LANIER: Why?

14 MR. POWERS: Because you quoted -- the reason
15 I'm not going to let him answer is because you were
16 quoting a document, and as best as I was able to follow
17 along, you then added a question which appears to be a
18 quote but it's not. It's just your question.

19 MR. LANIER: Oh, well, I don't want to mislead.
20 I was saying is he aware of the concern that I read
21 about in the question.

22 MR. POWERS: I understand what you were trying
23 to ask, but the way you asked it your question comes
24 across as a quotation from that document, which it
25 isn't.

John L. Myers (11-29-01)

1 MR. LANIER: Well, I hope to be showing the
2 document to the jury while I ask it, but I'll be more
3 clear because I know this is a deposition that can be
4 used in other cases.

5 BY MR. LANIER:

6 Q. Sir, I want you to read this first sentence
7 with me. I think we can do all but one word. Let me
8 look at that word. I think that word is going to be
9 "because." Let's see if that doesn't make sense.

10 We've been interested in the possibility that
11 the short fiber Coalinga product might have a greater
12 hazard than the more conventional forms of asbestos
13 because submicron silica has been known to cause rather
14 -- is that rather?

15 A. Rapidly.

16 Q. -- rapidly progressive silicosis after
17 exceedingly brief exposure. Did I read that right?

18 A. Yes.

19 Q. Did you know about this concern that your short
20 form Coalinga asbestos was going to be more hazardous?

21 MR. POWERS: Object to the form.

22 THE WITNESS: It wasn't going to be more. He
23 said the possibility and --

24 BY MR. LANIER:

25 Q. We will get to the rest of it. You don't know

54

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023266

1 about the tests that were done to see?

2 A. No.

3 Q. Have you ever heard of Sterling Forest?

4 A. Yes.

5 Q. Where is Sterling Forest?

6 A. In New York somewhere.

7 Q. Did you know that in 1966 Union Carbide had the
8 Mallon Institute do a special study to see what the
9 potential for different asbestos products is for causing
10 a fibrogenic reaction in the body?

11 MR. POWERS: Object to the form.

12 THE WITNESS: I have seen those reports, yes.

13 BY MR. LANIER:

14 Q. Well, I think they're referenced here in Dr. --
15 the associate medical director's letter in June of '67.

16 MR. POWERS: Excuse me. Just so we have a nice
17 record. Could you identify who -- the date and who the
18 associate medical director is.

19 BY MR. LANIER:

20 Q. Yeah. The date of this letter is June 7, 1967.
21 It's on Union Carbide Corporation letterhead with the
22 Park Avenue, New York City address. It's addressed to
23 Dr. T.J. Hall with Union Carbide Europa with the Geneva,
24 Switzerland address. It's copied to Dr. Dernehl the
25 M.D.

John L. Myers (11-29-01)

1 I cannot read this fellow's signature, can you?

2 Do you know who that associate medical director was?

3 A. It looks like C.U. Dernehl to me.

4 Q. Except it keeps going kind of long. Maybe it's

5 C.U. Dernehl, M.D.?

6 A. M.D.

7 Q. Okay. I guess that would be instead of copied

8 that would be C.U. Dernehl, M.D. down at the bottom, and

9 e.d. it must be who typed it. All right. Sufficiently

10 -- good.

11 So if we look at Dr. Dernehl's letter of June

12 7th 1967 Dr. Dernehl continues, he says, we were

13 concerned about whether the Coalinga material with its

14 exceedingly fine fiber diameter might have a similar

15 effect in causation of asbestosis. We therefore made

16 some preliminary studies in which the material was

17 injected into the body cavity of guinea pigs, rats and

18 rabbits and also was injected intravenously by a method

19 which distributes the asbestos throughout the lungs of

20 rats. The materials injected were the standard fiber, a

21 refined fiber and a long fiber obtained from Johns

22 Manville for the purpose of comparison. In the

23 injection study the Coalinga refined fiber produced the

24 -- what?

25 A. Most severe reaction.

56

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023268

John L. Myers (11-29-01)

1 THE VIDEOGRAPHER: Just one second, please.

2 BY MR. LANIER:

3 Q. Your Coalinga refined fiber produced the most
4 severe reaction in the belly cavity whereas the standard
5 fiber in the Johns Manville fiber were essentially the
6 same and less severe. Did I read that right?

7 A. Yes.

8 Q. Did you know about that concern, about your
9 Coalinga fiber being more dangerous than the others?

10 MR. POWERS: Object to the form.

11 THE WITNESS: As I said, I have read the
12 studies, yes.

13 MR. LANIER: I want the transcript to show so
14 that when we're reading it that I've a lengthy delay in
15 here that I should not be playing to the jury. That
16 will remind me not to, as I'm reading this and cutting
17 it.

18 BY MR. LANIER:

19 Q. Did you know that the associate medical
20 director, Dr. Dernehl has already testified under oath
21 that chrysotile asbestos could cause mesothelioma?

22 MR. POWERS: Object to the form.

23 THE WITNESS: No, I didn't know that.

24 BY MR. LANIER:

25 Q. And you don't have a medical doctor's degree,

57

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023269

1 do you?

2 A. No.

3 Q. You don't have any medical training that would
4 allow you to cast a personal opinion one way or the
5 other on that issue?

6 A. Not a medical training reason, no.

7 Q. You don't have a toxicology degree either, do
8 you?

9 A. No.

10 Q. When did Union Carbide start selling their
11 asbestos in pellets?

12 A. I believe in 1963.

13 Q. Why?

14 A. Well, the main reason was that the pellets are
15 produced in the drying operation. The -- I don't know
16 whether you want to get into the production system, but
17 all the product is -- it's all a wet process, and one of
18 the final stages is to remove the water from the
19 asbestos which becomes filter cake, which is the
20 consistency of Playdough and that is fed through
21 extruders into a dryer, and it's pelletized so that's
22 it's easy to dry in a tumbling dryer.

23 Q. So making pellets out of the asbestos was a
24 handy, economical thing that was going to happen anyway,
25 so you just sold it as pellets as opposed to regrinding

1 it afterwards; is that fair to say?

2 A. That's much cheaper to produce or to sell as
3 pellets than to grind it.

4 Q. And then the folks that ultimately need to use
5 it, if they need to use it as the powder asbestos, they
6 just grind the pellets; is that right?

7 A. No. In most cases if they couldn't use
8 pellets, we would provide them with the open fiber or
9 ground product.

10 Q. Did the pellets have a coating?

11 A. No.

12 Q. At some point you all started putting some
13 silica coating around some of your asbestos?

14 A. That was the RG-244 which we spoke about
15 earlier.

16 Q. Earlier. And when did that come about?

17 A. In 1967 or '68.

18 Q. Why did your company start putting that silica
19 coating around the pellets?

20 A. Well, as I told you before -- do you want to
21 hear it again?

22 Q. Yeah. It might not have clicked in my brain.
23 I'm sorry.

24 A. Okay. We were trying to develop a product
25 which would compete with material known as Cabosil,

1 which is a pyrogenic silica.

2 Q. Okay. You got a time out. She's got to type
3 that word, and I don't know what it is. She may, but --

4 A. Cabosil.

5 Q. Can you spell that for us.

6 A. C-a-b-o-s-i-l.

7 Q. Okay. What is Cabosil?

8 A. It's a pyrogenic silica.

9 Q. Pyrogenic means -- pyro is fire. Genic means
10 causes?

11 A. Produced in a heat process, by a heat process.

12 Q. Okay.

13 A. I think. I mean I'm not familiar with that at
14 all.

15 Q. Okay. So you all wanted to compete with that
16 product. So who made that product?

17 A. The Cabot Corporation.

18 Q. Next question. Tell me about Calidria
19 Corporation. What was that company?

20 A. It was set up, and I can't remember the dates.
21 It had a very brief history, a few months or even weeks
22 maybe. It was set up to facilitate the sale of the
23 business.

24 Q. So that would have been somewhere in the mid
25 '80s?

John L. Myers (11-29-01)

1 A. I can't remember that at all.

2 Q. Okay.

3 A. Well, I left in '8- --

4 Q. You left in '85?

5 A. They sold the business in '85, so it was before
6 that.

7 Q. So it had to be somewhere mid '80s or something
8 like that. Or the '80s.

9 MR. POWERS: Object to the form.

10 BY MR. LANIER:

11 Q. When you had the Calidria mine and you all were
12 selling this Calidria, was it all sold out of
13 California, or did you ship it other places to sell it
14 from?

15 MR. POWERS: Let me just ask you to clarify,
16 Mark. Your last question referred to after Union
17 Carbide sold the mine and now you're talking about us.

18 BY MR. LANIER:

19 Q. Good point.

20 Union Carbide -- let me use proper names
21 instead of personal nouns.

22 When Union Carbide was selling its asbestos, I
23 guess in a sense all over the world -- you all sold it
24 in England; right?

25 A. Yes.

61

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023273

John L. Myers (11-29-01)

1 Q. Would it all get shipped and sold out of
2 California, or did you have other processing places and
3 other distribution places?

4 A. No other processing places. We had warehouses
5 in the United States.

6 Q. Did you have any warehouses in Texas?

7 A. I think so, yes.

8 Q. Because I think Kelly-Moore was buying it for
9 use in their Texas plants.

10 In that situation would they have bought it out
11 of -- come from the Texas warehouse or California or
12 could it change --

13 MR. POWERS: Object to the form.

14 BY MR. LANIER:

15 Q. -- load to load?

16 A. It would depend on how much they ordered. If
17 they ordered a complete carload or truckload, it would
18 be shipped from King City.

19 Q. Okay. And was there any other business entity
20 or corporation, a subsidiary corporation or anything
21 that was ever set up around the mine itself in
22 California that you know of?

23 A. No.

24 Q. Okay. I've read in interrogatory answers that
25 Union Carbide sold its asbestos through not only itself

62

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023274

1 but to other companies to be packaged and sold by those
2 companies. Are you aware of that?

3 A. No. To be packaged by somebody else?

4 Q. Yeah. Like Arco bought your asbestos and
5 re-packaged it and sold it as an Arco asbestos. Did you
6 know about that?

7 MR. POWERS: Object to the form.

8 THE WITNESS: It was packaged in King City in
9 Arco bags.

10 BY MR. LANIER:

11 Q. Okay. And then Arco would just -- it would be
12 sold as an Arco asbestos even though you all did the
13 packaging and everything else?

14 A. Yeah. I'm not sure what was on the bags
15 identifying them, the manufacturer.

16 Q. What is magnetite?

17 A. It's a iron-based -- I'm not sure if it's Fe2O3
18 or Fe3O4, but it's an ingredient in asbestos are that is
19 not desirable.

20 Q. So you get the magnetite out of the asbestos?

21 A. As much as possible.

22 Q. As much as possible.

23 Sterling Forest, you said, was in New York?

24 A. Yes.

25 Q. Do you know who owned the asbestos mines there?

John L. Myers (11-29-01)

1 Were there asbestos mines in Sterling Forest?

2 A. No.

3 Q. Was there a Union Carbide plant or distribution
4 center in Sterling Forest?

5 A. I don't know.

6 Q. Here's the reason I'm asking. I read this
7 study that supposedly had Union Carbide asbestos as part
8 of it. This is the Mallon Institute report that is
9 shown received by you all July 18, 1966. It looks like
10 it was put out July 8th. And this is the fibrogenic
11 potential of asbestos products in the injection process
12 that we've talked about. In the summary it says the
13 results of intraperitoneal administration indicates the
14 asbestos products studied produced fibrotic lesions of
15 the visceral organs in rats, guinea pigs, regardless of
16 their fiber length. Then of the three products, there's
17 a CMS-100 refined fiber that produces the most severe
18 reaction. That is what we were talking about. But if
19 you look down here, designation of asbestos products,
20 this refined fiber. CTS-100, here it is, shows the
21 source Sterling Forest. I guess that's just where it
22 was sent out from? I'm not getting how your fiber got
23 to Sterling Forest as a source.

24 MR. POWERS: Object to the form.

25 BY MR. LANIER:

HARTSELL & OLIVIERI (831) 423-5911

64

UCAREF00023276

John L. Myers (11-29-01)

1 Q. Can you help me?

2 A. Well, I think that was a laboratory and maybe
3 they did -- I don't know.

4 Q. Okay. In other words, Sterling Forest may have
5 been the laboratory that sent out the 8 ounces of
6 refined fiber?

7 A. That's possible, yes.

8 Q. Okay. I just -- that I needed. Thank you.

9 What I'd like to do is take about a five-minute
10 break. I don't have a lot more.

11 MR. POWERS: Good.

12 THE VIDEOGRAPHER: Going off the record at
13 11:17 A.M.

14 (Recess.)

15 THE VIDEOGRAPHER: We're going back on the
16 record at 11:36 A.M.

17 MR. LANIER: Pass the witness.

18 MR. POWERS: I'm going to go change seats and
19 ask him a few questions.

20

21 EXAMINATION BY MR. POWERS

22 Q. Mr. Myers, good morning.

23 A. Good morning.

24 Q. Mr. Myers, you were retired from Union Carbide
25 -- or you didn't retire from Union Carbide. You left

65

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023277

John L. Myers (11-29-01)

1 your employment with Union Carbide in 1985; correct?

2 A. Yes.

3 MR. LANIER: Objection. Leading.

4 BY MR. POWERS:

5 Q. When did you leave your employment with Union
6 Carbide?

7 A. In 1985.

8 Q. When you left your employment in 1985 what did
9 you do next?

10 A. I went with KCAC. All employees were allowed
11 the opportunity to stay with the operation, and I chose
12 to stay.

13 Q. Did KCAC continue to operate the mine in King
14 City that was formerly owned by Union Carbide?

15 A. Yes. The mine is actually in San Benito
16 County, the mill operation is in King City.

17 Q. What was your position with KCAC after 1985?

18 A. I was president with the company.

19 Q. Are you still working for KCAC?

20 A. No. I retired in 1993.

21 Q. Where do you live now?

22 A. In King City.

23 Q. What do you do in King City?

24 A. I'm retired. I'm mayor of King City for the
25 last nine years, been on the City Council for 12 years.

66

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023278

1 Very active in community service.

2 Q. Mr. Myers, I want to direct your attention back
3 to the time when you did work for Union Carbide and ask
4 you a question, first of all, about something known as
5 the TLV. Do you know what that is?

6 A. Yes.

7 Q. What is it?

8 A. It's the threshold limit value.

9 Q. Before OSHA came into existence in 1970 or '71
10 do you know whether other organizations, whether they be
11 state agencies or federal agencies or private
12 organizations, proposed standards for exposure to
13 asbestos?

14 A. Yes.

15 Q. Do you know what some of those agencies or
16 organizations were?

17 A. The -- I can't remember the name for sure. The
18 Industrial Hygiene Association or --

19 MR. LANIER: Foundation.

20 THE WITNESS: -- Foundation. I don't think --
21 anyway. An industrial hygiene group established the --
22 as far as I know the original TLVs for asbestos.

23 BY MR. POWERS:

24 Q. Have you ever heard of an organization called
25 the American Conference of Governmental Industrial

1 Hygienists?

2 A. That's the group I was trying to think of,
3 yeah. ACGIH.

4 Q. In an earlier part of this deposition you were
5 asked some questions about a report prepared by an
6 individual named I.C. Sayers. Do you recall those
7 questions?

8 A. Yes.

9 Q. There were references throughout the earlier
10 part of the deposition to Dr. Sayers. Do you know
11 whether Sayers was a doctor?

12 A. No, I don't.

13 Q. Do you know whether he was a medical doctor?

14 A. Not to my knowledge.

15 Q. Or perhaps an engineer who had the title of
16 doctor?

17 A. That could be. I really don't know.

18 Q. You just don't know one way or the other?

19 A. No.

20 Q. I want to direct your attention now to the time
21 that you worked both for Union Carbide and KCAC in King
22 City. Where was your office in relation to the plant
23 that processed the Calidria asbestos fiber?

24 A. It was in a building above the maintenance shop
25 that is within 50 feet or so of the mill.

John L. Myers (11-29-01)

1 Q. How often were you there in your office 50 feet
2 or so from the mill?

3 A. Every day.

4 Q. Is this -- is this the mill that was processing
5 the Calidria asbestos fiber?

6 A. Yes.

7 Q. Did you wear a respirator?

8 A. Only if I was going to be out in a location in
9 the mill where a respirator was required.

10 Q. Were respirators required in every part of the
11 mill?

12 A. No.

13 Q. Do you have any concerns about your health from
14 having worked 50 feet from the mill that processed
15 Calidria asbestos fiber?

16 A. No, I don't.

17 Q. Do you have friends who worked there?

18 A. Yes.

19 Q. Do you have friends who still work there?

20 A. Yes.

21 Q. Do you have concerns about their health?

22 A. No. Not from an asbestos related problem.

23 Q. Mr. Lanier asked you and showed -- asked you
24 about some documents that he showed you. Do you know,
25 were you -- let me back up and start that question over.

69

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023281

1 Were you involved during your employment at
2 Union Carbide with investigating what the hazards of
3 asbestos were and what to do about them?

4 A. Only as it was necessary to keep informed so --
5 and when I was marketing manager to be able to pass that
6 information on to my salespeople.

7 Q. Were there others in Union Carbide who had
8 medical training and industrial hygiene training whose
9 principal job it was to investigate those hazards?

10 A. Not that I know of.

11 MR. POWERS: Okay. All right. Thank you, sir.

12 That's all the questions I have.

13

14 FURTHER EXAMINATION BY MR. LANIER

15 Q. I got a couple more.

16 KCAC I'm assuming that's King City Asbestos
17 Company?

18 A. No.

19 Q. What -- where did those initials come from?

20 A. I don't know. I don't remember anyway, but it
21 does not stand for anything.

22 Q. Did you have any ownership in KCAC?

23 A. At one point I had a few shares of stock in the
24 company.

25 Q. And when was that?

John L. Myers (11-29-01)

1 A. In the mid '80s.

2 Q. When you were president?

3 A. Yes.

4 Q. Did you have anything to do with the buy-out of
5 the Calidria Mine from Union Carbide?

6 A. No.

7 Q. Did you know when that buy-out -- who owned
8 KCAC?

9 A. It was a group of private investors from San
10 Francisco.

11 Q. Did you know them personally before they bought
12 the company, the mine?

13 A. I only got to know them when they were
14 negotiating with Union Carbide.

15 Q. And you got some ownership of that company when
16 you became president?

17 A. I can't remember if that was at the same time
18 or shortly thereafter, and then I -- they wanted me --
19 they required me to sell it back in a couple of years.

20 Q. Next issue. Your office was in a building
21 close to the mill.

22 A. Yes.

23 Q. Well, whenever you were around asbestos being
24 processed, I'll bet you you did wear a respirator,
25 didn't you?

71

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023283

John L. Myers (11-29-01)

1 A. No. Only in certain areas, because as I said
2 before, it was a wet process, so there was very little
3 or no dust in the air except in the packaging area.

4 Q. But wherever you all had asbestos dust in the
5 air, you were wearing a respirator, weren't you?

6 A. No.

7 Q. Okay. Where were you breathing asbestos dust
8 and not wearing a respirator?

9 A. Well, in the mill in general. There is some
10 dust in the mill, in the general part of the mill, but
11 the only place a respirator is required in the operation
12 is in the packaging area which is a closed off
13 ventilated area.

14 Q. So you wouldn't wear a respirator around
15 asbestos dust?

16 A. If I was in that area, I would, yes.

17 Q. Why?

18 A. Because the levels were below what I thought
19 was safe.

20 Q. So you think that chrysotile asbestos can hurt
21 you?

22 A. No, I mean my personal opinion Calidria
23 chrysotile asbestos, well, does not -- I think it may
24 cause -- if you had exceeding a lot of inhalation over a
25 long period of time you might get the asbestosis which

John L. Myers (11-29-01)

1 you could get from -- a similar disease from any dust
2 over a long period of time.

3 Q. So the chrysotile asbestos can hurt you and you
4 would wear a respirator?

5 A. No. I said I didn't wear a respirator except
6 in one area.

7 Q. There were areas where you wore respirators
8 because the chrysotile asbestos can hurt you; right?

9 A. Yes. It can cause asbestosis, or I think it
10 can. We have -- like I say, we haven't had any --

11 Q. Are you all still selling, or are you all -- is
12 KCAC still selling asbestos in the year 2001?

13 A. Yes.

14 Q. They sell it overseas?

15 A. Yes.

16 Q. Third world countries, places like that?

17 A. No.

18 Q. I mean you know it's been banned in Europe;
19 right?

20 MR. POWERS: Object to the form.

21 THE WITNESS: I'm not familiar with the latest
22 rules in Europe.

23 BY MR. LANIER:

24 Q. You didn't know it had been banned in Europe?

25 A. I know there were proposals.

73

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023285

John L. Myers (11-29-01)

1 MR. POWERS: Object to the form.

2 THE WITNESS: But I haven't kept up with
3 whether that was ever accomplished or not.

4 BY MR. LANIER:

5 Q. Well, what countries do you think are buying
6 asbestos these days?

7 A. Primarily Japan.

8 Q. Is that who you all were selling it to back
9 when you were president?

10 A. We sold to Japan, yes.

11 Q. Do you sell any to Brazil or to any countries
12 like that?

13 A. Yes.

14 MR. LANIER: Okay. I'll pass the witness.

15

16 FURTHER EXAMINATION BY MR. POWERS

17 Q. Mr. Myers, when you were at King City employed
18 by Union Carbide did you receive correspondence or other
19 written information from Union Carbide's medical
20 department or toxicology department?

21 A. Some, yes.

22 Q. Did it relate to asbestos and the hazards of
23 asbestos?

24 A. Yes.

25 MR. POWERS: Okay. Thank you, sir.

74

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023286

1 That's all I have.

2

3 FURTHER EXAMINATION BY MR. LANIER

4 Q. So the Union Carbide medical department sent
5 you some of their knowledge --

6 MR. POWERS: Object to the form.

7 BY MR. LANIER:

8 Q. -- is that right?

9 MR. POWERS: Object to the form.

10 THE WITNESS: I'm not sure whether it was some
11 or whether they sent me all of it. Or what they had.

12 BY MR. LANIER:

13 Q. For example, did you get that Dr. Dernehl
14 letter talking about 5 threshold limits not sufficient
15 to keep people from dying from mesothelioma?

16 A. Not that I remember.

17 Q. Okay. So somehow some of the information was
18 filtered down to you, but you don't think you got all of
19 the information that they knew about asbestos, do you?

20 A. I --

21 MR. POWERS: Object to the form.

22 THE WITNESS: I -- I really don't have any idea
23 what they knew except for what you've shown me today.

24 BY MR. LANIER:

25 Q. And I've shown you some things that you didn't

John L. Myers (11-29-01)

1 know about before, haven't I?

2 A. Yes.

3 MR. LANIER: I'll pass the witness.

4 MR. POWERS: Nothing further.

5 THE VIDEOGRAPHER: Anybody else?

6 All right. Stand by and I'll close this up.

7 This marks the end of tape A. It also marks
8 the end of today's deposition of John Myers in the
9 caption Charles R. Latham, et al. versus Union Carbide,
10 et al. Deja View Video will retain the original
11 videotape.

12 We are off the record at 11:49 A.M. on today's
13 date of November the 29th, 2001.

14 (The deposition was concluded at 11:49 A.M.)

15

16

17

18

19

20

21

22

23

24

25

HARTSELL & OLIVIERI (831) 423-5911

76

UCAREF00023288

John L. Myers (11-29-01)

1

2

3

DECLARATION OF WITNESS

4

5

6

I, JOHN L. MYERS, declare under penalty of

7

perjury that I have reviewed the foregoing transcript;

8

that I have made any corrections, additions, or

9

deletions in my testimony that I deemed necessary; and

10

that the foregoing is a true and correct transcript of

11

my testimony in this matter.

12

13

14

Dated this day of ,

15

2001, at , .

16

17

18

19

20

21

JOHN L. MYERS

22

23

24

25

77

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023289

1

2

CERTIFICATE

3

4 I, JANET T. OREB, a Certified Shorthand Reporter,
5 License No. 5198, do hereby certify:

6 That I am the reporter who reported the above and
7 foregoing proceedings; that said proceedings were taken
8 down by me in shorthand at the time and place therein
9 named and were thereafter transcribed; and the same is a
10 true, correct and complete transcript of the said
11 proceedings to the best of my ability.

12 I further certify that I am not of counsel or
13 attorney for any of the parties hereto, or in any way
14 interested in the events of this cause, and that I am
15 not related to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto subscribed my
17 name on this day of , 2001.

18

19

20

21

22

JANET T. OREB
Certified Shorthand Reporter

23

24

25

1 HARTSELL & OLIVIERI
2 CERTIFIED SHORTHAND REPORTERS
3 621-A Water Street
4 Santa Cruz, CA 95060
5 (831) 423-5911

6 December 7, 2001

7 JOHN L. MYERS
8 102 River Drive
9 King City, CA 93930

10 Re: LATHAM vs. GARLOCK, et al.

11 Deposition Date: November 29, 2001

12 Dear Mr. Myers:

13 The transcript of your deposition taken in the above
14 matter has been prepared. If you are represented by an
15 attorney and wish to read and sign the transcript, you
16 should contact your counsel.

17 You may also review your transcript in our office, which
18 is located at 621-A Water Street in Santa Cruz,
19 California. Our office is open weekdays 9:00 A.M. to
20 5:00 P.M.

21 The transcript will be available in our office for
22 review for 30 days from the date of this letter, unless
23 counsel have stipulated to another method.

24 After the 30-day period, the transcript will be sealed
25 and sent for safekeeping to the attorney who noticed the
deposition.

If you have any questions, please feel free to call our
office, (831) 423-5911.

21 Sincerely,

22
23 Kay Hartsell

24
25 cc: Counsel

79

HARTSELL & OLIVIERI (831) 423-5911

UCAREF00023291