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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

WILLIAM J. KORNEGAY

VS.

JOHNS-MANVILLE SALES
CORPORATION, ET AL.

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CIVIL ACTION NO.
G-81-131
(CONSOLIDATED)

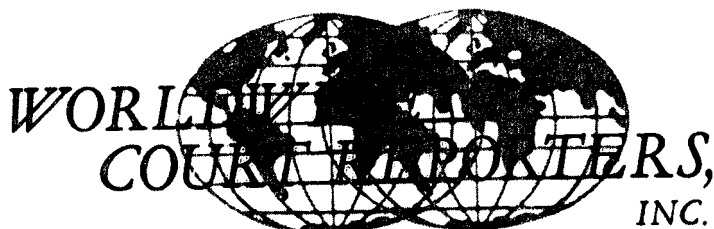
PROCEEDINGS
BEFORE THE HONORABLE HUGH GIBSON

DECEMBER 6, 1985

VOLUME VI

CONTINUED DIRECT EXAMINATION
OF
GERRIT W. H. SCHEPERS, M.D.

EXHIBIT TENDER



A P P E A R A N C E S

Messrs. Robert E. Ballard, of the law firm of Messrs. Abraham, Watkins, Nichols, Ballard, Onstad & Friend, 800 Commerce Street, Houston, Texas, 77002, and Lawrence Madeksho, of the Law Offices of Lawrence Madeksho, 8320 Gulf Freeway, Houston, Texas, 77087, representing the Plaintiffs.

Ms. Elizabeth Thompson and Mr. Robert D. Arredondo, of the law firm of Messrs. Butler & Binion, 1600 Allied Bank Plaza, Houston, Texas, 77002, representing Defendant Raymark.

Messrs. Arthur Stamm, John A. Sullivan, and Walter E. Workman, of the law firm of Messrs. Baker & Botts, One Shell Plaza, Houston, Texas, 77002, representing Defendant Owens-Illinois and the Wellington Group.

1 Messrs. Samuel E. Stubbs, of the law firm of
2 Fulbright & Jaworski, Eighth Floor, MBank Building,
3 Houston, Texas, 77002, and James H. Crosby, of the law firm
4 of Messrs. Brown, Hudgens & Richardson, 1495 University
5 Blvd., Mobile, Alabama, 36609, representing Defendant
6 Owens-Corning Fiberglas.

7
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9 Messrs. Walter F. Conrad and F. Witcher
10 McCullough, of the law firm of Messrs. Baker & Botts, One
11 Shell Plaza, Houston, Texas, 77002, representing Defendant
12 GAF.

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15 Ms. Sandra F. Clark, of the law firm of
16 Messrs. Mehaffy, Weber, Keith & Gonsoulin, InterFirst
17 Tower, Beaumont, Texas, 77704, representing Defendant
18 Standard.

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20 Ms. Gail C. Jenkins, of the law firm of
21 Messrs. Benckenstein, Norvell, Bernsen & Nathan, Sixth
22 Floor, InterFirst Tower, P. O. Box 551, Beaumont, Texas,
23 77704, representing Defendant Celotex.

1 Mr. R. Lyn Stevens, of the law firm of
2 Messrs. Weller, Wheelus & Green, Fifth Floor, Petroleum
3 Building, P. O. Box 350, Beaumont, Texas, 77704,
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7 Mr. John H. Boswell, of the law firm of
8 Messrs. Boswell & Hallmark, 2100 InterFirst Plaza, Houston,
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12 Mr. Ronald E. Cook, of the law firm of
13 Messrs. Mayor, Day & Caldwell, 700 Milam, Houston, Texas,
14 77002, representing Pittsburgh-Corning.

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17 Mr. Frank M. Bean, of the law firm of Messrs.
18 Bean & Manning, 1611 Wesleyan Tower, 24 Greenway Plaza,
19 Houston, Texas, 77046, representing Defendant Eagle-Picher.

1 experiments and check what had been accomplished and to
2 develop a report suitable for publication on the biological
3 action of the material, which is what I then did.

4 Q. Okay. Now, to educate us a little bit, the Kaylo
5 contained 15 to 20 percent asbestos, did it not?

6 A. The Kaylo itself is the trade name applying to
7 different kinds of products with different compositions,
8 sometimes with 15 percent chrysotile, sometimes with
9 chrysotile mixed with amosite, and sometimes with different
10 quantities of these. The product we studied at the Saranac
11 Laboratory for the long-term inhalation study, it was
12 shorter range-finding tests, but the long-term study was
13 continued several years, was Kaylo with 15 percent
14 chrysotile in it.

15 Q. Now, was the conclusion of Saranac that the dust from
16 Kaylo exposed users to a hazard?

17 A. Yes, sir.

18 Q. In publishing this report, did you say that Kaylo could
19 cause cancer?

20 A. No. I described changes of the kind that we put on the
21 board there, the epithelialization and the deformation of
22 the lung structure around the bronchioles, which I called
23 an adenomatoid change, which is a way of saying it looks
24 like a tumor. That's as far as I was willing to go,
25 because the cells have not metastasized to another location,

1 and I used the metastasizing or the spreading from one
2 point to another as the criterion for saying this is a
3 cancer versus this is a tumor-like growth.

4 Q. As of the time of the completion of the experiments,
5 the cancer had not yet appeared, as scientifically defined?

6 A. Yes.

7 Q. If when you were writing up the report, you had been
8 asked the opinion, "Do you have an opinion based upon
9 reasonable medical probability, as to whether or not these
10 changes will become cancerous, in the future after a few
11 more years," what would have been your opinion?

12 A. That they are a precursor to cancer; in other words,
13 that they would lead to cancer.

14 Q. Could you describe for the Court and jury, the nature
15 of the experiments that were conducted on these animals,
16 you might tell us what type animals they were and how the
17 experiment was conducted and why it was conducted?

18 A. Yes. It was a typical Saranac Laboratory study, spread
19 over three -- slightly more than three years, during which
20 animals of three species were kept in cages into which
21 quantities of Kaylo dust were caused to flow by mechanical
22 agitating machinery. And the animals lived under those
23 circumstances for the same periods of time as might have
24 been the experience of a human being working in a factory,
25 that was how the factory was designed. In other words,

1 approximately eight hours a day, five days a week, and then
2 a rest period, and then the same the next day or the next
3 week. And that was continued for three or four years,
4 almost four years.

5 The animals were sampled, which is a euphemism for
6 saying that numbers of them were taken and killed and
7 studied. And so, as time went by, there were fewer and
8 fewer animals left. And towards the end, I think there
9 were about nine or so animals that ran the full course of
10 exposure and showed the maximum effects of the inhaled dust.

11 Q. All right.

12 A. There was another phase of the study --

13 Q. Doctor, could I break your train of thought there?

14 A. Yes.

15 Q. It has been represented to this Court and jury that
16 about 450 animals were subjected to the tests and only 9
17 showed evidence of fibrosis. I think you just covered that.
18 Could you explain that to us?

19 A. I'll have to look at my report to be sure of the
20 numbers, but that is a positive test, the way the tests are
21 done. First of all, a whole lot of animals died at the
22 start, which suggested either that there was an epidemic
23 amongst the animals or that the dust was too toxic for them
24 to live in. So that reduced the numbers. And then from
25 there on, the survivors, which meant the toughest animals,

1 were sampled progressively.

2 Q. Excuse me. By "sampled," you mean you would kill them?

3 A. Killed and tissues cut up into sections and put on
4 microscopes and chemical analysis made of the tissues, to
5 see how much dust was in the lung.

6 Q. Okay.

7 A. Of course, with the last sampling, that had to be the
8 least number, because those are the only ones that were
9 left, were nine. The test of asbestosis is not just
10 whether or not fibrosis occurs. Fibrosis is just one of
11 the manifestations of what asbestos dust does. The animals
12 developed this emphysema that we talked about, they
13 developed this adenomatoid change.

14 Q. Precancerous?

15 A. Yes, the precancerous changes. And they developed the
16 fibrosis in those that lived long enough. Remember, this
17 is only a few years, and it normally takes many years for
18 asbestosis to develop. It doesn't occur immediately. The
19 fibrous component of it. Also, the dust exposure in this
20 particular experiment was relatively low. It was
21 approximately a quarter to a sixth of the usual method in
22 which asbestos experiments were conducted in the Saranac
23 Laboratory.

24 Q. I need to stop you there, Doctor, because two thoughts
25 come to my mind, and I need to get it out before I forget

1 them.

2 A. Yes.

3 Q. Of the nine animals that were left, were they killed or
4 sacrificed and examined?

5 A. Yes.

6 Q. Of the nine that remained, how many had what you would
7 call asbestosis in animals?

8 A. All of them. 100 percent.

9 Q. 100 percent?

10 A. Yes.

11 Q. Now, I'm coming back to where you left off. These
12 Kaylo experiments began, I believe, in 1943, did they not?

13 A. Yes. Right.

14 Q. At Saranac?

15 A. Yes.

16 Q. Now, before 1943, Saranac had been performing asbestos
17 experiments for members of the asbestos industry for some
18 number of years, had it not?

19 A. Since 1930, yes, sir.

20 Q. Now, would some of the early experiments have been with
21 what would be classified pure asbestos?

22 A. Yes.

23 Q. The Kaylo experiments would be conducted with
24 asbestos-containing dust?

25 A. Yes, sir.

1 Q. That was not pure asbestos?

2 A. It was diluted, the asbestos was diluted by the
3 presence of the hydrous calcium silicate component of the
4 product.

5 Q. Okay. Now, was there a difference in the dust exposure
6 in the Kaylo tests, compared to what had been done before
7 that time?

8 A. Yes, sir. Dr. Gardner, in his 18 large experiments,
9 had determined over the period preceding that, the 12 years
10 preceding, that one could evoke in the typical experimental
11 animals, such as the guinea pig, asbestosis in the form of
12 fibrosis, if you expose that animal for three to four years,
13 in a dust environment ranging from 700 to 900 million
14 particles per cubic foot of air. And that produced the
15 standard direction which was our measure with which to
16 calibrate the effects of the new dust, and that was the
17 laboratory biological measure.

18 Q. All right.

19 A. For the Kaylo experiments, the dust levels were set at
20 a lower dose.

21 Q. A lower dose?

22 A. Yes. About a sixth of the dose that was going or being
23 used in the other asbestos experiments.

24 Q. Now, I want to be sure I understand this. If we took
25 the prior asbestos experiments, would they be with pure

1 asbestos or mixed dust?

2 A. With pure asbestos.

3 Q. Okay. If you took the hundred --

4 A. Whatever pure asbestos is, but it's the asbestos as it
5 comes from the factory.

6 Q. I believe that's chrysotile with the amphiboles shaken
7 out of it.

8 If you took the pure asbestos then, allegedly pure,
9 test it at higher levels, seven or 800 million, and with
10 the Kaylo, which was a mixed dust only containing 20
11 percent asbestos, at what level was it tested?

12 A. About 120 to -- there were two experiments. One was
13 about 120 to 60, I believe. And the other was about 200, a
14 little over 200.

15 Q. So to make a comparison between the asbestos fiber
16 exposure, would we then have to take 20 percent of the 120 --
17 let's take the 200, because I can figure that one a lot
18 quicker. Twenty percent of that would be?

19 A. Forty.

20 Q. Thank you. 40,000 as composed to 700 to 800,000 in the
21 three tests?

22 A. Yes.

23 Q. Okay. And it would determine that even at this low
24 exposure, that could cause asbestosis?

25 A. Yes, sir.

1 Q. There was a letter from Owens-Illinois to Dr. Gardner
2 proposing these tests and outlining them in about 1943.

3 MR. BALLARD: I'll have them after lunch, Your
4 Honor.

5 THE COURT: Yes, sir.

6 Q. (By Mr. Ballard) But if I may paraphrase it, when Dr.
7 Gardner wrote back to Owens-Illinois, he said, "You're
8 starting out with a first-class hazard"?

9 A. Yes, sir.

10 Q. All right. Bearing in mind Dr. Hueper's 1943 statement
11 connecting asbestos and cancer, would you agree with Dr.
12 Gardner that, including 15 to 20 percent asbestos in this
13 product would indicate that you're starting out with a
14 first-class hazard?

15 A. The emphasis is not where your question puts it. The
16 emphasis is that Dr. Gardner, the product as described to
17 Dr. Gardner in the '43 correspondence, and the results of
18 preliminary analyses, indicated that the product contained
19 both asbestos and hydrous calcium silicate and some
20 unmodified quartz particles; in other words, silicon
21 dioxide.

22 And my understanding of what Dr. Gardner meant by
23 that statement was that if you combine silica exposure with
24 asbestos exposure, you are creating a first-class hazard,
25 because the laboratory had done many studies on human

1 beings who had worked in factories where they were exposed
2 both to silica and asbestos, and they were killed in five
3 to ten years time, showing that it was an extremely
4 hazardous combination of the two harmful substances.

5 I think that was what Dr. Gardner was focusing on,
6 and I believe that's why the dust levels were adjusted
7 downwards, to reduce the role of the silica in the test.

8 THE COURT: This would be a good time to recess
9 for lunch. And please be back at 1:15 again.

10
11 (Whereupon, after the luncheon recess, the proceedings
12 continued within the presence and hearing of the jury as
13 follows:)

14
15 THE COURT: Be seated.

16 MR. BALLARD: May I proceed?

17 THE COURT: Please.

18 Q. (By Mr. Ballard) Dr. Schepers, we were talking about,
19 I believe, the relationship between Saranac Laboratory,
20 Owens-Illinois, and the product Kaylo, which contained
21 asbestos. Did you know a Dr. Shook, Charles Shook and a
22 Mr. Willis Hazard?

23 A. Yes, sir.

24 Q. Could you relate to the Court and jury what Dr. Shook's
25 position was and who he worked for?