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Egilman

IN THE 138TH DISTRICT COURT OF
CAMERON COUNTY, TEXAS

DELMER SMITH, ET AL

VS. 95-04-1709-D

OWENS-CORNING FIBERGLAS CORP.
ET AL . . . . . .

"STATEMENT OF FACTS"
( This volume contains the second day of the jury trial conducted on MAY 8, 1996. It consists of Pages 118-327. )

VOLUME VII OF XI VOLUMES

BEFORE THE HONORABLE ROBERT GARZA
PRESIDING JUDGE

A P P E A R A N C E S :

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BE IT REMEMBERED, THAT ON THE 8TH DAY OF MAY, 1996, THAT THE AFOREMENTIONED CAUSE NUMBER AND STYLE WAS CALLED BY THE HONORABLE ROBERT GARZA, PRESIDING JUDGE OF THE 138TH DISTRICT COURT, AND AFTER BOTH SIDES HAVING ANNOUNCED READY, THE FOLLOWING MATTERS AS INDICATED ABOVE WERE HEARD BY THE COURT:



MR. KRAUS: Or you want to take a lunch break?

THE COURT: That's what I'm going to do. We are going to take a lunch break, at this point.

Ladies and Gentlemen we will start again at 1:15. Be back at 1:15. Do not discuss this case with anyone, or among yourself.

Be back at 1:15.

**( COURT RECESSED AT 12:00 P.M. AND RESUMED AT 1:30 P.M. )**

THE COURT: Continue.

MR. KRAUS: Yes, Your Honor.

**DIRECT EXAMINATION ( CONTINUED )**

Q. ( **BY MR. KRAUS** ) Doctor Egilman? Before the break, you were about to tell us that what Synkoloid could have found if they read the newspaper before 1975. What did you find, Doctor?

A. Well, just from the L.A. Times.

Q. All right.

A. The first article of asbestos, from the 1930s on, and, there is one titled -- it is dated, Tuesday, August 15 1967. "It Maybe Health Hazard." '"New Theory About Hazard," by Harry Nelson.

"Evidence is accumulating that asbestos, an almost indestructible mineral with thousands of commercial

uses, may become an increasing public health hazard."

I am just reading some of the highlights.

"Signs of asbestos, the lung disease resulting from inhalation of asbestos fibers, have been found in persons who live near factories where asbestos is used, in random autopsies in Montreal, Pittsburgh, Miami, Capetown, and London, and in animals that live near asbestos mines."

This is one from '72 entitled: "Perilous Particles".

"Tiny asbestos fibers pose a health threat to workers in public. Long exposure can result in lung disease, cancer; Industry seeks solution. The bodies are in the street".

Q. What's the next article, that was in the newspaper, that they read, Doctor?

A. "Asbestos Lung Cancer From Cigarettes Linked. Doctors Report Mineral Does Not Cause Disease But Enhances Smoking Dangers."

Basically, this article says that asbestos and cigarette smoking, it should be together to cause lung cancer.

Q. We didn't really talk about that Doctor, but when you have both smoking and asbestos exposures with regard to the cancer that comes from asbestos in the lung. As

opposed to mesothelioma, does smoking make the risk from asbestos much worse?

A. For lung cancer. Not from mesothelioma. This is also from 1972. "Threat Of Cancer to 225,000 World War II Workers Told," and it talks about the effect of these workers were at risk developing lung cancer.

Q. Doctor Egilman, because of the articles that are in the paper that you found before 1975 which were numerous, did you prepare a summary of all of them?

A. Yes, I have. A summary of 17 articles, from '67 to '75.

Q. Could you hit some of the points -- run it through, what was in the newspaper?

A. This is the title of the article, and then there is some quote from the text.

MR. BAILEY: I'm sorry, Your Honor. I didn't hear the dates of this article? '77?

THE WITNESS: First one is '67.

THE COURT: '67 through '75?

THE WITNESS: That's the range. I will give the date on the next one. The next one is May 20 of 1969. The title of the article was linked between asbestos, lung cancer studied and the quote from the article: "It is known that inhalation of asbestos fibers can cause some persons to develop asbestosis, in

which fibers gradually replace living tissue, says Doctor Premysl Pelnar of the institute. The institute they are talking about was a Canadian institute funded by the Canadian asbestos companies.

May 9, 1971: A labor union official said, 200,000 women's coats had been sold containing asbestos fibers, that medical experts say could be a health hazard. And the union would urge Congress to ban asbestos and other dangerous substances in clothing."

In June 7, 1971: "The American Public Health Association charged that the government had ignored warnings of a possible health hazard from the sale of up to 200,000 women's winter wool coats containing 7.8 percent asbestos."

"Asbestos has been linked to high rates of lung cancer in persons working with it over a long period."

December 9, 1971, "Study links lung disease to asbestos. High incidence of chronic lung inflammation has been reported in a study of asbestos workers in a private New England shipyard."

February 20 of 1972: "FDA asks Ban On Asbestos Use In Clothing."

"An FDA spokesman said, 'Asbestos fibers when inhaled can cause fatal lung damage'."

In March 15, 1927: "A group of labor leaders and

doctors said that the danger of cancer from breathing asbestos fibers is increasing sharply in the U.S. as the use of asbestos grows."

Quote: "It may be the most devastating environmental disaster yet perpetrated by any industrial nation."

June 7 of 1972: "The Labor Department has announced new regulations for the handling of asbestos." Quote. "Asbestos with some medical authorities and labor unions contend can cause death from cancer if the fibers are inhaled."

And this is the "Perilous Particles" one I read.

July 10, 1972: "Asbestos levels found high in some drugs.

There has been growing concerns over asbestos in medicine industry and government."

July 27 of 1972: Asbestos Lung Cancer From Cigarettes Linked." And I also I indicated it's unrelated.

"The incidence of lung cancer among cigarette-smoking asbestos workers was 92 times as high as it is for non-smokers not exposed to asbestos."

August 13 of 1972: "The FDA moved to require elimination of all asbestos articles for the talk." Asbestos which has been found to tend to cause cancer when inhaled -- "

September 30th, 1972: "Threat of cancer" -- this is one I read already.

October 5, 1972: "Case Against Asbestos As Cancer Agent Grows." Quote. "Asbestos already linked with lung cancer in insulation workers who smoke, was further linked with cancers of the esophagus, stomach, colon and rectum."

October 6 of 1972: "Senator Hiram L. Fong, (Republican-Hawaii) urged immediate investigation by the Navy of a medical report indicating the possibility of World War II shipyard workers developing lung cancer caused by asbestos. Doctor Selikoff estimated that as many as 225 of the 3.2 billion men and women, who worked in U.S. Shipyards might develop cancer associated with breathing asbestos fibers."

November 30th 1972, "Asbestos in U.C.L.A. Dorms Called a Potential Health Hazard."

"Public health officials have become concerned that the general public may be exposed to potentially hazardous levels around construction jobs or from the large number of commercial products which contain asbestos."

December 14 1973: "Authorities Hit On Ignoring Shipyard Workers' Anxieties."

"Asbestos has been linked with lung cancer, and a

malignancy called 'mesothelioma."

Q. So all 17 of these articles were in the public media before Synkoloid said it found out in 1975, Doctor?

A. Yes.

Q. They were all available before Synkoloid ever put any label on their product or warning?

A. Yes.

Q. Doctor, you've seen Delmer Smith like the rest of us. You're an expert in preventative medicine. Looking at this, and Delmer Smith, how does that make you feel as a specialist in this field?

A. It's a sad situation, obviously, knowing the literature about Mr. Smith.

MR. KRAUS: Your Honor, I would like to offer into evidence, Egilman Exhibit One. Curriculum vitae or resume of Dr. Egilman, and his qualifications.

And Exhibit Number Two, the summary that he just testified about to the articles that he found in the Los Angeles Times.

MR. BAILEY: Your Honor? We have no objections to Number One. I object to Number Two as hearsay and accumulative. There is no predicate laid for the admissibility of the newspaper articles or summaries of numerous articles.

THE COURT: All right. It will be overruled.