

In The Matter Of:

*Estate of Lloyd Koons, Estate of Donald Kotay v.
Union Carbide Corporation, et al.*

*Francis A. King
December 14, 2001*

*Morse, Gantverg & Hodge, Inc.
One Bigelow Square
Suite 719
Pittsburgh, PA USA 15219
(412) 281-0189*

*Original File cos2931.txt, 51 Pages
Min-U-Script® File ID: 2912738838*

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[1] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
[2] COMMONWEALTH OF PENNSYLVANIA
[3] CIVIL DIVISION

[4] RE:
[5] ALL PENDING ASBESTOS CASES
[6] ESTATE OF LLOYD KOONS,
[7] ESTATE OF DONALD KOTAY,

[8] Plaintiffs,)

[9] vs.) No. GD 99-122131

[10]) No. GD 99-10029

[11] UNION CARBIDE CORPORATION, et al.,)

[12] Defendants.)

[13] Deposition of FRANCIS A. KING
[14] Friday, December 14, 2001

[15]

[16] The deposition of FRANCIS A. KING, called as a
[17] witness by the Plaintiffs, pursuant to notice and the
[18] Pennsylvania Rules of Civil Procedure pertaining to
[19] the taking of depositions, taken before me, the
[20] undersigned, Colleen O'Brien Adams, a Notary Public in
[21] and for the Commonwealth of Pennsylvania, at the
[22] offices Goldberg, Persky, Jennings & White, 1030 Fifth
[23] Avenue, Pittsburgh, Pennsylvania 15219, commencing at
[24] 10:00 o'clock a.m., the day and date above set forth.

[25] COMPUTER-AIDED TRANSCRIPTION BY
[26] MORSE, GANTVERG & HODGE, INC.
[27] PITTSBURGH, PENNSYLVANIA
[28] 412-281-0189

[29]

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APPEARANCES:

[2] On behalf of the Plaintiffs:
[3] Goldberg, Persky, Jennings & White
[4] Aaron J. DeLuca, Esquire
[5] 1030 Fifth Avenue
[6] Pittsburgh, Pennsylvania 15219

[7] On behalf of the Witness:

[8] Eckert Seamans:
[9] Dale Hershey, Esquire
[10] USX Tower, 44th Floor
[11] 600 Grant Street
[12] Pittsburgh, Pennsylvania 15219

[13] On behalf of the Defendant UNC:

[14] Wilbraham, Lawler & Buba:
[15] Alba A. Romano, Esquire
[16] First and Market Building
[17] 100 First Avenue
[18] Pittsburgh, Pennsylvania 15222

[19] On behalf of the Defendant Klinger:

[20] Riley, McNulty, Hewitt & Sweltzer:
[21] Sandra L. Aven, Esquire
[22] 650 Washington Road, Suite 300
[23] Pittsburgh, Pennsylvania 15228

[24] ALSO PRESENT:

[25] Dr. David Egilman (via telephone)

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[1] FRANCIS A. KING
[2] called as a witness by the Plaintiffs, having been
[3] first duly sworn, as hereinafter certified, was
[4] deposed and said as follows:

[5] EXAMINATION
[6] BY MR. DELUCA:

[7] Q: Mr. King, good morning.

[8] A: Good morning.

[9] Q: My name is Aaron DeLuca and I represent a
[10] number of individuals who have claims against Union
[11] Carbide Corporation in asbestos cases. I appreciate
[12] you coming in this morning. I don't think I am going
[13] to take very much of your time. I understand that you
[14] are a lawyer?

[15] A: Correct.

[16] Q: And you are presently general counsel to
[17] Elkem Metals Company?

[18] A: Yes.

[19] Q: That being said, I am sure you are very
[20] familiar with the deposition process, just let me
[21] remind you if you don't understand one of my
[22] questions, I would ask that you tell me that and I
[23] will attempt to repeat it or rephrase it. Fair
[24] enough?

[25] A: Fair enough.

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[1] Q: I have issued a subpoena dated December 7,
[2] 2001 along with a notice of deposition, which I am
[3] going to ask be marked as Deposition Exhibit No. 1.
[4] And you have that in front of you right now; correct?
[5] A: I do.
[6] (Thereupon, Deposition Exhibit No. 1 was
[7] marked for identification.)
[8] Q: And you have had a chance to review that?
[9] A: Yes.
[10] MR. HERSHEY: I would like just to have one
[11] point of clarification and that is that the
[12] subpoena was issued on behalf of the plaintiffs
[13] in the cases that are pending against Union
[14] Carbide.
[15] MR. DELUCA: Yes, sir.
[16] MR. HERSHEY: And I would like it noted
[17] that Mr. King is here under subpoena and he is
[18] not testifying in cooperation with plaintiffs but
[19] going to respond to questions put to him under
[20] subpoena.
[21] MR. DELUCA: I agree to that.
[22] Q: Mr. King, do you recall our initial contact
[23] on December 6 when I contacted the law department of
[24] Elkem Metals?
[25] A: I remember a phone call, yes.

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[1] Q: Sure. And at that time your secretary or
[2] paralegal answered the phone. And I identified myself
[3] to her as being a plaintiff's attorney. Following
[4] that, she connected me with you, do you remember that?
[5] A: I remember being connected with you, yes.
[6] Q: What was the name of the lady who forwarded
[7] that call to you?
[8] A: Her name is Kathleen spelled with a K,
[9] Kantor, also spelled K-a-n-t-o-r.
[10] Q: Is she a paralegal with the law department
[11] at Elkem Metals?
[12] A: She is kind of a girl Friday, she does
[13] everything. She is my secretary, she's a paralegal,
[14] we have a very small department.
[15] Q: Would you describe to me your employment
[16] history with Elkem Metals as far as when you started
[17] and the positions you have held?
[18] A: I started in February, 1985 in the same
[19] position I hold today.
[20] Q: As vice president and general counsel?
[21] A: Correct.
[22] Q: You have had a chance to review the
[23] documents which were attached to the subpoena that I
[24] issued on December 7?
[25] A: Correct.

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[1] Q: Can you provide me with any information as
[2] to what, if any, business entities Elkem Metals
[3] purchased from Union Carbide in the early '80's?
[4] A: The transaction was completed in 1981. I
[5] believe the actual closing date was June 30, 1981.
[6] And by virtue of that agreement, Elkem purchased the,
[7] what was then known as the metals division of Union
[8] Carbide Corporation. It was an asset purchase and the
[9] assets - I may miss something here - but the assets,
[10] as I recall, consisted of a plant in Marietta, Ohio, a
[11] plant in Ashtabula, Ohio, a plant in Alloy, West
[12] Virginia, a plant in Alabama, I think it was
[13] Birmingham but I am not certain, and a plant in
[14] Portland, Oregon.
[15] The transaction also consisted of a lease
[16] of facilities in Niagara Falls, New York and I'm
[17] sorry, when I said Birmingham, Alabama, it was really
[18] Sheffield, Alabama, I recall it now. There was also a
[19] transaction agreed to at that time whereby Elkem would
[20] purchase two plants in Canada at a later date. And
[21] those two plants were actually purchased in 1984.
[22] Q: Can you tell me how Hawks Nest or Glen
[23] Ferris fits into these transactions that Elkem entered
[24] into with Union Carbide in 1981?
[25] A: Hawks Nest and Glen Ferris are

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[1] hydroelectric facilities that are located in proximity
[2] to the Alloy, West Virginia plant and they were part
[3] of assets of the purchase that were purchased.
[4] Q: Do I understand these to be hydroelectric
[5] power plants?
[6] A: Correct.
[7] Q: And is there one plant or are there two
[8] plants?
[9] A: There is two plants.
[10] Q: And they are known as Hawks Nest and Glen
[11] Ferris?
[12] A: Correct.
[13] MR. DELUCA: Off the record, please.
[14] (Discussion off the record.)
[15] MR. DELUCA: We are going back on the
[16] record.
[17] BY MR. DELUCA:
[18] Q: Mr. King, before we went off the record we
[19] were just talking about the Hawks Nest plant and the
[20] Glen Ferris plant which were hydroelectric power
[21] plants, which were part of the purchase by Elkem of
[22] the metals division of Union Carbide and I believe
[23] that you told me that these two power plants were
[24] associated with the facility in Alloy, West Virginia;
[25] is that correct?

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[1] A: That's correct.
[2] Q: With regard to the documents which I am
[3] seeking by the subpoena which are enumerated in the
[4] letter with enclosures dated August 17, 1981 from Mr.
[5] DeBor to Mr. Fawcett, have you undertaken a search to
[6] determine whether Elkem presently possesses those
[7] documents?
[8] A: I have done as much as I thought I could to
[9] attempt to determine if they exist.
[10] Q: And would you describe for me fully the
[11] steps that you have taken on behalf of Elkem to
[12] determine whether those documents are in existence and
[13] if so where they would be located?
[14] A: Well, the starting point was to contact the
[15] person to whom the letter of August 17 was addressed,
[16] Mr. Harry W. Fawcett. I called his home, I talked to
[17] him briefly to describe what was in the letter. I
[18] read him the letter, and then I asked him if he had
[19] any recollection at all of having received the 39
[20] cartons of documents that are identified in the
[21] letter. And the short answer is he had no
[22] recollection at all. In fact, he didn't even remember
[23] who I was, so, that was a dead end. That produced
[24] nothing.
[25] Then I went, I looked at our records

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[1] retention policy to see if there was any category of
[2] documents in that policy that might have - that these
[3] boxes might have fit into. I really didn't find
[4] anything that was relevant, in my mind, at least, as
[5] to a category that might have picked up these
[6] documents.
[7] Then I had my legal assistant, Mrs. Kantor,
[8] check our database, that is our own law department
[9] database, which includes all of our departmental
[10] records by category, and she didn't find anything in
[11] there that was applicable.
[12] And the last step was to check the manifest
[13] of retired documents that we have. We store retired
[14] documents in a mine north of Butler, Pennsylvania and
[15] the manifest categorizes those records both by the
[16] name of the person who delivers them for the storage
[17] and also by category in very broad categories. An
[18] example of the latter would be accounts receivable,
[19] for example, and under documents that I have sent for
[20] storage it comes under the heading FK, Frank King.
[21] And we looked through that and we didn't find anything
[22] that looked applicable. Those are the steps I took.
[23] Q: I would like to ask you about each one of
[24] those, if you don't mind.
[25] A: Sure.

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[1] Q: When you talked to Mr. Fawcett and you read
[2] him this letter, am I correct that he said he just
[3] didn't remember receiving these documents as opposed
[4] to telling you that he did not receive these
[5] documents?
[6] A: He said he didn't remember.
[7] Q: He couldn't tell you one way or the other?
[8] A: That's right.
[9] Q: And did Mr. Fawcett cite to you any other
[10] individuals that he thought perhaps could address your
[11] inquiry?
[12] A: No.
[13] Q: Do you know when Mr. Fawcett retired from
[14] Elkem Metals?
[15] A: Actually, I don't think he ever worked for
[16] Elkem Metals. Harry Fawcett was - I only know this
[17] by what predated my being employed by Elkem in 1985,
[18] Harry Fawcett, originally was a fairly high ranking
[19] executive at Alcoa. At the time that I knew him after
[20] I started in 1985, he was retired, and he was working,
[21] I believe, as a consultant for a sister company of
[22] Elkem called Elkem Chemicals. They were located at
[23] Building No. 1 on Cliff Mine Road in Pittsburgh. And
[24] he worked there. I met him a few times. He left the
[25] company about a year after I started.

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[1] Q: Mr. King, I note that your business card
[2] indicates that you are employed by Elkem Metals
[3] Company, LP.
[4] A: That's an old card. It's no longer true.
[5] It's now called Elkem Metals Chem, Inc. I just
[6] haven't had the cards updated.
[7] Q: I would note that both of those entities
[8] differ from the entity that's listed in this letter
[9] dated August 17, 1981.
[10] A: That's correct.
[11] Q: That was addressed to Mr. Fawcett of Elkem
[12] Management, Incorporated?
[13] A: Right.
[14] Q: Is that a different company than the Elkem
[15] Metals?
[16] A: It is. They are sister/daughter type
[17] companies. It's all one umbrella of companies under
[18] the same ultimate management ownership.
[19] Q: I am not seeking any confidential or
[20] proprietary information about the operations of Elkem,
[21] but can you tell me what relationship Elkem Management
[22] has or had with Elkem Metals?
[23] A: Well, at the time this letter was written,
[24] August 17, it would have post dated the closing on the
[25] purchase arrangement and Elkem Management, Inc. would

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[1] have been the managing partner of Elkem Metals
[2] Company. I can tell you what the structure was at
[3] that time. There were four partners, they were all
[4] ultimately owned by a Norwegian corporation called
[5] Elkem Metal Chem a/s, small a, small s, and those four
[6] partners, in turn, owned - I'm sorry, Elkem
[7] Management, Inc. is a corporation. Those four
[8] corporations that I just mentioned, owned the
[9] partnership, Elkem Metals Company.
[10] Q: Is there an entity in existence today known
[11] as Elkem Management, Incorporated?
[12] A: No.
[13] Q: Can you tell me when Elkem Management,
[14] Incorporated - well, strike that. Is there - do you
[15] know whether Elkem Management, Incorporated ceased to
[16] do business or whether it changed its name?
[17] A: Changed its name. And then it ceased to do
[18] business subsequent to that.
[19] Q: Can you tell me the name of the entity that
[20] Elkem Management, Incorporated became known as before
[21] it ceased to do business?
[22] A: Well, today, what was Elkem Management,
[23] Inc., along with several other companies are now
[24] merged together in a single company known as Elkem
[25] Investment Holdings, Inc.

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[1] Q: Where is that entity headquartered today?
[2] A: In Pittsburgh.
[3] Q: You are not employed by that company;
[4] correct?
[5] A: No.
[6] Q: You don't serve as general counsel to them?
[7] A: I do in the sense that it's a - yes, I do
[8] serve as general counsel to them.
[9] Q: Do they maintain records separate and apart
[10] from Elkem Metals?
[11] A: No.
[12] Q: Did you contact anyone at Elkem Investment?
[13] A: Could I correct that?
[14] Q: Yes, sir.
[15] A: They do maintain separate records in the
[16] sense of corporate identity type records like minute
[17] books and all the corporate documents. But as far as
[18] correspondence and that type of thing, they are all
[19] held at our offices pretty much together.
[20] Q: Did you contact anyone associated with
[21] Elkem Investment Holdings, Incorporated to determine
[22] whether or not they possessed the records which are
[23] listed in this letter of August 17, 1981?
[24] A: No.
[25] Q: Are you able to tell me - withdraw that

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[1] question.
[2] When you spoke to Mr. Fawcett, you said
[3] that he was here in the Pittsburgh area?
[4] A: Yes.
[5] Q: Does he presently live in Sewickley,
[6] Pennsylvania?
[7] A: Yes.
[8] Q: Does he work in any capacity with Elkem
[9] today, for instance, as a consultant?
[10] A: No.
[11] Q: Getting back to the four steps that you
[12] listed for me, I think the second one is that you
[13] checked your records retention policy?
[14] A: Correct.
[15] Q: You wouldn't have a copy of that with you
[16] today would you?
[17] A: I do.
[18] Q: May I mark that as Deposition Exhibit 2?
[19] (Thereupon, Deposition Exhibit No. 2 was
[20] marked for identification.)
[21] Q: Did I understand you to say that when you
[22] reviewed the records retention policy today, you
[23] didn't see any categories of documents in here which
[24] would suggest to you that the documents that I am
[25] seeking have been destroyed subject to this policy?

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[1] A: I didn't see any category of documents
[2] listed in that policy that I thought would pick up the
[3] types of documents that were in the letter that was
[4] addressed to Mr. Fawcett.
[5] Q: Okay. And then you indicated that your
[6] assistant, Ms. Kantor, checked the database that your
[7] law department maintains which covered departmental
[8] records?
[9] A: Correct.
[10] Q: Can you tell me when that database came
[11] into existence?
[12] A: Only roughly. I would say probably about
[13] 1996 or '97, I am not sure which.
[14] Q: And that was after the point in time you
[15] joined Elkem?
[16] A: Yes.
[17] Q: Is this something that was done pursuant to
[18] your instruction?
[19] A: Yes.
[20] Q: And can you tell me what efforts were made
[21] in - I'm sorry, did you say '86?
[22] A: What are you asking me, when -
[23] Q: When did the database come into existence?
[24] A: Round '96 or '97.
[25] Q: '96 or '97?

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[1] A: Right.
[2] Q: Can you tell me what efforts were made in
[3] '96 or '97, to look to see what documents were in
[4] existence for inclusion in the database?
[5] A: That would be all the legal department
[6] records, all of our files.
[7] Q: If there were files which were not
[8] generated or used by your legal department, they would
[9] not be in your database; is that correct?
[10] A: That's correct.
[11] Q: And then, finally, you indicated that you
[12] checked a manifest of retired documents?
[13] A: That's right.
[14] Q: Could you just tell me what that means so
[15] that we are clear?
[16] A: Well, when documents reach a certain point
[17] in the records retention policy that they are due to
[18] be retired, then they are cartoned up and sent off to
[19] this storage point, which is north of Butler,
[20] Pennsylvania. And then they are manifested; that is,
[21] they are marked in a certain way as to what they are.
[22] And then after they have been there for a period of
[23] time, they are supposed to be - when they reached the
[24] destruction point, they are supposed to be destroyed.
[25] And that's basically it.

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[1] Q: Is that the Iron Mountain facility?
[2] A: I don't know the name of it. I have been
[3] there but I forgot the name of it.
[4] Q: It's an old mine?
[5] A: It's an old mine, yes.
[6] Q: Just generally, can you tell me the volume
[7] of boxes that Elkem stores at that location?
[8] A: I can't tell you specifically. I know that
[9] I have been out there searching for documents on one
[10] occasion in particular, and I spent the better part of
[11] three days out there going through a definitive
[12] category of documents. I knew what I was looking for.
[13] Q: Are there thousands of boxes there?
[14] A: I think so, yes.
[15] Q: And there is some sort of index that you
[16] have created either for your own purpose or for the
[17] benefit of this facility that would tell you what is
[18] generally found in each box?
[19] A: That's the manifest that I referred to.
[20] Q: And can you just give me an example of the
[21] type of information or the quantity of information
[22] that would be located on this manifest as it would
[23] relate to describing the contents of any given box?
[24] A: It's pretty basic. It's just like I said,
[25] it's categorized by either the name of the person who

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[1] sent it or the initials of the person who sent it or a
[2] general subject matter like "accounts receivable,"
[3] that type of thing.
[4] Q: By chance, did you bring a copy of your
[5] manifest with you today?
[6] A: That, I didn't, no.
[7] Q: Is that something that you would be willing
[8] to provide?
[9] A: Sure.
[10] Q: There was no effort made to look into any
[11] boxes that are housed in that storage facility north
[12] of Pittsburgh to see whether the documents I am
[13] seeking would be located therein?
[14] A: No.
[15] Q: There was just a general effort to see who
[16] sent the boxes or whether there was any description
[17] which might match what I was looking for?
[18] A: Correct.
[19] Q: Did you look for documents that Harry
[20] Fawcett would have transferred to this facility or
[21] possibly transferred to this facility?
[22] A: Well, I looked through the manifest and
[23] Mrs. Kantor did, as well, under my direction, to see
[24] if there was anything in there that might indicate
[25] that these documents in this letter of 1981 were there

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[1] and there was no indication. There was nothing under
[2] the name, Fawcett, for example, HWE, or anything like
[3] that.
[4] Q: Were there any documents that would have
[5] pertained to Hawks Nest or Glen Ferris among these
[6] documents that are stored there based on your review
[7] of this manifest?
[8] A: There were general categories of what we
[9] call plant documents, also of boxes of what we call
[10] plant documents, okay? There were also, for example,
[11] my database, there are lots and lots of files that
[12] relate to Hawks Nest, that relate to Glen Ferris, that
[13] relate to the Alloy plant, that type of thing, but
[14] nothing that would correlate between those general
[15] categories and the documents described in the letter.
[16] Q: Mr. King, did you or anyone at your
[17] direction review the documents which you possess that
[18] pertain to Hawks Nest or Glen Ferris to see whether
[19] any of the documents that I am seeking were mixed in
[20] with them?
[21] A: Well, as far as the documents that were in
[22] storage, no, because we didn't go out to the mine. As
[23] far as the documents that are in my database, I looked
[24] at the file headings, I looked at - I mean I know
[25] these documents, and I can tell you that there's

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[1] nothing you are looking for that was in that, that
[2] were in those documents, I am sure of that.
[3] Q: You had described a certain category of
[4] documents as being plant documents. Let me ask you
[5] about the status of Elkem in regard to the Hawks Nest
[6] and the Glen Ferris plant. Does Elkem have any
[7] interest in those plants at present?
[8] A: We own them.
[9] Q: You still own them today?
[10] A: Yes.
[11] Q: Was there any effort made in response to my
[12] subpoena to contact those plants to determine whether
[13] or not they possess any of these 39 cartons of
[14] documents which I am seeking?
[15] A: No, I thought about that but then I thought
[16] "Why bother," because these documents were sent
[17] specifically to Harry Fawcett according to the letter,
[18] they weren't sent to the plant, so there is no way
[19] that I can think of that those documents would have
[20] wound up at the plant.
[21] Q: That involves an assumption on your part
[22] that Mr. Fawcett did not send them to the plants that
[23] these documents pertain to; correct?
[24] A: I guess that's right. Yes.
[25] Q: When I first spoke with Mrs. Kantor before

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[1] she transferred me to you, she had indicated that she
[2] had received a request three or four weeks earlier
[3] than the conversation I had with her on December 6, a
[4] request for these documents from someone from Texas.
[5] And she believed that that person was acting on behalf
[6] of Union Carbide.
[7] A: I don't think it was three to four weeks.
[8] Very shortly before I talked with you, I received a
[9] phone call from a law firm in Texas that represented
[10] themselves as representing Union Carbide, inquiring
[11] about the same matter. Unfortunately, I didn't write
[12] the fellow's name down. And I don't know who it was
[13] that contacted me but he did indicate that there was a
[14] trial that was imminent, and I don't remember the
[15] court in Texas, and he asked me about these documents
[16] and I said I didn't have a clue as to where they might
[17] be, and if they even existed, and that was pretty much
[18] it, the conversation.
[19] Q: Did you summarize your conversation with
[20] this person in the form of memo or did you take any
[21] notes about it?
[22] A: No.
[23] Q: Do you have any information as to the
[24] identity of the person that called you?
[25] A: I don't. I didn't go back and look at my

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[1] yellow pad or white pad that I had in front of me at
[2] the time. There may be a name there that I would
[3] recognize but I didn't look for that.
[4] Q: Did that individual ask you to make any
[5] search for these documents?
[6] A: No.
[7] Q: Is there anything else that you can recall
[8] about that conversation?
[9] A: Just what I have told you.
[10] Q: The conversation that we had on the 6th,
[11] which was before you were served with the subpoena in
[12] this matter, during that conversation, it appeared to
[13] me that I was on speakerphone and that Mrs. Kantor was
[14] in the room with you. Was that the circumstances?
[15] A: No, you were on the speakerphone but she
[16] wasn't there.
[17] Q: I heard someone talking in the background.
[18] Would that have been Mrs. Kantor?
[19] A: She might have appeared in the doorway and
[20] said something or whatever, I don't know.
[21] Q: I thought that during our conversation the
[22] name, DeBor, was raised by you as the name of somebody
[23] who may have contacted you about these documents.
[24] A: Yes. You are right. You are right. And
[25] the reason I know that is because that's a name of a

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[1] person I know here in Pittsburgh, that was
[2] coincidental. I believe his name was DeBor.
[3] Q: Was this a different conversation than the
[4] one you described to me?
[5] A: No, I think he was the - he was probably
[6] the fellow that called me representing Union Carbide.
[7] Q: Do you know whether you received more than
[8] one call from either Union Carbide or someone acting
[9] on their behalf?
[10] A: I believe just him.
[11] Q: So Mr. DeBor was the one that called you,
[12] asked you whether you knew where these documents were
[13] and Mr. DeBor was the person who did not ask you to
[14] search for them?
[15] A: I believe so, yes.
[16] Q: Do you know or did he disclose to you, Mr.
[17] DeBor, that he was the DeBor that had signed this
[18] letter addressed to Mr. Fawcett dated August 17, 1981?
[19] A: Wait a minute. Now, I am getting a little
[20] confused. DeBor is the name of the person on the
[21] letter; correct?
[22] Q: That's true.
[23] A: Maybe that's where I picked the name up.
[24] I am going to rescind my testimony that that was the
[25] name of the fellow that called me. I am not sure

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[1] about that now.
[2] Q: Did Mr. DeBor indicate to you that he was a
[3] potential witness in the Union Carbide trial which
[4] just occurred in Texas?
[5] MR. HERSHEY: You are now attributing an
[6] understanding that he has testified he doesn't
[7] have, that is he no longer -
[8] Q: Let me rephrase get. Did Mr. DeBor
[9] disclose to you that?
[10] A: I am going to back up. And now it's coming
[11] a little bit back to me. I wasn't paying a whole lot
[12] of attention to this at the time that it happened
[13] because I was working on a project when these calls
[14] came in. I do now believe there were two calls. I
[15] think there was a call from possibly a Mr. DeBor who
[16] indicated that he was calling on behalf of Union
[17] Carbide and inquiring about these documents and then I
[18] think there was a second call from a lawyer, because I
[19] asked Mr. DeBor could I speak with the counsel and
[20] then I the got a phone call from the counsel. That's
[21] the way it happened, I recall it now. Okay.
[22] Q: I didn't mean to interrupt you.
[23] A: I recall now that there were two calls; one
[24] was from a Mr. DeBor, I believe, and the second call
[25] was from a lawyer who identified himself as

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[1] representing Union Carbide in an asbestos litigation
[2] in Texas.
[3] Q: So the first call that you received about
[4] these documents was from Mr. DeBor?
[5] A: That's my recollection. Yes.
[6] Q: And then you -
[7] A: I know it was a layman; it was not a
[8] lawyer. I think his name was DeBor.
[9] Q: Is it your recollection that following or
[10] during the conversation with DeBor, you requested to
[11] speak with an attorney?
[12] A: That's correct.
[13] Q: Can you tell me - and then later, did you,
[14] in fact, speak with an attorney representing Union
[15] Carbide?
[16] A: That's correct.
[17] Q: Can you tell me how much time elapsed
[18] between the two conversations?
[19] A: Not really. I think it was the same day.
[20] Probably a couple of hours.
[21] Q: For purposes of this record, I don't want
[22] to confuse the conversations or what statements were
[23] made by what party, so I apologize but can we just get
[24] your recollection as to exactly what Mr. DeBor said to
[25] you and then we can get your recollection of what

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[1] transpired during the conversation with counsel?
[2] A: Well, I have told you just about everything
[3] I recall. But I believe Mr. DeBor identified himself
[4] said he was representing or he was working on asbestos
[5] litigation for Union Carbide, and asked about old
[6] records. I didn't have a copy of this letter
[7] obviously, in front of me at the time, asked me if we
[8] had any old records from Union Carbide relating to
[9] Hawks Nest and I said, "None that I am aware of." And
[10] then as we talked for a few minutes, I said, "Look,
[11] why don't you have your counsel call me and let's find
[12] out specifically what you are after. And if we can
[13] help you, we will. If we can't, well, we can't."
[14] Q: And then you were contacted by counsel?
[15] A: Correct.
[16] Q: And could you, as best you recall, describe
[17] the contents of that conversation?
[18] A: I believe he asked me the same question,
[19] "Do you have any of these records? We are starting an
[20] asbestos trial, Union Carbide is a defendant, do you
[21] have any knowledge of these kinds of records at all?"
[22] I said, "I don't have a clue. I wouldn't even know
[23] where to begin looking for them."
[24] Q: And am I correct, Mr. King, that neither
[25] Mr. DeBor nor Union Carbide counsel asked you to

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[1] search for them?
[2] A: I don't believe so. I don't recall them
[3] asking me to conduct any kind of search.
[4] Q: Did Mr. DeBor disclose to you his potential
[5] involvement as a witness in the Texas litigation?
[6] A: No.
[7] Q: Do you have any knowledge as to whether
[8] there was any federal laws which would have required
[9] Union Carbide to transfer these documents to Elkem in
[10] association with the purchase of the Hawks Nest and
[11] Glen Ferris facilities?
[12] A: Do I know if there were any federal laws
[13] that require that? No, I don't.
[14] Q: Do you know whether there are any federal
[15] laws that would require the retention of these
[16] records?
[17] A: No.
[18] Q: Can we go off the record, please?
[19] (Recess taken.)
[20] BY MR. DELUCA:
[21] Q: Mr. King, I do have some more questions for
[22] you. I am just looking for some general information
[23] because I am having a hard time within my own mind
[24] understanding this Hawks Nest plant and Union Carbide
[25] and Elkem's interest in it. When Elkem purchased the

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[1] Hawks Nest plant from Union Carbide, do you know
[2] whether that was a transaction that was negotiated by
[3] Elkem's legal department or whether there was outside
[4] counsel involved?

[5] A: It was outside counsel.

[6] Q: Do you possess a file on that asset
[7] purchase?

[8] A: Yes. We have - I am reasonably certain
[9] that there are files that were retired that would be
[10] out at the mine but we also have a complete set of
[11] documents in my office which are bound, all the basic
[12] documentation of the transaction was bound. I think
[13] there is like nine or ten volumes of that transaction.

[14] Q: Okay. And would that contain the purchase
[15] and sale agreement?

[16] A: Yes.

[17] Q: And the deeds, title instruments, things
[18] like that?

[19] A: Yes.

[20] Q: And I would assume that prior to Elkem
[21] purchasing that, they conducted some sort of title
[22] search to determine the legitimacy of the deed that
[23] Union Carbide was prepared to convey?

[24] A: Correct.

[25] Q: Would you have information relating to the

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[1] title search in your possession in those volumes of
[2] documents that you maintained?

[3] A: It would be in there, yes.

[4] Q: Do you know whether the Hawks Nest tunnel
[5] was part of the purchase by Elkem of assets owned by
[6] Union Carbide?

[7] A: Yes.

[8] Q: Does Elkem currently own the Hawks Nest
[9] tunnel?

[10] A: Yes.

[11] Q: And that was something that they purchased
[12] from Union Carbide?

[13] A: Yes.

[14] Q: And you have documents relating to that?

[15] A: Yes.

[16] Q: And would there be a title search for that,
[17] as well?

[18] A: I assume so.

[19] Q: Can you tell me what you know about the
[20] Hawks Nest plant and the construction of Hawks Nest
[21] tunnel, just generally?

[22] MR. HERSHEY: This goes pretty far beyond
[23] the subjects covered in the request for documents
[24] and Mr. King's search for the documents requested
[25] in the subpoena. He was asked to search and look

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[1] for documents in Exhibit A and he has done that
[2] and his familiarity with Elkem's affairs began in
[3] 1985, so he can answer your questions as fully as
[4] he is able but his understanding of the facts
[5] regarding Elkem and its properties really begins
[6] in 1985.

[7] MR. DELUCA: Let me see if I can lay a
[8] foundation. I am not trying to expand the scope
[9] of this. I think it relates to my ability to try
[10] to find documents.

[11] Q: I don't know if there are any other
[12] documents that Elkem may have which would be relevant
[13] to my cases, but upon your employment with Elkem
[14] Metals, in preparation for undertaking your job, did
[15] you have the occasion to review historical information
[16] about the Hawks Nest plant and the Hawks Nest tunnel?

[17] A: Before being employed, no.

[18] Q: From the time that you have been employed
[19] by Elkem, have you undertaken any review of documents
[20] which would give you some insight into the
[21] construction of the plant or the construction of the
[22] tunnel?

[23] A: I would answer it this way. I have learned
[24] about the asset, I would call it, the hydro facility
[25] simply by virtue of my work with the Federal Energy

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[1] Regulatory Commission, for example, FERC, that plant
[2] and that facility are licensed by FERC, so there is a
[3] great deal of information that you have to review and
[4] provide when you are relicensing, we relicensed that
[5] facility in 1987, so, I know a fair amount about it.

[6] Q: Let me see if I understand, and if I am
[7] incorrect in any regard, please let me know that.
[8] I am sure you would.

[9] A: Okay.

[10] Q: This plant, Hawks Nest plant, was regulated
[11] by the FERC?

[12] A: Correct.

[13] Q: And when Elkem purchased this plant from
[14] Union Carbide, the transaction had - the transaction
[15] was also regulated by FERC?

[16] A: Well, it was regulated in the sense that
[17] it's a licensed facility, it was a licensed facility
[18] by FERC in 1981 and that license had to be transferred
[19] from Union Carbide to Elkem. And that was done. And
[20] then - but the licence ran out in 1987, and it was
[21] relicensed in 1987 for 30 years.

[22] Q: By Elkem?

[23] A: By Elkem.

[24] Q: I apologize for asking this but licensed
[25] for what, sir?

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[1] A: Well, any hydroelectric facility in the
[2] United States that's on a navigable body of water has
[3] to be licensed by the Federal Energy Regulatory
[4] Commission and it's a very cumbersome process, it's a
[5] very time consuming process and it involves a whole
[6] lot of input from various federal agencies and it goes
[7] onto a docket for comment by the public, for comment
[8] by interested parties, for protests, for example, by
[9] interested parties, and FERC is required to conduct,
[10] do an investigation of the need for the project, the
[11] continuing need for the project, and to field input
[12] by, for example, the Fish and Natural Wildlife Agency,
[13] and all other interested parties, and conduct, really,
[14] a very, very sophisticated investigation as to the
[15] need for the project.

[16] If they are satisfied that the project
[17] represents the best and highest use for the navigable
[18] water, in this case the New River in West Virginia,
[19] then they will grant the licence for a hydro project.
[20] If they are not convinced, they will turn it down.

[21] Q: If I wanted to learn more about the
[22] obligations of the license holder, there would be a
[23] statute on point that would address that?

[24] A: Yes. There would be. There is a large
[25] body of statutory law and regulations, primarily

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[1] regulations that govern how you license a
[2] hydroelectric project. The licence, itself, that's
[3] granted by FERC is usually the document that contains
[4] all the restrictions on the use of the project.

[5] Q: Okay. And once a license has been granted,
[6] it's generally valid for 30 years?

[7] A: It depends. Ours went for 30 years. I
[8] think the norm right now for FERC is 30 years.

[9] Q: Are there ongoing inspections or
[10] responsibilities under that statute?

[11] A: Under the licence, itself?

[12] Q: Under the licence.

[13] A: Yes.

[14] Q: May I ask, sir, whether Elkem Metals
[15] currently does business with Union Carbide in any way?

[16] A: That's a good question. It's not Union
[17] Carbide anymore it's now Dow Chemical. Union Carbide
[18] was merged with Dow Chemical.

[19] Q: Yes, sir.

[20] A: But, I am sure we do. We have done
[21] business with Union Carbide over the years buying and
[22] selling different materials. I am currently in a
[23] project with Union Carbide, a legal project, involving
[24] the former Portland, Oregon facility where we share
[25] responsibility on an environmental issue. Yes. I

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[1] would have to safely say we do business with them.

[2] Q: I apologize if I covered any part of this
[3] question earlier but you had referenced that you
[4] possess files pertaining to Hawks Nest, your own
[5] personal files?

[6] A: Correct.

[7] Q: What types of documents would be contained
[8] within your Hawks Nest file?

[9] A: Mostly the licensing files with FERC, and
[10] the ongoing responsibility or compliance with that
[11] license would be in those files. We have had a couple
[12] of incidents involving the project. There was a
[13] drowning a couple years ago that resulted in a
[14] lawsuit. There would be files relating to updating
[15] the facility, itself, by you know, spending projects
[16] to refurbish turbines and that type of thing, just a
[17] whole host of different typical business projects that
[18] surround a project like that.

[19] Q: How long has Elkem been in business, sir?

[20] MR. HERSHEY: Which Elkem?

[21] Q: Well, that's a bad question.

[22] A: In the U.S. Elkem was in business in a
[23] small way prior to 1981. The main business started
[24] with the purchase of the metals division from Union
[25] Carbide in 1981.

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[1] Q: And this is a Norwegian entity, the parent
[2] company?

[3] A: Yes.

[4] Q: The parent company is from Norway?

[5] A: Correct.

[6] Q: And they have been in business for a long
[7] time?

[8] A: I think they go back to the early 1900's.

[9] MS. ROMANO: I didn't hear that.

[10] A: I think they go back to the early 1900's.

[11] Q: Would you happen to know whether Elkem has
[12] a company historian or anything like that?

[13] A: I don't know the answer. But I am certain
[14] that there is a lot of history of the company that's
[15] recorded.

[16] Q: Where would it be recorded?

[17] A: In Norway.

[18] Q: In Norway. Do you know whether Elkem has
[19] put out a brochure, commemorating an anniversary or
[20] something like that that would show its corporate
[21] history?

[22] A: I don't know.

[23] Q: Do you know whether Elkem ever published
[24] any materials such as a brochure or anything else, for
[25] that matter, specifically with regard to its purchase

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[1] of Hawks Nest from Union Carbide?
[2] **A:** I doubt that there is anything specifically
[3] related to Hawks Nest. I am not aware of any.
[4] **Q:** Finally, sir, I would like to just look at
[5] some of the different categories of documents which
[6] are described in the attachment to Mr. DeBor's letter
[7] of August 17, 1981 which is part of the subpoena which
[8] is Deposition Exhibit 1. There are some - and you
[9] have had a chance to review this, so, I think we can
[10] go through this quickly.

[11] There are some references to licenses,
[12] there are some references to land and water rights,
[13] there are some references to - I believe there were
[14] some references to deeds. Would those typically be,
[15] documents, licenses, deeds, would those be the types
[16] of documents that you would retain based upon your
[17] records retention policy?

[18] **MR. HERSHEY:** Can you point to any specific
[19] item on the list that you are referring to?

[20] **Q:** Well, sure. For instance, these documents
[21] itemize the 39 cartons referenced in Mr. DeBor's
[22] letter and then the last few pages appear to be a more
[23] in depth description of documents that were contained
[24] in carton 30 and 31. Just looking at the box No. 1,
[25] carton No. 1, it says, "Project 2512, West Virginia,

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[1] Hawks Nest, two folders." Then it says in parens,
[2] "(Federal Power Commission License.)" Would a Federal
[3] Power Commission license be the sort of document that
[4] Elkem would retain?

[5] **A:** Yes.

[6] **Q:** And there wouldn't be any set time for the
[7] disposal of those types of documents like licenses?

[8] **A:** I doubt it.

[9] **Q:** And then carton 2 says, "Application,
[10] licenses, & workpapers" and it gives a range from 1940
[11] to 1952. Again, based on your understanding, those
[12] were the types of documents that Elkem would want to
[13] retain?

[14] **A:** Probably, yes.

[15] **Q:** And that's your understanding as general
[16] counsel?

[17] **MR. HERSHEY:** Your question refers to the
[18] licences as opposed to the workpapers and so
[19] forth?

[20] **MR. DELUCA:** That's true.

[21] **A:** Probably, yes. Yes. But let me state
[22] this, if I can. I would guess, that at least the
[23] documents that are described in paragraph No. 1 there
[24] are probably in the binders that I am talking about
[25] that are in my office.

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[1] **Q:** Old licenses and things like that?

[2] **A:** Uh-huh.

[3] **Q:** That would show the history of -

[4] **A:** Well, simply because that license was in
[5] existence when the transfer took place in 1981, so
[6] obviously, it would be part of the turned over or
[7] turned over papers to us.

[8] **Q:** And sir, as far as documents like in carton
[9] 14, blueprints, and I understand that that is somewhat
[10] vague but also references to land and water rights and
[11] engineering specifications, those would also be
[12] documents that would be useful for Elkem to retain
[13] being that they purchased this power plant?

[14] **MR. HERSHEY:** Are you asking whether they
[15] were retained or whether in the abstract it would
[16] be advisable to retain them.

[17] **MR. DELUCA:** I think my question is in the
[18] abstract whether it would be advisable.

[19] **A:** Well, to the extent that these general
[20] descriptions would relate to dimensions of a project,
[21] for example, the size of the tunnel, the depth of
[22] concrete in the dam, that type of thing, certainly
[23] they are the kinds of records that Elkem would need to
[24] have in order to know what it had received and whether
[25] there were any problems with what it had received in

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[1] the way of assets. Whether those documents exist
[2] separately from this list here, I would expect that
[3] information of that type does exist separately from
[4] the 39 cartons that are described in this letter.

[5] **Q:** Would I be correct, sir, that to the extent
[6] there were any laws or regulations which would require
[7] Elkem to maintain such documents, that Elkem would in
[8] fact, comply with those laws?

[9] **A:** Sure.

[10] **Q:** Sure. Okay. And finally, sir, may I
[11] request from you that you just make a call or check at
[12] the plant level at Hawks Nest or the Glen Ferris plant
[13] for these documents, as you told me earlier that's
[14] something that you didn't do.

[15] **MR. HERSHEY:** And you are talking
[16] specifically about the 39 cartons? That's what
[17] we were asked to do.

[18] **MR. DELUCA:** Yes, sir, the 39 cartons
[19] and/or the contents thereof.

[20] **MR. HERSHEY:** Yes, well, the question is
[21] whether Mr. Fawcett might have sent any of the
[22] cartons to the plant, as opposed to disposing of
[23] them either in his office or later having them
[24] disposed of in the mine. We are looking for the
[25] 39 cartons.

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[1] **MR. DELUCA:** Are you representing your
[2] search is ongoing?
[3] **MR. HERSHEY:** No, we have made a search and
[4] the only area of search that you have suggested
[5] that Mr. King might pursue further is to check
[6] with the plants, right?
[7] **MR. DELUCA:** Yes, sir. And also to the
[8] extent that any of the documents here may have
[9] wound up in those binders, I would request those
[10] also.
[11] **MR. HERSHEY:** You want the binders? Well,
[12] the binders weren't in the cartons.
[13] **A:** The binders that I referred to, they are
[14] bound volumes of all the documents that represented
[15] the transaction between Elkem and Union Carbide that
[16] took place in 1981.
[17] **MR. HERSHEY:** They don't fall within your
[18] subpoena.
[19] **MR. DELUCA:** The reason I said that is that
[20] he earlier said as to one particular category of
[21] documents that "that's something that might be in
[22] my binders."
[23] **MR. HERSHEY:** That kind of a copy of that
[24] document might be in the binders but the binders
[25] were not in the 39 cartons which were the

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[1] documents that are the subject of your subpoena.
[2] You want the 39 cartons.
[3] **MR. DELUCA:** We can talk about the binders
[4] at a later date. I understand that he is here
[5] only in response to the subpoena.
[6] **MR. HERSHEY:** I want to make it clear that
[7] Mr. King has complied with the subpoena.
[8] **MR. DELUCA:** I don't suggest that he
[9] didn't. I am only requesting that as a final
[10] step in searching for these documents that he
[11] contact the plant level because he indicated he
[12] didn't do that.
[13] **THE WITNESS:** Right. I can do that
[14] **MR. DELUCA:** And you will agree to that?
[15] **MR. HERSHEY:** Yes. I just want to make it
[16] clear as to what he is supposed to ask when he
[17] contacts the plant. And the question he will
[18] ask, in order to comply with the subpoena, is
[19] whether to the knowledge of anybody at the plant,
[20] any of the 39 cartons wound up at the plant and
[21] if so, the documents in those cartons will be
[22] produced.
[23] **MR. DELUCA:** You know, I think that's fair
[24] but I don't want to get bogged down in a matter
[25] where due to semantics something isn't done that

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[1] I would have expected to be done. So I am simply
[2] asking that a search be made by Elkem to
[3] determine whether any of the these 39 cartons or
[4] the documents thereof might be located at the
[5] plant level. Is that fair?
[6] **MR. HERSHEY:** Yes.
[7] **MR. DELUCA:** Off the record.
[8] (Discussion off the record.)
[9] **BY MR. DELUCA:**
[10] **Q:** Just a few more questions. Mr. King. As
[11] general counsel to Elkem Metal, I am sure that one of
[12] your responsibilities is to ensure that Elkem complies
[13] with any federal or state laws that affect their
[14] business?
[15] **A:** Hopefully.
[16] **Q:** Hopefully. Certainly that would be your
[17] goal. And I would just like to turn you to the last
[18] several pages of this - actually, it's the last three
[19] pages which purports to be an itemized listing by
[20] carton of documents shipped to Elkem by Union Carbide
[21] pertaining to Hawks Nest and Glen Ferris and that
[22] would be the itemization of carton 30 and 31, the last
[23] two pages. And -
[24] **A:** Okay.
[25] **Q:** And my question to you would be, as general

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[1] counsel of Elkem Metal, are you aware of any federal
[2] or state laws that would require you to keep these
[3] specific documents, and I want to go through them
[4] category by category, very briefly.
[5] **A:** Okay.
[6] **Q:** And if there wasn't a federal requirement,
[7] then whether you would expect to have those in your
[8] files or not. The first one is 3.61, "Incorporation -
[9] Committee on New Kanawha Power Company. Affair
[10] Dissolution - Reorganization of Power Department."
[11] Are you aware of any federal or state law which would
[12] require Elkem to main those documents?
[13] **A:** No, I am not.
[14] **Q:** In the absence of such a law, those would
[15] be documents that you wouldn't necessarily keep?
[16] **A:** No. I don't know what the New Kanawha
[17] Power Company was, to be honest with you.
[18] **Q:** 3.612, "Financial estimates - 1927 through
[19] 1937. Yearly and monthly research projects. Retarded
[20] construction program. Construction budgets." Am I
[21] correct, sir, that you are not aware of any federal or
[22] state legal requirement to keep those types of
[23] records?
[24] **A:** No, I am not.
[25] **Q:** And accordingly, you wouldn't necessarily

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[1] expect to have those in your files?
[2] **A:** That's right.
[3] **Q:** 3.6120, "Invoices and Requisitions," to the
[4] extent that that identifies anything, you would be
[5] unaware of federal or state law on point that would
[6] require you to keep those?
[7] **A:** That's correct.
[8] **Q:** And again, it would appear looking at the
[9] top of this page that anything in the 3.6 range would
[10] pertain to the New Kanawha Power Company now Electro
[11] Metallurgical Company?
[12] **A:** That's correct.
[13] **Q:** As to 3.6121, "Payroll - Expense Accounts -
[14] Employment Personnel, 3.61210, Work Orders," again,
[15] you would be aware of no federal or state law which
[16] would require you to maintain those documents?
[17] **A:** No.
[18] **Q:** 3.62, "Applications for Positions.
[19] Positions in other Companies, 3.63, Weekly Reports -
[20] Construction, etc. See Book, 3.64, Plant Balance
[21] Sheet and Summary of Charges to Operation,
[22] Miscellaneous Financial. Cost of West Virginia
[23] plant. Accounting instructions. Property
[24] accounting." Again, sir, you would be unaware of any
[25] federal or state law which would require you to

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[1] maintain those documents?
[2] **A:** I don't know of any such law, no
[3] **Q:** In the absence of any such law, you would
[4] not expect to find these in your files?
[5] **A:** That's correct.
[6] **Q:** 3.69, "General - Medical Services -
[7] Sanitation. For housing see 3.90," 3.690, "Insurance
[8] - Surety Bonds, etc." Sir, are you aware of any
[9] federal or state law which would require you to
[10] maintain these documents?
[11] **A:** No.
[12] **Q:** 3.691, "Rates - Public Service Commission -
[13] Typical Rates in West Virginia - Sales of Power - Sale
[14] of Boomer Electric to Appalachian E.P. Company. (See
[15] also 3.702, 1930-34." Again, sir, you would be
[16] unaware of any federal or state law which would
[17] require you to maintain these documents?
[18] **A:** I don't know of any.
[19] **MR. HERSHEY:** Can I ask whether in this
[20] matter, it's the position of the plaintiff or any
[21] party that Elkem had an obligation to retain any
[22] category of document here? And then we can focus
[23] on that and see whether those documents have been
[24] retained.
[25] **MR. DELUCA:** I can't address that question

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[1] at this time, Mr. Hershey, but just to let you
[2] know, I am just going to go through the rest of
[3] these documents and as we get a little bit
[4] further on here, that's where my major interest
[5] lies, and then I will be finished. I am not
[6] suggesting anything at this point. I am just
[7] trying to -
[8] **MR. HERSHEY:** So it's not your position
[9] that there is a federal law that requires the
[10] retention of these documents?
[11] **MR. DELUCA:** I don't have a position on
[12] that matter. I don't have a statute to hand you
[13] right now, either.
[14] **MR. HERSHEY:** Well, your questions have
[15] that premise and -
[16] **MR. DELUCA:** I would tell you that, and I
[17] don't have the pages to give you for now, but
[18] it's my understanding that it was suggested by
[19] Union Carbide that such a statute existed. And
[20] that's all I can say at this time on the matter.
[21] I am not suggesting that that's true or false at
[22] this point. I am just trying to discover what
[23] the facts may or may not be.
[24] **BY MR. DELUCA:**
[25] **Q:** Picking right up where we left off,

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[1] 3.692, "SILICOSIS," 3.6921, "Industrial Hygiene in
[2] Tunnel Work. Mortality statistics 1936 study." Mr.
[3] King, as general counsel to Elkem Metals, are you
[4] aware of any federal or state laws or regulations
[5] which would require Elkem to maintain those documents?
[6] **A:** No, I am not.
[7] **Q:** 3.69211, "Tunnel Ventilation - Carbon
[8] Monoxide - Landis," 3.69212, "Rinehart and Dennis
[9] Fatal Accidents," 3.69213, "Non-Fatal Accidents -
[10] McClintic Marshall." Mr. King, as general counsel of
[11] Elkem Metals, are you aware of any federal or state
[12] laws or regulations which would require the
[13] maintenance of those documents?
[14] **A:** No, I am not.
[15] **Q:** 3.69214, "Insurance - Compensation,"
[16] 3.69218, "Silicosis Literature - Discussions -
[17] Addresses - Committee Societies," 3.6922, "Suits."
[18] Mr. King, as general counsel to Elkem Metals, are you
[19] aware of any federal or state laws or regulations
[20] which would require the retention or maintenance of
[21] those types of documents?
[22] **A:** No, I am not.
[23] **Q:** 3.6922), "Summons - Silicosis Suits,"
[24] 3.69221, "Attachments, Silicosis Suits," 3.69222,
[25] "Trials, Silicosis Suits -Testimony- Briefs -

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[1] Experts." Mr. King, as general counsel of Elkem
[2] Metals, are you aware of any federal or state laws or
[3] regulations which would require the retention of
[4] maintenance of those types of documents?
[5] A: No, I am not.
[6] Q: 3.62222, "Lilly & Lilly," 3.692227,
[7] "Records of Plaintiff's, Silicosis Suits. Work
[8] Records," 3.692228, "Mr. Davis' notes on Silicosis
[9] Suits." Mr. King, as general counsel of Elkem Metals,
[10] are you aware of any federal or state laws or
[11] regulations that would require the maintenance or
[12] retention of these documents?
[13] A: No, I am not.
[14] Q: We are almost done, sir. 3.692229,
[15] "General Material Under/Trial of Silicosis Suits.
[16] List of Suits," 3.6928, "Insurance in Connection with
[17] Silicosis Suits. Accounting," 3.69281, "Fees, Expert
[18] Testimony, Silicosis Suits." Mr. King, as general
[19] counsel to Elkem Metals, are you aware of any federal
[20] or state laws or regulations which would require the
[21] retention or maintenance of these types of documents?
[22] A: No, I am not.
[23] Q: 3.6929, "General - Rocks Samples," 3.69291,
[24] "Newspaper Clippings, Silicosis Suits. 1936 magazine
[25] and Newspaper Publicity." Sir, as general counsel to

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[1] Elkem Metals, are you aware of any federal or state
[2] laws or regulations that would require the maintenance
[3] or retention of these types of documents?
[4] A: No, I am not.
[5] Q: Sir, those are all the questions I have for
[6] you. Thank you.
[7] MS. ROMANO: To the extent that any
[8] documents are produced by Elkem entities or any
[9] other source we assert an attorney-client
[10] privilege on behalf of Union Carbide as
[11] applicable to the documents.
[12] MR. DELUCA: I will respond to that
[13] objection or claim of privilege at the time any
[14] such documents are produced. And I would just
[15] simply state that if these documents were truly
[16] privileged you wouldn't have been giving them to
[17] other folks.
[18] MS. ROMANO: And secondly -
[19] MR. DELUCA: Excuse me, and that the
[20] production of these documents to other parties is
[21] a waiver of any privilege that attaches to them
[22] or had attached to them.
[23] MS. ROMANO: I also am assuming that the
[24] standard reservation of objections as to form are
[25] declared - any objections other than as to form

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[1] are reserved for time of trial?
[2] MR. DELUCA: That's an assumption that you
[3] made at your peril at the outset.
[4] MS. ROMANO: At this time I would object to
[5] any line of questioning that had to do with
[6] obtaining hearsay evidence, inadmissible hearsay
[7] evidence.
[8] MR. DELUCA: Anyone else? Mr. King, Mr.
[9] Hershey, thank you for coming here today.
[10] MR. HERSHEY: We'll waive signature.
[11] MS. ROMANO: I would also cite the Rules of
[12] Civil Procedure on format for depositions with
[13] regard to objections.
[14] MR. DELUCA: Which rule of civil
[15] procedure?
[16] MS. ROMANO: I don't have that with me
[17] right now. I will provide it.
[18] (Thereupon, at 11:17 o'clock a.m., the
[19] deposition was concluded and signature was
[20] waived.)

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[1] CERTIFICATE
[2] COMMONWEALTH OF PENNSYLVANIA,)
[3]) SS:
[4] COUNTY OF ALLEGHENY.)
[5] I, Colleen O'Brien Adams, do hereby certify that
[6] before me, a Notary Public in and for the Commonwealth
[7] aforesaid, personally appeared FRANCIS A. KING, who
[8] then was by me first duly cautioned and sworn to
[9] testify the truth, the whole truth, and nothing but
[10] the truth in the taking of his oral deposition in the
[11] cause aforesaid; that the testimony then given by
[12] him as above set forth was by me reduced to stenotypy
[13] in the presence of said witness, and afterwards
[14] transcribed by means of computer-aided transcription.
[15] I do further certify that this deposition was
[16] taken at the time and place in the foregoing caption
[17] specified, and was completed without adjournment.
[18] I do further certify that I am not a relative,
[19] counsel or attorney of either party, or otherwise
[20] interested in the event of this action.
[21] IN WITNESS WHEREOF, I have hereunto set my hand
[22] and affixed my seal of office at Pittsburgh,
[23] Pennsylvania, on this day of _____,
[24] 2001.
[25] Colleen O'Brien Adams, Notary Public
In and for the Commonwealth of Pennsylvania
My commission expires November 19, 2003.

Lawyer's Notes

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Lawyer's Notes
