

FILE NAME: Georgia Pacific (GP)

DATE: 2007 Nov 14

DOC#: GP118

DOCUMENT DESCRIPTION: Legal - Deposition of Dr. Morton Corn

0001

1 IN THE STATE COURT OF FULTON COUNTY
2 STATE OF GEORGIA

3
4 EUNICE TAYLOR AND)
5 JOHNNY TAYLOR,)
6 Plaintiffs,) CIVIL ACTION
7 vs.) File No.
8 GEORGIA PACIFIC) 2007ev001878D
9 CORPORATION, et al.,)
10 Defendant.)

11
12 TELEPHONE DEPOSITION OF DR. MORTON CORN

13
14 In accordance with Rule 5(d) of
15 the Alabama Rules of Civil Procedure, as
16 Amended, effective May 15, 1988, I, Maya
17 Rose, am hereby delivering to PATTERSON
18 KEAHEY, the original transcript of the
19 oral testimony taken on the 14th day of
20 November, 2007, along with the exhibits.
21 Please be advised that this is
22 the same and not retained by the Court
23 Reporter, nor filed with the Court.

0002

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17 attached.)
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22
23

0005

1 I, Maya Rose, a Court Reporter of
2 Birmingham, Alabama, and a Notary Public
3 for the State of Alabama at Large, acting
4 as Commissioner, certify that on this
5 date, at 367 Valley Avenue, Birmingham,
6 Alabama, on the 14th day of November,
7 2007, commencing at 9:06 a.m., DR. MORTON
8 CORN, witness in the above cause, for oral
9 examination, whereupon the following
10 proceedings were had and done:
11

12 MR. DIMUZIO: Just some little
13 preliminaries here, we're taking this by
14 the Atlanta rules, I take it?

15 MR. WAMSLEY: That's fine.

16 MR. DIMUZIO: And read and --
17 is Dr. Corn going to want to do read and
18 sign?

19 MR. WAMSLEY: He is. By the
20 Georgia rules, you mean?

21 MR. DIMUZIO: Right.

22 MR. WAMSLEY: Yeah.

23 MR. DIMUZIO: Taking the

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1 deposition by the Georgia rules.

2 And, Court Reporter, I think
3 we're going to go ahead and do an
4 objection by one is good for all.

5 THE REPORTER: Okay.

6 MR. DIMUZIO: That will make
7 your life easier and that way you can just
8 put, you know, counsel down and not have
9 to worry about getting names; okay?

10 THE REPORTER: Great. Okay.

11 MR. DIMUZIO: Anything else,
12 Tom?

13 MR. WAMSLEY: I don't -- not
14 that I can think of.

15 MR. DIMUZIO: Okay. I guess
16 you can go ahead and swear the witness.
17 Oh, I guess also since the court reporter
18 is not actually there in person, I guess
19 we need to agree to waive any requirements
20 that the court reporter be there in
21 person; correct?

22 MR. WAMSLEY: That's fine with
23 me.

0007

1 MR. DIMUZIO: Okay. Good deal.

2 Okay. Are you ready, Dr. Corn?

3 THE DEPONENT: Yes.

4 MR. DIMUZIO: Okay. Madam
5 Court Reporter, go ahead and swear in the
6 witness.

7

8 DR. MORTON CORN,
9 being first duly sworn, was examined and
10 testified as follows:

11

12 EXAMINATION BY MR. DIMUZIO:

13 Q. Good morning, Dr. Corn. How
14 are you?

15 A. Fine, thank you. Good morning.

16 Q. Good morning. Could you,
17 please, state your full name for the

18 record?

19 A. My name is Morton Corn,
20 C-o-r-n.

21 Q. Okay. And, Dr. Corn, how are
22 you currently employed?

23 A. I am employed by Morton Corn &
0008

1 Associates, a consulting firm I formed in
2 1977.

3 Q. Okay. And right now, is this
4 just a solo operation or do you have other
5 employees as well?

6 A. My wife and my son are
7 part-time to assist me.

8 Q. I see. You don't have any
9 other -- at this point, other than your
10 wife and your son, you have no other,
11 like, full-time or part-time assistants to
12 help with administrative functions?

13 A. My wife and my son help with
14 both substantive assisting, namely
15 literature search or literature review, as
16 well as administrative.

17 Q. I see. And the way your
18 business is set up, do you pretty much
19 handle all the matters that require
20 expertise in terms of forming opinions, or
21 do you contract with other experts as
22 well?

23 A. I have not contracted with any
0009

1 experts for four or five years. I did
2 that in the past when I was doing a
3 simulation of something in the field. I
4 haven't done any of those recently, so
5 there's been no contracting.

6 Q. I see. And just in terms of
7 getting the scope of your testimony down,
8 I was a little anxious to do that. First
9 of all, by training and background, you're
10 an industrial hygienist; is that correct?

11 A. I'm initially a chemical
12 engineer and then with master's and
13 doctoral degrees in industrial hygiene and
14 sanitary engineering.

15 Q. Okay. And absent any sort of
16 industrial hygiene analysis that would
17 just be part and parcel of the
18 state-of-the-art analysis, do you intend
19 to offer any industrial hygiene opinions
20 in this case specific to Ms. Taylor?

21 MR. WAMSLEY: Object to form.

22 A. No.

23 Q. (BY MR. DIMUZIO:) Okay. Good

0010

1 deal. Do you intend to offer opinions
2 about exposure levels to individuals using
3 joint compounds in a general sense?

4 A. Only if asked a question
5 pertaining to the literature as
6 information appears. I will not do an
7 exposure analysis in this case.

8 Q. I see. Fair enough. Fair
9 enough.

10 First of all, do you have a
11 copy of your report there with you today,
12 sir?

13 A. Yes, I do.

14 Q. Okay. I want to talk about
15 that in just a moment.

16 MR. DIMUZIO: First of all,
17 Madam Court Reporter, I know you're in a
18 remote location. But in terms of what I
19 would like to have marked as Exhibit
20 Number 1, it will be a copy of today's
21 deposition notice of deposition and
22 subpoena duces tecum; all right?

23 THE REPORTER: Okay.

0011

1 (Whereupon, Plaintiff's
2 Exhibit 1 will be marked
3 for identification.)

4 MR. DIMUZIO: And, Tom, I
5 understand that you folks filed some sort
6 objections to that; is that correct?

7 MR. WAMSLEY: That's correct.

8 MR. DIMUZIO: Okay. Do you
9 want to go ahead and have that marked as
10 Number 2?

11 MR. WAMSLEY: That's fine.

12 (Whereupon, Plaintiff's
13 Exhibit 2 will be marked
14 for identification.)

15 MR. DIMUZIO: Okay. And then,
16 Madam Court Reporter, what will be marked
17 Exhibit Number 3 -- and we'll talk about
18 getting you these materials on a break --
19 will be Mr. -- Dr. Corn's report in this
20 particular case; okay?

21 THE REPORTER: Okay.

22 (Whereupon, Plaintiff's
23 Exhibit 3 will be marked

0012

1 for identification.)

2 Q. (BY MR. DIMUZIO:) Okay. Dr.
3 Corn, in -- as part of the report that I
4 was supplied, there was an Appendix B to
5 the report. And underneath that, it was

6 entitled Case Specific Materials Reviewed.
7 Is that something that you or your wife or
8 son put together specifically for this
9 case?

10 A. No. That was put together by
11 Nelson, Mullins for documents that I was
12 either sent or utilized during my trips to
13 Atlanta.

14 Q. I see. So you have either
15 retained -- come in possession of every
16 one of these documents or reviewed every
17 one of these documents in terms of forming
18 your opinions in this case; is that
19 correct?

20 A. Correct.

21 Q. Okay. And, first of all, do
22 you have possession of every one of these
23 documents as we sit here today?

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1 A. No. I have two bankers' boxes
2 of documents at home. I did not bring
3 them today because they're listed here.
4 What I did bring is the supporting
5 documentation for each citation in the
6 second part of my report.

7 Q. Okay.

8 A. Where a letter or document is
9 cited in the Section C chronology of the
10 Georgia-Pacific Company's approach to
11 asbestos in joint compound products, I
12 have a document for each citation here
13 today.

14 Q. Oh, okay. Good. Now, going
15 back to these documents that are listed
16 here, is it part of your professional
17 practice to make notes or tab or highlight
18 the actual documents themselves?

19 A. No. I don't touch documents
20 when I do this.

21 Q. Okay. So any sort of notes or
22 memos that you would have done concerning
23 this would be a completely separate

0014

1 document from the original document that
2 you reviewed; correct?

3 A. Yes.

4 Q. Okay.

5 A. I take very few notes. I might
6 say that to you in the beginning. The
7 really important documents I pulled, and
8 they're in the package of documents that I
9 have with me.

10 Q. Okay. Fair enough. And we'll
11 get to that in a moment. Is there

12 anything else that you brought with you
13 here today that you have not described
14 already?

15 A. Yes.

16 Q. Okay. And what would that be?

17 A. Well, I brought the notice of
18 deposition. And I brought, pursuant to
19 your request, an expert witness testimony
20 report, 2004 through 2007. Those are the
21 depositions or trial testimonies that I
22 have given in that period of time.

23 Q. Okay. Is there anything else

0015

1 you've brought with you?

2 A. I brought a single sheet that
3 is dated 2/8/07 and 2/9/07 that has
4 sixteen entries that describes what was in
5 the bankers' boxes that I went through in
6 Atlanta and contain the documents in the
7 Attachment B to my report. And they're
8 not -- they just are broad categories.
9 They're not details of documents. For
10 example, the categories are R & D
11 six-month report specs, comparison tests,
12 minutes of Gypsum Association, annual
13 reports, semi-annual reports, OSHA
14 inspection folders, formulation folders,
15 plastic bag manual, memos, 7776 CPSC bans
16 papers. Those are some of the categories
17 that I reviewed and are listed on this
18 sheet.

19 Q. Okay. And you reviewed these
20 documents in Atlanta, Georgia; is that
21 correct?

22 A. That's correct.

23 Q. Okay. And was that at the law

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1 firm, Nelson, Mullins?

2 A. That's correct.

3 Q. Okay. And did you meet with
4 any -- first of all, did you meet with any
5 company officials or representatives from
6 Georgia-Pacific in that time frame?

7 A. Not at that particular visit.
8 I did at other visits to Atlanta.

9 Q. Okay.

10 A. This was one of three visits.

11 Q. Okay. Well, let's go through
12 those, if we could. When was the first
13 visit that you made to Atlanta to get
14 materials rolled into your opinions about
15 Georgia-Pacific?

16 A. I believe this may have been
17 the first -- well, the first was shortly

18 before that. I haven't a date. I didn't
19 take notes. But it was to introduce me to
20 the Georgia-Pacific and Nelson, Mullins
21 people. And the bulk of that day was
22 reviewing my experience, qualifications,
23 consulting involvements, and so on. And
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1 after that meeting, I assume they met and
2 judged that they wanted to go ahead. And
3 I was invited to come down. Because one
4 of my stipulations was I must review
5 documents and would hold in abeyance my
6 appearance on their behalf pending what
7 those documents told me, that I had to
8 feel comfortable with the story or I would
9 not go forward. That's a standard
10 approach of mine to any potential client
11 that calls.

12 Q. Okay.

13 A. So a second visit was arranged.

14 Q. Okay. When did this first
15 visit happen, approximately?

16 A. Approximately in January.

17 Q. January of 2007?

18 A. Correct.

19 Q. Okay. Now, was that just for
20 this case or was this for a number of
21 cases involving Georgia-Pacific?

22 A. Oh, it had no specific case
23 mentioned at that time.

0018

1 Q. I see. Okay. Now,
2 approximately when did this second meeting
3 occur?

4 A. That was on the 8th and the 9th
5 of February.

6 Q. Now, going back to this first
7 meeting for a moment, who do you recall
8 meeting with from the firm Nelson, Mullins
9 at that time?

10 A. Tom Wamsley was the principal
11 contact at Nelson, Mullins.

12 Q. Okay.

13 A. And he has been the principal
14 contact.

15 Q. Okay. Did he make any sort of,
16 like, PowerPoint presentation or anything
17 like that about -- anything about
18 Georgia-Pacific and its involvement in
19 asbestos litigation?

20 A. No. There was nothing at
21 either of these two meetings about
22 Georgia-Pacific presented.

23 Q. I see. Okay. Let's talk about

0019

1 this second meeting. What was the purpose
2 of the second meeting?

3 A. For me to review documents.

4 They put me in a room, essentially, for
5 two days with twelve bankers' boxes and
6 left me alone.

7 Q. Okay.

8 A. And I went through them. I
9 didn't look at invoices, for example. I
10 disregarded that. These were
11 supposedly -- and I believe this day, they
12 are -- but, at that time, I -- I was told
13 these are all the documents that
14 Georgia-Pacific could collect in the field
15 and in their offices relating to asbestos
16 in their products.

17 Q. I see. Okay. And what was
18 your understanding that your role was in
19 reviewing these materials? What were you
20 reviewing them with an eye towards?

21 A. Well, they were quite specific
22 about that. They wanted to introduce into
23 their defense an independent -- what they

0020

1 referred to as a state-of-the-art witness,
2 but I refer to call a historical witness
3 who could describe -- and in my case, they
4 said I was particularly attractive to them
5 because I lived through it -- the learning
6 curve for the health effects of asbestos
7 and efforts in the regulatory community
8 and by companies to adapt to this new
9 knowledge. And I said, well, I would
10 start -- if I did this, I would start with
11 what I learned in graduate school and
12 progress to the present time. I would not
13 focus on the 1930s and 1940s other than
14 what I was told in graduate school,
15 because I didn't practice in those years,
16 but I would certainly describe the latter
17 half of the '50s and the '60s where I was
18 doing field practice research and
19 teaching.

20 Q. Okay. And --

21 A. And that was agreeable to them.

22 So --

23 Q. Okay. And --

0021

1 A. -- we went from there.

2 Q. Okay. And I almost cut you
3 off, which leads me to make the suggestion
4 to you that if I do cut you off at any
5 point, please let me know. Unfortunately,

6 I'm not there and I, you know, can't see
7 the body English and that sort of thing.
8 So if I cut you off, please let me know
9 and I'll always let you complete your
10 answer, sir; okay?

11 A. That's fine.

12 Q. Regarding your graduate school
13 experience and having lived through this,
14 I believe you started doing, sort of,
15 specific industrial-hygiene-type education
16 around 1955, '56; is that correct?

17 A. 1955. I entered the graduate
18 program at Harvard University for the
19 master's degree in industrial hygiene and
20 sanitary engineering.

21 Q. Okay. And that was the year
22 that Sir Richard Doll --

23 MR. DIMUZIO: D-o-l-l, Madam
0022

1 Court Reporter.

2 Q. -- published an epidemiologic
3 study, which some have held conclusively
4 established that asbestos could cause lung
5 cancer. Are you familiar with that
6 particular study that I'm referring to,
7 sir?

8 A. Yes.

9 Q. Okay. Was that something that
10 was discussed in your graduate schoolwork
11 at Harvard at that time?

12 A. It was brought up by Philip
13 Drinker, who taught industrial hygiene in
14 that course, yes.

15 Q. Okay. Fair enough. Coming
16 back to the meetings here, I'm sorry for
17 digressing there a bit --

18 A. I did not finish my answer.

19 Q. Oh, I'm sorry. Go right ahead.

20 A. It was not brought up in the
21 context that you just described it. Let
22 me add that.

23 Q. Okay. What context was it
0023

1 brought up?

2 A. It was brought up in the
3 context that all of the subjects in the
4 Doll study had fibrosis as well as lung
5 cancer. And Professor Drinker expressed
6 the view that it looked like our threshold
7 limit value protected against fibrosis
8 based on the Fleisher-Drinker studies he
9 had done and, therefore, it probably
10 protected against cancer. So it was not
11 viewed as a hallmark study conclusively

12 pointing to asbestos as a carcinogen. And
13 there are still, I am told, in this
14 country, pathologists who believe fibrosis
15 is an essential predicate of lung cancer.

16 Q. Okay. Scarring is a different
17 disease process, though, from cancer;
18 correct?

19 A. Yes.

20 Q. Okay. I mean, cancer is
21 essentially a disease of the DNA; right?

22 MR. WAMSLEY: Object to the
23 form.

0024

1 A. Well, I wouldn't describe it
2 that way. But some do, but there are
3 different physiological processes
4 associated with the diseases.

5 Q. (BY MR. DIMUZIO:) Okay. Fair
6 enough. Coming back to the second
7 meeting, other than your review of the
8 documents, did you engage in any sort of
9 meetings or briefings regarding your
10 document review with anyone at that time?

11 A. At the end of the second day, I
12 gave a preliminary impression of what I
13 had seen and that -- I put a little 3M
14 tab -- I forget what you call them -- on
15 the documents I wish to be sent and to
16 look over in closer detail.

17 Q. Okay. And the documents that
18 are listed in the appendix to your report,
19 are those the documents that you flagged
20 as a result of your review?

21 A. I believe I flagged more than
22 the ones that are in my Appendix B, but it
23 included all of that.

0025

1 Q. Oh, okay. So within Appendix B
2 are things that you definitely reviewed on
3 your second trip to Atlanta; correct?

4 A. That's correct.

5 Q. Okay. But there were
6 additional materials that are not listed
7 there; right?

8 A. Yeah. And I have many of them
9 at home.

10 Q. I see. And is there a list of
11 those additional documents that were
12 flagged but not included in the appendix
13 that's available?

14 A. It's not separated out from the
15 documents listed in the appendix. They're
16 all in that, but I did not make a separate
17 list of the ones in my possession.

18 Q. Okay. So at no point in time
19 have you ever seen a total list of every
20 document that you flagged in that
21 particular trip?

22 A. Not a list, no.

23 Q. Okay.

0026

1 A. No.

2 Q. Fair enough. Why were not all
3 the documents that you flagged copied and
4 provided to you?

5 A. Well, they were.

6 Q. Okay. So you did get copies of
7 every document that you flagged; is
8 that --

9 A. Yes.

10 Q. -- correct?

11 A. Yes. There's just no list of
12 the flagged documents. It's included --
13 those document titles are included in
14 Appendix B.

15 Q. Okay. And why are those
16 additional documents that are not in the
17 appendix, why are they not also listed in
18 the Appendix B?

19 A. They were. Let me repeat what
20 I said.

21 Q. Okay. I may have missed -- be
22 a misunderstanding, Doctor.

23 MR. WAMSLEY: I think we got
0027

1 mixed up.

2 A. At the two-day examination of
3 documents, I flagged documents to be
4 pulled, photocopied and that I asked to be
5 in my possession. That was done. The
6 documents in my Appendix B are a subset of
7 those, but I received copies of everything
8 I flagged.

9 Q. I see.

10 A. I did not use everything I
11 flagged to write Appendix B.

12 Q. Okay. And what would be the
13 reason for not including some of the
14 documents that you flagged and were given
15 copies? Why were some of those documents
16 not included in the appendix?

17 A. As I recall, some of them go to
18 a second level of detail of the major
19 decisions. I flagged the documents with
20 major decisions. There may be financial
21 issues discussed. There are may
22 logistical issues discussed. But I did
23 not think they were the critical documents

0028

1 that illustrated the points I was going to
2 make.

3 Q. Okay. Did you take any notes
4 at the second meeting when you did the
5 review?

6 A. No.

7 Q. Did you prepare any sort of
8 materials for your conversation with any
9 of the attorneys from Nelson, Mullins, or
10 anyone associated with Georgia-Pacific?

11 A. No. I -- as I recall, this
12 took two days. At the end of the second
13 day, we had a brief meeting before I left
14 and I gave a preliminary impression.

15 Q. Okay. And who did you meet
16 with before you left?

17 A. Well, there were several
18 members of the Georgia-Pacific legal team
19 present. I met with John Childs and a
20 woman, Karen, I don't recall her last
21 name. And two other attorneys came in at
22 intervals in that last meeting or at lunch
23 who I was introduced to. And Mr. Wamsley.

0029

1 Q. I see. Were all of these
2 individuals employed by the Nelson,
3 Mullins law firm?

4 A. No. No. The only one employed
5 by Nelson, Mullins, I think, was Mr.
6 Wamsley.

7 Q. Okay. Were the other
8 individuals employed by Georgia-Pacific?

9 A. Yes. I may have met another
10 Nelson, Mullins attorney, but I can't
11 recall his name.

12 Q. Okay. Fair enough. So, now,
13 have we completed the activities for the
14 second meeting that you had in Georgia,
15 sir?

16 A. That's correct.

17 Q. Okay. Tell me, when did the
18 third meeting occur?

19 A. The third meeting occurred in
20 the summer. It may have been July or
21 August.

22 Q. Okay.

23 A. And the purpose of -- I had

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1 written my summary and I had also had
2 several meetings, not in Atlanta,
3 preparing for testimony with a Mr. James
4 Hooper, an attorney retained by
5 Georgia-Pacific, who works in Denver. And

6 Mr. Hooper and I discussed what my
7 testimony would be both with regard to the
8 state of the art that I had put together
9 and the second part of the report, the
10 approach of Georgia-Pacific to the entire
11 asbestos issue.

12 Q. I see. And did you actually
13 ultimately give testimony in that case
14 with Mr. Hooper?

15 A. There was no case.

16 Q. I see.

17 A. It was all preparing me to
18 testify. No case discussed.

19 Q. I see.

20 A. So there was no specific case.
21 I was going to testify only on state of
22 the art, to start. That was the
23 assignment. We didn't discuss any

0031

1 potential involvement of mine with the
2 specifics of the case at that point in
3 time.

4 Q. Okay. And did you engage in
5 any other activities other than the
6 discussion with Mr. Hooper at this third
7 meeting in the summer of 2007?

8 A. No. That was not the summer.
9 This was prior to that.

10 Q. Oh, I'm sorry. Okay.

11 A. Mr. Hooper came to my home --

12 Q. I see.

13 A. -- in Maryland, and we spent a
14 day each time going over this and
15 discussing the flow of my testimony and
16 specific points that I would make that I
17 felt were appropriate. I got some
18 feedback from him. And then the third
19 meeting was scheduled.

20 Q. I see. In this meeting with
21 Mr. Hooper, were any sort of documents or
22 presentation materials, like PowerPoints,
23 created at that time?

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1 A. No. I indicated I did not want
2 to use PowerPoint for my presentations.
3 If I thought there were a few visuals that
4 I would use, I would let him know. But I
5 felt this story was better conveyed
6 without overloading people with a lot of
7 PowerPoints. I'm not a fan of
8 presentation of dozens of PowerPoints. I
9 think the main points get lost. But I did
10 reserve the right to select a few that
11 might be -- enhance the points I was

12 trying to make.

13 Q. Okay. Were there any written,
14 handwritten or typed notes that you made
15 regarding your meeting with Mr. Hooper?

16 A. I don't make notes.

17 Q. Okay.

18 A. I found that, number one, I
19 don't need them. I do a better job
20 retaining major points. I often make
21 notes that I look at and I have questions
22 about why I made the notes and it confuses
23 issues.

0033

1 Q. Okay.

2 A. I've learned how I work and
3 notes are not a good thing for me.

4 Q. Okay. Did he provide you with
5 any materials at all in that meeting where
6 he came to your home?

7 A. No. These are two meetings in
8 my home and we literally -- he played the
9 devil's advocate. When I took points I
10 wished to make, he wanted to know the
11 documents I used to reinforce those. So
12 his role was the devil's advocate in this
13 process of me putting together what you
14 see is my report.

15 Q. Okay. And then, I guess, is
16 the next major contact with anyone
17 affiliated with Georgia-Pacific, be it
18 internal employees or external counsel,
19 would this be the third meeting where you
20 went to Atlanta, Georgia again?

21 A. That's correct.

22 Q. Okay. And what was the purpose
23 of that meeting?

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1 A. The purpose of that meeting was
2 to put me through a mock cross
3 examination, a presentation of my views
4 and a mock cross examination on the
5 materials I had prepared. I had prepared
6 a report and I -- I would present that.
7 And then there would be a cross
8 examination by an attorney. To quote him,
9 I was ready to testify.

10 Q. Okay. You mentioned a report.
11 Is this the same report that you've
12 submitted with this case?

13 A. Essentially, yes. There may
14 have been some minor verbal or other
15 changes or -- I don't remember anything
16 really significant that was raised, but I
17 did some fine-tuning of words subsequent

18 to that meeting.

19 Q. Okay. And do you have a copy
20 of the draft of the report that you
21 actually utilized during this little mock
22 trial exercise?

23 A. All of my reports are prepared
0035

1 on the computer and I delete the former
2 one as soon as there's a new one. I don't
3 save drafts.

4 Q. Okay. Did you provide a hard
5 copy of that to anyone at Nelson, Mullins,
6 or anyone affiliated with Georgia-Pacific?

7 A. I don't know if I did. I don't
8 recall that, if I did. I know I took one
9 with me. I don't recall if they asked to
10 copy it or not. It was reviewed -- it was
11 looked upon as a very preliminary
12 document. Mr. Hooper read it. But I
13 can't recall if others at Georgia-Pacific
14 did.

15 Q. Okay. Any subsequent meetings
16 after this third summer mock trial meeting
17 that you had with the attorneys from
18 Georgia-Pacific?

19 A. No.

20 Q. Okay. Have you given any
21 testimony, either in deposition or at
22 trial, regarding this historical style
23 work that you've done for Georgia-Pacific?

0036

1 A. Yes. I gave it in deposition
2 in the Karen Koehne case in August.

3 Q. Okay. And do you know how
4 that's spelled, just so we have that clear
5 for the record?

6 A. I believe it's K-o-e-h-n-e.

7 Q. Okay. And who was the attorney
8 for Georgia-Pacific that was there for you
9 in that case?

10 A. Mr. Hooper defended me in that
11 case.

12 Q. Okay. And do you recall the
13 name of the plaintiff's attorney?

14 A. It was in Baltimore. I don't
15 recall the attorney's name.

16 Q. Okay. Do you know what state
17 the case was pending in?

18 A. It was pending in Baltimore
19 County.

20 Q. I see. Okay. Fair enough.

21 A. I have slow recall. Give me a
22 minute. I find with aging, you've got a
23 wait a few minutes. It's sometimes

0037

1 longer, but let me just take a minute. If
2 it doesn't come -- it will come.

3 Q. Okay. I appreciate it. If at
4 any time it comes, go ahead and interrupt
5 me and we'll go ahead and get that on the
6 record. That's fair enough.

7 Doctor, I want to go back to
8 the materials that you brought. We kind
9 of digressed when I learned about these
10 meetings and I want to get these -- any
11 documents that you brought with you today,
12 if they're not too voluminous, marked as
13 Exhibit --

14 A. Let me pause. On the defense
15 side, Robin Silva and Jim Hooper defended
16 me.

17 Q. Okay.

18 A. And the opposing attorney's
19 name was Parker.

20 Q. Okay.

21 A. I don't know his first name.

22 Q. Okay. Fair enough. Thank you
23 very much for that.

0038

1 You mentioned before that you
2 brought some sheets with you, dated 2/8
3 and 2/9 of 2007, describing documents; is
4 that correct, sir?

5 A. Categories of documents, that's
6 correct.

7 Q. Okay.

8 MR. DIMUZIO: And, Madam Court
9 Reporter, I would like both of those
10 sheets to marked Exhibit Number 4.

11 A. One sheet.

12 Q. (BY MR. DIMUZIO:) Okay. Oh,
13 there's one sheet?

14 A. Yes.

15 MR. DIMUZIO: Okay. Have that
16 sheet marked Exhibit Number 4.

17 THE REPORTER: Okay.

18 (Whereupon, Plaintiff's
19 Exhibit 4 will be marked
20 for identification.)

21 Q. (BY MR. DIMUZIO:) And I
22 understand you brought some other
23 materials related to your document review

0039

1 that you were discussing before; is that
2 correct, Doctor?

3 A. Yes. That's a collection of
4 documents about an inch-and-a-half thick.

5 Q. Okay. And why don't we go

6 ahead and have those added as an exhibit?

7 MR. DIMUZIO: And, Madam Court
8 Reporter, we will those additional
9 materials marked as Exhibit Number 5.

10 (Whereupon, Plaintiff's
11 Exhibit 5 will be marked
12 for identification.)

13 Q. (BY MR. DIMUZIO:) Dr. Corn,
14 did you reference any of those particular
15 documents in your report that was provided
16 in this case?

17 A. Yes. That's what I was
18 referring to earlier. If you go to my
19 report to Section C, every reference in
20 Section C is a document in this
21 collection. For instance --

22 Q. Okay.

23 A. -- in the first paragraph, the
0040

1 first reference is Gypsum Association
2 Safety Minute Meetings, September 19th.
3 You will find that document at the top of
4 the pile. If you go to the next
5 paragraph, there's a reference, GP Memo,
6 G. Wilson to C. W. Leonard. That will be
7 the second document in the pile.

8 Q. I see. I understand now.

9 A. So each reference in Section C
10 is in this collection of documents.

11 Q. Okay.

12 A. Okay?

13 Q. All right. Fine. Thank you
14 very much.

15 MR. DIMUZIO: And I guess,
16 Madam Court Reporter, we're going to mark
17 those particular exhibit -- documents as a
18 group. We'll mark those Exhibit Number 5.

19 THE REPORTER: Okay.

20 Q. (BY MR. DIMUZIO:) Doctor, I
21 noticed in your report that there's a
22 curriculum vitae for you. Is that
23 particular curriculum vitae an up-to-date
0041

1 one?

2 A. I revised it in September, so
3 it is dated September 2007.

4 Q. Okay.

5 A. I generally do this annually.

6 Q. Okay. Actually, I'm looking
7 for a date on mine that I have in your
8 report and I don't see a date.

9 A. It would be on the last page,
10 bottom left.

11 Q. Okay.

12 A. 9/24/07.

13 Q. Okay. So this is it? This is
14 the most recent? Okay. Fine. We'll just
15 leave that in as part of your report then.
16 Hold on here one moment. Let me get to
17 the end of this.

18 Okay. Actually, the one that I
19 have in my report says, updated June 2006.
20 So you have a copy of this more up-to-date
21 September CV with you there, Doctor?

22 A. Yes, I do.

23 MR. DIMUZIO: Okay. And, Madam
0042

1 Court Reporter, we'll go ahead and mark
2 that as Exhibit Number 6.

3 (Whereupon, Plaintiff's
4 Exhibit 6 will be marked
5 for identification.)

6 Q. (BY MR. DIMUZIO:) And just
7 quickly, since I don't have a copy of that
8 in front of me, what is the difference
9 between the June 2006 CV and the one we're
10 that marking as Exhibit 6?

11 A. Well, there is one published
12 article on page 28. I was coauthor with
13 Deall Cheng Matthew and Delzell -- that's
14 D-e-a-l-l, C-h-e-n-g for Cheng, and
15 D-e-l-z-e-l-l for Delzell -- entitled
16 Mortality In Cancer Incidents Among Tire
17 Manufacturing Workers Hired In Or After
18 1962. It appeared the Journal of
19 Occupational Environmental Medicine,
20 Volume 49, pages 680 to 690, 2007.

21 Q. And so this was basically an
22 occupational exposure that was not limited
23 to one substance; is that correct, that
0043

1 was being investigated?

2 A. That's correct. This was a
3 cohort study of all employees employed at
4 a Goodyear tire plant in Texas that I did
5 the original study with an epidemiologist,
6 who since have passed away. But the
7 medical director of Goodyear called asking
8 if I would update that from 1989 to 2005
9 working with Dr. Delzell, an
10 epidemiologist I had worked with before.
11 So I agreed to do it. We did the study in
12 2007 and submitted it for publication and
13 it was published quick rapidly.

14 Q. And, Dr. Delzell lives down
15 there in Alabama; is that correct?

16 A. That's correct.

17 Q. Okay. And was asbestos one of

18 the substances that was looked at with any
19 scrutiny in this study?

20 A. There were very minor uses of
21 asbestos in the plant. It was not the
22 major concern, but I had some 3,000
23 personal measurements of exposure in the
0044

1 first cohort, 1962 to '89, and Goodyear
2 had an additional 3,000 measurements that
3 I analyzed for the update. There may have
4 been a few asbestos measurements in there,
5 but asbestos was not a major concern in
6 this facility. We were looking at the
7 health status of all the workers in total.
8 And if any excesses were found, we would
9 then go back to look at the exposures.

10 There were three mesotheliomas,
11 two of those mesos had worked for many
12 years in the Pittsburg Corning, Tyler,
13 Texas plant, a notoriously noncompliant
14 plant in Texas. And I forget what the
15 third one involved. So we did not -- or
16 Dr. Delzell, I should say, because this
17 was her end of the investigation, did not
18 feel they were related to this plant.

19 Q. I see. Fair enough.

20 Okay. Doctor, first of all,
21 I'm not going to try to belabor this
22 deposition, but I'm new to you and I'm
23 certainly new to your state-of-the-art
0045

1 testimony. I've read some other
2 depositions of you in doing industrial
3 hygiene, so I'm going to try to keep this
4 as short as I can. But having said that,
5 it's probably going to go well in excess
6 of an hour. So at any time you want a
7 break, please let me know; okay?

8 A. I usually like to break about
9 an hour and a quarter. So we've been
10 going about three-quarters of an hour,
11 so --

12 Q. Okay.

13 A. -- another half hour would be
14 fine with me.

15 Q. All right. Good deal. And you
16 or Tom or I will put a halt to this in
17 probably, I guess, about another thirty
18 minutes and then take a short break.

19 All right. First of all,
20 Doctor, part of the state-of-the-art
21 analysis has to do -- or historical
22 analysis that you've done have to do with
23 the issues of warnings; correct?

0046

1 A. Yes.

2 Q. Okay. What, in your opinion,
3 constitutes an adequate warning about a
4 carcinogen in the workplace?

5 MR. WAMSLEY: Object to the
6 form.

7 A. Well, let me first address the
8 concept of a warning in general in the
9 safety profession.

10 Q. (BY MR. DIMUZIO:) Okay.
11 That's fine.

12 A. A warning is meant to cause the
13 individual to pause, generally because
14 there is an imminent hazard. A stop sign
15 is a warning. A brief "This Can Be
16 Harmful If Inhaled" is a warning. A
17 warning doesn't go into great detail.
18 There are other sources of information
19 available to employees, which varied with
20 time during my career, that the employee
21 can then go to find out why he or she has
22 been stopped in the course of their doing
23 work. So that -- you don't put a lot of

0047

1 detail on a warning or the purpose of the
2 warning is lost.

3 We label hazardous materials
4 with a diamond-shape symbol in four
5 different colors that cover the different
6 types of hazards. And each of the four
7 sections of the diamond have numbers for
8 the level of the hazard. That's a quick
9 warning. You go to a label when you want
10 to give more detailed information, if
11 indeed you want to give more detailed
12 information through the label. The other
13 recourses to get more information are,
14 number one, the supervisor, that was the
15 primary source in the 1950s and 1960s; and
16 then the labeling and the emphasis by OSHA
17 starting in the 1970's on informing
18 workers. So that period after OSHA became
19 one of -- a quantum leap in educating
20 workers due to OSHA's '60s standards.

21 And then finally in 1980 with
22 the Hazard Communication Standard, another
23 quantum leap in the amount of information

0048

1 that had to be given to the employee by
2 law. So that has undergone a transition
3 during my lifetime.

4 Q. Okay. You would agree with me,
5 though, that the concept of providing some

6 sort of a warning to workers about
7 hazardous substances significantly
8 predates your entry in the graduate field;
9 correct?

10 A. The concept of it does. The
11 actual practice of warnings in the '50s
12 and '60s was very spotty. The almost
13 total reliance in those years were on the
14 supervisor. In fact, as an industrial
15 hygienist, I was told not to speak to the
16 employee about anything I was doing. I
17 was to convey it to the supervisor, the
18 supervisor would pass it on to the
19 employee, and I would not break the
20 supervisor-employee chain, which was
21 considered essential. The supervisor
22 instructed the employee on how to do the
23 job and on how to do the job safely.

0049

1 Q. Okay. Objection.
2 Nonresponsive.

3 Regarding this idea of relying
4 on the supervisor, there is a tacit
5 assumption there that the supervisor has
6 adequate information about the risk in the
7 workplace to protect the employee;
8 correct?

9 MR. WAMSLEY: Object to the
10 form.

11 A. That's correct. But even the
12 concept of what is adequate information
13 varied, as I indicated in my last answer,
14 which I believe you objected to.

15 Q. (BY MR. DIMUZIO:) Okay. Well,
16 for example, in the 1930 Merryweather and
17 Price article, I believe the phrase that
18 Dr. Merryweather came up with was the
19 worker should be given a, quote, sane
20 appreciation of the risk. First of all,
21 you know that that was published in 1930
22 by Dr. Merryweather; correct?

23 A. Yes.

0050

1 Q. Okay. And do you disagree with
2 that?

3 A. No. I think, again, the
4 interpretation of what a sane appreciation
5 is has varied greatly with time. That's
6 what I was trying to describe.

7 Q. Do you think that the opinions
8 of the workers themselves about what
9 information they should be given to obtain
10 the sane appreciation of the risk has also
11 varied over time?

12 A. Oh, absolutely.

13 Q. Okay. And what do you base
14 that on?

15 A. Oh, from my experience in the
16 field. The -- the workers, the more
17 information they got, the more they
18 wanted. And, of course, that's what
19 culminated in the Hazard Communication
20 Act. Safety was not a major priority with
21 the unions in the '50s and '60s. It was
22 only towards the end of the '60s that it
23 started to be a priority. After the

0051

1 unions achieved their goals of health care
2 and wages, those were the two priorities.
3 And then having achieved that through that
4 very prosperous 1960's period they started
5 focusing on safety.

6 The first health and safety
7 bill of OSHA was introduced in 1951 by
8 Hubert Humphrey. It took nineteen years
9 to get it passed. The unions never gave
10 it enthusiastic support until the end of
11 the '60s.

12 Q. And by that time, the unions
13 had been provided a lot of information
14 about the hazards of asbestos
15 predominantly through the efforts of Dr.
16 Selikoff; right?

17 A. Yes. But asbestos was only a
18 small part of this march to improve health
19 and safety on the job. Asbestos was just
20 one of many, many hazards in the
21 workplace, both traumatic and health
22 hazards in the form of agents. One of the
23 things that is unusual about this

0052

1 litigation is that one coming to it would
2 think asbestos was the only thing that was
3 on the minds of employees and
4 practitioners in my field in those years.
5 It didn't come up to the top of the hit
6 parade until after the 1964 conference
7 that Irving Selikoff convened in New York
8 City. It was just one of many things that
9 were addressed in my graduate studies that
10 could harm people at work.

11 Q. All right.

12 A. And it wasn't the primary one
13 in the 1955, '56 health agencies?

14 Q. Okay. But this '64 conference,
15 it happened about a year before
16 Georgia-Pacific became directly involved
17 with asbestos-containing products through

0055

1 form.

2 A. That was in 1973.

3 Q. (BY MR. DIMUZIO:) Fair enough.

4 You mentioned respirators here.

5 Respirators, that's one of the methods by

6 which people can protect workers in the

7 workplace from hazardous materials;

8 correct?

9 A. Yes.

10 Q. Okay. Is that the preferred

11 mechanism for protecting workers from

12 hazardous materials?

13 A. No.

14 Q. Okay. What is sort of the

15 hierarchy of preferred approaches to

16 protecting workers?

17 A. The hierarchy of control is a

18 concept that I have, through colleagues,

19 developed at Johns Hopkins University and

20 published on. We essentially categorized

21 controls that have been known for many

22 years. We placed at the top of the

23 hierarchy, the most desirable engineering

0056

1 controls, controls that did not require

2 the employee to do anything. And

3 illustrations of that would be a

4 ventilation system, an enclosure, a change

5 of ingredient where you know the

6 potentially hazardous ingredient. Those

7 are changes or controls of the workers

8 protected in the workplace, alter their

9 behavior.

10 The second level of controls on

11 the hierarchy is called work practices,

12 ways of doing the job that would minimize

13 the risk. Illustrations of that would be

14 for the attorney to try to get the same

15 job by wetting a dust, by -- let me think

16 a minute of another illustration. By

17 doing all of the work that may have been

18 done in an open location, doing it out

19 under a hood or doing it outdoors. That

20 could be a work practice that was altered.

21 But the -- and different

22 industries have different work practices

23 that work. It does require some

0057

1 involvement of the employee to change what

2 they're doing, but not maximal.

3 The third level on the

4 hierarchy going downwards is

5 administrative controls. And what that

6 says is that the particular agent that
7 could potentially cause damage -- for
8 instance, noise is an area where
9 administrative controls are extensively
10 used. We, for instance, don't know how to
11 muffle the sound intensity from
12 compressors. There's very large
13 compressors in the oil industry. If you
14 insulate them to the point where the sound
15 around them is acceptable in the decibel
16 range, you burn them up. So you limit the
17 time that the employee can be in the
18 vicinity of that sound level.

19 If it's a chemical and you
20 would exceed the permissible exposure
21 limit over an eight-hour day but you
22 wouldn't if the employee did the work for
23 four hours, you would try to find other
0058

1 work for that employee for four hours so
2 that they do not exceed the acceptable
3 permissible exposure limit. Those are
4 administrative controls. Where you can't
5 find other work for the employee, it's
6 also common practice to build a special
7 enclosure where they can rest or take time
8 away from the job. They don't have other
9 tasks. You just don't have anything else
10 to assign them to. They're paid for eight
11 hours, but they get time out in an
12 enclosure that's been built for them.

13 The fourth level, and the least
14 desirable and the lowest level, is called
15 personal protective equipment. In the
16 health and safety profession, it is
17 considered the least desirable is because
18 it requires the employee, on a continuing
19 basis, perhaps every day, to do something
20 that may be inconvenient or uncomfortable,
21 and they can forget to do it. It's not
22 unlike the use of a seat belt for the
23 general public. And I'm told even today
0059

1 the compliance with that is somewhat
2 around eighty percent after so many years
3 of education and training.

4 So what are personal protective
5 controls? Everything from a hard hat to
6 earplugs to respirators to safety gloves
7 to steel-tipped footwear to heat-resistant
8 aprons. There's a whole variety of
9 personal protective equipment, much of
10 which may interfere with the task the
11 worker has to perform, slow down the

12 worker, or be a downright inconvenience to
13 him or her. That is the hierarchy of
14 controls.

15 Q. Okay. Where in the hierarchy
16 of controls would be substitution for a
17 non or less hazardous material?

18 A. That would be at the first
19 level of an engineering control.

20 Q. Okay. So that would be more
21 desirable, all other things being equal
22 than, say, using a respirator?

23 A. Yes.

0060

1 Q. Okay. Fair enough. Getting
2 away from this quick warning that we
3 discussed a few moments ago involving
4 symbols and stop signs and that sort of
5 thing, you mentioned something about
6 labels. What, in your opinion, makes for
7 an effective warning label?

8 A. Well, it goes beyond the simple
9 warning and gives a little more detail.
10 And in the case of OSHA, they have
11 provided for each of their sixty
12 standards, what, in their opinion, would
13 be an adequate label. It's part of the
14 standard. It specifies the type size, it
15 specifies the kind of type, and it
16 specifies what should be in it.

17 Q. And this is a regulatory
18 minimum; correct?

19 A. That's correct. Well --

20 Q. Okay. There's nothing that
21 prevents a manufacturer from including
22 additional information, is there?

23 A. There isn't. But you used the
0061

1 term "minimum" and my immediate reaction
2 was yes. But it's a minimum for
3 compliance, but it is really what the
4 agency thinks is the best warning. In
5 other words, in the -- to fulfill the
6 purpose of a warning, that's what the
7 agency thinks is needed. Now, you could
8 put more on it. In that sense, it is a
9 minimum. But the agency doesn't believe
10 more is good because it's not going to be
11 taken seriously. If there's too much on
12 it, the employee or the recipient of this
13 don't even look at this. Or if --

14 Q. Have manufacturers actually --

15 MR. WAMSLEY: Wait a second.

16 Q. -- manufacturers of
17 asbestos-containing products actually

18 lobbied OSHA and other health agencies to
19 have a more relaxed warning than had
20 initially been proposed?

21 A. Well, again, you've used the
22 term "relaxed." For each standard,
23 including the asbestos standard, a
0062

1 procedure known as the Administrative
2 Procedures Act is followed. The agency
3 issues a proposal and comments come in
4 from all those affected. And the -- these
5 are kept in an administrative record. And
6 the agency will also hold a hearing. I
7 think there's only one standard they
8 didn't hold a hearing, and that becomes
9 part of the administrative record. The
10 agency then promulgates what is required
11 based on that record.

12 When you use the word "lobby,"
13 the people who come into these hearings or
14 who provide comments are not lobbying,
15 they are engaging in the Administrative
16 Procedures Act, which is their right as
17 citizens who are going to sustain some
18 incursions on their fundamental rights
19 when the standard is promulgated. That's
20 not what lobbying means to me.

21 Q. Okay. Did the Gypsum
22 Association engage in this public comment
23 practice that you just described with
0063

1 regards to joint compound warnings?

2 A. I don't recall if I -- that in
3 the minutes. I went through minutes, but
4 I wasn't focusing on whether they
5 submitted or not. I would have to
6 re-examine that. All of the trade
7 associations I have ever had involvement
8 with do provide commentary to regulatory
9 proposals.

10 Q. Okay. Do you know whether or
11 not Georgia-Pacific engaged in that public
12 comment period with regards to warnings
13 about asbestos in joint compounds?

14 A. There, I'm pretty clear. I saw
15 nothing on that. With respect to the
16 association, I may have seen something. I
17 went through a lot of minutes. I'd have
18 to check that.

19 Q. Okay. Now, with regards to the
20 ultimate ban on the use of asbestos in
21 joint compounds by the Consumer Product
22 Commission, do you know whether or not the
23 Gypsum Association participated in that

0064

1 public comment process?

2 A. There -- I believe there was
3 some correspondence. But, again, I'd have
4 to check that.

5 Q. Okay. As we sit here today,
6 you would not be able to discuss the
7 details of that?

8 A. No.

9 Q. Okay. What about
10 Georgia-Pacific, did they participate in
11 the public comment practice that you
12 discussed a few moments ago with regards
13 to the ban on asbestos in joint compounds
14 by the Consumer Product Commission?

15 A. I don't think so. I think
16 anything they did was through the
17 association.

18 Q. Okay. So based on just your
19 review of the documents that were provided
20 to you, you received no information on
21 that particular subject that you can
22 recall?

23 A. That I can recall. I -- I

0065

1 don't recall those documents.

2 Q. Okay. Fair enough.

3 Okay, Doctor. What is your
4 opinion about how much information about a
5 potential hazard has to exist before a
6 company has to start providing warnings or
7 labels regarding potential dangers of
8 their products?

9 MR. WAMSLEY: Object to the
10 form.

11 A. I think you have phrased the
12 question in a way that is difficult to
13 answer. If the company has really no
14 capability to evaluate developing new
15 medical scientific information, it will
16 take longer than a company that has its
17 own medical staff, hygiene staff, perhaps
18 laboratory staff, and toxicology. The
19 companies that do not have this
20 capability, this is not their business,
21 and they generally rely on the government
22 for guidance as to what to do. The
23 companies, in my experience, that may move

0066

1 forward more rapidly than the government
2 are companies that have tremendous
3 internal capacity to evaluate developing
4 knowledge in the scientific and medical
5 areas. So the time varies. That's the

6 answer to the question. There is no one
7 point in time where there's sufficient
8 information. The amount required differs
9 and the vast majority of companies in the
10 '50s and '60s and even in the '70s, before
11 that internal capability developed, looked
12 to the government.

13 As an example, when I went to
14 OSHA in 1975, I couldn't retain a
15 hygienist for OSHA. I had to develop a
16 training program. There were only 1,500
17 in the country. Today there are 13,000.
18 So that capability to move more rapidly is
19 in many more companies today because there
20 have been similar increases in
21 occupational physicians, nurses, and
22 toxicology capability. But in the '50s
23 and the '60s, toxicology was just

0067

1 developing as a science, very few
2 companies had their own capability, and
3 they definitely looked to the government
4 for guidance.

5 Q. (BY MR. DIMUZIO:) Would you
6 agree that some companies formed trade
7 organizations and looked to them for
8 additional guidance and research and
9 potential hazards in their products?

10 A. Oh, absolutely. And I think
11 we're dealing with one such organization
12 here, the Gypsum Organization. But it
13 really didn't have a strong capability.
14 It did have some capabilities. And, as
15 you know, it was through the Gypsum
16 Association, the first testing of
17 exposures in joint compound occurred.

18 But by today's standards, those
19 associations have much greater capability
20 to serve their members in the medical and
21 the scientific areas.

22 Q. But I think you'd probably
23 agree with me that at least in 1965,

0068

1 probably both Georgia-Pacific and the
2 Gypsum Association would have had the
3 capability of doing some, at least,
4 preliminary tests to see what the levels
5 of the exposure to asbestos were from
6 using joint compounds in the field; right?

7 A. No, I don't agree with you.

8 Q. Okay. Why is that?

9 A. As I indicate in my report, it
10 took a while to digest the information of
11 the 1964 conference. Organizations don't

12 act on initial information immediately.
13 In this case, the information primarily
14 came from Dr. Selikoff, who wasn't an
15 epidemiologist, but a pulmonologist. The
16 government looked to verify it.
17 Verification is an essential part of
18 science. The Division of Occupational
19 Health, the predecessor of NIOSH, under
20 the Occupational and Safety Health Act
21 made no issuance. The government didn't
22 say anything until 1971. You're
23 suggesting the companies, with much less

0069

1 capacity, digest this new information
2 coming out in 1965 in printed form should
3 have acted. I don't think it works that
4 way.

5 The first -- the American
6 Conference of Government Industrial
7 Hygienists that sets the permissible
8 exposure levels did not change the
9 asbestos level until 1971. So there's a
10 period of six to seven years of
11 accommodation to these reported findings.

12 Q. First of all, would you agree
13 with me that one of the main reasons why
14 OSHA came into existence is that companies
15 were not controlling hazardous exposures
16 or providing the warnings that some public
17 health officials thought were necessary?

18 A. No. The primary reason OSHA
19 came into existence was traumatic injury.
20 We were killing, at that point in time
21 that OSHA came into existence, between
22 eight and nine thousand people a year on
23 the job and injuring two million beyond

0070

1 first aid requirements. Health wasn't
2 even on the agenda.

3 When I went to OSHA in 1975, my
4 directive was to move it into health. And
5 it focused entirely on safety, with the
6 exception of asbestos and vinyl chloride.
7 So, no, the primary reason for OSHA's
8 coming into being was traditional safety,
9 not health concerns.

10 Q. Okay. You just acknowledged in
11 your answer that one of the exceptions to
12 that was asbestos; correct?

13 MR. WAMSLEY: Object to the
14 form.

15 A. Yes, asbestos and vinyl
16 chloride were the only two standards
17 passed in the health area from 1971 until

18 I came in in 1975. I hired large numbers
19 of hygienists, brought a -- two positions
20 for physicians into the agency, started
21 the training institute in Chicago to
22 upgrade inspectors in the health area.
23 One of the three directives to me from the
0071

1 Secretary of Labor was move the agency
2 into health where it had done very little.
3 Because the demand out there was to cut
4 this traumatic injury rate.

5 Q. (BY MR. DIMUZIO:) With the
6 exception of vinyl chloride and asbestos?

7 A. Well, your question was, what
8 was the primary motivation that brought
9 OSHA into being, and that was not health.
10 Now, the agency did these two things in
11 health, but it was still a minor
12 consideration compared to the concerns at
13 OSHA when I came in. The biggest concern
14 were these two materials. There were, at
15 the time, 70,000 chemicals in commercial
16 usage. And OSHA was really looking into
17 two of them.

18 Q. Okay. If you're an expert in
19 the field in 1965, say, the researchers of
20 Mount Sinai, for example, certainly the
21 capability of doing tests on potential
22 exposures to joint compound in the field
23 existed in 1965 for experts; correct?
0072

1 MR. WAMSLEY: Object to the
2 form of the question.

3 A. Yes, the capability existed.
4 But we knew those exposures were lower. I
5 point out in my report the entire
6 community dealing with these matters was
7 in a funk, literally. Because we had told
8 300 to 350,000 asbestos workers, people
9 working with the raw fiber, that they were
10 safe at the equivalent of today's 30
11 fibers per cc. The suggestions coming out
12 of the meeting were this was inadequate.
13 The government was trying to verify that.
14 We knew we had to go back and get those
15 300 to 350,000 people at high exposure
16 down. We knew exposures to products other
17 than insulation were lower than the
18 asbestos workers' exposures.

19 So they were, as I say that,
20 they weren't even on the screen until OSHA
21 had been in existence for several years.
22 We weren't thinking about the lower
23 exposures. We were --

0073

1 Q. (BY MR. DIMUZIO:) So I take it
2 from your testimony thus far, that you do
3 not personally hold companies to the level
4 of knowledge of an expert in their
5 dealings with the public; is that correct?

6 MR. WAMSLEY: Object to the
7 form of the question.

8 A. I don't understand "and their
9 dealings with the public." You have to
10 speak to what areas of knowledge they deal
11 with the public. They're experts on their
12 products. They're experts on their
13 production methods. They may not be
14 experts on any potential hazards of their
15 products, many of which, depending on the
16 point in time, are not yet known.

17 Q. (BY MR. DIMUZIO:) Okay.

18 A. So --

19 Q. So -- thank you for that
20 response. So basically based on your
21 answer there, you don't believe that
22 companies have to be experts on the
23 potential hazards of their products;

0074

1 correct?

2 MR. WAMSLEY: Object to the
3 form of the question.

4 A. I don't think I said that.

5 Q. (BY MR. DIMUZIO:) Okay.

6 A. I believe today experts have to
7 be expert on any potential environmental
8 effects, any potential occupational
9 effects. Absolutely. I do not think they
10 had the capability. I said the people
11 weren't out there. They weren't geared up
12 for it. And they had that approach in the
13 '50s and '60s. That approach started
14 coming in with regulation of these areas
15 and that regulation started, really in
16 1969, with the Mining Act, in 1970 with
17 the OSHA Act. I have published on the
18 curve of regulation through the '70s and
19 the '80s and the increased obligations of
20 the companies. The Toxic Substances
21 Control Act didn't come in until 1977.
22 Every one of these laid new obligations on
23 organizations and they geared up to deal

0075

1 with them. And people were trained and
2 educated so they could fill those
3 positions.

4 That -- this is all part of a
5 learning curve that I tried to describe.

6 And I, obviously, haven't described all
7 aspects of it, because I haven't talked to
8 the increase of professional personnel to
9 meet the needs which I'm describing here,
10 and the staffing of companies throughout
11 the period that enables them to do a job
12 in this area.

13 Q. When, in your opinion, did
14 Georgia-Pacific have a responsibility to
15 have the knowledge of an expert regarding
16 the hazards of their products?

17 MR. WAMSLEY: Object to the
18 form of the question.

19 A. I think Georgia-Pacific had
20 some knowledge through the 1972 standard.
21 That's when it went out from OSHA. The
22 1971 emergency temporary standard, which
23 the Court remanded, had no real
0076

1 information attached to it. It wasn't
2 what we call a Christmas tree standard
3 that didn't have anything -- it didn't
4 have monitoring, it didn't have warning,
5 it didn't have surveillance, so on. The
6 1972 standard did. And I think that's
7 when companies were beginning to
8 understand what OSHA was all about.

9 So, as of 1972, the information
10 starts coming out. Trade associations are
11 watching. They get it. Individual
12 members are beginning to get it. And
13 that's the period, '72, '73 that I would
14 say Georgia-Pacific comes into awareness
15 of what it's all about.

16 Now, I also point out 1970
17 without all that understanding, which is
18 to me the most interesting decision by Mr.
19 Wilson. He just sees the turmoil. He
20 sees the discussions of asbestos. I don't
21 think he knew what it was all about. But
22 as a businessman, he says our best
23 long-range strategy is to get it out of
0077

1 our products and please start doing that
2 immediately. I considered that a
3 remarkable decision in the most senior
4 manager in this division. But '72, '73 is
5 the answer to my question.

6 Q. (BY MR. DIMUZIO:) Okay. The
7 comment that you just made about making
8 some decision to move forward with
9 removing asbestos, that was in about 1970;
10 is that correct?

11 A. That's correct.

12 Q. Okay. And was what,
13 approximately three years before they
14 began putting any warnings on their
15 products; correct?

16 A. Quite the contrary. Some
17 warnings went on in '73, others went on in
18 '74.

19 Q. Okay. So it was three to four
20 years before any sort of warnings were
21 communicated from Georgia-Pacific to the
22 end users of their product; correct?

23 A. Well, your timing is from Mr.

0078

1 Mr. Wilson, who, as I said, I don't think
2 had any appreciation of the science and
3 the medical. He just saw the turmoil out
4 there and the discussions, may have been
5 aware of the efforts to get the
6 Occupational Safety and Health Act through
7 in 1970, which I might say was a major
8 battle. It failed to get through in 1968.
9 And I'm referring to get through the
10 Congress. So he -- he just didn't like
11 the looks of it.

12 I date the response from the
13 1972 standard, which was my answer to your
14 question. In that sense, the first labels
15 went on in '73, and additional labels went
16 on in '74 in an upgraded form from the --
17 recommended by the regulatory agency,
18 OSHA.

19 Q. You mentioned before the
20 Selikoff 1964 conference. Do you recall
21 that testimony, Doctor?

22 A. Yeah. And I'd be happy to --
23 we're about an hour and twenty minutes.

0079

1 Can we take that break now?

2 Q. You bet. How long do you want,
3 Doctor?

4 A. I want five minutes just to
5 stretch my legs and --

6 Q. Okay. That sounds good.

7 A. Okay. Be back in five minutes.
8 And at worst, five to ten.

9 Q. Okay. You bet. Thanks.

10 (Whereupon, a short break was
11 taken.)

12 Q. (BY MR. DIMUZIO:) Doctor, when
13 we broke, we were just beginning to
14 mention the Dr. Selikoff 1964 conference
15 again. You recall your earlier testimony
16 about that; correct?

17 A. Yes.

18 Q. Okay. When would the
19 proceedings of that have been available in
20 medical and public health libraries around
21 the country?

22 A. Well, the proceedings came out
23 in '65. I don't recall the month.

0080

1 Q. Okay.

2 A. The conference was in October
3 '64 and the proceedings came out in '65.
4 I'd have to check the month.

5 Q. Okay. That's fair enough.

6 Fair enough.

7 Now, would you agree with me
8 that if somebody is making a product that
9 is used both by professional contractors
10 and consumers, that any sort of warnings
11 that are deemed to be needed should be
12 communicated to the end users of that
13 product?

14 MR. WAMSLEY: Object to the
15 form of the question.

16 A. Again, you have to place the
17 question in the context of the time
18 period. No question that is true today.

19 Q. (BY MR. DIMUZIO:) Okay. I
20 take it based on your earlier testimony,
21 that you do not believe that companies
22 should test their products prior to
23 putting them in the stream of commerce; is

0081

1 that correct?

2 MR. WAMSLEY: Object to the
3 form of the question.

4 A. Oh, quite the contrary. Again,
5 in today's context, and probably since the
6 Toxic Substances Control Act, increasingly
7 until today would be foolhardy. But from
8 1977, '78 onward, companies engaged in
9 increasing testing of their products
10 because of the potential liability.
11 They -- they have to provide information
12 in that act and in the Hazard
13 Communication Act. So if they don't have
14 the capability, they will contract for
15 such work. In the '50s and '60s, there
16 were very few places you could go to to
17 get such much work done. Today there are
18 many, many testing facilities that I
19 utilize to get the information that the
20 Material Safety Data Sheet requires or
21 that the various environmental acts
22 require to be filed.

23 Q. (BY MR. DIMUZIO:) Okay.

0082

1 A. That -- that has been a
2 tremendous transition in this country.

3 Q. Okay. So, as we sit here
4 today, though, going back in time and
5 looking at Georgia-Pacific when they first
6 got into the joint compound business in
7 1965, you would not hold them to the duty
8 to test that product before putting it in
9 the stream of commerce in 1965?

10 A. No.

11 Q. Okay.

12 A. Absolutely not.

13 Q. And -- I'm sorry, go ahead.

14 A. Absolutely not.

15 Q. Okay. And, likewise, you would
16 not hold Georgia-Pacific in 1965 to having
17 the level of knowledge of an expert
18 regarding the hazards of their products in
19 the year 1965?

20 MR. WAMSLEY: Object to the
21 form of the question.

22 A. Well, I don't think there were
23 any known hazards of their products in
0083

1 1965. That's the point I tried to make to
2 you. The standard for the permissible
3 exposure limit that was considered safe
4 remained in effect through 1971. The
5 government didn't change it. The major
6 private advisory group that passed
7 permissible levels didn't change it. And
8 you're suggesting Georgia-Pacific should
9 change things and declare this is a hazard
10 to consumers before any evocation from
11 those sources based on this new knowledge
12 that had to be verified and digested by
13 the very expert communities in public
14 health was done. And I do not hold the
15 company accountable to do that in those
16 years.

17 Q. (BY MR. DIMUZIO:) Okay.
18 Objection nonresponsive.

19 I'm not sure if you actually
20 answered my specific question, though,
21 regardless of what your feelings were
22 about the state of knowledge with --
23 regarding joint compounds in asbestos was
0084

1 in 1965. Just specifically as to whether
2 or not you would hold Georgia-Pacific to
3 the knowledge of an expert regarding any
4 potential health hazards of their products
5 in 1965, you would not?

6 MR. WAMSLEY: Object to the
7 form of the question.

8 A. I can't hold them to the
9 knowledge of an expert because the expert
10 didn't have that knowledge with regard to
11 their product. The first publication on
12 their product is 1975. So how can I
13 answer your question and say, no, I don't
14 hold them? Of course I don't hold them.
15 I don't hold the experts in 1965
16 accountable for joint compound.

17 Q. (BY MR. DIMUZIO:) Objection to
18 the nonresponsive portion.

19 Joint compound aside, there was
20 knowledge available in 1965 that exposure
21 to asbestos fibers could result in fatal
22 illnesses; correct?

23 A. To some people so exposed,
0085

1 that's correct.

2 Q. Right.

3 A. And we don't --

4 Q. And the body certainly has no
5 idea whether a given asbestos fiber
6 comes --

7 A. Wait. Wait.

8 Q. -- from joint compound or --

9 A. Can I --

10 Q. -- a gasket or a brake;
11 correct? There's no biological difference
12 to the asbestos fiber based on the product
13 that it came out of; correct?

14 A. I didn't finish my answer, sir.

15 Q. Okay. Go right ahead.

16 A. What was known in 1965 in
17 addition to the impact on asbestos workers
18 was that insulators were also receiving
19 excessive amounts of asbestos through
20 inhalation contrary to what
21 Fleischer-Drinker concluded in 1946.
22 There's nothing about anything else except
23 the suggestion by Molly Newhouse of
0086

1 England that take-home could be a problem.
2 In a study she did, she could not explain
3 nine family member cases of cancer, and by
4 default, attributed it to asbestos taken
5 from a highly-contaminated plant in
6 London. That's what was known from that
7 conference. And the fact that some of the
8 abscesses of the insulators were
9 malignant. And it was known they were
10 very highly exposed. So that's what we
11 came away with. It wasn't for asbestos as

12 in every form. It was for insulators and
13 asbestos workers. That's what we came
14 away with.

15 And it's known in public health
16 that the impact of a material is
17 dosage-dependent, how much the lung
18 receives. And these people received a
19 great deal. That had nothing to do with
20 joint compound. There were --

21 Q. And --

22 A. -- no products --

23 Q. And in 1965 or 1966 or 1967,

0087

1 that two- or three-year time frame, did
2 Georgia-Pacific conduct any tests to find
3 out what dose of asbestos people might be
4 receiving from their products in the
5 field?

6 A. No.

7 Q. I'm sorry?

8 A. I said no.

9 Q. Okay. Now, a couple other
10 things, this Newhouse study that you
11 mentioned regarding secondary exposures,
12 that was published I believe in 1965, the
13 same year Georgia-Pacific got into the
14 joint compound business; correct?

15 A. The preliminary findings were
16 published. The study was published in
17 '68.

18 Q. Okay. Now, before you were
19 discussing exposure levels and limits -- I
20 forget the exact context, so I'll let you
21 clarify if I'm misrepresenting what you
22 said. But at some point you said that a
23 given level was considered, quote,

0088

1 considered safe. I wrote that down. Do
2 you recall that testimony earlier?

3 A. Yes.

4 Q. Okay. What do you mean by safe
5 in that context?

6 A. The TLV committee defines the
7 threshold limit value as that
8 concentration which a worker may inhale
9 eight hours a day, five days a week, fifty
10 weeks a year for forty-five years,
11 continuous exposure. And that, quote,
12 nearly all workers will be protected. The
13 nearly all refers to a very small number
14 based on the public health OG or S-curve
15 describing population response to a
16 damaging agent. The bottom of the S is
17 the sensitive people at very low levels

18 and the top of the S is the resistant
19 population. The vertical is the percent
20 responding and my horizontal axis is the
21 intensity of the agent or the dosage.

22 So as the horizontal increases
23 to the right, more and more people are
0089

1 affected going up the curve. Nearly all
2 in the threshold limit values refers to
3 that small number at the lower left, the
4 bottom of the S. I've always taken it to
5 mean 99 percent in that there are
6 sensitive persons to everything. There
7 are persons sensitive to hearing, persons
8 sensitive to smell, and there are persons
9 sensitive to chemical agents. The most
10 familiar to the general population is
11 allergy. But it's true for toxic agents
12 as well. Some people respond to very
13 little and some people are highly
14 resistant.

15 In the lead area, we find
16 people with ten times the body burden of
17 lead with no symptoms, and people with
18 one-tenth of that with gross symptoms. So
19 that's how safe is defined, or was defined
20 until OSHA. OSHA then defines safe as the
21 permissible exposure limit. It said there
22 is -- they did a little more -- there's no
23 zero risk, but the risk is very small is
0090

1 what they thought was associated with the
2 PEL.

3 Q. And even with today's modern
4 lower limits to asbestos in the PELs by
5 OSHA, OSHA still feels that there will be
6 a certain number of asbestos-related
7 diseases in a population exposed to that
8 level or below; correct?

9 A. Well, that is not as simple as
10 you stated either. OSHA utilizes a model
11 called the linear no-threshold model to
12 calculate risk. That model assumes there
13 will be an effect at every level. We
14 don't have data on effects at the lowest
15 levels. We haven't had those low levels
16 for that long and the incubation period or
17 latency period of diseases associated with
18 asbestos in the malignant category are
19 twenty to forty years.

20 So OSHA draws a straight line
21 from the dose response data we have all
22 the way down to zero, assuming there's an
23 effect at every level, it is called

0091

1 hypothetical risk. We don't know if it
2 will or it will not happen. But for
3 prudent public health, we assume people
4 will be affected in the future at a
5 calculated level based on this model.

6 Q. And I think you would agree
7 with me that in the historical,
8 scientific, and medical literature,
9 articles have appeared that suggested that
10 mesothelioma was a disease capable of
11 being induced by low exposures to
12 asbestos; correct?

13 MR. WAMSLEY: Object to the
14 form of the question.

15 A. I phrase it at lower exposures
16 than either lung cancer or the -- or
17 asbestosis.

18 Q. (BY MR. DIMUZIO:) Okay.

19 A. But that that level is not, at
20 this point in time, clear.

21 Q. Okay. I noticed that most of
22 your analysis of Georgia-Pacific and their
23 knowledge begins in 1965; correct?

0092

1 A. That was -- those were
2 documents I had, that's correct.

3 Q. Oh, okay. Are you familiar --
4 have you reviewed any documents or been
5 given any information about the corporate
6 history of the Bestwall division that
7 Georgia-Pacific acquired in 1965?

8 A. No.

9 Q. Okay. Let me just ask you a
10 few things here. Were you provided any
11 information that suggested to you that the
12 Bestwall division was actually a part of
13 the CertainTeed Company until
14 approximately 1956?

15 A. I think I saw that somewhere.

16 Q. Okay. Were you aware that
17 CertainTeed became a member of the
18 National Safety Council in approximately
19 1949?

20 A. No.

21 MS. DEMOREST: Objection to
22 the -- object to the form of the question.

23 A. I -- I don't have the

0093

1 CertainTeed history.

2 Q. (BY MR. DIMUZIO:) Okay. Did
3 the National Safety Council over the years
4 publish information regarding potential
5 hazards from asbestos exposure?

6 A. My memory of the Safety Council
7 is they got into this very late, very late
8 on asbestos.

9 Q. Okay. And how are you defining
10 "very late"?

11 A. Oh, I don't think I saw
12 anything from the Safety Council until the
13 mid '70s, perhaps late early '70s.
14 Remember, the safety council covers
15 everything from home concerns, consumer
16 concerns, occupational concerns. They're
17 a very broad-based and, in my view,
18 general organization. It's very rarely
19 they get into too much nitty-gritty in
20 their communications.

21 Q. Okay. Are you -- have you
22 received any information suggesting that
23 the Bestwall division of CertainTeed
0094

1 became an independent company from
2 approximately 1956 to 1965?

3 A. No, I didn't have those dates
4 or that information.

5 Q. Okay. Were you aware of that
6 at all regardless of the date range that I
7 just gave you?

8 A. No.

9 Q. Okay. You would agree with me
10 that employees of the Bestwall division,
11 either while working with CertainTeed or
12 as an independent company, had information
13 regarding the dangers of asbestos, that
14 that information could be assumed to
15 travel with them when they became
16 employees of the Georgia-Pacific Company
17 in 1965; correct?

18 MR. WAMSLEY: Object to the
19 form of the question.

20 A. I don't know.

21 Q. (BY MR. DIMUZIO:) Okay.

22 A. I don't know if they did
23 have -- I simply don't know anything about
0095

1 the pre-1965 Bestwall division.

2 Q. Okay. Well, let's just do this
3 hypothetically then. Let's say that
4 the -- there were employees in the
5 Bestwall division prior to 1965 that had
6 information regarding the hazards of
7 asbestos. And in 1965, Georgia-Pacific
8 buys that division. It becomes part of
9 Georgia-Pacific and they become employees
10 now of Georgia-Pacific, still working on
11 the Bestwall line of products. Would you

12 then attribute the knowledge of those
13 newly-acquired employees to
14 Georgia-Pacific?

15 MR. WAMSLEY: Object to the
16 form of the question.

17 A. As you asked the question, they
18 got that knowledge at CertainTeed,
19 Bestwall.

20 Q. (BY MR. DIMUZIO:) Uh-huh.

21 A. That's where they learned it.
22 And Georgia-Pacific did not contribute to
23 that, if it came with them from

0096

1 CertainTeed.

2 Q. So you would not, even if they
3 had employees in tow from those prior
4 divisions, you would not attribute that
5 knowledge to Georgia-Pacific?

6 A. Not if they got knowledge at
7 the CertainTeed Corporation, no, I would
8 not.

9 Q. Why does it matter where they
10 got the knowledge from?

11 A. Because if the employer's --
12 the employer that usually imparts this
13 knowledge, and I'm attributing that
14 activity, as your question is phrased, to
15 the previous employer. So if
16 Georgia-Pacific didn't impart anything at
17 that point in time, then they got the
18 knowledge from the previous employer.

19 Q. Well, they certainly impart the
20 knowledge of how to make and distribute
21 the product to those former employees and
22 it's -- I mean, former employees of
23 CertainTeed and Bestwall. It's assumed
0097

1 they bring that knowledge with them to the
2 job; right?

3 A. I'm answering on the basis of
4 the knowledge of asbestos, which to me
5 translates into potential effects on them.
6 I was not -- I'm sure there was educating
7 employees to possible different methods of
8 production to methods of packaging, the
9 new owner may change those things. But
10 your question, as asked I interpreted, did
11 CertainTeed provide -- if CertainTeed
12 provided knowledge of these effects to the
13 employees that then came to
14 Georgia-Pacific, would I say that
15 Georgia-Pacific was responsible for that
16 knowledge? No, they were not.

17 Q. Okay.

18 A. Your question it seems to me
19 only has one obvious answer.

20 Q. Okay. Well, what if the person
21 who had the information imparted them by
22 either Bestwall or CertainTeed was the
23 safety director, and he then becomes the
0098

1 safety director at Georgia-Pacific in
2 1965. Don't you think he has the
3 responsibility to pass that information
4 along to others in the corporate chain and
5 see that the appropriate corporate
6 reactions are given to that risk
7 information?

8 MR. WAMSLEY: Object to the
9 question. Object to the form of the
10 question.

11 A. If there was reason to believe
12 there was a hazard, that the exposures
13 exceeded the then-existing threshold limit
14 value, and this safety director had such
15 knowledge from his previous employment,
16 and the methods of production were the
17 same when the company was acquired by
18 Georgia-Pacific, I would think he would
19 then pass on that information. The hazard
20 was thought to exist when the TLV was
21 exceeded. There's no hazard beneath that.
22 In OSHA's standards, the requirements
23 click in when you're above the PEL. They
0099

1 do not click in below the PEL. Because by
2 definition, the PEL is a safe level. So
3 previous to the PEL, it was a threshold
4 limit value.

5 If the plants producing this
6 product were in excess of five million
7 particles per cubic foot and the safety
8 director knew that and the production
9 methods were the same under
10 Georgia-Pacific and new employees came in,
11 I think he would inform new employees of
12 that and try to take steps to lower it
13 below the PEL -- pardon me, the threshold
14 limit in those years.

15 Q. (BY MR. DIMUZIO:) Objection to
16 nonresponsive portion.

17 Doctor, let's -- let's start
18 trying to go over some of your report;
19 okay?

20 A. Sure.

21 Q. And I believe --

22 MR. DIMUZIO: Has that been
23 marked Exhibit Number 3; is that correct,

0100

1 Tom?

2 MR. WAMSLEY: Yep.

3 MR. DIMUZIO: Okay. We're
4 doing this long distance, so I want to
5 make sure we're all on the same page here.

6 Q. (BY MR. DIMUZIO:) First of
7 all, Doctor, could you turn to page six of
8 your report?

9 A. Okay.

10 Q. Okay. What I'm interested in
11 is the second from the bottom bullet
12 point. And I just want to read a sentence
13 or two here. There was not a -- there was
14 not concern during the 1950's and '60s for
15 workers utilizing asbestos products or
16 intruding upon asbestos products in place,
17 period. Did I read that correctly?

18 A. Yes.

19 Q. Okay. Now, I know you have
20 some follow-up there, but my specific
21 question is, when in the medical and
22 scientific literature do you begin to see
23 articles appearing suggesting that users

0101

1 of the finished products themselves were
2 at some increased risk of developing
3 asbestos-related illnesses?

4 A. I gave that later in my report.

5 Q. Okay. And you believe that the
6 year on that is 1964?

7 A. No, I give that on page seven.

8 Q. Okay.

9 A. And indicate those concerns. I
10 like to think of those concerns like
11 dropping a pebble in a surface of water
12 that's calm, and the ripples go out. So
13 when you had a twelve fiber cc, the
14 ripples are close in. You have that
15 number of employees. As that circle of
16 ripple goes out, they're exposed to
17 twelve. Then it goes to five. Well, you
18 have to look at additional workers that
19 are exposed at five.

20 Now, when it goes to two,
21 you've got to look at others. And when it
22 goes to .2 in 1986, you're really
23 encompassing a larger surface of the water

0102

1 and potentially more workers. But the
2 industry had shrunk drastically by 1986
3 due to these requirements and liability
4 considerations.

5 But, at any rate, we started

6 looking at the workers close in. They're
7 the asbestos workers and insulators. Then
8 I point out after 1976, the focus changed
9 to include workers exposed at
10 concentrations at or below two fibers per
11 cc. I'm at the second bullet on page
12 seven. Exposures estimates of workers
13 exposed at lower concentrations began to
14 appear in the literature. The first brake
15 exposure assessment, 1976. Drywall
16 construction, '79 with Fishbein.
17 Carpenters, electricians, workers, and
18 painters with Pake in 1979 -- pardon me,
19 drywall was '76 -- no. '79. I was right.
20 But there was a '75 on drywall. So '75 we
21 had a drywall report in Science.

22 Q. Okay.

23 A. So it's in the mid '70s as the
0103

1 two fiber cc PEL is looming that we begin
2 to look at other things. I go on to say
3 millwright and maintenance worker
4 exposure, much later. Airborne asbestos
5 during gaskets and packing, much later.
6 Because those exposures, for instance,
7 gaskets and packings is down at around .1.
8 Well, in 1986, the .2 PEL standard came.

9 So there's a progressive
10 dealing with lower and lower risk. The
11 worst first was the philosophy. It was
12 the philosophy of the profession and it
13 was the philosophy of OSHA.

14 Q. Objection to nonresponsive
15 portion.

16 Doctor, you're familiar with
17 the 1960 Wagner study out of South Africa,
18 are you not?

19 A. Yes.

20 Q. Okay. A lot of people point to
21 that as a pivotal study in making the
22 determination that at least some forms of
23 asbestos cause mesothelioma; correct?

0104

1 A. Yes.

2 MR. WAMSLEY: Object to the
3 form of the question.

4 A. Yes. I think it was an
5 important study in the sense you described
6 it.

7 Q. (BY MR. DIMUZIO:) Okay.

8 A. A form of asbestos caused
9 mesothelioma. That was important.

10 Q. Okay. And you would agree with
11 me that some of those cases of

12 mesothelioma were actually household
13 exposures in 1960; correct?

14 A. Yes, but again --

15 Q. Okay. And but some of those --

16 MR. WAMSLEY: Wait, wait.

17 Q. -- exposures reported in that
18 1960 article were actually environmental
19 exposures; correct?

20 MR. WAMSLEY: Greg, he wasn't
21 done with his answer yet. We need to --

22 Q. (BY MR. DIMUZIO:) Oh, I'm
23 sorry. Okay. Go right ahead, Doctor.

0105

1 MR. WAMSLEY: I know it's
2 difficult, but we need to try to give him
3 a little bit of pause --

4 MR. DIMUZIO: Okay.

5 MR. WAMSLEY: -- if we can.

6 A. You asked two questions there,
7 and I was starting to answer the first
8 one.

9 Q. (BY MR. DIMUZIO:) Okay.

10 A. The important thing about the
11 Wagner study is that it applied to a form
12 of asbestos known as called crocidolite.
13 We use one percent or less crocidolite in
14 the United States on a weight basis in
15 1960. That study was not deemed by the
16 profession I was in, occupational health,
17 as relevant to our workers.

18 Now, time has, in a sense,
19 borne out our downplaying that concern.
20 The latest risk assessments in the 2000
21 and forward years assigned potency factors
22 to the different types of asbestos. We
23 didn't have this knowledge back then. But

0106

1 crocidolite is believed to be as much as
2 500 times more potent in its carcinogenic
3 potential in chrysotile, the form of
4 asbestos that we used for 97 percent of
5 the weight of asbestos used in the 1960s
6 in the United States.

7 But at any rate, the Wagner
8 study, which I think is a good study, was
9 received in the United States as having
10 little relevance to our experience with
11 chrysotile.

12 Q. Objection, to nonresponsive
13 portion.

14 Doctor, a moment ago you
15 mentioned something to the effect that we
16 didn't have this knowledge about these
17 assertions that some forms of asbestos

18 have greater potency than others. Do you
19 recall your testimony about that a moment
20 ago?

21 A. Yes.

22 Q. Okay. When do you think that
23 knowledge arose?

0107

1 A. Well, I was convinced of it and
2 published an article with others in 1990.
3 But it was still controversial, but we
4 took a position that the amphiboles, which
5 specifically we were pointing to amosite
6 and crocidolite on the basis of knowledge
7 gained up to 1990, were far more potent
8 than chrysotile for causing malignancy,
9 lung cancer and mesothelioma. And we
10 published that article in Science. It's
11 in the curriculum vitae in my
12 bibliography.

13 Q. And you would agree with me
14 that even through the 1965 publication of
15 the Selikoff conference, that there was
16 very little differentiation made in the
17 scientific literature between the various
18 forms of asbestos; correct?

19 A. Yes. I think that is true.
20 And for purposes of control, we have never
21 differentiated between the types in this
22 country. The main factor that led to the
23 downplaying of the Wagner article was the
0108

1 amount of usage. It wasn't the
2 differential of the potency in those
3 years.

4 Q. But how could the differential
5 usage be a factor when we're talking about
6 take-home exposures and environmental
7 exposures for people who live some
8 distance from these activities?

9 A. Because, once again, the
10 factory that Molly Newhouse studied we
11 believe had exposures equivalent to about
12 300 fibers per cc today. The men came
13 home white. The clothes were laundered
14 everyday by their wives in a close laundry
15 room attached to a noncentrally-heated
16 house. They shook the clothes out. We
17 believe, but can't pinpoint it, they
18 received very substantial exposures to
19 amphiboles. So it was a different
20 situation. It alerted people to the
21 possibility of take-home. But those
22 familiar with that study and how the study
23 was done knew these were very high

0109

1 exposures, even though we couldn't put a
2 number on them.

3 Q. Is it your position that all of
4 the thirty-some-odd cases that were
5 described in the 1960 Wagner paper were --
6 had evidence of high exposures in the
7 paper itself?

8 A. Well, Molly Newhouse didn't
9 have measurements, but she knew they were
10 very high. This factory was not only an
11 internal high dust concentration, they
12 were emitting high concentrations through
13 their exhaust. They weren't only sending
14 it home with employees. The factory was
15 well-known in London. I mentioned I was
16 in London on a Guggenheim fellowship at
17 the London School of Hygiene & Tropical
18 Health where Molly Newhouse was as a
19 faculty member. I knew her. I knew this
20 study was going on. I discussed some of
21 it with her. That was a very
22 high-exposure facility.

23 Q. Which I think we may be

0110

1 talking -- I was actually trying to pose
2 my questions in regards to the 1960 Wagner
3 study. So let me just revisit those same
4 questions with regard to that. Is it your
5 opinion that on the four corners of the
6 1960 Wagner study, that there's evidence
7 that all of those thirty-some-odd cases
8 had evidence of high exposures?

9 MR. WAMSLEY: Object to the
10 form of the question.

11 A. I don't think the Wagner study
12 had evidence of exposure. They -- we were
13 dealing with crocidolite. That's the main
14 feature of the study, in my mind. I don't
15 believe he had exposure estimates.

16 Q. (BY MR. DIMUZIO:) And the
17 evidence for exposure to asbestos in these
18 individuals was largely done along the
19 lines of a history of exposure; correct?

20 MR. WAMSLEY: Object to the
21 form of the question.

22 A. I'd have to reread the study.

23 Q. (BY MR. DIMUZIO:) Okay.

0111

1 A. I don't -- I come away from it
2 that they had very poor insight into
3 exposure.

4 Q. Okay. However, in that
5 article, though, some of the cases were

6 described the only known exposures were
7 that of secondary household type exposure;
8 correct?

9 A. An environmental exposure, yes.

10 Q. Exactly. Thank you much.

11 If you could turn to page ten
12 of your report, Doctor.

13 A. Okay.

14 Q. At the very top there, you're
15 talking about respiratory protection. Do
16 you see that particular bullet point
17 there? I'll let I read that real quickly.

18 A. Yes.

19 Q. It's not your position that
20 there were not respirator programs in some
21 industries or facilities prior to the
22 implementation of OSHA, is it?

23 A. In the sense of a respirator

0112

1 program today, there was not. That is my
2 position.

3 Q. Okay. But in some form there
4 were indeed respirator programs prior to
5 the implementation of OSHA; correct?

6 A. No. There was nothing one
7 could call a program. And let me just
8 define myself so it's clear. A respirator
9 program consists of giving an individual
10 his or her respirator. There are
11 requirements for turning it in. There are
12 requirements for individuals who can get
13 the respirator through a pulmonary
14 function test that requires a certain
15 level of a forced expiratory volume in one
16 second. There are requirements for
17 turning in the respirator for washing and
18 cleaning. And there are requirements,
19 mandated requirements, under the law and
20 in companies for when the respirator must
21 be worn. There was nothing, nothing like
22 that in the 1960s. Respirators were just
23 there and available. I know of no

0113

1 mandatory respirator requirements in
2 general industry by companies, anything
3 like what one would call a program in the
4 years 1950s and 1960s.

5 Q. What about in the mining
6 industry? Wouldn't you agree that they
7 had a stronger history of having organized
8 respirator programs prior --

9 A. Which --

10 Q. -- to OSHA?

11 A. Which -- I didn't hear the

12 industry. I'm --

13 Q. Mining. Mining.

14 A. No, mining did not. We had an
15 epidemic of coworkers pneumoconiosis for
16 that reason. There was no respiratory
17 program either in Great Britain or the
18 United States. Nothing. That's why we
19 have the Coal Mine Health and safety
20 Health Act.

21 Q. Going to the second bullet
22 point there on page ten, you're talking
23 about concentration of airborne dust

0114

1 decreasing with distance; correct?

2 A. Yes.

3 Q. Okay. Would you agree, though,
4 that if the exposure activity occurred in
5 a fairly small, confined space, that the
6 concentration level would sort of equalize
7 within that small enclosed space and
8 remain high for an extended period of
9 time?

10 MR. WAMSLEY: Object to the
11 form of the question.

12 A. The answer to that question
13 depends on the ventilation. If there is
14 no -- literally no air movement, yes, the
15 concentration would build up. If there is
16 air movement, there's competition between
17 the rate of generation of the airborne
18 dust and the dilution and cleansing effect
19 of the air movement. You'd have to know
20 both of these factors to predict if it
21 would build up or decrease.

22 Q. (BY MR. DIMUZIO:) Okay. If
23 there was very little air turnover in that

0115

1 confined space, how much -- how long would
2 respirable-size asbestos fibers remain
3 suspended in the air in that sort of
4 environment?

5 MR. WAMSLEY: Object to the
6 form of the question.

7 A. Again, I'd have to know how
8 much air movement and the degree of
9 mixing. I believe what you're buzzing
10 around is the length of suspension of
11 airborne fibers in the absence of any air
12 turbulence and the tranquil equilibrium
13 settling rate. Now, that is often quoted
14 in litigation, but that never occurs in
15 reality. It's a theoretical settling,
16 according to Stokes' Law and it has no
17 relevance to the real world. So your

18 question can't be answered without some
19 insertion of the parameters I mentioned.

20 Q. (BY MR. DIMUZIO:) Well, the
21 real world aspects of that would actually
22 make those fibers stay suspended for a
23 longer period in time; correct?

0116

1 MR. WAMSLEY: Object to the
2 form of the question.

3 A. Quite the contrary.

4 Q. And why is that?

5 A. Because there are removal
6 mechanisms for those particles. For the
7 inhalable particles, the settling rate is
8 a minimal consideration. They're lost
9 through impaction on surfaces due to the
10 turbulence of the air moving towards the
11 surface and the air changes direction.
12 The particle impaction sticks on the
13 surface.

14 There are electric charge
15 mechanisms when particles gets in the
16 vicinity of the surface and are attracted
17 to the surface. There are coagulation
18 mechanisms by which particles hit each
19 other, grow, and form a mechanism that
20 becomes more important. So we speak about
21 the decay rate, the rate of decay. And,
22 actually, you can calculate this, if you
23 have the parameters that you mentioned.

0117

1 If I know the dimensions of the room, the
2 ventilation rate in the room, and have
3 some insight into the mixing due to the
4 placement of the supply and exhaust in
5 ventilation. I could calculate the
6 removal or accumulation rate knowing the
7 particle size distribution of the dust.
8 But a simple answer to your question is
9 not possible.

10 Q. Okay. Some of these mechanisms
11 that you mentioned about becoming impacted
12 on the surfaces through one mechanism or
13 another, possibly electrostatic charges,
14 that would apply to people's clothing;
15 correct?

16 A. Yes. Clothing could be a sink
17 for that, absolutely.

18 Q. Okay. When, to your knowledge,
19 based on all the documents that you've
20 reviewed, both specifically for
21 Georgia-Pacific and possibly over the
22 course of your career as a consultant,
23 when do you believe the Gypsum Association

0118

1 first had information available that there
2 may be hazards associated with the
3 inhalation of asbestos?

4 A. Again, I cite that in my
5 summary based on the Gypsum Association
6 Health and Safety Committee meeting. I
7 give you -- and I think I can find it in
8 here -- when it first came up.

9 Q. It may be page ten, Doctor. I
10 could be referencing you to the wrong
11 section, but --

12 A. Yeah, let me go back and try to
13 find that. Yes, the 1967 was the first I
14 found in reading the minutes of the safety
15 committee. And I quoted at that point in
16 time, what was in the minutes. It was
17 that -- one member noting the recent
18 problem.

19 Q. Okay. And that involved a
20 cancer case; correct?

21 A. Yes.

22 Q. And it was actually from an
23 environmental exposure as opposed to an

0119

1 occupational or
2 direct-use-of-a-product-type exposure;
3 correct?

4 A. My own conclusion, which I
5 can't document, I think they were
6 referring to the Molly Newhouse study.

7 Q. The Molly Newhouse study that
8 was published in 1965?

9 A. Yes.

10 Q. Okay.

11 A. That's what I think it -- that
12 was very startling to everyone. And,
13 again, it's a first report. In science,
14 it requires verification. But it really
15 took -- although I was in contact with a
16 very important -- possibly important and
17 unusual -- and we were startled.

18 Q. It was not in any way
19 inconsistent with the findings of the 1960
20 Wagner study, though; correct?

21 A. No, because it was also
22 amphibole. It wasn't. It was just at
23 lower -- well, no, it wasn't inconsistent.

0120

1 It really wasn't, now that I think of it.

2 Q. Okay. And, again, I think
3 we've established before that this whole
4 idea of serpentine versus amphibole was
5 not really a topic of concern in the 1960

12 specific question is, when did you first,
13 in terms of dates, find information that
14 the Gypsum Association had passed on any
15 information at all to Georgia-Pacific
16 regarding potential hazards from
17 inhalation of asbestos?

18 A. Well, I don't have the Gypsum
19 Association passing on information. I
20 have information being discussed at Gypsum
21 Association meetings, minutes of meetings.

22 Q. Okay. And what are the first
23 meetings where, in the minutes, there were
0123

1 discussions of potential hazards of
2 asbestos?

3 A. On page twelve. That's the
4 last paragraph. The standard appeared in
5 '72. In the February of '73 meeting of
6 the technical committee, of the Gypsum
7 Association, quote -- and I'm quoting my
8 report. The committee proposed the
9 pooling of information on the health and
10 safety of asbestos in joint compounds as a
11 result of sanding and dry mixing. They
12 also requested staff to develop a list of
13 testing agencies qualified to conduct
14 tests of dust environments containing
15 asbestos, determine estimated cost of test
16 programs and report on methods used.

17 And it is also required, the
18 safety committee recommend what is needed
19 to protect the applicator working in these
20 conditions. So that's February 14, 15,
21 and 16, 1973. And that's what I referred
22 to. The association really got geared up
23 after the standard passed.

0124

1 Q. Okay. Sir, I take it from
2 reading your report you're familiar with
3 the safety supervisor at Georgia-Pacific?
4 I guess he goes by his initials a lot, Mr.
5 M. F. Fink?

6 A. Well, I'm not familiar with
7 him. I'm familiar with some documents
8 that carries his name.

9 Q. Right. Exactly. And what
10 about a Mr. Baranofsky, are you familiar
11 with him either through the Gypsum
12 Association or through Georgia-Pacific
13 documents or correspondence that you've
14 looked at?

15 A. It's not a name I recall, no.

16 Q. Okay. Do you recall any
17 correspondence between Mr. M. F. Fink and

18 anyone else in approximately 1966
19 regarding potential hazards of asbestos?

20 A. I don't think I had anything
21 from '66 --

22 Q. Okay.

23 A. -- I don't think.

0125

1 Q. Fair enough. I believe I have
2 a reference there, and I'm kind of going
3 off some of my work in other cases, so I'm
4 not sure I can link it up to your exact
5 spot in your report. But I believe you're
6 familiar that at some point in 1970, Mr.
7 Fink had a memo to a Mr. Fabst, an
8 executive at Georgia-Pacific, discussing
9 the Mount Sinai research being conducted
10 by Dr. Selikoff; do you recall that
11 particular --

12 A. Yes, I do. And may I interject
13 a comment --

14 Q. Sure.

15 A. -- independent of your
16 questioning? I would be very interested
17 in any documents you have that I may have
18 missed. The -- I was told I reviewed the
19 universe of documents. And if you have
20 anything from 1966 that I did not see, I
21 would be very interested.

22 Q. Okay. Fair enough. That's
23 fair. And that's consistent with good

0126

1 science; right? You want to look at
2 everything that's available out there and
3 make a determination of how useful it is
4 in forming your opinion; correct?

5 A. Yes, I would.

6 Q. Okay. That's fair enough.

7 Okay. In that communication
8 between Mr. Fink and Mr. Fabst, he
9 acknowledged that Mount Sinai might start
10 looking at drywall industry for exposures
11 in asbestos; is that correct?

12 A. Yes.

13 Q. Okay. In fact, I think he
14 actually used the word target. If I
15 recall; does that ring a bell?

16 A. I don't remember that word.

17 Q. Okay. You don't? What do
18 you -- what do you take away from that
19 particular memo? What do you think -- do
20 you think Georgia-Pacific is processing
21 this information about research on
22 asbestos hazards appropriately given the
23 information in that memo?

0127

1 A. I didn't. I thought this was
2 an unfortunate wording by one individual
3 in a company of thousands of individuals.
4 And I might say I have come across some
5 other memos in other cases, and in my
6 experience, where a particular individual
7 just sounds off and usually later regrets
8 it. That's the category I put this in,
9 and I phrased it that I think he used
10 unfortunate wording. I saw no evidence of
11 the extension of the views expressed in
12 this letter by anyone else.

13 And, again, in the '50s, '60s,
14 and '70s, we put everything on paper.
15 Later on when the computer came in, it's
16 in e-mail and it's usually erased. But
17 people talked to each other informally in
18 letters and memoranda in those early
19 years. And there are many such
20 unfortunate wordings that I have
21 encountered. And I try to, I think,
22 explain what I think a safety director
23 understanding the assignment

0128

1 responsibility in the safety field had in
2 mind when he used this word "blame."

3 Q. Okay. Well, first of all, you
4 mentioned the fact that -- and rightfully
5 so -- that Georgia-Pacific probably had
6 hundreds, if not possibly thousands of
7 employees; correct?

8 A. Yes.

9 Q. But all employees are not
10 created equal when it comes to
11 responsibility for potential hazards from
12 their products; correct?

13 A. That's correct.

14 Q. Okay. And a safety supervisor
15 certainly would be one of the primary
16 people who should have responsibility for
17 how an organization reacts to risk
18 information; correct?

19 A. Well, this wasn't risk
20 information. But they are responsible.
21 And, unfortunately, safety directors in
22 those years had very little insight into
23 health hazards.

0129

1 Q. Okay.

2 A. But he is a safety director.
3 And industrial hygiene wasn't even taught
4 in safety in those years. Today --

5 Q. Objection to the nonresponsive

6 portion.

7 I believe you have part of this
8 particular quote from a Fink letter, M.F.
9 Fink letter, but I don't think you had all
10 the language. I want to see if this rings
11 a bell to you from a 1970 Fink letter.
12 Quote, we realize that someone will be the
13 whipping boy, that product liability will
14 be stressed. It is our opinion that the
15 entire blame be placed on the contractor
16 for not insisting on respirators, end
17 quote. Did I read that correctly, to your
18 recollection, Doctor?

19 A. Yes, you did.

20 Q. Okay. First of all, we talked
21 about respirators a little while ago,
22 didn't we, in terms of hierarchy of
23 approaches to protect workers from
0130

1 hazardous exposures; correct?

2 A. That's correct.

3 Q. Okay. And that's the approach
4 of last resort, wouldn't you agree?

5 A. Yes.

6 Q. All right.

7 A. But I would modify that. It's
8 a very good approach for noncontinuous
9 work. It's the approach of last resort
10 for an eight-hour workday. I have used
11 respirators with short-term tasks very
12 effectively. It's when you have to wear
13 it for hours that it's a terrible burden,
14 which people who don't think it is should
15 try wearing one for hours. But for a
16 short task, fifteen minutes, even up to a
17 half hour, they're -- they're effective.

18 Q. And from your -- well, even
19 when utilizing respirators, if the workers
20 are wearing that in a hazardous
21 environment, they need a sane appreciation
22 of that risk, if for no other reason so
23 that they continue to use the respirator

0131

1 appropriately in the entire time frame
2 it's required; right?

3 MR. WAMSLEY: Object to the
4 form of the question.

5 A. Well, again, you used the
6 terminology "the sane appreciation of
7 risk." I haven't heard it before and it's
8 an interesting terminology. In the
9 1960's, what the worker would have gotten
10 from the supervisor for a sane
11 appreciation of risk would have been, this

12 dust can harm you; you should wear a
13 respirator. That would have been the
14 extent of it.

15 Q. (BY MR. DIMUZIO:) Okay. And I
16 admit that all my best lines I've stolen.
17 That goes for my entire life probably, and
18 it goes here. That quote is from the
19 Merryweather, Price 1930 article.

20 A. Yeah. Well, it's an
21 interesting phrase.

22 Q. Indeed.

23 A. And my point is the sane

0132

1 appreciation of risk changed with time.

2 Q. Uh-huh. If there is
3 information in the 1960's regarding at
4 least potential harm from asbestos dust,
5 even if you're going to be relying on
6 respirators to protect the worker, the
7 worker does need information to understand
8 that that dust could hurt him; correct?

9 A. I think the information in
10 those years would have been minimal, as I
11 described. I think a lot of our
12 discussion has been my pointing out what I
13 think is thinking in time. And a lot of
14 your questions really don't reflect
15 thinking in time. And I've had an answer
16 to every one almost with a time frame. So
17 I'm just trying to define what will
18 continue to be the way I'll answer the
19 broad questions you're asking.

20 Q. Okay. Well, in this case,
21 we're doing this in the context of the
22 1970 Fink article, five years after the
23 publication of the Selikoff conference.

0133

1 At that point in time, if a worker is
2 going to be using a respirator to protect
3 himself from asbestos, don't you think
4 that that worker, in order to have a sane
5 appreciation of the risk, should know that
6 that asbestos dust could hurt him?

7 A. If there is a risk. In 1973,
8 we -- government -- the public health
9 community believed the five fiber cc
10 standard was protective with a margin of
11 safety, not only for fibrosis, but cancer.
12 There was no risk in the time frame of
13 1973 if you were below five fibers. Now,
14 coincidentally, that's when the Clayton
15 study was done for this particular
16 industry. And Clayton came back saying,
17 you meet that standard. When it goes down

18 to two, there maybe some short-term task
19 that will exceed it. And maybe you should
20 think about that considering it's just a
21 few years down the road. So this industry
22 when went out and got some expertise and
23 got some consoling remarks concerning what
0134

1 the standard of safety was in 1973 and the
2 findings by a consulting firm on their
3 premises. So there --

4 Q. And this --

5 A. -- there was no risk.

6 Q. Oh, I'm sorry. Go ahead.

7 A. There was no definable risk in
8 terms of a permissible level at that point
9 in time.

10 Q. Okay. And when did this report
11 that you just mentioned, the Clayton
12 report, came out? It was in 1973?

13 A. That's correct.

14 Q. Okay. And that's approximately
15 when it was communicated to
16 Georgia-Pacific; is that correct?

17 A. Yes. The report was
18 distributed to the members, and I give the
19 dates in my summary.

20 Q. Okay. Prior to 1973, that
21 eight-year period of time where
22 Georgia-Pacific is putting
23 asbestos-containing joint compounds on the
0135

1 market, what did Georgia-Pacific or the
2 Gypsum Association do to insure that the
3 exposures to asbestos from their products
4 were below the TLVs at the time?

5 A. Oh, they didn't do anything
6 because we didn't think products like that
7 were of a concern when between 19 -- until
8 1971 the standard was still 30 fibers per
9 cc or five million particles per cubic
10 foot. The government didn't say that was
11 inadequate. The TLV committee didn't say
12 it was inadequate. They didn't do
13 anything, because I and others thought,
14 we're way below that. And, in fact,
15 subsequent articles in the literature in
16 the '75 to '79 time frame demonstrated
17 they were, on average, maybe a fifth of
18 that. So they didn't do anything in those
19 years.

20 Q. Okay. Now, we -- I think we
21 discussed earlier, and you acknowledge
22 that those levels were never designed to
23 be 100 percent protective, especially

0136

1 against cancers from asbestos; correct?

2 MR. WAMSLEY: Object to the

3 form of the question.

4 A. They say they don't know if

5 they're protective against cancer. Nobody

6 knew what was protective against cancer.

7 Q. (BY MR. DIMUZIO:) And up until

8 1973, I think you'll agree with me there

9 was no effort made by Georgia-Pacific or

10 their trade association, the Gypsum

11 Association, to determine what the levels,

12 actual levels of asbestos exposure were

13 when using their products correct;

14 A. I've already said that. But

15 there was no effort by the government to

16 accommodate to the new knowledge of

17 carcinogens either. There was no --

18 Q. Is it your opinion, Doctor,

19 that companies should be able to rely

20 exclusively on what the government does in

21 terms of whether or not to warn about

22 potential dangers from their product?

23 MR. WAMSLEY: Object to the

0137

1 form of the question.

2 A. I answered that way back.

3 Companies who do not have the expertise;

4 do not have the know-how; it's not a part

5 of their business; they do not have their

6 own laboratories, their own hygienists,

7 their own medical -- all of the

8 occupational specialists who can advise

9 them; they rely on the government, yes.

10 Q. (BY MR. DIMUZIO:) Okay. So,

11 again, this goes back to your opinion

12 that, in your professional opinion, these

13 companies should not be held to the level

14 of knowledge of an expert regarding the

15 health aspects of their products; correct?

16 MR. WAMSLEY: Object to the

17 form of the question.

18 A. Well, an expert would have told

19 you in those years there's no problem with

20 these products. They weren't on the

21 screen. There was --

22 Q. (BY MR. DIMUZIO:) Objection,

23 nonresponsive.

0138

1 Again, my particular question

2 is, in your opinion, companies should not

3 be held to the level of experts in that

4 time frame regarding potential dangers

5 from asbestos?

6 A. And I already --

7 MR. WAMSLEY: Object to the
8 form of the question.

9 A. I already qualified that. It
10 depended on the company.

11 Q. (BY MR. DIMUZIO:) How about
12 Georgia-Pacific?

13 A. This was not Georgia Pacific's
14 area of expertise. Georgia-Pacific did
15 not have the -- the internal knowledge of
16 this. It relied on its association. And
17 at this point in time, that association,
18 as well as the government, as well as
19 everyone else, would not have had insight
20 into this being a hazard.

21 Q. Okay. So based on your review
22 of the documents, I guess as a logical
23 follow-through for that, for what you just
0139

1 said, based on your review of the
2 documents, prior to 1972, in your opinion,
3 Georgia-Pacific did not have the knowledge
4 of an expert regarding the dangers, health
5 dangers, of their products?

6 MR. WAMSLEY: Object to the
7 form of the question.

8 A. They did not have the knowledge
9 of an expert, and an expert did not have
10 the knowledge relevant to Georgia
11 Pacific's concern.

12 Q. (BY MR. DIMUZIO:) Objection to
13 the nonresponsive portion.

14 Same question for the Gypsum
15 Association. Is it your opinion that
16 prior to 1972, that the Gypsum Association
17 did not have the knowledge of an expert
18 regarding dangers of asbestos in joint
19 compound products?

20 MR. WAMSLEY: I object to the
21 form of the question.

22 A. I don't think they had such
23 knowledge, and I don't think that
0140

1 knowledge available at that point in time
2 was relevant to their principal concern
3 with their products.

4 Q. (BY MR. DIMUZIO:) Objection to
5 the nonresponsive portion.

6 Doctor, when, in your opinion,
7 did Georgia-Pacific first have a joint
8 compound product that worked reasonably
9 well that did not contain asbestos?

10 A. In certain markets, they had it
11 as early as '73.

12 Q. Okay. And why did they not
13 replace all of their products with the
14 asbestos-free formulation at that time?

15 A. There's a great deal of
16 documentation in the records I mentioned
17 and that are listed in the appendix to
18 lack of consumer acceptance of the
19 products in certain markets. The product
20 is very susceptible to temperature and
21 humidity variations. And Georgia-Pacific
22 embarked on an extended period of change
23 of formulations for different markets.

0141

1 The acceptable products came in
2 sequentially. If they had replaced all
3 products at one time, there would not have
4 been acceptability.

5 Q. So basically it was market
6 considerations; correct?

7 MR. WAMSLEY: Object to the
8 form of the question.

9 A. Yes, I believe the rate of
10 replacement of asbestos during the period
11 of time when it was believed the hazard
12 did not exist, they worked on this
13 during -- before, during, and after the
14 Clayton report. It was a sequential
15 replacement.

16 Q. (BY MR. DIMUZIO:) And so,
17 effectively, what these contractors were
18 having to do was sort of a risk benefit or
19 cost benefit analysis as to whether or not
20 to use asbestos containing or
21 asbestos-free joint compounds; correct?

22 MR. WAMSLEY: Object to the
23 form of the question.

0142

1 A. No. If the contractors were
2 aware of the information the Gypsum
3 Association was aware of -- and I don't
4 know how knowledgeable contractors'
5 associations were -- they would have been
6 in the same position of not believing a
7 hazard exists.

8 Q. (BY MR. DIMUZIO:) Okay. And
9 what was being communicated by either the
10 Gypsum Association or Georgia-Pacific to
11 the contractors at that point in time
12 regarding the potential hazards of
13 asbestos?

14 A. I think they were adhering to
15 the regulation with warnings. And that
16 was their primary means of communicating
17 to users. And warnings went on in the

18 '73, '74 time frame.

19 Q. So prior to that, to your
20 knowledge, Georgia-Pacific did not provide
21 any sort of warnings to these contractors
22 who were making the decision on whether or
23 not to use asbestos or asbestos-free joint
0143

1 compound; correct?

2 A. There was no basis to
3 communicate those warnings, and they
4 communicated it when the government said
5 communicate it. Even though, as I said,
6 the government was of the belief they had
7 a protective standard. And the Clayton
8 report suggested this industry was below
9 it.

10 Q. Objection, nonresponsive.

11 I guess another way to phrase
12 the question, Doctor, is that prior to the
13 warnings going on the products that were
14 required by the government in 1973, to
15 your knowledge, Georgia-Pacific passed
16 none of the potential health risk
17 information onto the contractors using
18 their products; correct?

19 A. Well, I don't understand what
20 health risk information you would have
21 them pass on. The standard in 1972 was
22 out there for the public. It concerned
23 asbestos. It didn't concern their
0144

1 product. The warning applied and they
2 complied with the warning. The
3 surveillance applied and they got Clayton.
4 There's no requirement that's there to
5 take the position of communicating the
6 standard to their users. The government
7 publishes a standard, distributes it,
8 publicizes it. That wasn't Georgia
9 Pacific's responsibility.

10 Q. You don't think that it's
11 Georgia Pacific's responsibility to
12 provide that information to their
13 customers?

14 A. There's no hazard to their
15 customers at that point in time. They are
16 not in excess of the PEL. All the
17 information they have is they're
18 compliant. Only in 1976 is the
19 possibility raised that there may be some
20 excessive amount in the plants. If the
21 plants are in compliance, the users would
22 be in compliance. We speak about the
23 highest exposures in the plants and lower

0145

1 amongst users. So that's the reasoning.
2 And every time I try to inject the
3 reasoning, you tell me it's nonresponsive.

4 Q. Objection, nonresponsive.

5 Let me ask a related question,
6 Doctor. Do you believe that it has to be
7 proved to a scientific certainty that a
8 given type of product containing asbestos
9 hurts an individual before warnings are
10 required?

11 MR. WAMSLEY: Object to the
12 form of the question.

13 A. No, but I think that --

14 Q. (BY MR. DIMUZIO:) Okay. When
15 do you believe -- what level of proof do
16 you think there needs to be before a
17 company is charged with providing warnings
18 to their customers?

19 MR. WAMSLEY: Object to the
20 form of the question.

21 A. I believe a persuasive level of
22 proof that this, indeed, is a concern to
23 them. Not that asbestos, period, is a

0146

1 concern. Asbestos is a concern. But is
2 the asbestos as used in their organization
3 a hazard? It's a potential hazard, but
4 it's a hazard when the conditions are such
5 that we believe it exceeds a safe level.

6 Q. But you would acknowledge that
7 even by 1965, it was clear that asbestos
8 at some doses could cause health problems;
9 correct?

10 A. Yes.

11 Q. Okay. And I think we've also
12 established that Georgia-Pacific did
13 nothing until the early 1970's to
14 determine what the dose of asbestos from
15 using their product would be; correct?

16 A. Yes.

17 Q. Fair enough. Do you need a
18 break? I think we've been going about an
19 hour and five or ten minutes, Doctor?

20 A. That's fine.

21 Q. Okay. Let's go ahead and take
22 a break and that way I can go over my
23 notes. We're not over yet, but I think

0147

1 we're getting close. And if I could have
2 about five minutes to organize, I think I
3 can cut this down.

4 A. Okay.

5 MR. WAMSLEY: We'll give you

6 five then.

7 MR. DIMUZIO: All right.

8 Thanks.

9 MR. WAMSLEY: You can take six
10 then, if it will help.

11 MR. DIMUZIO: I'll probably
12 take six.

13 MR. WAMSLEY: All right.

14 (Whereupon, a short break was
15 taken.)

16 Q. (BY MR. DIMUZIO:) If you could
17 turn to page 13 of your report, Doctor.

18 A. Okay.

19 Q. Okay. It's the first full
20 paragraph there and they're talking about
21 an April 11, 1983 memo. And in that, you
22 have a quote here. The memo states,
23 quote, it is my understanding that our
0148

1 competitors will begin marketing their
2 bags -- marking their bags shortly,
3 unquote. Did I read that correctly?

4 A. Yes.

5 Q. Okay. So, in essence, is it
6 your understanding that Georgia-Pacific
7 waited until the other manufacturers began
8 labeling their bags before they did the
9 same?

10 A. That's what this suggests that
11 they would march in sequence with their
12 competitors at that point in time, in
13 1973, yes.

14 Q. Okay. But apparently the
15 decision had been made by those
16 competitors somewhat before
17 Georgia-Pacific; correct?

18 A. No. I think they're all
19 responding to the 1972 standard. I don't
20 know if Georgia -- I didn't see whether
21 Georgia -- the people at Georgia-Pacific
22 were thinking about this or not, but
23 they -- but what I took away is the whole
0149

1 industry marched in unison.

2 Q. Who was the last company to
3 actually produce and sell
4 asbestos-containing joint compounds in the
5 United States?

6 A. I don't know.

7 Q. You don't know whether it was
8 Georgia-Pacific one way or the other?

9 A. No.

10 Q. Okay. And who actually banned
11 the use of asbestos in joint compounds in

12 the United States?

13 A. The Consumer Product Safety
14 Commission banned it.

15 Q. Okay. Did Dr. Selikoff have
16 any input into starting that process?

17 A. I don't know.

18 Q. Okay. And why would the
19 Consumer Product Commission do that as
20 opposed to, say, the EPA or OSHA?

21 A. Well, I think in the safety
22 field, there's the general belief that
23 consumers are inexpert as contrasted to
0150

1 the professionals who use things in the
2 field. And from my own efforts at home
3 improvement, I would agree with that.

4 Q. Okay. And, in fact, that's
5 what we're dealing with here in the Taylor
6 case, people who are not professionals
7 actually applying these materials;
8 correct?

9 MR. WAMSLEY: Object to the
10 form of the question.

11 A. Yes.

12 Q. (BY MR. DIMUZIO:) Okay. And I
13 think it's generally deemed, at least
14 among the experts in the field, that
15 usually amateurs who try to do joint
16 compound work end up doing -- using a lot
17 more joint compound and doing a lot more
18 sanding than a professional would do; is
19 that correct?

20 MR. WAMSLEY: Object to the
21 form of the question.

22 A. I'm not sure of that. I don't
23 know that. But I will say that they don't
0151

1 do as good a job from my own experience.

2 Q. (BY MR. DIMUZIO:) Okay. Let's
3 turn to page 14 of your report, sir. And
4 it's really the first full paragraph that
5 I'm interested in here. It says George D.
6 Clayton & Associates Firm study; do you
7 see that paragraph?

8 A. Yes.

9 Q. Okay. You would agree with me
10 that nowhere on that report do they take
11 into effect the nature of the exposure of
12 someone who's doing this in their home and
13 they're going to stay there for 24 or 48
14 hours after the work is being done;
15 correct?

16 A. No. They -- they measured the
17 individual's exposure over the -- there

18 were personal samples over an extended
19 period. They were not doing the work all
20 of that time. That's what the personal
21 measurement is. But I can't, as I sit
22 here, remember the periods of inactivity
23 and the periods of activity.

0152

1 Q. But the work was actually --
2 the work in question as in Ms. Taylor was
3 actually done in a fairly small trailer
4 and these people continued to live in that
5 trailer in the days afterwards. Wouldn't
6 you agree that the fact that the
7 surrounding had been contaminated and
8 their clothes had been contaminated, et
9 cetera, would actually increase the
10 exposure to a consumer using the product
11 in that situation as opposed to a
12 professional in the field?

13 MR. WAMSLEY: I object to the
14 form of the question.

15 A. No. The type of -- and there's
16 a whole literature on this which you may
17 know I've contributed greatly to. The
18 sense of contamination of surface dust of
19 material that settles out, it's very hard
20 to make it airborne. The point you make
21 of a period of decay of what's in the air
22 is one you made earlier, and is valid.
23 The work ceases in the trailer, and

0153

1 depending on the ventilation of the
2 trailer, what is airborne when the work
3 ceased will have a decay curve. It will
4 decrease over a period of time.

5 That should come down to the
6 background level with any halfway decent
7 ventilation. And by that, I mean, say,
8 four air changes an hour or more, which is
9 the lowest design for any building
10 occupancy. I don't personally know what
11 trailers are designed for, but it would
12 come down in a couple of hours, two to
13 three hours at most, to background.

14 Now, the dust left in there
15 would be a very minimal exposure in
16 subsequent cleaning. Again, due to the
17 duration of time and that which is on
18 surfaces would be very much less for the
19 amount that got airborne than what was
20 generated during the primary work. So
21 that would be relatively a small
22 contributor to the dosage.

23 But the -- if they remain two

0154

1 to three hours in the trailer, they get a
2 progressively decreasing amount beyond the
3 period of work.

4 Q. (BY MR. DIMUZIO:) Okay. Now,
5 you mentioned that you -- and, again,
6 correct me if I'm wrong, but something
7 about you would generally want to look for
8 something like four air changes per hour;
9 is that correct?

10 A. That's a typical home occupancy
11 design. Just from leakage, you can get
12 that. In the 1980's, there was some
13 tightening up of buildings. But even in
14 those buildings, you get two air changes
15 an hour. So if I had to guess what a
16 trailer was, I'd say it's probably four
17 air changes an hour.

18 Q. All right. Now, you made the
19 comment earlier, also, that it's hard to
20 get this dust that has settled out back up
21 into the air; do you recall that
22 testimony --

23 A. That's correct.

0155

1 Q. -- a minute ago?

2 A. Yes.

3 Q. Okay. You would agree with me
4 that sweeping up this material with a
5 broom would be one way where the dust
6 particles -- dust fibers could indeed be
7 in the re-entrained into the respirable
8 air around people?

9 A. That's true. The application
10 of energy does that. But it generally
11 gets the larger particles, non-inhalable
12 with lesser amounts of the inhalable. And
13 I described that in great length in many
14 publications, which I can point out to
15 you. It was the subject of my doctoral
16 thesis of Harvard. It's still, much to my
17 amazement, occasionally quoted.

18 Q. Okay.

19 A. If you'll turn to page 16 --

20 Q. Okay.

21 A. -- see, the first publication
22 at the top of the page, see page 15, the
23 first publication -- instead of the

0156

1 bottom. And these -- this darn thing
2 hasn't got the -- oh, go to page 17, and
3 it is contained in the -- at the bottom of
4 the page. Skip Theander and Corn and the
5 three publications above it, describe this

6 phenomena. And there's even another one
7 later where I went into it again, I
8 believe. Oh, yes. Page 18, middle of the
9 page, Corn M. Stein, the re-entrainment of
10 particles from a plane surface. It was a
11 subject that interested me for many years.

12 Q. Okay. And along those lines
13 regarding fiber size, if someone was to
14 use a, kind of standard consumer vacuum
15 cleaner that would be available in the
16 1960's and '70s -- and by that I mean one
17 that does not have a high efficiency
18 particulate filter on it -- would that
19 vacuum cleaner be able to contain the
20 respirable asbestos fibers that we're
21 concerned about that someone would breathe
22 into their lungs?

23 MR. WAMSLEY: Object to the
0157

1 form of the question.

2 A. It would contain a portion of
3 it. Because the filter, the bag is the
4 filtering mechanism only in the initial
5 period that a dust layer builds up on the
6 bag. And then it's the dust layer that is
7 doing the filtering, not the bag. So the
8 pores on the bag are fairly large, a dust
9 layer builds up, and then filtration
10 occurs through the dust layer. And I
11 don't know what portion of respirable
12 fibers it would get, but it would get a
13 significant portion once that layer
14 existed. But --

15 Q. (BY MR. DIMUZIO:) And prior to
16 that layer existing, probably a very high
17 percentage of the respirable particles
18 would escape; correct?

19 A. Yes.

20 Q. And even after that, probably
21 some percentage of those respirable
22 particles would continue to escape; would
23 you agree?

0158

1 A. Yes, even though I can't put
2 numbers on that percentage.

3 Q. Okay.

4 A. There probably are data. I --
5 I don't recall it.

6 Q. Okay. When, to your knowledge,
7 did Georgia-Pacific first receive
8 information that sanding of joint
9 compounds could offer a potential hazard
10 from breathing asbestos dust?

11 MR. WAMSLEY: Object to the

12 form of the question.

13 A. I think they received that when
14 they received the Clayton report, which
15 was -- the work was done in '73. I think
16 the report was issued in '74.

17 Q. (BY MR. DIMUZIO:) So based on
18 the materials you reviewed, that's the
19 earlier that you would think they would
20 have information specifically regarding
21 the sanding of their products; right?

22 MR. WAMSLEY: Object to the
23 form of the question.

0159

1 A. It was called to their
2 attention by Clayton that during the peak
3 period, the short-term period they could
4 exceed the short-term PEL. And I might
5 point out that is not a health-based PEL.
6 That is a control PEL. The only
7 health-based permissible exposure limit is
8 the eight-hour time-weighted average. The
9 short-term limit is one to make the
10 efficiency of OSHA inspectors greater.
11 There was statistical argument of a large
12 database. OSHA carried the argument
13 before the administrative law judges and
14 the commission that they could predict
15 that there was a high probability the
16 eight hour PEL would be exceeded if the
17 short-term 30-minute value was exceeded.
18 So there is a short-term value. And that
19 was when Clayton alerted the Gypsum
20 Association, too, that they believed there
21 were some short-term excursions and felt
22 it was associated with these operations.

23 Q. (BY MR. DIMUZIO:) Objection to
0160

1 nonresponsive portion.

2 Doctor, in your opinion, based
3 on the materials that you've reviewed --
4 well, first of all, we've established that
5 there was an asbestos-free joint compound
6 at approximately 1972; is that correct?

7 MR. WAMSLEY: Object to the
8 form of the question.

9 A. I thought late '72, early '73,
10 yes.

11 Q. (BY MR. DIMUZIO:) Okay. And
12 when, in your opinion, did it become clear
13 that they had worked out any potential
14 kinks and they had a product that could
15 keep most contractors happy under most
16 circumstances?

17 MR. WAMSLEY: Object to the

18 form of the question.

19 Q. (BY MR. DIMUZIO:) If you have
20 an opinion.

21 A. They had different products for
22 different regions of the country. Even at
23 the time of the ban, I don't think they
0161

1 had worked out a satisfactory product
2 acceptable to users for the entire
3 country. I don't know what proportion of
4 users they had a satisfactory product for.
5 I suspect that number is available. But
6 even when they stopped manufacturing it,
7 they had not satisfied all the parts of
8 the country.

9 Q. Fair enough. Doctor, if a
10 particular product is banned by a
11 government agency, say, OSHA, EPA, or the
12 Consumer Product Commission, for example,
13 because of potential health problems. Do
14 you believe it is acceptable for companies
15 in that -- to produce that particular
16 product, to continue to sell those
17 products once they learn that the product
18 will be banned?

19 MR. WAMSLEY: Object to the
20 form of the question.

21 A. First, let me just correct your
22 question, if I might.

23 Q. (BY MR. DIMUZIO:) Okay.
0162

1 A. OSHA has never banned a
2 chemical or product. EPA has never banned
3 a chemical or product. They don't believe
4 in banning it. They believe in working
5 with it safely. The Consumer Product
6 Safety Commission banned this product, but
7 other regulatory agencies in this country
8 do not ban. They believe there are safe
9 levels of working with them. The ASTDR,
10 the agency that was assigned Hazardous
11 Waste Site Safety believes there are safe
12 levels of all chemicals at waste sites.

13 So we're talking about the
14 CPSC, and they issued a ban. And your
15 question is, is it appropriate once the
16 ban is issued to keep distributing it?
17 The ban has a compliance period, a period
18 for those using it to get themselves in a
19 position to curtail production. And I
20 think it's appropriate for a company to
21 utilize that period to try to improve it's
22 position until such time as the ban takes
23 effect. And it's following the law. It

0163

1 is -- as I said, Georgia-Pacific was still
2 working on getting the substitute at
3 certain places. Before the ban, they
4 curtailed production. They were left with
5 a large reservoir of asbestos that they
6 sold to another company. I think their
7 behavior was in line with the behavior the
8 government was asking for.

9 Q. Objection to the nonresponsive
10 portion.

11 Do you think that there was any
12 responsibility for them to inform the
13 public who was buying these products that
14 the product had been banned and would
15 cease to be produced?

16 MR. WAMSLEY: Object to the
17 form of the question.

18 A. I don't think there was any
19 obligation. And I think the government
20 publicized this very widely. The
21 newspapers publicized it. The magazines
22 publicized it. No, I don't think it's
23 necessary for the company to do it.

0164

1 Q. Okay.

2 A. First of all, it doesn't know
3 all its users. But I think that
4 informing, by the time this occurred, was
5 handled by the media and it was handled
6 well.

7 Q. Objection to the nonresponsive
8 portion.

9 Doctor, believe it or not. I
10 believe that's all the questions I have at
11 this time. I thank you very much for
12 giving me some time to ask you some
13 questions today.

14 A. You're most welcome.

15 MR. WAMSLEY: Anybody else got
16 anything?

17

18 FURTHER THE DEPONENT SAITH NOT

19

20

21

22

23

0165

1 DEPONENT'S CERTIFICATE

2

3 I, DR. MORTON CORN, the witness
4 herein, have read the transcript of my
5 testimony and the same is true and

6 correct, to the best of my knowledge. Any
7 corrections and/or additions, if any, are
8 listed separately.

9

10

11 DR. MORTON CORN

12

13

14 Sworn to and subscribed before me,
15 this the day of , 2007, to
16 certify which witness my hand and seal of
17 office.

18

19

20

21

22 NOTARY PUBLIC IN AND FOR
23 THE STATE OF ALABAMA

0166

1 C E R T I F I C A T E

2

3 STATE OF ALABAMA)

4 SHELBY COUNTY)

5

6 I, Maya Rose, Court Reporter, do
7 hereby certify that I recorded by means of
8 stenotype the foregoing proceedings at the
9 time and place stated in the caption
10 hereof. That later, under my supervision,
11 the proceedings were transcribed by means
12 of computer-aided transcription, and the
13 foregoing represents a full, true, and
14 correct transcript of the proceedings on
15 said occasion.

16 I further certify that I am
17 neither of counsel nor of kin to any
18 parties of said cause, nor am I in any
19 manner interested in the result thereof.

20

21

22

23 Maya Rose - ACCR# 242