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DATE: 1998 Nov 4

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Pickner vs. Owens-Corning Joseph Ross Hobby

11/4/98

Page 1 to Page 119

Condensed Transcript and Concordance

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SYLVIN W. PICKNER
and EVELYN I. PICKNER,
Plaintiffs,
vs.
OWENS CORNING, et al.,
Defendants.

NO-2-09390-1 SEA

VIDEOTAPE DEPOSITION OF JOSEPH ROSS HOBBY
November 4, 1998

Reported By:
MARY P. NELSON, CSR 3553

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EXAMINATION BY MR. BERGMAN

PLAINTIFF'S EXHIBITS:

1 Copy of a three-page deposition notice.
2 39 pages consisting of a cover letter to Matthew Bergman from Kenneth Petty dated 8/25/98 and attached responses to interrogatories, requested for production of documents, and requests for admissions.
3 Copy of a 28-page "Gypsum Division Organizational Chart," dated 11/1/70, PSLP 0230-237.
4 Copy of four pages of organizational charts dated April 1972, PSLP 0291-298.
5 Copy of a photograph.
6 Copy of a three-page Technical Bulletin dated March 1972, PSLP 0321-327.
7 Copy of a seven-page memo regarding "Health Hazards," dated 3/1/75, PSLP 0302-308.
8 Copy of a one-page memo regarding "Seasonal Hazardous," dated 3/29/76, PSLP 0326-335.

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PLAINTIFF'S EXHIBITS (CONT'D):

9 Copy of 19-pages of Raw Material Bulletin PSLP 0214-226.
10 Copy of a one-page memo regarding "Asbestos Fiber," dated 12/5/71, PSLP 0333.
11 Copy of a one-page memo regarding "Asbestos Fiber," dated 4/20/72, PSLP 0309.
12 Copy of a one-page memo regarding "Plastic - Plastic Gun Cement," dated 8/7/72, PSLP 0304.
13 Copy of a one-page memo regarding "Asbestos - Labeling Kaiser Cement Products," dated 9/28/72, PSLP 0302.
14 A videotape.
15 Copy of a two-page "Asbestos Toxicology Report" revised 4/1/70, PSLP 0261-265.
16 Copy of a six-page memo regarding "Plant Joint Compound Job Operations," dated 3/1/74, PSLP 0495-500.
17 Copy of a two-page memo regarding "Asbestos - Labeling Kaiser Cement Products," dated 9/28/72, PSLP 0302-303.

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PLAINTIFF'S EXHIBITS (CONT'D):

18 Copy of a three-page letter to Frank Mortimer from Richard Hudson dated 3/14/72, PSLP 0307-309.
19 Copy of a two-page letter to Walter Petropoulos from W.R. Hazy dated 12/27/71, PSLP 0351-354.

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DEPOSITIONS: That, on Wednesday, the 4th day of November 1998, commencing at the hour of 9:30 a.m. thereof, at the LAW OFFICES OF JACKSON & WALLACE, 580

California Street, 15th Floor, San Francisco, California 94104, before me, MARY P. NELSON, Certified shorthand Reporter No. 3553, State of California, duly authorized to administer oaths pursuant to Section 2039(b) of the California Code of Civil Procedure, personally appeared JOSEPH ROSS HOBBY, called as a witness by the plaintiff and the said witness, being by me first duly sworn, was thoroughly examined and testified as hereinafter set forth.

LAW OFFICES OF WEINSTEIN & BERGMAN, 1201 Third Avenue, Suite 3300, Seattle, Washington 98101-3300.
represented by MATTHEW P. BERGMAN, Esq., appeared as counsel on behalf of the plaintiff.

LAW OFFICES OF JACKSON & WALLACE, 580 California Street, 15th Floor, San Francisco, California 94104, represented by GABRIEL A. JACKSON, Esq., and PAUL SAMBA, Esq., appeared as counsel on behalf of the defendant Kaiser Gypsum Company, Inc.
LAW OFFICES OF STEELE & BALES, P.C., 700 Fifth Avenue, Suite 5515, Seattle, Washington 98104, represented by KATHERINE H. STEELE, Esq., appeared as counsel on behalf of the defendant E.J. Bartells.

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LAW OFFICES OF HAINES, BROWN & SCHWETZEL, One Bush Street, 27th Floor, San Francisco, California 94104, represented by SCOTT T. BLACK, Esq., appeared as counsel on behalf of the Center for Class Recollection defendants, to the extent they have been named, served and remain in the action.

LAW OFFICES OF LANE, POWELL, SPEARS & LUBENSKY, 1420 Fifth Avenue, Seattle, Washington 98101-3330, represented by PAUL CLARK, Esq., appeared as counsel on behalf of the defendant W.R. Hazy.

LAW OFFICES OF WILLIAMS, KARTNER & STEIN, Two Union Square, 601 Union Street, Suite 1100, Seattle, Washington 98101-2780, represented by KENNETH S. PETTY, Esq., appeared via telephone as counsel on behalf of the defendant Kaiser Gypsum.

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(1) (WHEREUPON, PLAINTIFF'S EXHIBITS 1 THROUGH 13 (2) WERE MARKED FOR IDENTIFICATION).

(3) THE VIDEOGRAPHER: Ladies and gentlemen, we (4) are on the video record on November 4, 1998. And the time (5) is 9:39 a.m. I'm Steve Leftwich, a certified notary public (6) for the County of San Mateo representing Tooker & Antz, 818 (7) Mission Street, 5th Floor, San Francisco, California 94103. (8) Telephone area code 415-392-0650.

(9) This is the beginning of Videotape 1, Volume I (10) in the case of Sylvin W. Pickner and Evelyn I. Pickner (11) versus Owens Corning, et al., in the Superior Court of (12) Washington for King County, Case No. 98-2-09390-1 SEA for (13) the deposition of Joseph Hobby.

(14) The deposition is located at the offices of (15) Jackson & Wallace, 580 California Street, San Francisco, (16) California, noticed by attorneys for plaintiff and the (17) videotape is produced by plaintiff.

(18) Counsel, would you please identify yourselves (19) and your clients?

(20) MR. BERGMAN: Matthew Bergman for the (21) plaintiff.

(22) MS. JACKSON: Gabriel Jackson for Kaiser (23) Gypsum.

(24) MS. STEELE: Katherine Steele for E.J. (25) Bartells.

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(1) MR. CLARK: Paul Clark for W.R. Grace.

(2) MR. PETTY: This is Ken Petty on the (3) telephone, Washington counsel for

Kaiser Gypsum in the (4) Pickner case.

(5) THE VIDEOGRAPHER: The reporter may swear in (6) the deponent. (7)

(8) JOSEPH R. HOBBY

(9) having been duly sworn,

(10) testified as follows:

(11) EXAMINATION BY MR. BERGMAN

(12) MR. BERGMAN: Q. Could you please state your (13) full name for the record, sir?

(14) A. Joseph Ross Hobby.

(15) Q. And where do you live?

(16) A. I live in Danville, California.

(17) Q. And what is your current position?

(18) A. Vice President Human Resources for Kaiser (19) Materials Corporation.

(20) Q. And how long have you held that position, sir?

(21) A. Approximately five years.

(22) Q. Sir, I'm handing you what has been marked as (23) Plaintiff's Exhibit 1 which is the Notice of Deposition in (24) this case and ask you to look at it, please, and I have a (25) few questions to ask you regarding this notice.

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(1) This is a 30(b)(6) deposition on various (2) topics relating to this case. And I want to go through (3) those topics with you briefly this morning. The first (4) topic, and that's toward the bottom of Page 1, is Kaiser (5) Gypsum's corporate history, organization, and governance (6) between 1957 and 1977. Are you the witness that Kaiser (7) Gypsum has designated to speak for the company on that (8) topic?

(9) A. Yes.

(10) Q. And second topic, sir, is Kaiser Gypsum's (11) relationship with Kaiser Cement. Are you the witness that (12) has been designated to speak for Kaiser Gypsum on that (13) topic?

(14) A. Yes.

(15) Q. The third topic, sir, is asbestos-containing (16) joint compounds manufactured by Kaiser Gypsum and intended (17) application of those products. Are you the witness who is (18) going to speak for Kaiser Gypsum on that subject matter?

(19) A. Yes.

(20) Q. The fourth topic is Kaiser Gypsum's knowledge (21) of the dangers associated with asbestos. Are you the (22) individual who Kaiser Gypsum has designated to speak for the (23) company on that subject matter?

(24) A. Yes.

(25) Q. The fifth topic is sales of Kaiser Gypsum

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(1) joint compounds in the Portland and Vancouver area. Are you (2) the witness on that subject matter?

(3) A. Yes.

(1) Q. Finally, our next is the sixth item, is Kaiser (5) Gypsum's answers to the interrogatories that plaintiffs (6) propounded in this case. Are you the witness on that (7) subject matter, sir?

(8) A. Yes.

(9) Q. The seventh topic is the involvement of Kaiser (10) Gypsum Company with the Gypsum Association. Are you the (11) witness that Kaiser Gypsum has designated on that subject (12) matter?

(13) A. Yes.

(14) Q. The eighth topic is Kaiser Gypsum's business (15) dealings with Owens Corning Fiberglas Corporation. Are you (16) the witness who Kaiser Gypsum has designated to speak for (17) the company on that subject matter?

(18) A. Yes.

(19) Q. The ninth topic is Kaiser Gypsum's document (20) retention policies. Are you the designated witness on that (21) matter?

(22) A. Yes.

(23) Q. And finally the tenth topic is certain (24) documents that are listed in the Notice of Deposition, (25) Exhibit 1. Are you the witness who is designated on those

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(1) subject matters?

(2) A. Yes.

(3) Q. Thank you, sir.

(4) MS. JACKSON: Counsel, I'm going to interrupt (5) you just for a moment. To the extent that we have (6) objections to the various topics I'm going to wait until you (7) hit the topics before making objections, all right?

(8) MR. BERGMAN: I understand, Counsel.

(9) Q. I'm handing you now Exhibit 2 which I will (10) represent to you is Kaiser Gypsum's Responses to Plaintiff's (11) Interrogatories and Requests for Admissions in this case, (12) and I'd ask you first of all to turn to the tabbed page (13) which is the signature page. And that is Page 15. Is that (14) your signature, sir?

(15) A. Yes.

(16) Q. And did you review these interrogatories on (17) behalf of Kaiser Gypsum prior to their submission to (18) plaintiffs?

(19) A. Yes.

(20) Q. I'd like to ask you then some general (21) questions, first of all on the corporate structure and (22) organization of Kaiser Gypsum. The first question, and I (23) would direct your attention to basically Interrogatories (24) 1, 2, and 3, and 14. Could you start, sir, by describing (25) the relationship between Kaiser Gypsum and Kaiser Cement

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(1) between the years of 1965 and 1975?

(2) MS. JACKSON: I'm going to object to this (3) question in that Kaiser Cement is not

a party to this (4) litigation and your inquiry is inappropriate in that regard. (5) Kaiser Gypsum is the party. Kaiser Cement is not. (6) MR. BERGMAN: Q. You can answer the question, (7) sir?

(8) A. Would you repeat the question?

(9) Q. Yes, I would. Can describe the corporate (10) relationship between Kaiser Gypsum and Kaiser Cement between (11) the years of 1965 and 1975?

(12) A. Yes.

(13) Q. Would you do that for me, please?

(14) A. **Kaiser Gypsum Company, Inc. is a wholly-owned (15) subsidiary of Kaiser Cement Corporation.**

(16) Q. And how was it that Kaiser Gypsum came to be (17) incorporated in the State of Washington?

(18) A. I don't know.

(19) Q. Do you know when Kaiser Gypsum was associated -- (20) incorporated in the State of Washington?

(21) A. Yes.

(22) Q. And when was that, sir?

(23) A. 1952.

(24) Q. Was, between the years of 1965 and 1975 what (25) was the division of products manufactured by Kaiser Gypsum

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(1) and Kaiser Cement? I'd be happy to clarify that question if (2) you need me to do so.

(3) MS. JACKSON: Objection insofar as you refer (4) to Kaiser Cement products. The plaintiff has not testified (5) to any products manufactured by Kaiser Cement. Kaiser (6) Gypsum products, of course, you may inquire about.

(7) MR. BERGMAN: Q. What were the products that (8) were manufactured by Kaiser Cement as opposed to Kaiser (9) Gypsum?

(10) MS. JACKSON: During what years, Counsel?

(11) MR. BERGMAN: Q. 1965 to 1975.

(12) MS. JACKSON: If you know.

(13) THE WITNESS: Well, to the extent I know (14) Kaiser Cement was in the cement manufacturing business at (15) that time primarily.

(16) MR. BERGMAN: Q. And what business primarily (17) was Kaiser Gypsum involved in the 1965 to 1975 time frame?

(18) A. **Primarily wallboard and accessories.**

(19) Q. Where were Kaiser Gypsum's corporate (20) headquarters located in the 1965 to 1975 time frame?

(21) A. **Based on the information I've been provided (22) they were located in the Kaiser Center in Oakland, (23) California.**

(24) Q. And where was Kaiser Cement's corporate (25) offices located in the years of 1965 to 1975?

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(1) MS. JACKSON: Same objection.

(2) THE WITNESS: To the best of my knowledge they (3) were located in the Kaiser Center in Oakland, California.

(4) MR. BERGMAN: Q. Did Kaiser Cement and Kaiser (5) Gypsum Company have separate accounting departments?

(6) A. **To the best of my knowledge, yes.**

(7) Q. And did Kaiser Gypsum and Kaiser Cement have (8) separate management?

(9) MS. JACKSON: Can I just object, Counsel. (10) Perhaps if you ask a little corporate history as a preamble (11) there might be some confusion over the names. At one point (12) the Kaiser Cement name included Gypsum in its title. It (13) would be a little more clear for the witness to have that (14) history first.

(15) MR. BERGMAN: Q. Could you provide us with -- (16) was there a time, sir, when Kaiser Gypsum and Kaiser Cement (17) had the same name in their title?

(18) A. **There was a time when the corporate entity was (19) called Kaiser Cement & Gypsum Corporation.**

(20) Q. And was Kaiser Cement & Gypsum -- was Kaiser (21) Cement & Gypsum Corporation located at the Kaiser Center (22) during the 1965 to 1975 time period?

(23) A. **To the best of my knowledge, yes.**

(24) Q. And was Kaiser Cement & Gypsum Company a (25) separate entity from Kaiser Gypsum Company during that same

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(1) time frame, sir?

(2) A. Yes.

(3) Q. Was there -- did Kaiser Gypsum Corporation (4) receive its instructions from Kaiser Cement & Gypsum (5) Corporation in the 1965 to 1975 time frame?

(6) MS. JACKSON: Objection, the word (7) "instructions" is vague.

(8) THE WITNESS: I don't know.

(9) MR. BERGMAN: Q. What was the level of (10) day-to-day interaction between Kaiser Gypsum Company and (11) Kaiser Cement & Gypsum Company in the 1965 to 1975 time (12) frame?

(13) MS. JACKSON: If you could, Counsel, clarify (14) the years that the company was called a company entitled (15) "Kaiser Cement & Gypsum Company," was in existence, it would (16) clarify for the witness.

(17) MR. BERGMAN: Q. Sir, during what years was (18) there an entity known as Kaiser Gypsum & Cement Company?

(19) A. **From roughly 1964 to approximately 1978.**

(20) Q. Between 1964 and 1978, sir, what was the level (21) of day-to-day interaction between Kaiser Gypsum Company and (22) Kaiser Cement &

Gypsum Company?

(127) A. I don't know.

(128) Q. Did Kaiser Cement & Gypsum Company and Kaiser (125) Gypsum Company have the same in-house counsel? I'm not

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(1) asking you for any comments or communications with that (2) counsel but did they employ the same in-house counsel?

(3) MS. JACKSON: I'm just going to place an (4) objection on the record that I'd like to apply to any (5) question that involves Kaiser Cement is not a party to this (6) action. Plaintiff has not testified in his deposition he (7) was exposed to or claiming exposure to products manufactured (8) by Kaiser Cement, and I'd like a running objection to any (9) questions on that.

(10) MR. BERGMAN: I will give you a running (11) objection on that subject matter, Counsel.

(12) THE WITNESS: I don't know.

(13) MR. BERGMAN: Q. Sir, I'm handing you what (14) has been marked as Exhibit 3.

(15) MS. JACKSON: Can you indicate what the (16) plaintiff number on the bottom?

(17) MR. BERGMAN: Yeah, I'm sorry, the plaintiff (18) number is 238.

(19) Q. Sir, does Exhibit 3 appear to be an (20) organizational chart of Kaiser Cement & Gypsum Corporation, (21) the Gypsum Division?

(22) A. That's what the title of the front page says.

(23) Q. And is this one of the document that you (24) reviewed in preparation for this deposition?

(25) A. Yes.

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(1) Q. Okay. I would like to turn, direct your (2) attention to page, the third page which is designated as (3) Page No. 240. Who was Mr. R.A. Costa?

(4) A. Well, according to the chart he was Vice (5) President and General Manager of Kaiser Gypsum.

(6) Q. And who was president of Kaiser Gypsum during (7) that 1970 time frame?

(8) A. I don't know.

(9) Q. How would that information be obtained?

(10) A. I don't have any idea off the top of my head.

(11) Q. Was there a president of Kaiser Gypsum (12) Corporation?

(13) A. I don't know.

(14) Q. Who if anybody did Mr. Costa report to? And (15) am I pronouncing his name right first of all?

(16) A. Yeah. I have not seen an organization chart (17) with Mr. Costa's name on it reporting to someone else.

(18) Q. So to the best of your knowledge Mr. Costa was (19) the chief executive officer of Kaiser Gypsum Corporation?

(20) A. Those aren't my words. I think he was Vice (21) president and general manager.

(22) Q. What were Mr. Costa's responsibilities as Vice (23) President and General Manager of Kaiser Gypsum Company?

(24) A. I can only deduce from the organizational (25) chart that his business was to run, his role was to run that

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(1) company on a day-to-day basis.

(2) Q. And sitting here today you don't know whether (3) or not Mr. Costa reported to anybody else?

(4) A. No, I've not seen an organizational chart that (5) said that he, nor have I read anything that said that Mr. (6) Costa reported to someone else.

(7) Q. Was Kaiser Gypsum in the 19 -- Kaiser Gypsum (8) Company, a public or private corporation in the year 1970 (9) when this chart was generated?

(10) A. It was a wholly-owned subsidiary of Kaiser (11) Cement Corporation or Kaiser Cement & Gypsum Corporation, (12) depending on the time frame.

(13) Q. Do you know whether or not Mr. Costa reported (14) to Kaiser Cement & Gypsum Company in 1970?

(15) A. I don't know.

(16) Q. I'm going to go down the list of some of the (17) individuals on this organizational chart and for the record (18) I'm referring to Page 240. What were the roles of the (19) executive assistant, the two executive assistants listed on (20) this chart, Mr. Eshelman and Mr. Orzech?

(21) A. I don't know. I've not seen a job (22) description, nor do we have any job descriptions for those (23) positions.

(24) Q. Do you have any knowledge whatsoever as to (25) what Mr. Eshelman or what Mr. Orzech did in the

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(1) organization?

(2) A. No, I don't. Perhaps I should say at this (3) point that the day-to-day business operations of Kaiser (4)

Gypsum Corporation ended in 1978 or about that time. There (5) are no current employees of Kaiser Gypsum. So it's been (6) over between 20 years since there was any employees there. (7) I've been with Kaiser companies roughly 18 years. So I have (8) no direct knowledge of these people and what they did. I (9) can merely go from the documents that have been provided to (10) me. And as I look at these documents as you have them in (11) front of you, I can make certain conclusions but --

(12) Q. What conclusions can you make, sir?

(13) MS. JACKSON: Objection,

overbroad.

(14) MR. BERGMAN: Q. Based on this document, sir, (15) what conclusions can you make?

(16) A. Well, I can conclude that Mr. Costa was the (17) Vice President and General Manager of the Kaiser Gypsum (18) Company, for example.

(19) Q. Looking down the chart, sir, there's the Group (20) Manager, Wallboard Accessories and Metal Products. What (21) were, what category of products were Wallboard Accessories?

(22) MS. JACKSON: I'm going to object, Counsel. (23) We've reached a stipulation with local counsel for Kaiser (24) Gypsum that the products inquired into would be limited to (25) the joint compound products that your client has testified

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(1) that he was exposed to. So insofar as your question exceeds (2) that narrow scope pursuant to stipulation I would object.

(3) MR. BERGMAN: Q. I'm not asking for any (4) detailed information. I'm just concerned about -- I would (5) like to know, and this falls within the ambient of my (6) request of organization and governance, what were the (7) general category of wallboard accessories. I'm not asking (8) specific product questions at this time.

(9) A. Well, as I understood it I think they're (10) referred to in our interrogatories. They generally consist (11) of the various joint compounds.

(12) Q. And who did, who was, first of all, J.W. (13) Blewett?

(14) A. Well, according to the chart he was group (15) Manager for the Wallboard Accessories and Metal Products (16) operations.

(17) Q. Do you know whether Mr. Blewett is still (18) living?

(19) MS. JACKSON: Counsel, I believe we provided (20) that to you in the answers to interrogatories that were the (21) subject of your motion.

(22) MR. BERGMAN: I understand.

(23) THE WITNESS: I'd have to see the document (24) that I provided. I have not committed -- I know a number of (25) the employees on these charts are deceased and I haven't

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(1) memorized them.

(2) MR. BERGMAN: Q. Who did Mr. Blewett report (3) to within Kaiser Gypsum?

(4) MS. JACKSON: What time frame?

(5) MR. BERGMAN: Q. 1970, the date that this (6) chart was generated?

(7) A. Well, according to the chart he reported to (8) Mr. Costa. That's the way I would read it.

(9) Q. Looking down the chart, sir, there's Vice (10) President of Sales. What was the function of the Sales (11) Department of Kaiser Gypsum in the 1965

to '75 period? (10) Correction, in the 1964 to '78 period.

(11) MS. JACKSON: Could you repeat the question, (14) Counsel?

(12) MR. BERGMAN: Q. Yeah. What was the function (14) of the Sales Department of Kaiser Gypsum in the 1964 to 1978 (17) time period?

(13) A. Well, I have no direct knowledge but I'll (19) venture that they were in charge of selling the various (20) products manufactured at the, on the manufacturing side of (21) the business.

(14) Q. And would that include joint compounds?

(15) A. Yes, I would think so.

(16) Q. And who did the Vice President for Sales (25) report to within Kaiser Gypsum Company?

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(17) A. Well, the chart would indicate to me that he (2) reported to Mr. Costa.

(18) Q. The next question is what was the role of the (4) vice president for merchandising within Kaiser Gypsum in the (5) 1964 to 1978 time period?

(19) A. I don't know.

(20) Q. Why was there a separate merchandising and (6) Sales Department?

(21) A. I don't know.

(22) Q. Does anybody at Kaiser Gypsum have any (11) knowledge regarding why there was a separate sales and (12) merchandising department?

(23) A. Kaiser Gypsum has no employees.

(24) Q. Is the answer to my question that nobody (15) besides yourself has any knowledge as to why there was a (16) separate Merchandising and Sales Department?

(25) MS. JACKSON: No one at the company.

(26) THE WITNESS: You asked was there anyone at (19) Kaiser Gypsum who has knowledge and I indicated Kaiser (20) Gypsum has no employees.

(27) MR. BERGMAN: Q. Is there anybody else (22) besides yourself that would be able to better answer the (23) question as to what the different function of the (24) Merchandising and Sales Department was?

(28) A. If there is I don't know who that would be.

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(29) Q. Who did the vice president for merchandising (2) report to within Kaiser Gypsum?

(30) A. According to the chart he would have reported (4) to Mr. Costa.

(31) Q. The next department is research and (34) development. What was the function of the research and (37) development department within Kaiser Gypsum in the 1964 to (38) 1978 time period?

(32) A. I have no direct knowledge. I

would assume, (19) though, that they were generally involved in researching and (21) developing and/or improving existing or new products.

(33) Q. In the 1964 to 1978 time period were there (13) ongoing changes in the products that were manufactured by (14) Kaiser Gypsum?

(34) MS. JACKSON: I'm going to object it's vague (16) and overbroad.

(35) THE WITNESS: I have no direct knowledge but I (19) would assume that if they had a department for that purpose (19) that that department did something and there were changes.

(36) MR. BERGMAN: Q. And I guess sir, in light of (21) counsel's prior objection, which is well taken, I'm trying (22) to ascertain whether there was a constant evolution of (23) products within the Gypsum Division or, and whether that was (24) part of the ongoing operations of the company.

(37) MS. JACKSON: To the extent that you know.

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(38) THE WITNESS: I don't have any direct (2) knowledge but I would assume, to use your word, that there (3) was an evolution or certainly new products were introduced (4) and those new products may have replaced existing products, (5) that sort of thing. That's common in industry.

(39) MR. BERGMAN: Q. And was one of the functions (7) of the Research & Development Department to integrate new (8) scientific developments that occurred between 1964 and 1978?

(40) A. I don't know. [

(41) Q. Was one of the functions of the Research & (11) Development Department to deal with any safety concerns that (12) might have arisen regarding products manufactured or sold by (13) Kaiser Gypsum Company?

(42) A. I don't know.

(43) Q. Was there a separate department within Kaiser (25) Gypsum that was responsible for insuring the safety of its (17) products?

(44) A. To the best of my knowledge there was not.

(45) Q. Who at Kaiser Gypsum would have been (20) responsible for insuring the safety of the products that (21) were sold to the public?

(46) MS. JACKSON: Over what time frame?

(47) MR. BERGMAN: 1964 to 1978.

(48) THE WITNESS: Ultimately I would have thought (25) Mr. Costa would be.

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(49) MR. BERGMAN: Q. Was there anybody besides (2) Mr. Costa at Kaiser Gypsum who was responsible for insuring (3) the safety of the products that were sold by Kaiser Gypsum (4) to the public?

(50) A. Well, I don't know where you're

going with (6) that question. I'd answer it generally that, you know, the (7) management team, all of the managers would shoulder some (8) responsibility for the safety of their product.

(9) Q. And by management team would that be fair to (10) say that the vice presidents who are listed on the, kind of (11) on the, toward the bottom of Page 240?

(12) A. I would say most of them. There may be some (13) people on there that, for example, the Financial Analyst or (14) the Vice President and Controller may not have a very strong (15) link to the safety efforts. But someone like the vice (16) president for operations in the manufacturing environment (17) may have a greater responsibility.

(18) Q. And moving then to the Vice President for (19) Operations, who did that individual report to?

(20) A. According to the chart he reported to Mr. (21) Costa.

(22) Q. And would the Vice President for Operations (23) have been the primary individual other than Mr. Costa (24) responsible for insuring the safety of Kaiser Gypsum's (25) products?

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(26) A. I don't know.

(27) Q. You had indicated individuals in the (3) management team who were responsible for insuring the safety (4) of Kaiser Gypsum's products and you identified the Vice (5) President of Operations. Would the manager of Research & (6) Development also have shared some responsibility for (7) insuring the safety of Kaiser Gypsum's products?

(8) A. He may or he may not. I don't know.

(9) Q. How about the Vice President of merchandising?

(10) A. I don't know.

(11) Q. And how about the vice president of sales?

(12) A. I don't know.

(13) Q. And how about the vice president for (14) manufacturing?

(15) A. I don't know.

(16) Q. And how about the, the group manager of (17) wallboard accessories?

(18) A. Mr. Blewett?

(19) Q. Yes.

(20) A. I don't know.

(21) Q. So the only individuals thus far, so if I (22) understand your testimony, sir, the two individuals that you (23) have identified as being responsible for insuring the safety (24) of Kaiser Gypsum's products are the vice president and (25) general manager, Mr. Costa, and the vice president of

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(1) operations, at this point Mr. Schaper?

(2) MS. JACKSON: I'm going to object

insofar as (1) it misstates his testimony. I think his testimony was that (4) the management team.

(5) MR. BERGMAN: Well, let -- well, Counsel, I'm (6) going to start objecting to your speaking objections. (7) You're certainly entitled to object.

(8) Q. And if I've misstated your testimony in any (9) way, Mr. Hobby, please enlighten me as to how I've done (10) that.

(11) A. I think you've mischaracterized it. What I (12) tried to say was that everyone in management has a (13) responsibility, okay, for the safety of the employees and/or (14) the products. I also indicated to you I don't know if any (15) one person in the organization had absolute day-to-day (16) responsibilities for that other than I would assume, and I (17) know that's dangerous to do, but Mr. Costa as the head of (18) the organization would have overall responsibility. Beyond (19) that I cannot say to you whether an individual within this (20) chart has greater or lesser responsibility than another. I (21) have no direct knowledge.

(22) Q. Sir, I'm handing you a picture an exhibit (23) marked as No. 5. I do have a color photograph if that would (24) be easier for you. Is that Mr. Costa?

(25) A. I don't know.

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(1) MS. JACKSON: Counsel, I just would like an (2) opportunity to see actually the color photo --

(3) MR. BERGMAN: Absolutely.

(4) MS. JACKSON: -- and also advise you that this (5) was not provided to us prior to the deposition. Thank you.

(6) THE WITNESS: I've never seen this picture (7) before, I've never met Mr. Costa, nor have I ever seen a (8) photo of Mr. Costa where he has been identified to me. So I (9) would have no way of identifying Mr. Costa.

(10) MR. BERGMAN: Q. Is Mr. Costa still living?

(11) A. To the best of my knowledge he is not. But (12) again I would refer you to the listing that I, was provided (13) to you and remind you that I haven't committed all the (14) deceased persons to memory.

(15) Q. I understand, sir.

(16) A. But I understand Mr. Costa is not living.

(17) Q. Do you know when Mr. Costa ceased to be vice (18) president and general manager of Kaiser Gypsum Company?

(19) A. No.

(20) Q. What was, directing your attention once again (21) to Exhibit 240, the vice president of manufacturing, who did (22) that individual report to?

(23) A. According to the chart I would indicate that (24) he reported to a Mr. Schaper I guess you would pronounce it,

(25) S-C-H-A-P-E-R.

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(1) Q. Now sir, if you would, please, turn to Page (2) 241. It appears to be a breakdown of the sales division or (3) the Sales Department of Kaiser Gypsum. And we've talked (4) about, quite a bit about who reports up the chain of (5) command. I'm going to try to address some questions to you (6) about how information is disseminated down the chain of (7) command.

(8) Would -- well, first of all, if I could direct (9) your attention once again, though, I'm sorry, to Page 240. (10) And I'd like to direct your attention to the line toward the (11) bottom of the page, the five vice presidents?

(12) A. I see it.

(13) Q. Okay. Was information concerning the safety (14) of Kaiser Gypsum products shared between the various vice (15) presidents listed on Page 240?

(16) MS. JACKSON: During what time frame?

(17) MR. BERGMAN: Q. During 1964 to 1978. And (18) let me just say for the record, Mr. Hobby, unless I say (19) otherwise, during my examination this morning my time frame (20) will be 1964 to 1978.

(21) MS. JACKSON: And just for the record to be (22) absolutely clear, Kaiser Gypsum's products became (23) asbestos-free in 1975. So to the extent you're inquiring (24) about information past the 1975 date I would object.

(25) THE WITNESS: I lost track of the question.

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(1) MR. BERGMAN: Q. That's fine, Mr. Hobby. (2) It's hard when a bunch of lawyers ask questions and go back (3) and forth, I know.

(4) A. That's okay.

(5) Q. I'd like to direct your attention on Page 240 (6) to the five individuals listed in the vice president (7) category. And we've spoken a lot about them. And I believe (8) you said that all of those individuals would report to Mr. (9) Costa. And my question to you now is would these (10) individuals, these five vice presidents have been (11) responsible for sharing information between themselves (12) regarding the safety of Kaiser Gypsum's products?

(13) A. I have no direct knowledge of the answer to (14) that question. Whether or not they would have had a (15) responsibility as you put it to share information, I have (16) not seen that in any job title or anything. I would say as (17) a normal course of business issues such as safety may be (18) would be shared between various departments, yes.

(19) Q. So as a normal course of business then the (20) various vice presidents would have been expected to

share (21) information concerning the safety of Kaiser Gypsum's (22) products?

(23) A. Well, when you say share, I don't know whether (24) or not there was some responsibility or directive, for (25) example for Mr. Hague to communicate to Mr. Crowle about

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(1) some safety item, whether or not he would have a (2) responsibility to do that. I would indicate to you that I'm (3) sure information was shared based on probably the individual (4) determination of that manager.

(5) Q. So, and I understand that, you know, we're (6) talking about the corporate structure and we may not have (7) precise directives concerning every interaction and every (8) responsibility that each corporate officer has in relation (9) to every other corporate officer. However, had say the (10) manager of research development learned of information (11) regarding the, learned that Kaiser Gypsum's products may not (12) be safe when used as intended would that have been the type (13) of information that would have been shared to the vice (14) president of sales responsible for selling those products to (15) the public?

(16) MS. JACKSON: Calls for speculation.

(17) THE WITNESS: All I can say to that is that (18) I've never seen a document that would indicate as you have (19) just stated.

(20) MR. BERGMAN: Q. Based on your knowledge of (21) the company overall would you have expected the vice (22) president of sales to have been informed of any defects of (23) the product that rendered it dangerous when used as (24) intended?

(25) A. That would be speculative on my part. I could

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(1) speculate that on that Mr. Bergman, but I have no direct (2) knowledge.

(3) Q. And I would understand from your answer that (4) you're not aware of anybody else at Kaiser Gypsum that would (5) know whether the Research & Development Department would (6) have been responsible for sharing safety information with (7) the Sales Department?

(8) A. No, I've never seen a document or anything in (9) writing or anything that I've been, any of the information (10) I've reviewed that would cause me to be able to answer that (11) question positively yes.

(12) Q. Now if we could go back to Page 241?

(13) MS. JACKSON: Just for the record, Counsel, (14) you have not designated 241 as a document you wish to (15) examine our witness on.

(16) MR. BERGMAN: Yes, I do, Counsel. My (17) intention in this designation was to

refer to the first page (18) of these documents, not to list every page of the document (19) that was indicated. But I will, in light of your objection (20) I will keep that in mind in the course of my examination.

(21) MS. JACKSON: My objection was that it was not (22) on the list. Now you're telling me that you designated (23) incomplete listing of document numbers or you intended to (24) designate just the Page 1? Is that it? Because what I was (25) just objecting to was document 0241 was not designated in

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(1) your notice. So my objection would be it's outside the (2) scope of the notice.

(3) MR. BERGMAN: I understand, Counsel, and (4) insofar as I refer to question 241 such reference is in (5) pursuit of my general inquiry concerning the corporate (6) history and governance of Kaiser Gypsum, not the document (7) per se.

(8) Q. And my question to you, Mr. Hobby, is what (9) were the general responsibilities of the vice president of (10) sales of Kaiser Gypsum Company?

(11) MS. JACKSON: And just for the record so that (12) you know, not having seen the complete designations in your (13) notice and not having a clarifying letter or phone call (14) about the nature of your notice, we have not prepared and (15) reviewed the documents that are not listed on your notice.

(16) MR. BERGMAN: I understand.

(17) MS. JACKSON: So my objection is going to be (18) that we've not had an opportunity to review them and that he (19) had been given incomplete numbers and I'm going to object (20) insofar as the documents are not complete.

(21) MR. BERGMAN: Q. Okay. What is the general (22) responsibility of the Sales Department, Mr. Hobby? And I (23) will ask you to look at Page 241 only insofar as it helps (24) you formulate an answer. If it doesn't help you, just (25) ignore it.

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(1) MS. JACKSON: Referring back, Counsel, to the (2) date of this document which is on 0238 is 1970, November 1? (3) That's the limitation on your question?

(4) MR. BERGMAN: Q. No, my question is in (5) general what was the department, responsibility of the Sales (6) Department of Kaiser Gypsum Company in the 1964 --

(7) MS. JACKSON: If you know.

(8) THE WITNESS: I think I already answered that (9) question but I have no direct knowledge. I have not seen a (10) job description. But I did venture an assumption that the (11) function of the Sales Department was to sell the products (12) that are manufactured by the company.

(13) MR. BERGMAN: Q. Was one of the -- what (14) department of Kaiser

Gypsum is, was responsible for (15) communicating product information to customers?

(16) MS. JACKSON: Objection, vague. "Product (17) information" is unclear.

(18) THE WITNESS: I don't know who had (19) responsibility for that.

(20) MR. BERGMAN: Q. I'm not talking about the (21) individual, I'm talking about the organization.

(22) A. I could guess but I have no direct knowledge (23) of who would have had responsibility for that specific (24) function.

(25) Q. What is your best understanding? Well, let me

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(1) ask you this: Was there an entity at Kaiser Gypsum that (2) communicated information regarding the use and application (3) of Kaiser Gypsum products to the customers?

(4) A. Well, as far as I know the Sales Department no (5) doubt communicated with its customers. But there may have (6) been other departments that communicated with customers as (7) well.

(8) Q. What department, if any, at Kaiser Gypsum was (9) responsible for communicating safety information to (10) customers?

(11) A. I have no direct knowledge.

(12) Q. Was there a department at Kaiser Gypsum that (13) had responsibility for communicating safety information to (14) the public, the users of your product?

(15) A. I don't know. I don't know.

(16) Q. Is there anybody who knows whether there was (17) any department at Kaiser Gypsum responsible for (18) communicating product safety information to the public?

(19) A. I don't know.

(20) Q. I'd like you to look at Page 244 and that is (21) of this exhibit.

(22) MS. JACKSON: Same objection as to the (23) incompleteness and lack of designation. Objection to the (24) inquiry outside the scope of the notice.

(25) MR. BERGMAN: Q. Kaiser Gypsum as I

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(1) understand it, sir, manufactured joint compounds that (2) contained asbestos during certain years; is that correct, (3) sir?

(4) A. That's correct.

(5) Q. And what plants, what manufacturing facilities (6) were responsible or manufactured asbestos-containing joint (7) compounds?

(8) MS. JACKSON: I'm going to object insofar as (9) the joint compounds in question would have emanated from one (10) plant in the Pacific Northwest. The inquiry on other plants (11) is inappropriate.

(12) MR. BERGMAN: Q. Go ahead and

answer the (13) question, sir.

(14) A. In the research I did I didn't research all (15) the operations that may have or may not have produced joint (16) compounds. I focused my research in the Seattle plant. But (17) I do know that other plants did, but I would be hard pressed (18) to categorically say what all the plants manufactured.

(19) Q. Why did you focus your research on the Seattle (20) plant, sir?

(21) A. Because based on the advice of counsel, Mr., (22) the Pickner case involved was localized to that region.

(23) Q. What years did the Seattle plant manufacture (24) asbestos-containing joint compounds?

(25) A. Roughly from 1969 to 1975.

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(1) Q. And is it your understanding, sir, that Mr. (2) Pickner was not exposed to joint compounds prior to 1969?

(3) A. I have no knowledge of Mr. Pickner's exposure.

(4) Q. And again, without going into any contents of (5) any communications, you focused your, you did not focus any (6) of your inquiry prior to 1969; is that correct?

(7) A. I read a lot of documents and reviewed a lot (8) of documents that would give me some general knowledge. But (9) I'm telling you that I focused on the Seattle area and the (10) Pickner case because I understood that's what we were being (11) deposed on.

(12) Q. And was -- you're aware, sir, and this kind of (13) gets into one of the other subject areas we're going to talk (14) about today which is sales of asbestos-containing joint (15) compounds in the Portland and Vancouver area. Would those (16) products have been, and is it your testimony, sir, that -- (17) well, where were joint compounds that were manufactured, (18) that were sold in the Portland, greater Portland and (19) Vancouver area manufactured?

(20) A. Well, would I say they were generally (21) manufactured at the Seattle plant.

(22) Q. And that was located kind of Harbor Island (23) area?

(24) A. I'm not familiar with the term "Harbor (25) Island."

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(1) Q. Located kind of south Seattle?

(2) A. In Seattle.

(3) Q. Okay.

(4) A. I've not been to the plant personally.

(5) Q. Okay. And so if I understand your testimony, (6) sir, at least after 1969, joint compounds that Mr. Pickner, (7) Kaiser Gypsum joint compounds that Mr. Pickner may have (8) worked around would have been manufactured primarily in (9) Seattle; is that correct?

(10) A. To the best of my knowledge. That's my (11) understanding, yes.
 (12) Q. And how about prior to 1969, sir?
 (13) MS. JACKSON: I'm going to object, Counsel, (14) it's not relevant.
 (15) MR. BERGMAN: It manifestly is relevant, (16) Counsel. The client was exposed from 1965 on.
 (17) Q. But you can go ahead and answer the question.
 (18) A. Perhaps if you tell me where he was exposed I (19) could more directly answer the question.
 (20) Q. Yeah. Mr. Pickner worked in Portland, greater (21) Portland and Vancouver, greater Portland, Oregon and (22) Vancouver, Washington.
 (23) A. Yes.
 (24) Q. And from approximately 1964, '65 on. So what (25) I'm trying to do is figure out if the Seattle plant didn't

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(1) start making asbestos-containing joint compounds until 1969 (2) where would this joint compound have been obtained prior to (3) that period?
 (4) MS. JACKSON: Well, it assumes facts not in (5) evidence that in fact there were exposures that I don't (6) believe have been testified to prior to the 1969 time frame.
 (7) MR. BERGMAN: Q. You can answer the question, (8) Mr. Hobby.
 (9) A. I'm getting a little confused.
 (10) Q. Okay.
 (11) A. But in 1969 is when we started manufacturing (12) joint compounds that contained asbestos. I don't know (13) whether or not we manufactured any joint compounds that (14) didn't contain asbestos. And I don't know specifically (15) whether or not there may have been some asbestos joint (16) compound that could have found its way to Portland through (17) some channel I'm not aware of.
 (18) Q. Okay. And I want to make sure I understand (19) your testimony. Are you testifying that Kaiser Gypsum did (20) not commence manufacturing asbestos-containing joint (21) compounds until 1969 or that it did not commence (22) manufacturing asbestos-containing joint compounds in Seattle (23) until 1969?
 (24) A. In Seattle.
 (25) Q. Okay. Prior to '69 did Kaiser Gypsum

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(1) manufacture asbestos-containing joint compounds?
 (2) A. I believe the answer to that is yes. Again I (3) haven't focused my research very much on what other plants (4) may have manufactured.
 (5) Q. Do you know whether asbestos-containing joint (6) compounds were manufactured at the Antioch plant?
 (7) MS. JACKSON: Objection, it's outside

the (8) scope of the notice.
 (9) THE WITNESS: I don't know.
 (10) MR. BERGMAN: Q. Do you know whether any (11) asbestos-containing joint compounds were manufactured in the (12) Delanco plant?
 (13) MS. JACKSON: Same objection.
 (14) THE WITNESS: I don't know. If you know the (15) answer to that perhaps you could give me a document or (16) something that would remind me. But based on my knowledge (17) as I sit here right now I don't know the answer to those (18) questions.
 (19) MR. BERGMAN: Q. Okay. And I'm referring to (20) Exhibit No. 244 -- or Page 244.
 (21) A. Yes.
 (22) Q. And that document indicates wallboard (23) accessories. And so based on that I'm --
 (24) A. What wallboard, where are you located at?
 (25) Q. I'm looking at the bottom line of the

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(1) organizational chart on Page 244.
 (2) A. Yes.
 (3) Q. Okay. And that is the basis on which I (4) inquired whether or not asbestos-containing joint compounds (5) were manufactured say at the Jacksonville plant?
 (6) MS. JACKSON: Well, to the extent that you're (7) looking at a document that you haven't designated in the (8) notice and you're asking him to speculate on what it means, (9) the document speaks for itself.
 (10) MR. BERGMAN: Q. You can answer the question, (11) Mr. Hobby.
 (12) A. Yeah. This would indicate that there were (13) some sort of wallboard accessories manufactured at those (14) various locations.
 (15) Q. And you previously testified that your (16) understanding of wallboard accessories included joint (17) compounds?
 (18) A. It included, yes.
 (19) Q. When did Kaiser Gypsum start manufacturing (20) asbestos-containing joint compounds?
 (21) A. I don't know the answer to that right off the (22) top of my head. Perhaps you can help me. I don't remember.
 (23) Q. Well, I don't know the answer to that (24) question, either, sir.
 (25) MR. PETTY: This is Ken Petty. Are we

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(1) anywhere near a break because I don't know what is happening (2) but I can't really hear anything. I can hear your questions (3) and some of Gaby, but I can't hear the witness at all.
 (4) MR. BERGMAN: I can try to move the phone a (5) little closer to the witness, Ken.
 (6) MR. PETTY: Okay.

(7) MR. BERGMAN: Watch if I screech while moving (8) the phone. I apologize in advance.
 (9) THE WITNESS: I guarantee you, I'm answering (10) them all, Ken.
 (11) MR. PETTY: Okay.
 (12) MS. JACKSON: Does that sound better, Ken?
 (13) MR. PETTY: It sounds better except now I got (14) something in my throat.
 (15) MS. JACKSON: I was going to say you don't (16) sound so hot.
 (17) MR. BERGMAN: Mr. Hobby was approximately five (18) feet away from the phone, Ken, so this may help things out a (19) little bit.
 (20) MR. PETTY: I've been hearing some and not (21) hearing some but I guess I would just like the record to (22) reflect, and I'm going to keep quiet as best I can, Matt, (23) but the tenor of the questions that I hear, I think more or (24) less all of them assume that this witness knows or has to

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(1) know the answers to questions. And I believe if you look at (2) the law on Civil Rule 30(b)(6), I think you need to find out (3) what he knows personally and then what is reasonably known (4) to him or what he knows from reasonably available (5) information, and I don't think the law allows you or anybody (6) to assume that the company can always produce a witness that (7) can answer every one of your questions. So I would just (8) interpose an objection generally speaking to the tenor of (9) your questions which I think assume facts not in evidence.
 (10) MR. BERGMAN: Well, the third sub -- and I (11) don't want to belabor Mr. Hobby who I'm sure has places he'd (12) rather be, with extended colloquy on the record. But the (13) third item of this notice of deposition specifically (14) requests asbestos-containing joint compounds manufactured by (15) Kaiser Gypsum and intended application of said products. (16) There was no date restriction on that, so I am concerned (17) that we have no information prior to 1969. I don't believe (18) that this is merely an academic concern given that the (19) evidence in this case is that Mr. Pickner worked as a (20) painter upon being released from the Navy in '64.
 (21) MR. PETTY: I think the evidence in this case (22) does not establish any exposure to Kaiser Gypsum products (23) before 1969. You may think it does or wish that it does but (24) I don't believe that it does. I don't think Mr. Pickner was (25) able to pinpoint any exposure in those years and certainly

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(1) neither of his three brothers were able to do so.
 (2) MR. BERGMAN: I'm just very

concerned at this point that, you know, we've gone to considerable expense to come down here to take a deposition. We have put this deposition off on numerous occasions. The deposition clearly seeks information regarding products manufactured prior to 1969. And we have a witness who can't answer that question. And through no fault of his own. I think he's, you know, doing a yeoman service but apparently was not prepared to do that. And I think that's clearly within the scope of both Rule 26 and my notice. So I'm going to do the best I can to continue with this examination but I'm going to note at this point for the record that I am quite concerned that through no fault of the witness our examination has been hampered.

MR. PETTY: Well, let me just respond to that if you want to make statements for the record like that. I think it should be clear that our discovery obligations are defined by the civil rules and framed by the facts of the case. And I mean I think you've been shown great latitude here in allowing you to ask questions about Kaiser Cement, a company who's not named in this case whose products are not even the type of products at issue in this case, and if you continue to persist to ask questions that are well beyond the scope of discovery I think we're going to have these

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kind of problems.

Now there may be some legitimate concerns that we both have and we should try to move ahead, iron them out and get what you can get done, accomplished today. I mean that's all I think we need to be doing. But you need to be guided by the facts of this case and the allowable scope of discovery and also what the obligations are for the witness to know in response to your notice which I think we've already determined you only listed about 25 pages of documents and you want him to be able to talk about a bunch of other documents that you didn't specifically list.

MR. BERGMAN: Aren't you sorry you didn't go to law school, Mr. Hobby?

THE WITNESS: Yes. No.

MR. PETTY: We are.

MS. JACKSON: I'd just like to advise counsel that to move the process along in the spirit of cooperation if you would refer to our answers to interrogatories you might be enlightened as to the years prior to 19, I think 69, or if in fact the question was asked and we answered it not to your satisfaction we have not been notified that that was insufficient response.

MR. BERGMAN: Is there a specific interrogatory, Counsel?

MS. JACKSON: I think you asked us what

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products were manufactured here. Where is it? No. 4 I believe.

MR. BERGMAN: Mm-hmm. Well, why don't we do the best we can. I mean if we could stipulate that Kaiser Gypsum manufactured a product prior to 1969 I think that could move things along.

MS. JACKSON: I would be happy to stipulate that.

MR. BERGMAN: Okay. All right. I think that would satisfy things and get Mr. Hobby on to places he'd much rather be.

Q. I'd like to direct your attention now, sir, to Interrogatory No. 4

MS. JACKSON: With regard to your stipulation you're asking if Kaiser Gypsum manufactured joint compound containing asbestos prior to 1969 as an overall background question?

MR. BERGMAN: That's correct, Counsel.

MS. JACKSON: Not concerning the Seattle plant.

MR. BERGMAN: That's correct.

MS. JACKSON: All right. And that's what we can advise you.

MR. BERGMAN: Okay, that's fine.

Q. Sir, if you could look on Page 4 of the

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interrogatories, I'm going to ask you some questions regarding these products. First of all, would it be fair to say that the six products listed on Page 4 of Kaiser Gypsum's response to plaintiff's interrogatories are joint compounds?

A. They are not all joint compounds.

Q. Okay. Which ones would not be joint compounds?

A. Well, No. 2 is identified as a finishing compound.

Q. What is the difference between a joint compound and a finishing compound?

A. Well, again, I'm not an expert and I was trying to merely respond to your question. But I think that a finishing compound is used during a different phase of the construction process than a joint compound.

Q. Okay. And I just want to make sure that we're -- I mean counsel and I made certain agreements prior to this deposition and I want to make sure that I honor them.

Would a finishing compound be something that was used in the process of taking two sheets of sheet rock and making a smooth joint between the two, or would it have some other application?

A. No, that's, that would be the general

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application.

Q. Okay. Okay. Could you describe for me briefly what then Joint Compound Powder is and how it was used? And I'm referring to the first item on Interrogatory 4 -- on Page 4 of your response to interrogatories.

A. Well, the joint compound referenced there came in a powdered form.

Q. And what was it used for?

A. Well, it was typically mixed with water to form a slush, if that's the right term, and that was then applied to the various surfaces or joints.

Q. What about, and then after it was applied to surfaces and joints was any other work done to it or modification done to it?

A. Well, I'm not sure I understand your question but -- I don't understand your question.

Q. Okay. I'll try to move on and then come back to this in more detail later.

A. Okay.

Q. And then what was the finishing powder that Kaiser Gypsum manufactured?

A. That was also a white powder that would have been mixed with water typically to form a paste that was used in the finishing aspect of the wallboard construction that you described.

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Q. And would the Finishing Compound Powder then come later in the taping process than the joint compound powder?

A. I understand that it would.

Q. Okay.

A. Keep in mind that I'm not a works -- craftsman.

Q. Okay. One-Day Joint Compound Powder. How did that differ from the first two products that you just testified to?

MS. JACKSON: If you know.

THE WITNESS: I don't know exactly. I don't know -- do you mean in chemical makeup?

MR. BERGMAN: Q. No, sir, just did, how was that a different product than the first two that you've testified to?

A. I can surmise that it was chemically composed so that it set up faster.

Q. And Three Purpose Compound Powder?

A. I think it had purposes where it, that extended beyond just the joint application.

Q. And what purposes would those be?

A. I understand they, a lot of times there were nails and staples and other components that were used to lay out the wall that this was used to cover in addition to the

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(1) joints.

(2) Q. I understand. And Dual-Purpose Pre-Mix (3) Compound?

(4) A. The primary difference here as I understand it (5) has to do with the, with the fact that it was a premixed (6) compound as opposed to a powder.

(7) Q. And by premix compound, in other words, it (8) would not have to be mixed up?

(9) A. It would generally come in a bucket or a (10) plastic container where the water had already been added so (11) you didn't have to physically do the mixing.

(12) Q. And how about Pre-mix Topping Compound, was (13) that the premix equivalent to Finishing Compound Powder to (14) the best of your understanding knowledge?

(15) A. That's my understanding.

(16) Q. Okay. I'm going to ask you a little more (17) questions about these products in question in general but I (18) want to be completely fair here. Would it be fair to group (19) these all in joint compounds or I --

(20) A. Well, it would depend what the question was.

(21) Q. Okay.

(22) A. But if you're just talking about the accessory (23) compounds would I say we can refer to them as joint (24) compounds.

(25) Q. Okay. And so then if you could once again

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(1) look with me on Page 4, No. 1 through 4 would be, would have (2) to be mixed with water, and Nos. 5 and 6 would come (3) premixed; is that correct?

(4) A. That's my understanding.

(5) Q. Okay. Would the application of the joint (6) compounds, and I'm now talking about merely just for the (7) sake of expediting this, between sheets of dry wall, would (8) the application as opposed to the mixing of these six (9) products be similar?

(10) A. As far as I know, yes.

(11) Q. I want to turn briefly to a subject matter (12) regarding, that it's been identified in our deposition (13) notice and that is the Gypsum Association. And then I'll (14) turn back to these products in a few minutes. If you would (15) please, look on your answers to our interrogatories, No. 10.

(16) A. What page would that be?

(17) Q. That would be Page 6. Your interrogatory (18) indicates that you believe that Kaiser Gypsum was a member (19) of the Gypsum Association from approximately 1952 to (20) 1978. Is that correct to the best of your knowledge?

(21) A. Yes.

(22) Q. What was the Gypsum Association, sir?

(23) A. Well, I believe the Gypsum Association is (24) still in existence.

(25) Q. What is the Gypsum Association

then? Or let

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(1) me rephrase it. What was the Gypsum Association at the time (2) that Kaiser Gypsum was associated with it?

(3) A. I don't know how, I don't know how to answer (4) that. Be more specific.

(5) Q. What was its purpose?

(6) A. I guess its purpose was to serve its members.

(7) Q. Okay. And who were its members?

(8) A. I can assume that those members were generally (9) made up of those people that were in the gypsum industry.

(10) Q. And do you know any of the other members of (11) the Gypsum Association besides Kaiser Gypsum?

(12) A. I have no personal knowledge.

(13) MS. JACKSON: Clearly it's outside the scope (14) of the notice, we're talking about Kaiser Gypsum. Certainly (15) not any other companies are at issue here.

(16) MR. BERGMAN: Q. Were other manufacturers of (17) gypsum products involved in the Gypsum Association?

(18) MS. JACKSON: Objection, outside the scope of (19) the notice.

(20) THE WITNESS: I can assume so. I mean I know (21) we weren't the only member.

(22) MR. BERGMAN: Q. Okay. Do you know how many (23) members there were?

(24) A. No.

(25) Q. Do you know what the Gypsum Association did

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(1) during the period that Kaiser Gypsum was a member of that (2) entity?

(3) A. What it did?

(4) Q. Yes.

(5) A. I don't understand that question.

(6) Q. You'd indicated its purpose was to serve its (7) members and my question is what did it do in service of its (8) membership?

(9) MS. JACKSON: If you know.

(10) MR. PETTY: He's not being offered as a Gypsum (11) Association --

(12) MS. JACKSON: Right.

(13) THE WITNESS: I don't, you know, I haven't (14) seen the by-laws of the Gypsum Association or anything. I (15) do know that they probably had meetings to discuss issues of (16) industrial importance.

(17) MR. BERGMAN: Okay and --

(18) A. And I've never seen any of those minutes or (19) anything.

(20) Q. Okay.

(21) A. I'm saying that, I'm speculating actually. I (22) shouldn't do that.

(23) MS. JACKSON: Yeah.

(24) MR. BERGMAN: Q. Okay. And just responding (25) to counsel's objection which is well taken, I'm concerned

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(1) about and I'm inquiring into Kaiser Gypsum's involvement in (2) the Gypsum Association and my previous questions were just (3) prefatory in nature.

(4) A. Okay.

(5) Q. Was the nature of Kaiser Gypsum's involvement (6) in the Gypsum Association? I understand that's a broad (7) question but hopefully we can hone in from there.

(8) A. Well, as I understand it we were a member.

(9) Q. And did Kaiser Gypsum attend meetings of the (10) Gypsum Association?

(11) A. I have no direct knowledge of that but we (12) probably attended as members do.

(13) Q. Who at Kaiser Gypsum, and by that I don't mean (14) the individual, but what entity, what officer of Kaiser (15) Gypsum would have been responsible for maintaining or (16) attending meetings of the Gypsum Association?

(17) A. I don't know that anyone would have had a (18) responsibility to attend.

(19) Q. Who would have, who, which Kaiser Gypsum (20) officers would have attended meetings of the Gypsum (21) Association?

(22) A. From time to time any of them might have (23) attended.

(24) Q. Okay. Did the Gypsum Association conduct, did (25) Kaiser Gypsum participate in any joint research efforts in

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(1) conjunction with the Gypsum Association?

(2) A. I don't know.

(3) Q. Did Kaiser Gypsum receive publications from (4) the Gypsum Association?

(5) A. I don't know. I would assume that we probably (6) did as members, would receive publications that were sent (7) out to all members.

(8) Q. Did the Gypsum Association conduct any (9) research into hazards associated with asbestos to the best (10) of your knowledge?

(11) A. I don't know.

(12) Q. Did Kaiser Gypsum participate in any research (13) with the Gypsum Association referring or relating to the (14) hazards associated with asbestos?

(15) A. I don't know.

(16) Q. Did the Gypsum Association -- well, insofar as (17) Kaiser Gypsum was involved with the Gypsum Association, did (18) it receive any information relating to thermal insulation (19) products as opposed to gypsum products?

(20) MS. JACKSON: Objection, outside the scope of (21) the notice. There's no indication that Kaiser Gypsum ever (22)

manufactured or your client was exposed to any products (23) entitled generically "thermal insulation" from Kaiser (24) Gypsum.

(25) MR. BERGMAN: Q. You can go ahead and answer.

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(1) A. I have no direct knowledge what we may have (2) received from the Gypsum Association. My response to your (3) earlier question is I'm sure as members we received general (4) information. I have never seen a document that came from (5) the Gypsum Association that comes to my mind.

(6) Q. Okay. And are you aware, do you know whether (7) or not the Gypsum Association had any involvement with (8) thermal insulation products as opposed to gypsum products?

(9) A. I have no personal knowledge.

(10) Q. Do you know whether Kaiser Gypsum received (11) information from the Gypsum Association concerning any tests (12) conducted on the safe levels of asbestos exposure of gypsum (13) products?

(14) A. I have no knowledge. I've never seen a (15) document from the Gypsum Association.

(16) Q. Sir, I'm handing you what has been marked as (17) Exhibit 6. Mr. Hobby, you're looking at your watch. Did (18) you want to take a break?

(19) A. I was thinking maybe a break, short break (20) would be --

(21) Q. I have about two or three more minutes on this (22) subject matter.

(23) A. Okay.

(24) Q. And then we'll take a break.

(25) A. That's certainly --

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(1) Q. Does that work within your time frames?

(2) A. I just needed to step out for a few minutes.

(3) Q. Okay. Would you rather do it now?

(4) A. No, let's go ahead and finish what we're (5) doing.

(6) MS. JACKSON: What again is the exhibit (7) number?

(8) MR. BERGMAN: I'm sorry, Counsel, it's 325.

(9) Q. Do you know what this document, is, sir?

(10) A. It says it's a Technical Bulletin.

(11) Q. And were technical bulletins prepared by (12) Kaiser Gypsum for the benefit of its customers?

(13) A. I understand they were.

(14) Q. And were technical bulletins prepared by (15) Kaiser Gypsum for the benefits of the users of its products?

(16) A. That's my understanding.

(17) Q. Is Exhibit 6 the type of information that (18) would have been contained in

technical bulletins?

(19) A. Yes.

(20) MS. JACKSON: Can I interrupt you just for a (21) minute, Counsel, because again the notice has designated (22) 0325 as the document you wish to inquire on, and we have not (23) been provided nor did we anticipate that the 326 and 327 (24) which are not on the notice would be inquired on. So to (25) that extent the witness has not seen these two pages before.

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(1) MR. BERGMAN: Okay.

(2) Q. I'd like to ask you some questions, sir, on, (3) and, maybe if you could refer in conjunction with Exhibit 6 (4) to Exhibit 4, refer with the two documents in conjunction (5) with one another.

(6) MS. JACKSON: Do we have Exhibit 4?

(7) THE WITNESS: Exhibit 4 did you say?

(8) MR. BERGMAN: Q. I'm sorry, I misspoke, Page (9) 4 of your interrogatories.

(10) A. And what was your --

(11) Q. I just wanted to direct your attention to the (12) products that were listed on Page 4 of your interrogatories (13) and then look at the Kaiser Gypsum.

(14) A. Okay.

(15) Q. Sir, I'd like to direct your attention to (16) Products 1 through 4 on Page 4 of your interrogatories. And (17) if you could describe in as great detail and as extensive (18) detail as you can the process under which (19) asbestos-containing joint compounds manufactured by Kaiser (20) Gypsum were mixed. What was the intended process for mixing (21) Kaiser Gypsum asbestos-containing joint compounds?

(22) MS. JACKSON: Objection, vague.

Are you (23) referring to at a job site or mixed in the manufacturing (24) process?

(25) MR. BERGMAN: Yeah, thank you for that

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(1) clarification, Counsel. ♪

(2) Q. How were the users of Kaiser Gypsum joint (3) compounds supposed to mix up the products?

(4) A. I don't know.

(5) Q. Was there a manner in which Kaiser Gypsum (6) joint compounds were supposed to be mixed?

(7) A. I assume that there was some sort of (8) directions on the package on how to mix and what quantities (9) with water to get, and that varies to get the necessary (10) consistency that the craftsman would be looking for.

(11) Q. Okay.

(12) A. Beyond that I'm not sure what you're asking (13) me.

(14) Q. Well, our deposition and again I'm not, Mr. (15) Hobby, you're doing a great job, our deposition notice (16) sought information on how, the use and application of Kaiser (17) Gypsum joint compounds,

and then my letter of September 29th (18) clarified exactly what we were seeking, intended (19) application. And I'm trying to find out how Kaiser Gypsum (20) intended its asbestos-containing joint compounds to be (21) mixed.

(22) A. I'm not sure I can answer -- I don't know what (23) you want from me. You know, I'm trying to answer your (24) question.

(25) Q. I know you are, sir.

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(1) A. We have a powder and we have water and there's (2) directions on the bag.

(3) Q. Okay.

(4) A. Okay. Now how they intend it to be mixed, I (5) don't know how to answer that.

(6) Q. Okay. Let me try to ask a few questions then (7) to be a little more specific.

(8) A. Okay.

(9) Q. Was it the intention of Kaiser Gypsum, and (10) again I'm referring to the first four products listed in (11) your interrogatory answers, the dry compound, was it the (12) intention that they be poured out of a bag into a bucket of (13) water?

(14) A. I don't know.

(15) Q. Was it the intention that Kaiser Gypsum dry (16) joint compounds be mixed with an electric mixer?

(17) A. I don't know.

(18) Q. Was it the intention of Kaiser Gypsum, were (19) there any directions governing or instructing the users of (20) Kaiser Gypsum asbestos-containing joint compounds on how to (21) mix up the product?

(22) MS. JACKSON: Objection, asked and answered.

(23) THE WITNESS: I don't know. There were (24) directions on the bag to the best of my knowledge. Now I (25) haven't committed those directions to memory. If we had a

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(1) bag --

(2) MR. BERGMAN: Q. Do you know that there were (3) directions on the bag, sir?

(4) A. I've been told there were.

(5) Q. Okay.

(6) A. And I was also told that there were warning (7) labels on the bags.

(8) Q. I understand.

(9) MS. JACKSON: Are you close to the end of your (10) questioning?

(11) MR. BERGMAN: Yeah I am, yeah, Mr. Hobby. (12) Well, I'm not but Mr. Hobby has been very patient and this (13) would be a fine time for a break. Counsel, I have some (14) things to say on the record but Mr. Hobby doesn't need to be (15) belabored by that.

(16) THE WITNESS: Well, I'd like to hear

them.

(17) MR. BERGMAN: Go ahead and take your break. (18) You deserve it.

(19) THE WITNESS: Okay.

(20) THE VIDEOGRAPHER: Do you want to go off the (21) record the video record at this time?

(22) MR. BERGMAN: Let's go off the record entirely (23) for a little bit.

(24) THE VIDEOGRAPHER: Off the record at (25) a.m.

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(1) (Brief recess).

(2) (WHEREUPON, PLAINTIFF'S EXHIBITS 14 THROUGH (3) 17 WERE MARKED FOR IDENTIFICATION).

(4) THE VIDEOGRAPHER: Back on the record at (5) a.m.

(6) MR. BERGMAN: Q. When we broke, Mr. Hobby, we (7) were discussing Page 4 of your responses to interrogatories (8) and we were discussing the manner in which these four bagged (9) or dry joint compounds were mixed up, and I believe that you (10) had indicated that you didn't have absolute knowledge on (11) that. We discussed with your counsel in recognition that a (12) long time has passed. So I don't want you to at all feel (13) like I'm pressuring you for an answer, Mr. Hobby. If you (14) don't know the answer to the question we'll just take it at (15) that and if your lawyers and us have to take something on (16) later on, that's fine. I just don't want you to think for a (17) minute -- you're obviously working very hard and you're in a (18) difficult position and I do appreciate that, sir.

(19) What I'd like to do at this time, Mr. Hobby, (20) is show you a videotape that has been identified in this (21) case as one of plaintiff's exhibits and the videotape shows (22) mixing up some Kaiser Gypsum joint powder and first I'd just (23) like you to look at and then I'll have some questions to ask (24) you about it. And that videotape is designated as Exhibit (25) 14. And I'll have a few questions afterwards to ask you

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(1) regarding that.

(2) A. Is there anything I'm supposed to focus on?

(3) Q. Why don't you just watch it and it's about two (4) or three minutes long.

(5) A. Okay.

(6) Q. Watch it as best you can and if you want to (7) see it again or something that's fine as well.

(8) MR. PETTY: Matt, what videotape is this? You (9) said something about Exhibit 14.

(10) MR. BERGMAN: It's one of the MLS tapes.

(11) MR. PETTY: I don't know that I've seen it (12) unless this is one that you showed in another deposition.

(13) MR. BERGMAN: It's not, I haven't shown it in (14) a deposition.

(15) MR. PETTY: And how are you showing it in this (16) deposition?

(17) MR. BERGMAN: Okay. Let's break for a, let's (18) just break for a second. I'm using a video monitor showing (19) it to the witness. It's not being dubbed onto the tape in (20) any manner.

(21) MR. PETTY: That's what I wanted to insure and (22) would like to make sure that is the case.

(23) MR. BERGMAN: Yeah. That is the case and -- (24) that is the case.

(25) THE VIDEOGRAPHER: Do you want to go off the

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(1) record?

(2) MR. BERGMAN: No, let's stay on the record.

(3) MS. JACKSON: Can you identify for us where (4) this tape came from if we don't have Exhibit 14, where the (5) tape came from, who made the tape? Do you have some (6) informational issues for us?

(7) MR. BERGMAN: Sure. It was a tape that was (8) made by Dr. Longo, my associate, the tape it's on, and (9) identified in the discovery in this case. It was my (10) associate has paired it down to about four or five minutes (11) but of course all of them are available and have been (12) available for your review.

(13) MS. JACKSON: Okay. So this is an edited (14) version --

(15) MR. BERGMAN: That is correct.

(16) MS. JACKSON: -- of a tape made by Dr. Longo.

(17) MR. BERGMAN: That is correct.

(18) MS. JACKSON: Okay.

(19) MR. PETTY: And I just would not necessarily (20) accept your representation that it's been produced in (21) discovery in this case because I believe I have propounded (22) Kaiser Gypsum specific written discovery to you for which (23) you provided answers and even supplemental answers but I do (24) not recall this videotape being described in any way, shape (25) or form in those responses.

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(1) MS. JACKSON: I guess insofar as it's an (2) exhibit to the deposition we would ask for the copy (3) reflecting the edit to be -- give it to us.

(4) MR. BERGMAN: We'll give to you. That's fine.

(5) MS. JACKSON: Yeah. Okay.

(6) (Videotape being shown).

(7) MR. BERGMAN: Okay, let's stop now.

(8) Q. First of all, Mr. Hobby, would you like to see (9) that tape again?

(10) A. I may at some point. Right now --

(11) Q. Okay.

(12) A. Until I know I'll ask.

(13) Q. Okay. My question to you, sir, is after (14) reviewing that tape designated as Exhibit 14 does that (15) appear to you to be

the intended manner in which Kaiser (16) Gypsum joint compound was mixed?

(17) A. I have no direct knowledge of that. As I (18) indicated before the break, you know, I'm not a (19) craftsman. I noted that the bags had direction on them. (20) I don't know if those were gyp -- compound bags or not. But (21) they had directions on them. This appeared to be using a (22) mixer in one case, appeared to be hand mixing in another (23) case. It would seem logical that something along those (24) lines would happen. But I'm not sure I can answer your (25) question in the affirmative.

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(1) Q. Is there anything that you saw in that tape (2) that appeared to you to be an incorrect use of a Kaiser (3) Gypsum joint compound?

(4) A. Again I have no direct knowledge of the use as (5) it was intended back at those particular point in time. I (6) think I could go out and take a sack of most any powdered (7) product that was on the market today and duplicate that (8) scenario, and I guess you're referring primarily to the (9) airborne --

(10) Q. No, actually, sir, I'm not. I'm not referring (11) to the airborne matter in that. I'm referring more to the (12) manner in which the workmen or the individuals depicted in (13) Exhibit 14 poured the joint compound into the bucket and (14) mixed it up.

(15) MS. JACKSON: Insofar as the witness has not (16) seen this tape before we have made our best efforts to (17) comply with discovery requirements in the State of (18) Washington. I think this is outside the scope of the (19) notice, I think this lacks foundation, and I wish you would (20) move along on some of these topics.

(21) MR. BERGMAN: Q. Would you like to see the (22) tape again, sir.

(23) MS. JACKSON: No, spare me.

(24) THE WITNESS: No, no.

(25) MR. BERGMAN: Q. Okay. I guess was there

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(1) anything, I understand this is 20 years later but based on (2) your knowledge and based on your preparation for this (3) deposition and based on our deposition notice was there (4) anything that you saw that the individuals on Exhibit 14 did (5) in mixing that joint compound that appeared to you to be an (6) inappropriate or improper application of Kaiser Gypsum (7) products?

(8) MS. JACKSON: Objection. Objection, calls for (9) speculation. This witness is not offered to testify about (10) appropriate or inappropriate methods to mix product and I'm (11) not going to let him answer that question.

(12) MR. BERGMAN: Q. Do you know

the (13) appropriate --

(14) Counsel, are you instructing the witness not (15) to answer?

(16) MS. JACKSON: I am indeed.

(17) MR. BERGMAN: And the basis of that, if you (18) would, is that is was not within the scope of the --

(19) MS. JACKSON: Outside the scope of the notice, (20) lacks foundation, calls for speculation and we are not (21) offering him as a witness as to the appropriateness of the (22) methods that whoever it was in the tape used to mix (23) products.

(24) MR. PETTY: Matt, you should know I'm in a (25) difficult position. I can't see your videotape over the

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(1) phone and I'm a little surprised that you're using a tape (2) that you would not have produced to me before today.

(3) MR. BERGMAN: I thought you'd be here, Ken, (4) but --

(5) MR. PETTY: So you intended to surprise me (6) there today in person.

(7) MR. BERGMAN: Q. Do you know, Mr. Hobby, (8) whether in mixing Kaiser Gypsum joint compounds it was (9) intended that the material be poured from sacks into (10) buckets?

(11) A. I don't know about your use of the word (12) "intended." I would suppose that material may have been (13) poured but that would have been an individual decision by (14) the craftsman.

(15) Q. Are you aware of any instructions by Kaiser (16) Gypsum to its customers not to pour joint compound from a (17) bag into a bucket?

(18) A. I am not aware.

(19) Q. Can you now, I'd now like to broaden my (20) questioning directing your attention to Page 4 once again of (21) responses to interrogatories, to all six of the products (22) listed on that document, and ask if you can describe how (23) once mixed, Kaiser Gypsum joint compounds were applied to (24) walls of sheet rock?

(25) A. How they were applied?

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(1) Q. Yes.

(2) A. I have no direct knowledge on how they were (3) applied. That would be, vary by craftsman.

(4) Q. After Kaiser Gypsum joint compounds were (5) applied to sheets of dry wall what was the next step in (6) preparing or finishing the job for eventual painting?

(7) A. Well, again that might --

(8) MS. JACKSON: Assumes facts not in evidence. (9) On a general basis not all walls may have been painted, you (10) know.

(11) MR. BERGMAN: Q. I'm just trying, maybe you (12) can just, you know I'm trying to work through the scenario (13) of how Kaiser Gypsum joint compounds were used and I'm (14) trying to, you know, go through

the steps and we've kind of (15) gone through one step of the mixing and now I'm wondering (16) what the next step would be.

(17) A. I'm trying to be responsive to you.

(18) Q. I understand.

(19) A. You understand I'm not a craftsman. I (20) understand the material was applied, okay, there may have (21) been a tape applied at some point in time. There may have (22) been some sort of smoothing that occurred. Depending on (23) what the final intent for the wallboard may have been, there (24) might have been some sort of a paint applied or texture (25) applied. It would vary from each and every job, would vary.

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(1) Now I don't know if that's responsive to you but I'm trying (2) to be.

(3) Q. I think it's quite responsive, sir. You (4) testified there was a smoothing that would go on in this (5) process?

(6) A. There may be.

(7) Q. May be. Can you describe what that smoothing (8) would have been?

(9) A. Well, I think that can vary from a trowel (10) application, a trowel, to basically take the lumps or often (11) when you put a material like that on a surface, you know, it (12) lumps or it tends not to be evenly applied. You may use a (13) trowel. You may use a sanding device of some sort.

(14) Q. What kind of a sanding device would have been (15) used?

(16) THE WITNESS: Again that might --

(17) MS. JACKSON: If you know.

(18) THE WITNESS: That would vary by application.

(19) MR. BERGMAN: Q. Was it anticipated by Kaiser (20) Gypsum that dried joint compound would be sanded.

(21) A. I don't know the answer about what Kaiser (22) Gypsum's anticipation was.

(23) Q. Would it have been proper to sand dry joint (24) compound?

(25) MS. JACKSON: Object to the use of the term

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(1) "proper." Vague.

(2) THE WITNESS: I would think in those (3) circumstances in which I described where it was necessary to (4) smooth the application, there would be some method possibly (5) using a trowel or possibly using sanding or something like (6) that to smooth it out. So it may be proper, it may not be (7) proper.

(8) MR. BERGMAN: Q. Did Kaiser Gypsum know that (9) users of its joint compound may use sanding as a process to (10) smooth the dried material?

(11) MS. JACKSON: I'm going to object insofar as (12) what Kaiser Gypsum knew. There is no time frame involved.

(13) MR. BERGMAN: Q. 1964 to 1978.

(14) A. I don't know what Kaiser Gypsum knew regarding (15) requirements for sanding.

(16) Q. Okay. I'm going to show you a little bit more (17) of Exhibit 14. I understand there will be some objections (18) to those and I'll have a few more questions to ask you (19) regarding that. You need to turn it on.

(20) (Videotape being shown).

(21) MR. BERGMAN: Why don't we see if we can turn (22) the sound off.

(23) THE VIDEOGRAPHER: All the way down?

(24) MR. BERGMAN: Yeah.

(25) Okay. That's fine.

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(1) Q. Mr. Hobby, does the sanding process that was (2) depicted in Exhibit 14 appear to you as a representative of (3) Kaiser Gypsum to be a proper use of Kaiser Gypsum joint (4) compound?

(5) MS. JACKSON: Objection, calls for (6) speculation, outside the ken of this witness. We're not (7) calling him and offering him to testify about the (8) appropriateness or the proper methods of the use in any (9) particular application. I'm not going to permit him to (10) answer.

(11) MR. BERGMAN: Q. Does the sanding of joint (12) compound depicted on Exhibit 14, Mr. Hobby, appear to you to (13) be, and I quote from the notice of deposition, "The intended (14) application of Kaiser Gypsum joint compound"?

(15) MS. JACKSON: Same objection.

(16) THE WITNESS: Am I supposed to answer? I've (17) gotten confused.

(18) MS. JACKSON: No.

(19) MR. BERGMAN: You're instructing the witness (20) not to answer, Counsel.

(21) MS. JACKSON: I'm sorry, I'm making my (22) objection. I did not instruct him not to answer.

(23) MR. BERGMAN: Okay.

(24) THE WITNESS: I got confused. Give me your (25) question one more time.

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(1) MR. BERGMAN: Q. I understand, sir. Does the (2) sanding of Kaiser Gypsum joint compound depicted in Exhibit (3) 14 appear to be the intended application of that product?

(4) MS. JACKSON: Lacks foundation.

(5) THE WITNESS: Well, again I don't know when (6) this film was made, whether it was made in 1970 or not. I (7) sort of doubt it or in that time frame that we're talking (8) about. So to the extent that this film represents how it (9) was done back then, I'm not sure, you know. If sanding was (10) necessary to do the job, certainly the method that these (11) people used would be one way to accomplish that.

(12) MR. BERGMAN: Q. Okay. One of the topics (13) that we've designated has

been sales of Kaiser Gypsum joint (14) compound in Portland and greater Vancouver area. And can (15) you, was there any single entity that distributed your (16) products in those geographical areas?

(17) A. Entity? I'm not --

(18) Q. Company.

(19) A. Oh, I don't know but I would assume not.

(20) MS. JACKSON: I'm going to object that it's (21) vague.

(22) MR. BERGMAN: Yeah. I'm just trying to go (23) from the vague to the specific.

(24) Q. And how were joint compounds manufactured by (25) Kaiser Gypsum distributed in the greater Portland and

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(1) Vancouver areas?

(2) MS. JACKSON: Could you ask a foundational (3) question as to whether or not they were?

(4) MR. BERGMAN: Q. Yeah. Were Kaiser Gypsum (5) joint compounds distributed in greater Portland and (6) Vancouver area in the 1964 to '78 time frame?

(7) A. Vancouver, Washington?

(8) Q. Yes, sir.

(9) MS. JACKSON: Insofar as you've asked for (10) information outside the years that the manufacturer of these (11) products would involve asbestos I would object to that.

(12) MR. BERGMAN: That objection is well taken, (13) Counsel. Let me rephrase that.

(14) Q. Were asbestos-containing -- well, were Kaiser (15) Gypsum joint compounds manufactured by -- were Kaiser Gypsum (16) joint compounds distributed in Portland and Vancouver (17) Metropolitan areas between 1964 and 1975?

(18) A. Yes.

(19) Q. Okay. And can you describe the manner in (20) which the products were distributed?

(21) MS. JACKSON: Objection, vague.

(22) THE WITNESS: I don't know what you mean by (23) manner. Did we sell them?

(24) MR. BERGMAN: Q. Yes.

(25) A. Yes.

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(1) Q. Would Kaiser Gypsum sell them to, was there a (2) wholesaler in Portland and Vancouver Metropolitan areas (3) responsible, primarily responsible for distributing your (4) joint compound products in the '64 to '75 time period?

(5) A. The term "wholesaler" I'm not sure of. There (6) were certainly suppliers.

(7) Q. Okay. Was there a primary or a principal (8) supplier? I guess let me try to put the question together (9) this way. How would Kaiser Gypsum joint compounds go from (10) the, get from the factory to the consumer in the Portland (11) area in the 1964 to '75 time frame?

(12) MS. JACKSON: If you know.

(13) THE WITNESS: Well, one of two ways that I (14) would imagine. One would be that the consumer could go to a (15) supplier and buy that. Or there may, the contractor, (16) assuming that's the consumer, may buy directly from the (17) company.

(18) MR. BERGMAN: Q. Would Kaiser Gypsum sell (19) directly to users of Kaiser Gypsum -- would Kaiser Gypsum (20) joint compound be sold directly from Kaiser Gypsum to (21) customers in the Portland and Vancouver area?

(22) MS. JACKSON: Asked and answered.

(23) THE WITNESS: I'm sorry, what did you say?

(24) MS. JACKSON: I'm said it was asked and (25) answered. You answered it.

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(1) THE WITNESS: Yes.

(2) MR. BERGMAN: Q. Okay. Would those primarily (3) be large dry wall contractors?

(4) A. I don't know about the size of the (5) contractors.

(6) Q. Would they generally be dry wall contractors (7) as opposed to householders or small consumers?

(8) A. Well, yeah, I don't think we would normally (9) sell to the person putting a deck on the back of their house (10) or something. But we would sell to contractors.

(11) Q. Okay. Do you, and by you I mean Kaiser (12) Gypsum, have any knowledge of any of the contractors that (13) Kaiser Gypsum supplied joint compound to between 1964 and (14) 1975?

(15) MS. JACKSON: I object insofar as you use the (16) word "contractors." I don't think we have any knowledge of (17) what these entities are. What their businesses are is not (18) at this point knowable by us.

(19) MR. BERGMAN: That's well taken.

(20) Q. I'd like to inquire whether or not Kaiser (21) Gypsum has any knowledge of any of the customers that bought (22) directly from Kaiser Gypsum joint compound products in (23) the '64 to '75 time period?

(24) A. Yes, I think we have knowledge.

(25) Q. What are some of the some of the customers who

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(1) purchased joint compound in the '64 to '75 period in (2) Portland?

(3) MS. JACKSON: I'm going to object to the (4) question as overbroad. My understanding in our conversation (5) of yesterday you were interested in inquiring as to the (6) plaintiff's job sites and suppliers that may or may not have (7) supplied to those particular job sites. I think we're (8) prepared to answer those questions for you but are not (9) prepared to give you answers

on the greater area other than (10) what we talked about generally that there was distribution (11) in the that area in the years you've inquired about.

(12) MR. BERGMAN: Yeah, and as I indicated this is (13) not an area I intend to spend much time on. Are there, have (14) you prepared -- let's go off the record for a minute.

(15) THE VIDEOGRAPHER: This marks the end of (16) Videotape No. 1, Volume No. 1 in the deposition of Joseph (17) Hobby. Going off the record. The time is 11:46 a.m.

(18) (Discussion off the record).

(19) THE VIDEOGRAPHER: We're back on the record. (20) At 11:49 a.m. This marks the beginning of Videotape No. 2, (21) Volume 1 in the deposition of Joseph Hobby.

(22) MR. BERGMAN: Q. Mr. Hobby, in preparation (23) for your testimony here today have you reviewed some of the (24) job sites that Mr. Pickner worked at and some of the (25) contractors that may have supplied products to those

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(1) particular job sites?

(2) A. Yes.

(3) Q. And can you tell me whether or not Kaiser (4) Gypsum supplied products, supplied joint compound to any of (5) those job sites to the best of your knowledge?

(6) A. Yes.

(7) Q. And what job sites were those, sir?

(8) A. There were none.

(9) Q. There were none. None of the job sites that (10) you reviewed indicated Kaiser Gypsum products were used?

(11) A. That's correct.

(12) MR. BERGMAN: Okay. All right. At this time (13) why don't we take a break. I'll indicate the exhibits I (14) want to inquire into and hopefully we can carry on.

(15) THE VIDEOGRAPHER: Off the record at (16) a.m.

(17) (Luncheon recess, 11:49 a.m. to 1:36 p.m.). (18) (19) (20) (21) (22) (23)

(24) ---oOo--- (25)

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(1) (WHEREUPON, PLAINTIFF'S EXHIBITS 18 AND 19 (2) WERE MARKED FOR IDENTIFICATION). (3)

(4) AFTERNOON SESSION (5) November 4, 1998 1:36 P.M.

(6) ---oOo---

(7) JOSEPH R. HOBBY (8) having been previously duly sworn,

(9) testified further as follows: (10) (11) EXAMINATION BY MR. BERGMAN (RESUMED) (12)

(13) THE VIDEOGRAPHER: Back on the record at 1:36 (14) p.m.

(15) MR. BERGMAN: Q. Mr. Hobby, you recognize (16) you're still under oath?

(17) A. Yes.
 (18) Q. Okay. If you would, please, on Page 5 of your (19) interrogatories, I'd like to direct your attention to (20) Question No. 7.
 (21) MS. STEELE: What number?
 (22) MR. BERGMAN: Question No. 7.
 (23) Q. The question is post had to Kaiser Gypsum:
 (24) "State the date on which you learned
 (25) that asbestos poses a hazard to human

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(1) health."
 (2) Would you please, sir, read the second
 (3) paragraph of Kaiser Gypsum's
 response?
 (4) A. "Without waiving said
 objections (5) Kaiser Gypsum responds
 that it became aware (6) generally
 sometime that the 1970s the users (7) of
 some asbestos-containing building
 products (8) [could be at health -- excuse
 me] could be at (9) risk of inhaling
 quantities of respirable (10) asbestos
 fibers sufficient to pose a (11) potential
 hazard to their health."
 (12) Q. I'm going to ask you a number of
 questions, (13) sir, concerning this question
 and the response to try to (14) flush out a
 little better Kaiser Gypsum's position. In (15)
 general it would appear to me, sir, would you
 not agree, (16) that the answer to
 Interrogatory No. 7 relates to users of (17)
 asbestos-containing products?
 (18) A. Yes, I would say that.
 (19) Q. Okay. I want to pose some
 questions to you (20) generally, sir, not with
 respect to users of (21) asbestos-containing
 products but asbestos in general. When
 (22) did Kaiser Gypsum become aware that
 asbestos in general (23) posed a potential
 hazard to human health?
 (24) A. When did they first become
 aware?
 (25) Q. Yes, sir.

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(1) A. I have no idea.
 (2) Q. Okay. Was there a time, was
 there a time that (3) Kaiser Gypsum
 became aware of hazards of asbestos in
 general (4) prior to the time it became aware
 that users of its asbestos (5) products could
 face a health risk?
 (6) A. Well, I would answer that in this
 way, I (7) guess. Asbestos is not a new
 term in the dictionary. (8) Asbestos was
 known way back a long time ago as being
 what it (9) is. So when our people first
 became aware, I can't answer (10) that,
 but -- I don't know if that answers your
 question or (11) not. I'm trying to say that
 asbestos wasn't a hidden item (12)
 necessarily.
 (13) Q. Right. And was there some time
 prior to the (14) early '70s when Kaiser
 Gypsum became aware that asbestos (15)
 could pose a potential hazard to human
 health?

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(16) A. For users?
 (17) Q. No, in general.
 (18) A. In general? Yes, would I say
 there was an (19) awareness.
 (20) Q. Okay. When was that awareness
 gained?
 (21) A. I don't know.
 (22) Q. Okay. Wasn't there a time prior
 to the early (23) '70s when Kaiser Gypsum
 became aware that asbestos could (24)
 pose a potential hazard to its employees?
 (25) A. Yes.

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(1) Q. And approximately when --
 (2) A. I've seen documents that would
 lead me to (3) believe that they had
 knowledge. I don't know when they (4)
 first had knowledge.
 (5) Q. I understand that, okay. I want to
 parse out (6) a little bit more, if I could, sir,
 your response to (7) Interrogatory No. 7. It
 indicates that Kaiser Gypsum became (8)
 aware generally some time in the '70s that
 users of its (9) asbestos products could face
 a health risk. My question to (10) you, sir, is,
 can you be any more specific as to when in
 (11) the '70s Kaiser Gypsum became aware
 that users of its (12) products could face a
 health problem?
 (13) A. Well, I don't know. I have seen
 a document (14) where warning labels
 were put onto their products and (15)
 certainly that would be I guess a point in
 time certain (16) where there was an
 awareness.
 (17) Q. Okay. And we'll get to those
 documents later, (18) sir, but if I represented
 to you that those documents are (19) dated
 1972 would that be a fair statement?
 (20) MS. JACKSON: I'm going to object
 insofar as (21) if you have a document that
 could help the witness then I (22) would like
 for you to tell him. He was not employed by
 the (23) company in those years and his
 knowledge is from documentary (24) review.
 (25) MR. BERGMAN: I understand that. I
 understand

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(1) that.
 (2) Q. So it would be your testimony, sir,
 that at (3) the date and we'll peruse those
 documents in a few minutes, (4) at the date
 that the documents were generated by
 Kaiser (5) Gypsum relating to warnings on
 its products was the date on (6) which Kaiser
 Gypsum recognized that its products could
 (7) potentially pose a hazard to its
 customers?
 (8) A. Well, I wouldn't characterize it
 exactly as (9) you've said that. I would
 say that that's a point in time (10) where I
 have a document that identifies that at
 least at (11) that point in time there was
 that awareness. Now whether or (12) not
 there was an awareness prior to that, if
 somebody could (13) show me a
 document then I would know.

(14) Q. Okay. Looking a little bit more at
 your (15) answer to Interrogatory No. 7, you
 indicate that Kaiser (16) Gypsum learned in
 the '70s that users of some (17)
 asbestos-containing products could be at a
 risk of inhaling (18) quantities of respirable
 asbestos fibers sufficient to pose (19) a
 hazard to human health.
 (20) Was there some time prior to the
 early 1970s (21) when Kaiser Gypsum
 became aware that larger quantities of (22)
 asbestos dust could pose a risk to human
 health?
 (23) MS. JACKSON: I'm going to have to
 object that (24) the question is vague,
 overbroad.
 (25) THE WITNESS: I think I just
 answered that

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(1) with my last -- the same answer would
 apply that the issue, (2) the quantity of
 asbestos fibers is not something that I can
 (3) focus on. I can focus on when we knew
 and we have at least (4) one document that
 says that we knew in, what did you say, (5)
 1972?
 (6) MR. BERGMAN: Q. Okay.
 (7) A. I've never reflected on the
 quantity. I've (8) never seen a document
 that reflects on the quantity whether (9)
 there was more or less.
 (10) Q. Okay. And I'm not trying to
 mislead you in (11) any way, sir. I'm trying
 to understand a little better (12) Kaiser
 Gypsum's position and let me try to
 rephrase the (13) question and see if that
 helps. It may, it may not. It (14) would
 indicate to me from reading your response
 to (15) Interrogatory No. 7 that there was,
 there is some (16) distinction regarding the
 quantity of asbestos in (17) relationship to
 the human health risk. And I may have (18)
 misread your interrogatory in that respect in
 which case (19) please correct me in that
 regard. But it would appear as (20) though
 from that answer that Kaiser Gypsum may
 have been (21) aware prior to the '70s that
 a greater quantity of asbestos (22) would
 have posed a human health risk. That may
 be a (23) misreading on my part.
 (24) A. Well, all I can tell you is I don't
 remember (25) our thought process
 when we answered that interrogatory,
 and

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(1) I can't remember that there was a,
 the issue what would have (2) caused us
 to use the word "quantity."
 (3) Q. Okay. So as far as you're
 concerned you could (4) just as easily say
 that Kaiser Gypsum became aware
 generally (5) in the '70s that its products
 posed a hazard to human health (6) and the
 issue of quantities is irrelevant?
 (7) MS. JACKSON: I'm going to object
 insofar as (8) you want to rewrite the
 answers to interrogatories. He's (9) not

going to give you a different answer than we've already (12) submitted. You can ask your questions, we can go from (13) there. We're not going to reanswer the interrogatories one (14) by one.

(15) MR. BERGMAN: That's not what I'm endeavoring (14) to do. I'm just trying to understand what the interrogatory (15) means. I'm not trying to rewrite them or rephrase them or (16) anything like that.

(17) Q. Was Kaiser Gypsum familiar with the term (18) "TLV"?

(19) A. I don't know.

(20) Q. You can't say one way or the other whether (21) Kaiser Gypsum was aware of that?

(22) A. There may be a document where the term "TLV" (23) is there. Now whether or not they were familiar with that (24) term, again I wasn't there.

(25) Q. And sitting here today you have no knowledge

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(1) other than the documents as to whether or not Kaiser Gypsum (2) was familiar with that concept?

(3) A. No. No, that's right.

(4) Q. Sir, I'm handing you Exhibit 7. My first (5) question, sir, is that one of the documents that you (6) reviewed with your attorneys?

(7) A. Yes, it is.

(8) MS. JACKSON: Let me just state for the record (9) that again this is one of the documents that was listed in (10) the notice by evidently its first numbered page and with no (11) indication that subsequent pages would be examined on. So (12) insofar as Pages 503 through 508 are attached, we have only (13) seen them just today. So he has not seen the rest of this (14) but he has seen this.

(15) MR. BERGMAN: Q. Okay. Mr. Hobby, have you, (16) let me just make sure I understand your counsel's statement. (17) You have never seen before today Pages 503 through 508 of (18) Exhibit 7?

(19) A. I don't recall that I've seen them.

(20) Q. Okay. Have you ever testified before (21) regarding any deposition or court proceeding regarding (22) exhibits --

(23) A. No.

(24) Q. Pages 503 to 508 of Exhibit 7?

(25) A. No, I have not.

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(1) Q. Okay. I'm going to ask you some questions (2) about Exhibit 7. If you would, sir, let me ask you, at what (3) date did Kaiser Gypsum become aware that there was a disease (4) known as mesothelioma?

(5) A. I don't know.

(6) Q. Did there come a time, did Kaiser Gypsum learn (7) in 1965 that there was a disease known as mesothelioma?

(8) A. Well, to the extent that that disease is (9) referenced in this

document, I guess the answer to your (10) question maybe is yes.

(11) Q. If you could --

(12) A. I don't know that they necessarily knew the (13) full scope and ramifications of what that disease was or is.

(14) Q. That in 1965 the Kaiser Gypsum's knowledge of (15) mesothelioma was limited to the information contained in (16) Exhibit 7?

(17) A. I don't know that.

(18) MS. JACKSON: Absolutely does not, your (19) characterization of his testimony is incorrect.

(20) MR. BERGMAN: Q. I'm just asking I think he (21) corrected me. Did there come a time subsequent to 1965 when (22) Kaiser Gypsum became more conversant with the concept of (23) mesothelioma?

(24) A. I don't know the answer to that because in (25) order to be more I would have to know what the level was in

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(1) the first place. And I've told you I don't know what the (2) level of knowledge was.

(3) Q. Did Kaiser Gypsum at any time understand that (4) its products could potentially cause mesothelioma in the (5) intended users of those products?

(6) A. I don't know.

(7) MS. JACKSON: Absolutely no foundation to that (8) question.

(9) THE WITNESS: You know, we put warning labels (10) on our packages in 1972 I believe it was you said. That (11) would indicate to me that we knew that there was a health (12) hazard. Now whether or not we knew that that health hazard (13) led to mesothe -- I struggle with pronouncing it, I don't (14) know.

(15) MR. BERGMAN: Q. Well, let me ask you this: (16) Sitting here today what is what is Kaiser's position, Kaiser (17) Gypsum's position on whether or not its products could have (18) caused mesothelioma?

(19) MS. JACKSON: Sitting here today this is a (20) company that is not in existence, does not transact business (21) and has no employees. So sitting here today it doesn't have (22) a position, on what products that it made 20 some odd years (23) ago.

(24) MR. BERGMAN: Counsel, I'm going to object to (25) the speaking objection. And I understand that procedures in

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(1) California may be different but that's an improper speaking (2) objection.

(3) Q. Mr. Hobby, did Kaiser Gypsum's products, joint (4) compounds, pose a potential risk to causing mesothelioma?

(5) A. I don't have a personal knowledge of that.

(6) Q. What is the position of Kaiser

Gypsum as to (7) whether or not its products caused mesothelioma?

(8) A. Well, all I know is that the, you know, there (9) had been lawsuits in that particular area and we've dealt (10) with them. I don't, I haven't been party to whether or not (11) we've admitted as a company that we, our product is the (12) cause of mesothe -- say it again for me.

(13) Q. Mesothelioma.

(14) A. -- thelioma.

(15) Q. Well, let me ask you, does Kaiser Gypsum admit (16) that its products could have caused mesothelioma?

(17) A. I will not admit that.

(18) MS. JACKSON: I'm going to object. I'm going (19) to object only insofar as you're using a term, number one, (20) that he's clearly not familiar with the definition. Number (21) two, he's not a medical expert. You're calling for an (22) expert opinion from him. That's improper.

(23) MR. BERGMAN: Q. Is Kaiser Gypsum -- what is (24) Kaiser Gypsum's position as to whether or not its (25) asbestos-containing joint compounds cause cancer?

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(1) MS. JACKSON: Objection, it's overbroad. The (2) word "cancer" encompasses a number of different diseases of (3) different parts of the body. Your client does not have (4) cancer.

(5) MR. BERGMAN: He'd be surprised to here that.

(6) Q. What is Kaiser Gypsum's position as to whether (7) or not its products caused a cancer of the chest wall?

(8) MS. JACKSON: Objection, lacks foundation, (9) calls for calls for medical opinion. I'm instructing him (10) not to answer.

(11) MR. BERGMAN: Your instructing him not to (12) answer --

(13) MS. JACKSON: Absolutely.

(14) MR. BERGMAN: -- whether or not its product, (15) whether or not the products manufactured and sold by Kaiser (16) Gypsum cause mesothelioma in the intended users?

(17) MS. JACKSON: Absolutely. Absolutely.

(18) MR. BERGMAN: And the basis on that, Counsel?

(19) MS. JACKSON: That it's outside the scope of (20) the notice. It calls for a medical opinion, lacks (21) foundation. He's not going to answer it.

(22) MR. BERGMAN: Q. Are you going to following (23) your counsel's instruction on that, sir.

(24) A. Yes.

(25) Q. What is Kaiser Gypsum's position as to whether

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(1) or not its products, it's

asbestos-containing joint (2) compounds posed a hazard to human health when used as (3) intended?

(4) A. May have caused.

(5) Q. What do you mean by that, sir?

(6) A. Well, my understanding is that asbestos (7) potentially can cause health hazards in people. Okay. So (8) we put warnings on our labels -- on our products to notify (9) people of that. That seems perfectly proper. Now to me (10) it's a giant leap to go from that conclusion to what you're (11) trying to have me say here to you, that, yes, there is (12) definitely a causal factor between our product and a (13) specific disease. I'm not in a position to sit here and (14) answer that affirmative.

(15) Q. Just so I understand your testimony and then (16) we'll move on, you are not in a position to say today (17) whether or not asbestos-containing joint compound (18) manufactured by Kaiser Gypsum causes mesothelioma?

(19) MS. JACKSON: Asked and answered.

(20) MR. BERGMAN: Q. You can answer the question.

(21) A. Yes.

(22) Q. You are not in a position to tell us that (23) today?

(24) A. That's right.

(25) Q. Thank you. Sir, looking at, can you tell me,

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(1) sir, what actions Kaiser Gypsum took in response to Exhibit (2) 7?

(3) MS. JACKSON: Again Exhibit 7 with the (4) additional pages that we've just seen over the break?

(5) MR. BERGMAN: You have a standing objection on (6) that, Counsel.

(7) THE WITNESS: Well, judging from the cover (8) letter the attachments were forwarded by a Mr. Flicker to a (9) number of named individuals.

(10) MR. BERGMAN: Q. Who was Mr. Flicker?

(11) A. My review of the organizational chart (12) indicates that he had some role in the safety department.

(13) Q. After the attachments to document 502 were (14) circulated to individuals in the company what action was (15) taken by Kaiser Gypsum in response to that information, the (16) information contained within that document?

(17) A. I don't know whether there was or was not any (18) further action taken.

(19) Q. Can you tell me whether or not Kaiser Gypsum (20) stopped manufacturing asbestos-containing joint compounds (21) after Exhibit 7 was circulated throughout the company?

(22) MS. JACKSON: Assumes facts not in evidence.

(23) THE WITNESS: No, I -- well, I

understand that (24) we stopped manufacturing asbestos-containing products, (25) compound products at our Seattle plant around 1975.

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(1) MR. BERGMAN: Q. And that was ten years after (2) Exhibit 7 was drafted; is that correct?

(3) A. That's right.

(4) Q. Can you tell me --

(5) A. I would point out that the second paragraph (6) does talk something about respirators and that sort of thing (7) were used.

(8) Q. Yeah. When did Kaiser Gypsum begin to warn (9) users of its product to use respirators?

(10) A. Well, the document I have, I think you (11) provided for me this afternoon, was around 1972 I believe.

(12) I don't know if that's the first such.

(13) MS. JACKSON: I would really would ask counsel (14) if you'd show him the documents or give us the numbers to (15) refer to.

(16) MR. BERGMAN: Sure, that's fine. Sometimes I (17) don't know what it is.

(18) Q. I'm handing you Exhibit I3, Mr. Hobby, and (19) that's, for counsel's record, No. 302.

(20) A. Yes sir.

(21) Q. I direct your attention to exhibit, is that 7?

(22) A. No, 13.

(23) MS. JACKSON: The --

(24) MR. BERGMAN: The one that you're holding, (25) sir.

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(1) MS. JACKSON: This is 7.

(2) THE WITNESS: 13?

(3) MR. BERGMAN: Q. Yeah, 13.

Directing your (4) attention to Exhibit I3, sir, in the middle of that document (5) there's a, it appears to be a warning; is that correct, sir?

(6) A. Yes. It's described as a caution actually.

(7) Q. Caution. Okay. Is that the caution that (8) Kaiser Gypsum placed on its products, its (9) asbestos-containing joint products that you previously (10) testified to?

(11) A. This memo would indicate that it is.

(12) Q. Okay. And if you could please read to me the (13) exact admonition that was provided?

(14) A. "Caution: Contains asbestos fibers.

(15) Avoid creating dust. Breathing asbestos dust (16) may cause serious bodily harm."

(17) Q. You would agree with me, sir, then, that (18) nothing in this admonition says anything about respirators?

(19) A. No. That's right, I agree with you.

(20) Q. All right. If you could please look back on (21) Exhibit 7 with me for a minute, sir, and I'm, I'd like to (22) direct your attention to Pages 503 and 504, understanding (23) counsel has a standing objection on that question. If you (24) could peruse those two pages and tell me whether or not (25) there's any reference to, any statement that a prolonged and

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(1) substantial exposure to asbestos is necessary before (2) mesothelioma is contracted?

(3) A. Maybe you can help me if you know if there is (4) such a mention.

(5) Q. Okay. If you could please look on the Page (6) 504?

(7) A. Okay.

(8) MS. JACKSON: I'm just going to object the (9) document speaks for itself. It's not a document that was (10) created by anyone from Kaiser Gypsum. It's not authored by (11) a Kaiser Gypsum employee. The document speaks for itself. (12) He can read from it but this prolongs the testimony here.

(13) MR. BERGMAN: Q. Sir, are you aware of any (14) knowledge regarding the Pickner case?

(15) A. Yes, I have knowledge of the Pickner case.

(16) Q. Are you aware of when Mr. Pickner was (17) diagnosed with mesothelioma?

(18) A. No, in fact I didn't know that Mr. Pickner had (19) mesothelioma.

(20) Q. Are you aware, sir, that Mr. Pickner was (21) diagnosed with mesothelioma approximately 32 years after (22) this Exhibit 7 was authored?

(23) A. I just answered that I didn't know he had (24) mesothelioma.

(25) Q. Okay. Moving along, handing you Exhibit 8, I

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(1) ask you whether you can identify that for me, please, sir?

(2) MS. JACKSON: This is another of the documents (3) with the standing objection to the completeness issue.

(4) THE WITNESS: Can I identify it?

(5) MR. BERGMAN: Q. Yes.

(6) A. In what respect?

(7) Q. Do you know what it is?

(8) A. You just gave it to me. No, I don't know what (9) it is.

(10) Q. Okay.

(11) A. It's a memo.

(12) Q. Okay. And is this again another memo from Mr. (13) Flicker?

(14) MS. JACKSON: The document speaks for itself.

(15) A. Yes, it would appear to be.

(16) MR. BERGMAN: Q. And Mr. Flicker, sir, was an (17) individual at Kaiser who had some responsibility over (18) safety?

119 A. I understand that to be the case.

120 Q. And Mr. Franklin, am I correct, sir, was the 121 vice president of manufacturing?

122 A. Oh, I'd have to go back to the, and cross 123 reference the organization charts that --

124 Q. Okay. I'll hand you my copy.

125 A. Okay.

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126 MS. JACKSON: I'll just make an objection in 127 that this document that you've handed him, Plaintiff's 0240 128 is dated 1970 and the document you're inquiring on is 1966. 129 It would appear not to relate.

130 THE WITNESS: Okay. I see a Mr. P.J. 131 Franklin.

132 MR. BERGMAN: Q. Okay. If you would look 133 with me, sir, and if you could read for me the first full 134 paragraph of Exhibit 8.

135 MS. JACKSON: The document speaks for itself.

136 MR. BERGMAN: Could you read that for me, sir?

137 A. "Recent studies by medical authorities 138 tend to show some possible connection between 139 inhalation of asbestos dust and cancer. Be 140 certain that all persons who work in the 141 vicinity of asbestos are wearing a proper 142 respirator approved by the U.S. Bureau of 143 Mines for asbestos dust."

144 Q. Do you know what the purpose of the Exhibit 8 145 was, who it was intended to go to?

146 A. Well, it would indicate that it was to go to 147 safety supervisors.

148 Q. And do you know whether or not precautions 149 were taken in response to Exhibit 8?

150 A. I have no direct knowledge whether or not

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151 precautions were taken in response to Exhibit 8.

152 Q. Do you know whether or not Exhibit 8 pertains 153 to asbestos risks posed by or presented to users of Kaiser 154 Gypsum products or employees of Kaiser Gypsum?

155 MS. JACKSON: Assumes facts not in evidence.

156 MR. BERGMAN: Q. Let me restate the question. 157 Does Exhibit 8 draw any distinction between users of Kaiser 158 Gypsum products and employees of Kaiser Gypsum?

159 MS. JACKSON: The document speaks for itself.

160 THE WITNESS: No, it doesn't draw a 161 distinction.

162 MR. BERGMAN: Q. Do you know what action, if 163 any, was taken in

response to Exhibit 8 regarding products

164 manufactured by Kaiser Gypsum?

165 A. No, I do not.

166 MS. JACKSON: Assumes facts not in evidence.

167 MR. BERGMAN: Q. Do you know whether or not 168 Kaiser Gypsum continued to manufacture asbestos-containing 169 joint compounds after Exhibit 8 was authored?

170 A. Yeah, to the best of my knowledge they did.

171 Q. And did Kaiser Gypsum ever provide a warning 172 suggesting that users of Kaiser Gypsum products wear a 173 respirator approved by the U.S. Bureau of Mines?

174 A. I can't answer the word "ever."

175 Q. Let me rephrase the question then for you,

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176 sir. Are you aware of Kaiser Gypsum ever providing any 177 warnings to users of its products that they should wear a 178 respirator approved by the United States Bureau of Mines?

179 A. No, I'm not.

180 Q. Let me hand you Exhibit 9, sir. Sir, I'd like 181 to direct your attention on Exhibit 9 to the bottom of the 182 page regarding safety indicating that employees should wear 183 respirators when handling and weighing and batching 184 asbestos. Do you know whether or not employees of Kaiser 185 Gypsum did wear respirators while handling, weighing and 186 batching asbestos?

187 A. I have no personal knowledge. I wasn't there.

188 Q. Can you tell me whether or not, do you know 189 one way or the other whether Kaiser Gypsum required its 190 employees to wear respirators when handling asbestos?

191 A. Well, I can assume that if this sort of a 192 safety warning was disseminated that they would have been 193 required to wear them.

194 Q. Why would Kaiser Gypsum suggest that its 195 employees wear respirators and not suggest that its 196 customers wear respirators?

197 MS. JACKSON: Lacks foundation, assumes facts 198 not in evidence.

199 THE WITNESS: Well, first of all, I can 200 probably answer that in several ways, but my first thought,

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201 I'd be supposing, of course, my first thought on that is 202 that the hazard of handling, weighing and batching raw 203 asbestos was known to Kaiser Gypsum. What was not known was 204 the hazard of asbestos in an end product that may be used by 205 a user.

206 MR. BERGMAN: Q. And what is the basis for 207 that understanding, sir? You indicated that --

208 A. Well, I've seen a number of documents coming 209 mostly from the Safety Department. And my understanding of 210 the way the Safety Department worked is it dealt with 211 employee issues, not end user issues.

212 Q. Uh-huh.

213 A. So coming from the safety personnel, various 214 documents that you've given me and that I have seen have 215 requirements that employees use respirators. So I deduct 216 from that that there was an awareness by Kaiser to a 217 potential hazard at least of asbestos, raw asbestos 218 exposure. Like I said before, the asbestos, the term 219 "asbestos" has been around a long time.

220 Q. So would it be fair to say, sir, that at least 221 as of 1969 Kaiser Gypsum was aware that its employees 222 working around asbestos faced a potential health hazard?

223 A. Well, this is dated 1972 if you're making 224 reference to this.

225 Q. I'm sorry, sir, I was referring to Exhibit 9.

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226 Upper right.

227 MS. JACKSON: Let's correct the date at the 228 top of the bulletin. It's 6/20/72 which cancels an earlier 229 document. At the top. You've got the wrong date 230 highlighted.

231 MR. BERGMAN: Q. I'm sorry, sir. Could you 232 please turn to Page 218 of Exhibit 9?

233 A. I'm sorry, I didn't hear you.

234 Q. Never mind. Sir, I'm handing you what has 235 been marked as Exhibit 10

236 I'm sorry, Counsel, it's 333.

237 MS. JACKSON: Thank you.

238 MR. BERGMAN: Q. Did Kaiser Gypsum at some 239 point become aware that the federal government was 240 considering banning asbestos from asbestos-containing 241 building products?

242 A. I don't know. At some point in time?

243 Q. Mm-hmm

244 A. I don't know.

245 MS. JACKSON: Overbroad.

246 THE WITNESS: When they became aware that the 247 government was considering doing something. If there's a 248 document that says that, you know, I --

249 MR. BERGMAN: Q. Maybe if you could look at 250 the document I just handed you, Exhibit 10 for a second.

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251 A. Is there a sentence in there? Why don't you 252 help me.

253 Q. If you could look at the third paragraph.

254 A. Third paragraph. Well, it talks about if 255 asbestos fiber is banned. I guess it doesn't say by the 256 federal

government.

Q. Mm-hmm. So it would be correct to say that in (8) November of 1971 Kaiser Gypsum was aware that there was a (9) potential that asbestos fiber might be banned from its (10) products?

MS. JACKSON: The document speaks for itself.

THE WITNESS: That's what it says.

MR. BERGMAN: Q. And I'm also correct, sir, (14) that as of in November of 1971 that Kaiser Gypsum at that (15) point was not providing any warnings to its customers (16) concerning asbestos content of its products?

A. I don't know when warnings were first provided (18) to its customers.

Q. Could you please look for me, sir, on Exhibit (20) 2, Page 5, your interrogatory answers?

A. Exhibit 2?

Q. Yeah. That's your interrogatory answers.

A. Okay. What page?

Q. Page 5.

A. Okay. Now where?

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Q. If you could look at your response to (2) Interrogatory No. 6.

MR. PETTY: Matt?

MR. BERGMAN: Yes, sir.

MR. PETTY: This is Ken Petty. I don't mean (6) to unduly interrupt you but may I have an objection, may we (7) have an objection to all of your warnings questions simply (8) because of the lack of relevance and not reasonably (9) calculated to lead to any admissible evidence in this (10) particular case. I think you're well familiar with Mr. (11) Pickner's testimony regarding his practice in terms of (12) reading warnings or instructions on the product packaging of (13) other trades.

MR. BERGMAN: You certainly do is have a (15) standing objection on that subject matter, Ken.

MR. PETTY: Thank you.

THE WITNESS: I didn't get your question.

MR. BERGMAN: Q. Okay. We were discussing (19) whether or not at the time Exhibit 10 was generated, the (20) memorandum, Kaiser Gypsum was providing warnings to its (21) customers concerning hazards of asbestos. And I'd like you (22) if you would, sir, to look at Page 5 of your (23) interrogatories, and tell me whether or not that refreshes (24) your recollection on whether warnings were being provided in (25) November of 1971?

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A. Well, this says beginning in 1972. If there's (3) a distinction between November of '71 and the beginning of (3) 1972 then I'll stand corrected.

Q. Okay. So would it be fair to state, sir, that (5) at least at the time that Exhibit 10

was generated warnings (9) were not being provided?

MS. JACKSON: Lack of foundation, speculation, (8) assumes facts not in evidence.

THE WITNESS: Yes.

MR. BERGMAN: Q. You want to look at your (11) answer to 19, to Interrogatory No. 6, and you indicate (12) beginning in 1972 Kaiser affixed caution labels. When in (13) 1972 did Kaiser begin affixing cautionary labels on its (14) products?

A. I don't know.

Q. Any time within January and December of 1972?

A. Yes. I'm not sure this is an exact science.

Q. If you could look with me on Exhibit I3.

A. Yes.

Q. We've previously discussed this document. (21) First of all, do you know who Mr. Toomey was?

A. I don't know Mr. Toomey, or I understand he (23) may have been an attorney. But I've been advised by counsel (24) that that may be the case but I have not personally seen his (25) name on any organization chart.

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MS. STEELE: What exhibit number are you (2) looking at?

MR. BERGMAN: It's 302.

MS. STEELE: What page?

MR. BERGMAN: First page.

MS. JACKSON: To the extent there's a (7) privilege issue if he is an attorney I'd like to preserve (8) that objection.

MR. BERGMAN: Absolutely, Counsel.

Q. Do you know, sir, whether -- well, if you (11) could just -- have you had a chance to look over Exhibit I3 (12) prior to my questioning of you?

A. I looked over it, yes.

MS. JACKSON: Insofar as we didn't have Page 2 (15) until the break.

MR. BERGMAN: I know.

MS. JACKSON: Okay.

MR. BERGMAN: Q. Okay. Do you know, sir, (19) whether warnings were applied to Kaiser Gypsum asbestos (20) products prior to the promulgation of Exhibit I3?

A. No, I don't know for sure.

Q. What is your best understanding?

A. I don't know. What I can tell you is I have, (24) I've seen this document, it says September 28th, 1972, I (25) have no way of knowing this was the first in a series of

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documents or not. And I think that in response to our (2) Interrogatory No. 6 that's why we said as we did that (3) sometime in 1972 there were warnings

put on there. We know (4) that that's the case.

Q. But sitting here today you can't say whether (6) warnings started to be put on in January in '72 or September (7) of 1972?

A. No, I can't.

MS. JACKSON: Asked and answered.

MR. BERGMAN: Q. If I could direct your (11) attention, sir, to the last full paragraph on the first page (12) of Exhibit I3, it refers to a federal regulation regarding (13) labeling. Could you read that paragraph, sir?

MS. JACKSON: The paragraph beginning with the (15) reason?

MR. BERGMAN: Q. Correct.

A. "The reason for using the foregoing (18) label only for asbestos-containing products (19) is that they are the only gypsum products (20) which federal laws at this time require to be (21) marked. The regulation went into effect July (22) 7th, 1972. Therefore, every effort should be (23) made to immediately comply with it. The (24) label should be applied by stencil, stamps, (25) stickers or whatever may be the most

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convenient means for prompt compliance."

Q. Would it be fair to say, sir, after reading (3) that paragraph that in September of 1972 Kaiser Gypsum was (4) not in current compliance with the federal regulation?

MS. JACKSON: I think that's speculation and (6) lacks foundation.

THE WITNESS: No, I wouldn't say that that was (8) fair to say that.

MR. BERGMAN: Q. You couldn't say one way or (10) the other.

A. I could not say one way or the other.

Q. Okay. Why didn't Kaiser Gypsum provide more (13) specific warnings than the ones set forth on the first page (14) of Exhibit I3?

MS. JACKSON: Calls for speculation, assumes (16) facts not in evidence.

A. I don't know.

Q. Was there a reason that Kaiser Gypsum did not (19) specifically provide warnings regarding the sanding of its (20) product?

A. I don't know.

Q. Was there a reason that Kaiser Gypsum did not (23) provide specific warnings regarding the mixing of its dry (24) joint compounds?

A. I don't know.

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Q. Was there a reason why Kaiser Gypsum did not (2) specifically warn the

you could (24) take a minute to peruse or as long as you want really to (25) peruse Exhibit 16 and I'll ask you some general questions

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(1) regarding it.

(2) MS. JACKSON: Take as much time as you need to (3) read it.

(4) MR. BERGMAN: Yeah, please do. And, of (5) course, counsel has a standing objection.

(6) Q. And if it's helpful, Mr. Hobby, I'm going to (7) be directing questioning --

(8) A. Yeah, I mean this is a lengthy document, four (9) or five pages it's hard for me to focus on what you might (10) ask me. Why don't you proceed.

(11) Q. I'm going to be focusing my questioning (12) basically on the first and second page and then Page 499 if (13) that's helpful to you.

(14) A. Please ask your question and if I have to take (15) more time I will.

(16) Q. Fine. Please do that. First of all, I direct (17) your attention to the upper right-hand corner of Exhibit 16. (18) It indicates that the document is confidential. Do you know (19) why Exhibit 16 would have been confidential?

(20) A. No, and in fact I don't know that that was a, (21) I can't tell from that that it was an original part of that (22) document. It may not, it may have been added later.

(23) Q. Are you aware of any testing of Kaiser Gypsum (24) joint compounds prior to 1974 to determine the levels of (25) airborne asbestos from the use of said products?

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(1) A. Any testing of joint compounds?

(2) Q. Correct.

(3) A. For airborne?

(4) Q. Correct.

(5) A. I don't, I don't, I wouldn't be aware of any (6) test that you would do on a compound to test for airborne.

(7) Q. Okay, okay. Are you aware of, are you aware (8) of any testing that Kaiser Gypsum conducted prior to 1974 to (9) determine whether the use of its joint compounds exceeded (10) the threshold limit value of airborne asbestos?

(11) A. Not the use of it. I am aware of some testing (12) that was done in our plants by an industrial hygienist to (13) determine exposure, asbestos exposure.

(14) Q. Of your, of Kaiser Gypsum's employees?

(15) A. Yes.

(16) Q. Okay. Okay. But your testimony, though, is (17) that you're not, Kaiser Gypsum is not aware -- well, prior (18) to 1974 did Kaiser Gypsum conduct any testing of its (19) products to determine the exposure level of its customers to (20) asbestos fibers?

(21) A. I'm not aware of any. By the same token, I (22) mean one way or the other. I don't know whether there was (23) any testing done.

(24) Q. You don't know, okay. And are you aware of (25) Kaiser Gypsum being provided with any testing of joint

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(1) compounds in general regarding levels of airborne asbestos (2) fibers?

(3) MS. JACKSON: Could you restate your question, (4) please?

(5) MR. BERGMAN: Q. Absolutely. You previously (6) testified I believe, Mr. Hobby, that you are not aware of (7) any tests prior to 1974 of Kaiser Gypsum compounds to (8) determine levels of asbestos fibers posed by the users of (9) Kaiser Gypsum products. My question to you is are you aware (10) of Kaiser Gypsum receiving any information regarding tests (11) performed on other manufacturers' joint compounds regarding (12) airborne asbestos levels prior to 1974?

(13) MS. JACKSON: If you know.

(14) THE WITNESS: I don't know. It's a long (15) question but from what I gathered from it I have no (16) knowledge of any testing that was going on regarding end (17) users.

(18) MR. BERGMAN: Q. Just so I can understand (19) your testimony then, so far as you know the first testing (20) that was performed for the benefit or regarding end users (21) was in 1974?

(22) MS. JACKSON: Assumes facts not in evidence.

(23) MR. BERGMAN: Q. The first testing that (24) you're aware of?

(25) MS. JACKSON: Overbroad.

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(1) THE WITNESS: Does this document say there was (2) a test in 1974?

(3) MR. BERGMAN: Q. If you could turn with me, (4) please, to Page 499.

(5) A. Yes.

(6) Q. Did Union Carbide conduct tests of Kaiser (7) Gypsum joint compounds?

(8) MS. JACKSON: The document speaks for itself.

(9) THE WITNESS: This document says that it's the (10) result of tests with KAGC compounds by Union Carbide.

(11) MR. BERGMAN: Q. And are you aware of any (12) tests prior to 1974?

(13) A. This doesn't --

(14) MS. JACKSON: Objection, overbroad.

(15) THE WITNESS: This doesn't say when the tests (16) may or may not have occurred.

(17) MR. BLACK: What was the exhibit number of (18) that document?

(19) MR. BERGMAN: I'm sorry, it's 495.

(20) MR. BLACK: Thank you.

(21) MR. BERGMAN: Q. Are you aware, sir, of any (22) documents other than Exhibit

16 that refer or relate to any (23) tests of Kaiser Gypsum products for the benefit of end (24) users?

(25) A. I think I answered that. The answer is no.

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(1) MR. BERGMAN: Okay. I think I'm almost done. (2) Why don't we take a break.

(3) THE VIDEOGRAPHER: Off the record at 2:37 p.m.

(4) (Brief recess).

(5) THE VIDEOGRAPHER: Back on the record at 2:51 (6) p.m.

(7) MR. BERGMAN: Q. Mr. Hobby, did there come a (8) time when Kaiser Gypsum stopped using asbestos in its joint (9) compounds?

(10) A. Yes.

(11) Q. And when was that?

(12) A. Well, in the Seattle operations it was around (13) 1975.

(14) Q. How about company wide, was there a time in (15) which asbestos was completely phased out of joint compounds (16) that were manufactured and sold by Kaiser Gypsum?

(17) A. I understood it was about the same time in the (18) rest of the company as well, and certainly the company (19) basically was out of business by 1978.

(20) MR. BERGMAN: Those are all the questions I (21) have at this time. Thank you.

(22) MS. JACKSON: Any other questions?

(23) THE VIDEOGRAPHER: This is the end of the (24) deposition of Joseph Hobby. The total number of videotapes (25) used is 2. All the original videotapes will be held at

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(1) Tooker & Antz, 818 Mission Street, 5th Floor, San Francisco, (2) California 94103. Telephone area code 415-392-0650. Going (3) off the record. The time is 2:52 p.m.

(4) MR. PETTY: Before we go off the stenographic (5) record can we confirm the witness is going to reserve (6) signature?

(7) MR. BERGMAN: Absolutely.

(8) (Whereupon, the deposition was concluded at (9) 2:52 p.m.). (10) (11) (12).

(13)

(14)

(15) SIGNATURE OF WITNESS (16)

(17) (18) (19) (20) (21) (22) (23) (24)

(25)