

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CLAUDE CIMINO, et al.,	*	CIVIL ACTION
	*	NO. B-86-456-CA
Plaintiffs,	*	
	*	Beaumont, Texas
v.	*	March 2, 1990
	*	9:00 O'Clock A.M.
RAYMARK INDUSTRIES, INC.,	*	
et al.,	*	
	*	
Defendants.	*	
* * * * *		

MORNING SESSION
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ROBERT M. PARKER
UNITED STATES DISTRICT JUDGE, JURY
VOLUME XXIX

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1 THE COURT: Mr. Mooney, thank you. You're excused,
2 sir.

3 THE WITNESS: Yes, sir.

4 THE COURT: Next witness.

5 MR. MOTLEY: Dr. William Johnston.

6 MR. RION: Your Honor, we have some notebooks, five
7 or six exhibits for the jurors.

8 DR. WILLIAM JOHNSTON, PLAINTIFFS' WITNESS, SWORN

9 THE COURT: Doctor, take your seat right here,
10 please, sir.

11 MR. MOTLEY: May I proceed, Your Honor?

12 Your Honor, in the interest of time, may I summate
13 the qualifications of the Doctor and ask him if he affirms
14 that what I say is true?

15 DIRECT EXAMINATION

16 BY MR. MOTLEY:

17 Q First of all, Dr. Johnston, state your name and age for
18 the record.

19 A Yes. My name is Dr. William Michael Johnston. My age
20 is forty-nine.

21 Q And where do you live, sir?

22 A In Augusta, Georgia.

23 Q Are you a married man?

24 A Yes, I am.

25 Q And do you have children?

1 - A Yes.

2 Q What is your current professional position?

3 A I'm chief of the pulmonary disease service at Eisenhower
4 Army Medical Center. I'm a colonel in the United States
5 Army.

6 MR. MOTLEY: Ladies and gentlemen of the jury, the
7 Judge has given me permission to save some time to state Dr.
8 Johnston's credentials. May I do it from here, Your Honor,
9 so I don't have to talk so much. My voice is a little raspy
10 today.

11 Dr. William Johnston is currently a colonel in the
12 United States Army. He is stationed at and practices
13 medicine at the Dwight D. Eisenhower Medical Center at Fort
14 Gordon, Georgia. Dr. Johnston practices pulmonary medicine.
15 Dr. Johnston is an associate clinical professor of medicine
16 at the Medical College of Georgia. He is Board-certified in
17 internal medicine, preventive medicine and pulmonary
18 medicine. He has a medical degree from Stanford University
19 near -- I was going to tell them near San Francisco -- in
20 1968 and studied for two years at the Harvard University
21 School of Public Health where he received master's degrees
22 in public health and industrial health in 1970 and 1971.

23 Following graduation from Harvard, Dr. Johnston
24 joined the United States Government. He became affiliated
25 with the United States Public Health Service as an

1 occupational doctor with the rank of medical officer
2 assigned to the National Institute of Occupational Safety
3 and Health, which is the scientific arm of OSHA in
4 Cincinnati, Ohio in July of 1971.

5 Shortly after joining the Federal Government, he
6 was promoted to the position of acting deputy director,
7 division of field studies and clinical investigation as
8 chief medical officer for that governmental organization.
9 As such, he was concerned with industrywide studies of
10 occupational environment. That's in 1971. Dr. Johnston
11 remained with the United States Government in service with
12 NIOSH until 1973 when he left the government to continue his
13 training in internal medicine and lung diseases.

14 Dr. Johnston obtained his board certification as a
15 lung specialist in 1980. Shortly after Dr. Johnston joined
16 the United States Government in July of 1971, he became
17 personally knowledgeable about Pittsburgh Corning
18 Corporation and Pittsburgh Plate and Glass and the asbestos
19 problems associated with Pittsburgh Corning Corporation in
20 Port Allegany, Pennsylvania and Tyler, Texas at their
21 Unibestos manufacturing plant.

22 Dr. Johnston was requested by the Plaintiffs in
23 this case to appear here at trial and has the permission of
24 the United States Army to do so as an individual citizen.

25 BY MR. MOTLEY:

1 Q Dr. Johnston, is the above summary correct and accurate
2 to best of your personal knowledge?

3 A Yes, it is.

4 Q Doctor, did you study the asbestos diseases in medical
5 school in the 1960's and later at Harvard?

6 A Yes.

7 Q Do you agree that asbestos diseases are serious and can
8 cause death?

9 A Yes.

10 Q Have you ever testified in a court of law in front of a
11 jury in your life?

12 A No, I have not.

13 Q Are you nervous?

14 A Yes.

15 Q Can we give the doctor some water, please, Mr. Rice? He
16 asked me that and I forgot.

17 Now, Dr. Johnston, you have personal eyewitness
18 knowledge, do you not, sir, about the conditions of exposure
19 of human beings employed by Pittsburgh Corning at their
20 Unibestos facilities; is that correct?

21 A Yes, sir.

22 Q In this case, sir, very serious allegations have been
23 made by myself on behalf of my clients against Pittsburgh
24 Corning. I ask you to pay very close and careful attention
25 to the questions both sides ask you.

1 Now, you affirmed a moment ago that shortly after you
2 joined the United States Government you became personally
3 knowledgeable about asbestos problems at Pittsburgh Corning.

4 A Yes, within the first two weeks at the National
5 Institute for Occupational Safety & Health, I was shown the
6 files dealing with the asbestos studies that have been
7 conducted by the U.S. Public Health Service.

8 Q And those studies that preceded the study your
9 investigation occurred in what year?

10 A 1967 to 1970 at the Pittsburgh Corning facilities.

11 Q Now, Doctor, tell the ladies and gentlemen of the jury
12 whether or not within two weeks of your joining the
13 Government you found out that there was a serious health
14 problem to human beings at the Pittsburgh Corning plant.

15 A Well, the United States Public Health Service had been
16 involved in looking at plants throughout the country and the
17 two plants that stuck out the most as having the highest
18 values were --

19 Q Highest what?

20 A Highest exposure levels were the facilities in Tyler,
21 Texas and in Port Allegany, Pennsylvania. The other
22 facilities that have been looked at by the Public Health
23 Service involved what we call the asbestos textile industry
24 and those levels generally seemed to be in order of
25 magnitude less than or more than the levels that were

1 -documented in Tyler and in Port Allegany. They stuck out.

2 Q They stuck out as being the best or the worst?

3 A The worst.

4 Q Now, that's Pittsburgh Corning was the worst, correct?

5 A Yes.

6 Q All right. The jury has heard the name of Dr. Lee
7 Grant. After you joined the United States Government as a
8 medical officer for NIOSH, did you meet and talk to Dr. Lee
9 Grant?

10 A Yes. Within that first month of July I had a telephone
11 conversation with Dr. Grant.

12 Q And who did he represent himself to be when you spoke to
13 him?

14 A He was regarded as the medical consultant to Pittsburgh
15 Corning and the medical director of PPG Industries.

16 Q Did he tell you he was the medical man you were to deal
17 with when you dealt with Pittsburgh Corning?

18 A Dr. Grant did, but one of the previous supervisors for
19 epidemiology at NIOSH indicated to me that Dr. Grant was the
20 individual to talk, to Dr. Lewis Crowley.

21 Q And you talked to Dr. Grant, correct?

22 A Yes.

23 Q And he held himself out to be the medical man for
24 Pittsburgh Corning?

25 A Yes, sir.

1 Q All right. Did you meet with a Mr. Farkos?

2 A In September three of us from the National Institute for
3 Occupational Safety & Health went to Port Allegany for a
4 meeting and a tour of the facility. One of the individuals
5 at the meeting representing Pittsburgh Corning was Mr.
6 Farkos.

7 Q And he was vice-president of personnel I believe?

8 A Yes, I believe that was the case.

9 Q Did you meet a Mr. Holman?

10 A Yes.

11 Q Some time during the time that you were involved with
12 investigating the health conditions at Pittsburgh Corning's
13 plant?

14 A He was at the facility at Port Allegany. He was the
15 vice-president of manufacturing Pittsburgh Corning.

16 Q Did you meet with a Mr. Van Horne?

17 A Not until late in October. Mr. Van Horne was the plant
18 manager at that time of the facility in Tyler.

19 Q All right. Did you yourself, William Johnston, as part
20 of your official investigation of the health conditions at
21 the Pittsburgh Corning asbestos factories, visit Port
22 Allegany and Tyler?

23 A Yes.

24 Q Did you become familiar, sir, with an insulation product
25 manufactured by Pittsburgh Corning, called "Unibestos"?

1 A That was the name of their amosite product. It was
2 their -- as far as I know -- main product, or only product
3 in Tyler. And it was their asbestos product at Port
4 Allegany. And they did have, I think, two or three other
5 product lines that did not deal with asbestos, at the Port
6 Allegany facility.

7 Q All right, sir. Were you told by Pittsburgh Corning
8 officials what was contained in Unibestos? How much
9 asbestos?

10 A In our report we indicated ninety percent.

11 Q Did you get that information from Pittsburgh Corning
12 officials?

13 A I assume so, because that aspect of the report involved
14 industrial hygienist that were familiar with the product and
15 the material.

16 Q All right. Now, Dr. Johnston, in a few words --

17 MR. MOTLEY: -- if I may pause a moment, Your
18 Honor.

19 BY MR. MOTLEY:

20 Q Would you describe in your own words, sir, when you
21 visited the Tyler, Texas, facility north of here, tell the
22 jury, in 1971, nine years after they started this plant,
23 what condition you found that plant in, as far as human
24 beings and health is concerned.

25 A I think "filthy" was a good word for the inside of the

1 -Tyler, Texas, facility.

2 Q "Filthy"?

3 A Yes.

4 Q Did you find the workers to be knowledgeable about how
5 dangerous the asbestos that they were working with was?

6 A I don't really think so, because they didn't seem to be
7 exercising the degree of caution that one would expect from
8 that type of an exposure. They, you know --

9 Q Just tell us what you saw when you went there.

10 A Their wearing of respirators was rather variable. Some
11 had them on; some didn't have them on right; some had them
12 draped down. There were some in some areas of the plant --
13 you know, it was contaminated throughout -- didn't even have
14 them. And we even observed some people eating in a section
15 or two of the plant.

16 Q Eating in the plant where the dust was flying around?

17 A Yes, sir. As I remember, also, they weren't provided
18 work clothing, which we would certainly regard as a good
19 practice today.

20 Q They were not?

21 A Not to the best of my knowledge.

22 Q Was there dust all over the place?

23 A Yes. It was on the floor, on the equipment. You could
24 see some in the air. The plant was generally contaminated.
25 And it was apparent to us that some of the ventilation

1 ducts, particularly in one area, I believe, were plugged.

2 Q Plugged with what?

3 A Asbestos material.

4 Q Dr. Johnston, in 1986 the Occupational Safety & Health
5 Administration of the United States Government held hearings
6 on asbestos. And a gentleman named Morton Corn, who was the
7 Assistant Secretary of Labor, testified that the Pittsburgh
8 Corning Tyler plant --

9 MR. GARRARD: Your Honor, I object to that. That's
10 hearsay.

11 MR. MOTLEY: It's an official government document,
12 Your Honor.

13 MR. GARRARD: Hearsay. No proof of that.

14 THE COURT: What's the purpose of your question,
15 Counsel?

16 MR. MOTLEY: The statement that is contained in the
17 official report of the government, Your Honor, is about this
18 plant that he visited. And I want to find out whether or
19 not he concurs with what was said.

20 THE COURT: Is the statement or the document in
21 evidence?

22 MR. MOTLEY: We are going to move its admission
23 into evidence, Your Honor. I believe it's listed on our
24 exhibit list, is it not, Mr. Thompson?

25 MR. THOMPSON: That entire document was listed on

1 the exhibit list, Judge. And it's --

2 MR. HARVARD: Could we have a number, please.

3 MR. THOMPSON: I'm not sure what number it is.

4 MR. MOTLEY: I will move on to something else until
5 we find the number --

6 THE COURT: It's your representation that the
7 document is on the exhibit list.

8 MR. THOMPSON: It's our representation, Judge, that
9 the document was listed on the exhibit list as a learned
10 treatise not to go to the jury, but to be read from.

11 THE COURT: Overrule the objection.

12 BY MR. MOTLEY:

13 Q In 1986 Dr. Morton Corn testified to the Federal
14 Government that Tyler, Texas, was the dirtiest, filthiest
15 plant that he had ever been in, in regard to asbestos. Do
16 you agree with that, sir?

17 A That's my experience, yes, sir.

18 Q Dr. Johnston, you indicated that you became
19 knowledgeable about Pittsburgh Corning by looking at the
20 reports of 1967 and 1970 the Government had done before the
21 creation of OSHA, correct?

22 A Yes.

23 Q And those were dust studies that were done of Tyler?

24 A Yes.

25 Q I want to focus on Tyler right now.

1 A Yes.

2 Q Dust studies of Tyler were in those files?

3 A Yes.

4 Q And did they show conditions similar to what you found
5 when you got there in 1971 -- the dust counts?

6 A Yes.

7 Q So, for four years there had been little or no change in
8 the type of work environment those men had to work in. Is
9 that fair?

10 A That's my understanding.

11 Q Now, sir, is it not true that Pittsburgh Corning
12 Corporation was called on the carpet by the United States
13 Government -- OSHA, NIOSH -- for the deplorable conditions
14 that existed in that plant for those men to work in, in
15 Tyler, Texas?

16 A Yes. We wrote a very critical report.

17 Q Very critical report?

18 A Yes, very critical report. And forwarded that report to
19 the United States Department of Labor, OSHA.

20 Q Now, sir, in addition to your investigation of the
21 unhealthy conditions of that plant, have you subsequently
22 learned that in 1969 Pittsburgh Corning was cited by the
23 Department of Labor for unhealthful conditions at that time?

24 A Yes, I learned that they had been cited for ventilation
25 problems.

1 Q In April of 1969?

2 A I would have to look at my notes on the documents. But
3 they were 1969 --

4 Q I asked you to assume it was April the 8th, 1969. Now,
5 sir, in the last several weeks, have I not sent you
6 documents in addition to the documents -- in addition to the
7 documents you had available in your files in 1971, for you
8 to look at?

9 A I think "several weeks" is inaccurate. It was just the
10 last week or so.

11 Q Okay. Ten days?

12 A At the most.

13 Q All right. Now, I sent you documents yea thick
14 (indicating)?

15 A Oh, initially about so thick (indicating).

16 Q All right. I will give you an inch.

17 A Thank you.

18 Q And these are documents, sir, that demonstrate that
19 other people had studied the Tyler and Port Allegany
20 facilities, in addition to the government, correct?

21 A Yes, sir.

22 Q When you went to Tyler, Texas, in your official capacity
23 for the United States Government in 1971, did Dr. Grant or
24 Mr. Holman, the vice-president, or anybody give you these
25 documents for you to look at -- the ones I sent you?

1 A No.

2 Q Doctor, the documents that I sent you indicate that
3 almost from Day One there was an asbestos health hazard at
4 Tyler, Texas, correct.

5 MR. GARRARD: Object to the form of the question,
6 Your Honor. Leading, argumentative. Objection to it.

7 THE COURT: Overruled.

8 BY MR. MOTLEY:

9 Q Is that not correct, sir? Do you want the question back
10 again?

11 A I was provided information dealing with the facility
12 owned by Pittsburgh Corning. And that was basically it,
13 yes, from Day One.

14 Q From Day One, a health hazard?

15 A During that time period, yes, sir.

16 Q Doctor, did I ask you to independently review these
17 documents so that you could come here and testify about your
18 own experience and offer us your personal observations about
19 these documents and your own personal experience?

20 A Yes.

21 Q Prior to my sending you these documents in the last
22 week, had you been aware of the existence of most of them?

23 A No.

24 Q Now, Doctor, before you went to Pittsburgh Corning's
25 facilities in 1971, were you professionally aware as a

1 doctor and a gentleman holding a master's degree in public
2 health and industrial health, that there were dangers
3 associated with human beings breathing asbestos dust?

4 A I was acutely aware of that.

5 Q What dangers did you know about before you came to
6 Pittsburgh Corning, about the hazards of asbestos -- you
7 personally, William Johnston?

8 A I was concerned about three serious diseases. One was
9 asbestosis, or scarring of the lungs. The other thing I was
10 concerned about was the problem with lung cancer. And the
11 other area was mesothelioma.

12 Q The jury has heard those terms repeatedly in the last
13 three or four weeks, Doctor; so, we won't explain them.

14 Approximately when, sir, did you first speak, yourself,
15 with Dr. Lee Grant, the medical consultant to Pittsburgh
16 Corning?

17 A I spoke with him on the telephone in that July after I
18 became aware of the air sampling data of Tyler and Port
19 Allegany.

20 Q You spoke to Lee Grant in July of 1971, correct?

21 A Yes.

22 Q And this was after you had looked at the government's
23 dust counts, right?

24 A Yes.

25 Q And you didn't have all this other stuff I've sent you

1 in the last week when you talked to Dr. Grant, did you?

2 A That's correct.

3 Q Nevertheless, tell the jury what you told Dr. Grant
4 about the conditions under which the human beings that were
5 working for Pittsburgh Corning were being exposed
6 in those plants?

7 A I said on the basis of the levels that I was aware of, I
8 expected that there could be biological problems from those
9 exposures.

10 Q Define "biological problems."

11 A Biological problems are the type of responses that I
12 previously mentioned. I felt that there was the potential
13 for asbestosis, lung cancer and mesothelioma among the Tyler
14 employees.

15 Q Did you ask, in July of 1971, Dr. Grant what Pittsburgh
16 Corning proposed to do to protect these people making
17 Unibestos from getting sick from asbestosis, lung cancer and
18 mesothelioma?

19 A Well, he said in Tyler that the situation was so dusty
20 and uncomfortable that there was such a large turnover that
21 a lot of people didn't really stay around to get sick.

22 Q That was his attitude?

23 A I was shocked.

24 Q You were shocked?

25 A Uh-huh.

1 Q Doctor, did you subsequently personally meet with Dr.
2 Lee Grant and visit the Pittsburgh Corning facilities at
3 Tyler and Port Allegany?

4 A Yes, I did.

5 Q Doctor, independent of anything I have sent you in the
6 last week, in 1971, from your own observations and your own
7 knowledge about what you saw in these earlier studies, did
8 you conclude that Pittsburgh Corning had done little or
9 nothing to clean up the mess at Tyler?

10 A That was a fair conclusion.

11 MR. MOTLEY: Your Honor, we have now exhibits that
12 Your Honor has ruled on that we have notebooks for the jury
13 which I would like to ask the clerk to pass out at this
14 times so I can ask the Doctor about the documents.

15 MR. GARRARD: Your Honor, I believe there was one
16 exhibit they I had in there.

17 MR. RICE: It's been removed. The tab is still in
18 there and the exhibit has been removed.

19 MR. MOTLEY: Ladies and gentlemen, if we have done
20 our homework, the first one you should see is Exhibit 1266,
21 dated November 16th, 1971. Does everyone have that?

22 BY MR. MOTLEY:

23 Q Doctor, do you have that, November 16th, 1971?

24 A Yes, I do.

25 Q All right. Doctor, are you the author? I guess we

1 don't have it right?

2 A I am the co-author of this report.

3 Q It's Exhibit 1266, should be the very first one.

4 A This is to Dr. Pevey, Texas State Health Department.

5 Q Wait a second, Doctor, we're having trouble finding it.

6 MR. MOTLEY: Your Honor, may I hand the juror my
7 copy?

8 THE COURT: He can see with the next juror.

9 Proceed.

10 BY MR. MOTLEY:

11 Q Dr. Johnston, did you author this with another
12 gentleman? Sir?

13 A Let me look at this a minute here.

14 Q All right.

15 A This is just the air sampling data. I believe there is
16 a more comprehensive report.

17 Q I know that. But did you author that?

18 A I co-authored this particular transmittal letter, yes.

19 Q All right. And this is to the Commission of Health of
20 Texas, correct?

21 A Yes.

22 Q And you were expressing your findings?

23 A Yes. We were also expressing concerns about what we
24 viewed as medical problems.

25 Q You indicate in Paragraph 2 that NIOSH industrial

1 hygiene surveys in 1967 and 1970 yielded grossly excessive
2 fiber concentration compared to current and proposed
3 asbestos standards, did you not?

4 A Yes.

5 Q And then, sir, did you report that you had concluded
6 that some of the men who worked at Tyler and were exposed to
7 all of that dust had gotten sick, seven out of eighteen?

8 A Yes, I did with -- we did not at that time have the
9 benefit of the review of the chest x-rays that had been
10 obtained on the Tyler workers. These chest x-rays were at
11 the East Texas Chest Hospital, which is now the University
12 of Texas Health Science Center at Tyler.

13 But we did do physical examinations. We did ask some
14 very specific questions. We had access to some breathing
15 tests that had been done at the East Texas Chest Hospital.
16 And on the basis of our physical examinations, on the basis
17 of the presence of shortness of breath and on the basis of
18 certain reduction in breathing capacity, we concluded that a
19 number of the men met criteria for the diagnosis of
20 asbestosis. And I believe that was seven of eighteen
21 workers with greater than ten years of employment at the
22 Tyler facilities.

23 Q All right, sir. Now, if I would ask the ladies and
24 gentlemen of the jury to turn to the next document and,
25 Doctor, the document is No. 1274, Your Honor, dated December

1 7th, 1971.

2 A All right, yes.

3 Q Now, this is the report that was requested both by the
4 Oil Chemical and Atomic Workers and by the State of Texas
5 Health Department, correct?

6 A Yes.

7 Q All right, sir. Now, Doctor, let me just ask you this
8 general question: You told the jury what you found when you
9 went there earlier, verbally you told them that?

10 A Uh-huh.

11 Q Correct?

12 A Yes.

13 Q Did you also tell in this report the same thing, but in
14 greater detail, what you found in the document the jury has
15 in front of them?

16 A Yes, we concluded there were major deficiencies in the
17 industrial hygiene, that there was a grossly inadequate
18 ventilation system and there were poor housekeeping
19 practices and Tom Annania (phon.), one of the senior
20 Industrial Hygienists in NIOSH, wrote a fairly descriptive
21 analysis of those areas and the problems.

22 Q I would ask you, Doctor, and you, ladies and gentlemen
23 of the jury, to turn to Page 5.

24 Did you criticize Pittsburgh Corning's policy of
25 gathering up asbestos refuse, loading it on a truck and

1 dumping it in a large field adjacent to the plant because
2 there had been no provision made to bury this material and
3 this practice has been carried out for at least fifteen
4 years and produces a serious air pollution problem?

5 A Yes, we were concerned about where the waste went and
6 had some discussion with Pittsburgh Corning about that.

7 Q Did you use the words that the ventilation system of the
8 entire plant was found to be grossly inadequate?

9 A Those are words that I have used, yes.

10 Q And that you said the floor, the ceilings and the
11 rafters had an excessive amount of dust on them, did you
12 find that when you went through there?

13 A Yes.

14 Q And you reported that, sir?

15 A Yes.

16 Q All right. Now, Dr. Johnston, as I said, Mr. Umphrey
17 and myself and my colleagues have made very serious charges
18 against Pittsburgh Corning. And in addition to the
19 violations of the U. S. Health Code that you have just
20 described, we have accused Pittsburgh Corning of submitting
21 misleading and false information to employees of Pittsburgh
22 Corning, to customers of Pittsburgh Corning and to the
23 United States Government.

24 I ask you to assume that I have made those allegations
25 on behalf of my client. Let me ask you this general

1 question: Based on the materials that I have given you, is
2 it true or not true that Pittsburgh Corning submitted
3 misleading and indeed false information to their own
4 employees?

5 A Yes.

6 Q Is it true or not true that Pittsburgh Corning submitted
7 misleading and false information to customers who purchased
8 their Unibestos?

9 A I have seen a document that's very disturbing.

10 Q Well, is the answer to my question is true or not true?

11 A Yes, yes.

12 Q Yes, it is true. Yes, it is true that they have
13 submitted false and misleading information to their
14 customers. Do you agree that they have or they haven't,
15 sir?

16 A Yes, they have.

17 Q All right. And, sir, do you agree or disagree that
18 Pittsburgh Corning submitted false and misleading
19 information to the United States Government?

20 A Yes, they have.

21 Q All right, sir. Now, Doctor, back in 1971 when you
22 investigated Pittsburgh Corning for the United States
23 Government, did you attend an educational seminar that Dr.
24 Grant gave to the employees of Pittsburgh Corning's Port
25 Allegany plant? Were you, William Johnston, there?

1 A Yes.

2 Q Did Dr. Lee Grant, when he for the first time told the
3 workers that Port Allegany, for the first time, about the
4 health hazard of asbestos, misstate any medical facts
5 regarding asbestosis to those employees?

6 A He said it would take twenty or more years to develop
7 asbestosis, given high exposure levels.

8 Q At that time in 1971 as an official of the United States
9 Government, did you correct Lee Grant on the spot?

10 A Yes, yes, and one of my co-workers provided him a
11 follow-up letter and we were concerned about it.

12 Q Now, Doctor, you corrected him on the spot, you just
13 said. In the last week, have I given you a document to look
14 at which proves that that was an outright lie to the
15 employees?

16 A Yes.

17 Q I would ask the ladies and gentlemen of the jury to look
18 at the exhibit dated November the 8th, 1965, 4414.

19 MR. GARRARD: Could I see what 4414 is, Mr. Motley?

20 MR. MOTLEY: December 1st, 1965.

21 THE WITNESS: What is the Plaintiffs' Exhibit
22 number? I have notes, but I --

23 MR. RICE: December 21?

24 BY MR. MOTLEY:

25 Q December 1, 1965, Grant to file?

1 A 12-1-65 regarding Tyler visit 11-8-65.

2 Q Do you, ladies and gentlemen, have December 1st?

3 Now, Doctor, I can read it to you if Mr. Rice can't find
4 it. Dr. Grant, in your presence in 1971, when for the first
5 time they got around to telling the workers there about
6 asbestos hazards told them it took twenty or more years
7 exposure to cause asbestosis, you heard him say that?

8 A Yes.

9 Q And you corrected him on the spot?

10 A Yes.

11 Q You didn't have this document that the jury is looking
12 at when you corrected him on the spot, did you?

13 A I obviously don't have it now. But I have my notes.

14 Q Well, I've got one for you. I'm guilty just as they.

15 All right. Now, Doctor, that document is dated December
16 1st, 1965. And who is the author of it?

17 A Dr. Grant.

18 Q The same man who told the employees it took twenty years
19 to get sick, right?

20 A Yes.

21 Q The same man that boasted to you that the people didn't
22 work in the plant long enough to get sick because it was too
23 dirty to work there, correct?

24 A Right.

25 Q Now, tell the ladies and gentlemen of the jury what he

1 reported to the file of about how long it takes to get
2 asbestosis?

3 A There had been one disability award for asbestosis, and
4 this award had been made in 1961. He mentions the
5 individual, who had a five-year exposure. If you would like
6 me to, and if I have the Court's permission, I will mention
7 the individual.

8 Q Well, they've got the --

9 THE COURT: That doesn't matter, Doctor.

10 BY MR. MOTLEY:

11 Q Mr. Land.

12 THE COURT: The name doesn't matter?

13 A Mr. Land.

14 BY MR. MOTLEY:

15 Q All right. And how long had he worked with Unibestos
16 before he got his case of disabling asbestosis?

17 A According to this, five years.

18 Q So, when Dr. Grant told the employees it took twenty
19 years, he had in his own records a case where it only took
20 five years?

21 A That's correct.

22 Q Doctor, --

23 THE COURT: Good time for the break, Counsel?

24 MR. MOTLEY: Yes, sir. Maybe I can get my notebook
25 straight.

1 THE COURT: All right. Twenty-minute break. I
2 need to see Mr. Harvard for just a moment during the break
3 and then Mr. Umphrey for just a moment.

4 We are in recess.

5 (RECESS AT 10:30 A.M. UNTIL 10:50 A.M.)

6 (JURY IN AT 10:50 A.M.)

7 CONTINUED DIRECT EXAMINATION

8 BY MR. MOTLEY:

9 Q Doctor, do you have the December 1st, 1965, document in
10 front of you? Now, let me --

11 A Yes, I do.

12 Q Don't get them out of order. Let me just read it to
13 you, okay? To be fair, Doctor -- this is 4414, ladies and
14 gentlemen. The same one we had right before the break.

15 A This is December 1st, 1965?

16 Q Right.

17 A All right.

18 Q Would you look, sir, at Item No. 1, the Tyler plant,
19 "History of the Tyler plant." Do you see that?

20 A Yes.

21 Q It became a Unibestos plant in 1954?

22 A Yes.

23 Q Correct. Now, Pittsburgh Corning bought this plant, I
24 believe, in the summer of 1962, correct? Isn't that your
25 understanding?

1 A It's my understanding they purchased it from UNARCO.

2 Q In 1962?

3 A Yes.

4 Q All right. So that the gentleman who had asbestosis
5 worked for UNARCO, the company from whom they purchased the
6 plant, correct?

7 A Yes.

8 Q But he was working with the same product, correct?

9 A Same product, same plant, same equipment, yes.

10 Q All right. Is that notice to Dr. Grant that it was a
11 hazard in that plant, in your opinion?

12 A Yes.

13 Q And down in No. 5, Doctor, does Dr. Grant point out that
14 there's a problem in housekeeping in that plant?

15 A Yes, he does. He indicates there's a twenty-inch fan
16 used to cool the batch loader, which obviously interferes
17 with the effectiveness of the dust collecting system in the
18 batch hoppers. The housekeeping is more difficult because
19 of the nature of the flooring, particularly in the building
20 operation, where large amounts of fibrous material is
21 impregnated with the --

22 Q Waterglass?

23 A -- and is stuck to the floors. Certainly some of this
24 must find its way back into the air.

25 Q And when you got there in 1971, was it a fact that some

1 of the dust got back into the air for the men to breathe?

2 A Oh, yes.

3 Q Now, sir, I ask you and the ladies and gentlemen of the
4 jury -- let me point this out, Doctor. I sent you a stack
5 either this tall or this tall of documents (indicating), and
6 we obviously don't have time to go through all of them. Do
7 you understand that?

8 A Yes.

9 Q But if you need to reference another document, you just
10 tell me and we'll try to find it. But I would like at this
11 time to direct your attention to Exhibit No. 1393, ladies
12 and gentlemen.

13 Doctor, this is a letter dated August 15th, 1966, from
14 Dr. Grant to Mr. Haskins (phon.) of the Bath Iron Works
15 Shipyard, August 15th, 1966. Bath Iron Works, Doctor, is a
16 shipyard, is it not?

17 A Yes.

18 Q Now, Doctor, you just received this letter within the
19 last week, have you not?

20 A Yes. And the first time I have been over this in any
21 detail was yesterday.

22 Q And I believe it's fair for me and Mr. Harvard, who were
23 with you last night, that this document upsets you greatly,
24 does it not?

25 A Yes.

1 -Q Will you tell the jury why this document, August 15th,
2 1966, from Dr. Grant to Mr. Haskins at the shipyard, who
3 purchased Unibestos -- first of all, let me do this.

4 He says in this letter that "Dr. Grant was requested to
5 write to Mr. Haskins regarding the health experience of our
6 Pittsburgh Corning employees in the manufacturing of
7 Unibestos." He says, "Although I am the medical director of
8 Pittsburgh Plate and Glass, I am the medical consultant for
9 Pittsburgh Corning."

10 And therefore, Mr. Stout, vice-president of Pittsburgh
11 Corning, asked him -- Dr. Grant -- to respond on behalf of
12 Pittsburgh Corning, correct?

13 A That's what the letter says, yes.

14 Q All right. Now, sir, tell the jury what it is about
15 this letter from Dr. Grant of August 15th, 1966, about the
16 health experience at the Unibestos facility, that causes you
17 to be so upset. And let me ask you: Why are you upset
18 about it? As a professional or as a human being or both?

19 A Both. And I think it raises all kinds of questions
20 about corporate and individual responsibility, professional
21 and group responsibility and so on.

22 Q First of all, Doctor, are there any false statements in
23 this letter?

24 A Yes. I think there are some problem areas that are
25 false and need amplification.

1 Q All right. What's the first false statement?

2 A "Repeated dust studies by the Industrial Hygiene
3 Foundation and the State Health Departments have shown dust
4 exposures to be within safe limits for these materials."

5 Q Is that true or false?

6 A The Pennsylvania people certainly found that there were
7 problems. There is no mention of the U.S. Public Health
8 Service data. The original Industrial Hygiene Foundation
9 study was really just a series of three dust measurements by
10 Dr. Corn. And one of them was grossly excessive. And that
11 isn't even mentioned in here.

12 His previous -- his subsequent work, which apparently is
13 under that Industrial Hygiene Foundation, although I'm not
14 sure. What his relationship subsequently was with the
15 Industrial Hygiene Foundation is not referenced. So, I
16 don't think that statement can be supported.

17 Q All right, sir. The statement that the dust levels were
18 safe in the plant is a false statement, correct?

19 A Yes.

20 Q All right. What's the second false statement?

21 A "The pre-employment and annual periodic chest x-ray of
22 all employees in the Unibestos manufacture have failed to
23 reveal any evidence of dust-related pulmonary disease."

24 Q Why is that false?

25 A I don't know of any annual periodic chest x-rays that

1 were required of Unibestos workers on a continuing basis.

2 Q All right. But let me ask you something, sir. Is there
3 any mention in that letter of the case of Mr. Land, who
4 worked for five years at that plant and got asbestosis from
5 Unibestos dust?

6 A No, there is not.

7 Q All right, sir. What's the next false statement?

8 A "The industrial hygiene measures utilized to maintain a
9 healthful working environment included local ventilation at
10 the point of dust generation."

11 Q All right. What's false about that?

12 A A lot of that local ventilation has been pointed out,
13 both in the private work and -- as not really working
14 properly. And our subsequent observations have also
15 validated that opinion.

16 Q All right, sir.

17 A I don't think that the data will support that there was
18 local ventilation to the point of safety.

19 Q All right. What about the next thing about the
20 mandatory respirator policy, the next sentence --

21 A "When an employee is required to being exposed to dust
22 concentrations above a safe level, must wear a Bureau of
23 Mines approved dust respirator during the period of
24 exposure."

25 Q Is that statement true or false?

1 A I'm not aware that there was any mandatory respiratory
2 policy during 1966 and previously which this letter
3 obviously references. As a matter of fact, I think that
4 data would support quite the contrary.

5 Q In fact, Doctor, the documents that I have shown you,
6 rather than have a mandatory respirator program in 1966,
7 they didn't do it until the government -- excuse me, they
8 didn't do it until 1971 to keep from having to spend money
9 in the plant to improve the dust system, isn't that the
10 truth?

11 A As part of their application for variance from the
12 OSHA-asbestos standard, yes.

13 Q All right. And that comes from a document from their
14 old files, doesn't it? To that fact, that they didn't have
15 a mandatory respirator policy until 1971, does it not?

16 A That is mentioned in more than one document, yes.

17 Q All right. Now, sir, I ask the jury to -- now, finally,
18 Doctor, let me ask you about this. The last paragraph:
19 "Our product contains amosite-asbestos, which has thus far
20 not been incriminated as a producer of asbestosis." Now,
21 Doctor, in 1966, sir, do you know of anybody in the world
22 who held the view that amosite-asbestos didn't cause
23 asbestosis?

24 A No, I am not aware of data that says that it didn't
25 cause it.

1 As a matter of fact, amosite had a prominent role in the
2 insulation industry and studies of insulation workers were
3 published in the mid-'60s certainly supported health related
4 problems including asbestosis in individuals whose exposure
5 had included amosite. I am also aware subsequently of
6 studies that were done by Harvard University dealing
7 predominantly with amosite at this particular yard, I
8 believe, in Maine that documented problems with asbestosis
9 and those exposures to amosite.

10 Q Let me show you, Doctor, the jury has already seen or
11 heard this testimony. This is the testimony of Richard
12 Gaze, the chief scientist for Cape Asbestos which supplied
13 them with the amosite fiber. He has testified, Dr. Gaze
14 did, sir, this is from his deposition read to the jury:
15 Would it be fair to say then, Dr. Gaze, that you discussed
16 this abestosis and the potential hazards of it with
17 Pittsburgh Corning from 1961 down to about 1971? Answer:
18 Yes. And in all that period of time, you, of course,
19 realized the dangers as you have previously explained?
20 Answer: Yes, as far as asbestosis is concerned.

21 That's what Dr. Grant said had never happened, didn't
22 he?

23 A Yes.

24 Q You made no distinction between the types of asbestosis,
25 did you, in your mind, as to what is dangerous and what is

1 not dangerous, that Dr. Gaze, the chief scientist for the
2 people that were selling them the amosite, said no.

3 In other words, for the three principle types, amosite,
4 crocidolite and chrysotile, in his opinion, all of these can
5 cause asbestosis.

6 So, you are not here to say that amosite asbestosis did
7 not cause asbestosis. His answer is no. Question: And you
8 have never advocated that. His answer is no. As far as
9 advising people of these dangers and this disease that he
10 characterized as a very serious problem, that would apply to
11 amosite asbestosis? Answer: Yes.

12 And, in fact, sir, this letter was written on August the
13 15th, 1966, right? The letter we're talking about of Dr.
14 Grant to Mr. Haskins Bath Iron Works was written August
15 15th, 1966.

16 A Yes.

17 Q Now, when was it that Dr. Grant wrote a memo to his file
18 about asbestosis? It was December the 1st, 1965, wasn't it?

19 A Yes.

20 Q And what kind of asbestos did they use at the UNARCO
21 plant that Pittsburgh Corning bought? Amosite, right?

22 A Amosite, yes.

23 Q So, that isn't exactly true, is it?

24 A You're on the money.

25 Q Pardon?

1 A You're right on the money.

2 Q And you know, of course, why he wrote that customer, to
3 keep on selling, didn't he?

4 MR. GARRARD: Objection, Your Honor, the Doctor
5 doesn't know why he wrote the letter.

6 THE COURT: Sustained.

7 BY MR. MOTLEY

8 Q Doctor, let's turn back to this same document where you
9 point out that he claims to Mr. Haskins that the dust levels
10 are safe, do you recall that, that he claims that?

11 A Could you tell me the --

12 Q This is the first thing you said that he said was false
13 in the August 15th letter.

14 A Yes.

15 Q Now, sir, I ask the ladies and gentlemen of the jury to
16 turn to Exhibit 4400, should be the next one. Do you have
17 that, Doctor, December 21st, 1965?

18 A Yes.

19 Q Look at Page 4, please, Doctor, and ladies and gentlemen
20 of the jury, Paragraph D, this is the letter from Dr. Grant
21 to the plant manager, is it not?

22 A This is a letter from Dr. Grant to Mr. Griffith, the
23 plant manager at Port Allegany.

24 Q Dated December 21st, 1965?

25 A Yes.

1 Q Eight months before he wrote this letter to the
2 customer, right?

3 A Yes.

4 Q Now, what did he tell the plant manager about these safe
5 dust levels, sir?

6 A It indicated that in 1964 the Department of Health for
7 the State of Pennsylvania did an industrial hygiene survey.
8 They reported that a hazardous asbestos dust condition
9 existed at several locations throughout the plant. They
10 made a number of recommendations as to how this dust
11 exposure could be controlled.

12 Q So, he told the plant manager they had a hazard and he
13 told the customer it was safe, correct?

14 A He told the plant manager that the State of Pennsylvania
15 showed that there had been a problem, yes.

16 Q And he told the customer it was safe, didn't he?

17 A Yes.

18 Q Now, sir, I ask you next, ladies and gentlemen of the
19 jury, to look at Exhibit 1404, which should be two over.
20 That's the leading, I'm sorry. Sir, tell the jury -- 1404
21 was deleted.

22 Tell the jury, Doctor, looking at this letter to a
23 customer in 1966 as a whole, how would you characterize that
24 letter as a professional and industrial health, a Doctor
25 writing a customer about a product as bad as Unibestos and

1 saying it's safe?

2 A The letter really doesn't seem that -- it seems
3 nonsensical and it doesn't seem rational. It seems totally
4 out of character with the memo to Mr. Griffith, the plant
5 manager at Port Allegany there. There's obviously a serious
6 problem.

7 Q With truth?

8 A Truth.

9 Q All right, sir. Let's turn now to what they were
10 telling the Government. Have you learned, sir, that on
11 April the 8th, 1969, the Department of Labor issued a
12 citation for violation of federal law against Pittsburgh
13 Corning's Tyler plant?

14 A Under the Walsh Healy Public Contracts Act.

15 Q All right. I ask the ladies and gentlemen of the jury
16 to turn to Page 1261 -- I mean to Exhibit 1261. It's a
17 letter from Mr. Stout. It's on Pittsburgh Corning
18 stationery to Mr. Blair of the Department of Labor right
19 here in Texas. Do you have that, sir?

20 A I don't believe so. This is to Mr. Blair from Mr.
21 Stout?

22 Q Yes, sir, dated April the 11th. I will give you my
23 copy, sir.

24 A I don't have it in my batch.

25 Q I'm sure it's up there, but I will try to save time and

1 give you mine.

2 A I have it.

3 Q You have got it, all right.

4 A Exhibit 1261?

5 Q Yes, sir.

6 A Okay.

7 Q Now, sir, I would ask you to look, sir, please, this is
8 Mr. Stout replying to the government citation of violation
9 of the law, is it not?

10 A Yes, it is.

11 Q And the law required them to maintain a safe place for
12 men and women to work, didn't it?

13 A Yes, it did.

14 Q And they were found guilty of not doing that, weren't
15 they?

16 A They were cited, yes, uh-huh.

17 Q So, Mr. Stout writes Mr. Blair and on Paragraph 2 on the
18 first page, ladies and gentlemen, he says for those areas in
19 which dust concentration, Stout's position, he was
20 vice-president, this is the vice-president of the company
21 writing the government.

22 "For those areas in which dust concentrations exceed
23 threshold limits, it is required as a condition of
24 employment that each employee wear a respirator," do you see
25 that sir?

1 A Yes, I do.

2 Q And then on Page 2 he says, under Paragraph 2, he says
3 the company retains the service of Dr. Morton Corn and he
4 approves all installations as well as modifications of our
5 dust collecting system, do you see that?

6 A Yes, I do.

7 Q As it turns out, sir, Dr. Corn had never even been to
8 Tyler, Texas when Mr. Stout wrote the government, had he?

9 A No, that is correct, he had never visited the Tyler
10 facility.

11 Q All right, sir. And, in fact, if you ladies and
12 gentlemen will look at No. 4420, the next document, you will
13 see Dr. Corn, who allegedly was taking care of the men at
14 Tyler, wrote Mr. Blair and said he had never been to Tyler,
15 Texas at the time Mr. Stout said he was looking after the
16 men, correct?

17 A That's correct.

18 Q Now, he later went out there, didn't he?

19 A Yes, he did.

20 Q That's kind of like postdating a check, isn't it?

21 Doctor?

22 A I think that's a term I have used before when I first
23 saw this.

24 Q All right. Now, let's tell the jury the next exhibit
25 1262, Dr. Corn, when he goes out there on April the 11th,

1 Stout says everybody is wearing a respirator, right, for
2 this excessive dust, isn't that what he said?

3 A Yes, mandatory.

4 Q Now, when Dr. Corn gets there, when did he go up to
5 Tyler, Texas, May 7th?

6 A May 7th, 1969 is the date of the visit.

7 Q All right. May 7th, 1969?

8 A '69.

9 Q Three and a half weeks after Mr. Stout says everybody is
10 wearing a respirator at Tyler so they will protect
11 themselves.

12 Page 3 and 4, ladies and gentlemen, of that document, if
13 you look at Page 3, ladies and gentlemen, at the bottom, in
14 addition to the inadequacies of the ventilation system and
15 the result in excessive dustiness, it was found that general
16 housekeeping is poor in the plant also during the entire
17 day of the survey. Was everybody wearing a respirator,
18 nobody was wearing a respirator, isn't that what he said?
19 Sir?

20 A I'm looking at what page he said that.

21 Q Page 3.

22 A Okay.

23 Q At the bottom, sir.

24 A Also during the entire today of the survey, not one
25 employee in the production area was observed to wear a

1 respirator.

2 Q So, Stout, the vice-president, tells the Government that
3 they've got everything in control in Tyler and then when the
4 man goes out there at three and a half weeks, not a soul had
5 on a respirator except Dr. Corn, correct?

6 A Yes.

7 Q And Dr. Corn, you know, sir, was ridiculed for wearing
8 one, wasn't he?

9 A Yes, I had the opportunity to review his deposition and
10 saw that and that was disturbing.

11 Q Who ridiculed the Doctor for protecting himself?

12 THE COURT: Has the jury not heard this, Counsel?

13 MR. MOTLEY: Yes, I am sorry.

14 Q Now, Dr. Johnston in a word, that letter from Mr. Stout
15 to the Government in 1969 was nothing but a lie; isn't that
16 right?

17 A It may have been fraudulent. That may be a better word.
18 I don't know. I will leave that to someone else to decide.

19 Q Well, it sure wasn't true, was it?

20 A No.

21 Q All right, Doctor, trying to hurry through this now.
22 Let me ask you this, sir: In order to get a variance, tell
23 the jury what a variance is.

24 A It's a way to continue your manufacturing operation in
25 violation of an air standard for a given exposure.

1 Q The documents I sent you indicate that in 1970 in
2 March -- in March of 1970, Exhibit 1265, ladies and
3 gentlemen.

4 March 19th, 1970, the same Pittsburgh Corning
5 Corporation, Exhibit 1265 dated March 19th, 1970 towards the
6 back, wrote Mr. Blair, in order to get a variance to keep
7 operating their factory and making their Unibestos, told Mr.
8 Blair that they were going -- I'm on Page 2 -- initiate a
9 health education program that will fully explain to the
10 employees the health hazards associated with asbestos
11 exposure and how they can protect themselves, did he not say
12 that?

13 A Yes.

14 Q The truth of the matter is, Doctor, they never got
15 around to telling the people at Pittsburgh Corning's plants
16 about all of those hazards associated with asbestos until
17 August of 1971, did they?

18 A That's my understanding, and that's documented in the
19 records.

20 Q That's in the corporation's own words, isn't it?

21 A Yes, and the presence of a health education program was
22 documented in material that we received from the Texas State
23 Health Department. I did not observe that particular health
24 education session. So, I can't even be a judge of that.
25 But if it was the same program that was offered in Port

1 Allegany, Pennsylvania, I did not agree with the content.

2 Q All right, sir. Doctor, Dr. Herbert Abrams, do you know
3 Dr. Abrams?

4 A Yes, I do.

5 Q Testified here day before yesterday that in 1953 he
6 wrote an article for the American Cancer Society and pointed
7 out how important it is for working people to know that
8 something they're working with can harm them. Do you agree
9 with that principle?

10 A Yes, I do. I think that's the only way that people have
11 a chance really of protecting themselves.

12 Q They have the right to know, don't they?

13 A Yes, they do.

14 Q Please, ladies and gentlemen, turn to Exhibit 1264, on
15 Page 3 of Exhibit 1264. Do you have that, sir? It's a
16 letter from Dr. Grant to Mr. Van Horne in Tyler with a
17 receipt stamped the office of the president of Pittsburgh
18 Corning. Do you see that, sir?

19 A Yes, I do.

20 Q Look at Page 3, please, ladies and gentlemen. Dr. Grant
21 wrote in March 1970, "Other than advising certain employees
22 that they must wear dust respirators, no information has
23 been provided the employee on the health hazards associated
24 with excessive and prolonged exposure to asbestos or the
25 increased hazard to lung cancer associated with the worker

1 who smokes cigarettes in addition to his exposure to
2 asbestos. In my opinion you have an obligation under Walsh
3 Healy." That's a federal law, isn't it?

4 A Yes.

5 Q "To provide the worker with such information." In other
6 words, they had been operating that plant for eight years
7 and never gotten around to complying with the law, correct?

8 A Easily, yes.

9 Q Easily what?

10 A Yes.

11 Q Yes? Further, the legal view is that if you don't do
12 so, you may be held negligent in case of an adverse health
13 effect from such environmental exposures.

14 Now, Doctor, have I shown you documents indicating that
15 two years prior to that, in 1968, Dr. Grant was urging the
16 company to tell their own employees about the hazards of
17 asbestos?

18 A In 1968?

19 Q Yes, sir.

20 A Reference that document.

21 Q Exhibit 1397, please, ladies and gentlemen. It's dated
22 July 9th, 1968, Doctor.

23 A Yes, the final paragraph in that letter of July 9th,
24 1968 to Mr. Stout from Dr. Grant indicates the evidence
25 concerning the synergistic effects of asbestos dust exposure

1 and cigarette smoking and the production of lung cancer
2 warrant consideration of an educational program for our own
3 employees working in the Unibestos operations and also the
4 use of pre-employment examination as a future selection
5 procedure in not permitting cigarette smokers to work in
6 Unibestos operations.

7 Q So, Dr. Grant, July 9th, 1968 writes we've got to tell
8 the workers, doesn't he?

9 A Yes.

10 Q And then in March of 1970 he writes the president and
11 says we've got to tell the workers or we are violating the
12 law, didn't he?

13 A Yes.

14 Q And they never got around to doing it until August of
15 1971. Do you know why they did it in August of 1971,
16 Doctor?

17 A I assume that there was pressure for the application of
18 variance. There may have been other factors that I'm not
19 aware of.

20 Q Well, they applied for a variance so they could continue
21 operating the factory, didn't they?

22 A Yes.

23 Q And one of the requirements for the variance was to have
24 a health education program, wasn't it?

25 A Yes.

1 Q And they, in fact, had a health education program in
2 August of 1971 because you attended one of them, didn't you?

3 A Yes, they had one in Port Allegany that I observed.

4 Q And that's the health education seminar where they told
5 them it took twenty years to cause asbestos when they knew
6 it took five; isn't that right?

7 A Yes, that it took twenty or more years, yes.

8 Q That's not much of an education, is it?

9 A No, and a little bit of education and a misleading
10 education can be dangerous.

11 Q All right, Doctor. In your opinion, does going from
12 1962 to 1971, without educating their own employees about
13 the hazards of asbestos, constitute in your professional
14 opinion conscious indifference to the rights of human
15 beings?

16 MR. GARRARD: If Your Honor, please, I object to
17 the question as being out of the purview of this witness and
18 out of his area of expertise and improper under Rule 704.

19 THE COURT: Overruled.

20 BY MR. MOTLEY:

21 Q Is it a conscious indifference to the rights of human
22 beings, Doctor?

23 A I believe it is. I believe there is serious ethical and
24 moral and professional and societal problems that are
25 addressed in this case that have not just bothered me but

1 have bothered others and I think there is a very serious
2 problem here.

3 Q Doctor, in fact, there's a book written about that Tyler
4 plant, wasn't there?

5 A Yes.

6 Q It's called Expendable Americans --

7 MR. GARRARD: If the Court please, Mr. Motley knows
8 better than that.

9 THE COURT: I sustain the objection. I also have
10 noticed the clock, Counsel.

11 MR. MOTLEY: Yes, sir, I have got two minutes,
12 Judge.

13 BY MR. MOTLEY:

14 Q Doctor, assume for me, Doctor, that in 1961 and 1962 as
15 Dr. Gaze, the chief scientist for Cape Asbestos who sold the
16 amosite asbestos to Pittsburgh Corning has testified, told
17 Pittsburgh Corning from Day One that amosite asbestos would
18 cause asbestosis and that amosite asbestos cause incurable,
19 irreversible, disabling and potentially fatal lung diseases.

20 And assume that there are documents that I gave you that
21 you hadn't seen when you went to Pittsburgh Corning
22 facilities that show that all, as you said, almost from Day
23 One they had a problem at Tyler and assume that when you got
24 there, it was a filthy mess because that's what you saw.
25 Will you tell the jury, Dr. Johnston, will you tell the

1 ladies and gentlemen of the jury whether, in your opinion,
2 Pittsburgh Corning was responsible in their activities and
3 conduct towards human beings?

4 A I think Pittsburgh Corning ultimately was responsible
5 for the obvious operation of that plant, the manufacture of
6 a product and the exposure of their employees, and now it
7 appears the exposure of other employees, that they withheld
8 vital information not just to me but to government agencies,
9 to workers, their fellow employees and may not even have
10 been honest amongs themselves at the upper levels of
11 management.

12 I think there are very serious issues here that
13 obviously we would all like to know a little bit more about.
14 But this is very serious.

15 Q Is it outrageous?

16 MR. GARRARD: Move to strike the response of the
17 witness as not responsive to the question. It is a lengthy
18 expose' on his part.

19 THE COURT: Overruled.

20 BY MR. MOTLEY:

21 Q Was the conduct outrageous, Doctor, in your view?

22 A Yes, and it was outrageous and I don't understand it.

23 Q Now, Doctor, you've testified before in a case arising
24 out of the Tyler plant back in, I believe, 1976 about what
25 you told Pittsburgh Corning, have you not?

1 A Yes.

2 Q And you gave a deposition from my firm once before I
3 believe or twice before, correct?

4 A In South Carolina and also in Georgia in 1988, yes.

5 Q And you expect to be compensated for the time you're
6 away from your family and your job?

7 A Yes.

8 Q In conclusion, Doctor, you've reviewed documents that I
9 have given you, correct?

10 A Yes.

11 Q That you had never seen before?

12 A Yes.

13 Q And when you gave your testimony in August of 1988, you
14 gave certain opinions that you retracted last night in a
15 deposition that Mr. Harvard and myself took, correct?

16 A Yes.

17 Q And why did you retract those opinions?

18 A Because previously I had not had access to these
19 documents which we've reviewed here today. It's new data
20 and I think casts a very different light on many aspects of
21 this.

22 Q I wrote you a letter and asked you to look at these
23 documents. And I told you my view of the documents, did I
24 not?

25 A Yes. You indicated that there was --

1 Q Don't tell us what I indicated, because I can't testify.
2 Did I write you a letter and give you my view of the
3 documents?

4 A Yes, you did.

5 Q Did I tell you to come to an independent evaluation of
6 the documents and not be influenced by my bias? Because I
7 am biased.

8 A Absolutely.

9 Q And have you undertaken an independent evaluation and
10 based your statements here totally on your own views and not
11 on anything I suggested to you?

12 A I based my statements today on the data in the records
13 and my personal observation as an officer of the U.S. Public
14 Health Service.

15 MR. MOTLEY: Thank you, Doctor.

16 THE WITNESS: Thank you.

17 MR. MOTLEY: You have to answer questions from
18 Mr. Garrard.

19 THE COURT: You pass the witness?

20 MR. GARRARD: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. GARRARD:

23 Q Doctor, you have children, do you not?

24 A Yes, I do.

25 Q What are their ages?

1 A Twenty, eighteen, fourteen, and thirteen.

2 Q Is that four of them?

3 A Yes.

4 Q I've got four, also. Mine are a little bit younger than
5 yours.

6 Has it been your experience that when you tell your
7 children to do something, they always either do what you
8 tell them to do or continue to do whatever you've told them
9 to do?

10 A Well, obviously there are problems in any potential
11 parent-offspring relationship.

12 Q They don't always do what you tell them to do, do they?
13 If yours do, yours are mighty miraculous children, 'cause
14 mine sure don't.

15 A Oh, I've got some good kids, too.

16 Q Do they always do what you tell them to do? I've got
17 good kids, too; but mine don't? Do they?

18 THE COURT: The question is: Do your kids always
19 do what you tell them to do?

20 A No. And I don't know why that's relevant here.

21 BY MR. GARRARD:

22 Q Well, we'll get to that. In terms of respirators,
23 Doctor, you were at the Tyler plant for one week, five days,
24 right?

25 A Yes, sir.

1 Q And how many days were you at the Port Allegany plant?

2 A Oh, I think two or three days at the most.

3 Q Those are the only times that you have a personal
4 observation of what the employees at either Tyler or Port
5 Allegany were doing; is that not correct, sir?

6 A Yes. And in Tyler there were also discussions with some
7 of the workers about their past experiences and behavior.

8 Q Well, I'm trying to talk about with your eyes, what you
9 saw. Those were the only times that you were at either
10 place?

11 A Direct observations, sir.

12 Q Correct?

13 A Yes.

14 Q And what the employees had, in fact, been told in
15 various spots at either Tyler or Port Allegany, you don't
16 know all that had occurred or all that had been told to
17 employees at either place from 1962 through the time that
18 you went to either one, do you, sir?

19 A Oh, I think that's glaringly obvious.

20 Q I'm sorry. I didn't understand your answer.

21 A I think that's a glaringly obvious statement.

22 Q What does that mean?

23 THE COURT: He agrees with you, Counsel.

24 MR. GARRARD: I wanted to make sure that's what it
25 meant, Judge. Thank you.

1 BY MR. GARRARD:

2 Q You don't know what was done after Pittsburgh Corning
3 bought the Unibestos plant from UNARCO in 1962, immediately,
4 do you?

5 A No. But I have the impression that basically the same
6 ventilation and manufacturing equipment was continued.

7 Q Do you know, when they first bought the plant, whether
8 they did anything? Or is it your feeling they did nothing,
9 Doctor, in terms of improving the plant?

10 A I have not seen, obviously, specific data dealing with
11 the startup by Pittsburgh Corning. I haven't seen data
12 dealing with the transition. And if you have information to
13 share with me, I would be glad to offer an opinion about
14 that.

15 Q All right, sir. I would like to do that. And by the
16 way, let me make sure I understand something, Doctor. You
17 don't have the impression necessarily that Mr. Motley showed
18 you all of the documents and all of the data that may
19 pertain to Pittsburgh Corning, either at Port Allegany or
20 Tyler, do you, sir?

21 A I would assume that obviously there is additional
22 correspondence and data sets that Mr. Motley has not seen
23 and I obviously have not seen.

24 Q All right, sir. Well, you don't know what Mr. Motley
25 has necessarily seen then, do you? You can speak only to

1 what you've seen, right?

2 A That's correct.

3 Q All right, sir. Did he show you a bulletin dated 9-4-62
4 to all personnel at Tyler, that says, "It is with pleasure
5 that I can advise you that improvements in working
6 conditions are now in progress and scheduled for immediate
7 completion." And also says that some of the things they're
8 going to do are "add to and improve dust control equipment
9 in the saw room and any necessary safety devices and
10 guards."

11 Did he show you that, sir?

12 A No. I haven't seen that.

13 Q All right, sir. Did he show you a letter from Mr.
14 McMillan, the works manager, dated October 1, 1962, to the
15 employees, that says, "Considerable progress has been made
16 toward solving the dust problems in the saw room. Further
17 improvements are being planned by our engineers."

18 Did he show you that, sir?

19 A No. And I wouldn't know what that meant.

20 Q You didn't see it, then?

21 A No.

22 Q Did you look at the report from the Industrial Hygiene
23 Foundation, dated July 8th, August 6th and 7th, 1963, in
24 regard to dust studies and evaluation of things at the
25 Tyler, Texas, plant?

1 A I saw the data dealing with Port Allegany in 1963, that
2 was done by Dr. Mort Corn, under the auspices or the
3 umbrella of the Industrial Hygiene Foundation.

4 Q What year was that, Doctor?

5 A I believe it was '63 or '64.

6 Q You talked a lot about Tyler in particular. Did you see
7 this one (indicating)?

8 A This is July 8th.

9 Q Yes, sir.

10 A August 6th --

11 Q 6th and 7th, 1963?

12 A 1963.

13 Q Uh-huh.

14 A No. And this indicates this apparently was done by the
15 Mellon Institute?

16 Q Industrial Hygiene Foundation, Mellon Institute. You
17 didn't see that?

18 A No.

19 Q All right, sir. Did you see where they said that it
20 would appear from the analysis of the samples that were
21 collected intentionally only at those processes that
22 appeared to be the principal producers of dust, that the
23 number of asbestos fibers present in the air, with few
24 exceptions, were well below the threshold limit of 5 million
25 particles per cubic foot?

1 A I see that. But I'd like to see the basic data set and
2 tables on that, if I may.

3 Q First, had you seen that before today?

4 A No. But I have some other reasons to want to go into
5 this in more detail.

6 Q Did you see --

7 A Who is the author on the report, the industrial
8 hygienist?

9 MR. HARVARD: Mr. Garrard, that's in the jury's
10 notebook, 4187.

11 MR. MOTLEY: He has seen it.

12 MR. GARRARD: Let's let him testify, Mr. Motley.

13 MR. HARVARD: It's in the notebook that was passed
14 out.

15 BY MR. GARRARD:

16 Q It's field investigation by Jacob Cholak, Lawrence
17 Schafer, William Tribius (phon.). Samples analyzed by
18 Kettering Laboratory, Cincinnati. Is that a decent
19 laboratory?

20 A Well, it really wasn't done by the Mellon Institute,
21 then. It was done under the umbrella of the Mellon
22 Institute, by the Kettering Laboratory at the University of
23 Cincinnati, according to that.

24 Q Okay. Well, did you get a chance to look at the dust
25 studies in this and see that a great -- just a minute,

1 sir -- that a great number of these -- most of them, in
2 fact -- are below the TLV?

3 Breathing zone at the scrap crusher while scrap was
4 being crushed was within the TLV, wasn't it?

5 A I think there's a problem --

6 Q Well, let's answer my questions, first, please, sir.
7 Wasn't that within the TLV?

8 A Yes. But that isn't million particles per cubic feet,
9 sir.

10 Q What does that mean, "MPPCF"?

11 A I would have to see the methodology. I saw that in
12 another IHF study and have reason to suggest that it may be
13 a problem.

14 Q What does MPPCF mean?

15 A It means million particles per cubic feet.

16 Q All right. And under that it says what?

17 A "Fibers."

18 Q Well, no. Under that it says what?

19 A "Asbestos fibers."

20 Q Yes, sir, it does. And it lists a lot of them, does it
21 not? List a lot of samples that were done?

22 A Yeah. But the threshold limit value was in terms of
23 million particles per cubic feet, sir, not fibers. And
24 there's a problem with that.

25 And I would like to know what the million particles per

1 - cubic feet is. I think there's a problem. And I saw that
2 in another IHF report. I remember that very clearly.

3 Q You think the IHF is giving Pittsburgh Corning bad
4 advice?

5 A I don't think that they are necessarily providing the
6 air sampling data that is called for under the million
7 particles per cubic feet. And I would have to look at the
8 methodology with much care and perusal before I would come
9 to a final conclusion.

10 But I think that you may have a problem with that. And
11 I wouldn't -- I would take a careful look at that.

12 Q Well, you were there when I read this. "It would appear
13 from the analysis of the samples that were collected
14 potentially only at those processes that appeared to be
15 potential producers of dust, that the number of asbestos
16 fibers present in the air, with few exceptions, were well
17 below the threshold limit of 5 million particles per cubic
18 foot."

19 Did I read that accurately as they reported it to
20 Pittsburgh Corning's Doctor?

21 A As they reported it. But as I say, I don't know if they
22 can draw that conclusions, based on the methodology which I
23 saw. And I know the literature in that area a little bit.

24 Q Were you aware this was a document Mr. Motley sent you?

25 A I have been through a number of these. And that one was

1 not highlighted as we went over these yesterday.

2 Q All right. Now --

3 A But I certainly was aware and had been through some
4 similar air sampling data with IHF.

5 Q Now, you are aware that Pittsburgh Corning did sponsor
6 air sampling data from time to time at both Tyler and Port
7 Allegany, are you not?

8 A I'm sorry. Will you repeat the question.

9 Q Sure. Just relax, Doctor. We've got a lot of things
10 we've got to talk about.

11 You are aware that Pittsburgh Corning did sponsor air
12 sampling data at both Tyler and Port Allegany on a number of
13 occasions, are you not?

14 A Yes, I have become aware of that. I previously was, you
15 know, acutely aware of the air sampling data that was
16 provided by the Public Health Service in 1967 and 1970. And
17 I now am aware that other studies were done, other air
18 levels were obtained, and that there was an additional data
19 base which the company had to make decisions in their
20 operations.

21 Q I'm a little bit confused, Doctor. Are you saying that
22 you were not aware before Mr. Motley in the last week sent
23 you some materials, that there had been dust studies done at
24 Pittsburgh Corning plants, other than those done by the
25 Public Health Service and NIOSH?

1 A I was aware that Dr. Corn put in some equipment in Port
2 Allegany and that he said, "Well, you can have the Public
3 Health Service people come through and do the measurements."
4 I was not really aware of and I hadn't seen other air
5 sampling data, to the best of my knowledge.

6 Q We'll talk about that a little bit more in a bit.

7 Now, let me talk to you a little bit. I'm going to come
8 back to some of this about the Public Health Service and its
9 involvement with Pittsburgh Corning Corporation.

10 Do you recollect from your review of materials
11 pertaining to the Public Health Service study, when the
12 Public Health Service first started investigating asbestos
13 manufacturing facilities, sir?

14 A It's my understanding that the asbestos textile studies
15 began in the early '60s.

16 Q All right, sir. And the Public Health Service
17 interrelates with NIOSH how?

18 A The Public Health Service is a part of the old
19 Department of Human and Health Services -- well, not the
20 old, but the Department of Health, Education, and Welfare.
21 I was in the Public Health Service at the time that it was
22 in the Department of Health, Education, and Welfare.

23 Occupational health activities, the research side of the
24 house, were traditionally under the umbrella of HEW. And
25 there were a number of different agency names. The Bureau

1 of Occupational Safety and Health of the U.S. Public Health
2 Service, I believe, was the agency name just prior to the
3 creation of the National Institute for Occupational Safety
4 and Health under the Occupational Safety and Health Act.

5 Q Now, you are aware, are you not, that at the time the
6 Public Health Service came into the Pittsburgh Corning
7 plants in 1967, they had been invited in by Pittsburgh
8 Corning?

9 A That's my understanding.

10 Q All right, sir. And that's because at that time,
11 they did not have a legal right of entry into the premises
12 or the property or the plant of Pittsburgh Corning without
13 an invite, did they?

14 A They had to be invited in, yes.

15 Q Yes, sir. And they did a study or a dust study in 1967
16 and finally, I think, in March of '68 sent Pittsburgh
17 Corning dust results, did they not?

18 A That's my understanding.

19 Q Then they went back, still with the approval of
20 Pittsburgh Corning, in 1970, didn't they?

21 A Yes.

22 Q Now, one thing that I have understood from you -- and I
23 don't imagine you've changed on this -- is that when you got
24 to NIOSH in -- was it June or July of 1971?

25 A July.

1 Q July of '71 -- you started looking at data on the
2 asbestos program that they were undertaking; isn't that
3 correct?

4 A Yes.

5 Q Had been undertaking, right?

6 A Yes.

7 Q And you were very disturbed that the Government
8 employees there had basically done nothing with the data
9 that had been generated, weren't you? That still disturbs
10 you today, doesn't it?

11 A Yes, it does. And also, Pittsburgh Corning didn't seem
12 to do anything with that information either and --

13 Q Well, I was asking you about the government for a moment
14 there, sir.

15 You have told me on depositions -- and you don't change
16 in relation to that -- that the people that had done it at
17 the government, at the Public Health Service in 1967, and
18 written a report in '68, that they had not seemed to be
19 overly impressed or concerned or bothered -- I don't
20 remember what words you used -- with the data they generated
21 in 1967; is that not true, sir?

22 A Well, some of the younger engineers that had been
23 through those facilities certainly were very anxious to
24 bring that data to my attention when I came to NIOSH in
25 1971, and share that information with me and share their

1 concerns.

2 And we certainly acted on that feedback. I will mention
3 this, also, just for the record -- and we must keep this in
4 context -- that U.S. Public Health Service officers went
5 through these plants without benefit of respirators, also.
6 That was the policy, which I didn't understand; but I think
7 it's also important to point out that these companies let
8 these individuals go through these plants, also, without the
9 benefit of respirators.

10 And I think the problem was that there was a concern
11 that if the government people were wearing respirators, the
12 workers, in fact, then would raise questions about why they
13 weren't provided respirators.

14 Q I didn't ask you about that, I don't think.

15 A I think it's very complex issue. And there is obviously
16 an area of concern there, too, that real relates to this.

17 Q Let me go back to question which I asked you, sir.

18 MR. MOTLEY: Your Honor, I just wonder if we're
19 going to try the government as well as the tobacco industry.

20 THE COURT: Overrule the objection at this point.

21 BY MR. GARRARD:

22 Q Doctor, my question was that when you first went to
23 NIOSH in July of 1971, the 1967 study didn't appear to have
24 caused a tremendous amount of alarm to the individual in the
25 government writing it at that time, though it would have

1 caused you concern; isn't that correct -- is what you've
2 said?

3 A Yes. Do you want to provide that particular thing to me
4 so I can respond to it.

5 Q I will be happy to read it to you. Page 79, the
6 question was asked: "What you are saying, then, is this
7 report" -- and that was talking about the one that actually
8 came out in 1968 -- "in light of the knowledge available to
9 the occupational health community in 1968, would have caused
10 alarm to a Government agent qualified in the field?"

11 And your answer was: "It doesn't appear to have caused
12 a tremendous amount of alarm to the individual in the
13 government writing it at this time. But it would have
14 caused considerable concern to me and I think, some other
15 people."

16 That's what you said at the time, wasn't it?

17 A But what cover letter was that, with what air sampling
18 data?

19 Q That was in 1968 report by Cralley, Doctor.

20 A By whom?

21 Q Cralley.

22 Q Not Cralley. Excuse me. That was the 1968 report.

23 A Who signed it?

24 Q By Lynch.

25 A By Lynch.

1 Q By Lynch.

2 A What did Lynch also indicate on that cover?

3 Q Isn't that what you said, Doctor?

4 A Well, I've had a subsequent opportunity to reivew that.
5 It's apparent, also, that he made a recommendation at that
6 time, also, on that cover.

7 Q What was the recommendation? I didn't ask you about
8 recommendations, by the way. I asked you another question.
9 But what was the recommendation?

10 A To use respirators.

11 Q All right, sir.

12 A He was obviously concerned enough to make that
13 recommendation.

14 Q All right. Okay. And Pittsburgh, from the documents
15 you've seen, had people using respirators from time to time,
16 did they not?

17 A From time to time.

18 Q Have you seen documents that said people were using
19 respirators?

20 A I guess, from time to time. I obviously didn't have
21 those observations because I wasn't there.

22 Q Yes, sir. Well, I don't know whether Mr. Motley showed
23 you the document on November 29, 1965, to McMillan from Mr.
24 Grant. Did you see that one?

25 A From McMillan to Grant?

1 Q Yes, sir.

2 A I don't know. Do we have that?

3 Q I don't know what he showed you, sir. So, I don't know.

4 A I would like to see it in order to comment, though, I
5 think.

6 Q Sure. Let me ask you a question. Then I will be glad
7 for you to look at it. It says here under "comments and/or
8 recommendations, Asbestos dust exposure": "Shortly after
9 Pittsburgh Corning took over the plant operations from
10 UNARCO, the Industrial Hygiene Foundation did an industrial
11 hygiene survey which found the dust control procedures
12 adequate. Only the dust collective cleaning operation,
13 which is done once a day, produced significant dust exposure
14 to asbestos. The employee exposed was adequately protected
15 with a dust respirator."

16 Doesn't it say that there, sir?

17 A Well, I think there's a problem there, also, that needs
18 to be addressed. I think, also, that this was predicated,
19 sir --

20 Q Tell me whether it says that. Then answer any way you
21 want to.

22 A It says what you read, sir.

23 Q Thank you, sir. Now, please explain whatever you want
24 to.

25 A Okay. I would have to, in order to interpret this

1 properly, review the IHF data. And we started to do that.
2 I indicated there were problems with that. Obviously these
3 industrial hygiene recommendations are predicated on that
4 IHF data which I indicated, in fact, may be faulty.

5 So, anything I may say about this is predicated on my
6 view and interpretation of the IHF survey data which you've
7 shared with me, which I pointed out had problems.

8 Q So, this, you wouldn't want to comment on because you
9 hadn't had the chance to thoroughly review it. The IHF
10 data, you don't want to comment on because you hadn't had
11 the opportunity to thoroughly review it. Is that --

12 A I had seen some of that, sir. And the scope of this is
13 getting a little bit more extensive than I expected. But
14 obviously I think this would require some further study. I
15 have questions about the validity, the basic validity and
16 methodology of the IHF data, particularly as it's being
17 utilized here, for solid recommendations and conclusions.

18 Q Okay. This document I just showed you, according to the
19 list Mr. Motley has given us, was one that you had had. Did
20 you know that, sir?

21 A It's not here. I have probably been through it. I was
22 certainly happy to review any data or document that's
23 provided to me here.

24 THE COURT: Counsel, I need to stop a few minutes
25 before 12:00. Let me excuse the jury until 1:30.

1 Mr. Motley, I need to see you at the bench.

2 THE COURT: We will be in recess until 1:30.

3 (RECESS AT 11:55 A.M. UNTIL 1:30 P.M.)

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C E R T I F I C A T I O N

We hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, to the best of our ability.

C. Frank McMillan
C. Frank McMillan
Official Court Reporter

3-2-90
Date

Susan Simmons
Susan Simmons
Official Court Reporter

TRIAL TESTIMONY OF DR. WILLIAM JOHNSON

RE: Cimino, et al. vs. Raymark, et al.
3-2-90

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CLAUDE CIMINO, et al., * CIVIL ACTION
* NO. B-86-456-CA
Plaintiffs, *
*
v. * Beaumont, Texas
* March 2, 1990
* 1:23 O'Clock P.M.
RAYMARK INDUSTRIES, INC., *
et al., *
*
Defendants. *
* * * * *

AFTERNOON SESSION
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ROBERT M. PARKER
UNITED STATES DISTRICT JUDGE, JURY
VOLUME XXX

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1 rulings of the magistrate affirmed at that time and
2 Pittsburgh Corning Corporation was given a continuing
3 objection to the use of those documents.

4 (JURY IN AT 1:30 P.M.)

5 MR. GARRARD: May I proceed? Thank you, Your
6 Honor.

7 CONTINUED CROSS-EXAMINATION

8 BY MR. GARRARD:

9 Q Doctor, you and I were discussing a November 29, 1965
10 document that you had talked with Mr. Motley about a little
11 bit, too, from Lee Grant to Mr. McMillan. And I need to
12 discuss one other aspect of that with you.

13 You remember when we talked about that before lunch,
14 this document?

15 A Yes, uh-huh.

16 Q Okay. They said in the document under Paragraph 3, the
17 employee exposed was adequately protected with a dust
18 respirator and I think we've read that. It said no change
19 has taken place in the operation since the survey.
20 Employees are given annual chest x-rays and no significant
21 findings related to asbestos exposure have been encountered.
22 Most of the present employees have worked at the plant since
23 1954. Then in parentheses it says eleven years.

24 So, at least insofar as that particular document, it
25 indicates that some people had been there as much as eleven

1 years, in fact, it says most of them, and also indicates
2 that there is some type of medical examination program, does
3 it not?

4 A Well, there was obviously, you know, some medical care
5 in the community that Pittsburgh Corning had available in
6 Tyler, I am aware of that, that they had back x-rays and
7 chest x-rays and the like. But I really have no data to
8 support that there was anything as comprehensive as alluded
9 to there.

10 Q Well, Doctor, I've even shown you today documents that
11 you either didn't recall or hadn't seen, haven't I?

12 A That's true. Can you show me any documentation?

13 Q Well, let's look at another one then, Doctor. Let's
14 look March 13, 1970, from Mr. Grant to Charles Van Horne.

15 A This is to Wendell Blair.

16 Q No, sir. I told you that was to Mr. McMillan.

17 A To Mr. McMillan.

18 Q Yes, sir. Here is other one here, March 13, 1970,
19 during my present visit, I learned that forty-four plant
20 employees with five or more years service were x-rayed by
21 the medical and surgical clinic in Tyler. No recommendation
22 for further studies were made. Based on the x-ray findings,
23 time did not permit the undersigned to discuss these x-rays
24 with the doctor who read them. However, a review of the
25 findings reported it did indicate a need for medical

1 follow-up on several employees.

2 Now, we don't know what that medical follow-up need was,
3 but that certainly indicates that there was some examination
4 being done, doesn't it, sir?

5 A I'm familiar that there was something done in Tyler at
6 the medical surgical clinic and I believe that I saw a stack
7 of those x-rays at some time in the facility. I have no
8 data on which to believe that annual chest x-rays were, in
9 fact, obtained on that many employees and that there had
10 been a review of those by a Board-certified radiologist as
11 Dr. Grant had made recommendations about earlier.

12 Q Doctor, I have heard you say you have no data, you have
13 no reason to believe that Mr. Motley has given you all of
14 the data either, do you? Sir, answer that question, please.

15 A I am not even sure that annual x-rays are that rational
16 a form of medical surveillance, given the exposures in that
17 population.

18 Q Okay. So, giving annual x-rays would not have been
19 important to do?

20 A Well, periodic x-rays, but Dr. Grant certainly never
21 indicated to me that there was ever anything of that nature
22 that had ever been done down there, I can assure you of
23 that.

24 Q I'm a little confused. Would you rather see annual
25 x-rays or periodic x-rays?

1 A Well, I would like to see environmental controls. I
2 don't like to see this medical question in the face of
3 what's obviously a filthy environment. I don't understand
4 it and it's not totally rational to me and Dr. Grant never
5 indicated to me that there was this tremendous accumulation
6 of data.

7 We certainly had ample opportunity to discuss the
8 availability of data with the East Texas Chest Hospital.
9 Dr. Hurst was not aware of anything of this order of
10 magnitude and this had been discussed fully. And I
11 subsequently have been to Tyler at least a couple of other
12 times and this is the first I've heard of this and I'm not
13 sure it's rational, I'm not sure it's true and I have reason
14 to question it.

15 Q All right. That wasn't my question anyway, sir. I
16 don't understand, you were with Mr. Motley taking issue with
17 whether annual x-rays were made or periodic x-rays earlier.
18 Now I'm hearing you say that annual x-rays don't matter and
19 you would rather have periodic x-rays.

20 My question to you is: Which one do you want, periodic
21 or annual?

22 A I would like the environment cleaned up.

23 Q Could you answer my question about that, please, sir?
24 I'm confused as to whether you want periodic or annual chest
25 x-rays?

1 A Annual are a form of periodic chest x-rays. I think it
2 has to be based on one's suspicion that one might find
3 asbestosis given the years of exposure, the latency
4 questions, the degree of exposure. I think it's a very
5 complicated question and you may be looking for too simple
6 an answer.

7 Q It is a complicated question, isn't it?

8 A Oh, absolutely.

9 Q Complicated issue, isn't it?

10 A Absolutely.

11 Q Yes, sir. And it's important in determining the
12 questions and the issues to look at the whole story, isn't
13 it, sir?

14 A It certainly is.

15 Q Yes, sir. Now, let's see a little bit more about the
16 story, Doctor. One thing that I want to make sure is clear,
17 this memorandum for the record that you and Mr. Motley
18 discussed from Lee Grant or by Lee Grant dated December 1,
19 1965.

20 A May I see that?

21 Q Have you got that there, sir? Just take the one I have.

22 A I can probably find it.

23 Q Now, the person that Mr. Motley talked about there was
24 in 1961 and you were aware that was preceding or before the
25 time that Pittsburgh Corning had anything to do with Tyler,

1 Texas, you realize that?

2 A Yes, sir.

3 Q All right, sir. Do you know anything at all about that
4 particular case other than the one sentence that's there, or
5 two sentences, I guess?

6 A No, I do not.

7 Q All right, sir. You are aware and understand that that
8 person never did work for Pittsburgh Corning?

9 A I'm under the impression he worked in the facility that
10 was subsequently purchased by Pittsburgh Corning which
11 involved the manufacture of amosite insulation and that the
12 same raw product was used and the same machinery was used
13 and basically the same type of ventilation system was there,
14 that's about it.

15 Q You are aware that person never worked for Pittsburgh
16 Corning, are you not? That's my question.

17 A It's my understanding that he didn't work for Pittsburgh
18 Corning, but that he worked in the facility for five years,
19 which I think in terms of extrapolating to the degree of
20 risk to workers in the Pittsburgh Corning plant is
21 appropriate.

22 Q You don't know the circumstances of this man, whether he
23 had exposure preceding the time he worked at UNARCO, you
24 haven't seen the file of diagnosis or anything else, have
25 you, sir?

1 A No. Have you? Do you have reason to believe otherwise?

2 Q You haven't seen anything on it, have you, sir?

3 A No, sir.

4 Q And you're aware, are you not, Doctor, I'm sure Mr.

5 Motley told you this, that this is not a document that came

6 from Pittsburgh Corning or was ever in the Pittsburgh

7 Corning files. You're aware of that, aren't you?

8 A Could you explain that to me, what you are pointing to
9 there?

10 Q Yes. Dr. Grant said that this was something he put in
11 his own file and it was never given to Pittsburgh Corning.
12 Did Mr. Motley tell you that?

13 A It's my understanding that --

14 Q Sir, could you answer that question. Did Mr. Motley
15 tell you that?

16 MR. MOTLEY: Your Honor, he's trying to answer the
17 question.

18 THE WITNESS: Can I answer the question?

19 BY MR. GARRARD:

20 Q I would like for you to answer the question.

21 A It's my understanding that in addition to PPG
22 Industries, that Dr. Grant worked for Pittsburgh Corning.
23 As their consultant that he shared this information with
24 Pittsburgh Corning, you can't say that this was not in the
25 file of somebody that worked for Pittsburgh Corning. I

1 don't understand.

2 Q Doctor, do you have one bit of evidence that says that
3 this document was ever in Pittsburgh Corning's files?

4 A No, I don't, but I'm sure Dr. Grant in his files.
5 certainly -- these were Pittsburgh Corning files.

6 Q Excuse me?

7 A He had Pittsburgh Corning files. He had plant files
8 dealing with Pittsburgh Corning. I don't understand what
9 you are getting at.

10 Q Have you seen anything which tells you that he passed
11 that specific piece of information on to Pittsburgh Corning?

12 A Well, if he didn't, he was probably derelict in his
13 responsibilities.

14 Q Doctor, do you remember being asked the question last
15 night by Mr. Harvard over here at Page 28 of your
16 deposition, "Have you seen anything which tells you that he
17 passed that specific piece of information on to Pittsburgh
18 Corning," and do you remember giving the answer "Not as I
19 have just seen this here," was that your testimony last
20 night?

21 A That is correct. I've seen nothing.

22 Q Was that true at that time, sir?

23 A Yes, still is.

24 Q Let's look at what he did pass on to Pittsburgh Corning,
25 Doctor, because it pertains to initial medical staff visit

1 November 8th, 1965 and that is the document that you and I
2 have been talking about dated November 29, 1965. That's
3 what he passed on to Pittsburgh Corning, isn't it, sir?
4 Doesn't it say up here? What is it? What does it say?

5 A Initial medical staff visit.

6 Q What date? .

7 A November '65.

8 Q Yes, sir. And that contains the paragraph you and I
9 have been reading from, doesn't it?

10 A This has to do with the Tyler plant and is a
11 communication from Dr. Grant.

12 Q Same visit, isn't it, Doctor?

13 A Well, according to this, he didn't pass this information
14 on to the plant manager.

15 Q You have no information that says he passed that
16 document on to Pittsburgh Corning, correct? Correct?

17 A He was Pittsburgh Corning. I don't get --

18 Q No, sir, he wasn't Pittsburgh Corning. Do you have any
19 information that he passed that on to Pittsburgh Corning?

20 A He was Pittsburgh Corning. I don't understand.

21 Q Doctor, you are aware he was not an employee of
22 Pittsburgh Corning, are you not?

23 A He was a Pittsburgh Corning consultant. He worked for
24 PPG and the Pittsburgh Corning people. I don't understand
25 the fine point here. He certainly presented himself to me

1 as the man that did the medical for Pittsburgh Corning. The
2 executives at Pittsburgh Corning, one of them specifically
3 apologized to me in Port Allegany that they used Dr. Grant,
4 but that they had to in his employment with PPG Industries,
5 that he was regarded as one of the team.

6 Q Doctor --

7 MR. GARRARD: Your Honor, I would move to strike
8 that as not responsive to anything that I asked him.

9 THE COURT: Sustained.

10 BY MR. GARRARD:

11 Q Doctor, please listen to my question. You are aware,
12 are you not, that Dr. Grant was not an employee of
13 Pittsburgh Corning?

14 A I believe he got his paycheck from PPG Industries, but I
15 have always been under the impression that he basically did
16 the medical for Pittsburgh Corning. And it all depends on
17 how you want to look at it, you know.

18 Q Sure does, doesn't it, sir?

19 A Absolutely.

20 Q Doctor, let's look at something else. In one of your
21 criticisms of Pittsburgh Corning, you talked about dust
22 studies. And if I recollect your testimony earlier, you
23 indicated that there had never been any dust studies that
24 showed anything except excessive dust at Pittsburgh Corning
25 facilities and that you thought the letter to Mr. Haskins

1 was wrong or false or whatever terminology you used because
2 of that. You remember that?

3 MR. MOTLEY: I object to the form. That's a
4 mischaracterization of what he said. He said they weren't
5 always safe.

6 THE COURT: The jury heard it. They will be
7 governed by their recollection of it.

8 BY MR. GARRARD:

9 Q You remember talking to Mr. Motley about that, sir?

10 A Could you repeat the question?

11 Q Yes, sir. When you were testifying for Mr. Motley on
12 direct, you said that one of the things that you thought was
13 incorrect, I don't remember exactly whether you said
14 incorrect or a lie or what you said, in the letter to
15 Haskins from Grant in August of 1966 was that there were no
16 dust studies shown that were decent dust studies or within
17 the standard as to Pittsburgh Corning as of August 15, 1966.
18 Do you remember that? That's one of the things you took
19 issue with.

20 A I would like to see the data.

21 Q You want to see the letter?

22 A I would like to see the data of what you are referring
23 to.

24 Q But you remember making that criticism of Pittsburgh
25 Corning, do you not, this morning?

1 A I'm having a hard time putting this all together. This
2 is getting to be a long day and I would like to be provided
3 the data so that I can appropriately respond.

4 THE COURT: Doctor, his question, as I appreciated
5 it was limited to what you're testimony was this morning in
6 response to Mr. Motley's question concerning the matter, not
7 the basis for any opinion, but simply what your response was
8 this morning.

9 MR. MOTLEY: Your Honor, we may have the -- do we
10 have this morning's transcript yet?

11 THE WITNESS: We don't have the transcript, yeah.
12 But I'm confused at this point.

13 BY MR. GARRARD:

14 Q I'm not trying to confuse you, sir. Let me try one more
15 time. Do you recall this morning testifying with Mr. Motley
16 about the letter from Lee Grant to Arthur Haskins at Bath
17 Iron Works?

18 A Yes, I do.

19 Q All right, sir. Do you remember that one of your
20 criticisms of that letter was his statement in there that
21 there had been dust studies done at Pittsburgh Corning
22 facilities that showed the results as being okay. You
23 remember that?

24 A Yes, I do.

25 MR. MOTLEY: Your Honor, I object to that, that's

1 not a fair characterization of what he said.

2 THE COURT: Well, Counsel, the jury heard it and
3 they will remember what he said.

4 BY MR. GARRARD:

5 Q Are you with me now, Doctor?

6 A I am looking at this and I'm waiting for the question.

7 Q You remember the testimony about the letter?

8 A I've got it marked here; and my concern about this
9 particular part of the letter, yes.

10 Q What was your concern about that part of the letter?

11 A It says, "Repeated dust studies by both the Industrial
12 Hygiene Foundation and the State Health Departments have
13 shown dust exposures to be within safe limits for these
14 materials."

15 Q All right, sir. And you think that's wrong?

16 A Yes, I do.

17 Q The date of that letter is what?

18 A August 1966.

19 Q Okay. And, Doctor, did you look at this document,
20 January 27, 1966 from Jan Lieben -- let me identify it,
21 please, then I will be glad to give it to you.

22 A Yes.

23 Q Jan Lieben, who was a doctor and director of the
24 Division of Industrial Hygiene for the state of Pennsylvania
25 Department of Health, to Pittsburgh Corning talking about

1 dust studies done at Port Allegany. Had you looked at that
2 when you made that comment previously?

3 A This was a resurvey, which showed dust levels below what
4 they have been previously documented at by the Pennsylvania
5 authorities. Certainly the study -- I have not seen the
6 original study, but it's referenced by Dr. Grant in one of
7 his data sets as indicating that there was, in fact, a
8 hazardous condition that had been documented previously by
9 the state of Pennsylvania in that facility.

10 Q In 1964, wasn't it, sir?

11 A I would have to look at it, but that sounds about the
12 right framework.

13 Q Yes, sir. We've got one right here, January 27, 1966,
14 by the State of Pennsylvania. And could you just tell the
15 Court and jury what, if I may refer you to something here,
16 please, sir.

17 A All right.

18 Q What do they say here about dust exposures in the second
19 paragraph?

20 A It says dust exposure have been reduced to less than the
21 threshold of 5 million particles per cubic feet.

22 Q Yes, sir. And had you looked at that one with Mr.
23 Motley?

24 A I had not seen this but there is certainly some
25 exposures in here that warrant concern. There is one that

1 is 5 million particles per cubic feet at one operator's
2 location. There's another one at 5.3 million particles per
3 cubic feet at an operator's exposure at a sawing operation,
4 and I think it's all a matter of how you want cut up the
5 data and look at it.

6 Q How many others in there within TLV, Doctor? Tell the
7 jury that, please, sir.

8 A There is certainly a number in there, but you can't
9 discount the individuals that are being exposed to these
10 higher levels. And that certainly bothers me in an overall
11 interpretation of that data.

12 Q Do you know Dr. Lieben?

13 A I know of him. I have not met him personally.

14 Q Yes, sir. His conclusion apparently was, dust exposures
15 have been reduced to less than the threshold limit value of
16 5 million particles per cubic foot and he communicated that
17 to Pittsburgh Corning, did he not, sir?

18 A He did. And I really don't even know if he had been
19 there as a part of the survey team. He was not an
20 industrial hygienist.

21 Q Yes, sir, I see. And did Mr. Motley show you the survey
22 done by Morton Corn April 14 through 15, 1966 at Port
23 Allegany?

24 A I would have to look at that quickly.

25 Q Please do. First answer me, did you see that before,

1 sir?

2 A Yes, I did and I think this has also some problems. It
3 also just involves a limited number of samples. It just
4 involves three samples. Obviously if you average this out,
5 you don't have a problem. But if you take look at the No. 2
6 sample, the breathing zone of the feeder, it is 11.5 million
7 particles per cubic feet, greater than two times the
8 threshold limit value. And that certainly was not a
9 protective level for the individual that had that sampler on
10 and I wonder if that was even conveyed to that individual.

11 Q What did they say about the breathing zone of Sawyer,
12 what was its result?

13 A 1.4.

14 Q Yes, sir. And what did they say, if I may refer you to
15 something, please, here, Table 4, that's what you were just
16 referring to, isn't it?

17 A Yes.

18 Q Do they say Table 4 is a summary of the results of three
19 air samples obtained in the plant, the concentration of the
20 dust and the breathing zone of the feeder is excessive. The
21 feeder wore a respirator and this practice, if voluntary,
22 should be compulsory. Did they also say that, sir?

23 A Dr. Corn said that, that feeder, in fact, adapt a
24 mandatory respiratory policy. I don't know. That certainly
25 does not give me any sense of security that that plant was

1 safe and I think three samples is not a statistical -- is of
2 no statistical value.

3 I see one excessive. That excessive in three indicates
4 to me that there is a problem in that plant and I think
5 that, again, this is matter of interpretation, and I would
6 certainly still feel as strongly as I do about this letter
7 with that data if you are using that to support that.

8 Q Well, Doctor, how strongly did you feel about that data,
9 in fact, the last two things I've showed you, when
10 Pittsburgh Corning sent it to you back in 1971? Do you see
11 on this letter, Doctor, that's to you, September 13, 1971
12 from Lee Grant. It says, "Dear Dr. Johnston, the following
13 reports and correspondence from my personal Port Allegany
14 plant files in which you had indicated an interest are
15 enclosed for your information." One is a letter dated
16 1-27-66 from the Commonwealth of Pennsylvania to Pittsburgh
17 Corning Corporation which is what we just looked at. And
18 another is a report on industrial survey of selected process
19 operations performed April 14 through 15, 1966 at Port
20 Allegany which we just looked at.

21 A I find that very interesting and deserving of additional
22 review. This information obviously didn't affect my
23 attitude or analysis of the situation at Port Allegany and
24 in Tyler.

25 Q Well, Doctor, what about this one, October 25, 1967,

1 from Dr. Lieben again of the State of Pennsylvania to
2 Pittsburgh Corning where it says, air samples for dust
3 containing asbestos were collected in midget impingers.
4 What's a midget impinger, sir?

5 A It's a way of collecting dust.

6 Q All right, sir. Were collected in midget impingers, I
7 can't hardly say that, containing distilled water. A
8 standardized light filled microscope technique was used to
9 count dust. Results indicate that exposures in all areas
10 except No. 2 building machine, parentheses, two-and-a-half
11 by one inch pipe insulation, are less than the threshold
12 limit value of 5 million particles per cubic foot of air
13 based on an eight hour daily exposure. Had you reviewed
14 that document before today, sir?

15 A I don't know. Let me take a look at that.

16 Q Sure, please do.

17 A Where is the air sampling data in this report?

18 Q I don't have the air sampling data, Doctor. I've got
19 what he said right there. Had you reviewed that document
20 before?

21 A I don't remember. Is it in my list?

22 Q I don't know, Doctor. I didn't provide your list.

23 A I certainly -- let me check this, please.

24 Q Sure.

25 A Well, this certainly makes everything look just nice and

1 rosey.

2 Q Have you figured out whether you reviewed that before or
3 not, sir?

4 A This indicates information about the Foam Glass
5 operation, the glass plant. Could you point out to -- where
6 there's anything that really gives a sufficient amount of
7 detail to make any independent analysis of that air sampling
8 data?

9 Q Doctor, my question to you is simply: Had you seen that
10 before, sir?

11 A I can't remember and I can't do anything with that data.

12 Q All right, sir. So that didn't nor would it affect your
13 opinion; is that correct?

14 A Not at all.

15 Q Not at all. Doctor, you are aware, are you not, that
16 when Pittsburgh Corning invited the U.S. Public Health
17 Service into their plant that they were of the impression
18 that the Public Health Service was going to do a medical
19 study of their people? You are aware of that, aren't you?

20 A I'm aware there has been discussion about that, yes.

21 Q Yes, sir. And that Pittsburgh Corning had been talking
22 to Dr. Hurst from Tyler, Texas about doing a medical study
23 of their employees. But because they thought, rightly or
24 wrongly, that the Public Health Service was going to do a
25 study, they didn't have Dr. Hurst go on and do one in 1967,

1 you're aware of that, are you not?

2 A I'm aware there has been some discussion about that.

3 Q Do you have any reason to doubt that, sir?

4 A Yes.

5 Q Please tell me, what?

6 A I don't know. The more you have been telling me about
7 all of these x-rays that were supposedly have been done, I
8 don't know why Pittsburgh Corning wanted the Public Health
9 Service to come in and take more x-rays. Didn't they look
10 at the x-rays they claimed they already have and have their
11 consultants look at them and their Board-certified
12 radiologists that they talked about in their material? I
13 have not seen anything like that.

14 The United States Public Health Service was obligated in
15 its medical studies to the asbestos chrysotile textile
16 industry. This amosite operation was out of the purview of
17 the Public Health Services protocols for medical studies.
18 And apparently, from what I understand, there weren't even
19 funds allocated or available in the Public Health Service
20 for these studies. And it's my understanding that that had
21 been previously conveyed to Dr. Grant and that he was fully
22 aware of this.

23 Q Where did you get that from, sir?

24 A I've heard that in the past and I've heard it discussed
25 in the last day and we certainly had discussed this in

1 Cincinnati a number of times when I was with NIOSH.

2 Q Doctor, you heard it discussed in the last day from Mr.
3 Motley saying that Dr. Grant thought they weren't going to
4 do it?

5 A I have no reason or any data to conclude that there was
6 any evidence or data or communication to Dr. Grant to even
7 give any inkling that the Public Health Service was going to
8 do this. This involved the mobilization of resources and
9 radiographic equipment and so on that was tied up other
10 places and I do not understand where this is coming from.

11 Q Doctor, do you remember giving your deposition back in
12 1975 in the case of Yendel, in the case of Kaye versus
13 various Defendants April 16, 1975, do you remember that?

14 A I remember people deposing me in Tucson, yes.

15 Q Do you remember at Page 137 of your testimony being
16 asked this question: Maybe I've confused you, Doctor, here
17 is what I mean: The purpose of the survey, they were
18 talking about the 1967 survey, what they were going to do
19 was take medical histories, you said our particular. And
20 the questioner said, yes, sir and dust surveys and medical
21 examinations.

22 And your answer on Page 138 was: Right, medical and
23 environmental measurements. And the question was: They did
24 not. They did do some but they did not make any medical
25 examinations or make medical examinations, did they.

1 And then you went on to say that's right, they
2 eventually didn't.

3 But you said at that time, did you not, that one of the
4 purpose of the study was to do medical examinations?

5 A May I clarify that, sir, for the record?

6 Q You certainly can clarify it if you first answer my
7 question. You did say that, didn't you?

8 A If I said that, I said -- I would love to see the
9 deposition and because I think that needs amplification.

10 Q You think what?

11 A That needs to be explained.

12 Q Well, let's make sure I read it right. Look at what I
13 just read. Did I read that right, down through here,
14 starting there? Did I read it right?

15 A I think this has to be clarified.

16 Q First tell me: Did I read it right, sir?

17 A Yes.

18 Q Thank you.

19 A But I think this needs to be clarified.

20 Q Please do.

21 A Okay. In 1967 the primary purpose was the collection of
22 dust samples. It came to my attention that x-rays were not
23 taken. No medical doctors were sent down to Tyler by the
24 Public Health Service. But I believe that the industrial
25 hygienist administered some form of a medical questionnaire,

1 which wound up in the files in the Public Health Service.
2 Apparently Pittsburgh Corning had never asked about that,
3 from what I understand. And that information was conveyed
4 to me, I think, in a subsequent discussion that I had with
5 somebody that worked in NIOSH.

6 So, the medical aspect of that, sir, only involved
7 questionnaires. It did not involve any medical personnel.
8 It did not involve the analysis of any data. It did not
9 involve the laying on of hands of any Public Health Service
10 physicians on the amosite-exposed workers in either Tyler,
11 Texas, or Port Allegany, Pennsylvania.

12 Q Doctor, had you ever seen -- did Mr. Motley show you
13 this letter from Dr. Grant to Dr. Hurst, dated March 7th,
14 1967, where he says: "As I indicated during my preliminary
15 meeting with you" -- talking to Dr. Hurst -- "the United
16 States Public Health Service has been interested in
17 environmental and medical study in the asbestos products
18 manufacturing industry for some time. They have only
19 recently agreed to include our Pittsburgh Corning plants at
20 Tyler, Texas, and Port Allegany, Pennsylvania, in the
21 environmental study."

22 Does that talk about a medical study, Doctor?

23 A It talks about an environmental study that's been
24 committed to Pittsburgh Corning and Tyler. It only talks
25 about a medical study in relationship to the asbestos

1 products manufacturing industry, which specifically was
2 chrysotile and specifically was the asbestos textile
3 industry.

4 It in no way alludes to the fact that the asbestos
5 facilities at Tyler, Texas, or at Port Allegany,
6 Pennsylvania, were, in fact, to be included in any medical
7 studies performed by the U.S. Public Health Service.

8 Q So, the Public Health Service was going to study
9 chrysotile; but they didn't want to study amosite?

10 A They had limited resources. And it sounds like,
11 according to what you've brought to my attention today -- if
12 it, in fact, is true -- that there were all sorts of x-rays
13 available. And if those x-rays were available, why weren't
14 they submitted to the government for review, to read them
15 for the absence or presence of asbestos-related diseases?

16 We certainly had consultants available to us in the
17 government. And perhaps some of your x-rays were --

18 Q Do you know if Dr. Cralley ever asked for any?

19 A Why would he? It was not in the purview of the
20 protocols of the Public Health Service to --

21 Q So, he wouldn't have been interested in that if it was
22 amosite?

23 A Not at that particular time.

24 Q But he would have been interested if it was chrysotile?

25 A According to the protocols, the focus was on chrysotile.

1 And that's where the resources were allocated. That's my
2 understanding.

3 Q Did you see from Mr. Motley this letter of July 12,
4 1967, from Grant to Cralley, saying, "Dear Lewis" -- and Dr.
5 Cralley: tell the jury who he is, please.

6 A Dr. Cralley was the director of epidemiology for one of
7 NIOSH predecessor agencies, the National Center for Urban
8 and Industrial Health, which became the Bureau of
9 Occupational Safety and Health.

10 Q He was director of epidemiology and field studies?

11 A Yes.

12 Q What are field studies? Does that mean going out and
13 looking at people?

14 A Going and looking at people doing medical and mental
15 studies, yes, sir.

16 Q Dr. Grant kind of puzzles me when he says, "Dear Lewis,
17 what is the status of the medical portion of your studies in
18 the asbestos industry? As you know, Pittsburgh Corning
19 Corporation is interested in U.S. Public Health Service
20 following up on the environmental studies at their Tyler and
21 Port Allegany plants as soon as possible. We are also
22 awaiting the reports on these environmental studies.

23 "You may remember that I had indicated to you that prior
24 to U.S. Public Health Service involvement in the Tyler
25 plant, we had discussed with Dr. Hurst of the East Texas

1 Tuberculosis Hospital, the possibility of their conducting
2 medical studies on the Tyler employees. When it appeared
3 that the U.S. Public Health Service would include the Tyler
4 plant in the asbestos industry study, we deferred further
5 discussion with Dr. Hurst."

6 Why in the world did Dr. Grant write that if he knew
7 they weren't go to do it, sir?

8 A I don't know. Can I see that a minute?

9 Q You sure can.

10 A I don't know. I think it should be pointed out for the
11 record -- may I?

12 Q Sure. Take all the time you want.

13 A -- that Dr. Lewis Cralley was a Ph.D.; he was not a
14 physician. That the physician that was over this, to my
15 understanding, was a Dr. William Lanehart (phon.). I think
16 that I would certainly want to have discussion about this
17 with Dr. Lanehart instead of Lewis Cralley.

18 I don't particularly understand this. I've seen this
19 letter before. I don't think in any way that it obviates
20 the need for Pittsburgh Corning to, in fact, look out after
21 the medical affairs of their own employees.

22 Q So, this is something you would like to discuss with Dr.
23 Lanehart, to see what he really means. Is that the case?

24 A I think Dr. Lanehart, being the chief medical person at
25 that time, could probably shed additional information on

1 that. Do you have anything from him?

2 Q Have you talked to him?

3 A No, I haven't.

4 Q Okay. Now, Doctor --

5 A I think it should be pointed out, also, that the Public
6 Health Service also had obligations in the coal mining
7 industry and was actively involved in their resources, with
8 looking at under ground coal miners. And that was something
9 that obviously needed attention and was a competing
10 resource, a competing program during those times.

11 So, I think you are -- again, here, I don't want to
12 oversimplify the issue. These were programing matters that
13 I had no involvement in at the time. And you may want to
14 direct these to the individuals in the Government that had
15 responsibility for those matters at that time. You may be
16 talking to the wrong person.

17 Q Yes, sir. But you're testifying.

18 Let's change to another subject, sir. You and Mr.
19 Motley talked about the Walsh Healy matter. Do you remember
20 that, sir?

21 A Yes, sir.

22 Q Okay. Make sure we get on the same wave length here.

23 Now, are you aware that the reason that Walsh Healy comes in
24 and visits an operation is because the government is buying
25 the product?

1 A That's my understanding, yes.

2 Q Yes, sir. In terms of Walsh Healy, as I understand it,
3 your issue you take with that is when Mr. Stout wrote to Mr.
4 Blair, April 11, 1969, and said that Pittsburgh Corning used
5 Dr. Corn as a consultant on ventilation.

6 That's what you think is inappropriate or you and Mr.
7 Motley said it's like writing a postdated check.

8 A Well, he had never been to Tyler. He had not -- you're
9 using a professional's name in correspondence when he, in
10 fact, hasn't even had the advantage to have reviewed the
11 plant or made any independent assessment.

12 Q Well, what happened after that was written by Mr. Stout,
13 sir? Was it just left that way?

14 A No. There were some -- I would have to -- I would like
15 to get the --

16 Q Sure. Let me help you with it, sir. There's the
17 document that you talked about, April 11, 1969. You recall
18 that, don't you?

19 A Yes, I do. There's a corresponding document back.

20 Q Yes. There's a document from Dr. Corn to Mr. Blair less
21 than three weeks later that clarifies that and says, "Dear
22 Mr. Blair, I'm writing to clarify the letter from Burl
23 Stout, vice-president of manufacturing, Pittsburgh Corning
24 Corporation, to you, dated April 11, '69. I have been
25 working with Pittsburgh Corning central engineering

1 engineers on dust control in their Port Allegany,
2 Pennsylvania, works.

3 "The manufacturing operation in this plant is similar to
4 that in the Tyler, Texas, plant. We are installing an
5 entire ventilation system and dust collector at Port
6 Allegany. However, it should be noted that I have never
7 visited or surveyed the Tyler, Texas, plant of this
8 corporation.

9 "I first saw the letter from Mr. Stout to you on April
10 28, 1969. At that time, Mr. Stout suggested that I visit
11 the Tyler plant. And I have scheduled to do so on May 7th,
12 1969. You may rest assured that all the engineering skills
13 which have been brought to bear on the Port Allegany plant
14 dust control system will be focused on the Tyler plant."

15 Now, that was written by Dr. Corn to Mr. Blair,
16 clarifying the confusion within three weeks, wasn't it, sir?
17 A I think that we probably would want to ask Dr. Corn what
18 his particular motive was in writing that letter. And he
19 may be, in fact, responding to a concern that he, in fact,
20 was never consulted when his name was used and is trying to
21 interject his professional concern at this time.

22 Q You just don't know, do you?

23 A No. But that's what it looks like to me, in terms of
24 the time relationship.

25 Q Looks like to me he's writing there and saying, "He

1 shouldn't have said that, but I'm on my way down there."

2 Isn't that what he says?

3 A Well, I don't know how he can be on his way down there.
4 The other thing is that I think we need to point out here is
5 that Pittsburgh Corning's facility in Port Allegany was a
6 much newer facility. We are talking about an older system.
7 I think that the record will point out that apparently these
8 used to be old military buildings in Tyler.

9 The ventilation system that Dr. Corn was talking about
10 was going to be designed for the facility in Port Allegany.
11 It did not necessarily have any direct application, the way
12 it was being designed for the facility in Tyler. And I
13 think you may be too premature in promoting it's application
14 to the Tyler facility, particularly this early in the game.

15 Q Thank you, Doctor. I'm glad you made that point because
16 that's one of the points I've been trying to make, was it
17 was an old facility at Tyler, Texas, wasn't it?

18 A Oh, yes.

19 Q And it was much more difficult to deal with Tyler,
20 Texas, than it was with Port Allegany, wasn't it?

21 A Yes. That's maybe why it shouldn't have been allowed to
22 be perpetuated as long as it was.

23 Q What did Dr. Corn say March 25, 1970? Have you seen
24 this from Dr. Corn to John Hyde about what he has done in
25 regard to the ventilation systems? Is that something you

1 reviewed, sir?

2 A No --

3 Q Answer that first: Have you reviewed it?

4 A No. I don't believe I've seen this.

5 Q All right, sir. Let me show you something on there.

6 I'll be glad to -- let me point out something. I'll be glad
7 to put it back in your hands, sir.

8 Does he say, "The Tyler ventilation system is the best
9 one I can design for these process operations"? Does he say
10 that?

11 A Yeah.

12 Q All right, sir. Now, would you like to look at that?

13 A Yes.

14 Q Please do.

15 A That's certainly at variance with anything else that I
16 have seen Dr. Corn write. And I don't understand it; I
17 really don't. There was a system that he had put in in
18 Tyler. But my goodness, he didn't put in a system -- I
19 mean, he put in a system at Port Allegany which really
20 hadn't been tested until the Public Health Service went by
21 and did some air sampling, from what I understand.

22 I don't understand how he can make that statement about
23 Tyler, Texas, particularly using a superlative like
24 "excellent." And I would want to ask Dr. Corn specifically
25 what the basis for that was. I do not understand that and

1 have professional questions about it.

2 Q Yes, sir. You've basically had professional questions
3 about everything, haven't you, sir?

4 A I would hope so, with the training and background I've
5 had.

6 Q Yes, sir. Now, you talked earlier about the Walsh Healy
7 matters. Let's explore that just a little bit. As far as
8 Walsh Healy is concerned, sir, that was -- to use your
9 terminology, if I can find the right place -- the things
10 that Mr. Blair and Walsh Healy got onto Pittsburgh Corning
11 about, you didn't think their conclusions were very strong,
12 did you?

13 A Do you want to show me the document? And then I will
14 comment.

15 Q Well, have you testified before that you didn't think
16 their conclusions were very strong?

17 A It's been a while. I would like to review this. I
18 don't do this for a living.

19 Q Let me find the right one, sir. There it is, sir. Tell
20 me when you've looked at it. Have you looked at
21 it?

22 Q Yes. There are two areas of concern here in the
23 Department of Labor notice of violation. One has to do that
24 there were no certified first-aiders in the plant. No. 2
25 has to do with local exhaust ventilation. Local exhaust

1 ventilation not according to standards. The face velocities
2 are given. Those are very low. The conclusion is that the
3 present system is below required capacity.

4 It was recommended they do a study. It, to me, is
5 interesting here that the Federal Government is pointing out
6 that again that the ventilation system is a problem area,
7 it's not adequate and will not do the job. They are
8 suggesting that -- let's see.

9 There's something in the bottom here that's cut off.
10 "Arrangements were made over three weeks ago with local"
11 something. I don't know what that refers to. But
12 certainly, according to what they call the American
13 Conference of Governmental and Industrial Hygienists
14 industrial ventilation code here, they were -- it was a
15 totally inadequate system. And --

16 Q Did they say it was totally inadequate anywhere on
17 there?

18 A They said that it was inadequate, that it was not --

19 Q Did they say that it was totally inadequate anywhere,
20 sir?

21 A It was below required capacity.

22 Q Yes, sir. And do you remember testifying, Doctor -- I
23 asked you the question: "Have you seen that
24 correspondence?"

25 And you said, "I have seen that correspondence."

1 And the question was: "And they didn't, when they sent
2 the correspondence to Pittsburgh Corning, tell them anything
3 to say 'you've got a bad situation or a hazardous situation
4 here and you ought to take the asbestos out, you ought to
5 require respirators or anything of that nature,' did they?"

6 And do you remember giving an answer: "I would have to
7 review that, but I don't think their conclusions were very
8 strong."

9 And then the question was: "They, in fact, were not
10 strong at all, were they?"

11 And the answer was "no."

12 A Well, it came to my attention that Dr. Corn also was
13 apparently of that same viewpoint, and that he, in fact,
14 apparently had informal discussion, unbeknown to the time,
15 with the Department of Labor people in Dallas. He thought
16 that they were not strong enough, also.

17 Q The conclusion?

18 A That they could have pointed out a little bit harder,
19 yes.

20 Q Yes, sir.

21 A And Doctor --

22 Q That is, in fact, what they said to Pittsburgh Corning,
23 isn't it?

24 A Yeah. And Dr. Corn, in so communicating, apparently --
25 from my impression -- had some real concern also about

1 whether the workers in that factory were being protected.

2 And I just --

3 Q Do you know what --

4 A It's still -- you know, it's still a filthy mess that
5 had not been taken care of. And I don't know where you're
6 going here.

7 MR. GARRARD: Your Honor, I would move to strike
8 his last response.

9 THE COURT: Sustained.

10 BY MR. DAGGETT:

11 Q Doctor, did Mr. Motley show you the letter of July 2,
12 1969, from Mr. Stout to Mr. Blair, where he says, "All
13 persons working in areas where the report shows dust levels
14 in excess of a threshold limit value have been required to
15 wear dust respirators approved by the U.S. Bureau of Mines
16 for pneumoconiosis-producing and for nuisance dust"?

17 Did he show you that, sir?

18 A I believe I've seen this. I don't have everything here.
19 What is the date on this? July 2 --

20 Q 1969. The "9" is just not showing up there.

21 A May I check my notes?

22 Q Sure, you can.

23 A This does look very familiar to me. Well, I think
24 that --

25 Q My question was: Had you seen that?

1 A This looks familiar to me. I just can't place it at
2 this time. I believe I've reviewed this.

3 Q Well, let me ask you, Doctor: Are you aware that the
4 Walsh Healy people, Department of Labor, had visited the
5 Pittsburgh Corning plant once before prior to this little
6 series of correspondence in 1969?

7 A I can't say for sure.

8 Q Yes, sir. Were you aware that in September of 1963 they
9 visited Pittsburgh Corning and they said of twelve
10 recommendations, one dealt with dust. And it says, "Provide
11 other personnel protective equipment for environmental
12 conditions in accordance with Section 50-204-275. Excessive
13 amount of asbestos dust noted near sawing operations and
14 where ground scrap is placed in the feeders."

15 Had you seen that, sir?

16 A I don't believe so, sir.

17 Q And had you seen the response of Mr. McMillan to that,
18 dated October 25, 1963, where he says, "Gentlemen, with
19 reference to your letter of September 24 listing twelve
20 items as unsatisfactory conditions existing at this plant,
21 this is to advise that all of these conditions have now been
22 completely corrected except for the following."

23 And that was Item No. 3, "Provide hot water for the
24 laboratories and the office building." Had you seen that
25 before today, sir?

14
1 A No. But it's obvious that the Department -- may I see
2 this again? -- that the Department of Labor people didn't go
3 back in and reassess that, that they took the word of
4 Pittsburgh Corning that there had been corrected --

5 Q Yes, sir. They did, didn't they?

6 A -- conditions. And I think that may be a problem, also.
7 I think, also, I think it should be pointed out on the
8 letter of July 2, 1969, it says, "All persons working in
9 areas where the report shows dust levels in excess of the
10 threshold limit values have been required to wear dust
11 respirator approved by the U.S. Department of Mines for
12 pneumoconiosis-producing or for nuisance dust."

13 From what I understand, that was something that was not
14 done by Pittsburgh Corning. So, I think there's a problem
15 there, also.

16 Q But you've seen a number of letters, have you not, sir,
17 that have confused you, as you've said it, because they say
18 things other than what you and Mr. Motley had discussed;
19 isn't that true?

20 A No, sir. I've had my own knowledge of this facility for
21 some time. I've been there; I've had my own independent
22 thoughts about this. And I think that you're saying that --
23 I don't know. You've got Mr. Motley in the middle of all of
24 this, and I don't understand why you're doing that. I think
25 that I've got my own opinions, viewpoints, and experience

1 with this facility. And I'm trying to convey that.

2 Q Doctor, Mr. Motley brought you in the courtroom to
3 testify, didn't he?

4 A Well, he thought --

5 Q Didn't he?

6 A Yes. He -- on the basis of --

7 Q And he gave you and discussed with you his opinions,
8 which he admitted are biased, when he asked you questions on
9 direct examination, didn't he?

10 A I --

11 Q Didn't he, sir?

12 A He obviously has a bias. He is representing people that
13 have been hurt or feel they've been hurt. And there is no
14 question about that.

15 What I'm trying to do here is bring some light to the
16 situation. And Mr. Motley asked me to do that. And I am
17 trying to convey to you my viewpoint, interpretation, and
18 observations. And obviously not all of those meet with your
19 pleasure.

20 Q They don't all meet with all the documents I've shown
21 you either, do they, sir? Do they, sir?

22 THE COURT: Gentlemen, it appears to me that we
23 have become a bit argumentative.

24 MR. GARRARD: I will rephrase the question, Your
25 Honor.

1 BY MR. GARRARD:

2 Q Doctor, there are documents I have shown you that
3 indicate that respirators were used at the plants. Whether
4 you want to believe them or not, they're there, aren't they?

5 A You've produced some documents. From my own observation
6 and discussion with other people, including workers, have
7 reason to question that.

8 Q Yes, sir. They are documents I have shown you that show
9 that x-rays were taken of people at the plants, are they
10 not?

11 A You've shown me that. I've never seen those x-rays, as
12 a Federal physician.

13 Q Did you ever ask for them, sir?

14 A Yeah. We asked for the ones at the East Texas Chest
15 Hospital and had nothing but a problem in getting those.

16 Q Well, now, Doctor, you asked for those in October of
17 1971. And Dr. Grant flew with somebody from your office to
18 Austin, Texas, in January of 1972 and gave them to you,
19 didn't he; isn't that true?

20 A Well, it sure took a long time to get them, when we were
21 concerned about tying up that particular medical
22 environmental study, given the seriousness of it. There was
23 some unnecessary delay which we didn't understand, still
24 don't understand it. And be that as it may, it's probably
25 not worthy of more comment.

1 Q Well, you got them in January of 1972, did you not?

2 A Yes, sir.

3 Q And you have previously said, have you not, that Dr.
4 Grant was cooperative with you and the Public Health
5 Service, was he not?

6 A Well, it was obvious that his cooperation was very
7 limited, because I didn't have the access to all this other
8 material that I've seen here and reviewed it in detail. And
9 it's very disturbing.

10 Q Doctor, haven't you said he was cooperative with you?

11 A I said that at one time. But it's apparent to me now
12 that his cooperation was very limited, and his communication
13 with me was very limited.

14 Q And you didn't remember till today that he had sent you
15 the list of materials that you and I talked about before,
16 including several dust studies, did you?

17 A I -- it's been since 1971 that I received that. And as
18 I say, this is not my job. This is something that I was
19 asked to do in addition to my job. And I worked until
20 Tuesday night, got on the plane Wednesday. I was down here
21 yesterday and am here today. And I have to go back because
22 I'm on call this weekend.

23 And I have a limited amount of time that I can give to
24 this. And I am rather amazed that you expect me to remember
25 a lot of this. There's -- whew! These documents, I think,

1 speak for themselves. And I think we'll let other people
2 make a -- come to some sort of conclusion about it.

3 Q Doctor, would you have liked to have had more time to
4 review all the documents and all the materials before you
5 came to all these conclusions?

6 A I think I've had an adequate amount of time to review
7 the documents that were provided to me. I've seen very
8 disturbing things in some of these documents. I've seen
9 inconsistencies. I've seen things that I do not understand.

10 I see things that obviously raise very serious questions
11 about the corporate conduct of people within the Pittsburgh
12 Corning Corporation. I think that there has been a can of
13 worms opened up here and I don't think that you and I are
14 going to resolve this this afternoon. I think this is going
15 to be resolved at another time, maybe in different settings
16 and it sounds like you've got some work cut out for you.

17 MR. GARRARD: Your Honor, I move the strike the
18 answer of the witness. It's nonresponsive to anything I
19 asked.

20 THE COURT: Overruled to that objection.

21 BY MR. GARRARD:

22 Q Doctor, it doesn't matter what I show you. From all of
23 the documents I have got or depositions I've got or evidence
24 I've got, nothing will make a difference to your opinion in
25 this case, will it?

1 A I haven't seen anything at this point that is changing
2 my mind or viewpoint, sir.

3 Q So, there's nothing that I can show you that you can
4 envision that could change your mind, is there?

5 A You could give it a try, you're certainly welcome.

6 Q Certainly welcome, huh? Well, Doctor, you are aware
7 that Pittsburgh Corning dealt with Dr. Hurst in terms of
8 medical examinations, are you not?

9 A Yes, I am.

10 Q You are aware that they invited the Public Health
11 Service into their plants, are you not, we have talked about
12 that?

13 THE COURT: Counsel, I think we've gotten
14 cumulative on cross now.

15 MR. GARRARD: I'm trying to do a wrap-up question,
16 Your Honor. Just bear with me.

17 BY MR. GARRARD:

18 Q You're aware they invited the Public Health Service into
19 their plants, are you not?

20 A Yes, I am.

21 Q You are aware that they invited Dr. Corn and hired him
22 to look at Port Allegany and I've shown you documents about
23 Tyler, Texas, are you not?

24 A Yes. I think Dr. Corn should probably speak for
25 himself.

1 Q You are aware that they hired Industrial Hygiene
2 Foundation to do studies, are you not?

3 A Yes, and I'm very disappointed with what I've seen.

4 Q You're aware that the State of Pennsylvania Department
5 of Health came into their plants and did studies, are you
6 not?

7 A Yes, and I'm aware they pointed out a problem and that
8 they on their resurvey said there wasn't a problem on the
9 basis of very limited data, sir.

10 Q Those things that Pittsburgh Corning engaged in were
11 appropriate things to do, were they not?

12 A I am not sure about that, sir. I don't know why, with
13 all of this other material that Pittsburgh Corning claims
14 they were accumulating, all of these other dust levels, all
15 of these other reports, all these other industrial hygiene
16 consultations, all of these x-rays, all of this other
17 medical, why they would come to the Public Health Service,
18 in fact, for a couple of additional dust studies and for
19 additional medical when, with their resources and what they
20 claim they have, no, sir I am totally confused about that
21 and maybe that's worthy of more questions.

22 Q Let's get on one other thing, Doctor. I've got about
23 two more areas I want to cover and I will be through.

24 You took significant issue with Dr. Grant's explanation
25 of health matters to employees and your basic issue you took

1 or criticism was that he said that it takes twenty years or
2 more of exposure to develop asbestosis, you recall that?

3 A Yes, sir.

4 Q That was your basic criticism, was it not, of his
5 explanation to the employees?

6 A Yes.

7 Q Doctor, do you know who Irving Selikoff is?

8 A I certainly do.

9 Q Is he respected in your mind?

10 A He's respected in some circles and he is questioned by
11 others.

12 Q Is he respected in your mind, in relation to asbestos
13 matters?

14 A On some issues, yes.

15 Q On medicine?

16 A He has an experience with asbestos diseases that is very
17 indepth and hands-on. He has practiced as a chest
18 specialist and certainly as a clinician viewed the problems
19 of workers that developed asbestos-related diseases
20 certainly both from the clinical and epidemiologic point of
21 view, this individual is a tremendous individual that has
22 written stuff that I certainly use and respect, yes, sir.

23 Q Did you take issue with his statement in 1967 when he
24 addressed the heat and frost insulators and asbestos workers
25 and said and, I quote, "Men begin breating in dust but the

1 diseases that they develop don't develop for twenty-five or
2 thirty or thirty-five years and probably that is why we
3 doctors didn't understand it until recently."

4 Did you take issue with him when he said it took twenty,
5 twenty-five, thirty years?

6 A May I say that I think that can be interpreted two or
7 three different ways.

8 Q All right, sir. Right there's where I was reading.
9 Doctor, first tell me, did I read it correctly?

10 A This is in 1960 --

11 Q '67.

12 A And this is in Chicago, Illinois. Okay.

13 Q And he was addressing the heat and frost insulators and
14 asbestos workers, wasn't he?

15 A Well, there are two or three ways to interpret this.
16 One is that they don't develop for twenty-five or thirty or
17 thirty-five years. In other words, it's a concept we call
18 latency. These disease are not instantaneous. They develop
19 over time. This in no way refers to the duration of
20 exposure to the years of exposure.

21 This talks about the years to develop and appreciate in
22 some individuals. In other words, you can have a shorter
23 duration of exposure, the disease will continue to progress
24 after the cessation of the exposure and may not clinically
25 manifest itself for twenty-five, thirty or thirty-five years

1 in some individuals. That's one way to interpret that, sir,
2 and that's the way I look at that limited.

3 Q That's the way you select to interpret it? That's the
4 way you select to interpret it?

5 A That's what it appears to me to be, sir.

6 Q I see. Now, one other area, Doctor. In terms of the
7 work done by Dr. Cralley's group, which is the group you
8 eventually hooked up with in '67, and then they published a
9 report which we have talked about, the Pittsburgh Corning in
10 March of '68. Then they did another study in 1970. The
11 first report from the Public Health Service given to
12 Pittsburgh Corning with definitive recommendations other
13 than you said something about in 1968 they said use some
14 respirators, with definitive recommendations was the one
15 that was given to Pittsburgh Corning in December of 1971,
16 was it not, from the Public Health Service?

17 A That is correct, the National Institute for Occupational
18 Safety and Health.

19 Q Yes, sir. And you were aware that Pittsburgh Corning
20 shut down the operation in 1972 in February, are you not?

21 A Yes, I am.

22 Q And you've previously testified that was a prudent thing
23 to do, haven't you?

24 A It sounds like it was the only thing to do.

25 Q It was a prudent thing to do, wasn't it?

1 A And the only thing to do.

2 Q Yes, sir. You've previously said it was a prudent thing
3 to do, haven't you?

4 A Obviously it was a prudent thing to do. It should have
5 been done way, way, way in the past.

6 Q Well, did you see in all that you've reviewed anything
7 from the State of Pennsylvania, the Public Health Service,
8 Walsh Healy as a federal act, State of Texas, saying
9 preceding that time, shut it down? Have you seen any
10 document that says that, sir?

11 A No, I haven't.

12 MR. GARRARD: Thank you. That is all I have got.

13 THE COURT: Any redirect?

14 MR. MOTLEY: Yes, briefly.

15 REDIRECT EXAMINATION

16 BY MR. MOTLEY:

17 Q Ladies and gentlemen of the jury, would you kindly turn
18 in this book to Exhibit No. 4397. Doctor, if you can find
19 4397, I will be grateful. If you can't, I will be glad to
20 just read it to you. 4397, it's dated August 30th, 1971 on
21 Pittsburgh Corning Corporation stationery.

22 A I don't believe that I --

23 Q That's all right. To save time I will just read it.

24 Ladies and gentlemen, do you have that August 30th, 1971? I
25 would ask the ladies and gentlemen of the jury to turn to

1 Page 6.

2 But let me ask you this: Mr. Garrard showed you all of
3 these documents from Pittsburgh Corning to different people
4 claiming they had a mandatory respirator policy, didn't he?

5 A Yes, uh-huh.

6 Q Uh-huh. They claimed to the Government they had one,
7 correct?

8 A Yes.

9 Q Well, let's look and see what they really had. This is
10 a document, Doctor, from the personnel manager of Pittsburgh
11 Corning Corporation. I ask the ladies and gentlemen of the
12 jury to kindly look in the middle of the page under Item No.
13 6, talking about respirators. This is the program as it
14 exists today. This is the date of August 30th, 1971,
15 Doctor.

16 Respirators were not mandatory in any area, in any area,
17 prior to August the 24th, 1971, but were only provided with
18 the choice being left up to individual employees who we
19 already know weren't told about the health hazards; isn't
20 that correct?

21 A That's true.

22 Q Does that indicate to you they have been phonying up
23 more than the two that we have talked about?

24 A That they've?

25 Q Phonied up.

1 A Yes.

2 Q Now, he asked you about Dr. Corn. I want to read you
3 his sworn testimony?

4 MR. GARRARD: If Your Honor, please, this is not in
5 evidence in this trial.

6 MR. MOTLEY: Your Honor, he implied that Dr. Corn
7 felt this way and felt that way. Here's his sworn testimony
8 about what really he felt. I would like to ask him if that
9 coincides with his impression of what he saw when he was
10 there.

11 MR. GARRARD: Your Honor, I would like take this up
12 out of the presence of the jury if he's serious about that
13 because I think it has matters --

14 THE COURT: Counsel, I always assume objections are
15 serious.

16 MR. GARRARD: If he is serious about it. I don't
17 know what transcript he is referring to. I don't know that
18 my client was involved in that transcript and I think it's
19 improper to have him now read on redirect from a Corn
20 deposition which is also hearsay.

21 MR. MOTLEY: Let me phrase it in the form of a
22 hypothetical, Your Honor, under Rule 703, if I might.

23 THE COURT: I will listen to the hypothetical.

24 MR. MOTLEY: All right.

25 BY MR. MOTLEY:

1 Q Dr. Johnston, assume that Dr. Corn, whom Mr. Garrard
2 asked you about, testified as follows: On the time of your
3 second visit to Tyler, when you had your information or data
4 from the first visit, did you at any time tell any of the
5 men working in the factory, talking about Tyler, of your
6 findings. His answer was: Absolutely, I told them all. We
7 had a forum, me against the plant foremen. I am telling
8 them, the men, they should wear respirators and I'm wearing
9 a respirator and him, the plant manager, telling them I am a
10 sissy.

11 QUESTION: You stood in front of the workers and told
12 them that?

13 ANSWER: Absolutely, in groups.

14 QUESTION: And the plant manager was there?

15 ANSWER: And the plant manager was there contradicting
16 me and I wished I remembered his name. I can't. But he was
17 really quite a macho character. But I was ridiculed for
18 wearing the protection I was wearing. And the men asked me
19 why are you wearing that, what are you doing. I explained
20 it and he, the plant manager, told them he didn't think it
21 was necessary.

22 We are talking about 1969, Doctor. I ask you to assume
23 the truth of what I just said to you.

24 MR. GARRARD: I object.

25 THE COURT: You're asking him to assume the truth

1 of the fact that the statement was made?

2 MR. MOTLEY: Yes, sir.

3 THE COURT: But not of the substance.

4 MR. MOTLEY: Absolutely.

5 MR. GARRARD: I object to that again. It's
6 hearsay, improper redirect examination. He brought up Corn
7 in his direct examination. I merely responded to that. I
8 think that's inappropriate.

9 THE COURT: Well, the substance of the matter has
10 been addressed on both direct and cross. I think it's
11 proper. You may answer the question.

12 BY MR. MOTLEY:

13 Q Assume that statement was made by Dr. Corn, that they
14 called him a sissy for wearing a respirator. Is that
15 consistent with what you found when you went there in 1971,
16 the attitude of management when you were there?

17 A Yes, absolutely.

18 Q Mr. Garrard asked you about Dr. Corn in that letter that
19 you said you couldn't understand why he wrote the letter, do
20 you remember that?

21 A Yes.

22 Q I ask you to assume this fact: That it was said, said
23 last Friday, in fact, by Dr. Corn.

24 MR. GARRARD: Same objection, Your Honor, we're
25 getting well beyond any permissible redirect examination in

1 a document that is, in fact, hearsay. We object to
2 preceding the entire examination.

3 THE COURT: I'm sorry, I didn't hear your last --

4 MR. GARRARD: We objected to this document
5 preceding the entire examination of this witness that he is
6 reading from.

7 THE COURT: Is this a document that I have ruled
8 on?

9 MR. GARRARD: No, sir, you never ruled on that.
10 It's a deposition that Mr. Motley has scammed it up from
11 somewhere and we object to it.

12 THE COURT: Why don't you ladies and gentlemen take
13 about a five-minute break.

14 (JURY OUT AT 2:36 P.M.)

15 MR. MOTLEY: I will just withdraw this question.

16 Your Honor, since the jury is not in here, can we get
17 some scheduling guidance? We are not going to be required
18 to argue any motions today for directed verdict or anything
19 like that?

20 THE COURT: Why not?

21 MR. MOTLEY: I'm just asking if we are.

22 THE COURT: If we get this case over, we are going
23 to immediately do that.

24 MR. MOTLEY: All right. Thank you, sir. That was
25 my scheduling question.

1 THE COURT: Now, are you about through?

2 MR. MOTLEY: Yes, sir. I've got five minutes. A
3 real five minutes, not a South Carolina five minutes.

4 THE COURT: I will hold you to that.

5 MR. MOTLEY: I know you will, Judge.

6 THE COURT: Mr. Rice, if you could maybe expedite
7 the doctor's return.

8 MR. RICE: Yes, sir.

9 MR. GARRARD: Will you ask the jury to disregard --

10 MR. MOTLEY: I'm going to withdraw the question on
11 the record. I didn't even get a question asked.

12 THE COURT: I didn't hear a question.

13 MR. MOTLEY: Your objection --

14 THE COURT: If he asked one, I didn't hear it.

15 MR. GARRARD: He was reading from the deposition.

16 MR. MOTLEY: I never got one on the record.

17 THE COURT: Gentlemen, let's maintain some order.
18 I think we can go ahead and bring the jury in.

19 (JURY IN AT 2:50 P.M.)

20 THE COURT: Doctor, in five minutes you're going to
21 be excused.

22 THE WITNESS: Thank you.

23 MR. MOTLEY: Madam Clerk, did you distribute that
24 document? Thank you.

25 THE CLERK: Yes.

CONTINUED REDIRECT EXAMINATION

BY MR. MOTLEY:

Q Now, Doctor, you have a copy of this in front of you?

A Yes. April 3, 1968, to the --

Q This is in regard to the U.S. Public Health Service study in 1967 about Tyler, Texas?

A Yes.

Q "I have reviewed the subject report to you from J. R. Lynch, a copy of which was sent to me at my request. This showed a significant health hazard existed from asbestos dust inhalation throughout the Unibestos operation. The following jobs were evaluated." They list them.

"Similar findings have been made in previous industrial hygiene surveys of this operation, and control recommendations have been made. You must anticipate that both some cases of asbestosis and an increased incidence of pulmonary carcinoma will develop in your employee population as a result of continued exposure to these levels for fifteen or more years."

Not twenty to thirty like he told the employees, right?

A Yes, sir.

Q "I strongly recommend appropriate steps be taken as soon as possible to reduce dust exposures of the Unibestos employees to safe levels."

Now, sir, for four more years they continued not to

1 reduce the dust levels, did they?

2 A Yes. My reaction to this is that it's disgusting.

3 Q Well --

4 A It's disgusting.

5 MR. GARRARD: If Your Honor, please, I move to
6 strike that statment.

7 THE COURT: Sustained.

8 MR. GARRARD: Ask the jury to disregard it.

9 THE COURT: The Court had previously instructed the
10 jury how they deal with matters that are sustained.

11 BY MR. MOTLEY:

12 Q Now, Dr. Johnston, Mr. Garrard talked to you about Dr.
13 Grant and who he was. You remember correspondence to Mr.
14 Stout, Burl Stout, the vice-president?

15 A Yes, sir.

16 Q All right. This is his sworn testimony. "Was it your
17 normal procedure with regard to health matters to refer it
18 to Dr. Grant?"

19 "ANSWER: Yes.

20 "QUESTION: Why was that?

21 "ANSWER: Because he was the authority in our
22 organization. He was a consultant for our company and one
23 of the owners. And so, we didn't have a medical consultant
24 within our group. So, we used him."

25 Is that consistent, the sworn statement of the

1 vice-president of Pittsburgh Corning, with why you were
2 dealing with Lee Grant?

3 A Yes. He was the medical man.

4 Q Doctor, they asked you, sir, about the medical program.
5 I don't have that copy here, but if I could show this to
6 you. This is 1969, October. He is talking about this
7 promising Dr. Hurst to go look at the employees.

8 Here's two years later, 1969. "In addition to the dust
9 control program on which you are already well-embarked, I
10 strongly recommend a comprehensive annual medical
11 examination of all Unibestos employees, as well as a strong
12 health education program concerning the particular hazards
13 of cigarette smoking and asbestos workers."

14 Does that indicate to you that they had any kind of
15 health program, sir?

16 A It indicates to me that Dr. Grant certainly saw the need
17 for one. And it raises questions about all those other
18 annual x-rays and periodic x-rays that have been alluded t.

19 Q Probably didn't exist, did they?

20 A I don't know.

21 Q Well, when you got there in 1971 as the government's
22 official investigator, nobody came up to you and said, Dr.
23 Johnston, we're glad to see you. Here's all these x-rays we
24 got," did they?

25 A No, they did not.

1 Q I didn't think so.

2 MR. MOTLEY: Your Honor, one second here.

3 BY MR. MOTLEY:

4 Q Now, finally, on this letter they wrote to the Bath Iron
5 Works -- and Mr. Garrard showed you some dust counts that
6 were less than the TLV -- you remember that? Were
7 relatively safe -- didn't he? He showed you some that were
8 relatively safe, didn't he?

9 A Yes, he did.

10 Q But the letter that they wrote to the customer said they
11 were all safe, didn't they?

12 A Let me take a look here. "They have shown dust
13 exposures to be within safe levels for these materials,
14 repeated dust studies."

15 Q They don't say that --

16 A There's no indication here that there were any excessive
17 levels, that there were any problems at all, yes.

18 Q So, they tell the customers that they are all safe when,
19 in fact, over half of them were dangerous, right?

20 MR. GARRARD: I object to the form of the question.
21 He hasn't said anything about "all." It's an improper
22 characterization, Mr. Motley.

23 THE COURT: The jury has heard the evidence. They
24 will determine from their recollection.

25 BY MR. MOTLEY:

1 Q What does the letter say, Doctor? Does it say some are
2 hazardous and some are safe?

3 A It says, "Repeated dust studies by both the Industrial
4 Hygiene Foundation and State Health Departments have shown
5 dust exposures to be within safe limits for these
6 materials."

7 Q It doesn't say a word about any of them being hazardous,
8 does it?

9 A That is correct.

10 Q And that's not true, is it?

11 A That's -- I'm sorry.

12 Q That's not true, what they said, is it?

13 A It's not true at all, no.

14 MR. MOTLEY: Thank you. No further questions.

15 MR. GARRARD: I have two questions.

16 THE COURT: Very well.

17 RECROSS-EXAMINATION

18 BY MR. GARRARD:

19 Q Doctor, the first question, do you recall receiving a
20 letter dated August 30th, 1971, from Mr. Martin Waukash
21 (phon.), the State of Texas?

22 A Yes. That's familiar to me.

23 Q Yes, sir. And that was based on a visit that he made in
24 1971 to the Pittsburgh Corning plant, was it not?

25 A Yes.

1 Q And does he say right here on the fourth page, "The
2 efforts of management toward the protection of the health of
3 the workers seemed the central theme of expression by those
4 who responded"? Does he say that, sir?

5 A Well, I think with all --

6 Q Does he say it, sir?

7 A It's mentioned in here. Yes, it says that.

8 Q All right.

9 MR. GARRARD: Thank you, sir.

10 MR. MOTLEY: Excuse me. What was the date of that?

11 THE WITNESS: August 30th, 1971.

12 MR. GARRARD: August 30th, 1971.

13 THE COURT: Doctor, you are excused, sir.

14 THE COURT: Next witness..

15 MR. RICE: Your Honor, are we going take a break at

16 3:00?

17 THE COURT: How long is your next witness?

18 MR. RICE: About twenty minutes. We've got a
19 little bit of publishing things to read that we can do right
20 now before the break..

21 THE COURT: All right.

22 MR. RICE: Your Honor, we would read into the
23 record, pursuant to agreement with Celotex counsel, the
24 corporate history of the Philip-Carey Corporation.

25 MR. ARREDONDO: Excuse me. Can I just follow

C E R T I F I C A T I O N

We hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, to the best of our ability.

C. Frank McMillan

C. Frank McMillan
Official Court Reporter

3-2-90

Date

Susan Simmons

Susan Simmons
Official Court Reporter