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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

LEXINGTON COUNTY SCHOOL DISTRICT)
FIVE,)
PLAINTIFF,) CIVIL ACTION NO. 82-2072-0
VS.)
UNITED STATES GYPSUM COMPANY,) UNITED STATES COURTHOUSE
DEFENDANT.) COLUMBIA, SOUTH CAROLINA
FRIDAY, APRIL 6, 1984

PARTIAL TRANSCRIPT OF TESTIMONY OF TRIAL
BEFORE THE HONORABLE LLOYD F. MACMAHON, SENIOR DISTRICT JUDGE,
AND A JURY.

TRANSCRIPT ORDERED BY: DANIEL A. SPEIGHTS, ESQ.

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JOHN HERNAN, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. BROWN:

Q MR. HERNAN, WOULD YOU GIVE US YOUR FULL NAME, PLEASE?

A JOHN F. HERNAN.

Q AND YOUR ADDRESS?

A LOMBARD, ILLINOIS.

Q MR. HERNAN, IN ORDER NOT TO CAUSE YOU ANY EMBARRASSMENT,
DO YOU HAVE A SLIGHT SPEECH IMPAIRMENT?

A I HAVE STUTTERED SINCE I WAS A CHILD.

Q WELL, DURING THE COURSE OF THIS EXAMINATION, JUST
TAKE YOUR TIME AND WE WILL WAIT.

WHAT IS YOUR OCCUPATION?

A I AM THE MANAGER OF OUR CORPORATE QUALITY FOR THE U. S.
GYPSUM COMPANY.

Q HOW MANY YEARS HAVE YOU BEEN WITH U. S. GYPSUM?

A 34 YEARS.

Q AND DURING THAT TIME WHAT POSITIONS HAVE YOU HELD?

A I HAVE HAD MANY POSITIONS IN OPERATIONS, STAFF AND IN
QUALITY, WORKING AT NUMEROUS PLANTS AND IN THE CORPORATE
OFFICE.

Q WHERE IS YOUR PRESENT LOCATION?

A IN THE CORPORATE OFFICE IN CHICAGO.

Q AND WHERE IS THAT CORPORATE OFFICE?

A 101 SOUTH WACKER DRIVE.

1 Q IS THAT RIGHT IN THE CENTER OF CHICAGO?

2 A YES.

3 Q IS THAT BUILDING THE HEADQUARTERS OF UNITED STATES
4 GYPSUM COMPANY?

5 A YES.

6 Q ALL RIGHT. DO YOU KNOW WHEN THAT BUILDING WAS BUILT?

7 A IT WAS BUILT IN 1963.

8 Q WERE YOU WITH THE COMPANY THEN?

9 A YES.

10 Q ALL RIGHT. NOW, I WOULD LIKE YOU TO TELL THE JURY
11 WHAT YOUR FIRST ACQUAINTANCE WAS WITH THE PRODUCT CALLED
12 AUDICOTE.

13 A MY FIRST ACQUAINTANCE WITH AUDICOTE WOULD HAVE BEEN IN
14 1960 WHEN I WAS ASSIGNED THE POSITION OF QUALITY SUPERINTEN-
15 DENT AT THE FORT DODGE, IOWA, PLANT.

16 Q AM I CORRECT THAT AUDICOTE IS AN ACOUSTICAL PLASTER
17 PRODUCT?

18 A YES.

19 Q IT COMES IN BAGS?

20 A YES.

21 Q AND HOW IS IT APPLIED IN ORDER TO GET IT ON THE CEILING?

22 A THERE ARE TWO GENERAL WAYS FOR THE APPLICATION OF IT.

23 THE INITIAL -- TO ACQUIRE A PRESCRIBED SOUND RATING OF THE

24 PRODUCT, IT SHOULD BE APPLIED TO A ONE-HALF INCH THICKNESS.

25 THE INITIAL COAT OF APPROXIMATELY THREE-EIGHTHS OF AN INCH IS

1 APPLIED EITHER THROUGH A MACHINE APPLICATION OR BY HAND OR
2 BY HAND TROWLING.

3 Q BY MACHINE APPLICATION, DO YOU MEAN SPRAYING IT ON?

4 A IT CAN BE SPRAYED ON.

5 Q THAT MEANS YOU MIX IT WITH WATER, THEN SPRAY THE
6 PRODUCT ON?

7 A YES. IN ORDER TO PREPARE IT FOR APPLICATION, IT IS
8 MIXED IN, I GUESS THE BEST WORD TO USE IS AS A PLASTER MIXER,
9 THAT LARGE TUB MIXER. IT IS POURED INTO THE MIXER, WATER
10 ADDED AND MIXED FOR ABOUT FIVE MINUTES TO ACHIEVE THE
11 HOMOGENEOUS MIX, AND THEN FROM THAT POINT ON WOULD BE APPLIED
12 EITHER BY HAND OR BY THE MACHINE.

13 Q WHEN WAS THE FIRST TIME YOU EVER SAW AUDICOTE APPLIED
14 TO A CEILING?

15 A I WOULD SAY IN 1960.

16 Q AND HAVE YOU SEEN IT ACTUALLY BEING APPLIED MANY TIMES
17 SINCE THEN?

18 A YES. I WOULD ESTIMATE THAT I HAVE SEEN IT IN EXCESS
19 OF A HUNDRED TIMES.

20 Q HAVE YOU ALSO SEEN IT IN PLACE AFTER IT'S BEEN APPLIED
21 TO CEILINGS?

22 A YES, NUMEROUS TIMES.

23 Q ALL RIGHT. NOW, IN 1963 WHEN THE U. S. GYPSUM HEADQUARTERS
24 WAS BEING BUILT, WHERE WERE YOU?

25 A I WAS THE QUALITY SUPERINTENDENT OF THE FORT DODGE, IOWA,

1 PLANT.

2 Q DID THE FORT DODGE, IOWA, PLANT HAVE ANY ROLE IN SUPPLY-
3 ING THE BUILDING MATERIALS FOR THE HEADQUARTERS IN CHICAGO?

4 A IT WAS THE PLANT THAT FURNISHED ALL OF THE PLASTER
5 PRODUCTS FOR THE CORPORATE OFFICE BUILDING.

6 Q AMONG THE PLASTER PRODUCTS THAT WERE SUPPLIED, WAS
7 AUDICOTE ONE?

8 A YES.

9 Q ALL RIGHT. DID YOU SUPERVISE THE ACTUAL PREPARATION
10 OF THE PRODUCT IN ITS SHIPMENT TO CHICAGO?

11 A YES.

12 Q NOW, WERE YOU PRESENT IN CHICAGO IN 1962 WHEN AN
13 EXPERIMENT WAS DONE ON THE CEILING OF THE 17TH FLOOR OF
14 THE HEADQUARTERS?

15 A IN 1982.

16 Q '82?

17 A YES, I WAS PRESENT.

18 Q YOU WERE THERE. ALL RIGHT. NOW, DID THERE COME A TIME
19 AFTER THAT EXPERIMENT WAS DONE WHEN A QUESTION WAS RAISED AS
20 TO WHETHER THE MATERIAL ON THE CEILING OF THE 17TH FLOOR
21 ACTUALLY WAS AUDICOTE?

22 A YES.

23 Q WAS THAT AFTER THE EXPERIMENT WAS DONE?

24 A YES.

25 Q WERE YOU ASKED TO UNDERTAKE ANY KIND OF INVESTIGATION

1 TO DETERMINE WHETHER THAT CEILING REALLY WAS AUDICOTE?

2 A YES.

3 Q ALL RIGHT. WHAT DID YOU DO IN YOUR INVESTIGATION IN
4 ORDER TO DETERMINE THE ANSWER?

5 A WELL, I SUPERVISED THE REMOVAL OF TWO LARGE SLABS OF
6 THE CEILING ASSEMBLY ADJACENT TO THE TEST AREA AND HAD THOSE
7 SAMPLES CUT OUT OF THE CEILING AREA, MOVED THEM TO MY OFFICE,
8 AND I SUBSEQUENTLY HAD IT MOVED TO THE RESEARCH CENTER.

9 Q WHAT WAS DONE AT THE RESEARCH CENTER?

10 A THEN THE RESEARCH CENTER PREPARED SAMPLES FROM THE SLABS
11 AND TESTED THE SAMPLES.

12 Q TESTED THEM TO DETERMINE WHAT?

13 A TO DETERMINE THE CHEMISTRY OF THE PRODUCT.

14 Q WAS THE RESULT OF THAT TEST REPORTED BACK TO YOU?

15 A NO.

16 MR. SPEIGHTS: I WOULD OBJECT TO THE RESULT COMING
17 IN THROUGH THIS GENTLEMAN AS HEARSAY, YOUR HONOR.

18 MR. BROWN: I ONLY ASKED IF IT WAS REPORTED BACK
19 TO HIM, YOUR HONOR.

20 THE COURT: I'M AWARE OF WHAT ALL YOU HAVE ASKED.

21 MR. BROWN: AM I ALLOWED TO HAVE HIM ANSWER, YOUR
22 HONOR?

23 THE COURT: YES.

24 Q WOULD YOU ANSWER THAT QUESTION, MR. HERNAN?

25 A I DID NOT SEE THE TEST RESULTS.

1 Q WHAT ELSE WAS DONE WITH THE SLAB THAT WAS SENT TO THE
2 RESEARCH LABORATORY?

3 A THE SLAB WAS CUT INTO VARIOUS PIECES FOR SUBSEQUENT
4 TESTING BY THE ONTARIO RESEARCH FOUNDATION AND ALSO FOR
5 EXHIBITS AS MIGHT BE NEEDED.

6 Q WHERE IS THE ONTARIO RESEARCH FOUNDATION?

7 A THAT IS IN A SUBURB OF TORONTO, CANADA.

8 Q ALL RIGHT. NOW, WERE THERE SOME SMALL SAMPLES TAKEN
9 FROM THAT SLAB THAT YOU HAD CUT OUT OF THE 17TH FLOOR?

10 A I HAD PURPOSELY TWO, ROUGHLY SIX-INCH BY SIX-INCH SLABS,
11 CUT FROM THE MASTER SLAB AND ENCAPSULATED WITH A PLASTIC
12 SIDING ON IT.

13 Q I SHOW YOU THIS OBJECT WHICH HAS BEEN MARKED AS
14 DEFENDANTS' EXHIBIT 1 AND ASK YOU IF THAT'S ONE OF THE PIECES
15 THAT WAS PREPARED OUT OF THAT SLAB?

16 A YES.

17 Q ALL RIGHT. NOW, ARE YOU FAMILIAR FROM YOUR PAST
18 EXPERIENCE WITH THE LOOKS OF AUDICOTE AND THE TEXTURE OF
19 AUDICOTE AND THE HARDNESS OR THE CHARACTERISTICS OF AUDICOTE?

20 A YES.

21 Q IN YOUR OPINION, BASED ON YOUR EXPERIENCE, IS THAT SAMPLE
22 A SAMPLE OF AUDICOTE?

23 A YES.

24 Q DID YOU ALSO EXAMINE THE SPECIFICATIONS FOR THE BUILDING
25 OF THE U. S. GYPSUM HEADQUARTERS?

1 A YES.

2 Q DID YOU LOOK AT THE SPECIFICATIONS FOR WHAT WAS TO BE
3 PUT ON THE 17TH FLOOR CEILING?

4 A YES.

5 Q WHAT DID THE SPECIFICATIONS PROVIDE?

6 A THE SPECIFICATIONS CALLED FOR THE ACOUSTICAL PLASTER
7 IN THE BUILDING, INCLUDING THE 17TH FLOOR, TO BE U. S. G.
8 AUDICOTE ACOUSTICAL PLASTER.

9 Q AT THE TIME WHEN THE BUILDING WAS BUILT, WERE YOU
10 AWARE OF ANY INSTRUCTIONS AS TO WHETHER THE BUILDING MATERIALS
11 TO BE USED WERE TO BE U. S. GYPSUM'S PRODUCTS OR ANYBODY
12 ELSE'S?

13 A YES.

14 Q WHAT WERE THE INSTRUCTIONS?

15 A WHAT WE HAD WAS A DIRECTIVE THAT ALL OF THE PRODUCTS TO
16 BE USED IN THE BUILDING WERE TO BE MANUFACTURED BY THE
17 U. S. GYPSUM COMPANY.

18 Q TO THE BEST OF YOUR KNOWLEDGE, WAS THAT ORDER CARRIED
19 OUT?

20 A YES.

21 MR. BROWN: YOU MAY CROSS EXAMINE.

22 CROSS EXAMINATION

23 BY MR. SPEIGHTS:

24 Q MR. HERNAN, YOU HAVE HAD AN ACTIVE ROLE IN SCHOOL LITIGATION
25 SINCE IT'S BEEN FILED AGAINST U. S. GYPSUM, HAVEN'T YOU?

1 A YES.

2 Q YOU HAVE WORKED CLOSELY ON THESE CASES AND, INDEED,
3 HAVE ANSWERED INTERROGATORIES CONCERNING THESE CASES,
4 HAVEN'T YOU?

5 A YES.

6 Q AND YOU HAVE COLLECTED INFORMATION CONCERNING THESE
7 CASES?

8 A YES.

9 Q AND YOU HAVE WORKED CLOSELY WITH MS. TORY AND DR. KORN
10 IN PREPARING THE TEST OF THIS PRODUCT, WHATEVER IT IS, ON
11 THE 17TH FLOOR?

12 A YES.

13 Q AND IT HAS BEEN KIND OF YOUR LITTLE JEWEL WITHIN THE
14 COMPANY, HASN'T IT? YOU HAVE BEEN THE COMPANY MAN REGARDING
15 THIS TEST, HAVEN'T YOU?

16 A YES.

17 Q NOW, WHAT YOU'RE TRYING TO TELL US TODAY, AS I GATHER,
18 IS THAT THAT SAMPLE RIGHT THERE IS AUDICOTE. YOU'RE TRYING
19 TO IDENTIFY THE PRODUCT FOR US, IS THAT FAIR?

20 A YES.

21 Q WELL, WOULD YOU AGREE THAT THERE IS MORE THAN ONE WAY
22 TO IDENTIFY A PRODUCT?

23 A YES.

24 Q ONE WAY, AT LEAST SOME EVIDENCE OF IT, I BELIEVE YOU
25 ALLUDED TO, WOULD BE SPECIFICATIONS. THAT'S IMPORTANT TO YOU

1 IN YOUR CONSIDERATION OF WHAT A PRODUCT IS?

2 A THAT IS THE STARTING POINT.

3 Q YES, SIR. I MEAN, THAT'S YOUR STARTING POINT, SPECIFI-
4 CATIONS. AND THEN IF YOU CAN FIND THE ARCHITECT, YOU WOULD
5 WANT TO TALK TO THE ARCHITECT TO SEE WHETHER THERE WERE ANY
6 CHANGE ORDERS ON THE SPECIFICATIONS, WOULDN'T YOU?

7 A YES.

8 Q THAT WOULD BE A REASONABLE STEP IN REGARD TO I.D.?

9 A YES.

10 Q THEN IF YOU COULD FIND THE ACTUAL PLASTERER WHO APPLIED
11 THE MATERIAL, THAT WOULD BE A REASONABLE STEP TO GO TALK
12 TO HIM AND ASK HIM WHETHER OR NOT IT WAS AUDICOTE?

13 A YES.

14 Q THEN IF YOU HAD SOME SALES INVOICES FROM A SUPPLY HOUSE,
15 THAT WOULD BE A REASONABLE THING TO DO, SEE IF YOU COULD GET
16 SOME SALES INVOICES TO SHOW A SHIPMENT OF AUDICOTE FOR A
17 CERTAIN USE?

18 A IF IT SHOWED IT GOING TO THAT PARTICULAR JOB, YES.

19 Q YES, SIR. AND SOME SALES INVOICES MIGHT HAVE THE
20 JOB FOR WHICH THAT INVOICE OR THAT SHIPMENT WAS INTENDED?

21 A YES.

22 Q ALL RIGHT, SIR. THEN ANOTHER WAY MIGHT BE TO TALK TO
23 THE SALESMAN, IF A U.S.G. SALESMAN REMEMBERED SELLING A
24 PRODUCT FOR A CERTAIN BUILDING, A SCHOOL OR WHATEVER, THAT
25 WOULD BE A REASONABLE STEP IN PRODUCT ID, TO TALK TO THE

1 SALESMAN?

2 A YES.

3 Q AND THEN, IN ADDITION TO THAT, YOU COULD HAVE IT
4 ANALYZED BY ONE OF THESE MICROSCOPISTS LIKE DR. ROHL OR
5 MS. LAVOTI.

6 A YES.

7 Q SO THAT'S ANOTHER WAY OF TRYING TO IDENTIFY THE PRODUCT.
8 AND AS I GATHER FROM WHAT YOU SAID WHEN QUESTIONED BY COUNSEL
9 IS THAT YOU CAN ALSO LOOK AT IT, IF YOU ARE EXPERIENCED WITH
10 IT; IN OTHER WORDS, SOMEBODY LIKE YOU THAT HAS SEEN A LOT OF
11 AUDICOTE OVER THE YEARS, YOU CAN LOOK AT IT AND THAT'S SOME
12 EVIDENCE OF PRODUCT ID?

13 A YES.

14 Q ALL RIGHT, SIR. AND THE SAME WOULD HOLD TRUE IF SOMEBODY
15 LIKE HOLBROOK WILLIAMS WHO HAD BEEN INVOLVED IN THE BUSINESS
16 FOR 20 OR 30 YEARS WITH YOUR PRODUCT, HE WOULD BE PRETTY
17 GOOD AT LOOKING AT IT, TOO; WOULDN'T HE?

18 A I THINK THERE COULD BE A QUESTION IN THAT PARTICULAR
19 AREA.

20 Q WELL, SIR, YOU MEAN A MAN WHO HAS BEEN PUTTING IT UP
21 FOR 20 OR 30 YEARS WOULDN'T BE AS COMPETENT TO LOOK AT IT
22 AS YOU WOULD?

23 A I WOULD SAY NO.

24 Q ALL RIGHT, SIR. NOW, WHEN YOU TOOK THESE SAMPLES, I
25 ASSUME YOU DIDN'T PREDETERMINE SOME SPECIAL PLACE IN THE

1 CEILING TO GET OUT OF THE 17TH FLOOR, BUT YOU WENT DOWN AND

2 PICKED IT AT RANDOM, A FAIR SAMPLE OUT OF THE CEILING?

3 A YES.

4 Q ALL RIGHT, SIR. AND TOOK TWO SLABS TO BEGIN WITH?

5 A YES.

6 Q NOW, YOU WOULD AGREE WITH ME, WOULDN'T YOU, MR. HERNAN,

7 THAT THIS MATERIAL RIGHT HERE IS A HARD MATERIAL?

8 A YES.

9 Q NOW, YOU HAVE -- U. S. GYPSUM HAS ADVERTISED AUDICOTE

10 OVER THE YEARS, HASN'T IT?

11 A YES.

12 Q AND AS A PART OF THAT ADVERTISEMENT YOU SEND OUT BROCHURES,

13 DON'T YOU?

14 A YES.

15 Q ALL RIGHT, SIR. I ASK YOU IF THIS IS A COPY OF A

16 BROCHURE FOR AUDICOTE, 1962, WHICH WOULD HAVE BEEN APPLICABLE

17 TO THE SALE OF IRMO HIGH SCHOOL, OR AT LEAST THE FIRST PART

18 OF IT?

19 A YES.

20 Q ALL RIGHT, SIR. AND I ASK YOU, MR. HERNAN, ON THIS

21 BROCHURE AT PAGE 2 IF IT DOESN'T SAY "AUDICOTE DOES NOT SET

22 INTO A DENSE, HARD MASS"?

23 A I WOULD HAVE TO READ IT. I DID NOT READ IT.

24 Q ALL RIGHT, SIR. WOULD YOU READ THAT FIRST PARAGRAPH?

25 AND I ASK YOU WHETHER OR NOT THAT'S AN ACCURATE STATEMENT

1 CONTAINED IN YOUR BROCHURE?

2 A THAT IS A CORRECT STATEMENT.

3 Q ALL RIGHT. AND THEN I ASK YOU WHETHER FURTHER DOWN
4 YOUR BROCHURE ADVERTISING THIS PRODUCT DOESN'T SAY, "AUDICOTE
5 IS RECOMMENDED FOR USE ON CEILINGS OR WALLS, WALL AREAS,
6 NOT SUBJECT TO CONTACT, EXCESSIVE VIBRATION OR HIGH MOISTURE.
7 IT IS IDEAL FOR USE IN CLASSROOMS." IS THAT ALSO A CORRECT
8 STATEMENT THAT'S IN YOUR BROCHURE, MR. HERNAN?

9 A YES.

10 Q ALL RIGHT, SIR. SO THE IMPORT OF THAT STATEMENT IS THAT
11 THIS MATERIAL, THIS HARD MATERIAL, SHOULDN'T BE USED WHERE
12 THERE IS GOING TO BE ANY VIBRATION OR WATER DAMAGE OR ANY
13 CONTACT WITH THE MATERIAL; ISN'T THAT CORRECT?

14 A THAT IS WHAT THE STATEMENT STATES.

15 Q THAT'S WHAT YOU REPRESENTED THE PRODUCT TO PEOPLE LIKE
16 IRMO HIGH SCHOOL, OUT THERE IN THE FIELD WITH THIS BROCHURE;
17 ISN'T THAT RIGHT, MR. HERNAN?

18 A YES.

19 Q MR. HERNAN, HAVE YOU EVER HAD AN OPPORTUNITY TO EXAMINE
20 A RESEARCH REPORT DATED MARCH 9, 1973, PREVIOUSLY MARKED AS
21 PLAINTIFF'S EXHIBIT 1707, ENTITLED, "DEVELOPMENT OF
22 MATERIALS AND PROCEDURES FOR REPAIRING DAMAGED AUDICOTE
23 ACOUSTICAL PLASTER CEILINGS"?

24 A I DO NOT THINK THAT I SAW THAT SPECIFIC REPORT.

25 Q ALL RIGHT, SIR. I SHOW YOU A COPY OF 1707 AND ASK YOU

1 TO REVIEW IT AND ASK YOU WHETHER OR NOT YOU HAVE EVER SEEN
2 THAT REPORT?

3 A I'M CONSCIOUS OF THE EXISTENCE OF THIS REPORT AND I
4 SAW IT RECENTLY FOR THE FIRST TIME.

5 Q ALL RIGHT, SIR. I WANT TO TALK ABOUT THIS REPORT TO YOU.
6 THE FIRST LINE OF THIS REPORT, 1973, SAYS, "AUDICOTE ACOUSTICAL
7 PLASTER WAS USED IN THE U.S.G. CORPORATE OFFICE, 17TH FLOOR
8 AND CAFETERIA. THESE AREAS ARE IN NEED OF REPAIR, BUT
9 CONTRACTORS WILL NOT USE STANDARD AUDICOTE BECAUSE OF ITS
10 ASBESTOS CONTENT."

11 IS THAT A FAIR READING OF THAT?

12 A YES.

13 Q THAT'S THE 17TH FLOOR, NOW, WHICH IS PART OF THAT SAMPLE
14 RIGHT THERE; ISN'T IT?

15 A YES.

16 Q AND THEN AS A RESULT OF THIS, YOU -- THAT IS, U.S.G.,
17 ENTERED INTO A PROGRAM TO REPAIR THE CEILING CONTAINED ON
18 THE 17TH FLOOR?

19 A I THINK THE WORD REPAIR IS USED IN A FASHION THAT DOES
20 NOT STATE WHAT WAS DONE.

21 Q WELL, SIR, LET'S LOOK AT WHAT WAS DONE ON PAGE 2 TO THAT
22 17TH FLOOR.

23 "MATERIALS AND PROCEDURES FOR REPAIR AND PAINTING OF
24 DAMAGED AUDICOTE PLASTER CEILINGS," THAT'S WHAT WAS DONE,
25 WASN'T IT?

1 A THAT'S WHAT THIS STATES.

2 Q ALL RIGHT, SIR. WELL, THE FIRST THING THAT YOU HAD ON
3 THIS -- WELL, LET ME BACK UP A MINUTE. I HAVE LEFT OUT
4 SOMETHING.

5 THIS 17TH FLOOR CEILING, I FORGET BECAUSE I'VE BEEN
6 TO CHICAGO, BUT THE 17TH FLOOR CEILING IS IN YOUR CORPORATE
7 HEADQUARTERS; ISN'T THAT RIGHT?

8 A YES.

9 Q IN FACT, IT'S UP THERE WHERE YOUR CORPORATE BOARD OF
10 DIRECTORS FOR UNITED STATES GYPSUM MEETS?

11 A YES.

12 Q IT'S UP THERE WHERE YOUR PRESIDENT HAD ITS OFFICE?

13 A YES.

14 Q SO THAT IS SORT OF A SPECIAL FLOOR FOR THE U. S. GYPSUM
15 BUILDING, THAT'S YOUR TOP LEVEL MANAGEMENT WHICH OCCUPIES
16 THAT FLOOR, ISN'T IT?

17 A YES.

18 Q SO I IMAGINE THAT IF -- I HAVE WORKED FOR A FEW BOSSES
19 BEFORE, I WOULD IMAGINE THAT EVERYTHING IS DONE TO KEEP
20 THAT FLOOR AND THAT SPACE IN TIP-TOP SHAPE; IS THAT A FAIR
21 STATEMENT?

22 A YES.

23 Q NOW, ISN'T IT CORRECT, MR. HERNAN, THAT YOU COULD HAVE --
24 YOU HAVE COMPUTERIZED SALES RECORDS WHICH REFLECT SALES OF
25 AUDICOTE PRODUCTS SINCE 1964?

1 A I CAN'T ANSWER THAT. I DON'T KNOW.

2 Q YOU WEREN'T THE ONE THAT GOT THE COMPUTER INFORMATION
3 AND SUPPLIED US ABOUT SALES OF AUDICOTE?

4 A NO.

5 Q YOU DON'T KNOW WHETHER OR NOT YOU COULD GO TO YOUR SALES
6 OFFICE AND LOCATE OTHER BUILDINGS WHERE AUDICOTE WOULD BE?

7 A I CANNOT STATE OF KNOWING OF ANY OTHER BUILDINGS WHERE
8 OUR MATERIAL IS IN.

9 Q YOU DON'T THINK THAT U. S. GYPSUM COULD FIND AUDICOTE
10 IN SOME BUILDING AWAY FROM THAT CORPORATE HEADQUARTERS IN A
11 SCHOOLHOUSE OR CLASSROOM OR I.B.M. BUILDING OR SOMETHING
12 LIKE THAT, IF THEY WANTED TO?

13 A WE COULD, I'M CERTAIN, IF WE LOOKED.

14 Q ALL RIGHT, SIR. ARE YOU TRYING TO TELL US DOWN HERE
15 IN SOUTH CAROLINA THAT THE CORPORATE HEADQUARTERS IN CHICAGO
16 WOULD BE SUBJECT TO THE SAME HISTORY WITH YOUR PRODUCT AS
17 A CLASSROOM IN IRMO?

18 A I DON'T BELIEVE THAT THE SALES RECORDS WERE KEPT FOR THAT
19 LONG OF A PERIOD. THERE WAS NO -- I DON'T THINK THAT THERE
20 WAS ANY BASIC REASON FOR KEEPING OF SALES RECORDS LIKE THAT,
21 THAT PERIOD OF TIME.

22 Q MY QUESTION, THOUGH, MR. HERNAN, WAS WHETHER THE CORPORATE
23 HEADQUARTERS CEILING IS SUPPOSED TO BE WHAT YOU WOULD THINK
24 A CEILING WOULD BE IN BETHEL BAPTIST CHURCH OR IN THE IRMO
25 HIGH SCHOOL OR IN SOME OTHER BUILDING? WOULD YOU ENVISION

1 THAT THAT PRODUCT WAS PUT TO THE SAME USE, WAS PUT TO THE
2 SAME HISTORY, AS IRMO HIGH SCHOOL?

3 A I WOULD SEE NO ACTUAL REASON NOT TO BE THE SAME.

4 Q WELL, TO BEGIN WITH, YOU DON'T HAVE A FLAT ROOF, DO
5 YOU? THE 17TH FLOOR IS NOT YOUR TOP FLOOR, IS IT?

6 A THERE IS A MECHANICAL ROOF OVER IT.

7 Q ALL RIGHT, SIR. AND I DON'T BELIEVE THE PRESIDENT OF
8 U.S.G. HAS EVER GONE DOWN THE HALL AND WRITTEN ANY GRAFFITI
9 ON THE AUDICOTE, HAS HE? YOU HAVEN'T EVER SEEN THAT, HAVE
10 YOU?

11 A I DOUBT IT.

12 Q ALL RIGHT, SIR. AND YOU DOUBT THAT -- YOU WOULDN'T
13 IMAGINE THE PRESIDENT TO GO DOWN AND JUST GOING DOWN TO
14 CLASS AND GO UP AND DO LIKE THAT, WOULD YOU?

15 A I DOUBT IT.

16 Q ALL RIGHT, SIR. BUT YOU HAVE JUST TOLD US AWHILE AGO
17 IF YOU WANTED TO FIND SOME AUDICOTE SOMEWHERE ELSE BESIDES
18 THE 17TH FLOOR, YOU COULD HAVE FOUND IT, COULDN'T YOU?

19 A YES.

20 Q ALL RIGHT, SIR. BUT EVEN THE 17TH FLOOR OF YOUR
21 CORPORATE HEADQUARTERS REFLECTS THAT IN 1973, EIGHT YEARS
22 BEFORE YOU RAN THIS PROJECT, YOU WORKED ON THIS CEILING;
23 ISN'T THAT CORRECT? U.S.G. WORKED ON IT?

24 A YES.

25 Q ALL RIGHT, SIR. AND THE FIRST THING YOU DID WAS YOU HAD

1 OIL SPOTS, EVEN ON THE 17TH FLOOR, YOU HAD SOME OIL SPOTS
2 ON THAT CEILING, DIDN'T YOU?

3 A THAT'S WHAT THIS STATES.

4 Q ALL RIGHT, SIR. AND TO GET RID OF THOSE OIL SPOTS
5 YOU CUT OUT A SECTION OF THE CEILING CONTAINING THE OIL
6 SPOT SUFFICIENTLY LARGE TO REMOVE OIL SATURATED MATERIAL,
7 REMOVING ACOUSTICAL PLASTER, BASE COAT PLASTER AND ROCK
8 LATHE, ISN'T THAT CORRECT?

9 A YES.

10 Q YOU WENT ALL THE WAY DOWN TO THE BASE WHEN YOU STARTED
11 REPAIRING THIS SUBSTANCE, DIDN'T YOU?

12 A YES.

13 Q TO REMOVE THOSE. AND THEN WHAT YOU DID, YOU WENT BACK
14 IN THAT CAVITY THAT WAS FILLED AND YOU STARTED PATCHING IT
15 WITH SOME MATERIAL?

16 A YES.

17 Q ALL RIGHT, SIR. WE WILL GET TO WHAT YOU USED TO
18 PATCH IT IN A FEW MINUTES. NOW, THE SECOND THING YOU HAD
19 ON THE CORPORATE HEADQUARTERS UP THERE WAS GOUGES AND
20 SCRATCHES, LOOKS LIKE YOUR PRESIDENT OR SOMEBODY MAY HAVE
21 BEEN GOUGING AND SCRATCHING THAT MATERIAL A LITTLE BIT AFTER
22 ALL. IS THAT RIGHT?

23 A APPARENTLY THERE WERE SOME SCRATCHES.

24 Q ALL RIGHT, SIR. SO WITH REGARD TO THE SCRATCHES AND
25 GOUGES, YOU USED AN IMPLEMENT AND A SMALL PAINTBRUSH AND SOME

1 MIXING FORMULA TO FILL THE CAVITIES WHERE THOSE SCRATCHES

2 AND GOUGES HAD TAKEN PLACE?

3 A YES.

4 Q ISN'T THAT WHAT THAT REFLECTS?

5 ALL RIGHT. AND IT SAYS FOR DEEP GOUGES A SECOND TOUCH-UP

6 WITH THE SAME TYPE OF PATCHING MIX, USING A SMALL FAINTBRUSH,

7 MAY BE NECESSARY; IS THAT CORRECT?

8 A YES.

9 Q THEN THE THIRD THING YOU HAD, YOU HAD AREAS WITH SURFACE

10 DAMAGE FROM WATER LEAKAGE. SO YOU HAD SOME WATER LEAKAGE

11 UP THERE ON YOUR AUDICOTE ON THE 17TH FLOOR, TOO, DIDN'T

12 YOU?

13 A APPARENTLY.

14 Q YES, SIR. AND YOU HAD TO GO REPAIR THOSE UP THERE,

15 TOO, DIDN'T YOU?

16 A YES.

17 Q ALL RIGHT, SIR. SO, NOW, TO REPAIR THIS WATER DAMAGE

18 ON THE 17TH FLOOR, YOU REMOVED APPROXIMATELY TWO-INCH DIAMETER

19 SECTIONS OF ACOUSTICAL PLASTER DOWN TO THE BASE COAT SURFACE

20 THERE. YOU WENT BACK DOWN TO THE BASE COAT ON THAT TO REMOVE

21 IT, DIDN'T YOU?

22 A YES.

23 Q AND THEN YOU HAD TO GO IN THERE AND PATCH THAT MATERIAL

24 AS WELL?

25 A YES.

1 Q NOW, I DON'T HAVE THE LAST TWO -- THIS IS A FOUR-PAGE
2 DOCUMENT, ISN'T IT, THE ONE YOU HAVE GOT IN YOUR HAND, AND
3 THE FIRST TWO PAGES I HAVE GOT COPIED HERE?

4 A 3 AND 4.

5 Q ALL RIGHT, SIR. WELL, TURN OVER TO PAGE 2, AND IT
6 REFLECTS, I BELIEVE, DOES IT, MR. HERNAN, THAT AFTER YOU DID
7 THIS, THAT IS, AFTER YOU TOOK IT DOWN TO BASE COAT AND
8 FILLED IT IN WITH THIS MATERIAL, THEN YOU HAD TO GO OVER AND
9 YOU HAD TO PAINT IT?

10 A YES.

11 Q SO YOU PAINTED THAT ENTIRE MATERIAL UP THERE ON THE
12 17TH FLOOR?

13 A YES.

14 Q NOW, WOULD YOU READ THE LAST PARAGRAPH, LITTLE C, FOR
15 ME DOWN ON THE BOTTOM OF PAGE -- WELL, IT SAYS PAGE 2 UNDER
16 PARAGRAPH 5. CAN YOU FIND THAT ON YOURS?

17 A YES. THIS IS 5-C. "WITH APPRECIABLE REDUCTION IN
18 SOUND ABSORPTION AND A SLIGHTLY DIFFERENT TEXTURE, BUT WITH
19 A HARDER SURFACE, TO MINIMIZE SURFACE DAMAGE FROM MINOR
20 ABRASION."

21 Q YOU GOT THE STUFF HARDER, DIDN'T YOU?

22 A THE PATCHED AREAS.

23 Q YES, SIR. YOU BUILT YOU A NEW CEILING UP THERE IN
24 CHICAGO, DIDN'T YOU?

25 A I WOULD SAY NO.

1 Q YOU PATCHED IT, YOU PAINTED IT AND YOU PUT PREMIX IN
2 AND YOU COULDN'T GET AN ASBESTOS TO PUT IN THE MIX, COULD
3 YOU?

4 A NO.

5 Q AND '73, A YEAR BEFORE IRMO GOT ITS LAST BATCH OF
6 AUDICOTE, YOU COULDN'T GET ANYBODY TO PUT AUDICOTE UP IN YOUR
7 CEILING, COULD YOU?

8 A WE WERE NOT MAKING THE PRODUCT AT THAT TIME.

9 Q YES, SIR. BUT DOESN'T IT ALSO SAY HERE, "THESE AREAS
10 ARE IN NEED OF REPAIR BUT CONTRACTORS WILL NOT USE STANDARD
11 AUDICOTE BECAUSE OF ITS ASBESTOS CONTENT"?

12 A STANDARD AUDICOTE WAS NOT MADE AT THAT TIME.

13 Q YES, SIR. BUT EVEN IF IT HAD BEEN, OR IF YOU HAD SOME
14 STILL AROUND, OR IF YOU WANTED TO GO OVER THERE AND MAKE SOME,
15 YOU KNEW A YEAR BEFORE IRMO HIGH SCHOOL IN '74 PURCHASED
16 AUDICOTE THAT CONTRACTORS IN YOUR AREA WOULDN'T EVEN PUT IT
17 IN YOUR BUILDING?

18 MR. BROWN: OBJECTION, YOUR HONOR.

19 THE COURT: OVERRULED.

20 A I'M NOT PERSONALLY CONSCIONABLE OF KNOWLEDGE OF THAT
21 MYSELF.

22 THE COURT: YOU HAD SEEN THE REPORT, HADN'T YOU?

23 THE WITNESS: I SAW IT WITHIN THE LAST WEEK.

24 Q THAT'S WHAT THE DOCUMENT REFLECTS, ANYWAY, THOUGH,
25 DOESN'T IT?

1 A YES.

2 Q NOW, MR. HERNAN, I THINK I ASKED YOU A FEW MINUTES AGO
3 IF YOU ALSO HAD NOT BEEN THE MAN TO ANSWER INTERROGATORIES
4 FOR THIS CASE, LEXINGTON CASE?

5 A YES.

6 Q ALL RIGHT, SIR. AND FOR THE LADIES AND GENTLEMEN OF THE
7 JURY, WHEN YOU ANSWER AN INTERROGATORY, YOU UNDERSTAND THAT
8 THAT IS A QUESTION THAT'S PART OF A COURT PROCEDURE WHICH
9 MUST BE ANSWERED UNDER OATH?

10 A YES.

11 Q ALL RIGHT, SIR. I ASK YOU, MR. HERNAN, WHETHER IN
12 JUNE OF 1982 WE ASKED YOU THE FOLLOWING QUESTION AND U.S.G.
13 GAVE THE FOLLOWING RESPONSE:

14 "WHEN AND BY WHAT MANNER WERE YOU FIRST AWARE OF THE
15 HAZARDS OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS --"
16 LET ME TRY AGAIN.

17 "WHEN AND BY WHAT MANNER WERE YOU FIRST AWARE OF THE
18 HAZARDS OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS TO
19 THE USERS OF THOSE PRODUCTS?

20 ANSWER: "THIS DEFENDANT --"

21 MR. BROWN: OBJECTION, YOUR HONOR, THIS QUESTION
22 IS ASKED OF THE DEFENDANT, IT'S NOT ASKED OF MR. HERNAN.

23 THE COURT: OVERRULED.

24 Q "THIS DEFENDANT STATES THAT WITH RESPECT TO THE DANGERS
25 ASSOCIATED WITH EXPOSURE TO ASBESTOS, LATE 1960'S, AND WITH

1 RESPECT TO ACOUSTICAL PLASTERS AS MANUFACTURED AND SOLD BY
2 THIS DEFENDANT, NEVER."

3 WAS THAT THE ANSWER THAT YOU VERIFIED UNDER OATH
4 IN LEXINGTON COUNTY'S CASE BACK IN JUNE OF 1982?

5 A YES.

6 Q WELL, NOW, MR. HERNAN, YOU HAVE SEEN, I ASSUME, THE
7 REPORT ON THE EFFECTS OF ASBESTOS DUST ON THE LUNGS, DATED
8 1930, WHICH WAS IN THE U. S. GYPSUM LIBRARY?

9 A I HAVE SEEN THAT WITHIN THE LAST SEVERAL DAYS.

10 Q ALL RIGHT, SIR. YOU WOULD AGREE WITH ME THAT THAT
11 DISCUSSES THE DANGERS OF ASBESTOS?

12 A YES.

13 Q HAVE YOU SEEN THE UNITED STATES GYPSUM COMPANY LIBRARY'S
14 COPY OF A REVIEW OF PNEUMOCONIOSIS, DATED 1931?

15 A WITHIN THE LAST SEVERAL DAYS.

16 Q AND THAT DOCUMENT DISCUSSES ASBESTOS AND ASBESTOS-
17 RELATED DISEASE BACK IN THE 1930'S?

18 A YES.

19 Q HAVE YOU SEEN THE DOCUMENT ENTITLED, "PNEUMOCONIOSIS,"
20 IN 1932?

21 A WITHIN THE LAST SEVERAL DAYS.

22 Q ALL RIGHT, SIR. AND THAT'S MAINTAINED IN THE U.S.G.
23 LIBRARY?

24 A YES.

25 Q HAVE YOU SEEN THE DOCUMENT ENTITLED, "PNEUMOCONIOSIS,"

1 1934?

2 A WITHIN THE LAST SEVERAL DAYS.

3 Q YOU WOULD AGREE WITH ME, WITHOUT BELABORING THE POINT,
4 MR. HERNAN, THAT THERE ARE A NUMBER OF MEDICAL DOCUMENTS IN
5 THE U.S.G. LIBRARY WHICH DISCUSS THE HEALTH EFFECTS OF
6 ASBESTOS, DOCUMENTS WHICH GO BACK TO 1930?

7 A YES.

8 Q AND THOSE DOCUMENTS GO ON UP, INCLUDING DOCUMENTS IN
9 THE 1960'S, CONCERNING DR. SELIKOFF'S STUDIES?

10 A YES.

11 Q WELL, MR. HERNAN, HAVE YOU ALSO SEEN THIS INTERNAL
12 DOCUMENT, THIS IS AN INTERNAL DOCUMENT OF UNITED STATES
13 GYPSUM COMPANY, ISN'T IT?

14 A YES.

15 Q AND THAT DOCUMENT IS DATED FEBRUARY 11, 1954?

16 A YES.

17 Q AND IT'S ENTITLED, "ELIMINATION OF DUSTY CONDITIONS"?

18 A YES.

19 Q AND THAT DOCUMENT SAYS UNDER, "ASBESTOS EXPOSURE,
20 OPERATIONS INVOLVING THE MANUAL HANDLING OF ASBESTOS IN ANY
21 PLANT SHALL BE CONSIDERED AN AREA IN WHICH EMPLOYEES SHALL BE
22 REQUIRED TO WEAR ADEQUATE RESPIRATORY EQUIPMENT"?

23 A YES.

24 Q AND THAT DOCUMENT REQUIRES EVEN PEOPLE SWEEPING IN THE
25 AREA OR WORKING IN THE AREA TO WEAR MASKS OR RESPIRATOR

1 EQUIPMENT?

2 A YES.

3 Q AND THAT IS 1954?

4 A YES.

5 Q WELL, DO YOU STILL STAND BY YOUR ANSWER THAT IN THE
6 LATE 1960'S THAT U.S.G. FIRST DISCOVERED THE DANGERS OF
7 ASBESTOS?

8 A FOR MY PERSONAL KNOWLEDGE, WHICH IS WHAT YOU ASKED ME,
9 I HAVE CLASSED ASBESTOSIS ALONG WITH SILICOSIS AS BASICALLY
10 BEING ONE AND THE SAME. I DID NOT PLACE ANY SPECIAL ONUS
11 ON ASBESTOS, ANYTHING DIFFERENT THAN EXPOSURE TO SILICA DUST.

12 Q WELL, SIR, IN 1983, JUNE, WHEN YOU ANSWERED THIS INTERRO-
13 GATORY, YOU WEREN'T ANSWERING FOR JOHN HERNAN, WERE YOU?
14 YOU WERE VERIFYING THAT INTERROGATORY FOR UNITED STATES GYPSUM
15 COMPANY, ISN'T THAT CORRECT?

16 A YES.

17 Q YOU WERE THE MAN, I DON'T KNOW HOW YOU CHOOSE THE PEOPLE,
18 BUT YOU WERE THE MAN WHO WAS RESPONSIBLE FOR MAKING SURE
19 THIS INFORMATION WHICH WAS GIVEN TO THIS COURT WAS THE MOST
20 ACCURATE INFORMATION POSSIBLE?

21 A CORRECT.

22 Q AND ON THAT -- WOULD YOU STILL NOW, TODAY, STAND BY
23 YOUR ANSWER TO THAT INFORMATION THAT U. S. GYPSUM COMPANY
24 DID NOT KNOW THE DANGERS OF THE HEALTH EFFECTS OF ASBESTOS
25 UNTIL THE LATE 1960'S?

1 A TO THE BEST OF MY KNOWLEDGE, MANY PEOPLE WHO I'M AWARE
2 OF IN THIS PARTICULAR AREA OF PLASTER PRODUCTS, FEEL THE
3 SAME WAY THAT I FEEL.

4 Q MR. HERNAN --

5 THE COURT: YOU WEREN'T ASKED HOW YOU FELT. ARE
6 YOU TELLING US THAT YOU GAVE THAT ANSWER TO THIS COURT UNDER
7 OATH WITHOUT EVEN LOOKING IN YOUR LIBRARY FOR WHAT INFORMATION
8 THERE WAS?

9 THE WITNESS: I'M CERTAIN THAT THERE WAS A STUDY
10 MADE, YOUR HONOR.

11 THE COURT: WAS IT REPORTED TO YOU? YOU'RE VERIFYING
12 THAT ANSWER UNDER OATH.

13 THE WITNESS: PERHAPS I DON'T QUITE UNDERSTAND.

14 THE COURT: DID YOU MAKE SURE THAT ANSWER WAS
15 ACCURATE?

16 THE WITNESS: TO THE BEST --

17 THE COURT: OR DIDN'T YOU CARE?

18 THE WITNESS: YES, SIR, I CARED. AND TO THE BEST
19 OF MY ABILITY.

20 Q (BY MR. SPEIGHTS:) WELL, MR. HERNAN, IF I SERVED YOU
21 TODAY -- WELL, LET ME JUST ASK YOU THE QUESTION RIGHT OUT.

22 MR. HERNAN, FOR U.S.G., WHEN DID U.S.G. FIRST BECOME
23 AWARE OF THE HAZARDS OF ASBESTOS AND ASBESTOS-CONTAINING
24 PRODUCTS TO THE USERS OF THOSE PRODUCTS?

25 A IT WOULD APPEAR THAT THOSE REPORTS THAT YOU LISTED THERE

1 WOULD BE THE STARTING POINT.

2 Q ALL RIGHT. AND AT LEAST GO BACK TO 1954 WHEN YOUR OWN
3 INTERNAL POLICY WAS STATED WITH REGARD TO HANDLING OF
4 ASBESTOS?

5 A YES.

6 Q NOW, MR. HERNAN, DO YOU RECALL MY ASKING YOU SUPPLEMENTAL
7 INTERROGATORIES IN THE LEXINGTON CASE?

8 A I THINK SO.

9 Q AND YOU ANSWERED THOSE SUPPLEMENTAL INTERROGATORIES IN
10 JANUARY OF THIS YEAR?

11 A YES.

12 Q YOU RECALL THAT? AND I GOT A LITTLE MORE SPECIFIC WITH
13 YOU ON THAT OCCASION. I ASKED YOU, AND I'LL PULL IT OUT IF
14 YOU WANT ME TO TO REFRESH YOUR MEMORY.

15 A I THINK I SHOULD.

16 Q ALL RIGHT, SIR. I ASKED YOU IN ONLY JANUARY -- THE
17 PLAINTIFF ASKED YOU, "STATE THE FOLLOWING WITH RESPECT TO
18 ASBESTOSIS: THE DATE YOU FIRST HEARD IT ALLEGED THAT THERE
19 IS A CAUSAL CONNECTION BETWEEN ASBESTOSIS AND THE INHALATION
20 OF ASBESTOS."

21 DID I ASK THAT QUESTION THAT DAY WITH SOME FURTHER
22 REQUESTS FOR INFORMATION?

23 A YES.

24 Q ALL RIGHT, SIR. SO THESE ANSWERS WERE BACK IN JUNE,
25 AND NOW IN JANUARY, TWO OR THREE MONTHS AGO, YOU HAVE ANSWERED

1 ANOTHER QUESTION CONCERNING WHEN YOU KNEW ABOUT SPECIFICALLY
2 THE DANGERS OF ASBESTOSIS. ISN'T THAT CORRECT?

3 A YES.

4 Q READ YOUR ANSWER TO THAT, PLEASE, MR. HERNAN.

5 A "ANSWER A. 1975. LITIGATION FILED AGAINST THIS
6 DEFENDANT. VARIOUS INDIVIDUALS MAY HAVE READ THE MATERIAL
7 IN THE POPULAR PRESS IN THE LATE 1960'S."

8 Q ALL RIGHT, SIR. NOW, WOULD YOU ALSO BE WILLING TO
9 ACKNOWLEDGE NOW, MR. HERNAN, THAT THE ANSWER YOU GAVE IN
10 JANUARY IS NOT CORRECT, IN LIGHT OF THE INTERNAL POLICY OF
11 U.S. GYPSUM COMPANY IN 1954?

12 A IT WAS MY IMPRESSION THAT THE 1954 PERIOD COVERED
13 NUISANCE DUST COMPARABLE TO SILICOSIS. THAT'S MY PERSONAL,
14 HONEST FEELING.

15 Q WELL, SIR, WHAT'S THE DOCUMENT SAY? DOESN'T THE
16 DOCUMENT SAY ASBESTOS EXPOSURE?

17 A YES.

18 Q ALL RIGHT, SIR. MY QUESTION IS, TODAY, APRIL WHATEVER
19 IT IS, 1984, WOULD YOU STILL RESPOND TO THIS SAME INTERROGA-
20 TORY THAT IT WAS 1975 BEFORE YOU HEARD IT ALLEGED THAT
21 ASBESTOS CAUSES ASBESTOSIS?

22 A BASED ON YOUR PRESENTATION THERE, I WOULD SAY 1954.

23 Q ALL RIGHT, SIR. WELL, I ALSO ASKED YOU IN JANUARY, TWO
24 MONTHS AGO, MR. HERNAN, TO STATE THE FOLLOWING WITH RESPECT
25 TO LUNG CANCER: "THE DATE YOU FIRST HEARD IT ALLEGED THAT

1 THERE IS A CAUSAL CONNECTION BETWEEN LUNG CANCER AND THE
2 INHALATION OF ASBESTOS, THE IDENTITY OF THE PERSON OR DOCU-
3 MENT THAT WAS THE SOURCE OF SUCH ALLEGATION." RESPONSE:
4 "LATE 1970'S."

5 WAS THAT YOUR ANSWER IN JANUARY IN THIS COURT?

6 A THAT WAS MY ANSWER OR THIS IS WHAT I SIGNED TO AT THAT
7 TIME.

8 Q THAT WAS THE POSITION OF UNITED STATES GYPSUM COMPANY
9 IN JANUARY?

10 A YES.

11 Q NOW, WOULD YOU STILL STAND BY THAT POSITION TODAY, THAT
12 UNITED STATES GYPSUM DIDN'T HEAR IT ALLEGED THAT ASBESTOS
13 CAUSED LUNG CANCER UNTIL 1979?

14 A I HEARD DR. SELIKOFF SPEAK THIS PAST WEEK, WHO I BELIEVE
15 IS THE RECOGNIZED EXPERT IN THIS PARTICULAR AREA.

16 MR. SPEIGHTS: YOUR HONOR, I WOULD MOVE TO STRIKE
17 IF HE IS TRYING TO CITE --

18 THE COURT: YES. STRIKE THAT.

19 Q MY QUESTION IS SIMPLY THIS, MR. HERNAN: WOULD YOU STAND
20 BY YOUR ANSWER TODAY AND ANSWER IT THE SAME WAY IF I ASKED
21 YOU THE SAME QUESTION, THAT IT WAS NOT UNTIL THE LATE 1970'S
22 THAT U. S. GYPSUM HEARD IT ALLEGED, NOT PROVEN, BUT ALLEGED,
23 THAT ASBESTOS CAUSES LUNG CANCER?

24 A IT WOULD BE EARLIER THAN THAT.

25 Q ALL RIGHT, SIR. I ASKED YOU THIS, MR. HERNAN, ON JANUARY,

1 1984: "STATE THE FOLLOWING WITH RESPECT TO MESOTHELIOMA:
2 THE DATE YOU FIRST HEARD IT ALLEGED THAT THERE IS A CAUSAL
3 CONNECTION BETWEEN MESOTHELIOMA AND THE INHALATION OF
4 ASBESTOS; THE IDENTITY OF THE PERSON AND/OR DOCUMENT THAT
5 WAS THE SOURCE OF SUCH ALLEGATION; THE IDENTITY OF THE PERSON
6 WHO RECEIVED SUCH INFORMATION; AND THE IDENTITY OF ALL
7 DOCUMENTS GENERATED AS A RESULT OF THE RECEIPT OF SUCH
8 INFORMATION."

9 ANSWER: "LATE 1970'S OR AROUND 1980." HAVE I READ
10 THAT CORRECTLY? IT'S THE LAST OF THAT PAGE AND THE TOP OF
11 THE NEXT ONE.

12 A YES. YOU HAVE READ IT PROPERLY.

13 Q I ASK YOU, MR. HERNAN, IF YOU ARE NOW TELLING THE COURT
14 AND THE JURY TODAY, APRIL, 1984, THAT THAT IS STILL U. S.
15 GYPSUM'S ANSWER, THAT IT NEVER HEARD IT ALLEGED THAT ASBESTOS
16 CAUSES MESOTHELIOMA UNTIL THE LATE 1970'S OR 1980?

17 A MY OWN PERSONAL KNOWLEDGE WAS AT ABOUT THIS PARTICULAR
18 PERIOD FOR MESOTHELIOMA.

19 Q YES, SIR. BUT YOU NOW KNOW THAT THAT ANSWER IS NOT
20 CORRECT, DON'T YOU?

21 A ALL I HEARD IS THE TESTIMONY OFFERED IN THIS COURT ON
22 THAT.

23 Q MR. HERNAN, YOU DIDN'T VERIFY SOME ANSWERS TO INTERROGA-
24 TORIES IN THE GREENVILLE CASE, A SPECIAL COURT INTERROGATORY,
25 IN FEBRUARY OF THIS YEAR, A MONTH AFTER THAT?

1 A YES.

2 Q AND YOU DIDN'T SUPPLY US BY COURT ORDER IN THE GREENVILLE
3 CASE WITH ALL OF THESE DOCUMENTS I'M NOW GIVING YOU TO LOOK
4 AT?

5 A I DID NOT SEE THE DOCUMENTS UNTIL THIS PAST WEEK.

6 THE COURT: COULD YOU ANSWER THE QUESTION? YOU
7 DID NOT SUPPLY THEM? NOBODY ASKED YOU WHEN YOU FIRST SAW
8 THEM. YOU WERE ASKED IF YOU SUPPLIED THEM.

9 THE WITNESS: OH, YES.

10 THE COURT: YOU DID NOT, IN THE GREENVILLE CASE?

11 THE WITNESS: YES, WE FURNISHED THEM.

12 THE COURT: YES, YOU DID NOT? YES, WE HAVE NO
13 BANANAS.

14 THE WITNESS: WE FURNISHED THE DOCUMENTS, YOUR
15 HONOR.

16 Q (BY MR. SPEIGHTS:) NOW, NOT ONLY DID YOU FURNISH THE
17 DOCUMENTS, BUT IN FEBRUARY YOU LISTED THOSE DOCUMENTS FOR THE
18 FIRST TIME BY SPECIAL COURT ORDER, YOU LISTED THOSE DOCUMENTS
19 AND VERIFIED THE LIST, DIDN'T YOU?

20 A YES.

21 Q YOU DIDN'T SEE THE DOCUMENTS BUT YOU VERIFIED THE
22 DOCUMENTS?

23 A YES.

24 Q SO YOU'RE NOT TELLING US NOW THAT IT WASN'T UNTIL YOU
25 ARRIVED IN THE COURTROOM IN COLUMBIA, SOUTH CAROLINA, THIS

1 WEEK, IS THE FIRST TIME YOU EVER LEARNED ABOUT THAT, ARE YOU?

2 A THAT I LEARNED ABOUT WHAT?

3 Q TO MY UNDERSTANDING, YOU TESTIFIED A MOMENT AGO,
4 MR. HERNAN, THAT IT WAS NOT UNTIL THIS WEEK THAT YOU BECAME
5 AWARE OF THOSE DOCUMENTS, WHEN YOU ARRIVED IN COURT IN
6 SOUTH CAROLINA.

7 A WITHIN JUST A VERY SHORT PERIOD OF TIME BEFORE THAT.

8 Q FEBRUARY 15 WHEN YOU HAD TO VERIFY THE ANSWER TO
9 INTERROGATORY TO JUDGE WILKINS JP IN GREENVILLE, YOU LISTED
10 ALL OF THOSE DOCUMENTS, DIDN'T YOU?

11 A YES.

12 Q YOU DIDN'T SUPPLEMENT YOUR ANSWERS DOWN HERE IN
13 LEXINGTON AND TELL THE COURT DOWN IN LEXINGTON THAT YOUR
14 ANSWERS WERE WRONG, DID YOU?

15 A NO.

16 Q ALL RIGHT. I ASK YOU WHETHER IN THE LEXINGTON
17 INTERROGATORIES, MR. HERNAN, I ALSO DIDN'T ASK YOU WHETHER
18 OR NOT U. S. GYPSUM HAD SUPPLIED ANY WARNINGS ON ITS PRODUCTS.
19 YOU RECALL THAT QUESTION?

20 A YES.

21 Q AND DO YOU RECALL YOUR ANSWERING ME THAT EXCEPT FOR
22 JOINT COMPOUNDS IN 1972 THAT U. S. GYPSUM DIDN'T SUPPLY ANY
23 WARNINGS ON ITS PRODUCTS?

24 A YES.

25 Q NOW, ISN'T IT CORRECT THAT U. S. GYPSUM ALSO MADE A

1 PRODUCT CALLED SPRAYED-ON?

2 A YES, SIR.

3 Q AND SPRAYED-ON WAS A FIREPROOFING AND ACOUSTICAL PRODUCT,
4 WASN'T IT?

5 A IT WAS MY KNOWLEDGE THAT IT WAS A FIREPROOFING PLASTER
6 MADE UNDER A FORMULATION FURNISHED BY THE SPRAY-ON CORPORATION.

7 Q WELL, YOU MADE THE SPRAYED-ON PRODUCT?

8 A YES.

9 Q AND IT WAS A SPRAY APPLIED PRODUCT?

10 A YES.

11 Q AUDICOTE IS A SPRAY APPLIED PRODUCT?

12 A THEY ARE TWO ENTIRELY DIFFERENT PRODUCTS, SIR.

13 Q ALL RIGHT, SIR. BUT THEY ARE BOTH SPRAY APPLIED PRODUCTS,
14 YOU SPRAY THEM UP?

15 A ONE IN DRY FORM AND ONE IN WET FORM.

16 Q ALL RIGHT, SIR. ARE YOU FAMILIAR WITH THE SWEETS
17 CATALOGUE?

18 A I HAVE HEARD OF THE NAME. I'M KNOWLEDGEABLE IN THEM.

19 Q YOU ARE KNOWLEDGEABLE IN THEM.

20 MR. BROWN: OBJECTION, YOUR HONOR. THIS LINE OF
21 QUESTIONING HAS NOTHING TO DO WITH THE PRODUCT IN THIS CASE.

22 THE COURT: IT HAS TO DO WITH THE RELIABILITY OF
23 THIS WITNESS. OVERRULED.

24 Q I ASK YOU IF THIS IS NOT AN ADVERTISEMENT IN THE SWEETS
25 CATALOGUE FOR SPRAYED-ON, THE PRODUCT YOU ALSO MANUFACTURED

1 AT THE TIME YOU WERE MANUFACTURING AUDICOTE?

2 A THIS IS A SPRAYED-ON BROCHURE.

3 Q ALL RIGHT, SIR. AND DOESN'T THAT BROCHURE REFLECT
4 SPRAYED-ON ACOUSTICAL TREATMENT AS ONE OF THE PURPOSES OF
5 SPRAYED-ON SPRAY APPLIED PRODUCT?

6 A THIS IS THE SPRAYED-ON FORMULATION. I WOULD HAVE NO
7 KNOWLEDGE OF THE PERFORMANCE OF THEIR PRODUCT.

8 Q THIS IS A PRODUCT THAT YOU MADE AND A PRODUCT THAT HAS
9 BEEN ADVERTISED BOTH FOR FIREPROOFING AND FOR ACOUSTICAL
10 TREATMENT, ISN'T IT?

11 A THIS IS WHAT THIS DOCUMENT STATES.

12 Q ALL RIGHT, SIR. AND STARTING IN THE LATE 1960'S UNITED
13 STATES GYPSUM COMPANY REQUIRED THAT PRODUCT TO HAVE WARNINGS
14 ON IT ABOUT ASBESTOS?

15 A YES.

16 Q SO YOUR ANSWER TO THE INTERROGATORY IN THIS CASE THAT
17 YOU DIDN'T SUPPLY WARNINGS ON PRODUCTS IS NOT CORRECT, IS IT?

18 A I THINK THE INITIAL ANSWERS WERE BASED ON THE AUDICOTE
19 ACOUSTICAL PLASTER AND THE SPRAYED-ON ACOUSTICAL -- THE
20 SPRAYED-ON ACOUSTICAL TREATMENT, AS STATED HERE, ARE TWO
21 ENTIRELY DIFFERENT PRODUCTS.

22 Q THE ANSWER WAS ACOUSTICAL PRODUCTS, WASN'T IT, THAT YOU
23 GAVE US IN THE LEXINGTON CASE?

24 A YES.

25 Q ALL RIGHT, SIR. AND THAT DOCUMENT REFLECTS THAT'S AN

1 ACOUSTICAL PRODUCT, DOESN'T IT?

2 A THAT IS WHAT THIS DOCUMENT STATES.

3 MR. BROWN: YOUR HONOR PLEASE, AGAIN I OBJECT --

4 THE COURT: AGAIN, I OVERRULE YOU.

5 Q SO IN THE LATE 1960'S, IN '68, BEFORE IRMO HIGH SCHOOL
6 PURCHASED ITS '68 SUPPLY, BEFORE IT PURCHASED ITS '72 SUPPLY
7 AND BEFORE IT PURCHASED ITS '74 SUPPLY, YOU WERE SELLING
8 ANOTHER ACOUSTICAL TREATMENT PRODUCT WITH WARNINGS ABOUT
9 ASBESTOS ON IT? ISN'T THAT CORRECT?

10 A IN THE WAY THAT YOU HAVE PHRASED IT.

11 Q WELL, MR. HERNAN, NOT ONLY THAT, YOU TOOK THE ASBESTOS
12 OUT OF THAT PRODUCT IN 1970, DIDN'T YOU?

13 A THE SPRAYED-ON FORMULATION WAS CHANGED BY THAT PARTICULAR
14 CORPORATION.

15 THE COURT: DID YOU TAKE THE ASBESTOS OUT, YES OR
16 NO?

17 THE WITNESS: YES. YES.

18 THE COURT: DON'T EVADE EVERY QUESTION. JUST WASTING
19 THE COURT'S TIME. ANSWER THEM.

20 Q (BY MR. SPEIGHTS:) WELL, SIR, IN 1520, WALLS AND CEILINGS
21 MAGAZINE, DOES IT -- IN 1970, AREN'T YOU ADVERTISING THIS
22 ACOUSTICAL PRODUCT, THIS ASBESTOS-FREE PRODUCT?

23 A THAT WAS DONE BY SPRAYED-ON CORPORATION, NOT THE U. S.
24 GYPSUM COMPANY.

25 Q ALL RIGHT, SIR. THE COMPANY THAT WAS SELLING YOUR

1 ENTITLED DAVID DONALD SMITH VERSUS UNITED STATES GYPSUM
2 COMPANY, ET AL?

3 A YES.

4 Q I ASK YOU IF ON THAT OCCASION, AUGUST 25, 1981, A YEAR
5 AND A HALF BEFORE YOU GAVE THIS COURT THAT ANSWER, THIS
6 QUESTION WAS ASKED AND YOU VERIFIED YOUR ANSWER AS FOLLOWS:

7 "IF YOU KNOW OF ANY TEST, STUDIES, RESEARCH OR EXPERI-
8 MENTS CONCERNING THE EFFECTS OF THE INHALATION OF ASBESTOS
9 FIBERS CONDUCTED AT ANY TIME SINCE 1900 BY ANY MEMBER OF
10 THE ASBESTOS PRODUCTS INDUSTRY, MINERS, MILLERS, MANUFACTURERS,
11 SELLERS, ET CETERA, OR BY ANY GROUP OR ORGANIZATION OF OR
12 RELATED TO THAT INDUSTRY, GIVE THE TITLES, DATES AND
13 PARTICIPATING COMPANIES OR ORGANIZATIONS AND RESPONSIBLE
14 INDIVIDUALS."

15 ANSWER: "THIS INTERROGATORY IS OBJECTED TO ON THE
16 GROUNDS THAT IT IS OVERLY BROAD AND BURDENSOME IN THAT IT
17 COVERS A TIME PERIOD OF 81 YEARS.

18 "HOWEVER, SUBJECT TO THE OBJECTION, THIS DEFENDANT IS
19 AWARE OF A STUDY CONDUCTED IN THE LATE 1930'S CONCERNING
20 THE HEALTH EFFECTS OF INHALATION OF ASBESTOS FIBERS BY
21 DR. LEROY GARDNER OF SARANAC LAKE."

22 WAS THAT YOUR ANSWER UP IN MINNESOTA A YEAR AND A HALF
23 BEFORE THIS ANSWER?

24 A YES.

25 MR. SPEIGHTS: THANK YOU, SIR. THAT'S ALL I HAVE.

REDIRECT EXAMINATION

1
2 BY MR. BROWN:

3 Q MR. HERNAN, LET'S GET BACK TO THE SUBJECT WHICH YOU
4 WERE CALLED TO TALK ABOUT, WHICH IS THE 17TH FLOOR OF U. S.
5 GYPSUM.

6 MR. SPEIGHTS SHOWED YOU SOMETHING OUT OF A REPORT IN
7 1973 ABOUT SOME REPAIRS THAT WERE DONE TO THE 17TH FLOOR.
8 NOW, THE FIRST PARAGRAPH TALKS ABOUT OIL SPOTS AND IT SAYS,
9 CUT OUT SECTIONS OF CEILING CONTAINING OIL SPOTS." YOU HAPPEN
10 TO RECALL HOW BIG AN OIL SPOT THERE WAS IN THAT 17TH FLOOR
11 AREA?

12 A NO, I DO NOT KNOW.

13 Q DO YOU RECALL ROUGHLY HOW BIG THE ENTIRE AREA WAS OR
14 IS ON THE 17TH FLOOR OF THE U. S. GYPSUM BUILDING THAT IS
15 COVERED WITH AUDICOTE? HOW MANY DIFFERENT ROOMS ARE THERE,
16 FOR EXAMPLE?

17 A WITHOUT LOOKING AT THE PRINT, I WOULD ESTIMATE THAT
18 THERE ARE PROBABLY IN THE NEIGHBORHOOD OF 25 OFFICES, AT LEAST
19 FOUR LARGE OPEN AREAS. LET ME THINK, COUNT IN MY HEAD HERE.
20 THERE MUST BE IN THE NEIGHBORHOOD OF 20,000 SQUARE FEET.
21 THE OFFICE -- THE TOTAL AREA WOULD BE PROBABLY 20 TIMES 30
22 TIMES THE SIZE OF THIS COURTROOM, FOR AN APPROXIMATION OF
23 PHYSICAL SIZE.

24 Q DO YOU HAVE ANY INFORMATION WITH RESPECT TO GOUGES AND
25 SCRATCHES WHICH COULD BE REPAIRED WITH A SMALL SPATULA AND

1 SMALL PAINTBRUSH, AS TO ABOUT HOW MANY OF THOSE THERE WERE
2 THAT WERE REPAIRED IN 1972?

3 A I DON'T HAVE ANY PERSONAL KNOWLEDGE OF THAT.

4 Q ALL RIGHT. NOW, YOU WERE ASKED BY MR. SPEIGHTS WHETHER
5 THERE WERE OTHER PLACES THAT YOU COULD HAVE FOUND AUDICOTE
6 ON THE CEILINGS, AND YOU SAID YES.

7 A YES.

8 Q AT THE TIME WHEN THIS EXPERIMENT WAS BEING DONE AT
9 U. S. GYPSUM, WAS THERE A CASE PENDING IN NEW JERSEY INVOLVING
10 THE CINNAMINSON SCHOOL DISTRICT?

11 A YES.

12 Q DO YOU KNOW WHY IT WAS THAT THE 17TH FLOOR CEILING
13 AT U. S. GYPSUM WAS SELECTED FOR THE EXPERIMENT RATHER THAN
14 GOING SOMEWHERE ELSE AND FINDING SOME OTHER MATERIAL?

15 A YES.

16 Q WHY WAS IT?

17 A IT WAS BECAUSE IT WAS THE -- DONE AT THE SAME PERIOD
18 OF TIME AND HAD THE SAME PRODUCT FORMULATION.

19 Q ALL RIGHT. ONCE MORE, IS IT YOUR OPINION THAT THE
20 MATERIAL IN THE 17TH FLOOR CEILING AT U. S. GYPSUM IS AND WAS
21 AUDICOTE?

22 A YES.

23 MR. BROWN: THAT'S ALL I HAVE, YOUR HONOR.

24 RECROSS EXAMINATION

25 BY MR. SPEIGHTS:

1 Q MR. HERNAN, MY UNDERSTANDING IS THE 17TH FLOOR IS JUST
2 THE CORRIDOR AND ONE ROOM THAT HAS THE AUDICOTE ON IT, ISN'T
3 THAT CORRECT?

4 A WOULD YOU RESTATE THAT?

5 Q ISN'T THE CORRIDOR THAT HAS THE AUDICOTE ON IT IN THE
6 17TH FLOOR?

7 A THAT IS ONE OF THE AREAS ON THE 17TH FLOOR.

8 Q AND THEN THE CAFETERIA ALSO HAS IT ON IT?

9 A THE CAFETERIA AND THE LOBBY OF THE BUILDING.

10 Q ALL RIGHT, SIR. AND I ASK YOU ALSO, WHEN YOU TOOK THIS
11 SAMPLE, THAT YOU JUST TOOK IT IN A RANDOM PLACE ON THAT 17TH
12 FLOOR, DIDN'T YOU? ISN'T THAT WHAT YOU TESTIFIED?

13 A I TOOK IT, I THINK I SAID, ADJACENT TO THE TEST AREA.

14 Q ALL RIGHT. BUT YOU TOOK IT -- YOU SELECTED THE TEST
15 AREA OR YOU SELECTED IT JUST ON A RANDOM BASIS ON THAT
16 17TH FLOOR?

17 A I DID SAMPLE IT OR TEST IT MYSELF TO ASSURE MYSELF THAT
18 IT HAD THE PHYSICAL PROPERTIES.

19 Q WELL, AUDICOTE HAS 7 PERCENT ASBESTOS IN IT, DOESN'T IT,
20 EXCESS OF 7 PERCENT?

21 A YES.

22 MR. SPEIGHTS: I WOULD MOVE FORMALLY TO PUT
23 1707 INTO EVIDENCE, YOUR HONOR.

24 MR. BROWN: NO OBJECTION.

25 THE COURT: RECEIVED.

1 MR. SPEIGHTS: THAT'S ALL I HAVE.

2 REDIRECT EXAMINATION CONTINUED

3 BY MR. BROWN:

4 Q MR. HERNAN, WHERE WAS THE SLAB CUT OUT OF THE 17TH
5 FLOOR CEILING?

6 A IT WAS TAKEN WITHIN ROUGHLY 7 TO 10 FEET FROM THE
7 TESTING SITE THAT WE WORKED ON HERE.

8 Q ISN'T IT A FACT THAT THE EXPERIMENT WAS DONE IN A
9 LARGE CORRIDOR AND RIGHT AROUND THE CORNER FROM THE CORRIDOR
10 THERE WAS AN EXECUTIVE WASHROOM?

11 A YES.

12 Q AND WASN'T THE SLAB CUT OUT OF THE CEILING IN THE
13 EXECUTIVE WASHROOM?

14 A YES.

15 Q WAS ALL THE MATERIAL IN THAT WHOLE AREA, INCLUDING THE
16 WASHROOM, ALL PART OF THE SAME CEILING?

17 A YES.

18 MR. BROWN: THAT'S ALL. THANK YOU.

19 MR. SPEIGHTS: NOTHING FURTHER.

20 MR. BROWN: YOU MAY STEP DOWN, MR. HERNAN.

21

22

23 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
24 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

25

Phillip W. Loter
PHILLIP W. LOTER, OFFICIAL REPORTER

6-14-84
DATE