

FILE NAME: Hercules Chemical (HERC)

DATE: 1990 Nov 9

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DOCUMENT DESCRIPTION: Legal - Deposition of Jay W. Fidler

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Oscar Adolf, Charles Anderson, Edward)
Bossert, George Bunnell, Sr., Robert)
Clooten, Roger Daub, Richard Denzel,)
Stanley J. Forstner, Boyd Gilchrist,) IN RE: NORTH
Robert Glasser, Leslie Hansen, Richard) DAKOTA PERSONAL
Heck, Douglas Jessen, Albin Johnson,) INJURY ASBESTOS
Kenneth Kautzman, Martin Ketterling,) LITIGATION NO. 1
James Kinsella, Ben Klein, John Kuntz,)
Alfred LaFontaine, Myles Lais, Louis) CIVIL NOS.
Lang, Teanus Loeb, L. D. MacMartin,) A1-89-098 thru
John Morrell, Stephen Morrell, Noel) A1-89-138 and
Noakes, John Olafson, Walter Poppke,) A1-89-145 thru
Richard Poukka, Darrell Rathjen, Pete) A1-89-146
Riedinger, Vernon Solum, Donald Stanek,)
Gene Thompson, Frank Unser, Virgil)
Voeller, Eugene Vogel, Joe Vogel,)
Frank Willson, Joe Winbauer, LaVon)
Matthews, Betty Hatzenbihler,)
Plaintiffs,)
vs.)
A.P.I., Inc., et al,)
Defendants. _)

Owens-Corning Fiberglas Corporation,)
Plaintiff,)
vs.) Court File No.
The Manville Corporation Asbestos) A1-90-083
Disease Compensation Fund (appearing)
for the Manville Personal Injury)
Settlement Trust),)
Defendant.)

D E P O S I T I O N

OF
JAY W. FIDLER

REPORTED

November 9, 1990

By: Paula D. Weber - R.P.R.
Notary Public

NORMAN E. MARK
Court Reporter Service
Fargo, North Dakota
235-7571 or 235-7572

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I N D E X

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W I T N E S S E S

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JAY W. FIDLER

PAGE

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Direct Examination by Mr. Mr. Thompson

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DEPOSITION
EXHIBIT NO.

DESCRIPTION

MARKED

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1

Second Amended Notice
of Deposition

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Response to Second Amended
Notice of Deposition

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Product Catalog (5/74)

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Product Catalog (1976)

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Product Catalog (1977)

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Product Catalog (2/79)

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Product Catalog (3/80)

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Product Catalog (4/81)

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Product Catalog (1982)

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Product Catalog (1984)

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Computer Printout of Sales
in North Dakota

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Report of Case Consulting
Laboratories (8/3/83)

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Handwritten Table of Sales
(1949-1966)

72

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

3 Oscar Adolf, Charles Anderson,)
4 Edward Bossert, George Bunnell, Sr.,)
5 Robert Clooten, Roger Daub, Richard)
6 Denzel, Stanley J. Forstner, Boyd)
7 Gilchrist, Robert Glasser, Leslie)
8 Hanson, Richard Heck, Douglas Jessen,)
9 Alvin Johnson, Kenneth Kautzman, Martin)
10 Ketterling, James Kinsella, Ben Klein,) IN RE: NORTH
11 John Kuntz, Alfred LaFountain, Myles) DAKOTA PERSONAL
12 Lais, Louis Lang, Teanus Loeb, L.D.) INJURY ASBESTOS
13 MacMartin, John Morrell, Stephen) LITIGATION
14 Morrell, Noel Noakes, John Olofson,) NO. 1
15 Walter Poppke, Richard Pukka, Darrel)
16 Rathjen, Pete Riedinger, Vernon Solum,)
17 Donald Stanek, Gene Thompson, Frank)
18 Unser, Virgil Voeller, Eugene Vogel,) Civil Nos.
19 Joe Vogel, Frank Willson, Joe Winbauer,) A1-89-098
20 LaVon Matthews, Betty Hatzenbihler,) thru A1-89-138
21) and A1-89-145
22) thru A1-89-146
23 Plaintiffs,)
24)
25 vs.)

14 A.P.I., Inc., et al.,)
15)
16 Defendants.)
17)
18 Owens-Corning Fiberglas Corporation,)
19)
20 Plaintiff,)
21)
22 vs.)
23)
24 The Manville Corporation Asbestos)
25 Disease Compensation Fund (appearing)
for the Manville Personal Injury)
Settlement Trust),)
Defendant.)

Court File
No. A1-90-083

1 TELEPHONIC DEPOSITION

2 of JAY W. FIDLER, taken by and for the Plaintiffs,
3 pursuant to Notice and pursuant to the Federal Rules
4 of Civil Procedure. The deposition was taken at the
5 Radisson Hotel, Fargo, North Dakota, on Friday,
6 November 9, 1990, commencing at the hour of 8:30 a.m.

7
8 A P P E A R A N C E S

9 Craft, Thompson & Boechler, P.C. For the Plaintiffs;
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By: David C. Thompson, Esq.
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A P P E A R A N C E S (CONT'D)

1
2 Serkland, Lundberg, Erickson, For the Defendants
3 Marcil & McLean, Ltd. Armstrong World
4 Attorneys at Law Industries, Inc., a
5 10 Roberts Street Delaware corporation;
6 Fargo, North Dakota 58102 (individually and as
7 AND successor-in-interest
8 Foley & Lardner to Armstrong Cork
9 Attorneys at Law Company and Keasbey &
10 First Wisconsin Center Mattison Company;
11 777 East Wisconsin Avenue Flexitallic Gasket Co.,
12 Milwaukee, Wisconsin 53202-5367 Inc., a Connecticut Corp.;
13 GAF Corporation, a
14 Delaware Corporation,
15 (individually and as
16 successor-in-interest
17 to The Ruberoid Company;
18 A. P. Green Refractories
19 Co., a Delaware
20 corporation;
21 National Gypsum
22 Company, a Delaware
23 Corporation; Turner
24 Asbestos Fibres, Ltd.,
25 (a subsidiary of Turner &
 Newall PLC and successor-
 in-interest to Keasbey &
 Mattison Company); Turner
 & Newall PLC,
 (individually and as
 successor-in-interest
 to Turner & Newall,
 Ltd and Keasbey &
 Mattison Company); U.S.
 Gypsum Co., a Delaware
 corporation; Union Carbide
 Corp., a New York
 corporation;

21 Meagher & Geer For the Defendants
22 Attorneys at Law A. H. Bennett
23 4200 Multifoods Tower Company, a Minnesota
24 33 South Sixth Street Corporation; and
25 Minneapolis, Minnesota 55402 S.O.S. Products,
 a New York corporation;

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Muth Asbestos Product
3 Attorneys at Law Manufacturing Corporation;
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5 Asbestos Product
Manufacturing
6 Corporation); H. & A.
Construction Corporation,
7 (individually as
successor-in-interest to
8 Asbestos Product
Manufacturing Corporation,
9 Asbestospray Corporation
and Spraycraft
10 Corporation); Spraycraft
Corporation, (individually
11 and as successor-in-
interest to Asbestos
12 Product Manufacturing
Corporation and
13 Asbestospray Corporation);

14 Lucas & Smith For the Defendant
Attorneys at Law Building Sprinkler,
15 333 North 4th Street Co., Inc., a North
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17 Degnan, McElroy, Lamb, Camrud, For the Defendant
Maddock & Olson, Ltd. Crane Packing Co.;
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19 Grand Forks, North Dakota 58201

20 Arndt and Benton, P.A. For the Defendant
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2	Moss & Barnett	For the Defendant
3	Attorneys at Law	Flintkote Company,
4	4800 Norwest Center	a Connecticut Corporation;
5	Minneapolis, Minnesota 55402	
6	Vogel, Brantner, Kelly,	For the Defendant
7	Knutson, Weir & Bye, Ltd.	Grant Wilson, Inc., an
8	Attorneys at Law	Illinois corporation;
9	502 1st Avenue North	
10	Fargo, North Dakota 58102	
11	Fleck, Mather and Strutz	For the Defendant
12	Attorneys at Law	W. R. Grace & Co.,
13	400 East Broadway, Suite 600	a New Jersey corporation,
14	P.O. Box 2798	(individually and as
15	Bismarck, North Dakota 58502	successor-in-interest to
16		Zonolite Company and
17		Western Mineral Products
18		Company);
19	Nilles, Hansen & Davies, Ltd.	For the Defendant
20	Attorneys at Law	Empire Ace Manufacturing
21	1800 Radisson Tower	Corporation;
22	Fargo, North Dakota 58102	
23	Pustorino, Pederson, Tilton &	For the Defendant
24	Parrington	MacArthur Corporation, a
25	Attorneys at Law	Minnesota corporation; 4005
26	West 65th Street	
27	Suite 200	
28	Minneapolis, Minnesota 55435	
29	Faegre & Benson	For the Defendant
30	Attorneys at Law	Owens-Corning Fiberglas
31	2200 Norwest Center	Corp., a Delaware
32	90 South Seventh Street	corporation;
33	Minneapolis, Minnesota 55402	
34	Pearce & Durick	For the Defendant
35	Attorneys at Law	Rutland Fire & Clay,
36	314 E. Thayer Avenue	a Vermont corporation;
37	Bismarck, North Dakota 58501	

1 A P P E A R A N C E S (CONT'D)

2 Jeffries, Olson & Flom, P.A. For the Defendant
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Moorhead, Minnesota 56560

5 Dosland, Nordhougen, For the Defendant
6 Lillehaug, Johnson & Saande U. S. Mineral Products
7 Attorneys at Law Company, (individually
American National Bank Bldg. and as successor-in-
8 Moorhead, Minnesota 56560 interest to Turner &
Newall, Ltd. and Keasbey
& Mattison Company);

9 Bowman & Brooke For Hercules Chemical;
10 Attorneys at Law
Suite 600 Midwest Plaza West
11 Minneapolis, Minnesota 55402
By: David Lutz, Esq.
and
12 George W. Soule, Esq. (By Telephone)

13 Collins, Buckley, Sauntry For Fibreboard Corporation;
14 & Haugh Owens-Illinois, Inc.;
Attorneys at Law Pittsburgh Corning;
15 332 Minnesota Street
W-1100 FNB Bldg.
16 St. Paul, Minnesota 55101

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18 Donnelly Asbestos Disease
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20 Foley & Mansfield For the Defendants
21 Attorneys at Law Keene Corporation,
22 Ten South Fifth Street a Delaware corporation,
23 Minneapolis, Minnesota 55402 individually and as
successor-in-interest to
24 Ehret Magnesia
Manufacturing Company,
25 Baldwin-Hill Company,
Baldwin-Ehret-Hill, Inc.,
Keene Building Products
Corporation and Mundet
Cork Corporation;

1 P R O C E E D I N G S

2 (Whereupon, the deposition of JAY W. FIDLER
3 commenced at 8:30 a.m. as follows:)

4 (Whereupon, Deposition Exhibit Nos.
5 1-11 were marked for identification by
the Court Reporter.)

6 MR. THOMPSON: Before we start today
7 I'd like to have an agreement on the record that
8 this is a telephonic deposition taken pursuant to Rule
9 30(b)(7) of the Federal Rules of Civil Procedure and that
10 Mr. Fidler or whoever else is being designated by
11 Hercules pursuant to Rule 30(b)(6) as a corporate
12 deponent for Hercules Chemical Company will be under oath
13 for purposes of this case and that the notary, the court
14 reporter for the Norman Mark Court Reporter Service, will
15 be swearing this witness and that this witness will be
16 testifying under oath pursuant to Rule 30(b)(7).

17 Counsel, is my recitation of the housekeeping
18 of this deposition in your understanding?

19 MR. SOULE: Yes, it is.

20 MR. THOMPSON: All right.

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JAY W. FIDLER,

HAVING BEEN FIRST DULY SWORN TO TESTIFY THE TRUTH,
THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, RELATIVE

TO THE CAUSE SPECIFIED, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q. Mr. Fidler, my name is David Thompson and I'm
a lawyer in Fargo, North Dakota.

MR. THOMPSON: First from counsel I'd like to
ask counsel how defendant Hercules Chemical Company is
responding in this deposition to the Second Amended
Notice of Deposition which I have had marked for your
information as Deposition Exhibit No. 1.

MR. SOULE: Mr. Fidler will respond on behalf
of Hercules.

MR. THOMPSON: I have also marked as
Deposition Exhibit No. 2 Hercules Chemical Company,
Inc.'s Response to Second Amended Notice of Deposition
for your information, and at some point I'm sure we'll
refer to that.

(Whereupon, difficulty was encountered
establishing telephonic communication. Upon resolution
of the problem the deposition continued as follows:)

MR. THOMPSON: Mr. Soule?

MR. SOULE: Yeah.

1 Q. (Mr. Thompson continuing) Mr. Fidler?

2 A. Yes.

3 Q. All right.

4 MR. THOMPSON: And, Mr. Soule, is Mr. Fidler
5 the only person who's going to be designated to testify
6 today by Hercules?

7 MR. SOULE: Yes.

8 Q. (Mr. Thompson continuing) Mr. Fidler, could
9 you please state your full name for the record and spell
10 it for us?

11 A. Jay, J-a-y, W., middle initial, Fidler,
12 F as in Frank, i-d, as in David, l-e-r.

13 Q. Mr. Fidler, are you currently employed?

14 A. Yes.

15 Q. And what is that employment and could you
16 describe your title, please?

17 A. I'm president of the Hercules Chemical
18 Company, Incorporated.

19 Q. And how long have you occupied that position?

20 A. Since 1962.

21 Q. Prior to that time were you employed by
22 Hercules Chemical Company, Inc.?

23 A. Yes.

24 Q. And what was your capacity immediately before
25 you became president in 1962?

1 A. Sales manager.

2 Q. And when did you begin as sales manager of
3 Hercules Chemical Company?

4 A. Somewhere in the 1950s.

5 Q. Mid '50s, early '50s or late '50s?

6 A. Mid '50s.

7 Q. Was that the capacity which you came to the
8 company in?

9 A. No.

10 Q. What position did you occupy with Hercules
11 prior to becoming sales manager?

12 A. Just a general worker.

13 Q. And when did that employment begin?

14 A. In 1946. June of 1946.

15 Q. And I assume from that answer that you did a
16 number of tasks with the company beginning in '46 and
17 extending to the time you became sales manager.

18 A. Yes.

19 Q. Was that employment at the plant in Passaic,
20 New Jersey or was it in New York City?

21 A. It was in New York City.

22 Q. Did Hercules begin in June of 1946 or did the
23 company exist prior to that time?

24 A. The company existed prior to that time.

25 Q. I believe in the Interrogatory Answers it

1 states that the company was incorporated in 1915 as a New
2 York corporation. Would that be correct?

3 A. That is correct.

4 Q. And what business was the company in from 1915
5 through the present? Has it basically been in the same
6 type of manufacturing business?

7 A. Yes.

8 Q. And that business is described in the
9 Interrogatory Answer as the business of manufacturing,
10 distributing and selling various consumer trade and
11 industrial products and industrial chemicals. Would that
12 be correct?

13 A. Yes.

14 Q. Is it fair to say that Hercules Chemical
15 Company was in the business of providing chemicals and
16 products for the plumbing industry from the time it began
17 in 1915 through the present?

18 A. That is correct.

19 Q. Is the plumbing industry the primary marketing
20 focus and has it been for the company since 1915 through
21 the present?

22 A. Yes.

23 Q. Thank you. When you came to the company in
24 1946 approximately how many employees were there of
25 Hercules Chemical?

1 A. Oh, as I recall there were approximately a
2 dozen.

3 Q. And how many employees does the company have
4 today? Approximately.

5 A. One hundred.

6 Q. Is this the largest that the company has ever
7 been?

8 A. Yes.

9 Q. In the '60s, mid '60s, approximately how many
10 employees did the company have?

11 A. Fifty to sixty.

12 Q. Now in the Interrogatory Answers it states
13 that there is a corporate office at 29 West 38th Street,
14 New York, New York and a plant at 111 South Street,
15 Passaic, New Jersey.

16 A. That is correct.

17 Q. You anticipated my next question. And that
18 would be -- that is still true today, correct?

19 A. That is true today.

20 Q. Was the manufacturing facility ever situated
21 in New York? And I discern from one of your prior
22 answers that it was.

23 A. Ever situated in New York since its founding?

24 Q. Well, at the time that you began with the
25 company in 1946 it's my understanding you were employed

1 in a variety of capacities including those associated
2 with manufacturing, and you stated that your employment
3 began in New York City. And I assume then from that
4 answer that the company had a plant in New York.

5 A. Yes.

6 Q. Where was that plant located?

7 A. At 332 Canal Street in Manhattan.

8 Q. I'm familiar with where that's located
9 generally. Now was that the location where the company
10 began its manufacturing operations around 1915?

11 A. No.

12 Q. Where did -- where was the company's
13 manufacturing facility prior to that time?

14 A. I don't know.

15 Q. Okay. In any event, it had been located on
16 Canal Street at that location for some time as of the
17 time that you arrived at the company.

18 A. Yes.

19 Q. Where did the manufacturing operation of
20 Hercules Chemical Company move from Canal Street in Lower
21 Manhattan to the present? In other words, did it move to
22 Passaic from Canal Street?

23 A. No.

24 Q. All right. Where did you go from Canal
25 Street?

1 A. It went to the Bronx.

2 Q. Where in the Bronx was the manufacturing
3 facility?

4 A. At 740 East 134th Street.

5 Q. When was that move made to the best of your
6 memory today?

7 A. Sometime in the early '60s.

8 Q. And how long did the manufacturing operation
9 of Hercules stay at 740 East 134th Street in the Bronx?

10 A. Approximately ten years.

11 Q. So approximately to the early 1970s. Would
12 that be correct?

13 A. Yes.

14 Q. And as of the early 1970s where did the
15 manufacturing operation of Hercules Chemical become
16 located?

17 A. In Passaic, New Jersey.

18 Q. And that location that it moved to at that
19 time would have been 111 South Street, Passaic, New
20 Jersey?

21 A. Yes.

22 Q. Thank you. At the time that you arrived with
23 the company in June of 1946, Mr. Fidler, was Hercules
24 manufacturing a product known as Hercules Furnace
25 Cement?

1 A. No.

2 Q. And right now for purposes of clarity I'm
3 referring to the pre-mixed product that you're probably
4 aware was the subject or one of the subjects of our
5 Interrogatory Answer or questions in this case. At what
6 time did Hercules Chemical Company begin marketing
7 Hercules Furnace Cement? And it's my understanding that
8 it also bore the trade name For, F-o-r, Heat's,
9 H-e-a-t-apostrophe-s, Sake, S-a-k-e. At what time did
10 the company begin manufacturing that product?

11 MR. SOULE: Now you've asked two different
12 questions. One was marketing and one was manufacture.

13 Q. (Mr. Thompson continuing) I'll back it up
14 because I do see your Interrogatory Answers. I want this
15 to be clear. First, Mr. Fidler, when did Hercules begin
16 selling a furnace cement, a pre-mixed furnace cement that
17 contained asbestos that was marketed under its name, the
18 name Hercules?

19 A. Prior to my arrival in 1946.

20 Q. Now that does clarify it. To your knowledge
21 how far back was this product marketed under the Hercules
22 trade name?

23 A. I don't know.

24 Q. In any event, Hercules was selling what was
25 designated as Hercules Furnace Cement, a product that

1 contained asbestos, as of June of 1946.

2 A. Yes.

3 Q. At what time did the trade name For Heat's
4 Sake become applied to this product? And it's my
5 understanding that -- first of all, let me ask you this.
6 In your Interrogatory Answers or in the company's
7 Interrogatory Answers it is stated that For Heat's Sake
8 was the same as Hercules Furnace Cement. They were two
9 different trade names of Hercules applying to what in
10 substance was the same product.

11 A. Yes.

12 Q. And that would be correct?

13 A. Yes.

14 Q. At what point did the trade name For Heat's
15 Sake become utilized? First of all, was it utilized as
16 of June of 1946?

17 A. No.

18 Q. When did it become used?

19 A. To my best recollection sometime after 1973.

20 Q. All right. In 1946 was Hercules manufacturing
21 the asbestos-containing furnace cement that we have been
22 describing here that it was selling as of June of 1946?

23 A. No.

24 Q. Do you know who the manufacturer of that
25 product was as of June of 1946?

1 A. Yes.

2 Q. Who was it?

3 A. Johns-Manville.

4 Q. Do you know what plant of Johns-Manville was
5 the manufacturer or was the entity that manufactured that
6 product as of June of -- as of June of 1946?

7 A. No.

8 Q. During the latter part of the 1940s, from June
9 of 1946 actually until the year 1973 was Johns- -- did
10 Johns-Manville continue to be the producer of Hercules
11 asbestos furnace cement?

12 A. Yes.

13 Q. Without interruption, sir?

14 A. Yes.

15 Q. What happened in the year 1973 with regard to
16 who actually produced Hercules Furnace Cement?

17 A. We stopped buying from Johns-Manville and
18 manufactured the product ourselves.

19 Q. Is it fair to say that the product -- that
20 Hercules began producing the product itself when it moved
21 to its Passaic location or did it begin when you were
22 still in the Bronx?

23 A. It's possible that it was made while we were
24 still in the Bronx.

25 Q. But you're sure that it was the year 1973 when

1 Hercules began manufacturing itself the furnace cement.

2 A. Yes.

3 Q. With regard to --

4 MR. THOMPSON: And the record should reflect
5 that the only lawyers present are David Lutz from your
6 office, Mr. Soule or Soule, excuse me, and myself. There
7 is a court reporter present and we're the only three
8 people in this room. We have asked for production of
9 formulae relating to Hercules Furnace Cement or Hercules
10 For Heat's Sake and for Hercules Sta-Put plumbing putty.
11 I can understand concerns about proprietary information.
12 We have attached a copy of the magistrate's order
13 relating to this. The reason I'm getting to this now is
14 that I'm going to ask some questions with regard to
15 product formula and whether the product itself was
16 changed in 1973 in composition, et cetera. So maybe you
17 could respond, give me some information as to how you're
18 responding to this request. The magistrate has required
19 companies to produce such formulae subject to a
20 protective order in the past. So what situation are we
21 dealing with on this subject today?

22 MR. SOULE: I have no problems with providing
23 you the formula, but we do need some type of
24 confidentiality provision by agreement or by court
25 order.

1 MR. THOMPSON: We'll, we're --

2 MR. SOULE: I'm perfectly willing to provide
3 you that information in writing later. I think it's
4 difficult to convey at a deposition because other
5 parties, of course, can receive copies of this deposition
6 unless we make some type of a provision to put this
7 confidential information on separate pages and not become
8 part of the deposition that's available to the other
9 parties.

10 MR. THOMPSON: I think probably the way that
11 I'd like it, I'm willing to execute a stipulation and an
12 agreement with your office to obtain the formula.
13 Perhaps for the purposes of today's deposition we can
14 deal with the situation in sufficiently general terms
15 that we don't have to have a problem today. We do want
16 the information. The magistrate in the past has said
17 that it's discoverable subject to protective provisions
18 to protect the company's confident- -- or trade secrets
19 so...

20 MR. SOULE: And we will provide it to you
21 subject to those provisions. I think, you know, in terms
22 of what percentage was asbestos and what types of
23 asbestos, I think that's something that I don't have any
24 problems with talking about today.

25 MR. THOMPSON: That's fine.

1 Q. (Mr. Thompson continuing) Mr. Fidler, you've
2 heard our conversation and our colloquy on the record
3 just now, haven't you?

4 A. Yes.

5 Q. All right. The next question I'm going to ask
6 you is as of 1973 when Hercules began producing Hercules
7 Furnace Cement that contained asbestos, did Hercules have
8 access to the Johns-Manville formula that had been used
9 to prepare that, the Hercules Furnace Cement that was
10 being sold by Hercules but which was actually being
11 produced by Johns-Manville from at least prior to 1946
12 until 1973?

13 A. I'm not sure I understand what you mean by
14 access to the formula.

15 Q. Well, did Johns-Manville after -- as of 1973
16 continue to make that product itself? To the best of
17 your knowledge.

18 A. I don't know.

19 Q. Did Johns-Manville give you their formula?
20 When I say "you" I mean Hercules. The formula for the
21 furnace cement that they had been producing but which
22 appeared under a Hercules label and which was sold by
23 Hercules.

24 A. No.

25 Q. As of 1973 did Hercules formulate its own

1 product, asbestos furnace cement?

2 A. Yes.

3 Q. Which persons were involved in the development
4 of that product at Hercules, Mr. Fidler?

5 A. The product was developed by an outside
6 consulting laboratory.

7 Q. And what was the identity of that laboratory?

8 A. The name was Foster, F-o-s-t-e-r, D., as in
9 David, Snell, S as in Samuel, n as in new, e-l-l.

10 Q. And was that an individual or was that a
11 laboratory?

12 A. This was a consulting laboratory.

13 Q. And where was Foster D. Snell located?

14 A. I believe they were in New Jersey at that
15 time.

16 Q. Do you happen to remember where in New Jersey,
17 Mr. Fidler?

18 A. Hanover, New Jersey.

19 Q. I once worked in Hanover, New Jersey,
20 Mr. Fidler.

21 A. Oh.

22 MR. SOULE: My condolences.

23 MR. THOMPSON: That's a typical remark by a
24 New Yorker toward New Jerseyans.

25 MR. SOULE: That was a remark by a

1 Minnesotan.

2 MR. THOMPSON: Well, I can understand that.

3 Q. (Mr. Thompson continuing) As of 1973 then
4 it's my understanding from your testimony that the
5 formulation for this product was developed by this
6 outside consulting firm, Foster D. Snell, which at the
7 time was located in Hanover, New Jersey. Would that be
8 correct, Mr. Fidler?

9 A. Yes.

10 Q. Thank you. Hercules did have access to the
11 formula though once it was prepared by the consulting
12 firm. Correct?

13 A. It was prepared on Hercules' behalf.

14 Q. Right. In order to prepare the product
15 obviously the written formula had to be on hand at
16 Hercules. Correct?

17 A. Yes.

18 Q. Now as of 1973 -- let me just say this.
19 In the Interrogatory Answers it is stated that the
20 furnace cement or For Heat's Sake alternatively contained
21 6.6 percent chrysotile asbestos fiber. Was that true
22 beginning in 1973?

23 A. Yes.

24 Q. And was that true until the product was no
25 longer manufactured sometime in the year 1983?

1 A. Until the product was no longer manufactured?

2 Q. Right. It's my understanding that from the
3 Interrogatory Answers it states that the Hercules Furnace
4 Cement was sold -- was marketed until or through 1983.
5 So that's what I'm asking is if the formulation stayed
6 the same through the time in 1983 that production of it
7 stopped.

8 A. Hercules Furnace Cement was manufactured and
9 is manufactured to this day.

10 Q. I'm talking about --

11 A. We stopped making it in 1983, which is the
12 sense I get from your question.

13 Q. I'm sorry. Of course I was referring
14 specifically to the product in its asbestos formulation,
15 sir. So my question is did the product contain 6.6
16 percent chrysotile asbestos fiber by volume from the time
17 in 1973 when Hercules began producing it itself until the
18 time in 1983 when the product no longer contained
19 asbestos fiber as part of its formulation?

20 A. Yes.

21 Q. Prior to 1973 what percentage by volume of the
22 product was asbestos fiber?

23 A. I don't know.

24 Q. That would be something that Johns-Manville
25 would have knowledge of and not Hercules. Is that

1 correct?

2 A. Yes.

3 Q. To your knowledge was the Hercules product
4 substantially the same in terms of the way it functioned
5 and its purpose as the Johns-Manville produced product
6 prior to 1973?

7 A. It was formulated for the same job and
8 performed similarly.

9 Q. Did it have the same appearance?

10 A. Yes.

11 Q. Now was the formula for Hercules Furnace
12 Cement the same from 1973 through 1983?

13 A. Yes.

14 Q. In the Interrogatory Answers, sir, there is a
15 reference to the fact that the cement was black in color
16 until 1976 when the color was changed to gray. Was it
17 just a coloring agent that was different?

18 A. Yes.

19 Q. And I assume the product was gray from 1976
20 through 1983 then.

21 A. Yes.

22 Q. What color was the product prior to the year
23 1973 when Hercules began producing it themselves?

24 A. Black.

25 Q. Thank you. What was the purpose, the intended

1 purpose, of Hercules Furnace Cement?

2 A. This is a product which is intended for use in
3 the ceiling firebrick and use in combustion chamber
4 repairs and boilers and heating systems generally.

5 Q. Is it fair to characterize it as a heat
6 resistant and perhaps fireproof product?

7 A. Yes.

8 Q. Did the function of that product remain the
9 same from 1946 through the year 1983 when the product no
10 longer contained asbestos fiber?

11 A. Yes.

12 Q. To your knowledge was the product of the same
13 formulation from 19- -- from June of 1946 until Hercules
14 began producing it in that year, in 1973?

15 A. Yes.

16 Q. My notes aren't that clear. I believe you did
17 testify that to your knowledge -- or you're fairly
18 certain that Hercules acquired the furnace -- the
19 Hercules brand furnace cement from Johns-Manville, which
20 was the actual producer from before, sometime prior to
21 June of 1946 until Hercules began producing the product
22 itself in 1973. Would that be correct?

23 A. Yes.

24 Q. When Hercules began manufacturing the product
25 in the year 1973 -- first of all, do you remember when in

1 the year 1973 production began?

2 A. No.

3 Q. Which entity was the supplier of the
4 chrysotile asbestos fiber which was a component in the
5 product's formulation?

6 A. Where did we buy it?

7 Q. Yes.

8 A. Johns-Manville in Canada.

9 Q. Would that have been true consistently from
10 the time that Hercules began manufacturing the product at
11 its own plant in 1973 through 1983 when production of it
12 as an asbestos product stopped?

13 A. Yes.

14 Q. Now in other situations involving
15 asbestos-containing products when a changeover was made,
16 I'm referring specifically to S. O. S. Furnace Cement,
17 manufacturing of the product stopped at a particular time
18 and then the -- as an asbestos-containing product, and
19 once the existing inventory of the product containing
20 asbestos was then sold and when that inventory was
21 exhausted then the newly produced product was supplied in
22 its place. Was that what happened with Hercules?

23 A. I'm sorry, I don't -- I don't understand your
24 question.

25 Q. Well, what happened to the Hercules Furnace

1 Cement that contained asbestos as of 1983? Was that when
2 the production changed and all inventory of the
3 asbestos-containing product was sold?

4 A. That is the date when we -- that was the year
5 in which we discontinued making the asbestos bearing
6 material and switched to a nonasbestos formula.

7 Q. And the product that contained asbestos that
8 was on hand in 1983 was then I assume sold and replaced
9 with the new product when the stocks became substituted.
10 Would that be correct?

11 A. Yes.

12 Q. So then is it possible that actually for some
13 time into 1984 Hercules continued to sell
14 asbestos-containing furnace cement while this changeover
15 was taking place?

16 A. Possible.

17 Q. Now with regard to records, let me just get
18 briefly to the Hercules Sta-Put plumber's putty. What
19 was that product, Mr. Fidler?

20 A. As the name indicates, it was a plumber's
21 putty. It was intended for setting toilet boills, sink
22 strainers and all the various types of operations
23 plumbers do with putty.

24 Q. And it's identified in the Interrogatory
25 Answers as having been a greenish base mastic material

1 composed of diatomaceous earth, various oils and
2 approximately three percent asbestos fibers. Would that
3 be correct?

4 A. Yes.

5 Q. Getting back to the year 1983, Mr. Fidler,
6 what was the reason as to why Hercules stopped
7 manufacturing furnace cement with an asbestos
8 formulation?

9 A. It was generally known that asbestos had been
10 responsible for certain illnesses in certain forms. And
11 despite the fact that our product was of such a nature
12 that it was not harmful to the user, we felt that it was
13 appropriate to eliminate asbestos from any of our plant
14 manufacturing to primarily safeguard our own employees
15 who were handling the basic fibers, which were not, of
16 course, in a mastic before we started using it.

17 Q. Did that fiber -- was that fiber shipped from
18 Johns-Manville Canada to Hercules in bags,
19 Mr. Fidler?

20 A. Yes.

21 Q. Fifty-pound or hundred-pound bags?

22 A. I don't know.

23 Q. And was it shipped by motor carrier or
24 railroad car?

25 A. Motor carrier.

1 Q. As of 1983 had Hercules had any notice or
2 indication from its employees or that its employees had
3 contracted any asbestos-related illness arising from
4 their employment at Hercules?

5 A. No.

6 Q. Has it had any such notice either through a
7 Workers' Comp claim or some sort of private settlement of
8 any type from an employee at any time?

9 A. No.

10 Q. Thank you. As of 1983 had any governmental
11 agencies ever inspected the plant at Hercules either in
12 the Bronx, New York if it was being -- if asbestos
13 furnace cement was being made there, and later at
14 Passaic, New Jersey with regard to the fact that Hercules
15 was using asbestos in its products?

16 A. Yes.

17 Q. And when did the first such inspection occur,
18 do you remember?

19 A. I don't know.

20 Q. Do you remember who conducted the inspection?

21 A. I believe there were inspections by federal
22 authorities and also by state agencies.

23 Q. State agencies in New Jersey?

24 A. Yes.

25 Q. Do you remember what agencies they would have

1 been? The Workers' Compensation entity?

2 A. No.

3 Q. It was not the Workers' Compensation entity or
4 you don't remember?

5 A. It was not the Workers' Compensation entity.

6 Q. Do you remember which agencies they were?

7 A. I believe the federal agency was OSHA.

8 Q. Occupational Safety & Health Administration?

9 A. Right.

10 Q. Okay.

11 A. And the New Jersey entity, I don't recall the
12 name, but they were charged with checking the -- we
13 called them in to check out the situation to be
14 absolutely certain that our people were protected.

15 Q. Approximately when did that occur,
16 Mr. Fidler?

17 A. I don't know.

18 Q. It was in the early '80s or late '70s or
19 when?

20 A. I don't know.

21 Q. Do you have any idea?

22 A. No.

23 Q. Did any of your workers complain about the
24 situation to management to your knowledge?

25 A. No.

1 Q. Approximately how many workers were working in
2 the vicinity where the asbestos bags were being
3 incorporated into the asbestos furnace cement and
4 plumber's putty products?

5 A. In the mixing operation --

6 Q. Right.

7 A. -- there was one worker and one supervisor.

8 Q. Could you -- just so that we're clear here,
9 are Hercules Furnace Cement, otherwise known as For
10 Heat's Sake, and the second product, Hercules Sta-Put
11 plumber's putty, are they the only two
12 asbestos-containing products that were manufactured --
13 when I say manufactured I mean in its classic sense.

14 A. Yes.

15 Q. -- by Hercules Chemical Company, Inc. to your
16 knowledge?

17 A. Yes.

18 Q. Were they the only asbestos-containing
19 products that were sold by Hercules Chemical Company?

20 A. To my knowledge, yes.

21 Q. All right. Going back to the mixing
22 operation, Mr. Fidler. Could you describe that operation
23 for me and try to give me a picture for it as these
24 products were being formulated?

25 A. Are you talking about furnace cement?

1 Q. Let's start with furnace cement.

2 A. The -- some of the materials were added to
3 a -- some of the -- I'll try to do it when we come to
4 asbestos. Some of the materials were added to a mixing
5 vat and a slurry was formed. Into this slurry a worker
6 put a pre-measured amount of furnace cement into that
7 mixture.

8 Q. You mean asbestos or furnace cement, sir?

9 A. I'm sorry. The asbestos into that mixture. A
10 cover was then placed on the mixer and that material was
11 mixed and incorporated into the slurry, after which other
12 ingredients were added and the mix continued for the
13 requisite time to make it into the heavy paste product
14 which was furnace cement.

15 Q. That was then put into cans. Is that
16 correct?

17 A. Yes, it was filled into metal cans.

18 Q. In the Interrogatory Answers it is stated that
19 the furnace cement was sold in one-pound and five-pound
20 cans and the same product under the name For Heat's Sake
21 was sold in half gallons, one-gallon and two-gallon
22 cans. Was that true from '73 until 1983 when production
23 of the asbestos-containing products stopped?

24 A. Yes.

25 Q. What about before 1973, was it -- were these

1 products always sold in those size containers?

2 A. The furnace cement was. We didn't have the
3 product For Heat's Sake.

4 Q. Prior to 1973.

5 A. Correct.

6 Q. So the product For Heat's Sake began in
7 production when Hercules began producing -- manufacturing
8 the product itself at its own plant in 1973. Would that
9 be correct?

10 A. I'm sorry, I didn't get your question. Would
11 you repeat it, please?

12 Q. So if I understand you correctly, the
13 For Heat's Sake, which was the same product but was sold
14 in larger containers, namely, half gallon, one-gallon and
15 two-gallon cans, that product began in production and
16 sale in 1973. Correct?

17 A. Yes.

18 Q. And that was produced in those sizes until the
19 product -- or through the time that the product stopped
20 having asbestos in it through 1983.

21 A. Yes.

22 Q. Or in 1983, I'm sorry. That would be
23 correct?

24 A. From 1973.

25 Q. Right. Was Hercules Furnace Cement sold in

1 one- and five-pound cans in June of 1946 to your memory?

2 A. Yes.

3 Q. And was consistently sold in those sizes
4 through 1983 when it stopped having asbestos in it?

5 A. Yes.

6 Q. Going back to the mixing and production
7 process from 1973 through 1983. The asbestos, this
8 pre-measured amount of asbestos, was then put into this
9 slurry which was still in a mixing vat or was it after it
10 had come out of the mixing vat?

11 A. It was in the mixing vat.

12 Q. And the employee who was using the asbestos
13 fiber was putting the pre-measured amount of chrysotile
14 fiber into the mixing vat which was then mixing it up,
15 and then after the asbestos was put in some other
16 ingredients were incorporated into the product.

17 A. Yes.

18 Q. Was there ever a dust collector placed over
19 the mixing vat at the plant?

20 A. Yes.

21 Q. When did that dust collector first become
22 placed over the mixing vat?

23 A. From the day we started manufacturing the
24 product.

25 Q. And that would be in 1973.

1 A. That's correct.

2 Q. But you're not sure when in 1973.

3 A. Nope.

4 Q. Mr. Fidler, I didn't ask you, but what is your
5 educational background?

6 A. I have a bachelor of arts degree from Brown
7 University.

8 Q. And what year did you graduate from Brown, Mr.
9 Fidler?

10 A. 1943.

11 Q. And, I'm sorry, what was the degree in?

12 A. Fine arts.

13 Q. That's interesting.

14 MR. SOULE: Can we just take a short minute
15 here?

16 MR. THOMPSON: Sure.

17 MR. SOULE: Okay. Just take a minute or two.

18 (Recess taken).

19 MR. THOMPSON: We're back on the record.

20 Q. (Mr. Thompson continuing) In the year 1973
21 when Hercules began manufacturing the furnace cement and
22 For Heat's Sake, was the dust collector put into place in
23 order to siphon off -- well, first of all, how close was
24 it to the vat, Mr. Fidler?

25 A. It was actually built into the cover of the

1 mixing vessel so that when the material was mixing with
2 the cover closed no powders of any kind, and there were
3 several different types of powders used, could escape
4 into the atmosphere.

5 Q. It's my understanding from listening to you
6 describe the operation that that cover would have to be
7 taken off to put in the pre-mixed amount of asbestos and
8 whatever other ingredients.

9 A. The cover would have to be opened. I believe
10 it was hinged.

11 Q. In order to do that.

12 A. Yes.

13 Q. Mr. Fidler, when was the first time that you
14 acquired knowledge, you had knowledge yourself that
15 asbestos was potentially a dangerous substance?

16 A. Oh, I assume sometime in the '70s.

17 Q. Do you know what the basis for your learning
18 about it was?

19 A. Well, I do read newspapers, I do read
20 magazines, I do read a few business publications, and
21 that would be the basis for learning about what was going
22 on.

23 Q. So it was -- to your knowledge it was reading
24 some material someplace in the 1970s.

25 A. Yes.

1 Q. Do you remember whether it was the early '70s,
2 the mid '70s or the late '70s?

3 A. No.

4 Q. Had you ever heard of Dr. Irving Selikoff?

5 A. No.

6 Q. Do you know who he is today?

7 A. No.

8 Q. If I told you that he was a noted physician in
9 Mount Sinai Medical Center in New York City, that
10 wouldn't mean anything to you.

11 A. Mount Sinai's a good medical center.

12 Q. I'm sure it is, but I guess my -- back in the
13 1960s, around 1964, there was a meeting of the New York
14 Academy of Sciences during which Dr. Selikoff presented a
15 paper on asbestos, causation of asbestosis and lung
16 cancer. But do you ever remember anything about that
17 event being that you were in New York at the same time
18 and that this was a fairly -- well, I'll just represent
19 to you that there were newspaper stories in the New York
20 Times and other publications on it. Does that refresh
21 your recollection at all?

22 A. Not really. I could have read it and it could
23 have -- it's a long time ago and we are always alert to
24 those things.

25 Q. But you have no specific recollection of

1 reading anything about that today back in the '60s.

2 A. No.

3 Q. It's my understanding that -- from your
4 testimony that Johns-Manville was the exclusive supplier
5 of raw asbestos fiber or chrysotile asbestos fiber that
6 was used in Hercules Furnace Cement from 1973 until
7 1983. Correct? Or through 1983. Right?

8 A. Yes.

9 Q. Did you ever have occasion to see the bags
10 that the Johns-Manville asbestos fiber came in?

11 A. I don't recall.

12 Q. What is the basis for your knowledge that it
13 was Johns-Manville? Is it just -- well, you were the
14 president of the company at the time I guess.

15 A. Yes.

16 Q. Was it your decision to purchase from
17 Johns-Manville the asbestos?

18 A. I undoubtedly okayed the decision to buy from
19 Johns-Manville.

20 Q. Okay.

21 A. Or didn't interfere with the decision.

22 Q. Were you ever aware that Johns-Manville had
23 placed warnings, health warnings, on its bags of raw
24 asbestos fiber during the time that Hercules was
25 manufacturing asbestos furnace cement?

1 A. I don't recall.

2 Q. In other words, -- in other words, you have no
3 present recollection today of ever being aware of that.

4 A. That's correct.

5 Q. Did anyone in the Hercules organization ever
6 communicate to you a concern about health hazards
7 associated with asbestos?

8 A. There were no communications as such from
9 anyone about the health hazards of asbestos.

10 Q. Were any tests ever performed -- you testified
11 earlier I believe that -- I think the words were that
12 your -- you believed that the Hercules Furnace Cement was
13 of such a nature that it was not hazardous to the user.
14 What is the basis for that conclusion? I'm talking about
15 when it contained its asbestos formulation, sir.

16 A. Principally the initial basis is the fact that
17 the asbestos fibers in furnace cement were completely
18 encapsulated, that there was very low percentages of
19 asbestos content in the total product, and that the user
20 did, therefore, have no exposure to the asbestos when the
21 product was used.

22 Q. It's my understanding from reading the
23 Interrogatory Answers that there was never any warning
24 placed on the packaging of asbestos furnace cement or the
25 other product that contained asbestos that was sold by

1 Hercules and manufactured, Hercules plumbing -- or
2 Sta-Put plumber's putty. Would that be correct?

3 A. Yes.

4 Q. And could you tell me, sir, what the reason
5 was as to why no warning was ever placed upon any of the
6 packaging of these materials at any time?

7 A. There was no warning because there was no
8 danger, and there was certainly no requirement by any
9 agency of government at any level to place such a
10 warning.

11 Q. You say there was no requirement to place any
12 such warning on the product. What was your understanding
13 on the state of governmental regulations relating to
14 warnings for products containing asbestos from 1973
15 through 1983?

16 A. There were no Federal Hazardous Substances
17 Labeling Act requirements, there were no Poison
18 Prevention Packaging Act requirements. And that is my
19 understanding about labeling requirements as it relates
20 to hazardous materials, particularly asbestos, for that
21 period of time.

22 Q. And that was the primary reason why the
23 company placed no warnings on the packaging?

24 A. No, I didn't say that.

25 Q. All right.

1 A. I said the primary reason was because there
2 was no hazard.

3 Q. Okay. What tests were performed on those
4 products, if any, to determine if there was any hazard to
5 a user because of the asbestos content of those
6 products?

7 A. I repeat our belief because the product was
8 completely encapsulated, because asbestos was completely
9 encapsulated, and because there was such a small
10 percentage of that material in the product.

11 Q. I infer from your answer then that there were
12 never any such tests, any tests to determine there was
13 any hazard to a user. Correct?

14 A. No.

15 Q. I'm not correct or I am correct?

16 A. You're not.

17 Q. All right. Why am I not correct?

18 A. Because there were some tests performed.

19 Q. All right. What tests were performed, sir?

20 A. Tests were performed by an independent
21 laboratory.

22 Q. When did that occur, sir?

23 A. That occurred -- I believe it was in 1983.

24 Let me check my recollection. Yes.

25 Q. Are you looking at documents, sir, relating to

1 that?

2 A. Yes.

3 Q. Now they weren't produced here today. What
4 documents are you looking at?

5 A. The Case Consulting Laboratories.

6 Q. A report from Case Consulting Laboratories?

7 A. Yes.

8 Q. And that's C-a-s-e --

9 A. Yes.

10 Q. -- Consulting, C-o-n-s-u-l-t-i-n-g, --

11 A. Yes.

12 Q. -- Laboratories?

13 A. Yes.

14 Q. Where are they located? And if you could give
15 us their address, please.

16 A. In New Jersey.

17 Q. Where in New Jersey?

18 A. In Whippany, New Jersey, 622 Route Ten.

19 MR. THOMPSON: Mr. Soule, --

20 Q. (Mr. Thompson continuing) Well, let me ask
21 you this, Mr. Fidler. How many pages is that report?

22 A. Several pages. Not particularly lengthy.

23 Q. I'm sorry, Mr. Fidler, what did you say?

24 A. I said several pages.

25 Q. Six or seven?

1 A. Six.

2 MR. THOMPSON: Mr. Soule, this is in the
3 nature of -- if you want I can specifically reference the
4 part of the Deposition Notice that's applicable, but it
5 is in the nature of 16 and 17 and Production Request No.
6 4 of the Second Amended Notice of Deposition.

7 MR. SOULE: Mr. Fidler is prepared to respond
8 to your category 16 and 17. I don't believe that there
9 was a request for documents that encompassed this
10 document. We're certainly prepared to discuss it with
11 you, and if you ask me for it I will probably give you a
12 copy.

13 Q. (Mr. Thompson continuing) Mr. Fidler, could
14 you read the document for me in its entirety?

15 A. In its entirety?

16 Q. Please. We could have avoided this if I had
17 access to it, but I think I'm just going to ask you to
18 read it. And I will make the request that counsel
19 produce it at some future time, but this will help me
20 understand this and ultimately might save us time, sir.

21 A. Okay. Subject is furnace cement. "In
22 accordance with the --"

23 Q. (Mr. Thompson continuing) You're going to
24 have to read a little slower for the court reporter, and
25 also I'd like you to give me the date of the report.

1 A. Date is August 3rd, 1983. Excuse me just a
2 moment.

3 MR. SOULE: How about if we fax it to the
4 hotel?

5 MR. THOMPSON: That's not a bad idea. Don't
6 hang up or anything. I'll just go find out what the fax
7 number is.

8 (Off the record).

9 MR. THOMPSON: Why don't we talk about other
10 documents for the time being that have been produced.
11 I'm in receipt of Hercules Chemical Company, Inc.'s
12 Response to Second Amended Notice of Deposition, Mr.
13 Soule. I've had it marked as Deposition Exhibit No. 2.

14 MR. SOULE: Okay.

15 Q. (Mr. Thompson continuing) Now in the
16 Deposition Notice we have asked for -- I'm going to the
17 page here -- all sales records showing sales and
18 purchases of asbestos-containing products for use or sale
19 in the state of North Dakota during the years 1955
20 through 1986. That's No. 1 of the document requests made
21 pursuant to Rule 30. It's my understanding from reading
22 the response to the Notice of Deposition that what you're
23 producing today is a -- appears to be a computer run of
24 sales of -- or sales deriving back to -- or into the year
25 1983.

1 A. That's right.

2 Q. Now are these sales --

3 MR. THOMPSON: I've had all of these computer
4 -- or copies of computer runs marked as Deposition
5 Exhibit No. 11.

6 MR. SOULE: Okay.

7 Q. (Mr. Thompson continuing) So looking at
8 Deposition Exhibit No. 11, it begins with Acme Electric
9 Motor in Bismarck, and the last page relates to Western
10 Steel Plumbing -- & Plumbing Supply. Excuse me. So
11 we're looking at the same thing, are we not?

12 A. Yes.

13 MR. SOULE: Yes.

14 Q. (Mr. Thompson continuing) Just let's take as
15 a representative sample the last page, Western Steel &
16 Plumbing Supply. Would that represent -- would that
17 contain reference to all sales of Hercules Furnace Cement
18 and/or For Heat's Sake to Western Steel & Plumbing Supply
19 in back through the year 1983?

20 A. Yes.

21 Q. And do you represent, Mr. Fidler, that the
22 documents produced here today are -- include sales
23 records for the entire year or records of sales in the
24 entire year of 1983?

25 A. Yes. For that product. For those products.

1 To that customer.

2 Q. And so this -- just so I'm understanding what
3 this document represents, this last page relating to
4 Western Steel & Plumbing Supply, all the references on
5 that page are to Hercules Furnace Cement or For Heat's
6 Sake. Correct?

7 A. Yes.

8 Q. And that would be true of all of the other
9 pages to other customers.

10 A. Yes.

11 Q. Now I'm looking at some other documents just
12 for the moment, and I'll make them available to Mr. Lutz,
13 but the only dates relevant for our purposes -- well, how
14 long was it into 1984 that
15 the -- or let me ask you this. How long is it usually
16 from the time that Hercules Furnace Cement is
17 manufactured until the time that it's sold?

18 A. There's no way to tell that.

19 Q. I suppose that varies on market conditions.

20 A. Yes.

21 Q. Is there a range that you can provide me
22 understanding that there are cyclical phases of our
23 economy?

24 A. No.

25 Q. Is there -- can it be as long as a year from

1 the time of production to the time of sale?

2 A. Not likely.

3 Q. What is likely? Six months?

4 A. Usually less.

5 Q. Sometimes more, sometimes less?

6 A. Usually less.

7 Q. Okay. What was the date that Hercules stopped
8 manufacturing asbestos furnace cement?

9 A. It was a date in 1982. I don't have a date in
10 front of me.

11 Q. Are there any documents that would refresh
12 your recollection as to what date it was?

13 A. Possible.

14 MR. THOMPSON: Counsel, we'd ask that there be
15 some effort made to determine that.

16 MR. SOULE: To determine the date?

17 MR. THOMPSON: That manufacturing stopped of
18 the Hercules Furnace Cement.

19 MR. SOULE: Okay. We can try to do that.

20 Q. (Mr. Thompson continuing) Going back to what
21 I've had marked as Deposition Exhibit No. 11 which is --
22 which comprises all of those computer run records, Mr.
23 Fidler. Does this represent total sales amounts of all
24 and quantities of all furnace cement and For Heat's Sake
25 that was sold by Hercules from the beginning of 1983

1 through November of 1990? Or until November of 1990.

2 A. Yes.

3 Q. And because of the form that these documents
4 take I assume that all of this information is and has
5 been in a computer at Hercules.

6 A. Yes.

7 Q. And it is maintained there probably for use in
8 sales and marketing and production control, et cetera?

9 A. Yes.

10 MR. THOMPSON: Mr. Soule, the copy I have is
11 pretty good but it was faxed from Hercules to your office
12 and then I believe Federal Expressed to our office. I
13 would ask that the originals to the extent they exist in
14 your possession be available if we want to compare them
15 to these copies that we have.

16 MR. SOULE: That's fine.

17 Q. (Mr. Thompson continuing) How long does it --
18 did it take to run off these computerized records, Mr.
19 Fidler?

20 A. I don't know how long it took to run them
21 off.

22 Q. If this information is in the computer -- I
23 see that you are able to access it for sales for North
24 Dakota, furnace cement/For Heat's Sake for a period of
25 time covering March '83 through November 1990. I assume

1 that if this request is made to the computer it can spit
2 out these sales fairly readily. Is that correct?

3 A. No, it took some work on the part of our
4 programmer because there hadn't been a program written to
5 retrieve this kind of information before.

6 Q. I see. But you now have such a program. Is
7 that right?

8 A. That's correct. Now we do.

9 Q. Right. And was that program basically put
10 into place to respond to this request?

11 A. Yes.

12 Q. Thank you. And I appreciate the effort. I'm
13 not being sarcastic. I'm serious.

14 MR. THOMPSON: Now with regard to sales --
15 with regard to invoices there is an objection made, Mr.
16 Soule, on the grounds that to retrieve these would be
17 overly burdensome.

18 Q. (Mr. Thompson continuing) Mr. Fidler, why
19 would that be the case?

20 MR. SOULE: Let me add, David, and this is
21 something I had not put in the response, but the computer
22 runs do show each sale and the date of each sale and the
23 amount involved with each sale both by case, number of
24 cases and by dollar amounts. I really think that
25 basically all the information that would be contained on

1 the invoice is set forth on the computer run. And I just
2 might put that on the record.

3 MR. THOMPSON: Okay.

4 Q. (Mr. Thompson continuing) But then I just
5 want to ask Mr. Fidler. Looking at that last page then,
6 Mr. Fidler, that would represent a complete record of all
7 sales, that's Exhibit 11, that last page, page involving
8 Western Steel & Plumbing Supply would represent all sales
9 by Hercules of either furnace cement or For Heat's Sake
10 to Western Steel & Plumbing Supply from March of '83
11 through -- until November of 1990 when this information
12 was retrieved from your computer?

13 A. That is correct.

14 Q. Okay. And indeed the documents that have been
15 produced with regard to the request made for production
16 in connection with this deposition and that I have marked
17 copies of which as Deposition Exhibit No. 11 represent
18 such records of all such sales to all customers in North
19 Dakota during that same time period. Would that be
20 correct?

21 A. I'm sorry, I was -- I was floating somewhere.
22 Please repeat the question.

23 Q. Could -- I'll -- well, could we have it read
24 back? Court reporter's going to read it back.

25 (Question read.)

1 A. Yes.

2 MR. SOULE: I would just add as a matter of
3 clarification on your choice of the term "customers," Mr.
4 Thompson, because Hercules does not sell to retail
5 customers, it sells to wholesalers, so those would be a
6 record of its sales to wholesalers and Hercules would not
7 receive records of sales by the wholesalers to the
8 individual customers.

9 MR. THOMPSON: Thank you for that
10 clarification. That's what I meant in my question but
11 I'm glad you clarified the record.

12 Q. (Mr. Thompson continuing) Now going then to
13 -- I have marked as Deposition Exhibits 3 --

14 MR. THOMPSON: Well, Deposition Exhibit No. 3,
15 Mr. Soule, I have marked a group of documents that has
16 5/74 on the front.

17 MR. SOULE: Are these the catalogs now?

18 MR. THOMPSON: Yeah, I believe they're catalog
19 references, but I'm asking for the record what they are.
20 I've had the sets marked as Deposition Exhibits 3 through
21 10 and they extend from 5 of 1974 until -- well, the year
22 1984 would be the last one, Deposition Exhibit 10. And
23 they are in sequence. I'll just designate them for
24 authentication purposes.

25 Q. (Mr. Thompson continuing) Exhibit 3 has the

1 designation 5/74. Does that mean May 1974?

2 A. Yes.

3 Q. Exhibit 4 just contains the year 1976, the
4 numbers 1976. That would be the year 1976?

5 A. Yes.

6 Q. Deposition Exhibit 5 has the number 1977 on
7 the front, so this would be a catalog for the year 1977?

8 A. Yes.

9 Q. Exhibit 6 bears the numbers 2/79. That would
10 represent February of 1979?

11 A. Two slash what?

12 Q. 79.

13 A. Yes.

14 Q. Exhibit 7 bears the numbers on its cover
15 3/80. That would be March of 1980?

16 A. Yes.

17 Q. Exhibit 8 bears the number 4/81. That would
18 be April 1981?

19 A. Yes.

20 Q. Deposition Exhibit No. 9 bears the number
21 1982. That would represent the year 1982. Correct?

22 A. Yes.

23 Q. Deposition Exhibit 10 bears the number 1984,
24 and that would be a product catalog for the year 1984.

25 A. Yes.

1 Q. And once again because I didn't say it as to
2 each one, I did for some of them, but Deposition Exhibits
3 3 through 10 are complete product catalogs of Hercules
4 during those particular time periods or for those
5 particular times or are they excerpts from Hercules
6 product catalogs?

7 A. This is what we designate as our product
8 catalog and they are complete.

9 Q. All right. That was my question. So each of
10 these documents, 3 through 10, represent complete product
11 catalogs for those respective times as we have referenced
12 this morning, namely, May of 1974 through 1984.

13 A. Yes.

14 Q. With regard to sales and records prior to
15 1983, Mr. Fidler, why do they no longer exist? Or that
16 isn't really what you said in the objection. The
17 objection states, "Hercules no longer has in its
18 possession or subject to its control records of sales to
19 customers in North Dakota prior to 1983." What does that
20 mean?

21 A. It means we don't have the records.

22 Q. Does somebody else have the records?

23 A. No.

24 Q. What happened to those records?

25 A. They're disposed of.

1 Q. Could you describe for me why that is?

2 A. Because we don't have any room or the
3 inclination to keep around a lot of paper which is not
4 useful in carrying out a business.

5 Q. Is there a regular records retention policy at
6 Hercules?

7 A. No.

8 Q. Why is it that Hercules has records only back
9 to March of 1983?

10 A. Well, it may be because of it's -- of the old
11 habit of keeping papers for seven years which came up
12 somewhere along the line. And we hope to eliminate as
13 much of the paper as we possibly can since we are now
14 into the 20th century and have computer records.

15 Q. When -- I do understand that sales invoices do
16 exist going back to -- I'm not saying I'm asking for them
17 at this time, Mr. Soule, but it is my understanding that
18 sales invoices backing up the computerized information
19 that has been provided do exist. Is that correct?
20 Dating back to at least March of 1983.

21 A. I believe so.

22 Q. Now do such sales invoices exist prior to
23 1983? Now I know that it would be a substantial job to
24 get them but I'm just asking you.

25 A. They do not.

1 Q. Why is it that the paper records correspond
2 with the computer records exactly?

3 A. It turns out that they really don't. The
4 computer record happens to reflect the fact that we
5 started this and went back 25 months when we started.
6 And that's the reason we got as far back as '83.
7 Whereas, the paper records do in fact -- there is some
8 indication that there might be some paper records as far
9 back as '83. The computer record by its -- by its
10 peculiarity in setting it up to keep a long range useful
11 record for sales primarily, sales purposes, goes back 25
12 months. And when this was set up there was a 25-month
13 period. It was taken into consideration at the start.
14 And while generally speaking those papers don't exist,
15 you know, we have been able to find some, some of the
16 papers that do go back farther. So there's not a direct
17 correlation.

18 Q. All right. Now what I'm asking is -- well,
19 first of all, with regard to the computer records, it's
20 my understanding that the computerized information that
21 has been provided extends back to March of 1983.
22 Correct?

23 A. Yes.

24 Q. And March of 1983 would have been about 25
25 months prior to the time that --

1 A. Actually it's 25 months prior to the time we
2 started the new computer.

3 Q. Right. So that would have been sometime in
4 May or June of 1985 that these records were placed on
5 computer. Correct?

6 A. Yes.

7 Q. Now you did mention that there are some paper
8 records that extend farther back than March of 1983.
9 Correct?

10 A. No. I said there is some that extend back to
11 March of '85.

12 Q. I'm sorry. And some of them extend back as
13 far as 1983?

14 A. That's my understanding.

15 Q. Were all the paper records kept that were
16 utilized to place the information on the computer?

17 A. I don't know.

18 Q. What was the manner of marketing or the scheme
19 of marketing that was used -- I don't mean to use the
20 term scheme in its bad connotation. I'm talking about
21 the marketing scheme that was used to sell Hercules
22 Furnace Cement and Hercules products generally in the
23 state of North Dakota. Was a manufacturer's rep
24 utilized?

25 A. Yes.

1 Q. Now we took the deposition of Western -- Maury
2 Kamins at Western Steel & Plumbing Supply. Have you ever
3 met Mr. Kamins?

4 A. I believe I have.

5 Q. And where would that have been?

6 A. At a trade show.

7 Q. When was that, do you remember?

8 A. No.

9 Q. Have you ever spoken to Mr. Kamins since that
10 time?

11 A. Not that I recall.

12 Q. Did you ever speak to Mr. Kamins in relation
13 to asbestos litigation?

14 A. No.

15 Q. Now I have Mr. Kamins' deposition here, and I
16 believe he identifies a manufacturer's rep through whom
17 he dealt. I don't have it right at hand. Do you
18 remember who the manufacturer's rep would have been,
19 let's put it this way, from 1973 through 1983? And if
20 there are more than one I guess start in 1983 and work
21 backwards for the manufacturer's rep who would have had
22 access.

23 A. The manufacturer's rep --

24 Q. For North Dakota.

25 A. -- on board at that time and still is is the

1 R. L. Marten, M-a-r-t-e-n, Company.

2 Q. M-a-r-t-i-n?

3 A. M-a-r-t-e-n Company.

4 Q. It's R. L. M-a-r-t-e-n?

5 A. That's right. Company.

6 Q. We cut each other off over the speaker. It's
7 my understanding they're based in the Twin Cities,
8 Minnesota area?

9 A. That's correct.

10 Q. Are they in Minneapolis?

11 A. Yes.

12 Q. Do you have their address?

13 A. I can get it for you.

14 Q. Okay.

15 A. Would you like to have it?

16 Q. Sure.

17 A. Just a minute. Okay. Marten. And it's
18 Marten, M-a-r-t-e-n, & Associates, Inc., at 924 North
19 Fifth Street in Minneapolis. ZIP is 55401.

20 Q. Thank you. Do you know any individual at
21 Marten & Associates, Inc. -- well, first of all, how far
22 back does this relation extend with Hercules?

23 A. It's a long time.

24 Q. Earlier than 1983?

25 A. Oh, yes.

1 Q. How about earlier than 1973?

2 A. Well, you're getting to the border. We had
3 one rep for another 20 or so odd years before and he
4 became ill and passed away.

5 Q. Who's the principal in Marten & Associates
6 with whom you have dealt?

7 A. Well, the principals are -- I guess the
8 principal is Bob Marten. And we've also dealt with his
9 son, Jim.

10 Q. And that relationship would extend back -- the
11 son is now in charge of Marten & Associates?

12 A. Not really. Bob is still I guess nominally in
13 charge.

14 Q. And Bob was in charge dating back to
15 approximately 1973 or thereabouts?

16 A. I believe so.

17 Q. Who was the manufacturer's rep prior to that
18 time who had the North Dakota territory?

19 A. Gentleman by the name of Fred Sweeney.

20 Q. Fred Sweeney?

21 A. Sweeney.

22 Q. And what was his company known as?

23 A. Fred Sweeney.

24 Q. Was he a resident of Minneapolis?

25 A. Yes.

1 Q. Was it Minneapolis proper or some other town
2 around it?

3 A. No, Minneapolis proper in the early days. I
4 guess he moved out to the country as he got older.

5 Q. Do you know what his middle initial was?

6 A. No.

7 Q. Do you know if Mr. Sweeney is still alive?

8 A. He is not.

9 Q. Would he have passed away in the early 1970s?

10 A. No. He would have passed away in the early
11 '80s.

12 Q. Thank you. Does Marten & Associates or has it
13 historically in marketing your products visited accounts
14 such as Western Steel & Plumbing Supply in Bismarck?

15 A. Yes.

16 Q. And how are orders placed? I believe
17 Mr. Kamins stated that they can be placed one of two
18 ways. Either Western Steel & Plumbing Supply can contact
19 Marten & Associates or they can contact Hercules
20 directly.

21 A. Yes.

22 Q. Has that been a practice which has been
23 employed consistently dating back to at least 1973?

24 A. Yes.

25 Q. How about back to 1955?

1 A. Yes.

2 Q. Understanding, of course, that Marten &
3 Associates was not the rep until the early 1970s.

4 A. That's correct.

5 Q. Are there any other sales records other than
6 invoices that might exist which would evidence sales of
7 Hercules Furnace Cement, For Heat's Sake or Sta-Put
8 plumber's putty other than what has been produced today
9 with the exception of the sales invoices to your
10 knowledge, Mr. Fidler?

11 A. Yes.

12 Q. What other documents are there?

13 A. There is a very rudimentary document that I
14 keep myself by hand which shows our monthly and annual
15 sales of this product, furnace cement, by month and year
16 going through -- I guess starting in '49 or so.

17 Q. And you still have this material?

18 A. Yup.

19 MR. SOULE: It is not specifically directed at
20 North Dakota though.

21 A. No, it's not. It's national sales.

22 Q. (Mr. Thompson continuing) Okay. How many
23 pages does it comprise? I'm not going to ask you to fax
24 it today but I think I am --

25 A. Two pages.

1 Q. I'm sorry?

2 A. Two pages.

3 MR. THOMPSON: Well, maybe in the interest of
4 expediency I think I would ask that that be faxed and
5 then make both of these things exhibits in the
6 deposition, Mr. Soule, since it's just two pages.

7 MR. SOULE: Fine. I can tell you that it
8 covers a period from 1949 to 1966. It just shows monthly
9 sales of furnace cement by dollar during those years and
10 it's not broken down into any region or state or anything
11 like that.

12 MR. THOMPSON: I understand that. I just
13 think it might be helpful in looking at least the overall
14 production during those years to the extent that it would
15 be relevant.

16 MR. SOULE: Okay.

17 MR. THOMPSON: Do you want to make those
18 arrangements? We'll just stop for a second.

19 MR. SOULE: Yeah.

20 (Short recess taken).

21 MR. THOMPSON: I'd like to have marked the
22 report from Case Consulting Laboratories dated August 3,
23 1983, and I believe it would be Deposition Exhibit No.
24 12. We'll just have that marked right now.

25

1 (Whereupon, Deposition Exhibit No. 12
2 was marked for identification by the
Court Reporter.)

3 Q. (Mr. Thompson continuing) Okay.

4 Mr. Fidler, I'm looking at that report and I've had it
5 marked as Deposition Exhibit No. 12. And as I understand
6 it, in looking at it it's a six-page document with an
7 Exhibit I --

8 A. I have to get my copy back. I haven't gotten
9 it yet.

10 Q. Okay. Well, then we'll wait a minute.

11 A. Just a minute.

12 Yup, go ahead.

13 Q. All right. Now could you tell me what the
14 circumstances were for requesting -- the company
15 requesting, and when I say "the company" I mean Hercules,
16 requesting that this testing be conducted? I see that a
17 Mr. N. George Tucker is listed as an addressee on this
18 report. Could you tell me what the circumstances were
19 which predicated Mr. --

20 MR. THOMPSON: Mr. Soule said to go ahead.

21 MR. LUTZ: Great.

22 Q. (Mr. Thompson continuing) What the
23 circumstances were that predicated this request for this
24 testing in August of 1983?

25 A. Well, it was intended for us simply to be sure

1 that all bases were touched, that we knew all the things
2 that we had in some cases assumed and based on reasonable
3 assumptions but wanted to have that information
4 solidified by formal testing procedures.

5 Q. And it's my understanding that the methodology
6 -- well, first of all, Mr. Tucker is listed as an expert
7 witness in these cases for Hercules. It's my
8 understanding that he is -- has an engineering
9 background. Would that be correct?

10 A. Yes.

11 Q. And as of 1983 he was vice president for
12 manufacturing.

13 A. That's correct.

14 Q. And that he occupied that position until I
15 believe 1988, would it be?

16 A. Yes.

17 Q. But he is still associated with the company.
18 Is that right?

19 A. No.

20 Q. He's not associated with the company in any
21 capacity?

22 A. No.

23 Q. That would be correct?

24 MR. SOULE: It is correct, he is not
25 associated with the company.

1 Q. (Mr. Thompson continuing) Okay. That is
2 correct, Mr. Fidler, since --

3 A. I didn't understand the question. Yes, that
4 is correct.

5 Q. To your knowledge where does Mr. Tucker reside
6 today?

7 A. In New Jersey in I believe it's Montvale.

8 Q. You said Montvale, M-o-n-t-v-a-l-e?

9 A. I don't have his address right at hand.

10 Q. And that's the town in Morris County?

11 A. I don't know.

12 Q. Okay. Is it Mr. Tucker that made the request
13 on behalf of Hercules that this testing be done in 1983?

14 A. Yes.

15 Q. Now I've been looking at this document.
16 Looking at the fifth page of it --

17 A. Fifth page?

18 Q. The last page of the letter.

19 A. Yes.

20 Q. I'm not talking about the exhibit now.

21 MR. SOULE: Page 4 it says.

22 MR. THOMPSON: I'm sorry, I don't have it on
23 mine.

24 THE WITNESS: Page 5.

25 MR. SOULE: On the top left does it say page

1 4?

2 MR. THOMPSON: It does say page 4, I'm sorry.

3 All right.

4 Q. (Mr. Thompson continuing) Looking at the last
5 paragraph, and I'm going to read it, it says, "From a
6 practical standpoint, it would seem, based on this data,
7 that no realistic hazard exists. The most probable
8 possibility could arise from sanding the cured cement or
9 vigorous scraping of cement deposits on tools."

10 Now I'm going to stop there. When it says
11 "the most probable possibility," does that mean to your
12 understanding or did it mean the most probable
13 possibility of a possible hazard arising from sanding the
14 cured cement or vigorous scraping of cement deposits on
15 tools?

16 A. The most probable, it means to me that the
17 most probable possibility of any realistic hazard.

18 Q. Okay. Was it as a result of receiving this
19 report that a decision was made that rather than place --
20 the next sentence, rather -- I'm sorry -- says, "As a
21 precaution, it may be useful to advise that tools be
22 cleaned before the residue dries and that no sanding --
23 or no sanding, rather, of the dried or cured material be
24 done without proper particulate mask protection." Do you
25 see that sentence, Mr. Fidler?

1 A. Yes.

2 Q. With regard to that sentence, was a decision
3 made at Hercules that rather than place a warning on the
4 can to that effect that it would be wiser simply to
5 produce the product with a nonasbestos formulation?

6 A. No.

7 Q. I am correct in my conclusion from your
8 testimony that no warning concerning asbestos health
9 hazards ever did appear on either Hercules Furnace Cement
10 or Hercules For Heat's Sake. Correct?

11 A. Correct.

12 Q. Have you discussed asbestos litigation with
13 Case Consulting Laboratories, Inc., Mr. Fidler?

14 A. No.

15 Q. When did you first become aware that asbestos
16 personal injury litigation was occurring?

17 A. I don't recall the starting date.

18 Q. I'm asking for your best approximation today
19 based on your present recollection.

20 A. I'm sorry, I don't recall. It's a matter of
21 record, we have it in our papers somewhere, but I don't
22 recall it. It's a date I'd rather forget.

23 Q. What papers are those, Mr. Fidler?

24 A. Papers informing us of asbestos litigation.

25 Q. Oh, no, I'm not referring to your case in

1 which Hercules was named as a party, sir. I'm talking
2 about generally the fact that people claim that they'd
3 been injured by asbestos products.

4 A. A lot of years.

5 Q. '70s?

6 A. Yes.

7 Q. Early '70s?

8 A. Yes.

9 Q. Okay. What was the basis for that knowledge,
10 Mr. Fidler?

11 A. As indicated previously, reading newspapers,
12 magazines, journals.

13 Q. What, about the late 1960s?

14 A. I think I answered.

15 Q. Okay. Early 1970s then, sir, correct?

16 A. Yes.

17 Q. Did you ever circulate any memos or were any
18 memos to your knowledge ever circulated in the company
19 addressing asbestos personal injury litigation? I'm not
20 talking about -- let's say prior to 1985. And I'm not
21 talking about letters to your attorneys; I'm talking
22 about within the company.

23 A. We're a small company and matters that we
24 consider important we usually talk about. We don't
25 circulate memos generally speaking.

1 Q. So the answer would be you're not aware of any
2 such memos that exist?

3 A. That's correct.

4 Q. Or that ever have existed?

5 A. That's correct.

6 Q. Is the testing that's reflected in the report
7 dated August 3, 1983 or the Deposition Exhibit No. 12 as
8 marked today the only test that was ever performed or
9 only testing that was ever performed of any Hercules
10 asbestos-containing products concerning possible hazards
11 of asbestos in those products?

12 A. Yes.

13 Q. Was any similar testing ever performed with
14 regard to the Sta-Put plumber's putty, sir?

15 A. No.

16 Q. And from the Interrogatory Answers, sir, it's
17 my understanding that that product was discontinued in
18 its asbestos formulation in November of 1986.

19 A. Yes.

20 Q. And what was the reasons for -- just strike
21 that. In Hercules Chemical Company's disclosure of
22 experts N. George Tucker is listed as of Tucker
23 Associates, Inc. in River Vale, New Jersey. That's the
24 same N. George Tucker who was a vice president of
25 manufacturing for Hercules for a number of years?

1 A. Yes.

2 Q. When did he first become associated with the
3 company?

4 A. Approximately 20 years ago.

5 Q. All right. I'm now looking at his resume. It
6 says that from 1960 to 1967 Mr. Tucker operated
7 Goodman-Tucker Associates in New York as a management
8 consulting firm, stating that Hercules Chemical Company
9 was a client of that company for a year and a half before
10 Mr. Tucker joined Hercules. And it states that he, Mr.
11 Tucker, joined Hercules on January 1, 1968 and left the
12 company on December 31, 1988. Would that be correct?

13 A. Yes. That's about 20 years.

14 Q. And looking at the -- at my notes, it was not
15 the Tucker Associates, Inc. but rather Foster D. Snell
16 which formulated the formulation for asbestos furnace
17 cement as used in -- when Hercules began producing,
18 manufacturing the product itself in 1973. Correct?

19 A. Yes.

20 Q. Now we've just been handed what I'm going to
21 have marked as Deposition Exhibit No. 13, and that's
22 going to be the handwritten notes, notations that you
23 described, Mr. Fidler.

24

25

1 (Whereupon, Deposition Exhibit No. 13
2 was marked for identification by the
Court Reporter.)

3 Q. (Mr. Thompson continuing) All right. I'm
4 looking at Deposition Exhibit No. 13, and it appears to
5 be a table or two pages of a table extending from 1949
6 through 1966. Do you see what I'm talking about?

7 A. Yes, sir.

8 Q. And could you describe when you began
9 preparing this document or how it is -- how it was
10 developed?

11 A. Obviously it's one of our very rudimentary
12 sales records which started back in 1949 where I was able
13 to take a look and see how much of a certain product we
14 sold across the country on any given month.

15 Q. What do these numbers represent, sir?

16 A. Those are dollar sales of the product by
17 month, by year.

18 Q. All right. Let's just take, for example, the
19 year of my birth, 1953.

20 A. All right.

21 Q. Looking to the month of my birth, July. It
22 says 168.

23 A. Right.

24 Q. Does that mean \$168?

25 A. That's exactly what it means.

1 Q. Looking at the year 1965. For July of that
2 year it's \$909. Correct?

3 A. 1965.

4 Q. July.

5 A. July? Yes, \$909 is correct. That's national
6 sales.

7 Q. Of the product.

8 A. Of the product for that month.

9 Q. Okay. Where did you go to obtain these
10 numbers, Mr. Fidler?

11 A. I presume I obtained them from invoices,
12 invoice copies.

13 Q. Okay. And you prepared this document when?
14 I'm talking about the document that I've had marked as
15 Deposition Exhibit 13 which is two pages.

16 A. Oh, that document was prepared many years
17 ago. I didn't even know I had it.

18 Q. Would it have been prepared in the year 1966?

19 A. Well, it would have been prepared -- it would
20 have been perhaps consolidated in 1966, but the
21 information was going over the years and it's strictly --
22 strictly factual and a very rudimentary kind of sales
23 recordkeeping.

24 Q. I understand. It seems to extend from January
25 of 1949 through February of 1966.

1 A. There's a few holes.

2 Q. I see the holes. The holes would noticeably
3 be the year 1954 with the exception of two months, August
4 and September of that year.

5 A. Right.

6 Q. That would be right?

7 A. Yes.

8 Q. And the entire year of 1955.

9 A. Right.

10 Q. What is the reason for these holes, sir?

11 A. I don't know. I got lazy I guess.

12 Q. Okay. And was there any reason why it stopped
13 in February of 1966?

14 A. Well, we were developing a little more
15 sophisticated operation and ways of maintaining sales
16 information and obviously it was no longer a useful
17 tool.

18 Q. In 1968 -- or '66, rather, how did -- what
19 kinds of sales records were maintained at that time that
20 were more up-to-date and efficient for sales purposes?

21 A. I can't -- I can't tell you offhand. I don't
22 recall exactly what the changes were or when exactly the
23 changes may have been made. But it doesn't look anything
24 like our sales records look today.

25 Q. Do consolidated sales records relating to

1 Hercules Furnace Cement exist from like March of 1966
2 where Exhibit 13 leaves off until 1983?

3 A. No.

4 Q. I presume --

5 A. You mean the product by year or by month?

6 Q. By month, --

7 A. Nationally.

8 Q. -- right. The same type of information.

9 A. Yeah. I don't know that they exist, no.

10 Q. Was one reason why Hercules stopped
11 manufacturing asbestos furnace cement because there was a
12 potential hazard as recorded on the last page in the last
13 paragraph of Exhibit 12, the letter dated August 3,
14 1983?

15 A. No.

16 Q. Thank you.

17 MR. THOMPSON: Mr. Soule, do you have a copy
18 of the Deposition Notice in front of you?

19 MR. SOULE: Yes, I do.

20 MR. THOMPSON: Okay. If you could make it
21 available to Mr. Fidler. I don't know how you guys are
22 situated there.

23 MR. SOULE: I think he has a copy too.

24 Q. (Mr. Thompson continuing) Mr. Fidler, do you
25 have a copy?

1 A. Please tell me what you're referring to.

2 Q. I'm going to go through it. I just want to do
3 it kind of like a checklist. We're almost done here, and
4 I want to make sure that we've covered the waterfront.

5 A. Go ahead.

6 Q. With regard to No. 1, the chemical composition
7 including asbestos classification and type, can you tell
8 me what -- this is on page 1 of Deposition Exhibit 1
9 which is the Second Amended Notice of Deposition.

10 MR. SOULE: Do you have that, Jay?

11 A. I have the -- I have -- was it --

12 Q. (Mr. Thompson continuing) Just No. 1 on the
13 Notice page.

14 A. Yes.

15 Q. Okay. The request is concerning the name,
16 chemical composition including asbestos fiber
17 classification and type, et cetera.

18 A. Yeah, I thought that was already covered.

19 Q. Yeah.

20 A. And that was going to be provided under
21 certain circumstances to you.

22 Q. That's correct. And that was fine. And I was
23 going to say that myself. The question I wanted to ask
24 was do you know what classification of asbestos fiber was
25 used?

1 A. I understand it was chrysotile.

2 Q. Right. That's the fiber type. But it had
3 many different grades.

4 A. No.

5 Q. Like --

6 A. That should be on the formula information.

7 Q. Now with regard to records of raw fiber
8 purchases from Johns-Manville, do any such records exist?

9 A. No.

10 Q. Did Johns-Manville -- just a minute. We're
11 taking a break for the court reporter here.

12 (Short recess taken).

13 Q. (Mr. Thompson continuing) Okay.

14 Mr. Fidler, did Johns-Manville ever communicate with
15 Hercules Chemical Company, Inc. during the time that it
16 was the supplier of asbestos fiber for use in Hercules
17 products with regard to hazards of asbestos?

18 A. I don't know.

19 Q. If there was any such correspondence to that
20 effect would it still exist?

21 A. Unlikely.

22 MR. THOMPSON: Mr. Soule, I'd just ask that
23 Mr. Fidler make an effort to at least attempt to locate
24 any such information and if it -- to the extent it exists
25 I would ask that it be provided through you in a timely

1 manner.

2 MR. SOULE: Okay.

3 Q. (Mr. Thompson continuing) Have we pretty well
4 -- with the exception of the formula which we've
5 discussed, Mr. Fidler, have we pretty well discussed the
6 intended purpose and use of the two asbestos-containing
7 products that were manufactured by Hercules beginning in
8 the year 1973?

9 A. Yes.

10 Q. And sold by Hercules at least back to June of
11 '46.

12 A. Yes.

13 Q. Going to No. 3. Have we pretty well discussed
14 the sale of asbestos-containing products, those that
15 we've discussed, to sellers, distributors, contractors or
16 job sites in the state of North Dakota? And I do
17 understand from your counsel's remarks that Hercules
18 marketed through wholesalers. So we've pretty well
19 covered that subject, have we?

20 A. Yes, we have.

21 Q. The same would be true of No. 4 with regard to
22 the identities of manufacturers of asbestos-containing
23 products purchased by Hercules for use or resale?

24 A. Yes.

25 Q. And we've talked about No. 5, the identities

1 of the providers of raw asbestos fiber or asbestos
2 components for any products used, sold or manufactured by
3 Hercules. That would be correct?

4 A. Yes.

5 Q. No. 6 as well concerning records evidencing
6 those sales of product from Hercules in North
7 Dakota we've covered as well?

8 A. Yup.

9 Q. 7 as well? Understanding that there
10 may --

11 A. Existence and content of invoices?

12 Q. Well, I understand that you have some invoices
13 dating back perhaps as far as 1983, but I'm not asking
14 that you produce them at this time. I'm just saying we
15 have covered that, correct?

16 A. Yes.

17 Q. The same with regard to purchase orders, No.
18 8?

19 A. We touched base on it, yes.

20 Q. Is there any more information or any other
21 documents regarding 7 and 8 that we haven't discussed?

22 A. No.

23 Q. And we've talked about the records compilation
24 and retention policies, No. 9?

25 A. Yes.

1 Q. No. 10, covered as well?

2 A. Yes.

3 Q. Now with regard to No. 11, I'm asking the
4 names and addresses -- I'm not going to ask the
5 addresses, but the clerical employees with duties
6 involving the processing of sales. I think we'll forgo
7 that today in light of the information that has been
8 produced.

9 A. Thank you.

10 Q. And the same with regard to No. 12.

11 A. All right.

12 Q. Are there any other -- going down to No. 14.
13 Are there any communications that you're aware of that
14 exist or that existed as of the commencement of this
15 lawsuit, these lawsuits, relating to communications
16 between Hercules and manufacturers, other sellers and
17 distributors of asbestos products concerning health
18 hazards concerning asbestos?

19 A. No.

20 Q. Now do you know Mr. Prior who operates S.O.S.
21 Products Company, Inc.?

22 A. Yup.

23 Q. Would it be fair to say that S. O. S. is a
24 competitor of your company?

25 A. I guess so.

1 Q. Your company, as I understand it, is
2 substantially larger though.

3 A. I beg your pardon?

4 Q. Your company I believe is substantially larger
5 based on at least the number of employees that you
6 presently have in comparison with the number of employees
7 he has.

8 A. Yes, we think so.

9 Q. Well, I'm talking like a hundred as compared
10 to about ten.

11 A. Yeah.

12 Q. Have you ever seen his operation?

13 A. Yes. I haven't seen his operation. I've seen
14 his building.

15 Q. Okay.

16 A. Since he moved from Brooklyn.

17 Q. Right. Has Hercules ever manufactured furnace
18 cement for some other entity where you've rebranded it
19 for anybody else?

20 A. No.

21 Q. So all Hercules Furnace Cement, all Hercules
22 For Heat's Sake, all Hercules Sta-Put plumber's putty
23 manufactured by Hercules from 1973 through 1983 was sold
24 under the Hercules label?

25 A. Yes.

1 Q. Are you familiar with the Rutland furnace
2 cement product line? Or that did exist at one time?

3 A. I'm somewhat familiar with it, yes. It's
4 ancient history.

5 Q. Yeah, I think they stopped making it in the
6 early or mid, late 1970s.

7 A. Yeah.

8 Q. Is it fair to say that S. O. S. Products
9 Company, Inc. is your primary competitor in the
10 field -- well, I'll confine it for time. Up through 1983
11 was S. O. S. Products Company, Inc. your primary
12 competitor in the market for Hercules Furnace Cement?
13 And I'm including in that For Heat's Sake.

14 A. I would say so.

15 Q. And it seems like they're a distant second.
16 Is that correct?

17 A. In that market?

18 Q. I'm just confining it to that particular
19 market for that product.

20 A. Not at all.

21 Q. Okay. Explain that answer if you could.

22 A. Okay. The answer was that these --
23 S. O. S. to our knowledge had always sold substantially
24 more furnace cement and refractory products than we had.
25 Their line and their distribution to heating wholesalers

1 in the oil burner industry and the fact that they
2 manufactured a sectional combustion chamber for
3 installation by contractors put the emphasis on this type
4 of product. We were way in the rear when
5 I came into the business. We were smaller than
6 S. O. S. altogether.

7 Q. I'm confining it to now furnace cement or For
8 Heat's Sake later on.

9 A. That's correct.

10 Q. All right. What about for Sta-Put plumber's
11 putty? They make a similar -- or they made a similar
12 product?

13 A. No contest.

14 Q. No contest who? You guys beat them quite a
15 bit over the years?

16 A. Yes.

17 Q. Okay. So I'm clear, your voice was breaking
18 up a little bit in your answer on the furnace cement,
19 that you believe S. O. S. was from the time you came to
20 the company in 1946 -- first of all, you were both based
21 in New York City at that time?

22 A. They were based in Brooklyn, yes.

23 Q. They were based in Brooklyn and you were based
24 in downtown Manhattan.

25 A. That's correct.

1 Q. And at that time S. O. S. was producing more
2 or selling more asbestos furnace cement than Hercules
3 was.

4 A. By far.

5 Q. You said --

6 A. By far.

7 Q. Okay. And then could you estimate what
8 percentage you folks sold in comparison with what they
9 sold?

10 A. On furnace cement?

11 Q. Right.

12 A. I can't estimate that.

13 Q. Okay. Except that they were larger than you.

14 A. Yes.

15 Q. Where did Rutland stand in the market?

16 A. When they were operational --

17 Q. Right.

18 A. -- they were very active, sold a fair amount
19 of material and sold a lot as I recall to the consumer
20 trades.

21 Q. Now what do you mean, sold a lot to the
22 consumer trades?

23 A. Through hardware stores, other wholesalers.

24 Q. Now Hercules also sold through its
25 manufacturer reps to hardware wholesalers too. Correct?

1 A. Right.

2 Q. And when I talked about Rutland I was
3 referring to furnace cement only. That was your
4 understanding?

5 A. That's what I'm referring to.

6 Q. Okay. Now I'm also aware of a product known
7 as Laclede Furnace Cement. Are you aware that?

8 A. No.

9 Q. Is it fair to say that the major three
10 producers from -- of asbestos furnace cement, the product
11 we've been talking about, from 1946 when you came to
12 Hercules through 1983 -- or let's put it this way --
13 through the late '70s were S. O. S., yourselves and
14 Rutland?

15 A. No.

16 Q. Okay. Who else was involved?

17 A. A company in Philadelphia by the name of
18 Pecora.

19 Q. Pecora?

20 A. P-e-c-o-r-a. I believe they're out of
21 business now.

22 Q. Okay. Did JM also make a product like this?

23 A. Johns-Manville? Yes.

24 Q. Did Johns-Manville continue to make asbestos
25 furnace cement after Hercules began manufacturing the

1 product itself in 1973?

2 A. I don't know.

3 Q. All right. I'm going to list these off now.

4 Johns-Manville, Pecora, Hercules, Rutland,

5 S. O. S. Does that pretty well cover the furnace cement
6 market as far as you're aware of it? And you were --

7 first of all, your background is in sales, correct?

8 A. Yes.

9 Q. So I assume you had some knowledge of the
10 competition.

11 A. Yes.

12 Q. Naming it again, Johns-Manville, Pecora,
13 Hercules, S.O.S., Rutland, have we pretty -- and
14 Johns-Manville, have we pretty well covered it, the
15 market?

16 A. If you are calling these the leading
17 manufacturers --

18 Q. Of asbestos furnace cement.

19 A. -- I would be hardpressed to include us in
20 that figure. You have some sales information which
21 should give you a very clear clue of the fact that we
22 were very minor players in the entire furnace cement
23 industry.

24 Q. Okay.

25 A. And there are other companies, too many to

1 mention at this point.

2 Q. Well, have we covered pretty much those
3 companies that are involved -- that were involved in
4 production of furnace cement in those years?

5 A. As I said, there are others.

6 Q. Okay. Which others can you tell me about?

7 A. I can tell you there was Utility manufacturing
8 company.

9 Q. Utility?

10 A. Yeah. It was called Utility Laboratories.

11 Q. Did they market a product under their own
12 name?

13 A. Yes.

14 Q. What was the product trade name? Furnace
15 Cement?

16 A. Utility.

17 Q. It was called Utility Furnace Cement?

18 A. Yes.

19 Q. Do you know where they were based?

20 A. Brooklyn at that time. They're now on Long
21 Island.

22 Q. And they're still in business?

23 A. Yes.

24 Q. Any others?

25 A. Wonder-King Manufacturing.

1 Q. Is that hyphenated?

2 A. Yes. Wonder, hyphen, King.

3 Q. And they made an asbestos furnace cement?

4 A. Yes.

5 Q. And are they still in business?

6 A. They are part of Utility now.

7 Q. Where were they based?

8 A. I believe in Westchester County. I'm not
9 sure. Or the Bronx. One of the two.

10 Q. Okay. Atlas?

11 A. Atlas I've heard of.

12 Q. You're familiar with an Atlas furnace cement
13 and stove cement?

14 A. Yes.

15 Q. Where did they stand in the market?

16 A. I don't know.

17 Q. If you had to rank these based on your --
18 well, let's go -- who would be the largest in the furnace
19 cement field?

20 A. I don't know.

21 Q. Would S. O. S. likely be close to the largest?

22 A. Yes.

23 Q. What about Johns-Manville?

24 A. Probably number one.

25 Q. So perhaps S. O. S., generally number two?

1 A. Yes, in the smaller containers.

2 Johns-Manville didn't sell to my knowledge in the small
3 sizes.

4 Q. Johns-Manville sold furnace cement in larger
5 containers.

6 A. That's correct.

7 Q. Where does Grant Wilson fit in on furnace
8 cement?

9 A. They fit in.

10 Q. What?

11 A. They fit in.

12 Q. Would they be after S. O. S.?

13 A. I don't know.

14 Q. Are you familiar with any asbestos furnace
15 cement manufactured by an outfit in Chicago called Sure
16 Seal Products Company, Inc.?

17 A. Yes.

18 Q. What was their trade name?

19 A. Sure Seal was the trade name. The company is
20 Lichten, L-i-c-h-t-e-n. They're out of business.

21 Q. And they were based in Chicago.

22 A. Yes.

23 Q. Did anyone take over their operation?

24 A. They may have been partly taken over by Black
25 Swan, which is another chemical manufacturer in Chicago.

1 Q. Did they buy their assets or did they merge
2 with them or you don't know?

3 A. I do not know.

4 Q. Okay. Where did Atlas fit in?

5 A. I don't know.

6 Q. But they fit in.

7 A. Yes. It should also be noted --

8 Q. Go ahead.

9 A. -- that there was a lot of people making
10 material for use as furnace cement that had to be mixed
11 with water and that was a friable powdery material.

12 Q. Now I've been talking about just pre-mixed
13 products.

14 A. That's exactly right. And that's why I
15 mentioned a nonpre-mixed product.

16 Q. Okay. But the manufacturers we've been
17 talking about were pre-mixed product?

18 A. They were pre-mixed product.

19 Q. All right. It's my understanding that there
20 was also a product that was intended for use as furnace
21 cement which was a -- which came in a powdery form that
22 was mixed with water to be used in its application.

23 A. Yes.

24 Q. And was this product also -- could it be used
25 in essentially the same applications as the pre-mixed

1 products?

2 A. Yes.

3 Q. Do you know any people that manufactured that
4 product?

5 A. I don't have -- I can't tell you them by
6 name. I don't know.

7 Q. But you know that they did exist?

8 A. Absolutely.

9 Q. Was that product known as a furnace cement or
10 --

11 A. Yes.

12 Q. Was it a refractory cement and a furnace
13 cement or --

14 A. Yes.

15 Q. Was A. P. Green a manufacturer of that
16 product?

17 A. I don't recall.

18 Q. What about Refractory & Insulation
19 Corporation?

20 A. I don't know.

21 Q. Ever heard of R & I?

22 A. Armite? A-r-m as in Mary --

23 Q. No, the letter R, ampersand, and then I.

24 A. I don't know that name.

25 Q. Okay. Did you ever buy any raw asbestos fiber

1 for use in your products from Empire Ace in Brooklyn?

2 A. No.

3 Q. Do you know the folks at Empire Ace?

4 A. No.

5 Q. Okay. Moving on to the Deposition Notice
6 again. We really are just about done here. We've talked
7 at -- 16 and 17, I'll talk about them together. Again,
8 the only study concerning asbestos fiber or only tests
9 concerning asbestos fiber at least for any Hercules
10 Chemical Company product, whether manufactured or sold by
11 Hercules, was this test that's reflected in the report of
12 August 3, 1983 that we've had marked today as Exhibit
13 12.

14 A. Yes.

15 MR. THOMPSON: Mr. Soule, if I can have a
16 couple of minutes, a minute here just to look through my
17 notes.

18 MR. SOULE: Sure.

19 Q. (Mr. Thompson continuing) One more question.
20 When Johns-Manville was the producer of the Hercules
21 brand asbestos furnace cement prior to 1973, Mr. Fidler,
22 did Hercules -- did Johns-Manville ever advise Hercules
23 to put a warning on the product?

24 A. No.

25 Q. Did Johns-Manville physically put the furnace

1 cement product into the can, the Hercules marked cans, at
2 a Johns-Manville factory?

3 A. No.

4 Q. Could you describe the process that
5 Johns-Manville went through then? In other words, I
6 guess I'd assumed that and I'd like to get that clear.
7 Did Johns-Manville --

8 A. Johns-Manville shipped us finished material in
9 drums.

10 Q. Okay.

11 A. We emptied the drums into our extruding
12 equipment and put the furnace cement into our own cans at
13 our own plant.

14 Q. Okay. When -- was that the practice from the
15 time that you arrived at Hercules in 1946 until Hercules
16 began manufacturing the product itself in 1973?

17 A. Yes.

18 Q. To your knowledge was there ever any warning
19 concerning asbestos fiber dangers on the drums that
20 Johns-Manville shipped?

21 A. No.

22 Q. And it's my understanding that the product
23 that was shipped in the drums was -- when you say put
24 into your extruding equipment, what do you mean by that?

25 A. Well, we had some rudimentary machines that

1 would turn a screw or whatever, and it was very heavy
2 material. Sometimes in the larger containers it may have
3 been troweled into the cans.

4 Q. And perhaps more rudimentary the earlier the
5 time period.

6 A. Yes.

7 MR. THOMPSON: Mr. Fidler, I appreciate your
8 time today. Your counsel will advise you of your rights
9 to read and sign. And I thank you for your time, sir.

10 THE WITNESS: Yes, sir.

11 MR. SOULE: Thank you for your courtesies. We
12 will read and sign.

13 MR. THOMPSON: Very good. We're off the
14 record.

15 (Whereupon, the deposition of JAY W.
16 FIDLER concluded at 11:05 a.m.)
17
18
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24
25

1 STATE OF NORTH DAKOTA)
2 COUNTY OF CASS)
3

4 CERTIFICATE OF DEPONENT

5 I hereby certify that I have read and examined
6 the foregoing transcript, and the same is a true and
7 correct record of the testimony given by me, with
8 corrections, if any, as noted on the attached sheet or
9 sheets.
10 DATE:

11 JAY W. FIDLER - Witness

12 CERTIFICATE OF REPORTER

13 Be it known that I took the telephonic
14 deposition of JAY W. FIDLER on the 9th of November, 1990
15 at the Radisson Hotel, Fargo, North Dakota;

16 That I was then and there a Notary Public in
17 and for the County of Cass and State of North Dakota; and
18 that by virtue thereof I was duly authorized to
19 administer an oath;

20 That the witness before testifying was by me
21 first duly sworn to testify the whole truth and nothing
22 but the truth relative to said cause;

23 That the testimony of said witness was recorded
24 in Stenograph by myself and was thereafter reduced to
25 typewritten form by computer-aided transcription under my
direction; and that the deposition is a true record of
the testimony given by the witness;

That I am not related to any of the parties
hereto, nor interested in the outcome of this action;

That the said deposition, having been
transcribed, was subsequently made available to said
deponent by me, Paula D. Weber, for purposes of reading
and signing.

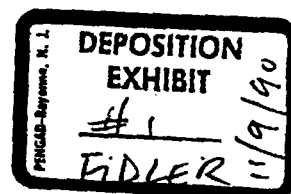
WITNESS my hand this 3rd day of December, 1990.

Paula D. Weber
Paula D. Weber, RPR
Notary Public

Cass County, North Dakota

My Commission Expires June 15, 1992.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION



In Re: North Dakota Personal
Injury Asbestos Litigation No. 1

SECOND AMENDED
NOTICE OF DEPOSITION

TO: Hercules Chemical Company, Inc., and its Attorney,
George W. Soule, BOWMAN & BROOKE, 801 Nicollet Mall,
Suite 600, Midwest Plaza West, Minneapolis, MN 55402

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure the Plaintiffs in the above-entitled action will take the depositions of the person or persons designated by Hercules Chemical Company, Inc., on November 9, 1990, beginning at 9:00 a.m. and continuing from day to day until completed at the Radisson, in Fargo, North Dakota. You are notified that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the plaintiff wishes to examine those witnesses designated to testify with respect to the following matters:

1. The name, chemical composition including asbestos fiber classification and type, and formula (pursuant to the Magistrate's Order in Adams Public School District v. Carey Canada, Inc. et. al. Civil No. A3-88-89, attached as Appendix #1), intended purpose and use and dates of manufacture and distribution for all asbestos-containing products manufactured by deponent. Including: Hercules Furnace Cement, For Heat's Sake, and Sta-Put plumbers putty;

2. The chemical composition including asbestos classification and fiber type, and formula (pursuant to the

Magistrates Order in Adams Public School District v. Carey Canada, Inc. et. al., Civil No. A3-88-89, attached as Appendix #1), intended purpose and use and dates of manufacture and sale for Hercules Chemical Company asbestos-containing products including: Hercules Furnace Cement, For Heat's Sake, and Sta-Put plumbers putty.

3. The sale by deponent of asbestos containing products to sellers, distributors, contractors, and/or jobsites in the State of North Dakota or otherwise for use in the State of North Dakota from 1955 through 1986;

4. The identities of the manufacturers of asbestos containing purchased by deponent for use and/or resale from the years 1955 through 1986;

5. The identities of the providers of raw asbestos fiber and/or asbestos containing components for any product used, sold or manufactured by the deponent during the years 1955 through 1986

6. The existence and content of Hercules Chemical Company's records and documents evidencing the sale of asbestos-containing products for use/or resale in North Dakota during the period from 1955 through 1986;

7. The existence and content of invoices showing the sale of asbestos-containing products for use/or resale in North Dakota from 1955 through 1986;

8. The existence and content of purchase orders showing the dates, quantities and identification of asbestos-containing products for use/or resale in North Dakota from 1955 through 1986;

9. The methods used by deponent for compiling and maintaining sales records, invoices, purchase orders, jobsite plans and specifications and employee records concerning the purchase or sale of asbestos-containing products from 1955 through 1986;

10. The methods and procedures used by deponent for the retention and destruction of sales records, invoices, and purchase orders, involving asbestos-containing products from 1955 through 1986;

11. The names and addresses of all clerical employees of Hercules Chemical Company with duties involving the processing of sales, purchase order, receipts, invoices and billings for asbestos-containing products purchased and sold by Hercules Chemical Company from 1955 through 1986;

12. The names and addresses of all warehouse employees with duties involving the receipt and shipment of asbestos-containing products purchased and sold by Hercules Chemical Company from 1955 through 1986;

13. The content of any document which the deponent is required by the subpoena accompanying this notice to bring to the deposition, when the documents were received, who supplied the information, who had knowledge of the information, and who was notified of the information;

14. All communications between the deponent and the manufacturers, other sellers and distributors of asbestos products concerning the nature, quality, content, use, manufacturing methods, distribution methods, safety, health hazards, availability, installation procedures, warranties,

guaranties and asbestos related litigation with regard to such products from 1955 through 1986;

15. The identity of shippers used by deponent and/or distributors of deponent's asbestos-containing products for use or sale at sites in North Dakota from 1955 through 1986;

16. Identification and description of experiment conducted by you or for you to determine and establish the quantity of asbestos fibers which would become airborne as a result of manufacturing, processing or use of your asbestos products and the dates of said tests and experiments, including the findings, conclusions, and results from such tests.

17. In the manner and extent to which your asbestos fibers and/or products were investigated, tested, examined and experimented with to determine the effects of airborne asbestos fibers upon being inhaled into the human body as a result of the use of such asbestos products.

You are further notified that a subpoena duces tecum is being served upon Hercules Chemical Company and persons designated by Hercules Chemical Company are required to bring with them to the deposition the following items, documents or things within the care, custody or control of Hercules Chemical Company for inspection and copying, encompassing the years 1955 through 1986 inclusive:

1. All sales records showing sales and purchases of asbestos-containing products for use or sale in the state of North Dakota, during the years 1955 through 1986;

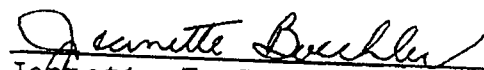
2. All invoices showing the sale and purchase of asbestos-containing products for use or sale in the state of North Dakota, during the years 1955 through 1986;

3. All correspondence and documentary materials received from distributors concerning the sale of Hercules Chemical Company products containing asbestos from 1955 through 1986;

4. All information received from or sent or delivered to distributors of Hercules Chemical Company concerning the nature, quality, content, use, manufacturing methods, distribution methods, safety, health hazards, availability, installation procedures, warranties and guaranties concerning Hercules asbestos-containing products;

5. All shipping receipts and bills of lading concerning the shipping and receiving of asbestos-containing products for use or sale in the state of North Dakota from 1955 through 1986;

Dated this 29th day of October, 1990.



Jeannette T. Boechler

David C. Thompson

CRAFT, THOMPSON & BOECHLER, P.C.

16 North Broadway, Suite 315

P.O. Box 1932

Fargo, North Dakota 58107-1932

(701) 237-3071

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Adams Public School District,)

Plaintiff,)

vs.)

Civil No. A3-88-89

Carey Canada, Inc., a)
foreign corporation, et al.,)

Defendants.)

FILED

JAN 30 1990

EDWARD I. KILGUS, CLERK
U.S. DISTRICT COURT, BISMARCK, N.D.

ORDER

Defendants' Motions

Motions to compel were filed in this case by defendants Keene Corporation, W.R. Grace and Eagle-Picher Industries, Inc., seeking an order requiring the plaintiff to answer interrogatories. Defendants Grace and Eagle-Picher's motions also seek an order requiring plaintiff to respond to requests for production of documents and things. Plaintiff opposes the motions, stating that the three defendants were served with interrogatory answers on November 13, 1989. Therefore, defendants' motions to compel discovery are moot at least with respect to the interrogatory answers. Plaintiff's brief does not specifically state that the production requests have been answered; however, it appears plaintiff may be treating the document requests as just a part of the interrogatories. Since the court has heard nothing more from the moving defendants, it assumes the requested documents have been produced as well.

and that the motions can be denied in their entirety as moot.

Motion for Rule 37 Sanction

Also before the court is plaintiff's motion for Rule 37 sanctions for failure to answer interrogatories. Rule 37 sanctions are imposed when an order for discovery has been entered by the court, and the party against whom the order is entered does not comply. Therefore sanctions are premature at this time. However, plaintiff has briefed the issue as a motion to compel rather than as a motion for sanctions, so the court will consider the motion as a motion to compel.

Plaintiff requests that defendant Keene Corporation be ordered to answer Interrogatory No. 10, which reads as follows:

10. Set forth in precise formula or formulas, including all constituents and the percentage of each, and the dates thereof, of each of your asbestos-containing spray or towel applied ceiling or fireproofing product and each asbestos containing insulation product.

Keene objects to this interrogatory, alleging that it seeks confidential, trade secret, and other proprietary information or materials. The court finds that discovery of the formulas is necessary for product identification essential for plaintiff's trial preparation. The court also finds that Keene is arguably entitled to some protection of the formulas as trade secrets. The in camera inspection procedure proposed by Keene is too complex and too time consuming. Consequently, the parties will have until March 15, 1990, to work out an

agreement for an appropriate protective order under which the formulas can be disclosed. If the parties do not reach an agreement, they shall each submit a proposed protective order to the court by April 1, 1990, along with a statement informing the court of what efforts were made to jointly devise a protective order without the court's involvement.

IT IS ORDERED:

1. Defendants' motions to compel with respect to interrogatory answers and document requests are denied as moot.
2. Plaintiff's motion for Rule 37 sanctions, which is treated as a motion to compel interrogatory answers is granted. Defendant Keene will be compelled to answer Plaintiff's Interrogatory No. 10, subject to a protective order to be entered by the court at a later time.
3. Defendant Keene's request for oral argument is denied.

Dated: January 30, 1990

NOTICE OF ENTRY

Take notice that the original of this copy was entered in the office of the clerk of the United States District Court for the District of North Dakota on the 30th day of January 1990

EDWARD J. KLECKER, CLERK

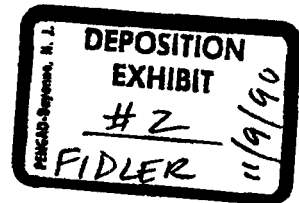
Karen K Klein

Karen K. Klein
United States Magistrate

By: [Signature]

Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION



In Re: North Dakota Personal)
Injury Asbestos Litigation)
No. 1)

**HERCULES CHEMICAL COMPANY,
INC.'S RESPONSE TO SECOND
AMENDED NOTICE OF DEPOSITION**

TO: Plaintiffs and their attorneys, Jeanette T. Boechler and
David C. Thompson, CRAFT, THOMPSON & BOECHLER, P.C., 16
North Broadway, Suite 315, P.O. Box 1932, Fargo, North
Dakota 58107-1932.

PLEASE TAKE NOTICE that defendant Hercules Chemical Company,
Inc., hereby responds to plaintiffs' request for documents
pursuant to subpoena duces tecum of second amended notice of
deposition.

REQUEST NO. 1: All sales records showing sales and
purchases of asbestos-containing products for use or sale in the
State of North Dakota, during the years 1955 through 1986.

RESPONSE: A computer list of customers in North Dakota that
have purchased and sold Hercules Furnace Cement and For Heat's
Sake between March 1983 and November 1990, is produced herewith.
Hercules no longer has in its possession or subject to its
control records of sales to customers in North Dakota prior to
1983.

REQUEST NO. 2: All invoices showing the sale and purchase
of asbestos-containing products for use or sale in the State of
North Dakota, during the years 1955 through 1986.

RESPONSE: For a list of North Dakota customers who have
purchased and sold Hercules Furnace Cement and For Heat's Sake
between March 1983 and November 1990, please see the list

produced in response to request no. 1, above. It would difficult, if not impossible to obtain copies of invoices for this time period. Thus, Hercules objects to this request on the grounds that it is unduly burdensome. Moreover, the list of customers produced herewith identifies the quantity of sales to each customer. In addition, Hercules search of its records reveals copies of invoices dated prior to 1983 no longer exist.

REQUEST NO. 3: All correspondence and documentary materials received from distributors concerning the sale of Hercules Chemical Company products containing asbestos from 1955 through 1986.

RESPONSE: Hercules has conducted a reasonable and diligent search of its records as kept in the ordinary course of business for any correspondence and other documentary materials received from distributors concerning the sale of Hercules products containing asbestos from 1955 through 1986. This search has revealed that such documents responsive to this request, if any, no longer exist.

REQUEST NO. 4: All information received from or sent or delivered to distributors of Hercules Chemical Company concerning the nature, quality, content, use, manufacturing methods, distribution methods, safety, health hazards, availability, installation procedures, warranties and guarantees concerning Hercules asbestos-containing products.

RESPONSE: Copies of Hercules product catalogs for the years 1974, 1976, 1977, 1979, 1980, 1981, 1982 and 1984 are produced herewith. The product catalogs show Hercules entire product line, including Hercules Furnace Cement, For Heat's Sake and Sta-Put plumber's putty, for the years identified.

REQUEST NO. 5: All shipping receipts and bills of lading concerning the shipping and receiving of asbestos-containing

products for use or sale in the State of North Dakota from 1955 through 1986.

RESPONSE: Hercules has conducted a reasonable and diligent search of its records as kept in the ordinary course of business for any shipping receipts and bills of lading concerning Hercules asbestos-containing products shipped for use or sale in North Dakota from 1955 through 1986. This search has revealed that such documents responsive to this request no longer exist.

Dated: November 7, 1990.

BOWMAN AND BROOKE

By George W. Soule
George W. Soule (#103664)
Cynthia J. Atsatt (#149366)
David N. Lutz (#203191)
Attorneys for Defendant
Hercules Chemical Company, Inc.
600 Midwest Plaza West
801 Nicollet Mall
Minneapolis, Minnesota 55402
Telephone: (612) 339-8682

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss.
 COUNTY OF HENNEPIN)

Betty M. Pietilainen, being first duly sworn, deposes and says on oath that on the 7th day of November, 1990, she served the attached Defendant Hercules Chemical Company, Inc.'s Response to Plaintiff's Second Amended Notice of Deposition upon David C. Thompson and all counsel of record by depositing a true and correct copy thereof in a sealed envelope duly addressed as follows:

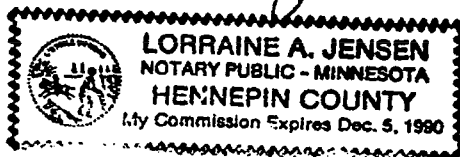
David C. Thompson, Esq.
 Jeanette T. Boechler, Esq.
 CRAFT, THOMPSON BOECHLER, P.C.
 16 North Broadway, Suite 315
 Fargo, ND 58107-1932

and ALL COUNSEL OF RECORD
 in the United States mails at Minneapolis, Minnesota.

Betty M. Pietilainen

Subscribed and sworn to
 before me this 7th day of
NOVEMBER, 1990.

Lorraine A. Jensen
 Notary Public



Bowman and Brooke

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Thomas C. Howard
Aimee L. Burr
Peter A. Frazier

November 7, 1990

VIA FEDERAL EXPRESS

Jeanette T. Boechler, Esq.
Craft, Thompson & Boechler, P.C.
16 North Broadway, Suite 315
P.O. Box 1932
Fargo, North Dakota 58107-1932

Re: North Dakota Personal Injury Asbestos
Litigation No. 1

Dear Ms. Boechler:

Enclosed herewith and served upon you, please find defendant Hercules Chemical Company, Inc.'s response to plaintiff's second amended notice of deposition. Also enclosed are copies of responsive documents being produced pursuant to subpoena duces tecum.

By copy of this letter, all counsel of record are being served with the pleading only. Any counsel wanting copies of the documents may contact us.

Sincerely,

George W. Soule

DSL/bmp
Enclosure

cc: All Counsel of Record

**FEDERAL
EXPRESS**

QUESTIONS? CALL 800-238-5355 TOLL FREE

257M

9189189085

AIRBILL
PACKAGE
TRACKING NUMBER

9189189085

Date
11/7/90

RECIPIENT'S COPY

From (Your Name) Please Print George W. Soule		Your Phone Number (Very Important) 612-339-8682		To (Recipient's Name) Please Print Jeanette T. Boechler		Recipient's Phone Number (Very Important) ()			
Company LOWMAN & BROCKE		Department/Floor No.		Company CRAFT, THOMPSON & BOECHLER, P.C.		Department/Floor No.			
Street Address 801 NICOLLET MALL STE 600				Exact Street Address (We Cannot Deliver to P.O. Boxes or P.O. Zip * Codes) 16 North Broadway, Suite 315					
City MINNEAPOLIS MN		State MN		City Fargo,		State ND			
ZIP Required 55404				ZIP Required 58107-1932					
YOUR INTERNAL BILLING REFERENCE INFORMATION (First 24 characters will appear on invoice.) 178937/40934				IF HOLD FOR PICK-UP, Print FEDEX Address Here Street Address City State ZIP Required					
PAYMENT 1 ☐ Bill Sender 2 ☐ Bill Recipient-FedEx Acct. No. 3 ☐ Bill 3rd Party FedEx Acct. No. 4 ☐ Bill Credit Card 5 ☐ Cash/Check									
SERVICES (Check only one box) Priority Overnight Service (Delivery by next business morning) 11 ☐ YOUR MAILING 51 ☐ 16 ☐ FEDEX LETTER 56 ☐ FEDEX LETTER 12 ☐ FEDEX PAK 52 ☐ FEDEX PAK 13 ☐ FEDEX BOX 53 ☐ FEDEX BOX 14 ☐ FEDEX TUBE 54 ☐ FEDEX TUBE Economy Two-Day Service (formerly Standard Air) (Delivery by second business day) 30 ☐ ECONOMY TWO-DAY SVC Heavyweight Service (for Extra Large or any package over 150 lbs.) 70 ☐ HEAVYWEIGHT 80 ☐ DEFERRED HEAVYWEIGHT *Declared Value Limit \$100 **Call for delivery schedule		DELIVERY AND SPECIAL HANDLING (Check services required) 1 ☐ HOLD FOR PICK-UP (FedEx Box 1) 2 ☐ DELIVER WEEKDAY 3 ☐ DELIVER SATURDAY (Extra charge) (Not available to all locations) 4 ☐ DANGEROUS GOODS (Extra charge) 5 ☐ DRY ICE 7 ☐ OTHER SPECIAL SERVICE 8 ☐ 9 ☐ SATURDAY PICK-UP (Extra charge) 10 ☐ 11 ☐ DESCRIPTION 12 ☐ HOLIDAY DELIVERY (if offered) (Extra charge)		PACKAGES WEIGHT in Pounds Only YOUR DECLARED VALUE Total Total Total DIM SHIPMENT (Chargeable Weight) Received At 1 ☐ Regular Stop 3 ☐ Drop Box 2 ☐ On-Call Stop 4 ☐ B.S.C. 5 ☐ Station FedEx Emp. No.		Emp. No. Date ☐ Cash Received ☐ Return Shipment ☐ Third Party ☐ Chg To Del ☐ Chg To Hold Street Address City State Zip Received By: X Date/Time Received FedEx Employee Number Release Signature Date/Time		Federal Express Use Base Charges Declared Value Charge Other 1 Other 2 Total Charges REVISION DATE 8/90 PART 1115011 ITEM 00X FORMAT #041 041 © 1990 F.E.C. PRINTED IN U.S.A.	