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NO. 88-C-0615

 SHERMAN A. SEARLS, JR.] IN THE DISTRICT COURT OF
 VS.] BRAZORIA COUNTY, TEXAS
 OWENS-CORNING FIBERGLAS]
 CORPORATION, ET AL] 23RD JUDICIAL DISTRICT

NO. 87-C-1934

 TOMMIE L. HEATHMAN, ET UX] IN THE DISTRICT COURT OF
 VS.] BRAZORIA COUNTY, TEXAS
 OWENS-CORNING FIBERGLAS]
 CORPORATION, ET AL] 23RD JUDICIAL DISTRICT

IN RE: CONSOLIDATED NO. 87-37068

 RICHARD B. JACKSON, ET UX] IN THE DISTRICT COURT OF
 VS.] HARRIS COUNTY, T E X A S
 OWENS-CORNING FIBERGLAS]
 CORPORATION, ET AL] 165th JUDICIAL DISTRICT

NO. 90-20663

 GLADYS LORETTA STEELE, ET AL.] IN THE DISTRICT COURT OF
 VS.] HARRIS COUNTY, T E X A S
 FISCHBACH & MOORE, INC.,]
 ET AL.] 55TH JUDICIAL DISTRICT

NO. 89-053547

 HAZEL WILKENING, ET AL.] IN THE DISTRICT COURT OF
 VS.] HARRIS COUNTY, T E X A S
 FORD, BACON AND DAVIS]
 CONSTRUCTION CORP., ET AL.] 334TH JUDICIAL DISTRICT

NO. 91-002902

 LORETTA TURNER] IN THE DISTRICT COURT OF
 VS.] HARRIS COUNTY, T E X A S
 ARMSTRONG WORLD INDUSTRIES,]
 INC., ET AL.] 189TH JUDICIAL DISTRICT

VIDEOTAPE DEPOSITION OF

HARVEY G. LEWIS

May 19, 1992

Between the hours of 10:00 a.m. and 2:30 p.m.

800 Commerce

Houston, Texas

Wanda Kelley, Texas CSR No. 2007

Nell McCallum & Associates

2900 Smith, Suite 104

Houston, Texas 77006 (713) 523-3767

**NMA
ORIGINAL**

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1 [EXHIBIT NO. 1 MARKED]

2 VIDEOGRAPHER: Today is May 19th, 1992. The
3 time is 10:05 a.m. On the record.

4
5
6 HARVEY G. LEWIS,

7 being duly sworn, testified as follows:

8
9 EXAMINATION BY

10 MR. MADEKSHO:

11 Q Would you state your full name for the
12 record, please, sir?

13 A Harvey G. Lewis.

14 Q Mr. Lewis, how are you doing this morning so
15 far?

16 A Fine. Thank you.

17 Q Mr. Lewis, in regard to today's proceedings,
18 we have noticed the deposition of Commercial Union
19 Insurance Company concerning certain areas of inquiry.
20 And you understand that, sir?

21 A I do.

22 Q And you have been designated by Commercial
23 Union to make an appearance for that testimony here this
24 morning?

25 A Yes, sir.

1 Q Mr. Lewis, if we could back up for just a
2 second and if you would please give us the benefit of
3 your educational background, we would appreciate that.

4 MR. MARTINSON: Mr. Madeksho, if I might
5 interrupt just for a second. We were noticed in Cause
6 No. 88-C-0615, which is the only case we're a party to.
7 We're not taking a position regarding these other
8 depositions, but I wanted you to know that's the only
9 case in which we're a party and that we know that we're
10 here.

11 MR. MADEKSHO: We understand that.

12 A I'm a 1966 graduate of Northeastern
13 University in Boston, Massachusetts; a 1969 graduate of
14 Suffolk University Law School in Boston, Massachusetts,
15 where I received a J.D. degree.

16 Q And in 1969, after you received your law
17 degree, did you take the bar exam there in the state of
18 Massachusetts?

19 A I did, sir.

20 Q Are you a practicing lawyer at this time?

21 A I am admitted before the Bar of the
22 Commonwealth of Massachusetts and the United States
23 District Court for the First Circuit.

24 Q Are you admitted to practice in the courts of
25 any other state besides the state of Massachusetts?

1 A No, sir, I am not.

2 Q In 1969, upon receiving your law degree --
3 did you receive your license in the same year?

4 A 1970.

5 Q 1970. Upon receiving your law degree and
6 your license in 1970, could you tell us what your work
7 history has been since that time?

8 A Prior to being admitted to the bar, I was an
9 employee of the Massachusetts Defenders Committee and
10 continued on after being admitted into the bar. In
11 1970, I left the Massachusetts Defenders Committee and
12 went on active duty in the United States Army until the
13 middle of January 1972, when I was relieved of military
14 service.

15 I then became an associate in a small defense
16 firm in Boston, Massachusetts. The name of the firm was
17 Galvin, Smith & Nordlinger. I practiced with that firm
18 until sometime in 1976. I left that firm and for a
19 period of approximately three years practiced as a sole
20 practitioner in Boston and then became associated with
21 Commercial Union Insurance Company in June of 1979.

22 Q And since June of 1979, in your employment
23 with Commercial Union Insurance Company, could you give
24 us the various positions and duties and responsibilities
25 you have held up to the present time?

1 A In June of 1979, upon my first employment, I
2 was a Fidelity Surety claim attorney in the home office
3 claim department until approximately 1981, when I
4 transferred to the claims counsel's office of the home
5 office claims department.

6 In 1984, I officially transferred into the
7 environmental issues area and remained in environmental
8 issues in one capacity or another until the present
9 time.

10 Q And when is the first time that you became
11 involved with the asbestos litigation on behalf of
12 Commercial Union?

13 A Approximately the spring and summer of 1983,
14 I was asked to participate with other personnel at
15 Commercial Union involved in a document production that
16 arose out of the California coordinated asbestos
17 proceedings.

18 Q Okay. And we're talking about the California
19 insurance litigation between Commercial Union and a
20 number of asbestos manufacturers and then also some
21 other insurance companies besides Commercial Union?

22 A That's correct, sir.

23 Q And do you have a specific title with
24 Commercial Union at this time?

25 A I do.

1 Q And what is that title, sir?

2 A I am vice president of specialty litigation.

3 Q And as vice president of specialty litigation
4 for Commercial Union Insurance Company, what do you do?

5 A My responsibility is the management and
6 supervision of three areas which primarily involve the
7 handling of environmental claim matters and all
8 litigation involving environmental claims.

9 Q So basically your sole expertise and your
10 sole duties and responsibilities surround the
11 environmental arena?

12 A That is correct.

13 Q And in regard to the environmental arena,
14 as the -- in your position that you presently hold,
15 approximately how much of your time do you spend in the
16 asbestos litigation?

17 A By virtue of my management responsibilities
18 and administrative responsibilities, only a small
19 portion of my current time is involved with asbestos
20 litigation.

21 Q Could you give us an idea in regard to a
22 percentage of that time or how many days a week or a
23 month or anything of that nature?

24 A My sense would be approximately 10 percent
25 of my time is involved in direct involvement with the

1 asbestos litigation.

2 Q And in your management position with
3 Commercial Union, do you control and direct other
4 individuals there at Commercial Union concerning the
5 asbestos litigation?

6 A I do.

7 Q And how many people are under your management
8 control?

9 A Approximately 40 people.

10 Q And in regard to these 40 people, what do
11 they do for Commercial Union in regard to the asbestos
12 litigation?

13 A Some of those personnel are clerical
14 personnel, file personnel, claims technicians who handle
15 the underlying claims if there are in fact underlying
16 asbestos claims or hazardous waste claims. There are
17 attorneys who are involved in the declaratory judgment
18 litigation. They are responsible for managing and
19 directing that declaratory judgment litigation. There
20 are paralegals involved with searching for documents and
21 providing answers for various discovery responses.
22 There is a reinsurance claims unit which deals with the
23 reinsurance portion of the company's operation.

24 Q And in regard to the management of the
25 various accounts, what are the various active accounts

1 for Commercial Union at this time concerning the
2 asbestos litigation, of the insureds?

3 A Of the insureds?

4 Q Yes.

5 A Dealing with active insureds?

6 Q That's correct.

7 A I would venture to say that there are less
8 than half a dozen of active insureds.

9 Q And could you tell us who that might be at
10 this time?

11 A Offhand, I can't recall any of the names of
12 the insureds involving underlying claims, is what we're
13 referring to, I presume.

14 Q At this time, yes, sir.

15 A Yes, sir.

16 Q You can't recall one of those at this time?

17 A No, sir, I'm sorry, I cannot.

18 Q In regard to the reinsurance that you had
19 mentioned, could you tell us as to which of the asbestos
20 manufacturers that Commercial Union has some type of
21 reinsurance coverage with?

22 A I would venture to say in most instances
23 there is some element of reinsurance involved with each
24 of the insureds. Whether or not that is active at this
25 point in time by virtue of the level of payments or

1 negotiations that are ongoing, I can't state.

2 Q Okay. We'll get to some of that information
3 in just a little bit that I believe that you had covered
4 and responded to concerning the answers to
5 interrogatories that Commercial Union had filed in this
6 case?

7 A Yes, sir.

8 Q Have you had an opportunity, Mr. Lewis, to
9 review the answers to interrogatories that Commercial
10 Union had filed in these cases?

11 A I did.

12 Q Could you tell us what else that you have had
13 the opportunity to review preparatory for your testimony
14 here this morning?

15 A I reviewed the deposition notice and the
16 items that were to be covered. I reviewed the answers
17 to interrogatories, supplemental answers to
18 interrogatories, briefly reviewed the testimony of
19 Arthur Lynn with reference to the deposition notice. I
20 believe I reviewed some of the responses to notices to
21 produce involved in this litigation as well.

22 Q And that's all that you have reviewed that
23 you can recall at this time?

24 A Yes, sir, that's correct.

25 Q In regard to area of inquiry number one to

1 today's notice of deposition, Mr. Lewis, we had
2 requested that Commercial Union produce someone to
3 discuss the corporate history of Commercial Union. And
4 could you briefly tell us as to when Commercial Union
5 was first -- when it first came into existence?

6 A Perhaps I can explain it to you in this
7 fashion, sir. In approximately 1968 or '69, Commercial
8 Union and the Employers group of insurance companies,
9 which are both United States groups of companies, merged
10 and ultimately the end result was the Commercial Union
11 Insurance Companies of today.

12 Prior to that time the Employers group of
13 insurance companies went back into the early 1900s with
14 Employers Liability Assurance Corporation Limited. The
15 United States branch of that operation was operating in
16 this country from the early 1900s on.

17 During the 1920s, Thirties and Forties, there
18 were other companies as part of the Employers group,
19 including American Employers Insurance Company,
20 Employers Fire Insurance Company.

21 In 1957, there was incorporated the Employers
22 Surplus Lines Insurance Company, all part of the
23 Employers group. The Northern Assurance Company of
24 America.

25 And then, as I said, in 1968 or 1969, there

1 was a merger with the Commercial Union group of
2 companies. I have much less information as to the
3 origins of Commercial Union in the United States than I
4 do with the Employers group. Suffice it to say that as
5 of 1968 or '69, during the merger, Commercial Union was
6 the end result of that merger along with all the
7 subsidiary companies and that remains today.

8 Q At the time that the merger occurred between
9 Commercial Union and a number of these companies that
10 you had just mentioned from the Employers group, did
11 Commercial Union assume the assets and the liabilities
12 of those insurance companies?

13 A It did, sir.

14 Q And Commercial Union, their origination, was
15 it in England?

16 A There is a Commercial Union in England which
17 is the parent company. There was a United States branch
18 of Commercial Union which was the branch that ultimately
19 became domesticated as a United States based operation
20 and ultimately merged with the Employers group in the
21 late Sixties.

22 Q In regard to Commercial Union's origination
23 in England, was that sometime in the 1800s?

24 A I couldn't tell you the exact date, sir.

25 Q Are you familiar with an individual by the

1 opportunity to review this as part of the documentation
2 that was produced to the plaintiffs in these cases
3 subject to a request for production to Commercial Union?

4 A No, sir, I don't believe I have read this
5 document.

6 Q On the second page of what has been marked
7 as, I believe, Exhibit 2 to your testimony here this
8 morning, there are some statements concerning the
9 testimony of Mr. Martens that Commercial Union is an
10 all-lines, property-casualty insurance company and that
11 their parent company is based in London, England, and
12 does business in almost all of the countries of the
13 world.

14 Is that a true statement, to the best of your
15 knowledge?

16 A Well, I can certainly read what Mr. Martens
17 has to say here. I have no reason to disagree with it.
18 His written description of it is probably more succinct
19 and has more basis in fact than I have knowledge.

20 Q Is Commercial Union also ranked as one of the
21 largest property and casualty insurance carriers doing
22 business on a worldwide basis, to your knowledge?

23 A It's my understanding that Commercial Union
24 is a large composit insurance company that does business
25 throughout the world.

1 Q Is it also your understanding that Commercial
2 Union was the company which introduced the forerunner of
3 workers' compensation insurance to the United States
4 market back in 1886?

5 A I am not aware of that.

6 Q Could you tell us as to whether or not that
7 you're aware that Commercial Union was writing workers'
8 compensation insurance in this country before the turn
9 of the century?

10 A I'm not aware of that either, sir.

11 Q Could you tell us as to whether or not
12 Commercial Union was writing workers' -- the equivalent
13 of workers' compensation coverage in England before the
14 turn of the century?

15 A I'm sorry. I couldn't tell you.

16 Q Could you tell us as to whether or not
17 Commercial Union was writing the equivalent of workers'
18 compensation coverage in England by the 1920s or the
19 1930s?

20 A No, sir, I don't know exactly when they
21 started to write workers' compensation coverage.

22 Q Are you familiar with a company called
23 Employers Mutual Insurance Company?

24 A No, sir, I'm not.

25 Q Now, as I understand your earlier

1 testimony -- and I want to make sure we've got it
2 straight -- in regard to a merger or acquisition that
3 took place between Commercial Union and the Employers
4 group, that was sometime around 1968 or 1969?

5 A I believe so.

6 Q And in regard to the companies that
7 Commercial Union had merged with, which were the
8 subsidiaries to the Commercial group, there were a
9 number of them? Or there were just a number of
10 insurance companies that made up the Commercial group?

11 MR. MARTINSON: You mean Commercial Union
12 group?

13 MR. MADEKSHO: Well, the Employers group.
14 I'm sorry. Thank you.

15 A You are referring to the Employers group?

16 Q Yes, sir.

17 A Yes, sir, there were a number of companies
18 that made up the Employers group. And I believe I
19 alluded to a number of them.

20 Q Let me see if I can go down the line and see
21 if these are the same ones that you covered or not. The
22 Employers Liability Assurance Corporation Limited?

23 A Yes, sir.

24 Q Now, was that based in England?

25 A No, sir. That was a United States branch of

1 the London company, but it was authorized to do business
2 in the United States and was licensed in the United
3 States.

4 Q Okay. Now, this branch, this Employers
5 Liability Assurance Corporation Limited was a branch of
6 a home office in England, in London, England?

7 A That's what I'm led to understand. At some
8 point in time it became domesticated in the United
9 States of America.

10 Q Do you know when the Employers Liability
11 Assurance Corporation Limited first came into existence?

12 A No, I do not, sir.

13 Q Let me ask you about another company, being
14 American Employers Insurance Company. Is that also one
15 of the group of companies that comprised the Employers
16 group, to your knowledge?

17 A It did.

18 Q And would another company be the Employers
19 Fire Insurance Company?

20 A Yes, sir.

21 Q And would another company be the Northern
22 Assurance Company of America?

23 A Yes, sir.

24 Q And would another company be Employers
25 Surplus Lines Insurance Company?

1 A Yes, sir.

2 Q Can you think of any other companies at this
3 time other than those five that we just went over?

4 A No, sir. Those are the five that I'm
5 familiar with.

6 MR. MADEKSHO: Mr. Lewis, another area of
7 inquiry for today's testimony surrounded the answers to
8 interrogatories that Commercial Union had filed in these
9 cases.

10 And let me ask this to be marked as
11 plaintiffs' next in order.

12 [EXHIBIT NO. 3 MARKED]

13 MR. MADEKSHO:

14 Q Mr. Lewis, let me hand you what has been
15 marked as Exhibit 3 to your testimony here this morning,
16 sir, and see if that is the same set of interrogatories
17 that you have previously answered and previously
18 reviewed prior to today's testimony.

19 A It is, sir.

20 Q That's one of the sets that you reviewed?

21 A That's correct.

22 Q Mr. Lewis, in regard to Interrogatory Nos. 1
23 and 2 and 3, these are the interrogatories that related
24 to Commercial Union's participation as far as having
25 insurance coverage for asbestos products manufacturers

1 and also in regard to hiring and paying for the defense
2 lawyers and also in regard to whether or not there had
3 been any settlements between Commercial Union Insurance
4 Company regarding insurance coverage with any of the
5 manufacturers. Is that correct, first three?

6 A That's essentially correct, sir.

7 Q Now, in Interrogatory No. 1, this relates
8 solely to Commercial Union's participating in the hiring
9 and paying of the defense lawyers in whole or in part
10 for any of the asbestos products manufacturers. Is that
11 correct?

12 A That are named as the co-defendants in this
13 case.

14 Q Yes, sir.

15 A Yes, sir.

16 Q And the ones that you indicated -- well, one
17 of them that you indicated was Pittsburgh Corning
18 Corporation.

19 A That's correct.

20 Q And for the years 1983 to 1984.

21 A Yes, sir.

22 Q And then also there is a footnote to that
23 answer at the bottom stating that: "In 1990, Commercial
24 Union Insurance Company started reimbursing Pittsburgh
25 Corning Corporation for the expenses it incurred in

1 hiring and paying for its own defense lawyers."

2 Is that your understanding still?

3 A It is, sir.

4 Q And in regard to Commercial Union's hiring of
5 the defense counsel for Pittsburgh Corning, was 1983 the
6 earliest that you're aware of?

7 A That's my recollection.

8 Q Okay. Now, when Commercial Union hired the
9 defense lawyers, did Commercial Union also control the
10 defense that would be used in the asbestos products
11 cases that were filed against Pittsburgh Corning?

12 A That was not my understanding.

13 Q What is your understanding as to who
14 controlled or directed that and made those decisions?

15 A In most instances, with reference to the
16 Pittsburgh Corning litigation, Commercial Union was an
17 excess carrier and took over the defense of cases that
18 had originally been handled by the primary carrier
19 involved.

20 Q Who was the primary carrier, to your
21 knowledge?

22 A My recollection is it was Travelers.

23 Q Okay. Travelers Insurance Company or
24 Travelers Indemnity or both?

25 A I can't recall which it was. I can't recall.

1 Q Just Travelers?

2 A I just recall it as being Travelers. I can't
3 recall if it was Travelers Insurance or Travelers
4 Indemnity. They had been defending Pittsburgh Corning,
5 and they had claimed exhaustion of their policies and
6 tendered the defense of those claims to Commercial
7 Union. Commercial Union continued with the defense of
8 those claims, paid defense and indemnity on those claims
9 and new claims that were filed during the period of time
10 '83 to '84.

11 Q In regard to paying for the defense and the
12 hiring of the lawyers for Pittsburgh Corning, did
13 Commercial Union have any say whatsoever in regard to
14 what evidence or what testimony would be presented in
15 cases filed by the asbestos victims against Pittsburgh
16 Corning?

17 A For the most part, I would say that that was
18 not the case; that the defense was handled between
19 Pittsburgh Corning and the lawyers directly, and
20 Commercial Union basically paid settlements and paid
21 defense costs.

22 Q You say that was handled between the lawyers.
23 Which lawyers would that be for Pittsburgh Corning?

24 A Pittsburgh Corning's liaison counsel and
25 counsel for Pittsburgh Corning would direct the defense

1 counsel. That was my understanding.

2 Q Okay. And then Commercial Union, would they
3 have any involvement in regards to overseeing what the
4 defense counsel either -- are you talking about the
5 National Coordinating Counsel for Pittsburgh Corning?

6 A My sense would be that's correct.

7 Q And was it your understanding that the
8 Reed Smith firm and the Danaher firm were the National
9 Coordinating Defense Counsel for Pittsburgh Corning
10 during this period of time?

11 A I recall the Danaher firm being involved,
12 yes, sir.

13 Q Okay. Cornelius Danaher, Neal Danaher?

14 A I can't recall which one.

15 Q Did you ever meet with any representatives
16 from Pittsburgh Corning yourself?

17 A Not during this period of time and not
18 dealing with the defense of the underlying claims.

19 Q Okay. So, in other words, as I understand
20 the situation, Commercial Union, did they simply give a
21 carte blanche to Pittsburgh Corning's lawyers to present
22 whatever defense and put on whatever evidence they
23 wanted to put on?

24 A Essentially, that was my understanding, that
25 we only became involved in the claims when the

1 settlements were upon us. And the claim technicians
2 reviewed the nature of the settlements, the value of the
3 settlements, and basically approved the settlements and
4 made the payments.

5 Q Did Commercial Union also review the extent
6 of the defense costs that the defense lawyers for
7 Pittsburgh Corning were running up in the asbestos
8 cases?

9 A To the extent that we had the ability to
10 review those and make comment on those, yes, sir.

11 Q Well, those bills would be forwarded to
12 Commercial Union. Is that correct?

13 A During that period of time, that's correct.

14 Q And what would happen if Commercial Union
15 made a determination that the defense lawyers' bills
16 were excessive or that there was needless litigation
17 going on in the asbestos litigation? What would be
18 Commercial Union's position on that?

19 A I don't know what the manner in which
20 Commercial Union dealt with those bills in those days.
21 I do know what the situation is today. In handling
22 defense attorney bills, Commercial Union does review
23 those bills, does review the type of work that is being
24 done for justification of payment.

25 Q Okay. So you can't tell us what was going on

1 necessarily in 1983 or 1984, but you can tell us what's
2 going on today?

3 A Yes, sir.

4 Q The bills that are presently submitted by
5 the defense counsel for Pittsburgh Corning, are they
6 submitted directly to Commercial Union?

7 A There are no bills being submitted today to
8 Commercial Union from Pittsburgh Corning.

9 Q Okay. In regard to this footnote to the
10 answers to interrogatory, it states: In 1990,
11 Commercial Union started reimbursing Pittsburgh Corning
12 for the expenses incurred in hiring and paying for
13 Pittsburgh Corning's defense lawyers.

14 A I'm sorry. Your question?

15 Q Could you explain that footnote, then?

16 A There were a number of coverages that were
17 the subject of litigation between Pittsburgh Corning and
18 Commercial Union. A large block of that coverage dealt
19 with second and fourth layer excess policies during the
20 Sixties, up through the late part of the Sixties. That
21 was the subject of the payments that were made during
22 1983 and 1984. When Commercial Union exhausted those
23 coverages, it tendered its outstanding files back to
24 Travelers, who was the next excess carrier, or, in the
25 alternative, to Pittsburgh Corning.

1 As the days went along, there were other
2 coverages that had not been resolved by the original
3 litigation between Commercial Union and Pittsburgh
4 Corning that were reached, coverages in the early
5 Sixties that were high excess and coverages beyond 1970.
6 When those coverages were reached, Commercial Union
7 negotiated with Pittsburgh Corning on those coverages.
8 Pittsburgh Corning had already established its own
9 nationwide network, was no longer a part of any
10 facility, was handling its own cases. And upon
11 submission of bills from Pittsburgh Corning, Commercial
12 Union agreed to pay defense and/or indemnity to the
13 extent of their agreed upon limits.

14 So that's why the footnote was placed in
15 there, to make it perfectly clear that there was a
16 period of time when we were not handling the defense
17 of Pittsburgh Corning directly, but we were merely
18 indemnifying and paying the defense costs submitted by
19 Pittsburgh Corning.

20 Q Okay. So does that situation still exist as
21 of today?

22 A No, it does not.

23 Q Okay. When is the last time that Commercial
24 Union has paid any money in regard to the defense of
25 Pittsburgh Corning in the asbestos litigation?

1 that's why they didn't put other kinds of warnings. And
2 then he also told the Federal Court that there was in
3 fact on the part of many of the manufacturers a
4 deliberate attempt to conceal the fact that they knew
5 that those third-party users were at risk. Now, aren't
6 those the exact words of Commercial Union's
7 representatives?

8 A Yes, sir. During the argument in this
9 matter, I agree with you, that those are the exact
10 words.

11 Q And there again, in regard to the last page
12 of that exhibit, Mr. Griffith told the Federal Court
13 again that the industry-wide scheme not to tell the
14 people about what they knew of the risk, not just to
15 their employees, which is what they have been
16 contending, but of what they actually knew to the people
17 who were going to use the products. Isn't that exactly
18 what he said to the Federal Court?

19 A It is, sir.

20 Q In 1982?

21 A Yes, sir.

22 Q Thank you.

23 Now, is it also your understanding that
24 Commercial Union was a party to the other action that
25 was filed in the Federal Court in Philadelphia in the

1 case styled Pittsburgh Corning v. Travelers Indemnity
2 Company? Wasn't Commercial Union a party to that
3 litigation also?

4 A I believe that was subsequent litigation, and
5 I can't recall whether or not Commercial Union was a
6 named party in that one as well.

7 Q Are you familiar with the statements made by
8 the Travelers Insurance Company, the Travelers Indemnity
9 Company, in that same case that Pittsburgh Corning had
10 sponsored perjurious testimony under oath calculated to
11 convince claimants and courts that Pittsburgh's conduct
12 was not negligent?

13 A No, sir, I'm not familiar --

14 Q Are you aware of those representations?

15 A I'm not familiar with that testimony.

16 Q Were you also aware that Travelers had made
17 statements in that same case that despite the
18 overwhelming evidence discrediting the state-of-the-art
19 defense, Pittsburgh Corning continues to sponsor
20 perjurious testimony consistent with this defense?

21 A No, sir, I'm not aware of that.

22 MR. MADEKSHO: Let me ask that this be marked
23 as plaintiffs' next in order.

24 [EXHIBIT NO. 10 MARKED]

25 MR. MADEKSHO:

1 Q Now, Mr. Lewis, you have been following the
2 Searls case, this litigation, yourself, have you not,
3 sir?

4 A Yes, sir.

5 Q Is there any particular reason that you have
6 taken a special interest in this litigation as opposed
7 to having one of the other claims people? Why is it
8 that you, the supervisor for Commercial Union, has taken
9 an interest in this case?

10 A At this point in time my understanding is
11 that this is a -- this is not a claims matter. This is
12 a matter involving Commercial Union as a corporate
13 insurance carrier and an entity, and that is the reason
14 that I have taken control of this particular piece of
15 litigation.

16 Q Okay. Now, of course, you're familiar with
17 the plaintiffs' contentions in this litigation, are you
18 not? You have had the opportunity to review the
19 petition that's been filed by the plaintiffs in this
20 case?

21 A I had opportunity recently to review I
22 believe it was Paragraph 5 of the amended petition.

23 MR. MADEKSHO: Yes, sir. Let me ask that
24 this be marked as next in order.

25 [EXHIBIT NO. 11 MARKED]

1 MR. MADEKSHO:

2 Q Mr. Lewis, let me hand you what has been
3 marked as plaintiffs' next in order to your testimony
4 here this morning and see if this is the same
5 information that you had reviewed previously in regard
6 to Paragraph 5 of the amended petition in this action.

7 A I believe this is the same Paragraph 5 that I
8 reviewed, sir.

9 Q Mr. Lewis, during the course of your review
10 of that particular petition, did you see where the
11 allegations have been made by the plaintiffs, the
12 allegations have been made by the plaintiffs that the
13 defendants have conspired and acted in concert among
14 themselves and with others, including their insurance
15 companies, to suppress the truth concerning their
16 liability for and the effect of asbestos-related
17 diseases?

18 A I see that.

19 Q And did you also notice, in your review of
20 that, that the plaintiffs have alleged in furtherance of
21 the conspiracy and concert of action that these
22 defendants denied their actual knowledge, suppressed
23 information, provided false information and misleading
24 information?

25 A I see that.

1 Q And that during the conspiracy and concert of
2 action, these defendants, or some of them, have utilized
3 the offices of the courts in attempts to hide damaging
4 information under courts' seals and protective orders?
5 Did you see that allegation, too?

6 A I do, sir.

7 Q And then with that -- plaintiffs have also
8 alleged with that knowledge they have actually had,
9 together with what has been furnished to them by their
10 insurance companies, defendants began to affirmatively
11 misrepresent the truth and perpetuate a fraudulent
12 state-of-the-art defense while concealing and
13 suppressing damaging evidence under court seals and
14 protective orders. Do you see that?

15 A Yes, I do, sir.

16 Q Now, of course, yourself, you are familiar
17 with the court seals and protective orders that
18 Commercial Union has been involved with, are you not?

19 A To the extent that I've been personally
20 involved with them, yes.

21 Q And you have been personally involved with
22 reviewing the court seals and the protective orders in
23 the Commercial Union case in the Federal Court in the
24 Eastern District of Pennsylvania. Isn't that true?

25 A I am, sir.

1 MR. MADEKSHO: Let me ask that this be marked
2 as plaintiffs' next in order.

3 [EXHIBIT NO. 12 MARKED]

4 MR. MADEKSHO:

5 Q Mr. Lewis, for identification purposes, this
6 is a motion to seal that has been filed -- that was
7 filed by Commercial Union in the Federal Court in
8 Philadelphia in the Commercial Union v. Pittsburgh
9 Corning, et al. case?

10 A I believe it is.

11 Q And there again, we've talked about the
12 representative of Commercial Union a little bit earlier,
13 James Griffith, and the motion to seal was prepared by
14 Mr. Griffith where they requested the court to seal
15 certain information?

16 A Yes, sir.

17 Q As a matter of fact, Commercial Union's
18 representative asked the court to even seal their motion
19 for a protective order. Isn't that what that motion to
20 seal is about?

21 A I believe that's what the motion requests.

22 Q And didn't also Commercial Union's
23 representative represent to that court that by agreement
24 of counsel, the subject matter disclosed during the
25 course of the discovery is to remain confidential?

1 A 1991.

2 Q And could you give us the approximate date in
3 1991? The middle of the year? Latter part of the year?
4 First of the year?

5 A My sense would be approximately the middle of
6 the year, it was resolved.

7 Q Sometime during the summer of 1991, would be
8 a fair estimate?

9 A A fair estimate. That's all.

10 Q And you testified a little bit earlier that
11 Commercial Union controlled the defense of Pittsburgh
12 Corning simply for the years 1983 to 1984?

13 A Yes, with the qualification as the fact that
14 the defense really was controlled by the insured with
15 defense counsel.

16 Q And Commercial Union was simply paying for
17 the defense that was -- that you indicated was
18 controlled by the defense counsel for Pittsburgh
19 Corning?

20 A Yes, sir.

21 Q And that would be the National Defense
22 Counsel that would set those policies, the National
23 Defense Counsel for Pittsburgh Corning?

24 A I believe there was involvement of the
25 coordinating counsel with Pittsburgh Corning during that

1 period of time.

2 Q Okay. And the coordinating counsel, there
3 again, that would have been the Reed Smith firm out of
4 Pittsburgh and also the Danaher firm out of Hartford,
5 Connecticut?

6 A My recollection is more with the Danaher firm
7 in Connecticut than the Reed Smith firm, but it might
8 have been combined.

9 Q Did you ever have the opportunity to meet
10 with any of the regional counsel for Pittsburgh Corning?

11 A I did not.

12 Q Do you know who any of the regional counsel
13 were or presently are for Pittsburgh Corning in the
14 asbestos litigation?

15 A No, I do not, sir.

16 Q West Coast? East Coast?

17 A I'm not aware of any of their names, sir.

18 Q Now, in regard to the amount of money that
19 was being paid on behalf of Pittsburgh Corning and
20 Raymark, another area of inquiry, could you tell us what
21 your understanding is as to the amount of money that was
22 paid by Commercial Union on behalf of Pittsburgh Corning
23 say during this period of time up through 1983 or 1984?

24 MR. MARTINSON: Mr. Madeksho, are you
25 limiting it to those two years or cumulative to that

1 point in time?

2 MR. MADEKSHO: Well, however it would be most
3 comfortable for Mr. Lewis to handle that situation up
4 through this period of time when Commercial Union was
5 actually controlling the defense of Pittsburgh Corning.
6 And I think that was limited to '83 and '84, up through
7 that period of time.

8 A Approximately 73 million dollars was
9 expended.

10 Q Okay. That was the total that was paid out
11 by Commercial Union on behalf of Pittsburgh Corning for
12 defense and indemnity?

13 A That's right, somewhere between 73 million
14 and 74 million. I don't have the exact number in mind.

15 Q Okay. Now, in regard to the area of inquiry,
16 it stated the sums of money paid on behalf of -- by
17 Commercial Union for Pittsburgh Corning in defense and
18 to asbestos victims. Now, in regard to this 73 to 74
19 million dollars that Commercial Union paid out
20 concerning the Pittsburgh Corning account, could you
21 tell us as to how much was paid to the asbestos victims
22 and how much was paid to Pittsburgh Corning's defense
23 lawyers?

24 A I do not have that information available to
25 me at this point in time.

1 MR. MADEKSHO: Let me ask that this be marked
2 as plaintiffs' next in order.

3 [EXHIBIT NO. 4 MARKED]

4 MR. MADEKSHO:

5 Q Mr. Lewis, what I have handed you and what
6 has been marked as Exhibit 4 to your testimony is part
7 of a transcript -- and I have the full transcript here
8 if you need to refer to it -- concerning a hearing that
9 took place on February 25, 1985, in the United States
10 District Court for the Eastern District of Pennsylvania
11 in the case styled Commercial Union Insurance Company v.
12 Pittsburgh Corning Corporation and others.

13 Is that correct?

14 A Yes, sir.

15 Q And are you familiar with a lawyer by the
16 name of James Lewis Griffith?

17 A Yes, sir.

18 Q And who is Mr. James Lewis Griffith?

19 A At the time Mr. Griffith was representing
20 Commercial Union in the declaratory judgment litigation
21 referenced by the heading in this case.

22 Q And what I needed to ask you about, it looks
23 like Mr. Griffith, was he representing Commercial Union?

24 A He was representing Commercial Union in the
25 declaratory judgment litigation.

1 Q With the permission and the authority of
2 Commercial Union, I assume?

3 A Yes, sir.

4 Q And in regard to Mr. Griffith's statements
5 to the court -- and see if this comports with your
6 recollection of the history of this coverage -- that Mr.
7 Griffith was telling the court that Commercial Union had
8 exhausted the 74 million dollars of coverage that had
9 been agreed upon between Commercial Union and Pittsburgh
10 Corning, and that of that 74 million dollars,
11 approximately 50 million dollars went to the defense.

12 Is that correct?

13 A That's what Mr. Griffith had testified to the
14 court.

15 Q And does that refresh your recollection as to
16 how much money that Commercial Union had been paying on
17 behalf of Pittsburgh Corning to the defense lawyers for
18 Pittsburgh Corning and how much was going to the
19 asbestos victims?

20 A It doesn't refresh my recollection. I have
21 no reason to disbelieve that this was a misstatement by
22 Mr. Griffith.

23 Q It was a --

24 A I have no reason to believe it was a
25 misstatement by Mr. Griffith.

1 Q So you have no reason to doubt those figures
2 there?

3 A No, sir.

4 Q Now, in regard to the other portion of the
5 information in that area of inquiry, under area of
6 inquiry No. 11, the amount of money that Commercial
7 Union had paid on behalf of Raymark Industries, and
8 essentially the same question as to how much money that
9 Commercial Union had paid to the defense lawyers for
10 Raymark Industries, Raybestos Manhattan, and how much
11 was paid to the asbestos victims. Could you tell us
12 what those figures were for approximately that same time
13 period running up through the early 1980s to the mid
14 1980s?

15 A By 1984, Commercial Union's limits on behalf
16 of Raymark had been exhausted to the extent of 2.495
17 million dollars. Those were indemnity limits. So 2.495
18 million dollars was paid to asbestos victims as
19 indemnity.

20 Q Give me that figure again, two point --

21 A \$2,495,000.

22 Q And could you tell us as to how many millions
23 of dollars that were paid to the defense lawyers for
24 Raymark and Raybestos Manhattan in regard to the
25 asbestos litigation for that same period?

1 A Up until the time that the court relieved
2 Commercial Union of its obligation to pay defense costs,
3 which went well beyond the exhaustion of Commercial
4 Union's indemnity limits, the amount that had been
5 expended in behalf of Raymark was in the area of six
6 million dollars. 3.6 million of that was an amount
7 which had been expended in excess -- beyond the time
8 that Commercial Union had exhausted its indemnity
9 limits, but the court was still ordering Commercial
10 Union to provide a defense.

11 Q Are you familiar with some litigation that
12 Commercial Union was involved with in the state of
13 Illinois concerning Raymark Industries, Raybestos
14 Manhattan and Commercial Union?

15 A Yes, sir.

16 MR. MADEKSHO: Let me ask that this be marked
17 as plaintiffs' next in order.

18 [EXHIBIT NO. 5 MARKED]

19 MR. MADEKSHO:

20 Q Mr. Lewis, what I would ask you to do is,
21 first of all, do you recognize the style of this lawsuit
22 in which Commercial Union was involved with?

23 A I recognize the style of the case, sir.

24 Q And I believe this is headed up Memorandum
25 and Final Judgment Order. And it was filed in, it looks

1 like, August 29, 1984, on the front of it. There are
2 two file dates on it. One of them appears to be August
3 29, 1984, and another one appears to be June 15. And I
4 can't make out the other one.

5 A I can notice the filings on here, sir. I
6 cannot notice any date in that second filing as well.

7 Q Now, in regard to this litigation that was
8 ongoing in the state of Illinois, this is where the
9 court had ordered Commercial Union to continue with the
10 defense payments to the lawyers for Raymark and
11 Raybestos Manhattan?

12 A Yes, sir.

13 Q And if you would turn to Page 7, at the
14 bottom of Page 7.

15 A Yes, sir.

16 Q Do you see that where the court, in this
17 order, had stated, "From information supplied to the
18 court up to February 8, 1984," then they're talking
19 about some defense costs?

20 A Yes, sir.

21 Q And continuing over onto the top of Page 8?

22 A Yes, sir.

23 Q And the defense costs to Commercial Union was
24 32,958,000?

25 A I see what it says, but I can't agree with

1 that.

2 Q You don't agree with the figures that are
3 included in the court's Memorandum and Final Judgment
4 Order in that litigation?

5 A My sense was that was a scrivener's error
6 when the judgment was prepared, sir.

7 Q And so as opposed to what the court has in
8 this particular Memorandum and Final Judgment Order of
9 the 32,958,000 was paid to Raymark's defense lawyers,
10 you indicate that to the best of your understanding it
11 was how much?

12 A My recollection was it was somewhere in the
13 neighborhood of six million dollars, sir.

14 Q And so then also in regard to what Commercial
15 Union had paid out to the asbestos victims who had made
16 claims against Raymark Industries, I believe that figure
17 was 2,495,000?

18 A Yes, sir, which was the total sum of
19 Commercial Union's indemnity limits.

20 Q Now, in regard to the insurance coverage that
21 Commercial Union had for all asbestos products
22 manufacturers, could you tell us as to who all they
23 might have been, or can you remember any of them today?

24 MR. MARTINSON: By identity of asbestos
25 manufacturers?

1 MR. MADEKSHO: Asbestos products
2 manufacturers.

3 A I can only remember those that I have dealt
4 with recently or historically involved in the
5 litigation.

6 Q Okay. Which ones have you dealt with
7 recently?

8 A Pittsburgh Corning, Johns-Manville, Raymark,
9 or Raybestos Manhattan, as it was previously known, GAF,
10 Flintkote, Fibreboard, Standard. Generally, those are
11 the ones that I have dealt with over the past number of
12 years.

13 Q What about Armstrong World Industries?

14 A I'm sorry. Yes, sir, Armstrong World
15 Industries.

16 Q Used to be known as Armstrong Cork Company?

17 A Yes, sir.

18 Q Now, what is your understanding as to the
19 years that Commercial Union had provided coverage to
20 Pittsburgh Corning Corporation as far as the asbestos
21 litigation?

22 MR. MARTINSON: Including both primary and
23 excess?

24 MR. MADEKSHO: Both, right.

25 A With reference to Pittsburgh Corning, there

1 was no primary coverage. I believe it was excess
2 coverage at a number of layers, commencing sometime in
3 1961 and running through, not continuously, but running
4 through up until sometime in 1972, I believe.

5 MR. MADEKSHO: Let me ask that this be marked
6 as plaintiffs' next in order.

7 [EXHIBIT NO. 6 MARKED]

8 MR. MADEKSHO:

9 Q Mr. Lewis, I would like to hand you what has
10 been marked as Exhibit 6 to your testimony, sir. And
11 this is identified as a March 20, 1978 letter on the
12 letterhead of Commercial Union Assurance Company
13 directed to Pittsburgh Corning Company to the attention
14 of their legal department from a claims representative
15 of Commercial Union. Is that correct?

16 A This appears to be that.

17 Q Now, in regard to this correspondence from
18 Commercial Union to Pittsburgh Corning's legal
19 department in 1978, there is an indication toward the
20 bottom of that first and basically the only paragraph
21 that states that: "As you know, Commercial Union
22 provided coverage for your company" -- being Pittsburgh
23 Corning -- "from July 15, 1959 to December 1, 1972."

24 And I think it's your testimony a little bit
25 earlier that you thought it was sometime in the early

1 Sixties up through 1972?

2 A Yes, sir. I believe it was sometime mid
3 1961. And the reason I state that is that's the extent
4 of the coverage or the involvement of Pittsburgh Corning
5 in asbestos production. There may very well have been
6 coverage prior to that time, but my understanding was
7 Pittsburgh Corning was not involved in any asbestos
8 activity prior to sometime in 1961.

9 Q Did you have any understanding as to whether
10 or not Pittsburgh Corning was actually manufacturing,
11 selling or distributing asbestos-containing products
12 prior to 1961? Were you aware that they were?

13 A No, I was not.

14 MR. MADEKSHO: Let me also have this marked
15 as Mr. Lewis' Exhibit No. 7 to his testimony this
16 morning.

17 [EXHIBIT NO. 7 MARKED]

18 MR. MADEKSHO:

19 Q Mr. Lewis, let me ask you to take a look at
20 what has been marked as Exhibit No. 7 and which is
21 identified as a Chart of Relevant Parties in Each
22 Included Action in the California Asbestos Litigation.

23 Have you seen a chart, either that chart or a
24 chart similar to that, concerning your involvement with
25 what is known as the California Asbestos Insurance

1 Litigation?

2 A No, sir, I have not.

3 Q In your earlier testimony -- well, of course,
4 what this chart reflects are the insurance companies and
5 then a certain number of asbestos products manufacturers
6 that were involved with that litigation. Is that
7 correct?

8 A It would appear to be.

9 Q And as we go down the list, I think that
10 Commercial Union is listed about the fourth one from the
11 bottom.

12 A Yes, sir, I see that.

13 Q And this chart reflects what you had
14 testified to earlier about Commercial Union having the
15 coverage for Armstrong World Industries, used to be
16 known as Armstrong Cork, and for the GAF Corporation,
17 Johns-Manville, and then also there is some coverage,
18 on the second page, through Employers Surplus for
19 Fibreboard, at the top.

20 A Yes, sir, I see that.

21 Q In reviewing this list of insurance
22 companies, are there any insurance companies that
23 Commercial Union is associated with besides Commercial
24 Union and Employers Surplus? What about Employers
25 Reinsurance?

1 A No, sir, they are not.

2 Q What about Employers Insurance?

3 A No, sir.

4 Q Could you just take a minute to look at that
5 list and see if you recognize any other insurance
6 companies?

7 MR. MARTINSON: Take your time.

8 MR. MADEKSHO: Yeah, don't rush yourself.

9 A I do not find any of the other companies on
10 this list.

11 Q Okay. Fair enough.

12 Mr. Lewis, in regard to -- let me ask you
13 something about a couple of companies listed on Page 3.
14 And the fourth and fifth ones down, it's got London
15 Assurance is the fourth one, and then the fifth one is
16 London 1978 and 1979. Now, based on your knowledge and
17 experience, would that indicate some syndications from
18 the London Market for the years 1978 and 1979?

19 A I have no idea what those mean.

20 Q Now, of course, another area of inquiry for
21 this morning's testimony was in regard to Commercial
22 Union's involvement with the London Market, through
23 syndication or otherwise, regarding coverage for
24 asbestos-related disease claims.

25 And could you tell us the extent of

1 Commercial Union's involvement with the London Market
2 concerning coverage for asbestos-related disease claims?

3 A The only association or relevance that might
4 have would be in the event that through a brokerage
5 house representing a manufacturer, the brokerage house
6 sought out participation of a number of companies for a
7 block of coverage at some particular level. And in that
8 case, there perhaps might have been a participation by
9 Commercial Union with a London Market company for a
10 percentage of a particular layer of coverage.

11 Q Okay. Well, are you prepared to provide
12 testimony on that area this morning, though?

13 A To that extent that would be the only
14 involvement I can see Commercial Union having with the
15 London Market would be in the event that on a particular
16 layer for a particular insured, Commercial Union might
17 be participating with other carriers including the
18 London Market for a portion of the coverage limits in a
19 particular layer of coverage.

20 Q Okay. Now, for the benefit of the court and
21 jury in regard to the London Market, could you go ahead
22 and explain what the London Market actually is and how
23 it's comprised and who it's made up of, including the
24 domestic and foreign insurance companies?

25 A I am not -- I am not privy to the exact

1 manner in which the London Market is formulated. I
2 don't deal with them.

3 Q Okay. Who at Commercial Union would deal
4 with the London Market?

5 MR. MARTINSON: In relationship to asbestos-
6 related disease claims?

7 MR. MADEKSHO: As far as coverage, right,
8 writing coverage.

9 A That would have been handled by underwriters
10 at the time the coverage was negotiated.

11 Q Okay. Well, is there anybody within
12 Commercial Union that was involved with that
13 negotiations or in contact with the underwriters and the
14 brokers from the London Market concerning that type of
15 coverage?

16 A No, sir, not today.

17 Q Have you made or asked anybody, in your
18 supervisory capacity, to check the records for
19 Commercial Union to see as to whether or not Commercial
20 Union was involved in any of these syndications
21 concerning the insurance coverage for asbestos-related
22 diseases and any involvement with the London Market?

23 MR. MARTINSON: Other than he's described
24 already?

25 MR. MADEKSHO: That's correct.

1 A For asbestos-related disease claims, there
2 are none, sir.

3 Q Okay. As far as Commercial Union?

4 A Yes, sir.

5 Q Now, Mr. Lewis, I believe that Commercial
6 Union, they also have insurance coverage, primary or
7 excess, concerning other manufacturers of products that
8 have asbestos as a component to the product as well. Is
9 that correct?

10 A That may very well be, yes, sir.

11 Q For an example, Foster Wheeler, Commercial
12 Union has had insurance coverage for Foster Wheeler?

13 MR. RILEY: Object to the predicate for that
14 question as presuming facts not in evidence and possibly
15 being inaccurate.

16 A I don't have any specific knowledge of
17 involvement of Foster Wheeler.

18 MR. MADEKSHO:

19 Q Do you know an individual by the name of
20 Michael Sommerville, spelled S-o-m-m-e-r-v-i-l-l-e?

21 A Yes, sir, I do.

22 Q And who is Michael Sommerville?

23 A Michael Sommerville was the manager of the
24 special claims unit at Commercial Union.

25 Q And have you, with your involvement with the

1 processing of the asbestos claims and supervising the
2 asbestos claims, ever had an opportunity to review the
3 Asbestos Related Disease Claim Handling Procedures that
4 was created by Michael Sommerville?

5 A I reviewed that at one time, sir.

6 Q And during the course of your review of that
7 information, do you recall seeing the lists of
8 identified insureds of Commercial Union?

9 A That document was prepared by Michael
10 Sommerville a number of years ago. I recall reviewing
11 it a number of years ago. And I know that there must
12 have been a list attached to it, if I recall.

13 MR. MADEKSHO: Let me ask that this be marked
14 as plaintiffs' next in order.

15 [EXHIBIT NO. 8 MARKED]

16 MR. MADEKSHO:

17 Q Mr. Lewis, in regard to Exhibit No. 8, this
18 is a portion of the Asbestos Related Disease Claim
19 Handling Procedures manual that had been prepared by
20 Mr. Sommerville. And the portion that I have handed you
21 is the list of the insureds of Commercial Union. Now,
22 does that look familiar now? Does that refresh your
23 recollection?

24 A I recall there was a list. I have no reason
25 not to believe that this was part of that presentation

1 that Mr. Sommerville had made, sir.

2 Q Now, in regard to this list of various
3 insureds -- and I think we had identified a number of
4 these earlier in your testimony: Armstrong Cork, which
5 is now Armstrong World Industries; of course, we've
6 talked about Raybestos Manhattan, Raymark; we've got the
7 GAF Corporation. Then do you also see the Foster
8 Wheeler name on that list as well?

9 A I do, sir.

10 Q Now, in regard to the coverage that was
11 provided to Pittsburgh Corning, on the list there is
12 PPG. And do you know what the PPG stands for?

13 A I believe there were a number of additional
14 named insureds. I cannot remember who the primary
15 insured was. But suffice my memory to say that it was
16 PPG, PPG Industries, Pittsburgh Corning. They were all
17 related. My recollection is that that's the manner in
18 which the policies were issued with additional named
19 insureds.

20 Q Okay. Now, Pittsburgh Corning, to your
21 understanding, was an additional named insured under
22 the policies of PPG Industries, Pittsburgh Plate Glass?

23 A That's my recollection at this point. I
24 don't have a specific memory of that, but my sense would
25 be that's what it was.

1 Q Would they also have been an additional named
2 insured under the policies of Corning Glass Works,
3 Corning Glass?

4 A No, sir.

5 Q It was simply limited to PPG?

6 A That's my recollection.

7 Q Now, has Commercial Union Insurance Company
8 ever prepared or made any calculations or come up with
9 any figures in regard to the total amount of defense
10 costs and the total amount that was actually paid to the
11 asbestos victims, say as far as up to the year around
12 1985?

13 MR. MARTINSON: Are you asking that question
14 as to all insureds, all circumstances?

15 MR. MADEKSHO: As to all insureds, including
16 the ones we had talked about a little bit earlier:
17 Armstrong World Industries, Armstrong Cork, GAF
18 Corporation, right on down the line.

19 A I can't recall seeing any document that would
20 have a summary such as that.

21 Q Now, could you tell the court and jury as to
22 when Commercial Union either first knew or alleged that
23 there was an industry-wide scheme on the part of
24 Pittsburgh Corning and the other manufacturers of
25 asbestos products to deliberately conceal facts of what

1 the manufacturers actually knew about the risks to the
2 users of the asbestos products in order that the
3 manufacturers could go into courts all over the country
4 and argue a state-of-the-art defense that the
5 manufacturers didn't know of the risks to the users and
6 that's why they didn't put on warning labels? Could you
7 tell us as to when Commercial Union first knew or
8 alleged that?

9 MR. MARTINSON: I'm going to object to the
10 form of the question. It assumes facts that he's not
11 testified to.

12 A I don't recall Commercial Union ever taking
13 that position as you stated.

14 MR. MADEKSHO: Let me hand you and ask to be
15 marked as plaintiffs' next in order.

16 [EXHIBIT NO. 9 MARKED]

17 MR. MADEKSHO:

18 Q This is a portion -- and there again, I have
19 got the entire hearing, transcript from this entire
20 hearing, if you need to refer to it, Mr. Lewis -- but
21 what has been handed to you and marked as plaintiffs'
22 next in order is a portion of the transcript from June
23 24, 1982, in the Federal Court in the Eastern District
24 of Pennsylvania in the case styled Commercial Union
25 Insurance Company v. Pittsburgh Corning, PPG Industries,

1 Corning Glass Works and Travelers Indemnity Company,
2 et cetera.

3 Now, there again, if you would look to the
4 counsel page in regard to who's representing whom at
5 this hearing and in this litigation. Do you see the
6 name James Lewis Griffith?

7 A I do.

8 Q That's the same Mr. Griffith that we had
9 talked about a little bit earlier?

10 A Yes, sir.

11 Q Do you know Mr. Griffith personally?

12 A I do.

13 Q Have you dealt with him on a regular basis
14 over a period of years?

15 A I did.

16 Q Did he represent Commercial Union? Did he
17 have the authority to represent Commercial Union in this
18 litigation?

19 A He did, sir.

20 Q Now, if you would, turn to Mr. Griffith's,
21 Commercial Union's statements, the representative of
22 Commercial Union. See on Page 187?

23 A Yes, sir.

24 Q Do you see where Mr. Griffith was telling the
25 court, the Federal Court in Philadelphia, that: For

1 years, Johns-Manville, PC and all these manufacturers
2 have been going into courts all over the country
3 standing before the court and arguing a state-of-the-art
4 defense based upon the fact that they did not know that
5 this product was a risk to the individual in the
6 capacity of a third-party user and that's why they
7 didn't put labels on their bags and they didn't put
8 other kinds of warnings? Do you see those statements?

9 A I see statements similar to that. I'm
10 reading them exactly as they appear on the record right
11 now, sir.

12 Q What I just recited, was that accurate?

13 A Yes, sir.

14 Q Do you also see that Mr. Griffith, on behalf
15 of Commercial Union, is alleging that there was in fact
16 on the part of many of these manufacturers a deliberate
17 attempt to conceal the fact that they knew that those
18 third-party users were at risk? Do you see those
19 statements?

20 A I see them, sir.

21 Q And if you would turn over to the two pages
22 over from where you are.

23 MR. MARTINSON: What page is that?

24 MR. MADEKSHO:

25 Q It would be the last page, where Commercial

1 Union's representative, Mr. Griffith, was telling the
2 court also that there was an industry-wide scheme not to
3 tell the people about what they knew of a risk, not just
4 to their employees, which is what they have been
5 contending, but of what they actually knew to the people
6 who were going to use the product? Do you see those
7 statements?

8 A I see them.

9 Q And isn't it true that these statements were
10 made by Commercial Union's representative in the Federal
11 Court in Philadelphia on June 24, 1982?

12 A That appears to be the case. I do not know
13 what context they were made in from this copy.

14 Q Do you have any doubt in your mind that
15 Commercial Union's representative, Mr. Griffith,
16 Commercial Union's lawyer, made those statements to that
17 Federal Court in 1982?

18 A Sir, I have no doubt that that's what the
19 attorney said, according to this exhibit; but again, I
20 don't know in what context that was said.

21 Q There is no question as to what those words
22 are, though, is there?

23 A No, sir. They are very apparent on the
24 record.

25 Q Do you know that as of 1991 that of course

1 Pittsburgh Corning was still alleging this state-of-the-
2 art defense in this litigation along with other
3 manufacturers of asbestos products?

4 MR. MARTINSON: "This litigation," you're
5 talking about the Searls case?

6 MR. MADEKSHO: That's correct.

7 A I'm not aware of that.

8 Q Were you aware that Commercial Union, they
9 are not the only insurance company that's alleged that
10 the state-of-the-art defense is a fraud?

11 A I'm sorry?

12 Q Are you aware that Commercial Union is not
13 the only insurance company that's made allegations to
14 the effect that the state-of-the-art defense is a fraud?

15 A Well, first of all, I can't agree with your
16 statement. The only thing that we've had to go on so
17 far is this statement by counsel out of context.

18 Q Okay. Well --

19 A I don't know what other insurance companies
20 have stated.

21 Q I tell you what I'm going to do for you, Mr.
22 Griffith, let me go ahead -- I mean Mr. Lewis. Pardon
23 me. I tell you what I'm going to do, Mr. Lewis, I'm
24 going to hand you that entire transcript, if you think
25 that I have taken something out of context in regard to

1 Commercial Union's representative's statements.

2 MR. MARTINSON: Mr. Madeksho, what do you
3 want the witness to do?

4 MR. MADEKSHO: Basically we need to
5 straighten up the situation concerning as to whether or
6 not I have taken something out of context concerning
7 Commercial Union's representative's statements to the
8 Federal Court in Philadelphia in 1982.

9 MR. MARTINSON: It will not suffice for Mr.
10 Lewis to acknowledge that the statements that you read
11 from the Exhibit No. 9 were correctly read?

12 MR. MADEKSHO:

13 Q Well, let's go back to Exhibit No. 9 right
14 quick, Mr. Lewis.

15 A Yes, sir.

16 Q Let's get No. 9 before you. There again, I
17 think we had a little bit earlier agreed that Mr.
18 Griffith, the representative of Commercial Union, the
19 lawyer for Commercial Union, had represented to the
20 court that the manufacturers had been going into the
21 courts all over the country standing before the court
22 and arguing a state-of-the-art defense based upon the
23 fact they did not know that this product was a risk to
24 an individual in the capacity of a third-party user and
25 that's why they didn't put labels on their bags and

1 that's why they didn't put other kinds of warnings. And
2 then he also told the Federal Court that there was in
3 fact on the part of many of the manufacturers a
4 deliberate attempt to conceal the fact that they knew
5 that those third-party users were at risk. Now, aren't
6 those the exact words of Commercial Union's
7 representatives?

8 A Yes, sir. During the argument in this
9 matter, I agree with you, that those are the exact
10 words.

11 Q And there again, in regard to the last page
12 of that exhibit, Mr. Griffith told the Federal Court
13 again that the industry-wide scheme not to tell the
14 people about what they knew of the risk, not just to
15 their employees, which is what they have been
16 contending, but of what they actually knew to the people
17 who were going to use the products. Isn't that exactly
18 what he said to the Federal Court?

19 A It is, sir.

20 Q In 1982?

21 A Yes, sir.

22 Q Thank you.

23 Now, is it also your understanding that
24 Commercial Union was a party to the other action that
25 was filed in the Federal Court in Philadelphia in the

1 case styled Pittsburgh Corning v. Travelers Indemnity
2 Company? Wasn't Commercial Union a party to that
3 litigation also?

4 A I believe that was subsequent litigation, and
5 I can't recall whether or not Commercial Union was a
6 named party in that one as well.

7 Q Are you familiar with the statements made by
8 the Travelers Insurance Company, the Travelers Indemnity
9 Company, in that same case that Pittsburgh Corning had
10 sponsored perjurious testimony under oath calculated to
11 convince claimants and courts that Pittsburgh's conduct
12 was not negligent?

13 A No, sir, I'm not familiar --

14 Q Are you aware of those representations?

15 A I'm not familiar with that testimony.

16 Q Were you also aware that Travelers had made
17 statements in that same case that despite the
18 overwhelming evidence discrediting the state-of-the-art
19 defense, Pittsburgh Corning continues to sponsor
20 perjurious testimony consistent with this defense?

21 A No, sir, I'm not aware of that.

22 MR. MADEKSHO: Let me ask that this be marked
23 as plaintiffs' next in order.

24 [EXHIBIT NO. 10 MARKED]

25 MR. MADEKSHO:

1 Q Now, Mr. Lewis, you have been following the
2 Searls case, this litigation, yourself, have you not,
3 sir?

4 A Yes, sir.

5 Q Is there any particular reason that you have
6 taken a special interest in this litigation as opposed
7 to having one of the other claims people? Why is it
8 that you, the supervisor for Commercial Union, has taken
9 an interest in this case?

10 A At this point in time my understanding is
11 that this is a -- this is not a claims matter. This is
12 a matter involving Commercial Union as a corporate
13 insurance carrier and an entity, and that is the reason
14 that I have taken control of this particular piece of
15 litigation.

16 Q Okay. Now, of course, you're familiar with
17 the plaintiffs' contentions in this litigation, are you
18 not? You have had the opportunity to review the
19 petition that's been filed by the plaintiffs in this
20 case?

21 A I had opportunity recently to review I
22 believe it was Paragraph 5 of the amended petition.

23 MR. MADEKSHO: Yes, sir. Let me ask that
24 this be marked as next in order.

25 [EXHIBIT NO. 11 MARKED]

1 MR. MADEKSHO:

2 Q Mr. Lewis, let me hand you what has been
3 marked as plaintiffs' next in order to your testimony
4 here this morning and see if this is the same
5 information that you had reviewed previously in regard
6 to Paragraph 5 of the amended petition in this action.

7 A I believe this is the same Paragraph 5 that I
8 reviewed, sir.

9 Q Mr. Lewis, during the course of your review
10 of that particular petition, did you see where the
11 allegations have been made by the plaintiffs, the
12 allegations have been made by the plaintiffs that the
13 defendants have conspired and acted in concert among
14 themselves and with others, including their insurance
15 companies, to suppress the truth concerning their
16 liability for and the effect of asbestos-related
17 diseases?

18 A I see that.

19 Q And did you also notice, in your review of
20 that, that the plaintiffs have alleged in furtherance of
21 the conspiracy and concert of action that these
22 defendants denied their actual knowledge, suppressed
23 information, provided false information and misleading
24 information?

25 A I see that.

1 Q And that during the conspiracy and concert of
2 action, these defendants, or some of them, have utilized
3 the offices of the courts in attempts to hide damaging
4 information under courts' seals and protective orders?
5 Did you see that allegation, too?

6 A I do, sir.

7 Q And then with that -- plaintiffs have also
8 alleged with that knowledge they have actually had,
9 together with what has been furnished to them by their
10 insurance companies, defendants began to affirmatively
11 misrepresent the truth and perpetuate a fraudulent
12 state-of-the-art defense while concealing and
13 suppressing damaging evidence under court seals and
14 protective orders. Do you see that?

15 A Yes, I do, sir.

16 Q Now, of course, yourself, you are familiar
17 with the court seals and protective orders that
18 Commercial Union has been involved with, are you not?

19 A To the extent that I've been personally
20 involved with them, yes.

21 Q And you have been personally involved with
22 reviewing the court seals and the protective orders in
23 the Commercial Union case in the Federal Court in the
24 Eastern District of Pennsylvania. Isn't that true?

25 A I am, sir.

1 MR. MADEKSHO: Let me ask that this be marked
2 as plaintiffs' next in order.

3 [EXHIBIT NO. 12 MARKED]

4 MR. MADEKSHO:

5 Q Mr. Lewis, for identification purposes, this
6 is a motion to seal that has been filed -- that was
7 filed by Commercial Union in the Federal Court in
8 Philadelphia in the Commercial Union v. Pittsburgh
9 Corning, et al. case?

10 A I believe it is.

11 Q And there again, we've talked about the
12 representative of Commercial Union a little bit earlier,
13 James Griffith, and the motion to seal was prepared by
14 Mr. Griffith where they requested the court to seal
15 certain information?

16 A Yes, sir.

17 Q As a matter of fact, Commercial Union's
18 representative asked the court to even seal their motion
19 for a protective order. Isn't that what that motion to
20 seal is about?

21 A I believe that's what the motion requests.

22 Q And didn't also Commercial Union's
23 representative represent to that court that by agreement
24 of counsel, the subject matter disclosed during the
25 course of the discovery is to remain confidential?

1 A That's what it says.

2 Q And then are you also familiar with the
3 Consent Motion to Place Documents Under Seal in that
4 case between Commercial Union, Pittsburgh Corning and
5 Travelers and the other parties?

6 A No, I'm not.

7 MR. MADEKSHO: Let me ask that this be marked
8 as plaintiffs' next in order.

9 [EXHIBIT NO. 13 MARKED]

10 MR. MADEKSHO:

11 Q Mr. Lewis, what has been handed to you is a
12 Consent Motion to Place Documents Under Seal that was
13 filed in the Federal Court there in Philadelphia in the
14 case styled Commercial Union Insurance Company v.
15 Pittsburgh Corning, Travelers Indemnity, and others, and
16 that's headed up Consent Motion to Place Documents Under
17 Seal. Is that correct?

18 A Yes, sir.

19 Q And do you see that, there again, that this
20 was action that was taken by Commercial Union through
21 its lawyers, and James Lewis Griffith being one of them?

22 A Yes, sir.

23 Q And do you see, under No. 1, where it states
24 and represents to the court that: The parties to this
25 litigation, being that case in Philadelphia, that they

1 have agreed to be bound by a protective order and under
2 the terms of which depositions and documents produced in
3 discovery are confidential and that materials filed with
4 the clerk of the court may be designated as confidential
5 and placed under seal. Correct?

6 A I see that, yes, sir.

7 Q And do you also see on the second page of
8 that exhibit, in Item No. 3, that Commercial Union
9 Insurance Company is authorized to advise the court that
10 this motion is consented to by all the parties? Do you
11 see that?

12 A I do.

13 Q Now, in regard to the protective order
14 itself, the consented-to protective order, have you had
15 an opportunity to review that, in regard to the
16 protective order concerning the exchange of confidential
17 information?

18 A No, sir.

19 MR. MADEKSHO: Let me ask that this be marked
20 as plaintiffs' next in order.

21 [EXHIBIT NO. 14 MARKED]

22 MR. MADEKSHO:

23 Q Now, Mr. Lewis, what has been handed to you
24 as Exhibit 14 to your testimony is entitled Protective
25 Order Concerning the Exchange of Confidential

1 Information filed in the United States District Court.
2 There again, we're talking about the Philadelphia case
3 involving Commercial Union, Pittsburgh Corning,
4 Travelers, and others. Is that correct?

5 A Yes, sir.

6 Q In No. 1, do you see where it was ordered
7 that all testimony, information, documents or materials
8 resulting from or disclosed through formal or informal
9 discovery in the course of that litigation shall be
10 regarded as confidential?

11 A Yes, sir.

12 Q And if you could turn to the Page No. 4. And
13 in the middle of the page there, do you see where the
14 various undersigned parties had consented to the entry
15 of the protective order?

16 A I do.

17 Q And do you see the signature of James Lewis
18 Griffith, counsel for Commercial Union?

19 A Yes, sir, I do.

20 Q Do you also see where there is a signature
21 for the counsel for Pittsburgh Corning?

22 A Yes, sir.

23 Q And likewise for PPG Industries and Corning
24 Glass Works and, if you will turn over to the next page,
25 also the counsel for Travelers Indemnity Company?

1 A Yes, sir, I do.

2 Q And is today the first time that you have had
3 an opportunity to review this consented-to protective
4 order concerning the exchange of confidential
5 information?

6 A Yes, sir, it is.

7 Q Now, of course, you are also familiar with
8 the attempts by Commercial Union and Pittsburgh Corning
9 to get an injunction in that same Federal Court in
10 Philadelphia to prevent the production of the 1937
11 Commercial Union engineering manual to the plaintiffs,
12 are you not?

13 A Yes, sir.

14 Q As a matter of fact, I believe that you had
15 executed an affidavit for that purpose. Is that
16 correct?

17 A Yes, sir.

18 MR. MADEKSHO: Let me ask that this be marked
19 as plaintiffs' next in order.

20 [EXHIBIT NO. 15 MARKED]

21 MR. MADEKSHO:

22 Q Mr. Lewis, I would ask you to look at Exhibit
23 15 to your testimony and see if you recognize that
24 affidavit that you signed on February 28, 1991. Do you
25 recognize that?

1 A Yes, I do, sir.

2 Q Now, in regard to the purpose for executing
3 this affidavit was to get the Federal Court there in
4 Philadelphia to issue an injunction prohibiting the
5 production of Commercial Union's 1937 engineering
6 manual. Is that correct?

7 A Yes, sir.

8 Q And, of course, the reason that Commercial
9 Union did not want that 1937 engineering manual produced
10 is because it felt like it could be damaging evidence in
11 cases against Commercial Union's insureds in the
12 asbestos litigation. Correct?

13 A No, sir.

14 Q Let's take a look at your affidavit. Let's
15 look at Item No. 3. Item No. 3 that you filed in that
16 affidavit is -- and see if this is a correct recitation
17 of your affidavit that you executed: The discovery
18 sought -- now, the discovery sought, of course, we know
19 that's the 1937 engineering manual. Correct?

20 A I can't recall if that was the only thing
21 that was sought through Pittsburgh Corning. I'm not --
22 I can't recall that.

23 MR. MADEKSHO: Okay. Let's do this then.
24 Let's back up just a hair then. Let me ask that this be
25 marked as plaintiffs' next in order.

[EXHIBIT NO. 16 MARKED]

MR. MADEKSHO:

Q Mr. Lewis, what I have just handed you is a February 26th, 1991, letter on the letterhead of the Reed Smith Shaw & McClay firm in Pittsburgh, Pennsylvania, to James L. Griffith there in Philadelphia. Correct?

A Yes, sir.

Q And as a matter of fact, you received a copy of this letter, didn't you?

A I believe I did.

Q Does this refresh your recollection now in regard to what the affidavit was executed for as far as getting the injunction? Of course, this is a letter from the lawyers that represent Pittsburgh Corning to the lawyer representing Commercial Union. Correct?

A Yes, sir.

Q And it states very clearly that the issue has arisen in this underlying asbestos-related case concerning plaintiffs' request that Pittsburgh Corning produce the 1937 group engineering manual of Commercial Union. Correct?

A Yes, sir.

Q So does that refresh your recollection at this point as to what document was in controversy?

1 A Yes, sir, it does.

2 Q Okay. We can pass on this one then. Now,
3 getting back to this affidavit, Mr. Lewis, in regard to
4 Item No. 3 -- and these were your statements under oath
5 on February 28, 1991, two days after this letter we just
6 went over. Correct?

7 A Yes, sir.

8 Q And in regard to your sworn affidavit, you're
9 stating that, "The discovery sought" -- and that
10 discovery sought being the 1937 engineering manual --
11 "may severely prejudice Pittsburgh Corning Corporation
12 and other insureds in their defense of the many
13 thousands of claims past and present which have been
14 filed against them and potentially expose them to
15 inflated compensatory and punitive damages."

16 Correct? Isn't that what you stated?

17 A That's what I stated, sir.

18 Q Now, and you also stated that, "The discovery
19 sought" -- being the 1937 engineering manual -- "will
20 immediately and irreparably harm other insureds in
21 connection with the underlying asbestos claims."

22 Correct?

23 A That's what it says.

24 Q And, of course, the reason that that could
25 jeopardize those claims is because of the knowledge that

1 Commercial Union had in 1937 concerning the hazards of
2 exposure to asbestos. Correct?

3 A That was not my reason for approving counsel
4 to seek the injunction in this case.

5 Q Is there any doubt in your mind that you had
6 authorized the efforts to seek the permanent injunction
7 in the Federal Court there in Philadelphia to prevent
8 the plaintiffs from getting their hands on the 1937
9 engineering manual?

10 A To the extent that that was the subject of a
11 protective order entered by a Federal Court judge, I
12 believe in 1981 or 1982, to which I was not a party and
13 privy, based upon the fact that that protective order
14 had been entered by the parties at the time, I was
15 reluctant to do anything that would be in violation of
16 that protective order.

17 Q In other words, you knew that the Commercial
18 Union 1937 engineering manual had been placed under seal
19 and made part of a protective order in that case in the
20 Federal Court in Philadelphia. Correct?

21 A Yes, sir, I was aware of that fact.

22 Q And then when you found out or Commercial
23 Union found out that the plaintiffs wanted to get the
24 information contained in that 1937 engineering manual,
25 Commercial Union, along with Pittsburgh Corning, went to

1 the Federal Court to see about getting an injunction to
2 keep the plaintiffs from getting it. Correct?

3 A That's my understanding.

4 Q Now, of course, the 1937 engineering manual,
5 that clearly demonstrated that an asbestos hazard was to
6 be looked for wherever asbestos dust is created.

7 Correct?

8 A I recall reading words similar to that in the
9 manual, but I can't -- I'm not sure if you are quoting
10 it correctly. If you have a copy, I'll be more than
11 happy to verify that that's what it did say, sir.

12 Q Yes, sir. Let's take a look at the answers
13 to interrogatories that you filed in this case. And if
14 you would, Mr. Lewis, turn to Interrogatory No. 14.
15 And, of course, you have a sworn affidavit attached to
16 these answers to the interrogatories on behalf of
17 Commercial Union Insurance Company as the vice president
18 of specialty litigation. Correct?

19 A Yes, sir.

20 Q In regard to Interrogatory No. 14, the
21 question is: Is it true that this defendant, being
22 Commercial Union Insurance Company, knew by no later
23 than 1937 that a potential asbestosis hazard was to be
24 looked for wherever asbestos dust was created?

25 Correct? And tell us what your answer was.

1 A My answer was yes, sir.

2 Q Now, of course, that 1937 engineering manual
3 told us a little bit more than just simply that
4 asbestos -- that an asbestos hazard could be looked for
5 wherever asbestos dust was created, didn't it?

6 A Yes, sir.

7 Q As a matter of fact, it told us that anytime
8 that there was a visible concentration of dust, it was a
9 hazardous situation and that if you couldn't see the
10 dust that you needed to take dust counts. Correct?

11 A I can't recall that specifically being
12 stated.

13 MR. MADEKSHO: Let me hand you a copy of that
14 1937 engineering manual, those portions of it. And I've
15 got the entire manual here for you, Mr. Lewis, if you
16 need it. And ask that this be marked as plaintiffs'
17 next in order.

18 [EXHIBIT NO. 17 MARKED]

19 MR. MADEKSHO:

20 Q Mr. Lewis, do you recognize that as the 1937
21 engineering manual that we've been discussing?

22 A I recognize this as a portion of it, sir,
23 yes.

24 Q Yes, sir. And like I said, I've got the
25 entire thing here, if you need it. But the portions

1 that we're concerned about relate to the occupational
2 disease hazards in 1937 and under the heading of
3 Asbestosis. Do you see that?

4 A I do, sir.

5 Q And, of course, we've already discussed a
6 little bit earlier about the potential asbestosis hazard
7 is to be looked for wherever asbestos dust is created.
8 And, of course, under that same section it mentions
9 various industries, including brake lining and gaskets
10 and insulation. Correct?

11 A Yes, sir.

12 Q And also, in regard to the portion -- if you
13 would turn over to the next to the last page where it
14 talks about dust control. Are you under that section?

15 A I am, sir.

16 Q And at the bottom of the left-hand column
17 there, as a matter of fact, where it starts at, "A dust
18 cloud may be composed," do you see the start of that
19 sentence?

20 A Yes, sir.

21 Q Where it states that, "A dust cloud may be
22 composed of billions of particles of varying sizes and
23 shapes." Correct?

24 A Yes, sir.

25 Q And then at the bottom of that page on the

1 right-hand side, do you see that statement by Commercial
2 Union in 1937 that, "When dust in the area is visible,
3 we know a hazard exists, when not visible, dust counts
4 should be employed." Correct?

5 A Yes, sir.

6 Q And this was known in 1937 by Commercial
7 Union. Correct?

8 A This was the manual that the loss prevention
9 engineering department utilized in workers' compensation
10 type loss reports.

11 Q And that information was known in 1937.
12 Correct?

13 A Yes, it was.

14 MR. MADEKSHO: Did you want to take a quick
15 break, or do you want to keep marching on?

16 MR. MARTINSON: We're going to break at lunch
17 in the next 30 minutes. We might as well go on, unless
18 you wanted to take a break.

19 THE WITNESS: No, I'm fine.

20 MR. MADEKSHO:

21 Q In regard to discussing some of the -- pardon
22 me. Strike that.

23 Now, another portion of these interrogatories
24 related to the meetings of the American Insurance
25 Association back in 1976. Is that correct?

1 A I believe so.

2 MR. MADEKSHO: Do you remember that?

3 Let me hand you and ask that this be marked
4 as next in order and ask you to take a look at that.

5 [EXHIBIT NO. 18 MARKED]

6 MR. MADEKSHO:

7 Q Mr. Lewis, you recall in the answers to
8 interrogatories that there were some questions asked of
9 Commercial Union relating to these minutes from these
10 minutes of the American Insurance Association back in
11 1976? Do you remember those interrogatories?

12 A I recall them, sir.

13 Q And if you would turn over to the second page
14 of that exhibit and you will see that that's entitled
15 that Minutes of the Enterprise Liability Discussion
16 Group, November 10, 1976, American Insurance Association
17 in New York City. Right?

18 A Yes, sir.

19 Q And present at this meeting there were
20 representatives from the Commercial Union Insurance
21 Companies. Correct?

22 A That's correct.

23 Q And they had two representatives there?

24 A I believe so.

25 Q And also present were other insurance

1 companies, the Aetna and the Travelers Insurance
2 companies?

3 MR. GEORGE: I'll object to the form of
4 the question to the extent this witness has personal
5 knowledge of who was present and who wasn't present. I
6 don't believe the witness has testified that he knows
7 who was there and who wasn't there.

8 MR. MADEKSHO:

9 Q Does the document reflect, Mr. Lewis, that
10 Travelers Insurance Company had a representative at that
11 meeting of the American Insurance Association in
12 November of 1976?

13 A The document indicates that, sir.

14 Q And if you recall in regard to the
15 interrogatories, we were wanting to find out what
16 Commercial Union's position was concerning the
17 information in these minutes? Do you remember that?

18 A I recall the question in the interrogatories
19 about this.

20 Q As a matter of fact, we had asked Commercial
21 Union if they had agreed or not concerning the
22 information about when the dangers of asbestos were
23 known. Do you recall that?

24 A Yes, sir.

25 Q And if you would, turn over to Page 3 of this

1 particular document, where Commercial Union had two
2 representatives at this 1976 meeting, and you see under
3 the section Asbestosis Medical Program?

4 A I do, sir.

5 Q And do you see there that where it's stated
6 that, "In 1900 medical research linked the mineral
7 asbestos with asbestosis and 1935 brought the first
8 direct linkage of asbestos to cancer"?

9 A I see where it says that.

10 Q And do you have any reason to dispute this
11 information from the American Insurance Association, of
12 which Commercial Union was a member?

13 A I have no reason one way or another.

14 Q Now, also, we had asked Commercial Union
15 about some of the asbestos lawsuits that were filed
16 by -- filed against manufacturers of asbestos products
17 in the 1920s. Do you remember that interrogatory?

18 A Yes, sir, I do.

19 Q And, of course, Johns-Manville was one of the
20 insureds of Commercial Union. Correct?

21 A It was.

22 Q And have you since had the opportunity to go
23 back and see some of the lawsuits that were filed
24 against Johns-Manville in the 1920s and concerning
25 asbestos diseases?

1 A We were unable to locate any that go back to
2 the 1920s. I believe in responses to the discovery we
3 did provide information on a 1949, I believe, workers'
4 comp claim.

5 Q Were you aware that there were asbestos
6 disease claims alleging malignancies in the 1920s
7 against manufacturers of asbestos products?

8 A No, I wasn't.

9 MR. MADEKSHO: Let me ask that -- and see if
10 we can speed this up just a little bit. I'm going to
11 ask that these two be marked consecutively as
12 plaintiffs' next in order, these two exhibits.

13 [EXHIBIT NO. 19 MARKED]

14 [EXHIBIT NO. 20 MARKED]

15 MR. MADEKSHO:

16 Q I believe the first exhibit that you have
17 before you is a lawsuit styled Robert Marshall,
18 Administrator of the Helen Marshall -- of Helen Marshall
19 deceased?

20 A Yes, sir.

21 Q Filed in the New Jersey Supreme Court against
22 Johns-Manville?

23 A Yes, sir.

24 Q Do you see that where it's alleged that Helen
25 Marshall was the employee of the defendant corporation,

1 under Allegation No. 1, and that under Allegation No. 2
2 that the defendant corporation was engaged in the
3 manufacture of asbestos products?

4 A Yes, sir.

5 Q And also, in regard to -- in Allegation No.
6 3, that the defendant employed the intestate, being the
7 deceased Ms. Marshall, in its manufacture of asbestos
8 products and that the said defendant not only knew but
9 should have known that the said asbestos products
10 contained certain dangerous, insidious and harmful
11 agencies composed of asbestos fibers and other particles
12 that were destructive to life and health in the human
13 body?

14 A I see that in Paragraph 3.

15 Q Is this the first time that you have become
16 aware of this particular lawsuit that was filed against
17 Johns-Manville in 1929?

18 A Yes, sir, it is.

19 Q Take a look at the next exhibit, if you
20 would, please. This is a 1929 lawsuit, is it not?

21 A Yes, sir, it's dated 1929.

22 Q And this is a lawsuit that's filed in the
23 United States District Court for the District of New
24 Jersey, styled Anna Pirskowski, P-i-r-s-k-o-w-s-k-i, v.
25 Johns-Manville?

1 A Yes, sir.

2 Q And in regard to this lawsuit in the 19 -- in
3 1929, do you see that the allegation is made against
4 Johns-Manville that Anna Pirsowski, that she was in the
5 employ of the defendant, under No. 2?

6 A Yes, sir.

7 Q And that defendant was engaged in the
8 manufacture of asbestos, and particles of asbestos and
9 other dangerous articles used in its business of
10 manufacture were inhaled by her, that she became
11 diseased, sick and poisoned, that her body became
12 infected and weakened so as to cause her to suffer
13 permanently with a malignant disease?

14 A That's what it says.

15 Q Is this the first time that it's come to your
16 attention that asbestos lawsuits were filed against
17 manufacturers for malignant diseases in the 1920s?

18 A Yes, sir.

19 Q Now, in regard -- let me back up for just
20 one second, if I could, please, Mr. Lewis. There was
21 another insured that we perhaps didn't touch on that was
22 on that list, that Mr. Michael Sommerville's Commercial
23 Union claims handling manual concerning asbestos-related
24 diseases. Do you remember that list we had looked at?

25 A Yes, I do.

1 Q Do you recall and do you know for a fact that
2 also that Union Carbide was one of the insureds of
3 Commercial Union, or would you need to go back and take
4 a look at that exhibit?

5 A Well, I'll accept -- I'll accept your
6 statement that Union Carbide was on that list.

7 Q I'll represent to you that it is, and if we
8 need to find it we can get it.

9 A That's fine.

10 Q Also, that Owens-Corning was one of
11 Commercial Union's insureds as well, correct, concerning
12 asbestos-related diseases?

13 A I'm not sure that Owens-Corning was on that
14 list.

15 Q What about W. R. Grace?

16 A Yes, sir, they are an insured of Commercial
17 Union.

18 Q Okay. Now, let me ask you about Employers
19 Liability Assurance Corporation Limited. Is that
20 Commercial Union?

21 A The U.S. branch ultimately became
22 domesticated and merged into Commercial Union and is
23 Commercial Union today.

24 Q Were you aware that the Employers Liability
25 Assurance Corporation Limited, that portion of

1 Commercial Union, that they had paid out its policy
2 limits for payment in the asbestos cases filed against
3 Owens-Corning?

4 A I can't recall specifically that taking
5 place, but it may very well have happened, if it was in
6 fact an insured of Commercial Union.

7 Q When did Commercial Union first begin
8 negotiations with the Asbestos Claims Facility, the
9 Wellington group?

10 A I can't recall specifically when that took
11 place.

12 Q Now, in regard to those negotiations, was
13 there a follow-up of Commercial Union becoming a
14 signatory to the Wellington agreement, the Asbestos
15 Claims Facility?

16 A My recollection is that a formal presentation
17 was made by representatives of -- I'm not sure if it was
18 the Asbestos Claims Counsel, prior to the creation of
19 the Asbestos Claims Facility.

20 Q Well, did Commercial Union become a signatory
21 to the Asbestos Claims Facility, the Wellington
22 agreement?

23 A No, they did not.

24 Q And in regard to the Center for Claims
25 Resolution, so-called the CCR, did Commercial Union have

1 negotiations with the CCR?

2 A No, they did not.

3 Q Now, in regard to the second set of answers
4 to interrogatories, you have reviewed those, too, have
5 you not? Well, not the second set, I apologize. In
6 regard to Commercial Union's supplemental answers?

7 A I believe I did.

8 MR. MADEKSHO: Okay. Let me ask to have this
9 marked as plaintiffs' next in order and see if that's
10 what you had reviewed.

11 [EXHIBIT NO. 21 MARKED]

12 A Yes, sir, this is -- I reviewed this
13 document.

14 MR. MADEKSHO:

15 Q Now, in regard to Interrogatory No. 6, where
16 it's requested to provide certain names of individuals
17 having knowledge of relevant facts.

18 A Yes, sir.

19 Q You're listed number one there. Right?

20 A I am, sir.

21 Q Vice president, specialty litigation
22 division?

23 A Yes, sir.

24 Q Commercial Union Insurance Company out of
25 Boston, Massachusetts?

1 A Yes, sir.

2 Q Now, also, there is a listing for Mr. Michael
3 Sommerville that we had discussed a little bit earlier
4 in regard to he being the one who had prepared the
5 Asbestos Disease Claims Handling manual and procedures
6 for Commercial Union?

7 A Yes, sir.

8 Q Do you know Mr. Sommerville personally?

9 A Yes, I do.

10 Q Is he still with Commercial Union?

11 A No, he is not.

12 Q Who does he work with now?

13 A He's employed by a law firm in Boston.

14 Q Is he an attorney?

15 A He is.

16 Q And do you know when he was first licensed to
17 practice law?

18 A Sometime after 1987.

19 Q Do you know which law firm that he is
20 employed with at this time there in Boston?

21 A The law firm is designated on the responses.

22 Q Okay. The Peabody-Arnold? That's a law
23 firm?

24 A Peabody & Arnold, yes, sir.

25 Q Okay. What about Mr. John Schreiber? Do you

1 know Mr. Schreiber personally?

2 A I do.

3 Q And how long have you known Mr. Schreiber?

4 A I have known Mr. Schreiber since I came to
5 the company in 1979.

6 Q Okay. Now, he is a vice president of claims
7 in the specialty litigation division. He's in the same
8 division as you. Is that correct?

9 A I'm sorry. That's an error. That line is an
10 error.

11 Q That's not correct there then?

12 A No.

13 Q Okay.

14 A Mr. Schreiber was the vice president of
15 technical claims other than environmental.

16 Q What does he do now?

17 A He sleeps late, feeds the birds. He's
18 retired.

19 Q I see. What was his involvement with the
20 asbestos litigation prior to his retirement from
21 Commercial Union?

22 A I would say from approximately 1982 or 1983,
23 until 1988, Mr. Schreiber also had the responsibility
24 during that period of time for the environmental area.

25 Q Including the asbestos arena?

1 A Including the asbestos arena. In 1988, I was
2 given the good fortune of being promoted to assistant
3 vice president and a new division was created called the
4 specialty litigation division and I became responsible
5 for the environmental arena at that point in time.

6 Q Let's turn over to the next page. There is
7 another name mentioned here, a Mr. John Bullock.

8 A Yes, sir.

9 Q Who is John Bullock?

10 A Mr. Bullock is a Commercial Union retiree
11 who, during the Sixties and Seventies, was an
12 underwriter in the home office of the company.

13 Q Okay. Now, you're talking about the home
14 office, are you talking about the home office here in
15 the United States or in England?

16 A No, One Beacon Street.

17 Q In Boston, Massachusetts?

18 A Yes, sir.

19 Q Do you know if he was -- when did he retire?

20 A Within the past five years.

21 Q Did he have any supervisory control in regard
22 to the asbestos litigation, to your knowledge?

23 A No supervisory control as to litigation. He
24 was an underwriter.

25 Q In regard to the last page, concerning names,

1 do you know a Mr. John L. McConn?

2 A No, I don't, sir.

3 Q Do you know a Mr. Roy Welch?

4 A No, I don't.

5 Q Now, do you see that also that Commercial
6 Union has -- they cross-designated all other expert
7 witnesses designated by all other parties in this case,
8 too?

9 A Yes, sir.

10 MR. MADEKSHO: Could you tell us as to why --
11 well, first of all, let me make sure that you're
12 familiar with what Commercial Union is designating as
13 other witnesses in this litigation.

14 [EXHIBIT NO. 22 MARKED]

15 MR. MADEKSHO:

16 Q Now, this is the list of witnesses on behalf
17 of Armstrong World Industries, GAF Corporation, National
18 Gypsum Company, United States Gypsum Company and Union
19 Carbide Corporation. Correct?

20 A That's what the designation indicates, sir.

21 Q Let me ask you to turn over to what is
22 identified as Page 2 of the list of those witnesses. Do
23 you see there about a third of the way down in regard to
24 the mention of certain names of individuals?

25 A Yes, sir.

1 Q Dr. Weill, Demopoulos, Hinshaw, et cetera?

2 A Yes, sir.

3 Q Let me make sure that we're clear on this in
4 regard to what this list says. This list that we're
5 both looking at right now states, "It is expected that
6 Dr. Weill, Demopoulos, Hinshaw and Gaensler will testify
7 that the medical community became aware that insulators
8 with prolonged intense exposure might be at risk for
9 asbestos-related diseases in the late 1960s or early
10 1970s." Do you see that?

11 A Yes, sir.

12 Q Could you tell us as to why Commercial Union
13 would designate a witness to come in to testify that
14 these risks might be known in the late 1960s or early
15 1970s, when it's already indicated in its answers to
16 interrogatories that these risks were known wherever
17 asbestos dust was created, they knew that in 1937?

18 MR. THAMM: Objection as to that being a
19 misstatement of facts and assumes facts not in evidence.

20 MR. MARTINSON: I join in that objection.

21 A My understanding of my statements with
22 reference to the 1937 engineering manual indicate that
23 the engineering manual describes occupational disease
24 hazards in the workplace, that it was designed for the
25 engineering department when they were doing loss reports

1 and loss investigations for workers' compensation type
2 involvements in the manufacturing of asbestos-containing
3 products. By virtue of that, there's no doubt that
4 Commercial Union had a 1937 engineering manual that did
5 state in fact that the asbestos hazard is to be looked
6 for wherever asbestos dust was created for an
7 occupational disease --

8 MR. MADEKSHO:

9 Q By 1937?

10 A -- by 1937, occupational disease in the
11 workplace, in the manufacturing environment.

12 MR. MARTINSON: The question had a lot of
13 stuff in it, but really the question is: Why did you
14 designate, cross-designate the folks that are listed in
15 this exhibit as expert witnesses, if you know. That's
16 the question.

17 A First of all, counsel, I authorized counsel
18 to take care of cross-designations, and I was not aware
19 of the actual names of some of the medical experts.
20 That's actually the real reason.

21 MR. MADEKSHO:

22 Q Okay. Now, when you provided the sworn
23 answer for Commercial Union to Interrogatory No. 14 --
24 do you remember Interrogatory No. 14?

25 A If you can refresh my recollection as to

1 which one it is, or I can get out the answer to
2 Interrogatory No. 14.

3 Q That relates to when Commercial Union knew
4 that an asbestos hazard was to be looked for anyplace
5 where asbestos dust was created, anyplace. Do you
6 remember that?

7 MR. MARTINSON: Why don't you find the answer
8 to the interrogatory. It speaks for itself.

9 A The statement I affirmatively responded to
10 was: Is it true that this defendant knew no later than
11 1937 that a potential asbestosis hazard was to be looked
12 for wherever asbestos dust was created?

13 MR. MADEKSHO:

14 Q And your answer, your sworn answer was yes or
15 no?

16 A Yes, sir. It was yes.

17 MR. MADEKSHO: Thank you. Let's go off the
18 record. It's time to change the tape.

19 VIDEOGRAPHER: This is the end of Tape No. 1.
20 Going off the record at 11:57 a.m.

21 [LUNCH RECESS]

22 VIDEOGRAPHER: This is Tape No. 2. It's 1:06
23 p.m. On the record.

24 MR. MADEKSHO:

25 Q Mr. Lewis, in your capacity and supervisory

1 position with the Commercial Union Insurance Company and
2 along with your involvement with the asbestos
3 litigation, have you become aware or have you personally
4 been involved with various meetings of the insurance
5 carriers or meetings with the asbestos products
6 manufacturers to discuss asbestos litigation?

7 A No, I have not.

8 Q Are you aware of instances where other
9 supervisory personnel from the Commercial Union
10 Insurance Company have been involved with meetings such
11 as I have just mentioned?

12 A Yes, sir.

13 Q And who would those individuals be that would
14 attend those meetings, ordinarily?

15 A I know that over the past number of years
16 before his departure, prior to the creation of the
17 Asbestos Claims Facility, Michael Sommerville had
18 attended a number of meetings of the Asbestos Claims
19 Counsel. I presume that there were representatives of
20 the manufacturers attending those meetings as well.

21 Q And is it your understanding that in regard
22 to these meetings that various defense strategy would be
23 discussed concerning the litigation?

24 A Not at the meetings concerning the creation
25 of the Asbestos Claims Facility, I don't believe. I do

1 know from previous experience that there were meetings
2 of the American Insurance Association and there were
3 representatives at times of Commercial Union employees
4 attending.

5 Q And also in regard to those meetings, do you
6 recall that there were discussions concerning as to
7 whether or not to admit liability in the asbestos
8 litigation?

9 MR. RILEY: Objection to the form of the
10 question to the extent that any questions asked by
11 counsel invade any privilege, whether attorney-client
12 or work product, which may be possessed by my client.
13 I would have a running objection to all similar
14 questions and to any information being given by this
15 witness. And I will put counsel on notice of that
16 objection and that no privilege material is being waived
17 by my client. And I would object to this question and
18 any future questions pertaining to -- the question is
19 very broad, don't know what it relates to, but any
20 information pertaining to my client, I would object to
21 this question if it's privileged.

22 MR. THAMM: I join in that objection or those
23 objections.

24 MR. WALZEL: I join in those objections as
25 well.

1 MR. MADEKSHO:

2 Q I believe the question that we were
3 discussing and the answer that you had started to give
4 related to various meetings with the American Insurance
5 Association.

6 A Yes, sir.

7 Q And the question being as to whether or not
8 that you are familiar with the meetings at the American
9 Insurance Association discussing as to whether or not
10 the insurance industry should go ahead and admit
11 liability in the asbestos litigation.

12 MR. RILEY: Objection, since the question is
13 not specific as to who was at the meeting and going into
14 the content of what was discussed, same objection as
15 previously stated. Also, instructing counsel that my
16 client does not waive any privilege and requesting the
17 witness not to divulge any privileged information.

18 MR. THAMM: I join in that, also.

19 THE WITNESS: Sir, could I have the question
20 back, sir?

21 MR. MADEKSHO: Read the exact question back
22 to Mr. Lewis, if you would, please.

23 COURT REPORTER: "And the question being as
24 to whether or not that you are familiar with the
25 meetings at the American Insurance Association

1 discussing as to whether or not the insurance industry
2 should go ahead and admit liability in the asbestos
3 litigation."

4 A I am familiar to the extent that the company
5 has produced in this litigation and I have read a
6 summary of the minutes of a meeting that took place in
7 1977 where that subject was discussed.

8 MR. MADEKSHO:

9 Q And those minutes that you have read and you
10 are familiar with, they reflect, do they not, that the
11 insurance industry made the determination of a unanimous
12 rejection of the suggestion that liability in the
13 asbestos cases be admitted?

14 MR. MARTINSON: Object to the question that
15 the document speaks for itself. If you know
16 specifically what it says, you are certainly entitled to
17 answer the question. Otherwise, I would ask you to
18 refer to the document.

19 A I don't have a specific recollection as to
20 what it said concerning that.

21 MR. MADEKSHO: Let me ask that this be marked
22 as next in order.

23 [EXHIBIT NO. 23 MARKED]

24 MR. MADEKSHO:

25 Q Mr. Lewis, what has been handed to you is a

1 memorandum of the meeting of April 21, 1977, of the
2 American Insurance Association, the Enterprise Liability
3 Study Group. Correct?

4 A That is correct, sir.

5 Q And this is the document that you are
6 familiar with. Is that true?

7 A I believe so.

8 Q And in regard to the first page, where there
9 is a listing of the attendees at that meeting, do you
10 see that Commercial Union companies were represented by
11 Mr. D. O. Ellis?

12 A I do, sir.

13 Q And do you also see that the Aetna companies
14 were present and that also that the Travelers Insurance
15 Company was present at this meeting?

16 MR. GEORGE: I'll object to the form of the
17 question to the extent you are doing anything other than
18 asking the witness to reflect what the document says.

19 MR. MADEKSHO: You can answer the question.

20 A The document does indicate that there were
21 representatives present.

22 Q And, of course, you recall earlier in regard
23 to our discussions concerning the other information from
24 the American Insurance Association where they discussed
25 concerning when the dangers of asbestos were known. Do

1 you recall that line of questioning?

2 A No, I don't, sir.

3 Q Let me refresh your recollection, then, if I
4 could. Let me ask you to take another look at this
5 document. I'm not going to ask that this be marked,
6 because it's been previously marked. And if you would,
7 to refresh your recollection, turn over to Page 3 where
8 it's marked at the top.

9 A Yes, sir. I recall this now.

10 Q You recall this now where there was the
11 mentioning and discussion that in 1900 that the medical
12 research linked the mineral asbestos with asbestosis and
13 1935 brought the first direct linkage of asbestos to
14 cancer?

15 A I recall that appearing in the memorandum.

16 Q And in regard to the other memorandum that
17 has been marked as an exhibit that is present before
18 you, this is in regard to the meeting of April 21, 1977,
19 the next year?

20 A It's apparently that, sir.

21 Q And in regard to the meeting was closed with
22 a unanimous rejection of a suggestion that liability in
23 asbestos cases be admitted. Is that correct?

24 A That's part of what the statement says.

25 Q And in regard to the liability in the

1 asbestos litigation, as far as the victims filing
2 lawsuits against the manufacturers, you are aware that
3 the liability defense centers around state of the art.
4 Correct?

5 A I'm not aware that that is the only defense
6 that manufacturers have asserted; but I think this was
7 something a little bit different, from what I understand
8 of the rejection in this case.

9 Q You are familiar with the Borel case, are you
10 not?

11 A To the extent that I have recollections of
12 the case when it came down.

13 MR. MADEKSHO: Let me ask that this be marked
14 as plaintiffs' next in order.

15 [EXHIBIT NO. 24 MARKED]

16 MR. MADEKSHO:

17 Q Mr. Lewis, what has been handed to you is a
18 memo dated March 15, 1977, on the letterhead of the
19 Commercial Union Assurance Companies. Is that correct?

20 A Yes, sir.

21 Q And the subject being Asbestosis Meetings?

22 A Yes, sir.

23 Q And this is from a Mr. Bruno -- and it's
24 spelled C-y-z-o-w-k-s-i, Cyzowski? Cyzowski?

25 A I would say it's Cyzowski.

1 Q Are you familiar with this gentleman?

2 A I have heard the name years ago.

3 Q And if you -- would you notice in the top
4 paragraph where there is a mention of the Borel case?

5 A Yes, sir, in the second sentence.

6 Q Where there is a mention of the Borel case
7 where the manufacturers in the asbestos products are
8 liable inasmuch as they put a dangerous product on the
9 market without adequate warning? Is that correct?

10 A That's what this statement does say.

11 Q And you have had an opportunity to read the
12 Borel decision or memos concerning the Borel decision
13 yourself?

14 A Over the years. I'm not currently familiar
15 with exactly what the holdings were on it.

16 Q Now, you have also seen documents in the
17 files of Commercial Union relating to the state-of-the-
18 art defense, have you not, sir?

19 A I have seen mention in documents of the
20 state-of-the-art defense.

21 Q And, of course, the state-of-the-art defense
22 is that the manufacturers, they just didn't know and it
23 couldn't have been known about the dangers of the
24 asbestos products that they put on the market, and so
25 therefore they had no duty to warn the users and the

1 consumers of those products. Is that in essence what
2 the state-of-the-art defense is?

3 A I guess that could be one interpretation of
4 it.

5 Q In your involvement with the Pittsburgh
6 Corning account, were you aware of Pittsburgh Corning's
7 defense, that they alleged that the state of the medical
8 and scientific knowledge prior to the late 1960s, as it
9 related to the exposure of the asbestos insulation
10 worker to asbestos dust, was such that the medical and
11 scientific community were of the opinion that the
12 exposures to which the asbestos insulation workers was
13 subjected was safe and that the asbestos insulation
14 occupation was a reasonably safe occupation and as a
15 result the manufacturers of asbestos insulation products
16 were charged with no greater knowledge than that of the
17 medical and scientific community and such manufacturers
18 had no reason to reasonably foresee injury to insulators
19 or other workers from application of their insulation
20 products which contained asbestos and therefore had no
21 duty to warn regarding their products prior to such
22 time? Are you familiar generally with that type of
23 defense statements by Pittsburgh Corning?

24 A No, I'm not, sir.

25 Q Are you aware that they are alleging that

1 defense in this case?

2 MR. MARTINSON: Searls?

3 MR. MADEKSHO:

4 Q In the Searls case?

5 A Not particularly.

6 Q Are you also aware of Pittsburgh Corning's
7 statements in regard to the allegations against
8 Commercial Union back in June of 1982, where they were
9 telling -- where Pittsburgh Corning was telling the
10 Federal Court that it couldn't have been more clear by
11 the year 1937 that an asbestos hazard was to be looked
12 for wherever asbestos dust was created?

13 A My recollection is that those were some of
14 the allegations by Pittsburgh Corning.

15 Q Do you have any understanding, in the
16 position of a supervisor or a supervisory position with
17 Commercial Union Insurance Company and your experience
18 in the asbestos litigation, as to why they would allege
19 in this case that these dangers were not known until the
20 late 1960s or early 1970s, and they were telling the
21 Federal Court in Philadelphia in 1982 that it couldn't
22 have been more clear in 1937?

23 MR. WALZEL: Object to the question. I
24 believe his previous testimony was he was not involved
25 in the defense of Pittsburgh Corning.

1 MR. MARTINSON: I'm going to object --

2 MR. WALZEL: Or the decisions.

3 MR. MARTINSON: I'm going to object to the
4 form of the question in that he's testified he was not
5 familiar with the allegations Pittsburgh Corning was
6 making in the Searls case, and your question assumes
7 that he is familiar with that.

8 MR. MADEKSHO: Let me have this marked as
9 next in order.

10 [EXHIBIT NO. 25 MARKED]

11 MR. MADEKSHO:

12 Q Mr. Lewis, first of all, this document is
13 entitled the Amended Answer, Cross-Action asserted by
14 Pittsburgh Corning Corporation, and it's in the Searls
15 case. Is that correct?

16 A Yes, sir, it appears to be that.

17 Q And could you turn over to the last page to
18 see that this was -- has a certificate of service on the
19 20th day of December 1989. In 1989, was Commercial
20 Union still paying for the defense of Pittsburgh Corning
21 in the asbestos litigation?

22 MR. MARTINSON: You can look at your answers
23 to interrogatories, if you need to.

24 A I don't believe that was a period of time,
25 sir, in which we had been asked to come back in to get

1 involved again with Pittsburgh Corning on those other
2 excess layer policies. I believe it might have been
3 subsequent to that.

4 MR. MADEKSHO:

5 Q Well, this is -- if this were the current
6 pleading on file by Pittsburgh Corning, would it stand
7 to reason that if it were filed in December 1989 that it
8 would have been on file in 1990 and 1991?

9 A It certainly would stand to reason.

10 Q And was Commercial Union paying for the
11 defense of Pittsburgh Corning in the asbestos litigation
12 during 1990 and 1991?

13 A Commercial Union was reimbursing Pittsburgh
14 Corning for its defense costs pursuant to an agreement.

15 Q If you would, look on that next to the last
16 page of this filing by Pittsburgh Corning. Do you see
17 that this was actually filed by the attorneys for
18 Pittsburgh Corning Corporation?

19 A Yes, sir, I see that.

20 Q Are you familiar with the law firm of Weller,
21 Wheelus & Green?

22 A No, I am not, sir.

23 Q Do you know a Lyn Stevens, a lawyer?

24 A No, I don't.

25 Q Do you know a lawyer by the name of David

1 Tolin?

2 A The name David Tolin does ring a bell, in the
3 most recent litigation involving Commercial Union in
4 this Searls case, yes, sir.

5 Q If you would, look on Page 6 of the
6 allegations made by Pittsburgh Corning, under Paragraph
7 Roman Numeral XIX. And just read that to yourself
8 essentially.

9 Have you read it?

10 A Yes, sir.

11 Q Is it a fair statement, Mr. Lewis, that
12 Pittsburgh Corning is alleging in this case that the
13 state of the medical and scientific knowledge prior to
14 the late 1960s was such that they had no duty to warn
15 regarding their asbestos products?

16 MR. WALZEL: I'm going to object. The
17 document speaks for itself.

18 MR. MARTINSON: Same objection. But you can
19 answer the question.

20 A It would appear generally that that was the
21 allegation that Pittsburgh Corning was making in this
22 paragraph.

23 MR. MADEKSHO:

24 Q Of course, you are very familiar with the
25 litigation between Pittsburgh Corning and Commercial

1 Union in the Federal Court up in Philadelphia, are you
2 not?

3 A No, sir, I was not that familiar with the
4 declaratory judgment litigation. I only became further
5 involved in it as a result of my involvement with this
6 later date petition for the injunction. I was not
7 involved in the settlement or the litigation between
8 Commercial Union and Pittsburgh Corning.

9 Q Okay. But, of course, you are familiar with
10 that case, though?

11 A Generally speaking, sir.

12 Q And was that an important case to the
13 Commercial Union Insurance Company?

14 A As all cases are, yes, sir.

15 Q And in regard to that case, and part of the
16 notice for the deposition today relates to the
17 allegations made back and forth between Pittsburgh
18 Corning and Commercial Union Insurance Company in that
19 case. Correct?

20 A Yes, sir.

21 MR. MADEKSHO: And as part -- well, let me
22 just ask you if you're familiar with the allegations --
23 let me just do it this way. Let me ask that this be
24 marked as next in order.

25 [EXHIBIT NO. 26 MARKED]

1 MR. MADEKSHO:

2 Q Mr. Lewis, if you would, turn over -- you
3 are already turning over to the first and second pages,
4 et cetera. There again, this is a portion of the
5 transcript from the hearing of June 24, 1982, in the
6 case styled Commercial Union Insurance Company v.
7 Pittsburgh Corning in the Federal Court in Philadelphia.
8 Correct?

9 A Yes, sir.

10 Q And in regard to the appearances, as far as
11 the lawyers representing the various parties, of course
12 we have earlier discussed that James Lewis Griffith was
13 representing Commercial Union. Right?

14 A Yes, sir.

15 Q And do you also see that in regard to the
16 representation of Pittsburgh Corning Corporation, there
17 was a lawyer representing them by the name of Mr. John
18 McN.Cramer?

19 A Yes, sir, I see that.

20 Q And if you would, turn to the -- you are
21 already looking at it.

22 A Yes, sir.

23 Q Do you see the underscored portions of that
24 transcript in regard to the representations that were
25 made by the Pittsburgh Corning lawyer to the Federal

1 Court there in June of 1982?

2 A I note what's on Page 173 here, yes, sir.

3 Q And in regard to what is in the transcript,
4 that is all put on that first page of that exhibit?

5 A Well, I think you have taken some statements
6 partially out and put them on this summary exhibit on
7 the top.

8 Q The statements by the lawyers for Pittsburgh
9 Corning from that June 1982 hearing?

10 A Yes, I presume so, sir.

11 Q Now, for the benefit of the court and jury,
12 is it a correct recitation that the statements made by
13 the lawyer for Pittsburgh Corning in June of 1982 was
14 that: "First, Commerical Union had knowledge that
15 exposure to asbestos could produce asbestos-related
16 disease."

17 "Commercial Union's own 1937 engineering
18 manual states, quote, 'Asbestosis is a disease caused
19 by the inhalation of asbestos fibers,' close quote.

20 "Commercial Union's own 1937 engineering
21 manual states, quote, 'A potential asbestos hazard is to
22 be looked for wherever asbestos dust is created,' close
23 quote, and finally that same manual states, 'Industries
24 which have this exposure to asbestos dust include
25 insulation,' close quote."

1 And then the lawyer states to the court, does
2 he not, that: "Now, it's all there, all you need to
3 know"... "and it could not be more clear that Commercial
4 Union knew that an asbestos hazard was to be looked for
5 wherever asbestos dust was created, and that insulation
6 was an industry in which the exposure existed."

7 Is that correct? Is that in that 1982
8 hearing before the Federal Court?

9 A These are apparently representations of
10 counsel. They do appear in the transcript.

11 Q Now, based upon Commercial Union's experience
12 in the asbestos litigation, do you have any idea as to
13 why Pittsburgh Corning states, in cases filed against
14 Pittsburgh Corning by asbestos victims, that these
15 dangers could not be known until the late 1960s, and why
16 Pittsburgh Corning's representatives were telling the
17 Federal Court in Philadelphia in 1982 that these hazards
18 were known by 1937?

19 A You would have to ask the attorneys for
20 Pittsburgh Corning, sir. I don't know why they made the
21 statements as they did.

22 Q You are familiar with Pittsburgh Corning's --
23 I mean -- pardon me. Strike that.

24 You are familiar with Commercial Union's own
25 Asbestos Related Disease Claim Handling Procedures

1 manual by Mr. Sommerville?

2 A I am familiar with the fact that Mr.
3 Sommerville issued such a document.

4 MR. MADEKSHO: Let me ask that this be marked
5 as next in order.

6 [EXHIBIT NO. 27 MARKED]

7 MR. MADEKSHO:

8 Q Does this appear to be the same claim
9 handling procedures manual that you have reviewed
10 previously?

11 A Yes, sir.

12 Q And it appears that on the bottom right-hand
13 column, or the right-hand corner, that there's a
14 Pittsburgh Corning exhibit sticker of August 13, 1981?

15 A I have no idea that that's Pittsburgh Corning
16 or otherwise.

17 Q Let's turn over to the first page of
18 Commercial Union's asbestos claims handling manual, in
19 regard to the introduction. Do you recall reading the
20 introduction before, Mr. Lewis?

21 A Quite a while ago, yes, sir.

22 Q With your experience in the environmental
23 claims section which included -- which includes
24 asbestos, have you formed the opinion that scientific
25 studies have demonstrated that asbestos creates an

1 especially high risk of lung cancer and other serious
2 lung disease for workers who have been heavily exposed
3 to this toxic substance, as Commercial Union's manual
4 states?

5 A I am not a medical person, sir. I have never
6 formed that opinion. I don't have the ability to form
7 that opinion.

8 Q Now, this was prepared by a representative of
9 Commercial Union, though. Correct?

10 A Apparently so.

11 Q Mr. Sommerville?

12 A Yes, sir.

13 Q Could you turn to the next page, please, and
14 under the section "A Hazard to Human Health"?

15 A Yes, sir.

16 Q Do you recall Mr. Sommerville discussing with
17 you the fact that Commercial Union's own manual stated
18 that asbestos is a hazard to man's health and this was
19 recognized quite early?

20 A I don't believe he ever discussed that with
21 me.

22 Q Have you reviewed other documents in the
23 files that have been prepared by Commercial Union
24 stating that the cancer producing potential of asbestos
25 was not established until 1949?

1 A I haven't read that anywhere else.

2 Q Do you recall the other documents that we had
3 reviewed earlier today that the first direct link to
4 asbestos and cancer was 1935?

5 A There were documents that had statements in
6 it of that nature.

7 Q And for how many decades had Commercial Union
8 Insurance Company been in effect prior to 1935?

9 A I believe you indicated at least three
10 decades before that, sir.

11 Q Have you had the opportunity to become
12 familiar with allegations made by Commercial Union in
13 regard to Pittsburgh Corning other than what we
14 discussed earlier today about Mr. Griffith's allegation
15 about the scheme and the concealing of the facts --

16 A No, sir, I have not.

17 Q -- by the manufacturers?

18 A I'm sorry. No, sir, I have not.

19 Q Has Commercial Union ever taken the position
20 that the asbestos products manufacturers have
21 deliberately concealed facts and evidence from
22 Commercial Union?

23 A Yes, sir, I believe there have been positions
24 like that asserted in the past.

25 Q And could you tell us as to whom, which

1 manufacturers that Commercial Union has alleged that
2 those particular asbestos products manufacturers
3 concealed, deliberately concealed facts and evidence
4 from Commercial Union?

5 A Facts in evidence? I'm sorry.

6 Q Facts and evidence.

7 A Oh, facts and evidence? My understanding was
8 that those were some allegations that were made in
9 Pittsburgh Corning, and I believe they were also made in
10 litigation involving Eagle Picher.

11 Q So the only ones that you are familiar with
12 is in regard to those allegations being made by
13 Commercial Union against Pittsburgh Corning and Eagle
14 Picher?

15 A That's my recollection.

16 Q And when the answers to interrogatories were
17 filed initially by Commercial Union, there was no
18 mention, I don't believe, about the coverage that was in
19 effect for Armstrong World Industries, Armstrong Cork,
20 and we discussed that a little bit earlier today
21 concerning the California litigation?

22 A Yes, sir. I don't believe that -- if they
23 weren't one of the individuals mentioned in your
24 complaint, that's what you referred to.

25 Q Right. Armstrong is a party to this

1 litigation.

2 A Okay. Then the reason Armstrong World
3 Industries is not mentioned, I believe, is because no
4 payments have been made to or on behalf of Armstrong.

5 Q Okay. Now, of course, we have determined
6 that Commercial Union had coverage for Armstrong -- do
7 you recall exactly how many years back that the coverage
8 by Commercial Union goes for Armstrong Cork, now known
9 as Armstrong World Industries?

10 A I believe it was a three-year period in the
11 mid Sixties. It was an excess cover.

12 Q Are you familiar with the allegations by
13 Commercial Union that Armstrong produced highly
14 dangerous asbestos-containing products as early as the
15 1940s, which gave rise to injury and death among its
16 employees and third-party users?

17 A That may have been an allegation or an answer
18 in response to the original complaint in Armstrong. I
19 don't believe it went much further than a defense that
20 was asserted.

21 Q Let me ask you if you're familiar with this
22 allegation by Commercial Union against Armstrong Cork,
23 now known as Armstrong World Industries: Armstrong was
24 acutely aware of the deadly propensities of asbestos as
25 early as 1952 and increasingly thereafter but took

1 absolutely no substantive steps to protect its own
2 workers or third parties or to in any way curtail its
3 own use of asbestos products. Are you familiar with
4 those allegations by Commercial Union?

5 A No, I'm not, sir.

6 MR. MADEKSHO: Let me ask you to take a look
7 at this particular document and have that marked as next
8 in order.

9 [EXHIBIT NO. 28 MARKED]

10 MR. MADEKSHO:

11 Q Mr. Lewis, what you presently have before you
12 is Commercial Union Insurance Company's post trial brief
13 that was filed in the Superior Court of the State of
14 California during the trial of the California insurance
15 litigation?

16 A Yes, sir.

17 MR. MARTINSON: Mr. Madeksho, if I might
18 intercede just for a moment, certainly you are welcome
19 to question the witness on this area, but the specifics
20 about allegations against or in favor of specific
21 companies did not include Armstrong, so for that reason
22 we were not prepared.

23 MR. MADEKSHO: That's fine. He can take his
24 time. But Armstrong wasn't answered on the
25 interrogatories and I've since determined that there was

1 coverage by Commercial Union and that's the reason.

2 MR. MARTINSON: I have no quarrel with it. I
3 have no quarrel with you asking. I want you to be aware
4 that we weren't prepared to answer that because, again,
5 it's not a specific item on your topic of inquiry.

6 MR. MADEKSHO: All right. It would have
7 been if they had been answered in the interrogatories.

8 MR. MARTINSON: Right.

9 MR. MADEKSHO:

10 Q Let me ask you to turn to Page 19 of
11 Commercial Union's allegations against Armstrong and the
12 trial court there in California. Do you see the section
13 there where Commercial Union states that, "Armstrong
14 intended to cause injury when they purposefully employed
15 men to work with products they knew would result in
16 asbestos-related disease and death"?

17 A Yes, sir, I do.

18 Q And do you also see further, starting
19 approximately Line 18 -- the lines are numbered on the
20 left-hand side -- where it states that, "From the early
21 1940s through the early 1970s, Armstrong continued a
22 course of conduct which was unrelenting in its quest for
23 profit over the health concerns of its employees or
24 third parties"?

25 A The trial brief does so state.

1 Q Do you have any reason to dispute Commercial
2 Union's allegations that were filed in the trial court
3 in California?

4 A Sir, I cannot recall what the testimony was
5 that gave rise to this statement in the trial brief.

6 Q What I'm asking you about are the allegations
7 that you have before you right now.

8 MR. MARTINSON: What is the question again?

9 MR. MADEKSHO: If you will just read back the
10 exact question for Mr. Lewis.

11 COURT REPORTER: "Do you have any reason to
12 dispute Commercial Union's allegations that were filed
13 in the trial court in California?"

14 A The document does indicate that these
15 statements were made.

16 MR. MADEKSHO:

17 Q And let's turn over to Page 21, in regard to
18 the allegations made by Commercial Union, starting on
19 Line 6. Do you see there where it states that --
20 Commercial Union states that: Wegman admits that
21 documents refreshed his recollection that he was aware,
22 in the early 1950s, that Armstrong products could
23 contribute to asbestos-related diseases?

24 A Yes, sir, it is so stated.

25 Q Do you have any reason to dispute Commercial

1 Union's allegations concerning that particular bit of
2 information?

3 A No, sir, I don't.

4 Q Do you see the next sentence there concerning
5 Commercial Union's allegation that, "George W. Nichol,
6 who was a plant chemist for Armstrong during the mid
7 1950s likewise admits that he understood sometime
8 between 1956 and 1957 that asbestos was a toxic
9 material"?

10 And would you have any reason to disagree
11 with Commercial Union's allegations concerning that
12 information?

13 A No, sir.

14 Q Have you become aware, during the course of
15 your duties with Commercial Union, that one of
16 Commercial Union's insureds, Johns-Manville, had claims
17 by the users of asbestos products that were filed
18 against them by no later than 1935?

19 A No, I was not personally aware of that.

20 Q And you have been following this case fairly
21 closely?

22 A The Johns-Manville case, sir?

23 Q No, this case here.

24 A No, I haven't. I have not been following the
25 underlying matter at all.

1 Q In regard to the case that we're here today,
2 you haven't been following that?

3 A Only to the extent of Commercial Union's
4 involvement in this case.

5 Q Commercial Union was one of the insurance
6 companies for Johns-Manville?

7 A Yes, sir, it was.

8 Q Had you become aware, during the course of
9 your -- any of your activities on behalf of Commercial
10 Union in the asbestos litigation, that by 1935 that
11 users and installers of asbestos-containing insulation
12 products had filed claims against Johns-Manville?

13 A Third-party claims?

14 Q Third-party claims.

15 A I can't recall that having happened.

16 Q Had you become aware, during the course of
17 your duties, that Johns-Manville started to put labels
18 on its asbestos-containing products in 1944 and didn't?

19 A I'm sorry. I didn't follow that question,
20 sir.

21 Q Yes, sir. During the course of your duties
22 with Commercial Union and Commercial Union's insuring
23 and defending Johns-Manville, have you become aware or
24 did you become aware that Johns-Manville started to put
25 warnings on its asbestos-containing products by 1944 and

1 Q In regard to the case that we're here today,
2 you haven't been following that?

3 A Only to the extent of Commercial Union's
4 involvement in this case.

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6 companies for Johns-Manville?

7 A Yes, sir, it was.

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9 your -- any of your activities on behalf of Commercial
10 Union in the asbestos litigation, that by 1935 that
11 users and installers of asbestos-containing insulation
12 products had filed claims against Johns-Manville?

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14 Q Third-party claims.

15 A I can't recall that having happened.

16 Q Had you become aware, during the course of
17 your duties, that Johns-Manville started to put labels
18 on its asbestos-containing products in 1944 and didn't?

19 A I'm sorry. I didn't follow that question,
20 sir.

21 Q Yes, sir. During the course of your duties
22 with Commercial Union and Commercial Union's insuring
23 and defending Johns-Manville, have you become aware or
24 did you become aware that Johns-Manville started to put
25 warnings on its asbestos-containing products by 1944 and

1 then didn't?

2 A And then did not?

3 Q And then did not.

4 A No, I don't recall that.

5 Q Now, of course, another one of Commercial
6 Union's insureds has been Union Carbide. Correct?

7 A Yes, sir.

8 Q And during the course of your activities and
9 involvement with the asbestos litigation on behalf of
10 Commercial Union, have you become aware of when Union
11 Carbide states that the dangers of asbestos were known?

12 A No, sir.

13 MR. MADEKSHO: Let me have this marked as
14 plaintiffs' next in order.

15 [EXHIBIT NO. 29 MARKED]

16 MR. MADEKSHO:

17 Q Mr. Lewis, I've got the entire document, if
18 you need to refer to it. But the section I want to ask
19 you about is in regard to this document that was
20 prepared by Mr. I. C. Sayers entitled "Asbestos as a
21 Health Hazard in the United Kingdom." And have you
22 turned over to that chart there?

23 A I have.

24 Q Do you see the perspectives and the
25 associated diseases relating to the asbestos industry?

1 A Yes, sir.

2 Q And do you see that date 1900 when asbestosis
3 was known?

4 A I do, sir.

5 Q And that's the same date that we saw a little
6 bit earlier in regard to the American Insurance
7 Association documents, 1900. Correct?

8 A There was a reference made to the year 1900.

9 Q And do you also see, in regard to the
10 association of asbestosis and lung cancer, approximately
11 1935?

12 A Yes, sir, I see it on here.

13 Q And is that the same date of 1935 that we saw
14 in the American Insurance Association documents that we
15 looked at earlier?

16 A My recollection is it is the same date.

17 Q And do you also see in regard to the
18 associated diseases relating to asbestos concerning
19 insulation workers?

20 A Yes, sir.

21 Q And do you see when it was known in regard to
22 insulation workers, looks like around 1930, '31?

23 A That's what the graph indicates.

24 Q And you are aware that Union Carbide mined
25 asbestos, was a miner of asbestos, are you not?

1 A No, I'm not, sir.

2 Q Are you aware that the GAF Corporation mined
3 asbestos?

4 A No, sir, I was not.

5 Q During the course of your involvement on
6 behalf of Commercial Union Insurance Company, did you
7 become aware that the GAF Corporation had stated that as
8 early as 1934 the United States knew that exposure to
9 the asbestos dust released during the construction or
10 repair of its ships and other facilities, including
11 particularly the installation or removal of thermal
12 insulation products, posed a serious health risk to its
13 workers?

14 A I don't recall that statement.

15 Q During the course of your involvement with
16 Commercial Union and Eagle Picher in the asbestos
17 litigation, did you become aware that Eagle Picher had
18 alleged that the government has, since the turn of the
19 century, possessed substantial direct knowledge of the
20 hazards of asbestos-containing insulation products?

21 A I don't recall that statement.

22 Q Now, Eagle Picher was one of the companies
23 that Commercial Union had accused of concealing,
24 deliberately concealing facts even from Commercial
25 Union. Correct?

1 A That's correct. They moved for rescission.

2 Q And the other company was Pittsburgh Corning?

3 A I recall that's correct.

4 Q During the course of your involvement on
5 behalf of Commercial Union and its coverage for the
6 Fibreboard Corporation, did you become aware that
7 Fibreboard had known since 1930 about exposure to
8 asbestos dust being capable of producing asbestosis?

9 A I didn't know that it was particularly
10 applicable to Fibreboard, no, sir.

11 MR. MADEKSHO: Let me ask that this be marked
12 as next in order.

13 [EXHIBIT NO. 30 MARKED]

14 MR. MADEKSHO:

15 Q Mr. Lewis, what you have before you is
16 Owens-Corning's Amended Complaint for Declaratory
17 Judgment that was filed in Ohio. And what I would like
18 you to do -- well, first of all, let me see if I recall
19 correctly. You were not sure one way or the other as to
20 whether or not that Commercial Union had insurance
21 coverage for Owens-Corning?

22 A I think, when you asked me that question
23 originally, I was not aware of it. I believe that,
24 after giving it some thought, that there had been one
25 policy period where Commercial Union had issued a

1 one-year policy to Owens-Corning. I don't recall
2 whether or not it was for -- the settlement was as a
3 result of asbestos bodily injury claims. My
4 recollection is, though, that if that's what it was,
5 there was a million dollar settlement on one policy on
6 Owens-Corning, and we were not really involved in any
7 litigation with Owens-Corning.

8 Q Well, during the course of your involvement
9 with Commercial Union, did you ever become aware of any
10 of the documents of Owens-Corning that threatened to
11 send information to the asbestos workers, the insulators
12 about asbestos diseases being asbestosis and lung
13 cancer, they started to send out in 1942 and then
14 didn't?

15 MR. THAMM: Objection, misstatement of facts,
16 assumes facts not in evidence.

17 A I'm not aware of that.

18 MR. MADEKSHO: Let me ask that this be marked
19 as next in order.

20 [EXHIBIT NO. 31 MARKED]

21 [MS. CYNTHIA HOOPER INGLET ENTERED THE
22 DEPOSITION ROOM]

23 MR. MADEKSHO:

24 Q Mr. Lewis, what I need to find out, sir, is
25 as to whether or not you ever saw this 19 -- this

1 January 7, 1942 correspondence on the letterhead of
2 Owens-Corning Fiberglas Corporation?

3 A No, sir, I have never seen this.

4 Q If you would, turn over to the second page.
5 And, of course, the subject of this is the -- on the
6 front page is the Asbestos Workers Union. Is that the
7 subject matter of this 1942 correspondence?

8 A This intra-company correspondence does refer
9 to a subject as asbestos workers union.

10 Q And if you would, on Page 2, do you see
11 toward the bottom where there is a statement about "the
12 threat to distribute to all members of the union copies
13 of the U.S. Public Health Bulletin No. 241 on
14 Asbestosis"?

15 A That's what the document says.

16 Q Were you aware, sir, that the Public Health
17 Bulletin No. 241 is the 1938 publication known as the
18 Dreessen report?

19 A No, sir.

20 Q Were you familiar that the 1938 Dreessen
21 report had numerous listings concerning references to
22 the diseases of asbestosis and asbestosis and lung
23 cancer?

24 A No, sir, I was not.

25 Q Mr. Lewis, was Commercial Union, did they

1 January 7, 1942 correspondence on the letterhead of
2 Owens-Corning Fiberglas Corporation?

3 A No, sir, I have never seen this.

4 Q If you would, turn over to the second page.
5 And, of course, the subject of this is the -- on the
6 front page is the Asbestos Workers Union. Is that the
7 subject matter of this 1942 correspondence?

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9 to a subject as asbestos workers union.

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11 toward the bottom where there is a statement about "the
12 threat to distribute to all members of the union copies
13 of the U.S. Public Health Bulletin No. 241 on
14 Asbestosis"?

15 A That's what the document says.

16 Q Were you aware, sir, that the Public Health
17 Bulletin No. 241 is the 1938 publication known as the
18 Dreessen report?

19 A No, sir.

20 Q Were you familiar that the 1938 Dreessen
21 report had numerous listings concerning references to
22 the diseases of asbestosis and asbestosis and lung
23 cancer?

24 A No, sir, I was not.

25 Q Mr. Lewis, was Commercial Union, did they

1 know anything at any time concerning the plaintiffs'
2 request to Pittsburgh Corning concerning the second and
3 third requests in the Searls case which related to
4 documents of Travelers?

5 A I recall reviewing the requests; but with
6 reference to the documents sought, I was not familiar
7 with that.

8 Q To your knowledge, then, that Commercial
9 Union had no involvement in regard to whatever occurred
10 concerning those documents after the plaintiff had
11 requested them in this case?

12 MR. MARTINSON: If you can just give him a
13 second to take a look at that, to refresh his memory,
14 about what you asked for for Travelers, Pittsburgh
15 Corning.

16 A Both of these requests refer to documents
17 that referenced the litigation involving Pittsburgh
18 Corning and Travelers, which was an action that I don't
19 believe Commercial Union was a party to. In 1984, it
20 was commenced.

21 MR. MADEKSHO:

22 Q Okay. Now, you are referring to the
23 Pittsburgh Corning v. Travelers Indemnity case?

24 A Yes, sir. I believe that's the reference in
25 here.

1 Q Actually, Commercial Union was a party to
2 that litigation. Take a look, if you would, at the
3 front page of the docket sheet, and that's headed up
4 Pittsburgh Corning v. the Travelers Indemnity Company,
5 and others. And if you go down, you see Commercial
6 Union Insurance Company as successor to Employers
7 Liability Assurance Corporation Limited?

8 A Yes, sir, it is listed. My understanding was
9 we were dismissed out of that case. And I don't know
10 whether or not we would have received any pleadings
11 thereafter.

12 Q Now, you see, the question being -- the
13 plaintiff had requested documents to be produced by
14 Pittsburgh Corning out of this case that you're
15 presently looking at the docket sheet. And the question
16 being: Do you or Commercial Union know anything about
17 what happened to those documents --

18 A I see.

19 Q -- that the plaintiff requested that
20 Pittsburgh Corning produce to the plaintiffs in this
21 case?

22 A No, sir.

23 I don't believe that was an exhibit.

24 MR. MADEKSHO: Let's go ahead and have that
25 marked as next in order, just for the record.

1 [EXHIBIT NO. 32 MARKED]

2 MR. MADEKSHO:

3 Q Now, we also wanted to discuss with
4 Commercial Union its past or present medical directors
5 and assistant medical directors, and we had stated the
6 names of several of them.

7 A Yes, sir.

8 Q Do you recall that?

9 A I do, sir.

10 Q And could you tell us as to when Commercial
11 Union first had medical directors?

12 A I can't give you a specific date, but my
13 sense would be that for any period of time that
14 Commercial Union or one of its subsidiary companies had
15 a life insurance company there would have been a medical
16 director attached to that company.

17 Q And this would have gone back in time to
18 approximately what year, to your knowledge?

19 A I can't even speculate on that. I don't know
20 when.

21 Q At least 1930s?

22 A My sense would be if there was a life company
23 attached at that point in time, that's my only
24 contingency.

25 Q In regard to the medical directors that were

1 mentioned in the notice of the deposition, have you had
2 an opportunity to review any affidavits that they have
3 prepared previously in the asbestos litigation?

4 A I was unable to locate any affidavits
5 prepared by Dr. Revotskie. I could not locate any
6 information on Mr. Kent as being a director of
7 Commercial Union.

8 Q Is Dr. Revotskie, is he still with Commercial
9 Union?

10 A In a semiretired capacity, yes, sir, he is.

11 Q Who is the present medical director for
12 Commercial Union?

13 A I believe Dr. Revotskie remains in that
14 capacity.

15 Q And who would be the names of any assistant
16 medical directors presently employed by Commercial
17 Union?

18 A I'm not aware of any, although in the past
19 that there were associate medical directors.

20 Q Does Dr. Revotskie operate out of Commercial
21 Union's home office in Boston?

22 A Yes, he does, sir.

23 Q But you think -- it's your impression that he
24 might be semiretired at this point?

25 A Yes, sir.

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135

1 mentioned in the notice of the deposition, have you had
2 an opportunity to review any affidavits that they have
3 prepared previously in the asbestos litigation?

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5 prepared by Dr. Revotskie. I could not locate any
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16 medical directors presently employed by Commercial
17 Union?

18 A I'm not aware of any, although in the past
19 that there were associate medical directors.

20 Q Does Dr. Revotskie operate out of Commercial
21 Union's home office in Boston?

22 A Yes, he does, sir.

23 Q But you think -- it's your impression that he
24 might be semiretired at this point?

25 A Yes, sir.

1 Q Does Commercial Union have any prospects of
2 hiring a new medical director, or have they interviewed
3 anyone as a new medical director?

4 A Not to my knowledge.

5 Q Have you ever reviewed any of the papers,
6 manuals, any documents that Dr. Revotskie has prepared
7 previously relating in whole or in part to asbestos or
8 asbestos diseases?

9 A When I searched for any affidavits of Dr.
10 Revotskie, I would have also come up with any memoranda
11 that he might have prepared, and I located none.

12 MR. MADEKSHO: Why don't we take a short
13 break. We're doing real well.

14 [RECESS]

15 VIDEOGRAPHER: Going off the record, 2:01
16 p.m.

17 [RECESS]

18 MS. MANLEY: My name is Barclay Manley. I'm
19 with Fulbright & Jaworski, and I'm appearing at this
20 deposition of Mr. Lewis on behalf of Aetna solely in the
21 Searls case, identified in the notice, and I am
22 appearing on behalf of Ford Bacon solely in the
23 Wilkening case, appearing on the notice. I am not
24 making an appearance on behalf of any of those entities
25 in any other case identified in the notice.

1 MR. MADEKSHO: Do you want us to state our
2 position on the record about that, Barclay?

3 MS. MANLEY: No.

4 MR. MADEKSHO: Of course, obviously, it's the
5 plaintiffs' position that Aetna is here for all purposes
6 and all cases.

7 MS. MANLEY: And since he stated that on the
8 record, we strenuously disagree with that, and I have
9 made it clear my appearance.

10 [RECESS]

11 VIDEOGRAPHER: 2:13 p.m., on the record.

12 MR. MADEKSHO:

13 Q Mr. Lewis, in regard to the area of inquiry
14 concerning the engineering manuals and the risk control
15 and loss from loss department, those type of manuals?

16 A Yes, sir.

17 Q And when that information is prepared, does
18 Commercial Union use the most current available
19 information in the preparation of such information for
20 its own uses?

21 A I have no knowledge about how they go about
22 preparing those manuals, sir.

23 Q Does Commercial Union have any updated
24 manuals other than the 1937 manual that we looked at
25 earlier today?

1 A My sense would be that they do, sir.

2 Q Did you have an opportunity to check on that
3 like you had checked on the affidavits for Dr.
4 Revotskie, et cetera, a little bit earlier?

5 A No, sir, I did not.

6 Q Okay. Would we need to talk to somebody from
7 the engineering department about that or somebody from
8 the risk control or the loss department concerning those
9 manuals?

10 A As far as the availability of those manuals,
11 sir?

12 Q Well, in regard to the manuals, when they
13 were prepared, how they were prepared, and who prepared
14 them, when they were prepared, et cetera?

15 A If it's a question, my sense is, of whether
16 or not such current manuals are available and would they
17 be made available to you, I can make that inquiry and
18 counsel can provide those, if that's the issue.

19 Q We would also want to know as to whether or
20 not there were some manuals that were dated from 1938
21 through 1963, that type of information.

22 A 1938 through '63?

23 Q Yes, sir. Could we ask that there be someone
24 make that inquiry and then let us know as to whether or
25 not that information would be available? Is that

1 permissible?

2 MR. MARTINSON: Mr. Madeksho, I have no
3 quarrel with you asking Mr. Lewis, and certainly Mr.
4 Lewis can do that, if he would like. But it would be
5 subject to the attorneys' objections, if any, that we
6 might have.

7 MR. MADEKSHO: Certainly. I understand.

8 MR. MARTINSON: I believe he can do the
9 search for you.

10 THE WITNESS: Yes, sir.

11 MR. MADEKSHO: That was one of the areas of
12 inquiry, obviously, for today's testimony, and that's
13 the reason I was making that inquiry.

14 MR. MARTINSON: I apologize. We didn't read
15 it in that fashion. We assumed you were talking about
16 the '37 manual.

17 MR. MADEKSHO: Oh, okay.

18 MR. MARTINSON: But I'll be glad to have him
19 make that search.

20 THE WITNESS: Up through 1963?

21 MR. MADEKSHO: That's correct.

22 THE WITNESS: Yes, sir.

23 MR. MADEKSHO:

24 Q In regard to the area of inquiry concerning
25 Commercial Union's environmental issues task force, are

1 you familiar with that particular task force?

2 A Yes, sir.

3 Q And what is generally the things that the
4 task force would do?

5 A As initially constituted, the task force was
6 designed to be the central receiving point within
7 Commercial Union for all types of environmentally related
8 claims, to provide expertise on the handling of those
9 claims and in the event there were coverage issues to
10 also provide research and litigation assistance in any
11 areas where there might be coverage issues involved.

12 Q Are you familiar with a gentleman by the name
13 of William Bailey?

14 A Yes, sir, I am.

15 Q And who is William Bailey?

16 A William Bailey was a senior vice president of
17 the claim department from approximately 1979 through
18 perhaps 1982, and it was during his tenure that the
19 environmental issue task force was created.

20 Q Do you know as to whether or not Mr. Bailey
21 is still with Commercial Union Insurance Company in any
22 capacity?

23 A He is not, sir.

24 Q Do you know when he left the employ of
25 Commercial Union?

1 A I believe it was 1982 or 1983.

2 Q Did you personally know Mr. Bailey when he
3 was with Commercial Union during that period of time?

4 A Yes, I knew Mr. Bailey personally during that
5 period, yes, sir.

6 Q Did y'all work together?

7 A We worked -- I worked in the claims
8 department, and Mr. Bailey was the senior claims officer
9 at the time. So I guess you could say I worked with him
10 and for him.

11 Q Did he also represent Commercial Union at the
12 meetings for the American Insurance Association?

13 A He could have been in attendance at those
14 meetings representing Commercial Union. I don't know of
15 any specific meetings that he attended.

16 Q Do you know as to whether or not he was
17 actually an officer in the American Insurance
18 Association?

19 A No, I don't know, sir.

20 MR. MADEKSHO: Let me ask that this be marked
21 as next in order.

22 [EXHIBIT NO. 33 MARKED]

23 MR. MADEKSHO:

24 Q Mr. Lewis, what you have before you is a June
25 13, 1980 letter on the letterhead of the American

1 Insurance Association, and at the bottom of the page
2 it's got William O. Bailey, vice president. Is that
3 William Bailey from Commercial Union?

4 A No, sir, it's not.

5 Q That would not be the same?

6 A No, sir, it is not.

7 Q Let's turn over to the next page. It's got
8 the task force and then it has members and it's got
9 William E. Bailey. Would that be the William Bailey
10 from Commercial Union?

11 A That is the William Bailey from Commercial
12 Union.

13 Q And he was a senior vice president in 1980?

14 A Yes, sir, he was.

15 Q In regard to this task force from the
16 American Insurance Association that Mr. Bailey from
17 Commercial Union was -- appeared to be the -- was he --
18 appeared to be the chairman of the task force, on the
19 basis of the letter attached to the list of members?

20 A Yes, sir, it does appear that.

21 Q Did you ever have an opportunity to review
22 the report that was prepared by the American Insurance
23 Association, the task force that Mr. Bailey was the
24 chairman of?

25 A No, sir.

1 MR. MADEKSHO: Let me ask that this be marked
2 as next in order.

3 [EXHIBIT NO. 34 MARKED]

4 MR. MADEKSHO:

5 Q I believe this record is entitled the
6 Estimates of Potential Liability from Asbestos, and then
7 also DBS Related Injuries?

8 A Yes, sir, it is.

9 Q Are you familiar with any estimates that have
10 been made by Commercial Union as to the number of cancer
11 deaths that can be expected from human beings that have
12 been exposed to asbestos-containing products?

13 A I'm not familiar with any specific numbers,
14 sir. I understand that some type of a study had been
15 performed, an initial study in a rough draft form by
16 Commercial Union.

17 Q Do you recall as to whether or not that that
18 rough draft form that had been prepared by Commercial
19 Union had numbers somewhere in the area of 65,000 lung
20 cancer and mesothelioma claims as a result of asbestos
21 exposure?

22 A No, sir. I only reviewed that document once
23 many years ago, when I became first involved, and I have
24 never seen or had an opportunity to review it again.

25 Q Do you know where that document is at this

1 time?

2 A No, sir.

3 Q Do you know of any independent studies that
4 Commercial Union has made on its own about how many
5 asbestos disease, cancer deaths or deaths from
6 asbestosis itself that can be anticipated from prior
7 exposure to asbestos products?

8 A Well, as I say, I believe some type of a
9 study, a draft study was done in the early Eighties. I
10 don't know what ever came of that study or whether or
11 not it was ever approved or used elsewhere.

12 Q Take a look at the first page. You see on
13 the left-hand corner of that document, it's got draft?

14 A Yes, sir, I do.

15 Q And this was dated in the early 1980s,
16 obviously, because it's dated September 17, 1980.

17 A Yes. But this was done by the research and
18 policy development department of the AIA. I was
19 suggesting to you that people at Commercial Union had
20 attempted something internally.

21 Q Okay. So, in other words, we have one from
22 the American Insurance Association, then Commercial
23 Union had their own?

24 A And I don't know which came first.

25 Q Okay. Do you recall as to whether or not the

1 estimated thousands of deaths from cancer from prior
2 asbestos exposure, if those numbers were higher or lower
3 in the Commercial Union's own study as opposed to the
4 study that was done by the American Insurance
5 Association?

6 A No, sir, I have absolutely no idea.

7 MR. MADEKSHO: One second.

8 Mr. Lewis, thank you. I have no further
9 questions at this time. Thank you. That concludes
10 this --

11 MR. MARTINSON: We haven't heard from our --

12 MR. BALLARD: I can tell Owens-Corning is
13 getting ready to open up an area of inquiry.

14 MR. THAMM: No, no, no, I wouldn't do that.
15 Do I need a microphone or something?

16 MR. MARTINSON: He's got one for you.

17
18
19 EXAMINATION BY

20 MR. THAMM:

21 Q Mr. Lewis, my name is Rick Thamm. I've got
22 just a few questions for you. Earlier Mr. Madeksho
23 mentioned something about an Owens-Corning Fiberglas
24 policy. Do you recall that?

25 A Yes, I do, sir.

1 Q A policy that apparently Commercial Union had
2 issued for approximately a one-year period of time. Is
3 that right?

4 A That was my recollection, sir.

5 Q Okay. Do you know when that policy was
6 issued?

7 A No, I don't.

8 Q Do you know what that policy covered?

9 A It was probably an excess liability policy.
10 That's all I can recall.

11 Q You don't really know much about that policy
12 then?

13 A None whatsoever.

14 Q And also, earlier, Mr. Madeksho asked you
15 about a document that was purportedly on Owens-Corning
16 Fiberglas letterhead. Is that right?

17 MR. MADEKSHO: That's correct.

18 MR. THAMM:

19 Q Do you recall Mr. Madeksho asking you about
20 that document?

21 A I do, sir. It was Exhibit No. 31.

22 Q Okay. Would you have had any reason to see
23 that document before today?

24 A I don't believe so.

25 MR. THAMM: That's all I have. Thanks very

1 much.

2 MR. MARTINSON: Anybody else?

3 MR. MADEKSHO: That concludes this
4 deposition.

5 VIDEOGRAPHER: 2:25 p.m., end of deposition.

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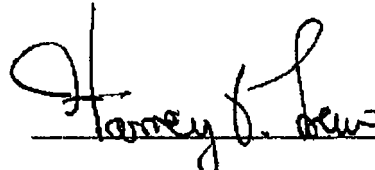
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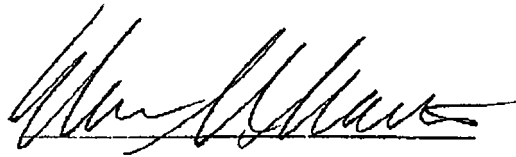
SIGNATURE OF WITNESS

I, HARVEY G. LEWIS, solemnly swear or affirm,
under the pains and penalties of perjury, that the
foregoing pages contain a true and correct transcript of
the testimony given by me at the time and place stated,
with the corrections, if any, and the reasons therefor
noted on a separate sheet of paper and attached hereto,
and that I am signing this before a Notary Public.


HARVEY G. LEWIS

THE STATE OF Massachusetts 1

Subscribed and sworn to before me, the
undersigned authority, by the said HARVEY G. LEWIS on
this the 11th day of June, 1992.


Notary Public in and for
Commonwealth
the State of Massachusetts

My Commission Expires Jan. 31, 1997

1 THE STATE OF TEXAS]

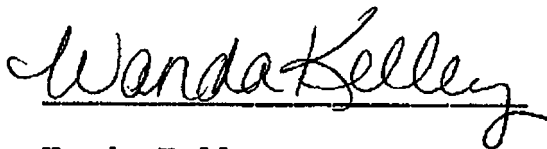
2 CERTIFICATE

3 I, Wanda Kelley, a Certified Shorthand
4 Reporter, hereby certify that the foregoing testimony
5 was given before me after the witness had been duly
6 sworn.

7 I further certify that this deposition was
8 prepared under my direction and is a complete and
9 correct transcript of the proceedings.

10 I further certify that I am neither attorney
11 for, related to, nor employed by any of the parties or
12 any attorney of record in this cause, nor do I have a
13 financial interest in the matter.

14 Witness my hand in Houston, Texas, on this
15 the 21st day of May 1992.

16
17 
18

19 Wanda Kelley, CSR, RPR

20 *Certificate No. 2007

21 Nell McCallum & Associates

22 2900 Smith, Suite 104

23 Houston, Texas 77006

24 (713) 523-3767

25 *My Certificate Expires December 31, 1992

1 NO. 88-C-0615
 2 SHERMAN A. SEARLS, JR.] IN THE DISTRICT COURT OF
 3 VS.] BRAZORIA COUNTY, TEXAS
 4 OWENS-CORNING FIBERGLAS]
 5 CORPORATION, ET AL] 23RD JUDICIAL DISTRICT
 6 NO. 87-C-1934
 7 TOMMIE L. HEATHMAN, ET UX] IN THE DISTRICT COURT OF
 8 VS.] BRAZORIA COUNTY, TEXAS
 9 OWENS-CORNING FIBERGLAS]
 10 CORPORATION, ET AL] 23RD JUDICIAL DISTRICT
 11 IN RE: CONSOLIDATED NO. 87-37068
 12 RICHARD B. JACKSON, ET UX] IN THE DISTRICT COURT OF
 13 VS.] HARRIS COUNTY, T E X A S
 14 OWENS-CORNING FIBERGLAS]
 15 CORPORATION, ET AL] 165th JUDICIAL DISTRICT
 16 NO. 90-20663
 17 GLADYS LORETTA STEELE, ET AL.] IN THE DISTRICT COURT OF
 18 VS.] HARRIS COUNTY, T E X A S
 19 FISCHBACH & MOORE, INC.,]
 20 ET AL.] 55TH JUDICIAL DISTRICT
 21 NO. 89-053547
 22 HAZEL WILKENING, ET AL.] IN THE DISTRICT COURT OF
 23 VS.] HARRIS COUNTY, T E X A S
 24 FORD, BACON AND DAVIS]
 25 CONSTRUCTION CORP., ET AL.] 334TH JUDICIAL DISTRICT
 NO. 91-002902
 LORETTA TURNER] IN THE DISTRICT COURT OF
 VS.] HARRIS COUNTY, T E X A S
 ARMSTRONG WORLD INDUSTRIES,]
 INC., ET AL.] 189TH JUDICIAL DISTRICT
REPORTER'S CERTIFICATE TO THE DEPOSITION OF

HARVEY G. LEWIS

I, Wanda Kelley, a Certified Shorthand
 Reporter for the State of Texas, hereby certify,
 pursuant to the Texas Rules of Civil Procedure and/or
 agreement of the parties present to the following:

That this deposition transcript is a true
 record of the testimony given by HARVEY G. LEWIS, the
 witness named herein, on May 19, 1992, after said
 witness was duly sworn by me;

1 That \$ 501.75 is the charge for the
2 preparation of the completed deposition transcript and
3 any copies of exhibits, charged to Lawrence Madeksho,
4 Texas Bar Association No. 12797500;

5 That notification of the submission of the
6 deposition transcript was received by the witness or the
7 attorney of record for a party who was the witness on
8 May 22, 1992, that same was to be
9 examined and signed within 20 days of said date. The
10 attached Change/Correction Sheet contains any changes
11 made by the witness and the reasons therefor;

12 That the original deposition transcript,
13 together with copies of all exhibits, was delivered or
14 mailed in a postage-paid, properly-addressed wrapper,
15 certified with return receipt requested, on
16 June 29, 1992, for safekeeping and use at
17 trial and hearings, to the attorney or party who asked
18 the first question appearing in the transcript;

19 That pursuant to Texas Rules of Civil
20 Procedure 21a, a copy of this certificate was served on
21 all parties made known to me, to-wit:

22 MR. LAWRENCE MADEKSHO

23 Law Offices of Lawrence Madeksho

24 8320 Gulf Freeway, Suite 218

25 Houston, Texas 77017-4598