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DOCUMENT DESCRIPTION: Legal - Deposition of John Higgins

1 JOHN J HIGGINS, 24 Hook Mountain Drive,
2 Anandale, New Jersey, sworn.

3

4 DIRECT EXAMINATION BY MR. PLACITELLA:

5

6 THE VIDEOGRAPHER: Good
7 morning. The is the videotaped deposition of John
8 Higgins in the matter of Chavan versus 3M Company,
9 et al, docket number MID--L-1628-09. This
10 deposition is being held at 200 Atrium Drive,
11 Somerset, New Jersey on June 15, 2011 by Charles
12 Papa. I'm from the firm of Magna Legal Services..
13 I'll be the videographer. We are out of
14 Philadelphia, Pennsylvania.

15 We are going on the record at
16 9:45. Appearance will be noted in the video record
17 record. The court reporter will now swear in the
18 witness.

19

20 Q. Good morning, Mr. Higgins, how are you?

21 A. Fine. How about you?

22 Q. Good. We are here for the purpose of
23 taking your deposition today. Have you ever had
24 your deposition taken before?

25 A. Yes.

1 Q. How many occasions?

2 A. Oh, gosh, half a dozen. Some number like
3 that. Mostly in labor disputes in front of a
4 smaller audience, I have to admit.

5 Q. So you are familiar with the rules? I
6 don't need to go over them?

7 A. Correct.

8 (P-1 is marked for Identification)

9 Q. I'm going to show you what's been marked
10 P-1 for Identification ,which is the Deposition
11 Notice for today. Have you seen that before?

12 A. Yes, I have.

13 Q. You are the person being produced by Merck
14 as the person most knowledgeable about the use of
15 asbestos at the Rahway plant. Is that correct?

16 A. That's correct.

17 Q. What qualifies you to be that person?

18 A. I started working with Merck at Rahway in
19 1970 through 1981 first in technical services as a
20 chemical engineer. Later in various manufacturing
21 roles.

22 I also participated as sort of the tour
23 guide when the Selikoff folks from Mt. Sinai came
24 into Rahway to look at asbestosis cases in about
25 1972 or '73.

1 So between the manufacturing experience
2 and the experience with the Selikoff folks I feel
3 like I'm qualified to talk about the usage of
4 asbestos, at least in general terms, at the Rahway
5 site.

6 Q. Now, the Deposition Notice asks that you
7 produce various documents with you. Did you look at
8 that notice for the documents?

9 A. I did. Pardon me. I also looked at the
10 Defendant Merck response to the first notice in and
11 a prior notice, excuse me, another notice relative
12 to various documents in this site.

13 Q. Did you bring the documents called for in
14 the notice with you today?

15 A. No. I believe most of those documents,
16 according to the answers from Mr. Seaver, are not
17 are not available.

18 Q. Can you tell me going through the list 1
19 through 21, which documents are available to your
20 knowledge, rather read each one?

21 MR. SEAVER: You are asking him to review.
22 There's been a written response to the document
23 production. The documents were produced to your
24 office. We are now going to do an exercise to have
25 him go through it again?

1 Q. Did you make an independent search for the
2 documents called for?

3 A. No. I didn't.

4 MR. SEEVER: Just for the record, counsel,
5 Mr. Higgins is retired from Merck. He is not
6 currently employed there, in terms of current access
7 to the documents.

8 Q. Do you have any access to the documents
9 called for in this?

10 A. At this time I do not. I retired about a
11 year ago.

12 Q. Were you provided with any documents in
13 preparation for your deposition today?

14 A. I was provided with some historical
15 documents from the '70s at Rahway, including a
16 deposition from Jack Snyder, who formerly headed
17 safety.

18 Q. Do you have those with you today?

19 A. Yes, I do.

20 Q. Can we mark that group as P-2, please?

21 MR. SEEVER: I'm removing correspondence
22 with counsel.

23 MR. PLACITELLA: No problem.

24 (The above documents are marked P-2 for
25 Identification)

1 MR. SEAVER: Chris, I have no objection to
2 your asking the witness what he knows about document
3 retention.

4 MR. PLACITELLA: I'll get to that.

5 MR. SEAVER: I wanted to clarify that on
6 the record. He is not there anymore.

7 Q. You graduated from Steven's Institute in
8 1970, correct?

9 A. That's correct.

10 Q. With a degree in chemical engineering?

11 A. That's correct.

12 Q. And you started at Steven's in 1966. Is
13 that correct?

14 A. That's also correct.

15 Q. And your first job out of college was at
16 Merck?

17 A. Yes. About a month after school let out I
18 got done with my diploma, I started at Merck.

19 Q. When you took your undergradte education
20 at Steven's, did you have any safety training in the
21 handling of toxic chemicals?

22 A. No. It was more related to things like
23 reactor design, distillation practice. Those kind
24 of theoretical things.

25 Q. Have you had ever taken any formal courses

1 on asbestos use or asbestos dangers?

2 A. Only the sort of internal Merck talks,
3 lectures, materials related to asbestos handling
4 practices.

5 Q. So nothing other than what Merck itself
6 ran?

7 A. Correct.

8 Q. When was the first such course run by
9 Merck that you attended?

10 A. You are taxing my memory. I would say
11 early, mid '70s. Sometime after the Mt. Sinai visit
12 in the early '70s.

13 Q. Now, when you started at Merck in 1970,
14 what was your first job?

15 A. As a technical services engineer, fitting
16 new processes into an automated factory.

17 Q. How long did you keep that job?

18 A. That was about a year.

19 Q. And in that job did you have anything to
20 do with asbestos?

21 A. Well, at the time I was a shift engineer,
22 so I was on shift working with mechanics and
23 chemical operators and certainly observed mechanics
24 working with asbestos-containing materials, whether
25 they were pipe covering or insulation on reactors.

7

1 Those kinds of things.

2 Q. In 1971 what was the next job that you

3 had?

4 A. In about 1972 I joined the narcotics

5 operation and so-called Factory 1, and about a year

6 later I was promoted to run the operation.

7 Q. How long did you have that job?

8 A. Let's see. I would say until about 1976

9 or thereabouts.

10 Q. What were your basic job responsibilities?

11 A. At the time Merck was producing cocaine

12 morphine, codeine from opium and a certain type of

13 raw material for the cocaine process. So we

14 imported the materials and synthesized compounds,

15 packaged then, shipped them out all under DEA

16 regulations.

17 Q. From '72 to '76 did you have any

18 responsibilities as it related to the use of

19 asbestos in the Merck facility?

20 A. Correct. This was the oldest factory at

21 Merck. It contained a lot of asbestos and of course

22 we had mechanics in there all the time effecting

23 repairs.

24 So, again, I was able to personally

25 observe the way pipefitters, pipe coverers and such

8

1 would work with the material.

2 Q. When you say mechanics, what trades are
3 you referring to?

4 A. There were a bunch of trades. The ones
5 I'm particularly thinking of are pipefitters and
6 pipe coverers. What we used to call tin knockers,
7 sheet metal workers that would apply metal covering
8 over the insulating materials.

9 Q. And then in 1976 what was your next job?

10 A. I, through about 1999 -- about 1981 I
11 gradually picked up more operating responsibilities
12 for different factories at the site. And I would
13 say in about 1979 I was the assistant manufacturing
14 manager and had responsibility for about half of the
15 production at the site.

16 Q. What, if any, responsibilities did you
17 have with asbestos during that 1976 to 1981 time
18 period?

19 A. Very similar. A little bit less exposure
20 since I spent more time in the office. But still I
21 was on the operating floor. The one factory in
22 particular that comes to mind is Factory 29, which
23 was a predominantly outdoor facility about two
24 blocks long, about a block wide and contained
25 enormous amounts of pipe and had lots of corrosive

9

1 chemicals that engendered the requirement for a lot
2 maintenance. Again, I observed the mechanics, the

3 pipefitters, coverers, tin smiths working with

4 insulation materials.

5 Q. So in the 76 to 1981 time period the pipe

6 fitters were working with insulation materials?

7 A. Sure.

8 Q. Were they removing?

9 A. Yes. They would be removing and replacing

10 as they repaired leaks and piping and whatnot.

11 Q. In 1981, what was your next job?

12 A. 1981 I went to Stonewall, which is a

13 factory in Virginia as the manufacturing manager.

14 Second in charge of the plant. Large scale, gosh,

15 radioactive, fermentation, sterile productio.

16 Things of that nature. Bulk chemical facility. We

17 have down in the Shanandoah Valley.

18 Q. How long did you have that job?

19 A. That was about four years. So in 1985 I

20 moved to Puerto Rico as the operations manager and

21 was in charge of all production and technical

22 support functions in Puerto Rico.

23 Q. And how long did you have that?

24 A. That was about three years.

25 Q. You hated that job?

10

1 A. Pardon me?

2 Q. You hated that job?

3 A. PR is a difficult place to operate.

4 Let's leave it at that.

5 Q. That was during work. After work it is

6 wasn't so bad.

7 In 1988 what was your next job?

8 A. Came back to Rahway site and I had charge

9 of inventory control, production management and

10 capital allocations for the division.

11 Q. How long did you have that job?

12 A. That was about a year, and I have been

13 around so long I have to refer to this. In 1989 I

14 returned to Rahway as the head of site services for

15 the location.

16 Q. How long did you have that job?

17 A. That was about two years. Two and a half

18 years. In that function I was responsible -- i

19 would talk about that as a plant engineer, mechanics

20 and services at the site reported to me.

21 Q. And in '89 --

22 A. That's '89 to '91.

23 Q. And in '89 to '91, did you have anything

24 to do with asbestos?

25 A. At that point in time the company had been

11

1 removing asbestos gradually from the Rahway site, so

2 we -- how would I say this? That group, my group

3 was responsible for maintaining the inventory of

4 asbestos-containing materials at the sites, and in
5 some cases the larger asbestos jobs were done by
6 contract folks that were skilled in that area. That
7 was there primary function.

8 But our pipe fitters and coverers that
9 were under me would remove certain materials,
10 smaller kinds of jobs.

11 Q. In 1991 what was your next job?

12 A. 1991 I was asked to start up operations at
13 the Whitehouse Station site, the new corporate
14 headquartes we built in Readington and, gosh, I did
15 that until about 2005 or so and that morfed into
16 corporate services function.

17 So facilities operations, corporate
18 aviation, creative services, credit card programs,
19 things of that nature. All of the sort of corporate
20 services you would expert at a large corporation.

21 Q. Did you have any jurisdiction at that
22 point over the Rahway site?

23 A. No. I would also add there was no
24 asbestos at the Whitehouse site being new
25 construction.

12

1 Q. Then in 2005 what was your next job?

2 A. 2005, 2006 I was selling surplus factories
3 for the company in Europe and Asia and the U.S.

4 Q. Then in 2006?

5 A. Came back to Rahway for a third time.

6 This time as the plant manager for the site and in

7 that situation all of the services and the

8 production activities reported into that position.

9 Q. You held that job for how long?

10 A. Three years.

11 Q. Until 2009?

12 A. Yes. 2009

13 Q. Then you retired?

14 A. Yes.. I retired in February of 2010.

15 Q. When you worked at the plant did you know

16 ed Skolnick?

17 A. Oh, sure. I knew Ed for 20 years. He was

18 quite a customer.

19 Q. Did you know Margie McGlynn?

20 A. Sure. Built headquarters for her.

21 Q. Other than what's been marked as P-2, did

22 you review any documents other than these in

23 preparation for your deposition?

24 A. No.

25 Q. You have in front of you a document you
13

1 have been referring to, what is that?

2 A. That's a CV I did, an informal CV so I

3 could keep track of my various jobs at Merck.

4 MR. PLACITELLA: Mark that P-3.

5 (The above document is marked P-3 for

6 Identification)

7 Q. Did you consult with any witnesses in

8 preparation for for your deposition today?

9 A. No. Only two attorneys.

10 Q. One was Mr. Seaver and the other was --

11 A. A nice gentleman talking to us from -- I

12 don't remember his name.

13 MR. SEAVER: Merck general counsel, Marsh

14 Coleman. Assistant counsel.

15 Q. How long did you spend preparing for the

16 deposition?

17 A. I would say two hours.

18 Q. I'm just focusing on the Merck Rahway

19 facility.

20 A. Sure.

21 Q. The Merck Rahway facility was about

22 1020 acres? How big was it?

23 A. Give or take 120 acres, 120, 130

24 structures.

25 Q. In the 1960s and 1970's was it about
14

1 4,000 employees?

2 A. I would say so. I have less knowledge of

3 the whole population. I would agree that's a rough

4 number that makes sense. Still about 4,000. A

5 little more than 4,000 folks.

6 Q. How many buildings?

7 A. About 120, 130. In that range. That

8 includes sheds. Those are separate structures we

9 are talking about.

10 Q. Am I correct research was also housed

11 there?

12 A. Sure. Basic chemical research was house

13 at Rahway. Pharmaceutical, of course, was done at

14 West point predominantly.

15 Q. Other than research, am I correct that the

16 Rahway facility was essentially a chemical And

17 refining facility?

18 A. That's correct. Rahway was a

19 multi-purpose, predominantly a multi-purpose

20 purpose, what we call API, Active Pharmaceutical

21 Ingredient facility.

22 Q. And it was kind of a city in and of

23 itself?

24 A. In a lot of ways, yes.

25 Q. You had your own security?

15

1 A. Security, fire, food services, et cetera,

2 et, cetenna, et cetera. It was quite

3 self-contained.

4 Q. You generated your own power?

5 A. A portion of the power required for the

6 site. Twenty, thirty percent. In that range.

7 Q. You had six boilers?

8 A. You got me on numbers. But that would be

9 an approximate number I would agree with. Sizeable

10 powerhouse.

11 MR. SEAVER: Still talking in what time

12 frame?

13 MR. PLACITELLA: The '60s and '70s.

14 A. Yes. Still about six boilers at Rahway.

15 They are just different than they were back in the

16 '70s.

17 Q. You had your own set of hired labor to

18 maintain the facility, correct?

19 A. Correct. We had two unions on-site.

20 There was the IUOE, the operatoring engineers that

21 ran the powerhouses, operated the powerhouse and the

22 outside facilities associated with it. And then in

23 those days it would have been OCAW, Oil Chemical and

24 Atomic Workers where the production workers and the

25 mechanics were.

16

1 Q. And you had your own pipe coverers,

2 correct?

3 A. Pipe coverers, tin smiths and pipefitters.

4 Q. Electricians?

5 A. Of course.

6 Q. Labors?

7 A. Yes. Masons, millwrights. There were
8 probably 15 crafts there. I struggle to remember
9 them all.

10 Q. Would you agree with me that without
11 proper safety precautions it was a dangerous place
12 to work?

13 A. That's kind of a leading question.

14 Q. I'm allowed to ask leading questions.

15 A. Without proper safety precautions I would
16 agree almost any site that manufacturers something
17 is a dangerous place to work.

18 Q. Did you have a health and safety
19 department on site?

20 A. Yes, we did. I would say in those days we
21 both had a local safety department and since it was
22 the corporate headquarters in the '70s, we also had
23 a corporate, small corporate safety function.

24 Q. So both the local health and safety
25 department and the corporate headquarters were in
17

1 Rahway?

2 A. Correct. And health and safety are two
3 separate functions.

4 Q. I'm going to get to that.

5 A. All right.

6 Q. Approximately how many people were

7 involved in the local health and safety department?

8 A. My best estimate would be five to six. It

9 was a relatively small organizations in those days.

10 Q. What about corporate safety?

11 A. Corporate was of a like size. I would say

12 five, six. Again, it was a small organization in a

13 relatively small corporation back then.

14 Q. Who was in charge of the local health and

15 safety?

16 A. I want to say in that era Ken Doremus

17 probably the fellow. That's the name that comes to

18 mind in the '70s.

19 Q. He dated all the way back to the 1950s,

20 his involvement?

21 A. Ken had white hair when I new him in the

22 '70s. I'm thinking he went back that far.

23 Q. What about the corporate safety

24 department? Who was in charge of that?

25 A. Jack Snyder. Again, another long term
18

1 Merck employee.

2 Q. That's the person whose deposition you
3 read?

4 A. Correct.

5 Q. What were the responsibilities of the

6 health and this safety department in the '60s and

7 the '70s?

8 A. Again, two separate departments. It
9 wasn't health and safety. We had plant health with
10 the health department which reported up to human
11 resources and in those days --

12 Q. Let's just focus on safety. Is the health
13 department another word for a medical department?

14 A. Yes.

15 Q. Let's just talk about the safety
16 department for a second.

17 A. Safety set the rules of operation. If we
18 needed to do some hot work on a back-up, we handled
19 an enormous amount of solvents and a variety of
20 solvents at the Rahway site in the course of
21 manufacturing materials.

22 Most of the equipment that we had was
23 what's called explosion proof. So if we were doing
24 electrical work or, gosh, welding or anything of
25 that sort in the factory, the safety department
19

1 would have a representative there that would fill
2 out the permit for doing that kind of work. And
3 later in the '70s, after the sort of hazards of
4 asbestos were recognized, there was also a permit
5 required to do asbestos work, and safety would
6 officiate over that as well.

7 In addition, many of the factories had

8 what were called a safety and service person. They
9 had a dual reporting relationship. These were
10 hourly people. They worked for the factory, but
11 they also had sort of a dotted line into safety.
12 And these folks supplied gloves, respirators, safety
13 equipment to the factories.

14 Q. Did the safety people track the number of
15 injuries per year that happened at the job?

16 A. Yes, they did. The reporting changed, of
17 course, once OSHA came in and the tracking and
18 reporting was more formalized.

19 Q. Did you have industrial hygienist on
20 staff?

21 A. I don't remember. Prior to 1972, again,
22 the visit from the Mt. Sinai folks, the Selikoff
23 folks, engendered quite a reaction from the company.
24 I don't recall prior to 1972 having an industrial
25 hygienist on site.

20

1 Once we became aware of asbestos, or more
2 a aware of asbestos, as the case may be as a hazard,
3 we then did add, to my memory, an industrial
4 hygienist or two. The name that comes to mind is
5 David Kirk. I believe Dave arrived in 1972 or '73.
6 He just comes up in my memory as a very capable guy.

7 Another name that comes to mind is, I

8 believe, Peter Calagueri was also an industrial

9 hygienist.

10 Q. Who was the person running the Merck

11 Rahway plant in the '70s?

12 A. In the 1970s it was first -- plant

13 managers traditionally don't last a long time at

14 Rahway. So there's a few names here.

15 But in the '70s it was Clarence Peno,

16 P E N O, long since retired, and David Conkling,

17 also was in that area era. And after Dave came Bill

18 Lahorn. And that will bring you up to about the

19 early '80s.

20 Q. Who was the person at the Rahway facility

21 making the decisions about what to do in response to

22 information received about asbestos?

23 A. I would say --

24 MR. SEAVER: Objection to the form because

25 it is sort of vague. Chris, are you talking about
21

1 in response to, as he already testified, Mt. Sinai

2 and OSHA or are you talking in general terms before

3 that time period as well?

4 MR. PLACITELLA: In general.

5 A. I think it is sort of a typical

6 relationship. The central safety, in some cases,

7 has their feelers out beyond the plant, and as they

8 would recognize hazards, whether it is asbestos or

9 solvents, the central safety folks would formulate a
10 position on the part of the company. That would
11 then be communicated with the line organization, the
12 plant manager and the local safety department.

13 These would be guidelines or they would be
14 requirements, depending upon the nature of the
15 hazard. The plant manager is overall fully
16 responsible for the operation.

17 When corporate safety says this is the
18 procedure to follow, the local safety folks put that
19 in a format that that location understands and the
20 plant manager enforces those regulations.

21 Q. So top down. Who is the person at
22 corporate safety that is dictating the policy on how
23 to respond to hazards, industrial hazards in the
24 plant?

25 A. The head of corporate safety in those days
22

1 was Jack Snyder.

2 Q. Do you know how long he had that job?

3 A. I can remember going out to Dow Chemical
4 with him in 1980. So he had the job at least in
5 1980 or 1981.

6 Q. Do you know when he got there?

7 A. He went back to the '50's, at least.

8 Probably earlier. I would say maybe the mid '40s.

9 Q. So he was ultimately the person at Merck
10 who was making the decisions on how to respond to
11 whatever industrial hazards were in the plant?

12 A. Correct. On the advice, if he had experts
13 in various fields, he would take the advice of those
14 experts and then publish the regulations or the
15 procedures.

16 Q. Now, let's focus on the medical
17 department. Was there also a local and corporate
18 medical department, both located at the Rahway
19 facility?

20 A. Correct.

21 Q. Who was in charge of the local medical
22 department?

23 A. I don't remember the names from back then.
24 We had at least two doctors on staff and those of us
25 that handled things like benzene, for instance, were
23

1 scheduled for periodic blood testing.

2 That was in the '70s, the early '70s in
3 particular. That was the most frequent reason to go
4 to plant health.

5 Q. So you had two doctors. How many people
6 worked in the local Merck medical department?

7 A. I would say at least five or six. Couple
8 of doctors, couple of nurses and at least one admin.

9 Q. Did you have also relationship at that

10 point with Rahway hospital where people were sent

11 when issues came up?

12 A. As far as I know we only sent to Rahway if

13 we had an industrial accident and they needed first

14 aid or some treatment beyond first aid.

15 Q. And in terms of the corporate medical

16 department, that was also located at Rahway?

17 A. It was. I'm less familiar with the folks

18 in the corporate medical department in that era.

19 Q. Do you know who ran that?

20 A. I don't. My dealings at that point in

21 time were exclusively with the local folks.

22 Q. Would you agree with me that during the

23 '60s and '70s and '80s Merck had both the money and

24 the resources to do whatever was necessary to

25 protect workers and their families?

24

1 A. I can't testify to the '60s, not having

2 been there, but certainly in the '70s and '80s,

3 sure.

4 Q. Did you know Gary John Chavan, Sr.?

5 A. I knew of John Chavan, Sr.. The name is

6 very familiar. He worked there at Rahway for quite

7 a long time. I didn't know him personally.

8 Q. Do you know his son?

9 A. No.

10 Q. Did you have the opportunity to read his
11 deposition prior to today?

12 A. No, I didn't.

13 Q. When I say his, I mean the father.

14 A. No.

15 Q. One of the places he worked was in the
16 research building. Are you familiar with the
17 research building?

18 A. Very. Well, buildings, plural.

19 Q. Buildings. Can you tell me what to your
20 knowledge what equipment in the research buildings
21 were historically insulated with asbestos-containing
22 products?

23 A. Predominatnly steam pipes and I would --
24 my judgment would say that's what Mr. Chavan worked
25 on predominantly, leaking steam pipes and such.
25

1 Q. About how many miles of steam piping was
2 there in the Merck facility in total, if you had to
3 estimate?

4 A. Based on the numbers I saw in the
5 materials that you marked in evidence, roughly
6 between eight and ten miles at the site at the peak.

7 Q. So, is it fair to say that during the '60s
8 and 1970s there was eight to ten miles of
9 asbestos-containing pipe covering that Mr. Chavan
10 potentially would come into contact with?

11 A. Yes. As a pipefitter he could work in any
12 part of the plant.

13 Q. In research, did they also use transite?

14 A. Transite was used in a lot of
15 applications. As you probably know it is a solid
16 asbestos material and it was used not only as
17 insulation, but as actually structural member in
18 things like dryers.

19 Q. Do you know whether the counter tops in
20 the laboratories contained asbestos?

21 A. I know the countertops were soap stone. I
22 wouldn't speculate. I have no evidence or no
23 knowledge whether that soap stone had asbestos or
24 not.

25 Q. What about the hoods? Do you know whether
26

1 they were lined with asbestos in the laboratories?

2 A. Some hoods in that era, at least in the
3 factory, were lined with transite. I don't know
4 about the research area in that area.

5 Q. What about the doors to the laboratories,
6 were they asbestos core doors?

7 A. Not to my knowledge. I wouldn't
8 speculate.

9 Q. What about the floors?

10 A. Vinyl asbestos tile.

11 Q. And what about the ceilings?

12 A. Ceilings were mineral fiber. Well, they
13 were typical Celotex or, gosh, the same kind of
14 ceiling tile you find today. In that era there was
15 a slightly different type of tile called, oh, gosh,
16 spline type tile that went together. But I don't
17 believe -- I'm not certain, but I don't believe, I'm
18 not certain, but I don't believe it contained
19 asbestos.

20 Q. According to Mr. Chavan's deposition, he
21 described how he believed he was exposed to asbestos
22 at Merck. He said that he knocked the asbestos off
23 the pipes. Would that be an accurate statement?

24 A. Yes. I've seen pipefitters, if you
25 understand the type of insulation we used, there's a
27

1 metal jacket around the asbestos. The asbestos is
2 kind of an anulis and the pipe is in the center. I
3 would see pipefitters occasionally, again, back in
4 that era, strip off the metal and then hit the
5 asbestos with small hammer and have it drop off.

6 Q. He also indicated that he mixed asbestos
7 cement. Did you ever observe that?

8 A. Oh, sure. On elbows and things of that
9 nature where you had to join two pieces of straight
10 asbestos insulation or two pieces of any kind of
11 insulation, there's typically some cement applied to

12 seal up the cracks around that elbow. And way back
13 when in the early '70s I'm sure that contained
14 asbestos. Again, as we became became aware of the
15 hazards, we moved to non-asbestos type cements.

16 Q. When you say as we became aware of the
17 hazards, you are talking about Merck, from your
18 knowledge?

19 A. Right.

20 Q. Do you have any personal knowledge about
21 how far Merck's knowledge goes back concerning the
22 dangers of asbestos?

23 A. From my experience at Merck, up until the
24 Selikoff -- To me the Selikoff visit was really a
25 pivotal point relative to asbestos.

28

1 Before the Mt. Sinai folks came to the
2 site and found some asbestosis in some of our
3 pipefitters, it was viewed as kind of a nuisance
4 dust. It wasn't viewed as a significant hazard.

5 After that visit, and after the
6 epidemiological work, it was viewed as a significant
7 hazard and the company reacted I thought pretty
8 quickly in terms of halting its use.

9 Q. That's your personal knowledge?

10 A. Correct.

11 Q. You don't know as you sit here what the

12 people in the medical and health and safety

13 department at the corporate level knew before 1972?

14 A. No. I can testify to the practices that

15 we had in the workplace and the rules and

16 regulations that we operated under the safety

17 regulations.

18 Q. What you were told?

19 A. Correct.

20 Q. He testified that valves were covered with

21 asbestos. Is that true?

22 A. Sure.

23 Q. He said he worked with boilers that had

24 asbestos.

25 A. Also correct.

29

1 Q. He said he worked with stills that had

2 asbestos.

3 A. Yes. Stills, another word for reaction

4 vessels, tanks, 500 to say 3,000 gallons, and in

5 many cases the older ones were insulated with

6 asbestos.

7 Q. Now, how big is that?

8 A. 500 to 3,000 gallons. A 3,000 gallon

9 vessel might be eight feet in diameter and 10 feet

10 tall.

11 Q. And the entire outside covered with

12 asbestos?

13 A. Again, the older ones would have been
14 covered with asbestos-containing blocks. Solid
15 material that was cemented on to the metal and then
16 that would have been covered with a metallic jacket.

17 Q. He said he worked with gaskets that had
18 asbestos. Is that accurate?

19 A. I believe so. In those days we certainly
20 had gaskets that were reenforced with fibrous
21 asbestos.

22 Q. He said he worked on condensers that had
23 asbestos.

24 A. Condensers would have been insulated the
25 same way as a reaction vessel.
30

1 Q. What is a condenser?

2 A. A condenser. A still, think of making
3 vodka or something. The still is where you boil the
4 material, it goes up a riser, a piece of large
5 diameter pipe, which also would have been insulated.
6 And then it goes up into a condenser which contains
7 a bundle of tubes inside of it it with cooling
8 water.

9 The cooling water inside this condenser is
10 a like a large piece of pipe. The cooling tubes
11 would condense the vapor being driven off the still
12 and then in turn that condensed vapor, the liquid,

13 would end up in a receiver, another vessel.

14 That entire train, since it would be

15 operating at a relatively temperature would be

16 insulated. Again, in the old days, in the '60s and

17 '50s, that would have been asbestos.

18 Q. And into into the early '70s?

19 A. Yes. We. By the ,gosh, by '73, '74 we

20 weren't applying any new asbestos, but clearly we

21 had a large inventory of older equipment, extent

22 equipment.

23 Q. How big is a condenser?

24 A. A condenser varies in size. It could be

25 the length of the table you are sitting at say six
31

1 feet, 10 inches in diameter. It could be 15,

2 20 feet long and two feet in diameter. Depending

3 upon the volume of material going into it.

4 Q. Do you have an estimate of how many

5 condensaters like that were on the Merck property?

6 A. 100, 200. A significant number.

7 Q. What about the stills that had the

8 asbestos? How many of those were on the Merck

9 property?

10 A. Gosh.

11 Q. Best estimate.

12 A. Easily somewhere between say 200 and 500.

13 Quite a large number.

14 Q. What about the valves he said he worked on
15 covered with asbestos? How many were those were on
16 the property?

17 A. Thousands.

18 Q. He also indicated he worked on heater
19 exchangers where he believed he was exposed to
20 asbestos.

21 A. To me a heater exchanger is effectively a
22 condenser. Same thing.

23 Q. He also talked about hot water tanks that
24 he believed had asbestos. Is that correct?

25 A. Yes. When I said vessel, well, we were
32

1 talking about reactors and such. That would
2 encompass hot water tanks, it would encompass
3 solvent receivers, stills, reactors. All sorts of
4 closed tanks for water or chemicals.

5 Q. How many hot water tanks insulated with
6 asbestos would you estimate are on the Merck
7 property that you had jurisdiction over?

8 A. Back then it be could be 100. Again, I'm
9 going down to the smaller tanks associated with
10 condensate return systems where you take water off
11 of a radiator and send it back to the powerhouse.

12 Q. He also indicated that he worked with fire
13 boxes that were insulated with asbestos? Do you

14 know what a fire box is?

15 A. That's a term I'm not familiar with.

16 Q. He indicated that he was in charge of
17 maintaining insulation when he was in the research
18 department.

19 A. If I remember correctly he was a
20 pipefitter.

21 Q. Right

22 A. And There were overlapping jurisdictional
23 disputes that came up between pipe coverers, that
24 was their sole job was maining insulation and
25 applying new insulation and pipefitters.
33

1 The pipefitters could do incidental -- for
2 instance repair a steam like. They could take the
3 insulation off around that leak and put back on
4 insulation, but I wouldn't say they were in charge
5 of maintaining insulation. That would have been a
6 pipe coverer's job.

7 Q. How many buildings were in research?

8 A. Rough guess I would say 30 or 40.

9 Q. He said he worked primarily in the
10 research department. That wasn't just one building.
11 It was 30 or 40 buildings?

12 A. Yes. Pilot plants, laboratories.

13 Q. He indicated in his deposition that when
14 he knocked the asbestos off the pipes he did it with

15 a hammer and there was so much dust you couldn't see

16 the person next to you. Did you ever observe that?

17 A. I never observed that magnitude of

18 dust. I did observe pipefitters knocking

19 asbestos-containing insulation off with a hammer,

20 but I would say that's an exaggeration. There would

21 not be that amount of dust coming off of that type

22 of insulation, in my opinion.

23 Q. Well, would it undoubtedly generate a dust

24 cloud that would last up to ten minutes in a work

25 area?

34

1 A. Ten minutes?

2 Q. Yes.

3 A. No. A minute, two minutes. But, again

4 I'm used to people taking ordinary care with what

5 was to some degree regarded as nuisance dust. I'm

6 used to seeing a pipefitter, again, in that era,

7 knock off a piece of insulation and you would have a

8 small cloud of dust. Not that large and it would

9 dissipate relatively quickly. A minute, two

10 minutes.

11 MR. PLACITELLA: Can we mark this as P-4?

12 (The above document is marked P-4)

13 Q. I have in my hand, and I'll show you a

14 memo from 1975 from a G.D. Kirk. Who is he?

15 A. Dave Kirk, an industrial hygienist.

16 Q. And what was his job?

17 A. He would -- as an industrial hygienist, he
18 would take samples of the air. One of the functions
19 would be to take samples of air in the work space.
20 That might be the kind of thing where you had an air
21 pump on and you could be taking solvent reading.
22 You could also be counting asbestos fibers.

23 Q. When did he start doing those kinds of
24 tests?

25 A. Dave was hired, I believe, in '72 or '73.
35

1 So I would say by '75 he was probably doing that
2 sort of work.

3 Q. Who is Dr. Foldy?

4 A. Steve Foldy. He was a medical doctor, I
5 believe, in plant health.

6 Q. And J. P. Larkin, who is that?

7 A. Joe Larkin was probably the number two guy
8 in human resources. Handled most of the labor
9 concerns for human resources.

10 Q. I'm going to show you this document marked
11 P-4 for identification from the hygienist at Merck
12 dated 7-15-75 and ask if you ever have seen that
13 before?

14 A. First of all, I have not seen this before.

15 Let me just finish reading it.

16 Q. Sure.

17 A. Well, my recollection of the dust cloud
18 differs from this.

19 MR SEAYER: Is there a question pending?

20 Q. I asked have you seen this before?

21 A. No, I haven't.

22 Q. This is a memo from the hygienist at
23 Merck, correct?

24 A. Yes.

25 Q. He is talking about pipefitters, right?
36

1 A. Right.

2 Q. He is talking about Mr. Chavan
3 specifically, is he not? Look at the next page.

4 A. The rest are redacted, so I'm assuming,
5 yes.

6 Q. Somebody took out all the other names. He
7 says until approximately a year and a half ago it
8 was customary for pipefitters, that's like
9 Mr. Chaven, right?

10 A. Um-hum.

11 Q. To knock off pipe insulation in
12 preparation for repairing a valve or a flange, for
13 example. This they might do in a rather crude
14 manner such as hitting with a heavy tool, correct?

15 A. That's correct.

16 Q. This undoubtedly would generate a dust
17 cloud which could last up to ten minutes,
18 particularly if the work area as confined with
19 little air movement, correct?

20 A. That's what it says.

21 Q. And he would be the person in a position
22 to know that best, would he not?

23 A. That's arguable. Again, my personal
24 observations, I already testified pipefitters
25 operate in this manner with typically a hammer being
37

1 the heavy object. I'm not used to seeing a dust
2 cloud which persisted for up to ten minutes.

3 Q. He says that this could happen maybe once
4 a week or several times a day, does he not?

5 A. I won't argue with that.

6 Q. And that the pipefitters who were doing
7 this were provided no respiratory protection at all,
8 correct?

9 A. I would say they were provided respiratory
10 protection. We always had respirators available.
11 Whether they will wore them or not, maybe another
12 mat.

13 Q. When did you first start providing
14 respirators to pipefitters who were working with
15 insulation?

16 A. As far as I remember respirators were

17 routinely available throughout the factories.

18 Again, the availability was there. Whether they
19 were used or not is another story.

20 Q. When was the first time Merck told the
21 pipefitters they should be wearing respirators to
22 protect themselves from asbestos exposure?

23 A. I believe that our concerns were
24 heightened after, again, the Selikoff visit or the
25 selikoff work in the early '70s at Rahway. So I
38

1 think that pretty much lines up with this.

2 If I take a year and a half off of this,
3 it's is early 1974 which is about when I think those
4 folks from Mt. Sinai came to the site and we
5 discovered that there were some serious hazards with
6 asbestos.

7 Q. Can we agree that at least prior to 1974,
8 thereabouts, Merck never instructed pipefitters to
9 wear protective respirators when they were working
10 around asbestos insulation?

11 A. I can't testify to that. I can testify to
12 what I saw in the workplace, which was people,
13 pipefitters knocking insulation off pipes without
14 respirators on. That's certainly a fact. But,
15 again, I just don't know what they were told in
16 terms of work rules.

17 Q. Even after OSHA was passed you had
18 incidents of people cutting asbestos and asbestos
19 dust going into the ventilation systems and being
20 carried out throughout the building, including into
21 the locker rooms, right?

22 A. Not to my knowledge.

23 MR. SEAVER: Can I have the question read
24 back, please?

25 (The above question is read)
39

1 MR. SEAVER: Is that incidents, plural,
2 Chris?

3 MR. PLACITELLA: Yes.

4 Mark this P-5.

5 (The above document is marked P-5 for
6 Identification)

7 Q. I'm going to show you what's been marked
8 P-5 for Identification. This is from a Mr. Zehler.
9 To you know who he is? Z E H L E R?

10 A. That name doesn't ring a bell.

11 Q. How about about a Mr. Gardener?

12 A. Alan Gardener was the plant engineer.

13 Q. What was his job?

14 A. His job would be -- he headed the
15 organization that provided the mechanical repairs
16 for the site.

17 Q. And who was Mr. Eckenfelder?

18 A. Don Eckenfelder was safety. That's a name

19 I hadn't heard in a long time.

20 Q. How about M. G. O'Brien?

21 A. I don't know.

22 Q. I'm going to show you a document from

23 E. J. Zehler 6-22-73 to Mr. Gardener. See if you

24 have ever seen that before?

25 A. No. I have not seen the document before,
40

1 nor am I familiar with the incident.

2 Q. This was two years after OSHA was enacted,

3 correct?

4 A. I believe you are about right.

5 Q. And this document -- where is building 81?

6 A. Building 81 was the main shop. I

7 demolished that about two years ago. It was the

8 main shop that supported the factory. That's where

9 the mechanics, carpenters, pipefitters, millwrights

10 would work.

11 Q. And that's where their lockers were?

12 A. Yes. The lockers, we had lockers on the

13 second floor of that building.

14 Q. This document says that the asbestos got

15 into the ventilation system in 1973 and went into

16 the lockers where the pipefitters and everybody else

17 changed, right?

18 A. Yes. The configuration, to be precise,
19 there was a dust collector on the west side of that
20 building and what I'm understanding from this memo
21 is that the dust collector for a carpentry shop
22 picks up large particles very effectively, but small
23 particles of dust it is not very effective.

24 It is vended into the atmosphere. The
25 wind is from the west predominantly. The air
41

1 intakes for the locker facilities on the second
2 floor of that building were separated from this dust
3 collector by, I don't know, 10,15 feet. That kind
4 of a configuration. So it probably came out of the
5 dust collector, was blown into the intake of the
6 ventilating system for the locker room.

7 Q. And so the asbestos that was released in
8 that building was also released into the locker
9 rooms where the men changed, correct?

10 A. That's what it says.

11 Q. Are you aware of any documents or
12 information that the men were actually told or
13 warned that the lockers that they worked in were
14 contaminanted with asbestos?

15 MR. SEAVER: Objection to the form.

16 A. I'm not familiar with the memo and I'm not
17 familiar with any action subsequent to or concerning
18 the memo.

19 MR. PLACITELLA: Let's take five.

20 (Recess taken)

21

22 Q. At some point in time, I think you told

23 me, you served as the plant manager at the Rahway

24 facility, correct?

25 A. That's correct.

42

1 Q. And there was somebody with that same job

2 in the '70s and '60s, correct?

3 A. Yes. In that era I think the individual

4 would have been Clarence Peno or Dave Conklin. They

5 changed right around that point.

6 Q. And was it the plant manager's job to know

7 the dangers inherent in the jobs that the people

8 were asked to do at Merck?

9 A. The plant manager is responsible for the

10 safety operations of the site. There was no

11 question about that, regardless of the site.

12 Most plant managers, particularly at a

13 places as complicated and large as Rahway, depend

14 upon their subordinates to manage those hazards. In

15 that era Allen Gardener, the plant engineer,

16 reporting directly to the plant manager.

17 Q. Would you agree that a company like Merck

18 is not allowed to needlessly endanger the workers

19 and their families?

20 A. I would go beyond that. I would say the
21 company take significant efforts as so as not to
22 endanger their employees.

23 Q. Would you agree that Merck, as the
24 employer, should not needlessly exposes its
25 employees or the employees' families to asbestos?
43

1 A. I would say once the hazards of asbestos
2 were fully understood, Merck should not, would not
3 and did its best not to expose employees to those
4 hazards.

5 Q. So you would agree that Merck, as the
6 employer, should not needlessly expose workers'
7 families to asbestos?

8 A. Well, again, with the stipulation that
9 once the hazard is recognized we should not expose
10 workers or their families.

11 Q. And do you recognize that Merck had an
12 obligation to provide a safe workplace to its
13 employees, correct?

14 A. Of course.

15 Q. You recognize that Merck had an obligation
16 to inform employees about the hazardous substances
17 they were required to work with or around?

18 A. Yes.

19 Q. If Merck had actual knowledge about the

20 dangers of asbestos would it have been important for
21 that knowledge to be communicated to the plant
22 manager running the Rahway facility?

23 MR. SEAVER: Objection to the form. I
24 don't know what you mean by the term dangers of
25 asbestos. Pretty vague term.

44

1 If you can answer the question, go ahead.

2 A. What I would say in general, whether it is
3 asbestos or solvents or toxic chemicals that
4 employees would routinely work with, there is an
5 obligation to inform our employees of the associated
6 hazards. There's no question. But first the
7 hazards need to be recognized.

8 Q. Did you have a plant or a major facility
9 in the State of Pennsylvania?

10 A. Yes.

11 Q. Going how far back?

12 A. That went back -- it was originally the
13 Cherokee Powder Works in Danville, Pennsylvania. It
14 was built as munitions plant in World War II. And
15 we leased the plant in the early '50s, bought the
16 plant in '53 or '54 and sold it recently .

17 Q. You are aware, I think you told us before,
18 that there were cases of asbestosis diagnosed at the
19 Merck plant, correct?

20 A. That's correct.
21 Q. And people received compensation
22 eventually for some of those diagnoses, correct?
23 A. In the materials in evidence I did see
24 that 14 or 20, some number like that, of our
25 employees received compensation.
45

1 Q. And you agree that Merck would be charged
2 with the knowledge of what was in the laws related
3 to what was compensable for injuries that could be
4 sustained on their plant, correct?

5 A. Restate the question a little bit more
6 clearly.

7 Q. There are laws that govern Workers'
8 Compensation claims for people who are hurt on
9 Merck's premises, correct?

10 A. Absolutely.

11 Q. And Merck was responsible to know what
12 those laws were?

13 A. Correct.

14 Q. In making your statement that Merck was
15 not knowledge about the dangers of asbestos before
16 Dr. Selikoff visited them, did anyone ever tell you
17 that there was a law passed in 1944 charging Merck
18 with responsibility for asbestosis claims for people
19 who would get sick in their plant?

20 MR. SEAVER: Objection to the form.

21 A. Should I answer?

22 MR. SEEVER: Can you answer that question?

23 A. I'm not familiar or knowledgeable of that.

24

25 MR. PLACITELLA: Mark that P-6.
46

1

2 (The above document is marked P-6 for
3 Identification)

4 Q. This is the New Jersey Compensation
5 Statute for 1994. Do you see where it talks about
6 asbestosis?

7 A. Yes, both asbestosis and silicosis.

8 Q. Was this information ever made known to
9 you in terms of your knowledge when you said Merck
10 did not know about the dangers of asbestos before
11 the '70s?

12 MR. SEEVER: Objection to the form.

13 Again, when you say the dangers of asbestos, I don't
14 think the witness used it quite the same as you are,
15 counsel.

16 A. What I can say is in the workplace we were
17 not cognizant of the quote unquote dangers of
18 asbestos.

19 Prior to the Mt. Sinai thing, asbestos
20 was, gosh, treated as I said before, almost as a

21 nuisance dust. Akin to sawdust. Like that.

22 Q. Did the nuisance dust cause asbestosis?

23 A. Not to my knowledge.

24 Q. Do you know what the Merck Manual is?

25 A. Of course.

47

1 Q. What is the Merck Manual?

2 A. The Merck Manual is -- well, there are

3 several Merck Manuals. The Merck Manual I'm most

4 familiar with is the chemical index basically. A

5 listing of chemicals, their synthesis and some of

6 their effects on humans.

7 Q. And who relies upon the Merck Manual?

8 A. I would say students, chemists, people

9 that manufacture chemical compounds. It is a

10 reference book akin to a dictionary or abbreviated

11 encyclopedia.

12 Q. Does the safety department at Merck

13 corporate headquarters rely upon the Merck Manual?

14 A. I wouldn't think so.

15 Q. Would you agree with me that whatever was

16 in the Merck Manual the doctors at Merck would be

17 aware of?

18 A. The Merck Manual is, gosh, 800, 900.

19 Pages, some size like that. Most people I know, if

20 they had a question about a chemical, how it is

21 made, patents, thing of that, would refer to it as

22 an abbreviated encyclopedia.

23 Q. Well, it was published right in Rahway,

24 was it not?

25 A. It is published in Rahway by a publishing
48

1 group that was and is still separate and distinct

2 from much of the rest of the company.

3 This is hard to express. Almost feels

4 like an independent organization that publishes this

5 on a sort of pro bono basis. It is a good general

6 reference. If I were an industrial hygienist or If

7 I were a safety expert, I would not use that book as

8 a reference. I would go to a much more detailed,

9 deeper kind of a reference materials.

10 Q. Well, the Merck Manual recognized

11 asbestosis as an industrial disease as early as

12 1950, did it not?

13 A. I don't know.

14 Q. In terms of your testifying before that

15 Merck had an obligation to warn if it had some

16 knowledge about a danger, were you aware that the

17 Merck Manual recognized asbestosis as an

18 occupational disease in 1950?

19 A. No. As I said, I would use it for an

20 occasional look at a solvent or a particular

21 chemical.

22 MR. PLACITELLA: Can you mark this next,
23 please.

24 (The above document is marked P-7)

25 A. You will have to pardon me. I was talking
49

1 about the Merck Manual which is a reference book of
2 chemicals. This is another Merck Manual aimed at
3 physicians.

4 Q. You have in front of you P-7. That's a
5 Merck Manual?

6 A. Yes. This is a Merck Manual. Again, the
7 audiences is not chemical engineers or chemists.
8 The audience for this particular manual is
9 physicians.

10 Q. Doctors?

11 A. Correct.

12 Q. And that's published by Merck and Company
13 in Rahway, New Jersey, correct?

14 A. That's correct.

15 Q. And that is excerpt from the 1950 manual.
16 Do you see that?

17 A. Yes.

18 Q. And it has a section on asbestosis, does
19 it not?

20 A. Yes, it does.

21 Q. And it does not call asbestos a nuisance
22 dust, does it?

23 MR. SEAVER: Objection to the form. It
24 says what it says, counsel.
25 A. I don't think it calls it anything
50

1 particular, to tell you the truth.
2 Q. It says it is like silicosis, correct?
3 A. Correct.
4 Q. Was that recognized as a serious disease?
5 A. My knowledge is sort of limited in that
6 area. I thought silicosis was a disease of coal
7 minors and such like that. Again, my knowledge is
8 very limited. I'm not a doctor.
9 Q. Would you agree with me that this clearly
10 indicates that Merck was aware of the disease
11 asbestosis in the year 1950?
12 A. Just let me read this. Apparently so.
13 Q. Did Merck have contracts with the federal
14 government?
15 A. I presume so.
16 Q. In testifying about what Merck knew about
17 the dangers of asbestos, were you aware that in
18 order to get a contract with the federal government,
19 as of 1952, you had to comply with an asbestos
20 standard for exposure?
21 A. I'm not familiar with that.
22

23 MR. PLACITELLA: Mark that P-8.
24 (The above document is marked P-8 for
25 Identification)
51

1

2 Q. In front of you is P-8. This is a copy of
3 the Walsh-Healey act. Have you ever heard of the
4 Walsh-Healey Act?

5 A. No I haven't.

6 Q. For 1952?

7 A. No.

8 Q. Were you aware that the State of New
9 Jersey required Merck to test for asbestos exposure
10 going back to 1958?

11 A. Again, I'm not familiar with that.

12 MR. PLACITELLA: Mark this P-9.

13 (The above document is marked P-9)

14 Q. You have in front of you P-9 for
15 Identification. These are the New Jersey
16 regulations number 3, Threshold Limit Values,
17 excerpts. Have you ever seen these before?

18 A. No, I have not.

19 Q. Do you see of the second page where it
20 talks about duty of employer?

21 MR. SEAVER: It would actually be the
22 fourth page of the exhibit. Is that where you are
23 directing him?

24 MR. PLACITELLA: Right.

25 MR. SEEVER: R. S. 34:6-48?

52

1 Q. It talks about the duty of the employer.

2 Do you see that?

3 A. Um-hum.

4 Q. And it talks about the duty of the

5 employer to prevent occupational and other

6 illnesses?

7 A. Correct.

8 Q. Can you turn to the page, to the next

9 green tab where it talks about the obligation to do

10 testing and dust counts in the employment

11 environment?

12 MR. SEEVER: Objection to the form of the

13 question.

14 A. Should I reply?

15 MR. SEEVER: You are asking if he sees

16 what?

17 Q. 4.1 says sampling, testing and analysis to

18 determine the atmospheric concentration of dust,

19 fumes, gases and mists and vapors shall be performed

20 only by technically qualified persons.

21 4.3, samples of workroom atmosphere should

22 be taken wherever there exists potential exposure to

23 any toxic dust, fumes, gas, mists or vapor, correct?

24 A. Correct.

25 Q. And do you see the final page?

53

1 A. Yes, we do.

2 Q. Does it list asbestos as a toxic dust?

3 MR. SEEVER: Objection to the form. The

4 heading is substances, counsel.

5 MR. PLACITELLA: Toxic substance.

6 MR. SEEVER: It says substance, counsel.

7 Q. What does it say?

8 A. Substance. It includes silica, talc,

9 Porthand cement, mica dust.

10 Q. And asbestos?

11 A. And asbestos and aluminum oxide.

12 Q. Can you tell me what Merck did between

13 1958, when these regulations were promulgated, and

14 1974 or 1975 when you say you started taking dust

15 counts in the plant to comply with this regulation?

16 MR. SEEVER: Objection to the form. You

17 can answer the question, if you can.

18 A. What I can say is at least that we did

19 provide, as I already testified, respirators and

20 protective equipment, free of charge to employees.

21 We had personnel in the factories that

22 stocked those kinds of items in the workplace, in

23 the factories and mechanical shops.

24 Whether it was warn properly or whether it

25 was warn all the time, you know, was another matter.
54

1 Q. My question is what did you do in terms of
2 dust counts in the work environment to see what the
3 level of asbestos dust was in the air pursuant to
4 these regulations between 1958 and 1974 or 1975?

5 A. In the departments I was responsible for
6 I don't recall any counts being done.

7 MR. PLACITELLA: Mark this that P-10.

8 (The above document is marked P-10 for
9 Identificationr)

10 Q. You have in front of you P-10, which is a
11 membership list for the American Industrial Hygiene
12 Association from the same year, 1958. Do you see
13 that?

14 A. Um-hum.

15 Q. Did you see that Merck had a
16 representative as a member of the American
17 Industrial Hygiene Association?

18 A. If you would call out a name it would save
19 time.

20 Q. Mr. Doremus. I think you talked about him
21 before?

22 A. Yes.

23 Q. It lists him as the Chief of Industrial
24 Hygiene, Industrial Health, Merck and Company

1 A. I'm trying to find it.

2 Q. Sure.

3 A. Yes, it does.

4 MR. PLACITELLA: Mark that P-11.

5 (The above document is marked P-11 for
6 Identification)

7 Q. This is a 1958 publication put out by that
8 same organization that Mr. Doremus was a member of,
9 the Industrial Hygiene Association. Do you see that
10 in the upper right-hand corner?

11 A. I do.

12 Q. And this refers to what?

13 A. It refers to asbestos and it calls out
14 recommended maximum concentration of 5 million
15 particles per cubic foot of air.

16 Q. Certainly in 1958 Mr. Doremus aware of the
17 publications and regulations put out by his own
18 organization, would you agree?

19 MR. SEAVER: Objection to the form.
20 Objection to whether the witness is competent to
21 speculate about what someone else may or may not
22 have known.

23 A. I would just make a comment on the side.
24 I would be personally curious what 5 million
25 particles per cubic foot of air looks like in terms

1 of capacity. Can you see through it? It is a
2 startlingly high number of particulates of air to
3 me.

4 Q. Would it shock you to know it is not
5 visible to the naked eye?

6 A. It is would surprise me, yes.

7 Q. I think the testimony, expert testimony in
8 the case will establish you can't see 5 million
9 particles per cubic foot.

10 A. Fair enough.

11 Q. Certainly when it came to asbestos dust at
12 the Merck plant, you could see the dust that was
13 generated by the pipefitters, correct?

14 A. I could see some dust in the work area,
15 that's correct. I have no particular idea how many
16 particles per cubic foot that would be.

17 Q. You would never know unless you tested it,
18 right?

19 A. Correct.

20 Q. Now, you are aware that Merck was also a
21 member of the National Safety Council?

22 A. Yes.

23 Q. And that membership went back to at least
24 the early '50s?

25 A. I would think so. I don't have any direct

1 knowledge. We have been a member a very long time.

2 Q. Do you know who is Mr. Alibisser is?

3 A. That's a name I'm not familiar with at

4 all.

5 MR. PLACITELLA: Mark this next.

6 (The above document is marked P-12)

7 Q. If you look at the last page, do you see a

8 Mr. Alibisser listed for Merck?

9 A. Yes. Unfortunately that's a name I don't

10 recall at all. 18 years before I joined the

11 company.

12 Q. He was from Rahway, New Jersey?

13 A. That's what it says.

14 Q. And does it also indicate with an asterisk

15 he was the past chairman?

16 A. Of an advisory committee.

17 Q. Of the chemical section?

18 A. Hang on. I believe you are correct.

19 Q. And in working, in terms of plant safety,

20 do you know whether Merck ever consulted the

21 National Safety Council Accident Prevention Manual?

22 A. I don't.

23 Q. I am going to show you an excerpt of the

24 National Safety council Accident Prevention Manual

25 from 1964.

1 MR. PLACITELLA: Mark that.

2 (The above document is marked P-13)

3

4 Q. I believe the evidence will show that

5 Merck was still a member of the National Safety

6 council at this is point in time. Do you know

7 whether this publication was in the possession of

8 the Merck Safety or Medical Department?

9 A. I don't.

10 Q. Can you go to the last page where I have a

11 tab? Does it say there in 1964 that there's good

12 evidence that asbestos causes lung cancer?

13 A. It says here inhalation of excessive

14 quantities of asbestos fiber can produce a fibrosis.

15 I don't know what excessive is. Then finally it

16 says there's also good evidence that inhaled

17 asbestos causes lung cancers.

18 Q. And the National Safety Council also told

19 Merck, did it not, that even a slight haze of

20 asbestos dust was too much?

21 MR. SEAVER: Objection to the form.

22 A. It may or may not. I don't know.

23

24 MR. PLACITELLA: Mark that P-14.

25 (The above document is marked P-14 for

1 Identification)

2 Q. You have in front of you P-14 with the
3 transactions from the 1966 National Safety Congress?

4 A. Yes. Automotive machine shop, power press
5 and forging.

6 Q. And there was an article in there by the
7 U.S. Department of Labor. Do you see that?

8 A. Hang on.

9 Q. Mr. Henning? Just to move it, do you see
10 in the lower right hand corner where my tab is?

11 A. Yes. I see an article by Van Alta.

12 Q. Does it say excessive amounts of asbestos
13 dust is only enough to constitute a slight haze in
14 the air?

15 A. This individual says I might say that
16 excessive amountsof asbestos dust is only enough to
17 constitute a slight haze. That's correct.

18 Q. Now, you indicated when we started that
19 Dr. Selikoff actually made a visit to Merck sometime
20 in the early '70's?

21 A. Actually, as I remember it, he was the
22 person at Mt. Sinai responsible for a visit. The
23 gentleman I escorted around several locations was a
24 gentleman by the Schwartz. I don't recall his first
25 name.

1 Q. The relationship between Merck and Dr.
2 Selikoff did not begin in 1972 or 1973 when people
3 from Mt. Sinai visited there, did it?

4 A. The extent of my knowledge is that for
5 whatever reason this gentleman Schwartz visited the
6 Rahway site to look at the way we handled asbestos.
7 I showed him around the factory and he worked for
8 Selikoff in Selikoff's group.

9 Q. Well, Merck was involved with asbestos and
10 Dr. Selikoff going all the way back to the early
11 1960s, wasn't it?

12 A. I don't know.

13 Q. In making your statement that you only
14 knew about Selikoff and the dangers of asbestos
15 after the visit, you were not aware of any
16 relationship between Merck and Dr. Selikoff going
17 back to the early '60s?

18 A. No. I was in manufacturing and, you know,
19 I could see change in the way we regarded asbestos
20 and the hazards of asbestos after that visit.
21 That's what I testified to.

22 Q. Who is G.W. Merck?

23 A. George W. Merck, one of founding fathers
24 of the company.

25 Q. He was the top banana in the '60s, right?
61

1 A. Correct.

2 MR. PLACITELLA: Mark this next.

3 (The above document is marked P-15)

4 Q. You have in front of you from 1965 the
5 annals of the New York Academy of Sciences. Do you
6 see that?

7 A. Yes, I do.

8 Q. And can you turn the next page, please?

9 A. Boards of trustees, classes of '62 to '65
10 include G.W. Merck and I see Selikoff is listed as
11 an author on the first page.

12 Q. Right. The first page talks about the
13 biological effects of asbestos, correct?

14 A. Correct.

15 Q. This is an excerpt of about a 1,000 page
16 book that's put out and George Merck, the top banana
17 at Merck, is listed on the second page as part of
18 the board of trustees for the New York Academy of
19 Sciences, is he not?

20 A. That's correct.

21 Q. Certainly Merck had access to this
22 publication, would you agree?

23 A. No particular knowledge whether the
24 publications would go to the trustees or not.

25 MR. SEAVER: Counsel, can you represent
62

1 whether the second page of this exhibit is in fact

2 the second page of this document?

3 MR. PLACITELLA: It is.

4 Q. Mr. Chavan, Sr. was a pipefitter in 1965

5 at the Merck Rahway plant, was he not?

6 A. Yes.

7 MR. PLACITELLA: Mark that P-16.

8 (The above document is marked P-16 for

9 Identification)

10 Q. You have in front of you P-16, which was

11 one of the articles published by the New York

12 Academy of Sciences where Mr. Merck was on the board

13 of trustees, talking about the disease mesothelioma.

14 Do you see that?

15 A. Yes, I do.

16 Q. And I tagged a page with a green sticker.

17 MR. SEAVER: Actually, I think it is blue.

18 A. Yes. I was just reading.

19 Q. Take your time.

20 A. Selikoff on a preceding page.

21 Q. Take your time.

22 A. Go ahead.

23 Q. This article, and this is publication is

24 by Dr. Selikoff, that's the same Selikoff that you

25 said his people came to Merck in the early '70s,
63

1 right?

2 A. I believe so, yes.

3 Q. This article, if you look at where the
4 green sticker is, talks about people getting
5 mesothelioma who worked as insulators, boilermakers
6 and pipefitters, correct?

7 A. The discussion, or the gentleman by the
8 name of Eisenstadt from Port Arthur, an oil refinery
9 town, talks about, yes, asbestos disease
10 mesothelioma and fibrosarcoma, mislabeling these
11 diseases as fibrosarcoma.

12 Q. The next page talks about the people who
13 were getting it and they say insulators,
14 boilermakers and pipefitters, right?

15 A. Correct.

16 Q. That is what Mr. Chavan was doing in 1965,
17 right?

18 A. He was a pipefitter.

19 Q. And what was essentially -- he also did
20 some insulating work, did he not?

21 A. Sure.

22 Q. And he also worked on some boilers, did he
23 not?

24 A. I would presume so, even though he was in
25 research, it was a plant-wide craft.
64

1 Q. Now, Dr. Selikoff and the New York Academy
2 of Sciences, of which George Merck was a trustee,

3 also published that family members of asbestos

4 exposed workers could get mesothelioma in 1965,

5 true?

6 A. I don't know. Is it in here?

7 Q. I'll give you another one.

8 A. Okay. I would remark, there's another

9 paragraph here. In a few of our proven cases of

10 malignant mesothelioma, we have not been able to

11 establish the presence of asbestosis. It seems like

12 there's still some uncertainty as to cause and

13 effect, but it is just on a quick read.

14 Q. That's because you didn't need to get

15 asbestosis to get mesothelioma, right?

16 MR. SEAVER: Is that a question, Chris, or

17 is that just a statement for the record?

18 MR. PLACITELLA: A question.

19 A. I don't know.

20 PLACITELLA: Mark this next.

21 (The above document is marked P-17 for

22 Identification)

23 Q. You have a front of you P-17, which is

24 another article appearing in the publication by the

25 New York Accademy of Sciences, of which George Merck
65

1 was on the board of trustees in 1965. Do you see

2 that?

3 A. Yes.

4 Q. In making your statement that Merck didn't
5 know about the dangers of asbestos, were you ever
6 shown this article?

7 A. No.

8 Q. And does this article in fact talk about
9 wives and children of asbestos exposed workers
10 coming down with mesothelioma? I tagged it for you.

11 MR. SEAYER: For the record, it is an 11
12 page document. You are asking the witness a
13 question about a document he is seeing for the first
14 time.

15 Q. Do you see the first tab?

16 A. It talks about exposure of relatives.

17 Q. I put it up on the screen to make it easy.
18 Experted. Does it say there seems little doubt of a
19 risk of both occupational and domestic exposure to
20 asbestos? Do you see that?

21 A. Um-hum.

22 Q. It also talks about people who were
23 getting mesothelioma from washing their husband's
24 clothing?

25 MR. SEAYER: Objection to the form. The
66

1 documents says what it says.

2 Q. The most usual history was that the wife
3 who washed her husband's dungarees or work clothes,

4 correct?

5 A. Yes, but it also says, you know, it is

6 centered on the study in London in U.K. and these

7 people were working in asbestos mines. One could

8 speculate about the amount of exposure and the

9 difference in the amount of exposure between the

10 mechanic, pipefitter and somebody actually mining

11 the substance.

12 Q. Well, we know from the publications we

13 have seen so far that it was documented in the New

14 York Academy of Sciences publication of 65 that

15 pipefitters were getting mesothelioma, correct?

16 A. Um-hum.

17 Q. It is also documented that children of

18 asbestos exposed workers were getting mesothelioma.

19 You want to qualify it by saying they were miners..

20 Children are miner, right?

21 MR. SEAVER: Objection to the form,

22 counsel. The document says what it says.

23 Q. Let me ask you the question this way. You

24 are aware that Mr. Chavan, John Chavan's wife washed

25 his work clothes?

67

1 A. In my discussions with counsel I have been

2 told that, yes.

3 Q. You know she died from mesothelioma, do

4 you not?

5 A. No. I don't know her.

6 Q. Did you know his son had mesothelioma?

7 A. Yes.

8 Q. Did you know his other son has asbestos

9 poisoning from Merck?

10 A. I'm not aware of that.

11 Q. You don't know that John, Jr. also has

12 asbestos poisoning?

13 MR. SEAVER: Objection to the form.

14 A. No.

15 Q. Do you know what the Industrial Hygiene

16 Foundations is?

17 A. I'm not familiar with that group.

18 Q. Do you know that in 1968 Merck published

19 in its own manual that you could get cancer from

20 asbestos and listed the very products that

21 Mr. Chavan worked with as potentially hazardous?

22 MR. SEAVER: Counsel, for clarification,

23 in light of the earlier testimony, we are talking

24 about the Merck Manual of Diagnostic?

25 MR. PLACITELLA: Fair enough.

68

1 A. This is the index. That's what I was

2 thinking about.

3 MR. PLACITELLA: Mark this next.

4 (The above document is marked P-18)

5 Q. You have in front of you an excerpt from a
6 publication. Can you tell me what the publication
7 title is?

8 A. This is actually the one we were confused
9 about earlier. S this the Merck Index.

10 Q. What is the Merck Index?

11 A. The Merck Index is a compendium of
12 characteristics associated with a huge variety of
13 chemicals. As I say, like an abbreviated
14 encyclopedia for chemists and chemical engineers..

15 Q. This is from 1968. In the context of what
16 Merck knew and should have warned about, does it
17 indicate what asbestos is capable of causing in this
18 1968 manual?

19 A. The quote is "Toxicity, prolonged
20 exposure" -- you'll have to forgive me, there's a
21 production stamp on it. "to the dust can result in
22 pulmonary fibrosis. asbestosis, emphysema and lung
23 neoplasma"

24 Q. That's cancer, right?

25 A. Correct.
69

1 Q. And what products, kinds of products does
2 it list above that in terms of asbestos-containing
3 products?

4 A. Insulator cement furnace and hot pipe
5 covering rings, filter media, fireproof gloves,

6 clothing, brake linings.

7 Q. Some of the very same products that

8 Mr. Chavan was encountering in his work as a

9 pipefitter in 1968, correct?

10 A. Correct.

11 Q. Now, in 1971 OSHA is passed, correct?

12 A. Yes.

13 Q. And you indicated that at some point in

14 '72 or '73 Dr. Selikoff came in?

15 A. A representative from his group, this

16 fellow Schwartz, correct.

17 Q. Now, what was done by Merck between

18 1971 and when the people from Mt. Sinai came in when

19 OSHA was passed in 1971 and people from Mt. Sinai

20 came in, to alert the people in the plant about the

21 dangers of asbestos?

22 A. I don't recall any specific, gosh, actions

23 or changes in procedures at that point in time.

24 As I said before, my experience through a

25 sea change in the way asbestos and the hazards
70

1 associated with it was regarded after the Selikoff

2 visit and the attention that was focused on that

3 substance.

4 Q. You called it the Selikoff visit. The Mt.

5 Sinai people

6 A. Yes.

7 Q. How many people came?

8 A. Oh, gosh, two or three, but that is a very
9 vague recollection.

10 Q. Do you know the circumstances under which
11 they came?

12 A. I'm not familiar with what triggered the
13 visit, precise reasons for it. I believe that there
14 were -- I'll back up. Medical conditions by their
15 nature are confidential, but I believe that there
16 was some symptoms shown by some of our employees.

17 I'm not sure if the union precipitated the
18 visit by preaching out to Selikoff or how that
19 worked. What I can say is folks from his group came
20 to the site, looked at the way we worked with
21 asbestos, looked at the factory environment and
22 subsequent to that our procedures were drastically
23 tightened up.

24 Q. So you don't have information, specific
25 information about why he came?
71

1 A. No, I don't

2 Q. Was there any type of memo generated
3 specifically about the visit?

4 A. Not to my recollection.

5 Q. What did they find when they came to the
6 Merck plant, the Mt. Sinai people?

7 A. If my recollection is correct, we
8 discovered that several of our employees had,
9 whether it is called asbestosis or mesothelioma. I
10 believe it was asbestosis, and speaking as an
11 individual employee, I was surprised.

12 Q. Well, there were things, for example,
13 known to the safety and perhaps the medical
14 department about what was going on with employees
15 that you wouldn't be privileged to because it wasn't
16 your job to know and you shouldn't know, correct?

17 A. Correct.

18 Q. For example, were you aware that in 1968
19 Merck had already had information that Mr. Chavan,
20 Sr. had fibrosis in his lungs?

21 A. No.

22 Q. Would that surprise you to know that
23 beginning in 1968 the Merck medical department was
24 tracking the changes in Mr. Chavan's lungs?

25 A. Well, surprise is not -- how would I say
72

1 this? In one sense fibrosis seems like a
2 progressive, a slowly progressive situation. I
3 wouldn't be surprised if he hadn't been diagnosed
4 in '72 or '73 with some sort of impaired lung
5 function that there would have been some evidence of
6 it prior to that. So, on one hand I'm not

7 surprised, but again, I'm not just not knowledgeable
8 of the specific case, and I shouldn't be.

9 Q. I want to show you an excerpt from
10 Mr. Chavan's Merck medical file.

11 MR. PLACITELLA: Mark that P-19.

12 (The above document is marked P-19 for
13 Identification)

14 Q. You have in front of you P-19 for
15 Identification. Do you recognize the format of this
16 document?

17 A. No. I have not seen it, but obviously a
18 Rahway Hospital document. I guess from the
19 radiology department.

20 Q. And do you know who a Dr. Osborne was?

21 A. No.

22 Q. Does it indicate that Mr. Chavan, in 1968,
23 had an x-ray for a possible broken rib?

24 A. I see down, impression, linear fracture of
25 the right ninth rib and mild interstitial lung
73

1 fibrosis.

2 Q. Do you remember you told me before that
3 when there's an accident at Merck that's where they
4 would send their people, to Rahway Hospital?

5 A. Um-hum.

6 Q. So here Rahway Hospital told the doctors
7 at Merck that Mr. Chavan had interstitial lung

8 fibrosis. Do you see that?

9 A. Yes. Mild interstitial lung fibrosis.

10 Q. Any indication that you have ever seen in
11 Mr. Chavan's medical file that he was advised of the
12 results in 1968?

13 A. As I say, I've not seen this medical file
14 nor am I familiar with the interchanges between the
15 MDs and Mr. Chavan.

16 Q. Can you tell me how long it took Merck to
17 advise Mr. Chavan that he had asbestosis?

18 MR. SEAVER: Objection to the form.

19 A. I certainly can't.

20 Q. Do you know whether Mr. Chavan was one of
21 the people that Dr. Selikoff's group determined to
22 have asbestosis?

23 A. I don't. I don't know the specific
24 individuals involved.

25 Q. You are aware that after Dr. Selikoff
74

1 visited Merck, John Chavan, Sr. visited the medical
2 department complaining of difficulty breathing?

3 A. Again, I'm not knowledgeable of any
4 interchanges between Mr. Chavan and the medical
5 department.

6 MR. PLACITELLA: Mark this P-20.

7 (The above document is marked P-20 for

8 Identification)

9 Q. You have in front of you P-20, which is
10 the July 3, 1975 memo from Employee Health, Dr.
11 Foldy. Who is he?

12 A. Steve Foldy was, I believe, the head of
13 the local employee health function at Rahway.

14 Q. And who is Dr. David Kirk?

15 A. Well, it is Mr. David Kirk. Dave is the
16 industrial hygienist. He came on board in 1972,
17 1973.

18 Q. And the subject is pipefitters?

19 A. Subject is pipefitters and it is medical
20 establishment reaching out to the safety or
21 industrial hygiene establishment asking for
22 basically sort of a job description of what these
23 pipefitters do on a daily basis.

24 Q. And that included Mr. Chavan, right?

25 A. Presumably.
75

1 Q. And this doctor, after Dr. Selikoff
2 visited, says x-ray results with nonspecific
3 findings, right?

4 A. Correct. They take annual x-rays, chest
5 x-rays.

6 Q. And there's nothing in there about
7 asbestosis, correct?

8 A. Correct. It is non specific findings and

9 it conveys the impression that the medical
10 establishment felt that this group's exposure to
11 asbestos was minimal.

12 Q. But we know that's not so from other
13 documents we saw where it said it was in some cases
14 clouds of dust for up to ten minutes, correct?

15 A. Minimal is not exactly a well defined
16 characterization of exposure.

17 Q. Now, who is Dr. Urbanski?

18 A. I would have to see the memo in context.
19 I might be able to help.

20 MR. PLACITELLA: Mark that P-21.

21 (The above document is marked P-21 for
22 Identification)

23 (Recess taken)

24

25 Q. You have in front of you P-21, August
76

1 20,1975 report from a Dr. Urbanski.

2 A. Yes.

3 Q. Do you know who he is?

4 A. I don't, but it sounds like he would be a
5 third party physician to whom we would refer
6 employees.

7 Q. And he issued a report to Dr. Foldy?

8 A. Foldy was the doctor at Merck, yes.

9 Q. Was he in the medical department?

10 A. It says -- yes.

11 Q. And he comes to a diagnosis, correct?

12 A. I'm getting there.

13 MR. SEAVER: Are you referring to what he
14 says as an impression?

15 MR. PLACITELLA: Yes.

16 A. Mild chronic bronchitis, bilateral
17 moderate interstitial changes in all lung zones.

18 Q. And above that he says, he has
19 pneumoconiosis. Do you see that?

20 A. It says employing the Cincinnati
21 classification of pneumoconiosis the x-ray can be
22 best classified as small capacities, irregular
23 profusion.

24 It says they are employing a particular
25 way of classifying the x-rays. I don't know if that
77

1 constitutes a diagnosis or not.

2 Q. Nothing in this report in 1975 about
3 asbestosis or asbestos-related disease, correct?

4 A. Asbestos is not mentioned, nor is
5 asbestosis.

6 MR. SEAVER: Other than the first
7 paragraph it reference his work history.

8 A. Yes.

9 Q. Patient claims to have been exposed to

10 asbestosis, fiberglass foam glass in his work.

11 MR. SEAYER: I think we can all conclude
12 the doctor meant asbestos, not asbestosis.

13 MR. PLACITELLA: Yes.

14 Q. Do you have any idea from your research as
15 to why in 1975 that Merck Medical Department seems
16 to be avoiding using the word asbestosis?

17 MR. SEAYER: Objection to the form. The
18 letter is not from the Merck Medical Department. It
19 is to the Merck Medical Department.

20 A. Correct. I wouldn't speculate whether
21 they are trying to avoid it or not, to tell you the
22 truth. I'm not a doctor so I can't read too much
23 into the way it is written.

24 Q. Ultimately you are aware that Mr. Chavan
25 filed a Workers' Compensation claim for exposure to
78

1 dust at work?

2 A. Yes.

3 Q. And how are you aware of that?

4 A. Through discussions with my attorney.

5 Q. I don't want you to tell me anything you
6 talked to him about. Did you see anything? A
7 document or anything?

8 A. Just the documents in the record that he
9 was one of the 14 or 20 pipefitters that, gosh, was

10 part of the settlement.

11 MR. PLACITELLA: Mark that P-22.

12 (The above document is marked P-22 for
13 Identification)

14 MR. SEEVER: Do you know the date of this
15 document? It is cut off.

16 MR. PLACITELLA: I believe it was 3-20-78.

17 (Discussion off the record)

18 MR. SEEVER: For the record he put the
19 date '78 on the document.

20 MR. PLACITELLA: Okay.

21 Q. That is a judgment from the Workers'
22 Compensation Court for John Chavan?

23 A. Yes.

24 Q. And the first page indicates he has
25 chronic bronchitis, correct?
79

1 A. That's correct. 15 percent PT chronic
2 bronchitis.

3 Q. And that is consistent with the diagnosis
4 given by Dr. Urbanski, is it not?

5 A. Chronic mild bronchitis, correct.

6 Q. So, ultimately there's a judgment in the
7 Workers' Compensation claim, correct?

8 A. Roughly three years later, yes.

9 Q. And have you seen anything in the files
10 that you reviewed in preparation to indicate that

11 between the time Dr. Selikoff visited the Merck
12 facility, or his people visited the Merck facility,
13 and 1978, that Mr. Chavan was ever told he had
14 asbestosis?

15 A. I have not seen any documents to that
16 effect.

17 Q. Are you aware that at some point
18 Mr. Chavan actually went for a lung biopsy?

19 A. No.

20 MR. PLACITELLA: Mark that P-23.

21 (The above document is marked P-23 for
22 Identification)

23

24 A. This is a very familiar form.

25 Q. How so?
80

1 A. When you went to plant health this was the
2 form that you would carry in to give the doc.

3 Basically, excusing you from work for a while.

4 Q. This would have been a form that
5 Mr. Chavan actually carried in when he went to see
6 the Merck doctor, from your practice?

7 A. Yes.

8 Q. It indicates this was after his Workers'
9 Compensation award for chronic bronchitis?

10 A. This was the chronic bronchitis award was

11 3-20-78 and this is August of '78, yes.

12 Q. And he went in and he got a chest x-ray?

13 A. Correct.

14 Q. And is there any indication on this form

15 that he was told that at that point that he had

16 asbestosis?

17 A. Well, there's a check in the box calling

18 it a non occ base.

19 Q. It says non-occupational right?

20 A. Right.

21 Q. Meaning whatever he got didn't come from

22 work?

23 A. Presumably.

24 Q. Do you have any idea why they would put in

25 his form that whatever he had wasn't work related?
81

1 A. Just looking through the form, there's

2 nothing that stands out.

3 Q. You know that Mr. Chavan eventually

4 retired on disability from Merck?

5 A. Yes.

6 MR. PLACITELLA: Mark these.

7 (The above documents are marked P-24 and

8 P-23 for Identification)

9 Q. If the patient was diagnosed with a

10 particular injury or disease, would it normally

11 appear on the form as part of Merck's practice?

12 A. I'm not sure, to tell you the truth. I've
13 seen the form very often, but just for periodic
14 blood tests for myself. I didn't know and don't
15 know what the docs would write on it.

16 Q. What was last document I gave you?

17 A. 24 dated January 23, '79.

18 Q. Tell me what this is?

19 A. This is a slip that apparently records a
20 visit to Rahway Hospital for a biopsy of the right
21 lung. It says he was hospitalized for a month, had
22 a series of chest x-rays. I'm having a hard time
23 making out some of the writing. Lung scan. Seen by
24 Dr. Rosenzweig. Hal was the then head of the local
25 medical practice. Has approved doctor's note. Then
82

1 there's some blood pressure and whatnot, like that,
2 and it notes will try to work. It is still marked
3 as non-occupational.

4 So this, based on my experience, would be
5 an employee coming back after having some work done
6 that was ostensibly not work related and this would
7 be a ticket used to -- this would be handed -- well,
8 a blank form without the medical information would
9 be given to a supervisor authorizing him or her to
10 come back to work.

11 Q. He came back after apparently he had a

12 lung biopsy?

13 A. That's what it looks like to me.

14 Q. Does it say above that that -- does the

15 asbestosis appear on the form above that?

16 A. It says pulmonary fibrosis, pulmonary --

17 okay. Pulmonary embilism probably due to

18 asbestosis.

19 Q. Asbestosis?

20 A. Correct.

21 Q. That is the first indications I could find

22 on any Merck medical form indicating that he had

23 asbestosis. Are you aware of any before that that I

24 missed?

25 A. No.

83

1 Q. And they called it non-occupational?

2 A. Yes.

3 Q. And then they said you could go back to

4 work, right?

5 MR. SEAYER: Objection. The form says

6 what it says. It says will try to work.

7 Q. He wants to go back to work?

8 A. There's a box checked. Back to work

9 assigned, previous to absense. It is a procedure

10 where if the union employee goes out, they have to

11 be cleared back to work and that's what this did.

12 Q. Shortly thereafter he retired on

13 disability, right?

14 A. I'm not knowledgeable of the retiring

15 date.

16 MR. SEAVER: Counsel, we already

17 established Mr. Higgins did not review Mr. Chavan's

18 medical records.

19 MR. PLACITELLA: Okay. Mark this 25.

20 (The above document is marked P-25 for

21 Identification)

22 Q. This is August 25, 1980 memo from

23 Mr. Chavan's Merck file. Have you seen memos like

24 this before?

25 A. No, I can't say that I have. Not having
84

1 access to medical files, of course.

2 Q. This indicates at this time in 1980 he was

3 59, correct?

4 A. Yes.

5 Q. And it says he has a long history of

6 exposure to asbestos, right?

7 A. Oh, yes. Okay.

8 Q. And then it says apparently he has been

9 followed by the company physician with a history of

10 pulmonary fibrosis, correct?

11 A. Yes.

12 Q. It does not say the company first

13 physician told him had asbestosis, does it?

14 A. It does not.

15 Q. Would you agree with me that there were
16 people at Merck who, when they personally were made
17 aware of the dangers of asbestos, tried to do the
18 right thing?

19 A. Yes.

20 Q. That recommendations were made in the
21 early '70's, by people that cared, to stop using
22 asbestos in the plant?

23 A. Again, I would agree after the Selikoff,
24 or after the Mt. Sinai visit, we began to look very
25 hard at asbestos, began the work of obtaining an
85

1 inventory, stopped bying asbestos-containing
2 materials, et cetera, et cetera.

3 Q. Well, do you know who Mr. Levine is?

4 A. Is it H. Levine?

5 Q. Yes.

6 A. Howard Levine ended up as a senior
7 vice-president in human resources, but he began as a
8 site trainer, if I remember correctly.

9 Q. In his deposition he indicated he didn't
10 believe there was an asbestos safety policy at Merck
11 Rahway until about the mid-'70s. Are you aware of
12 that or does should sound about right?

13 A. Again, sounds about right. It lines up

14 pretty well with the Mt. Sinai visit, after the Mt.

15 Sinai visit.

16 Q. From my review of the documents it looked

17 like Merck came up with a manual for handling

18 asbestos around 1974, correct?

19 A. That sounds just about right.

20 Q. And when was the first time you are aware

21 that Merck actually gave safety training to its

22 employees on how to handle asbestos?

23 A. It would have been when that procedure, if

24 I recall correctly, I'll back up a little bit.

25 There's a book of safety procedures for the site.

86

1 And what I saw in one of the prior exhibits was that

2 1974ish procedure which included a permit for

3 working with asbestos, and that would have been

4 promulgated, those two things, the permit and the

5 procedures, would have been promulgated by safety

6 talks.

7 Q. Am I correct until about 1974, 1975 Merck

8 never provided any warning to any employee at the

9 Rahway facility about the dangers of asbestos and

10 how to protect yourself?

11 A. Welll, as I testified before, asbestos was

12 regarded in the same way as working with any dust

13 generating material. Wood, fiberboard, those kinds

14 of things. So, I don't recall it being called out

15 as a special hazard.

16 Q. So am I correct that before the mid '70s

17 there was no specific warning issued by Merck to

18 anyone on the premises about the dangers of working

19 with asbestos?

20 A. Not that I'm familiar with.

21 Q. Now, even after there was a manual in

22 place there continued to be lapses within Merck over

23 protecting employees health when it came to

24 asbestos, correct?

25 MR. SEEVER: Objection to the form.
87

1 A. I would have to characterize the situation

2 as needing to change longstanding practices. Those

3 things don't -- you can publish standards and

4 procedures like turning a switch.

5 Particularly with the Rahway -- Rahway

6 mechanics can be difficult to -- how would I say--

7 to get to comply with every new standard. It takes

8 a bit of time to actually make that standard fully

9 in effect in the workplace.

10 Q. But there were clear failures on the part

11 of Merck management, not the employees, some seven,

12 eight years after OSHA was in enacted, true?

13 MR. SEEVER: Objection to the form.

14 A. You would have to show them to me.

15 Q. Well, for example, OSHA came in on a
16 number of occasions as late as 1979 and actually
17 sited Merck for failing to train and warn employees
18 about the dangers of asbestos, true?

19 A. I don't know.

20 MR. PLACITELLA: Mark this P-26

21 (The above document is marked P-26 for
22 Identification)

23 Q. You have in front of you P-26 for
24 identification?

25 A. I do.
88

1 Q. Do you recognize the form?

2 A. I do, as well as who it was issued to. It
3 was my boss at the time.

4 Q. Who was your boss?

5 A. Stan Newsome.

6 Q. And what was his job?

7 A. He was the overall manufacturing manager.

8 He ran half the plant and I ran the other half at

9 this point. This citation is relative to fit

10 testing, the way the respirators were fit tested.

11 As you I'm sure you know you amil nitrate oil to do

12 that. Facial hair can Interrupt.

13 Q. Was this 1979?

14 A. Correct.

15 Q. Eight years after OSHA?

16 A. Yes.

17 Q. And did it talk about, and this was an

18 OSHA citation?

19 A. This is an OSHA citation for not providing

20 individuals the opportunity to wear a respirator and

21 test atmosphere.

22 Q. Does it talk about failure to train

23 employees in the use of respirators in an asbestos

24 environment?

25 A. I'm sorry, I haven't seen asbestos here.

89

1 Help me. Because respirators are a general class of

2 protective equipment. And they protect against

3 solvents vapors as well as dust. It is not -- I

4 can't discern whether this was, gosh, related to

5 inappropriate fit testing for benzene or methanol

6 acetone or asbestos. It is nonspecific.

7 MR. PLACITELLA: Mark this 27.

8 (The above document is marked P-27 for

9 Identification)

10 A. Is there a date on this?

11 Q. Do you recognize the form again?

12 A. Yes.

13 Q. Do you see in the lower right hand

14 corner -- I couldn't find the date. But do you see

15 in the lower right hand corner it talks about the

16 date of the form?

17 A. Yes. Revision date 1-84

18 Q. So it would have happened at least January

19 1, 1984?

20 A. Correct.

21 Q. And can you tell me what this is about?

22 A. Charlie Branard in those days was a

23 supervisor, first line supervisor of mechanics.

24 Q. He was the guy in charge of supervising

25 people like Mr. Chavan?

90

1 A. Yes. Pipe coverers, pipefitters and folks

2 like that.

3 Q. This is a citation again from OSHA?

4 A. Well, it's an alleged safety citation and

5 it alleges they were exposed to asbestos as a result

6 of not using protective equipment. I don't know how

7 this was settled and whether the allegation was

8 correct or not, based on this document.

9 Q. It says the employees were not cautioned

10 or warned about asbestos contamination, correct?

11 A. Yes.

12 Q. It also says they were specifically told

13 by Merck that there was no hazard, doesn't it?

14 A. That's correct. But it alleges. Where is

15 the subsequent -- subsequent to one of these notices

16 there's an adjudication procedure at which point
17 it is either proven or disproven that the allegation
18 is correct. We have not been present with the
19 conclusion of this.

20 Q. I'll make you a deal. If we take a break
21 and Mr. Seaver can show me how it ended up, I'll put
22 it in front of you. I don't have it. Right now I
23 only know what happened based on this document.

24 Now, as I indicated, I think before, there
25 were people at Merck who took their jobs in safety
91

1 seriously?

2 A. True.

3 Q. They wanted to do the right thing,
4 correct?

5 A. Yes.

6 Q. They urged others to do the right thing,
7 correct?

8 A. Um-hum.

9 Q. But Merck didn't always do the right
10 thing, did it?

11 A. I wouldn't say that. You have to show me
12 some documentation to back that up.

13 Q. Okay. As soon as Dr. Selikoff left, there
14 were people at Merck that said you, Merck, need to
15 protect the workers' families from asbestos, not
16 just the workers, correct?

17 A. I can't say that I remember a dialogue
18 long those lines, but you would have to first
19 recognize concerns about material being brought
20 home.

21 MR. PLACITELLA: Mark this P-28.

22 (The above document is marked P-28 for
23 Identification)

24 Q. You have in front of you P-28, which is a
25 memo 1-25-74?

92

1 A. Yes.

2 Q. From Mr. Doremus?

3 A. Right.

4 Q. Subject, asbestos?

5 A. Um-hum.

6 Q. He is the same Mr. Doremus who was a
7 member of the American Industrial Hygiene
8 Association that we saw back in 1958, correct?

9 A. Yes, Ken Doremus.

10 Q. And in this memo he urges Merck to do a
11 number of things, correct?

12 A. Correct.

13 Q. He says, the first thing we should do is
14 get rid of all the asbestos that we can. New
15 asbestos, right?

16 A. Elimination or repair. Oh, excuse me.

17 Elimination of repair or construction materials,

18 yes.

19 Q. He said first and foremost, I'm

20 interpreting, let's get rid of the asbestos, right?

21 MR. SEAVER: Objection to your

22 interpretation, but you are entitled to it.

23 Q. That is the first thing he says in his

24 memo.

25 A. Yes. It is a recommendation, but how
93

1 would I say this? With 10 miles, 8 miles of

2 asbestos pipe one doesn't eliminate that

3 immediately, and as I'm sure you are aware there's

4 always a debate between encapsulation or cataloging

5 first or inventorying and then encapsulation or

6 removal.

7 Q. I understand. What he is saying is he is

8 not talking about removing dealing with the stuff

9 that's in place yet, he is just saying let's not buy

10 it anymore.

11 A. Fair enough.

12 Q. And he says we shouldn't be buying pipe

13 covering, right?

14 A. Um-hum.

15 Q. And we shouldn't be buying sheet and rope

16 packing, correct?

17 A. Correct.

18 Q. And gasketing?
19 A. Transite, et cetera.
20 Q. And transite, et cetera, right?
21 A. Um-hum.
22 Q. That was 1974, right?
23 A. Correct.
24 Q. Well, six years later you were still
25 purchasing the same asbestos products and using them
94

1 in your plant in 1980, weren't you?

2 A. Not that I'm aware of.

3 Q. We are going to get there.

4 Does he say that you should avoid contact
5 of asbestos-containing materials with clothing?

6 A. Yes.

7 Q. And that you should provide showers and
8 changes of clothes?

9 A. We provide showers. We provide time to
10 shower and we provide changes of clothing to all of
11 our employees engaged in hourly work and first line
12 supervisory work.

13 Q. Well, the only people you gave time to
14 shower, and you only gave them ten minutes, were the
15 pipe coverers, not the pipefitters, right?

16 A. No. I recall shower provisions in the
17 union contract going way back.

18 Q. Why is it then that you made a
19 discretionary about who got the change of clothing
20 and how much time they got to take the showers and
21 only the pipefitters -- rather only the pipe
22 coverers got that benefit?

23 A. I would have to go back and look at the
24 union contracts. Gosh, as long as I can remember
25 chemical operators, first line supervisors,

95

1 basically all hourly people had time to shower and
2 change.

3 We would have to back and look at when --
4 if that provision changed over the years.

5 Q. You told me before, did you not, that
6 people like Mr. Chavan continued to be involved with
7 asbestos through the '70s and into the 1980s,
8 correct?

9 A. They would have been involved in it
10 because it was in the plant.

11 Q. And they would have removed it?

12 A. Again, small amounts incidental to their
13 work as a pipefitter, but they would not be
14 undertaking large projects to remove it.

15

16 MR. PLACITELLA: Mark that 29.

17 (The above document is marked P-29 for
18 Identification)

19 Q. This is a memo, P-29, dated 10-15-75?

20 A. Um-hum.

21 Q. That was almost what, two years after the

22 previous memo urging --

23 A. '74, '75, yes. It says we stopped buying

24 asbestos insulating materials.

25 Q. But it was about two years after

96

1 Mr. Doremus urged no more buying insulating material

2 and please protect people from bringing asbestos

3 home on their clothing, right?

4 MR. SEAYER: The is question is that the

5 date of the second memo?

6 Q. About two years after that.

7 MR. SEAYER: January '74 to October '75 is

8 whatever it is.

9 Q. And this is from a J. J. Jackson. Who is

10 he?

11 A. Joe Jackson was a mechanical, what was

12 called a superintendent. He would be an individual

13 that first line supervisors reported to. Dave

14 Conklin, D. A. Conklin was the plant manager.

15 Q. D. A. Conklin was the guy who ran the

16 plant?

17 A. Correct.

18 Q. He ultimately was your boss?

19 A. Yes.

20 Q. And can you go down to the third

21 paragraph?

22 A. I'm there.

23 Q. Does it say pipe coverers are given ten

24 extra minutes at the end of each workday to allow

25 for shower time?

97

1 A. Ten extra, but I think if you read the

2 contract, everybody had a shower time incorporated

3 in the contract.

4 Q. But the only ones who got the extra time

5 to get rid of the asbestos on their body were the

6 pipe coverers, and they only got ten minutes, right?

7 MR. SEAVER: Objection to the form of the

8 question.

9 Q. That is what the document says.

10 MR. SEAVER: You are mischaracterizing

11 what the witness said.

12 A. I think what this says is it doesn't imply

13 that anybody else didn't get uniform changes. It

14 doesn't imply nobody else got shower time. To me it

15 is a recognition that the pipe coverers -- how would

16 I say, because they would potentially be exposed to

17 greater concentrations of asbestos over a longer

18 period of time in the course of their normal work,

19 were accorded extra privileges above and beyond what

20 the regular employees, you know, quote unquote
21 regular employees were afforded.
22 Q. So tell me when is the first time that
23 Merck warned people like John Chavan that they
24 should take showers and change their clothes at work
25 because if they do so they could kill their family

98

1 members?

2 A. I've already said I'm not familiar with
3 exactly what was said to Mr. Chavan in that regard,
4 and other like employees.

5 What we did was, what the company did was
6 change the procedures to avoid exposures and what
7 the company, over the years tried to do, was to have
8 mechanics change the clothing at the company, use
9 the showers for the purpose they were designed, to
10 prevent carryover from going home.

11 And I would also say mechanics, and I
12 don't know if Mr. Chavan's attitude in this regard,
13 and some employers can be very reluctant to spend
14 the time in the shower room as opposed to getting
15 home ten minutes earlier.

16 Q. What I want to know is what information do
17 you have that pipefitters, like Mr. Chavan, were
18 ever warned that they needed to take showers in
19 order not to expose their wives and their children

20 to the asbestos they were exposed to at work?
21 A. You would have to go back and look at the
22 safety talks that were presented in those days. I'm
23 sure those records don't exist. But over the years
24 management has urged people, hourly people, first
25 line supervisors, to take the time accorded in the
99

1 contract to shower and change their uniforms.

2 Q. Is there a difference between saying
3 shower and change, you can shower and change or if
4 you don't shower and change you could kill your wife
5 and children?

6 A. I don't know the precise verbage used in
7 the safety talks, but the emphasis I'm familiar with
8 has been for a very long period of time that you
9 should shower, change clothing at work, leave the
10 work uniforms at work so as to avoid carrying home
11 whatever the chemicals or substances you were
12 working with at the plant might be in those clothes.

13 Q. And what documentation do you have that
14 Mr. Chavan, Sr. was told that if he didn't change
15 his work clothes at work and take a shower he could
16 potentially kill his family?

17 A. I don't -- we don't have any documentation
18 of those that I'm aware of, of those safety talks.

19 Q. Do you have any evidence as you sit here
20 today that Mr. Chavan was ever told, given the fact

21 he was still working around asbestos into the 1980s,
22 that he had to change his clothes and take a shower
23 or his wife and his children were at risk of getting
24 sick and dying?

25 A. Only the general talks that were presented
100

1 to our employee based people that I'm familiar with
2 personally. Mr. Chavan is not among them, but it
3 was, has been a struggle for years to have employees
4 take the time to shower, change their clothes, get
5 into street clothes and then go home.

6 Many employees -- it is very difficult to
7 enforce. Many employees would go directly home
8 despite those kinds of safety talks.

9 Q. So you think if you would have told
10 Mr. Chavan that he should have have warn -- he
11 should have changed his clothes and took a shower in
12 order to avoid placing his family at risk, he would
13 have ingnored that?

14 A. In my experience, yes. The want to
15 shortcut the day and get home that ten or 20 minutes
16 earlier, is a powerful driver for behavior and it
17 was and has been very difficult to change that
18 pattern.

19 Q. So, it is Merck's position that even if
20 they told Mr. Chavan that he could kill his family

21 over 20 minutes getting home earlier, he would have
22 ignored the warning and done it anyhow?

23 MR. SEAVER: Objection to the form.

24 A. Right. What I've said was we've talked to
25 employees over the years, most recently in my stint

101

1 as plant manager about being careful with your
2 clothing, leaving it at work, taking the time to
3 shower. Short of having a guard with a gun in the
4 locker room, it is very difficult to enforce that
5 behavior. And I have to admit, unfortunately this
6 issue persists even now after all these years and
7 many, many safety talks along these lines. Leave the
8 chemicals, leave the substances at the work place,
9 don't bring them home.

10 Q. So your testimony is that Mr. Chavan would
11 deliberately put his family at risk in order to get
12 home 20 minutes earlier?

13 A. My testimony is not specific to
14 Mr. Chavan. My testimony is specific to a large
15 group of employers and what I observed as their
16 behavior and have observed as their behavior over
17 well my 40 years.

18 Q. If you thought that was so, and you
19 thought they wouldn't follow general directions,
20 then why didn't you make it a requirement that you
21 could not leave the plant in the work clothing you

22 came to the plant in?

23 MR. SEAVER: Objection to the form.

24 A. As I said, we tried to enforce that

25 particular rule and those contractual allowances
102

1 that were provided because of this particular

2 concern, and short of putting a guard with a gun in

3 the locker rooms to ensure the people changed their

4 clothing, which is obviously not very practical, it

5 has been very, very difficult to ensure that

6 100 percent of our employees changed their clothes

7 before they go home.

8 Q. It wouldn't have mattered that you put a

9 guard there with a gun in the locker room because

10 the locker room was already contaminated, right?

11 MR. SEAVER: Objection to the form.

12 A. One instance from how many years ago?

13 Q. It didn't matter?

14 MR. SEAVER: Objection to the form.

15 Argumentative.

16 Q. So, tell me exactly what Merck's program

17 was knowing that you thought people wouldn't pay

18 attentions to your warnings to stop people who you

19 knew were carrying carcinogens home on their

20 clothing from carrying those clothes home to their

21 families?

22 MR. SEAVER: Objection.
23 Q. What was your procedure?
24 MR. SEAVER: Objection to the form. Can
25 we please have a time frame on when this question
103

1 covers over a 50 year period?

2 Q. During the time Mr. Chavan, Sr. worked
3 there.

4 MR. SEAVER: Again, we are talking about
5 thirty to forty years. Could you be more specific?

6 Q. Any time. Tell me any time up until 1980,
7 when he retired, what you did, you, Merck, to make
8 sure that he did not bring carcinogenic laden
9 clothing home to his family because you didn't think
10 that he would listen to you anyhow?

11 A. We provided the information to employees.
12 We provided the facilities. We provided the time to
13 employees. We provided safety talks that urged them
14 to avail themselves of the facilities and the time
15 that was contractually provided to change clothes
16 and leave the clothes at home -- rather leave the
17 clothes at the workplace to have then laundered at
18 workplace. Not all of our employees followed those
19 guidelines. We did the best we could from a
20 practical perspective.

21 Q. According to this memo in 1975, and then I
22 want to get to 1980, it indicated, did it not, that

23 the only people who were given extra time to shower
24 and change their clothes were the pipe coverers?
25 MR. SEAVER: Objection. Asked and
104

1 answered. Argumentative. The witness already
2 testified to his understanding of what that language
3 meant.

4 A. It describes extra entitlement above and
5 beyond the normal shower and change time and it just
6 merely states that they are using this respirator.

7 Q. That, according to this memo, was not
8 extended to the pipefitters, even though they were
9 exposed to asbestos --

10 A. I would not read that in at all.

11 MR. SEAVER: Objection to the form. That
12 is not what the document says because when he talked
13 about the respirators it talks about the mechanics.
14 If your question is more specific than that, please
15 ask a more specific question.

16 Q. It says the only contact mechanics now
17 have with asbestos-bearing insulation materials
18 occurs when removing or repairing previously
19 installed insulation of that type, correct?

20 MR. SEAVER: Whenever works occurs on
21 asbestos bearing insulation dust producing material,
22 as the witness said before.

23 A. These respirators are warn. It should
24 have been end of paragraph. Now, there's some
25 special stuff associated with pipe coverers. The
105

1 first sentences deal with the entire mechanic
2 population, okay?

3 Q. But only pipe coverers get the extra --

4 A. The extra ten minutes to shower. That's
5 correct .

6 Q. Now, when did you start the asbestos
7 safety talks with the people in the plant?

8 A. I believe when those -- that permit was
9 promulgated and the procedure, corporate safety
10 procedure number 1 was issued.

11 In the materials I was given to look at
12 unfortunately I could not find a specific date on
13 that policy, which was kind of frustrating. It
14 would have been, I would conjecture it would have
15 been '74, '73. In that range.

16 Q. Who was Mark Levine?

17 A. Are you sure it is not Howard?

18 MR. SEAVER: It is Mark.

19 A. If you showed me a document I might be
20 able to conigure up a memory.

21 MR. PLACITELLA: Let's take two minutes.

22 (Recess taken)

23 MR. PLACITELLA: Mark this as 30.

24 (The above document is marked P-30 for
25 Identification)
106

1 Q. I'm going to show you what's been marked
2 P-30 for Identification. Is this the asbestos
3 safety talk that we referred to?

4 A. Do you have a date on this by chance?

5 Q. No. Unfortunately this is the way it was
6 given to me.

7 A. Okay. It has a date fairly far back. Dr.
8 Foley is referenced.

9 Q. And that would have been when?

10 A. The '70s.

11 Q. In the '70s?

12 A. Yes.

13 Q. And can you look at number 5? Take your
14 time.

15 A. I would like to read it before I got to
16 the part your are interested in.

17 MR. SEEVER: A little intellectual
18 curiosity is not a bad thing.

19 A. Especially him.

20 Okay.

21 Q. Do you want to look at the whole document?

22 A. No, no, I'm good now. That's okay.

23 Q. Number 5 says for pipe coverers only,

24 correct?

25 A. That's correct.
107

1 Q. A daily change of work clothing has been
2 authorized for this group in order to minimize
3 exposure to asbestos dust, correct?

4 A. That's correct.

5 Q. And then number 6 says showers will remain
6 a supervisor's prerogative, but their value is
7 recognized following any significant exposure to
8 asbestos or other materials causing body irritation,
9 correct?

10 A. Correct. Now just --

11 MR. SEAVER: Let him ask a question.

12 Q. The memo then goes on in different places
13 to talk about other protections that are available
14 to people exposed to asbestos in the plant, whether
15 or not they are pipe coverers, correct?

16 A. Yes Respiratory protection, et cetera

17 Q. There's nothing in this document that
18 indicates that pipefitters will be given a daily
19 change of work clothing, is there?

20 A. No. What I was going to say, there was a
21 practice in the '70s, and at that time I was
22 responsible for chemical operators, in some cases
23 say chemical operators were given three days of
24 clothing or three changes per week. The idea being

25 that you hang your stuff up and wear it the next day
108

1 and every other day you throw it in the laundry.
2 That could have been the case with regular mechanics
3 or non pipecovering mechanics, but I'm not familiar
4 with the frequency of fewer than three changes per
5 week.

6 Q. This document doesn't say any of that,
7 does it? It says for pipe coverers only. They are
8 the only ones that get a daily change of work
9 clothes. Isn't that what it says?

10 A. No. It says a daily change has been
11 authorized for this group in order to minimize
12 exposure. It is silent as far as the rest of the
13 groups.

14 Q. And then below it, it is up to the
15 supervisor about who gets showers, according to this
16 document, right? It is his prerogative?

17 A. That's correct.

18 Q. It didn't say anything about holding a gun
19 to somebody's head, does it?

20 A. What I said was in order to get everybody
21 to shower, we would have to do that.

22 Q. It is not even mandatory, according to
23 paragraph 6. It says it is the supervisor's
24 prerogative, correct?

25 A. According to this document, that's the
109

1 case.

2 Q. Now I'm going to show you testimony from
3 Mark Levine, who was also a Merck witness, about the
4 shower policy at Merck from 2005. And I blocked it
5 for you.

6 Could you read the question and answer
7 that Mark Levine gave about shower policies at
8 Merck?

9 A. Now I want to -- my question is a little
10 broader. I will walk --

11 MR. SEEVER: I'm going to object to the
12 question because it stops too soon. The testimony
13 went on to clarify that Mr. Levine was referring to
14 contractors, not employees. So this is not a fair
15 representation.

16 MR. PLACITELLA: Do you have the whole
17 thing?

18 MR. SEEVER: I don't have it with me, but
19 I know what the testimony is.

20 MR. PLACITELLA: I wouldn't ask the
21 question based on your representation.

22 MR. SEEVER: The question at the bottom of
23 the page --

24 MR. PLACITELLA: I Ed, I'll take your
25 representation that's that what it says so we don't

1 have to fight over it.

2 MR. SEAVER: Thank you.

3 Q. In 1974, we established that Mr. Doremus

4 called for the elimination of buying anymore

5 gasketing, rope and sheets, asbestos sheets,

6 correct, and transite?

7 A. Correct.

8 Q. It wasn't until the end of the year in

9 1974, almost 12 months later, that Merck established

10 a policy for stopping buying asbestos insulation

11 materials, correct?

12 A. I don't know that for a fact.

13 Q. Do you have P-29 in front of you?

14 A. I have P-29 here. Thank you. It is the

15 same document. Okay.

16 MR. SEAVER: Is that the Jackson memo to

17 Conklin?

18 Q. 10-15-75. Second page. Are you on the

19 second page?

20 A. Yes.

21 Q. Does it say, even though Mr. Doremus said

22 in 1974 that they shouldn't use asbestos gasketing

23 or rope or sheets anymore, that Merck was going to

24 continue to use it anyway because they didn't have

25 any other kind of materials to use?

1 A. What I would derive from this, if I'm
2 permitted to. I read into this a little bit. It
3 sounds to me, or looks to me, that the vast majority
4 of asbestos materials, gosh, the easier ones to
5 substitute, if you will, pipe covering, blocks that
6 would be used to insulate vessels were done away
7 with.

8 When you get down to rope packing, it is
9 used in small quantities and it is kind of a greasy
10 material that doesn't easily shed fibers, and when
11 you look at asbestos cement building products, it is
12 asbestos fibers within a tar. It sheds nothing.

13 When I look at asbestos bearing gasketing
14 materials, these are asbestos fibers in like a
15 rubber matrix so it looked like they effected this
16 change, a massive change the size and complexity of
17 Rahway in those days. They effected the change on a
18 risk adjusted basis. You got rid of the stuff like
19 transite and asbestos pipe covering that would shed
20 large volumn. To your point or your comments
21 earlier about pipefitters hitting pipe covering with
22 a hammer. Those kinds of things, the gross hazards,
23 if you will, were done away with quickly leaving
24 these smaller hazards these less, gosh, less
25 offensive sorts of materials to be substituted and

1 gasketing can be a very, from a technical
2 perspective, you don't want to substitute gasketing
3 quickly. A steam leak on a very high pressure main
4 is a real hazard.

5 So, to me this looks like the residual of
6 what's left after a very large change was made at
7 the Rahway site purchase and practices.

8 Q. Let me start this way.

9 A. Go ahead.

10 Q. When you take out a gasket, do they often
11 have to be scraped?

12 A. When you take off a gasket, yes. When you
13 put them on, obviously no.

14 Q. So if you install a gasket in 1975 or 1976
15 that has asbestos, eventually when you have to take
16 it off it is likely to be scraped, correct?

17 A. That's correct.

18 Q. And at that point that will release
19 asbestos fibers, correct?

20 A. In my opinion a minimal amount like vinyl
21 asbestos tile. The asbestos is in a matrix. It is
22 roughly encapsulated so it may release fibers, but
23 much, much smaller amount of fibers.

24 Q. I'm not fighting you on the issue.

25 A. Okay.

1 Q. The asbestos packing that goes in pumps,
2 that goes in hard and lubricated, correct?

3 A. I'm sorry?

4 Q. It goes in hard and lubricated. It
5 doesn't creat much dust?

6 A. Correct.

7 Q. But when you take it out and it is dry,
8 sometimes they actually take like a corkscrew?

9 A. Corkscrew.

10 Q. And they shove it in and pull it out,
11 right?

12 A. Yes.

13 Q. And that's capable of creating dust too,
14 isn't it?

15 A. But again, on a relative basis, a much,
16 much smaller volume of dust.

17 Q. I understand. And asbestos rope -- by the
18 way does it indicate in that memo that Merck is
19 going to continue to use transite, which you said
20 was a great hazard?

21 A. Let me correct you on one thing. It is
22 rope packing. It is not like closeline rope.

23 Q. I understand. Does it talk about transite
24 there?

25 A. Let us scan it and we will tell you. I
114

1 don't see it on the second page. Okay. Due to lack
2 of alternatives, asbestos cement building
3 products -- I'm sorry. I saw cement I was thinking
4 the powder. Existing installations only transite
5 siding, roofing and hot boxes.

6 MR. SEAYER: Chris, is your question
7 broader than that specific use of transite?

8 MR. PLACITELLA: No.

9 Q. You said she they stopped using all
10 transite and I'm saying they still were using
11 transite in '75, weren't they?

12 A. Yes, they hadn't removed it. I don't
13 think we were buying it, but they hadn't removed it
14 all.

15 Q. Remember when we talked earlier about the
16 obligation not to needlessly exposes workers to
17 asbestos?

18 A. Um-hum.

19 Q. Don't you think the scraping of asbestos
20 gaskets after you know full well it can cause cancer
21 is needlessly exposing people to asbestos?

22 A. No. The hazards were recognized, and as I
23 say, you can't change everything out all at once in
24 a plant the size and complexity of Rahway.

25 Q. Because it costs too much money.
115

1 A. No. You could create larger -- you know,

2 the law of unintended consequences? You could
3 create significantly greater hazards by having
4 gaskets that leak, toxic, noxious chemicals.

5 Q. When did you stop using the asbestos
6 gaskets?

7 A. That, I don't know.

8 Q. What did you substitute them with?

9 A. I don't know at this point in time. And I
10 also don't know sitting here whether the
11 manufactures of this gasketing material, how quickly
12 they adjusted the composition of their gaskets
13 moving, say, from asbestos to glass fibers.

14 What I did say was it looked like a large
15 change was made on a risk based method. You got rid
16 of the big, big generators of asbestos fibers first,
17 and relatively quickly. Lesser hazards, still
18 hazards, but again, there were procedures put into
19 place in terms of protective equipment and the like
20 to null this stuff out.

21 To me this looks like a report on how far
22 have we gotten on getting rid of asbestos at the
23 Rahway site. How far have we gotten on not
24 purchasing more of this stuff, and I'm sure there
25 was a discussion, and I'm conjecturing, of course,
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1 after this note was written in terms of when are you

2 going to get rid of these other items as well?

3 Again, based on my experience in

4 manufacturing and plant engineering, these are some

5 of the items that would take some time to

6 substitute.

7 Q. So the man who tried to do the right

8 thing, Mr. Doremus, says in '74 we shouldn't buy

9 anymore asbestos, right?

10 A. Um-hum.

11 Q. He is the guy in charge of safety. He is

12 the guy, right?

13 A. No. I think Jack Snyder was the guy.

14 Q. He worked for Jack Snyder?

15 A. Yes.

16 Q. He wrote, and he said no more asbestos.

17 Not rope, not gaskets, not transite, not insulation,

18 not anything?

19 A. It's a great position and it is a great

20 position to take and as I said, I think the company

21 was going in that direction as fast as it reasonably

22 could without causing additional hazards.

23 Q. Then a couple of years later they finally

24 got rid of buying new asbestos insulation, right?

25 MR. SEAYER: Objection.
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1 A. We don't know when they got rid of it.

2 Q. Then they continued to use other asbestos

3 products despite Mr. Doremus' urging for however

4 long, and you don't even know how long.

5 A. We can go around and around on this, but

6 I'm telling you from my experiences this look like a

7 report on progress toward the end that Mr. Doremus

8 asked for and relatively rapid progress given the

9 complexity of the sites.

10 Q. How long did you use asbestos, new

11 asbestos at that site?

12 A. I don't have documentation of that.

13 Q. You were still giving workers gloves made

14 of asbestos in '79 and 1980, weren't you?

15 A. I don't know. I would be interested to

16 know who used them and for what purpose.

17 MR. PLACITELLA: Mark this next.

18 (The above document is marked P-32)

19 A. This is Peter Caliguari to a bunch of

20 people in mechanical or the maintenance department

21 and the research establishment.

22 Q. The maintenance department included the

23 mechanics, right?

24 A. Yes. Bill Downey was the fellow that was

25 in charge of mechanical storage. If you go the the
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1 to list, he maintained stocks of materials and

2 purchased them. Harry Ferensi was the powerhouse

3 head, Joe Jackson, mechanical superintendent, Eric
4 Lindquist, quality control. Ed Scharschmidt head of
5 the pilot plants, Lenny Schwartz head of the research
6 engineering.

7 Q. These included the bosses for Mr. Chavan,
8 right?

9 A. I believe Joe Jackson would have been in
10 that line. If you look at the CC list it included
11 tons of people in the mechanical area, so, yes.

12 Q. So according to this memo, five years
13 after Mr. Doremus said no more asbestos gloves,
14 Merck is still giving people like Mr. Chavan
15 asbestos gloves to use in their work, right?

16 A. Looks to me like it's not just Mr. Chavan.
17 The people I thought would be using asbestos gloves
18 at this point would have included glass blowers in
19 the research area, which is why Len Schwartz might
20 be on a copy list.

21 There would be a small number of sort of
22 specialized tasks you would require very heat
23 resistant gloves for.

24 Q. In 1979 Merck was still using asbestos
25 gloves, five years after Mr. Doremus said don't do
119

1 it anymore, correct?

2 A. That's correct. Of course, we don't know
3 when Kevlar became available as the appropriate

4 substitute.

5 Q. Now, Mr. Doremus, in 1974, not only called
6 for the elimination of further purchasing of
7 asbestos, he also called for the elimination of
8 anymore exposure to asbestos, did he not?

9 A. Yes.

10 Q. But you personally know and observed
11 people like Mr. Chavan knocking asbestos off pipes
12 with hammers in the '70's and into the '80s,
13 correct?

14 A. No, I didn't testify to that effect. I
15 testified to observing work practices prior to the
16 Mt. Sinai visit with pipefitters knocking the stuff
17 off like that.

18 Q. Did you not testify that Mr. Chavan
19 continued to be exposed to asbestos in the '70s into
20 the 1980s?

21 A. I did, but exposed and protected by PPE,
22 Personal Protective Equipment and procedures that
23 mitigated the risk.

24 Q. So you have evidence as you sit here today
25 that you warned Mr. Chavan that he needed to protect
120

1 himself from exposure to asbestos.

2 MR. SEAYER: Objection to the form.

3 A. Well, we did present that safety talk

4 where the employees were warned of the hazards..

5 Q. There was for 1,980 though.

6 A. We don't know the date of that, except for
7 Steve Foldy being on the copy list or mentioned the
8 on it.

9 Q. Am I correct, sir, that the asbestos at
10 Merck eventually killed John Chavan, Sr.?

11 A. I can't testify to that.

12 Q. In 1984, you did an inventory and there
13 was still asbestos all over the Merck facility,
14 correct?

15 A. And there's asbestos in certain locations
16 today. It is not completely gone. But the key
17 thing to remember procedures and protective
18 equipment were put into place to mitigate the actual
19 exposure.

20 Q. Way too late for Mr. Chavan, correct?

21 MR. SEAVER: Objection. Argumentative.
22 Don't answer that question.

23 A. Of course, not.

24 Q. Of course, not, it wasn't way too late?

25 MR. SEAVER: He was responding to his
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1 direction from counsel.

2 Q. The asbestos from Merck killed Mrs.
3 Chavan, correct?

4 MR. SEAVER: Objection. Don't answer that

5 question. He doesn't know anyway nor has it ever

6 been established.

7 Q. The asbestos from Merck poisoned John

8 Chavan, Jr. did it not?

9 A. I have no evidence to that effect and I

10 can't testify to that.

11 Q. From your review of all the material that

12 you have seen today, and what you know, did Merck

13 make any mistakes in how they handled asbestos as it

14 related to John Chavan, Sr.?

15 A. In my opinion once the hazards --

16 MR. SEAYER: Object to the form of the

17 question. I don't know what mistakes means. Go

18 ahead and answer.

19 A. In my opinion once the hazards of asbestos

20 were recognized, the company moved to eliminate its

21 use or purchase and reduce its use as quickly as

22 practically possible and provided safety talk

23 information, provided information relative to the

24 hazards of asbestos, promulgated standards in terms

25 of personal protective equipment, again, as quickly
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1 as the knowledge that we had at the point in time

2 allowed.

3 MR. PLACITELLA: I respectfully move to

4 strike. Read my question back.

5 (The above question is read)

6 MR. SEEVER: Same objection. Vague.

7 Q. Can you answers their question, sir?

8 A. I'm not knowledgeable of any mistakes made

9 vis-a-vis Mr. Chavan.

10 Q. So everything that Merck did was on

11 purpose?

12 MR. SEEVER: Objection. Argumentative.

13 A. Putting words in my mouth.

14 Q. Well, it wasn't a mistake, then it was

15 done delibratly, would you agree?

16 MR. SEEVER: Objection. Argumentative?

17 A. No.

18 Q. Why wouldn't you agree?

19 A. As I said --

20 MR. SEEVER: Objection argumentative..

21 Q. It wasn't a mistake, you said, correct?

22 A. Correct.

23 Q. So if it wasn't a mistake, then they knew

24 what they were doing, correct?

25 MR. SEEVER: Objection.

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1 Q. It was deliberate.

2 MR. SEEVER: Argumentative. The witness

3 testified he was not aware of any mistakes.

4 A. That's correct.

5 Q. So if there's no mistakes that means what

6 they did was on purpose.

7 MR. SEAVER: You are putting worlds in the
8 witness' mouth. He testified he was not aware of
9 any mistakes. Now you are trying to -- you are only
10 offering him one option. I object to the question
11 and I'm going to direct him not to answer that
12 questions. If you ask an appropriate question, he
13 will answer it.

14 Q. Everything that Merck did as it related to
15 exposing John Chavan to asbestos was in your mind
16 correct?

17 A. Based on the information that we were
18 aware of at the time, yes.

19 Q. Based on what you were aware of?

20 A. Correct.

21 Q. Not what everybody else knew?

22 A. I can only testify to what I was aware of
23 personally and the change in practices I saw once it
24 was widely known, if you will, after the Selikoff,
25 Mt. Siani stuff.

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1 Q. Okay. Your testimony that everything was
2 done correctly is premised based upon your own
3 personal knowledge of what you were told, correct?

4 A. What I was told, what I was aware of
5 generally as an engineer.

6 Q. Not all the other information that I
7 showed you for over an hour dating back to 1942?

8 A. Six years before I was born. That's
9 correct.

10 Q. If Merck was aware of the dangers of
11 asbestos before Dr. Selikoff got there, or his
12 people, in 1972, then you will agree with me that
13 plenty of mistakes were made along the way as it
14 related to protecting John Chavan, Sr, correct?

15 MR. SEAVER: Objection to the form.
16 Define what you mean by dangers of asbestos.
17 There's both the medical consequences and there's
18 also the understanding of what can be done to
19 protect against and what should be done to protect
20 against it.

21 If you are including it all please say
22 that. If you are simply talking about the medical
23 information attributed to asbestos exposure, then
24 confine the question to that.

25 Q. Can you answer my question now?
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1 A. If you rephrase it.

2 MR. PLACITELLA: Can you read my the
3 question back, please, Mr. Brody.

4 (The above question was read)

5 MR. SEAVER: The same objection. Are
6 referring to the dangers of asbestos or are we

7 referring to the standards expected of property

8 owners at the time in question?

9 Q. You can answer it.

10 A. To my it is a hypothetical, so how can I

11 answer it? That big if is a qualifier. As far as I

12 know, based on my experience, once we in the

13 workplace from the plant manager down to the first

14 line supervisor and hourly people, became truly

15 aware of the asbestos hazards, Merck acted quickly

16 to remove, stop purchasing the stuff, take better

17 protective measures and really focus on improving

18 the workplace situation relative to the asbestos

19 hazard.

20 Q. We have seen in 1944 New Jersey

21 established, and Merck was charged with the

22 knowledge, that asbestos was a compensable disease,,

23 asbestosis, correct?

24 A. Correct.

25 Q. Mr. Chavan started to work at the plant in
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1 the late '40s, correct?

2 A. Correct.

3 Q. He was not warned after the compensation

4 statute was established, correct?

5 A. I don't know.

6 Q. Do you have any evidence he was warned?

7 A. No.

8 Q. The Merck Manual in 1950 acknowledges that
9 asbestos causes asbestosis, correct?

10 A. In large concentrations, correct.

11 Q. And in 1950, you have no information that
12 John Chavan, Sr. was ever warned about the dangers
13 of asbestos, correct?

14 A. Correct.

15 Q. In 1952, when the Walsh-Healey Act was
16 established, setting asbestos exposure limits, you
17 have no information to indicate John Chavan, Sr. was
18 ever warned about the dangers of asbestos, correct?

19 A. I already testified I'm not at all
20 familiar with that act.

21 Q. In 1958, when Mr. Doremus, who was the
22 plant safety person, was receiving publications from
23 the American Industrial Hygiene Association about
24 asbestos, John Chavan was not warned about the
25 dangers of asbestos, correct?

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1 MR. SEAVER: Objection. Assumes facts not
2 in established.

3 Q. You have no evidence to indicate he was
4 warned, correct?

5 A. That's correct.

6 Q. In 1958, when the State of New Jersey
7 enacted the asbestos regulations, you have no

8 evidence to indicate that John Chavan, Sr. was ever

9 warned about the dangers of asbestos, correct?

10 A. That's also corrections.

11 Q. You also have no evidence that Merck

12 conducted any testing to determine the level of

13 asbestos dust in the plant generated by operations

14 conducted by John Chavan and his co-workers,

15 correct?

16 A. I have not seen evidence to that effect.

17 Q. In 1964, when the Accident Prevention

18 Manual indicating asbestos could cause cancer by the

19 National Safety Council was issued to members, you

20 have no information to indicate John Chavan was

21 warned about asbestos then, did you?

22 A. No. And nor do I have information

23 relative to whether that was actually read by anyone

24 in safety.

25 Q. The next year, in 1965, when George W.
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1 Merck served on the board of trustees for the New

2 York Academy of Sciences and appeared on the

3 publication indicating that pipefitters,

4 boilermakers, insulators, children and wives could

5 gets mesothelioma, no warnings were issued by Merck

6 to John Chavan, Sr, were they?

7 MR. SEAVER: Objection to the form of the

8 question.

9 A. I couldn't tell you.

10 Q. In 1968, when the Merck Manual indicated
11 that asbestos could cause cancer and listed the very
12 products that Mr. Chavan was exposed to, no warning
13 was given by Merck to John Chavan, sr., was there?

14 A. Once again, we don't know.

15 Q. You have no evidence to indicate that that
16 happened, do you?

17 A. That's correct.

18 Q. In 1971, when OSHA was passed, you have no
19 evidence to indicate that John Chavan, Sr. was
20 warned about the dangers of asbestos in the
21 workplace at Merck, do you?

22 A. That's also correct.

23 Q. Although Merck knew that John Chavan, Sr.
24 had fibrosis in his lungs in 1968, and never told
25 him he had asbestosis until the day he retired, you
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1 say they made no mistakes, correct?

2 MR. SEAVER: Objection to the question.

3 Also assumes there was a diagnosis of asbestosis at
4 an earlier date. You can answer the question, if
5 you can.

6 A. I can't.

7 MR. PLACITELLA: I think that's my
8 questions. I want to take five minutes.

9 (Recess taken)

10

11 Q. At this is point that concludes my

12 questions. Thank you. I'll reserve, depending on

13 what other people have to say.

14 Does anybody have any other questions?

15 (Discussion off the record)

16 (The deposition is concluded at 1:45)

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