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September 16, 2003

Dr. Barry Castleman
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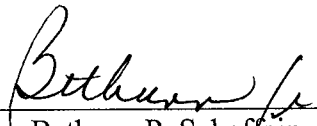
Dear Dr. Castleman:

Enclosed please find copies of depositions of Leon Horowitz.

Thank you for your courtesies.

Very truly yours,

SHEIN LAW CENTER, LTD.

BY: 
Bethann P. Schaffzin

BPS:mar
Enclosures

P.S. This was inadvertently left out of a package of depositions
you will be receiving from Bethann P. Schaffzin.

Thank you.

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DONALD WEISBERG, ESQUIRE : COURT OF COMMON PLEAS
and MEYER A. BUSHMAN, OF PHILADELPHIA COUNTY
ESQUIRE, Co-Executors of
the Estate of MELVIN P.
TIMBERS

VS. : MAY TERM, 1978

BELL ASBESTOS MINES, LTD. : NO. 4629

ELSIE HAYDEN, Administra- : COURT OF COMMON PLEAS
trix of the Estate of JESSE
HAYDEN, Deceased

VS. : NOVEMBER TERM, 1978

BELL ASBESTOS MINES, LTD., :
ET AL : NO. 3624

PETER SERRATORE and : COURT OF COMMON PLEAS OF
MARJORIE SERRATORE, his PHILADELPHIA COUNTY
wife

VS. : JULY TERM, 1979

BELL ASBESTOS MINES, LTD., :
ET AL : NO. 3348

ROSEMARY E. COULSTON, : COURT OF COMMON PLEAS OF
Administratrix of the MONTGOMERY COUNTY
Estate of CHARLES W.
COULSTON, and ROSEMARY E.
COULSTON, on her own
behalf

VS.

BELL ASBESTOS MINES, LTD., :
ET AL : NO. 80-5250

(CONTINUED)

1 JOHNNIE WILLIAMS and : COURT OF COMMON PLEAS
2 RUTH F. WILLIAMS, his wife OF PHILADELPHIA COUNTY

3 VS. : AUGUST TERM, 1980

4 BELL ASBESTOS MINES, LTD.,
5 ET AL : NO. 3710

6 ROSE MARY MACO, Executrix : COURT OF COMMON PLEAS
7 of the Estate of PAUL MACO, OF MONTGOMERY COUNTY
8 SR., and ROSE MARY MACO, on
9 her own behalf

10 VS.

11 BELL ASBESTOS MINES, LTD.,
12 ET AL : NO. 80-18537

13 EDWARD BARNES and NANNIE : COURT OF COMMON PLEAS
14 BARNES, his wife OF PHILADELPHIA COUNTY

15 VS. : DECEMBER TERM, 1980

16 BELL ASBESTOS MINES, LTD., : NO. 4429
17 ET AL

18 WARDELL M. BAILEY and : COURT OF COMMON PLEAS
19 ROSE ELLA BAILEY, his wife PHILADELPHIA COUNTY

20 VS. : MAY TERM, 1981

21 BELL ASBESTOS MINES, LTD.,
22 ET AL : NO. 1675

23 WILLIAM R. DIXON and : COURT OF COMMON PLEAS
24 MATTIE N. DIXON, his wife OF PHILADELPHIA COUNTY

25 VS. : OCTOBER TERM, 1981

BELL ASBESTOS MINES, LTD.,
ET AL : NO. 2874

(CONTINUED)

1
2 PAULINE GASKINS, : COURT OF COMMON PLEAS
3 Administratrix of the OF MONTGOMERY COUNTY
4 Estate of ALFRED GASKINS,
5 ET AL

6 VS.

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8 BELL ASBESTOS MINES, LTD., : NO. 80-12774
9 ET AL

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11 Videotape deposition of LEON HOROWITZ,
12 taken pursuant to notice at the offices of KNIPES-
13 COHEN ASSOCIATES, 400 Market Street, 10th Floor,
14 Philadelphia, Pennsylvania, on Monday, February 1,
15 1982, at 10:00 a.m., E.S.T., before Claude Forte and
16 Earle Strain, Videotape Operators, and Suzanne
17 McLaughlin White, Registered Professional Reporter,
18 Notary Public in and for the County of Philadelphia,
19 there being present:

20 - - -

21 APPEARANCES:

22 BLANK, ROME, COMISKY & McCAULEY,
23 ESQUIRES

24 BY: MITCHELL COHEN, ESQUIRE
25 Representing Plaintiffs

GREITZER & LOCKS, ESQUIRES

BY: GENE LOCKS, ESQUIRE
Representing Plaintiffs

(CONTINUED)

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2 CONTINUED APPEARANCES:

3

SHEIN & BROOKMAN, ESQUIRES
BY: JOSEPH SHEIN, ESQUIRE
AND: ROBERT PAUL, ESQUIRE
Representing Plaintiffs

5

6

POST & SCHELL, ESQUIRES
BY: F. JAMES GALLO, ESQUIRE
AND: ROBERT M. BRITTON, ESQUIRE
Representing Bell Asbestos Mines, Ltd.

7

8

SWARTZ, CAMPBELL & DETWEILER, ESQUIRES
BY: DANIEL BRUCH, JR., ESQUIRE
Representing Certainteed Corporation

9

10

MALCOLM & RILEY, ESQUIRES
BY: PETER COLEMAN, ESQUIRE
Representing Celotex

11

12

MARSHALL, DENNEHEY, WARNER, COLEMAN
& GOGGIN, ESQUIRES
BY: MICHAEL CREEDON, ESQUIRE
Representing Johns-Manville Corporation

13

14

MESIROV, GELMAN, JAFFE, CRAMER &
JAMIESON, ESQUIRES
BY: RANDI WERNER, ESQUIRE
Representing GAF

15

16

17

OMINSKY, JOSEPH & WELSH, ESQUIRES
BY: CLIVE MENDELOW, ESQUIRE
Representing Asbestos Corporation
Limited

18

19

PEPPER, HAMILTON, & SCHEETZ, ESQUIRES
BY: DIANA M. JONIEC, ESQUIRE
Representing Amatex

20

21

BENNETT, BRICKLIN & SALTZBURG,
ESQUIRES
BY: BYRON MILNER, ESQUIRE
Representing Nicolet

22

23

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(CONTINUED)

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2 CONTINUED APPEARANCES:

3

LaBRUM & DOAK, ESQUIRES
BY: FRANCIS WENZEL, ESQUIRE
Representing Keene Corporation

4

5

HARVEY, PENNINGTON, HERTING AND
RENNEISEN, ESQUIRES
BY: JOEL GUSKY, ESQUIRE
Representing Carey-Canadian Mines,
Ltd.

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7

8

DECHERT, PRICE & RHOADS, ESQUIRES
BY: JOHN MASON, ESQUIRE
Representing Turner-Newall

9

10

PORZIO, BROMBERG AND NEWMAN, P.C.
BY: MYRON J. BROMBERG, ESQUIRE
Representing Lake Asbestos of
Quebec

11

12

McWILLIAMS & SWEENEY, ESQUIRES
BY: WALTER JENKINS, ESQUIRE
Representing Special Asbestos Co.

13

14

WOLF, BLOCK, SCHORR, SOLIS & COHEN,
ESQUIRES
BY: M. RICHARD KOMINS, ESQUIRE
Representing North American Asbestos Co.

15

16

17

SHEA & GARNER, ESQUIRES
BY: S. ELIZABETH GIBSON, ESQUIRE
Representing Brinco Mining Ltd.

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I-N-D-E-X

WITNESS	Direct	Cross	Redirect	Recross
LEON HOROWITZ				
By: F. James Gallo	26		--	--
By: Elizabeth Gibson	--	121	--	--
By: Myron Bromberg	--	132,169	--	--
By: Daniel Bruch	--	135,196	--	--
By: Joel Gusky	--	140,183	--	--
By: John Mason	--	146,193	--	--
By: Mitchell Cohen	--	198	--	--
By: Joseph Shein	--	226	--	--

- - -

1	OFF THE RECORD DISCUSSIONS & BREAKS	PAGE NUMBER
2	Discussions - 10:20 am - 10:25 am	21
3	Discussions - 10:26 am - 10:27 am	21
4	Break - 11:30 am - 11:40 am	70
5	Lunch break - 12:45 am - 1:40 pm	128
6	Discussions - 5:05 pm - 5:10 pm	218
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2 MR. COHEN: Before we go on, just on
3 the stenographic record, let's just get whatever
4 housekeeping that has been done as far as
5 objections are. My proposal would be to the
6 extent any questions are asked, that there would
7 be an understanding that any testimony given by
8 Mr. Horowitz, whether it's in response to a
9 particular counsel's question, that that testimony
10 would be used by stipulation equally in every
11 case which has been noticed for the deposition,
12 so that we can avoid the necessity of repetitive
13 questions or cross examination by counsel.

14 MR. GALLO: I think we have to have
15 that understanding.

16 MR. SHEIN: I don't necessarily agree
17 to that, Joseph Shein, representing Various
18 Plaintiffs. I do have several questions. One,
19 I would like to know who has been notified, who
20 is not present now, that you know of?

21 MR. GALLO: All counsel.

22 MR. SHEIN: Or is every one here?

23 MR. GALLO: This videotape deposition
24 was noticed in some twelve or so asbestos cases
25 of workers at the Keasbey-Mattison, later

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2 Certainteed Plants, in Ambler, PA. The Notice
3 of Deposition went to all counsel of record in
4 each of these cases, and looking around the room,
5 I notice that it seems like Counsel for Cassiar
6 is not here. Some others may not be here.
7 Notice did go to counsel of record.

8 MR. SHEIN: Notice did go to
9 Cassiar, Counsel for Cassiar?

10 MR. GALLO: That's right.

11 MR. SHEIN: Do you stipulate to the
12 fact that this is being noticed in some cases
13 that are not ours? I do not know the extent
14 of the notices, and therefore, we know who is
15 here, but I would like to know who has been
16 noticed, who is not here. If you would just
17 recite the names, if you could, on the
18 record?

19 MR. GALLO: I'm not about to do that.
20 I can tell you that all Counsel of Record who
21 have entered appearances for Defendants in all the
22 cases that you have, Mr. Shein, were notified of
23 this deposition.

24 MR. BROOKMAN: Any Nicolet Plant
25 worker cases?

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2 MR. GALLO: There may be some of these
3 workers who worked in the Nicolet Plant after
4 it was taken over by Nicolet, yes.

5 MR. SHEIN: Again, it's my understanding
6 that Notices were sent out in other than our
7 cases?

8 MR. GALLO: That's correct.

9 MR. SHEIN: With other Plaintiffs.
10 I don't know the extent of those Notices.
11 That's -- I know who has been notified in our
12 cases, what I'm trying to find out is what
13 other Defendants in either Perlberger cases or
14 Greitzer & Locks cases have been notified for
15 these depositions.

16 MR. GALLO: All right, I don't have
17 the captions or the rather extensive mailing
18 list that we used at this time.

19 MR. SHEIN: Will you supply that to us?

20 MR. GALLO: I will be happy to, Mr.
21 Shein.

22 MR. SHEIN: I would like that made an
23 Exhibit to the deposition.

24 MR. GALLO: Sure, no problem.

25 MR. SHEIN: One other housekeeping

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2 method or matter, I should say, you have
3 noticed this as a deposition for use at trial,
4 and it being such, I'm going to ask that you
5 make an offer of proof, I would like to know
6 whether or not this man is being called as an
7 expert or a fact witness, whether or not you
8 consider him, due to the fact that he was an
9 employee of a sister corporation of Bell, as a
10 Bell employee, and that will be important for
11 the purposes of cross examination, as he would
12 then be a party. That's how we consider him.

13 MR. GALLO: Well, your consideration
14 is incorrect, in my view, Mr. Shein. Mr.
15 Horowitz will testify in accordance with the
16 deposition he gave on June 30th, 1980 in Washing-
17 ton, D.C., a copy of which you have been furnished
18 with, basically outlining his background, his
19 educational history, his experience with the New
20 York State Industrial Hygiene Board, and his
21 coming with Keasbey-Mattison, later Certainteed
22 Corporation, his work with them as Industrial
23 Hygienist. He would authenticate certain
24 documents, all of which were used in the prior
25 deposition, and will discuss the method of

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2 industrial hygiene and dust control at
3 Certainteed. He is being called as a fact
4 witness, not an expert, and he is being
5 asked to discuss his activities as an employee
6 of Keasbey-Mattison and as an employee of
7 Certainteed Products Corporation.

8 MR. SHEIN: Well, for the record,
9 we consider, due to the inter-relationship
10 between Turner and Newall, Keasbey and
11 Mattison, Bell and Cassiar, that for purposes
12 of trial testimony, he is a party. If we're
13 prevented from cross examining as a party, we
14 object to the deposition.

15 MR. GALLO: Your objection is noted.
16 He is not a party. He is a witness, as an
17 employee of the company which employed these
18 Plaintiffs, and we will proceed with the
19 deposition under that status, and observe
20 the rules covered by -- If you have a legal
21 argument to make on what you've just said,
22 it will be raised at the appropriate time. He
23 was never an employee of my client.

24 MR. COHEN: Mr. Shein, I didn't want
25 to interrupt you, just as -- the extent of my

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2 knowledge at this time, Mr. Horowitz is
3 employed by the same insurance carrier that
4 was discussed in the deposition in 1980. If
5 that is not correct, if someone would let me
6 know, that insurance carrier has been named.

7 THE WITNESS: I'm still employed by
8 the same company that I was in 1980, yes.

9 MR. COHEN: That carrier has
10 been named as a Defendant in lawsuits in the
11 United States. They will be named again as a
12 Defendant with regard, at least, to certain
13 cases where our law firm represents Plaintiffs.
14 It should be noted that his interests, under
15 the rules, would be such of a party, or at
16 best, has adverse interest and can be cross
17 examined to that extent, since the insurance
18 carrier is a Defendant, has been named as a
19 co-conspirator, I think that should be brought
20 out with regard to how Plaintiff's counsel, at
21 least, or other Defense counsel may wish to
22 treat the witness.

23 I would just like to ask Mr. Shein, my
24 original thing before was, whether there would be
25 an objection to having Mr. Horowitz testify as

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2 to any question being utilized in every case,
3 if there comes an appropriate time that we may
4 have to edit the video for particular trials.
5 That shouldn't be a problem, but rather than go
6 and repeat particular questions that you may ask
7 that I may have a vested interest in likewise,
8 I would just like to see if we have an under-
9 standing that whatever he says is used in any
10 trial that has been noticed?

11 MR. SHEIN: Well, there are certain
12 matters that we have in common, obviously, they
13 would certainly be used there and we have no
14 objection to being -- it being used in every
15 case on which we have been noticed. I don't
16 mind that. We may have --

17 THE WITNESS: May I raise a point?

18 MR. GALLO: Off the record.

19 MR. LOCKS: I don't want any off the
20 record discussions at this point.

21 MR. GALLO: In response to --

22 MR. BROMBERG: Can I inquire, please,
23 as to any Plaintiff has filed any Motion that
24 you're aware of, objecting to the present
25 procedure of taking this deposition in more than

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one case at the same time?

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MR. GALLO: No, there has been no objection that I'm aware of. Responding briefly to Mr. Cohen, the insurance company that employs Mr. Horowitz is not a party to any of the cases in which this deposition is noticed, therefore, his status in this deposition is purely of a witness and not as an employee, because simply, his employer is not a party. That's the way in which we're proceeding today.

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MR. COHEN: That's the way in which you want to proceed. I do reserve the right, upon amendment of certain complaints that have been noticed in this case, and I will treat the witness as such, because his interest is identical as an alleged co-conspirator with other Defendants. So, we can argue that at another point, this is not the appropriate time, but --

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MR. GALLO: I agree with that.

MR. SHEIN: I join in that objection.

MR. BRUCH: I would like to say that Leonard Horowitz is not represented by any attorney here today.

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MR. COHEN: My next question is --
I'm sorry.

MR. BRUCH: That's it, Mitch.
No one is explaining to Mr. Horowitz under those
allegations.

MR. COHEN: I think my next question
was, whether any one is representing the
insurance carrier here, or B, if Mr. Horowitz
in an individual capacity, and I state this,
because it's possible, based upon testimony
that Mr. Horowitz gives, Mr. Horowitz may
have a vested interest, which should be protected
by counsel, and I think if he wishes to proceed
without counsel, he certainly has that right.
But, it should be with an understanding that he
may have certain rights that should be protected
so that he is not adversely affected, and that
he certainly has every right to consult an
attorney, if he wishes, prior to giving any
testimony, and if he wishes to testify
without counsel, he can proceed accordingly.

MR. GALLO: Anything else?

MR. SHEIN: Has it been explained to
Mr. Horowitz at all, does he understand the

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possibilities of this situation?

MR. GALLO: Well, he has been here
listening to Mr. Cohen's --

MR. SHEIN: That's the total of the
explanation that counsel has given him?

MR. GALLO: I'm thinking Mr.
Horowitz is aware of what is taking place.

THE WITNESS: Mr. Horowitz would
like to say something. Apparently, I can say
it on or off the record.

MR. BRUCH: Yes, you can.

THE WITNESS: When I was approached
for the deposition in June of 1980, knowing that
my -- the company I worked for has insured
Keasbey-Mattison for the two years that I
worked for Keasbey-Mattison, I asked our legal
counsel to sit in to get their opinion whether
I should depose or not. Although I was told I
would have to one way or another, and he said
it was perfectly all right because we -- that
the company I worked for no longer insures --
or only insured for that period that I worked, it
was then okay. You're bringing in other cases
that the insurance company is involved with, and

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2 I don't know whether I'm protecting my company's
3 interest or not. I really don't know.

4 MR. COHEN: All I wish to say in
5 fairness before you take a deposition, is that
6 subsequent to that deposition, which you took
7 in 1980, events have changed, such as your
8 employer has, as far as I'm aware, been named
9 as a Defendant and co-conspirator along with
10 other Defendants, --

11 THE WITNESS: Yes.

12 MR. COHEN: -- in the lawsuit. By
13 virtue of that fact and by virtue of anticipated
14 events which I personally believe will be
15 appropriate in representing the clients that we
16 represent, that same thing may occur again
17 shortly. Now, to the extent that you provide
18 testimony, that testimony may or may not be used
19 adversely to yourself and to your employer, and you
20 and your employer may have the same interest, or
21 you may have completely different interests,
22 such that you may have to seek independent
23 counsel. So that both of you are protected,
24 I'm just suggesting to you that if you wish to
25 testify here, certainly that is your right, but

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2 you should be aware that based upon testimony
3 you give, that may impact adversely to you
4 personally or to your employer, personally, as
5 a corporate entity.

6 MR. BRITTON: Hadn't you just stated
7 this five minutes ago? Is there a need to put
8 it on the record again?

9 MR. COHEN: I don't know that Mr.
10 Horowitz completely understands.

11 THE WITNESS: I appreciate the fact
12 that you have. Secondly, I would like to
13 inform the people here that in the first case,
14 my company was aware that I was deposing in
15 this instance. They are not aware that I was
16 deposing. Only in that way, will I be privately
17 effected, the fact that I'm here without their
18 knowledge.

19 MR. BROMBERG: I understand this to be
20 a deposition of a fact witness who is going to
21 be sworn or has been sworn to be under oath to
22 tell the truth, and it's not anything other
23 than that. He is not asked to plead in the case,
24 just to tell the truth in the case, as I under-
25 stand it.

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MR. BRITTON: That's correct.

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MR. BROMBERG: I can't understand

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the statements of various counsel who feel that

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this may have some negative effect on

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American Mutual Liability Company, or upon the

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witness, himself, in the future. I suppose

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that is potentially true whenever a witness

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testifies, but I'm sure Mr. Horowitz, as I

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suppose he has in the past, tells the truth

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when he is asked questions.

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THE WITNESS: I will tell the

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truth.

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MR. GALLO: I want to note for the

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record that Counsel for Cassier, Elizabeth Gibson,

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has arrived.

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(Whereupon discussions were held off

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the record from 10:20 a.m. to 10:25 a.m.)

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MR. BROMBERG: For the record, we've

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had an off the record discussion, the only

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point of which I would like to put on the record,

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there has been no stipulations or agreements

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in regard to reservation of objections to

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trial. All objections will be stated on the

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record, or waived.

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2 MR. LOCKS: I will affirmatively
3 join or not join in an objection by other
4 Plaintiffs' counsel. And if I fail to state
5 anything, that is my not joining in that
6 objection.

7 MR. BROMBERG: If I understand what
8 you said, you then would waive any objections
9 that you did not personally make?

10 MR. LOCKS: That's correct. And
11 I might reconsider that for expeditious
12 handling of this procedure, if whatever agreement
13 on objections you're seeking, Mr. Bromberg,
14 is equally applicable to all Defendants.

15 MR. BROMBERG: I surely would.

16 MR. LOCKS: I don't know what the
17 position of all Defendants are. Until that is
18 done, I might reconsider.

19 MR. GALLO: Do all Defendants agree
20 that an objection by one Defendant inures to
21 the benefit of all --

22 MR. BRUCH: No, I don't agree to that.

23 MR. MASON: Okay, he has to object,
24 the rest of us do not.

25 MR. BROMBERG: We all agree other than

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2 Certainteed, that when an objection is made
3 by any Defendant, it is as though it was made
4 by all, for purposes of preservation of
5 record.

6 MR. GALLO: Dan, you'll join in every
7 objection that you want to join in then,
8 otherwise you're not objecting?

9 MR. BRUCH: I'll take exception
10 to that.

11 MR. GALLO: Mr. Locks, are you now
12 joining in all objections without stating so?

13 MR. LOCKS: I will join in all other
14 Plaintiffs' counsel objections.

15 MR. BROMBERG: And that is true of all
16 other Plaintiffs, as well, we said off the
17 record.

18 MR. LOCKS: Mr. Gallo, you did mention
19 this was noticed in some twelve cases.
20 My notice contains eight cases, so I'm going to
21 ask that you double check your count or rattle
22 off the names of the cases.

23 MR. MASON: I only have ten cases.

24 MR. BRUCH: I have ten.

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2 MR. FORTE: Ladies and gentlemen,
3 we're now on the record.

4 Ladies and gentlemen of the Jury, this
5 is a videotape deposition for the Court of
6 Common Pleas, Philadelphia County.

7 My name is Claude Forte, assisting
8 today is Earle Strain. I'm the videotape
9 operator and notary public in and for the
10 Commonwealth of Pennsylvania, employed by
11 Knipes-Cohen Associates, Registered
12 Professional Reporters, 400 Market Street,
13 Philadelphia, Pennsylvania. The court
14 reporter for today is Suzanne McLaughlin
15 White.

16 The caption of today's case is as
17 follows, Donald Weisberg, Esquire and Meyer
18 A. Bushman, Esquire, Co-Executors of the
19 Estate of Melvin P. Timbers, versus Bell
20 Asbestos Mines, et all. Additional captions
21 in this matter will be attached to the written
22 record.

23 This deposition is being taken on
24 behalf of the Defendant, Bell Asbestos Mines,
25 at the offices of Knipes-Cohen Associates, 400

1
2 Market Street. Appearances today are F. James
3 Gallo, Attorney for the Bell Asbestos Mines,
4 Ltd. Other counsel involved in the litigation
5 will be identified on the written record, identify
6 themselves at the time of cross examination.

7 Today's date is February the 1st, 1982,
8 and the time is 10:40 a.m.. The deponent for
9 today is Leon D. Horowitz.

10 The reporter will now swear in the
11 witness.

12 - - -

13 LEON D. HOROWITZ, after having first
14 been duly sworn, was examined and testified
15 as follows:

16 - - -

17 MR. MASON: Off the record.

18 MR. FORTE: Off the record, the time
19 is 10:40.

20 MR. MASON: I object to the
21 preparation of a videotape for presentation in
22 the case where the caption mention, or where the
23 transcript mentions the caption of another and
24 different case. For example, I would object
25 to the transcript being used in Elsie Hayden cases

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2 mentioning the Weisberg case. I don't know
3 how you can set it up, the case tape for
4 each separate case should mention the caption
5 for that separate case only.

6 MR. BRUCH: I join in that objection.

7 MR. BROMBERG: I would also.

8 MR. FORTE: Want to go back, read
9 that, just say that the captions of these cases,
10 matter, will be attached to the written record?
11 I was given this as a starter.

12 MR. GALLO: Go back and do that.
13 Make all references in the singular.

14 - - -

15 MR. FORTE: Ladies and gentlemen,
16 we're now on the record.

17 Ladies and gentlemen of the Jury, this
18 is a videotape deposition for the Court of
19 Common Pleas.

20 My name is Claude Forte. Assisting
21 me today is Mr. Earle Strain. I'm employed
22 by Knipes-Cohen Associates, Registered
23 Professional Reporters, 400 Market Street,
24 Philadelphia, Pennsylvania.

25 The caption for todays cases will

1
2 be followed -- will be attached to the
3 written record.

4 This deposition is being taken
5 on behalf of Defendant, Bell Asbestos Mines,
6 Limited, at the office of Knipes-Cohen
7 Associates, 400 Market Street.

8 Appearances today are, F. James
9 Gallo, Esquire, Attorney for the Defendant,
10 Bell Asbestos Mines. All other counsel are
11 present, and will be identified on the written
12 record.

13 The deponent for today is Mr. Leon D.
14 Horowitz. Today's date is February the 1st,
15 1982, and the time is 10:42 a.m.

16 The reporter will now swear in the
17 witness.

18 - - -

19 LEON D. HOROWITZ, after having first
20 been duly sworn, was examined and testified
21 as follows:

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23 DIRECT EXAMINATION

24 - - -

25 BY MR. GALLO:

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Leon Horowitz - Direct

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Q. Mr. Horowitz, good morning. My name is James Gallo. I represent Bell Asbestos Mines Limited in this case.

Would you state your full name for the record, please?

A. Leon David Horowitz.

Q. How old are you, sir?

A. I'm sixty-three and a half years old.

Q. And, where do you live?

A. I live in Burlington, Massachusetts.

Q. And, your address?

A. 78 Macon Road, Burlington, Massachusetts.

Q. What do you do, sir?

A. I'm Chief Industrial Hygiene of the Hygiene Section for American Mutual Insurance Company, Wakefield, Massachusetts.

Q. And, would you tell us, briefly, what your duties involve?

A. I am Director of an accredited laboratory, and a Staff Consultant to Field Industrial Hygienist and Loss Control Consultants.

Q. Could you tell us what an industrial hygienist is, please?

A. An industrial hygienist is a person who

1
2 evaluates and measures and defines and controls --
3 and helps control hazardous conditions due to toxic
4 dusts, vapors and chemicals in an industrial
5 plant.

6 Q. Would you tell us what your educational background
7 is, please?

8 A. I am a Graduate Chemical Engineer, Bachelor of
9 Chemical Engineering from the College of the City of
10 New York in 1942. I had one semester in Chemical
11 Engineering at the University of Colorado without any
12 -- no degree. That is my formal education.

13 Q. After graduating in 1942, what did you do?

14 A. I went to the War in 1942 until 1946. And then
15 was employed by the Division of Industrial Hygiene,
16 New York State Department of Labor for approximately
17 nine years. Then, I was a consultant in the field of
18 Industrial Hygiene for four years in New York City.
19 After that, I was employed by Keasbey and Mattison.

20 Q. In what year, sir?

21 A. In the year of 1960. And two years after that,
22 Certainteed bought them out and I continued with
23 Certainteed in the year 1968. In 1968, I was employed
24 by my present company, American Mutual Insurance
25 Company.

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2 Q. Sir, going back to your years with the
3 Division of Industrial Hygiene for the State of
4 New York, could you give us some detail of what
5 your job involved?

6 A. Essentially, it was two fold. One was as an
7 arm of the Safety Division, we visited industrial
8 plants throughout the -- throughout New York State,
9 and surveyed for what we call, occupational -- potential
10 occupational disease hazards. And, we also examined
11 all exhaust system plans, designed by all of industry
12 in New York State, made corrections and followed up by
13 testing those systems, after they were installed.

14 Q. What was your title with the State?

15 A. I started as an Industrial Hygiene Engineer, and
16 continued when I left as a Senior Industrial Hygiene
17 Engineer.

18 Q. Did your work with the State of New York involve
19 you at all with industries that used asbestos?

20 A. It involved all industries in New York State,
21 including asbestos, yes.

22 Q. Could you give us some examples of industries
23 using asbestos that you were involved in surveying?

24 A. The only industries I recall visiting were
25 the Todd Shipyard, and actually, it was a contract of

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Leon Horowitz - Direct

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who was cutting up insulation for plumbing systems in the Todd Shipyard. And one manufacturer that made asbestos gloves in Up-State New York in Gloversville or Amsterdam, I don't recall where it was.

MR. LOCKS: I'm sorry, Mr. Horowitz --

THE WITNESS: Yes.

MR. LOCKS: -- I didn't hear your answer.

THE WITNESS: I -- the only involvement while I worked with the Division of Industrial Hygiene, in the State of New York, was with a contractor for the Todd Shipyards, in which they were cutting up insulation for preparation for use in the Yard or on the ship, as well as an asbestos glove manufacturer in Gloversville or Amsterdam, New York, somewhere around there.

BY MR. GALLO:

Q. In your work as an Industrial Hygienist from 1956 to 1960, after you left the State of New York, did you come in contact with any industries involved with asbestos?

A. No, none.

Q. During the course of your work for the State of New York, what were the methods that you used to

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Leon Horowitz - Direct

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survey a particular dust hazard?

A. At that time, the State of the art for all dust was capturing the dust particles in what was called a midget impinger, which contained a liquid isopropyl alcohol or water, and then was brought back to the laboratory for counting under what was called the light field dust count method.

MR. SHEIN: I object to the witness' answer. The witness has been called as a fact witness, and he is now testifying as an expert witness as to what the state of the art was at that particular time. I move the answer and the question be stricken.

BY MR. GALLO:

Q. Was the method which you just described, the method that you actually used in performing your duties?

A. That is the method which I actually used, yes.

Q. And, was there a standard against which you were comparing the findings --

MR. SHEIN: Object to the question --

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Leon Horowitz - Direct

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BY MR. GALLO:

Q. -- which you came up with?

MR. SHEIN: -- as to standard, again
going into expertise.

BY MR. GALLO:

Q. You may answer.

MR. LOCKS: Also, object to the
form of the question.

THE WITNESS: There is no -- sorry.

THE COURT REPORTER: Object to the
form of the question?

MR. LOCKS: Correct.

BY MR. GALLO:

Q. You may answer, Mr. Horowitz?

A. The exercise of taking samples is useless
without comparing it to a standard, and therefore,
a standard had to be used.

Q. What was the standard which you used in taking
these dust counts?

A. The standard --

MR. SHEIN: Rather than my keep
objecting, let this objection, if you will
agree, go to this entire line of questioning
of standards, as I believe that calls for

Leon Horowitz - Direct

expert testimony and opinion. And he has only been offered as a fact witness, unless you wish to change that?

MR. GALLO: No, I don't wish to change it, and you certainly have a continuing objection to this line of questioning, Mr. Shein.

MR. SHEIN: Thank you.

THE WITNESS: What was the question?

BY MR. GALLO:

Q. What was the standard which was employed by you in taking dust counts during your work with the New York State Department of Labor, Mr. Horowitz?

A. The standard employed by me was five million particles per cubic foot as established by the American Conference of Governmental Industrial Hygienists.

Q. What is that body?

A. That body is a group of Governmental people who annually or semi-annually get together and decide on standards such as this.

Q. Is this a standard that was in use in areas other than New York State?

MR. SHEIN: Objected to as leading.

1
2 BY MR. GALLO:

3 Q. You may answer.

4 A. Yes, it was. It's a National standard.

5 Q. Was it at the time that you were using it?

6 A. It was a National standard at the time I used
7 it.

8 Q. At some point in time, did you come to work for
9 Keasbey and Mattison Company?

10 A. Yes, I did.

11 Q. Explain to us how you came to work for them.

12 A. After consulting for four years, I would peruse
13 the help wanted ads and in the New York Times, there
14 was an advertisement for a Dust Control Engineer in
15 Ambler, Pennsylvania, in 1960.

16 Q. Did you respond to it?

17 A. I responded to it.

18 Q. And, as a result of responding to it, were you
19 hired by Keasbey and Mattison?

20 A. Yes, I was.

21 Q. And, what month was that?

22 A. In, I believe, May of 1960.

23 Q. What were your functions as far as the
24 capacity in which you were hired?

25 A. I was hired to design and have installed all

1
2 industrial exhaust systems pertaining to the control
3 of toxic dust, gases and fumes.

4 Q. And, did your duties, thereafter expand, to
5 include other areas or functions?

6 A. Yes, it did. I included or my duties
7 included industrial hygiene work for the Company.

8 Q. And how does that differ from the Dust
9 Control Engineering which you explained a moment
10 ago?

11 A. As defined earlier, an industrial hygienist's
12 function is to recognize, evaluate and control the
13 hazards mentioned, and a dust control engineer is
14 a very narrow part of that in the control aspects
15 of a dust exposure.

16 Q. Does the dust control engineer actually design
17 the equipment?

18 A. He designs the equipment.

19 Q. Did you do that?

20 A. Yes, I did.

21 Q. After Certainteed took over the operation of
22 certain plants from Keasbey and Mattison, I believe
23 you indicated that was 1962.

24 A. Yes.

25 Q. Did your duties remain the same, or did they

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Leon Horowitz - Direct

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change, and if so, how?

A. They remained the same immediately, but changed later on.

Q. Now, how did they change?

A. The Safety Director for Certainteed Products left the company, when they sold one of their divisions called Vesterol, and he went with them. I believe Georgia-Pacific picked them up. And they asked me to take over his duties as Safety Director for the whole company.

Q. That was a corporate-wide, company-wide --

A. A corporate-wide, company-wide position.

Q. About when did that occur?

A. I don't know exactly, but about '65, I would say.

Q. From the time you were hired with Keasbey and Mattison, what was the scope of your duties in terms of the geographical scope?

A. My function in dust control covered every plant that was part of Keasbey and Mattison.

Q. What plants did you visit, as part of Keasbey and Mattison?

A. I visited the local plants in Ambler. I may get the numbers wrong, but there was a shingle plant at

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Leon Horowitz - Direct

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the time, Plant 1, I believe.

THE COURT REPORTER: There was a
shingle plant --

THE WITNESS: There was a shingle
plant in Ambler. There was a pipe, asbestos
cement pipe plant in Ambler. And there was
an insulation plant in Ambler, Plant 4, I
believe, which had an attachment, a smaller
plant, which did some rubber asbestos type of
work.

BY MR. GALLO:

Q. Did you visit plants in other parts of the
Country?

A. Yes, I did. I visited St. Louis, and I visited
Santa Clara. I visited Perth Amboy, in a roofing
plant, and I visited Plant 10 in asbestos textile in
Meredith, New Hampshire.

Q. All right.

After you became employed by Certainteed,
did you continue to visit plants nationwide?

A. At that time, the only Keasbey and Mattison
plants retained by Certainteed were the asbestos cement
plants, and until I became Safety Director, I visited
the asbestos cement plants. After becoming Safety

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Leon Horowitz - Direct

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Director, my function as Dust Control Engineer was passed on to another draftsman in the Engineering Department, under my tutelage, you might say --

THE COURT REPORTER: I couldn't hear you.

THE WITNESS: Under my tutelage, and I visited all of Certainteed plants including the roofing plants and their fiberglas plant, which they picked up later on as well as the asbestos cement plants.

BY MR. GALLO:

Q. At the time you went with Keasbey and Mattison in 1960, what was your understanding of the nature of the asbestos related disease?

MR. COHEN: Objection.

MR. SHEIN: Objection.

MR. COHEN: Again, you're calling for a statement that only an expert is qualified to give. There has been no qualification of Mr. Horowitz as to his ability to answer the question accurately. So, I would object to any questions going to his knowledge or understanding unless there's qualification.

BY MR. GALLO:

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Leon Horowitz - Direct

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Q. You may answer the question, Mr. Horowitz.

What was your understanding --

A. My understanding as to the nature of this disease at that time, was that it was one of the -- what we call pneumoconiosis disease.

Q. What disease entity are you talking about?

A. That has to do with a lung disease due to exposure to dust.

Q. What is the name of the disease you're talking about?

A. Asbestosis.

Q. And, how did you understand that that disease was contracted?

A. By breathing --

MR. LOCKS: Continuing objection.

THE WITNESS: By breathing asbestos.

MR. LOCKS: We have a continuing objection, excuse me, Mr. Gallo, without restating it for the same reasons stated to the prior question.

MR. GALLO: Yes, sir.

BY MR. GALLO:

Q. And, how did the standard of five million particles per cubic foot that you mentioned earlier, relate to the disease?

Leon Horowitz - Direct

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MR. LOCKS: I object to that.

There is no foundation whatsoever that this witness has any knowledge as to the components of that standard, the manner in which it was developed or, in fact, any information --

MR. GALLO: All right, you have a continuing objection to all questions regarding the standard and regarding the --

MR. LOCKS: I'm stating an additional basis, there's no foundation for this witness at this point in time for that.

BY MR. GALLO:

Q. Did you have any understanding as to the manner in which asbestosis related to the five million particles per cubic foot standard?

A. I believe there was a study by the U.S. Public Health Service, which helped -- which was part of the documentation and the reasoning that the ACGIH, American Conference of Governmental Industrial Hygienists, decided to use that as a standard, and we used it in the State of New York.

Q. What was your --

MR. LOCKS: I object to the answer, move that it be stricken on the basis that the

witness has stated, I believe, any kind of
opinions or statements about what he believes
is not proper testimony.

BY MR. GALLO:

Q. When -- when you say that the standard you
believe was used by the State of New York, was it,
in fact, the standard you were using?

A. I didn't say that I believe it was used by the
State of New York. It was used by the State of New
York. I said, I believe that it was -- the way it was
brought out or brought up was by the ACGIH based on a
study done by the U.S. Public Health Service.

MR. COHEN: Also, object to it

as hearsay.

BY MR. GALLO:

Q. What was your understanding as to whether
asbestos, asbestosis would occur, if the standard
were observed?

MR. LOCKS: Object to the form of

the question.

BY MR. GALLO:

Q. You may answer.

A. The definition and explanation of a standard
in the ACGIH listing, defines the standard as a limit

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2 that the people who promulgated the standard, believe
3 it will protect eighty percent of those exposed to
4 asbestos.

5 MR. COHEN: Object to the testimony
6 based upon hearsay and based upon best evidence
7 rule. Ask that it be stricken.

8 BY MR. GALLO:

9 Q. Was that your understanding of the nature of
10 the standard in the way it related to asbestosis at
11 the time you went with Keasbey and Mattison?

12 A. That was my understanding.

13 Q. Did you have any knowledge at that time of any
14 other diseases alleged to have been caused by
15 asbestos?

16 A. I had no knowledge of any other disease at that
17 time that was related to asbestos -- asbestos.

18 Q. All right.

19 At some time after joining Keasbey and
20 Mattison, did you learn of a suspected link between
21 asbestos exposure and cancer?

22 A. Yes, I did.

23 Q. How did that occur?

24 A. I read it in the literature somewhere.

25 Q. What did you read, do you recall?

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2 A. Reference to the fact that in other countries,
3 like England and South Africa, some investigation
4 concluded or did not conclude, but did say there may
5 be an association to -- between the cancer, the lung
6 cancer and asbestos.

7 Q. All right.

8 Did you subsequently learn from anyone
9 through personal discussions that there was such a
10 suspected cancer?

11 MR. SHEIN: Counsel, you're saying
12 subsequently, I'm not certain a date has
13 been given for this question in the first
14 instance.

15 MR. GALLO: All right.

16 BY MR. GALLO:

17 Q. Approximately what time did you come across
18 these articles that you just described?

19 A. Early in my career with Keasbey and Mattison in
20 -- between May of 1960 and September of 1960.

21 Q. At some point, still in 1960, did you have
22 personal discussions or did you participate in any
23 conferences where the subject was discussed?

24 A. Well, prior to that, I contacted my insurance
25 company to find out what they knew about it. They sent

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Leon Horowitz - Direct

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me a few abstracts relating to the news that I had read, or the items that I had read.

MR. SHEIN: Object to it as hearsay unless items are going to be produced for examination at which time we may continue our objection, or reconsider it.

BY MR. GALLO:

Q. Did you subsequently or did you at some point in 1960, participate in a discussion with a Dr. Knox?

A. Yes, I did.

MR. COHEN: Objection, it's leading.

MR. LOCKS: Objection.

BY MR. GALLO:

Q. Could you tell us who he is, please?

A. Dr. Knox represented Turner-Newall in a visit to the United States at that time.

Q. Would you tell us what was discussed at that meeting, and first of all, tell us when it was?

A. Again, I don't know the exact date, but it was in 1960, somewhere around September.

Q. What was discussed?

A. The discussion -- it appeared the purpose of his visit was to inform the management of Keasbey and Mattison that there was an association between cancer

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Leon Horowitz - Direct

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and asbestos exposure.

MR. BRUCH: I object to that last
answer, and move that it be stricken.

BY MR. GALLO:

Q. Did you participate in the meeting?

A. I was invited and I sat in in the meeting,
yes.

Q. Who else was at the meeting that you recall?

A. I recall that my immediate supervisor, Mr.
Al Spedding, was there, Vice-President of Engineering
Schneider, I think or --

THE COURT REPORTER: Schneider?

THE WITNESS: I believe it was
Schneider, yes, was there, and I believe a
Mr. H. B. -- I know a Mr. H. B. Childs was
there. I think Mr. Hutchcroft was there, and
I have no real recollection whether the
President of the Company was there. I just
think he ought to -- he should have been there
and probably was, but I'm not sure.

BY MR. GALLO:

Q. What is Mr. Childs' position -- what was his
position?

MR. LOCKS: I object to that. It

calls -- it must call for hearsay.

BY MR. GALLO:

Q. You may answer.

A. My contact with him had to do with claims and he had records of various claims due to accidents and so on, so I don't recall any particular title, but I -- I believe he had a relationship with insurance for the company, that's about all I know.

MR. LOCKS: Move to strike the answer for the same reasons I talked about before, that the witness is saying what he believes and that is not proper testimony.

BY MR. GALLO:

Q. When you say, you believe that he held those positions, this is based upon your experience in working with him; is that correct?

MR. LOCKS: Jim, I'm awful sorry, I didn't hear a single thing you said, thank you to Joel.

MR. GALLO: I'll ask the reporter to read back the question and answer, please.

THE COURT REPORTER: Question: When

you say, you believe that he held those positions, this is based upon your experience in working with him; is that correct?

BY MR. GALLO:

Q. Answer?

A. Answer is yes.

Q. And what was Mr. Hutchcroft's position with Keasbey and Mattison?

A. He was in charge of research, R&D, Research and Development.

Q. And Mr. Schneider, what was his post?

A. He was Vice-President of Engineering.

Q. And was he the superior of Mr. Spedding, who was your immediate superior?

A. Yes, he was.

Q. What was discussed at that meeting?

MR. COHEN: Objection, it calls for hearsay.

BY MR. GALLO:

Q. You may answer.

A. I don't recall the whole discussion, but the part that I do recall in the time I sat in, was the urgency that Dr. Knox informed the management, or was

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Leon Horowitz - Direct

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trying to inform the management that the awareness of the association between cancer and asbestos in England was much greater than it was in the United States. He did show us a picture, which described a mesothelioma which I had never heard of before, and it was the first time I heard of it at that time.

Q. As a result of your participation in that meeting, did you initiate certain procedures and guidelines for the Keasbey and Mattison Company?

A. We organized under Mr. Childs' direction, a Loss Control Committee, and I was asked to propose an industrial hygiene program.

Q. Did you, in fact, make such proposal?

A. I did so.

Q. All right.

I would ask you to, sir, refer to the documents which you have brought with you, and refer you, specifically, to the document that's been marked Horowitz 2.

A. Yes, I have it.

Q. Would you tell us what that is, sir, first of all, read the title of it, and the date at the end, please.

A. The title is, Proposed Industrial Hygiene

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Program for all K&M Plants, the date is 6/17/1960.

Q. All right.

A. So, apparently, the meeting was before that.

Q. But, this is the outline which you drew up pursuant to the discussions at that meeting; is that correct?

A. Yes.

Q. Would you please read for us the three main sections --

MR. SHEIN: I'm going to object to that. The document has been marked and it certainly speaks for itself.

BY MR. GALLO:

Q. Mr. Hutchcroft -- or Mr. Horowitz, is this a document that you, yourself, wrote?

A. I wrote this.

Q. And to whom did it go in the Keasbey management -- Keasbey and Mattison management?

A. To Mr. Childs and Mr. Spedding, of course.

Q. To anyone else, to your knowledge?

A. Probably, Mr. Schneider.

Q. And, does this document come from your personal file?

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Leon Horowitz - Direct

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A. Yes, it does.

Q. Would you please read to us the first two items under A?

A. Number one is evaluate existing exhaust systems and dust control equipment by engineering methods, etcetera, each system to be tested at least once each year. And number two is initiate monitoring program to include dust counts of atmospheric samples obtained at each operating machine, as well as in the general air in the plant.

Q. Would you explain to us, please, exactly how a dust count is taken in an industrial setting?

MR. COHEN: Objection, objection as to how any dust count is taken at any particular setting, unless we can relate it specifically to dust counts that this witness took.

MR. GALLO: Fair enough. I'll rephrase the question.

BY MR. GALLO:

Q. Would you tell us exactly how you took the dust counts at Keasbey and Mattison?

MR. SHEIN: I have to voice a further objection that this would call for expert testimony on experience and manner of taking dust

counts, and again, it has been specifically
stated the witness is a fact witness.

BY MR. GALLO:

Q. You can answer, Mr. Horowitz, tell us,
factually, how you did it.

A. The method used is called the impinger method.
The material used to retain or catch the dust is
isopropyl alchohol. It is put in a glass bottle
called an impinger flask. The -- it is -- it is
connected to, at that time, it was connected to
a hand operated pump with a rubber hose and the pump
was operated by myself, by hand, similar to an organ
grinder type of thing, and the glass tube in which
the dust was collected was held as close to the
breathing zone of the operator as possible, by me.

Q. When you say the operator, who are you
referring to?

A. The person that we were trying to determine
the exposure.

Q. Were these dust counts taken when the
production operation was actually going on?

A. When it was -- when the operation was
actually going on, yes.

Q. Is that the only way that they can be taken?

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2 A. No, it could be taken at many conditions, but
3 whatever the conditions are, you enumerate the
4 conditions and then you evaluate by saying, by
5 knowing what the conditions were when you took the
6 sample. So, we might be operating the machine heavily
7 or lightly, or not at all, nevertheless, that is part
8 of the evaluation.

9 Q. The individual, whose exposure was being
10 measured, was this a production line worker?

11 A. It could be a production line worker, it
12 could be a helper, it could be anybody.

13 Q. All right, it was an employee of the company
14 working in the plant?

15 A. It was an employee of the company, yes, who
16 was exposed.

17 Q. And, how long would you stand there taking
18 the count, how long did this usually take?

19 A. At that time, three ten minute samples were
20 obtained at each operation. And the results were
21 averaged for reporting purposes.

22 Q. Can you indicate to us just how close you would
23 have to hold the intake tube to the operator?

24 A. I would have to stand and hold it as close --

25 Q. It's not going to -- indicate on your own person,

1 if you would.

2 A. As close to the breathing zone, which is the
3 nose, as possible, without interference.

4 Q. And, was this the method that was used during
5 your years, both with Keasbey Mattison and with
6 Certainteed?

7 A. That was the only method I used during those
8 periods.

9 Q. And that's an eight year period, am I
10 correct?

11 A. That's an eight year period.

12 Q. Would you please read for us the three items
13 under Number three of this document.

14 A. For in -- for inadequate existing exhaust systems,
15 a, reconstruct where possible, b, replace obsolete
16 and inadequate equipment, c, completely redesign
17 exhaust system, where necessary.

18 Q. And, would you read items b and c, please?

19 A. B and C under three?

20 Q. The main items, B and C.

21 A. On the back, I'm sorry.

22 Under item b, personal respiratory
23 protective equipment to be used only as a secondary
24 means of dust control, and c, medical control.
25

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2 Q. Would you read the subsections under Medical
3 Control, please?

4 A. 1, is pre-employment and routine physical
5 examinations, including x-rays, 2, rotation of
6 employees where required, and 3, education for personal
7 and industrial hygiene.

8 Q. Under item b, where you refer to personal
9 respiratory protective equipment as being secondary, as
10 a means of dust control, what is meant by that?

11 A. My position, as well as many others in industrial
12 hygiene is that dust -- that respiratory is a --
13 only a temporary and not a positive method of protection
14 of the worker.

15 Q. What -- if respirator use is secondary, what
16 did you understand at that time to be primary?

17 A. Engineering method, change of process, industrial
18 exhaust systems, things like that.

19 Q. Would you please now refer to the document
20 that's been marked Horowitz 3.

21 MR. COHEN: Let me just interpose an
22 objection with regard to Horowitz 2, in that
23 the witness has not been asked to read -- he
24 has been read -- asked, rather, to read selected
25 portions under the document completeness, if he

1 is to read the exhibit, it should be read in
2 toto, rather than selectively omitting areas of
3 the document which may not be as beneficial
4 to the witness. I ask that he read the
5 entire section under B, and if he's going to
6 read the exhibit again, that we go through
7 it, in toto.
8

9 MR. GALLO: Your objection is
10 noted.

11 BY MR. GALLO:

12 Q. Would you please refer to Horowitz 3.

13 Would you please read to us, sir,
14 the title and date of the document.

15 A. Notes on Papers at 13th International Congress
16 on Occupational Health, and the date is August 3rd,
17 1960.

18 Q. Is this a document authored by you?

19 A. Yes, it is.

20 Q. And, to whom did the document go?

21 A. It went to Mr. Spedding. I was reporting on a
22 meeting.

23 Q. All right.

24 Would you tell us the circumstances
25 of that meeting and your attendance, were you asked to

1 attend by some -- one of your superiors?

2 A. Usually, I ask to attend myself and was given
3 permission. And, I'm sure that's what occurred in
4 this case.
5

6 Q. During the course of your work with Keasbey
7 and Mattison and Certainteed, did you attend various
8 meetings dealing with industrial hygiene?

9 A. Yes, I did.

10 Q. Meetings by various organizations?

11 A. Yes, I did.

12 Q. And, was it your usual practice to report to
13 your superiors the transactions of these meetings?

14 A. Only those that were pertinent to our problems.

15 Q. And those problems being what, sir?

16 A. Anything having to do with exposure to asbestos
17 dust, silica dust, talc and mica, etcetera.

18 Q. Were these all substances that were used in the
19 Keasbey and Mattison and Certainteed processes?

20 A. Yes, they were.

21 Q. And, is this a summary or a true and correct
22 copy of a summary that you prepared from this particular
23 meeting?

24 A. Yes, it was.

25 MR. SHEIN: I object to the document,

any reference to it, as it is replete with hearsay. And the conclusions of the witness which conclusions necessarily call for expertise.

BY MR. GALLO:

Q. Mr. Horowitz, would you please read paragraph 5?

A. The relation between asbestos and lung cancer has not been firmly established. Lung cancer related to industry require much study.

Q. Thank you.

MR. BRUCH: Can we have a date on that document?

THE WITNESS: Yes, that was the August 3rd, 1960.

MR. SHEIN: And I specifically object to that statement as being a conclusion derived from listing to multiple testimony, which conclusions may be in error.

BY MR. GALLO:

Q. Would you please turn to Horowitz 4.

Have you looked at that document, sir?

A. Yes.

Q. Would you tell us what it is entitled, and what

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the date is?

A. The title is Dust Collection Cut-Off Saw, and the date is August 19th, 1960.

Q. It appears to be a letter, sir; is that what it is?

A. Yes, it is.

Q. Who's it going to and who's it from?

A. It's going to Mr. Charles D. French, who is Plant Manager of Plant 8 at the time, and it was written by my supervisor, A. W. Spedding.

Q. Did you have anything to do with the writing of this letter?

A. I was asked to determine a design for this particular operation, and the letter was written by the -- by my supervisor.

Q. Could you --

MR. LOCKS: Would you be kind enough to read that answer back, Miss Reporter?

(Whereupon the court reporter read back the previous answer.)

BY MR. GALLO:

Q. Try and keep your voice up, Mr. Horowitz.

A. Yes, I'm sorry.

Q. Did you have anything to do with furnishing the

1 information that went into this letter?

2 A. Yes, I did.

3 Q. Would you please read to us the first
4 paragraph?

5 A. You are probably aware that it is Central
6 Engineering Division's responsibility to maintain a
7 healthy and dust free industrial atmosphere in all
8 K&M Plants. One method of obtaining such conditions
9 is to properly redesign and/or install exhaust
10 systems for new machines or relocation of old ones.
11 With this in mind, our dust control section was
12 requested to design an exhaust system for your new
13 cut-off saw for reworking pipe.

14 Q. The reference to the word -- to the term, dust
15 free in the first sentence, was that intended to
16 include asbestos dust?

17 MR. LOCKS: I object.

18 MR. COHEN: Objection, the witness has
19 stated that a, he did not write the memorandum,
20 it is hearsay as to whether any -- as to who
21 authored it. Now, we're asking the witness to
22 get into the mind of the author of that document
23 and anticipate what was meant by the author.
24 I would object to it on that basis, and I would
25

like to take a continuing objection to the practice of having the witness selectively read a paragraph or line in an exhibit to the exclusion of other material that is contained on there.

MR. GALLO: You can have a continuing objection to that.

BY MR. GALLO:

Q. Would you answer the question, please, Mr. Horowitz?

A. I would like to hear it again, please?

Q. Did the term, dust free, include asbestos dust?

A. Yes, especially in particular to this cut-off saw.

Q. Why was that?

A. Because the cut-off saw was cutting asbestos cement pipe.

Q. And, there's reference to a dust control section, what is that?

A. That was me.

Q. Did you have any assistance or understudies?

A. I had, for a short time, in training, a young recent Graduate of Drexel, John McGinney, who Mr.

1
2 Spedding asked me to use as an assistant in the field
3 of dust control and industrial hygiene, yes.

4 Q. Did he assist you in taking dust counts?

5 A. For a short time.

6 Q. Incidentally, these documents that we've
7 discussed so far, are these documents that you kept in
8 your file at Keasbey and Mattison in the regular
9 course of your duties?

10 A. Yes, they were.

11 Q. Would you turn to Horowitz 6, please? Would
12 you read the title of that, please, and the date?

13 A. The date is October 13th, 1960. It was directed
14 to all Plant Managers and the title was Respirator
15 Program for all K&M Plants.

16 Q. I notice on this document that the term, K&M
17 has been crossed out at various points, and has been
18 replaced by CPC. Would you explain why that change
19 was made?

20 A. The same document was intended and was used for
21 direction to all Plant Managers after Certainteed
22 Products Corporation took over the operation.

23 Q. All right.

24 I noticed, there's a notation at the
25 bottom of the page. This memorandum was issued in 1960,

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and must be strictly enforced. And there are some
dates after that. Do they have any meaning?

A. They have meaning as to when I re-issued it.

Q. Would you read those dates to us, please?

A. August 9th, 1967, and December 6th, 1967.

Q. All right.

This is a -- is this a document that
was written by you?

A. It was written by me.

Q. Is that your signature at the bottom?

A. That is my signature at the bottom.

Q. Would you please read to us the first paragraph
and the portion of the second paragraph, before the
numbers?

MR. SHEIN: I'm going to object to
this document and all others that have
reference to this, because although it says
it must be enforced, he has not testified
whether it was, or his knowledge in that regard
at all.

MR. GALLO: Your objection is noted.

BY MR. GALLO:

Q. Would you please read those two sections,
please, Mr. Horowitz?

1
2 A. First paragraph, dust respirators must be
3 used by K&M personnel at all operations involving
4 the use of silica, cement, mica, talc and asbestos
5 dust. K&M was crossed out when it was changed to
6 CPC. The second paragraph --

7 THE COURT REPORTER: To --

8 THE WITNESS: CPC or Certainteed
9 Products Corporation.

10 A second paragraph, a program for the
11 use and care of dust respirators must be
12 promulgated at each plant in order to protect
13 the health of operating personnel. It is
14 the responsibility of the Plant Manager to
15 insure that the following program be closely
16 adhered to:

17 BY MR. GALLO:

18 Q. With respect to the first paragraph, where it
19 says, dust respirators must be used, what were the
20 methods by which that policy was enforced?

21 MR. SHEIN: Objection, we don't know
22 if it was.

23 MR. COHEN: If he knows that there
24 was such a policy.

25 THE WITNESS: The policy is here.

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BY MR. GALLO:

Q. Was there --

A. This is the policy, whether it was enforced, I -- the responsibility was the Plant Manager's.

Q. What were the methods that they used to enforce the policy?

MR. SHEIN: Objection, he did not say it was enforced.

MR. COHEN: Assumes a fact not in evidence.

BY MR. GALLO:

Q. To your knowledge, what were the methods available to the Plant Managers, to enforce the policy?

A. To my knowledge --

MR. SHEIN: Object, same question.

BY MR. GALLO:

Q. You may answer.

A. To my knowledge, the method of enforcement was posting this on the bulletin board at each plant. I guess that's the limit of my knowledge in that area.

MR. COHEN: Excuse me, can I just have a clarification, is -- are you stating

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that to your knowledge, such was posted, or that was a method that might be available?

MR. GALLO: I -- I object to your questioning him during the direct examination, Mr. Cohen. Do you have an objection?

MR. COHEN: Well, I have a right to have a clarification to determine whether it would be appropriate to lodge an objection. I don't understand the answer that was given. I'm just asking him to clarify that.

MR. GALLO: You can clarify it on cross.

MR. COHEN: All right, then for now, I'll take an objection to the answer, and ask that it be struck, since I was not given the opportunity to assess whether it was responsive to the question.

BY MR. GALLO:

Q. Mr. Horowitz, for whom was this document drawn up, or at whose suggestion?

A. As part of the Loss Control Program, I was asked -- or I determined that this type of bulletin should be presented to all Plant Managers.

Q. I refer you to item 2. Would you explain to us

1
2 what the reference is there to respirators approved
3 by the Bureau of Mines?

4 A. Shall I read the paragraph or just --

5 Q. That's all right, just explain what the meaning
6 of that term is.

7 A. There are respirators and there are
8 respirators. There are respirators and there are
9 respirators, and the -- the paragraph intended that
10 the proper respirator be used for asbestos. And,
11 at that time, the U.S. Bureau of Mines, was the
12 only body approving or testing respirators.

13 Q. Would you please turn to Horowitz 8?
14 Would you tell us what it is and the date.

15 A. It is a memo to Mr. H. B. Childs, the title
16 is Dust Control, and the date was December 1st, 1960.

17 Q. Did you receive a copy of this?

18 A. Yes, I did.

19 Q. Could you tell us the context in which Mr.
20 Childs was writing this, did it have anything to do
21 with the loss control --

22 MR. SHEIN: Objected to --

23 MR. GALLO: Can I finish the
24 question?

25 MR. SHEIN: -- as hearsay.

1
2 BY MR. GALLO:

3 Q. Can you tell us whether or not this document
4 was written by Mr. Childs in connection with his work
5 in the Loss Control Committee?

6 A. It was written by Mr. Scranton --

7 Q. Scranton, I'm sorry.

8 A. -- and it was sent to Mr. Childs.

9 Q. Did it have anything to do with the Loss
10 Control Committee?

11 MR. LOCKS: Objection.

12 THE WITNESS: I don't recall that Mr.
13 Scranton was on the Loss Control Committee.
14 I don't remember.

15 BY MR. GALLO:

16 Q. What was his position with the company?

17 A. I don't have total recall, I believe it was
18 Industrial Relations.

19 MR. STRAIN: Excuse me, gentlemen,
20 this concludes tape number one. We have to go
21 off the record, and the time is 11:29.

22 (Whereupon the following discussion
23 was off the videotape record.)

24 MR. BROMBERG: There have been quite a
25 number of objections stated, and I must confess

1 to my lack of knowledge of the detail of
2 Pennsylvania procedure on the subject. When we
3 get to trial, I assume that the fact that
4 there has been silence in response to those
5 objections, would not in any way bar
6 Defendants from arguing those issues before
7 the Court. It is on that basis that I am not
8 responding to the various objections, many of
9 which, seem to me, to be ranged from meritorious
10 to utterly without merit. So, I certainly
11 would have comments on them, but I, for one,
12 am reserving all of them for the Court. I
13 assume that would be the normal procedure, I
14 don't have to state them now?

16 MR. SHEIN: Counsel, I would agree
17 that these objections can certainly be argued
18 at the proper time. But, now that I've been
19 listening to this testimony for about an hour,
20 I must confess that I am at a total loss, even
21 after the offer of proof, to understand its
22 significance, and I object to all of it. If
23 it's being offered to support what is known as the
24 sophisticated Employer defense, why then, I
25 would remind Counsel that under Pennsylvania law,

that's not delegable.

MR. GALLO: Well, Mr. Shein --

MR. SHEIN: Let me finish my statement, if it's being offered to show the knowledge of Keasbey and Mattison, then I would remind Counsel that that is a sister corporation with both being wholly owned by Turner and Newall. And that the knowledge of one, would in our opinion, be the knowledge of the other.

MR. GALLO: Any other statements, arguments, questions, inquiries?

MR. BROMBERG: So, I assume from the silence of all Counsel, I assume in response to my comment, I assume that I do properly entertain the procedure?

MR. LOCKS: Mr. Bromberg, my silence does not concede that. So, I'll affirm that I'm not saying anything to what you've just said. Any steps that you think are appropriate to protect your client. My silence is not any tacit agreement to anything you say.

MR. COHEN: I don't want to preclude the fact that at some point we may argue that all

positions should have been placed on the record or waived, if not placed by whichever side.

With regard to Exhibit #8, I want to know whether it's -- we're on #8 now, am I correct?

MR. GALLO: Yes.

MR. COHEN: Okay. I have two copies of Exhibit 8, and to the extent that we're reading from Exhibit 8, I'm going to object because page two of one of my Exhibit 8's has one paragraph that was apparently redacted.

MR. GALLO: You can have a copy of mine, take a look at it. That's the one that will go into evidence.

MR. COHEN: Well, I just want to ask, since I was given two copies of 8, one with a redaction on paragraph one of page two, and one without a redaction --

MR. GALLO: Do you want an explanation of that, Mr. Cohen:

MR. COHEN: Well, I would like if I can, get an explanation, and be assured that I discard, if it's appropriate, the one that is redacted, so we're working a completed --

MR. GALLO: The one that will be introduced in evidence and will be attached to the deposition is complete Exhibit Horowitz 8. The non-redacted one will not be used. That was a redaction that was implemented during a recent trial.

MR. COHEN: Can I just ask the trial and matter?

MR. GALLO: Hardemon and Barlieb.

Okay, can we proceed, please?

MR. PAUL: I'm not sure if I understand. Are you saying --

MR. GALLO: The non-redacted one is being introduced now. You'll have a chance to argue for further redactions later.

(Whereupon a break was taken from 11:30 a.m. to 11:40 a.m.)

MR. STRAIN: We're now back on the record, and the time is 11:42.

MR. GALLO: The beginning of video-tape number two?

MR. STRAIN: Yes.

BY MR. GALLO:

Q. Mr. Horowitz, would you please turn to the

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document that's been marked Horowitz 9. Do you have that before you, sir?

A. Yes, I do.

Q. Would you read its title and its date, please?

A. The title is Dust Control Report, and the date is December 6th, 1960.

Q. Would you turn to the last page, and tell us whose name appears there?

A. Dr. Almand C. Stabler, M.D..

Q. Did he write this document?

MR. COHEN: Objection.

MR. SHEIN: I object to that. He wouldn't know that, and I object to the document as it contains multiple hearsay.

BY MR. GALLO:

Q. For whom was this document written?

MR. COHEN: Objection.

BY MR. GALLO:

Q. Mr. Horowitz --

MR. COHEN: I'm sorry, so my objection -- it calls for hearsay, it calls for information which has not been established which is personally known to the witness. It calls for conclusion, therefore.

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BY MR. GALLO:

Q. Mr. Horowitz, is this a document that was in your file during the years that you were with Keasbey and Mattison?

A. Yes, it was.

Q. And did it continue in your file during the years you went with Certainteed?

A. Yes, it was.

Q. And, did it continue in your possession until today?

A. Yes, it is.

Q. Could you tell us what the circumstances were for the writing of this document?

MR. COHEN: I'm going to note my objection. The subsequent questions to the witness after my earlier objection did absolutely nothing to qualify your -- or contain the objectionable nature of the question initially.

BY MR. GALLO:

Q. You can answer, sir.

A. It was a reporting by a consultant medical person, consultant to Keasbey and Mattison, a reporting of the existence of a relationship of the disease, of the exposure to asbestos.

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Q. Was this a document that you received in the course of your duties as an industrial hygienist for the company?

A. Yes.

Q. And, was it written in the usual course of business?

MR. COHEN: Objection. The witness can have no possible knowledge as to whether Dr. Stabler's authorship of the letter, even assuming, in fact, he did, was in the ordinary and routine course of the doctor's business.

BY MR. GALLO:

Q. You can answer.

MR. SHEIN: More over, the document is unsigned.

BY MR. GALLO:

Q. You may answer, sir.

A. Yes, he was reporting to the Loss Control Committee.

Q. The Loss Control Committee is the body that you described earlier?

A. Yes.

Q. And you were on that Committee, am I correct?

A. Yes.

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Q. And, was it in your capacity as a member of that Committee, that you received a copy of this document?

A. Yes.

Q. Would you please read to us the first two paragraphs?

A. It is difficult to reach any definite conclusion on the subject of occupational chest diseases in asbestos industries. Asbestosis of the lung is a constant fear of all employees, and a problem to management. There is comparatively very little known of the disease, especially in its beginning and early stages. How to control its cause is still theoretical. There has not been enough research and study of asbestosis to protect the industry.

Q. Sir, would you please turn to the second page, and read to us the section entitled B, Programs we now have.

MR. BROMBERG: Can you identify a date, perhaps he did, Mr. Gallo, I may have --

THE WITNESS: Yes, the date was December 6th, 1960.

MR. BROMBERG: Thank you.

MR. COHEN: Can we just have a notation of my continuing objection to having the witness reading selected portions of exhibits.

MR. GALLO: I will give all Plaintiffs' counsel a continuing objection to the reading of any portions of the documents, if that will serve to speed things up.

MR. COHEN: It will.

MR. BRUCH: Mr. Gallo, I also have a minor objection. You used the word company when you're referring to the document by Dr. Stabler. And I represent Certainteed, and I don't know that Dr. Stabler was ever employed by Certainteed. When you use the word company, I wish you would qualify Keasbey-Mattison, if you're going to refer to this document.

MR. GALLO: All right.

BY MR. GALLO:

Q. Would you read to us Section B, beginning on page two, please, Mr. Horowitz?

A. In a program we now have, column one, pre-employment examination and chest x-ray, including a

1 detailed history of past dust exposure and lung
2 conditions. Two, medical inspection upon return to
3 work, of all employees that have been out of work over
4 three days because of illness. Three, yearly x-ray
5 pictures of all employees on a voluntary basis.
6

7 Shall I read the subs?

8 Q. Please.

9 A. Sub under 3, a, we are fortunate in having a
10 well qualified doctor to read the x-rays. He is a
11 chest specialist experienced in the reading of x-rays,
12 and also as an expert witness at many Court hearings.
13 B, any x-ray picture that is suspicious is re-x-rayed
14 with a regular large x-ray plate. C, persons whose
15 x-rays are normal are so informed. D, persons whose
16 results are questionable have their reports mailed
17 to the family doctor of the employee, and the individual
18 is notified of the action taken. This report contains
19 the findings of the x-ray, but no diagnosis. E, all
20 cases that need adjustment of their jobs are removed
21 from any dust areas.

22 Q. I think item four is also part of sub-division

23 B.

24 A. Item four, dust exhaust fans and respirators
25 are used in certain areas of the plant.

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Q. Would you --

MR. BROMBERG: I'm sorry, Mr. Gallo, for the record I would like to indicate that I do want to reserve for the time of trial, the right to move to strike those portions of the witness' testimony, where he is reading from an exhibit. I don't know whether I will or not -- will not. So, I want to reserve it because it may be that I wish to offer the entire exhibit, itself, and would not want to have cumulative testimony.

MR. GALLO: I would state at this time that I certainly intend to offer all of these exhibits in their entirety. And I'm not waiving that right, by having the witness read parts of them.

MR. SHEIN: Well, then I renew my previous objection about the reading.

MR. GALLO: I understand.

BY MR. GALLO:

Q. Would you please read the first item under number C, Program we need?

A. Extensive dust count control, it is an accepted fact that over a space of years, the lower the dust

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count the fewer number of asbestos cases.

Q. Is that asbestosis cases?

A. I'm sorry, asbestosis cases.

Do you want me to read 2?

Q. I think there are more under 1.

A. Since this is a proven practical application,
we must use it to its best advantage.

Q. Would you please read item 7?

A. Gaining the confidence of employees, a, since
it is obvious that each year more cases of alleged
asbestosis are arising and going to Court, we cannot
ignore it. We should take the initiative in dust
control, preventive medicine and education of
the employee to the effect that management is
interested in their welfare and protection.

Q. Would you turn now to Horowitz 13,
please?

A. Yes.

Q. And, would you tell us -- give us the title
and date of that document, and tell us what it is,
please?

A. Asbestos Textile Institute Meeting, Air
Hygiene and Manufacturing Committee, June 8th and 9th,
1961, the memo was written June 12th, 1961.

1 Q. By whom was it written?

2 A. It was written by me to Mr. A. W. Spedding.

3 Q. All right.

4 A. With a copy to Mr. Childs.

5 Q. And, could you tell us how it is that you
6 prepared this summary?

7 A. I represented the company at the Asbestos
8 Textile Institute Meeting, and my duty, primary
9 duty, was to inform my immediate supervisor of the
10 contents of that meeting relating to the subject,
11 or the area of -- of -- that I covered for the
12 plant.

13 Q. Was this part of your usual practice, to
14 report to the company on meetings you attended?

15 MR. BRUCH: I have the same
16 objection to the use of the word, company,
17 in both the question and the witness used
18 it. The document is dated 6/12/61 and it
19 says Keasbey Mattison --
20

21 THE COURT REPORTER: I'm sorry,
22 I can't understand what you said.

23 MR. BRUCH: Says Keasbey Mattison,
24 I would like that to be known as the
25 company you're referring to in respect to

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the ATI.

MR. GALLO: Let me rephrase it,

Mr. Bruch.

BY MR. GALLO:

Q. In reporting to the people you reported to in writing this memorandum, were you following the usual procedure that you have in your years with Keasbey and Mattison, of preparing memoranda for meetings you attended?

A. Yes.

Q. Did that practice continue after you went with Certainteed?

A. Yes.

Q. After Certainteed took over?

A. Yes.

MR. BRUCH: I object to that, and

move to strike the answer.

BY MR. GALLO:

Q. Who else was present for Keasbey and Mattison at this meeting?

A. John McGinley was present and Dr. Stabler, yes.

Q. Do you recall why it was that Dr. Stabler was present?

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A. I suggested that he come to the meeting because I knew that Dr. Kenneth Smith of Johns-Manville would be talking.

Q. What subject was he going to discuss?

A. The subject of health aspects related to asbestos.

Q. Any particular health aspects?

A. In particular, relationship to cancer.

Q. And, Dr. Stabler did, in fact, attend this meeting?

A. Yes, he did.

Q. Would you please look at the first paragraph under discussion. There is a sentence there, I believe it's the second sentence, each member submitted its dust counting technique and existing medical program. Do you see that sentence?

A. Yes.

Q. Did Keasbey and Mattison, in fact, submit its techniques?

A. Yes.

Q. Were they comparable to those submitted by the other companies?

MR. SHEIN: Objection.

MR. COHEN: Objection.

1 BY MR. GALLO:

2 Q. You may answer.

3 A. Yes, as described previously -- as I described
4 previously, yes.

5 Q. All right.

6 Would you please turn to the document
7 marked Horowitz 15 --

8 MR. COHEN: Excuse me, can I just
9 ask, I notice Mr. Horowitz is reading from
10 a different form of the document than I have.
11 Can I assume that when the deposition record is
12 prepared, that the -- it looks like a typewritten
13 carbon of the document will be included as
14 the Exhibit?

15 MR. GALLO: No, off the record,
16 off the videotape.

17 MR. STRAIN: We're going off the
18 record is now, and the time is 11:54.

19 (Whereupon the following discussion
20 was off the videotape record.)

21 MR. COHEN: Since Mr. Horowitz is
22 apparently reading from a -- what appears to be
23 a copy of a typewritten document, that was made
24 simultaneously with the original, and I have
25

1 Leon Horowitz - Direct 82
2 what appears to be a xerox copy that has been
3 represented by counsel as being an exact
4 duplicate of what he is reading, my question
5 is, first, will the document that Mr. Horowitz
6 is reading from be appended to the original
7 copy of the deposition. And I've been advised
8 by counsel that it will not be. And if that
9 is the case, then I want to object to the
10 introduction of any of these documents and
11 records, based on the best evidence rule,
12 and based upon the fact that he has those
13 documents. If they are not made available at
14 the time of trial, we're precluded, I think,
15 from meaningful examination as to the documents.

16 MR. GALLO: Okay, my only response
17 to that is that you'll be provided with true
18 and correct copies of the documents that Mr.
19 Horowitz is referring to, at the time you
20 receive copy of the deposition.

21 MR. COHEN: Okay, we'll I just want
22 to have an objection, I'll do so at the time of
23 trial to anything other than the document that
24 the witness is reading from.

25 MR. SHEIN: Well, I'm going to ask, in

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view of this, that each document he has be referred to be marked as an exhibit and you may use the exhibit numbers from the previous deposition, and append it to this deposition.

MR. GALLO: That's what we intend to do.

MR. BROMBERG: I would suggest that if anyone has any question as to whether the photocopy is the same as the items, that Mr. Horowitz has produced here and is referring to, that Counsel look at them to see if there is any variation.

THE WITNESS: They're available, and that's --

MR. BROMBERG: If there is, we can clarify the problems. They're Mr. Horowitz' documents. There is obviously some reticence on his part to give up his originals. We can convenience him by making photocopies of the originals which he may need for other purposes. Since we're off the record, he may need them for testimony in other cases, and put photocopies in here.

MR. GALLO: I think there will be

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adequate time for counsel to examine them.

Can we go back on the tape?

MR. STRAIN: We are now back on the record, and the time is 12:57.

MR. GALLO: 11:57.

BY MR. GALLO:

Q. Mr. Horowitz, we're now on the document that's been marked Horowitz #15. Do you have that before you?

A. Yes, I do.

Q. Was this a document written by you?

A. Yes, it was.

Q. It was written in the course of your duties as a member of the Loss Control Committee?

A. Yes.

Q. And, would you give us the subject of it, and the date?

A. The subject is analysis of environmental conditions in Ambler Plants from the Industrial Hygiene point of view, referring to recent x-rays, and the date was October 9th, 1961.

Q. Would you read for us, please, the first sentence?

A. X-rays were made of six hundred and fifty-three Keasbey and Mattison employees in May of 1961. Of

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these, fifteen have been reported as "possible pulmonary disease or damage" cases by Dr. J. J. Kirschner, Specialist in Pulmonary Diseases.

Q. All right.

Would you please turn to the second page, section entitled Recommendations, and read for us everything before the first numbered paragraph.

A. Recommendations, a "company policy" must be established with respect to occupation disease, such as, new paragraph, to correct, "to correct -- I'm sorry, "to correct sub-standard working conditions and protect the health and safety of the employee. To comply with local, State, and Federal regulations in conformance with good industrial practices with respect to health and safety. This policy should be directed to by the Loss Control Committee and implemented as follows.

Q. And then there are four numbered paragraphs. Would you just read us the title of those paragraphs, please?

A. Right, one is educational program. Two is x-ray program. Three is respirator program. And, four is engineering.

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2 Q. And this document, apparently, was copied to
3 Dr. Stabler and Mr. D. W. Keach?

4 A. Yes.

5 Q. Who is Mr. Keach?

6 MR. LOCKS: Object to the form of
7 the question.

8 BY MR. GALLO:

9 Q. Who was Mr. Keach?

10 A. Industrial Relations, I think.

11 Q. Would you please turn now to Horowitz 17.

12 A. Number 17 isn't here, but is that it?

13 Q. Yes, Meeting of Loss Control Committee.

14 A. Right.

15 Q. Would you read the title and date of that document
16 to us, please?

17 A. The title is Meeting of Loss Control Committee,
18 the date is January 8th, 1962. Meeting title also
19 says Meeting number four.

20 Q. All right.

21 All the people listed at the top, were
22 they members of the Loss Control Committee?

23 A. Yes.

24 Q. And could you tell who this document was
25 authored by? Who wrote it?

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2 A. I think the initials in the end are Mr.
3 Childs'.

4 MR. COHEN: Objection.

5 BY MR. GALLO:

6 Q. What are the initials, sir?

7 A. It's hard to read his handwriting, but there is
8 definitely an H, and it looks like a B middle initial,
9 and I assume the last initial is a C.

10 MR. COHEN: I'm going to object to
11 the speculation as to the authorship of the
12 document.

13 BY MR. GALLO:

14 Q. Would you -- was this document in your personal
15 file?

16 A. Yes, it was.

17 Q. From January -- from the time it was written
18 until the present?

19 A. Yes.

20 Q. And, did you receive this in your capacity as
21 a member of the Loss Control Committee for Keasbey and
22 Mattison?

23 A. Yes, I did.

24 Q. Would you please read the title of item four to
25 us?

1 A. The title is Company Policy on OD.

2 Q. What is OD?

3 A. OD is occupational disease.

4 Q. Does that include asbestosis?

5 A. It includes asbestosis.

6 Q. Would you please read to us the last paragraph
7 on the page?

8 A. The company will make every effort to improve
9 the safety and working conditions of our plants and
10 offices. Necessary tools, equipment and safeguards
11 provided insofar as possible to protect our employees
12 against illness or accidents. It is the responsibility
13 of supervisors to promote the safety programs, and
14 to instill the safety concept in each of their
15 employees. Safety program can be effective only if
16 all employees accept the principles of safety and
17 practice safety all times, on and off the job. For
18 the good of all concerned, unsafe acts and conditions
19 cannot be tolerated.

20 Q. Would you now turn to Horowitz 20?

21 A. Use of dust respirators.

22 Q. Let me ask you to read the title and date of
23 that document to us.

24 A. The title is use of dust respirators. Its date

1 Leon Horowitz - Direct

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2 is April 5th, 1962.

3 Q. Who wrote it and who is it written to?

4 A. I wrote it, and it was written to Mr. J. S.
5 Simmons, Safety Director.

6 Q. All right.

7 Was this written by you in the usual
8 course of your duties as an industrial hygienist for
9 Keasbey and Mattison?

10 A. Yes, it was.

11 Q. Did you continue to keep this in your file,
12 after you went with Certainteed?

13 A. Yes, I did.

14 Q. I would like you to read for us, please, the
15 fourth paragraph on the first page.

16 A. There are several areas in K&M plants, which
17 require the use of dust respirators. The following
18 list of operations which should be performed with the
19 use of dust respirators is made up of two sections
20 depending on the degree of dust exposure.

21 Q. All right.

22 Now, does there then follow a section
23 A and a Section B?

24 A. Yes.

25 Q. All right.

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2 In Section A, what is the title of
3 Section A?

4 A. Operations which must be performed with a dust
5 respirator.

6 Q. And is that section then divided into plants?

7 A. A separate paragraph under each plant
8 referred to.

9 Q. All right.

10 And there are two locations under
11 plant one, which are listed under subdivision A;
12 is that right?

13 A. Yes.

14 Q. And eleven locations in plant four --

15 A. Yes.

16 Q. -- which are listed under plant A?

17 A. Yes.

18 Q. Or Section A?

19 A. Yes.

20 Q. And, there's another section devoted to plant
21 6, 7, 8 and 9, and I believe that section says pipe
22 plants. Were those all the Keasbey Mattison pipe
23 plants?

24 A. In existence at that time, yes.

25 Q. Could you give us their location, please?

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2 A. Number 6 was Santa Clara. Number 8 was Ambler.
3 I'm not sure of 7 and 9. I don't recall.

4 Q. Well, if you don't recall which was which,
5 what were the other two locations of the pipe plants?

6 A. There was St. Louis. I think that was 9.
7 And what did I say, Ambler, St. Louis, and Santa
8 Clara, and the other pipe plant, it might have been
9 Riverside -- no, Riverside was not built yet. And
10 it wasn't Hillsboro. If you could recall the fourth
11 one?

12 Q. Would it have been New Orleans?

13 A. No, it was not New Orleans.

14 Q. Well, we'll skip that.

15 Are there, then, five locations in
16 each of the pipe plants, which are listed under
17 Operations, which must be performed with a dust
18 respirator?

19 MR. MASON: I object to the form of
20 that question, because although there are five
21 numbers, some of the numbers refer to different
22 locations.

23 BY MR. GALLO:

24 Q. Are there five enumerated positions, where
25 according to section A, respirators --

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2 A. Types of operations, yes.

3 MR. MASON: Well --

4 THE COURT REPORTER: I'm sorry,
5 what kind of operations?

6 THE WITNESS: Types of operations.

7 MR. MASON: I object to the form of
8 the question, because you take number one, one
9 location or position is unloading another
10 location is storage, another location or
11 position is transfer. It's not just five
12 positions.

13 MR. GALLO: Skip the question. I'll
14 withdraw the question.

15 BY MR. GALLO:

16 Q. Would you please turn to major sub-section B
17 on page three. Read that to us, please?

18 A. Operations which should have just respirators
19 available for use at the discretion of Plant Manager
20 and/or operator.

21 Q. And under that sub-section, are there job
22 descriptions or locations listed for plant one, plant
23 four and the pipe plants?

24 A. Yes.

25 MR. SHEIN: I'm going to object to

1 Leon Horowitz - Direct 93
2 that. I don't know that that applies to my
3 client, the deceased Melvin Timbers.
4 MR. GALLO: Well --
5 MR. BRUCH: I just object for the
6 purpose of the document as to Certainteed
7 never purchasing plant number one, number
8 four --
9 THE COURT REPORTER: Excuse me, I
10 can't hear you.
11 MR. BRUCH: Objecting as to Certainteed
12 never purchasing plant number one, four and
13 ten.
14 MR. LOCKS: I object.
15 BY MR. GALLO:
16 Q. Mr. Horowitz, referring back to subdivision B,
17 are there locations listed for plant number one?
18 A. There are locations listed for plant number
19 one.
20 Q. And, are there other locations listed for
21 plant number four?
22 A. Yes, there are.
23 Q. And, are there other locations listed for
24 plant number eight?
25 A. Yes, there are.

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2 Q. What's the distinction -- or what was the
3 distinction at the time this document was written
4 by you, between the operations listed under number A
5 or letter A, and the operations listed under B?

6 A. When you say letter A, you mean large,
7 capital A?

8 Q. Yes.

9 A. Under capital A, my feeling at the time was
10 that those operations must be performed and must was
11 underlined. And under B, it was an optional feature
12 for management and/or the operator, to make a decision
13 whether to wear a respirator. In other words, it
14 wasn't as important as under A, in my opinion.

15 Q. Was Mr. Simmons the Safety Director company-
16 wide for Keasbey and Mattison?

17 A. I don't have recall on that.

18 Q. He was an official of Keasbey Mattison,
19 though?

20 A. Apparently.

21 Q. Would you please turn to -- please turn to
22 Horowitz 21, please. Would you read us the title
23 and date of it?

24 A. I'm just comparing. You prefer that I read from
25 this, right, from my own copy?

1 Q. From your actual copy, right.

2 A. Right, the subject was Asbestos Textile
3 Institute Meeting, Air Hygiene and Manufacturing
4 Committee, September 13 and 14, 1962, and the date
5 it was written was September 25th, 1962.

6 Q. Would you tell us what your involvement was
7 with that meeting?

8 A. I was a member of the Air Hygiene -- Air
9 Hygiene and Manufacturing Committee. And this was
10 my -- one of the meetings that I usually attended.

11 Q. When did you become a member of the Air Hygiene
12 and Manufacturing Committee?

13 A. Within two or three months of my being hired
14 by Keasbey and Mattison.

15 Q. And that was a Committee of the ATI, the
16 Asbestos Textile Institute; is that right?

17 A. Yes, it was.

18 Q. And, when you attended this meeting on
19 September 25th, 1962, were you attending for Keasbey
20 and Mattison or for Certainteed?

21 A. For Keasbey and Mattison.

22 Q. Well, would you look at your --

23 A. I'm sorry --

24 Q. -- name there.

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2 A. I'm sorry. I -- I answered too quickly. I was
3 attending for Certainteed. Keasbey and Mattison
4 no longer, apparently, was involved. It already had
5 been sold to Certainteed.

6 MR. BRUCH: Objection, move to
7 strike the answer. The witness doesn't know
8 anything about the sale.

9 MR. COHEN: Objection.

10 BY MR. GALLO:

11 Q. All right, were you attending for Certainteed
12 or for Keasbey and Mattison?

13 A. I was attending for Certainteed.

14 Q. And, why is it that you continued to attend
15 the ATI meetings after Certainteed took over?

16 A. Yes, if you notice the first subject, or the
17 main subject was U.S. Public Health Survey. At that
18 time, or previous to that, while still representing
19 Keasbey and Mattison, the U.S. Public Health Service
20 had presented a program, a program to the ATI, in
21 which they wanted to evaluate dust exposures as well
22 as make a medical study at asbestos plants, and they
23 had proposed it to the members of the ATI. And as a
24 representative of Keasbey and Mattison, I was involved
25 with that, and I recommended to Certainteed management

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2 that since the meetings were still continuing and
3 that they would probably -- and that they would visit
4 our plants that Certainteed now owned, that I continue
5 going to these meetings, and that's why I went.

6 Q. Who is Mr. Johnson, referred to at
7 the top?

8 A. Mr. Johnson was Chief Engineer for Certainteed
9 Products.

10 Q. And, Messrs Davis and Fink, who were they?

11 A. Mr. Davis was a Vice-President, and I believe
12 he was -- I think he was put in charge of the Pipe
13 Division, the area that they bought over from
14 Keasbey and Mattison. And Mr. Fink --

15 THE COURT REPORTER: They area
16 that they --

17 THE WITNESS: That they bought from
18 Keasbey and Mattison.

19 Mr. Fink was Safety Director for
20 Certainteed Products.

21 BY MR. GALLO:

22 Q. And this is a document written by you?

23 A. This is a document written by me.

24 MR. SHEIN: I object to the document
25 if it's written by him, because it's expressing

an opinion with regard to "irresponsible writing." And he's being offered as a fact witness. And there's been no expertise established to qualify him to make such a statement.

BY MR. GALLO:

Q. Just so we clarify, Mr. Horowitz, when you summarized these meetings that you attended and specifically, meetings of the Asbestos Textile Institutes Air Hygiene Committee, were you basically summarizing the discussions and transactions that took place at the meetings?

A. I was reporting on the transactions that took place at the meeting, and naturally, it was in summary form, yes.

Q. Turning now to Horowitz 22, can you tell us what this document is, and its date?

A. Again, another meeting with the Asbestos Textile Institute Air Hygiene and Manufacturing Committee, which was on January 24th, 1963, and I wrote it on January 29th, 1963, reporting it to Mr. H. C. Johnson, Vice-President of Engineering at the time, or Chief of Engineering, his exact title.

Q. And, referring to the first paragraph, would you

1 read that, please, the first underlined title?

2 A. Environmental and Medical Inplant Occupational
3 Health Study of the Asbestos Products Industry.

4 Q. Who was doing this study, or planning to
5 do it?

6 A. The U.S. Public Health Service. This was a
7 continuation of the previous discussions that U.S. Public
8 Health Service had on their proposal to study the
9 asbestos industry.

10 Q. Did the study actually take place?

11 A. The study -- part of the study actually took
12 place.

13 Q. What part?

14 A. There were two parts. One was supposed to be
15 environmental, the other medical. The only part that
16 was ever conducted was the environmental.

17 Q. As part of that study, were any Certainteed
18 Plants visited by the U.S. Public Health Service?

19 A. Yes.

20 Q. Which plants, if you recall?

21 A. Two plants. One in St. Louis and one in Santa
22 Clara.

23 Q. And --

24 A. Santa Clara, that was the other one.

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Q. Exactly what procedures were performed, or what tests or measurements were performed?

MR. SHEIN: Objected to as being irrelevant to my client, Melvin Timbers.

BY MR. GALLO:

Q. You may answer.

A. The -- a team of U.S. Public Health Service Workers or people came to the plant. One person was assigned to take work histories of the employees, while a team of four people were using various methods available at the time, as well as new methods of dust counting or dust sampling, and they were counting on the premises.

Q. Is this a document actually written by you?

A. Yes, it is.

Q. Or a copy of a document written by you?

A. This is a copy of a document written by me.

MR. COHEN: May I just go off -- can we go off the video a moment, and stay on the stenographic?

MR. STRAIN: We're going off the record and the time is 12:16.

(Whereupon the following discussions

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were held off the videotape record.)

MR. COHEN: I just want to ask, the copy of this exhibit that I have, in listing persons in attendance under Dr. Kirschner and enter line, have a dash and then there is a space of about an inch. And then the words, due --

THE WITNESS: Ditto.

MR. COHEN: Oh, that is ditto?

THE WITNESS: Yes.

MR. COHEN: Okay.

MR. STRAIN: We're back on the record, and the time is 12:17.

BY MR. GALLO:

Q. Would you turn now to Horowitz Exhibit 23, please?

A. I believe I have a 25.

MR. MASON: It looks like a 25, June 1, 1964.

THE WITNESS: Is that the same one?

MR. GALLO: Yes.

THE WITNESS: R. Lanz'?

MR. GALLO: Yes.

BY MR. GALLO:

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2 Q. Would you tell us what this one page
3 document is?

4 A. I was reporting on some material I had read
5 about asbestos exposure and neoplasia to Mr. R. L.
6 Lanz, and the date was June 1st, 1964.

7 Q. Who is Mr. Lanz?

8 A. Mr. Lanz was Vice-President of the Pipe Division
9 at that time.

10 Q. Of Certainteed?

11 A. Of Certainteed.

12 Q. And, what was your purpose in writing this to
13 him?

14 A. To keep him updated on the discussions and the
15 press and in the field about asbestos and its relation-
16 ship to cancer.

17 Q. All right.

18 Did it have anything to do with the
19 U.S. Public Health Service proposed study?

20 A. I reminded him of the fact that there was an
21 on-going program, U.S. Public Health Service was going
22 to make a study of the asbestos industry, yes.

23 Q. Were you, in any way, urging that the company
24 cooperate or take a position with respect to this --

25 MR. COHEN: Objection, leading.

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2 MR. SHEIN: Object to the form.

3 BY MR. GALLO:

4 Q. Okay, what was your purpose in writing this to
5 Mr. Lanz with respect to the U.S. Public Health
6 Service Study?

7 A. To urge the company to join in the study, to
8 have them visit us, yes.

9 MR. SHEIN: I further object to that
10 portion of the document that refers to what the
11 U.S. Public Health Service felt, paragraph three.

12 MR. GALLO: Okay.

13 BY MR. GALLO:

14 Q. Is there a notation in handwriting, at the
15 bottom of that?

16 A. Yes, there is.

17 Q. Whose handwriting is that?

18 A. That's mine.

19 Q. Would you read it to us, please?

20 A. The name, R. L. Lanz phoned June 2nd, 1964,
21 notification, okay for U.S. Public Health Service
22 visit.

23 Q. Okay.

24 And, what did that indicate?

25 A. It indicated that Mr. Lanz agreed that we should

1 Leon Horowitz - Direct 104

2 permit the U.S. Public Health Service to visit our
3 plants.

4 Q. Just one other thing, there's a reference here
5 to a Dr. Selikoff, in the first paragraph, and an
6 American Industrial Hygiene Meeting in Philadelphia
7 on April 29th, 1964.

8 A. Right.

9 Q. Is that a meeting that you attended?

10 A. Yes.

11 Q. Did you attend any other conferences sponsored
12 by Dr. Selikoff?

13 A. This was not sponsored by Dr. Selikoff.

14 Q. I'm sorry.

15 Did you attend any other conferences
16 where Dr. Selikoff was involved as a speaker?

17 A. Yes.

18 Q. What other conferences did you attend?

19 A. The main one and first one was the large
20 conference in 1964 at the Waldorf-Astoria, which was
21 an International conference.

22 Q. What was the subject of that conference?

23 MR. COHEN: Excuse me, I'm going to
24 object to that being a statement of the main one
25 and the first one.

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THE WITNESS: First one in my -- that

I met Dr. Selikoff, I meant, or heard Dr.

Selikoff.

BY MR. GALLO:

Q. Okay, what was the first conference that you attended where Dr. Selikoff was involved?

A. It was the International Conference on asbestos at the Waldorf-Astoria.

Q. And, what was the subject of that conference?

A. The subject of the conference was asbestos and its relationship to occupational disease.

Q. What occupational diseases was the conference involved with?

A. They were involved with asbestosis, lung cancer and mesothelioma.

Q. And were all three of those diseases discussed at that conference at the Waldorf-Astoria in 1964?

A. They were.

Q. Who -- with whom did you attend that conference from Certainteed? Who from Certainteed went with you to the conference?

A. I don't recall anybody else from Certainteed.

I don't recall.

Q. Did Mr. Hutchcroft --

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2 A. No.

3 Q. -- or Mr. Shaw go with you?

4 A. Mr. Shaw was not --

5 MR. COHEN: Objection.

6 MR. BRUCH: Objection.

7 THE WITNESS: Do I answer that?

8 MR. GALLO: Yes.

9 THE WITNESS: Mr. Shaw was not an
10 employee of Certainteed, so I answered your
11 question correctly, but Dr. Shaw did attend
12 with me, yes.

13 BY MR. GALLO:

14 Q. To which conference?

15 A. To this conference that we're talking about
16 in 1964.

17 Q. In New York?

18 A. In New York, at the Waldorf-Astoria.

19 Q. What was the subject matter of Dr. Selikoff's
20 speech to the American Industrial Hygiene Foundation
21 in Philadelphia --

22 THE COURT REPORTER: What was that,
23 the Industrial --

24 MR. GALLO: The Industrial -- American
25 Industrial Hygiene Meeting in Philadelphia, on

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April 29th, 1964.

THE WITNESS: The subject was related to the asbestos exposure and neoplasia, and the article that I attached to this, which we don't have, the newspaper article, describes that event, so that was the subject matter.

BY MR. GALLO:

Q. What was meant by neoplasia?

A. I understand it to mean cancer related.

Q. Did anyone attend with you from Certainteed?

A. Not that I know of, no.

You mean the Industrial Hygiene Meeting here in Philadelphia?

Q. Yes.

A. No, none.

Q. All right.

Going now to Horowitz 24.

A. Yes.

Q. Do you have that?

A. Yes, I have.

Q. Can you give us the title and date of that?

A. The title is X-ray Program, the date, I wrote it, was October 16th, 1964. And it was written to

Mr. Ankstat who was Plant Manager of Santa Clara Plant

1 Leon Horowitz - Direct 108

2 in California.

3 Q. Would you read the -- that's all right.

4 Let's go to the next document.

5 Would you take a look, please at

6 Horowitz 25.

7 A. Yes.

8 Q. What is that and who wrote it?

9 A. I wrote it. The title was Chest X-ray Program.

10 The date it was written was August 11, 1965. It was

11 an attempt to tell all Pipe Plant Managers, and direct

12 them on having a chest x-ray program.

13 MR. COHEN: Can we identify that as a

14 three page document, so that there is no --

15 BY MR. GALLO:

16 Q. That's a three page document; isn't it, Mr.

17 Horowitz?

18 A. Yes, it is.

19 Q. And in the first sentence, Mr. Lanz is

20 identified. Is he the same Mr. Lanz that you had

21 earlier communicated with?

22 A. Yes, he is.

23 Q. As described in Horowitz 23?

24 A. Yes.

25 Q. And, who is the D.J. Donald referred to in the

1 first paragraph?

2 A. That was the Doctor consultant to the Ambler
3 plant, or to the Corporate Headquarters.

4 Q. Where was he located?

5 A. In Ambler or locality, I'm not sure.

6 THE COURT REPORTER: In Ambler or --

7 THE WITNESS: Or local area.

8 BY MR. GALLO:

9 Q. Finally, I'm going to show you a document
10 labelled Horowitz 26, ask if you can identify it.

11 A. Yes, I -- it is the Table of Organization for
12 Keasbey and Mattison at the time I worked with them.

13 Q. Is there a date down at the bottom right hand
14 corner?

15 A. October 1st, 1960, yes.

16 Q. All right.

17 Is this a copy of a chart that you
18 had in your personal file?

19 A. Yes, it is.

20 Q. I want to direct your attention now to a number
21 of documents, Horowitz Exhibit 5, 10, 11, 12, 14, 16
22 and 19.

23 A. Well, I don't think I have 11.

24 MR. BROMBERG: Could you run through
25

1 Leon Horowitz - Direct 110

2 those numbers again, please?

3 MR. GALLO: Sure, 5, 10, 11, 12, 14,
4 16 and 19.

5 THE WITNESS: I have 11, I don't have
6 them in that order, 11, 12, 14.

7 MR. GALLO: Down at the bottom.

8 THE WITNESS: Oh, is this 16, I'm
9 sorry, the bottom, yeah, I have them all.

10 BY MR. GALLO:

11 Q. Sir, are these all summaries that you wrote of
12 meetings that you attended for the Asbestos Textile
13 Institute on various dates?

14 MR. LOCKS: I object to the form.

15 THE WITNESS: Not all. I -- Number 7,
16 oh, did you include 7?

17 MR. GALLO: No, I didn't include 7.

18 THE WITNESS: I'm sorry. Number 12,
19 I don't believe Number 12 referred to an actual
20 meeting. I don't believe that referred to an
21 actual meeting, but we can look at it again.
22 But, all the others referred to actual meetings
23 that the Asbestos Textile Institute -- all those
24 you referred to, yes.

25 BY MR. GALLO:

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Q. And in the usual course of your duties, as you described to us earlier, did you write these reports following your attendance at those meetings, in order to summarize the transactions for your superiors?

A. Yes, I did.

Q. And were these documents that you kept in your personal file since the time you wrote them?

A. Yes, I did.

Q. Referring to Horowitz 5, can you get that in front, please?

A. Yes.

Q. I'm sorry, Horowitz 7.

A. Yes.

MR. LOCKS: What number are we on now?

MR. GALLO: Horowitz 7.

BY MR. GALLO:

Q. That is -- would you tell us what that document is, please?

A. That is a reporting to Mr. Barge, dated November 22nd, 1960, on a meeting in the Industrial Hygiene Foundation, which occurred on October 27, 1960, --

Q. And, who wrote it?

A. -- in Pittsburgh. Mr. Childs wrote that.

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MR. COHEN: Objection.

BY MR. GALLO:

Q. Did you receive a copy of this document in the course of your duties?

A. I received a copy in the course of my duties.

Q. What was the Industrial Hygiene Foundation?

A. The Industrial Hygiene Foundation was and I believe still is, is a foundation organized to help industry approach and do research on various occupational disease problems that they may have.

Q. And was Mr. Childs' summarizing the transactions of that meeting in writing this paper?

A. Yes.

Q. Okay.

I want to show you, now, a document that I will mark Horowitz 27, and show it to you. That is a -- would you read that to us, please?

A. That is Industrial Hygiene Foundation Meeting, October 25th, 1961 at the Mellon Institute, written by -- at the Mellon Institute in Pittsburgh, written by me and written to Mr. A. W. Spedding, October 30th, 1961.

Q. Are these notes that you wrote after attending an IHF or Industiral Hygiene Foundation meeting, on or

1 about that date?

2 A. Yes, they were.

3 Q. And, you followed a similar practice that you
4 used in reporting on the ATI transactions, when you
5 wrote this memo?

6 A. Yes.

7 Q. Thank you.

8 MR. BRUCH: Mr. Gallo, can I see
9 Number 27, please?

10 BY MR. GALLO:

11 Q. All right, Mr. Horowitz, that concludes our
12 discussion of the documents. I would like to now turn
13 your attention to the actual procedure you followed,
14 when you conducted your dust counting at Keasbey and
15 Mattison and at Certainteed. You indicated to us that
16 you would actually place the intake tube for the dust
17 counting device right at the worker's face; is that
18 correct?

19 A. Right near his breathing zone.

20 Q. All right.

21 And, you would stand there for how
22 long?

23 A. Any one exposure for three samples of ten minutes
24 each.

1
2 Q. During the course of taking dust counts for
3 either Keasbey Mattison or Certainteed, did you have
4 occasion to discuss with the workers what you were
5 doing?

6 A. They would usually, very frequently, talk to
7 me, yes.

8 Q. And what would they say and what would you
9 respond?

10 MR. COHEN: Objection, hearsay.

11 BY MR. GALLO:

12 Q. You can answer.

13 A. Various things. We would talk about everything
14 around the sun. Sometimes, they would ask me what I
15 was doing.

16 Q. And, what was your response, if asked what you
17 were doing?

18 A. I told them --

19 MR. LOCKS: I object to the question.

20 It's too general. It calls for an eight year
21 period of time. He has not specified when he
22 did it, how he did it, who he did it with and
23 what departments, how many times he did it, or
24 anything of that nature. It's much too general.

25 BY MR. GALLO:

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Q. You can answer, Mr. Horowitz.

MR. LOCKS: Besides being hearsay.

MR. BRUCH: Just note my objection
for the record.

THE WITNESS: I responded to them, to
the question, and told them I was sampling the
dust in the air at the station that they were
working at.

BY MR. GALLO:

Q. Did you conduct these counts throughout the
Keasbey and Mattison Plant #1, the shingle plant, during
the years you were working for Keasbey and Mattison?

A. The shingle plant was torn down within less than
a year in a time -- after the time I was hired.

Q. Do you recall whether you ever conducted any
counts there?

A. I don't -- I didn't conduct any counts there.

Q. How about plant 4?

A. Plant 4, I --

MR. COHEN: Objection to the form of
the question.

BY MR. GALLO:

Q. Did you conduct counts, dust counts, in plant
4?

2 A. I conducted dust counts in plant 4.

3 Q. And, did you conduct dust counts in plant 8?

4 MR. SHEIN: Objection to, unless it's
5 specified when he conducted them.

6 BY MR. GALLO:

7 Q. You can answer, Mr. Horowitz.

8 A. I conducted dust counts in plant 8.

9 Q. When did you first conduct a dust count in
10 plant 8?

11 A. I have no recall of specific date.

12 Q. Did you conduct any dust counts --

13 MR. SHEIN: Move that his answer be
14 stricken.

15 THE WITNESS: What was the question,
16 please?

17 BY MR. GALLO:

18 Q. Did you conduct any dust counts in plant 8, when
19 you were still working for Keasbey and Mattison?

20 A. Yes, I did.

21 MR. COHEN: Objection. I object to
22 the form of the question, leading.

23 MR. SHEIN: I also object.

24 BY MR. GALLO:

25 Q. Did you conduct any dust counts in plant 8, when

1 Leon Horowitz - Direct 117

2 you were working for Certainteed?

3 A. Yes, I did.

4 MR. SHEIN: Again, object.

5 MR. COHEN: May I have a continuing
6 objection to any leading questions with regard
7 to the number of the plant where he may or may
8 not have conducted some sort of testing
9 for which --

10 MR. GALLO: No, I suggest you make
11 the objection.

12 MR. COHEN: Okay.

13 BY MR. GALLO:

14 Q. In conducting dust counts for either Keasbey
15 Mattison or Certainteed, did you follow the procedure
16 that you outlined to us, initially?

17 A. Yes.

18 MR. COHEN: Objection, leading.

19 BY MR. GALLO:

20 Q. Did you ever take dust counts at any Keasbey and
21 Mattison or Certainteed Plant in Ambler in areas where
22 respirators were required?

23 A. Yes.

24 MR. SHEIN: Objected to as being too
25 broad in scope.

1
2 BY MR. GALLO:

3 Q. If you did take a dust count in such an area,
4 and you observed that respirators weren't being used --
5 well, first of all, did you ever observe respirators not
6 being used in an area where they were required?

7 A. Yes.

8 Q. Did that occur?

9 A. Yes, it did.

10 Q. And, if you made such an observation, what would
11 you do?

12 A. I would talk to the Manager, Plant Manager, about
13 it.

14 Q. And, what would you tell him?

15 A. I would tell him there's a respirator program
16 and refer to it, and tell him they weren't adhering to
17 it.

18 Q. They meaning whom?

19 A. Meaning the Plant Manager.

20 MR. SHEIN: Note my continuing
21 objection to this question as being too broad
22 in scope and not applying to my client.

23 BY MR. GALLO:

24 Q. And, what was the Plant Manager's response to
25 your statement?

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2 MR. COHEN: Objection, hearsay.

3 MR. BRUCH: I have the same objection.

4 MR. BROMBERG: You're not offering this
5 to prove the truth of what the Plant Manager
6 said, are you?

7 MR. GALLO: No.

8 MR. BRUCH: I object to the question
9 only because it may refer to plants other
10 than where this -- these plants were notice of
11 deposition.

12 BY MR. GALLO:

13 Q. You understand that I'm questioning you
14 regarding the plants in Ambler, don't you, Mr.
15 Horowitz?

16 MR. LOCKS: If you are, then I object
17 to that, because all of the line of questioning
18 that you've had in the last few minutes regarded
19 plant #8, and only plant #8. And that's my
20 understanding of the question. If it's not,
21 then please, if you intended a different answer
22 for all the plants, then just make it clear on
23 the record, Mr. Gallo, make sure the witness
24 understood it.

25 MR. COHEN: Join with that objection.

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It was the only line of inquiry before.

BY MR. GALLO:

Q. Mr. Horowitz, answer the question, please?

MR. COHEN: Can I -- can I just --
can we get a clarification as to whether your
question relates -- I mean, are you following
the same line, or are we now talking about any
plant, Keasbey Mattison or Certainteed may
have been involved with?

MR. GALLO: I think my earlier
question was, Keasbey Mattison or Certainteed
plants in Ambler.

MR. COHEN: Okay.

MR. GALLO: And, I'll restate the
question, if I can remember it.

THE WITNESS: What was the response
of the Managers, when I --

MR. GALLO: I'm trying to get
something else.

BY MR. GALLO:

Q. Mr. Horowitz, was there a program in effect,
which the managers were supposed to follow at all
Keasbey and Mattison's plants?

MR. COHEN: Objection, no reference as

1 Leon Horowitz - Direct

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2 to time.

3 BY MR. GALLO:

4 Q. You can answer, Mr. Horowitz.

5 A. The exhibits were --

6 MR. LOCKS: Also, --

7 THE COURT REPORTER: Pardon, also --

8 MR. LOCKS: It was a little too

9 general. The program about what, about getting

10 paid, program about selling product, program

11 about distribution of memorandum, what's the

12 program about, Mr. Gallo?

13 THE WITNESS: A respirator program

14 which --

15 MR. GALLO: Let me rephrase the

16 question, Mr. Horowitz.

17 BY MR. GALLO:

18 Q. Was there in effect during the time that you

19 were with Keasbey and Mattison, a program regarding

20 respirator use, which Plant Managers at Keasbey and

21 Mattison plants were to follow?

22 A. That was shown as one of the exhibits earlier

23 today. And that was the program continuing from

24 Keasbey and Mattison through Certainteed products.

25 Q. And, if you pointed out to a Plant Manager that

1

2 respirators were not being worn where required, what
3 response would the Plant Manager make to you?

4

MR. LOCKS: Objection, calls for
5 speculation.

6

MR. COHEN: Objection.

7

BY MR. GALLO:

8

Q. You can answer, Mr. Horowitz.

9

A. Calls for speculation.

10

Q. That's all right, you can --

11

A. It's very difficult to answer that question.

12

Some would say, well, we provide it to them, and they

13

don't wear it, or some would say, well, it's there,

14

or some would say, well, they're wearing it when I was

15

there before, things like that.

16

MR. COHEN: I'm going to object to

17

this. It has no basis in time, plant location.

18

MR. SHEIN: I join in that objection.

19

BY MR. GALLO:

20

Q. Mr. Horowitz, did the Plant Managers indicate to

21

you on such occasions that you would point out the

22

failure to wear respirators in certain areas that they

23

knew of the program --

24

MR. COHEN: Objection.

25

BY MR. GALLO:

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2 Q. -- was to be followed?

3 MR. COHEN: Objection to the form
4 of the question. It's leading --

5 MR. SHEIN: Hearsay.

6 MR. COHEN: -- it's hearsay.

7 BY MR. GALLO:

8 Q. Go ahead.

9 A. It was a program that came from staff, and the
10 understanding was that they all knew about it.
11 And there was no question raised whether, did you know
12 about it.

13 Q. Now, when you first went with Keasbey and
14 Mattison in May of 1960, did you acquire any knowledge
15 as to what they had been doing, prior to your coming
16 with them, in the areas of dust counting and dust
17 control?

18 MR. SHEIN: Objected to as hearsay.

19 BY MR. GALLO:

20 Q. Go ahead and answer, Mr. Horowitz.

21 A. I picked up some information both verbal and
22 from the copies of memorandum that I found in my
23 desk.

24 Q. These copies of memoranda that you found in your
25 desk, were these documents that you were given when you

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2

took over as Industrial Hygienist?

3

A. They were just in the desk.

4

Q. And, did you have any other methods of gaining knowledge of what had been done before you were there?

5

A. From the past meetings of the ATI, I noticed that Mr. Arthur May represented the company --

6

THE COURT REPORTER: Mr. who?

7

THE WITNESS: Arthur May, represented the company in the same capacity that I did later on.

8

9

MR. BRUCH: What company are you referring to?

10

THE WITNESS: Keasbey and Mattison.

11

BY MR. GALLO:

12

Q. Go ahead.

13

A. And a Mr. Schmidt, when I found the dust collecting, dust sampling equipment, I found some material of dust counts that Mr. Schmidt had made, previous to my coming to the company.

14

15

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MR. COHEN: Unless those -- excuse me, unless those documents are produced, I'm going to object, and ask that any testimony regarding what he may or may not have known be stricken on the basis that it's hearsay. Also, on the

basis of the best evidence rule.

BY MR. GALLO:

Q. Did you observe any dust count equipment that Keasbey and Mattison had before you came with them?

A. Yes, they had some equipment.

Q. Did you have to purchase all additional equipment when you went with them, or did they have certain equipment that you were able to use?

A. They had most of the equipment I needed. I believe I bought some accessories. That's about it.

Q. All right.

What did they have?

A. They had a midget impinger, which I described before, the glass -- the glass collecting material, the hand -- hand operator pump, the tube and microscope for counting.

Q. Were these the items of equipment that would be used, generally, in industrial hygiene at that point in time to measure a dust hazard?

A. They were the basic tools that we needed, yes.

Q. During the years that you were with Keasbey and Mattison, Mr. Horowitz, did you at any time ask a Canadian mining company, a supplier of raw asbestos, to

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come down and instruct the workers at the Keasbey and
Mattison Plant?

A. At no time.

Q. Did you ever suggest to anyone above you in the
Keasbey and Mattison hierarchy or recommend to anyone
that a Canadian mining company do that?

A. I did not.

Q. Did you ever suggest to the Canadian mining
companies, or did you ever recommend to your superiors
that the Canadian mining companies put a warning label
on the asbestos bags during the years you were with
Keasbey and Mattison?

A. No, I did not.

MR. COHEN: Can we have just a
narrowing of what we mean when we're talking
about Canadian asbestos mining companies.

MR. BRITTON: That's cross
examination.

MR. COHEN: We're using a term of
art here. I would like to know the definition
or the parameters of what a Canadian mining
company was. You're asking him a question and
he's responding, and I would just like to know --

MR. GALLO: I think the term is self

1
2 explanatory, Mr. Cohen, but I'll ask the
3 witness --

4 BY MR. GALLO:

5 Q. Do you understand by my question that I mean a
6 mining company that mines asbestos in Canada, don't you,
7 Mr. Horowitz?

8 A. No, I understood it to mean any supplier to
9 Keasbey and Mattison.

10 MR. COHEN: Thank you, that's why
11 my objection.

12 BY MR. GALLO:

13 Q. So, you never requested --

14 A. I never requested --

15 Q. -- those things from a supplier?

16 A. -- no, either my management to ask for that
17 information, nor did I -- or the question you asked,
18 nor did I contact any mining supplier, no.

19 Q. Would you give the same answers for the years
20 that you were with Certainteed?

21 A. I would give the same answers, yes.

22 Q. You did not make any such contact or
23 recommendation --

24 A. I did not.

25 Q. -- of your superiors?

1
2 A. I did not.

3 Q. All right.

4 MR. STRAIN: Excuse me, gentlemen,
5 this concludes tape number two, and the time
6 is 12:44.

7 (Whereupon the following discussion
8 was off the videotape record.)

9 MR. GALLO: That concludes the
10 Direct, good time to break.

11 (Whereupon a lunch break was taken
12 from 12:45 a.m. to 1:40 p.m.)

13 MR. STRAIN: This is the beginning
14 of tape number three, and the time is 1:41.

15 MR. GALLO: Well, have you started
16 yet, go off the tape for a minute.

17 MR. STRAIN: We're going off the
18 record, the time is 1:42.

19 MR. STRAIN: This is the beginning
20 of tape number three, and we're now back on
21 the record, and the time is 1:44.

22 MR. GALLO: That concludes the
23 Direct Examination of Mr. Horowitz. We'll
24 now proceed with Cross Examination.

25 - - -

CROSS EXAMINATION

- - -

BY MS. GIBSON:

Q. Mr. Horowitz, my name is Elizabeth Gibson,
and I represent Brinco Mining Limited.

You mentioned in your testimony that
you learned about possible link between asbestos
and cancer through some literature that you read.
Did you receive that literature in the course of
your employment at Keasbey-Mattison?

A. It was the type of literature that crosses
your desk.

Q. From where would you receive such literature?

A. General literature information pertaining to
occupational health.

Q. Was it one of your duties at Keasbey and
Mattison to read such literature?

A. Yes.

Q. Was that also true when you worked for
Certainteed?

A. Yes, it was.

Q. Now, you mentioned that you met with a Dr. Knox
who represented Turner-Newall sometime in 1960, when
you worked for Keasbey and Mattison.

1
2 A. Yes.

3 Q. Why was it that Dr. Knox came to Keasbey-Mattison
4 to give you that information?

5 A. I understand he was visiting the Country and
6 making several visits, and as a representative of
7 Turner-Newall, he wanted to speak to management, to
8 inform them of the information he had that he was
9 disseminating in this Country.

10 Q. Did you understand that there was a relationship
11 between Keasbey and Mattison and Turner and Newall?

12 A. Yes, I did.

13 Q. And, what did you understand that relationship
14 to be?

15 MR. MASON: Objection.

16 BY MS. GIBSON:

17 Q. You may answer.

18 A. I thought it was an English Company that owned
19 Keasbey-Mattison.

20 Q. Did you have any other -- on any other occasion,
21 did you have any discussions with personnel from
22 Turner and Newall about the possible hazards of
23 asbestos?

24 A. At that time?

25 MR. LOCKS: I object to the form. It's

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far too broad. What time period are you
referring about?

BY MS. GIBSON:

Q. I'm talking about any time that you worked for
Keasbey-Mattison.

A. Dr. Knox was the only person -- is that the
question you asked, from England?

Q. Yes.

A. Dr. Knox was the only person I really ever
spoke to, very shortly.

Q. And was that also true for when you worked at
Certainteed, did you ever have any discussions with
Turner-Newall personnel?

A. I may have spoken to them at a meeting subse-
quent to -- after Certainteed took over at the Mellon
Institute, or something like that.

THE COURT REPORTER: At the what
institute?

THE WITNESS: At the Mellon Institute,
or something like that.

BY MS. GIBSON:

Q. Do you recall any specific discussions?

A. Nothing.

MS. GIBSON: I have no other

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questions.

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BY MR. BROMBERG:

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Q. Sir, you've been shown quite a number of exhibits this morning. Are those items that belong to you?

6

7

A. They were in my file at home.

8

Q. Okay.

9

When you say, your file at home, were these items that you took with you, when you left the employ of Certainteed?

11

12

A. Yes, they were.

13

Q. Were they documents that were kept in the ordinary course of business at Certainteed?

14

15

A. It is my practice to keep copies of any documents that I have, any letters, memos, and so on, that I have had anything to do with.

17

18

Q. Okay.

19

A. And I took it with me.

20

Q. Okay.

21

And that was part of your practice in the ordinary course of business while you were employed at Certainteed?

23

24

A. Yes, it was.

25

Q. And, the memos that you, yourself, wrote, that

1
2 are in here, that would report on a meeting, would they
3 be made relatively soon after the meeting, itself,
4 occurred?

5 A. Usually, yes.

6 Q. As far as the minutes of the Asbestos Textile
7 Institute, they would be received, I assume, sometime
8 after the meeting occurred, the actual minutes,
9 right?

10 A. Right.

11 Q. All right.

12 And, you would prepare a separate
13 report usually to your company letting them know what
14 your impressions or -- were of the meeting, or what you
15 had learned from the meeting?

16 A. Certain cover letter, yes.

17 Q. Okay.

18 And, that was done in the ordinary
19 course of your business in your job?

20 A. Yes.

21 Q. The respirator program, which was one of the
22 documents that was marked, that was something likewise
23 prepared in the ordinary course of business, was it?

24 A. Yes, it was.

25 Q. In the various letters that were written to and

1
2 from you, and the memoranda those likewise, were issued
3 in the ordinary course of business?

4 A. Yes.

5 Q. At Certainteed?

6 A. Yes.

7 Q. Or at Keasbey-Mattison, if you were employed
8 by them at that time?

9 A. Both places.

10 Q. Was there dust counting that went on at
11 Keasbey-Mattison?

12 A. Yes, there was.

13 Q. And, did it sometime exceed five million
14 particles per cubic foot?

15 A. Yes, it did.

16 MR. BROMBERG: I have no other
17 questions.

18 Oh, I'm sorry, I do have one other
19 one, before I pass the microphone on.

20 BY MR. BROMBERG:

21 Q. When you went from Keasbey and Mattison to
22 Certainteed, your papers and files that you had in
23 your job as industrial hygienist for Keasbey and
24 Mattison, you kept them; did you not?

25 A. Physically, we stayed in the same place, so --

1
2 Q. You had the same office, same filing cabinets,
3 same papers?

4 A. Correct.

5 Q. And, you did not, I assume, flush out of your
6 mind what you knew when you worked for Keasbey-Mattison
7 at the time you went to work for Certainteed, did
8 you?

9 A. It was a continuance of the job.

10 Q. So, what you knew on the day that you last
11 worked for Keasbey-Mattison was essentially what you
12 knew about asbestos on the first day that you went to
13 work for Certainteed; right?

14 A. Yes, it was.

15 MR. BROMBERG: I have no other
16 questions.

17 BY MR. BRUCH:

18 Q. Mr. Horowitz, my name is Dan Bruch. I represent
19 Certainteed.

20 Were you ever an officer with
21 Keasbey-Mattison?

22 A. I was not an officer of Keasbey and Mattison.

23 Q. Were you ever an officer with Certainteed?

24 A. I was not an officer of Certainteed.

25 Q. During your employment with Certainteed from 1962

1
2 to 1968, did the dust conditions improve, get worse
3 or stay the same --

4 A. I would say --

5 Q. -- with respect to the asbestos cement pipe
6 plants.

7 A. I would say they improved.

8 Q. Now, plant four in the Keasbey-Mattison days,
9 was that the textile plant?

10 A. No, not in my time.

11 Q. What was the textile plant?

12 A. Textile plant was plant ten in Meredith,
13 New Hampshire.

14 Q. And in plant four, they made insulation products?

15 A. They made various products. It was a long,
16 warehouse-type building. The first part of it, they
17 made insulation products. After that, I think there
18 was an empty section where the textile plant used to
19 be. And, then, further on, sort of an attachment, or
20 additional building, there was a rubber -- well, they
21 made a paper product, which was used as an insulation
22 for electrical like irons and stuff like that. And
23 then they had a rubber product, which was gasket
24 asbestos, rubber gasket material. Further on, and
25 I called that all plant four.

1 Q. Did Certainteed remain a member of the ATI --

2 A. They did not.

3 Q. -- once it purchased the asbestos cement --

4 A. They did not, they had no reason to.

5 Q. Why -- why did they not have a reason to
6 remain a member of the ATI?

7 A. They no longer had a textile plant.

8 Q. So, how many times did you attend the ATI,
9 after Certainteed purchased the pipe plant in
10 Ambler and --

11 A. I think it was twice.

12 Q. What were the years of the U.S. Public Health
13 studies at the Certainteed plants, if you know?

14 A. The years that they actually visited the
15 plants --

16 Q. Right.

17 A. -- or the years of their complete study?

18 Q. The year they actually visited the plant, you
19 said in St. Louis and Santa Clara?

20 A. I don't recall the exact year, but I would say
21 anywhere between '64 and '68 -- '67.

22 Q. I notice that out of the various exhibits
23 presented today, three of them are after 1962, when
24 Certainteed had purchased the pipe plants, that a lot
25

1 of the Keasbey-Mattison, or a few of the Keasbey-
2 Mattison records have confidential written on them.
3 What was the reason for that, if you know?
4

5 A. I've tried to recall even whether I put that
6 on, or a secretary put that on, but the reason for
7 it, and it may have been a general company policy that
8 whoever it was intended to -- whoever the memo, or
9 letter was intended for, it was intended only for
10 them.

11 Q. Now, looking at the three Certainteed exhibits,
12 21, 22 and 23, two of those exhibits don't have
13 confidential written on them, and one of them does.
14 Is there any reason for the distinction?

15 A. I assume it happened accidentally. I have --
16 I have no knowledge. There is no reason why an ATI
17 report in one hand should be confidential, while the
18 -- on the next time it should not.

19 Q. Well, did the U.S. Public Health Governmental
20 Agency decide to study the textile plants first?

21 A. I believe they did, yes, they did, because of
22 the higher exposure to asbestos in that area.

23 Q. What do you mean by higher exposure?

24 A. Well, the use of asbestos in textile plants is
25 generally ninety to ninety-five percent of the product

1 is asbestos. But, the use of asbestos, in let's say
2 asbestos cement, is only fourteen percent.

3
4 MR. COHEN: I'm going to object to the
5 nature of the testimony. It calls for -- it
6 calls for an opinion only an expert is competent
7 to render. There's no basis been established
8 that Mr. Horowitz can make these expert state-
9 ments.

10 BY MR. BRUCH:

11 Q. I would like you to look at Exhibit number 15,
12 if you would, for a minute, please. It refers to the
13 studies of six hundred and fifty-three Keasbey and
14 Mattison employees in May of 1961.

15 A. Yes, I have that.

16 Q. Do you know where those employees -- what plants
17 they were working in?

18 A. I recall a listing that I received from Mr.
19 Childs, and I assembled those, and they were from all
20 the plants of Keasbey and Mattison.

21 Q. And, you were asked on direct examination to read
22 paragraph one. I would like for you to read paragraph
23 two to the Jury, please.

24 A. Paragraph two is, it is significant that most
25 of these people are older employees, who have been

employed by K&M for nineteen years or more. Although, there is no dust concentration data available, it is probable that dust concentrations in the past were much greater than in recent years. The beater man operation, which in general has not had adequate dust control, appears several times on this list. This would indicate that more adequate dust control is necessary at this operation.

Q. Mr. Horowitz, do you know if Dr. Delmar Donald was an employee of Certainteed?

A. I am almost sure he was a consultant, medical consultant, to Keasbey-Mattison in Ambler.

MR. BRUCH: Thank you, Mr. Horowitz.

THE WITNESS: You're welcome.

MR. CREEDON: No questions.

BY MR. GUSKY:

Q. Mr. Horowitz, I believe you told us that as a result of Dr. Knox' visit, that a Loss Control Committee was formed; is that right?

A. That is right.

Q. Now, when Certainteed took over the operations of Plant 8 in Ambler, what happened to that Committee?

A. It disappeared.

Q. Is there any reason why it disappeared?

1
2 A. Some of the employees, people on the committee
3 were no longer with the company, and there was no
4 decision made to continue it.

5 Q. What happened to Mr. Spedding, when Certainteed
6 took over?

7 A. He was not -- he did not go -- he was not rehired
8 by Certainteed.

9 Q. Do you know why that was?

10 A. I've always wondered.

11 Q. On Exhibit 6, down at the very bottom, the lower
12 right hand corner, there is an asterisk and a delta
13 sign indicating when the memo was re-issued?

14 A. Yes.

15 Q. Is there any reason why the memo was
16 re-issued within approximately four months of each
17 other in 1967?

18 A. Yes, I recall that I made a -- what I thought
19 was a poor statement in the original, and if you notice
20 in paragraph one, you can even see the type is different,
21 I said originally, dust respirators must -- must be
22 used by KM or CPC personnel at all operations, involving
23 the use of silica cement, mica, talc and asbestos
24 dust. When I really meant to say where -- to add, where
25 dust control is not sufficient to maintain airborne

1 dust concentrations below maximum permissible limits.
2 My original statement was contradictory to my
3 philosophy, that dust -- that respirators are a --
4 not a primary means of control. So, I added that
5 statement to it.
6

7 Q. When you started with Keasbey and Mattison
8 in 1960, did you belong to a certain department with
9 the company?

10 A. I was in the Engineering Department.

11 Q. Was that known as Central Engineering?

12 A. Central Engineering.

13 Q. And, in May of 1960, when you started, how
14 many employees worked in that Department?

15 A. I can only approximate and say ten.

16 Q. When Certainteed took over in 1962, how many
17 employees worked in that plant?

18 A. About eight.

19 Q. Am I correct, Certainteed took over what was
20 known as Plant 8?

21 A. That's right.

22 Q. And, did they also take over any other
23 facilities outside of Ambler, that had previously
24 belonged to Keasbey and Mattison?

25 A. Yes, they did.

1
2 Q. And, what facilities were those?

3 A. The St. Louis and the Santa Clara facility.
4 There were four altogether. I always get confused.
5 There is one other pipe plant.

6 Q. From 1962 to 1968, did Certainteed build or
7 acquire any other asbestos cement pipe plants?

8 A. Yes, they did.

9 Q. And, could you tell us when they acquired or
10 built these plants, and where these plants were
11 located?

12 MR. BRUCH: I object to this question
13 because it is not -- there's no evidence of
14 the Plaintiffs who were noticed for this
15 deposition worked in any of these other plants,
16 other than Ambler. It's beyond the scope of
17 direct.

18 THE WITNESS: Answer the question?

19 MR. GUSKY: Yes, sir.

20 THE WITNESS: We built new plants in
21 Hillsboro, Texas, and in Riverside, California,
22 approximately, I think the Hillsboro went up
23 first, approximate years were '64, '65 and maybe
24 a year or two later, the Riverside Plant.

25 BY MR. GUSKY:

1
2 Q. When you worked for Keasbey-Mattison, you
3 reported to Mr. Spedding; is that correct?

4 A. That's correct.

5 Q. And, I'm not clear, when you worked for
6 Certainteed, who did you report to?

7 A. The transition was to report to the same
8 function, and that was Mr. Johnson.

9 Q. And, where was his office?

10 A. His office was in Ardmore, Pennsylvania.

11 Q. And yours was in Ambler still?

12 A. My office was in Ambler, still.

13 Q. What was Mr. Johnson's title with the
14 company?

15 A. I believe he was Chief Engineer.

16 Q. Prior to testifying today, did you review
17 your -- the deposition transcript from your June of
18 1980 deposition?

19 A. Yes, I did.

20 Q. I believe you made reference to a report of a
21 Dr. Melvin First of Harvard University in that
22 deposition.

23 A. Yes, I did.

24 Q. And, Dr. First, I believe, made a report about
25 dust control in plant number 4; is that right?

1
2 A. Yes, he did.

3 Q. Since the date of that deposition, have you been
4 able to locate that report?

5 A. No, I have not.

6 Q. Do you know what, if anything, was done in
7 response to the report of Dr. First by Keasbey and
8 Mattison?

9 A. Not too much was done.

10 Q. Well, was anything done?

11 A. An analysis of the cost needed to follow his
12 recommendation was made, and it was very costly, and
13 I made a -- another review of the same thing that he
14 did, and tried to adapt to the problems that we
15 had.

16 Q. When did you do that?

17 A. One of my assignments, after I was hired.

18 Q. It would be sometime between 1960 and 1962?

19 A. Yes.

20 Q. Do you recall how much money was required, or
21 what the recommended figure was to implement the programs
22 that Dr. First made?

23 A. I can only guess --

24 Q. We don't want you to guess. Do you have any
25 present recollection of that?

1

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2

A. I'd say thirty thousand dollars, something
3 like that.

4

Q. Okay.

5

In 1960 dollars approximately?

6

A. In 1960 dollars, yes.

7

MR. GUSKY: That's all I have, sir,

8

thank you.

9

MR. MENDELOW: I have no questions,

10

thank you.

11

BY MR. MASON:

12

Q. I have some questions, sir.

13

Mr. Horowitz, prior to coming to
14 work for Keasbey and Mattison in May of 1960, did you
15 have any knowledge concerning any possible hazards
16 connected with exposure to asbestos?

17

A. Yes, I did.

18

Q. Where did you acquire that knowledge?

19

A. From my training as an industrial hygienist
20 for the State of New York.

21

Q. And, when did you acquire that knowledge?

22

A. Well, you don't -- it's difficult to put a
23 date on it, but --

24

Q. How about a decade?

25

A. Oh, decade, was definitely within the first year

2 of my working with the Division of Industrial Hygiene.

3 Q. And, what year was that?

4 A. Which was 1947.

5 Q. And, what knowledge did you acquire at that
6 time?

7 A. The knowledge I acquired at the time and which I
8 retained throughout my working time, until I joined
9 Keasbey-Mattison, was that asbestosis was a
10 pneumoconiosis disease, or a disease caused by dust
11 in the lungs. And that it had a threshold limit
12 of about five million particles per cubic foot, which
13 made it approximately as toxic as silica at the
14 time.

15 Q. And, that was the information you brought with
16 you, when you were employed --

17 A. Yes, it was.

18 Q. -- with Keasbey and Mattison?

19 A. Yes, it was.

20 Q. No one there told you this, you already knew
21 that?

22 A. No one where told me?

23 Q. At Keasbey-Mattison.

24 A. They didn't have to tell me that, right.

25 Q. Okay.

Now, who, when you first started your employment at Keasbey-Mattison in May of 1960, who was your boss?

A. Mr. Spedding.

Q. And, he was the one who told you what to do, what duties to perform?

A. He hired me in my technical interview with him, for purposes of dust control engineering.

Q. Well, did he leave how you performed these duties up to your discretion, or would you check with him, and do what he told you?

A. Well, I had shown him what I did before as a consultant, as well as my previous experience. And he saw some of my plans, and he wanted me to do the same thing. And I would get his approval on any plans. He was Chief Engineer. So, any design I made, he would approve.

Q. These were plans for what?

A. Design of industrial exhaust systems, the removal of dust, gas or fumes, mostly dust.

Q. Some kind of mechanical equipment that either purchased or had made?

A. There is -- there's no or practically no equipment that you could buy and just put it and work. You

1
2 have to design it around the job, and you have to
3 design hoods, you have to design duct work, you have
4 to design dust collectors, you have to get contractors
5 in, you have to design footings for it, and stuff like
6 that. So, my job was designing it, purchasing it, and
7 getting it done, and installing it.

8 Q. Okay.

9 Well, now, as I understand it, you
10 testified earlier that you would design this exhaust
11 system for individual machines?

12 A. Yes.

13 Q. Did you design one, generally, for the general
14 area -- area in a building, or were you just limited
15 -- did you just limit yourself to individual machines?

16 A. Mostly, I would use my industrial hygiene
17 skills, if you want to call it that, to determine
18 where there was a need, and where there was a need,
19 I would recommend to the company the need and give
20 them an estimate of the cost, and then design for
21 picking up the dust, right at the machine, and
22 conveying it to a dust collector, and then discharging
23 the clean air outside. That was my complete
24 function.

25 Q. Okay.

2 How did you determine where there was
3 a need, through these dust counts that you took?

4 A. Through the dust counts, yes.

5 Q. And, once you -- I gather you would determine
6 that there was a need, if you took dust counts which
7 exceeded the then threshold limits; is that right?

8 A. Exactly.

9 Q. Then, on your own, you would go ahead and
10 design --

11 A. No, no, no, no, I would have to express that
12 need or show -- tell the management through Spedding,
13 that there was a need, and then they had to make a
14 determination, and give an estimate of the cost,
15 and they would have to make a determination whether to
16 go ahead or not.

17 Q. Well, take the -- by the way, do you recall when
18 the last day was, or the month, at least, that you worked
19 with Keasbey-Mattison, and when you started for
20 Certainteed? I don't think you had testified to that
21 before.

22 A. I think it was June of '62, anywhere between
23 April and June of '62.

24 Q. Okay.

25 Well, now, did you first determine need

1
2 by sampling the dust at various machines. Did you
3 check all the machines in all the plants in Ambler?

4 A. No, there was no need to -- part of the
5 technique is using visual observations, and making a
6 determination where you needed more specific information
7 which you couldn't depend on, a subjective visual
8 opinion, and then you would take air samples, and then
9 the air samples would help you determine the need.

10 Q. Okay.

11 Are you telling us that first you
12 would look at an operation at a particular machine,
13 and if you visually observed dust, that you would then
14 test it?

15 A. From the industrial hygiene point of view, yes,
16 very often, though, you needed dust collecting, just
17 for the fact that they were producing so much dust
18 that they had to carry it away from the machine, other-
19 wise, it would interfere with the job. So, there were
20 two -- two motivations to designing industrial exhaust
21 systems.

22 Q. Okay.

23 Now, did you design exhaust systems
24 for existing machines, as well as any new machines?

25 A. Yes.

1
2 Q. And, were your plans approved for any
3 existing machines?

4 A. Yes.

5 Q. Were your plans ever approved for new machines?

6 A. Yes, they were. In a new plant, I designed
7 all the exhaust systems for the new plant, it was on
8 paper, before the plant even went in.

9 MR. SHEIN: I have to object to this
10 testimony, unless it pertains to machines that
11 were used by my client, Melvin Timbers.

12 BY MR. MASON:

13 Q. All right, let's go back, you mentioned something
14 about a new plant.

15 A. Yes.

16 Q. What plant was that?

17 A. Well, Hillsboro was a new plant, and so was
18 Riverside.

19 Q. Okay.

20 Let's focus on the plant at Ambler,
21 there were no new plants for which you designed exhaust
22 systems there, in Ambler, were there?

23 A. No, but new processes, yes.

24 Q. Okay.

25 Do you remember in which plants you

1 designed exhaust systems or new exhaust systems for old,
2 existing machines?

3 A. Yes, plant 8 was one of them.

4 Q. Any other plants?

5 A. You mean in the Ambler area?

6 Q. Yes, only in the Ambler area.

7 A. Yes, in plant 4, the insulation area. Plant 1
8 when it was a shingle plant, but that wasn't dust,
9 it had to do with vapors and paint.

10 Q. Okay.

11 How about new machines, in which
12 plants in the Ambler area --

13 A. In plant 8, new machines.

14 Q. Any other plants in the Ambler area for new
15 machines?

16 A. They didn't put any new machines in plant 4,
17 while I was there.

18 Q. How about 1?

19 A. Plant 1, as I indicated before, was shut down
20 within a year, but there were new processes that I
21 designed an exhaust system for, which was a paint, they
22 were painting shingles, things like that.

23 Q. Okay.

24 Now, I think you testified that from

1
2 your point of view, the primary purpose was to get
3 exhaust systems installed as sort of the best way to
4 control dust; is that what you testified?

5 A. Well, I was hired as a Dust Control Engineer,
6 to use that engineering method for reducing the
7 dust created at the jobs, at the particular machines,
8 that's right.

9 Q. And, to reduce it to the threshold limits that
10 were allowed?

11 A. Definitely, that's the purpose.

12 Q. And, what did you mean that this was the
13 primary control?

14 A. As opposed to a secondary control of a
15 respirator. In other words, you can prevent the
16 man -- the employee, from breathing a dust, harmful
17 dust, by many ways. You can put him a mile away and
18 he won't be breathing it.

19 MR. COHEN: I'm going to object to
20 that speculation.

21 THE WITNESS: That was an example.
22 In other words, distance could do it. You
23 could do it by enclosing the man. You could
24 do it by enclosing the operation. But, in order
25 to continue an operation the way you like to, and

the process to continue, local exhaust ventilation is one of the best engineering methods.

BY MR. MASON:

Q. Is there any better method that you know of?

A. It depends on your parameters. If you want to continue working with the material or not, if you can find a substitute that is not as hazardous, let's say, that might be a better method. So, better is a matter of degree.

Q. Okay.

But, now -- so that when you use the term, primary for dust control, are you using it in relationship to exhaust systems?

A. I'm using it in relationship to the best engineering method available according to my knowledge, yes.

Q. And, what did you mean, I think when you described the use of respirators as a secondary method?

A. It is -- you can't have much confidence in the use of respirators to protect a -- an employee, from breathing material.

Q. Why couldn't you be confident about that?

1 A. Because a fit -- because of --

2 Q. What do you mean by fit?

3 A. Well, sometimes, they don't fit properly.

4 So, therefore, there is plenty of space for the material
5 to get in. They plug up. They get dirty. There are
6 many, many features about respirators that you --
7 that no industrial hygienist that I know of, use it
8 as a primary method, except in areas where you can't
9 help it. You can't put an exhaust system onto a
10 maintenance man when he goes from one machine to
11 another and crawls all over it. A respirator functions
12 as a fair method of reducing the amount of dust he
13 might get.

14 Q. Okay.

15 A. So, therefore, it's not a primary method.

16 Q. And, yet, I forget whether it was 1960 or
17 1961, you prepared a memorandum that stated that it
18 was mandatory for an employee to wear respirators
19 at certain stations; did you not?

20 A. Yeah, the count was, as you notice, with the
21 addition I just mentioned, where the exposure was
22 greater than the threshold limit, and engineering
23 methods had not been used to reduce it yet, or where
24 they couldn't be used, then a respirator should be used,
25

2 and a proper respirator should be used.

3 Q. Let's explore that a little bit. Were there
4 machines where you either did not, or could not, through
5 the design of an exhaust system, reduce the dust levels
6 to the -- below the threshold values?

7 A. There are areas where people work, where you
8 couldn't put an engineering or exhaust system to reduce
9 it below the level. There are certain areas, for
10 instance, the maintenance man going into a dust
11 collector to clean it. It's impossible to do
12 anything about that, except for, what I would call, a
13 very positive respirator, which would mean a helmet
14 with air introduced to the helmet, so that no dust
15 could get in while it's flowing out. Yes, there are
16 certain areas, yes.

17 Q. I can understand a dust collector is designed
18 to collect dust --

19 A. Yeah, right.

20 Q. -- so you can't keep dust out of it --

21 A. Right.

22 Q. -- the idea is to get dust into it; right?

23 A. Most engineering --

24 Q. Bear with me.

25 A. Yes.

1
2 Q. And there, you would require a man to wear a
3 respirator, when he goes into the dust collector.

4 A. Right.

5 Q. Were there other, let's say machines, where
6 employees worked, aside from dust collectors, where
7 you could not reduce the dust count by appropriate
8 design of exhaust systems that you can remember?

9 A. No, if sufficient money is put into it, you
10 can design pretty well a machine that will reduce it
11 to below the level.

12 Q. Okay.

13 Well, now, was it your responsibility
14 to seek out these areas and design plans for exhaust
15 systems to reduce the dust levels there?

16 A. My responsibility was to seek out those areas
17 and report them to management and make recommendations
18 and if they followed it, then I was the one who designed
19 the equipment, yes.

20 Q. Okay.

21 Well, now, I think you testified
22 that in September of 1960, you attended a meeting
23 with a Dr. Knox.

24 A. Yes.

25 Q. I believe you testified that he informed you

1

2 and the people who were there, either that there was
3 an association between asbestos and cancer, or I'm
4 not sure whether you said there was a suspected
5 association, which was it?

6 A. I think it was very positive that there was an
7 association.

8 Q. Okay.

9 Now, that -- and I think you said
10 the word mesothelioma came up at that time?

11 A. That's right.

12 Q. And, that was the first time you had ever
13 heard that word?

14 A. That's true.

15 Q. And, I think you also said testified that --
16 I think you used the word, spur on our efforts to
17 control dust.

18 A. Well, the establishment of the Loss Control
19 Committee, and the direction that I got from management
20 would fall into that category of spurring on the --
21 I believe so.

22 Q. Well, the spurring on, did it take place in any
23 way besides the formation of this Loss Control
24 Committee?

25 A. Well, the mandate that what came out of the Loss

1
2 Control Committee should be adhered to by -- by all
3 the managers or the directors of the plants, yes. But,
4 it wasn't a thing that, gung-ho, let's stop everything
5 and only do this, it was an on-going type of thing.

6 Q. Well, then how was there any spurring on, I
7 don't follow you?

8 A. You were the one that brought the spurring on,
9 I don't remember saying --

10 Q. Yeah, I wrote that down.

11 A. I wrote -- said, spurring on?

12 Q. Yes, sir.

13 A. Well, if I did, I didn't mean any immediacy.
14 In other words, tomorrow, let's drop everything. It
15 was the fact that it never existed before a Loss
16 Control Committee, and for the purposes of reducing
17 dust exposure, and now there was one. And it was a
18 continuing thing.

19 Q. Well, how did that differ in any way from the
20 fact that you were given the responsibility, when you
21 were first hired, to control dust?

22 A. Well, the period between the time I was hired,
23 and the time of this, was a very short period. It was
24 within six months.

25 Q. I know that, but how did it differ in any way

2 from the fact that you were hired to control dust?

3 A. I think it differed by the fact that now it
4 was a management directive to everybody that that a
5 Loss Control Committee existed, that --

6 THE COURT REPORTER: I'm sorry, the
7 what committee?

8 THE WITNESS: The Loss Control
9 Committee existed, and the company was going
10 to make efforts to reduce the exposure. It was
11 an awareness -- more, greater awareness.
12 Frankly, there may have been an awareness before
13 that, and that's why they hired me. I don't
14 know.

15 MR. MASON: Okay.

16 BY MR. MASON:

17 Q. Well, now, as a result of this information, you
18 obtained about mesothelioma and cancer, did you go out
19 and acquire any new knowledge that you needed to
20 design your dust control system?

21 A. There was no new knowledge needed. The acceptance
22 of -- of cancer and mesothelioma, in association with
23 asbestos was not taken verbatim, merely because a Dr.
24 Knox or a Dr. Selikoff or anybody said there was. The
25 whole community, industrial hygiene community, or tech-

1 nical community, scientific community, said, well, you
2 know, now, there are suspicions, let's do further
3 studies, let's find proof. It wasn't an immediate type
4 of thing.
5

6 MR. SHEIN: Object to the question
7 and answer as to what the community felt or
8 thought. There has been no foundation laid
9 for that. And, it's hearsay.

10 THE WITNESS: Did I respond to your
11 question? I may have digressed.

12 MR. LOCKS: And --

13 BY MR. MASON:

14 Q. I think my basic question was, did you feel the
15 need to go out and acquire any more knowledge about
16 what you were doing in light of the fact that you had
17 now heard the word, mesothelioma, and now heard about
18 the possible connection between asbestos and cancer?

19 A. There was no need to get any more skills in the
20 design of industrial exhaust systems.

21 Q. You already had, as far as you were concerned,
22 sufficient skills --

23 A. Yes.

24 Q. -- in designing industrial dust control systems --

25 A. Right.

1
2 Q. -- to keep dust down wherever the dust exceeded
3 allowable limits?

4 A. No matter whether it caused asbestosis or cancer,
5 there's a large question about mesothelioma.

6 Q. And, I think one of your memos talks about
7 informing the foreman about hazards; does it
8 not?

9 A. Yes, it does.

10 Q. Do you know whether that was actually
11 done?

12 A. No, I do not.

13 Q. Now, whose responsibility was it to do
14 that informing?

15 A. My direction was to the Plant Manager, it was
16 his responsibility.

17 Q. Whose idea was it to make the Plant Manager
18 responsible to do that, was that yours?

19 A. My direction was to make these memos and send
20 it to the Plant Manager, so it was Mr. Spedding, my
21 bosses' direction.

22 Q. Well, did you have any feeling of concern at
23 that time that, well, maybe not telling the right
24 people?

25 A. It was out of my responsibility.

1
2 Q. No, I'm talking about whether you, yourself,
3 had any concern that maybe you weren't telling the
4 right people?

5 A. I had lots of concerns, concerns of poor people
6 living in Latin America, but --

7 THE COURT REPORTER: I'm sorry,
8 concerns of --

9 THE WITNESS: Of poor people living in
10 Latin America, but this was not my function.
11 So, I don't know whether concerns entered my
12 function. I was doing my job, what I was hired
13 for.

14 BY MR. MASON:

15 Q. Well, did you have any discussion with Mr.
16 Spedding as to whom should be given this information?

17 A. That was his responsibility, not mine.

18 Q. Okay.

19 So, he told you, tell the Plant
20 Managers to tell the foremen?

21 A. Right, and he didn't tell me to follow it up.

22 Q. Okay.

23 A. I only followed it up in the normal course of
24 events. If I happened to see it wasn't done, then I
25 would notify the Plant Managers.

1
2 Q. Was there ever any discussion why you were not
3 telling the employees directly?

4 A. It was not my province to discuss it with the --

5 Q. I mean, was there any such discussion?

6 A. There was no discussion. There was no
7 discussion to tell them, and there was no discussion
8 not to tell them.

9 Q. There's been much talk about warnings being
10 given, about the hazards of asbestos. Did you, at any
11 time, feel that you required any -- any such warnings?

12 MR. LOCKS: I object to the form of
13 the question. The characterization of whatever
14 you're talking about is much discussion. I
15 don't remember a single, solitary piece of
16 testimony using that word, Mr. Mason.

17 MR. MASON: Yes, I think --

18 MR. BROMBERG: I join in Mr. Locks'
19 objection.

20 THE WITNESS: I further --

21 MR. MASON: Wait a minute, let me
22 answer to that, because I think this witness
23 testified earlier that he never asked any
24 supplier about warnings.

25 MR. LOCKS: I stand corrected.

MR. SHEIN: I object to the question as to what he required, because warnings are questions of law, and not of the individual.

MR. BROMBERG: I join in that objection, too.

MR. MASON: Well, I would respond to that by saying, I think warnings are mixed questions of law and fact. And whether warnings were necessary is in part a fact.

MR. SHEIN: I don't agree with that.

MR. MASON: Of course not, but that's what makes lawsuits.

BY MR. MASON:

Q. Did you believe that you needed any warnings about the hazards of asbestos, and working with asbestos?

MR. LOCKS: Are you referring to him, himself, Mr. Mason?

MR. MASON: Yes, sir, only him, himself.

THE WITNESS: The asbestos at the time I started until we were convinced that there was a cancer hazard, was not a special hazard any more than the other exposures they

1 had. It happens that this company did more
2 asbestos than let's say silica exposure, but
3 we had noise exposure, we had talc exposure,
4 mica exposure. And I had no direction to
5 communicate directly with the employee, nor did
6 I feel that I would long have that job if I went
7 out of my way without such direction, to do so,
8 so I did not do so.
9

10 BY MR. MASON:

11 Q. I'm talking -- that wasn't responsive, sir.

12 MR. MASON: I move to strike that.

13 BY MR. MASON:

14 Q. I'm talking about --

15 MR. BRUCH: I move to strike the last
16 answer, also.

17 BY MR. MASON:

18 Q. -- what -- what you -- I'll start over
19 again.

20 Did you feel that you, yourself,
21 needed any -- any additional warnings from anyone
22 about the hazards of asbestos or --

23 MR. BRUCH: Same objection.

24 BY MR. MASON:

25 Q. -- were you satisfied that you knew that there

1
2 were such hazards?

3 A. I was as knowledgeable, I feel, as anybody
4 else in my area of expertise, about the hazards
5 of asbestos. The knowledge, which came, let's say
6 slowly to me, also came slowly to the rest of the
7 community --

8 MR. COHEN: I'm going to object
9 to any characterization of --

10 MR. BROMBERG: Let's let him finish
11 his answer.

12 MR. COHEN: Go ahead.

13 THE WITNESS: Well, that's practically
14 finished. And I felt that I knew as much about
15 asbestos as the next guy.

16 MR. COHEN: I'm going to object to
17 any statement as to what the "community" had
18 any knowledge or awareness of, at any particular
19 time. It calls for --

20 MR. SHEIN: I join in that objection.

21 MR. MASON: That's all I have.

22 MR. BROMBERG: I have one or two
23 questions to pursue cross examination --

24 THE WITNESS: Your microphone.

25 THE COURT REPORTER: I have one or two

questions --

MR. BROMBERG: -- since I last spoke to --

THE COURT REPORTER: I didn't hear you.

MR. BROMBERG: I have one or two questions that relate to matters that have been asked by others, after I last questioned the witness.

BY MR. BROMBERG:

Q. After Certainteed -- after you went with Certainteed, and they did not belong to the ATI, you indicated you went to only two meetings with ATI?

A. Of the ATI, yes.

Q. Okay.

Then, did you go to NIMA meetings?

A. Yes, I did.

Q. And, what's NIMA?

A. NIMA is the National Insulation Manufacturers Association.

Q. Okay.

Was that an organization that likewise had interest in the dangers of working with asbestos?

MR. BRUCH: Objection.

MR. LOCKS: I didn't hear it, who made an objection?

THE WITNESS: Did someone want to repeat the question, or --

MR. BROMBERG: If you heard the question, that's all that matters.

THE WITNESS: I was -- I represented the company on a Committee, and I don't exactly recall whether it was called an Air Hygiene Committee or an Engineering Subcommittee, but our -- we directed our attention to the hazards of insulation material, of which asbestos was included.

BY MR. BROMBERG:

Q. In fact, you worked on the preparation of certain brochures in that regard; didn't you?

A. Yes, we did.

Q. You, specifically, did you work on such brochures?

A. Yes.

Q. Did you ever work with a man named John Viberberg on that?

A. Yes, I did.

1 Q. And, others?

2 A. Yes.

3 Q. Let's go back to Exhibit 6, about which you
4 were questioned, after I last had an opportunity to
5 speak to you.

6 Would you turn to that, please?

7 A. I have it now.

8 Q. In that paragraph one, you referred to, where
9 K&M was written in in 1960, you drew a line through
10 K&M and CPC was written above it; correct?

11 A. That's true.

12 Q. And, then -- that occurred when, what year?

13 A. When I made a change to CPC?

14 Q. Right. Would that have been -- well --

15 A. I would have to say '62, '63, but I have no
16 indication that I did that in '62, '63.

17 Q. Well --

18 A. So, I don't know.

19 Q. All right.

20 Is it possible that it wasn't done
21 until '67 --

22 MR. BRUCH: Objection.

23 BY MR. BROMBERG:

24 Q. -- when it was re-issued?

MR. BRUCH: Objection, anything is possible.

THE WITNESS: I don't think so, because we -- we acquired new plants, and the same information was -- that is, I acquired new plants under Certainteed, roofing plants and others, and I believe that the same information was workable for them. So, I believe all I did was change K&M to CPC at the time.

BY MR. BROMBERG:

Q. The words, where dust control is not sufficient to maintain airborne dust concentrations, below maximum permissible limits, were probably added in '67 --

A. That's right.

Q. -- were they not?

A. That's true.

Q. So, that, from the time you first issued this in 1960, up through 1967, the memo that you issued to Plant Managers said in paragraph one the following: dust respirators must be used by CPC or K&M, whichever was the case at the time, personnel at all, underlined, operations involving the use of silica, cement, mica, talc and asbestos dust.

1 A. That's true.

2 Q. So, for those seven years, if I were a Plant
3 Manager let's say in Santa Clara, California, what
4 I would have believed from my industrial hygiene --
5 hygiene expert in the Industrial Hygiene Department,
6 was that in my plant, all CPC personnel would have to
7 use respirators so long as they were involved in
8 any operation that involved the use of either silica
9 or cement or mica or talc or asbestos dust?
10

11 MR. COHEN: Objection --

12 MR. BRUCH: Objection.

13 MR. COHEN: -- the question assumes a
14 fact not in evidence, that is, a, anyone who
15 is a Plant Manager, anywhere, was even aware
16 of that memorandum, let alone enforced its
17 provisions to those that were ostensibly
18 directed to wear respirators.

19 BY MR. BROMBERG:

20 Q. Would you ask -- would you answer this question
21 first, and then we'll get to that problem.

22 A. Yes, probably a mistake on my part --

23 Q. Regardless of whether it was a mistake on your
24 part or not --

25 A. Let me try to define, to me it was an under-

1 standing that what I meant was if they were over the
2 threshold limit. And, obviously, it came to light
3 that not everybody understood that, and that's why I
4 added the statement.
5

6 Q. I see.

7 In other words, it was thought that
8 some Plant Managers thought that everybody was
9 supposed to wear them all the time --

10 A. And objected to that, and I agreed with their
11 objection. I didn't mean it for that. And, obviously,
12 I didn't -- wasn't clear.

13 Q. When you said to all Plant Managers, you meant
14 to all Plant Managers, sir?

15 A. Yes.

16 Q. And, how did you get this to them, did they
17 get this through company mail or how?

18 A. No, I would mail it to them.

19 Q. And did you, in fact, send it to all Plant
20 Managers in '60?

21 A. Yes.

22 Q. And, again in '67?

23 A. Yes, I did.

24 Q. Only in '67, you had added the words, where
25 dust control is not sufficient to maintain airborne dust

1
2 concentrations below maximum permissible limits?

3 A. Right, and I also added another sentence to
4 paragraph four.

5 Q. Indeed, you did. Let me stick with paragraph
6 one for a minute.

7 A. Right.

8 Q. Did I understand you to -- well, did you tell me
9 a minute ago, that the reason that you thought that
10 the Plant Managers would understand it was only where
11 maximum permissible limits were exceeded that one
12 would have to wear a respirator, was that Plant
13 Managers were familiar with maximum permissible
14 limits?

15 A. Yes, they were.

16 Q. And that would have been true even as of 1960?

17 A. Yes.

18 Q. And how would they have been aware of that?

19 A. Our whole modus operandi in the field --

20 THE COURT REPORTER: I'm sorry, our --

21 THE WITNESS: Our whole way of
22 operating in the field was --

23 MR. BROMBERG: Modus operandi.

24 THE WITNESS: Modus operandi, our

25 way of operating in the field was to aim towards

1 that guide of what was so-called cleanliness.

2
3 BY MR. BROMBERG:

4 Q. And --

5 MR. LOCKS: May I object to the
6 question and the answer, as not responsive.

7 MR. BROMBERG: You're late for the
8 question. The answer you can move to strike.

9 MR. LOCKS: I'll move to strike --
10 thank you, Mr. Bromberg, I'll move to strike
11 the answer.

12 BY MR. BROMBERG:

13 Q. The -- and this was something that you had made
14 the Plant Managers aware of; correct?

15 A. Yes.

16 You see, apparently, I added it after
17 certainteed. But, in the Keasbey-Mattison days, it
18 was sort of an obvious conclusion.

19 Q. Okay.

20 And at one point you testified in
21 -- on examination by one of my colleagues that one
22 of the things that would lead you to determine where to
23 do your air sampling would be visual observation; is
24 that correct?

25 A. That's correct.

1
2 Q. By that what do you mean, seeing the dust in
3 the air?

4 A. Yes.

5 Q. And, did you know, sir, at that time, at
6 what level or how many particles per cubic foot of
7 dust in the air would have to be reached for you to
8 actually see it in the air, if you knew?

9 A. Generally, if you see it, it's an area that you
10 would want to determine with instruments. And, usually,
11 it depends on the lighting, but you -- you can -- it's
12 a very subjective method.

13 Q. If you could see dust in the air, did that
14 automatically mean that you were exceeding five million
15 particles per cubic foot?

16 A. No, it did not. Definitely not.

17 Q. Okay.

18 And the only way that you could make
19 that determination, it was your understanding, was
20 through the use of certain machinery, and I think you
21 mentioned certain types of impingers.

22 A. Yes.

23 Q. Did you in the early days, use the Greenberg
24 impinger?

25 A. Greenberg-Smith impinger.

1 Q. And, later, the midget impinger?

2 A. Well, the Greenberg-Smith impinger was a large
3 impinger which I only used the midget impinger, which
4 was also Greenberg-Smith.
5

6 Q. Did you work under Greenberg?

7 A. I worked with Dr. Leonard Greenberg. He was
8 my first boss in the State of New York.

9 Q. The -- strike that.

10 There were occasions, were there not,
11 when you would determine that -- strike that.

12 When you were working for Keasbey-
13 Mattison, were there not occasions when you would
14 determine that concentrations of dust in the air had
15 exceeded five million particles per cubic foot?

16 A. There were.

17 Q. And, did you, on those occasions, recommend
18 that something be done about it?

19 A. Usually.

20 Q. And the nature of your recommendation would be
21 what, sir, please?

22 A. It depended what I thought the source of the
23 dust was. It could be anything from a change of
24 technique and operation and process to the perhaps
25 extreme of re-designing or adding to the exhaust system.

2 Q. Okay.

3 Now, in addition to your --

4 What?

5 THE WITNESS: Exhaust system.

6 BY MR. BROMBERG:

7 Q. In addition to your recommendations, were there
8 occasions when outside consultants made recommendations
9 as to changes that should be made in the ventilation
10 system or otherwise?

11 A. During my tenure?

12 Q. During your tenure at Keasbey-Mattison.

13 A. I was the expert.

14 Q. Okay.

15 Do you recall any occasions when
16 outside consultants also -- during the Keasbey-Mattison
17 days, when outside consultants made recommendations
18 as to changes in the manufacturing process or in
19 ventilation equipment to reduce constraints --

20 A. The doctor referred to before from Harvard,
21 Dr. First.

22 Q. Dr. First from Harvard?

23 A. He's the only one I know of.

24 Q. He did make a recommendation to Keasbey-Mattison?

25 A. Yes.

1
2 Q. Did they follow it?

3 A. At plant 4. I indicated there was a cost
4 factor, and there was much discussion and some minor
5 points were followed, but not completely.

6 Q. And, did there continue to be concentrations
7 in excess of five million particles per cubic foot
8 at that location?

9 A. Yes, there did.

10 Q. Were there occasions when you made recommenda-
11 tions as to ventilating equipment or other mechanical
12 changes that should be made at Keasbey-Mattison, and
13 they were not followed because of the cost factors
14 involved?

15 A. Not all of my recommendations were followed.

16 Q. Okay.

17 Let me ask you the question, turned
18 around slightly though, I think I asked a somewhat
19 different question from the one you answered.

20 Were most of your recommendations
21 followed, by that --

22 MR. SHEIN: Objected to, vague.

23 BY MR. BROMBERG:

24 Q. -- by that, I mean more than half.

25 A. More than what?

1

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2

Q. More than half of your recommendations.

3

MR. SHEIN: Objected to, as --

4

BY MR. BROMBERG:

5

Q. With regard to changes in ventilation systems,

6

same --

7

A. I never made an evaluation of that. I can assure

8

you a hundred percent were not followed, and I can

9

assure you more than zero were.

10

Q. Okay.

11

A. That's about all.

12

Q. That gives us some room.

13

Now, assuming that we have that

14

range, sir, were there occasions when you made a recommen-

15

dation as to changes that should be made in order to

16

cut down on dust concentrations at Keasbey-Mattison

17

that were not followed by management and there continued

18

to be concentrations in excess of five million particles

19

per cubic foot?

20

A. In general, I believe my recommendations were

21

taken seriously. And --

22

Q. But, that's not what I'm asking.

23

A. And, they -- and discussions where the cost

24

factor came in, there were time delays. But, in those

25

areas where they did not improve, naturally, it continued

1
2 to be higher than the -- what I would like to see,
3 right.

4 Q. Five million particles?

5 A. Yes.

6 Q. And, did you or anyone else at Keasbey-Mattison
7 then go to the men and say, men, we are exceeding
8 the permissible limits here and you should wear
9 respirators?

10 A. No, that was an on-going program.

11 Q. And that was because your memo of October 13,
12 1960 said that respirators were to be worn all the
13 time everywhere, where there was asbestos dust, right

14 A. ~~Where~~ -- I meant where there was excessive
15 asbestos dust, yes.

16 Q. How did you think the man on the job was going
17 to know that it was being exceeded at his particular
18 work station?

19 A. It was not the man on the job --

20 MR. LOCKS: I object to the form of
21 the question.

22 BY MR. BROMBERG:

23 Q. Did you think the man on the job --

24 A. It was the Manager's responsibility. If I saw
25 it, I continued my recommendation.

Q. When you say management responsibility, you mean Keasbey-Mattison responsibility?

A. The Plant Manager at the time, whoever it was.

Q. You didn't hide the fact from the Plant Manager that they were exceeding five million particles per cubic foot?

A. I would report on it.

MR. STRAIN: This concludes tape number three, and the time is 2:44.

We're now back on the record. This is the beginning of tape number four, and the time is 2:49.

MR. BROMBERG: I have no further questions, sir.

MR. GALLO: No other Defense counsel have cross examination?

MR. GUSKY: I have a couple of questions.

BY MR. GUSKY:

Q. Mr. Horowitz, after your deposition in Washington on June 30th, 1980, did you make a further search to find other documents which you may have had that you acquired during the period of time that you worked for Keasbey-Mattison and Certainteed?

1

2

A. At the time of the deposition, I was asked to make a further search. I did. I sent it to the people in Washington.

5

Q. Sir, let me pass down to you a letter --

6

THE WITNESS: A letter to Lizzie, yes,

7

I've read it.

8

BY MR. GUSKY:

9

Q. Sir, is that a true and correct copy of a letter which you wrote?

10

11

A. Yes, it is.

12

Q. What is the date of that letter?

13

A. July 2, 1980.

14

Q. And, to whom did you write the letter?

15

A. I wrote it to Miss Elizabeth Gibson.

16

Q. Does she represent a party in this litigation, to the best of your knowledge?

17

18

A. To the best of my knowledge, she represented --

19

Shea and Garner, she worked for -- Shea and Garner,

20

represented a party to this.

21

Q. Okay.

22

And did you --

23

A. Sorry.

24

Q. Did you include with that letter a number of

25

other documents?

1
2 A. I believe I did. I say I did.

3 Q. In that letter, there's a reference made to a
4 memo of November 10, 1964; is that correct?

5 A. Yes.

6 MR. GUSKY: I would like that letter
7 marked, as I believe it would be Exhibit 28,
8 which is the next number in our series.

9 BY MR. GUSKY:

10 Q. Sir, I would --

11 MR. SHEIN: Are there copies of
12 this letter for Counsel, or is this the
13 first time we're hearing of this?

14 MR. GUSKY: It's no secret.

15 MR. GALLO: Why don't you continue
16 with your cross examination, please.

17 MR. SHEIN: I object to it. I
18 don't know what letter we're talking about.
19 I haven't been shown it.

20 MR. GALLO: Pass it down to
21 Mr. Shein.

22 MR. COHEN: I haven't seen it
23 either, so I'll wait for Counsel to finish
24 it, so I can look at it.

25 MR. STRAIN: We're going off the record

and the time is 2:53.

We're back on the record, and the
time is 3:03.

BY MR. GUSKY:

Q. Mr. Horowitz, do you have in front of you what's
been marked as Exhibit 29?

A. Yes, I do.

Q. Could you describe what Exhibit 29 is, please?

A. It is a memo from me to Mr. Davis, who is
Vice-President of the Pipe Division, written on
November 10th, and reviewed the commentary made by
Dr. Shaw, as a result of our attendance at the meeting,
at the conference on biological effects of asbestos
at the New York Assembly of Science.

Q. And, was this memorandum prepared by you in the
normal course of business, as an employee of Certain-
teed?

A. Yes, it was.

Q. Who is Mr. J. L. Anderson, whose name appears
on this memorandum?

A. Can you tell me where it appears?

Q. Right under Mr. Lanz's name. On the --

A. Yes, I believe at that time, he was made
Chief Engineer in replacing Spedding in our Staff Office,

1 and therefore, he would have been my superior.

2 Q. Was he your immediate superior in November of
3 1964?
4

5 A. For that time, very short time. He, later,
6 was Manager of one of the pipe plants.

7 Q. Sir, I would like to call your attention, on page
8 one, to the second full paragraph, not paragraph two
9 but the second paragraph. I would like you to read
10 that to yourself for a moment, please.

11 A. Yes.

12 Q. Could you read the first sentence of that
13 paragraph and stop and then I'll ask you some
14 questions.

15 A. The discussion at our meeting with the four
16 representatives from Turner Brothers Asbestos Company
17 the evening before the conference was mostly on the
18 accomplishment of the asbestos research counsel of
19 England --

20 MR. LOCKS: Asbestosis Research

21 Counsel?

22 THE WITNESS: Is that right?

23 MR. GUSKY: That's right.

24 THE WITNESS: Is that what you
25 wanted?

MR. GUSKY: Yes, that's correct.

BY MR. GUSKY:

Q. Could you tell us, sir, who the four representatives from the Turner Brothers Asbestos Company were at that time?

A. I can only recall Mr. Davis and Dr. Knox.

Q. Is it the same Mr. Davis whose name appears on the memo?

A. No, no.

Q. Another Mr. Davis?

A. This was a scientist from England. I think it was Davis or Davies. His name has come up during our interrogatory here.

Q. The phrase, our meeting, who else was at the meeting that's described in that first sentence?

A. Those four representatives, myself and Dr. Shaw. It was on the night before the meeting, conference room.

Q. Do you know at whose request the meeting was held?

A. I believe our management realized that these people were on the agenda, and having come -- and having -- since they represented Turner Brothers or Turner-Newall, and Certainteed newly acquired the

asbestos cement plant, they thought it would be nice for us to get together and talk to them.

MR. LOCKS: I object to the answer,

move to strike, as to what he believes.

BY MR. GUSKY:

Q. In November of 1964, to the best of your knowledge, was there any business relationship between Turner Brothers Asbestos Company and Certainteed?

A. None that I know of.

Q. Was Turner Brothers Asbestos Company providing any type of advice to Certainteed prior to the meeting that you held there?

MR. BRUCH: Objection.

THE WITNESS: None that I know of.

BY MR. GUSKY:

Q. Did Turner Brothers Asbestos Company provide any advice after the meeting that's referred to up until the time that you left Certainteed?

A. I have no knowledge of that at all.

Q. Did you have any further communications with anyone from Turner Brothers Asbestos Company, after the meeting that's referred to in this memorandum?

A. I believe I met Dr. Knox at the Industrial

1
2 Hygiene Foundation that was referred to before in
3 this testimony. And he was the speaker there, that's
4 all.

5 Q. Sir, during the time that you worked at
6 Keasbey and Mattison, did you ever hear of a company
7 known as Bell Asbestos Mines Limited?

8 A. Yes, I did.

9 Q. And, what -- what did you hear about
10 them?

11 A. I thought they were the company owned by
12 Turner and Newall.

13 Q. They were also owned by Turner-Newall?

14 A. I thought they were. I didn't say they were.

15 Q. You thought they were. Has anything happened
16 since that time to change your thinking on that?

17 MR. MASON: Objection.

18 MR. GALLO: Objection.

19 THE WITNESS: I believe somebody
20 indicated that it was true.

21 MR. GUSKY: Okay.

22 BY MR. GUSKY:

23 Q. In your job, sir, did you have any involvement
24 with deciding what grades or types of asbestos fibers
25 would be used in the products manufactured by Keasbey

1
2 and Mattison?

3 A. I had no input, nothing to do with that at all.

4 Q. Would your answer be the same, if I asked you
5 with respect to Certainteed?

6 A. That's true.

7 Q. Sir, did you ever place any of these dust
8 monitoring devices you described previously on anyone
9 who worked as a forklift operator?

10 A. The technique used was not conducive to placing
11 any air sampling equipment on anybody. I had to carry
12 it myself. It was not like modern techniques.

13 Q. I thought you made -- are you talking about
14 putting a monitoring device near where a person would
15 breath?

16 A. I held it with my hands.

17 Q. Okay.

18 So, I take it then you never did
19 this with anyone who operated a forklift truck?

20 MR. BROMBERG: Objection, irrelevant.

21 THE WITNESS: That's not true. I
22 can still do it with a forklift truck by
23 just going on it, sitting on it with him.

24 BY MR. GUSKY:

25 Q. Did you do it with anyone who operated a fork-

1
2
3
4
5
6
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Leon Horowitz - Cross

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lift truck?

MR. BROMBERG: Objection, irrelevant.

THE WITNESS: I don't recall doing
it.

MR. BROMBERG: And not proper
cross examination.

BY MR. GUSKY:

Q. Mr. Horowitz, I believe that your prior
deposition, you made a comparison of the dustiness
of plants 4, 1 and 8; is that correct?

A. If you say so, yes.

Q. Well, let me ask you this, which plant -- which
plant of those three was the dustiest?

A. Again, subjective type thing, plant four.

Q. And why -- why was that?

A. That was because of the process they had of
making insulation, pipe insulation.

Q. What was inherent in that process which made it
dustier than other processes?

A. Well, they made a block of material through a
wet slurry method and then dried it. And then they cut
out about seventy-five percent of the block for a round-
ing it out so that you can use it as a cover.

THE COURT REPORTER: I'm sorry, for a

round --

THE WITNESS: For rounding it out,
so that it would fit on a pipe. So, seventy-five
percent of the material had to be cut out.
So, there was an awful lot of dust made at
that time.

BY MR. GUSKY:

Q. Certainteed didn't acquire plant 4, did it?

A. No, they did not.

Q. Do you know who did?

A. Nicolet, as far as I know.

Q. From '62 to '68, when Nicolet acquired or had
plant 4, did you ever have occasion to go in there?

MR. BROMBERG: Objection, irrelevant.

THE WITNESS: I don't recall going
in there.

MR. GUSKY: Thank you, that's all
I have.

MR. MASON: I have a couple of ques-
tions based on what Mr. Gusky has brought out.

BY MR. MASON:

Q. In this Exhibit 29, you wrote paragraph two,
Dr. Knox said that U.S. industry in general --

We can't hear you down

2 here.

3 BY MR. MASON:

4 Q. In paragraph two --

5 A. You don't have a mike on.

6 Q. Oh, sorry.

7 In paragraph two of Exhibit 29, you
8 wrote that Dr. Knox said that U.S. industry in
9 general does not want to accept the fact that
10 asbestos is very hazardous, did you not?

11 A. Yes, I did.

12 Q. Were you one of the persons in U.S. Industry
13 who did not want to accept that fact?

14 A. I was not U.S. industry, but I will answer the
15 question and say, rather than not want to, it was
16 difficult for me to accept it at the time, yes.

17 Q. Now, was that because of number 3 -- I'm sorry,
18 because of the rest of number 2 where Dr. Knox said
19 they, referring to U.S. industry, will accept any
20 doctor's view if he intimated that it is not hazard --
21 hazardous. Were you one of those who would accept
22 any doctor's view, if he intimated that it was not
23 hazardous?

24 A. No, the intimation there is that they are
25 more ready to accept a negative attitude than

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2 a positive, and that was not my attitude at all.

3 I had other reasons for not readily accepting it.

4 Q. What were they?

5 A. My reasons were as a -- traditionally, as an
6 industrial hygienist, you needed more exposure, time
7 weighted exposure, to get an occupational disease
8 than the mesothelioma is not related to time weighted
9 exposure. So, it was difficult for me to accept.

10 MR. SHEIN: Objected to as the witness
11 has not shown qualifications to express that
12 opinion, and has not been called as an expert.

13 BY MR. MASON:

14 Q. Let me ask you this --

15 MR. SHEIN: Move that it be
16 stricken.

17 BY MR. MASON:

18 Q. -- did you learn anything you didn't already
19 know, as a result of this meeting referred to in Exhibit
20 29?

21 MR. SHEIN: Objection as we don't
22 know what he already knew.

23 MR. BROMBERG: Objection, there's
24 two different meetings.

25 There are also two different meetings.

THE WITNESS: I learned a lot that
week.

BY MR. MASON:

Q. I'm talking about this meeting you had with
four representatives from Turner Brothers Asbestos
Company, the evening before the conference, about the
hazards of asbestos, I'm talking about.

A. You learn something all the time. I learned
something from it.

Q. What did you learn about the hazards of
asbestos --

A. A little more convincing that these
professionals accepted the fact and that I should
review my thinking and listen more and learn more.

Q. Okay.

Aside from either re-enforcing or
more convincing, as you put it, what new fact about
the hazards of asbestos did you learn, if anything?

A. Nothing new that I hadn't been informed of
before.

MR. MASON: That's all I have.

MR. GALLO: Mr. Cohen?

MR. BRUCH: I have one question.

BY MR. BRUCH:

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2 Q. Mr. Horowitz, in 1960, when you referred to
3 the five million particles per cubic foot standard,
4 was that over an eight hour weighted average?

5 A. That was over an eight hour weighted average,
6 yes.

7 Q. And what does that mean?

8 A. That means that in order to compare with the
9 allowable limit, the allowable limit was designed or
10 stated that if a worker was exposed for a full eight
11 hours per day, forty hours per week and fifty weeks
12 per year, on a steady basis, over the allowable
13 limit, chances are that he might get a -- a disease,
14 an occupational disease.

15 MR. COHEN: Object to the testimony
16 of the witness, in that it calls for an exper-
17 tise which the witness has not been qualified
18 to testify to as of this function.

19 BY MR. BRUCH:

20 Q. Mr. Horowitz, as an engineer, when you design
21 a dust good, or any system to collect dust, do you
22 design it for a certain level or do you design it
23 for zero?

24 A. You put the best design possible you can put
25 in.

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MR. BRUCH: Thank you.

BY MR. COHEN:

Q. Mr. Horowitz --

A. Yes.

Q. -- my name is Mitchell Cohen, and I represent certain Plaintiffs in -- in this action.

I'd like to just go back briefly and I believe you stated that you're presently working with American Mutual Liability Insurance Company; is that correct?

A. That is correct.

Q. And they're located in Wakefield, Massachusetts?

A. That is correct.

Q. And, can you tell me their specific address in Wakefield, including their postal zip?

A. Wakefield, Massachusetts, 01880.

Q. Is there an address -- post office box?

A. No, no post office box. The biggest one in town.

Q. Now, I believe that you stated in your prior deposition at page fourteen that you were interviewed initially in Rockefeller Center, prior to your actually being hired by Keasbey-Mattison; is that correct?

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A. That is correct.

Q. Do you know who had the office at Rockefeller Center that you were interviewed at, was that a Keasbey and Mattison office?

A. I believe Keasbey and Mattison had an office there.

Q. Now, can you tell me at the time you first began working for Keasbey and Mattison, were you aware of who the insurance carrier was for their product liability insurance?

A. Did you say before or during?

Q. At the time you came with Keasbey and Mattison, were you aware of the insurance carrier, who was responsible for covering claims which were made or may potentially be made because of product liability?

MR. GALLO: Objection.

MR. MASON: I object to that question.

THE WITNESS: I was not aware.

MR. BRUCH: Objection.

BY MR. COHEN:

Q. At any time subsequent to your beginning employment with Keasbey and Mattison, did you ever have occasion to learn whether an insurance carrier

underwrote the risk of Workmens' Compensation or
product liability for Keasbey and Mattison?

MR. GALLO: Objection.

MR. MASON: Objection.

MR. GALLO: Beyond the scope.

MR. BRUCH: Objection.

THE WITNESS: Only Workmens'
Compensation.

BY MR. COHEN:

Q. And, can --

MR. LOCKS: I'm sorry, I didn't hear
the answer.

THE WITNESS: Only Workmens'
Compensation.

MR. COHEN: Only Workmens'
Compensation.

BY MR. COHEN:

Q. Okay, can you tell me who that Workmens'
Compensation carrier was at the time you first
became aware?

A. I believe it was the company I work for now,
American Mutual Liability Insurance Company.

Q. Now, are you aware of the dates that American
Mutual Liability Insurance Company became or was a

1
2 carrier for Workmens' Compensation for Keasbey-
3 Mattison?

4 A. When they started?

5 MR. BRUCH: Mr. Cohen, can I have a
6 continuing objection to all questions regarding
7 insurance coverage?

8 MR. COHEN: Surely.

9 THE WITNESS: You mean, when they
10 started?

11 MR. COHEN: When they started.

12 THE WITNESS: I have no idea.

13 BY MR. COHEN:

14 Q. Do you know at what point they were actually
15 insuring for Workmens' Compensation, while you were
16 with Keasbey-Mattison?

17 MR. BROMBERG: Could we clarify
18 this, are we talking about Workmens' Compensa-
19 tion who would cover the workers at the plant
20 in the event that they got an industrial
21 injury while they worked there? Is that
22 what you're talking about?

23 THE WITNESS: That's my understanding.

24 BY MR. COHEN:

25 Q. And, we were discussing Workmens' Compensation;

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Leon Horowitz - Cross

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is that correct?

A. That's correct.

Q. Okay.

Now, do you know whether that included any asbestos related disease which an employee may suffer due to his or her employment at Keasbey-Mattison, would that have been included in Workmens' Compensation?

MR. MASON: I would object, unless he knows the terms of the policy.

THE WITNESS: I don't know the terms of the policy, didn't know the terms of the policy. I thought it was a function of the State laws at the time. Whether there was a specific law about asbestos, I'm not sure of.

BY MR. COHEN:

Q. Do you know whether any insurance carrier actually paid any claims that were made for alleged disease caused by exposure to asbestos by an employee at Keasbey-Mattison?

MR. MASON: Objection.

THE WITNESS: I don't know of any that did, during the time I was there?

MR. COHEN: That's correct.

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2 BY MR. COHEN:

3 Q. Are you aware as you testified today, as to
4 whether American Mutual Liability Insurance Company,
5 your employer, has ever been named in a lawsuit relating
6 to asbestos disease?

7 A. Yes, I'm aware that they are.

8 Q. Are you aware of the nature of the allegation
9 made against your employer with regard to the lawsuits
10 brought against it?

11 A. A general awareness on products, that's all.

12 Q. Well, when you say a general awareness, can you
13 tell me, specifically what it is alleged that your
14 employer did which caused it to be sued in an action?

15 MR. BROMBERG: Objection, irrelevant.

16 MS. GIBSON: Objection.

17 MR. BROMBERG: And prejudicial.

18 THE WITNESS: I'm not privy to that
19 information except by hearsay.

20 BY MR. COHEN:

21 Q. What is your understanding as to why American
22 or what allegedly did your employer do, which
23 caused it to be named in an asbestos lawsuit or
24 lawsuits?

25 A. Apparently, they insured --

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MR. GALLO: I'm going to object.

MR. MASON: I'll object to that.

MS. GIBSON: Me, too.

MR. BROMBERG: Are you including claims they may have by way of Workmens' Compensation liens against cases so that they are, in effect, Plaintiffs?

MR. COHEN: No, I am talking about where they were named as Defendants in asbestos lawsuits.

MR. GALLO: Objection, irrelevant.

MR. BROMBERG: Join the objection.

MR. CREEDON: Join the objection.

MR. COHEN: I think it goes to the interest that this witness may have with regard to his credibility. I think it's relevant for that purpose.

BY MR. COHEN:

Q. Go ahead, you can answer the question.

A. The only awareness I have is of suits that are made against companies that my present company insured many, many years ago, on their products, which products were supplied to a particular company. I think the shipyards in Pascagoula. They're

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the only ones I'm aware of.

Q. Are you aware of any allegations that American Mutual Liberty or Liability Insurance conspired --

THE COURT REPORTER: Are you aware of any allegations --

BY MR. COHEN:

Q. Are you aware of any allegations that your present employer conspired with Keasbey and Mattison to preclude the distribution of information concerning health hazards at the Ambler facility?

MR. MASON: Object to the question.

MR. BROMBERG: Objection.

MR. BRUCH: Objection.

MR. GALLO: Totally irrelevant.

THE WITNESS: Oh, definitely not.

BY MR. COHEN:

Q. Now, when you first got to Keasbey and Mattison, can you enumerate for me the sources of knowledge that were available to Keasbey and Mattison with regard to the question of asbestos health?

A. Help or health?

Q. Health, H-E-A-L-T-H, the sources of materials that Keasbey-Mattison had available to it, from which it could learn about known or suspected health hazards

1 relating to asbestos?

2 A. When I joined them, prior to when I joined them,
3 or after I joined them?

4 Q. Well, let me state at the time you joined
5 them, based upon your experience, were you able to
6 determine what material was accessible to them prior
7 to your joining them?

8 A. They were a member of the Industrial Health
9 Foundation, which publishes abstracts of all papers
10 having to do with occupational diseases. So, if
11 anybody read them, they were aware of the abstracts
12 that were available, yes.

13 Q. And, do you know how long -- I'm going to use
14 the term IHF --

15 A. IHF.

16 Q. Instead of Industrial Health or Industrial
17 Hygiene Foundation --

18 A. Right.

19 Q. -- they went under a name change.

20 Do you know how long Keasbey and
21 Mattison was a member of IHF prior to your joining
22 them?

23 A. Several years, but I don't know the number of
24 years.

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2 Q. And, do you know whether Keasbey and Mattison
3 would have received publications from IHF --
4 rather, such as abstracts that were distributed concern-
5 ing asbestos related disease?

6 A. Yes, they would, that's part of the membership.

7 Q. And, you --

8 A. That is part of the membership.

9 MR. STRAIN: We're going off the
10 record, and the time is 3:26.

11 We're back on the record, and the
12 time is 3:27.

13 BY MR. COHEN:

14 Q. Mr. Horowitz, when you first began at Keasbey
15 and Mattison, do you recall seeing any of the IHF
16 abstracts anywhere on the premises of Keasbey and
17 Mattison, specifically concerning asbestos disease?

18 A. I don't recall seeing that.

19 Q. Do you ever recall at any time seeing any
20 abstracts from IHF?

21 A. From that time on, I received all of them.

22 Q. From -- when you say from 1960 forward?

23 A. From 1960 forward, yes.

24 Q. And, would that include the period of time
25 where you became an employee of Certainteed?

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2 A. Yes, it was.

3 Q. And, approximately how often did you receive
4 abstracts specifically concerning asbestos health
5 hazards from IHF?

6 A. IHF does not publish anything specifically
7 concerning anything in particular unless they have a
8 symposium or something. Most of their abstracts cover
9 -- they have a library, they cover occupational disease
10 and industrial hygiene, related subjects, and they
11 don't specialize, in other words. So, we have to cull
12 out an abstract on asbestos.

13 Q. And, upon what basis can you say that they did
14 not send specific abstracts dealing with asbestos
15 disease?

16 A. I did not say that. I don't understand your
17 question.

18 Q. Let me -- let me go back.

19 Your statement was, I believe, that IHF
20 did not send specific abstracts treating only the
21 subject of asbestos related disease; is that correct?

22 A. Only if they had a symposium on asbestos
23 related disease. But, otherwise, the abstract would
24 be on every subject that was -- that came out within
25 that period of time.

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2 Q. So, if there were a specific type of abstract
3 sent relating only to asbestos disease, you would not
4 be aware of it even as today we sit here, would that
5 be correct?

6 MR. GALLO: Objection, that's not his
7 testimony.

8 THE WITNESS: No, I said if I would
9 cull it out.

10 BY MR. COHEN:

11 Q. Well, are you aware today as to whether IHF
12 ever sent abstracts to its members that specifically
13 dealt only with the subject of asbestos disease?

14 A. Definitely, they did.

15 Q. Okay.

16 Now, when was the earliest recollection
17 you have of specifically receiving such abstracts?

18 A. Almost immediately, and this raised the question
19 of the relationship between cancer and asbestos,
20 almost immediately after I joined the company.

21 Q. Now, if I understand correctly from your testi-
22 mony this morning, up until 1960, throughout your
23 experience with the State of New York, the City of
24 New York, you had no knowledge of any carcinoma hazard
25 being associated with asbestos exposure?

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A. I was not aware of that, yes.

Q. Now, when you got to Keasbey and Mattison and began receiving the specific IHF abstracts relating to asbestos disease, were there abstracts from years prior to the time you came at Keasbey-Mattison?

A. There were a few.

Q. Okay.

Now, are you aware of whether any of those abstracts specifically concerned asbestos related disease?

A. That's the one we're talking about. That's the one I said I'm aware of.

Q. Okay.

A. The asbestos.

Q. Can you tell me how far back in time prior to your starting with Keasbey and Mattison, the abstracts went that dealt with asbestos related disease?

A. When I read the first time I read of any correlation or supposed or suspected correlation, I wrote -- I called the industrial hygienist of the insurance company, which was the company I worked for now in Philadelphia, and he -- and asked him if he would do a search for me on any literature, and he sent me about two pages of abstracts dealing mostly with

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2 papers that had been written in England and in South
3 Africa.

4 Q. Okay.

5 So --

6 A. So, those were the only ones I ever saw prior
7 -- that were written prior to the time I started
8 seeing them.

9 Q. And, did you specifically tell your now employer,
10 but then insurance carrier, about IHF as a potential
11 source for these type of articles?

12 A. I didn't have to tell them. They probably --
13 they recommended that the company join IHF. They were
14 a member, themselves, and I would meet them at the
15 meetings all the time. There was no need to tell
16 them. They were aware of it.

17 Q. Your present employer was a member of IHF?

18 A. Local area here was, yeah.

19 Q. Okay.

20 And the only thing they provided you
21 was two pages of abstracts upon your request to them?

22 A. After the search they made, that was the only
23 thing they provided me, yes.

24 Q. Did you ever call IHF or instruct anyone else to
25 contact IHF to determine whether there was -- whether

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2 there were any abstracts that you did not have in
3 your possession, concerning asbestos related disease?

4 A. No, I didn't follow it up, no.

5 Q. Well, did you think that it would be helpful
6 or necessary for you, in terms of the function that
7 you were hired for by Keasbey and Mattison, to have
8 the broadest possible source of information available?

9 MR. BRUCH: I object to the form
10 of that.

11 THE WITNESS: I didn't pursue it
12 that way. I didn't pursue it that way. I
13 was just made aware of it, and kept my eye
14 open to any literature or any meetings, any
15 discussions as a member of the AIHA, the
16 American Industrial Hygiene Association, as
17 a member of the IHF, and with the local people
18 in the local industrial hygiene section.

19 BY MR. COHEN:

20 Q. Now -- so that would have been anything from
21 1960 forward?

22 A. Correct.

23 Q. Did you believe that it was relevant to your
24 employment function that you concern yourself with
25 knowledge which had been accumulated prior to 1960,

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2 concerning asbestos disease?

3 A. Well, I had enough to do to follow the progress
4 from then on, rather than do a research. I was not
5 a research person, so --

6 Q. Well, my -- my question was not whether you felt
7 you had more than enough to do otherwise. My question
8 is, did you feel that it was necessary to acquaint
9 yourself with the body of scientific or medical
10 information which may have existed prior to 1960,
11 concerning the specific subject of asbestos disease?

12 A. I limited myself to what was available to
13 the insurance company.

14 MR. MASON: I object -- I object to
15 the form of the question, because the witness
16 has testified that he came armed with knowledge,
17 certain knowledge, that he had described
18 previously. I think your questioning suggests
19 that he had no knowledge until he came to
20 Keasbey-Mattison about asbestos diseases.

21 MR. BROMBERG: I also object to the
22 form of the question as to his feelings.

23 MR. LOCKS: I object to Mr. Masons'
24 improper characterization of his prior testimony.

25 MR. COHEN: Thank you.

THE WITNESS: Do I have a question

to answer?

MR. COHEN: No.

BY MR. COHEN:

Q. Let's get back -- let's get back -- we'll incorporate Mr. Mason's objection for want of a better term and you brought with you a certain amount of information that you had gathered by virtue of your work experience prior to 1960 with you.

A. That's true.

Q. Now, did you believe that it would have been helpful, as of 1960, when you began with Keasbey-Mattison, to go backward and determine what the body of scientific and medical information was that was available concerning asbestos disease, whether you had time or not to look at it all or research it, did you think that that was something that should be done in order for you to be in the best position to operate for Keasbey and Mattison?

MR. GALLO: Objection to the

form.

MR. MASON: Object to the form of the

question.

THE COURT REPORTER: Wait a minute.

MR. GUSKY: Objection to the form of the question.

THE WITNESS: No, I did not pursue that area. I felt my experience with industrial hygiene, if there were information that were pertinent to the field that I would have obtained it one way or another in my natural work and I did not feel this is -- the kind of abstract that I did have at that time, was the kind of new thing that you get every day about new products. Type of thing that required more study, more research, and as -- as a practitioner in the field, primarily in the dust control area, it was not -- my curiosity was not pinched enough to do that, no.

BY MR. COHEN:

Q. Well, let me ask --

A. If that's the word.

Q. -- at the time you first came with Keasbey and Mattison, you had no knowledge of an alleged relationship between carcinoma and asbestos exposure; is that correct?

A. I had no knowledge of that.

Q. Were you aware of whether IHF had published

1
2 abstracts going -- going back thirty years, twenty-five,
3 thirty years, prior to 1960, that addressed that
4 subject?

5 A. Up to that time, I was not aware.

6 Q. Now, I believe that you stated that the first
7 time you ever became aware of an alleged health hazard
8 insofar as cancer and asbestos exposure was concerned,
9 was in or about September of 1960, when Dr. Knox
10 spoke with you; is that correct?

11 A. No, the reference to asking the insurance
12 company to give me any material was prior to Dr.
13 Knox' visit.

14 Q. Well, as a result of that information that was
15 given to you by American Mutual, did you learn that
16 there were articles which suggested that cancer
17 was a disease associated with asbestos exposure?

18 A. As I said, those articles meant to me a --
19 an initial discovery that required more study. And,
20 therefore, it was the first information of any -- any
21 illusion or alluding to the fact that there was a
22 relationship. It wasn't until Knox came and mentioned
23 that it was more substantiated than the few abstracts
24 that I had read.

25 Q. Okay.

Well, you used the word, initial studies, would you consider studies that had gone back thirty years to be initial studies from the standpoint of 1960?

MR. GALLO: Move to strike unless a foundation can be shown.

MR. COHEN: I'll be happy to show --

MR. GALLO: At the time of trial. I don't need the explanation now.

THE WITNESS: They are --

MR. COHEN: Well, wait a minute -- excuse me, the witness is not going to be here at the time of the trial, that's the entire reason we're taking it. I'll be happy to show those documents which deal with the questions I'm asking, no problem.

MR. GALLO: I just want to preserve an objection for the record. Why don't you continue?

MR. COHEN: Well, I'm not going to -- no, then you either withdraw your objection, or I'll proceed with the abstracts, because --

MR. GALLO: Proceed with the abstracts,

then.

MR. COHEN: Okay.

Let me just ask, if I may, whether there was a question pending that was unanswered prior to getting into this.

THE COURT REPORTER: Yes, there was.

MR. COHEN: Okay, go ahead.

THE COURT REPORTER: Question: You used the word, initial studies, would you consider studies that had gone back thirty years to be initial studies from the standpoint of 1960?

MR. MASON: I object to the form of that question. We're not concerned about what this witness considers as an early study.

MR. COHEN: Well, we are, when the witness suggests that there were only initial studies being done in 1960, which may have pricked his interest in a certain area. And I'm just trying to define what he means by initial.

MR. BRÖMBERG: He said pinched.

MR. MASON: That was not his testimony.

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MR. BROMBERG: Excuse me.

MR. MASON: That was not his testimony.

THE WITNESS: As a industrial hygienist whose specialty is engineering, I depend, I and all industrial hygienists who have any particular specialty depend on other skills for information such as this. Asbestos was not the only subject that had references to abstracts and papers that may have been going on for thirty years. The fact that the states, the ACGIH and all the authorities that we lean upon for information and guidance and help, did not accept these studies of twenty, thirty years before sufficiently enough to change their threshold limit values, and to make it well known was sufficient for me, as an individual, not to make the research and to accept them as being more pertinent than the prevailing knowledge at the time.

BY MR. COHEN:

Q. So you, in essence are agreeing with the statement that was made on Exhibit 29, that we spoke about, and I'm referring specifically to paragraph number two, "Dr. Knox said that you U.S. Industry in

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2 general does not want to accept the fact that asbestos
3 is a very hazardous, and they will accept any doctor's
4 view, if he intimated that it is not hazardous.

5 MR. BROMBERG: Objection.

6 THE WITNESS: That's your conclusion,
7 not mine.

8 MR. BROMBERG: Hold it, objection on
9 the ground the question is number one, argumenta-
10 tive, number two, it asks the witness to charac-
11 terize somebody else's testimony, who hasn't
12 given testimony, who, in fact, is in only as a
13 result of included hearsay, if it's in at all,
14 and it's entirely improper question.

15 MR. COHEN: Okay. Well, it wasn't
16 improper when it was asked before, so I'll just
17 let the testimony go with that.

18 BY MR. COHEN:

19 Q. Now, let me, if I can, since there was an
20 objection made by counsel, I'm going to have to go
21 through a number of documents --

22 MR. GALLO: I'm going to object to
23 this entire line of questioning, Mr. Cohen.
24 The witness has already said that his first
25 contact with this subject was in 1960. He had

1
2 already given us the dates of his first receipt
3 of IHF documents. It's improper for you to
4 question him on documents that he's already
5 said, he has never received or seen.

6 MR. COHEN: Not when you raise an
7 objection as to the basis of my questioning.
8 And I ask you either to withdraw your objection,
9 in which case I will not proceed, or I can't --
10 it's not something I can go over with the witness
11 at a later time, as you suggest.

12 MR. MASON: So, what are you going to
13 do, are you going to ask him whether he ever
14 saw this or whether he considers this an early
15 study?

16 MR. COHEN: I'm going to ask him if he
17 has any familiarity with the materials that
18 have been in existence relating to a number of fac-
19 tors going back as far as 1931.

20 MR. GALLO: My objection to the lack
21 of foundation still stands unless you can
22 demonstrate the foundation. But it doesn't have
23 to be done now.

24 MR. COHEN: Well, the foundation --

25 MR. GALLO: -- you can lay the founda-

tion later, and I will withdraw the objection.

MR. BROMBERG: Further object on the grounds of relevancy.

MR. COHEN: Let's go off -- let's go off the video.

MR. STRAIN: We're going off the record, and the time is 3:43.

(Whereupon the following discussions were held off the videotape record.)

MR. COHEN: If you're telling me that you're objecting to a lack of a basis --

MR. GALLO: Right.

MR. COHEN: Okay, if the witness -- if this is a de bene deposition, then I can't establish that basis at a later time. I either have to do it now --

MR. GALLO: Sure, you can, if there is a basis for the question, and you demonstrate it to me now or later, the objection has to be overruled.

MR. COHEN: Well, the only way I can establish the basis is doing it now. Suppose I feel I've established a basis, and he's here to answer questions.

MR. GALLO: Well, what's he going to say, yeah, that's a document that contains certain writing on it, but I've never seen it.

MR. COHEN: Well, that will establish --

MR. GALLO: Show me, maybe I'll withdraw the objection.

MR. MASON: Find out what he's going to ask him.

THE WITNESS: That's all right. I'm not an expert witness, so it doesn't matter.

MR. COHEN: That's right. Those are IHF abstracts.

MR. GALLO: Show me what will justify that question about cancer?

MR. COHEN: I'll be very happy to do it.

MR. GALLO: An IHF abstract about asbestos causing cancer, going back to 1930 --

MR. COHEN: 1935, 1935, 1936, here why don't you read the whole tablet, because it comes up in later -- one of your later exhibits.

I want to at this juncture if you can

1
2 allow other counsel, since it looks like I'm
3 going to be the longest, and I'll relinquish.

4 MR. MASON: Go ahead, ask your next
5 question.

6 MR. GALLO: Go ahead.

7 MR. COHEN: Well, let me just state,
8 I was asked by counsel if I will yield the
9 floor, as they say, and --

10 MR. GALLO: All right, whatever you
11 want to do.

12 MR. COHEN: I've just been asked by
13 other Plaintiffs' counsel to -- if we can go
14 out of time, so at this point, I'll stop my
15 examination and defer to the gentleman from
16 Philadelphia.

17 MR. GALLO: Who's next?

18 MR. COHEN: Wait a minute, let me just
19 make that statement again on the video, so it
20 will be at least --

21 MR. MASON: I object to this switching
22 of counsel. I think it's going to make things
23 very confusing, both on the record and on future
24 videotapes.

25 MR. BROMBERG: I join in that.

1
2 We started out giving Plaintiffs' counsel
3 complete choice of who went first. They agreed
4 and we've now started with one. Now, switch
5 to another one and go. It seems to me it will
6 be only confusing to the witness, and only delay
7 the procedure. I think we ought to finish one
8 Plaintiff, and then continue.

9 MR. GUSKY: I join in Mr. Bromberg's
10 objection.

11 MR. BROMBERG: It's now 3:49
12 according to my watch.

13 MR. MASON: Okay, when did the witness
14 say he has to end today?

15 THE WITNESS: I can get a later
16 plane.

17 MR. COHEN: How late?

18 MR. SHEIN: I felt that if we did our
19 questioning now, perhaps in the interim, you
20 would be able to work this out. And it might
21 save time in the long run, but due to the objec-
22 tions, we will grin and bear it.

23 THE WITNESS: Nine-fifteen is my
24 last flight, if I can make it.

25 MR. STRAIN: We are now back on the

record, and the time is 3:52.

MR. COHEN: Mr. Horowitz, we just took a very short break off the video record, and it was requested because of some scheduling problems, that I relinquish the examination now to co-counsel. So, I will do that, and we will come back sometime later together to discuss these matters further.

Thank you.

BY MR. SHEIN:

Q. Mr. Horowitz, my name is Joseph Shein, and I represent the Plaintiff in this case, Melvin Timbers, who is deceased.

Did you by chance know Mr. Timbers?

A. I did not know Mr. Timbers.

Q. He worked, to possibly refresh your recollection, for Keasbey-Mattison and then for Certainteed. You did not know him?

A. I did not know him.

Q. Now, you've told us that you started for Keasbey-Mattison in 1960; is that correct?

A. That is correct.

Q. What product containing asbestos were they manufacturing at that time?

2 A. In 1960?

3 Q. Yes, sir.

4 A. They were manufacturing asbestos shingles, siding
5 in plant 1, I think it was, insulation material in
6 plant 4, pipe insulation material, a paper product used
7 for the electrical industry, asbestos paper product, a
8 rubber product containing asbestos for gasketting,
9 asbestos cement pipe and textile, asbestos textile.

10 Q. Did these products have any particular type of
11 tradename that you can recall at this time?

12 A. Each company used its own tradename. I believe
13 Johns-Manville's tradename for asbestos cement --

14 MR. CREEDON: Objection, move to
15 strike.

16 THE WITNESS: I'm sorry, but another --
17 everybody has trade names.

18 MR. SHEIN: I understand that.

19 BY MR. SHEIN:

20 Q. I'm not asking about Johns-Manville's tradename,
21 though.

22 A. I'm sorry, that's the only tradename I know.

23 Q. We know those.

24 A. That's the only tradename I know, I'm sorry.

25 Q. Okay, you don't know any of Keasbey-Mattison's

2 particular tradenames or products?

3 A. No.

4 Q. Now, beginning in 1960, with the first products
5 you told us about, tell us what percentage of asbestos
6 they contained, each contained?

7 MR. BROMBERG: Now, are we talking
8 about Ambler or the whole Country?

9 BY MR. SHEIN:

10 Q. Let's talk about Ambler first.

11 MR. MASON: Are we talking about the
12 Plant where Mr. Timbers worked?

13 MR. SHEIN: That's what we're trying
14 to do, plant number 8.

15 BY MR. SHEIN:

16 Q. Plant 8, what did they manufacture?

17 A. They -- Plant 8 manufactured asbestos cement
18 pipe only. They used the raw materials asbestos,
19 which came in -- in bags of a hundred percent asbestos.

20 Q. Where did they come from?

21 A. Various places, South Africa that I know of.

22 Q. What names were on those bags?

23 A. I don't recall the names.

24 Q. You don't recall?

25 A. Cassiar, that's about the only one I remember.

1

2 Q. You recall Cassiar, seeing it on a daily
3 basis?

4 A. I -- it was not my function to record the name.
5 I knew we picked blue fiber and white fiber and it was
6 from different sources, so I know some came from
7 Canada. Where they came from, I don't know.

8 Q. But, you know some came from Cassiar; is that
9 correct?

10 A. I believe so, yes.

11 Q. Okay.

12 Now, how much asbestos was in the
13 finished product from plant 8?

14 A. The finished product contained about fourteen
15 percent asbestos.

16 Q. And, what does that mean, when we say -- we've
17 heard today percentages of asbestos. Exactly what does
18 that mean as far as a worker cutting it is concerned?

19 MR. GUSKY: Objection.

20 THE COURT REPORTER: Who was that?

21 BY MR. SHEIN:

22 Q. -- or using the asbestos, what does that
23 mean, fourteen percent?

24 MR. BRÖMBERG: Objection, there hasn't
25 been any testimony about anybody cutting asbestos,

if that can be done.

MR. SHEIN: All right, well, I'll go into that.

BY MR. SHEIN:

Q. This pipe, is it in particular lengths?

MR. GUSKY: I'm going to object to the relevance of this entire line of questioning, based on the direct examination.

MR. SHEIN: Your objection is noted, Counsel.

MR. GALLO: I'll object also, beyond the scope.

MR. MASON: I'll join in that.

MR. SHEIN: This is a party.

MR. LOCKS: Just so we don't waste the record, relevance and materiality clearly are objections that are reserved until the time of trial, and are debated at that point.

MR. BROMBERG: That certainly is not my understanding.

MR. GUSKY: Not on videotape.

MR. CREEDON: All objections must be waived or raised. That was my understanding.

MR. COHEN: It's not the nature of it

1
2 being a videotape, it's the nature of it being
3 a de bene esse.

4 MR. CREEDON: Waive it or raise it.

5 MR. LOCKS: Gentlemen, if we have a
6 multiple Plaintiff deposition with multiple
7 time periods of exposure and multiple different
8 products, and that is what you've got in this
9 case, how could you possibly make materiality and
10 relevance objections to every single thing,
11 when the time parameters would be different for
12 every person?

13 MR. GALLO: It's beyond the scope
14 of the direct. It all is.

15 MR. LOCKS: But, I mean, as far as I
16 was concerned, that portion might have
17 been preserved. Maybe I'm wrong. And if I'm
18 wrong, go right ahead. I'm just trying to point
19 something out. Excuse me, Joe.

20 MR. SHEIN: I think I can short cut
21 this a bit. Are we still on the record, or
22 on the tape?

23 MR. STRAIN: Yes.

24 BY MR. SHEIN:

25 Q. In your functioning of examining the various

1
2 plants, I take it that you at times observed the
3 manner in which the raw asbestos was moved, once it
4 arrived?

5 A. Yes.

6 Q. And that was removed by forklift, wasn't it?

7 A. Most of the time.

8 Q. From one section to another?

9 A. Most of the time, yes.

10 Q. So, that --

11 A. From the railroad cars to the plant --

12 Q. Yes.

13 A. -- from the plant's storage, from the storage, to
14 the hopper, where it was opened and bagged and dropped
15 into the hopper, yes.

16 Q. And, what was the function of a forklift
17 operator in Plant 8?

18 A. Various functions, and that was one of them.
19 And there's many other functions, such as picking --
20 picking up the finished pipe, broken pipe and so on.

21 Q. And, how was this raw asbestos bagged?

22 A. Mostly in a paper wrapping, a paper bag.

23 Q. And, of course, we're talking about one hundred
24 percent asbestos, when we talk about raw asbestos,
25 aren't we?

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2 A. Yes.

3 Q. What color was it?

4 A. Mostly, the white color.

5 Q. When the finished product was ready for
6 delivery to wherever it was going, was it boxed?

7 A. No, it was not boxed.

8 Q. How did it leave the plant?

9 A. I'm sorry, may I retract?

10 Q. Yes, sir.

11 A. They made couplings, which may have been
12 boxed.

13 Q. What is a coupling?

14 A. Coupling is where you join two pieces of pipe,
15 and you have a smaller section, and some of the
16 couplings may have been boxed.

17 Q. And, were they -- did they have asbestos
18 content, also, the couplings?

19 A. It was a hard, solid product of asbestos
20 cement, which contained fourteen -- about fourteen
21 percent asbestos.

22 Q. Now, that was also boxed? That was boxed?

23 A. I believe sometimes it was boxed.

24 Q. And, the pipe, how did it leave the plant?

25 A. It left on large trailers, and it was piled up

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2 in a certain way and tied down.

3 MR. BROMBERG: Can we have a continuing
4 objection --

5 MR. SHEIN: Sure.

6 MR. BROMBERG: -- to the cross being
7 beyond the scope of the direct?

8 MR. SHEIN: Sure.

9 MR. BROMBERG: Okay.

10 BY MR. SHEIN:

11 Q. What length was this pipe?

12 A. I think they had varying lengths, but maybe
13 they ran around twenty feet, something like that.

14 Q. Now, during the time that you worked for
15 Keasbey and Mattison, did you ever see on any of the
16 pipes, or on any of the couplings in boxes any type of
17 cautionary or warning label?

18 A. None that I remember.

19 MR. GALLO: Objection.

20 BY MR. SHEIN:

21 Q. After 1962 --

22 MR. STRAIN: Excuse me, gentlemen,
23 we're going off the record, and the time is
24 4:01.

25 (Whereupon the following was held off

1 the videotape record.)

2
3 MR. MASON: I just want to put on the
4 record, my objection to any questions by anyone
5 which were not within the scope of direct
6 examination, that includes past questions and
7 future questions, so I don't have to keep
8 repeating this all the time.

9 MR. GALLO: Mr. Shein, will you
10 agree that we all have a continuing objection
11 on that basis?

12 MR. SHEIN: On what basis?

13 MR. GALLO: That the questions
14 into the manufacturing process, length of the
15 pipe, et cetera, are beyond the scope of
16 direct.

17 MR. SHEIN: I don't agree they're
18 beyond the scope of direct.

19 MR. GALLO: Well, do you agree that
20 we have a continuing objection?

21 MR. SHEIN: Yeah.

22 MR. MASON: And my objection was
23 broader than that. That was to anyone's
24 question, past or future, that is beyond the
25 scope of the direct, so we don't have to keep

1 Leon Horowitz - Cross 236

2 repeating this all the time.

3 MR. SHEIN: Sure.

4 MR. BROMBERG: Are you making this
5 witness your own witness?

6 MR. SHEIN: I never make a witness
7 my own, unless I have to.

8 THE WITNESS: What do you have to
9 offer?

10 MR. BROMBERG: I take that to be
11 negative.

12 MR. SHEIN: Read me the last question.

13 (Whereupon the court reporter read
14 back the last question.)

15 MR. STRAIN: This is the beginning of
16 tape number five, and the time is 4:04.

17 BY MR. SHEIN:

18 Q. During that same time period, sir, from '60
19 until '62, did you ever see any cautionary labels of any
20 kind on the raw asbestos fiber that was coming in
21 bags into the plant?

22 MR. BROMBERG: How can you put a label
23 on a piece of fiber?

24 MR. SHEIN: That's a very good
25 question.

1
2 BY MR. SHEIN:

3 Q. On the bags of raw asbestos fiber.

4 A. I don't recall seeing any warning.

5 Q. Now, that fiber that was coming in, did you
6 also see in addition to white fiber, blue fiber?

7 A. In plant 8? In plant 8?

8 Q. Yes, sir.

9 A. I don't remember blue fiber in plant 8, I do
10 remember it in plant 4.

11 Q. In plant 4?

12 A. Yes.

13 Q. Now, after 1962, when Certainteed took over,
14 and you remained in your same office, and basically,
15 I gather, at your same job; is that correct?

16 A. For six months, we were in limbo, until we
17 found out that we were re-hired. But, essentially,
18 that's the same.

19 Q. What products did Certainteed manufacture from
20 that same plant?

21 A. Asbestos cement, plant 8, was the only one in
22 Ambler that Certainteed Products picked up.

23 Q. What did they manufacture?

24 A. Asbestos cement pipe, same product.

25 Q. The exact same product as before?

1 A. The exact same product as before.

2 Q. With the same content?

3 A. With the same content.

4 Q. Did they manufacture the other product you
5 referred to, couplings?

6 A. Yes.

7 Q. Or gaskets?

8 A. That was the same.

9 MR. BRUCH: Objection, no mention of
10 gaskets.
11

12 THE WITNESS: No gaskets.
13

14 BY MR. SHEIN:

15 Q. No gaskets, couplings?

16 A. Couplings, they did have a rubber gasket, but
17 that wasn't mentioned before.

18 Q. Okay.

19 A. That was brought from outside any way.

20 Q. And, were those couplings boxed?

21 A. After being produced? The same way as before,
22 some -- some were, small couplings were.

23 Q. And, between 1962 and 1968, did you ever see
24 any cautionary label on the boxes of couplings?

25 A. I don't remember seeing any.

1
2 Q. And, did you ever see any type of cautionary
3 stamp on the pipe?

4 A. I don't remember seeing any.

5 Q. Now, when you first began to work for Keasbey
6 and Mattison, you knew, did you not, sir, that they
7 were a wholly owned subsidiary of Turner and Newall?

8 MR. MASON: Objection.

9 BY MR. SHEIN:

10 Q. Did you know that?

11 A. I believe I was told that, yes.

12 MR. MASON: Move to strike.

13 BY MR. SHEIN:

14 Q. Now, who told you that?

15 A. My fellow workers.

16 Q. And, during the course of your employment, in
17 the two years from 1960 to 1962, except for the visit
18 from Dr. Knox, did you ever receive, sir, any informa-
19 tion at all with regard to asbestos hazards from
20 Turner and Newall?

21 MR. MASON: Objection.

22 THE WITNESS: I had no relationship
23 with Turner and Newall at all, so I received
24 no information.

25 BY MR. SHEIN:

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2 Turner-Newall. I didn't know it was part of Turner-
3 Newall. I thought it was a separate, scientific
4 organization.

5 Q. I'm talking about research that Turner and
6 Newall, itself, did, were you aware of any research
7 that Turner and Newall did?

8 MR. MASON: Objection.

9 THE WITNESS: No, I did not.

10 BY MR. SHEIN:

11 Q. Now, exactly when was it that Dr. Knox came
12 to visit?

13 A. Mostly from looking at these memos, it appears
14 that his visit was somewhere around June of 1960.

15 Q. June of 1960.

16 And, did you know he was coming to
17 visit beforehand?

18 A. I was told, and invited to the meeting, maybe
19 a week before. And that's how I knew, yes.

20 Q. And, who did you understand exactly he was, what
21 was his capacity, in other words?

22 A. I understood that he -- I thought at the time
23 worked for Turner and Newall, and was their Medical
24 Advisor.

25 MR. MASON: Objection, move to strike,

1
2 not responsive.

3 BY MR. SHEIN:

4 Q. How did you learn that, sir?

5 A. I imagine I was told that. I don't know.

6 MR. MASON: Move to strike.

7 BY MR. SHEIN:

8 Q. Did you, personally, have discussions with

9 Dr. Knox?

10 A. The majority of the meeting was him -- discussing
11 the whole problem, and it was only at the end of the
12 meeting that he showed me a cross section of a lung
13 which he pointed out had a mesothelioma in it.
14 It was a very short discussion.

15 Q. And, he told you that that was from asbestos
16 exposure?

17 A. The implication was that, that's right.

18 Q. What did the remainder of the meeting consist
19 of?

20 A. That was the end of the meeting.

21 Q. How long did this meeting take?

22 A. I would say about an hour or two.

23 Q. Where did -- where was the meeting held?

24 A. I believe our Engineering Office, and the
25 Staff Office was in a small building on the main street

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2 Q. You received nothing?

3 A. No.

4 Q. Did you ever receive, sir, between 1960 and
5 1962, from Turner and Newall, any type of medical
6 bulletins, of any kind, that notified you of the
7 latest developments, medically or scientifically,
8 of possible asbestos hazards?

9 MR. MASON: Objection.

10 THE WITNESS: I had no information
11 such as that.

12 BY MR. SHEIN:

13 Q. You knew, didn't you, that Turner and Newall
14 had a Research Department or Division in England?

15 MR. MASON: Objection.

16 THE WITNESS: When Dr. Knox visited,
17 I found that out, yes.

18 BY MR. SHEIN:

19 Q. And, did you find out how extensive their
20 research was?

21 A. At the time, I didn't know it was Turner-Newall's
22 and I didn't find out how extensive it was.

23 Q. When you say, at the time you didn't know it
24 was Turner and Newall, what do you mean by that?

25 A. You said this Research Counsel was part of

1

2 in Ambler, and this was in a room like this, on the
3 second floor.

4 Q. Was it held at the plant?

5 A. No, not at the plant.

6 Q. How far was the plant from where the meeting
7 was held?

8 A. About a block away from the main line.

9 Q. And, did Dr. Knox advise you that the MAC, the
10 maximum allowable concentration, in England was less
11 than in the United States?

12 A. I don't recall specifically talking about that
13 subject to him, but the implication was that in the
14 United States, we were not measuring asbestos the proper
15 way, and that they were doing so in England.

16 Q. And, when did you know that?

17 A. I believe at that meeting we discussed that.
18 But, I'm not sure.

19 Q. Now, was any line of communication set up between
20 you, or your plant, you being the Industrial Hygienist
21 there, and Turner and Newall in England, as a result
22 of this meeting?

23 MR. MASON: I object to the form
24 of the question. It's two questions in one.

25 THE WITNESS: No, there was not, and I

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was the Dust Control Engineer at the time.

BY MR. SHEIN:

Q. Well, was there a Medical Director at Keasbey-Mattison?

A. Employed fully by Keasbey and Mattison?

Q. Yes, sir.

A. A hundred percent of the time?

Q. Yes, sir.

A. No, there was not.

Q. And, did Turner and Newall know that?

MR. MASON: Objection.

THE WITNESS: I have no way of knowing what they knew.

BY MR. SHEIN:

Q. Well, did you make Dr. Knox aware of that fact?

A. No, there was no occasion to do so.

Q. Was a Medical Director at the meeting that was held with Dr. Knox?

A. I have no recall about that.

Q. You don't remember one way or the other?

A. I don't remember one way or the other.

Q. Was there a part time Medical Director for Keasbey-Mattison at that time?

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A. Yes, I'm not sure that was his title, but there was a part time Medical person, advisor or consultant, if you wish.

Q. Did you take Dr. Knox for a tour of the plant?

A. I did not.

Q. This would be plant 8, I'm talking about.

A. I did not.

Q. Did he request that he see that plant?

A. Not in my presence. I have no knowledge that he requested it.

Q. And, to your knowledge, he was not shown it; is that correct?

MR. MASON: Objection.

THE WITNESS: I have no idea whether he was shown it or not.

BY MR. SHEIN:

Q. Did he show you any improved methods of taking dust control measurements?

A. No, it was not his area of expertise, I believe, but he did not show me any.

Q. But, it was discussed?

MR. BROMBERG: Objection.

THE WITNESS: No, it was not

discussed.

1
2 BY MR. SHEIN:

3 Q. I thought you told us a few moments ago, sir,
4 that you -- that the English method was different
5 than the American method for measurement.

6 A. That's another subject.

7 Q. I see.

8 A. The subject of control is not the same as
9 the subject of monitoring. And I was talking about
10 the way to air sample.

11 Q. I see.

12 A. At the time.

13 Q. Well, the subject of monitoring was discussed?

14 A. I believe I -- it was discussed at that time,
15 yes.

16 Q. And, as a result of that discussion, did you
17 change your method of monitoring?

18 A. No.

19 Q. Between 1960 and 1962, did you receive any
20 notice from Turner and Newall that the products should
21 be labelled, should have cautionary labels?

22 A. I, personally, have no -- have no information
23 in that area.

24 Q. Did you receive any type of notice from Turner
25 and Newall as to any type of warning that should be

1

2 placed on a product?

3 A. No, as I said, I had no correspondence with
4 Turner and Newall, or communications with them.

5 Q. And, I gather that none passed across your
6 desk in those two years; is that correct?

7 A. Communication of the type you're talking
8 about --

9 Q. Yes, sir.

10 A. -- no, none passed across my desk.

11 Q. Well, did any type of communication in those
12 two years pass across your desk from Turner and Newall?

13 A. None passed over my desk.

14 Q. Now, you were asked a few moments ago as to
15 the method by which you got the information you had
16 once you joined the company. And when I say the
17 company, I'm talking about Keasbey-Mattison. Did
18 you receive a magazine called Asbestos, that was
19 published right here in Philadelphia?

20 A. I don't recall receiving that, no.

21 Q. Have you ever seen it?

22 A. Vaguely familiar, but I don't really recall
23 it, no.

24 Q. Do you know anything about it?

25 A. No, I do not.

1
2 Q. You have used the word today, when we talked
3 about maximum allowable concentrations, and you've called
4 it a standard. Now, in your deposition of Johnson
5 versus Turner and Newall, and that was taken on
6 June 30, 1980, did you not call it a guide?

7 A. Yes, I did.

8 Q. And, that's what it was, wasn't it, it was not
9 an absolute figure; was it?

10 A. That is true today.

11 Q. Well, today, it's different; isn't it?

12 A. The difference is so multiple that my concept
13 of any of these numbers is that it is a guide.

14 Q. And that's always been your concept; isn't it?

15 A. Always been my concept.

16 Q. And, you've told us before, I believe you used
17 the figure that following it, eighty percent of the
18 people exposed would be considered safe?

19 A. That is the concept of the American Conference
20 of Government Industrial Hygienists.

21 Q. What does that mean with regard to the other
22 twenty percent?

23 A. Well, it means that if -- in order to have a
24 value that would protect a hundred percent, the level
25 would have to be zero. And there is no workable way of

1
2 doing zero, of using zero as a concept, because that
3 would mean eliminating whatever material it is completely.
4 So, threshold limit values, that name has been changed
5 again, many times, threshold limit values, which allow
6 you to go above or below that value, as long as it
7 averages out on an eight hour day, the concept is
8 that if you're able to keep it below that, and generally,
9 when you aim for that, you're much -- you try to be
10 much below that, that you'll -- you will at least
11 protect eighty percent of the people. There are
12 twenty percent, or certain number of people, that have
13 greater susceptibility than other people, and that you
14 cannot in positive way say that a certain number you
15 pick will protect a hundred percent. It's a
16 scientific figure.

17 MR. COHEN: I just want to pose an
18 objection as to any belief on the part of
19 the witness that even this utilization of the
20 TLV or MAC is going to protect eighty percent
21 of the people. I direct that with regard to
22 carcinoma, specifically, and I think it's
23 totally inaccurate, and I object to it.

24 MR. SHEIN: In fact, that's my next
25 question.

1
2 MR. BROMBERG: I'm sorry, but before
3 you get to the next question. I understand
4 the question that it simply asks this witness
5 what his understanding of the term was.
6 I certainly don't agree with the witness'
7 view as to what the TLV does, and I gather
8 Plaintiffs' counsel doesn't either.

9 MR. COHEN: I just want to have my
10 objection that that is an opinion that can
11 be rendered by an expert, and to the extent
12 that he's rendering it, I object to that.

13 BY MR. SHEIN:

14 Q. In fact, wasn't it your understanding, sir,
15 that threshold limit value or maximum allowable
16 concentration, they're basic -- they're the same
17 thing, really; aren't they?

18 A. Technically, by strict definition, they're
19 not the same thing. Maximum allowable concentration
20 was the first terminology used and that meant that
21 it should never exceed that particular number.
22 Threshold limit value allows you to exceed certain
23 materials, but the amount you exceed it in certain
24 part of the day, you have to average it below that,
25 so that it averages out. There are other definitions

1
2 that OSHA has brought in, PEL and what not, all within
3 -- that's why I keep insisting these are guidelines
4 for us to work for.

5 Q. These guidelines were never applicable to
6 mesothelioma; were they?

7 MR. GALLO: Objection.

8 MR. BROMBERG: Objection on the
9 ground, he didn't even know about mesothelioma
10 until a certain point in time.

11 THE WITNESS: Well, even today, that
12 they do know, there is no value. In fact, the
13 thinking is for cancer producing material,
14 there should be zero.

15 BY MR. SHEIN:

16 Q. That was my next question. Then, they're
17 not applicable to any --

18 MR. BROMBERG: Objection to that
19 answer, the witness is now giving expert
20 testimony, it does not relate --

21 MR. SHEIN: The witness has been
22 giving expert testimony, counsel, all day
23 long.

24 THE WITNESS: And you haven't
25 objected.

1
2 MR. BROMBERG: I would also move
3 that comment, gratuitous comment, be stricken
4 from the record.

5 MR. BRUCH: Objection.

6 MR. CREEDON: Objection.

7 MR. SHEIN: And, besides, counsel,
8 you are not in our case.

9 MR. BROMBERG: That may be, but you
10 are in mine at the moment.

11 MR. SHEIN: Oh, but we're not.

12 MR. COHEN: No, on your case, is
13 the word. There's a difference in
14 terminology.

15 MR. GALLO: To the extent
16 necessary, I'll adopt Mr. Bromberg's
17 objection. I believe it extends to
18 all of us.

19 MR. BROMBERG: If we have an
20 agreement that the questions and answers
21 of this questioner will not be used in
22 any case that I'm in, then I have no
23 problems.

24 Do all the other Plaintiffs'
25 attorneys agree to that?

Leon Horowitz - Cross

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MR. LOCKS: Of course not, Mr.

Bromberg.

BY MR. SHEIN:

Q. Now, if we may continue, and I'm not going to be much longer.

The report that has been marked as Exhibit 29, and again going, sir, if I may, and I believe it's to the second -- the third paragraph --

MR. SHEIN: Go off the record a moment, please?

MR. STRAIN: We're going off the record, and the time is 4:25.

We're back on the record, and the time is 4:26.

BY MR. SHEIN:

Q. Sir, this exhibit that has been marked as #29, which I believe you have in front of you.

A. Yes, I do.

Q. And which states November 10, 1964, and I gather that was written by you, sir?

A. Yes, it was.

Q. And, in number two, which has been referred to, it states, Dr. Knox said that U.S. industry in general does not want to accept the fact that asbestos

1
2 is very hazardous, and they will accept any doctor's
3 view, if he is -- if he intimidated, that it was not
4 hazardous.

5 Now, you heard, I gather Dr. Knox
6 make that statement?

7 A. That was --

8 MR. BROMBERG: Objection, on the
9 grounds that it's irrelevant and immaterial.

10 THE WITNESS: That was an opinion that
11 he stated at that meeting.

12 MR. BROMBERG: And hearsay.

13 BY MR. SHEIN:

14 Q. And, when he made the statement, sir, did he
15 refer to any particular physician who adhered to that
16 concept or principal?

17 A. No, he did not.

18 Q. Now, who is --

19 MR. BROMBERG: I move to strike that.

20 BY MR. SHEIN:

21 Q. -- Dr. W. C. Heuper, do you know who Dr. Heuper
22 is?

23 A. Yes, he's a very well known medical person with
24 a great deal of knowledge and experience in the cancer
25 field.

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Q. And, in fact, was he with the National Cancer
Institute in about 1964 and '5?

3

4

A. I don't know when he was with them, but he was
with them, I believe.

5

6

Q. And, was he a recognized authority in the
Country in the cancer field, sir?

7

8

MR. BROMBERG: Objection on the ground
that he's incompetent to answer the question.

9

10

MR. GALLO: Beyond the scope, as

11

well.

12

MR. BRUCH: Objection.

13

MR. CREEDON: Objection.

14

BY MR. SHEIN:

15

Q. Well, let me ask you this being all counsel
are saying you're incompetent --

16

17

MR. BROMBERG: Nobody is saying he's
incompetent.

18

19

MR. SHEIN: What was the word used?

20

MR. BROMBERG: Incompetent to answer
the question.

21

22

MR. SHEIN: To answer -- you didn't
let me finish before you objected, sir.

23

24

Sir, nobody is saying you're

25

incompetent.

THE WITNESS: But, I'm not an expert.

BY MR. SHEIN:

Q. But, didn't you tell us at the very beginning of your testimony this morning, that an industrial hygienist is a person who evaluates, measures and helps to control hazardous conditions due to toxic dust in an industrial plant?

A. That's the general definition, yes.

Q. And, in order to do that, you certainly have to know something about the hazardous conditions; don't you?

A. Yes.

Q. And, you certainly have to know something about pneumoconiosis; don't you?

A. Yes.

Q. And, you certainly, if cancer is caused by a pneumoconiosis, particularly asbestos, you have to know something about it; don't you?

MR. BROMBERG: Object to the form.

MR. CREEDON: Objection to the form.

MR. BRUCH: Object to the form --

BY MR. SHEIN:

Q. You may answer, sir.

MR. BRUCH: -- on the grounds cancer is

not a pneumoconiosis.

THE COURT REPORTER: On the grounds that --

MR. BRUCH: I'm sorry, on the grounds that asbestosis is not a pneumoconiosis.

BY MR. SHEIN:

Q. You may answer, sir.

A. There are several things to answer. The -- as an industrial hygienist and many of us have specialties, we depend on the other -- the expertise of other specialties, and those of us who are not medical people, depend on the medical specialty for their conclusions. We don't generally jump to a conclusion of any one particular person. We wait until there's a consensus and the whole community is ready to accept it and when the organizations like the ACGIH will accept it and change their limits, which they present to us, then we accept it.

Q. And, you don't accept it before?

A. Not readily, no.

Q. So, that if a possibility of a disease exists from asbestos, from asbestos exposure, you don't accept that possibility, until it's a proven fact, is that what you're telling this Jury?

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2 A. Until it is proven, and sufficiently for the
3 consensus to accept.

4

MR. BRUCH: Object.

5

6 THE WITNESS: Dr. Heuper, who is
7 an expert in cancer may not necessarily be
8 an expert in cancer on asbestos. I'm not
sure of that.

9

BY MR. SHEIN:

10

Q. I see.

11

Well, let me ask you this. You
12 read Exhibit #29, and I asked you a question about
13 whether you knew which doctors might be intimidated
14 into testifying about the non-hazards of asbestos.

15

MR. MASON: Objection.

16

MR. BRUCH: Objection.

17

MR. GALLO: Objection.

18

BY MR. SHEIN:

19

Q. Now, in 1965, sir, Dr. Hueper wrote an article

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--

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MR. GALLO: Move to strike that

22

last --

23

THE WITNESS: It was not intimidated,

24

it was intimated.

25

BY MR. SHEIN:

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2 Q. -- Occupational and Non-occupational Exposure
3 to Asbestos. And, I'm going to read you a paragraph
4 from that article --

5 A. What year was that?

6 Q. 1965, that appeared in the Anals of the New York
7 Academy of Scientists. And, then I'm going to ask you a
8 question.

9 MR. BROMBERG: Object to the procedure.
10 He's not called as an expert witness.

11 MR. SHEIN: I'm going -- this is not
12 an expert question, sir.

13 MR. BROMBERG: Then what are you
14 doing with an article?

15 BY MR. SHEIN:

16 Q. He said, numerous reports by many investigators
17 from various countries established the fact that an
18 occupational or non-occupational inhalation of dust
19 of different chemicals and physical types of asbestos
20 result in a development of asbestosis of the lung,
21 which depending upon the type of exposure, may be
22 designated as an occupational neighborhood or household
23 pneumoconiosis. Since 1935, an increasing amount of
24 epidemiologic clinic and pathologic evidence more over
25 incriminates this health hazard as one of the

1
2 environmental sources of cancers of the lung. And
3 more recently of -- also of mesotheliomas of the
4 pleura and peritoneum.

5 And I ask you to listen to the
6 conclusion of that sentence now, although, some
7 commercially interested parties and their medical
8 guardians and protectors still prefer for their own
9 reasons and motives to deny the existence of these
10 dangerous and usually fatal sequeli of a respiratory
11 contact with asbestos dust.

12 Now, sir, my question to is this,
13 in 1965, there were commercially interested parties
14 who were attempting to deny this, weren't there, sir?

15 MR. GALLO: Objection.

16 MR. BROMBERG: Objection.

17 MR. BRUCH: Objection.

18 MR. MENDELOW: Objection.

19 THE WITNESS: If there were, --

20 MR. BROMBERG: Wait, Mr. Horowitz,
21 do you want us to state the grounds?

22 BY MR. SHEIN:

23 Q. Weren't you one of them, sir?

24 MR. MASON: Wait a minute, did you
25 record his answer? If there were, I have no

1 Leon Horowitz - Cross 261

2 knowledge of them.

3 THE COURT REPORTER: I have, if there
4 were --

5 THE WITNESS: They want you to cross
6 that off, right?

7 MR. BROMBERG: No.

8 THE COURT REPORTER: Your answer was,
9 if they were --

10 THE WITNESS: If there were, I had
11 no knowledge of them.

12 BY MR. SHEIN:

13 Q. Weren't you one of them, sir?

14 A. In 1935?

15 Q. '65.

16 A. In 1965?

17 Q. Yes, sir, weren't you still demanding more
18 proof?

19 A. I thought the article was written in 1935.

20 Q. No, I said '65, sir.

21 A. I see.

22 MR. BROMBERG: Is there a question
23 pending?

24 MR. SHEIN: Yes, there is. Read it
25 back.

THE WITNESS: First of all, I was --

MR. GALLO: We object to it, whatever
it is.

MR. COHEN: Whatever it is, you
object?

MR. GALLO: Well, we heard it.
I heard it.

THE WITNESS: The reference he made
was to whom industrial -- industrial managers,
is that what the reference was?

MR. SHEIN: The reference was to
commercially interested parties.

THE WITNESS: I am -- have never been
nor am I today a commercially interested party.
So, therefore, that doesn't include me. But, I
will give you my opinion and my transition in
my thinking towards asbestos, and I've alluded
to it before. It was difficult for me --

MR. GALLO: Well, wait a minute, we
object to this. He is not called as an expert
to give his opinion today of his feeling concern-
ing asbestos. It's beyond the scope of --

BY MR. SHEIN:

Q. All right, so that you can't tell us --

1
2 MR. GALLO: -- do I get cut off
3 when I make an objection or do I -- am I
4 entitled --

5 MR. SHEIN: I'm sorry, sir, I
6 thought you were finished.

7 MR. GALLO: That's all right, Mr.
8 Shein. He can testify within the scope of
9 the direct examination, which was as a fact
10 witness, in fact, and you're going beyond
11 that.

12 MR. COHEN: The fact is the witness
13 is not entitled to give an opinion based upon
14 the work experience that he --

15 MR. GALLO: If it's beyond the
16 scope of direct.

17 MR. COHEN: What?

18 MR. GALLO: If it's beyond the
19 scope of the direct, which it is.

20 MR. SHEIN: Are you finished your
21 objections, counsel?

22 MR. GALLO: Yeah.

23 MR. BROMBERG: I also object to the
24 inclusion within this question of the --

25 THE COURT REPORTER: I'm sorry, I also

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object --

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MR. BROMBERG: -- object to the

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inclusion within this question of the long

5

reading from some item of hearsay that

6

preceded it.

7

MR. CREEDON: Object.

8

MR. GUSKY: I further object because

9

the question was argumentative.

10

MR. SHEIN: Do we have any further

11

objections?

12

MR. BROMBERG: Irrelevant and

13

immaterial, as well.

14

BY MR. SHEIN:

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Q. So, you can't tell us, sir, who Dr. Hueper

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was referring to in 1965, when he talked about

17

commercially interested parties, and you can't tell

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us who Dr. Knox was referring to in 1964, when he

19

talked about persons who could be intimidated.

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MR. MASON: Objection.

21

MR. GALLO: Objection, the article

22

doesn't say that.

23

MS. GIBSON: Objection.

24

THE WITNESS: It doesn't say that, it

25

says intimated.

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MR. SHEIN: Intimated, I'm sorry.

THE WITNESS: I cannot --

MR. SHEIN: Go off the record,
please.

MR. STRAIN: Going off the record,
and the time is 4:37.

We're now back on the record, and the
time is 4:38.

BY MR. SHEIN:

Q. Sir, do you know the business relationship, if
any, of Bell Asbestos to Turner and Newall?

MR. MASON: Objection.

MR. GALLO: Objection.

THE WITNESS: Not really, no.

BY MR. SHEIN:

Q. Do you know the business -- and when I say,
do you know, I mean as of the years that you were
with -- from '60 to '62.

A. Keasbey-Mattison, no.

Q. Keasbey-Mattison.

You don't --

A. I did not know the business relationship.

Q. At all?

A. At all, no.

Q. Did you know whether Turner and Newall wholly owned Bell as a subsidiary?

MR. GALLO: Objection.

MR. MASON: Objection.

MR. GALLO: It's been asked and answered.

THE WITNESS: I knew they owned a mine, but I didn't know what.

BY MR. SHEIN:

Q. Do you know if between 1960 and 1962, Bell was supplying Keasbey and Mattison with fibers?

A. I didn't know that as a fact.

Q. How about after 1962?

A. Again, same -- same answer.

Q. Do you know, as of 1960 to 1962, whether Turner and Newall owned in whole or in part, Cassiar?

MR. MASON: Objection.

MS. GIBSON: Objection.

THE WITNESS: I had no knowledge of that area.

BY MR. SHEIN:

Q. Did you ever see at any ATI meetings that you attended representatives from either Bell or Cassiar?

A. I believe they were there. I saw their names --

1
2 I was on a special committee that they were not on,
3 but I knew of the QAMA, that's all I knew.

4 Q. I'm not talking about QAMA, I'm talking about
5 ATI. Did you see representatives of Bell or Cassier
6 at any of the ATI meetings that you attended?

7 A. If they were there, I was never introduced to
8 them, and I didn't know them, no.

9 Q. How about any representatives from Turner
10 and Newall?

11 MR. MASON: Objection.

12 THE WITNESS: None that I knew of.

13 BY MR. SHEIN:

14 Q. Did you ever receive a book called Turner and
15 Newall Limited, the first fifty years?

16 A. No, I would like to see a copy of that.

17 Q. You've never seen it before, sir?

18 A. No, never saw it.

19 MR. SHEIN: Okay, I have no further
20 questions.

21 MR. GALLO: No Redirect.

22 MS. GIBSON: I have one further
23 question -- I have one question in response to
24 something Mr. Shein asked.

25 MR. MASON: I have some more. Are we

going to stop now or --

MR. COHEN: Wait a minute, let me just say, because I was asked -- let's go off the video.

MR. STRAIN: We're going off the record, and the time is 4:41.

(Whereupon the following discussion was held off the videotape record.)

MR. COHEN: Well, Mr. Locks has left, and upon the representation that following the completion of Mr. Shein's questioning that that would terminate the deposition. I think -- and he asked me to specifically state that if we went beyond any questions asked by Mr. Shein to interpose an objection, since this is contrary to the agreement we had. And, therefore, I would ask that no further questioning would occur at this point. It's obvious, we have to come back, at least one more day with Mr. Horowitz, and I think we can pick up any further questions at that time.

MS. GIBSON: Well, I thought we were going to finish up Mr. Shein's case. And I have one question.

MR. COHEN: He wanted to finish.

It was no understanding that we would finish Shein's case, as such.

MR. SHEIN: Just that I would finish.

MR. COHEN: We would finish.

MR. GALLO: Well, she can re-ask the question.

MS. GIBSON: One dumb question.

MR. COHEN: It's not going to be one question, because Jack's got questions.

MR. MASON: I have questions, too.

MR. COHEN: Well, that's contrary to the representation that was made to counsel, and I think it would be unfair to put him in a position of leaving.

MS. GIBSON: But, I thought Mr. Gallo said we were going to have his -- first of his case, because his case was coming up first, and we may need to use this, before we finish this.

MR. COHEN: Well, the only agreement was that after Mr. Shein finished his questioning,

1 we would be finished. It was not that all
2 Counsel would then follow up with any questions
3 that that may raise. And the only --

4 MR. GALLO: The only one missing
5 if we continue this, will be Mr. Locks, right,
6 so if people have to repeat their questioning,
7 they'll have to repeat it at the second
8 proceeding.

9 MR. COHEN: Well, you just don't do
10 that. It's never been done at any deposition
11 that I'm aware of. And I think it's --

12 MR. SHEIN: Isn't he coming back
13 tomorrow, isn't this going on tomorrow?

14 MR. COHEN: We haven't agreed to
15 when this would be continued.

16 MR. SHEIN: Oh, I thought this would
17 be --

18 THE WITNESS: Mr. Locks said he would
19 be busy tomorrow.

20 MR. GUSKY: I think that what Mr.
21 Cohen just said really is the understanding.

22 MR. COHEN: I mean, it's -- I've never
23 seen this done at any deposition where counsel --

24 MR. BRITTON: I agree, I made the same

representation to Locks.

MR. SHEIN: I said I would take about forty-five minutes. I have thought all along that this is continuing, doesn't the Notice say from day to day until completed? And due to the fact that I am one of the next cases out and counsel is in the middle of questioning, I'm vitally interested in what he has to say for purposes of my case, also.

And I think it should be continued.

MR. MASON: It does say continue day to day from thereafter until completed.

MR. SHEIN: Yeah. And I simply have assumed all along that we would continue tomorrow morning at ten o'clock. And I think it should be continued tomorrow morning at ten o'clock.

MR. BRITTON: Mr. Shein, for purposes of your case, which is the first case that apparently is going to come to trial in this group, you've completed your questioning; is that correct?

MR. SHEIN: Only to the extent I have not covered what counsel is in the middle of.

MR. MASON: I don't understand that.

MR. SHEIN: Counsel is in the middle of a cross examination, which I will incorporate in my case.

MR. BRITTON: Well, counsel --

MR. GUSKY: Mr. Cohen and Mr. Locks?

MR. SHEIN: Yes.

MR. BRITTON: Well, these attorneys are not representing your clients.

MR. COHEN: But, we agreed that any testimony elicited from Mr. Horowitz would be utilized in Mr. Shein's cases.

MR. SHEIN: That's right, I am not covering specifically certain subjects, which I know they're going to cover.

MR. MASON: So, actually, he's not finished himself.

MR. SHEIN: I'm not finished at all, actually. I'm finished what I'm covering.

MR. BRITTON: I think for purposes of your case, unless you're willing to waive any objection you might have that this deposition is

incomplete, if we want to use it.

MR. SHEIN: This deposition is incomplete.

MR. BRITTON: Well, then, I think you should complete your questioning.

MR. GALLO: Complete your questioning, Mr. Shein.

MR. COHEN: He can't -- he's finished those questions --

MR. BRITTON: He is the -- his case is the first one on the caption, and you're not counsel in his case and haven't entered appearance. If he wants further questioning for his case, I think he should do it now, or waive his objection not to use this deposition during the time of trial.

MR. COHEN: If we all agreed that all Plaintiffs' counsel would have the benefit of Mr. Horowitz' testimony, as applied to all Plaintiffs' cases, but for the fact that I am not a member of that law firm, our cases and interests are identical, because I have discussed specific interests that I am going into and those questions were not pursued by Mr. Shein,

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based on the fact that I'm going to spend at least half a day with Mr. Horowitz, if not longer.

MR. SHEIN: And the same goes for Locks.

MR. COHEN: And the same thing goes for Mr. Locks.

MR. BROMBERG: Mr. Locks has no problem about coming back tomorrow morning, I assume?

THE WITNESS: I thought he did object to coming tomorrow morning.

MR. CREEDON: I think he's starting trial tomorrow morning.

THE WITNESS: Is it all right if the witness says something?

My understanding was that this would be a one day affair, just like the other one was, apparently -- it became quickly apparent that it would not be a one day. Mr. Locks says he, himself, requires one day. You require a half day.

MR. COHEN: At a minimum.

THE WITNESS: At a minimum. And you

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2 require whatever addition to that. Apparently,
3 the Defendants don't require anything but
4 rebuttal. I don't see anything less than two
5 days. And I never volunteered to come here
6 for three days. And I am a person in my own
7 right, and I have responsibilities, and I can't
8 get away that easy. So, therefore, I will make
9 it difficult for you, because I won't be
10 available, when you are available. So, I don't
11 know, and you surely -- I may not be available,
12 when you're available.

13 MR. GALLO: I want to make one thing
14 clear for the record.

15 THE WITNESS: I wish you would take me
16 into consideration.

17 MR. GALLO: As I understand the
18 discussions we had off the record before Mr.
19 Shein began his examination, Mr. Shein took
20 over the examination at that point, because he
21 had the first case on the list, which we feel
22 is coming to trial, and it was suggested and
23 agreed that Mr. Shein would complete his
24 examination for that case. So that the case
25 could go to trial. This transcript could be used

1
2 in his case. That was the understanding on
3 which we proceeded at that time. Now, Mr.
4 Horowitz is here. He's indicated to us that he
5 can stay until late in the evening to complete
6 this deposition. And the deposition, I feel,
7 has to go forward with respect to anything that
8 you may wish to bring out for your case. And
9 we're prepared to continue.

10 MR. SHEIN: Well, that's not the
11 stipulation that was originally entered into.

12 MR. COHEN: Let me just state that
13 it was not my understanding of the agreement.
14 If you want to proceed, there is no way that
15 we'll be able to finish today, because assuming
16 Mr. Horowitz wants to make the nine o'clock
17 plane, I'm not going to be finished, even if
18 I start five minutes from now.

19 MR. BRITTON: We're only concerned
20 about the first case on the list, which is --

21 MR. COHEN: You have to be concerned
22 with what I do by virtue of the agreement that
23 we made, and that everyone agreed to early out,
24 and that was that the questions and answers
25 elicited would be utilized in every asbestos

case on behalf of Plaintiffs.

MR. SHEIN: And, in fact, part of it has been. It's simply not completed due to multiple objections.

MR. GALLO: Well, I don't know what that means, but it was your request that you take over --

MR. BRITTON: I think for purposes --

MR. SHEIN: Part of the question has already been utilized in my case, because it has been done, obviously --

MR. BRITTON: I think for purposes --

MR. SHEIN: -- it is not completed. It's open.

MR. BRITTON: For purposes of the Timbers' case, Mr. Horowitz is available now for Plaintiffs' counsel who has entered his appearance on behalf of Plaintiff in the Timbers' case, to complete his questioning. And if you, Mr. Shein, do not complete your questioning, at this time, we are going to object to your argument that this deposition is not admissible. He is available and you now have the opportunity

1 to complete your deposition.

2
3 MR. SHEIN: I think that you will
4 find of record that we have reserved this and
5 I have a right to have this gentleman's
6 testimony totally completed before this deposition
7 can be used. It was based upon our agreement
8 this morning that we have divided up the work.

9 MR. COHEN: That's one reason why --
10 I was the one that brought up the stipulation,
11 because of that situation, I wanted to make
12 sure, as we did on the Eagle-Picher deposition,
13 that it would get whacked up once between all
14 Plaintiffs' counsel, and that was going to be
15 it. And the dep would not be used in any trial
16 until all Plaintiffs' counsel would complete
17 it.

18 Mr. Horowitz, are you available any
19 time soon?

20 THE WITNESS: Well, you realize I
21 work for another company. I'm doing this on
22 my own time, my vacation time.

23 MR. BROMBERG: How about Saturday?

24 THE WITNESS: I would be more willing
25 to do it on weekends than I would be willing to

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do it on weekdays.

MR. SHEIN: I should like to add one thing, and that is that the notice says from day to day until completed. It's now ten minutes of five. We are ready to come back tomorrow morning. That's what the notice says.

MR. GUSKY: The witness is beyond jurisdiction. This man is here voluntarily to testify.

THE WITNESS: I have stated to counsel that if you could finish tomorrow, I would be willing to stay another day. I would have to call my office. But, you're not going to be able to finish tomorrow, Mr. Locks has indicated that he will not be here tomorrow.

MR. SHEIN: Start early.

MR. GALLO: The deposition says tomorrow.

THE WITNESS: If it said, day to day, Mr. Locks, apparently, has already committed himself.

MR. GUSKY: I don't think we can go

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2 ahead with the deposition knowing that he's
3 not available.

4 MR. COHEN: Not only is he not
5 available, number two, he's not here right
6 now to discuss it. That's the worse thing .

7 MR. BROMBERG: That's because he
8 left.

9 MR. COHEN: He left, based on the
10 representation that nothing was going to
11 happen after he walked out the front door.

12 MR. BROMBERG: I heard no such
13 representation that nothing was going to
14 happen when you walked out the front door.
15 Every other person is still sitting at the
16 table. Mr. Locks was in a hurry and he left
17 before we got done.

18 MR. BRITTON: The representation was
19 that -- the representation I made to him that
20 -- was that only Mr. Shein's interrogation
21 would be completed today. I think that was
22 the understanding.

23 MR. CREEDON: Why doesn't someone
24 who represents Plaintiffs, call Gene Locks'
25 office and find out, if in fact, he can be

here tomorrow to continue the questions of
Mr. Horowitz?

MR. COHEN: Well, let me just state,
I have to go yet, let's assume that he's
available tomorrow -- off the record.

(Whereupon off the record discussions
were held from 5:05 p.m. to 5:10 p.m.)

MR. SHEIN: For the purpose of the
Timbers' case only, once Mr. Cohen finishes
his cross examination subject to whatever
redirect or recross there may be, without
the necessity of Mr. Locks' cross examination,
we will consider this deposition of this
witness complete, subject to all of the
objections I made this morning, particularly
with regard to relevancy.

If, prior to the Timbers' trial,
Mr. Locks does depose this witness, we will
be at liberty, as I presume will other counsel,
to use that testimony, as well.

MR. BRUCH: With respect to Timbers?

MR. SHEIN: Just with respect to
Timbers.

(Witness excused.)

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(Whereupon the deposition was
concluded for the day at 5:15 p.m.)

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REPORTED BY: Suzanne McLaughlin White,
Registered Professional Reporter -
Notary Public

TYPIST : Margaret E. Belza

CERTIFICATE

Commonwealth of Pennsylvania:

: SS

County of Philadelphia :

I, Suzanne McLaughlin White,

Notary Public within and for the County of

Philadelphia, Commonwealth of Pennsylvania, do

hereby certify that the foregoing videotape deposition of

LEON HOROWITZ, was taken pursuant to notice at

the offices of Knipes-Cohen Associates, 400

Market Street, Philadelphia, Pennsylvania, on

Monday, February 1, 1982; that said witness was duly

sworn before the commencement of his testimony; that

the testimony of said witness was written in

shorthand by myself and reduced to typing under my

direction and control; that the foregoing is a true

and correct transcription of the testimony; that

I am not related to or employed by any of the parties,

or their attorneys or agents, or interested directly

or indirectly in the matter in controversy either as

counsel, attorney, agent or otherwise.

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3 IN TESTIMONY WHEREOF, I have hereunto
4 set my hand and affixed my seal of office at
5 Philadelphia, in said County, this 16th day of
6 February, 1982.
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Suzanne R. McLaughlin White
NOTARY PUBLIC

SUZANNE R. McLAUGHLIN
Notary Public, Phila., Phila. Co.
My Commission Expires Dec. 11, 1982