Union Carbide - Discovery

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

LESTER RICE,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	C.A.-81-977-9
	§	
UNION CARBIDE CORPORATION,	§	
	§	
DEFENDANT.	§	
	§	
	§	

DEPOSITION OF JOHN L. MYERS

COLUMBIA, SOUTH CAROLINA

APRIL 9, 1982

3:55 P.M.

DEPOSITION
FILE COPY

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THE RECORD NEVER FORGETS

deptest. UC

A I BELIEVE THAT, TOO. I'M SAYING TWO FIBERS IS SAFE.
Q OKAY.
A I BELIEVE THAT HIGHER THAN THAT IS ALSO SAFE FOR CHRYSOTILE.
Q FIVE FIBERS?
A YES.
Q TEN?
A YES.
Q RATHER THAN BE SPELLING OFF THE NUMBERS, WHAT --
A TEN IS HIGH ENOUGH.
Q TEN IS THE HIGHEST THAT YOU WOULD SAY WOULD BE SAFE?
A YES.
Q DESPITE DR. SELIKOFF'S STATEMENT THAT ASBESTOSIS CAN BE DETECTED AMONG PERSONS EXPOSED TO THAT LEVEL?
A YES.
Q YOU WOULD STILL CONSIDER IT SAFE?
A YES.
Q EVEN THOUGH -- LET ME ASK YOU JUST GENERALLY --
A NOT A MEDICAL OPINION.
Q I'M ASKING YOUR OPINION.
A WE HAVE ESTABLISHED THAT.
Q OKAY. THIS IS NOT MEDICAL OPINION, BUT IN YOUR OPINION, GENERALLY, IF PERSONS, SOME PERSONS EXPOSED TO A LEVEL DEVELOPED ASBESTOSIS, WOULD YOU STILL CONSIDER THAT TO BE A SAFE LEVEL?

A YES. THERE IS A CERTAIN RISK ASSOCIATED WITH THE SOCIETY IN WHICH WE LIVE.

Q OKAY, AND YOU FEEL THAT THE WORKERS SHOULD JUST ASSUME THAT RISK?

A WELL, I THINK WE ALL HAVE TO ASSUME RISKS WHETHER IT'S WALKING ACROSS THE STREET OR WORKING IN AN ASBESTOS PLANT OR WORKING IN A COCA-COLA PLANT.

Q OKAY. WOULD THERE BE SOME REASON WHY THE WORKER SHOULD ASSUME THAT RISK? I'M NOT TALKING ABOUT ASSUME THE RISK IN A LEGAL SENSE BUT WHY HE SHOULD SUBJECT HIMSELF TO THAT RISK, IN YOUR OPINION?

A I THINK THAT'S THE SOCIETY IN WHICH WE LIVE, THAT THERE IS RISK IN EMPLOYMENT, THERE IS RISK IN RECREATION, RISK IN ALL FIELD, AND IF WE ARE GOING TO HAVE A CONTINUING SOCIETY, A GROWING SOCIETY AND GROWING ECONOMY, THERE ARE RISKS THAT WE ALL HAVE TO TAKE WHETHER IT'S IN OUR WORK OR WHATEVER.

Q AND SO YOU FEEL THAT THE INCIDENTS AT WHATEVER LEVEL IT IS, OF PERSONS WHO BECOME ILL FROM AN EXPOSURE, THE RISK, SHOULD JUST BE ACCEPTED BY THAT PERSON?

MR. CHROLEY: OBJECT TO THE FORM OF THE QUESTION.

Q (CONTINUING) IS THAT YOUR OPINION?

A I DON'T THINK I COULD ANSWER THAT IN ONE WORD. I THINK THAT IF EVERYTHING IS BEING DONE TO PROTECT THE WORKER, PROTECT THE ENVIRONMENT, THAT CAN BE DONE AND THE

PRODUCT IS STILL NEEDED OR SERVICE IS STILL NEEDED, THAT WHOEVER IS INVOLVED MUST ACCEPT THE RISK PROVIDING THAT PRODUCT OR THAT SERVICE.

Q BUT YOUR OPINION IS THAT EVERYTHING SHOULD BE DONE TO PROTECT THE ENVIRONMENT AND TO PROTECT THE PERSON BEFORE HE WILL BE SUBJECTED TO WHATEVER RISK THERE IS?

A EVERYTHING BEING MODIFIED TO ASSURE THAT THE RISK BENEFIT, THAT THE BENEFITS OUTWEIGH THE RISK.

Q HOW DO YOU DETERMINE RISK BENEFIT?

A THAT HAS TO BE DONE ON EVERY INDIVIDUAL CASE.

Q IS IT A COST BENEFIT ANALYSIS?

A THAT WOULD BE PART OF IT.

Q AND THIS CASE, WOULD YOU LOOK AT THE ENGINEERING CONTROLS, THE COST OF THE ENGINEERING CONTROLS NECESSARY TO REDUCE THE EXPOSURE TO THE PERSON?

A WOULD YOU LOOK AT THEM?

Q YES.

A YES.

Q AND WHAT WOULD YOU CONTRAST THOSE TO?

A TO ACHIEVING A LEVEL BELOW WHICH THE INCIDENTS OF DISEASE IS ACCEPTABLE.

Q OKAY, BUT WHAT WOULD YOU WEIGH THAT AGAINST IN DETERMINING WHETHER OR NOT THAT WAS FEASIBLE OR NOT TO SPEND THAT MONEY?

A I DON'T KNOW. I WOULDN'T KNOW HOW TO ANSWER THAT. TO

ME, IT'S A PHILOSOPHICAL TYPE OF QUESTION WITHOUT AN ANSWER FOR ANY SPECIFIC CASE.

Q OKAY. AND JUST BACKING UP FOR A MOMENT, THE RISK -- THE INDIVIDUAL SHOULD NOT BE SUBJECTED TO THE RISK UNTIL EVERYTHING HAS BEEN DONE TO PROTECT THEM FROM THE HAZARDS?

A EVERYTHING WITHIN REASON.

Q WITHIN REASON.

A VIABLE.

Q OKAY. AND YOU STATED THAT IT'S VIABLE AND THAT UNION CARBIDE CAN KEEP THE LEVEL AT ITS PLANTS DOWN TO TWO FIBERS?

A YES. BECAUSE I BELIEVE THE 10 FIBERS WOULD BE SAFE DOESN'T MEAN THAT WE WOULD PROMOTE THAT OR ALLOW OUR LEVELS TO GO TO 10.

Q OKAY. I GUESS WHAT I'M HAVING TROUBLE UNDERSTANDING, EITHER YOU'RE NOT MAKING CLEAR OR I'M TOO DENSE, IS ALTHOUGH YOU CAN GET DOWN TO BELOW TWO, I MEAN TO THE LEVEL OF TWO FIBERS, YOU STILL FEEL THAT 10 FIBERS WOULD BE A SAFE LEVEL ALTHOUGH SOME PERSONS WOULD GET ILL FROM THE EXPOSURE?

A I'M SURE THERE ARE PEOPLE WHO BELIEVE IN THE ONE-HIT THEORY.

Q HOW DO YOU CLASSIFY SAFE? I GUESS THAT'S WHAT I'M HAVING TROUBLE WITH OR WHAT I DON'T UNDERSTAND.

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A WELL, I WOULD PREFER IT TO BE A LEVEL BELOW OR ABOVE WHICH THERE IS NO DISEASE CAUSE.

Q OKAY. BUT YOU'VE SAID THAT DISEASE WILL BE CAUSED AT 10 FIBERS OR YOU SAID THAT YOU'VE READ ABOUT IT OR ARE AWARE OF IT.

A THAT IT WOULD BE CAUSED AT 10 FIBERS?

Q YES.

A NOT NECESSARILY. IT DEPENDS ON THE KIND OF FIBERS AND --

Q DR. SELIKOFF REPORTED DISEASE BEING CAUSED AT THE TWO FIBER LEVEL.

A THAT'S BASED ON EPIDEMIOLOGICAL STUDIES. I DON'T THINK THERE'S ANY ABSOLUTE CLINICAL EVIDENCE THAT SOMEBODY -- TO ME, THAT'S WHERE A LOT OF HIS STUDIES ARE LACKING, HE CAN REPORT ON THE EPIDEMIOLOGICAL RESULTS BUT NOT ON THE FIBER LEVEL TO WHICH THESE PEOPLE ARE EXPOSED. TO ME, THAT'S WHERE THE CORBETT MCDONALD STUDIES ARE MORE COMPLETE, HE DOES HAVE FAIRLY GOOD RECORDS ON EXPOSURE LEVELS.

Q THE SECTION WE JUST REFERRED TO, HE DID PURPORT TO REFER TO THE FIBER LEVELS TO WHICH THE PERSONS WERE EXPOSED TO, AND STATED THAT AT THE TWO FIBER LEVEL, CASES OF ASBESTOSIS WAS STILL DEVELOPING, DID HE NOT?

MR. CHROLEY: OBJECT TO THE FORM.

THE WITNESS: I'M NOT FAMILIAR WITH IT.

BY MR. HART:

Q THE THING I JUST SHOWED YOU.

MR. CHROLEY: WELL, IT'S NOT GOING TO CHANGE IF YOU SHOW IT TO HIM AGAIN.

THE WITNESS: I THOUGHT HE WAS JUST TALKING IN GENERALITIES.

BY MR. HART:

Q "EXPERIENCE SINCE 1968 PROVIDED NEW DATA INDICATING THAT SUCH LEVELS WOULD NOT PROTECT WORKERS AGAINST THE DEVELOPMENT OF ASBESTOSIS."

A I'M NOT FAMILIAR WITH THE EXPERIENCE.

Q OKAY. ARE YOU STATING THAT AT TWO FIBERS NO DISEASE WILL DEVELOP?

A NO. THERE IS SOMEONE OUT THERE SOMEWHERE THAT WILL PROBABLY GET IT WITH NO EXPOSURE LIKE THE RAT DID IN THIS STUDY.

Q I'M TALKING ABOUT ASBESTOS-ASSOCIATED DISEASE, ASBESTOS-RELATED DISEASE. AT TWO FIBERS, WILL SOME PERSON EXPOSED TO IT BECOME ILL AS A RESULT OF THAT ASBESTOS EXPOSURE?

A YES.

Q OKAY. AT FIVE FIBERS, WILL A FEW MORE PEOPLE BECOME ILL?

A PROBABLY.

Q AND AT 10 FIBERS, SOME MORE?

A YES.

Q HOWEVER, YOU WILL STILL SAY THAT THE 10 FIBER LEVEL WOULD BE SAFE?

A FOR CHRYSOTILE ASBESTOS. PERSONAL OPINION.

Q OKAY.

AND THE WORD "SAFE" IS BEING USED NOT IN ITS ABSOLUTE SENSE BUT IN A RELATIVE SENSE?

A RIGHT.

Q OKAY. THAT'S WHERE I HAD TROUBLE FOLLOWING YOU.

AND AGAIN, HOW DO YOU DETERMINE THE RELATIVE SAFE LEVEL -- I MEAN THE RELATIVE SAFENESS OF IT?

A I DON'T THINK I COULD EXPLAIN. I MEAN I DON'T THINK I REALLY KNOW WHAT I WOULD MEAN BY THAT.

Q OKAY. LET'S TALK ABOUT SAFE IN THE ABSOLUTE SENSE; THAT IS, NO DISEASE OCCURRING ASSOCIATED WITH ASBESTOS EXPOSURE. IS THERE A LEVEL AT WHICH NO DISEASE WILL OCCUR, ABSOLUTELY?

A I DON'T KNOW.

Q DO YOU KNOW OF A LEVEL?

A NO.

Q SO YOU KNOW OF NO SAFE LEVEL OF ASBESTOS EXPOSURE USING SAFE IN THE ABSOLUTE SENSE?

A RIGHT.

MR. HART: JUST TO MAKE THE RECORD COMPLETE, LET ME MARK AS EXHIBITS THE TWO PATENTS AND THE TWO