IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

FRANCES E. REMNER, et al	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	No. 80-L-970
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

Before the HON. RICHARD P. GOLDENHERSH, Judge

REPORT OF PROCEEDINGS

JURY TRIAL

February 19, 1986

APPEARANCES:

MR. REX CARR and MR. JEROME SEIGFREID
on behalf of the Plaintiffs;

MR. KENNETH R. HEINEMAN and MR. JOSEPH NASSIF
on behalf of the Defendant.

KIMBERLY GANZ, CSR, RPR, CM
Official Court Reporter

BE IT REMEMBERED, that on February 19, 1986, the same being one of the regular judicial days of said court, the above-entitled cause came on regularly for hearing before the HONORABLE RICHARD P. GOLDENHERSH, one of the Judges of said court, at the St. Clair County Building, 10 Public Square, in the City of Belleville, St. Clair County, Illinois. Whereupon the following proceedings were had:

(The following proceedings were had in the hearing and presence of the jury).

MR. CARR: Your Honor, I would like to have another copy of 1728 marked rather than the copy that had my notes on it.

RAYMOND SUSKIND

having resumed the witness stand, being previously sworn, testified further as follows:

CROSS EXAMINATION

By

MR. REX CARR.

Q. Doctor, I would like to ask you some questions mentioned this morning about the second examination you conducted of some of the Nitro workers that took place in 1950. I think that is Defendant's Exhibit 1700. Doctor, this is a report referring to an examination that took place on April 14, 1950, is it not?

A. Yes, it is, sir.

Q. And this is contrary or different from the October '49 examination, this took place at the Monsanto Chemical Company Plant?

A. Yes, it did, sir.

Q. And you examined not only the original four that you had seen in October of '49 but also two additional workers, did you not?

A. That is true, sir.

Q. Now, had you examined anybody other than those original four in between October of '49 and April of '50?

A. We did not.

Q. All right. When you reexamined Ival McClanahan, you found that he had resumed work in November of '49 but had gained 20 pounds and his pains in the legs had gradually subsided. Does that mean that they have gone?

A. Yes, it does, sir.

Q. All right. And so when you use the word subsided, you mean gone?

A. Yes.

Q. That is a little different from the dictionary definition but it is your, it is the way you use the word, correct, sir?

A. Yes, sir.

Q. All right. So, in other words, he tells you that the -- that his pains have gradually gone, that is, they are now gone, and he has no complaints to any organ system and his only concern is whether or not the pains in his legs will come back, is that correct, sir?

A. That is what he stated, sir.

Q. So, as far as you are concerned based upon what he told you and based upon your examination of his skin, he has had fairly good if not better than fairly good recovery, has he not?

A. From the record, I would say so.

Q. His complaints of impotence which he had complained of had returned to normal?

A. That is what he said, sir.

Q. And, Doctor, you took that as a fact, did you not, sir?

A. Yes, we did.

Q. And you did, however, find upon examination that he still had an enlarged liver, didn't you, sir?

A. The liver was palpable.

Q. Is the answer to my question yes, he did have an enlarged liver?

A. On examination, he had a large liver, an enlarged liver.

Q. Right. And that was still -- and it was also somewhat tender, was it not, sir?

A. Yes.

Q. And would still be then an objective finding that you made relative to his condition as it was in April of '50? That was an objective finding that you made as of April of 1950?

A. Yes, sir.

Q. And the next person you saw was Mr. Paul Willard. He had not gone back to work. Well, he tried to go back to work for a week but he couldn't hack it and then he quit his job and hadn't worked since November, is that correct, sir?

A. That is right.

Q. By quit his job, you meant he quit working. Didn't quit his employment, did he not, sir?

A. Well, he quit his employment at Monsanto.

Q. He did quit actual employment by Monsanto at that time?

A. Well, I am not all together sure whether or not that means that he simply got a leave of absence because he did return to work later on.

Q. Well, then, he didn't quit his job?

A. Quit his job meant that he was not working at that time at Monsanto.

Q. That is what I thought you meant but I wasn't sure.

A. Thank you, sir.

Q. Because I did know that he had returned to work somewhat later on. In any event, you examined him and you found that he had some or at least that he complained of pain on his feet -- pain, rather. If he is on his feet a great deal, he has a mild aching in the right calf, did you not, sir? Top of page 3 of your report, Doctor?

A. That is what he said but no discomfort.

Q. And you also found that he had an aching in his chest, though, did you not, sir?

A. He described it as a slight discomfort in the chest.

Q. Well, he also described it, at least in your words, it is in the form of substernal aching. Isn't that what you said, Doctor?

A. That is right, sir.

Q. And he has had that since the fall of '49, isn't that correct, sir?

A. I don't know. From this -- I can't say.

Q. If you look --

A. May I finish, sir?

Q. If you look at the second line in the paragraph it

will tell you. You say, do you know, it has persisted since last fall?

A. Yes, we did.

Q. Yes. And, Doctor, it comes, at least insofar as what he told you, it usually comes upon just slight exertion, correct?

A. He so stated.

Q. And it is also associated with shortness of breath and whistling sounds, isn't it, sir?

A. That is what the record reads, sir.

Q. Well, Doctor, I know that is what the record reads because I can read it and you so reported it. My question is, insofar as you are concerned as treating physician, that was a fact and you reported it as fact?

A. That is true, sir.

Q. Yes. Doctor, he also stated that he had a chronic cough which was most marked when he is in a recumbent position, is that correct, sir?

A. That is true.

Q. He also found that or rather he reported to you that he had gained weight. Apparently he had lost -- well, whether or not he had lost weight it doesn't say, but you do know that he gained weight. At least he reported to you 8 pounds, correct, sir?

A. Yes, sir.

Q. Now, his impotence had also disappeared and his sexual life was now approximately normal, is that correct, sir?

A. Yes, sir.

Q. You found that he had, or he stated to you that he had difficulty in going to sleep at night. He has a general nervousness inside, he feels tired, worn out most of the time and in the words that you put, claims he cannot return to work because of his weakness, is that correct, sir?

A. That is correct, sir.

Q. And he also told you that he was avoiding any kind of, he didn't say work, avoiding any kind of activity as long as possible, did he not, sir?

A. Yes. He also said something else, though.

Q. He had a fear, did he not, sir, that if he did any work around his house that someone might see him and would send him back to work at the plant?

A. Yes.

Q. And he did not want to get sent back to work at the plant, did he, sir?

A. Apparently.

Q. From what you could divine from what he told you, isn't that correct, sir?

A. He admitted freely that he didn't want to work. That is in the record.

Q. What he said was, he didn't want to be sent back to work at the plant. Isn't that what he said, sir?

A. That is true, sir.

Q. Yes. And at the plant, when he went back to work on the occasion he had gone back to work, his acne flared up and he had to quit it. He did try to go back to work, didn't he, sir?

A. If you will show me where that is.

Q. On page 2 where it says, "Following our examination last October, Mr. Willard attempted to go back to work for a week but his acne flared up and he quit his job. He has not worked since November".

A. He reported that to us.

Q. Sir?

A. He reported that to us.

Q. Now, you didn't know then but you did know from what occurred at the workmen's compensation hearing that a large number of these workmen compensation claimants were afraid of going back to work at the plant. They were nervous and afraid, weren't they, sir?

A. Some of them might have been.

Q. Now, Doctor, it is not some of them might have

been. It is what was reported to you. You examined these men and testified at that hearing. This is what you became aware of that they were saying, whether they were, in fact, afraid, whether they were just putting on and feigning this fear or this apprehension. You, of course, not being a psychiatrist you wouldn't know. But they did so report to you, didn't they, sir?

A. Some of them did.

Q. Yes. And, Doctor, you also know that the acne continued to break out from time to time not just with these men but with other men, additional cases added on, after they went back to work or after they were exposed to the processes at the Nitro Plant, isn't that correct, sir?

A. No, sir.

Q. That is not correct?

A. That is not correct, sir. That is not completely correct.

Q. Doctor, is it correct that acne cases continued to break out?

A. Acne cases continued to break out.

Q. And with workers who were exposed to the process, not an accident, but just working in the plant in ordinary day-to-day fashion?

A. What is the question, sir?

Q. Isn't it a fact that the acne continued to break out in workers not exposed to any accident but just who did their everyday work in ordinary fashion at the plant?

A. During what year, sir?

Q. During the years following the accident and up to the last time you examined them in 1953?

A. That is true, sir.

Q. And from your examination in 1979 from the history given you, you know that the acne cases continued to break out up until 1969 and when they quit making 2,4,5-T at the plant. You know that as well, don't you, sir?

A. I am not sure that that is the date, though.

Q. Well, the date is not material. The important point is the acne continued to break out in these men and other men until the time the 2,4,5-T manufacture was stopped, isn't that correct, sir?

A. No, sir.

Q. That isn't correct?

A. No, sir.

Q. What is incorrect about the statement?

A. Well, I don't know. I have no idea from our examination that there were cases, for example, that broke out a year before the process was terminated or the year it was terminated or two years before. I have no idea. So that

-- I am saying that your statement that they broke out until 1969 is incorrect.

Q. What you are saying is that it may have broken out right up to the day they quit manufacturing but you didn't get enough details from the history to pinpoint it precisely, is that correct, Doctor Suskind?

A. I don't know that they broke out up until the time that the operation terminated. I don't have that information.

Q. Doctor, wasn't it reported to you at the time you did your study in 1979 that that occurred?

A. No.

Q. Didn't you get that information from Monsanto? Didn't you get that information from the workers?

A. No, we did not.

Q. Well, Doctor, I don't have -- I am not -- I don't have with me at this point in time the documents on that so I can't demonstrate to you but I will get to that when we get to the morbidity study.

A. I have never seen a document that said that.

Q. Doctor, I don't care whether you saw a document. What I want to know is wasn't it reported to you, sir, that these men or men continued to get chloracne during the time the manufacturing of 2,4,5-T took place at the Monsanto

plant?

A. The answer I have given you is no.

Q. It was not so reported to you?

A. No.

Q. All right. Well, we will get to that shortly. Back to Willard and his fear. He, in addition to the complaints that he gave to you, he was treated for a burning sensation in his eyes by local doctors once or twice a week, correct, sir?

A. Yes.

Q. On physical examination, you found again the same thing that you found in the other men, an enlarged liver, did you not, sir?

A. Yes, we did, on examination. Non tender.

Q. I am sorry?

A. Without tenderness, however. Which is significant.

Q. Doctor, I didn't ask you whether it was tender or not. I asked you, I thought I asked you a precise question whether or not the liver was enlarged?

A. The answer is yes.

Q. And, Doctor, you also believed then and, thereafter, that the enlarged livers that you found in these men that you examined was a result of their exposure to this contaminant, did you not, sir?

A. We thought it was.

Q. Well, that was your medical opinion to a reasonable degree of medical certainty, wasn't it, sir?

A. It was, indeed.

Q. Yes. Doctor, you reexamined Mr. Steele and found with him as with the other men that you saw earlier that his libido had returned to normal, did you not, sir?

A. Yes, we did.

Q. You also found that he had complained of continued soreness. He had not returned to work, had he, sir? Very first line, sir, of your examination report on Mr. Steele.

A. Yes, he had not returned to work.

Q. He continued to have soreness in his right upper quadrant, pains in his legs upon walking, recurrent sharp pains over the left side of his neck and shoulders and that when he has continuous standing, it results in severe aching in muscles of the lower legs, isn't that correct, sir?

A. Yes, we reported that.

Q. Now, Doctor, on your examination of this man in addition to the chloracne, you found as with the others that he, too, had an enlarged liver, did you not, sir?

A. Yes, we did.

Q. And I can't read this copy but it appears to say and is slightly, what is that word?

A. And is slightly tender.

Q. All right. And what is the next word there? Metal?

A. The rectal examination is negative.

Q. My copy of your carbon isn't too clear. That last word was negative?

A. Right.

Q. All right. And what was -- the neurological examination is negative also. That last word on that sentence is negative also?

A. Yes, that is true.

Q. All right. You found that this man still had clinical evidence of hepatitis, correct, sir?

A. Yes.

Q. Now, this particular kind of hepatitis that this man and others had is a chemical hepatitis, isn't it, sir?

A. We believe that it might be due to the chemical.

Q. Now, that was your medical opinion to a reasonable degree of medical certainty, wasn't it, sir?

A. Yes, sir.

Q. And there are other kinds of hepatitis in addition to or different from chemical hepatitis, isn't there, sir?

A. There are two, sir.

Q. Sir?

A. Yes, there are.

Q. The next gentleman you examined was Mr. Hurley and he had returned to work. I can't make out that date.

A. March 1, 1950.

Q. Had he not?

A. Yes.

Q. That was just what, then, just a month before you saw him or probably short -- no, your report is dated April so it is probably just a week or two before you saw him, is that correct?

A. We visited the plant on April 14th and he returned to work on March 1st.

Q. So it would have been a month and a half?

A. I believe so.

Q. All right. Now, this man who along with the others you saw a year after the accident, his nervousness -- well, you say there, noticeable subsidance in his nervousness. Do you mean in that instance that it is gone all together or do you mean just that it is reduced?

A. I mean that it is gone in this instance as well.

Q. Noticeably gone?

A. Yes.

Q. Although he still complains of insomnia?

A. Yes.

Q. Well, the insomnia complaint would be connected with or could be connected with the central nervous system disorder, could it not?

A. It might or not. I have no idea.

Q. I know that Doctor, but my question was that it could be associated with the central nervous system disorder, could it not?

A. It might be.

Q. Well, that is what I asked you. Could and might are interchangeable, they are equivalent words. They are, aren't they?

A. In some people's dictionary they are equivalent.

Q. Well, when you use the word could, couldn't you just as easily use the word might?

A. Yes.

Q. It could be or might be or perhaps?

A. The answer is yes.

Q. And, Doctor, in addition to this complaint of insomnia -- by the way, Doctor, when these men give these complaints, at this particular point in time as the examining or treating physician, you make sure that you inquire as to whether or not they have had such problems or complaints before their exposure or before the inciting incident, did you not, sir?

A. We probably did, sir.

Q. Well, Doctor, a good treating physician tries to elucidate or identify the cause of a particular problem and if you do not eliminate whether or not it pre-existed the inciting agent or the incident, you can never know, can you, sir?

A. That is true, sir.

Q. So, a good treating physician makes sure that he does everything that he can to eliminate the possibility that it was a condition that he had before the accident or the incident complained of, isn't that correct, sir?

A. I believe so.

Q. And you are a good treating physician, aren't you, Doctor Suskind?

A. I hope so.

Q. And, therefore, you did everything you could to eliminate those complaints that had pre-existed the problem unless you identified them as being exaggerated or exacerbated or aggravated by the problem, isn't that correct, sir?

A. That is true, sir.

Q. So, this man presumably did not have insomnia before this accident, did he, sir?

A. I don't believe he did.

Q. From what you could gain or gather or glean from your examination of him and in your inquiries made of him and your perusal of his medical records, that was the conclusion that you reached, isn't it, sir?

A. I assume so from this report, sir.

Q. Doctor, this is a report that you made to Monsanto and you intended for Monsanto and others to rely upon, did you not?

A. Yes.

Q. And you wouldn't have put it in there if you didn't think it was so, would you, Doctor?

A. Absolutely not.

Q. All right. Now, you also said, did you not, sir, that he reported to you that the aching pains in his legs and feet had improved, had not disappeared. They are particularly severe, however, after a day of prolonged activity, correct, sir?

A. Yes, sir.

Q. He doesn't believe that any of his complaints were made worse by his returning to work, correct, sir?

A. That is what he said to us, sir.

Q. So, by that, you could take that to mean that if he has got a day of prolonged activity on his day off at home, on Saturday or Sunday or on his days off, that he would get

the severe pains and they are not just associated with work? It would be connected to any day of prolonged activity, correct?

A. Probably.

Q. He also reported that he had occasional headaches for the past three months, did he not, sir, over the vertex? Where is the vertex, Doctor Suskind?

A. The vertex is the top of the head.

Q. The top of the head. Doctor, this was a new complaint that he made, wasn't it, sir? This is something he had not had in October of '49 when you first examined him, isn't that correct, sir?

A. I am not sure. I would have to go back to the '49 examination to see it, sir.

Q. Doctor, can't you see it from the way you phrased the finding? You said the patient has had occasional headaches over the vertex for the past three months. That would be March, February and January of 1950?

A. I don't see any report of headaches in 1949, sir.

Q. My question is, Doctor, you can conclude that this is a new complaint, can you not, from the fact that he reported that he had it for the past three months?

A. It might be.

Q. You have no other record of the man ever having

headaches, did you, sir?

A. No, we didn't.

Q. And is it not, therefore, a new complaint as far as you are concerned?

A. I said it could be.

Q. I know that, Doctor, but I want a more definite answer than that. As far as you are concerned, it was a new complaint, wasn't it, sir?

A. It could be.

Q. I know that, Doctor. You have said that already.

A. That is what I am going to stand on is that it could have been a new --

Q. That is a speculation. You are saying that it might be and it might not be. What I am saying as far as you are concerned, it was a new complaint?

A. No.

Q. It was not?

A. No, because I am not sure.

Q. Doctor, have you got any record that he had any kind of headaches before?

A. Well, he might have had it without reporting.

Q. Doctor, you would inquire about it, would you not? A good treating physician, you just got through saying, would inquire about these things whether or not they had

pre-existed the occurrence. Didn't you just get through saying that?

A. Yes, I did.

Q. And, Doctor, you, therefore, inquired about his headaches that he reported in 1950, did you not, sir?

A. I did.

Q. And you found out that he had had these headaches just the past three months, did you not, sir?

A. According to the record, that is what he stated.

Q. And it was, therefore, a new complaint, wasn't it, sir?

A. I am not sure, sir.

Q. You were as sure as you could be under the circumstances that existed at that time which included your ability as a skillful treating and examining physician to elucidate these facts from this worker at Monsanto?

A. At the time we examined him in 1950 he gave us that history.

Q. My question, isn't that correct, sir, that this was a new complaint as far as you could tell from what you found out from the man?

A. A new complaint as far as I was concerned.

Q. That is correct, sir. That is what I am asking you as far as you are concerned.

A. As far as I was concerned, but that doesn't mean to say it was a new complaint. He could have had it before.

Q. Doctor, yes. He could have lied to you when you asked him had you had headaches before because as a treating physician, you would ask him have you had headaches before and he could have lied to you and said no, I haven't had headaches before. This is something new. He could have made that lie to you but as a treating physician, so far as you were concerned, it was a new complaint?

A. Mr. Hurley was not lying, sir.

Q. I understand that. I don't believe he was either so, therefore, as far as you were concerned, it was a new and and honest new complaint?

A. A new complaint from my point of view.

Q. Yes. And that is what I asked you to start with, Doctor Suskind. He also reported that these headaches were not severe, didn't he, sir?

A. He did.

Q. He also told you that his hearing had decreased, did he not, sir?

A. He said he believed that his hearing had decreased.

Q. And he also told you that he has noticed shortness of breath, didn't he, sir?

A. Yes.

Q. Now, this occasional wheezing in his chest, correct, sir?

A. Correct.

Q. These are again things that you didn't find, that he didn't complain of at least in 1949, isn't that right, sir?

A. No, he did not.

Q. It is right that he did not complain of them?

A. He did not complain of them in 1949.

Q. So, these are new symptoms showing up in this man a year after his exposure, aren't they, sir?

A. Yes, but they are common symptoms that many people may have.

Q. Doctor, I certainly know that everything that happens in a case of systemic poisoning is common to the world at large. Everybody can have any of those problems, if they are human, that is caused by systemic poisoning, can they not, sir?

A. No, sir.

Q. Can't everybody get from time to time a headache?

A. They can, indeed.

Q. Can't everybody feel from time to time nervous?

A. Absolutely.

Q. Can't everybody from infectious processes get liver

disease, never been exposed to systemic poisoning?

A. Probably.

Q. Can't everybody be susceptible to colds and get AIDS because their immune system is not functioning or infectious processes -- can't all of these things, can't you get peripheral neuropathies from conditions other than systemic poisoning?

A. That is true.

Q. Everything that you can get from systemic poisoning you can attribute to some other cause if you wanted to?

A. One has to determine whether they are associated.

Q. Isn't my question, sir, that everything that has afflicted these men could have been -- the shortness of breath, for instance -- could have been because of smoking or because he is exposed to some other substance or because he has got pneumonia or because of asthma or a number of different reasons, isn't that right, sir?

A. These symptoms could be attributed to other things, too. Yes, I agree.

Q. But you put them here and so far as you know from the history that you got, nothing occurred to cause this man's hearing to be decreased, to cause shortness of breath or to cause this wheezing so far as you knew at that time, isn't that correct, sir?

A. That is absolutely not so.

Q. Did you not try to eliminate -- did you not, as a good examining physician, try to eliminate other possible causes, sir?

A. Like wax in the ears?

Q. Excuse me. Did you not try to eliminate these other causes?

A. That the --

Q. Yes, sir.

A. No possibility of doing that.

Q. Did you ask questions to attempt to eliminate it?

A. We probably did.

Q. No, Doctor. Not probably. A moment ago you said you most certainly did as a good treating physician. That you most certainly asked those questions. Now you are hedging on it.

A. I am not hedging at all, sir.

Q. There is no question in your mind that you asked the questions, isn't that correct, sir?

A. We probably did.

Q. Doctor, a good treating physician would do it, period, wouldn't he, sir?

A. Yes, they would.

Q. And you are a good treating physician, aren't you,

sir?

A. I believe so.

Q. Therefore, you would do it, period, wouldn't you, sir?

A. This is 35 years after the fact and I cannot tell you whether or not we absolutely did it at the time.

Q. Doctor, my question is, as a good treating physician, you would do it and, therefore, it is your opinion, the best knowledge that you have is that you did indeed ask questions aimed at eliminating other possible causes, isn't that correct, sir?

A. We probably did.

Q. Doctor, now you are giving me the hedging again probably. You don't have to give that to me because you know that in your mind you did ask such questions, isn't that correct, sir?

A. We probably did.

Q. And you won't give me that you did. And, Doctor, what you are saying is --

A. 35 years after the fact I can't say anything absolute about this.

Q. Doctor, what you can tell me absolutely, though, is that a good treating physician would ask such questions, aren't you?

A. A good treating physician would.

Q. Doctor, then if you say you probably did, you are saying that it is possible on that occasion you were not a good treating physician?

A. That is not the conclusion.

Q. Well, Doctor, if --

A. I don't agree with your logic, sir.

Q. If a good treating physician asks the question and you are not sure that you did, you just speculate well maybe you did, maybe you failed to ask a question that would have uncovered an underlying disease that you as a good treating physician should have detected and should have sent the man to a hospital for treatment. Now, that is possible. If you didn't ask the questions that a good treating physician would ask, Doctor, isn't that correct, sir?

A. Would you repeat that long question please because I don't understand it.

Q. Doctor, let me spell it out to you a little more carefully, then. If you don't do that which the medical profession says that you must do, that is, ask questions designed to discover the cause -- for instance, if you didn't, it is possible that the shortness of breath could be one that has come on because of the lung cancer or tumor or emphysema or some other thing. So when you get a sign like

that, as a good treating physician, you ask questions to make sure that there is not some underlying disease that should be treated because if you don't ask those questions, you are not acting as a good treating physician should and you may be liable to suffer the consequences if, indeed, you missed something that a good treating physician would have uncovered, isn't that correct, sir?

A. I cannot answer that question in the way you have formulated it. It is a complicated question which includes liability, responsibility and I really cannot answer that kind of a question.

Q. Well, let's go it one at a time.

A. Why don't you do that, sir.

Q. A good treating physician would make sure he asks that which is necessary to uncover underlying diseases?

A. Absolutely.

Q. It is not probable, is it? It is absolutely?

A. Absolutely. A good treating physician would.

Q. And you are a good treating physician, correct?

A. We have assumed that, yes.

Q. And, therefore, if you don't ask those questions that a good treating physician would ask, you are either, A, not a good treating physician, or, B, you have committed some form of malpractice, isn't that correct?

A. That is not so.

Q. It isn't so. What other conclusions can we reach, sir?

A. You might reach a conclusion that the physician got a negative answer and didn't put it down or got a positive answer and didn't put it down.

Q. Doctor, if he got a positive answer and didn't put it down, it is a form of malpractice, isn't it, sir, that a good treating physician would not do?

A. Not at all. It all depends how important the doctor feels -- May I finish? It all depends how important the doctor feels that question is and the answer is.

Q. Well, Doctor, it is quite important to discover the cause of shortness of breath and wheezing, isn't it, sir, that came on for no particular reason?

A. I am not sure it came on for no particular reason.

Q. No. Doctor, the reason you are not sure is because you are, indeed, sure. You know that it came on and associated with the exposure to the dioxin or the 2,4,5-T and its contaminant at that time?

A. I am not sure at all, sir. You are making that relationship. I did not.

Q. Did you not make that relationship?

A. No, I did not make that relationship.

Q. And, Doctor, you still haven't made that relationship?

A. Still haven't made the relationship with respect to whom?

Q. Shortness of breath and wheezing, respiratory difficulties, as being exposure to 2,4,5-T and its contaminant? Haven't you made such a relationship, sir?

A. We have included it in our report. We have included it in a report as a possible association but not having done and we were not required to do the -- May I finish -- the followup examinations to determine whether or not this man had a bronchitis and due to something else, this was in the winter of 1950 and he could have had a bronchitis. So that we, in our report, we say there might be some association but we don't point it out as definite. We do not.

Q. Now, Doctor, you have reported and made reports in other places that respiratory difficulties are one of the things that is an inconstant result of exposure to TCDD, have you not, sir?

A. Others have reported it.

Q. And have you not also reported it?

A. We have only indicated it in this report.

Q. Didn't you indicate it in a table you prepared once

upon a time, Doctor? Didn't you indicate it in a table you prepared once upon a time, Doctor?

A. Would you show me where I have done that?

Q. The exhibit that is offered by Monsanto into evidence in this case, Table 1?

A. Yes, sir.

Q. Thank you, Doctor.

A. That is acute respiratory problems from trichlorophenol. It has nothing to do with 2,4,5-T.

Q. This chart has nothing to do with TCDD?

A. It has only to do with it -- Read the top of it.

Q. Human Health Effects-TCDD. It also says acute following. No doubt about it.

A. TCP runaway reaction or poor plant hygene. That is what it reads.

Q. Yes. What is the main heading?

A. The main heading --

Q. Human Health Effects - TCDD?

A. Right.

Q. And there is something that you said follows and it followed this TCP runaway reaction which you know incorporated the TCDD contaminant. Now you know that, isn't that right, Doctor?

A. That has --

Q. Isn't that correct, sir?

A. Yes. But this is not -- We did not assume at all or in our papers we have demonstrated, sir, that these acute reactions are largely due to the irritant aspects of trichlorophenol.

Q. Now, Doctor, the trichlorophenol has in it the TCDD, does it not, sir?

A. But the TCDD itself --

Q. Could you answer this question, please, so I can pass to the next one?

A. Yes.

Q. And did you not include respiratory problems as one of the human health effects from TCDD?

A. No.

Q. Now, Doctor, am I misreading this table?

A. You are, indeed, sir.

Q. Doesn't this table include as a clinical feature and it is -- the only clinical features you have here is eye, respiratory, skin and GI irritation. Acute headaches and malaise. Isn't that correct, sir?

A. Right.

Q. There are no other acute health effects except these listed here, correct, sir?

A. From trichlorophenol.

Q. Is that correct?

A. From trichlorophenol.

Q. Does that say trichlorophenol?

A. It does not.

Q. It says TCDD, doesn't it, Doctor Suskind? Doesn't it say TCDD, Doctor Suskind?

A. It does, indeed.

Q. These are clinical features that you have attributed in this table in times past as a human health effect to exposure to TCDD, have you not, sir?

A. Yes.

Q. Isn't that correct, Doctor?

A. In that --

Q. Whether it is acute or chronic or long-term or subchronic or over the moon or under the moon, it is a human health effect that you have attributed to exposure to TCDD, isn't that correct, sir?

A. No, sir.

Q. Then why did you put it in that table, Doctor? There is nothing else in this table. If it is not associated with TCDD or not caused by TCDD, then what you would have here for the TCDD would be a big zero, wouldn't you, sir?

A. No, sir.

Q. What are other human health effects according to

this table from exposure to TCDD?

A. I don't know what the acute health effects of TCDD are.

Q. Doctor, what are the human health effects from exposure to TCDD that you have listed in this table? Name them for me please, sir?

A. None. This is taken out of context.

Q. Doctor, I will accept that answer.

A. This is taken out of context.

Q. I understand that, Doctor. Doctor, the context is what you testified to on direct examination, what this chart says, what you have said in other places and if you say that it is not human health effects from exposure to TCDD at this point in time, we will let it go at that and we will pass on to something else, Doctor.

A. Fine.

Q. And, Doctor, back to the question that I am getting to on the particular exhibit that we got diverted from is, so far as you knew, there was nothing that occurred in the interim to cause this shortness of breath, this respiratory difficulty, isn't that correct, sir?

A. No, sir, it is not correct.

Q. What else did you divine or get from him that could have caused this shortness of breath? What else? Point it

to me, please, sir. Would you point it to me what else you found could have caused the shortness of breath?

A. We don't say what caused the shortness of breath. We only state our findings there.

Q. Doctor, isn't your belief that these problems that this man had and these other had, these respiratory problems, were associated with or manifestations from the accident, from the intoxication?

A. Absolutely not.

Q. Oh, Doctor, turning to page 13 of the report we are reading from. Do you not say there, the four men we examined have suffered from an intoxication which affected their skin, respiratory tract, central nervous system, peripheral nerves and so forth. Isn't that exactly what you just got through saying absolutely not?

A. That is what we said in this report.

Q. And that is something that you have said just this moment absolutely not, didn't you, sir?

A. Yes, indeed.

Q. And, Doctor, other things that you concluded from your examination was not just for the respiratory tract but the central nervous system, the peripheral nerves, the hepatic tissues, the sexual factors and the endocrine system, isn't that correct?

A. That is what we stated.

Q. And you go on to describe the respiratory difficulty has been limited to dyspnea and wheezing, isn't that correct, sir?

A. That is correct.

Q. And the very thing that you reported in finding in the gentleman we are just discussing, isn't that correct, sir?

A. That is correct.

Q. Doctor, you also found in this gentleman, Mr. Hurley, that he had, his liver was not enlarged, didn't you, sir?

A. That is correct, sir.

Q. So, the systemic poisoning has affected at least the three men that you looked at thus far or the four men you looked at, three of them had their livers affected and one at least as of 1950, his liver is not affected, isn't that right, sir?

A. By physical examination, yes.

Q. And the other three men didn't have any neurological problems but yet this man did, correct, sir?

A. Yes.

Q. So, it would suggest at least that this dioxin affects some people one way and others another way, doesn't

it, sir?

A. At the time we didn't know that this was dioxin.

Q. I understand that, Doctor. The contaminant that you now know is dioxin affects some people one way and others another, isn't that correct, sir?

A. With respect to systemic --

Q. Yes.

A. -- findings, yes.

Q. And, Doctor, in your continued examination of this man, you found that he now has -- his deep reflexes are normal. Now in 1949 he had hyperactive deep tendon reflexes, didn't he, sir?

A. I believe so.

Q. But now his reflexes are normal, correct, sir?

A. Right.

Q. That would indicate that the symptoms have waxed or rather wained and not waxed. Waxed is increase and wained is decreased, correct, sir?

A. Correct.

Q. And he is now -- where he did have lack of sensation all over the foot, the feet, he now has just slight hypesthesia over both heels, isn't that correct, sir?

A. Correct.

Q. Now, Doctor, this is an apparent improvement in Mr.

Hurley's neurological condition, isn't it, sir?

A. It is an apparent improvement.

Q. But you did discover later on when you examined the man three years later, which we will get to in a few moments, that his neurological problems had increased then for 1950, didn't you, sir, if you recall it?

A. I haven't looked at the 1953 report but I would be happy to look at it.

Q. Well, just look for Hurley and see if you did not find in 1953 -- and let me help you on the page.

A. Page 14.

Q. Page 35 or page 47. You got the report in front of you, sir. That he had no vibratory sensation from the iliac crest down. And on page 42, bilateral absence of vibratory sensation from the iliac crest distally. Page 47, loss of sensation from both extremities from the iliac crest down requires further study.

A. I see that.

Q. And, Doctor, you found that in '50 his neurological symptoms had decreased from what they were in '49. You found in '53 that his neurological findings had increased, did you not, sir?

A. These were probably new findings.

Q. They were new findings, Doctor, but it was a

worsening of his neurological problem as compared to what it was in 1950, wasn't it, sir?

A. They were different, sir.

Q. Well, weren't they worsening, Doctor?

A. I can't tell you whether they were worsening or not. I can only say that they were different.

Q. Doctor, in 1950, the only neurological problem he had according to your report was a slight hypesthesia. That means a slight numbness over both heels, correct, sir?

A. Uh-huh.

Q. It was limited to the heel of his feet, correct, sir?

A. Yes.

Q. Where is the iliac crest, Doctor? It is right here, is it not, sir (indicating)?

A. That is true.

Q. So, now from his heels, he now has lost his vibratory sensation from his hips all the way down, hasn't he, sir?

A. The reason I say that, I don't know if it is new.

Q. Could you answer that question, please?

A. Yes, that is what it means.

Q. Now, Doctor, this could be considered what has been called by others as the waxing and waining effect of dioxin

exposure, could it not, sir?

A. I don't know.

Q. Could it not be, Doctor -- you also know from your 1953 examination that this man's condition neurologically speaking got a lot worse. He got involuntary twitching of his muscles in his legs. He got a lot of things which we will get to in more detail, different from 1950, did he not, sir?

A. He didn't report that in 1950.

Q. Page 15, Doctor Suskind.

A. I see it, sir.

Q. He reported or did you say --

A. He didn't report that in 1950.

Q. He didn't report it?

A. In 1950 he didn't report these findings.

Q. Well, if he had had it in 1950, he surely would have reported it if you asked him the questions as a good examining physician would ask, would he not?

A. We wouldn't ask whether his muscles were twitching.

Q. You would ask him to describe everything that is wrong with him, wouldn't you, sir?

A. Correct.

Q. Now, in 1950, he did not have so far as he reported any involuntary twitching of muscles in the arms and legs,

did he, sir?

A. No, he didn't report that.

Q. But he did have that and he so reported it in '53?

A. Those were the complaints.

Q. That is surely a worsening of his condition from 1950 to 1953, is it not, sir?

A. It is a different kind of condition, sir.

Q. Is he in better condition neurologically in 1953 than he was in 1950 so far as the reports and the examinations showed?

A. Probably not.

Q. Yes. If he isn't worse, then this would be considered a waxing condition with regard to Mr. Hurley, would it not?

A. I have never heard of the term waxing and waining so far as TCDD is concerned.

Q. Well, Doctor Carnow has described dioxin as one that in which the symptoms change, they wax and they wain from time to time. That is, sometimes they are better and sometimes they are worse.

A. Doctor Carnow is no expert on TCDD, sir.

MR. CARR: Your Honor, would you ask the jury to disregard the comment that Doctor Suskind has made?

THE COURT: The jury is so ordered to disregard it.

MR. HEINEMAN: Can we approach the bench?

THE COURT: Yes.

(Bench conference had out of the hearing of the jury.)

MR. HEINEMAN: If indeed, if indeed what Mr. Carr just said was a question, which it is questionable, if indeed, then it was indeed inviting his comment about Doctor Carnow.

THE COURT: It was not a response. It is the type of remark which I should probably hold this witness in contempt and I may just do that unless you give me a damn good reason why I shouldn't. That remark was totally unresponsive and irresponsible.

MR. HEINEMAN: I disagree. I think that that question, if that indeed was a question rather than a statement of what Doctor Carnow has testified to, invited his comment on whether or not he agreed with that.

MR. CARR: He said he had never heard anyone describe it as such and I said Doctor Carnow has described it as such. That was in response to his inquiry the source of the information where it come from. He has never heard of it.

MR. HEINEMAN: He didn't ask where it came from.

MR. CARR: He said he had never heard of it.

MR. HEINEMAN: Does that ask where it came from?

MR. CARR: Certainly.

MR. HEINEMAN: If that is asking where it came from, then your statement in response asks him to respond in comment on it.

MR. CARR: It is a repsonse.

THE COURT: You asked him to respond to the original question which was amplified by that responding the source of the question and how the terms were used. That is the way I interpreted and that is the way in a reasonable proceeding, and the comment was totally not responsible and we are going to have a discussion about that during the break on the basis of that comment. Now let's proceed.

(The following proceedings were had in the hearing and presence of the jury).

MR. CARR: Will the jury be instructed to disregard the comment?

THE COURT: The jury is so instructed. You are not to regard that comment in any way.

Q. Doctor, this change in the condition of Mr. Hurley was one of improvement in 1950, and in 1953 one of worsening, was it not, sir?

A. It would appear so.

Q. And if waxing and waining can be applied to dioxin

problems, this would be a situation of waxing and waining, would it not, sir?

A. I don't know, sir.

Q. Doctor, I have given you the definition of waxing and waining, conditions that can improve at one time and worsen at another time. This is such a condition, if it is truly reflective of Mr. Hurley's condition, isn't that correct, sir?

A. If, indeed, you indicate that he may be worse, that is true.

Q. And, Doctor, the impression that you have at that time is that the symptom complex is, I can't make out that word. It is subsiding?

A. On what page are you, sir?

Q. Mine doesn't have a page. Page 8. The number is off at the top.

A. Yes. The impression, yes. Symptom complex is subsiding. Shall I go further?

Q. No. I just want to know whether or not subsiding was the word.

A. Right.

Q. Symptom complex. That means a number of symptoms that are attributable to the particular problem when you say symptom complex, correct, sir?

A. Right. That --

Q. That would be something like syndrome complex?

A. Could be.

Q. So, in this case, if one had knew at the time that this was the result of dioxin exposure, could you say that there was a dioxin, instead of saying symptom complex, you could say dioxin syndrome, couldn't you, sir?

A. We haven't used it.

Q. I know you haven't used it, Doctor. I am not asking whether or not you have used it. I am asking you whether or not you could have said instead of saying the symptom complex, could you have said the syndrome is subsiding?

A. I wouldn't use it, sir.

Q. I didn't ask you if would you have used it, sir. I know you did not use it. What I am asking you is you could have used the words, the syndrome is subsiding, couldn't you, sir?

A. I could have used it?

Q. Yes.

A. No.

Q. Doctor, doesn't symptom complex mean syndrome?

A. In some sense, yes.

Q. And isn't that the sense you use it here? The

symptom complex. You had a group of symptoms that you lumped together as being caused by the same thing, isn't that right, sir?

A. That is quite true.

Q. And that is what a syndrome is, isn't it, sir? Things that all are caused by the same thing? One or more?

A. It might be.

Q. Yes. Well, isn't it one or more? Isn't a syndrome something that is caused by something else? Syndrome simply means sign or symptom, doesn't it, sir?

A. Syndrome means a series of complaints or a series of findings which are pathonomic.

Q. Or a series of symptoms?

A. It could mean that, yes.

Q. And so when you say symptom complex, you mean a series of symptoms, don't you, sir?

A. They varied in this instance.

Q. Excuse me, Doctor. I know they are varying but you use the words the symptom complex and I am simply trying to get you to agree that that is the same thing as saying the syndrome.

A. I wouldn't say it.

Q. Well, the words are equivalent. Symptoms and symptom complex means a group of symptoms attributable to the

same cause, is it not, correct, sir?

A. That is correct.

Q. And the word syndrome means a group of symptoms attributable to the same cause?

A. It might or might not.

Q. All right. And you go on to say that the peripheral neuropathy, the nervous complaints, and I can't make --

A. Periorbital edema. Swelling around the eyes, sir.

Q. Persisted. In other words, he still has the neuropathy and the nervous complaints?

A. But the patient is much improved.

Q. Doctor, if you don't mind, would you allow me please to finish my question?

A. I thought you were asking me to read for you.

Q. No, Doctor. I hadn't finished my question yet.

A. I am sorry.

Q. You say here, the peripheral neuropathy, nervous complaints and periorbital edema persist. That means he still has these problems, correct?

A. That is right.

Q. So he still has peripheral neuropathy problems, correct, sir?

A. Yes.

Q. He still has nervousness?

A. Right.

Q. Well, Doctor, over on page 7 you said that the nervousness subsided and that means that it is completely gone but now you are saying that the nervous complaints persist. So we don't know what you mean when you say subsided, do we, sir, because I just asked you a little earlier there had been a noticeable subsidance in his nervousness and you said that means it is completely gone and now over on the next page you say that it persists?

A. That is true, sir.

Q. So, what you meant in this particular instance when you used the word subsided was that they had improved but not gone away?

A. Well, I think what I probably --

Q. Isn't that what you meant, sir?

A. You asked me about insomnia before.

Q. No, Doctor, I was talking about the nervousness before. You said the nervousness had completely gone away. That is what you meant when you said the noticeable subsidance in his nervousness. I wasn't talking about insomnia. I was talking about nervousness.

A. In this instance it probably decreased, sir.

Q. So, in this instance the word subsidance means

decreased?

A. It could be.

Q. In some other instances it would mean gone away completely?

A. That is right.

Q. And we don't know, really know, then, when you use the subsided or subsidance, we don't really know what you meant in that particular instance unless we are lucky enough to have another statement about the same complaint, do we, sir? We are at the mercy of however you choose to interpret the word subsided, aren't they, sir?

A. No, sir.

Q. All right.

A. No.

Q. Well, if you hadn't included that impression on page 8, we would have had to take your word for it that his nervousness was completely gone, wouldn't we, sir, when you said has subsided?

A. Or markedly decreased.

Q. You didn't say that. You said subsidance meant completely gone, didn't you, sir?

A. In that instance, yes.

Q. So, we didn't have this followup statement. We would have had to take your word for it and we would have

believed that his nervousness had completely gone, wouldn't we, sir?

A. Yes, sir.

Q. When, in fact, it hadn't?

A. Well, in this instance it hadn't.

Q. Yes. In this instance it hadn't.

A. In 1950 it hadn't.

Q. But most of the times when you use the word subsided, I take it unless there is something qualifying later on, you mean completely gone?

A. Yes, sir.

Q. All right.

THE COURT: Is this a good point for a short break?

MR. CARR: Yes.

THE COURT: We will take a short recess at this time. I would remind you as I do on any break you are not to discuss this matter among yourselves, with anyone outside the jury panel or as of yet form any opinions or conclusions about the matters on trial. Court will be in a short recess. Gentlemen, could I see you in chambers please.

COURT RECESSED:

(The following proceedings were had in chambers out of the hearing and presence of the jury.)

(The witness, Doctor Suskind, is brought into chambers.)

THE COURT: Doctor Suskind, I have repeatedly suggested to counsel that they talk to you about your, the way you have been answering questions or not answering them on the stand. I have talked to you about it in chambers and I have talked to you in the courtroom about it as late as yesterday afternoon. At the end of court there was a remark which I pointed out to you was an example of what was not to be done and I gathered at that point that you understood what was involved here.

This last remark when you were asked about medical situation in the context of the usage of terms of waxing and waining and indicating that you didn't have an understanding or experience of how those terms were being used in that context, an explanatory, addition to the question as to the use of it, in proper form, because as is would be normal under these circumstances, it indicated the source of the use of these terms as far as our record was concerned which was Doctor Carnow's testimony before this very jury that has been listening to you. And your remark to that about Doctor Carnow not being an expert, in no way being an expert on TCDD was totally improper. It was not responsive to the question. It was not called for by the question and it is

just one of a long string of times in which you have done this and, in context, it is the last straw.

I think your actions have been wilful and contemptuous. I am holding you in contempt of this court. I am going to impose sanctions on you later, probably on Tuesday. The imposition of the sanctions will depend to some extent on your behavior on the stand between now and then. There is a concept in the law of contempt called purging oneself of contempt which means that by one's subsequent actions, one that either lessens the sanctions that is imposed or under certain extraordinary circumstances, avoid a sanction completely.

I will probably impose sanctions on Tuesday. I am not going to do it now. I am going to give you an opportunity to reform your behavior under threat of this imposition of sanctions and I would remind you that the sanctions this court can impose will be a fine, a period in the County Jail or a combination of the two. It is within my discretion but I will impose sanctions in this matter. I will probably do it on Tuesday.

I am holding you in wilful contempt of this court. I don't think -- There is not a doubt in my mind that your action was deliberate, wilful and contemptuous and no court in the State of Illinois can stand for that kind of behavior

and that includes mine.

DOCTOR SUSKIND: May I say something, sir?

THE COURT: Yes, you may.

DOCTOR SUSKIND: I don't believe I was contemptuous. I really don't. I am a decent human being and I have been in the field of science for 40 years and I know from where I speak and I know Doctor Carnow very well. I helped him get started and I, at the present time, because of what I recognize, he has been doing with respect to such matters as are in this court, I act like a human being and I act impetuously and that is what I have done. It is not really in contempt of the court, sir. I can really --

THE COURT: Well, you are an impetuous individual. The problem with what you have said --

MR. CARR: May I interrupt for a moment, Your Honor, because I think I can bring something to your attention that you are not aware of and that may at least justify, not excuse perhaps, but at least show that Doctor Suskind was not wilfully in contempt. I know it but the Court doesn't. From a long series of depositions and things that have been said by Doctor Carnow about Doctor Suskind and by Doctor Suskind about Doctor Carnow, there is bad blood between the two. Doctor Carnow said something about Doctor Suskind in Nitro, West Virginia, that I personally thought was reprehensible.

I really did. I am not going to repeat what it was but I thought it was reprehensible and it would take somebody more like a saint than Doctor Suskind is not to recent it deeply. I am not going to point it out because maybe counsel doesn't know about it and I sure as hell don't want to put it in the record. It is something that shocked me that he would say it and I can understand Doctor Suskind's reaction in this instance. The name of Carnow would be like Pavlov's dog. He would just automatically start salivating and I think Doctor Suskind is with Doctor Carnow.

I don't think that what he said was wilful or I don't believe there was even at least a fleeting shot in his mind that he was flouting the Court's authority here and I must tell you that as an officer of the court that I do not think the doctor was in wilful contempt of your order. He is in violation, perhaps, of rules of the decorum and wasn't responsive but I understand the situation and I do not think that this is wilful contempt.

THE COURT: Well, that puts a new twist to it.

DOCTOR SUSKIND: Thank you.

THE COURT: Do you understand intellectually, looking back on it now, how your response, you know, given all of that as true, was in no way responsive to the question that was asked of you? You were given a question. You

didn't understand the context of the use of two terms. You were given that context in a way that properly linked it to other evidence as the jury has heard it and then you said what you said. Now, do you understand intellectually how that was in no way responsive to what you were asked because you were asked about the terms?

DOCTOR SUSKIND: Yes.

THE COURT: Okay. Well, then, I will reconsider my decision on that as far as the contempt is concerned.

DOCTOR SUSKIND: Thank you.

THE COURT: Fine. Okay. Thank you, Mr. Carr, for letting me know.

MR. CARR: I understand perfectly the doctor's feelings in this situation. I really do.

THE COURT: Thank you.

(The following proceedings were had in the hearing and presence of the jury)

RAYMOND SUSKIND

having resumed the witness stand, being previously sworn, testified further as follows:

CROSS EXAMINATION

By

MR. REX CARR.

Q. Doctor, the next worker that you examined was a new

one, Harold Young. He was one of two additional persons you examined that had severe symptoms just like the other four, right, sir?

A. Yes.

Q. And Harold Young, while he was actually off work having been exposed in the evening of the accident, he was off work and remained off for four months and while he was off work, he developed pains in his legs, ankles, shoulders and arms, correct, sir?

A. Yes, sir.

Q. He returned to work, worked for five months, got conjunctivitis, severe conjunctivitis and hadn't worked since January 21, 1950, correct, sir?

A. Yes, sir.

Q. So he was off work at the time you saw him then, is that right?

A. Yes, that is true.

Q. Now, he is the one that had the severe hyperpigmentation occur, isn't that correct?

A. Yes, it is true, sir.

Q. And the symptoms that he had at the time that you saw him in addition to the chronic conjunctivitis and the discoloring or deepening color of the skin was the loss of libido that he had for nine months and impotence for six

months?

A. Yes, sir.

Q. Now, again, these were things that you established that had not afflicted this man. He had no loss of libido prior to his exposure and he was certainly not impotent prior to his exposure, is that correct?

A. That is correct, sir.

Q. This man, it looks to me -- I can't make it out -- it looks to me like he is 36 years of age at the time you saw him. The print is not too good on mine.

A. What page are you on?

Q. It would be the preceding page. Page 8, second line.

A. Age 36.

Q. Certainly, there would be no reason of which you were aware then that would cause this loss of interest in sexual relationship or to cause the impotence, that is, the inability to engage in a sexual relationship, isn't that correct, sir, in a 36 year old man?

A. Yes.

Q. And he still had it at that time. He was still impotent when you saw him?

A. He complained of impotence at the time.

Q. Now, Doctor, you again used the word complaint and

you described it in your report, however, as a symptom. You took it --

A. That is the same thing.

Q. You took it as a fact, did you not, sir, that he was indeed impotent. He could not get an erection for the past six months?

A. Well, this is what he told us so it would be.

Q. And you took that as a fact, didn't you, Doctor?

A. Yes.

Q. And, Doctor, that would have meant then that his impotence occurred not at the time of the accident, or six months after the accident he became impotent, is that correct, sir? If you saw him in April of 1950 and he had been impotent for six months at that time, that would have meant that since the accident happened in March of '49, that he was not impotent for a period of six months following the accident and that he got impotent and was impotent for six months up to the time you saw him. Got impotent, perhaps, seven months after the accident?

A. Yes. This is an estimate that the patients --

Q. This is what you reported, however, is that he didn't get his impotence until a period of several months, six to seven months following his exposure. Then he got impotent?

A. No, sir.

Q. Isn't that correct, sir?

A. No.

Q. When did he report -- How long did he say?

A. He said he had been impotent for about six months.

Q. Up to the time you saw him?

A. That is an estimate.

Q. I understand that. You don't even say estimate?

A. He could have been wrong by 12 months.

Q. I am sorry?

A. He could have been in error by -- when a patient describes symptoms, sir, they attempt to determine how long it has occurred and they have to depend upon their memory. So that it isn't a hard fact, it simply is an estimate of the amount of time that, in this instance, the amount of time that he had been impotent and that is how we record it, sir.

Q. Well, Doctor, he was fairly precise in his symptoms. He told you that in about a month after exposure he got the severe skin condition and he told you that he remained off work for four months during which time he developed pains in his legs and ankles and returned to work. Then he told you when he got conjunctivitis?

A. Yes.

Q. And then he told you that he got his loss of libido

for nine months and then he was impotent for six months. That is a pretty good history, isn't it, Doctor?

A. It is but again, sir, if I may, these are estimates that patients give.

Q. Doctor, I surely understand that. I am not quarreling with the view that it is an estimate. The best information that you had at that time and what you reported, you didn't say it is an estimate. You said his present symptom was that he had been impotent for six months, isn't that correct, Doctor Suskind?

A. True, sir.

Q. He also had a complaint of -- and that this six months, if you calculated it that way, would have been six to seven months after his exposure he became impotent, isn't that correct, sir?

A. Based upon this record, yes.

Q. That is what I am asking you. That is all I have got to base it on. Based upon this. Do you believe that I am basing it upon something else?

A. No, I don't.

Q. I am basing it on this, aren't I, sir?

A. Yes, sir.

Q. And based upon this, he got his impotence some six to seven months after the exposure, didn't he, sir?

A. It would appear so, yes.

Q. And he also had complaints of wheezing and shortness of breath early in his illness. Now, Doctor, there is some confusion in my mind in this paragraph whether or not he had the wheezing and shortness as a present symptom that had persisted or started from early in his illness. Was the wheezing and shortness of breath one of his present symptoms as you reported it in this paragraph?

A. From this record, sir, I would assume that he had had, not at the time we saw him but he had some wheezing and shortness of breath early in his illness.

Q. And which he did not have at the time you saw him?

A. I would assume that that is what he meant.

Q. All right. And, Doctor, again you examined this man and with him like in the others preceding him you found an enlarged liver, did you not, sir?

A. Yes, we did.

Q. So, thus far in every person that you examined that has been exposed to this process has had an enlarged liver, is that correct, sir?

A. I think all but one, sir.

Q. No --

A. In 1949 there were three out of four, I believe.

Q. That is right. Hurley did not have the enlarged

liver at least in your examination in 1950.

A. I think so.

Q. All right. I think we just established that and I had forgotten. And, Doctor, you again used the word symptom complex to describe the problems this man has, don't you, sir?

A. Yes.

Q. And you then report on Mr. Lane, do you not, sir?

A. We do.

Q. And reports that he developed his acne on the 24th of March, just a couple of weeks after the accident, correct, sir?

A. Yes, sir.

Q. There is no statement in this report whether or not he was in 51 or worked in building 51 or just what his connection with the accident was. Do you have any memory as to whether he was or was not in the accident building itself?

A. No. We may have that in 1953, sir, but I think that --

Q. Indeed we may have and we will get to that in a few moments. But as far as you know now from this exhibit and from your memory, you don't know whether he was or was not in the building?

A. Except as a pipefitter, I assume that he was

probably involved in helping to clean up and we established the operation. That was the purpose of the pipefitters, or the job of the pipefitters.

Q. All right. And it is not important at this point, Doctor, but Mr. Lane, to pass on to his problems, he got his chloracne and then 30 days later he developed pains in the legs, particularly in the knees, calves and heels, right?

A. Yes, sir.

Q. While they never did stop him from working, they did prevent him from sleeping at night. The pains were so severe that he couldn't sleep at night, is that correct, sir? Page 12, Doctor Suskind.

A. Yes. The report reads that way, sir. Yes.

THE COURT: I couldn't hear you.

A. Yes.

Q. And he also developed wheezing in the chest and a cough which lasted some nine months?

A. Yes.

Q. And he, too, complained of much loss of libido and potency for a period of nine months, is that correct, sir?

A. Yes.

Q. And he had gradually improved after that nine months until the time you saw him he reported to you that he was normal?

A. Yes.

Q. So, contrary to the situation of Mr. Young, this man was impotent for a period of nine months but got normal. Mr. Young was still impotent at the time you saw him, correct, sir?

A. He said so, yes, sir.

Q. Well, is it again a fact that you took, sir, that he was indeed impotent because when you say he said so, that puts in my mind that perhaps you doubt whether he really was?

A. No, it doesn't, sir. I have no doubt that he was accurate.

Q. All right. And, Doctor, this gentleman also had complaints of fatigue and still had complaints of fatigue following the accident and up to the time you saw him, correct, sir?

A. Yes, sir.

Q. He described it not as fatigue as such but he said he tired easily?

A. Yes.

Q. He still had aching in his legs at night and as you described it here, a great deal of nervousness, is that correct, sir?

A. Yes.

Q. Again that is a central nervous disorder and he had

something that you called wild dreams. That is the first time wild dreams are mentioned. Was this the first time that you got from any of these gentlemen that it had affected even their dreaming process?

A. Well, I would assume he had nightmares, sir. Wild dreams.

Q. But my question is, is this the first encountering you had in nightmares being associated with this incident in these workers?

A. I believe of the six that we saw during that period, this was the first. This was the only time we had reported it and I assume that he was the only one who gave that information.

Q. And the nightmares would fall into the category of a central nervous system disorder?

A. It might be. Not necessarily.

Q. Well, what else would it be if it is not disorder of the central nervous system?

A. There are psychological factors, sir, that lead to nightmares. Nightmares are common among children, as you well know, who have psychological problems.

Q. Well, then, this could be attributable or part of the fear and apprehension about which you testified with regard to these men at the workmen's compensation hearing.

This could be in that category. Could be caused by psychological problems, that is, fear of the work, fear of the contaminants, fear of going back to work or working in the plant?

A. It could be, sir. Yes, sir.

Q. And, Doctor, even though you are not a psychiatrist, you know that fear that generates in us whether it is based upon a real condition or not is quite important in one's everyday life. You know that?

A. It is indeed, yes.

Q. And in point of fact, a person could have a fear of a non existent danger and he would act and have his personality affected in the same manner as if the danger existed in fact, isn't that correct?

A. That is true, sir.

Q. And insofar as exposure to this contaminant is concerned, the fear that one can have generated from such an exposure can be equivalent to or worse than the actual organic problems that might occur, isn't that correct?

A. It might be.

Q. There are people that actually -- and many people, unfortunately, that actually become totally dysfunctional and totally unable to function simply because of fear and apprehension that is not based upon any real danger or

circumstance, isn't that correct?

A. That is possible, sir. Yes.

Q. And all of these men or at least all -- that is too strong a statement. As far as the 16 claimants were concerned at the workmen's compensation hearing, they all exposed -- and again I said all. I didn't mean all. A significant portion of these claimants expressed fear and apprehension, didn't they, sir?

A. I haven't read through this recently but I know some of them did, yes.

Q. And do you know anything about -- has anybody told you about the fear and apprehension that the Sturgeon residents have or that the Times Beach residents have or that the Minker Stout residents have?

MR. HEINEMAN: Objection, Your Honor. May counsel approach the bench?

THE COURT: Sure.

(Bench conference had out of the hearing of the jury.)

MR. HEINEMAN: Your Honor, there is no evidence in this case whatsoever about the fear of people at Times Beach or the fear of people at Minker Stout.

MR. CARR: Yes, there is.

MR. HEINEMAN: Where?

MR. CARR: In the Missouri health report.

THE COURT: Objection is overruled. I remember that.

MR. CARR: It is there. The jury has heard it.

THE COURT: I didn't even mention it but I remember it. Objection is overruled. While you are up here, we are going to go until 1:30 at lunch. They are having some demonstration of the new phone system so we might actually be able to communicate with the outside world.

MR. HEINEMAN: So lunch will go from 12:00 to 1:30?

MR. CARR: It has been going for some other period?

THE COURT: Allegedly to 1:15.

(The following proceedings were had in the hearing and presence of the jury).

Q. Doctor, do you know anything about any fear and apprehension that may be, may have been mentioned by the groups that I gave to you in the question?

A. Some, not all of them, sir. Some of that group.

Q. And that would be, what group do you have knowledge of?

A. The Times Beach group through the report that I read.

Q. And when you say the Times Beach group had these

fears and apprehensions, do you include in that the Minker Stout group as well?

A. Sorry?

Q. Do you include in that the Minker Stout group as well? They are frequently lumped together.

A. I am not sure I understand what the Minker Stout group is, sir.

Q. Minker Stout is another location near Times Beach where Bliss sprayed this contaminated oil.

A. My own information is simply through the report of the study that was done of the so-called Times Beach inhabitants by the CDC.

Q. You are referring to the Missouri Pilot Health Study?

A. Right.

Q. And that included Minker Stout.

A. Thank you.

Q. All right.

A. Yes.

Q. Okay. And you know nothing, though, about the fears and apprehensions of the Sturgeon residents?

A. No.

Q. Or the Sturgeon Plaintiffs, I should say?

A. No.

Q. All right. Doctor, the liver in this man -- we are talking about Lane, are we not?

A. Yes.

Q. His liver was not enlarged, was it, sir? Top of page 13.

A. Right.

Q. So we have got of the six then that you saw, four had enlarged livers and two did not. The two being Lane and Hurley?

A. Yes, that is true, sir.

Q. Now, Doctor, I know you are not an internist but how does a chemical or toxic substance cause the liver to be enlarged?

A. Depending upon the substance, sir, some toxic substances, many toxic substances, when it gets to the liver, the liver attempts to detoxify, attempts to cope with the toxic agent and often in doing so is also damages or irritates -- the cells of the liver may be irritated or not just the liver cells but the supporting cells, the stroma cells may be irritated and one gets an inflammatory reaction and when there is inflammation just like inflammation on the skin, it swells. The skin swells. So that in the case of the liver, one can, whether it is hepatitis due to virus or hepatitis due to a toxic agent, the liver can swell because

of the inflammatory process and when that happens, the liver enlarges so that one can, by palpating the liver area on the right side and then determining whether or not there is an edge, usually you don't feel the edge of the liver below the rib margin but in order to determine if a liver is enlarged, you do an examination of that side of the body. I am not an internist but I do it all the time and determine whether or not the liver is enlarged below the costal or the rib margin and whether or not it is tender. That is, whether or not pressure will elicit pain.

Q. Now, Doctor, the enlarged liver in the case of these men, then, had been more or less in existence since they first started this systemic reaction to the dioxin?

A. I really can't tell you except that it would be impossible to determine on the basis of their history, Mr. Carr --

Q. Well, I understand that.

A. -- when it started.

Q. At least in October of '49 you found it in three of the four men, if not all four, and I don't recall that.

A. Three out of four.

Q. Three out of four. And then in -- they still had -- the same three out of four still had their enlarged livers six months later, seven months later, whatever, when you saw

them in April of '50, correct, sir?

A. Right.

Q. So, their liver was reacting. Would this be part of the immune system reacting in this inflammatory process that occurred?

A. I really don't believe so. I think that the defenses of the liver are, they can be immunologic but usually in response to a toxic agent, it is the irritancy that the toxic agent or it is --

Q. It is the direct irritant effect on the liver cells itself rather than an activation of the immune system, is that correct, that is causing the inflammatory process?

A. Well, inflammatory, an inflammation doesn't necessarily involve the immune system, sir. It can and in this instance we really didn't know but in most instances where the liver is damaged by a toxic agent, it is based upon the direct effect of the toxic agent on the liver cells and the supporting structures, the stroma cells.

Q. Of course, the porphyrins are associated with the liver function as well. Would that be involved in when you get these inflammed or enlarged livers?

A. It might. It might.

Q. At this time, however, did you in either '49 or in '50, did you test their porphyrins in any urinalysis? Then

the charts that you associated -- the records I don't find any reference to it.

A. I don't believe there was a record to it, sir.

Q. So, actually at this time, then, you have no knowledge as to whether or not any of these men would have any of the porphyrias or any precursor to porphyrias, is that correct, sir?

A. Yes. We would have some knowledge.

Q. And as manifested by what?

A. Manifested by the clinical effects of hepatic porphyria. If this was a problem induced which would have induced changes in the liver and heme metabolism or the ability to form hemoglobin, the ability to form hemoglobin, we might have seen it in the clinical evidence of the skin manifestations and easily sunburn. That is photosensativity.

Q. You are talking about porphyria cutanea tarda?

A. Yes.

Q. I did not ask you about porphyria cutanea tarda. I am talking about intoxication porphyria, chemically induced porphyria. It is not porphyria cutanea tarda. My question is, did you have any way of knowing whether or not these men had a form of chronic hepatic porphyria or intoxication porphyria? Did you do anything to let you know whether they did or did not have it at that point in time?

A. Yes, we examined them clincally and there was no clinical evidence of porphyria, sir.

Q. What would you expect to find in a clinical examination that would demonstrate porphyria?

A. We would expect to find skin changes.

Q. That is, porphyria cutanea tarda?

A. That is produced by intoxication with chemical agents as well.

Q. Doctor, in what instance are you aware of where it was not porphyria cutanea tarda?

A. Porphyria cutanea tarda had indeed been caused by chemical agents, is what I am saying.

Q. Well, Doctor, but I am asking you about a form of porphyria that is not porphyria cutanea tarda. That is, what is known as intoxication porphyria. Are you familiar with the term, sir?

A. I am, indeed.

Q. All right. And, Doctor, you can have intoxication porphyria without any skin signs whatsoever, can you not, sir?

A. But you have other manifestations which they did not have, sir.

Q. I understand that. But I am talking about the skin manifestation. You can have intoxication porphyria because

of the skin manifestations?

A. You might.

Q. Now, Doctor, what else could you look for clincally to find out whether or not these gentlemen had forms of intoxication porphyria?

A. One would look for gastrointestinal problems when taking drugs or alcohol, which they did not have.

Q. Anything else, Doctor?

A. Sometimes there are neurological problems which may occur as a result of acquired hepatic porphyria.

Q. You can have peripheral neuropathies from acquired hepatic porphyria, can you not, sir?

A. Not frequently but it might be, yes.

Q. What are the neuropathy problems that you get with acquired or hepatic porphyria?

A. You have some sensory changes.

Q. Anything else?

A. And you can get neuritis.

Q. That is pain in the nerves, pain in the legs. Anything else, sir?

A. Well, those are the chief -- oh, yes, and you can get also some central nervous system problems.

Q. Neuro-behavioral problems?

A. You might.

Q. What about reflex changes?

A. Sorry, I didn't hear you.

Q. What about reflex changes?

A. You might get reflex changes but that is not very common, sir.

Q. You could get diminished or slowed reflexes, couldn't you, sir?

A. Not frequently, sir.

Q. Well, my question is, can you get it with acquired or hepatic porphyria?

A. You might get it.

Q. What about slowed nerve velocity conduction? Could you get that with acquired or hepatic porphyria?

A. I do not know, sir.

Q. You don't know one way or the other?

A. No, I really don't know.

Q. But, do you know that you can get all of those things that you have just mentioned through intoxication, acquired, chemical or hepatic porphyria?

A. It is possible.

Q. All right. And, Doctor, these men had -- you also get problems with the blood, don't you, sir? You can, with acquired hepatic porphyria?

A. Problems with the blood?

Q. Blood problems?

A. Such as what?

Q. Well, prothrombin time abnormalities?

A. I really don't know. I don't think so.

Q. These men had prothrombin time abnormalities, didn't they, sir?

A. They did but they didn't have porphyria, sir.

Q. Well, Doctor, you did no urinalysis to show whether they did have porphyria, isn't that correct, sir?

A. At the time we did it, Delta-ALA was not even known in 1949.

Q. But urinalysis was known and you did not do that, did you, sir?

A. No, we did not.

Q. But they did have prothrombin time decreases, they did have central nervous disorders, they did have peripheral disorders, peripheral nerve disorders, did they not, sir? They did have peripheral neuritis, didn't they, sir?

A. Yes, sir.

Q. They had all of those things which can be a sign of acquired intoxication or hepatic porphyria, did they not, sir?

A. They did not have acquired hepatic porphyria.

Q. My question is, they have had these signs which you

said can be caused by acquired intoxication or hepatic porphyria, did they not, sir?

A. They might.

Q. No, Doctor. They had these signs, didn't they, sir? Doctor, did they have these signs or not?

A. They had those signs, sir.

Q. And cannot those symptoms, those problems, be caused by, and didn't you just say they could be caused by hepatic porphyria, intoxication porphyria, acquired porphyria or chemical porphyria?

A. I didn't say that, sir.

Q. You didn't say that, sir?

A. No.

Q. I --

A. Can I explain?

Q. Didn't you tell us you were --

A. You were asking me about intoxication porphyria.

Q. I asked you about the problems that can be caused by intoxication porphyria and didn't you tell me that peripheral neuritis could be caused by it?

A. Yes.

Q. Didn't you tell me that neural behavioral problems can be caused by it?

A. They might.

Q. And didn't you tell me that blood problems could be caused by it?

A. I am not sure what the blood problems are.

Q. Excuse me. Didn't you tell me that? Problems involving prothrombin time or heme manufacture?

A. Heme metabolism, correct.

Q. And, Doctor, these men had these problems which could be caused by porphyria or they could be caused by porphryia. But they could be caused by porphyria, could they not, sir?

A. They might but there would be other symptoms.

Q. All right, Doctor. The other symptoms would be what? Skin symptoms, because, Doctor, you said skin symptoms is porphyria cutanea tarda and may or may not be associated with intoxication porphyria, isn't that correct, sir?

A. It may or may not, right.

Q. And, Doctor, you also had the signs of the irritability, the nervousness, the insomnia, the libido, the impotence, did you not, sir?

A. Yes.

Q. All of these things can be caused by acquired or chemical or intoxication or hepatic porphyria, can they not?

A. No, sir.

Q. Are these not central nervous system disorders?

A. No.

Q. Well, which are not, sir?

A. I am not sure that the impotence is a central nervous system disorder.

Q. I think you are right. It is not. The loss of libido would be, wouldn't it, sir?

A. Not necessarily.

Q. It could be, sir?

A. It could be fear.

Q. Well, you mean they are fearing the -- the fear of the chemicals cause them to lose interest in sex or fear for their life, presumably, or their future health has caused this disinterest in sex?

A. Right. It could be. Absolutely.

Q. Or it could be a symptom of a central nervous system disorder?

A. No, sir.

Q. Loss of libido could not be?

A. It might.

Q. Well,, that is what I asked you, sir. It could be. It might be, mightn't it, sir?

A. It might be.

Q. Now, Doctor, you did find as well and concluded as well, did you not, that these men had suffered from an

intoxication, didn't you, sir?

A. Yes, I think we concluded that.

Q. And the intoxication would be a chemical intoxication, wouldn't it, sir?

A. Yes, sir.

Q. And the chemical intoxication would be that material which escaped from the autoclave which would include the contaminant which we now know is 2,3,7,8 TCDD, isn't that correct, sir?

A. That or other contaminants.

Q. Well, it was your judgment then that it was associated with or caused by the TCDD?

A. Then, no, sir.

Q. Doctor, the table that you --

A. I thought you were referring to these conclusions at the time we didn't know there was TCDD, sir.

Q. Doctor, I understand that and I didn't mean to mislead you to try to get you to say that you knew it was TCDD. I know that you didn't know that it was TCDD. I know that you learned later that it was but you did know that there was something in that without a name that was causing it because you knew the pure 2,4,5-T didn't cause the problems whereas the manufactured 2,4,5-T did cause the problems. Those things you knew and, Doctor, so, therefore,

the intoxication with this chemical caused these problems, did it not, sir?

A. No, sir.

Q. Doctor, what did you -- didn't you say that they suffered from an intoxication?

A. Yes, we said that.

Q. And the intoxication is with the chemical in question, is it not, sir?

A. It could be several chemicals.

Q. Is the chemical in question which is the 2,4,5-T with it is various contaminants?

A. Yes, sir.

Q. And that is what intoxicated these people?

A. Yes, sir.

Q. And they had from that intoxication not just the skin problems but the respiratory problems, central nervous system problems, peripheral nerve problems, hepatic tissue problems, sexual factors of their endocrine system. Now, Doctor, the sexual factors from the endocrine system is not psychological, is it, sir?

A. No.

Q. This is something that the endocrine system is involved in the manufacture of the sperm and the semen and everything else, isn't it, sir?

A. Indirectly, yes, sir.

Q. And this is -- you found at that time that the sexual factors in their endocrine system could well be a result of this intoxication, didn't you, sir?

A. We assumed it was the endocrine system that was involved, sir. There was no definite proof.

Q. Did you know there was a sexual problem involved?

A. Correct.

Q. Have you been told that Doctor Zaneveld of Northwestern University testified that he found that 53 percent of the Sturgeon male plaintiffs had reduced total sperm count, abnormally reduced sperm total count in the 1983 examinations of the sperm that he did? Were you aware of that, sir?

A. No, sir.

THE COURT: Mr. Carr, is this a good point to break for lunch?

MR. CARR: Yes.

THE COURT: We will break for lunch at this time. We are going to go until 1:30 today rather than 1:15. The admonishments that I have given you earlier will apply during this break also. Court is in recess for lunch.

COURT RECESSED:

(The following proceedings were had in the hearing

and presence of the jury)

RAYMOND SUSKIND

having resumed the witness stand, being previously sworn, testified further as follows:

CROSS EXAMINATION

By

MR. REX CARR.

Q. Doctor, referring back to Plaintiffs' 1700, your 1950 report, from the portion that is described as the summary, I believe we were in the middle of that at the time. Have you got it in front of you?

A. Yes.

Q. And you and Doctor Ashe described the respiratory difficulties being limited to the shortness of breath, the wheezing, I think we mentioned that already, and the neurological manifestations were characterized by localized pain and weakness which have been associated with the history of pathologic findings of peripheral neuropathy. Correct, sir?

A. Yes.

Q. And the central nervous system symptoms were irritability, nervousness, insomnia and I believe we already mentioned that. Those examined consistently had a loss of libido and some impotence. You also stated that you found

hepatomegaly, tenderness, soreness in the right upper quadrant and epigastrium in addition to a delayed prothrombin time and those things indicate a disorder of the hepatic tissue?

A. Yes. We do say so.

Q. And the hepatic tissue, the disorder that you are talking about there, is a disorder of the liver, isn't that correct?

A. Yes. Hepatic means liver.

Q. So what you are saying is the enlarged liver, the tenderness and the soreness and the delayed prothrombin time indicates to you and Doctor Ashe some disorder of the liver?

A. Yes, sir.

Q. All right. You also point out that in eight out of nine of your subjects who have these clinical findings, that the serum lipids were definitely increased; in four out of seven they had an increase of total serum cholesterol, correct. Sir?

A. Yes.

Q. Then you make a final conclusion saying that it is our considered opinion -- and by that I take it you mean that it is not an opinion given lightly but an opinion that you have come to after analyzing all the facts and circumstances that you know of at that time, is that correct, sir?

A. Yes, sir.

Q. It was your considered opinion that the intoxication in each person affected has given rise to a disturbance of lipid metabolism which has affected several organ systems, is that correct, sir?

A. Yes.

Q. And I take that to mean that the intoxication by the chemicals and contaminants involved cause the lipid metabolism in each of these persons to be disturbed and the disturbance of the lipid metabolism is what affected these several other organ systems, is that correct?

A. That was our belief at the time, sir.

Q. Is that what you meant at the time?

A. That was our belief at the time, sir.

Q. All right. Now, with relation to later findings or later reports, you reported -- could you give Plaintiffs' Exhibit 1467 to the witness and Defendant's Exhibit 62 at the same time. Plaintiffs' Exhibit 1467 is the so-called morbidity study which you did of all these workers and had published in 1984, correct, sir?

A. Correct.

Q. You make a statement with reference to the symptoms and findings in the second column on the first page, right toward the bottom of that column. You say, you point out the

symptoms that you had found in '49. You say these symptoms, those symptoms and findings referable to the nervous system and liver had subsided but chloracne, although much improved, persisted, do you not, sir?

A. As of 1953?

Q. Yes?

A. Yes.

Q. And by that you meant that the symptoms and findings in the nervous system in the liver had gone away but the chloracne continued?

A. Correct.

Q. All right. And, Doctor, also in Exhibit 62 which is the mortality study by Zack and Suskind published in January of 1980, on the second page of that document, you again referred to the 1953 examination of these people, do you not, sir? The second paragraph, first column, second page. Are you with me, sir?

A. Yes, I am.

Q. It starts in 1953. You say there in a few cases, workers continued to complain of aches and pains of the lower extremities and back, nervousness, excessive fatigue and dyspnea, shortness of breath. Do you not, sir?

A. Yes, we do.

Q. And again you are referring to the examination that

took place, the third examination that took place, that is, in 1953, correct, sir?

A. Yes.

Q. All right. And in this document in 1980, you say there are few workers. In a few cases, workers continued to complain but in your later paper in 1979, you say those symptoms had gone away, don't you, sir?

A. Subsided.

Q. Well what you said --

A. There was a decreased number of them in this instance.

Q. Well, I thought you meant -- You told us that means had gone away?

A. Well, again I think we are concerned about the word subsidance, sir.

Q. Well, didn't you tell us just a second ago that you meant by that that those symptoms and findings referable to the nervous system and liver had gone away?

A. In most instances.

Q. All right. And what you are saying in effect is the same thing that you have said in 1982. In 1980, then, in a few cases they continued to complain of aches and pains of the lower extremities, correct, sir?

A. Correct.

Q. Now, a few cases would be, I think we have established yesterday, would be two to four cases?

A. I have no idea. I haven't counted them, sir.

Q. Well, I am asking you what you mean by the word few in this document?

A. Well, not having gone through this recently to count noses, sir.

Q. I understand that, Doctor.

A. I can't tell you.

Q. Well, I would like to know. Do you not mean in a few cases as you have said yesterday the word few means two, three, four cases?

A. It could be that that was so. It might have been.

Q. It certainly wouldn't be the majority. A few cases would be a small minority, wouldn't it, sir?

A. It would be a minority of the cases.

Q. And like two to four?

A. It might be that or perhaps even more but -- Not having counted them, I can't tell you.

Q. What you are telling the world, though, in 1980 and in 1984, that these workers that you examined in 1953, four years after they were exposed, four and a half years, whatever the date was in '53, that their complaints, that the aches and the pains of the lower extremities in the back and

the nervousness, the excessive fatigue, the shortness of breath, these things had gone away except in a few cases?

A. Right.

Q. All right. And, Doctor, you know, of course, the effect of this is these two documents, the Zack-Suskind mortality study and the Zack-Suskind morbidity study are relied upon by scientists all over the world as a report of a responsible organization to the fact that you may get exposed to TCDD but within four years or so of the time you are exposed, your aches, your complaints about fatigue, your nervousness, excessive fatigue and shortness of breath are going to go away except in a few cases. Isn't that what you are telling the world?

A. Yes, sir.

Q. And you want the world to rely upon that, don't you, sir?

A. If they are reported accurately, they should rely on it.

Q. And people do. Since these are both peer reviewed papers, they rely upon the integrities and the ability of the authors of the document to accurately and truthfully report what they discovered in 1953, isn't that correct, sir?

A. That is true.

Q. Because the people reading the document can't go

back. They don't have access to the 1953 examination that you conducted, do they, sir?

A. One would expect them to --

Q. You would expect them to rely upon your integrity, the integrity of Judith Zack from Monsanto who was the senior or lead author of the 1980 publication, they would expect you all to report completely, truthfully and accurately what you did in fact find relative to the complaints of these workers in 1953, isn't that correct?

A. Yes, sir. Which we did.

Q. And, Doctor, it goes beyond just this case because there are so few studies on human health effects. These two studies that you authored make up a great deal of the world's scientific literature on what are the human health effects of exposure to TCDD, isn't that correct, sir?

A. Correct.

Q. And it has been relied upon. Your report has been relied upon by governmental agencies, not just in this country but all over the world, I suppose, correct, sir?

A. I believe so.

Q. It has been made a major foundation stone in the position that Monsanto and other companies responsible for the manufacture of TCDD have given to the world saying don't worry about what TCDD will do because within a few years, the

health effects such as aches and pains and fatigue, all these things, and nervousness, all of these things will go away except in a few cases, isn't that correct, sir?

A. Correct.

Q. And, Doctor, if the foundation is flawed, is false, is untrue, then the entire edifice that is built on that foundation is also unworthy of belief and fails, isn't that correct, sir?

A. I don't know what you are talking about, sir.

Q. Doctor, if the world has perceived and at least half of the literature refers to health effects, the population study, if the world had relied upon something that is untrue, if in fact an overwhelming majority of the workers, 90 percent of the workers or 75 percent of the workers continued to complain of aches and pains and nervousness and fatigue four years after their exposure, contrary to what you said, the edifice upon which that foundation stone is based would also be faulty, wouldn't it, sir?

A. If indeed we had reported it wrong.

Q. Yes. Now, Doctor, I expect at this point in time to demonstrate that you have indeed reported it wrong to the world, and that the foundation, the world's concept or view of the health effects of TCDD is not that they disappear in a

few years but that they have persisted and that in your last examination as of 19 -- in your examination as of 1953, that the overwhelming majority of the 36 workers that you examined at that time continued to complain of aches and pains, fatigue, nervousness, central nervous disorders. And if I demonstrate that, sir, you will agree that you have done a disservice to the world at large, will you not, sir?

A. I can't say. I haven't heard this.

Q. I know but if I do demonstrate that, then you indeed have done a disservice to the world at large?

A. No, sir, because I haven't said that.

Q. But you did say it, Doctor. You did say in a few cases, only in a few cases, did these complaints persist, did you not, sir?

A. Correct.

Q. And if we demonstrate that that is untrue, then you have done the world a disservice?

A. I have not done the world a disservice.

Q. Even if you say that falsely, sir?

A. Because I haven't said it falsely.

Q. But assume if you said it falsely. Assume that I can demonstrate what you said is untrue, sir, then you have done the world a disservice?

A. I cannot assume that, sir.

Q. Please assume it.

A. I cannot.

MR. HEINEMAN: Objection, Your Honor.

MR. CARR: I asked the witness to assume that I can demonstrate what I say I can demonstrate at this point, Your Honor.

MR. HEINEMAN: Objection, Your Honor. He has no right to do that.

Q. Suppose somebody else had said something false of that sort, untrue of that sort, inaccurate of that sort, would you agree that they have done the world a disservice?

A. No. I would look at the details first.

Q. Assuming, sir, that the details show that the statement is not true, is not correct, is not accurate. Assume that, sir, not you, because you are personally involved, but Judith Zack or Doctor Carnow or Doctor Blonsky. Assume, sir, that they made these statements, not you, and that the statements they made were untrue. Would they not have done the world a disservice, sir?

A. I don't know because I would want to as a scientist --

Q. Doctor, I am asking you to assume in the hypothetical situation that they did inaccurately, falsely, improperly, untruthfully report something that wasn't so and

that the world in relying upon that statement came to certain conclusions?

MR. HEINEMAN: Objection. Your Honor, may counsel approach the bench?

Q. Would you not have done the world a disservice under the circumstance?

MR. HEINEMAN: Could counsel approach the bench?

THE COURT: Sure.

(Bench conference had out of the hearing of the jury.)

MR. HEINEMAN: I object, Your Honor. He has no right to ask the witness to assume anything that isn't in evidence. He has no right to assume anything that isn't in evidence.

MR. CARR: I believe I certainly can. It is logical and were taken as given. The man has practically said it already that if it is not true, that he just doesn't believe it is not true.

THE COURT: I don't think the entire question is improper. Your objection is overruled.

(The following proceedings were had in the hearing and presence of the jury).

Q. Will you assume that, sir? I know you are looking at your records, Doctor, but we will get to your records in a

moment. Assuming, sir, that what I said is true, hasn't that scientist done the world a disservice?

A. Not necessarily, sir.

Q. Not necessarily. You think they may have, though?

A. They might.

Q. All right. Now, Doctor, I expect to demonstrate with you and we will go through your 1953 report --

A. Sir, I cannot hear you.

Q. I am sorry. My back was to you and I should not have turned my back to you, sir. I expect to demonstrate that what I have suggested to you about the truthfulness or the accuracy of your statements in these documents are not correct and I have, if you would compare, the 1980 statement, sir, I will read it to you. You need not come down, Doctor, I will read it to you. I have properly quoted from your 1980 statement, in a few cases, workers continued to complain of aches and pains of the lower extremities and back, nervousness, excessive fatigue and dyspnea, correct, sir?

A. Yes.

Q. Now, Doctor, if we could -- do you have Defendant's Exhibit 1701? Now, Doctor, you recognize 1701 as the report on a clinical and environmental survey made of the Monsanto Chemical Company facility at Nitro, the Kettering Laboratory, Department of Preventive Medicine and Industrial Health. Do

you not, sir?

A. Yes, sir.

Q. And this is the report that you and --

A. Doctor Akin and Doctor Davis.

Q. And you were the senior, however, of the group, were you not, sir?

A. Yes, sir.

Q. And it is this report that makes up the 1953 examination of these people, doesn't it, sir?

A. Yes, sir.

Q. I would like to pass the first -- the report by the way, Doctor, includes not just the report on the workers but an environmental survey of the plant. It is done by some engineers, correct, sir?

A. That is correct.

Q. And you were not author of the engineering report?

A. I was not, sir.

MR. CARR: I would like to pass to the jury that part of the document which he was the author of.

THE COURT: That has been admitted.

MR. CARR: But I am passing to the jury not the engineering report but just the medical report that he made and I don't know whether the Court has a copy of that or not.

THE COURT: I don't have a copy.

MR. HEINEMAN: What pages are you passing?

MR. CARR: Everything but the engineering report that starts at the end.

(Defendant's Exhibit 1701 is passed to the jury.)

Q. Doctor, the part one, the clinical survey, that which had been passed to the jury and that page, first page without a number on it but it just says report, gives the objective of the, the general objective of the study, does it not, sir?

A. Would you repeat the question please, Mr. Carr?

Q. The third page on the document that you gave to the jury, that is the Exhibit 1701, the page entitled report, a clinical and hygienic survey, gives the general objective of the study, does it not, sir?

A. You are talking about the hygienic survey?

Q. No. I am talking about the third page of the document you have. Do you have the document in front of you?

A. I have the document here.

Q. You are on the page number three instead of the third page. That is the page right there.

A. Fine.

Q. Doctor, it points out there that the clinical survey deals with those problems that have dealt resulting from the accident in March of '49 in building 41 as well as

those which have developed from the operations since October of 1948, correct, sir?

A. Correct.

Q. I am sorry, sir?

A. Yes.

Q. So, it includes not just those that were exposed to the accident itself but those that were involved in the process as far back as October of 1948, correct?

A. That is true, sir.

Q. And you point out that the, on the page numbered two, that some of the people involved had left the company of the 117 cases of chloracne that were associated with the accident, that there are 97 others included, correct, sir?

A. 97 who were exposed.

Q. Additional cases of chloracne were believed to have originated from the regular operations in the production of 2,4,5-T which was put in operation in the Fall of '48?

A. That is how it is reported, sir, yes.

Q. And this survey deals with 36 of those people, 11 who were in the accidental exposure and 25 who were just in the regular operations, correct, sir?

A. I believe it is 10 and 26, sir.

Q. Well, I think it ended up that way because one was questionable but if you look at the bottom of page two, sir.

Page number two it says there, does it not, the group examined consisted of 11 affected workers to the accident exposure and 25 from the production, is that correct, sir?

A. Yes.

Q. And there was one that was questionable. The 11th one was questionable, was he not, sir?

A. Right.

Q. So he may or may not have been exposed to the accident. That is the reason you now say 10 and 26, correct, sir?

A. Correct.

Q. And, Doctor, in this instance, you did do urinalyses, did you not?

A. We did.

Q. On these 36 people. This urinalysis?

A. I am sorry. We didn't do it on all 36.

Q. You are correct. You did not. You did it on a chosen number of people in certain instances, correct, sir?

A. Right.

Q. Is that correct, sir?

A. Yes, that is correct.

Q. The urinalysis that you did was a spot urine sample, was it not?

A. Yes, it was, sir.

Q. That is, it was not a 24 hour sample?

A. That is correct, sir.

Q. And you did it for the purpose of determining the urinary porphyrins, among other things, did you not, sir?

A. We thought we did, yes.

Q. Well, that was the reason you say here that you did it, isn't that correct, sir? To determine the urinary porphyrins?

A. Precisely.

Q. And you believed at that time that you could determine the urinary porphyrins with this spot sample, did you not?

A. We thought we did by extrapolation.

Q. And if you carry it on forward, you did the same spot sample in your morbidity sample of 1949 at the Nitro Plant, did you not?

A. Yes, sir.

Q. And you did the same spot urinary porphyrin sample in 1979 at the Sauget, Illinois, plant, did you not?

A. We did, indeed.

Q. And you reported in your 1953 study on the urinary porphyrins, didn't you, sir?

A. Yes, sir.

Q. And you found, according to this record, that the

urinary porphyrins were normal, didn't you, sir?

A. We so stated, sir.

Q. That is what you found?

A. We so stated at the time.

Q. My question is, Doctor, you found at the time according to in the urinalysis that they were normal?

A. According to our knowledge of porphyrins at the time.

Q. Doctor, please. I am asking you as your knowledge was at that time.

A. Correct. You are absolutely right, Mr. Carr.

Q. You can change your mind from a dozen different reasons later on if you want to. My question is directed at that time you analyzed the porphyrins and found that they were normal, did you not, sir?

A. Correct.

Q. And, Doctor, you on the next page you point out the various types of exposure, don't you, sir?

A. Yes, sir.

Q. That is on page number four. On this page you find that 10 were in the accident, 12 were in operations in building number 34. In building number 34, what do they do there, sir?

A. There was where they made 2,4,5-T from

trichlorophenol.

Q. In building 51?

A. That is where they made trichlorophenol at that time.

Q. In building 51 there were four workers that you examined from that building?

A. Yes.

Q. Correct, sir?

A. Yes.

Q. There were two that did nothing but haul 2,4,5-T that you examined, correct, sir?

A. Correct.

Q. There were three maintenance workers in 51 and 34 that you examined but they were not in building 41 where the explosion took place, correct, sir? Is that correct, sir?

A. Building 41 wasn't used at the time, sir.

Q. I wonder if you could answer my question?

A. Yes.

Q. And you had combined exposures, two that were in both 34 and 51, one that was in buildings 40 and 46 and 34, one that was in building 79, 16 and 34. The one in building 79, that is where they packaged the 2,4,5-T, is it not, and shipped it out?

A. I can't say. I don't remember, sir.

Q. All right. It is not important at this time. And I am not sure that that is correct. But in any event, you found another one that had been involved in the drying of 2,4,5-T in buildings 46 and 79, correct, sir?

A. Yes.

Q. Now, in addition to those which you noted that they occurred, there were persons that had worked in the laboratory that had the chloracne. There were medical persons who treated the affected people and persons who visited, and these are plural, persons who visited the areas of exposure occasionally. For instance, the safety director also developed chloracne, correct, sir?

A. Yes, sir.

Q. Now, the next paragraph points out that one of these persons did not develop chloracne, do you not, sir?

A. On page 5, sir?

Q. The very same page, sir. You say there it is apparent from the history that the cutanea symptoms in all except one developed prior to the other symptoms. Do you see that, sir?

A. Yes.

Q. All right. On the next page, you give the distribution of these various complaints that they had. 35 had cutaneous lesions out of the 36. One person did not get

chloracne, correct, sir? Do you see that table, sir?

A. Yes.

Q. So, we have got 35 had got chloracne and one person that did not get chloracne?

A. Yes.

Q. So that would indicate that you can be exposed to TCDD, get systemic problems, pains, fatigue and irritability and never get chloracne, doesn't it, sir?

A. No, it does not.

Q. Doctor, do you not say that this person had the complaints of pain, fatigue and irritability but did not get chloracne?

A. He complained about it and we in looking at his record, sir, and in talking with him, we determined that he was a complainer and that was Mr. Kyle.

Q. Doctor, what you put in your list here, that there are symptoms that these people have and they add up to the 36 for all the problems other than the chloracne, don't they, sir?

A. These are subjective symptoms, sir.

Q. Doctor, I understand that. They are all subjective in these complaints and that is what we are talking about.

A. In 1953.

Q. Doctor Suskind, if you could --

A. Yes, go ahead, sir.

Q. You reported here that this person had these symptoms of pain, fatigue and irritability. Now, he could be lying just like all the other 35 could be lying. He could be stretching, he could be doing all kinds of things but he reported to you and you reported it to us as a symptom, did you not, sir?

A. Yes, we did.

Q. All right. And if true, if he was not lying to you, if, in fact, he was having pains and fatigue and irritability, then indeed he had a systemic effect which did not go along with when chloracne did not go along with it. Isn't that correct, sir?

A. Not necessarily, sir.

Q. If it is true it is, isn't it, Doctor Suskind?

A. Not in this case, sir.

Q. Doctor, you are saying that it is not true?

A. I am saying it is not true in this case.

Q. Doctor, what I am telling you is to assume that he wasn't lying to you. Would you direct the witness to assume that the man wasn't lying to him, Your Honor?

THE COURT: Doctor, do you understand the assumption?

A. Yes, I do.

THE COURT: Please follow it.

Q. Assume that he wasn't lying to you. That indeed he did have the aches and the pains, the fatigue and the irritability; that he was exposed to the TCDD or the 2,4,5-T and its contaminants but he didn't develop chloracne. Will you assume that, sir?

A. I am assuming it.

Q. Are you assuming it? Then, indeed, one can get a systemic effect without chloracne, can he not?

A. It is possible, if that is true.

Q. All right, thank you. Now, with relation to the people involved in the accident itself, Mr. Shank was the first one you examined, was he not, sir, and he was a foreman, correct, sir?

A. Yes.

Q. And he told you that a year after the accident, this would be 1950 as opposed to the accident in 1949, a year after the accident after his acne occurred which, by the way, occurred three months after the spill, so 15 months after the exposure, this man developed severe aches in his lower legs and thighs, excessive fatigue, loss of sexual interest, irritability, mental depression, aching sensation in the infraclavicular and presternal areas. Also developed cramps in the calves and portions of the thighs that was so severe

that he had to soak his legs and he complained of cold intolerance, correct, sir?

A. Correct.

Q. Now, these things occurred 15 months after the exposure, is that correct, sir?

A. 15 months after the accident, sir.

Q. Yes. And he was in there 5 minutes after the explosion, wasn't he, sir?

A. That is what it reads, sir.

Q. So, it occurred 15 months after his exposure, didn't it, sir?

A. Yes.

Q. And, Doctor, you know the instance of Oliver where the complaints in these three laboratory workers and some of their problems occurred two years after the incident. You know that as well, don't you, sir?

A. I don't know that it was two years.

Q. We will get to Oliver shortly but it was reported. I would like for you to assume that it was reported that these problems occurred some two years after the exposure?

A. The examination was made two years after.

Q. No, the symptoms occurred two years later, sir. The problems occurred two years later in Oliver. Could you assume that, sir? It is in evidence in this case.

A. I am assuming it.

Q. And this case would parallel the Oliver case, wouldn't it, sir, insofar as the length of time it takes for these systemic disorders --

A. I would say no, sir.

Q. You know here the systemic problems showed up 15 months later?

A. After the accident.

Q. Yes.

A. He could have been exposed after that, too, sir.

Q. Well, surely, Doctor. I am not quarreling with that. He was exposed to the accident and these problems showed up 15 months later?

A. But what I am saying, sir, he could have been exposed afterwards as well.

Q. Well, surely he could. There is no question but that he was exposed. If it is spread over a wide area in the plant, there is no question that he was exposed later as well.

A. He was exposed to the work, to the work effort subsequent.

Q. On March 8, 1949, he was exposed to the residue of the explosion and he was exposed from thereafter. He continued in that building until 1952 as foreman. He was

exposed all that period of time, was he not, sir?

A. Yes.

Q. And he had his problems show up 15 months later insofar as his aches and pains and irritability and so forth?

A. No, sir.

Q. Doctor, am I misreading it where it says that his cutanea lesion occurred three months following the accident?

A. Uh-huh.

Q. Am I misreading that?

A. No, you are not.

Q. And a year after the cutaneous lesions occurred, he developed these other problems?

A. But he was still being exposed in building 41.

Q. I understand that. Did you hear my question? My question said 15 months after the exposure in the accident, these things occurred.

A. I will agree with you.

Q. And, Doctor, in your -- in the present complaints, he says that there had been a noticeable regression, that means they have lessend, and he has occasional pains in infraclavicular and presternal areas and excessive fatigue. Correct, sir?

A. Correct.

Q. So he has pains and excessive fatigue?

A. Regressed, yes.

Q. He has what you described as excessive fatigue, doesn't he, sir, and pains?

A. But that is qualified, sir.

Q. Doesn't he have at the time you examined him in 1953, occasional pains and he also has excessive fatigue?

A. Correct.

Q. So he is one of these few workers, isn't he, sir?

A. Uh-huh.

Q. And, Doctor, I am going to put two checks over him so we will know that he is complaining of pain and excessive fatigue, correct, sir?

A. Yes.

Q. And, Doctor, the next person examined there is Frank Milan, correct, sir?

A. Milan.

Q. He was also in the building 15 minutes after the accident to clean it up, wasn't he, sir?

A. Correct.

Q. Six months after. He got his chloracne three weeks after the accident, six months later he developed aches in the legs, shoulders, fatigue and inertia, doesn't he, sir? Do you see that, sir?

A. Yes.

Q. And he was unable to work from June to December of 1950, isn't that correct, sir?

A. Correct.

Q. Now, that is a year and a half after the accident he was in such fatigue and such pain that he was unable to work for a period of six months, isn't that correct, sir?

A. Yes, but between the time the accident --

Q. Doctor, if you don't mind, could you just please direct your attention to the question I am asking so that I can get through with this. And, Doctor, he was -- when he did return to work after being unable so to do, he was actually transferred to another building, wasn't he, sir?

A. He was.

Q. And, Doctor, now these problems that he had got so severe that it took a year and a half for them to get so severe as to prevent him from working, doesn't it, sir, this pain and this fatigue?

A. This is what the record reads, sir.

Q. Doctor, and you took this as fact, did you not, sir?

A. We did, sir.

Q. And you could have certainly checked the record whether or not he was able to work in that period of time, whether or not he worked in that period of time, could you

not, sir?

A. We regard it as his history as the truth, sir.

Q. And you find at the present time he has got complaints of fatigue?

A. Mild fatigue, sir.

Q. Correct, sir?

A. Correct.

Q. So, he has one check and that is the fatigue, correct, sir?

A. As you stated it, sir.

Q. Ralph Westphall was the next person that you saw. He was in the building three days after the accident. He got his lesions starting in May of '49, correct, sir? Is that correct, sir?

A. Yes.

Q. Now, he didn't get the other problems until three years later in early 1952, isn't that correct, sir?

A. This is what he stated, sir.

Q. Excuse me, Doctor Suskind. But if everytime you say that, if I have to ask you this is what you took as fact and I am giving the question to you as if it is fact, fact that you relied upon, the fact that I am relying upon, we would save a lot of time if I didn't have to ask you that additional question. This is what you took as fact, is it

not, sir?

A. Yes, sir.

Q. As far as you know, it is fact, isn't it, sir?

A. As he reported it, sir, yes.

Q. Is your answer yes, it was fact, sir, and you treated it as fact?

A. We treated it as fact.

Q. And as far as you are concerned it was fact?

A. We treated it as fact, sir.

Q. And, Doctor, you understood Mr. Westphall is a truthful person. You believed he is telling the truth, did you not?

A. Yes, sir.

Q. Have you ever found anything to counterindicate his ability, his willingness that he didn't tell the truth?

A. I would assume from this report that he was telling us the truth.

Q. In 1953 he developed the aches and pains in the back, the thighs, the lower legs, severe fatigue, loss of libido, shortness of breath and pain in the right upper quadrant, did he not, sir?

A. That is what the report reads.

Q. And this he got three years after the accident, correct, sir?

A. Yes.

Q. The problems of the aches and the pain and the fatigue got so severe that in June of '52 he left work and has not returned since?

A. Correct.

Q. Doctor, that means as of 1953 when you saw him, this man still wasn't working because his aches and pains and fatigue and libido and all of this business was so severe that he left his work and hadn't returned since, right, sir?

A. That is right, sir.

Q. And this is a man that you considered is telling the truth?

A. Yes, sir.

Q. And, Doctor, at the time that you saw him or your team saw him, he had severe fatigue throughout the day, loss of initiative, shortness of breath on excertion, decrease in libido, a dizziness upon waking and occasional pains in his thighs and calves, correct, sir?

A. Yes.

Q. Now, this man then has central nervous system problems or problems associated with what you said the nervousness could be. He has got the aches and pains and he has got the fatigue, hasn't he, sir?

A. He does.

Q. And so we will put him up there with three checks, correct, sir? Would that be correct, sir, based upon what you have reported in your 1953 report?

A. Not completely, sir.

Q. Well, shall I put four checks on because I am just looking at the nervousness or the central nervous system complaints or those associated with nervousness, the fatigue and the pains.

A. Yes, sir.

Q. And we get three checks for that, would he not, sir, for present complaints?

A. Not when I read the final sentence of that examination, sir.

Q. The final sentence is that he seemed anxious to convince you that he was very ill and that his illness was similar to that of Mr. J. G. Steele?

A. Yes, sir.

Q. Do you think that there is something wrong that the man that has these problems, that he can't prove that he is having by any objective tests, the pain can't be proven by a test, the fatigue can't be proven by a test. Is there something wrong with this worker trying to convince you that he has these problems that he does have in fact? Is there something wrong with that, Doctor Suskind?

A. Well, I believe that, if I may answer that --

Q. Could you answer my question? Is there something wrong with that, sir, if, in fact, it is the truth?

A. Well, if it is the truth.

Q. Yes?

A. And there is some doubt.

Q. Excuse me. If it is the truth, is there anything wrong with him trying to convince you that it is the truth?

A. No.

Q. Because if you report to the company that this man is not in this condition, if this man doesn't have these problems, his unemployment or workmen's compensation benefits would be terminated, wouldn't they, sir?

MR. HEINEMAN: Objection, Your Honor. May counsel approach the bench?

THE COURT: Sure.

(Bench conference had out of the hearing of the jury.)

MR. HEINEMAN: That question is irrelevant and immaterial and there is no evidence to support it and I object to it.

THE COURT: I think it is relevant and material. Overruled.

(The following proceedings were had in the hearing

and presence of the jury).

Q. Could you answer my question, Doctor Suskind?

A. I don't know, sir.

Q. Have you never examined for and made reports relating to workmen's compensation?

A. I have indeed. I do it all the time.

Q. And you do know that if the examining physician chosen by the company says the man is able to work, that the company has the right to cut off his benefits. You know that also, don't you, sir?

A. Yes.

Q. And if you reported to the company that this man was able to work, he could indeed have had his benefits cut off, couldn't he, sir?

A. Not medical benefits but other benefits.

Q. Yes. Isn't that right, sir?

A. That is probably so.

Q. And, Doctor, is there anything wrong with a man who has got extreme pain, that he can't prove that he has got, extreme fatigue that he can't prove that he has got, is there anything wrong with him trying to convince you that these problems are real?

MR. HEINEMAN: I object, Your Honor. It has been asked and answered.

THE COURT: I think it has been asked and answered.

Q. Now, Doctor, the next person is Jesse G. Steele, correct, sir?

A. It is.

Q. You saw him -- the report that he had given you, he was there in June of '49. He was one of the original four that you saw. You repeated what you had found on your original exam, the fatigue, the shortness of breath, the soreness in the chest, insomnia, irritability, nervousness, decreased libido, numbness in his hands, pain in the shoulders, neck and extremities, correct, sir?

A. Correct.

Q. And these were the things that you found on your first examination that he had reported to you on the first examination, correct, sir?

A. Yes.

Q. Now, you saw him, he was one of the groups that you saw again in 1950, correct, sir?

A. Correct.

Q. And you repeat again problems that he had reported to you in 1950, that is the pains that had decreased but still persisted, the loss of libido -- I am sorry. In 1950 you reported, according to this report, that the loss to libido, the insomnia and the nervousness had regressed

completely?

A. Yes.

Q. And by that you mean had gone away completely, correct, sir?

A. I would assume that that is true, yes, sir.

Q. And, he presently gave you as his complaints, however, pains in the neck and shoulders, fatigue. He has been away from work -- I am sorry. He was on light duty for 10 months before you saw him in 1953 but he had been away from work since that time all together. So for 10 months, as I take this, he worked on light duty and he returned to work after the accident and then all together was off for the 10 months prior to the time you saw him and was off from work at the time you saw him?

A. That is correct, sir.

Q. And his complaints at that time consisted of pains in the neck and shoulders, fatigue, the nervousness, the swelling in the groin and neck, the soreness in the right upper quadrant and the occasional vertigo, correct, sir?

A. Correct.

Q. And you point out that these are identical with that of Mr. Westphall, don't you, sir?

A. Yes, sir.

Q. But he also -- this is Steele, is it not? He would

get three complaints for the fatigue, the pains and the nervousness, would he not, sir?

A. If you are separating complaints. You are separating complaints, sir?

Q. Yes.

A. So long as I understand.

Q. That is what we have been doing thus far. So we have four on our list so far and the next one is John Selby. John Selby was in the accident building the day after it occurred. He got his cutaneous eruptions, that is just another word for saying the starting of chloracne, isn't it, sir?

A. I believe so.

Q. He got his several weeks after the accident. In May of '49 he had a high fever, Rocky Mountain Spotted Fever. He was off work for 10 weeks with that. But then three months after his first skin lesion he developed aches, pains in the lower extremities and extreme fatigue, correct, sir?

A. Yes, sir.

Q. He was off work. And a year later, he also had frequent nightmares, his hands became numb. A year later he developed severe fatigue, pains in the chest, low back pain, loss of libido, cysts up near his, near his eyes?

A. Yes.

Q. Occasional --

A. The eyelids.

Q. Eyelids. Occasional depression and vertigo, correct, sir?

A. That is what he had complaints of.

Q. He had been off work for 18 months or over 18 months and as matter of fact he returned to work the very day you examined him, is that correct, sir?

A. That is correct.

Q. He complained presently at the time you saw him in '53 of persistent fatigue, pains in the legs and chest, occasional depression and recurrent vertigo. Again he would get, he would be one of the persons that would get three checks, correct, sir? Is that correct, sir?

A. If that is the way you are scoring.

Q. Well, for the aches and pains, the nervousness, the fatigue is what I am primarily concerned with, Doctor.

A. Yes.

Q. And, Doctor, so that you won't, so you will understand why I am doing it and concentrating on those three, those are the three main complaints of the Sturgeon Plaintiffs. Do you understand that, sir?

A. I don't because I don't know what the complaints

are, sir.

Q. All right, Doctor. The next person is Paul Willard. He again was one of the ones that you originally examined and we won't need to get into all of his complaints. You saw him again in 1950 but since his examination in 1950, he had remained out of the plant for about half the time and when he does go back to work, he has done light work and he has had no problem with chloracne since 1950. Do you see that, sir?

A. He had no complaints about it, yes.

Q. He has had no trouble according to what you say here, no trouble with his skin since 1950. Isn't that what you say, sir?

A. One would have to look at the examination to determine whether or not indeed that was true, sir.

Q. Well, if you look at the examination on Mr. Willard on page 34?

A. Yes, I am, sir.

Q. All that is listed there is residual chloracne on the face and acne scars on the face, neck and trunk?

A. But he still had some chloracne, sir.

Q. Well, if he had it, it was of a form that you called residual and was no longer active, correct, sir?

A. No. It is simply that he had chloracne which was

still there. Residual means being still there. The scars are, those are no longer active but residual would mean that it is still there.

Q. I won't quarrel with that, Doctor, because it is not of a concern with me because what you found upon your present complaint was presternal aching, marked shortness of breath on exertion, frequent, heart palpatations, flushing, low back pain, posterior cervical pain, recurrent vertigo and depression, correct, sir. Is that correct, sir?

A. Yes, I believe that is so. I am just reading it, sir.

Q. I am sorry?

A. I was just reading it.

Q. And on page 34 where you summarize the clinical complaints for Willard, you also had in there fatigue, do you not, sir?

A. Yes.

Q. So, Mr. Willard would go on the list and with three checks, would he not, sir? One for the pain, one for the fatigue and one for the nervousness, is that correct, sir?

A. If that is the way you are scoring it.

Q. Doctor, the next one would be Lonnie Hurley who worked in building 41 and got his first eruption in 19, in May of '49, and a year after the chloracne showed up, he

developed pains of the calf muscles, he had painful twitching of the muscles especially at night, he developed nervousness, generalized weakness and fatigue, is that correct, sir?

A. That is correct, sir.

Q. He had been away from work a total of 14 months but he had not lost any time since 1951. Is that also correct, sir?

A. That is correct.

Q. His complaints at the time you saw him in 1953 was mild fatigue which increases on exertion, nervousness and occasional leg pain, is that correct, sir?

A. That is correct.

Q. So, Mr. Lonnie Hurley's name would go on here and with three checks as well, would it not, sir?

A. If you are counting the mild effects, yes.

Q. Well, that is what I am counting, sir. And, Doctor, the next one would be Barry Hudnall. Mr. Hudnall was a man that worked with the pipes and steam traps with the involved autoclave. He got his skin problems 10 days following the accident and some few months later he developed pains in the lower extremities and hips and fatigue on exertion, and during the past few years, I would take that to mean a couple of years before '53, he developed shortness of breath, correct, sir?

A. That is what it says.

Q. I am sorry?

A. Yes, that is what it says, sir.

Q. And his present complaints were a multiplicity of symptoms including pain in the lower extremities, fatigue and loss of teeth which he claimed was due to chloracne but which I take it you would not agree with, isn't that correct?

A. That is correct, sir.

Q. So, Mr. Hudnall would go on the list but just two checks, one for the pains and one for the fatigue, is that correct, sir?

A. Correct.

Q. Sir?

A. If that is the way you are scoring it.

Q. Doctor, the next person listed is Harold Young who got his systemic problems other than the chloracne several months after the chloracne appeared. He got pains in his lower and upper extremities, shortness of breath, loss of the sexual drive and severe conjunctivitis, is that correct, sir?

A. Yes. We reported that, sir.

Q. He was one of the ones that you saw in 1950 and reported on, correct, sir?

A. Correct.

Q. And according to what he told you, there was a

steady regression. Now that means that symptoms get less, or his condition improves, correct, sir?

A. His condition improved.

Q. And while he had lost a year because of his symptoms, he hadn't lost any work since 1951 but he still complains of continuous mild fatigue, slight irritability, aching in his legs and feet, correct, sir?

A. Correct.

Q. So, he still has these problems and that would be Harold Young and that would be three checks, would it not, sir?

A. If that is the way you are scoring it, sir.

Q. And, Doctor, the next one is Mr. J. A. Hurley. That is the man that had the nerve biopsy and the problems of the loss of sensation and you report that he reports to you at least that there was a continuance and steady regression of all skin lesions and non cutaneous symptoms. His present complaints were insomnia, pains in the hips, thighs and feet. Involuntary twitching of muscles of arms and legs, swelling of the eyelids, slight nervousness and fatigue, correct, sir?

A. Correct.

Q. And he is the one, if you recall this morning, that pointed out on the neurological examination that had the loss

of vibratory sensation from the iliac crest all the way down. Do you understand that, sir?

A. Yes.

Q. And so he gets, Mr. J. A. Hurley would also get three checks, would he not, sir?

A. If that is the way you are scoring it.

Q. Well, those are the problems he had, isn't it, sir?

A. Yes. But I am concerned with the degree.

Q. I understand that, Doctor. But --

A. And also --

Q. I am concerned with what you said in 1980 and others times.

THE COURT: Is this a good point for a short break?

MR. HEINEMAN: First may I object to the speech and ask that it be stricken since it wasn't part of the question and ask that the jury be instructed to disregard it.

THE COURT: The objection is overruled. What was said is proper. Gentlemen, could I see you at the bench for a minute.

(Bench conference had out of the hearing of the jury and off the record.)

COURT RECESSED:

(The following proceedings were had in chambers out

of the hearing and presence of the jury.)

(The witness, Doctor Suskind, is brought into chambers.)

THE COURT: Okay. Doctor, on the basis of what was said earlier and the facts that Mr. Carr gave you that I did not have before, I have reconsidered my decision and I am not going to hold you in contempt for the remark that you made.

DOCTOR SUSKIND: Thank you, sir.

THE COURT: I want to emphasis again, I understand the circumstances under which it happened and I was not aware of that before. I had no reason to be and I wasn't. I want to emphasize again as I explained to you earlier and I think you agreed, you could see how the remark -- you can see intellectually how the remark was not responsive to the question that was asked and you know basically what I am asking here and what any Judge asks of you is to respond to what you are asked to. No more, no less. Just comply with some basic rules such as that.

We have taken this break after about an hour. I understand I am trying to make sure that you don't get too fatigued as far as the testimony is concerned because I don't want that to interfere with your ability to comply with the requirements that any witness has to comply with in this courtroom. I can juggle these afternoon breaks accordingly.

I would much rather have your compliance and we move along with the testimony and any conflicts, be they intellectual conflicts in front of the jury and not a conflict between you and me and I will demand and will continue to demand that these basic rules of decorum in the courtroom be followed. You understand that, too.

DOCTOR SUSKIND: Yes. I will attempt to respect them, sir.

THE COURT: Okay. Let's all take a break.

COURT RECESSED:

(The following proceedings were had in the hearing and presence of the jury)

RAYMOND SUSKIND

having resumed the witness stand, being previously sworn, testified further as follows:

CROSS EXAMINATION

By

MR. REX CARR.

Q. Doctor Suskind, the group that we have thus far on the chart paper consists of the 10 workers who were clearly associated with the accidental explosion, isn't that correct, sir?

A. That is true, sir.

Q. And of those 10, nine of those 10 continued to

complain of aches and pains, all 10 continued to have complaints of fatigue, isn't that correct, sir?

A. I haven't counted that but if your checks indicate that.

Q. Milan is the one that no longer is complaining of pain, the other nine are. And all 10 have complaints of fatigue and there are 7 of the 10 that have complaints of nervousness or other complaints associated with the nervous system. And, Doctor, the next one that we have is Dewey Meadows. He is the one that there is some question whether or not he should be in the accident group or in the process working group, is there not, sir? Do you see there where you said in 1953 there was some question as to what group he was going to be classified? Are you up to page 15, Doctor Suskind?

A. I am on page 15 but I wanted to look at where we had classified, attempted to classify him. I believe we classified him finally in the group exposed to the making of 2,4,5-T. There was no --

Q. And not in the accident group?

A. Right.

Q. But in any event, it is not particularly important to the purpose that I am driving at but he is the one that you had some question about where in your first statement you

say there were 11 affected workers, this is on page number 2, 11 workers in the accident process and 25 from the other. Do you recall that, sir?

A. Yes, sir.

Q. All right. And pass from that. Dewey Medows now, his problems started with his chloracne three years prior to the time you saw him. That would be in 1952 -- I am sorry, 1951. No. I can't subtract. 1950 is when his problems started. Would that be correct, sir, according to what he told you?

A. If that was three years before, sir, yes.

Q. And a year and a half before he developed pains in the thighs and knees. The pain become worse when he tried to carry heavy objects. The eruption, that is the chloracne, and the pain both have regressed considerably during the past year. His present complaints consist of excessive fatigue, a loss of vigor and -- loss of vigor?

A. And moderately active skin eruptions.

Q. And the loss of vigor, could that be called part of a nervous system disorder? It is a feeling rather than --

A. I would assume he was talking about becoming tired.

Q. Well, that would be excessive fatigue, wouldn't it, sir? Loss of vigor you could categorize that?

A. That must be how he described it, Mr. Carr.

Q. Well, if you look to page 35 to categorize it, you call it on page 35 in the present complaints, you call it loss of ambition and fatigue. Do you see that?

A. Under Dewey Meadows?

Q. Under Dewey Meadows on page 35. Present complaints.

A. Yes.

Q. So we could put two checks, he has aching in the legs and thighs for 18 months so he still has the aching although it has regressed. He has a loss of ambition and fatigue. Would that be three checks, Doctor?

A. If that is the way you are scoring, yes.

Q. Would you agree that those are his present complaints?

A. Those were his present complaints.

Q. And, Doctor, the next person would be Mr. Stover, Donald Stover, who is working in building 34 and he had his chloracne that started -- mine is very dim. He claims that he had been working in building number 34 for five months but he started working in 1951 and he started developing his chloracne then four weeks after he started in that building. Six weeks later he developed pains in the legs, nervousness, shortness of breath and exertion, easy fatiguability and a constant feeling of being tired and a decreased libido. He

had been off work or assigned to light duty since October of '51, is that correct, sir?

A. That is correct, sir.

Q. And as far as his present complaints are concerned, there has been a noticeable decrease in fatigue and he has not complained of pain in his legs for some three weeks, is that correct, sir?

A. That is correct.

Q. And as far as Mr. Stover is concerned, if you will turn to page 35, he is listed as fatigue, inertia, mild shortness, inertia regressing and mild shortness of breath. So he would have two complaints, one for the fatigue and one for the so-called inertia, would that be correct, sir?

A. No. If I understand your scoring, it would probably be only one because the inertia and the fatigue might be one and the same thing.

Q. That is all right, Doctor. We can put one down for Mr. Stover. The next person would be Charles Arthur and he developed pain in his thighs, this would be after he got his chloracne, and the pain became most apparent on exertion. It has persisted to the present time but it is mild and transitory. He has decreased libido and he has become nervous, is that correct, sir?

A. The decreased libido is in the past, sir.

Q. He also complained of decreased libido and you would put that in the past?

A. I think so.

Q. On the summary sheet on 36, he complained -- he had aches and pains, nervousness and fatigue so he would have three checks, would he not, sir? Would that be correct, sir?

A. If that is the way you are scoring it, sir, yes.

Q. Does he have those complaints?

A. Those complaints are listed in the report.

Q. The next person is Workman. Now, Workman never had any problems other than chloracne, did he, sir?

A. I believe that is so.

Q. So, he will not be on the board and he can't be one of the -- well, he just simply has never had any problem. He never had any systemic poisoning. No symptom other than the skin symptoms, is that correct, sir?

A. He never complained about systemic symptoms, sir.

Q. Is that a yes to my question, Doctor, that the only problems that he had so far as you are aware is the skin problem?

A. Correct, sir.

Q. All right. And Mr. Young would be the next one and this would be H. O. Young as distinguished from Harold Young. He was working in the buildings that had the accident

synthesis. He also was in building 41 but he was not working on involved equipment. He could easily be in either category as well, could he not, since the material was scattered all over the inside of building 41, being in that building three weeks following the accident working in it and also working on the agitator of the involved autoclave and the machine shop. He could well be included in the accident people, isn't that correct, sir?

A. In our judgment he would be put into the group that was involved in 2,4,5-T synthesis rather than the accident.

Q. But he was in the building three weeks following the accident and he did work on the accident equipment, didn't he, sir, not that it makes a bit of difference with anything?

A. Several months later, sir.

Q. And Mr. Young presently -- well he developed his pains in the left hip which became worse and he says that he has pains in the left chest occasionally and shortness of breath for the past two to three years. So his only complaints that he had at the present time would be pain, is that correct, sir? And I am not putting a check down for the shortness of breath on the scoring that we are doing on this chart. Mr. H. O. Young would just get one check for the pain, would that be correct, sir?

A. If that is the way you are scoring it, sir.

Q. Is that correct, sir?

A. That is correct.

Q. And, Doctor, the next person is Mr. Smith. He had the chloracne. He developed pains in the calves which started when he was in 51 and he presently has the pain in the calves, is that correct, sir, pains or aches in the calves?

A. Yes, that is correct.

Q. So, he would get one check, would he not, sir? Is that correct, sir?

A. Correct.

Q. The next person is a Mr. Beckman and Mr. Beckman was a foreman and he developed his problems about a year after the operation was initiated and it was chloracne that he first noticed, is that correct, sir?

A. Yes, sir.

Q. In May of '51 he developed pains in his legs and hips and became more intense while sitting down or lying down. He became -- in the past two years he has tired very easily, little ambition. He has become irritable and a noticeable decrease in sexual activity. He also states that his pains in the legs and hips have decreased considerably but they do recur with severity at times, does he not, sir?

A. Yes.

Q. And he has listed then for present complaints is aches in the legs, irritable, decreased sexual activity. He would get two checks, would he not, sir, under the way that we are scoring?

A. If that is the way you are scoring it, yes.

Q. The next person, Doctor Suskind, would be Willard Forbes. His problems started in October of '51 with the chloracne. It was a year later that he developed pain in the back and lower extremities, more severe in the lying position. They have persisted and they are relieved by aspirin, is that correct, sir?

A. He indicated that in addition to the mild skin eruptions, there were occasional pains in the back and lower extremities. Is it Mr. Willard Forbes you are talking about on page 21?

Q. All right. What he said, though, these pains are severe and he is lying down. They have persisted and they are relieved by aspirin. Doesn't he say that, sir?

A. Yes. But -- yes, sir. But he noticed also that at the present he only had occasional pains in the back and the lower extremities.

Q. Which become apparently more severe when he lies down, is that correct, sir. The historian, the person

writing it down, uses the words they have persisted and that they are relieved by salicylates?

A. That is what it reads.

Q. The next one is Charles Farley. He got his pains in the lower extremities, shoulders and chest shortly after he got the lesions. He had been in the building six months after the accident but he had also worked hauling the 2,4,5-T over to the building 79 for drying, is that correct, sir?

A. Yes. That is the story he gave.

Q. His present complaints consist of, other than the folliculitis, shooting pains in the calves, shoulders, calves, arms, part of the neck and nervousness and continuous fatigue. Is that correct?

A. That is correct. That is how it reads.

Q. Mr. Farley then would get three checks, would he not, sir? Did you hear my question, Doctor?

A. Are you asking for an answer?

Q. Yes, I am. You would get three checks, would he not, sir?

A. If that is the way you are scoring it, yes, sir.

Q. And, Doctor, the next one is Mr. Galloway who was one of the few persons who had no problems but chloracne, isn't that correct, sir?

A. That is correct, sir.

Q. And he would not go on the board, would he, sir?

A. Not the way --

Q. And that is two people of those that we have talked about so far that have got no problems as of 1953, is that correct, sir?

A. What kind of problems, sir?

Q. These problems that we are talking about, the pain, the fatigue and the central nervous problems, irritability?

A. The way you are judging them, yes, that is correct.

Q. The next one is Basil Hoffmann who didn't even start seeing the acne until January of '53, just a few months before you saw him and he had occasional mild pain in the left leg, is that correct, sir?

A. After the appearance of his acne, yes.

Q. And that is the present complaint, is it not, sir? Is it not, sir?

A. It reads occasional, slight occasional pain in the left leg.

Q. That is a present complaint is my question?

A. That is a present complaint.

Q. The next one would be Mr. Null who has no complaint referable to the exposure. He did have some TCP exposure one week prior to the examination and based upon the past history of how long it takes for these problems to show up and you

wouldn't expect to see any problems related to this man in just the week you saw him, would you, sir?

A. I can't answer that, sir, because I don't know the degree of his exposure except that it was chemical burn.

Q. Well, my question is, is that based upon the length of time that it took these other persons to have their systemic problems show up, you would not expect the systemic problems to show up in this man within a week, would you, sir?

A. Probably not.

Q. Not when it takes it a year or six months or 8 months for these others that have the systemic problems, isn't that correct?

A. You asked another question, though, sir. You asked me would I anticipate, did you not, sir?

Q. I think I did, yes.

A. Well, I can't answer that. That is what I am saying.

Q. Well, based upon your observation of these others that we have looked at, these 36, and the length of time that it has taken in nearly -- invariably for these other problems to show up, you would not expect, Doctor Suskind, as his treating and examining physician, for these kind of problems to show up in Mr. Null within a week, would you, sir?

A. That is probably correct.

Q. Mr. McClanahan is the next one. He is related to the Ivel -- well, I don't know if he is related at all. He has the same last name as Ivel McClanahan. You probably know whether he is or is not related but I don't. In any event, he developed his problems of chloracne in 1950 but it wasn't until a year later that he developed the aches and pains and so forth, isn't that correct, sir?

A. That is what the record shows, sir.

Q. And they are most noticeable in him when he is relaxed such as sitting and lying down. He has also noticed a decrease in his sexual interest for several months anorexia and continuous fatigue. In the case of this man, he got transferred to another building and his appetite and sexual interests have been normal. His pains and fatigue have subsided completely and I take it there you are using the word subsided to mean gone, do you not?

A. When I say completely, I mean gone, yes.

Q. And, Mr. McClanahan would not get on the board as having any present complaint referable to fatigue, aches and pains or central nervous system disorder, would he, sir?

A. No, not according to your scoring system.

Q. And, so far, Mr. McClanahan is the only one of those who had been exposed who had aches, pains, fatigue and

these other problems and in whom the problems have completely gone, isn't that correct, sir?

A. Well, I would have to look at the records to verify that, sir.

Q. Well, to help you verify it, we have got Galloway who didn't have any problems to start with and Workman and Null. All these men did not have problems to start with and since they didn't have any problems other than chloracne to start with, they can't very well go away, and McClanahan is the only one, if you want to look at the board or to your own records, the only single one person who has had problems and who now no longer has them other than the chloracne, isn't that correct, sir?

A. I haven't been keeping score so I can't verify that.

Q. Doctor, if you could look to the board there and look at your charts -- well, we will verify it when we get through, Doctor, if you have any problem about it. Your next person is Mr. Simmons and he developed his pain in 1951, pains in his shoulders, arm and right hip, is that correct, sir?

A. As the record reads that way, sir, yes.

Q. And his pain according to your report seems to have subsided with injections of Vitamin B 12, is that right, sir?

A. That is how he reported it, sir.

Q. And he had, however, severe and recurrent ear aches and severe chronic sinusitis, is that correct, sir?

A. He did but they were separate, I believe, Mr. Carr. One occurred in '52 and the sinusitis occurred before they made --

Q. Before?

A. Before they made 2,4,5-T.

Q. The only thing that occurred after the accident was the severe recurrent ear aches and Mr. Simmons should not go on the board either, should he, sir?

A. No, not according to your way of scoring, sir.

Q. Now, we have the second person. Mr. Simmons is a person that did have complaints of pain to start with but because he got these injections of the B 12, his pains have gone away?

A. I don't know whether it is because he got the injections, sir. He had the injections and he indicated they went away.

Q. Well, Doctor, you are the one that said at that time quote his pain seems to have responded to injections of B 12, end of quote?

A. I noticed. Seemed to have repsonded.

Q. My question is, isn't that what you said?

A. Yes, it is. Absolutely.

Q. Doctor, the next one is Ervin Bailey and Mr. Bailey had shortly after his skin problems which occurred in '52, he started having pains in the calves and knees as well as the back and the pains now occur most frequently in the early morning at the end of the shift. He presently complains in addition to the pains and his acne, he complains of nervousness, urinary frequency and fatigue on exertion, is that correct?

A. That is how the record reads, sir.

Q. So he, too, would get three checks, would he not, sir?

A. Yes, according to your scoring.

Q. And, Doctor, the next person is Earl Harris who developed aches in both knees within the past year. While he had chloracne in October of '49, he didn't report it until 1950 and the symptoms are improved at the present time but he would have a check for present complaints of aches in the legs, would he not, sir?

A. Yes, according to your method of scoring.

Q. Doctor, Mr. Ferrell had no complaints initially other than his chloracne and recently he's noticed an increase in nervousness in the last year, has he not, sir?

A. That is how it is recorded. There is also a record

of other symptoms, sir.

Q. Well, the other symptoms don't fall -- the peptic ulcer you are talking about, are you not, sir?

A. The peptic ulcer and the Banthine can be related to the nervousness.

Q. Yes, I am sure they can and that was a question that I was going to ask you is that the one thing that you found in your '79 study reported in '84 was an association of ulcer and exposure, did you not, sir?

A. There was a suggestion of relationship between the history of peptic ulcer and exposure.

Q. And the nervousness can be connected with that, can it not, sir?

A. It could.

Q. And you recall again the 16 claimants in the workmen's compensation matter all said they were fearful and apprehensive which again could cause the peptic ulcers, could they not, sir?

A. It might have some association, sir.

Q. And you found a statistically significant association, did you not, sir, in 1984?

A. By history.

Q. Is that an answer to my question, sir?

A. I think it is, sir.

Q. Is it a yes or is it a no?

A. There is a suggestion of association, yes, sir.

Q. All right. Thank you, sir. The next person was Mr. Roy Wright who noticed his chloracne starting in 1951. 18 months later he developed pains in the hips, lower extremities and back with pain in the hip becoming so severe that he thought of laying off work. Do you see that, sir?

A. I do, sir.

Q. Doctor, again this person with these systemic problems with pain developing so long after the chloracne developed and so long after the initial exposure, doesn't it remind you of the occurrence with the scientists as reported by Oliver, the three scientists and in many instances the same thing in the Spolana, Czechoslovakia, occurrences?

A. May I comment on that, sir?

Q. My question is, doesn't it remind you of those things, Doctor?

A. They might be similar but they are not identical whatsoever.

Q. Well, Doctor, I know they are not identical whatsoever. They are different plants, they are different combination of chemicals. There scientists were working with pure TCDD. The people at Nitro were not and neither were the people at Spolana, Czechoslovakia. My question was, sir,

don't the onset of the delayed onset of these problems, do they not appear similar to you? Do they not remind you of one another?

A. I would have to know what problems you are referring to, Mr. Carr.

Q. There that we are just talking about here, sir. 18 months after the chloracne he developed the pains in the hips and lower extremities and the others that we talked about earlier where a year or nine months or six months they noticed their impotence or their loss of libido or their aches and pains. Doesn't that remind you, sir, of the things that occurred in Spolana and these three --

A. No, sir. Not at all.

Q. Doctor, the next one would be Mr. William Saxton. I think I neglected to do my job here. I did not put Wright. And Mr. Wright would have one check for the pain, would he not, sir?

A. Yes, according to your method of scoring.

Q. Doctor, the next one then is Mr. Saxton. He developed his pain one year after he developed the chloracne, did he not, sir?

A. According to the record, yes.

Q. And then after that, that is during the past three years, he tires easily and he has become nervous as well,

isn't that correct, sir?

A. That is what the record reads, sir.

Q. So Mr. Saxton would get three checks for the pain, the nervousness and the fatigue, would he not, sir? Is that correct, sir?

A. According to your method of scoring, yes.

Q. The next one is Donald Payne who had no problems other than his chloracne except that his children developed the comodone blackheads and papules when he went home, isn't that correct, sir?

A. That is what the record reads.

Q. The next person is Byron Jones. Mr. Jones developed chloracne in 1951 but in the past six months, that is some two years after the chloracne was started, he developed aches in the thighs and the calf muscles during the time that he has heavy lifting, is that correct, sir?

A. Yes, that is the way the record reads, sir.

Q. And he would get one check, would he not, sir?

A. Yes, according to your method of scoring.

Q. The next person is Harold McClanahan and Mr. McClanahan has had no problems other than the chloracne, isn't that correct, sir?

A. He never complained of any systemic symptoms, sir.

Q. Is the answer to my question that he had no

problems other than the chloracne, is that --

A. That is true, sir.

Q. The next one is Mr. Harold Newcomer and Mr. Newcomer developed problems in December of 1952 but since January -- where he got his chloracne -- but since January of '53 he developed aches in the lower part of the back, thighs and calves which seemed to appear when he is relaxed or sitting down or lying down. They are not continuous. They occur about once or twice weekly and they are not relieved by aspirin. Is that correct, sir?

A. That is the way it reads.

Q. So Mr. Newcomer would get one check?

A. I don't believe he would get any checks because if you look at my page 39, you will see that all we list is the acne of the face since December of '52.

Q. Well, that is all you list on that chart but you list in the history that, in fact, he has pain that are not continuous and occur about once or twice weekly and they are not relieved by aspirin, isn't that correct, sir?

A. There is what it reads.

Q. Yes.

A. In the physician's judgment, however, and I think that is important, sir. One would have to consider the significance of those occasional pains.

Q. Doctor, I am not asking at this time to consider the significance. All I am asking you for is an affirmation that he had those pains in 1953 at the time he was examined by your group.

A. Once or twice weekly.

Q. Yes. Thank you, sir. The next person would be Mr. James Kyle and there is the man that did not have the chloracne, isn't that correct, sir?

A. He did not have an eruption typical of chloracne, correct.

Q. And he did have, however, aches and does have aching in the back and knees that is continuous. He is fatigued and irritable, is that correct, sir?

A. Those were his complaints and I would not score him for those complaints.

Q. Doctor --

A. Because we doubted that this was so.

Q. You may doubt all you want but he complained of the aches and pains, did he not, sir?

A. I think it is --

Q. All of these complaints may be fictions of their imagination or may be anything you want to call them, sir, but my question to you is is Mr. Kyle in the examination that you made of him had complaints of aches and pains, fatigue

and nervousness, did he not, sir?

A. Yes, sir.

Q. And based upon --

A. I wouldn't agree with your scoring, sir.

Q. Well, let me ask you again. If we are giving checks for complaints, sir, would Mr. Kyle get checks because he has these complaints?

A. If they are valid complaints, yes.

Q. I am not even asking you about the validity. I accept the fact that you consider that all of these others preceding him are valid and that his are not valid. But my question is, sir, we give checks to the people that have complaints and that is the sole criteria for putting the checks on. Whether or not he was a worker that complained of aches and pains in '53, is he entitled to be on this list or not, sir?

A. No, sir.

Q. Did he complain of aches and pains in 1953?

A. In the judgment of the physician they were not accurate.

Q. Doctor, he was complaining, was he not, sir? Did he not make complaints?

A. He did.

Q. Yes. And if we are putting on this board the

people who made complaints, then he should be on the board, shouldn't he, sir?

A. According to your scoring, too, but according to my judgment he shouldn't.

Q. That is perfectly all right, Doctor. My question is, did he have complaints of pain and if we are putting people on this list that have complaints, he goes on the list, does he not, sir?

A. Not if in the judgment of the physician they are not valid.

Q. Do you understand? I am not asking you whether they were valid or not. Assume they are invalid and that we are putting on this board people who have invalid complaints of pain. Does he get on this list?

A. If it is invalid and you are willing to put that on the board, yes.

Q. Yes. Because, Doctor, the thing that this list is to demonstrate, sir, is not whether or not these people really have these because I don't know it and you are the one that says they all had them except Kyle and that is not the purpose of this board. The purpose of this board is to demonstrate the untruthfulness of the statement that you made, that is, in a few cases workers continued to complain. That is all this is about, Doctor Suskind, and he was a

worker, wasn't he, sir?

A. Yes.

MR. HEINEMAN: I object to the speech, Your Honor.

THE COURT: Gentlemen, could you approach the bench, please.

(Bench conference had out of the hearing of the jury.)

THE COURT: That is the second time you stated that objection before the jury. That is a speaking objection and I don't want you to do it anymore in front of the jury.

MR. HEINEMAN: I can't conceive that that would be a speaking objection insofar of the fact I object to the speech and I move that it be stricken and ask the jury be instructed.

THE COURT: I do consider it a speaking objection. You are now on notice. Now, make your objection.

MR. HEINEMAN: I object to the speech. It had nothing to do with the question. It was nothing but a speech directed to the jury. I object to it and ask that it be stricken and ask that the jury be instructed to disregard it.

MR. CARR: I don't think I need to respond, Your Honor. I was responding to what he said.

THE COURT: Objection is overruled. We will take

about a five minute break and then we will go back to it.

(The following proceedings were had in the hearing and presence of the jury).

THE COURT: Ladies and gentlemen, we will take about a five minute break and then we will go back to questioning. The admonishments that I gave you earlier will apply during this break also. Court is in recess.

COURT RECESSED:

(The following proceedings were had in the hearing and presence of the jury)

RAYMOND SUSKIND

having resumed the witness stand, being previously sworn, testified further as follows:

CROSS EXAMINATION

By

MR. REX CARR.

Q. Doctor Suskind, with relation to Mr. Kyle who we were discussing at the break, he has these complaints, has he not, sir?

A. He provided us with complaints, yes, sir.

Q. And, Doctor, in your analysis of him, in the summary box that you used on page 39, you put in the abnormal clinical finding problem complainer, question mark, did you not, sir?

A. Yes.

Q. That meant that you thought, you questioned then whether or not his complaints were based upon real occurrences or whether they were exaggerated in part or real in part, did you not, sir?

A. I think we were concerned that they were not real, sir.

Q. Doctor, you found that he did have a mild folliculitis, didn't you, sir?

A. Yes, sir.

Q. And the only man that you found -- and he had the same exposure, he had the same work as Saxton and Bailey, did he not, sir?

A. Yes, sir, according to the record.

Q. And he had the same hygienic program as Saxton and Bailey, did he not, sir?

A. I assume that is so because we mentioned that.

Q. And he wasn't off work, was he, sir? He was working full time?

A. Yes, sir.

Q. He was not using the complaints for any purpose that you are aware of, was he, sir?

A. We didn't know.

Q. Sir?

A. I said I didn't know at the time whether he was or not.

Q. Well, was he looking to get off work?

A. We didn't make any mention of it.

Q. Did he put in any claim for workmen's compensation?

A. I have no idea, sir. I wasn't concerned with workmen's comp.

Q. Now, Doctor Suskind, you have put on this board as legitimate and truthful the complaints of all of these people with the exception of Kyle, have you not, sir?

A. Sir, you have put it on the board.

Q. Doctor, didn't I get your agreement for each one?

A. According to your method of scoring, yes.

Q. Didn't all of these people have these complaints as the checkmarks indicate, sir?

A. Yes, sir.

Q. All right. And, Doctor, all of those had some -- the only difference, sir, between Kyle and all of these others, his complaints are the same, his complaints start in a similar fashion after exposure, same thing as Saxton and Bailey. The only difference, Doctor Suskind, is that he doesn't have chloracne, isn't that correct, sir?

A. I am not sure that the mild folliculitis might not be chloracne but we didn't diagnose it as such, sir.

Q. Could you answer my question? The only difference between Kyle and all these others is that he did not have chloracne, isn't that correct, sir?

A. No, sir.

Q. What other difference is there?

A. The other difference is in the veracity of his complaints.

Q. What led you to believe that he wasn't telling the truth?

A. The observation by the interviewer and by the doctor which is in the record, sir.

Q. My question is what led you to believe that he wasn't telling the truth?

A. He appeared to be attempting to convince us of all of these things excessively, I assume.

Q. Doctor, there is two others at least on here that you said tried to convince you of that, of their condition?

A. These are also people, Mr. Carr, that had previously, we had previous knowledge of their complaints which were real.

Q. Doctor, their complaints were real. The aches and pains were real. You had to accept their word for it in each instance. The fatigue complaints, the aches, the pains, the nervousness. In each of these indications they are all

things that the people tell you. You have no way of verifying those complaints, do you, sir?

A. Yes, we do, because in some instances, especially those who were exposed to the runaway reaction, they were off work because of these disabilities.

Q. Well, Doctor, they were off work because they said they hurt so much they couldn't work, isn't that correct, sir?

A. And it appeared to be real by observers.

Q. What observers, Doctor?

A. Their peers.

Q. What peers?

A. The management.

Q. Doctor, do you mean to say you went out and investigated the validity of these people's complaints?

A. I am not talking about that. I am only talking about the medical records of the company, for example.

Q. The medical -- What they showed you was this man said that he was so tired that he couldn't work, isn't that correct, sir?

A. Or that he could not work because he was aching and that was real.

Q. He hurt so much?

A. Yes, sir.

Q. Now, he said these things and there was no evidence other than his statement that these things were true, isn't that correct, sir?

A. But in the way he --

Q. Excuse me, sir. Isn't that correct, sir?

A. That is so, but --

Q. Doctor Suskind, do you have children?

A. Yes, I do.

Q. Do you have -- how many children do you have?

A. I have two sons.

Q. In my children -- I have some children and I -- I have some children that can be telling the absolute truth to me and they act as if they are telling me a tale. I have other children, I didn't know this until years later, that can be lying like a thief to me and I think they are telling the truth. Have you had a common experience like that, perhaps not with your children, but perhaps with other people?

A. I have had experience with patients, Mr. Carr.

Q. That you would think would be telling you the truth and you accepted as telling the truth but it turned out they were lying, isn't that right, sir?

A. They were telling me about certain experiences that they had that couldn't be verified.

Q. That doesn't mean they are not telling the truth simply because there is all kinds of things, Doctor, that happen to us individually that can't be verified unless we are accepted as telling the truth. And my question to you, sir, is do you not agree that some people have the appearance of not telling the truth when, in fact, they are and others, we call them con men, have the ability to lie like mad men and make you believe it is the gospel truth? You know that to be the case, don't you, sir?

A. If I may use your phrase, sir, yes, I think it is true. We have thought that Mr. Kyle was conning us.

Q. And you thought that or at least you made some comment that these other people wanted to convince you in order to stay off work. Now, Westphall and Steele, I think it were, were two people that were off work. They had reason to convince you that they were ill and couldn't work and they had a motive, too. Mr. Kyle -- and you accepted their statement. Mr. Kyle has no motive. He is simply and he is even telling you that his aches and pains get improved with B 12 injections. Now, why would somebody go get B 12 injections, sir? I hate needles and I will tell you it would take a lot of aches and pains for me to go get a shot of any kind. Why would somebody tell you that his aches and pains improve with these B 12 injections if he wants to convince

you of some kind of lie?

A. I am not all together sure, sir, because it is so long ago but all I can do is take the record at its face value.

Q. Doctor, take the record at its face value. The man told you B 12 injections seemed to help him and he did tell you that, didn't he, sir?

A. That is what he said.

Q. Now, Doctor, the only reason -- Now, that is a reason to believe that he is telling the truth about aches and pains, isn't it, sir?

A. Not necessarily.

Q. Oh, Doctor, if somebody wanted to convince you they got aches and pains, they will tell you I took these B 12 shots and they didn't help me at all. This man said I took these shots and they helped me. Now, if he is trying to convince you that he has a terrible condition that he should get compensation for or whatever the reason, he is not going to tell you that the B 12 injections helped him, is he, sir? He is not going to show up for work everyday, is he, sir? He is going to lay off from work. I hurt so much I can't go to work. This man took his B 12 injections and they improved him and he didn't miss a single day from work.

Now, Doctor, isn't it a fact that from the

appearances that you have at that time, from the fact that he took the shots, the fact that he worked, the fact that he had the same exposure of the others, that he had aches and pains the same as the others, wouldn't that support you in coming to the conclusion that this man was telling the truth but may have unfortunately fallen into the category like one of my boys -- and he is the boy, by the way, that is the missionary today, I might say -- that false in the category -- that is vice versa. He was the con man. It is Eric. I am getting my kids confused, but in any event, the missionary was the one that conned me and Eric is the one that I never would believe, but anyway, I am digressing, Doctor.

Isn't it a fact that Kyle may be in that situation?

A. We didn't think so, sir.

Q. I know you didn't think so, sir, but what I am asking you now on reflection and considering the things that I have pointed out to you, isn't that a possibility, sir?

A. I really can't say after the fact whether that is, sir.

Q. All right, Doctor. Doctor, the final two that we have were Asbury and Dent and both Asbury and Dent, if my notes are correct, had acne only and had no problems either initially or thereafter except the chloracne, isn't that correct, sir?

A. That is true, sir.

Q. And so they would not go on the board, would they?

A. Yes, sir.

Q. Now, Doctor, on that board we have 23 people, don't we, sir?

A. I haven't counted them but --

Q. That was what I last counted. We have got 27 people that have these complaints, have we not, sir?

A. Yes, sir.

Q. Now, that is 27 out of 36, isn't it, sir?

A. It is, sir.

Q. And of the initial 36, we had 7 people that had chloracne only, isn't that correct, sir? I will remind you Dent, Asbury, H. McClanahan, Null, Galloway and Workman, is that correct, sir?

A. How many did you say, sir?

Q. Seven, sir, with chloracne only?

A. I assume that that is probably so. I haven't counted.

Q. So, Doctor, of the 36 people that were examined, 7 had no complaints other than chloracne and that would leave us then 29 people that had complaints of chloracne and in addition thereto with exception of Kyle who had no chloracne. Of our 36 people then, only two of those with

initial complaints had no complaints in 1953 referring to the aches, the pains, the nervousness, the fatigue and the shortness of breath, isn't that correct, sir?

A. I haven't counted them.

Q. Please count them, Doctor Suskind.

A. Well, you have 27 there.

Q. Yes, and we have got 7 who had chloracne only, don't we, sir? That is 34, isn't it, sir?

A. Yes.

Q. And you examined 36?

A. Yes.

Q. That means two had complaints initially but they went away, isn't that correct?

A. That might be possible.

Q. I haven't checked. Isn't it correct, sir? Those two people, sir?

A. Who are they, sir?

Q. They are McClanahan and Null. No, I am sorry. Null is the one that had chloracne only. Simmons. McClanahan and Simmons.

A. Which McClanahan, sir?

Q. M. McClanahan.

A. H. McClanahan?

Q. Yes. It could be Willard McClanahn. The man

following Null. Do you see that that is correct, sir?

A. Let me check, sir, if you will. Millard R. McClanahan, page 23. And who was the second one?

Q. I said it just a second ago. Simmons.

A. Okay.

Q. Is that correct, sir?

A. That is correct.

Q. So, what we have on this 1980 report that you and Doctor Zack prepared is that if we put in the words in a few cases workers did not continue to complain of aches and pains and so forth, it would then be an accurate statement, wouldn't it, sir, because we have two that did not continue to complain of aches and pains and so forth, isn't that correct, sir?

A. No. That is not correct, sir.

Q. How many did we have that did not continue to complain of aches and pains, lower extremities, back, nervousness, fatigue and shortness of breath?

A. Of the 36 we have 27 but we are talking about something else in the Zack-Suskind study.

Q. We are talking about something else? How many did not continue to complain of aches and pains?

A. May I read it?

Q. My question is, how many did not continue to

complain of aches and pains in 1953?

A. Two of the 36 but that is not what we were talking about in the Zack-Suskind study.

Q. What we are you talking about in the Zack-Suskind study --

A. May I read it?

Q. What were you talking about in the Zack-Suskind study?

A. We were talking about the re-examination of the persons, the 4 of the 6 workers examined in 1949.

Q. That is the 10 to start with, isn't it, sir? How many of those 10 continued to complain of aches and pains in 1953?

A. There weren't 10, sir. There were only 6.

Q. Well, how many of those 6 continued to complain, sir?

A. We only examined --

Q. All of them is the answer, isn't that correct, Doctor?

A. That is not so.

Q. Did you examine Shank, Milan, Westphall, Steele, Selby, the original 10 with the original 6 in that, sir?

A. Sir, we did not examine Shank or Milan, Westphall or Selby or Hudnall in 1949 or '50.

Q. Who did you examine, sir?

A. We examined Willard, we examined Steele, we examined Ivel mcClanahan, we examined Jonathan Hurley, we examined Harold Young and we examined --

Q. You examined Steele, Willard, Harold Young, J. Hurley and Ivel McClanahan?

A. We examined one other, sir.

Q. Well, Doctor, of those that you re-examined in 1953, 100 percent of those people continued to complain of these aches and pains and so forth, did they not, sir?

A. But what we said --

Q. Excuse me, sir. Could you answer that question, please, sir?

A. Yes.

Q. Isn't it a fact that 100 percent of the workers that you re-examined continued to complain of aches and pains and so forth?

A. Would you refer to this?

Q. Could you answer my question please?

A. They did.

Q. Yes.

A. But that is not what we said here.

MR. CARR: Your Honor, I think the witness has responded to my question.

Q. Doctor, all of the workers that you examined that you re-examined continued to have these complaints, did they not, sir?

A. We said that the finding --

Q. Excuse me, Doctor. All of the workers that you re-examined continued to have these complaints, didn't they, sir?

A. But at a much lower level, sir.

Q. Doctor, I am not quarreling with the much lower --

A. That is what we said in the statement, sir.

Q. What you said was quote in a few cases, workers continued to complain of aches and pains of the lower extremities, in the back, nervousness, excessive fatigue and dyspnea. Didn't I put it up here exactly correct?

A. But there is another statement which you left out. There is a statement that you left out.

Q. No clinical explanation for these complaints could be made based on the record. All of the workers showed a marked improvement in their skin lesions?

A. No, sir, that is not what I am talking about.

Q. Let's read the whole paragraph. "In 1953, four of the six workers examined in 1949 and 1950 were re-examined and six additional workers involved in the accident were also examined." Now, that is 10, isn't it, sir?

A. That is.

Q. And that is these 10, isn't it, sir?

A. But we didn't examine six in 1949 and '50. We didn't examine six. We only examined four.

Q. Doctor, be that as it may, then you go on to say, "The findings in this later examination indicated a general regression of both the cutaneous and non cutaneous symptoms which had been present earlier", and that is certainly true, isn't it, sir?

A. That is certainly true.

Q. No question about that?

A. That the --

Q. Doctor, there is no question that they did show a general regression in these cutaneous and non cutaneous symptoms, isn't that correct, sir?

A. That is right.

Q. And in those four that were re-examined, isn't that correct, sir?

A. Right.

Q. "And all of the workers showed a marked improvement in their skin lesions", that is correct, isn't it, sir?

A. Yes.

Q. "There were residual of the acne and a few active lesions", that is correct, isn't it, sir?

A. Yes, it is.

Q. "In a few cases, workers continued to complain of aches and pains of the lower extremities and back, nervousness, excessive fatigue and dyspnea." That isn't correct?

A. It is, if you --

Q. 100 percent of those that you re-examined continued to have those aches and complaints, did they not, sir? 100 percent of those that you re-examined continued to have these aches and pains, did they not?

A. Those were the few we were talking about. Four is a few. Four is a few.

Q. And, Doctor, what you are doing then is misleading the world at large by making a suggestion. We only examined a few cases and in these few cases that we examined they continued to have their aches and pains, isn't that right, sir? That is what you are telling the world at large?

A. No, I am not.

Q. Doctor, did you tell the world that every single one of the persons that you re-examined continued to have these same complaints that they had in 1949, albeit reduced in some cases and increased in others. Did you tell the world that, Doctor Suskind?

A. We did in the first part of that paragraph.

Q. You didn't say that, did you, sir? But now in the next sentence. You said referring to exactly the same cases, that is all of them. You are referring to exactly the same cases in the next sentence, aren't you, sir?

A. Right.

Q. In the one sentence you say all of them showed great improvement. In the next sentence in a few cases they continued to complain. Why didn't you say if you wanted to let the world know that four years after this exposure they continued to have these complaints, why didn't you say in that next sentence, all of the workers also, however, continued to complain of aches and pains? Why didn't you say that, Doctor Suskind?

A. Because all we could judge by were the people we re-examined.

Q. And that was 100 percent, wasn't it, sir?

A. And those are a few of the workers.

Q. And, Doctor, when you wrote the thing in 1980, you had the benefit -- you knew that 27 of these people out of 36, 27 out of 29 that had the complaints continued to have the complaints, didn't you, sir?

A. At a much lower level.

Q. Doctor, would you answer my question, please, sir?

A. We weren't talking about the --

Q. Doctor, you said all of the workers showed a marked improvement in their skin lesions. Now, by that you meant 100 percent of the workers, didn't you, sir? All of the workers?

A. Yes.

Q. You are talking about four, aren't you, sir?

A. Uh-huh.

Q. But you are distinguishing from that, aren't you, sir? You are saying in the next sentence, in a few cases, they continued to complain of these aches and pains? Why didn't you say in all of the cases they continued to complain? You said in all of the workers that they had an improvement in their skin lesions, didn't you, sir?

A. We were referring to those few.

Q. Didn't you, sir?

A. Yes.

Q. You didn't say in a few of the workers they showed a marked improvement, did you, sir? You didn't say a few of the workers showed a marked improvement, did you, sir?

A. Where are you looking at, sir?

Q. The sentence where you said all of the workers. You didn't say in a few cases, the workers showed a marked improvement in their skin lesions?

A. Right, and I was talking about the four.

Q. Doctor, would you answer my question please, sir?

A. The answer is no.

Q. You did not know what was -- what I put is the first time you learned that there were 27, sir, is when I put it on this board that continued to have these complaints?

A. That isn't what we are talking about in this article.

Q. I am not asking you about that at this point in time. What I am asking you, sir, is you knew when you wrote the article in 1980 that 27 out of 29 workers continued to have these complaints, did you not, sir?

A. We had only discovered that they had those complaints.

Q. You discovered that in 1953. You wrote the article in 1980, Doctor. In 1980 when you wrote the article which the world read and believed, you knew at that time that 27 out of 29 workers continued to complain of these problems, did you not, sir?

A. We only knew --

MR. CARR: Your Honor, would you direct the witness to answer that question? I think he can easily answer that either he did know it or did not know it.

THE COURT: Doctor, you do have to answer it.

A. Thank you. We did know it.

Q. Thank you, Doctor.

A. But that isn't what we said in the article.

Q. I know you didn't say that in your article and, Doctor, that is exactly the point of this cross examination. You knew it, it is information the world should have been told. You knew it, your workers knew it but you did not tell anybody, did you, sir? You minimized it. You said in a few cases they continued to complain. And an intelligent person reading that, the sentence right before it says all of the people had an improvement in their chloracne and a few cases they continued to complain of the aches and pains. Doctor, you knew as an intelligent scientist along with Zack, you knew exactly what you were saying. You meant to convey to the world that which you did convey, that these people at Nitro had their aches and complaints and problems and nervousness and fatigue, had disappeared except for a few cases. That is exactly what you meant to convey, didn't you, sir?

A. That is what we say.

Q. And, Doctor, even in your report in 1953, you pointed out then with a somewhat different count, that there were 23 -- page 41, you said there in the middle of the page, 23 persons at the time of the examination complained of symptoms other than cutaneous which they attributed to the

occupational exposure. You counted that time 23, didn't you, sir?

A. No, sir.

Q. Isn't that what you said?

A. We did not say it was attributed to the occupational exposure.

Q. Didn't you say that 23 persons at the time of the examination complain of symptoms other than cutaneous which they attributed to the occupational exposure?

A. They attributed it.

Q. Isn't that what they said?

A. They attributed to it. That is what we said.

Q. Isn't that what you said?

A. That is what we said.

Q. And isn't that what we are talking about? They in this case are the workers, aren't they, sir?

A. That is true.

Q. And, these included, according to your statement, aches, pains, nervousness, fatigue, loss of vigor, shortness of breath, decrease in libido. Most of the 23 cases they were mild but there were seven cases that were not mild, isn't that right, sir? Isn't that what you said, sir?

A. Where are you reading from, sir?

Q. That very same paragraph on page 41, sir, that I

Q. Doctor, what do you --

A. The non cutaneous findings were also liver findings.

Q. Doctor Suskind, what do you cite as authority for the statement that you make in that paragraph that we have been discussing? Let me help you. Your reference, Doctor, is contained on page 14 and your reference is the very report of the Kettering Laboratory that we have been referring to, July of 1953?

A. Correct.

Q. Doctor, what that means is is that when you and Zack sat down together to prepare this report, you had this mortality experience of workers exposed that you put in the Journal of Occupational Medicine, you had this report that we have just gone through in front of you, didn't you, sir?

A. Yes, sir.

Q. You knew what it said. You knew the kind of problems that the people had and you determined to minimize it, didn't you, sir?

A. We did not, sir.

Q. Did you not make a conscious determination to minimize the complaints that these workers were having?

A. Absolutely not, sir.

Q. Excuse me, Doctor. Who actually wrote this

was just reading to you.

A. Would you repeat the statement, please, sir?

Q. You said there, "In most of these 23 cases, the other symptoms were mild except in the instances of seven workers. Westphall, Steele, Willard, Hudnall, Selby, Beckman and Stover." Isn't that correct?

A. That is correct.

Q. These seven people had symptoms and problems other than mild, did they not, sir?

A. This is what we said.

Q. Yes. Did you tell the world that, sir, in your 1980, report?

A. We described the finding.

Q. Excuse me, Doctor. Did you tell the world that in your 1980 report?

A. I think we did.

Q. When you said that the cutaneous, all the cutaneous symptoms had improved and in a few cases the workers continued to complain. Is that telling the world of all these problems these workers at Nitro have, Doctor Suskind?

A. I believe we have.

Q. Is that telling the world, sir?

A. Yes, sir. As accurately as we could determine it at the time including the liver findings.

paragraph? Did you write it or did Judith Zack write it?

A. I can't tell you at this time.

Q. Let me help you, Doctor. You know she sent it to you?

A. She sent what to me?

Q. This draft to you, sir. You made some revisions in it and then sent it back. That paragraph was --

A. That is not so, sir.

Q. That isn't so. Well, I don't have the document with me at this moment but we will bring it when you next come back.

A. Very good, sir. I would be delighted to see it.

Q. Doctor, in addition to the other findings, there is another finding that you made, an objective neurological finding of another worker, isn't that correct, sir?

A. If you are talking about Mr. Hurley --

Q. No, I am talking about Mr. Hudnall. We already went into Hurley. I am talking about Mr. Hudnall. Page 41, Doctor. The same page we have been on.

A. I see it, sir.

Q. And this is a neurological complaint that he didn't have at the earlier examination, did he, sir?

A. We didn't examine Mr. Hudnall before, sir.

Q. He wasn't examined by you before 1953, was he?

A. That is correct.

Q. But in any event, this is another neurological finding, isn't it?

A. Another neurological finding, yes. A finding.

THE COURT: Is this a good point to break, Mr. Carr?

MR. CARR: Yes, Your Honor, it is.

THE COURT: Could I see you at the bench for a minute please, gentlemen.

(Bench conference had out of the hearing of the jury and off the record.)

(The following proceedings were had in the hearing and presence of the jury).

THE COURT: Ladies and gentlemen, we are going to adjourn for the day and as it turns out for the week. As I told you earlier on the schedule, we will start again on February 25th which is Tuesday at 9:30. I would remind you as I do on any of these overnight breaks that you are not to read, listen to or watch anything about this case in particular or subject matter in general in any of the media. Thank you for your attention and cooperation and your patience. We will see you next week. Have a good weekend.

COURT ADJOURNED:

STATE OF ILLINOIS)
)
TWENTIETH JUDICIAL CIRCUIT) SS
)
COUNTY OF ST. CLAIR)

I, Kimberly Ganz, one of the Official Court Reporters, do hereby certify that the foregoing transcript is a true and correct transcript of the proceedings had in the above-entitled cause.

Dated this 24 day of February, 1986.

KIMBERLY GANZ

STATE OF ILLINOIS)
)
TWENTIETH JUDICIAL CIRCUIT) SS
)
COUNTY OF ST. CLAIR)

I, RICHARD P. GOLDENHERSH, one of the Judges in and for the Twentieth Judicial Circuit, do hereby certify that the foregoing transcript is a true and correct transcript of the proceedings had in the above-entitled cause.

Dated this 25 day of February, 1986.

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HON. RICHARD P. GOLDENHERSH

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