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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION)
PUSEY TRAIL GROUP) C.A. NO. 90C-MR-18

BEFORE: THE HONORABLE RICHARD S. GEBLEIN, J.
and a Jury

APPEARANCES:

THOMAS C. CRUMPLER, ESQUIRE
MAPLA ESKIN, ESQUIRE
JACOBS & CRUMPLER
For the Plaintiffs

KRISTINE CROSSWHITE, ESQUIRE
WILES & STOCKBRIDGE

-and-

ARMAND DELLA PORTA, JR., ESQUIRE
KELLEY JACONS MCGUIRE & SPINELLI
For the Defendant OCF

GARY MAPLAN, ESQUIRE
GOLDFEIN & JOSEPH
For Garlock

TRIAL TESTIMONY AND PROCEEDINGS
Thursday, September 23, 1993

SUPERIOR COURT COURT REPORTERS
1020 King Street - Public Building - Wilmington, DE.

1 created both NIOSH, which is the research agency, and
2 OSHA, which is the regulation enforcement agency.

3 Q What is the relationship between NIOSH and
4 OSHA? How did NIOSH help OSHA in coming up with
5 regulations to protect people?

6 A In many ways. One of its major roles is
7 to do research that forms the basis for health and
8 safety standards, and then to develop documents
9 called Criteria Documents, and these are documents
10 which try to review and summarize and digest the
11 world's literature on a given subject, and based on
12 that review, try to develop health and safety
13 standards which are then transferred over to the
14 Department of Labor for the development of standards.

15 Q Were you involved in the development of
16 the federal government standards regulating asbestos?

17 A Yes.

18 Q And could you tell the jury when you were
19 involved in the development of those standards?

20 A Well, I came to NIOSH in 1971, and just
21 shortly after its formation, actually, and the first
22 Criteria Document developed by NIOSH after the
23 formation, was a Criteria Document on asbestos.

1 Q Let me just stop you, Doctor.

2 Are you telling the jury, Doctor, the
3 first action that NIOSH did, was develop an action on
4 asbestos?

5 A One of the first, yes, NIOSH, the
6 predecessor of NIOSH actually had an ongoing research
7 program which had begun in the 60's, but that agency
8 had no enforcement mandate, or really not much of a
9 research mandate, and not much of a budget. After
10 the formation, one of the immediate things NIOSH did
11 was to take on the issue of asbestos, and they did so
12 in really its first Criteria Document.

13 Q NIOSH or OSHA regulates hundreds of
14 substances, does it not?

15 A Essentially, anything in the workplace,
16 yes.

17 Q And, you said the first Criteria Document
18 prepared by NIOSH dealt with asbestos?

19 A Yes, it did.

20 Q What was your role in the Criteria
21 Document?

22 A Well, a document like that is really put
23 together in an agency like NIOSH by many people, and

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1 methods that would measure fibers in the air more
2 directly - called a membrane filter method. So that
3 the method was developed and available.

4 Q So, actually measuring the fibers that
5 scar up the lungs and cause the cancer rather than
6 the particles?

7 A That is correct.

8 Q And could you, tell the jury what the
9 first fiber recommendations were, the criteria that
10 was put into effect in 1972? And I think it was a
11 two-stage requirement?

12 A Actually, there is a three-stage process,
13 because in December of 1971, OSHA used one of the
14 provisions of the act called the Emergency Temporary
15 Standard. There is a provision in the Act that when
16 OSHA sees a very significant health hazard it can
17 bypass the normal process of rule making, which takes
18 a long time, and put in place on a temporary basis, a
19 standard.

20 Q So serious then that they could do it
21 automatically?

22 A Yes; you can bypass the law-rule making
23 procedures which requires public hearings and notices

1 and federal registers and all that type of thing. So
2 they used that provision of the Act in December of
3 '71 to put in place a five-fibers-per-cc-standard.

4 Q Okay. Now, is that the same as this 5
5 million particles per cubic foot, this five fibers
6 per cc?

7 A No, it's not.

8 Q All right. Then, I'll write that in a
9 different color. Five -- how do industrial
10 hygienists --

11 A "F per cc". I guess we should state that
12 it's fibers that are longer than 5 micrometers in
13 length. So, you don't need to put all of that down.

14 Q Well, let me -- is there any way -- I
15 mean, are we dealing with inches and meters? Is
16 there any way you can compare what this means
17 (indicating) to what this standard (indicating) meant?

18 A Well, there have been various attempts to
19 correlate these two sampling methods together. And
20 basically what was done was go into a factory run
21 these two samples side by side, and measure it by one
22 way and then measure it by the other and see how they
23 relate to each other.

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