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__ meeting agenda __ minutes __ attendee list

__ legal filing of defense

__ legal filing of plaintiff

__ BC notes

✓ legal - testimony of J Hernan

HERNAN (missing pg 197)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

LEXINGTON COUNTY SCHOOL DISTRICT FIVE,	)
PLAINTIFF,	) CIVIL ACTION NO. 82-2072-0
VS.	)
UNITED STATES GYPSUM COMPANY,	) UNITED STATES COURTHOUSE
	) COLUMBIA, SOUTH CAROLINA
DEFENDANT.	) FRIDAY, APRIL 6, 1984

- - -

PARTIAL TRANSCRIPT OF TESTIMONY OF TRIAL
BEFORE THE HONORABLE LLOYD F. MACMAHON, SENIOR DISTRICT JUDGE, AND A JURY.

- - -

TRANSCRIPT ORDERED BY: DANIEL A. SPEIGHTS, ESQ.

APPEARANCES:

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BLATT & FALES
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FOR THE DEFENDANT
ROBINSON, MCFADDEN, MOORE, POPE, WILLIAMS, TAYLOR & BRAILSFORD, PA
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MORGAN, LEWIS & BOCKIUS
BY: RICHARD P. BROWN, JR., ESQ.
PHILADELPHIA, PENNSYLVANIA

PHILLIP W. LOTER
OFFICIAL REPORTER

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JOHN HERNAN, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. BROWN:

Q MR. HERNAN, WOULD YOU GIVE US YOUR FULL NAME, PLEASE?

A JOHN F. HERNAN.

Q AND YOUR ADDRESS?

A LOMBARD, ILLINOIS.

Q MR. HERNAN, IN ORDER NOT TO CAUSE YOU ANY EMBARRASSMENT, DO YOU HAVE A SLIGHT SPEECH IMPAIRMENT?

A I HAVE STUTTERED SINCE I WAS A CHILD.

Q WELL, DURING THE COURSE OF THIS EXAMINATION, JUST TAKE YOUR TIME AND WE WILL WAIT.

WHAT IS YOUR OCCUPATION?

A I AM THE MANAGER OF OUR CORPORATE QUALITY FOR THE U. S. GYPSUM COMPANY.

Q HOW MANY YEARS HAVE YOU BEEN WITH U. S. GYPSUM?

A 34 YEARS.

Q AND DURING THAT TIME WHAT POSITIONS HAVE YOU HELD?

A I HAVE HAD MANY POSITIONS IN OPERATIONS, STAFF AND IN QUALITY, WORKING AT NUMEROUS PLANTS AND IN THE CORPORATE OFFICE.

Q WHERE IS YOUR PRESENT LOCATION?

A IN THE CORPORATE OFFICE IN CHICAGO.

Q AND WHERE IS THAT CORPORATE OFFICE?

A 101 SOUTH WACKER DRIVE.

Q IS THAT RIGHT IN THE CENTER OF CHICAGO?
A YES.
Q IS THAT BUILDING THE HEADQUARTERS OF UNITED STATES GYPSUM COMPANY?
A YES.
Q ALL RIGHT. DO YOU KNOW WHEN THAT BUILDING WAS BUILT?
A IT WAS BUILT IN 1963.
Q WERE YOU WITH THE COMPANY THEN?
A YES.
Q ALL RIGHT. NOW, I WOULD LIKE YOU TO TELL THE JURY WHAT YOUR FIRST ACQUAINTANCE WAS WITH THE PRODUCT CALLED AUDICOTE.
A MY FIRST ACQUAINTANCE WITH AUDICOTE WOULD HAVE BEEN IN 1960 WHEN I WAS ASSIGNED THE POSITION OF QUALITY SUPERINTENDENT AT THE FORT DODGE,IOWA, PLANT.
Q AM I CORRECT THAT AUDICOTE IS AN ACOUSTICAL PLASTER PRODUCT?
A YES.
Q IT COMES IN BAGS?
A YES.
Q AND HOW IS IT APPLIED IN ORDER TO GET IT ON THE CEILING?
A THERE ARE TWO GENERAL WAYS FOR THE APPLICATION OF IT. THE INITIAL -- TO ACQUIRE A PRESCRIBED SOUND RATING OF THE PRODUCT, IT SHOULD BE APPLIED TO A ONE-HALF INCH THICKNESS. THE INITIAL COAT OF APPROXIMATELY THREE-EIGHTHS OF AN INCH IS

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APPLIED EITHER THROUGH A MACHINE APPLICATION OR BY HAND OR BY HAND TROWLING.

Q BY MACHINE APPLICATION, DO YOU MEAN SPRAYING IT ON?

A IT CAN BE SPRAYED ON.

Q THAT MEANS YOU MIX IT WITH WATER, THEN SPRAY THE PRODUCT ON?

A YES. IN ORDER TO PREPARE IT FOR APPLICATION, IT IS MIXED IN, I GUESS THE BEST WORD TO USE IS AS A PLASTER MIXER, THAT LARGE TUB MIXER. IT IS POURED INTO THE MIXER, WATER ADDED AND MIXED FOR ABOUT FIVE MINUTES TO ACHIEVE THE HOMOGENEOUS MIX, AND THEN FROM THAT POINT ON WOULD BE APPLIED EITHER BY HAND OR BY THE MACHINE.

Q WHEN WAS THE FIRST TIME YOU EVER SAW AUDICOTE APPLIED TO A CEILING?

A I WOULD SAY IN 1960.

Q AND HAVE YOU SEEN IT ACTUALLY BEING APPLIED MANY TIMES SINCE THEN?

A YES. I WOULD ESTIMATE THAT I HAVE SEEN IT IN EXCESS OF A HUNDRED TIMES.

Q HAVE YOU ALSO SEEN IT IN PLACE AFTER IT'S BEEN APPLIED TO CEILINGS?

A YES, NUMEROUS TIMES.

Q ALL RIGHT. NOW, IN 1963 WHEN THE U. S. GYPSUM HEADQUARTERS WAS BEING BUILT, WHERE WERE YOU?

A I WAS THE QUALITY SUPERINTENDENT OF THE FORT DODGE, IOWA,

PLANT.

Q DID THE FORT DODGE, IOWA, PLANT HAVE ANY ROLE IN SUPPLYING THE BUILDING MATERIALS FOR THE HEADQUARTERS IN CHICAGO?

A IT WAS THE PLANT THAT FURNISHED ALL OF THE PLASTER PRODUCTS FOR THE CORPORATE OFFICE BUILDING.

Q AMONG THE PLASTER PRODUCTS THAT WERE SUPPLIED, WAS AUDICOTE ONE?

A YES.

Q ALL RIGHT. DID YOU SUPERVISE THE ACTUAL PREPARATION OF THE PRODUCT IN ITS SHIPMENT TO CHICAGO?

A YES.

Q NOW, WERE YOU PRESENT IN CHICAGO IN 1962 WHEN AN EXPERIMENT WAS DONE ON THE CEILING OF THE 17TH FLOOR OF THE HEADQUARTERS?

A IN 1982.

Q '82?

A YES, I WAS PRESENT.

Q YOU WERE THERE. ALL RIGHT. NOW, DID THERE COME A TIME AFTER THAT EXPERIMENT WAS DONE WHEN A QUESTION WAS RAISED AS TO WHETHER THE MATERIAL ON THE CEILING OF THE 17TH FLOOR ACTUALLY WAS AUDICOTE?

A YES.

Q WAS THAT AFTER THE EXPERIMENT WAS DONE?

A YES.

Q WERE YOU ASKED TO UNDERTAKE ANY KIND OF INVESTIGATION

TO DETERMINE WHETHER THAT CEILING REALLY WAS AUDICOTE?

A YES.

Q ALL RIGHT. WHAT DID YOU DO IN YOUR INVESTIGATION IN ORDER TO DETERMINE THE ANSWER?

A WELL, I SUPERVISED THE REMOVAL OF TWO LARGE SLABS OF THE CEILING ASSEMBLY ADJACENT TO THE TEST AREA AND HAD THOSE SAMPLES CUT OUT OF THE CEILING AREA, MOVED THEM TO MY OFFICE, AND I SUBSEQUENTLY HAD IT MOVED TO THE RESEARCH CENTER.

Q WHAT WAS DONE AT THE RESEARCH CENTER?

A THEN THE RESEARCH CENTER PREPARED SAMPLES FROM THE SLABS AND TESTED THE SAMPLES.

Q TESTED THEM TO DETERMINE WHAT?

A TO DETERMINE THE CHEMISTRY OF THE PRODUCT.

Q WAS THE RESULT OF THAT TEST REPORTED BACK TO YOU?

A NO.

MR. SPEIGHTS: I WOULD OBJECT TO THE RESULT COMING IN THROUGH THIS GENTLEMAN AS HEARSAY, YOUR HONOR.

MR. BROWN: I ONLY ASKED IF IT WAS REPORTED BACK TO HIM, YOUR HONOR.

THE COURT: I'M AWARE OF WHAT ALL YOU HAVE ASKED.

MR. BROWN: AM I ALLOWED TO HAVE HIM ANSWER, YOUR HONOR?

THE COURT: YES.

Q WOULD YOU ANSWER THAT QUESTION, MR. HERNAN?

A I DID NOT SEE THE TEST RESULTS.

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Q WHAT ELSE WAS DONE WITH THE SLAB THAT WAS SENT TO THE RESEARCH LABORATORY?

A THE SLAB WAS CUT INTO VARIOUS PIECES FOR SUBSEQUENT TESTING BY THE ONTARIO RESEARCH FOUNDATION AND ALSO FOR EXHIBITS AS MIGHT BE NEEDED.

Q WHERE IS THE ONTARIO RESEARCH FOUNDATION?

A THAT IS IN A SUBURB OF TORONTO, CANADA.

Q ALL RIGHT. NOW, WERE THERE SOME SMALL SAMPLES TAKEN FROM THAT SLAB THAT YOU HAD CUT OUT OF THE 17TH FLOOR?

A I HAD PURPOSELY TWO, ROUGHLY SIX-INCH BY SIX-INCH SLABS, CUT FROM THE MASTER SLAB AND ENCAPSULATED WITH A PLASTIC SIDING ON IT.

Q I SHOW YOU THIS OBJECT WHICH HAS BEEN MARKED AS DEFENDANTS' EXHIBIT 1 AND ASK YOU IF THAT'S ONE OF THE PIECES THAT WAS PREPARED OUT OF THAT SLAB?

A YES.

Q ALL RIGHT. NOW, ARE YOU FAMILIAR FROM YOUR PAST EXPERIENCE WITH THE LOOKS OF AUDICOTE AND THE TEXTURE OF AUDICOTE AND THE HARDNESS OR THE CHARACTERISTICS OF AUDICOTE?

A YES.

Q IN YOUR OPINION, BASED ON YOUR EXPERIENCE, IS THAT SAMPLE A SAMPLE OF AUDICOTE?

A YES.

Q DID YOU ALSO EXAMINE THE SPECIFICATIONS FOR THE BUILDING OF THE U. S. GYPSUM HEADQUARTERS?

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A YES.
Q DID YOU LOOK AT THE SPECIFICATIONS FOR WHAT WAS TO BE PUT ON THE 17TH FLOOR CEILING?
A YES.
Q WHAT DID THE SPECIFICATIONS PROVIDE?
A THE SPECIFICATIONS CALLED FOR THE ACOUSTICAL PLASTER IN THE BUILDING, INCLUDING THE 17TH FLOOR, TO BE U. S. G. AUDICOTE ACOUSTICAL PLASTER.
Q AT THE TIME WHEN THE BUILDING WAS BUILT, WERE YOU AWARE OF ANY INSTRUCTIONS AS TO WHETHER THE BUILDING MATERIALS TO BE USED WERE TO BE U. S. GYPSUM'S PRODUCTS OR ANYBODY ELSE'S?
A YES.
Q WHAT WERE THE INSTRUCTIONS?
A WHAT WE HAD WAS A DIRECTIVE THAT ALL OF THE PRODUCTS TO BE USED IN THE BUILDING WERE TQ BE MANUFACTURED BY THE U. S. GYPSUM COMPANY.
Q TO THE BEST OF YOUR KNOWLEDGE, WAS THAT ORDER CARRIED OUT?
A YES.

MR. BROWN: YOU MAY CROSS EXAMINE.

CROSS EXAMINATION

BY MR. SPEIGHTS:
Q MR. HERNAN, YOU HAVE HAD AN ACTIVE ROLE IN SCHOOL LITIGATIO... SINCE IT'S BEEN FILED AGAINST U. S. GYPSUM, HAVEN'T YOU?

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A YES.

Q YOU HAVE WORKED CLOSELY ON THESE CASES AND, INDEED, HAVE ANSWERED INTERROGATORIES CONCERNING THESE CASES, HAVEN'T YOU?

A YES.

Q AND YOU HAVE COLLECTED INFORMATION CONCERNING THESE CASES?

A YES.

Q AND YOU HAVE WORKED CLOSELY WITH MS. TORY AND DR. KORN IN PREPARING THE TEST OF THIS PRODUCT, WHATEVER IT IS, ON THE 17TH FLOOR?

A YES.

Q AND IT HAS BEEN KIND OF YOUR LITTLE JEWEL WITHIN THE COMPANY, HASN'T IT? YOU HAVE BEEN THE COMPANY MAN REGARDING THIS TEST, HAVEN'T YOU?

A YES.

Q NOW, WHAT YOU'RE TRYING TO TELL US TODAY, AS I GATHER, IS THAT THAT SAMPLE RIGHT THERE IS AUDICOTE. YOU'RE TRYING TO IDENTIFY THE PRODUCT FOR US, IS THAT FAIR?

A YES.

Q WELL, WOULD YOU AGREE THAT THERE IS MORE THAN ONE WAY TO IDENTIFY A PRODUCT?

A YES.

Q ONE WAY, AT LEAST SOME EVIDENCE OF IT, I BELIEVE YOU ALLUDED TO, WOULD BE SPECIFICATIONS. THAT'S IMPORTANT TO YOU

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IN YOUR CONSIDERATION OF WHAT A PRODUCT IS?

A THAT IS THE STARTING POINT.

Q YES, SIR. I MEAN, THAT'S YOUR STARTING POINT, SPECIFICATIONS. AND THEN IF YOU CAN FIND THE ARCHITECT, YOU WOULD WANT TO TALK TO THE ARCHITECT TO SEE WHETHER THERE WERE ANY CHANGE ORDERS ON THE SPECIFICATIONS, WOULDN'T YOU?

A YES.

Q THAT WOULD BE A REASONABLE STEP IN REGARD TO I.D.?

A YES.

Q THEN IF YOU COULD FIND THE ACTUAL PLASTERER WHO APPLIED THE MATERIAL, THAT WOULD BE A REASONABLE STEP TO GO TALK TO HIM AND ASK HIM WHETHER OR NOT IT WAS AUDICOTE?

A YES.

Q THEN IF YOU HAD SOME SALES INVOICES FROM A SUPPLY HOUSE, THAT WOULD BE A REASONABLE THING TO DO, SEE IF YOU COULD GET SOME SALES INVOICES TO SHOW A SHIPMENT OF AUDICOTE FOR A CERTAIN USE?

A IF IT SHOWED IT GOING TO THAT PARTICULAR JOB, YES.

Q YES, SIR. AND SOME SALES INVOICES MIGHT HAVE THE JOB FOR WHICH THAT INVOICE OR THAT SHIPMENT WAS INTENDED?

A YES.

Q ALL RIGHT, SIR. THEN ANOTHER WAY MIGHT BE TO TALK TO THE SALESMAN, IF A U.S.G. SALESMAN REMEMBERED SELLING A PRODUCT FOR A CERTAIN BUILDING, A SCHOOL OR WHATEVER, THAT WOULD BE A REASONABLE STEP IN PRODUCT ID, TO TALK TO THE

SALESMAN?

A YES.

Q AND THEN, IN ADDITION TO THAT, YOU COULD HAVE IT ANALYZED BY ONE OF THESE MICROSCOPISTS LIKE DR. ROHL OR MS. LAVOTI.

A YES.

Q SO THAT'S ANOTHER WAY OF TRYING TO IDENTIFY THE PRODUCT. AND AS I GATHER FROM WHAT YOU SAID WHEN QUESTIONED BY COUNSEL IS THAT YOU CAN ALSO LOOK AT IT, IF YOU ARE EXPERIENCED WITH IT; IN OTHER WORDS, SOMEBODY LIKE YOU THAT HAS SEEN A LOT OF AUDICOTE OVER THE YEARS, YOU CAN LOOK AT IT AND THAT'S SOME EVIDENCE OF PRODUCT ID?

A YES.

Q ALL RIGHT, SIR. AND THE SAME WOULD HOLD TRUE IF SOMEBODY LIKE HOLBROOK WILLIAMS WHO HAD BEEN INVOLVED IN THE BUSINESS FOR 20 OR 30 YEARS WITH YOUR PRODUCT, HE WOULD BE PRETTY GOOD AT LOOKING AT IT, TOO; WOULDN'T HE?

A I THINK THERE COULD BE A QUESTION IN THAT PARTICULAR AREA.

Q WELL, SIR, YOU MEAN A MAN WHO HAS BEEN PUTTING IT UP FOR 20 OR 30 YEARS WOULDN'T BE AS COMPETENT TO LOOK AT IT AS YOU WOULD?

A I WOULD SAY NO.

Q ALL RIGHT, SIR. NOW, WHEN YOU TOOK THESE SAMPLES, I ASSUME YOU DIDN'T PREDETERMINE SOME SPECIAL PLACE IN THE

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CEILING TO GET OUT OF THE 17TH FLOOR, BUT YOU WENT DOWN AND PICKED IT AT RANDOM, A FAIR SAMPLE OUT OF THE CEILING?

A YES.

Q ALL RIGHT, SIR. AND TOOK TWO SLABS TO BEGIN WITH?

A YES.

Q NOW, YOU WOULD AGREE WITH ME, WOULDN'T YOU, MR. HERNAN, THAT THIS MATERIAL RIGHT HERE IS A HARD MATERIAL?

A YES.

Q NOW, YOU HAVE -- U. S. GYPSUM HAS ADVERTISED AUDICOTE OVER THE YEARS, HASN'T IT?

A YES.

Q AND AS A PART OF THAT ADVERTISEMENT YOU SEND OUT BROCHURES, DON'T YOU?

A YES.

Q ALL RIGHT, SIR. I ASK YOU IF THIS IS A COPY OF A BROCHURE FOR AUDICOTE, 1962, WHICH WOULD HAVE BEEN APPLICABLE TO THE SALE OF IRMO HIGH SCHOOL, OR AT LEAST THE FIRST PART OF IT?

A YES.

Q ALL RIGHT, SIR. AND I ASK YOU, MR. HERNAN, ON THIS BROCHURE AT PAGE 2 IF IT DOESN'T SAY "AUDICOTE DOES NOT SET INTO A DENSE, HARD MASS"?

A I WOULD HAVE TO READ IT. I DID NOT READ IT.

Q ALL RIGHT, SIR. WOULD YOU READ THAT FIRST PARAGRAPH? AND I ASK YOU WHETHER OR NOT THAT'S AN ACCURATE STATEMENT

CONTAINED IN YOUR BROCHURE?

A THAT IS A CORRECT STATEMENT.

Q ALL RIGHT. AND THEN I ASK YOU WHETHER FURTHER DOWN YOUR BROCHURE ADVERTISING THIS PRODUCT DOESN'T SAY, "AUDICOTE IS RECOMMENDED FOR USE ON CEILINGS OR WALLS, WALL AREAS, NOT SUBJECT TO CONTACT, EXCESSIVE VIBRATION OR HIGH MOISTURE. IT IS IDEAL FOR USE IN CLASSROOMS." IS THAT ALSO A CORRECT STATEMENT THAT'S IN YOUR BROCHURE, MR. HERNAN?

A YES.

Q ALL RIGHT, SIR. SO THE IMPORT OF THAT STATEMENT IS THAT THIS MATERIAL, THIS HARD MATERIAL, SHOULDN'T BE USED WHERE THERE IS GOING TO BE ANY VIBRATION OR WATER DAMAGE OR ANY CONTACT WITH THE MATERIAL; ISN'T THAT CORRECT?

A THAT IS WHAT THE STATEMENT STATES.

Q THAT'S WHAT YOU REPRESENTED THE PRODUCT TO PEOPLE LIKE IRMO HIGH SCHOOL, OUT THERE IN THE FIELD WITH THIS BROCHURE; ISN'T THAT RIGHT, MR. HERNAN?

A YES.

Q MR. HERNAN, HAVE YOU EVER HAD AN OPPORTUNITY TO EXAMINE A RESEARCH REPORT DATED MARCH 9, 1973, PREVIOUSLY MARKED AS PLAINTIFF'S EXHIBIT 1707, ENTITLED, "DEVELOPMENT OF MATERIALS AND PROCEDURES FOR REPAIRING DAMAGED AUDICOTE ACOUSTICAL PLASTER CEILINGS"?

A I DO NOT THINK THAT I SAW THAT SPECIFIC REPORT.

Q ALL RIGHT, SIR. I SHOW YOU A COPY OF 1707 AND ASK YOU

TO REVIEW IT AND ASK YOU WHETHER OR NOT YOU HAVE EVER SEEN THAT REPORT?

A I'M CONSCIOUS OF THE EXISTENCE OF THIS REPORT AND I SAW IT RECENTLY FOR THE FIRST TIME.

Q ALL RIGHT, SIR. I WANT TO TALK ABOUT THIS REPORT TO YOU. THE FIRST LINE OF THIS REPORT, 1973, SAYS, "AUDICOTE ACOUSTICAL PLASTER WAS USED IN THE U.S.G. CORPORATE OFFICE, 17TH FLOOR AND CAFETERIA. THESE AREAS ARE IN NEED OF REPAIR, BUT CONTRACTORS WILL NOT USE STANDARD AUDICOTE BECAUSE OF ITS ASBESTOS CONTENT."

IS THAT A FAIR READING OF THAT?

A YES.

Q THAT'S THE 17TH FLOOR, NOW, WHICH IS PART OF THAT SAMPLE RIGHT THERE; ISN'T IT?

A YES.

Q AND THEN AS A RESULT OF THIS, YOU -- THAT IS, U.S.G., ENTERED INTO A PROGRAM TO REPAIR THE CEILING CONTAINED ON THE 17TH FLOOR?

A I THINK THE WORD REPAIR IS USED IN A FASHION THAT DOES NOT STATE WHAT WAS DONE.

Q WELL, SIR, LET'S LOOK AT WHAT WAS DONE ON PAGE 2 TO THAT 17TH FLOOR.

"MATERIALS AND PROCEDURES FOR REPAIR AND PAINTING OF DAMAGED AUDICOTE PLASTER CEILINGS," THAT'S WHAT WAS DONE, WASN'T IT?

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A THAT'S WHAT THIS STATES.

Q ALL RIGHT, SIR. WELL, THE FIRST THING THAT YOU HAD ON THIS -- WELL, LET ME BACK UP A MINUTE. I HAVE LEFT OUT SOMETHING.

THIS 17TH FLOOR CEILING, I FORGET BECAUSE I'VE BEEN TO CHICAGO, BUT THE 17TH FLOOR CEILING IS IN YOUR CORPORATE HEADQUARTERS; ISN'T THAT RIGHT?

A YES.

Q IN FACT, IT'S UP THERE WHERE YOUR CORPORATE BOARD OF DIRECTORS FOR UNITED STATES GYPSUM MEETS?

A YES.

Q IT'S UP THERE WHERE YOUR PRESIDENT HAD ITS OFFICE?

A YES.

Q SO THAT IS SORT OF A SPECIAL FLOOR FOR THE U. S. GYPSUM BUILDING, THAT'S YOUR TOP LEVEL MANAGEMENT WHICH OCCUPIES THAT FLOOR, ISN'T IT?

A YES.

Q SO I IMAGINE THAT IF -- I HAVE WORKED FOR A FEW BOSSES BEFORE, I WOULD IMAGINE THAT EVERYTHING IS DONE TO KEEP THAT FLOOR AND THAT SPACE IN TIP-TOP SHAPE; IS THAT A FAIR STATEMENT?

A YES.

Q NOW, ISN'T IT CORRECT, MR. HERNAN, THAT YOU COULD HAVE -- YOU HAVE COMPUTERIZED SALES RECORDS WHICH REFLECT SALES OF AUDICOTE PRODUCTS SINCE 1964?

A I CAN'T ANSWER THAT. I DON'T KNOW.
Q YOU WEREN'T THE ONE THAT GOT THE COMPUTER INFORMATION AND SUPPLIED US ABOUT SALES OF AUDICOTE?
A NO.
Q YOU DON'T KNOW WHETHER OR NOT YOU COULD GO TO YOUR SALES OFFICE AND LOCATE OTHER BUILDINGS WHERE AUDICOTE WOULD BE?
A I CANNOT STATE OF KNOWING OF ANY OTHER BUILDINGS WHERE OUR MATERIAL IS IN.
Q YOU DON'T THINK THAT U. S. GYPSUM COULD FIND AUDICOTE IN SOME BUILDING AWAY FROM THAT CORPORATE HEADQUARTERS IN A SCHOOLHOUSE OR CLASSROOM OR I.B.M. BUILDING OR SOMETHING LIKE THAT, IF THEY WANTED TO?
A WE COULD, I'M CERTAIN, IF WE LOOKED.
Q ALL RIGHT, SIR. ARE YOU TRYING TO TELL US DOWN HERE IN SOUTH CAROLINA THAT THE CORPORATE HEADQUARTERS IN CHICAGO WOULD BE SUBJECT TO THE SAME HISTORY WITH YOUR PRODUCT AS A CLASSROOM IN IRMO?
A I DON'T BELIEVE THAT THE SALES RECORDS WERE KEPT FOR THAT LONG OF A PERIOD. THERE WAS NO -- I DON'T THINK THAT THERE WAS ANY BASIC REASON FOR KEEPING OF SALES RECORDS LIKE THAT, THAT PERIOD OF TIME.
Q MY QUESTION, THOUGH, MR. HERNAN, WAS WHETHER THE CORPORATE HEADQUARTERS CEILING IS SUPPOSED TO BE WHAT YOU WOULD THINK A CEILING WOULD BE IN BETHEL BAPTIST CHURCH OR IN THE IRMO HIGH SCHOOL OR IN SOME OTHER BUILDING? WOULD YOU ENVISION

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THAT THAT PRODUCT WAS PUT TO THE SAME USE, WAS PUT TO THE SAME HISTORY, AS IRMO HIGH SCHOOL?

A I WOULD SEE NO ACTUAL REASON NOT TO BE THE SAME.

Q WELL, TO BEGIN WITH, YOU DON'T HAVE A FLAT ROOF, DO YOU? THE 17TH FLOOR IS NOT YOUR TOP FLOOR, IS IT?

A THERE IS A MECHANICAL ROOF OVER IT.

Q ALL RIGHT, SIR. AND I DON'T BELIEVE THE PRESIDENT OF U.S.G. HAS EVER GONE DOWN THE HALL AND WRITTEN ANY GRAFFITI ON THE AUDICOTE, HAS HE? YOU HAVEN'T EVER SEEN THAT, HAVE YOU?

A I DOUBT IT.

Q ALL RIGHT, SIR. AND YOU DOUBT THAT -- YOU WOULDN'T IMAGINE THE PRESIDENT TO GO DOWN AND JUST GOING DOWN TO CLASS AND GO UP AND DO LIKE THAT, WOULD YOU?

A I DOUBT IT.

Q ALL RIGHT, SIR. BUT YOU HAVE JUST TOLD US AWHILE AGO IF YOU WANTED TO FIND SOME AUDICOTE SOMEWHERE ELSE BESIDES THE 17TH FLOOR, YOU COULD HAVE FOUND IT, COULDN'T YOU?

A YES.

Q ALL RIGHT, SIR. BUT EVEN THE 17TH FLOOR OF YOUR CORPORATE HEADQUARTERS REFLECTS THAT IN 1973, EIGHT YEARS BEFORE YOU RAN THIS PROJECT, YOU WORKED ON THIS CEILING; ISN'T THAT CORRECT? U.S.G. WORKED ON IT?

A YES.

Q ALL RIGHT, SIR. AND THE FIRST THING YOU DID WAS YOU HAD

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OIL SPOTS, EVEN ON THE 17TH FLOOR, YOU HAD SOME OIL SPOTS ON THAT CEILING, DIDN'T YOU?

A THAT'S WHAT THIS STATES.

Q ALL RIGHT, SIR. AND TO GET RID OF THOSE OIL SPOTS YOU CUT OUT A SECTION OF THE CEILING CONTAINING THE OIL SPOT SUFFICENTLY LARGE TO REMOVE OIL SATURATED MATERIAL, REMOVING ACOUSTICAL PLASTER, BASE COAT PLASTER AND ROCK LATHE, ISN'T THAT CORRECT?

A YES.

Q YOU WENT ALL THE WAY DOWN TO THE BASE WHEN YOU STARTED REPAIRING THIS SUBSTANCE, DIDN'T YOU?

A YES.

Q TO REMOVE THOSE. AND THEN WHAT YOU DID, YOU WENT BACK IN THAT CAVITY THAT WAS FILLED AND YOU STARTED PATCHING IT WITH SOME MATERIAL?

A YES.

Q ALL RIGHT, SIR. WE WILL GET TO WHAT YOU USED TO PATCH IT IN A FEW MINUTES. NOW, THE SECOND THING YOU HAD ON THE CORPORATE HEADQUARTERS UP THERE WAS GOUGES AND SCRATCHES, LOOKS LIKE YOUR PRESIDENT OR SOMEBODY MAY HAVE BEEN GOUGING AND SCRATCHING THAT MATERIAL A LITTLE BIT AFTER ALL. IS THAT RIGHT?

A APPARENTLY THERE WERE SOME SCRATCHES.

Q ALL RIGHT, SIR. SO WITH REGARD TO THE SCRATCHES AND GOUGES, YOU USED AN IMPLEMENT AND A SMALL PAINTBRUSH AND SOME

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MIXING FORMULA TO FILL THE CAVITIES WHERE THOSE SCRATCHES AND GOUGES HAD TAKEN PLACE?

A YES.

Q ISN'T THAT WHAT THAT REFLECTS?

ALL RIGHT. AND IT SAYS FOR DEEP GOUGES A SECOND TOUCH-UP WITH THE SAME TYPE OF PATCHING MIX, USING A SMALL PAINTBRUSH, MAY BE NECESSARY; IS THAT CORRECT?

A YES.

Q THEN THE THIRD THING YOU HAD, YOU HAD AREAS WITH SURFACE DAMAGE FROM WATER LEAKAGE. SO YOU HAD SOME WATER LEAKAGE UP THERE ON YOUR AUDICOTE ON THE 17TH FLOOR, TOO, DIDN'T YOU?

A APPARENTLY.

Q YES, SIR. AND YOU HAD TO GO REPAIR THOSE UP THERE, TOO, DIDN'T YOU?

A YES.

Q ALL RIGHT, SIR. SO, NOW, TO REPAIR THIS WATER DAMAGE ON THE 17TH FLOOR, YOU REMOVED APPROXIMATELY TWO-INCH DIAMETER SECTIONS OF ACOUSTICAL PLASTER DOWN TO THE BASE COAT SURFACE THERE. YOU WENT BACK DOWN TO THE BASE COAT ON THAT TO REMOVE IT, DIDN'T YOU?

A YES.

Q AND THEN YOU HAD TO GO IN THERE AND PATCH THAT MATERIAL AS WELL?

A YES.

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Q NOW, I DON'T HAVE THE LAST TWO -- THIS IS A FOUR-PAGE DOCUMENT, ISN'T IT, THE ONE YOU HAVE GOT IN YOUR HAND, AND THE FIRST TWO PAGES I HAVE GOT COPIED HERE?

A 3 AND 4.

Q ALL RIGHT, SIR. WELL, TURN OVER TO PAGE 2, AND IT REFLECTS, I BELIEVE, DOES IT, MR. HERNAN, THAT AFTER YOU DID THIS, THAT IS, AFTER YOU TOOK IT DOWN TO BASE COAT AND FILLED IT IN WITH THIS MATERIAL, THEN YOU HAD TO GO OVER AND YOU HAD TO PAINT IT?

A YES.

Q SO YOU PAINTED THAT ENTIRE MATERIAL UP THERE ON THE 17TH FLOOR?

A YES.

Q NOW, WOULD YOU READ THE LAST PARAGRAPH, LITTLE C, FOR ME DOWN ON THE BOTTOM OF PAGE -- WELL, IT SAYS PAGE 2 UNDER PARAGRAPH 5. CAN YOU FIND THAT ON YOURS?

A YES. THIS IS 5-C. "WITH APPRECIABLE REDUCTION IN SOUND ABSORPTION AND A SLIGHTLY DIFFERENT TEXTURE, BUT WITH A HARDER SURFACE, TO MINIMIZE SURFACE DAMAGE FROM MINOR ABRASION."

Q YOU GOT THE STUFF HARDER, DIDN'T YOU?

A THE PATCHED AREAS.

Q YES, SIR. YOU BUILT YOU A NEW CEILING UP THERE IN CHICAGO, DIDN'T YOU?

A I WOULD SAY NO.

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Q YOU PATCHED IT, YOU PAINTED IT AND YOU PUT PREMIX IN AND YOU COULDN'T GET ANY ASBESTOS TO PUT IN THE MIX, COULD YOU?

A NO.

Q AND '73, A YEAR BEFORE IRMO GOT ITS LAST BATCH OF AUDICOTE, YOU COULDN'T GET ANYBODY TO PUT AUDICOTE UP IN YOUR CEILING, COULD YOU?

A WE WERE NOT MAKING THE PRODUCT AT THAT TIME.

Q YES, SIR. BUT DOESN'T IT ALSO SAY HERE, "THESE AREAS ARE IN NEED OF REPAIR BUT CONTRACTORS WILL NOT USE STANDARD AUDICOTE BECAUSE OF ITS ASBESTOS CONTENT"?

A STANDARD AUDICOTE WAS NOT MADE AT THAT TIME.

Q YES, SIR. BUT EVEN IF IT HAD BEEN, OR IF YOU HAD SOME STILL AROUND, OR IF YOU WANTED TO GO OVER THERE AND MAKE SOME, YOU KNEW A YEAR BEFORE IRMO HIGH SCHOOL IN '74 PURCHASED AUDICOTE THAT CONTRACTORS IN YOUR AREA WOULDN'T EVEN PUT IT IN YOUR BUILDING?

MR. BROWN: OBJECTION, YOUR HONOR.

THE COURT: OVERRULED.

A I'M NOT PERSONALLY CONSCIONABLE OF KNOWLEDGE OF THAT MYSELF.

THE COURT: YOU HAD SEEN THE REPORT, HADN'T YOU?

THE WITNESS: I SAW IT WITHIN THE LAST WEEK.

Q THAT'S WHAT THE DOCUMENT REFLECTS, ANYWAY, THOUGH, DOESN'T IT?

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A YES.

Q NOW, MR. HERNAN, I THINK I ASKED YOU A FEW MINUTES AGO IF YOU ALSO HAD NOT BEEN THE MAN TO ANSWER INTERROGATORIES FOR THIS CASE, LEXINGTON CASE?

A YES.

Q ALL RIGHT, SIR. AND FOR THE LADIES AND GENTLEMEN OF THE JURY, WHEN YOU ANSWER AN INTERROGATORY, YOU UNDERSTAND THAT THAT IS A QUESTION THAT'S PART OF A COURT PROCEDURE WHICH MUST BE ANSWERED UNDER OATH?

A YES.

Q ALL RIGHT, SIR. I ASK YOU, MR. HERNAN, WHETHER IN JUNE OF 1982 WE ASKED YOU THE FOLLOWING QUESTION AND U.S.G. GAVE THE FOLLOWING RESPONSE:

"WHEN AND BY WHAT MANNER WERE YOU FIRST AWARE OF THE HAZARDS OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS --" LET ME TRY AGAIN.

"WHEN AND BY WHAT MANNER WERE YOU FIRST AWARE OF THE HAZARDS OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS TO THE USERS OF THOSE PRODUCTS?

ANSWER: "THIS DEFENDANT --"

MR. BROWN: OBJECTION, YOUR HONOR, THIS QUESTION IS ASKED OF THE DEFENDANT, IT'S NOT ASKED OF MR. HERNAN.

THE COURT: OVERRULED.

Q "THIS DEFENDANT STATES THAT WITH RESPECT TO THE DANGERS ASSOCIATED WITH EXPOSURE TO ASBESTOS, LATE 1960'S, AND WITH

RESPECT TO ACOUSTICAL PLASTERS AS MANUFACTURED AND SOLD BY THIS DEFENDANT, NEVER."

WAS THAT THE ANSWER THAT YOU VERIFIED UNDER OATH IN LEXINGTON COUNTY'S CASE BACK IN JUNE OF 1982?

A YES.

Q WELL, NOW, MR. HERNAN, YOU HAVE SEEN, I ASSUME, THE REPORT ON THE EFFECTS OF ASBESTOS DUST ON THE LUNGS, DATED 1930, WHICH WAS IN THE U. S. GYPSUM LIBRARY?

A I HAVE SEEN THAT WITHIN THE LAST SEVERAL DAYS.

Q ALL RIGHT, SIR. YOU WOULD AGREE WITH ME THAT THAT DISCUSSES THE DANGERS OF ASBESTOS?

A YES.

Q HAVE YOU SEEN THE UNITED STATES GYPSUM COMPANY LIBRARY'S COPY OF A REVIEW OF PNEUMOCONIOSIS, DATED 1931?

A WITHIN THE LAST SEVERAL DAYS.

Q AND THAT DOCUMENT DISCUSSES ASBESTOS AND ASBESTOS-RELATED DISEASE BACK IN THE 1930'S?

A YES.

Q HAVE YOU SEEN THE DOCUMENT ENTITLED, "PNEUMOCONIOSIS," IN 1932?

A WITHIN THE LAST SEVERAL DAYS.

Q ALL RIGHT, SIR. AND THAT'S MAINTAINED IN THE U.S.G. LIBRARY?

A YES.

Q HAVE YOU SEEN THE DOCUMENT ENTITLED, "PNEUMOCONIOSIS,"

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1934?

A WITHIN THE LAST SEVERAL DAYS.

Q YOU WOULD AGREE WITH ME, WITHOUT BELABORING THE POINT, MR. HERNAN, THAT THERE ARE A NUMBER OF MEDICAL DOCUMENTS IT THE U.S.G. LIBRARY WHICH DISCUSS THE HEALTH EFFECTS OF ASBESTOS, DOCUMENTS WHICH GO BACK TO 1930?

A YES.

Q AND THOSE DOCUMENTS GO ON UP, INCLUDING DOCUMENTS IN THE 1960'S, CONCERNING DR. SELIKOFF'S STUDIES?

A YES.

Q WELL, MR. HERNAN, HAVE YOU ALSO SEEN THIS INTERNAL DOCUMENT, THIS IS AN INTERNAL DOCUMENT OF UNITED STATES GYPSUM COMPANY, ISN'T IT?

A YES.

Q AND THAT DOCUMENT IS DATED FEBRUARY 11, 1954?

A YES.

Q AND IT'S ENTITLED, "ELIMINATION OF DUSTY CONDITIONS"?

A YES.

Q AND THAT DOCUMENT SAYS UNDER, "ASBESTOS EXPOSURE, OPERATIONS INVOLVING THE MANUAL HANDLING OF ASBESTOS IN ANY PLANT SHALL BE CONSIDERED AN AREA IN WHICH EMPLOYEES SHALL BE REQUIRED TO WEAR ADEQUATE RESPIRATORY EQUIPMENT"?

A YES.

Q AND THAT DOCUMENT REQUIRES EVEN PEOPLE SWEEPING IN THE AREA OR WORKING IN THE AREA TO WEAR MASKS OR RESPIRATOR

EQUIPMENT?

A YES.

Q AND THAT IS 1954?

A YES.

Q WELL, DO YOU STILL STAND BY YOUR ANSWER THAT IN THE LATE 1960'S THAT U.S.G. FIRST DISCOVERED THE DANGERS OF ASBESTOS?

A FOR MY PERSONAL KNOWLEDGE, WHICH IS WHAT YOU ASKED ME, I HAVE CLASSED ASBESTOSIS ALONG WITH SILIICOSIS AS BASICALLY BEING ONE AND THE SAME. I DID NOT PLACE ANY SPECIAL ONUS ON ASBESTOS, ANYTHING DIFFERENT THAN EXPOSURE TO SILICA DUST.

Q WELL, SIR, IN 1983, JUNE, WHEN YOU ANSWERED THIS INTERROGATORY, YOU WEREN'T ANSWERING FOR JOHN HERNAN, WERE YOU? YOU WERE VERIFYING THAT INTERROGATORY FOR UNITED STATES GYPSUM COMPANY, ISN'T THAT CORRECT?

A YES.

Q YOU WERE THE MAN, I DON'T KNOW HOW YOU CHOOSE THE PEOPLE, BUT YOU WERE THE MAN WHO WAS RESPONSIBLE FOR MAKING SURE THIS INFORMATION WHICH WAS GIVEN TO THIS COURT WAS THE MOST ACCURATE INFORMATION POSSIBLE?

A CORRECT.

Q AND ON THAT -- WOULD YOU STILL NOW, TODAY, STAND BY YOUR ANSWER TO THAT INFORMATION THAT U. S. GYPSUM COMPANY DID NOT KNOW THE DANGERS OF THE HEALTH EFFECTS OF ASBESTOS UNTIL THE LATE 1960'S?

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A TO THE BEST OF MY KNOWLEDGE, MANY PEOPLE WHO I'M AWARE OF IN THIS PARTICULAR AREA OF PLASTER PRODUCTS, FEEL THE SAME WAY THAT I FEEL.

Q MR. HERNAN --

THE COURT: YOU WEREN'T ASKED HOW YOU FELT. ARE YOU TELLING US THAT YOU GAVE THAT ANSWER TO THIS COURT UNDER OATH WITHOUT EVEN LOOKING IN YOUR LIBRARY FOR WHAT INFORMATION THERE WAS?

THE WITNESS: I'M CERTAIN THAT THERE WAS A STUDY MADE, YOUR HONOR.

THE COURT: WAS IT REPORTED TO YOU? YOU'RE VERIFYING THAT ANSWER UNDER OATH.

THE WITNESS: PERHAPS I DON'T QUITE UNDERSTAND.

THE COURT: DID YOU MAKE SURE THAT ANSWER WAS ACCURATE?

THE WITNESS: TO THE BEST --

THE COURT: OR DIDN'T YOU CARE?

THE WITNESS: YES, SIR, I CARED. AND TO THE BEST OF MY ABILITY.

Q (BY MR. SPEIGHTS:) WELL, MR. HERNAN, IF I SERVED YOU TODAY -- WELL, LET ME JUST ASK YOU THE QUESTION RIGHT OUT.

MR. HERNAN, FOR U.S.G., WHEN DID U.S.G. FIRST BECOME AWARE OF THE HAZARDS OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS TO THE USERS OF THOSE PRODUCTS?

A IT WOULD APPEAR THAT THOSE REPORTS THAT YOU LISTED THERE

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WOULD BE THE STARTING POINT.

Q ALL RIGHT. AND AT LEAST GO BACK TO 1954 WHEN YOUR OWN INTERNAL POLICY WAS STATED WITH REGARD TO HANDLING OF ASBESTOS?

A YES.

Q NOW, MR. HERNAN, DO YOU RECALL MY ASKING YOU SUPPLEMENTAL INTERROGATORIES IN THE LEXINGTON CASE?

A I THINK SO.

Q AND YOU ANSWERED THOSE SUPPLEMENTAL INTERROGATORIES IN JANUARY OF THIS YEAR?

A YES.

Q YOU RECALL THAT? AND I GOT A LITTLE MORE SPECIFIC WITH YOU ON THAT OCCASION. I ASKED YOU, AND I'LL PULL IT OUT IF YOU WANT ME TO TO REFRESH YOUR MEMORY.

A I THINK I SHOULD.

Q ALL RIGHT, SIR. I ASKED YOU IN ONLY JANUARY -- THE PLAINTIFF ASKED YOU, "STATE THE FOLLOWING WITH RESPECT TO ASBESTOSIS: THE DATE YOU FIRST HEARD IT ALLEGED THAT THERE IS A CAUSAL CONNECTION BETWEEN ASBESTOSIS AND THE INHALATION OF ASBESTOS."

DID I ASK THAT QUESTION THAT DAY WITH SOME FURTHER REQUESTS FOR INFORMATION?

A YES.

Q ALL RIGHT, SIR. SO THESE ANSWERS WERE BACK IN JUNE, AND NOW IN JANUARY, TWO OR THREE MONTHS AGO, YOU HAVE ANSWERED

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ANOTHER QUESTION CONCERNING WHEN YOU KNEW ABOUT SPECIFICALLY THE DANGERS OF ASBESTOSIS. ISN'T THAT CORRECT?

A YES.

Q READ YOUR ANSWER TO THAT, PLEASE, MR. HERNAN.

A "ANSWER A. 1975. LITIGATION FILED AGAINST THIS DEFENDANT. VARIOUS INDIVIDUALS MAY HAVE READ THE MATERIAL IN THE POPULAR PRESS IN THE LATE 1960'S."

Q ALL RIGHT, SIR. NOW, WOULD YOU ALSO BE WILLING TO ACKNOWLEDGE NOW, MR. HERNAN, THAT THE ANSWER YOU GAVE IN JANUARY IS NOT CORRECT, IN LIGHT OF THE INTERNAL POLICY OF U.S. GYPSUM COMPANY IN 1954?

A IT WAS MY IMPRESSION THAT THE 1954 PERIOD COVERED NUISANCE DUST COMPARABLE TO SILICOSIS. THAT'S MY PERSONAL, HONEST FEELING.

Q WELL, SIR, WHAT'S THE DOCUMENT SAY? DOESN'T THE DOCUMENT SAY ASBESTOS EXPOSURE?

A YES.

Q ALL RIGHT, SIR. MY QUESTION IS, TODAY, APRIL WHATEVER IT IS, 1984, WOULD YOU STILL RESPOND TO THIS SAME INTERROGATORY THAT IT WAS 1975 BEFORE YOU HEARD IT ALLEGED THAT ASBESTOS CAUSES ASBESTOSIS?

A BASED ON YOUR PRESENTATION THERE, I WOULD SAY 1954.

Q ALL RIGHT, SIR. WELL, I ALSO ASKED YOU IN JANUARY, TWO MONTHS AGO, MR. HERNAN, TO STATE THE FOLLOWING WITH RESPECT TO LUNG CANCER: "THE DATE YOU FIRST HEARD IT ALLEGED THAT

THERE IS A CAUSAL CONNECTION BETWEEN LUNG CANCER AND THE INHALATION OF ASBESTOS, THE IDENTITY OF THE PERSON OR DOCUMENT THAT WAS THE SOURCE OF SUCH ALLEGATION." RESPONSE: "LATE 1970'S."

WAS THAT YOUR ANSWER IN JANUARY IN THIS COURT?

A THAT WAS MY ANSWER OR THIS IS WHAT I SIGNED TO AT THAT TIME.

Q THAT WAS THE POSITION OF UNITED STATES GYPSUM COMPANY IN JANUARY?

A YES.

Q NOW, WOULD YOU STILL STAND BY THAT POSITION TODAY, THAT UNITED STATES GYPSUM DIDN'T HEAR IT ALLEGED THAT ASBESTOS CAUSED LUNG CANCER UNTIL 1979?

A I HEARD DR. SELIKOFF SPEAK THIS PAST WEEK, WHO I BELIEVE IS THE RECOGNIZED EXPERT IN THIS PARTICULAR AREA.

MR. SPEIGHTS: YOUR HONOR, I WOULD MOVE TO STRIKE IF HE IS TRYING TO CITE --

THE COURT: YES. STRIKE THAT.

Q MY QUESTION IS SIMPLY THIS, MR. HERNAN: WOULD YOU STAND BY YOUR ANSWER TODAY AND ANSWER IT THE SAME WAY IF I ASKED YOU THE SAME QUESTION, THAT IT WAS NOT UNTIL THE LATE 1970'S THAT U. S. GYPSUM HEARD IT ALLEGED, NOT PROVEN, BUT ALLEGED, THAT ASBESTOS CAUSES LUNG CANCER?

A IT WOULD BE EARLIER THAN THAT.

Q ALL RIGHT, SIR. I ASKED YOU THIS, MR. HERNAN, ON JANUARY,

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1984: "STATE THE FOLLOWING WITH RESPECT TO MESOTHELIOMA: THE DATE YOU FIRST HEARD IT ALLEGED THAT THERE IS A CAUSAL CONNECTION BETWEEN MESOTHELIOMA AND THE INHALATION OF ASBESTOS; THE IDENTITY OF THE PERSON AND/OR DOCUMENT THAT WAS THE SOURCE OF SUCH ALLEGATION; THE IDENTITY OF THE PERSON WHO RECEIVED SUCH INFORMATION; AND THE IDENTITY OF ALL DOCUMENTS GENERATED AS A RESULT OF THE RECEIPT OF SUCH INFORMATION."

ANSWER: "LATE 1970'S OR AROUND 1980." HAVE I READ THAT CORRECTLY? IT'S THE LAST OF THAT PAGE AND THE TOP OF THE NEXT ONE.

A YES. YOU HAVE READ IT PROPERLY.

Q I ASK YOU, MR. HERNAN, IF YOU ARE NOW TELLING THE COURT AND THE JURY TODAY, APRIL, 1984, THAT THAT IS STILL U. S. GYPSUM'S ANSWER, THAT IT NEVER HEARD IT ALLEGED THAT ASBESTOS CAUSES MESOTHELIOMA UNTIL THE LATE 1970'S OR 1980?

A MY OWN PERSONAL KNOWLEDGE WAS AT ABOUT THIS PARTICULAR PERIOD FOR MESOTHELIOMA.

Q YES, SIR. BUT YOU NOW KNOW THAT THAT ANSWER IS NOT CORRECT, DON'T YOU?

A ALL I HEARD IS THE TESTIMONY OFFERED IN THIS COURT ON THAT.

Q MR. HERNAN, YOU DIDN'T VERIFY SOME ANSWERS TO INTERROGATORIES IN THE GREENVILLE CASE, A SPECIAL COURT INTERROGATORY, IN FEBRUARY OF THIS YEAR, A MONTH AFTER THAT?

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A YES.

Q AND YOU DIDN'T SUPPLY US BY COURT ORDER IN THE GREENVILLE CASE WITH ALL OF THESE DOCUMENTS I'M NOW GIVING YOU TO LOOK AT?

A I DID NOT SEE THE DOCUMENTS UNTIL THIS PAST WEEK.

THE COURT: COULD YOU ANSWER THE QUESTION? YOU DID NOT SUPPLY THEM? NOBODY ASKED YOU WHEN YOU FIRST SAW THEM. YOU WERE ASKED IF YOU SUPPLIED THEM.

THE WITNESS: OH, YES.

THE COURT: YOU DID NOT, IN THE GREENVILLE CASE?

THE WITNESS: YES, WE FURNISHED THEM.

THE COURT: YES, YOU DID NOT? YES, WE HAVE NO BANANAS.

THE WITNESS: WE FURNISHED THE DOCUMENTS, YOUR HONOR.

Q (BY MR. SPEIGHTS:) NOW, NOT ONLY DID YOU FURNISH THE DOCUMENTS, BUT IN FEBRUARY YOU LISTED THOSE DOCUMENTS FOR THE FIRST TIME BY SPECIAL COURT ORDER, YOU LISTED THOSE DOCUMENTS AND VERIFIED THE LIST, DIDN'T YOU?

A YES.

Q YOU DIDN'T SEE THE DOCUMENTS BUT YOU VERIFIED THE DOCUMENTS?

A YES.

Q SO YOU'RE NOT TELLING US NOW THAT IT WASN'T UNTIL YOU ARRIVED IN THE COURTROOM IN COLUMBIA, SOUTH CAROLINA, THIS

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WEEK, IS THE FIRST TIME YOU EVER LEARNED ABOUT THAT, ARE YOU?

A THAT I LEARNED ABOUT WHAT?

Q TO MY UNDERSTANDING, YOU TESTIFIED A MOMENT AGO, MR. HERNAN, THAT IT WAS NOT UNTIL THIS WEEK THAT YOU BECAME AWARE OF THOSE DOCUMENTS, WHEN YOU ARRIVED IN COURT IN SOUTH CAROLINA.

A WITHIN JUST A VERY SHORT PERIOD OF TIME BEFORE THAT.

Q FEBRUARY 15 WHEN YOU HAD TO VERIFY THE ANSWER TO INTERROGATORY TO JUDGE WILKINS UP IN GREENVILLE, YOU LISTED ALL OF THOSE DOCUMENTS, DIDN'T YOU?

A YES.

Q YOU DIDN'T SUPPLEMENT YOUR ANSWERS DOWN HERE IN LEXINGTON AND TELL THE COURT DOWN IN LEXINGTON THAT YOUR ANSWERS WERE WRONG, DID YOU?

A NO.

Q ALL RIGHT. I ASK YOU WHETHER IN THE LEXINGTON INTERROGATORIES, MR. HERNAN, I ALSO DIDN'T ASK YOU WHETHER OR NOT U. S. GYPSUM HAD SUPPLIED ANY WARNINGS ON ITS PRODUCTS. YOU RECALL THAT QUESTION?

A YES.

Q AND DO YOUR RECALL YOUR ANSWERING ME THAT EXCEPT FOR JOINT COMPOUNDS IN 1972 THAT U. S. GYPSUM DIDN'T SUPPLY ANY WARNINGS ON ITS PRODUCTS?

A YES.

Q NOW, ISN'T IT CORRECT THAT U. S. GYPSUM ALSO MADE A

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PRODUCT CALLED SPRAYED-ON?

A YES, SIR.

Q AND SPRAYED-ON WAS A FIREPROOFING AND ACOUSTICAL PRODUCT, WASN'T IT?

A IT WAS MY KNOWLEDGE THAT IT WAS A FIREPROOFING PLASTER MADE UNDER A FORMULATION FURNISHED BY THE SPRAY-ON CORPORATION.

Q WELL, YOU MADE THE SPRAYED-ON PRODUCT?

A YES.

Q AND IT WAS A SPRAY APPLIED PRODUCT?

A YES.

Q AUDICOTE IS A SPRAY APPLIED PRODUCT?

A THEY ARE TWO ENTIRELY DIFFERENT PRODUCTS, SIR.

Q ALL RIGHT, SIR. BUT THEY ARE BOTH SPRAY APPLIED PRODUCTS, YOU SPRAY THEM UP?

A ONE IN DRY FORM AND ONE IN WET FORM.

Q ALL RIGHT, SIR. ARE YOU FAMILIAR WITH THE SWEETS CATALOGUE?

A I HAVE HEARD OF THE NAME. I'M KNOWLEDGEABLE IN THEM.

Q YOU ARE KNOWLEDGEABLE IN THEM.

MR. BROWN: OBJECTION, YOUR HONOR. THIS LINE OF QUESTIONING HAS NOTHING TO DO WITH THE PRODUCT IN THIS CASE.

THE COURT: IT HAS TO DO WITH THE RELIABILITY OF THIS WITNESS. OVERRULED.

Q I ASK YOU IF THIS IS NOT AN ADVERTISEMENT IN THE SWEETS CATALOGUE FOR SPRAYED-ON, THE PRODUCT YOU ALSO MANUFACTURED

AT THE TIME YOU WERE MANUFACTURING AUDICOTE?
A THIS IS A SPRAYED-ON BROCHURE.
Q ALL RIGHT, SIR. AND DOESN'T THAT BROCHURE REFLECT SPRAYED-ON ACOUSTICAL TREATMENT AS ONE OF THE PURPOSES OF SPRAYED-ON SPRAY APPLIED PRODUCT?
A THIS IS THE SPRAYED-ON FORMULATION. I WOULD HAVE NO KNOWLEDGE OF THE PERFORMANCE OF THEIR PRODUCT.
Q THIS IS A PRODUCT THAT YOU MADE AND A PRODUCT THAT HAS BEEN ADVERTISED BOTH FOR FIREPROOFING AND FOR ACOUSTICAL TREATMENT, ISN'T IT?
A THIS IS WHAT THIS DOCUMENT STATES.
Q ALL RIGHT, SIR. AND STARTING IN THE LATE 1960'S UNITED STATES GYPSUM COMPANY REQUIRED THAT PRODUCT TO HAVE WARNINGS ON IT ABOUT ASBESTOS?
A YES.
Q SO YOUR ANSWER TO THE INTERROGATORY IN THIS CASE THAT YOU DIDN'T SUPPLY WARNINGS ON PRODUCTS IS NOT CORRECT, IS IT?
A I THINK THE INITIAL ANSWERS WERE BASED ON THE AUDICOTE ACOUSTICAL PLASTER AND THE SPRAYED-ON ACOUSTICAL -- THE SPRAYED-ON ACOUSTICAL TREATMENT,AS STATED HERE, ARE TWO ENTIRELY DIFFERENT PRODUCTS.
Q THE ANSWER WAS ACOUSTICAL PRODUCTS, WASN'T IT, THAT YOU GAVE US IN THE LEXINGTON CASE?
A YES.
Q ALL RIGHT, SIR. AND THAT DOCUMENT REFLECTS THAT'S AN

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ACOUSTICAL PRODUCT, DOESN'T IT?

A THAT IS WHAT THIS DOCUMENT STATES.

MR. BROWN: YOUR HONOR PLEASE, AGAIN I OBJECT --

THE COURT: AGAIN, I OVERRULE YOU.

Q SO IN THE LATE 1960'S, IN '68, BEFORE IRMO HIGH SCHOOL PURCHASED ITS '68 SUPPLY, BEFORE IT PURCHASED ITS '72 SUPPLY AND BEFORE IT PURCHASED ITS '74 SUPPLY, YOU WERE SELLING ANOTHER ACOUSTICAL TREATMENT PRODUCT WITH WARNINGS ABOUT ASBESTOS ON IT? ISN'T THAT CORRECT?

A IN THE WAY THAT YOU HAVE PHRASED IT.

Q WELL, MR. HERNAN, NOT ONLY THAT, YOU TOOK THE ASBESTOS OUT OF THAT PRODUCT IN 1970, DIDN'T YOU?

A THE SPRAYED-ON FORMULATION WAS CHANGED BY THAT PARTICULAR CORPORATION.

THE COURT: DID YOU TAKE THE ASBESTOS OUT, YES OR NO?

THE WITNESS: YES. YES.

THE COURT: DON'T EVADE EVERY QUESTION. JUST WASTING THE COURT'S TIME. ANSWER THEM.

Q (BY MR. SPEIGHTS:) WELL, SIR, IN 1520, WALLS AND CEILINGS MAGAZINE, DOES IT -- IN 1970, AREN'T YOU ADVERTISING THIS ACOUSTICAL PRODUCT, THIS ASBESTOS-FREE PRODUCT?

A THAT WAS DONE BY SPRAYED-ON CORPORATION, NOT THE U. S. GYPSUM COMPANY.

Q ALL RIGHT, SIR. THE COMPANY THAT WAS SELLING YOUR

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ENTITLED DAVID DONALD SMITH VERSUS UNITED STATES GYPSUM COMPANY, ET AL?

A YES.

Q I ASK YOU IF ON THAT OCCASION, AUGUST 25, 1981, A YEAR AND A HALF BEFORE YOU GAVE THIS COURT THAT ANSWER, THIS QUESTION WAS ASKED AND YOU VERIFIED YOUR ANSWER AS FOLLOWS:

"IF YOU KNOW OF ANY TEST, STUDIES, RESEARCH OR EXPERIMENTS CONCERNING THE EFFECTS OF THE INHALATION OF ASBESTOS FIBERS CONDUCTED AT ANY TIME SINCE 1900 BY ANY MEMBER OF THE ASBESTOS PRODUCTS INDUSTRY, MINERS, MILLERS, MANUFACTURERS, SELLERS, ET CETERA, OR BY ANY GROUP OR ORGANIZATION OF OR RELATED TO THAT INDUSTRY, GIVE THE TITLES, DATES AND PARTICIPATING COMPANIES OR ORGANIZATIONS AND RESPONSIBLE INDIVIDUALS."

ANSWER: "THIS INTERROGATORY IS OBJECTED TO ON THE GROUNDS THAT IT IS OVERLY BROAD AND BURDENSOME IN THAT IT COVERS A TIME PERIOD OF 81 YEARS.

"HOWEVER, SUBJECT TO THE OBJECTION, THIS DEFENDANT IS AWARE OF A STUDY CONDUCTED IN THE LATE 1930'S CONCERNING THE HEALTH EFFECTS OF INHALATION OF ASBESTOS FIBERS BY DR. LEROY GARDNER OF SARANAC LAKE."

WAS THAT YOUR ANSWER UP IN MINNESOTA A YEAR AND A HALF BEFORE THIS ANSWER?

A YES.

MR. SPEIGHTS: THANK YOU, SIR. THAT'S ALL I HAVE.

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REDIRECT EXAMINATION

BY MR. BROWN:

Q MR. HERNAN, LET'S GET BACK TO THE SUBJECT WHICH YOU WERE CALLED TO TALK ABOUT, WHICH IS THE 17TH FLOOR OF U. S. GYPSUM.

MR. SPEIGHTS SHOWED YOU SOMETHING OUT OF A REPORT IN 1973 ABOUT SOME REPAIRS THAT WERE DONE TO THE 17TH FLOOR. NOW, THE FIRST PARAGRAPH TALKS ABOUT OIL SPOTS AND IT SAYS, CUT OUT SECTIONS OF CEILING CONTAINING OIL SPOTS." YOU HAPPEN TO RECALL HOW BIG AN OIL SPOT THERE WAS IN THAT 17TH FLOOR AREA?

A NO, I DO NOT KNOW.

Q DO YOU RECALL ROUGHLY HOW BIG THE ENTIRE AREA WAS OR IS ON THE 17TH FLOOR OF THE U. S. GYPSUM BUILDING THAT IS COVERED WITH AUDICOTE? HOW MANY DIFFERENT ROOMS ARE THERE, FOR EXAMPLE?

A WITHOUT LOOKING AT THE PRINT, I WOULD ESTIMATE THAT THERE ARE PROBABLY IN THE NEIGHBORHOOD OF 25 OFFICES, AT LEAST FOUR LARGE OPEN AREAS. LET ME THINK, COUNT IN MY HEAD HERE. THERE MUST BE IN THE NEIGHBORHOOD OF 20,000 SQUARE FEET. THE OFFICE -- THE TOTAL AREA WOULD BE PROBABLY 20 TIMES 30 TIMES THE SIZE OF THIS COURTROOM, FOR AN APPROXIMATION OF PHYSICAL SIZE.

Q DO YOU HAVE ANY INFORMATION WITH RESPECT TO GOUGES AND SCRATCHES WHICH COULD BE REPAIRED WITH A SMALL SPATULA AND

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SMALL PAINTBRUSH, AS TO ABOUT HOW MANY OF THOSE THERE WERE THAT WERE REPAIRED IN 1972?

A I DON'T HAVE ANY PERSONAL KNOWLEDGE OF THAT.

Q ALL RIGHT. NOW, YOU WERE ASKED BY MR. SPEIGHTS WHETHER THERE WERE OTHER PLACES THAT YOU COULD HAVE FOUND AUDICOTE ON THE CEILINGS, AND YOU SAID YES.

A YES.

Q AT THE TIME WHEN THIS EXPERIMENT WAS BEING DONE AT U. S. GYPSUM, WAS THERE A CASE PENDING IN NEW JERSEY INVOLVING THE CINNAMINSON SCHOOL DISTRICT?

A YES.

Q DO YOU KNOW WHY IT WAS THAT THE 17TH FLOOR CEILING AT U. S. GYPSUM WAS SELECTED FOR THE EXPERIMENT RATHER THAN GOING SOMEWHERE ELSE AND FINDING SOME OTHER MATERIAL?

A YES.

Q WHY WAS IT?

A IT WAS BECAUSE IT WAS THE -- DONE AT THE SAME PERIOD OF TIME AND HAD THE SAME PRODUCT FORMULATION.

Q ALL RIGHT. ONCE MORE, IS IT YOUR OPINION THAT THE MATERIAL IN THE 17TH FLOOR CEILING AT U. S. GYPSUM IS AND WAS AUDICOTE?

A YES.

MR. BROWN: THAT'S ALL I HAVE, YOUR HONOR.

RECROSS EXAMINATION

BY MR. SPEIGHTS:

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Q MR. HERNAN, MY UNDERSTANDING IS THE 17TH FLOOR IS JUST THE CORRIDOR AND ONE ROOM THAT HAS THE AUDICOTE ON IT, ISN'T THAT CORRECT?

A WOULD YOU RESTATE THAT?

Q ISN'T THE CORRIDOR THAT HAS THE AUDICOTE ON IT IN THE 17TH FLOOR?

A THAT IS ONE OF THE AREAS ON THE 17TH FLOOR.

Q AND THEN THE CAFETERIA ALSO HAS IT ON IT?

A THE CAFETERIA AND THE LOBBY OF THE BUILDING.

Q ALL RIGHT, SIR. AND I ASK YOU ALSO,WHEN YOU TOOK THIS SAMPLE,THAT YOU JUST TOOK IT IN A RANDOM PLACE ON THAT 17TH FLOOR, DIDN'T YOU? ISN'T THAT WHAT YOU TESTIFIED?

A I TOOK IT, I THINK I SAID, ADJACENT TO THE TEST AREA.

Q ALL RIGHT. BUT YOU TOOK IT -- YOU SELECTED THE TEST AREA OR YOU SELECTED IT JUST ON A RANDOM BASIS ON THAT 17TH FLOOR?

A I DID SAMPLE IT OR TEST IT MYSELF TO ASSURE MYSELF THAT IT HAD THE PHYSICAL PROPERTIES.

Q WELL, AUDICOTE HAS 7 PERCENT ASBESTOS IN IT, DOESN'T IT, EXCESS OF 7 PERCENT?

A YES.

MR. SPEIGHTS: I WOULD MOVE FORMALLY TO PUT 1707 INTO EVIDENCE, YOUR HONOR.

MR. BROWN: NO OBJECTION.

THE COURT: RECEIVED.

MR. SPEIGHTS: THAT'S ALL I HAVE.

REDIRECT EXAMINATION CONTINUED

BY MR. BROWN:

Q MR. HERNAN, WHERE WAS THE SLAB CUT OUT OF THE 17TH FLOOR CEILING?

A IT WAS TAKEN WITHIN ROUGHLY 7 TO 10 FEET FROM THE TESTING SITE THAT WE WORKED ON HERE.

Q ISN'T IT A FACT THAT THE EXPERIMENT WAS DONE IN A LARGE CORRIDOR AND RIGHT AROUND THE CORNER FROM THE CORRIDOR THERE WAS AN EXECUTIVE WASHROOM?

A YES.

Q AND WASN'T THE SLAB CUT OUT OF THE CEILING IN THE EXECUTIVE WASHROOM?

A YES.

Q WAS ALL THE MATERIAL IN THAT WHOLE AREA, INCLUDING THE WASHROOM, ALL PART OF THE SAME CEILING?

A YES.

MR. BROWN: THAT'S ALL. THANK YOU.

MR. SPEIGHTS: NOTHING FURTHER.

MR. BROWN: YOU MAY STEP DOWN, MR. HERNAN.

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

Phillip W. Lotier 6-14-84

PHILLIP W. LOTIER, OFFICIAL REPORTER DATE

PENGAD CO., BAYONNE, N.J. 07002 - FORM SEL 2547