

FILE NAME: National Safety Council (NSC)

DATE: 1984 Mar 28

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DOCUMENT DESCRIPTION: Legal - Deposition of Schmidt, Philip E.

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

ROBERT L. SHARP,

Plaintiff,

VS.

Cause No. 83-L-584

ILLINOIS CENTRAL GULF RAILROAD
COMPANY, a corporation,

Defendant.

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

ISABEL S. ROSER, Administratrix
of the Estate of BEN P. ROSER,
Deceased,

Plaintiff,

VS.

No. 82-L-1011

ILLINOIS CENTRAL GULF RAILROAD
COMPANY, a corporation,

Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:

ASBESTOS CASES

Insulator,
Shipworker and
Plantworker

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
 AT HUNTINGTON

3 EMALENE M. STONE, Executrix of)
4 the Estate of ACIE K. STONE,)
5 Deceased,)

 Plaintiff,)

6 vs.)

Civil Action
No. 81-3159

7 JOHNS-MANVILLE SALES CORPORATION,)
8 A Delaware corporation, et al.,)

 Defendants.)

10 IN THE UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF KENTUCKY
 AT LOUISVILLE

12 JAMES C. BAGGERLY,)

13 Plaintiff,)

14 vs.)

Civil Action
No. C-83-1190 L-B

15 SEABOARD SYSTEMS RAILROAD, INC.,)
16 et al.,)

 Defendants.)

18 IN THE UNITED STATES DISTRICT COURT
19 DISTRICT OF PENNSYLVANIA

20 LECHNER,)

 Plaintiff,)

21 vs.)

Civil Action
No. 82-2301, et al.

22 CONRAIL, et al.,)

23 Defendants.)
24

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

BURGER,)
)
Plaintiff,)
)
vs.) Civil Action
) No. 83-4118
CHICAGO NORTH WESTERN)
TRANSPORTATION CO.)
)
Defendant.)

) Civil Action
) No. 83-4118

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

BROWN,)
)
Plaintiff,)
)
vs.) Civil Action
) No. 1-83-280
SOUTHERN RAILWAY COMPANY,)
)
Defendant.)

) Civil Action
) No. 1-83-280

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION

TEA,)
)
 Plaintiff,)
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 vs.) Civil Action
) No. C82-1174 (C)
 DENVER & RIO GRANDE WESTERN)
 RAILROAD CO.,)
)
 Defendant.)

) Civil Action
) No. C82-1174 (C)

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CARROLL,)
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 Plaintiff,)
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 vs.) Civil Action
) No. 83-0-615
 UNION PACIFIC RAILROAD CO.,)
)
 Defendant.)

JUDD,
Plaintiff,

vs.

THE CHESAPEAKE & OHIO
RAILWAY CO.,

Defendant.

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) Civil Action
) No. 83-3035
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SCHOLL,)
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 Plaintiff,)
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 vs.) Civil Action
) No. 82-1685
 CONRAIL and THE READING CO.,)
)
 Defendants.)

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

PEASE,

Plaintiff,

VS.

No. 82-L-1012

ILLINOIS CENTRAL GULF
RAILROAD CO.,

Defendant.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

PALMER,

Plaintiff,

VS.

Civil Action
No. 83-0282-R

NORFOLK & WESTERN RAILWAY
CO.,

Defendant.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

DAVIS,

Plaintiff,

VS.

Civil Action
No. N-83-4

WESTERN MARYLAND RAILWAY
CO., et al.,

Defendants.

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

YERGAN,)
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Plaintiff,)
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vs.) Civil Action
) No. H-83-1231
THE BALTIMORE & OHIO)
RAILROAD CO.,)
)
Defendant.)

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

GRIMSLEY,)
)
Plaintiff,)
)
vs.) Civil Action
) No. 83-880-Civ-J-12
SEABOARD SYSTEM RAILROAD,)
INC.,)
)
Defendant.)

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
AT LOS ANGELES

WALSH,)
)
Plaintiff,)
)
vs.) Civil Action
) No. CV-83-0751 (WMB)
SOUTHERN PACIFIC TRANS.)
CO.,)
)
Defendant.)

1 The deposition of PHILIP E. SCHMIDT, called
2 by the plaintiff for examination, pursuant to
3 subpoena and notice, and pursuant to the Rules of
4 Civil Procedure for the United States District
5 Courts pertaining to the taking of depositions,
6 taken before Donna M. Urlaub, a Notary Public within
7 and for the County of DuPage and State of Illinois,
8 and a Certified Shorthand Reporter of said State, at
9 the Tropical Room, Hotel Continental, 505 North
10 Michigan Avenue, and the National Safety Council,
11 25th Floor, 444 North Michigan Avenue, Chicago,
12 Illinois, on the 17th day of April 1984, commencing
13 at 10:00 o'clock a.m.

14

15 APPEARANCES:

16

MR. JOHN D. ROVEN

17

-and-

BLATT & FALES, by

18

✓MR. JOSEPH F. RICE

P.O. Box 365

19

Barnwell, South Carolina 29812

appeared for the plaintiff;

20

GUNDLACH, LEE, EGGMANN, BOYLE & ROESSLER, by

21

MR. WILLIAM P. GAVIN

P.O. Box 692

22

5000 West Main Street

Belleville, Illinois 62223

23

appeared for the Illinois Central Gulf
Railroad Company;

24

1 APPEARANCES: (Cont'd)

2 RAINEY, BRITTON, GIBBES & CLARKSON, P.A., by
3 MR. DANIEL B. WHITE
4 Suite 800
5 First Federal Building
6 301 College Street
7 Greenville, South Carolina 29601
8 appeared for Southern Railway Company and
9 Norfolk & Western Railway Company;

10 DICKIE, MC CAMEY & CHILCOTE, P.C., by
11 MR. DAVID B. WHITE
12 3180 U.S. Steel Building
13 Pittsburgh, Pennsylvania 15219
14 appeared for Consolidated Rail Corporation;
15
16 MR. JOHN T. VAN GESSEL
17 One North Western Center
18 Chicago, Illinois 60606,
19 appeared for the Chicago and North Western
20 Transportation Company;

21 HUNTER, MACLEAN, EXLEY & DUNN, P.C., by
22 MR. F. SAUNDERS ALDRIDGE, III
23 Savannah Bank Building
24 Post Office Box 9848
Savannah, Georgia 31412
appeared for Seaboard System Railroad;

GAINES, OTIS, MULLEN & CARTA, by
MR. HARRY B. OTIS
Regency One Building
10050 Regency Circle
Omaha, Nebraska 68114
appeared for Union Pacific Railroad Company;

HUDDLESTON, BOLEN, BEATTY, PORTER & COPEN, by
MR. DONALD G. POWERS
P.O. Box 2185
Huntington, West Virginia 25722
appeared for Chesapeake & Ohio Railroad
Company, Baltimore & Ohio Railroad Company,
and Western Maryland Railroad Company;

24

1 APPEARANCES: (Cont'd)

2 MR. CRAIG J. WHITNEY
3 Southern Pacific Building
4 One Market Plaza, Suite 836
5 San Francisco, California 94105
6 appeared for Southern Pacific Transportation
7 Company;

8 JONES, GREGG, CREEHAN AND GERACE, by
9 MR. FREDRIC E. ORLANSKY
10 1010 Grant Building
11 Pittsburgh, Pennsylvania 15219
12 appeared for Celotex Corporation;

13 WILDMAN, HARROLD, ALLEN & DIXON, by
14 MR. EDWARD J. MELIA
15 One IBM Plaza
16 Chicago, Illinois
17 appeared for Combustion Engineering, Inc.;

18 ROSENBERG, KIRSHNER, KALEUGHER & WINIKOFF, P.A.,
19 by
20 MR. PATRICK W. MURPHY
21 Suite 1000
22 Law & Finance Building
23 Pittsburgh, Pennsylvania 15219
24 appeared for Eagle-Picher Industries, Inc.;

25 LAW OFFICES OF THOMAS J. KEEVERS, by
26 MS. SUSAN G. CASTAGNOLI
27 230 West Monroe Street
28 Chicago, Illinois 60606
29 appeared for Eagle-Picher Industries, Inc.;

30 LA FOLLETTE, JOHNSON, SCHROETER & DE HAAS, by
31 MR. PETER R. BING
32 320 North Vermont Avenue
33 Los Angeles, California 90004
34 appeared for Flintkote Company;

35 KATTEN, MUCHIN, ZAVIS, PEARL & GALLER, by
36 MR. BARRY J. PARKER
37 4100 Mid-Continental Plaza
38 55 East Monroe Street
39 Chicago, Illinois 60603
40 appeared for GAF Corporation;

1 APPEARANCES: (Cont'd)

2 SANDS, ANDERSON, MARKS & MILLER, P.C., by
3 MS. CAROL L. WINGO
4 1000 Main Street Centre
5 Richmond, Virginia 23216
6 appeared for H. K. Porter, Inc., and Southern
7 Textile Company;

8 MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, by
9 MR. JEFFREY T. MORRIS
10 2500 Grant Building
11 Pittsburgh, Pennsylvania 15219
12 appeared for Keene Building Products;

13 SWEENEY AND RIMAN, LTD., by
14 MR. ~~HARRY~~ G. SACHRISON, JR.
15 Suite 2900
16 230 West Monroe Street
17 Chicago, Illinois 60606
18 appeared for Keene Corporation;

19 MS. BARBARA L. ARRAS
20 101 South Wacker Drive
21 Chicago, Illinois 60606
22 appeared for United States Gypsum Company;

23 HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER,
24 by
MR. TRACY C. BEGGS
Suite 2700
69 West Washington Street
Chicago, Illinois 60602
appeared for Owens-Corning Fiberglas Inc.;

SCHIFF, HARDIN & WAITE, by
MR. ROBERT H. RILEY
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
appeared for Owens-Illinois, Inc.;

SCHOEN & SMITH, by
MR. DAVID M. SMITH
Suite 1100
20 North Clark Street
Chicago, Illinois 60602
appeared for Pittsburgh Corning Corp.;

1 APPEARANCES: (Cont'd)

2 CHADWELL & KAYSER, LTD., by
3 MS. ERICA A. MUNZEL
4 8500 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
appeared for Raymark Industries, Inc.;

5
6 McDERMOTT, WILL & EMERY, by
MS. SHERI H. MECKLENBURG
111 West Monroe Street
7 Chicago, Illinois 60603
appeared for Studebaker-Worthington, Inc.;

8
9 WALSH, CASE, COALE, BROWN & BURKE, by
MR. JOHN T. BURKE
2500 Prudential Plaza
10 Chicago, Illinois 60601
appeared for John Crane, Houdaille, Inc.

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I N D E X

Witness:

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Philip E. Schmidt

Examination by:

Mr. Rice 22

Mr. Daniel B. White 126

Mr. Whitney 138

Mr. Murphy 139

Mr. Aldridge 143

Mr. Rice 144

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1 MR. RICE: Let's go on the record for some
2 preliminary matters.

3 This is the deposition of Philip
4 Schmidt that was noticed multi-jurisdictional.
5 Mr. Schmidt is the gentleman sitting here in front
6 of me.

7 And I'm going to ask the court
8 reporter to mark as exhibits several Notices of
9 Deposit~~ion~~. I'm not going to mark all of them, but
10 I'm going to mark just a collection of them. The
11 one for the State of Illinois cases, Sharp vs.
12 Illinois Central; the one for the Louisville cases,
13 Baggerly vs. Seaboard; one for the Huntington cases,
14 Stone vs. Johns-Manville, et al; and the one for the
15 South Carolina cases, In Re: South Carolina,
16 Asbestos Cases, Insulator, Shipworker, and Plant-
17 worker.

18 In addition, attached to these notices
19 is a list of the cases in which this deposition has
20 been noticed to the knowledge of the plaintiffs'
21 attorneys that noticed this deposition with the
22 exception of the Stone case and the Huegel case in
23 West Virginia that have been noticed in addition to
24 the ones listed on the attachment to the notice

1 itself.

2 I do not -- I'm not aware of any
3 additional ones, with the exception also that there
4 was a -- in some of the notices, there was not
5 listed the Walsh vs. Southern Pacific case, which is
6 in the U.S. District Court in the Central District
7 of California at Los Angeles. That notice has been
8 sent. And as to the cases in the Western District
9 of Kentucky, Louisville Division, this case, instead
10 of being noticed in Greenwell vs. Seaboard Systems,
11 it was noticed in Baggerly vs. Seaboard Systems.

12 I believe with those exceptions, that
13 the notice is complete as to the cases this
14 deposition is being taken in.

15 I'd ask you to mark those that I just
16 read as an exhibit.

17 (Whereupon, Deposition Group
18 Exhibit No. 1, Witness Schmidt,
19 was marked for identification,
20 as of this date.)

21 MR. DANIEL B. WHITE: May I see a copy of your
22 subpoena? I've never seen it.

23 MR. RICE: That's just the one subpoena.
24 There's a second subpoena that was served. That's

1 the one that was the latest one served. There was a
2 previous one served out of the Illinois courts back
3 two months ago.

4 MR. GAVIN: Do you have a copy of the Sharp
5 notice itself?

6 MR. RICE: Yes.

7 MR. GAVIN: May I see it, please? Thank you.

8 MR. DANIEL B. WHITE: You say there was another
9 subpoena?

10 MR. RICE: Yes, there was an additional subpoena
11 served on Mr. Schmidt several weeks ago, a month ago.

12 MR. SCHMIDT: Oh, more than that.

13 MR. RICE: Yes. And that deposition was -- that
14 subpoena was for February 1st, and we changed that
15 date until today through their legal counsel.

16 MR. SCHMIDT: Back in February.

17 MR. GAVIN: The subpoena that you gave me here
18 is different from the Sharp case. It was apparently
19 noticed in both the --

20 MR. RICE: It was noticed in both the Roser and
21 the Sharp cases.

22 MR. GAVIN: That's what I was concerned about.

23 MR. SCHMIDT: We're going to go over this
24 (indicating). This is about the same thing that was

1 covered in the other one.

2 MR. RICE: Can I have those, the subpoenas?

3 MR. SCHMIDT: That's my copy there.

4 MR. RICE: Yes, you keep that copy.

5 MR. SCHMIDT: This (indicating) is my copy of
6 the original. That's (indicating) February 1.

7 MR. RICE: The subpoena was part of the material
8 marked.

9 MR. PALDRIDGE: Do you need this for the conduct
10 of the deposition?

11 MR. RICE: I just want to see if that's the one
12 I marked. The second subpoena that was served on
13 Mr. Schmidt has already been marked as part of the
14 deposition exhibits, and we will mark the first one
15 when we get to Mr. Schmidt's testimony.

16 Off the record.

17 (Discussion off the record.)

18 MR. BURKE: I want to make a statement on the
19 record here when you're ready.

20 I'm here representing the Crane
21 Company, and that's in the case of Kaskie vs.
22 Atchison, et al. And I received a notice last
23 Friday that a deposition was going to be taken of
24 Mr. Philip Schmidt at the Continental Hotel at 505

1 North Michigan. The notice that I received had no
2 caption on it, doesn't state who the deposition is
3 going to be taken before, and I object to the
4 defects of the notice. I don't know whether or not
5 my client is involved in this case, in view of the
6 fact that there's no caption on the notice that I
7 received; however, I am attending this deposition,
8 and by my attendance, I'm not waiving any of the
9 rights ~~that I~~ feel that I can raise on behalf of my
10 client at some later proceeding.

11 MR. RICE: And for the record --

12 MR. BURKE: That's all I have to say. The name
13 is John T. Burke, and my address is 2500 Prudential
14 Plaza, Chicago, Illinois.

15 MR. RICE: Mr. Burke, in response to that, as
16 far as I know, no plaintiffs' attorney here in
17 attendance represents Mr. Kaskie or is involved in
18 the Kaskie case. I have noticed this deposition, I
19 have no knowledge of the Kaskie case being noticed,
20 and therefore I don't care whether it's in that case
21 or not.

22 But in, also, response, John Crane is
23 a defendant named in approximately 30 cases pending
24 in the United States District Court for the District

1 of Western Pennsylvania, and you are named in those
2 cases, and whether you're here in attendance for
3 Crane in those doesn't matter to me, either, but
4 Crane is noticed in.

5 MR. BURKE: It's not noticed, properly noticed.

6 MR. RICE: Yes, it is noticed properly in those
7 cases.

8 MR. BURKE: Well, I'm appearing in the case of
9 84 C 2008, a case pending before Judge Moran in the
10 United States District Court, and I just recently
11 have filed my appearance. As a matter of fact, my
12 appearance in that case was filed April 5, '84.

13 MR. RICE: All right.

14 MR. BURKE: That's John Crane, Houdaille,
15 H-o-u-d-a-i-l-l-e, Inc. That's who I appeared for
16 in the case pending in the United States District
17 Court, 84 C 2008.

18 MR. RICE: This deposition is being taken
19 pursuant to the Federal Rules of Civil Procedure.
20 All cases in which this deposition is noticed, with
21 the exception of two, are federal cases. It is our
22 understanding that the case will also be taken
23 pursuant to the rules of the state courts of
24 Illinois, where the St. Clair County cases are

1 pending. We do not believe there are any
2 substantial differences in the rules, but any rights
3 that would inure to any party because of the
4 differences will be reserved.

5 Will you swear the witness, please.

6 (Witness sworn.)

7 MR. RICE: If it's agreeable with the parties,
8 we will reserve objections except as to the form of
9 the question until the time of trial or use of the
10 deposition. All formalities as to the qualifica-
11 tions of the court reporter will be deemed waived
12 and the deposition will proceed.

13 MR. DANIEL B. WHITE: May we have an agreement
14 that the objection of one may be the objection of
15 all unless disclaimed?

16 MR. RICE: I have no problem with that. I might
17 suggest that since we have one group of defendants
18 that can be generally classified as the railroads,
19 and one group of defendants that can be generally
20 classified as manufacturers, that possibly we would
21 need an objection from each group to stand for the
22 group. But if one person wants to speak, that's
23 okay, it doesn't matter to me.

24 MR. MURPHY: I don't know who's a railroad

1 objector and who's a manufacturer.

2 MR. RICE: I think it's pretty simple. These
3 (indicating) are railroads, these (indicating) are
4 manufacturers.

5 MR. DANIEL B. WHITE: But we're not appointing
6 one person to object on behalf of all the railroads.
7 That's not what I'm saying.

8 MR. RICE: Oh, no.

9 MR. ~~PSACH~~RISON: Just say an objection by one is
10 an objection by all.

11 MR. BURKE: If I'm going to object, I'm going to
12 object; I don't care what anybody else does.

13 MR. RICE: Off the record.

14 (Discussion off the record.)

15 MR. RILEY: My name is Bob Riley, and I
16 represent Owens-Illinois. And I just wanted to
17 clarify something Mr. Rice said with regard to the
18 qualifications of the court reporter, and off the
19 record he clarified it as follows: That his
20 statement had to do with the qualifications of
21 this court reporter to administer oaths and take
22 testimony in the State of Illinois. And I don't
23 dispute that fact on behalf of Owens-Illinois.

24 MR. RICE: Do you raise an objection for any

1 other jurisdiction because she's not licensed to
2 administer oaths in other states?

3 MR. RILEY: I'm not going to waive that
4 objection. I don't raise the objection, but I don't
5 waive it.

6 MR. RICE: All right.

7 MR. DANIEL B. WHITE: Can we agree that an
8 objection of one is objection of all, and we don't
9 have to distinguish between manufacturers and
10 railroads?

11 MR. RICE: That's fine, I don't have any problem
12 with your doing that, but there could be problems
13 down the road with that, but that's up to you all.

14 Anyone else have anything else they
15 want to put on the record before we start?

16 MS. MUNZEL: I just encourage you to speak up.

17 MR. RICE: Encourage me?

18 MS. MUNZEL: Well, because you're facing that
19 way, so you'll have to speak louder.

20 MR. SCHMIDT: You may have to use a microphone
21 yet.

22

23

24

1 PHILIP E. SCHMIDT,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 EXAMINATION

5 BY

6 MR. RICE:

7 Q. State your full name and address for the
8 record, please, sir.

9 A. ~~My~~ My name is Philip Schmidt. I work for the
10 National Safety Council. We're located at 444 North
11 Michigan Avenue, Chicago, Illinois. I have my card,
12 if anybody needs it, and I'll give one to the court
13 reporter so she gets it correct.

14 Pass them down the line, if you wish.

15 Q. Mr. Schmidt, are you here pursuant to a
16 subpoena that was served upon you?

17 A. Yes.

18 Q. In fact, there were two subpoenas served
19 upon you.

20 A. Correct.

21 Q. Let me show you a document and ask you if
22 that is one of the subpoenas served.

23 A. That is correct.

24 Q. And do you have a copy of the second

1 subpoena?

2 A. Yes, I do.

3 Q. Would you please give both of those to the
4 court reporter and ask her to mark those as Exhibits
5 2 and 3 to this deposition.

6 (Whereupon, Deposition Exhibits
7 Nos. 2 and 3, Witness Schmidt,
8 were marked for identification,
9 as of this date.)

10 MR. RICE: Q. Mr. Schmidt, the court reporter
11 administered an oath earlier. Did you understand
12 that oath?

13 A. Yes.

14 Q. And you understand what a deposition is.

15 A. Yes.

16 Q. And you understand the process we're about
17 to undertake.

18 A. Yes.

19 Q. Okay. Mr. Schmidt, when did you join the
20 National Safety Council?

21 A. 1965.

22 Q. And in what capacity?

23 A. Well, I'm going to say that I can't
24 remember my first title. I worked for the Farm

1 Department of the Council at that time.

2 Q. All right. Could you take us through from
3 1965 to the current time and give us the different
4 positions you've held with the National Safety
5 Council generally?

6 MR. BURKE: Excuse for the interruption. I
7 think that the witness is going to have to raise his
8 voice. If I'm having trouble here, I'm sure the
9 people ~~in the~~ back are going to have trouble.

10 Could you read the last question back,
11 please.

12 (Record read as requested.)

13 THE WITNESS: Okay. I joined the National
14 Safety Council in 1965 in the Farm Department. My
15 primary work at that time was working with farm and
16 youth organizations in the development of safety
17 programs on the national level and the state level,
18 and limitedly on the local levels.

19 About 10 years ago, I joined the
20 Industrial Department of the Council, which is the
21 largest department within the Council. My present
22 work is primarily to serve as the staff liaison
23 person between the Council and three large safety
24 committees. These are committees made up of our

1 members of the Council and several industries.

2 In addition, I work with our technical
3 publications people; I work with problems which
4 members may bring to me; I attempt to answer
5 technical and nontechnical questions if they're
6 raised within the information we have available.
7 I assist in the development of materials for the
8 Council such as books, films, materials of that sort.
9 I work with our Congress Program, which is an annual
10 event every year, in working with our committees, in
11 working with speakers, in working with presentations.
12 One of my special assignments for the last couple of
13 years has been to handle most of the legal inquiries
14 which we receive within our department. In addition,
15 I work with some of the other people within the
16 Council who answer legal inquiries. We do work with
17 our legal counsel, who's Harry Rosenfield, and he's
18 located in Washington, D.C.

19 MR. RICE: Q. Mr. Schmidt, would you briefly
20 tell us what the National Safety Council is?

21 A. The National Safety Council is a
22 not-for-profit corporation. We do have a federal
23 charter which was issued in 1953. The National
24 Safety Council, under a slightly different name,

1 began in 1913. They grew out of a desire of
2 industry to create an organization to prevent
3 accidents to people working.

4 Since that time, we have added to the
5 scope of the Council not only people that work, but
6 people at any endeavor. So you will hear us most
7 commonly identified I guess I would say by the man
8 in the street, the National Safety Council is that
9 organization that tells us on the 4th of July how
10 many people are going to be killed on the highways.
11 That is a very, very tiny piece of our work, but it
12 is part of what we do.

13 Q. How is the membership of the National
14 Safety Council made up, and who are members, and how
15 do they become members?

16 A. The Council is a membership organization.
17 Anyone, any organization, any association can be a
18 member. There are a number of classes of members,
19 and the services provided are determined in part by
20 what the member is.

21 The membership aspect of it started
22 many, many years ago, in fact, in the very, very
23 beginning, after there was a desire to have a
24 continuing ongoing organization. Current membership

1 of the Council is approximately 13,000 members, of
2 which about 9,000 of those are what we call
3 industrial or industrial-related members.

4 Q. Mr. Schmidt, does the National Safety
5 Council have an annual meeting?

6 A. We have an annual Congress with all the
7 National Safety -- it's classed in our bylaws as the
8 meeting of the National Safety Council.

9 Q. And can you explain to us how this meeting
10 is put together, who attends the meeting, and a
11 little bit about what goes on?

12 A. Perhaps I should go back to the beginning.
13 The really first thing that was known was a Safety
14 Congress. This was -- the first one was held in
15 1912, brought together by people from industry. The
16 Safety Congress currently is about a four-day affair
17 currently held here in Chicago at which safety
18 practitioners and others in the field are welcome to
19 come. While intended perhaps primarily for our
20 members, it is open to the general public that
21 desires to come.

22 During the Congress, there are
23 presentations made by approximately 600 speakers at
24 about 200 different programs and events. We also

1 have an exhibit of safety equipment, from last year
2 I believe about 300 commercial exhibitors. The
3 attendance in the last couple of years has been
4 between 13 and 14,000 people.

5 Q. Through the 20 plus years that you've been --
6 or, about 20 years that you've been with the Safety
7 Council, have the proceedings of these Congresses
8 been recorded or gathered in some fashion?

9 A. Since the beginning, there has been an
10 attempt made to keep a record at the presentations
11 of the annual meeting, which is the formal addresses
12 by the officers of the Council and by those who
13 present programs. These records are, we call them
14 our Transactions, they've been complete -- fairly
15 complete, I'm going to say, till 1978, at which time
16 they were discontinued.

17 Q. Are you personally familiar with the
18 Transactions of the National Safety Council volumes?

19 A. Yes.

20 Q. Where are these materials maintained?

21 A. Copies of them from 1912 through '78 are
22 maintained in the National Safety Council library.

23 Q. And that library is here in Chicago?

24 A. In Chicago.

1 Q. Have you brought with you any of the
2 volumes from the Transactions of the National Safety
3 Council?

4 A. I brought with me two volumes, one from
5 1940, and one from 19 -- I'll look -- 1932
6 Transactions.

7 MR. RICE: I'm going to request to go off the
8 record a minute and make an explanation. Let's go
9 off the record.

10 (Discussion off the record.)

11 MR. RICE: Let's go back on the record.

12 Q. Mr. Schmidt, at some point in time, were
13 the volumes of the Transactions of the National
14 Safety Congress microfilmed?

15 A. Yes.

16 Q. And are you familiar with who has
17 possession of those microfilms?

18 A. Well, the National Safety Council library
19 has a copy of them for our files, but they are
20 available from two other sources.

21 Q. Would you please tell us where those are,
22 and which years are available from each source?

23 A. The years of 1912 through 1970 are
24 available from Micre, M-i-c-r-e, Cord Sales

1 Corporation, 155 Eisenhower Lane North, Lombard,
2 Illinois 60148, phone number 312-495-9790.

3 From the years of 1974 through '78,
4 which in 1978 Transactions were discontinued as a
5 publication, those years are available from
6 University Microfilm International, 300 North Zeeb
7 Road, Ann Arbor, Michigan 48106. Phone number is
8 313-761-4700.

9 The years of 1971 through '74 are, to
10 the best of our knowledge, are not available on
11 microfilm from anyone.

12 Q. This document that you've just read from is
13 a document you brought with you this morning?

14 A. Yes, I brought that with me this morning.

15 Q. And that's just the names and addresses of
16 the companies?

17 A. Correct.

18 MR. RICE: Let's just mark that as an exhibit,
19 please, ma'am.

20 (Whereupon, Deposition Exhibit
21 No. 4, Witness Schmidt, was
22 marked for identification, as of
23 this date.)

24 MR. RICE: Q. Mr. Schmidt, Exhibit No. 4 is the

1 list of the names and addresses of the persons who
2 microfilm can be obtained from.

3 A. Correct.

4 Q. Okay. Mr. Schmidt, were copies of these
5 Transactions furnished to the membership of the
6 Council at any point in time?

7 A. Yes.

8 MR. DANIEL B. WHITE: Object to the form of the
9 question.

10 MR. RICE: State your objection, please.

11 MR. DANIEL B. WHITE: Leading.

12 MR. RICE: Q. Were the members of the National
13 Safety Council provided the entire volumes?

14 MR. DANIEL B. WHITE: Object to the form of the
15 question. Calls for matters outside of the
16 knowledge of this witness.

17 MR. RICE: Q. Go ahead and answer it,
18 Mr. Schmidt.

19 A. Restate your question again.

20 Q. Did the National Safety Council provide its
21 members with copies of the Transactions?

22 MR. WHITNEY: I'm going to object insofar as the
23 word "provide." I think the word "provide" here has
24 an inherent vagueness in it that I would object to.

1 MR. RICE: I'll correct your vagueness.

2 MR. GAVIN: My name is William Gavin, and I
3 think that inherent vagueness is that it assumes
4 that the members received them. That's my objection.

5 MR. DANIEL B. WHITE: I would also object that
6 it's leading and calls for matters beyond the -- the
7 question is over broad, and as stated, calls for
8 matters beyond the competence of this witness or
9 outside of his personal knowledge.

10 MR. RICE: Q. Mr. Schmidt, you've been with the
11 National Safety Council since 1965. From that time
12 forward, do you know whether or not copies of these
13 materials have been sent to or any way made
14 available to the members of the National Safety
15 Council?

16 A. Yes.

17 Q. Have they?

18 A. Yes.

19 Q. All right. Prior to 1965, due to your 20
20 years with the National Safety Council, are you
21 aware of whether or not the Transactions of the
22 National Safety Council prior to 1965 were provided
23 to or any way made available to the members?

24 MR. DANIEL B. WHITE: Can we reiterate our

1 previous objections at this point?

2 MR. RICE: Your objections stand.

3 THE WITNESS: Yes.

4 MR. RICE: Q. And such copies were -- how were
5 such copies made available to the members?

6 MR. DANIEL B. WHITE: Same objections as
7 previously made.

8 MR. RICE: Q. Go ahead.

9 A. ~~To~~ To the best of my knowledge, they were made
10 in printed form and mailed to them after the
11 Congress.

12 Q. Would that include the entire volume, the
13 entire bound volume?

14 MR. ALDRIDGE: We have a standing objection on
15 this line of questioning.

16 MR. RICE: No, no standing objection.

17 THE WITNESS: I do not know --

18 MR. ALDRIDGE: Same objection.

19 THE WITNESS: -- if the bound volumes were or
20 not.

21 MR. RICE: Q. But the printed materials --

22 A. Printed materials would be.

23 MR. GAVIN: I object to the leading form of the
24 question.

1 MR. RICE: Q. Let's look at the 1932 volume
2 that you brought with you, please, sir.

3 MR. RILEY: Off the record.

4 (Discussion off the record.)

5 MR. RICE: Q. Mr. Schmidt, you're familiar with
6 these books?

7 A. Yes.

8 Q. Looking at the foreword, the foreword in
9 the book refers to a policy of the National Safety
10 Council concerning mailing or supplying the members
11 with copies of the materials.

12 MR. DANIEL B. WHITE: Object to the form of the
13 question. Leading.

14 MR. RICE: That's fine.

15 Q. Are you and I at the same place in the
16 foreword?

17 A. (No response.)

18 Q. Look at the foreword.

19 A. I'm looking at it.

20 Q. Okay. Does the foreword refer to binding
21 these volumes?

22 A. Do you mean binding into a hard cover?

23 Q. Or in any way supplying them or making them
24 available to members.

1 A. Yes.

2 Q. Could you tell us what the foreword says on
3 that?

4 A. One paragraph --

5 MR. GAVIN: Excuse me. I'm going to object to
6 the question. I don't think you've laid a proper
7 foundation for introduction as to what this book
8 says.

9 MR. PRICE: Q. Okay. Go ahead and answer the
10 question.

11 A. Paragraph 2 of the foreword says that
12 Volume 1 is distributed automatically to all
13 industrial members of the Council. Volume 2 is sent
14 to members who are believed to be interested chiefly
15 in the sessions it contains; however, other members
16 of the Council may obtain Volume 2 upon request.

17 I'd like to read one additional
18 paragraph here also, because I think it clarifies
19 some questions that may come later.

20 "The Transactions are a condensed
21 record of the proceedings of the Congress. The
22 papers and addresses and many of the discussions
23 have been edited to delete extemporaneous matter,
24 abbreviate the less important positions, and

1 emphasize those parts of particular usefulness in
2 promoting effective safety organization and other
3 accident prevention measures. The volumes are
4 therefore somewhat abridged versions, compact,
5 practical, and of particular value to the student,
6 the supervisor, and the executive in achieving more
7 thorough accident prevention success. The original
8 manuscripts are available for additional reference,
9 if desired, from the files of the National Safety
10 Council."

11 I would have to say today that none of
12 these that we are talking about would be available,
13 none of the originals would be.

14 Q. All right. Mr. Schmidt, have these volumes
15 been available in the National Safety Council
16 library for the membership to look at at any point
17 in time --

18 A. Yes.

19 Q. -- since the time they were --

20 A. Put on the shelf.

21 Q. -- put on the shelf?

22 A. Yes.

23 MR. DANIEL B. WHITE: Object to the question.

24 MR. ALDRIDGE: I'll --

1 MR. RICE: Go ahead and state your objection.

2 MR. DANIEL B. WHITE: Object to the form of the
3 question. Beyond the competency of the witness,
4 beyond his personal knowledge.

5 MR. RICE: Mr. Schmidt, you've got to let me ask
6 the questions before you answer them, okay?

7 Q. When you came in 1965, and from that time
8 forward, have these volumes been available for
9 people to look at, members to come into the library
10 and look at?

11 A. Yes.

12 Q. To your knowledge, through your experience
13 with the National Safety Council or any other source
14 of knowledge -- you can identify the source for us,
15 if you would -- have these been available since
16 prior to 1965?

17 A. To the best of my knowledge.

18 MR. ALDRIDGE: I'm sorry --

19 MR. RICE: Q. And are you familiar with the
20 workings of the library --

21 MR. ALDRIDGE: Objection to that question again
22 because it is, once again, calling for matters
23 beyond the competency of this witness to answer.
24 You stated no grounds, also, for his answer.

1 MR. RICE: Q. Mr. Schmidt, you need to tell us
2 why it's your understanding that these books have
3 been made available prior to 1965.

4 A. Well, the library of the Council has been
5 open to the general public, to the members, to
6 students which come, to anyone doing research. The
7 policies of the library, to the best of my knowledge,
8 have not changed in the 20 years that I have been
9 there.

10 Q. Were those policies in effect when you came
11 in in 1965?

12 A. Yes.

13 Q. And did those policies allow or make
14 available these books?

15 A. Yes.

16 Q. Mr. Schmidt, in addition to the Congresses,
17 does the National Safety Council send any
18 publications out to its members?

19 A. The National Safety Council supplies many
20 publications to members.

21 Q. What is the National Safety News?

22 A. The National Safety News is a magazine
23 published monthly by the National Safety Council.

24 Q. Could you tell us how it is circulated?

1 A. It is available to -- let me start over.

2 It is available on subscription to
3 anyone. It is furnished as part of services on
4 certain membership packages, particularly to the
5 industrial member.

6 Q. Do all industrial members get a copy of the
7 National Safety News on a monthly basis?

8 MR. GAVIN: I object to the question. Again it
9 assumes ~~that~~ the members actually receive it, and
10 your question should be directed toward what the
11 Council does.

12 MR. RICE: Q. Does the Council --

13 MR. ALDRIDGE: I further object to your question
14 as not limited in time and scope.

15 MR. RICE: Q. To your knowledge, Mr. Schmidt,
16 does the Council mail or send to the members, all
17 industrial members a copy of the National Safety
18 News on a monthly basis?

19 A. Yes.

20 Q. Do you know how long that procedure has
21 been --

22 A. No.

23 Q. -- taking place?

24 What years do you have knowledge of?

1 A. The current membership package offered to
2 industrial members does provide that as one of the
3 services. It has been that way in the 20 years,
4 approximately, that I have been there.

5 Q. Was it that way when you came in 1965?

6 A. Yes.

7 Q. Are you familiar with the -- let me restate
8 that question.

9 Are there bound volumes of this
10 monthly magazine available by the National Safety
11 Council?

12 A. In our library.

13 Q. Are you familiar with how far back those go?

14 A. I would assume they go back to the
15 beginning of the magazine.

16 Q. Do you know of your own knowledge?

17 A. I did not research that question originally
18 for you.

19 Q. All right. Let's go on back to the
20 Congress. Can you explain to us briefly how the
21 volumes are set up, Volume 1, Volume 2, and how the
22 Transactions are set up?

23 MR. DANIEL B. WHITE: Object to the form of the
24 question. Over broad.

1 MR. RICE: Q. Go ahead and answer the question.

2 A. I object, too, because there have been many
3 changes in it, and you have not given me a point in
4 time, unfortunately.

5 Q. Well, let's talk about the '30s and '40s.

6 A. I was not there. I don't want to answer
7 that for you.

8 Q. Are you familiar with the books,
9 Mr. Schmidt?

10 A. Yes.

11 Q. Could I explain for me from your
12 familiarity with the books how they are set up?

13 A. In general, in the period of time in the
14 '30s and '40s, the industrial related, which is a
15 broad term, was one volume, the non-industrial area
16 was put into another volume. That, in very simple
17 terms, is what was done at that point. But there
18 were changes made in it.

19 Q. Do you know when the changes were made?

20 A. No, I do not.

21 Q. Okay. Could you tell us what kind of
22 changes you're familiar with that have been made?

23 A. The primary change -- I shouldn't call it
24 change. One of the ways that it was put together

1 was that the -- a major or a couple of major
2 industrial sections were put together as a volume.
3 These volumes were then printed, they were available
4 separately if you desired, or they could be
5 purchased in toto. These were made available to
6 members or to non-members, whoever would like to get
7 them.

8 Q. Do you know approximately when that
9 procedure started?

10 A. I do not.

11 Q. Has it been since your time with the
12 National Safety Council?

13 A. When I started, they were available in
14 separate volumes.

15 Q. Okay. Mr. Schmidt, as part of the subpoena
16 that was served upon you, you were provided with a
17 list of companies. Do you recall that?

18 A. Yes.

19 Q. At my request, have you reviewed the
20 records of the National Safety Council to determine
21 if any of those companies were ever a member of the
22 National Safety Council?

23 A. Well, as I explained in my response to this,
24 we did not determine whether a company was ever a

1 member unless they are presently members.

2 Q. Would you explain that for us, please?

3 A. The only records available for membership
4 in the Council is what is currently available. And
5 in answer to the subpoena, I checked the computer
6 printout which I used, dated March 6th of 1984, that
7 lists those companies currently a member. If a
8 company or an organization ceased membership and
9 they were ~~not~~ membership at that date, I would have
10 no way of determining.

11 Q. As I understand it, if they were a member
12 currently, you would have the date they originally
13 joined --

14 A. That is correct.

15 Q. -- and their present membership.

16 A. I would have their continuous membership
17 from date of joining to the present. If there were
18 gaps within that time frame, I only picked out the
19 last time they rejoined.

20 Q. All right. By way of example, if a company
21 was a member from 1930 to 1950, then dropped out
22 from '50 to '60, and rejoined in 1960 and was
23 currently a member, your records would reflect what?

24 A. 1960.

1 Q. 1960. So you wouldn't have any record of
2 their earlier membership.

3 A. That is correct.

4 Q. All right. So if a company is listed on
5 your records as being a member now, and it has a
6 date of original -- or, of --

7 A. Last joining.

8 Q. -- last joining, we know they've been a
9 member continuously since that time.

10 A. That's correct.

11 Q. All right. Let's start at the top of the
12 page, please, sir. And this is Appendix A to the
13 Exhibit 1 that was marked.

14 Let's start on the left-hand side
15 where it says, "Railroad Companies."

16 A. Yes.

17 Q. And if you would, please tell me what
18 information your records reflect concerning
19 membership of each of the companies so listed.

20 MR. ALDRIDGE: I --

21 MR. GAVIN: Excuse me. I'm going to object to
22 what his records show. I don't believe you've
23 stated an adequate foundation for the introduction
24 of this hearsay evidence. That's all.

1 MR. RICE: That's fine.

2 Q. You can answer the question.

3 A. The first one is Illinois Central Gulf
4 Railroad Company. Our records indicate they joined
5 in 1916.

6 I'm going to skip the next one because
7 of some joining, and I'll come back to it.

8 Q. The next one you're skipping right now is
9 the Chesapeake & Ohio Railroad Company?

10 A. Is the Chesapeake & Ohio Railroad Company.

11 Q. All right. The Norfolk & Western Railroad
12 Company?

13 A. 1980.

14 The Southern Railroad Company, 1940.
15 Burlington Northern Railroad Company,
16 1937.

17 Chicago & North Western Railroad
18 Company, 1981.

19 Seaboard Systems Railroad Company,
20 Incorporated, 1918.

21 I find no record for Louisville &
22 Nashville Railroad Company; Penn Central
23 Transportation Company.

24 Consolidated Rail Corporation, 1980.

1 National Railroad Passenger
2 Corporation (Amtrak), 1973.

3 I find no record for the Reading
4 Corporation.

5 Baltimore & Ohio I'll come back to in
6 a minute.

7 Denver and Rio Grande Railroad Company,
8 1944.

9 Western Maryland Railroad Company I'll
10 come back to.

11 Union Pacific Railroad Company, 1913.

12 Missouri Pacific Railroad Company,
13 1918.

14 Southern Pacific Transportation
15 Company, 1943.

16 Those three that I skipped, Chesapeake
17 & Ohio Railroad Company, Baltimore & Ohio Railroad
18 Company, Western Maryland Railroad Company are now
19 listed in our membership under the Chessie System,
20 and the date given there is 1979.

21 Q. In addition to the railroad companies, I
22 asked you to look at a group of companies I
23 classified as non-railroad companies. Were you able
24 to check your records concerning membership of those

1 companies?

2 A. Yes.

3 MR. ORLANSKY: My name is Fred Orlansky. We'd
4 like to interpose the same objections to the non-
5 railroad companies as the railroads had to the
6 naming of their companies.

7 MR. RICE: All right.

8 Q. Go ahead and tell us what your records
9 reflect on that, please, sir.

10 A. I'm going to state as a preface of this we
11 took the names as given here, with one correction
12 which was given. Thus, if any of these companies,
13 for reasons that we do not know, are part of another
14 corporation, or have a different name than given
15 here, then I would not find it unless that name is
16 given to me, which it wasn't. And I'm going to go
17 through them.

18 AS&C, Incorporated, we have no record
19 on.

20 Q. That's AC&S?

21 A. Excuse me, AC&S, Incorporated.

22 Armstrong World Industries, 1944.

23 Benjamin Foster Company, no record.

24 Canadian --

1 MR. DANIEL B. WHITE: Can I ask that you slow
2 down just a little bit?

3 THE WITNESS: All right.

4 Benjamin Foster Company, no record.

5 Canadian Johns-Manville, no record.

6 The Manville Corporation, 1928.

7 Carey Canada, no record.

8 Celotex Corporation, no record.

9 ~~Combustion Engineering, Incorporated,~~
10 1916.

11 Covil Corporation, no record.

12 Eagle-Picher, Incorporated, 1949.

13 Fiberboard Corporation, no record.

14 Empire-Ace Company, no record.

15 Forty-Eight Insulations, Incorporated,
16 no record.

17 The next one is where there was a
18 correction made for us. It originally said TAF.

19 The correct letters are GAF Corporation, 1940.

20 Garlock, Incorporated, 1922.

21 H. K. Porter, Incorporated, no record.

22 J. R. Deans Company, no record.

23 The Keene Corporation, 1971.

24 Lake Asbestos, no record.

1 National Gypsum Corporation, 1926.
2 North Brothers, Incorporated, no
3 record.
4 Owens Corning Fiberglas, Incorporated,
5 1943.
6 Owens-Illinois, Incorporated, 1976.
7 Pittsburgh Corning, Incorporated, 1981.
8 Raymark, Incorporated, 1936.
9 ~~Rockwool~~ Rockwool Manufacturing Company, no
10 record.
11 Standard Asbestos Company, no record.
12 Turner Newall, Limited, no record.
13 U.S. Mineral Company, no record.
14 Vinasco Corporation, no record.
15 Southern Textile Company, no record.
16 Turner Asbestos Fibers, Limited, no
17 record.
18 Bell Asbestos Mines, no record.
19 Asbestos Corporation, Limited, 1952.
20 Nicolet, Incorporated, no record.
21 Metropolitan Life Insurance Company,
22 1914.
23 I do have two copies of these that I
24 just read from.

1 MR. RICE: All right. Let's mark this Exhibit 5,
2 please.

3 (Whereupon, Deposition Exhibit
4 No. 5, Witness Schmidt,
5 was marked for identification,
6 as of this date.)

7 MR. RICE: I'm requesting that all exhibits be
8 attached to the original and the original copy.

9 MR. GAVIN: Excuse me, Mr. Rice. My objection
10 to his testimony of improper foundation I would like
11 to reiterate to the Deposition Exhibit No. 5.

12 MR. RICE: Q. Mr. Schmidt, at my request, did
13 you also check the company United States Gypsum?

14 A. You made that request yesterday, and I did
15 look this morning. Our record indicates that they
16 became members in 1914.

17 Q. This record that you're referring to, is
18 this a computer printout?

19 A. This was a computer printout which is made
20 available to staff people of the Council for
21 whatever need we may have.

22 Q. And is a copy of that computer printout
23 available? Could it be made available?

24 A. I would assume it could be made available.

1 Now, let me add to it, the one that I
2 used may not be available anymore.

3 Q. But the --

4 A. A current one could be.

5 I don't believe that we could
6 reconstruct the March 6th record that I used because
7 we do not retain it that way.

8 Q. But the procedure which you would go
9 through to determine years of membership would be
10 the same for any --

11 A. Yes.

12 Q. -- week.

13 A. That's correct.

14 Q. Is this record, this computer printout, is
15 it something that you get on a regular basis?

16 A. It's normally provided to staff
17 approximately monthly.

18 Q. And is it the kind of material that you use
19 in a daily fashion to determine membership?

20 A. Yes, and other factors.

21 Q. If anyone wanted to know the question as to
22 whether another company was a member of the National
23 Safety Council, could they provide you -- or,
24 request to provide that information?

1 A. By subpoena only.

2 Q. Is it the policy of the National Safety
3 Council to respond to no inquiries of that nature
4 except under legal process?

5 A. That's correct.

6 Q. Mr. Schmidt, showing you what's been marked
7 as Exhibit No. 3, which is a subpoena issued out of
8 the State of Illinois Circuit Court in St. Clair
9 County, ~~reading~~, the request is for "mailing list
10 indicating all railroads and railroad organizations
11 who received the general Volume No. 1 of the annual
12 safety congresses of the National Safety Council for
13 the years 1932 through 1942, inclusive, and 1961."
14 It also requests "the membership list of all
15 railroad or railroad affiliated organizations who
16 were members of the National Safety Council for the
17 years 1930 through 1982."

18 Would you tell us what procedure you
19 went through to comply with that subpoena?

20 MR. GAVIN: Again, Mr. Rice, I'd object to the
21 question because of the word "received." It assumes
22 that these things were received.

23 MR. RICE: I just asked him what he did to
24 comply with the subpoena.

1 MR. ALDRIDGE: I would like to interpose another
2 objection. F. Saunders Aldridge on behalf of the
3 Seaboard System.

4 With respect to any documents other
5 than the Transactions, of which you advised me prior
6 to this deposition, my subpoena -- or, excuse me, my
7 Notice of Deposition did not contain any list of
8 documents, and to the extent that we are reviewing
9 any documents which were not so listed, I believe
10 that it may well be in violation of Rule 30, and
11 perhaps nonresponsive to outstanding requests for
12 production of documents or interrogatories.

13 MR. RICE: In response to Mr. Aldridge, just for
14 the record, so it will be clear at this point, this
15 deposition was subject of a discussion with Judge
16 Ballentine (phonetic) at the pretrial conference
17 held, at which time it was discussed what would be
18 done at this deposition. Mr. Aldridge was not
19 present, but his partner Mr. Jordan was, and that
20 record can stand for itself and everybody can
21 reserve all objections.

22 MR. ALDRIDGE: Excuse me, Mr. Rice. Were you
23 suggesting that you itemized the documents that
24 would be reviewed at that time?

1 MR. RICE: No, but --

2 MR. ALDRIDGE: Just to --

3 MR. RICE: -- at that time it was discussed that
4 we were coming up looking for Transactions, and not
5 only new documents, but if there were other
6 documents, we did certainly request them and we did
7 have them under subpoena.

8 MR. ALDRIDGE: Okay.

9 MR. DANIEL B. WHITE: On behalf of all railroads,
10 however, I would like to reiterate Mr. Aldridge's
11 objection, which, as far as I know, no other
12 railroads were present at any hearing where any
13 discussion was made concerning this notice.

14 MR. RICE: In response to that, Mr. White had
15 ample opportunity himself, had he himself reviewed
16 the documents of the National Safety Council under a
17 previous subpoena, and whether there are other
18 documents up there that they want to look at, more
19 power to them, they can look at them.

20 MR. DANIEL B. WHITE: May I just clarify this.
21 We are getting into making lists and that sort of
22 thing. Those sorts of materials were not subject to
23 subpoenas that we were here on last summer, and as
24 far as that's concerned, Mr. Rice is incorrect.

1 MR. ALDRIDGE: Just one additional clarification.
2 I think that what we're getting to is that we are
3 reserving, to the extent of these other documents,
4 the possibility of further cross-examination of this
5 deponent, should we deem that necessary.

6 MR. RICE: Q. Mr. Schmidt, do you remember what
7 my question was?

8 A. I can give you an answer. It may not reply
9 totally to it. I would like to just address the
10 issue a little bit because I can clarify a couple of
11 things for you.

12 MR. ALDRIDGE: Sir, can you just answer his
13 question first?

14 MR. RICE: Q. You have to answer my question
15 first.

16 A. Well, I don't know whether I'm addressing
17 it or not.

18 Q. Tell me what you did to comply with that
19 subpoena when it was served upon you.

20 A. In order to set the stage, I've got to make
21 a couple of additional statements. First of all,
22 the business records of the Council are only kept
23 for two years and the current year, so the business
24 files indicating what was sent to members, what was

1 purchased by members or purchased by others are only
2 currently available back two complete years plus the
3 current year. So to respond to this as to what was
4 sent to members back in the '30s and '40s, there is
5 no way that the Council, through our business
6 records, can determine that information.

7 Q. How about the membership?

8 A. The membership, I've reiterated to you
9 earlier, lists are not maintained of previous years.
10 The only current list we have is the list we are
11 currently using.

12 Q. And that's the list that you use in a daily
13 fashion for the National Safety Council?

14 A. That's correct.

15 Q. Okay. Thanks, sir.

16 Are there any ways to determine
17 through the National Safety Council the gaps in time
18 that you referred to as to when someone may have not
19 been a member?

20 MR. ALDRIDGE: I object to the form of the
21 question. I find the question to be very confusing,
22 and I'm not sure the deponent referred to gaps in
23 time.

24 MR. RICE: Q. Didn't you refer to gaps in

1 membership time?

2 A. When I was discussing membership, I talked
3 about the possibility if somebody is a member from
4 1910 to 1920, he quit for 10 years, he rejoined.
5 Are you talking about this gap?

6 Q. Yes, sir. If there's a gap in membership,
7 continuous membership, is there any way, through the
8 National Safety Council, to determine if a gap
9 existed? and if so, when it existed?

10 A. There is no way of determining gaps which
11 may have existed back in the beginning of time. It
12 is possible within the last few years, because we
13 may have retained some of these records for the
14 purpose of resoliciting a member who may have
15 dropped out in the last couple of years. Where
16 those records would be right now, I don't know.

17 Q. You were asked in the second subpoena that
18 was served, again out of St. Clair County, Illinois,
19 "to produce to plaintiff's attorney certain
20 instruments of writing purporting to be or indicate
21 the membership history of the corporations,
22 companies, or railroads listed on the attached sheet
23 which is incorporated as Appendix A," which is the
24 sheet we just discussed with the names.

1 A. Yes.

2 Q. Would you tell us what documents you have
3 to report or provide to us as a result of that
4 subpoena?

5 A. I did not bring any supporting documents,
6 except I reviewed our computer printout of members
7 based on names you supplied to us, Appendix A.

8 Q. Would you make available to this court
9 reporter's copy of that computer printout, please,
10 sir, or a computer printout of the current --

11 A. I can make available a current printout.

12 Q. I would ask that that be done, and that the
13 printout be affixed to the original deposition --

14 A. I think that --

15 Q. Is this printout big, or little?

16 A. Big. Massive. 13,000 names.

17 MR. MORRIS: Jeff Morris for Keene.

18 I would object to the attaching of
19 that exhibit to this deposition because it has no
20 relationship to this man's testimony, preparing his
21 testimony on the basis of a printout that's dated
22 sometime in March, which, by his own testimony, is
23 no longer available.

24 MR. RICE: His own testimony is he doesn't know

1 if it's available or not.

2 MR. DANIEL B. WHITE: And I would object, too.

3 The computer is obviously hearsay.

4 MR. RICE: You want the printout -- you want the
5 computer?

6 Q. Would you make a copy -- these become -- as
7 I understand it, Mr. Schmidt, at the end of a -- the
8 current month, a new printout will come out and last
9 month's printout is no longer of use to you for your
10 purposes in the National Safety Council.

11 A. That's correct.

12 Q. So if you gave us a copy of March or April's
13 printout when you finished your use of it, it would
14 be no problem.

15 A. I said earlier that I would. I'm going to
16 retract that because I think we need to consult
17 would our counsel on this, the fact that I don't
18 think that you need all of this information.

19 Q. That's fine. You're talking Mr. Rosenfield?

20 A. That's correct.

21 Q. All right. We'll work that out.

22 I won't mark it as an exhibit, I'll
23 just get a copy of it.

24 Mr. Schmidt, are these volumes and

1 Transactions of the National Safety Council
2 presently available at 444 North Michigan Avenue in
3 Chicago?

4 A. Yes.

5 Q. And are they there today?

6 A. Yes.

7 Q. And are -- these volumes, do they run
8 continuously from some point in time to -- can you
9 tell me the dates on which they run?

10 A. To the best of my knowledge, they run from
11 1912 to 1978.

12 Q. All right. Mr. Schmidt, to your knowledge,
13 has any of the companies that we went over in
14 Exhibit A to the subpoena ever made inquiry of the
15 National Safety Council concerning what information
16 the Council had available on asbestos and asbestos-
17 related diseases?

18 MR. RILEY: Objection to the form of the
19 question.

20 MR. DANIEL B. WHITE: Object to the form of the
21 question. Lacks foundation.

22 MR. BURKE: May it please the Court, at this
23 time -- of course, I realize this is a deposition --
24 may I have that question read back.

1 (Record read as requested.)

2 MR. ALDRIDGE: I would impose another objection
3 as beyond the scope of the notice.

4 MR. GAVIN: Bill Gavin.

5 It's not limited in time.

6 MR. ALDRIDGE: F. Saunders Aldridge again.

7 This notice is before authentication,
8 and I think it makes some mention of membership only.

9 MR. PRICE: Anyone want to say anything else?

10 (No response.)

11 MR. RICE: Q. Answer the question, Mr. Schmidt.

12 A. To the best of my knowledge, I really do
13 not know because, very simply, I don't handle all
14 inquiries to the Council, which are extremely
15 voluminous, nor do we retain those records.

16 Q. So to your knowledge, you don't have any --
17 no one has done that, to your knowledge.

18 MR. RILEY: Same objection.

19 MR. DANIEL B. WHITE: Objection --

20 MR. GAVIN: Objection. That's a misstatement of
21 his statement.

22 MR. DANIEL B. WHITE: Objection. Argumentative.

23 MR. GAVIN: And my objection was it's a
24 misrepresentation of what he just said.

1 THE WITNESS: Let's go back to what I said.

2 I'd like to hear what I said earlier.

3 MR. RICE: Q. Mr. Schmidt, the question, very
4 simply --

5 A. No, I want to go back -- I want to hear
6 what I said earlier.

7 MR. DANIEL B. WHITE: Please read the witness'
8 previous answer.

9 (Record read as requested.)

10 MR. RICE: Q. And my question to you,
11 Mr. Schmidt, which is what I want answered, is do
12 you have any knowledge as to whether any of these
13 companies ever inquired of the National Safety
14 Council about asbestos or asbestos disease?

15 MR. RILEY: Same objection.

16 MR. ALDRIDGE: Same objection.

17 MR. RILEY: Form of the question.

18 MR. ALDRIDGE: Same objections as to the
19 previous question.

20 THE WITNESS: My previous statement will have to
21 stand in part. There have been inquiries made to us
22 for information. Most of the -- I don't know how to
23 answer this, because it's difficult.

24 Let me go back to -- I don't know

1 which exhibit it is. The exhibit that you gave us --
2 or, requested in February, for example, was a
3 request for information. It was brought to the
4 Council's attention somewhere in that, and maybe
5 even previous, that the subject area being sought
6 was on asbestos. Now, the subpoena itself does not
7 specifically identify that specific information.

8 Going back even further, it is
9 possible, and I -- it's possible that I handled
10 inquiries from this kind of baseline of information
11 previous to this. It is not a situation -- the
12 whole area is, very simply, we don't keep a total
13 tab of what everybody asks. I could have -- you
14 know, I could have answered an inquiry, for example,
15 on the phone to someone, and I have no record of it;
16 he called today, I responded yesterday, and it's
17 gone.

18 MR. RICE: Q. Do you have any present
19 recollection of ever having such a conversation with
20 any of the companies or representatives of the
21 companies that are on Appendix A?

22 MR. RILEY: Object to the form of the question.

23 MR. DANIEL B. WHITE: Object to the form of the
24 question.

1 THE WITNESS: I cannot answer that question for
2 you as it is.

3 MR. RICE: Q. Mr. Schmidt, either you have a
4 recollection, or you don't have a recollection. It
5 doesn't matter which one, I just want to know which
6 one.

7 MR. DANIEL B. WHITE: Object to the form of the
8 question. Argumentative.

9 THE WITNESS: I gave my statement earlier. I
10 prefer to let that stand.

11 MR. DANIEL B. WHITE: Argumentative. The
12 question has been asked and answered.

13 MR. RICE: Q. Mr. Schmidt, have you ever talked
14 to Mr. White about asbestos?

15 A. Mr. White, if I recall, was in our office
16 some time ago --

17 MR. DAVID B. WHITE: Excuse me. I'd like a
18 clarification as to which Mr. White.

19 THE WITNESS: Point well made.

20 MR. RICE: Q. Mr. Danny White.

21 A. Mr. White was in our office, if I recall,
22 last year sometime.

23 Q. At that time, these books were made
24 available?

1 A. He worked with our librarian. They could
2 have been made available to him at that time.

3 Q. Have you ever talked with Mr. Aldridge?

4 A. I've talked with him on the phone.

5 Q. Do you recall ever talking with anyone else
6 by name?

7 A. Well, not hearing anybody's name here in
8 addition, I couldn't answer that question.

9 MR. DANIEL B. WHITE: May I say on the record
10 that I was in Mr. -- in the library of the National
11 Safety Council pursuant to a discovery deposition
12 notice served by Mr. Rice in a case pending in South
13 Carolina, and Mr. John Roven was also present.

14 MR. RICE: That's correct. No question about it.

15 Q. Since that time, has anyone from Norfolk &
16 Western Railroad ever inquired of the National
17 Safety Council about information they had on
18 diseases caused by asbestos?

19 A. I can't answer that question.

20 Q. Do you have any knowledge of anyone from
21 the Norfolk & Western ever making inquiry since that
22 time?

23 A. That was not covered in the original
24 subpoena. I can't answer it.

1 Q. Well, sir, I'm asking you knowledge. Your
2 knowledge is covered by the subpoena.

3 MR. DANIEL B. WHITE: Object to the form of the
4 question. It's been asked and answered.

5 MR. ALDRIDGE: It's also beyond the scope of
6 this deposition.

7 THE WITNESS: That's right.

8 MR. RICE: Well, Mr. Aldridge, the deposition
9 was noticed for all purposes under the federal rules.
10 I'm not sure what your definition of the scope of a
11 deposition is under federal rules, but I'll let that
12 stand. I don't understand your objection at all
13 saying it's not within the scope of the deposition.

14 MR. DANIEL B. WHITE: Just as clarification on
15 the record at this point, the deposition notice
16 states, in part, "The purpose of this deposition is
17 to have Mr. Schmidt produce annals of the National
18 Safety Council and other publications present in the
19 National Safety Council library and to authenticate
20 the same materials. The plaintiff further intends
21 to inquire of the witness any knowledge he has
22 concerning the membership of the National Safety
23 Council."

24 MR. RICE: That's right. And I want to know

1 what knowledge he has concerning the membership,
2 which Mr. Aldridge's client is a member. I want to
3 know what knowledge he has.

4 MR. DANIEL B. WHITE: I simply wanted to read
5 that on the record at this point, that statement on
6 the record.

7 MR. RICE: The notice is a part of the record.
8 It's attached.

9 Q. Mr. Schmidt, have you reviewed the records
10 of the National Safety Council in any way to
11 determine what other materials may be available from
12 the National Safety Council that deal with asbestos
13 or asbestos-related disease?

14 A. In the scope of the two which were
15 identified here, that was not specifically inquired,
16 so we didn't, no.

17 Q. You did not do that?

18 A. We did not do that.

19 MR. RICE: At this time, it's my intentions to
20 go to the National Safety Council and identify these
21 volumes on the record. I would propose that we
22 finish cross-examination here, and then move over
23 there, but I'm open to any suggestion. If anybody
24 has an objection to that, I'll go over there and

1 identify the records, and then we can either come
2 back here, or do it over there. So I'm open for
3 suggestions.

4 MR. DANIEL B. WHITE: Could you define for me,
5 just as a point of information, how you intend to
6 identify the Transactions on the record without
7 attaching them as a copy?

8 MR. RICE: I'm going to pick up the book, I'm
9 going to ~~read~~ it into the record, and he's going to
10 take the microfilm, and I'm going to ask him to
11 certify the microfilm.

12 MR. DANIEL B. WHITE: You're going to read the
13 entire Transactions, or portions?

14 MR. RICE: Read the title, Transactions of the
15 National Safety Council 21st Annual Safety Congress,
16 and get the date, as Volume 1, it's going to be
17 marked, and then we will use the microfilm, which he
18 will -- I will ask Mr. Schmidt to certify the
19 microfilm when it's available from his people, and
20 I'll recess the deposition, come back up here, if
21 necessary, to get the microfilm certified.

22 MR. BURKE: That will be the extent of the
23 deposition, then.

24 MR. RICE: Yes.

1 MR. BURKE: As a point of information, Counsel --

2 MR. DANIEL B. WHITE: We would like to, as far
3 as I'm concerned, wait to do our cross-examination
4 until such time as you've completed your direct
5 examination.

6 MR. RICE: That's fine.

7 It's 12:20, Mr. Schmidt. What time do
8 you want to reconvene at the library?

9 THE WITNESS: 11:20 our time.

10 MR. RICE: Excuse me. I'm on South Carolina
11 time still.

12 What time do you want to reconvene
13 over there?

14 THE WITNESS: How much time are we going to need
15 over there?

16 MR. RICE: Probably 30 minutes. Do you want to
17 go now? Do you want us to meet you over there?

18 THE WITNESS: Does everyone present plan to be
19 in our library at that time? Is that the present
20 plan of everybody here?

21 MR. DANIEL B. WHITE: We might say, it's very
22 small. It's really not a library, it's an area
23 about that (indicating) big.

24 THE WITNESS: Where the documents are that

1 you're interested in.

2 MR. MELIA: Just for clarification, you're not
3 going into the contents of --

4 MR. RICE: We're just going over to identify the
5 volumes for the record.

6 MR. MELIA: That have already been identified,
7 the microfilm, and --

8 MR. MURPHY: Why can't that be done later?

9 MS. CASTAGNOLI: Do you want a show of hands who
10 will be going over? I'll be there.

11 MR. RICE: We're just going to get a count.
12 This will not be on the record.

13 (Show of hands.)

14 MR. RICE: About everybody. It's about 25.

15 THE WITNESS: Well, if they can be satisfied
16 with taking a glance to see that they are there, we
17 can do it right there in the library and can
18 probably do it, you know, within a few minutes. If
19 they want them laid out on a table so they can see
20 them in toto and everybody see them at one site, why,
21 we're going to have to do a little work.

22 MR. RILEY: Can we go off the record for a
23 second?

24 (Discussion off the record.)

1 MR. RICE: Mr. Schmidt, it's 11:30. I would ask
2 if you would take the court reporter with you and go
3 over to the National Safety Council, and we'll
4 reconvene over there in 30 minutes. Would that be
5 fair?

6 THE WITNESS: Okay.

7 MR. RICE: We'll be in the library, 25th floor,
8 444 North Michigan, right across the street.

9 THE WITNESS: With the number of people here,
10 there is a little lobby there, it's going to be a
11 little bit full. Why don't you --

12 MR. RICE: We'll wait by the elevators.

13 THE WITNESS: Yes, why don't you all wait there
14 as a group until we're all set in the library, and
15 then we'll have you all come in as a group. It's
16 going to be a crowd, unfortunately.

17 MR. RICE: All right. We will be come back here
18 for their cross-examination, if they want to do it.

19 (Whereupon, a recess was taken,
20 and the deposition resumed at
21 the National Safety Council,
22 444 North Michigan Avenue,
23 Chicago, Illinois.)
24

1 (Whereupon, Deposition Exhibits
2 Nos. 6 thru 20, inclusive,
3 Witness Schmidt, were marked for
4 identification, as of this date.)

5 MR. RICE: Let's go back on the record.

6 Q. Mr. Schmidt, we have reconvened the
7 deposition at the library of the National Safety
8 Council. Could you tell us where we are, please,
9 what part of the library?

10 A. We're in the library.

11 Q. What part of the library are we in?

12 A. The area in which we've stored a number of
13 our historical volumes, including the National
14 Safety Council Transactions and the National Safety
15 News magazines bound volumes that are library copies.

16 Q. Would you please identify for us on the
17 record by pointing out to the counsel that are here
18 assembled which books represent the proceedings of
19 the National Safety Congress or the Transactions of
20 the National Safety Congress?

21 A. The Transactions begin over here on this
22 shelf (indicating), which happens to be the very
23 beginning one, a very historical book of 1913 --
24 '12 here, and continue on down here to 1978, which

1 is the last volume that we put together.

2 Q. Mr. Schmidt, would you please point out for
3 the record the volumes beginning in 1930?

4 A. Point them out, or take them out?

5 Q. Take them out.

6 A. All right. Well, I assume this is Volume 1.

7 This is Volume 1, Congress Transactions
8 of 1930, which was held in Pittsburgh in October of
9 1930.

10 Q. And how many volumes are there from the
11 year 1930?

12 A. Three volumes from 1930.

13 Q. Mr. Schmidt, can you tell me what this
14 (indicating) is, please, sir?

15 A. This is a microfilm of Volumes 1 through 3
16 1930. It's a duplicate we had made of these records
17 here.

18 Q. And let's mark that as Exhibit No. 6 to the
19 deposition, please, as so marked.

20 Would you please pull the volumes from
21 1931.

22 A. This is going to be a long procedure, I'll
23 tell you that.

24 This (indicating) is 1931 volume. And

1 I have to look because I don't -- I can't tell them
2 by looking totally from the outside.

3 This (indicating) is 1931 volume.

4 This is perhaps a duplicate of that one.

5 1931, this must be Volume 2.

6 I don't know whether there's a third
7 volume on that one or not.

8 This (indicating) is 1932 volume, one
9 more ahead. There should have been two volumes from
10 1931.

11 Q. Are those the volumes of the National
12 Safety Congress for the year 1931?

13 A. Yes.

14 MR. DANIEL B. WHITE: Excuse me. How many
15 volumes for 1931?

16 THE WITNESS: Two. Volume 1 and 2, 1931 --
17 excuse me. Let me restart. 1931 Volume 1, through
18 1932 Volume 2.

19 MR. RICE: Q. And is that a microfilm?

20 A. This is a microfilm copy of what we have.

21 Q. Could you tell us where these microfilm
22 copies came from?

23 A. They're stored in another library in a
24 cabinet not far from here.

1 Q. Are these records kept in the normal course
2 of business of the National Safety Council?

3 A. Yes.

4 Q. The volume -- the microfilm we looked at
5 for 1931 Volume 1, through 1932 Volume 2, that's
6 what we've marked as Exhibit No. 7?

7 A. Correct.

8 Q. And could you tell us which books in
9 addition to the ones you point out for 1931 are
10 included on that microfilm?

11 A. That was Volume 1 of '32, Volume 2 of '32,
12 would be these two books here (indicating).

13 Q. So on Exhibit No. 7 --

14 A. 7, yes.

15 Q. -- we have 1931 and 1932 Congresses.

16 A. Correct.

17 Q. Okay. Thank you, sir.

18 Could you tell me, please, sir --
19 identify this (indicating) for the record.

20 A. Congress Transactions microfilm 1933
21 Volume 1, through 1936 Volume 2.

22 Q. And is that --

23 A. Exhibit No. 8.

24 Q. Is that a microfilm kept in the normal

1 course of business of the National Safety Council?

2 A. Yes.

3 Q. And were those so kept today when we came
4 here?

5 A. Yes.

6 Q. All right. Mr. Schmidt, could you tell us
7 which volumes that microfilm covers?

8 A. Well, it's got -- let me see.

9 MR. DANIEL B. WHITE: Object to the form of the
10 question.

11 THE WITNESS: 1933 Volume 1, 1934 Volume 1, 1933
12 and 1934 Volumes 2, 1935 Volume 1, 1935 Volume 2,
13 1936 Volume 1, 1936 Volume 2, which is the same as
14 that (indicating) particular one.

15 MR. RICE: Q. Mr. Schmidt, do you know these --
16 what we have marked as Exhibit No. 8, do you know
17 whether or not it is a microfilm of the volumes you
18 just identified?

19 A. Yes, these are microfilm of these volumes.

20 Q. All right.

21 A. '33 through '36.

22 Q. Thank you, sir.

23 MR. DANIEL B. WHITE: May the record reflect at
24 this point that in responding to the questions,

1 Mr. Schmidt is simply reading what is written on the
2 outside of the microfilm boxes.

3 MR. RICE: Q. Mr. Schmidt, do you know what's
4 in these microfilm boxes?

5 A. These are the Transactions of the National
6 Safety Congress.

7 Q. And do you have personal knowledge of that?

8 A. I've used them.

9 Q. Thank you, sir.

10 Could you tell us what Exhibit No. 9
11 is?

12 A. Exhibit No. 9, Congress Transactions 1937
13 Volume 1 through 1938 Volume 2.

14 Q. Could you tell us from your own personal
15 knowledge which volumes -- identify which volumes of
16 the Transactions are contained on Exhibit No. 9.

17 A. Volume 1, 1937 is here, and Volume 2 of '37
18 is here, and Volumes 1 and 2 of '38 are here.

19 Q. And are those volumes of the National
20 Safety Congress?

21 A. These are volumes of the National Safety
22 Council library.

23 Q. Could you identify for us, please, what's
24 been marked Exhibit No. 10?

1 A. Exhibit 10 is marked as National Safety
2 Council Transactions, October 1939 - October 1940.

3 Q. Could you please identify for us which
4 volumes of the Congress are contained on that
5 microfilm by pointing out the books to counsel.

6 A. These two (indicating) are Volumes 1 and 2
7 of '39, Volume 2 (indicating) of 1940, and Volume 1
8 (indicating) of 1940.

9 MR. DANIEL B. WHITE: Joe, I'm willing to
10 stipulate, at least on behalf of my client, that
11 Mr. Schmidt will continue this exercise through 15
12 microfilms numbered consecutively from 6 through 20,
13 and that these microfilms will be identified by
14 Mr. Schmidt from reading the exterior of the
15 microfilm boxes, the microfilms for the Transactions
16 through 1961.

17 MR. RICE: Are you willing to stipulate that the
18 microfilm that's on there is in fact the copy of the
19 books?

20 MR. DANIEL B. WHITE: I'm willing to stipulate
21 that he will continue testifying as he has
22 previously testified.

23 MR. RICE: We want the microfilms, unless you
24 want to stipulate to them.

1 MR. DANIEL B. WHITE: No, I can't stipulate to
2 his testimony.

3 MR. RICE: My question is, will you or will the
4 railroad defendants or the defendants here stipulate
5 that this is a microfilm copy of what it represents
6 to be on the outside of the box?

7 MR. WHITNEY: Craig Whitney.

8 I won't stipulate to that.

9 MR. RICE: You will not?

10 MR. WHITNEY: No. I can't until I see the books.

11 MR. DANIEL B. WHITE: As I indicated previously,
12 I'm willing to stipulate that Mr. Schmidt will
13 continue this exercise that we're going through,
14 which I personally think is a waste of time, up
15 through Exhibit No. 20, which is 1961, and that his
16 testimony about the succeeding exhibits will be the
17 same except for the years changing.

18 MR. RICE: Will everyone here so stipulate?

19 MS. CASTAGNOLI: Sue Castagnoli.

20 As to his testimony, not as to the
21 contents of the microfilm.

22 MR. DANIEL B. WHITE: Yes, we are making it
23 clear that his testimony will continue to be; that
24 we are not stipulating to the contents of the box or

1 the contents of the microfilm.

2 MR. RICE: All right.

3 Q. Mr. Schmidt, we have before us 15 rolls of
4 microfilm. Do you know of your own personal
5 knowledge, sir, that these are true and accurate
6 microfilm copies of the Transactions of the National
7 Safety Congress from 1930 through 1961, inclusive?

8 MR. DANIEL B. WHITE: Object to the form of the
9 question.

10 MR. RICE: Q. Do you have that knowledge, sir?

11 A. No.

12 MR. RICE: All right. Let's go to the microfilm
13 machines.

14 MR. DANIEL B. WHITE: I guess I shouldn't have
15 checked out.

16 MR. RICE: Yeah, because we're going to be here
17 tomorrow.

18 (Whereupon, the parties moved to
19 another section of the library
20 to resume the deposition.)

21 MR. RICE: Q. Mr. Schmidt, would you please
22 review Exhibit No. 6 and tell us what it is.

23 A. Have we got everybody here now?

24 Q. We've got a court reporter. That's all we

1 need.

2 A. Exhibit No. 6, microfilm, Congress
3 Transactions, 1930 Volume 1 through Volume 3. And
4 on the screen we have the beginning page of the
5 Transactions of 1930 from the microfilm copy.

6 Q. Mr. Schmidt, would you please turn the
7 microfilm and to your satisfaction tell us whether
8 or not that is in fact a copy of the National Safety
9 Council Congress for 1930.

10 A. Well, at this point, looking just at the
11 beginning few pages, I'm satisfied they represent
12 the books which we have out there, the bound volumes.

13 Q. All right. Now, what else is contained on
14 that, what other years besides 1930, to your
15 understanding?

16 A. This was 1930 on this exhibit, Exhibit
17 No. 6.

18 Q. Could you please tell us whether or not
19 Volume 2 of 1930 is on that microfilm by looking at
20 the film itself?

21 A. Here (indicating) is the beginning page of
22 Volume 2 of 1930 Congress Transactions.

23 Q. Could you tell us if Volume 3 is on that
24 microfilm?

1 A. There's the title page (indicating) of
2 Volume 3 of 1930 on the microfilm.

3 MR. DANIEL B. WHITE: I will stipulate at this
4 point that Mr. Schmidt, at least for my clients that
5 I'm appearing on behalf of, that Mr. Schmidt will
6 continue this exercise for Exhibits 6 through 20,
7 which include 19 -- I understand the 19 -- the boxes
8 of microfilm labeled 1930 through 1961. And I think
9 it's fairly apparent Mr. Schmidt is not going to
10 review every page shown on the microfilm and compare
11 it with the books -- with the Transaction books. I
12 think it's apparent that he's going to continue
13 doing what he is doing now, and that is checking the
14 cover page of each volume to see that it is in the
15 microfilm, and that he will continue doing that up
16 through 1961. And I'm willing to stipulate that he
17 will continue doing that.

18 MR. WHITNEY: I would join in that stipulation.

19 MR. OTIS: I would, too. Harry Otis.

20 MR. ALDRIDGE: Subject to the ability to later
21 review for accuracy.

22 MR. DANIEL B. WHITE: And, again, we are simply
23 stipulating that will be the testimony, or we are
24 willing to stipulate that, if Mr. Rice will accept

1 it, and avoid this continued exercise.

2 MR. WHITNEY: I want to emphasize a point that
3 Mr. White made. For purposes of the record, it
4 should be clear that what Mr. Schmidt has done is
5 put the tape on the machine, or caused it to be put
6 on the machine, and gone through all the pages
7 without looking at any individual page except for
8 the cover page.

9 MR. GAVIN: And without comparing it to the
10 original book.

11 MR. RICE: As I understand it, everyone here is
12 prepared to stipulate that Mr. Schmidt will review
13 each microfilm, and that these will be, as far as
14 his knowledge goes, copies as represented on the
15 boxes, but you're not stipulating they are in fact
16 copies of the books. Is that what you're saying?

17 MR. DANIEL B. WHITE: I'm simply stipulating as
18 to his testimony that he will continue what he's
19 done so far.

20 MR. RICE: All right.

21 MR. WHITNEY: For each box.

22 MR. DANIEL B. WHITE: For each box.

23 THE WITNESS: I object.

24 MR. RICE: I don't blame you. I'd object, too.

1 MR. DANIEL B. WHITE: I think it's burdensome to
2 expect this witness to do more, and that's why we're
3 willing to enter into this stipulation in good faith.
4 There are proper ways to authenticate microfilm, and
5 I'm not sure this witness is the one to do it.

6 MR. RICE: Q. Mr. Schmidt, put on the film now,
7 Exhibit No. 7, which is the volume -- microfilm for
8 1931 Volume 1, and 1932.

9 A. (Witness complying.)

10 Q. Would you turn to 1932, please, sir.

11 A. (Witness complying.)

12 Q. Mr. Schmidt, would you please turn to
13 Page 50 of Volume 1 of 1932.

14 A. Would you correct your directions on what
15 you want? I was looking for Volume 2.

16 Q. I'm sorry. Excuse me. Volume 1 of 1932,
17 Page 50.

18 A. Now, what did you want? Please tell me
19 again, because I'm not sure I got it all straight.

20 Q. I'd like for you to turn to Volume 1, 1932,
21 Page 50.

22 A. Volume 1 of which year?

23 Q. 1932.

24 A. Volume 1, 1932.

1 Volume 1, 1932 (indicating).

2 Q. Page 50.

3 A. Page 50 (indicating).

4 Q. Could you tell us what -- excuse me. Here
5 is the original volume. Could you please tell us
6 whether Volume 1, Page 50 through Page 57, as shown
7 on the microfilm marked as Exhibit No. 7 are in fact
8 true and accurate copies of the original Page 50
9 through 57 of Volume 1 of the 1932 bound volume.

10 MR. DANIEL B. WHITE: Object to the form of the
11 question.

12 MR. SACHRISON: What is it, Joe?

13 MR. RICE: It's an article by Gardner.

14 MR. DANIEL B. WHITE: Off the record.

15 (Discussion off the record.)

16 (Mr. Daniel White briefly left
17 the room.)

18 MR. RICE: Q. Mr. Schmidt --

19 MR. DANIEL B. WHITE: Did he not answer your
20 last question?

21 MR. RICE: You told him not to.

22 MR. DANIEL B. WHITE: Okay. I've returned. I
23 had to get my articles.

24 MR. RICE: Q. Mr. Schmidt, my question to you,

1 is the microfilm shown as Exhibit No. 7 a true and
2 accurate duplicate of the original Volume 2 from
3 Page 50 to 57, inclusive?

4 A. Yes, it's a --

5 MR. DANIEL B. WHITE: Renew my objection.

6 MR. RICE: State your objection, please, if
7 you're going to state it.

8 MR. DANIEL B. WHITE: I think it's improper
9 authentication technique to authenticate portions of
10 text in this manner.

11 MR. RICE: The text is available for you to
12 authenticate the rest of, and that's what the rule
13 requires, is my interpretation.

14 MR. DANIEL B. WHITE: That's my objection.

15 MR. RICE: Okay, fine.

16 Q. Could you give us your answer, sir?

17 A. The copy on microfilm appears the same as
18 in the printed text material for the pages cited.

19 Q. And are those -- could you tell us, on
20 Page 50 there's the beginning of an article entitled,
21 "The Effects of Inhaled Mineral Dust," by Leroy
22 Gardner.

23 MR. GAVIN: Is that a question?

24 MR. RICE: I'm waiting till he gets there.

1 Q. And I'd ask you, sir, if the microfilm
2 includes the entire text of that speech or article.

3 MR. GAVIN: I object to the question because it
4 contains the title of the article from material that
5 has not been properly authenticated.

6 MR. RICE: Q. Is that the entire article?

7 A. The microfilm contains a printed copy of
8 what is in the textbook.

9 Q. All right. Thank you, sir.

10 Thank you, sir. You can remove that
11 tape.

12 There are six more to go.

13 A. I object to doing six more.

14 Q. Based on the objections, Mr. Schmidt, there
15 is no other way.

16 MR. DANIEL B. WHITE: May I state on the record,
17 I did not hear Mr. Schmidt's request, but we renew
18 earlier our offer to stipulate.

19 MR. RICE: I accept your stipulation. You so
20 stipulate on the record?

21 MR. DANIEL B. WHITE: Well, in lieu of the
22 procedure we're going through.

23 MR. RICE: No, you will not stipulate that the
24 microfilm that we marked is in fact a copy of the

1 Transactions; therefore, the documents I'm
2 interested in I'm going to specifically identify
3 and prove that they are in fact copies of the
4 Transactions. If you want any other documents to
5 prove --

6 MR. DANIEL B. WHITE: I withdraw my stipulation
7 if your intent is to go forward with authenticating
8 individual -- or, attempting to authenticate
9 individual articles on the microfilm.

10 MR. RICE: I'm going to do it -- I can do it
11 both ways, or I can do it just one way. I can go
12 through every microfilm, have him verify that the
13 microfilm is what it says on the box; that would be
14 number one. I understood you stipulated that he
15 would testify by looking at the microfilm that it in
16 fact represented the copies of the books, that would
17 be his testimony.

18 MR. DANIEL B. WHITE: No, we indicated that he
19 would continue the exercise of identifying the lead
20 page of each Transaction as being in the microfilm,
21 which is what he was doing.

22 MR. RICE: That's fine.

23 MR. DANIEL B. WHITE: And we're willing to
24 stipulate that he'll continue doing that.

1 MR. RICE: That's fine. I accept that
2 stipulation.

3 MR. OTIS: No objection.

4 MR. RICE: No objection from anyone present?

5 MR. WHITNEY: Can we go off the record?

6 (Discussion off the record.)

7 MR. WHITNEY: We've had an off-the-record
8 discussion that I'm going to try to summarize on the
9 record.

10 That the defendants are willing to
11 enter into a stipulation with counsel for plaintiff
12 that Mr. Schmidt -- Mr. Schmidt's testimony would be,
13 in regards to the remaining microfilms, that he has
14 reviewed the initial page of each Transaction, and
15 based upon that, it is his belief that the material
16 on the microfilm is identical to the written
17 material in the bound volumes.

18 MR. RICE: There's no objection to that
19 stipulation.

20 THE WITNESS: I object to it.

21 MR. RICE: You object to the stipulation?

22 THE WITNESS: Because I don't want to look at
23 all those things, that's why.

24 MR. RICE: That's what they're saying, they'll

1 stipulate that you would do that.

2 MR. DANIEL B. WHITE: So you won't have to.

3 THE WITNESS: I don't want to look at them.

4 MR. RICE: That's right, so we don't have to
5 look at all 15 of them.

6 MR. GAVIN: You should say "I stipulate, too."

7 THE WITNESS: I'll tell you what I think.

8 MR. RICE: For the record, the exhibits that we
9 are identifying -- we identified I think through
10 No. 10 -- Exhibit No. 11 are the Transactions from
11 October '41 through October '42.

12 No. 12 is October '43 to October '46.

13 No. 13 is 1947 and 1948.

14 No. 14 is 1949 to 1950.

15 No. 15 is 1951 and 1952.

16 No. 16 is 1953 through 1954.

17 No. 17 is 1955 to 1956.

18 No. 18 is 1957 to 1958.

19 No. 19 is 1959 through 1960.

20 And No. 20 is 1961 through Volume 26,
21 1961.

22 MR. ALDRIDGE: The last part, Exhibit 20, is
23 Volume 61 -- excuse me. 1961?

24 MR. RICE: Exhibit 20 is Volume 1, 1961, through

1 Volume 26, 1961.

2 MR. ALDRIDGE: Thank you.

3 MR. RICE: Now, as I understand it, you're not
4 willing to stipulate that the pages on the microfilm
5 are in fact copies of the pages in the books.

6 MR. WHITNEY: That's correct.

7 MR. RICE: You're not willing to stipulate to
8 that.

9 MR. WHITNEY: That is correct.

10 MR. RICE: Therefore, the articles that I'm
11 interested in I'm going to look to microfilm and
12 compare to the original books and verify that they
13 are in fact copies of the original books.

14 MR. DANIEL B. WHITE: Can you advise us how many
15 articles you've got, how many you intend to do?

16 MR. ROVEN: About 8 volumes.

17 MR. RICE: About 8 volumes -- about 8 articles.
18 Some of them are in the same volume.

19 MR. BURKE: Have you stated anywhere what the
20 names of these articles are?

21 MR. RICE: No, sir, I have not.

22 MR. ROVEN: Well, we did on the first one.

23 MR. RICE: I did when I got to it.

24 MR. BURKE: Would you do it now as to what the

1 articles are in these remaining volumes?

2 MR. RICE: When I get to them, I'll be glad to.

3 MR. BURKE: That will be today, right?

4 MR. RICE: It will be in the next 30 minutes is
5 all it will take me to do this.

6 Mr. Schmidt --

7 MR. DANIEL B. WHITE: May I ask that you ...

8 Mr. Rice, do you intend to make copies
9 of the articles and attach them as exhibits to the
10 deposition?

11 MR. RICE: No, sir. I'm going to make the
12 microfilm exhibits. Anybody who wants to look at
13 them can copy them off the microfilm.

14 The reason I'm saying that, Mr. White,
15 is because you don't stipulate that my copies are
16 true and accurate copies, and therefore my giving
17 them to you would not be fair, since you don't
18 stipulate that they're true and accurate. So you
19 can get your own copies. You have copies. I think
20 they're the same ones we copied last time we were up
21 here.

22 MR. DANIEL B. WHITE: I don't believe we've been
23 served with any request for admissions on that point.

24 MR. RICE: That's all right.

1 Page 37.

2 MR. RILEY: Excuse me. What exhibit number?

3 MR. RICE: He's referring to Exhibit No. 8.

4 MR. WHITNEY: What year is that, Mr. Rice?

5 MR. RICE: 1933.

6 THE WITNESS: What page?

7 MR. RICE: Page 37.

8 THE WITNESS: Which volume?

9 MR. RICE: He's looking at 1933.

10 MR. RILEY: Which volume?

11 MR. ROVEN: 1933, Volume 1.

12 MR. RICE: Q. Mr. Schmidt, looking at what was
13 previously identified by you as the original volume
14 for the 1933 Volume 1 Congress, could you tell me,
15 please, sir, whether Page 37 through Page 39 is a --
16 on Exhibit No. 8 is in fact a copy of the original
17 volume?

18 A. It appears to be an original copy of the
19 printed text.

20 Q. And the name of that article is what, sir?

21 A. "The Mechanical Control of Dust."

22 MR. DANIEL B. WHITE: May we have a running
23 objection on the identification of these articles,
24 objecting to the form of the question, because he's

1 authenticating articles which themselves have not
2 been authenticated from books which have not been
3 authenticated from microfilm which has not been
4 authenticated.

5 MR. RICE: You can have any running objection
6 you want.

7 MR. BURKE: Excuse me. Could you give the name
8 of the article again?

9 THE WITNESS: "The Mechanical Control of Dust."

10 MR. RICE: "The Mechanical Control of Dust."

11 MR. DAVID B. WHITE: Author?

12 THE WITNESS: E. O. Jones.

13 MR. RICE: Q. Now, could you please tell me
14 whether the article contained on Page 39 as shown on
15 the microfilm is in fact a true and accurate copy of
16 the article as it appears in the printed volume?
17 And also tell us the name of the article.

18 MR. MURPHY: The page?

19 MR. RICE: 39.

20 THE WITNESS: That appears to be in agreement
21 with what is in the printed text.

22 MR. RICE: Q. Could you tell us what the name
23 of that article is, please, sir?

24 A. "How to Determine the Dust Content of the

1 Atmosphere in Dusty Industries."

2 Q. By Dr.?

3 A. E. G. Meiter.

4 MS. CASTAGNOLI: Joe, could you read that again?

5 MR. RICE: "How to Determine the Dust Content of
6 the Atmosphere in Dusty Industries," by Dr. E. G.
7 Meiter, M-e-i-t-e-r, Page 39 through 42.

8 Q. Mr. Schmidt, I'd also ask you to look at
9 Page 42 through 44, and ask you if the pages so
10 numbered on the microfilm are true and accurate
11 copies of the volume as you have in your possession
12 at this time.

13 A. They appear to be the same.

14 Q. And could you tell us what the title of the
15 article on Page 42 is?

16 A. "Discussion of Dust Problems," by
17 Dr. Leonard Greenburg.

18 Q. Look at Page 439 of Volume 1, please, sir,
19 on the microfilm as well as in the book.

20 A. (Witness complying.)

21 Q. Sir, could you tell us if Page 4 -- tell us
22 the title of Page 439, and also tell us if the
23 picture on the microfilm is a true and accurate copy
24 of the original.

1 A. It is.

2 Q. And what's the title of it?

3 A. "Safety Section, ARA - Steam Railroad
4 Section, NSC."

5 MR. ALDRIDGE: Would you repeat or give that
6 title again?

7 MR. RICE: "Safety Section of the ARA - Steam
8 Railroad Section, NSC."

9 Q. And that page is a true and accurate copy
10 of the original?

11 A. Yes.

12 Q. That's Page 439.

13 MR. DANIEL B. WHITE: Let me make a statement on
14 the record.

15 MR. RICE: Let me finish this statement, then
16 you can make your statement.

17 Q. Is that a true and accurate copy?

18 A. Yes.

19 MR. RICE: Okay.

20 MR. DANIEL B. WHITE: For the convenience of the
21 witness, I would simply like to point out I think
22 later I may ask him to indicate to me which of these
23 articles which you are laboriously going through now
24 was delivered, if he can tell from the Table of

1 Contents, to the general session, or particular
2 section meetings.

3 MR. RICE: If you're asking if you can ask that
4 question at the same time, it's all right with me --

5 MR. DANIEL B. WHITE: Okay.

6 MR. RICE: -- if that's what you want to do.

7 MR. DANIEL B. WHITE: Okay.

8 MR. RICE: Do you want to ask him about that?

9 MR. DANIEL B. WHITE: Let's go back.

10 MR. RICE: Look at Page 439 on the book.

11 THE WITNESS: Well, let me finish this other one
12 first.

13 MR. DANIEL B. WHITE: That will be easier.

14 MR. ROVEN: Let's go off the record for a minute.

15 MR. DANIEL B. WHITE: I'm just going to have one
16 or two questions.

17 THE WITNESS: The articles on 39 --

18 MR. RICE: That's 37.

19 THE WITNESS: -- 37, 39, and 42 are classed as
20 subject sessions.

21 MR. ALDRIDGE: Say that again, sir?

22 THE WITNESS: The articles on Page 37, 39, and
23 42 are classed as subject sessions. That does not
24 define its audience.

1 The article on Page 439 was identified
2 as part of the railroad -- Steam Railroad Section
3 program.

4 MR. RICE: Mr. White, do you have any questions
5 about this volume before we go on?

6 MR. DANIEL B. WHITE: No, I just wanted to, for
7 ease of convenience, ask those one identifying
8 questions.

9 And in terms of Page 439, you
10 indicated that was simply the title page of the
11 section in that volume dealing with the Safety
12 Section of the ARA and the Steam Railroad Section of
13 the National Safety Council; is that correct?

14 THE WITNESS: Right.

15 MR. DANIEL B. WHITE: And the previous articles
16 were evidently presented at the quote, "subject
17 sessions," close quote, whatever that means.

18 MR. RICE: Q. Would you tell us what the
19 subject sessions mean?

20 A. I can't tell you what it meant in 1932-'3.

21 Q. Tell us what you know about it.

22 A. In general, subject sessions are defined as
23 a large session appealing to self stress over a
24 common problem. However, they are not presented

1 with the idea that everyone who is at a Congress
2 will attend that one, and then the next one and then
3 the next one; they usually run concurrent.

4 MR. DANIEL B. WHITE: Let me ask, you've only
5 been on one previous article, and that was on 1932,
6 Page 50. If you could simply look at the Table of
7 Contents of the 1932 volume, Volume 1 --

8 MR. RICE: That's the wrong one.

9 THE WITNESS: This (indicating) is '34.

10 MR. RICE: That's '34. Here's '32.

11 THE WITNESS: Page 50?

12 MR. DANIEL B. WHITE: Page 50, yes, sir.

13 And perhaps you may want to look at the Table of
14 Contents.

15 The article on Page 50 would have been
16 delivered at the general session; is that correct?

17 THE WITNESS: Yes, that was the title given in
18 the Table of Contents on that particular one,
19 General Sessions.

20 MR. SMITH: Could I ask a general question?

21 MR. RICE: Go ahead. State your name for the
22 record.

23 MR. SMITH: David Smith, Pittsburgh Corning
24 Corporation.

1 Do you know, sir, of your own
2 knowledge whether the articles that you've been
3 looking at are the full and complete articles as
4 published in the text?

5 THE WITNESS: Yes.

6 MR. SMITH: How do you know that?

7 THE WITNESS: As printed in here. What is on
8 the microfilm is a copy of what is in here.

9 MR. SMITH: Okay. What I want to know, sir, the
10 article submitted by whomever, is that a full and
11 complete article that is republished in the
12 Transaction?

13 THE WITNESS: I read you a statement earlier out
14 of an earlier volume that I had with me, and she can
15 find it, if you wish, but I don't have it handy. In
16 essence, they are not necessarily.

17 Is that the one I quoted this morning?
18 The one around 1940 I read to you.

19 MR. RICE: (Indicating.)

20 THE WITNESS: The statement I read this morning
21 pertained because -- I must qualify. What has been
22 submitted to us as part of the Transaction is what
23 the speaker gave us, by and large.

24 MR. SMITH: So you don't know if he edited his

1 remarks.

2 THE WITNESS: Well, yes, speakers are normally --
3 in the past when I have been here, in the 20 years
4 that I was here, when we did this, speakers were
5 always given an opportunity to edit their remarks
6 and make whatever adjustments they felt necessary.

7 MR. SMITH: What I'm having a problem with, sir --
8 maybe we can shortcut this -- do you of your own
9 knowledge know whether the articles that you've
10 quoted are printed or reprinted verbatim in the
11 Transaction?

12 MR. RICE: I don't understand your question.

13 THE WITNESS: I'm not sure that I do, either.

14 MR. SMITH: What we have is possibly summaries
15 of someone else's article that you're seeking to
16 authenticate here, and I'm going to object to the
17 continued --

18 MR. ROVEN: So what?

19 MR. SMITH: -- introduction of this material
20 into evidence unless we have a showing that we have
21 the original or an exact copy of the original
22 article, not something that's been paraphrased by
23 somebody else to give a different slant.

24 MR. RICE: Q. The question I think Mr. Smith is

1 asking, when Dr. Gardner gave a speech in 1932, is
2 the, what's printed in this Transaction what
3 Dr. Gardner submitted?

4 A. Well, I reviewed what I said in the
5 beginning about what has been done with the Council
6 in the time that I was here beginning in '65, I
7 reviewed that process, and I don't think it changed
8 significantly. A speaker made a presentation, the
9 speaker submitted a written copy of his presentation,
10 it was edited here, whatever adjustments we felt
11 necessary in order to put it into this form, the
12 speaker normally had an opportunity to review it
13 himself, then we printed it as what we considered a
14 record of that particular session or presentation.

15 MR. SMITH: So that I understand, sir, what is
16 printed there is an edited version of the initial
17 work that was submitted by the particular author or
18 speaker.

19 THE WITNESS: It may be, if he chose to have it
20 edited or we chose to have it edited.

21 MR. SMITH: Is there any record of the original
22 submission of the particular talk or paper?

23 THE WITNESS: In the volumes that you are
24 talking about here in the '30s and '40s, there are

1 none left anymore. They have been destroyed. If
2 you went to the 1978 one, which was the last year we
3 did the Congress Transactions, it is possible we may
4 have the original copies as submitted by the speaker.

5 MR. SMITH: Okay. On behalf of my client,
6 Pittsburgh Corning, I'm going to impose an objection
7 to an attempt at introduction of any of these
8 articles based on Mr. Schmidt's testimony that
9 possibly it's an edited version in there and we
10 don't have the original version of the particular
11 article.

12 THE WITNESS: This was the statement, sir, that
13 I made this morning when I quoted out of here. We
14 acknowledged at that point that there had been
15 editing, compacting, and some things done -- that
16 may have been done.

17 MR. DANIEL B. WHITE: I join in that objection.
18 There certainly has been no stipulation to the
19 authenticity of any documents. And if we could have
20 a continuing running objection to that and to the
21 previous articles entered as to the lack of
22 authenticity.

23 MR. OTIS: And you speak for the railroads in
24 general?

1 MR. DANIEL B. WHITE: Yes.

2 MR. MURPHY: We've already stipulated that you
3 speak for everybody.

4 MR. RICE: Does anybody want to say anything
5 else? I don't care.

6 MR. ALDRIDGE: I was just going to say we still
7 have the same standing agreement that an objection
8 of one is the objection of all defendants unless --

9 MR. RICE: Mr. White said that four or five
10 times, and you can say that four or five more, if
11 you want to.

12 Let's go, Mr. Schmidt.

13 THE WITNESS: You said it was time for dinner,
14 sir?

15 MR. RICE: No, sir.

16 Q. 1934.

17 A. 1934. What do you want of '34? You want
18 what?

19 Q. That's Volume 1, Page 23. 1931, Volume 1,
20 Page 23.

21 MR. DAVID B. WHITE: 1934.

22 MR. RICE: Q. 1934, Page 23, Volume 1. The
23 name of the article is, "Types of Dust That Cause
24 Occupational Diseases," by Leroy Gardner. It would

1 be the 23rd Annual Congress.

2 A. 23rd. What page?

3 Q. Page 23.

4 Sir, I would ask you to tell me the
5 name of the article that appears on Page 23 of the
6 original volume, and I also ask you to compare that
7 with the microfilm and see if it's -- the microfilm
8 copy is a true and accurate copy of the complete
9 article as printed in the Transactions.

10 A. Yes, it is.

11 Q. Could you just tell us the name of the
12 article?

13 A. The title of the article is, "Types of Dust
14 That Cause Occupational Diseases," by Leroy Gardner.

15 Q. All right, sir. Let me ask you to look at
16 Page 26 of that same volume. I'd ask you, sir, to
17 tell us what article appears on Page 26 through 28
18 of the original volume, and also tell me whether or
19 not the microfilm is a true and accurate copy of the
20 original as printed in the Transactions.

21 A. The title of the article is, "Using Exhaust
22 Systems and Respiratory Equipment to Protect Workers
23 Exposed to Dust," by Stuart W. Gurney and David S.
24 Beyer. And the copies on microfilm are the same.

1 Q. I'd ask you, sir, to look at Page 29 and
2 tell us the name of that article as it appears in
3 the original text and also on the microfilm, and
4 verify that they're the same for us.

5 A. "The Medical Supervision of Workers Exposed
6 to Dust," by W. J. McConnell.

7 Q. And is the microfilm a true and accurate
8 copy of that article as printed in the Transactions?

9 A. The two-page article is the same.

10 Q. Mr. Schmidt, those two articles we just
11 discussed, being on Pages 23 through 30 of the
12 articles, could you tell us what section they were
13 delivered to?

14 A. Subject Sessions.

15 Q. Thank you, sir.

16 Anyone have any questions about those
17 articles?

18 (No response.)

19 Mr. Schmidt, let's look at Page 350 of
20 the same volume.

21 MR. DANIEL B. WHITE: May I simply object for
22 the record as to the competency of this witness at
23 this point to say anything other than that according
24 to the Table of Contents on this microfilm, that

1 these three articles which have previously been
2 identified in the 1934 volume are listed under the
3 topic Subject Sessions.

4 MR. RICE: Q. Mr. Schmidt, looking at Page 350
5 of the original text, could you tell me the article
6 that appears there and whether or not the microfilm
7 at Page 350 is a true and accurate copy of the
8 entire article as published?

9 MR. ALDRIDGE: Is there in fact an article on
10 that page?

11 THE WITNESS: Yes, there is.

12 The title of the article is, "The Dust
13 Hazards in Industry," written by Dr. R. R. Sayers.
14 And the copies are the same.

15 MR. RICE: Q. That article carries from Page 350
16 to Page 353?

17 A. 350 to 353.

18 Q. And could you tell us which section of the
19 proceedings that appears in?

20 A. This one is a section proceeding in Quarry
21 Section.

22 Q. Thank you, sir.

23 Sir, if you would please turn to the
24 volume that -- 1935, Volume 1, which I believe is on

1 the same microfilm that you have.

2 A. '35, Volume 1.

3 Q. Yes, sir. I'd like for you to turn to the
4 section on Occupational Diseases.

5 A. What page?

6 Q. I believe it's Page 117.

7 Sir, I'd ask you to look at the
8 original text and tell me whether the article
9 appearing under Occupational Diseases starting at
10 Page 117 entitled, "Present and Prospective
11 Occupational Disease Legislation" is true -- as
12 shown on the microfilm is a true and accurate copy
13 of that published in the original text.

14 A. They are the same.

15 Q. All right, sir. Look at Page 120 --

16 MR. BEGGS: Excuse me, Counsel. Did you give
17 the name of the author?

18 MR. RICE: There wasn't a name of the author.

19 THE WITNESS: Yes, there was an author.

20 MR. RICE: F. Robertson Jones is the author.

21 I'm sorry.

22 Q. Looking at Page 120, sir, I would ask you
23 to tell us the name of that article and tell us
24 whether the microfilm is a true and accurate copy of

1 the original.

2 A. The article is, "Some Practical
3 Considerations in Dust Control," by J. J. Bloomfield,
4 from Page 120 through 127. The copies are the same.

5 Q. Look, if you would, please, sir, to
6 Page 127 of the same volume.

7 A. (Witness complying.)

8 Q. Could you tell us, please, if the microfilm
9 is a true and accurate copy of the original as
10 published in the Transactions, the article that
11 appears on that page and the pages that follow?

12 A. The copy is the same.

13 Q. Could you tell us the name of that article,
14 please, sir?

15 A. "Silicosis and Silicotuberculosis, Medical
16 Problems of an Important Industrial Disease," by
17 Edgar Mayer.

18 Q. Sir, if you would, look at Page 133 of the
19 same volume.

20 A. (Witness complying.)

21 Q. Could you tell me what section of the
22 National Safety Congress that article was in, the
23 one appearing on Page 133?

24 A. That was listed in Subject Sessions.

1 Q. And what is the name of the subject session?

2 A. Safety Equipment.

3 Q. Could you tell us the name of that article,
4 please, sir, as appears on Page 133 and --

5 A. "Respiratory Protective Devices."

6 Q. Is that, the copy on the microfilm, a true
7 and accurate copy of the microfilm as published in
8 the Transactions?

9 A. The copies are the same.

10 Q. Look at Page 459 of that volume, please,
11 sir.

12 439 is the only page.

13 A. You said 59.

14 Q. I'm sorry, 459 is the right one. You had
15 it right there. Excuse me. 459.

16 Could you tell me if the copy on the
17 microfilm is a true and accurate copy of the
18 original?

19 A. The copy is the same.

20 Q. And could you tell us the title of that
21 page?

22 A. That is, "Safety Section, AAR - Steam
23 Railroad Section, NSC."

24 Q. Thank you, sir.

1 Sir, if you would --

2 MR. DANIEL B. WHITE: May I ask him, before you

3 go to another year --

4 MR. RICE: Sure.

5 MR. DANIEL B. WHITE: The first four articles

6 which were mentioned from the 1935 volume, do they

7 not, Mr. Schmidt, appear under the Table of Contents

8 under the topic Subject Sessions, and not under an

9 individual section name?

10 THE WITNESS: That's correct.

11 MR. DANIEL B. WHITE: And Page 459, which was

12 revealed, is the title page of the Railroad Safety

13 Section?

14 THE WITNESS: Right, right.

15 MR. DANIEL B. WHITE: Thank you.

16 MR. RICE: Q. Sir, looking at Volume 1 of 1936,

17 which is on the same microfilm, I believe --

18 A. '35 you wanted?

19 Q. '36, 1936.

20 Sir, if you would, turn to Page 117.

21 If you would, tell us the name of the

22 article as appears on the original text for 1936.

23 A. Let me have the text.

24 "The Lesser Known Facts About Common

1 Occupational Diseases," by Dr. Robert B. Hunt.

2 Q. And could you tell us if the microfilm is a
3 true and accurate copy of the original Transactions
4 as it relates to that article?

5 A. The copies are the same.

6 Q. Sir, if you would, look at Page 121. Could
7 you tell me the name of that article, please, sir.

8 A. "Pre-employment Examination as an Aid to
9 the Control of Industrial Diseases," by Dr. W. C.
10 Templer.

11 Q. And could you tell us what it relates --
12 Dr. Templer's profession is and who he's with?

13 A. It says, "Medical Director, Corning
14 Glassworks, Corning, New York."

15 Q. Could you tell us if the microfilm is a
16 true and accurate copy of the article as published
17 in the Transactions?

18 A. Yes.

19 Q. If you would, turn to Page 124.

20 Tell us the name of the article and
21 whether or not the microfilm is a true and accurate
22 copy of the article as it appears in the original
23 Transactions.

24 A. The copy is the same. The article is,

1 "What Can the Engineer Do to Eliminate the Hazards
2 of Occupational Disease," by Reuel C. Stratton.

3 Q. Mr. Schmidt, if you'll turn now to Page 244 --

4 MR. DANIEL B. WHITE: Before you go, can I ask
5 him, these two articles appeared in the General
6 Session, according to the Table of Contents.

7 THE WITNESS: Yes, Subject Sessions.

8 MR. RICE: Q. The general subject --

9 A. Subject Sessions.

10 Q. All right.

11 MR. RICE: Is that your question?

12 MR. DANIEL B. WHITE: Yes.

13 MR. RICE: Q. Looking at Page 244, please.

14 A. (Witness complying.)

15 Q. Could you tell me, please, sir, if the
16 article -- tell us the name of the article appearing
17 on Page 244, and the -- if that's a true and
18 accurate copy as appears on the microfilm of what's
19 in the original Transactions.

20 A. The copy is the same. The title is, "Dust
21 Diseases as They Affect the Construction Industry,"
22 by A. J. Lanza.

23 Q. Thank you, sir.

24 If you would look at Page 312.

1 MR. DANIEL B. WHITE: Before you go further,
2 could you identify what section that article is
3 listed under?

4 THE WITNESS: It says Construction Section.

5 3 what?

6 MR. RICE: Q. 312. Could you tell us, please,
7 sir, the name of the article that appears on
8 Page 312 of the original Transactions.

9 A. "The Present Status of Control of Dust and
10 Fumes in Industry," by H. B. Meller.

11 Q. That's M-e-l-l-e-r?

12 A. Meller, Miller.

13 Q. And is the microfilm a true and accurate
14 copy of the original?

15 A. Yes.

16 Q. Sir, if you -- and that is in which section?

17 A. Metals Section.

18 Q. All right. If you would, please, turn to
19 Page 489.

20 A. (Witness complying.)

21 Q. Could you tell me if that Page 489 is a
22 true and accurate copy of the original?

23 A. Yes.

24 Q. And tell us what that title is, please, sir.

1 MR. RICE: How can you stipulate to some of them
2 without stipulating to all of them? Either the
3 microfilms are accurate, or they're not accurate.

4 MR. DANIEL B. WHITE: No, no, you indicated that
5 there were only going to be 8 articles in all. I'm
6 simply indicating that I have seen these particular
7 articles.

8 MR. RICE: But how do you know that what's on
9 microfilm is --

10 MR. DANIEL B. WHITE: Okay, let's go ahead.

11 MR. RICE: I mean, that's what I asked you to
12 stipulate two or three hours ago, but you wouldn't
13 do that.

14 MR. DANIEL B. WHITE: I don't think so. Let's
15 go ahead.

16 MR. RICE: Q. Looking at the 1937 Transactions,
17 would you please look at Page 85.

18 MR. RILEY: Which volume?

19 MR. RICE: Exhibit No. 9, 1937, Volume 1.

20 MR. BEGGS: Page 85, or 35?

21 MR. RICE: 85.

22 Q. Page 85, could you tell me the name of the
23 article, what section it was in, and whether the
24 microfilm is a true and accurate copy of that

1 article.

2 A. The microfilm is a copy. Okay. It was in
3 the Subject Sessions. The article is, "What
4 Industrial Dusts are Harmful? Why?" by Senior
5 Surgeon R. R. Sayers.

6 Q. Sir, could you look at Page --

7 MR. ALDRIDGE: The page number on that, please?

8 MR. RICE: 85.

9 THE WITNESS: 85 through 92.

10 MR. RICE: Q. Look at Page 92, if you would.

11 Tell me the name of that article and if the
12 microfilm copy is a copy of the original.

13 A. It is a copy. "The Engineer's Part in
14 Eliminating Dust Hazard," by Arthur S. Johnson.

15 Q. I'd ask you, sir, to look at Page 94 -- 95.
16 Excuse me, 95. Tell us the name of that article and
17 if the microfilm is a true and accurate copy of the
18 original as published in the Transactions.

19 A. It is an accurate copy. It's, "The Doctor's
20 Part in Controlling Dust Hazards," by A. D. Lazenby.

21 Q. We're finished with that one, Mr. Schmidt.

22 MR. DANIEL B. WHITE: Can I ask him a question?

23 MR. RICE: Sure.

24 MR. DANIEL B. WHITE: Again, the three articles

1 from 1937 which you've testified about are all
2 tabulated under the Subject Sessions section of the
3 book.

4 THE WITNESS: Yes.

5 MR. RICE: Q. Mr. Schmidt, let's look at the
6 1941 Transactions of the National Safety Congress,
7 what's been marked as Exhibit No. 11, the microfilm,
8 and ask you to look to Page 35, and ask you, looking
9 at Page 35, could you tell us by comparing the
10 microfilm with the original Transactions if that is
11 a true and accurate copy as shown on microfilm.

12 A. The copies are the same.

13 Q. Is that a true and accurate copy, sir?

14 A. Yes.

15 Q. Could you tell us the name of that article?

16 A. "Ventilation and Exhaust Equipment," by
17 Gordon C. Harrold.

18 Q. Could you tell us what section that was
19 delivered in?

20 A. Subject Sessions.

21 Q. All right. Looking at Page 44, I think --
22 flip back one more page.

23 Yes, Page 43. Could you tell us the
24 name of that article.

1 A. "Personal Respiratory Protective Equipment."
2 Q. By who?
3 A. By Dr. J. H. Sterner.
4 Q. And could you tell us if the microfilm copy
5 is a true and accurate copy of that article as it
6 appeared in the original Transaction?
7 A. Yes.
8 Q. Could you tell us what section that was in?
9 A. Subject Sessions.
10 Q. All right. If you would look at Page 655.
11 Could you tell us what that page is
12 and if the microfilm copy is a true and accurate
13 copy of the original.
14 A. The copies agree. Steam Railroad Section.
15 MR. RICE: All right. Does anyone have any
16 questions about that?
17 MR. MURPHY: I do.
18 Can you identify, please, the members
19 of the Health Committee.
20 THE WITNESS: Which year do you want, sir?
21 MR. MURPHY: The page you're looking at.
22 THE WITNESS: There's two listings here.
23 MR. MURPHY: 1940 to 1941.
24 THE WITNESS: Oh, all right.

1 MR. RICE: The same one both years.

2 THE WITNESS: Yes, they may be the same one.

3 Doctor I. S. Cutter, Chicago North
4 Western Railroad, and Dr. Harvey Battle -- or,
5 Bartle, I guess, B-a-r-t-l-e, Pennsylvania Railroad.

6 MR. MURPHY: And that's in Philadelphia,
7 Pennsylvania, if I'm reading it correct?

8 THE WITNESS: Yes, that's correct.

9 MR. DANIEL B. WHITE: Who do you represent,
10 Mr. Murphy?

11 MR. MURPHY: Eagle-Picher Industries.

12 MR. RICE: Thank you, sir. That's all I have on
13 that film.

14 MR. DANIEL B. WHITE: Do you want to take a
15 lunch break, Mr. Schmidt?

16 MR. RICE: We've got one more to do, and then
17 I'm finished. This is the last one. Then if you
18 want to take a lunch break, we can take a lunch
19 break.

20 Q. I'd ask you to turn to Page -- well, to
21 that page (indicating).

22 A. Railroad Section, Page 45.

23 Q. And Volume 25 --

24 MR. BEGGS: Counsel, could you give us the

1 exhibit and volume number, please?

2 MR. RICE: We're referring now to Volume 25 of
3 the Annual Safety Congress Transaction for the 36th
4 Annual Conference for 1948, Page 45 of Volume 25.

5 MR. RILEY: Which exhibit?

6 MR. RICE: No. 13.

7 THE WITNESS: There we are. Page 25 of that?

8 MR. RICE: No, Page 45.

9 THE WITNESS: Oh, 45.

10 Are you sure you're on 45?

11 Have you got the same book I have?

12 MR. RICE: Well, I'm checking to see.

13 THE WITNESS: They don't agree.

14 This is 1947, not '48.

15 MR. RICE: Yes, '48.

16 THE WITNESS: Where is my box? Is '48 in this
17 box?

18 Okay. That's why we haven't got it.

19 MR. DANIEL B. WHITE: What year is it?

20 MR. RICE: 1948.

21 THE WITNESS: He had me in '47.

22 MR. RICE: You haven't got it, Dan.

23 MR. DANIEL B. WHITE: Is this the smoking pistol?

24 MR. RICE: No, we just ran across it. We don't

1 have a copy of it, either. That's why I say the
2 more I look, the more I find.

3 THE WITNESS: Okay. Page 45. "Brief History of
4 Railroad Section."

5 MR. RICE: Q. Looking at Page 45 of Volume 25
6 of the 1948 Congress, could you tell us the name of
7 that article, please?

8 A. "A Brief History of the Railroad Section,
9 National Safety Council."

10 Q. Could you tell us if the microfilm is a
11 true and accurate copy of the original article?

12 A. It appears to be, yes.

13 Q. Could you tell us what article appears on
14 Page 47 of that same volume?

15 A. "Past General Chairmen, Railroad Section,
16 National Safety Council."

17 MR. MURPHY: Can you please, well, read ...

18 MR. GAVIN: Excuse me. I object to this fellow's
19 question for the same reasons, that it's introducing
20 hearsay testimony without adequate foundation.

21 MR. MURPHY: I'd still like an answer to the
22 question.

23 MR. RICE: Mr. Schmidt.

24 MR. MURPHY: Go back to the first page of that,

1 and I'd like you to tell me, according to this page,
2 who was the Past General Chairman of the Railroad
3 Section of the National Safety Council during the
4 years 1920 to 1921.

5 MR. GAVIN: Same objection.

6 THE WITNESS: Thomas H. Carrow, Dr. C-a-r-r-o-w,
7 Pennsylvania System.

8 MR. MURPHY: Thank you.

9 Now, if anybody else wants any more
10 read in, they can ask that.

11 MR. RICE: Q. Could you just tell me if the
12 microfilm is a true and accurate copy of Page 47 and
13 48 of that volume.

14 A. Yes.

15 Q. Thank you, sir.

16 Mr. Schmidt, we have gone through 6 or
17 7 or 8 years of the microfilm and talked about
18 specific articles; is that correct?

19 A. I have not kept track.

20 Q. Well, we've gone through several, right?

21 A. Several.

22 Q. Have we at any time -- have you found at
23 any time an inaccuracy between the microfilm and the
24 original Transaction?

1 A. No.

2 MS. CASTAGNOLI: Are we finished with this?

3 MR. RICE: In a minute.

4 Q. Mr. Schmidt, you have produced to us the
5 original microfilm set kept by the National Safety
6 Council; is that right?

7 A. It is our library set.

8 Q. Right. Okay. Your library set of the
9 microfilm.

10 A. Yes.

11 Q. I have ordered a duplicate of this set.
12 And what I would ask you, sir, if when that
13 duplicate is hand delivered to you by the Micre Cord
14 people, if you would compare that to the microfilms
15 that you have here and provide to this court
16 reporter in writing a statement as to whether that
17 is in fact a true and accurate copy of the
18 microfilms.

19 A. Okay. Agreed.

20 MR. RICE: I have nothing further.

21 MR. ALDRIDGE: Back to the Continental?

22 MR. DANIEL B. WHITE: Well, I've got less than
23 ten minutes worth of questions, and depending upon
24 what the witness would like to do, we can either

1 break for lunch, or try to finish now. I'm
2 perfectly willing to go ahead. I don't think I have
3 more than ten minutes.

4 THE WITNESS: Who else does? How many more
5 questions will you have?

6 MR. DANIEL B. WHITE: Anyone else?

7 MR. MURPHY: I might have a couple.

8 MR. DANIEL B. WHITE: There will probably be
9 some fillers after I finish.

10 MR. RICE: I think I'll probably have ten
11 minutes after his.

12 MR. GAVIN: I just want to object to your
13 proposed procedure upon obtaining a copy for the
14 reasons that his examination of the copy that Micre
15 Cord sends to him and all that examination he's
16 about to do will not be subject to cross-examination,
17 neither will his written statement to the court
18 reporter, so for that reason, I object to that
19 procedure, and I don't think it's proper.

20 MR. RICE: Based on that objection, Mr. Schmidt,
21 when you receive those, will you notify me so I can
22 have the court reporter present while you look
23 through that film, and if anyone wants to cross-
24 examine, we'll give notice.

1 MR. GAVIN: That's improper, too. I would
2 object.

3 MR. RICE: You can object, but that's the
4 procedure we'll follow. The deposition will be
5 recessed for that purpose. We'll reconvene when he
6 gets a copy.

7 MR. DANIEL B. WHITE: We'll join in the
8 objection as that procedure being improper.

9 Mr. Schmidt, what would you like to do?

10 THE WITNESS: If you can get done in ten or
11 fifteen minutes, we'll finish.

12 MR. DANIEL B. WHITE: I've got ten -- less than
13 ten. He's indicated he wants another ten.

14 MR. RICE: No, depending on what you ask. I
15 anticipate I will have some redirect after you
16 finish yours.

17 THE WITNESS: If you can make them brief and
18 finish it now, I would just as soon you finish now
19 and be done with it.

20 EXAMINATION

21 BY

22 MR. DANIEL B. WHITE:

23 Q. Mr. Schmidt, I'd like to clear up in my own
24 mind, you are not the librarian of the National

1 Safety Council, are you, sir?

2 A. No.

3 Q. And you are not the legal custodian of the
4 materials in the National Safety Council, are you,
5 sir?

6 MR. RICE: Object to the form of the question.
7 Calls for a legal conclusion.

8 THE WITNESS: Well, we don't have anybody by
9 that definition.

10 MR. DANIEL B. WHITE: Q. All right, sir. But
11 you yourself are not the custodian of the materials
12 in the National Safety Council library.

13 A. No.

14 Q. Now, in terms of the microfilm which has
15 been referred to, you have not personally reviewed
16 all of the rolls of microfilm for completeness, have
17 you, sir?

18 A. No.

19 Q. The microfilming was not made by employees
20 of the National Safety Council, was it?

21 A. No.

22 Q. And you yourself did not make the microfilm.

23 A. No.

24 Q. And, again, I'm referring to the

1 microfilming of the Transactions of the National
2 Safety Council. Is that your understanding?

3 A. Yes.

4 Q. And the microfilming was not made under
5 your personal supervision.

6 A. No.

7 Q. And I believe you stated earlier that you
8 have only been with the National Safety Council
9 since 1965.

10 A. That's correct.

11 Q. And in your first nine years or so, you
12 were in the Farm Department.

13 A. That's correct.

14 Q. Now, in terms of the National Safety
15 Council, you indicated there are 13,000 members.

16 A. As of today.

17 Q. How many different sections are there?

18 A. In what we call sections, there's 27
19 industrial and 3 motor transportation, as we define
20 a section.

21 Q. And there is a section for the railroads.

22 A. That's correct.

23 Q. And you have never personally worked with
24 and been responsible for the functions of the

1 Railroad Section?

2 A. I have worked with the Railroad Section
3 very briefly.

4 Q. All right, sir. But generally there is a
5 staff person from the National Safety Council --

6 A. That's correct.

7 Q. -- assigned to each section.

8 You have never been the staff person
9 assigned to the Railroad Section.

10 A. I was assigned temporarily.

11 Q. When was that, sir? Well, if you can just
12 estimate for me some time.

13 A. It would have been about eight or nine
14 years ago.

15 Q. You indicated, as far as the record
16 retention policy of the National Safety Council, you
17 generally do not keep any business records around
18 for more than two years.

19 A. That's correct.

20 Q. You do not, Mr. Schmidt, have any personal
21 knowledge of the business of the National Safety
22 Council prior to your employment with the National
23 Safety Council.

24 A. No.

1 Q. And so you have no personal knowledge of
2 the Transactions of the Congress of the National
3 Safety Council prior to your becoming employed by
4 this agency, your personal knowledge.

5 A. You're going back so far, I can't give you
6 an answer in terms of my previous employment,
7 whether I'd seen them before or not. I was aware --
8 before I worked here, I was aware of the National
9 Safety Council, I was aware of some of the things
10 that they did.

11 Q. All right, sir. But, I mean, you were not
12 personally aware of how the materials were compiled
13 and published --

14 A. No.

15 Q. -- prior to your employment in 1965.

16 A. No, not in answer to that question.

17 Q. And you cannot testify as to your own
18 personal knowledge that the Transactions were
19 prepared and when they were prepared in relation to
20 when the National -- when the annual meeting was
21 held.

22 A. Not prior to '65.

23 Q. And you cannot state of your own knowledge
24 who prepared -- or, who the different persons were

1 who prepared the Transactions prior to 1965, can you,
2 sir?

3 A. No.

4 Q. You cannot state of your own knowledge that
5 the persons who prepared the Transactions had
6 personal knowledge of the events which are related
7 in the Transactions.

8 A. No.

9 Q. The National Safety Council is not a
10 business, is it, sir?

11 A. Not a what?

12 Q. It's not a business.

13 A. Well, yes, it is a business.

14 Your definition of what is a business?

15 Q. Define your term business. I'm sorry.

16 A. I defined it earlier this morning that we
17 are a not-for-profit corporation, association, if
18 you'd like to call it that. So we do have financial
19 ins and outs; we pay bills and we collect moneys.

20 Q. All right, sir.

21 A. By that, it makes it a business.

22 Q. Will you agree with me that the
23 Transactions do not purport to be a verbatim
24 transcript of the proceedings before the National

1 Safety Congress?

2 A. This was stated earlier in what I said this
3 morning.

4 Q. And you agree with that statement.

5 A. Yes.

6 Q. In fact, they are condensed and edited
7 versions, are they not?

8 A. Not necessarily. They may be an exact
9 verbatim of the presentation; they may not be. That
10 determination is made by the individual speaker and
11 what is submitted to the Council.

12 Q. I hand you a copy, Mr. Schmidt, of a 4-page
13 article entitled, "General Sessions, 1950 National
14 Safety Congress," and ask you if you can identify
15 that.

16 A. Well, it appears to be out of our
17 Transactions. I would say it is.

18 Q. All right, sir. I ask for you to refer to
19 the third page of those materials, and read the --

20 A. Fourth, fifth paragraph?

21 Q. The fourth paragraph, sir.

22 A. It says, "In preparing these, the
23 proceedings of the Congress have been condensed and
24 edited for reference purposes. Complete original

1 charts and illustrations are available in Council
2 file."

3 MR. RICE: Do you want to mark that, unless
4 you've got it in -- I want to mark that page. If
5 he's reading from it, I want it marked.

6 THE WITNESS: This is 1950, which is very
7 similar to what was said this morning.

8 MR. DANIEL B. WHITE: All right, sir.

9 THE WITNESS: But now in answer to your question,
10 sir, I do know that since '65, since I have been
11 here, that some of the presentations as given by the
12 speakers and as printed in Transactions were
13 verbatim.

14 MR. DANIEL B. WHITE: First, Mr. Schmidt, let me
15 have that page marked as the next numbered exhibit
16 for this deposition.

17 (Whereupon, Deposition Exhibit
18 No. 21, Witness Schmidt,
19 was marked for identification,
20 as of this date.)

21 MR. DANIEL B. WHITE: Q. Mr. Schmidt, you will
22 agree with me, at least as far as Exhibit No. 21
23 shows, this remark was made in the introductory
24 materials to the 1950 Transactions.

1 A. That's correct.

2 Q. And at least in a number of the volumes
3 prior to 1965, that disclaimer, if you want to call
4 it that --

5 A. That is correct.

6 Q. -- does appear.

7 A. Yes, it does.

8 Q. I believe you stated this morning,
9 Mr. Schmidt, you can only testify of your own
10 personal knowledge as to those persons who are
11 members today in 1984, and --

12 A. That's correct.

13 Q. -- your records reveal the continuous
14 memberships of those members today.

15 A. That's correct.

16 Q. But you yourself are not custodian of the
17 membership list.

18 A. No.

19 Q. And it's not your function to maintain the
20 membership list.

21 A. No.

22 Q. And you do not make entries in the
23 membership list.

24 A. That is -- well, the final entry into, in

1 this case, the computer input I do not; I do not do
2 that kind of work, no.

3 Q. In terms of the mailing list of the
4 National Safety Council, you are not the custodian
5 of the mailing list, are you, sir?

6 A. In terms of the membership that you're
7 addressing, no.

8 Q. You do not maintain the mailing list of the
9 National Safety Council.

10 A. I don't.

11 Q. And you do not have any personal knowledge
12 of the method of mailings of the Transactions of the
13 National Safety Congress prior to your employment in
14 1965.

15 A. No.

16 Q. Is that correct, sir?

17 A. That's correct.

18 Q. Mr. Schmidt, we talked briefly about the
19 Subject Sessions. Is it your understanding that the
20 Subject Sessions were the general sessions of the
21 National Safety Congress?

22 A. If you want to call "subject" general.

23 Q. All right, sir. But based upon your
24 knowledge -- and I want to restrict this to your

1 knowledge -- I believe you stated earlier that
2 generally while general sessions are going on, that
3 usually there will be several general sessions going
4 on at one time; is that correct?

5 A. General sessions generally have things
6 going on concurrently. And I should add that there
7 may be section programs going on at the same time.

8 Q. And, Mr. Schmidt, the National Safety
9 Council has a Railroad Section, you testified
10 earlier, correct?

11 A. Yes.

12 Q. And this Railroad Section has an Executive
13 Committee; is that correct?

14 A. Yes.

15 Q. And the National Safety Council has minutes
16 of the Executive Committee going back to the mid 19
17 teens; is that correct?

18 A. That's your statement. The section
19 originated back in the teens as part of the Council.

20 Q. And there are minutes of --

21 A. There should be minutes available of those.

22 Q. And there are minutes of the Executive
23 Committee of the National Safety Council --

24 A. That's correct, there should be.

1 Q. -- available at the National Safety Council
2 library?

3 A. There should be.

4 Q. Today.

5 A. There should be.

6 Q. And you have not been asked to produce
7 those --

8 A. No.

9 Q. -- and authenticate those for this
10 deposition, have you, Mr. Schmidt?

11 A. No.

12 Q. And the Railroad Section of the National
13 Safety Council has produced a monthly newsletter at
14 least since the 1920s, has it not, sir --

15 A. Yes.

16 Q. -- based upon your information?

17 And you have not been asked to produce
18 today for authentication any of those newsletters.

19 A. No.

20 MR. DANIEL B. WHITE: That's all I have.

21 MR. WHITNEY: I have --

22 MR. DANIEL B. WHITE: I have no more questions,
23 Mr. Schmidt. Thank you, sir.

24 MR. WHITNEY: Mr. Schmidt --

1 MR. ALDRIDGE: Just a second. Off the record.

2 (Discussion off the record.)

3 MR. GAVIN: I'd like this on the record, please.

4 MR. RICE: I'm not going to stipulate one way or
5 the other. I think if a deposition is taken, you
6 can read any part of it.

7 MR. ALDRIDGE: No, no, that's fine. We're not
8 going to go through here and give the same questions
9 again that he just asked. He just asked the
10 questions on behalf of the railroads.

11 MR. GAVIN: All we're saying is I can adopt his
12 questioning as my own in the Illinois cases. Is
13 that right?

14 MR. RICE: I don't care.

15 MR. ALDRIDGE: Right. Okay. That's fine. Back
16 on the record.

17 F. Saunders Aldridge, Seaboard System.

18 I would like to do that, and I
19 apologize for interrupting whoever I interrupted.

20 EXAMINATION

21 BY

22 MR. WHITNEY:

23 Q. Mr. Schmidt, in answer to counsel's
24 question, you indicated that some of the written

1 records in the proceedings may have been verbatim
2 transcriptions of the presentations, and others
3 edited, of course. As you sit here, you have no way
4 of knowing which ones may have been verbatim
5 transcriptions, and which --

6 A. I have no way of knowing.

7 MR. WHITNEY: That's all I have.

8 MR. DANIEL B. WHITE: Bill?

9 MR. GAVIN: (Shaking head.)

10 EXAMINATION

11 BY

12 MR. MURPHY:

13 Q. Mr. Schmidt, I'm going to give you
14 Transactions of the National Safety Council, 1948.
15 We've already identified this. This is Page 47 --

16 A. Oh.

17 Q. -- that we talked about, Past General
18 Chairmen.

19 We're having trouble with membership
20 lists except for the past two years, so my questions
21 are going to be directed towards membership and what
22 this exhibit may or may not reflect in membership.
23 Do you know if it is the -- if it is the normal
24 procedure for a Past General Chairman, Railroad

1 Committee, to appear for himself individually, or
2 does this indicate that the Pennsylvania System was
3 a member during that time?

4 MR. DANIEL B. WHITE: Object to the form of the
5 question.

6 MR. DAVID B. WHITE: I object to the competency
7 of this witness to testify to that question of
8 counsel.

9 MR. MURPHY: Q. I understand that you may not
10 know the answer to this question. I'm just asking
11 whether you do in fact know that it is.

12 We can take it in the present day. Is
13 it the practice of the National Safety Committee to
14 have the chairman of a certain section represent
15 himself as an individual, or is he there
16 representing -- or does that indicate also that the
17 organization that he is affiliated with is also a
18 member?

19 MR. GAVIN: I object.

20 MR. DANIEL B. WHITE: Renew our previous
21 objection.

22 MR. ALDRIDGE: Object to form. Assumes facts
23 not in evidence, is vague and misleading.

24 MR. WHITNEY: I want to join in that objection.

1 THE WITNESS: I cannot speak to the volume you
2 have. I can recite for you, if you'd like to hear
3 the policy as of today relative to these executive
4 committee officers.

5 MR. MURPHY: Q. Go ahead.

6 A. The present policy, which has only been
7 enforced within the last couple of years, in essence,
8 asks that anyone serving on an executive committee
9 of the section should -- their company or them
10 individually should be a member, is expected to be a
11 member of the National Safety Council.

12 Now, there are a couple of notable
13 exceptions, the major one being federal government
14 employees, because of some difficulties with the
15 federal government in paying dues to a private
16 association.

17 Q. Can you tell me what --

18 A. That policy, I might say, does present
19 certain difficulties of enforcement from time to
20 time.

21 Q. Can you tell me what year that was started?

22 A. I cannot recite a year for you. The policy
23 as given out from our board of directors would have
24 been about three or four years ago when they spelled

1 it out in writing finally.

2 Q. Do you have any personal knowledge, sir,
3 about the years before that what the policy may or
4 may not have been?

5 A. The policy before that was pretty much as
6 what I've stated before, but it was never spelled
7 out and never enforced.

8 Q. In your experience, though, the members of
9 the -- heads of the individual sections were there
10 representing themselves individually, or
11 representing the companies?

12 A. In terms of representation, as a rule, an
13 individual either will indicate that he is employed
14 by someone and thus representing someone, or if he's
15 representing himself, he'll usually be himself at a
16 home address, a home city, state, with no company
17 name.

18 MR. MURPHY: That's all I have for right now.
19 Thanks.

20 MR. RICE: Anyone else have any cross-
21 examination?

22 MR. ALDRIDGE: Mr. Schmidt --

23 MR. RICE: You just adopted Mr. White's. You
24 can't go twice.

1 MR. ALDRIDGE: I did adopt it, but I have one
2 question.

3 THE WITNESS: He's been nice about it. We'll
4 let him go.

5 EXAMINATION

6 BY

7 MR. ALDRIDGE:

8 Q. I believe that it's Exhibit No. 5, the
9 membership, you took some information off of some of
10 the records. Is that the list of --

11 A. Is that 5 here (indicating)?

12 Is that 5? Yes, okay. That was the
13 list given to us by subpoena to check over.

14 Q. Yes, sir.

15 A. Okay.

16 Q. The entry of 1918 beside Seaboard System
17 Railroad, I represent to you, sir, that Seaboard
18 System Railroad has not been in existence since 1918,
19 that your records would apparently reflect a
20 membership by some predecessor. Is that -- would
21 that be accurate?

22 A. That is possible.

23 Q. You don't know which predecessor that would
24 be?

1 A. No, I do not know.

2 MR. ALDRIDGE: Thank you very much, sir.

3 FURTHER EXAMINATION

4 BY

5 MR. RICE:

6 Q. Mr. Schmidt, what did you do prior to 1965?

7 A. Prior to '65, I was in school.

8 Q. You said earlier to Mr. White that you had
9 some familiarity with the National Safety Council
10 before you came to work.

11 A. Um-hmm.

12 Q. I'm just asking you as to what basis -- how
13 you did that, how you had that information.

14 A. Well, prior to going to school, which was
15 in '62 -- '63, excuse me, I was a schoolteacher in
16 high school, and there were materials which we use
17 in our programs that came from the National Safety
18 Council.

19 Q. So that's the familiarity you had?

20 A. Yes.

21 Q. The microfilm that we have identified today,
22 was that microfilm made at the request of the
23 National Safety Council?

24 A. Yes.

1 Q. And is it kept in the normal course of
2 business by the National Safety Council?

3 A. Yes.

4 Q. And was it made by a contractor that the
5 National Safety Council contracted with to make the
6 microfilm?

7 A. I assume.

8 Q. Do you have any knowledge about that?

9 A. No.

10 Q. Are you familiar with the way the library
11 works at the National Safety Council?

12 A. Pretty closely.

13 Q. Are you familiar with the library?

14 A. Yes.

15 Q. And do you come here on a frequent basis?

16 A. Several times a day.

17 Q. Is there a head librarian as such that has
18 master control over the library?

19 A. Yes.

20 Q. And her name is?

21 A. Ruth Hammersmith.

22 Q. And when did she come?

23 A. Sometime after I came.

24 MR. RICE: Mr. Schmidt -- that's all. Thank you.

1 I have no further.

2 THE WITNESS: I do wish to have a copy of this
3 transcript, though.

4 MR. DAVID B. WHITE: Joe will pay for that.

5 MR. DANIEL B. WHITE: No questions.

6 MR. RICE: All right. On the record,
7 Mr. Schmidt will maintain the exhibits that were
8 microfilmed that were marked, he will maintain the
9 original, and I assume they will be found or find-
10 able in the library of the National Safety Council.

11 THE WITNESS: Yes.

12 MR. RICE: Mr. Schmidt, you have the right to
13 read and sign this deposition if you so desire --

14 THE WITNESS: I desire.

15 MR. RICE: -- or you may waive that right.

16 THE WITNESS: No, I'm going to.

17 MR. RICE: All right. You make arrangements
18 with the court reporter to handle that.

19 MR. DANIEL B. WHITE: Let me simply state on the
20 record again that we have objected previously to
21 Mr. Rice's procedure for providing copies of the
22 microfilm, and of course we object to that procedure
23 for the reasons stated, but if for some reason that
24 is allowed to be attached as an exhibit and used as

1 part of this deposition, then certainly we contend
2 we have the right to further cross-examination once
3 that microfilm is available.

4 MR. RICE: I contend that the microfilm is
5 available right now, and there are the copies, and
6 your cross-examination is to take place now if you
7 have any. Those are the copies I'm going to have.

8 MR. GAVIN: Well, that's an absurd statement,
9 given the fact that not all the microfilm is
10 available.

11 MR. RICE: Yes, it is.

12 MR. GAVIN: There's only 15 things here.

13 MR. RICE: That's all I'm having marked.

14 MR. GAVIN: And that's an absurd statement,
15 given the logistics of it.

16 MR. RICE: The microfilm is here, the microfilm
17 that plaintiffs intend to mark and have attached as
18 exhibit -- as part of exhibits to this deposition
19 are here. Cross-examination can be done effectively
20 right now. The microfilm is available, the reader
21 is available, and the witness is available.

22 MR. DANIEL B. WHITE: Well, we are relying on
23 our previous objection, and I believe you already
24 stated that the copies which you intend to use to

1 make your copies of documents which you will use
2 have not even been prepared or in the process of
3 being prepared.

4 MR. RICE: I intend to make my copies from
5 whatever source I have, but these are the copies
6 that will be the accurate copies, and if there's any
7 question about that, that can be resolved.

8 MR. DANIEL B. WHITE: When you say "these copies,"
9 you mean --

10 MR. RICE: The ones that were marked.

11 MR. DANIEL B. WHITE: -- these microfilms that
12 are here at the National Safety Council.

13 MR. RICE: Or a copy of those made, which will
14 be the same. A copy is the same as the original.

15 MR. DANIEL B. WHITE: We contend, of course,
16 those are not properly authenticated.

17 MR. RICE: And I contend that they are. But as
18 far as your cross-examination, that's what you
19 cross-examine off of, Mr. White. It's available.

20 MR. DANIEL B. WHITE: Okay. We can cross that
21 hurdle later.

22 MR. ORLANSKY: For the record, Joe, are the
23 articles that you had reproduced xerographically,
24 are those going to be attached as exhibits?

1 MR. RICE: No.

2 MR. ORLANSKY: Apparently some of the counsel
3 have available to them -- I've seen one gentleman
4 over here with copies of those articles. I'm
5 wondering how we who do not have those copies
6 available can have them made available to us.
7 Apparently there was some arrangement you made with
8 the other counsel to get some of them copies, and
9 others not, and --

10 MR. RICE: I have made no arrangements with no
11 one to provide copies of anything other than
12 materials that were marked as part of this
13 deposition, which are microfilmed, which are
14 available from the addresses that we talked about.
15 There was a dep -- there was a document production
16 done in July of 1983 in a Norfolk Southern case in
17 which Mr. White and Mr. Roven came up here and
18 reviewed and copied some materials. That is the
19 only other source of the materials that I'm aware of
20 is what Norfolk Southern has, and I think Norfolk
21 Southern might have made it available to some of the
22 other railroads.

23 MR. DANIEL B. WHITE: The copies were made
24 available to me by Mr. Roven in your office.

1 MR. RICE: Okay. You all came up to me and got
2 a copy. That was pursuant to a subpoena that we had
3 issued at that time in French vs. Norfolk Southern
4 filed in the United States District Court for the
5 District of South Carolina, Anderson Division.

6 MR. ORLANSKY: However you got them, Joe, can we
7 have them made available to us, a photocopy?

8 MR. MORRIS: We don't care how you got them.

9 MR. ORLANSKY: For the record, I will contact
10 Mr. Rice after I get back to Pittsburgh and he gets
11 back to South Carolina, we'll make arrangements.

12 MR. DANIEL B. WHITE: My name is Danny White,
13 and I live in Greenville, South Carolina. Anybody
14 can call me there and I'll be glad to provide copies
15 for the copying charge.

16 MR. GAVIN: You're going to make the exhibits
17 part of the transcript?

18 MS. URLAUB: Yes.

19 MR. RICE: Now, all of them that we referred to,
20 I don't have copies of them, you understand that.

21 MR. ORLANSKY: Whatever you do have.

22 FURTHER DEPONENT SAITH NOT ...
23
24

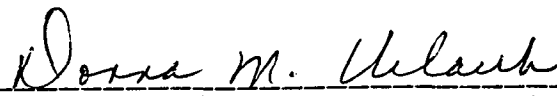
1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)
4

5 I, Donna M. Urlaub, a notary public in and
6 for the County of DuPage and State of Illinois, do
7 hereby certify that PHILIP E. SCHMIDT was first duly
8 sworn to testify the whole truth, and that the
9 foregoing deposition was recorded stenographically
10 by me and was reduced to computerized transcript
11 under my direction, and that the said deposition
12 constitutes a true record of the testimony given by
13 said witness.

14 I further certify that the reading and
15 signing of said deposition was reserved by the
16 witness and counsel.

17 I further certify that I am not a relative
18 or employee or attorney or counsel of any of the
19 parties, or a relative or employee of such attorney
20 or counsel, or financially interested directly or
21 indirectly in this action.

22 IN WITNESS WHEREOF, I have hereunto set my
23 hand and affixed my seal of office at Chicago,
24 Illinois, this 23rd day of April A.D. 1984.

25 
26 Notary Public, DuPage County, Illinois
27 My commission expires April 15, 1985.

1 IN THE CIRCUIT COURT
2 TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

3 ROBERT L. SHARP,)

4 Plaintiff,)

5 vs.)

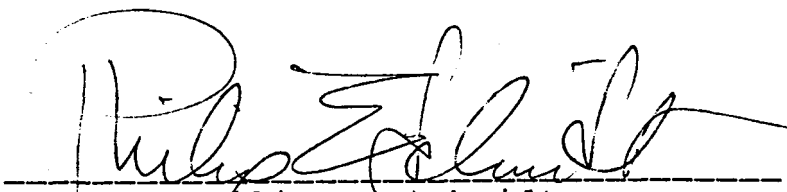
Cause No. 83-L-584

6 ILLINOIS CENTRAL GULF)
7 RAILROAD COMPANY, a)
corporation,)

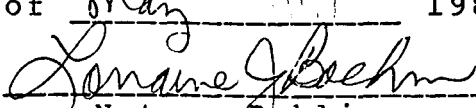
8 Defendant.)

9 AND CAUSES NOTICED IN AFOREMENTIONED JURISDICTIONS

10 This is to certify that I have read the
11 transcript of my deposition taken on the 17th day of
12 April 1984 in the foregoing cause, and that the
13 foregoing transcript accurately states the questions
14 asked and answers given by me, with the changes or
15 corrections, if any, made on the Errata Sheet
16 attached hereto.

17 
18 _____
19 Philip E. Schmidt

20 Subscribed and sworn to
21 before me this 5th day
22 of May 1984.

23 
Notary Public

24 My comm. expires 4-10-87

ERRATA SHEET

I wish to make the following changes for the following reasons:

PAGE LINE

43 9 SHOULD BE: Members

REASON: wrong for the word

43 18 SHOULD BE: Computer records - not "I"

REASON: Incorrect "that I picked out"

45 7 SHOULD BE: not "going" = changes

REASON: -

65 8/8 SHOULD BE: ~~addition~~ in the audience

REASON: not addition - wrong word-

SHOULD BE: _____

REASON: _____

SHOULD BE: _____

REASON: _____

SHOULD BE: _____

REASON: _____

SHOULD BE: _____

REASON: _____

SHOULD BE: _____

REASON: _____

SHOULD BE: _____

REASON: _____

SHOULD BE: _____

REASON: _____

(Signed)

Philip J. Schmitt

ORIGINAL FILED

MAR 29 1984

IN RE:

ASBESTOS CASES

Insulator, Shipworker
and Plantworker

DEPOSITION
EXHIBIT GR
Schmidt #12
4-17-84 me

NOTICE TO TAKE DEPOSITION

You are hereby notified that, pursuant to the terms and provisions of Rule 30 of the Federal Rules of Civil Procedure, on April 17, 1984, beginning at 10:00 a.m. at the Hotel Continental, 505 North Michigan Avenue, Chicago, Illinois, the plaintiff will take the deposition of Phillip Schmidt, Chief Librarian, National Safety Council, 444 N. Michigan Avenue, Chicago, Illinois.

This deposition is being taken in a number of jurisdictions as shown on the attached sheet. It is being taken pursuant to the Federal Rules of Civil Procedure for all purposes allowed by those rules, including use at trial. In cases which this deposition is noticed that are pending in State Courts or a Federal Court with special rules, this deposition will be conducted pursuant to those rules if not inconsistent with the Federal rules. If, for any reason, the deposition cannot be taken in compliance with all rules, a second deposition will be taken specifically for that Court at the same time and place listed above.

The purpose of this deposition is to have Mr. Schmidt produce annals of the National Safety Council and other publications present in the National Safety Council library and to authenticate the same materials. The Plaintiff further intends to inquire of the witness any knowledge he has concerning the membership of the National Safety Council. To the knowledge of the undersigned, Mr. Schmidt has never been deposed in asbestos litigation.

This deposition is expected to last only four hours but will continue from day to day until completed. You are invited to attend and participate.

Respectfully submitted,

BLATT & FALES
P. O. Box 365
Barnwell, S. C. 29812

BY: Joseph F. Rice
Joseph F. Rice

March 28, 1984.

NOTICE OF DEPOSITION OF PHILLIP SCHMIDT SERVED IN THE FOLLOWING JURISDICTIONS

In Re: Asbestos Cases (USDC - South Carolina) (Insulator, Shipworker, Plantworker

USDC, District of Pennsylvania

Lechner v. Conrail, et al

C/A No. 82-2301, et al.

USDC, District of South Dakota, Southern Division

Burger v. Chicago Northwestern Transportation Co.

C/A No. 83-4118

USDC, Western District of Kentucky, Louisville Division

Greenwell v. Seaboard Systems Railroad, Inc.

C/A No. 83-0541-L-A

USDC, Eastern District of Tennessee

Brown v. Southern Railway Company

C/A No. 1-83-280

USDC, District of Utah, Central Division

Tea v. Denver & Rio Grande Western Railroad Co.

C/A No. C82-1174(C)

USDC, District of Nebraska

Carroll v. Union Pacific Railroad Co.

C/A No. 83-0-615

USDC, Southern District of West Virginia at Huntington

Judd v. The Chesapeake & Ohio Railway Co.

C/A No. 83-3035

USDC, Eastern District of Pennsylvania

Scholl v. Conrail and The Reading Co.

C/A No. 82-1685

Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois

Pease v. Illinois Central Gulf Railroad Co.

C/A No. 82-L-1012

USDC, Western District of Virginia, Roanoke Division

Palmer v. Norfolk & Western Railway Co.

C/A No. 83-0282-R

USDC, District of Maryland

Davis v. Western Maryland Railway Co., et al.

C/A No. N-83-4

USDC, District of Maryland

Yergan v. The Baltimore & Ohio Railroad Co.

C/A No. H-83-1231

USDC, Middle District of Florida, Jacksonville Division

Grimsley v. Seaboard System Railroad, Inc.

C/A No. 83-880-Civ-J-12

CERTIFICATE OF MAILING

This will certify that the undersigned today placed in the United States Mail, postage prepaid, copies of the within _____

NOTICE TO TAKE DEPOSITION

to the below listed counsel:

Robert A. Patterson, Esq.
P. O. Drawer H
Charleston, SC 29402

Henry G. Garrard, III Esq.
P. O. Box 832
Athens, GA 30603

Joseph H. McGee, Esq.
5 Exchange Street
Charleston, SC 29401

Robert R. Carpenter, Esq.
P. O. Box 551
Rock Hill, SC 29730

N. Heyward Clarkson, Esq.
800 First Federal Bldg.
Greenville, SC 29601

James B. Pressly, Jr., Esq.
Dewey Oxner, Esquire
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Greenville, SC 29603

R. Bruce Shaw, Esquire
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Columbia, SC 29211

Rembert D. Parler, Esq.
P. O. Box 3544
Spartanburg, SC 29304

Thomas S. Tisdale, Jr., Esq.
Post Office Box 993
Charleston, SC 29402

George Nicholson, Jr., Esq.
P. O. Box 489
Lexington, SC 29072

March 28, 1984
SCDC/a1/3-21-84/51

Dellie Rosier

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

ISABEL S. ROSER, Administratrix)
of the Estate of BEN P. ROSER,)
deceased,)

Plaintiff,)

vs.)

Cause No. 82-L-1011

ILLINOIS CENTRAL GULF RAILROAD)
COMPANY, a corporation,)

Defendant.)

NOTICE TO TAKE EVIDENCE DEPOSITION

TO: ILLINOIS CENTRAL GULF RAILROAD COMPANY

AND: Richard E. Boyle, Esq.
Gundlach, Lee, Eggmann, Boyle & Roessler
5000 West Main Street, Box 692
Belleville, Illinois 62222
Attorney for the Defendant

DATE, HOUR & PLACE: Tuesday, April 17, 1984, at 10:00 a.m.
The Westin Hotel (Continental)
500 N. Michigan Ave.
Chicago, Illinois

WITNESS TO BE DEPOSED: Phillip Schmidt
Chief Records Librarian

PLEASE TAKE NOTICE that at the above stated date,
hour and place I shall cause the deposition of the witness
above stated to be taken on oral interrogatories, pursuant
to the Illinois Statutes and Supreme Court Rules governing

depositions, before a suitable Notary Public, at which time any party or their attorney may appear and cross-examine if they may see fit.

KUJAWSKI & ROSEN

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above causes by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid and by depositing said envelope in a U.S. Post Office

Mail Box in Belleville, Illinois, on the 28th day of

March A.D. 1984
Antoinette H. Dickert

By

John P. Kujawski
John P. Kujawski
6400 West Main Street, Suite 3A
Belleville, Illinois 62223
(618) 397-8047

Attorneys for the Plaintiff

Copy to: ☒ Sullivan Reporting Company
(312) 782-4705

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

ROBERT L. SHARP,

Plaintiff,

vs.

ILLINOIS CENTRAL GULF RAILROAD
COMPANY, a corporation,

Defendant.

Cause No. 83-L-584

NOTICE TO TAKE EVIDENCE DEPOSITION

TO: ILLINOIS CENTRAL GULF RAILROAD COMPANY

AND: Richard E. Boyle, Esq.
Gundlach, Lee, Eggmann, Boyle & Roessler
5000 West Main Street, Box 692
Belleville, Illinois 62222
Attorney for the Defendant

DATE, HOUR & PLACE: Tuesday, April 17, 1984, at 10:00 a.m.
The Westin Hotel (Continental)
500 North Michigan Avenue
Chicago, Illinois

WITNESS TO BE DEPOSED: Phillip Schmidt
Chief Records Librarian

PLEASE TAKE NOTICE that at the above stated date,
hour and place I shall cause the deposition of the witness
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KUJAWSKI & ROSEN

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties in the above causes by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid and by depositing said envelope in a U.S. Post Office

Mail Box in Belleville, Illinois, on the 28th day of

March A.D. 1984
Antoinette H. Richert

By John P. Kujawski
John P. Kujawski
6400 West Main Street, Suite 3A
Belleville, Illinois 62223
(618) 397-8047

Attorneys for the Plaintiff

Copy to: Sullivan Reporting Company
(312) 782-4705

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY

ROBERT L. SHARP,
Plaintiff,

vs.

ILLINOIS CENTRAL GULF RAILROAD
COMPANY, a corporation,
Defendant.

No. 83-L-584

SUBPOENA FOR DEPOSITION

To: Phillip Schmidt, Chief Records Librarian
National Safety Council, 444 N. Michigan Ave., Chicago, IL 60611

You are commanded to appear to give your deposition before a notary public in room
The Westin Hotel (Continental), 500 North

no. _____ at Michigan Ave., Chicago, Illinois, on
(Insert name of building, address including city)

Tuesday, April 17, 1984, at 10:00 A.M.

YOU ARE COMMANDED ALSO to bring the following: and to produce to plaintiff's
attorney certain instruments of writing purporting to be or indicate the
membership history of the corporations, companies or railroads listed on
the attached sheet which is incorporated as Appendix "A".

our possession or control.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR
CONTEMPT OF THIS COURT.

WITNESS, March 26, 1984

(Seal of Court)

C. BARNEY METZ

(Clerk of the Circuit Court)

By: *Queneta Garrett*
(Deputy)

I served the subpoena by handing a copy to _____

on _____, 19____. I paid the witness \$ 30.00 for witness and mileage fees.

Signed and sworn to before me

_____, 19____

(Notary Public)

(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

Name John P. Kujawski/John D. Roven

ney for Plaintiff

Address 6400 West Main St., Suite 3A

City Belleville

Telephone (618) 397-8047

APPENDIX "A"

Railroad Companies

Illinois Central Gulf Railroad Co.
Chesapeake & Ohio Railroad Co.
Norfolk & Western Railway Co.
The Southern Railroad Company
Burlington Northern Railroad Co.
Chicago and Northwestern Railroad Co.
Seaboard Systems Railroad Co., Inc.
Louisville & Nashville Railroad Co.
Penn Central Transportation Co.
Consolidated Rail Corporation
National Passenger Railroad Corp.
(AMTRAK)
The Reading Corp.
Baltimore & Ohio Railroad Co.
Denver and Rio Grande Railroad Co.
Western Maryland Railroad Co.
Union Pacific Railroad Co.
Missouri Pacific Railroad Co.
Southern Pacific Transportation Co.

Non-Railroad Companies

AC&S Inc.
Armstrong World Industries
Benjamin Foster Co. (Amchem)
Canadian Johns-Manville
The Manville Corporation
Carey Canada
Celotex Corp.
Combustion Engineering, Inc.
Covil Corporation
Eagle-Picher, Inc.
Fiberboard Corp.
Empire-Ace Co.
Forty-Eight Insulations, Inc.
TAF Corporation
Garlock, Inc.
H. K. Porter, Inc.
J. R. Deans Co.
The Keene Corp.
Lake Asbestos
National Gypsum Corp.
North Brothers, Inc.
Owens Corning Fiberglas, Inc.
Owens-Illinois, Inc.
Pittsburgh Corning, Inc.
Raymark, Inc.
Rockwool Manufacturing Co.

APPENDIX "A" (Cont.)

Non-Railroad Companies

Standard Asbestos Co.

Turner Newall, Ltd.

U.S. Mineral Co.

Vinasco Corp.

Southern Textile Co.

Turner Asbestos Fibers, Ltd.

Bell Asbestos Mines

Asbestos Corp., Ltd.

Nicolet, Inc.

Metropolitan Life Insurance Co.