

FILE NAME: Kaiser Gypsum (KG)

DATE: 1999 June 1

DOC#: KG054

DOCUMENT DESCRIPTION: Legal - Deposition of Brentwood Crosby Vol II

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF KING

3 ---000---

4 JOHN E. CRUM and MARILYN J.
5 CRUM, a married couple,

6 Plaintiffs,

7 vs.

No. 98-2-24915-3SEA

8 THE E.J. BARTELLS COMPANY;
9 et al.,

10 Defendants.

11
12
13 DEPOSITION OF BRENTWOOD CROSBY

14 VOLUME II

15 (Pages 70 to 171)

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18
19 Taken before KIMBERLEY RICHARDSON

20 CSR No. 5915

21 June 1, 1999



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Certified Shorthand Reporters

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DEPOSITION OF BRENTWOOD CROSBY

BE IT REMEMBERED, that pursuant to Notice, and on the 1st day of July 1999, commencing at the hour of 10:00 a.m., in the offices of Aiken & Welch, One Kaiser Plaza, Suite 505, Oakland, California, before me, KIMBERLEY RICHARDSON, a Certified Shorthand Reporter, personally appeared BRENTWOOD CROSBY, produced as a witness in said action, and being by me first duly sworn, was thereupon examined as a witness in said cause.

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FRANCIS FERNANDEZ, Kazan, McClain, Edises, Simon & Abrams, 171 - 12th Street, Suite 300, Oakland, California 94607, appeared on behalf of the Brentwood Crosby.

MATTHEW P. BERGMAN, Weinstein & Bergman, 1201 Third Avenue, Suite 5300, Seattle, Washington 98101-3000, appeared on behalf of the Plaintiffs.

1 GABRIEL A. JACKSON, PAUL J. GAMBA, Jackson &
2 Wallace, 580 California Street, 15th Floor, San
3 Francisco, California 94104, appeared on behalf of the
4 Defendant Kaiser Gypsum Company, Inc.

5
6 PATRICIA FRIEDEL, Gordon, Thomas, Honeywell,
7 Malanca, Peterson & Daheim, One Union Square, 600
8 University, Suite 2101, Seattle, Washington
9 98101-4105, specially appearing for those defendant
10 members of the Center for Claims Resolution who have
11 been served in this action.

12
13 PAUL CLARK, Lane, Powell, Spears, Lubersky, 1420
14 Fifth Avenue, Suite 4100, Seattle, Washington
15 98101-2338, appeared on behalf of the Defendant W.R.
16 Grace & Company.

17
18 KATHERINE M. STEELE, Steele & Sales, 700 Fifth
19 Avenue, Suite 5511, Seattle, Washington 98104,
20 appeared on behalf of the Defendant E.J. Bartells
21 Company.

1 KENNETH E. PETTY, Williams, Kastner & Gibbs, Two
2 Union Square, 601 Union Street, Suite 4100, Seattle,
3 Washington 98101-2380, appeared on behalf of the
4 Defendant Kaiser Gypsum Company, Inc.

5
6 ALSO PRESENT: Ondrietta Johnson, Tele-Video
7 Production.
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1 MR. PETTY: For the record, my name is Ken
2 Petty, and I'm the attorney of record for Kaiser
3 Gypsum in the lawsuit entitled John E. Crum and
4 Marilyn J. Crum vs. E.J. Bartells pending in King
5 County Superior Court in Seattle, Washington.

6 This is the continuation of the videotape
7 deposition of Brentwood Crosby. Plaintiffs conducted
8 and completed their videotape direct examination of
9 Mr. Crosby on January 19, 1999, in Seattle,
10 Washington.

11 Defendant Kaiser Gypsum is proceeding here
12 today, July 1st, 1999, in Oakland, California with its
13 videotaped cross-examination of Mr. Crosby pursuant to
14 the order of the Honorable Anne Schindler.

15 For the record, would the videographer please
16 identify herself as well as the date, time and
17 location for the videotaping.

18 THE VIDEOGRAPHER: My name is Ondrietta Johnson.
19 I'm a qualified video technician and a notary public
20 for the County of Alameda, State of California.

21 This deposition is located at Aiken & Welch, the
22 Ordway Building, One Kaiser Plaza, Suite 505, Oakland,
23 California 94612.

24 It is July 1st, 1999. The present time is 10:05
25 a.m.

1 MR. PETTY: And for the record, stipulations
2 will be the same as were reached for the January 19,
3 1999, deposition; is that fine?

4 MS. FRIEDEL: Yes.

5 MR. PETTY: May we go ahead and proceed to swear
6 the witness, please.

7 BRENTWOOD CROSBY,
8 sworn as a witness,
9 testified as follows:

10 EXAMINATION BY MR. PETTY

11 MR. PETTY: Q. Good morning, Mr. Crosby. I
12 introduced myself. We met in Seattle and again this
13 morning. And we're here today, are we not, right
14 across from the Kaiser Center where you worked for
15 Kaiser for some 14 years?

16 A. Right.

17 Q. Near the end of the testimony that you
18 gave at Mr. Bergman's request in Seattle earlier this
19 year, do you remember testifying that, quote, "Kaiser
20 Gypsum was the best company I ever worked for. We
21 were very upset that they sold the company to Domtar
22 of Canada"? Do you remember that testimony?

23 A. Yes.

24 Q. So I take it it's true that you found that
25 Kaiser Gypsum was a great company to work for?

1 A. Very much so.

2 Q. And, in fact, if it hadn't been such a
3 great company, you would not have stayed with them for
4 18 years; would you, sir?

5 A. No.

6 Q. In terms of some of the reasons why you
7 found it to be such a great company to work for, did
8 you find that the people generally got along well?

9 A. Yes.

10 Q. Did you find that the people took their
11 job seriously?

12 A. Yes.

13 Q. And did you find that from your
14 perspective the people tried their best to create good
15 products to satisfy the needs of their customers?

16 A. Yes.

17 Q. Did you find that the people at Kaiser
18 Gypsum worked well together?

19 A. Yes.

20 Q. Did you find that the people effectively
21 communicated with one another whether it was a formal
22 meeting or just an informal chat in the hallway?

23 A. Yes.

24 Q. And was it your perception that the people
25 at Kaiser Gypsum cared about each other?

1 A. Yes.

2 Q. Did you find that the people at Kaiser
3 Gypsum went so far as to do things with one another
4 away from work whether it's golfing with one another,
5 fishing with one another, socializing, whatever they
6 wanted to do?

7 A. Yes.

8 Q. Now, in terms of your 18 years with Kaiser
9 Gypsum, did you find it to be a collection of
10 individuals who cared about their customers as well?

11 A. Yes.

12 Q. Now, isn't it true, sir, that had the
13 company not been sold to Domtar of Canada in 1978, you
14 likely would have spent the rest of your work career
15 and retired as a Kaiser Gypsum employee?

16 A. Yes.

17 MR. FERNANDEZ: Objection. It calls for
18 speculation on the part of the witness.

19 MR. PETTY: May you identify yourself because I
20 don't believe you are on the record.

21 MR. FERNANDEZ: Sure. My name is Frank
22 Fernandez, and I'm here representing Mr. Crosby.

23 MR. PETTY: Thank you.

24 Q. Now, Mr. Crosby, when Kaiser Gypsum was
25 sold to Domtar in 1978, isn't it true that you

1 continued working at Domtar with many of your same
2 fellow co-workers who you had worked with at Kaiser
3 Gypsum?

4 A. Yes.

5 Q. And, in fact, wasn't the plaintiff in this
6 case, Mr. John Crum, one of your co-workers who you
7 continued to work with at Domtar?

8 A. Yes.

9 Q. And didn't you and Mr. Crum, in fact,
10 continue to work together for another 10 or 11 years
11 at Domtar after Kaiser Gypsum was sold?

12 A. Yes.

13 Q. Now, during your 18 years with Kaiser
14 Gypsum, isn't it true that it appeared to you to be a
15 safety-conscious company concerned with the health and
16 well-being of its employees?

17 A. Yes.

18 Q. And did the company provide you and the
19 other employees health care insurance?

20 A. Yes.

21 Q. Did the company provide you and the other
22 employees Workers' Compensation insurance for any
23 accidents that might occur?

24 A. Yes.

25 Q. And speaking for yourself, I take it,

1 isn't it true that during the 14 years that John Crum
2 worked for you as an area sales manager you certainly
3 did not want or intend him to be harmed performing his
4 normal job duties, calling on customers and selling
5 the company's products; did you?

6 A. No.

7 Q. And you got to know other people in
8 management at the company pretty well over the years;
9 did you not?

10 A. Yes.

11 Q. From getting to know those others in
12 management, isn't it true, sir, that you have
13 absolutely no reason to believe that anyone else in
14 management wanted or intended area sales managers like
15 John Crum to be harmed performing their normal duties
16 calling on customers and selling products?

17 A. Yes.

18 Q. Now, in terms of your 18 years working for
19 the company, sir, isn't it true that many of your
20 close friends even today some 21 years after Kaiser
21 Gypsum was sold, many of your close friends today are
22 people you worked with at Kaiser?

23 A. Yes.

24 Q. And those would be -- before he passed
25 away, John Crum was a close friend of yours?

1 A. Yes.

2 Q. And Dick Madsen, you mentioned his name in
3 the prior deposition.

4 A. Yes.

5 Q. Does he continue to be a close friend of
6 yours?

7 A. Yes.

8 Q. And you mentioned Byron Havernick. Was he
9 a former employee at Kaiser Gypsum?

10 A. Yes.

11 Q. And does he continue to be a close friend
12 of yours?

13 A. Yes.

14 Q. And I take it there are others that I
15 haven't mentioned; correct?

16 A. Yes.

17 Q. Now, you and Mr. Crum -- how close was
18 your relationship with Mr. Crum? Were you very close
19 friends?

20 A. Yes.

21 Q. And I take it you were close enough that
22 you would help Mr. Crum out if he needed your help?

23 A. Yes.

24 Q. If he asked you for something, you
25 wouldn't hesitate to give it to him?

1 A. No.

2 Q. Now, Dick Madsen, do you call on or visit
3 Dick Madsen quite frequently even today, 1999?

4 A. Yes.

5 Q. How far apart do the two of you live?

6 A. Probably about 15 miles. He lives in
7 Danville.

8 Q. And I think you testified or perhaps Mr.
9 Crum testified that you and Dick Madsen traveled from
10 the Bay Area to Nevada to visit John Crum when he took
11 ill last year in 1998?

12 A. Yes.

13 Q. Now, I want to talk to you some about Mr.
14 Madsen because I take it you've gotten to know him
15 very, very well in the years that you've worked with
16 him and since then while you've been his close friend;
17 correct?

18 A. Yes.

19 Q. How long have you known Dick?

20 A. Since approximately 1965.

21 Q. Can you think of any reason why your good
22 friend Dick Madsen would lie about his direct
23 responsibilities and experiences at Kaiser Gypsum?

24 A. No.

25 Q. Now, while Mr. Madsen was employed by

1 Kaiser Gypsum, wasn't his position director of
2 advertising or director of advertising and public
3 relations, something of that nature?

4 A. Yes.

5 Q. And in that position, wasn't Dick Madsen
6 the individual at Kaiser Gypsum who was responsible
7 for the design and the ordering of packaging materials
8 and labels for every product which bore the name
9 Kaiser Gypsum?

10 A. Yes.

11 Q. Now, by contrast, sir, isn't it true that
12 you as sales -- in the sales department you had no
13 responsibilities relating to the design or the content
14 of the product packaging or the labels; correct?

15 A. Right.

16 Q. And isn't it true, sir, that in your
17 position you were not involved in management decisions
18 or discussions involving issues like product
19 packaging, product formulations or caution labels?
20 That wasn't what you did?

21 A. No.

22 Q. And since that was not part of your direct
23 responsibilities, I take it you would not have
24 personal knowledge, would you, of the company's
25 discussions or decisions regarding the product

1 formulations, regarding the product packaging or
2 regarding caution labels?

3 MR. FERNANDEZ: Let me just object to the
4 question as posted is compound.

5 If you can answer that question, go ahead.

6 MR. PETTY: I'm happy to break it into three if
7 you wish.

8 Q. Would you rather I rephrase that question?

9 A. Yes.

10 Q. All right. Since you were not involved in
11 discussions and decisions concerning issues about
12 product packaging, I take it, sir, you would not have
13 personal knowledge of the discussions and the
14 decisions the company made about the product
15 packaging; correct?

16 A. Correct.

17 Q. And similarly, since you were not involved
18 in the discussions and the decisions about product
19 formulations, I take it, sir, you would not have
20 personal knowledge of the discussions and the company
21 decisions about the product formulations; correct?

22 A. Correct.

23 Q. And similarly, with respect to labeling,
24 caution labels and that nature that might go on a
25 package, since you were not directly involved with

1 those issues, I take it you would not have personal
2 knowledge of the discussions and the decisions of the
3 company concerning product labeling; correct?

4 A. Correct.

5 Q. Now, sir, would you agree with me that
6 Dick Madsen would have far greater expertise and
7 knowledge about the packaging and the labeling of
8 Kaiser Gypsum products?

9 A. Yes.

10 Q. And if Dick Madsen were to testify under
11 oath that "Beginning in 1972, pursuant to OSHA
12 regulations, Kaiser Gypsum placed a caution label on
13 all of its asbestos-containing products," do you have
14 any reason to believe that he would be lying?

15 A. No.

16 Q. And if you didn't recall such caution
17 labels yourself being on the product, but your friend
18 Dick Madsen told you, in fact, swore under oath that
19 they were on the packaging of the Kaiser Gypsum
20 asbestos-containing products, would you believe him
21 and stand corrected?

22 MR. FERNANDEZ: I'm going to object. It calls
23 for speculation. It misstates his prior testimony.
24 He has not testified he doesn't recall. He testified
25 he didn't see any labeling.

1 So as stated, I think it's an unfair question.
2 It assumes facts not in evidence. It's misleading.

3 And on that basis I'm going to instruct my
4 client not to answer.

5 MR. PETTY: You're going to instruct your client
6 not to answer?

7 MR. FERNANDEZ: That's right.

8 MR. PETTY: What's the authority for instructing
9 your client not to answer under Washington rules?

10 MR. FERNANDEZ: I just stated my objections and
11 the reasons why.

12 MR. PETTY: Q. Did you understand the question
13 that I asked you, Mr. Crosby?

14 A. Yes.

15 Q. And are you going to listen to the
16 instruction of your counsel and not answer it here on
17 the record?

18 A. Yes.

19 Q. Let me ask you this, sir: If Dick Madsen
20 were to testify under oath that the caution label
21 read, "Caution. Contains asbestos fiber. Avoid
22 creating dust. Breathing asbestos dust may cause
23 serious bodily harm," would you believe him that that
24 is, in fact, what the caution label said?

25 MR. FERNANDEZ: I'm going to object. Again,

1 you're asking my client to speculate about what
2 someone might testify to, and there has been no
3 testimony to that effect, at least presented to my
4 client. You're asking him to judge the credibility of
5 someone else, and that's argumentative and an improper
6 question.

7 You can ask my client about his knowledge of the
8 various issues, but I think to the extent you're
9 asking him to pass judgment on what someone else might
10 say if they were faced with that question under oath,
11 it's just unfair, and I'm going to instruct my client
12 not to answer.

13 MR. PETTY: I would just state for the record,
14 Mr. Fernandez, that I do not believe your objections
15 are proper under Washington rules of procedure. I do
16 not believe it is proper to instruct the witness not
17 to answer in either of these situations, nor do I
18 believe it is proper to have a speaking objection as
19 you have lodged for the record. And if this
20 continues, we will need to get in touch with Judge
21 Schindler for that.

22 But in recognition of your objection and to
23 alleviate any fears, hopefully any basis for you to
24 continue in that regard, I would like to have the
25 court reporter mark what will be Kaiser Gypsum Exhibit

1 No. 3. And I have one copy for you. I didn't realize
2 that you were going to be here. I have one copy for
3 Matt I should say.

4 (Document marked Kaiser Gypsum
5 Exhibit No. 3 for
6 Identification.)

7 MR. PETTY: Q. Mr. Crosby, have you had an
8 adequate opportunity to read what has been marked as
9 Kaiser Gypsum Exhibit No. 3?

10 A. Yes.

11 Q. From reading it, can you tell us is that a
12 signed sworn affidavit from your friend Dick Madsen
13 who you worked with at Kaiser Gypsum for many years?

14 A. Yes.

15 Q. And, sir, you have never seen that
16 affidavit before I take it?

17 A. No.

18 Q. So when you testified in Seattle in
19 January of this year, you did not have that
20 information to consider this sworn testimony of Mr.
21 Madsen; correct?

22 A. No.

23 Q. I would like to go through the affidavit
24 with you, then.

25 The first paragraph, could you read it? Is your

1 eyesight adequate to be able to read that well into
2 the record or would you like me to read it, and then I
3 want to ask you questions about it.

4 MR. FERNANDEZ: Is there any purpose in having
5 my client read? This is a document in the record.
6 The document speaks for itself. If you want to ask
7 him some question about No. 1 -- but there is no
8 purpose, sir, in having my client read the document.

9 MR. PETTY: Do you have an objection?

10 MR. FERNANDEZ: Yes. I think it's unfair and
11 it's unnecessary for my client to have to read into
12 the record a document that you're making an exhibit
13 for the record.

14 THE WITNESS: If you want to read it, you can
15 read it.

16 MR. FERNANDEZ: I'm happy to do it. That's all
17 I asked.

18 Q. Let's go ahead and do that, sir. The
19 first paragraph -- and please read along with me, and
20 if I misstate even a single word, would you stop and
21 correct me? Is that fine?

22 A. Yes.

23 Q. The first paragraph, sir, it reads, "I was
24 employed with Kaiser Gypsum Company, Inc., hereinafter
25 Kaiser Gypsum from 1966 to 1978 when Kaiser Gypsum

1 ceased its operations. While employed with Kaiser
2 Gypsum, my job title was director of advertising and
3 public relations."

4 Did I read that correctly, sir?

5 A. Yes.

6 Q. Is that all truthful information to your
7 knowledge?

8 A. To my knowledge, yes.

9 Q. And looking at the second paragraph, Mr.
10 Madsen states under oath, "I was a friend and
11 co-worker of John Crum and accompanied Brent Crosby to
12 visit Mr. Crum a few weeks prior to his death."

13 Is that a true statement to your knowledge?

14 A. Yes.

15 Q. I would like to jump ahead to the fifth
16 paragraph. And it states, "As director of advertising
17 and public relations, it was my responsibility to
18 supervise the design and order all packaging materials
19 and labels for every product which bore the Kaiser
20 Gypsum name."

21 Did I read that correctly, sir?

22 A. Yes.

23 Q. And to your knowledge and understanding,
24 is that a true statement that Mr. Madsen made under
25 oath?

1 A. Yes.

2 Q. And now the sixth paragraph reads, "I have
3 been informed that Mr. Brentwood -- Brent Crosby, a
4 former district sales manager for Kaiser Gypsum with
5 whom I'm personally acquainted testified recently in
6 deposition that he was unaware of any caution labels
7 on any of the packages of Kaiser Gypsum's
8 asbestos-containing products."

9 Did I read that correctly, sir?

10 A. Yes.

11 Q. And did Mr. Madsen properly characterize
12 the testimony that you gave about six months ago in
13 Seattle?

14 MR. FERNANDEZ: I'm going to object. The record
15 of what my client said six months ago can be
16 referenced. There's no need for my client to
17 characterize whether what Mr. Madsen is saying is an
18 accurate reflection of what he said six months ago.

19 I think that question is not likely to lead to
20 the discovery of admissible evidence. It's
21 argumentative. This is trial testimony. I don't
22 think this is the type of question that any judge in
23 any jurisdiction would allow and require that a
24 witness answer.

25 So on that basis, I'm going to instruct him not

1 to answer.

2 MR. PETTY: Counsel, I would again ask you to
3 please adhere to the rules of procedures and the
4 objections pertinent to Washington civil litigation.
5 You are not doing so. You have continued to make
6 speaking objections. In this instance you are now
7 ruling on your objections, which is thoroughly
8 improper.

9 I would ask you to please make proper
10 objections. It will be at my peril if I don't
11 understand the nature of your objection.

12 I am entitled to have a clean record just as I
13 afforded Mr. Bergman and Mr. Crosby the opportunity to
14 speak clearly and be heard and develop a clean record
15 at their deposition in January of this year.

16 I will once again ask you for that courtesy and
17 adherence to our rules. May I have it, sir?

18 MR. FERNANDEZ: I will proceed in what I think
19 is the best interest of my client.

20 MR. PETTY: Q. I'm going to read you, sir,
21 paragraph 7 and 8. The first, paragraph 7, references
22 what I just read from paragraph 6. It says, "The
23 statement in deposition by Mr. Crosby that Kaiser
24 Gypsum's asbestos-containing products never contained
25 a caution label is not correct."

1 Did I read that properly, sir?

2 A. You read it properly.

3 Q. Do you think that perhaps Mr. Madsen is
4 right that there were caution labels on the products,
5 and you simply don't recall?

6 A. Yes.

7 Q. And in paragraph 8, I will read it.
8 "Beginning in 1972, pursuant to OSHA regulations,
9 Kaiser Gypsum placed a caution label on all of its
10 asbestos-containing products. The caution label as
11 prescribed by OSHA read 'Caution. Contains asbestos
12 fiber. Avoid creating dust. Breathing asbestos dust
13 may cause serious bodily harm.'"

14 Did I read that correctly, sir?

15 A. Yes.

16 Q. Do you have any reason to believe that Mr.
17 Madsen is lying or is incorrect in the statements he
18 has made in paragraph 8?

19 MR. FERNANDEZ: I'm going to object, Counsel.
20 You're asking my client to pass judgment on the
21 veracity of Mr. Madsen. I think that's an improper
22 question. It will not be allowed at trial.

23 On that basis, I'm going to instruct my client
24 not to answer.

25 MR. PETTY: Q. Are you going to follow the

1 continuing instruction of your attorney?

2 A. Yes.

3 Q. You realize this may necessitate a further
4 deposition of you?

5 MR. FERNANDEZ: Counsel, if you have a question
6 to ask my client, ask him a question. He is not here
7 to seek advice from you, he is not here to be
8 threatened by you or to be harassed or badgered by
9 you. Ask a question.

10 MR. PETTY: Counsel, I think the only harassment
11 is coming from your mouth in this room.

12 MR. FERNANDEZ: That's fine. You were just
13 threatening my client with a further deposition, and
14 that, I think, is an unnecessary intimidation. It
15 wouldn't be allowed in any court in any jurisdiction
16 in this country, certainly not at trial in front of a
17 jury.

18 MR. PETTY: Q. I'm going to read the 10th
19 paragraph and see if we can make it through that one.

20 It states, "In the course of his employment, Mr.
21 Crosby was informed by inter-office memoranda of any
22 changes in packaging and labeling specifically in
23 reference to asbestos caution labels."

24 Did I read that correctly, sir?

25 A. You read it correctly.

1 Q. Let me ask this: In the course of your
2 employment with the company over 14-some years, did
3 you periodically receive inter-office memoranda on
4 various subjects?

5 A. Oh, yes.

6 Q. Was that a quite common occurrence that
7 mail would be routed to you?

8 A. Yes.

9 Q. Do you have any recollection as you sit
10 here today of receiving inter-office memoranda that
11 referenced the subject of asbestos in the products or
12 asbestos caution labels?

13 A. No, I have no recollection.

14 MR. PETTY: I would like to hand the court
15 reporter what will be marked as Kaiser Gypsum No. 4.

16 (Document marked Kaiser Gypsum
17 Exhibit No. 4 for
18 Identification.)

19 MR. PETTY: Q. Sir, I would like to hand you
20 what the court reporter has marked as Kaiser Gypsum
21 Exhibit No. 4, and I'll give you an opportunity,
22 however much time you wish, to review it.

23 MR. BERGMAN: I'm going to object to the use of
24 this document insofar as it was not produced in prior
25 discovery in response to explicit requests for

1 documents such as this nature. I'm also going to
2 object on foundational grounds.

3 MR. PETTY: And for the record, I would just
4 note there are no discovery requests of any nature in
5 this lawsuit that have been directed to Kaiser Gypsum.

6 MR. BERGMAN: In the Pickner case, there were
7 specific requests for documents falling within the
8 category of that document. They were not produced,
9 and they were signed under oath by Kaiser Gypsum.

10 MR. PETTY: I would note in this case at the
11 videotaped depositions of Mr. Crum you used exhibits
12 without producing them in advance, exhibits that were
13 directly responsive to pending discovery that had been
14 issued by me in this case.

15 Q. Have you had an opportunity to review the
16 document that has been marked as Kaiser Gypsum Exhibit
17 No. 4, sir?

18 A. Yes.

19 Q. And is that an example of the type of
20 inter-office memorandum that you would often receive?

21 A. Yes.

22 Q. Is that a distribution list --

23 MR. FERNANDEZ: Let me object that the question
24 as posed is vague. Exhibit 4 consists of two pages.
25 The first page is not an inter-office memorandum, so I

1 would ask you to rephrase. The question as posed is
2 an inaccurate description of this exhibit.

3 MR. PETTY: And I would ask you to again try to
4 conform your objections to the rules and the
5 requirements that we proceed --

6 MR. FERNANDEZ: Counsel, I have to tell you what
7 my objection is and ask you to conform what I think is
8 an appropriate way to ask the question. That's all
9 I'm doing.

10 But as I say, the first page is not an
11 inter-office memorandum.

12 MR. PETTY: You'll have an opportunity to ask --
13 Mr. Bergman will have all the opportunity to ask
14 questions.

15 MR. FERNANDEZ: It is my job to make sure you
16 ask fair and accurate questions of my client. That's
17 what I'm trying to do.

18 MR. PETTY: Q. Mr. Crosby, that document there,
19 the first page, it is a distribution list; is it not?

20 A. Right.

21 Q. And was it common for memoranda to be
22 routed with a distribution list like that?

23 A. Yes.

24 Q. And does the inter-office memorandum
25 itself -- it's dated May 3, 1973; correct. Up in the

1 upper right corner it says May 3, 1973?

2 A. Uh-huh.

3 Q. You have to say "yes."

4 A. Yes.

5 Q. Doesn't that inter-office memorandum state
6 that it was sent to "See attached distribution"?
7 Right up here in the top of the page.

8 A. Yes.

9 Q. And the distribution list that it was
10 attached to, is that the group of people that would
11 receive an inter-office memorandum such as that?

12 MR. FERNANDEZ: Let me just object. That calls
13 for a speculation on the part of the witness.

14 You can answer -- if you can answer, go ahead.

15 MR. PETTY: Q. Do you remember my question,
16 sir? Does that distribution list look like the kind
17 of a distribution list that would have been used for a
18 memorandum of this type?

19 MR. FERNANDEZ: It also calls for speculation on
20 the part of the witness.

21 THE WITNESS: Yes.

22 MR. PETTY: Q. And that distribution list, sir,
23 does it not show your name there under the district
24 sales manager, D.F. Crosby?

25 A. Yes.

1 Q. That's you?

2 A. Yes.

3 Q. Sir, when you testified in Seattle earlier
4 this year, do you recall testifying that you did not
5 know that Kaiser Gypsum was using asbestos in some of
6 its accessory products?

7 A. Yes.

8 Q. And do you recall testifying in that
9 deposition about certain alleged conversations with
10 George Kirk and Al Raffgelli when you contend that
11 they expressly denied that Kaiser Gypsum was using
12 asbestos in products?

13 MR. FERNANDEZ: I'm going to object. Again,
14 Counsel, the record will speak for itself. You're
15 arguing with the witness. I think that's improper.
16 He didn't contend anything. He made statements based
17 on his memory.

18 As the question is phrased, it's an inaccurate
19 description of his testimony, and on that basis I'm
20 going to instruct my client not to answer. As
21 phrased, it's an unfair question.

22 MR. PETTY: So is your client withdrawing that
23 testimony?

24 MR. FERNANDEZ: My client is not doing anything.
25 My client is waiting for you to ask him a proper

1 question.

2 MR. PETTY: And I have done so, and you've
3 instructed him not to answer.

4 MR. FERNANDEZ: That's correct.

5 MR. PETTY: Q. Are you going to continue to
6 adhere to the instructions of your attorney?

7 A. Yes.

8 Q. Now, from Kaiser Gypsum Exhibit No. 4, can
9 you tell us, first, sir, who was the author?

10 MR. FERNANDEZ: Let me just -- I'm going to
11 object. It calls for speculation on the part of my
12 client.

13 If you're asking him who the author is based on
14 what this says on the document, this document is
15 hearsay. There is no foundation for this document.

16 So if you're just asking him to read what's on
17 this document, you can do that as well as I can, and
18 the jury can do it as well as any of us can.

19 As posed, the question lacks foundation. It's
20 argumentative.

21 MR. PETTY: We will recess the deposition at
22 this time and entertain Judge Schindler.

23 For the record, this is Ken Petty. We are going
24 to recess the deposition, take whatever time is
25 necessary to reach Judge Schindler to resolve the

1 matter relating to Mr. Fernandez' appearance and
2 obstructionist tactics here to try to create an
3 unusable record of testimony. State whatever you want
4 for the record.

5 MR. FERNANDEZ: This deposition was scheduled
6 for today. If you want to call the judge, that's
7 fine, but my client is prepared to testify today. His
8 time is valuable to him and to us. And so if you want
9 to try to get ahold of the judge, feel free, but if
10 you adjourn this deposition today, you do so at your
11 own risk, and my client will not have to return.
12 We're here ready to give testimony and to answer
13 proper questions.

14 MR. PETTY: Go off the record.

15 THE VIDEOGRAPHER: It is 10:38 a.m. We are now
16 off the record.

17 (Recess taken.)

18 THE VIDEOGRAPHER: It is 11:21 a.m. We are back
19 on the record.

20 Counsel, you may continue.

21 MR. PETTY: Thank you.

22 Q. Mr. Crosby, again, I've handed you what's
23 been marked as Kaiser Gypsum Exhibit No. 4, and I
24 would ask you to take a look at the second page. Can
25 you tell us who sent that memorandum, that

1 inter-office memorandum to you and others at Kaiser
2 Gypsum?

3 A. It indicates it is from R.A. Madsen.

4 Q. And who would that be?

5 A. Dick Madsen.

6 Q. Is that the same Dick Madsen we've been
7 talking about here today?

8 A. Yes.

9 Q. Now, when an inter-office memorandum such
10 as this was routed to you, did you make a practice of
11 reading it?

12 A. Yes.

13 Q. Now, from this particular inter-office
14 memorandum, if we were to look at the subject of it,
15 it discusses two products, dual purpose joint compound
16 and topping compound.

17 Do you see that, sir?

18 A. Yes.

19 Q. And it states below, it says, "The above
20 packaging carries approved caution as prescribed by
21 federal regulations relating to products containing
22 asbestos fibers."

23 Did I read that correct?

24 A. Yes.

25 Q. Would that have alerted you to the fact

1 that those two products referenced in the inter-office
2 memorandum contained asbestos, sir?

3 MR. FERNANDEZ: If he received and read the
4 document.

5 THE WITNESS: Yes.

6 MR. BERGMAN: Speculation. Foundation.

7 MR. PETTY: Q. Did you answer that, sir?

8 A. Yes.

9 Q. And your answer was? Your answer was
10 "yes"?

11 A. Yes.

12 Q. And from your review of that sentence that
13 I just read, would that have told you, assuming that
14 you received and read this in 1973, that those
15 products, the packaging for those products contained a
16 caution label?

17 MR. BERGMAN: Objection. Foundation.
18 Speculation.

19 THE WITNESS: No.

20 MR. PETTY: Q. And why do you say that, sir?
21 The sentence that reads "The above packing carries
22 approved caution as prescribed by federal regulations
23 relating to products containing asbestos fiber," what
24 is it about that sentence that would not have alerted
25 you to the fact that there was a caution label on such

1 products?

2 A. Well, it states that there is a caution
3 label, but I do not remember seeing it.

4 Q. Sir, the one product there is dual purpose
5 joint compound?

6 A. Right.

7 Q. And it says, "Premixed five-gallon plastic
8 or metal pail"?

9 A. Uh-huh.

10 Q. Does it state, "a black pail"?

11 A. Yes.

12 Q. And does it state, "with white printing"?

13 A. Yes.

14 Q. Sir, I would like to hand you what has
15 been marked as Kaiser Gypsum Exhibit No. 11, and I
16 would like to first hold it up since it is not one
17 that can accompany the record. Can the videographer
18 zoom in and get a picture of the front of this
19 exhibit?

20 MR. BERGMAN: I would like to interpose a
21 foundational objection as to the use of this exhibit
22 and ask for a standing objection throughout your
23 questioning of that exhibit.

24 MR. PETTY: That's on the objection that you
25 lodged that we did not produce the discovery --

1 MR. BERGMAN: No. It is a foundational
2 objection.

3 MR. PETTY: This is not an authentic?

4 MR. BERGMAN: Correct.

5 MR. PETTY: Turn it around to the backside. The
6 video may need to zoom it.

7 Please let me know if you cannot pick this up.
8 We may have to come closer to you.

9 THE VIDEOGRAPHER: I have it. It is a little
10 tilted.

11 (Bucket marked Kaiser Gypsum
12 Exhibit No. 11 for Identification.)

13 MR. PETTY: Q. Sir, I'm going to hand you --
14 maybe we could set it because I don't want to put it
15 in front of you. We won't see you on the video. The
16 pail that's been marked as Kaiser Gypsum Exhibit No.
17 11, is that the kind of a pail that Kaiser Gypsum
18 premix dual purpose joint compound was packaged in?

19 A. Yes.

20 Q. Is that the kind of a pail of a product
21 that you and the men under you sold to customers?

22 A. Yes.

23 Q. And I'd ask you to turn and look at the
24 back. Do you see, is there any kind of an asbestos
25 warning label on that package there, that pail?

1 MR. BERGMAN: Same objection.

2 MR. FERNANDEZ: Let me just interpose an
3 objection to the extent that you're using the term
4 "warning," you might want to define that term. That
5 word is not on the label.

6 THE WITNESS: I might ask: When was this can
7 produced with this labeling?

8 MR. PETTY: Q. Let me ask you, though, sir.
9 That's a question someone else may need to answer.
10 Looking at that particular pail, that appears to be
11 the type of a pail with the kind of labeling, at least
12 on the front side, that you recall the company using?

13 A. Yes.

14 Q. And they used it for that particular
15 product; correct?

16 A. Yes.

17 Q. Now, the back that you read, there was a
18 caution label; was there not?

19 A. Yes.

20 Q. And can you read for the record what that
21 caution label says?

22 A. It says, "Caution. Contains asbestos
23 fibers. Avoid creating dust. Breathing asbestos dust
24 may cause serious bodily harm."

25 Q. And is that the exact same wording, the

1 exact same caution label that your friend Dick Madsen
2 stated was on the products?

3 A. This memo does, yes.

4 Q. Does your opportunity to look at a pail
5 from that particular product refresh your recollection
6 as to whether or not there may have been caution
7 labels on Kaiser Gypsum products at some point in the
8 past?

9 A. Well, my deposition was based on a period
10 of 1970s -- 1970. Not 1973.

11 It might also state that if this was on all of
12 our pails, why would customers come to our salesmen --
13 come to me and ask, "Do you have asbestos in your
14 product?" if it is stated on the can?

15 But we did receive many, many requests, did we
16 have asbestos in our product.

17 MS. FRIEDEL: Move to strike as nonresponsive.

18 MR. PETTY: I would join in that objection.

19 Q. Sir, what I asked you was whether your
20 opportunity to review that pail refreshed your
21 recollection as to whether or not at some point in the
22 past there were cautions on the packaging?

23 A. No, it doesn't.

24 Q. Now, you said your prior testimony was
25 referencing a period 1970, but I would like to read to

1 you, and your attorney can read along, at the top of
2 page 56 of your deposition Mr. Bergman asked you,
3 "Mr. Crosby, between 1972 and 1978 were you aware of
4 any warnings on the containers of Kaiser Gypsum
5 asbestos products that breathing asbestos could cause
6 asbestosis?"

7 Do you remember him asking you questions about
8 later time periods like 1972 to 1978?

9 A. Yes.

10 Q. And are you stating that despite looking
11 at that pail that you do not believe that there were
12 warning labels, caution labels on the products in that
13 time frame?

14 A. Not to my recollection. Again, I don't
15 know when that can was produced in that manner.

16 (Document marked Kaiser Gypsum
17 Exhibit No. 5 for
18 Identification.)

19 MR. PETTY: Q. Let me hand you another
20 document, hand you what's been marked as Kaiser Gypsum
21 Exhibit No. 5. I would ask you to take a moment to
22 review it.

23 A. Okay.

24 Q. You've had an opportunity to review Kaiser
25 Gypsum Exhibit No. 5; have you not?

1 A. Yes.

2 Q. Let me ask you: Does the first page
3 appear to be a copy of a little notepad memorandum
4 that was sent by Dick Madsen to a Syd Henderson?

5 A. It appears to.

6 Q. Who is Syd Henderson?

7 A. I don't know.

8 Q. Does that appear to be Dick's signature
9 where it says "Dick"? Does that look like his
10 writing?

11 A. Yes.

12 Q. The second page of Exhibit 5, does that
13 appear to be a copy of an inter-office memorandum
14 dated May 17, 1973, sent by Dick Madsen?

15 A. Yes.

16 Q. And the various individuals that are
17 listed at the top as receiving it, Mr. Caprye,
18 Cassidy, Flannigan, Hardy, and it goes on with six
19 more names, do you recall, were those individuals
20 involved in the production side at different Kaiser
21 Gypsum plants?

22 A. Yes.

23 Q. And the people that were copied on the
24 memorandum there, Mr. Blewett, Mr. Crawl, Mr. Dupuis,
25 Mr. Franklin and the others, were those people that

1 were in Kaiser Gypsum management here across the
2 street at the Kaiser Center?

3 A. Yes.

4 Q. So in your reading this memorandum, isn't
5 it true that Dick Madsen was telling the plant
6 managers as well as senior management that this
7 caution label must appear on all Kaiser Gypsum Company
8 bags, cartons, containers which contain products
9 formulated with asbestos fiber?

10 A. Yes.

11 MR. BERGMAN: Objection. Speculation.
12 Foundation.

13 MR. PETTY: Q. Now, sir, you gained a great
14 understanding as to how the company was run over the
15 years; did you not?

16 A. Yes.

17 Q. Now, if Dick Madsen directed the various
18 plant managers and those involved in the production of
19 the products to be sure that asbestos caution labels
20 were on the packages of asbestos-containing products,
21 do you have any reason to believe that any of those
22 individuals would have disregarded his instruction?

23 MR. BERGMAN: Calls for speculation.

24 MR. FERNANDEZ: Calls for speculation by the
25 witness. Lacks foundation as to whether anyone

1 received this document.

2 MR. PETTY: Q. Do you recall my question, sir?

3 A. No.

4 Q. From knowing the way the company did
5 business and the way that people worked together, do
6 you have any reason to believe that the plant managers
7 who received this directive from Dick Madsen would
8 have disregarded his instruction?

9 A. No.

10 Q. In fact, that would not be the way that
11 the people at the company would have worked. They
12 would have gone ahead and done what they were
13 instructed to do; correct?

14 A. Correct.

15 MR. BERGMAN: Same objections.

16 (Document marked Kaiser Gypsum
17 Exhibit No. 6 for
18 Identification.)

19 MR. PETTY: I would like to next hand you what's
20 been marked as Kaiser Gypsum Exhibit No. 6 and give
21 you a moment to study that.

22 Q. Sir, from your review of Kaiser Gypsum
23 Exhibit No. 6, and I apologize that it is not a more
24 legible copy, but can you tell me, does that appear to
25 be a one-page letter signed by your friend Dick

1 Madsen?

2 A. Yes.

3 Q. And does that appear to be on official
4 company letterhead that would have been used back in
5 June of 1973?

6 A. Yes.

7 Q. And from your review of Exhibit 6, does it
8 appear that Mr. Madsen was writing to a company that
9 supplied containers for some of the Kaiser Gypsum
10 product?

11 MR. FERNANDEZ: Calls for speculation on the
12 part of the witness.

13 MR. PETTY: If he doesn't know, he can state
14 that.

15 MR. FERNANDEZ: Let me also object. The
16 question as posed is vague.

17 Are you asking him whether he knows what Bennett
18 Industries is or are you asking for his
19 characterization of this letter as looking like it's
20 going to that type of a company?

21 As posed, I think the question is vague, and I
22 would ask you to rephrase so we have a clear record.

23 MR. PETTY: Q. Sir, do you understand the
24 nature of my question?

25 A. Yes.

1 Q. And from your reading of this letter, does
2 it appear that Mr. Madsen was writing to a company
3 that supplied containers or packaging for Kaiser
4 Gypsum products?

5 MR. FERNANDEZ: Same objections.

6 THE WITNESS: I don't know Jack Sullivan. Could
7 be.

8 MR. PETTY: Q. In any event, does it appear
9 that Dick Madsen was conveying instructions for the
10 way a container was to be printed?

11 MR. BERGMAN: Objection. The document speaks
12 for itself.

13 THE WITNESS: Yes.

14 MR. PETTY: Q. And his item numbered No. 3, it
15 states, does it not, "That the asbestos caution must
16 be printed as shown on the container"?

17 Do you see that, sir?

18 A. Yes.

19 Q. Now, do you have any reason to believe
20 from your understanding of the way business is run, do
21 you have any reason to believe that if one of Kaiser
22 Gypsum's supplier of containers received a directive
23 from Dick Madsen that they would have disregarded it?

24 MR. BERGMAN: Objection. Calls for speculation.

25 MR. FERNANDEZ: Lacks foundation.

1 THE WITNESS: Basically, no.

2 MR. PETTY: Q. Let me just ask you as a general
3 proposition if you were dealing with a supplier for
4 Kaiser Gypsum, and they didn't do what you asked,
5 wouldn't you just go find another supplier?

6 A. Yes.

7 (Document marked Kaiser Gypsum
8 Exhibit No. 7 for
9 Identification.)

10 MR. PETTY: Q. I would like to hand you another
11 exhibit that has been marked as Kaiser Gypsum Exhibit
12 No. 6 -- excuse me, Exhibit No. 7, and ask you -- it's
13 a few more pages, so it may take you a few minutes to
14 study it.

15 A. Okay.

16 Q. Having had an opportunity to review
17 Exhibit 7, does the second page, sir, appear to be a
18 copy of another inter-office memorandum sent by Dick
19 Madsen?

20 A. It appears to be.

21 Q. Can you tell me the nature of the people
22 he sent his memorandum to? What would their jobs or
23 function have been with the company? Are these people
24 in production?

25 A. Yes.

1 Q. And the subject of this inter-office
2 memorandum that's been marked as Exhibit 7, sir, is
3 62-pound packages of premixed joint and topping
4 compound, labeling for it; is that correct, sir?

5 A. Yes.

6 Q. And from this inter-office memorandum sent
7 by Dick Madsen on August 7, 1975, doesn't it appear to
8 you that the production of these pails and cartons at
9 that time had asbestos warning labels on them?

10 A. In 1975, yes.

11 Q. And does it not also appear that the
12 company -- Dick Madsen and others at the company were
13 preparing to begin production of nonasbestos
14 formulations of those same products?

15 MR. FERNANDEZ: Objection.

16 MR. BERGMAN: Objection. Foundation.
17 Formulation.

18 MR. FERNANDEZ: May I hear that question read
19 back, please?

20 (Record read.)

21 MR. FERNANDEZ: I'm going to object that the
22 document does speak for itself and asking the client
23 to speculate.

24 MR. PETTY: Q. Do you recall the nature of my
25 question, sir?

1 A. No.

2 Q. The sentence there, the middle of the
3 second page that I will read, "The new labels are to
4 be placed over the asbestos warning label printed on
5 the containers when production at your plant shifts to
6 the nonasbestos product formulation."

7 Did I read that correctly?

8 A. Yes.

9 Q. Does that indicate at least to the
10 recipients of that letter that the company at that
11 time in 1975 was preparing to roll out nonasbestos
12 formulations for those products?

13 MR. BERGMAN: Same objections.

14 MR. FERNANDEZ: Same objections.

15 THE WITNESS: Yes.

16 MR. PETTY: Q. Now, from reading these
17 documents, the additional exhibits we've looked at,
18 does this refresh your recollection as to whether, in
19 fact, there may have been caution labels on the Kaiser
20 Gypsum asbestos-containing products at least from 1973
21 through August 1975, the date of this memorandum?

22 A. Well, the memorandum does so indicate,
23 but, again, my deposition was referenced to 1970.

24 Q. So let me see if I understand what you're
25 saying. It's your recollection that there were not

1 warnings on the products in 1970, but you believe that
2 at some later time there was a period when warnings
3 did appear on the products or caution labels did
4 appear on the products; am I correct?

5 A. Yes.

6 Q. Now, we've been talking quite a bit so far
7 this morning about your friend from Kaiser Gypsum Dick
8 Madsen, and I'd like to change now and ask you about
9 someone else you mentioned in your January 1999
10 testimony. That is an individual named George Kirk.

11 Do you remember George Kirk?

12 A. Definitely.

13 Q. Did you become friends with George Kirk
14 during the years you two worked at Kaiser Gypsum?

15 A. Yes.

16 Q. Did you come to learn that he was employed
17 at Kaiser Gypsum even before you joined the company?

18 A. Yes.

19 Q. And, in fact, did you come to learn that
20 he was employed back when the company started in 1952?

21 A. Yes.

22 Q. And was he there at the company through at
23 least the mid-1970s when you were there?

24 A. Yes.

25 Q. And from your interactions with Mr. Kirk,

1 did you come to understand that at least over the
2 years that you were there his position with the
3 company was the director of research?

4 A. Yes.

5 Q. And was in essence the head of the
6 research and development group?

7 A. Yes.

8 Q. Now, isn't it true that George Kirk's
9 responsibilities in that position would have included
10 being intimately familiar with Kaiser Gypsum's
11 products and the ingredients that were used to
12 formulate those products?

13 A. Yes.

14 Q. Wasn't the nature of his job to keep
15 seeing if they would adjust the formulation and make
16 it a little bit better so the customers would be more
17 pleased with it?

18 A. Yes.

19 Q. And from what you know of his
20 responsibilities and his position with Kaiser Gypsum,
21 isn't it true that he would have been in the best
22 position to know whether or not asbestos was an
23 ingredient in a particular product?

24 A. Yes.

25 Q. Now, isn't it true that he would have far

1 greater knowledge of the product formulas and
2 ingredients than would you or any salesman working
3 under you?

4 A. Yes.

5 Q. And can you think of any reason why George
6 Kirk would lie about his direct responsibilities and
7 experiences at Kaiser Gypsum?

8 A. None.

9 Q. Now, do you recall giving testimony at
10 your January 1999 Seattle deposition about a
11 conversation you had with Mr. Kirk where he denied
12 that there was any asbestos in Kaiser Gypsum accessory
13 products?

14 A. Yes, I remember.

15 Q. Can you think of any reason why George
16 Kirk would not have wanted Kaiser Gypsum's salesmen to
17 know that there was asbestos in the products?

18 A. No, I cannot.

19 (Document marked Kaiser Gypsum
20 Exhibit No. 8 for
21 Identification.)

22 MR. PETTY: Q. In fact, I'm going to hand you
23 what's been marked as Kaiser Gypsum Exhibit No. 8 and
24 ask you to study that.

25 A. Okay.

1 Q. Sir, have you had an adequate opportunity
2 to carefully and completely review the document marked
3 as Kaiser Gypsum Exhibit No. 8?

4 A. Yes.

5 Q. And from your review of that exhibit, does
6 this again appear to be at least the first page of a
7 copy of another inter-office memorandum?

8 A. Yes.

9 Q. And this one was sent by G.B. Kirk. That
10 would be George Kirk; correct?

11 A. Yes.

12 Q. The date of that inter-office memorandum
13 is June 27, 1973; correct?

14 A. Yes.

15 Q. Now, if I could direct your attention to
16 the third paragraph -- first, what was the subject of
17 it? It is "Asbestos" in all capitals and underlined
18 on the first page. Right? Do you see, that sir, the
19 subject of the memorandum?

20 A. Yes.

21 Q. If I could direct your attention to the
22 third paragraph, it states, "In order to clarify the
23 facts concerning the OSHA and EPA regulations
24 concerning asbestos, the attached draft has been
25 prepared as a proposed merchandising bulletin. This

1 would disseminate the information to our sales
2 personnel and would be available through our
3 salespeople to contractors."

4 Did I read that correctly, sir?

5 A. Yes.

6 Q. And, in fact, were merchandising bulletins
7 a publication that was available to the salesmen?

8 MR. BERGMAN: Are you talking in general?

9 MR. PETTY: Talking in general.

10 Q. A merchandising bulletin, is that the type
11 of document that the salesmen would receive to provide
12 information about the products?

13 A. No.

14 Q. What was a merchandising bulletin from
15 your experience with the company?

16 A. A merchandising bulletin was not sent in
17 general to the salesmen. They were sent to the sales
18 managers who disseminated it down to the salespeople.

19 Q. And who would the sales managers be?
20 People like you?

21 A. Right.

22 Q. And would it be people working under you
23 like John Crum?

24 A. Well, it would be discussed probably at a
25 district sales meeting.

1 Q. So if I understand correctly, a
2 merchandising bulletin would come to a middle level
3 management sales manager like you, and when you got
4 together with your men like Mr. Crum, you would share
5 that information with them, if necessary pull out the
6 bulletin and read it with them?

7 A. Right.

8 Q. From your reading of that paragraph that I
9 read out loud, does it appear to you that Mr. Kirk
10 wanted to share information about asbestos to the
11 sales managers like you and thereafter to the salesmen
12 and the customers?

13 MR. FERNANDEZ: Let me object. It calls for
14 speculation on the part of the witness in that you're
15 asking whether he knows whether Mr. Kirk wanted to do
16 something, desired to do something, so I object on the
17 basis of vagueness as to the term "wanted."

18 MR. PETTY: Q. Do you understand my question,
19 sir?

20 A. Yes.

21 Q. This sentence there, "This merchandising
22 bulletin would disseminate the information to our
23 sales personnel and would be available through our
24 salespeople to contractors."

25 Does that not indicate to you that George Kirk

1 wanted this information to go to you, the salesmen and
2 the customers?

3 MR. BERGMAN: Mischaracterizes the document.

4 MR. FERNANDEZ: This document speaks for itself,
5 Counsel.

6 MR. PETTY: Q. Did you understand my question,
7 sir? Isn't that true?

8 A. Yes.

9 Q. I want to turn to the subject of your
10 January 1999 deposition testimony, the conversation
11 that you told us about where you asked Mr. Kirk about
12 whether asbestos was in accessory products, and you
13 testified that he said there was none.

14 Do you remember that testimony?

15 A. Yes.

16 Q. Now, if George Kirk were to review that
17 testimony you gave, and if he were to swear under oath
18 that he would not have lied to you about that issue,
19 would you sit here and call him a liar?

20 A. No.

21 MR. FERNANDEZ: Wait a minute. Objection.
22 Calls for speculation on the part of the witness. It
23 assumes facts not in evidence. And my client is not
24 here and hasn't accused anyone of anything. In his
25 earlier deposition he did not accuse anyone of

1 anything.

2 So as phrased, I think that question is unfair,
3 and I would ask that the question and the answer be
4 struck.

5 (Document marked Kaiser Gypsum
6 Exhibit No. 9 for
7 Identification.)

8 MR. PETTY: Q. Sir, I'm going to hand you
9 what's been marked as Kaiser Gypsum Exhibit No. 9 and
10 ask you to take a few moments, whatever you wish, to
11 review that document.

12 MR. FERNANDEZ: Is there a question pending?

13 MR. PETTY: No. I'm giving your client an
14 opportunity to fully review that document.

15 MR. FERNANDEZ: May I have the last question
16 read back, last question and answer.

17 (Record read.)

18 MR. FERNANDEZ: Let me just raise a belated
19 objection based on the fact that at the time that the
20 question and answer were given that was just read back
21 I did not have this affidavit of George Kirk, and as I
22 read this affidavit, nowhere does he state that either
23 my client lied or that he would not have lied to my
24 client. That statement does not appear anywhere in
25 this document.

1 So I renew my objection being an unfair question
2 based on facts not in evidence and asking my client to
3 speculate who the -- pass judgment of somebody else's
4 testimony which is not a proper subject for discovery
5 deposition.

6 MR. PETTY: My response will be reserved for the
7 judge.

8 Q. Sir, have you now had an opportunity to
9 carefully and completely review the document that's
10 been marked as Kaiser Gypsum Exhibit No. 9?

11 A. Yes.

12 MR. BERGMAN: I'm going to have a standing
13 hearsay objection to the use of this exhibit.

14 Was that "yes"?

15 MR. PETTY: That's fine. You can have that.

16 Q. Let me ask you this, Mr. Crosby: The
17 document marked as Kaiser Gypsum Exhibit No. 9, does
18 it appear to be a copy of a sworn affidavit signed by
19 George Kirk?

20 A. Yes.

21 Q. Have you ever seen that affidavit before
22 today?

23 A. No.

24 Q. So is it fair to state that when you
25 testified in Seattle in January of this year, you did

1 not have the benefit of this affidavit from Mr. Kirk
2 to consider; correct?

3 MR. FERNANDEZ: Well, let me just object to your
4 characterization as this declaration being of some
5 benefit.

6 You can answer the question if you want, but
7 "benefit" is your characterization, not my client's.

8 MR. PETTY: I think again we're reverting back
9 to the improper speaking statements on the record, and
10 I would ask for you to refrain.

11 MR. FERNANDEZ: It also assumes facts not in
12 evidence. He hasn't said it was a benefit.

13 MR. PETTY: He hasn't said it wasn't.

14 MR. FERNANDEZ: No. I said you are
15 characterizing this document.

16 MR. PETTY: Please. I thought we had an
17 understanding that you now knew the scope of proper
18 objections and speaking objections and instructions to
19 your client --

20 MR. FERNANDEZ: All you have to ask him, "Does
21 this help you to recall?" You can ask a nice clean
22 question or you can editorialize and ask an improper
23 question.

24 MR. PETTY: Q. Do you remember my question?

25 A. No.

1 Q. The document marked as Exhibit No. 9, you
2 did not have that information available to you, that
3 document available to you when you testified in
4 Seattle in January of this year; did you, sir?

5 A. No. This thing was written in 1999.

6 Q. It was written after your deposition as a
7 result of some testimony you gave; correct?

8 A. 11th of March of 1999.

9 Q. I'm going to ask you to consider some of
10 the sworn testimony provided by Mr. Kirk in his
11 affidavit marked as Exhibit 9.

12 The first paragraph, sir, and read along with me
13 to make sure that I don't mischaracterize it, states,
14 "I was employed with Kaiser Gypsum Company, Inc.,
15 hereinafter Kaiser Gypsum, since its inception in 1952
16 through 1974. In 1958 I became director of research
17 for Kaiser Gypsum and held that position through
18 1974."

19 Did I read that correctly?

20 A. Yes.

21 Q. Is that information as referred to by Mr.
22 Kirk true and correct to your knowledge?

23 MR. FERNANDEZ: Let me just object. It calls
24 for speculation on the part of my client. He wasn't
25 there in '58.

1 MR. PETTY: Q. Did you answer that question?
2 Do you have any reason to believe that any of that
3 information is incorrect?

4 A. No.

5 Q. Now, I would like to direct your attention
6 to the third paragraph. It states, "As director of
7 research, I am familiar with Kaiser Gypsum's product
8 line and the components which were used to formulate
9 each product."

10 Did I read that correctly?

11 A. Yes.

12 Q. And I take it you would agree with Mr.
13 Kirk's testimony in that paragraph?

14 A. Yes.

15 Q. Then, if I were to turn your attention to
16 the fourth paragraph, this is the one where he recites
17 the testimony that you gave about the conversation in
18 1970.

19 A. Uh-huh.

20 Q. Correct?

21 A. Yes.

22 Q. And we've talked about that conversation a
23 couple of times here earlier today; correct?

24 A. Yes.

25 Q. And if you look at paragraph No. 5, and

1 I'll read it for you, "I do not recall that Mr. Crosby
2 ever asked me in 1970 whether or not any of Kaiser
3 Gypsum's products contained asbestos. Had he asked me
4 that question in 1970, I would have truthfully
5 responded that Kaiser Gypsum's accessory products
6 contained asbestos as an ingredient."

7 Did I correctly read his sworn testimony?

8 MR. BERGMAN: Object to the term "testimony."

9 THE WITNESS: Yes.

10 MR. PETTY: Q. Now, from your reading of
11 paragraph 5, does it appear that he does not have the
12 recollection of the conversation that you have a
13 recollection of occurring in 1970?

14 A. It appears.

15 Q. I want to ask you this, sir: Is it
16 perhaps possible that if you, in fact, accurately
17 recall conversations with people at Kaiser Gypsum
18 where they denied the presence of asbestos in the
19 products, is it perhaps possible that those
20 conversations may have occurred five or six years
21 later after George Kirk had changed the formulations
22 to remove asbestos?

23 A. No.

24 MR. FERNANDEZ: Let me just object. It calls
25 for speculation on the part of the witness. It

1 assumes facts not in evidence.

2 MR. PETTY: Q. It's not possible?

3 A. That's right.

4 Q. And why is that not possible, sir, that
5 that conversation may have occurred five to six years
6 later when there no longer was asbestos in the
7 products?

8 A. Well, the question that was broached to
9 sales personnel and middle management was strong in
10 about 1970.

11 Q. Why is it that you can date this to 1970?

12 A. Well, I had transferred back to the Kaiser
13 Center in 1970, and that's when the question was
14 rampant at that time, and my meeting -- my discussion
15 with Mr. Kirk was not in a meeting formally. It was a
16 question that was asked possibly on the floor of the
17 25th floor or in the elevator or in the parking lot.
18 It was a question that had been bothering me, and this
19 was an opportunity for me to talk to George, who I
20 have tremendous respect for.

21 Q. Let me ask you this, sir: So it's the
22 fact that the conversation occurred at the Kaiser
23 Center that you find somewhat helpful in dating it;
24 correct?

25 A. Right.

1 Q. And you returned to the Kaiser Center in
2 1970?

3 A. Right.

4 Q. How long did you remain at the Kaiser
5 Center while employed by the company? From 1970 --

6 A. Until 1974 when the company was dissolved
7 and taken over by Domtar.

8 Q. Is it your recollection that that occurred
9 in 1974?

10 A. April of 1974.

11 Q. So the conversation that you had with Mr.
12 Kirk was sometime --

13 A. Excuse me. Possibly it was 1978.

14 Q. It's kind of hard to remember details on
15 dates that far back; correct, sir?

16 A. Yes.

17 Q. The conversation occurred at the Kaiser
18 Center, so you know it occurred sometime between the
19 time when you were transferred back there in 1970 and
20 the time the company was dissolved and acquired by
21 Domtar, whenever that happened; correct?

22 A. Well, specifically I would state that it
23 was in 1970.

24 Q. And that's simply because you know that
25 you were back at the Kaiser Center, and you believe it

1 was 1970 or so when people were asking you questions
2 about asbestos?

3 A. Yes. It started in '68, '69 and '70.

4 Q. Let me direct your attention to the sixth
5 paragraph of Mr. Kirk's affidavit marked as Exhibit 9,
6 and I'll read it.

7 "Kaiser Gypsum always had an open-door policy
8 and encouraged its employees such as Mr. Crosby to
9 tour its facilities."

10 Did I read that sentence correctly?

11 A. Yes

12 Q. And is that a true statement?

13 A. Yes.

14 Q. And then that paragraph goes on to state,
15 "I specifically recall Brent Crosby touring the
16 Antioch manufacturing facility with Kaiser Gypsum
17 customers."

18 Did I read that correctly?

19 A. Yes.

20 Q. And was that a true statement? Did you
21 tour the Antioch facility with customers?

22 A. Yes, what we call plant tours.

23 Q. Was that a common occurrence? It wasn't
24 something you did once or twice in your career?

25 A. Oh, no, it was practically monthly.

1 Q. He goes on to state in paragraph 6, "At
2 the time that Mr. Crosby took these tours, pallets
3 with sacks labeled asbestos would have been visibly
4 present and could have been seen by Mr. Crosby during
5 the plant tours".

6 Did I read that sentence correctly?

7 A. Yes.

8 Q. Is it true that the various constituents
9 used to formulate the products would have been there
10 set out in the open waiting to be put together to make
11 the products?

12 MR. FERNANDEZ: Calls for speculation. If you
13 have a memory of that, go ahead and answer, but you
14 should not speculate. If you don't know, you should
15 say you don't know.

16 MR. PETTY: Q. I'm just asking you: Going
17 through the manufacturing plant, were the various
18 components used to make the product there sitting out
19 in the open?

20 A. Yes.

21 Q. So if you were on a tour, you have would
22 have been able to see to the extent there was labeling
23 on the components just what there was there; correct?

24 MR. BERGMAN: Objection. Speculation.

25 THE WITNESS: Possibly.

1 MR. PETTY: Q. Now, I would like to read the
2 seventh paragraph that says, "Likewise, I recall Mr.
3 Crosby visiting the research and development lab at
4 Antioch where asbestos was kept in clearly labeled
5 containers."

6 Did I accurately read that paragraph?

7 A. Yes.

8 Q. And is that a true statement? Did you
9 from time to time visit the research and development
10 lab in Antioch?

11 A. Yes.

12 Q. Do you recall there being asbestos there
13 that was stored in clearly labeled containers?

14 A. No.

15 Q. Do you recall anything about different
16 components or chemicals or whatever it was being
17 stored there in containers?

18 A. No.

19 Q. So you don't recall anything about any
20 constituents of the products that may have been stored
21 there?

22 A. No.

23 Q. Now, I'd like to direct your attention to
24 paragraph 9. He states, "Brent Crosby's job title did
25 not necessarily involve him in the management decision

1 regarding product formulations and caution labels."

2 Is that a true statement?

3 A. Yes.

4 Q. And he goes on to state, "Therefore he
5 would not have had personal knowledge of any company
6 decisions regarding product formulations and caution
7 labels."

8 I think you agreed to that earlier; did you not?

9 A. Right.

10 MR. PETTY: If I could just raise the issue, I
11 don't know about break. I would probably have another
12 half hour or 45 minutes. Is now is a good time for a
13 break? Or if you want to plug on, and you know how
14 these things go, it could be an hour.

15 MR. BERGMAN: I have some, too.

16 MR. PETTY: Do you want to take a lunch break
17 now and come back in 45 minutes or something?

18 MR. FERNANDEZ: Is that okay with you?

19 THE WITNESS: Yes, that's fine.

20 MR. PETTY: On the videotape here, we are now
21 going to go off the record so the witness and counsel
22 can have a lunch break.

23 THE VIDEOGRAPHER: This ends videotape No. 2 in
24 the deposition of Brentwood Crosby. It is 12:32 p.m.
25 We are now off the record.

1 (Lunch break taken.)

2 THE VIDEOGRAPHER: This begins videotape No.3 in
3 the deposition of Brentwood Crosby. It is 1:38 p.m.
4 We are back on the record.

5 Counsel, you may continue.

6 MR. PETTY: Thank you.

7 Q. Mr. Crosby, did you have a nice lunch?

8 A. Yes.

9 Q. Good. Before I move on, I want to ask
10 just a few more questions to try to help us date the
11 conversations that we talked about that you had with
12 George Kirk. And one thing we know is that it
13 occurred after you got transferred back to the Kaiser
14 Center; correct?

15 A. Right.

16 Q. And when the conversation occurred, was
17 your position district sales manager?

18 A. Yes.

19 Q. Let me ask you a few other things.
20 Did you start with the company on February 1,
21 1960?

22 A. Yes.

23 Q. And was your last date with the company
24 April 1, 1978?

25 A. April 3rd, I think.

1 Q. And when you started with the company, was
2 your first position in technical sales? Was that your
3 title?

4 A. Right.

5 Q. Did you gradually progress through the
6 years?

7 A. Yes.

8 Q. Did the progression lead you to become a
9 line salesman, and then a salesman, and then a
10 technical representative?

11 A. No. I was a tech rep first.

12 Q. And then you were a line salesman?

13 A. Then I had a territory, right.

14 Q. And then ultimately you worked up to a
15 position as an area sales manager?

16 A. Right.

17 Q. And then ultimately you then were promoted
18 to become a district manager?

19 A. Right.

20 Q. District sales manager?

21 A. 1965.

22 Q. What I want to turn to next is when Mr.
23 Bergman was asking you questions in Seattle in January
24 of 1999, earlier this year, do you recall him asking
25 you some questions about a Bob Costa?

1 A. Yes.

2 Q. And Mr. Costa, he was an upper level
3 management person at Kaiser; correct?

4 A. Vice president and general manager, right.

5 Q. And do you recall testifying at page 58 of
6 your deposition that you were unaware of any
7 discussions among Kaiser Gypsum senior management that
8 warnings needed to be placed on asbestos-containing
9 products?

10 A. That's right.

11 (Document marked Kaiser Gypsum
12 Exhibit No. 10 for
13 Identification.)

14 MR. PETTY: Q. I would like to hand you what
15 has been marked as Kaiser Gypsum Exhibit No. 10 and
16 ask you to take a moment to study that.

17 MR. BERGMAN: Which number is this?

18 MR. PETTY: This is Kaiser Gypsum Exhibit No.
19 10.

20 MR. BERGMAN: The exhibit refers to an attached
21 document. Is that one that was intended to be given
22 to the witness as well?

23 MR. PETTY: I do not have the attached document.
24 At the time this document was located, apparently the
25 attached document was not with it. I don't know that

1 for a fact, but at least the document I received is
2 what we're looking at.

3 THE WITNESS: Okay.

4 MR. PETTY: Q. Have you had an opportunity to
5 review Kaiser Gypsum Exhibit No. 10, sir?

6 A. Yes.

7 Q. Does it appear to be a letter sent by Mr.
8 Robert A. Costa, vice president and general manager?

9 A. It appears to be, yeah.

10 Q. The date is April 5, 1974?

11 A. Yes.

12 Q. Does it appear to be printed on the Kaiser
13 Gypsum letterhead that was being used at that time?

14 A. Yes.

15 Q. And if you'll look at the person to which
16 Mr. Costa directed his letter, he's identified as the
17 executive vice president of the Gypsum Association.
18 Do you know what the Gypsum Association was?

19 A. Yes.

20 Q. Was that the trade organization for
21 companies that made products like Kaiser Gypsum made?

22 A. Right.

23 Q. Products that used gypsum in them?

24 A. Uh-huh.

25 Q. Now, from your review of Kaiser Gypsum

1 Exhibit No. 10, isn't it apparent that Mr. Costa was
2 telling the Gypsum Association that it was Kaiser
3 Gypsum's position that the companies in the industry
4 should be labeling joint compounds containing asbestos
5 in strict accordance with OSHA regulations?

6 MR. BERGMAN: Objection. Foundation.

7 MR. FERNANDEZ: Assumes facts not in evidence
8 that this letter is an authentic letter. My client
9 has no information as to that effect. If you want to
10 preface your question assuming --

11 MR. PETTY: You can consider it so prefaced.

12 MR. FERNANDEZ: Do you understand the question?
13 Assuming this is an accurate letter from Kaiser
14 Gypsum.

15 THE WITNESS: Not signed.

16 MR. FERNANDEZ: What are you asking him about
17 it?

18 MR. PETTY: I'm asking him if his review of the
19 letter provides him information as to what the
20 position of the company was with respect to putting
21 labels on asbestos-containing joint compound.

22 THE WITNESS: Yes.

23 MR. PETTY: Q. And what was the company's
24 position at least in April of 1974?

25 MR. BERGMAN: Objection. Foundation. The

sence correctly in the
on is that we should la
asbestos in strict acco
and are doing so on our
I read that sentence cor
FERNANDEZ: I'll stipulat
nce correctly, Counsel.
WITNESS: Are you referri
PETTY: Paragraph 2 in th
WITNESS: Yes.
PETTY: Q. Would you agr
this letter it does appea
level management had
s and taken a position or
BERGMAN: Objection. Fou
n. Vague and ambiguous.
FERNANDEZ: Also, it's ar
PETTY: Can you repeat th
ur objections stated so t
ar the question and provi
e on?
WITNESS: Repeat the ques
PETTY: She's going to do

1 document speaks for itself.
2 MR. FERNANDEZ: And calls fo
3 part of the witness. The document
4 itself.
5 MR. PETTY: Q. You're getti
6 the objections; aren't you, sir?
7 A. Well, and your questio
8 Q. I'll try to clarify my
9 can't control the objections.
10 From this letter --
11 MR. FERNANDEZ: You can cont
12 Counsel, by asking good questions.
13 MR. PETTY: I would ask you
14 Counsel. I thought we were doing
15 MR. FERNANDEZ: I thought we
16 you want to editorialize, I can do
17 MR. PETTY: Here you are aga
18 MR. FERNANDEZ: What's good
19 good for the gander.
20 MR. PETTY: Well, I'm not a
21 gander, so...
22 MR. FERNANDEZ: Maybe you sh
23 MR. PETTY: You do in the St
24 MR. FERNANDEZ: Well, you're
25 MR. PETTY: Q. Let me ask :

1 MR. FERNANDEZ: I'll interpose a further
2 objection. As posed, the question is unfair because
3 the paragraph you're asking him about --

4 MR. PETTY: Is this an objection as to form?

5 MR. FERNANDEZ: It lacks foundation that this
6 document is an incomplete document. There is an
7 attachment that goes with this document. The
8 paragraph that talks about supposedly what the
9 company's policy is references a specific document
10 that has details supporting some position that is
11 relevant to your question.

12 My client has not been provided with that
13 document. So as posed, that question is very unfair.
14 You're asking him to give his opinion about what was
15 in somebody's mind based on an incomplete letter, and
16 that's unfair.

17 MR. PETTY: Are you going to instruct him not to
18 answer or may we now proceed with what we've been
19 trying to proceed with, which is the deposition of
20 your client.

21 MR. FERNANDEZ: I made my objection, Counsel.

22 (Record read.)

23 THE WITNESS: Yes, you read it correctly.

24 MR. PETTY: Q. Let me move on to another
25 subject, sir. And we can put that exhibit down for a

trips or did you a

They would usually

So on some of the

me to Reno every four

the times when you mi

one of his homes that

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Right.

And did you -- you

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opened to work in with

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ction or just to have

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p him pound nails?

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1

moment.

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When you gave testimony in Janu

3

you talked to us about occasions when

4

Mr. John Crum after work hours at son

5

that he was building in Nevada, the

6

correct?

7

A. Yes.

8

Q. Let me see if I understan

9

that you would make these visits to

10

were you there on company business b

11

A. Yes.

12

Q. And so from time to time

13

that area and call on John Crum or d

14

that area on behalf of the company; c

15

A. Right.

16

Q. About how frequently wou

17

A. Every month or month and

18

Q. So every four to six weel

19

yourself in John Crum's backyard, so

20

correct?

21

A. Well, in his territory.

22

Q. And at the time you were

23

California; correct?

24

A. Sacramento, right.

25

Q. And on those occasions, c

1 Q. Or saw lumber or do anything?

2 A. No.

3 Q. Now, Mr. Crum, we talked to him; we took
4 some testimony from him at his home last year, and he
5 testified that in building a typical house he handled
6 nearly everything from the ground breaking right up to
7 the finish work, and that the entire process usually
8 took him one to two years.

9 Was that consistent with your observations of
10 his home construction?

11 A. Yes.

12 Q. And Mr. Crum testified that out of that
13 process of one to two years of building a home the
14 hanging and the taping of the wallboard typically took
15 only two or three weeks out of that time frame. Is
16 that consistent with your knowledge of home
17 construction and the way he did it?

18 A. Yes.

19 Q. Now, I take it if you happened to be in
20 Reno on Kaiser Gypsum business, and it was one of
21 those occasions where you went to visit him and
22 socialize after hours, I would take it that on most of
23 those visits he wouldn't actually be in the active
24 phase of the work doing the drywall work; correct?

25 A. Correct.

1 Q. Do you remember any particular instance
2 when you were there when he was actually doing the
3 drywall work?

4 A. Yes.

5 Q. Can you pinpoint that to any of the
6 particular homes? Do you remember the addresses, any
7 characteristics about the home?

8 A. Well, they were in Washoe Valley. The
9 community was called Washoe Lake area, which is
10 halfway between Reno and Carson City.

11 Q. Now, from the testimony we took from Mr.
12 Crum, I understood that he built these homes for the
13 last couple of decades, right up through 1998, in
14 fact; is that your understanding?

15 A. Yes.

16 Q. And when you and he were both working for
17 Domtar, did you continue to go visit him in the Reno
18 area?

19 A. Yes.

20 Q. So is it fair to assume that some of these
21 occasions where you went to visit him at the house --
22 at the houses he was building were times when you were
23 both employed by Domtar?

24 A. Right.

25 Q. And some of them were occasions were when

1 you were both employed by Kaiser Gypsum?

2 A. Right.

3 Q. On the occasions that you recall to go
4 visit him when he was in the active drywall phase of
5 the construction, do you recall if you were Kaiser
6 Gypsum couple of guys or if you were both Domtar guys
7 at that point?

8 A. Both.

9 Q. So you recall visiting him when he was
10 doing -- when he was at the drywall phase of the work
11 when you were both at Kaiser Gypsum, and you also
12 recall visiting him when he was doing that kind of
13 work when you were both employed by Domtar?

14 A. Well, when you would call a visitation,
15 what would happen, when I would go to Reno, John would
16 pick me up at my hotel or motel, and we would travel
17 the day together. Usually when I would stop by his
18 place in Washoe Lake was if we were working in the
19 Carson City area or South Lake Tahoe, and we were
20 articulating back to my place in Reno.

21 Q. So would it be -- what? Maybe a couple of
22 times a year that you would go out and visit him on
23 the houses that he was actually building where your
24 itinerary took you through Washoe Valley?

25 A. Two or more.

1 Q. Now, are you able to give any further
2 identification or details as to the home -- I want to
3 focus now on the time when you were both Kaiser Gypsum
4 employees, and you went to visit him at one of these
5 homes that he was building, and it happened to be at
6 the time of the drywall work. Can you remember how
7 many bedrooms or how many bathrooms or if the home had
8 an attached garage or a detached garage, any of those
9 kind of details?

10 A. Well, they were a minimum of two bedroom
11 and up to four.

12 Q. Can you provide any more details beyond
13 that, that sort of range of homes? And if you can't,
14 it's understandable.

15 A. No.

16 Q. Okay. Let me ask you this: At the time
17 that you would have gone to visit him, and you went
18 out and called on the customers, and then you visited
19 the home while they were doing drywall work, would
20 this have been when you were working out of Oakland as
21 a district sales manager?

22 A. Sacramento and Oakland.

23 Q. Do you have a specific recollection of
24 working out of Sacramento and visiting him on one of
25 the homes where he was in the drywall phase or are you

1 saying it was one or the other, and you're not sure?

2 A. Normally, when I would be with John, we
3 would both be in our business clothes, and he wouldn't
4 actually be in there pounding nails or hanging
5 wallboard. We would just stop by on our way through
6 Washoe Valley because John's working on the houses was
7 basically done prior to a workday and after. He was a
8 very industrious guy. He would get up real early in
9 the morning, and he and his son would go down and work
10 on a project. He would then change and start the
11 coverage of his territory.

12 Q. Let me ask you this, maybe that will help
13 us date it a little better: The times that you're
14 thinking about when you went to visit him, you were on
15 a jobsite, it was drywall work that was the active
16 phase of construction, and his son was helping him,
17 about how old was his son? Was he out of high school
18 yet or a teenager?

19 A. Well, he was -- I think J.D. was -- he was
20 in high school part of it, and then he graduated from
21 high school and stayed with his dad.

22 Q. Okay. It would have been when he was 15
23 and 16 years old and after that?

24 A. Uh-huh.

25 Q. I want to ask you some other questions

oned that.

alked to you about some
cts?

would like to take about a
e can go off record and off

ER: It is 1:59 p.m. We are now

aken.)

ER: It is 2:23 p.m. We are back

ay continue.

ank you.

by, before I finish up, I just
nderstanding a little bit of your
rogression through the 18 years
where you were based during those

started in February of 1960,
cally based? Where were you
orking out of your home or out of
what?

1 about Mr. Crum.

2 Sir, isn't it true
3 Mr. Crum had taken ill l
4 visited him, you spoke w

5 A. Yes.

6 Q. And when you
7 tell you about his cance
8 it?

9 A. He just call
10 hell out of me. He saic

11 I said, "What the
12 John? We're all dying."

13 "No," he says, "I'
14 my chest." He didn't re

15 So I told him I w
16 could break free, I went

17 Q. And did he
18 learned from his doctor
19 of cancer he had and ho
20 him?

21 A. Well, he sa
22 products.

23 Q. Isn't it tr
24 about that, he discusse
25 employment of his up in

v?

A. My
about the time

Q. Whe
year do you rem

A. I t
1961.

Q. Was
you worked out

A. Yes

Q. And
Center to work

A. Sac

Q. And
Sacramento?

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Q. And
1970?

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Q. And
Center from '70

A. Unt

E
MS. JACKS
Antioch?

1

A. Kaiser office at I think it was

2

Q. And where is that?

3

A. In Oakland.

4

Q. Right here in Oakland?

5

A. Yes.

6

Q. And for how many years did you r
working out of that office?

7

8

A. I think only about six months.

9

Q. And then about six months later
a line salesman; is that true?

10

11

A. Yes.

12

Q. And is that when you transferred
you were no longer working out of the Grand
here in Oakland?

13

14

A. Right.

15

16

Q. Where were you working out of th

17

A. My home in Alameda.

18

Q. Your home was where in Alameda?

19

A. It was on Laurel Street.

20

Q. And then for how long did you wo
your home on Laurel Street in Alameda while
continued in sales, for how many years?

21

22

A. Oh, for approximately a year.

23

24

Q. And then where did you -- did yo
position change in that you moved out of th

25

1 A. Yes. Yes. For a couple of years we
2 transferred the regional offices to Antioch, yes.

3 Q. What years were those?

4 A. I would say '71, '72, in that area.

5 MS. JACKSON: Thanks, Ken.

6 EXAMINATION BY MR. PETTY

7 MR. PETTY: Q. Now, when you talked about the
8 conversation you had with Mr. Kirk, was it after you
9 returned to the Kaiser Center from Antioch? Some
10 point between then and when the company was bought out
11 by Domtar?

12 A. Yes. It was in about the middle of 1970.

13 Q. Do you remember replacing Mr. Alesandro?

14 A. Yes.

15 Q. Did you ever take his position?

16 A. Yes.

17 Q. What was the title of that position
18 when --

19 A. Regional manager.

20 Q. Were you the regional manager when you had
21 the conversation with George Kirk?

22 A. No. I think I was still a district
23 manager.

24 MR. PETTY: Kaiser Gypsum has no further
25 questions of Mr. Crosby.

1 MR. BERGMAN: I'll need about three to four
2 minutes to get put together.

3 THE VIDEOGRAPHER: It is 2:27 p.m. We are now
4 off the record.

5 (Brief recess taken.)

6 THE VIDEOGRAPHER: It is 2:29 p.m. We are back
7 on the record.

8 Counsel, you may begin.

9 EXAMINATION BY MR. BERGMAN

10 MR. BERGMAN: Q. Mr. Crosby, when did you serve
11 in the Marine Corps?

12 MR. PETTY: Object to the form. Beyond the
13 scope.

14 THE WITNESS: 1944 to 1946 approximately.

15 MR. BERGMAN: Q. Is that service that you're
16 proud of, sir?

17 A. Yes.

18 MR. PETTY: Same objection. May I have a
19 continuing objection to this line?

20 MR. BERGMAN: Yes.

21 Q. Sir, when you served in the Marine Corps,
22 was honesty and integrity a value that was important
23 to you?

24 A. Yes.

25 Q. When you worked as a salesman, sir, was

1 honesty and integrity something that was important to
2 you?

3 A. Absolutely.

4 Q. When you were a district manager for
5 Kaiser Gypsum, was honesty and integrity something
6 that was important to you?

7 A. Absolutely.

8 Q. How about a regional manager?

9 A. Absolutely.

10 Q. Did you value your relationship with your
11 customers?

12 A. Yes.

13 Q. Was credibility an important thing for you
14 to have in your dealings with your customers?

15 A. Very much so.

16 Q. Sir, when asked by Mr. Petty whether you
17 would help out John Crum from time to time, what kind
18 of things would you do for him?

19 A. Well, basically on a territory visitation
20 he would accompany the salesmen on calls to his key
21 accounts and try to bolster the Kaiser image, Kaiser
22 product and service. That's basically it.

23 Q. In the course of helping John Crum out,
24 sir, did you ever lie for him?

25 A. No.

1 Q. Would you ever lie for him?

2 A. No.

3 Q. Would you ever lie for anybody?

4 A. No.

5 Q. You've seen a lot of documents during the
6 course of your deposition here this morning. I don't
7 want to ask you about any documents. I want to ask
8 you about what you actually remember.

9 I'm going to ask you, first of all, in the
10 course of your work, did you actually see bags and
11 buckets of Kaiser Gypsum joint compounds?

12 A. Not to my recollection.

13 Q. Did you ever undertake tours of the
14 manufacturing facilities where Kaiser Gypsum joint
15 compounds were made?

16 A. Yes.

17 Q. And during the course of those tours, did
18 you ever see bags of joint compound?

19 A. Yes.

20 Q. Did you ever see any warnings on those
21 bags of joint compound?

22 A. Not that I can remember.

23 Q. In the course of your work, sir, as a
24 district sales representative, was it ever necessary
25 to conduct demonstrations of Kaiser Gypsum joint

1 compounds?

2 A. Yes.

3 Q. Could you describe for us how these
4 demonstrations would go about?

5 MR. PETTY: I'm going to object. This is beyond
6 the scope.

7 MR. BERGMAN: You can have a continuing
8 objection on that, Counsel.

9 MR. PETTY: Thank you.

10 THE WITNESS: The salesman would approach a
11 potential customer that he wanted to sell our products
12 to, and in many cases they are using a competitive
13 product, and your ploy was to offer him some of our
14 material to use to gauge between the product he was
15 using and our product. Was ours equal or better?

16 And we would donate product to the customer
17 after the salesman had prepared what we call a demo
18 request and got it signed by the appropriate people,
19 and the material would be taken out of the inventory
20 at Antioch and delivered to the field.

21 MR. BERGMAN: Q. And by "material," what do you
22 mean, sir?

23 A. Well, whether it was taping or topping or
24 K-spray or radiant heat compound.

25 Q. Would you be present when these

1 demonstrations were conducted, sir?

2 A. Some of them.

3 Q. Can you describe the type of work that
4 would be done during these demonstrations?

5 A. Well, normally the contractor would hang a
6 room, put the wallboard up, and then they would be
7 prepared to tape and then top. We would give them the
8 material. They would mix it if it was powder in a
9 five-gallon bucket, and then they would put it in a
10 trowel and use tape and tape the joints.

11 After that had an opportunity to dry, they would
12 rough sand it and then put on the finishing coat
13 through the same process of taking finishing compound
14 and putting it in a bucket and mixing it to a --

15 Q. Why in your position, sir, was it
16 necessary for you to be present while these
17 demonstrations were going on?

18 A. Well, it was just good business that we
19 showed an interest in our customer and in our product.

20 As I say, I didn't go to every demonstration
21 that was made, but a good many.

22 MR. BERGMAN: Let me make what we'll call Kaiser
23 Gypsum Exhibit 12. Is that what we're on?

24 MR. PETTY: This is not a Kaiser Gypsum exhibit.
25 This can be plaintiff exhibit whatever the number is.

1 MR. BERGMAN: Whatever you prefer.

2 MR. PETTY: Your exhibits were marked 1 through
3 8.

4 MR. BERGMAN: We'll make it Plaintiff's Exhibit
5 8, then -- excuse me, 9.

6 (Document marked Plaintiff's
7 Exhibit No. 9 for
8 Identification.)

9 MR. BERGMAN: Q. Mr. Crosby, I'm going to read
10 from Exhibit 9, which are Kaiser Gypsum's sworn
11 Answers to Interrogatories in litigation pending in
12 San Francisco County describing the labels allegedly
13 affixed to Kaiser Gypsum products.

14 "Initially the labels were 4 inches by 8 inches
15 in size and had yellow backgrounds with red letters.
16 They were affixed to a bag or container of the product
17 by adhesive in a prominent place. Later as new bags
18 and containers were purchased, the labels were printed
19 onto the side of the bag or container in our belief to
20 have been the same color or colors as the bag,
21 container or the printing thereon. The warning label
22 as prescribed by OSHA read, 'Caution, contains
23 asbestos fibers. Avoid creating dust. Breathing
24 asbestos may cause serious bodily harm.'"

25 Mr. Crosby, when you were conducting these

1 demonstrations for Kaiser Gypsum customers, did you
2 ever see warnings such as the ones I just described?

3 A. Not to my recollection.

4 Q. Sir, did you conduct these demonstrations
5 between 1972 and 1975?

6 A. Yes.

7 Q. Regarding the text of these alleged
8 labels, sir, is it possible to finish joint compound
9 without creating dust?

10 A. No.

11 Q. And why is that, sir?

12 A. Because you have to sand it.

13 Q. Is there any way you can sand joint
14 compound without creating dust?

15 MR. PETTY: Can I have a continuing objection to
16 beyond the scope?

17 THE WITNESS: Not to my knowledge.

18 MR. BERGMAN: Yes, of course.

19 Q. During the examination this morning, you
20 were shown a can with the Kaiser Gypsum label on it,
21 sir.

22 A. Yes.

23 Q. Do you have any idea where that can came
24 from?

25 A. No idea.

1 Q. Do you have any idea when it was made?

2 A. No.

3 Q. Do you know whether it was made in 1973 or
4 1993?

5 A. No.

6 Q. During your deposition, you were shown
7 Exhibit 4, which was a document with a distribution
8 list attached to it. Do you know whether that
9 distribution list was attached to the document on the
10 second page of Exhibit 4? Let me strike that.

11 If you would look at the second page of Exhibit
12 4, does your name appear anywhere on that second page?

13 A. No.

14 Q. Do you have any idea whether or not or
15 when the first page of Exhibit 4 was affixed to the
16 second page of Exhibit 4?

17 A. I have no idea.

18 Q. I'm going to refer to Exhibit 9, Kaiser
19 Gypsum Exhibit 9, and in doing so I'm not waiving my
20 previous objections to that document.

21 Mr. Kirk indicated in paragraph 6 of Exhibit 9
22 that you'd undertake tours of the manufacturing
23 facility at Antioch.

24 A. Right.

25 Q. Was that something that you did fairly

1 often, sir?

2 A. Oh, quarterly probably.

3 Q. When you'd undertake tours in Antioch,
4 sir, was production going on?

5 A. Yes.

6 Q. And did you undertake tours of the Antioch
7 facility prior to 1975?

8 A. Yes.

9 Q. At any time, sir, did you wear any
10 respiratory protection when you were undertaking these
11 tours?

12 A. No.

13 Q. And was -- did anybody with whom you were
14 conducting these tours with wear respiratory
15 protection?

16 A. No.

17 Q. Was anybody in the plant at Antioch
18 wearing respiratory protection?

19 MR. PETTY: Object to form.

20 MR. BERGMAN: Q. Did you see anyone at the
21 plant in Antioch ever wearing any respiratory
22 protection prior to 1975?

23 A. Very minimal, if any.

24 Q. You were shown Exhibit 8 by Mr. Petty.
25 I'm not going to ask you to read the whole document

1 again with me, sir. I'm just going to ask you a few
2 questions based upon it, although if you feel the need
3 to read it, of course, I'll be happy to provide you
4 with that opportunity.

5 The document states on the first page of Exhibit
6 8, "The attached draft has been prepared as a proposed
7 merchandising bulletin. This would disseminate the
8 information to our sales personnel and would be
9 available through our salespeople to contractors."

10 If you could look at the second page of Exhibit
11 8, and my question to you is, sir, did you ever see a
12 merchandising bulletin, not a draft, but a
13 merchandising bulletin such as the one attached to
14 Exhibit 8?

15 A. Not to my recollection.

16 Q. Sir, I'm going to just read a few things
17 from Exhibit 8 from this draft document. It states on
18 page 2 of the document: "During manufacture of these
19 products, OSHA has several requirements including use
20 of proper respirators by workers."

21 When you were undertaking tours of the Antioch
22 facility, did you see workers wearing respirators?

23 MR. PETTY: Object to the form of the question.

24 THE WITNESS: Not to my recollection.

25 MR. BERGMAN: Q. Moving down the second page of

1 the document attached to Exhibit 8, it states, "During
2 mixing, spray application and sanding of these
3 products, OSHA requires workers to use proper
4 respirators." And it says, "Contractors."

5 Sir, at any time were you told to advise
6 contractors to wear respirators while sanding Kaiser
7 Gypsum joint compounds?

8 A. Not to my recollection.

9 Q. Were you ever told by anybody at Kaiser
10 Gypsum to advise your customers to wear respirators
11 while mixing Kaiser Gypsum K spray?

12 A. No.

13 Q. Sir, if you had been provided that
14 information, if you had been instructed to tell your
15 customers to wear respirators while sanding Kaiser
16 Gypsum joint compounds, would that have been an
17 instruction that you would have followed?

18 MR. PETTY: Object to form. Calls for
19 speculation.

20 THE WITNESS: Yes.

21 MR. BERGMAN: Q. I want to again refer to
22 Exhibit 9 without waiving my aforestated objections.
23 Mr. Kirk states in his affidavit that he recalls that
24 you toured the Antioch manufacturing facility with
25 Kaiser Gypsum customers.

1 A. True.

2 Q. Why would you take customers on tours of
3 the manufacturing plants?

4 A. Well, number one, it was an interest that
5 we had in our customers to see our products being
6 manufactured so they'd become more attuned to them.

7 Q. Did you take -- did you -- when Kaiser
8 Gypsum customers would tour the manufacturing
9 facilities, would they meet with any of the
10 individuals at the plant?

11 A. Yes. Usually we'd attempt to get in a
12 specific area a workman from that area that was fully
13 versed in the product, whether it was the board line,
14 the accessory plant or the warehousing of material and
15 the loading and unloading of trucks.

16 Yes, we would request that we have plant
17 personnel with us.

18 Q. In 1970, sir, did you take any Kaiser
19 Gypsum customers on tours of the Antioch facility?

20 A. Very likely.

21 Q. And do you recall any discussions with Mr.
22 Raffaelli during any of these tours in the 1970-'71
23 time period?

24 A. Yes. Al was -- in fact, we used Al on
25 customer complaints.

1 Q. During any of these tours -- let me ask
2 you about the period 1970 to 1971. During any of
3 these customer tours of the Antioch facilities, did
4 any customers express interest or concern regarding
5 asbestos in Kaiser Gypsum products?

6 A. I believe so.

7 MR. PETTY: Object to the form of the question.

8 MR. BERGMAN: Q. What was the nature of those
9 concerns, sir?

10 MR. PETTY: Same objection.

11 MR. BERGMAN: That you remember.

12 THE WITNESS: Well, there was quite a bit of
13 publicity at the time that asbestos was considered a
14 hazard to your health, and so they would specifically
15 ask us do we have asbestos in our products that could
16 be harmful to them.

17 MR. BERGMAN: Q. Were those -- during these
18 plant tours, during this, sir, were any concerns ever
19 expressed regarding asbestos to Mr. Raffaelli?

20 MR. PETTY: Object to form. Calls for hearsay.

21 THE WITNESS: Yes.

22 MR. BERGMAN: Q. And can you describe those
23 concerns? Can you describe the conversation to the
24 best of your ability? Understanding giving counsel a
25 standing objection for hearsay.

1 again with me, sir. I'm just going to ask you a few
2 questions based upon it, although if you feel the need
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7 Gypsum joint compounds?

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11 while mixing Kaiser Gypsum K spray?

12 A. No.

13 Q. Sir, if you had been provided that
14 information, if you had been instructed to tell your
15 customers to wear respirators while sanding Kaiser
16 Gypsum joint compounds, would that have been an
17 instruction that you would have followed?

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22 Exhibit 9 without waiving my aforestated objections.
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24 you toured the Antioch manufacturing facility with
25 Kaiser Gypsum customers.

1 A. True.

2 Q. Why would you take customers on tours of
3 the manufacturing plants?

4 A. Well, number one, it was an interest that
5 we had in our customers to see our products being
6 manufactured so they'd become more attuned to them.

7 Q. Did you take -- did you -- when Kaiser
8 Gypsum customers would tour the manufacturing
9 facilities, would they meet with any of the
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11 A. Yes. Usually we'd attempt to get in a
12 specific area a workman from that area that was fully
13 versed in the product, whether it was the board line,
14 the accessory plant or the warehousing of material and
15 the loading and unloading of trucks.

16 Yes, we would request that we have plant
17 personnel with us.

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20 A. Very likely.

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22 Raffaelli during any of these tours in the 1970-'71
23 time period?

24 A. Yes. Al was -- in fact, we used Al on
25 customer complaints.

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2 you about the period 1970 to 1971. During any of
3 these customer tours of the Antioch facilities, did
4 any customers express interest or concern regarding
5 asbestos in Kaiser Gypsum products?

6 A. I believe so.

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9 concerns, sir?

10 MR. PETTY: Same objection.

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12 THE WITNESS: Well, there was quite a bit of
13 publicity at the time that asbestos was considered a
14 hazard to your health, and so they would specifically
15 ask us do we have asbestos in our products that could
16 be harmful to them.

17 MR. BERGMAN: Q. Were those -- during these
18 plant tours, during this, sir, were any concerns ever
19 expressed regarding asbestos to Mr. Raffaelli?

20 MR. PETTY: Object to form. Calls for hearsay.

21 THE WITNESS: Yes.

22 MR. BERGMAN: Q. And can you describe those
23 concerns? Can you describe the conversation to the
24 best of your ability? Understanding giving counsel a
25 standing objection for hearsay.

1 A. Well, they were fairly general insomuch as
2 because he was our specialist on accessory products,
3 he would ask "How much?" or "Do you put asbestos into
4 your accessory products? And I can remember asking Al
5 that directly.

6 Q. What, if anything, did Mr. Raffaelli say
7 in response to the customer inquiry at the Antioch
8 plant concerning asbestos in Kaiser Gypsum products?

9 MR. PETTY: Same objections.

10 THE WITNESS: "No." He said, "No. We do not
11 have asbestos in our products."

12 MR. BERGMAN: Q. Did these conversations take
13 place, sir, at the time that you were a district
14 manager for Kaiser Gypsum?

15 A. Yes.

16 MR. BERGMAN: Those are the questions that I
17 have at this time.

18 MR. PETTY: Just give us two minutes.

19 THE VIDEOGRAPHER: It is 2:48 p.m. We are now
20 off the record.

21 (Brief recess taken.)

22 THE VIDEOGRAPHER: It is 2:51 p.m. We are back
23 on the record.

24 Counsel, you may continue.

25 MR. PETTY: At this point Kaiser Gypsum has no

1 further questions. Thank you, sir.

2 THE VIDEOGRAPHER: This concludes the deposition
3 of Brentwood Crosby. The present time is 2:52 p.m.

4 The electronic record for this portion of the
5 deposition contains two videotapes. The originals are
6 to be retained by Tele-Video Production Services at
7 3655 Grand Avenue, Oakland, California 94610.
8 Telephone 510-893-0555. Copies are available to
9 interested parties unless otherwise stipulated.

10 Would anyone like copies at this time?

11 MS. JACKSON: Yes.

12 MR. BERGMAN: Yes.

13 MR. PETTY: Just for the stenographic record,
14 I'm not sure that we made this clear, but Exhibit 11
15 is being retained by stipulation of counsel with
16 Jackson & Wallace here in San Francisco, the Kaiser
17 Gypsum Exhibit 11.

18 (Whereupon, the deposition was
19 concluded at 3:00 p.m.)

20

21

22

SIGNATURE OF WITNESS

23

24

25

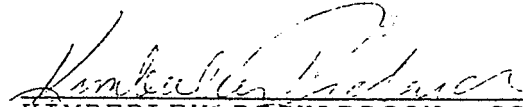
1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ALAMEDA)
4

5 I, KIMBERLEY RICHARDSON, do hereby certify:

6 That BRENTWOOD CROSBY, in the foregoing
7 deposition named, was present and by me sworn as a
8 witness in the above-entitled action at the time and
9 place therein specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me,
12 a Certified Shorthand Reporter of the State of
13 California, and was thereafter transcribed into
14 typewriting, and that the foregoing transcript
15 constitutes a full, true and correct report of said
16 deposition and of the proceedings that took place;

17 IN WITNESS WHEREOF, I have hereunder subscribed
18 my hand this 16th day of July 1999.
19
20

21 
22 KIMBERLEY RICHARDSON, CSR No. 5915
23 State of California
24
25



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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JOHN E. CRUM and MARILYN J.
CRUM, a married couple,

Plaintiffs,

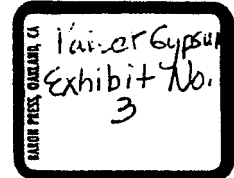
v.

THE E.J. BARTELLS COMPANY; et al.,

Defendants.

No. 98-2-24915-3 SEA

AFFIDAVIT OF RICHARD A.
MADSEN



STATE OF CALIFORNIA)

COUNTY OF SAN FRANCISCO)

ss.

I, RICHARD A. MADSEN, declare:

1. I was employed with KAISER GYPSUM COMPANY, INC. (hereinafter "KAISER GYPSUM") from 1966 through 1978 when KAISER GYPSUM ceased its operations. While employed with KAISER GYPSUM, my job title was Director of Advertising and Public Relations.

2. I was a friend and co-worker of JOHN CRUM and accompanied Brent Crosby to visit Mr. Crum a few weeks prior to his death.

3. I recall decedent JOHN CRUM being employed by KAISER GYPSUM as a salesman for the Reno/Tahoe district.

4. I am informed and believe that the above-captioned lawsuit was filed against KAISER GYPSUM by JOHN CRUM who alleges exposure to asbestos-containing products.

5. As Director of Advertising and Public Relations, it was my responsibility

1 to supervise the design and order all packaging materials and labels for every product
2 which bore the KAISER GYPSUM name.

3 6. I have been informed that Mr. Brentwood (Brent) Crosby, a former
4 District Sales Manager for KAISER GYPSUM with whom I am personally acquainted,
5 testified recently in deposition that he was unaware of any caution labels on any of the
6 packages of KAISER GYPSUM's asbestos-containing products.

7 7. The statement in deposition by Mr. Crosby that KAISER GYPSUM's
8 asbestos-containing products never contained a caution label is not correct.

9 8. Beginning in 1972, pursuant to OSHA regulations, KAISER GYPSUM
10 placed a caution label on all of its asbestos-containing products. The caution label, as
11 prescribed by OSHA, read, "CAUTION: Contains asbestos fiber; avoid creating dust;
12 breathing asbestos dust may cause serious bodily harm."

13 9. Initially, the above-worded caution was a separate label placed on the
14 packaging of asbestos-containing products. Eventually, as new product packaging was
15 ordered and replenished, the caution label was printed on the packaging itself. As non-
16 asbestos product formulations were developed and marketed, the asbestos caution label
17 was replaced with an indication that the product was of a non-asbestos formulation.

18 ///

19 ///

20 ///

21 ///

22 ///

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DISTRIBUTION LIST

Plant Managers

S. R. Witt
M. Slavich
J. F. Modaff
P. D. Orleman
G. W. James
C. E. Caprye

Product Sales Managers

E. K. Denning
C. V. Durant
J. D. Hodges

Distribution Centers

R. P. Russell - Newark
D. L. Hardy - Phoenix

L. D. Olsen

Regional Sales Managers

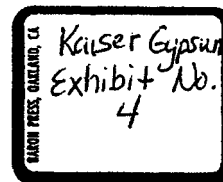
T. C. Donovan
A. P. Alessandri
J. H. Watson

District Sales Managers

G. G. Brown
A. R. Olson
G. M. Thomas
B. F. Crosby
W. M. Torgerson
C. E. Watson
J. V. Kelly
R. H. James

Area Sales Managers

D. J. Deya
B. T. Asimos
D. V. Merante
R. H. Ranger
J. F. Houser
R. L. Nauta
A. V. Capone
D. V. Merante



KAISER GYPSUM COMPANY, INC.

INTER-OFFICE MEMORANDUM

G-7

TO
AT

See Attached Distribution

DATE May 3, 1973

COPIES TO

J. W. Blewett	H. C. Dupuis	
R. C. Crowle	C. R. Grimme	
P. J. Franklin	W. J. Marshall	
R. W. Grigg	E. H. Schaper	G. K. Kirk
	T. V. Smith	R. J. Laidlaw

FROM

R. A. Madsen
KB-928

AT

SUBJECT

PRODUCT IDENTIFICATION FOR PRE-MIX DUAL PURPOSE
JOINT COMPOUND AND TOPPING COMPOUND

The purchasing department has instructed suppliers of packaging for subject products to convert to the following color-coding effective immediately:

1. Dual-Purpose Joint Compound
 - a. 5 gal. plastic or metal pail. Black pail. White printing. Black top. (White top Atlanta area).
 - b. 4 gal. carton. Natural kraft stock. Red and black printing.
2. Topping Compound
 - a. 5 gal. plastic or metal pail. Black pail. Green printing. Green top.
 - b. 4 gal. carton. Natural kraft stock. Green and black printing.

The above packaging carries approved Caution as prescribed by federal regulations relating to products containing asbestos fibers.

Please inform your people of these packaging changes.

RAM:jw

Memorandum from
R.A. MADSEN

Chron

SYD HENDERSON

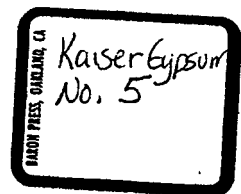
5/17/73

As soon as the plant managers advise me of their requirements, I'll let you know what quantities of labels we'll need and where to ship them.

Thank you.

Dick

Dick M.



Chron.

INTER-OFFICE MEMORANDUM

TO C. E. Caprye G. W. James
AT J. D. Cassidy J. F. Modaff M. Slavich
J. W. Flannigan P. D. Orleman S. R. Witt
D. L. Hardy R. P. Russell
COPIES TO J. W. Blewett R. W. Grigg J. H. Walton
✓ R. C. Crowle C. R. Grimme
H. C. Dupuis G. B. Kirk
P. J. Franklin E. H. Schaper

DATE May 17, 1973
FROM R. A. Madsen
AT KB-928

SUBJECT ASBESTOS CAUTION LABELS

Ref: Occupational, Safety, and Health Act of 1970

CAUTION
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM

Above label is in compliance with Federal Regulations relating to Occupational, Safety, and Health Standards 29 CFR 1910.93a.

The above label must appear on all Kaiser Gypsum Company bags, cartons, containers, etc. which contain products formulated with asbestos fiber. The purchasing department is continuing to instruct suppliers to include the caution label when printing reorders for packaging materials in order to eventually eliminate the need to hand affix them at the plants.

In the meantime, if you have existing unlabelled inventory, please advise me immediately of the number of labels needed at your facility to insure prompt compliance with the above referenced federal regulation.

You may prefer to accomplish the labelling with a hand stamp which can be procured locally at any stationery store. intention, please advise.

Thank you.

7/7-3

Chron. —

K A I S E R G Y P S U M C O M P A N Y , I N C .

SALE CENTER 300 LAKESIDE DRIVE

KAISER
GYPSUM

OAKLAND, CALIFORNIA 94604

AREA 25 10 1973

June 19, 1973

Mr. Jack Sullivan
Bennett Industries
P. O. Box 34132
San Francisco, California 94134

Dear Jack:

Per your instructions we have forwarded to your plant a sample container layout for the revised imprinting of one gallon containers of Kaiser Gypsum Pre-Mix 3 Purpose Compound. Copy is essentially the same, but please be advised of the following copy additions and changes in the printing format.

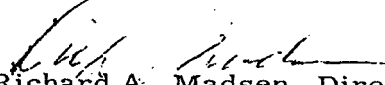
1. "1 Gallon U. S. Standard Measure". This must appear (as indicated) on the lefthand side on the lower one-third of the principal display panel.
2. We have repositioned the instruction panel moving the name and address of the company; i. e., "A Product of Kaiser Gypsum Company, Inc., 300 Lakeside Drive, Oakland, Ca. 94604" to the lower one-third of the panel.
3. The asbestos caution must be printed as shown on the container.
4. The "Important Note to Purchaser" is to be positioned as indicated.

With the exception of Item 4, the above changes reflect the requirements of federal as well as most state regulations. As you know, this is a rush job. However, I would appreciate reviewing a proof prior to printing.

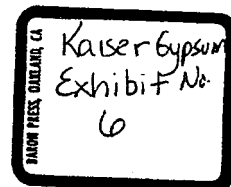
Thank you for your assistance in this matter.

Very truly yours,

BCC: L. Beck
J. W. Blewett
R. W. Grigg
G. B. Kirk


Richard A. Madsen, Director
Advertising and Sales Promotion

CC: Mr. Donald Anderson
Container Industries Inc.





Q37-13
Folder 4

R. A. MADSEN

CHRON FILE

1975

APRIL — DEC.

Kaiser Gypsum
Exhibit No.
7
BATCH PRESS OAKLAND, CA

Chron file

KAISER CEMENT & GYPSUM CORPORATION
INTER-OFFICE MEMORANDUM

L. Beck
R. Bridges
G. James

P. D. Orleman
J. M. Schlenner

DATE August 7, 1975

COPIES TO C. E. Caprye
E. K. Denning
J. F. Modaff

R. L. Muhr
D. K. Tudor

FROM R. A. Madsen *RAM*

SUBJECT 62-LB. PRE-MIX JOINT AND TOPPING COMPOUND NON-ASBESTOS LABELS.

Self-adhesive labels for subject product pails and cartons are being shipped to you via surface today as indicated below:

<u>Destination</u>	<u>Quantity</u>
Antioch	10,000
Delanco	10,000
Jacksonville	500
Santa Ana	20,000
Seattle	10,000

The new labels are to be placed over the asbestos warning label printed on the containers when production at your plant shifts to the non-asbestos product formulation.

Please see attached.

RAM:mh
Attach.

CAUTION

CONTAINS ASBESTOS FIBERS

AVOID CREATING DUST

BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM

Above label is in compliance with Federal Regulations relating to Occupational, Safety, and Health Standards 29 CFR 1910.93a.

(Red Label attached here)

NEW NON-ASBESTOS

FORMULATION

KAISER GYPSUM COMPANY, IC.

cc: G. James
C. Caprye
J. Modaff
M. Slavich

INTER-OFFICE MEMORANDUM

TO	J. W. Blewett	E. H. Schaper	DATE	June 27, 1973
AT	R. C. Crowle	J. S. Sheahan		
	H. C. Dupuis	T. V. Smith		
	P. J. Franklin ✓	J. E. Toomey		
COPIES TO	R. A. Madsen	J. H. Walton	FROM	G. B. Kirk <i>GBK</i>
	W. J. Marshall	H. L. Weightman	AT	KB-1145

SUBJECT ASBESTOS

With the recent passage of EPA regulations restricting the spray-on application of insulating and fireproofing products containing asbestos, we are beginning to get inquiries from contractors concerning Kaiser Gypsum Texture Products and Radiant Heat Products. These products do contain small amounts of asbestos fiber and are spray-applied on the job. Contractors are anxious to know whether the new EPA regulations restrict or prohibit the spray-on application of these products.

During the past year, John Sheahan has attended EPA meetings and has corresponded with EPA and has now received a letter from EPA headquarters advising that these Kaiser Gypsum products are considered to be decorative materials and are not a major source of asbestos emissions. Therefore, EPA does not include these products in the scope of the new regulations. Therefore, these Kaiser Gypsum products may continue to be spray applied on the job by contractors.

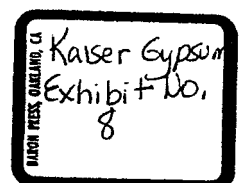
In order to clarify the facts concerning the OSHA and EPA regulations concerning asbestos, the attached draft has been prepared as a proposed Merchandising Bulletin. This would disseminate the information to our sales personnel and would be available through our sales people to contractors.

Please review the attached draft and advise your comments on the draft by July 13.

NOTE:

Attached to this memo are copies of John Sheahan's correspondence and a copy of the asbestos caution label for your information. It is not intended to attach this material to the Merchandising Bulletin.

GBK:jc
Enclosures



DRAFT

ASBESTOS

Federal agencies have investigated asbestos and found that it can be a health hazard.

Exposure to airborne asbestos of high enough intensity and long enough duration causes lung cancer and asbestosis, a non-cancerous lung disease which often causes death. There are many disputes as to what is a safe level of exposure and whether one type of asbestos is less harmful than others.

Because the effects may take twenty to thirty years to show up, health authorities are inclined to set tight limits on any asbestos exposure.

U. S. Department of Labor, through the Occupational Safety & Health Act, has adopted regulations to protect workers exposed to asbestos. U. S. Environmental Protection Agency has adopted regulations to protect the general public.

Kaiser Gypsum Company, Inc., uses a small amount of asbestos for workability and shrinkage control in joint compounds, texture paints, and radiant heat compounds. Kaiser Gypsum Company is manufacturing and labeling these products in accordance with OSHA and EPA regulations. Contractors using these products are also affected by these regulations.

The following information generally summarizes asbestos regulations pertaining to Kaiser Gypsum products. Specific details are spelled out in the regulations themselves and should be studied by contractors using these products.

KAISER GYPSUM COMPANY

During manufacture of these products, OSHA has several requirements including use of proper respirators by workers. Broken bags and spills are to be cleaned up by vacuum cleaners. Bags are to be disposed of in sealed plastic bags.

EPA requires "No visible emissions" to the outside air from manufacturing plants to protect the general public from asbestos fiber.

CONTRACTORS

During mixing, spray application, and sanding of these products, OSHA requires workers to use proper respirators. Empty bags are to be disposed of in sealed plastic bags.

There is considerable misunderstanding about the EPA regulations on spraying of asbestos-containing products on jobs. Kaiser Gypsum Company has been advised by the EPA that, "It is the opinion of this Agency that the spray-on application of decorative materials containing asbestos is not a major source of asbestos emissions; therefore, spray-on decorative materials were not included in the regulations. The regulations only apply to the spray-on application of insulating and fireproofing materials."

Kaiser K-Spray Ceiling Texture, Kaiser Cover-Tex Texture Paint, and Kaiser Radiant Heat Compounds may be sprayed applied on the job. Although these products contain small amounts of asbestos, spray application is not considered to create a hazard, and these products are not covered by EPA regulations.

REFERENCES

1. OSHA regulations: Occupational Safety and Health Standards, Department of Labor. Standard for Exposure to Asbestos Dust. Title 29, Chapter XVII, Part 1910, Federal Register, Volume 37, No. 110 - June 7, 1972.
2. EPA regulations: National Emission Standards for Hazardous Air Pollutants, 40CFR 61, Federal Register, Volume 38, No. 66 - April 6, 1973.
3. Letter to Kaiser Gypsum Company from the Deputy Assistant Administrator for General Enforcement, U. S. Environmental Protection Agency, Washington, D. C., dated May 29, 1973.
4. Control Techniques for Asbestos Air Pollutants, U. S. Environmental Protection Agency, Research Triangle Park, North Carolina - February 1973.

GBK:jc
6/27/73

K A I S E R G Y P S U M C O M P A N Y , I N C .

**KAISER
GYPSUM**

P. O. BOX 460

ANTIOCH, CALIF. 94509

PHONE 767-2670

May 2, 1973

Robert W. Fri
Acting Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Sir:

We have reviewed the National Emission Standards for Hazardous Air Pollutants published in the Federal Register, April 6, 1973, in regard to asbestos. We are particularly interested in spray-applied materials used as decoration and not for insulation or fireproofing, having worked closely with your staff on them.

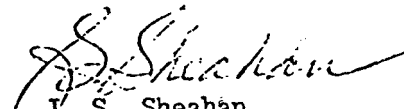
The following is our interpretation of the above standards as they pertain to these products:

Spray-on operations using asbestos materials for decoration and not for insulating or fireproofing, in which the asbestos is strongly bound and would not generate particulate asbestos emissions, are not covered in this regulation and are not restricted in asbestos content. Occupational Safety and Health Administration regulations include exposure, housekeeping and waste disposal requirements which will protect the health of those working in proximity to such spraying operations.

Is this interpretation correct?

Very truly yours,

KAISER GYPSUM COMPANY, INC.


J. S. Sheahan
Senior Research Chemist

/c

bcc: G. B. Kirk
T. V. Smith



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 29 1973

RECEIVED JUN 1 1973

Mr. J. S. Sheahan, Senior Research Chemist
Kaiser Gypsum Company, Inc.
P. O. Box 460
Antioch, California 94509

Dear Mr. Sheahan:

This is in response to your inquiry of May 2, 1973, concerning the interpretation of the National Emission Standards for Hazardous Air Pollutants (40 CFR 61) as they pertain to asbestos-containing spray-applied materials used for decorating purposes.

Subpart B of these regulations was designed to limit major sources of asbestos emissions. It is the opinion of this Agency that the spray-on application of decorative materials containing asbestos is not a major source of asbestos emissions; therefore, spray-on decorative materials were not included in the regulations. The regulations only apply to the spray-on application of insulating and fireproofing materials.

Please be advised, however, that the manufacture of spray-on asbestos materials for decoration is regulated under section 61.22(c)(7) of the regulations under the category of manufacturing of a coating.

If you have any further questions, please contact the Director of the Enforcement Division of the appropriate Regional Office of the Environmental Protection Agency. A list of the Regional Offices is included in 40 CFR 61.04.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "G. V. Allen".

George V. Allen
Deputy Assistant Administrator
for General Enforcement

CAUTION

CONTAINS ASBESTOS FIBERS

AVOID CREATING DUST

BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM

Above label is in compliance with Federal Regulations relating to Occupational, Safety, and Health Standards 29 CFR 1910.93a.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JOHN E. CRUM and MARILYN J.
CRUM, a married couple,

Plaintiffs,

v.

THE E.J. BARTELLS COMPANY; et al.,

Defendants.

No. 98-2-24915-3 SEA

AFFIDAVIT OF GEORGE KIRK

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SS.

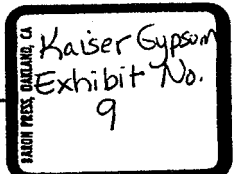
I, GEORGE KIRK, declare:

1. I was employed with Kaiser Gypsum Company, Inc. (hereinafter "Kaiser Gypsum") since its inception in 1952 through 1974. In 1958, I became Director of Research for Kaiser Gypsum, and held that position through 1974.

2. I am informed and believe that the above-captioned lawsuit was filed against Kaiser Gypsum by John Crum, who alleges exposure to asbestos-containing products.

3. As Director of Research, I am familiar with Kaiser Gypsum's product line and the components which were used to formulate each product.

4. I am informed and believe that Mr. Brentwood "Brent" Crosby, a former regional salesman for Kaiser Gypsum with whom I am personally acquainted, testified recently in a deposition that in 1970, he asked me if any of Kaiser Gypsum's products contained asbestos. I am informed and believe that Mr. Crosby said that my response was to tell him that none of Kaiser Gypsum's products contained asbestos.



1 5. I do not recall that Mr. Crosby ever asked me in 1970 whether or not any
2 of Kaiser Gypsum's products contained asbestos. Had he asked me that question in 1970,
3 I would have truthfully responded that Kaiser Gypsum's accessory products contained
4 asbestos as an ingredient.

5 6. Kaiser Gypsum always had an open-door policy and encouraged its
6 employees, such as Mr. Crosby, to tour its facilities. I specifically recall Brent Crosby
7 touring the Antioch manufacturing facility with Kaiser Gypsum customers. At the time
8 Mr. Crosby took these tours, pallets with sacks labeled asbestos would have been visibly
9 present and could have been seen by Mr. Crosby during the plant tours.

10 7. Likewise, I recall Mr. Crosby visiting the research and development lab at
11 Antioch where asbestos was kept in clearly labeled containers.

12 8. I recall that in approximately 1972, OSHA began to regulate the types of
13 asbestos-containing products which were manufactured by Kaiser Gypsum. In response
14 thereto, Kaiser Gypsum placed a caution label which conformed to OSHA mandates on
15 all of its asbestos-containing products. Initially, the caution labels were printed
16 separately and placed on each product package. Eventually, as new product packaging
17 was ordered, the labels were printed directly on the packaging. As asbestos was removed
18 from the products, the packaging no longer contained the caution label.

19 ///

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28 ///

9. Brent Crosby's job title did not necessarily involve him in the management decisions regarding product formulations and caution labels; therefore, he would not have had personal knowledge of any company decisions regarding product formulations and caution labels.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Signed at San Francisco, California this 11th day of March, 1999.

George Kirk
GEORGE KIRK

SUBSCRIBED AND SWORN to before me this 11th day of march, 1999,
by George Kirk.



Jill Harvey

Jill Harvey

(PRINT NOTARY'S NAME)
Notary Public in and for the State of
California, residing at *Richmond, CA*
My commission expires: *12/5/00*

R:\PIGMAIL\KAISER.400\CRUM\AFFIDAVI.GK

1. 7. 1 - covered by
2. 1. 1 - to be
3. 1. 1 - to be

KAISER GYPSUM COMPANY, INC.

KAISER CENTER — 300 LAKESIDE DRIVE

OAKLAND, CALIFORNIA 94604

April 5, 1974

Mr. A. Victor Abnee, Jr.
Executive Vice President
Gypsum Association
1603 Orrington Avenue
Evanston, Illinois 60201

Dear Vic:

As you know I shall be unable to attend the forthcoming Gypsum Association Board of Directors Meeting. There is one subject on which I would like you to know our position, and this is in respect to labeling products containing asbestos.

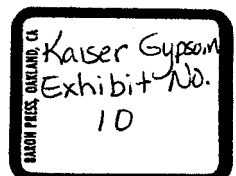
Our position is that we should label joint compound containing asbestos in strict accordance with OSHA regulations and are doing so on our products. The attached letter by our John Sheahan to Mr. Volk of National Gypsum, whom I understand is a member of the Safety Committee of the Association, provides details supporting the need for this position.

If there are any further questions you have with respect to this subject please give me a call.

Yours very truly,

Robert A. Costa
Vice President and General Manager

HCD:eco
Attachment



76A-10



Orig. @ Ex. "C"

PARA DID #13
ATTY CL
RECEIVED

JUL 23 1997

BRAYTON HARLEY
HAND OVERNIGHT

PATRICK J. HAGAN, ESQ. (State Bar #68264)
E. JANE WELLS, ESQ. (State Bar #112178)
DILLINGHAM & MURPHY
225 Bush Street, Sixth Floor
San Francisco, CA 94104-4207
(415) 397-2700

Attorneys for Defendant
KAISER GYPSUM COMPANY, INC.

POS 7/22/97
VERIF Y (7/28/97)
LDF 1/19/98

file

TD/TSC

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

IN RE: SAN FRANCISCO COUNTY
COMPLEX ASBESTOS LITIGATION

CASE NO. 828684

KAISER GYPSUM COMPANY, INC.'S
RESPONSES TO PLAINTIFFS'
STANDARD INTERROGATORIES
TO ALL DEFENDANTS

GO129

PROPOUNDING PARTY : Plaintiffs
RESPONDING PARTY : Defendant Kaiser Gypsum Company, Inc.
SET : Standard
DATE :

COMES NOW defendant Kaiser Gypsum Company, Inc. (hereinafter "Kaiser Gypsum"), and provides the following responses to Plaintiffs' Standard Interrogatories To All Defendants propounded pursuant to San Francisco County Complex Asbestos Litigation General Order No. 129:

KAISER GYPSUM'S PRELIMINARY STATEMENT

Kaiser Gypsum submits this preliminary statement to memorialize certain steps taken to implement the standard discovery regime adopted pursuant to the revised General Orders filed November 15, 1996 governing asbestos-related personal injury

1 obtained from Wesco Waterpaints, Inc. was an asbestos-containing product. Kaiser
2 Gypsum knows of no other agreement entered by it that provided for rebranding any
3 product of another company's which may have been an asbestos-containing product in
4 Kaiser Gypsum's
5 name for sale in California.

6 **RESPONSE TO INTERROGATORY NO. 37:**

7 Yes, as to products marketed in 1972 or thereafter.

8 A. Beginning in 1972, in response to regulations adopted by the U.S.
9 Occupational Safety and Health Administration (see 37 Fed. Reg. 11318, June 7,
10 1972), Kaiser Gypsum affixed caution labels to the packages and containers of its
11 asbestos-containing products. The OSHA regulations requiring this label were made
12 subject to the limitation that "no label is required where asbestos fibers have been
13 modified by a bonding agent, coating, binder, or other material so that during any
14 reasonably foreseeable use, handling, storage, disposal, processing, or transportation,
15 no airborne concentrations of asbestos in excess of the exposure limits prescribed in
16 paragraph B. of this section will be released." In light of then-existing ambiguities as to
17 what tests OSHA would recognize as adequate to demonstrate a product's falling within
18 this exception, Kaiser Gypsum applied the caution label to all its then-manufactured
19 products in which chrysotile asbestos was used as a component.

20 Initially, the labels were four inches by eight inches in size and had yellow
21 backgrounds with red letters. They were affixed to the bag or container of the product
22 by adhesive in a prominent place. Later, as new bags and containers were purchased,
23 the labels were printed onto the side of the bag or container and are believed to have
24 been the same color or colors as the bag/container or the printing thereon. The warning
25 label as prescribed by OSHA read:

26 CAUTION: contains asbestos fibers; avoid creating dust;
27 breathing asbestos dust may cause serious bodily harm.
28

1 Additionally, Kaiser Gypsum Technical Bulletins 5703-A, dated October 1973,
2 and 5707, dated October 1973 and November 1976, prescribed the use of respirators
3 during spray application.

4 B. Yes.

5 C. Beginning in 1972; exact date unknown.

6 D. This caution label remained the same during the remaining time the products
7 upon which it was used continued to use asbestos as a component.

8 E. Joseph R. Hobby, Vice President, 2680 Bishop Drive, San Ramon,
9 California.

10 **RESPONSE TO INTERROGATORY NO. 38:**

11 Most of Kaiser Gypsum's products were sold in the form of a powder or paste;
12 therefore, the name of the company was on the packaging of the product. However,
13 Kaiser Gypsum's 2-hour fire-rated ceiling tiles and suspended ceiling lay-in board
14 products (in which asbestos was used as a component were specially marked because
15 they looked similar to other Kaiser Gypsum mineral fiberboard ceiling tiles and lay-in
16 boards (that did not contain asbestos as a component) and building inspectors wanted
17 to be able to check to make sure that 2-hour fire-rated products actually were being
18 used by the building contractor when those had been specified. It is believed that each
19 piece of 2-hour fire-rated ceiling tile and suspended ceiling lay-in board was stamped
20 on the back with either the initial "KG" or the word "Kaiser Gypsum." Such marking was
21 employed during the entire period that the 2-hour fire-rated products were
22 manufactured by Kaiser Gypsum.

23 **RESPONSE TO INTERROGATORY NO. 39:**

24 Kaiser Gypsum has no knowledge that it ever purchased or otherwise acquired
25 an asbestos-containing product line from another person or entity.

26 **RESPONSE TO INTERROGATORY NO. 40:**

27 Kaiser Gypsum has no knowledge that it ever sold an asbestos-containing
28 product line to another person or entity.