IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL	X	
VS.	X	Civil Action No. 6449
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	X	

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JAN 26 1971

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DEPOSITION OF PAUL SHELBY CULLEN, M. D.

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HOUSTON, TEXAS

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CLARENCE BOREL	)	
VS.	)	Civil Action No. 6449
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	)	

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DEPOSITION OF PAUL SHELBY CULLEN, M.D., taken on the 22nd day of January, 1971, at Memorial Baptist Hospital, Houston, Texas, between the hours of 2:00 p.m. and 2:45 p.m., pursuant to notice and stipulation.

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S-T-I-P-U-L-A-T-I-O-N

IT IS STIPULATED by and between counsel for the respective parties hereto, that the deposition of PAUL SHELBY CULLEN, M.D., may be taken at this time and place, before RONALD D. MILLER, an Official Court Reporter, certified under the laws of the State of Texas, all formalities and requirements for the taking of deposition, including time and issuance of notice, and all formalities in the taking and return of this deposition being waived, including the signature of the witness.

IT IS FURTHER STIPULATED that the necessity for the making of objections to the questions and answers at the time of the taking of this deposition is waived, and that such objections may be made when the deposition or any part of it is offered in evidence, with the same force and effect as if the witness were present and testifying in person.

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PAUL SHELBY CULLEN, M.D.,

the witness, was by the notary duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and thereupon in answer to questions propounded by counsel, testified as follows:

DIRECT EXAMINATION

By Mr. Stephenson:

Q Dr. Cullen, my name is Ward Stephenson and I am an attorney representing Mrs. Clarence Borel. We are here to take your deposition. By that, meaning to ask you questions, and I will ask you direct questions, and then other lawyers who represent the various defendants in this case can ask you questions under cross examination. This testimony you give may be used in court as though you were testifying personally in court. If you have any questions about any of the things that we ask you, you can stop and ask for a clarification. If you don't understand the question, just tell the lawyer, please.

State your full name for the record.

A Paul Shelby Cullen.

Q Where do you live, Doctor? In Houston?

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A Yes.
Q Where do you practice medicine, please?
A I practice mostly in the Memorial Baptist Hospital. We have a private office across the street in the Memorial Professional Building.
Q Now, are you a licensed medical practitioner?
A Yes.
Q Is your license on record here in the Harris County Courthouse?
A Yes, it is.
Q Would you please tell us where you did your medical training and studies?
A I did my medical education at Baylor Medical College here in Houston. I graduated in '48. I did two years of hospital training at Jeff Davis Hospital here in Houston, '48 to '50. I had six months at the Baptist Hospital in San Antonio in '53 and '54. I took my specialized pathology training partly in Methodist Hospital in Houston and partly at Jefferson Davis in Houston, and that was in the years of '57 through '61.
Q Have you entered the field of specialty?
A Yes. Well, since '57 I have been entirely in pathology. September of '57.

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Q Where did you take your training in pathology?
A Well, it was in the Baylor University Training Program, and they have several hospitals to which their trainees are assigned, and I was assigned to Methodist and to Jeff Davis.
Q Tell us what pathology means, the practice of pathology.
A The strict definition of pathology is the study of disease. As a matter of practice, it's divided into two general classifications, anatomic pathology, which includes the study of surgical tissues and the study of autopsy tissues, which includes the doing of autopsies. The clinical pathology is the study of blood, including blood transfusions, bacteriology, stool examinations, urine examinations, and that sort of thing.
Q Did you have occasion to make a study of certain tissues submitted to you by a surgeon, Dr. Ricks, and perhaps the internal medicine doctor by the name of Dr. P. O. Jones concerning one Clarence Borel?
A Yes, sir.
Q Would you explain starting with the first study you made, Doctor, what studies you made and what

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your opinion was concerning those studies?

A Yes, sir. On March 3rd, 1969, there was sent to the laboratory small fragments of tissue, and this was examined by me after nothing had been done to it except that it had been partially fixed in formaldehyde solution, and this was quite small. It measured three by three by 1.5 millimeters, which would make it not quite as big as the head of a kitchen match. Microscopically this contained a little bit of muscle and a little bit of fibrous tissue, and I couldn't make any specific diagnosis. This was taken as a biopsy of the pleura, the pleura being the fibrous covering which covers the lung, and which also lines the chest cavity.

My diagnosis was biopsy of pleura. I asked that the surgeon in this case, P. O. Jones, examine my description above which stated that no pathological change is demonstrated in either the fibrous tissue nor the muscle. This is not uncommon, I might say, because this is in a sense a blind procedure. A hollow needle is inserted, and it's sort of like the geologist taking a core sample, and if you get something in that core that is worthwhile, you are lucky,

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and if you don't, you don't. This time he didn 't get anything that was diagnostic at all.

Q All right, sir. Did you subsequently have occasion to make other studies of Mr. Clarence Borel's tissue?

A Yes. Other examinations were made by people other than myself, but so far as I personally was concerned, on the 11th of February, 1970, a rather extensive surgical procedure was done on Mr. Borel, and the entire right lung was removed along with most, if not all, of the lining of the right chest cavity.

Q Just explain, please, Doctor, if you will, what studies you made of this lung tissue and what conclusions you reached.

A I was called to the operating room to look at this lung to see if I could find a tumor in the lung at the time the surgeon still had the chest cavity open, and I did not find any just by gross examination. After the material came into the laboratory, I looked at all parts of it and described it in its gross state. Some of the tissue had been partially fixed in a formaldehyde solution, and some had not. Then microscopic slides were made, and I studied all

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of those. I have here two pictures that were made of the portion of the lung, if any of you would care to look. The scale is in centimeters, of course. The first picture really tells you something. The second one is rather difficult to interpret and doesn't really tell too much. That would be much more interesting to someone who knew something of normal anatomy first.

Q If I can ask you without your notes, but if you would rather wait --

A That's all right.

Q Doctor, in the final analysis of your studies done, are these on record as a part of the official records of Memorial Baptist Hospital?

A Yes, sir.

Q And we all have those copies, so we can introduce them at the time of trial, perhaps to shorten this deposition, if I would ask you to state what is your conclusion based upon reasonable medical and scientific certainty as to what this patient had wrong with his lung?

A He had two things wrong with his lung, actually. Now, before I enlarge on that, let me say that one can go into great detail and mention a number of things that are perhaps significant

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to some degree, but he had two things that really matter. As an example of what doesn't matter, his lung weighed something like 500 grams, as I recall. It's part of the record. Normal right lung weighs perhaps 300 grams. Well, where did the extra weight come from? Well, it came from congestion, but so his lung was congested. That really doesn't matter too much. The things that matter was that this man had asbestosis with its features, which include many things, and he had a diffuse malignant mesothelioma.

Q Would we call that a type of cancer?

A Yes, sir.

Q Then would it be your opinion that the right lung phorectomy, I guess it is -- removal --

A You call it a pneumonectomy.

Q That the right lung removal was a proper decision by the surgeon?

A Yes. Pardon me. My answer is still yes, but in this case you can't just say the right lung. The lung is covered with pleura, and that's a thin membrane, and that membrane covers the lung, and it also lines the chest cavity, but in your lung or mine, hopefully, you could remove the

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lung and still leave the pleura on the inner surface of the chest cavity. In this man perhaps that could have been done and perhaps it could not have been done. I don't know, but if you removed only the lung, it would not have been proper treatment. You would have to get all the pleura that you could. Of course, that on the outer surface of the lung is going to come, anyway, but you get what you could off the chest wall, stripping the muscles and ribs bare on their inner surface.

Q What was the reason for having to strip the pleura from the surface, Doctor, of the chest cavity?

A Let me put it this way. Asbestosis is a disease condition resulting from the reaction between asbestos fibers and the lung, but it's extremely rare that the asbestos fibers ever leave the lung. Some people think they never do, and we have no reason to believe they did in this man's case. That was one disease, the asbestosis. The second disease, malignant diffuse mesothelioma, involves the pleura, which both covers the lung and lines the chest cavity, and the reason to remove it would be to

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remove the cancer.

Q Is mesothelioma a type of cancer that is peculiarly attached to asbestosis?

A That would not be the medical way to put it. First of all, there is such a thing as a benign mesothelioma. Mesothelioma is the name given to the linings of the heart cavity, plus the covering of the heart, the lining of the peritoneal cavity, plus the coverings of the intestines and liver, etc. The linings of the chest cavity plus the covering of the lung, it's all mesothelioma. The "oma" part means tumor. It's possible to have a benign mesothelioma, which is a tumor. You cut it out and it's gone. It's not cancer. But a malignant mesothelioma is a very rare condition, and most of the time it is associated with asbestosis. It can be found not in association with asbestosis.

Q By far the higher incidence would be accompanied by the disease, asbestosis?

A Yes.

Q Is there any doubt in your mind at all from a medical and scientific standpoint, Doctor, but what this man had asbestosis?

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A There is no doubt.

MR. STEPHENSON: That's all I have.

CROSS EXAMINATION

By Mr. Weller:

Q Doctor, what are some of the other causes of mesothelioma?

A I don't know of any other cause. Now, in general we say that no one knows the cause of cancer in general, but you know and I know that's not exactly true. Some people have skin cancers that the sun is bad for, and those people are required to stay out of the sun to prevent cancer. The Surgeon General says smoking causes lung cancers. Well, most cancers we just don't know what causes.

Q Well, cancer within the body cavity, we really don't know what causes them, do we?

A Most of them we do not.

Q In this man's case did you take any tissues from any other section of the body to determine if they had cancer cells?

A I believe that some fluid was taken from his --

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I think I have that record here. He had a biopsy of the lung, the lymph node and -- well, I don't find any record of anything other than pleura, lungs, and lymph nodes, and a few of the fragments of the muscle attached to one, and I did find cancer in one of the lymph nodes.

Q In the earlier examination of this patient when specimens were taken, I suppose in March of 1969, or was it February 11th, '69 and March of '70? Which was it?

A March 3rd, '69, biopsy of the pleura in which I found --

Q When those first biopsies were taken, there was no evidence of any cancerous cells, were there?

A No evidence at that time.

Q So that that based on what you have, this condition developed between March of '69 and February of '70, is that right?

A The malignancy.

Q Now, do you have any way of determining with any degree of medical certainty where this malignancy came from?

A I am not sure that from my medical standpoint I understand what you mean by where this came from.

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Q Well, can you tell with any degree of medical certainty the place where the cancer cells developed in this man?

A Well, as I said a while ago, mesothelioma is the word used to designate that lining of the heart cavity and abdominal cavity and chest cavity. Now, this is a mesothelioma, which means that it's malignancy developing from the cells that line one of those cavities, and if you come to me and say, "What's a mesothelioma?", I can tell you that it's not that, but I can tell you with only that information whether it came from the heart cavity, the chest cavity or the abdominal cavity, but there is a specific little cell that lines those cavities on the surface that makes the surface slick so that every time you breath, the lungs move freely back and forth along the inner surface of the chest wall. That's the little cell, and it's just a little hook shaped cell.

Q Based upon the fact that the only tissue that you had was taken from the lung and you didn't take it from anywhere else, can you tell us with any degree of medical certainty that this was the place that the cancer started, originated?

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A Are you asking did it arise in the chest cavity rather than somewhere else?

Q Yes, sir.

A Well, I have no doubt that it arose in the chest cavity. You say with any degree of medical certainty. I'm making some sort of silly assumptions there. A man is sick and he comes to the doctor, and the doctor examines him and finds nothing wrong with his abdomen and x-rays his chest, and he finds more disease on the right side than he does the left, well, the doctor is going to send me something to diagnose from the place where he thinks the disease is, and that's where he sent it, and that's where he found it. I have no reason to believe that the man had any disease anywhere else, or the doctor who is taking care of him would have sent me something from that part. This is where they do come.

Q Doctor, as a pathologist the only thing you did was examine these sections of the lung that were sent to you?

A Yes, sir.

Q You didn't make any physical examination of the man?

A That's right.

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Q And you took no samples of his tissue from any other section of his body?

A That's right.

Q Now, if you were really going to determine whether the cancerous cells or the cancer had metastasized and spread over other sections of the body, wouldn't you have taken tissue sections from other sections of the body?

A Well, in the first place, I don't treat the patient. I take care of what they send me. Now, in this case we did find spread from the pleura into some lymph nodes around the root of the lung.

Q Are you able to tell by the limited examination that you made of these tissues where the cancer cells originated in this man?

MR. STEPHENSON: Do you mean limited, George? He didn't say he made limited studies.

MR. WELLER: We have established the study that he made and the samples that he made.

MR. STEPHENSON: I wouldn't call it limited.

THE WITNESS: The only examination

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that I made is of any consequence is of the man's right lung and the pleura on the right side of his chest cavity. Now, I have here 21 sections of microscopic sections from this man, and two of these are of the bronchus at the point where it was sectioned to determine if there was a tumor at the line where it was cut off. Now, that leaves about 19, and none of these other 19 are free of disease. I would have to go through them and check them, but I would imagine -- I looked at them this morning. I would imagine that on at least 17 out of these 19 there's cancer, and on at least 15 out of 19 -- or maybe it would be the other way around. Certainly in more than half of them you can see the asbestos bodies and you can see cancer. I have no doubt that this man had asbestosis in his lung. I have no doubt that it was in the other lung. I can't see him breathing asbestos bodies on one side and not on the other side. Whether he had cancer in the pleura on the other side, I don't know. Whether he had cancer in the heart cavity or the peritoneal cavity, I don't know.

Q The cancer could have originated in either one or other parts of the body and moved into the

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pleura and into the lung, couldn't it?

A There has never been a case recorded so far as I know -- and I have read this literature in the last few days -- dealing with mesothelioma in a case of asbestosis involving the heart, primarily the lining of the heart. I never heard of a malignant mesothelioma arising in the peritoneum first in a case of asbestosis.

Q Mesothelioma does occur in people who do not have asbestosis?

A Yes, sir, and it does occur primarily in the peritoneal cavity, but that's rare.

Q Where is the peritoneal cavity?

A I say peritoneal cavity, and sometimes abdominal cavity. The peritoneal cavity is below the diaphragm. It's that cavity that contains the live, the intestines and the kidneys, bladder.

Q If mesothelioma has had its start there, it can spread up into the lungs, can't it?

A I don't see any reason why it couldn't. I have never known of it to do so, but I don't know that it hasn't.

Q You made an interesting statement that in your opinion this man could not have had asbestosis in the right lung without the same degree of

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asbestosis in the left lung.

A I didn't say the same degree or didn't intend to say that. I can't imagine him having it on one side and not on the other. He could have had a greater or lesser degree.

Q If he had been subjected to the same exposures, wouldn't both sides, both lungs be affected?

A I am sure both lungs would be affected, but that doesn't prove they would be affected equally.

Q If the diagnosis in this case, all the x-rays were to the effect that the left lung was completely clear, would that indicate to you that there was some doubt as to whether this man had asbestosis of the right lung?

A After what I have seen, it wouldn't.

Q Well, would it be medically possible for the left lung to be clear and the right lung to have a severe case of asbestosis?

A In medicine there's an old saying that one never says never. In this case I would be tempted. I don't see how that could be possible.

Q You don't see how the left lung could be clear and the right lung would be affected?

A That's right.

Q In your opinion is the mere presence of asbestos

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fibrous bodies in a person's lung alone sufficient enough to justify a diagnosis of asbestosis?

A No, it is not.

Q Then asbestos fibers can be found in a person's lung, and he would not have asbestosis, necessarily?

A That's correct.

Q I suppose there are a number of people who have asbestos fibers in their lungs who do not have asbestosis?

A I am sure that's true. I am sure I have some.

Q Even though some people may have asbestos fibers in their lungs, they never develop asbestosis?

A That's correct.

MR. WELLER: That's all. Thank you, Doctor.

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FURTHER CROSS EXAMINATION

By Mr. Reynolds:

Q Doctor, you have had five specimens that you have analyzed, is that right, sir, in connection with this February 11th?

A Well, let's say five containers. That's why I numbered them five.

Q Would you go through them for us and tell us what they are and what part of the body they are from, please, sir?

A Could I refer to that? I don't have it. Is that the record?

MR. WELLER: I think that's it.

THE WITNESS: When the surgeon is operating, he removes some tissue and he gives it to a nurse. He says, "This is a specimen."

Well, more than likely she takes this and puts it in a bottle and labels it and puts it to one side.

He will get some more tissue after a while and give it to her, and he will say, "This is specimen."

Sometimes she will ask him, "Doctor, is this a separate specimen or do you want me to put this in with the other one?"

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Sometimes she doesn't bother. Sometimes she just makes it a separate specimen. There's no need for it, the two are essentially the same. There's no need to separate them. In this case I said there were five specimens, but actually the first four were pieces of pleura, some of which had a few little fragments of muscle, chest wall attached, or a few little fragments of muscle attached, but that was incidental. They were bits of the pleural membrane.

Q Were they joined together or taken from the same area?

A I don't have any way of knowing.

Q They were not connected?

A The record will describe whether specimen one was two pieces or three pieces or a number of pieces, but when a man is scraping around the pleura, it's like peeling an orange. If you are careful and real lucky, you can get it off in one piece, but usually when I peel an orange, I don't care how many pieces I get, and usually I get 15 or 20. That's sort of like how the pleura came off. He had a number of pieces of it, and it got here in four containers, and the

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fifth one was the lung. Have I finished answering the question?

Q I take it you are not clear about exactly what areas the pleura came from within the cavity itself?

A On two or three of the major fragments, I could be fairly certain where they were from, but the major part of it, I couldn't tell whether it was the front or the back or the side or the top or the bottom. It really wouldn't matter.

Q I see at one point that you mentioned a finding of anthracosis. Is that the way you say it?

A Yes, sir.

Q What is that, sir?

A Anthracosis -- the word comes from the same word as anthracyte coal. As far as we are concerned, it means the black powdery carbon pigment that people inhale in coal dust or cigarette smoking or anything else that contains finely divided carbon. The pigment is deposited and makes the lungs black, and that is what makes an anthra-scopic picture.

Q Is that the explanation for the color in the lungs?

A Yes.

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Q Was this seen throughout the lung, wide spread?
A As best I recall, this man -- it's on the picture there. He had what I would call a moderate amount diffusely throughout the lung, but that's not uncommon. If a man smokes for 15 or 20 years, his lungs will look like that, and I don't know if this man smoked or not.
Q This has nothing to do with asbestos?
A No, it has nothing to do with asbestos. Coal miners, of course, are the ones who get extreme degrees of anthracosis.
Q Doctor, can you examine your records or tell us which lymph node it was that you found some of the mesothelioma cells in, and maybe I can point to a part of it here?
A I remember the report, and here's the slide here. I can tell without even a microscope. On this microscopic section, which is perhaps slightly more than an inch in each direction, I can see a part of the main bronchus to the right lung, and I can see two lymph nodes and a part of the pulmonary artery leading to the lung. So I know it's right at the root of the lung.
Q What do you mean by the "root" of the lung? I am sorry.

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lung or --

A Right at the connection between the lung and the rest of the body.

Q Right at the connection of the lung to the rest of the body?

A Uh-huh.

Q Was that mediestic?

A Well, the word is "midiastinum." It's the partition between the two lung cavities, but metastatic is the word that you have there. That means it spread.

Q This means it's spread from some other part of the body, is that right?

A When you say, "tumor" speaking of malignant tumor, you usually differentiate between primary and metastatic, meaning it's still confined to its original location or else it's spread from where it is now to somewhere else, and this mesothelioma did not originate in these two lymph nodes. We just aren't built that way. It came here from somewhere else, and that's why it's metastatic.

Q How can you tell that it's metastatic? Is that

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something that you can look at and know, or what tells you that?

A There are certain tumors which arise primarily in lymph nodes. Lymph nodes are sort of a sieve or a filter, and they catch tumors from many, many other places. Mesothelioma is not a tumor that arises primarily in the lymph nodes. You can find most any kind of tumor in the lymph nodes, but very few arise primarily there.

Q Thank you, Doctor.

FURTHER CROSS EXAMINATION

By Mr. Pate:

Q Doctor, I only have one question. I believe on your March 3rd, 1969 report, where did the specimen come from there? You say the pleura, but you don't say --

A We were not told.

Q So it could have been from any part of the body that you have --

A Well, it's a pleural biopsy, and it would have to be from either the left lung or the right lung pleura. Well, it wouldn't be lung. It would be chest wall because we found the skeletal

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muscle in it, but it was not specified whether he took this specimen from the right chest or the left chest.

Q There's no way of knowing?

A Unless you ask him. He did not tell us in the record. It may have been in your hospital records.

MR. PATE: That's all I have.

REDIRECT EXAMINATION

By Mr. Stephenson:

Q Doctor, can we say based upon your medical opinion -- we already have said that this patient had asbestosis. Would it be your medical opinion that mesothelioma was secondary to asbestosis?

A Yes.

Q Now, would you explain for us what you mean by secondary to the asbestosis?

A Well, I will put it this way. Although we have said -- "We" meaning me and thousands of other physicians, that we do not know the cause of cancer, to some extent there is a common denominator of things that cause cancer. That

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common denominator is some sort of irritant. It is something that damages human tissue, but does not necessarily kill any single cell. Very simple thing, some people are more prone than others to getting skin cancers. Those of us who are prone to get skin cancers had better stay out of the sun as much as we can because of the radiant energy of the sun damaging our skin, as we know from sunburning, but it doesn't necessarily kill our skin. But if you go out in it, you are going to get more skin cancers. If you stay in, you are going to get less, and that's not anything anybody argues about, so that's an irritant, an irritation, a sublethal damage. Asbestosis is a disease of reaction between the body and asbestos fibers. That is an irritant. Asbestos fibers cause a disease. That's been known for many, many years. The asbestos fibers are the irritant, and that irritant in some people apparently is the difference which triggers the onset of malignant diffuse mesothelioma. Just like some people will get skin cancer whether they ever go out in the sun or not, some people are going to get mesothelioma whether they ever come near asbestos or not, but the statistics

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are that the people who have asbestosis are much more likely to get mesothelioma, and that's why I say the mesothelioma in my opinion is secondary to the asbestosis.

Q Thank you, Doctor.

RECROSS EXAMINATION

By Mr. Weller:

Q Doctor, since this man had anthracosis as shown on your autopsy and you referred to Specimen No. 1, "lymph node, hilar anthracosis", would that have been developed from smoking?

A Well, maybe no, maybe yes. It's inhalation of carbon pigment.

Q Can you develop mesothelioma as a result of the irritation from smoking, the side effects of it?

A I have never heard of such.

Q In your opinion can you develop cancer from smoking?

A Yes.

Q Now, the asbestos bodies would not produce the anthracosis, would it?

A That's right, it would not.

MR. WELLER: That's all. Thank

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MR. STEPHENSON: Thank you, Doctor.

(Signature Waived)
Paul Shelby Cullen, M.D.

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THE STATE OF TEXAS:

COUNTY OF HARRIS:

I, RONALD D. MILLER, an Official Court Reporter, certified under the laws of the State of Texas, and a Notary Public in and for said county and state, duly commissioned and qualified and authorized to administer oaths, and to take and certify depositions, do hereby certify that the above and named witness appeared at the time indicated and was by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth and nothing but the truth, and that said witness thereupon testified as is aobve set forth; that the answers of said witness to the oral interrogatories propounded to him were taken by me in shorthand, and thereafter reduced to typewriting under my personal direction and supervision.

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I FURTHER CERTIFY that the facts stated in the caption hereto are true, and that all of the proceedings in the course of the taking of said deposition are correctly and accurately set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as such notary public in and for the County of Harris, State of Texas, on this the 24th day of January, 1971.

Ronald D. Miller, Official Court Reporter, Certified under the laws of the State of Texas, and a Notary Public in and for Harris County, Texas

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