IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAY 17 1971
JAMES R. COONEY, CLERK
BY DEPUTY Margaret Turner

CLARENCE BOREL)
)
VS.) CIVIL ACTION NO. 6449
)
FIBREBOARD PAPER PRODUCTS)
CORPORATION, ET AL)

NAMES OF WITNESSES WHO MAY BE CALLED
BY DEFENDANT, UNARCO INDUSTRIES, INC.

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to instructions of the Court, the following are submitted as the names of possible witnesses to be called by the Defendant, Unarco Industries, Inc.:

1. Mr. Anthony Summers
2. Deposition of Clarence Borel as an adverse party, subject to objections
3. Oral deposition of Mrs. Thelma Borel as an adverse party, subject to objections
4. Ralph J. Shrode
5. Dr. Hans Weill.

II.

This Defendant may call one or more of the various witnesses designated by the Defendants and Cross-Defendants herein.

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III.

Depositions which may be used in whole or part by this Defendant:

1. Hospital records of Doctors Hospital, Groves, Texas

2. Dr. John J. Bunting

3. Deposition of Ralph J. Shrode

4. Deposition of Paul E. Petrofsky.

Respectfully submitted,

VINSON, ELKINS, SEARLS & SMITH

By Gerald P. Coley

Gerald P. Coley
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ATTORNEYS FOR DEFENDANT, UNARCO INDUSTRIES, INC.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CLARENCE BOREL	)	
	)	
VS.	)	CIVIL ACTION NO. 6449
	)	
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	)	

DESIGNATION OF REPRESENTATIVE

TO THE HONORABLE JUDGE OF SAID COURT:

The Defendant, Unarco Industries, Inc., in accordance with the Order of the Court, hereby designates Mr. Anthony Summers as the representative of Unarco Industries, Inc., during the trial of this case.

All counsel have been notified with a copy of this notice.

Respectfully submitted,

VINSON, ELKINS, SEARLS & SMITH

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ATTORNEYS FOR DEFENDANT, UNARCO INDUSTRIES, INC.

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CONTINUATION OF DEPOSITION SUMMARY OF
DR. DANIEL E. JENKINS TAKEN ON
AUGUST 28, 1970

This continuation of the deposition summary begins with the cross-examination by Mr. James W. Mehaffey.

Page 140 — Dr. Jenkins admits that the general state of the knowledge pertaining to asbestosis among insulation workers was very limited until Dr. Selikoff's work. He recalls only one limited case of an insulator with asbestosis prior to Selikoff's work. Dr. Jenkins agrees that prior to Selikoff's work there was little attention called to both the insulator and the manufacturers of the hazard.

Page 144 — Dr. Jenkins admits that it was not common knowledge prior to Dr. Selikoff's studies that the inhalation of asbestos fibers by insulation workers was hazardous; that Dr. Selikoff's studies opened the door to this subject.

Page 148 — Dr. Jenkins testifies that the first information or publication which would have been available to a manufacturer pertaining to the unusual hazards of insulation of asbestos fibers would probably have been in either 1963 or 1964.

CONTINUED CROSS-EXAMINATION BY MR. GEORGE WELLER

Page 149-150 — Dr. Jenkins first became interested in the disease of asbestosis in the early 1950's; he did not make any extensive study or research in connection with the treatment of a patient at that time who had extensive fibrosis, but only consulted and reviewed literature.

Page 150-151 — Dr. Jenkins did not make any study as to the effective use of a respirator; he recognizes that the disease of asbestosis is related to the extent of the degree of exposure.

Page 152 — He admits the threshold limit values for dust exposure as recommended at 5 million parts per cubic foot of air - 1946 Survey of Pipe Covering Operations; that the figure was commonly used as one within safe limits of exposure.

Page 153 — Acknowledges the statement made by the Association of Governmental Hygenists in 1961.

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Page 154	Cannot give the name of any publication that would dispute the threshold limits as a safe limit for asbestos dust of 5 million particles per cubic foot of air before 1968.
Page 155	Admits similarities of the diseases of asbestosis and silicosis; admits similarities between other pneumoconioses and asbestosis.
Page 156-157	Admits that he has relied in a great part upon Dr. Selikoff's work in forming his conclusions regarding this subject.
Page 157	Admits that the working conditions in a textile mill are different from the conditions under which construction workers work.
Page 160-161	Dr. Jenkins recognizes the fact that Dahl & Knox have conducted in the United Kingdom some epidemiologic studies which he feels are significant and valid including the statement of Dahl that: "The experience of those members of this Advisory Panel who have had asbestos-exposed populations under survey lens for years is also in support of the view that there is no association in Great Britain between asbestosis or asbestos exposure and a high incident of gastrointestinal cancer."
Page 163	Dr. Jenkins admits that all of Dr. Selikoff's research was not based upon personal examination regarding the health of the asbestos worker, but had to take some of the information from death certificates or whatever material was available.
Page 166	Dr. Jenkins admits that the cause of a particular mesothelimoa in any individual would be difficult.
Page 167-168	Admits that there is a causal relationship between cigarette smoking and cancer; that if an asbestos worker smoked one and a half or two packs of cigarettes a day over some 40 - 45 years and subsequently developed cancer, it would be difficult - just an educated guess - as to the cause - whether it was cigarette smoking or exposure to asbestos dust. Dr. Jenkins testifies that he has not been able to find the presence of cancer in Mr. Potter.
Page 169	Dr. Jenkins states that there is a reasonable medical probability that Mr. Potter has cancer, but he cannot find it and is not prepared to make a diagnosis of such until he could prove it.

The Borel v. Fibreboard Case File (1969-1972), Designations and deposition summaries Published by AsbestosClaims.Law
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Page 170	States that the crocidolite or blue asbestos fiber is the agent being associated more with mesothelioma and is open to some question.
Page 171-173	Testifies that the leading cause of chronic bronchitis is cigarette smoking; that cigarette smoking also causes emphysema.
Page 176	Recognizes Dr. W. Clark Cooper as a recognized researcher in this field. Accepts as valid the statement of Drs. Balzer and Cooper that: "That manufacturer who sells insulation products to be applied experienced contractors in this field and experienced insulation workers, that they could not reasonably expect at that time as late as that time (1964 - 1966); that these workers would be exposed to injurious exposures to dust as a result of their work." (Page 178 reaffirms the validity of this statement by adding: "If that's what their references state, then I will have to go according to that.")
Page 180-181	When questioned about the accepted safe rate of 5 million particles per cubic foot of air and the research in that connection, Dr. Jenkins testifies: "As I said, if a manufacturer who is not a knowledgeable person in the field is looking for limits to stay within, then I think this is reasonable from the manufacturer's point of view."
Page 182	Recognizes use of respirators, adequate ventilation, filtration of air, exhaust fans and good housekeeping practices as methods of reducing the particle count in the air; that such good practices when followed would diminish the risks to an asbestos worker.
Page 183-184	Recognizes that the inhalation of many types of dust, including cotton, silicate, cement dust and a number of other dusts are harmful and produce a variety of diseases; Dr. Jenkins admits that he does not know how to eliminate all dust and advises his patients to try to avoid inhalation of dust.
Page 185	Dr. Jenkins admits that Potter's early exposures in the shipyard to excessive dust is a substantial factor in his present condition. Dr. Jenkins that work out in the open and with light exposure dust would produce less difficulty.

Page 186 — Dr. Jenkins admits that Mr. Potter's condition had its origin or beginning as long as ten years ago and probably long before that time.

Potter gave Dr. Jenkins a history of smoking approximately two packs of cigarettes a day over a long number of years; gave a history that he drank considerably.

Page 187 — Potter states in his history that he had his complaints of shortness of breath and periodic pain in his chest, some expectoration of sputum since 1959.

Page 188 — Potter stated in his history that he began to smoke about the age of 11 and that his level cigarette consumption was about two packs a day in his adult life; Dr. Jenkins tried to get him to quit, but to the doctor's knowledge, he did not do so. Dr. Jenkins did not have the benefit of any prior X-rays other than those taken at Orange Memorial Hospital in 1967.

Page 189 — Potter admitted to Dr. Jenkins that he did not always wear a respirator.

Page 194 — Dr. Jenkins admits that one does not see fibrous tissue on X-ray; that one sees a shadow on the X-ray film and has to interpret its meaning. He admits that the shadow seen on Potter's X-ray suggested the presence of fibrosis, but admits that there are a number of causes of pulmonary fibrosis, including the inhalation of silica, silicone dioxide and other particles of around 5 microns in diameter.

Page 196 — Question: "Assuming he worked in a shipyard for two years, that he was confined in close places and exposed to heavy amounts of dust containing asbestos, could his whole trouble have started and developed from that period of exposure, and is just now coming to light, or came to light some 15, 20 years later?"

Answer: "Undoubtedly such an exposure would have had something to do with it. I'm not certain in time reference as to whether this was his first exposure or not."

Question: "I am assuming that his first exposure was in the shipyard?"

Answer: "In 1959?"

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Question: "No, he went to work earlier than that. I have forgotten."

MR. COLEY: "Early '40's."

THE WITNESS: "1940. Okay. I think I would say that was the reason."

Question: "Would you say that after 1957 that exposure had nothing...additional exposures had nothing to do with it? Would that be a reasonable assumption? The asbestos dust?"

Answer: "Well, I'm not sure that's entirely correct, but because of the time requirements inherent in the development of the disease process following exposure, more recent exposures might well have less to do with the current problem at any given time."

Question: "Based on the history of what he told you that occurred in 1957, he had all these symptoms. Now, assuming he had all these symptoms which he related to you and that he didn't work with asbestos any more from after that time, wouldn't he have had the same result that he's got today?"

Answer: "Yes, I think that's a reasonable statement."

Question: "Then as far as exposures from and after that time, it really had nothing to do with the onset of his problem, did it?"

Answer: "With the onset of the problem?"

Question: "Yes."

Answer: "It's not likely."

Question: "Or with the acceleration of the problem?"

Answer: "I couldn't say that with any certainty."

Page 198

Question: "Would it be correct that the optimum injurious exposure had occurred by 1957, and he was destined to reach the end result that he is reached today?"

Answer: "I think that's reasonable. Exposure was heavy around 1940. Resulted in the disease process, which has been present and perhaps worsened 20 years later, 30 years later."

Page 202 — Dr. Jenkins does not relate Potter's contracture of his fingers to asbestosis and doubts that such (clubbing) is a diagnostic sign as far as asbestosis is concerned; he sees no opportunity to relate it to asbestosis.

Page 203-204 — Dr. Jenkins diagnosed arteriosclerosis in Potter.

Page 206 — Dr. Jenkins admits that the available knowledge or information as it affected asbestos workers pertaining to the use of asbestos products in the construction field would be equally available to the asbestos workers' union as it was to the manufacturers.

Page 210 — Dr. Jenkins admits testimony given by him earlier in a compensation case in answer to Interrogatory No. 29, to which he answered as follows: "The diagnosis at the end of the period of my complete examination was as I had given it to you previously, in addition to which I felt that the patient had another condition which was picked up in the pulmonary function study; namely, that of an obstructive chronic pulmonary disease. The main component of which was probably a chronic bronchitis, and the chronic bronchitis was, I felt, in all probablity related more to his heavy smoking than to perhaps any other single cause, although some of his occupational exposure may have contributed to the chronic bronchitis."

Dr. Jenkins admits that this statement is still true today.

Page 211-221 — RE-DIRECT EXAMINATION BY MR. STEPHENSON in which Mr. Stephenson asked questions pertaining to certain articles, all of which are objectionable, and interrogates the Doctor about certain slides showing alleged working conditions of asbestos workers in the field, all of which should be objectionable.

Page 222-223 — Dr. Jenkins admits that exposure to asbestos products over a period of several weeks in 1960 only would probably be a very small infintesimal portion of Potter's problem. If such very limited exposure was light exposure or mild exposure, then Dr. Jenkins feels that such exposure would not play any significant part in his present condition.

Dr. Jenkins answered a question in his deposition on interrogatory in the compensation case of Potter on October 25, 1968, in which he was asked: "What percentage in your opinion does asbestosis as a causative factor bear to all of the other non-occupational causes of disability, if any?" to

which Dr. Jenkins replied: "The percentage in my opinion which asbestosis as a causative factor of disability is minimal, perhaps 5%, and certainly not more than 10%." Dr. Jenkins testifies on this deposition that he was not sure that he understood the question, nor is he certain that he understands it now. He adds that he is still not certain whether it relates to the patient's symptomatology. He concludes it's a difficult question and needs to be redefined before he would attempt to answer it.

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DEPOSITION SUMMARY OF DR. PAUL SHELBY CULLEN
TAKEN ON JANUARY 22, 1971

DIRECT EXAMINATION BY MR. WARD STEPHENSON:

Page 6-7 — Dr. Paul S. Cullen has limited his practice to pathology and has been a pathologist since September 1957.

Page 8 — On March 3, 1969, Dr. Cullen received tissue fragments quite small, taken as a biopsy of the pleura. He made a diagnosis of "biopsy of pleura." There was no pathological change demonstrated in the fibrous tissue or the muscle - he did not get anything that was diagnostic.

Page 9 — Subsequently, on February 11, 1970, Dr. Cullen made studies of lung tissue which was obtained on rather extensive surgical procedure.

Page 11-13 — Dr. Cullen testifies that: "The things that matter was that this man had asbestosis with its features, which include many things, and he had a diffuse malignant mesothelioma."

Page 13 — Dr. Cullen testifies that mesothelioma is a type of cancer; that a malignant mesothelioma is a very rare condition; that most of the time it is associated with asbestosis; however, it can be found not in association with asbestosis.

CROSS-EXAMINATION BY MR. GEORGE WELLER:

Page 14 — Dr. Cullen admits that he and the medical profession do not know the cause of cancer in general. He admits that mesothelioma is a form of cancer.

Page 15 — Dr. Cullen testifies that the first biopsies did not reveal any evidence of cancerous cells.

Page 17 — Dr. Cullen did not make any physical examination of Mr. Borel and his work was limited to the pathological study of material given to him.

Page 18 — Dr. Cullen took no samples of tissue from any other section of Borel's body other than the lungs.

Page 19 — Dr. Cullen does not know whether the patient had cancer in other portions of his body or not.

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Page 20 — Dr. Cullen admits that mesothelioma does occur in people who do not have asbestosis. Dr. Cullen admits that mesothelioma could start below the lungs and spread into the lungs, but he has no personal knowledge of such occurring.

Page 21 — Dr. Cullen testifies that both lungs should be affected by any exposure. He testifies that he does not see how it could be possible for the left lung to be clear and the right lung to have a severe case of asbestosis.

Page 22 — Dr. Cullen admits that the mere presence of asbestos fibrous bodies in a person's lungs alone is not sufficient enough to justify a diagnosis of asbestosis; that there are quite a number of people who have asbestos fibers in their lungs who do not have asbestosis.

CROSS-EXAMINATION BY MR. BEN REYNOLDS:

Page 25-26 — Dr. Cullen found anthracosis, a black powdery carbon pigment that people inhale in cold dust or cigarette smoking or anything else that contains finely divided carbon; such was found in Mr. Borel in a moderate amount diffusely throughout the lung, which is not uncommon in a man who smokes for 15 - 20 years.

CROSS-EXAMINATION BY MR. GORDON PATE:

Page 29 — Dr. Cullen could not state whether the specimen he examined came from the left lung or the right lung pleura - or rather whether the specimen came from the right chest or the left chest and there is no way of knowing unless such is revealed by the patient, the surgeon or the hospital records.

RE-DIRECT EXAMINATION BY MR. STEPHENSON:

Page 30 — Dr. Cullen testifies that in his opinion the patient had mesothelioma secondary to asbestosis.

RE-CROSS-EXAMINATION BY MR. GEORGE WELLER:

Page 32 — Dr. Cullen admits that in his opinion one can develop cancer from smoking. Dr. Cullen admits that asbestos bodies in the lung would not produce the anthracosis that was found by him.

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DEPOSITION SUMMARY OF DR. LOUIS A. MATEO
TAKEN ON JANUARY 22, 1971

DIRECT EXAMINATION BY MR. WARD STEPHENSON:

Page 6 — Dr. Mateo is a pathologist who received his medical training at the University of Havana; took his formal training in pathology from 1950 to 1954, and has practiced in this county since 1960. He has limited his work to pathology beginning in 1961.

Page 7 — On or about March 7, 1969, Dr. Mateo made tissue studies of Clarence Borel.

Page 8 — Dr. Mateo received five specimens as follows: (1) hilar nodes, (2) specimen from the open lobe of the lung, (3) lung tissue from the lung itself, (4) tissue from the chest wall and (5) specimens submitted as biopsy of the right lung.

Page 9 — Dr. Mateo did the routine study, consisting of usual hematoxylin and arosene and historical preparation.

Page 10 — In specimens 2, 3 and 4, Dr. Mateo found fibrosis. In specimen 5, Dr. Mateo found lesions that are produced by any kind of injury to the lung and also found within the tissue what was identified as asbestos bodies.

Dr. Mateo concluded that the lung biopsy was that of asbestosis.

CROSS-EXAMINATION BY MR. GEORGE WELLER:

Page 12 — Dr. Mateo states that he had had occasion to diagnose asbestosis or tissues involving asbestosis in two or three instances prior to the one in question.

Page 13 — Dr. Mateo did not find any asbestos in specimen 1, which was lymph node taken from the hilar region of the lung. Specimen 2 came identified as a node from the upper lobe on the right side, which contained fibrosis.

Page 14 — Specimen 3 was tissue from the lung and did not contain any asbestos bodies. Specimen 4 was material from the chest wall, which did not contain any asbestos bodies. Specimen 5 came from the right lung, but Dr. Mateo does not know what part of the lung from which it was taken.

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Question: "Well, how would you account for the fact that there were four samples of tissue taken from a lung that did not have any asbestos bodies in it, and then there was only one that did?"

Answer: "Usually asbestosis is more common in the lower portion of the lung than in the upper lobe since gravity has something to do with it."

Page 15

Question: "If you don't know where specimen 5 came from, you don't know whether that came from the lower lobe or not, do you?"

Answer: "No."

Question: "There were no specimen taken of the left lung, were there?"

Answer: "I don't have any information on that."

Dr. Mateo admits that the presence of asbestos bodies alone does not make a diagnosis of asbestosis.

Page 16

Dr. Mateo mentioned that there was an inflammatory reaction around the bodies (asbestos bodies) found by him, but admits that if the patient had had a prior case or cases of pneumonia the condition he found could have been scar tissue developing from the pneumonia and and other causes - admits that this is possible.

Page 17

Dr. Mateo admits that there are asbestos bodies present in the lungs of quite a number of people who do not have asbestosis and who never develop asbestosis; that the mere presence of asbestos fibers in a person's lungs does not always cause a reaction.

CROSS-EXAMINATION BY MR. GORDON PATE:

Page 18-19

Dr. Mateo again admits that there were asbestos bodies present in only specimen 5 and not in the other four.

Page 19

When asked to what does he attribute the fibrosis tissues in specimens 2, 3 and 4, Dr. Mateo responded that one does not always find the agent that produces these changes and that there are many, many agents that could produce these changes, such as pneumonia.

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Page 20 — Dr. Mateo further admits that pneumonia could possibly have produced the fibrosis found in tissue in specimen 5.

Page 22 — Dr. Mateo admits that it is possible that an asbestos worker could inhale asbestos fibers and bodies and have no reaction and then subsequently suffer from pneumonia which sets up the fibrosis or inflammation.

Dr. Mateo admits that smoking could possibily have set up the fibrosis found in the tissues.

Page 23 — Question: "What I am really driving at, Dr., is this. Let me state it once again. I am trying to clarify .. that tissues 2, 3 and 4 that had the fibrosis, as well as 5, which had the fibrosis yet you only found an asbestos body in tissue 5?"

Answer: "Right."

Question: "Therefore, you cannot say that this fibrosis caught in these four tissues, 2, 3, 4 and 5, were caused by asbestos, can you?"

Answer: "No, I cannot say that the tissues 2, 3 and 4 were caused by that. I probably could say that in tissue 5 there is a relation of location between the two."

Question: "Possibility?"

Answer: "Possibility."

Page 24 — Dr. Mateo admits that as pertains to specimen 5 and the inflammatory reaction found therein, that pneumonitis could cause such inflammatory reaction.

Page 25 — Dr. Mateo distinguishes inflammatory reaction and fibrosis by explaining that fibrosis is established as the result of an old inflammatory reaction, for example, a foreign body or bacteria might cause an acute inflammatory reaction and then the body, trying to reject the offender, trying to isolate the foreign body, produces fibrous tissue, called fibrosis.

Dr. Mateo admits that any inflammatory disease, such as pneumonia or bronchitis may produce a fibrosis.

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Page 26 — Dr. Mateo did not have any specimens from the left lung - all specimens were from the right cavity. He does not know whether there were any asbestos bodies in the left lung or not.

RE-DIRECT EXAMINATION BY MR. WARD STEPHENSON:

Page 28 — Dr. Mateo states that the reason he did not diagnose the other fibrous growth found in the specimens as asbestosis was because he did not actually observe asbestos agents in the fibrous growth. In other words, he did not find asbestos agents in all of the specimens.

RE-CROSS-EXAMINATION BY MR. GEORGE WELLER:

Page 29 — Dr. Mateo admits that pneumonia can leave scars on the lungs that will show up in X-rays.

Page 30 — Dr. Mateo did not find any evidence that the fibrosis was caused by cigarette smoking, in the absence of emphysema or other conditions.

Assuming the patient had emphysema and bronchitis, Dr. Mateo admits that this could produce the fibrous tissue, if he smoked.

Dr. Mateo did not find in the biopsy any cancerous cells and did not make any diagnosis of cancer in this patient.

FURTHER RE-CROSS-EXAMINATION BY MR. GORDON PATE:

Page 31 — Dr. Mateo admits that the fibrosis which he observed in specimens 2, 3 and 4 could have been caused by pneumonia.

Page 32 — Dr. Mateo explains that the reason he diagnosed asbestosis as to specimen 5 was because of the presence of the asbestos bodies and the relationship of the asbestos bodies and the fibrous tissue. At the same time, he admits that if he had not found asbestos bodies and saw the same fibrosis condition, then such could be due to any other irritant or condition, such as old pneumonia, etc. He does add that had there been no presence of asbestos bodies in specimen 5 then the cause of the condition would be such that he really couldn't make any diagnosis in that respect.

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CERTIFICATE OF SERVICE BY MAIL

I, Gerald P. Coley, hereby certify that a true and correct copy of the foregoing instrument was on this the 14th day of May, 1971, mailed to the following named attorneys:

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CIVIL ACTION NO. 6449

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CLARENCE BOREL

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

NAMES OF WITNESSES WHO MAY BE CALLED BY DEFENDANT, UNARCO INDUSTRIES, INC.; DESIGNATION OF REPRESENTATIVE; CONTINUATION OF DEPOSITION SUMMARY OF DR. DANIEL E. JENKINS; DEPOSITION SUMMARY OF DR. PAUL SHELBY CULLEN; DEPOSITION SUMMARY OF DR. LOUIS A. MATEO

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