IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL,

Plaintiff,

vs.

FIBREBOARD PAPER PRODUCTS, INC, ET AL,

Defendants

CIVIL ACTION NO. 6449

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 22 1972
JAMES R. COONEY, CLERK
BY DEPUTY Jay J McBride

VOLUME NO. ONE

HEARD AT: Beaumont, Texas

ON: September 21, 1971.

2041

JERRY T. BLOXOM

OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
BEAUMONT, TEXAS

EASTERN DISTRICT OF TEXAS

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----For Pittsburgh Corning Corp.

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----For Ruberoid Company

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Hon. W. N. Arnold, Jr.
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---For Armstrong Cork Co. &
Pittsburgh Corning Corp.

Hon. John G. Tucker
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Beaumont Savings Building
Beaumont, Texas

---For Johns-Manville Products
Corp.

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BE IT REMEMBERED that on the 21st, 22nd, 23rd, 24th, 27th, 28th & 29th days of September, 1971 before the Honorable Joe J. Fisher, Chief Judge, United States District Court, Eastern District of Texas, and a Jury, the following proceedings were had in the above-styled and numbered cause:

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REPORTER'S NOTE: Whereupon, the jury was duly impaneled and selected to try Civil No. 6449, September 20, 1971.

THE COURT: Please be seated.

Ladies and Gentlemen of the Jury, we are now ready to proceed with the trial. During the offering of testimony some of the attorneys may object. If the Court overrules the objection it means that you may give that evidence or testimony such consideration as you think it is entitled to. If the Court sustains the objection it means that you must not give that matter any consideration in your deliberations when you begin deliberating in order to reach a verdict.

Mr. Stephenson, we are ready to proceed.

MR. STEPHENSON: Thank you, Your Honor.

MR. TUCKER: The Defendants want to invoke the rule.

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THE COURT: All right, the rule has been invoked in this case. We will have the witnesses who are present in the courtroom at this time to stand, all who know yourselves to be witnesses.

MR. STEPHENSON: Mrs. Borel, stand please. She will testify, Your Honor.

MR. TUCKER: We have one representative of the Johns-Manville Products Corporation, Mr. Parmalay. who will probably testify. We want him excused from the rule.

THE COURT: All right. A representative of the Defendant and the parties, the widow of Mr. Borel may be excused from the rule.

Please raise your hands, all of you who are present.

REPORTER'S NOTE: Whereupon, at this time the witnesses were sworn by the Clerk of Court.

THE COURT: All right. The rule has been invoked which means that

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the witnesses will have to remain out of the hearing of the trial. You can remain near the court building and the Deputy Marshal Hardy, who is on duty here this morning, will show you where you may stay. Please do not leave the building without checking with the Deputy Marshal or the attorneys.

As the Court has stated, the parties in the case or their representative may be excused from the rule.

MR. STEPHENSON: Your Honor, Mr. Borel is a party as well as the children.

THE COURT: He will be excused.

MR. STEPHENSON: We only have two witnesses who are not named parties.

THE COURT: All right, if you will indicate those two they may leave the room.

MR. STEPHENSON: Mr. Borel --

MR. WELLER: Mr. Borel is not a party. The sole plaintiff in this case is Mrs. Borel according to the pleadings and everything.

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THE COURT: Whether he is a party or not I would certainly exempt the son. If you want to take an exception to it you may do so.

All right. The rest of you may remain in the courtroom.

Who do you have first?

MR. STEPHENSON: I would like to read some interrogatories, Your Honor, to establish which company makes what product, so that we could get started. I have prepared a summary of each of these which, if the Court thinks might be helpful, I would like to present to the jury at the time so they can follow the manufacturer's name and products made by each. Should I use the podium, Your Honor?

THE COURT: Yes, sir, you may.

MR. PIPKIN: If the Court please, may I make a general objection at this time.

Come the Defendant, Combustion Engineering, Inc., and at the beginning

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of this trial and at the time that the Plaintiff makes his first proffer in evidence as he stated before such evidence is introduced and moves the Court that and says that the Defendant will object and does object to the proffer or offer of any evidence against Combustion Engineering, Inc., because the Plaintiff in his opening statement made a judicial admission to the effect, legal effect, that he had no cause of action and no evidence to offer against that Defendant and, therefore, any evidence he would attempt to offer now would be prejudicial to this Defendant and the Defendant files its motion to be dismissed from this case. The Plaintiff because of his opening statement and apparent intent of it and breadth of it is estopped to offer any evidence against this Defendant and I make this at the outset objection, at the outset to any and all evidence he might purport to offer

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against the Defendant, Combustion Engineering, Inc.

THE COURT: The objection will be overruled. The Court will take care of this matter at the proper time.

MR. PIPKIN: Thank you, Your Honor.

THE COURT: You may proceed, Mr. Stephenson.

MR. STEPHENSON: May it please the Court, I only wish to read two of the interrogatories at this time, but to read the remainder at a future date in the Plaintiff's case.

The first interrogatory which was submitted by me as attorney for the Plaintiff to all of the Defendants was a question, "Please give the names and trade names of all types of insulating materials manufactured by you, giving the dates that you began to manufacture such materials, starting in the year 1940, a description

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of the materials and what they contain."

The answer filed by attorneys for various companies read as follows:

Ruberoid Company answered, "Calsilite - A high Timberate pipe covering and Block. This product has been manufactured since the late 1940's and contains 10% asbestos and the balance is composed of diatamaceous earth and Hydrous Lime Silicate."

The second, "7M Cement and Asbestos Insulating and Finishing Cement. This product has been manufactured since 1936 and is composed almost entirely of asbestos fibers."

"T/ nal00 - A Tedlar neoprine asbestos insulating jacketting. This product has been manufactured since 1961 and contains 40% asbestos and the remainder consists of Tedlar (poly vinyl Floride) and neoprine."

And in addition, Ruberoid has manufactured the other asbestos products of commercial asbestos paper, asbestos

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mill board, asbestos roll board, asbestos furnish tape and asbestos electri-light paper.

May I be permitted, Your Honor, to hand one of these to the jury?

THE COURT: Yes, sir.

MR. TUCKER: We would like to see it.

MR. STEPHENSON: This is just a summary of what I just read.

THE COURT: Counsel for the Defendant may reserve any objections that they have until later. If you discover that it is objectionable. It will take too long to pass it around for review at this time. Mr. Barnes, hand it back to him.

MR. STEPHENSON: The next defendant company answering Interrogatory No. 1 was Pittsburgh Corning. Their answer was: "Since 1962, Pittsburgh Corning Corporation has manufactured UNIBESTOS insulation. Unibestos contains amosite asbestos fiber, sodium

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silicate and diatomaceous earth.

The only one shown is Unibestos, Your Honor.

THE COURT: All right.

MR. STEPHENSON: The next company answering the interrogatory No. 1 was Fibreboard Paper Products, known as Pabco Company. Their answer was: "Prasco Pipe Covering, Block, Cement. These products were manufactured from 1940 to January, 1957, and contained 85% diatamaceous earth and 15% asbestos.

b. 85% Magnesia (Precision Molded) Pipe Covering, Block, Cement. These products were manufactured from 1941 until 1966 and contained 85% Magnesium Carbonate with 15% Asbestos.

c. Caltemp and Super Caltemp (Precision Molded) Pipe Covering, Block, Cement. Caltemp was manufactured from 1950 to 1968 and Super Caltemp from 1968 to the present. Both contain Hydrous Calcium Silicate with less than 15% Asbestos."

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Number (d), still answering on Fibreboard. "F. I. Cement and #127 Cement. F. I. Cement was manufactured from 1963 to 1966 and #127 Cement from 1966 to the present. Both contain Hydrous Calcium Silicate with mineral binders and less than 5% Asbestos."

This is the summary of what I have just read.

The next defendant answering Interrogatory No. 1 was Philip Carey. And that answer was, under name, trade name and description, number one item:

"(1) 85% Magnesia Pipe Covering and Block, manufactured from 1906 to 1961. Containing basic magnesium. Carbonate and Asbestos Fiber.

(2) No. 19 Hitemp Pipe Covering and Block. Manufactured from 1906 to 1961. Containing Diatomaceous earth and asbestos fiber.

(3) Temp-Chek Pipe Covering and Block. Manufactured from 1940 to 1954. Containing Diatomaceous earth, basic

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magnesium carbonate and asbestos fiber.

(4) Alltemp Pipe Covering and Block. Manufactured from 1954 to 1958. Contained explanded Perlite, Bentonite Clay and asbestos fiber.

(5) Careytemp Pipe. Manufactured from 1958 to 1962. Contained Expanded Perlite, Bentonite Clay, chopped glass roving and asbestos fiber."

The next -- the numbers change here, but the next number is:

"New Careytemp 1500 Pipe Covering and Block. Date of Manufacture, Sept. 23, 1969 to present. Containing Expanded Perlite, Bentonite Clay and chopped glass roving."

Next is: "Aircell Pipe Covering and Board. Manufactured from 1906 to 1960. Asbestos fiber and sodium silicate."

The next is, "Excel Pipe Covering and Board. Manufactured from 1906 to 1960. Containing asbestos paper and sodium silicate."

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The next is, "Careycel Pipe Covering. Manufactured from 1906 to 1960. Containing Asbestos paper and sodium silicate."

Next is, "Asbestos Rope and Wick. Manufactured from 1906 to 1954. Containing Asbestos Fiber and cotton fiber.

Next is, "MW 50 Cement. Manufactured from 1940 to 1967. Containing Mineral Wool fiber, asbestos fiber and Bentonite clay."

Next is, "MW 1 Cement. Manufactured from 1950 to 1967. Mineral Wool fiber, Portland cement and Bentonite clay."

The next is, "Asbestos Finishing Cements -- giving various numbers, 100 and so on. Composed of Asbestos fiber, ground gypsum and Bentonite clay."

The next is another, "No. 19 Vitricel Cement. Made from 1940 to 1967. Containing Asbestos fiber, and mica."

At the Linden, New Jersey Plant

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Philip Carey manufactured Asbestos paper covering and 4, 6 and 8 ply Aircell Coverings from February 18, 1969 to present. Containing Asbestos paper and sodium silicate.

Since 19 -- the statement is made, "Since September of 1969, asbestos fiber has been eliminated from regular Careytemp and fiberglass has been substituted therefor. It was felt that Careytemp reinforced with glass fiber is less susceptible to breakage."

The next defendants answer is Armstrong Cork Company. Their answer to Interrogatory No. 1 submitted by Plaintiff was:

(a) Cork board and cork pipe coverings were manufactured by us and distributed under a number of trade designations, from some time prior to 1940 until relatively recently. Generally speaking, they were composed of granulated cork, asphalt coated and

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uncoated.

(b) LT pipe covering for several years until 1957. Consisting of cork board, aluminum foil and asbestos paper laminate.

(c) Under the trade name Temlok they manufactured an asphalt-impregnated insulating fiberboard, beginning prior to 1940.

(d) During World War II they manufactured a product known as "Spray-On Insulation". Containing cork and resinous binders, and was used to line tanks and similar military vehicles.

(e) Plasticork, a reground baked cork and rubber misture, was produced during 1950."

Let me skip down, Your Honor, some of these do not contain asbestos and I will eliminate them if it is permitted.

THE COURT: All right.

MR. STEPHENSON: The next shown here is, "Beginning October 1966 was

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manufactured a group of products known as Armaspray. This is a binder coated mineral fiber insulating material, containing 9% asbestos."

We have put on this particular card, Your Honor, LT Pipe Covering and a group of products known as Armaspray other than trying to enumerate them.

THE COURT: All right.

MR. STEPHENSON: Next defendant answering is Combustion Engineering, and Combustion Engineering made Detrick Bonding Cement, insulating cement, comprised of mineral wool, asbestos and clay. Detrick Thinsuliner cement, comprised of clay, asbestos and Portland cement. Detrick Pyroscat, light-weight fire-proofing for structural steel, containing asbestos fiber, binders and other materials. Detrick casing cement, comprised of asbstos and Portland cement. Detrick T-60 Insulating Finish, containing insulating cement,

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mineral wool, asbestos and Portland cement. Detrick MHD Finishing Cement, consisting of asbestos and Portland cement. Detrick No. 7 Asbestos Cement, straight asbestos fiber cement, comprised of asbestos.

No. 12, Detrick Asbestos Ropes, comprised of long fiber amosite, finished in 100 foot coils.

No. 16, Super No. 711 Cement, comprised of asbestos, wool and clay.

17, Utility Termal Finish Cement, comprised of asbestos, wool, Portland cement and clay.

No. 18, Hilite, insulating and finishing cement, comprised of mineral wool, asbestos, Portland cement and clay.

Prior to the acquisition by and merger with Combustion Engineering, Inc. and beginning prior to the year 1940, this is part of the answer to the question that I am reading, R & I Refractory and Insulation Corporation

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manufactured and still manufactures now operating as C. E. Refractory Division of Combustion Engineering, Incorporated, the following insulating materials:

1. Super Stic Tite --

All of these I am reading contain asbestos.

2. Super Finish Stic Tite.

5. Stic Tite.

6. Super Finish.

9. Finish Stic Tite

12. Mix A, semi-expansion insulation.

All products contain asbestos.

Your Honor, if I may, Johns-Manville has answered the Interrogatory No. 1 very fully and its answer takes possibly eight or ten legal pages. Would it be permissible for me only to list a few of the major ones and then state about fifty other instead of --

THE COURT: You may proceed in the manner in which you think is

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appropriate.

MR. STEPHENSON: All right, Your Honor. I don't want to indicate that Johns-Manville didn't answer. They did fully, I think.

THE COURT: If there are any objections they will be noted.

MR. STEPHENSON: Johns-Manville, according to our calculations has made since, roughly 1900, I will give you the date of the organization shortly, some fifty-seven asbestos insulating products. We have named some here and there are about fifty others.

I would like to read now, Your Honor, Interrogatory No. 32 which on the behalf of Mrs. Borel I submitted to the various defendants, the question being: "How many years has your company been engaged in the manufacture of products containing asbestos and which are commonly used by insulators and asbestos workers?"

The answers to this question were

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as follows --

MR. WELLER: I object to that unless the full answer is given and the interrogatory in regard to my company, Fibreboard, is that it was used mainly in the Western United States.

THE COURT: Objection overruled.

MR. STEPHENSON: The question being: "How many years the company has been engaged in the manufacture of asbestos products. Ruberoid answered approximately forty five years. Combustion Engineering Company answered, Combustion Engineering, Inc. has been engaged in the manufacture of products containing asbestos and which are commonly used by insulators and asbestos workers since December 1960. Correction, December 1967. However, it acquired by purchase in June, 1963, R & I Refinery and Insulation Corporation which had manufactured insulation containing asbestos, the latter having begun the manufacture of such products

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in about the year 1938.

Eagle-Picher's answer was since approximately 1934.

The answer filed by Philip Carey was ten years and nine months.

The answer filed by Armstrong Cork, approximately forty years.

Johns-Manville was approximately forty two years.

Pittsburgh Corning's answer was since August, 1962.

Fibreboard or Pabco's answer was approximately forty years.

That concludes the interrogatories that we wish to read at this time, Your Honor.

THE COURT: All right. Do the defendants have any portion of these interrogatories that they would like to offer at this time?

MR. TUCKER: We would, I am sure, Your Honor, want to offer answers which --

THE COURT: You can also do it

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later if you want to.

MR. TUCKER: We will offer it later and put it in the same form as Mr. Stephenson did.

THE COURT: All right. Who do you have next?

MR. STEPHENSON: I would like to call Mr. Harry Legate, please.

HARRY LEGATE,

having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

THE COURT: I believe we will ask you to go to the lectern, Mr. Stephenson.

MR. STEPHENSON: Yes, sir.

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Mr. Legate, state your full name, please.

A Harry Buford Legate.

Q All right.

THE COURT: Pull the mike up a little bit. It is not catching your

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voice, Mr. Legate.

BY MR. STEPHENSON:

Q What age are you, please?

A Forty-eight.

Q Where do you live, Mr. Legate?

A 1936 Green Avenue, Port Arthur.

Q All right. Now, where are you employed?

A I am business agent for the Asbestos Local 22.

Q And where is your place of business?

A 6001 Gulf Freeway, Houston.

Q All right. How long have you been associated with asbestos insulation work?

A Twenty-nine years.

Q Was your father likewise an insulator?

A Yes.

Q Mr. Legate, I have asked you to bring your tool box for the purpose of showing the Court and Jury what type of work an insulator is called upon to do in applying asbestos products. Have you done this?

A Yes, sir.

MR. STEPHENSON: May it please the Court, could he get his tool box

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-- set this next to the witness stand.

THE COURT: Yes, sir, you may.

BY MR. STEPHENSON:

Q Mr. Legate, let me start of this way. Tell us what types of asbestos insulation material that you all apply, generally and how it is put up?

A Well, we use the asbestos block, a flat block we use on boilers and such. We have the molded pipe cover that comes in various sizes to fit the pipe, 36 inches long and the thickness of from one inch to maybe four inches.

Q All right, sir. What about cement?

A Yes, we have various types of cements.

Q All right, would you explain to the Court and Jury please, how the cement is applied? What the purpose of it is?

A Well, the cement is put over the surface for sealing the joints and the cracks and --

Q All right. How do you make it up?

A They use a big mortar box and pour it in and apply water to it and use a regular mortar holder to mix it with.

Q All right, sir. Is water applied to the cement?

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A Yes, sir.

Q Is this mixed somewhat in the same fashion that ordinary concrete or cement is mixed in a mortar box?

A Right.

Q And I believe you stated it is mixed with a hoe?

A Yes.

Q Do the asbestos workers do this?

A Yes.

Q Then how is the cement transported to the place where it is applied on the pipe covering or crack?

A Well, it is carried in twelve quart buckets and applied with a pointing trowel which I have one of.

Q All right. Show us that, please.

(PAUSE)

A This is a pointing trowel and this is what we call a flat trowel.

Q All right. Now, in the process of pouring the cement into the mortar box, is any dust created?

A Yes, sir, it is dry when we pour it in the

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mortar box.

Q Do what?

A It is dry when you pour it into the mortar box.

Q All right. Is this mixing of asbestos cement a dusty operation?

A Very much so.

Q All right, sir. Now, explain to us how you apply the pipe covering to pipe that you mentioned.

A Well, most of your specifications call for standard joints or broken joints, so the pipe covering comes in thirty-six inch sections and we usually cut half a section of it on nine and twenty-seven to start and tie it, tie by each and then add a half a section at a time to it so it will be a broken joint on eighteen inch centers.

Q Does this mean you cut it at an angle of some kind?

A Yes, we cut it at angles for fitting.

Q All right, sir. What do you use to cut this with?

A We use hand saws, keyhole saws, band saws.

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Q All right. Is this sawing a dusty procedure?

A Yes.

Q And is it necessary that all -- on all jobs that a sawing, cutting, scribing and fitting be done?

A Yes.

Q Now, when you put on blocks or insulating blocks applied to pipe covering, how is that done?

A Well, it is -- some of it is scored, they are six inches wide and we score them in the center to break them where they fit the curvature of any boiler and you have to cut around all your protrusions and so forth.

Q All right. Is this likewise a dusty procedure?

A Yes, sir.

Q How do you scribe the asbestos that you mentioned, how do you mark it and break it as you testified?

A We usually use a butcher knife for a marker.

Q Uh-huh.

A And then you lay it out and saw it with a hand saw in the field, with a band saw in the

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shop.

Q Is much of an insulator's work in enclosed areas?

A Different types of jobs, some is and some isn't.

Q All right. What about the use of a band saw with cutting asbestos products, does this create much dust?

A Very much so.

Q In your work, Mr. Legate, have you known of any type of breather or respirator in common use that was effective to prevent the inhalation of asbestos fibers or dust?

A No, sir.

Q Have you ever been present or know of any time when any of the manufacturers of asbestos products have come upon the job to take dust counts or make studies of any kind?

A Not to my knowledge.

Q Mr. Legate, the other tools you have there, what -- would you just briefly describe what purpose they serve in your trade.

A This is a nipper that we used to tie the wires. This is just a keyhole saw that we use

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up on the small cuts on the -- like small protrusions, small cuts. This is a clipping hammer we use to slip out where we have to protrusions on the inside.

Q Do you have a large hand saw that you use likewise?

A Yes, sir.

Q Do you use a mallet?

A Yes, sir.

Q What do you use a mallet for?

A Usually to take up the slack when we are putting a band on vessels.

Q Well, what do you do to take up the slack? How do you use the mallet?

A You beat it.

Q And does this create dust?

A Yes.

Q Now, did you know Clarence Borel during his lifetime?

A I did.

Q Tell the jury about how long you knew him, please.

A From '42, I believe was when I met Mr. Borel.

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Q All right, sir. Did you -- let me go back and ask you a preliminary question. Is it true that insulation work is work on many jobs, perhaps even thousands during your lifetime of work?

A Yes.

Q Do you frequently move from job to job after a week or a month or so at work?

A Yes.

Q Is most of the work done on a construction type basis as opposed to plant maintenance?

A Yes.

Q And do members of your trade travel and work in many states of the United States?

A Right.

Q Now, could you tell me, Mr. Legate, from your own memory, where you worked on every job and all materials that you ever used?

A No.

Q Can you tell me some of the places that you can recall where you and Mr. Borel worked together and tell me for the benefit of the Court and Jury, please, what materials were used there on these few jobs which you can remember.

A Yes, I worked with Mr. Borel,when I first

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met him it was in the shipyard at Orange, Consolidated Steel and we used Johns-Manville materials on this job, 85% magnesium and --

THE COURT: Keep your voice up, please.

A -- Superex and Amosite, we used quite a bit of amosite on the job.

Q All right, sir. About how long did you work on Consolidated Steel job during the war?

A I worked approximately eighteen months.

Q Was Mr. Borel there during the entire time?

A No.

Q All right. How long was he there when you were there?

A I would guess about eight months.

Q All right. Now, was this work of a dusty nature?

A Yes.

Q Did you have any type of breathing apparatus or suction apparatus or anything of that nature that would keep the dust away from you?

A No.

Q Can you think of any other place that you and Mr. Borel worked together?

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A Yes, sir, I worked with him at Jefferson Chemical.

Q All right. Where is Jefferson Chemical place?

A Port Neches.

Q And what kind of work were you doing there?

A Insulation using unibestos and Kaylo.

Q All right. Who manufactures unibestos?

A Pittsburgh Corning.

MR. DUNCAN: I don't believe he said what date it was.

MR. STEPHENSON: All right. I will ask him right now.

BY MR. STEPHENSON:

Q Do you recall the date? Mr. Duncan asked whether it was after 1962 or before 1962?

A After 1962.

Q Can you remember exactly the year?

A Around 1965.

Q All right. Thank you.

Can you remember any other places that you and Mr. Borel worked together and products that you used containing asbestos?

A Yes, at Mobil Chemical in Beaumont.

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Q About when was that, please?

A '64, I believe it was, the year.

Q What asbestos materials did you and Mr. Borel use there?

A Unibestos and thermobestos.

Q All right. And unibestos is manufactured by Unarco -- who is unibestos manufactured by?

A Pittsburgh Corning.

Q And who is thermobestos?

A Johns-Manville.

Q All right. About how long did that job last, Mr. Legate?

A Well, it was a type of job that we would have a little shut down and hire people and they would leave and they come and go. And I would say maybe Mr. Borel worked two weeks, three weeks at a time, maybe or three times in the years time.

Q Well, over how many years did this run?

A One year.

Q All right. Now, I don't know whether I asked you how long the Jefferson Chemical job lasted that he you already testified about.

A One year, it didn't last over a year, six

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or seven months.

Q All right. Any others, places that you can think of that you worked with Mr. Borel that you can recall specifically?

A No, I am sure I worked with him but I can't remember.

Q All right. You say your father was an insulator?

A Right.

Q And what caused his death, Mr. --

A Asbestosis.

MR. WELLER: I object to that as being irrelevant and immaterial to any issue in this case and --

THE COURT: Objection sustained.

BY MR. STEPHENSON:

Q Mr. Legate, have you heard Dr. Irving J. Selikoff of Mount Sinai Hospital in New York lecture?

A Yes, sir.

Q Is he generally recognized as an authority --

MR. WELLER: If the Court please, I again object. This would call for an opinion and conclusion by a lay

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witness as to the qualifications of a medical doctor, and I would, therefore, object to this witness stating his opinion, not qualified.

THE COURT: It might be too far to have him reach a legal conclusion as to the qualifications. I think he can tell all he knows, that the man knows about the subject, if he has had some contact with him.

MR. STEPHENSON: All right, sir.

BY MR. STEPHENSON:

Q In line with His Honor's recommendation, what does Dr. Selikoff do primarily, Mr. Legate?

A Dr. Selikoff is studying this asbestosis and asbestos and the damage it does to the people's lungs that works with it, he is working on a grant with the International Associations of Heat and Frost and Insulators and Johns-Manville.

Q All right, sir. And has he done a great deal of research in this field?

A Yes, sir, a lot.

Q Tell us what kind of worker Clarence Borel was, Mr. Legate.

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A He was a good worker, dependable worker.

Q Was he regular in his attendance on the job?

A Yes.

Q Were you ever notified, have you ever been notified by any of the major manufacturers of asbestos insulating material of the danger of breathing asbestos?

A Not other than through literature that they -- just in recent years.

Q All right. Now, that is what I wanted to get at. When did this start, when did you first have any information concerning the danger of asbestos products?

A In '66, I believe, when they started to putting out literature on it.

Q All right.

MR. TUCKER: I didn't get the answer. What year was it.

THE COURT: 1966.

THE WITNESS: 1966.

BY MR. STEPHENSON:

Q And prior to that time, had any of the manufacturers by writing or by notices posted on the boxes or packages of this material or

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any other way ever advised you that their products were dangerous if breathed?

A No.

Q Are you familiar with certain notices that are now currently being placed on a few boxes of asbestos material warning those that use it that it might injure their health, to avoid breathing the dust?

MR. WELLER: If the Court please, I object to this as leading and suggestive. I think counsel is attempting to testify.

THE COURT: Objection overruled.

MR. WELLER: Note our exception.

BY MR. STEPHENSON:

Q Are you familiar with these little signs which are put on boxes I think just recently?

A Yes, sir.

Q Do you know when the first time was that you saw one of these warnings on the box?

A No, sir, I can't recall when it was, but just the last few years.

Q Well, try and narrow it down more than that. You mean three or four or five or what do you mean?

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A I would say the last four years.

Q All right. Mr. Legate, I am going to get for you in just a second some of these warnings and ask you whether or not you can identify them.

MR. STEPHENSON: In the meantime, Your Honor, may I show him two other exhibits?

BY MR. STEPHENSON:

Q Mr. Legate, I have placed before you there two types of breathing apparatus, and I would like for you to tell us whether or not you have ever seen these two types of breathing devices before?

A Yes, I have seen them.

Q All right. If you will start with the white one there and tell us what it is.

A I didn't quite get that.

Q Tell us what that is, describe it.

A It is a respirator that fits over your nose and your mouth.

Q All right. Would you mind placing it as you would wear it.

(PAUSE)

Q All right. That is fine, Mr. Legate. I

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thank you for the demonstration. Now, tell the jury, please, whether or not this little mask, paper mask you put on there, will prevent the inhalation of asbestos dust by one using it.

A No, I wouldn't think so.

Q Have you ever used that type?

A I have tried to use it.

Q Well, why were you unsuccessful?

A Well, for one thing, it clogs up real easy, real quick, and another thing, it leaks all around the sides and irritates your face.

Q All right. What about the other type mask there?

(PAUSE)

Q You don't need to put the head strap over but just place it on your -- All right, sir. And that is the way that is worn?

A Right.

Q And where is the -- is there a filter on there?

A Yes, sir, there is.

Q What is it, a paper like filter?

A It is a cotton like material.

Q All right. Let the -- can you hold that

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where the Judge can see it and the Jury, please.

A (WITNESS INDICATING)

Q All right. Now, has that, have you used that type respirator?

A No, I haven't used this type here, but our people have used it. I have been out of the business or a representative for four years but we have used these on the job just recently.

Q All right. But your testimony, not prior to that time?

A No.

Q All right. Were there any other types of breathing apparatus used in -- in use in which, that you knew of other than these two types that I have shown you?

A Not that I recall.

Q All right, sir. And have you ever tried to wear a type respirator or a breathing device such as that plastic one with rubber around it?

A This one?

Q Yes, sir.

A Similar to it, yes.

Q All right. Tell us whether or not that is effective in preventing inhalation of asbestos

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dust and fibers?

A No, it isn't because it leaks around the side and it is -- I couldn't wear it because they are hazardous when I am trying to climb and especially with glasses on. They leak and fog your glasses and to me they are dangerous trying to climb with them on.

Q All right, sir. Tell the jury whether or not your work involves much climbing, working on scaffolds and so on?

A Oh, yes, quite a bit. Well, most of it is.

Q Most of it, you say?

A Yes.

Q And what type of scaffold and situation would be in common use?

A Well, we have safeway scaffolds and we have two block scaffolds, two board wise where we go up as high as 150 to 200, 225 feet on the side of towers.

Q Do you ever observe anyone wearing those plastic type masks working at heights?

A Very few people wear them other than in the shop that I know of.

Q All right, sir. Now, I think I have some

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samples here of the type of warning. I ask you if this is the type thing that you have seen on some of the boxes in the last two years which you mentioned?

MR. WELLER: Have those been marked, please?

MR. STEPHENSON: No.

MR. WELLER: Would you mark them so we can tell what you are talking about.

THE WITNESS: Yes, this is what I have seen.

THE CLERK: Plaintiff's 1, 2 and 3.

MR. STEPHENSON: Your Honor, Mr. Duncan suggested that for the record Iidentify these by number.

THE COURT: All right.

MR. STEPHENSON: And the white one has Plaintiff's Exhibit 4 on it and the plastic one Plantiff's Exhibit 5. We are not introducing them in the record.

BY MR. STEPHENSON:

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Q You have identified this as being the type of warning thing you have seen on boxes, would you please read this one "Thermobestos", what that warning says.

A "Caution, this product containing asbestos."

(PAUSE)

A "Insulation," it is kind of blurred,"of asbestos in excess quantities. Over a long period of time may be harmful."

Q May I help him with the words --

A "Inhaling of asbestos and excessive quantities over a long period of time may be harmful if dust is created when the product is handled. Avoid breathing the dust. If ventalation control is not possible, wear respirators approved by the U. S. Bureau of Mines for Pneumoconiosis Producing dusts."

Q All right. Thank you, Mr. Legate.

Now, this particular warning has thermobestos under it, the one that is marked Plaintiff's Exhibit 3. Starting off, "Caution, this product contains asbestos fiber. Inhalation of asbestos in excessive quantities over long periods of time may be harmful."

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Has anyone ever told you what excessive quantities they are talking about in this little notice?

A No.

Q How would you know to gauge whether you are getting excessive quantities or not if the manufacturers who put this on their boxes have never told you what is excessive?

A I wouldn't know.

Q Do you know anybody in your trade that knows?

A No.

Q Now, they further say, "If dust is created when this product is handled, avoid breathing the dust." Do you know of any way in your trade that a man working can avoid breathing asbestos dust when working with these asbestos insulating materials?

A No, I sure wouldn't.

Q Has anybody ever told you how you were going to avoid breathing the dust?

A No.

Q Has any of the manufacturers ever said, Mr. Legate, avoid breathing the dust by doing so and so, wetting the material or something else?

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A No.

Q "If adequate ventilation control is not possible," has anybody ever told you, any of the manufacturers what is adequate ventilation control?

A No.

Q Would you know how to install adequate ventilation control?

A No.

Q "Wear respirators approved by the U. S. Bureau of Mines for Pneumoconiosis-producing dusts." Do you know what that means?

A No.

Q Well --

MR. STEPHENSON: May I introduce this, Your Honor.

THE COURT: All right, you may do so.

BY MR. STEPHENSON:

Q Now, these other two, Mr. Legate, do they say substantially the same as this Exhibit 3 which we have just shown to the jury?

MR. WELLER: I think the exhibits ought to speak for themselves. I object to

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the conclusion on that, they are substantially the same --

MR. STEPHENSON: We will introduce them then if he wishes, Your Honor.

THE COURT: All right.

MR. WELLER: What numbers are they?

MR. STEPHENSON: One and three.

MR. WELLER: Could we see them? Judge, my I examine them?

THE COURT: Yes, sir.

MR. WELLER: These have not been marked, if they had been on the back -- All right, numbers 1 and 2 and they are not identified as to whose warnings they are.

THE COURT: You may proceed.

MR. STEPHENSON: That is all I have from this witness, Your Honor.

THE COURT: All right, I think we will have a little recess.

Ladies and Gentlemen of the Jury, we will stand in recess for twenty minutes.

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THE MARSHAL: Everyone rise, please.

REPORTER'S NOTE: Whereupon, at this time a twenty minute recess was taken.

THE COURT: Mr. Weller, you may proceed.

MR. WELLER: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WELLER:

Q Mr. Legate, L-e-g-a-t-e?

A Right.

Q When did you start in the insulation industry?

A 1942.

Q And what process do you go through to be admitted to the -- as an insulation worker?

A We file an application for an apprentice in the union.

Q How long were you an apprentice?

A Four years.

Q And then what status did you attain?

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A A Journeyman.

Q All right. Now, is a Journeyman a specialist in the application of insulation products which include asbestos?

A Yes, sir.

Q Do you hold yourself out as a specialized workman?

A Yes, sir.

Q The number of asbestos workers is limited, is it not?

A Yes, sir.

Q Now, how long have you been a member of the union?

A Twenty-nine years.

Q And how long did you work in the industry itself with tools?

A Pardon?

Q How long did you work with your tools in the industry?

A Twenty-six years.

Q All right. Since that time have you been a business agent for the union?

A Yes, sir.

Q Now, prior to becoming business agent, did

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you occupy any office, elective office in the union?

A Yes, sir, I was on the E. Board.

Q What is that?

A Executive Board.

Q What kind of board is that?

A That, an executive board, that you bring the grievances to before the regular meeting.

Q All right. Did you at any time engage in the negotiation of contracts?

A No, sir.

Q Now, does the union negotiate with all of the employees, the insulation contractors in this area?

A Houston Insulation Contractors.

Q Your union deals with the Houston insulation contractors?

A Yes, sir.

Q Do you have a union over in Lake Charles?

A Yes, sir.

Q And that union deals with the contractors in Lake Charles and Orange, do they not?

A Yes, sir.

Q Now, doesn't your union negotiate what your

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working conditions are?

A Yes, sir.

Q So whatever the working conditions that exist out in the field or wherever you work, this is a result of a contract between the union and the insulation contractor, isn't it?

A Yes, sir.

Q Isn't it a part of your job as the union representative to negotiate with your employers concerning safety conditions?

A Yes, sir.

Q In the past, haven't you negotiated or your union negotiated conditions requiring dust eliminators or suctions on saws and blowers and that sort of thing?

A Two contracts prior to this one, I believe, it was in the contract there that would furnish blowers and things like that were necessary.

Q All right. Now, you have nothing to do with the owner of a business or a plant when you go to work there, do you?

A No, sir.

Q You don't negotiate with the owner, do you?

A No, sir.

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Q You do not look to the owner to provide you the working conditions which exist, do you?

A No, sir.

Q If there is a general contractor on the job, does your union negotiate with the general contractor or the insulation contractor who is a sub under him?

A We negotiate with both. We work direct for the general in some cases and sub-contractors in other cases.

Q All right. Now, when you have a general contractor you look to the general contractor to provide you with the working conditions, don't you?

A Yes, sir.

Q In those cases is the union representative or do you observe union representatives call on the general contractor to do certain things on the job concerning the working conditions?

A Yes, sir.

Q If you have got a complaint you complain to the general contractor, don't you?

A Yes, sir.

Q Now, if there is an insulation contractor on

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the job and you work for an independent insulator insulation contractor you look to him to arrange the working conditions, don't you?

A Yes, sir.

Q Have you ever at any time ever worked the shop over at Sabine Insulation in Orange?

A No, sir.

Q Are you familiar with the fact that many shops have had dust collecting systems for at least ten or fifteen years in this area that handle asbestos or other insulation products?

A I know there are some that exist but I didn't know that far back.

Q At times out in the field when you set up a workshop, do you set up shops in the field?

A Yes, sir.

Q What precautions are taken to eliminate dust in those shops?

A Well, most cases we have a maybe a thirty-six inch fan, like an attic fan to draw what we can away from it.

Q All right. Do you use suction devices on the saws, the electric saws?

A No, sir, not out in the field we don't.

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Q Not out in the field. Now, are most of your foremen members of the union?

A Yes, sir.

Q In other words, a foreman working for a contractor is either designated by the union or he is a union member, isn't he?

A Yes, sir.

Q And under him comes the insulation worker?

A Right.

Q Now, who does the insulation worker take his orders from?

A From the foreman on the job.

Q From the foreman?

A Yes, sir.

Q Now, if a representative of a manufacturer happened to get out on one of your jobs and started telling one of your insulation workers don't do this, you do that, you would be on him in the first few minutes, wouldn't you?

A Yes, sir, I would.

Q Because he doesn't have any right to do that, does he?

A That's right.

Q Now, do you have some rules about cutting

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and shaping insulation products in the field, sort of like pipes and the insulation around valves and that sort of thing?

A Yes, sir.

Q Isn't that the jurisdiction of the union?

A Yes, sir.

Q And you don't permit the contractor to perform this in the shop, do you?

A Yes, sir, they do all their molding and fittings and things in the shop.

Q All right. These valves or coverings for valves, they are not manufactured at the factory, are they?

A Some of them are, yes.

Q Some of them are?

A Yes, sir.

Q All right. But the union does claim the jurisdiction of cutting and shaping and all this that you do with insulation products?

A Fabricating in the field.

Q Fabricating it in the field. Now, when these products come to you, take pipe insulation, pipe insulation is a hard product when it comes, isn't it?

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A Yes, sir.

Q And you can pick it up with your hands or anything like that. It doesn't create an excessive amount of dust, does it?

A Yes, sir, any time that you move it or disturb it it causes dust.

MR. WELLER: Mr. Stephenson, do you have some of the samples of the products that were delivered to you?

MR. STEPHENSON: Your Honor, may I answer?

THE COURT: Yes, sir.

MR. STEPHENSON: They are in the Clerk's Office, Your Honor. We have so many exhibits we had to get the Clerk to let us have some room in there and they are in there.

THE COURT: Would you like to have them brought in, Mr. Weller.

MR. WELLER: Yes, sir, I would.

THE COURT: All right. If the Marshal -- he will assist if you will tell him where they are.

MR. WELLER: Yes, sir.

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MR. STEPHENSON: Does he want them all, Your Honor.

MR. WELLER: I will take one -- you can bring me any of the pipe insulation, bring me the Fibreboard exhibits if you will.

(PAUSE)

BY MR. WELLER:

Q Now, Mr. Legate, ever since you have been working in the shipyard in 1942, you have known that you were working with asbestos, haven't you?

A Yes, sir.

Q That the products contained asbestos?

A Yes, sir.

Q And you have known that this created dust, haven't you?

A Yes, sir.

Q I notice that you were unable to tell what was an excessive amount of dust, is that correct?

A Well, to the extent that it would damage my lungs I couldn't tell you.

Q Well, when you worked at the shipyard, did

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you work in a lot of close places?

A Yes, sir.

Q Was there a heavy dust concentration where you worked?

A Most cases it was.

Q Most cases. Were you tearing out insulation or were you putting it in as a new product?

A Mostly as a new product, some --

Q Were you working on new ships?

A Yes, sir.

Q All right. Did the Navy Department or the Consolidated Shipyard have blowers and -- in close places?

A Yes, sir.

Q Did they have suction devices in close places?

A Yes, sir.

Q Now, what was the purpose of those?

A To remove as much of the dust as they possibly could.

Q Now, did they at any time if you were in a real close place have available to you respirators?

A No, sir.

Q Did you ever ask for a respirator?

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A No, sir.

Q Mr. --

MR. WELLER: Let's set them right there by the Clerk's desk.

BY MR. WELLER:

Q Mr. Legate, haven't you known for a long period of time that the inhalation of -- or the breathing of asbestos dust in excessive quantities would cause harm to you?

A Well, we first began to realize that it was real harmful to us, to my knowledge was in '67.

Q Well, hasn't your union been discussing this for, since 1954, 1956?

A I don't recall it.

Q You don't recall it?

A No, sir.

Q Well, one of these signs say, one of these notices says, "This product contains asbestos fiber." You knew that, didn't you?

A Yes, sir.

Q You didn't have to be told that, did you?

A No, sir.

Q Inhalation of asbestos in excessive quantities

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over long periods of time may be harmful. Now, you know that the excessive inhalation of any kind of dust was harmful?

MR. STEPHENSON: Objection, Your Honor, that is not accurate in cross examination. He isasking two questions in one. Did you know that asbestos dust and any other type of dust was harmful and this is two questions in --

THE COURT: The Court will sustain the objection on duplicity.

MR. WELLER: All right, I will rephrase it, Your Honor.

BY MR. WELLER:

Q Did you know that the breathing of any kind of dust in heavy quantities would be harmful to your respiratory system?

A Yes, sir.

Q So that you knew that if you were breathing asbestos dust in excessive quantities that it would be harmful to your respiratory system, didn't you?

A No, sir, no more than the others.

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Q What did you do to avoid breathing the dust when you were working at the shipyard and other places?

A We didn't avoid it.

Q Did you do anything to avoid it?

A Nothing other than these little suction fans that they had to set in the room with you to pull as much of it out as they could.

Q Did you ever put mentholatum in your nose?

A No, sir.

Q Did you ever wet hankerchiefs and tie it across your face?

A No, sir.

Q Never did any of that?

A No, sir.

Q Did you ever attempt to wet the product down to keep the dust down?

A No, sir.

Q Did you use any other means to avoid the dust other than these fans and suction deals that were in the close areas?

A No, sir.

Q Now, when you were working outside the dust isn't very heavy, is it?

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A No, sir, out in the open and on the scaffold --

Q Out in the open -- a great deal of your work is in the open, isn't it?

A Yes, sir.

Q So you really don't have a dust problem on those occasions, do you?

A Not enough that I would notice it.

Q All right. Now, did you work at DuPont in 1946? That job over there, Orange, DuPont job in Orange?

A No, sir.

Q Where did you go after you left the shipyards?

A Went to the Army.

Q You went to the Army.

A And when I came back I went back to the shipyards.

Q And you went back to the shipyards?

A Yes, sir.

Q Well, how long did the work last in the shipyard?

A I believe it was '47.

Q All right. Did you ever work in a DuPont plant?

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A Yes, sir.

Q When was that?

A '51, I believe.

Q All right, 1951. Didn't they have respirators provided, available for you in the DuPont Plant?

A I didn't -- excuse me. I don't know whether they did or not. I didn't use one.

Q You didn't use one?

A No.

Q Well, now, if you were given this warning, if adequate ventilation control is not possible wear respirator approved by the U.S. Bureau of Mines for Pneumoconiosis-producing dust. You understand what that means, don't you?

A Yes, sir.

Q In other words, if there is an excessive amount of dust wear respirator. The respirator is the second one that, the metal one with the filter inside that is one that is approved by the U.S. Bureau of Mines. Now, did you ever wear any of those respirators?

A No, sir, I never wore that particular type, no, sir.

Q Well, did you wear any type other than the

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little white one?

A Yes, sir.

Q Why did you wear it?

A To try to prevent the dust when we were working inside of a wool box.

Q Working inside what?

A Inside of a closed place.

Q Close place. All right, didn't you do that because you knew that the dust was harmful?

A Yes, sir, that's in recent years.

Q Well, how long ago?

(PAUSE)

Q When did you first wear a respirator?

A '67.

Q Hasn't your union told you to wear respirators to protect yourself from dust for a number of years?

A No, sir.

Q You --

THE COURT: Speak out.

THE WITNESS: No, sir.

THE COURT: Pull the mike up a little bit, Mr. Legate.

Now.

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BY MR. WELLER:

Q You do get the Asbestos Worker, don't you?

A Yes, sir.

Q Did you know Mr. Claude Tomplait?

A Yes, sir.

Q Was he a member of your union?

A No, sir.

Q But you knew him?

A Yes, sir.

Q Did you know of his experience with asbestosis?

A Yes, sir.

Q And that happened way back in 1958 or '59, didn't it?

A I don't know when it happened. I remember when it was settled.

Q All right. You knew about it back at the time he had a Workmen's Compensation claim, didn't you?

A I don't recall.

Q Who was the employer on -- your employer, I believe you gave us three jobs where you worked, you worked at the shipyard. Who was your employer in the shipyard?

A Asbestos Magnesia Material Company out of

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Chicago.

Q Out of Chicago. And who was your employer at the Jefferson Chemical job in 1965?

A Industrial Insulators.

Q Industrial Insulators. And who was your employer on the Mobil Chemical job in 1964?

A Aber Company.

Q Aber Company out of Houston?

A Yes, sir.

Q All right. On each one of those jobs you look to your employer to provide the -- whatever working conditions you had, didn't you?

A Yes, sir.

Q And if you had a complaint about your -- the working conditions you would complain to your union stewart on the job, wouldn't you?

A Yes, sir.

Q Or to the business agent?

A Yes, sir.

Q And it was their job to take it up with the employer, wasn't it?

A Yes, sir.

Q You never at any time looked to the manufacturer of a product to come out on the

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job and do anything about your working conditions, did you?

A No, sir.

Q Now, these products -- I don't see the pipe. Here is a piece of block insulation marked F-8, Fibreboard Corporation, is that the way that the block insulation comes to you?

A Yes, sir.

Q So, it actually doesn't produce any dust now, does it?

A No, this particular one doesn't.

Q Sir?

A This particular one doesn't.

Q And the only way that dust can be produced by this is by cutting it, isn't it?

A Yes, sir, or handling, moving it around.

Q And that is when it is going to produce some dust?

A Yes, sir.

Q Now, isn't the pipe insulation the same way?

A Yes, sir.

Q I don't see the sample of pipe insulation that I gave counsel. I want to offer this in evidence, if we may.

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THE CLERK: Fibreboard, Defendants' 1.

MR. WELLER: Fibreboard 1, and put one on this one.

THE CLERK: Fibreboard 2.

MR. WELLER: Fibreboard 2.

BY MR. WELLER:

Q I show you here a piece of pipe insulation that is -- it is split, of course, it has got tape on it but comes in two parts, doesn't it?

A Yes, sir.

Q If you handle that in the condition it comes from the factory it doesn't produce any dust, does it?

A This particular one might.

Q Sir?

A This particular one doesn't create as much as some of the others.

Q All right.

MR. WELLER: I want to offer these into evidence. I don't know where you want me to put them.

BY MR. WELLER:

Q So the changes that occur occur as a result

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of the work in the field, don't they, in these products?

A Yes, sir.

Q And these changes are produced by the manner and the method which the work is carried on, isn't it?

A Yes, sir.

Q Haven't you seen suction devices on saws when you cut pipe insulation and the other type, the brick insulation?

A Yes, sir.

Q And that pulls the dust right into the inside the saw, doesn't it?

A Yes, sir.

Q Takes it out?

A (NO RESPONSE)

(PAUSE)

Q Now, you were asked whether you knew what an excessive quantity of dust particles containing some asbestos was. Do you know?

A Pardon?

Q Do you know what an excessive quantity of dust is?

A Well, yes, sir.

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Q You don't need anybody to tell you that, do you?

A No, sir.

Q Now, if you were told to -- as a safety precaution, provide adequate ventilation controls and wear respirators, you know what that means, don't you?

A Yes, sir.

Q As a business agent you go out and negotiate about these things on the job, don't you?

A Yes, sir.

Q Because if your member complains to you that the ventilation out there is very poor and having a lot of trouble you go out on the job and say something about it, don't you?

A Yes, sir.

Q Now, as to whether a man wears a respirator or doesn't wear a respirator after he is told to, that is his own prerogative, isn't it?

A Yes, sir.

MR. WELLER: I believe that is all at this time, Your Honor. Mr. Tucker wants to ask some questions,

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Your Honor.

THE COURT: Do you have any questions, Mr. Tucker?

CROSS EXAMINATION

BY MR. TUCKER:

Q Mr. Legate, what is the purpose for which these insulation products are manufactured and sold?

(RAUSE)

Q What is their function, what is the purpose of them?

A We use them on them on steel lines, boilers, refrigeration, hold the heat in and refrigeration in.

Q These products that we are talking about, they are fit and suitable for use for those purposes, are they?

A I didn't quite get the question.

Q Well, you use it for insulation, don't you?

A Yes, sir.

Q Well, are these products fit and suitable for use as an insulating material?

A Yes, sir.

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Q I believe you testified you worked with Mr. Borel in Jefferson Chemical Company in 1962, was that the year that you worked with him on the Jefferson Chemical Company job?

A I think it was 1965.

Q '65?

A Yes, sir.

Q Did he use a respirator on that job?

A I couldn't say. I don't think he did. I couldn't say whether he did or not.

Q You worked on that Jefferson Chemical, did they use a product of Kayola?

A Kaylo.

Q Yes. Kaylo?

A Yes, sir.

Q Is that manufactured by Owens Corning?

A Yes, sir.

Q In 1964 you worked with him on the Mobil job?

A Yes, sir.

Q Did he use a respirator on that job?

A No, sir.

Q You mentioned or the mention was made of the Asbestos Worker, is that a publication

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put out by the union?

A Yes, sir.

Q Does that go to members of the union?

A Yes, sir.

Q Every member gets a copy of it, does he, of each issue?

A Yes, sir.

Q I show you -- can you identify what I will show you here. This is the October 1966 issue of the Asbestos Worker.

A Yes, sir.

Q Do you recall reading on page 11 of this union publication, this warning here: "Due to increasing amount of chest ailments among our membership within the past 15 years, and also from the reports of experiences of other locals, arrangements were made with the Boston --

MR. STEPHENSON: Your Honor, may I interrupt at this time. I would object to him reading unless this can be identified and properly introduced into evidence because he is reading it without -- if it is not admitted it would be the same as having it admitted.

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THE COURT: I think it would make for a better procedure, Mr. Tucker, to offer it if you want to call attention to some particular aspect of it.

MR. TUCKER: We have had copies made of a certain page, Your Honor, but I'll go ahead --

THE COURT: You can underline that portion.

THE CLERK: Johns-Manville No. 1, No. 2, Johns-Manville No. 3.

BY MR. TUCKER:

Q The first one I showed you which is now marked as Defendants' 1. I stated the date as '66, this is October 1956, is it not.

A Yes.

Q The next one that I wish to show you is -- is this the issue for July of 1957?

A Yes, sir.

Q The third one which is marked as Defendants' 3 is that or not the official publication of the Asbestos Worker for November of 1961?

A Yes, sir.

Q This is a publication that would go to

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Mr. Borel as a member of the union?

A Yes, sir.

Q Well --

MR. TUCKER: We will now offer these in evidence, Your Honor, and there are certain excerpts that I wish to read to the jury.

THE COURT: All right.

Has the witness testified that he is familiar with these publications?

BY MR. TUCKER:

Q Are you familiar with these publications?

A Yes, sir.

Q And they are the official publications of the Asbestos Worker which the union organization -- which Mr. Borel was a member?

A Yes, sir.

MR. TUCKER: We offer these particularly to read to the jury from page 11 of the October 1956 --

MR. STEPHENSON: At this time I would like to object because there is no showing at all to tie this in in any way to Mr. Borel, Your Honor.

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No evidence that Mr. Borel read this or was familiar with it or could interpret it if he had.

THE COURT: Objection overruled.

BY MR. TUCKER:

Q "October 1966, due to the increasing amount of chest ailments among our membership within the past 15 years, and also from the reports of experiences of other locals, arrangements were made with the Boston Tuberculosis Society to set up a portable X-ray machine in our union headquarters on two appointed Saturdays. Approximately 50 per cent of the membership had their chests and hearts x-rayed. Samples of the numerous materials used in the trade today have been submitted to the State Department of Health and Hygiene for analysis. We intend to continue our investigation with thehope of pinpointing the cause of so many deaths in recent years from the so called asbestosis and fibrous disease."

That is from 1956. In 1957 from the publication of that time, you can check --

THE COURT: Rather than read it

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Mr. Tucker, if you will just state the gist of it, the gist of the excerpt that you would read.

MR. STEPHENSON: May my same objection go to each one?

THE COURT: Your objection may go to this line of testimony without making specific objections.

MR. TUCKER: In July of 1957 the excerpt is to the effect that hazardous material was again disucussed. It was suggested that while working under dusty conditions, respirators should be used at all times and gloves whenever conditions warrant.

From 1961, I'll ask you, sir, whether or not the November 1961 that there was a full page add addressed to all of the union members to wear their respirators. Is that correct?

THE WITNESS: Yes, sir.

BY MR. TUCKER:

Q Is this a copy of that add as it appeared in 1961?

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A Yes, sir.

MR. TUCKER: We would like to pass this to the jury, Your Honor.

BY MR. TUCKER:

Q I will ask you again, sir, is it your testimony that you never saw Mr. Borel use a respirator at the time you worked with him?

A I don't recall it.

Q Were respirators available on many of these jobs for anyone who wanted to use them?

A Yes, sir.

MR. TUCKER: We offer these publications in evidence, Your Honor.

THE COURT: All right.

BY MR. TUCKER:

Q You mentioned a Dr. Selikoff who made some researches, from the familiarity with his articles, do you or not know that it was until the latter part of 1964 that he first reported that he even suspected asbestosis could result from inhalation of products such as this?

Isn't it a fact that is the first time he ever reported he suspected it?

A When?

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Q In 1964.

A '64?

Q Yes.

A When we began to know when it was so bad was in 1967. Prior to that I probably read this but didn't pay it any mind. I couldn't say that I even read it.

Q Now, does -- well, I believe that's all.

JUROR: Are we allowed to ask a question?

THE COURT: Beg your pardon?

JUROR: Are we allowed to ask a question?

THE COURT: Does counsel have any objection to the juror asking a question?

MR. STEPHENSON: I have none, Your Honor.

MR. TUCKER: We have none, Your Honor.

THE COURT: All right.

JUROR: Is this magazine published by the union, is it backed up by medical authority that the warning -- that would be in there.

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THE WITNESS: It is published by the general president of the International Association out of Washington.

JUROR: Did it explain what these chest ailments were and say danger or something like that?

THE WITNESS: It does now. Nearly everyone of them. They have a couple of pages in it in the past few years.

JUROR: Okay.

THE COURT: Anything further, Mr. Stephenson?

MR. STEPHENSON: Rather short, Your Honor, yes, sir.

I would like to show the witness, Your Honor, a page from the brochure of Fibreboard Paper Products Corporation, Pabco, so I can ask him about this.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. STEPHENSON:

Q And look at this, please, which is a page out of Fibreboard Paper Products brochure and I will ask you if this shows a man's scribing

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material for the purpose of breaking it?

A Yes, sir.

Q Would that create dust?

A Yes, sir.

Q And this shows a man putting bands on insulation around pipe, would putting the bands on create dust?

A Yes.

Q Have to hammer them in place with a mallet?

A Yes, sir.

Q It shows a man putting some insulation around a very large pipe there, does placing this material on and binding it and putting it in place create dust?

A Yes, sir.

Q I will ask you if this picture shows this man wearing a respirator of any kind?

A No, sir.

MR. STEPHENSON: I would like to introduce this to the jury, please.

THE CLERK: Plaintiff's No. 6.

MR. STEPHENSON: May I show this to the jury, Your Honor?

THE COURT: You may do so.

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BY MR. STEPHENSON:

Q Mr. Legate, is sawdust from wood harmful to your lungs in a manner that asbestos dust is?

A Not to my knowledge it isn't.

Q All right, sir. Mr. Weller questioned you about all dust being harmful. Did you mean to convey the impression to the jury that any kind of dust was harmful as you now know asbestos dust is?

A No, sir, not as I know asbestos dust.

Q He also asked you about whether or not working in the field, if a manufacturer or some other person came out and told the men what to do and tried to direct them in their work that you as their foreman would not have wanted this done?

A No, sir.

Q All right, sir. Now, I will ask you the question though that I think is pertinent to this inquiry. Had a manufacturer of asbestos insulating material came into the field in an effort to find out how this product could be used safely, would you or would you not welcomed

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him?

MR. WELLER: If the Court please, I object to that question. It calls for an opinion, conclusion and --

THE COURT: Objection sustained.

BY MR. STEPHENSON:

Q All right, sir. Did what you have reference to, did your answer have reference only to someone coming out and telling the men what to do, what nature of work? You didn't mean to then, to disallow anyone interested in safety from coming in, did you?

MR. WELLER: If the Court please, I object. It is leading, suggestive to the witness.

THE COURT: The question might be rephrased, Mr. Stephenson. Objection will be sustained.

MR. STEPHENSON: All right.

BY MR. STEPHENSON:

Q Mr. Legate, the point I am making is, I believe on direct examination you said that no manufacturer had ever been in the field to your knowledge to investigate their products and the

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effect on the workmen?

A Right.

Q All right, sir. Had a manufacturer come in to observe or to work with your men in a safety effort, would there be any objection from you or the union to this?

A No, sir.

Q But to this day, as I understand your testimony, as you sit on the witness stand there now, has a manufacturer ever been in the field investigating the effect of this product on the worker?

A Not to my knowledge, no.

Q All right. Now Mr. Weller handed you some samples of material here. Do those pipe coverings and those blocks, he showed you two items, do they have to be sawed, cut and scribed to be used?

A Yes, sir, most cases.

Q All right. Now, what happens -- I don't think His Honor would let us demonstrate in the courtroom what would happen if we sawed that block, but what would it do as far as creating dust is concerned?

A It would create a dust when you sawed.

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Q All right, sir. Now, does everybody that you know of or is it generally accepted and known in the industry that all the materials as they come to the job site, whether it is in a bag or in a box have to either be poured in a hopper and mixed with water or has to be cut, sawed, scribed and banded in place?

A Yes, sir.

Q Is there anybody that you know of that is not familiar with the fact that this is the end result of the manufactured product?

A No, sir.

THE COURT: Speak out, please.

THE WITNESS: No, sir.

BY MR. STEPHENSON:

Q If you got a box of this material on the job and simply wanted to open it up to show it to the jury after it had been taken off of a box or a truck and been placed out there to use, would simply the opening of this box create dust up into your face?

A A certain amount, yes, sir.

Q He talked about blowers, is it or is it not true that the blower you referred to primarily

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are for cooling purposes in close quarters?

A For both purposes.

Q The suction blower is for exhaust of dust?

A Yes.

Q The working in the shipyard that you referred to and the blowers there, what kind were used, exhaust blowers or cooling blowers?

A Exhaust, we used both.

Q All right, sir. What happens to asbestos dust when you blow a cooling fan into an area where workers are using it?

A It just stirs it up.

Q All right, sir. Does then this make it even more dusty by turning a cooling fan into the work area?

A Yes.

Q Now, Mr. Tucker asked you a question as to whether or not the insulating materials were fit and suitable. What I am going to ask you, whether or not you know how that these insulation materials cannot be used without endangering man's health?

MR. WELLER: Your Honor, I object on the grounds that this calls

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for an opinion and conclusion of this witness and would invade the province of the jury.

MR. TUCKER: We would add to that. He is not shown to be qualified to express such an opinion, Your Honor, which involves a medical opinion.

MR. STEPHENSON: Your Honor, may I be heard on this point?

THE COURT: Yes, sir.

MR. STEPHENSON: Mr. Tucker asked this question whether or not the products were fit and suitable for the purpose of insulating materials, and I think the legal test is whether or not they are fit and suitable for the purpose intended without injury or harm to human life. This is the point I was counting with.

THE COURT: Objection overruled.

MR. STEPHENSON: All right.

BY MR. STEPHENSON:

Q Do you now know that these materials are not fit for their supposed or intended purpose

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without endangering human life?

A Yes, sir.

Q All right, sir. Now, in answer to the question about whether or not these articles in the Worker were scientific medical articles backed up by any scientific or medical type proof, do you know one way or the other about that?

A No, I don't.

Q Now, do I understand that in recent years Dr. Selikoff has started working on this subject under a grant by the union and by Johns-Mannville, that was your direct testimony?

A Yes, sir.

Q Now, do you know when this started?

A Not exactly, no, sir.

Q All right. Do you know about the year for the benefit of the jury?

A I heard it in 1967.

Q All right. Prior to that time have you ever known of any work in the field of investigating asbestos and the effect upon mankind conducted by any of the manufacturers?

MR. WELLER: I object because as far as this witness knows it hasn't

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been shown that he has access to any such knowledge, wouldn't be qualified.

THE COURT: Objection overruled. Has he already answered the question?

BY MR. STEPHENSON:

Q Have you answered the question?

A No, sir.

Q The Judge says you can answer. So far as you know before Dr. Selikoff's work has a manufacturer ever engaged in the investigation of the problem of what his product does to the worker using it?

A Not to my knowledge.

Q All right. Thank you.

MR. STEPHENSON: That's all, Your Honor.

THE COURT: Mr. Weller?

RECROSS EXAMINATION

BY MR. WELLER:

Q Mr. Legate, had you seen this photograph that was -- or brochure that was offered a moment ago, prior to this trial had you seen this exhibit No. 6?

A I don't recall seeing it, no, sir.

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Q Did you have to be told how to cut or scribe a piece of asbestos product containing asbestos?

A No, sir.

Q You didn't see that before so you didn't rely on it, did you?

A No, sir.

Q Now, are you familiar with some of the temperatures of piping in various plants where you have worked?

A Not a great deal, no, sir.

Q Do you know that pipe insulation which contains asbestos, some asbestos is used for high temperature piping?

A Yes, sir.

Q High temperature boilers?

A Yes, sir.

Q And that is the only product that is used for high temperature, isn't it, fifteen, sixteen hundred degrees?

A Only with asbestos?

Q Yes, sir.

A Yes, sir.

Q You don't know of any other products that they use to provide that insulation on those

high temperatures, do you?

A Not with asbestos in it, no.

Q Yes, sir. Now, have you ever worked with Armstrong Contracting Company?

A Yes, sir.

Q That company supplies, has supplied respirators for a number of years, hasn't it?

A I don't know.

Q Now, they are a contracting company and an applicator, aren't they?

A Yes, sir.

Q And you have been employed by them?

A I did one job with them, yes, sir.

Q All right. Have you ever been employed by the contracting firm of Johns-Manville?

A No, sir, not as Johns-Manville.

Q Not Johns-Manville. Okay. You actually do not know when your national union first contacted Dr. Selikoff, do you?

A No, sir.

Q You don't know when Dr. Selikoff began his studies, do you?

A No, sir.

Q November 1962 -- I show you here excerpts

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from the Asbestos Worker 1962 under health hazards. You see that where it mentions Dr. Irving J. Selikoff a specialist in internal medicine as conducting this survey and presents recommendations that this investigation be continued?

A Yes, sir.

MR. STEPHENSON: Your Honor, I would object at this time that it is not in the record that Dr. Irving J. Selikoff is an authority in this field and I would so ask for a stipulation of counsel at this time before the introduction of this. I will agree that he is but I feel that before these papers can be introduced that there should be an agreement or stipulation between counsel on this point.

MR. WELLER: Your Honor, we do not stipulate such a fact but the witness was asked on direct examination about Dr. Selikoff and so there was testimony about it and I feel that this is proper cross examination to show

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that he was mentioned. This was the 20th International Convention at Atlantic City, New Jersey, September 1962 report.

Did you go to that convention?

THE WITNESS: No, sir.

MR. WELLER: But you do recognize that this is reported by -- that Dr. Selikoff has been retained by the union, haven't you?

THE WITNESS: Yes, sir.

MR. WELLER: I think that's all.

THE COURT: We will overrule the objection.

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

THE COURT: Anything further, Mr. Tucker?

MR. TUCKER: I have no further questions, Your Honor.

THE COURT: All right. We are going to excuse you, Mr. Legate. You may leave any time you wish.

Ladies and Gentlemen of the Jury,

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we are going to recess until 1:30. Please return to your places at that time. Stand in recess until 1:30.

THE MARSHAL: Everyone rise, please.

REPORTER'S NOTE: Whereupon, at this time Court recessed until 1:30.

THE COURT: Please be seated. Mr. Stephenson, you may proceed.

CECIL E. GLADDEN,

after having first been cautioned and sworn to testify the truth, the whole truth and nothing but the truth testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q State your full name for the record.

A Cecil E. Gladden.

Q Mr. Gladden, where do you live, please?

A 4908 Garfield, Groves, Texas.

Q And what age man are you?

THE COURT: Pull the mike in front of you there.

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A Forty four.

Q All right, sir. What has been your business or occupation?

A An asbestos worker.

Q How long have you followed that trade?

A Twenty seven years.

Q I am sorry, I didn't hear you?

A Twenty seven years.

Q All right, sir. In the course of your work as an asbestos insulator, have you ever had occasion to work with Clarence Borel?

A Yes, sir.

Q And could you tell us about how long you knew Mr. Borel before he died?

A I have known Mr. Borel since 1943.

Q All right, sir. Did you have occasion to work with him on several jobs or one job or what is your recollection on that?

A Several different jobs.

Q All right, sir. Was Mr. Borel a good conscientious worker?

A Yes, sir.

Q Can you recall for us, please, the specific places which you have worked with Mr. Borel.

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I recognize there may be places that you worked with him that you can't remember at this time but try to recall all the places that you can.

A He worked at the Pure Oil and Jefferson Chemical, Mobil Oil. Other than those I don't remember any others.

Q All right, sir. I suppose there could have been others but you don't recall specifically?

A Yes, sir.

Q Now, when you worked at Pure Oil with him, can you tell us about what time that was?

A Somewhere about 1955, '56, somewhere in there.

Q All right, sir. How long did that job last?

A Approximately five months.

Q All right, sir. Was Mr. Borel there with you during that five months?

A Not the full time, not the full five months, no, sir.

Q About how long would you say that he was -- that you and he worked together on this job at Pure?

A Roughly a month.

Q All right. Can you tell us, please, what products you used there during that months time?

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A We used Corning Kaylo.

Q All right.

A And we used Detrick wool blanket.

Q Detrick wool blanket?

A Detrick wool blanket, yes, sir.

Q Does that have asbestos in it?

A No, sir.

Q All right. I am only interested in those products that contained asbestos, Mr. Gladden.

A Kaylo was the only one we used on that particular job.

Q All right. What about Mobil, on the Mobil job, about when was that?

A I don't recall, sir, it was a small job and I don't recall.

Q Can you give us an approximation of how long ago it was?

A Roughly fifteen years ago.

Q All right. And do you remember the names of the products you used on that job?

A That was Kaylo.

Q All right, sir. And then I believe you mentioned Jefferson Chemical job?

A Yes, sir.

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Q What period of time does that job cover?

A Now, actually, the one at Jefferson Chemical covered between '52 up through '66.

Q That is 1952 through 1966?

A But there were some times that I would pull out of there to go to another job.

Q All right, sir. Then I understand that you weren't there continuously for the fourteen year period?

A No, sir.

Q But during that fourteen year period, did Mr. Borel work there on the Jefferson Chemical job with you?

A Yes, sir.

Q And what position did you have on that job, Mr. Gladden?

A I was the field foreman.

Q And who were you working for?

A Industrial Insulators.

Q All right. And would this mean then that Mr. Borel would have worked under your supervision?

A Yes, sir.

Q All right, sir. Did Mr. Borel likewise work there off and on during the period of

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fourteen years?

A Yes, sir.

Q Can you tell us what asbestos products were used on that job that Mr. Borel would have used during his work there?

A We used Kaylo. We used JM Thermobestos, JM Superex.

Q Okay.

A Ruberoid, Philip Carey Careytemp, Johns-Manville asbestos clothe, and various cements, insulating cements.

Q Can you remember the name of the manufacturers of any of the asbestos insulating cements? That were used?

A The main one would be Eagle-Picher, mostly.

Q All right, sir. Now, is it true that in the position of foreman,for example, would you know whether or not it is fairly common among asbestos insulation contractors to exchange goods or, for example, if one company runs out of merchandise or asbestos products for this to be picked up from another company?

MR. WELLER: If the Court please, on behalf of each and all defendants we

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object to that because the testimony would be too vague, indefinite and speculative. If this is an attempt to say that he worked with the products of any particular individual whom he hasn't named heretofore.

THE COURT: Objection overruled.

MR. WELLER: Note our exception.

BY MR. STEPHENSON:

Q What I was asking about, Mr. Gladden, is it customary in the business if, for example, you ran out of materials at Jefferson to get the materials from some other contractor if you could?

A Yes, sir.

Q I ask you whether or not you are familiar with the defendants in this case, Pittsburgh Corning Corporation, do you know about this company being an asbestos manufacturer?

A Yes, sir.

Q And likewise Armstrong Cork Company?

A Yes, sir.

Q And Philip Carey Corporation?

A Yes, sir.

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Q Ruberoid Corporation?

A Yes, sir.

Q Johns-Manville Products Corporation?

A Yes, sir.

Q Are these corporations which I have just named to you all major asbestos manufacturers, do they all do this?

A Yes, sir.

Q All right, sir. Mr. Gladden, in your experience of many years in this trade, have you ever known of any of these manufacturers whose names I have read to come out into the fields and make dust counts or do any type of studies designed to protect the worker from danger?

A No, sir, I have never seen it.

Q Would you tell us whether or not all of the insulating products such as would insulate pipe, heat and cold, blocks or sacks of cement. No, let's leave sacks out. In the pipe covering and blocks, does this have to be cut, sawed and scribed to be applied in the field?

A Yes, sir.

Q And is there any doubt about, I mean, do you

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know anyone that has thought that this does not have to be cut, sawed and scribed?

A I didn't understand you, sir.

Q All right. That is a confusing question. I will go forward. Have you had occasion to see a boxcar come in which had asbestos products in it?

A Yes, sir.

Q And would you explain to the jury whether or not, were all the boxes closed in a box-car, there was a lot of asbestos dust?

A Yes, sir.

Q And would the men just carrying the boxes from the boxcar to the work site get asbestos dust on their clothing?

MR. WELLER: If the Court please, this is all leading and suggestive. I haven't objected heretofore. He is not asking this witness a question, he is telling him what he wants.

THE COURT: It may be a little leading but the Court does not consider that it is to the degree that it is too objectionable. Objection will be

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overruled.

BY MR. STEPHENSON:

Q Are you familiar with the respirators or little breathing devices that are in common use?

A Yes, sir.

Q Have you used any of this type thing yourself?

A Yes, sir.

Q Would you explain whether or not any of these devices prevent inhaling asbestos dusty.

A There is none of them that will be one hundred per cent.

Q All right, sir.

Have you ever in your career had any -- received any notice, whether printed on the box or any other form from manufacturers of asbestos materials which would indicate that these materials are dangerous to life?

A Would you repeat that, sir.

Q Have you had any notice of any kind from the manufacturers of any of these products that they are dangerous to human life?

A You mean have they sent any notices out?

Q Yes, sir.

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A That they are --

Q Yes, sir.

A -- dangerous.

Q Yes, sir.

A In the last few years they have started putting on their cartons, I don't know the exact wording, about it being harmful.

Q All right, sir. And do you remember -- Let me ask you, what do you mean by the last few years?

A I would say within the last five or six years.

Q All right, sir. Prior to that time had there ever been any notice given to you by any manufacturer of asbestos insulating material?

A No, sir.

Q To the effect that it was dangerous?

A No, sir.

Q All right, sir.

I have --

MR. STEPHENSON: If I may show the witness, Your Honor --

THE COURT: All right.

BY MR. STEPHENSON:

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Q Is that the type notice that you have seen, Mr. Gladden?

A Yes, sir.

Q Other than that, has there been any type of notification that you know of by any manufacturer of asbestos insulation material?

A No, sir.

Q One further thing. Have you been present or have you yourself opened boxes of asbestos insulating material?

A Yes, sir.

Q And how is that done on the job customarily, do you do it with your hands, knife or tools of some kind or what?

A Both hands and knife.

Q All right. Is dust created when the boxes are opened?

A Yes, sir.

MR. STEPHENSON: That's all I have, Your Honor.

THE COURT: Mr. Weller?

CROSS EXAMINATION

BY MR. WELLER:

Q Mr. Gladden, I believe you have been in the

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field for twenty seven years?

A Yes, sir.

Q Are you still employed in the field?

A Yes, sir.

Q What precautions do you use today when you use asbestos products?

A What precautions?

Q Yes, sir to prevent inhalation of dust?

A Well, we use respirators when they are available.

Q How long have you known that you should use a respirator in working in dusty areas?

A Since approximately 1966.

Q Did you ever work at the DuPont Plant?

A Yes, sir.

Q When was the first time that you worked at DuPont?

A In 1946.

Q Then you worked on the job in 1946 at Orange for DuPont?

A Yes, sir.

Q Didn't they have respirators available on that job?

A I don't remember, sir.

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Q Did you ever use one on that job?

A Not to my knowledge, no, sir.

Q Now, have you ever been an officer of the union?

A No, sir.

Q You just been a member?

A Yes, sir.

Q During the twenty seven years?

A Yes, sir.

Q Well --

A Wait a minute, I haven't been in the union for twenty seven years.

Q All right. How long have you been in the union?

A Since 1944. I have been doing insulation since 1942.

Q All right. Did you first start out in the shipyards?

A Yes, sir.

Q And do they have any respirators there?

A No, sir.

Q Do they have any dust collectors?

A No, sir.

Q Do they have any blowers?

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A No, sir.

Q What did you do to keep out of the dust?

A You didn't keep out of it.

Q Well, to keep from inhaling it, what did you do?

A We just, we inhaled it really.

Q You didn't use any mentholatum or wet a handkerchief or put over your face or anything of that nature?

A No, sir, I never did.

Q Never did. When is the first time that you wore a respirator on the job?

A About 1966.

Q Did you ever work for Armstrong Contracting Company?

A If I did it was only for about a week.

Q Did --

A I am just trying to remember.

Q All right. About when did you work for Armstrong?

A I don't have no idea, sir.

Q Do you recall whether they furnished you respirators on the job?

A No, sir, I don't recall.

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Q Now, when you work on a job and did you ever ask for a respirator and it wasn't furnished?

A No, sir.

Q When you work on a job who do you take your orders from?

A Your immediate supervisor.

Q Well, is he a foreman out of the union?

A Sometimes yes and sometimes no.

Q All right. Haven't you worked as a foreman?

A Yes, sir.

Q Doesn't the union require that if it is a union job that the foreman be a union member?

A Yes, sir.

Q All right. Now, who do you complain to about the working conditions on the job if you have got a complaint about working conditions?

A Who does the foreman --

Q Who do you as a worker complain to if you have got a complaint about the working conditions?

A He would normally go to his stewart, the job stewart.

Q Would the foreman go or would you complain to the foreman or would you complain to the job stewart?

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A Would you come back again at me?

Q All right. If you have a complaint about the working conditions on the job --

A You are speaking as a worker?

Q As a worker?

A Not as a foreman?

Q Not as a foreman. If you as a worker have a complaint, to whom do you go to complain?

A To the job stewart.

Q To the job stewart?

A Right.

Q Now, if you are foreman on the job, to whom do you go to complain about the working conditions?

A To my immediate supervisor.

Q To your immediate supervisor?

A Yes, sir.

Q And he is employed by the -- either by the company as owner of the premises or by the insulating contractor?

A Right.

Q All right. You look to him to provide the working conditions while you are on the job, don't you? The contractor or the owner?

A Yes, sir.

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Q Now, haven't you worked on jobs that -- where they had blowers and suction to take care of dust?

A Yes, sir, but -- is it all right to say something?

Q Yes, sir, go ahead.

A But the blowers and the fans or whatever you use don't take care of it one hundred per cent. It helps.

Q All right. It does reduce the dust down, doesn't it?

A Some.

Q And the respirator that you have used, it does reduce down the amount of dust that you get on a job, doesn't it?

A Some, but it is not one hundred per cent by a long way.

Q All right. It is not one hundred per cent. Isn't that the purpose of it, of using respirators to reduce the amount of dust that might be inhaled?

A Yes, sir.

Q Now, haven't you seen -- do you receive the Asbestos Worker?

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A Yes, sir.

Q Have you seen the publications in your own Asbestos Worker which tells you to wear a respirator in dusty places?

A Since 19 -- about 1966, '67.

Q Well, prior to 1966 or '67 did you take any precautions whatsoever on the job to keep from inhaling dust?

A No, sir.

Q Do you wear a respirator at all times while you are working on a job?

A No, sir.

Q When do you wear it?

A Whenever it is dusty.

Q Whenever it is too dusty?

A Whenever it is dusty. Sometimes you are working up high, say, 100 to 200 feet on a scaffold, these respirators, they are kind of dangerous up there if you are wearing glasses, particularly bifocals. They fog your glasses up and stuff.

Q All right. Now, when these products actually first come to you, like this product here, which is pipe insulation, showing you

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Defendants' Exhibit 5 and block insulation, Exhibit No. 4, these are not very dusty, are they?

A Could I see them, sir?

Q Yes.

(PAUSE)

Q They have a hard rind on the outside?

A This is normally not the way we get them when we get them on the job.

Q Well, are you saying that this is a special sample?

A No, sir, I am not saying that.

Q Is this the way you get pipe insulation on the job?

A Yes, sir, but it is more dustier than that.

Q What products are you talking about? Any particular products?

A Any of your cylicates (phonetic).

Q Are you saying that this is a special sample that has been manufactured specially or is this out of stock sample?

A Well, no, sir. During shipment of these materials they have a tendency to break off on

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the corner and that causes dust.

Q All right. But after you take these out and you are getting ready to apply this, you can carry this around all day without it getting dusty, couldn't you, and inhaling any dust from it?

A No, sir, you can't.

Q If I carried this around for twenty four hours you would say I would inhale dust from it?

A Yes, sir, you would breath dust, yes, sir.

Q Now, all the changes that are made in a product such as cutting and so forth, these are actually done on the job, aren't they?

A All the cutting of the material for any specific job is done on the job.

Q And your union insists that they have jurisdiction over the cutting of any material that is supplied on a job, don't they?

A Yes, sir.

Q Now, whatever precautions are taken while you are cutting those, do you always cut them in a shop on the job?

A No, sir.

Q Do you have shops on the job sometimes?

A Yes, sir.

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Q In those shops on the job do you sometimes have blowers and suction devices in the shop?

A About 95 per cent of them consists of fans that is set up next to the band saw.

Q Consists of a fan next to the band saw?

A Yes, sir.

Q Do you have a window fan that draws the material out of the room?

A This is the type of fan that I am talking about.

Q This is the type of fan that you are talking about?

A But it don't take it all out.

Q It doesn't take it all out?

A No, sir.

Q Well, have you worked in shops?

A Yes, sir.

Q Did you wear a respirator while you were working in the shop?

A Yes, sir.

Q And the reason you wear the respirator was to keep away from the dust, wasn't it?

A It was, yes, sir.

Q And I believe the first time you wore a

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respirator was in 1966?

A About, yes, sir.

Q Did you work in shops before that?

A Yes, sir.

Q Did you ever work over at the Sabine Insulation Company in Orange?

A No, sir, not in their shop.

Q Not in the shop. All right. Now, if you were working out at the DuPont Company and do you work for DuPont? Direct for DuPont or do you work for a contractor when you are working at DuPont?

A Normally you are working for a contractor.

Q You are working for a contractor?

A Yes.

Q All right. And you take -- if you are working as a foreman you take your orders directly from the superintendent or your superior, don't you?

A Yes, sir.

Q And he is employed by the contractor?

A Yes, sir.

Q Now, you wouldn't take your orders from a stranger, would you, if he came out on that

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job?

A No, sir.

Q Somebody came out there and said you are working in the shop and you are not wearing a mask, you better wear a mask or you'll have to get off the job. What would you tell him?

A Could I back up just a minute there?

Q Yes.

A If you are working in DuPont and in their shop, their safety man comes and tells you to put on a mask you are going to put on a mask.

Q All right. If their safety man comes there and tells you you better -- even though he is a DuPont employee because he is identified as a safety man, isn't he?

A That's right.

Q What does he do, wear a white hat?

A Normally, yes.

Q Then you recognize him, but if a total stranger came out there and said, "Mr. Gladden, you can't do that work this way. You have got to wear a mask," what would you tell him?

A I wouldn't have to obey him. He would be a

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total stranger to me. I wouldn't know who he was.

Q You wouldn't have to obey him, would you?

(PAUSE)

Q Are you familiar with the fact that your union negotiates the working conditions under which you work?

A Yes, sir.

Q You have known that for a number of years, haven't you?

A Yes, sir.

Q And if you have a complaint about the working conditions or the dusty conditions then you complain to your union, don't you?

A To the job stewart.

Q All right. How long has your union been discussing the problem about dust on the job?

A Sinc e about 1966.

Q Is that the first time that you have ever --

A The first time that I have ever known.

Q You've ever known?

A Yes, sir.

Q All right. You didn't know Borel -- I mean Claude J. Tomplait, did you?

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A Claude Tomplait.

Q Yes.

A Yes, sir.

Q Do you know when he had his difficulty?

A Yes, sir.

Q Back in 1958, '59?

A Yes, sir.

MR. STEPHENSON: May I object at this point because the cross examination is saying when he had his trouble, Mr. Tomplait's trouble is not being identified in any way and the time span, of course, not being identified.

THE COURT: Objection overruled.

BY MR. WELLER:

Q You knew that he had a claim -- that he had asbestosis back in '58 and '59, didn't you?

A I knew he had a claim for a lung disease.

Q A lung disease that he claimed was caused by asbestos dust?

A I don't know, sir.

Q You don't know.

A No.

Q Well, you have been working in the asbestos

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trade for a number of years. You did know that if you got a lung disease on the job it was known as asbestosis, didn't you?

A Not prior to 1966, sir.

Q Not prior to '66. Now, this notice that you have seen on the boxes since that time, you have known that there was some degree of risk in working in asbestos dust, hadn't you?

A Since I've noticed these coming out on the cartons, yes, sir.

Q Yes, sir, but you still went ahead and worked and are still working with the problem?

A Yes, sir.

Q Didn't you know prior to the time that that notice came out that you were working with asbestos?

A I knew it was an asbestos material.

Q An asbestos material. That's the name of your union, isn't it, Asbestos and so forth Workers Union?

A Asbestos Workers Local Union, yes, sir.

Q And you also knew all the time that that product produced dust, didn't you?

A Yes, sir.

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Q And you knew that you were inhaling the dust, didn't you?

A Yes, sir.

Q As a matter of fact, you inhale it and spit it out and that sort of thing on the job, don't you?

A Yes, sir.

Q At times do you have such exposure of dust that you have to go outside the area where you are working and cool off and get out of the dust?

A If you are working in a confined space.

Q All right. Now, most of your work isn't in confined spaces, is it?

A Quite a bit of it is.

Q Well, what, twenty percent of it?

A Oh, I would say thirty or thirty five per cent.

Q Thirty or thirty five per cent and another sixty five per cent is generally out in the open, isn't it?

A Yes, sir.

Q And you don't have very much dust problems out in the open, do you?

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A It is blowing around quite a bit.

Q Sir?

A It is blowing around quite a bit.

Q Well, if you are working out and the wind is in one direction you are working on the leeward side, aren't you?

A No, sir. It don't work out that way always.

Q It doesn't work out that way. You have worked twenty seven years in the industry, do you have any respiratory problems?

A No, sir, not to my knowledge.

Q Not to your knowledge?

A No, sir.

MR. WELLER: I think that is all.

THE COURT: Mr. Tucker, do you have any questions?

CROSS EXAMINATION

BY MR. TUCKER:

Q Mr. Gladden, who do you, as you are working on these various jobs, who do you rely on to furnish you with safety equipment and take the necessary safety precautions?

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A Normally the contractor.

Q The contractor is different from the people such as Johns-Manville and Philip Carey and these people who supply the products, they are different concerns, are they?

A Yes, sir.

Q And so you on these jobs, and you know that over the twenty seven years you have been relying on the contractor that you are working for in as far as safety equipment, safety precaution is concerned, is that true?

A Yes, sir.

Q Does the union also take an interest in the safety precautions and safety and preventive measures that should be taken on these jobs?

A Yes, sir.

Q They have committees to investigate these things or representatives to investigate, make recommendations or do you know?

A I have never known of a representative or committee.

Q But they are interested in them?

A Yes, sir.

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Q Have you ever seen a dust count made in your twenty seven years on any job?

A No, sir.

Q Does the union ever have any dust counts made?

A I wouldn't know, sir.

Q Have your employers, these contractors, have they ever had any dust counts made?

A I wouldn't know that, sir.

Q Have you ever seen them make any?

A No, sir.

Q When you are working out there for Jefferson Chemical, did Jefferson Chemical have any dust counts made?

A Not to my knowledge they didn't.

Q Did DuPont have any dust counts made when you were working on that job?

A I've never seen any dust counts made.

Q Now, every job that you have worked on, the conditions are somewhat different, are they not?

A Would you repeat that, sir?

Q I say is every job the same or do conditions vary from job to job and even from day to day

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on the same job?

A They vary from job to job.

Q On some jobs you work, your work will be in a more confined area, is that correct?

A Yes, sir.

Q And when you are working in a more confined area, who would you rely on, whatever warnings were necessary, whatever safety equipment was necessary to protect you?

A The shop you are working for.

Q The shop you are working for?

A Yes.

Q As a member of the union you get an issue of this Asbestos Worker magazine?

A Yes, sir.

Q And you recognize these -- this is marked Defendants' Exhibit 1, 2 and 3, official publications from the Asbestos Workers' Union, their magazine?

A Yes, sir.

Q Now, November of '61, were you a member of the union?

A Yes, sir.

Q Do you recall in that issue, this is on the

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back page of your union publication, either in this issue or another issue, the admonition to wear respirators?

A I might have noticed it and it didn't register with me. I might not even have read that particular month's magazine. I don't know, sir.

Q Do you recall that you have ever seen an admonition or recommendation such as this to wear respirators?

A Not until around 1966.

Q You don't recall seeing the one that was put out in '61?

A Like I say, I don't remember that far, I don't remember if I read that particular issue, whether I read it, I don't even remember whether it registered with me or not.

Q If you read it at that time, did you pay any attention to it in 1961?

A Well, like I say, I don't remember seeing it. I might not have read that particular issue.

Q If you had seen it in 1961 would you have paid any attention to it?

A I don't remember, sir.

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MR. TUCKER: I believe that is all. Thank you.

THE COURT: Mr. Stephenson?

REDIRECT EXAMINATION

BY MR. STEPHENSON:

Q Mr. Gladden, you were asked on cross examination whether or not if a stranger had come on the job and ordered you around and so forth, would you have obeyed and you said you wouldn't have been obligated to. Now, in the same context to that cross examination I asked you if a stranger had come on the job and said, "I am representing Johns-Manville or Pabco Corporation and I can show you how to use this asbestos without endangering your health --" would you have listened to him?

A Yes, sir.

Q Would you have ever even gotten into the trade as a young man if you knew then what you know today about the danger of this product?

A No, sir.

MR. WELLER: Now, I object to that. It calls for an opinion and

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conclusion retrospectively on the part of the witness and it would be self-serving and further hasn't been shown that there was any knowledge either scientifically or medically that there would be any danger insofar as the asbestos insulation worker was concerned.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q All right. Mr. Weller has asked you the question why do you work with the products now. Mr. Gladden, I don't think that you got a chance to answer it, if you did I didn't hear what your answer was.

A That is the only livelihood I know.

Q All right, sir. Have you ever worked directly for Johns-Manville as a contractor, when Johns-Manville was doing its own contracting?

A I worked for Johns-Manville as a worker.

Q Yes.

Q As a craftman.

Q Yes. Did Johns-Manville provide you with

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any type of safety apparatus that would prevent you from inhaling this stuff?

A I don't remember it.

Q Had you worked for Philip Carey or any of the other manufacturers who also contract work?

A Philip Carey, yes.

Q Did Philip Carey provide you with any type of safety device to prevent you from inhaling this dust?

A I don't recall but I don't believe they did.

MR. STEPHENSON: That's all I have.

THE COURT: Anything further, Mr. Weller or Mr. Tucker?

MR. TUCKER: I just have one question, Your Honor.

RECROSS EXAMINATION

BY MR. TUCKER:

Q The respirators that you have reference to, are these in evidence?

MR. STEPHENSON: They are not in evidence, but you can have them.

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BY MR. TUCKER:

Q These have been marked as exhibits 4 and 5, are those the type of respirators that you have reference to?

A Yes, sir.

Q And you say they help a great deal in eliminating the inhalation of too much dust?

A They help some, sir.

Q Now, these types of respirators that you now use are supplied by your employer, is that correct?

A Yes, sir.

MR. TUCKER: That is all.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: I have nothing further, Your Honor.

THE COURT: Mr. Gladden, you may be excused. You may leave any time you wish.

THE WITNESS: Thank you, Your Honor.

THE COURT: Call your next witness.

MR. STEPHENSON: Your Honor, at this time we would like to present a

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summary of the oral deposition of Dr. Dan Jenkins. It will be fairly long in itself, but the deposition required seven hours to take and I have summarized I think --

THE COURT: All right. You might take the stand and give the summary from there.

MR. STEPHENSON: May I explain, Your Honor, that this is a deposition taken when all of the parties and their attorneys were present in Houston, Texas at the Baptist Hospital. The deposition is of Dr. Daniel E. Jenkins.

MR. WELLER: Your Honor, the defendants do not agree with the plaintiff's summary of the deposition and request the right to make objection at various times during the reading of the summary to specific portions of it and also to offer their summary which has been on file.

THE COURT: All right. You can object any time you wish to object, and

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you may also offer your interpretation of the testimony.

MR. WELLER: All right, Your Honor.

SUMMARY DEPOSITION OF DR. JENKINS

MR. STEPHENSON: My summary of the deposition is as follows: "Dr. Jenkins has been engaged in the practice of medicine since 1940. Receiving his preliminary training at the University of Texas Medical Branch in Galveston, where he received his Doctor of Medicine Degree. He received his intern training at the University of Michigan Hospital in Ann Arbor, Michigan. And then took three years of hospital in-service training in internal medicine. Following that, he took a year's work in pulmonary disease and stayed there at the University and was in charge of the pulmonary and tuberculosis section of the University of Michigan Hospital for a year.

He then left in July of '47 and came to Baylor University where he joined the Department of Medicine as an

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assistant professor of medicine in charge of the pulmonary disease section in that department.

He has been with Baylor University ever since. And is currently professor of medicine at Baylor University College of Medicine. He is still in charge of the pulmonary section of the Department of Medicine and in charge of the pulmonary disease training program in the affiliated hospitals of which there are four.

His license to practice medicine is on record in Harris County, Texas. And he practices medicine as a full time occupation. But at the same time he is also a teacher of medicine. As part of his medical school affiliation, he engages in medical research.

He belongs to the Harris County Medical Society and the American Medical Association. He belongs to the American College of Physicians, also a fellow in the American College of Chest

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Physicians. He belongs to the American Thoracic Society, the National Tuberculosis and Respiratory Disease Association, the American Federation of Clinical Research, the Houston Society of Internal Medicine, the Texas Society of Internal Medicine, the American Clinical and Climatological Association.

He practices in the field of medicine known as internal medicine, and has a sub-speciality of internal medicine known as pulmonary diseases.

He is 52 years old and has been actively engaged in the practice of medicine for 21 years, over and above his years of training at the University of Michigan, which were seven altogether. So, added up, it means 29 years in the field.

He has written a number of articles in the field of this specialty, some 61 medical articles ranging from publications in medical journals to chapters in medical textbooks. He

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received a number of special awards and citations in his specialty field. He has been president of the American Thoracic Society in 1958 and 1959, president of the Texas Tuberculosis Association in 1966 and '67. He was president of the National Tuberculosis and Respiratory Disease Association in 1967 and '68. He has been president of the Southern Chapter of the American College of Chest Physicians in 1959, and he is a member of the Alpha Omega Alpha honorary medical society.

He presently resides and practices medicine in Houston, Harris County, Texas.

Dr. Jenkins has never testified for the Plaintiffs in any lawsuit before giving testimony in this case.

Dr. Jenkins' most recent papers or lectures have been delivered in the field of pulmonary disease and pulmonary physiology. He received a Southern Conference award of the Southern Tuberculosis Conference, which is a conference comprised

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of some nine Southern states from Texas to the East Coast, and this is an honorary award.

There is no medical evidence to show that asbestos fibers will show up by x-ray shortly after they are inhaled by one breathing them. Dr. Jenkins testified concerning the first time fibers or particles inhaled in ones lungs would be visible on x-ray and he stated that, "Just limited to x-ray findings, the usual dequels of this in humans as well as certain experimental animals where studies have been conducted show that findings that usually take place are those of the very fine granular appearance to the lung, which is well characterized by the appearances of the x-rays, and secondly, of calcification in the parietal pleura. There are two types. The parietal pleura is the lining inside of the chest wall, and the viscera pleural is the pleura that lines the outside of the lungs. The interest-

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ing thing about the calcifications in asbestosis is that they are found in the parietal pleura rather than the visceral pleura." Dr. Jenkins believes these are the things that appear pretty characteristic of the secondary effects of asbestos inhalation.

In answer to the direct question, "In your medical and scientific opinion, is it necessary that one have prolonged periods of exposure over a number of years, perhaps, before one can inhale enough asbestos dust to cause clinical and x-ray findings supporting the disease of asbestosis?"

Dr. Jenkins replied, "Well, this is frequently the case, but it is not always necessary that one have continued prolonged inhalation over a period of years. Sometimes a short period of exposure have been associated with the later appearance, many years later, of these characteristic findings. There are, perhaps, a number of

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things that might govern the potential of any exposure, such as the type of asbestos or the intensity of the exposure, the number of asbestos particles at breathing level work and so on. I think in answer to your question, there are some cases, published cases, which point out that it is not necessary that the individual have a continuously prolonged exposure in order to develop the disease complexion."

The next question of Dr. Jenkins was, "Is it generally an accepted medical and scientific fact that even though one might inhale such asbestos to show up by medical tests later, a number of years later, that it's difficult immediately to detect this disease by x-ray and medical tests shortly after its inception?"

Dr. Jenkins' answer was, "Yes, I would say this is invariably true, that long periods of time are required to detect

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these various things that we have mentioned, and some of the other things that we haven't mentioned, which tend to follow the asbestos exposure."

Dr. Jenkins testified that clubbing of the fingers is not inconsistent with the disease. And that it is well known that the incidence of lung cancer is higher in persons who have been exposed to asbestos.

He further stated that it has been common medical practice over decades, or perhaps centuries for experimental animals such as guinea pigs to have been used to make various medical and scientific tests which scientists call experimental prototypes in animals so that the process of disease development can be better studied and understood.

Likewise, he said, experimental animals are used in the invention process of drugs and that there are many of these carried out by various

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workers. He estimated that during the last 22 years he had seen 25 to 30 per cent of patients with clinical asbestosis among the various hospitals in Houston associated with the Baylor complex.

Dr. Jenkins says that any intelligent person doing research would rely upon the experience other have had who have done work in this field. They would read the literature and be prepared in regard to the findings of others, so that if you plan to publish, you do not do so in unreasonable conflict of others' findings, so he says that a combination of both other people's experience, as well as his own experience at Baylor Medical Center; and that there has been a research project at Baylor Medical Center that Dr. Jenkins was connected with in relation to the disease of asbestosis.

MR. WELLER: If the Court please, I object first because the sentence

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does not make sense and secondly, I object because the opinion or statement is based upon hearsay, saying that it is a combination of both, other people's experience as well as his own experience at Baylor. So that he is relating something that somebody else reported. I would also make the objection to a prior statement. "He estimated during the last 22 years he has seen 25 per cent or 30 per cent of the patients with clinical asbestosis among the various hospitals in Houston associated with the Baylor Complex." I make the objection that that is vague and indefinite, percentage of what. It doesn't say what it is a percentage of.

THE COURT: Objection overruled.

MR. WELLER: Note our exception.

MR. STEPHENSON: He further states that in the field of medical science, it is the custom and practice of one working in the field and writing in

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the field, studies the work and writings of others in the field. And that it would be improper not to make some study of works done by others in the field in which you propose to conduct work and that if one wishes to contribute to any of the frontiers of knowledge, one has to know what other people have done. Dr. Jenkins has done excessive and voluminous reading in the particular field of asbestosis as it appears in the pulmonary disease category.

The disease asbestosis gets its name from asbestos, that being the origin of the term, and that this disease, asbestosis, is caused only by inhalation of asbestos fibers or particles.

He states that asbestosis has been written about for many years, and --

MR. WELLER: May I make an objection at this time, Your Honor. He is going to refer to the publications of other articles of which he had no connection.

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Now, this is a Plaintiff's medical witness and, therefore, I would object to any reference to other material because it would be hearsay first, second, it is not original evidence and it is not proper for a medical witness to introduce other medical articles or medical tests to support his own opinion.

THE COURT: What is counsel's opinion?

MR. STEPHENSON: Our position is, Your Honor, that Dr. Jenkins has already testified that certainly anyone doing research and study in the field must take into consideration the writings of others in the same field. And use that as a beginning basis for his own work. And any scientist would be derelict in his duties if he did not so consider works written by others in the field.

THE COURT: Is it articles referred to -- is there any question about the

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relevancy of the material?

MR. WELLER: Yes, sir, Your Honor, it is a matter of research and depth of the research is criticized. It is not recent material, much of it is material that still is in the process of studies, publication being in 1964 and '65 and subsequent thereto. And for this reason we object because the persons making these statements are not subject to cross examination and the experiments that they made, the depth of, you can't determine at times from the articles although at times you can, and they just take a statement verbatim and say well this is the document.

THE COURT: I think the testimony of this time where it is dealing with research that the Court has to allow some liberalities, and I am going to overrule the objection. However, if you want to recall it to the Court's attention later --

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MR. WELLER: Your Honor, may I have a running objection to each and every one of these articles that are referred to and there may be additional objections?

THE COURT: Yes, without making specific objections.

MR. STEPHENSON: Your Honor, I don't know what he is talking about because on this page I don't --

THE COURT: He has reference, I suppose, to the opinion of the witness about certain periodicals which he considered in his research, but the objection has been recorded and the Court has made his ruling. So you may proceed.

MR. STEPHENSON: All right. Thank you, Your Honor.

BY MR. STEPHENSON:

Referring to what Dr. Jenkins testified, he testified, "that asbestosis has been written about for many years, and in 1900, a man died who had had

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approximately 15 to 20 years of exposure to asbestos fibers at that time. the publication of this death came out in 1907 by a British physician named Murray, and others then followed in quick sequence.

Asbestosis is an irreversable disease, meaning that it cannot be cured or made less severe. That the only thing that can be done from a medical viewpoint to help a patient is symptomatic treatment, and that consists of medication for pain, cough remedy, restriction on activity and reduction of smoking. That cigarette smoke adds to this, but this is primarily because cigarette smoking causes its own epidemiological condition and not because cigarette smoking causes asbestosis. That lung cancer is found to be more prevalent in those having asbestosis than in those who do not, and that the disease known as cor pulmonale is more pronounced in asbetos

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workers than in those who have no contact with asbestos. Cor pulmonale is a heart disease; and that there is a tumor which is quite rare, very seldom found, which is found now commonly in persons who have exposure to asbestos. That tumor is called mesothelioma. The mesothelioma is three or four times more common among asbestos workers than among the general public. A person having asbestosis would be endangered by receiving a normal dose of Demerol for pain because it would have to do with suppression of the respiratory center and a person with asbestosis would be less well prepared to meet such emergency because of his impaired pulmonary function. That even the use of oxygen could have an adverse effect on one with asbestosis.

Dr. Jenkins testifed that he knows Dr. I. J. Selikoff of the Mount Sinai Hospital in New York City, having first met him in 1952, at which time he became

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acquainted with him in conjunction with his studies on drugs and the treatment of tuberculosis. Both of them were involved in research on this particular drug and that Dr. Selikoff is a recognized and well-known medical and scientific authority in the field of asbestos and its effects upon mankind, and particularly as relates to the asbestos insulating industry and the workers in the industry. That Dr. Selikoff is not only a recognized authority in the field of asbestosis in this country, but is well known throughout the world, and that Dr. Selikoff was certainly recognized as such authority in 1965 when the New York Academy of Sciences published its work. Dr. Jenkins first identified the article entitled PULMONARY FUNCTION IN ASBESTOS. SERIAL TESTS IN A LONG TERM PROSPECTIVE STUDY. Dr. Selikoff participated in this function study with Drs. Mortimer Bater and

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Dr. Richard Bater, who are co-authors. Dr. Jenkins said that this is a good study, and he is very familiar with it.

The next --

MR. WELLER: If the Court please, I want to direct the Court's attention that I am now objecting to each and all of the articles by Dr. Selikoff for the specific reason heretofore stated that each of these articles are hearsay, should not be considered as original evidence and should not be considered to boster up or form the basis for the opinion of Dr. Jenkins and be admitted in evidence in support of that opinion.

THE COURT: Objection overruled.

MR. STEPHENSON: "The next article is entitled THE OCCURRENCE OF PLEURAL CALCIFICATION AMONG ASBESTOS INSULATION WORKERS, by Dr. Selikoff, reprinted from the annals of the New York Academy of Sciences, Volume 132, page 351 to 367, December 31, 1965. Dr. Jenkins said he was well acquainted

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with this, it being a work in which Dr. Selikoff gives his experiences in relation to the occurrence of pleural calcification in a large number of patients that he has studied and that this study was done upon approximately 1117 patients on whom information was available out of some 1258 studied, and that Dr. Jenkins believes this to be reliable reference source on that particular topic.

The next article is entitled THE OCCURRENCE OF ASBESTOSIS AMONG INSULATION WORKERS IN THE UNITED STATES, by Dr. Selikoff and Dr. E. C. Hammond of the American Cancer Society and Dr. J. Churg. This article is reprinted from the New York Academy of Sciences Annals, Volume 132, Page 139 through 155. It is an authoritative article on the occurrence of asbestosis among insulation workers. They examined 1713 of these workers and the information is quite authoritative, being the

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best study of insulation workers in this country and probably in the world at the present time."

MR. WELLER: If the Court please, I object to the use of the words, "being the best study of insulation workers in this country and probably in the world at this time," because that is a self-serving statement by the doctor and opinion and nothing being introduced to support such a statement. And it is another attempt to boster the testimony and the work of Dr. Selikoff.

THE COURT: We sustain that objection.

MR. STEPHENSON: May I continue, Your Honor?

THE COURT: Yes.

MR. STEPHENSON: "The next article is entitled NEOPLASIA AMONG INSULATION WORKERS IN THE UNITED STATES, with a special reference to intraabdominal neoplasia, by Dr. E. C. Hammond of the American Cancer Society and the co-authors are Dr. Selikoff and Dr. Churg.

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Dr. Jenkins has read this article and believes the team of Dr. Selikoff and Dr. Hammond being a very interesting one, Dr. Hammond being a statistician, epidemiologist with the American Cancer Society who has teamed up with Dr. Selikoff in some of the epidemiologic studies concerned with these asbestos workers, and he feels that in this article, Dr. Hammond, who is quite a cancer authority, simply points out that cancer of the stomach and the bowel, in particular, are more common among asbestos workers than the population at large. So Dr. Jenkins believes this can also be added to the list of things that occur more commonly in people who are exposed to asbestos insulation."

MR. WELLER: I want to object to this article, that Dr. Jenkins does not testify that this article is authoritative, therefore, it shouldn't be admitted for any purpose.

THE COURT: I believe we will

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overrule the objection.

You may proceed.

MR. STEPHENSON: "The next article is entitled THE DETECTION AND LOCALIZATION OF MINERAL FIBERS IN TISSUE, by Dr. C. Berkley and Drs. Churg, Selikoff and W. E. Smith, reprinted from the Annals of the New York Academy of Sciences. This is written by a pathologist and laboratory worker who explains the difficulties in localizing asbestos within lung tissue. He described in here methods in which the tissue is burned or ashed as a way to get rid of the organic material and see what the underlying asbestos is and where it is, since this is not destructable by heat, and he also describes another method, experimental method."

MR. WELLER: If the Court please, I add to this objection that Dr. Jenkins does not testify that this article is authoritative, same one made before.

THE COURT: Objection overruled.

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MR. STEPHENSON: "The last article is entitled RHEUMATOID FACTOR IN THE SERUM OF INDIVIDUALS EXPOSED TO ASBESTOS, by Dr. Pernis Viglioni and Dr. Selikoff. Dr. Jenkins states that he is familiar with this work and it is authoritative."

MR. WELLER: If the Court please, I object to that for all the reasons heretofore stated and this statement is not accurate according to the record on page 94, he does not state that it is authoritative, but observes it is simply an interesting laboratory observation which has very little specificity s-p-e-c-i-f-i-c-i-t-y. That is the statement that he makes and I object to it, the language that it is authoritative.

THE COURT: You don't find that he does use the word?

MR. STEPHENSON: No, sir, Your Honor, it is not --

THE COURT: Objection will be sustained.

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MR. STEPHENSON: "Further, Dr. Jenkins was shown an editorial entitled ASBESTOSIS AND NEOPLASIA, by Dr. Richard Bater, Mortimer Bater, Churg and Hammond, published in the American Journal of Medicine, Volume 42, during 1967. Dr. Jenkins was familiar with this editorial and believes it to be authoritative. The references shown on the last two pages of this particular pamphlet refer to Dr. Cooke's writings in the 1920's and there is also a reference to an article by Dr. Leroy Gardner in 1931, published in the American Journal of Cancer in 1935. That the --"

MR. WELLER: Go ahead, read the next sentence.

MR. STEPHENSON: "That the reference shown in this pamphlet are generally available to anyone wishing to avail themselves of this information."

MR. WELLER: If the Court please, we object to this for the reason that

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it is not shown that Dr. Cooke's article was published in the United States at any time and, therefore, hearsay. And the next sentence I object to because it is -- for all reasons heretofore stated and further, it is a comment on the weight of the evidence in that the doctor seeks to comment on the available medical journals and so forth and there is no evidence introduced to support it.

THE COURT: Objection overruled. You may proceed.

MR. STEPHENSON: "Dr. Jenkins said that he had personally read most of these references and that they are reputable, easily available medical journals, and would have been available to any one at that time or any subsequent time they might wish to look at them.

The next reference is to an article entitled RELATION BETWEEN EXPOSURE TO ASBESTOS AND MESOTHELIOMA, by Drs. Selikoff, Churg and E. C.

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Hammond, reprinted from the New England Journal of Medicine in 1965, and that any library can look up these references if you have just the information previously mentioned. This particular article cites the epidemiologic evidence which has arisen from the 1200 asbestos insulation workers that Dr. Selikoff and Hammond have studies, and this is simply a rather detailed accounting of the occurrence of mesothelioma as they have arisen among these people that they have followed for 20 years."

MR. WELLER: If the Court please, I object to this because the article shows on its face that it is retrospectively study. In other words, it began about 1962 and, of course, they went back and tried to work up the studies from that date retrospectively. I make all the other objections I heretofore made.

THE COURT: Objection overruled.

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MR. STEPHENSON: Your Honor, we have some slides that we would introduce in conjunction with the testimony that follows through at this time. If we could put up our projector.

THE COURT: I believe we will have a recess at this time. We will see them after the recess.

Ladies and Gentlemen of the Jury, we are going to stand in recess for -- until ten minutes after three by the clock in the courtroom.

THE MARSHAL: Everyone rise, please.

REPORTER'S NOTE: Whereupon, at this time a recess was taken and Court resumed.

THE COURT: Please be seated. You may proceed.

MR. STEPHENSON: Continuing with Dr. Jenkins' summary: "Next, turning to the slides, Dr. Jenkins stated that the slides are medically and scientifically accurate."

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If I may turn this on, Your Honor, and show them.

MR. WELLER: Your Honor, I have an objection to the first slide because it -- I had to refer to the question and answer testimony to show the Court why -- the reason I object to it because the doctor isn't sure exactly what the slide shows, and here we are piling hearsay upon hearsay in that these slides are taken from articles that were made by other doctors in connection with some matter and which they report their findings and that doctor nor the doctor who wrote the article is subject to cross examination here as to exactly what the slides show. And, further, these slides pertain generally to, not to conditions relating to asbestos insulation workers, but mainly to textile workers. Further, that they, Dr. Hardy's article isn't shown and the doctor stated that he wasn't sure but he thought it was in 1966. And,

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further, the interpretation of the slide itself is very indefinite and I read this and the doctor's answer to show what I mean.

"Doctor, as I read this, this is mesothilial tumors without asbestosis. Isn't that what that is supposed to show on this chart?"

MR. STEPHENSON: May I ask where he is reading, Your Honor.

MR. WELLER: On page -- Dr. Jenkins' deposition, page 102.

THE COURT: What page?

MR. WELLER: Page 102.

"Isn't that what that is supposed to show on this chart?" Answer, "Well, I think the inference here probably relates to the fact that particularly where you see the line drawn and the split below there that we are talking the recognition of the fact mesothelial tumors are associated with asbestosis more than they are with the spontaneous occurrence of the tumor in the popu-

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lation at large. I think your inference on the interpretation of the working is not the correct one. Perhaps the working isn't very clear.

MR. WELLER: I will go into that field with you a little later about other causes of it. I wanted to point out what the language is on the chart itself, and because you made the statement that this showed mesothelial tumors with asbestos or in asbestos workers, whereas the chart purports to show that it's without asbestosis."

And the doctor's answer is this: "Well, I think you will notice a little dotted line kind of moving on up there which may have some reference to the 'without' part of it, but where you see the broad line and the dotted line going over to the left, you are talking about really the occurrence below that point in association with asbestosis, not without it. So I think there are perhaps two connotations to

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the thing, which is not altogether clearly -- all these things are not perhaps stated too clearly on the slide."

Therefore, under the doctor's own testimony, it is not clear as to what the slides show. I would object to it in evidence.

THE COURT: Are you making this a general objection to all of the slides that are offered. I am trying to avoid you making the same objection every time a slide comes up.

MR. WELLER: Yes, but I want to make the objection to all the slides, that the slides are based on hearsay testimony and they are not original evidence and they are being used by this doctor here to support his testimony and they are research material that the doctor did not develop himself and he was not a part of any team that did develop it.

MR. TUCKER: The statements on the slides are hearsy. The slides themselves

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are hearsay and they have not been authenticated as to when they were made or by whom.

THE COURT: All right. The objection will be overruled.

MR. STEPHENSON: All right. Thank you, Your Honor.

Now turning to the slides, "The first slide was one taken from an article by Dr. Harriett Hardy, of Harvard University, being published in the Transactions of the Association of American Physicians. Dr. Jenkins says that we can see that the start of the asbestos industry was back somewhere around 1878 in this particular slide, and there were a number of uses of asbestos for similar things that came into being subsequent to that time; but it was around 1900, as mentioned earlier, that the disease asbestosis was really first recognized, and while the diseases were described mostly in textile workers, asbestos

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being used predominately in British and Canadian and to a certain extent, U. S. texitle industry, however many other uses for asbestos, particularly in various types of insulation, came into being. So that about 1920 or so the disease began to be described among insulation workers. Along about 1932 and 1933, the first descriptions of lung cancer occurring more predominately among asbestos workers than the population at large was described; and of course this has been, since those early studies there have been a lot of studies now, which tended to support this. Along about 1952, the mesothelioma was recognized and described. And on the righthand side of the slide in a roughly semi-diagramatic form, the long black diagramatic presentation of the world production of asbestos. I think the point here, Dr. Jenkins said, is that we are seeing an increasing production

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of this and probably our annual consumption today is somewhere around 3,000,000 tons of asbestos. I think this roughly gives you the proportion of which the product has grown according to year. The purpose of this slide is to give some historical references for the product asbestos for which it was first used, the disease complexes that we have seen and recognized as a consequence of the industrial uses of the product, and to give you some idea of what quantitatively the world production looks like in terms of this growth.

The next slide is taken from an author in Finland who has done experimental work on the relationship of asbestos to pleural calcification, the article being PLEURAL CALCIFICATION AS A ROENTGENOLOGIC SIGN OF NON OCCUPATIONAL ENDEMIC ANTHOPHYLLITE ASBESTOSIS, by Dr. Raimo Kiviluoto, the Finnish Worker. This article

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was published in Stockholm in 1960. This particular doctor studied epidemiology in Finland. These studies are related to the appearance of pulmonary disease and pulmonary calcification, particularly among people who are exposed and live in and around these areas and include some people who can be classified as asbestos workers."

MR. WELLER: If the Court please, I object to that because the article does not state that it is related to asbestos construction workers or workers in construction applying asbestos products.

THE COURT: Objection overruled.

MR. STEPHENSON: "This doctor has studied the disease in quite a number of people who have had it, some of whom have come to autopsy, and he has done some experimental animal work, and he's put all this together in a theory of the pathogenesis or develop-

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ment of the pathology of pleural calcification. Recalling that there are two types of pleura, one is the visceral pleura or the pleura lining of the lung, and that is represented in the slide by "A" on each of these diagrams. And then there is the parietal pleura, or that pleura that lines the inside of the chest walls, which on these diagrams is represented as "B" over to your left, number one, portrays asbestos fibers, these little sticks that penetrate from "A" to "B" represent asbestos fibers. As we must know, these fibers are mostly silicates that have a tendency to be in many instances fairly long and fairly rigid. He depicts them as sticking through the outside of the lung, which is through the visceral pleura, which is "A" and then sticking "B", which is the parietal pleura. Now, as the patient breathes, "A" moves up and down on the lung, and these things as they stick

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into "B" cause irritation which form blips on "B" in diagram two. As time goes on, diagram three, these little blips become enlarged and actually represent some scar tissue. Then as time goes on further, you will see in diagram number Four a little slit of darkness. Then diagrams Five and Six, the bumps there on the "B", the parietal pleura, have developed larger areas of darkness which depict calcium deposition. What happens then is that according to this opinion, the asbestos fibers penetrate the visceral pleura and irritate the parietal pleura, penetrate "A" and irritate "B". At the same time, scar tissue develops on "B" and these is probably little areas of bleeding and things that go along with inflammation and eventually these develop calcium within them. The sequence from One to Six would take quite a number of years to develop. In this particular writer's experiences, this has not been

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seen in less than two and a half years and is more apt to take over 12 to 15 years to develop.

The next slide is a lung specimen taken from one of our patients who had a lung (probably 15 years) asbestos exposure history, who has pleural calcification. Close examination shows the thickened pleura over the bottom of the lung, which also contains some calcium. Here in a patient with long asbestos exposure, there is thickening of the pleura and calcification.

The fourth slide is taken from one of Dr. Selikoff's articles, styled THE OCCURRENCE OF ASBESTOSIS AMONG INSULATION WORKERS IN THE UNITED STATES, printed from the annals of the New York Academy of Sciences, Vol. 132."

MR. WELLER: Could we have the date of that article.

MR. STEPHENSON: Well, I don't have the date. It is in Volume 132.

I think we have it in our files,

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Your Honor.

THE COURT: We can determine that later.

MR. STEPHENSON: Your Honor, may I point out that all counsel has been given copies of all of these slides. So -- I didn't know whether the Court knew that.

December 31, 1965.

THE COURT: All right. The record will reflect that is the date.

MR. STEPHENSON: The left column shows the onset of exposure in years, but says nothing about the interim exposure, just from the first known exposure to the end of the observation period. Now, if that period is less than ten years, the percentage of abnormality is noted on the chest x-rays of these workers (10.4%).

MR. WELLER: Your Honor, may I make a further objection on that, that the chart alone does not show the

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experiments, the depth of the experiments and that the articles -- if the chart is to be admitted, the article accompanying it would give the best estimation of what the research was done, what research was done.

MR. STEPHENSON: Your Honor, they have been furnished copies of the articles and I am trying to summarize them which the Court directed me to do.

THE COURT: All right, Mr. Stephenson. The objection will be overruled.

MR. STEPHENSON: Speaking of 10 years, the percentage under abnormal there would be 10.4%, however, let us say if the onset of the exposure to the end of the observation was between 20 and 29 years, then almost 73% of the patients showed x-ray abnormalities. And those with more than 40 years since onset of exposure, 94.2% of them showed definable x-ray abnormalities, so then as one looks at the evidence, the time lapse between

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onset of exposure varies inversely to the percent of x-ray abnormality.

This next slide, No. 5, is meant to portray the lapsed period from the onset of exposure to death. In this column, we are simply looking at the period from the onset of exposure to death. These are all patients who have died.

Particular notice should be taken that in lung cancer we have a sort of frequency distribution curve here where it is highest from 20 years on up to 45 years as far as numbers were concerned. You see that pleural mesothelioma has a sort of similar distribution. The point of this slide is to show the time lapse that occurs with each one of these diseases between the onset, as far as history of exposure is concerned, and death by these various diseases. And under the asbestosis column, as a cause of death, it has to be throughout these diseases, such

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as fibrosis and the other things we talked about.

The Sixth slide is from the same article as the previous one, DEATHS AMONG 632 ASBESTOS INSULATION WORKERS OBSERVED PROSPECTIVELY. This study is from 1943 to 1967."

MR. WELLER: If the Court please, I am going to object to this because this is Plaintiff's interpretation of a written article and not the doctor's testimony, further, it is argument, further, it is a retrospective study and the statement that they started this study in 1943 is not correct because it was retrospective and it was begun in 1962, I believe, and attempts to relate the thing back to 1943. And, of course, it is hearsay, not original testimony. It is not a correct interpretation of the study which actually is reported in the article.

THE COURT: Objection overruled.

MR. STEPHENSON: "This study is

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from 1943 to 1967. In other words, they started this study in 1943, and then they are looking at those people as they go along. The purpose of this slide is to relate the number of observed deaths among those asbestos insulation workers and to relate that to the expected deaths as projected from mortality figures. Now, in the case of carcinoma of the lung, the expected number of deaths would be 8.9 versus 66, and therefore, the observed number of deaths from cancer of the lung among asbestos workers is probably at least six times as great as the number expected. And in pleura mesothelioma, you would expect no deaths in the general population as far as this number is concerned, and we have six deaths over here. So, that's a six-to-one ratio. Peroneal mesothelioma is even greater, a ratio of eight-to-zero, and so on.

In Slide No. 8, this is an

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electron micrograph of the asbestos fibers showing that really one can identify them quite accurately. They have a characteristic appearance. They are magnesium silicates. This slide came from a recent article in the Journal of the American Medical Association.

This 10th Slide is an asbestos body, a picture of an asbestos type of fiber with some organic material around it. This is what happens in the body. These fibers have various types of protein and organic substances and imparts a sort of brown discoloration of the body of the tissue. These are exceedingly difficult to recognize in the body and one has to use ingenius methods Knowing of the animal experimental work, I found out they stain these with fluorochrome before they expose the animal so they can identify them later, or they will heat the tissue and burn away some of the organic elements of the tissue, and then they leave behind

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the asbestos fiber, which survives the heat. This is one way they occur in the body. The other way is by the depositing of various organic material around the fiber and then it assumes this fairly characteristic appearance."

The next slide is "Slide No. 11 shows a section of lung which has been magnified up to about eight or nine hundred times. This is a pretty characteristic appearance of two of these things lying side by side. This is stained with hematoxylin.

This next, or 12th slide, is an example of the ash method, in which most of the tissue has been sort of decimated by heat, as heat can be applied cyclically, and it leaves these asbestos fibers in an indentifiable sort of form."

I have one more slide, Your Honor, if I could put it in out of order of testimony.

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I am skipping over on my outline here of summary deposition to page 21.

"We next showed Slide No. 13, showing a person mixing asbestos cement. Dr. Jenkins said that in his opinion, a person mixing cement in this nature over a period of perhaps two or three years would have a sufficient concentration of asbestos dust to give him asbestosis."

MR. WELLER: Your Honor, on behalf of Fibreboard and each of the other defendants, I object to the cement mixing slide for the reason it hasn't been shown as against either Fibreboard or any of the other defendants that the man worked with the cement manufactured by any of these defendants.

THE COURT: Objection overruled.

MR. STEPHENSON: Dr. Jenkins further testified that in his opinion there was adequate literature and scientific knowledge to put a manufacturer of asbestos products on notice of the

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danger in 1940 and subsequent years. He further testified that restrictions to inhaling and exhaling which had to be done under force can cause injury to the lung and that he presently occupies his position of professor of the Department of Medicine of Baylor Medical School.

On cross examination, Dr. Jenkins testified that a Dr. Ellman, 1934, published an article having to do with asbestosis among asbestos insulation workers. And again in 1947 Meriwether reported in London some 15% of the men dying of asbestosis being shown to have bronchogenic carcinoma and asbestos was used and an insulating way back there in the 1800's.

MR. WELLER: If the Court please, I object to the article on Meriwether because there was a study of asbestos textifle workers not in the asbestos insulation industry.

THE COURT: To be consistent, the

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Court will overrule the objection.

MR. STEPHENSON: This use of insulation was back in the 1800's and as you know, workers were involved in this and certainly the fact that asbestos workers, be they insulation or other type workers, admittedly the emphasis was probably more on textile, but I think it was not common, but certainly was medical knowledge that asbestos produced trouble.

Prior to Dr. Selikoff's articles Leroy Gardner at the Trudeau Foundation Laboratories did work on this problem. And in 1954 Gardner wrote an article having to do with chrysotile insulators in the American Review of Tuberculosis, Volume 45, Page 762, in 1942.

Dr. Jenkins further on cross examination was asked whether or not he recognized that inhalation of types of dust was harmful. Dr. Jenkins said, "Not in the same sense that asbestos dust is harmful." Dr. Jenkins further

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testified on redirect examination that asbestosis is contracted by insulation workers is exactly the same asbestosis contracted by any other type of worker. In using a reference of the, the book, the article, "THE OCCURRENCE OF PLEURAL CALCIFICATION AMONG ASBESTOS INSULATION WORKERS" there were references attached to the article as well as to an article on "THE DETECTION AND LOCALIZATION OF MINERAL FIBERS IN TISSUE". Dr. Jenkins said that in his opinion there would have been adequate notice just in those 44 articles referred to in those two works to place anyone on notice interested in finding out about the danger of asbestos insulating products to have reasonably placed such person wishing to make this inquiry upon notice that in truth this is and was a dangerous product. He said that reference was by in large or that these references by in large are very acceptable, commonly

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read medical journals and would have constituted notice to anyone wishing to inquire of the danger of asbestos inhalation. The doctor said that he felt --

MR. WELLER: Now, I want to object to the next statement because this is a comment by the doctor as to what was reasonable or not reasonable in relation to this product and it would, the comment would invade the province of the jury. And is not a medical opinion.

THE COURT: All right. If you agree, Mr. Stephenson, the Court will sustain that objection. Do you agree?

MR. STEPHENSON: No, sir, I do not, Your Honor, because the defendants in this case have alleged that there was not sufficient scientific and medical literature available to them to place them on notice of the danger of asbestos in respect to man. And I, therefore, asked Dr. Jenkins if they requested it as to whether or not there was and --

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MR. WELLER: If the Court please, he heretofore read that part of it, that there was sufficient medical literature. I submit that the question, I mean the state to which I object to the Court is this paragraph right here and it has nothing to do with answering that question.

THE COURT: Objection will be sustained.

MR. STEPHENSON: May I go to the next paragraph, Your Honor?

THE COURT: Yes, sir.

MR. STEPHENSON: There are roughly 600 human hairs that can be laid side by side in a linear inch, 2800 silicate fibers that can be laid side by side in a linear inch, and three hundred thousand Chrysotile fibers laid side by side in a linear inch. And I showed doctor the slides.

The last portion of Dr. Jenkins' deposition and cross examination I have summarized here in two pages.

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"Starting on Page 149 of his deposition (cross-examination by Mr. Weller), Dr. Jenkins first became interested in asbestosis in 1950 -- in the early 1950's, in relationship to the patient. At that time, he studied the literature that was available, in the interest of this patient who would die and whose death would be associated with very extensive fibrosis and an autopsy was done. He continued his studies on through the 1950's and into the 1960's, and found that patients came to see him with different types of exposure, mostly occupational. That he studied the length and degree of the exposure and the type of exposure these patients had.

The doctor was asked on cross-examination if he recognized that the inhalation of all types of dust was harmful. He stated again not in the sense that asbestos dust is harmful. He stated that he thought that proper

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ventilation, exhaust fans, wearing excess-exposure respirators, together with possible elimination of the dust itself so that it ceases to be the problem with which one has to contend.

The doctor says that the type of asbestosis contracted by insulation workers is the same asbestosis," as any other -- that was repeated testimony on direct examination.

Your Honor, I think most of this is repetitious of what was on direct so I defer reading the balance. And I only have reference, Your Honor, to two articles. I won't read from all of those that I introduced by Dr. Jenkins but with the Court's permission only from THE OCCURRENCE OF ASBESTOSIS AMONG INSULATION WORKERS IN THE UNITED STATES by I. J. Selikoff, Dr. Churg and Dr. Hammond and just portions of that, Your Honor.

MR. WELLER: Let me find it, just a moment.

THE COURT: You may proceed.

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MR. WELLER: Which number is it in your list?

MR. STEPHENSON: I think it is number 3. All of these have been furnished to the defendants, Your Honor, long ago.

I am just reading --

MR. TUCKER: Your Honor, we want to object to these articles on the ground that they are hearsay. They are not used for any proper purpose such as impeachment. They are attempting to introduce hearsay articles as primary testimony, and my understanding they can only be used for impeachment after someone testified they were authoritative articles, and his opinion probably was different from those expressed. These articles are trying to boster the testimony of the witness by hearsay testimony.

MR. WELLER: Your Honor, I have some objections to these two. We object to the reading of the excerpts from

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medical research papers written by Dr. Selikoff and associated for these reasons. The document is hearsay as to each and is not admissible under Rule 43 of the Federal Rules of Civil Procedure. Neither Dr. Selikoff nor any of the remaining joint authors have been tendered as a witness and therefore neither Dr. Selikoff or any other person has been subject to cross examination by either of the defendants. Thirdly, the medical research papers by Dr. Selikoff were only published beginning in 1964, and they are therefore irrelevant and immaterial insofar as any injury occurrence prior to said date. And such articles by third persons and such third persons have not been subject to cross examination.

Fourthly, medical articles or medical texts cannot be used to support the medical testimony of a medical witness who is tendered by the plaintiff.

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Fifthly, such articles written by Dr. Irving J. Selikoff if submitted to the jury would permit the jury to consider such persons as witnesses in this case whereas the deposition of neither doctor have been taken and neither have been subject to cross examination.

Much of the material is based upon the experiments and reports of others concerning conditions in asbestos factories, asbestos textile factories which are wholly different, not coupled to the facts in this case which relate to an asbestos insulator in the construction industry.

Such articles as a medical research article which shows publications in 1964 or later and it would be irrelevant, this one was published December 31, 1965, all subsequent to the notices, etc., and, therefore, it should not relate to any occurrences prior to the date of publication.

THE COURT: Mr. Weller, haven't

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you made that objection to the testimony of Dr. Jenkins?

MR. WELLER: I have made part of it, Your Honor, but not all of it and I have not made it to the introduction of the article itself.

THE COURT: It isn't necessary to repeat the objection that you heretofore made, and I think all of the objections made by counsel are of record. To be consistent of it, the Court has permitted Mr. Stephenson to offer the testimony of Dr. Jenkins whose testimony in part has been based on research and articles on asbestosis. Therefore, the Court admitted this testimony over the objections of counsel for the defendant because we felt that we should resort to a liberal ruling and in regard nor in addition to Dr. Jenkins' testimony based upon the articles of other doctors, Mr. Stephenson now has requested permission to offer the articles themselves. I do not understand why this would be necessary

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if Dr. Jenkins has already testified about the articles, Mr. Stephenson. And maybe all of the objections made by counsel for the defendant are good on a strict ruling, but under the Court's liberal ruling of permitting the doctor to testify from research that he has made, the Court feels that this is admissible testimony. But, now, to go and have you read from the articles which the doctor has made research, the basis of the doctor's research in is conclusion, I think maybe that is going too far and the Court will at this time sustain counsel's objection on admissibility of the excerpts from the article.

MR. STEPHENSON: Thank you, Your Honor.

THE COURT: If you wish to take it up with the Court later you may do so.

MR. STEPHENSON: Thank you, Your Honor. Your Honor, we have Mr. Bracey Borel as the next witness.

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THE COURT: You can come forward, please.

MR. WELLER: We would have cross examination of our summary of Dr. Jenkins' testimony.

THE COURT: That is correct, just a minute.

I presume, Mr. Weller, that you probably would want to wait until later to offer it, but if you wish to offer it now you may do so.

MR. WELLER: Your Honor, my co-counsel would like to offer it now.

THE COURT: All right. You may do so.

REPORTER'S NOTE: Whereupon, at this time Mr. Weller took the stand to give the summary of cross examination of Dr. Jenkins' testimony.

MR. WELLER: Your Honor, if you will bear with me I will try and eliminate some of the material that counsel has read, but this testimony

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was actually given in connection with the case of Potter and not in the case of Borel. But is technical testimony, could be used in connection with this case. This is a continuation of the deposition summary beginning with the cross examination by Mr. Mehaffy.

Dr. Jenkins admits that the general state of 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 manufacturer of the hazard.

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.

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Dr. Jenkins testified 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.

And continued cross examination by myself. Dr. Jenkins first became interested in the disease of asbestosis in the early 1950's. He did not make any extensive studies or research in connection with the treatment of a patient at that time who had extensive fibrosis but only consulted and reviewed literature. Dr. Jenkins did not make any study to the effective use of a respirator. He recognizes that the disease of asbestosis is related to the extent of the degree of exposure.

He admits the threshold limit value for dust exposure as recommended at five million parts per cubic foot of air, 1946 Survey of Pipe Covering

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Operations. That the figure was commonly used as one within safe limits of exposure. He acknowledged the statement made by the Association of Governmental Hygienists in 1961. He cannot give the name of any publications that would dispute the threshold limit as a safe limit for asbestos dust of five million parts per cubic foot of air before 1968.

He admits the similarities of the diseases of asbestosis and penumoconioses and admits similarities between other penumoconioses and asbestosis. He admits that he has relied in a great part upon Dr. Selikoff's work in forming his conclusion regarding this subject. He admits that the working conditions in a textile mill are different from the conditions under which construction workers work.

Dr. Jenkins recognizes the fact that Dahl and Knox have conducted in the United Kingdom some epidemiologic

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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 incidence of gastrintestinal cancer."

Dr. Jenkins admits that all of Dr. Selikoff's research was not based upon personal examination regarding the health of the asbestos worker, but he had to take some of the information from deaths certificates or whatever material was available.

Dr. Jenkins admits that the cause of a particular mesothelioma in any individual would be difficult.

He admits that there is a causal relationship between cigarette smoking and cancer. That if an asbestos worker

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smokes one and a half or two packs of cigarettes a day over some 40 to 45 years, and subsequently develops cancer it would be difficult, just an educated guess as to the cause, whether it was cigarette smoking or exposure to asbestos dust.

He testifies that the crocidolite or blue asbestos fiber is the agent being associated more with mesothelioma and is open to some question.

He testifies that the leading cause of chronic bronchitis is cigarette smoking and cigarette smoking also causes emphysema. He recognizes Dr. W. Clark Cooper as a recognized researcher in this field. He accepts as valid the statement of Drs. Balzer and Cooper that that manufacturers who sells insulation products to be applied by experienced contractors in this field and experienced insulation workers that they could not reasonably expect at that time, as late as that time

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1961 to 1966 that these workers would be exposed to injurious exposures to dust as a result of their work.

On page 178 he reaffirms the validity of this statement by adding, "if that's what their reference states, then I will have to go according to that."

When questioned about the accepted safe rate of five million particles per cubic inch of air and the research in that connection, Dr. Jenkins testified, "As I said, if a manufacturer who is not a knowledgeable person in the field is looking --

MR. STEPHENSON: We object here, Your Honor, this is not appropriate under the law which holds a manufacturer and seller to the degree of knowledge of an expert in the field and not -- this question does not apply to one with such knowledge as expert in the field would contain or have.

THE COURT: Objection overruled.

MR. WELLER: Dr. Jenkins testified

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 manufacturers point of view.

He recognizes the use of respirators, adequate ventilation, purification of air, exhaust fans and good housekeeping practices as methods of reducing the particular count in the air. That such good practices when followed would diminish the risk to an asbestos worker.

He recognizes that the inhalation of many types of dust including cotton, silicate and kaolite 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. Dr. Jenkins admits, this is referring to Potter, but offered solely and alone -- is from the technical standpoint, not having anything to do with Mr. Potter.

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Admits that Potter's early stage in the shipyard to excessive dust is a substantial factor in his present condition. Worked out in the open with light exposure to dust would produce less difficulties.

He admits that the condition of Potter, the condition Potter had or as long as ten years prior to the time of the deposition and probably long before that.

He also was given a history of smoking approximately two packs per day, and the complaints were shortness of breath and pain and expectoration of sputum since 1959.

MR. STEPHENSON: Your Honor, I would like for it to be made clear Mr. Weller didn't read the first part of that. This is Potter that he is talking about not Mr. Borel.

MR. WELLER: I have said that. This is scientifically relating to another patient and his name is Potter,

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that he worked in the shipyards, ect., but he's complaining of a similar condition, we'll say of asbestosis. And referring to the fact that he was smoking and also the fact that he did not always wear a respirator.

Now, the question was asked, "Assuming he worked in the shipyards for two years and confined in close places, exposed to heavy amounts of dust containing asbestos, could his whole trouble have started and developed from that period of exposure and just now coming to light or came to light some fifteen or twenty years later. Undoubtedly such an exposure would have had something to do with it. I am not certain in time reference as to whether this was his first exposure or not. I am assuming that his first exposure was in the shipyard." And it is stated in the early '40's.

"The Witness: 1940. Okay. I think I would say that was the reason.

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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?"

The answer, "Well, I am not sure that's entirely correct, because 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."

The question, "Based on the history of what he told you that occurred in 1957, he had all of these symptoms. Now, assuming he had those symptoms which he related to you and that he didn't work with asbestos any more 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 exposure from and after that time, it really

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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 with any certainty."

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's reached today?"

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

Dr. Jenkins -- I am going to skip a little to page 206. Dr. Jenkins admits that the available knowledge or information as it affected asbestos

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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.

Dr. Jenkins admits testimony given by him earlier in a compensation case in answer to Interrogatory 29 in which he answered, "The diagnosis at the end 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 --" and so forth. "-- which was picked up in the pulmonary function study; namely that of an obstructive chronic pulmonary disease. The component of which was probably a chronic bronchitis, and the chronic bronchitis, was, I felt, in all probability related more to his heavy smoking than to perhaps any other single cause." He admits that that statement is true today.

And Mr. Stephenson asked these

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questions pertaining to certain articles which objection --

MR. STEPHENSON: Could it be made clear to this point where he stopped and has been talking about Mr. Potter and not Mr. Borel.

MR. WELLER: That's right. This doctor did not see Mr. Borel.

THE COURT: All right.

MR. WELLER: Page 222. Dr. Jenkins admits that exposure to asbestos products over a period of several weeks in 1960 only would probably be a small infinitesimal portion of Potter's problem. This is pertaining to Potter but related to any exposure after 1960. If such were limited exposures, were light exposures or mild exposures then Dr. Jenkins feels that such exposure would not play any significant part in his present condition.

And we had some subsequent interrogatories. I don't have a copy of them here I don't believe.

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THE COURT: Do you wish to offer those later?

MR. WELLER: Yes, sir, I could offer those later if I might.

THE COURT: All right. Mr. Borel, if you will come forward.

BRACEY BOREL,

having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Please state your name?

A Bracey David Borel.

Q Mr. Borel, are you the son of Clarence and Thelma Borel?

A True.

Q How old are you, please?

A Thirty two.

Q All right. I believe I inadvertently told the jury on opening statement that Mr. and Mrs. Borel had three children but they had six.

A Right.

Q And you are one of the six children?

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A Right.

Q I would like for you to tell us, please, something about your father and give the jury some insight as to what type of person he was. Were you in close contact with your father from infancy on up until the time of his death?

A Right.

Q Did you work with him from time to time on various jobs?

A Right.

Q Was your father a man that smoked cigarettes?

A Well, I heard he did smoke, but up since I've known him he never had. I've never seen him smoke.

Q All right. Did your father use any type of intoxicating liquor or beverage?

A Never.

Q Was he affiliated in any form with church activities?

A Right. He was when he died a Sunday School Superintendent in the Groves Assembly of God Church on Main Avenue, and he was also an Ordained Minister of the Assembly of God for quite a few years.

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Q All right. From what you say, I assume he took an active party in the church affairs?

A Right.

Q Was he a steady worker, attended his job regularly?

A Always unless he was sick and that was rare.

Q Did he provide well for you and your mother and brothers --

A Good as he could, six kids and all, he worked everyday, plus, now, any overtime he made he always give the double time share of it to the church. We never saw any of that.

Q All right. Mr. Borel, were you with your father at his home from time to time after he became ill with asbestosis?

A Right. Well, every weekend available we could get down there we was there and he was at the house every time he come to the doctor, about every two weeks in Pasadena.

Q And that was in Houston?

A Right. I live in Pasadena.

Q All right. And then I assume he stayed with you when he went over to Houston to see the doctor?

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A Right.

Q And in 1969 and I believe he died in 1970, in Mid County at his home there?

A Right.

Q From 1969 when he could no longer work until the time of his death, did you observe whether or not he suffered any pain and discomfort?

A Yes, a whole lot. Well, when he came to the house, you know, to go in for a visit to the doctor, he would always stay a couple of days and I was kind of always glad to see him leave because we never -- couldn't even sleep all night long, you know. I mean -- the further it got the worse it got, I mean, you know, the closer to death he got, the worse it got, always worried me. I heard him pray to die, many times all night long.

Q Well, would your mother accompany him on these trips?

A Oh, yes, she was always with him.

Q When -- do you think your father ever realized until he was told he had asbestosis that asbestos would give any type of injurious

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lung disorder?

MR. WELLER: If the Court please, that calls for a comment and opinion of the mental workings of the deceased and would invade the province of the jury.

MR. STEPHENSON: Your Honor, I intend to tie this in with specific examples of matters --

THE COURT: You would have to rephrase the question. Objection sustained.

BY MR. STEPHENSON:

Q Let me word it this way, Mr. Borel, did your father ever bring any asbestos insulating material home?

A Right, sure did.

Q And would you please tell the jury what you have seen him do with pieces of asbestos at home as well as for your school.

A Well, other than work with them, he -- one time at Christmas, I was just a kid, probably ten years old, we had bought some of this spray to spray on a Christmas tree and make snow and we

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run out of it after a little bit, you know, didn't have a whole lot of stuff in the can, so he said, "Well, I got some stuff that will make prettier snow than that." So we said, "Okay." The next day he brought in a piece of block just like what they got here and he went out on the porch and beat it all up and put it in a bag, come in and put this stuff on the tree. And it looked beautiful. I mean just like white snow, more like snow than snow did I thought. And so my little sister said, "Well, we could use that at school." So she asked the teacher about it and he told --

MR. TUCKER: If Your Honor please, we are going to object to these hearsay statements and statements of other people as to what someone else said on occasions.

THE COURT: The objection will be sustained for the hearsay statement.

All right.

MR. STEPHENSON: Don't refer to what your sister said.

THE WITNESS: Okay. My sister carried some in a bag to school and

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they decorated the school tree with it.

BY MR. STEPHENSON:

Q All right. That's all right. The Court has sustained the objection to that, Mr. Borel. We won't inquire further about it.

Tell us, please, if you remember the places that you worked with your father during his work life?

A Well, I worked with him a number of places. I mean, and I am not up on the dates. I can't even remember when I got married really. But it would take me all afternoon to name the jobs that we worked partners on, I mean side by side.

Q Okay.

A And I could name them all the way from start to finish. I mean, we started at Gulf Refinery. That's when I quit school. He told me that I had to work or go back to school so he got me on a job with B & B Engineering and from there we went to Pure Oil --

Q Well, if you will as you go along tell us the material and products that you and your father used on these various jobs.

A Well, the way I look at a material, well --

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I always call a Kaylo a Kaylo job, I mean everything white was Kaylo and if it was black it was foam glass and I don't recall, I mean, this was a hot job, it was a lot of asbestos, Kaylo, all different types. I mean it was B & B, so it would be Philip Carey I imagine.

Q Why do the --

MR. WELLER: I object to that unless he knows, imagination is not testimony.

THE COURT: Objection overruled.

MR. WELLER: Not our exception.

BY MR. STEPHENSON:

Q Why do you believe that Philip Carey would, that B & B would have used Philip Carey, Mr. Borel?

A Well, I am not sure about it. I think they are distributors for B & B. I am not even sure about that though. Really whenever people don't understand --

MR. WELLER: If the Court please, I now --

THE COURT: All right, the objection will be sustained.

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MR. WELLER: I move to strike that and ask the jury be instructed not to consider it.

THE COURT: Don't give any consideration to the answer made by the witness.

BY MR. STEPHENSON:

Q Mr. Borel, what is the next job you remember working on with your father?

A Well, he run a few jobs, he had little jobs with Pure Oil. I was a helper during this time. I can't even recall who had the job, I mean, what company had it. And I worked at the Texas Company with him on jobs, Magnolia, I've worked on gillions of them.

Q Well, what products did he use at Texas Company?

MR. WELLER: If the Court please, the witness is not being responsive to the question and he said he doesn't know. I think that is substantial.

THE COURT: I think the witness is doing the best he can. I may not strictly be in response or a responsive answer but the Court is of the opinion

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he is doing the best he can.

Objection will be overruled.

BY MR. STEPHENSON:

Q What materials did you and your father use at Texaco?

A Well, it was on a turbin and a turbin is hot, I mean it was asbestos type material, who made it, you got me.

Q All right. What other job did you work on with your father?

A Well, I worked on jobs in Denver, Colorado with him for Western Asbestos.

Q And do you recall what products you used there?

A No, I don't.

Q All right. Can you remember any other jobs?

A Well, I worked on the last job he ever worked on at Humble Refinery in Baytown and that was a hot job and I thought a lot about what kind of material was used but it was a hot -- it was an asbestos type material, and I like I say, I call it Kaylo and that is what the job consisted of.

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Q All right, but as I understand in fairness that you do not mean to say that the material was actually Kaylo material, just the name that you --

A That's the way I explained --

MR. WELLER: Your Honor, I move that the testimony not be considered that it was Kaylo or any other product.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q Mr. Borel, is there any place that you can recall specifically where you worked with your father that you can tell the jury what asbestos products you used?

A Well, no, not really, not being fair I couldn't.

Q All right. Thank you, Mr. Borel.

MR. STEPHENSON: That is all we have on direct.

THE COURT: Just a minute.

CROSS EXAMINATION

BY MR. TUCKER:

Q You say, let's see, I believe you are thirty two?

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A Right.

Q You quit -- about what grade were you in when you quit school to go to work?

A The middle of the 10th grade.

Q And you worked, started out working with your father on these jobs?

A Right.

Q Were these jobs dusty?

A Yes, sir.

Q Did you make any complaint about the dust?

A No, because I would have had to go back to school.

Q Did your father ever complain about the dust?

A He wasn't a complainer of any kind, he never complained about anything.

Q My question was, did he ever complain about the dust?

A Sure didn't.

Q Did he ever wear a respirator?

A I never seen him wear a respirator, the only respirator I -- Well, no.

Q Were respirators available on any of these jobs?

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A I would say they were.

Q The dust is at least -- you never complained, you say your father never complained about it at all?

A Well, just one of them things, I mean, the dust was there, I mean, so you complained it was still there the next day. You just --

Q Did you ever ask for a respirator or blowers or anything?

A Right, sure have.

Q Did your father ask for respirators or --

A I don't recall that he did.

Q Well, who did you ask to supply you with that equipment?

A Well, really you don't really have to ask. They will mostly have respirators laying around the gang box. You just go pick one up and put it on and wear it.

Q And what are the purposes of respirators?

A Well, I think to choke you to death, they say to keep out the dust.

Q And why did they want to keep out dust?

A Well, I guess to -- why they want to keep out dust -- I guess to keep you healthy.

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Q To keep you healthy. That's all.

THE COURT: Anything further?

MR. STEPHENSON: No further questions, Your Honor.

THE COURT: All right. Mr. Borel you may step down.

MR. STEPHENSON: Your Honor, right at this point I would like to introduce Interrogatory No. 30 to Philip Carey Corporation. It is rather short.

THE COURT: All right.

MR. STEPHENSON: Question: "Is it true -- It is true, is it not, that most of the products manufactured by your company containing asbestos will in most instances have to be cut, sawed, scribed, shaped or mixed by the ultimate user and his employees?"

Answer: "The statement is untrue. In 1959, we licensed B & B Engineering & Supply Company, Inc., Houston, Texas, to manufacture and use, transfer or sell 'Careytemp' insulation elements molded to fit valves, tube turns, tees,

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unions, flanges and other fittings of boilers, breachings, piping and the like requiring insulation."

The point I wanted to show there was the relationship between B & B and Carey.

(PAUSE)

THE COURT: We will go about fifteen of twenty minutes longer.

MR. STEPHENSON: All right. I was trying to find something short, Your Honor. If I may have just a moment.

(PAUSE)

Your Honor, I will read some interrogatories and I can stop at any time that the Court wishes me to.

THE COURT: All right.

MR. STEPHENSON: These are additional interrogatories that I submitted to each of the defendant corporations containing what I read yesterday.

INTERROGATORY NO. 3: "What studies have you made to determine the effect of your products on the lungs and physical

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condition of persons employed as insulators and asbestos workers who use your products?"

Fibreboard says: "No studies have been made directly by this defendant."

There are other statements in there, Your Honor, but this is all I care to read.

MR. WELLER: If the Court please, I would like to read the rest of it. I haven't been able to find my answer to them, but the full answers should be read.

THE COURT: All right. We will give the defendants an opportunity to read any part of the admissions, they are admitted as you offer them and --

MR. WELLER: That is No. 32, Mr. Stephenson?

MR. STEPHENSON: No. 3.

MR. WELLER: Do we have the original here?

MR. STEPHENSON: Yes.

THE COURT: You may continue and we

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will permit counsel to read it when he can find it.

MR. STEPHENSON: The answer of the defendant, Johns-Manville, 'defendant understands the word use in the context of this interrogatory to mean the handling and/or applying and/or installing of its industrial insulation products which contain asbestos by an 'Asbestos Worker' such as Plaintiff alleges he was.

Defendant is currently participating in and supporting an insulation Industry Hygiene Research Program being conducted by Mt. Sinai Environmental Sciences Laboratory, Mt. Sinai Hospital New York, New York. This is a combined industrial hygiene and preventative engineering research program designed to develop improved methods to minimize exposure of insulation workers to dust, etc., encountered on their jobs. This program was instituted on May 14, 1968.

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Additionally, an epidemiological study of the biological effects of asbestos dust among the Port of Genoa and LaSpezia Arsenal insulation workers, among others, is being conducted by the Clinica del Lavoro, Milano, Italy, under the sponsorship of the Institute of Occupational and Environmental Health, which Institute in turn is funded by the Quebec Asbestos Mining Association. An affiliate corporation of Defendant is the principal contributor to the funding of the Quebec Asbestos Mining Association. This study was initiated early in 1968, and is scheduled --"

I might read the question because I think sometimes we forget the question.

Question: "What studies have been made to determine the effect of your products on the lungs and physical condition of persons employed as insulators and asbestos workers who use your products?"

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Ruberoid Company's answer was: "Ruberoid Company, itself, has made no such studies."

Combustion Engineering says: "Defendant has not made the studies referred to."

Philip Carey said: "We have made no studies to determine the effect of our products on the lungs, the physical condition of persons employed as insulators and asbestos workers by independent contractors or owners who use our products."

Armstrong says: "This defendant has no facilities or equipment designed for medical research there for conducting those studies of a scientific nature."

Pittsburgh says that: "No studies to determine the effect of the above-named product on the lungs and physcial condition of persons employed as insulators and asbestos workers who use the materials manufactured by it."

MR. DUNCAN: Excuse me, sir, are you reading from sets of interrogatories?

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MR. STEPHENONS: All right. That is the first set.

MR. DUNCAN: Are you going to introduce the second set?

MR. STEPHENSON: I may.

THE COURT: All right. You may proceed.

MR. STEPHENSON: All right. Thank you, Your Honor.

MR. DUNCAN: Just so the record is clear, Your Honor, I understand him reading from the second set. My answer that Pittsburgh Corning's answer to the second set are entirely different from what he read.

THE COURT: I am not sure that I understand what you have reference to, Mr. Duncan.

MR. DUNCAN: Well, never mind, Your Honor. We will just let it go for now.

MR. WELLER: Your Honor, I found the answer that I wanted to complete the interrogatories with answers. He gave

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only partial --

THE COURT: I think we will wait until he finishes all of the admission and then you may.

MR. STEPHENSON: I have finished those for that particular question, Your Honor.

THE COURT: All right. Then you may make --

MR. WELLER: May I read it from here, Your Honor?

THE COURT: Yes.

MR. WELLER: The answer was: "No studies have been made directly by this defendant. Studies have been made by scientists engaged by the United States Government and others.

Supplementing the answer to Interrogatory No. 3, the question is unlimited and non-specific as to time, and this answer is likewise not limited as to time.

The studies referred to were:

(1) Threshold Limit Values for

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1961 - adopted at the 23rd Annual Meeting of the American Conference of Governmental Industrial Hygienists, Detroit, Michigan, April 9-12, 1961.

(2) Threshold Limit Values for Air-borne Contaminants for 1968-Recommended and Intended Values - adopted at the 30th Annual Meeting of the American Conference of Governmental Industrial Hygienists, St. Louis, Missouri, May 13, 1968.

(3) A Health Survey of Pipe Covering Operations in Constructing Naval Vessels by Walter E. Fleischer, Frederick J. Viles, Jr., Robert L. Gade and Philip Drinker, published in The Journal of Industrial Hygiene & Toxicology, Vol. 28, #1; 9-16 and the reference was given.

(4) Documentation of Threshold Limit Values 1966.

(5) Asbestos Exposure During Naval

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Vessel Overhaul, by W. T. Marr. American Industrial Hyg. Assn. Journal, Vol. 25, 1964.

(6) Evaluation and Control of Asbestos Exposures In the Insulating Trade by W. Clark Cooper, M. D. and J. LeRoy Balzer, M. S. - prepared for presentation at the Second International Conference on the Biological Effects of Asbestos, Dresden, Germany; April 22, 1968.

This defendant knew of the disease or condition of asbestosis which occurred in mining and in plants which manufactured products containing some asbestos. In its manufacturing facilities it provided for dust control and dust collecting systems to provide safe working conditions for its employees engaged in manufacturing. This defendant's present plant has reasonable and proper dust controls which has eliminated dust as much as is reasonably possible, and the threshold limit values in the plant

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were well within the recommended Threshold Limit Values for dust from products containing some asbestos.

Defendant was not engaged in the application of its pipe insulation or products in construction, but such products were used by independent contractors and owners, and the working conditions were the legal responsibility of the contractors and owners as this defendant had no control or right to control such premises or the working conditions.

Defendant through its employees had general knowledge of recommended Threshold Limit Values, and knew of now problem as far as contractors or construction workers working with its products which contain approximately 12 to 15% asbestos fibers. All research up to 1963-1964-1965 or later had shown that the Threshold Limit Values of dust to which asbestos workers in the construction industry were

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ordinarily and usually subjected were below the recommended limit value of 5 million parts per cubic foot of air. Some of the material referred to has been developed as a result of research and studies made since 1963-1964.

At the suggestion of an industry wide committee, beginning in 1966, containers of our products have had the following warning labels on them - "This product contains asbestos fibers. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirator approved by U. S. Bureau of Mines."

We were of the opinion that contractors engaged in the insulation business, and insulation workers, were well aware of the problem created by inhalation of dust, and that respirators or masks had been in use by asbestos workers for a number of years, but notice was placed on our product --

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MR. STEPHENSON: Your Honor, may I object here. I didn't realize it was so long. I just asked one simple question and none of this answers my question, and I object to it being jury argument.

THE COURT: I think it would probably be proper for you to offer this at such time as you make your principal case. If it is material --

MR. WELLER: Well, I was just offering the answer. He was offering a part of it and I thought I was entitled to complete it. That is sufficient for my purpose.

THE COURT: Well, it is obvious that the answer is pretty loaded.

(PAUSE)

THE COURT: All right.

MR. STEPHENSON: My next question is No. 8. This is directed, of course, to all the defendants through their attorneys.

INTERROGATORY NO. 8: "Has your

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company done any studies or has your company conducted any studies concerning the effects of inhalation of asbestos dust or fibers by one using or being exposed to any of the asbestos materials manufactured by your company? In answer to this question, please give the date and nature of your studies, if any, the name or names of the persons conducting the studies and their address, what the purpose of the studies were, and attach a copy of any report based upon such studies, showing to whom such report was given and when."

To which Ruberoid Company answered: "Ruberoid Company, itself, has made no such studies. However, this Company is familiar with the studies made by other agencies."

Combustion Engineering's answer was: "No studies have been made directly by this defendant."

MR. PIPKIN: If the Court please, I would like to make an objection to

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that question and answer here because of the first objection that I made in the opening of the trial here, I like to reasserting it without repeating it but I don't think --

THE COURT: The objection is noted, Mr. Pipkin, and this objection will also be overruled.

MR. STEPHENSON: Philip Carey's answer to this interrogatory was: "No."

Armstrong's answer was: "Our company has not done or conducted any such studies."

John-Manville's answer: "Defendant understands this interrogatory to relate to persons working with and/or installing and/or applying industrial insulation products after they leave defendant's place of manufacture. Accordingly, defendant answers that it was participating directly or indirectly in the studies described in defendant's response to interrogatory No. 3."

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And Pittsburgh answered: "This Defendant would answer Interrogatory Number 8 exactly as it has answered Interrogatory Number 3."

And Fibreboard Products Company or Pabco said: "No studies have been made directly by this defendant. Studies have been made by scientists engaged by the United States Government and others. See answer to Interrogatory No. 3." But I will not re-read that.

The next Interrogatory No. 9. Question: "Have you or your employees conducted studies designed to minimize or eliminate the inhalation of asbestos dust and fibers by those exposed to the use of your company's products? If so, give the name or names of such persons conducting such studies, attach copies of such studies, by whom they were made, and to whom they were given, and when, and state what action, if any, was taken based upon such studies in an effort to minimize or eliminate the

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effects of inhalation of asbestos dust or fibers upon those using or being exposed to the dust and fibers contained in such products as manufactured by your company."

To which Ruberoid Company answered: "No, but see the Answers to Interrogatories No. 3 and No. 8."

Combustion Enginerring answered: "No."

Philip Carey answered: "No."

Armstrong: "Our company and employees have not conducted such studies."

Pittsburgh said: "Defendant understands this interrogatory to relate to person working with and/or installing and/or applying industrial insulation products after they leave Defendant's manufacturing plant. Defendant answers that it is participating, directly or indirectly, in the studies described in Answer to Interrogatory Number 3."

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To which Fibreboard answered, "No."

And I will omit reading Johns-Manville, Your Honor. It is quite -- it is quite a lengthy answer to that question.

MR. TUCKER: Your Honor, we would want to offer Johns-Manville's answer. He asked what studies we made and --

THE COURT: Is it also loaded?

MR. TUCKER: No, sir, it is a factual statement as to what studies we made.

THE COURT: We will permit you to offer it at a later time.

MR. STEPHENSON: The next question was No. 15. "What technique, if any, does your company use to make dust samplings, explaining the technique and when it was commenced and what the purpose was and what action has been taken in response to the findings as to the dust samples."

Ruberoid Company says: "This Defendant has no right to enter upon any premises where its materials are being installed in the field; hence,

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it can make no dust samplings where such products are being installed."

Combustion Engineering says: The answer to No. 10, Defendant does not make dust samplings in the field."

MR. PIPKIN: Same objection, Your Honor.

THE COURT: Note your objection.

MR. STEPHENSON: Philip Carey's answer to No. 15 was: "Since the 1930's, dust samplings at our Lockland, Ohio plant have been taken by the Division of Safety and Hygiene, Industrial Commission of Ohio. The division employs either an electrostatic precipitator owned by it or a "midgit impinger" produced by Mine Safety Appliances Company. We believe that these devices charge dust particles either negatively or positively and impinge them on a plate oppositely charged. The samples thus collected are applied against screens in order to measure the size and number

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of dust particles and determine if the area sampled is within the safe standards prescribed by the Division. Dust collectors are in constant operation to maintain safe levels. An authority of the Commonwealth of Pennsylvania followed similar procedures at our Plymouth Meeting, Pennsylvania insulation plant prior to its close in 1962. At the present time, we are participating with a number of other companies in a program conducted by the U. S. Department of Public Health to determine safe dust limits in areas in which products composed in part of asbestos, talc, mica or stone dust are produced."

Armstrong's answers was: "This Defendant is familiar with at least three such techniques, the electrostatic precipitator, the midgit impinger and personnel monitor. However, we have no experience of the use of any of them to make samplings of dust conditions prevailing at the sites where

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materials manufactured by our corporation are being installed except in one instance in which the use of personnel monitors produced dust samples, the analysis of which was not productive of reliable results.

Pittsburgh Corning says none.

Johns-Manville has a fairly long answer, also which I will not read but let Mr. Tucker read later, Your Honor.

MR. TUCKER: We would like to offer that as an entirely factual answer, Your Honor, in my direct response.

THE COURT: All right, we will permit you to offer it later.

I believe we will recess here.

Ladies and Gentlemen of the Jury, please remember the instructions that you are not to discuss this case with each other, not to permit anyone who is not a member of your jury to talk to you about the case. We will now recess until 9:30 o'clock tomorrow morning.

Please be in your places at 9:30.

REPORTER'S NOTE: Whereupon, at this time

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Court was recessed for the day.

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