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
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ON: September 22, 1971.

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JERRY T. BLOXOM
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
BEAUMONT, TEXAS
EASTERN DISTRICT OF TEXAS

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September 22, 1971

Wednesday Morning, 9:30 a.m.

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

MR. STEPHENSON: Your Honor, if the Court please, I would like to put on Mr. Potter and stop reading the interrogatories and answers at this time and go forward with him and pick up later with the interrogatories and answers.

THE COURT: All right.

MR. PIPKIN: Your Honor, we have a representative, I have a witness that come in from afar and I want him as a representative of the defendant in court. He is here.

THE COURT: Does he represent your client?

MR. PIPKIN: Yes, sir, representing my company.

THE COURT: Your company? All right, he will be excused from the

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rule so we can swear him in later, he may remain in the courtroom. You may proceed.

MR. DUNCAN: Your Honor, I also have a representative of our company here who may or may not be a witness at a later time.

THE COURT: The same ruling will to all of the defendants. All right, you may proceed.

SAMUEL R. POTTER,

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

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q State your full name, please.

A Samuel Raymond Potter.

Q What age are you, Mr. Potter?

A 59.

Q Where do you live, please?

A 816 Moss Street, Orange, Texas.

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Q Have you had an occasion to work as an asbestos insulator during your lifetime?

A Yes, sir.

Q When did you first start in the trade?

A In 1940.

Q All right, and have you followed that trade, that is your occupation since then?

A Yes, sir.

Q Then when did you last work at this trade?

A May 3rd, about five years ago, I believe it was.

Q All right, during your work life did you have an occasion to work with Mr. Clarence Borel?

A Yes, sir.

Q Would you please explain for the Court and the jury where you worked with him?

A The first time I worked with him was '43 and '44, at the Orange shipyard, in Orange during the second World War.

Q All right, sir, what products containing asbestos did you use there?

A Well, we used Johns-Manville that I remember and we used the asbestos ropes and the asbestos cloth and eighty-five percent magnesia, I think

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calsilite or something like that.

Q Were all of those Johns-Manville products?

A Yes.

Q All right sir, do you recall any other place that you worked with Mr. Borel using asbestos products?

A I am pretty sure I worked with him at du Pont over in Beaumont, the year that President Kennedy was assassinated.

Q And what products did you use there?

A We were using that lypit-- (phonetic) something like that, amosite asbestos fiber. Following that -- we also used kaylo, that is -- I believe that is eighty-five percent magnesia, I am not quite sure.

Q Who makes lypit (phonetic) that you used?

A They used that, I think, I believe they used it too, Armstrong.

Q Armstrong Company?

A Yes.

Q All right, sir. Are there any other jobs that you can recall having worked with Mr. Borel?

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A I worked on other jobs but I don't recall exactly where or when, I am not sure.

Q All right, sir, did you work on the Jefferson Chemical job with him?

MR. WELLER: If the Court please, I object to this as leading and suggestive to the witness, he states he didn't remember where he worked and then he is trying --

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q You said you worked at Jefferson Chemical with him?

A Yes, sir.

Q And about how long did that job, where you and he were together, last, I should say?

A I don't know, I was on that job a couple of times and I just don't remember the dates.

Q What products containing asbestos did you use on that job?

A I believe Johns-Manville, some of it I know was Johns-Manville.

Q All right, Mr. Potter, do you have the disease known as asbestosis?

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A Yes, sir.

Q Did you have to get up out of your sick bed to come over here to testify?

A Yes, sir.

Q For the benefit of the jury, so that they might understand how this disease affects a person that has it, will you please describe for us what this disease has done to you, how it affects you physically? Now wait a minute before you answer.

MR. WELLER: I object to this as being irrelevant and immaterial in the trial of this case because the visible conditions as it affects this witness.

THE COURT: Can it affect people differently?

MR. WELLER: Your Honor, it can, and it would depend on the medical testimony and this man is not a physician and he would be relying on hearsay testimony from --

THE COURT: Objection overruled.

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I think it would have some materiality and would go to the weight rather than the admissibility.

MR. STEPHENSON: Thank you, Your Honor.

BY MR. STEPHENSON:

Q You may answer the question, Mr. Potter. How does it affect you?

A Well, hard breathing, hard for me to breathe, and pains through my chest and I spit blood at times, I cough up blood and I have an awful hard time breathing at night, I have to have a bunch of pillows, I can't walk very far at times, I get tired, I am tired all of the time and it is painful, it starts right here and most of my pain seems to be in the left lung and up in through here.

Q Are you on any kind of medication to relieve this pain?

A Yes, sir, I am on a medication, it relieves the pain. I have to have pain medication all the time.

Q What is this?

A It is Adoliphine (phonetic), it is a needle,

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you shoot it with a needle. It's narcotic, you have to have a narcotic prescription for it.

Q I believe you have been treated by Dr. Dan Jenkins, of the Baylor Methodist complex in Houston?

A Yes.

MR. STEPHENSON: Your Honor, I won't go into any more detail with him.

THE COURT: All right. Do any of the defendants wish to interrogate the witness at this time?

MR. WELLER: Just a second, Your Honor.

CROSS EXAMINATION

BY MR. WELLER:

Q Mr. Potter, you now have a lawsuit pending which Mr. Stephenson represents you, do you not?

A Yes, sir.

Q And did you see Dr. Jenkins and consult with Dr. Jenkins and give him a history, didn't you?

A Yes, sir.

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Q And during your lifetime, beginning at age fourteen, you smoked something like two to two and a half packs of cigarettes a day until about five years ago?

A No, sir, I said when I quit I was smoking about two packs a day.

Q About two packs a day?

A Yes, sir.

Q And you did begin smoking at what age?

A I started when I was real young.

Q All right, and have you continued to smoke?

A No, I don't smoke, I quit smoking a while back, a few months ago.

Q How long ago did you stop?

A June 12th.

Q All right, you started having your trouble in 1961, didn't you?

A Somewhere about there, yes, sir.

Q All right, did the doctor tell you that you had chronic bronchitis that was caused by your heavy smoking?

A No, sir.

Q Did you ask him about that?

A No, sir.

Q He has testified in your case, hasn't he?

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A I don't know.

Q You don't know?

A No.

MR. WELLER: I believe that is all from this witness.

THE COURT: Mr. Tucker.

CROSS EXAMINATION

BY MR. TUCKER:

Q Mr. Potter, I believe you said your trouble started about 1961. How long did you continue working after it started?

A Let's see, after I quit working, May 3rd, I believe it was, five years ago.

Q Now on any of these jobs that you worked on were respirators or masks available?

A Later, the last two or three years they had respirators.

Q D id you use them?

A Not too much, sometimes it didn't work very good.

Q You mentioned working on the Jefferson Chemical and the du Pont job, do any of these companies for whom you were working recommend

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or suggest to you the use of a respirator?

A Yes, sir, they had respirators on the job but they didn't do the work, they stopped up.

Q My question was, when you were working on these jobs, Jefferson Chemical or du Pont, or any of these jobs, did the companies recommend the use of a respirator?

A They had them on the job.

Q And did anyone recommend that you use them?

A Not as I remember.

Q What was the purpose of a respirator?

A To keep dust out of your lungs.

Q You knew --

A Fibers.

Q What's that?

A Fibers out of your lungs.

Q The purpose of these respirators you knew then was in order to keep the dust fibers from getting into your lungs?

A Yes, sir.

Q And --

A It was supposed to.

Q Well, would dust fibers get into your lungs, would they cause -- affect you, cause you to

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cough or give you any trouble?

A What is that again, beg your pardon?

Q I said would those dust fibers in your lungs, would they cause you trouble?

A Well, I am having trouble brething.

Q Just about everyone that works in a dusty condition would have that trouble, would they not?

A I don't know, it has been five years.

Q On these jobs did you ever complain about the dust?

A Yes.

Q Who did you complain to?

A The foreman on the job.

Q Did you ever hear Mr. Borel complaining about the dust?

A No.

Q When you, yourself, complained about the dust did they do anything about it?

A Well, they had those -- as I say, they had the respirators on the job, sometimes we used them for a little while, I mean I would, speaking for myself, and they would stop up and I couldn't use them.

Q What type of complaint did you make to your

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foreman? What did you tell your foreman when you were making these complaints?

A Well, years ago I didn't tell them anything, I would tie a handkerchief around my face when I was sick.

Q What was the purpose of tying a handkerchief around your face?

A To try to keep some of the dust down.

Q Did you do that because you knew that the dust would affect you in some way?

A No, it is disagreeable, I didn't know it would affect me, I thought I could cough it out, when you get the dust in your lungs you could cough a lot of times and cough it out.

Q Getting back to the complaints that you made to your foreman, just what did you tell him when you made a complaint?

A I don't know what they told him, I said it was dusty, I guess.

Q And what did he tell you?

A I don't know which one you are referring to.

Q Did he tell you to use the respirator?

A No, it never come up that way.

Q You just made complaints and don't recall

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what you were told?

A No.

Q Now the insulating workers who were doing shop work, did they wear a mask because of the dust problem?

A Some of them did.

Q Did you wear one because of that problem?

A Sometimes.

Q How about Mr. Borel?

A I don't know.

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

THE COURT: Any question, Mr. Stephenson?

MR. STEPHENSON: No, Your Honor.

THE COURT: All right, Mr. Potter, you may be excused. You may leave any time you wish.

I believe Mr. Duncan has an expert witness that he would like touse out of order.

MR. DUNCAN: Yes, sir, Your Honor.

THE COURT: You may call him at

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this time.

MR. STEPHENSON: We have no objection, Your Honor.

MR. DUNCAN: I would like to call Dr. Paul Gross, please, sir.

THE COURT: If you will stand in front of the bench and please raise your right hand.

PAUL GROSS,

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

DIRECT EXAMINATION

BY MR. DUNCAN: If it please the Court, in view of the defendants and attorneys who are here, may I again introduce myself to the jury.

THE COURT: You can identify yourself, yes, sir.

MR. DUNCAN: Ladies and Gentlemen ofthe Jury, my name is George Duncan and I represent one of the

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defendants, Pittsburgh-Corning Corporation, and Mr. Stephenson here has graciously consented that Dr. Gross may testify at this time, which will be out of order, but Dr. Gross could be here at no other time and so at this time I would like to adduce the testimony of Dr. Paul Gross.

BY MR. DUNCAN:

Q Would you state your name, please?

A Paul Gross.

Q And what is your occupation or profession?

A I am a physician.

Q Where do you presently reside, Dr. Gross?

A I reside in Mt. Pleasant, South Carolina.

Q How long have you resided in Mt. Pleasant?

A Two months.

Q And prior to that time where did you reside?

A I was a resident of Glenshaw, Pennsylvania, which is a suburb of Pittsburgh.

Q Are you licensed to practice medicine, Dr. Gross?

A I am licensed to practice medicine in Ohio and Pennsylvania.

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Q Are your licenses to practice medicine duly recorded with the proper authorities in Ohio and Pennsylvania?

A Both licenses are so recorded.

Q All right, sir, Dr. Gross, do you have a specialty in the practice of medicine?

A Yes, sir, I am a pathologist.

Q And will you tell the Court and Jury a little bit about what the specialized practice of pathology entails?

A The practice of pathology involves the study of disease. It involves the study of tissues removed from the body in surgery or autopsy. It involves the study of excretions of blood to determine the presence of abnormal constituents.

Q All right, sir, now would you relate to the Court and the Jury your educational background and the history of your medical training? That is, generally, sir, not in great detail but in some generalities.

A I received all of my education in Cleveland, Ohio. My medical training was obtained at Western Reserve University in Cleveland. My

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M.D. in 1927. Masters Degree in Pathology, 1929. I had approximately three years of training in pathology, one year which was prior research fellowship in Pathology. One year was a year of study in Vienna, Austria, under the guidance of Professor Edheim. I was pathologist for Charity Hospital in Cleveland from 1931 to 1935, and from '35 to '54 I was pathologist of two hospitals in Pittsburgh, Pennsylvania. Beginning with 1948 I was Director of Research at the Mount Institute at the Industrial Hygiene Foundation and from 1954 to the present time I have devoted my entire time to research. From '48 to '54 I was doing research on the part-time basis.

Q All right, sir, at the present time are you associated with any educational, medical educational institutions?

A From 1965 I was Adjunctive Professor of Pathology of Occupational Disease at the University of Pittsburgh, until 1971, and since July 1 of this year I have been given the title of Distinguished Research Professor of Pathology at the Medical University of South Carolina.

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Q Excuse me, sir. How old a man are you?

A I shall be 70 my next birthday.

Q Dr. Gross, are you certified as a member of any specialty boards?

A I am certified in the specialty of pathology, which has two branches, clinical pathology and anatomical pathology.

Q In order to become a member of these Boards, of course, it is necessary for you to take an oral and written examination?

A That I have done.

Q Now then, have you received -- are you presently associated with the Industrial Hygiene Foundation?

A The Industrial Hygiene Foundation recently changed its name to the Industrial Health Foundation, and I am the Director of Research of that organization.

Q All right, sir, will you please describe for us the work and research in which you have been involved as Director of the Research Laboratory of the Industrial Health Foundation?

A My work has involved the study of lung diseases in animals as a model for the study of dis-

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eases in man. Particularly of interest has been the study of diseases caused by the inhalation of various dusts and noxious gasses.

Q Yes.

A We have been interested not only in the nature of the disease but also in the concentration of noxious materials which could give rise to disease in the animal and man.

Q All right, sir, as a result of this work and research that you have done have you had an occasion to author and publish any papers dealing with your research?

A The sum total of my publications is approximately 180 at the present time and of those 180 I would say probably around 130 deal with chronic lung disease, mostly with the effect of dust on the lungs and noxious gasses.

Q Now during the course of your practice what special honors have been conferred upon you?

A Well, I received an Adolph Kama (phonetic) award for medical authorship and was recently given honorary membership in the American Association of Industrial Hygienists.

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Q Now, Doctor Gross, have you in the past or are you presently serving on any governmental committees dealing with industrial hygiene?

A I have been consulted by the Federal Food and Drug Administration as consultant and I have been asked to serve on committees for the determination of the allowable asbestos dust concentration in air and also as a member of the committee for the National Academy of Science, also dealing with asbestos.

Q All right, are you a member of the American Conference of Governmental Industrial Hygienists?

A Yes, sir, I am.

Q Will you tell the Court and Jury what the function of that body, what the functions are?

A The American Conference of Industrial Hygienists is an association of state and federal hygienists whose work involves the monitoring of toxic materials and dust in industry. In this organization there are a number of committees and one of these committees is the Threshold Limit Committee. The function of this committee is to evaluate the allowable limits for dustiness in industry and I was asked to

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become a member of this Committee. I think it is about six years ago, I am not sure of the date, and was made a Chairman of the subcommittee on mineral dust.

Q All right, sir, were you a member of the Threshold Limit Values Committee of the American Conference of Governmental Hygienists in 1966, when the Threshold Limit Values of asbestos were set for that year or at least recommended for that year?

A I believe so.

Q All right, sir, I hand you a document which is entitled "Documentation of Threshold Limit Values", and ask you if on page 15 of that document does not appear a recommendation concerning asbestos?

A Yes, sir, such a write-up is found on page 15 of this documentation.

Q All right, sir, and that was published in 1966, is that correct, Dr. Gross?

A That's correct.

Q All right, sir. Thank you.

MR. DUNCAN: Your Honor, I would like to introduce this, at least page

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15 of this document, or introduce the whole document, but have the right to withdraw it.

THE COURT: You may reproduce it later, you can mark it, have it marked.

THE CLERK: Defendants' Exhibit 7.

(REPORTER'S NOTE: Whereupon it was marked Defendants' Exhibit 7 and received into evidence).

BY MR. DUNCAN:

Q Dr. Gross, I hand you what has been marked as Defendants' Exhibit No. 7, and refer you to page 15 thereof, which you have just identified, and I will ask you to please explain to the Court and jury what is meant by Threshold Limit Values and what its significance is.

A The Threshold Limit is the concentration which is recommended as safe for a worker to work in for eight hours a day for his working lifetime without -- it is the concentration of dust which he can work for eight hours a day without danger of developing disease.

Q All right, sir, now in the document which

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you have before you which refers to asbestos on page 15, what was the Threshold Limit Value recommendation for that year of 1966?

A The recommended value for total dust was 5,000,000 per cubic foot.

Q All right, sir, and can you explain that in layman's terms to the jury?

A The fiber particles per cubic foot represented the total amount of dust, that is dust which included not only asbestos fibers, which are so small that it would be very difficult to see without a microscope, as well as other non-fibrous particles. As you know, asbestos itself is a fibrous dust. Anything which is not fibrous is not asbestos. But, this Threshold Limit included non-fibrous dust, so the total dust recommendation was for total dust at a level of 5,000,000 particles per cubic foot.

Q All right, sir, and this particular Threshold Limit Value was disseminated or published so that all the members of the Industrial Hygienists Foundation as well as members of any industry would have this recommendation in hand, is that correct?

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A That's correct.

Q What changes, if any, were recommended after 1966?

A About 1968, as I recall, the Threshold Limit Committee received a communication which indicated that the British had re-evaluated their own recommended Threshold Limit and had considered that a lower concentration would be advisable to safeguard the health of the workers.

Q All right, is there any -- what evidence was produced by this British body which caused your committee to re-evaluate the situation of asbestos dust?

A They had placed monitors in various regions of the asbestos textile factories and found that the dust concentration based not on the total dust but based on the fibrous constituents of dust as only fiber, they found that if there were only two fibers per cubic centimeter of air in the room and the workers were exposed to this concentration for a lifetime then there was a risk of only one percent, one out of a hundred of the workers to develop disease.

Q All right, sir, now I hand you what purports

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to be a letter over the signature of Herbert E. Stockinger, Chairman of the Threshold Limit Values Committee of the American Conference of Governmental Hygienists, dated July 3rd, 1968, and I ask you if you received that letter, together with the enclosure in due course?

A This letter dated July 3rd, 1968, was addressed to me, as Chairman of the subcommittee on mineral dust of the Threshold Limits Committee ACGIH.

Q And there was enclosed with that letter, what was enclosed with that letter?

A With the letter was included recommendations of 2,000,000 particles of -- a Threshold Limit of asbestos dust of 2,000,000 particles per cubic foot or twelve fibers per cc, which were greater than -- the fibers were greater than five microns in length. I could say one micron is approximately one over 25,000ths of an inch and obviously such dust can be seen only with the microscope.

Q Now the enclosure which accompanied that letter of July 3rd, 1968, was that a final recommendation or was that a draft?

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A It was a draft which the members of the Threshold Limit Committee were to study and to come to an agreement on for the next meeting of the Threshold Limit Committee.

Q All right, sir, do you recall approximately how long after this draft was received by you before the final recommendation was made by your committee?

A Well, we met generally in and around September, we met twice a year and this was a July 3rd communication. We, therefore, met the following September.

Q September of 1968, is that correct, sir?

A That's correct.

Q And at that time you changed the recommended Threshold Limit Values to 2,000,000 particles of dust per cubic foot of air, is that correct?

A That's correct, 2,000,000 particles or twelve fibers per cc of air.

Q Was there any mention of a disease in your deliberations which had not been considered before in connection with the Threshold Limit Values?

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A I am not certain of that, I would have to read the communication -- I do not see any mention of disease other than that of asbestosis which is an inflammation of the lungs. I am, of course, thinking of tumors, but I don't happen to see any mention of -- yes, sir, there is some mention of lung cancer and mesothelioma on page 2 of the communication.

Q All right, sir, had the disease of mesothelioma been considered by your committee prior to 1968?

A No, it had not.

Q Why is that, Doctor?

A Well, mesothelioma is a rare disease in general and it has only recently come to the fore as a disease among the asbestos workers.

Q What in general terms is the disease of mesothelioma?

A It is a tumor which arises from the surface lining which covers the lung, the inside of the chest cavity and also covers the lining of the abdominal cavity.

Q All right, sir, you say this is a very rare disease?

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A It is in terms of the general population. It is a very rare disease.

Q Now turning to another subject, Doctor, were you, as Research Director of the Industrial Hygiene Foundation, requested by Pittsburgh-Corning Corporation and certain other companies, manufacturers of asbestos insulation products, to do certain research in connection with the effects of asbestos dust?

A Yes.

Q Do you recall when this was that you commenced your research pursuant to the request that was made to you by Pittsburgh-Corning and others?

A I believe this is about the fourth or fifth year that we have been doing this particular research which makes it about 1966, I believe, that we began our research activities.

Q All right, and so that from 1966 to the present you say you are still carrying on this research, is that correct?

A Yes, sir, that's correct.

Q And specifically what were the substances which were used in your research and experiments?

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A Well, there are three main types of asbestos used in this country. The most common one is chrysotile. That represents ninety-five percent of the asbestos used in this country, the other five percent are divided among a South African type of asbestos called crocidolite, and we use all three type of asbestos to study in our animals.

Q All right, sir, now generally, without going into highly technical details, what conclusions, if any, were reached by you, as Director of Research, as a result of this study that you have been making over the past four or five years?

A We have been attempting to produce lung tumors in these animals comparable to the lung tumors which develop in man and in order to achieve this end we injected the dust into the lungs of animals under a suitable anesthetic. We were unable, however, to produce lung tumors by burdening the lungs with these three different types of dust. However, when we injected these three dusts into the chest cavity of the animal, again under anesthetic, then tumors did develop

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in these animals but they were not mesotheliomas. I should add also that as far as rats are concerned if you inject quartz dust or most any foreign material into the animals they develop the same kind of tumor which, however, is not mesothelioma, and is not specific for any particular material, so I would say that in effect the fact that we produced tumors in these animals had no significance.

Q Now, Doctor, I ask you to assume that the decedent in this case, Mr. Borel, was an asbestos insulation worker for more than thirty-three years. That he began his work as an insulator in the shipbuilding industry in 1942 through 1946, and that thereafter, in 1969, in 1970 he began to have problems with his right lung. I ask you further to assume that in 1970 his condition was diagnosed as that of mesothelioma and as asbestosis. Assuming all of these facts do you have an opinion based upon reasonable medical probability as to which exposure during this thirty-three year period would have been responsible for the development of mesothelioma?

A It is generally recognized that mesothelioma

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exposure requires a latent period, that is, a time lapse from the time of first exposure to the development, not to development but to the diagnosis of the disease of thirty to forty years. A study of a large number of cases has indicated that thirty to forty years elapsed between the first exposure to the dust and the finding of mesothelioma in the person.

Q Excuse me, go ahead, proceed.

A In some cases, that's the majority of the cases, required thirty to forty years. Some cases have been reported for as little as twenty years between the first exposure to the asbestos dust and the finding of the disease. There are only two cases on record, as far as I know, where in one case the disease was found sixteen years from the time the first exposure occurred to the finding of the disease and in the second case the time lapse was thirteen years. There was no case in which the mesothelioma developed in less than thirteen years from the time of first exposure to the finding of the disease. On that basis the exposure to which this individual developed mesothelioma must have been at

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the time when he was in the shipbuilding industry. The second reason for believing that it was the shipbuilding industry exposure was because the development of mesothelioma, the fact that in the shipbuilding industry the two most common, most commonly used asbestos, two of them, crocidolite and amosite, however, there is no case on record of a patient developing mesothelioma from the exposure of amosite. The most clear-cut example of this is to be seen in a series of mesothelioma which was reported from South Africa, it was the first series where out of a large series of over one hundred cases the exposure was to crocidolite alone, and it is of interest that to the north of this region where crocidolite was mined there is also mining of amosite and there is no case of mesothelioma recorded from the miners of amosite. All the cases of mesothelioma that have been reported have had an exposure either where crocidolite was mentioned as being the dust to which the people had been exposed or it was a mixed dust in which crocidolite played the most important role.

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Q All right, sir, now you testified as to the so-called latent period from first exposure to diagnosis of mesothelioma, the time lapse being from in rare cases thirteen years to thirty to forty years. Now in your opinion and based upon reasonable medical probability would that disease likewise have manifested itself had this man after first exposure completely gotten away from the asbestos insulation industry and say gone to farming?

A Yes, sir, indeed.

Q Why do you say that?

A Because there have been cases there has been a single exposure, that is, an exposure of over a period of time, this period of time could have been in the terms of months or years, and then no further exposure for twenty or thirty years. This happens in South Africa, where the individual was exposed to the mine tailings, the dust from mine tailings during his childhood and then moved away where there were no mine tailings and, therefore, no air pollution by the dust from the mine tailings and those individuals who had exposure as children or young adults only

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they developed mesothelioma in late adulthood.

Q All right, now, I ask you to assume the same facts I asked you to assume earlier with respect to Mr. Borel having commenced his work as an asbestos insulation worker in the shipyard in 1942, and ask you if you have an opinion based upon reasonable medical probability as to the period of time it would have taken for the asbestosis diagnosis to have been made?

A Asbestosis also requires a rather long latent period for development of enough disease as to be clinically apparent. By clinically apparent I mean that there is sufficient disease so that it can be diagnosed, can be detected either by X-ray or by physical examination.

Q All right, sir, now then, Dr. Gross, the testimony in this case and it has been stipulated by counsel for the plaintiff that the defendant, Pittsburgh-Corning Corporation, has manufactured the product, unibestos only since August, 1962, therefore, that it had no responsibility in connection with the manufacture, sale or use of this product before August, 1962. The testimony in this case has been that the decedent

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in this case, Mr. Clarence Borel, may have used the product, unibestos, produced by Pittsburgh-Corning Corporation at the most at one period in 1964 and again in 1968, and in this case only one or two occasions. Now then, do you have an opinion based upon reasonable medical probability as to whether or not these two exposures or the use of this particular product by the decedent could have in any way contributed to the diagnosis of mesothelioma or of asbestosis in 1969?

A I would like to first amend, rather to continue the answer to the previous question in which I indicated that there has to be a latent period between the exposure and the detection of the disease known as asbestosis. Exposures to asbestos dust and the detection of the disease known as asbestosis and this latent period on the average is twenty years or longer. Now with regard to this particular individual the time lapse between the exposure to the asbestos dust produced from a -- to arrive from a product of this particular company was at the most six years and that falls far short of the twenty-year period which generally is required for the

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dust to produce a detectable disease.

Q That applies to --

A That applies not only to the tumor which I indicated previously, it generally requires even a longer time, most usually, but it also applies to the inflammatory disease which we call asbestosis.

Q All right, sir, the facts of this case and answers to interrogatories which have been filed in this case are that the product, unibestos, produced by Pittsburgh-Corning Corporation contains amosite as the only form of asbestos in that product and that is the only product which has been produced by Pittsburgh-Corning Corporation since August, 1962. Now do you have an opinion based upon reasonable medical probability as to whether or not, asssuming the same facts that we assumed earlier concerning Mr. Borel, as to whether or not exposure to amosite in the product unibestos on the two occasions, in 1964 and 1968, would have manifested itself in the diagnosis either of asbestosis or mesothelioma?

A I think I indicated quite clearly in a

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previous question that there has been no case in which exposure to amosite has produced, amosite along has produced mesothelioma.

Q All right, sir, now, of course, every exposure to asbestos dust could not be calculated to produce asbestosis, isn't that also true, Doctor?

A Well, it would depend on the amount of exposure and the duration of exposure.

Q All right, sir, thank you.

MR. DUNCAN: I think, Doctor, I have no further questions.

Before I conclude though I would like to introduce this document, Your Honor, it is also together with the attachment as Defendants' Exhibit No. 8, with the understanding that I might substitute a Xerox copy of the same.

THE COURT: You may, you may make the substitution later.

Mr. Stephenson, do you wish to interrogate the Doctor?

MR. STEPHENSON: Yes, sir, Your Honor.

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THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Dr. Gross, my name is Ward Stephenson, and I am the attorney for Mrs. Borel, whose husband died as Mr. Duncan has indicated to you. I appreciate your testimony and would like to continue on with it, if I may. I believe Mr. Duncan brought out that the Association of Governmental Hygienes was not an official body of any kind?

A That is correct.

Q Although the word "governmental" is in there it is not a part of any governmental work?

A That is correct.

Q But, of course, it does valuable work, such as setting out limits, threshold limit values and so on and I assume from what Mr. Duncan said that these values are made available to members of the asbestos manufacturing industry, is this right?

A Those values are published and available to everybody.

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Q All right, sir, now I believe Mr. Duncan mentioned 1966, yes, the Threshold Limit Values published in 1966, as being 5,000,000 parts per cubic foot of total dust?

A That's correct.

Q Now, as I understand, the total dust means whatever dust is there including asbestos, it doesn't have to be all asbestos dust?

A That is also correct.

Q All right, sir, thank you. Now one of the contentions made by the defendant in his case is that there was not sufficient information in the early years of this man's work life to place them on notice of the danger of the asbestos dust to workers.

A I know nothing about that, sir.

Q I was laying a predicate for my question. Now you know, you have already testified, Mr. Herbert E. Stockinger, M.D., Chairman of the Threshold Limits Committee, do you not?

A Yes, sir.

Q And I assume you would recognize his signature?

A Yes, sir, I recognize his signature.

Q All right, sir. Now this shows Threshold

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Limit Values for as early as 1947.

A Are you asking me?

Q Yes, I am asking you if this is not correct?

A Dr. Stockinger in his letter states: "We are pleased to enclose Threshold Limit Values for the year 1947, 1948, 1949 and 1950."

Q All right, are you familiar without me showing you what those Threshold Values as published by the Threshold Limit Committee were as applied to asbestos in 1947?

A No, I am not.

Q Would you please then look at this first one here that came with Dr. Stockinger's letter and I have marked in red for convenience the identification of asbestos dust.

A 1947, maximum allowable concentration values placed at 5,000,000 particles per cubic foot.

Q All right, sir, and he likewise included for the year 1948, I don't have that marked, but it --

A Inasmuch as in 1966 the Threshold Limit Value was 5,000,000 particles per cubic foot

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I think we can agree that in the intervening years the similar values were considered to be the same.

Q Thank you very much, Dr. Gross. I think then can we not say as early as 1947, manufacturers of asbestos insulating materials should have known of this 5,000,000 particles per cubic foot of total dust recommended maximum concentration?

A The information was available.

Q All right, sir. Now continuing on with the information that was available in early years I would like to show you and ask you if you are familiar with an article published by the Commonwealth of Pennsylvania, Department of Labor and Industry entitled "Asbestosis, Part 1", published at Harrisburg, Pennsylvania, Official State Publication, October 1st, 1934, and I will show this to you so you might tell me if you recognize it?

A No, I am not familiar with it. I have not read it. I know nothing about it.

Q All right, Dr. Gross, as a researcher would you please explain to us whether or not it is

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an important part of medical research to read works and studies of a scientific and medical nature that have been written by others?

A Yes, it is important to read the medical literature written by others provided it falls within your field of competency, within your sphere of interest.

Q Yes, sir, I am assuming they are pertinent articles.

A Yes.

Q Pertinent articles. The point I want to make is that for example, if you as a doctor or any other doctor wants to make the study which you made I am sure that you find it perfectly proper and right to review articles written by others touching upon the subject of your investigation?

A That is correct.

Q And as a matter of fact, you would probably be remiss or derelict if you didn't review scientific and medical articles written by others touching upon matters of your inquiry?

A That is also correct.

Q All right, sir, are you familiar, Doctor,

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with Dr. Berlyn J. Selikoff, Mt. Sinai Hospital in New York?

A Yes, sir, I am.

Q As a matter of fact, I think you made reference in your direct examination to the New York Academy of Sciences?

A Yes.

Q And you are a member?

A No, I am not. I was a member at one time but I resigned.

Q All right, sir, are you likewise familiar with Dr. Harriet Hardy, who has done considerable study on asbestosis, of Harvard University?

A I don't believe Dr. Harriet Hardy did a significant amount of work, a lot of work on asbestosis. Her main interest has been in pneumoconiosis.

Q In what?

A Pneumoconiosis.

Q Doctor, in your injection of asbestos into diseases of experimental animals, is this a technique which has been used for many, many years to study and observe the effect of whatever the nature of injection might be in ex-

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perimental animals?

A I have used this technique for the past twenty years.

Q And could we say that generally it has been used in medical and scientific research for perhaps as much as one hundred years?

A No, I don't think.

Q Well, about what would be the beginning point of this type of thing, study, not your specialty but using experimental animals?

A I would say probably less than fifty years.

Q All right, we would be safe then in fifty years being a point in time which experimental animals were used to study the effects of various things upon man?

A Well, animals have been used experimentally for longer than that but I thought you were referring to the injection of dust.

Q No, no, just the use of experimental animals in the scientific and medical research.

A I think you were probably right in your estimate of one hundred years.

Q And perhaps fifty years or so in the injection of dust in experimental animals to

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determine what effect that has on experimental animals?

A Yes.

Q And then, of course, the parallel being if it affects experimental animals then you make inquiry into how this same thing affects human beings?

A That's correct.

Q That's the purpose of using experimental animals?

A Yes.

Q Doctor, if 5,000,000 parts per cubic foot of exposure was a danger level set by the Threshold Limit Value Committee would there be any way to know whether a worker was being exposed to more or less than 5,000,000 parts besides going into the area where the worker works and taking dust counts?

A No.

Q All right, sir, so if Johns-Manville or Fibreboard or any of the defendants here knew in 1947 of the 5,000,000 parts per cubic foot then would there be any way for them to tell a worker that they were dangerous exposures other

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than going and taking measurements as to how much dust was created by the use of their products?

A I wouldn't think so.

Q No, sir, I wouldn't either. Now, you mentioned placing monitors, which was done in England on certain studies there. Would you explain to us what a dust monitor is?

A Well, my statement referred to the British use of monitors and they placed a suction pump device in strategic places of the factory and this suction pump sucked air through a filter and in so doing any suspended particles in the air were caught on this filter. Now they knew the device was such that the amount of air passing through the filter was known and then by counting the number of fibers under a microscope and dividing the number of fibers so counted by the number of cubic centimeters of air which had passed through the filter they arrived at a measure of the number of fibers per cubic centimeter of air.

Q All right, sir, are there personal monitors which go on an individual personally which can

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monitor the amount of dust?

A Yes, there are such devices.

Q All right, sir, and are these devices commonly recognized as a useful measure of dust count?

A Yes.

Q Now, Doctor, when you were in school I believe in 1927, medical school, is that right?

A That's when I graduated.

Q As a student in medical school prior to your graduation were you taught about the disease asbestosis?

A No, I was not, the disease was not mentioned.

Q All right, were you taught about any disease in your medical studies in school, lung diseases such as dust causing lung diseases such as silicosis or asbestosis?

A Silicosis was mentioned and described but not asbestosis.

Q Now, Doctor, are you familiar with how many articles, for example, in 1934 were readily available to anyone wishing to find out about the disease asbestosis, could you tell me how

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many articles that you know of that were written in 1934?

A No, I can't tell you that.

Q Now I want to go just a little bit into something Mr. Duncan raised with you and I think it is clear, but if you don't mind, we will ask you again the exposure that a worker has to asbestos dust, we will say, as Mr. Duncan pointed out, in 1940 or 1942 he could have some exposure at that time and then go to farming and not contact asbestos in the interim and later the disease manifests itself?

A That's correct.

Q All right, sir, now if a man stays in the trade of asbestos worker and continues working through the 1940's and through the 1950's and partially through the '60s would it be your opinion that all subsequent exposures to asbestos dust would be cumulative, that is, that they would add to the total problem?

A That is also correct.

Q And so we can't, can we say that medical science does not know how many exposures of what quantity of dust would be requ ired to give

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the disease asbestosis?

A That is correct.

Q All right, sir, now is asbestos once it is inhaled in the lungs, is there any way to get the asbestos dust or fibers from the lungs?

A Yes.

Q How is that done?

A By the natural lung-clearing process.

Q Well, I should have said any medical -- any medically-approved way.

A No.

Q All right.

A That is, now you are referring to an artificial way, a man-made way of getting the dust out, is that right?

Q Right.

A The answer is still no.

Q I recognize that the body does certain things to some aspect and it dissipates through the natural body processes?

A Yes.

Q But then, of course, it doesn't dissipate all because there are many people with asbestosis?

A It depends on how much dust is inhaled.

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Q All right, now, as a consequence of this I think we can say that as far as a doctor is concerned if a man comes to him with asbestosis there is not much, if anything, a doctor can do to cure that up?

A No, that's right.

Q And it is medically called irreversible disease?

A Yes.

Q It cannot be reversed, in other words?

A Right.

Q Once you find a patient with a certain degree of asbestosis then by medical treatment you can't reverse that and make him better?

A That's correct.

Q All right, sir, now generally speaking then if a person has this disease would it be that at best perhaps the only treatment for him would be to try and make him comfortable and to keep him away from dust in the future so that he wouldn't catch colds and have pneumonia, respiratory diseases and things of this nature? In other words, try to keep him healthy and not exercise him?

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A I think your question is based on an assumption which is not necessarily correct.

Q All right, sir, now straighten me out, please, Doctor.

A And that is you are now assuming that all cases of asbestosis are handicapped.

Q Well, I think you are right, can we put it this way then, whatever degree the patient has the disease when it is detectable by X-ray, when the treating doctor knows he has got it, at that point there is nothing medically that can be done to make the man well again?

A Nothing that can be done to change the X-ray pattern.

Q Thank you, I accept that as correct. Doctor, getting to Dr. Selikoff, he has been referred to several times in the trial of this case. Is he generally considered an authority in the field of asbestosis as it affects insulation workers?

A He is considered an authority on epidemiology of asbestos dust as it affects insulation workers.

Q And by epidemiology you mean the cause of

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it, of what causes it?

A Yes. Not the cause so much as the association of the disease with exposure.

Q All right, sir, are you familiar with the fact of Dr. Selikoff's studies that an asbestos worker who shows X-ray changes in the chest who has worked in the industry from zero to nine years, 10.4 percent of the workers show abnormal lung findings?

A I don't recall the figures but I am willing to agree it sounds reasonable to me.

Q All right, sir, I don't want to -- I know you can't just remember figures offhand --

THE COURT: How much longer will your cross examination be?

MR. STEPHENSON: Not very much, I think, Your Honor.

THE COURT: I would like to conclude with the Doctor, if we can --

MR. STEPHENSON: I think perhaps five minutes or so, Judge.

THE COURT: All right, we will go along.

Q Doctor, this table here is from an article

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by Dr. Selikoff, Churg and Hammond. The occurrence of asbestosis among insulation workers in the United States. Are you familiar with that article?

A Yes, sir, I believe I have read it.

Q All right, sir, and on this page, the point I am simply making is that the percentage of X-ray, abnormal X-ray findings in workers from the onset of exposure, zero to nine years is 10.4 percent.

A Yes.

Q And from ten to nineteen years it jumps to 44.1 percent.

A Yes.

Q And from twenty to twenty-nine years, 72.8 percent of all workers exposed to asbestos have abnormal lung findings.

A This, of course, is among the insulation workers, yes, sir.

Q Yes, among the insulation workers.

A Yes.

Q And from thirty to thirty-nine years, 87.1 percent and from forty years on, 94.2 percent.

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A That is correct. It may be well to point out that the figure of abnormalities of ten plus percent at exposure of zero to nine years does not necessarily mean that the abnormality in the X-ray was of an asbestosis character, was merely some abnormalities.

Q Right. Now let me see if there is anything else, Doctor, of any significance that I can find to mention. The disease mesothelioma is found in very much greater quantities among asbestos workers than among the public not working with asbestos?

A That is right.

Q Now, Doctor, if a patient has asbestosis is there anything that would give him that disease other than asbestos?

A No. May I qualify that?

Q Yes.

A There are other dusts which greatly resemble asbestosis, for example, exposure to talc dust may produce very similar changes and to some degree exposure to mica dust also will produce similar changes, so that one can say that the scarring of the lungs produced by asbestos dust

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can be produced by other dusts which are also classified as silicates.

Q All right, sir, what I am trying to say here is I don't want to try and get you in any way to compare your testimony with some other medical doctor's testimony but I will tell you that this case, as Mr. Duncan said to you in his direct examination, is a case where the medical men agree that this man had asbestosis. Assuming that he did, is there any other way to get that disease other than through asbestos dust?

A No.

Q All right, Doctor, I think in your Threshold Limit Values of airborne contaminates in 1970 you covered some of this, Threshold Limit Values refer to time-rated concentration for seven or eight-hour work day and a forty-hour work week. They should be used as guides in the control of health hazards and should not be used as fine lines between safe and dangerous concentrations. Do you agree with that?

A Yes.

Q Now one other thing and I will be through, Your Honor. I am looking at this exhibit that

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Mr. Duncan put in evidence. Where is the page of the book you had?

A The book is here.

Q Thank you. In this book that Mr. Duncan introduced, the last paragraph on that page right before the references said the exposure to asbestos is associated with the development of a potentially disabling pheumoconiosis in man has been amply demonstrated by industrial experience, the present Threshold Limit was recommended by Dresden, et al, after study of 541 employees in three asbestos textile plants using calsilite and the reference to Dresden is W. C. Dresden, et al, published, a Public Health Bulletin No. 241 of 1938. Do you agree with that, this is the Dresden study referred to in this pamphlet as early as 1938?

A I have to agree.

Q All right.

A It is in the documentation.

Q Yes, sir, it is documented. And as a medical and scientific researcher you have to accept these things, the studies of others, do you not?

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A Yes. Well, there are quite a number of studies which I don't accept.

Q Well, I am sure there are better and worse studies.

A Yes.

Q I recognize that.

MR. STEPHENSON: Your Honor, I hate trying to question him when I can't show him the page. I don't know that it is fair to the witness.

Q Doctor, my main interest here is the references on this page are for the years 1941, 1951, 1926, 1938, 1935, 1936, 1938, and the last three, 1955, is that correct?

A That is correct.

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

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

MR. WELLER: Yes, Your Honor.

THE COURT: I guess we had better have a recess then, Doctor.

I am wondering about the priority of other defense attorneys interroga-

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ting this doctor since he was offered by the defendant? I suppose the Court will permit it but I was of the opinion that all of the questions would be propounded by the defendant offering the Doctor.

MR. WELLER: Your Honor, the doctor was offered only by Pittsburgh-Corning.

THE COURT: Well, that's correct, he is offered only by Pittsburgh Company, is that correct, Mr. Duncan?

MR. DUNCAN: Yes, sir, that's correct, Your Honor.

THE COURT: Now I am wondering about the priority of going into other matters with the Doctor or the interrogation by the other defendants of the Doctor. You can certainly ask Mr. Duncan to interrogate him for you, if you like to. All right, we will take this up in the recess. Ladies and Gentlemen, we are going to stand in recess for fifteen minutes.

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Please return to your places at that time, and, Doctor, I am sorry we couldn't conclude with you this morning, but you will have to be back at that time.

THE MARSHAL: Everyone rise, please.

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THE COURT: Mr. Weller, you may proceed.

MR. WELLER: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WELLER:

Q Dr. Gross, what year did medical science decide that Mesothelioma was a problem insofar as asbestos was concerned?

A I can't give you the exact year, but the publications by Dr. Wagner in South Africa started the ball rolling.

Q Do you know approximately?

A Probably around 1962, but I am by no means certain of that date.

Q When in this country did you as a researcher recognize that Mesothelioma may be a problem in connection with exposures to asbestos?

A With the publication of Chris Wagner's article.

Q All right, and did I understand you correctly that it is not every exposure to asbestos dust that causes asbestosis?

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A The development of asbestosis is dependent on the dosage of asbestos that happens to be in the lungs.

Q I see. Then --

A Excuse me, may I amplify on that?

Q All right, go ahead.

A With this statement, for the last two years my laboratory has been engaged in determining the fiber content of human lungs and we have been finding that practically everybody's lungs, that is city dwellers, contain asbestos, contain fibers and some of the fibers are asbestos; and that this fiber content is not related to any disease that is present in the lungs. In other words, we can have -- we do have fibers in our lungs which we have inhaled, but there is no disease associated with the presence of these fibers.

Q All right, isn't it likewise correct that even though a person may have asbestos fibers in their lungs they do not necessarily have asbestosis, do they?

A That is absolutely correct.

Q Now industry-wide and in the United States

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as well as in England, has it not been recognized that so long as the Threshold Limit Values are kept within 5,000,000 particles per cubic foot of air on an average for the lifetime that those exposures up until 1968 were recognized as reasonably safe?

A That was the thinking.

Q So it has only been after 1968 that this thing has changed?

A That is right.

Q Now, Doctor, are you familiar with the reported research in 1946 by Flasher, Lyles, Gade and Drinker?

A No, I am not.

Q Are you familiar with the research done by Marr (phonetic) in the Naval Shipyards in 1964?

A No, I am not.

Q Do you know Dr. Clark W. Cooper?

A Yes.

Q Is he a member of the Threshold Limit Committee?

A No, he is not.

Q Has he been a member of the society or

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Association of Governmental Hygienistis?

A Yes, sir.

Q Are you familiar with the research done by Dr. Cooper and his associate, Leroy Balzer among the insulation workers on the West Coast insofar as dust limits are concerned?

A Only vaguely familiar.

Q All right, Doctor, assume for the purpose of my question that there was research in the Naval Shipyards in 1946, and we will connect this up later, and in 1964 a research in Naval Shipyards concerning the exposure of asbestos workers and in 1968, by Dr. Cooper and Leroy Balzer. And that in these experiments the average dust exposure was within the five million particles per cubic foot of air.

MR. STEPHENSON: I will have to object here, Your Honor, what he is referring to is the Fleischer and Drinker report which is not accepted as a competent work in this field because it did not consider the effects over any period of time and Dr. Selikoff has so stated this is not a reliable

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work and I would object to him trying to cross-examine the Doctor about a work, number one, that is not as reliable or generally accepted as an authoritative work; and, number two, about a work which Dr. Gross does not have any knowledge.

THE COURT: I think the Court is capable of answering the question, the objection will be overruled.

BY MR. WELLER:

Q Assuming that these reports are correct and they show that experiments in the field, taking dust counts in Naval Shipyards and in areas where asbestos construction workers were working on the West Coast, that the dust count was within the Threshold Limit Values recommended of 5,000,000 particles of dust per cubic foot of air. In your opinion, based upon the medical knowledge and scientifc knowledge available at that time, would you say that those conditions were recognized as reasonably safe for work?

A Yes, sir, I would.

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THE COURT: Anything further, Mr. Weller?

MR. WELLER: Yes, sir. Your Honor, I have one other matter.

THE COURT: All right --

MR. WELLER: Well, I believe that is all.

THE COURT: Anything further, Mr. Stephenson?

MR. STEPHENSON: I have two question, Your Honor.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. STEPHENSON:

Q Doctor, I have an article here, "Editorial, Asbestosis and Neoplasia" by Dr. Selikoff, Bader, Bader and Churg and Hammond, and are you familiar with that work?

MR. WELLER: Which number is that?

MR. STEPHENSON: Number 9, I think.

THE WITNESS: I may have read it, I have no recollection of it at the

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present time.

Q All I want to do by this work is to point out, you were referring to Wagner in South Africa, and this study was done in 1960, is that correct?

A That's what the article indicates and I believe I indicated my own uncertainty in regard to that date.

Q Yes, Doctor, you did, and I was just trying to thumb up the date. Only one other question. Regardless of the Threshold Limit Values, if a worker contracts the disease asbestosis then he must have been exposed to sufficient number of asbestos fibers and particles to give the disease, regardless of whatever Threshold Limit Values are established?

A I think that is only common sense.

MR. STEPHENSON: Yes, thank you, that's all.

THE COURT: Anything further, Mr. Duncan?

MR. DUNCAN: No, sir, Your Honor.

THE COURT: All right, Doctor, you may be excused, and we are glad

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that you came.

THE WITNESS: Thank you.

THE COURT: Do you wish to call any other witnesses out of order at this time?

MR. DUNCAN: I have no other witnesses to call at this time, Your Honor.

THE COURT: All right, Mr. Stephenson, we will return to the plaintiff.

MR. STEPHENSON: I would like to call Claude J. Tomplait.

CLAUDE J. TOMPLAIT,

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

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q State your full name, please.

A Claude J. Tomplait.

Q Mr. Tomplait, where do you live?

A I live at 210 Case Street, Bridge City,

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Texas.

Q And what age man are you?

A I am 51.

Q Have you worked as an asbestos insulation worker in your lifetime?

A Yes, sir, I have got right at thirty-one years.

Q When did you first start in the trade?

A Well, I started in the trade, let's see, it was the first part of January of '41.

Q All right, sir, Mr. Tomplait, during your years working as an asbestos insulator did you know Mr. Clarence Borel?

A I sure did.

Q Was Mr. Borel a good, competent worker in this field?

A Well, I classify him to be one of the best, as far as I am concerned.

Q All right, sir, did you have an occasion to work with him on any jobs that you can remember?

A Yes, sir, it has been a pleasure to work with Mr. Borel on the jobs that I have worked with h im. I worked with him at the shipyard

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during the war.

Q That is Consolidated Shipyard in Orange?

A It was Consolidated, yes.

Q At Orange?

A At Orange.

Q All right, now stop right there a moment, please, and tell us what products, asbestos products you and Mr. Borel used on that job?

A Well, we were using quite a bit of amosite and a lot of -- lot of Johns-Manville materials that the company was using on this, but pure amosite was mostly what we used in the shop. That is a raw asbestos.

Q And was this likewise a Johns-Manville product?

A Yes.

Q How long id that job at the shipyard last?

A Well, I don't know, I was a pretty young fellow then, I would say we stayed there about a year and a half, roughly.

Q All right, did you after that have occasion to work with Mr. Borel on any other jobs?

A Well, yes, sir, I worked with Mr. Borel on a du Pont job when we started it at Orange,

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Texas.

Q All right, and about what year was that?

A Well, I would say roughly about '43, '44, somewhere along in there. Whatever year they started building that du Pont plant.

Q And what material did you use there?

A Well, there we used Philip Carey material.

Q All right, sir, and how long did that job last?

A Well, I started roughly about a year and a half.

Q All right, sir, and Mr. Borel was on that job with you during that time?

A Yes, sir.

Q Can you remember any other places that you worked with Mr. Borel?

A There is one more that I worked with him on and this was at the Neches Butance, we was working on some boilers and this was also a Johns-Manville job there, but I don't recall the year exactly, I can tell you about a year after Neches Butane was built.

Q All right, sir, could you give the jury an

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approximation of how long ago it was that you worked there at Neches Butane with Mr. Borel?

A Well, not hardly, I just remember working with him on that job.

Q Mr. Tomplait, can you tell us whether or not on the jobs that you worked on is it necessary to cut, saw and scribe the blocks and pipe insulation in order to apply it?

A Yes, sir, there is no way in the world that an insulator can do insulation jobs without having to cut material all day long. The material does not come on the job ready to put on. It is just like lumber, you get lumber to build a house, it has got to be cut to fit, and insulation is the same way.

Q And does this cutting, fitting, scribing create dust?

A Oh, my gosh, yes.

Q Do you have to hammer the bindings and bands in place?

A Yes, sir, what we have to do after we get our covering fitted on the pipe we take it, we have got a little, old, wooden mallet, we pull our wires with out nippers and tap that wire,

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well, naturally, that's creating dust all the time. In other words, to make it fit tight against the pipe.

Q Have you had experience pouring asbestos cement into a mixing box?

A Oh, yes, sir, that's done all through my apprenticeship years.

Q Does that create dust?

A Yes.

Q Now during your career have you used at any time any respirator that was effective to prevent the inhalation of asbestos dust?

A No, sir, I haven't, I sure haven't.

Q All right, sir, Mr. Tomplait, you have the disease asbestosis?

A At 51 years of age I hate to say, yes, I do, and real bad. As a matter of fact, I have been retired now at my age, I had to give up just like giving up life.

Q All right, explain to us for the benefit of us, please, so we might know how this disease asbestosis, affects you.

A Well, one thing --

MR. WELLER: I object to that

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on the grounds that this would be irrelevant and immaterial and a matter of medical knowledge and there are many factors that went into Mr. Tomplait's physical condition. I would object to him reciting what his difficulty is.

THE COURT: Objection overruled.

MR. WELLER: Note our exception.

THE WITNESS: What was the question again, please?

BY MR. STEPHENSON:

Q How does this disease, asbestosis, affect you, what difficulties, if any, do you have from it?

A Well, the way it is with me, I am sitting here right now and I am just liable to go to coughing and want to black out right quick and when I do it is like pins and needles going through my body. As a matter of fact, I can't use my hands, if you will notice, all of my fingers are all thick and club, if I could have some kind of a little old job putting things together it would be impossible, as I say, my

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life is ruined from it.

Q I notice you with a crutch, what is the need for that crutch?

A Well, very simple, on the 24th day of May I was sitting under my tree, I had my legs crossed under me like this, playing with my shepherd dog and all at once I started coughing and I start to get up to go in the house to take some oxygen and I took a cramp in my leg and I fell backwards, and when I did I hit my hip against the tree and broke my hip and my leg.

Q Do you have to take oxygen with you all the time?

A Yes, sir.

Q Do you have it by your bed at night?

A I have a great, big bottle, regular welder's bottle, right on the side of my bed and I have one of the small bottles in my car.

Q Before you got this disease, Mr. Tomplait, did you ever know there was such a thing as asbestosis?

A No, sir, I sure didn't, I thought it was just like anything else, just like driving a car or anything else, just a day's work, I didn't

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know there was any hazard to it.

Q Did you know that asbestos would give you this disease, asbestosis?

A No, I didn't, because I could maybe live like my old mother, ninety-four years old, if I had never belonged to it, never would have done it, but I didn't know.

MR. STEPHENSON: That's all.

THE COURT: I believe before we get into the cross examination, I presume the attorneys will want to cross examine the witness?

MR. TUCKER: Yes, sir.

THE COURT: We will have the noon recess. Ladies and Gentlemen, report back at 1:30, and remember the instructions that we gave you. Mr. Tomplait, it will be necessary for you to come back.

THE WITNESS: All right, sir.

THE COURT: We will stand in recess until 1:30.

THE MARSHAL: Everyone rise.

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AFTERNOON SESSION
September 22, 1971

THE COURT: Please be seated.

We are ready to proceed.

CROSS EXAMINATION

BY MR. TUCKER:

Q Mr. Tomplait, as I understand it, you started working as an insulator about 1940, was it?

A Well, let's see, I started the 2nd day of January of 1941.

Q 1941?

A Uh-huh.

Q And when did you finally cease working as an insulator?

A Well, because of my health the doctor told me I had to get out if I wanted to live and that has been about eight or nine or ten years ago.

Q Was that about 1960 or thereabouts?

A Along in there somewhere.

Q At that time was it determined that you had asbestosis?

A Yes, sir.

Q And you say it was somewhere around 1960,

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is that correct?

A Well, let's say it has been about eight to ten years ago now, what I can recall.

Q Yes.

A And I went to the hospital and the doctor told me if I wanted to live I had better get out of the business all together. Since then I had double pneumonia twice.

THE CLERK: Defendants' Exhibits No. 9 and 10.

THE COURT: Are you ready to go ahead.

MR. TUCKER: Yes.

BY MR. TUCKER:

Q I am trying to make this as short as possible, do you recognize your signature on these two instruments?

A Yes, sir.

Q Are those the claims that you made back in 1961, for asbestosis? Do you recognize that injury, caused by asbestosis?

A Yes, uh-huh.

Q And at that time it says that the disease started in July of '61, is that correct?

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A Well, I would say around there.

Q Around about that time?

A Uh-huh, because I have a poor memory on dates.

Q And that's the reason I showed you these and after having looked at these you can tell it was about 1961?

A Yes, sir, I know it has been eight to ten years since -- let's see, since I have been in bad health.

MR. TUCKER: We offer these in evidence.

BY MR. TUCKER:

Q Were you represented by the attorney Ward Stephenson in your claim and suit?

A Yes, sir.

Q Were the conditions all the same on several jobs or did -- was there ever a job different insofar as where you would work, whether you would work inside or outside?

A Well, yes, you had to do inside work and outside work, you had different materials and different ways of putting on different things.

Q Now inasfar as the safety devices or safety

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equipment, who did you expect to supply those so you could do your work?

A Well, sir, I will explain it this way, I never knew in my life this stuff was hard on my life, no more than the air I am breathing right now, and just like for me to go out there and cutting my grass and putting a handkerchief over my face.

MR. TUCKER: Your Honor, the answer is not responsive.

A I didn't know it was a hazard or I would have put a handkerchief over my face, but nothing was furnished to us.

THE COURT: Just a minute.

MR. TUCKER: My question, Mr. Tomplait --

THE COURT: Just a minute, let's try to make your responses, your answers to the questions as brief as possible and be sure that they are in response to the question.

THE WITNESS: Yes, sir.

THE COURT: All right, you may proceed.

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BY MR. TUCKER:

Q Did the company you were working for, did you look to them to supply you safety equipment?

A Well, on some jobs we asked for it but what they gave you, you couldn't wear it.

Q You have reference to a respirator?

A Yes, sir, on some jobs, some jobs you didn't even have them.

Q When did you first start asking for respirators?

A Well, the only way we asked for them if we were being under our work looking right straight up and this is the only time.

Q Was that as far back as the shipyard days?

A Yes, sir.

Q So as far back as 1940, under some circumstances, or '41, you would ask for respirators when you were in dusty areas?

A We asked for them but we couldn't use them.

Q Well, my question is, as far back as 1941, when you first started in the shipyard, you did ask for respirators when you worked in dusty areas, didn't you?

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A Yes.

Q And why were you asking for respirators back as early in 1941, while working for the shipyard?

A Well, we knew the doggone stuff would get in our face, get in our mouth and you would cough up wads of the stuff because at the time you are working with your mouth open and stuff falls in your mouth, logically it would keep it out of your mouth more than anything.

Q Is the purpose of the respirator to keep something out of your mouth or out of your nose and lungs?

A To my point, the way I used it was to keep it out of my mouth.

Q Keep it out of your mouth?

A Yes, it gets awful hot under there, you are working with your mouth open half the time.

Q Now I believe you knew Mr. Borel?

A Sir?

Q You knew Mr. Borel?

A Yes, sir, very well.

Q He was a member of the same Union with you?

A Well, same organization but different Local.

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Q And from the 1960's or 1961, when he became ill it was generally known by your friends and people in the insulation work of the illness, was it?

A Well, no, it was quite a while before anybody could -- I never would get out of the house, I stayed in and out of the hospital most of the time.

Q Would you have been assigned to work through the Union?

A Well, I would go whenever I wanted to work but it would come through the Union.

Q And when you became ill, of course, you would no longer be available then to accept employment from the Union, is that right?

A Well, I could if I wanted to on my own, at one time to keep from losing my house I did try to go back to work for a year and a half and I got worse than ever when I did.

Q This year and a half, when was that?

A That has been about, oh, about four years ago or five years ago, I would say roughly maybe not, yes, about that long.

Q This was after you had already been having

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trouble with it three or four years?

A Yes, sir.

Q Did you use a respirator on that job?

A Yes, sir.

Q Who supplied those?

A Well, part I bought myself at fifteen cents apiece, and part of them the company would furnish.

Q And if you became ill, well, you say that was four or five years ago that you did use a respirator when you worked?

A Yes.

Q And how long did you work, approximately, at that time?

A Well, I worked long enough to try and catch up on my back notes on the house, I would say roughly about a year.

Q You worked for about a year?

A Yes, sir, then I had to quit all together, I couldn't go no more.

Q During that time that you worked you used a respirator in order to keep you from inhaling the dust?

A Yes, sir.

MR. TUCKER: That's all.

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THE COURT: Any questions, Mr. Weller?

MR. WELLER: No questions, Your Honor.

REDIRECT EXAMINATION

BY MR. STEPHENSON:

Q Mr. Tomplait, the respirator that you used in working when you did go back to work to save your house, did that keep the asbestos dust out?

A No, sir, it sure didn't.

Q Is there any breathing device that you ever used that would keep you from breathing this asbestos dust?

A No, sir, in a way the respirator they have is more of a hazard than they are doing you good. In any case, I would put them on and go to work and it would fog up my glasses to where I couldn't see what I was doing even.

Q All right, have you seen boxcars or trucks loaded with sealed containers of asbestos material come into the yard?

A Sir?

Q Have you seen say boxcars with asbestos

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materials come into the yard so you would know whether or not there was asbestos dust in all of the boxcars?

A Well, we didn't know because it wasn't until we started unloading and, you see, the box --

Q Was the boxcar, did it have dust in it?

A Well, if I had unloaded them.

Q Okay, that's all, thank you.

THE COURT: All right, Mr. Tomplait, you may be excused. Be careful when you leave the stand and take your time.

THE WITNESS: Thank you, sir.

MR. STEPHENSON: I have a summary of the deposition of Joseph Ralph Shrode which I would like to introduce at this time, and some more slides. The projector is all set up if we could just set the screen up.

THE COURT: All right.

MR. TUCKER: Your Honor, I anticipate that Mr. Shrode will be present in person, he may be subponaed for tomorrow, and there is no

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showing of his unavailability to make the deposition admissible.

THE COURT: You object to it?

MR. TUCKER: Yes, sir.

THE COURT: Objection overruled.

MR. STEPHENSON: May I start reading, Your Honor?

THE COURT: Yes.

MR. WELLER: Your Honor, can it be understood that if we do not offer the cross examination or summary of the cross examination of Mr. Shrode's deposition that he can be --

THE COURT: Used?

MR. WELLER: Used, Your Honor.

THE COURT: Yes, sir.

MR. STEPHENSON: This is a summary which I have prepared of Mr. Shrode's testimony. Mr. Shrode was questioned about whether he remembered wearing any type of respirator when he worked in the shipyard during World War II days, he stated that he did not remember wearing one on a ship and

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didn't remember seeing anyone wear one on a ship while he was working there. That the materials create dust, even a certain amount of dust just taking them out of the cartons. There is a certain amount of dust created when you move any type of asbestos materials.

Mr. Shrode first became aware of asbestosis in the 1950's, when he had trouble with his lungs and went to his family doctor who advised him that he had some spots on his lungs. This, together with some of the experiences that some of the members of the Local had, concerning their own personal experiences with asbestos, called this to his attention during the middle 1950's. There was certain literature sent out by the International Union but it did not go directly to the individual members. He further testified that one of the manufacturers, at least, has started

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now to put the asbestos cement in a plastic bag where you can attach a garden hose to it and mix it in the bag. He said even if you start moving the cartons or boxes around there will be a certain amount of dust created by moving them, even though the boxes are not open. Mr. Shrode said that he would have complained to a representative of the manufacturers of asbestos products when the dust was blowing and getting into his nose and into his lungs if he had had an opportunity to do so.

In all the years Mr. Shrode has worked as an insulator he does not recall ever having seen a representative of any of the manufacturers out on the job making dust counts or trying in any way to alleviate the horrible, dusty conditions. He has never seen a labor inspector from the manufacturers come out, working him or any of his men in an effort

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to devise a system of applying this material which would not endanger human life. He stated that if a fan is used instead of eliminating the dust it would only aggravate and stir up this dusty condition. Mr. Shrode testified that in a confined area while it might blow some of the dust out it would stir up what was there. The basic purposes in most instances would be that the fans are put in not to solve the dust problem but to keep the men cool where they can tolerate the steaming and burning sensation.

He testified that prior to 1966 he had no knowledge of any absestos insulating manufacturer placing any type of warning or notification on their boxes or cartons of material advising of the dangerous nature of the material. Among other things, the notice that has been placed on some of the boxes by some of the manufacturers since 1966 state: "Avoid

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breathing the dust", and Mr. Shrode said he was not aware of any way that this could be accomplished at the present time. He said that it was after 1966 that the plastic bag was made by one of the manufacturers.

Mr. Shrode was familiar with the way that asbestos materials are brought on the job and frequently are brought by truck and sometimes by railroad cars. The floor of the truck or the floor of the railroad car containing the boxes of asbestos insulating material would have a lot of asbestos dust on them, and that as far as he knew there was never any warning given to the truck drivers or railroad men that breathing the asbestos dust was dangerous to them.

Asbestos insulation workers frequently work in boxcars and trucks unloading asbestos material and other workers in the area, even though they were not unloading the materials, such

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as carpenters, insulators, brick-masons and so on, are not working with the materials, but would still be exposed and would inhale the asbestos dust.

Mr. Shrode, in recalling --

MR. WELLER: I object to the next statement as being hearsay in relation to the opinion of some third person.

THE COURT: Objection overruled.

BY MR. STEPHENSON: Mr. Shrode, in recalling what Dr. Selikoff of Mt. Sinai Hospital in New York had to say about asbestos dust, stated to him that there was not even today any device, respirator, filter, breather, or whatever, in common use, that would keep a worker from inhaling asbestos dust or particles. He recalls also that Dr. Selikoff stated that workers of twenty years or more experience in insulating approximately ninety percent had abnormal lung

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findings, indicating asbestosis; and that Dr. Selikoff had likewise stated that wives of men who worked around asbestos contracted the disease simply from handling their husband's clothing.

Mr. Shrode further stated that members of the various Locals did not regularly attend meetings and he would judge ten to fifteen percent of the membership attended meetings fairly regularly.

Mr. Shrode stated that he had never heard anything about the so-called Threshold Limits, and had never been advised by Fibreboard Paper products Company, nor any of their representatives of any Threshold Limit that the workers were supposed to watch out for. Fibreboard Paper Products Company nor any of their representatives never told him even to the date of taking his deposition that inhalation of asbestos was

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dangerous.

The safety rules on the job do not have anything to do with the manufacture of asbestos insulating products and his Union has no contact directly with the manufacturers of the various asbestos insulating products.

Mr. Shrode stated that the fact that his Union has had to concern itself with safety from the contract viewpoint has arisen because the manufacturer of asbestos insulating products had done nothing to make them safe to use.

Mr. Shrode had mentioned the plastic bag with the garden hose attachment and mentioned that this was just a recent thing and only used by one or two manufacturers at most. He said that mixing the mud in the plastic bag would be safer than mixing the mud in the open hopper as had been done for years and mixing in the

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plastic bag would substantially reduce the amount of asbestos dust or fiber.

At the time he worked at Consolidated, during World War II, Mr. Shrode said that no manufacturer ever told him or any of the other workers that inhaling this asbestos would give him cancer of the lungs or anything of that nature, and that he had no knowledge that this was any different from inhaling dust from wood or any other type of dust. Mr Shrode knows nothing before 1966 that the manufacturers of asbestos insulating products did to make their products safer to use than in 1942, when Mr. Shrode entered the trade, and speaking right down to taking his deposition, he did not know of anything any manufacturer of asbestos insulating products who are defendants in this case had done to devise a safe breathing device which

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would keep a worker from inhaling the asbestos fibers. He did not know when he coughed up this dust he was endangering his health at du Pont or Consolidated either, and subsequently found out about it when he went to his personal doctor at Pasadena, Texas. His personal doctor found that he had spots on his lungs and this was only after about eleven or twelve years of working in the insulating field, or perhaps thirteen years. He further testified that there was no way, even after he became Business Agent, that he could go out on a job and tell his men not to breathe asbestos dust and fibers. Mr. Shrode then proceeded to introduce certain slides. Number one slide shows a piece of asbestos as it is mined and as it comes out of the mine. No. 2 slide is a man putting on a piece of asbestos pipe covering. No. 3 slide is a typical work area

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where insulating materials are being applied.

MR. WELLER: If the Court please, I have an objection to slide No. 4, it shows a white asbestos being blown as to each and every defendant, and we object because it is not shown that we produced or applied any asbestos in this manner.

THE COURT: Objection overruled.

MR. STEPHENSON: No. 4 slide is a column being covered with white asbestos blown onto it. No. 5 --

MR. WELLER: The same objection to slide No. 5, Your Honor.

THE COURT: Objection overruled.

MR. STEPHENSON: Slide No. 5 is a man spraying inside a building on beams and studs in the building.

No. 6 slide looks like a piece of machinery that has been in an area where they have sprayed the beams of a building. No. 7 is a man emptying a bag of cement in a mud box and the

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manner shown in slide No. 7 is the way that asbestos cement has been mixed for the most part for the entire period of time that Mr. Shrode has been working in this field, since 1942. He observed that he could see men standing in the background of the picture that were not wearing masks, but that they would also breathe in the dust from the man mixing the mud in the mixing box. That the mask shown on the man mixing the mud would not prevent all of the insulating dust and fibers from being breathed, and that within a very short period of time the paper mask would clog up.

Plaintiff's Exhibit No. 4 is the type of mask the man in slide No. 7 -- this has been introduced previously, Your Honor, is the type of mask the man is wearing, and that within a very short period of time, thirty minute or so, this paper mask would become clogged up and be of no

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use.

He now shows a picture of the same general area and he says that this does portray a typical scene around an asbestos cement mud box.

He identified Plaintiff's Exhibit No. 5, which was a plastic respirator, as being another type of respirator and states that these respirators will not prevent the user from taking into his lungs and body asbestos dust and fiber and in addition to clogging up in a very short period of time will cause chafing and burning of the face. That Exhibit 5 mask, if worn for eight hours in any type of dust will cause irritation where it is pressing and will make it very difficult to breathe and that if you wore any of these masks every day for a week there would be a condition on your face where the mask fits of irritation and such irritation would be

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such a degree that it would be painful, even to shave around the area, and that this would be caused from fibers getting under the area where it fits on your face. Even so, the filters referred to were not in common use in the 1940's, and as far as Mr. Shrode knows if we tie the matter down to the manufacturers of asbestos insulating products since 1942 to his knowledge the manufacturers have not devised any type of breathing apparatus that was not already in existence in 1942.

The ninth slide shows a typical scene of a man applying blocks in a close space.

That concludes the summary of the deposition and the slides, Your Honor.

THE COURT: Just leave it standing, just leave it standing, please.

MR. STEPHENSON: Yes, sir.

I would like to call Mr. Billy

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Condrey at this time as a witness, Your Honor.

BILLY CONDREY,

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

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q State your full name, please, sir.

A Sir?

Q State your full name, please.

A Albert Lewis Condrey.

Q You are commonly known as Bill?

A That's right.

Q Mr. Condrey, what age man are you, please?

A Sixty.

Q Sixty?

A Yes, sir.

Q And where do you live?

A I live at 1015 Colorado, Beaumont.

Q Mr. Condrey, have you had an occasion in your lifetime to work as an insulating worker?

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A Yes, sir.

Q When did you start in that trade?

A I started forty-two years ago.

Q Forty-two years ago?

A Yes, sir.

Q Have you worked in that trade since that time?

A Yes, sir, practically all of the time.

Q Have you known Mr. Charles Borel during his lifetime?

A Yes, sir.

Q And did you work with Mr. Borel on varous jobs at different times?

A Yes, sir, I sure did.

Q Now I will ask you, please, to state to the jury what jobs you recall working on with Mr. Borel and what asbestos materials you used on those jobs?

A Well, I first met Mr. Borel around 1941.

THE COURT: Can you speak louder, please?

A I first met Mr. Borel around 1941, at the Orange shipyard during the war.

Q Get a little closer to the microphone, if

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you can.

A I met Mr. Borel at the Orange shipyard during the war in 1941. We worked approximately four years together there with Johns-Manville materials, asbestos insulation. Magnesia, fifteen percent asbestos. Five percent magnesium, fifteen percent asbestos.

Q Do you recall other jobs that you worked on with Mr. Borel?

A Yes, sir, I went to work with him after that at Orange, the du Pont plant, around '45, '46, somewhere in that neighborhood. We worked about two years together there, Philip Carey materials.

Q Philip Carey materials?

A Philip Carey.

Q Do you recall any other jobs?

A I remember one outstanding one at du Pont here in Beaumont. We worked there off and on about eight or nine years.

Q All right, sir, what products did you use there?

A We were using asbestos, various types of insulation, mostly asbestos.

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Q What manufacturer?

A We were using Armstrong, it was Armstrong's job, we were working for Armstrong.

Q All right, sir.

A At the latter part we was working for B&B.

Q Do I understand that you were working for Armstrong Cork Company?

A Yes, sir, that's right.

Q And you were using Armstrong asbestos products?

A We was using some Armstrong and various other people's materials, they were buying materials from several guys, we were working for Armstrong and using their material plus they would bring other materials in too.

Q Was it primarily Armstrong material that you used?

A Yes, sir, it was supposed to be their material.

Q In that connection now, when you were working for Armstrong directly did Armstrong ever furnish you any type of breathing apparatus to keep you from breathing in asbestos dust?

A The latter part of the job they did come

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in with a few.

Q With what?

A With a few respirators, we never could wear them though very well.

Q Explain to us why you couldn't wear them.

A Well, you had to wear glasses, you couldn't wear the respirator and the glasses together, they don't fit, you can't breathe, you have got to have lots of pressure on your lungs to breathe, it's hard to breathe and it clogs up and it sweats up and you can't see nothing through your glasses, they don't fit with glasses, the respirator and glasses both at the same time, you can't hardly wear them.

Q All right, sir, but do I understand, did Armstrong do anything else to try and keep you from breathing asbestos dust?

A Not nothing in the field at all, they did put in some blowers about halfway through but it still didn't get it out.

Q Do you recall any other jobs that you worked on with Mr. Borel?

A I worked on a job with him about 19 and -- somewhere in the neighborhood of '62 or '63, at

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Mobil Chemical working for Fluor Corporation. We were using B & B insulation, I think Kaylo, mostly Kaylo.

Q All right, sir, who was the manufacturer of the asbestos where you were working there at Mobil Company?

A It was coming through B & B, so I imagine it was Philip Carey, because they represented --

MR. ARNOLD: On behalf of my client I object, he said he just imagined it came from Philip Carey.

THE COURT: All right, your objection is overruled.

BY MR. STEPHENSON:

Q Will you tell us, please, why you believe that it was Philip Carey products since B & B was the jobber?

A Well, B & B represented Philip Carey, they handled Philip Carey materials, they acted in this area for Philip Carey and we was buying from B & B.

Q Okay, Mr. Condrey, do you recall any other jobs that you worked on with Mr. Borel, using asbestos?

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A Well, offhand I don't -- I can't pinpoint it. Right offhand some of the jobs was two or three days, maybe a week, various jobs all over the place, and it is hard, I can't remember.

Q All right, sir, will you explain whether or not there is dust created simply by opening a box of asbestos insulating material?

A Absolutely, you have got to turn your head to keep from inhaling it, it is full of loose dust in all of the boxes.

Q Have you ever seen a boxcar come in to the job site with asbestos material on it?

A Yes, sir, I sure have, I have helped unload a lot of it. You have got to open the door, and the dust, it is full of dust.

Q And the boxes?

A In the boxes, it comes through the boxes.

Q All right, sir, this is all the places that you can think of that you worked with Mr. Borel?

A I believe that would be the most important ones that I can remember right now.

MR. STEPHENSON: All right, thank you, Mr. Condrey.

THE COURT: Any questions by the

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defendants?

MR. WELLER: Yes, sir, Your Honor.

CROSS EXAMINATION

BY MR. WELLER:

Q You spell your name C-o-n-d-r-y?

A C-o-n-d-r-e-y.

Q What year was it that you worked for Armstrong Cork on the du Pont job?

A We started around 1960, '61, in that neighborhood and worked off and on for them around eight or nine years, the latter part of the Armstrong -- latter part of the du Pont job was taken over by B & B the last few months. Armstrong was taken out and B & B was put in. That is, the last part of the -- the last time I worked there.

Q Did Armstrong Cork pay you on the job?

A They gave our checks on the job.

Q You were employed directly by Armstrong, Mr. Borel was employed directly by Armstrong?

A Yes, sir, that's right.

Q All right, how many employees did you have

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on that job?

A Well, it varied, sometimes as much as one hundred, it just varied. There is no suggested number or set limit.

Q You hired more than three, didn't you?

A Oh, yes.

Q Now, sir, in 1941 did they furnish you with any respirator or mask at the shipyard?

A Not whatsoever.

Q Did they have suction fans in close places?

A The Consolidated Steel had some fans for their men, if we got one we was just lucky, we had to steal it from them or borrow it or drag it over to our corner and when they got ready for it they would take it away from us. We had a lot of trouble over those fans but they weren't ours.

Q You were a member of the Union at that time?

A Absolutely was.

Q Well, your Union negotiated your working conditions with the employer, didn't they?

A They did.

Q Where were you working, were you working

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directly for Consolidated Steel or --

A No.

Q It was in the shipbuilding?

A Yes.

Q At that time didn't you look to your employer to furnish you proper working conditions?

A We did, but at that time we didn't pay much attention to inhalation, they never mentioned it would hurt you, never did tell us it would hurt, we didn't know anything about it.

Q Well, now when you went to du Pont in '44, '46, did du Pont furnish you with respirators on their job?

A We weren't working for du Pont, we were working for a contractor, he didn't furnish them.

Q Well, did du Pont make them available to you when you were on the job?

A No, sir, we didn't have any respirators.

Q When is the first time you had respirators on a job?

A Respirators hadn't come into effect until the last three or four years, it hasn't helped too great amount.

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Q Did you ever work for Sabine Insulation in the last ten years?

A Yes, I have.

Q Have you ever worked in their shop?

A Never have.

Q On their jobs don't they furnish respirators?

A I guess they have at some jobs but the ones I have worked on they didn't.

Q Well, did you ever work as a foreman on these jobs?

A As a foreman?

Q Yes.

A Yes, sir, I sure have.

Q Well, now at the time you worked as foreman you were still a member of the Union, weren't you?

A Yes, sir.

Q Did you demand at any time the use of respirators?

A Well, no, we didn't pay any attention to it because we didn't think it hurt us.

Q You received the "Asbestos Worker", don't you?

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A Sir?

Q You receive the publication entitled "Asbestos Worker", don't you?

A Yes, sir, I sure do.

Q And you read that publication as far back as 1954, '56?

A There has been talk of it for the last eight or ten years, they would slightly touch on the subject but here lately it has really got more representation than we ever did before. Up until then very little was ever said about asbestosis.

Q Well, so long as ten or fifteen years ago among the Unions they were discussing the dangers of exposure to asbestos dust, weren't you?

A I can't remember if we did that far back, no, sir, I can't.

Q But you did receive all of the copies over the years of the "Asbestos Worker"?

A You mean the journal we receive?

Q Yes.

A Yes, sir, I have.

Q Now you were a technician or a journeyman asbestos insulator, I assume?

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A Yes, sir, that's right.

Q After a few years?

A Yes, sir.

Q Do they perform the job of unloading railroad cars?

A We do if we get in a bind to get it, you know, the Union before, before they merged, would all get, you know, unloaded, we would get it unloaded, even the superintendents if he has to.

Q All right, throughout the years that you have worked you have relied upon the contractor that you were working for to furnish the working conditions under which you worked, haven't you?

A Yes, sir.

Q And if you were working for, directly for or on a plant you relied upon that individual to furnish you the proper working conditions, don't you?

A No, sir, we don't work directly for a company, we work for contractors only.

Q You work only for contractors and --

A That's right.

Q For instance, if du Pont had construction

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going on there, you don't work for du Pont Construction?

A No, sir, we are not signed up with du Pont Construction, we work for assigned contractors only.

Q All right, then they have the contractor and then they deal directly with the Union, don't they?

A Well, they deal directly with the shop, I don't know about the association, I don't go that far into it.

Q Then you look to the man you are working for for your working conditions?

A That's who we are working for.

Q Now, on a job if you are working as a journeyman you take orders from the foreman, don't you?

A That's right, sir.

Q And you wouldn't take your orders, if a representative of the owner came out there and started telling you what to do, you don't take your orders from them, do you?

A He goes through the foreman, the foreman comes to us.

Q He has to go through the foreman and the

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foreman comes to you?

A Yes.

MR. WELLER: I believe that is all.

THE COURT: Mr. Tucker?

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

REDIRECT EXAMINATION

BY MR. STEPHENSON:

Q Mr Condrey, in your career working as an asbestos worker have you ever known of anyone from any of the manufacturer coming out into the field making any dust count or any study of any kind designed to make it more safe to use the product?

A No, sir, I haven't.

Q Have you ever worked directly for any of the major manufacturers?

A Yes, sir.

Q Of asbestos insulating material?

A Yes, sir.

Q All right, which one, please?

A I worked for Phillip Carey, I have worked

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for Johns-Manville, I have worked for Standard Asbestos, that's three.

Q All right, sir, Philip Carey, Johns-Manville and Standard Asbestos?

A Armstrong, I worked for them.

Q Armstrong?

A Yes.

Q On any of those jobs for those four manufacturers of asbestos insulating material were you ever told how you could use their material safely without inhaling the dust and fibers?

A Never was told how to use it in any way, never have.

Q As a matter of fact, were you ever furnished respirators or breathing devices on these jobs?

A No, sir, up until the last few years is the only time they ever even brought them in, and they weren't very useful.

Q Have these manufacturers that you worked for directly or any other ever supplied you, brought any safety wearing apparel that you might use to reduce the dust?

A No, sir, they never have.

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Q Have they ever told you about any method of applying the product that would reduce the dust?

A Never have, sir.

Q Have you ever heard one word out of them at all about any safety features?

A Never have.

Q Mr. Weller asked you if somebody came out on the job directing you around would you take orders from them. Now I will ask you if somebody came out on the job saying that they were out there to make this work more safer would you have listened to him?

A Yes, sir, I would, that would have been under a safety meeting and we always listen to the safety meetings. We believe in safety meetings and if they come out and suggest we are more than glad to listen as far as giving orders to do our work or give us orders like that. That's what I am speaking of, not taking orders from them, the safety meetings, we would.

THE COURT: Anything further?

MR. TUCKER: No.

MR. WELLER: No.

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THE COURT: All right, you may be excused. You may leave any time you wish.

Call your next witness.

MR. STEPHENSON: We call J. J. Crawford, please.

THE COURT: Have you been sworn as a witness?

THE WITNESS: No, sir.

J. J. CRAWFORD,

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

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Mr. Crawford, state your name, please.

A Sir?

Q Get up close to the microphone and state your full name for the record, what is your name?

A Jesse J. Crawford.

Q Where do you live, please, Mr. Crawford?

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A 2504 Francis Drive, Pearland, Texas

Q What age man are you?

A Sixty-seven.

Q Mr. Crawford, during your life have you had an occasion to work as an asbestos insulation worker?

A Yes.

Q How long have you followed that trade?

A Approximately forty-five years, forty.

Q During your working time did you have an occasion to know Mr. Clarence Borel?

A Yes, sir, I know Mr. Borel.

Q Did you work with him on various jobs from time to time?

A A couple of jobs, a couple, sir, that I personally remember.

Q All right, sir, would you please tell us what jobs you worked on with Mr. Borel that you can recall and also what asbestos insulating materials were used on that job?

A I worked with Mr. Borel at -- in Beaumont, on I believe it was the Monsanto job, we were working for Armstrong Cork Contracting Supply Company. We were using Armstrong material on the job and at various times, other times we

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were using other material, when it was substituted for Armstrong material.

Q All right, can you tell us about when that was?

A I believe it was '62 or '63, to the best I can remember right at this time.

Q And how long did that job last, Mr. Crawford?

A Well, I was only on the job about five months, but I think the job went a couple of years.

Q All right, sir, and during that time that you were there was Mr. Borel also working there?

A Yes, sir, he was.

Q Do you remember any other jobs then other than that one that you have mentioned?

A In '42 I worked with Mr. Borel at Texas Company.

Q All right, sir.

A We were working for B & B Engineering Supply Company.

Q What asbestos or manufacturer supplied the material for that job?

A I can't truthfully say, there were three or

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four different brands of material used on the job. The job defined a particular one, we had used some Manville products, I remember, and I believe we used another product.

Q Try to be as certain as you can about that, if you don't know just say that, that is all right.

A Well, I wasn't too sure because we were working for an outside contractor and they were bringing those materials in, they would bring them in on those jobs. If they ran short of one particular brand of material they would substitute for another one.

MR. WELLER: I object to that as speculative and I ask the Jury be instructed.

THE COURT: Objection sustained.

BY MR. STEPHENSON:

Q Mr. Crawford, if you can think of any more, please, that you worked with Mr. Borel, please tell us and the products.

A No, sir, not at the present time.

Q All right, I realize over many years it is hard to remember every place. Now I suppose in

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your life you have worked with asbestos pipe coverings?

A Yes.

Q Asbestos blocks?

A Yes.

Q Asbestos cement?

A Yes, sir, I have.

Q Is there any way to use these products without inhaling the dust?

A No, sir, there is no way to use the products without creating a certain amount of dust.

Q Does the opening of the boxes create dust?

A Yes, sir, it does.

Q And have you seen boxcars that have had materials in it, how much dust is in there?

A Well, normally just a small amount of it in the boxcars but inside the boxes when you open them there is always dust in the bottom of those.

Q Is there any system used during your work life of mixing asbestos cement in a hopper or box that doesn't create dust?

A No, sir, no system that I have ever seen.

Q If you saw the material with your hand saw

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to shape it to the job you are applying it to does that cause dust?

A Yes, sir, that creates dust.

Q Have you ever known of any of the manufacturers of asbestos insulating material to come on a job to try and make dust counts or work out some system of using their material without the worker breathing the dust?

A No, sir, I have never seen that in my lifetime.

Q Do you have the disease asbestosis, Mr. Condrey?

A I have asbestosis, yes, sir.

Q When did you first know you had it?

A Some six or seven years ago, about six years, I think something like that.

Q All right, sir.

A To be definite I couldn't say right at this point.

Q I would like for you, if you don't mind, to explain what symptoms this disease creates in you?

MR. WELLER: I object to the witness stating what his symptoms

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may be. It is not shown that he is qualified as a physician or has any special qualifications in this field, and, further, because his condition as related to other conditions, it would not be fair to attempt to try his medical case at this time.

THE COURT: Objection overruled.

MR. WELLER: Note our exception.

BY MR. STEPHENSON:

Q Tell us how this disease affects you, what effects you have from it.

A Excuse me. Well, it causes a shortening of the breath, pains in the chest and very much of a discomfort, more especially in the night time, if I sit up straight it doesn't bother me as much as when I try to rest. There is no way hardly to get a night's rest. I have to use my bed elevated approximately twelve inches and I use another additional pillow, whatever it might take to be able to get a night's sleep and then if I happen to turn on my side or something well I start wheezing and finally I go to coughing and vomiting and have to get up and set up

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for approximately thirty or forty minutes and then I will be all right again. I lay back down.

Q Are you working at your trade now?

A No, sir, I am not, I am not physically able to work at the trade.

MR. STEPHENSON: That's all.

CROSS EXAMINATION

BY MR. TUCKER:

Q Mr. Crawford, is Ward Stephenson your attorney?

A Yes, sir.

Q On these jobs when you ran across these dusty conditions did you ever make complaints about the dust?

A Oh, yes, sir, I made complaints about it.

Q Over how many years have you been complaining about it?

A Practically half a lifetime, I imagine.

Q Who did you make your complaints to?

A Foremen, the men and everyone else that would listen.

Q You made them to your employer?

A Well, a foreman is our employer, sir.

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Q Did they ever make a dust count out there, the people you were working for, and that you complained to?

A No, sir.

Q Beside your foreman and the men you were working with and for, did you complain to anyone else about dust?

A No, sir, not to the general public I didn't

Q Well, you indicated you must have complained to someone, who did you complain to?

A Men working on the job, we griped about it being dusty and all that sort of stuff and complained to the foreman and probably the job steward or somebody like that.

Q And they would pass those complaints on to the Union?

A Pardon?

Q Were those complaints passed on to the Union representatives?

A Yes, sir, they have been passed on to the Union representatives.

Q Did the Union ever make dust counts to determine whether there were dangerous quantities of dust out there?

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A Well, to my knowledge with something you count dust with, no, sir.

Q Now about these concerns that you were working for in plants, for instance, at the Texas Company and some other concerns did they ever make dust counts?

A Not to my knowledge, no, sir.

Q There are other types of insulating material beside those containing asbestosis, aren't there?

A Yes, sir.

Q Fiberglass?

A Fiberglass, foam glass.

Q Do they create dust?

A Yes, sir, they create dust.

Q Do you complain about those?

A Yes.

Q Now the fiberglass manufacturers, did they ever come out and make dust counts?

A Not on the job I w as working on, to my knowledge.

Q How about foam glass, do those people make dust counts?

A They never made a dust count on a job that

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I worked on, to my knowledge.

Q Did you ever ask for a respirator or some kind of face mask at the time these complaints about the dust were being made over your lifetime?

A Yes, sir, I have asked for a respirator.

Q Who did you ask for them?

A The foreman.

Q Did you get them?

A Sometimes.

Q Did Mr. Borel use a respirator?

A I really don't know, sir.

Q Do you know if he ever made complaints so far as you know?

A To my knowledge I heard him complain on a job about dust, yes.

Q That's over this same period of many, many years, is that correct?

A Well, as I stated before, I have known Mr. Borel, worked with him on a couple of jobs and to my knowledge at this time, and there is probably other jobs but I don't remember.

Q Well, he was making complaints about dust?

A Yes, sir, he was complaining about dust.

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Q Did he wear a respirator or a mask?

A No, sir, I never seen him wear one.

MR. TUCKER: That's all.

MR. WELLER: I have a couple of questions, Your Honor.

CROSS EXAMINATION

BY MR. WELLER:

Q Mr. Crawford, were you a smoker over a long period of time?

A Pardon?

Q You smoked cigarettes over a long period of time?

A Well, I smoked pipes more than I have cigarettes.

Q But you did smoke cigarettes over a long period of time, you gave that history to your doctor?

A Yes, sir, I smoked cigarettes.

Q And your doctor finally told you you had to quit?

A He didn't tell me I had to quit, no, sir, he told me that -- to quit smoking, he didn't say I had to.

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Q You began having trouble as long -- as far back as in 1956, didn't you?

A Yes, sir, somewhere in that area.

Q And you consulted a doctor about it back at that time?

A Yes, sir.

Q And that the doctor told you it was connected with your work, didn't he?

A Yes, sir.

Q So that you have known that asbestos dust was a hazard for as long as fourteen or fifteen years, haven't you?

A Well, I have known about it since the time my doctor told me about it, I don't have the date with me, I don't remember.

Q But you have known it that long, haven't you?

A Well, I am not going to say fifteen years, I will say -- I am not going to say.

Q Whatever date it was that the doctor told you it was?

A Yes, sir.

Q It was long prior to 1960, wasn't it?

A Yes, sir.

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Q Now you also had a condition, serious condition of arteriosclerosis, hardening of the arteries of your leg?

A I had to have an operation on my legs, yes.

Q You had to have an operation to save your leg, didn't you?

A Yes, sir.

Q The asbestos didn't have anything to do with that?

A I don't think so.

Q Well, the doctor told you it didn't, didn't he?

A Well, at that time I had an operation on my lungs, at the same time, for asbestosis.

Q Now this matter of danger from the dust particles on your job, that has been discussed in your Union and among your Union members for at least twelve or fifteen years, hasn't it?

A Somewhere along in that line of time, I wouldn't know the exact date.

MR. WELLER: I believe that's all.

THE COURT: Anything further?

MR. STEPHENSON: No, sir.

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THE COURT: All right, sir, you may be excused. You may leave at any time you wish.

Who do you have next?

MR. STEPHENSON: Mr. Robert L. Mooney, Sr.

ROBERT L. MOONEY, SR.

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

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q State your full name, please.

A Robert L. Mooney, Sr.

Q Mr. Mooney, get closer to the microphone.

A Robert L. Mooney, Sr.

Q Mr. Mooney, where do you live?

A Vidor.

Q And what age man are you?

A Sixty-seven.

Q All right, sir, have you worked as an asbestos insulation worker during your life?

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A Yes, sir.

Q When did you start?

A Well, I started way back about '29.

Q All right.

A Gulf in Port Arthur.

Q Did you know Mr. Clarence Borel during your work life?

A Yes, sir.

Q Do you recall any of the jobs where you worked with Mr. Borel and approximately when they were and what materials you and he used which contained asbestos?

A Yes, sir, I met him at the shipyard in -- over in Orange, about 1942, '3 and '4. We worked there approximately about three years.

Q All right, and -- excuse me, go ahead, sir.

A We was using mag pipe coverings and magnesia and asbestos and also raw amosite and also asbestos pads that we sewed these fittings with and beat them and made fittings out of them.

Q What company was manufacturing these products?

A That was a magnesium material company out of Chicago that we were working for. Now I

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really don't know too much about it, I guess they furnished the material, I guess, I don't know, it was all mag.

Q Well, do you know the name of the company that manufactured the material which you used there at the shipyard?

A Well, it was, I saw some of it, some of it was Johns-Manville Insulation Company on it, some of it, we used with Johns-Manville material and some of it was other kinds and raw amosite.

Q All right, sir, do you remember the name of any other manufacturers supplying asbestos products on the shipyard job other than Johns-Manville?

A No, sir.

MR. WELLER: Your Honor, I object, he is satified that he doesn't know any more. This is repetitious.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q Would you go then to the next job that you recall working with Mr. Borel on?

A The next job we went over at the du Pont plant for Philip Carey Insulation Company and

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we handled magnesia there. This is asbestos.

Q What company manufactured that product?

A Well, that was Philip Carey, I think, had some of that and when they ran out they would buy it from Johns-Manville.

Q And about what year was that, please?

A Well, that was in '44 or '45, '46, we worked two years there for them.

Q All right, sir, did you work with him in any other place?

A Yes, sir, we moved from there in '47 to Johns-Manville, they had a job there in the du Pont plant in Orange, and we worked there about a year on that job and we also used Johns-Manville insulation.

Q And you were working directly for Johns-Manville?

A Yes, sir, working for Johns-Manville.

Q Were you furnished any type of breathing device by Johns-Manville?

A No.

Q What about on the Philip Carey job you mentioned before?

A No, sir, we all was looking to try to get

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on the asbestos jobs then.

Q This may be interesting, would you please explain where you were trying to get on asbestos jobs?

A Well, they had many jobs that had -- they had some jobs that had foam glass and stuff that would get in your eyes and affect your eyes and it always would eat you, fiberglass would eat you. We were trying to get the mag jobs so we could stay out, we didn't know it would hurt us.

Q In other words, you felt the asbestos jobs were healthier than the fiberglass?

A Yes, so we got on the ones of them -- we wanted to show off then, we wanted to -- we strived to beat the others to get on the mag jobs.

Q I see, I take it then at that time you had no knowledge at all that asbestos would give the disease of asbestosis?

A No, sir, we sure didn't, we was ignorant in that.

Q Can you please tell us the next job you worked on with Mr. Borel?

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A Well, he worked with me at Atlantic Refinery at Port Arthur, and on a Johns-Manville job there we had and also an Armstrong job we had at Atlantic. He worked there with us and we used magnesium insulation.

Q And this was Johns-Manville products?

A One of them was and another was Armstrong Insulation Company.

Q All right, sir, when you worked for Johns-Manville on that job were you given any special safety devices?

A No, we still didn't know, we didn't know, we was ignorant to the fact that it would hurt you and we didn't think of it at all.

Q What year was that?

A That was in about, looks about '58 or '9, along in there.

Q All right, sir, can you remember another job, please?

A Well, then we went on to -- from there we went to work in Jefferson Chemical on maintenance and I stayed in there off and on with -- Clarence worked for me in there off and on for about four or five years.

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Q What products were used?

A Well, I will tell you what, we went in there with the Avor Company, I was having Jefferson Chemical to buy material from Johns-Manville because we wanted to put, you know, asbestos give us a fit, stuck in our hands and I got the company to buy Johns-Manville material and that's how come I got run off out there because one company found out I was getting, buying Johns-Manville material, so that's what got me out of there.

Q All right, sir, and did Mr. Borel work there?

A He worked off and on every time I hired a few and I would have to lay off, I hired a few more, when they would pick up, off and on for five or six years, there in Jefferson Chemical Plant in Port Neches.

Q And that was Philip Carey and Johns-Manville products?

A Yes, sir.

Q Can you remember any other jobs?

A Yes, sir, I went from there to Gulf and stayed in there about six years, five or six

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years with an insulation company working for -- on maintenance work and was working through Carruth-Dishman and we used all materials from the warehouse. We got all the materials out of the warehouse, Gulf bought the materials, Johns-ville insulation material.

Q All right, sir, did Mr. Borel work on that job?

A Yes, sir, he worked for me on and off every time I could use him.

Q During the entire five or six years?

A Yes, sir.

Q All right, sir, can you recall any other jobs?

A Well, after that, then after that wound up it was about '60, we all went to work at du Pont and --

Q Where?

A Here in Beaumont, this little place out here, and we stayed out there off and on as time would get good and then we would get laid off and we would go and come, we stayed there until he died. Well, he was sick when he was working for me there in the shop right on the last, in

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the insulation shop there where we was fabricating, fitting.

Q And you were using Armstrong products there?

A Well, we used some. They used all kinds, asbestos, raw asbestos, kind of experimenting with the unit there at du Pont, we were trying every kind of material that we could try. Lots of different kinds of materials.

Q Do you remember the names of the manufacturers of the other products other than Johns-Manville?

A They used some Carey stuff, Carey something insulation and then there was Carey temp, they used that stuff, fiberglass, they used some fiberglass, they used some foam glass --

Q Are you referring now to asbestos products?

A No, sir, that's about the only ones that I can remember offhand.

Q Johns-Manville, Philip Carey?

A Yes, sir.

Q Can you recall any other jobs that you have worked on with Mr. Borel?

A No, sir -- Well, I worked with him on some jobs, I worked with him in Indiana, and we went

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out on travel times and worked different jobs, I worked with him some time, I can't pinpoint every time I worked with him but there was a time that there wasn't but a very few of us working, we were in the hole when the job come up, we all hit it together trying to get the job together.

Q Do you recall what material you used in Indiana?

A Well, they used Armstrong, the cork on that job.

Q It was Armstrong Cork itself?

A Yes, sir.

Q All right, sir, I know you can't remember all the places, but do you think this is what you can recall?

A Yes, sir, that is about the best of my ability.

Q What kind -- you were with Mr. Borel, what kind of man was he?

A He was a very good man, really good.

Q You were very close friends, I am sure?

A Yes, sir.

Q Mr. Mooney, is your son in this business?

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A Yes, sir.

Q By whom is he employed?

A I have three sons.

Q Sir?

A Yes, sir.

Q By whom is he employed?

A Du Pont.

Q What does he do with the company, at du Pont?

A He goes everywhere on du Pont jobs and he writes specifications and they place him here and yonder to see the job gets started right and using the right kind of materials.

Q All right, sir, when was the first time that you ever had any knowledge that asbestos would give you any serious disease?

A Well --

MR. TUCKER: We object to that, from his own experience, what he knows, I don't think it is material to this case as to what someone else may have known or what he thought.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q When did you first know?

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A Right here in the last couple or three years.

Q All right, sir, did any manufacturer of asbestos materials ever tell you that this product was dangerous?

A No, sir, we never did know, didn't ever think anything about it, we just fly into it and get it done.

Q All right.

A The one that got the most of it got to stay the longest.

Q Did you ever know of any manufacturer coming out and making dust counts or trying in any way to improve their product to make it safer?

A Right here in the last year, right out there at du Pont they are trying to rig up a deal to try to kind of keep it, keep the dust down but it didn't catch it, well, it caught some of it.

Q All right, sir, du Pont, of course, has a very fine safety record?

A Yes.

Q And you know yourself that du Pont tries to work on some of these things themselves to remedy this situation?

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A Yes, sir.

Q Now I am speaking as a manufacturer now.

A Yes.

Q As opposed to a company such as du Pont --

A Yes, sir, they are trying now to.

Q The manufacturers are now?

A Yes, sir.

Q And when did they start trying?

A About the last year before I left out there, I have been gone out there two years, I retired two years ago.

MR. STEPHENSON: Thank you, Mr. Mooney.

THE COURT: Mr. Weller?

CROSS EXAMINATION

BY MR. WELLER:

Q When you worked for Armstrong did Armstrong pay you on each of these Armstrong jobs?

A If we -- we got Armstrong checks.

Q So you were employed directly by Armstrong?

A Yes, sir.

Q Cork or --

A Yes.

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Q How about Philip Carey, did you work directly for Philip Carey on the Philip Carey job?

A Yes, sir, we worked for Philip Carey.

Q You drew Philip Carey's checks?

A Yes, sir.

Q When you worked on the Johns-Manville job did you draw a Johns-Manville check?

A Yes, sir, we drew Johns-Manville checks.

Q And on the jobs that Mr. Borel worked with you he drew the same checks, I suppose?

A Yes, sir.

Q You worked in the du Pont plant around 1946, didn't du Pont furnish and have available for you respirators or masks on the job?

A No, sir. No, sir, we never did, never had any respirators back in those days.

Q When is the first time that respirators were made available to you on the job?

A The first time I seen them was out here at du Pont.

Q Sir?

A The first time I seen them was out here at du Pont.

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Q How long ago?

A Well, I have been retired two years, about a year before, about a year, about three years ago, I guess.

Q In other words, a year before you retired was the first time that you ever --

A Yes, sir, that's the first time we ever seen any.

Q On a job?

A Yes, sir, and I made just about all of them.

Q Have you ever asked the foreman for a respirator on the job?

A Well, we finally did when we found out they had them and what they was good for, we sure did try to keep everybody in there in them.

Q Did you ever work for Sabine Insulation in Orange?

A Yes, sir.

Q When did you work for them?

A I worked in Orange, you mean the shipyard there in Orange?

Q No, sir, Sabine Insulation Company.

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A Yes, sir, I worked at Sabine Insulation Company.

Q Did you work for them as long as ten years ago?

A I worked for less than that, back here at this shipyard, Pennsylvania Shipyard, not only about six or seven years ago.

Q About six or seven years ago, didn't they have available for you --

A No, sir.

Q Masks and respirators on that job?

A No, sir, we choked down on the boats, we didn't have anything.

Q Did you work as a foreman most of the time?

A Yes, sir, outside that, I wasn't a foreman on that job though, I was working with tools.

Q You worked as a foreman most of the time?

A Most of the time, yes, sir.

Q And based on your experience with the Union and working as a foreman it was your responsibility to ask for safety devices on the job, wasn't it?

A If I knew anything about it, like I said, I didn't know anything about it at that time,

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that they had such stuff.

Q You didn't know anything about what?

A About respirators, we didn't know that they had that kind.

Q You didn't know that they had them?

A No, sir, nobody ever told us about them.

Q Well, did you have any of your men come to you and say I want a respirator because I am going to work in a tight place?

A No, sir, they didn't refuse to work on that because they didn't know it would hurt them.

Q Have you ever held an office in the Union?

A No, sir.

Q You have just been a member all these years?

A Yes, sir.

Q As a member have you received the "Asbestos Worker", the Union magazine?

A Well, here lately they have got it in a magazine, right now it is full of it.

Q Well, how long have you been a member of the Union?

A I got in in '39.

Q Now during that time, since 1939, have you received the magazine known as the "Asbestos

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Worker"?

A Well, I never did read the magazine too much, I never -- I wanted to go out and travel, see what was going on in other places.

Q You never did read the magazine?

A I never did read it too much.

Q Hadn't you Union members over the last fifteen years discussed this dust problem in connection with asbestos dust and the fact it does harm you?

A No, sir, they never did to me.

Q You just never did discuss it?

A No, sir, all I was interested in was a good scaffold on the job, I didn't know anything was going to hurt me but that.

Q Well, what is your age?

A I am sixty-seven years old.

Q And you are retired now, are you?

A Yes, sir.

Q You took retirement?

A Yes, sir.

Q And worked consistently in the asbestos field all these years?

A Yes.

Q Are you a chronic smoker or not?

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A No, sir, I don't, I never --

Q You have never used any in your life?

A No.

Q Have you had any respiratory troubles?

A Yes, sir, I have got it right now.

Q You claim you have respiratory trouble now?

A I am sure that I have, I cough it up at night and it's not a cold.

Q Well, have you consulted a physician about this?

A I am afraid to, I am afraid to go.

Q All right, you haven't been to a physician then about it?

A Not that -- no, sir, I had an operation two years ago, gall bladder, I don't know what --

Q If your national Union was discussing the fact that dust created by asbestos products was harmful as far back as 1956, you just didn't know anything about it?

A Well, I didn't know anything about any way to protect it, get away from it, from the dust, just walk out of it.

Q That wasn't my question, Mr. Mooney, my question was did you know anything about the fact

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that within your Union they were discussing the fact that asbestos dust or dust created by asbestos products was harmful to the worker?

A No, sir, I didn't know anything about that.

Q You just didn't know it?

A No, sir.

Q Now can you give us the year that you were working at the -- I believe you said you were working for Johns-Manville at the du Pont plant in Orange?

A Yes, sir.

Q Can you give us the year?

A Well, that was about '45 and '46, wasn't it, I believe I said. I think maybe '47, in '47 when I was working for Johns-Manville, I am pretty sure that's what I said.

Q Now you referred to working at Jefferson Chemical off and on for four or five years?

A Yes, sir, that's right.

Q Do you know what years those were?

A Well, it was about -- well, I can't pinpoint the time but it was after we had done all the work at the -- shifted from Magnolia, I mean

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du Pont plant, in or about that time, about '49 and '50.

Q All right.

A We went in there -- I can't remember all the dates but that has been so long ago and I don't have no records of it.

MR. WELLER: I believe that is all.

MR. TUCKER: Just one or two questions, Your Honor.

CROSS EXAMINATION

BY MR. TUCKER:

Q Did I understand you correctly, Mr. Mooney, that it was just within approximately the last three years that you have seen the use of a respirator?

A Yes, sir, I have been retired two years, I would say, and the last year that I worked at du Pont I run the shop, insulation shop, where fabricating was done, all the fittings, put them together and send them out to the field.

Q And who was using those safety precautions, did du Pont use them for their own employees?

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A Yes, sir, using it for our men that was in there and that they could -- I don't know, I don't think they could possibly have done much better than what they was doing there at that particular time.

Q Now you had worked in the du Pont plant, as I see it, all the way back to 1940, starting in '44 and '46?

A Well, in Orange, yes, sir.

Q Did they have equipment back at that time?

A No, sir, they didn't have anything back at that time.

Q And they appeared in 1960, when I believe you worked here in the Beaumont plant?

A Yes, sir.

Q Did they have that equipment then?

A Not when we started in there they didn't.

Q Du Pont has their own work force, some of them do this type of work, do they not?

A What now?

Q Du Pont has their own work force and some of them do this type of work at the du Pont plant, maintenance and some insulation work, do they not?

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A Yes, they do a little bit of it, yes, sir.

Q And Mr. Stephenson says with their fine record at the program it wasn't until the last approximately three years ago that du Pont started protecting their employees?

A That's right.

MR. TUCKER: That's all.

THE COURT: Anything further, Mr. Stephenson?

MR. STEPHENSON: No, Your Honor.

THE COURT: All right, you may be excused, Mr. Mooney.

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

THE MARSHAL: Everyone rise.

(REPORTER'S NOTE: Whereupon the Court was in recess for twenty minutes).

THE COURT: Please be seated. Who do you have next?

MR. STEPHENSON: I have a deposition, Your Honor.

THE COURT: All right, sir, you may proceed.

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MR. STEPHENSON: Judge, this was taken Thursday of last week and it is fairly short and I didn't prepare a summary but the deposition itself will not be lengthy.

THE COURT: All right.

MR. STEPHENSON: This is the deposition of Percy La Grappe.

Deposition of Mr. Percy La Grappe being read by Mr. Stephenson:

"Q Mr. LaGrappe, would you state your name, please.

A Percy La Grappe.

Q As you know, I'm Ward Stephenson.

A Yes, sir.

Q And I represent the widow of Clarence Borel in this suit in which your deposition is being taken.

A Yes, sir.

Q Of course, you won't be at the trial, so if you will tell us what age man are you, please?

A I'm sixty-four years old. I had a birthday week before last, the first of September.

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Q Have you recently had a heart attack?

A Yes, sir.

Q Has your doctor advised you that you cannot attend the trial to testify?

A I called him and asked him and he wouldn't let me go.

Q But it's all right with your doctor for you to give your deposition --

A Yes, sir.

Q -- here in your home?

A Yes, sir.

Q As I mentioned to you I want to ask you a few questions about Clarence Borel. Did you know Clarence Borel during his lifetime?

A About thirty years.

Q Were you and he ever members of a Union at the same time?

A Yes, sir, we belonged to the Asbestos Workers' Local, Local 22, in Houston.

Q How long have you been a member of that Local?

A I've been a member of that Local about twenty-seven years, twenty-eight years.

Q Was Mr. Borel a member when you joined?

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A Yes, sir.

Q Have you had an occasion to work with Mr. Borel on few or many jobs where asbestos products were used?

A I worked on a few jobs with him.

Q Would you tell us, please, in the nature of your work, do you work for many different concerns or just a few?

A Well, we work for many different concerns.

Q Does your work take you over a large area of the United States?

A A lot of times we have to go -- like right now, the Local is on strike right now, and some of those boys are up the country working different places, wherever they can get a job.

Q Have you worked in several states of the United States doing asbestos work?

A Well, I worked in a few of them. I worked in New Mexico and I worked in Madison, Indiana, and I worked several places, Louisville, Kentucky.

Q In the course of your years of working with asbestos products, have you had an occasion to work with many products made of asbestos or few

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or what?

A I have worked with just about all the material that's on the market.

Q Let me ask you some questions about whether or not you have had an occasion many times to use products made by Pabco or Fibreboard Paper Products Corporation?"

MR. WELLER: I object to that as leading and suggestive and the product has not in any way been identified.

THE COURT: Objection overruled.

READING BY MR. STEPHENSON:

"A I have."

MR. STEPHENSON: I am skipping to page 9, line 16.

"Q Go ahead, Mr. La Grappe, if you can remember the question, and answer it.

A I've used some Pabco material from time to time, but I can't remember just when I used it.

Q All right, sir. Have you used Caltemp or Super Caltemp?

A Yes, I have. I've used both of them.

Q Have you used eighty-five percent magnesia?

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A Yes, sir, I have.

Q Do men working out of the Houston Local that you and Mr. Borel were members of use Pabco products in your work?"

MR. DUNCAN: Your Honor, there is an objection there because the question calls for an opinion and conclusion and the witness had already stated that he doesn't know when or where he worked with such a product.

THE COURT: Objection overruled.

READING BY MR. STEPHENSON:

"A Yes, sir, we have used it for the past twenty-eight years since I've been in the Local.

Q What about Eagle-Picher Industries, is the same thing true of that?

A Yes, sir, I have used some of their products too.

Q What about Combustion Engineering?

A I can't remember too much on them.

Q What about Johns-Manville Products?

A Yes, sir.

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"A Let me ask you this, Mr. La Grappe: is it possible for you to remember where and when you have used every product you have ever worked with?

A Not every one. I can remember Johns-Manville at the shipyard during the war in '42 and '43, where I used their products.

Q Was Mr. Borel working there with you?

A Yes, sir, he was working on the same job. He wasn't working partners with me, but he was working on the same job.

Q Did the products you used contain asbestos?

A Yes, sir.

Q Was one of the products used Thermobestos?

A Thermobestos, I can't remember too much on the shipyard, but it was mostly a job of fiberglass and asbestos, and blocks too.

A And amasite too, which is a raw form of asbestos where we made pads and fittings.

Q What company furnished the asbestos insulating product for that job?

A Down here at Consolidated Shipyard in Orange.

Q What company provided --

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A Asbestos Material, Asbestos Magnesia Material Company out of Chicago had that job.

Q What company manufactured the asbestos products?

A Johns-Manville.

Q All right. I'll ask you the same question about whether or not you and other members of Local 22 over a period of many years have used Philip Carey Corporation asbestos products?

A The Local, they use it all the time because B & B Engineers is a distributor for them.

Q Do you recall whether or not you and Mr. Borel worked on any jobs where Philip Carey Corporation products were used?

A Yeah, right over in Orange in '46 when they built the du Pont plant.

Q What Philip Carey products were used?

A We used foam glass.

Q Asbestos is what I meant.

A We used asbestos, Philip Carey asbestos pipe covering, and they have also a Careytemp that they've got on the market which is a very light material, but it contains a lot of magnesia.

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Q Did you use that on the du Pont job?

A Yes, sir.

Q Where Mr. Borel was working?

A Yes, sir.

Q It's been admitted by Philip Carey Corporation, and there is no contest over this, that they manufacture eighty-five percent magnesia.

A They do.

Q Is this a widely used product?

A Yes, sir, it is.

Q And Careytemp pipe --

A Careytemp pipe covering, yes, sir, and blocks too. They use quite a bit of the blocks and the pipe covering.

Q And Aircell pipe covering?

A Aircell, I've used some of that, not too much of it.

Q Do the members of Local 22 widely use Pittsburgh-Corning Corporation asbestos products?

A Well, I don't know about Pittsburgh-Corning Corporation. They use a lot of their glass and foam glass.

Q It's been admitted by Pittsburgh-Corning

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Corporation that they manufacture unibestos. Have you used unibestos many times?

A Yes, sir, I have."

BY MR. DUNCAN: I would object to that and I did object to it at that time, unless this is limited to unibestos after 1962, after August, 1962, which has been stipulated by Mr. Stephenson.

THE COURT: All right, the comment has been noted, Mr. Duncan, and if it becomes material we will sustain your objection.

MR. DUNCAN: Thank you, sir.

MR. STEPHENSON: And his answer was, "Yes, I have".

READING BY MR. STEPHENSON:

Q Have you had an occasion to use Armstrong Cork Company products many times?

A Yes, sir, I have.

Q Is it a widely used product containing asbestos?

A All their products are.

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Q I will ask you whether or not you've had an occasion to use Ruberoid Company products?

A I've used some of their products, but I can't remember just where and when, but I've used some of it.

Q Is that a widely used product?

A Not down in this area it's not used too widely.

Q Mr. La Grappe, would you please try and do the best you can and think of the various places that you and Mr. Borel might have worked together using asbestos products, please.

A Well, I jotted some names down last night. Could I call it off the tablet?

Q Yes, sir."

MR. STEPHENSON: Skipping to page 16, line 6, with an answer.

READING BY MR. STEPHENSON:

A Now, I told you people that I worked with Borel in 1942 for Asbestos Material Company, Consolidated Shipyard. In '46 I worked with him --

Q Excuse me. Whatproducts did you use there?

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A Well, we used Johns-Manville Products there throughout, and we used amosite. Now, that's a raw form of magnesia is what it is.

Q Go ahead, sir.

A All right, sir. Then I worked with him at the DuPont plant when they started this job in 1946, we were both on that job.

Q What products were used there?

A We used Philip Carey's products there throughout this whole job.

Q This is asbestos products you're speaking of?

A Right, sir.

Q How long did the Consolidated job last?

A The Consolidated job must have lasted all through the war up until after the war the best I can remember.

Q About how many years did you work with Clarence Borel there?

A Well, I didn't work -- I worked there two or three different times. I'd quit and I'd go back. I guess I worked with Clarence a year or two there.

Q Do you know of your own knowledge how many

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years he was there at Consolidated?

A No, sir, I don't. I couldn't remember that, but he was on that job several different times just like I was.

Q And then how long did the DuPont job last?

A The DuPont job lasted, oh, I guess six or seven years. You know, they built one phase of it and then another phase of it, and it must have lasted six or seven years.

Q Is it your testimony that during all of that time Philip Carey products were used?

A On that DuPont job over here, yes.

Q Did Mr. Borel work there the entire time?

A Well, no, not the entire time. He done just like a lot of other insulators. He'd work three or four months there and quit and go somewhere else and come back and what-have-you.

Q Is it your testimony then that he worked there from time to time --

A Yes, sir.

Q -- over a period of six years?

A Over a period of six years he worked there from time to time.

Q Go ahead, sir.

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A That's in 1946, the best I remember, the DuPont plant in Nederland. Then we worked for Armstrong Cork Company, and I imagine that was about 1967, or '68, along in there, and he worked on that job and then he left.

Q What products did you use?

A We used a lot of Armstrong products and that, and B & B had some material out there when they took the job over, but that was later on.

Q Now, we're speaking about asbestos products. That's what I want you to testify about.

A Well, we used Armstrong products there. They had the job. And then Fluor Corporation down here at Neches Butane, Fluor Corporation bought all their products from B & B Engineers. It was unibestos, and there was also mostly magnesia, and then there was a lot of foam glass on that job too.

Q Did Mr. Borel work there with you?

A Yes, sir.

Q How long did that job last?

A That lasted a couple of years, two or three years. As a matter of fact, they just got

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through with part of it.

MR. WELLER: What job was that, now?

A The DuPont job at Nederland."

MR. STEPHENSON: And Mr. Weller said, "No, you gave us the Neches Butane job."

READING BY MR. STEPHENSON:

"A Well, the Neches Butane job -- you already got that job in Nederland. Fluor Corporation at Neches Butane."

MR. STEPHENSON: And Mr. Weller said, "When was that".

READING BY MR. STEPHENSON:

"A Well, I would say that that was along in '68 too or '69, somewhere along in there, but we done that job, the last unit they built there. And then the Fuller Austin job in Baytown in 1968. I worked there for about a month or two and got laid off. Borel was on that job. As a matter of fact, that's the job he got sick on.

Q What products were you using there?

A We were using -- Fuller Austin had the

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job. I can't remember what products they had, but they had asbestos on the job, and they had a little unibestos, not very much. And then I worked with Mr. Borel on the -- for the Industrial Insulation Company at Jefferson Chemical Company at Port Neches in 1967."

MR. STEPHENSON: Mr. Pate asked a question.

READING BY MR. STEPHENSON:

"A I just named it. Industrial Insulation Company at Jefferson Chemical Company.

Q What products, asbestos products, did you use?

A We used a lot of glass --

Q No, asbestos products.

A Asbestos, we used a lot of that too.

Q What asbestos products did you use?

A From the best I can understand I think they make their own.

Q Who is that?

A Industrial.

Q Can you remember any other specific jobs and dates that you and Mr. Borel worked together?

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A No, sir, I can't. There's a few more, but I just can't remember them. It's hard to remember just everything, you know."

MR. STEPHENSON: Now skipping to page 58 of the deposition, line 14, re-examination by myself.

READING BY MR. STEPHENSON:

"Q Do you have the disease asbestosis?

A Yes, sir, according to Doctor Barnett and all the X-rays they have taken, they say I have.

Q Mr. Weller asked you questions to the effect that you knew the dust was harmful for a certain number of years. Did you ever know that this dust would give you asbestosis?

A Well, I didn't think that it would, but it apparently has.

Q When did you know that the asbestos fibers and dust would give you asbestosis?

A Well, when I went down here to Doctor Barnett and he discovered it on me.

Q Was that the first time you knew?

A That's the first time, yes, sir, that I knew that I was ill with it.

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Q Was that the first time you knew about the disease asbestosis?

A Well, I had heard about Tomplait's case. I knew it then, about three years prior to that.

Q Was that the first time you knew that the disease asbestosis would be given by inhaling asbestos dust and particles?

A Yes,sir, I would say that.

Q On the various jobs you worked on, you insulators work on, do you know many of the products just by their trade name, such as Caltemp or Super Caltemp?"

MR. WELLER: I object to that for the reason that there isn't testimony here that Mr. La Grappe worked with Mr. Borel using Caltemp or Super Caltemp.

THE COURT: Objection overruled.

MR. STEPHENSON: Now his answer was "yes".

READING BY MR. STEPHENSON:

"A Yes.

Q Do you know in each instance, for example,

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who might manufacture this?

A It's like I said about Philip Carey, they manufacture a lot of their products.

Q No, sir. I understand that, but knowing the name, say, of Caltemp or Super Caltemp, do you know necessarily who manufactured it?

A No, I wouldn't say that I would.

Q It's been stipulated and agreed in this case that the company, Fibreboard Paper Products Company, which is known as Pabco --

A Yes, sir.

Q -- manufactures Caltemp and Super Caltemp."

MR. WELLER: The objection was made and he was leading the witness and telling him what to say.

THE COURT: Objection overruled to the leading.

MR. STEPHENSON: Skipping then the rest of that objection to page 61, line 5.

READING BY MR. STEPHENSON:

"Q Are Caltemp and Super Caltemp commonly used products?

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A Yes, sir."

MR. STEPHENSON: Then skipping to line 20, on page 61.

READING BY MR. STEPHENSON:

"Q I'll ask you the question that Mr. Pate asked you. Have you used Caltemp and Super Caltemp on many jobs?

A I've used it from time to time, but I can't remember just what jobs."

MR. STEPHENSON: Then skipping to page 63, line 4.

READING BY MR. STEPHENSON:

"A I have used Caltemp on several jobs, but to remember the exact job I can't do that. In twenty-eight years I know I've used it.

Q In your best opinion and judgment?

A Yes.

Q You believe that you and Mr. Borel have worked together on jobs using Caltemp and Super Caltemp even though you can't identify which job?

A Yes."

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MR. WELLER: The objection was made here that he was asked to speculate, conjecture, and to state an opinion or conclusion without any substance to back it up when he says he doesn't remember any other jobs that he worked on with Mr. Borel. Therefore, I object to the witness speculating, unless he actually knows and can identify the time and the place. He has testified earlier that he couldn't testify as to any other places.

THE COURT: Objection overruled.

MR. STEPHENSON: And his answer to that was "yes".

That's all, Your Honor, of the deposition that I wish to read at this time.

MR. WELLER: If the Court please, could we offer part of this deposition?

THE COURT: Would you like one of the attorneys for the defendants

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to read the question or answer?

MR. WELLER: Your Honor, it is a little difficult because I had a hard time following the way it was offered.

THE COURT: You may proceed.

MR. WELLER READING FROM THE DEPOSITION OF MR. La GRAPPE.

THE COURT: Where are you beginning at?

MR. WELLER: Page 7, line 12, with the question:

"Q Let me ask you some questions about whether or not you have had an occasion many times to use products made by Pabco or Fibreboard Paper Products Corporation.

A I have."

MR. WELLER: Page 9, line 16:

"Q Go ahead, Mr. La Grappe, if you can remember the question, and answer it.

A I've used some Pabco material from time to time, but I can't remember just when I used it.

Q All right, sir. Have you used Caltemp or Super Caltemp?

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A Yes, I have. I've used both of them."

BY MR. WELLER: All right, I have got the rest of it, I think, Your Honor, summarized.

He is sixty-four years of age --

THE COURT: What page are you on?

MR. WELLER: I am using the summary and I furnished counsel with a copy of the summary.

MR. DUNCAN: Do you want a copy of the summary?

THE COURT: No, that is all right.

MR. WELLER: He was sixty-four years of age, he had known Clarence Borel about thirty years, and they belonged to the Asbestos Workers Local 22 in Houston. La Grappe had been a member of the Union for twenty-eight years and Borel was already a member when La Grappe joined. That's on page 6. La Grappe worked with Borel on a few jobs, they worked for

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many different concerns. He worked in a few states, New Mexico, Indiana and Kentucky, and the other part has been read by the plaintiff.

On cross examination the jobs listed are the only ones he can remember, that's page 21, and in 1942 and '43 he worked with Borel at the Consolidated Shipyard in Orange. They used Johns-Manville products. The next job was the du Pont plant in Orange, in 1946, Philip Carey products were used, and the next job was the du Pont job at Beaumont, in 1967, 1968, for Armstrong Cork Company. Borel was there when it started but B & B took over and he left. That's page 22. The next job was in 1968 or '69, when he was working for B & B on the Fluor Corporation job at Neches Butane. Page 23. They used unibestos and magnesia. He does not know what products were used on the Humble plant job. The witness has

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a claim pending for exposure to asbestos. There is a lawsuit pending, his last employer was B & B Engineering. He is making the same type of claim as made by Borel. That's page 26. Mr. Ward Stephenson represents him. La Grappe has been a member of the Union for twenty-eight years, he has received the publications of the Union called the "Asbestos Worker". He reads it. He has not kept up with it lately. Page 27. In the past years he has been familiar with it, he has kept up with it, he has been familiar with the fact that the asbestos workers have had a serious problem with asbestos dust for a number of years. There are lots of these jobs when you ask for respirators to wear they laugh at you, they don't even know what that is or don't want to know. He asked for respirators at the shipyard. The only place he got them was at the du Pont job.

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Page 28. Back in 1946, when he worked for du Pont he asked for them but they never had any. The reason he asked for a respirator was that he was trying to protect himself from the dust. Page 29. He knew at the time that asbestos dust was harmful but what was he to do when he had to work for a living back when he was at the shipyard he knew that the dust was harmful. Everybody knows that the dust is harmful. Page 29. He has asked for a respirator on every job he has been on. He has worked as a foreman on various jobs he was on. That's page 29. He was familiar with the fact that his Union was stating that asbestos dust was harmful and would cause this disease as early as 1954.

Page 31. He has worked with standard asbestos cement at Lake Charles refinery.

Page 33. Known as Cities Ser-

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vice, and Borel worked on the job with him.

Page 34. He knows Claude J. Tomplait, knew about his claim, has known about it since Tomplait came down with it.

Page 37. He was a member of the Union in 1954. "As a matter of fact, I have known it all along in a sense". He knew about it in 1954, and he knew about it in 1956.

Page 38. So he has known since 1954 and 1956 that exposure to asbestos dust causes injury to your chest and a chest disease and this has been generally known in the asbestos insulation industry among his fellow workers and on the Cit Con job in Lake Charles, about 1949. Borel was on the job, he knows that Standard asbestos was used, he knows that the product contained asbestos, there is no doubt in his mind that it was Standard Asbestos products. He

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is familiar with Owens-Corning, making it, it was used on jobs at Jefferson Chemical in 1967. Borel was on the job.

Page 43 --

MR. DUNCAN: I will ask you not to read the next --

MR. WELLER: La Grappe and Borel worked in shift work doing insulation work during the war. The used blowers but they did not do too much good. In comparing the work in the shipyard in 1942 and '43 with work in the field he would say there was not as much exposure out in the open. He and Borel worked on shifts from 1943 to '46 off and on.

Page 55. Mr. La Grappe said he gave every job that he and Borel worked on that he could remember. La Grappe said he had given every product that he knew he used on the jobs that he and Borel worked on.

Page 56. On none of the jobs

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did they use products manufactured by Fibreboard.

Page 57. He did not know who manufactured Caltemp or Super Caltemp, Pabco products. This is on examination by Mr. Stephenson. Pabco products, eighty-five percent magnesia, is not used much in this area.

Eagle-Picher products known as One Kote is widely used. He used Caltemp and Super Caltemp from time to time but he did not remember on just what jobs.

Page 61. He used Caltemp on several jobs but in the twenty-eight years cannot remember the exact jobs.

Page 63. Mr. Stephenson represents La Grappe in his lawsuit.

Page 65. He talked with Mr. Stephenson about different products, he states: "He would give me the name of the company and ask me if I had used these products".

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THE COURT: Anything further?

MR. WELLER: Not on that deposition, Your Honor.

THE COURT: All right, we are ready to proceed.

MR. STEPHENSON: I have another deposition, Your Honor.

THE COURT: All right, sir.

MR. STEPHENSON: Your Honor, this is the deposition, this deposition is fairly long, of Dr. William Clark Cooper, a witness called by Mr. George Weller for the defense, and I have not been able to summarize it because of the --

THE COURT: You may offer it by question and answer.

MR. STEPHENSON: Thank you, sir. These questions here are by Mr. George Weller.

DEPOSITION TESTIMONY OF

DR. WILLIAM CLARK COOPER

DIRECT EXAMINATION

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BY MR. WELLER:

Q What is your name, please?

A William Clark Cooper.

Q What is your profession?

A I am a physician.

Q Where do you presently reside?

A I reside at El Cerrito, California, near Berkeley, California.

Q Where are licensed to practice medicine?

A In the State of California.

Q Is your license to practice duly recorded with the proper authorities there to permit you to practice?

A It is.

Q Doctor, will you give us your educational background and also the history of your medical training?

A I graduated from high school in San Antonio, Texas, in 1928. I went to pre-medical school and medical school at the University of Virginia at Charlottesville, where I graduated in 1934, with and MD. I had my internship and residency training in medicine at the University Hospital in Cleveland, Ohio, in 1937. I went to the University

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of Cincinnati where I did research in nutrition and vitamin research. From 1937 until 1940 I was in the Medical Department of U. S. Army, and also doing research at Walter Reed Hospital in Washington, D. C. In 1940 I joined the Public Health Service and was a member of the Public Health Service from 1940 until 1963. During that time I served approximately eight years at the National Institute of Health working in malaria and continuing clinical work in internal medicine. I got my Specialty Boards in internal medicine in 1948, and in 1950 I was transferred by the Public Health Service to San Francisco where I was deputy chief of the Medical Service at the Public Health Service Hospital. At that time I became particularly interested in pulmonary diseases and was assigned to the pulmonary disease service of the Pulmonary Disease Ward in the hospital. In 1952 I was transferred to Cincinnati, Ohio, and made chief of the Public Health Service Occupational Disease Laboratory, and I was chief of this laboratory from 1952 until 1957. During those five years I was particularly interested in studies of pulmonary diseases and carried out

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studies of lung diseases and diatomaceous earth, and carried out studies on uranium miners, hard rock miners, and silicosis, and organized some of the studies on coal miners.

Q All right.

A Then I -- in 1957 until 1958, I spent a year at Harvard where I received a degree of Master of Public Health (MPH), with emphasis on industrial hygiene. After that I was assigned to Washington, D. C., where I was in the headquarters of the United States Public Health Service, Division of Public Health, and in 1962 I was made chief of that division, and was chief of that division until I retired in 1963. In 1962 I took examination for and was certified by the American Board for Preventive Medicine and Occupational Medicine.

Q That was in 1962?

A 1962.

Q All right, now would you tell us since your retirement from the Public Health Service -- first, what status did you occupy in the Public Health Service in Washington when you retired?

A I was Chief of the Division of Occupational

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Health.

Q And how long had you been chief of that division?

A I was chief of that for a year and a half. I had been Deputy Chief for a previous period.

Q All right, I think the term Chief of the Division of Occupational Health speaks for itself, but for the benefit of the jury tell us what that involves.

A It involves the responsibility of all Public Health Service and services in the PO diseases. We had a budget which we thought was quite inadequate, but it was in the neighborhood of four to five to six million dollars, and we had a staff that ranged from one hundred to two hundred people all the time I was there.

Q Doctor, what is the National Institute of Health?

A The National Institute of Health is a group of research institutes mainly located at Bethesda, Maryland, which have been the research branch in medical sciences of the Public Health Services, the combined research, and it has been the major vehicle through which medical research has been

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carried out in the United States since World War II.

Q All right, and this is a Government supported agency?

A Yes.

Q Since your retirement from the Public Health Service in 1963, would you tell us the sphere of your activity since that time?

A When I left the Public Health Service I was appointed to the faculty of the University of California at Berkeley in the School of Public Health. My first appointment was as research professor, and I subsequently had my title changed to professor of Occupational Health, and my work has involved teaching graduate students in the field of Occupational and Environmental Health, and supervising and carrying out research in occupational health with particular emphasis on lung diseases, and with particular emphasis on asbestos and asbestos effects.

Q All right, have you had any -- occupied any outside consulting positions since your retirement from the Public Health Service?

A I have been a number of times a consultant to

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the Public Health Service, and I am a consultant to the Atomic Energy Commission in connection with medical problems in the western states, and I am a member of the National Research Council's Committee on biological effects of air pollutants, and in the last year have served as the chairman of the panel on asbestos and the effects of asbestos of the National Council.

Q All right, have you since -- prior to 1963 did you make any studies in regard to the effects of the use of asbestos and occupational diseases and so forth?

A I did not personally carry them out but I was involved in some of the discussions within the Public Health Service relating to the question of whether or not the Public Health Service should look and reinvestigate its position with regard to asbestos. This was in the period of 1961, 1962. There was confusion within the Public Health Service of whether or not it would be -- we had been correct in all of our assumptions with regard to asbestos up to that time.

Q All right, now what month did you retire in 1963?

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A September, 1963.

Q All right. after September, 1963, did you participate in any research projects concerning asbestos or asbestos dust in relation to any particular phase of that industry?

A I did not begin work in asbestos until sometime in 1964. I am not certain of the date. My first year I got to the University, I spent working on pesticides and some of the problems of organic results of pesticides, and I continued to be interested in insulating workers, and it was in part due to my acquaintance with Dr. Selikoff, and also the fact that I had become aware during that period that insulating workers did have problems. In 1964, I felt it would be important to find out whether or not insulating workers on the west coast who dealt with somewhat different products than other parts of the world had the same problems that were being reported about that time by Dr. Selikoff, so in 1964 we began studies of insulating workers in the San Francisco area.

Q All right. Now describe to us what studies that you did, and if you had any associates you might designate them with reference to asbestos

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insulation workers on the west coast.

A On the west coast we had access to the records of the International Association of Heat and Frost Insulators and Asbestos Workers of America, otherwise known as the Asbestos Workers Union, which is the insulation workers union, and we conducted studies which essentially fell into two major areas. One was to determine the causes of death in insulation workers and compare them with the general population and, in other words, to study the effects of their health, and, secondly, to study the working conditions of the insulating workers to see if we could define where their maximum exposures were occurring and make recommendations to prevent them. The first part of the study we also looked for asbestosis, that is the fibrous body changes in the lung that have long been known to result in asbestosis, and we also looked to see if there was an increase in lung cancer.

Q Doctor, did you engage in any field tests to determine the dust conditions or dust counts which involved insulation workers?

A We very definitely did do this because we

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felt that one of the things the group in New York had not paid attention to had been dust concentration, so we did make measurements of dust concentration on the jobs.

Q All right, now prior to the time of your -- and I am going to ask you about that study, did you make a field study, a study out in the field that involved the conditions surrounding the asbestos workers?

A That's the only we we could do.

Q Surrounding the asbestos workers?

A Absolutely. We went into shops where asbestos insulating materials were being prefabricated, and we also went on actual jobsites and measured the dust concentration during the various states of the various types of work that an insulator did. We tried to estimate the amount of time he spend working with asbestos-containing materials as compared to other materials, and the amount of time he spent in the dusty parts of his job as compared to the non-dusty part. We also tried to develop recommendations as to how the dustier portions of this work could be eliminated or remedied.

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Q For whom did you make this research?

A This was financed by the Public Health Service.

Q Financed by the Public Health Service. All right, in the trade is there something known as threshold limit values?

A Threshold limit values is a term that is used in the field of industrial hygiene which -- and every year a list of so-called TLV'S or threshold limit values is published by an organization known as the American Conference of Governmental Industrial Hygienists..

Q Now explain to us what the American Conference of Governmental Industrial Hygienists, who it is composed of.

A I will use the term ACGIA from now on.

Q All right.

MR. STEPHENSON: Your Honor, he describes the association in a similar way to which it has already been described, so I am omitting that page if I may, down to page 12, line 25. Another question.

READING CONTINUED:

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Q I do want you to tell the court and jury what threshold limit values are generally, and also tell us what it means insofar as asbestos dust is concerned.

A I will paraphrase slightly here, but the definition of threshold limit value was the average concentration of a substance to which it was believed that nearly all workers would be exposed eight hours a day, five days a week, for a working lifetime without harm, and it was time-weighted average. By that I mean if a man worked two hours at a high level, then that could be balanced off by his working two hours below this, so that, roughly speaking, it was an average based upon combining all of his exposure. It was not a ceiling above which it could never go.

Q All right, I want to show you here, and we will just call it Exhibit No. 1 to Dr. Cooper's definition, marked Threshold Limit Values for 1961. Are you familiar with this publication, sir?

A I am. In fact, I was a member of the Committee at the time this was published.

Q All right, now is that the threshold limit

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values for air-borne contaminants that was recommended and published by the Committee in 1961?

A It is.

Q Doctor, what threshold limit values were published and recommended for asbestos?

A The recommended limit then was five million particles per cubic foot.

Q All right, had that recommended value or threshold limit values for asbestos been recommended for a number of years prior to 1961?

A 1961, it slipped my mind when it was actually first recommended. I would have to refresh my memory.

MR. STEHENSON: Then I stated:

1947.

And the doctor's answer was:

A It was very early.

Q Now referring to your study in San Francisco of the asbestos construction workers or the workers involved in applying asbestos in insulating materials, what did you find in your studies in regard to the dust count or the threshold limit values of asbestos dust in this research project?

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A We studied the dust concentration, using the method recommended here, which I have to stress is five million particles of all kinds of dust, not just asbestos fibers. We studied air concentrations using this method, and we also studied air concentrations using methods that had not been available when these things were developed which we actually studied fiber counts in the same air at the same time, and we found that the -- I have actual figures here that I could quote, but in our conclusions were that the average insulation workers or non-insulation workers were receiving average concentration at or below. Then if one applied the approved methods of averaging out their concentrations, we found that they had occasional peak concentration that exceeded these levels, and we-- but we were, I might say, surprised to some extent that the concentrations did not exceed it. I have the actual figures here.

Q Doctor, you and your associate, I believe, wrote a report or published a report in this regard, did you not, about your research?

A Yes, we have the report.

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Q Is that by Cooper --

A Balzer and Cooper.

Q Balzer and Cooper, and when was that published?

A Oh, it happens that that particular one, I am not sure --

Q Was it published after 1964?

A Oh, yes, it was published something like 1968.

Q 1968?

A Yes, 1968.

Q All right, in 1968. Now prior to your study had there been a study of asbestos insulation workers in shipyards?

A There had been a study published by a group of Harvard by Fleischer and two other co-authors, and Professor Drinker, who, in 1946, had studied some naval shipyards in New England and had measured dust concentrations.

Q All right, now without going into the details of that report, based upon your examination, did dust concentrations in shipyards involve a heavier concentration than the average asbestos worker who would be applying new asbestos products?

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A I think that the conditions in shipyards, particularly in refinishing ships, probably provided the heaviest exposure.

Q All right, according to the Fleischer-Drinker report of that research project, did you make any conclusion -- what did they report as to the dust counts found by them in naval shipyards?

A Their general conclusions were they were not excessively high, but there were places where dust control was necessary.

Q Did they indicate that the dust counts found by them were below the five million particles per cubic foot of air?

A They were not using techniques that were strictly comparable to these but by a number of other studies which tied their time and place together, I think one can safely say that the conclusion was on the average theirs were not higher. Now I would have to make some conclusions based on more recent studies in shipyards by Farris, using the same instruments which Professor Drinker did. This sounds fairly complicated, but you cannot go from one instrument to another instrument in industrial hygiene and say that the

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count I get with this is the same as that because they have different sampling characteristics.

Q All right, I will ask you, Doctor, if Fleischer and Drinker did not publish the results of their report that it was reasonably safe for asbestos workers to work in shipyards without any problem?

A I will answer yes. Their report was of a nature which was interpreted as minimizing the importance of this type of exposure.

Q Later wasn't there another research project in naval shipyards by 1964 which reached the same results?

A Mr. Marr carried out studies of the Long Beach Naval Shipyard. He too came to the conclusion that the dust concentrations as they were -- that he found, were not excessively high except for some limited exposure, and also he came to the conclusion that using these rules they were not excessively high, but he did not -- he contained within his report his warning that maybe we were not either measuring the right thing or that our rules were not correct because he did also say that they received some lung cancer,

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and this was in 1964.

Q All right, didn't Dr. Marr, based on his report or his research, state that the threshold limit values for dust asbestos workers in naval shipyards was below the five million particles per cubic foot?

A I will have to consult his paper to see exactly what he said, because I have not refreshed my memory on it but his paper did indicate that if we applied this threshold limit value and accepted it as being okay, then the naval shipyard workers on the average were not being exposed about the TLV. That's the conclusion one would get from it but by 1964 we were becoming concerned ourselves whether or not we were correct in our threshold limit value.

Q All right, Doctor, let me ask you this, as far as the publication of articles up to 1964, wasn't it correct that the recommended threshold limit value for asbestos dust in asbestos workers was five million particles of dust per cubic foot of air?

A That's right, the answer is yes.

Q And wasn't it found after this or at least

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not prior to 1964, that articles were beginning to be published raising some question about the validity of this threshold limit value?

I objected to that.

Q You can answer the question. I will rephrase it.

And he rephrased the question and said:

A I know of none.

Q All right, now are you familiar with the publications of Dr. Selikoff?

A I think I have read most of them.

Q Do you know Dr. Selikoff personally?

A Quite well.

Q When did Dr. Selikoff begin publications of articles in regard to asbestos and the potential hazards of asbestos dust?

A I am not certain I know the first published ones. The first ones that came to my attention were in 1963 and 1964.

Q Now, Doctor, were you interested in this from a scientific standpoint?

A I was interested from a scientific and also an administrative and an official standpoint too because I had to make recommendations in regard

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to the Public Health Service and the Federal Government's attitude on it.

Q All right, now so you had access generally to all of the scientific publications in this field, didn't you?

A I tried to.

And I objected and Mrs. Weller asked the question again.

A We tried out best to do it. We tried to have access to them.

Q All right, so in your position as Assistant Director of the Public Health of the United States --

A Assistant Chief and the Chief of the Division of Occupational Health.

Q All right, Chief of Occupational Health, is it a correct statement that there were no publications prior to 1963 which were in general circulation that would have given any notice that an industrial worker working with asbestos insulation in construction could not work safely where the dust count was within limits of five million particles per cubic foot?

A As you question has finally been phrased I

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would have to say that we would have put them in a fairly low order of risk. We were in a period of developing knowledge, of increasing knowledge, in a very complicated field of relationship, so to reconstruct the order of general knowledge or any specific knowledge at any particular time requires consideration of the facts that when we are dealing with asbestos we are dealing with a number of different minerals, and there was even more controversy then, as there is now, as to whether or not these different types acted quite differently in the human body.

Q You mean the different types of asbestos?

A Yes, sir. Asbestos is not a single substance. There are many different minerals that come under the generic term of asbestos, and there are three types of major industrial importance. Secondly, we are talking about a number of different kinds of effects. We are talking about the disease asbestosis which is a fibrosis of the lungs which can lead to respiratory failure, and this had been recognized as being a problem of the asbestos worker. It had been known since about 1900 and had been widely known since about 1924 or 1925,

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and it was toward the prevention of this effect that this threshold limit value that I have mentioned had been directed. The threshold limit value had been arrived at out of studies of asbestos textile workers, and the harmful effect that it was aimed at preventing was fibrosis of the lungs, and during the period of, from 19 -- it was only in 1947 that there had been any reports the textile workers carry a lung cancer risk. When I was working in the Public Health Service in 1953 to 1960 this for the textile workers and miners was a very debatable point, and it was during the period 1960, 1961, 1962 and 1963 that studies began which were finally published in 1963 and 1964 showing that insulation workers did have an increase, of course, of lung cancer. All this is saying when you separate these effects, the different kinds of asbestos and different trades, you have to realize this was a changing and a developing situation.

MR. STEPHENSON: Judge, if I may have just a moment I will try and omit some of this because I running out of voice.

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Your Honor, if I may skip then to my cross examination.

THE COURT: All right.

MR. STEPHENSON: Of this doctor, William Clark Cooper.

MR. WELLER: What page, please.

MR. STEPHENSON: 46.

READING CONTINUED:

Q Doctor, my name is Ward Stephenson. I am an attorney representing --

THE COURT: Do you need to get some water or something.

MR. STEPHENSON: I have some, Your Honor.

THE COURT: All right.

READING CONTINUED:

Q Doctor, my name is Ward Stephenson. I am an attorney representing Mrs. Borel in an asbestosis case against several manufacturers of asbestos insulating products. I will ask you some questions as Mr. Weller has done, and if you don't understand my questions just tell me and I will try to make them more clear. Do you know generally about the case and the nature of it?

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A Generally, yes, sir.

Q Have you been involved in other cases involving asbestosis or asbestos use?

A Yes.

Q All right, would you please tell me about them so I can know what they are?

A Now when you refer to involved, do you mean legally or medically?

Q Well, as a witness, medically perhaps, or any way.

A Because I have been involved medically in a fairly large number because I am a medical adviser to the Western States Conference of Asbestos Workers and Associated Insulation Contractors of the Western States, as their medical adviser in regard to health problems, and I have a general relationship and supervision of physical examinations that are carried out on asbestos workers in Spokane, Seattle, San Francisco and Anchorage, Alaska, and a number of places, so I am involved to that extent, and I from time to time give my opinion as to cause and effect relationship in specific cases to people that ask me for it.

Q All right.

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A So that in that way I am medically involved. I have at least once in the past year reviewed a case for a company, for a manufacturer of asbestos products, and given my opinion as to what I thought some appropriate questions might be in developing evidence of the case.

Q Was that Fibreboard Paper Products Corporation?

A I assume that it is all right for me --

MR. WELLER: You can identify the company, whoever it was.

A It was Johns-Manville Corporation.

Q Do you know a manufacturer called Fibreboard Paper Products Corporation, commonly referred to as Pabco?

A I am aware of them.

Q Are you aware also of a company called Combustion Engineering Corporation?

A I know nothing about them.

Q Johns-Manville Products Corporation?

A I am aware of them, having worked with them in study of a number of problems ever since about 1954.

Q Owens Corning Fiberglas Corporation?

A I have worked with them in connection with

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fiberglas products.

Q And Eagle-Picher Industries Corporation?

A I know them for the fact they operate out of Ohio, and I have given them advice.

Q Pittsburgh Corning Corporation?

A Pittsburgh Corning Corporation, I know them because they are one of the biggest producers of fiberglas and also manufacture asbestos products, and I have had occasion to talk to their medical director and other members of their staff from time to time.

Q Unarco Industries Corporation?

A I know nothing about them.

Q Philip Carey Corporation?

A Only that they are involved in the supply of some products we have studied on the west coast.

Q Ruberoid Corporation?

A I don't know about them.

Q Armstrong Cork Corporation?

A I have talked to some of their representatives in connection with the use of asbestos products.

Q Would it be your opinion that the companies which I have just read out to you represent the majority of the asbestos insulating manufacturers

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in America?

A I am not in position to answer that.

Q Doctor, would you give me some background, please, on what a medical researcher does, what do you do in medical or scientific research?

A It indicates everything from the study of an interior enzyme system of a single cell when it is separated from a person, and it is hard to even realize you are dealing with people all the way. It is studies of a group of people, the study of causes of diseases in a large group of people in an attempt to try to find out the more causative factor in disease.

Q Would it be proper for a medical or scientific researcher to review medical and scientific articles previously written by others in order to form a basis perhaps for a beginning point, or to get more knowledge of the particular subject under inquiry?

A Certainly.

Q For example, I would suppose that when you were going to investigate asbestos and its effects upon the human body, you reviewed all the articles of a medical or scientific nature which you could

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find on the subject?

A That's the usual starting point.

Q And that's acceptable and proper for researchers to do?

A Yes.

Q May I say it probably would be not correct if you did not review all the medical and scientific literature available to you.

A I would say that for most persons. Occasionally some one who has an eccentric idea says he does not want to be influenced by what other people think but that's an uncommon take-off point.

Q Can you tell me in your best judgment how many articles of a scientific or medical nature had been written about asbestos and its effects upon the human body by the year 1945?

A Oh, it would certainly be over one hundred.

Q Now let's go back say to the year 1930, how many articles would be in your opinion the amount under scientific or medical studies?

A If you counted all the languages in the world it would be fifty plus or minus. In fact, I have not attempted such a count. I know it would be considerable if you count every case report and

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every summary and every review.

Q Was it also proper and appropriate for a researcher to read medical and scientific articles written by authors or writers of other countries such as Italian, German, French and so on?

A The answer is yes. It would depend upon the problem and the apparent relevance of the experience to yourself, but the answer to this would have to be yes, because it is customary.

Q I have just a list of articles which I was able to turn up concerning asbestos. Most of those of early time have been marked with a pencil mark or a pen mark on the side. Would you mind just glancing at that for a moment, please?

A Uh-huh.

Q Well, thank you, I don't want to take you unarmed by any of this. In 1930, in your opinion, was there ample medical and scientific literature available to cause anyone -- to put anyone on notice who might inquire about the dangerous nature of asbestos dust?

His answer:

A By 1930, as I believe I said earlier this morning, in my other testimony, the fact that

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asbestos could cause mesothelioma, the asbestos was, I would say, generally accepted.

Q Doctor, when you attended medical school during the 1930's was the disease asbestosis taught to the students or were you taught about asbestosis at that time?

A It was mentioned. It was not given much prominence but it was given to us as one of the dust diseases of the lungs.

Q All right, one of the mesotheliomas?

A One of the mesotheliomas.

Q So can we say in the 1930's that medical schools were teaching their students about the disease asbestosis?

A Yes, no argument about that.

Q You mentioned that you had made some studies of asbestosis in California, I am interested to find out how your studies were conducted and the general system of sampling various workers and so on, what did you do?

A We obtained a list of everyone who had been a member of Local 16 of the Asbestos Workers Union at any time, I believe it was January 1, 1946 -- January 1, 1946, through 1965, and we

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then attempted to find as many of those people, whether they were still working or not, and to determine the causes of deaths of those who had died, and compared the numbers of deaths and causes of death with those that would have been expected from men of the same age in California from the general population. This was phase 1, and secondly, we set up the facilities for physical examination of these men and examined several hundred of them in our clinic, and, thirdly, we reviewed the x-ray films that had been taken by the union's health and welfare fund, which is a management labor managed fund which has been taking x-rays since 1958 of asbestos workers with the objective of finding whether they had developed asbestosis, and we reviewed these films and classified them all by a standardized method. That was a part of our studies and the occasion of it as related to the study of men. Now the study on the working environment involved making arrangements with the major contractors to go on jobsites and put dust samples to be worn on the lapels of selective workers and measure the dust concentration as they carried out their various

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jobs. We also took samples by our industrial hygienist reading from the x-rays, and those samples were then collected and counted to permit us to get dust concentrations and to get counts by the workers of fibers per cc, and that is in broadest outline a summary of what we did.

Q Thank you, that's helpful.

What was your beginning date they did it for the workers or where did they go back to start?

A It was January 1, 1946.

Q All right, sir, January 1, 1946, through 1965?

A 1965, but this included men in 1946 who possibly had been there for ten, fifteen or twenty years before, and, in fact, I have a break-down somewhere in my report here of the dates that these people actually began work in the study, but it is not in this report.

Q All right, did you come to any conclusion about the percentage of asbestos insulation workers who had abnormal lung findings?

A We found of the total population, and again these figures will not stick in my mind, I will

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have to look here, we found of the total population whose films we reviewed which was three hundred eighty-six men, we found x-ray changes in twenty-four percent. Now if we move back into those who had entered the trade early, the percentages were much higher, and so they come down to those who had entered the trade ten years before.

Q Are you familiar with Dr. Selikoff's figures and percentages that he made of the asbestos workers who had been in the trade as long as thirty years?

A I have read his report and I think it was nearly all of them.

Q Nearly ninety-four percent, is that about right?

A Yes, sir. All workers who had been in it over thirty years would have been seventy percent perhaps. Now these kind of differences are -- do not necessarily reflect differences in the population, although they might. It does reflect differences in what you call significant change, and by the time you get to the dividing point there can be differences of opinion.

Q Your research indicated, in any event, the

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asbestos worker had a much higher count of abnormal lung findings than an average person?

A There is no question about that.

Q All right, and the name of the disease asbestosis comes from the word asbestos, I am sure?

A Yes.

Q Do you recall in your studies when the disease asbestosis was first written about?

A The first published description was in 1900 by Cook -- no, by Montague Murray, who described a case at the Charing Cross Hospital in London, and this is the first report. This was a very obscure sort of publication, and it was actually a governmental report, and it was really not until about 1924 when Cook reported on a series of cases that asbestos came to reach the consciousness of people as being a serious industrial problem. There were isolated reports but these were obscure or single cases, and so that the 1924 articles were the ones that really began to establish it as important and from them the British Inspector of Factories, Dr. Merriweather, conducted studies which began in quantitative

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terms.

Q Are you familiar with the fact that England enacted legislation concerning asbestos?

A --

THE COURT: I believe, Mr. Stephenson, we will stop here. We won't be able to finish this afternoon.

Ladies and Gentlemen of the Jury, please remember the instructions that the Court has given you. You are not to discuss the case with each other and not to permit anyone to discuss it with you. We are going to adjourn until 9:30 tomorrow morning. We will see you at that time.

We will stand adjourned until 9:30.

THE MARSHAL: Everyone rise, please.

REPORTER'S NOTE: Whereupon, at this time Court was recessed for the day.

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