IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL,

Plaintiff,

vs.

FIBREBOARD PAPER PRODUCTS, INC., ET AL,

Defendants.

CIVIL ACTION NO. 6449

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

VOLUME NO. THREE

HEARD AT: Beaumont, Texas

ON: September 23, 1971.

2043

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

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PAGE NO.

I N D E X

WITNESS	PAGE
DEPOSITION TESTIMONY OF DR. WILLIAM CLARK COOPER CONTINUED	457-549
INTERROGATORIES PROPOUNDED TO JEROME T. SIEDLECKI	555-577
INTERROGATORIES # 18 --- 5	581-601
DEPOSITION TESTIMONY OF DR. RICHARD KENNETH RICKS	605-619
SUMMARY OF DEPOSITION TESTIMONY OF DR. KENNETH WATKINS	620-631
SUMMARY OF DEPOSITION TESTIMONY OF DR. LOUIS A. MATEO	632-645
DEPOSITION OF DR. PAUL SHELBY CULLEN	646-659
DEPOSITION TESTIMONY OF DR. P. O. JONES	659-701
MRS. JACKIE BEAN	
Direct Examination	705

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 2 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/2

REPORTER'S NOTE: Whereupon, trial continued, September 23, 1971, 9:30 A.M.

THE COURT: Please be seated. We are ready to resume the trial.

MR. STEPHENSON: All right, Your Honor. I was reading the deposition. I was reading at page 56, line 17 of the deposition of Dr. William Clark Cooper, a witness for Mr. George Weller's client, Fibreboard Products Company.

MR. WELLER: If the Court please, I object to the statement he is a witness for me for the reason that counsel is offering and tendering the deposition on his own, therefore, it becomes his witness.

THE COURT: Objection overruled.

MR. STEPHENSON: Question, line 17. This is questioning by myself on cross examination.

THE COURT: What page?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 3 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/3

2

MR. STEPHENSON: 56, Your Honor.

DEPOSITION OF

DR. WILLIAM CLARK COOPER

READING CONTINUED:

Q Are you familiar with the fact that England enacted legislation concerning asbestos?

A About 1931.

Q Could we say that in the 1920's and in the 1930's that there were literally dozens of articles written about the disease asbestosis?

A There was a period of intense interest in it. In fact, there were more written then than written in a comparable period ten years later. It was recognized and it was thought that methods for its control were being developed and could be applied, and in a sense interest in it tapered off.

Q You remember Arobolt's work on this in 1906?

A Yes, this was my example of something that was not given wide circulation, as is not uncommon in medicine or research for isolated reports to precede definitive studies to establish a cause and effect.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 4 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/4

3

Q All right, sir, can you likewise say that in the 1930's there was not at that time any particular established standards or suggested minimum exposure that might or might not be harmful?

A It was not -- the first serious attempts as to allowable concentration was contained in a report by Duson, I believe, in 1938, who did make a recommendation based on the three textile mills that he had studied, that the total dust concentration of five million corresponding to that which was recommended for silica dust on the basis of the studies would probably be effective in preventing asbestosis.

Q Are you familiar with a work by H. E. Eyler and M. D. Gilmore on cases of asbestosis reported in the British Medical Journal in 1931?

A I have seen the report but I can't say I am familiar with it.

Q Is the British Medical Journal a widely read and published medical periodical?

A Yes, it is an outstanding medical periodical.

Q Are you familiar with a work by F. E. Tylelott and J. E. Dunn written in 1931 --

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 5 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/5

4

A Here again I have scanned this article but I am not saying I am familiar with it. It didn't have anything particularly new or different than other reports of the same time.

Q Are you familiar with the work by Dr. B. Gordon on pulmonary asbestosis, Pennsylvania Medical Journal, 1932, in June of that year?

A This again I have only scanned it. It didn't have anything different from other things appearing at the same time. I might say that the literature on asbestos is a stack about this high, and there are many, many reports, but out of every ten articles there may be one that really makes a contribution.

Q You have indicated a stack about two feet high?

A Yes.

Q Dr. J. Donley wrote an article on pulmonary asbestosis in the American Journal of Public Health --

A I have read that.

Q M. J. Stewart and N. Tattersol and Dr. Haddow wrote a book in 1932 about asbestos bodies in the sputum of asbestos workers.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 6 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/6

5

A Yes, I am familiar with that because Stewart was making some contribution on asbestos bodies, and I was very interested in following his work, and he was the first one to emphasize the importance of these fibers in the sputum in being an aid in diagnosing.

Q Doctor, what is the periodical Tubercel, is that an abbreviation for tuberculosis?

A Tubercel, is that a name of a publication?

Q Yes, sir, that's the name of a publication, and I don't know whether it is still being published or not.

A This publication was very popular back thirty or forty years ago as a place for publishing articles on unusual lung diseases, or usual lung diseases, excuse me.

Q I didn't mean to interrupt you, are you familiar with an article by Dr. W. B. Wood in Tubercel in July in 1929, on asbestosis?

A Here again the name is familiar and the articles are familiar, and they are in my bibliography, but I have, in fact, many of those in it, and I wouldn't be able to say.

Q All right, sir, was Tubercel in the 1930's

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 7 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/7

6

a widely distributed medical journal?

A Not widely. It was within a closed circle of people that were particularly interested in tuberculosis and chest diseases. It was not such a journal as the American Medical Association, it was to a specialized audience.

Q But to this specialized audience it was available to anyone who wanted it?

A I assume so. I never saw it, it was a little bit before my time.

Q Doctor, if I wanted to know what articles were available on asbestosis for medical investigative purposes, how would I go about in the library, or wherever, getting the information and data together so I might study it?

A Well, if you didn't realize that you could get it from me or from Dr. Selikoff, and I think you could get a coverage of it from someone who has done this. You could write to the National Library of Medicine and you could have them send you some of the literature on this. This was not available fifteen or twenty years ago but now there is access to this kind of information, probably twenty years ago, or

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 8 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/8

-7

ten years ago, I don't know, but now, yes.

Q Are these sources of information available to say companies like Fibreboard Paper Products as well as to medical researchers?

A I assume so.

Q Would the AMA, American Medical Association, likewise be able to make inquiry of bibligraphic data on asbestos?

A To a limited extent. They do not at the present time attempt to maintain up-to-day bibliographies, they did in years past do this, but they could, they have groups or committees that could probably answer questions and send you selected sources and who in turn could lead you to other sources.

Q The state of knowledge in the 1930's, let's say, in your opinion was asbestosis as a disease known about and recognized as a danger caused by inhaling asbestos dust?

A Yes.

Q And would you say that would have been rather common knowledge known in the 1930's?

A Yes, I would say that. The answer to that would be yes.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 9 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/9

8

Q Doctor, in the 1930's if a company manufacturing asbestos products had a desire to do so, could a company have gotten dust samples, was there equipment available at that time?

A To a limited extent. They were in the process of being developed right in that period.

Q Would you say in the 1940's the art of dust sampling had been --

A Yes, sir, I would say by then and other types of apparatus in Great Britain and South Africa and this country. Each country had their own methods of collecting dust.

Q I believe in 1941 Great Britain enacted legislation about the sampling of dust at that time?

A Yes, sir, that is right. I have not reviewed the fine print but I am not sure -- I know they did not set a fixed rule.

Q All right, sir, in the 1930's was it known or recognized medically and scientifically that any certain percentage of asbestos dust in the air would be dangerous as opposed to a lesser being safe?

A You mean the percentage?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 10 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/10

9

Q Well, any concentration.

A I think I said earlier, based upon the studies of dust concentration taken in textile mills that five million total particles concentration, five million per cubic foot or less, you can probably be safe.

Q All right, sir.

A This was developed late in the 1930's.

Q All right, sir, in relation to dust samples or tests, has it been your experience that asbestos insulation workers experienced high peaks of exposure to great quantities of asbestos dust?

MR. WELLER: Your Honor, I object to that because it is highly speculative and would have no reference to any particular defendant in this case, or any particular incident.

THE COURT: Objection overruled.

READING CONTINUED
BY MR. STEPHENSON:

A Well, dust samples did show there were certain operations involved in the trade of the insulator in which there were very high brief concentrations of dust.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 11 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/11

10

Q What would be the concentration of dust at these high levels, could you put it in particles per cubic feet?

A For brief periods we had concentrations in marine construction that went as high as twenty-nine million, and in industrial work we had concentrations going as high as fourteen million. These were in turn with operations in certain sawing operations, and when it came to fiber concentrations, we also had these very brief high concentrations which, if you took into account the time this happened and averaged it out, it would still be below your so-called threshold limit value.

Q All right, do you recall the examples mentioned in scientific and medical writings of housewives whose husbands worked asbestos who contracted the disease of asbestosis through the handling of their husbands' clothing?

A There have been such cases reported and I see no reason to doubt that this has occurred on the basis of cases I see reported.

MR. STEPHENSON: Now, I am skipping down to the last line on page 64.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 12 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/12

11

READING CONTINUED:

Q At the times when you found high concentrations of asbestos dust in the asbestos worker's work, was it reasonable to believe that he inhaled some of that dust and particles into his lungs?

A Absolutely, yes.

Q I don't mean to cut you off.

A I want to make it brief but sometimes I tend to meander.

Q If the asbestos particles entered the worker's lungs, would there be any medical method to get these particles out of the worker's lungs?

A Not while he was alive, no.

Q All right, can we say that asbestos by its very nature is difficult to burn, it has to be at extremely high temperatures?

A Yes, it is difficult to burn.

Q It would burn at temperatures far in excess of that that the human body could withstand?

A Yes.

Q And likewise, would there be any way to freeze the asbestos particles in a human being without of course killing the person?

A Freezing them in the sense of keeping them

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 13 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/13

12

from moving?

Q Yes.

A I know of no method to do that.

Q What I am driving at in perhaps a clumsy fashion --

A I can't conceive of any.

Q The asbestos fibers move, I understand, in the lungs, and the asbestos fibers move in the pleura and peritoneum and cause a fibrosis around the fiber, is that correct?

A We know this much and we know they are associated with fibrosis, and whether one is dependent upon the other, we don't know.

Q Can we say that because the asbestos fibers get in the human lungs they stay there, there is no way to get them out?

A There is no way we can speed up or alter the course of their moving so far as I know.

Q How many heavy exposures do workers have to experience to give a worker the disease of asbestosis?

A There is no clear cut answer to that. I have no way of answering that question.

Q Can we say it can be then perhaps as few as

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 14 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/14

13

six exposures to asbestos dust?

A I have no way of saying that.

Q Can we say this is variable?

A Yes, it is variable.

Q Then you could not dispute or admit the fact that six exposures of heavy concentration of dust might cause it?

A Here again I would be dealing with probabilities and if the total amount and toal duration decreased my estimate of the probability would reach the point where I would say it is highly improbable or would be almost impossible, and when we talk about six, we might be talking about six lasting a second or six lasting a whole day, and so this is a question I can't answer.

Q All right, Doctor, are you familiar with the procedure commonly used to mix asbestos cement in water in the mortar business?

A Yes, I am in general familiar with it. My industrial hygienist has studied it and made dust concentrations during this operation.

Q Would that be work that would cause high dust concentration?

A There is a good deal of dust which if a man

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 15 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/15

14

remains in doing this it can give him a significant exposure or I would say a fairly high exposure.

Q All right, sir, are you familiar with the cutting of asbestos products so that they may be applied to pipe surfaces and other surfaces?

A That's right, fabrication and cutting is a normal procedure.

Q All right, sir, would this likewise be a source of high dust concentration?

MR. WELLER: If the Court please, I object to that because the conditions under which some cutting and fabricating is done has not been established. Many of them are done in shops which are protected by dust collectors or exhaust fans and so forth.

And in this particular case, there is still no evidence of the extent of the dust exposure on the plaintiff.

THE COURT: Objection overruled.

MR. STEPHENSON: Mr. Weller made that same objection and I said, "Go ahead, please, Doctor."

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 16 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/16

15

READING CONTINUED:

A It can product dust, and to protect a worker in this situation it would be recognized and protection should be provided.

Q So far as you know, in the 1930's or 1940's or the 1950's, did any of the manufacturers of asbestos insulating products ever warn the worker who would be cutting and mixing the cement and using thèir product of the dangerous nature?

A --

MR. WELLER: If the Court please, I object to that question for the reason that plaintiff has no control over the working conditions of the asbestos worker, but the responsibility to the working conditions is that of the asbestos worker's employer, therefore, such question would be highly speculative unless the doctor has specific knowledge with reference to each and every manufacturer. The question is too general.

THE COURT: I don't think there is any issue on that. Aren't those facts

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 17 of 262
asbestosclaims.law/library/10244/17

16

stipulated?

MR. WELLER: Not as far as I know.

THE COURT: Warnings were not issued until a later date. The objection will be sustained.

MR. STEPHENSON: All right. Going to page 69.

READING CONTINUED:

Q Doctor, let me back up just a moment then, I assume that in your studies you made in the 1960's that you go into the field and observe workers engaged in their trade?

A I went in personally on a supervisory basis with my industrial hygienist. My industrial hygienist went in and studied it in depth with Dr. Balzer.

Q I am sure you had the benefit of his study?

A I did.

Q Did you find that the men doing the mixing of cement experienced high concentrations of asbestos dust at that time?

A Some of them, yes.

Q Did your investigation also reveal that the cutting of asbestos products preparatory

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 18 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/18

to placing the products in their place also experienced high concentrations of asbestos dust?

A Some did and many of them had protective -- had ventilation, and were wearing respirators. It was quite variable.

Q I am speaking of the dust at the moment?

A It was a source of dust.

Q Well, high concentration of dust?

A Yes, brief high concentration.

Q All right, sir, I believe in your work now that you took an average so if a worker was exposed to heavy concentrations of dust for two hours and to light concentration of dust for two hours, then you balance this out to a medium?

A We did this only in our interpretation of the results and tried to relate them to the threshold limit value, but our actual counts are the actual counts which we obtained during the period which might have been fifteen minutes or an hour of the sample, and we report the number that we get, and we have those records, but in an effort to interpret those we attempted to see how

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 19 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/19

18

those would be averaged out.

Q Could you tell me how you could make an interpretation based on average high and low periods of dust concentration when you don't know how long is required to give a worker a lung disease with a heavy concentration of the dust?

A When I said we averaged them out because we were attempting to relate them to the existing regulations or guides to dust control. In fact, our conclusion there, you must remember this was 1967 and 1968, our conclusion was that this was an inappropriate way to attempt to gauge the men's exposure, and that special attention should be given to control these peaks, and that it was practically impossible to -- it was impossible to come to an exact figure of a minimum average exposure. It was very difficult to come even to an approximation of an average time but measuring the results of the man's time that he worked in one or the other, and assuming he worked in it practically all the time, we averaged it out. We said since we were seeing disease in these people here what we were seeing was due to high

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 20 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/20

19

exposure in the past which we doubted was entirely true, but that it could be due to more modest exposure a long time ago by surges just like we are seeing now, and this was not until 1968 until this kind of recommendation came out, and it was not until last year that Dr. Selikoff and his group reported formally on his studies in New York and this was in 1970.

Q In the inquiry Mr. Weller made of you about the average of the governmental industrial hygienist you mentioned five million particles per cubic foot.

A Yes, sir, of total dust particles.

Q Is this total asbestos dust particles?

A Any kind of dust that came into the machine, the collecting device. This was total dust of all kinds.

Q To refresh your memory do you recall it was the year 1947 when the ACGIH first came to the five million parts per cubic foot of total dust?

A Right.

Q At that time, in 1947, was there adequate sampling equipment available to manufacturers of insulating products to enable them to go in the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 21 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/21

20

field and take dust samples?

A Samples were available.

Q In your reading or in your experience do you know in the 1930's, 1940's, 1950's or 1960's of any manufacturer of insulating material that went into the field to see how much --

Then Mr. Weller makes an objection.

MR. WELLER: I object because that calls for a conclusion on the part of the witness and further because the manufacturers owed no duty to provide the working conditions for the employees of insulating contractors.

THE COURT: Objection overruled.

MR. STEPHENSON: Now his answer.

READING CONTINUED:

A I don't know of any but that doesn't mean it was not done because I was not in position to know. In fact, being with the Government, I might not have had some ways to have had access to all of that.

Q And you say in your experience you know of none who made dust counts during those years?

A I know of none but I don't know of too much

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 22 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/22

21

to be made of it because I did not know everything that was going on.

MR. STEPHENSON: Skipping on over to the next page, to line 9, page 74.

READING CONTINUED:

Q Now, Doctor, do I understand that a person does not have to necessarily be exposed to asbestos dust for ten, twenty or thirty years for the asbestos exposure to show up?

A That's the description of what has been observed.

Q Am I correct in understanding that asbestos fibers in the lungs are not themselves subject to x-ray, that is, to be shown by x-ray?

A No, they don't show up on x-ray.

Q All right, sir.

A I assume you could possibly get a large enough glob of them, but that doesn't happen. They are not what you see in looking at an x-ray of the lungs.

Q What would be the usual first observation of x-ray you would have if there were asbestos particles in the lungs?

A The reaction to asbestos can vary from

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 23 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/23

22

individual to individual. The first manifestation may be an increase in markings in the lower lobes of the lungs and maybe a thickening of the pleura. There may be mesothelioma developing thirty years afterwards with nothing you can see on x-ray. It may be a lung cancer with nothing you can see elsewhere in the lung, so the first manifestation can take any one of a number of forms.

Q So as I understand it that would be then some resultant medical harm or harm to the body that would first be seen and not the asbestos fibers themselves?

A Not the asbestos fibers or even the x-ray changes. The x-ray changes even if you see them, they may not be connected with anything the man knows about.

Q What are some of the recognized sicknesses caused by asbestos inhalation?

A As we have said, mesothelioma and asbestosis which is a fibrosis of the lung, and changes in the x-ray and restriction of movements of the lung and the ability to move air in and out and ultimately it will affect the passage of blood

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 24 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/24

23

through the heart and so called pulmonale, and that's asbestosis, and that's the one that has been known thirty, forty or fifty years, and second, is an increased risk in lung cancer which may be due to the asbestos, and, third, this again only within the last few years has generally been acknowledged as an associated disease which is mesothelioma and which occurs apparently much more often in people who have worked with asbestos than with people who do not. There are asbestos warts, that is, people get a little skin reaction, and that so far as I know has never been associated with skin cancer. It is in the established disease associated with asbestos.

Q Did you mention pleural calcification?

A I should have included that in my general description of asbestos, but it is so unique and special for asbestos and it can go along without much evidence of disease in the lung that it should be singled out for special mention, calcified tips on the diaphragm and on the pleura.

Q Would you say that pleural calcification is typically attributable to asbestos?

A It so strongly suggests asbestos that you

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 25 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/25

24

almost have to rule out other causes.

MR. STEPHENSON: I am skipping to page 77, line 13.

READING CONTINUED:

Q Doctor, is it not true that asbestos is used in such quantities today that most people who have autopsies or lung section studies might even at this time have findings of asbestos particles in their lungs?

A I will answer the last part of your question. I will say that most people do have, but I am not prepared to say it is due to the increased use of asbestos.

Q Thank you for straightening that out. Doctor, are you familiar with studies that have been made out in California of the effect of asbestos coming from brake linings of automobiles where there is travelling on heavy concentrated roads?

A I know that there are no conclusvie -- we have no conclusvie data as to brake linings to air-borne asbestos. In fact, our laboratory right now has a contract with the Air Resources Board of California to study asbestos fibers on the near freeways and to compare them with a natural

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 26 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/26

25

background of asbestos that we see in many parts of California due to the presence of crocidolite asbestos from the serpentine type which is present in much of California. So the date on asbestos fibers, you asked me if I am familiar with it, I would say this is a very questionable source, and we don't know to what extent it is important.

Q You are familiar with the studies that have been made in this field?

A There have also been studies in static stations in laboratories by the Public Health Service and by the industry relating to it. This is a complicated little subject as to what happens to the asbestos fibers under heat, and a portion of them are converted to phosphorite and whether ten percent goes into the brake lining or one percent or what, that becomes air-borne, we don't know the answer to that, nor does anybody.

Q Are you still engaged in the study of asbestos and its effect upon the human body?

A We are still acting as medical consultants to the contractors, and we are continuing to review the x-rays of asbestos insulaint workers in the western states. I havea file of several

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 27 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/27

26

thousand films, and we are also making recommendations as to improving dust control with the contractors, and we periodically review the statistics on this. We are also studying problems in the air of California cities, and in addition this likewise applies with reference to asbestos and many other fibers that occur in the air.

Q Doctor, who sponsored your particular studies in 1965 or 1966?

A The Division of Occupational Health of the United States Public Health Service.

Q Doctor, do you know in your experience of any manufacturer of asbestos insulating products who in the 1930's through 1960's tested their products in a controlled environment or otherwise to see how much dust was created by sawing their product, for example?

A I know of none up until recently.

Q I include the 1930's through the 1960's.

A Yes, in the last two years we have tested some products.

MR. STEPHENSON: Skipping to line 3, page 80.

READING CONTINUED:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 28 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/28

27

Q All right, sir, do you know of any manufacturer of asbestos insulation in the 1930's to 1969 who tested their products -- their cement, let's say, to see how much dust was created in the mixing procedure?

A I know of none, but I would not have had access to it if they had.

Q Why wouldn't you have access to it?

A If they carried out a test they might or might not let me know about it, I don't know. I would not have had access necessarily to it but I know they were testing brake lining, for example, and many of these things that were personally determined -- once these figures came up from our studies they didn't have to go back and do it again.

Q In 1950's and 1940's and 1930's would it not have been of significant help in the study and effects of asbestos to determine whether or not anyone made any tests in the air --

Mr. Weller had an objection.

READING CONTINUED:

A As I say, I don't know, I really can't say anything about it. I don't know anything

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 29 of 262
asbestosclaims.law/library/10244/29

28

about it. Whether or not tests were done, I simply don't know whether they were or not.

Q My question was, Doctor, would it have been helpful to have had the benefit of any studies had one been made to one engaged in research?

A I will answer that to say anything you know about something can be helpful.

Q All right, Doctor, are you familiar enough with the application of asbestos insulating material to be able to say whether or not these products have to be cut, sawed and applied and mixed with water and so on in order to be applied?

MR. WELLER: If the Court please, I object to this. He is referring to all products and they have not been identified as to the manufacturer, and each manufacturer produces a separate and distinct product, and some of them don't produce any cement at all.

THE COURT: Objection overruled.

MR. STEPHENSON: His answer:

READING CONTINUED:

A All I can say in our studies we did find products that did require this, so we know that

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 30 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/30

29

some do.

Q All right, in your opinion as an expert do you think it would be reasonable to assume that an asbestos insulation worker would have to cut, saw and scribe the insulating products in order to apply them?

A Yes.

MR. STEPHENSON: Let's see.

Question on the top of page 82.

READING CONTINUED:

Q I think you already answered, Doctor. Now, Doctor, is there any way for a person to contract the disease asbestosis other than through the inhalation of asbestos dust and fiber?

A I have answered that asbestosis is due to asbestos, and the only other way is to deliberately inject himself with asbestos which is unlikely.

Q I agree it would be unlikely. Of course there is a parallel in the experimental animal.

A Yes, by sticking a needle in the pleural cavity.

Q Does anything else cause asbestosis other than asbestos?

A Nothing, but still there are many kinds of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 31 of 262

asbestosclaims.law/library/10244/31

30

asbestos.

Q But all the results of asbestos is the same?

A Yes, sir.

MR. STEPHENSON: And skipping, I believe -- Your Honor, I am skipping all the balance of that portion of my cross examination and going to my recross examination on page 96 of line 22.

Questions by me continues.

READING CONTINUED:

Q Doctor, do you have any objection to your whole paper that Mr. Weller has been reading excerpts from being introduced in this case?

A It may have had some editorial revisions and there may be two or three typographical errors in it, but other than I have no quarrel.

Q Would you care to look at Table No. 2 of your paper?

A Yes.

Q Do I understand this table to mean if a man entered the trade of an asbestos insulation worker between the years 1911 and 1915 that you found one hundred percent with definite changes

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 32 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/32

31

consistent with asbestosis?

A All five of those that we took x-rays of.

Q All right, sir, we can go on down with this, which I believe 1921 through 1925, there were sixty-seven percent and 1926 through 1930 there was sixty-two percent, and 1931 through 1935 there was forty-six percent and so on. Now Mr. Weller has taken portions of your paper to mean that asbestos workers in the field don't get more than five million particles per cubic foot exposure, that's not what your paper says, is it?

A What the paper says, if you average out the exposures of an asbestos worker over a period of time they don't average out more than five million particles per cubic foot.

Q All right, sir, now in regard to your paper you showed in light and heavy industrial work, prefabrication, an exposure range up to fourteen percent, is that correct -- fourteen parts, I am sorry.

A We showed that we found some sample studies that went that high.

Q And for marine construction and repair and fabrication you found samples up to 28.8 parts,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 33 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/33

32

million parts per cubic foot?

A Yes.

Q And in application, light and heavy industrial, you found up to 7.5 parts per million cubic foot?

A Yes.

Q And in marine construction and repair you found 5.9?

A Correct.

Q And in mixing you found in light and heavy industrial 9.8 and in marine construction you found 29.0?

A Yes, I agree.

Q Those are in your paper?

A Yes.

Q And this does not mean that these men were exposed to more than five million parts?

A At any time?

Q Let's assume that at any time they were exposed to ten parts per cubic foot, then would it be --

What did I say wrong --

READING CONTINUED:

Q Let's assume that at any time they were

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 34 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/34

33

exposed to ten parts per cubic foot, then would it be your opinion at that time they would have gotten enough asbestos to give them symptoms of asbestosis?

A No, I think this is not a correct conclusion to draw from these types of figures. These type of figures meant that during the course of a surge. Sometimes they were down and sometimes they were high. If you assume you have a man that worked all the time the high surges and he used that respirator protection and he didn't change his job to any one of these jobs, he might get an average in the order of fifteen or twenty, but that's not what we found was occurring. Industrial hygiene requires common sense applied to the things a man does, and when we apply our interpretation of an insulation worker over a period of months or years on the basis of this type of figure he would not have had an average of more than five million. We know they are getting momentarily higher, and when I say this, that's about fifteen minutes that there are surges which are higher. It was the nature of the industry that nobody kept doing these things

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 35 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/35

34

constantly over a working lifetime.

Q Do you remember my earlier examination where I asked you if you could tell me how many exposures to heavy concentration of asbestos that would be required to give one a case of asbestosis?

A And I recall I said I didn't think there is a magic number.

Q All right, and you can't say how many times a man has to be exposed to fourteen parts per cubic foot to give him the disease?

A I can't say it today, and I certainly could not have said it ten years ago.

Q And you can't say it with reference to tearing out marine construction where he might be exposed to fourteen parts per cubic foot?

A No, and I don't think it should happen.

Q All right, you recognized in your paper, did you not, that a factory would have better control conditions than would exist in the field?

A I think for a number of reasons control measures are both excellent to install and afford good supervision.

Q Do you know any manufacturer of insulating products that I originally read off to you that

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 36 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/36

35

has done anything to prevent the inhalation of asbestos dust in the field by those workers applying their product?

MR. WELLER: If the Court please, I object to that because it calls for hearsay and speculation on the part of the witness and, further, it is not the duty of the manufacturer of the product containing asbestos to supervise and police the worker in the field where he is employed by an independent contractor.

THE COURT: Objection sustained.

MR. STEPHENSON: I am skipping to page 102, line 13.

READING CONTINUED:

Q Doctor, can we say that for at least fifty years it has been recognized that asbestos is a harmful -- causes harm to the human body?

A If I don't have to narrow myself down to words, and I also have the responsibility to the insulating workers and to the contractors to whom I make recommendations, and I want the record to show that I believe strongly that asbestos, the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 37 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/37

36

inhalation of asbestos can be harmful, and that I feel it is a great responsibility for people that manufacture or sell or use asbestos to handle it with dispatch and to avoid exposures, and the record must show that I feel this very strongly.

Q Thank you, Doctor.

A Which is the context of what I have learned in my own experience in seeing insulation workers in the last five or six years.

Q All right, sir, my question was, I think maybe he might have answered it in that, but if you don't mind my repeating it one more time, do you believe that it has been recognized for more than fifty years that asbestos can cause harm to the human body?

A It has been recognized that it can cause asbestosis which is harm, and it was known for the last ten or fifteen years that this harm could be prevented if the exposures were kept down to a modest level. It was both recognized as harmful and also as being controllable.

MR. STEPHENSON: Line 20, skipping.

READING CONTINUED:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 38 of 262

asbestosclaims.law/library/10244/38

37

Q Do you, Doctor, know of any controls that were suggested by any manufacturers before 1960?

A It depends upon -- again upon the time period.

Q Before 1960 now?

A Before 1960 I know of none. I have not made special inquiry and have not looked for them.

MR. STEPHENSON: Then skipping Mr. Weller's further redirect over to my final cross examination on page 105, line 20.

Continued questioning by myself.

READING CONTINUED:

Q Doctor, one other thing, if there was a recognized five million particles per cubic foot by the National Conference, can you tell me if there is any way that a manufacturer of an asbestos product would know that his product exceeded that particle?

A He could only tell by such a study as presently made which he probably didn't, and the only way would have been to have gone and done it because observation would not be enough, take

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 39 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/39

38

the count.

Q That's all.

MR. STEPHENSON: That concludes that, Your Honor. I have some excerpts, Your Honor, from Dr. Cooper's paper which I would like to read from them if I may.

THE COURT: All right.

MR. WELLER: Which paper are we talking about.

MR. STEPHENSON: The one that he testified about on his deposition.

MR. WELLER: I don't think it was attached. It is not part of the deposition, Your Honor.

MR. STEPHENSON: Well, I will withdraw it, Your Honor, if there is an objection to it.

THE COURT: All right. Do you care to offer any portions of the deposition, Mr. Weller?

MR. WELLER: Yes, Your Honor. We begin on page 12, the part omitted by the defendant -- by the plaintiff.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 40 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/40

39

I will use the term, start on page 11.

CONTINUED READING OF
DEPOSITION OF DR. COOPER:

BY MR. WELLER:

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.

A The ACGIA was formed immediately after World War II, around 1944 or 1945 as an organization of individuals who were officially responsible in some capacity for industrial hygiene. These people from the State Health Department, sometimes the State Labor Department, from the U. S. Public Health Service, and the U. S. Department of Labor and to a limited extent people from universities. This was a group which was a quasi-official, I mean it had no official status, but the Government people were very active in it and they did a number of -- had a number of functions relating to training and standards of people in the field of industrial hygiene and this function of establishing and making recommendations for what was a safe guideline or a work place was just one of their

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 41 of 262
asbestosclaims.law/library/10244/41

40

functions, and they had a committee, a standing committee I should say, which made annually recommendations which were then submitted to the entire membership in their annual meeting, and they would even debate and discuss and approve an annual list. This was intended as a guideline, it was not a regulation but it was a guideline to industry and other people who were trying to supervise industry as to what would be a safe limit. Now you might want to ask me what the definition of official limit value is.

MR. WELLER: The next question was offered but I won't repeat it.

Then we will refer to page 18, line, must be 27 or 26.

READING CONTINUED:

Q In 1964 were there any publications that made any recommendation in regard to the change of the threshold limit value of five million particles per cubic foot of air in relation to asbestos dust?

A I know of none.

MR. WELLER: Then page 22.

READING CONTINUED:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 42 of 262

asbestosclaims.law/library/10244/42

41

Q Doctor, is there a difference between a textile worker in a mill and the conditions under which he was working and the dust conditions under which he was working, and the dust conditions under which the asbestos insulation worker was working?

A I think we all agree on that. All people working in the field would feel that these were different.

Q All right, what difference was there back prior to 1947, with reference to the textile mills working with asbestos products?

A Well, the difference is many. They can relate to the type of asbestos, the concentration of asbestos, and the constant exposure as compared to rate exposure, and the amounts of other substances which may be inhaled at the same time, so that the textile worker is on the average exposed to a more constant concentration of fibers of fibers of the same type, but there are many variations.

Q Doctor, did they at that time come up with the recommendation that if a factory maintained a threshold limit of five million particles or

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 43 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/43

less in these factories, that it was a reasonably safe limit?

A Yes. The answer is yes. If dust control was reducted to the concentration of five million particles or less the evidence in the textile industry was that the problems were greatly reduced or eliminated.

Q All right, when, in your opinion -- well, first, based on the reported studies and based on your own study, I will ask you if the conditions under which the average industrial insulation worker performed his work were such that the threshold limit values were below the five million particles per cubic foot --

A By the definition of threshold limit value, that's the average. The insulation worker continued to have high peaks, and we still do not really know the relative importance of those surges and peaks, so that his exposure was of a different kind. That's all we can say. So using the best knowledge, as to knowledge, it would be all right, but I think it would be improper to say that it was all right, because events have shown that it wasn't all right.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 44 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/44

43

Q Doctor, I'm taking you now back to 1961, assuming what was known in 1961 in relation to the asbestos insulation worker who worked in the field, I will ask you if the dust counts were maintained or if the conditions under which he worked and experiment showed that the threshold limit value of dust was below five million particles of air per cubic foot, that it was reasonably safe for the industrial worker to work with products that could have contained some asbestos?

A I am trying to recall where to break into that.

Q Doctor, assuming the knowledge that was generally available in 1961, and assuming that the experiments done in the field of industrial insulation worker showed that the threshold limit values were below five million particles per cubic foot of air, was it reasonably safe, based upon your knowledge, at that time for these workers to participate in work with products containing some asbestos?

A I will answer that by saying if an industrial hygienist had been given the type of dust counts

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 45 of 262
asbestosclaims.law/library/10244/45

44

that were being experienced by the insulation worker and had the knowledge that the materials he was working with contained twelve to fifteen percent asbestos, I would have felt that he was in a low order of risk compared with many other people exposed to asbestos. In other words, it would not have been regarded as a dangerous level of exposure. Again I say this was a defect of knowledge at that time.

Q This lack of knowledge was general in the industry, wasn't it?

A I think in this connection the British who had set up elaborate asbestos regulations which did control asbestos in the textile industry did not set up regulations covering uses such as we are talking about here until well up into the 1960's. In other words, the asbestos regulations had greatly reduced exposures and disease and the asbestos textile industry had not been translated into the insulation workers, and in fact, in 1963, two doctors, Leathart and Sanderson, reported on the situation in Great Britain and showed that insulation workers were beginning to be a major asbestos problem in Great

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 46 of 262

asbestosclaims.law/library/10244/46

45

Britain because they had not been covered by these regulations alone, which I think reflects again a lack of attention and a lack of knowledge as to this being a problem.

Q Doctor, did the threshold limit value recommended by the American Conference of Governmental Industrial Hygienists remain at five million particles per cubic foot of air until the year 1970?

A In 1968 a recommended change was made to two million particles if they counted all the dust, or twelve fibers per cubic centimeter if you used another method which depended upon collecting air samples from a so-called membrane filter.

Q Doctor, that was recommended but didn't the recommendation for this remain in effect for two years?

A It was a tentative level for two years.

Q All right, I show you Exhibit 2, Threshold Limit Values of Air-Borne Contaminants for 1968, Recommended and Intended Values. Doctor, are you familiar with that publication?

A I am.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 47 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/47

46

Q Then was 1968 the first recommended change in the threshold limit value for asbestos, of dust containing some asbestos?

A Yes, it was so far as I know.

Q All right, and actually --

A As I say, the answer to that is yes.

Q All right, then up until that recommendation, the recommendation was five million particles per cubic foot of air?

A Total dust.

Q Total dust, all right. Now were the people who were connected with this American Association of Industrial Hygienists, did they represent the people in the United States who were concerned with the problem of occupational health?

A It included the people who were officially concerned, and it had -- it solicited information from all people and made these recommendations available rather widely for comment prior to their publication.

Q Now did the Department of Public Health publish these recommended values, threshold limit values?

A Not the Department of Public Health. These

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 48 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/48

47

were published by the American Conference of Industrial Hygiene. They were used by the Public Health Service when they were asked for recommendations as to guidelines. There were no official Public Health regulations relating to industrial concentrations.

Q But if a manufacturer of asbestos products had consulted the Public Health Service of the United States and asked what their recommendation was on dust counts, they would have received this material?

A They would have received this material, and the Department of Labor would be given it. In fact the Department of Labor included it in the publication for Government supply contracts.

Q All right, so these standards were recognized in the industry throughout the United States?

A Yes, correct.

Q Likewise, they have been recognized in England?

A They have been widely copied and used all over the world. The English know of our special concern in the textile industry about this same period, 1967 and 1968, and they were developing

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 49 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/49

48

some regulations of its own.

Q All right, Doctor, then if a manufacturer of products containing some asbestos, twelve to fifteen percent of asbestos, had may inquiry, would he have found that the recommended values -- dust count values up to 1967 was five million particles per cubic foot of air?

A Well, from 1947 to 1955 --

MR. WELLER: Well, that is another question. There is an objection.

READING CONTINUED:

Q Well, from 1947 to 1955, when the Drinker report was made, I think that you have referred to it?

A The answer is yes.

Q All right. Now based upon the state of the generally accepted medical knowledge up until we will say 1962, was it recognized that a worker who worked under conditions where the threshold limit value were under five million particles per cubic foot of air was reasonably -- working in a reasonably safe industry?

A It would depend a little bit upon one's understanding of the variable of human response

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 50 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/50

49

of the uncertainty of threshold limit values as a guide. If one is sophisticated in the value, one would be less likely to rely upon any number as an indicator of safety. Therefore, as an individual, as a doctor and as scientifically interested in the field might be a different response than a person who was officially responsible as an inspector or one who was carrying this as an official function. One place is a break point between safety and nonsafety, and at one point there is a midline. I don't want to give an answer I can't live with.

Q Doctor, I am not asking you this from a strictly scientific standpoint, but from the standpoint of the generally accepted knowledge that was published at that time, was it generally accepted that if an asbestos construction worker was working in an area where the threshold limit values were below five million particles per cubic foot that it was reasonably safe?

A Most people would have said that it was safe. Certainly, so far as asbestos is concerned, and any other thing, is very debatable.

Q All right, asbestos disease per se had

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 51 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/51

50

long been recognized as an occupational disease hazard, has it?

A Yes.

Q And it is covered by a number of our compensation laws. Now up until 1964, did we see very many cases of asbestosis, even in asbestos construction workers?

A It depends on what you mean by many. When you consider the numbers of people employed, I think that up until 1964 we were seeing asbestosis in -- they were being reported, and considering the fact that the number of workers was not a huge crew, it was significiant, but this was generally -- they were not -- the number of individuals becoming disabled did not to compare with the numbers that earlier had been employed by the textile industry, that's all I can say.

Q All right.

A When you say were we seeing any significant numbers, it would be unfair to say we were not because we were. It was becoming apparent in the early 1960's.

Q All right, now, Doctor, up to, we will say 1962, was there any general knowledge that had

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 52 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/52

51

been disseminated or published to the effect that the persons using asbestos or who had been subject to asbestos dust could develop mesothelioma?

A The answer is that in -- although there had been isolated case reports, I mean on case here and two cases there, from Europe and England, it was not until 1960 when a group of people in South Africa reported a series of mesothelioma cases that appeared to be associated with, with either working with or living near areas where crocidolite asbestos exposure occurred had the tumor which had hitherto before this been regarded as very rare.

Q All right, was this in connection with a mine in that town?

A It was a mining area, and many people were living on roads upon which this material had been used to build roads, and there was much of it in the soil in the area, but many had worked and handled or in processing of it, I have the paper here, but the essence of it was it called attention to a rare tumor which occurred in large numbers in an area where crocidolite asbestos was found.

Q All right, crocidolite is blue asbestos,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 53 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/53

is it not?

A Yes, sir, it is.

Q Is there some opinion that crocidolite asbestos is more harmful than chrysotile or amocite?

A Originally this was believed to be -- originally that was postulated that these cases in some way were espectially related to crocidolite, and that one could not or should not translate those results in other forms of asbestos. It was found, however, that in other areas of South Africa, which also produced crocidolite, they did not find as high a number. It has also been found subsequently that there was some excess of these in places when workers had no crocidolite exposure, but this was the kind of knowledge that was developed in the period between 1960 and 1963 and 1964, so that, therefore, the first revelations I would say that we might be dealing with a problem of mesothelioma was lured by the uncertainty as to whether or not this was not a unique effect of crocidolite, and crocidolite is one used in insulating materials, so that the answer in 1962 was that the mesothelioma was a matter of concern and one that required careful

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 54 of 262

asbestosclaims.law/library/10244/54

53

study as it related to another type of asbestos exposure, and it was out of these studies this crocidolite was incidentally reported.

Q All right, Doctor, you are talking that the scientists became concerned about that?

A About that.

Q Along in 1962, 1963 and 1964?

A That is correct.

Q And it was in that period that Dr. Selikoff began his studies in regard to asbestos construction workers?

A Yes, he was beginning to accumulate enough data about 1963 and 1964 to be able to reach certain conclusions.

Q All right, did Dr. Selikoff write his publications about 1964?

A Yes, sir, he gave a report, I don't think it was widely circulated in 1963 at some meeting, but 1964 was his key publication.

Q All right, Doctor, does talc cause conditions very similar to asbestosis?

A To answer that question one has to define what one means by talc.

Q All right.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 55 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/55

54

A I hate to be -- because talc in the sense of a mineral, pure talc, there is no evidence that it can or does produce changes like asbestosis, however, much commercial talc occurs in types which contain tremolite, which is a form of asbestos, so while we are talking about talc in a commercial sense we may be talking about asbestos in a mineral sense, and these people exposed to that kind of talc, as in the talc mines of the type in New York State, developed lung changes which looked very much like asbestosis, you might classify pleural plaques. There is no indication that I know of that they have an increased exposure of talc is a very confusing subject, and it is one on which we are in a state of knowledge right now that might induce questions like this ten years from now that have been asked earlier.

Q I see. All right, but talc powder or talc products are suspected as causing lung changes?

A As causing lung changes but it would be absolutely wrong to combine all talcs or all sources of talc. You have to be discriminating on what you are talking about.

Q Isn't there a threshold of talcs the same as

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 56 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/56

55

for asbestos and other products?

A Yes, there is, but I would have to refresh my memory on it.

Q Now, Dr. Cooper, based upon your knowledge and experience and knowledge in this field and based on all of the medical knowledge up to 1962, the published medical knowledge of 1962 and 1963, can you reasonably be certain that the manufacturer of asbestos products containing twelve to fifteen percent of asbestos, insulation products could not reasonably anticipate that the use of the product could cause serious bodily harm to an asbestos construction worker?

A I think it is truthful to say that he had been led to believe by what appeared to be the low level of exposure and the low level of concentration that it probably would not produce serious effects.

And Mr. Duncan, by he, who are you talking about.

A The manufacturer. I at that time was in a position of being an individual who was trying to look for sources of trouble, and that I was concerned with things -- that's why I became

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 57 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/57

56

interested in it, the things we might not be handling with sufficient care, so if you ask me at that time I would say we better look into this even though the evidence doesn't show it. That's why I became interested in it, and that's why I think you have to translate this into the different avenues of responsibility and comparing, and if you had asked me at that time, I would say that we better look into this. In fact, I was helping -- Dr. Selikoff came to the Public Health Service to get me to help him with his studies, and I endorsed those studies in 1961 and 1962, which indicated that I was not satisfied.

Q Referring to the same question to you, relating this to the manufacturer of the products containing same asbestos, could he, based upon the medical knowledge and the knowledge available, could he reasonably anticipate that the use of his product was reasonably safe?

A I think the answer to that is he was not getting the information and he had no basis really for concern.

Q All right, now you say the same --

A I can only speak for my particular field.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 58 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/58

57

I think there are different levels of knowledge and sophistication in this as in everything else.

Q Could we say this was true up to 1964?

A Changes were occurring rapidly then.

Q In 1964?

A Changes were beginning to develop on that before 1964 and 1965. I think that it was -- we could say that we had not been -- that some of our assumptions were not correct.

Q Doctor, when you made your experiment or research in San Francisco, and I believe you said it was in 1966?

A Yes, we began in the latter part of 1964 and we continued. Our first report on our actual medical findings was not given until 1968 in the meeting at Bethesda.

A I see. So you were still not fully satisifed when you continued your research in this particular field of the asbestos worker under the conditions under which he was working, were you?

A I was not satisfied that there were no differences in the east coast and the west coast. By 1964 I felt Dr. Selikoff's figures were pretty solid, and I felt the insulation workers were

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 59 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/59

suffering a special risk.

Q All right, assuming that an individual began working as an insulator in the year 1936, and that he continued to work until 1969, a span of thirty-five years, and that he worked in the shipyards in his early days, and assume further that there has been a diagnosis in 1969 of asbestosis, 1969 or 1970, of asbestosis or mesothelioma or both in this individual, could you -- is there any way to tell when or which exposure over that periof of thirty-five years that products containing asbestos caused or produced his condition of asbestos or the condition of mesothelioma?

A There is no way to tell absolutely. One can express -- make certain statements as a probability.

Q All right, now, Doctor, assume that he had excesses, that he worked in shipyards and the shipyards generally during the war there were excessive exposures to asbestos dust, could you tell us how long it would take for asbestosis to develop or how long it would take -- well, I will say for asbestosis to develop first?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 60 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/60

59

A All right, a diagnosable asbestosis itself, asbestosis that you can detect by x-ray or by examination or impaired pulmonary function rarely occurs at the levels of exposure we see in insulating workers in less than fifteen to twenty years after the starting of exposure, and we see many who have been in the trade thirty and forty years who don't show it, so with regard to the asbestosis, it is a fibrosis of the lungs, a period of fifteen, twenty, twenty-five or thirty years is a normal length of time from the effective exposure to the appearance of the disease. That's all.

Q All right, Doctor, if this individual had been removed from all exposures for the last ten years and he subsequently developed asbestosis would it have made any difference in the final results of his case?

A I would say asbestosis does progress after exposure is stopped.

Q It does not progress?

A It does progress.

Q All right, it does progress. All right, so based upon your knowledge and experience and the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 61 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/61

60

research, if a man had been exposed to excessive asbestos dust twenty-five or thirty or thirty-five years ago, would you say what the most probably cause of his condition of asbestosis was?

A I would have to answer that it is composition both of the intensity of exposure and the duration of the exposure, and particularly the length of time from the exposure to the present that determines one's decision as to probability and that is -- by that I am saying that a heavy exposure twenty-five years ago would be much more likely to be associated with an effect you can see today than a heavy exposure five years ago.

Q All right.

A So that it is a very interesting common factor -- one of the most interesting factors in regard to the asbestos effect is the long delay between exposure and apparent effect.

Q All right, Doctor, assume that a man has been diagnosed in 1969 or 1970 as having mesothelioma, that he has worked in the asbestos construction insulation industry for some thirty-five years, beginning his career in a shipyard,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 62 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/62

61

why length of time does medical science recognize that it takes to develop the disease of mesothelioma or the condtion of mesothelioma?

A The common finding in all the cases of mesothelioma as to relate to asbestos to the time when the first contact with asbestos until the diagnosis of tumor or definitely tumor is very long. In a series that Dr. Selikoff reported in 1969, he had twenty-two cases of mesothelioma and the average length of time from first exposure to diagnosis or death was thirty-four-point-eight years. He had one case who had started work after 1930 in that series of twenty-two. Dr. Newhouse in England studied fifty-one cases and found that time ranged from sixteen to fifty-five years or an average of thirty-seven and a half years. Dr. Vodner, in the original series, reported some fifty-two over there and found the length of time first contact to development of diagnosis of the tumor was from twenty to forty years. McDaniel, in twenty-one cases in Canada, reported sixteen to fifty years, so that this is a fairly consistent finding of a very long interval. Therefore, one would have to regard it highly

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 63 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/63

62

probable that exposure associated with the development of mesothelioma in an asbestos worker would not likely be those of recent years but much more likely to be those of fifteen, twenty and thirty years ago.

Q All right, now, Doctor, is every case -- does every exposure to asbestos dust, no matter how minimal, produce asbestosis?

A Not asbestosis that can be diagnosed or can be detected.

Q All right, then if a person is diagnosed as having asbestosis in 1969 or 1970 after working thirty-five years as an asbestos insulation worker, could you as a man who has studied long in this field as a physician and researcher, is there any way that you can tell which exposure and which product caused or produced his condition of asbestosis?

A I know I can't and I don't think anyone can.

Q Is there any way that you as a physician and researcher could tell which exposure over a span of thirty-five years caused or produced mesothelioma, if it did?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 64 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/64

63

A My answer would be the same. I know I can't, and I don't think anyone can.

Q Now, Doctor, if a man had been working in the industry, asbestos insulation industry, for some thirty-five years, the early part of his career being work in shipyards during the war, what would be the most probable cause of his condition of asbestosis which is finally diagnosed in 1969 or 1970?

A I would place those early exposures high on my list of probably causes. I would not rule out some of the immediate later exposures and add them to it. As I approach the present I would tend to give them less and less significiance, so it is a relative answer.

Q Doctor, in all reasonable probability the exposures over the last ten years would not have caused the condition that ultimately developed, would it?

A I would think that I would regard them as not being of much importance, if any at all.

Q I see. Would that go both as to asbestosis and mesothelioma?

A It would apply more to the mesothelioma than

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 65 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/65

64

the asbestosis, but it would apply to some extent to the asbestosis too. By that I mean -- I could expand on this with your permission, that I think it is highly probable that if he had quit work as an insulator entirely and become a farmer in 1960 that he might have developed, he very likely would have developed this mesothelioma. For example, in Dr. Selikoff's series, he found a man who had quit work fifteen years before. In his series that he reported several years ago, he had three out of ten cases that he reported were no longer insulators, and one of them had stopped three years before he developed his mesothelioma, and two of them had stopped fifteen years before they developed mesothelioma, and this is the kind -- this kind of evidence turns up repeatedly.

Q Doctor, in the diagnosis of mesothelioma, is there cancer too that will metastasize and affect the same organs that mesothelioma will affect?

A The answer is the metastatic particularly from the pancreas and in women the ovary and other organs will be spread out over the surface and become indistinguishable from mesothelioma. Now

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 66 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/66

65

I am not a pathologist so I am reporting my general knowledge of this.

Q Doctor, if you are going to rule metastasized cancer or cancer that has been produced at some other source, how would you do that?

A You do it by careful examination of all the other likely sources, which is by inspection and by complete autopsy, and in which you look to see if it is the primary location, and you can draw some conclusions by the type of cells you find in the spreading tumor.

Q Doctor, if you do not do an autopsy or rule out a primary cancer from another source, which has spread to the area where this would be mesothelioma of the chest and pleura, could you state with any degree of medical certainty that this was mesothelioma as opposed to metasthasized cancer which had spread?

A Strictly speaking, the criteria of mesothelioma requires that you rule out the primary source. Consequently, if you have not had a complete sutopsy you do not meet that criteria and it could not be stated with certainty that it is a mesothelioma. However, if there are mesothelioma

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 67 of 262

asbestosclaims.law/library/10244/67

66

tumors as it were, which by their cell characteristics and so forth, and particularly there is a variety of cells in them in which one can say probably mesothelioma, and if one has examined and ruled out primary sites elsewhere, but it is a very difficult diagnosis to make.

Q Have you had any experience in the diagnosis with the use of slides --

THE COURT: Just a minute, Mr. Weller.

MR. WELLER: Yes, sir.

THE COURT: Just a minute. Do you think this might be a good place for us to have a recess.

Ladies and gentlemen of the Jury, we are going to stand in recess for fifteen minutes, which will be about twelve minutes after eleven o'clock by the clock in the courtroom. Please return at that time.

THE MARSHAL: Everyone rise, please.

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

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 68 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/68

67

THE COURT: Please be seated.

We are ready to proceed, Mr. Weller.

READING CONTINUED:

Q Have you had any experience in the diagnosis with the use of slides --

A This is something I have not published but I have done this personally. I have found what appears to be thirty or forty mesotheliomas diagnosed in northern California over the last four or five years. Cases that I found by going back and searching death certificates, so I prepared to write a report on these trying to show how they related to asbestos plants and asbestos exposures. I turned the slides over on the first twenty-five or thirty of these to a pathologist who is a member of a review panel that has been set up unofficially to review cases like this in the United States under the auspices of the International Union Against Cancer. I sent slides on the first thirty or so and he ruled out half of them, so I have abandoned my project because I did not have time to establish the diagnosis on these. Now this is not an uncommon experience and it reflects differences of opinion

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 69 of 262

asbestosclaims.law/library/10244/69

68

between pathologists as to their criteria and others say we are not strict enough, and I am (a) not prepared to judge between these, and (b) I think it is going to take time to separate this out. There are other methods of diagnosis such as tissue culture and other approaches. All I am using this is an illustration of the fact that the diagnosis is a difficult one.

Q All right, then based upon your personal experience --

A And upon other reports on literature, Dr. Levin and Bell, which he reported thirty-three cases in Pennsylvania indicating something like half of his cases were ruled out by a review pathologist, and I have that paper for direct reference here, but he finally decided to analyze all of these together and not to throw out the ones that the pathologist threw out, and that complete paper analyzes the whole group.

Q Then based upon your experience it is easy for someone who is not thoroughly experienced in the diagnosis or interpretation of mesothelioma to diagnose another type of mesastasized cancer as mesothelioma?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 70 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/70

A My answer to that, that pathologists can differ in their own criteria and in their knowledge and experience in applying the criteria.

MR. WELLER: All right. Now, to line 11, page 45. That stopped on line 20 on page 44.

READING CONTINUED:

Q All right, Doctor, as of 1961 on the basis that was generally available, would there have been writings by industrial hygienists and the people in that field that an industrial insulation worker engaged in the application of products which contained twelve to fifteen percent asbestos was likely to produce serious physical consequences?

A No, because we were thinking then largely of asbestosis. We didn't think the concentration then was such that they would be likely to produce asbestosis, and we hadn't really begun to connect asbestos with lung cancer, and certainly not with mesothelioma, so we would have been thinking about it in terms of asbestosis.

Q Doctor, this is the question that I asked you before, in 1961 was it reasonably foreseeable

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 71 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/71

70

by a manufacturer of insulation products containing approximately twelve to fifteen percent asbestos to foresee that insulation workers such as Mr. Borel and these others, Mr. Potter, Mr. McDaniel and Mr. Crawford, would have contracted asbestosis as a result of working in the asbestos construction industry with the product, relating this solely to 1961 or prior thereto?

A Let me --

MR. STEPHENSON: Your Honor, I made an objection there which I would like to state again and this question does not couple with the standards which the manufacturer is held and that being the standard of the expert in the field.

THE COURT: Objection overruled.

READING CONTINUED:

A I would have to say that as of 1961 it was not foreseeable and I have to say this because I was associated with the Government job at the job, and I frankly say we did not foresee it.

MR. WELLER: Now skip to page 72, line 19.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 72 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/72

READING CONTINUED:

Q You have mentioned Fleischer and Drinker's report on studies of shipyards, Doctor. I will ask you whether that is or is not considered to be an authoritative work?

A Well, the senior authority of that report, Dr. Drinker, was one of the outstanding industrial hygienists in the country at the time.

Q I don't mean to impugn him but what --

MR. WELLER: Questions by Mr. Stephenson.

READING CONTINUED:

Q I don't mean to impugn him but what my question refers to is it recognized as an authoritative report because of the manner in which it was made?

A It was the best we had at that time, and it was authoritative in that sense. In fact, there have been few reports since.

Q All right, did Fleischer and Drinker take into consideration any asbestos workers at that time who had been exposed to asbestos dust over a period of years or was it just over a short span of years?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 73 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/73

72

A I would have to review the paper on that. My recollection would be that there had not been long periods such as we are talking about now. They were mainly people who had been in a shorter time than twenty or thirty or forty years.

Q Doctor, so we might have it in the record, I think it is in here in one form or another, but pardon me if I re-ask, do I understand that there is a connection between the time of the exposure to asbestos dust and the time of the first manifestation of the disease, the lung disease?

A Yes, there is a relationship. It is conflicting by the intensity of the exposure plus individual variables.

Q Surely, one individual may be more susceptible to mesothelioma than another, I assume is what you say?

A Yes, sir.

Q This being the case, for example, is a worker working in the industry let's say for one year, and then left the industry and went to farming, I believe you mentioned that type of parable yourself.

A Yes, sir.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 74 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/74

73

Q Would you expect there would be several years go by before he would have abnormal lung findings?

A If he had any at all it might be ten, it might be twenty or it might be thirty years, if he had any at all.

MR. WELLER: All right. Then what do you have -- the next -- The Plaintiff offered the next.

MR. PATE: I believe we go to 82, line 19.

MR. WELLER: All right. Page 82.

READING CONTINUED:

Q Are you familiar with any breathing apparatus commericially in use by asbestos workers?

A You mean respirator protection?

Q Yes, sir, excuse me, Doctor?

A The answer is yes.

Q All right, I am going to show you a little paper type mask that has been marked as Plaintiff's Exhibit 4, and ask you if you can identify this.

A That looks like one of the M & M or some other companies' throwaway mask, which is a form which has been regarded by some as respiratory

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 75 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/75

protection.

Q Have you made any studies to help you learn whether or not this type mask prevents the inhalation of asbestos dust by one exposed?

A I have not personally carried out studies, and I don't know of any even published studies on it. It is not an effective device.

Q All right, sir, I show you another item which appears to be some type of breathing apparatus, plaintiff's Exhibit No. 5, and ask you if you can identify this.

A Yes, this again is not my area of detailed expertise in the sense of technical differences between masks. I will have to consult guides as to choice of fibers, and this is a recognized and acceptable form of respiratory protection if the proper filters are used.

MR. WELLER: That was the same filter device that has been exhibited here, is it not --

Q All right, sir, do you know whether this Exhibit 5 will prevent the inhalation of asbestos particles?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 76 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/76

75

A I cannot speak for this specific model and this particular type. It depends upon the type of filter, it depends upon its fitting, and it depends upon a number of things. I think this type with the proper filter would reduce it if those conditions were adhered to.

Q Do you know of any filter of any kind in common use that would prevent the inhalation of asbestos dust?

A There are filters that would greatly reduce the inhalation and probably reduce the inhalation in an otherwise hazardous atmosphere to a point where it would be -- but when you open up the question of respiratory protection you are opening up something where neither the industry nor the worker nor the industrial hygienist really had completely satisfactory masks to carry, to be worn. Some of the work that an insulator has to perform, both in terms of resistance to breathing and abrasions of the skin due to pipe grease which he might be working with at the same time, and so that the matter of getting a satisfactory mask or respirator for the insulating worker has been a very difficult one. You asked

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 77 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/77

76

me if that is right, and if everything is right it will reduce the dust exposure.

Q It will reduce but not eliminate?

A That's right, and the reason is that fibers do not behave in filters as round dust particles. You have to test a filter specifically for fibers. The Bureau of Mines until very recently has not considered asbestos as a different kind of dust in making workers have masks.

Q Do you know Dr. Selikoff's work in his attempt to develop masks?

A No, but we have had some of their masks and some of our insulators have worn them. This is an attempt to get an inexpensive throwaway mask that will be effective in reducing asbestos dust.

Q Doctor, are you familiar with Dr. Selikoff's testimony before the Congressional Committee on Environmental Control regarding --

A Not in detail, I have scanned it but I am not familiar with it in any detail.

Q Do you agree with Dr. Selikoff that the manufacturers of products containing some asbestos from twelve to fifteen percent would not be held

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 78 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/78

77

responsible to the asbestos insulation industry for the conditions which were discovered to exist after 1964 in relation to the use of asbestos products?

A I am not sure of the context of which you said, and I would have to answer it in terms of context. I would agree with the general statement, which was a different time and a different state than today.

Q All right, now when Mr. Stephenson was asking you a question about your research project in 1964 of the union workers, asbestos workers, did your study begin in 1964?

A Well, as I can recall it was 1964 or either 1965 when we began our project, and we were funded for three years by the Public Health Service, and since then the work which we have provided service is funded by the industry and the Union Welfare Fund.

Q All right, sir, now your study, I take it, related back to employees as early as January, 1946?

A That's right, and it included exposures back to 1920 sometime, because of that we picked

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 79 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/79

78

up in 1946 had worked twenty years or more.

Q All right, now, Doctor, Mr. Stephenson asked you about various literature and various studies and legislation in England, I will ask you if most of these studies did not concern themselves with the textile mills which were using pure asbestos in the manufacture of products?

A The answer is a large proportion of the studies related to textile mills.

Q All right, now based on your knowledge prior to -- that is, based on your research and knowledge prior to the legislation in England, was there an absence of dust control in the modern factory facility?

A In the British --

Q In the British textile industry?

A The answer is yes.

Q Now, in this country was there a standard established in textile manufacturing plants and plants that manufactured products containing some asbestos, that is, a dust standard or a threshold limit value of dust?

A After the Congress study in 1938, then our advanced segments of industry began to adopt this.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 80 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/80

79

They were confronted by the realization that they were liable for compensation and also to a varying extent they were concerned about the Air Force so there was a gradual improvement in conditions.

Q Now beginning after 1938 --

A It probably didn't really begin until 1940.

Q All right, beginning in 1940, was it recognized and considered in this country that as long as the dust count remained at five million particles per cubic foot of air that this was a reasonably safe operation for people engaged in the asbestos industry?

A Yes, and this was part of the explanation for the decline in interest in the disease in the sense it was thought we had established the disease and we had found a way to prevent it and let's get on to the next problem.

Q All right, Doctor, did you publish an article after your research in 1964 through 1968 in San Francisco?

A I have an article that was presented and will appear in the proceedings of the Second International Conference on the biological effects of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 81 of 262
asbestosclaims.law/library/10244/81

80

asbestos, which I wrote in

MR. WELLER: Which I presented --

READING CONTINUED:

MR. PATE:

which I presented in Dresden in April, 1968. This is the one to which I have been referring, I have published sections in other papers.

Q What is the title of that?

A It is the Evaluation and Control of Asbestos Exposures in the Industry and Trade, which most of the people are interested in in this country, including Dr. Selikoff.

Q Let me ask you a little bit about that article, if this is not your statement: "It has been recognized for a number of years that insulating workers have an increased risk of asbestosis

MR. STEPHENSON: Your Honor, may I object to this. When I wanted to introduce Dr. Cooper's paper Mr. Weller objected to the introduction and now he is reading from parts of it himself and I would make the same objection he made to me.

THE COURT: What portion, Mr. Weller?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 82 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/82

MR. WELLER: Your Honor, I quoted the portion of the article and ask the witness about it at the time and its -- the dates of the articles have a materiality here.

THE COURT: I understand that you are evading the question now. I want to know the consistency with which you support your position on.

MR. WELLER: Well, Your Honor, I have really no objection to the full import of Dr. Cooper's article if it is introduced in full.

THE COURT: Then you may proceed.

MR. WELLER: Or any of these other articles.

THE COURT: You may proceed with this question.

READING CONTINUED:

BY MR. WELLER & MR. PATE:

Q Now, let me ask you a little bit about that article, if this is not your statement. "It has been recognized for a number of years that insulating workers have an increased risk of asbestosis

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 83 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/83

(Leathart and Sanderson, 1963; Marr, 1964; Selikoff, et al, 1965; Ahlman, 1966; Keane and Zavon, 1966; Ferris, 1967; Kleinfeld, et al, 1967; and others);" is it your position that these particular studies directed everybody's attention to the problem in the asbestos industry?

A Yes, these were the conglomeration of studies that had begun a ye ar or two earlier, but these were the reported findings of the studies.

Q These were really the first reports --

A In which insulation workers had been singled as a high risk.

Q I see. Also, if you will refer to page 11 of your article, the last paragraph, and see if this was the conclusion that you reached from your study.

Q I will give you a copy of it but I don't have it right now. Doctor, the last paragraph, is this your conclusion: "It is of interest that time-weighted averages were not unusually high and that current TLV recommendations in the United States for asbestos containing dust (5 million particles per cubic foot) would not have been exceeded, even for a man working 100% of his

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 84 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/84

83

time with asbestos. The fact that most men work less than half of their time with this material would be an added safety factor. Figures 3 and 4."

A Yes, I subscribed to that statement in the context of the entire article.

Q In the context of the entire article?

A Yes.

Q But this was the result of the test which you made at that time?

A Yes.

(PAUSE)

Q Doctor, look at page 15 in regard to the dust levels, actually it is the second paragraph on the page starting with "Existing dust levels, and see if I read your conclusion correct: "Existing dust levels, whether measured by midget impinger or fiber counts from membrane filters, were not as high as had been anticipated. The time-weighted averages were within the present threshold limit value of 5 million particles per cubic foot, even for men working full time with asbestos. In reality, most men work less than half of this with such materials."

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 85 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/85

84

A That's right.

Q Now is that a correct statement of your conclusion?

A That was my interpretation, my conclusion.

Q Based upon the actual field experiment?

A Yes.

Q And beginning with the last paragraph on page 15: "In our opinion, in the absence of any evidence that work practices have changed sufficiently to blame present asbestosis on extreme conditions in the past and uncertainty as to levels necessary to reduce cancer rates, we think it is prudent that insulating workers not be permitted to work under any conditions that exceed 5 million particles per cubic foot by midget impingers and that industrial hygiene and personal protective equipment be geared toward these objectives."

A This is essentially saying let's put a ceiling of five million particles per cubic foot average. In other words, let's cut off these peaks.

Q On page 17, I will ask you if you didn't reach this conclusion based upon your field experiment and observation and test: "Dust

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 86 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/86

85

concentrations were studied by midget impinger and membrane filter sampling. The former indicated time-weighted averages in nearly all work situations below the present threshold limit value of 5 million particles per cubic foot", is that a correct statement?

A That is a correct statment.

Q And that's what you found on your test and experiment. Now, Doctor, Mr. Stephenson asked you about the use of respirators, do these serve to reduce and cut down the exposure to the inhalation of asbestos dust if properly used?

A A respirator of the type that is approved, if it is worn, it will greatly reduce the asbestos dust.

Q All right, it will greatly reduce the dust?

A Yes, and if it could be worn consistently it will probably prevent the development of asbestosis.

Q So would it reduce the exposure to non-hazardous exposure to asbestos dust if it were properly used?

A I don't get that.

Q Down to a non-hazardous level?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 87 of 262
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asbestosclaims.law/library/10244/87

A There are respirators that will do that. I can't speak in general terms for all respirators but there are respirators that are made that will do that.

MR. WELLER: All right, I won't offer the next four lines from 7 to 11.

READING CONTINUED:

Q All right, Doctor, has the Bureau of Mines until recently recognized asbestos fibers as being anything but dust?

A No, they have not singles them out for special consideration.

Q All right, when did you start singling asbestos dust out?

A Within the last five years.

Q Within the last five years?

A And I have been developing tests methods for testing for asbestos dust.

Q Now with the use of dust collectors, suction fans and so on, will that reduce the exposure?

A Very definitely it will.

Q In some instances these have been in use for a considerable period of time in industry, have they not?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 88 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/88

87

A Yes.

Q Isn't the main recommendation today, so far as asbestos dust is concerned and the asbestos industry to reduce the exposure to dust by good housekeeping and by the use of suction equipment and exhaust equipment and the use of masks, respiratory masks?

A Yes, sir, a combination of these devices. There are a variety of approaches, depending upon the situation.

Q Now have there been some tests in the United States in regard to the general public that the average individual will show some particles of asbestos in his lungs?

A Yes, it has been shown in a number of places since about 1962 or 1963 that asbestos bodies and asbestos fibers can be found in many lungs. Dr. Gross has found ninety-nine percent of the lungs he examined in Pittsburgh, and Dr. Selikoff says he finds fibers in practically every one, but these are generally in very small numbers in the general public.

Q Doctor, in your opinion, based on your knowledge in this field is it each exposure to

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 89 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/89

88

asbestos dust that will cause asbestosis?

A Obviously not or we would all have what you call asbestosis.

Q Is it each exposure to asbestos dust that will cause mesothelioma?

A Certainly not.

Q Or chest cancer?

A Certainly not. There is some relation between dosage and other factors.

Q Actually your research will show that a lot of workers who have engaged in this field of endeavor over a long period of years have neither asbestosis nor mesothelioma?

A Certainly.

Q A good percentage?

A Certainly.

Q Now is there any way on earth that you could sit here today, and considering that there are eleven alleged manufacturers of products containing asbestos with which a man has alleged in which he worked beginning thirty-five years priors to 1970, and that in 1970 it is alleged that he had developed asbestosis and that he developed mesothelioma, now taking those facts, is there any

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 90 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/90

89

way in the world that you can sit here and tell us with any reasonable degree of medical certainty when this man got an exposure which caused or produced his asbestosis?

A The answer is no.

Q Is there any way you can sit here and tell us with any degree of medical certainty which exposure or exposures has caused or produced the mesothelioma?

A The answer is no.

Q Doctor, isn't it entirely probably that the man could have worked with the product on some job where he had a minimal exposure to dust and that it caused no harm whatsoever to him?

A In a relative sense or use of the word I would say no, there would certainly be some that had no detectability exactly in terms of total outcome but I wouldn't be able to distinguish those here.

Q You wouldn't be able to distinguish those here?

A No.

Q So actually, if you were trying to pick out, out of the eleven products or eleven manufacturers and some instances where the product may have been

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 91 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/91

90

used once a day and without reference to time, would it just be bold speculation to say which product did cause or did not cause any injury or damage?

A It would be bold speculation.

Q Doctor, does the mere finding of asbestos fibers in the lungs indicate that a man has disability?

A No.

Q Does it indicate that he has asbestosis?

A No, not in itself, it does not.

Q All right, Doctor, how old are you?

A I was born in 1912. Let's see, that would make me --

Q Fifty-eight, wouldn't it?

A Fifty-nine.

Q Fifty-nine, depending on the month?

A Fifty-nine.

Q Fifty-nine, all right, and how long have you been licensed to practice medicine?

A I graduated from medical school in 1934, and I was licensed immediately in Virginia in 1934, but since I was in Government service I did not take my formal state license board until I went to

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 92 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/92

91

California in 1943.

Q So, Doctor, you have been engaged in research --

A I practiced medicine in the Public Health Service but being with the Government I did not have to have a formal state license.

MR. WELLER: All right. I believe I have got a little redirect, haven't I?

MR. PATE: Page 104, I believe.

MR. WELLER: Yes.

READING CONTINUED:

Q I have two questions. Doctor, before 1960 was it not recognized in industry and by the Public Health Service and by the unions that the threshold limit value for dust containing asbestos was five million particles per cubic foot of air?

A That was the threshold limit value.

Q All right, and as long as the threshold limit value was kept within those limits it was considered to be reasonably safe for workers, wasn't it?

A The answer is yes to that.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 93 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/93

92

Q And all of the research that had been done, including your paper, up through 1968, showed that asbestos insulation workers on an average were not subjected to dust counts in excess of five million particles per cubic foot of air?

A They were not subjected to average exposure.

Q All right, in your research on the Pacific coast with the contractors and the asbestos union, didn't you find that some of them used dust collecting equipment in their fabricating shops, and that some of them used respirators, some of the men?

A Some of them used them and some didn't. Some provided respirators and some of the respirators were worn and some of the respirators weren't worn.

Q The mere fact in your report that you tested the dust counts and what you reported didn't mean --

(PAUSE)

Q Did it mean where dust collecting equipment was used and the men were wearing masks that they were subjected to these exposures?

A Ventilation was in place and the effect of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 94 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/94

that ventilation would have been reflected in lowering these counts, but if a respirator was being handled well, and that's basically a poor substitute, it would not be reflected in this count, the man's actual exposure would have been less.

MR. WELLER: I believe that's all. I want to offer later the two exhibits of the threshold limit value but I will do that later.

THE COURT: Anything else?

MR. STEPHENSON: Your Honor, I would like to reoffer now a certain excerpt from Dr. Cooper's article.

THE COURT: All right.

MR. WELLER: This is summary, Mr. Stephenson?

MR. STEPHENSON: No, I will be reading directly.

I am reading from --

MR. WELLER: Your Honor, I am asking for the title of the article so that I can find it.

MR. STEPHENSON: The Evaluation

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 95 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/95

94

and Control of Asbestos Exposure in the Insulating Trade.

MR. WELLER: What is the -- You have got two articles there.

MR. STEPHENSON: Dr. Clark Cooper and Leroy Balzer.

Page 15, talking about asbestos and whether or not there should be a substitute. "Unless it can be shown that asbestos cannot be used safely abandonment or prohibiting it would be a drastic recommendation. In our opinion efforts to use it safely have not yet been vigorously tried."

Going on down the same page.

MR. DUNCAN: That is 15. It is obliterated on my copy. I can't tell the page number. I think it is 15.

MR. STEPHENSON: Let me check the previous page. No, it must be 13.

Last paragraph. "Personal respiratory protection is an important adjunct to other measures. Present masks are not worn regularly even when

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 96 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/96

95

provided because they are hot, uncomfortable, increase the effort of breathing and interfere with communication. Many filter materials dispute this high resistance do not adquately filter out fibrous material. Research leading to the development of better fitting, low resistance, fiber removing masks is imperative. In some situations the insulating workers may have to depend upon a supplied air system, but because of the need for hoses and compressors its usefulness is limited. Personal air supplied respirators with their own power units would be more versatile and could be used for some articularly dusty exposure such as tearing out aboard ship."

Second paragraph on that page. "Changing work practices offers great potential, examples include increased use of properly designed pre-molded and cut fittings, the use of water sprays to wet material before cutting,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 97 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/97

96

the enclosed mixing of mud, the use of industrial vacuum cleaners for cleaning up and when tearing out. It is believed that a combination of all the foregoing properly planned and tailored to meet the different requirements of the many and varied jobs the insulator must do could drastically reduce his exposure. It would also protect the members of many other trades who work near the insulator and who are subject over the years to dust created and disbursed through construction cites. The patern of incidents of asbestosis and the nearly eight fold ratio between observed death from cancer of the lung and pleural and the number expected are in general agreement with other studies of insulating workers.

Though Selikoff and others found 6.8 times the expected number of respiratory cancer deaths in Clinfield and others 8.4 times. Quite similar to our findings of 7.9."

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 98 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/98

97

Then skipping to the middle of the page.

"Fiber counts were on the average between 2 and 10 fibers per cubic centimeter, nevertheless, there was evidence as pointed out, for both asbestosis and excessive tumor incidents. The possible explanations are, one, exposure in the past were much higher. Two, the peak dust in fiber counts are more important than averages. Three, there are substances present in insulating material which augment the asbestos effect. Four, our present permissible levels are too high and, five, the shipyard exposure during the period 1940 and 1945 being largely amosite and continued at rather high levels over several years may be major contributors to the present situation.

And then, Your Honor, there are these tables which I have made reference to before in the back but I won't re-read them if it is all right.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 99 of 262

asbestosclaims.law/library/10244/99

THE COURT: Anything further in connection with the deposition of Dr. Cooper?

MR. WELLER: Your Honor, could we reserve the right to read other portions of it, of Dr. Cooper, at a later date, at a later time in the trial?

THE COURT: All right.

Ladies and Gentlemen of the Jury, the Court is going to stand in recess now and I am wondering if we could return at one. Would that work a hardship on anyone, rather than waiting until 1:30.

(NO RESPONSE)

THE COURT: I assume that will be all right then. We will stand in recess until 1:00 o'clock, and please return at that time.

THE MARSHAL: Everyone rise, please.

REPORTER'S NOTE: Whereupon, at this time the morning recess was taken and resumed for the afternoon session at 1:00 o'clock p.m.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 100 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/100

99

AFTERNOON SESSION

SEPTEMBER 23, 1971

THE COURT: Please be seated.

Mr. Stephenson, who do you have next?

MR. STEPHENSON: Your Honor, I have summary of a deposition I would like to read.

THE COURT: All right.

MR. STEPHENSON: This is a summary which I prepared of the original deposition of Mr. Paul E. Petrofsky. The oral deposition of Mr. Petrofsky was taken by the Defendant. Mr. Petrofsky is employed as President of The Aber Company in Houston. Aber Company is an insulation contractor. Mr. Petrofsky has been with the Aber Company for 21 years, and the company has been in the insulation contracting business for the same length of time.

Quoting from page 8 of his deposition, the question was:

SUMMARY OF ORAL DEPOSITION OF PAUL E. PETROFSKY

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 101 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/101

100

"Q Mr. Petrofsky, can you tell us when you first became aware of any problem of insulation workers in your business contracting an occupational disease called asbestosis?

A The first time I heard the terminology, as I recall, was in the Tomplait case that was filed some three or four years ago.

Q Was this the first knowledge you had of this as an occupational disease?

A As it registered with me. If there was anything other than that, then it is passing verbiage, I never heard the term really applied previous to that.

Q We are concerned here today with at least two claimants, one is S. R. Potter and the other is Clarence Borel. Do you know whether or not these men have ever worked for your company?

A I checked our records, which basically only go back five years, we retain records through five years, but we did have some quarterly reports on both these people. Potter was in the last quarter of '63, as I recall, approximately $200 in wages, and

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 102 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/102

101

Borel was in the first quarter of '64, with approximately $2,000 wages. That's all I have showing they were employed by us."

MR. STEPHENSON: Then his answer on page 9, line 22:

READING CONTINUED:

"A Respirators that are available are still the same that we have had for quite some number of years, that has been made availalabe, and they are the paper type cup mask."

MR. STEPHENSON: Page 10, Line 14:

READING CONTINUED:

"Q You have noticed that within the last few years the manufacturers have been putting a warning on the bags containing asbestos?

A Yes, sir, there's been some since the Tomplait case, particularly, I'm sure that there were several of them put different data on their bags, I haven't particularly read them, each one of them, to see what they say, but each one of them have called it to our attention to some degree since then.

Q Have you also received some literature

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 103 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/103

102

from the National Contractors Association with respect to dust prevention and safety with respect to this particular problem?

A Yes, we have.

Q And when has that been?

A It originated approximately a year and a half ago. I believe, basically, Johns-Manville and the International Association of Asbestos Workers have employed a Dr. Selikoff, who has done some basic work into this asbestosis problem, and we were advised of their findings.

Q What particular safety measures have been suggested by the National Contractors Association, can you tell us?

A Basically it is more in setting up our funds to investigate this further, to see what additional safety factors we can install that would avoid this problem. The only direct recommendation, the only thing that has come out, I believe, is in New York, they have stopped the spraying of asbestos, primarily in buildings for fireproofing. That has been the prime idea so far that I

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 104 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/104

103

have seen come out of this program."

MR. STEPHENSON: Then questioning by me on cross examination. Page 12, Line 18.

READING CONTINUED:

"Q Are you familiar with the fact that the manufacturers of asbestos are trying to say that it's the contractor groups that are at fault for these men getting asbestosis?

A Am I aware of that? No, sir.

Q Well, I'll tell you that right now, because I think you should be aware of it. Has any manufacturer of asbestos insulating products ever sent you any material as to how to safely apply their product?"

MR. WELLER: If the Court please, I object to this because the manufacturer was not identified and because the witness has not said that he dealth with each and every one of the manufacturers in this case. Therefore, it is too vague and indefinite to be applicable to any particular defendant.

THE COURT: Objection overruled.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 105 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/105

104

READING CONTINUED
BY MR. STEPHENSON:

"A They have basically sent us specifications as to how to apply their products.

Q I don't mean as to the structural nature, but how to apply their products with safety to themselves.

A No, sir, not to my knowledge.

Q And in the twenty-odd years you have been in the business have you ever been contacted by Pittsburgh Corning Corporation, Unarco Industries, Eagle-Pitcher Corporation, Fibreboard Paper Products Corporation, which is commonly called Pabco, I'm sure you have heard of Pabco, Johns-Manville Corporation, Ruberoid Corporation, Armstrong Cork Corporation, Philip Carey Corporation, Combustion Engineering, R. & I. Refractory, and Standard Asbestos Manufacturing and Insulating Company, finally Owens-Corning Fiberglas Company, have any of those manufacturers or distributors of asbestos insulating material ever advised you of the dangerous nature to your workers if they breathe this asbestos dust and fiber?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 106 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/106

105

MR. WELLER: If the Court please, we object to this because it hasn't been shown that there was any business relationship between the Aber Company and any one of these defendants.

THE COURT: Objection overruled.

MR. STEPHENSON: His answer to that was:

READING CONTINUED:

"A No, sir.

Q Are you familiar with the fact that now one manufacturer, perhaps, is putting his asbestos cement in plastic bags, with a garden hose attachment, so that the water can be mixed and kneaded with the cement to reduce the dust?

A I have never seen any of it.

Q Are you aware that there is such a thing as I mentioned?

A No, sir. I am aware that they were trying this, with Dr. Selikoff, but as far as ever seeing any of it, or it being made available I don't know.

Q Can we safely say, then, that, so far

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 107 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/107

106

as the insulating contractors are concerned, the cement is still mixed in the old box, with water and a shovel?

A Right.

Q What is the normal way of putting pipe covering on?

A Our standard way is twofold. One is with a tie wire, or use bands.

Q When you use tie wire and bands is it necessary to hit them with a hammer?

A Where you twist it, tighten it up with a mallet.

Q And what precautions, if any, are taken to keep such worker from inhaling asbestos dust?

A None other than the respirator.

Q Have you ever used a respirator?

A Have I?

Q Yes.

A Personally?

Q Yes.

A No, sir.

Q I'm sure you have been on many jobs where asbestos work was being done, insulation

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 108 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/108

107

was being carried out, haven't you?

A Yes, sir.

Q Why is it you never wore a mask?

A Well, basically, I never felt the need to.

Q Well, why not, Mr. Petrofsky?

A No more so than I would walking outside. I don't wear a mask in downtown Houston because of the smog. I mean, I just wouldn't have thought about it being something worthwhile to do.

Q That is, until the Tomplait case, I believe you said?

A Pardon?

Q Until the Tomplait case?

A No, I said that was the first time I became aware of such a thing as asbestosis.

Q Since you have became aware of asbestosis in the Tomplait case have you worn a respirator on the job?

A No, sir.

Q Why is that?

A I still don't feel the need to.

Q Why don't you?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 109 of 262
asbestosclaims.law/library/10244/109

108

A Basically, I have nothing that tells me, definitely, that I'm going to have asbestosis. Secondly, if I did, I have nothing to tell me what kind of respirator I'd have to wear that would do any good, in the second place.

Q Is it true that, generally, asbestos insulation contractors, such as your firm, will get material from various manufacturers, particularly if they run out?

A That's true.

Q -- "

MR. WELLER: If the Court please, I object to that. It is speculative as to the use of any particular product manufactured by any particular manufacturer.

THE COURT: Objection overruled.

MR. STEPHENSON: He said, "That's true."

READING CONTINUED:

"Q And you trade around materials some, one concern is doing work, runs out of material, you happen to have some of the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 110 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/110

109

materials, he can get it from you, and vice versa?

A Occasionally it can happen. If your foremen are so well acquainted, and you are both on the same job, ordinarily you don't (sic) buy it out of each other's stock if you run out.

Q Are you familiar with the Pittsburgh Corning Corporation?

A Yes, sir.

Q Do you buy their materials from time to time?

A Yes, sir.

Q That is, asbestos materials?

A We also buy their foam and siliculose.

Q And Unarco Industries, do you buy their products?

A We were distributors for them prior to their selling their Unibestos Division to Pittsburgh Corning."

MR. STEPHENSON: And I am omitting the next reference to Eagle-Picher.

READING CONTINUED:

"Q What about Johns-Manville Products

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 111 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/111

110

Corporation?

A Yes, sir.

Q Ruberoid Company?

A Yes, sir.

Q Philip Carey Corporation?

A Yes, sir."

MR. STEPHENSON: Let's see. Skipping to page 9, the third line, no.

READING CONTINUED:

"Q And Owens-Corning Fiberglas Corporation?

A Yes, sir.

Q All those that you said you have used their products, are they widely-used products in this area, Southeast Texas?

A Yes.

Q Has there been any notice given through the contractors association to the workers of the dangerous nature of breathing asbestos?

A Some of the individual associations, themselves, I doubt whether there has been. There has been publications through the Asbestos Workers Journal which has publicized their working with the International Contractors

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 112 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/112

111

Association about the hazardous nature of the asbestos.

Q And that has been in about 1969?

A Yes, sir.

Q Prior to 1969 was there any notice given to the workers, at all, that you know of, of the dangerous nature of breathing asbestos?

A --

MR. WELLER: Was going to the workers.

MR. STEPHENSON: Going to the workers. Thank you.

READING CONTINUED:

"-- at all, that you know of, of the dangerous nature of breathing asbestos?

A Not to my knowledge.

Q Have you as president of the Aber Company done anything at all to safeguard the worker from breathing asbestos dust since these warnings have been posted on boxes?

A I don't know that you would say since the warnings have been posted on the boxes,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 113 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/113

112

we have provided more ventilation, I would say, than we would at one time. But our problem with this is when we start doing this at the job site we are blowing the dust in some other person's face in another area, so we have been a little bit restricted as a contractor, just what we can do in this matter.

Q Do you know of anybody ever coming out to any of the jobs that you have been on and making a dust count to see how the asbestos insulation material is affecting -- is polluting the air?

A No, sir.

Q Have you ever heard of anybody making a dust count of any kind?

A No, sir.

Q You mentioned some respirators other than the paper respirator, would you describe that more in detail?

A I assume this is like this approved by the U. S. Bureau of Mines.

Q And why do you feel that the workers would not use this particular type respirator?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 114 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/114

113

A Well, of course, wearing a respirator is in some degree something like wearing goggles, a man has to be a little careful with either one, to not endanger his life with something other than what he is trying to protect himself from. Some of the people I would rather imagine wouldn't want to use a heavy type respirator that's always slipping down and spending half their time pushing it back in place, and you might fall off the scaffold. The same way with goggles, if you start sweating and fogging up your glasses, you don't like it. It's good to protect your eyes, but it doesn't protect his life very much sometimes.

Q Can we wind up by saying that the safeguards in use in 1971 by the contractor groups to keep workers from inhaling asbestos are substantially the same safeguards which were in use when you started in the business?

A With the exception of more ventilation, I would say. I think everyone is more conscious of more ventilation. Other than that I would say basically the same."

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 115 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/115

114

MR. STEPHESON: That's all.

THE COURT: Mr. Weller, do you have any portions of the deposition?

MR. WELLER: Yes, sir. I offer from the same summary prepared by Mr. Stephenson parts of which he omitted beginning at page 25, line 7.

READING
BY MR. WELLER:

"Q Are you familiar with Eagle-Picher Industries?

A Yes, sir.

Q Do you buy materials from them from time to time?

A We haven't in recent years.

Q Well, in early years, whatever point of time?

A In the '50's we bought some materials from them.

Q Standard Asbestos? They make a material called Simco, Simco No. 9, Simco 55, Simco Weathercoat, Aerosel Pipe Covering.

A Aerosel Pipe Covering?

Q Yes.

A It's possible, if it was it was in the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 116 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/116

early '50's."

MR. WELLER: Then I have a summary prepared by the defendant.

SUMMARY OF ORAL DEPOSITION OF PAUL E. PETROFSKY

READING
BY MR. WELLER:

Mr. Petrofsky has been with the Aber Company for 21 years, and has spent the same amount of time in the insulation contracting business.

He was asked to describe the safety devices and appliances utilized by insulation contractors with respect to dust prevention to which he answered that ventilation facilities were provided by fans, even in open air shops, as far as it is open on the job. In addition, his company supplies the paper type respirators to the men and it is his testimony that in some places they wear them, some they do not.

He stated that that is about all that his company does to keep the dust away.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 117 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/117

With respect to a dust collecting system he stated that dust collecting systems were used in some shops, for example, in the Aber Shop in Houston, Aber Company Shop in Houston, but this was principally for foam glass material, not an asbestos type material.

He testified that some of his company shops are temporary shops at the job site, and that ninety per cent of the time fans would be the ventilating source on the job site. This is basically the uniform practice throughout the years and has not changed even in the last few years.

He stated that he heard the terminology with respect to the disease of asbestosis in the Tomplait case.

Mr. Petrofsky stated that he did not know what jobs Borel worked on or what products were used on the jobs, but that on all the jobs there was available a paper type cup mask or respirator, as a respirator.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 118 of 262

asbestosclaims.law/library/10244/118

117

His company has never used any material from Fibreboard Paper Products Company, has never obtained or used material manufactured by Combustion Engineering Company.

On Cross Examination he was asked if Aber Company performed a job in 1958 at Jefferson Chemical Plant at Port Neches but Mr. Petrofsky was unable to recall any definite job, although his company had had several jobs in that plant, nor was he able to testify what products were used at that time in 1958 on a Jefferson Chemical job.

He was asked if the Aber Company worked on a construction for TPA-Mobil Chemical in Beaumont, Texas, in 1964 and he answered he did not recall that, but that he was unable to recall what materials were used.

When asked if he purchased materials from Pittsburgh Corning, he answered that his company had purchased some asbestos material as well as foam and

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 119 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/119

118

siliculose.

He was asked if his company had bought Unarco Industries' products and he answered that his company was distributors for them prior to their selling the Unibestos Division to Pittsburgh Corning.

When asked about Eagle-Picher Industries, he stated that his company had not bought materials from them in recent years, at least since the 50's.

When asked about Pabco materials, he stated that to his knowledge his company never used the companies' materials.

His company has not used any materials from Armstrong Cork Company or from Armstrong Supply Company.

When asked if his company had used materials from Standard Asbestos, he answered that only Aerosel Pipe Covering had been used by his company in the early 50's.

His company had used the products

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 120 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/120

119

of Owens-Corning Fiberglas Corporation.

He stated that his company had received literature from the National Contractors Association with respect to dust prevention and safety with respect to such problems, this originated approximately a year and a half ago.

It was his testimony that Johns-Manville and the International Association of Asbestos Workers had employed Dr. Selikoff who had done some basic work in the asbestosis problem, and that the Contractors Association was advised of Dr. Selikoff's findings.

(PAUSE)

He was asked if dust was created in opening boxes of asbestos insulating material to which he answered that you would not create any upon opening them.

He was shown Slide No. 3 which was a paper mask and he could identify saying, this was the same type his company used. He further stated that this slide depicted mixing cement indoors and it was not normally done, it was usually mixed out-

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 121 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/121

doors.

In Slide No. 4 he was asked if this was a typical scene where everything was contaminated with asbestos and he stated that he did not recognize that there, that the men were spraying insulation on overhead joist, that his company had never used that type of application, that this was spraying asbestos on a building and his company does not do any building work.

Slide 5 which portrays the outside column of a building, he stated this was not the type of work that his company did and he had never seen asbestos sprayed on a column.

In Slide 6 he testified this portrayed a man putting a pipe cover over some pipes which was a typical scene. He was asked whether or not to put the bindings on the man would have to hammer them in place. He stated this is possible, but the normal way of putting pipe covering on was

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 122 of 262

asbestosclaims.law/library/10244/122

121

twofold, one is with a tie wire, and the second is with bands after which it is twisted and tightened up with a mallet. In this connection the only precautions which could be taken to keep the worker from inhaling asbestos dust was the use of a respirator.

And that's the end of this deposition.

MR. STEPHENSON: I just have two sentences in reply, Your Honor, if I may read it.

THE COURT: You may do it right there.

MR. STEPHENSON: On page 30 of Mr. Petrofsky's deposition the question was asked: "Does dust come up when you open boxes? Answer, On some you would and some you wouldn't. It would depend on how it was handled in shipment, I would say, to a great degree.

Question: In any event, in some instances dust does come up simply when you open the box? Answer: It could very well happen, yes."

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 123 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/123

122

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

MR. STEPHENSON: I have the deposition, Your Honor, of Dr. -- of Jerome Siedlecki. This is done by written interrogatories, Your Honor. And there are only a few. And the answers are very short.

THE COURT: What is the name of the doctor?

MR. STEPHENSON: He is not a doctor. I stand corrected. It is Jerome T. Siedlecki, S-i-e-d-l-e-c-k-i. He is the Assistant Director of the American Medical Association, Chicago, Illinois.

He was questioned by me through a court reporter in Chicago and after being duly sworn testified to the following questions:

INTERROGATORIES PROPOUNDED TO JEROME T. SIEDLECKI

1.

"My name is Ward Stephenson and I am an attorney representing the plaintiffs in these cases. Please state your full name and address

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 124 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/124

123

to the court reporter.

ANSWER: Jerome T. Siedlecki, 535 North Dearborn Street, Chicago, Illinois 60601.

2.

Are you the Assistant Director of the Division of Scientific Activities, Department of Occupational Health, American Medical Association, 535 North Dearborn Street, Chicago, Illinois?

ANSWER: I am the Assistant Director of the Department of Environmental, Public and Occupational Health which is in the Division of Scientific Activities of the American Medical Association.

3.

Please state how long you have served in this capacity.

ANSWER: Approximately seven and a half years.

4.

Please state what your duties entail as Assistant Director of the Division of Scientific Activities, Department of Occupational Health.

ANSWER: My duties include research, information retrieval and consultation with physicians and others relating to the technical and scientific aspects of occupational health; prepare articles

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 125 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/125

12B

and statements on the technical and scientific aspects of occupational health for publication in the various journals of the American Medical Association; maintain liason with other professional organizations concerning the technical and scientific aspects of occupational health, and perform certain internal administrative duties within the American Medical Association.

5.

Did you on or about November 19, 1970, pursuant to my request send me a certain bibliography on health effects of asbestosis?

ANSWER: Yes.

6.

Was this only a partial bibliography?

ANSWER: Yes.

7.

Would you please attach a copy of the bibliography which you sent to me, marking in red pencil each reference which concerns itself in whole or in part with asbestosis.

ANSWER: Yes, I will.

8.

Did you make this bibliography available to

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 126 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/126

125

me simply upon written request from myself?

ANSWER: Yes."

MR. STEPHENSON: Your Honor, I would like at this time to introduce the bibliography that I got by a letter of request to Mr. Siedlecki here and which I think contains some 86 articles on asbestosis, most of them being written prior to 1938 that he referred to.

THE COURT: All right. Has that been marked.

MR. STEPHENSON: Excuse me, it hasn't been marked.

THE CLERK: That will be Plaintiff's No. 7.

MR. STEPHENSON: Your Honor, I would like to complete reading the interrogatories. I have eliminated all but about three or four in the interest of time.

THE COURT: All right.

MR. STEPENSON: Continuing reading interrogatories which

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 127 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/127

126

I have started before.

READING OF INTERROGATORIES CONTINUED

BY MR. STEPHENSON:

INTERROGATORY NO. 18

Does your company place any warning signs on its asbestos products? If so, please state exactly what the warning is, where it is used, and when its use was first begun. If your answer to this question is "Yes", then please explain why your company uses such warning notices.

The answer of Ruberoid Company was: Approximately five years ago the company began placing a warning on the packaging containing calsilite. The warning states as follows:"

MR. STEPHENSON: Your Honor, I could read it but I think substantiates, we have read to the jury before, "CAUTION, This product contains asbestos fiber. Inhalation of asbestos in excessive quantities over long periods of time may be harmful. If dust is created when this product is handled, avoid breathing the dust. If adequate

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 128 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/128

127

ventilation control is not possible, wear respirators approved by the U.S. Bureau of Mines for pneumoconiosis producing dust."

Combustion Engineering --

THE COURT: I would suggest that you make these offers just as they are. If you think it is necessary to read them to the jury later, you can do so.

MR. STEPHENSON: All right, sir.

MR. PIPKIN: I am still objecting I am not waiving -- still insisting on my original objection made by the defendant. They said they wouldn't prosecute this case against this defendant, this is evidence now and I think he is estopped in offering --

THE COURT: Objection overruled.

MR. STEPHENSON: Your Honor, there are two here that said no in answer to this inquiry. Philip Carey Corporation said no, indicating they do not place any warning. And Armstrong, likewise,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 129 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/129

said, No, we do not provide warnings.

And Pittsburgh said, Yes, they did. And Fibreboard said, Yes, since 1966 they did place warnings.

INTERROGATORY NO. 23

MR. TUCKER: Your Honor, are all of the answers to these, Interrogatory 18 admitted in evidence?

THE COURT: Yes, and may be read by any of the counsel that wishes to read them.

MR. TUCKER: Thank you.

MR. STEPHENSON: No. 23.

INTERROGATORY NO. 23

Does your company contribute any funds to research concerning asbestos and its relation to lung and larynx disease? If so, please state the amount of money contributed, when and to whom, attaching any report or reports from such individual or organization to whom your funds were contributed.

Pittsburgh answered: "Yes." And stated the amount of -- one of several companies supporting "Fibrous Dust Studies," now in progress

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 130 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/130

129

at the Industrial Hygiene Foundation, and to date has thus far supported this research by the contribution of $40,000.00.

Fibreboard --

MR. WELLER: Just a minute, Your Honor. May I complete it --

MR. STEPHENSON: I will read the rest of it, Your Honor.

THE COURT: All right.

READING CONTINUED:

Pittsburgh Corning Corporation is committed for further expenditures in this connection. To date, no report or reports from the above-mentioned organization have been prepared and submitted.

Fibreboard Paper Products or Pabco's answer was: Not directly.

Ruberoid's answer was: No direct contributions of this type are made.

Combustion's answer was: No.

And Philip Carey --

MR. STEPHENSON: It is rather long, Your Honor, but I would like to read the portion that I think is

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 131 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/131

appropriate.

"It has not contributed to any research concerning asbestosis and its relation to lungs and larynx disease."

Armstrong Cork --

MR. ARNOLD: Why don't you read it all?

MR. STEPHENSON: Which one, Philip Carey?

MR. ARNOLD: Yes.

MR. STEPHENSON: All right, sir. I will try to speed up my reading if the Court wishes.

THE COURT: All right.

BY MR. STEPHENSON:

"Philip Carey: Your Defendant objects and excepts to Interrogatory No. 23 for the reason that the same is irrelevant and immaterial to any issue in this action. Subject to the above and foregoing objection and exception your defendant says that it has not contributed to any --

THE COURT: That part you don't have to read. That part of it is not part of the answer.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 132 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/132

131

MR. STEPHENSON: Well, sir --

THE COURT: In fact, it is irrelevant and immaterial. That couldn't possibly be the answer.

MR. STEPHENSON: I didn't think so, Your Honor.

THE COURT: All right. Don't anybody insist on that being read.

READING CONTINUED
BY MR. STEPHENSON:

Armstrong in answer to 23 lodged certain objections and then said, "Defendant answers that it has not directly made any such contributions.

Johns-Manville --

MR. STEPHENSON: Johns-Manville has a very long answer, Your Honor, which it does say it has made some contributions. It is --

THE COURT: If they wish to read it they can later on.

MR. STEPHENSON: All right, sir.

Question No. 24:

INTERROGATORY NO. 24

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 133 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/133

Do you have any labor inspectors or anyone from your company whose job it is to go to areas where your products are being used to make a dust level count, and if so, please state when your company started such procedure, the purpose of it, and what action, if any, was taken in response to your findings.

Ruberoid Company answered: No, but see the Answer to Interrogatory No. 10.

Combustion Engineering said: See Interrogatory No. 10.

Philip Carey said: No. The areas in which your defendant's products are applied are on construction sites, marine vessels and the like, which are owned and controlled by others.

Armstrong said: No.

Johns-Manville said: Defendant has no such inspectors but Defendant does provide services of an industrial hygienist to Dr. Selikoff and Mt. Sinai Hospital in New York for the purpose of making environmental evaluations including dust counts at the construction site where thermal insulation products are being installed. This service is being provided in conjunction

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 134 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/134

133

with the joint scientific research program being conducted by the Mt. Sinai Environmental Sciences' Laboratory, Johns-Manville Corporation and the Heat and Frost Insulators and Asbestos Workers Union.

Pittsburgh Corning answered: No.

Fibreboard Products answered: No.

MR. WELLER: It says, See answer to No. 10.

MR. DUNCAN: Your Honor, may I read from Pittsburgh Corning's answer to Interrogatory No. 23 in which it refers to Interrogatory No. 10. I would like to introduce the answer to Interrogatory No. 10.

THE COURT: You may at a later time.

MR. DUNCAN: At a later time, all right.

MR. STEPHENSON: Interrogatory No. 27.

INTERROGATORY NO. 27

If your answer to the preceding Interrogatory No. 26 is "no", then please state

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 135 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/135

134

whether or not you have familiarized yourself with Dr. William H. Steward, Surgeon-General of the United States, testifying before the Committee mentioned above that probably three and one-half million construction workers are being exposed to asbestos dust in addition to those workers actually using the materials containing asbestos?

MR. TUCKER: Your Honor, we object to this interrogatory because it is clearly based upon some assumption of hearsay and testimony apparently given was before some committee which wouldn't make it admissible here, and there is no showing also as to the date of any such testimony.

THE COURT: You insist on it.

MR. STEPHENSON: No, sir, I do not.

THE COURT: All right. Objection sustained.

The Court will call attention to this matter which the attorneys will be concerned with. It appears to

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 136 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/136

me that a lot of the answers to the interrogatories are in an argumentative nature or the Court sometimes refers to as being loaded. They are not in response or they are argumentative. The Court will not permit the reading of it. I will let -- permit counsel to answer the interrogatories briefly and give some explanation, but not to the extent that it is too long or too argumentative, and not in response.

MR. STEPHENSON: Thank you, Your Honor.

READING CONTINUED
BY MR. STEPHENSON:

INTERROGATORY NO. 31

"Please give the state of incorporation of your company, the date it was organized, and the domicile of your company at this time."

To which Ruberoid replied: Delaware April 26, 1929; New York is the domicile at this time.

Combustion Engineering was incorporated under the laws of the State of Delaware, October

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 137 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/137

13

25, 1912, Winsor, Connecticut is one of its domicles.

Philip Carey organized, the state of Ohio, December 1, 1966. It is domiciled in the State of Ohio.

Armstrong Cork Company was incorporated in Pennsylvania in 1891, and still domiciled in Pennsylvania.

Johns-Manville Corporation was organized as Delaware Johns-Manvile Corporation and incorporated in the State of Delaware, January 12, 1927. Its name was changed on January 18, 1927 to Johns-Manville Corporation of Delaware; and in May, 1932, its name was changed to Johns-Manville Products Corporation.

Pittsburgh Corning was organized in the State of Pennsylvania in the year 1883 --

THE COURT: Have you seen this or, just wanted to relieve the juror of the exhibit. If you have seen it -- if you haven't seen it then you may pass it around.

I am sorry there, Mr. Hardy.

BY MR. STEPEHENSON:

Pittsburgh was incorporated in the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 138 of 262

asbestosclaims.law/library/10244/138

137

State of Pennsylvania, in the year 1883.

And Fibreboard Paper Products was incorporated in the State of Delaware November 18, -- 19, 1917.

MR. WELLER: In San Francisco.

THE COURT: Sir?

MR. WELLER: Domiciled in San Francisco. He didn't read the full instrument.

THE COURT: All right.

MR. STEPHENSON: Question No. 36.

INTERROGATORY NO. 36

Please state whether or not your company has had knowledge of any deaths or serious lung disease among your employees which has been attributed to the inhalation of asbestos dust or fibers. If so, please give the number, the name where known, and address of such person, together with the name and address of the doctor who administered treatment to such persons, if known.

To which Philip Carey answered; listing fourteen men with their addresses as requested in the interrogatory, Your Honor.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 139 of 262

asbestosclaims.law/library/10244/139

138

To which Johns-Manville replied: Defendant has had knowledge of deaths or serious lung disease among its employees which have been attributed to the inhalation of dust or fibers in extensive concentrations over long periods of time.

MR. STEPHENSON: Then goes on with further explanation, Your Honor, which we won't read at this time.

Ruberoid Company names two men affected with this disease and giving their address.

Combustion's answer was: Not to the knowledge of this defendant.

Armstrong said -- objects, but said it has no knowledge of death or lung disease among their employees attributed inhalation of asbestos dust or fibers.

Pittsburgh said there are no known cases of death or serious lung disease.

Fibreboard Paper Products answered: Two cases of lung disease in a manufacturing company acquired by Fibreboard and give them their names and position.

INTERROGATORY NO. 43

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 140 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/140

139

MR. STEPHENSON: Interrogatory No. 43 inquires:

Please give the total volume of sales of products manufactured by your company and include, if possible, the total amount of sales of products of your company containing asbestos for each of the years since 1960.

Ruberoid --

MR. TUCKER: We object to this as from volume sales and prices, it is immaterial and irrelevant in this case.

THE COURT: Do you insist on this interrogatory?

MR. STEPHENSON: I'd like to, Your Honor. I think it is material.

THE COURT: Is it rather lengthy?

MR. STEPHENSON: No, sir.

THE COURT: All right. Objection overruled.

READING CONTINUED
BY MR. STEPHENSON:

Ruberoid said they would furnish copies of the reports, Your Honor, but I did -- do not have them.

Combustion Engineering reports

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 141 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/141

140

a varying amount from two hundred sixty nine million in 1960 to six hundred eighty eight million five hundred and eighty nine thousand in 1967.

Philip Carey reports sixty nine million five hundred and sixty nine thousand in 1960 to ninety six million six hundred and thirty nine thousand in 1968.

Armstrong Cork is two hundred ninety one million in 1960 to five hundred fifty two million in 1969.

Johns-Manville is beginning at seventy seven million in 1960 to two hundred sixty two million in 1969.

And Pittsburgh, we do not find an answer for them, nor Fibreboard Paper Products.

MR. WELLER: If the Court please, I stated this information is attached to a part of the interrogatories from our 1967, 1968 answer report. Counsel had copies of those reports.

MR. STEPHENSON: I did not have copies of them, Your Honor, but I didn't make an issue of it.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 142 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/142

151

MR. TUCKER: Your Honor, there is one correction on the Johns-Manville, it shows cost sales and is not broken down because there was no way to break it down as to sales from asbestos or any other material.

THE COURT: All right.

MR. TUCKER: The same for Armstrong Cork, Your Honor.

MR. STEPHENSON: Well, Your Honor, the next several interrogatories inquire as to which state of the United States have Workmen's Compensation laws. However, the year that they were enacted. Your Honor has taken judicial knowledge of the fact that states of the United States first began to have Workmen's Compensation laws covering the occupational disease of asbestosis beginning in 1913 and continuing on down through the years today. So, with that -- If I may just substitute that for this reading of this I would like to do that.

MR. WELLER: Your Honor, as part

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 143 of 262
asbestosclaims.law/library/10244/143

142

of that same offer, may we offer that part which shows the Workmen's Compensation law of Texas with reference to asbestosis which began in 1947 as an occupational disease?

THE COURT: All right.

MR. STEPHENSON: I am on the second set of interrogatories now, Your Honor. And I don't think they will be so very lengthy. No. 1.

READING CONTINUED:
BY MR. STEPHENSON

SECOND SET OF INTERROGATORIES PROPOUNDED TO THE DEFENDANT

Have you ever advised those using your products of your so-called threshold limits? If you did, describe exactly how you advised those using your products of such threshold limits.

To which Combustion Engineering answered, This Defendant has no so-called threshold limit for its own or any product it manufactures or sells.

Armstrong Cork Company says that the threshold limit values referred to in our answer

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 144 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/144

143

in previous Interrogatory No. 35 published by American Conference of Industrial Hygienists to which this defendant has not attempted to bring to the attention of those using its products.

Fibreboard Corporation says among other things, this Defendant has not advised insulation contractors and those using its products of these publications referring to the Governmental Industrial Hygienists.

Ruberoid Company answered saying, this Defendant does not have any so-called threshold limit of its own. And then stating other things, but concluding, this defendant has not advised insulation contractors and those using its products of this -- of these publications.

MR. STEPHENSON: Pittsburgh Corning, Your Honor, has a lengthy answer which I will omit.

READING CONTINUED:

Johns-Manville Corporation among other things says, subject to the foregoing objections Defendant has advised customers, both verbally and in writing, concerning threshold limit values.

Philip Carey Corporation said, We have

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 145 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/145

144

never specifically advised those using our products of any specific threshold limit on our products in a formal way until our recent letter to Industrial Insulators, Inc. of April 3, 1970.

MR. STEPHENSON: And the final interrogatory is No. 5 of the second set.

READING CONTINUED:

INTERROGATORY NO. 5

Has your company ever gone into the field and seen, observed, or counted, or in any way shown any interest in ascertaining how much dust is created by the worker applying your products when he is in an enclosed area such as a building, factory, room, or confined area? And I requested a "yes" or "no" answer.

Armstrong Cork Company says, no.

Combustion Engineering said that it had determined one occasion in connection with one of its products, representative of the defendant went into the field to observe the amount of dust created in connection with the use of said product being No. 12 insulating block.

Fibreboard Paper Corporation answered,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 146 of 262

asbestosclaims.law/library/10244/146

145

no.

Ruberoid Corporation answered no.

Pittsburgh Corning Corporation answered no.

Johns-Manville Products Corporation answered yes.

And Philip Carey Corporation answered yes.

MR. STEPHENSON: That is all I have on those, Your Honor.

THE COURT: We will permit any of the attorneys for the defendants to include any of the answers to the requested admission, either those filed by the Plaintiff or those filed by the Defendant when they offer their case in chief.

You may proceed.

MR. STEPHENSON: Your Honor, it was my understanding from counsel that this would not be necessary to go through these medical bills, that it would not be necessary to go through each medical bill and item, but that

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 147 of 262

asbestosclaims.law/library/10244/147

146

I can read the total of the medical bills for the various class of treatment.

MR. WELLER: If the Court please, Your Honor, this is not correct and counsel has discussed it fully with Mr. Pate and myself and we told him that if he offered, he could offer the medical bills and there would be no objection to the manner of proof. And, now, Mr. Pate has conferred with Mr. Stephenson and I don't know what they are but he agreed, made some agreement about that he wouldn't contest certain bills. Now that is the agreement that they are to be offered in evidence.

MR. PATE: He has two statements that I have gone over with Mr. Stephenson's secretary and confirmed that they are the correct amount. The agreement is that he may offer those two in evidence and we will not object to them.

THE COURT: Is there anything -- any objection any of the medical expenses

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 148 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/148

147

contended for by the Plaintiff?

MR. PATE: Not the one he has listed, Your Honor. I have gone over them carefully and confirmed that they are correct.

THE COURT: In view of the statement made by Mr. Weller and Mr. Pate, which I presume they are speaking for all of the defendants, you need not offer them unless you wish to.

MR. STEPHENSON: We can stipulate to it.

MR. PATE: We do stipulate, we agreed that he could offer them in evidence.

THE COURT: Do you contest them?

MR. PATE: No, sir.

THE COURT: Well, it would be a matter for the Court to pass on, not a matter for the jury unless you offer evidence to the contrary.

MR. PATE: That was not our understanding with Mr. Stephenson, Your Honor. We merely told him it would not be

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 149 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/149

148

necessary.

THE COURT: Perhaps you had better offer them.

MR. STEPHENSON: Your Honor, at this time I would like to offer medical bills from Surgical Associates in the amount of $850.00; from Memorial Baptist Hospital in the amount of $1,927.85; Groves Clinic, $79.00; Dr. Milton Self, $180.00; Dr. P. O. Jones, $182.50; Drs. Crager, Quick & Pratt, $20.00; M. D. Anesthesia, $132.00; Herbert C. Allen, M.D., $20.00; James E. Street, M.D., $50.00; St. Elizabeth Hospital, $1,019.96; Drs. Cox, Moody & Harwell, $81.00; Clarence Borel, $538.79 for a total of $5,081.10 of that particular section.

THE COURT: All right, it shall be offered as Exhibit --

THE CLERK: Plaintiff's No. 8.

MR. STEPHENSON: I should further like to offer the bills from Doctors Hospital at Groves in the amount of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 150 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/150

149

$541.65; $54.15; $987.00, totaling $1,882.80. As well as the Memorial Baptist Hospital bill, Houston, Texas in the amount of $1,527.40. The bill of Dr. Richard K. Ricks, Houston, $850.00. The bill of Dr. P. O. Jones, Houston, $170.00. The bill of Dr. Kenneth R. Watkins, Groves, $272.00, for a total of $4,702.20, which when added to the previously introduced bills comes to $9,783.30.

THE COURT: Mark it as an exhibit.

THE CLERK: Plaintiff's No. 9.

MR. STEPHENSON: Your Honor, may I introduce a deposition of Dr. Kenneth Ricks?

THE COURT: You may proceed.

DR. RICHARD KENNETH RICKS

READING
BY MR. STEPHENSON:

QUESTION NO. 1:

Please state your name, residence and place of business.

ANSWER:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 151 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/151

150

Richard Kenneth Ricks, 619 East Friar Tuck, Houston, Texas; 6436 Fannin, Houston, Texas.

QUESTION NO. 2:

Please state your profession.

ANSWER:

Physician and surgeon.

QUESTION NO. 3:

Please state how long you have been engaged in the practice of such profession.

ANSWER:

Twelve years.

QUESTION NO. 4:

Please state where you received your preliminary training.

ANSWER:

Baylor University College of Medicine, 1954 to 1958.

QUESTION NO. 5:

Please state where you received your intern training.

ANSWER:

Jefferson Davis Hospital, 1958, '59, Houston, Texas.

QUESTION NO. 6:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 152 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/152

151

Please state what additional training you have had.

ANSWER:

Residency in General Surgery, 1959 to 1963, Baylor University College of Medicine. Affiliated Residency in Thoracic and Cardiovascular Surgery, 1963 to 1964, Department of Surgery, Baylor College of Medicine, Houston.

QUESTION NO. 7:

Please state whether or not your license to practice medicine is on record in Harris County, Texas.

ANSWER:

Yes, it is.

QUESTION NO. 8:

Do you practice medicine as a full-time occupation?

ANSWER:

Yes.

QUESTION NO. 9:

Are you associated with any clinic or medical group? If so, please state the name.

ANSWER:

I am associated with a surgical group,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 153 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/153

152

Surgical Associates.

QUESTION NO. 10:

Do you belong to any professional society or grou? If so, please state which ones.

ANSWER:

Harris County Medical Society, Houston Surgical Society, Texas Medical Soceity, American Medical Association, American College of Surgeons, American Board of Surgery, American Board of Thoracic Surgery.

QUESTION NO. 11:

Do you practice in any field of medical speciality? If so, please state in which speciality you engage.

ANSWER:

Thoracic and Cardiovascular surgery.

QUESTION NO. 12:

If you have had any specialized medical training please state what it is and where such specialized medical training was taken.

ANSWER:

This has been previously stated.

QUESTION NO. 13:

For the benefit of the jury, please

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 154 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/154

153

state your age and the number of years you have been actively engaged in the practice of medicine.

ANSWER:

I am thirty-seven years old; twelve years.

QUESTION NO. 14:

Have you ever written any articles, concerning your field of specialty, given any lectures, or received any special awards or citations for service in your field of specialty?

ANSWER:

Yes, a member of clinical faculty, Baylor University College of Medicine; lecture to medical students and residents, and also teaching lectures given to nursing services at Memorial Baptist Hospital and St. Joseph's Hospital; published several articles pertaining to thoracic and cardiovascular problems.

QUESTION NO. 15:

Please state where you are presently residing and practicing medicine.

ANSWER:

I am residing in Houston, Texas, and gives his address.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 155 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/155

154

QUESTION NO. 16:

Please state whether or not you have ever had occasion to see and treat Clarence Borel, deceased.

ANSWER:

Yes, I have.

QUESTION NO. 17:

Please state the first date that you saw Clarence Borel.

ANSWER:

March 5, 1969 in Memorial Baptist Hospital Central.

QUESTION NO. 18:

Please state the history given you by the patient.

ANSWER:

This fifty-six year old white male insulation worker had been in essentially good health until approximately eight and a half weeks ago when he developed a tightness in his chest on the right, shortness of breath, and exertional dyspnea. He went to his local physicial who thought the patient had congestive lungs and pneumonia and placed him on antibiotic medication.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 156 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/156

155

The x-rays apparently showed infiltrate in the right lung, and, therefore, he was hospitalized in Beaumont where he was seen in consultation, and bronchoscopy performed. However, the patient was told that the bronchoscopy was not satisfactory, but that a biopsy was taken. The patient was subsequently referred to Dr. Jones in Houston and to Memorial Baptist Hospital. Since his admission to the hospital the patient, has been essentially afebrile; white counts have been normal; he continues to have a chronic cough; the right chest has discomfort; and he is short of breath on exertion. His sputum is productive of approximately one to one and a half teaspoons clear mucoid material. He denies hemoptysis. He has been a moderately heavy smoker for many years. He has worked around asbestos and other insulation materials for the past thirty-three years. In fact, his last job in Baytown in November and December was placing asbestos insulation around oil refinery pipes.

QUESTION NO. 19:

Please state the nature of the complaints which the said Clarence Borel made to you at

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 157 of 262
asbestosclaims.law/library/10244/157

156

that time.

ANSWER:

Chest pain and shortness of breath.

QUESTION NO. 20:

Please state what your medical examination consisted of, listing the tests and methods used for examining the patient.

ANSWER:

The physical examination at that time consisted of thorough physical examination and review of previously obtained chest x-rays and laboratory data.

QUESTION NO. 21:

Please state your diagnosis of the patient's physical, mental or nervous condition at that time, basing your answers to this and all following question upon reasonable medical certainty. Include in your answer a description of pain which the patient has suffered, if any.

ANSWER:

My impression at that time was that the patient had a chronic and unresolved pneumonia with persistent pleural effusion with carcinoma of the lung and acute and chronic asbestosis to

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 158 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/158

157

be considered, also.

The patient complained of tightness in his right chest both at rest and on exertion with associated shortness of breath.

QUESTION NO. 22:

Please state what your prognosis of the patient's physical, mental or nervous condition was at that time.

ANSWER:

Prognosis at that time was guarded, depending upon ultimate diagnosis.

QUESTION NO. 23:

If your examination of the patient consisted of making x-rays and if the x-rays were used in the formation of your medical opinion concerning the patient's condition, please state whether or not these x-rays were taken under your general direction and supervision.

ANSWER:

X-rays had been previously made at Memorial Baptist Hospital under the auspices of Dr. P. O. Jones.

QUESTION NO. 24:

If you have said that you made x-rays

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 159 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/159

and that you used them as a basis for any part of your medical opinion concerning the patient, please state what the x-ray findings were which you considered in forming your medical opinion.

ANSWER:

(Not applicable)

QUESTION NO. 25:

Did you have occasion later to see the said Clarence Borel with reference to the same condition?

ANSWER:

Yes.

QUESTION NO. 26:

Please state the number of occasions and state with some detail what you found on each occasion.

ANSWER:

On March 7, 1969, I performed an exploratory thoracotomy right, with wedge re-section of the right upper lobe and partial pleurectomy of the right lung. I then followed him daily in the hospital until his discharge on March 16, 1969, and subsequently saw the patient as an out-patient on 25 March, 1969; 24 April, 1969;

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 160 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/160

22 August, 1969; and again on 9 February, 1970. On that last occasion the patient was continuing to complain of right side chest pain and shortness of breath, and he was re-admitted to the hospital by Dr. P. O. Jones. X-rays at that time showed parenchyma infiltrates in addition to pleural densities previously seen.

On 11 February, 1970, I performed a bronchoscopy, right thoracotomy, right total pleurectomy, and total pneumonectomy.

The pathalogic diagnosis in the first operation on March 7, 1969, was --

MR. WELLER: If the Court please, I object to this because this is hearsay. This is a report from some other physician or doctor and not by this particular doctor.

THE COURT: Objection overruled.

READING CONTINUED
BY MR. STEPHENSON:

The pathologic diagnosis on 11 February, 1970, was malignant mesothelioma with mestastasis to hilar left nodes and chronic asbestosis with fibrosis of right lung.

QUESTION NO. 27:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 161 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/161

160

Please give the date of the last time you saw the said Clarence Borel concerning this condition.

ANSWER:

I last saw Mr. Borel on 4 March, 1970, in my office as an out-patient.

QUESTION NO. 28:

Please state your diagnosis at that time and likewise give your prognosis as to the said Clarence Borel's condition.

ANSWER:

At that time the patient was still complaining of right chest wall pain in the area in his chest incision, and it was not clear whether this was due to recurrent malignant mesothelioma or to incisional pain.

Prognosis was extremely guarded as to any long term survival.

QUESTION NO. 29:

Did you perform any surgery on Clarence Borel, or assist in any surgery on him? If so, please describe this surgery in detail.

ANSWER:

Please see the question and answer above.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 162 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/162

161

QUESTION NO. 30:

In your medical opinion, did Clarence Borel suffer from mesothelioma?

ANSWER:

Yes.

QUESTION NO. 31:

Was this mesothelioma in the right lung?

ANSWER:

Yes, it was.

QUESTION NO. 32:

Is mesothelioma a form a cancer?

ANSWER:

Yes, it was.

QUESTION NO. 33:

Was it diffuse, or wide-spread, about the body of Clarence Borel?

ANSWER:

It was localized to the right chest cavity, mediastinam, chest wall mediastinal lymph nodes. There was no evidence of metastasis beyond these areas.

QUESTION NO. 34:

Did you perform a pulmonary function study on Clarence Borel? If so, please state the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 163 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/163

result of this study.

ANSWER:

No, I did not.

QUESTION NO. 35:

Was the removal of the patient's right lung a medical necessity?

ANSWER:

Yes, it was.

QUESTION NO. 36:

Please state whether or not specimens of the patient's lung were submitted to a pathologist for analysis?

ANSWER:

Yes, they were.

QUESTION NO. 37:

Please state whether or not this analysis revealed that the patient was suffering from asbestos.

ANSWER:

Yes, it did.

QUESTION NO. 38:

Do you agree that the patient was suffering from asbestosis?

ANSWER:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 164 of 262

asbestosclaims.law/library/10244/164

163

Yes.

QUESTION NO. 39:

Please state whether or not the asbestos bodies were observed which had invaded the lung tissue.

ANSWER:

Yes.

QUESTION NO. 40:

MR. STEPHENSON: And we asked for a copy of his charges which we have already introduced and that was reasonable. That concludes that, Your Honor, without going into his charges which have already been placed in the record.

THE COURT: All right.

MR. STEPHENSON: Your Honor, I have summarized two additional medical witnesses which I would like to put on at this time.

THE COURT: All right.

MR. STEPHENSON: The first will be the summary of the oral deposition of Dr. Kenneth R. Watkins, and the next will be a summary of the oral deposition

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 165 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/165

164

of Dr. P. O. Jones.

THE COURT: Okay.

SUMMARY OF ORAL DEPOSITION OF DR. KENNETH WATKINS

MR. STEPHENSON: Dr. Kenneth R. Watkins' oral deposition was taken on December 21, 1970 at Dr. Watkins' office in Groves, Texas.

Dr. Watkins stated that he graduated from Kirksville College of Osteopathy in 1951, in Missouri, and then he had three years of college -- pre-med training. He entered into the practice of a Doctor of Osteopathy in 1951 and has taken yearly postgraduate courses, such as seminars, etc. He practices in Groves, Texas. He is 52 years of age and he is a licensed medical practicioner in the State of Texas, and his license is on record in Jefferson County, Texas.

Dr. Watkins testified that he first started treating Clarence Borel for chest problems on January 19, 1969. He stated that Mr. Borel complained of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 166 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/166

165

pain in his right chest, productive cough, dyspnea, and general weakness. Dr. Watkins put him in the hospital and gave him antibiotics and positive pressure and supportive therapy. Dr. Watkins testified that x-rays were made of Mr. Borel while he was hospitalized and that he personally looked at the x-rays, and he confirmed by looking at the x-rays that a wedge-like shape existed in the right lung, in the lower right chest, which is the lower right lung field. He stated that this wedge-like shape was in his opinion either pneumonitis or a possible tumor, and that it didn't respond to therapy so he referred Mr. Borel to Dr. Self, a lung specialist in Beaumont.

He testified that Mr. Borel didn't get along too well with Dr. Self, and Mr. Borel's family requested that he see someone in Houston, and that the family knew of an internist who was a friend of the family, and Mr. Borel was

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 167 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/167

166

then transferred to Dr. P. O. Jones in Houston.

MR. WELLER: If the Court please, I object to that testimony because it is hearsay, that he stated he followed Mr. Borel's progress through the family and through reports and telephone conversation with Dr. Jones in Houston, therefore, it would be hearsay.

THE COURT: Do you insist on it?

MR. STEPHENSON: No, sir, he stated the whole paragraph so I don't insist on it, Your Honor.

THE COURT: All right.

READING CONTINUED:

MR. STEPHENSON: Dr. Watkins testified that Mr. Borel wasn't getting any relief from narcotics at home, and that Dr. Watkins admitted him into the hospital on March 20, 1970, which was following his surgery in Houston. On page 12, he said, "And I have down here the daughter reported that he had surgery in Houston and so --

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 168 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/168

167

MR. WELLER: This is the same thing I was objecting to before, all through here the doctor's opinion is based upon telephone conversations and what somebody else told him.

THE COURT: I think we will sustain the objection.

MR. STEPHENSON: I will go on to the next paragraph, Your Honor.

READING CONTINUED:

MR. STEPHENSON: Mr. Borel was in the hospital for seven days in March, 1970, and the course of treatment involved mostly supportive therapy of building up his blood and giving him just supportive therapy of vitamins, diet and trying to keep him comfortable. Dr. Watkins testified that Mr. Borel was in quite a bit of pain and required narcotics for the relief of the pain.

He next saw Mr. Borel on May 10, 1970, when he re-admitted him back in the hospital. He testified that he was in a terminal state of general

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 169 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/169

debilitation from carcinomatosis, and we now quote from Page 13:

"Q Did he subsequently expire?

A Yes. The family requested that he be dismissed on 5-29 to return home. The patient, himself, wished to return hom. He knew he was going to die and he wanted to die at home.

Q Do you have the date that he finally did expire?

A I don't have the date that he expired, but I was out there.

Q You were there, you say?

A Yes."

Dr. Watkins on Page 14 stated concerning charges which have already been introduced.

READING CONTINUED:

MR. STEPHENSON: Dr. Watkins testified from the beginning of the time when he first started treating Mr. Borel for his chest condition, he suffered a lot of pain, even more than

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 170 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/170

169

average. He stated that prior to death, Mr. Borel was comatose the last few days, and just generalized debilitation and weakness and a gradual decline. He said that everything was done that could have been to preserve his life, except getting him out of the irritating factor. He said that "Of course that should have been done years ago."

Dr. Watkins states that the operating surgeon from Houston reported --

Well, that is another --

Dr. Watkins was asked about the history he obtained from Mr. Borel which led him to believe Mr. Borel had the disease of asbestosis, and he answered:

"A Well, of course, he told me that he had been in the asbestos work and insulating work for thirty-three years, and of course he had the typical findings of one with the asbestosis condition; dyspnea and

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 171 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/171

170

loss of weight.

Q Cough?

A Cough.

Q Did he have any clubbing of the fingers or toes?

A No, I didn't notice that he did.

Q Doctor, does it immediately place you on suspicion when someone gives a history of being an asbestos worker and they have lung complaints?

A Yes, sir.

Q Let's see, when did you go to school, prior to 1953?

A Yes. I graduated in '51.

Q '51, excuse me. Were you taught about asbestosis in medical school?

A Yes."

Dr. Watkins testified that Mr. Borel had been a patient of his for a number of years, and he had never had any serious chest or lung conditions before the dates that he testified about. He said that Mr. Borel was a cooperative patient during his last

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 172 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/172

171

last sickness, and on Page 24, he was asked the following question:

"Q He he been one to over-complain or suffer from hypochondria?

A No, he was usually the other way around. He would go as long as he could. I knew he was a sick man when he came in.

Q Did you feel when you gave him narcotics for pain that he was sincerely and honestly having pain?

A Yes, sir."

On cross-examination, Dr. Watkins was requested by defense attorneys to order that the x-rays of Mr. Borel taken at Doctors' Hospital be released and filed with the Clerk in the United States District Court in Beaumont.

He testified that on Mr. Borel's admission to the hospital the first time following surgery, he made the diagnosis that Mr. Borel's cancer was metastasized throughout his system.

On re-direct examination, beginning

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 173 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/173

on Page 37, Dr. Watkins was asked:

"Q Let me ask you one question, Doctor, please: Regardless of all of this, if you saw this and if you saw that, is it your medical opinion based on a reasonable degree of medical certainty that Mr. Borel had asbestosis?

A In my opinion, he had asbestosis.

Q Did you feel that his death was brought about by carcinoma, secondary to the infection of the fibrous tissues caused by asbestosis?

A Yes."

MR. STEPHENSON: That concludes this, Your Honor. Should I read the next one --

MR. WELLER: If you will give me a second. I may have a little cross examination, but I am not sure.

(PAUSE)

MR. WELLER: The doctor said that he stayed at Kirksville, Missouri

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 174 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/174

173

for approximately four years and does not hold himself out as specializing in the diagnosis of asbestosis.

As to any questionable x-rays, he says he relied on the interpretation of the radiologist who took them. He said that no history was given him by Mr. Borel, that the patient had trouble in coughing over a period of years. He also said that the medical profession does not know the cause of cancer. That he did not diagnose Borel as having asbestosis as he has made no studies of this disease.

Dr. Watkins said that he had no history that Borel was a constant cigarette smoker and does not remember whether he did or did not smoke. Assuming that Borel was a heavy or moderately heavy smoker for some 30 or 32 years, he admitted that cigarettes do have an adverse effect upon a person's lungs, and has seen people who smoke cigarettes who have lung cancer. That

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 175 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/175

174

smoking also contributes emphysema and bronchiectasis, that Borel did have a severe case of emphysema.

Turning to x-rays, he said that no malignancy had been noted in the lungs on the basis of the records of Memorial Baptist Hospital in Houston on February 11, 1970 under report from Dr. Peter Valdez and that this would indicate that Borel had no malignancy at that time. And that he was familiar with the x-rays taken on January 20, 1969 at Doctors' Hospital in Groves. And that those revealed that Borel's left lung was not involved. That the pleural effusion occupying approximately one-fourth of Borel's lower right lung field, as seen in the x-ray, could have been caused by excessive smoking, but probably it would have been secondary to some infection. That this could also be caused by pneumonia and the same thing would show up on the x-ray.

That Borel told him he had frequent

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 176 of 262
asbestosclaims.law/library/10244/176

175

chest x-rays over the years because of his occupation. That except for his physical examinations and x-rays he never made an individual diagnosis of asbestosis and personally never made a diagnosis of asbestosis as to Mr. Borel. That he personally never made a diagnosis of cancer either until after he had known that Mr. Borel had his operation and after there had been such diagnosis in Houston.

That he does not know the cause of cancer and that he does not know what produced cancer in Mr. Borel.

That's the end of the proffer.

THE COURT: Ladies and Gentlemen of the Jury, we are going to stand in recess until twenty minutes until three by the clock in the courtroom, that will be about seventeen or eighteen minutes.

THE MARSHAL: Everyone rise, please.

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

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 177 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/177

SUMMARY OF ORAL DEPOSITION OF DR. LOUIS A. MATEO

176

MR. STEPHENSON: Summary of the oral deposition of Dr. Louis A. Mateo. was taken January 22, 1971, at Memorial Baptist Hospital in Houston, Texas.

Dr. Mateo stated that he is a medical doctor and that he received his medical training in the University of Havana. He completed his formal medical training in 1949. Following that, he took formal training in pathology from 1950 to 1954, he served a year of residency in 1960 here in the United States, and started the practice of medicine in the United States in 1961. Since 1961, he has practiced in the field of pathology, which is the examination of tissue of those removed from surgical cases, and autopsies, and clinical laboratory. Most of his work is referred by either clinicians of surgeons or general practitioners. Most of the time his work in pathology regards the study of specimens of tissue and would be

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 178 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/178

177

done without Dr. Mateo seeing the patient.

Dr. Mateo's license to practice medicine is on record in Harris County, Texas.

He practices medicine as a full-time occupation.

He testified that according to the records of Memorial Baptist Hospital, on or about March 7, 1969, he had occasion to make tissue studies from Clarence Borel. We now quote from his deposition, beginning on Page 9, Line 5:

MR. WELLER: If the Court please, we object to the answer on the grounds that no proper predicate has been laid and that they were speculating as to what area that specimen came from, what area of the chest wall.

THE COURT: Objection overruled.

READING CONTINUED:

MR. STEPHENSON:

"Q Would you please tell us what tissue was submitted and what you did to make your

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 179 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/179

178

pathology studies of this tissue?

A Well, according to this record I received five different specimens, which is usually the case in lung cases, in cases of any importance. It depends upon the region from where the specimen is removed so we can identify those tissue from where they were removed. According to this, I received tissues submitted as hilar nodes, and a second specimen, was, say, from the open lobe of the lung, and then a third specimen submitted as lung tissue coming from the lung itself, and another specimen submitted as tissue from the chest wall, and then another specimen submitted as biopsy of right lung.

Of course, to specimen with the patient, we have to refer to the patient's chart and usually to the surgeon's report.

Q After having received this tissue, would you explain what you did then?

A Well, I did what we usually do. We do a gross description of the specimen first, and then we select a portion of that specimen

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 180 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/180

179

for microscopic studies, and usually the following day we do that microscopic study, which I did in this case, too, according to this report.

Q This report you are referring to is the official records of Memorial Baptist Hospital?

A That's correct.

Q Doctor, what type of studies did you make of the tissue that you got?

A Well, I did here what we call the routine study, and that consists of usually hematoxylin and aresene, historical preparation. We do this type of study in all cases, and when we see in it for something more, we do it. In this case I didn't see the need to do any other studies, so that was limited to that type of thing."

MR. STEPHENSON: On Page 10 Dr. Mateo was asked to relate his findings upon examining these studies and he answered:

READING CONTINUE:

"A In those specimens labelled two, three

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 181 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/181

180

and four, I found only fibrosis, and that consists of fibrous connective tissue usually replacing the tissue either from the pleura or from any other structure from where the specimen were removed, and specimen number five, which is the most important of them all, I found lesions that are usually produced by any kind of injury to the lung, and also I found within the tissue what we call the asbestos bodies.

So, my conclusion was that this lung biopsy was that of a case of asbestosis.

Q How did you make the determination that these were asbestos bodies and that the patient had asbestosis?

A Well, asbestos bodies are characteristic on microscopic study, so they are easy to recognize as such. Very seldom do you have any doubt about it.

Secondly, when you see those bodies within fibrous tissue and with the tissue reaction around them, then your conclusion would be that the lesion is produced by the bodies, and in this case, that was asbestosis.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 182 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/182

181

Q Does the fribrous tissue ground around the spicula or the portion of the asbestos fiber in an indentifiable fashion?

A The tissue reaction itself is not characteristic. It's characteristic if you put everything together and you see that reaction and the asbestos bodies.

Q You did actually see the asbestos bodies?

A Yes. If you see that reaction without the asbestos bodies or any other organism or particle, you cannot be sure what you are dealing with.

Q Then did you make any other tests, or does this conclude the tests that you, yourself, made?

A That was all I did in this particular case."

On cross-examination, Dr. Mateo was asked if prior to coming to the United States, he had had occasion to diagnose any cases of asbestosis or tissues involving asbestosis, and he replied:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 183 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/183

182

"A Yes. Now, I have to quote by memory. I don't remember the number of cases specifically, but probably two or three cases, yes, sir.

Q Where was that, in Cuba?

A In Cuba, and I don't remember if here in the United States. Not counting those cases you see in seminars and study sets. Usually we don't count them as a number of cases in our experience."

On re-direct, Dr. Mateo said:

"Q Doctor, let me try and put this in perspective. In your medical opinion based upon reasonable medical and scientific certainty, did this patient have the disease, asbestosis?

A That's correct.

Q Now, I am not talking about possibilities to you because the law doesn't recognize that. If you find in a patient fibrosis, do you then look to find what the cause of the fibrosis is?

A Yes. We try to find out which agents, if any, caused it.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 184 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/184

183

Q In this specimen did you find the agent that caused the fibrosis to be asbestos fibers?

A That's correct.

Q No pneumonia could cause fibers like this surrounding an asbestos agent, could it?

A I don't believe I understand the question.

Q Pneumonia would not cause a fibrous growth around an asbestos agent such as you found in this case, would it?

A To begin with, we have to have the asbestos body there.

Q And you found the asbestos bodies in the air spaces as well as in the fibrous tissue?

A In the fibrous tissue, that's correct.

Q So you can say without any question or doubt that asbestos fibers were present in this man's lung?

A That's correct."

Late on Page 33, the doctor was asked the following question:

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 185 of 262
asbestosclaims.law/library/10244/185

184

MR. STEPHENSON: By myself. "Doctor, to summarize this, is it still your medical and scientific opinion based upon reasonable and medical certainty that that patient had asbestosis according to your studies of his tissue?

A That's exactly correct."

MR. STEPHENSON: Cross-examination beginning on page 13. Dr. Mateo did not find any asbestos in specimen 1, which was lymph node taken from the hilar region of the lung.

Specimen 2 came identified as a node from the upper lobe on the right side, which contained fibrosis.

Specimen 3 was tissue of the lung and did not contain any asbestos bodies.

Specimen 4 was material from the chest wall which did not contain any asbestos bodies.

Specimen 5 came from the right lung, but Dr. Mateo does not know what part of the lung from which it was taken.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 186 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/186

195

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

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

Q If you don't know where Specimen 5 came from, you don't know whether that came from the lower lobe or not, do you?

A No.

Q There was no specimen taken of the left lung, were there?

A I don't have any information on that."

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

Dr. Mateo mentioned that there was an inflammatory reaction around the bodies, asbestos bodies, found by him but admits that if the patient had had a prior case or cases of pneumonia the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 187 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/187

condition he found could have been scar tissue developing from the pneumonia and other causes, and admits that this is possible.

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

And cross by Mr. Gordon Pate.

He again admits that there were only asbestos bodies present in Specimen 5 and not in the other four. And when asked to what he attributed the fibrosis tissue in 2, 3, and 4, he responded that one does not always find the agent that produces the changes and there are many many agents that could produce the changes such as pneumonia.

He further admits that pneumonia could possibly have produced the fibrosis fround in tissue in Specimen 5.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 188 of 262

asbestosclaims.law/library/10244/188

187

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

Dr. Mateo admits that smoking could possibly have set up the fibrosis found in the tissue.

"Q What I am really driving at, Doctor, is this. Let me state it once again. I'm trying to clarify -- that tissues two, three and four that had the fibrosis, as well as five, which had the fibrosis yet you only found an asbestos body in tissue five?

A Right.

Q Therefore, you cannot say that this fibrosis caught in these four tissues, two, three, four and five, were caused by asbestos, can you?

A No, I cannot say that the tissues two, three and four were caused by that. I probably could say that in tissue five there is a relation of location between the two.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 189 of 262
asbestosclaims.law/library/10244/189

188

Q Possibility?

A Possibility."

He admits that as pertains to Specimen 5 that the inflammatory reaction found there, that pneumonitis could cause such reaction. He distinguishes inflammatory reaction and fibrosis by explaining that fibrosis is established by the result of an old inflammatory reaction. For example, a foreign body or bacteria might cause an acute inflammatory reaction, and then the body trying to reject the offender, trying to isolate the foreign body produces fibrous tissue called fibrosis. He admits that any inflammatory disease such as pneumonia or bronchitis may produce a fibrosis in the lung.

He did not have any --

Dr. Mateo admits that pneumonia can lead to scars on the lungs which is shown up in x-rays. He did not find in the biopsy any cancer cells and did not make any diagnosis of cancer

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 190 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/190

in this patient. These were questions by Mr. Ward Stephenson.

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

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

MR. STEPHENSON: I have the deposition of Dr. Paul Shelby Cullen, Your Honor. It is a short deposition and

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 191 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/191

190

I will just read my direct, Your Honor, if I may.

THE COURT: All right.

DEPOSITION OF PAUL SHELBY CULLEN, M.D.

READING
BY MR. STEPHENSON:

MR. STEPHENSON: This deposition was taken of Paul Shelby Cullen, M.D., was sworn to testify by a notary before the deposition was taken and testified as follows: Direct questioning by myself.

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Dr. Cullen, my name is Ward Stephenson and I am an attorney representing Mrs. Clarence Borel. We are here to take your deposition. By that, meaning to ask you questions, and I will ask you direct questions, and then other lawyers who represent the various defendants in this case can ask you questions under cross examination. This testimony you give may be used in court as though you were testifying personally in court. If you have any questions about any

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 192 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/192

191

questions about any of the things that we ask you, you can stop and ask for a clarification. If you don't understand the question, just tell the lawyer, please.

State your full name for the record.

A Paul Shelby Cullen.

Q Where do you live, Doctor. In Houston?

A Yes.

Q Where do you practice medicine, please?

A I practice mostly in Memorial Baptist Hospital. We have a private office across the street in the Memorial Professional Building.

Q Now, are you a licensed medical practitioner?

A Yes.

Q Is your license on record here in the Harris County Courthouse?

A Yes, it is.

Q Would you please tell us where you did your medical training and studies?

A I did my medical education at Baylor Medical College here in Houston. I graduated in '48. I did two years of hospital train-

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 193 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/193

192

ing at Jeff Davis Hospital here in Houston, '48 to '50. I had six months at the Baptist Hospital in San Antonio in '53 and '54. I took my specialized pathology training partly in Methodist Hospital in Houston and partly at Jefferson Davis in Houston, and that was in the years of '57 through '61.

Q Have you entered the field of specialty?

A Yes. Well, since '57 I have been entirely in pathology. September of '57.

Q Where did you take your training in pathology?

A Well, it was in the Baylor University Training Program, and they have several hospitals to which their trainees are assigned, and I was assigned to Methodist and to Jeff Davis.

Q Tell us what pathology means, the practice of pathology.

A The strict definition of pathology is the study of disease. As a matter of practice, it's divided into two general classifications, anatomic pathology, which includes the study of surgical tissues and

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 194 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/194

the study of autopsy tissues, which includes the doing of autopsies. The clinical pathology is the study of blood, including blood transfusions, bacteriology, stool examinations, urine examinations, and that sort of thing.

Q Did you have occasion to make a study of certain tissues submitted to you by a surgeon, Dr. Ricks, and perhaps the internal medicine doctor by the name of Dr. P. O. Jones concerning one Clarence Borel?

A Yes, sir.

Q Would you explain starting with the first study you made, Doctor, what studies you made and what your opinion was concerning those studies?

A Yes, sir. On March 3rd, 1969, there was sent to the laboratory small fragments of tissue, and this was examined by me after nothing had been done to it except that it had been partially fixed in formaldehyde solution, and this was quite small. It measured three by three by 1.5 millimeters, which would make it not quite as big as the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 195 of 262
asbestosclaims.law/library/10244/195

194

kitchen match. Microscopically this contained a little bit of muscle and a little bit of fibrous tissue, and I couldn't make any specific diagnosis. This was taken as a biopsy of the pleura, the pleura being the fibrous covering which covers the lung, and which also lines the chest cavity.

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

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

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 196 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/196

195

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

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

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

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 197 of 262
asbestosclaims.law/library/10244/197

196

care to look. The scale is in centimeters, of course. The first picture really tells you something. The second one is rather difficult to interpret and doesn't really tell too much. That would be much more interesting to someone who knew something of normal anatomy first.

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

A That's all right.

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

A Yes, sir.

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

A He had two things wrong with his lung, actually. Now, before I enlarge on that, let

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 198 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/198

197

me say that one can go into great detail and mention a number of things that are perhaps significant to some degree, but he had two things that really matter. As an example of what doesn't matter, his lung weighed something like 500 grams, as I recall. It's part of the record. Normal right lung weighs perhaps 300 grams. Well, where did the extra weight come from?

MR. STEPHENSON: He is continuing with his answer.

READING CONTINUED:

Well, where did the extra weight come from? Well, it came from congestion, but so his lung was congested. That really doesn't matter too much. The things that matter was that this man had asbestosis with its features, which include many things, and he had a diffuse malignant mesothelioma.

Q Would we call that a type of cancer?

A Yes, sir.

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

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 199 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/199

removal --

A You call it a pneumonectomy.

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

A Yes. Pardon me. My answer is still yes, but in this case you can't just say the right lung. The lung is covered with pleura, and that's a thin membrane, and that membrane covers the lung, and it also lines the chest cavity, but in your lung or mine, hopefully, you could remove the lung and still leave the pleura on the inner surface of the chest cavity. In this man perhaps that could have been done and perhaps it could not have been done. I don't know, but if you removed only the lung, it would not have been proper treatment. You would have to get all the pleura that you could. Of course, that on the outer surface of the lung is going to come, anyway, but you get what you could off the chest wall, stripping the muscles and ribs bare on their inner surface.

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

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 200 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/200

199

chest cavity?

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

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

A That would not be the medical way to put it. First of all, there is such a thing as a benign mesothelioma. Mesothelioma is the name given to the linings of the heart cavity, plus the covering of the heart, the lining of the peritoneal cavity, pluse the coverings of the intestines and liver, and so forth. The linings of the chest

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 201 of 262
asbestosclaims.law/library/10244/201

200

cavity plus the covering of the lung, it's all mesothelioma. The "oma" part means tumor. It's possible to have a benign mesothelioma, which is a tumor. You cut it out and it's gone. It's not cancer. But a malignant mesothelioma is a very rare condition, and most of the time it is associated with asbestosis. It can be found not in association with asbestosis.

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

A Yes.

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

A There is no doubt.

MR. WELLER: If the Court please, cross examination. Dr. Cullen admits that he in the medical profession do not know the cause of cancer in general. He admits that mesothelioma is a form of cancer. He testified that the first biopsies did not reveal any evidence of cancerous cells. Dr. Culler

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 202 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/202

201

did not make any physical examination, and his work was limited to the pathological studies of material given him. He took no samples of tissue from any other section of Borel's body other than the lung.

Dr. Cullen does not know whether the patient had cancer in other portions of his body or not. Dr. Cullen admits that mesothelioma does occur in people who do not have asbestosis. He admits that mesothelomia could start below the lung and spread into the lung, but he has no personal knowledge of such occurring.

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

Dr. Cullen admits that the mere presence of asbestos fibrous bodies in a person's lungs alone is not

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 203 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/203

202

sufficient enough to justify a diagnosis of asbestosis.. That there are quite a number of people who have asbestos fibers in their lungs who do not have asbestosis.

Dr. Cullen found anthracosis, a black powdery carbon pigment that people inhale in coal dust or cigarette smoking or anything else that contains finely divided carbon. Such was found in Mr. Borel in a moderate amount diffusely throughout the lung, which is not uncommon in a man who has smoked for 15 to 20 years.

Cross by Mr. Pate. Dr. Cullen could not state whether the specimen he examined came from the left lung or the right lung pleura, or whether the specimen came from the right chest or the left chest, and there was no way of knowing unless such was revealed by the patient, the surgeon or the hospital records. He admits that in his opinion, one can develop cancer from

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 204 of 262
asbestosclaims.law/library/10244/204

203

smoking. Dr. Cullen admits that asbestos bodies in the lung would not produce the anthracosis that was found by him.

That's the end of that examination.

THE COURT: Who do you have.

MR. STEPHENSON: I have a summary, Your Honor, of quite a lengthy deposition of Dr. P. O. Jones, that I have summarized.

THE COURT: All right.

MR. STEPHENSON: The summary of the oral deposition of Dr. P. O. Jones.

SUMMARY OF ORAL DEPOSITION OF DR. P. O. JONES

READING
BY MR. STEPHENSON:

After the introduction of myself as an attorney representing the plaintiffs in this case, I advised the doctor that we were there to take his deposition, transcribe his testimony so that it might be used at the time of the trial.

The doctor gave his qualifications as undergraduate training at the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 205 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/205

204

Louisiana State University, starting in 1938; he received his B.S. Degree in 1942 at the Louisiana State University in Baton Rouge, and then proceeded to L.S.U. Medical School in New Orleans in 1942 and received his Master of Doctorate Degree in 1945. Following graduation from Medical School, he went on and served an internship in Brooklyn at Cumberland Hospital, which is a charity hospital in Brooklyn, New York, from April of 1945 through May of 1946. At that time he entered the Armed Forces in 1946 and served for two years -- two and a half years -- at Brooks General Hospital, at which time he was Chief of the so-called Women's Medical Section, which is really taking care of retired colonels and generals' wives with all their complaints, and was released from the service in 1958.

He then went to Barnes Hospital in St. Louis, Missouri, where he started

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 206 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/206

205

his residency in chest diseases from about January of 1959 through May of 1960, sixteen or seventeen months, at which time he had extensive training in pulmonary diseases.

From St. Louis he went to New Orleans and returned back to L.S.U. Medical School Charity Hospital, where he took some more training in internal medicine, and then in November of 1959, he came to Houston where he has been since.

After he came to Houston, he assumed the Assistant Medical Director-ship of the Houston Tuberculosis Association, where he was full-time Medical Director from November of 1959 through about July of 1957 -- must be '67, my notes say '57.

-- at which time he entered private practice, and up until that time he was full-time with Baylor Medical School, and then as he entered private practice, he assumed a part-time position at

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 207 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/207

206

Baylor Medical School, which he still has, and has the title of Clinical Professor of Medicine at Baylor, and has been doing internal medicine, which he has an American Board of Internal Medicine qualification, as well as the American College of Chest Physicians, both of which have been obtained in the last ten years.

At the present time, he is Chief of Medicine at Memorial Baptist Hospital and does full-time practice in chest diseases and internal medicine.

He limits his practice to the field of pulmonary diseases, lung diseases and to internal medicine.

He saw Clarence Borel in the course of his practice and made an examination of him. He first hospitalized Mr. Borel on February 28, 1969, which lasted from that date to March 16, 1969. In taking the history of Mr. Borel, Dr. Jones relates the fact that in January of 1969, Mr. Borel developed a

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 208 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/208

207

severe upper respiratory infection, difficulty with breathing and pain in his right chest, he had had progressive shortness of breath, particularly when he walked a long time or stood a long time. He also had lost ten pounds of weight over a three-week period.

He further gave a history to Dr. Jones that on January the 19th, when he was admitted to the hospital in Port Arthur, Texas, his physicians there had diagnosed pneumonia and found fluid in his right lung; they removed the fluid and did what they call "scally node", which is the removal surgically of a node in the neck area and that there was no evidence of cancer or tuberculosis in this node. They removed fluid from his chest and examined it for cancer cells and for tuberculosis, both of which were negative. On two occasions they attempted to bronchoscope the patient, but this procedure was unsuccessful due to the inability of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 209 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/209

208

Mr. Borel to relax and to hyper-extend his head, which prohibited them from looking down his windpipe, so they did not do this procedure.

In giving occupational history, Mr. Borel stated he had worked as a pipe insulator using fiberglass, foam glass, and various types of asbestos-containing materials for the past 33 years.

Dr. Jones stated that it is customary and proper for him to take a history from the patient and that the methodology of obtaining a history from any patient having been trained so long in pulmonary diseases that he sees more and more occupational lung diseases now, and it's just a part of what we teach our medical students in taking a good history of someone that has lung complaints to ask about the occupation.

After taking the history from the patient, Dr. Jones made a physical examination which revealed a slightly

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 210 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/210

209

built male who did not appear too acutely ill or chronically ill. At the time of the initial examination, his blood pressure was 130/70 (which is normal); his temperature was normal, and all of his physical findings were confined to his neck (he had a scar where surgery had been done but was well healed); and examination of his chest showed findings confined to his right chest, in which he was having what Dr. Jones called a "lag", or difficulty in moving the right thorax, or the right side of his chest. Listening to his lungs with a stethoscope revealed that he was having difficulty moving the air in and out of his right lung, and there was some definite signs of obstruction, with wheezing and asthmatic sounds on auscultation, and there was some signs of impaired motion of breathing in his right lower lobe. His left lung was completely clear. His heart was negative. The abdomen and

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 211 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/211

210

and all the rest of the physical examination was negative.

Dr. Jones testified that after taking additional x-rays, he found what is called a right lower lobe pneumonia, which consists of a density, or opaque appearance, in the right lower middle lobe area, and this was associated with pneumonia, which we call pleural effusion, which is the presence of fluid within the chest cavity, and that is all we could tell from looking at this one x-ray.

The doctor thereafter described the various and sundry tests which were conducted on Mr. Borel. The course of treatment consisted of symptomatic treatment, which really consisted of relieving the man of his pain and keeping him comfortable. Mr. Borel was short of breath so he was given oxygen for his shortness of breath and no specific other form of treatment was given him. He was in the hospital

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 212 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/212

211

at that time from the 28th of February to the 16th of March, 1969, at Memorial Baptist Hospital, in Houston. Dr. Jones saw the patient daily while he was in the hospital.

The course the patient took in the hospital consisted actually of persistent pain in his right chest, which prevented him from breathing normally, so he was by necessity having shortness of breath, for which he was given oxygen.

After having Mr. Borel in the hospital under oxygen, as described, and after examination of the x-rays, on March 5th Dr. Jones felt that Mr. Borel had reached the end of his rope as far as the diagnosis was concerned, and that he could go no further, and at this point, he called in a consultation with a chest surgeon to help arrive at a definitive diagnosis. This chest surgeon was Dr. Kenneth Ricks. Dr. Ricks reviewed the studies that Dr. Jones had already performed and got the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 213 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/213

212

breathing studies on the patient, pulmonary function studies and made the diagnosis as to whether or not Mr. Borel was able to tolerate surgery.

On the 29th of February, Mr. Borel's vital capacity (that is, the amount of air that you can take in and blow out in one maximum deep breath), which for his age showed 56 and by his weight was 59 kilograms, height of 180 centimeters, was 4,590 cubic centimers, his observed was 2,360, which gave a percentage of predicted of 52%. Then they analyzed his maximal breathing capacity (which is the maximum amount of air that he can move in and out with per unit time for his age, height and weight, and his predicted was 146 liters per minute and he performed 55 liters per minute, which is 37% of predicted normal.

Further analysis was made of the curve, breaking down the so-called forced expiratory volume in terms of seconds, trying to determine how much air this

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 214 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/214

213

man was moving in a half-second, and the predicted for him was 2,420 cubic centimeters of air in one-half second; he moved 1,260 cubic centimeters of air, which is 53% of predicted. In one second, he moved, or should have moved 3,440 cubic centimeters of air, but he was only able to move 1,560 cubic centimeters. So, these values lead them to believe that he had what is called restrictive ventilatory defect, and in pulmonary function, these are divided into restrictive (which is a type of defect we see in any individual who has a loss of function in lung substance due to pneumonia or to fluid in his chest, or due to thoracoplasty, or surgery on the chest wall, or due to a lung collapse.) Then the second type is the obstructive defect, he which the patient has air-way obstruction such as asthamatic and chronic bronchitis or pulmonary emphysema patients have.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 215 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/215

214

The interpretation of this was severe restrictive defect and a mild obstructive defect and there was no evidence of emphysema on the determination of the lung volumes in this man.

These studies again pointed towards the fact that Mr. Borel had some process involving his right lung, precisely, the right lower two-thirds, which had totally and completely knocked out his ventilation and ability to utilize his right lung, and that he still did not have an etiological cause as to his pneumonia and to his fluid formation.

In the various step-by-step stages of the examinations of Mr. Borel, certain things were eliminated, such as emphysema and other lung disease, and doing everything possible, they then proceeded to consider surgery. A biopsy was done, which is taking a sample of the lung. And then the decision to explore the patient surgically was made. Dr. Jones was present to see the appearance of the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 216 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/216

215

lung.

In describing the way a lung has to be freed, the surgeon has to use a thorocotomy incision, which is simply an incision extending from the mid-part of the chest, say around the 4th or 5th rib level, extending around through the armpit and all the way back to the shoulder blade, usually right beneath the shoulder blade. They make this incision which is usually about ten or twelve inches long, and then they have to go down and expose the ribs, and use what they call rib retractors, and cut the muscle bundle between the ribs, and with the rib retractor actually force the ribs apart where you will have opening in them about the size of -- half the size of a football, where the surgeon can get his operating hands into the pleural space and palpate the lung and palpate all structures and directly visualize all the pathology.

In describing what is meant by the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 217 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/217

216

term "freed up the lung," the lung has to be freed of any adhesions from previous infections, pneumonia or any causes that produce scar tissue where the lung is so bound down to the chest wall, that if you don't free it up, when they start cutting it, they will get in trouble with a lot of bleeding, the patient will hemorrhage, and they will have a lot of complications, so that's what is meant when they say "freed up."

Dr. Ricks did this biopsy, a surgical procedure, and Dr. Jones was there and observed the lung, which appeared to him as looking like a shaggy, scarred-down, bound-down lung, which, when the surgeon freed it up, it actually had a very hemorrhagic, a very easy bleeding surface, that looked exactly as if you had a piece of beef that you had stomped on or something that was old-looking and had no resemblance of a normal lung. This was encased by a scar tissue area of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 218 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/218

217

fibrosis that had to be freed up to even take a biopsy.

The taking of a part of a lung in biopsy proceeding was to establish this to be sent to the pathologist for examination for smears, for tuberculosis, for cancer and examination for any foreign body or foreign particles. In other words, to try to find out what is going on in the lung tissues.

All these specimens -- 1, 2, 3 --

MR. WELLER: I believe that the next paragraph there is hearsay testimony in regard to the findings of the pathologist and of the reporting surgeon. Dr. Jones did not do this himself.

THE COURT: Objection overruled.

MR. WELLER: Objection to it as hearsay.

THE COURT: All right. You may proceed.

READING CONTINUED:

MR. STEPHENSON: All these specimens -- 1, 2, 3, 4 and 5, were

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 219 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/219

218

submitted and Specimen No. 5, which is the lung tissue, was interpreted as showing marked thickening due to fibrosis and edema. Numberous inflammatory cells are noted, and in some air spaces, which is so-called alveoli, are asbestos bodies surrounded by macrophages with brown granules. The diagnosis of Specimen No. 5 was asbestosis. Specimens Nos. 2, 3 and 4 showed fibrosis. Summarizing this, the doctor said that the biopsy specimen of this man's lung showed extensive fibrosis, which is replacement of normal lung tissue by fibrosis and scar tissue, and within this invasion of his lung tissue by the scar tissue, there were numerous asbestos bodies seen, and the interpretation, the clinical, as well as the pathological, as well as surgeon, placed upon this that the intense fibrosis was the asbestos fibers.

The question was asked "Would that mean that the asbestos apparently which

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 220 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/220

219

the patient had inhaled at some time was the cause of the condition which you mentioned in your testimony?" Dr. Jones' answer was, "Yes, sir."

After that the patient was kept under observation to see that he didn't develop some post-operative complications, and that his heart was functioning normally; all of his body functions were normal and he recovered uneventfully from the biopsy and subsequently dismissed.

Mr. Borel during this period of time experienced pain. It was difficult for him to breathe in any normal manner, and he was uncomfortable 24 hours a day to the degree that he had to have narcotics and analgesics to relieve him of the pain.

After this period, the patient was allowed to return hom and was given Demerol by mouth in 50 miligram tablets for chest pain (that meant for him to take it as he needed it) and Nembutal (which is sodium barbiturate) given one

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 221 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/221

capsule at bedtime for sleep, and appetite stimulants and vitamins.

Demerol was administered primarily for the relief, as it is a narcotic (a Class A narcotic) which is given to patients who have pain from any cause to relieve them of their pain.

Nembutal is just a sedative, a hypnotic agent that is given to patients for pain and to give them rest at night.

After the surgery, the main complaints Mr. Borel had was the he had no appetite, he couldn't eat, and Dr. Jones thought that adding vitamins to his program might stimulate his appetite so he could eat and gain weight and gain his strength back.

The next question was asked on Page 30 of Dr. Jones' deposition, "Now, was there any medical or surgical treatment that could have, at this point in time, have been given that might have even worked a cure on this patient?" Answer: "A cure?" Question: "Yes, a cure?"

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 222 of 262

asbestosclaims.law/library/10244/222

221

Answer: "No, sir." Question: "Was his condition what is sometimes referred to as irreversible?" Answer: "Irreversible, yes, sir."

Following Mr. Borel's return to his home on March 16th, Dr. Jones saw him nine days later as a post-operative patient. This would be about the same time that he would see the surgeon for the surgeon's post-operative examination. The notes Dr. Jones made on March 25th indicate that Mr. Borel was still having soreness in his right chest with stiffness in his chest wall, he was still having some difficulty breathing, and he was virtually at home, bed rest, going to and from the bathroom. He had no fever, no cough, no sputum.

The next question was asked on Page 31: "Are these findings which you just mentioned compatible with the disease asbestosis?" Answer: "Yes."

The doctor was asked how Mr. Borel got these asbestos fibers into his

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 223 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/223

222

lung and the doctor testified that the only way to get such fibers in the lung would be through the inhalation of asbestos particles. That these asbestos particles are deposited into the lung and they initiate an inflammatory reaction within the lung itself, setting off a type of fibrosis, which Dr. Jones characteristically sees as a result of the asbestos particles.

The doctor was further questioned as to whether or not the disease asbestosis has been known of for many years, that is, prior to the time that he began the study of medicine, and the doctor said that reams of information going back as early as 1866 and 1867 in which they started wrapping boxes and things with so-called magnesium blocks in which the main constituent was asbestos. He further testified that the term "Asbestosis" was commonly accepted as a medical term when he was in medical school, that

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 224 of 262

asbestosclaims.law/library/10244/224

223

is, in the late 1930's when Dr. Jones became familiar, and he said that in 1930, asbestosis first became upon the forefront as a clinical lung disease; and that he was taught the general characteristics of asbestosis when he was in medical school; and that there is no other way to get asbestos particles into the lungs except through inhalation of the asbestos dust and fibers.

Dr. Jones saw Mr. Borel one month after his routine check-up. He had complete loss of appetite, was complaining of constant pain in his right lower and lateral chest, and his activities were still about as he described them a month prior, in which he was not very active, just around the house, and I examined his lungs he said. Generally, Mr. Borel looked sick, which is unlike most patients four weeks post-operative, that they should be well on their way to recovery and with a return of appetite, but he still did not demonstrate this.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 225 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/225

224

He was still having symptoms, and when he was examined, Dr. Jones still found physical signs of disease existing in his lungs, and also he was beginning to show changes in his left lung at that time, too. No change was made in his medication, and Dr. Jones verifies that Mr. Borel was having pain in his right chest.

When asked to explain pain, Dr. Jones stated: "It can be real severe or it can be mild, it can be moderate. I would class this man (Mr. Borel) as having moderately severe pain in that whatever movement of his chest, or walking, or bending, or stretching or standing, he was having pain which was of a constant nature. It was not relieved except under the influence of narcotics. So, I would have to say that his severity was moderately severe."

Dr. Jones next saw him after April on June 27, 1969, and Mr. Borel was still complaining of tightness and pain

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 226 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/226

225

in his right anterior chest, and he was examined again and the same identical findings persisted and the doctor kept in touch with Mr. Borel from time to time. On January 26, 1970, Mrs. Borel called and said that Mr. Borel was having so much pain that the narcotics were not relieving him by mouth and wanted to know what should be done. Dr. Jones told her that rather than seeing the patient at the office, re-admit him to the hospital for re-evaluation, which was done on the 26th of January, 1970, and he remained in the hospital for three days.

On the 26th day of January, 1970, Mr. Borel was having considerable pain and based upon the doctor's skill, Dr. Jones said this was a valid complaint of pain. Dr. Jones said that Mr. Borel was also spitting up blood and his pain was worse -- it was quite sharp and pleuritic in nature. X-rays were again taken, and he was given Demerol, 75

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 227 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/227

226

milligrams, for severe pain every three or four hours as needed. He was continued on the Nembutal for sleep and had other medications as well.

An attempt was made to do a thoracentesis, but no fluid was able to be found. Thoracentesis is a procedure where the patient's chest is anesthetized and the patient's chest with anesthesia and insert a needle into the thoracic cavity to aspirate or bring out fluid, in the hopes that you find fluid, and they send this fluid to the laboratory for analysis and study. They were unsuccessful, however, in removing any fluid from Mr. Borel's chest, and that was the extent of his treatment for the three-day period of hospital stay at that time.

Mr. Borel was then allowed to return home and was seen by Dr. Jones on February 10, 1970, about eleven days afterwards. He was progressively growing worse at home, with more pain,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 228 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/228

227

complete disability, he could not get out of bed, and on the date Mr. Borel's wife called Dr. Jones, Dr. Jones called the chest surgeon and told him that this man was worse, that he was steadily going downhill, and that there was some doubt in Dr. Jones' mind as to whether or not Mr. Borel had an underlying malignancy complicating the asbestosis. Dr. Jones testified that the surgeon elected to re-admit him to the hospital for surgical treatment.

On February 10, 1970, Mr. Borel underwent additional surgery, the nature of which was a right thoracotomy; a decortication and a right pneumonectomy. Put in laymen's terms, a thoracotomy is a surgical procedure where the chest is opened up, and a decortication is simply like taking the rind off an orange and peeling it; if you want to eat the orange, you have to get down to it, and a surgeon could not possibly remove this man's lung until he decorticated it and

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 229 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/229

228

removed the rind off the surface where he could get down to the hollow structure and the big blood vessels and tie them off and ligate them, and then bisect the bronchus and remove the lung, and that is what he did with the pneumonectomy.

Mr. Borel was kept in the hospital after these surgical procedures and showed remarkable improvement, considering the fact that he had a pneumonectomy, which is a pretty formidable operation for a 56-year-old man. He continued to have pain and was kept on the same medication as prescribed before.

After the pathologists made studies of the tissues of the right lung of Mr. Borel, it was found that he had cancer and chronic asbestosis. This term is at times applied to chest cancer caused by asbestosis and a mesothelioma. Mesothelioma is commonly associated medically with the disease asbestosis and asbestosis predisposes a person to a higher percentage of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 230 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/230

229

mesothelioma than those not having asbestosis. Dr. Jones said that the disease mesothelioma did not come as a surprise to him after he had known of the asbestos fibers being in this patient's lung. There was no other treatment Dr. Jones felt could be given Mr. Borel that might affect a cure on him at all. At that time, his picture was considered totally irreversible.

Dr. Jones was asked the question as to whether or not there was any treatment known to medical science that could have saved Mr. Borel's life after he had contracted the disease asbestosis and to the degree Dr. Jones observed it on the first lung opening; and Dr. Jones verified that nothing he knew could be done that was not done.

Dr. Jones followed Mr. Borel for a little over a year as doctor-patient, and then was told about Mr. Borel's death.

Dr. Jones further stated in his

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 231 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/231

230

testimony on Page 41, Question: "During that time, Doctor, did you ever believe (that is, speaking of the year that he followed the patient) that this patient was comfortable and free from pain or relaxed?" Answer: "No, sir, I did not, at any time."

Dr. Jones further testified that it is a characteristic of asbestos inhalation that fibrosis or fibrous growth of the lung occurs, and the commonly accepted medical way that asbestos manifests itself in patients is in the fibrosis and fibrous growth of the lungs and in the lung area and associated with the lungs, and this occurs in the pleura as well as the inner lung surface.

In Mr. Borel's case, it followed along the generally recognized and accepted symptoms of a patient with asbestosis. When asked why the asbestos could not be removed after one inhaled asbestos fibers, Dr. Jones said he thought

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 232 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/232

it is inherent in the disease itself and that an inflammatory reaction is set up within the lung tissue trying to rid itself of a foreign particle. It incites inflammatory cells, which in turn create scar tissue, and this in turn, where every particle, where every asbestos particle, lies within the lung substance, identical reaction is occurring where you have a chain of events throughout the patient's lungs. It is a slow, very slow in forming, but the ultimate end result is like a scar on the back of your hand from a cut, is scar tissue, where there is no normal skin left. In the asbestos lung, there is no normal lung tissue left where this reaction has occurred.

This concluded the direct examination of Dr. Jones.

Your Honor, I might as well finish, there is some cross examination here. Should I wait until Mr. Weller --

THE COURT: Do you want to offer

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 233 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/233

232

part of the cross examination?

MR. STEPHENSON: Yes, sir.

READING CONTINUED

On cross-examination at Page 45, the question was asked by Mr. Weller, "Have you studied any of the rather voluminous research literature on the subject of asbestosis?" Dr. Jones said, "Yes, sir, I have."

On Page 49 of the cross-examination, Dr. Jones testified that on his knowledge of the subject of asbestosis and having read it and followed the patient so long that has died with asbestosis, and in looking at the figures to show the high instance, which is almost nine times higher than in the average male, higher in patients with asbestosis, that there is some link, in his opinion, between asbestosis and cancer.

On Page 58, the question was asked, "Doctor, is there any particular length of time required for the development of cancer?" Dr. Jones replied, "I think

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 234 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/234

233

most studies show that you have to have at least a period of time for the circumferential growth of the tumor from the time it is first recognized on x-ray, and usually by the first time it is recognized it is very obvious as to the diagnosis, but as far as trying to date and say it takes a tumor of the lungs so many months, or years, to develop, I don't think anyone can say exactly in figures statistically proven how many months it does take." Dr. Jones said that he had seen this develop in such a small period as six months and the disease of asbestosis usually becomes apparent fifteen to twenty or twenty-five years, and there is no way the doctors can determine which exposure can cause the development of the disease, unless you are a medical director where you can go out to the plant and see them expose themselves to the particles, whatever it might be, and then watch them develop disease. He

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 235 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/235

234

said the thought this was the only way.

The doctor stated that in his opinion that if a man is subjected to rather heavy exposure as much as thirty years ago, the disease could date from that time.

On page 62 of the cross-examination, Dr. Jones was asked the question: "Doctor, you say you have been familiar with the disease of asbestosis since what period of time?" Answer: "Well, in medical school in 1942 when they were giving us lectures on occupational lung diseases they gave us lectures in asbestosis." Question: You don't know how long the public has been familiar with the disease?" Answer: "Sir, all I know is going in retrospect, in 1930 you can pick up the literature and see proven documented cases in asbestosis of insulation workers, in 1930."

On Page 63, he said that in that

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 236 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/236

235

era of time, the laying of magnesium blocks as insulation in which they had no idea asbestos was in it caused asbestosis.

On Page 64 of the cross-examination, the question was asked: "Now, who arrived at the conclusion that these were asbestos bodies in the lung; was that you or Dr. Mateo or --" Answer: "Dr. Mateo. This is the pathological report." Question: "This was not your conclusion?" Answer: "No, sir. I looked at the sections myself because I accumulate all of this for lecturing medical students, so I went out and picked out the sections that I wanted and I had 35 mm. slides made out of it, and I picked out the bodies that I wanted. That is how I know that they were there."

On Page 64 of the cross-examination, the question was asked: "Doctor, I believe that another doctor has told us that all lungs have a blackened appearance after they have been used for several

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 237 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/237

236

years; is that right -- a darkened condition?" Answer: "This is what we refer to as anthracosis, where you get the lymph node out and it was anthracotic, because everyone of us inhale coal dust into our lungs, and every one of our lungs, when we are twenty years of age, our lungs are dark, sure. It depends on what part of the country you live in. If you live in a small country town, your chances are much less than if you live in a metropolitan center where you inhale more particles."

On redirect examination, the doctor was asked whether or not cigarette smoking could have put asbestos particles into Mr. Borel's lungs, and Dr. Jones said No, this was not possible, and he was of the opinion that Mr. Borel's death was caused primarily by asbestosis. The medical history which he took was entirely adequate for the purpose of diagnosing his condition.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 238 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/238

237

On Page 67 and 68, the following questions were asked on redirect examination and answered by Dr. Jones as follows:

"Q Mr. Weller asked you a question about development, and I don't think he meant to mislead you or have the record in any way unclear on this, but develop and manifest itself might be two different things. Now, I am going to ask you a question about -- he asked you -- he used the word 'develop', and you answered a minimum of fifteen, or perhaps more years; did you mean manifest or develop, if you follow me?"

"A When you say 'manifest', does that mean that the disease is diagnosable?"

"Q Yes, that is what I am meaning."

"A Well, that is what I thought this gentleman was asking me, how

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 239 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/239

long would it take to diagnose it."

"Q Now, the question of how long it takes a person to get the disease of asbestosis before, let's say, it is diagnosed --"

"A That is twenty-five or thirty years."

"Q Not, to again -- I think manifest is the word, but let me go about it this way: Have you read in medical literature authenticated cases of children playing in kindergarten with --

MR. WELLER: If the Court please, this is absolutely hearsay and it is not true at all. I hate to get into this --

THE COURT: Objection sustained.

MR. STEPHENSON: All right, Your Honor, that concludes my examination.

THE COURT: All right, Mr. Weller, how much more?

MR. WELLER: Your Honor, I have a little cross examination.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 240 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/240

THE COURT: Sir? I can't understand you.

MR. WELLER: I have a little cross examination.

THE COURT: In addition to what Mr. Stephenson has offered?

MR. WELLER: Yes, Your Honor.

THE COURT: All right.

MR. WELLER: Dr. Jones states that in his opinion from the x-rays he first believed that Borel had a right lower lobe pneumonia with associated pleural effusion or presence of fluid in the right chest cavity. Fluid was removed from the right lung, sent to the pathologist and found to be negative for cancer cells as well as negative for tubercolosis organisms or any other possible cause for the collection of fluid in the lung.

Dr. Jones stated that he never did obtain any medical history of any kind or character regarding Mr. Borel from Borel's doctor in Port Arthur.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III

Published by AsbestosClaims.Law

ACL Doc 10244 · Page 241 of 262

asbestosclaims.law/library/10244/241

240

Dr, Jones states that in the last 20 years he has seen about half a dozen patients with asbestosis, in addition to this he has not made any special study of the disease of asbestosis.

He admitted that there were other causes of mesothelioma besides asbestosis. In this connection he admitted that a moderate smoker of cigarettes for 30 or 33 years could experience harm to the chest cavity. Although Dr. Jones admitted when he first saw Borel roughly a year before his death, that there was no diagnosis of cancer and that his death was due to cancer, yet he maintains that the cancer did not develop between the time he first saw Borel and the time of Borel's death. He stated that the cancer had not metastasized at the time of the diagnosis of cancer in February of 1970. Jones also testified that in his opinion, if Borel would have had cancer at the time of the biopsy that it would have been discovered.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 242 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/242

241

From this hypothesis, Dr. Jones concludes that in his opinion the cancer developed subsequent to the biopsy. Although his reasoning was somewhat difficult to follow, Dr. Jones testifys that the cancer developed subsequent to the biopsy, yet Borel had cancer prior to the biopsy, since this testimony is confusing, it would be quoting. Answer: "I think that if this man had had cancer when we initially did the biopsy we would have found cancer then."

"Q So the cancer developed after the biopsy?"

"A That is right."

"Q But you feel he had the cancer prior to that time?"

"A I think he probably did."

Dr. Jones did state he just did not know whether or not the cancer was caused by the asbestosis. Page 49.

Dr. Jones states that the x-ray reports and the tests indicated that the left lung was clear at all times,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 243 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/243

242

although he was not aware of any physiological reason why the inhaltion of asbestos dust would affect the right lung any more than the left lung. However, he would not admit that there was no asbestosis in the left lung since he had not seen the final autopsy.

Dr. Jones also testified that pneumonia can leave a scar of the lung tissue and that if Borel's medical records indicate bouts with pneumonia over the past 10 years that scar tissue on the lungs possibly could have resulted from such pneumonia. He testified that his first examination on February 28, 1969 indicated a clear left lung and the diagnosis at that time was right lower lobe pneumonia. No biopsy was done at that time, just a thoracenteis the aspiration of pleural fluid.

Dr. Jones includes in his list of causes of fibrosis inhalation of silica dust, asbestosis, asbestos, tuberculosis,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 244 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/244

243

bronchiectasis, granulomatous disease of the lungs and improperly treated bacterial pneumonia. He goes on to say that in order to render a complete medical opinion, a complete medical history is necessary, including any history or bout with bronchitis and pneumonia.

Dr. Jones indicates that in his opinion one cannot state statistically how many months it takes cancer to develop. He states that from his studies of the authorities and literature it takes a minimum of fifteen years to develop the disease of asbestosis and a period of twenty to twenty-five years is the average length of time for such development. And there is no way of telling without actually observing field conditions and subsequently following the developments of the disease to determine which may have resulted in asbestos. He does state that not every exposure to asbestos

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 245 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/245

244

dust results in asbestosis and that many asbestos workers never develop the disease.

Dr. Jones recognized that Borel's history contained in certain hospital records indicate that Borel was a moderately heavy smoker for many years but he saw no reason for advising Borel to stop smoking.

Dr. Jones states that he could think of nothing but asbestosis that would give Borel's lungthe appearance it had.

And then on re-cross examination, Dr. Jones upon being asked to assume that Borel had an x-ray 10 years earlier indicating that he had spots on his lung concluded that Borel should have known at that time that he was having trouble with his lungs due to the inhalation of asbestos dust and that he probably had asbestosis. Jones states that silicosis is a distinct and different disease from asbestosis.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 246 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/246

He states that in his opinion, assuming the hypothetical situation presented to him indicating spots on the lung some years earlier that an irreversible condition of asbestosis existed at that time.

Dr. Jones says that he recognizes the Governmental Hygienists conclusion that more than five million particles of asbestos per cubic foot of air is necessary in order to result in contraction of asbestosis. And that unless a man is exposed to such a dust concentration or greater concentration of asbestos particles in the air, he would not expect him to contract the disease of asbestosis.

Dr. Jones says that the Governmental Hygienists tests for asbestosis in millions per cubic foot of air has been known for many years.

THE COURT: All right. How much more testimony do you have, Mr. Stephenson?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
Published by AsbestosClaims.Law
ACL Doc 10244 · Page 247 of 262
asbestosclaims.law/library/10244/247

246

MR. STEPHENSON: I have just two short matters which I could read from here, Your Honor, and two witnesses.

THE COURT: How long will the witnesses take, do you know?

MR. STEPHENSON: Well, Mrs. Bean, my secretary, I expect would only take about fifteen minutes or so and then I plan to put Mrs. Borel on the stand. I will have to read Mr. Borel's deposition in addition, Your Honor. I forgot that.

THE COURT: His deposition will take some time, will it not?

MR. STEPHENSON: I have a summary of it, Your Honor, which will take, perhaps, twenty or thirty minutes.

THE COURT: All right. Ladies and Gentlemen of the Jury, we are going to stand in recess for ten minutes by the clock in the courtroom. That will be about twelve minutes. If you will return at that time.

THE MARSHAL: Everyone rise, please.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 248 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/248

247

REPORTER'S NOTE: Whereupon, at this time Court recessed for twelve minutes.

THE COURT: You may proceed.

MR. STEPHENSON: Thank you, Your Honor.

At this time, Your Honor, I would like to state to the jury that we have filed of record in this case a disclaimer by the six children of Clarence Borel, and they have assigned any rights they might have under law to Mrs. Borel, their mother, and the wife of Clarence Borel. This has already been filed in the papers.

MR. WELLER: If the Court please, on behalf of all defendants, I object to the statement on the grounds that the children had no cause of action whatever for the death of Mr. Borel under the admissions that were made that they were not dependent, they were all adults and not dependent, so they had no cause of action.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 249 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/249

248

THE COURT: What harm is done?

MR. WELLER: I don't want the impression to be left that they were giving up something that they didn't have under the law of Texas.

THE COURT: Wouldn't all requirements -- maybe requirements that they would waive such interest as they have, I don't see any need to take up time with this sort of objection.

MR. STEPHENSON: I would like to read the life expectancy tables taken from the U. S. Department of Health, Education and Welfare, Public Health Service, National Vital Statistics Division, Vital Statistics of the United States, 1964, Volume 2, Section 5, Life Tables, which show that a male 57 years of age has a life expectancy of 18.0 years.

Your Honor, I would also like to introduce the income tax records of Mr. & Mrs. Borel for the years 1962 through 1968. Their 7 year period of

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 250 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/250

249

time. All defendants have been furnished copies of these, Your Honor, and if I may be allowed to do so, I have added the total earnings up for these years and divided by 7 and it arrives at a figure of $8,520.56 as an average annual earning for that period of time.

MR. WELLER: Your Honor, I do not object to the authenticity of the income tax return but I do object on the grounds that there can only be a cause of action based upon the monetary contribution that are made to Mrs. Borel. And therefore the total amount of income would not be material in this case, but they would have to establish the amount of contribution that was made to Mrs. Borel.

THE COURT: Objection overruled.

MR. STEPHENSON: I would like at this time, if it please the Court, to call Mrs. Jackie Bean as a witness.

MRS. JACKIE BEAN,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 251 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/251

250

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

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Would you state your full name, please.

A Mrs. Jackie Bean.

Q And for the benefit of the record, please, how old are you?

A I am 38.

Q By whom are you employed?

A Stephenson and Thompson Law Firm.

Q And how long have you been so employed?

A A little over twenty-one years.

Q Mrs. Bean, I would like for you to tell us whether or not you typed certain cards which were used in Mr. Clarence Borel's deposition.

A I did.

Q And would you please state what the cards you typed contained?

A First of all, these cards were according to manufacturer. They contained the name of the manufacturer, beneath the name of the manufacturer the contained the trade name of the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 252 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/252

251

products containing asbestos that that particular manufacturer made.

Q Speak more closely into the microphone. You have to move it over a little bit.

A Okay.

And this information as to trade name was taken from interrogatories that the defendants had answered in the Potter suit. Then beneath that information I had typed in when Mr. Borel could remember when he had used that defendant or that manufacturer's products.

Q Mrs. Bean, where did you get the information, please, to put down as to the places that he had worked with these various products?

MR. WELLER: If the Court please, this would be hearsay as to each and all of the defendants in this case.

THE COURT: Objection overruled.

A I obtained this information from Mr. Borel himself. At the time when he first came into our office we told him that we would need to try to establish or recreate part of his work record as far as he could recall. I prepared blank slips of paper which contained a year, employer,

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 253 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/253

252

job site and products worked around. Then blank spaces beneath each of those categories and I xeroxed several of these. And since he didn't have his income tax returns with him when he came in the office, and since he appeared to, well, pretty sick, we asked him if he would prefer to return home with the slips of paper and sit down with his income tax returns and -- because this would refresh his memory. Then fill out these slips of paper and return them to us. And in this way we could, well, establish some form of order as to when and where he had worked around the different products.

Q Did he then give you these slips of paper which he had written in his own hand the places where he had worked?

A Yes, sir, he did. He returned to the office sometime later. I don't recall, maybe within two or three weeks later. But he did return to the office and he had completed these slips of paper and in addition thereto he gave me some others that I do not have attached to the particular return but I have left the slips of paper that he completed pinned to the income tax

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 254 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/254

return for that particular year.

Q All right. Do the records that you have before you there indicate the W-2 forms which he got for the work that he did for various companies?

A Well, some of them do have, but some of them don't. Some of them have a list of his employers. Apparently whoever prepared his return that year, it is whatever they typed and the W-2 form, it is not on every one of them but it is on some.

Q All right. And did you take the slips of paper that were written in his hand and reduce this to a written form on a card?

A Yes, sir, I did.

Q All right. I would like to hand you these cards, please, and ask you to state whether or not this is the cards which you put the material on that Mr. Borel had provided you?

A These are, they are the ones.

MR. STEPHENSON: The defendants have all been furnished copies, Your Honor, that is the reason I am not showing them to them at this time.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 255 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/255

254

BY MR. STEPHENSON:

Q Now, Mrs. Bean, in some of these, for example, I am noticing Fibreboard Paper Products, you have down here 1954, '55, worked for Fuller Austin at Casper Wyoming Texaco Plant - probably Pabco products. What --

MR. TUCKER: Your Honor, we are going to object to these cards when and if they are offered and certainly would object to reading portions of them. We object to the cards because they are hearsay, because they contain information apparently written or collected from hearsay sources and no opportunity to cross. We have filed a written objection to this matter and we -- which I believe -- I called the Court's attention to it in chambers. We argued all of those objections, particularly the hearsay and no opportunity to cross as to the source or authenticity of this information.

THE COURT: There is no question but the information is hearsay, but the

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 256 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/256

255

Court feels that under the circumstances we will admit it.

The objection will be overruled.

MR. WELLER: Before the Court admits it, I wish it would hear the testimony of Mr. Borel in regard to the cards. His statement was that he phoned various people and talked with various people, and based on what they told him he put the information on the cards. In other words, we have double hearsay.

THE COURT: I suppose this came out in his deposition?

MR. WELLER: Yes, sir. It will come out in his deposition.

THE COURT: Well, can you make any stronger objection than it is hearsay?

MR. WELLER: Yes, we can.

THE COURT: Can you get any more stronger admission, the fact that the Court says there is no question about it being hearsay. Why do you want to make

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 257 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/257

256

more objection about it being hearsay?

MR. WELLER: I would make the -- add to the further objection that Mr. Borel testified during his lifetime and therefore this could not be original evidence and should be based upon is testimony.

THE COURT: Objection overruled.

MR. STEPHENSON: We would like to introduce the cards at this time if I may, Your Honor.

THE COURT: All right.

THE CLERK: Plaintiff's Exhibit 10.

MR. WELLER: Your Honor, on behalf of Fibreboard Corporation, I make the specific objection that this list tendered under Fibreboard, certain dates, certain jobs, for example, with the words manufacturer unknown probably Pabco Products because this is too vague and indefinite, might have used Pabco and they got '58, they show Caltemp whereas the witness testified on his deposition that he used Unibestos. So

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 258 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/258

257

therefore, I would object and also on another time he testified in lieu of the products that he listed that he used a different product. Therefore, with these speculating comments I would like to object to them as not being competent testimony.

THE COURT: Objection overruled.

MR. STEPHENSON: That is all the direct examination we have.

THE COURT: All right. Do you have any questions you would like to propound to the witness.

All right, you may step down.

MR. STEPHENSON: Your Honor, I have excerpts or sheets from the various hospitals that Mr. Borel was confined in, but I think that generally all of the matters which I would want to point out to the jury have been brought out by depositions of the doctors. But I would like to at least tender these records so that in the event the jury wishes to look at them they might

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 259 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/259

258

do so.

THE COURT: All right.

THE CLERK: That will be Plaintiff's Exhibit 11.

MR. WELLER: Could we see those because these are not all the records.

MR. STEPHENSON: Not all the record. All the records are very voluminous, Your Honor.

I would like to read the summary.

MR. WELLER: Pardon me a moment. Your Honor, we would object to the offer of part of the records. They are not material. The testimony has already gone in from each and all of the medical witnesses who testified to the matters. So I would object to the offer of these statements from the hospital records and not complete.

THE COURT: Objection overruled.

MR. STEPHENSON: I would like to offer a summary, Your Honor, of Mr. Borel's deposition.

THE COURT: Mr. Borel's deposition?

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 260 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/260

259

MR. STEPHENSON: Yes, sir. It is very short, Your Honor.

THE COURT: I believe we will wait until the morning to hear this. And you have one other witness, I believe you said.

MR. STEPHENSON: Yes, sir, I do.

THE COURT: You anticipate it will probably take about an hour for her?

MR. STEPHENSON: Yes, sir.

THE COURT: All right. Gentlemen, you can judge by this time schedule and Ladies and Gentlemen of the Jury, the Court will give you this information. We are going to recess at noon tomorrow. I would like to ask for you to be here at nine in the morning if this wouldn't work a hardship on any of you.

All right, then, you will be excused at noon tomorrow and we will adjourn until Monday. You will be off during that period of time.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 261 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/261

260

We will stand in recess until 9:00 o'clock tomorrow morning.

THE MARSHAL: Everyone rise.

REPORTER'S NOTE: Whereupon, at 4:30 o'clock p.m. Court adjourned for the day.

The Borel v. Fibreboard Case File (1969-1972), Trial transcript, volume III
ACL Doc 10244 · Page 262 of 262
Published by AsbestosClaims.Law
asbestosclaims.law/library/10244/262