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. FOUR

HEARD AT: Beaumont, Texas

ON: September 24, 1971

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JERRY T. BLOXOM

OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
BEAUMONT, TEXAS

EASTERN DISTRICT OF TEXAS

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September 24, 1971

9:30 A.M.

THE COURT: I see everyone arrived on time this morning. Mr. Stephenson, we are ready to proceed.

MR. STEPHENSON: Thank you, Your Honor.

MR. TUCKER: Before we resume we have a witness that is coming in to be here, Mr. Pate has gone to meet him now. I understand we will be allowed to put him on out of order when he arrives, is that correct?

THE COURT: Do you want to use him now?

MR. TUCKER: Mr. Pate is meeting him at the airport now, Your Honor, we would like to use him this morning.

THE COURT: We will see that he is used this morning.

MR. STEPHENSON: Your Honor, I would like to show the jury the cards of Mr. Borel's work record that was introduced as Plaintiff's Exhibit 10

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yesterday.

THE COURT: All right, you may do so.

MR. STEPHENSON: Your Honor, we would like to introduce the slides which we have previously shown for the record and to give the Clerk's office a copy of these slides so that they may be included in the record.

THE COURT: You may do so over any objections that may have been made.

MR. STEPHENSON: Yes, sir.

Your Honor, Mr. Arnold and I have entered into a stipulation, a short stipulation concerning Armstrong Cork Company and Armstrong Cork Contracting & Supply. If I may read that, please?

THE COURT: Yes.

MR. STEPHENSON: It is stipulated by and between plaintiff and the defendant, Armstrong Cork Company, acting through their respective attorneys

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of record, as follows:

1.

"That Armstrong Cork Company is a corporation duly incorporated under and by virtue of law. That at all times material hereto it was a subscriber of workmen's compensation law, and had in its employ more than three employees.

2.

That Armstrong Contracting and Supply Company is likewise a corporation duly incorporated under and by virtue of law, that at all times material hereto it was a subscriber of workmen's compensation law of the State of Texas,and had in its employ more than three employees; that Armstrong Contracting and Supply Corporation is an affiliate of Armstrong Cork Company and was such at all times material hereto, and did asbestos insulating contract work. Armstrong Cork Company does not engage in the insulating contracting business."

MR. STEPHENSON: Your Honor, I have a short deposition prior to this that -- the first attempt to take Mr. Borel's testimony, and I would like

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to read this for the benefit of the jury before I read Mr. Borel's deposition summary.

THE COURT: All right.

MR. BARNES: May I ask the Court a question? In connection with the deposition of Mr. Borel, on behalf of the Ruberoid Company I would have an additional objection to the use of the cards and in order to save time would the Court grant us permission to make these objections in behalf of our individual clients at a later time?

THE COURT: Yes, you may do so.

MR. BARNES: Thank you, sir.

THE COURT: You may proceed.

BY MR. STEPHENSON:

This is entitled, it started out:

"Be it remembered that on the 23rd day of April, 1970, at 10:00 o'clock A.M., in the residence of Mr. Clarence Borel, 4500 Longdale, Groves, Jefferson County, Texas, before Mrs. Edna Labove, Court Reporter and Notary Public in

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and for Jefferson County, proceedings were conducted as follows:

Beginning by myself.

Q You and Mr. Ben Reynolds questioned Mr. Borel and we are going to have to limit it to about an hour and if you all need some more time we will come back for another hour."

MR. WELLER: If the Court please, now we object to this, this was a preliminary matter that was taken care of by the Court. It is irrelevant and immaterial to any issue in this case and it is only offered here in an attempt to prejudice the defendants.

THE COURT: I doubt the materiality of it, Mr. Stephenson, I think I will sustain the objection.

MR. STEPHENSON: All right, sir, thank you.

Your Honor, I would like at this time to re-offer the two medical articles by Dr. Selikoff and others which you have heretofore sustained an objection to but my offer now is not for

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reading from the articles but for the purpose of showing the bibliography and number of articles referred to in these two articles towards the end of establishing this state of knowledge.

THE COURT: All right.

MR. STEPHENSON: If I may offer these, please.

MR. WELLER: Your Honor, may we have the same objection that we had before to the offer of the articles heretofore stated?

THE COURT: You may without restating them.

MR. WELLER: The articles, the bibliographies refer to certain specific portions and, therefore, the bibliography itself would be misleading.

THE COURT: Sir?

MR. WELLER: It would be hearsay.

THE COURT: Objection will be overruled.

MR. STEPHENSON: Your Honor, should

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I submit these reference articles and request the jury not read the remainder of the article?

THE COURT: Yes.

MR. WELLER: Please identify the articles.

THE CLERK: Plaintiff's Exhibits 14 and 15.

MR. STEPHENSON: Number 14 is the "Occurrence of Asbestosis Among Insulation Workers in the United States", by Dr. Selikoff, Churg and Hammond; and the other is an editorial, "Asbestosis and Neoplasia", by Dr. Selikoff, Richard Bater, Mortimer Bater, Dr. Churg and Hammond.

MR. WELLER: Will you please show the date of publication of the record itself, please, for these, 1964 or '65, 1965 was the date of publication.

MR. STEPHENSON: Your Honor, I would like to read, if I may, the summary of the deposition of Clarence

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Borel.

MR. DUNCAN: Excuse me, sir. Mr. Stephenson, will you admit that these articles were published in December 31, 1965, in the annals of the New York Academy of Medicine?

MR. STEPHENSON: Now I hesitate to reply, Your Honor, he has addressed me, not the Court, but whatever --

THE COURT: You may reply to it, if you do not wish to reply to it we will take it up later.

MR. STEPHENSON: Whatever the articles show I will be perfectly happy for that to be known.

THE COURT: All right, you may offer Mr. Borel's deposition.

MR. STEPHENSON: This is a summary, Your Honor, which I prepared and furnished counsel a copy. I, speaking of myself, advised Mr. Borel what a deposition was, and, just one moment, please.

(At this point there was a pause

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in the proceedings).

MR. STEPHENSON: If I may start again I would like to read the first page or two of the deposition, the questions and answers.

READING BY MR. STEPHENSON:

"Mr. Borel, my name is Ward Stephenson, I am your attorney in this lawsuit we have filed against several asbestos manufacturers and distributors. We are going to take your deposition this morning. I haven't had a chance to go over with you exactly what a deposition is but it means that you are under oath as the Court Reporter has sworn you. Your testimony will be taken down and transcribed just as though you were in the courtroom and can be used by any of the parties in court. Do you understand that?

A Yes, sir.

Q It has the same significance as though you were sitting in the witness stand in the Federal Court Building, giving your testimony. Now you will have to speak out because Mrs. Labove can't

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watch you and watch her pad at the same time. Try to speak out as loudly as you can.

A Okay.

Q Now we are going to try to take your deposition. If you get tired, tell us and we will stop and let you rest and we want to get as much done as we can today and then we will come back tomorrow, but we will have to depend on you to tell us when you are getting tired and when your mind is weakening. If you don't feel like that you are able to think clearly or something like that why you let us know, will you do that?

A Yes.

Q And state your full name."

Mr. Stephenson summarizing the deposition of Mr. Borel:

Mr. Borel was born August 14, 1912, at Jeanerette, Louisiana. He is married and has six children. All of his children are married. He has been following the trade of an insulator since 1937, and he has had occasion in the years intervening to

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work with materials containing asbestos.

He has been a member of the Union since 1944. He has taken his W-2 forms --

MR. WELLER: Your Honor, may we object here, this refers to W-2 forms and we object that this is hearsay and adopt all of the motions, all of the objections in a written motion. The W-2 forms have not been produced, they were only produced for a short period of time, three or four years, and in this summary it has the effect of Mr. Stephenson testifying and not the testimony of Mr. Borel.

THE COURT: Objection overruled.

Mr. Stephenson continuing the summary of Mr. Borel's deposition:

He has taken his W-2 forms and compiled a list of the places he had worked, the years that he worked there and the company for whom he worked, and my secretary, in turn, typed up

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the information given to us by Mr. Borel, and this compilation of the records was made from his own memory, coupled with the W-2 forms which he had. I handed to Mr. Borel the cards used to refresh his memory as to the places that he worked and the materials he had used --

MR. WELLER: May we, without continuing to object, state that some of these statements in the deposition are not correct and we would rely on the deposition as written. Therefore, I may be able to point it out on the cross examination but --

THE COURT: All right, you may offer any portion of the deposition that you wish which you think would be in conflict with the summary presented by Mr. Stephenson. Also, any objections that you wish to make to any portion will be considered made at the time to the effect of the item that you had mentioned, namely, hear-

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say or inaccuracy, and you will not have to make specific objections.

MR. WELLER: All right, the first sheet of paper, for example, we don't produce things like that --

THE COURT: All right, make a better presentation, otherwise you will be making an objection all the time.

MR. WELLER: Yes, sir, that's correct.

THE COURT: It would be better, and the Court will give all the defendants this privilege of having a running objection.

MR. WELLER: Thank you, Your Honor.

BY MR. STEPHENSON: (Continuing the summary of Mr. Borel's deposition).

He then started out by stating that he had worked for Armstrong Cork Company in 1958, in Topeka, Kansas. In 1960 and 1961, and down to 1967, he worked on the du Pont job for Arm-

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strong in Beaumont, and in 1966 or '67, at the Texas Company in Port Arthur. That while he had worked for Armstrong the materials he used were asbestos and every bit of material that he used had asbestos in it, that he had worked with Armstrong Cork products many times.

Nuarco Industries: Fuller-Austin, Aber Company, Industrial Insulators and Fluor Corporation. He worked for Fuller-Austin in Jefferson Chemical and at a plant in Winnie; he worked also for the Aber Company at Jefferson Chemical; He worked for Fuller-Austin in Casper, Wyoming, at the Texaco plant. He worked for Fuller-Austin in Lake Charles for many years, and in 1958 he worked for the Aber Company at Mobil Chemical.

He had worked with Unibestos pipe covering and block insulation material he used Nuarco board and insulating cement made by Nuarco called

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One Cote.

Mr. Borel further testified that he had occasion to use Ruberoid products and had used a material called Calsilite, 7-N cement and asbestos insulating and finishing material, 7/NA 100 insulating jackets manufactured by Ruberoid.

That during his lifetime and his work life he used materials manufactured by Pittsburgh-Corning Corporation, Philip Carey Corporation and products and that Philip Carey was one of the main manufacturers and Mr. Borel stated that he had used their products many, many times.

That during his work life he has on occasions used Fibreboard Paper Products Corporation materials, as well as Eagle-Picher Industries products and products and materials manufactured by Combustion Engineering Company.

Mr. Borel prepared the sheets of

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paper I have, he dictated them to my secretary and these sheets of paper accurately reflect to the best of his recollection where he had worked and the materials that he used.

He further stated that he has used all the materials shown on the cards and that there was no doubt about that. He stated that he used the W-2 forms to refresh his recollection and memory as to what jobs he worked on and then he used his memory as best he could, and that the cards accurately showed the materials that he used on the various jobs to the best of his memory and recollection. He stated that he provided the information to the law firm of Stephenson & Thompson, which was then taken by one of the secretaries and typed up at the request of Mr. Borel and that these cards and the material contained on the cards are material that he got from his own recollection

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and from his W-2 forms. He used the W-2 forms to, "kind of bring my memory as to what jobs I had worked on". Then he used his memory as best he could and the cards to show the materials that he used on the various jobs to the best of his memory and recollection.

Further testifying, Mr. Borel said that he first noticed the symptoms of asbestosis about a year before the deposition was taken in April, 1970, when he noticed that he was getting real short-winded. At that time he went to Dr. Kenneth R. Watkins, his family physician, in Groves, Texas. That when Dr. Watkins first saw Mr. Borel he made an examination, had X-rays taken and, in turn, sent Mr. Borel to a specialist. This specialist was Dr. Milton R. Self, of Beaumont. He made tests for seventeen days and following that he went to see Dr. P. O. Jones in Houston, who is a chest

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specialist for lung and chest diseases. Dr. Jones put Mr. Borel in the hospital in Houston, Texas, at Memorial Baptist Hospital, where he was again tested, and at the end of five days the diagnosis was asbestosis.

Then Mr. Borel testified to the type of operation he had and the testimony bears out Dr. P. O. Jones' deposition, where they cut his chest open, where he was in the hospital fourteen days and stayed in his son's home in Houston, Texas, a few days because he was too weak to return to his home in Groves. He went back on other occasions and at the same hospital in trying to get the fluid off his chest. They stuck needles in his chest and a needle in his back. His suffering became so severe until he went back this last time to Dr. Jones and they recommended that Mr. Borel be put in the hospital to see what was causing this pain. Mr. Borel

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stated that he had been bedridden ever since this last surgical procedure to remove his lung, that he has suffered pain continuously night and day for thirteen or fourteen months. That the pain is so severe that it would take his breath and he was so nervous he couldn't stand his wife or anyone talking on the telephone when the severe pain hits him. It wakes him up at night and he has been waking at least three or four times every night and not able to sleep without having to take shots to get back to sleep. In addition to the shots he took medication all day and during the night for pain every four hours.

Mr. Borel testified that in applying the asbestos materials manufactured by these defendants that they had to be sawed, cut and hammered, mixed and so on. It's just like building a house, you have to make

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every piece fit. You have got hangers and you have got pipes coming out of the pipes and you have got an awful lot of sawing. There is very few sections of pipe covering you apply that you don't have to do something to it, saw it or beat it and you will have to beat it with your mallet in order to make it come together and this creates a lot of dust.

The mixing cement comes in fifty-pound bags, you have to pour it in a trough or bucket, whichever amount you want to mix, and when you do there is an awful lot of dust coming out of it and Mr. Borel said, "And they tell me that's pure asbestos, that stuff coming out of the bags". Mr. Borel said that he knew this of his own knowledge, that this asbestos dust up into the person's face who is applying the product through the air every time you open your bags.

Mr. Borel further testified that

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he has used every type of respirator he knows of and you can hardly breathe with them. On these jobs where he was working if you didn't get up there and apply so much material and make a good showing you couldn't stay on the job and you would be fired, and you would have to work fast and you can't breathe with the respirators the employers furnished. At no time did anyone ever tell him that these materials were dangerous to his health.

Mr. Borel further testified that he had never seen any representative of these companies that this suit is brought against out on the job trying to devise some technique to use their product safely without the dust coming up into his mouth, nose and lungs.

He stated that it is true that even though you were working on a metal building that in a room or area where other asbestos workers were

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applying asbestos materials there would be dust in the room.

Concerning the question as to whether or not he smoked, Mr. Borel does not smoke, he smoked when he was a young man for about five years but it has been twenty-five years or better since he smoked.

He testified that at the end of a day working with asbestos his clothing was so dusty until he could hardly bear to pick them up without shaking them and when you just move the clothes a little there was going to be dust in them. He has blown this dust out of his nostrils by the handfuls at the end of a day, trying to use water and even Mentholatum to put into his nostrils to try to keep some of this dust from going down into his throat, but it is impossible to get rid of it all with your clothing staying dusty continuously unless you blow it off with an air hose.

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That the boxes the material comes in are dusty and dust comes up just simply opening the boxes and that in all the years in his experience as an insulator he was never told any way how to open a box of insulation material without the dust flying up into his face.

He stated that his medical expenses were running right at $10,000.00 at the time of his deposition.

Mr. Borel testified that throughout his early life and back five or ten years ago he was a man in good health, had no pains except those that came with lung congestion, which he had put off as pleurisy, and that at the time of taking his deposition he had pain located in his right chest running down to his back into his hips. That all he had been able to eat was Cream of Wheat and Jello, beef bouillon, water and soup and that was the extent of it.

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"I tried to eat meat", he said, "But I just can't even swallow it". He said he lost his appetite and was taking glucose and he wanted to come home from the hospital against the doctor's recommendation, but being at home where his wife could give him the same medication he was receiving in the hospital. The last two or three weeks he said he had lost a considerable amount of strength. "I can tell by not being able to walk", he said, "And some of them ask why don't you just stand up and try. Well, I fall on the floor and black out. I just don't have the strength to sit up over five or ten minutes at a time; just to sit up the room goes around and I become weaker in the last three weeks than I have ever been in my life".

The scale of wages he was receiving as an insulator before he had to stop work was $5.45 an hour. The scale is larger now and the Union has

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had two raises since Mr. Borel's confinement.

On cross examination Mr. Borel testified that he started in 1936 working at Texaco and was using Johns-Manville, Philip Carey, Standard Asbestos and Armstrong And Mundet Cork Manufacturer's products. That back in the early years he breathed asbestos in and it caused difficulty with his sinus and he could hardly breathe. He spit it out and sometimes it would get down in his throat and no mask or respirator was furnished to him.

He first worked six years as an asbestos worker for Texaco and he continued to breathe the asbestos dust all during the six years.

He further testified that he went into the shipyard, the Weaver Shipyard, in 1942, after he quit Texaco in order to go to work in a defense plant, and he worked there for five

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years at Weaver and was exposed to asbestos dust.

He further testified on cross examination that he knew that he was inhaling dust but he didn't know it would affect his lungs and no one ever told him that it would.

He further testified that if the weather was cool he could use a respirator, but if it was hot he couldn't use one at all, that it was very uncomfortable to breathe.

BY MR. STEPHENSON: Now that concludes the summary which I have prepared, Your Honor, but I would like for the jury to know that this deposition was taken on April 30, 1970, at 9:15 A.M., and continued daily thereafter until it was completed.

THE COURT: All right, Mr. Tucker.

MR. TUCKER: Your Honor, our witness has arrived and we would like to put him on now, if possible, and

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then we would --

THE COURT: I think maybe it doesn't matter to the Court, do you have any objections to the use of the witness?

MR. STEPHENSON: Whatever the Court wishes, Your Honor, I just have one witness --

THE COURT: What is your pleasure, Mr. Tucker?

MR. TUCKER: We would like to get him on and make sure we finish with him this morning and we have some of our, of their defense --

THE COURT: All right.

MR. PATE: Dr. Wild is in the hallway.

HANS WILD,

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

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DIRECT EXAMINATION

BY MR. PATE:

Q Would you give us your full name, please, sir?

A Hans Wild.

Q Dr. Wild, will you speak out now clearly and with distinction in order that all the jury may hear you?

Where do you live, Doctor?

A New Orleans, Louisiana.

Q And what is your occupation or profession?

A I am a physician.

Q And will you give us a very brief summary of your educational background?

A Yes, sir, I graduated Tulane Medical School in 1958, interned in New York, but came back for residency in internal medicine to New Orleans, continued on in sub-specialty work in pulmonary diseases and I remained at Tulane since that time. I am now Professor of Medicine at the Medical School.

Q You are licensed to practice medicine in the State of Louisiana, is that correct?

A Right, sir.

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Q Are you licenses on file with the proper authorities in the parish in which you reside?

A They are, sir.

Q All right, sir, now, Doctor, I believe you stated that you are Professor of Internal Medicine at Tulane, is that correct?

A That's right.

Q Do you do any practice in addition to that or do you confine yourself to your teaching position?

A Yes, sir, I do consultative practice in addition to my teaching and research.

Q And how long have you been connected with Tulane?

A As a member of the faculty since 1961.

Q All right, and would you tell the jury what particular field you specialize in, if any?

A Yes, sir, my field of specialty is pulmonary diseases and pulmonary functions, pulmonary physiology with a special interest in occupational and environmental lung disease.

Q Would you explain that just a little so the jury would better understand it?

A Yes, sir, the special interest that I occupy

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myself with primarily is the effect of adverse environmental conditions, whether they be in the occupation or elsewhere on the lungs, which would include then lung diseases that are related in some way to exposure within a job or factory or industry or something like that.

Q Are you a member of any medical boards, Doctor?

A Yes, sir, I am certified by the American Board of Internal Medicine and in pulmonary diseases. As a specialty.

Q All right, sir, have you written any papers pertaining to your specialty or contributed to any medical journal?

A Yes, sir, I have written a number of papers in the specialties that I have indicated.

Q All right, sir, Doctor, are you now or have you been engaged in any in depth studies, we will say, concerning pulmonary diseases?

A Yes, sir, most of my research within this ten-year period that I have been at Tulane has been in the field of environmental occupational lung diseases which includes a number of large research projects. I am at present engaged in

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one which is applicable to this procedure I believe in asbestos workers in the New Orleans area.

Q All right, sir, have you had an occasion, Doctor, to see many or few people who had asbestosis?

A Yes, sir, I have seen many people who have had asbestosis.

Q Would you give the jury some idea of the numbers?

A Well, they would -- I would assumedly say that it has been more than one hundred with the disease. I have seen many more individuals who have been occupationally exposed to asbestos. As a matter of fact, in the study that we are in our third year of at this time we studied over one thousand workers who have been exposed to this material. Some of those have the disease called asbestosis and in addition to that throughout the ten years as a consultant in pulmonary diseases I have seen quite a few other cases from other types of exposures.

Q Do you have occasions to see many people on a referral basis, on a consultation basis?

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A Yes, sir, that's correct. My practice is limited to consultation or referral.

Q And do I understand then other doctors there refer many patients to you who are suspected of having asbestosis, is that correct, sir?

A Yes, sir, included in the types of patients that I see would be those types.

Q All right, you mentioned a minute ago something about a study you had been involved in for a period of some three years. Will you tell the jury what type study that is?

A Yes, sir, this is a study of workers who are exposed to asbestos and other dust within the asbestos-cement industry, the construction, manufacturing industry in the New Orleans area. These workers are studied extensively clinically with very complete pulmonary function studies, X-ray-wise. There exposure is evaluated and we are now in the process of compiling this data and trying to assess what type of exposures are related to what type of biological or medical effect.

Q Doctor, we are concerned here in this case with a man, Mr. Clarence Borel, who was an in-

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sulator for a period of some thirty-three years and that is, a man that worked with insulation material in the field as opposed to a textile worker. I would like to ask you this question, tell the jury, give the jury any idea as to when the general public, that is, first became aware of or the people started focusing on insulating workers as being seriously involved inasfar as asbestos is concerned.

A Yes, I think that general information regarding the risk of exposure to asbestos products in the insulation trade could be placed at or around 1965. Following publications and a presentation at a meeting in the New York Academy of Science some work has been done in the New York area on insulators and their health effects.

Q Since that time has there been considerable research and attention called to the insulators, Doctor?

A Yes, that work which was first presented and published at the time I indicated has continued and there is a good bit of activity in this area continuing up to the present time and I am certain will continue in the future.

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Q Prior to that time I am sure asbestosis was recognized among scientists and medical doctors, is that correct?

A Yes, sir, asbestos fibrosis of the lungs has been recognized for a number of years prior to that time by physicians and people interested in this area of medicine.

Q All right, are you telling the jury then that prior to the meeting of the New York Academy in 1965, that no particular emphasis had been placed on the problem inasfar as the insulators were concerned?

A I think that is a fair statement, no emphasis has been placed on the problem which was encountered by the insulators of these products, that is, the insulators of it out in the field, outside the factory environment.

Q Now, Doctor, is there any way medically or scientifically speaking to determine if a man has worked in this field for a period of time, we will say some thirty-three years, as to what exposure or when he would have caught the disease of asbestosis or mesothelioma, assuming that he had either or both?

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A Well, if I understand the question right you are asking specifically which exposure in regard to products or composition of products could reasonably be expected to be associated with one of the health effects that you mentioned, specifically asbestosis or mesothelioma.

Q That's correct.

A The answer to that question is there is no way of knowing which type of fiber or which product specifically would cause one or both of those diseases.

Q Why, Doctor?

A Well, the information just isn't there. The difficulty is, of course, that exposure with two minerals of this sort is an accumulative thing over many, many years and the end result, if it is adverse, such as asbestosis or mesothelioma, you have got an X number of products and fibers and so forth on one side and the health effect or biological effect on the other side and there is just no way that anyone is aware of at the present time to know which of those did the damage or caused the disease.

Q All right, sir, now with reference to the

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disease of mesothelioma what is the average time for that disease to develop after exposure, Doctor?

A The predominant view among scientists working this field and my view, that is, twenty to thirty years. It would be a rather large period of time required for this tumor to develop. As a matter of fact, in most instances it takes longer than that, it is possibly closer to forty years, but certainly some cases have been associated with exposure that was quick, twenty years perhaps.

Q As I understand the disease mesothelioma, it is a form of a cancerous tumor?

A Yes, sir, that's right.

Q Do scientists at this time know what causes it, Doctor?

A Well, one knows really little about causation of very few diseases. The answer to that strictly interpreted would be no, that the cause of the tumor is not known. There are some associations.

Q All right, Doctor, you had an opportunity to review summaries of the various doctors' deposi-

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tions that saw Mr. Borel during his lifetime and also to review his X-rays, is that correct, sir?

A Yes, sir, I reviewed some depositions and have reviewed the X-rays extensively.

Q Did you in viewing the X-rays find evidence of asbestosis in the X-rays or not, sir?

A No, sir, I found no evidence of diffused fibrosis in the lungs, which would be consistent with asbestosis.

Q What did you find, Doctor?

A Well, from nineteen, excuse me, let me refer to my notes on this if I may. I reviewed films from 1964, 1965 and 1967, and those films in my opinion are clear of any disease, were clear of any disease.

Q Which one, so that the jury can --

A Specifically the dates and what it is?

Q Yes.

A 9-10-64, 9-25-65 and 7-17-67.

Q Were clear of any disease?

A Were clear of any disease.

Q All right, did you see X-rays that were taken after that?

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A The next films that I have listed here that I reviewed was January 23, 1969. That film and subsequent films in 1969, and I can give you the exact dates if you like on those, revealed a pleural diffusion, that is a shadow in the right chest, right portion of the chest which was characteristic of something affecting the lining of the lung. That is the pleura, that is spelled p-l-e-u-r-a, the lining of the lung, and from an X-ray standpoint that was all there was. The lungs themselves, both the lung on the right side where the pleura shadow was obvious and the entire left lung was clear of any radiographic X-ray abnormalities.

Q Can you describe very briefly what shows up in X-rays if a man does have asbestosis?

A Yes, sir, of course, this is one of our great interests and we have had a lot of experience with that, and the work that I have indicated to you before in the X-ray findings in asbestosis revealed fine, small, widely-disseminated nodules, that is round and linear that is shadows on the lungs since the minerals that is inhaled get into both lungs these changes are

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first subtle and they progress, they start usually in the lower lobes and extend throughout both lungs as the disease progresses.

Q Now the condition you found in the right lung, could it have been caused by something other than the asbestos fibers?

A Well, as a matter of fact, there was nothing about the X-ray findings, the pleural change that I have mentioned which suggests asbestosis, but, of course, it could have, the pleural change could have closely been associated, but there were no changes in the lungs that were indicative of that condition.

Q Do I understand you to be saying that is a unilateral problem in that only his right lung was affected inasfar as his X-rays were concerned?

A That's correct.

Q Have you ever in your experience, Doctor, seen or some in contact with a case of unilateral asbestosis?

A I have not.

Q Do you know of any cases as far as your research or reading is concerned?

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A I know of no cases where asbestosis affected only one lung.

Q All right, sir, well then your medical opinion, or do you have a medical opinion as to whether or not Mr. Borel had or did not have asbestosis?

A My opinion on the basis of the review of the X-rays through March 22, 1970, is that he did not have asbestosis.

Q All right, sir, did you arrive at a conclusion as to what he did have, Doctor, if anything?

A Yes, sir, the conclusion is very strong, the impression is very strong that man had a pleural mesothelioma or a pulmonary pleural tumor which in the absence of evidence of tumor elsewhere which certainly would be consistent from X-rays and clinical standpoint which mesothelioma, I haven't reviewed the slides and I understand that no thorough post-mortem examination was performed but what information we have would certainly be consistent with that, one could not say conclusively that that was his diagnosis on the basis of the information that I have here.

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Q What would be necessary to conclusively establish what he did have, Doctor?

A Well, the conclusive establishment of that diagnosis in my view and in most people's view would be a complete examination to exclude the possibility that this pleural tumor was the result of spread from some other pulmonary site within the lung or outside the lung, in the abdomen, pancreas, stomach or other organs.

MR. PATE: Doctor, I believe that's all I have at this particular time.

THE COURT: Mr. Stephenson.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Doctor, I am not sure I got your last name so I can pronounce it correctly, I have it Wild.

A Wèill, W-e-i-l-l.

Q Doctor, I am sure you know of Dr. Irving J. Selikoff?

A I do, sir.

Q Do you know him personally?

A I know him personally.

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Q Do you know Dr. Harriet Hardy?

A I don't know her, I know who she is.

Q Do you know Dr. Dan Jenkins, Baylor University?

A I know Dr. Jenkins.

Q Of Houston?

A Yes.

Q Do you by any chance happen to know Dr. P. O. Jones in Houston, internal medicine specialist?

A No, sir, I don't.

Q Let me ask you a little background, if you don't mind, about asbestosis. I think we have heard enough already to know that asbestosis cannot be caused by anything other than breathing asbestos dust, do you agree with that?

A Yes, sir, that is a fair statement.

Q And I think we know enough also to believe that asbestosis does not readily manifest itself by X-ray finding until after the lung has entered some abnormal condition such as fibrosis, in other words, you can't photograph it, you can't X-ray it, X-ray the fibers of asbestos in the lungs until they cause some irritation of the

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lungs?

A Part of the definition of asbestosis would have to include fibrosis in the lungs. Once the fibrosis takes place it should be radiographically apparent so that I think it would be difficult to make a diagnosis of asbestosis without some changes on the film, changes occur rather early, as a matter of fact.

Q And usually there are diffuse X-ray findings in the lower lobes of the lungs?

A Yes, they certainly start in the lower lobes.

Q There is no question about starting in the lower lobes?

A Right.

Q And frequently, do you know now that asbestosis has with it pleural calcification?

A Some cases of asbestosis have pleural calcifications. There is pleural calcification as well in people exposed to asbestos who have no asbestosis.

Q Pleural calcification being the linings of the lung which you referred to in your direct examination known as the pleura?

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A Yes, sir.

Q And the spikial or fibers of asbestos enter into the pleura and work up and down in an irritating fashion causing this calcification?

A That is a reasonable sequence of events.

Q That's the way it is?

A Yes, sir.

Q And when the fibers go from the pleura to the peritoneum through the, more or less, outside of the lung, as I would call it, you might help me, I am not certain in my medical language here.

A Yes.

Q But my understanding is that these fibers pierce through the pleura and work up and down in some fashion causing pleuracation and calcification of the peritoneum?

A No, sir, of the pleura.

Q Pleura, yes, sir. And this takes some time I understand, from exposure until this becomes apparent by medical X-ray or study?

A Yes, sir, the pleural changes take sometimes many years to develop.

Q All right, now, Doctor, asbestosis itself

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has been known about perhaps for seventy-five or maybe even one hundred years. Do you agree with that?

A Yes, sir, I think Dr. Meriwether's report in 1930 was -- is the date that most workers use as a time when the disease as an occupational hazard became generally appreciated.

Q Are you familiar with the work that Dr. Cook did in 1907?

A Yes, sir, I am.

Q And are you familiar with a particular work he did entitled "Pneumoconiosis Due to Asbestos Dust" with a Dr. Hill in 1927?

A I have seen references to that work but I haven't read it.

Q You haven't read it, you say?

A That's right.

Q Doctor, I have talked before about this and I might mention it, is it not proper and correct for one doing medical and scientific studies to research the background and history of a matter that he has under study, to read and gather all the knowledge that previous writers have done before him?

A Without question.

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Q And actually you would be in default if you didn't research the history of this study?

A Of course.

Q Certainly. So I am sure you did that before undertaking your study of asbestosis among workers in New Orleans?

A That's right, sir.

Q As a lawyer and certainly not in any way qualified medically, I have been able to accumulate for my own bibliography twenty-two legal pages of references to medical articles and writings, would you say that you found that many, or perhaps I am sure more?

A Yes, sir, there are a large number of articles in medical literature on asbestosis, disease.

Q Could you tell me, Doctor, how could we explain that a company entered into the asbestos insulating business making asbestos materials in the early 1900's and never made a single test to determine what the effect of this material would have upon the workers? Did you observe that in your studies that this was the case, that no company had ever made any studies to see what

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the effect of this material would have upon the worker using it?

A No, sir, that's not my impression. I am not an expert on what industry has done in the medical surveillance programs but I don't think that is correct.

Q All right, sir, can you tell me -- let's say before 1968 or 1969, can you tell me the name of any manufacturer who did make any type of study such as I mentioned?

A This would be in the industry-wide, not specifically relating to insulation or --

Q This would be relating to the asbestos insulating products.

A No, I am not aware personally of any studies that industry did prior to that time on health effects of people utilizing the insulation product, but that doesn't mean that they don't exist.

Q Well, but as far as within your expert knowledge you know of none?

A Yes, sir.

Q Is that correct?

A That's right.

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Q Doctor, without going through my twenty-two pages here of bibliography, can we agree that by let's say certainly the 1935's there were literally dozens and dozens of articles dealing with asbestosis and its effect upon man?

A Prior to what year, sir?

Q 1935.

A Yes, sir, there were a number of articles prior to 1935 dealing with asbestos exposure and its effect on man but these were rather specific types of asbestos exposure related almost exclusively to the asbestos textile industry.

Q All right, sir, now have you done any work concerning the textile factory, of the mills, have you done any investigative work of them?

A No, sir, we have neither of those in our part of the country.

Q In your study have you done field examinations or study, that is, I mean go out into the field where the worker works to observe the working conditions?

A Yes, sir, I have.

Q Do you feel that anyone interested in know-

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ing the effects of asbestos on an insulation worker must certainly go into the field to observe what is happening to him, that is a very common, accepted practice, isn't it?

A Yes, sir, that's right.

Q And a company manufacturing a product who never has went into the field to see what effect their product was having upon the worker would be terribly derelict, would they not?

A I am really not sure that I am qualified to answer that. I think most of the information regarding occupational hazards of all sorts are not uncovered by industry but are uncovered by scientists who look at the scientific aspect of it.

Q Do you advocate that as being proper, Doctor?

A Well, I think that we are in a changing world, I think that it has only been in recent years that public opinion and industry in general has accepted the responsibility for seeking out adverse health effects. I am, my business is health and, of course, I advocate finding out about problems as early as possible. The realities

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of the situation, however, are different and certainly have been different in the past years, as I say, up until very recently.

Q Is the asbestosis that a factory worker gets any different than the asbestosis and insulation worker gets?

A No, sir, but there is one, I suppose one slight qualification, in the factory, some factory workers, which would include the asbestos cement industry, are exposed to a mixed dust environment which would then influence the clinical and X-ray pictures because of other dust which also may produce some pathological change but, for instance, the asbestos textile industry with the exposures primarily of asbestos, the picture should be the same as an insulator who develops the disease.

Q All right, sir, generally speaking then I suppose we can say that the disease is the same, it is caused by inhalation of asbestos dust and wherever you inhale it, it doesn't make much difference?

A Yes, sir, I think considering that dose and time relationship may be different under

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different circumstances. A similar dose-time situation would produce a similar disease.

Q Now I take it by your testimony here on cross examination that you are not experienced in going into any mills or factories but do you know, Doctor, that --

A I have been in the factories, I am not experienced in mills.

Q All right.

A Or textile factories.

Q Well, factories that are making asbestos products, have you been in them?

A Yes, sir.

Q All right, and you have been in the field observing insulation workers as well?

A I have observed some insulation activities.

Q May I ask you this, in the factory the conditions are the same, that is, the machinery is in the same spot Monday of one week as it is Friday of the week before?

A I think in general the machines don't move about, I am not sure about that.

Q And the suction and air purification devices can be applied in factories much more

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readily and satisfactorily than they can be used by workers working in the field?

A I think in general that is a fair statement, that it is easier to provide adequate ventilation in the same place all the time rather than in changing situations.

Q All right, sir, so can we say that the exposure an insulation worker might experience in the field would be greater than the exposure of a factory worker in a factory that had somewhat adequate control measures?

A No, sir, I don't think that that follows, as a matter of fact, I think in general the overall exposure of insulators would have to be less than it is in many factory situations merely because there is less dust and also because in some insulating circumstances the ventilation is very good. It varies, of course, but they don't -- they aren't necessarily exposed to more dust because of the changing working situations.

Q All right, sir, Doctor, have you testified before, I didn't ask you that?

A In court?

Q Yes, sir.

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A Yes, sir, I have.

Q I understand now that inasfar as your testimony concerning Mr. Borel, you never saw him?

A That's right, sir.

Q And I presume that Johns-Manville attorneys, Mr. Pate furnished you with whatever information you used to come to an opinion?

A That's right, sir.

Q And you never saw the lung itself of Mr. Borel?

A That's right.

Q And do you feel that competent Board pathologists would be qualified having the lung removed from this man's body to make a diagnosis of asbestosis?

MR. WELLER: If the Court please, I object to this question because it was only five samples taken, the lung was not removed or diagnosed by any pathologist at all.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q The lung was removed from Mr. Borel, Doctor?

A Yes.

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Q And it was in the hands of the surgeon and the hands of the pathologist and the hands of the internal medicine man. The internal medicine man looked at it, and he described it as an old piece of leather that had been stomped on, did you read that?

A I think I remember the testimony.

MR. WELLER: I object to that question because it was not in the possession of the pathologist. The pathologist never saw that.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q Doctor, you and I read the same testimony in any event, have we not?

A I would presume so.

Q That is, that I referred to, I don't mean in general but the reference that I made to Dr. Jones' description of the lung and you and I both know what we are talking about there?

A Yes, sir.

Q All right, sir, so we know that Dr. Jones saw and observed those, have you read the pathologist's report also?

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A I have, sir.

Q All right, have you read the report of Dr. Rich, the surgeon?

A Yes, sir, I have his report, his operative notes which indicate what he found at the time of operation.

Q Have you read the hospital records which are replete with the word "asbestosis"?

A I have.

Q All right, sir, now you are saying to this jury that you come to a different opinion even though you have never seen the man and never seen the lung?

A Yes, sir, I am afraid that is the conclusion I have drawn and I will be glad to tell you why I come to that conclusion.

Q All right, Doctor, I would be interested in knowing that, but I will ask it in a moment. Now a man has one lung removed, what's going to happen to him if the other lung is removed, he certainly must die, I take it?

A Yes, sir, that is correct, notwithstanding some Texans transplanting hearts and lungs in people.

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Q Well, in any event, it would certainly not be an accepted procedure to remove both lungs in anybody?

A That's correct.

Q And so, this being the case when Mr. Borel had his right lung removed, this was a pretty serious, major type operation for anyone to undergo?

A Very definitely.

Q And then in June of 1970 he expired following this?

A Yes, sir.

Q Doctor, I will go ahead and let you tell me then why you think these two pathologists, an internal medicine specialist and a surgeon as well as the family doctor, were all wrong.

A Well, I don't think they were all wrong, I would disagree with their interpretation of the lung findings insofar as a diagnosis of asbestosis is concerned. The tumor which is apparently a mesothelioma is a tumor which characteristically produces scarring fibrosis, as a matter of fact, as I recall, there was also in the testimony that I read the indication

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that it was very difficult to even put a needle in the man's chest to draw off the fluid because the pleura lining was so hard, encasement of the lung by this hard tumor. Now the hardness is due to fibrosis. It is due to scarring and as this tumor grows and gets bigger it invades the lung and it produces this same fibrosis within the lung. If you remove such a lung after this tumor has gotten to be very large as it was here, one sees the tumor and lung which has fibrosis or scarring in it. But, if that scarring and fibrosis is related as I have indicated to the tumor but it also is a histologic picture which could be interpreted as being diffused asbestosis. But by the very nature of the inhalation of fibrous minerals such as asbestos over the many years that this gentleman was exposed to it, the very nature of that inhalation and that goes to both lungs, there is no way physiologically that someone can breathe in this material in one lung and not the other lung and the disease asbestosis is, as I have indicated, it affects both lungs. It must affect both lungs and it does also pro-

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duce a very characteristic X-ray picture, as I have also indicated previously. So that it is understandable that the examination of just the lung which was involved by the tumor could be interpreted as showing asbestosis, when in fact the fibrosis which was really what we are talking about was undoubtedly the result of the tumor and cause of the absence of bilateral X-ray changes. I feel that the diagnosis of asbestosis is not established.

Q One or two little questions, Doctor, why do you think that fibrosis was caused by the tumor as opposed to the asbestosis spicules?

A Because we know that the tumor produces fibrosis, it is a very fibrosing or fibrogenic tumor, because the other lung didn't have the changes in it, X-ray-wise.

Q I thought we had agreed earlier, and let me retract if we haven't, that asbestos spicules and fibrils cause fibrosis?

A They do, sir.

Q Okay. Now you say that also in the mesothelioma tumor it causes fibrosis?

A That's correct.

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Q So we have two things under your testimony that causes fibrosis?

A Yes, sir.

Q Asbestosis and mesothelioma tumor?

A That's right.

Q Did you notice in your reading that the pathologist had found that the fibrosis, the fibrotic tissue was surrounding asbestos particles?

A Yes, sir, I did notice that.

Q All right, sir, wasn't an interesting thing to you?

A Well, yes, it was interesting, it doesn't indicate that the fibrosis was related to the bodies, it indicates the bodies there and the lungs are being fibrosed.

Q The bodies were inside the fibrotic lungs?

A Yes, sir, that's correct, they can be engulfed by fibrosis, certainly.

Q That's right, and how else would the asbestos fibers cause a fibrosis other than around the fibrils?

A Well, we begin by the statement that asbestos bodies will be all over the lungs of an

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individual exposed occupationally to asbestos dust. We then go to the fact that a tumor has developed in the surrounding portions, that is the outer portion of the lung, which then encroaches on the lung as it grows. Eventually the fibrosis will be surrounding asbestos bodies.

Q All right, sir, let me go back this way. Mesothelioma does not have to be in the lung itself, it can be in other parts of the body, what is it, the peritoneum?

A Yes, sir.

Q And the peritoneum is in the stomach?

A The peritoneum is the lining of the inner abdomen.

Q The inner abdomen, as well as the chest cavity?

A Well, the peritoneum is not in the chest cavity, no, sir.

Q It's not in the chest cavity?

A No, sir.

Q All right, now we have a mesothelioma that can be in the stomach, can't it?

A It can be in the peritoneum, which is the outside of the stomach.

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Q All right, sir.

A Yes, sir.

Q I don't know the term but around the stomach?

A I understand, yes.

Q And we also have a mesothelioma that can be in the lung area?

A That's right, sir.

Q Or maybe within the lung?

A Well, it starts in the pleura and as it extends it can grow and it usually goes into the lung, it can go into the chest wall, go into the heart, it is a very aggressive, malignant tumor.

Q With that, let me keep that point in mind and I will ask you if you know Dr. Clark Cooper?

A I sure do, sir.

Q All right, sir, now do you agree with Dr. Cooper's testimony that mesothelioma is so characteristic with asbestosis that one would have to rule out all other causes?

A I don't think Dr. Cooper said that, you don't mean asbestosis there, do you?

Q Mesothelioma is so peculiar to asbestos

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inhalation or --

A To asbestos inhalation.

Q In other words, the number of people that have this mesothelioma that are asbestos workers far, far greatly exceed the average public having this disease?

A I feel that there is an association between asbestos exposure and the development of the tumor.

Q Right.

A So that I would agree with the statement I just made, asbestosis, however, is only seen in the minority of cases of mesothelioma.

Q All right, sir, thank you for helping me with my point, but the one I want to make was that mesothelioma is a characteristic outcome of asbestos?

A No, I wouldn't say that. Most people exposed to asbestos do not develop mesothelioma fortunately, so that would have to be rephrased, I would be --

Q All right, let me rephrase it. What I am trying to arrive at, Doctor, is most mesothelioma you find in people who are working with asbestos

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or at least the industry is so much greater than people working with asbestos?

A Yes, sir, again a slight modification of that, I would say that the majority of cases of mesothelioma with careful questioning and obtaining of history there will be some exposure to asbestos. That doesn't have to be occupational but certainly is in most cases.

Q All right, sir, so can we say then that under your testimony the mesothelioma that you testified about of Clarence Borel in all likelihood was attributable to his work as an asbestos insulator?

A I would think the evidence is fairly strong that there is an association between his asbestos exposure and development of this tumor.

Q Can we say that whether he died of asbestosis or a malignant mesothelioma, the chances are certainly that they were caused by his work?

A Well, again I would say that if this indeed was mesothelioma and I have no reason to doubt that it was although I can't personally conclusively say that it is, then there is the likelihood from present evidence that it was

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associated with asbestos exposure.

Q When does your plane leave, Doctor?

A 2:35.

MR. STEPHENSON: All right, sir, that's all the cross examination I have.

THE COURT: Anything further, Mr. Pate?

MR. PATE: Just a moment, sir.

REDIRECT EXAMINATION

BY MR. PATE:

Q Are there any other causes of mesothelioma?

A I would have to assume that there are other causes of mesothelioma to cause in a small but significant percentage of proven cases here and in the United Kingdom and elsewhere there is no history at all of asbestos exposure, so there are undoubtedly a number of other causes of mesothelioma.

Q What you are saying then is then that scientists do not know at this point what causes --

MR. STEPHENSON: I object to him leading the witness, please.

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THE COURT: Objection overruled.

BY MR. PATE:

Q Scientists at this time do not know what causes mesothelioma, is that correct?

A I think from the strict sense as we know that pneumonia is caused by a bacteria, we don't know what causes mesothelioma, that's correct. We know of certain associations.

Q You are telling this jury then that you find that you have found certain associations between mesothelioma and people who have been exposed to asbestos?

A That's correct, sir.

Q But there are other causes of mesothelioma?

A There must be because in some situations no such exposure has been found.

Q All right, sir, now I believe that the records also indicate that Mr. Borel had had pneumonia on several occasions, is that correct, sir?

A Yes, that's what I read, I don't know that from personal knowledge.

Q Could that have also caused the scarring or some of the scarring which you saw in the lungs?

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A Well, I didn't see scarring in the lungs on the X-rays, what I saw was the pleura shadow which is related to the tumor and the effect of the tumor such as fluid.

Q All right, sir, and are you telling the jury that this pleura that you saw in your opinion was caused by the tumor?

A I would think that is the likelihood.

Q All right, sir, Doctor, you were asked some questions about some studies prior to 1965, would you tell the jury whether or not these studies primarily concern themselves with textile workers and mine workers as opposed to insulators who work in the field as did Mr. Borel?

A Yes, sir, there is no question that the studies prior to that time were primarily among -- in factories, asbestos textile factories, some studies on mining and milling and nothing on a significant scale of insulators using asbestos products.

Q All right, sir, you have different working conditions and different exposures there?

A That's correct, sir.

Q Now it is not every exposure to asbestos

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that causes asbestosis, is that correct, Doctor?

A That certainly is correct as many individuals with lifelong exposure do not develop adverse health effects.

Q So you would have to know the man's working conditions, the duration and type of exposure that he was exposed to, is that correct, sir?

A Well, with that information one couldn't predict whether he is going to develop one or either of the major diseases that we are talking about. The only real definite way one could tell whether they are going to -- whether they are present as a result of exposure is to see whether they are in fact present. There is no way of predicting, even knowing exposure situations, in fact, this is one of the things that we and other -- a few others are working on right now, is to see whether or not there is a relationship between the type of exposure and the disease. At this point though there is no one that could take a given exposure, whether it be in the factory or outside the factory, and predict whether or not the disease is going to

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recur, either of these diseases, asbestosis or mesothelioma.

Q As a result of your interest in this field, Doctor, studies you have made, let me ask you this question. Insulating material that contains asbestos dust serves a useful purpose in the refineries and industry in which it is used, is that correct?

MR. STEPHENSON: I object to leading, Your Honor.

THE COURT: Objection overruled.

THE WITNESS: Well, there is no question on this, obviously I am a layman just as any of us here are or most of here are, I don't know whether any people in the industry are present, there is no question, however, though, as a knowledgeable individual, that asbestos serves a very important function as an insulating material. That is well documented over the years.

Q All right, in the risk and danger, if any, Doctor, as I understand it, is caused from the asbestos fiber as it is mined, not to mention

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anything that the manufacturers may do to it, is that correct?

A Yes, sir, I think that is essentially correct, it is either the risk or the dangering material, if you will, it is either the fiber or something which has been on the fiber from the time it was obtained from the ground, from the mine.

Q As opposed --

A As opposed to any manipulation afterwards, yes.

Q That the manufacturers may do?

A Yes.

Q In making it into an insulating product?

A Yes, sir.

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

THE COURT: Anything further?

MR. STEPHENSON: Yes, sir, Your Honor.

RECROSS EXAMINATION

BY MR. STEPHENSON:

Q Doctor, Mr. Pate asked you about asbestos

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as a useful material, and you gave some testimony concerning that. Are you aware of the fact that now asbestos is being considered by many major companies as being so dangerous that in the bids that they offer to insulation contractors they are asking that substitute materials be provided?

A I am not aware of that. I would have no knowledge of that.

Q Are you aware of Dr. Irwin J. Selikoff's article, "Relation Between Exposure to Asbestos and Mesothelioma"?

A Yes, sir, I am.

Q Do you agree with the last paragraph of his summary, "It appears that mesothelioma must be added to the neoplastic risk of asbestos inhalation and joins lung cancer and probable cancer of the stomach and colon as a significant complication of such industrial exposure in the United States"?

A Yes, I think certainly the first part of that statement regarding lung cancer and mesothelioma seems well-based. There is some very serious question regarding the other tumors that

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he has.

Q Are you familiar with Dr. Clark Cooper's work wherein he found that man who began in the asbestos insulating industry between the years 1911 and 1920, one hundred percent of these workers had definite abnormal lung findings consistent with asbestosis?

MR. WELLER: If the Court please, I think the article says -- I would object to it for this reason, the article says that they had definite signs of asbestos exposure but not the disease asbestosis.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q All right, Doctor, I will read you exactly what it says.

A All right, sir.

Q "The number with definite changes consistent with asbestosis" -- and he gives the percentages out here -- between 1911 and 1920, if a man entered the occupation between those years, one hundred percent would have had the definite changes he speaks about in his papers.

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A How many workers in that period?

Q Well, the number available for films, ten, number having films, seven, number with definite changes, seven.

Q Well, I would have to agree with Dr. Cooper's finding that seven out of those seven with X-rays who were first employed during those years had evidence of asbestosis, although obviously I couldn't fully agree unless I saw the films and reviewed the same material that he did. If he found it, he is a credible individual and I am sure that the findings were valid.

MR. STEPHENSON: Thank you, sir.

THE COURT: Anything further?

MR. PATE: I have one further question, Your Honor, if I may?

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. PATE:

Q Doctor, I just have one brief question and that is, when did medical science first perceive the possibility of association between asbestos and mesothelioma?

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A Yes, that information became available in a realistic sense in 1960. It was not fully appreciated that year because the first major article on this association came out at that time. Shortly thereafter, however, people were beginning to appreciate that association. Now that first article, major article that I referred to was in relation to asbestos exposure in mines in South Africa. It wasn't until five or so years later that this association was appreciated in utilizers of asbestos products in insulating work.

Q So you would say sixty-five or sixty-six then, Doctor?

A For the insulation worker certainly at that time.

Q All right, and South Africa, you have a different kind of asbestos, is that not correct, sir?

A Yes, it is a different -- well, it is a blue asbestos called crocidolite, which is a pure exposure. Insulators exposed to a number of types of asbestos, one of which may be small, a small percentage of the same type.

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Q But a very small percentage?

A Very small percentage.

MR. PATE: Thank you.

THE COURT: Anything further, Mr. Stephenson?

MR. STEPHENSON: I think not, Your Honor.

THE COURT: All right, Doctor, this will conclude your testimony. You may be excused. You may leave any time you wish.

Ladies and Gentlemen of the Jury, we will stand in recess until fifteen minutes until 11:00, by the clock in the courtroom.

THE MARSHAL: Everyone rise.

(REPORTER'S NOTE: Whereupon a fifteen-minute recess was taken and court resumed).

THE COURT: Please be seated.

Mr. Weller, are you ready to proceed?

MR. WELLER: Your Honor, I have the testimony summary of the deposi-

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tion of Clarence Borel.

THE COURT: All right.

MR. STEPHENSON: Your Honor, I have not been furnished a copy of that, if I may, from one of the defense counsel, so I can follow it.

THE COURT: All right, someone can hand him that.

MR. STEPHENSON: Thank you, Your Honor.

THE COURT: All right, you may proceed.

Summarization of Clarence Borel's deposition:

BY MR. WELLER: Clarence Borel was born August 14, 1912, in Jeanerette, Louisiana, resided at 4500 Longdale, Groves, Texas, for six years or more. He formerly resided at 6011 Monroe, Groves. He has been a member of the Asbestos Workers Union since 1944. Borel worked until January 17, 1969, and has not worked since that time.

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On direct examination Mr. Borel testified, "Now, Mr. Borel, throughout your earlier life let's say going back four, five, ten years ago, were you or were you not a man in good health? A. I think I was, I thought I was in pretty good health. I had no pains outside of lung congestion continually, all the time, and I just put it off. They called it pleurisy and so forth. I have had X-rays, went to the doctor to have X-rays just to check and they would say it was a little cloudy, your lungs are cloudy, and ask me what type of work I was doing and I told them and they would say well, that is the reason for this cloudiness in your lungs."

That is deposition page 37.

On cross examination on this area Mr. Borel testified, and I am quoting: "Q All right, now I believe you made the statement that you had pleurisy for a long time. A Well,

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I called it pleurisy. Q Well, what conditions, would you describe it to me, how it affected you? A Well, you know, when you wake up in the morning especially when you have been on some jobs that is real dusty, why you just feel bad all over and you have pains all over your chest. I would until I coughed around and coughed up and spit a lot of that stuff up. I couldn't hardly get started, but after I do that I would be all right.

Q How long has this been going on?" Page 55. "A Oh, I would say four or five years. Q And I believe you said that, did you go to see a doctor because of this pleurisy? A I went to see my doctor several times. I had pneumonia one time, I got a real bad cold and I had my doctor and it was pneumonia. Q Who was that doctor? A Kenneth R. Watkins. Q How long has Watkins been your doctor? A Ever since he has been in the Groves.

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Do you remember how long it is and this is his question, I would say fifteen years is what he said. All right, I believe you made the statement that you had been having X-rays made of your chest for a long time just off and on, I didn't realize how bad. Well, I didn't have any that deep a pain unless I would get this pleurisy, the doctor called it pleurisy. How long have you been having X-rays made of your chest? I don't know exactly, I had them whenever it was required. As long as ten years ago? Oh, I have had some before ten years, yes. Q Some before ten years? Did you have this pleurisy problem as long as ten years ago? A Yes, sir, I have had that. Q So that you have had some chest problems during the last ten years? A Oh, yes, off and on. Q Off and on, and you have had X-rays to try to determine what -- A The trouble

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was? The difficulty was? Yes. Have you had X-rays taken by anybody other than Dr. Watkins? Yes, when I bought this house I wanted to take out an insurance policy and when they found out that I was an insulator they said, man, you will have to have a chest X-ray so they paid for it. It was a doctor over in Port Neches. That was six years ago, I just don't remember the name, his name, but they recommended that doctor and I went at their recommendation. Q Was it Dr. Byrd? A I can't recall his name. Q But it was some doctor in Port Neches, where you went for X-rays? A About five or six years ago. Q All right, now I believe you said one doctor told you that your X-rays were cloudy and the reasons for that was your occupation? A Yes. Q What doctor was that? A That was this doctor right here. Q That was this doctor? A Yes, that

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took this X-ray, yeah. Q In Port Neches?" He bought his house in April, 1964, and this is the symptoms of something wrong. Q How long did you notice any shortness of breath? A I would say two years ago, as much as two years real shortness. Q A real shortness of breath but you had some shortness of breath prior to that. Well, off and on I did,at times I would be short of breath, yes, it was two years ago when I started noticing it real bad. Q All right, when did you first start noticing some shortness of breath, how long ago? A Oh, I would say in about 1968, the first part of '68 and the last part of '67, was when it started getting bad. I couldn't walk real fast and I just started giving out. Q Well, did you have shortness of breath when you first started going to Dr. Watkins and complaining about pleurisy? A Yes, sir, I had short-

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ness of breath then. Q And that was as long as six, eight years, wasn't it? A Well, yes, but I had pneumonia, you see, and he told me the pneumonia would leave a scar there possibly and if I wasn't careful I could get pneumonia easy."

He admitted that Dr. Watkins advised him that his X-rays were cloudy. "Did Dr. Watkins then advise you that they were cloudy? A Yes. And it was caused by dust? He didn't say, Dr. Watkins never came out and said it was caused by. Q Well, who told you it was caused by dust?
A Not Self, but P. O. Jones.
Q Did the doctor at Port Neches tell you that? A He told me that it was cloudy, that it might -- it could be from the trade I worked in. Q All right, and the trade that you worked in is in the asbestos industry or asbestos insulation industry? A You can put it that way. Q Did Dr.

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Watkins tell you you should get out of this work? A No, sir, never did. Q Did the doctor in Port Neches tell you you ought to get out of this type of work? A No, sir, he didn't mention it. Q Did he tell you to avoid dust? A He told me to avoid dust as much as I possibly could."

And this is direct examination by Mr. Stephenson. "Q All right, have you ever used any respirator of any kind that would prevent you from inhaling this asbestos dust? A I have tried every type of respirator they have because I didn't know that the dust would cause asbestosis, but I knew it couldn't be good for your health, so I tried. And you couldn't hardly breathe with them and on these jobs we worked nowadays if you couldn't get up there and apply so much material and make a good showing you just couldn't stay and you have to work fast and you can't breathe with

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the respirator they furnish you.

Q At the end of the day's work where you were around asbestos describe to us what your clothing would look like and your mouth and nose would look like and your hair with regard to whether or not there was asbestos dust on you. A Brother, I could tell you it was plenty dusty. Your clothes were so dusty until you could just barely pick them up without shaking them. You just move them just a little and there is going to be dust, and I blowed this dust out of my nostrils by handfuls at the end of the day trying to use water too, I even used Mentholatum in my nostrils to keep some of the dust from going down in my throat, but it is impossible to get rid of all of it. Even your clothes just stay dusty continually unless you blow it off with an air hose.

Cross examination by Mr. Weller.

Mr. Borel started his career as an

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asbestos worker for the Texas Company plant in Port Arthur, beginning in the year 1937. The only type of products he worked with which he could remember at that time were Johns-Manville, Phillip Carey, Standard Asbestos, Armstrong and Mundet Cork.

Q All right, how did you know you were working with asbestos products?

A Yes -- Q How did you know?

A Yes, I knew it was asbestos. Q Did you have to saw it at that time?

A Oh, yes. Q Did you get a lot of dust? A A lot of dust, every time you saw a piece of insulation you are going to get a lot of dust. Q Would you breathe this stuff, get it in your nose? Yes, sir. Q Did it cause you some difficulty then? A Well, it caused difficulty with your sinuses, sometimes you could hardly breathe.

Q Well, would you spit it out? A Yes, sir. Q Would it get down in your throat? A I have even got it out

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of my throat."

After testifying that he continued working at the Texas Company as an asbestos worker for six years he then testified: "Q All right, did you continue to breathe that asbestos dust all during that six years? A All during that six years. Q Did you know you were breathing it? A Yes, sir, I knew it. Q Did you know at that time that breathing dust wasn't good for you? A Well, I figured it wasn't good for me but there wasn't nothing I could do, I didn't know how in the world to apply it without breathing some of it because you just can't do it."

Borel stated that at no time while he worked at Texas Company was he offered the use of a respirator or mask. Beginning in 1942, Borel worked at the Consolidated Shipyard in Orange, Texas. His employer was Asbestos Magnesia Material Company, for

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whom he worked for about five years. He was engaged in insulation work on destroyers, working with asbestos. "Did you work in close places?

A Awfully close places on the ship.

Q And were you subjected to any heavy concentration of asbestos dust?

A Heavy concentrations of dust of insulation. Q All right, and you knew you were being subjected to asbestos dust? A Sure. Q Didn't they use respirators over at the shipyard in these tight places? A No, but if it were a little room they did use the blower, a suction blower to try to take some of it out. Q All right, did you use anything to try to keep the dust down or keep from breathing the dust? A Sometimes I would tie my handkerchief over my nostrils to try to. Q Did you wet it? A Sometimes I would. Q And what was the purpose of that? A Well, to try to get this so I could breathe a little

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better, this dust was so bad. At the end of the day would you clear your nose or would you have to clear it off of there during the day? A I would have to clear it all during the day. Q What would you do? A Blow it out. Q Just come out with these particles of dust? A Yes, sir, blow your nostrils real hard. Q Did you know this was asbestos dust? A Yes, sir, I did."

Then he worked for the Dallas Air Conditioning Company at the U. S. Rubber Plant at Port Neches, in 1944. No respirators were used. "Q Now you worked at du Pont plants a number of times? A Yes, sir. Q And when you worked at du Pont did they furnish you with respirators and require you to wear them? A They furnished them for you if you wanted one but having to -- anybody to tell me that I needed one, never have. Q Well, I thought I understood you to say that you had

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tried about every type of respirator that is made. A At du Pont, yeah, at du Pont I did. Q And did you try those when you were on these du Pont jobs? A On the du Pont jobs only. Q Why did you do that, why did you use a respirator? A Well, I just figured this dust was bad for me but I didn't know how bad it was. Q All right, then you didn't know that the dust -- then you did know that the dust was bad for you but you just didn't know how bad? A I didn't know how it would affect your lungs, no one ever told me. Q Well, would you use the respirator the whole time that you were on the job or not? A Oh, no, I couldn't breathe with it on me. Q How long would you use it, to what extent? Well, if the weather was cool you could use it a lot oftener than if it was hot, but if it was hot weather you just couldn't use it at all, it was uncomfortable, uncomfort-

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able to breathe. Q Did du Pont require you to wear it on their jobs? A No, sir, they had them there for you but they didn't require it. Q Isn't that the responsibility of the foreman, to take care -- isn't that your responsibility as a foreman to take care of the respirator and safety equipment? A I would think so but the job I worked on there wasn't no du Pont job and the company I worked for never said anything about no respirator. If they ever bring any they didn't bring any to me. I have my doubts they would. Q Did you ever make any requests for a respirator? A No, sir, because I didn't know whether they could get them or not. They just tell you they would get them, they wouldn't bring them to you. Q Is it correct that you knew that the purpose of the respirator was to keep the dust out of your lungs? A They never have

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come up with a respirator yet that would keep all of this dust out of your lungs. Q What was your understanding of the purpose of the respirator? A That is to keep dust out of your nostrils and your lungs. Q Now how long -- have you known that as long as ten years? A Yes, sir, I know it, I know it was dangerous, any kind of dust was dangerous, the way I considered it I just myself, yes. Yes, sir, I considered any kind of dust was hazardous to you. Q. All right, did you -- A But I didn't know what. Q Have you used a respirator as early as 1950, '54, when you were working at du Pont? A I am trying to remember. I think du Pont has been furnishing that for that long, maybe a lot longer. Q Did you ever see any respirators in the shipyard over in Orange in '42, '3 or '4? A No, sir. Q When did you start using Mentholatum to

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put in your nose to keep the dust out? A Oh, I would say about fifteen years ago. The congestion got so bad in my nostrils that I done that for relief. It will give you a little relief and I imagine it held a lot of that dust from getting in there too.
Q All right, I was hoping it would. How often would you use that? A Well, I carried it around in my pocket continually, a little tube, and I would say I would use it several times a day. I always had my Mentholatum with me. Q And the purpose of that was to keep out this -- keep from inhaling this? A Asbestos dust, to keep from inhaling the dust, I couldn't keep the passages open, sometimes it would clog up so I couldn't breathe.
Q When did you try using various types of respirators, when did you start that? A I don't recall, but like I said, just on the job I have ever known we was requested to use them

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was du Pont jobs and then we wouldn't demand it, they couldn't tell you that you could breathe properly with them. It has been proven that you couldn't breathe properly. Q Is the du Pont job the only job you ever tried to use the respirator on? A No, there has been several other jobs but no one didn't bring them and put them in the tool box and known by that they was for the men to use but, like I said, you couldn't breathe with them in hot weather, it was just out of the question. Q How long has your employer been bringing respirators and putting them in the tool box and having them available for you to use? A Not all jobs do that, just on certain jobs, I don't recall. Some of the biggest jobs would. Q Well, would Armstrong do it? A Well, I imagine they would, I don't recall seeing any. Q What jobs do you recall seeing respirators

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on? A I would say on such jobs as that rubber plant job, it was a big job and they were on that job because there was a lot of building work there they were to work in but the type of respirator they had you just smother with it, just like a rag. It would have been better to put a rag over your face. Q All right, have you ever used these little, white throw-away respirators? A Yes, sir, I have used them on the last job I worked for at this Fluor Corporation, I worked for over there at the rubber plant, over here at the rubber plant two years ago. All the men was trying to, since everybody was getting sick with this dust they was trying to do something about it. Q Therefore, they were all trying to protect themselves. A It is hard to do. I believe that when Mr. Stephenson was examining you you stated you knew that the breathing of asbestos dust could

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not be good for your health, is that correct? A That's right, it is impossible. Q How long have you known this? A Well, I have known this, I would say, in the last two years or a year and a half. Q Allright, haven't you known this for at least fifteen to twenty years, that you were breathing this dust and it was bad for you? A Yes, I knew the dust was bad but we used to talk it among the insulators how bad was this dust, could it give you TB, could it give you this, and everyone was saying no, that dust don't hurt you, it dissolves as it hits your lungs. That was the question you get all the time.

Q Where would you have this discussion, in your Union Hall? A On the jobs, just among the men. Q In other words, there was some question in your mind as to whether this was dangerous and whether it was bad for your health? A There was always a

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question, you just never know how dangerous it was. I never did know really. If I had known I would have gotten out of it. Q All right, then you did know it had some degree of danger but you didn't know how dangerous it was? A I didn't know it was dangerous like this bad, I really didn't."

He further testified about the use of respirators or said he never did ask for one from his employer because he tried them at the du Pont job in 1961.

"Q When the doctor over in Port Neches told you that your occupation was the reason for your lungs being cloudy and the X-rays, did you know at that time that you were working with asbestos and asbestos dust? A I knew I was working with insulation. Q Did you know that it contained asbestos? A Yes, sir, but I didn't know what asbestos was."

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Borel belongs to Local 22 of the Asbestos Workers Union, Houston, regarding knowledge and discussion in the Union Borel testified, "And also in your Union meetings how long had you all been discussing this problem of dust? A Well, it's always been a problem but they never -- they just talked about it and they never did do anything about it to try to get something to put in a contract. They would get blowers to put in the bottom of the skirts of a tower like when you are working in there, you can't hardly breathe, they did get the company to do that. Q How long have you actually been talking about it at your Union meetings? A Oh, I can't remember that, it's always been a safety item. They talked about some place, some way where they could get rid of this dust ever since I can remember. Q All right, when you have been working with these insulators

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since 1937, have you been talking about it since 1937? A Yes, sir, I would say so. Q And you have been aware of the problems since that time, is that correct? A I have been aware of it, it doesn't seem very health, I know. Q And you also wear a handkerchief over your mouth and nose, I believe, on occasions? A I have done it on a lot of jobs.

Q You would wet them, I take it, is that correct? A Summertime I would. If it was wintertime I wouldn't wet them. Q Why would you wear those? A Try to get fresh air to keep the dust out of my nostrils."

Now the next is testimony about his work record from the deposition: From 1938 through '42, Texas Company, Port Arthur, as plant employee, and he testified he worked with Johns-Manville, Philip Carey, Standard Asbestos and Mundet Cork Products.

1942 through '46, Consolidated

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Shipyard in Orange, Texas, and his employer, Asbestos Magnesia Company, for five years. He did not testify what products he used because he didn't know.

1944, the Rubber Plant in Port Neches, he said probably United States Rubber, employer, Dallas Air Conditioning Company.

1953, '54, chemical plant at Tuscalee, Illinois. He used eighty-five percent magnesia, but does not know who manufactured it.

Deposition, page 65:

Since the cards have been submitted we will offer this testimony, on Exhibit P-1 it is shown that this employer is listed under Fibreboard Paper Products Corporation, manufacturer unknown. In the language of Mr. Borel: "I wasn't positive which company manufactured that. They had all kinds of different materials on that job, there was so many different

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kinds. Q All right, you don't know who manufactured the magnesia on that job? A It was in 1953, '54, chemical plant at Tuscalee, Illinois, no, unless Fiberglass was the general contractor but I don't know if they was the manufacturer of it. Q Are you saying that Fibreboard was the general contractor on that job? A Not Fibreboard, they called it Fiberglass something, I forget the name, but they didn't call it Fibre-board. Q Then where you say the manufacturer is unknown you don't know who manufactured the eighty-five percent magnesia, do you? A No, I really don't. Q You worked at Palms, California, do you know what you worked with at that place? A That was magnesia eighty-five percent Mag 2. Do you know who manufactured that? A No, sir, I don't. And when you worked for Fuller-Austin at Casper, Wyoming, in the Texaco Plant,

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what product did you work with there? A Well, they had mag and unibestos. Mag and unibestos and in 1958, when you worked for Armstrong Contracting, the people of Kansas, on a du Pont job, do you know what products you used on that job? A Yes, sir, they had so many different materials, they had a lot of different materials on that job. Q Well, do you know what? A Kaylo was one, was the main -- Kaylo, I think."

That is deposition, number 66, and I point out that on the cards this is listed under Fibreboard but Fibreboard doesn't manufacture Kaylo.

"All right, in 1958, you worked for the Aber Company at the Jefferson Chemical Company in Port Neches? A Yes, sir. Q Do you know what product you used on that job? A Yes, sir. Q What? A Unibestos. Q All right, in 1959, you worked for Precision Instrument Company in the

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Texaco Plant in Port Arthur? A Yes. Q Do you know what products you used there? A Magnesia, eighty-five percent mag. Eighty-five percent magnesia and Kaylo, I am sure they had Kaylo. Q Now do you know who manufactured the eighty-five percent mag? A No, I just know -- no, I really don't."

Deposition, page 67:

"Q Now you said that Pabco was a hard material? A Real hard. Q In other words, if you handled it and didn't cut it it doesn't produce dust, does it? A Yes, sir, it produces a certain amount of dust if you saw it, but not near as much as the other magnesia material. It was compressed a lot harder than the rest of them.

The following was a compilation of the testimony from the deposition in regard to the use of various products mainly by dates, and this is subject to the admission of the cards

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which were a part of the offer of deposition and now has been admitted in evidence.

1953 and '54, and this is all of them, chemical plant, Tuscalee, Illinois, eighty-five percent mag, magnesia, does not know who manufactured them.

1954, Marina Air Base, Palms, California, eighty-five percent mag, and does not know the name of manufacturer.

1954 to '55, Texaco plant, Casper, Wyoming; employer, Fuller-Austin; product, eighty-five percent mag and unibestos. He does not know the names of the manufacturer of the eighty-five percent magnesia.

1958, du Pont job, Topeka, Kansas; employer, Armstrong Cork & Supply; product, Kaylo.

1958, Jefferson Chemical Company, Port Neches; employer, Aber Company; product, unibestos.

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1959, Texaco, Port Arthur; employer, Precision Instruments; product, eighty-five percent magnesia; manufacturer, unknown and Kaylo.

In 1960, Monsanto Chemical, Texas City; employer, Mundet Cork or Armstrong.

1960, du Pont plant, used Kaylo and calcylite.

1960, East Texas Pulp; employer, B & B; product, Careytemp.

1961, Texas Gas Plant, Winnie, Texas; Fuller-Austin; product, Kaylo and dermabestos.

In 1961, du Pont plant; employer, Armstrong Contracting Supply; product, Kaylo.

In 1961, Goodrich-Gulf; employer, Sabine Insulation Company; product, calcylite or magnesia, mostly fiber-glass, not sure who manufactured the magnesia.

1965, Houston Chemical Company; employer, American Insulation Company;

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product, claimed to be Pabco.

1966, Texaco Plant, Port Arthur; employer, American Insulation; products, Kaylo and Pabco.

Du Pont Plant; employer, Armstrong Contracting & Supply; and the product, Kaylo.

'67, du Pont plant, Beaumont; employer, Armstrong Contracting & Supply; product, Kaylo and thermobestos.

1967, Atlantic-Richfield, Port Arthur; claims employer American Insulation Company, claims Pabco products.

1968, Mobil, Beaumont; employer, B & B Engineering Company; can't remember the material, probably magnesia.

And then this answer in addition to the foregoing Mr. Borel testified "Have you had occasion during your work life and have you used Fibreboard Paper Products Corporation materials", and an objection was made and he said,

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"Yes, sir, I have used unibestos". Fibreboard does not make unibestos.

At page 77 of the deposition the witness stated: "Calcylite is bad but I don't know exactly what Fibreboard manufactures."

We do not manufacture calcylite. Armstrong Cork Company listed 1958, Topeka, Kansas, 1960, these are, I think, on the cards and I won't read that unless you all, unless the rest of you want me to read all of that.

THE COURT: The Court would suggest you not read it.

MR. WELLER: Thank you, Your Honor.

THE COURT: All right, who do you have next, Mr. Stephenson?

MR. STEPHENSON: Just a short rebuttal of that, about two or three minutes.

THE COURT: All right.

MR. STEPHENSON: Your Honor, in reply to section of Mr. Borel's deposi-

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tion where he repeatedly stated he used eighty-five percent magnesia I would like to say that the interrogatories heretofore entered admit that Fibreboard Paper Product makes eighty-five percent magnesia, and Philip Carey Corporation.

MR. WELLER: Judge, eighty-five percent magnesia is made by a number of manufacturers and those are not the only two but --

MR. STEPHENSON: It's the only two in the record in this case, Your Honor.

THE COURT: All right.

BY MR. STEPHENSON: On page 32 of Mr. Borel's deposition he said at no time has anyone told me that this material was dangerous to your health, in no form.

Page 53: "Q All right, how long did you smoke? A About five years. Q What did you smoke? A Well, that was during the Depression, I used to

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smoke maybe a pack of cigarettes a week trying to stretch them out. Camels mostly. Q And you say you smoked for how long? A Five years. Q When did you fix the cards that you were talking about? A Fixed them up last year before my last operation. I fixed them last September or August. September some time, in September, I think, last September, August, in that neighborhood. Were the cards written out at that time or not? No, no, I had to fill out the cards, I done it here by myself. Q Did you do some of the work here at home? A Yes, sir."

MR. WELLER: What page is that from, Mr. Stephenson?

MR. STEPHENSON: 64.

That's all I have, Your Honor, in that connection.

THE COURT: Anything further?

MR. WELLER: I have something in that connection, if I may find it.

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I had it in connection with a motion.

I will just state what it is without offering it, if I may, if I can find the reference. That Mr. Borel stated that he got the information by calling people on the telephone and making inquiries. That he made inquiries of a Mr. Demay and that some of the information was furnished by Mrs. Jackie Bean and Mr. Stephenson's office and this was the net result of all of the inquiries that he had made and it is back up, we have it in the motion that is on file specifically quoted.

THE COURT: All right, who will you have next?

MR. STEPHENSON: Mrs. Borel, Your Honor.

THE COURT: Mrs. Borel, if you will come forward, please.

MRS. CLARENCE BOREL,

having first been duly cautioned and sworn to testify

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the truth, the whole truth and nothing but the truth, did testify as follows:

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q State your full name, please, Mrs. Borel.

A Mrs. Thelma Borel.

Q You will have to hold the microphone up closer to your mouth and speak into it directly so we can all hear you.

A Okay.

Q Mrs. Borel, when were you and Clarence married?

A February 20, of '34.

Q All right, where were you married?

A In Port Arthur, the Methodist Church.

Q Did you begin at that time living in Jefferson County?

A Yes, sir.

Q And you lived in Jefferson County all during your married life?

A Yes, sir.

Q When you married Mr. Borel, there has been some question here about his smoking. Did Mr.

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Borel smoke, Mrs. Borel?

A No, sir, we married sixty-seven years and he never smoked a cigarette.

Q How long?

A Sixty-seven.

Q You don't mean -- you weren't married sixty-seven.

A Thirty-seven, I mean, I am sorry.

Q All right, thirty-seven years.

A Yes, sir.

Q And was he a member of a church?

A Yes, sir.

Q And what church?

A Assembly of God of Groves.

Q All right, and was he active in his church activities?

A Yes, sir, he was superintendent of the Sunday School there.

Q Did he hold any official positions as minister?

A He was a preacher, licensed preacher.

Q All right, and under the rules of the church is the use of cigarette smoking prohibited or against the rules of the church?

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A Yes, sir, it is.

Q Was he steady and competent in his attendance on the church and his devotion to it?

A Yes, sir, he was.

Q Did Mr. Borel engage in the use of alcohol or alcoholic spirits?

A No, sir, he didn't drink any.

Q Mrs. Borel, I would like for you to tell the jury in your own words with as little questioning by me as possible what kind of man, husband and father Mr. Borel was and just be descriptive of him in your own language, please.

A Well, he was real faithful to the family. He worked to support his children, he had six children. He was real faithful to them. He played with them and stayed with them and since all the girls married and had their grandchildren he played with them and loved every one of them, played until up toward the last when he just couldn't have them around him when he was real sick, that he took sick. We went to church every Sunday, every time we had church we taken all six of them, we never missed a service. We always went to church. That was the only

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place that we would go with the children.

Q Did he work in and around the home to do things for his family?

A Yes, sir, he did all of his work, anything that had to be done to the home, and worked on his cars and done everything, helped the girls with their cars too. He never was sick on up until '69 was it I think that he taken sick then.

Q Was his health good prior to that time?

A Yes, sir, real good.

Q Now I believe you and he bought a home in 1964?

A Yes, sir, we did.

Q And he took a physical examination at that time?

A That's right.

Q And passed that all right?

A Yes, sir, he did.

Q Was he a steady worker throughout his work life?

A Yes, sir, he never missed any.

Q Until he got ill?

A Until he got ill in '69, and couldn't work

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after that.

Q All right, I believe Mr. Borel was engaged in the trade of an insulator since about 1937?

A Yes, sir.

Q All right, and I won't go through his work record with you, I think we have gone through that enough. Mrs. Borel, the jury might be interested in knowing whether or not Mr. Borel ever appreciated or understood the harmful effects that asbestos would have on his body until he got ill in 1969?

A No, sir.

MR. TUCKER: We object to that as it calls for her to pass upon someone else's knowledge or appreciation.

THE COURT: I believe it would be a conclusion, we will have to sustain the objection. You may ask the witness if you want to of any acts or conduct from which the jury might make such a conclusion.

MR. STEPHENSON: Your Honor, I intended to follow it with "How do

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you know".

THE COURT: All right.

MR. STEPHENSON: So she can then describe how she knows.

THE COURT: In view of the objection I am afraid we will have to sustain it.

MR. STEPHENSON: Yes, sir.

BY MR. STEPHENSON:

Q Mrs. Borel, may I ask you to state how you know or what causes you to say that --

MR. TUCKER: This is the very question the Court sustained the objection to, Your Honor.

THE COURT: Yes, we will have to sustain the objection, you will have to rephrase it differently.

MR. STEPHENSON: Excuse me, Your Honor.

BY MR. STEPHENSON:

Q Did Mr. Borel do anything, any act which you observed which would indicate one way or the other whether he thought asbestos was harmful or not harmful?

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A Yes, sir, he didn't think it was harmful to him --

MR. TUCKER: That's the same objection, Your Honor, before, and I move the jury be instructed not to consider it.

THE COURT: I think I will overrule that objection and let her state why she said that.

BY MR. STEPHENSON:

Q Tell us why you said that, please?

A Well, because during, around Christmas when we had our Christmas tree he would bring home samples os asbestos dust or, you know, the block, and we would crumble it up and put it on our Christmas tree. We even sent it to the school where they could use it for snow on the trees and I am sure if he thought that was harmful to them or to us he wouldn't have brought that home and then he would bring home scraps of the material, it was wrapped in the material and they would let him have it and he would bring them home and we would have to wash them and they were really full of dust and we would

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shake them and we knew by that that we knew that the dust that he had been in and that's -- he would bring them home to us like that and we would give them to others because they wanted to use these for different things.

Q Were they used as rags?

A Yes, sir.

Q For cleaning?

A Yes, sir, and we used them for dishrags, they were real -- you know, we had a lot of the neighbors that would want them, they would ask him to bring them to them and I am sure if he knew that that was harmful to anyone that he never would have brought it into his home or sent it to any place like that.

THE COURT: I am afraid that part of the testimony will have to be stricken as to what -- what she knows that he knew because she can testify what he said and what he brought home but don't give any consideration to the last part of Mrs. Borel's testimony as to what Mr. Borel knew. That would be an opinion or conclusion

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on the part of Mrs. Borel.

BY MR. STEPHENSON:

Q Now as His Honor stated, don't say what you think he knew but did he continue to bring these asbestos rags home for use up until shortly before he got ill the last time?

A Yes, sir, he did.

Q And, as I understand it, these rags were used for many purposes but among them for washing the dishes which the family ate from?

A Yes, sir.

Q Mrs. Borel, during your husband's life you stated he was a good worker, was his health good up until 1969?

A Yes, sir, on up until the last, you know, on up until he went to that doctor, to Dr. Watkins he never was sick.

Q Would you please tell us, Mrs. Borel, something of the physical pain and mental suffering that your husband endured for the last year of his lifetime?

A Yes, sir, when he first went to the doctor and they put him in the hospital, pains in his chest and I stayed with him from the time he

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went to all of the hospitals I was with him day and night, I stayed at the hospitals with him, helping him, because he had such pains and he hurt so bad and when he was home we had to give him pills and I had to give him shots sometimes every two hours. The pain was so severe in his body, and I just stayed with him and helped him and that was the only way, he just couldn't get relief from no other way unless we could give him the shots about every two hours for pain in his chest.

Q Did you ever hear him pray about the pain that he was having?

A Yes, sir, I have, I sure have.

Q All right.

A I heard him say at one time if he wasn't a Christian he knew why people would take their life, because the pain was so severe and that is why people would take lives, because they just can't hardly take it and if he wouldn't have been a Christian, I have heard him say that more than one time.

Q Do you remember when the group of lawyers came to your home and --

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A Yes, sir, I do.

Q And we started to take his deposition and adjourned a week later?

A Yes, sir, I do.

Q And then thirty-three days before his death we took his deposition on two different days?

A Yes, sir, I remember that one time in the hospital.

Q Tell the jury what his physical condition was at that time.

A Well, at that time he was real bad off, he just didn't hardly know anything at times. They had to take him and give that deposition in the hospital and he couldn't even write his name because he was so sick up there and they had a witness up there when he had to make the cross for his name because he was so sick and at the house he was sick when they taken the deposition at the house, he was real sick then, he just couldn't remember the things that they would ask him to say.

MR. WELLER: If the Court please, I object to that, that he couldn't remember, that's giving it on the basis

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of his testimony, therefore, I object to her comments.

THE COURT: Objection overruled.

BY MR. STEPHENSON:

Q Mrs. Borel, toward the last of his life was there need to suction out his throat?

A Yes, sir, after --

Q To keep him from coughing?

A Yes, sir, well one time in the hospital he had a coughing spell that it hit him and I had to take him then and then he wanted to come home so bad from the hospital the doctor released him and we brought him home and we had a hospital bed there for him and he was -- he would get so he couldn't even talk, they had to take and put suction down his throat to get that stuff, the fluid out of there so he wouldn't choke to death there, and right at the last we had to just give him shots, glucose at the house, that was right at the last before he died.

Q Did his minister who was here yesterday stay in attendance on him almost constantly the last of his life?

A He was there at all times and all the girls

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were there at the very last, they were right at his bedside when he passed away.

Q How old are you, Mrs. Borel?

A I am fifty-eight, I will be fifty-nine in November.

Q Do you know how old Mr. Borel's mother and father were at the time of their deaths?

A His daddy was around ninety years old, and his mother died at childbirth, I don't know what age.

Q And you live at home alone now?

A Yes, sir, I do.

MR. STEPHENSON: That's all I have.

MR. WELLER: I have a few questions, Your Honor.

CROSS EXAMINATION

BY MR. WELLER:

Q Mrs. Borel, wasn't your husband in the hospital for pneumonia in 1960, '61?

A He was in the hospital but I don't know if it was pneumonia.

Q Well, how long was he in the hospital?

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A Well, I don't remember, one time he had been in there for some time, that I just can't remember, each time how long he had been there.

Q I am talking about now before 1970, was the first time that he went to Houston, that was back in '61 and '60 that he was in the hospital for pneumonia, wasn't he?

A He was in the hospital but I don't know if they said he had pneumonia.

Q In 1963 and '64 he was in the hospital again for some stomach trouble, wasn't he?

A He had a gall bladder operation.

Q When was that?

A Well, I don't remember the date.

Q Well, he was off for six or eight, ten weeks, wasn't he?

A I imagine so.

Q And he lost considerable amount of time when he was in the hospital in '60 and '61, from pneumonia, didn't he?

A I don't remember.

Q All right, now I am interested in things that you used for dishrags, weren't those cloth coverings that came off of asbestos products?

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A Yes, sir, they were.

Q And did you run them through your washer and use a detergent on them before you used them?

A We put them in water, they were dusty, and we would have to wash them two or three times to get the dust out.

Q All right, and you did get the dust out before you used them, didn't you?

A We sure did.

Q After you did that they didn't have dust in them any more, did they?

A No, not after you wash them so many times they wouldn't have dust.

Q How old was Mr. Borel at the time of his death?

A Of his death?

Q Yes, ma'am.

A Fifty-seven, I think.

Q Now Mr. Borel was a member of the Asbestos Workers Union for a number of years, wasn't he?

A Yes, sir, he was.

Q And at least for the last fifteen years, wasn't he, prior to his death?

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A Yes, sir.

Q Did he receive the "Asbestos Worker" at his home?

A Yes, sir, he did.

Q And he would read it as a good Union member would?

A No, he didn't read it all the time, he wasn't there a lot of times, he worked out of town, and he didn't get that every time because he had to work out on the kind of jobs -- they didn't have much work here.

Q All right, but the magazine was delivered to your home each month?

A Yes, sir, it was, but he didn't read them all.

Q All right, now in 1964 I believe you purchased your home, didn't you?

A Yes, sir.

Q Where you now live?

A Yes, sir, we did.

Q And in connection with that purchase your husband had to take out some life insurance, didn't he?

A Yes, sir, he did.

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Q And were you not present at the time his deposition was taken?

A At the home?

Q Yes.

A When you came there and taken his deposition?

Q Yes, ma'am, when I and a number of other lawyers came.

A I was present, yes.

Q And did you hear him testify that the doctor in Port Neches told him when he had that X-ray made in 1964, that his lungs were cloudy?

A Yes, sir, I did.

Q And that this resulted from his employment?

A Yes.

Q Now I believe I asked you whether you had any way of determining how much money Mr. Borel would give you and how much you would spend each month on yourself?

A I didn't have an allowance.

Q You have no idea whatsoever?

A No.

Q Is that still true now today?

A That is still true. He didn't give me an

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allowance.

Q And you have no way today of calculating what part was contributed to you and the house and what part he spent, do you?

A No, but we used the money the way we had to use it, for bills and to buy things with.

Q This is what you told me before when you were asked this question, you have no way of calculating what part was contributed to you and the house and what part he spent and you told me no?

A Because he taken care of all of the business, I never did.

MR. WELLER: I believe that is all. Let's see, just a second, none of your adult children are dependent on you, are they?

A No, they are not.

MR. WELLER: I think that's all.

MR. STEPHENSON: Your Honor, I had asked Mrs. Borel to bring some photographs of Mr. Borel. If the jurors or the Court and jury might like to see him and I would like to

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ask her if she has them and tender them to the jury at this time, not as an introduction in evidence.

THE COURT: Well, I am not -- do any one of you have an objection?

MR. WELLER: I don't know the purpose of it, I see no materiality.

THE COURT: I don't believe it would be material, Mr. Stephenson.

MR. STEPHENSON: Thank you, Your Honor, that's all. We have no re-direct examination.

THE COURT: All right.

Ladies and Gentlemen of the Jury, just remain seated if you will. I think it is too close to 12:00 o'clock for us to begin testimony by the defendants and we are going to adjourn until 9:30 Monday morning. Please remember that you are not to discuss this case with each other and do not permit anyone to talk to you about the case. If that should occur remember the instructions of the Court to

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report it to the Judge if it should occur. I do not anticipate that it will but sometimes things of this nature do occur. We hope that you will have a pleasant weekend and we will see you Monday morning at 9:30. We will stand adjourned until that time. If counsel would like to talk to the Court before you leave today, you may come in chambers and do so.

THE MARSHAL: Everyone rise, please.

(REPORTER'S NOTE: Whereupon the weekend recess was taken).

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