IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL,

Plaintiff

VS.

FIBREBOARD PAPER PRODUCTS, INC., ET AL,

Defendants

CIVIL ACTION NO. 6449

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 22 1972
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ON: September 27, 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 27, 1971

MR. BARNES: Ruberoid, Philip Carey Corporation and Armstrong Cork Company, come now and file their motion for directed verdict at the conclusion of the plaintiff's evidence and immediately following plaintiff's announcement that he had rested his case. These motions for directed verdict were properly and timely filed with the Clerk and called to the attention of the Court prior to the time that the defendant began the presentation of their evidence and the Court announced that he would take same under advisement. Robert Barnes.

Monday Morning, September 27, 1971
9:30 A.M.

THE COURT: Please be seated. We are ready for the defendants to begin their evidence in chief.

MR. DUNCAN: If the Court please, on behalf of Pittsburgh-Corning Corpora-

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tion, the person whom I designated as the representative of that company is ill and won't be able to come, so I have designated at this time Mr. E. W. Homing, Vice President of the corporation, who is sitting here in the courtroom.

THE COURT: That is all right. Who will proceed first?

MR. TUCKER: Has the plaintiff rested, Your Honor?

THE COURT: It is my understanding the plaintiff has rested.

MR. TUCKER: Well, I will consider that these various motions on trial --

THE COURT: The Court will consider the motions.

MR. TUCKER: We have some of the answers to interrogatories which Mr. Pate will read first, Your Honor.

THE COURT: You may proceed.

MR. PATE: Your Honor, I will make this as brief as possible and I

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will not read the entire answer unless someone requests that I do so. The second set of interrogatories, No. 1, which inquires as to: "Have you ever advised those using your products of your so-called Threshold Limits", and in that connection the defendant, Standard Asbestos Company, answered: "This company has no Threshold Limits".

No. 5: "Has your company ever gone into the field and seen, observed or counted or in any way shown any interest in ascertaining how much dust is created by the workers applying your product", and the answer by Standard Asbestos to that was: "No". Owens-Cornings' answer to No. 1: "This defendant has no so-called Threshold Limits". Their answer to No. 5, with reference to going into the field was: "No". Unarco Industries says to No. 1, with regard to the Threshold Limits: "This defendant has no so-called Threshold Limits".

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Their answer to No. 5, with reference to going into the field was that they have never been into the field.

Now turning to the first set of interrogatories, the same ones that Mr. Stephenson has introduced in evidence, as to certain defendants' interrogatories No. 3: "What studies have you made to determine the effect of your product on the lungs and physical condition of persons employed as insulators", and the answer of Standard Asbestos to that interrogatory is: "This company has made ro such studies".

Interrogatory No. 9: "Have you or any of your employees conducted studies designed to minimize or eliminate the inhalation of asbestos dust and fibers", and Standard Asbestos answered to that: "No such studies have been made by this defendant".

Interrogatory No. 15: "What

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techniques, if any, does your company use to make dust samples", and Standard Asbestos' answer to that: "We do not make dust samples".

Interrogatory No. 18: "Does your company place any warning signs on their asbestos products", and Standard Asbestos' answer to that is "No".

Interrogatory No. 23: "Does your company contribute any funds to research concerning asbestos and its relation to the lung and pulmonary diseases", and the answer to that is: "Not directly".

Interrogatory No. 24: "Do you have any labor inspectors or anyone from your company whose job it is to go to the area where your products are being used to make a dust level count", and Standard Asbestos answered: "No".

Interrogatory No. 27: "Please state whether or not you have familiarized yourself with Dr. William H.

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Stewart's, Surgeon General of the United States, testimony before the Committee mentioned above with reference to dust exposure", and Standard Asbestos answered: "No" to No. 27.

Interrogatory No. 31 -- that deals with the corporations, I will skip that one.

No. 32: "How many years has your company been engaged in the manufacture of products containing asbestos", and their answer to that is: "This company and its predecessor has been in business sixty-nine years".

Interrogatory No. 36: "Please state whether or not your company has had knowledge of any deaths or serious lung diseases among your employees which was attributed to the inhalation of asbestos dust or fiber", and Standard Asbestos' answer to that Interrogatory No. 36 was: "No".

Interrogatory No. 43: "Please

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give total volume of sales of products manufactured by your company and include if possible the total amount of sales of the products of your company containing asbestos for each of the years since 1960", and Standard Asbestos answered: "This information is considered confidential."

MR. PATE: Now, Your Honor, I will read the answers of the defendants Eagle-Picher, Owens-Corning, Unarco, without reading the interrogatories, if I may.

THE COURT: All right.

THE COURT: The answers of Owens-Corning to the interrogatories which I have just read, they answered "No". No. 3 by listing some six different studies that had been made by their company. No. 15 by saying that Owens-Corning does not take area samples in the field. No. 18 they answered by saying "Yes, they do have a label stamped on their carton containing

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asbestos products and that this label was first put on in February, 1967".

They answered Interrogatory No. 23 by saying that Owens-Corning Corporation has not directly contributed to research concerning asbestos and the relation to lung diseases.

Their answer to No. 32, Your Honor, which inquires as to how long they have been making asbestos products, by stating since May of 1958.

They answered No. 9 and No. 36 with supplemental answers saying that they had not conducted any studies.

To interrogatories No. 9 and 27 they say that they are not familiar with Dr. Stewart's testimony, the Surgeon General, as mentioned in Interrogatory No. 27.

Your Honor, the answers of Eagle-Picher. Eagle-Picher says to Interrogatory No. 3 that no studies have been made by this defendant.

Interrogatory No. 9, they answered

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no, and that is with reference to studies which the company has made.

Interrogatory No. 15 is what technique they have used for dust counts and they answered none.

Interrogatory No. 18. They state that they do put a warning on their products which they started putting on in 1964.

Interrogatory No. 23, as to whether or not they contributed to any research concerning asbestos, they answered no.

Interrogatory No. 24, as to whether anyone from their company has gone on the job to make any studies of the dust level and they answered that interrogatory no.

Interrogatory No. 32, which inquires as to how many years they have been making asbestos products and they answered since approximately 1934.

Interrogatory No. 36, which in-

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quires as to whether or not Eagle-Picher had any knowledge of any deaths or serous lung diseases among its employees which have been attributed to the inhalation of asbestos dust and they answered no.

Interrogatory No. 3 -- I mean 43, which inquires as to the volume of sales and they object to that interrogatory and do not answer it.

Now turning to the answeres of Unarco Industries. They answered Interrogatory No. 3 with reference to studies, that Unarco Industries has made no studies.

They answered Interrogatory No. 9, with reference to whether or not any of their employees have conducted any studies to minimize or eliminate the inhalation of asbestos dust, and they likewise answered No. 9, "No".

Interrogatory No. 15, which inquires as to what techniques Unarco Company uses to make dust samplings

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and they answered: "This defendant does not conduct dust samplings in the field where the products are being used".

Interrogatory No. 18, as to whether or not the company puts any warnings on its asbestos products, and they answer: "No, not during the period 1936 to 1939", being the period that Mr. Borel was working as an insulator.

Interrogatory No. 23, as to whether they contribute any funds to research concerning asbestos, they answered: "No".

Interrogatory No. 24, as to whether they have any instructors which go into the area where their products are being used and they answered: "No, not in the field where the products are being used".

Interrogatory No. 27, which inquires as to whether or not they are familiar with Dr. Stewart's, the

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Surgeon General, testimony they object to that interrogatory and do not answer it.

Interrogatory No. 31 I will skip because that is concerning their incorporation.

Interrogatory No. 32, which inquires as to how long they have been manufacturing insulating products containing asbestos and their answer was: "Approximately fifty years".

Interrogatory No. 36, which inquires as to whether or not Nuarco Company has had any deaths or serious lung diseases among the employees which have been attributed to the inhalation of dust, and they object to that and do not state whether they did or did not have such knowledge.

Interrogatory No. 43, which inquires as to the volume of sales of materials containing asbestos, Nuarco Company has answered likewise, objected to it and refused to answer

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that interrogatory.

BY MR. PATE: Your Honor, that's all the additional answers that we want to offer at this time.

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

MR. PATE: We would like to call Mr. Shrode. Your Honor, we want to call him for cross examination in person. Mr. Stephenson has already read his summary from that deposition and we call him in for cross examination.

THE COURT: Come this way, please, sir.

JOSEPH RALPH SHRODE,

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

CROSS EXAMINATION

BY MR. PATE:

Q Would you give us your full name, please,

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sir?

A Joseph Ralph Shrode.

Q Mr. Shrode, speak into the microphone, if you will, so the jury can hear you. Where do you live, Mr. Shrode?

A I live in Pasadena, Texas.

Q How long have you lived in Pasadena?

A About twenty years.

Q What is your occupation or profession?

A I am representative for the Asbestos Workers International.

Q Do you belong to the Asbestos Workers Union?

A Yes.

Q What is the full name of that Union?

A The International Association of Heat & Frost Insulators and Asbestos Workers.

Q How long have you been an insulator, Mr. Shrode?

A Since 1944.

Q 1944?

A Yes.

Q And what is your present position now with the Union?

A I am International Organizer.

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Q All right, sir, and what Union or -- what Local are you a member of?

A Local 22 in Houston.

Q All right, sir, how long have you been a member of Local 22?

A Since 1944.

Q All right, sir, Mr. Shrode, tell the jury, if you will, what different offices you have held in Local 22 in Houston, over the years?

A Well, I have been on the Executive Board, Vice President, President and Business Agent.

Q How long were you Business Agent?

A Eight years.

Q All right, sir, now, Mr. Shrode, you have worked in the field as an insulator, is that correct, sir?

A Yes, sir.

Q And where did you first start working in the field as an insulator?

A In the Orange shipyard back during the War.

Q 1944, is that correct, sir?

A Yes, sir.

Q Mr. Shrode, were you working on a ship in the Orange shipyard or working in the shop or

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what were you doing?

A Both.

Q All right, sir, would you tell the jury whether or not you ever wore any mask or respirator while you were working in the shipyard back in 1944?

A No, sir, not while I worked in the shipyard.

Q Where did you -- when did you first start wearing masks or respirators?

A Well, I don't recall exactly the first time I ever wore it.

Q Approximately?

A Probably when I was -- started doing fabrication work in the shop.

Q What year would that have been?

A That was probably in the late forties, '48 or '49.

Q All right, sir, can you tell us where that was and on what job?

A That was at the du Pont plant in Orange.

Q What type of respirator or mask did you wear at that time?

A Well, I don't know the type, it was a face

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type. Well, I wore both types, it depended on what I was doing.

Q Describe to the jury what you mean by both types.

A Well, they have a real light, face-type, surgical mask, type respirator, and then they have one with filters in it. I have worn both types.

Q Back in the forties?

A Yes, sir.

Q Why did you wear the mask or respirator?

A Well, to keep from breathing so much dust in running the saw.

Q Why did you not want to breathe that dust, sir?

A Well, for many reasons.

Q Would you tell the jury?

A Well, it was uncomfortable, for one thing. I didn't feel it was that good to breathe that much dust.

Q Did you or did you not know, sir, that it was dangerous to breathe that dust?

A Well, I felt that it would be, yes.

Q All right, sir, and did you also know that

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when you were working in the shipyard in the early forties?

A Well, I don't think I was very conscious of it at that time. Of course, I wasn't working in it, wasn't running a saw at that time either.

Q All right, sir, now, Mr. Shrode, did you a mask or a respirator during your work life as an asbestos insulator out in the field?

A No, not in the field, no.

Q Why not out in the field, sir?

A Well, there wasn't as much dust working in the field as there was working around the saw in the shop.

Q All right, sir, and is it your testimony that dust was minimal when out in the open or out in the field?

A Well, not always minimal, but less than working in the shop.

Q All right, you did not see the necessity then for having a mask or respirator when you were working out in the field, so to speak?

A No, I didn't feel like it was necessary.

Q All right, sir, you have not worked with your tools, so to speak, for how many years?

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A Well, I went in as Business Agent in 1960, January, 1960, and I haven't worked with a tool since then.

Q All right, sir, Mr. Shrode, in your various positions with the Union have you had occasion to urge the insulators to wear masks and respirators?

A Oh, yes, I urged them to.

Q For what period of time?

A Well, basically since I have been in an official capacity as Business Agent of the Local.

Q Beginning in 1960?

A Yes.

Q Mr. Shrode, how about prior to that?

A Well, I encouraged people to wear masks most especially if they were working around a real dusty area.

Q Well, they would be aware of the fact if there was excessive amount of dust present, would they not?

A Oh, yes, sir, they can -- they would be aware of it.

Q I mean an experienced insulator, experienced mechanic, there would be no doubt in his mind

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as to when he was creating an excessive amount of dust, would there?

A I think he would know he was creating dust.

Q How is this dust created, Mr. Shrode?

A Well, in many ways, in handling materials, mixing it, sawing it or cutting it.

Q Now most of the products come to the job in such a form that there is very little cutting or scribing that has to be done, is that correct?

A No, there is quite a bit of cutting that has to be done.

Q Could you fabricate those products in the shop, sir, so there would be, there wouldn't be any dust on the job?

A I don't think you could where there wouldn't be any dust, fabricating a lot of stuff in the shop.

Q As I understand it, the insulator will not install a product which has been prefabricated, is that correct?

A Yes, they install it.

Q All right, sir, now these pipe coverings in particular, do they have some kind of a cloth around them?

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A Some of them do, most of them used to, but there is many of them now that don't have, they are held together with -- two sections of pipe covering, they are held together with tape.

Q Do they have some kind of coating on them?

A No, not all of them.

Q Some of them?

A Some of them do, most of don't.

Q All right, does the covering cut down on the dust exposure?

A I would say that it would cut down it, yes.

Q All right, sir, Mr. Shrode, how long have you personally been familiar with the hazards or dangers of breathing this dust which is created on a job?

A Well, I don't know when I became real personally acquainted with the hazards other than just knowing I shouldn't breathe that much dust.

Q Well, I believe you testified on your deposition that somewhere around the mid-fifties or '55 or '56?

A In the mid-fifties I became more aware of

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it, yes, sir.

Q All right, sir, and would you say that most of the workers in the Local became aware of it at that time?

A I would say that they became aware of it, yes, it was reported to them.

Q Now you say it was reported, by whom, sir?

A Well, it was reported by the officers of the Local and, of course, I became aware of it myself, personally, on a warning from a doctor that I went to see along about the mid-fifties.

Q Were you all receiving information from your International headquarters about the mid-fifties about the dangers of breathing an excessive amount of dust?

A Well, I don't think it was that early when we started getting specific information on the dangers of it, probably the latter part of the fifties, early sixties.

Q Now, Mr. Shrode, you receive, I am sure, the "Asbestos Worker" magazine, is that correct, sir?

A Yes.

Q All right, sir, and I believe in about

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1956 they started having articles in the magazine warning the workers about the dangers or hazards of breathing asbestos dust?

A I would say in the latter part of the fifties, yes.

Q All right, sir, do you all not -- did you not also about that same period of time start discussing the hazards and problems at your Union meetings?

A Oh, yes, sir, it was discussed at our meetings.

Q What was the purpose of these discussions at your Union meetings?

A Well, it was to make our people aware of the fact that they shouldn't breathe too much of the dust.

Q All right, sir, can you as near as possible pinpoint for the jury approximately what year that would be?

A Well, I don't know that I could pinpoint the year, I would say the latter part of the fifties, from '56, '57 up.

Q I believe you previously testified somewhere in the neighborhood of '56 or '57?

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A Yes, sir, somewhere in that neighborhood.

Q And you were all receiving certain information at that period of time from the International Union concerning this product?

A Well, it wasn't instructions, it was just statements trying to make people aware that they shouldn't breathe too much of the dust.

Q All right, sir,now I believe you have attended, have you not, your International meetings which are held ever so often?

A Yes, sir.

Q And at these International meetings would you all have medical experts or speakers which addressed themselves to this problem?

A Yes, sir, but this was -- well, the first International meeting that I have attended was in '62.

Q All right, sir.

A And then in '67, they have them every five years.

Q In '62, did Dr. Selikoff appear at that meeting?

A Yes, sir, he appeared.

Q Did you hear him speak at that meeting?

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A Yes, sir, I did.

Q And that meeting was held in Atlanta, where was it?

A Atlantic City.

Q And what did he advise you all at that time with reference to the dust problem?

A Well, he strongly advised trying to protect yourself from breathing dust.

Q And were you not instructed to come back and advise your members of your Local with the problem?

A Oh, yes.

Q All right, Mr. Shrode, as you have just mentioned, you do receive the "Asbestos Worker" magazine and have received it over the years, is that correct, sir?

A Yes, sir.

MR. PATE: Would you mark this for us, please, ma'am?

THE CLERK: Defendants' Exhibit No. 11.

BY MR. PATE:

Q Mr. Shrode, I show you what has been marked Defendants' Exhibit 11, and I will ask

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you to look through there and tell me whether or not those are excerpts from various issues of the "Asbestos Worker" magazine?

A Yes, sir, it is.

MR. PATE: Your Honor, I would like to introduce this in evidence, Exhibit No. 11, which are excerpts, and, if I may, just introduce it without reading them at this time, sir?

THE COURT: You may do so.

(REPORTER'S NOTE: Whereupon they were received into evidence as Defendants' Exhibit 11).

BY MR. PATE:

Q Mr. Shrode, you are familiar with the various insulating products that contain asbestos, is that correct, sir?

A Yes, sir, I am acquainted with a lot of them.

Q And you are familiar with using these products to insulate pipes and boilers which have temperatures, rather high temperatures, is that correct, sir?

A That's correct.

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Q And is it my understanding that there is no substitute for insulation containing asbestos when you come to insulating boilers and pipes which go up to some twelve hundred degrees or fifteen hundred degrees?

A I am not sure that there are any substitutes, but all of the materials that I know of that are used on really high temperature stuff do contain or most of them contain asbestos.

Q All right, sir, so these products do have a utility then, is that correct, sir?

A Yes.

Q And they have over a period of years?

A Yes.

Q And the workers such as yourself or Mr. Borel, who was a member of Local 22, when you all were working these products all realized that they did contain asbestos, is that correct, sir?

A Yes.

Q And when you breathed this dust you realized that it could be harmful to your health, did you not, sir?

THE COURT: I think he has already given that testimony, that's repeti-

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tious.

MR. PATE: All right, sir.

BY MR. PATE:

Q Mr. Shrode, how long have you been aware of the disease called asbestosis?

A Well, I don't know the exact amount of years but I would say probably fifteen years.

Q Since about 1955, is that correct?

A Somewhere in that neighborhood, yes.

Q All right, would you say that the disease asbestosis was discussed at your Union meetings about that same period of time?

A Yes, sir, it has been discussed.

MR. PATE: That's all I have, Mr. Shrode, at this time. Thank you, Your Honor.

THE COURT: Any of the other defendants wish to ask additional questions of this witness, not the same questions or similar questions but additional questions?

MR. WELLER: I would like to ask him one question, Your Honor.

THE COURT: All right.

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CROSS EXAMINATION

BY MR. WELLER:

Q Mr. Shrode, when you became aware of -- your personal involvement and went to see your doctor did he tell you that you had spots on your lungs?

A Yes, sir, he told me.

Q And this was connected with your employment, the nature of your employment?

A Yes.

MR. WELLER: I think that's all.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. STEPHENSON:

Q Mr. Shrode, as I understand your testimony, you worked with your tools a total of about sixteen years?

A That's correct.

Q And what -- do you have -- what lung disease do you have?

A Well, I have an advanced stage of emphysema.

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Q And is this what you became aware of in 1955?

A Yes.

Q In other words, at that time you only worked with asbestos materials for eleven years?

A That's correct.

Q All right, and then what brought this lung disease to your attention, was it shortness of breath or what?

A Yes, sir, shortness of breath was the main thing that brought it to my attention.

Q All right, and then, as I understand it, it got so bad that you had to seek medical advice?

A That is true.

Q And at that time you have testified that your doctor told you that the lung condition you have was caused by your work as an asbestos insulator?

A That's right.

Q All right, sir, since that time you have been personally involved, have you not, with lung trouble caused by the trade?

A Yes.

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Q All right, sir, what percentage of your membership would normally be expected to attend these business sessions or meetings or whatever you call it?

A I would say from ten to fifteen percent.

Q All right, sir, and you know Mr. Bill Condrey, do you?

A Yes.

Q He testified and he has been a long-time member here. Now, Mr. Shrode, getting to the mask, which you said you used while working with the power saw, were the masks little,white, surgical masks and then another plastic one that went around and had a rubber sort of fastening around it?

A Yes, sir.

Q Were either one of those effective to prevent you from inhaling asbestos dust?

A I don't think it kept me from inhaling the dust, all of it, but it cut down on it.

Q All right, sir, now when you were running a saw describe the saw to the jury, please, what does it look like?

A Well, I ran two types of saws, one of them

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what we call a cutoff saw, which had a circular blade that we used in cutting broken insulation, and the other type saw was a bandsaw, known as a bandsaw, that we used for cutting, fitting.

Q All right, sir, now were there suction devices on these saws which were designed to suck the dust that was created away into a container?

A Not when I was running them, no, we didn't have any such thing.

Q All right, sir, then all the dust that the saw created just flew around in the air around the operator?

A That is correct.

Q All right, sir, now in the field, Mr. Shrode, we are speaking of in the field, I mean in a boiler room or powerhouse or a chemical plant or an oil refinery, is it very frequently to say that you working inside rooms?

A Oh, yes, sir.

Q And you work inside close places?

A Yes.

Q And do you have to saw, scribe, cut and mix the asbestos products in order to apply it?

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A Yes, we do.

Q When you saw, scribe, cut and mix, does that create dust?

A Yes, sir, it does.

Q And have you ever been told by any manufacturer, even to this day, how you can avoid breathing that dust?

A Nothing only to wear a respirator and I wasn't told that.

Q All right, sir, I believe you have already stated the respirators weren't one hundred percent effective?

A No, they wasn't that effective.

Q Have you ever been told by a manufacturer how much dust was injurious?

A No, sir.

Q You don't know when they say avoid breathing how to do that, do you?

A No, sir, I don't.

Q And you don't know how much to avoid breathing in order to try and be of a safe level, do you?

A No, I do not know that.

Q Have you ever known of asbestos manufacturers

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coming into the work area where you were working to take a simple dust sample?

A No, sir.

Q Have you ever seen a labor representative from any of the manufacturers working in the area where you were employed, trying to devise safety techniques for applying these products?

A No, sir, I can't say that I have.

Q Mr. Shrode, there has been some testimony to this effect, and I will ask you if it hasn't been commonly understood for many years by asbestos workers that the asbestos would dissolve when it got into your lungs?

A Well, for a long time people felt like that it would. There were certain materials that we used that did dissolve.

Q All right, sir, now I believe one example was that on occasion this worker would show how little effect the asbestos had on a person who ate some of it?

A Oh, yes, I have seen this happen.

Q Of course, this was the talk in the trade, that this would not harm you, although it was uncomfortable, distasteful, is this correct?

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A This is correct.

Q All right, sir, and when you became personally involved, of course, your attention to this problem had ultimately reached a peak?

A This is true.

Q All right, sir, the type respirators that you used when you first began to use a respirator at the du Pont job, have there been any improvements, changes to these type respirators that would help make them better since that time?

A I think there has been some effort made to try to make them better.

Q Uh-huh. Has any of this effort been made by any of the manufacturers of the asbestos material, let's say?

A No, not that I know of.

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

THE COURT: Anything further, Mr. Pate?

MR. PATE: Just a few, Your Honor.

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RECROSS EXAMINATION

BY MR. PATE:

Q Mr. Shrode, as a member and officer of the Union you have participated, have you not, in dictating the contracts between the Union and the various employers?

A Yes, sir.

Q And when we talk about employers there we are not talking about the manufacturer of the product but we are talking about the insulating contractors who bid for the jobs and go out and install the product.

A That's correct.

Q And the Union officers and the employers as a part of this negotiation, initiate the safety provisions of the contract, is that correct, sir?

A Yes.

Q All right, sir, so the manufacturers have nothing to do with that, correct, sir?

A I would say basically they don't have.

Q All right, sir, now my next question is this, who do you all look to to furnish you with a safe place to work or safety equipment when you

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are working as an asbestos insulator?

A Well, we look to the contractor that we are working for.

Q All right, now, sir, who has control of these jobs, Mr. Shrode, in the work area that Mr. Stephenson asked you about a minute ago?

A Who has control of it?

Q Yes, sir.

A Probably the foreman.

Q And the insulating contractor, is that correct, sir?

A Yes.

Q All right, now the manufacturers have nothing to do with that, do they?

A As far as I know they don't have, no.

Q Right. Now he asked you as to whether or not you have seen a manufacturer out on the job making dust counts or collecting dust, as a matter of fact, the manufacturer would probably not be allowed out on these jobs, isn't that right, sir?

THE COURT: That may be --

THE WITNESS: I don't think so.

THE COURT: That might be speculative.

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THE WITNESS: I don't know. I just don't know whether they would allow it or not.

BY MR. PATE:

Q All right, sir, now let me ask you this with reference to the notices, Mr. Shrode, that are on the certain insulating products. You are familiar with them, is that correct, sir?

A Yes, sir.

Q And they have been on there since the latter part of '64 and some companies have been putting them on there after 1965, I believe, is that correct, sir?

A Well, the first people that put a note on their carton was the fiberglass people.

Q All right, sir.

A It was back in -- they started putting it on there back in the fifties, latter '58.

Q What did that note say, Mr. Shrode?

A I don't know the exact wording, it was a warning that the breathing of the material could be harmful.

Q It said something to the effect, caution, avoid breathing excessive amount of dust, didn't

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it?

A Something to that nature, yes, sir.

Q And if you knew -- it could be harmful to your health --

A This is correct.

Q Now the question is this, did this tell you anything that you did not know already?

A Well, it didn't tell me anything that I didn't already know.

Q Because you knew at that time, didn't you, Mr. Shrode, an experienced insulator would know that breathing excessive amounts of dust could be harmful to your health?

MR. STEPHENSON: That's a double question, Your Honor.

THE COURT: It's a double question and I think it is repetitious to go back over the same material he testified to before.

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

THE COURT: All right, anyone have any further questions?

MR. WELLER: No.

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

Who do you have next?

MR. TUCKER: Clifford Sheckler.

CLIFFORD L. SHECKLER,

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

DIRECT EXAMINATION

BY MR. TUCKER:

Q Will you state your name, please, sir?

A Clifford L. Sheckler.

Q Where do you reside?

A 838 South Drive, Metedezonk, New Jersey.

Q By whom are you employed?

A Johns-Manville.

Q In what capacity?

A I am manager of accident prevention and health administration for the corporation.

Q Just briefly what does that job entail?

A Well, sir, I have the responsibility for

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the health administration of the programs -- health administration programs of the corporation, which includes the administration of toxicological data, administration of customer relations concerning toxicological data, administrations of medical programs, medical director has the responsibility for the program itself, the professional responsibility. I have the responsibility for unemployment compensation within the corporation, workmen's compensation within the corporation, and accident prevention.

Q And how long have you been employed by Johns-Manville in that capacity?

A Since 1968 in that capacity.

Q And prior to that time?

A I was employed by Johns-Manville during the time I was going to school in 1936, I was employed as a --

Q In your early employment what did that consist of?

A I was employed as a construction engineer from 1936 to 1942. I then went into the armed services and served in the 14th Air Force Flying Tigers in the Air Force as a construction super-

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visor. Subsequent to my tour of duty in the military I returned to Johns-Manville in 1946, as supervisor of construction for the Manville complex, that includes the plants, the research center, data processing center and general engineering complex. I served in that capacity to 1952, when I was made Safety Engineer for the complex. From 1952 to 1957, I remained in that capacity and then was promoted to Supervisor of Safety and Industrial Hygiene.

Q And during the time that you were in the construction end of it --

A Excuse me, sir, I didn't finish my answer.

Q I am sorry.

A From 1957 to 1960 I served in that capacity and in 1960 I was promoted to the general headquarters, New York, became corporate manager of industrial health and served in the capacity of corporate manager of industrial health until 1967, when I was sent on a detached service for one year type of thing to start an environmental control department and made manager of occupational and environmental control. In 1968 I returned to New York in the corporate headquarters in my

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present capacity.

Q Who was your predecessor in this department of manager of the industrial health department?

A Mr. Hugh Jackson.

Q During the time that you were in the construction end of it did you or not have occasion to observe in the field the manner in which various insulation products were installed?

A As part of my function as construction supervisor I had people working for me who did thermal insulation, installation, yes, sir, within that particular complex.

Q Now as manager of the industrial health department and these other capacities which you have served, did you or not have an occasion to become familiar, generally, with the medical literature and medical aspects insofar as asbestos was concerned and what effect it might have on the workers?

A Yes, sir, I did.

Q Covering what period of time were you involved particularly where you were familiar with this medical literature?

A I would say primarily from 1960 to date.

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Q Now insofar as the medical aspect and medical literature back in the 1960's, did that or not concern itself primarily with the possible hazards in the mines or milling or in the textile industry so far as the health hazard from asbestos was concerned?

A Well, sir, there was literally reams of medical literature produced over the years, all of which in conjunction with asbestos exposure and the disease asbestosis, was related to the -- primarily the manufacturing processes, some of the literature dealt with mining and milling but most of the literature, especially that coming out of Great Britain dealt primarily with manufacturing and almost specifically dealt in the area of asbestos textiles, which, of course, was the major industry in Great Britain at that time. The only report prior to about 1964, that I know of, that dealt at all in the area of thermal insulation was known as the Drinker Report.

Q All right, I will ask you, sir, whether or not any difference between the exposure to which someone working in the mine or in the textile industry as opposed -- his exposure and

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that which someone working in the field installing insulation products might be exposed to?

A Yes, sir, there is a vast difference.

Q Would you explain that difference, sir, to the jury?

A Certainly. An employee who worked in the mine or the mill or in the factory who manufactures a product is usually working at one specific operation and he works with that operation his normal eight-hour work day shift continually except for whatever time he has out of that shift in conjunction with his lunch break or his coffee break or whatever it might be, but, he is constantly working in a given particular area at a given particular exposure all the time. There is no deviation from this. Now, some people may have a job that may take them from one place to the other but basically this type of work is continually repetitive. This is, in my opinion, entirely different from the construction type of potential exposure where a man is doing literally everything on a job, he is all over the job and this work is not repetitive and, therefore, there is no constant exposure and this, of

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course, is why, without any question, there was so much emphasis put on the exposure of people who were working in factories and mills, and just no knowledge of potential exposure to people working on construction or other than manufacturing of products themselves.

Q Is there any difference insofar as the product itself and the possible percentage of asbestos in the manner in which it is handled in the field from what you might expect in the textiles or in the mines?

A Oh, there is no question about that either. We will use thermal insulation products that are used in the field as the example. Pipe covering, pipe blocks, what-have-you, and I speak now, sir, only for Johns-Manville and the products that we manufacture. Our products, thermal insulation products, blocks and pipe coverings, contain now about eight percent asbestos. Fifteen, eighteen, twenty years ago, it contained about fourteen or fifteen percent of asbestos. Now this is in contrast to a man who is opening bags of fiber at the feed station where you are manufacturing the product in the plant and he is

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working with one hundred percent asbestos for a continued eight-hour shift and those people certainly have an extensive exposure, potential exposure, in comparison to the fellow who is working periodically with a product that contains one-tenth of that amount of asbestos.

Q You mentioned a report of Dr. Drinker. Will you tell us just what that consisted of and what significance that was to you insofar as your knowledge of any hazard from these products are concerned?

A May I refer to my notes?

Q Yes, if you have notes, you may.

A The Drinker Report was a study that was made just prior to 1946, and, in fact, it was published in the journal, "Industrial Hygienes and Toxicology", in January of 1946, and Fleischer, Federick, Viles, Roberts, Cade and Drinker were the authors of the paper which appeared, and it was a study of U.S. Navy Yards. The contract yards would be those yards contracting to do naval work. This was a study primarily taken in the shipyards on ships of people who

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were handling and doing work with thermal insulations, pipe coverings, blocks and what-have-you. Now the Drinker Report in 1946, was indicative of the fact that they found only three cases of asbestosis out of 1,074 workers. They also found that the Threshold Limit Values as reported were relatively low and in comparison with the then Threshold Limit Value of 5,000,00 particles per cubic foot of air, they found that there was no great, excessive amount of asbestos in the air and when they did their analysis presumably by impinger (phonetic) count of the particular matter, they found that the total dust was far, far in excess of the asbestos dust. So, all in all, the paper indicated no problem in conjunction with the use of the material in the field, that, at least, was my interpretation and I might add, if I may, sir, that that was confirmed in 1968, in an article in the Journal of Occupational Medicine, by Leroy Balzer, who did an industrial hygiene or insulation worker study on the West Coast, and again, Dr. Balzer found that the asbestos worker Threshold Limit Value of 5,000,000 particles per cubic foot of

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air was not being exceeded in any appreciable amount. Again, without reference to whether or not the Threshold Limit Value was realistic, the Threshold Limit Value was established, sir, and it certainly would be in order to believe that these people were not working in an atmosphere that would be conducive of producing disease, extensive disease.

MR. TUCKER: Will you mark this, please?

THE CLERK: Defendants' Exhibit No. 12.

BY MR. TUCKER:

Q I show you what has been marked as Defendants' Exhibit No. 12, is that or not, sir, a copy of that report?

A Yes, sir, this is a copy of the Drinker Report.

Q That was in 1942?

A No, sir, that was January, 1946, it was the Journal of Industrial Hygiene and Toxicology, January, 1946.

Q Well, when did you first become aware of the Drinker Report, or approximately when was it?

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A Well, I can't give you a specific date. I would say I was aware of the Drinker Report somewhere after 1960, after I had been reviewing the literature --

MR. TUCKER: We want to offer the report in evidence.

(REPORTER'S NOTE: Whereupon Defendants' Exhibit No. 12 was placed in evidence).

BY MR. TUCKER:

Q But what conclusion was reached in that report as to whether or not there was a health hazard among the insulation workers as studied by Dr. Drinker?

A The report conclusions are: one, the character of asbestos pipe covering industry on board Naval vessels is such that conclusions drawn from other asbestos industries, such as textiles, cannot be applied. The operations of bandsaw cutting, grinding, cement mixing and installation on board ships should be equipped with exhaust ventilations to keep the total dust concentration low. The incidence of asbestosis among pipe coverers in the shipyard study was low,

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0.29 percent or three cases out of 1,074 studied.

In view of the nature of the shipyard pipe covering work, they are of little incident and not surprising, since each of the three cases of asbestosis had worked at asbestos pipe covering in shipyards for more than twenty years it may be concluded that such pipe covering is not a dangerous occupation.

Q Now the exposure in a shipyard and working in the confined area of the ship, would it or not be your opinion that that was actually greater than you would encounter in the use of the product in the field?

A It would be my opinion, sir, that exposure in the shipyard in the hold of a ship would be greater than those that would be encountered on the ordinary construction site. I am talking about building construction sites, of course, and the reasoning behind this is that when -- the steel work on the ship is set first and all the bulkheading is set before the insulation goes in, so that in many instances these people are working in a very confined space, and when I

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say confined I am talking about spaces, sir, perhaps the length of the four jurors chairs square and possibly eight feet high and many of them in these confined spaces can be excessively dusty.

Q Now being aware of the hazards from the exposure to what you might say pure asbestos in the manufacturing industry did Johns-Manville make any effort to protect their employees who were subjected to that type of exposure?

A Yes, sir, we worked diligently from the time -- from the time I was employed with Johns-Manville, we have also had dust control equipment in our plant, mines and factories, from the time I became active in accident prevention and health work from, 1952 on we made diligent efforts to control dust of all kinds, not just asbestos but total dust of all kinds which installation of engineering equipment, dust collection equipment and what-have-you. Again, this was all directed toward protecting employees who worked on the jobs and, again, I don't mean to be repetitive but again, this man was in a specific place for eight hours a day and he didn't move around so the theory was remove the dust from

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the employee.

Q Well, did you have any awareness or any indication whatsoever that there was any hazard to be encountered by those who were using the product after it had been manufactured and sold?

A My first indication of a problem, a health problem existing among the people who fabricated and installed materials came in approximately 1964.

Q And how did that come about, how was that brought to your attention?

A That was brought to my attention by the Dr. Selikoff studies that were done with the insulation group in New Jersey, included the New Jersey Locals, New Jersey and New York Locals, those were the first studies that he did. I believe he did those studies in 1963, reported them in late '63 or early '64. But, the real impact of the -- the real impact of the fact that there were problem areas in the health field concerning customers came as a result of a meeting that was held in the New York Academy of Science in 1964, after Dr. Selikoff's preliminary work with the New Jersey

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and New York insulation workers, we gathered there some -- I don't know the number of people, it must have been 150 to 200 people from all over the world, Great Britain and many other countries including the United States, for a discussion of these problems concerning asbestos. This was the first real knowledge that I had that that problem exists and, of course, from there on, as soon as we learned that this was a potential problem we went to work diligently to get it solved. I will be glad to go into that later.

Q Does Johns-Manville have a representative, any being dealing with Selikoff?

A Yes, sir, Dr. Kenneth Smith, our then Medical Director and myself both attended the symposium of the New York Academy of Science.

Q Prior to that time, sir, did you or anyone with your company have any knowledge or information that there was a hazard to those who were using these products, these various insulation products?

A No, sir, no, sir. Prior to 1964, there was no indication and no knowledge as far as

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I am concerned that there was a problem with it. For a better word I call it the customer or the user of the product, the fabricator.

Q Well, once this -- you became aware of this problem I will ask you to tell the jury then what Johns-Manville and your organization have done in order to try and solve this problem and what research you participated in.

A Well, after the Academy of Science meeting in 1964, one of the first steps we took as a company was to pursue the potential problem and you must understand that now this was Selikoff's first report and this was in its very early stages of development. We took the initiative immediately and when I saw "we", I am talking about my own functions, to alert the -- and please understand, within our corporation we have many divisions other than that of manufacturing thermal insulation, but I took the initiative immediately to advise our division who manufactured thermal insulation of the potential health problem to the customer and recommended that we immediately start an investigation into the matter, conferring with those

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people who are seeking out the problem. In about, and I don't know the precise date, but I believe it was about December of 1964, we began -- Johns-Manville took the initiative to voluntarily place caution labels on some of the thermal insulation products. We began with those which we felt might present the worst hazard and quickly as we could develop the labeling we put labels on all thermal insulation products.

Q Now at that stage let me ask you this about the warning. The type of warning and how that wording was finally arrived at, sir.

A Labeling -- there was no -- in fact, is no at the moment legal requirement for labeling of this type of material. Labeling is done on a voluntary basis and the way we determined that we would do it was to follow the recommendations of the manufacturing chemist association who are the organizations that pick specific recommendations for wording and for format and type of labeling to go on. Now the labeling that we chose to put on our particular packages reads as follows: The labeling was a square block

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on each carton, on each bag, on each package and it was outlined in a color which differentiated from the color of the package and said, "Caution, this product contains asbestos fiber. Inhalation of asbestos in excess quantities over long periods of time may be harmful. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirator approved by the U. S. Bureau of Mines for pneumoconiosis-producing dust.", and that is the end of the label, sir.

Q Did Dr. Selikoff, in his article, give you any indication as to how much dust would be hazardous or do you have any information on which you could have made any warning more specific than that?

A No, sir, this was -- there is no specific information available as to the extent of dust and on a specific given construction site. We just don't know and I can give you logical reasons why we don't know.

Q Go ahead, sir.

A We don't know because the work is so

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varied. Momentarily the work changes and momentarily the dust concentration changes with the type of work that is being done. A man may be installing pipe coverings, he may go along a string of pipe for forty or fifty feet without absolutely no cutting required and when he gets to the end of fifty feet he has got to cut. Well, when he cuts there is a little bit of dust, there is some dust created. Then he goes back on another string and in this string of fifty feet he may have three or four cuts, so, as I say, you don't know what the concentration of dust is on a construction site because the work is just always being changed and the environment is being changed.

Q Now there has been some testimony about the Threshold Limits, back at the time of Dr. Selikoff's first disclosure --

THE COURT: Mr. Tucker, I believe we will stop right here for a recess.

Ladies and Gentlemen of the Jury, we are going to stand in recess for twenty minutes, which will be ten minutes after eleven. If you will

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return to the witness stand at that time.

THE WITNESS: Thank you, sir.

THE MARSHAL: Everyone rise.

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

THE COURT: Please be seated. You may continue, Mr. Tucker.

BY MR. TUCKER:

Q Mr. Sheckler, you mentioned an article by Leroy Balzer, and I will ask you if this is a copy of that article, sir?

A Yes, sir, that is a copy of Mr. Balzer's article appearing in the Journal of Occupational Medicine, in January of 1968.

THE CLERK: Defendants' Exhibit 13.

BY MR. TUCKER:

Q This was in January of 1968. Did that or not generally confirm as far as in any way the finding of Dr. Drinker in the shipyard studies?

A It would be my opinion that it did confirm it, especially in the area of potential exposures.

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Q Now referring to, without going through the entire article, did Balzer analyze and find that the insulator would spend approximately forty-five percent of his time working with asbestos material?

A Yes, sir, the insulators spend approximately forty-five percent of their time working with the asbestos-containing materials.

Q And did he or not --

THE COURT: I am not too sure that we can hear the witness, Mr. Tucker. Maybe the jury can hear it better than the Court can. He is not speaking into the mike, he is turning his head around.

THE WITNESS: I am sorry, sir.

MR. TUCKER: That is my fault, since I was up here.

BY MR. TUCKER:

Q Did he also, and can you refer to the article, set out the various jobs which the insulators were doing and about how much time he would spend on each one?

A Yes, sir, it was Mr. Balzer's observations

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that on prefabrication he spent approximately ten percent of his time. Materials precut and shaped using hand and power tools on application, he spent approximately forty percent of his time. Materials fitted, hammered or carved and attached to the surface by wiring or gluing and on finishing he spends thirty percent of his time, materials are coated with asbestos-containing cements, resins and cotton cloth or petroleum-base sealers of one type or another. He spends ten percent of his time on tearing out or removal of the old or unusable materials in the process or re-insulating. He spends about five percent of his time mixing, the material he uses in mixing are mineral wools, asbestos, fiberglass, cements, mixed either separately or mixed in a combination or materials and trowels or buckets and he spends approximately five percent of his time cleaning up of old insulation, transportation of materials and what-have-you.

Q Now did that article also have any reference to the Threshold Limit Values that I have just asked you about before we recessed?

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A Yes, sir, I am sure it does.

Q Well, now on the Threshold Limit Values in 1964 and '65, at the time Dr. Selikoff's disclosures first became known what were those Threshold Limit Values at that time?

A Threshold Limit Values when we first acquired knowledge of this circumstance was 5,000,000 particles per cubic foot of air. Threshold Limit Values for asbestos were 5,000,000 particles per cubic foot of air, and that was measured by what we call the impinger method of sampling. Those were the values at that time that were recommended by the American, and I say recommended, by the American Conference of Governmental Industrial Hygienists.

Q From your knowledge and the articles, Drinker's, that you were aware of, was it or not your belief that those Threshold Limits were being exceeded in the field by the insulators who were using these products?

A It would be my opinion from both the Drinker Report and the Balzer Report that there was no appreciable problem in conjunction with the exceeding the TLV's that were established at

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that time.

Q Well, back at that time if you had or any manufacturer wanted to give any more specific information as to exposure did you have anything other than the Threshold Values to go by?

A No, sir, nothing other than the Threshold Limit Values and if I may answer that, that 5,000,000 particles per cubic foot of air, the Threshold Limit Value was time-weighted average and it was not a set ceiling value. In other words, that 5,000,000 particles per cubic foot of air was presumably what a man could work with eight hours a day for a lifetime and it was an average of 5,000,000 particles per cubic foot of air over his eight-hour working day period. It was not a ceiling set, set ceiling value that at no time would exceed this.

Q Now have subsequent studies made since 1965, have they indicated that the original Threshold Limit Value of 5,000,00 particles per cubic foot were correct or incorrect?

A Subsequent studies to up to and including the present date indicate a diminishing of the

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Threshold Limit Values, not only with asbestos but with many, many dusts and other substances. For instance, the Threshold Limit Value as recommended by the American Conference of Governmental Industrial Hygienists was changed in 1968, when there was a recommended value established in 1968, of twelve fibers per cubic centimeter of air as measured by the Milipoor (phonetic) filter method of measuring asbestos dust or 2,000,000 particles per cubic foot of air as measured by the impinger method. What I am saying here now is that in 1968 these men in their wisdom determined that there was a better way now to measure asbestos fiber than the old impinger method which was gathered total dust. The Milipoor Filter Method covered only asbestos fibers, so at this point in the scientific approach you now have a method by which you could count the asbestos fibers the man was exposed to rather than count total dust which may contain some asbestos, contain road dust, contain silica dust and contain many other contaminants. So in '68 this became, through the efforts of the Public Health Service and ACGIH, it became a

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reality and a recommended value. Then in December of 1970, President Nixon signed into law the Federal Occupational Health & Safety Act and under the Federal Occupational Health & Safety Act the Federal Commissioner of Labor had the authority to sign regulations concerning standards for -- I beg your pardon, standards for Threshold Limit Values. The standard that was initially came into effect under the ISSAH Act in August 27, 1971, was the original recommendation of 1968, by ACGIH of twelve fibers per millimeter of air over five microns as measured by the membrane filter method or 2,000,000 particles per cubic foot as measured by the impinger method. However, ACGIH has now converted their recommended standard, this gets rather confusing, sir, because we are working with a specific statute and we are working with recommended values by ACGIH. ACGIH in 1970 went further and recommended a diminishing of the asbestos standard to five fibers per cubic centimeter of air, greater than five microns as measured by the Milipoor Filter Method, but permitting excursions of up to ten fibers for

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fifteen-minute intervals each hour up to five hours a day. Now that was ACGIH recommendations. The Federal Occupational Health & Safety Act has not adopted that standard to date, so we are working under -- we are working presently under a Federal act of twelve fibers, we are working with a recommended standard of five fibers, and many state statutes still remain at 5,000,000 particles.

Q Now these changes, have they come about as a result of investigations and studies that were made after Dr. Selikoff's article?

A If I may, sir, may I bring you to date, from '64 to date?

Q Yes.

A When the realization struck home that this problem existed and the potential for the problem I might say it was realized then that the potential for the problem might have reached further than thermal insulation, it might have reached into other asbestos-containing materials which was difficult to believe. We, as I told you, the first step within the corporation was to begin labeling. This was our proposed method

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for alerting those people that were using material in the field. But, simulatneously we became active immediately with the National Insulation Manufacturers Association, of which I am Chairman of the Health and Safety Committee. We became active with the Abestos Textile Institute, of which I am Chairman of the Environmental Health Committee, and we became active in the Asbestos Cement Products Association, which I am Chairman of the Health and Safety Committees. Our purpose was to begin a drive among industry people to do everything in our power to find ways and means of protection for the people now that were using the materials. We started a campaign in the National Insulation Manufacturer Association and in 1967 and 1968, each of those two years I personally went out with other representatives of NIMA and other thermal insulation industries and I met each year with some 400 thermal insulation contractors.

Q Contractors, you mean the people by whom these insulators are actually employed?

A That is right, sir. Now these are people who belong to a group of people called the

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National Insulation Contractors Association, and the purpose of these meetings and this was done in regional meetings of up to thirty or forty contractors per meeting. The purpose of going around the country holding these meetings was to verbally make the contractor aware of the potential hazards involved in using some of the materials and to make him aware of what he could do as the employer of these people to take precautions in protecting them. Now we covered such things as the biological effects of the materials. We covered the Threshold Limit Values, what they were, what they stood for. We covered the methods for measuring asbestos dust. We covered such things as the possible engineering and methods, when I say that I am saying, talking about job method changes that he might try and institute on construction sites to abate dust and we also talked and I took with me samples of various types of personal protective equipment, respiratory equipment that could be used by workers to reduce the dust that was inhaled where other engineering or method controls could not be instituted.

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Now, as I say, we met for two years consecutively with the same group. We did this in two stages. Then we realized after the first year that in addition to verbally presenting this to a contractor who heretofore presumably had no knowledge of this that in addition we had to leave something with him, something that he could refer to, something that would give him some insight on what the problem was and if he so chose to hand to his people or hand to his supervisory groups. So we produced a booklet called, "Recommended Health Safety Practices for Handling and Applying Thermal Insulation Products Containing Asbestos". Now we wrote and produced this booklet between '67 and '68, so that at the '68 meetings we could refer and discuss the booklet. In addition to that we produced booklets in the other areas aside from thermal insulation, asbestos fiber, which is the handling of raw fiber, through the Asbestos Cement Products Association. We produced a booklet for fabricating, handling and applying asbestos cement products and we produced a booklet for handling and fabricating

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asbestos textile products.

Now in addition to that we had a reasonably close working relationship with Dr. Selikoff at Mt. Sinai Hospital and about 19 -- about May 14th, 1968, in conjunction with Dr. Selikoff and Mr. Hutchison, who is President of the Heat, Frost and Asbestos Workers Union, we initiated a program, invited all of the industry members who were manufacturing and interested in the manufacture of thermal insulation products to the New York Academy of Science for a meeting there and that was the initiation and formation of a Co-operative Manufacturers Union academic group. Mr. Hutchison and his asbestos workers group, some of the manufacturers of thermal insulation products, and, of course, Dr. Selikoff of Mt. Sinai, and the idea was to formulate an organization that could best get this information down to the worker level. Now this was much more difficult than it sounds at the outset, just to feed this information down to the worker level and have them understand it. So we formulated an organization called the IIHRP, Industrial Insulation Hygiene Research

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Program, and the purpose of that program was to provide improved methods of environmental control for insulation workers and to disseminate the knowledge down to the worker level as best we could, and also to offer as much cooperation and as much advice as we possibly could, not only to the worker level but to all of the levels between us and the workers. It would be the contractor or the user, the manufacturer, the worker, and what-have-you. As a result of that program we began publishing IIHRP publications, insulation hygiene progress reports and I have just a few here but these are sent to Mr. Hutchison's total membership. They are also published in what we call the International Insulation Contractors Association Journal, plus the fact that I personally sent them to all the organizations other than thermal insulation in which I am engaged, in order to get as much knowledge of the subject around the industry as possible. You can see some of the headlines, "Joint Health Research Efforts Starts for Insulation Men". "New Mask Undergoes Field Test". "Sprayed Fiber Controls Are Adopted".

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"Cigarette Asbestos Don't Mix". "Mixing Bags Tests are Successful". "New York Leads U. S. as Such Rules for Spray". "Worlds First Course in Asbestos Effects". In addition to that, sir, through both the National Insulation Manufacturers Association and my own corporation I was requested to become active, more active with the Nica group itself. Again this is the total contractors group. I have spoken at their annual meetings in addition to meeting with them privately and in 1970 in their annual meeting in Dallas, I was on the platform with Mr. Hutchison and the Contractors Safety Committee making a -- I would almost say making a plea to be of assistance in the health field to abate dust and get education to the worker level. I think that my speech is part of the interrogatores in conjunction therewith.

Q One of the interrogatories that has been addressed to the defendants and the answers, some of them have been read as the question as to what contributions have been made by various companies to this investigation and to studying the hazards. The one for Johns-Manville was

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not read, are you familiar with what Johns-Manville has done along that line, sir, and, if so, would you tell us?

A Well, are you referring, sir, to financial contributions?

Q Financial and the nature of the -- the reason for the contribution and the organizations to which the contributions are made.

A Without reference back to the notes and the interrogatories I can't just recite the specific amounts.

Q You can certainly refer to those, sir.

A What is the number, please?

Q Nine, I believe.

A I am not going to delay the testimony, I don't see specific amounts of money listed in here.

Q Well, just to what --

A I will say that aside from the financial aspect of this thing which I will give an opinion but we, as I say, engaged in the IIHRP program, with Dr. Selikoff and Mr. Hutchison. The concern of my top management and frankly my president in the corporation was such that he agreed

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to finance the first year's activities of the IIHRP program at Johns-Manville's expense. Thereafter it would be financed jointly by the Asbestos Workers Union, Johns-Manville and there were other corporations involved. I think our contribution to that program was, I have no set figures, I think our contributions for the first year to get the program off the ground was between $150,000.00 and $200,000.00, and subsequent years it increased because in addition to the cash contributions we purchased an electron microscope for Mt. Sinai Hospital. I believe some $200,000.00 plus additional equipment that Dr. Selikoff required in his laboratory in order to continue his studies. In addition to this we became extremely active and I say in the other organizations plus the time and effort that was put into the program by not only our industry but many of the major manufacturers of thermal insulation products. To put a total figure on this is almost impossible in conjunction with the men's times that worked on these things. For instance, the booklet that I showed you required literally

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hours of work and research work to produce. The meetings with the contractors, the expensive travel and what-have-you, I just can't put a figure on there, but actually out-of-pocket figures are given in the interrogatories.

Q All right, were other -- did you participate in other research, assist in other programs in Canada and elsewhere, other studies?

A Yes, sir, we have numerous medical scientic research and engineering, scientific research studies underway, both in Canada, United States, Italy and really all over the world. In Canada the asbestos miners and manufacturers through the Quebec Asestos Mining Association formulated their own research group of which, of course, Johns-Manville is a major contributor there because we are one of the miners of asbestos and that group was called the Institute of Occupational and Environmental Health. It was housed in Montreal and there was a sub-committee of that group called the Scientific or is the Scientific Advisory Committee Group which is chaired by Dr. George Wright of St. Luke's Hospital in Cleveland, one of the world's most

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renowned medical people in the world of pulmonary medicine and again, the object of that organization was to make world-wide studies of asbestos and its effects on the health of people in general. Those studies are underway at the present time. They are extensive. They are covering asbestos and health, as I say, in many countries of the world, even including information which is able to disseminated from Russia, which, of course, is one of the world's big producers of asbestos.

Q Mr. Sheckler, these studies and this work, as I understand from your testimony, has been done since the publication of Dr. Selikoff's article in 1964, I believe. Why was that not done before that time, sir?

A Well, sir, simply as I can state it, there was no -- the medical scientific world and I am not being critical, sir, the medical scientific world just didn't have this knowledge to provide to us. We didn't have the knowledge that there was a problem area in this area. As soon as we learned of the problem area we initiated every conceivable step to do something about it and we

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are working continually at this time.

MR. TUCKER: That's all, thank you.

THE COURT: Does any of the defendants have any additional questions to propound to the witness?

(REPORTER'S NOTE: No response from the other defendants' counsel).

THE COURT: All right, Mr. Stephenson, you may proceed.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Sheckler, let me get just a little background of Johns-Manville, please. As I recall the interrogatories, Johns-Manville has been making eighty-five percent magnesia, and other asbestos products which are still in use today. They began in the 1900's, is that correct?

A I don't know.

Q Well, did you assist the attorneys in preparing answers to the interrogatories?

A I assisted the attorneys in preparing some

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of the answers, yes, sir.

Q Do you know where they got the information for this particular answer?

A No, sir, I do not.

Q Well, I think we can assume, since the answers are on file, that since the 1900's certain, well, perhaps before, but eighty-five percent magnesia was started to be manufactured in that year. Is it still manufactured by your company?

A As of the moment I can't answer that question. I don't know. Someone who represents the sales end of the business or production end of the business would have to answer that question for you.

Q I understood your testimony perhaps incorrectly to be descriptive of some nine percent asbestos content in certain of the insulating products as opposed to fifteen or twenty several years ago. I thought perhaps you had firsthand knowledge to give us this testimony.

A The eight percent asbestos I am referring to now is in thermobestos, which is the leading line, eighty-five percent magnesia product that

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you are talking about, I don't know just how much of that is used any more. I have no knowledge of that.

Q Would it be true then that you generally have no knowledge of any specific product manufactured by the company containing asbestos, as that knowledge would relate to its use?

A I have knowledge of practically every product that is manufactured by the company in conjunction with its content on file in my office which I referred to but I just can't pull these figures out of my head. We manufacture numerous products, as you might guess, other than insulation products, and I just have no specific knowledge of percentage content of a given product with me. I have no file on it with me.

Q All right, sir. May I go over your background just a minute, please, and be sure that I am accurate in what I understood? In 1967, was when you started the job with the company in the Environmental Control Department?

A Yes. I was transferred to the Environmental Control Department from 1967 to 1968.

Q All right, and that was for the purpose of

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starting this department?

A It was the purpose for starting this department as new endeavor, yes.

Q Well, what does Environmental Control Department encompass, what does that mean?

A Heretofore, Mr. Stephenson, in conjunction with industrial hygiene engineering studies, that is taking samples of air within the confines of the manufacturing establishment. The responsibility was originally with me in New York from 1960 to 1968, and prior to my being in New York it was with Mr. Jackson. In 1967, when it became apparent that there was a need for measuring and evaluating both the inside atmosphere as well as the outside atmosphere of our various locations, our senior officers established what is known as the Environmental Control Department. Excuse me, sir. This is basically an engineering function to evaluate industrial hygiene engineering within the confines of the manufacturing, mining and milling establishments and measure industrial emissions as they relate to outside atmosphere.

Q Air pollution?

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A Community environmental control.

Q This, of course, was prompted by Federal legislation which made you make such studies of the pollution you were putting into our atmosphere, was it not?

A I can't say that it was or was not. To the best of my knowledge it was prompted by the desire of the senior officers to be certain that they met specific state and community codes which were being enacted at that time.

Q But, in any event, in response to some codes which were making this mandatory upon the company?

A In some instances and in some instances it was instituted as a voluntary measure.

Q All right, before 1967, and you went to start up this Environmental Control Department who was in charge of the environmental control as it affected the asbestos workers in the field using your products? What department did that fall under?

A Prior to -- there was -- in our -- specific company no specific group or endeavor to measure or control atmosphere on a construction site of

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a job under which we had no authority or control to do.

Q All right, sir, do you still contend that you have no authority or control to go into a work area in the interest of safety?

A I most certainly do, sir.

Q All right, sir.

A We cannot under any circumstances venture on a contract job because we sell a contractor specific material. He is a subcontractor in essence and then there is a general contractor. Many of these are government installations and certainly you just don't walk on that type of a job without clearance.

Q All right, and could you give me an explanation as to how medical researchers and scientists are able to go into the field and make their particular counts?

A Yes, sir, I cannot give you firsthand knowledge, I can tell you what I know about it from other people who have done this and that is that through the IRRHRP program, for instance, and Dr. Selikoff's group, we must get permission to go on a construction site. That permission

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now is gotten through the contractor, through the Union, through the general contractor, and through the people who are responsible for the construction site.

Q All right, sir, is it my understanding that you say this just came about recently?

A The visiting of construction sites by academic groups or people interested in the health field have come about since the 1964, Dr. Selikoff's disclosure of his information concerning the insulation worker.

THE COURT: Just a minute, Mr. Stephenson, I think we will stand in recess for the noon period.

Ladies and gentlemen of the jury, we will return at 1:30. Mr. Sheckler, you will return at that time. We will stand in recess until 1:30.

THE MARSHAL: Everyone rise.

(REPORTER'S NOTE: Whereupon the noon recess was taken and court resumed).

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AFTERNOON SESSION

September 27, 1971.

CROSS EXAMINATION CONTINUED

BY MR. STEPHENSON:

Q Mr. Sheckler, I think we were discussing before lunch the position that you filled in 1967, from 1968, starting this Environmental Control Department of Johns-Manville Corporation, and I believe you said that this was the beginning of it. So you had no predecessors in that office?

A No, sir, that's correct. Prior to 1967 the industrial hygiene program,which was the measurement of the airborne contaminants within the organization was my responsibility in New York City.

Q All right, sir, this touches on one point that I want to make. As I understand it, now prior to 1967 the measurement of airborne contaminants was within the Johns-Manville Corporation?

A Yes, sir, that's correct.

Q And it was not outside in the field where

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asbestos workers were using Johns-Manville products?

A That is correct.

Q So until 1967, at least, can we say that Johns-Manville made no tests in the field?

A Not to the best of my knowledge, sir.

Q All right, sir, are you familiar with the fact that Johns-Manville Corporation has a subsidiary company, Johns-Manville Construction or similar words, that does contracting of insulation, installation work?

A Yes, sir, I am.

Q And how long has that company been in existence?

A I can't give you a date. I don't know.

Q Before you came with the company?

A Before 1936, I can't say that, sir.

Q What I am arriving at is was it before you came with the company in 1936 that it was organized?

A I don't know.

Q All right, so we have Johns-Manville on the one hand, that manufactures asbestos products, and we have Johns-Manville Construction concern,

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which actually contracts work involving installation of asbestos?

A That is right.

Q Could you tell us, please, why you would have no access to the field where Johns-Manville Construction Company was working in order to make the tests to determine whether the products Johns-Manville Manufacturing Company was making were dangerous?

A Mr. Stephenson, the answer to that is precisely as I stated before. Two reasons, one, there is no reason to believe before 1964 that that type of work was necessary or required, and, number two, access to even those construction jobs which Johns-Manville may be a subcontractor is very difficult, as I pointed out to you before, especially on government work.

Q All right, sir, if we take the hypothesis, Mr. Sheckler, that there was no reason to make these dust tests or any type of test to determine the safety or unsafety of a product, what is your understanding of the reason why it was not felt that there was any need to make such tests?

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A I am afraid, sir, I don't understand the question.

Q Thank you for telling me. What I am driving at is do you have some basis for saying that there was no reason to make these tests and I understand this, that -- my understanding of your testimony, you were waiting on or relying on Dr. Selikoff's testimony or his relevation of his findings.

A Well, again, up to the time of Dr. Selikoff's publication, when he published his findings and Dr. Selikoff, who presumably was one of the first scientists to do epidemological studies in this area, up until that time, sir, there was no indication that this was a problem area, that this presented a problem of any kind in conjunction with the workers, and, of course, subsequent to the 1964 date, as I recited, we then got into, immediately got into joint programs with Dr. Selikoff and with Mr. Hutchison of the Heat, Frost and Asbestos Workers Union to try and solve the problem. That began to open the doors to make the people aware and alert and identify the problem areas but up until 1964 there just was

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no indication that this was a problem area.

Q All right, sir, what studies had your company taken or undertaken in the 1930's, 40's, 50's, let's say, to determine whether this was a problem area or not?

A My reply, sir, not only will be from my experience in reviewing files --

Q All right.

A We began doing asbestos studies, studies of asbestos and health in the early 1930's.

Q Excuse me, may I interrupt and add one thing to my question? I am not speaking of investigation of your own plant workers, I am speaking of investigation of what happens to an insulation or asbestos worker using your products. What studies has the company made in this field?

A There were no studies done to the best of my knowledge prior to 1964.

Q All right, sir, do you know why this was true?

A Simply because there was no problem identified, there was no inclination that there was a problem. There was no medical or scientific information available to really tell us any

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problem existed. If we had, Mr. Stephenson, if we had any inclination that a problem existed, we would have taken the same action that we have taken from 1964 to date as soon as we learned the problem existed. I think it is just as simple as that, sir.

Q Fine. Thank you. We might stop here and explain in some detail who Dr. Selikoff is. I think he has been identified time and again as a doctor doing research in the field of asbestosis, but I am sure you know him, can we agree that he is one of the world's foremost authorities on asbestosis?

A Well, Mr. Stephenson, let's put it this way, I think Irwin Selikoff is without doubt an authority on asbestosis and even broader than that, on diseases of the chest.

Q All right, thank you.

A He is one, however, of many authorities throughout the world.

Q Do you have this book, the "Annals of the New York Academy of Scientists"?

A I don't have it with me, sir, I am familiar.

Q Sir?

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A I say I don't have it with me but I am familiar with the fact that it exists.

Q All right, you are familiar with the general substance in this, I guess, having attended the meetings?

A Well, I am familiar generally with it, yes.

Q All right, touching upon why you feel there was nothing to warrant investigation before 1964, had Johns-Manville researched all of the tremendous volume of medical and scientific literature available at any time prior to 1964, to determine whether or not asbestos, asbestosis might be involved in workers in the field?

A I can't answer that question, Mr. Stephenson, I don't know. I can speak from my own experience from 1960 to date and I might say we did not research all of the information available because there was literally thousands of papers on various subjects in conjunction with diseases of the chest. We did, however, try and keep ourselves familiar with those of import.

Q All right, now you may be perhaps familiar with a paper Dr. Selikoff delivered at the New York Academy of Science entitled "Detection of

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Mineral Fibers in Tissues", wherein he said that a writer by the name of Fahr published no illustrations of these "peculiar crystals" seen in the lungs of a woman asbestos worker reported by him in 1914. But he referred to their appearance as similar to the crystals described by Marchand in 1906. In the latter was described the unusual histological findings in the lungs of a young man working in a dye factory and a woman, the wife of an oven placer, a review of these illustrations in Marchand's paper leave no doubt that they were asbestos fibers". Now the point of my inquiry here, there is reported cases in this instance which I read to you of the wife of a worker who contracted the disease. Could you explain to me why it was thought that a man using the product wouldn't catch it, wouldn't get it?

A Again, Mr. Stephenson, all of the papers that I am familiar with except the Drinker Report up to 1964, deals with people who worked in mines, mills and factories and those are people who are primarily stationary in a job where the exposure levels are high and all of the British papers, all of the South Africa papers

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and the Canadian papers that have come out deal with people who work in manufacturing and I venture to say that it was absolutely not before the Dr. Selikoff epidemiological study of the insulation workers that this problem of the users became apparent.

Q Excuse me, did I interrupt you?

A I am through, yes, sir.

Q Are you familiar or is Johns-Manville familiar with a work done by Dr. P. Elmond in 1934, on pneumoconiosis dealing with asbestos and insulation workers?

A No, sir, I am not.

Q Well, this is in Dr. Selikoff's papers in the annals of the New York Academy of Scientists, which I understood you attended.

A I did. I think there was some several hundred papers.

MR. WELLER: What page are you reading from, Mr. Stephenson?

MR. STEPHENSON: 140.

BY MR. STEPHENSON:

Q Now I understood you on direct examination to base some of your opinion of the lack of

danger to asbestos workers on the Thrasher-Drinker Report?

A Yes, sir, that is true.

Q And did you also hear Dr. Selikoff in discussing this said: "They found only three cases of asbestosis and concluded that asbestos pipe covering of naval vessels is relatively safe operation. Unfortunately ninety-five percent of those examined by them had worked for less than ten years at the trade, and as we shall see for evaluation of the risk of insulation workers limited to studies of men with relatively short durations of exposures may be misleading."

A I am sure that is printed in the results of the New York Academy meeting, that is true, but, sir, again, I point out to you that this is 1964 Dr. Selikoff is saying this and there is no indication before that or no question concerning the Drinker Report. The Drinker Report stood as accepted up until the time it was challenged and certainly Dr. Selikoff's epidemiological studies of the insulation workers of 1964 was a challenge to all prior reports.

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Q But yet you didn't yourself know about the Drinker Report, according to your direct testimony, until the 1960's?

A I would have no reason, sir, to.

Q All right, so you didn't rely on it for anything Johns-Manville decided about that report, did you?

A I relied on the validity of that report between the 1960's and until I learned of the situation in 1964.

Q But the Drinker Report, who in Johns-Manville Company in the 1940's and 1950's and the first five years of the 1960's relied upon the Drinker Report?

A Well, I can't speak for other people but I am sure Mr. Jackson, Dr. Smith and other people in the corporation relied on that report just like we would rely on any valid report published in the medical journals.

Q And I believe you said that Dr. Kay Smith was in attendance at the same meeting with you from which this publication arose?

A Yes, sir, that is correct.

Q Can you tell me why on page 709 Dr. Kay

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Smith, Johns-Manville Corporation, 22 East 40th Street, New York, New York, 10016, was listed as invited, unable to attend, and sent apologies?

A I can't answer why that is published. Dr. Smith attended at least the first day of the meeting with me.

Q All right, sir, I believe your testimony is that Johns-Manville cooperated medically with Dr. Selikoff upon hearing and knowing about certain work that he has done, is that right?

A Well, I don't know that I used the word immediately. Immediately in the sense I assume as soon as possible after the information was revealed at the meeting we began discussing the situation with Dr. Selikoff and his people at Mt. Sinai Hospital.

Q Then would you be surprised to know that Dr. Selikoff made this statement about Johns-Manville: "For example, a year and a half ago I spoke to some of the Johns-Manville people and suggested that the problem was a joint one and they might even like to meet with some of your officials and I offered my laboratory as a neutral ring. Everything was arrranged and the

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people were supposed to come and the week before they called and cancelled and said they had something to do that was perhaps more important. Are you familiar with that?

A No, sir, I am not, Mr. Stephenson, but, I can assure you that I don't know what his reference to a year and a half ago, what date he references that to but I can assure you that we made every effort and, of course, to get a group of forty or fifty people together is a major undertaking and we started discussions with Dr. Selikoff subsequent to this 1964 meeting and finalized the arrangements for the outset of the IIHRP program by May 14, 1968. Now Mr. Stephenson, if I may --

Q What question are you answering now, I have forgotten?

A Your question, sir.

Q What was it, I have forgotten what I asked you?

A Whether or not we cooperated with Dr. Selikoff within a year and a half. That was requested. Now, if I may, I would like to point out that the meeting took place at the New

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York Academy in 1964. October, in fact. The publication of the manual that you have on your desk is dated December, 1965, which is a span of even past a year. It must be understood that it does take time to accomplish these things.

Q What did he have reference to about Johns-Manville that he couldn't get you to do anything for a year and a half?

A I have no idea what reference was made, sir.

Q Who would he have talked to about this, you?

A He did not talk to me about this.

Q Now you have discussed Threshold Limit Values and I would like to ask you some questions about this. I take it that in some way Johns-Manville, under your direct testimony, has indicated that some reliance was placed on this Threshold Limit Values by the company, is this correct?

A That is correct.

Q And I believe you said that the reliance was placed on this Threshold Limit Values when they were published by the American Conference

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of Governmental Industrial Hygienists?

A That's correct.

Q And what year did that start?

A I believe that the first TLV's for asbestos were published somehwere around 1937 or 1938.

Q All right, sir, and, in any event, before World War II, is that correct?

A Yes, sir, to the best of my knowledge.

Q And Johns-Manville has received this information periodically since that time?

A That is right.

Q All right, sir, what action did you take in response to having standards established at 5,000,000 particles per cubic foot of air? What steps did you take knowing of the existence of the standard to see that your product did not exceed that standard in the field?

A Again, sir, within our plant locations where we knew the potential problem existed we made every possible effort to control dust, extensive dust abatement equipment was installed where raw asbestos was used and where people were working on the jobs. Again, the literature throughout the years in conjunction with the disease

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asbestosis was related to job location and primarily related to the textile industry, not entirely.

Q Asbestosis is the same, I believe, it has been established, whether it is contracted by a carpenter or a weaver, so how did you distinguish between these two things you are talking about now before the Thrasher-Drinker Report which Dr. Selikoff says isn't authoritative. You are talking about in 1930. What did you rely on then to cause you not to make any investigation of your products?

A You asked me, you directed my attention to the Threshold Limit Values which I suggested to the best of my knowledge were established somewhere about '37 or '38, and I am attempting to bring you up to date from that date forward.

Q What was done in '39?

A I can only from my files say that continual extensive dust abatement equipment was installed in the factories and mines and mills to reduce the Threshold Limit Value to that recommended by the ACGIH.

Q Now we are talking about an asbestos insula-

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tion worker in the field in this case. My question is what did Johns-Manvill Corporation do in 1939 to see whether or not the asbestos worker in the field was exceeding this by using your product?

A There was nothing done in the field by Johns-Manville in 1939 to evaluate a construction worker's potential exposure on a construction site because there was absolutely nothing in the literature, nothing that would indicate that this particular type of a job presented any health hazard.

Q What about the woman that I just read you a report of in 1914, the wife of a worker that got it?

A Sir, I am not familiar with the report, I do not know --

MR. WELLER: I believe that counsel is inadvertently misquoting the article, I am looking at a similar article and the woman in 1914 was a woman asbestos worker reported by Fahr in 1914.

MR. STEPHENSON: If he had read

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the rest of it, Your Honor, he would see what I am referring to.

THE COURT: I don't know, are you making an objection?

MR. WELLER: Yes, sir, I am making the objection that he is misquoting the article.

THE COURT: Objection overruled.

MR. WELLER: Note our exception.

BY MR. STEPHENSON:

Q May I reread that portion of the article?

THE COURT: I suppose so, go ahead.

BY MR. STEPHENSON:

Q Mr. Weller was reading from the sentence above there. I am now reading from the next to last sentence in the middle paragraph on the page and the woman, the wife an oven placer. Now do you know that since Johns-Manville did nothing in 1939 to see if asbestos workers in the field were being exposed to dangerous quantities of their dust, I suppose your testimony could go from each and every year up to 1965, is that correct?

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A That's correct, sir.

Q All right, did you know that states of the United States had dust concentration counts before 1942, and that these states, among them are California, Colorado, Massachusetts, Michigan, North Carolina, Oklahoma and Pennsylvania.

A Most of the states in the Union, sir, when the American Conference of Governmental Industrial Hygienists recommendations for Threshold Limit Values were published annually every two years, most of the states in the Union adopt them under their statutory requirements, under the code rules and regulations procedures and, sir, most of the states will monitor and inspect places of employment where they believe that concentrations could exceed these Threshold Limit Values.

Q All right, sir, now speaking of Threshold Limit Values, are you familiar with the books setting out these Threshold Limit Values and what they mean?

A I am familiar with the ACGIH book.

Q Is this it?

A Yes, sir, what year is that, sir?

Q 1970. It is the latest I could get de-

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fining what the Threshold Limits mean.

THE COURT: I believe he said he was familiar with it.

MR. STEPHENSON: Yes, sir, all right, I am sorry, Judge, I thought he was looking for it.

THE WITNESS: I am, sir.

MR. STEPHENSON: Is it all right to continue, Your Honor?

THE COURT: Yes.

BY MR. STEPHENSON:

Q The first page,the amount by which Threshold Limits may be exceeded short periods wit hout injury to health depends on a number of factors, such as the nature of the contaminant, whether very high concentration even for short periods produce acute poisoning, whether the effects are accumulative, the frequency with which high concentrations occur and the duration of such periods. All factors must be taken into consideration in arriving at decision as to whether a hazardous condition exists. Now that was on page one. Finishing at the end of the page. Now, Mr. Sheckler, did Johns-Manville do anything

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before 1965 to determine whether or not the Threshold Limit Values were in high concentration amounts, whether the effects were accumulative, the frequency with which the high concentration occurred, the duration of such periods. Did you do anything to find out whether your products, when being used in the field, were violating any of these requirements?

A The answer to that, sir, is no, we made no effort before 1964, and the knowledge by Dr. Selikoff's studies that there was any problem in the field of any concentration that would exceed the TLV even for short durations.

Q Excuse me --

A In fact, sir, the preface of the 1970 ACGIH booklet has changed somewhat from that of the 1968 and '69, I believe.

Q Well, sir, I will try and go back then to the beginning. Are you familiar with Dr. William G. Frederick, who was the original chairman of this Industrial Hygiene Committee in 1936?

A No, sir.

Q Well, now let's get to what Johns-Manville did that is manufacturing for its own company

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design. When Johns-Manville, in the 1930's, 1936, when you first came with the company, at that time wasn't there some program to try and remove from the workers in your factory the danger of breathing this asbestos dust?

A Now, sir, I am going to speak, you understand that between 1936 and 1952, I had no direct responsibility in this area.

Q You don't have any knowledge, that's perfectly all right.

A The knowledge I have, of course, is the fact that I am thoroughly familiar with the construction of the plant. There has been dust abatement equipment, extensive dust abatement equipment installed throughout the plant locations, and at that time throughout Manville's New Jersey plant to remove the dust from the employees who worked on stationary jobs.

Q All right, sir, and does this program encompass putting suction devices on saws and various manufacturing appliances so that the dust will be blown into a filter area where the likelihood of the workers breathing this dust is lessened?

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A Yes, sir, these are exhaust systems that are installed on machines that remove the dust and run the air through a collective filter media.

Q All right, sir, and, of course, recognized, I am sure, Johns-Manville did, that breathing the dust was dangerous?

A No question about it.

Q And there is no question that this has been known for fifty years, is there?

A I don't know that fact, there is no question that there has been knowledge concerning the disease asbestosis since the 1930's.

Q All right, sir, and Johns-Manville within your own knowledge knew of this and made an effort to put suction devices or exhaust blowers, whatever they call it, in the factory so the workers wouldn't be exposed to inhaling the asbestos dust and that is the purpose of it, wasn't it?

A That is exactly the purpose.

Q All right, sir, and I guess they still have them?

A Yes, sir.

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Q Now I want to ask you a point or two about that. Are you familiar with any of the Johns-Manville literature, sales literature, sir?

A I may be, I am not thoroughly familiar with the Johns-Manville sales literature.

Q And does Johns-Manville advocate that respirators be worn by those applying its products?

A At the moment, yes, sir, most definitely.

Q When did it start making such recommendations?

A After 1964. After we began to understand the problem.

Q So can we say then that Johns-Manville didn't understand the problem of respirators until after 1964?

A Well, sir, now you are referring to sales literature and you are referring to customers and it refers to products produced, I presume, not people working in the factory.

Q I am referring to whether Johns-Manville Corporation, whom you represent, had any knowledge of the use of respirators or recommended the use of respirators before 1964?

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A Respirators were used in the factory, on jobs where it was impossible to engineer dust out for years before 1964, yes, sir.

Q But then Johns-Manville never recommended before 1964, as I understand your testimony, that workers in the field wear them?

A That is to the best of my knowledge, that is correct. I have no intricate before 1964, of the recommendation for respirators or whether respirators were made. After 1964, we, as I have testified here, we made every effort to assure as best we could that they be worn. Now, Mr. Stephenson, if I may explain a little bit about the wearing of respirators in the field. It must be understood that the people working in the field on construction sites or jobs that are being done for a contractor are the responsibility of that particular contractor and that a manufacturer would find it very difficult to make it mandatory to wear respirators, regardless of his convictions about this sort of thing. Secondly, until the Federal Occupational Safety & Health Act was passed in 1970, I know of no statutory provision that said employees

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had to wear respirators.

Q Mr. Sheckler, I notice on your direct examination that you spent quite a lot of time telling the jury of all of the things that Johns-Manville has done in 1969 and '70, to bring home to the worker the danger of the asbestos material which you produced. Why couldn't you have done that earlier?

A We did, sir.

Q All right, how did you bring it to the workers' attention any earlier?

A We started from 1964, the date of knowledge of this information, and proceeded as rapidly as we could right there to this present date.

Q All right, sir, from 1964, was then the beginning date of the time that Johns-Manville gave any notice to the workers of the danger of the product, is that right?

A That is right, Mr. Stephenson, and as a result of our first getting knowledge of these facts we began in 1964. As I repeated before, had we known this in 1960 or '58 or '56, we would have taken that action immediately.

Q Is there any way in the field, for example,

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when a worker is cutting a sheet of asbestos material with a DeWalt handsaw, is there any way to attach a vacuum device to that to suck out the dust as there is in a factory or a permanent location?

A Presumably yes.

Q What do you mean by presumably?

A Well, I don't know the circumstances. If the man is up on a scaffold attempting to cut a piece of material with a Skil saw that is one thing, and if he is on the ground that is another thing.

Q I show you a couple of pictures out of Johns-Manville literature and ask you if this man using the DeWalt saw on the right, is there any suction device around that saw?

A I see none.

Q What about the middle man using the jig-saw?

A I see none, but we are not talking about insulation material.

Q All right, is it your testimony insulation material doesn't have to be sawed, cut, scribed, hammered in place and mixed with water?

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A No, sir.

Q All right, I show you another picture here. The second page of men applying asbestos to a large pipe, and ask you if you see any of them with any type of breathing device?

A No, sir, I see no --

Q And the next page, do you see any breathing devices there?

A No, sir.

Q On those workers, or the next page?

A May I answer the question, sir?

Q You did when you said no. This one looking up, the man looking up drilling a hole right over his face, with a drill right over his face, what would keep that man from breathing whatever dust the drill put out?

A First of all, he is installing acoustical panels which contain no asbestos, and, secondly, Mr. Stephenson, the photographs you showed me of the man putting thermal insulation on, the atmosphere in those photographs are absolutely clean. Now even in the factories we don't keep respiratory equipment on people that don't require it.

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Q All right, sir, I think I understand that, but what I am trying to drive at is where you have a plant you have controlled conditions, you have machinery that is relatively permanent, you have suction devices that are relatively permanent, you have filters that are also of a permanent nature. Didn't it ever occur to Johns-Manville that a man out in the field having to saw and cut and scribe and mix your product was going to breathe some of that dust?

A Mr. Stephenson, from the 1930's to the 1964's, all the medical and scientific literature in conjunction with the disease asbestosis was based on, as I said before, mine, mill and factory workers. Much of that literature, the greater portion of it, was based on the textile industry. In the textile industry you have carders, you have spinners, you have wrappers, you have weavers, these people stand at a machine eight hours a day, forty hours a week or forty-eight hours a week, and their exposure is almost consistent. It never occurred to anyone, to the best of my knowledge, up until the time that Dr. Selikoff did his epidemiological study that

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people who do not stand in fixed positions of fixed machines might have potential exposures that could possibly cause some pulmonary disease.

Q I understand then Johns-Manville had to wait on Dr. Selikoff to show that asbestos workers were breathing the dust?

A Like many other potential toxic materials, DDT and many others that we are learning of today, I presume if you put it that way the answer yes.

Q All right, sir, I understand from your direct testimony that you relied upon a work of Mr. Balzer, which you said was done in 1968, supporting the work done by Thrasher and Drinker in 1945. Is my memory correct?

A I said his conclusions supported that of Dr. Drinker's.

Q And was this man named J. Leroy Balzer, M.S. Associate Specialist in Industrial Hygiene, Engineering School of Public Health, University of California, in Berkeley, California?

A Yes, sir.

Q Would it surprise you to know that Dr.

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Clark Cooper and this same J. Leroy Balzer delivered a paper for presentation at the International Conference of Biological Effects of Asbestos in April, April 22 -- the 25th, 1968, do you know about this paper?

A It wouldn't surprise me. I know of Dr. Cooper and Dr. Balzer's work.

Q All right, sir, Dr. Cooper was called, was brought from California to testify here in Beaumont on deposition by Fibreboard Paper Products Company, and I got this paper from him at the time. Have you seen this?

A No, sir, I have not seen that.

Q Would you be surprised to know that Dr. Cooper and Dr. Balzer found extremely high instance of asbestosis among workers in the field in 1968?

A I would not be surprised, no, sir.

Q All right, sir, would you then be surprised to know that the only purpose of Dr. Balzer or Mr. Balzer making a study --

A It is Dr. Balzer.

Q Dr. Balzer making a study in 1968, was to compare the method of dust samplings which

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were used by Fleischer and Drinker in 1945, with what would happen on the Est Coast of the United States if exactly those same methods of sampling dust were followed, and he found that the system used by Fleischer and Drinker were so defective that they could not get any conclusions from the tests using the method which Fleischer and Drinker used?

A Mr. Stephenson, that does not surprise me. The method for evaluating asbestos dust was prescribed primarily by the United States Public Health Service, we followed the recommendations of the United States Public Health Service up to the time that the Threshold Limit Values and the system was both changed in 19 -- approximately 1968, when the Public Health Service, Dr. Lewis Corley and Mr. Sherman A Lynch, made strong recommendations that we switch from the use of the midget impinger to the Greenberg-Smith impinger to instruments called the membrane filter method of sampling. Now the difference in these two methods of sampling is understandable because, as I testified previously, one method of sampling evaluates total dust and the

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other method of sampling evaluates asbestos fiber alone. One method of sampling, the impinger method of sampling that was used up to the recommendation of Public Health Service's change was a room-type of sample where you would set up your instrument and you would get some indication of what dust levels were in a given huge area. Now you can well imagine if you had drafts and wind blowing in that area and just picture a construction site and trying to make any sense out of sampling a construction site with one impinger set in the middle of the floor. Now the membrane filter method of sampling, it is a personal method of sampling, it is a filter that is pinned on the man's collar as close to his breathing zone as possible with a little pump fastened on his belt which pulls the air to the filter. So now we know what the man is actually breathing and this is precisely or this is to the best of my knowledge what Mr. Balzer was attempting to establish.

Q Now you refer to Dr. Edwards and Lynch, did you?

A No, sir, I am referring to Mr. Jeremiah

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Lynch, United States Public Health Service, Cincinnati, Ohio.

Q J. R. Lynch?

A J. R. Lynch.

Q J. R. Lynch together with G. H. Edwards wrote an article on methods used by the U. S. Public Health Service for enumeration of asbestos dust and membrane filters, are you familiar with that?

A I am familiar that the article exists, yes.

Q Do you know that they came to the conclusion that the filter used by Fulton in 1934, that is, the dust count used by Fulton in 1935 and by Thrasher in 1938, had resulted in a considerable decline of asbestosis where it has been conscientiously applied?

A I am not familiar with this writing and again, sir, now you are referring to British experiments in the textile factories.

Q Yes, but the point I make is that anywhere dust is being breathed if a dust count by even the old system was used, according to Edwards and Lynch, it would considerably reduce asbestosis where it may be conscientiously applied. Now

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whether it is the textile industry or any industry or the asbestos worker in the field, that's the point I am making.

A I beg your pardon, Mr. Stephenson, but Mr. Lynch, I think, would be the first to indicate to you that while we at Johns-Manville -- may I, we at Johns-Manville instituted an asbestos textile through the Asbestos Textile Institute in and about 1964. We requested the Public Health Service to do the study and Dr. Lewis Corley took on this work and the purpose of the study by the United States Public Health Service was the very purpose of Jerry Lynch to try and evaluate the milipoor or membrane filter methods versus the impinger methods and draw some correlation between the two. Mr. Lynch has not been able to draw a correlation between the two except in the textile industry. He attempted to do this and in the asbestos cement industry and was unable to do it. An attempt to do it in the thermal insulation and he was unable to do it. The reason is that when we deal with the asbestos textile industry where all of these multitudes of scientific papers have come out of we are

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dealing with one hundred percent asbestos. When we are dealing in an industry such as thermal insulation or asbestos cement we are dealing with other dusts in addition to the asbestos content and there is just absolutely a vast difference in the scientific engineering approach to both of these measurements.

Q Do you recognize that one of the reasons in the early 1900's for using the plants that used textiles, I assume used -- plants where they used one hundred percent asbestos was because asbestos combined with other materials may have given a false report, so when the test was done of workers using one hundred percent of the material it was definitely found that asbestosis resulted. If that is the only reason why a selection was made of this nature.

A That is why precisely the USMS agreed to do the asbestos textile industry so that it could be compared with other industries and this was simultaneous with Dr. Selikoff's study in conjunction with the thermal insulation work.

Q All right, sir, a final question or two and I will be through. This is a Johns-Manville

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product, thermobestos, you probably can't read the small writing from there.

A I assume that is the caution label, sir.

Q Yes, it is. I am not presuming you can read it from that distance.

A I cannot.

Q Who was this caution label put on the boxes or cartons for, what user, what -- who was supposed to see it and take some action in response to it?

A The caution label was put on that box for the benefit of those people who handle fabricated, use the product when it left the plant.

Q And that would be the worker, in other words?

A Not the workers, not the Johns-Manville employee worker but anyone, including contractor, worker, supervisor, manager or what-have-you after the material left the plant.

Q In other words, going to the point of consumption?

A Yes, sir.

Q And at least a part of -- you say of the people that should have read it was the worker?

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A I would say so, yes, sir.

Q All right, sir, among other things your caution says, "Inhalation of asbestos in excessive quantities", what is excessive quantities? How would the worker know whether he is getting in an excessive quantity or not?

A Well, sir, if you read the entire label I think the word "excessive" becomes self-explanatory.

Q I read the whole label but right at this point how does an asbestos worker in the field know when it is excessive?

A If he sees, if he sees what he considers to be clouds of dust or dusty conditions in the air, at the time that label was put on the box that is the explanation for excessive.

Q Inhalation of asbestos in excessive quantities over long periods of time may be harmful. What did you mean by long periods of time and how would the worker know what you meant?

A Long periods of time, Mr. Stephenson, means over a period of years.

Q Well, how does the worker know that?

A Well, Mr. Stephenson, when this label was

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put on the box much thought went into the wording of that label and, frankly, much thought went into the word "excessive", by me. There were two choices to tell the worker how to measure the amount of dust. One was to make it as simple as possible by using the word "excessive", and the other was to recite on there the 5,000,000 particles per cubic foot of air which he absolutely would have no way of measuring, understanding or conceiving.

Q And which Johns-Manville had never measured for him?

A And which we had not measured for him prior to 1964, but again, the label didn't go on there prior to 1964. It went on subsequent to 1964, so presumably after 1964, through IIHRP by contact with the contractors, by contact with NIKA, he was aware of what the Threshold Limit Values were, but he certainly had no -- the worker had no indication of how to measure.

Q And if dust is created when this product is used how do you avoid breathing the dust?

A I think, sir, that explains the word "excessive".

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Q If adequate ventilation is not possible, adequate meaning what?

A Enough to remove the visual dust.

Q Wear respirators approved by the U. S. Bureau of Mines for pneumoconiosis-producing dust. Do you suppose a worker would understand what that meant?

A Yes, sir, number one, through the IIHRP and the other programs I am sure that he had seen the word "pneumoconiosis" and knew how to apply it, sir. You must remember, sir, that Dr. Selikoff had various meetings with asbestos workers from '64 on, meeting with the delegations and meeting at their conventions and they were certainly well proved in the area of industrial health. Secondly, the reason the word "pneumoconiosis" was put on that label in conjunction with the approved respirator is, number one, to assure that the worker would not use just any old respirator that came down the line and would provide no protection for him. This is why we felt that it was important to insist that the U. S. Bureau of Mines respirator be approved and that approval on the respirator itself, that

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is printed on there, their approval for pneumoconiosis dust. That is precisely how it is worded and we felt that that was important to put on the label so he would understand what we meant.

Q All right, and now you know that was wrong, don't you?

A No, sir, I do not.

Q You know the dust is not the problem, it is the fiber of the asbestos and the different filters are required for the fibers as would be required for dust, such as coal miner's dust or other pneumoconiosis dust?

A That is true, sir, but that to date has not been published by the U. S. Bureau of Mines or any other agent, in fact, the United States Bureau of Mines approved respirators for pneumoconiosis dust are the type respirators that are apparently being recommended not only by me but by Dr. Selikoff and the industry for wearing to protect against asbestos dust and asbestos fibers.

Q Are you familiar with the book written by Lanigon in 1936 on asbestosis?

A I know that the book exists.

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Q Did you look through the many, many records, articles and significant work that were in that book?

A I have examined that book from time to time. I am not familiar with it word for word.

Q Are you familiar with -- let me ask you this, there is a town of Manville, New Jersey?

A Yes, sir.

Q And there is a Johns-Manville plant there?

A Yes, sir.

Q It is rather a small town?

A A rather small town.

Q Are you familiar with research being done by the Johns-Manville group on the amount of asbestosis among plant workers at the Johns-Manville plant there in Manville, New Jersey?

A I know of no research work being done by the Manville group, I don't think the Manville group per se is in that position to do any research.

Q I don't mean significant research, I mean getting together of the information to publish a story.

A I am familiar with the Manville news.

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Q Have you read the story?

A I read the story.

Q All right, sir, now --

A Incidentally, Mr. Stephenson, if I may, those stories were mentioned during contractors negotiations, you might not know that.

Q No, I don't know anything other than the paper contacting me trying to get information on the amount of the dust that was in the plant. Now you know what a personal dust monitor is, do you not?

A I presume you are referring to the millipore membrane method.

Q How long has that been in use?

A I personally know that that piece of equipment has been in use in the United States since about 1957.

Q Yes.

A Now it is my understanding, and I have no firsthand knowledge that this equipment was used in Great Britain for some time prior to that, but it was not the accepted method by the United States Public Health Service.

Q All right, sir, is Johns-Manville a large

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company in the mining of asbestos?

A We mine asbestos, I just couldn't tell you where we fit in with our competitors.

Q In the United States, for example, does Johns-Manville own mines?

A We have one very, very small mine in California.

Q In Canada?

A In Canada we have two mines at the present time.

Q All right, sir, have you heard of any company putting asbestos cement up in plastic bags with a little, garden-hose nozzle on it so that water can be put in there and then be mixed and --

A Yes, sir.

Q Has Johns-Manville done that?

A We are doing that now, yes, sir.

Q I mean have you seen any of it to be used in the field five years ago, for example?

A I cannot answer that, Mr. Stephenson, I don't know how prevalent the use of the plastic bag is in the field. The plastic bag development was one of those joint developments of IIHRP, between the asbestos workers and Dr. Selikoff and our-

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selves.

MR. STEPHENSON: All right, sir, I think that is all, Your Honor.

THE COURT: Any further, Mr. Tucker?

REDIRECT EXAMINATION

BY MR. TUCKER:

Q Dr. Sheckler, are conditions found in the factory in exposures which these factory workers or miners that are possibly exposed to, are they anything like what you find in the field with the insulation worker?

A It would be my opinion that the answer to that is definitely no.

Q Are the concentrations of asbestos anything near the same for those using a product with ten or fifteen percent asbestos, such as in the insulation worker, are they the same as in the factory or in the field?

A Absolutely not.

Q Now you mentioned and had with you a number of the pamphlets that had been sent out. I will you is this the type of, form of pamphlet that --

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A That is one of the recommended health safety practices, of course, this one deals with thermal insulation products containing asbestos by the National Insulation Manufacturers Association, which was written by my committee.

MR. TUCKER: Your Honor, we will offer that in evidence.

MR. STEPHENSON: May I ask what the purpose of it is, Your Honor?

MR. TUCKER: To show what warnings were put out and what was done.

MR. STEPHENSON: Well, I would object to it until there is some time specified.

THE CLERK: Defendants' Exhibit 14.

THE COURT: You can make your objections later.

BY MR. TUCKER:

Q Do you know when this was first sent out, sir?

A Yes, sir, I testified before that pamphlet was printed and distributed between 1967 and 1968.

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Q And what was the -- to whom was it distributed?

A It was distributed to the membership of the National Insulation Contractors Association called NIKA, and it was distributed to many, many contractors who did not belong to NICA. It was distributed to Mr. Hutchison through Mr. Haus, the Executive Secretary for the Heat, Frost & Asbestos Workers Union, and it has been used extensively by me as an attachment to shipyards and Navy yards upon filling out safety data sheets which we are required to fill out by the Government.

MR. TUCKER: I believe that is all, thank you.

THE COURT: Anything further, Mr. Stephenson?

MR. STEPHENSON: I think not, Your Honor.

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

MR. TUCKER: We call Mr. Jackson.

THE COURT: Come in front of the

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bench, please.

HUGH M. JACKSON,

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

DIRECT EXAMINATION

BY MR. TUCKER:

Q Will you state your name, please, sir?

A My name is Hugh M. Jackson.

Q Where do you reside?

A I reside in New York State.

Q By whom are you employed?

A I am employed by Johns-Manville Corporation.

Q And in what capacity?

A My present job title is Director of Employer Relations and Management Development.

Q How long have you been in that position?

A I have been in this position about eleven years.

Q Prior to that in what capacity were you employed by Johns-Manville?

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A May I consult my records to make sure I have the dates correct?

Q Yes, if you need to.

A Prior to that I was Director of Training for the corporation from 1960 to 1964, and before that I was Manager of the Industrial -- Corporate Industrial Health Program from 1952 to 1960. Prior to that I was the corporate safety engineer from 1947 to 1952, and for ten years prior to that I was located at our Waukegan, Illinois manufacturing facility, one of our larger plants, and I had experience there in industrial engineering, cost accounting. I was manager, supervisor trainee at the plant and just before my move to New York, was Assistant Industrial Relations Manager.

Q In the course of your employment have you had an occasion to be concerned with the health of the employees or any other one who might be exposed to asbestos fibers?

A I have from the years back in the Waukegan plant as the Industrial Engineer of Training and Assistant Industrial Relations Manager, part of my responsibilities were that of conducting the

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safety programs which was safety and health programs for that plant location. As I moved to New York in '47, as Corporate Safety Engineer the Industrial Health Program of the corporation was a very specific responsibility under that title. In fact, up until 1960, when I became Director of Training, I had the direct industrial health responsibility for the company. Subsequent to that time, some of these dates and times get a little confusing because we had a number of organizational changes during that period, but I again, as Director of Industrial Relations, had the industrial health assignment re-allocated back to me in 1968. So, I have it currently.

Q In the course of this work have you to some extent became familiar with various scientific literature relating to asbestosis and the way in which to attempt to protect the worker from that disease?

A I have. As I came into the corporate safety engineer's job I had to spend considerable periods of time in the years immediately following 1947 in becoming familiar with the state of medical knowledge, hygiene engineering knowledge

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in order to carry out my responsibilities. Up until that time within the corporation there has been no single person charged with that responsibility. So that the development of the program was one of my duties at the time. So, yes, I purposely became familiar with the literature.

Q Now this literature that we have reference to, was it or not -- did it or not deal with the exposures in the mines and in the factories and in the textile industry?

A Yes, sir, the principal literature speaking of asbestosis, asbestos, which I presume -- may I add that our concern in industrial health related to the total work environment of the individual and because we in Johns-Manville manufacture a wide variety of products, there were many other toxic exposures that we had to be concerned about in addition to asbestos. But in connection with the asbestos literature it was principally concerned with the experiences in mining, milling and manufacturing operations.

Q Now there has been mention made of a Dr. Drinker's report, are you familiar with that, sir?

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A Yes, sir, I am familiar with it, yes.

Q Did that report relate to exposures, possible exposures of the insulation worker working in the shipyards?

A It was. That report, that study was made, I believe, in four Navy shipyards of people who applied insulation.

Q Do you recall about when it was that that was -- that report was brought to your attention, when did you first hear about it?

A Well, the report was published in 1946, and I would say between the period of '47 and '49, when I was indoctrinating myself by reading literature was the time I became familiar with it.

Q Other than the Drinker Report, which was published, I believe, in 1946, so far as you know was there any medical or scientific literature dealing with the exposure that might be expected by those involved in the insulation, that is, installing insulation products other than that report?

A I am not familiar with any other paper other than those primarily offered by Dr. Selikoff in

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1963 and '64, '65, that period of time.

Q Now from the 1946 Drinker Report did that or not lead you to believe that there was any particular health hazard being encountered by those who were using asbestos insulation products?

A Well, the conclusion that Drinker and the other officers of the paper came to was this operation of installing insulation in shipyards was not a dangerous or a hazardous operation. They found very few cases of pulmonary involvement of asbestosis among the workers that they examined.

Q Are there exposures that they find in the factory and in the textile industry, are they heavier concentrations, are they different from those found with respect to those using the insulation products? Is there any difference between the type of exposure and the concentration?

A I would say there is. As we think of the manufacturing processes we think of a man that comes to work at the beginning of a shift and works constantly throughout the ship doing pretty much the same operations, subjected to the same

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environmental conditions. The insulation worker is a man of many tasks and would be operating under a variety of conditions during the day, some heavy exposure and some light exposure, I would think.

Q Now prior -- you mentioned Dr. Selikoff's report, prior to Dr. Selikoff's article was there any indication that you had that there was any problem being encountered by those in the insulation industry who were using these products?

A No, there was no indication, in fact, as we learned of Dr. Selikoff's work this cast a total new perspective in the whole area of insulation workers.

Q In those areas were you ever aware of the problems, did they relate to your factory, is that primarily what you were concerned with?

A We had been for many years. The early British paper, papers indicating that there was such a thing as asbestosis caused the company, and this was before my time of my employment with them, but I got familiar with this in my review of our records, sponsored research by the

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Dr. Leroy Gardner and the laboratory of the Trudeau (phonetic) Institute. An investigation through the exposure of experimental animals to asbestos.

Q You have --

A This was back in 1928, '30, this period of time. A year or two later to the qualified people in the Metropolitan Life Insurance, Dr. A. J. Lang and others made a survey of the people in a number of manufacturing plants in which asbestos was used. These two bits of research effort established, number one, that there was a disease entity called asbestosis, and both from the animal experimental work and a study of people working in the plants it was the conclusion or one of the observations of the researchers that it was a matter of heavy exposure over a long period of time that was required to produce the disease. The recommendations stemming from both studies was that dust controls should be implemented, physical examinations should be arranged for, and as a result in the mid to late thirties, 1935, '37, Johns-Manville established the Standard Operating Pro-

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cedure, the program for periodical examinations of all of our people. That has continued right up until today, and we also place substantial emphasis on the improvement control of the work environment. These positive results stem from this earlier research.

Q Do we have available here in the courtroom the records from which you can give us briefly some of the work and what Johns-Manville has done insofar as protecting those within the area that they thought dangerous, do you have those records here?

MR. STEPHENSON: Your Honor, if I understand the testimony, he is just testifying about employees working in the plant, Mr. Tucker's statement didn't include that.

THE COURT: Well, I think there is a distinction all right, however, you would be permitted to offer this should Mr. Stephenson cross examine him upon what, if anything, he might have done in their own plant. Certainly there is some difference in

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the efforts or procedures followed by the manufacturer as to their employees as compared to employees in the field. Now I don't want to -- if it isn't too long -- but I am looking at some books there, he has got to look through those books, he is going to have to make some adjustment in that regard and it looks to me like we are engaging in repetition, but so far everything that this man has said I haven't heard anything new that wasn't said by Mr. Sheckler. Now how many times do you want to prove it?

MR. TUCKER: He was Mr. Sheckler's predecessor, Your Honor, and among other questions that Mr. Stephenson asked Mr. Sheckler, as I recall it, about the Drinker Report and this was the man that was on the job before Mr. Sheckler. I will shorten it as much as I can.

THE COURT: Well, we will go

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along with you as much as we can but --

MR. TUCKER: Thank you.

BY MR. TUCKER:

Q Mr. Jackson, in the areas where you were aware that there was any possible hazards if you would just very briefly tell the jury what was done to protect the workers against that hazard?

A Yes, sir, I think I can in general terms.

MR. STEPHENSON: Your Honor, I object to this workers in the plant and it would be immaterial to the law-suit.

THE COURT: Objection overruled. Let's move along.

THE WITNESS: Again, as a result of the earlier research program we recognized that it was necessary to evaluate the measure of the work areas. We obtained such services from the Industrial Hygiene Laboratory of the Metropolitan Life Insurance Com-any from the early years and in 1947, when I came to New York, part of my

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efforts there was the establishment of an internal capacity, we added, we hired industrial hygienists and engineers. These men surveyed the plants and when the problem areas were identified as a result of their surveys it was a part of our cooperate management philosophy and the very direct responsibility of the plant manager to attempt to correct those conditions. So, depending upon the nature of the problem, appropriations were prepared, requested, reviewed by engineering groups to make sure that the proposed method of correction was sound, and when the monies were approved by the corporate authorities required, then the project was undertaken for control.

THE COURT: Now what has he said?

MR. TUCKER: He said --

THE COURT: Actually what has he said?

MR. TUCKER: Well, he said that

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when they were aware of the problem that they took steps to correct it.

THE COURT: It looks like he could say that, doesn't it?

MR. TUCKER: Well, let me ask one further question of Mr. Jackson.

BY MR. TUCKER:

Q Had you been aware that there was any similar problem among those using insulation products at the same time would you have taken such steps as you could to acquaint yourself with those problems and to put out whatever warning or do whatever else was necessary?

A We certainly would have and we did and not to be redundant, perhaps Mr. Sheckler has talked about that, he was a member of my staff at the time this activity took place, so warning labels were developed and applied and considerable staff help had been given to the manufacturing associations that have direct contact with the contracting people.

MR. TUCKER: We pass the witness.

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CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Jackson, before this Fleischer-Drinker Report came out what did Johns-Manville rely on to excuse them from not making any tests of the products in the field? You are using Fleischer Drinker since 1946, what did you use from 1936 to 1946 to excuse you from not even going into the field?

A I am not sure what you mean by excusing.

Q Well, you are using Fleischer-Drinker Report as a reason for not thinking that this was affecting men using your products. What did you think, what reason did you have for not going into the fields before this ever came out?

A The reason we had was that there was nothing to suggest that there was a problem. When the Fleischer-Drinker Report came out that strongly suggested that there was no problem.

Q You are familiar with, of course, the Trudeau Foundation in Serenac, New York, you testified about that?

A That's right.

Q And are you familiar with in the 1920's

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CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Jackson, before this Flasher-Drinker Report came out what did Johns-Manville rely on to excuse them from not making any tests of the products in the field? You are using Flasher-Drinker since 1946, what did you use from 1936 to 1946 to excuse you from not even going into the field?

A I am not sure what you mean by excusing.

Q Well, you are using Flasher-Drinker Report as a reason for not thinking that this was affecting men using your products. What did you think, what reason did you have for not going into the fields before this ever came out?

A The reason we had was that there was nothing to suggest that there was a problem. When the Flasher-Drinker Report came out that strongly suggested that there was no problem.

Q You are familiar with, of course, the Trudeau Foundation in Serenac, New York, you testified about that?

A That's right.

Q And you are familiar with in the 1920's

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they were doing research with experimental animals, mice and guinea pigs, injecting them with asbestos, isn't that true?

A It is.

Q And they were looking to see what happened to these experimental animals. Did that work have anything to do with where the worker was, in other words, a mice was used, it didn't say he had to be in a mine or a mill or a factory or an insulation worker. It just simply meant that when the mice or experimental animal was injected with asbestos he got the disease, didn't it?

THE COURT: I think your question is a little argumentative, Mr. Stephenson.

MR. STEPHENSON: Excuse me, Your Honor.

THE COURT: All right, let's move along, ask a question.

BY MR. STEPHENSON:

Q May I say that the mice were used and they weren't categorized as to mill, mine, factory or --

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A Quite correct, sir.

Q All right, sir, when a mice got asbestosis -- well, never mind. Withdraw that, Your Honor.

Now you mentioned some studies done in England about asbestos mills causing asbestosis. You are familiar with those reports in the twenties and thirties, aren't you?

A You are speaking of the textile mills?

Q Yes.

A Yes, sir.

Q Now why did you think that the experience of the workers in a textile mill had getting the disease was comparable to your factory?

A Because we also have textile mills as well as other operations that use asbestos in large quantities in the products mix.

Q All right, sir, but did you feel that it was appropriate to apply the results of the studies of textile mills to your manufacturing plants?

A Yes, sir, because textile mills are manufacturing plants.

Q Well, I mean manufacturing the asbestos insulation products.

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A Yes, sir, the logic that went into our thinking there is that the manufacturing processes, no matter what products we were using, we are using substantially great quantities of asbestos fiber in the raw form bagged in one form or another of paper bags, so that the work environment again, regardless of what product we are making, is one in which there is a constant and daily, regular exposure to asbestos.

Q In the Trudeau Foundation work was it not recommended that dust controls be used?

A Yes, sir, that was one of the recommendations stemming from that work.

Q And that was in 1928, as I recall?

A Published in '31, yes, sir, the work.

Q What did Johns-Manville do to see that dust controls of some kind were established by workers using your products in the field?

A I know of nothing that we did in those years to establish --

Q All right, sir, in 1938 and '37, as I understand your direct testimony, you established periodical medical examinations for all of your people, as you said, and I take it you mean all

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your plant employees?

A Yes, sir, all plants.

Q Why didn't you --

A Plant and office.

Q Why didn't you set up some recommendations for workers using your products in the field?

A Because we had no knowledge of problems there as we did within the plants.

Q This was before the Fleischer-Drinker Report Now?

A Yes, again we had no knowledge of the problem, that's what I stated.

Q I see.

A Whereas we had specific knowledge of the problem within our operating locations.

Q In 1936, Fleischer published his work on asbestosis, did you read that when you went to work for the company?

A Yes.

Q Didn't it make you wonder why in the world or do something about the field workers, the exposure that they were experiencing?

A Again, we had no knowledge of the problem as we did with out own employees.

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Q But you didn't investigate, I think that is clear?

A No, I did not.

Q Has Johns-Manville before 1965, let's say, from 1900 to 1965, ever employ an industrial hygienist to go out and see what effects their products were having on the worker?

A No.

MR. STEPHENSON: That's all.

A We employed industrial hygienists to evaluate our own workers' exposures where we knew the problem was.

Q Yes, I understood that, but you didn't employ one to go out to see what was happening to the man using your products.

A (No response).

THE COURT: All right, anything further, Mr. Tucker?

MR. TUCKER: We have no further questions.

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

Ladies and Gentlemen of the Jury,

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we will stand in recess for twenty minutes, which will be fifteen minutes after three, by the clock in the court-room.

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

THE COURT: Please be seated. We are ready to proceed. You may call your next witness.

MR. TUCKER: Your Honor, we next want to offer in evidence the file marks on the plaintiff's original complaint showing that this suit was filed on October 20, 1969, and with that the defendant, Johns-Manville, rests, Your Honor.

THE COURT: All right, who will be next?

MR. WELLER: Your Honor, I have Mr. Heathman to tender as a witness at this time.

THE COURT: Come forward, please.

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EUGENE A. HEATHMAN,

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

DIRECT EXAMINATION

BY MR. WELLER:

Q What is your name, please?

A Eugene A. Heathman.

Q Mr. Heathman, what is your profession?

A Certified Public Accountant.

Q How long have you been a Certified Public Accountant in the State of Texas?

A Ten years.

Q And you are duly licensed by the State of Texas, as a Certified Public Accountant?

A I am.

Q At my request did you make some calculations based upon a set of figures that I gave you?

A I did.

Q I will ask you to assume that during the years 1962, '63, '64, '65, '66, '67 and '68, that Mr. Borel had a total net income of $52,618.42, which would create an average income per year

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of $7516.92. I will first ask you to assume that Mr. Borel contributed one-half of his net income to his wife, Thelma Borel, for a total of $3758.48. I will ask you to round it off to $3800.00. Did you make that calculation for a period of eight years?

A I did.

Q What discount factor did you use, sir?

A Six percent.

Q Now under current economic conditions is the rate of return on many government bonds and high corporate bonds in excess of that amount?

A It is.

Q Is that on the conservative side?

A Six percent is on the conservative side, yes, sir.

Q Now assuming that for eight years there was a contribution until Mr. Borel, he was fifty-eight years of age, so that would take him through age sixty-five. Assuming that he made $3800.00 a year and contributed that to his wife what would be the present cash value of that discounted at six percent?

A On an eight year period it would be

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$23,597.22.

Q $23,597.22?

A Yes.

Q Now if you use a figure of $4,000.00 for the same period of eight years what would you have?

A $24,839.18.

Q And if you used six percent of $4500.00 for eight years what calculations did you make?

A Present value would be $7,944.07.

Q Now if you assumed that Mr. Borel would have continued to work for as long as ten years did you make the same calculations for $3800.00 a year?

A I did.

Q At six percent discounted, and what amount did you arrive at?

A $27,968.33.

Q And for $4,000.00 a year for ten years?

A $29,440.35.

Q And did you use $4500.00 for ten years at six percent discounted?

A $33,120.39.

Q All right, sir, is this a copy of the

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memorandum that you prepared for me?

A Yes, sir.

MR. WELLER: I tender this in evidence.

THE CLERK: That will be Defendants' Exhibit 15.

MR. STEPHENSON: May I see it, Your Honor?

THE COURT: Yes.

MR. WELLER: Your Honor, that is all for this witness.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Heathman, would you mind helping me follow your testimony. Mr. Weller gave you some figures of a seven-year income from 1962 to 1968 inclusive?

A Eight years.

Q Do you have the annual figures there so that I might compare it with the income tax records?

THE COURT: I think he gave the figures of $3800.00 and $4,000.00

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and $4500.00, is that correct?

MR. STEPHENSON: What I had reference to, Your Honor, was the total earnings which Mr. Weller gave him for that period.

THE COURT: Well, that's what he gave him, he assumed those figures, that he earned those figures. You can interrogate him from that.

MR. WELLER: I can tell him where the figures came from, they are the net income figures from the income tax returns.

THE COURT: I was just trying to shorten it.

BY MR. STEPHENSON:

Q All right, my calculation was $59,643.90.

THE COURT: Half of his earnings?

MR. STEPHENSON: No, sir, for the total.

THE COURT: Well, let's not be playing checkers, let's talk about the same thing. He is talking about he contributed fifty percent of his

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income to his wife and then he went on up.

MR. STEPHENSON: All right, sir, I understood Mr. Weller to give him a figure of $53,618.42.

THE COURT: The Court understands he gave him the figure talking about $3750.00, and then he said round it of to $3800.00, and then gave it to him for $4,000.00, and then he gave it to him for $4500.00.

MR. STEPHENSON: All right, Your Honor.

BY MR. STEPHENSON:

Q Mr. Heathman, do you know where these figures came from that you were given by Mr. Weller?

THE COURT: What difference does it make where the figures come from? Mr. Weller gave him some figures and if you want to give him some figures, well you give him some.

MR. STEPHENSON: All right, Your Honor, I don't want to go into --

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THE COURT: It doesn't make any difference, it couldn't possibly make any difference. You talk about what figures you want to and let Mr. Weller talk about the figures he wants to.

MR. STEPHENSON: All right, sir, that's all, Your Honor.

THE COURT: Any further questions?

MR. WELLER: No further questions, Your Honor. May this witness be excused?

THE COURT: You may be excused.

MR. DUNCAN: Your Honor, I have some interrogatories, rather answers to interrogatories submitted on behalf of Pittsburgh-Corning Corporation and one witness.

THE COURT: All right, you may proceed.

MR. DUNCAN: May it please the Court and Ladies and Gentlemen of the Jury, in connection with the first set of interrogatories which were

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propounded to all of the defendants on behalf of the plaintiff in this case, I would like to introduce in evidence certain answers which were filed on behalf of Pittsburgh-Corning Corporation, and the first interrogatory was: "Give the name and trade names of all types of insulating materials manufactured by you, giving the date that you began the manufacturing of the materials", and the answer was: "Since August, 1962, Pittsburgh-Corning Corporation has manufactured unibestos insulation. Unibestos contains amosite asbestos fibers, sodium silicate and dicimacious earth.

The third interrogatory was: "What studies have been made to determine the effect of your products on the lungs and physical condition of persons employed as insulation asbestos workers who used your products", and the answer was: "No studies to deter-

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mine the effect of the above-named products on the lungs and physical condition of persons employed as insulators and asbestos workers who used the material for manufacture by this defendant were made. However, this defendant, the employees of this defendant, Pittsburgh-Corning Corporation are given pre-employment physical examinations and annual chest X-rays which have failed to reveal any evidence of a dust-related pulmonary disease".

Interrogatory No. 5 inquires as follows: "Did you package or sell any products containing asbestos from the years 1940 to 1967", and the answer was: "Yes, since August, 1962, this defendant has sold the products to distributors, contractors and agencies of the United States Government. The product was packaged in cartons. The product was not sold universally throughout the United

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States, but sold in parts of the United States."

Interrogatory No. 6 inquired as to whether or not these products were used primarily in any specific location or area, and the answer was the same as Interrogatory No. 5, that it was sold to distributors, contractors and agencies of the United States.

Interrogatory No. 10 inquired as to whether or not this company has any regular inspection areas where workers are using products manufactured by your company containing asbestos as to the dust count and the answer was: "This defendant does not regularly inspect the area or areas where workers are using products manufactured by it, assuming that the plaintiff refers to in-the-field inspections. The reason such inspections are not made is, number one, the defendant has no jurisdiction or control over the area in which it may be used.

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Two, it has no way of knowing where the product is being applied; and three, it has no control over the manner of installation by the individual insulator or contractor. The scientist engaged by the United States Government and others, as well as public literature, indicates that in areas where workers are using this defendant's product the dust counts have been below the Threshold Limits by the American Conference of Governmental Industrial Hygienists."

Interrogatory No. 18 inquired as to whether or not the company had placed any warning labels on its boxes and Pittsburgh-Corning answered: "Yes, since 1968 containers of the product unibestos have had the following warning labels on them: 'This product contains asbestos fibers. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation is not pos-

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sible, wear respirators approved by the U. S. Bureau of Mines.' This defendant was under the opinion that such information should be transmitted to workers using the product if such workers did not already have that information. The use of same was commenced at the suggestion of the industry-wide committee."

Interrogatory No. 23 inquires as to whether or not this company has contributed any funds to research concerning asbestos inhalation to the lung and larynx disease, to which it answered: "Yes, Pittsburgh-Corning Corporation is one of several companies supporting 'fibrous dust studies now in progress at the Industrial Hygiene Foundation, and to date has thus far supported this research by contribution of $40,000.00.' Pittsburgh-Corning Corporation has, is committed for further expenditures in this connection."

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And, again, Interrogatory No. 32 inquired as to how long Pittsburgh-Corning, rather this company had been engaged in the manufacture of products containing asbestos, to which the answer was: "Since August, 1962."

Interrogatory No. 36 inquired as to whether or not this defendant, Pittsburgh-Corning Corporation, had any knowledge of any deaths or serious lung diseases among its employees which has been attributed to the inhalation of asbestos dust or fibers, to which the answer was: "There are no known cases of death or serious lung diseases among the employees of the defendant."

The final interrogatory, No. 39, of the first set of interrogatories inquires as to whether or not any statistical figures available, are available showing the number of employees employed with your company who are exposed to asbestos dust and

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who have worked for your company twenty years or longer have any lung disease, and the answer was: "Pre-employment physical examinations and annual chest X-rays have failed to reveal any dust-related pulmonary disease in any employee employed by Pittsburgh-Corning Corporation."

Now then, Your Honor, I would like to now introduce just certain answers to the second set of interrogatories which is very short.

The second set of interrogatories inquired as to whether or not Pittsburgh-Corning Corporation had ever advised those using its products of the so-called Threshold Limits and the answer to that was: "This defendant does not have any so-called Threshold Limit Values of its own in reference to answers to written interrogatories previously propounded were publications by the American Conference of Governmental and Indus-

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trial Hygienists entitled 'Threshold Limit Values for Airborne Contaminants'.

In response to both this study and the National Insulation Manufacturers Association recommendations, Pittsburgh-Corning Corporation labels its products with labels quoted in answer to Interrogatory No. 19, of the first set of interrogatories, which was the warning. And additionally Pittsburgh-Corning Corporation gives to independent contractors using its products the National Insulation Manufacturers Association booklet entitled 'Recommended Health Safety Practices for Handling and Applying Thermal Insulation Products Containing Asbestos'.

In view of the fact that there are other statements made by Industrial Hygienists Foundations, Pittsburgh, Pennsylvania, which is sponsored by member companies of the National Insulation Manufacturers

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Association, this defendant is aware that by reason of the dissemination of various studies, booklets, pamphlets and so forth hereinabove mentioned in others, so-called Threshold Limits are widely known by independent contractors using the products of this defendant and other manufacturers."

And in answer to Interrogatory No. 4, which inquires as to where did you obtain such information concerning Threshold Limits, the answer was: "Since this defendant has been manufacturing unibestos only since 1962, the information which it obtained from the publications mentioned above subsequent to the commencement of the manufacture of the products in 1962."

BY MR. DUNCAN: That completes the submission of the answers to the interrogatories which were filed under oath, Your Honor. I would like to call Mr. E. W. Holman to the stand, please.

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THE COURT: All right.

E. W. HOLMAN,

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

DIRECT EXAMINATION

BY MR. DUNCAN:

Q Your name is Eugene W. Holman?

A That's correct.

Q Where do you live, Mr. Holman?

A I live in Pittsburgh, Pennsylvania.

Q And by whom are you employed?

A I am employed by Pittsburgh-Corning Corporation.

Q And in what capacity, please, sir?

A At this time I am Vice President of Manufacturing.

Q All right, sir, it has been established and I will ask you again, is Pittsburgh-Corning Corporation, do they manufacture the product unibestos?

A Yes, sir, we do.

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Q And what is the components of that particular type of insulation material?

A This product contains amosite asbestos fibers, diatomaceous earth and sodium silicate.

Q Does Pittsburgh-Corning Corporation manufacture any other type of product containing asbestos fibers other than unibestos?

A No, sir.

Q When did Pittsburgh-Corning Corporation commence the manufacture of unibestos?

A We purchased the manufacturing facilities in 1962.

Q All right, and now was your company aware of any problems that the asbestos insulation worker may have had at the time your company acquired and commenced -- acquired the rights of unibestos and commenced manufacturing it?

A No, we were not.

Q When did it first come to your attention or the attention of your company that there was such a problem?

A It came to my attention probably not until 1968, when I cam back from Europe, but from

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going through the past files I find certain recommendations from our medical advisors, Dr. Lee Grant, as early as 1966.

Q All right, sir, are you able to tell us the basis for Dr. Grant's recommendation that some affirmative type steps be taken in 1966?

A In 1966 Dr. Grant, I believe, as a result of the annals of the New York Academy of Science, which were published December 31st, 1965, recommended that Pittsburgh-Corning Corporation enter into a research program with the Industrial Hygiene Foundation. One of the main reasons were the Pittsburgh-Corning Corporation to enter into this program was to try to differentiate, if possible, the differences in the different types of asbestos. We were particularly interested in amosite because unibestos contains only amosite.

Q All right, sir, and did you then -- did your company, that is, the Pittsburgh-Corning Corporation, then enter in a contract with the Industrial Hygiene Foundation of America for certain research, is that correct?

A Yes, sir, we did.

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Q Now Dr. Paul Gross briefly testified here and he testified he was employed by the Industrial Hygienist Foundation of America, is it your understanding that Dr. Gross was a man to whom this was assigned?

A Yes, sir.

Q All right, sir, now I hand you a letter on the stationery of the Industrial Hygiene Foundation of America, dated June 14, 1966, and ask you if you can identify that?

A Yes, sir, this is a letter I took from the files which basically in accordance with Dr. Lee Grant's request, our medical advisor, that -- included are copies of a contract agreement for a prospectus on asbestos and fiberglass.

Q Now I hand you a letter, file copy of a letter, dated June 22, 1966, purportedly over the signature of Mr. Russell Brittingham, to which is attached a contract. Can you identify that, please, sir?

A Yes, sir, I can.

Q Sir?

A Yes, sir, I can. At that time Russell Brittingham was President of Pittsburgh-Corning

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Corporation and this is a letter returning a signed copy of the agreement between Pittsburgh-Corning Corporation and the Industrial Hygiene Foundation for the research that we had previously mentioned.

MR. DUNCAN: Would you mark these, please, ma'am?

THE CLERK: Defendants' Exhibits 16 and 17.

BY MR. DUNCAN:

Q All right, now I hand you a copy of a letter dated August 12, 1969, likewise over the signature of Russell Brittingham, and ask you if you can identify that?

A Actually this is a file copy of an agreement for the fourth year of research by the Industrial Hygiene Foundation.

Q All right, sir, thank you. Would you mark this, please?

THE CLERK: Defendants' Exhibit 18.

BY MR. DUNCAN:

Q Is this a work research by the Industrial Hygiene Foundation, I believe that Dr. Gross

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had indicated that recently the name was changed to the Industrial Health Foundation, is this still being carried on?

A Yes, sir, it is.

Q All right, sir, and how much money has your company contributed to this research program?

A At this time approximately $40,000.00.

Q Now then, have you had periodic reports from time to time regarding the result of the research?

A A report is issued yearly.

Q All right, sir, and have you, yourself, in your capacity as Vice President of Manufacturing, been advised concerning these reports?

A Yes, sir, I have been advised by Dr. Lee Grant, who is our medical consultant, that at -- up to this time, at least, no positive results have been obtained from these tests. In other words, no cancer, no fibrosis, this type of thing.

Q What particular type of asbestos is involved in this particular --

A Amosite.

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Q And there has been no reports that amosite fibers have induced any cancerous --

A No, that's correct.

Q All right, now then, but it is your testimony that six months after the publication of the New York Academy of Science annals on December 31, 1965, that your company immediately went into their research program?

A Yes, sir, that's correct.

Q All right, sir, now then, were you aware that in 1968 the American Conference of Governmental Industrial Hygienists had recommended a change in the Threshold Limit Values from 5,000,000 particles of dust per cubic foot of air to 2,000,000 particles of dust per cubic foot of air?

A I was advised of that by our medical advisor, Dr. Grant.

Q What action, if any, was taken by you and your company as a result of having received this advice?

A We took two steps, we participated in the publishing of the NEMA pamphlet for giving advice as to how to use asbestos-containing pro-

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ducts safely in the field, and we also placed a warning label on all of our cartons containing asbestos.

Q All right, sir, now you are referring to the NIMA pamphlet, is this pamphlet that I hold here in my right hand which is actually, NIMA is abbreviation for National Insulation Manufacturers Association?

A Right.

Q And has been introduced as Defendants' Exhibit No. 14, basically, just generally what does this pamphlet impart?

A It imparts information on how to handle asbestos-containing materials in the field safely.

Q All right, sir, was anyone connected with your corporation involved in connection with preparing and disseminating the information contained in Exhibit No. 14?

A Yes, sir, I believe Dr. Lee Grant was one of the main people behind the publication of that pamphlet.

Q Was he Chairman of the committee at one time?

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A I believe he was.

Q All right, sir, you stated also, did you not, or have you stated what the second step that was taken after you heard of this?

A The second step that we took was placing a warning label on the cartons.

Q All right, and I now hand you an inter-office communication dated November 5, 1968, and ask you if you can tell us what that document is?

A This is a letter to the tool works managers indicating that the addition of a health hazard warning should be added to the printing on the unibestos cartons.

Q All right, I hand you another document there and ask you what that represents?

A This is the warning that was printed on the cartons. "This product contains asbestos fibers. If dust is created when this product is handled avoid breathing the dust. If adequate ventilation is not possible, wear respirators approved by the U. S. Bureau of Mines.

Q All right, sir, these instructions to place the safety warning on the cartons was sent out

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to your work managers November 5, 1968?

A That's correct.

Q That's approximately two months after you -- your company learned of the recommendations of the lowering of the Threshold Limit Values?

A That's correct.

MR. DUNCAN: Would you mark it, please?

THE CLERK: Defendants' Exhibit No. 19.

MR. DUNCAN: I pass the witness.

THE COURT: All right, Mr. Weller?

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

THE COURT: All right, Mr. Stephenson.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q When was this NIMA, N-I-M-A, pamphlet made, I don't remember?

A I believe it was made in 1968.

Q At the time it was made was there any com-

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pany that you know of that had worked up or put out any similar type work?

A Not that I am familiar with. I am not an expert in this field though.

Q All right, sir, as I understand, your company entered the field of manufacturing asbestos products in 1962?

A That's correct.

Q With unibestos?

A Right.

Q Can you tell us what unibestos is used for, that is, what type insulation?

A It is a high-temp insulation used for hot pipes basically.

Q Is it widely used throughout the United States or only certain sections?

A Much more in certain sections than in others. It is basically used in power plants and this type of work.

MR. STEPHENSON: That's all I have.

THE COURT: Anything further, Mr. Duncan?

MR. DUNCAN: Just one other

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question, Your Honor.

REDIRECT EXAMINATION

BY MR. DUNCAN:

Q Mr. Holman, so it will be clear, unibestos is a pipe covering, is that correct?

A That's correct.

Q And it comes how, how is it shipped?

A We ship it in cardboard cartons.

Q Does it come as a whole --

A It comes as a half pipe segment about three feet long.

Q Half pipe segments?

A It is actually it is a segment which covers half of the pipe, three feet long.

MR. DUNCAN: Fine. I have no further questions, Your Honor.

THE COURT: Mr. Holman, I suppose this concludes your testimony. You may be excused. You may leave any time you wish.

THE WITNESS: Thank you.

MR. WELLER: Your Honor, Mr. Arnold would like to introduce testi-

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mony on behalf of Phillip Carey and Armstrong Cork.

THE COURT: All right, Mr. Arnold.

MR. DUNCAN: Excuse me, Your Honor, Pittsburgh-Corning rests. I am sorry.

THE COURT: All right. Mr. Arnold, you may proceed. Who would you like to call?

MR. ARNOLD: I want to offer some interrogatories, Your Honor, it will be very short.

THE COURT: All right.

MR. ARNOLD: This is on behalf of Armstrong Cork Company and I will omit any that Mr. Stephenson has heretofore offered.

THE COURT: All right.

MR. ARNOLD: Will refer to them by number. Interrogatory No. 5, this is addressed to Armstrong Cork Company. "Did you package and sell any products containing asbestos from the

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years 1940 to 1967? If so, how were the products sold, how were the products packaged, and were these products universely used throughout the United States?" Answer: "During the years 1940 to 1967, we did not repackage and sell any insulating products containing asbestos, although we did distribute throughout the United States certain products of this type in the original packaging form which we obtained such products from other manufacturers, all or most who are named as defendants in this proceeding."

No. 10. These are the original interrogatories. "Do you or your company have any regular inspection of areas where workers are using products manufactured by your company containing asbestos as to the dust count? If you do not, explain why this is done and if you do, please explain what action, if any, is taken

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by your company following the taking of dust counts of any of the locations referred to above. Also, please give the dates, if any, that your company started making this dust count." Answer: "Inasmuch as this defendant's products have been sold to insulating contractors or to owners who may and do use our insulation applications, employees in various parts of the United States, a regular inspection program as suggested in the interrogatories is not feasible."

Interrogatory No. 15: "What techniques, if any, does your company use to make dust samplings, explaining the technique and when it was commenced and what the purpose was and what action has been taken in response to the findings as to the dust samples?" Answer: "This defendant is familiar with three techniques. The electrostatic precipator, the midget impinger and

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personnel monitoring. However, we have no experience of actual use of any of them that make sampling of dust conditions prevailing at sites where the materials are being installed except in one instance which the use of personnel monitors produced dust samples, the analysis of which was not productive of reliable results."

No. 33: "If you or your company or your company's attorneys contend that any respirators or other breathing devices is currently on the market that will prevent the inhalation of asbestos dust and fibers, give a detailed description of such respirators of other breathing devices together with how you know this would prevent the inhalation of dust and fibers, what tests were conducted by whom and where with sufficient details to enable us to obtain the results of such tests." Answer: "Other than

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airline respirators this defendant knows of no respirator or other breathing device currently on the market which will absolutely prevent the inhalation of all asbestos dust. The United States Bureau of Mines has established safety standards for masks and respirators and this defendant understands and, therefore, avers that several respirators are currently marketed with compliance with such standards."

No. 35: "Do you or your company recognize that such asbestos insulating materials are dangerous and harmful to human beings and to the health of man? If your answer is yes, then please explain when it came to this conclusion and what, if anything, you have done about it to notify your public." Answer: "This defendant does not agree to the accuracy of the statement made. On the contrary, properly used our products

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are not injurious to health as long as the Threshold Limit Values do not exceed the specified level."

Paragraph No. 36: "Please state whether or not your company has had knowledge of any death or serious lung disease among your employees which has been attributed to the inhalation of asbestos dust or fibers, and, if so, please give the number, the names where known, and the addresses of such persons, together with the name and address of the doctor who administered treatment". Answer to No. 36: "This defendant states that it has no knowledge of death or lung disease among our employees attributable to the inhalation of asbestos dust or fibers."

No. 37: "Assume for the purpose of this question that it has been known for many years that asbestos dust and fibers have been dangerous to human beings. Assuming the truth

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of such statement, has your company done anything prior to 1966 to notify any segment of the American population of such dangers and, if so, please explain." Answer: "This defendant does not accept the truth of the question as stated. For many years prior to 1966, your defendant advised its employees concerning breathing of any kind of dust and where appropriate has furnished its employees with masks, installed mechanical dust collectors, and taken similar steps to reduce exposure of its employees and others to dust and dilitary substances."

And then, supplemental interrogatory No. 1, propounded by Mr. Stephenson: "Have you ever advised those using your product of your so-called Threshold Limits, and if so, describe them." Answer: "Referring to the Threshold Limits, defendant denies any possessitory interest in any such

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Threshold Limits and states that the Threshold Limit Values referred to in the answer to the previous interrogatories are those published by the American Conference of Governmental Industrial Hygienists, which this defendant has not attempted to bring to the attention of those using its product."

Supplemental Interrogatory No. 2: "If you did not advise those using your product of such Threshold Limits, explain why you did not." Answer: "Our customers are independent businesses who have their own responsibilities to provide safe places for their employees to work and to comply with applicable regulatory codes where such codes exist. The Threshold Limit Values are not absolute. They may be varied by the number of hours that workmen spend in the area, the nature and quantities of materials not of our manufacturing being in-

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stalled in the area, and the concentration of the working forces in the area and other variables. Since such measurements are likely to be misunderstood and if misunderstood could be used to justify maintenance of conditions which in fact are or were unsafe as measured by the Threshold Limit Values and advice to the purchasers concerning such values would probably be ineffective and could have been adverse to the best interests of persons installing such products."

Number 3 asks as to what we contend to be the Threshold Limits provided and propounded in the preceding interrogatories, and the answer to Supplemental Interrogatory No. 3: "The Limit Values published by the American Conference of Governmental Industrial Hygienists."

Supplemental Interrogatory No. 4: "Where did you obtain such in-

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formation containing Threshold Limits and when did you get such information." Answer to No. 4: "The information was obtained as published normally annually by the American Conference of Governmental Industrial Hygienists, 1014 Broadway, Cincinnati, Ohio."

No. 5, Supplemental Interrogatory No. 5: "Has your company ever gone into the field and seen, observed or counted or in any way shown any interest in ascertaining how much dust is created by the worker applying your product when he is in an enclosed area such as a building, factory, room or confined space." Answer to Supplemental Interrogatory No. 5: "No, at one time this defendant undertook a program which included the activities described in this interrogatory but before any actual observation could be completed and measured projects were discontinued because our corpora-

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tion had determined to stop the manufacture of all asbestos insulating products."

Supplemental Interrogatory No. 7: "If your company is one contending that some dust count constitutes a Threshold Limit, please explain in detail when you got such information, exactly what it is, setting out all of the details which you have concerned therewith in its entirety and what your company has done to advise those who might use your products". Answer to Supplemental No. 7: "The Threshold Limit Values to which we referred in answering previous interrogatories, No. 35, have been received by this defendant regularly as published by the American Conference of Governmental Industrial Hygienists. The detailed descriptions of which set forth in a series of publications by the Conference entitled 'Threshold Limit Values of Airborne

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Contaminants', which publications may be had for further analysis of such values."

MR. ARNOLD: That's all for the Cork Company. Your Honor, if the Court will bear with me, I represent another defendant, Philip Carey, and I will try to shorten this.

THE COURT: All right.

MR. ARNOLD: Mr. Stephenson has already offered several out of here and I will not reread them.

THE COURT: All right.

MR. ARNOLD: Interrogatory No. 5: "Did you package and sell any products containing asbestos from the year 1940 to 1967." This is similar to the preceding one by my other client. Answer: "Yes, products were sold to the distributor trade and insulating contractors, as well as to owners who used their own application crews or who contracted the insulating application

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contracts. Pipe covering and blocks were packaged in cardboard cartons. The products have been used throughout the United States."

No. 6: "If these products were used primarily in any specific location or area please explain where said products were primarily used." Answer to No. 6: "The products were used primarily in industrial metropolitan areas, east of the Mississippi River."

No. 7: "Do you recognize that prolonged use of the insulating material manufactured by you can cause or contribute to cause various occupational disease including asbestosis, silicosis and dermatitis?" Answer to No. 7: "Assuming that the interrogatory refers to the usual, customary and expected use of its product, the answer is no. Your defendant knows of no case which any period of use, commercial, residential

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or other of its insulating material has caused any disease."

No. 10: "Do you or your company have any regular inspection of areas where workers are using products manufactured by your company containing asbestos as to the dust count? If you do not, then explain why this is not done, and if you do, please explain what action, if any, is taken by your company following the taking of dust counts at any of the locations referred to above." And answer to Interrogatory No. 10: "Inasmuch as your defendant's products are sold to insulating application contractors or to owners who may and do use their own insulating application employees, and such products are used at various points in the United States, a program as suggested in Interrogatory No. 10 is not feasible."

No. 15: "What techniques, if any, does your company use to make

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dust samplings, explain the technique, when it was commenced, and what the purpose was and what action has been taken in response to the findings as to the dust samples." Answer to No. 15: "Since 1930, dust samplings at our Lockland, Ohio, plant has been taken by the Division of Safety and Hygiene, the Industrial Commission of the State of Ohio. The Division employs either an electrostatic precipitator owned by it or a midget impinger produced by the Mines Safety Appliance Company. We believe that these devices charge dust particles with a negatively or positively -- impinge them on the plates opposite the charge. The samples collected are applied against screens in order to measure the size and number of dust particles and determine if the area sampled is within the safe standards prescribed by the division. Dust collectors are in constant operation to maintain safe

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levels and Authority of the Commonwealth of Pennsylvania followed similar procedures at our Plymouth, Pennsylvania plant prior to 1962. At the present time we are participating with a number of other companies in a program conducted by the U. S. Department of Public Health to determine safe dust limits in areas in which products compose a part of asbestos, talc, mica or stone dust are produced."

"Does your company place any warning signs on its asbestos products, if so, please state exactly what the warning is, where it is used, and when it was first begun." Answer to No. 18: "No, however, persons working with your defendants asbestos products are furnished and urged to use masks recommended by the U. S. Bureau of Mines and dust collectors are attached to saws."

No. 24: "Do you have any labor

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inspectors or anyone from your company whose job it is to go to the areas where your products are being used to make a dust level count? If so, please state when your company started such procedure, the purpose of it, and what action, if any, was taken in response to your findings." Answer: "No, the area in which your defendant's products are applied are on construction sites, marine vessels and the like, which are owned and controlled by others."

No. 30: "Is it true that most of the products manufactured by your company containing asbestos will in most instances have to be cut, sawed, scribed or shaped or mixed by the ultimate user or his employees?" Answer to No. 30: "This statement is untrue, in 1959 we licensed B & B Engineering & Supply Company of Houston, Texas, to manufacture and use transfer or sell 'Careytemp' insula-

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tion elements molded to fit valves, tubes, unions, ells, flanges and other fittings and boilers, pipings and the like requiring insulation. We purchase the elements from our licensee and furnish them to our customers who purchase the conventional form of Careytemp. The availability of such elements has eliminated the cutting, sawing, scribing, shaping and mixing by the ultimate purchaser or his employee. There have been isolated instances, however, in which insulation workers and their local Unions have resisted the use of such elements. Non-standard fittings require a minor amount of on-site cutting or sawing."

Interrogatory No. 32: "How many years has your company been engaged in the **manufacture** of products containing asbestos which are commonly used by insulators and asbestos workers?" Answer to No. 32: "Ten

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years and nine months."

MR. ARNOLD: I believe that is all, Your Honor.

THE COURT: Do you have any other testimony?

MR. ARNOLD: No, Your Honor.

THE COURT: Mr. Weller?

MR. WELLER: Yes, sir, Your Honor, these are offered on behalf of all defendants. I would first like to offer the Federal Standard Stock Catalog, Federal Specifications for Magnesia Block Cement and Pipe Covering, April 18, 1945. Only a small portion of it, of the Government specifications number C. Well, first, this specification was approved on the above date by the Director of Procurement for the Use of All Departments in the Establishments of the Government and shall become effective not later than June 15, 1945. It may be put in effect, however, at any other earlier date after promulgation and

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grades and types of materials shall be furnished in one grade only and in the following types as specified by the invocation of bids and specifies that and the C part is material. C-1, magnesia insulating material shall contain not less than eighty-five percent of pure hydrated magnesium carbonate and not less than ten percent long asbestos fibers, and that is the part which we wish to offer in evidence.

MR. STEPHENSON: No objection.

THE CLERK: Defendants' Exhibit No. 21.

MR. WELLER: The next offer is the Military specifications, August 23rd, 1951, for cement insulation, high temperature cement insulation. This specification was approved by the Department of Army, Navy and the Air Force for procurement services of the respective departments and supersedes the following specification.

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And the important part of the document is dated April 1, 1946. Material and workmanship C-1, type A material shall be composed of a dry mixture of suitable refracturing materials ground fine asbestos fibers and clay binders to thoroughly mix to obtain uniform distribution of ingredients.

Paragraph C-1 B, material shall be composed of a dry mixture of rock or mineral wool fibers, asbestos fibers and binders thoroughly mixed to obtain uniform distribution of the ingredients.

MR. WELLER: I would like to offer this in evidence.

MR. STEPHENSON: No objection.

THE CLERK: Defendants' Exhibit No. 22.

MR. WELLER: Our next offer, the Military specifications for cement insulation, high temperature, December 4, 1967, and it has those specifications, the same thing, September 16,

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1963, which is superseded by the 1967 specifications. Two of those. I offer those.

MR. STEPHENSON: May I object to all of this as being immaterial, Your Honor, it is not any standard for safety purposes.

THE COURT: I wonder about the materiality myself, I am letting it go in without any objection.

MR. WELLER: Well, Your Honor, it is any asbestos cement --

THE COURT: The Army --

MR. WELLER: The products supplied to the Government must conform to these specifications and during these years.

THE COURT: So what?

MR. WELLER: They must conform to these specifications.

THE COURT: Well, what materiality does it have for the Government to form certain specifications, what does that mean?

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MR. WELLER: Well, it means that they are big users in products and they prescribe the specifications.

THE COURT: Does that mean the Government is correct?

MR. WELLER: Well, not necessarily so.

THE COURT: All right. It doesn't have any materiality. Objection sustained.

MR. WELLER: It shows the utility of the product if the product is properly manufactured.

We next offer in evidence the hearing before the Select Subcommittee on Labor Committee of Education of Labor, House of Representatives, published hearings held in March of 1968, and particularly offering in this connection the testimony of Dr. Irving J. Selikoff, given before the committee that shows his testimony had been offered indirectly here a number of times as to what his recommendations

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were and also as to -- on the question of whether the manufacturer should have had knowledge. There are a few excerpts from it that I would like to read to the jury. This is testimony that was given under oath before the Select Committee on Labor and Education of Labor in the House of Representatives, the 90th Congress, and it is on the question of asbestos products and asbestosis.

MR. STEPHENSON: I object to it as being an improper way to produce testimony. There is no witness under examination. This has not been authenticated in any way, and this is not subject to any type of cross examination and matters bearing upon this subject have not been allowed in evidence up to this point over objections of counsel, who is now offering the same thing.

THE COURT: If it pertains to the subject that we are -- that we have

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under trial at this time the Court can see some materiality from the standpoint that papers or opinions of Dr. Selikoff have been mentioned and discussed by various witnesses. The Court, therefore, will overrule the objection. But in regard to this business of the formula of the Government that you offered there, I can't see how that can possibly be material to this case and that's the reason the Court sustained those objections and it may be this might not be material either.

MR. WELLER: This is directly on the point, it is testimony --

THE COURT: The only trouble is the Court and the attorneys are not always in agreement as to what is on point, but you go ahead and the Court will overrule the objection and let you offer it.

MR. WELLER: All right, sir. The part that I would offer is on page

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350 of the report. For the past six years I have been investigating occupational health hazards among insulation workers.

THE COURT: This is in 1968, I believe you said?

MR. WELLER: Yes, sir, in 1968.

THE COURT: All right, go ahead.

MR. WELLER: He says for the past six years I have been investigating health hazards among insulation workers in our construction industry. These men applied the thermal insulations to pipes, ducts, boilers and other structures in buildings, factories and shipyards, and other facilities, and he gives the history and then his comments said: "It is an unhappy reflection on all of us - Government, Public Health authorities, the medical profession - that at this time in the United States, in the '60's, seven percent of all deaths among insulation workers are due to

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a completely preventable cause, pulmonary asbestosis. It is evident that somehow we have failed these men. They had every right to look to their Government and Public Health authorities, and to the physicians and scientists who guide them, for protection at their work. They were not given this protection." Let's see, page 353, we offer this: "It is idle and largely inadequate to blame the industry for the present situation. It is sometimes not appreciated that industry is not an all-powerful, monolithic, single entity -- certainly it is not in the insulation trade. In this trade most employers are small business men with limited resources, employing few men. When I looked into this matter at the end of 1965, there were 900 employers in the industry, employing an average of 17 men per shop." I offer all of the testimony which is the testimony of

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Dr. Selikoff given before the House Committee.

THE CLERK: Defendants' Exhibit No. 23.

MR. WELLER: I next offer in evidence the Threshold Limit Values for 1961, and I will just state that they show the 5,000,000 particles per cubic foot and the Threshold Limit Values for airborne contaminants, 1968, adopted at the meeting of the American Conference of Industrial Hygienists.

THE CLERK: Defendants' Exhibit No. 24.

MR. WELLER: I next offer the documentation of the Threshold Limit Values for substances in workroom air, the American Conference of Governmental Industrial Hygienists, Third Edition, 1971, where it discusses asbestos, and this article says: "In arriving at an asbestos limit based on American experience and con-

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siderations applicable to the American industrial scene, the following facts predominate. Recent evaluation of the health experience in asbestos plants indicate that the 5,000,000 particles per cubic foot limit was not sufficiently low to protect workers exposed for thirty years, a period rarely exceeded in America. Balzer and Cooper supported this review in a report of asbestosis occurring among insulation workers from levels that were deemed highly unlikely to have exceeded a time-rated average of 5,000,000 particles. A retrospective investigation of the association between cancer in asbestos workers and smoking by Selikoff et al, revealed that asbestos neoplasias were stongly associated with smokers.

THE CLERK: Defendants' Exhibit 26.

MR. WELLER: I would next offer the regulations published in the

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Federal Register dated December 28, 1960. The safety and health standards for federal supply contracts under the Walsh-Healey Act. Published in 1960. And if I might state, Your Honor, what these reflect, they publish regulations about the conditions of anybody working on a federal contract beginning in 1960, and they recognize that the dust limit of 5,000,000 particles per cubic foot of air and they are published, as I say, here in the Federal Register and these are regulations published by the United States Government under the Act of Congress known as the Walsh-Healey Act.

MR. STEPHENSON: Your Honor, in this particular connection I would object to him paraphrasing because I don't think he is in the context of Walsh-Healey. I feel that in reading that particular section he thinks appropriate is the best procedure, and

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I would object.

THE COURT: Objection overruled.

MR. WELLER: I tender it, Your Honor.

THE CLERK: Defendant's No. 27.

MR. WELLER: I have a copy of the pertinent parts that I would offer that and maybe substitute later.

Your Honor, may I approach the bench, I have a matter here that is a --

THE COURT: Is this the only thing that you have left?

MR. WELLER: No, sir, I have something else to offer first.

THE COURT: All right.

MR. WELLER: I would next offer on behalf of the -- this is solely on behalf of Fibreboard interrogatories, number 5, did we use, package and sell any products containing asbestos from the years 1940 to 1967, if so, how were the products sold, how were they packaged and were they

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produced universally, were the products used principally throughout the United States. The products were sold, yes, the products were sold to distributors, contractors, agencies of the United States Government, the products were packaged in cartons and bags. Products were not sold universally throughout the United States, they were sold primarily in the west and mid-west for use in new construction to refineries, petrochemical plants and power plants. The next question, No. 10, "Do you or your company have any regular inspections of areas where workers are using products manufactured by your company containing asbestos as to the dust count. If you do not then please explain why this is not done and if you do, please explain what action, if any, was taken by your company." And the answer: "We do not regularly inspect the area where workers are

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using products manufactured by our company. Scientists engaged by the United States Government as well as other literature indicate that in areas where workers are using our products dust counts have been below the Threshold Limit Values set by the American Conference of Governmental Industrial Hygienists."

No. 18: This inquires as to the warning signs and we say that since 1966 our products have had this warning label on them: "This product contains asbestos fibers. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirators approved by the U.S. Bureau of Mines." We were of the opinion that this information should be transmitted to workers using the product if they did not already have this information. We began the use of this printing at the suggestion

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of the industry-wide committee. And then No. 33 inquires as to respirators, breathing devices and the answer, defendant contends that the respirators were on the market which would materially reduce inhalation of asbestos dust and fibers and these respirators are available under the United States Bureau of Mines Schedule 21-B and they are described in the respiratory protective devices manual published by the American Industrial Hygienists Association, American Conference of American Hygienists, 1963. We point out one particular one, Duspo 77, manufactured by the Mines & Safety Appliance Company.

And 34, we state that we do not sell our products to the general public or on the open market but I think maybe that is in evidence.

I next want to offer, if I may, from the article, "The Occurrence of Asbestosis Among Insulation Workers

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in the United States". P-2, 1971. I am offering this on the basis of the state of knowledge which is recognized by Selikoff, who is quoted by Dr. Jenkins, and this is one of the articles that was referred to by Dr. Jenkins, and has been referred to in this trial.

MR. STEPHENSON: I would object, Your Honor, that is one of the very articles that Mr. Weller objected to and would not let me read from during the plaintiff's case, and I would object now. This would call for me to have to reread again.

THE COURT: Is that correct, Mr. Weller?

MR. WELLER: Well, I don't think it is, Your Honor. I did make one objection to one article, but I didn't make any objection to this article. This is the historical article that was referred to and has been relied on and it shows that --

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THE COURT: All right, we will overrule the objection and let you read from it. If Mr. Stephenson wants to read any part of it he may do so.

MR. WELLER: All right, sir. This was published December 31, 1965, reprinted from the Annals of the New York Academy of Scientists, Volume 132, Article 1, pages 139, 155 and this is Plaintiff's Exhibit 2, to Dr. Jenkins' deposition. Dr. Selikoff, Churg and Hammond. There were good reasons for the early emphasis on asbestos textile workers. The first cases of asbestosis were in textile workers. Following the republication of Cooke's case in 1927, with its rapid confirmation by the report of another case by Seiler, the factory department in Great Britain had to decide whether these were exceptional occurrences or represented a significant health risk in industry. The textile industry was selected for

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studies since only here was there pure or almost pure asbestos exposure. Subsequent surveys similarly designed to study the risk of industrial asbestos exposure, were also confined to asbestos textile works. And then on page 140, "Just as in Great Britain, early studies concerning asbestosis in the United States did not mention asbestos insulation workers." And they refer to neither Pancoast nor Hoffman characterized the asbestos trade in which the workmen referred to by them were engaged. The first official claim for compensation associated with asbestos in the U. S. was in 1927, and again, the nature of the work was not stated. Then he said the only large scale survey of asbestos insulation workers was undertaken in the United States by Fleischer, et al, in 1945. This is part of the Drinker report, they found only three cases of asbestosis and concluded that asbestos

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pipe covering of naval vessels is a relatively safe operation.

And then they explain the work that is done by the asbestos workers and the statement is made, much of their work, referring to shipyards, of insulation workers is in the open air but it sometimes is, as aboard ship, in rather tight quarters with poor ventilation. And then this, in later specimens obtained crocidolite has also been found. Moreover, materials used for ship insulation, which contain the same amounts of asbestos as above, began in 1934, to have significant amounts of amosite in addition to chrysotile, because of the lighter weight of the material. Marr, and he quotes him in 1964, has recently brought shipyard insulation experience up-to-date, comparing it with the observations of Fleischer and colleagues and concludes that insulation materials and work methods

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have remained essentially the same. Measurement of dust exposure of insulation workers have been but infrequently reported and have been hampered by the very nature of the work. As in other asbestos work peak counts are met which are excessively high but generally counts of asbestos fibers have been within the 5,000,000 particles per cubic foot of the ACGIH. Such counts as have been available, made during work engaged in by the men studied by us, have shown a range similar to that of the published counts, and that is --

THE COURT: Mr. Weller, the Court wants to inquire why you made that offer, what are you expecting to prove by that?

MR. WELLER: The offer is made on the state of the scientific and medical knowledge as of those dates and also the fact that here is the scientist, Mr. Selikoff, who has been

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identified as one of the experts in the field, has recognized that the work of the insulation worker is within the 5,000,000 particles per cubic foot of air on the average.

THE COURT: Isn't that in the record so many times that it wouldn't be anything to be gained by putting it in the record again? That is the point the Court is making. If there is anything new there that hasn't been discussed, that has been placed in the record many, many times.

MR. WELLER: Your Honor, I don't believe it has been placed in the record as having been recognized by Dr. Selikoff as the part of his research and reporting in 1965.

THE COURT: When he first started working with textile workers?

MR. WELLER: That part of the study, earlier studies --

THE COURT: You are talking about the Threshold Limit Values?

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MR. WELLER: These Threshold Limits were in connection with shipyard workers and insulation workers.

THE COURT: All right. Anything further?

MR. WELLER: The only other thing I have, if the Court please, is the matter which I want to ask Your Honor about. It is offered in the form of admission.

THE COURT: You can call that to our attention at a later time in chambers.

MR. WELLER: All right, I will show it -- Your Honor, we would like to now put in evidence the cards which were identified and offered during Mr. Borel's testimony and other witnesses pertaining to Eagle-Picher, Unarco, Owens-Corning, Fiberglass and Standard Asbestos Insulation Company.

THE COURT: All right. Is that all?

MR. WELLER: With the exception

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of the one piece of evidence that I have, Your Honor.

THE COURT: All right, anyone else have testimony to offer at this time?

MR. WELLER: Mr. Barnes has some testimony and I think he has two witnesses but he will have to explain his situation.

THE COURT: You don't have your witnesses here at this time?

MR. BARNES: I understood it would be all right if I have them here in the morning, Your Honor.

THE COURT: That will be fine. Do you have anything else, does anyone have any other testimony?

(REPORTERS NOTE: No response by the parties.)

MR. BARNES: May I say at this time that I would read answers to the interrogatories, I can read them now.

THE COURT: You might as well offer your interrogatories now.

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MR. WELLER: Your Honor, could I offer one more piece of evidence for the record? This concerns the law of limitations in the State of California, and I would offer it in evidence at this time.

THE COURT: You may do so.

THE CLERK: Defendants' Exhibit No. 29.

THE COURT: Mr. Barnes, you may proceed.

MR. BARNES: These are the interrogatories and answers that were propounded to the Ruberoid Company. I will not read all of the interrogatories but I will read enough to where we have the context, if Your Honor please.

THE COURT: All right.

MR. BARNES: Interrogatory No. 3 concerns the studies made by this defendant concerning the hazards, if any, Mr. Stephenson read part of the answer and I won't repeat that part of

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it but the remainder of the answer is this, and that is, that the Ruberoid Company, this company, is familiar with the studies made by the various other agencies, including the United States Government.

Interrogatory No. 5 asks: "Did you package and sell the products or any products containing asbestos from the years '40 to 1967? If so, how were the products sold and so forth." The answer of Ruberoid was: "Yes, these products were sold to contractors, building material wholesalers, retailers and to other manufacturers. These products were packaged in corrugated cartons and paper bags. These products are sold throughout the United States, except only a limited basis west of the Rockies."

No. 10 concerns an inquiry as to whether or not dust counts were taken in the field, and the answer being: "We have no control of the

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working areas and scientists and others engaged by the Government and others have made these counts." In other respects that answer is similar to those that have been read. I offer the rest of it for the record.

Interrogatory No. 15 concerns what technique has been used to make dust samples in the field. This defendant has no right to enter upon the premises where its materials are being installed in the field, hence it can make no dust samples where such products are actually being installed.

No.18 inquires concerning the warning labels, about which we have all heard. Approximately five years ago the company began placing a warning on the packages containing calcilite, and the warning reads as follows: Your Honor, I might state it is exactly like the others. I don't see any reason to repeat that here.

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THE COURT: All right.

MR. BARNES: The next interrogatory I want to read would be No. 33. The answer, it is concerning the types of respirators and I needn't repeat the interrogatory again, I think that the Court and the Jury understands that. This defendant contends that respirators are currently on the market which will materially reduce the inhalation of asbestos dust and fibers. Such respirators are available under the U. S. Bureau of Mines Schedule 21-B. Tests upon which said approval was based, designed and conducted by governmental agency and is described in the respiratory protective devices manual published by the American Industrial Hygiene Association and American Conference of Governmental Hygienists of 1963. One such respirator, Duspo 77, Catalog No. 109600, is now manufactured by the Mines Safety Appliance Company.

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The last interrogatory will be No. 35, and the substance of that interrogatory inquires about whether or not the company recognizes the health hazards involved with the use of asbestos. We do not believe that our products are harmful when used for their intended purpose, relying upon studies conducted by the American Conference of Governmental Industrial Hygienists and the work of scientists employed by the United States Government as well as others. We are aware of only two cases of respiratory disease, and those are in Vermont, asbestos mining employees, and the exact medical cause of any lung disease is a matter of conjecture and there are no cases of respiratory illness that have been reported in any of our manufacturing plants.

That concludes the offer, Your Honor.

THE COURT: All right, Ladies and

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Gentlemen of the Jury, we will stand in recess until 9:30 tomorrow morning. If you will return at that time.

THE MARSHAL: Everyone rise.

(REPORTER'S NOTE: Whereupon court recessed for the day of 9-27-71.)

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL,

Plaintiff

vs.

FIBREBOARD PAPER PRODUCTS, INC., ET AL,

Defendants.

CIVIL ACTION NO. 6449

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

VOLUME NO. SIX

HEARD AT: Beaumont, Texas:

ON: September 28, 29, 1971:

2046

JERRY T. BLOXOM

OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
BEAUMONT, TEXAS

EASTERN DISTRICT OF TEXAS

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9-28-71

A. M. SESSION

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

MR. BARNES: Your Honor, I might point out that the witness has been sworn.

MARION McMANUS,

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

DIRECT EXAMINATION

BY MR. BARNES:

Q Would you state your name, please?

A Marion McManus.

Q Mr. McManus, I will ask you to speak right into the microphone so the jury and the Court and those here can hear you, please. Where do you live, Mr. McManus?

A In Houston.

Q And what is your occupation or profession?

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A Insulation contractor.

Q And how long have you been in that type of business, sir?

A Twenty-one years.

Q What is the name of the particular company that you are associated with?

A The Fuller-Austin Insulation Company.

Q Fuller-Austin?

A Uh-huh.

Q And what is your capacity or connection with that company?

A President.

Q Fuller-Austin Company is a contracting company. Can you tell the jury, please, sir, what particular type of contracting that you may specialize in, if you do?

A Yes, we specialize in industrial insulation.

Q All right, sir, is that to be distinguished, as I understand, from just general construction, contracting?

A Yes, sir, industrial insulation contracting is a specialty contracting.

Q All right, sir, and in connection with this specialized type of contracting do you have

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occasion to hire Union insulators to work for you as your employees, sir?

A Yes, sir, we do.

Q All right, in connection with carrying out that specialty of your business do you purchase thermal insulation products containing some asbestos?

A Yes, sir.

Q And are these products purchased generally by you specialized contractors such as your company, sir?

A Yes, sir, generally they are.

Q Are they purchased generally by the general public?

A No.

Q Now in connection with your work, Mr. McManus, have you had an occasion to utilize safety devices for the protection of your employees?

A Yes, sir, we have and we do.

Q Can you give the jury, please, sir, an idea of what type of safety devices that you have been employing in your business?

A Well, respirator types that are used by the

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workers, dust collector systems that are put on the saws. These are the basic types.

Q All right, sir, have you ever had an occasion to utilize exhaust fans say in a shop condition to ventilate the dust or exhaust the dust out of the shop?

A Yes, sir, they normally are in shops or in enclosed areas.

Q How about in connection with the power saws which your company might use to work with insulation products?

A Well, we either use blowers, big fans to blow the dust away from the individual who is working on the saw or dust collector systems.

Q All right, sir, as an insulation worker contractor, Mr. McManus, are you concerned with just general good-housekeeping practices in the insulation trade?

A Yes, sir, we are.

Q And can you give the jury and the Court some idea of about how long that your particular company, Fuller-Austin has been employing these safety devices that you have just described?

A Well, at least for the last fifteen years.

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Q All right, sir, and can you give the jury, please, sir, your idea of why such devices are utilized by insulation contractors such as yourself?

A Well, obviously the breathing of dust is not a healthful thing, both as protection to the worker and as a safety device to clear the air around the working part of the saw to prevent accidents.

Q Based on your experience in this type of trade, Mr. McManus, do you have an opinion as to whether or not the inhalation of the dust created in applying the products is or is not harmful to the body?

A Well, we believe it is.

Q Has this belief existed for some period of time and, if so, please tell the jury approximately how long.

A Well, I would say since we have been using power equipment.

Q All right, sir, is that for this fifteen year period?

A Yes, sir, for the last fifteen year period.

Q Mr. McManus, in your history as an insula-

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tion contractor have you ever had any difficulties or problems with persuading the workers who are employed by your company to utilize these protective devices in the field?

A Well, they are made available to the men and we recommend that they use them. However, this is at the option of the worker and normally it is very difficult to get people to use them even in confined areas where there is an awful lot of dust involved.

Q Mr. McManus, when you buy thermal insulation products from the manufacturer do you recognize and know that they are going to contain some asbestos?

A Yes, sir, we do, we know that.

Q And then when you receive these products, thermal insulation products containing some asbestos, do they live up to your expectations as to the constituents of the products?

A Well, they are in the form we expect to receive them.

Q Incidentally, was Charles Borel employed by Fuller-Austin on the Texgas job at Winnie?

A Yes, sir, he was.

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Q And in that connection did your company utilize Ruberoid products?

A No.

Q Have you recognized the existence of asbestosis as an occupational disease under workmen's compensation?

A Yes, sir, we do.

Q Have you carried this type of compensation for many years?

A Yes, sir, we have.

Q Could you give the jury an idea of about how many years you carried this?

A Since we began in business, since 1934.

Q All right, sir, do you know of any way that the use of thermal insulation products by the insulators in the field can be made safer for them and, if so, please describe how this could be done.

A Will you repeat that question.

Q I say is there some way that you know of, based on your experience as an insulation contractor how to improve the safety to an insulator in the field using asbestos products?

A Well, with the materials available to us the

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only thing that we know today that can be used is the safety devices such as respirators, masks and this type of thing.

Q All right, sir, Mr. McManus, is this something of a necessity that has to be done in the field where the job is actually taking place by the contractor?

A Or where the work is being performed.

MR. BARNES: I pass the witness, Your Honor.

THE COURT: Do any of the defendants wish to interrogate the witness?

MR. WELLER: No.

THE COURT: Mr. Stephenson, you may proceed.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. McManus, I am Ward Stephenson, and I represent Mrs. Borel, Clarence Borel's widow. You have recognized, I believe your testimony is that asbestos causes asbestosis and you have know that for quite a number of years?

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A No, I haven't known that quite a number of years.

Q How long have you known it?

A For the last five or six years.

Q Only the last five or six years?

A Uh-huh.

Q Well, I understood you to say that you had workmen's compensation covering employees and you had that covering asbestosis since 1944?

A Well, we have, that's correct. However --

Q You didn't know that it covered the disease, I mean?

A Well, I knew that workmen's compensation covered the disease.

Q But you only learned of asbestosis four or five years ago?

A We learned -- yes, I guess I would say that.

Q All right, sir, are you familiar with Paul Petrosky?

A Yes, sir, I am.

Q And Jimmy Hord, Sabine Insulation, and the Reed Company?

A Yes, sir.

Q I believe they are in the same business that

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you are in?

A Yes, they are.

Q And do you recognize now that some of the major clients, I believe that's what you call companies that give you invitations to bid, I believe they are referred to as clients or customers, are they not?

A Yes, sir, they are.

Q Are you familiar with the fact that the clients now are submitting invitations to bids requiring that asbestos-free materials be used?

A I have heard that is being done.

Q And as a matter of fact did you bid on a Gulf job where this was in the invitation to bid?

A No, not to my knowledge.

Q You didn't bid that job?

A I don't know what job you are referring to.

Q The Gulf Oil job in Port Arthur.

A Well, as far as I know, no, no, we didn't bid on the job and I didn't see the inquiry.

Q But you are familiar with the fact that some clients now are requesting total asbestos-free products on their insulation jobs?

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A I understand they are.

Q All right, sir, thank you. Now I commend you for having respirators available and dust collection systems on permanent installations. Did you do any of this because you were told by any of the major manufacturers of asbestos products that their materials were dangerous to the health of employees and would cause asbestosis?

A No, we didn't.

Q Do you know -- let me ask you this. Do you know that the manufacturers, such as Ruberoid and the other defendants in this case, are contending that you, the contractor, should bear all of the fault of workers getting this disease?

A No, I didn't know that.

Q Did you come over here voluntarily?

A Yes, sir, I did.

Q Mr. Petrosky, have you been in any of the manufacturing plants where these companies have their own workers there subject to workmen's compensation --

THE COURT: McManus.

MR. STEPHENSON: I am sorry, Judge, I forget, Mr. McManus, I didn't mean

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to call you by some other name.

A Restate the question, please.

Q Are you familiar with the manufacturing plants that manufacture asbestos insulation material and the safeguards they put around their employees where workmen's compensation cost is involved there?

A Not specifically, no.

Q All right, sir, can we say then, Mr. McManus, in summary, that the manufacturers of asbestos insulation material have done nothing to assist your company through information or materials or safety devices or suggested systems or any other way as to how to apply their product safely and without harm to the worker?

A Well, they are publishing information through I believe NIMA, which is the National Manufacturers Insulation Association, I believe that is being made available to the contractor.

Q And how long has this been made available?

A Within the last four or five years.

Q Uh-huh. More specifically probably within the last two years?

A I said four or five.

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Q It could be two, I say, is what you say?

A Well, I don't know.

MR. STEPHENSON: Thank you, Mr. McManus.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. BARNES:

Q Did you know Mr. Claude J. Tomplait, Mr. McManus?

A No, I didn't know him.

Q The last question, sir, In your business of these fifteen or twenty years have you found that asbestos-containing products have a wide variety of uses, useful purposes and serve useful purposes in the field where the temperatures are extremely high?

A Oh, yes, sir.

MR. BARNES: Thank you, Your Honor.

THE COURT: You may be excused, Mr. McManus.

Who do you have next?

MR. BARNES: William O. Dailey.

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I think he is in the hall. I think he will be a very short witness, Your Honor.

THE COURT: All right.

WILLIAM O. DAILEY,

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

DIRECT EXAMINATION

BY MR. BARNES:

Q State your name, please.

A William O. Dailey.

Q Mr. Dailey, I will ask you, if you will, please, sir, to get as close to that mike as I am to this one in order for us to hear you better.

A Thank you, sir.

Q Mr. Dailey, where do you live?

A Houston.

Q What kind of business are you in?

A Insulating contractor.

Q And what is the name of your contracting company?

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A A. C. & S., Incorporated.

Q And what does that stand for, sir?

A Just A. C. & S., Incorporated.

Q All right, what is your particular capacity with this company?

A District Manager of the Houston District.

Q And how long have you been in this insulation contracting business?

A A little over nineteen years.

Q And can you tell the jury whether or not in this insulating contracting business you are in a specialized contracting business?

A Well, specialize in thermal insulation, primarily for industrial and commercial insulation.

Q And just hurriedly in this respect, do you employ Union insulators?

A Yes, sir, we do.

Q And you purchase your materials from manufacturers of these products to be applied by these Union insulators?

A That's right.

Q Mr. Dailey, have you, as an insulation contractor, had an occasion to use any safety devices

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or techniques in the field for the protection of the worker applying insulation products?

A Yes, sir, we have.

Q Can you tell the jury what types of devices or practices or techniques you employ?

A Well, we use the so-called hard hat safety helmet, protective eyewear, masks for breathing purposes.

Q Masks, is that sometimes referred to as a respirator?

A Yes.

Q How about ventilator fans or suction exhaust fans for shop areas?

A Oh, yes, we use exhaust fans in the shop area and also in our scaffolding and so forth, that type of thing, we have safety precautions.

Q Have you had an occasion to utilize mechanical suction devices on your power saws?

A Yes, sir.

Q And can you give the jury and the Court an idea, Mr. Dailey, of approximately how long these devices have been utilized by you for worker protection?

A Well, I would say that we have used them as

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long as I have been in the business.

Q All right, sir, have you become aware since you have been in the business of -- that it is harmful to the body to inhale these fumes or these dust particles?

A Yes, sir, I have heard testimony to that effect.

Q How long have you, as an insulation contractor, been aware that the inhalation of asbestos fibers was harmful to the human body?

A The first time I ever heard of the disease called asbestosis was probably, oh, I would have to say thirteen or fourteen years ago.

Q All right, sir, are you aware of the disease of asbestosis being one of those occupational diseases covered by your workmen's compensation insurance?

A Yes, sir.

Q And have you carried this type of workmen's compensation for many years?

A Oh, yes, sir, as long as I have been in the business.

Q As long as you have been in the business?

A Yes, sir.

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Q And do you ever have any difficulty in persuading the insulation workers in the field to take advantage of these safety devices that you make available for his use?

A Constantly.

Q Is this one of your major problems?

A This is indeed.

Q Are you a member of any contractors association, Mr. Dailey?

A The Houston Insulation Contractors Association.

Q Does this association discuss problems of health hazards and their peculiarities to the trade?

A Yes, sir, they do.

Q About how long has this type of discussion been going on in the association?

A Well, I only know firsthand for a period between five and six years, since I have only been in Houston that long. Prior to that time I am sure there has been some discussion of it.

Q All right, sir, Mr. Dailey, in your nineteen years of experience as an insulation contractor has it been your own personal experience that

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every single use of any product containing any asbestos poses a hazard to the worker?

A My personal opinion?

Q Yes, based upon your experience.

A No, sir, I don't think so.

Q When you buy these insulation products which contain some asbestos you realize and know and you expect them to contain this product, this asbestos fiber, do you not?

A Yes.

Q And when you receive the thermal insulation products of asbestos in it that is the condition you expect it to be in when you receive it, is that correct?

A Yes, assuming it arrives in good condition, unbroken and so forth.

MR. BARNES: I pass the witness, Your Honor.

MR. WELLER: I want to ask one question, Your Honor.

DIRECT EXAMINATION

BY MR. WELLER:

Q Did you at any time employ Clarnece Borel?

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A I personally did not. I believe that predecessors to our company did.

Q But you, since you have been with the company you don't have any knowledge of any employment?

A To the best of my knowledge, no, sir.

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

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Dailey, I have a few questions to ask you. Number one, are you aware of the fact that the manufacturers of asbestos materials such as Ruberoid, Johns-Manville, Fibreboard and so on, are contending in this case that the employers, the contractors, such as your company, are totally to blame for any breakdown in safeguarding the workers?

MR. TUCKER: That is not a correct statement at all. I hate to interrupt Mr. Stephenson, but the contention in evidence from the pleadings in the case is that the contractors

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are the ones who have control of the working conditions and the responsibility for providing the equipment and the conditions. There is nothing in the pleadings and no contention that they are the ones who are responsible here, but it is -- the evidence shows beyond any doubt that they are the ones who have control of the working conditions and these people are working for them. This is a mis-statement of the contention of the defendants and we object to it for that reason.

THE COURT: The Court will overrule both the argument, the statement and the objection. I do think that the question should be reworded because I believe you used the word "sole" or "exclusive", I think the Court will sustain the objection on this, and just overrule the statement and the argument and we sustain the objection and permit counsel to restate the question.

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MR. STEPHENSON: Thank you, Your Honor.

Q Mr. Dailey, what I am driving at is the defendants, among other defenses in the case, have asserted that the safety of the worker is the responsibility of the contractor and it is not a responsibility of the manufacturer and in that extent they are trying to lay the blame on you, the contractor. Before you came to testify --

MR. TUCKER: Same objection, Your Honor.

THE COURT: Objection overruled.

Q Were you made aware of this by whoever called you to testify?

A No, sir, I don't believe I am specifically aware of that.

Q All right, sir, Mr. Dailey, do you have any facilities in your company or is it large enough for you to engage in testing of asbestos products to determine their safe or non-safe characteristics or what safe measures should be used or how to reduce the dust going to the worker, do you have testing facilities such as that?

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A We do not have specific facilities for that.

Q I don't believe you are employing industrial hygienists in your company?

A Not directly.

Q Now the point I make by this, Mr. Dailey, actually, I think, is one in support of the contractors. Have the manufacturers of this asbestos material come into your office or your place where you work and in an effort to make dust counts or to study how much asbestos, dust from their material is created, have any of the manufacturers come into your place and asked your cooperation about this?

A Not that I can recall.

Q All right, sir, are you at all familiar with Threshold Limit Values?

A Restate the question.

Q Are you familiar with Threshold Limit Values?

A Generally.

Q All right, sir, do you know what -- what is the American Conference of Industrial Hygienists recommended Threshold Limits for asbestos?

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A No, sir.

Q Have you gotten any material from the manufacturers such as Johns-Manville, advising you about this Threshold Limit Values and what your workers should not be exposed to?

A Not directly.

Q Have you gotten it from any of the manufacturers advising you about what Threshold Limits should not be exceeded?

A Not specifically or directly, no.

Q All right, sir, Mr. Dailey, has your company been asked in invitations to bid by clients to submit bids on materials totally free of asbestos?

A On occasions.

Q All right, sir, now --

A Not always.

Q Yes, sir, there has been a safety warning introduced in the case and it says that among other things, I will be reading, "This product contains asbestos fibers. Inhalation of asbestos in excessive quantities." Do you know what is meant by "excessive quantities"?

A No, I suppose not, since I don't know the Threshold Limits

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Q "Over long periods of time may be harmful". Do you know what is meant by long periods of time?

A I think it is probably a matter of individual judgment.

Q All right, sir,"If dust is created when this product is handled, avoid breathing the dust". Is there any way a worker can apply, cut, saw, scribe and mix asbestos material without creating dust?

A Yes, sir.

Q How can he do that?

A Wear an inhalator or respirator.

Q Sir?

A Wear an inhalator or respirator.

Q Well, have you worn any of the respirators, do you work with the tools?

A No, sir.

Q Now this caution goes on further.

A Do you want to back up a minute?

Q Sir?

A I want to back up a minute.

Q Yes, sir.

A You asked me two questions, have I ever

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worn a respirator.

Q Yes, sir.

A Or do I work with the tools. I do not work with tools, I have worn a respirator.

Q All right, how long ago did you wear the respirator?

A Oh, maybe some time ago, I couldn't say for sure.

Q Were you working with your tools at that time?

Q How long has that been?

A Oh --

Q More than nineteen years?

A Yes.

Q Now, "If adequate ventilation control is not possible, wear respirator", and so on. Have any of the manufacturers told you what is or is not adequate ventilation control?

A Not specifically. Let me back up just a minute, sir, I don't want to mislead you about wearing a respirator. I do not wear the respirator as an asbestos worker, but I have worn a respirator in working with the tools of another trade.

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Q I see. All right, sir, then you have no experience with the respirators in the asbestos field personally?

A Not only other than just try them on.

MR. STEPHENSON: I thank you, Mr. Dailey.

THE COURT: Anything further, Mr. Barnes?

MR. BARNES: Yes, sir, I have one question.

REDIRECT EXAMINATION

BY MR. BARNES:

Q Mr. Dailey, Mr. Stephenson asked you about a request for you to bid on jobs involving asbestos-free products. Can you give the jury some idea about whether this has been recently, a long time ago or --

A Well, I would say that it has been relatively recent.

MR. BARNES: Thank you, sir, that's all.

MR. WELLER: Could I ask one question, Your Honor?

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THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. WELLER:

Q Mr. Dailey, do you use cork and other materials like that for insulation?

A Yes, sir, we use cork and other materials like that. However, the use of cork is very minimal now as insulation.

Q I see. For thermal insulation, high heat insulation, do you use products containing asbestos?

A We use silicates, we use glass fibers.

Q I see, and are these products reasonably suited for the purpose of insulating high temperatures?

A Within given temperature ranges, yes.

Q Now the asbestos products used in the 1500 to 1600 range --

A The higher end.

Q You don't have any substitute for that, do you?

A No.

MR. WELLER: That's all.

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THE COURT: All right, Mr. Dailey, you may be excused. You may come in front of the bench and leave the courtroom.

MR. BARNES: The only other thing I have in this connection, I would like to make a statement by way of a supplement to the answer to Interrogatory No. 23.

THE COURT: All right.

MR. BARNES: And that is that Ruberoid Company, whom I am representing here, is a contributing member to the National Insulation Manufacturers Association.

Your Honor, subject to the Court's allowing me to develop a bill of exception later, we rest.

THE COURT: All right.

MR. WELLER: Your Honor, I have one offer for the purpose of the bill of exceptions. I have misplaced it temporarily, could I offer it for the record later?

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THE COURT: You may.

Do any of the defendants have anything further?

MR. TUCKER: No, sir, I believe all the defendants rest.

THE COURT: For the purposes of the record, the record will show that all defendants have rested.

MR. WELLER: Yes, sir.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: We have nothing in rebuttal, Your Honor, other than just the one matter, the formal nature which you said I could put in afterwards.

THE COURT: All right.

Members of the Jury, we are going to give you until 10:30. Please return at that time. If you will leave the courtroom now, please leave.

(REPORTER'S NOTE: Whereupon the jury withdrew from the courtroom).

THE COURT: Do any of the parties have any matters you would like to

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take up with the Judge that needs to be a part of the record in this matter?

MR. BARNES: I do, Your Honor.

THE COURT: If so, you may proceed.

MR. TUCKER: Your Honor, we have a stipulation which has been approved by Mr. Stephenson and the various attorneys. This relates to the four defendants who settled and sets out the amount of the settlements. Those who are out of the case now, and we have the stipulation which we would like to have filed and approved by the Court.

THE COURT: It will be made a part of the record.

MR. ARNOLD: Your Honor, on behalf of Philip Carey Corporation and Armstrong Cork Company and each of them, I desire to renew and reurge our motion for directed verdict which was made at the time of the plaintiff's

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resting. It may be understood that I will not have to retype it, but just reurge the original motion.

THE COURT: All right.

MR. BARNES: Your Honor, on behalf of the Ruberoid Company, I have just filed my motions for directed verdict at the close of all of the evidence and the record reflecting that I called it to the Court's attention.

THE COURT: All right, Mr. Weller?

MR. WELLER: Your Honor, on behalf of Fibreboard Corporation I have on file a motion for an instructed verdict at the close of all of the evidence and I earnestly request the Court to consider it. I take the position that there hasn't been shown any exposure to my product in this case.

MR. PATE: Your Honor, on behalf of Johns-Manville we would like to

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reurge our motion for instructed verdict which we filed at the close of Plaintiff's testimony. We would like to reurge it at this time.

MR. DUNCAN: Your Honor, on behalf of Pittsburgh-Corning Corporation we would like to reurge our motion for instructed verdict which was filed at the close of plaintiff's case in chief after the conclusion of all of the testimony in this case and particularly we urge that the Court consider the fact that Pittsburgh-Corning Corporation has been manufacturing one product, unibestos, only since August, 1962, and in the status of the medical testimony which has been adduced at this trial could not reasonably have contributed to any disease which Mr. Clarence Borel may have contracted as urged by the plaintiff.

THE COURT: All right, the motions for instructed verdict filed and

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called to the Court's attention at the conclusion of the plaintiff's evidence and also at the conclusion of all of the evidence in the case and before the case is submitted to the jury will be overruled. The Court will enter one order to this effect.

MR. WELLER: Your Honor, I have an order for that.

THE COURT: It includes all of the defendants?

MR. WELLER: Yes, sir, Your Honor, I had it include all of the defendants.

THE COURT: We will stand in recess until 10:30, and the attorneys may come to the chambers and we will discuss the charge, if you have some suggestions to make to the Court.

MR. STEPHENSON: Your Honor, may I put in the date of settlement for the Industrial Accident Board into the record?

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THE COURT: Yes.

MR. STEPHENSON: I would like to put this letter from the Texas Industrial Accident Board into the record showing the seventh month, 31st day of 1969, the compromise settlement agreement was made by Mr. Borel with whatever insurance company was involved.

THE COURT: It may be offered.

MR. WELLER: May I now offer this for the bill of exceptions, I found the document?

THE COURT: It may be offered for the purposes of the bill of exceptions only.

MR. WELLER: This is a certified copy of the workmen's compensation board of June 1, 1969, signed, Clarence Borel.

THE CLERK: That will be Defendants' 31.

THE COURT: We will stand in recess until 10:30.

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

THE COURT: Please be seated. Ladies and Gentlemen of the Jury, we have now approached that time when the attorneys will make their arguments, and under the Rules of Procedure, the plaintiff having the burden of proof, has the right to open and close the arguments. The defendants will argue in the middle. The attorneys will present to you the arguments on the evidence which they think is favorable to their particular position. I am sure they will clarify the case considerably to you. They will argue to you what issues you are to find. After they have concluded the Court will give you a charge. I will charge you on certain definitions and also on the law applicable to such facts as you may find. In other words, you are a fact-finding body. You determine whether a fact exists or

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whether a fact doesn't. Whether there is sufficient evidence to justify your findings of a fact. Also, in a situation of fact-finding you can fine one way or another way. In other words, you have two ways to go. If a matter is stipulated or agreed upon, of course, you do not have to determine that fact, but if there is a dispute on a matter of fact, then the jury must determine it. Then conditioned and predicated upon how you find that fact you will apply the law that the Court gives you. Now that is the -- briefly and simply the outline that will be followed. Mr. Stephenson will argue for the plaintiff and some three of the defense attorneys will argue probably before Noon. Mr. Tucker, I believe, will lead off for the defense attorneys and several of the other gentlemen will also argue. We are ready to proceed, Mr. Stephenson.

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(REPORTER'S NOTE: Whereupon the closing arguments were given by each respective counsel representing each respective defendant.)

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