PLAINTIFF'S EXHIBIT
UC-5167

UNITED STATES DISTRICT COURT

DALLAS COUNTY, TEXAS

44TH JUDICIAL DISTRICT

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DANIEL ALDERETE, JR.; CHARLIE RAY BROWN; HAROLD R. CADENHEAD; ALBERT DICKEY; JOHN Z. GRACIA; CECIL EDWARD JOHNSON; ROSENDO LEAL, JR.; CHOYCE EDWARD MITCHELL; JOSEPH F. STEVENS; ARNULFO ARRENDONDO MADRIGAL, SR. and FAUSTINA MADRIGAL, Plaintiffs, vs. OWENS CORNING, ET AL, Defendants.	No. 97-02640-B

DEPOSITION OF

DOUGLAS WAYNE MERRILL

Friday, September 18, 1998

REPORTED BY: BETTY A. CALLIES CSR 11092 Job# 71461

COPY

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A No.
Q What did the Consumer Product Safety Commission ultimately do on the proposed rules published in the July 29, 1977 --
A Can we go back to the last one?
Q Yes, sir
A I recall that an earlier question had come up and I think it was in the testimony about substituting asbestos for titanium And that ended up in the lower cost. But titanium had been used in the product to make it white; and that was the only reason for it And actually, what it was was a change from one source of asbestos to another that had titanium as part of it -- and I think some literature that spoke to the fact that by going from -- there was a Canadian source -- I don't know which one -- going from a Canadian source to a Union Carbide product which had titanium -- it could replace the Canadian asbestos. And some of the titanium was taken out because this asbestos was whiter and had titanium with it
So there was some literature that spoke to that. And the way it spoke to that was by putting Union Carbide in you could take

titanium out and cut the price back. But in essence it was changing from one type of asbestos to another type of asbestos. That is sort of an impurity to titanium dioxide
Q What type of a product were you just referring to; what was the end product, do you recall?
A It's probably ceiling texture, in order to have any titanium in it.
Q And the change removed the titanium, is that correct, or the change added the titanium?
A. No, either reduced it or took it out.
Q In reducing or taking out the titanium did it add more asbestos?
A I don't believe so The switch was from going from a Canadian source to the Union Carbide source. And typically Union Carbide asbestos itself was a little more efficient. You could get by with using, on a pound-per-pound basis, a little bit less. But it had this whiter characteristic to it which actually had titanium dioxide with it.
In fact I think it was called -- I don't remember the name of it -- High Purity Open, or something like that It had some titanium with

it. So in addition to changing the asbestos, some of the titanium could be taken out, because it was only put in there to make the finished coat whiter. It wasn't white, but an off-white.
So I remember that coming up sometime in the past where it appeared, based on a meeting or something, that was announced that that was being done. It appeared that asbestos was replacing titanium dioxide, but it was more than just that
Q Is there anything else as you reflect back that you would like to change or add about your testimony?
A I don't recall anything else.
Q I was asking you whether you knew what the Consumer Product Safety Commission did with regard to the proposed rules published in the July 28, 1977, Federal Register?
A As I recall they acted upon them as proposed. I don't remember any changes.
Q In other words, despite the Asbestos Information Association's objection, and despite the Paco objection, which is in Exhibit 3, the Consumer Product Safety Commission still decided to go ahead with the ban as proposed, correct?

A Yes, that's the way I recall it.
Q It's true, sir, isn't it, that when the ban of asbestos-containing joint compound was enacted that there was a period of time between when you knew that it was going to happen and the last date that, for example, you could sell a product, correct?
A I think there were three -- there was -- well, the first step would be it had passed. And then there would be a short period of notification, and then like a thirty-day period to stop manufacturing. And then another period of six months or something to stop selling it. It was like from January then to June.
Q So in other words, it wasn't such that from overnight or from nowhere you had to go from manufacturing to not selling it the very next day -- not without any notice, correct?
A Correct.
Q In the period of time between when you learned that you were no longer going to be able to manufacture and sell asbestos-containing joint compound and from the time the law forbid you to sell it, Kelly-Moore made a corporate decision to sell as much as they could, didn't they?

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A Or '71.
Q Prior to that you had no knowledge that asbestos could be harmful?
A No
Q Didn't see the warnings on the Johns Mansville bag?
A No
Q Didn't read anything indicating that?
A No
Q Did you look?
A Did I look for asbestos hazards in 1969, 1970, no
Q No, you did not?
A I don't remember what I did back then
Q Possibly you may have looked to see whether it was harmful; you just don't recall?
A I don't recall.
Q Don't you think before Kelly-Moore marketed products it should have tested those products to see whether they would be safe for use?
A I don't know if they tested them before they marketed them
Q You know they didn't do any testing for health problems in the time you were there,

don't you?
A Yes -- well, no, we did some testing
Q Starting when?
A Starting when?
Q Yes.
A Well, we asked our insurance company to come in and do some exposure tests after OSHA
Q But that didn't have anything to do with the use of the product, did it; that meant you were asking them to test remaining manufacturing facilities to see if they were safe for its workers, right?
A. Yes, what the exposure was.
Q In manufacturing facilities?
A Yes.
Q You never ever tested to see if the use of the product would be harmful to health, did you?
A For a finished product, yes, we did.
Q What do you mean, a "finished product"?
A With asbestos in it.
Q When did you first test a product to see if it was safe?
A Probably '73, or after OSHA

Q Tell me the testing that you did
A It was ceiling texture in a joint effort with Union Carbide
Q You tested the ceiling texture?
A Exposure to the applicator
Q Did you ever test joint compounds?
A I don't recall if I tested it.
Q If you learned asbestos was harmful to your health in '72, why did you continue manufacturing and selling asbestos-containing products until the government forced you to stop in '78?
A Well, the government set certain thresholds, so we worked -- we did a number of things, but we worked towards eliminating it from the product And also looked to see which ways we could minimize the exposure to the fibers.
Q What is the best way to minimize the exposure to asbestos fibers?
MS ANDREWS Objection, calls for speculation.
THE WITNESS The best way is no exposure at all.
MR BARON Q Eliminating asbestos is the very best way?

A Limiting exposure, yes.
Q If for some reason the company wanted to put asbestos in after it learned it was harmful, what else could a company do to minimize exposure to users, or people working around users of products?
A The labeling, which we did; the warning not to create a dust.
Q Let's talk about the label. Do you believe that label was a warning?
A That's what it said, yes.
Q Do you believe it was an adequate warning?
A. It came from the government.
MR BARON Objection, nonresponsive.
Q Do you believe it was an adequate warning?
A. Yes, for that period of time it was.
Q Kelly-Moore made available to its employees who made the joint compound, mixed up the dry ingredients, respirators, correct?
A Yes.
Q And you did that because you thought that might be the prudent thing to do to reduce or eliminate exposure to asbestos, right?

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A No
Q Because there is no risk of that, is there?
A That I don't know We don't use it in paint because of that.
Q You as a taxpayer don't want your tax dollars going to try to support government that could test every product made by every manufacturer to determine which ones are safe, do you?
MS ANDREWS Objection, calls for speculation, argumentative
THE WITNESS As a consumer I would be paying for it one way or the other, whether it be the government or every company involved
MR BARON Objection, nonresponsive
Q Was that your answer?
A Yes.
Q Consumers of Paco products paid for the lack of testing and the lack of investigation by Kelly-Moore products with their lives, didn't they?
MS ANDREWS. Objection, calls for speculation, argumentative, and absolutely assumes facts not in evidence

THE WITNESS I do not know that
MR. BARON Q Do you deny it?
A I don't know if Paco customers paid for that with their lives
MR BARON Can we take a quick break?
(Whereupon, there was a break taken at 4:30 to 4:45 p m.)
MR BARON Mr Merrill, let me show you a document that's been marked Exhibit 14 to your deposition, and ask you to look at that, please, and tell me whether you recall receiving Exhibit 14.
(Whereupon, Exhibit 14 was marked for identification)
A I recognize this as having received this, yes.
Q In fact, it is a letter dated September 27, 1976, addressed to you?
A Correct.
Q It's from the Union Carbide folks, is that right?
A Yes
Q They are referencing in this letter -- well, it says that you discussed the petition

filed by the National Resources Defense Council demanding the banning of asbestos in patching an similar compounds intended for consumer use. And it then goes on to say, "A copy of the Asbestos Information Association/North America's response to this petition is attached " Would you look and see whether that appears to be what is attached to Exhibit 14?
A It appears to be, yes
Q In fact if you --
A It's probably what we looked at earlier
Q Yes, sir We had Exhibit 2 that I think had some incomplete pages in it, right, do you remember that?
A Yes, I do
Q Does Exhibit 14 appear to be a complete copy of that?
A. Yes, it does.
Q Does Exhibit 14 refresh your recollection that you, in fact, did receive around September of '76 a copy of the Asbestos Information Association's position on the proposed Consumer Product Safety Commission ban?
A I don't recall specifically having

received it; but yes, I did receive it
Q. You got the letter?
A Yes.
Q And you think you got the attachment?
A Yes.
Q And, in fact, the letter and the attachment exist in the Kelly-Moore files today?
A Yes.
Q As indicated by the KMX numbers, correct?
A Correct.
Q Do you recall discussing with Mr Rhodes the proposed ban as he has referenced in the letter?
A I don't remember him as an individual, particularly, with Union Carbide, but I know that the issues surrounding the ban were discussed with the asbestos suppliers; certainly Union Carbide was one of them.
Q In fact, Mr Rhodes in this letter, Exhibit 14, says, "I want to thank you for your assistance in providing the information needed for this response." Do you see that?
A Yes.
Q As far as Mr Rhodes was concerned you

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