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IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

BRIAN KING, Individually and as)
Special Administrator for the) NO. 13-L-31
Estate of TOM KING, Deceased,)
)
Plaintiff,)
vs.)
)
A. W. CHESTERTON COMPANY,)
et al.,)
)
Defendants.)

JURY TRIAL
FEBRUARY 20, 2014
VOLUME 4b

REPORT OF PROCEEDINGS of the Jury Trial before
ASSOCIATE CIRCUIT JUDGE STEPHEN STOBBS on February 20th,
2014.

APPEARANCES:

SHRADER & ASSOCIATES, by
Ms. Allyson Romani & Mr. Frank Wathen,
Attorneys at Law,
for the Plaintiff.

K & L GATES, by
Mr. James A. Lowery,
and
HEPLERBROOM, by
Ms. Rebecca Nickelson,
Attorneys at Law,
for the Defendant Crane Company.

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Christy Streicher, CSR
CSR#84-002682
Official Court Reporter
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I N D E X

WITNESSES:	Direct	Cross	Redirect	Recross
Dr. Barry Castleman		3	103	109

1 (Court convened pursuant to lunch recess.)

2 (The following proceedings were had in
3 presence of the jury.)

4 THE COURT: We will get started with the cross
5 examination.

6 MR. LOWERY: With the Court's permission, and
7 allowing Dr. Castleman to sit down.

8 CROSS EXAMINATION

9 BY MR. LOWERY:

10 Q. Good afternoon, Dr. Castleman.

11 A. Good afternoon.

12 Q. Is it all right if I call you Dr. Castleman?
13 You do have a Ph.D., correct? I want to make sure I am
14 being respectful to you, sir.

15 We have had the pleasure of meeting before,
16 correct, sir?

17 A. Yes.

18 Q. Good to see you again. Doctor, I would like
19 to talk to you first about -- explore a little bit more
20 about your background if I could. When you came out of
21 college your first job think I was in 1968 for Hercules
22 Chemical, is that correct?

23 A. Right.

24 Q. And you were asked to leave that job a little

1 bit early, correct, sir?

2 A. Yes, I was raising concerns about the way they
3 were dumping hazardous waste.

4 Q. So you were asked to leave that job a little
5 bit early?

6 A. A couple days before my scheduled departure.

7 Q. And then from '72 to '73 you worked for the
8 Baltimore County Health Department, correct?

9 A. Right.

10 Q. And at one point you were fired from that job
11 but later rehired, correct?

12 A. Right. For naming the names of companies using
13 asbestos filtering gin and beer in Baltimore County at a
14 Senate hearing.

15 Q. Gin and beer?

16 A. And beer, yeah. They were using asbestos in
17 the brewery and in the distillery, and we demonstrated
18 the contamination of the gin through microscopic
19 analysis.

20 Q. You don't have any evidence of a certain
21 brewer in this part of the world doing that kind of
22 thing?

23 A. I don't know, but Cowling had breweries around
24 the country and they told me that they stopped using

1 asbestos in all their breweries after --

2 Q. Hopefully Anheuser Busch doesn't. And in 1974
3 and '75 you worked for the Maryland Public Interest
4 Research Group, correct, sir?

5 A. Right.

6 Q. And you were fired from that job too, correct?

7 A. Right.

8 Q. That's when you became an independent
9 consultant?

10 A. That's right.

11 Q. In 1976 asbestos plaintiffs' lawyers, like
12 these fine gentlemen and ladies here, began hiring you
13 as a researcher, correct?

14 A. Right, started out as a research job.

15 Q. Okay. And then asbestos plaintiffs' firm
16 decided they want you to start testifying in Court,
17 correct?

18 A. In 1978 I was asked to do that, and in 1979 I
19 was first deposed and testified in a trial like this.

20 Q. Since '78 or '79 you have been testifying
21 regularly for law firms representing asbestos plaintiffs
22 in this litigation, correct?

23 A. On average about one trial a month, yes, since
24 then.

1 Q. You are not an industrial hygienist, correct,
2 sir?

3 A. No, I have training in industrial ventilation,
4 but I am not a certified industrial hygienist.

5 Q. I think we established that we call you Doctor
6 out of respect; it is because you have a Ph.D., but it
7 is not because you are a medical doctor, correct?

8 A. I am not a medical doctor.

9 Q. You do not testify in asbestos cases as an
10 epidemiologist, fair statement?

11 A. I am not a specialist in epidemiology. That is
12 also part of my training.

13 Q. You don't testify about the medical cause of a
14 disease or the diagnosis of the Plaintiff, correct?

15 A. Correct.

16 Q. And typically in asbestos cases, Doctor, you
17 testify regarding the historical knowledge of asbestos
18 hazards, is that fair?

19 A. Right.

20 Q. You are not an expert on Navy or military
21 specifications, fair?

22 A. Correct.

23 Q. You are not an expert on gaskets and packing,
24 correct?

1 A. Not on the technology, no.

2 Q. You are not an expert on valves, true?

3 A. Same thing, yes, as for gaskets and packing.

4 Q. Since you began, Doctor, testifying in
5 asbestos litigation in 1979 you have testified -- well,
6 have you testified as much as two trials per month on
7 average in certain years?

8 A. Yes, the most was I think 30 trials in one
9 year.

10 Q. Okay. And in asbestos litigation matters
11 would it be fair your work is almost exclusively for
12 firms representing plaintiffs in asbestos litigation?

13 A. Yes.

14 Q. For instance, in 2011 you testified in over 20
15 trials, correct?

16 A. I think so.

17 Q. Okay. Gave over 50 depositions, correct?

18 A. Yes, the defendants persist in taking my
19 deposition almost at a weekly rate.

20 Q. Well, we have a right to come in and ask for
21 your deposition and get your opinion in a case, right?

22 A. Oh, sure, but with some of these companies
23 there have been no new documents or opinions since my
24 book was published ten years ago, and they are still

1 deposing me every month.

2 Q. They must enjoy your company.

3 A. It is called billing.

4 Q. In the 30 years of testifying you have never
5 actually testified in a deposition or trial on behalf of
6 a traditional asbestos defendant such as a product
7 manufacturer, a product supplier or a premise?

8 A. Right. The only defendant I testified on
9 behalf of was the United States Government.

10 Q. In 2008 you submitted some comments to a panel
11 of a U.S. Environmental Protection Agency, correct?

12 A. Yes.

13 Q. And basically in that written statement you
14 summarized what you intended to say orally before the
15 panel, is that correct?

16 A. Yes.

17 Q. And I believe you said that -- in that
18 statement you said that you testify regularly as an
19 expert witness on public health and corporate history of
20 asbestos, the subject of your doctoral thesis, usually
21 at the request of plaintiffs in personal injury cases,
22 is that correct?

23 A. Right.

24 Q. So your letter to the EPA said you testify at

1 the request of plaintiffs should say you always testify
2 at the request of plaintiffs, correct?

3 A. I said usually at the request of plaintiffs
4 because it is usually at the request of plaintiffs. I
5 have been a defense witness in one proceeding. I have
6 agreed to be a defense witness in other proceedings, but
7 they never called me.

8 Q. And while you give expert testimony on behalf
9 of plaintiffs in asbestos litigation with some
10 frequency, you have never testified as an expert in any
11 other type of case, correct?

12 A. Correct.

13 Q. Now, you have -- we talked a little bit about
14 what you are getting paid for your time here today. Do
15 you recall that during Direct?

16 A. Yes.

17 Q. Would it be fair to say that 90 to 95 percent
18 of your income has come as a result of your work in
19 asbestos litigation?

20 A. Probably most of the work I do pays little to
21 nothing.

22 Q. And, for instance, in 2007 you earned about
23 \$340,000 from your work testifying for plaintiffs' firms
24 in asbestos litigation, correct?

1 A. I think so.

2 Q. And in 2008 it was \$315,000?

3 A. I think so. I don't remember these numbers
4 perfectly, but they sound like they are in the right
5 range.

6 Q. 2009 about 387, fair statement?

7 A. I think so.

8 Q. Is it fair to say that over the years you have
9 brought in or grossed over four million dollars
10 testifying for plaintiffs in asbestos litigation over
11 the years?

12 A. I have never tried to count it up, but the
13 figures are much greater for the past five years or so
14 than they were go back 10 or 15 years before that.

15 Q. We talked about -- Mr. Wathen asked you a
16 question about your rate. I think you said it is still
17 \$400 an hour, correct, sir?

18 A. Yes.

19 Q. In addition have you not in the past charged
20 plaintiffs' firms a \$1,000 fee just for the right to
21 list your name as an expert in the case?

22 A. The first time I encounter plaintiffs' law firm
23 I charge them \$1,000 to list me as an expert witness. If
24 they have a hundred plaintiffs they can list me in all

1 their cases and charge their clients \$10 apiece. It is a
2 one time charge, and they can go on listing me after that
3 without.

4 Q. Well, to be fair you have charged somewhere
5 between 30 and 50 different law firms that \$1,000 one
6 time charge, correct?

7 A. Well, it wasn't always a thousand but probably
8 30 to 50 firms over the many years I have been doing this
9 have paid retainers, yeah.

10 Q. Doctor, in all the years that you have
11 testified, in the hundreds of matters you have been
12 involved with you have never testified, have you, sir,
13 that a company that sold an asbestos-containing product
14 acted in a reasonable or prudent manner with respect to
15 asbestos related health risk, correct?

16 A. Correct.

17 Q. Now, you would agree that over the decades
18 asbestos was used in literally thousands of products,
19 correct?

20 A. Right.

21 Q. You are familiar with a gentleman -- I think
22 we talked about it on Direct named Irving Selikoff. The
23 jury has heard about Dr. Selikoff?

24 A. Yes.

1 Q. And Dr. Selikoff, just to refresh everyone's
2 recollection, was associated with the Mt. Sinai School
3 of Medicine in New York City, correct?

4 A. Right.

5 Q. And he was -- I have heard various ways to
6 describe him. He was certainly a pioneer in the
7 development and research into asbestos-related health
8 disease?

9 A. Yes.

10 Q. One of the things, Doctor, is it not true
11 that one of the things Dr. Selikoff did in his research
12 was to assess the health of a large group of asbestos
13 insulation workers in the greater New York area?

14 A. Right.

15 Q. And in fact you mentioned you had some
16 association with Dr. Selikoff, correct?

17 A. Right.

18 Q. This was in the early '70s, correct?

19 A. Well, from then until he died in 1992.

20 Q. 1992, okay. Did you ever, Doctor, ask Dr.
21 Selikoff to conceal or not disclose any of his research?

22 A. Not that I recall.

23 Q. Okay.

24 MR. LOWERY: May I approach, your Honor?

1 THE COURT: You may.

2 Q. (Mr. Lowery) Doctor, I am going to hand you a
3 Memorandum. I can have it marked in a minute.

4 Do you recognize this Memorandum, sir?

5 A. I recognize it as something I was shown on
6 cross examination in 2010 in a trial in Illinois,
7 elsewhere in Illinois.

8 Q. Okay.

9 A. And I don't recognize it other than that.

10 Q. All right. And you do recognize that it is
11 entitled Memorandum from Dr. Barry Castleman to Irving
12 Selikoff dated November 5th, 1979, correct?

13 A. That's what it says.

14 Q. And the Memorandum, does it not state, sir,
15 that you asked Dr. Selikoff to withhold information with
16 respect to insulation workers and their likelihood of
17 contracting cancer from their work?

18 A. The Memorandum indicates that -- this has no
19 signature, has no letterhead which most of my letters to
20 Selikoff did. They were written: Dear Irving, and
21 signed Barry.

22 But aside from that, this document in the first
23 two paragraphs conveys concerns of a lawyer named Ron
24 Motley. In its text it says that Motley is concerned

1 about the disclosure of Selikoff's medical questionnaires
2 to the people who was doing these studies on and that --
3 basically that it expresses concern that these people
4 might because of comments they may have made in answering
5 the questionnaire jeopardize their rights to recover any
6 kind of compensation in Court.

7 And the document goes on with a third paragraph
8 that says something to the effect that if the people at
9 Selikoff's studies are harmed as a result of his doing
10 the studies and turning over documents that it might make
11 it difficult for him to do epidemiological studies on
12 other workers and other hazards in this country and get
13 cooperation of workers and unions.

14 But I have no memory of writing this, and I
15 don't recognize the document.

16 Q. And just to be clear Ron Motley was a -- he is
17 passed. Sadly he is passed on now. Ron Motley was a
18 very well known plaintiffs' lawyer in representing
19 plaintiffs in asbestos litigation for decades, correct,
20 sir?

21 A. Yes.

22 Q. And in fact you have done some work with Mr.
23 Motley and his firm over the years?

24 A. Well, Motley never asked me to testify as a

1 witness in cases he was involved in, but I have done work
2 for his firm over the years.

3 Q. Okay. Thank you, sir.

4 Let's press on if we can. You have written --
5 and I think we discussed this in some detail, but I
6 would like to explore it a little further. You have
7 written this book -- I have my own copy -- *Asbestos*
8 *Medical and Legal Aspects, Fifth Edition*, correct, sir?

9 A. Right.

10 Q. And the first thing I can take from that is
11 that there were four other previous editions, correct?

12 A. Correct.

13 Q. And this book -- well, let me ask you this
14 question, sir. Any plans as of February, 2014 to author
15 a Sixth Edition?

16 A. No.

17 Q. This book, as I understand, sir, grew out of
18 your doctoral thesis, is that correct?

19 A. The First Edition was largely identical to my
20 doctoral thesis.

21 Q. And that was in 1984?

22 A. Yes.

23 Q. You would agree that before, during and after
24 the time you were writing the thesis which later became

1 Volume I or First Edition, I should say, of your
2 *Asbestos Medical and Legal Aspects* you were working and
3 testifying for plaintiffs' attorneys in asbestos
4 litigation, correct?

5 A. Sure. The jury has heard that I have been
6 involved since 1976 as a researcher and since 1979 as a
7 witness.

8 Q. And in fact one of the most valuable sources
9 for your research has been materials provided to you by
10 plaintiffs' lawyers in asbestos litigation, true?

11 A. Particularly the corporate documents, the
12 internal corporate documents and trade association
13 minutes which are not available in any public place.

14 They only emerged and found the light of day
15 because they were produced in litigation, and I have
16 asked defense counsel as well in countless depositions to
17 enlighten me if there are additional documents involving
18 their clients that they would like to share with me so
19 that I would have a full appreciation of what their
20 companies did and knew about the hazards of asbestos.

21 Q. And we will spend some more time on some of
22 the documents in just a minute.

23 At the time you were working on your thesis,
24 you billed particular research products to particular

1 plaintiffs' attorneys who requested that research be
2 done, correct?

3 A. Yes.

4 Q. And in fact I believe you -- it is your
5 opinion that you stated that you paid for a lot of
6 research which turned up the documentation cited in your
7 doctoral thesis, correct?

8 A. Certainly with respect to some of the published
9 literature and also with respect to some of the industry
10 associations whose documents were opened up for
11 examination through litigation. I would -- I went to the
12 Industrial Hygiene Foundation, for example, and saw their
13 documents back in 1980 or so.

14 Q. Okay. Plaintiffs' lawyers in asbestos
15 litigation encouraged you in fact to go back to school
16 and get your Ph.D. so courts would be more likely to
17 accept you as an expert witness?

18 A. Well, when I told the plaintiffs' lawyers I was
19 going back to school they certainly encouraged it. They
20 said, sure, good for you.

21 Q. And actually another way that you make some
22 income from this work is to sell files of corporate
23 related documents to those that want to obtain them and
24 pay you for that service, correct?

1 A. No.

2 Q. Who does that?

3 A. The files are sold by someone I know named
4 Albert Donnay. He came to me about ten or 12 years ago
5 and said, look, why don't you scan some of these files.
6 You are constantly being asked to produce boxes of
7 documents for depositions. I can scan some of these
8 files, make them available a lot more easily.

9 And so he started doing this, and so now Albert
10 is able to partly support himself by selling files to
11 plaintiffs' and defense lawyers and relieve me of the
12 burden of having to deal with having my documents
13 photocopied and stapled and destroyed in the process of
14 discovery.

15 Q. I just want to be clear --

16 A. I don't make any money off of --

17 Q. That was going to be my follow-up question.
18 You are telling this jury that you don't make any money
19 from that service that Mr. Donnay provides?

20 A. Right, I do not.

21 Q. Now, let me switch gears a little bit. In
22 this particular case you haven't looked at any of the
23 documents related specifically to this matter, correct,
24 of Mr. King?

1 A. No, I am not testifying about anything that is
2 specific to Mr. King's case. I testify about the
3 defendant, not about the plaintiff.

4 Q. Okay. You don't have any -- you haven't been
5 asked by the Shrader law firm, for instance, to do any
6 specific investigation related to this case, is that
7 fair?

8 A. Right.

9 Q. Doctor, let's take some time if we can because
10 I would like to explore in little bit greater detail
11 some of the testimony you gave earlier about the
12 development of knowledge of asbestos-related use and
13 illnesses caused by asbestos, is that okay?

14 A. Sure.

15 Q. All right. You would agree with me that no
16 one makes asbestos, correct? It is naturally occurring?

17 A. Right.

18 Q. And in fact asbestos has been used for
19 centuries in various applications, correct?

20 A. Well, it is more of a novelty and rarity up
21 until about the 1870's, and then more modern industrial
22 uses of asbestos started in earnest.

23 Q. Well, that's a good point because when the
24 industrial revolution came in about that timeframe in

1 the late 19th Century, the use of asbestos rose along
2 with the industrial revolution, correct?

3 A. Right.

4 Q. Because of asbestos's physical and chemical
5 properties, asbestos was deemed to be a very useful
6 material in the creation of insulation products, true?

7 A. Yes.

8 Q. You mentioned on Direct -- well, you know
9 what, I can skip that. We will save some time. Let's
10 skip right to the -- okay, actually there is one thing I
11 want to ask you.

12 You will agree with me, Doctor, that it is
13 universally accepted in the medical community that the
14 higher the dose that an individual -- of asbestos that
15 an individual inhales, the greater risk that individual
16 would have of contracting disease?

17 A. That's right, I mean up to a point. The people
18 who were wiped out with asbestosis in their early 30's in
19 the early days of the industrial industry didn't live
20 long enough to develop occupational cancers, but
21 generally speaking the greater the dose the greater the
22 risk of developing certainly cancers.

23 Q. And that's a widely held concept of industrial
24 hygiene in toxicology that in any substance that could

1 be potentially hazardous, the greater the dose, the
2 greater the risk, correct?

3 A. Yes.

4 Q. Let's skip to 1930 if we can. And let me talk
5 to you a little bit about the -- Merewether. Spelling
6 is not my strong suit.

7 There was another researcher that did this
8 work with Merewether named Price, correct?

9 A. Right.

10 Q. All right. And that's the paper you talked
11 about on Direct Examination, correct, sir?

12 A. Yes.

13 Q. In 1930 the authors of this report, Merewether
14 and Price, they published a paper where they found there
15 was a high incidence of asbestosis amongst workers who
16 were working in asbestos factories, correct, sir?

17 A. That's what their report was about was workers
18 in the factories.

19 Q. Now, to be clear the individuals in the
20 Merewether study they weren't end users of products,
21 were they? They were people working with raw asbestos
22 to make products?

23 A. Well, they were working with asbestos and
24 whatever materials it was combined with to make other

1 products in the factory setting.

2 Q. Well, they started with raw asbestos, correct?

3 A. Well, some of the people in the plant opened up
4 sacks of asbestos and dumped them into mixing vessels.
5 Other people further downstream weren't exposed to what
6 you call raw asbestos.

7 Q. Got it. Merewether, in this paper, he
8 advocated controlling risks of asbestos through what
9 they call dust suppression measures, correct?

10 A. Right.

11 Q. He believed -- Merewether did -- that the
12 hazards of asbestos could be limited with the
13 implementation of these dust control measures, true?

14 A. Yes.

15 Q. And those included -- see if you agree with
16 this -- wet -- wetting of material?

17 A. Right.

18 Q. Ventilation?

19 A. Yes.

20 Q. And respiratory protection?

21 A. Among other things, yes.

22 Q. Like segregation of work?

23 A. Segregation of the dust process so people don't
24 get bystander exposure who are working in less dusty

1 activities.

2 Q. Anything else I missed?

3 A. Education of the workers, about the nature of
4 the risk, and there were probably some other housekeeping
5 details like keeping asbestos in impermeable containers
6 once it was stored in the factory, and periodic cleaning
7 of the surfaces, floors and machinery so there wouldn't
8 be an accumulation of dust.

9 Q. And good housekeeping practices like cleaning
10 of the work area, those are good sound practices whether
11 you are working with asbestos in the 1930's or some
12 other toxin in 2014, correct?

13 A. As long as you don't use a dry broom, yes.

14 Q. So these measures that were put forth by
15 Merewether, he wasn't saying that asbestos should be
16 banned in 1930, was he?

17 A. No, he didn't even contemplate that until 1933.

18 Q. Okay. He was saying that asbestos could be
19 used safely if these measures were taken, correct?

20 A. I don't think he put it quite like that, but he
21 certainly said that workers need to be protected and that
22 these are ways of making the asbestos industry a less
23 hazardous industry.

24 Q. Those safety measures, those industrial

1 hygiene protocols, they are just as valid today as they
2 were in 1930?

3 A. That's right. They didn't need to be invented
4 for asbestos. They were used for the lead industry and
5 other industries and recognized before --

6 Q. And they --

7 A. And they are basic standard approaches to dust
8 control in industry.

9 Q. My apology. I didn't mean to step on you.
10 They would be just as valid throughout the 1960's for
11 someone serving on a ship, correct?

12 A. Right. These are general principles.

13 Q. Can you point me, Doctor, to any article that
14 Merewether wrote in which he said gaskets and packing
15 are dangerous?

16 A. Well, not aside from the one, the 1932 article
17 which is the British government publication I referred to
18 on Direct that referred to industries that -- industries
19 and products that could give rise to asbestosis and said
20 that the dry scraping or whatever they said of -- are
21 particles composed wholly or partly of asbestos in the
22 dry state, the turning or grinding, whatever it was,
23 including jointings as they called gaskets.

24 Q. Let's visit on that point for a second. Are

1 you here to tell this jury that the British use of the
2 term jointing and packings in 1930 or '32 is the same as
3 a chrysotile containing gasket used in the 1960's? Do
4 you know that?

5 A. I don't see any reason to regard it as
6 different.

7 Q. Do you know one way or the other?

8 A. Well, we only have one part of one sentence in
9 a report. We don't have any government -- there is no
10 explanation that the government report provides that
11 elaborates any further. They laundry list brake linings
12 and gaskets and other products, if they are turned in the
13 dry state in a way that is going to generate dust it is
14 going to create an asbestosis hazard.

15 Q. So is it fair for me to say in this timeframe
16 in the early to mid 1930's researchers like Merewether
17 and others thought that asbestosis, the incidence of
18 asbestosis could be reduced if these safety -- types of
19 safety measures and other regulations were imposed?

20 A. Yes, he said in his 1930 report, as a means of
21 dust control are perfected, the time it takes for people
22 to develop this disease should be lengthened and the
23 severity of the disease that the workers get should be
24 reduced.

1 Q. Are you - and I am asking for some assistance
2 because it involves push buttons. Thank you. And
3 actually I don't know why it is not showing up on that
4 one.

5 A. That looks like the Merewether.

6 Q. That is the Merewether we have just been
7 talking about?

8 A. That's the title page.

9 Q. Technical malfunction. You are familiar, are
10 you not, sir, with a paper published at the end of the
11 decade of the '30s, approximately 1938 by a Dr.
12 Dreessen, D-R-E-E-S-S-E-N?

13 A. Yes.

14 Q. Okay. And Dreessen worked for the U.S. Public
15 Health Service, is that correct?

16 A. He did.

17 Q. What's the U.S. Public Health Service?

18 A. It is -- it was then a part of the Department
19 of the Treasury, and the Public Health Service would
20 occasionally in the 1930's do surveys of hazards in
21 industry. Two S's.

22 Q. Thank you.

23 A. They had no power to enter the factories. They
24 had to get the permission of the factory owners to even

1 walk into these plants, but they did do some surveys of a
2 number of industries, and they did such a survey of the
3 asbestos industry -- well, several asbestos textile
4 plants in North Carolina after the change in the
5 compensation law in the state of North Carolina, and they
6 were invited in by the State authorities.

7 Q. And, Doctor, is that -- we have our technical
8 issues resolved, not by me.

9 A. That's the title page of the report.

10 Q. Okay. Title page of the Dreessen article,
11 1938?

12 A. Right.

13 Q. I think you said this; I want to be clear.
14 The U.S. Public Health Service at that time was an arm
15 of the U.S. Government, correct?

16 A. Yes.

17 Q. And in fact the U.S. -- let me explain that a
18 little further. There are a number of uniformed
19 services like the Marine Corps, the Army, Navy, Marine
20 --

21 A. Right.

22 Q. That I said twice, but this is considered one
23 of the uniformed services, correct?

24 A. Right, like the military in that sense. They

1 wear uniforms, at least they do for some of their
2 official duties.

3 Q. And the Dreessen 1938 study for the U.S.
4 Public Health Service was basically an attempt to figure
5 out the relationship between dust levels present in an
6 asbestos textile plant and the amount of disease
7 produced, correct?

8 A. Right.

9 Q. Now, these textile plants at the time, are you
10 familiar with the conditions that existed in those
11 plants?

12 A. Well, I am familiar with dust counts they
13 reported. They actually monitored the dustiness of a
14 number of the conditions -- the number of the occupations
15 in the plant, and they also demonstrated that most of the
16 airborne dust was not asbestos fiber.

17 Q. The dust levels in these plants, have you
18 heard anecdotally that they were so high that people
19 couldn't see from one side of the plant to the other?

20 A. I haven't heard about these plants that they
21 surveyed there. It may have been true in some cases.

22 Q. You would agree the dust levels generally are
23 very high?

24 A. Well, in many cases they are well above five

1 million particles per cubic foot and they were probably
2 visibly dusty in some parts of these plants.

3 Q. These textile plants were all in North
4 Carolina, correct?

5 A. Yes.

6 Q. And the study was done with the cooperation of
7 the State of North Carolina and the U.S. Government,
8 correct?

9 A. Right.

10 Q. The first -- and we heard this term earlier,
11 spell it out. The first threshold limit value, TLV, you
12 heard that acronym TLV for threshold limit value?

13 A. Yes.

14 Q. This actually came out of the research that
15 Dreessen did in his 1938 paper, correct?

16 A. Right. That was the report that was referenced
17 as the basis for the 5 million particles per cubic foot
18 guideline, later published by the Industrial Hygiene
19 Professional Association.

20 Q. We will get to that in just a second. So
21 that's 5 million particles per cubic foot, correct?

22 A. Right.

23 Q. That's an acronym you are familiar with -
24 mppcf, right?

1 A. Yes.

2 Q. Have you ever seen anyone try to equate the 5
3 million particles per cubic foot level to fibers per cc
4 which is the standard that OSHA uses?

5 A. I have, but I have also seen studies that say
6 you really can't do that with any scientific basis. It
7 is too much scattering. When you do split sampling using
8 both methods in the same environment and analyze you
9 don't get a single conversion factor you can use to go
10 from one system of measurement to the other. It is much
11 more scattered.

12 Q. Have you heard some researchers contend that
13 it is roughly equivalent to 30 fibers per cc?

14 A. Well, people who were forcing the issue
15 claiming that they needed to go from the old system to
16 the new did that. You could use the 6 to 1 ratio.

17 Q. Now Dreessen said, did he not, Doctor, that it
18 appeared from the data collected in his study that if
19 asbestos dust concentrations in the air were kept below
20 this 5 million particles per cubic foot standard, new
21 cases of asbestosis would not appear, correct?

22 A. Well, the statement was somewhat more qualified
23 with words like "it would appear that" and so on, but
24 generally speaking there was a sense to that effect, also

1 more guarded statements that appeared.

2 For example, on page 93 where he refers to it as
3 a tentative threshold for the industry to be observed
4 until more data are available. It wasn't presented as a
5 guarantee.

6 Q. And as you mentioned later the American
7 Conference of Governmental Industrial Hygienists, ACGIH,
8 adopted this 5 million particles per cubic foot standard
9 as the recommended level for dust control for asbestos,
10 correct?

11 A. Right, included that -- they included that in
12 their list of over a hundred exposure limits they
13 recommended for toxic substances.

14 Q. And that was in 1946, correct?

15 A. Yes.

16 Q. And at some point in time, Doctor, did the
17 United States Navy also adopt 5 million particles per
18 cubic foot standard?

19 A. I think sometime in the mid '50s there was some
20 memo from the Navy that said we would like to see that
21 these exposure limits are honored in our activities and
22 maybe contract activities. I don't remember exactly how
23 it was said.

24 Q. You certainly are aware of the fact from your

1 own research that the Navy was certainly aware that
2 standard was out there, correct?

3 A. Certainly some people in the country were.

4 Q. Including the Navy?

5 A. Well, some people in the Navy were, yes.

6 Q. And then later OSHA came into being in the
7 early 1970's and this threshold limit value was called
8 something else, called permissible exposure limit or
9 PEL, correct?

10 A. Well, it wasn't the same number, wasn't the
11 same method of measurement but the concept was setting
12 some maximum concentration for the toxic material in the
13 workplace air which would be a legally enforceable limit.
14 That was called a permissible exposure limit under the
15 Occupational Safety and Health.

16 Q. That is a fair clarification, appreciate it.
17 Now, this 5 million particle per cubic foot standard, it
18 was not a legally enforceable standard, correct?

19 A. No.

20 Q. It was a recommendation adopted by the
21 American Conference of Governmental Industrial
22 Hygienists, but it wasn't necessarily the law of the
23 land, correct?

24 A. It wasn't the law of the land. It wasn't taken

1 seriously as far as I can tell by just about everybody.

2 Q. Well, let's just make sure we are on the same
3 page. Many states in fact adopted the 5 million
4 particle per cubic foot standard as their law, correct?

5 A. They adopted it as a guideline, as a standard
6 of good practice but it was never enforced as far as I am
7 aware in any state.

8 Q. Are you aware that the State of Texas adopted
9 it as a legal standard in 1958?

10 A. Different states adopted it with different
11 language. I don't recall the specifics of the Texas law.
12 In California it was listed in a table called Suggested
13 Maximum Allowable Concentrations, and in California and
14 Texas and all the other states nobody got fined for
15 violating a suggestion.

16 Q. And you know that from your own research, or
17 are you just assuming no one got fined?

18 A. I have yet to see any example, and I have had
19 substantial assistance from plaintiff and defense counsel
20 in looking for such things, and I have not yet seen any
21 case in which any company was cited or fined for
22 overexposing workers to asbestos in this country before
23 OSHA came along in the 1970's.

24 Q. So we can add the state regulators to the list

1 of people that let these workers down, correct?

2 A. It is not quite that simple. I think the
3 legislators could include these lists of TLV's in the
4 state code and go to the unions and say, look at what we
5 did for you. As long as they didn't spend the money to
6 empower the State authorities to go into the plants and
7 do unannounced inspections and fine the companies and
8 have laboratories that were capable of doing air sampling
9 analyses for the 300 or 400 chemicals on the list it was
10 an empty gesture. It didn't really mean that industry
11 was going to be any safer in the state. It just looked
12 good somewhere in the code.

13 Q. Sounds like there is a hint of conspiracy
14 there; we will get to that.

15 Doctor, this standard of 5 million particles
16 per cubic foot remained in effect until OSHA -- was
17 that '71 or '72? I forget.

18 A. OSHA began to function in April of 1971.

19 Q. Okay.

20 A. So there was no regulation until then.

21 Q. 1971 when the PEL came out, correct?

22 A. Right.

23 Q. And that PEL was 5 fibers per cubic centimeter
24 of air, correct?

1 A. Technically it was 12 fibers per cc in April,
2 and then they imposed an emergency temporary standard for
3 asbestos in December of 1971. They lowered the
4 permissible exposure limit to 5 fibers per cubic
5 centimeter.

6 Q. And I don't want to get too far afield, but
7 you would agree generally that since that standard came
8 out OSHA has over the years continually lowered that
9 standard, and that's a time-weighted average standard,
10 correct, what someone can be exposed to eight hours a
11 day all day long?

12 A. Right.

13 Q. And that standard has gone down slowly, as
14 was already shown to the jury today, that the standard
15 today .1 fiber per cc?

16 A. That's the current exposure limit at OSHA.

17 Q. Doctor, can you cite me any documents from
18 1946 until the time OSHA came into existence in '71
19 where the ACGIH said, well, these limits aren't safe?

20 A. No. They were promoting the limits as, you
21 know, safe for -- should be more or less safe for most
22 workers is about the way they put it.

23 Q. Can you show me one document from '46 to '71
24 where they said this limit won't keep you from getting

1 lung cancer or mesothelioma?

2 A. No, but the documentation they presented in
3 support of the limit they had for asbestos only talked
4 about asbestosis, so I think it is safe to conclude that
5 they weren't representing that it was safe from the
6 standpoint of cancer.

7 Q. Well, just to be clear and my question was,
8 can you show me any document, point me to any document
9 and you can't, correct?

10 A. Not from the ACGIH. They were criticized by
11 others, but they themselves didn't have any such things
12 to say.

13 Q. Okay. Let's move on to the '50s. And
14 actually -- actually let's take a stop in the '40s and
15 deal with this now and not have to worry about it later.

16 Let's move forward to 1946. Are you aware of
17 any significant studies that came out in 1946 that dealt
18 with whether or not insulators were at increased risk
19 for asbestos-related disease in shipyard operations?

20 A. I don't know how significant it is, but there
21 was a study published in 1946.

22 Q. And that was the Fleischer --

23 A. Fleischer was the first article. Fleischer,
24 Vile, Gade --

1 Q. Is that the first page of that article?

2 A. Yes, it is.

3 Q. I will just put Fleischer, et al. Is that
4 generally referred to as the Fleischer-Drinker study?

5 A. That's what lawyers call it.

6 Q. So if I call it that you know we are talking
7 about the same thing. That study came out in 1946,
8 correct?

9 A. Yes.

10 Q. And as I recall -- please correct me if I am
11 wrong -- this study, well, first of all, let me back up.
12 One of the authors was Phillip Drinker?

13 A. Phillip Drinker was a chemical engineer who was
14 on the faculty at the Harvard School of Public Health and
15 taught industrial hygiene.

16 Q. Okay. And is it your understanding, Doctor,
17 that this study was contracted by the Government to have
18 the researchers go into U.S. Naval contract shipyards
19 where they were building U.S. Navy vessels during the
20 buildup of World War II and determine whether or not
21 individuals working with pipe covering that contained
22 asbestos were at increased risk of disease?

23 A. It wasn't contracted by the Navy. If you blow
24 up that lower left hand corner you will see that's a

1 disclaimer by the Navy saying the Navy takes no
2 responsibility for this, but the people that did the work
3 --

4 Q. Okay, fair enough.

5 A. -- the people that did the work were listed as
6 consultants to the Navy.

7 Q. Okay. The opinions -- I will read it. The
8 opinions and the assertions contained herein are private
9 ones of the writers and are not to be construed as
10 official or reflect the views of the Navy Department or
11 the Navy Service at large.

12 Did I read that correct?

13 A. I think so.

14 Q. Okay. So this study was done of shipyards
15 where large amounts of Naval ship construction were
16 being done, correct?

17 A. New ship construction, yes. There was no ship
18 repair going on in this.

19 Q. Okay. And during this timeframe these were
20 Naval vessels of various sizes, but thermal insulation
21 -- you know from your research was commonly used on
22 these Naval ships built during that time?

23 A. Sure.

24 Q. What were the conclusions reached by the

1 authors in this study with respect to whether or not
2 people working day in and day out with thermal pipe
3 insulation during the mid 1940's were at increased risk
4 for disease?

5 A. Well, the conclusion number 4 which made it
6 into my book because of its abundant use in the courtroom
7 reads in its entirety: Since each of the three cases of
8 asbestosis that worked at asbestos pipe covering in
9 shipyards for more than 20 years, it may be concluded
10 that such pipe covering is not a dangerous occupation.

11 Q. Did they get that right?

12 A. I find the sentence internally inconsistent.
13 The three cases are elsewhere described in the report as
14 moderate and advanced asbestosis, but that's what they
15 wrote.

16 Q. That's what they wrote. I am particularly
17 interested in the part where they said it is not a
18 dangerous occupation. Did they get that right?

19 A. Well, aside from the three guys that, you know,
20 might have been wiped out by asbestos they didn't find
21 any problems. There were only 51 people in the study
22 who had ten or more years of exposure. Most of these
23 people had just been brought into the shipyards during
24 the war and wouldn't have been expected to develop

1 asbestosis in two or fewer years. Some of them had --
2 hundreds of them had less than two years. Hundreds more
3 had two to five years.

4 Q. Well, isn't it certainly fair to say that one
5 of the things is that Fleischer, et al., didn't take
6 into account is the latency period involved?

7 A. That's right. They missed the business of the
8 maturation period Merewether had spoken of 16 years
9 earlier.

10 Q. So this at the time 1946 was a widely
11 available, widely disseminated paper that people could
12 go to and for all it's worth read it and learn lessons
13 provided by Fleischer, et al., true?

14 A. I would say it was widely available in the
15 sense that it was probably carried in many libraries in
16 this country. It was not widely cited. It was in fact
17 cited by only one study within the ten years after the
18 period, one study written by other people and that was an
19 Italian study that credited these guys for identifying
20 the asbestosis hazard in the shipyard --

21 Q. And Drinker was actually a very well known
22 researcher at the time?

23 A. Yes, he was on the faculty at Harvard. He was
24 a corporate consultant to the oil industry in the '40s.

1 He was on the original Threshold Limits Committee of the
2 ACGIH in 1946 and 1947.

3 Q. Let's move on to the '50s. You mentioned this
4 on Direct. That is an article that you are familiar
5 with by Sir Richard Doll?

6 A. Yes.

7 Q. I refer to it as Sir Richard. He is not
8 called Sir Richard there because I don't think he had
9 been knighted by the Queen yet, correct?

10 A. Well, even after he was knighted I don't think
11 in medical articles they identify you with those kinds of
12 terms, but he was honored for his epidemiological studies
13 establishing the risk of lung cancer from tobacco smoking
14 in 1950's and --

15 Q. Would it be fair to say, Doctor, that even
16 through the 1950's there were medical and scientific
17 publications disputing the contention that asbestos
18 causes lung cancer?

19 A. There were a few studies that questioned it
20 usually without having any data, but they raised the
21 question.

22 Q. Now, Doll -- and I don't want to belabor too
23 much because we just talked about it, but Doll found in
24 his research published in 1955 a linkage between

1 asbestos -- people with asbestosis and lung cancer in
2 British factory workers, fair?

3 A. Virtually all the people that died with lung
4 cancer had asbestosis because many of them started their
5 work in the years before there were any regulations in
6 the asbestos industry in England which he points out.

7 Q. And this is viewed as the first peer-reviewed
8 epidemiological study in the world linking asbestos and
9 lung cancer, correct?

10 A. No, I mentioned the study of Breslow in
11 California with the interviews of the two, 500 lung
12 cancer patients and the comparison with their occupations
13 with the control group and the identification of the
14 group of asbestos workers, boilermakers and steamfitters
15 as being at increased risk --

16 Q. Epidemiological study?

17 A. It was an epidemiological study, sure.

18 Q. This one certainly was well widely read and
19 well accepted during this time?

20 A. This was also widely cited, yes.

21 Q. One of the things Doll noted in this paper,
22 isn't it true, Doctor, is that the causes of lung cancer
23 he observed were among people who worked in textile
24 factories, asbestos textile factories prior to factory

1 regulations that were put in place later in the 1930's?

2 A. Yeah, the cohort, the population of people
3 studied, were people working in an asbestos textile
4 factory. As I said some of their exposures predated the
5 British regulations introduced in 1933. They were
6 followed up through about 1952 in this study.

7 Q. My fault. In fact Doll was hopeful that the
8 controls that had been put in place in asbestos textile
9 factories in the '30s would reduce or eliminate the risk
10 of lung cancer in the factory workers, correct?

11 A. I think so.

12 Q. All right. Now, let's move on to 1960, and
13 you mentioned a study by -- well, we Americans would
14 pronounce it Wagner, but he was a South African,
15 correct, and I think his name was pronounced Vogner,
16 correct?

17 A. Actually it was Welsh. He pronounced his name
18 Vogner.

19 Q. Who are we to argue with that? This Welshman
20 actually published his study in 1960 in South Africa?

21 A. He did.

22 Q. His study, I think I have a picture of that as
23 well. J.C. Wagner discussed the incidence of
24 mesothelioma in and around a mine in South Africa,

1 correct?

2 A. Not only that but most of the people in this
3 study were people whose exposure came from the asbestos
4 mine, a bunch of asbestos mines, not just one.

5 Q. And you are aware, of course, that the mine in
6 question was actually mining crocidolite asbestos,
7 correct?

8 A. Yes.

9 Q. And I assume through your research through the
10 years have seen studies, articles and publications that
11 indicate that crocidolite is generally going to be far
12 more potent of causing mesothelioma than amosite and,
13 certain chrysotile, correct?

14 A. Some people believe that to be true.
15 Experimental animal studies didn't confirm that.
16 Chrysotile was just as lethal as the other types of
17 asbestos when you expose by inhalation rats to chrysotile
18 with breathing different types of asbestos they all
19 produced lung cancers and mesotheliomas, and chrysotile
20 as much as any of the others.

21 Q. We certainly heard about rats so I won't
22 belabor that, but, Doctor, in this study you believe
23 that this study -- well, first let me ask you this. Is
24 this in your mind the first peer-reviewed

1 epidemiological study that links exposure to asbestos
2 and mesothelioma?

3 A. Well, I don't know technically whether you can
4 call it an epidemiological study or a big case report,
5 but it really established -- it put mesothelioma on the
6 map in terms of having a lot more people around the world
7 concerned about mesothelioma, particularly low dose
8 asbestos exposures and causing it than previously had
9 been the case.

10 Q. And isn't it in fact true, however, that even
11 after the publication of Dr. Wagner's study in 1960
12 there was still debate in the medical and scientific
13 community about whether mesothelioma was linked to
14 asbestos?

15 A. Very little of that. I mean there was -- the
16 literature is remarkably consistent on that question.

17 Q. Is it true, Doctor, that by 1968 the ACGIH was
18 actually considering recommending a stricter set of
19 requirements for the control of dust when crocidolite
20 asbestos was involved?

21 A. That's also true.

22 Q. The -- and in 1968, for instance, the British
23 Government began treating crocidolite as especially
24 dangerous and began issuing regulations for crocidolite

1 which were stricter than regulations for chrysotile?

2 A. They did.

3 Q. All right. Dr. Selikoff - you talked about
4 his publication and his work in the early to mid '60s.
5 I think it was '64, is that correct?

6 A. Right.

7 Q. I think you referred to him as a towering
8 figure in the development of asbestos knowledge --
9 knowledge of asbestos diseases?

10 A. He was a leading figure in this country partly
11 because he didn't just publish in medical journals. He
12 was willing to do media interviews and try to raise
13 public understanding and awareness about asbestos and
14 other things in ways a lot of other doctors were
15 unwilling to do.

16 Q. One of the things -- well, let me back up. I
17 don't want to belabor this too much on Selikoff. We
18 have heard quite a bit about it, but obviously the
19 group, the cohort as they call it that Selikoff was
20 looking at, were insulation workers in the greater New
21 York area, correct?

22 A. Initially that's right.

23 Q. And these people were applying thermal
24 insulation like pipe covering and block and other

1 material -- similar material and also tearing them out,
2 correct?

3 A. Right.

4 Q. You are familiar with studies that demonstrate
5 that tear out of asbestos insulation -- pipe insulation
6 can generate fiber levels of 100 fibers per cc or
7 higher, correct?

8 A. Yes.

9 Q. And to be fair these workers, these insulators
10 in Selikoff's study, they would have received these
11 doses routinely because that was their job as
12 insulators, correct?

13 A. Yeah, there were periodic -- depending on what
14 they were doing from day-to-day. Sometimes they didn't
15 work with asbestos-containing materials at all. Other
16 times they would be doing rip out of old dry asbestos
17 insulation.

18 Q. And in fact Selikoff found in '64, in the '64
19 study that there was in fact a terrible degree of
20 occupational cancer among asbestos insulation workers,
21 correct?

22 A. Right.

23 Q. Are you familiar with a gentleman by the name
24 of -- well, did Selikoff have a gentleman that published

1 his -- or did work with by the name of Dr. Hammond?

2 A. Yes.

3 Q. And you know that in the mid 1960's Dr.
4 Hammond was discussing Dr. Selikoff's studies and he had
5 held the position that prior to those studies there was
6 hardly anyone who would have suspected that there was a
7 risk of lung cancer among asbestos insulation workers,
8 correct?

9 A. There is a part of the transcript of the
10 conference includes a discussion that took place after
11 the papers were presented in different groups, and one
12 part of one of the discussions includes this where
13 Hammond where -- that is attributed to Hammond which is
14 kind of inconsistent with his own writing in which he
15 cites 18 studies of lung cancer and asbestosis and
16 mesothelioma in insulators published prior to 1964, going
17 back to the 1930's.

18 Q. I am sorry. My question was, did Hammond
19 actually say that?

20 A. I don't recall word for word, but he said
21 something to that effect during one of his discussion
22 sections or at least that is what appears in the Annals
23 of the New York Academy.

24 Q. You would agree with me that Dr. Selikoff

1 published a lot of material on the issue of asbestos and
2 asbestos-related health?

3 A. He did.

4 Q. And in none of those materials did he ever say
5 that asbestos needed to be banned, did he?

6 A. I don't think he did, although he certainly
7 supported our work when we were trying to get it banned
8 in the '80s.

9 Q. All right. Let's switch gears again if we
10 can. You are aware of the fact that throughout the
11 years many different companies sold a variety of
12 asbestos-containing products, correct?

13 A. Yes.

14 Q. You have heard the estimate I think that
15 asbestos ultimately found its way to over 3000 different
16 products over the years, fair statement?

17 A. I have seen that figure in one text about
18 asbestos in its industrial application, yes.

19 Q. At one time even the U.S. Government sold raw
20 asbestos in brown burlap bags, true?

21 A. I don't know about the bags - probably. The
22 Government would occasionally stockpile what they thought
23 were strategically important materials, and asbestos is
24 one of those. So it would have been handled in that

1 manner along with whatever else the military and
2 Government considered strategically important.

3 Q. You would agree with me that health risk posed
4 by a given asbestos containing product are largely a
5 function of its ability to release fibers in the air?

6 A. Yes.

7 Q. And different products can have different
8 levels of exposure, correct?

9 A. Right.

10 Q. Some products create less exposures than
11 others based upon their chemical makeup or their
12 structural makeup or other factors?

13 A. Right.

14 Q. And you believe a manufacturer has a duty to
15 anticipate the types of exposures products can create,
16 right?

17 A. Yes.

18 Q. Are you aware -- but yet you are unaware --
19 start over. You are unaware of one industrial hygiene
20 article recommending that a warning be placed on an
21 asbestos-containing product before the 1970's, correct?

22 A. I think that's right. I mean industrial
23 hygienists generally didn't address the question of
24 warning labeling for asbestos when they were writing

1 prior to that time. They would measure levels of
2 exposure associated with the products, but they wouldn't
3 think to throw in, oh, by the way people should be warned
4 about this.

5 Q. So I am correct?

6 A. I think you are.

7 Q. You are not aware of any article in the peer
8 reviewed literature prior to 1970 that indicated that
9 working with chrysotile-containing gaskets and packing
10 increased a person's risk of mesothelioma, correct?

11 A. Correct.

12 Q. You are not aware of any article in the peer
13 reviewed literature prior to 1970 that indicated that
14 exposure to chrysotile asbestos only put an individual
15 at increased risk of contracting mesothelioma, fair
16 statement?

17 A. Well, there were studies that suggested that.
18 There were reports of mesothelioma in chrysotile miners
19 in 1952.

20 Q. A study in peer reviewed literature prior to
21 1970 that chrysotile in products that contained
22 chrysotile asbestos put individuals at increased risk of
23 mesothelioma?

24 A. I can't think of any end product that contained

1 only chrysotile. The insulation that contained
2 chrysotile and amosite, at least some of the insulation
3 did, so you wouldn't be able to say that chrysotile was
4 causing all the death and disease that it did, that it
5 was all from chrysotile because there was amosite mixed
6 in some of those rods.

7 Q. Fair enough. That actually raises a good
8 point. Throughout this time period throughout the
9 1960's the focus certainly was on insulation, wasn't it?

10 A. Well, the focus of whom? There wasn't much of
11 a focus except for a few people like Selikoff who would
12 go to the trouble to make friends with the union of
13 insulators, get their cooperation and do an
14 epidemiological study somehow coming up with a federal
15 funding to carry on research, but for the most part there
16 was no focus.

17 Q. Well, to the extent there was it was on
18 insulators. That's certainly the cohort that Dr.
19 Selikoff --

20 A. Thanks to Selikoff there was a focus on
21 insulators, yes.

22 Q. One of the reasons that's true is because
23 insulation was an extremely dusty product, correct?

24 A. Yes.

1 Q. In fact it was so dusty that in the 1970s it
2 was finally banned by the EPA, true?

3 A. It was banned in 1975 as an air pollution
4 hazard by the EPA, yeah.

5 Q. All right. Let's talk a little bit about
6 gaskets and packing if we can. You testified in the
7 past and I would like to know if it is still your
8 opinion today that it would be difficult for you to
9 fault manufacturer of valves for not applying a warning
10 regarding asbestos-containing components in the valve in
11 1946, correct?

12 A. I think I said in the early '40s because the
13 cancer-causing aspects -- cancer-causing potential of
14 asbestos was not abundantly demonstrated until the late
15 1940's.

16 Q. So until that was demonstrated in the late
17 1940's that is your answer?

18 A. I was giving the industry a bit of a break in
19 answering the question, but that's why.

20 Q. Fair enough. I appreciate that.

21 I would like to move on to some of the other
22 literature that we didn't cover earlier in either my
23 Cross Examination or on Direct Examination. Are you
24 familiar, sir, with a publication that came out in 1971

1 by a gentleman named P. G. Harries?

2 A. The name -- I recognize the name, and I know
3 there are a couple publications he wrote.

4 Q. Do you recall this: Asbestos Dust
5 Concentrations in Ship Repairing: A Practical Approach
6 to Improving Asbestos Hygiene in Naval Dockyards?

7 Are you familiar with that?

8 A. Yes.

9 Q. Okay. And Harries was a British industrial
10 hygienist if I recall correctly, correct?

11 A. I think so. I don't really know for sure.

12 Q. And he did a survey of British shipyards and
13 reached certain conclusions about whether or not certain
14 types of asbestos-containing products posed a risk while
15 others did not, correct?

16 A. Well, he mentioned dust concentrations
17 associated with some aspects of asbestos product used and
18 published them in that paper.

19 Q. You would agree with me that Harries in this
20 publication concluded that high temperature gaskets and
21 packing containing asbestos do not pose a health risk in
22 normal shipyard operation, correct?

23 A. I think he said something to that effect based
24 upon the study he did, whatever it was, of packings.

1 Q. In fact --

2 A. He was looking at the full range of asbestos
3 products, was no doubt distracted by sprayed asbestos and
4 asbestos pipe covering and some of the other --

5 Q. You knew Mr. Harries at the time? You knew he
6 was distracted?

7 A. Well, those products were more well known in
8 the literature as potentially hazardous asbestos
9 products. The British Government published about that in
10 its annual report to the chief inspector prior to the
11 time this appeared.

12 Q. You don't dispute the fact that Harries
13 reached a conclusion that high temperature gaskets and
14 packing don't pose a health risk in normal shipyard
15 operations, correct?

16 A. I think he put that -- the line appears in the
17 article. I don't have the article in front of me, but I
18 think that line appears in there.

19 Q. Tell me if you do recall that in an earlier
20 Harries publication again in the same subject matter,
21 asbestos hazards in a Naval dockyard in 1968 concluded
22 that gasket and packing were -- working with them were
23 among the shipyard tasks that were non-dusty, correct?

24 A. I believe he designated it that way. He didn't

1 include any dust counts for things like wire brushing of
2 pipe flanges or adhering gasket material.

3 Q. One second, Doctor. Let's go right to my
4 beloved book that you looked at earlier.

5 MR. LOWERY: May I approach the witness, your
6 Honor?

7 THE COURT: You may.

8 Q. Did you recall this from earlier this morning,
9 right, *Asbestos and Disease* by Selikoff and Lee? I am
10 not going to belabor about who edited it and who wrote
11 what. You do acknowledge that there is a table in
12 Chapter 20, correct, sir?

13 A. Right.

14 Q. Are you familiar with it?

15 A. Sure.

16 Q. And when it talks about high temperature
17 jointing and packing materials you said that you believe
18 that's gaskets, correct?

19 A. Right.

20 Q. It says: No substitute heat resistant
21 material, no health hazard in forms used in shipyard
22 applications, correct?

23 A. You read that correctly.

24 Q. Is that not the same conclusion reached in

1 Harries' 1971 paper?

2 A. It sounds similar.

3 Q. And this is certainly a well-regarded and
4 reliable textbook in the field of asbestos and related
5 health issues, correct?

6 A. Certainly for the medical information that it
7 contains.

8 Q. And that was in 1978, correct?

9 A. That's when the book was published, yes.

10 Q. Isn't it true even today you can't cite to us
11 one epidemiological study showing an increased risk of
12 mesothelioma arising from working with gaskets and
13 packing?

14 A. That's right. There are no studies of workers
15 whose only asbestos exposure were gaskets and packing and
16 no other type of asbestos product.

17 Q. All right. In all of the editions of your
18 book, there is a chapter that's called Asbestos Product
19 Use, correct?

20 A. Yes.

21 Q. And in that chapter you detail some of the
22 asbestos products that have been shown to pose health
23 hazards, correct?

24 A. Yes.

1 Q. The first version of your book, First Edition
2 -- well, let me back up. The first edition in fact
3 where you did mention either gaskets or packing was the
4 Fourth Edition, is that true?

5 A. I don't recall but it wasn't in the initial
6 edition. It takes an awful lot to put something like
7 this together, and I neglected a few things in the
8 earlier editions.

9 Q. I understand. That Fourth Edition came out in
10 1996, isn't that right?

11 A. That's right.

12 Q. The Third Edition that you published in 1990
13 in fact doesn't talk about gaskets and packing in the
14 Asbestos Product Use section, correct?

15 A. I think that's correct. I don't really
16 remember.

17 Q. And that's because in 1990 there wasn't
18 anything published about gaskets and packing that
19 actually tried to measure the levels of exposure
20 associated with it, true?

21 A. There was little if anything in print where
22 people had actually measured the exposures associated
23 with the use of packings and gaskets in the various ways
24 that the products were used.

1 MR. LOWERY: Your Honor, I am at a place where I am
2 going to branch out into something totally different.
3 Do you want to do it now or wait?

4 THE COURT: Take our afternoon break?

5 MR. LOWERY: Yes, sir.

6 THE COURT: Let's do that and be back here at 2:30.

7 (Brief recess taken.)

8 (The following proceedings were had in
9 presence of the jury.)

10 MR. LOWERY: Dr. Castleman, are you okay to
11 continue, sir?

12 A. Sure. Go ahead.

13 Q. (Mr. Lowery) I want to switch into some of
14 the Crane documents you talked about on Direct. Before
15 I do that, I just want to cover one addition, Doctor.

16 With regard to asbestos and the United States
17 Government's use of it, you would agree that the U.S.
18 Government was one of the largest suppliers of asbestos
19 fibers to various companies during the 1940's, correct?

20 A. I don't know about that. I mean the suppliers
21 were companies like Johns-Manville and other companies
22 that had mines in Canada. They were the large suppliers.
23 The Government was directing things during the war,
24 something called the War Production Board which totally

1 controlled the U.S. economy, but they weren't the
2 supplier of the material.

3 Q. Let me ask it a slightly different way.
4 That's a fair point you make.

5 Was the United States -- you would agree with
6 me that the United States Government was one of the
7 largest procurers or obtainers of asbestos-containing
8 materials particularly during this time?

9 A. Sure, during the war.

10 Q. In fact they stored those asbestos-containing
11 materials at Government facilities, correct, sir?

12 A. I presume so, sure.

13 Q. Doctor, as I said I would like to switch gears
14 and talk a little bit about the Crane Co. documents that
15 -- or documents related to Crane Co. is a better way to
16 put it that were shown earlier.

17 Let me just preface with a couple things. In
18 the Fifth Edition of your book Crane Co. is not
19 mentioned, correct?

20 A. I believe that's right.

21 Q. In fact you testified that as recently as July
22 of 2004 that you had not paid any attention to Crane Co.
23 in the past and you had no opinions regarding Crane Co.,
24 correct?

1 A. I hadn't seen any Crane Co. documents. That's
2 certainly true, and it is true today. I don't think I
3 have seen any internal documents from Crane Co., maybe a
4 few but I don't recall.

5 Q. Okay. Crane Co. eventually got your attention
6 not because you had independent interest in research in
7 Crane Co. but because an attorney representing
8 plaintiffs in asbestos litigation in Mississippi was in
9 the process of taking a case against Crane Co. to trial
10 in 2004 and requested your help, correct?

11 A. That is probably right. I don't recall the
12 details.

13 Q. Mr. Pendleton - do you recall that name?

14 A. I don't even remember the guy. Some of these
15 lawyers just came and went with one letter or phone call.

16 Q. Got it. The attorney -- this attorney mailed
17 you a number of documents and later became a part of the
18 basis of your opinions regarding Crane Co., correct?

19 A. Well, I don't recall what I got from the
20 attorney so I am kind of at a disadvantage trying to
21 answer your question about the usefulness of whatever it
22 was he sent me.

23 Q. You don't have any idea what trade
24 associations Crane Co. is a member of, fair statement?

1 A. That's right.

2 Q. You obviously talked about a lot of documents
3 that either mentioned Crane Co. personnel or you believe
4 Crane Co. had access to on Direct Examination, but you
5 have no evidence that Crane Co. received any of these
6 documents, correct?

7 A. You mean like the documents that they had
8 advertisements in the magazines?

9 Q. That -- we are going to get to that in a
10 minute. Do you know whether they received them or not?

11 A. I don't know if they received the magazines
12 that they paid for one or two page ads in or not.

13 Q. We will get to that. Let's take a look at
14 some specific documents. One of the ones you mentioned
15 was 1935 document which referenced Dr. Andrew Harvey, do
16 you recall that?

17 A. Right.

18 Q. Dr. Harvey was a medical person -- I am not
19 sure exactly what his title was. He was associated with
20 the medical department at Crane Co., correct?

21 A. Right. He was medical director or the
22 equivalent, whatever they called it.

23 Q. The page referencing Dr. Harvey that was shown
24 to you on Direct Examination does not discuss asbestos,

1 correct?

2 A. The page in which Harvey's name appeared, that
3 exact page doesn't have the word "asbestos" on that page,
4 no.

5 Q. According to the journal Harvey was in an
6 association called the American Association of
7 Industrial Physicians and Surgeons, correct, sir?

8 A. He was, yes.

9 Q. You testified that that association published
10 that journal, correct?

11 A. They do.

12 Q. But according to the front page of the journal
13 a company called Industrial Medicine, Inc. was the
14 publisher, correct?

15 A. Well, the people that actually printed the
16 magazine may have had a different name, but it was the
17 journal of the professional association. I didn't mean to
18 imply that the professional association ran the printing
19 press.

20 Q. Not a big deal. Let's move on. You had no
21 idea whether Crane Co. ever published any material in
22 that journal, correct?

23 A. Correct. I didn't know.

24 Q. You don't know if Crane Co. received or

1 reviewed any of the material in that journal, true?

2 A. I would be amazed if Dr. Harvey didn't read it,
3 but I don't really know for sure.

4 Q. Your testimony is the journal included
5 articles on dust diseases, right?

6 A. Right.

7 Q. And these articles are not limited to just
8 asbestos, are they? They talk about all kinds of
9 things?

10 A. They do.

11 Q. In fact silica is the primary focus of the
12 article, isn't it?

13 A. I haven't done a count but silica was a very
14 serious concern among the dust diseases in the American
15 industry.

16 Q. Certainly in the 1935 timeframe silica was a
17 very big concern, correct?

18 A. It was.

19 Q. Let's talk a little bit about Dr. Harvey. You
20 have seen references to him in publications other than
21 this journal, true?

22 A. I have.

23 Q. Based on what you reviewed you believe Dr.
24 Harvey was a leader in the early industrial medicine at

1 this time, correct?

2 A. He was one of the early industrial physicians,
3 yes, in industry.

4 Q. You are not here trying to tell this jury that
5 Dr. Harvey was out to hurt workers, are you?

6 A. No.

7 Q. You are not here saying he was anything other
8 than a good, upstanding physician, right?

9 A. Well, I don't know anything about him
10 personally, but I don't have any reason to say anything
11 bad about him certainly. He seems to have been a
12 knowledgeable industrial physician who was a leader in
13 the company doctors group.

14 Q. He was actually a practicing professional
15 doctor in the late 1890's, did you know that, sir?

16 A. Yes.

17 Q. Do you know whether Dr. Harvey was even alive
18 when, say, Richard Doll published his 1955 article?

19 A. No, I don't.

20 Q. Or the Wagner article in 1960?

21 A. No, I don't. He would have had to have been
22 quite old and probably would have been retired by the
23 time those things came out.

24 Q. I promised that we would get to some of those

1 advertisements in the trade publications. Let's talk
2 about that now if we can. You mentioned Crane Co. put
3 an ad in a magazine called *Heating and Ventilating* in
4 1944, correct?

5 A. Yes.

6 Q. You have that in front of you?

7 A. Yes.

8 Q. And in that magazine there is an article that
9 discusses industrial dust hazards, correct?

10 A. That's right.

11 Q. The article does not discuss mesothelioma,
12 right?

13 A. It doesn't talk about cancer at all as a
14 consequence of dust exposure.

15 Q. It doesn't discuss valves?

16 A. No.

17 Q. It doesn't discuss gaskets and packing?

18 A. No.

19 Q. And it doesn't say asbestos should be banned,
20 correct?

21 A. That's correct.

22 Q. And it is not limited to asbestos as I think
23 we may have mentioned. It is discussing asbestos and of
24 other potential dust hazards, correct?

1 A. Well, the headings are silicosis, asbestosis
2 and then it has miscellaneous dust in another heading.

3 Q. You mentioned Crane also had an advertisement
4 in a magazine called *Southern Power and Industry* in
5 1946, correct, sir?

6 A. Yes.

7 Q. And that -- in that issue I should say, the
8 1946 issue of *Southern Power* it also had an article that
9 dealt with dust control, correct?

10 A. Yes.

11 Q. That article actually references asbestos
12 quite minimally, correct?

13 A. Talks about lots of different dust hazards but
14 talks about asbestos as well, doesn't go on and on about
15 asbestos.

16 Q. Again like the other article doesn't discuss
17 mesothelioma or valves or gaskets and packing?

18 A. Doesn't talk about cancer and asbestos.

19 Q. Now, I just want to make sure I understand
20 what you were telling the jury earlier today. It is
21 your position that a company that had an advertisement
22 in a publication should be fully aware of the substance
23 of the articles in that publication, correct?

24 A. Not necessarily. I am just saying that quite

1 likely somebody at the company would have checked the
2 company to make sure that their ad appeared in the form
3 that it should have, and since it was kind of a
4 publication that was used as a vehicle for advertising
5 and commerce by companies in the business of making
6 boilers and piping systems and insulation and so on that
7 they very likely would have seen the article.

8 Q. Let me ask it this way. I think you answered
9 the question. So your position is, if a company placed
10 an ad in a publication they should at least be aware
11 that the subject, the title of the article or the topic
12 that's being discussed was in that publication?

13 A. I would say somebody in the company probably
14 would, yes.

15 Q. Do you have your curriculum vitae handy? I
16 think it is your Exhibit 1.

17 A. Yes.

18 Q. You wrote an article entitled: Asbestos
19 Product Hazards and Regulations, correct?

20 A. Yes.

21 Q. Actually got published in the *International*
22 *Journal of Health Services* in 2006?

23 A. Right.

24 Q. Listed on your curriculum vitae, correct?

1 A. Right.

2 Q. Please tell the jury one of the other articles
3 that appeared in that journal besides yours?

4 A. I don't remember now, but I probably looked
5 through the journal when I received that issue of the
6 journal and looked to see what else was published in it.

7 Q. Just to be clear you can't tell the jury one
8 other article that appeared in that journal?

9 A. No, not now. I don't remember.

10 Q. Maybe that was a bad one. Let me pick
11 another. You published an article on vinyl chloride
12 that appeared in the *Environmental Health Perspective* in
13 2005, correct?

14 A. Yes.

15 Q. That's on your CV also, true, isn't it?

16 A. Yes.

17 Q. Tell us one of the other articles that
18 appeared in that journal?

19 A. Well, I looked through the journal when the
20 journal came out, but again I don't recall what the other
21 articles were at the time.

22 Q. You subscribe to magazines, don't you?

23 A. Pardon?

24 Q. You subscribe to magazines?

1 A. Sure. Well, a few.

2 Q. Mother Earth -- Mother Jones?

3 A. Yeah. My goodness, they even know what
4 magazines I subscribe to.

5 Q. I asked you this question before.

6 MR. WATHEN: Your Honor, I will object to the
7 relevance of the random magazines he subscribes to.

8 MR. LOWERY: I think when you accuse someone of
9 knowing everything that's in a publication you put an ad
10 in it.

11 MR. WATHEN: I object to the speaking objection.

12 MR. LOWERY: You raised the issue.

13 THE COURT: I am going to overrule it.

14 MR. LOWERY: I am done. I will move on.

15 Q. So as far as Crane Co.'s advertisements in the
16 '40s you don't know if Crane Co. used an ad agency to
17 place that ad, correct?

18 A. Correct.

19 Q. You don't know if Crane Co. subscribed to the
20 magazine?

21 A. Right.

22 Q. You don't know if anyone at Crane Co. ever
23 read the magazine or publication?

24 A. No, this was 70 years ago.

1 Q. Let's move on to the symposium in 1935. That
2 was discussed earlier today, correct?

3 A. Right.

4 Q. That was a symposium or meeting I should say
5 held in Pittsburgh, Pennsylvania, correct?

6 A. Right.

7 Q. And it is your testimony that from your review
8 of that document that two people from Crane Co. attended
9 the meeting?

10 A. They are listed by the doctor at Metropolitan
11 Life as having been there, yes.

12 Q. You really don't know if anyone gave a speech
13 at this meeting, correct?

14 A. Well, I know from the Johns-Manville memo about
15 some of the people that gave speeches, but I don't know
16 everything that went on at the meeting.

17 Q. The meeting lasted one day?

18 A. I think so, yes.

19 Q. Can you tell me which meetings of the 1935 one
20 day symposium that the Crane Co. people went to?

21 A. No, I don't know whether there were different
22 sessions or anything like that. There is no program of
23 that meeting that I have ever seen.

24 Q. You don't know whether they went to a meeting

1 on silica or asbestos or benzene?

2 A. Well, it was about industrial dust.

3 Q. Fair enough. We will scratch benzine. How
4 about silica or asbestos?

5 A. I don't know. Mainly they were talking about
6 how this is a big problem for industry. All these
7 lawsuits and comp claims and what could industry do to
8 deal with this problem, and they decided to set up an
9 organization that would provide them with technical
10 expertise, medical and industrial hygiene expertise that
11 would provide them with publications that would provide
12 them with like the *Industrial Hygiene Digest* that would
13 provide them with research and consulting capacity to
14 hire people at the IHF to go and do surveys at the oil
15 refineries and chemical plants and power plants and
16 whatever else they had, and give them confidential
17 reports on the hazards they found.

18 This is basically what they decided to do and
19 what they did, and by the late 1940's the annual meeting
20 of the Industrial Hygiene Foundation were noted in the
21 *Wall Street Journal* and the *New York Times* and they had
22 hundreds of industrial companies as members.

23 Q. Certainly the two gentlemen from Crane Co.
24 were not the only ones to attend the meeting, correct?

1 A. Right.

2 Q. There is a list of attendees about eight pages
3 long, fair statement?

4 A. Eight pages.

5 Q. Eight I said, yes.

6 A. I wanted to make sure the jury heard.

7 Q. Between -- the number between seven and nine,
8 right. There were people attending from a lot of
9 different companies, correct, sir?

10 A. Right.

11 Q. People attended from academia like University
12 of Pittsburgh, correct?

13 A. Well, there were one or two professors there
14 but mostly was people in the business community that were
15 concerned about this problem.

16 Q. People attended from trade associations like
17 the American Refractory Institute, correct?

18 A. Right.

19 Q. And the gentleman we looked at earlier who was
20 involved in that shipyard study Dr. Drinker was in
21 attendance?

22 A. I think he was.

23 Q. Along with other people from the U.S. Public
24 Health Service?

1 A. I think one guy name Sayers (ph.) from the
2 Public Health Service who also attended.

3 Q. So there were representatives there from the
4 United States Government as well?

5 A. Well, if Sayers was there you could say that.

6 Q. All right. Let's move on to the Illinois
7 Manufacturers Association document, 1936, if you have
8 that?

9 A. Yes, I do.

10 Q. You mentioned earlier some people associated
11 with Crane were involved in commenting on workers'
12 compensation laws that were being considered at that
13 time in the State of Illinois, correct?

14 A. Well, they were involved in the medical side of
15 the industry, a lobbying presence in negotiating that --
16 the language of that law.

17 Q. I know you are familiar with the Constitution
18 of the United States and Article 1 of the Constitution,
19 and everyone has a right to petition the Government,
20 correct, sir?

21 A. That's right.

22 Q. You don't disagree with that, do you?

23 A. No, I don't. People with more money generally
24 petition the Government with more --

1 Q. I got two kids in college, and I don't have
2 any money. I can petition the Government, so can you,
3 right, Doctor?

4 A. We can.

5 Q. And you also agree it's a good things to try
6 to compensate workers who are injured on the job, right?

7 A. Well, that's one of the public health
8 protections that workers are supposed to enjoy mainly to
9 discourage them from being over exposed and getting
10 occupational diseases, but at least secondarily to
11 compensate them for their lost earnings.

12 Q. It is a fair statement, isn't it, sir, that
13 before the turn of the 20th Century, 1900, there was
14 really no system of workers' compensation in this
15 country?

16 A. Right. And companies were being sued in Court
17 on some occasions and so they needed workers'
18 compensation in order to better manage that cost.

19 Q. You don't dispute to try and compensate
20 workers who are injured on the job --

21 A. I am sorry. You are speaking a little fast and
22 low.

23 Q. My apologies. You don't contend that there is
24 anything wrong with trying to compensate workers who are

1 injured on the job?

2 A. There is nothing wrong with trying to
3 compensate workers fairly for their losses.

4 Q. So in toto these documents, Doctor, in looking
5 at all of them that we just discussed, not one of them
6 references a hazard associated with valves, correct?

7 A. I am sorry. Not one of them has --

8 Q. I will speak up. I am sorry. All the
9 documents we just talked about that were shown to you on
10 Direct, none of them reference a hazard associated with
11 valves specifically, correct?

12 A. Right.

13 Q. And same is true with gaskets and packing.
14 They don't specifically --

15 A. Besides the British document that's talks about
16 jointings, I think that is right.

17 Q. None of them are actually created by Crane Co.
18 other than the advertisement of themselves?

19 A. Right. I have never seen any internal Crane
20 Co. documents, at least I can't recall having seen any.

21 Q. Let's switch gears again. I want to talk to
22 you about some other industries. For instance, you
23 expect as an expert in your field that premises owners
24 should be responsible for what goes on in their work

1 sites regardless of whether anyone else brings a
2 hazardous material to that work site?

3 A. Well, if you control an industrial premise and
4 you bring people on to do work for you, you have some
5 responsibility to try to assure that they don't
6 unnecessarily create hazardous conditions, sure.

7 Q. In fact you have testified in the past I think
8 that you believe industrial employers have complete
9 control over what happens on their industrial premises,
10 correct?

11 A. Well, certainly nobody walks into an oil
12 refinery without being allowed onto the premises by the
13 guards, and that's true for all kinds of industries as
14 far back as I can remember.

15 Q. By the 1950's industrial hygiene techniques
16 like the ones we talked about there were referenced in
17 the Merewether study and others which help keep dust
18 levels down were available and well known to employers,
19 correct?

20 A. Well, they were to employers that had some
21 sophistication in the field of industrial hygiene and
22 industrial medicine certainly.

23 Q. These controls and techniques in the '50s and
24 '60s included engineering controls to help reduce the

1 amount of dust, correct?

2 A. All the things we already talked about.

3 Q. You have mentioned education of workers,
4 housekeeping methods, right?

5 A. Right.

6 Q. All those were available in the '50s and '60s?

7 A. They were.

8 Q. All the precautionary measures were published
9 in the medical and industrial literature and
10 Governmental reports through the years too, weren't
11 they?

12 A. These are things that have repeatedly been
13 noted as general good practices in writing on industrial
14 hygiene and occupational medicine, dust control,
15 education of the worker, warnings on products that say
16 what's in it and not some GX42 trade name that doesn't
17 tell you the stuff is 95 percent benzene, absolutely.

18 Q. An employer has a responsibility to warn its
19 workers of dangers posed by products used at the work
20 site?

21 A. To the extent that the employer knows about
22 that, yes.

23 Q. So it is your testimony if it is shown that an
24 employer is aware of the hazards of using a particular

1 toxin or substance they should be in a position to warn
2 those employees, correct?

3 A. Yes.

4 Q. You believe that employer has a duty to
5 determine what is hazardous in the workplace, and
6 educate the worker, true?

7 A. Yes.

8 Q. An employer is well-positioned to warn its
9 employees about occupational hazards which the employer
10 knows about, correct?

11 A. Right.

12 Q. An employer is in the best position to
13 implement safety measures to reduce occupational hazards
14 and to protect workers from hazards the employer is
15 aware of?

16 A. Yes.

17 Q. And that includes training and holding safety
18 meetings, and employer is in the best position to do
19 that as well?

20 A. Yes.

21 Q. You would include the Navy in the category of
22 employers, correct, sir?

23 A. Sure.

24 Q. You would agree that employers were obligated

1 to protect their employees from hazards about the -- I
2 am sorry, strike that. Since 1971 in fact that
3 obligation to protect workers in the workplace has been
4 a legal obligation, correct?

5 A. Well, yes, to the extent that the OSHA
6 regulations address it.

7 Q. And you -- I think you testified earlier, you
8 have always been involved and given the opinion that it
9 is always an ethical obligation?

10 A. I am sorry?

11 Q. You have always thought that's been an ethical
12 obligation whether it is legally imposed duty or not?

13 A. Sure. Employers should try to keep their
14 employees from getting occupational diseases.

15 Q. I want to drill down a little bit more on the
16 Navy if we can. You would agree with me, Doctor, by
17 1930 at the latest the U.S. Navy was putting asbestos
18 material on ships, correct?

19 A. I don't know for sure but probably that's true,
20 probably used in some of the insulation products they
21 were using.

22 Q. Well, we know for instance that the Navy uses
23 asbestos insulation extensively from the '30s up through
24 the 1970's, fair statement?

1 A. Certainly sometime in the '30s they were using
2 it and probably they were using insulation containing
3 asbestos well before that.

4 Q. Well, let's -- I want to be clear. As part of
5 your research and I believe it is discussed in your
6 certainly well documented book you looked at what the
7 Navy used with respect to asbestos and what they knew
8 about asbestos hazards, correct?

9 A. I didn't look at all of the usage of asbestos
10 that they did. I certainly was interested in their
11 documentation of any awareness about the hazards of
12 asbestos which they started publishing in the early
13 1940's.

14 Q. You are aware from your own research that by
15 1918 the United States Government was clearly aware that
16 asbestos was a health hazard, correct?

17 A. Well, the Bureau of Labor Statistics recorded
18 by Hoffman that I mentioned on Direct talked about that
19 the life insurance companies not wanting to sell life
20 insurance to asbestos workers. That was a government
21 publication.

22 Q. In 1932 a man named Dr. Albert Russell who
23 worked for the U.S. Public Health Service issued a
24 report about insulation work causing asbestosis,

1 correct?

2 A. Well, he presented a case of asbestosis in a
3 government worker who had worked as maintenance worker in
4 government hospital and had been identified as having
5 disability from asbestosis and was compensated for that
6 by the Government. That was reported in 1932.

7 Q. Well, let me ask you this question. Do you
8 understand that the United States Navy published
9 documents relating to the health risks associated with
10 asbestos as early as the 1940's, correct?

11 A. That's what I said.

12 Q. I am sorry. I wanted to make sure we agree.
13 The Navy was using asbestos certainly by the 1930's?

14 A. Yes.

15 Q. And they were publishing documents on hazards
16 by the 1940's, is that fair?

17 A. Early 1940's.

18 Q. Early 1940's. In fact -- skip back. Let me
19 go back to 1939 for a second. In 1939 there was
20 something called the Annual Report of the Surgeon
21 General of the U.S. Navy. In that document the Surgeon
22 General expressed concern over asbestos exposure of
23 insulation workers, correct?

24 A. Yeah, it was called the Annual Report for the

1 Year 1939 and it was published in 1941.

2 Q. Okay. We will keep it the way it is.

3 Are you familiar with that document?

4 A. Yes.

5 Q. You would agree in that document the Surgeon
6 General concluded that asbestosis is an industrial
7 disease of the lungs incident to the inhalation of
8 asbestos dust over long periods and is distinct from
9 silica. The development of the disease depends upon the
10 concentration of the dust, size of dust particles and
11 the length of exposure, correct?

12 A. I really don't recall the exact text, but I
13 know that they acknowledged the hazard of asbestos in
14 that report.

15 Q. That's good enough. Thank you.

16 Certainly from reviewing that publication as
17 part of your research you were able to conclude that by
18 -- when it was published early 1940's Navy was aware
19 that asbestos can cause disease, correct?

20 A. Yes.

21 Q. Are you familiar with another document at that
22 time period, a handbook called The Handbook of the
23 Hospital Corps of the United States Navy?

24 A. I may have seen it. I don't remember that.

1 Q. I will warn you it is actually referenced in
2 your book?

3 A. Okay. I haven't looked at it in a long time.

4 Q. Don't drop the book on your foot.

5 A. There were a couple of documents from the early
6 '40s that I reference in the book.

7 Q. Do you recall a document in the early 1940's
8 in which Navy for lack of a term, the brass or higher
9 ups were discussing the idea that the Navy is not
10 adequately protecting its members from asbestos hazards?

11 A. That's an internal memo. I think that was from
12 1941.

13 Q. That was a Navy document?

14 A. Yes.

15 Q. So the Navy in an internal document is
16 concerned that they weren't protecting workers and
17 sailors well enough in 1941, right?

18 A. I think they were mainly talking about people
19 that worked on the docks, yes, but certainly people in
20 the Navy yards, Navy shipyards that I think were the
21 subject of that.

22 Q. Let's skip to 1943 memo from the Chief of
23 Bureau of Ships entitled Insulation Water Repellant
24 Amosite For Cold Water Piping.

1 Do you recall that?

2 A. Yes, I recall that.

3 Q. In that memo the Chief of the Bureau of Ships
4 discusses the possibility of using mineral wool as a
5 safer alternative to amosite asbestos for insulation,
6 correct?

7 A. I am referring to my book to refresh my
8 recollection.

9 Q. Please do.

10 A. Yes, that's right. They talk about the use of
11 mineral wool instead of amosite. They say they were
12 doing some testing.

13 Q. And just so we all have the same understanding
14 the Chief of Bureau of Ships recommended that medical
15 and hygiene makers be observed for workers handling
16 amosite asbestos, correct?

17 A. Yes.

18 Q. 1943. The Chief of the Bureau of Ships of the
19 U.S. Navy, that's a fairly high ranking officer in the
20 Navy, correct?

21 A. Sounds like it.

22 Q. In fact aren't you aware that that's the
23 highest ranking individual in the Navy that is directly
24 responsible for procuring materials in building Navy

1 ships?

2 A. I didn't know about that.

3 Q. So there is no doubt in your mind that by 1943
4 the Navy was aware of asbestos as a hazard, and they
5 were looking at ways to minimize those hazards, correct?

6 A. Certainly some people in the Navy were aware of
7 that and were trying to do something about it. That's
8 right.

9 Q. You are also aware that amosite asbestos was
10 commonly used on military vessels throughout the mid
11 20th Century, correct?

12 A. Probably. I mean it was common components of
13 insulation materials. I think they were mostly
14 chrysotile, but some of them also contained amosite.

15 Q. And in thermal insulation materials like pipe
16 covering, like block insulation are used extensively on
17 U.S. Navy warships during that time period, correct?

18 A. Yes.

19 Q. There are many reasons for that. It was
20 lighter. It could stop the spread of fire. Do you
21 agree with that?

22 A. Well, that was one reason. They wanted an
23 insulation material, pipe insulation that wouldn't catch
24 fire so mineral wool would have worked just as well.

1 Q. Also help with containing the heat?

2 A. Well, that was the purpose of the heat
3 insulation, yes.

4 Q. Amosite, thermal insulation was lighter weight
5 than other types of insulation, correct?

6 A. I think so but again the technical details are
7 limited in the articles that talk about that.

8 Q. Well, are you aware from your research that
9 ship weight was a concern because of certain trees that
10 were in effect that limited the tonnage of Naval
11 warships though to enable to carry more armaments and
12 weaponry, weight had to be sacrificed in other areas?

13 A. Right.

14 Q. World War II airships, those that were
15 contracted for, laid down and commissioned in and around
16 the time of World War II, those typically had miles of
17 asbestos-containing pipe insulation aboard them,
18 correct?

19 A. Probably. I don't really know, but based on
20 what I have read about oil refineries and other
21 industrial facilities there is a lot of length of pipe
22 covering and piping that's present from ships.

23 Q. Okay. Now between 1946 and the year after the
24 end of World War II when the Fleischer-Drinker article

1 we talked about was published and '64 when Dr. Selikoff
2 held his conference are you aware of anyone, anyone
3 anywhere in the world criticizing the conclusions in
4 that Fleischer-Drinker paper?

5 A. No, they were mostly ignored, not criticized.

6 Q. So you are not aware of anyone criticizing
7 those?

8 A. No, not until Selikoff's conference in 1964 and
9 then they took a look and this study obviously didn't
10 consider latency.

11 Q. Did you also discuss in your book an article
12 entitled Asbestos Dust in a Safety -- volume of the
13 Safety Review published by the U.S. Navy in January,
14 1947. Do you recall that?

15 A. Yes.

16 Q. Would you agree that that article states that
17 exposure to asbestos dust is a health hazard which
18 cannot be overlooked in maintaining an effective
19 industrial occupational hygiene program?

20 A. Yes.

21 Q. You are familiar also, Doctor, with an article
22 by a Navy captain Earnest Brown published in the early
23 1940's entitled: Industrial Hygiene in the Navy and
24 National Defense?

1 A. That was published in 1940.

2 Q. 1940. Captain Brown listed asbestosis as
3 suspected occupational hazard of shipyard work in that
4 article, correct?

5 A. Right. They had not identified any cases of
6 asbestosis at the time he wrote that.

7 Q. But he was suspecting that might be a problem?

8 A. They were looking for them. They were starting
9 to do periodic medical surveys of people in shipyards.

10 Q. Speaking of Philip Drinker you are aware of a
11 letter he sent to the Bureau of Medicine and Surgery,
12 U.S. Navy Department to the attention of a Captain
13 Thomas Carter dated January, 1945, correct, sir?

14 If it helps you at all I will represent it
15 dealt with bath iron works.

16 A. I just don't happen to remember that or see it.
17 Do you have a reference to it in my book?

18 Q. Let me see.

19 A. I know there was something in 1944, but it is
20 not about bath iron works.

21 Q. The reference I had to it is to some prior
22 testimony. You know what, in the interest of time we
23 can move along.

24 By the mid '50s, Doctor, the Navy was

1 recommending an internal memo that Navy personnel
2 implement the threshold limit value of five million
3 particles per cubic foot of air, correct?

4 A. I think they referred generally to the list of
5 the threshold limit value saying that it would be to try
6 and comply with those throughout Navy operations. It
7 wasn't about asbestos.

8 Q. And did they adopt that for asbestos?

9 A. Well, the indication is somebody sent out a
10 memo saying this is what we should do. I don't know
11 exactly what happened after that.

12 Q. And that would be of that 5 million particles
13 per cubic foot, correct?

14 A. That was the asbestos exposure limit in the
15 list.

16 Q. Okay. You seen a letter from Murray Brown,
17 Chief Occupational Health Program of the Public Health
18 Service to Vice Admiral R.B. Brown, Chief, Bureau of
19 Medicine of the Navy dated July 30, 1968?

20 A. Yes, I think so. The name is certainly
21 familiar.

22 Q. Do you recall whether in that document the
23 Navy is organizing meetings to coordinate efforts to
24 deal with the asbestos problem?

1 A. That sounds -- I think that's correct.

2 Q. And do you remember -- are you familiar with a
3 document that same year authored -- a Naval memorandum
4 1968, entitled Hazards of Asbestos, author by W.R.
5 Ribleit, R-I-B-L-E-I-T?

6 A. I vaguely remember that.

7 Q. Do you recall that document concluded the U.S.
8 Navy is well aware of the hazards of asbestos to its
9 employees engaged in ship construction and ship repair
10 at Naval shipyards?

11 A. No.

12 Q. You don't remember that?

13 A. I don't remember the exact language in the
14 document. We are doing -- you are making a legal record
15 here. I am not disputing that. I just don't have the
16 document in front of me.

17 Q. Do you recall whether or not in that Ribleit
18 memorandum that Mr. Ribleit concluded that
19 asbestos-containing gaskets and packing are not friable
20 when cut and do not cause dust in shipboard applications
21 and are not considered to be a significant health
22 hazard; do you recall that?

23 A. I really don't recall the detailed text, and I
24 have never heard of this Naval bureaucrat other than

1 seeing his name on that document.

2 MR. LOWERY: May I approach, your Honor?

3 THE COURT: You may.

4 Q. I will approach, Doctor, and hand you the
5 memorandum and see if that refreshes your recollection.

6 A. Thank you.

7 Q. Thank you.

8 A. Okay. I see the part that you read about
9 packings and gaskets. It says considered to be -- not
10 considered to be a significant health hazard.

11 Q. Okay. This is an internal Navy Memorandum in
12 1968, correct?

13 A. Yes.

14 Q. The idea -- skip that. Let me ask you this
15 question. Certainly by 1968 the Navy should have taken
16 precautions to protect persons working on ships from the
17 hazards of asbestos, fair statement?

18 A. Yes.

19 Q. By 1968 the Navy was definitely aware of the
20 hazards posed by asbestos aboard ships and persons in
21 the Navy were actually publishing on that topic,
22 correct?

23 A. Well, there was one publication in 1964, yes.

24 Q. You understand that the Navy has complete

1 control over of what goes on aboard its vessels,
2 correct, sir?

3 A. Aboard its vessels?

4 Q. Aboard its vessels.

5 A. I would think so, sure.

6 Q. By 1962 the Navy already knew there were risks
7 associated with working around asbestos-containing
8 products, correct?

9 A. Certainly some people in the Navy were aware of
10 that.

11 Q. And the Navy was also aware of safety
12 precautions that could be used to minimize that risk,
13 fair statement?

14 A. Certainly some people in the Navy were aware of
15 the safety precautions that could be used.

16 Q. That was true in the '50s and throughout the
17 1960's, fair statement?

18 A. Right.

19 Q. You would agree with me, sir, that there is
20 nothing that Crane Co. knew in the 1950's that the Navy
21 did not already know with respect to the hazards --
22 potential hazards of asbestos, correct?

23 A. Will, as far as I am aware, that's correct.

24 Q. Same was true in the 1960's?

1 A. Yes.

2 Q. You also agree that the Navy had knowledge of
3 the potential hazards of asbestos, that because they had
4 knowledge of that potential hazard it was within the
5 Navy's power to implement the variety of dust control
6 measures, train their sailors and warn of the hazards of
7 asbestos?

8 MR. WATHEN: Your Honor, I am going to object at
9 this point. This is again cumulative of all this Navy
10 testimony. They are going to have experts and calls for
11 speculation.

12 THE COURT: Overruled.

13 Q. (Mr. Lowery) Correct?

14 A. I am sorry. The Navy had what?

15 Q. I will read it. You would agree that because
16 the Navy had knowledge of the potential hazards of
17 asbestos it is within the Navy's power to implement the
18 various dust control measure, train their sailors and
19 warn of the hazards of asbestos, correct?

20 A. True.

21 Q. And the Navy could have done more to protect
22 its sailors from the asbestos hazards over the years,
23 true?

24 A. Yes.

1 Q. They had an ethical obligation to do so,
2 didn't they?

3 A. Yes.

4 Q. The Navy was in the best position to educate
5 its sailors of the dangers of asbestos in the '40s,
6 '50s, and '60s, correct, sir?

7 MR. WATHEN: Your Honor, I object. This is again
8 cumulative.

9 THE COURT: I don't know that -- I am going to
10 sustain that objection.

11 MR. LOWERY: I am done, your Honor. I will move on
12 to something else.

13 Q. (Mr. Lowery) Let's move on to warnings very
14 briefly. You would agree with me, Doctor, that there
15 isn't anything on equipment, a company could have put on
16 a warning on its equipment that the Navy wasn't already
17 aware of, correct, sir?

18 A. Well, there was some people in the Navy that
19 were aware of the medical and scientific literature on
20 the hazards of asbestos. Warning labels wouldn't have
21 informed those people anything that they didn't know, but
22 the people that actually did the work on the ships maybe
23 didn't know nearly as much about what was in the medical
24 literature.

1 Q. Certainly there were elements of the Navy that
2 were well aware of those issues, correct?

3 A. There were people in the Navy that were
4 presumably well aware of the hazards of asbestos.

5 Q. OSHA was actually the first governmental
6 agency that required a warning on asbestos-containing
7 products, true?

8 A. Right.

9 Q. That was '72?

10 A. Right.

11 Q. That OSHA warning requirement only applied to
12 products with exposures could exceed the then
13 permissible exposure limit of 5 fibers per cc, correct?

14 A. That or the short time ceiling limit of 10
15 fibers per cc for a 15 minute period of time.

16 Q. The language that was contained in the OSHA
17 warning label would not have conveyed any information to
18 the Navy that it did not already know, correct?

19 A. Well, again there were people in the Navy that
20 knew plenty about the hazards of asbestos, but not all
21 the people that worked on the ships and handled the
22 products that were coming in to the shipyards knew
23 anything about asbestos.

24 Q. Let's talk about something a little bit

1 different. You certainly in researching and putting
2 together your book looked at a question of companies
3 that made asbestos thermal insulation like those that
4 the workers in Dr. Selikoff's study worked with,
5 correct?

6 A. Right.

7 Q. It is your position that those companies that
8 made those types of products either knew or should have
9 known the products were extremely dangerous, correct?

10 A. Yes.

11 Q. You are familiar with manufacturers of various
12 insulation materials used in both the Navy and the
13 industry like Johns-Manville, correct?

14 A. Yes.

15 Q. Pittsburgh Corning?

16 A. Yes.

17 Q. Mundet?

18 A. Yes.

19 Q. You know that some of those were very large
20 suppliers of insulation, correct?

21 A. Yes.

22 Q. And in particular Johns-Manville was a massive
23 asbestos company that made all sorts of asbestos-
24 containing products including various types of

1 insulation material, correct?

2 A. They were the industry leaders.

3 Q. And many of these products contained amphibole
4 asbestos like amosite, correct?

5 MR. WATHEN: Your Honor, I am going to object to
6 that as vague. There are numerous products that were
7 made. If he wants to ask about a specific one,
8 otherwise it is very confusing and a global question and
9 vague.

10 MR. LOWERY: Sure. I am happy to.

11 Q. Thermobestos, a pipe covering made by
12 Johns-Manville contained amosite?

13 A. Contained chrysotile and amosite I believe.

14 Q. Unibestos made by both Unarco and Pittsburgh
15 Corning pipe covering contained amosite, didn't it?

16 A. Yes.

17 Q. Mundet pipe covering?

18 A. I don't know.

19 MR. WATHEN: Your Honor -- I am sorry.

20 A. I don't know about Mundet's product
21 composition.

22 Q. Doctor, if the record in this case is that
23 these companies made asbestos-containing thermal
24 insulation products and supplied them to the Navy that

1 were used on vessels in which Mr. King worked, is it
2 your opinion these companies either had actual knowledge
3 or should have known of the hazards of those products?

4 A. Are you talking during the 1960's?

5 Q. Yes, sir.

6 A. And the companies are Mundet, Johns-Manville
7 and --

8 Q. Pittsburgh Corning.

9 A. -- Pittsburgh Corning. Pittsburgh Corning
10 didn't make these products --

11 Q. Or Unarco.

12 A. Unarco - all those companies had experiences
13 that should have informed them, did inform them of the
14 dangers of asbestos prior to 1960.

15 Q. Do you believe, sir, isn't it true you believe
16 by the 1940's at the latest makers of thermal insulation
17 should have known that their products were dangerous?

18 A. Yes.

19 Q. And it is your opinion that these insulation
20 companies were negligent in failing to warn about the
21 harms of asbestos?

22 MR. WATHEN: Your Honor, I am going to object. He
23 has made objections to my questions which were remotely
24 like that. Since this is a general expert I am going to

1 make the same objection to strike that question.

2 THE COURT: He asked him whether they were
3 negligent. That calls for a legal conclusion. I will
4 sustain the objection.

5 Q. Now, certainly by 1960, Doctor, it is your
6 position that companies that made a product that
7 contained asbestos should have known that there were
8 risks associated with those products, correct?

9 A. Any product that contained asbestos?

10 Q. That's a fair point. Let's talk about thermal
11 insulation products by 1960.

12 A. Well, those companies should have known. Any
13 company that was using asbestos as a raw material in the
14 manufacture of products should have known that asbestos
15 was harmful any time since the 1930's based on what was
16 publicly available in the medical and industrial
17 circuits.

18 Q. Okay. And that would include companies that
19 used asbestos as a raw material in their products that
20 supplied equipment or components or insulation to the
21 Navy, correct?

22 A. Yes.

23 Q. Those companies should have known the risk and
24 should have warned, correct?

1 A. Yes.

2 Q. If they didn't warn it is your belief that
3 those companies were creating an unreasonable risk from
4 a public health perspective, correct?

5 MR. WATHEN: Your Honor, same objection.

6 THE COURT: Overruled.

7 A. Yes.

8 Q. And if they didn't warn it is your opinion
9 their conduct was unreasonably dangerous, correct?

10 A. Yes.

11 Q. Would you agree, Doctor, that companies that
12 manufactured boilers such as Foster Wheeler and Babcock
13 & Wilcox had this information available to them --

14 MR. WATHEN: Your Honor -- I am sorry. Go ahead
15 and finish your question. I am sorry.

16 MR. LOWERY: -- had this information available to
17 them and knew or should have known about that asbestos
18 was hazardous?

19 MR. WATHEN: Your Honor, I object. Can we
20 approach for just one moment?

21 (An off the Record discussion was held
22 at the Bench outside the hearing of the
23 jury.)

24 Q. (Mr. Lowery) Doctor, I have heard you testify

1 in the past that floating dust in the air does not
2 respect a job classification, correct?

3 A. Yes.

4 Q. A worker -- a worker is at risk when asbestos
5 materials are disturbed and other people around the
6 insulation are at risk as a bystander exposure, correct?

7 A. That's true with any asbestos product, yes.

8 Q. In fact you believe that if asbestos is being
9 disturbed anywhere in a room, everyone in the room will
10 be exposed, correct, sir?

11 A. Well, maybe -- it depends how long they stay in
12 the room but, yeah, the stuff tends to get disbursed and
13 diffused throughout the room.

14 Q. Now, one of the things you talk about in your
15 book, Doctor, is the fact that some companies that
16 manufacture thermal insulation actually work to conceal,
17 to withhold the knowledge of the hazards of asbestos
18 from other entities and individuals, correct?

19 MR. WATHEN: Your Honor, we object for relevance
20 on the whole point of his being allowed these questions,
21 goes to causation, has nothing to do with other type of
22 legal claims like conspiracy that he is trying to
23 inject. It's completely irrelevant.

24 MR. LOWERY: Can we approach on that?

1 (A discussion was held at the bench out of the
2 hearing of the jury and was not reported.)

3 Q. Doctor, thanks to that very nice side bar we
4 had from the Judge I am done. Thank you so much for
5 your time.

6 THE COURT: Thank you, Mr. Lowery. We will go on
7 with Redirect.

8 MR. WATHEN: Yes, your Honor. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. WATHEN:

11 Q. Dr. Castleman, you were asked a lot of
12 questions about the Navy and what they were doing and
13 what they were not doing and whether they were in the
14 best position to do some things, do you recall that?

15 A. Yes.

16 Q. I would like to ask similar questions to
17 follow up on that. Now, Dr. Castleman, was Crane using
18 asbestos since at least the 1930's?

19 A. Yes.

20 Q. If not before?

21 A. Probably before.

22 Q. Selling Crane products since the 1920's, does
23 that sound familiar?

24 A. I believe they were selling asbestos products

1 as well as using asbestos in their own pipes.

2 Q. Sorry. My handwriting it not very good there.
3 It is getting worse if that's possible. Judge, do you
4 have a crayon I could use? Might be more appropriate.
5 That's okay, your Honor. Thank you.

6 Dr. Castleman, they talk about Navy publishing
7 hazards. Was Crane ever publishing or issuing warnings
8 about asbestos hazards in the 1940's or any other time
9 to your knowledge?

10 MR. LOWERY: Objection, asked and answered.

11 THE COURT: I will overrule it.

12 A. No.

13 THE COURT: Let's try to stick to new material.

14 MR. WATHEN: He opened the door just on these
15 items.

16 THE COURT: I will give you some latitude.

17 Q. (Mr. Wathen) Dr. Castleman, was Crane doing
18 anything to protect users of its products with regard to
19 the hazards of asbestos to your knowledge since the
20 1940's or before or since?

21 A. No.

22 Q. Dr. Castleman, did Crane in the mid 1950's
23 before or any time since ever discuss or inform users of
24 its products to keep dust levels low when using those

1 products?

2 A. No.

3 Q. You were asked a lot of questions again about
4 the Navy and was the Navy aware. And I just want to
5 make sure we are clear about what this Navy is that they
6 are talking about as far as knowledge of asbestos
7 hazards.

8 During all your research have you ever seen
9 anything that individual sailors as a group working in
10 the engineering spaces on ships from the 1920's to the
11 1960's were aware of the hazards of the asbestos
12 products like those that Crane sold at any time?

13 A. No.

14 Q. Dr. Castleman, who is in a better position
15 than a company that manufactures and sells asbestos
16 products to understand the hazards of its products? Is
17 anyone in a better position than that company?

18 A. I don't think so. I mean the seller of the
19 products -- once they know asbestos dust is dangerous the
20 seller of the products knows better than, you know, some
21 industrial hygienist that works for the Navy or some
22 doctor who walks through some Navy yards all the ways in
23 which their product is used that might create dust.

24 The seller of the product knows that because it

1 is integral to the marketing and the sale of their
2 products is to know that in extraordinary detail.

3 And so if they have the knowledge that the dust
4 is lethal then they know all the ways in which the use of
5 the product can generate dust including those that some
6 of which may not have been obvious to people doing
7 surveys and writing tables and Navy reports and things
8 like that.

9 Q. Is the manufacturer or seller of the asbestos
10 products in the best position to research the hazards --
11 potential hazards of its products?

12 A. Sure, because they know the ways in which the
13 product is used. They know what kinds of activities to
14 do air sampling and testing on in order to see the extent
15 of the dangers that the individual tests in which their
16 product is ordinarily or foreseeably used, what those
17 tests might give rise to in terms of exposures and risks.

18 Q. If a company has a known toxin such as
19 asbestos in its products that it is selling and that
20 company during the 1950's, 1940's, the 1960's fails to
21 research the potential health hazards of that asbestos,
22 is that failure to do so unreasonable on the part of the
23 company?

24 MR. LOWERY: Objection, calls for a legal

1 conclusion.

2 THE COURT: Overruled.

3 A. Well, if they know that asbestos is lethal, if
4 they know about the scientific literature on asbestos and
5 disease then they are in the best position to determine
6 the extent of the hazards associated with all the ways
7 the product is used and of course to provide warnings to
8 people who are going to be using their product.

9 Q. And failure to do so, would that be
10 unreasonable?

11 A. I think so.

12 Q. Now, counsel has mentioned or asked you about
13 whether there were any studies prior to 1990 concerning
14 disease specifically from gaskets. Do you recall that
15 question?

16 A. Yes.

17 Q. So -- and you weren't aware of any?

18 A. I wasn't even aware of any exposure
19 measurements that had been published prior to the 1990's,
20 let alone studies of disease associated with the
21 products.

22 Q. So, Dr. Castleman, does that mean that Crane
23 Co. never conducted gasket studies over the decades
24 concerning either exposure levels or disease pertaining

1 to the asbestos gaskets they sold?

2 MR. LOWERY: Objection, calls for speculation, lack
3 of foundation.

4 THE COURT: Overruled.

5 A. As far as I know that's right.

6 Q. Last question, Dr. Castleman. You were asked
7 about questions again about the Navy, a lot of questions
8 about the Navy and asbestos.

9 Dr. Castleman, in your book is there a
10 reference to a colloquial expression of the tendency of
11 companies that supplied asbestos containing products to
12 the Navy to say they insisted upon those products
13 pursuant to their specifications?

14 A. Yes.

15 MR. LOWERY: Objection, vague, calls for
16 speculation.

17 MR. WATHEN: What is that called?

18 THE COURT: I will allow you Recross on that.
19 Overruled.

20 A. I think you are referring to the claim by some
21 manufacturers that they had to use asbestos in their
22 products because it was required by military
23 specifications under which the products were purchased by
24 the Government. I don't think that the military

1 specifications really bear that out, but that line of
2 reasoning has been referred to as "the devil made me do
3 it" defense.

4 MR. WATHEN: Thank you, Doctor.

5 THE COURT: You may recross on that point.

6 RE CROSS EXAMINATION

7 BY MR. LOWERY:

8 Q. Do you recall, sir, one of the first questions
9 I asked you in cross examination was: You don't
10 consider yourself an expert in military and Navy
11 specifications. Do you recall that question?

12 A. That's right.

13 Q. And the answer was?

14 A. I am not an expert on it.

15 MR. LOWERY: Right. Thank you.

16 THE COURT: Okay. The jurors are going to be given
17 an opportunity to ask Dr. Castleman any questions they
18 might have. This will be our last witness for the day.
19 We are about quarter till 4 here so we have a little
20 time to do this. If you want to formulate any questions
21 we have plenty of time to do that. If you do we will
22 have them handed down to Dana and take a minute to
23 consider the questions and have him address them.

24 (Pause.)

1 THE COURT: Raise your hand if you are working on a
2 question. No questions, okay. Thank you, Dr.
3 Castleman.

4 MR. LOWERY: Your Honor, he has to stick around.

5 THE COURT: We are going to go ahead and have you
6 jurors go out for just a short break. Probably you will
7 be finished here. We will call you back in to give you
8 the schedule for tomorrow. Okay.

9 (Jurors exit courtroom.)

10 (The following proceedings were had out
11 of the presence of the jury.)

12 MR. LOWERY: Your Honor, very brief.

13 (The following is an offer of proof
14 held in this cause.)

15 Q. (Mr. Lowery) Doctor, would you agree with me
16 that companies that manufactured boilers such as Foster
17 Wheeler and Babcock & Wilcox had this information with
18 respect to the hazards of thermal insulation that
19 contained asbestos available to them and knew or should
20 have known that asbestos was hazardous?

21 MR. WATHEN: Excuse me. For the record you are
22 asking about those two specific companies? I think you
23 said "companies like" and I think the nature of this is
24 it has to be very specific.

1 MR. LOWERY: You want me to rephrase? I will
2 rephrase.

3 MR. WATHEN: If you don't mind. I don't want to
4 drag this out.

5 MR. LOWERY: I literally had three questions.

6 MR. WATHEN: If we are going through this exercise
7 I want it to be accurate.

8 MR. LOWERY: The term might be a problem I think
9 with "such as".

10 MR. WATHEN: Yeah.

11 Q. (Mr. Lowery) Would you agree with me, Doctor,
12 that companies that manufactured boilers, particularly
13 Foster Wheeler and Babcock & Wilcox had information
14 available to them regarding the use of
15 asbestos-containing thermal insulation and knew or
16 should have known that that asbestos material was
17 hazardous?

18 MR. WATHEN: Your Honor, and I apologize to
19 interrupt, but I think it has to be amosite asbestos. I
20 will withdraw it please. I am sorry.

21 THE COURT: Okay.

22 A. May I answer?

23 Q. Answer it, sir.

24 A. Yeah. I think I have seen documentation on

1 Foster Wheeler from the '40s; Babcock & Wilcox I don't
2 remember how far back it goes, but certainly with Foster
3 Wheeler there was knowledge in the late '40s, early to
4 late '40s that there were hazards associated with
5 asbestos that was available to Foster Wheeler.

6 Q. And to clarify Mr. Wathen's issue, would your
7 answer be the same if this was thermal insulation that
8 contained amosite asbestos?

9 A. Well, I wouldn't think that the literature
10 distinguishes between chrysotile and amosite insulation.
11 It is all called asbestos.

12 Q. Okay. Same question with respect to turbines
13 manufactured by General Electric and Westinghouse would
14 you agree with me that those companies had information
15 available to them that amosite containing thermal
16 insulation would have been hazardous and they knew or
17 should have known that fact?

18 A. Well, if you just call it asbestos-containing
19 thermal insulation I would say yes.

20 Q. Fair enough. Would you agree with me that by
21 the 1940's the following companies had information about
22 asbestos available to them and knew or should have known
23 about the -- that asbestos was hazardous. Those
24 companies like Babcock & Wilcox, Mundet, Westinghouse,

1 General Electric, Pittsburgh Corning and Johns-Manville?

2 A. Westinghouse and Johns-Manville only.

3 Pittsburgh Corning didn't make asbestos products until
4 1962.

5 Q. I will add Unarco. Would you include Unarco
6 on that list?

7 A. Unarco knew something in the 1940's; this is in
8 my book. Everything in my book is totally reliable. It
9 has been thoroughly fact checked by the best lawyers and
10 scientists money can buy.

11 Q. Just so we have a clear record, Unarco,
12 Johns-Manville and who was the third one, sir?
13 Westinghouse.

14 A. Westinghouse.

15 MR. LOWERY: Thank you, sir.

16 THE COURT: And then the nature of the objection
17 just for the record at the side bar was not on the
18 record.

19 MR. LOWERY: Okay. You made the objection.

20 MR. WATHEN: We didn't have it on the record.

21 THE COURT: He did object.

22 MR. WATHEN: I did object.

23 MR. LOWERY: That's why we are doing the offer.

24 MR. WATHEN: No, the side bar wasn't on the

1 record, that's right. I am sorry.

2 The objection, your Honor, was that counsel's
3 questions are going beyond the *Nolan* ruling made by this
4 Court. The Court made a ruling that there would be --
5 the evidence that could be admitted with the
6 understanding that it would be supported by expert
7 testimony later on in the case, but Defendant's experts
8 in particular concerning amphibole-containing insulation
9 products, specifically named and identified by the
10 Plaintiff in his deposition thermal insulation which he
11 identified. What counsel --

12 THE COURT: Which was what?

13 MR. WATHEN: Johns-Manville and Mundet, and what
14 counsel is attempting to do by adding in their
15 terminology para metal equipment companies to the list
16 of other culprits in this amosite group is improper and
17 goes beyond your Honor's ruling because it is that same
18 insulation that Johns-Manville insulation that is put on
19 those pieces of metal.

20 Those are not distinct exposures. They put
21 Johns-Manville insulation on pipes. They put it on
22 boilers. Those do not all comprise additional parties
23 because the nature of the -- the whole basis of this
24 *Nolan* Motion being granted is the amosite asbestos and

1 so -- and that is the sole proximate cause.

2 It has nothing to do with causation the fact
3 that that amosite -- doesn't matter whether it was put
4 on a pipe by ABC brand company, doesn't matter if it was
5 put on a Babcock & Wilcox boiler or a Westinghouse
6 turbine, and by the way I think the turbine testimony I
7 think he was unable to identify the insulation put on
8 there.

9 So I think it is improper for that reason as
10 well, but even if you identify this thermal insulation
11 which they contend they can prove contained amphibole or
12 amosite which I don't think they have done yet,
13 specifically not for these ships, but if they are going
14 to be allowed to do it, it has just got to be for the
15 insulation products that contain amosite, not adding to
16 the list of culprits to build their mountain of sole
17 proximate cause to include just other pieces of metal
18 that had some name on it like Babcock & Wilcox. Well,
19 that has nothing to do with causation.

20 That is not probative of the causation
21 opinions that they are going to try to get, whether
22 sitting on a boiler or sitting on a pipe or used for
23 anything else.

24 The basis of my objection again was their

1 attempt to inject these brand names of these other
2 companies who have had been defendants in asbestos
3 litigation for various reasons, but their burden is
4 completely different. They have to prove amphibole by
5 sole proximate cause, and so that's why I object, your
6 Honor.

7 MR. LOWERY: May I be heard?

8 THE COURT: Yes.

9 MR. LOWERY: First off, it is our contention, your
10 Honor, that those products, the boilers and the turbines
11 that are identified manufactured by Babcock & Wilcox,
12 Foster Wheeler, General Electric, and Westinghouse all
13 incorporated thermal insulation products in both their
14 design specification, and that Mr. King testified to
15 working with and around those products which had that
16 thermal insulation in place that generated dust to which
17 he was exposed, and therefore all of those products
18 would be contributing factors, which by the way Dr.
19 Bedrossian agreed with me yesterday without objection on
20 that point that all of those products would also be
21 substantially contributing factors to the creation of
22 his mesothelioma, whether it be sole cause.

23 I think he indicated if that was the only
24 exposure that would be sufficient sole cause, their own

1 causation expert.

2 Also, your Honor, I would like to add and I
3 forgot to mention at side bar we opened on these very
4 companies, and there was no objection made on that
5 basis. I would contend the Plaintiffs have waived that
6 argument, and we should be allowed to go into that in
7 toto because they waived any objection.

8 MR. WATHEN: Your Honor, it is our recollection
9 Miss Romani did in fact object to it, and the burden --
10 they are conflating the burden of what we have and what
11 Plaintiff's causation expert will say with regard to
12 substantial contributing factor.

13 They have the burden of sole proximate --
14 unusual burden and very high burden, one that we have
15 never had in an asbestos case. Theirs is sole proximate
16 cause by amosite or amphibole only. That's it.

17 THE COURT: So I tend to agree, and as I said
18 earlier I do agree that there is a burden of proof with
19 respect to sole proximate cause.

20 It is true *Nolan* says you don't have any
21 burden of proof, but it doesn't say that if you
22 undertake to prove anything you then have no standard of
23 proof required. That would be illogical.

24 So the Defendant doesn't have the burden of

1 proof. If it however assumes a burden, if it then wants
2 to introduce that something was a sole proximate cause
3 it certainly has some burden of proof to prove that. I
4 mean, it can't just be no burden.

5 Now, the question will be, which *Nolan* doesn't
6 discuss which I think is an interesting question, I
7 think the answer is it can't be that the Defendant's
8 burden of proving something caused the injury is a
9 lesser burden than the Plaintiff's burden of proving
10 that something caused the injury.

11 I mean it wouldn't make sense that I could
12 give the jury two instructions, pick A or pick B, and
13 they are equal instructions. One of the causes will be
14 selected as the cause, yet the burdens of proof are
15 different. That wouldn't make any sense.

16 Now, whether or not something -- whether or
17 not that issue gets to the jury I think, you know, we
18 are kind of talking about the *Thacker* analysis I think.
19 It has to sort of meet that threshold to get there.

20 In the *Bolls* (sp.) opinion the Court decided
21 the facts were insufficient to meet that threshold
22 requirement. I tend to disagree with that opinion, not
23 in the analysis that was correct. I think there were
24 enough facts that it should have gotten by summary

1 judgment but certainly in the Fifth District, but that
2 goes both ways.

3 So the Defendant -- I think that the parties
4 have an equal burden to meet if they are going to try to
5 prove something in their case. If they are going to try
6 to prove proximate cause I think you have the same level
7 or burden of proof required as the Plaintiff would have.

8 Getting those issues to the jury will also be
9 considered similar and not differently. Okay. Now,
10 having said that I think that *Nolan* allows you to prove
11 that something was the sole proximate cause. You
12 mentioned in your argument, Mr. Lowery, that these other
13 companies were substantial contributing factors. I
14 don't think that's what *Nolan* says you get to do because
15 that in my opinion gets into the area of confusing the
16 jury with other causes in a joint and several liability
17 state, that is, that is not relevant.

18 MR. LOWERY: I understand. Just for clarification
19 of the record the questions I asked Dr. Bedrossian were
20 all qualified. I wanted him to assume that those
21 exposures, each one of them asked separately were the
22 only exposures the gentleman had. If that was true
23 would that be sufficient to cause his disease? That in
24 of itself is the sole proximate cause, and he agreed.

1 THE COURT: As I understand the initial
2 presentation and what you are going to do as your sole
3 proximate cause and you gave me some material I still
4 haven't seen the actual evidence, haven't really had a
5 chance to listen to your experts. Obviously I haven't
6 heard the Plaintiff's whole case to see whether or not
7 he was exposed to the material you say he was exposed
8 to, but there seems to be some indication which is why I
9 allowed you to proceed on that.

10 Again those are going to be questions that
11 need to be addressed at the close of the Plaintiffs'
12 case, the close of all the evidence and eventually we
13 talked about the jury instructions and maybe even after
14 the case is over, but I understand that the sole
15 proximate cause defense is based on his exposure to
16 Johns-Manville and Mundet pipe insulation.

17 And so for that reason I found the nature of
18 the question injecting the other companies was
19 irrelevant, not probative and likely prejudicial.
20 Prejudicial effect I think outweighed any probative
21 value in that it would mislead -- or not mislead, but
22 definitely might confuse the jury, go beyond the *Nolan*
23 ruling and go beyond I think what *Nolan* allows you to do
24 on that point. For that reason I sustained the

1 objection. Okay.

2 MS. ROMANI: Your Honor, real quick just for
3 scheduling and trying to expedite things, I reviewed the
4 brief on the Longo issue. I think I can address a
5 number of the issues.

6 THE COURT: I wanted to talk about that here.
7 Before you do that, not to interrupt you, I don't want
8 to do it that but there is a couple of questions I had
9 about that I am going to have after you done.

10 ATTORNEY: The jury is still outside.

11 THE COURT: Have Dana release them to have them
12 come back tomorrow at 9 a.m. instead of 8:30 in case we
13 need a little extra time in the morning.

14 Tomorrow morning at 9. Give us a little extra
15 time.

16 Real quick, Allyson, before you get into that
17 what I want to sort of question I had about this issue
18 with Dr. Longo is when was he noticed as a potential
19 witness? I assume in December when this case first came
20 around.

21 MS. ROMANI: Well, he has been on our general
22 witness list for sometime and per the Standing Order
23 once you disclosed he was a general expert you are
24 allowed to call them as long as they have been deposed

1 this case.

2 THE COURT: Then specifically with this case?

3 MS. ROMANI: We discussed this with Miss Behnen
4 back before December, that there was --

5 THE COURT: Why wasn't the deposition taken? Why
6 are we talking about this now?

7 MS. NICKELSON: Your Honor, they want a video
8 preservation --

9 THE COURT: What I want to know is why you
10 didn't -- I mean Garlock was -- when did that come out?
11 2012?

12 MR. LOWERY: No, about a month ago.

13 MS. ROMANI: His testimony was in July of 2013.

14 MR. LOWERY: About a month ago.

15 THE COURT: His testimony. I thought somebody said
16 that was in 2012.

17 MR. LOWERY: Are you talking about the *Garlock*
18 opinion?

19 THE COURT: Not the opinion. Somebody said there
20 was testimony in that case.

21 MR. LOWERY: That would have been --

22 MS. ROMANI: It was July 7, '13 per what they
23 attached to their Brief.

24 THE COURT: Okay. I guess what I am trying to get

1 at is why are we bringing this up now, why you didn't do
2 it sooner? You want to take his deposition based on
3 some inaccuracies or discrepancies. Why didn't you do
4 you that assuming --

5 MS. NICKELSON: Your Honor, given that we had 25
6 cases on this docket, and it was in December and there
7 were also multiple cases. We didn't find out they were
8 picking this case as you know until last Thursday or
9 Friday. We didn't know they were going to call Longo
10 until they said so.

11 THE COURT: This wasn't Crane's only case. Wasn't
12 he listed -- I am just trying --

13 MS. NICKELSON: He is listed generally.

14 THE COURT: But didn't anybody --

15 MS. NICKELSON: If we went and took everybody's
16 deposition who they list generally, that is hundreds of
17 experts, your Honor.

18 THE COURT: That's the reason for the rule. If
19 they already had their deposition taken it can be
20 utilized. That way you don't have to do that each time.

21 MS. NICKELSON: Which is why we need in this
22 situation to take the deposition because something has
23 changed.

24 THE COURT: But then why not when Mrs. -- what was

1 her name -- Behnen was apprised of his doing that list
2 for this particular case --

3 MS. NICKELSON: I have no knowledge of that, your
4 Honor.

5 THE COURT: I believe the representation. This
6 kind of gets back to what we talked about in terms of
7 case management. I really don't like this idea of being
8 in the middle of the case and doing deposition issues
9 and pre-trial issues. I know some of this you have to
10 do in terms of going through objections on video
11 depositions and things.

12 MS. NICKELSON: Right, your Honor, and we have an
13 agreement that experts will be deposed 48 hours prior to
14 their testimony, so next week for instance we are
15 putting up Dr. Taylor before he testifies. And we
16 discussed that and worked out the timing so that it
17 doesn't interfere with Court. So we know to do that.
18 So when we requested Dr. Longo we were then told he is
19 unavailable.

20 MS. ROMANI: That agreement was made, your Honor,
21 with regard to case specific expert witnesses. It is
22 under the Standing Order that if they decide that they
23 want to take a general expert that has already been
24 taken they are supposed to let us know.

1 We haven't filed a supplemental designation
2 for him. He hasn't changed his opinion. There is
3 nothing new about his opinions at any time after his
4 testimony in July of 2013. If any defendant in Madison
5 County wanted to cross him on that all they had to do is
6 ask any one of the plaintiff's attorneys that have him
7 listed. We want to take his deposition In Re All so we
8 can cross him on this issue. Nobody has done that.

9 THE COURT: That's what I was asking.

10 MS. ROMANI: Of note, there have been 24
11 depositions of Dr. Longo since his testimony in Garlock
12 including at least three that I am now aware of where
13 Crane has extensively crossed him.

14 They have had an opportunity to cross him on
15 these issues. I think they posited in their Motion that
16 should your Honor allow him in based on other arguments,
17 not based on the inopportunity to cross him they just
18 want to have the opportunity to present potentially the
19 --

20 THE COURT: Impeaching material.

21 MS. ROMANI: Exactly, which they certainly have --

22 THE COURT: What else were you going to say on it?

23 MS. ROMANI: Well, I just wanted to point out, your
24 Honor, I have already covered it with the Rule 212 and

1 Standing Order, you know, I read through his testimony
2 and the things they crossed him on are things he gets
3 crossed on all the time.

4 There are a few issues with some of the early
5 gasket studies. He has published subsequent gasket
6 studies. They have gone over all that with him. There
7 has been extensive cross examination by numerous
8 defendants, and like I said they are certainly entitled
9 to present prior depo testimony, prior trial testimony.

10 The Order that they attach that this Judge
11 issued is merely a finding of fact by that Judge. There
12 was a *Daubert* hearing. He was not excluded based on
13 *Daubert*. He was allowed to testify in those
14 proceedings. The opinions that are in that Order are
15 simply the opinions of that Judge. That doesn't
16 necessarily mean that his studies are now
17 unscientifically sound because a Judge in a bankruptcy
18 hearing decided that they didn't think that they were
19 relevant and --

20 THE COURT: But you are saying they would be
21 allowed if they choose to bring in his testimony in that
22 hearing or that case or other deposition testimony that
23 might where he may --

24 MS. ROMANI: Yeah, I mean he was extensively

1 crossed on these issue in the *Seaborne* deposition.

2 THE COURT: But they can do that you are saying in
3 this case?

4 MS. ROMANI: Well, they can certainly present what
5 they would like to --

6 THE COURT: Have the jury hear.

7 MS. ROMANI: -- have as evidence, yeah, and if
8 your Honor decides that it is admissible which I mean it
9 is prior deposition testimony. I don't know how it
10 could not be.

11 MS. NICKELSON: Your Honor, I think we are mixing
12 up discovery depositions and evidence depositions. We
13 can -- yes, we could have noticed and taken the
14 discovery deposition of Dr. Longo whenever we wanted,
15 but they are wanting to use this as evidence in front of
16 the jury. Therefore they, you know, they didn't
17 schedule him properly so now we are being punished
18 because he can't come testify live.

19 THE COURT: How is he not scheduled?

20 MS. NICKELSON: He is not available for this trial
21 even though they listed him as a witness.

22 THE COURT: It sounds like they have done
23 everything that's required under the Standing Order to
24 present his deposition.

1 MS. NICKELSON: I think that applies to discovery
2 depositions, your Honor, not evidence depositions.
3 Using an evidence deposition in another unrelated case
4 that has no Navy, that had nothing to do with Navy
5 exposures, had multiple differences which we outlined in
6 our Brief and trying to sub that in here --

7 THE COURT: Can't you bring in other deposition
8 testimony of his?

9 MS. NICKELSON: We can certainly impeach him, your
10 Honor, but he should be here live to testify or there
11 should be an evidence deposition in this case, and I
12 think that's what the Standing Order says.

13 MS. ROMANI: That's not what Rule 212 says
14 actually, your Honor. Any deposition which is properly
15 taken and filed in any Illinois action may be used at
16 trial in an Illinois court. The fact that this case
17 involves exposure to Crane valves on a Navy ship versus
18 *Seaborne* where they involved Crane valves in industrial
19 and commercial setting is totally irrelevant. He wasn't
20 deposed as a case specific expert in *Seaborne*. It
21 doesn't matter where the valves were at.

22 THE COURT: We do rely on Rule 212 in the Supreme
23 Court Rules.

24 MS. ROMANI: I agree. I don't think the Standing

1 Order differentiates between an evidence and a discovery
2 deposition. The reason behind that rule was so that we
3 didn't have in every single case the general experts
4 going up and being deposed on the exact same issue.

5 MS. NICKELSON: You are saying we should have
6 noticed the deposition. We would have only noticed the
7 discovery deposition. We would not notice an evidence
8 deposition.

9 THE COURT: Unless you want to subpoena him and
10 bring him in for your case. Nothing precludes you from
11 doing that.

12 MS. NICKELSON: We keep talking about this is what
13 is done like they list it and we know this is coming.
14 That is not how evidence depositions work. They notice
15 --

16 THE COURT: It is unusual, but I am saying that
17 there is nothing that would preclude you from doing
18 that.

19 MS. NICKELSON: I think in this case it is highly
20 prejudicial of the way it is being handled. I am going
21 to look at -- I did read the Brief. I flipped through
22 it. It wasn't that long.

23 THE COURT: I will look at it and make a ruling.
24 It sounds like -- just tell you, unless I see something

1 really drastic, sounds like that they have met the
2 requirements of the Standing Order and Rule 212. I
3 think if it were me I would probably start planning on
4 bringing in whatever other deposition testimony you
5 think you need.

6 MS. NICKELSON: We will be able to play that right
7 after theirs and not wait until our case in chief?

8 THE COURT: I think we have to keep it all
9 together. I think we should do that. So I will look at
10 it though in case there is something --

11 MS. ROMANI: And, your Honor, I would urge you to
12 reference the exhibits because there are a number of
13 statements made in the Brief that don't necessarily
14 coincide with what exactly is in the testimony.

15 THE COURT: I will probably look at it. I will
16 look at the testimony.

17 MR. LOWERY: May I raise just a general question
18 where we stand on everything. Are we -- do you have a
19 sense of how close we are to getting ready to proceed?

20 I don't know how close we are to an agreement
21 on King objections.

22 MR. SHUTTLESWORTH: Real quick, your Honor, on
23 King I am working with defense. We will have -- which
24 goes tomorrow. The jury is going to come at 9. We will

1 be here at 8:30. I think it takes maybe ten minutes.

2 THE COURT: You can be here at 8:30. If you are
3 here a little before that I will probably be here before
4 that.

5 MR. SHUTTLESWORTH: I think it will take ten
6 minutes of just general page line and be anything too
7 difficult to knock out, just a couple basic evidentiary
8 objections at which point it will be a finalized
9 product. I will give it to my paralegal and we will
10 have a video ready to play certainly by lunch.

11 THE COURT: Go through it. I noticed there was
12 some hearsay and relevancy objection. Relevancies are
13 pretty low threshold to get it in, but hearsay I mean --

14 MS. NICKELSON: It is my understanding we will have
15 a couple issues.

16 MR. LOWERY: We are much closer on that one. May I
17 approach?

18 THE COURT: Yeah.

19 MR. LOWERY: This is the objections and counters
20 designations that we have been given to the plaintiffs
21 on the Pantaleoni, P-A-N-T-A-L-E-O-N-I, transcript. The
22 transcript itself is actually not that long, your Honor,
23 and the counters are -- somewhat depend upon your ruling
24 but they are even short. But my understanding is our

1 counsel and their counsel tried to work out an agreement
2 on of that and they --

3 THE COURT: When is Pantaleoni going to be offered?

4 MR. LOWERY: He wants to play that tomorrow as
5 well. That is the gentleman I am bringing live on
6 Wednesday.

7 MR. WATHEN: It is a 15 minute clip. I haven't
8 been part of the negotiations, but I think it is pretty
9 much a disagreement --

10 MR. LOWERY: I think we are at loggerheads.

11 THE COURT: Pantaleoni is -- what type of expert is
12 he?

13 MR. LOWERY: He is not an expert. He is a corporate
14 representative.

15 MS. ROMANI: And like Robert said I am working on
16 addressing their objections. I think we can probably
17 knock those out pretty quickly tomorrow morning.

18 THE COURT: We are going to bring them in as
19 admissions against interest or something?

20 MS. ROMANI: Correct.

21 THE COURT: So what are you saying? They are not
22 all admissions against interest?

23 MR. LOWERY: Well, we have some other objections
24 there, your Honor.

1 MS. ROMANI: There is some relevancy objections
2 and --

3 MR. LOWERY: I can highlight for you the three main
4 issues I have are: One, relevancy; two, the fact that
5 he was shown a number of documents that he didn't know
6 anything about; and, relevancy, basically for the most
7 part which would deal with products that aren't an issue
8 in this case. I think based on the agreement that we
9 had we are not going to get into the insulation sold
10 out, right? That's our agreement?

11 MR. WATHEN: Right.

12 MR. LOWERY: So that can go. What was the other
13 area I had mentioned?

14 MS. NICKELSON: Documents, the items not at issue
15 in this case and the third, post sale action.

16 MR. LOWERY: Post sale, right. Those are the three
17 main issues. The rest of it I don't have a problem.
18 Those are my three main issues. Thank you.

19 THE COURT: So we will be here tomorrow morning.
20 Anything else?

21 MR. WATHEN: No, your Honor.

22 THE COURT: See you folks in the morning.

23 MR. LOWERY: Thank you, Judge.

24 (Trial adjourned to Friday, February 21,

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2014 at 9 a.m.)

1 IN THE CIRCUIT COURT
2 THIRD JUDICIAL CIRCUIT
3 MADISON COUNTY, ILLINOIS

4 I, Christy Streicher, CSR# 084-002682, an Official
5 Court Reporter for the Circuit Court of Madison County,
6 Third Judicial Circuit of Illinois, reported in machine
7 shorthand the proceedings had on the trial in the
8 above-entitled cause and transcribed the same by
9 Computer Aided Transcription, which I hereby certify to
10 be a true and accurate transcript of the proceedings had
11 before Associate Judge Steve Stobbs.

12
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14
15 *Christy Streicher*
16 -----
17 Official Court Reporter

18 DATED this 21st day
19 of February , 20 14

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