

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPOSITION ROUTING RECORD
LOGGED BY SL / SKALC DISCOVERY FILE COPY / FILE COPY FOR _____

JACK L. SCHWARTZ, ET AL.,)

PLAINTIFFS,)

VS.)

NO. C 465 912

UNION CARBIDE CORPORATION,)

ETC. ET AL.,)

DEFENDANTS.)

RECEIVED

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GREENE O'REILLY
BROUILLET ET AL

DEPOSITION OF: ALLAN HARVEY

TAKEN ON: MAY 27, 1987

VOLUME II: PAGES 228 - 429

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REPORTED BY:
DIANNE JONES, CSR NO. 3328
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FILE NO.: 7-3294-1

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DEPOSITION OF ALLAN HARVEY, VOLUME II TAKEN
AT 816 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA,
COMMENCING AT 9:15 A.M., ON WEDNESDAY, MAY 27, 1987,
BEFORE DIANNE JONES, CSR NO. 3328, REGISTERED
PROFESSIONAL REPORTER, A NOTARY PUBLIC IN AND FOR
THE STATE OF CALIFORNIA, PURSUANT TO STIPULATION.

APPEARANCES OF COUNSEL:

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I N D E X

WITNESS:

EXAMINATION

ALLAN HARVEY - VOLUME II

(BY MS. EISENSTEIN)

233

EXHIBITS:

PLAINTIFF'S

DESCRIPTION

IDENTIFIED

9	MORTALITY STUDY	286
10	OCCUPATIONAL EXPOSURES TO NON-ASBESTIFORM TALC IN VERMONT	287
11	BIOLOGIC TESTS OF TREMOLITE IN HAMSTERS	288
12	PROCEEDINGS OF THE SYMPOSIUM ON TALC, WASHINGTON, D.C. MAY 8, 1973	299
13	STOMACH CANCER AMONG RUBBER WORKERS: AN EPIDEMIOLOGICAL INVESTIGATION	303
14	RESPIRATORY MORBIDITY AMONG MINERS AND MILLERS OF ASBESTIFORM TALC	305
15	LETTER DATED JULY 20	314
16	INTER-OFFICE MEMORANDUM	322
17	MEMO RE MINUTES OF MEETING IN TOMA OFFICES	329

1 EXHIBITS (CONTINUED):

2

3	<u>PLAINTIFF'S</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
4	18	COMMENTS OF NIOSH TECHNICAL REPORT	330
5	19	TYPEWRITTEN TRANSCRIPTION OF TELEVISION NEWS	333
6	20	DOCUMENT ENTITLED "A MATTER OF FACT"	343
7	21	LETTER DATED APRIL 22, 1980	346
8	22	DOCUMENT ENTITLED BORG WARNER CASE	356
9	23	LETTER DATED APRIL 1, 1977	365
10	24	TECHNICAL DATA SHEET ENTITLED FIBERTAL	367
11	25	LETTER DATED MARCH 26, 1980	372
12	26	REPLY MESSAGE DATED MARCH 27, 1980	374
13	27	LETTER DATED AUGUST 8, 1978 TO BENJAMIN MINTZ	377
14	28	LETTER TO THE HONORABLE RICHARD STONE	379
15	29	LETTER DATED MARCH 14, 1977 TO THE HONORABLE F. RAY MARSHALL	385
16	30	LETTER DATE STAMPED JANUARY 19, 1977 TO H. B. VANDERBILT	387
17	31	LETTER DATED MARCH 1, 1977 TO G.E. ERDMAN	389
18	32	OSHA MATERIAL REGULATION UPDATE	392
19	33	LETTER DATED JULY 30, 1980 TO JAMES SCHIRRIPIA	397
20	34	ASBESTOS IN YOUR FUTURE	401
21	35	OSHA TALC STANDARDS IS 'TIME BOMB' FOR INDUSTRY	402
22			

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2
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EXHIBITS (CONTINUED):

<u>PLAINTIFF'S</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
36	LETTER DATE STAMPED JANUARY 27, 1981	404
37	LETTER DATED 18TH DECEMBER, 1980	404
38	INTER-OFFICE MEMORANDUM DATED SEPTEMBER 1, 1981	408
39	LETTER DATED NOVEMBER 12, 1980 TO RUSSELL HARLEY, M.D.	410
40	MEMORANDUM FOR REGIONAL ADMINISTRATORS AND AREA DIRECTORS	411
41	LETTER DATED FEBRUARY 16, 1977 TO GUY DRIVER, JR.	413
42	LETTER DATED JULY 13, 1976 TO HOWARD STEPHENS	414
43	SAMPLE IDENTIFICATION SHEET	415
44	SAMPLE IDENTIFICATION SHEET	415
45	LETTER DATED OCTOBER 9, 1974 TO H.B. VANDERBILT	416
46	LETTER DATED JANUARY 2, 1975	420
47	LETTER DATED MAY 20, 1975 TO HOWARD SHULTE	427

INFORMATION REQUESTED:

NONE.

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2
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ALLAN HARVEY,

CALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
WAS EXAMINED AND TESTIFIED FURTHER AS FOLLOWS:

EXAMINATION (CONTINUED)

BY MS. EISENSTEIN:

Q. GOOD MORNING, MR. HARVEY, NICE TO SEE YOU AGAIN.
HAVE YOU CHANGED YOUR RESIDENCE ADDRESS SINCE THE LAST
SESSION OF YOUR DEPOSITION?

A. NO.

Q. DO YOU HAVE ANY INTENTION OF MOVING IN THE NEAR
FUTURE?

A. NO.

Q. I'M GOING TO DISPENSE WITH THE ADMONITION. I
KNOW YOU HAVE GONE THROUGH THIS MANY TIMES BEFORE AND THIS
IS THE SECOND SESSION OF YOUR DEPOSITION. I WILL JUST SAY
YOU ARE UNDER OATH AND THAT IF ANY OF MY QUESTIONS ARE
CONFUSING, WHICH THEY VERY WELL MIGHT BE, PLEASE LET ME
KNOW AND I WILL REPHRASE THEM, OR TRY TO.

HAVE YOU REVIEWED ANY DOCUMENTS IN PREPARATION
FOR TODAY'S DEPOSITION?

A. YES.

Q. WHAT HAVE YOU REVIEWED?

A. THE TESTIMONY FROM THE LAST DEPOSITION.

Q. ANYTHING OTHER THAN THE FIRST SESSION OF YOUR

1 DEPOSITION?

2 A. YES. THE LOPEZ DEPOSITION THAT WAS TAKEN SOME
3 YEARS AGO.

4 Q. ANYTHING ELSE?

5 A. NO.

6 Q. HAVE YOU HAD YOUR DEPOSITION TAKEN SINCE OCTOBER
7 9, 1986?

8 A. NOT THAT I AM AWARE OF.

9 Q. HAVE YOU TESTIFIED IN TRIAL SINCE OCTOBER 9,
10 1986?

11 A. NO.

12 Q. HAVE YOU TESTIFIED AT ANY REGULATORY HEARINGS
13 SINCE OCTOBER 9, 1986?

14 A. NO.

15 Q. ANY ADMINISTRATIVE OR LEGISLATIVE HEARINGS?

16 A. NO.

17 Q. I WANT TO START OUT BY JUST CLARIFYING A FEW
18 POINTS THAT I WAS CONFUSED ON FROM YOUR LAST SESSION. AT
19 THE PRESENT TIME HOW MANY MINES DOES -- IS IT GOUVERNEUR
20 TALC COMPANY; IS THAT THE PARENT COMPANY'S NAME?

21 A. THE PARENT COMPANY IS THE R.T. VANDERBILT
22 COMPANY, AND THE GOUVERNEUR TALC COMPANY IS A SUBSIDIARY.

23 Q. HOW MANY MINES IN NEW YORK STATE DOES THE R.T.
24 VANDERBILT COMPANY HAVE AT THE PRESENT TIME?

25 A. DO YOU MEAN THAT THEY ARE WORKING?

1 Q. WORKING MINES, YES.

2 A. AS FAR AS I KNOW THERE ARE TWO WORKING MINES
3 HAVING TO DO WITH TALC. YOU ARE SPEAKING ABOUT TALC?

4 Q. YES.

5 A. TWO.

6 Q. HOW LONG HAVE THOSE MINES BEEN IN EXISTENCE,
7 WORKING MINES?

8 A. ONE MINE, WHICH WE CALL THE NO. 1 MINE, WAS
9 BROUGHT INTO PRODUCTION APPROXIMATELY 1948. THE OTHER MINE,
10 WHICH I BELIEVE THEY CALL THE NO. 2 MINE, WHICH IS KNOWN AS
11 THE OPEN PIT, HAD BEEN WORKED BY VANDERBILT SINCE 1974.
12 HOW SOON BEFORE THAT IT WAS OPEN, STARTED AND USED, I DON'T
13 KNOW.

14 Q. WAS THAT MINE PURCHASED FROM ANOTHER COMPANY IN
15 1974?

16 A. YES.

17 Q. WHAT COMPANY WAS THAT?

18 A. INTERNATIONAL TALC.

19 Q. BOTH THOSE MINES ARE PRESENTLY IN OPERATION?

20 A. AS FAR AS I KNOW.

21 Q. HAVE EITHER ONE OF THOSE MINES, TO YOUR
22 KNOWLEDGE, BEEN CLOSED DOWN FOR MORE THAN A PERIOD OF A
23 MONTH SINCE THEY WERE OPENED?

24 A. I AM NOT AWARE OF ANY CLOSING.

25 Q. DID R.T. VANDERBILT AT ONE TIME HAVE A THIRD

1 MINE?

2 A. TALC MINE?

3 Q. YES.

4 A. YES.

5 Q. WHEN WAS THAT MINE IN OPERATION?

6 A. BY VANDERBILT THAT MINE WE CALL NO. 3 MINE WAS
7 IN OPERATION AFTER JUNE OR JULY OF 1974, AT WHICH TIME HE
8 PURCHASED IT FROM INTERNATIONAL TALC COMPANY. IT WAS IN
9 OPERATION ABOUT A YEAR AND A HALF.

10 Q. TO APPROXIMATELY 1976, 1975, 1976?

11 A. APPROXIMATELY '76, SOMETIME IN 1976. THAT COULD
12 BE PLUS OR MINUS YEARS.

13 Q. WHY WAS THAT MINE CLOSED DOWN?

14 A. BECAUSE THE PRODUCT FROM THAT MINE DROPPED OFF
15 IN SALES VOLUME.

16 Q. WAS THE PRODUCT FROM THAT MINE TALC?

17 A. YES.

18 Q. WAS IT FOUND TO CONTAIN ASBESTOS?

19 MR. SMITH: OBJECT TO THE QUESTION, COUNSEL. THAT IS
20 IRRELEVANT TO THE SUBJECT MATTER OF THIS LAWSUIT, NOT
21 REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF
22 ADMISSIBLE EVIDENCE. I THINK IF YOU WANT TO GO INTO THAT
23 MINE, YOU OUGHT TO ESTABLISH THE PRODUCT FROM THAT MINE IS
24 AT ISSUE. I DON'T BELIEVE IT IS.

25 MS. EISENSTEIN: ARE YOU INSTRUCTING THE WITNESS NOT

1 TO ANSWER?

2 MR. SMITH: IF YOU WANT HIM TO TESTIFY ABOUT THAT MINE
3 WITHOUT LAYING A FOUNDATION, YES, I DO.

4 MS. EISENSTEIN: WELL, COUNSEL -- ALL RIGHT, OKAY.

5 ARE YOU GOING TO FOLLOW -- CAN WE GET A
6 STIPULATION, ANY INSTRUCTION THE WITNESS WILL FOLLOW?

7 MR. SMITH: SO STIPULATED.

8 BY MS. EISENSTEIN: Q. SO TWO MINES WERE PURCHASED
9 FROM INTERNATIONAL TALC; IS THAT CORRECT?

10 A. TWO TALC MINES.

11 Q. TWO TALC MINES, OKAY.

12 HAVE YOU EVER STATED PUBLICLY THAT THE REASON
13 THAT THIRD MINE WAS CLOSED WAS BECAUSE ASBESTOS WAS FOUND
14 TO BE PRESENT IN THE TALC IN THAT MINE?

15 A. I DON'T KNOW. I CAN'T RECALL.

16 Q. IS IT YOUR UNDERSTANDING AS YOU SIT HERE TODAY
17 THAT ASBESTOS WAS PRESENT IN THE TALC FROM THAT THIRD MINE?

18 MR. SMITH: I'M GOING TO POSE THE SAME OBJECTION I
19 POSED BEFORE. THIS LACKS FOUNDATION, CALLS FOR SPECULATION
20 ON THE PART OF THIS WITNESS, IS IRRELEVANT TO THE SUBJECT
21 MATTER OF THIS LAWSUIT, AND NOT REASONABLY CALCULATED TO
22 LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE. WITH THAT
23 OBJECTION ON THE RECORD, I WILL NOT INSTRUCT HIM NOT TO
24 ANSWER. YOU MAY ANSWER THE QUESTION, AL, IF YOU KNOW.

25 THE WITNESS: REPEAT THE QUESTION, PLEASE.

1 (RECORD READ.)

2 THE WITNESS: AT THIS TIME I DON'T KNOW WHETHER THERE
3 WAS ASBESTOS IN THERE OR NOT.

4 BY MS. EISENSTEIN: Q. AT SOME POINT IN TIME WAS IT
5 YOUR BELIEF THAT THERE WAS ASBESTOS PRESENT IN THE TALC
6 MINE FROM THAT THIRD MINE?

7 A. YES.

8 Q. WAS THE TALC FROM THAT MINE LABELED WITH AN
9 ASBESTOS WARNING LABEL?

10 MR. SMITH: ARE YOU GOING TO LIMIT THIS TO TIME OR DO
11 YOU CARE?

12 BY MS. EISENSTEIN: Q. AT ANY TIME?

13 A. YES.

14 MR. SMITH: LET ME JUST PUT AN OBJECTION ON THE RECORD
15 HERE SO I WON'T HAVE TO INTERRUPT YOU EVERY TWO MINUTES.
16 OBJECT TO THIS ENTIRE LINE OF QUESTIONING AND ANYTHING
17 REGARDING THIS MINE IN THAT IT LACKS FOUNDATION, IRRELEVANT
18 TO THE SUBJECT MATTER OF THIS LAWSUIT AND NOT REASONABLY
19 CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE,
20 AND THERE HAS NEVER BEEN ANY FACT ESTABLISHED THIS MINE HAS
21 ANYTHING TO DO WHATSOEVER WITH THIS CASE OR THE INJURIES
22 ALLEGEDLY SUSTAINED BY YOUR CLIENT. AND THAT OBJECTION
23 GOES TO ANY QUESTION REGARDING THIS MINE OR THE PRODUCT
24 THAT CAME OUT OF IT.

25 MS. EISENSTEIN: FINE.

1 Q. SIR, DO YOU HAVE ANY KNOWLEDGE AS TO WHY THE
2 DEMAND FOR THE TALC MINE FROM THIS THIRD MINE DROPPED?

3 A. I CAN ONLY GUESS AT WHY.

4 MR. SMITH: I DON'T WANT YOU TO GUESS, AND I'M SURE
5 MISS EISENSTEIN DOESN'T WANT YOU TO GUESS, EITHER.

6 THE WITNESS: THEN I DON'T KNOW FOR SURE.

7 BY MS. EISENSTEIN: Q. HAVE YOU EVER STATED PUBLICLY
8 THAT R.T. VANDERBILT LOST BUSINESS DUE TO THE FACT THAT
9 CUSTOMERS BELIEVED THERE WAS ASBESTOS IN SOME OF THE R.T.
10 VANDERBILT TALC PRODUCTS?

11 A. GO THROUGH THAT WHOLE QUESTION AGAIN, PLEASE. I
12 MISSED THE BEGINNING.

13 Q. LET ME TRY AND CLEAN IT UP A LITTLE BIT FOR YOU.
14 HAVE YOU EVER STATED PUBLICLY THAT THE COMPANY
15 WAS LOSING BUSINESS BECAUSE CUSTOMERS WERE CONCERNED ABOUT
16 THE FACT THAT ASBESTOS WAS FOUND IN SOME OF THE TALC
17 PRODUCTS?

18 A. I DON'T THINK I HAVE USED THOSE WORDS.

19 Q. HAVE YOU SAID ANYTHING SIMILAR TO THAT?

20 A. WHEN YOU SAY SOME OF THE TALC PRODUCTS, ARE YOU
21 TALKING ABOUT SOME OR ALL OF VANDERBILT'S TALC PRODUCTS?

22 Q. YES.

23 A. IN THE CASE OF PRODUCTS FROM MINE NO. 3, I MAY
24 HAVE SAID THAT THE WARNING LABEL WHICH INDICATES ASBESTOS
25 MAY HAVE CONTRIBUTED TO THE LOWERING OF THE SALES VOLUME.

1 Q. IN 1976 WAS A DECISION MADE BY THE COMPANY TO
2 STOP MINING THAT PARTICULAR MINE, MINE NO. 3?

3 A. YES. APPROXIMATELY IN 1976, PLUS OR MINUS A
4 YEAR.

5 Q. IN YOUR MIND DOES IT HAVE ANYTHING TO DO WITH
6 THE FACT THAT THAT PRODUCT FROM THAT MINE WAS LABELED WITH
7 AN ASBESTOS WARNING LABEL?

8 A. IN MY MIND I WOULD HAVE TO ASSUME THAT THE LABEL
9 HAD A LOT TO DO WITH THE LOWERING IN VOLUME OF THE SALES
10 WHICH WOULD LEAD TO ABANDONING A MINE NO MATTER WHAT THE
11 COST WAS. THE LOWERING OF SALES, THE SALES VOLUME DROPS
12 OFF, YOU HAVE TO DO SOMETHING.

13 Q. MINE NO. 1, DO YOU BELIEVE THAT THAT MINE
14 CONTAINS ANY FIBROUS MINERALS?

15 MR. SMITH: OBJECT THAT THE QUESTION, LACKS FOUNDATION,
16 CALLS FOR SPECULATION.

17 THE WITNESS: SAY THAT AGAIN NOW.

18 MS. EISENSTEIN: PLEASE REPEAT THAT QUESTION.

19 (RECORD READ.)

20 THE WITNESS: I DON'T BELIEVE IT DOES.

21 BY MS. EISENSTEIN: Q. HOW ABOUT MINE NO. 2?

22 MR. SMITH: SAME OBJECTION.

23 THE WITNESS: I DON'T BELIEVE MINE NO. 2 DOES.

24 BY MS. EISENSTEIN: Q. HAVE YOU EVER CHARACTERIZED
25 ONE OF THOSE MINES AS A MINE THAT PRODUCES NON-ASBESTIFORM

1 TALC AS OPPOSED TO THE OTHER MINE WHICH HAS FIBROUS --

2 A. ARE YOU TALKING ABOUT ALL THREE MINES?

3 Q. NO, JUST TALKING ABOUT ONE AND TWO NOW.

4 A. ONE AND TWO?

5 Q. YES.

6 A. NO. 1 MINE, NO. 2 MINE?

7 Q. YES.

8 A. PLEASE REPEAT THE QUESTION.

9 Q. LET ME ASK IT THIS WAY: HAVE YOU EVER
10 CHARACTERIZED THOSE TWO MINES, ONE AND TWO, HAVE YOU EVER
11 DIFFERENTIATED THEM BY SAYING ONE HAD FIBROUS TALC AND THE
12 OTHER WAS NOT FIBROUS?

13 A. YES.

14 Q. WHICH MINE IS CONSIDERED THE ONE THAT DOES NOT
15 CONTAIN FIBERS?

16 MR. SMITH: I THINK THAT MISCHARACTERIZES HIS
17 TESTIMONY.

18 BY MS. EISENSTEIN: Q. WHICH ONE IS NON-ASBESTIFORM?

19 MR. SMITH: THAT MISCHARACTERIZES HIS TESTIMONY, AS
20 WELL.

21 BY MS. EISENSTEIN: Q. EXPLAIN TO ME THEN THE
22 DIFFERENCE BETWEEN THE TWO MINES.

23 MR. SMITH: ASK HIM A SPECIFIC QUESTION.

24 BY MS. EISENSTEIN: Q. SIR, IS THERE A DIFFERENCE
25 BETWEEN THE COMPOSITION OF THE TALC IN MINE NO. 1 AND MINE

1 NO. 2?

2 A. YES.

3 Q. WHAT IS THAT DIFFERENCE?

4 A. I'M NOT QUALIFIED TO GO INTO THE MINERALOGY OF
5 THE TWO PRODUCTS. THERE ARE DIFFERENCES, I AM TOLD THERE
6 ARE DIFFERENCES, BUT I'M NOT QUALIFIED TO GO INTO
7 MINERALOGY.

8 Q. WHAT IS YOUR TITLE WITH THE COMPANY, SIR?

9 A. I AM NO LONGER WORKING FOR THE COMPANY. I AM A
10 CONSULTANT FOR THE COMPANY.

11 Q. WHEN DID YOU STOP WORKING FOR THE COMPANY?

12 A. OCTOBER 31 OF 1986.

13 MR. RACE: OCTOBER?

14 THE WITNESS: OCTOBER 31, 1986.

15 BY MS. EISENSTEIN: Q. SO NOW YOU JUST WORK AS A
16 CONSULTANT?

17 A. YES.

18 Q. UP UNTIL OCTOBER 31, 1986, WERE YOU THE DIRECTOR
19 OF ENVIRONMENTAL AFFAIRS?

20 A. YES.

21 Q. HOW LONG HAD YOU BEEN DIRECTOR OF ENVIRONMENTAL
22 AFFAIRS?

23 MR. SMITH: ASKED AND ANSWERED. COUNSEL, YOU WENT
24 INTO THIS ENTIRE HISTORY IN YOUR LAST DEPOSITION.

25 MS. EISENSTEIN: NO.

1 Q. HOW MANY YEARS WOULD YOU SAY, SIR?

2 MR. SMITH: INSTRUCT HIM NOT TO ANSWER. YOU HAVE
3 ALREADY BEEN OVER THIS. READ THE DEPOSITION YOURSELF.

4 MR. NISHIMURA: IT WAS COVERED IN EXCRUCIATING DETAIL.

5 MS. EISENSTEIN: YOU ARE SO FRIENDLY TODAY.

6 Q. SIR, DO YOU BELIEVE YOU ARE QUALIFIED TO DISCUSS
7 THE TALC PRODUCTS MINED AND SOLD BY R.T. VANDERBILT COMPANY?

8 MR. SMITH: IN WHAT SENSE, COUNSEL?

9 MS. EISENSTEIN: THE COMPOSITION OF THE TALC PRODUCTS.

10 MR. SMITH: MINERALOGICAL, IS THAT WHAT YOU ARE
11 TALKING ABOUT?

12 BY MS. EISENSTEIN: Q. YES.

13 A. I DON'T THINK I AM QUALIFIED TO TALK ABOUT THE
14 MINERAL COMPOSITION, MINERALOGICAL COMPOSITION OF THOSE
15 TALCS.

16 Q. HAVE YOU EVER TESTIFIED REGARDING THE MINERAL
17 COMPOSITION OF THOSE TALC PRODUCTS?

18 A. I MAY HAVE, BUT ONLY IN A VAGUE SORT OF A WAY,
19 NOT IN DETAIL.

20 Q. TO YOUR KNOWLEDGE DOES MINE NO. 1 CONTAIN
21 NON-ASBESTIFORM MINERALS?

22 A. YES.

23 Q. MINE NO. 2 CONTAINS A PERCENTAGE OF ASBESTIFORM
24 MINERALS?

25 A. MINE NO. 2 ALSO CONTAINS A PERCENTAGE OF

1 NON-ASBESTIFORM MINERALS.

2 Q. DOES IT ALSO CONTAIN A PERCENTAGE OF ASBESTIFORM
3 MINERALS?

4 MR. SMITH: IF YOU KNOW?

5 THE WITNESS: I DON'T KNOW IF IT CONTAINS ASBESTIFORM
6 MINERALS.

7 BY MS. EISENSTEIN: Q. BUT YOU ARE SURE MINE NO. 1
8 DOES NOT?

9 MR. SMITH: IF YOU KNOW.

10 MS. EISENSTEIN: I THINK HE JUST STATED THAT.

11 THE WITNESS: I'M NOT ABSOLUTELY SURE OF THAT EITHER.

12 BY MS. EISENSTEIN: Q. HAVE YOU EVER STATED PUBLICLY
13 MINE NO. 1 DOES NOT CONTAIN ANY SIGNIFICANT AMOUNT OF
14 ASBESTIFORM MINERALS?

15 A. YES, I THINK I MADE THAT STATEMENT.

16 Q. IS MINE NO. 1 THE MINE THAT NIOSH DID THEIR
17 STUDY, THE ONE THAT I THINK BEGAN IN 1975 AND WAS PRESENTED
18 IN 1979 OR '80?

19 A. NO. THEY COVERED BOTH --

20 Q. BOTH MINES?

21 A. THE PRODUCTS FROM BOTH MINES.

22 Q. THE MORTALITY STUDY THAT WAS DONE BY NIOSH, WAS
23 THAT DONE ON BOTH MINES?

24 MR. SMITH: DO YOU KNOW WHAT STUDY SHE IS REFERRING TO?

25 THE WITNESS: I THINK I DO, THE NIOSH STUDY, THAT

1 MORTALITY STUDY WAS DONE ON THE WORKERS IN BOTH MINES.

2 BY MS. EISENSTEIN: Q. AND THE MORBIDITY STUDY, WOULD
3 THAT BE THE SAME?

4 A. YES.

5 Q. AND THE INDUSTRIAL HYGIENE STUDY WAS DONE ON
6 TALC FROM BOTH MINE NO. 1 AND NO. 2?

7 A. IN ESSENCE YES, BECAUSE THE INDUSTRIAL HYGIENE
8 STUDY COVERED BOTH THE NO. 1 MINE AND NO. 2 MINE, NO. 1
9 MILL, NO. 2 MILL OR WHATEVER THAT MILL WAS THAT WAS MILLING
10 OVER THERE.

11 Q. OKAY.

12 A. COVERED THE WORKERS IN IT.

13 Q. OKAY. I'D LIKE TO FOCUS ON MINE NO. 1 FOR A
14 MOMENT. TO YOUR KNOWLEDGE HOW MANY STUDIES HAVE BEEN DONE
15 IN WHICH MINERS FROM MINE NO. 1 WERE INCLUDED IN A MEDICAL
16 STUDY OF SOME SORT?

17 A. TO MY KNOWLEDGE ABOUT THREE.

18 Q. CAN YOU TELL ME WHEN THE FIRST ONE WAS, PLEASE?

19 A. THE FIRST ONE WOULD BE THE STUDY DONE BY
20 DR. KLEINFELD THAT WAS REPORTED IN HIS 1973 PUBLICATION IN
21 I BELIEVE IT WAS THE JOURNAL OF INDUSTRIAL HYGIENISTS
22 ASSOCIATION. I'M NOT SURE OF THAT.

23 Q. DO YOU KNOW WHAT THE CONCLUSION OF THAT STUDY
24 WAS?

25 MR. SMITH: WELL, OBJECT TO IT. LACKS FOUNDATION,

1 CALLS FOR SPECULATION.

2 BY MS. EISENSTEIN: Q. JUST WHAT YOU KNOW, SIR.

3 A. IN GENERAL -- LET ME THINK. 1973. I CAN'T
4 RECALL WHAT THE CONCLUSIONS ARE. I WOULD HAVE TO REFRESH
5 MY MEMORY ON THAT.

6 Q. WHEN DID YOU FIRST BECOME AWARE OF THE FACT THAT
7 DR. KLEINFELD HAD DONE A STUDY REGARDING THE WORKERS OF
8 MINE NO. 1?

9 A. I WOULD SAY THAT I FIRST BECAME AWARE OF THAT
10 WHEN I BELIEVE -- I BELIEVE WHEN THAT PUBLICATION WAS
11 AVAILABLE TO ME, WHICH WOULD BE SOMETIME DURING 1973.

12 Q. DO YOU HAVE ANY KNOWLEDGE AS TO WHETHER OR NOT
13 DR. KLEINFELD HAD PERMISSION FROM ANYONE AT R.T. VANDERBILT
14 TO DO THAT STUDY?

15 A. IT'S OBVIOUS THAT IF A STUDY IS MADE OF WORKERS
16 IN A MINE THEY WOULD HAVE TO HAVE PERMISSION.

17 Q. DO YOU KNOW WHO DR. KLEINFELD CONTACTED FROM
18 R.T. VANDERBILT TO GET PERMISSION TO DO THE STUDY?

19 A. NO, I DON'T.

20 Q. DO YOU KNOW WHETHER ANYONE AT THE COMPANY WAS
21 AWARE OF THE STUDY WHILE IT WAS IN PROGRESS?

22 A. IT WAS OBVIOUS SOMEONE WOULD HAVE TO KNOW
23 BECAUSE THESE PEOPLE PHYSICALLY GO INTO THE MINE AND THEY
24 ARE NOT EMPLOYEES.

25 Q. DO YOU KNOW WHO WAS INVOLVED WITH DR. KLEINFELD

1 FROM VANDERBILT IN FACILITATING THE STUDY?

2 A. NO, I DON'T.

3 Q. HOW DID YOU BECOME AWARE IN 1973 OF

4 DR. KLEINFELD'S STUDY?

5 A. I DON'T KNOW EXACTLY HOW THAT PUBLICATION

6 REACHED MY DESK.

7 Q. DID YOU HAVE ANY DISCUSSIONS WITH ANYONE FROM

8 THE COMPANY REGARDING THAT STUDY?

9 A. YES.

10 Q. WHO CAN YOU REMEMBER HAVING DISCUSSED THAT STUDY

11 WITH?

12 MR. SMITH: AT ANY TIME? ARE WE TALKING SINCE THE

13 STUDY CAME OUT NOW?

14 BY MS. EISENSTEIN: Q. YES.

15 A. I PROBABLY DISCUSSED THAT PARTICULAR STUDY WITH

16 EVERYBODY IN MY COMPANY THAT HAD ANYTHING TO DO WITH THIS

17 WHOLE TALC-TOXICITY SITUATION, WHICH WOULD BE FROM THE

18 PRESIDENT ON DOWN.

19 Q. EVERYONE WAS INVOLVED IN THIS TALC CONTROVERSY,

20 AS I BELIEVE IT'S BEEN CALLED?

21 A. NOT EVERYBODY IN THE COMPANY, BUT MANY PEOPLE

22 WERE.

23 Q. IS IT YOUR UNDERSTANDING THAT THE PRESIDENT OF

24 THE COMPANY AT THAT TIME -- WHICH WAS MR. VANDERBILT; IS

25 THAT CORRECT?

1 A. YES.

2 Q. -- WAS AWARE OF THE KLEINFELD STUDY?

3 A. I'M SURE HE WAS.

4 Q. WOULD YOU SAY THAT THE EXECUTIVE OFFICERS AT
5 VANDERBILT WERE AWARE OF THE KLEINFELD STUDY?

6 MR. SMITH: OBJECT, IT CALLS FOR SPECULATION.

7 THE WITNESS: I WOULD SAY THEY WERE PROBABLY AWARE OF
8 IT BECAUSE IT WAS A FAVORABLE PAPER.

9 BY MS. EISENSTEIN: Q. IT WAS A FAVORABLE PAPER?

10 A. YES.

11 Q. DO YOU HAVE ANY RECOLLECTION AS TO WHY IT WAS A
12 FAVORABLE PAPER?

13 A. I DON'T KNOW THE DETAILS, AS I SAID BEFORE, SO I
14 CAN'T ANSWER THAT QUESTION.

15 Q. DID DR. KLEINFELD DO ANY OTHER STUDIES, TO YOUR
16 KNOWLEDGE, REGARDING ANY OF THE MINES AT VANDERBILT?

17 A. ANY OF THE MINES AT VANDERBILT?

18 MR. SMITH: WE ARE OBVIOUSLY REFERRING ONLY TO TALC;
19 IS THAT CORRECT?

20 BY MS. EISENSTEIN: Q. YES.

21 A. ANY OF THE MINES OWNED BY VANDERBILT?

22 Q. RIGHT.

23 A. TALC MINES.

24 Q. YES.

25 A. NOT OTHER THAN THAT ONE.

1 Q. ARE YOU AWARE OF DR. KLEINFELD HAVING DONE
2 STUDIES ON TALC MINES IN NEW YORK STATE?

3 A. YES.

4 Q. WHAT IS YOUR UNDERSTANDING OF WHOSE TALC MINES
5 THOSE WERE?

6 A. MY UNDERSTANDING IS THAT HE DID HEALTH STUDIES
7 OF ONE TYPE OR ANOTHER ON EMPLOYEES OF SEVERAL TALC MINES
8 IN THAT AREA, ONE OF WHICH WOULD BE THE INTERNATIONAL TALC
9 COMPANY'S MINE THAT WAS LATER PURCHASED BY VANDERBILT
10 COMPANY, NOW KNOWN AS THE NO. 2 MINE.

11 Q. WHEN WAS THE STUDY DONE OF THE NO. 2 MINE, THIS
12 ONE YOU JUST REFERRED TO?

13 MR. SMITH: IF YOU KNOW?

14 THE WITNESS: DR. KLEINFELD AS DIRECTOR OF THE
15 DEPARTMENT OF INDUSTRIAL HYGIENE FROM THE STATE OF NEW YORK
16 BEGAN HIS INVESTIGATIONS OF THE HEALTH OF THE MINERS, TALC
17 MINERS IN THAT PART OF THE STATE PROBABLY IN THE 1950'S AND
18 HE PUBLISHED A SERIES OF RESULTS OF THESE HEALTH STUDIES
19 THAT LASTED FROM ABOUT APPROXIMATELY THE END OF THE '50S OR
20 START OF THE 1960'S TO 1974 WHICH WAS HIS LAST PUBLICATION
21 THAT I AM AWARE OF IN CONNECTION WITH THE HEALTH OF THE
22 TALC -- THE TALC WORKERS FROM THAT PART OF THE COUNTRY.

23 BY MS. EISENSTEIN: Q. I UNDERSTAND, SIR. DO YOU
24 KNOW WHEN HE SPECIFICALLY DID THE STUDY, THE HEALTH STUDY
25 ON MINE NO. 2?

1 A. BEFORE -- THAT MINE, NO. 2 AND POSSIBLY NO. 3,
2 HAD BEEN IN OPERATION FOR ABOUT 100 YEARS. HE WOULD START --
3 THE ONLY TALC MINES THAT HE WOULD HAVE -- THE ONLY TALC
4 MINES WITH WORKERS IN THEM FOR THEM TO STUDY WOULD BE THOSE
5 TALC MINERS FROM THE NO. 2 OR 3 OR WHATEVER ELSE WAS THERE
6 50 YEARS AGO THAT WAS STILL IN OPERATION WHEN HE STARTED
7 HIS WORK IN 1955 OR '2 OR '3, WHATEVER IT WAS.

8 MR. SMITH: AL, I DON'T KNOW IF YOU HEARD HER QUESTION.
9 HER QUESTION TO YOU WAS VERY SPECIFIC. IT WAS DO YOU KNOW
10 WHEN HE MADE HIS STUDY OF MINE NO. 2, THE WORKERS WHO
11 WORKED IN MINE NO. 2?

12 THE WITNESS: HE MADE MORE THAN ONE STUDY.

13 BY MS. EISENSTEIN: Q. WHEN WAS THE FIRST ONE DONE OF
14 MINE NO. 2?

15 A. I DON'T KNOW EXACTLY, BUT I SAID BEFORE IT WAS
16 IN THE LATE '50S OR EARLY '60'S.

17 Q. WHAT IS YOUR UNDERSTANDING OF HOW MANY STUDIES
18 HE DID ON MINE NO. 2?

19 A. HE HAD MORE OR LESS AN ONGOING STUDY THAT WAS
20 FINISHED WITH HIS STUDY REPORTED IN 1974.

21 Q. NOW THAT IS A DIFFERENT ONE THAN THE STUDY DONE
22 ON MINE NO. 1 IN '73?

23 A. YES.

24 Q. IT IS, OKAY.

25 WHAT WAS THE CONCLUSION THAT HE REACHED, IF YOU

1 KNOW, OF THE STUDY IN 1974?

2 MR. SMITH: WE ARE BACK TO MINE NO. 1 NOW, CORRECT?

3 BY MS. EISENSTEIN: Q. NO, WE ARE TALKING ABOUT MINE
4 NO. 2.

5 A. MINE NO. 2, THE 1974 PUBLICATION DEALT WITH
6 WORKERS FROM MINE NO. 2 IN GENERAL, NOT NO. 1, AND HERE
7 AGAIN MY MEMORY IS NOT GOOD ENOUGH. I WOULD HAVE TO
8 REFRESH IT. I DON'T KNOW EXACTLY WHAT THE CONCLUSIONS WERE.

9 Q. WOULD YOU CALL IT A FAVORABLE CONCLUSION?

10 A. I DON'T KNOW. FAVORABLE TO WHOM?

11 Q. YOU CALLED THE STUDY DONE ON MINE NO. 1 IN 1973
12 A FAVORABLE CONCLUSION?

13 A. FAVORABLE TO VANDERBILT, YES.

14 Q. WAS THE CONCLUSION ON THE 1974 STUDY OF MINE
15 NO. 2 A FAVORABLE CONCLUSION TO VANDERBILT?

16 A. VANDERBILT DIDN'T RUN THOSE MINES WHEN THE STUDY
17 WAS STARTED SO I DON'T REALLY REMEMBER.

18 Q. BUT VANDERBILT DID BUY THAT MINE IN 1974; IS
19 THAT RIGHT?

20 A. IN 1974, YES.

21 Q. AND THE STUDY CAME OUT IN '74?

22 A. IT WAS PUBLISHED IN 1974.

23 Q. WHEN DID YOU FIRST LEARN ABOUT THE PUBLISHED
24 1974 STUDY?

25 A. I DON'T KNOW.

1 Q. WOULD IT HAVE BEEN APPROXIMATELY AROUND THE TIME
2 THAT IT WAS PUBLISHED?

3 A. YES.

4 Q. DID YOU HAVE ANY DISCUSSIONS REGARDING THE 1974
5 STUDY WITH ANYONE AT VANDERBILT?

6 A. HERE AGAIN THE ANSWER TO THAT QUESTION WOULD BE
7 THE SAME AS THE ONE FOR THE 1973 STUDY.

8 Q. THAT YOU WOULD HAVE DISCUSSED IT WITH THE PRESIDENT?

9 A. FROM PRESIDENT ON DOWN. ALL THOSE PEOPLE WHO
10 HAD SOMETHING TO DO WITH THAT END OF THE BUSINESS, SELLING
11 IT, MAKING IT OR WHAT.

12 Q. WERE THERE ANY PRELIMINARY FINDINGS FROM THAT
13 1974 STUDY MADE KNOWN TO YOU IN THE COURSE OF THAT STUDY?

14 A. NO.

15 Q. WHEN WAS THE FIRST TIME YOU SAW A PUBLISHED
16 ARTICLE BY DR. KLEINFELD ON THE TALC MINES OF NEW YORK
17 STATE?

18 A. I DON'T KNOW.

19 Q. WOULD IT HAVE BEEN PRIOR TO 1973?

20 A. I DON'T KNOW THAT EITHER.

21 Q. WERE YOU AWARE FROM THE BEGINNING OF KLEINFELD'S
22 ONGOING STUDIES IN THE LATE 1950'S THAT HE WAS DOING
23 STUDIES ON TALC MINES IN NEW YORK STATE?

24 A. WAS I AWARE WHEN?

25 Q. FROM THE LATE '50S ON.

1 A. AS I SAID, I DON'T KNOW WHEN I FIRST BECAME
2 AWARE BUT IT WOULD HAVE TO BE AFTER 1972 BECAUSE I WAS NOT
3 IN THAT PART OF THE COMPANY, CONCERNED WITH THAT SORT OF
4 THING.

5 Q. WHEN I ASKED YOU HOW MANY STUDIES WERE DONE ON
6 MINE NO. 1, YOU SAID THERE WERE APPROXIMATELY THREE?

7 A. YES.

8 Q. THE FIRST ONE WAS THIS 1973 KLEINFELD STUDY?

9 A. YES.

10 Q. WHAT WAS THE SECOND ONE?

11 A. THE SECOND ONE WOULD BE THE NIOSH STUDY THAT WAS
12 PUBLISHED IN 1980.

13 Q. AND THAT INCLUDED MINE NO. 1 AND MINE NO. 2?

14 A. INCLUDED THE PEOPLE WHO WORKED IN BOTH MINES AND
15 BOTH MILLS.

16 Q. DID IT FOCUS ON MINE NO. 1?

17 MR. SMITH: IF YOU KNOW?

18 THE WITNESS: NOT THAT I AM AWARE OF.

19 BY MS. EISENSTEIN: Q. WHAT ABOUT THE THIRD STUDY?

20 A. THE THIRD STUDY WOULD BE THE TABERSHAW,
21 T-A-B-E-R-S-H-A-W OR TOMA, TOMA BEING AN ANTHOPHYLLITE,
22 TABERSHAW OCCUPATION STUDY ASSOCIATES.

23 Q. THAT WAS DONE ON MINE NO. 1?

24 A. NO, THAT WAS DONE ON THE WORKERS FROM BOTH MINE
25 NO. 1 AND MINE NO. 2 AND MILL NO. 1 AND MILL NO. 2.

1 Q. THE TABERSHAW STUDY WAS THE ONE THAT WAS A
2 RESPONSE TO THE NIOSH FINDINGS?

3 MR. SMITH: IS THIS A QUESTION OR STATEMENT, COUNSEL?

4 BY MS. EISENSTEIN: Q. IT'S A QUESTION.

5 A. YOU ARE ASKING ME IF IT WAS A RESPONSE? NO, IT
6 WAS NOT A RESPONSE.

7 Q. WHAT WAS THE PURPOSE OF THE TABERSHAW STUDY?

8 A. THE TABERSHAW STUDY WAS COMMISSIONED BY US
9 BECAUSE WE WANTED TO HAVE A PARALLEL STUDY GOING ON BY
10 PEOPLE WHO WE COMMISSIONED, PARALLEL TO THE NIOSH STUDY.
11 THIS IS A COMMON PRACTICE TODAY.

12 Q. WHY IS IT THAT YOU WANTED A PARALLEL STUDY?

13 MR. SMITH: COUNSEL, THIS HAS BEEN ASKED AND ANSWERED
14 IN THE LAST SESSION OF THE DEPOSITION. YOU WENT OVER THIS
15 IN GREAT DETAIL, AND I'M GOING TO INSTRUCT HIM NOT TO
16 ANSWER.

17 BY MS. EISENSTEIN: Q. HAVE WE DISCUSSED ALL THE
18 STUDIES THAT WERE DONE ON MINE NO. 1?

19 A. HERE AGAIN, ARE YOU TALKING ABOUT THE WORKERS IN
20 MINE NO. 1? YOU ARE TALKING ABOUT HEALTH STUDIES OF
21 WORKERS IN MINE NO. 1? IS THAT WHAT YOU ARE TALKING ABOUT?

22 Q. YES.

23 A. I WANT TO MAKE SURE WE ARE BOTH ON THE -- WHEN
24 YOU SAY MINE NO. 1, THERE COULD BE ALL KINDS OF STUDIES,
25 THERE COULD BE A MINERALOGICAL STUDY. YOU ARE TALKING

1 ABOUT THE HEALTH WORKERS OF MINE NO. 1?

2 Q. LET'S GO OVER THE QUESTION AGAIN.

3 A. WHAT WAS THE ORIGINAL.

4 Q. ASIDE FROM THE THREE STUDIES, KLEINFELD, NIOSH
5 AND TABERSHAW STUDIES THAT WE JUST DISCUSSED, HAVE ANY
6 OTHER STUDIES BEEN DONE REGARDING THE WORKERS IN MINE NO. 1?

7 A. HEALTH STUDIES.

8 Q. HEALTH STUDIES?

9 A. NOT TO MY KNOWLEDGE.

10 Q. IS A HEALTH STUDY THE SAME THING IN YOUR MIND AS
11 A MORBIDITY STUDY?

12 A. YES.

13 Q. IS IT THE SAME AS A MORTALITY STUDY?

14 A. YES, THAT CAN BE INCLUDED.

15 Q. IS THAT INCLUDED IN THE DEFINITION, YOUR
16 DEFINITION WHEN YOU GAVE ME THESE THREE -- MORBIDITY AND
17 MORTALITY AND INDUSTRIAL HYGIENE?

18 A. YES.

19 Q. HOW ABOUT INDUSTRIAL HYGIENE STUDIES, ARE THOSE
20 DIFFERENT THAN MORBIDITY AND MORTALITY STUDIES?

21 A. THEY ARE DIFFERENT, BUT THEY ALL COME UNDER THAT
22 GENERAL CATEGORY OF HEALTH SO THEY ARE RELATED.

23 Q. WHAT IS, IN YOUR MIND, THE DIFFERENCE BETWEEN AN
24 INDUSTRIAL HYGIENE STUDY AND MORBIDITY AND MORTALITY STUDY?

25 A. THOSE THREE TYPES OF STUDIES ARE ALL PART OF AN

1 EPIDEMIOLOGICAL STUDY.

2 Q. RIGHT.

3 A. EACH HAVE A CERTAIN ROLE TO PLAY.

4 Q. WHAT IS THE ROLE OF AN INDUSTRIAL HYGIENE STUDY?

5 A. THAT IS THE GATHERING OF INFORMATION CONCERNING

6 THE ATMOSPHERE THAT THE WORKERS ARE EXPOSED TO WHILE THEY

7 ARE AT WORK.

8 Q. WOULD THAT INCLUDE AIR SAMPLES?

9 A. YES.

10 Q. DOES IT INCLUDE BULK SAMPLES OF TALC?

11 A. YES.

12 Q. DOES IT INCLUDE ANYTHING ELSE, GENERALLY?

13 A. THE ANALYSIS OF THESE THINGS IS PART OF IT.

14 Q. BUT IS THE ANALYSIS BASED ON AIR SAMPLES AND

15 BULK SAMPLES OF A PRODUCT?

16 A. YES.

17 Q. TO YOUR KNOWLEDGE HOW MANY INDUSTRIAL HYGIENE

18 STUDIES HAVE BEEN DONE REGARDING MINE NO. 1?

19 A. PROBABLY 20 OR 30, 40, I DON'T KNOW. MANY.

20 Q. TO YOUR KNOWLEDGE WHEN WAS THE FIRST STUDY DONE?

21 A. I DON'T KNOW.

22 Q. CAN YOU LIST FOR ME, PLEASE, THE NAMES OF THE

23 INDIVIDUALS THAT YOU CAN REMEMBER THAT DID THESE INDUSTRIAL

24 HYGIENE STUDIES?

25 A. I WOULDN'T KNOW INDIVIDUALS.

1 Q. OR ORGANIZATIONS?

2 A. YES. THE NEW YORK STATE DEPARTMENT OF
3 INDUSTRIAL HYGIENE --

4 Q. WHEN DID THEY --

5 A. -- MADE ONGOING STUDIES. I DON'T KNOW WHEN THEY
6 STARTED MAKING THEM, BUT I CAN PRESUME THEY MADE THEM SOON
7 AFTER THE MINE BECAME IN OPERATION IN 1948. SOMETIME LATER
8 ON THE MINE SAFETY HEALTH ADMINISTRATION DID THE SAME THING,
9 AND I DON'T KNOW WHETHER THEY OVERLAPPED OR NOT.

10 Q. WHAT DOES MESA STAND FOR?

11 A. MINING ENFORCEMENT AND SAFETY ADMINISTRATION.

12 Q. IS THAT THE SAME AS MSHA?

13 A. MSHA IS A SUCCESSOR GROUP. MESA WAS DROPPED AND
14 MSHA PICKED UP.

15 Q. DID NIOSH DO AN INDUSTRIAL HYGIENE STUDY?

16 A. YES.

17 Q. HAS THE COMPANY INITIATED INDUSTRIAL HYGIENE
18 STUDIES OF MINE NO. 1?

19 A. YES.

20 Q. WHEN WAS THE FIRST ONE THAT YOU KNOW OF?

21 A. I DON'T REMEMBER.

22 Q. WHO DID THOSE STUDIES ON BEHALF OF THE COMPANY?

23 A. THE INSURANCE COMPANY THAT INSURED US.

24 Q. HARTFORD?

25 A. HARTFORD BEGAN THOSE.

1 Q. ASIDE FROM HARTFORD, HAVE ANY INDUSTRIAL HYGIENE
2 STUDIES BEEN DONE BY ANYONE ON BEHALF OF R.T. VANDERBILT IN
3 MINE NO. 1?

4 A. WE HAVE DONE OUR OWN.

5 Q. WHO AT THE COMPANY TO YOUR KNOWLEDGE HAVE DONE
6 THOSE INDUSTRIAL HYGIENE STUDIES?

7 A. MR. JOHN KELSE, K-E-L-S-E.

8 Q. IT'S MY UNDERSTANDING THAT MR. KELSE HAS ONLY
9 BEEN WITH THE COMPANY A COUPLE YEARS; IS THAT CORRECT?

10 A. THAT'S RIGHT.

11 Q. BEFORE THAT HE WORKED FOR HARTFORD; IS THAT
12 RIGHT?

13 A. YES.

14 Q. ASIDE FROM MR. KELSE HAS ANYONE ELSE DONE ANY
15 INDUSTRIAL HYGIENE STUDIES FOR R.T. VANDERBILT?

16 A. NOT THAT I CAN RECALL.

17 Q. HOW ABOUT REGARDING MINE NO. 2, ARE YOU AWARE
18 OF ANY INDUSTRIAL HYGIENE STUDIES HAVING BEEN DONE ON MINE
19 NO. 2?

20 A. YES.

21 Q. AND HOW MANY WOULD YOU SAY HAD BEEN DONE ON THAT
22 MINE?

23 A. APPROXIMATELY THE SAME AS FOR MINE NO. 1. ALL
24 THE ANSWERS I GIVE FOR MINE NO. 2 APPLY -- AS FAR AS
25 INDUSTRIAL HYGIENE IS CONCERNED, ALSO APPLY TO MINE NO. 2

1 SINCE 1974 WHEN WE TOOK IT OVER.

2 Q. HAS VANDERBILT INITIATED ANY STUDIES REGARDING
3 TALC EXTRACTED FROM EITHER MINE NO. 1, MINE NO. 2 OR MINE
4 NO. 3?

5 A. REPEAT THAT AGAIN. QUALIFY THE WORD "STUDY."

6 Q. WELL, HAS VANDERBILT OCCASIONED ANY STUDIES TO
7 BE DONE REGARDING TALC OR ANY MINERALS IN TALC FROM EITHER
8 MINE NO. 1 NO. 2 OR NO. 3?

9 A. WHAT KIND OF STUDIES ARE YOU TALKING ABOUT?

10 Q. ANY TYPE OF STUDIES?

11 MR. SMITH: WELL, COUNSEL, I THINK YOU JUST
12 ESTABLISHED IN THIS INDUSTRIAL HYGIENE STUDY THERE IS A
13 STUDY OF AN ENVIRONMENT INCLUDING BULK SAMPLES. YOU ARE
14 TALKING ABOUT THAT KIND OF STUDY, ARE YOU NOT?

15 BY MS. EISENSTEIN: Q. YES, I'D LIKE TO FOCUS ON JUST
16 SAMPLES OF THE TALC.

17 A. YOU ARE TALKING ABOUT MINERALOGICAL STUDIES?

18 Q. LET'S TALK ABOUT MINERALOGICAL STUDIES.

19 A. ANALYTICAL STUDIES.

20 Q. HAVE THERE BEEN THOSE TYPE OF STUDIES DONE?

21 A. YES.

22 Q. HOW MANY WOULD YOU SAY HAVE BEEN DONE?

23 A. PROBABLY TEN, MAYBE MORE.

24 Q. WHEN WAS THE FIRST TIME A MINERALOGICAL STUDY,
25 TO YOUR KNOWLEDGE, WAS DONE ON TALC FROM R.T. VANDERBILT?

1 MR. SMITH: ANY MINE, NOW?

2 BY MS. EISENSTEIN: Q. YES.

3 A. I THINK THE FIRST TIME -- I DON'T KNOW EXACT
4 DATE. IT WOULD PROBABLY BE ABOUT 50 YEARS AGO. THAT WAS
5 REPORTED BY AUTHORS WHO INCLUDED MR. WILLIAM ASHTON. THAT
6 IS THE ONLY ONE I CAN REMEMBER, AND I DON'T KNOW WHETHER IT
7 WAS PUBLISHED. IT WOULD BE 50 YEARS, 40 YEARS AGO, 50.

8 Q. DO YOU KNOW WHAT THE FINDINGS WERE FROM THAT
9 STUDY?

10 A. ONLY IN A GENERAL WAY. I'M NOT QUALIFIED TO GO
11 INTO THE DETAILS.

12 Q. DO YOU KNOW WHETHER AMPHIBOLES WERE FOUND IN THE
13 TALC IN THAT --

14 A. OH, YES. YOU ARE TALKING ABOUT THE ORIGINAL
15 STUDY?

16 Q. YES.

17 A. THE FIRST ONE WE BECAME AWARE OF?

18 Q. YES.

19 A. YES.

20 Q. WAS FIBROUS TREMOLITE FOUND IN THIS TALC?

21 A. NO.

22 Q. ANY FIBROUS MINERALS?

23 A. NOT TO MY KNOWLEDGE.

24 Q. DO YOU HAVE A COPY OF THAT STUDY?

25 A. YES. IN MY FILES THERE IS A COPY OF THAT STUDY,

1 YES.

2 Q. WHERE ARE YOUR FILES KEPT NOW?

3 A. IN THE SAME PLACE THEY ALWAYS BEEN IN NORWALK.

4 Q. DO YOU STILL HAVE AN OFFICE IN NORWALK?

5 A. I DON'T HAVE AN OFFICE, NO.

6 Q. DID SOMEONE TAKE YOUR PLACE AS DIRECTOR OF
7 ENVIRONMENTAL AFFAIRS?

8 A. YES.

9 Q. WHO IS THAT?

10 A. PAUL VANDERBILT.

11 Q. IF I WANTED TO FIND THIS STUDY REPORTED BY
12 WILLIAM ASHTON IN YOUR FILES, HOW WOULD YOU FIND THAT STUDY?
13 WAS IT DESIGNATED?

14 A. I WOULD GO TO THE FILES WHERE WE KEEP ALL THE
15 COPIES OF LITERATURE THAT IS PERTINENT TO THIS WHOLE
16 SITUATION, AND I'D LOOK UNDER THE ALPHABETICAL LISTING.
17 I'D LOOK UNDER A.

18 Q. IS THERE A GENERAL NAME FOR THE FILE THAT HAS
19 LITERATURE AND INFORMATION PERTINENT TO THIS GENERAL ISSUE?

20 A. I DON'T THINK WE HAVE A NAME. WE JUST KNOW
21 WHERE IT IS.

22 Q. WHEN WAS THE NEXT MINERALOGICAL STUDY DONE?

23 A. I DON'T KNOW WHEN THE NEXT MINERALOGICAL STUDY
24 WAS DONE.

25 Q. WHEN WAS THE NEXT ONE THAT YOU ARE AWARE OF?

1 A. THE NEXT ONE THAT I AM AWARE OF THAT WAS A STUDY,
2 A REPLETE STUDY WAS A STUDY DONE BY DR. JAMES DUNN OF DUNN
3 GEOSCIENCE COMPANY.

4 Q. WHAT YEAR WOULD THAT HAVE BEEN?

5 A. THEY STARTED THAT WORK IN 1980, EARLY '80'S AND
6 REPORTED IT, FINALIZED THE REPORT ABOUT 1985.

7 Q. DO YOU KNOW WHAT HIS FINDINGS WERE?

8 A. YES.

9 Q. WHAT WERE THOSE?

10 A. HERE AGAIN FINDINGS OCCUPY MANY SHEETS OF PAPER,
11 MANY PAGES. I CAN'T GO INTO DETAIL. I CAN ONLY GIVE YOU
12 AN OVERVIEW.

13 Q. OKAY. DID YOU COMMISSION THIS STUDY?

14 A. YES.

15 Q. WHEN DID YOU COMMISSION IT?

16 A. EARLY '80'S.

17 Q. WHY DID YOU COMMISSION IT?

18 A. WE WANTED AN IN-DEPTH STUDY THAT WE HAD
19 COMMISSIONED OURSELVES.

20 Q. ON THE MINERAL COMPOSITION?

21 A. ON THE MINERAL COMPOSITION OF THE TALCS THAT WE
22 WERE SELLING.

23 Q. CAN YOU GIVE ME AN OVERVIEW, PLEASE, ON WHAT HIS
24 FINDINGS WERE?

25 A. THE OVERVIEW IN GENERAL WOULD BE THAT THIS --

1 THE TALCS THAT WE WERE MINING AND SELLING CAME FROM THE
2 NO. 1 AND NO. 2 MINE WERE A MIXTURE OF MINERALS, ALL OF
3 WHICH WERE NONASBESTIFORM IN VARIETY. IT IS KNOWN AS
4 TREMOLITIC TALC BECAUSE OF THE HIGH CONTENT OF TERMOLITE,
5 WHICH USUALLY AVERAGED AROUND 40 TO 50 PERCENT.

6 Q. WERE ANY ASBESTIFORM MINERALS FOUND IN ANY OF
7 THE TALC PRODUCTS?

8 MR. SMITH: OBJECT, LACKS FOUNDATION, CALLS FOR
9 SPECULATION ON THE PART OF THIS WITNESS.

10 BY MS. EISENSTEIN: Q. IF YOU KNOW, SIR?

11 A. NOT BY DR. DUNN, NO.

12 Q. WHERE WOULD I FIND A COPY OF THE DUNN STUDY?

13 A. IN MY FORMER OFFICE.

14 Q. WOULD IT BE IN THE SAME FILES WE JUST DISCUSSED?

15 A. YES.

16 Q. WHAT WAS THE NEXT MINERALOGICAL STUDY THAT YOU
17 KNOW OF?

18 A. I DON'T KNOW OF A MINERALOGICAL STUDY PER SE
19 OTHER THAN THOSE TWO. THERE ARE A LOT OF TINY LITTLE
20 ANALYSIS FROM TIME TO TIME BY VARIOUS PEOPLE, INCLUDING
21 NIOSH AND OSHA, BUT THESE ARE NOT STUDIES PER SE.

22 Q. JUST SENDING SAMPLES TO A LAB TO BE TESTED?

23 A. RIGHT, I DON'T QUITE CALL THIS A STUDY. THAT
24 WAS DONE -- THOSE WERE THE TWO MAIN STUDIES, UNLESS YOU
25 WANT TO CALL THE NIOSH REPORT OF 1980 A STUDY BECAUSE THEY

1 DID HAVE INDUSTRIAL HYGIENE IN THEM.

2 Q. HAS ANYONE ELSE DONE ANY STUDIES, MEDICAL
3 STUDIES NOW, JUST MEDICAL STUDIES REGARDING VANDERBILT TALC?

4 A. YES, DR. LAMM.

5 Q. STEVEN LAMM?

6 A. YES.

7 Q. THIS WAS DISCUSSED, I BELIEVE, A LITTLE BIT IN
8 THE FIRST SESSION. I HAVE A COUPLE FOLLOW-UP QUESTIONS
9 REGARDING HIS STUDY.

10 DID YOU MAKE THE DECISION TO COMMISSION DR. LAMM?

11 A. NOT BY MYSELF, NO.

12 Q. WHO DID YOU MAKE A DECISION WITH?

13 A. A COMBINATION OF PEOPLE, SUCH AS MY IMMEDIATE
14 SUPERIOR, MR. NOLAND AND COUNSEL AND MAYBE DR. THOMPSON.

15 Q. WHAT WAS THE PURPOSE OF DR. LAMM'S STUDY?

16 A. DR. LAMM'S STUDY WAS COMMISSIONED AS A
17 SUPPLEMENT TO THE ORIGINAL TABERSHAW STUDY, WHICH IS
18 REPORTED IN THE JOURNAL OF OCCUPATION MEDICINE UNDER THE
19 AUTHOR STILLE AND TABERSHAW, S-T-I-L-L-E.

20 Q. WAS IT YOUR IDEA TO HAVE DR. LAMM COMPARE THE
21 TABERSHAW STUDY WITH THE NIOSH STUDY IN VERMONT?

22 A. NO, I DON'T THINK IT WAS MY IDEA.

23 Q. IS THAT WHAT THE PURPOSE OF THE LAMM STUDY WAS?

24 MR. SMITH: HE JUST TESTIFIED TO WHAT THE PURPOSE OF
25 THE LAMM STUDY WAS. HE SAID IT WAS TO SUPPLEMENT THE

1 TABERSHAW STUDY.

2 BY MS. EISENSTEIN: Q. YOU CAN ANSWER, SIR.

3 MR. SMITH: ASKED AND ANSWERED. INSTRUCT HIM NOT TO
4 ANSWER.

5 MS. EISENSTEIN: I INTEND TO GET SPECIFIC ANSWERS FROM
6 THE WITNESS, SIR, IF IT MEANS BRINGING YOU BACK AGAIN BY
7 COURT ORDER, I'M SORRY, BUT I HAVE A CERTAIN UNDERSTANDING
8 OF THE LAMM STUDY AND WHAT ITS PURPOSE WAS, AND JUST TO
9 HAVE HIM SAY THAT IT SUPPLEMENTED THE TABERSHAW STUDY IS
10 NOT INFORMATIVE OF ANYTHING, AND I WOULD LIKE TO INQUIRE A
11 LITTLE BIT IN MORE DETAIL AS TO WHAT TYPE OF SUPPLEMENT WE
12 ARE TALKING ABOUT AND WHAT THE STUDY ACTUALLY WAS.

13 MR. SMITH: THEN I SUGGEST, COUNSEL, YOU ASK A
14 DIFFERENT QUESTION THAN THE ONE YOU JUST ASKED WHICH YOU
15 HAVE ASKED TWICE, WHAT WAS THE PURPOSE OF THE STUDY; HE
16 ANSWERED THAT. IF YOU WANT MORE SPECIFICS, ASK HIM MORE
17 SPECIFICS.

18 MS. EISENSTEIN: THANK YOU, COUNSEL. THAT IS EXACTLY
19 WHAT I DID ORIGINALLY, AND WILL DO IT AGAIN.

20 Q. SIR, WAS THE PURPOSE OF THIS STUDY TO COMPARE
21 DR. TABERSHAW'S OR TOMA'S FINDINGS WITH THE NIOSH FINDINGS
22 IN VERMONT?

23 A. AS I SAID, THE PURPOSE OF THE STUDY WAS TO
24 SUPPLEMENT THE TABERSHAW STUDY.

25 Q. IN WHAT WAY WAS IT TO SUPPLEMENT THE TABERSHAW

1 STUDY?

2 A. TO ADD TO IT ANY CONSIDERATIONS THAT MIGHT
3 IMPROVE THE STUDY AND MAKE IT MORE COMPREHENSIVE.

4 Q. WAS THE LAMM STUDY TO INCLUDE AN EVALUATION OF
5 THE NIOSH STUDY IN VERMONT?

6 A. IT DID, AND THAT WAS PART OF THE IMPROVEMENT OR
7 THE SUPPLEMENTATION.

8 Q. WAS ANY NEW DATA PREPARED BY OR FOR DR. LAMM,
9 FOR HIS STUDY?

10 A. YES.

11 Q. WHAT TYPE OF DATA WOULD THAT HAVE BEEN?

12 A. THAT WOULD BE TO EXTEND THE TIME PERIOD OF THE
13 STUDY SO AS TO INCLUDE WORKERS WHO HAD WORKED AFTER THE CUTOFF
14 DATE OF THE ORIGINAL TABERSHAW STUDY BY A FEW YEARS.

15 Q. WHEN WAS THE LAMM STUDY COMPLETED?

16 A. APPROXIMATELY TWO YEARS AGO.

17 Q. AND WHERE WOULD I FIND A COPY OF THE LAMM STUDY?

18 A. THE SAME PLACE. IN MY FORMER OFFICE.

19 Q. ASIDE FROM DR. LAMM'S STUDY, HAVE ANY OTHER
20 MEDICAL STUDIES BEEN DONE ON VANDERBILT TALC THAT WE
21 HAVEN'T DISCUSSED?

22 A. YES.

23 Q. BY WHOM?

24 A. ARE YOU TALKING ABOUT MEDICAL STUDIES?

25 Q. YES.

- 1 A. WE HAVEN'T DISCUSSED THE MC CONNELL STUDY.
2 M-C CAP C-O-N-N-E-L-L, I THINK.
- 3 Q. WHEN WAS THAT STUDY DONE?
- 4 A. APPROXIMATELY TWO YEARS AGO.
- 5 Q. WAS THAT STUDY COMMISSIONED BY R.T. VANDERBILT?
- 6 A. NO.
- 7 Q. DO YOU KNOW WHO COMMISSIONED THAT STUDY?
- 8 A. YES, THE ENVIRONMENTAL PROTECTION AGENCY.
- 9 Q. SPECIFICALLY WHAT TYPE OF STUDY WAS THIS?
- 10 A. FEEDING STUDY, ANIMAL FEEDING STUDY.
- 11 Q. DID ANYONE AT R.T. VANDERBILT PARTICIPATE IN
12 THIS STUDY?
- 13 A. ONLY INsofar AS SUPPLING AT THEIR REQUEST
14 MATERIAL TO BE FED TO THE ANIMALS.
- 15 Q. WHAT MATERIAL WAS SUPPLIED?
- 16 A. A HIGH-CONCENTRATED MATERIAL, A LIGHT ORE COMING
17 FROM OUR MINES.
- 18 Q. THIS WOULD BE MINE NO. 1 AND MINE NO. 2?
- 19 A. I BELIEVE THE MATERIAL THAT WE SUPPLIED THEM
20 CAME FROM MINE NO. 1.
- 21 Q. WAS THERE AN ATTEMPT MADE TO SUPPLY THEM ONLY
22 TREMOLITE?
- 23 A. THEY ASKED FOR TREMOLITE.
- 24 Q. WERE PROCEDURES PERFORMED ON THE TALC TO DISTILL
25 IT DOWN TO JUST THE TREMOLITE?

1 A. IT'S HARD TO DISTILL TREMOLITE. EXCUSE ME,
2 EXCUSE ME.

3 Q. SEPARATE ANYTHING OUT.

4 A. THE RESPONSE TO THEIR REQUEST FOR A TON, 2,000
5 POUNDS OF TREMOLITE AS HIGH A PURITY AS WE COULD GET. WE
6 SELECTIVELY MINED MATERIAL THAT WE BELIEVED -- THAT OUR
7 MINERALOGIST BELIEVED WOULD BE AS HIGH AS WE COULD FIND. I
8 THINK WE GOT AROUND 800 OR 1,000 POUNDS, DIDN'T GET THE
9 FULL TON, AND I THINK WE GOT ABOUT AS HIGH AS 85 PERCENT
10 TREMOLITE, WHICH WAS THE BEST WE COULD DO AT THAT POINT.
11 IT'S IMPRACTICAL OR IMPOSSIBLE TO TRY TO DISTILL OR
12 WHATEVER THESE...

13 Q. DO YOU KNOW WHAT THE OTHER 15 PERCENT WAS
14 COMPRISED OF?

15 A. NO, I REALLY DON'T. IT WOULD BE THE MATERIAL
16 THAT NORMALLY ACCOMPANIES TREMOLITE, SUCH AS ANTIGORITE.

17 Q. WAS DR. THOMPSON INVOLVED IN THE STUDY?

18 A. ONLY INSOFAR AS HELPING THEM COLLECT AND
19 CHARACTERIZING THE ORE.

20 Q. WAS THIS STUDY PUBLISHED?

21 A. YES.

22 Q. DO YOU KNOW WHAT THE RESULTS OF THIS STUDY WERE?

23 Q. WHAT WERE THEY?

24 A. THE FEEDING STUDY TO SEE IF THERE WAS ANY CANCER
25 OF THE G.I. TRACT, AND THERE WAS NO CANCER.

1 Q. DO YOU HAVE A COPY OF THIS STUDY IN YOUR FILES?

2 A. YES.

3 Q. WOULD IT BE CALLED THE -- IS THERE A TITLE FOR
4 THIS STUDY?

5 A. YES.

6 Q. DO YOU KNOW WHAT THE TITLE IS?

7 A. I CAN'T RECALL.

8 Q. BUT IS IT BY DR. MC CONNELL?

9 A. YES, HE WOULD BE THE LEAD AUTHOR SO IT WOULD BE
10 UNDER M IN THE FILES.

11 Q. DO YOU KNOW HIS FIRST NAME?

12 A. NO, I CAN'T RECALL.

13 Q. DID THE EPA REQUEST SPECIFICALLY TREMOLITE?

14 A. YES.

15 Q. DO YOU KNOW WHY THEY DID NOT REQUEST THE TALC
16 PRODUCT WITH THE OTHER 15 PERCENT OF COMPONENTS THAT IT
17 NORMALLY HAS?

18 MR. SMITH: OBJECTION, CALLS FOR SPECULATION.

19 BY MS. EISENSTEIN: Q. IF YOU KNOW, SIR.

20 A. THEY WERE NOT AFTER TALC. THEY WERE LOOKING FOR
21 SPECIFIC MINERALS.

22 Q. OKAY. HAVE ANY OTHER MEDICAL STUDIES BEEN DONE
23 ON R.T. VANDERBILT TALC, TO YOUR KNOWLEDGE?

24 A. YES.

25 Q. CAN YOU TELL ME WHAT THEY MIGHT BE?

1 A. THERE WAS A FEEDING STUDY BY DR. W.E. SMITH.

2 Q. SIR, WHAT DO YOU MEAN BY FEEDING, DO YOU MEAN --

3 A. I'M SORRY, LET ME BACK UP. IT'S NOT A FEEDING
4 STUDY BY DR. SMITH. IT WAS -- -- I WILL ANSWER YOUR
5 QUESTION IN A MINUTE. IT WAS AN INTRAPLEURAL INJECTION
6 STUDY BY DR. SMITH USING HAMSTERS. THE FEEDING STUDY THAT
7 I REFERRED TO BEFORE, THE MC CONNELL STUDY, MEANS THE
8 ACTUAL FEEDING OF RATS SOME OF THIS MATERIAL IN THEIR DIET.
9 THEY GIVE THEM SOMETHING ELSE TO KEEP THEM GOING BESIDES
10 THE TREMOLITE.

11 Q. HOPE SO.

12 HOW MANY STUDIES TO YOUR KNOWLEDGE HAS DR. SMITH
13 DONE USING VANDERBILT TALC?

14 A. HE'S DONE TWO STUDIES USING VANDERBILT MATERIALS.
15 ONE WAS -- NO. LET ME BACK THAT UP. HE'S RUN TWO STUDIES
16 USING TALC OR INGREDIENTS FROM THE GOUVERNEUR TALC MINE
17 AREA. FIRST ONE WAS A TALC THAT WAS DETERMINED BY
18 DR. THOMPSON AND OTHER PEOPLE TO BE A PRODUCT FROM THE
19 NO. 2 MINE. THIS WAS AN INTRAPLEURAL INJECTION STUDY. AND
20 THE SECOND STUDY WAS ONE USING TREMOLITE, ISOLATED FROM
21 R.T. VANDERBILT TALC PRODUCTS.

22 Q. THE SECOND STUDY WAS ONE YOU COMMISSIONED
23 PERSONALLY; IS THAT CORRECT?

24 A. YES.

25 Q. THE FIRST ONE WAS THAT COMMISSIONED BY

1 VANDERBILT?

2 A. NO.

3 Q. THE FIRST STUDY WAS DONE IN WHAT YEAR, DO YOU
4 KNOW?

5 A. APPROXIMATELY 1960 SOMETHING, LATE '60'S. I
6 THOUGHT I KNEW, BUT I DON'T.

7 Q. AND ONE OF THE SAMPLES IN THE FIRST SMITH STUDY
8 WAS FROM THE NO. 2 MINE?

9 A. IT WAS DETERMINED BY KNOWLEDGEABLE PEOPLE THAT
10 IT CAME FROM THAT MINE.

11 Q. WAS THAT SAMPLE NUMBER 14, FD-14?

12 A. FD-14, I BELIEVE THAT'S RIGHT.

13 Q. WAS THAT BOUGHT ON THE OPEN MARKET BY MR. SMITH?

14 A. I DON'T KNOW --

15 Q. I MEAN DR. SMITH.

16 A. -- HOW HE GOT IT.

17 Q. BUT IN THE SECOND STUDY THE TREMOLITE WAS
18 SUPPLIED BY YOU PERSONALLY; IS THAT CORRECT?

19 A. YES.

20 Q. DID YOU WANT TO TAKE A QUICK BREAK, SIR?

21 A. JUST BECAUSE I WAS LOOKING AT MY COFFEE.

22 Q. UP TO YOU. I'M FINE.

23 A. LET'S KEEP GOING.

24 MR. RACE: I WILL GET YOU A CUP.

25 BY MS. EISENSTEIN: Q. LET US KNOW WHEN YOU WANT TO

1 TAKE A BREAK; OTHERWISE, I WILL BE MONITORING YOUR BODY
2 LANGUAGE.

3 A. I WILL.

4 Q. WHY DID YOU COMMISSION THIS SECOND STUDY FROM
5 DR. SMITH?

6 A. IN GENERAL WE WERE ANXIOUS TO KNOW OF THE HEALTH
7 EFFECTS OF THE PRODUCT THAT WE WERE SELLING.

8 Q. WELL, HE WAS SUPPLIED SPECIFICALLY TREMOLITE; IS
9 THAT CORRECT?

10 A. YES.

11 Q. AND THERE ARE OTHER MINERALS ASIDE FROM
12 TREMOLITE THAT ARE FOUND IN YOUR PRODUCTS; IS THAT CORRECT?

13 A. YES.

14 Q. SO IS IT MORE ACCURATE TO SAY YOU WANTED TO KNOW
15 THE HEALTH EFFECTS SPECIFICALLY OF TREMOLITE?

16 A. YES.

17 Q. BECAUSE IF YOU HAD WANTED TO KNOW THE HEALTH
18 EFFECTS OF THE ENTIRE PRODUCT, WOULDN'T YOU HAVE SUPPLIED
19 HIM THE OTHER MINERALS THAT WERE ALSO IN THAT TALC?

20 A. HE'D ALREADY --

21 MR. SMITH: OBJECT, ARGUMENTATIVE. I AM NOT
22 INSTRUCTING YOU NOT TO ANSWER, BUT I DON'T BELIEVE THE
23 ARGUMENTATIVE QUESTIONS, COUNSEL, I REALLY DON'T. I THINK
24 HE TESTIFIED VERY CLEARLY AS TO WHAT THEIR PURPOSE WAS.

25 BY MS. EISENSTEIN: Q. YOU CAN ANSWER, SIR.

1 A. HE ALREADY TESTED THE FULL PRODUCT.

2 Q. THAT WAS FD-14?

3 A. YES, SO THERE WAS -- THEIR MAJOR COMPONENT IS
4 TREMOLITE. AND TREMOLITE IS LISTED BY OSHA AS ASBESTOS
5 MINERAL OR AS A REGULATED MINERAL; THEREFORE, THAT WOULD BE
6 THE ONE WHERE HE WOULD MOST LIKELY WANT TO KNOW THE HEALTH
7 EFFECTS OF.

8 Q. THAT WAS YOUR CONCERN AT THE TIME YOU
9 COMMISSIONED THE STUDY?

10 A. ONE OF THE CONCERNS.

11 Q. WHAT WERE THE OTHER CONCERNS?

12 A. I DON'T KNOW, BUT THAT WAS THE MAIN CONCERN; LET
13 ME PUT IT THAT WAY.

14 Q. ASIDE FROM THE TWO SMITH STUDIES, WERE ANY OTHER
15 STUDIES DONE TO YOUR KNOWLEDGE WHERE VANDERBILT TALC WAS
16 USED?

17 A. YES.

18 Q. WHAT WOULD THAT HAVE BEEN?

19 A. THE STANTON STUDY, DR. MERYL STANTON OF THE
20 NATIONAL CANCER INSTITUTE IN BETHESDA, MARYLAND.

21 Q. WHEN WAS THAT STUDY DONE?

22 A. IT WAS PUBLISHED IN 1981. WORK WAS DONE SEVERAL
23 YEARS BEFORE THEN.

24 Q. WHAT KIND OF STUDY WAS THIS SPECIFICALLY?

25 A. THAT WAS CALLED AN IMPLANTATION STUDY AS

1 DIFFERENTIATED FROM A FEEDING STUDY OR AN INTRAPLEURAL
2 INJECTION. I'M NOT A MEDICAL PERSON SO YOU WILL HAVE TO
3 EXCUSE ME FOR NOT KNOWING EXACTLY WHAT MEDICAL TERMS TO USE
4 HERE, BUT IN GENERAL THE MATERIAL WAS IMPLANTED NEAR THE
5 LUNG WHERE IT WAS DETERMINED WOULD BE A GOOD PLACE TO
6 DETERMINE WHETHER THAT MATERIAL COULD CAUSE CANCER.

7 Q. WHAT MATERIAL SPECIFICALLY WAS IMPLANTED, TO
8 YOUR KNOWLEDGE?

9 A. FROM THE VANDERBILT MINE?

10 Q. YES.

11 A. THERE WERE, I BELIEVE, AT LEAST TWO TALC
12 PRODUCTS THAT CAME FROM THE GOUVERNEUR AREA. PRECISELY
13 I DON'T KNOW WHETHER THEY WERE OUT OF THE NO. 1 MINE OR
14 NO. 2 MINE OR A MIXTURE THEREOF, BUT THEY WERE FROM THE
15 GOUVERNEUR AREA, AND I DON'T KNOW HOW HE OBTAINED THEM
16 OTHER THAN THEY WERE DEFINITELY TREMOLITIVE TALCS FROM THAT
17 AREA SIMILAR TO THE ONES WE WOULD SELL.

18 Q. WERE THEY JUST THE TREMOLITE OR WERE THEY ENTIRE --

19 A. ENTIRE TALC.

20 Q. DO YOU KNOW WHAT THE FINDINGS OF THAT STUDY WERE?

21 A. YES.

22 Q. WHAT WERE THOSE?

23 A. NO TUMOR PROBABILITY.

24 Q. DO YOU HAVE A COPY OF THAT STUDY IN YOUR FILES?

25 A. YES.

1 Q. DID VANDERBILT PARTICIPATE IN ANY WAY IN THAT
2 STUDY?

3 A. NO.

4 Q. ARE YOU AWARE OF ANY OTHER MEDICAL STUDIES
5 INVOLVING VANDERBILT TALC?

6 A. LOOK INTO THE INNER RECESSES OF MY MIND FOR JUST
7 A SECOND. THIS THING HAS BEEN GOING ON FOR SO LONG,
8 SOMETIMES YOU FORGET.

9 I WENT OVER THE MC CONNELL STUDY, THE SMITH
10 STUDY, AND THE STANTON STUDY. I THINK THAT IS IT. I MAY
11 HAVE MISSED ONE, IT'S BEEN SO LONG.

12 Q. ARE YOU FAMILIAR WITH A DR. COOPER?

13 A. YES.

14 Q. CLARK COOPER?

15 A. YES, YES.

16 Q. HAS HE EVER DONE A STUDY REGARDING VANDERBILT
17 TALC?

18 A. NOT TO MY KNOWLEDGE.

19 Q. HAS HE EVER PARTICIPATED WITH ANYONE ON A STUDY
20 DONE FOR VANDERBILT?

21 A. NOT TO MY KNOWLEDGE.

22 Q. WAS HE AT ONE TIME AN ASSOCIATE OF DR. TABERSHAW?

23 A. YES.

24 Q. YOU THINK WE COVERED ALL THE STUDIES AT THIS
25 POINT DONE ON VANDERBILT TALC?

1 A. I THINK SO.

2 Q. AND THE MEDICAL STUDIES DONE REGARDING
3 VANDERBILT?

4 A. AS FAR AS I CAN RECALL.

5 Q. SIR, I BELIEVE IN THE FIRST SESSION OF YOUR
6 DEPOSITION YOU SAID THAT YOU ATTENDED A CONFERENCE OUT OF
7 WHICH THE BOOK "DUSTS AND DISEASE" EVENTUALLY CAME INTO
8 BEING.

9 A. YES.

10 Q. WHAT WAS THE PURPOSE OF THAT CONFERENCE?

11 A. IN GENERAL AS THE TITLE OF THE BOOK INDICATES, A
12 CONFERENCE ON DUSTS AND DISEASE; THAT IS ABOUT AS CLOSE AS
13 I CAN COME.

14 Q. WHY DID YOU ATTEND?

15 A. BECAUSE WE KNEW THAT THERE WOULD BE SOME
16 REFERENCES TO MEDICAL STUDIES DONE ON OUR TALCS MADE AT
17 THAT MEETING.

18 Q. IS THAT WHERE THE NIOSH STUDY WAS TO BE PRESENTED?

19 A. IT WAS -- THERE WAS A PAPER -- THERE WAS A
20 PRESENTATION BY A MEMBER -- A PERSON FROM NIOSH ABOUT THAT --
21 THE NIOSH STUDY AT THAT MEETING.

22 Q. WHO WAS THAT PERSON?

23 A. DR. DEMENT, MR. DEMENT.

24 Q. JOHN DEMENT?

25 A. YES.

1 Q. IS IT YOUR UNDERSTANDING HE DID A PRESENTATION
2 REGARDING THE NIOSH STUDY THAT HAD BEEN DONE ON THE
3 VANDERBILT MINES?

4 A. YES.

5 Q. IS THAT WHAT YOU ARE REFERRING TO WHEN YOU SAY
6 THERE WAS GOING TO BE A DISCUSSION?

7 A. THAT IS ONE OF THE THINGS.

8 Q. WHAT ELSE ARE YOU REFERRING TO?

9 A. DR. SMITH, I BELIEVE, WAS ALSO AT THAT MEETING.

10 Q. WAS HE PRESENTING THE FINDINGS OF HIS STUDY THAT
11 YOU HAD COMMISSIONED ON INTRAPLEURAL INJECTION OF TREMOLITE?

12 A. YES, THAT ALONG WITH SOME OTHER ASSOCIATED
13 FINDINGS.

14 Q. WERE THOSE FINDINGS FROM THE EARLIER STUDY YOU
15 MENTIONED?

16 A. HE PRESENTED A PAPER THAT ENCOMPASSED HIS
17 FINDINGS FROM OUR STUDY AND HIS FINDINGS FROM ANOTHER
18 SIMILAR STUDY.

19 Q. WAS DR. LAMM PRESENT AT THAT CONFERENCE?

20 A. YES.

21 Q. DO YOU KNOW WHY DR. LAMM WAS PRESENT?

22 MR. SMITH: CALLS FOR SPECULATION.

23 THE WITNESS: DR. LAMM IS AN OCCUPATIONAL MEDICINE
24 PERSON WHO WOULD NORMALLY BE INTERESTED IN THAT.

25 BY MS. EISENSTEIN: Q. WAS HE WORKING FOR

1 R.T. VANDERBILT ON HIS STUDY AT THE TIME OF THAT CONFERENCE?

2 A. I DON'T KNOW WHO HE WAS WORKING FOR AT THE TIME,
3 BUT HE WAS WORKING FOR DR. TABERSHAW IN THE TOMA
4 ORGANIZATION.

5 Q. I SEE.

6 A. AT THAT POINT HE WAS ONE OF THE PEOPLE DOING THE
7 WORK ON THE TABERSHAW STUDY, AND I DON'T KNOW WHETHER HE
8 WAS STILL WITH TABERSHAW AT THAT POINT OR NOT.

9 Q. BUT THE TABERSHAW STUDY WAS BEING DONE DURING
10 THAT TIME; IS THAT CORRECT, THE TIME OF THE CONFERENCE?

11 A. YES.

12 Q. WAS DR. THOMPSON AT THE CONFERENCE?

13 A. I'M NOT SURE.

14 Q. ANYONE ELSE FROM R.T. VANDERBILT THAT YOU CAN
15 REMEMBER PRESENT AT THAT CONFERENCE?

16 A. I CAN'T REMEMBER WHO WAS THERE BESIDES MYSELF.

17 Q. WAS THERE SOMEONE ELSE THERE FROM THE COMPANY,
18 TO YOUR RECOLLECTION?

19 A. I DON'T KNOW. TOO FAR AGO.

20 Q. WAS DR. TABERSHAW THERE?

21 A. I DON'T THINK SO.

22 Q. I THINK THIS WOULD BE A GOOD TIME TO TAKE A
23 SHORT BREAK SO I CAN ORGANIZE SOME DOCUMENTS AND MOVE THIS
24 ALONG QUICKER.

25 (RECESS.)

1 BY MS. EISENSTEIN: Q. DO YOU HAVE AN UNDERSTANDING
2 AS TO WHAT THE CONCLUSIONS WERE IN THE STUDY, THE NIOSH
3 STUDY DONE ON THE VERMONT MINE OR MINES?

4 A. YES.

5 Q. WHAT IS THAT UNDERSTANDING, SIR?

6 A. TALC MINES?

7 Q. YES.

8 A. IN GENERAL THERE WAS AN INCREASE OF NONMALIGNANT
9 RESPIRATORY DISEASE ABOVE THAT EXPECTED.

10 Q. ANYTHING ELSE YOU ARE AWARE OF?

11 A. THERE WAS INDICATIONS OF EXCESS LUNG CANCER, BUT
12 THERE WAS AN UNKNOWN ETIOLOGY.

13 Q. DOES ETIOLOGY MEAN UNKNOWN SOURCE?

14 A. (NO AUDIBLE RESPONSE.)

15 Q. OKAY.

16 MR. SMITH: YOU HAVE TO GIVE AN AUDIBLE ANSWER TO THAT
17 QUESTION; I DON'T THINK WE GOT ONE.

18 THE WITNESS: (NO AUDIBLE RESPONSE.)

19 MR. SMITH: YES, YOU JUST NODDED YOUR HEAD.

20 THE WITNESS: YES. I SOMETIMES DO THAT.

21 BY MS. EISENSTEIN: Q. SIR, DO YOU REMEMBER IN THE
22 FIRST SESSION OF YOUR DEPOSITION STATING THAT THE RESULTS
23 OF THAT VERMONT STUDY -- THAT THERE WAS AN INCREASED RATE
24 OF LUNG CANCER BUT THAT IT COULD NOT BE ATTRIBUTED TO THE
25 EXPOSURE TO THE TALC DUST IN THAT MINE?

1 MR. SMITH: WHY DON'T YOU SHOW HIM THE DEPOSITION,
2 COUNSEL, AND HE WILL TELL YOU IF THAT IS WHAT HE SAID.

3 BY MS. EISENSTEIN: Q. DO YOU REMEMBER THAT TESTIMONY?

4 MR. SMITH: ARE YOU TRYING TO IMPEACH HIM WITH HIS OWN
5 DEPOSITION?

6 MS. EISENSTEIN: ARE YOU OBJECTING?

7 MR. SMITH: YES, I AM OBJECTING. DO YOU WANT TO SHOW
8 THE PASSAGE TO HIM SO HE KNOWS WHAT YOU ARE TALKING --

9 MS. EISENSTEIN: I WILL, BUT TO SAVE TIME, IF THAT IS
10 HIS UNDERSTANDING WE WOULDN'T HAVE TO GO THROUGH THIS,
11 COUNSEL.

12 MR. SMITH: I DON'T THINK HE SITS HERE READY TO RECALL
13 EVERY WORD HE SAID IN OVER 200 PAGES OF TRANSCRIPT.

14 BY MS. EISENSTEIN: Q. LET ME PHRASE IT THIS WAY TO
15 TRY AND SAVE TIME.

16 IS IT YOUR UNDERSTANDING THAT ONE OF THE
17 CONCLUSIONS OF THAT NIOSH STUDY IN VERMONT WAS THAT THERE
18 WAS AN INCREASED RATE OF LUNG CANCER, BUT THAT IT CANNOT BE
19 ATTRIBUTED TO EXPOSURE TO THE TALC DUST IN THE MINES THEY
20 WERE STUDYING?

21 A. THAT IS NOT MY UNDERSTANDING.

22 Q. WHAT IS YOUR UNDERSTANDING, SIR?

23 MR. SMITH: OF WHAT?

24 BY MS. EISENSTEIN: Q. OF THE INCREASED RISK OF LUNG
25 CANCER?

1 MR. SMITH: OF THE ETIOLOGY OF THE INCREASED RISK OF
2 LUNG CANCER.

3 MS. EISENSTEIN: THAT IS FINE.

4 MR. SMITH: IS THAT YOUR QUESTION?

5 BY MS. EISENSTEIN: Q. YES.

6 A. MY UNDERSTANDING FROM THAT STUDY WAS THAT THERE
7 WAS AN INCREASED RATE OF LUNG CANCER WITH UNKNOWN ETIOLOGY,
8 AS I SAID BEFORE. I JUST CAN'T REMEMBER SAYING ANYTHING
9 LIKE YOU SAID.

10 Q. I'M GOING --

11 A. I WOULD LIKE TO -- IF YOU WANT TO SHOW IT TO ME.

12 Q. I AM GOING TO SHOW YOU YOUR DEPOSITION TAKEN
13 OCTOBER 9, 1986, PAGE 67 AND ASK YOU IF YOU WOULD LOOK AT --
14 I'D LIKE YOU TO START BY LOOKING AT THE VERY FIRST ANSWER
15 ON LINE ONE. YOU MAY NEED TO LOOK BACK AT PAGE 66.

16 A. I'M EXPLAINING HERE, AS FAR AS I CAN SEE, WHAT
17 THE WORD ASSOCIATED MEANS.

18 Q. DO YOU SEE --

19 A. I SEE.

20 Q. -- YOUR ANSWER AT THE TOP?

21 A. WE GOT INTO A QUESTIONING THING HERE ABOUT THE
22 WORD "ASSOCIATED WITH." YOU SAY DOES ASSOCIATED WITH --
23 DO YOU MEAN NIOSH CONSIDERED EXPOSURES TO THAT TALC FACTOR
24 IN INDIVIDUALS -- I SAID NO, THAT IS NOT RIGHT. YOU SAY
25 WHAT DO YOU MEAN BY THE WORD ASSOCIATED. WE ARE TALKING

1 ABOUT NOW ASSOCIATED WITH, AND I GAVE THE ANSWER THAT
2 STARTS AT THE TOP HERE, OKAY?

3 Q. OKAY.

4 A. WE WERE ALMOST GONE AWAY FROM THE VERMONT WE
5 WERE TALKING ABOUT THAT LITTLE BIT OF MEANING.

6 Q. LET ME SEE THIS FOR A MOMENT, PLEASE.

7 SO WHEN YOU SAY AT LINE 2 IN THAT CASE THAT
8 THERE WAS AN INCREASE IN LUNG CANCER FOUND AMONGST THE
9 WORKERS OF THAT MINE BUT IT COULD NOT BE ATTRIBUTED TO
10 EXPOSURES TO THE TALC DUST AT THAT MINE, YOU WEREN'T
11 REFERRING TO THE VERMONT STUDY?

12 A. I HAVE TO LOOK AT IT AGAIN. WE GOT SIDETRACKED
13 HERE. WE ARE ONTO TWO DIFFERENT SUBJECTS, ALMOST. LET'S
14 SEE WHAT WE ARE TALKING ABOUT HERE.

15 TALKED ABOUT VERMONT STUDY. OKAY, YES. IN HERE
16 ASSOCIATED BUT NOT ATTRIBUTED.

17 Q. OKAY.

18 A. I AM ESTABLISHING THAT THE WORD -- YOU CAN'T SAY
19 ATTRIBUTED, YOU HAVE TO USE THE WORD ASSOCIATED. THAT IS
20 WHAT I AM ESTABLISHING HERE. IN OTHER WORDS, YOU CAN'T --
21 THIS IS NOT TRUE AS TO THE ANSWER TO THE RESULTS IN THE
22 VERMONT STUDY. THIS WAS ASSOCIATED, IT COULD BE SAID, BUT
23 NOT ATTRIBUTED.

24 Q. SO CORRECT ME IF I AM WRONG, IT'S YOUR
25 UNDERSTANDING -- IT IS NOT CORRECT TO SAY THAT THE RESULT

1 OF THE VERMONT STUDY WAS THAT THERE WAS AN INCREASE IN LUNG
2 CANCER FOUND AMONGST THE WORKERS, BUT THAT IT COULD NOT BE
3 ATTRIBUTED TO THE EXPOSURES TO THE TALC DUST AT THAT MINE?

4 MR. SMITH: OBJECT, VAGUE AND AMBIGUOUS; DOUBLE
5 NEGATIVE IN THERE.

6 MS. EISENSTEIN: I'M READING FROM THE DEPOSITION.

7 MR. SMITH: I DON'T CARE. I DON'T UNDERSTAND THE
8 QUESTION. YOU PUT A DOUBLE NEGATIVE IN, I DON'T KNOW WHAT
9 YOU ARE ASKING.

10 THE WITNESS: I CAN'T ANSWER IT. I GOT TO GIVE A
11 TRUTHFUL ANSWER.

12 BY MS. EISENSTEIN: Q. PLEASE, I WANT YOU TO
13 UNDERSTAND.

14 A. LET'S START OVER.

15 Q. AT PAGE 67 OF YOUR DEPOSITION IN DISCUSSING THE
16 VERMONT STUDY, YOU STATED THAT IN THAT CASE THAT THERE WAS
17 AN INCREASE IN LUNG CANCER FOUND AMONGST THE WORKERS AT
18 THAT MINE, BUT IT CANNOT BE ATTRIBUTED TO EXPOSURES TO THE
19 TALC DUST AT THAT MINE. DO YOU AGREE WITH THAT STATEMENT?

20 A. YES.

21 Q. IT'S YOUR UNDERSTANDING THEN THAT THAT WAS THE
22 CONCLUSION REACHED IN THE VERMONT STUDY BY NIOSH?

23 A. NOT WHAT YOU JUST TOLD ME, NO.

24 Q. BUT WHAT I JUST TOLD YOU IS A STATEMENT YOU MADE,
25 CORRECT?

1 A. THE STATEMENT I MADE WAS -- LET ME PUT THIS IN
2 THE RIGHT WORDS HERE.

3 THE STATEMENT I MADE WAS MY RECOLLECTION OF WHAT
4 WAS IN THE VERMONT STUDY. IN THE VERMONT STUDY THEY DID
5 NOT SAY -- THIS IS WHAT I AM TRYING TO SAY HERE -- THEY DID
6 NOT SAY THAT THIS WAS NOT ATTRIBUTED TO.

7 Q. THAT THE LUNG CANCER WAS NOT ATTRIBUTED TO
8 EXPOSURES TO TALC DUST AT THE MINE?

9 A. THAT'S RIGHT, THEY DID NOT SAY THAT.

10 Q. DID THEY SAY --

11 A. THAT WAS MY IMPRESSION, MY INTERPRETATION OR MY
12 RECOLLECTION OF THE VERMONT STUDY.

13 Q. YOU MADE REFERENCE TO THE BOUNDY STUDY; ARE YOU
14 REFERRING TO A STUDY -- IS IT YOUR UNDERSTANDING THAT THERE
15 WERE TWO STUDIES DONE AT THE VERMONT MINES?

16 A. NOT THAT I AM AWARE OF.

17 Q. I'D LIKE TO SHOW YOU, SIR, A DOCUMENT ENTITLED
18 MORTALITY PATTERNS AMONG MINERS AND MILLERS OF
19 NON-ASBESTIFORM TALC: PRELIMINARY REPORT BY SELEVAN,
20 DEMENT, WAGONER AND FROINES, AND ASK YOU TO LOOK AT THIS,
21 PLEASE.

22 MR. SMITH: COUNSEL, DO YOU WANT HIM TO READ ALL THIS?
23 THIS IS A LENGTHY DOCUMENT.

24 BY MS. EISENSTEIN: Q. WELL, I'D LIKE TO KNOW FIRST
25 OF ALL WHETHER HE'S EVER SEEN THAT BEFORE?

1 A. YES, I HAVE.

2 Q. IS THAT THE STUDY THAT WE HAVE BEEN DISCUSSING?

3 A. PART OF IT. THIS IS MORTALITY STUDY, AND I

4 THINK THERE IS A MORBIDITY STUDY IN THERE, TOO.

5 Q. THE BOUNDY STUDY, IT'S YOUR UNDERSTANDING THAT
6 IS A MORBIDITY STUDY?

7 A. I'M NOT SURE, BUT THERE IS A STUDY THAT IS PART
8 OF THIS WHOLE STUDY BY BOUNDY.

9 Q. AND IS IT YOUR UNDERSTANDING THERE WERE MORE
10 THAN TWO STUDIES DONE THAT COMPRISE THE VERMONT STUDY?

11 A. NO. THERE IS ONE HEALTH STUDY INCLUDING, AS WE
12 WENT OVER BEFORE, MANY DIFFERENT PARTS. MORTALITY STUDY,
13 MORBIDITY STUDY, INDUSTRIAL HYGIENE.

14 AS FAR AS I KNOW, THERE WAS ONE HEALTH STUDY
15 DONE OF THE VERMONT MINES BY NIOSH JUST LIKE THERE WAS ONE
16 HEALTH STUDY DONE BY NIOSH, OF THE GOUVERNEUR TALC MINES.
17 NOW SOMETIMES YOU HAVE A SEPARATE PAPER FOR THE MORBIDITY,
18 SEPARATE PAPER FOR MORTALITY AND SEPARATE PAPER FOR
19 INDUSTRIAL HYGIENE. IT'S STILL THE SAME HEALTH STUDY.

20 Q. SO IS IT YOUR UNDERSTANDING THAT THE STUDY IN
21 FRONT OF YOU RIGHT NOW IS THE MORTALITY STUDY DONE BY NIOSH
22 ON THE VERMONT MINES?

23 A. IT WOULD APPEAR THAT THAT IS WHAT IT IS.

24 Q. AND WHEN WE WERE JUST DISCUSSING THE INCREASE IN
25 LUNG CANCER THAT WAS FOUND IN THE VERMONT STUDY, THAT WOULD

1 HAVE BEEN FROM THE MORTALITY STUDY; IS THAT CORRECT?

2 A. YES.

3 Q. SO THIS WAS THE STUDY THAT WE WERE REFERRING TO
4 JUST A FEW MINUTES AGO; IS THAT CORRECT?

5 A. IT WOULD APPEAR THAT THIS IS THE STUDY THAT WE
6 WERE DISCUSSING.

7 MR. SMITH: COUNSEL, BEFORE YOU MOVE ON TO ANOTHER
8 DOCUMENT, DO YOU INTEND TO MAKE THIS AN EXHIBIT?

9 MS. EISENSTEIN: YES, I DO, COUNSEL.

10 MR. JOHNSON: CAN WE SEE COPIES?

11 MS. EISENSTEIN: SURE: LET'S HAVE THIS MARKED AS
12 PLAINTIFF'S 1 TO THIS DEPOSITION. THE MORTALITY PATTERNS
13 AMONG MINERS AND MILLERS OF NON-ASBESTIFORM TALC.

14 MR. SMITH: OFF THE RECORD.

15 (DISCUSSION OFF THE RECORD.)

16 MS. EISENSTEIN: MARK THAT 9, NOT 1.

17 (WHEREUPON THE DOCUMENT REFERRED TO WAS
18 MARKED AS PLAINTIFF'S EXHIBIT 9 FOR
19 IDENTIFICATION BY THE NOTARY PUBLIC AND
20 IS ATTACHED HERETO.)

21 BY MS. EISENSTEIN: Q. MR. HARVEY, HAVE YOU HAD A
22 CHANCE TO REVIEW THIS MORTALITY STUDY?

23 A. NOT RECENTLY. I'M NOT TOO FAMILIAR WITH IT NOW.

24 Q. THIS STUDY WAS DISCUSSED AT THE CONFERENCE THAT
25 YOU ATTENDED OUT OF WHICH DUSTS AND DISEASE WAS PUBLISHED;

1 IS THAT CORRECT?

2 A. I BELIEVE SO.

3 Q. YOU MENTIONED A BOUNDY STUDY, THAT WAS A STUDY
4 THAT WAS DONE IN CONJUNCTION WITH THE MORTALITY STUDY BY
5 NIOSH?

6 A. I BELIEVE SO.

7 Q. WHAT IS YOUR UNDERSTANDING OF THE RESULTS OF
8 THAT STUDY, IF YOU KNOW?

9 A. I BELIEVE THAT IS -- THAT MAY HAVE BEEN THE
10 MORBIDITY STUDY THAT WOULD HAVE FOUND THAT THERE WAS A
11 HIGHER-THAN-EXPECTED INCIDENCE OF NONMALIGNANT RESPIRATORY
12 DISEASE.

13 Q. I'M --

14 A. AMONGST THE WORKERS IN THE VERMONT TALC MINES.

15 Q. I'M GOING TO HAND YOU, SIR, A DOCUMENT ENTITLED
16 OCCUPATIONAL EXPOSURES TO NON-ASBESTIFORM TALC IN VERMONT
17 BY BOUNDY, GOLD, MARTIN, BURGESS AND DEMENT AND ASK YOU TO
18 REVIEW IT, PLEASE.

19 MR. SMITH: WE WILL HAVE THIS MARKED AS 10.

20 (WHEREUPON THE DOCUMENT REFERRED TO WAS
21 MARKED AS PLAINTIFF'S EXHIBIT 10 FOR
22 IDENTIFICATION BY THE NOTARY PUBLIC AND
23 IS ATTACHED HERETO.)

24 MR. SMITH: COUNSEL, JUST FOR CLARITY, WHEN YOU ASK
25 HIM TO REVIEW IT, I TRUST YOU WANT HIM TO LOOK TO SEE IF HE

1 RECOGNIZES IT. IT'S 15 OR 20 PAGES LONG.

2 MS. EISENSTEIN: NOT IN DETAIL, JUST SCAN IT BRIEFLY
3 TO SEE IF THIS IS THE SAME STUDY WE WERE TALKING ABOUT.

4 MR. JOHNSON: DO YOU HAVE ANY COPIES OF THAT?

5 THE WITNESS: YES, I HAVE SEEN THIS ONE. I RECOGNIZE
6 IT NOW.

7 BY MS. EISENSTEIN: Q. THIS WAS THE INDUSTRIAL
8 HYGIENE STUDY?

9 A. YES.

10 Q. SO WHEN YOU WERE REFERRING TO THE BOUNDY STUDY
11 IN THE FIRST SESSION OF YOUR DEPOSITION, YOU WERE REFERRING
12 TO WHAT YOU THOUGHT WAS A MORBIDITY OR MORTALITY STUDY?

13 A. I THOUGHT IT WAS, BUT IT IS NOT.

14 Q. THIS BOUNDY STUDY WAS ALSO PRESENTED AT THAT
15 CONFERENCE ON DUSTS AND DISEASE; IS THAT RIGHT?

16 A. YES.

17 Q. I WOULD LIKE TO HAND YOU NOW WHAT WE CAN MARK AS
18 11 TO THIS DEPOSITION. IT'S A DOCUMENT ENTITLED
19 "BIOLOGIC TEST OF TREMOLITE IN HAMSTERS" BY SMITH, HUBERT,
20 SOBEL AND MARQUET.

21 (WHEREUPON THE DOCUMENT REFERRED TO WAS
22 MARKED AS PLAINTIFF'S EXHIBIT 11 FOR
23 IDENTIFICATION BY THE NOTARY PUBLIC AND
24 IS ATTACHED HERETO.)

25 BY MS. EISENSTEIN: Q. HAVE YOU HAD A CHANCE TO

1 REVIEW THAT DOCUMENT, SIR?

2 A. YES.

3 Q. IS THIS THE STUDY THAT WAS COMMISSIONED BY
4 VANDERBILT OF DR. SMITH?

5 A. NO. THIS STUDY WAS NOT COMMISSIONED BY
6 VANDERBILT.

7 Q. DO YOU HAVE ANY UNDERSTANDING AS TO WHAT THIS
8 STUDY IS?

9 A. YES.

10 Q. WHAT IS IT?

11 A. THIS IS A STUDY BY DR. SMITH AND CO-WORKERS OF
12 THE RESULTS OF INJECTING VARIOUS FORMS OF TREMOLITE
13 INTRAPLEURALLY INTO HAMSTERS.

14 Q. IS IT YOUR UNDERSTANDING ONE OF THE SAMPLES THAT
15 WAS INJECTED INTO THESE GOLDEN HAMSTERS WAS TREMOLITE
16 SUPPLIED BY YOU TO DR. SMITH?

17 A. YES.

18 Q. WAS DR. SMITH'S ORIGINAL STUDY COMMISSIONED BY
19 YOU JUST ON VANDERBILT TREMOLITE?

20 A. WHICH STUDY?

21 Q. THE SECOND STUDY.

22 A. THE ONE IN WHICH HE USE -- THE ONE WE
23 COMMISSIONED?

24 Q. YES.

25 A. IT WAS DONE ONLY WITH TREMOLITE THAT WE SUPPLIED

1 FROM OUR MINES.

2 Q. SO IS IT YOUR UNDERSTANDING THEN THAT THIS
3 DOCUMENT, BIOLOGIC TESTS OF TREMOLITE IN HAMSTERS, INCLUDES
4 THE RESULTS OF THE STUDY YOU HAD COMMISSIONED BY DR. SMITH?

5 A. YES.

6 Q. IS IT YOUR UNDERSTANDING THAT THIS STUDY WAS
7 PRESENTED AT THE SAME CONFERENCE OUT OF WHICH DUSTS AND
8 DISEASE WAS --

9 A. I BELIEVE SO. I SAID THAT BEFORE.

10 Q. SORRY.

11 HAS VANDERBILT EVER DONE A STUDY SIMILAR TO THE
12 SMITH STUDY WHERE TREMOLITE WAS INJECTED INTO THESE
13 HAMSTERS BUT WITH ALL OF THE COMPONENTS OF VANDERBILT TALC?

14 A. VANDERBILT HAS NEVER COMMISSIONED DR. SMITH OR
15 ANYONE ELSE TO DO AN INTERPLEURAL INJECTION BECAUSE HE HAD
16 ALREADY DONE THAT WITH TALC THAT WOULD BE SIMILAR ENOUGH TO
17 VANDERBILT TALC THAT WE DIDN'T THINK IT WAS WORTH THE MONEY
18 TO REPEAT IT.

19 MR. RACE: OFF THE RECORD A SECOND.

20 (DISCUSSION OFF THE RECORD.)

21 BY MS. EISENSTEIN: Q. THE SAMPLE NO. FD-14 -- I
22 BELIEVE WE COVERED THIS EARLIER -- THAT WAS THE VANDERBILT
23 TALC USED IN THE FIRST SMITH STUDY, CORRECT?

24 A. NOT EXACTLY.

25 Q. WHAT IS YOUR UNDERSTANDING OF WHAT FD-14 WAS?

1 A. FD-14 IS A SAMPLE OF TALC, AS FAR AS WE KNOW,
2 ISOLATED FROM THE NO. 2 MINE AT GOUVERNEUR, AND BECAUSE OF
3 A DATE THAT IS INVOLVED, WE WOULD HAVE TO CONCLUDE IT WAS
4 BEFORE WE BOUGHT THAT PROPERTY.

5 Q. THE MINE THAT EVENTUALLY VANDERBILT ACQUIRED AND
6 IS NOW CALLED THE NO. 2 MINE?

7 A. RIGHT.

8 Q. DO YOU HAVE ANY UNDERSTANDING AS TO WHETHER
9 DR. SMITH FOUND ANY FIBROUS MINERALS IN FD-14?

10 A. HE REPORTED FIBROUS TALC, I BELIEVE, IN THAT
11 MATERIAL.

12 Q. WOULD YOUR ANSWER BE "YES" THEN?

13 MR. SMITH: I THINK HIS ANSWER SPEAKS FOR ITSELF,
14 COUNSEL.

15 THE WITNESS: I WANT TO SAY HE REPORTED FIBROUS
16 MATERIALS.

17 BY MS. EISENSTEIN: Q. OKAY. WAS THE EARLIER STUDY,
18 TO YOUR KNOWLEDGE, PRESENTED AT A TALC SYMPOSIUM IN 1973?

19 MR. SMITH: ARE YOU REFERRING TO THE EARLIER SMITH
20 STUDY?

21 BY MS. EISENSTEIN: Q. YES.

22 A. YES.

23 Q. WERE YOU PRESENT AT THE TALC SYMPOSIUM?

24 A. YES.

25 Q. AT THE SYMPOSIUM IN, I BELIEVE '79 -- I MEAN,

1 THE CONFERENCE, THE ONE OUT OF WHICH DUSTS AND DISEASE WAS
2 PUBLISHED, DO YOU REMEMBER ANY DISCUSSION REGARDING THE
3 FACT THAT YOU HAD SUPPLIED JUST TREMOLITE TO DR. SMITH?

4 MR. SMITH: OBJECT. IT'S VAGUE AND AMBIGUOUS AS TO
5 DISCUSSIONS BETWEEN WHO OR DISCUSSIONS HE WAS A PARTY TO,
6 COUNSEL. IT'S SO BROAD I DON'T KNOW WHAT YOU ARE ASKING.

7 DO YOU UNDERSTAND WHAT SHE IS ASKING?

8 THE WITNESS: I DON'T KNOW WHAT YOU ARE ASKING ME
9 MYSELF.

10 BY MS. EISENSTEIN: Q. DO YOU RECALL AT THAT
11 CONFERENCE THE ISSUE BEING RAISED BY ANYBODY THAT
12 VANDERBILT HAD SUPPLIED SPECIFICALLY TREMOLITE AND NOT THE
13 OTHER COMPONENTS OF THEIR TALC PRODUCT TO DR. SMITH?

14 A. I BELIEVE DR. DEMENT, JOHN DEMENT, MADE THAT
15 ACCUSATION.

16 Q. WELL, BUT IT WAS JUST TREMOLITE THAT WAS
17 SUPPLIED TO DR. SMITH FOR THE STUDY COMMISSIONED BY
18 VANDERBILT, CORRECT?

19 A. THAT'S RIGHT, JUST TREMOLITE.

20 Q. WHAT IS YOUR UNDERSTANDING OF JOHN DEMENT'S
21 ACCUSATION?

22 MR. SMITH: AGAIN, OBJECT. VAGUE AND AMBIGUOUS AND
23 UNINTELLIGIBLE. IT'S IRRELEVANT WHAT HIS UNDERSTANDING OF
24 MR. DEMENT'S ACCUSATION IS AS WELL. ON THAT GROUND, I WILL
25 INSTRUCT HIM NOT TO ANSWER.

1 BY MS. EISENSTEIN: Q. IS IT YOUR UNDERSTANDING, SIR,
2 THAT THE SMITH STUDY COMMISSIONED BY VANDERBILT SUPPORTS
3 THE POSITION THAT VANDERBILT TALC DOES NOT PRESENT A HEALTH
4 HAZARD?

5 A. YES.

6 Q. IS IT YOUR POSITION BASED ON THE SMITH STUDY
7 THAT WAS COMMISSIONED BY VANDERBILT THAT VANDERBILT TALC
8 DOES NOT CAUSE TUMORS?

9 A. YES, EXPOSURE TO VANDERBILT TALC DOES NOT CAUSE
10 TUMORS.

11 Q. VANDERBILT TALC CONTAINS MORE THAN TREMOLITE; IS
12 THAT RIGHT?

13 A. YES.

14 Q. AND THE SMITH STUDY WAS JUST TREMOLITE, RIGHT?

15 A. THE ONE WE COMMISSIONED WAS JUST TREMOLITE. THE
16 ORIGINAL ONE WAS THE FULL PRODUCT.

17 MR. SMITH: ACTUALLY, SO THE RECORD IS CLEAR, I THINK
18 EARLIER WHEN SHE ASKED YOU THIS SAME QUESTION PROBABLY
19 THREE TIMES, YOU SAID YOU THINK IT WAS ABOUT 85 PERCENT,
20 WAS AS PURE AS WE COULD SUPPLY.

21 MS. EISENSTEIN: THAT WAS A DIFFERENT STUDY.

22 MR. SMITH: THIS WAS PURE TREMOLITE THEN?

23 THE WITNESS: THIS WAS PROBABLY CLOSER TO 100 PERCENT.

24 BY MS. EISENSTEIN: Q. RIGHT. WERE YOU AWARE OF

25 DR. DEMENT'S CONCERN THAT THE SMITH STUDY WOULD BE USED FOR

1 THE PROPOSITION THAT VANDERBILT TALC IN GENERAL DID NOT
2 CAUSE TUMORS?

3 A. YOU HAVE TO GIVE ME THAT ONE AGAIN.

4 MR. SMITH: READ IT BACK.

5 MS. EISENSTEIN: LET ME TRY AND CLEAN THIS UP A BIT.

6 Q. IS IT YOUR UNDERSTANDING THAT DR. DEMENT
7 EXPRESSED A CONCERN THAT THIS SMITH STUDY COMMISSIONED BY
8 YOU WOULD BE USED TO SUPPORT THE POSITION THAT R.T. VANDERBILT
9 TALCS DO NOT CAUSE TUMORS?

10 A. MAY HAVE BOTHERED HIM.

11 Q. DID HE EXPRESS THAT OPINION TO YOU?

12 A. WHEN?

13 Q. AT ANY TIME.

14 A. WE DIDN'T DISCUSS THAT PARTICULAR SMITH STUDY
15 WITH DR. DEMENT.

16 Q. HAVE YOU EVER HEARD DR. DEMENT EXPRESS THAT
17 CONCERN REGARDING THE SMITH STUDY?

18 A. ONLY AT THAT MEETING.

19 Q. YOU DID HEAR HIM SAY IT AT THAT MEETING?

20 A. YES.

21 Q. ARE YOU AWARE OF WHETHER DR. SMITH IN THE
22 EARLIER STUDY WHICH HE PRESENTED AT THE 1983 TALC --

23 A. '73.

24 Q. '73, I'M SORRY.

25 -- WHETHER HE FOUND ANTHOPHYLLITE IN SAMPLE

1 FD-14?

2 MR. SMITH: WAIT A MINUTE. OBJECT. CALLS FOR
3 SPECULATION, LACKS FOUNDATION. HE DIDN'T, OBVIOUSLY,
4 CONDUCT ANY OF THESE TESTS, AND I'M NOT SURE IF YOU ARE
5 ASKING IF HE IS AWARE OF SOMETHING. THE QUESTION IS VERY
6 UNCLEAR. DO YOU MEAN WAS THIS ANNOUNCED AT THE CONFERENCE?
7 IS WHAT YOU ARE ASKING?

8 MS. EISENSTEIN: I WOULD LIKE TO KNOW WHETHER HE IS
9 AWARE OF THAT FINDING.

10 THE WITNESS: THAT OUR MATERIAL CONTAINS --

11 BY MS. EISENSTEIN: Q. THAT FD-14 CONTAINED
12 ANTHOPHYLLITE?

13 A. HE SHOULD BE -- BE AWARE OF.

14 Q. ARE YOU AWARE OF?

15 A. AWARE OF WHAT HE IS AWARE OF? LET'S GO OVER
16 THAT ONE AGAIN.

17 Q. WAS IT YOUR UNDERSTANDING THAT THE EARLIER STUDY
18 DONE ON FD-14, THAT WAS THE SAMPLE FROM MINE NO. 2 WHICH
19 WAS INTERNATIONAL TALC AT THE TIME, RIGHT?

20 A. YES.

21 Q. THAT THAT SAMPLE CONTAINED ANTHOPHYLLITE?

22 A. AM I AWARE?

23 MR. SMITH: AGAIN, OBJECT. CALLS FOR SPECULATION ON
24 THE PART OF THIS WITNESS, LACKS FOUNDATION. YOU NEVER
25 ESTABLISHED HE EVER INSPECTED THAT SAMPLE.

- 1 BY MS. EISENSTEIN: Q. YOU CAN ANSWER, SIR.
- 2 A. YES.
- 3 Q. WAS THERE ANYONE ELSE FROM VANDERBILT PRESENT AT
4 THE 1973 TALC SYMPOSIUM?
- 5 A. YOU ALREADY ASKED ME THAT.
- 6 Q. 1973?
- 7 A. OH, '73, I'M SORRY, FROM VANDERBILT?
- 8 Q. YES.
- 9 A. YES.
- 10 Q. WHO WOULD THAT HAVE BEEN?
- 11 A. ROBERT BACON.
- 12 Q. WHO IS ROBERT BACON?
- 13 A. HE WAS MY SUPERIOR AT THE TIME, ASSISTANT TO THE
14 PRESIDENT, SOMETHING LIKE THAT, VANDERBILT.
- 15 Q. WAS DR. THOMPSON PRESENT AT THE TALC SYMPOSIUM?
- 16 A. I DON'T KNOW.
- 17 Q. ASIDE FROM DR. SMITH'S STUDY THAT WAS PRESENTED
18 AT THAT '73 TALC SYMPOSIUM, WERE THERE ANY OTHER
19 PRESENTATIONS THAT DEALT WITH TALC FROM A VANDERBILT MINE
20 OR AN INTERNATIONAL TALC MINE?
- 21 A. ANY OTHER PRESENTATIONS?
- 22 Q. YES.
- 23 A. YES.
- 24 Q. WHAT PRESENTATION WOULD THAT HAVE BEEN?
- 25 A. ONE GIVEN BY DR. SCHEPERS, S-C-H-E-P-E-R-S.

1 Q. AND WHAT DID THAT PRESENTATION INVOLVE?

2 A. IN GENERAL IT INVOLVED THE TOXICITY OF VARIOUS
3 MINERALS AND -- VARIOUS MINERALS.

4 Q. WAS ONE OF THOSE MINERALS A MINERAL CONTAINED IN
5 VANDERBILT TALC?

6 A. YES.

7 Q. WHAT WOULD THAT HAVE BEEN?

8 A. TREMOLITE.

9 Q. DO YOU REMEMBER WHAT HIS CONCLUSION WAS
10 REGARDING THE TOXICITY OF TREMOLITE?

11 A. ESSENTIALLY IT WAS -- THERE WAS NO TOXICITY
12 OTHER THAN FOR ANY MINERAL DUST.

13 Q. THIS WOULD BE FOR NON-ASBESTIFORM TREMOLITE?

14 A. ANY KIND OF TREMOLITE. I'M NOT SURE WHAT HE HAD
15 IN MIND. I WOULD HAVE TO REVIEW THE DOCUMENT. I DON'T
16 KNOW WHETHER HE SPECIFIED THE TYPE OF TREMOLITE OR NOT.

17 Q. WHAT KIND OF STUDY DID HE DO THAT HE WAS
18 PRESENTING AT THAT TALC SYMPOSIUM?

19 MR. SMITH: IF YOU KNOW.

20 THE WITNESS: HE DIDN'T DO A STUDY PER SE FOR THE TALC
21 SYMPOSIUM, BUT HE HAD DONE STUDIES EARLIER, STUDIES ON TALC
22 AND OTHER MINERALS MANY YEARS BEFORE THAT WHEN HE WORKED AT
23 THE SARANAC LABORATORY IN NEW YORK.

24 BY MS. EISENSTEIN: Q. HOW LONG HAVE YOU KNOWN
25 DR. SCHEPERS?

1 A. ABOUT 13 OR 14 YEARS.

2 Q. DID DR. THOMPSON MAKE A PRESENTATION AT THE
3 SYMPOSIUM?

4 MR. SMITH: WHICH ONE ARE WE TALKING ABOUT?

5 BY MS. EISENSTEIN: Q. THE TALC SYMPOSIUM IN 1973.

6 A. I BELIEVE HE DID.

7 Q. WAS IT A DISCUSSION OF THE MINERALOGY OF THE
8 INDUSTRIAL TALCS?

9 A. SOUNDS PRETTY GOOD.

10 Q. DO YOU KNOW WHAT THE SUBSTANCE OF THAT
11 PRESENTATION WAS?

12 A. THE SUBSTANCE WAS IN GENERAL THAT THE TALC THAT
13 WAS BEING MINED UP THERE CONTAINED AMPHIBOLES SUCH AS
14 TREMOLITE, BUT NONE OF THESE AMPHIBOLES WAS PRESENT IN THE
15 ASBESTIFORM VARIETY.

16 Q. ASIDE FROM DR. THOMPSON, DR. SCHEPERS, AND
17 DR. SMITH, DID ANYONE ELSE MAKE A PRESENTATION THAT YOU
18 RECALL AT THAT SYMPOSIUM THAT DEALT WITH VANDERBILT OR
19 INTERNATIONAL TALC TALC?

20 A. I DON'T KNOW.

21 Q. I'D LIKE TO SHOW YOU A DOCUMENT WHICH I GUESS WE
22 WILL MARK AS NO. 12 ENTITLED "PROCEEDINGS OF THE SYMPOSIUM
23 ON TALC, WASHINGTON, D.C., MAY 8, 1973" AND ASK YOU IF YOU
24 HAVE EVER SEEN THIS DOCUMENT BEFORE.

25 MR. SMITH: LET THE RECORD REFLECT THE STACK OF

1 DOCUMENTS IS AT LEAST THREE QUARTERS OF AN INCH THICK.

2 THE WITNESS: YES, I HAVE SEEN THIS.

3 (WHEREUPON THE DOCUMENT REFERRED TO WAS
4 MARKED AS PLAINTIFF'S EXHIBIT 12 FOR
5 IDENTIFICATION BY THE NOTARY PUBLIC AND
6 IS ATTACHED HERETO.)

7
8 BY MS. EISENSTEIN: Q. DID YOU RECEIVE A COPY OF THAT
9 DOCUMENT AFTER THE SYMPOSIUM?

10 A. YES, I DID.

11 Q. THAT WAS THE SYMPOSIUM THAT YOU ATTENDED?

12 A. YES.

13 Q. THAT WE HAVE BEEN DISCUSSING?

14 A. YES.

15 MS. EISENSTEIN: THAT IS THE ONLY COPY I HAVE, SO WHEN
16 YOU GET A CHANCE --

17 MR. SMITH: DO YOU NEED TO REFER TO IT?

18 MS. EISENSTEIN: I MIGHT.

19 BY MS. EISENSTEIN: Q. I NOTICE DR. KLEINFELD GAVE A
20 PRESENTATION AT THAT SYMPOSIUM. DOES THAT PRESENTATION
21 INCLUDE ANY DATA FROM A VANDERBILT OR INTERNATIONAL TALC
22 MINE, TO YOUR KNOWLEDGE?

23 A. YES.

24 Q. DO YOU HAVE AN UNDERSTANDING AS TO WHAT THAT
25 PRESENTATION WAS, JUST GENERALLY?

1 A. IN GENERAL, YES.

2 Q. WHAT WOULD THAT BE?

3 A. A REPEAT MORE OR LESS OF THE DOCUMENTS OR THE
4 PAPERS THAT HE ALREADY PUBLISHED IN THE LAST SEVERAL YEARS
5 BEFORE THAT SYMPOSIUM.

6 Q. SO WE WOULD INCLUDE DR. KLEINFELD AMONG THE LIST
7 THAT WAS PRESENTING SOMETHING THAT HAD SOMETHING TO DO WITH
8 VANDERBILT OR INTERNATIONAL TALC?

9 A. YES.

10 Q. DO YOU REMEMBER A PRESENTATION GIVEN BY
11 DR. LANGER, ARTHUR LANGER?

12 A. I KNOW HE GAVE A PRESENTATION BECAUSE I JUST
13 LOOKED AT THE COVER THERE, AND I DO REMEMBER HIM GETTING UP
14 THERE, BUT I DON'T REMEMBER WHAT HE SAID.

15 Q. DID DR. LANGER, TO YOUR KNOWLEDGE, DO A STUDY
16 USING VANDERBILT OR INTERNATIONAL TALC TALC?

17 A. WHAT KIND OF STUDY?

18 Q. ANY KIND OF STUDY.

19 A. HE WAS ONE OF THE AUTHORS OF THE 1973 KLEINFELD
20 PAPER THAT INVOLVED ANALYSIS AND HEALTH STUDIES AND WHATNOT.

21 Q. IS IT YOUR UNDERSTANDING THAT VANDERBILT
22 TREMOLITE IS NONFIBROUS?

23 MR. SMITH: OBJECT. LACKS FOUNDATION, CALLS FOR
24 EXPERTISE OF THIS WITNESS, CALLS FOR SPECULATION ON HIS
25 PART, ALSO IRRELEVANT AS TO WHAT HIS UNDERSTANDING IS.

1 THE WITNESS: MY UNDERSTANDING IS IT'S NON-ASBESTIFORM.

2 BY MS. EISENSTEIN: Q. WHICH WOULD MEAN THAT THE

3 TREMOLITE IS NOT COMPRISED OF FIBERS?

4 A. YES, IT'S NOT ASBESTIFORM.

5 Q. IF IT WERE ASBESTIFORM, IT WOULD BE COMPRISED OF
6 FIBERS?

7 A. YES.

8 Q. I'M GOING TO READ TO YOU, SIR, FROM DR. LANGER'S
9 PRESENTATION. HE SAYS ON PAGE 83 OF THE PROCEEDINGS OF THE
10 SYMPOSIUM ON TALC:

11 "LET ME DESCRIBE SOME OF MY TALC
12 WORK TO YOU. THIS IS WHAT THE FIBROUS
13 TALC FROM NEW YORK STATE LOOKS LIKE AS
14 VIEWED WITH A TRANSMISSION ELECTRON
15 MICROSCOPE (FIGURE 1). SOME OF THESE
16 FIBERS ARE ANTHOPHYLLITE; OTHERS ARE
17 FIBERS OF TREMOLITE."

18 DO YOU REMEMBER HIM MAKING THAT STATEMENT, SIR?

19 A. NO, I DON'T.

20 Q. I'D LIKE TO GO BACK TO THE CONFERENCE OUT OF
21 WHICH DUSTS AND DISEASE CAME ABOUT. DO YOU REMEMBER A
22 PRESENTATION REGARDING A STUDY DONE BY BLUM, ARP, SMITH AND
23 TRYOLER, T-R-Y-O-L-E-R, ENTITLED "STOMACH CANCER AMONG
24 RUBBER WORKERS, AN EPIDEMIOLOGICAL INVESTIGATION"?

25 A. NO, I DON'T.

1 Q. I'M GOING TO HAND YOU A DOCUMENT, SIR, ENTITLED
2 "STOMACH CANCER AMONG RUBBER WORKERS, AN EPIDEMIOLOGICAL
3 INVESTIGATION," AND SEE IF THIS REFRESHES YOUR RECOLLECTION.

4 A. I CAN'T REMEMBER HEARING THIS PAPER, BUT I MUST
5 SAY I DIDN'T ATTEND EVERY MINUTE OF EVERY SESSION OF THE
6 THREE-DAY CONFERENCE.

7 Q. HAVE YOU EVER SEEN THIS STUDY BEFORE?

8 A. I DON'T KNOW.

9 Q. HAVE YOU EVER DISCUSSED THIS STUDY WITH ANYONE?

10 A. NOT TO MY KNOWLEDGE.

11 Q. DO YOU HAVE ANY UNDERSTANDING AS TO THE
12 CONCLUSION REACHED IN THIS STUDY?

13 MR. SMITH: OBJECT. CLEARLY LACKS FOUNDATION, CALLS
14 FOR SPECULATION. HE SAYS HE'S NEVER SEEN IT BEFORE TO HIS
15 KNOWLEDGE. THE DOCUMENT SPEAKS FOR ITSELF.

16 BY MS. EISENSTEIN: Q. DO YOU HAVE ANY UNDERSTANDING
17 THAT THE CONCLUSION OF THIS STUDY WAS THAT THERE WAS AN
18 INCREASE IN STOMACH CANCER AMONG RUBBER WORKERS EXPOSED TO
19 TALC?

20 A. I'D HAVE TO READ IT IF I'M TO AGREE WITH YOU,
21 BUT IF YOU WANT ME TO READ IT.

22 Q. I'M JUST ASKING WHETHER YOU HAVE THAT UNDERSTANDING.

23 A. NO, I HAVEN'T.

24 Q. HAVE YOU EVER HEARD THAT THERE ARE THOSE WHO
25 BELIEVE RUBBER WORKERS HAVE A HIGHER INCIDENCE OF STOMACH

1 CANCER DUE TO THEIR EXPOSURE TO TALC?

2 A. I DON'T THINK I HAVE HEARD THAT.

3 Q. HAVE YOU EVER HEARD FROM ANY SOURCE THAT
4 EXPOSURE TO TALC IS ASSOCIATED WITH A HIGHER RISK OF
5 STOMACH CANCER?

6 A. NO, I DON'T THINK I HAVE EVER HEARD THAT.

7 MR. SMITH: COUNSEL, IS THIS GOING TO BE EXHIBIT 13?

8 MS. EISENSTEIN: YES.

9 (WHEREUPON THE DOCUMENT REFERRED TO WAS
10 MARKED AS PLAINTIFF'S EXHIBIT 13 FOR
11 IDENTIFICATION BY THE NOTARY PUBLIC AND
12 IS ATTACHED HERETO.)

13 BY MS. EISENSTEIN: Q. LET ME JUST MAKE SURE.

14 THERE WERE SEVERAL STUDIES PRESENTED AT THE
15 CONFERENCE IN WHICH DUSTS AND DISEASE CAME ABOUT WHICH
16 DEALT DIRECTLY WITH VANDERBILT OR INTERNATIONAL TALC MINES
17 AND PRODUCTS; IS THAT CORRECT?

18 A. YES.

19 Q. THAT WOULD INCLUDE THE PRESENTATION BY DR. SMITH?

20 A. YES.

21 Q. WOULD THAT ALSO INCLUDE A PRESENTATION DONE BY
22 JOHN DEMENT AND RALPH ZIMWALD ON THE NIOSH -- WAS THAT THE
23 NIOSH STUDY?

24 A. I BELIEVE SO.

25 Q. WOULD IT INCLUDE A RESPIRATORY MORBIDITY STUDY

1 DONE BY GAMBLE, FELLNER AND DIMEO?

2 A. I'M NOT SURE WHETHER THEIR STUDY WAS IN THERE OR
3 NOT.

4 Q. DID THEY DO A STUDY THAT WAS BASED ON EITHER THE
5 MINES OR PRODUCTS OF INTERNATIONAL TALC OR VANDERBILT?

6 A. YES.

7 Q. DO YOU KNOW WHAT THE CONCLUSION OF THEIR STUDY
8 WAS?

9 A. I'M NOT FAMILIAR ENOUGH WITH THEIR CONCLUSIONS
10 TO BE ABLE TO TELL YOU WHAT THEY WERE.

11 Q. DR. GAMBLE'S STUDY, WAS THAT AN INDUSTRIAL
12 HYGIENE STUDY, TO YOUR KNOWLEDGE?

13 A. NO. DR. GAMBLE'S STUDY, I BELIEVE, WAS A
14 MORBIDITY STUDY.

15 Q. MORBIDITY STUDY WOULD BE ONE OF DISEASE; IS THAT
16 WHAT MORBIDITY STUDIES ARE?

17 A. YEAH, OF PEOPLE, LIVING PEOPLE.

18 Q. IS IT YOUR UNDERSTANDING THAT THE CONCLUSION OF
19 HIS MORBIDITY STUDY WAS THAT HE SAW EVIDENCE OF
20 ASBESTOS-RELATED DISEASES WHICH INDICATED TO HIM THAT THE
21 MINERS AND MILLERS WERE EXPOSED TO ASBESTOS?

22 MR. SMITH: LACKS FOUNDATION.

23 THE WITNESS: I DON'T KNOW ABOUT THAT. I DON'T
24 RECOGNIZE THAT AT ALL.

25 BY MS. EISENSTEIN: Q. I'M GOING TO SHOW YOU, SIR, A

1 STUDY WHICH I'D LIKE YOU TO JUST BRIEFLY REVIEW, IF YOU
2 WOULD.

3 MR. JOHNSON: WHICH STUDY, AND WHICH PAGE IS IT ON?

4 MS. EISENSTEIN: I THINK WHAT I'M GOING TO DO IS MAKE
5 A COPY OF THE STUDY AND TAKE IT OUT OF THE BOOK. IT'S ON
6 PAGE 307 OF DUSTS AND DISEASE.

7 MR. SMITH: ENTITLED "RESPIRATORY MORBIDITY AMONG
8 MINERS AND MILLERS OF ASBESTIFORM TALC" BY JOHN GAMBLE, ET
9 AL.

10 THE WITNESS: YES, I AM FAMILIAR WITH THIS ARTICLE.

11 (WHEREUPON THE DOCUMENT REFERRED TO WAS
12 MARKED AS PLAINTIFF'S EXHIBIT 14 FOR
13 IDENTIFICATION BY THE NOTARY PUBLIC AND
14 IS ATTACHED HERETO.)

15

16 BY MS. EISENSTEIN: Q. WAS THAT --

17 A. THIS PAPER.

18 Q. WAS THAT PAPER PRESENTED AT THE CONFERENCE?

19 A. I BELIEVE SO.

20 Q. DO YOU REMEMBER HEARING THAT PRESENTATION?

21 A. NOT SPECIFICALLY.

22 Q. BUT YOU WERE AWARE THERE WAS A PRESENTATION OF
23 THAT STUDY DONE?

24 A. I BELIEVE SO.

25 Q. WHAT IS YOUR UNDERSTANDING OF THE CONCLUSION OF

1 THAT STUDY BY GAMBLE, ET AL.?

2 A. IN GENERAL, THIS TYPE OF STUDY BY GAMBLE FOUND
3 THAT THERE WAS AN INCREASE ABOVE EXPECTED OF NONMALIGNANT
4 RESPIRATORY DISEASE BROUGHT ABOUT BY THE EXPOSURE TO
5 VANDERBILT TALCS.

6 Q. SO THAT STUDY WAS DONE ON VANDERBILT EMPLOYEES?

7 A. YES.

8 Q. WHEN YOU ARE FINISHED WITH THE BOOK, I'D LIKE TO
9 ASK YOU SOMETHING ABOUT IT.

10 A. SURE.

11 Q. I'D LIKE TO READ TO YOU, SIR, FROM THE
12 CONCLUSIONS AND RECOMMENDATIONS, PAGE 323 OF THIS STUDY
13 WHERE IT SAYS:

14 "A STUDY OF MORTALITY PATTERNS
15 AMONG MINERS AND MILLERS OF TALC CONTAINING
16 ASBESTIFORM AMPHIBOLES TREMOLITE AND
17 ANTHOPHYLLITE DEMONSTRATED EXCESSIVE
18 MORTALITY DUE TO NON-MALIGNANT RESPIRATORY
19 DISEASE AND BRONCHOGENIC CANCER. THESE
20 RESULTS ARE IN AGREEMENT WITH OTHER STUDIES
21 OF OCCUPATIONAL GROUPS EXPOSED TO THE SAME
22 OR SIMILAR MINERALS OR MINERAL MIXTURES."

23 MR. SMITH: COUNSEL, BY YOUR PAUSES, I'M ASSUMING YOU
24 ARE OMITTING SOME MATERIAL; IS THAT CORRECT?

25 MS. EISENSTEIN: NO. I WAS GOING TO OMIT A SENTENCE,

1 BUT I WILL KEEP GOING.

2 "ALTHOUGH SEVERAL COHORT MEMBERS HAD
3 PERIODS OF PRIOR EMPLOYMENT IN
4 NEIGHBORING TALC OPERATIONS, ALL MINES
5 AND MILLS INCLUDING THE OPERATIONS
6 UNDER STUDY HAVE BEEN SHOWN TO HAVE
7 SIMILAR FIBER EXPOSURE CHARACTERISTICS.
8 IT MUST, THEREFORE, BE CONCLUDED THAT
9 EXPOSURES TO TALCS FROM THE GOUVERNEUR
10 MINING AREA ARE ASSOCIATED WITH AN
11 INCREASED RISK OF BRONCHOGENIC CANCER
12 AND NON-MALIGNANT DISEASES OF THE
13 RESPIRATORY SYSTEM."

14 Q. ARE YOU IN AGREEMENT, SIR, WITH THIS CONCLUSION?

15 MR. SMITH: I OBJECT. IT'S TOTALLY IRRELEVANT WHETHER
16 HE AGREES WITH IT OR DISAGREES WITH IT. HE HAS READ IT. I
17 INSTRUCT HIM NOT TO ANSWER.

18 MS. EISENSTEIN: COUNSEL, I INTEND TO GET THIS ANSWER
19 BECAUSE THIS IS THE INDIVIDUAL THAT YOU PROVIDED OR WAS
20 PROVIDED TO DISCUSS IMMEDIATE ISSUES AND ISSUES REGARDING
21 THE CONTROVERSY SURROUNDING HEALTH HAZARDS ASSOCIATED WITH
22 VANDERBILT TALC. THIS IS THE PERSON THAT WAS PROVIDED TO
23 DISCUSS THESE VERY ISSUES, AND, UNFORTUNATELY -- NOT
24 UNFORTUNATELY. I INTEND TO PURSUE THIS. IF YOU CONTINUE
25 TO INSTRUCT NOT TO ANSWER, THAT IS FINE, BUT I'D LIKE

1 MR. HARVEY TO KNOW THERE MAY BE ANOTHER SESSION OF THIS
2 DEPOSITION AT A LATER DATE WHERE HE WILL HAVE TO ANSWER
3 THESE QUESTIONS.

4 MR. SMITH: MR. HARVEY UNDERSTANDS THAT AND SO DO I,
5 COUNSEL. HE'S NOT A MEDICAL DOCTOR. HE IS NOT HERE TO
6 VERIFY SOMEONE ELSE'S STUDIES AND CONCLUSIONS, AND YOU KEEP
7 ASKING HIM ABOUT OTHER PEOPLE'S CONCLUSIONS, AND HIS
8 OPINIONS ARE IRRELEVANT ON THOSE CONCLUSIONS.

9 MS. EISENSTEIN: COUNSEL, IN THE LAST SESSION OF THIS
10 DEPOSITION, HE STATED HE WAS THE PERSON AT VANDERBILT THAT
11 WAS IN POSSESSION AND KNOWLEDGEABLE REGARDING THE
12 CONTROVERSY SURROUNDING TALC AND REGARDING THE MEDICAL
13 LITERATURE. NOW TODAY YOU MAY TELL ME THIS IS NOT HIS AREA
14 OF EXPERTISE, BUT THAT IS THE UNDERSTANDING NOT ONLY THIS
15 WITNESS HAS GIVEN BUT HAS BEEN GIVEN BY HIS COUNSEL.

16 MR. SMITH: WHAT I AM SAYING, HE IS NOT A DOCTOR.
17 THAT HAS BEEN ESTABLISHED. YOU ARE ASKING HIM TO CONFIRM
18 OR REFUTE MEDICAL FINDINGS DONE BY A DOCTOR. I DON'T THINK
19 THAT IS WITHIN HIS AREA OF EXPERTISE, AND I DON'T THINK YOU
20 CAN EXPECT HIM TO ANSWER THOSE QUESTIONS.

21 BY MS. EISENSTEIN: Q. MR. HARVEY, WHEN WAS THE FIRST
22 TIME YOU SAW THIS STUDY BY GAMBLE, ET AL., OR ACTUALLY IT'S --
23 YEAH.

24 ACTUALLY, SIR, I WAS READING TO YOU FROM THE
25 MORTALITY STUDY BY BROWN, DEMENT AND WAGONER.

1 WHEN WAS THE FIRST TIME YOU SAW THAT STUDY?

2 MR. SMITH: IF EVER.

3 THE WITNESS: BROWN, DEMENT AND WAGONER, PROBABLY
4 AROUND 1978.

5 BY MS. EISENSTEIN: Q. THAT IS A PART OF THE NIOSH
6 STUDY, RIGHT?

7 A. YES.

8 Q. WAS THE GAMBLE STUDY A PART OF THE NIOSH STUDY?

9 A. YES.

10 Q. AND THEIR CONCLUSION WAS THAT THERE WAS EVIDENCE
11 OF A HIGHER RISK OF NONMALIGNANT RESPIRATORY DISEASE IN
12 YOUR MINERS AND MILLERS?

13 MR. SMITH: IS THAT A STATEMENT OR A QUESTION, COUNSEL?

14 MS. EISENSTEIN: QUESTION.

15 THE WITNESS: EVIDENCE, THERE WAS EVIDENCE OF A HIGHER
16 RISK OF NONMALIGNANT -- YES, THAT WAS THEIR CONCLUSION.

17 BY MS. EISENSTEIN: Q. OTHER THAN THE PRESENTATION AT
18 THE CONFERENCE DONE REGARDING THE DEMENT AND ZIMWALD STUDY
19 AND THE GAMBLE STUDY AND THE BROWN, DEMENT AND WAGONER
20 STUDY AND THE SMITH STUDY, ARE YOU AWARE OF ANY OTHER
21 PRESENTATIONS THAT DEALT WITH VANDERBILT OR INTERNATIONAL
22 TALC TALC OR MINERS AND MILLERS?

23 A. I CAN'T RECALL ANY AT THIS TIME.

24 Q. DID YOU HAVE KNOWLEDGE OF THE NIOSH FINDINGS
25 PRIOR TO THE CONCLUSION OF THEIR STUDY?

1 A. YES.

2 MR. SMITH: FOR MY CLARITY, WHAT STUDY ARE WE
3 REFERRING TO NOW?

4 MS. EISENSTEIN: STUDY DONE BY NIOSH, THE MORBIDITY,
5 MORTALITY AND INDUSTRIAL HYGIENE STUDIES.

6 THE WITNESS: OF THE GOVERNMENT.

7 BY MS. EISENSTEIN: Q. YES.

8 DID YOU RECEIVE A PRELIMINARY REPORT FROM ANY OF
9 THE PEOPLE PARTICIPATING IN THE STUDY PRIOR TO THE
10 CONCLUSION OF THE STUDY?

11 A. YES.

12 Q. WHO WOULD THAT REPORT HAVE BEEN FROM?

13 A. JOHN DEMENT.

14 Q. DID YOU CONTACT DR. DEMENT AND ASK HIM WHAT HIS
15 PRELIMINARY FINDINGS WERE?

16 A. NO. HE OFFERED THEM SPONTANEOUSLY.

17 Q. DID YOU HAVE A CONVERSATION WITH HIM REGARDING
18 THE PRELIMINARY FINDINGS?

19 A. NO.

20 Q. WAS THIS DONE IN THE FORM OF A LETTER?

21 A. YES.

22 Q. AND WHAT WERE HIS PRELIMINARY FINDINGS?

23 MR. SMITH: IF YOU CAN RECALL.

24 THE WITNESS: HIS PRELIMINARY FINDINGS, ACCORDING TO
25 THE LETTER HE SENT US, WAS THAT HE FOUND ASBESTOS IN THE

1 TALCS AND A HIGHER-THAN-EXPECTED INCIDENCE OF NONMALIGNANT
2 RESPIRATORY DISEASE AND BRONCHOGENIC CANCER.

3 BY MS. EISENSTEIN: Q. WAS IT YOUR UNDERSTANDING THAT
4 HE WANTED TO COMMUNICATE THAT INFORMATION TO YOU AS SOON AS
5 POSSIBLE?

6 A. HE SENT THE PRELIMINARY REPORT TO US FOR OUR
7 COMMENTS. I BELIEVE THAT IS ALL THE LETTER SAID.

8 Q. WHEN DID HE DO THIS? WHAT YEAR WOULD THAT HAVE
9 BEEN?

10 A. APPROXIMATELY 1978. IT COULD HAVE BEEN 1977.

11 Q. THEIR STUDY WAS STARTED IN 1975; IS THAT CORRECT?

12 A. YES.

13 Q. DID HE COMMUNICATE DIRECTLY WITH YOU?

14 A. WITH ME?

15 Q. YES.

16 A. YES.

17 Q. WERE YOU THE CONTACT BETWEEN NIOSH AND THE
18 COMPANY?

19 A. YES.

20 Q. WHAT DID YOU DO IN RESPONSE TO THIS COMMUNICATION
21 FROM DR. DEMENT?

22 A. I SENT BACK A LETTER WITH OUR COMMENTS.

23 Q. DO YOU REMEMBER WHAT YOUR COMMENTS WERE?

24 A. TO A CERTAIN EXTENT.

25 Q. WOULD YOU TELL ME, PLEASE?

1 A. WE OBJECTED STRENUOUSLY TO THE ALLEGATION WE HAD
2 ASBESTOS IN OUR TALCS, CHALLENGED HIM TO PROVE IT.

3 Q. BEFORE SENDING OFF THIS LETTER, DID YOU HAVE ANY
4 MEETINGS WITH ANYONE AT VANDERBILT REGARDING HIS PRELIMINARY
5 FINDINGS?

6 A. YES.

7 Q. WHO WOULD YOU HAVE MET WITH?

8 A. PROBABLY DR. THOMPSON.

9 Q. ANYONE ELSE?

10 A. THAT IS THE ONLY ONE I CAN THINK OF RIGHT NOW.

11 Q. DID YOU DISCUSS HIS PRELIMINARY FINDINGS WITH
12 THE PRESIDENT OF THE COMPANY, MR. VANDERBILT?

13 A. I CAN'T RECALL.

14 Q. DO YOU HAVE ANY RECOLLECTION OF DISCUSSING THE
15 PRELIMINARY FINDINGS WITH ANYONE OTHER THAN DR. THOMPSON?

16 A. YES. I DISCUSSED THEM WITH OUR ATTORNEY.

17 Q. WHO WAS THAT?

18 A. MR. DRIVER.

19 Q. GUY DRIVER?

20 A. YES, I THINK AT THE TIME. WHOEVER OUR ATTORNEY
21 WAS AT THE TIME. IT MIGHT HAVE BEEN GUY DRIVER OR
22 PAUL GIBNEY, G-I-B-N-E-Y, WHOEVER WAS OUR ATTORNEY AT THE
23 TIME HANDLING THAT PARTICULAR --

24 Q. ISSUE?

25 A. ISSUE.

1 Q. DID YOU HAVE ANY DISCUSSIONS PRIOR TO DRAFTING
2 YOUR LETTER TO DR. DEMENT WITH DR. TABERSHAW?

3 A. QUITE POSSIBLE.

4 Q. DID YOU CONTACT DR. TABERSHAW AFTER RECEIVING
5 THE PRELIMINARY FINDINGS FROM JOHN DEMENT?

6 A. I CAN'T RECALL.

7 Q. DID YOU CONTACT ANYONE AT TOMA REGARDING THE
8 PRELIMINARY FINDINGS?

9 A. I CAN'T RECALL THAT.

10 MS. EISENSTEIN: I NEED JUST A MOMENT HERE, SIR.

11 (LUNCH RECESS.)

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FURTHER EXAMINATION

BY MS. EISENSTEIN:

Q. MR. HARVEY, WHEN WAS THE FIRST TIME YOU BECAME AWARE OF THE FACT THAT THERE WERE INDIVIDUALS WHO WERE CONCERNED THAT THERE WAS A HEALTH HAZARD ASSOCIATED WITH VANDERBILT OR INTERNATIONAL TALC INDUSTRIAL TALC PRODUCTS?

A. GEE, I CAN'T REMEMBER THAT.

Q. WOULD YOU HAVE BEEN AWARE OF THIS CONCERN THAT I JUST MENTIONED IN 1972?

A. I DON'T THINK SO.

Q. WERE YOU AWARE IN 1972 OF SOME OF THE STUDIES THAT WE MENTIONED EARLIER, PARTICULARLY BY KLEINFELD, THAT HAD BEEN DONE THAT EXPRESSED A CONCERN REGARDING EXPOSURE TO INDUSTRIAL TALC?

A. I DON'T THINK SO.

Q. I'D LIKE TO SHOW YOU A TWO-PAGE DOCUMENT WHICH WE CAN MARK AS 15. IT'S ON THE LETTERHEAD OF DEPARTMENT OF HEALTH, EDUCATION AND WELFARE. IT'S ADDRESSED TO ALLEN M. HARVEY, MANAGER OF TECHNICAL DEVELOPMENT DEPARTMENT, R.T. VANDERBILT COMPANY, JULY 18, 1976, I BELIEVE. ON THE SECOND PAGE IT'S SIGNED BY JOHN M. DEMENT, AND ASK YOU TO REVIEW THIS, PLEASE.

(WHEREUPON THE DOCUMENT REFERRED TO WAS MARKED AS PLAINTIFF'S EXHIBIT 15 FOR IDENTIFICATION BY THE NOTARY PUBLIC AND

1 IS ATTACHED HERETO.)

2 THE WITNESS: YEAH, I AM FAMILIAR WITH THIS.

3 MR. SMITH: LET ME READ IT, PLEASE, BEFORE YOU ASK ANY
4 QUESTIONS. FOR THE RECORD, COUNSEL, YOU MIGHT CLARIFY THIS
5 BUSINESS WITH THE DATE BECAUSE IT SEEMS TO HAVE BEEN
6 CROSSED OUT. I DON'T KNOW WHAT DATE IT ACTUALLY BEARS.
7 SEEMS TO BE CROSSED OUT THEN A 20 WRITTEN OVER IT.

8 BY MS. EISENSTEIN: Q. WHEN WAS THE FIRST TIME YOU
9 SAW THIS LETTER, SIR?

10 A. I DON'T REMEMBER EXACTLY.

11 Q. DO YOU REMEMBER RECEIVING THIS LETTER FROM
12 JOHN DEMENT?

13 A. YES.

14 Q. DO YOU BELIEVE THAT YOU RECEIVED IT AROUND THE
15 TIME JULY 18 OR 20TH, 1976?

16 A. IT COULD BE POSSIBLE.

17 Q. ANY REASON TO BELIEVE THAT WASN'T THE TIME YOU
18 RECEIVED IT?

19 A. NO.

20 Q. THIS WAS NOT THE FIRST COMMUNICATION YOU HAD HAD
21 WITH JOHN DEMENT; IS THAT CORRECT?

22 A. I DON'T THINK SO.

23 Q. HE MAKES REFERENCE IN THE FIRST PARAGRAPH TO
24 YOUR LETTER OF JUNE 18TH, 1976, CONCERNING THE PROGRESS
25 REPORT OF THE NIOSH INDUSTRIAL HYGIENE STUDY.

1 CAN YOU RECALL WHAT THE SUBSTANCE OF YOUR LETTER
2 TO HIM WAS?

3 A. ESSENTIALLY WHAT I SAID HERE BACK BEFORE LUNCH,
4 THAT WE OBJECTED STRENUOUSLY TO HIS ALLEGATION THAT OUR
5 PRODUCT CONTAINED ASBESTOS.

6 Q. AND IS IT YOUR UNDERSTANDING THAT THIS LETTER
7 THAT HE SENT YOU WAS A RESPONSE TO YOUR COMMENTS TO HIM?

8 A. IT COULD BE.

9 Q. DID YOU SEND HIM ANY DATA WHEN YOU SENT HIM THE
10 JUNE 18, 1976 LETTER?

11 A. I DON'T REMEMBER.

12 Q. DID YOU MENTION TO HIM A MESA REPORT?

13 A. I DON'T REMEMBER THAT.

14 Q. HE SAYS ON PAGE 1, THIRD FULL PARAGRAPH DOWN,
15 "THE SOLE REPORT SHOWING FIBER EXPOSURES APPROACHING
16 PRESENT STANDARDS IS THE MARCH 26, 1976 MESA REPORT WHICH
17 YOU MENTIONED."

18 DOES THAT REFRESH YOUR RECOLLECTION AS TO WHAT
19 REPORT YOU MIGHT HAVE MENTIONED TO HIM?

20 A. NO, IT DOESN'T REALLY. IT'S TOO FAR AGO. I HAD
21 NO IDEA WHAT WAS IN THAT REPORT. I LEARN TO GATHER IT FROM
22 WHAT WAS WRITTEN HERE.

23 Q. I ASSUME THIS LETTER, THE ONE JULY 20, 1976, WAS
24 PRECEDED BY AN EARLIER LETTER BY JOHN DEMENT TO YOU THAT WE
25 DISCUSSED BEFORE LUNCH; IS THAT CORRECT?

1 A. THE CONTENTS OF THAT LETTER WOULD INDICATE THAT,
2 YES.

3 Q. WOULD THAT HAVE BEEN THE INITIAL LETTER APPRISING
4 YOU OF --

5 A. IT COULD HAVE BEEN THE INITIAL LETTER, COULD
6 HAVE BEEN A COUPLE LETTERS LATER BECAUSE WE HAD SEVERAL
7 LETTERS WENT BACK AND FORTH. I CAN'T TELL HOW MANY PRECEDED
8 THAT.

9 Q. OKAY. DO YOU BELIEVE THIS CORRESPONDENCE
10 OCCURRED IN 1976?

11 A. I BELIEVE IT IS APPROXIMATELY THEN.

12 Q. I'D LIKE TO SHOW YOU A TWO-PAGE DOCUMENT DATED
13 JANUARY 6, 1976, AND AT THE TOP IT HAS IN PRINT "INTER-OFFICE
14 MEMORANDUM," AND ON THE LEFT-HAND SIDE IT SAYS, "TO FILE
15 FROM A. M. HARVEY, SUBJECT NIOSH MEDICAL REPORT," AND ASK
16 YOU TO REVIEW IT, PLEASE.

17 A. YES.

18 Q. ARE YOU THE AUTHOR OF THAT INTER-OFFICE
19 MEMORANDUM?

20 A. YES.

21 Q. DID YOU PREPARE THIS AT OR ABOUT JANUARY 6, 1976?

22 A. I THINK SO.

23 Q. WAS THIS IN THE COURSE OF YOUR DUTIES FOR
24 VANDERBILT?

25 A. YES.

1 Q. YOU SAY IN THE VERY FIRST SENTENCE, "DR. TABERSHAW
2 GIVES THE FOLLOWING ADVICE ON THE NIOSH REPORT."

3 I ASSUME PRIOR TO JANUARY 6, 1976, YOU HAD
4 COMMUNICATED WITH DR. TABERSHAW REGARDING THE NIOSH REPORT?

5 A. THAT SEEMS EVIDENT.

6 Q. DID YOU MEET WITH HIM PERSONALLY REGARDING THE
7 NIOSH REPORT?

8 A. I DON'T REMEMBER.

9 Q. WHAT PROMPTED DR. TABERSHAW TO GIVE YOU THE
10 ADVICE CONTAINED IN THIS INTER-OFFICE MEMORANDUM?

11 MR. SMITH: IF YOU KNOW.

12 THE WITNESS: IT'S OBVIOUS I WOULD REQUEST HIS ADVICE.

13 BY MS. EISENSTEIN: Q. YOU REQUESTED DR. TABERSHAW'S
14 ADVICE REGARDING THE NIOSH MEDICAL REPORT?

15 A. YES.

16 Q. WAS IT IN RESPONSE TO DR. TABERSHAW'S ADVICE
17 THAT YOU REQUESTED RAW DATA FROM THE NIOSH INVESTIGATORS?

18 A. YES, WE DID.

19 Q. DID YOU OBTAIN THAT RAW DATA?

20 A. WE OBTAINED SOME DATA.

21 Q. WHAT WAS THE DATA CONCERNING?

22 A. I DON'T REMEMBER THE DETAILS OF THE DATA, BUT WE
23 DID GET SOMETHING FROM THEM.

24 Q. ON THE SECOND PAGE THERE ARE A LIST OF NAMES ON
25 THE LEFT-HAND SIDE. IT SAYS, "MR. H. B. VANDERBILT"; WAS

1 THAT THE PRESIDENT AT THE TIME?

2 A. YES.

3 Q. MR. T. T. NOLAND, WHAT WAS HIS POSITION?

4 A. EXECUTIVE VICE-PRESIDENT AND TO WHOM I ANSWERED.

5 Q. AND G. L. FIEDERLEIN, WHAT WAS HIS POSITION THEN?

6 A. AT THAT POINT HE WAS PROBABLY A CHIEF FINANCIAL
7 OFFICER.

8 Q. AND DR. C. S. THOMPSON?

9 A. HE'S OUR MINERALOGIST.

10 Q. AND WHAT WAS V. O. STREITMATTER'S POSITION?

11 A. HE WAS THE VICE-PRESIDENT IN CHARGE OF
12 MANUFACTURING AND MINING.

13 Q. AND G. E. ERDMAN'S POSITION?

14 A. MANAGER OF THE GOUVERNEUR HOTEL COMPANY?

15 Q. IS HE RETIRED?

16 A. NO.

17 Q. HE'S STILL THE EXISTING MANAGER?

18 A. YES.

19 Q. P. G. GIBNEY, JR., WAS HE A LAWYER?

20 A. YES.

21 Q. WAS G. DRIVER ALSO A LAWYER?

22 A. YES.

23 Q. ARE ANY OF THOSE GENTLEMEN RETIRED AT THE
24 PRESENT TIME?

25 A. YES.

1 Q. WHO WOULD THAT BE THAT IS RETIRED?

2 A. STREITMATTER.

3 Q. IS HE STILL ALIVE?

4 A. AS OF ABOUT SIX MONTHS AGO HE WAS.

5 Q. DO YOU KNOW WHERE HE LIVES?

6 A. YES. HE LIVES IN CONNECTICUT.

7 Q. WHERE IN CONNECTICUT?

8 A. I BELIEVE HE LIVES IN GREENWICH.

9 Q. DO YOU KNOW HIS EXACT ADDRESS?

10 A. NO.

11 Q. PLEASE LOOK UNDER NO. 4. IT SAYS ON PAGE 1:

12 "TABERSHAW ADVISES THAT WE CANNOT
13 KEEP SAYING 'NO COMMENT' IF THIS REPORT
14 GETS WIDE PRESS COVERAGE. HE SUGGESTS WE
15 START TO PREPARE LINES OF STRATEGY FOR OUR
16 RESPONSE TO INQUIRIES FROM THE MEDIA.
17 TABERSHAW SAYS WE HAVE MANY GOOD POINTS, AS
18 FOLLOWS, THAT WE CAN PUT FORWARD:"
19 THEN YOU GO ON TO LIST THEM. WERE LINES OF
20 STRATEGY PREPARED IN RESPONSE TO INQUIRIES FROM THE MEDIA?

21 A. I DON'T REMEMBER.

22 Q. WHY WERE YOU PREPARING A LINE OF STRATEGY IN
23 RESPONSE TO INQUIRIES FROM THE MEDIA?

24 MR. SMITH: THAT ASSUMES A FACT NOT IN EVIDENCE THAT
25 ANY SUCH LINE OF STRATEGY WAS EVER PREPARED. HE JUST

1 TESTIFIED HE DOESN'T REMEMBER WHETHER ONE WAS OR NOT.

2 BY MS. EISENSTEIN: Q. DID YOU HAVE A CONCERN, SIR,
3 ABOUT THE IMPACT IN TERMS OF PUBLIC OPINION, WHAT THE
4 IMPACT WOULD BE REGARDING THE NIOSH MEDICAL REPORT?

5 A. YES, WE WERE CONCERNED.

6 Q. WHAT WAS YOUR CONCERN?

7 A. OUR CONCERN WAS THAT THE PUBLIC -- CUSTOMERS
8 MIGHT GET THE WRONG IDEA OF THE CONTENT OF OUR TALC.

9 Q. AND THAT WOULD RESULT IN A LOSS OF BUSINESS TO
10 THE COMPANY?

11 A. YES.

12 Q. IN POINT NO. 3, SECOND SENTENCE, IT SAYS:

13 "THEN THE DATA COULD BE STUDIED
14 TO SEE WHERE THE GAPS ARE, AND TABERSHAW'S
15 CREW CAN BEGIN WORK ON COMPLETING THE
16 MEDICAL PROJECT."

17 WAS THERE AN ATTEMPT ON THE PART OF INDIVIDUALS
18 AT VANDERBILT TO FIND GAPS IN THE NIOSH MEDICAL REPORT?

19 A. NO, I DON'T THINK SO.

20 Q. FINDING THOSE GAPS, WAS THAT RESPONSIBILITY
21 DESIGNATED TO THE TOMA GROUP?

22 A. YES. THAT WAS THEIR AREA OF EXPERTISE, AND WE
23 WANTED THEM TO COMPLETE -- AS I TOLD YOU BEFORE -- THEIR
24 PARALLEL STUDY.

25 MR. SMITH: ARE YOU GOING TO MARK THAT DOCUMENT?

1 MS. EISENSTEIN: YES, I AM SURE.

2 MR. JOHNSON: DID YOU MARK THE DEMENT LETTER OF JULY 20?

3 MS. EISENSTEIN: THAT IS 15.

4 (WHEREUPON THE DOCUMENT REFERRED TO WAS
5 MARKED AS PLAINTIFF'S EXHIBIT 16 FOR
6 IDENTIFICATION BY THE NOTARY PUBLIC AND
7 IS ATTACHED HERETO.)

8 BY MS. EISENSTEIN: Q. I WOULD LIKE TO SHOW YOU A
9 TWO-PAGE DOCUMENT, SIR. IT IS A LITTLE HARD TO READ. IT
10 SAYS, "TO VANDERBILT -- SOMETHING, I'M HOPING YOU WILL HELP
11 ME WITH, FROM JAMES SHARPE, S-H-A-R-P-E, RE MINUTES OF
12 MEETING IN TOMA OFFICES ON 6-10-80. AND THE DATE OF THIS
13 DOCUMENT IS JUNE 18, 1980. IF YOU WOULD LOOK AT THAT,
14 PLEASE.

15 MR. SMITH: COUNSEL, DO YOU HAVE A BETTER COPY OF THIS
16 BY ANY CHANCE?

17 MS. EISENSTEIN: NO.

18 MR. SMITH: MUCH OF THE FIRST PAGE IS ILLEGIBLE. THE
19 WHOLE FIRST TWO PARAGRAPHS OF THE SECOND PAGE ARE TOTALLY
20 ILLEGIBLE, I'M AFRAID.

21 BY MS. EISENSTEIN: Q. HAVE YOU HAD A CHANCE TO
22 REVIEW THAT TWO-PAGE DOCUMENT, SIR?

23 A. YES.

24 Q. WHO IS JAMES SHARPE?

25 A. JAMES SHARPE IS A MEDICAL COORDINATOR -- WAS THE

1 MEDICAL COORDINATOR WHO WORKED IN THE TOMA OPERATION IN
2 MARYLAND -- WHEREVER -- IN THE OUTSKIRTS OF WASHINGTON.

3 Q. RIGHT UNDER THE DATE IT SAYS "PARTICIPANTS," AND
4 THERE IS A LIST OF NAMES. IT SAYS, "IRVING R. TABERSHAW, M.D.,
5 KNUD D. KNUDSEN, M.D.

6 A. YES.

7 Q. WHO IS THAT, SIR?

8 A. HE'S ONE OF THE TOMA MEDICAL PEOPLE.

9 Q. HENRY DOYLE?

10 A. HE WAS A TOMA INDUSTRIAL HYGIENIST.

11 Q. AND ALLEN HARVEY I ASSUME IS YOU?

12 A. YES.

13 Q. GUY DRIVER --

14 A. GUY DRIVER, THEIR ATTORNEY.

15 Q. THEN JAMES SHARPE.

16 HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

17 A. NO, I DON'T REMEMBER THIS ONE AT ALL.

18 Q. DO YOU REMEMBER A MEETING THAT TOOK PLACE AT
19 TOMA OFFICES ON 6-10-80?

20 A. 6-10-80. NO, I DON'T RECALL ONE SEVEN YEARS AGO
21 ON THAT DATE.

22 Q. DO YOU REMEMBER A MEETING IN 1980 WITH THESE
23 GENTLEMEN AT THE TOMA OFFICES?

24 A. I DON'T REMEMBER ANYTHING SPECIFICALLY, NO.

25 Q. DO YOU REMEMBER MEETING WITH THESE GENTLEMEN AT

1 SOME POINT AT THE TOMA OFFICES?

2 A. I REMEMBER MEETING WITH THESE GENTLEMEN AT THE
3 TOMA OFFICES, BUT I REALLY CAN'T RECALL WHEN IT WAS, WITHIN
4 A FEW YEARS.

5 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THE
6 CONTENTS OF THIS DOCUMENT WHICH ARE LEGIBLE ARE ACCURATE?

7 A. HAVE I ANY REASON TO BELIEVE THEY ARE ACCURATE?

8 Q. NOT ACCURATE.

9 MR. SMITH: ACCURATE IN WHAT RESPECT, COUNSEL?

10 BY MS. EISENSTEIN: Q. WELL, THAT THEY OCCURRED IS A
11 BETTER WAY TO PUT IT.

12 A. THAT THEY WHAT?

13 Q. THAT THEY OCCURRED.

14 MR. JOHNSON: I THINK WE HAVE TO DEFINE WHAT IS "LEGIBLE."
15 WHAT MAY BE LEGIBLE TO YOU MAY NOT BE LEGIBLE TO MR. HARVEY.

16 BY MS. EISENSTEIN: Q. I WILL ATTEMPT TO READ OUT
17 LOUD MY UNDERSTANDING OF THE FIRST PARAGRAPH:

18 "THE MEETING WAS CALLED TO DISCUSS
19 THE NIOSH TECHNICAL REPORT ON" SOMETHING
20 "TO TALC ISSUED IN 1980. H. DOYLE
21 PRESENTED AN ANALYSIS PREPARED BY TOMA
22 OF 15 LUNG CANCER CASES (INCLUDING ONE
23 MESOTHELIOMA). THE FOLLOWING POINTS WERE
24 MADE:"

25 MR. SMITH: COUNSEL, MAY I INTERRUPT YOU FOR ONE

1 SECOND. IN READING THAT FIRST SENTENCE, IT APPEARS ON THE
2 RECORD THAT THE WORD "SOMETHING" WAS IN THE SENTENCE, AND I
3 THINK IF YOU HIT AN ILLEGIBLE WORD, YOU SHOULD SAY "ILLEGIBLE"
4 AS OPPOSED TO "SOMETHING."

5 MS. EISENSTEIN: FINE.

6 Q. DO YOU HAVE ANY UNDERSTANDING AS TO WHAT THAT
7 ILLEGIBLE WORD IS?

8 A. WHERE IS IT?

9 MR. SMITH: UP HERE.

10 THE WITNESS: EXPOSURE.

11 BY MS. EISENSTEIN: Q. YOU ARE PROBABLY RIGHT.

12 "EXPOSURE TO TALC ISSUED IN 1980." THEN I BELIEVE
13 EVERYTHING ON THAT FIRST PAGE IS LEGIBLE.

14 NOW, THE SECOND PAGE, WHAT I CAN'T READ AND
15 WOULD LIKE TO ASK YOU ABOUT IS THE SECOND PARAGRAPH, THE
16 LAST SENTENCE SAYS, "A MINERALOGICAL REBUTTAL BY VANDERBILT
17 MINERALOGIST" -- I CAN'T READ ANYTHING FURTHER ON MY COPY.

18 DO YOU HAVE ANY UNDERSTANDING WHAT THAT IS
19 REFERRING TO?

20 A. THAT SOUNDS LIKE A MINERALOGICAL REBUTTAL BY
21 VANDERBILT.

22 Q. WAS A MINERALOGICAL REBUTTAL DONE IN RESPONSE TO
23 THE NIOSH STUDY?

24 A. I BELIEVE SO.

25 Q. DID DR. THOMPSON PARTICIPATE IN THAT REBUTTAL?

1 A. IF WE HAD A REBUTTAL, HE WOULD BE THE LEADING
2 CONTRIBUTOR.

3 Q. WHAT KIND OF REBUTTAL DO YOU BELIEVE WAS
4 PREPARED BY VANDERBILT? WAS IT IN WRITTEN FORM?

5 A. YES. WE SENT THEM A LETTER REBUTTING THE POINT
6 THAT BOTHERED US THE MOST, THE ALLEGATION OF ASBESTOS.

7 Q. YOU SENT WHO A LETTER, NIOSH?

8 A. NIOSH.

9 Q. DID YOU GIVE A COPY OF THAT LETTER TO ANYONE IN
10 THE MEDIA?

11 A. I DON'T REMEMBER.

12 Q. DID YOU DO ANYTHING ELSE IN PRINT IN TERMS OF
13 REBUTTING THE NIOSH REPORT?

14 A. WE ISSUED AND HAVE CONTINUED TO ISSUE OVER QUITE
15 A NUMBER OF YEARS THERE ABOUT 1975 -- RIGHT UP TO TODAY --
16 ODD AND SUNDRY MINERALOGICAL REBUTTALS, NOT ONLY NIOSH, BUT
17 ANYONE ELSE WHO ALLEGES THAT OUR TALC CONTAINS ASBESTOS,
18 COMPLETE WITH ANY DOCUMENTS THAT WE MIGHT HAPPEN TO HAVE
19 THAT WILL SUPPORT OUR CASE.

20 Q. DO YOU KEEP COPIES OF THESE MINERALOGICAL REBUTTALS?

21 A. CHANCES ARE THEY ARE IN THE FILES SOMEWHERE.

22 Q. IF YOU WANTED TO FIND THESE, WHERE WOULD YOU GO
23 TO LOOK, WHAT PARTICULAR FILES?

24 A. FILES HAVING TO DO WITH MINERALOGICAL ANALYSIS
25 AND NOMENCLATURE AND THE LIKE.

1 Q. WHERE WOULD THOSE BE KEPT?

2 A. THERE SHOULD BE FILES LIKE THAT IN MY FORMER
3 OFFICE.

4 Q. WHAT WOULD THEY SAY ON THEM, "MINERALOGICAL DATA"
5 OR "MINERALOGICAL REBUTTALS"?

6 A. "MINERALOGICAL REBUTTALS" WITH SCIENTIFIC
7 EXPLANATION OF WHAT WAS IN OUR TALC.

8 Q. IS THERE A PARTICULAR FILE YOU WOULD LOOK IN OF
9 TERMS A NAME OF A FILE OR THE NAME OF A GROUP OF DOCUMENTS
10 THAT YOU'D KEEP TOGETHER?

11 A. ONE WOULD BE OUR WHITE PAPER UNDER THE HEADING "W."

12 Q. WHAT IS "OUR WHITE PAPER"?

13 A. IT IS A COMPLETE REBUTTAL OF THE NIOSH DOCUMENT
14 AND ANY OTHER DOCUMENT HAVING TO DO WITH ASBESTOS IN OUR
15 TALCS OR ANY ALLEGATION THAT WORKERS HAVE BEEN EXPOSED TO
16 AN ASBESTOS-RELATED RISK BY WORKING WITH OUR TALC.

17 Q. WHEN WAS THE WHITE PAPER COMPLETED?

18 A. ABOUT TWO YEARS AGO.

19 Q. I'M GOING TO READ TO YOU NOW FROM THIS DOCUMENT
20 DATED JUNE 18, 1980, THE SECOND PAGE, THE THIRD PARAGRAPH
21 DOWN SAYS:

22 "DR. TABERSHAW SAID THAT THE MOST
23 EFFECTIVE RESPONSE WOULD BE A SCIENTIFIC
24 STUDY THAT COULD BE PUBLISHED IN A JOURNAL
25 RESPECTED IN THE SCIENTIFIC COMMUNITY.

1 THIS ALSO WILL ENSURE PEER SCRUTINY PRIOR
2 TO PUBLICATION."

3 DO YOU REMEMBER DR. TABERSHAW MAKING A STATEMENT?

4 A. SIMILAR STATEMENT, YES.

5 Q. WAS A SCIENTIFIC STUDY DONE TO BE PUBLISHED IN A
6 JOURNAL RESPECTED IN THE SCIENTIFIC COMMUNITY?

7 A. YES.

8 Q. WAS THAT THE TOMA STUDY?

9 A. YES, THE STILLE-TABERSHAW STUDY WAS THE ONE THAT
10 EVENTUALLY CAME OF THAT SUGGESTION.

11 Q. IT SAYS, "A. HARVEY INDICATED HIS APPROVAL OF
12 THE SCIENTIFIC PAPER."

13 I TAKE IT THAT IS AN ACCURATE STATEMENT?

14 A. YES.

15 Q. UNDER ACTION NO. 1 IT SAYS "H. DOYLE WILL
16 VALIDATE THE TOMA ANALYSIS." DOES THAT STATEMENT MEAN
17 ANYTHING TO YOU?

18 A. NOT REALLY.

19 Q. DO YOU HAVE ANY IDEA WHAT IT MEANS TO VALIDATE
20 THE TOMA ANALYSIS?

21 A. I'M AFRAID I DON'T.

22 Q. I CAN'T QUITE READ POINT NO. 2. POINT NO. 3
23 SAYS "G. DRIVER WOULD ADDRESS A LETTER TO TOMA SEEKING
24 SPECIFIC MEDICAL AND EPIDEMIOLOGIC INPUT RELATING TO THE
25 NIOSH REPORT. A SPECIFIC REBUTTAL TO THE NIOSH REPORT IS

1 PLANNED BY MR. DRIVER."

2 DO YOU KNOW IF IN FACT MR. DRIVER ADDRESSED A
3 LETTER TO TOMA SEEKING SPECIFIC MEDICAL AND EPIDEMIOLOGICAL --

4 A. I CAN'T RECALL.

5 Q. DO YOU RECALL WHETHER A SPECIFIC REBUTTAL TO THE
6 NIOSH REPORT WAS DONE BY MR. DRIVER?

7 A. I DON'T REMEMBER ONE.

8 Q. MR. DRIVER WAS THE LAWYER; IS THAT CORRECT?

9 A. YES.

10 Q. IS MR. DRIVER STILL WITH THE COMPANY?

11 A. NO.

12 Q. DO YOU KNOW WHERE HE IS NOW?

13 A. LAST TIME I HEARD HE WAS IN WINSTON SALEM, NORTH
14 CAROLINA.

15 Q. WHEN DID HE LEAVE VANDERBILT?

16 A. APPROXIMATELY THREE YEARS AGO, FOUR.

17 Q. SIR, I'M GOING TO SHOW YOU --

18 MR. SMITH: COUNSEL, BEFORE YOU GO TO THAT DOCUMENT,
19 ARE YOU GOING TO MARK THIS ONE?

20 MS. EISENSTEIN: YES, LET'S MARK THAT AS 17.

21 (WHEREUPON THE DOCUMENT REFERRED TO WAS
22 MARKED AS PLAINTIFF'S EXHIBIT 17 FOR
23 IDENTIFICATION BY THE NOTARY PUBLIC AND
24 IS ATTACHED HERETO.)

25 BY MS. EISENSTEIN: Q. SIR, I'D LIKE TO SHOW YOU A

1 EIGHT-PAGE DOCUMENT WITH A DATE ON THE LEFT-HAND SIDE
2 JULY 5, 1980, COMMENTS ON NIOSH TECHNICAL REPORT
3 "OCCUPATIONAL EXPOSURE TO TALC CONTAINING ASBESTOS," DATED
4 FEBRUARY 1980, AND ASK YOU TO REVIEW IT, PLEASE.

5 A. YES.

6 Q. HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

7 A. YES.

8 MS. EISENSTEIN: I WILL MARK THIS AS EXHIBIT 18 TO
9 THIS DEPOSITION.

10 (WHEREUPON THE DOCUMENT REFERRED TO WAS
11 MARKED AS PLAINTIFF'S EXHIBIT 18 FOR
12 IDENTIFICATION BY THE NOTARY PUBLIC AND
13 IS ATTACHED HERETO.)

14 BY MS. EISENSTEIN: Q. DID YOU PREPARE THIS DOCUMENT?

15 A. NO.

16 Q. WHO DID, SIR?

17 A. THE PERSON WHOSE NAME I DON'T REMEMBER.

18 Q. WAS IT MR. DRIVER?

19 A. NO. SOMEBODY, I DON'T REMEMBER WHO, WAS
20 RECOMMENDED BY MR. DRIVER AS AN EXPERT IN STATISTICAL
21 ANALYSIS.

22 Q. WHAT WAS THE PURPOSE OF THIS DOCUMENT?

23 A. TO SECURE STATISTICAL ANALYTICAL CRITIQUE OF THE
24 NIOSH DOCUMENT.

25 EVERY TIME I SAY "NIOSH DOCUMENT," I MEAN

1 FEBRUARY 1980 DOCUMENT. I THINK EVERYONE AGREES THAT IS
2 PRETTY WELL...

3 Q. DID THIS INDIVIDUAL THAT MR. DRIVER RECOMMENDED
4 DO MAKE THESE COMMENTS, DID HE PRESENT THEM TO PEOPLE AT
5 VANDERBILT?

6 A. YES.

7 Q. WHEN WAS THE FIRST TIME APPROXIMATELY YOU SAW
8 THESE COMMENTS?

9 A. PROBABLY SOON AFTER THIS JULY 5TH, 1980 DATE.

10 Q. WAS A COPY OF THIS DOCUMENT SUBMITTED TO YOU FOR
11 YOUR REVIEW?

12 A. YES -- NO, JUST SUBMITTED TO ME.

13 Q. DID YOU READ IT AT THAT TIME?

14 A. YES.

15 Q. WAS ANY ACTION TAKEN BASED ON THESE COMMENTS?

16 A. ANY ACTION? WHAT KIND OF ACTION? LIKE I GOT UP,
17 WALKED UP AND HANDED IT TO THE BOSS, THAT IS AN ACTION.

18 Q. WHO HANDED IT TO WHOM?

19 A. MR. VANDERBILT.

20 Q. OH, YOU DID, WAS THAT ACTION TAKEN?

21 A. YES.

22 Q. MR. VANDERBILT SAW THIS DOCUMENT?

23 A. CHANCES ARE HE DID.

24 Q. HE WAS HANDED IT ANYWAY, RIGHT?

25 A. CHANCES ARE HE WAS. HE GOT A LOOK AT MOST

1 DOCUMENTS.

2 Q. IS IT YOUR UNDERSTANDING HE WAS HANDED THIS
3 DOCUMENT?

4 A. YES.

5 Q. DID VANDERBILT INITIATE ANY PRESS RELEASES OR
6 ANY MATERIAL FOR THE MEDIA REGARDING A REBUTTAL TO THE
7 NIOSH STUDY?

8 A. I DON'T REMEMBER ANYTHING SPECIFIC.

9 Q. AT ANY TIME DID VANDERBILT COMMUNICATE WITH THE
10 MEDIA REGARDING THE NIOSH STUDY, TO YOUR KNOWLEDGE?

11 A. I CAN'T RECALL A SPECIFIC INSTANCE.

12 Q. DID YOU APPEAR ON AN N.B.C. NEWS PROGRAM
13 REGARDING THE CONTROVERSY SURROUNDING TALC?

14 A. YES.

15 Q. WHEN WOULD THAT HAVE BEEN, SIR?

16 A. I DON'T KNOW.

17 Q. IT'S AMAZING HOW MUCH --

18 A. IT CAME ON CHRISTMAS EVE ON TV. I DON'T KNOW
19 WHAT YEAR IT WAS.

20 Q. LET'S SEE IF I CAN FIND IT. IT WILL TAKE ME A
21 MOMENT, SIR.

22 WAS THERE AN OSHA REPRESENTATIVE ON THAT N.B.C.
23 NEWS SHOW?

24 A. ON THE N.B.C. NEWS SHOW, YES, I THINK NEXT TO MY
25 LITTLE SEGMENT THERE WAS A FELLOW FROM OSHA, I THINK.

1 Q. DO YOU KNOW WHO IT WAS FROM OSHA?

2 A. I THINK COOGIE KUAN.

3 Q. THAT IS A FAMILIAR NAME. I'M GOING TO HAND YOU
4 A TWO-PAGE DOCUMENT DATED 1-4-77. ON THE LEFT-HAND SIDE IT
5 SAYS TYPEWRITTEN TRANSCRIPTION OF TELEVISION NEWS FOR
6 RESEARCH PURPOSES AND ASK YOU TO REVIEW THIS, PLEASE.

7 A. INCIDENTALLY I GOT NO OFFERS.

8 A. OKAY.

9 Q. HAVE YOU EVER SEEN THAT BEFORE, SIR?

10 A. YES.

11 Q. WAS A COPY OF THAT SENT TO YOU?

12 A. NO.

13 Q. WHEN WAS THE FIRST TIME YOU'VE SEEN THAT?

14 A. I SAW THAT WITHIN A COUPLE WEEKS AFTER THE
15 BROADCAST.

16 Q. IS THAT AN ACCURATE REPRESENTATION OF WHAT WAS
17 SAID ON THAT BROADCAST?

18 A. I BELIEVE SO.

19 MS. EISENSTEIN: MAY I HAVE THAT MARKED AS EXHIBIT 19
20 TO THE DEPOSITION.

21 (WHEREUPON THE DOCUMENT REFERRED TO WAS
22 MARKED AS PLAINTIFF'S EXHIBIT 19 FOR
23 IDENTIFICATION BY THE NOTARY PUBLIC AND
24 IS ATTACHED HERETO.)

25 BY MS. EISENSTEIN: Q. IT SAYS ON THE TOP RIGHT,

- 1 "MR. DRIVER," D-R-I-V-E-R; IS THAT YOUR HANDWRITING, SIR?
- 2 A. LET ME SEE. IT LOOKS LIKE IT.
- 3 Q. DO YOU ROUTE THIS DOCUMENT TO
- 4 MR. DRIVER?
- 5 A. I GUESS I WOULD, YES.
- 6 Q. DID YOU EVER HAVE ANY DISCUSSIONS WITH ANYONE
- 7 FROM R.T. VANDERBILT REGARDING THIS N.B.C. BROADCAST?
- 8 A. YES.
- 9 Q. WHO DID YOU HAVE DISCUSSIONS WITH?
- 10 A. MR. VANDERBILT.
- 11 Q. AND WHAT WAS THE SUBSTANCE OF THOSE DISCUSSIONS?
- 12 A. TOO HARD TO RECALL.
- 13 Q. DID HE REQUEST THAT YOU APPEAR ON THIS BROADCAST?
- 14 A. NO.
- 15 Q. DID YOU REQUEST THAT HE APPEAR ON THIS BROADCAST?
- 16 A. NO.
- 17 Q. DID THE CONVERSATION TAKE PLACE PRIOR TO
- 18 APPEARING ON THE BROADCAST?
- 19 A. WAIT A MINUTE NOW. WHAT DO YOU MEAN BY THAT?
- 20 OH, THE CONVERSATION WITH MR. VANDERBILT?
- 21 Q. YES.
- 22 A. NO, AFTERWARDS.
- 23 Q. CAN YOU REMEMBER HIM EXPRESSING ANY OPINION
- 24 CONCERNING THE BROADCAST TO YOU?
- 25 A. I CAN'T REMEMBER WHAT HE SAID, NO.

1 Q. HAD HE SEEN THE SHOW?

2 A. HAVE I SEEN IT?

3 Q. DID HE SEE IT?

4 A. I'M NOT SURE.

5 Q. IT APPEARS THEY ONLY HAVE TWO COMMENTS BY YOU,
6 MR. HARVEY?

7 A. STAR.

8 Q. WAS THAT A JOB OF EDITING?

9 A. YOU MIGHT SAY IT WAS SOMEWHAT EDITED IN THAT THE
10 INTERVIEW TOOK ABOUT 20 MINUTES.

11 Q. THIS WAS THE FINAL INTERVIEW THAT WAS BROADCAST,
12 CORRECT?

13 A. THIS WAS EIGHT SECONDS OUT OF THE 20 MINUTES.

14 Q. I UNDERSTAND. IN RESPONSE TO THE QUESTION HERE
15 WHICH IS "MR. HARVEY, DOES YOUR TALC CONTAIN ASBESTOS, IT
16 SAYS" WELL, WHAT DO YOU MEAN BY A... THAT... SOME ASBESTOS
17 OR ANY ASBESTOS? DO YOU REMEMBER ASKING THAT QUESTION?

18 MR. SMITH: HE DIDN'T ASK THE QUESTION, COUNSEL. HE
19 ANSWERED -- I SEE WHAT YOU MEAN. HIS ANSWER WAS A QUESTION.

20 THE WITNESS: I REALLY CAN'T. IT'S JUST SUCH A SMALL
21 SEGMENT OUT OF A 20-MINUTE INTERVIEW.

22 BY MS. EISENSTEIN: Q. YOU WERE THEN ASKED "DOES IT
23 CONTAIN ENOUGH ASBESTOS TO BE HARMFUL?" REPLY, "NO, I
24 DON'T THINK SO."

25 DO YOU AGREE WITH THAT STATEMENT TODAY?

1 A. IT'S KIND OF A LEADING QUESTION IN A WAY. I
2 CAN'T REMEMBER ANSWERING IT.

3 Q. DOWN HERE IT SAYS, "HARVEY: NO, I DON'T THINK
4 SO."

5 DO YOU AGREE TODAY WITH THAT STATEMENT?

6 A. I DON'T AGREE TO THE LEAD-IN. I DON'T KNOW
7 WHETHER I SAID THAT OR NOT BECAUSE I CAN'T REMEMBER BACK
8 THEN BUT IT'S A LEADING QUESTION.

9 Q. WELL, THE QUESTION WAS, "DOES IT CONTAIN ENOUGH
10 ASBESTOS TO BE HARMFUL," AND THEN THE REPLY, AT LEAST ON
11 THIS TYPEWRITTEN TRANSCRIPTION IS "NO, I DON'T THINK SO."

12 MY QUESTION TO YOU IS: DO YOU AGREE WITH YOUR
13 ANSWER AS OF THE TIME YOU GAVE IN 1976 THAT YOU DON'T THINK
14 THAT VANDERBILT TALC CONTAINS ENOUGH ASBESTOS TO BE HARMFUL?

15 A. I MAY HAVE SAID THAT BUT IF YOU ASK ME AGAIN I'D
16 SAY IN THE FIRST PLACE WE DON'T HAVE ANY ASBESTOS SO
17 THEREFORE SINCE WE DON'T HAVE ASBESTOS IT CAN'T BE HARMFUL
18 IF THERE HAS BEEN NO ASBESTOS IN IT. IF I HAD TIME I
19 WOULDN'T HAVE ANSWERED THAT QUESTION.

20 Q. THE WAY YOU DID?

21 A. THAT WAY, BUT AS THEY SAY 20 MINUTES YOU GOT
22 EIGHT SECONDS. ANYTHING CAN HAPPEN.

23 Q. AS YOU SIT HERE TODAY IS IT YOUR BELIEF THAT
24 THERE HAS NEVER BEEN ASBESTOS FOUND IN ANY TALC MINE COMING
25 FROM EITHER THE ONE OR TWO MINE?

1 A. YES.

2 Q. NEVER FOUND ASBESTOS?

3 A. NO, THAT'S RIGHT.

4 Q. BY YOUR DEFINITION OF ASBESTOS?

5 A. BY MY DEFINITION OF ASBESTOS.

6 Q. HAVE YOU EVER STATED TO THE CONTRARY PUBLICLY?

7 A. NOT THAT I CAN REMEMBER.

8 MR. SMITH: OFF THE RECORD.

9 (DISCUSSION OFF THE RECORD.)

10 BY MS. EISENSTEIN: Q. AS YOU SIT HERE TODAY DO YOU
11 BELIEVE ASBESTOS WAS FOUND IN THE THIRD MINE, THE ONE THAT
12 IS NO LONGER IN OPERATION?

13 A. I'M NOT SURE OF THAT AT ALL.

14 Q. SIR, ATTACHED TO THE LAST SESSION OF YOUR
15 DEPOSITION AS EXHIBIT NO. 8 IS A PRESENTATION BY THE
16 R.T. VANDERBILT COMPANY INC. TO ASSISTANT SECRETARY OF
17 LABOR MR. JOHN STENDER. DO YOU REMEMBER MAKING THAT
18 PRESENTATION?

19 A. YES.

20 Q. THAT WAS ON JUNE 19, 1975?

21 A. I BELIEVE SO.

22 Q. IN THAT PRESENTATION YOU DISCUSS THE BUSINESS OF
23 MINING -- I'M GOING TO QUOTE TO YOU ACTUALLY FROM THAT, IF
24 THAT IS ALL RIGHT WITH YOU.

25 A. OKAY.

1 Q. THE VERY BOTTOM OF PAGE 5, LAST PARAGRAPH,
2 "THE BUSINESS OF MINING DEALING WITH MINERAL ASSOCIATIONS
3 AS THEY OCCUR IN NATURE IS CONCERNED WITH VARIATIONS IN
4 MINERAL CONTENT AND VARIATIONS IN THE FORMS OF THESE
5 MINERALS FROM BATCH TO BATCH AS DIFFERENT AREAS OF AN OPEN
6 PIT OR UNDERGROUND ARE DEVELOPED WITH THESE TALC PRODUCTS
7 AS WE ARE PRESSURING A MIXTURE OF AT LEAST SIX OR SEVEN
8 DIFFERENT MINERALS, AND SEVERAL OF THESE MINERALS CAN
9 APPEAR IN DIFFERENT FORMS, THAT IS THE SAME MINERAL WITH
10 THE SAME CHEMICAL COMPOSITION AND CRYSTAL STRUCTURE CAN
11 APPEAR IN MORE THAN ONE FORM OR SHAPE."

12 DO YOU AGREE WITH THAT STATEMENT?

13 A. YES.

14 Q. SO THERE CAN BE VARIOUS MINERAL COMPOSITIONS IN
15 THE SAME MINE; IS THAT CORRECT?

16 A. VARIOUS MINERAL COMPOSITIONS?

17 Q. VARIOUS DIFFERENT MINERALS WITH DIFFERENT
18 COMPOSITIONS IN THE SAME TALC MINE?

19 A. THAT IS NOT ACCURATE. VARIOUS MINERALS, EACH
20 MINERAL DOESN'T HAVE A DIFFERENT COMPOSITION. A MINERAL
21 HAS ONE COMPOSITION.

22 Q. RIGHT. THERE WOULD BE VARIATIONS IN THE MINERAL
23 CONTENT AND VARIATIONS IN THE FORMS OF THOSE MINERALS FROM
24 BATCH TO BATCH; IS THAT CORRECT?

25 A. IT COULD BE.

1 Q. I'M GOING TO READ TO YOU TWO BRIEF PARAGRAPHS
2 THAT PROCEEDED THE LAST ONE, "IN THE CASE OF MINERAL TALC
3 WE HAVE BECOME AWARE SINCE WE PURCHASED THE ASSETS OF THE
4 FORMER INTERNATIONAL TALC COMPANY IN THE VICINITY OF OUR
5 GOUVERNEUR PROPERTIES OF THE EXISTENCE OF TWO FORMS OF THE
6 MINERAL TALC, FIBROUS AND NONFIBROUS. THE FIBROUS FORMS
7 OCCUR PREDOMINANTLY IN THE FORMER INTERNATIONAL MINES AT
8 THE EASTERNMOST SECTION OF THE TALC BELT. USUALLY THE
9 FIBEROUS TALC DEPOSITS ARE ACCOMPANIED BY FIBERS AND TRUE
10 ANTHOPHYLLITE ASBESTOS."

11 DO YOU AGREE WITH THAT STATEMENT, SIR?

12 A. NOT TODAY.

13 Q. WHY IS IT TODAY YOU DON'T AGREE WITH THAT
14 STATEMENT?

15 A. SINCE THAT TIME DR. THOMPSON WHO GAVE ME THAT
16 INFORMATION TO BEGIN WITH HAS DONE BETTER AND MORE
17 SOPHISTICATED ANALYSIS. HE DOES NOT FIND THAT FORM OF AN
18 ASBESTOS IN THERE ANYMORE.

19 Q. WHICH MINE WERE YOU REFERRING TO THOUGH IN THIS
20 STATEMENT?

21 A. PREDOMINANTLY NO. 3 MINE.

22 Q. WERE YOU ALSO REFERRING TO NO. 2 MINE?

23 A. NO.

24 Q. OR NO. 1 MINE?

25 A. NO.

1 Q. IT WOULDN'T HAVE BEEN NO. 1, EITHER NO. 2 OR 3?

2 A. IT WOULD BE NO. 3.

3 Q. DID VANDERBILT ACQUIRE JUST TWO MINES FROM
4 INTERNATIONAL TALC?

5 A. TWO TALC MINES?

6 Q. YES.

7 A. YES.

8 Q. IT SAYS HERE THE "FIBROUS FORMS OCCUR
9 PREDOMINANTLY IN THE FORMER INTERNATIONAL TALC MINES IN THE
10 EASTERNMOST SECTION OF THE TALC BELT." THAT IS PLURAL. DID
11 YOU MEAN TO INCLUDE MINE NO. 2 AS WELL IN THE STATEMENT?

12 A. I DOUBT IT. THERE MAY HAVE BEEN OTHER MINES IN
13 IT THAT WE DIDN'T BUY, CLOSED-DOWN MINES. THERE WERE A LOT
14 OF TALC MINES IN THAT AREA OVER THE 100 YEARS.

15 Q. IS MINE NO. 2 LOCATED IN THE EASTERNMOST SECTION
16 OF THE TALC BELT?

17 A. NO.

18 Q. WHERE IS MINE NO. 2 LOCATED?

19 A. IT'S MORE OR LESS RIGHT BESIDE NO. 1, WITHIN A
20 COUPLE HUNDRED YARDS.

21 Q. WHAT AREA IS MINE NO. 1 LOCATED IN?

22 A. I'M NOT SURE OF THE GEOLOGY THERE BUT THE NO. 3
23 MINE WAS MILES TO THE EAST OF THE NO. 1 MINE OR NO. 2 MINE.
24 SO I DON'T KNOW AT WHAT END OR HOW CLOSE THE NO. 1 AND 2
25 MINE WERE TO THE WESTERN END.

1 Q. I SEE.

2 A. WHAT I DO KNOW IS THAT THE NO. 3 MINE IS WAY
3 DOWN TO THE EAST AND THAT MIGHT HAVE BEEN THE LIMIT OF THE
4 TALC BELT. I DON'T KNOW MY GEOLOGY, I DON'T KNOW THAT
5 GEOLOGY. I JUST KNOW THE RELATIVE POSITION.

6 Q. ARE THE ONE AND TWO MINES ALSO CONSIDERED IN THE
7 EASTERN SECTION OF THE TALC BELT?

8 A. NO, I JUST FINISHED TELLING YOU ONE AND TWO
9 MAY BE THE WESTERN LIMITS FOR ALL I KNOW. ALL I KNOW,
10 RELATIVELY SPEAKING, NO. 3 MINE IS MILES, A LONG WAYS FROM
11 THE NO. 2 -- ONE AND TWO WHICH ARE SIDE BY SIDE, AND THERE
12 MAY HAVE BEEN DOZENS OF MINES OUT THERE FOR ALL I KNOW IN
13 THE FAR EASTERN END.

14 Q. I'M LOOKING NOW AGAIN AT THE TYPEWRITTEN
15 TRANSCRIPTION OF THE TELEVISION NEWS FOR RESEARCH PURPOSES
16 DOCUMENT THAT YOU DISAGREED WITH THE STATEMENTS MADE BY THE
17 OSHA REPRESENTATIVE.

18 A. YES.

19 Q. SIR, I'D LIKE TO SHOW YOU A DOCUMENT ENTITLED "A
20 MATTER OF FACT, THE TRUTH ABOUT TREMOLITIC TALC" AND ASK
21 YOU TO REVIEW IT, PLEASE.

22 A. YES, I HAVE SEEN THIS.

23 Q. HAVE YOU EVER SEEN THAT BEFORE?

24 A. YES.

25 Q. DID YOU HELP IN THE PREPARATION OF THAT DOCUMENT?

1 A. YES.

2 Q. MAY I SEE IT FOR A MOMENT, SIR.

3 WHEN WAS THIS DOCUMENT CREATED?

4 A. APPROXIMATELY FIVE YEARS AGO.

5 Q. SO ABOUT 1982?

6 A. IN THERE SOMEWHERE.

7 Q. WHO CONTRIBUTED TO THE PREPARATION OF THIS

8 DOCUMENT?

9 A. MYSELF AND MR. BOBKER, WHO WAS A PRESIDENT OF
10 THE FILM COMPANY THAT MADE A FILM THAT ACCOMPANIED THAT --
11 YEAH, ACCOMPANIED THAT A MATTER OF FACT BOOKLET.

12 Q. DO YOU HAVE A COPY OF THAT FILM?

13 A. YES.

14 Q. WHERE WOULD THAT FILM BE KEPT?

15 A. IN MY OFFICE, FORMER OFFICE.

16 Q. WOULD IT BE KEPT IN FILES?

17 A. NO. TO TELL YOU THE TRUTH IT'S IN THE -- IN

18 ANOTHER BUILDING WHERE WE KEEP ALL OUR PHOTOGRAPHIC

19 EQUIPMENT AND THAT SORT OF THING ACROSS THE STREET.

20 Q. WHAT WOULD BE THE ADDRESS OF THAT BUILDING?

21 A. 30 WINFIELD STREET, NORWALK, CONNECTICUT.

22 Q. WOULD IT BE IN SOMEONE'S OFFICE?

23 A. NO. IT'S IN STORAGE.

24 Q. WHAT IS THE TITLE OF THAT FILM?

25 A. A MATTER OF FACT.

1 Q. DID VANDERBILT HAVE THIS FILM COMMISSIONED?

2 A. YES.

3 Q. WAS IT YOUR DECISION TO DO IT?

4 A. NO.

5 Q. WHOSE DECISION WAS IT?

6 A. MR. VANDERBILT'S.

7 Q. PRESIDENT?

8 A. YES.

9 Q. AND A MATTER OF FACT, THIS DOCUMENT, WHICH I
10 WILL NOW MARK AS 20, WAS TO ACCOMPANY THE FILM?

11 A. YES.

12 (WHEREUPON THE DOCUMENT REFERRED TO WAS
13 MARKED AS PLAINTIFF'S EXHIBIT 20 FOR
14 IDENTIFICATION BY THE NOTARY PUBLIC AND
15 IS ATTACHED HERETO.)

16 BY MS. EISENSTEIN: Q. WHAT WAS THE PURPOSE OF MAKING
17 THE FILM AND PREPARING THIS DOCUMENT?

18 A. THE PURPOSE WAS TO -- IT WAS A TOOL THAT WE
19 COULD USE TO EXPLAIN OUR SITUATION IN THE TALC-ASBESTOS
20 CONTROVERSIAL SITUATION TO A NUMBER OF DIFFERENT PEOPLE, TO
21 LEGISLATIVES, CUSTOMERS, EMPLOYEES, TO ANYBODY WHO WANTED
22 TO FIND OUT WHAT THIS TALC-ASBESTOS CONTROVERSY WAS ALL
23 ABOUT, NIOSH HAD SEEMED TO RAISE UP.

24 Q. DID YOU SEND COPIES OF THIS OUT TO VARIOUS
25 PEOPLE?

1 MR. SMITH: WAIT. ARE YOU REFERRING NOW TO THE
2 EXHIBIT 20 OR A FACSIMILE THEREOF?

3 MS. EISENSTEIN: EXHIBIT 20 AND THE FILM.

4 MR. SMITH: THAT IS WHAT I WANT TO KNOW, IF YOU WERE
5 TALKING ABOUT THE FILM, TOO?

6 THE WITNESS: YES, WE DID.

7 BY MS. EISENSTEIN: Q. DID YOU SEND IT OUT TO
8 CUSTOMERS?

9 A. WE SENT OUT THE BOOKLET TO A LOT OF CUSTOMERS.
10 WE DID NOT SEND THE FILM OUT TO CUSTOMERS. SHOWED THEM THE
11 FILM BUT DIDN'T SEND IT TO THEM.

12 Q. WHO ELSE AT VANDERBILT PARTICIPATED IN PUTTING
13 TOGETHER THE DOCUMENT AND THE FILM?

14 A. THE DOCUMENT AND THE FILM?

15 Q. YES.

16 A. DR. THOMPSON. I THINK THAT WOULD BE ALL.

17 Q. WHO IS DR. MALCOLM ROSS?

18 A. DR. MALCOLM ROSS IS A MINERALOGIST WHO WORKS IN
19 THE GEOLOGICAL SURVEY OF THE U.S. BUREAU OF MINES.

20 Q. HAS HE EVER BEEN COMMISSIONED TO DO ANY WORK FOR
21 VANDERBILT?

22 A. NO.

23 Q. HAS HE EVER DONE ANY STUDIES THAT YOU'VE SEEN OR
24 HEARD ABOUT?

25 A. YES.

1 Q. WHAT STUDIES WOULD THOSE BE?

2 A. HE'S PUBLISHED -- FIRST OF ALL, HE PUBLISHED --
3 HE WAS A JOINT AUTHOR OF ONE OF THOSE ORIGINAL DOCUMENTS ON
4 THE GEOLOGY AND MINERALOGY OF THE GOUVERNEUR TALC PRODUCTS
5 THAT I MENTIONED EARLIER ON THIS MORNING THAT MR. ASHTON
6 WAS ALSO -- I THINK ROSS MIGHT HAVE BEEN THE LEAD AUTHOR IN
7 THAT BUT HE'S PUBLISHED VARIOUS PAPERS OVER THE PERIOD OF
8 THE LAST 10 OR 15 YEARS HAVING TO DO WITH TALC AND ASBESTOS
9 AND RELATED MINERALS.

10 Q. DO YOU HAVE COPIES OF THOSE ARTICLES IN YOUR
11 FILES?

12 A. YES, I DO.

13 Q. WOULD THEY BE DESIGNATED BY THE AUTHOR'S NAME?

14 A. YES.

15 Q. I'M GOING TO HAND YOU A FOUR-PAGE DOCUMENT ON
16 R.T. VANDERBILT COMPANY, INC. LETTERHEAD DATED APRIL 22,
17 1980 TO THE OFFICE OF THE SECRETARY CONSUMER PRODUCTS
18 SAFETY COMMISSION AND ASK YOU TO PLEASE REVIEW IT.

19 DID YOU GET A CHANCE TO REVIEW THAT DOCUMENT?

20 A. YES, I DID.

21 Q. ARE YOU THE AUTHOR OF THAT DOCUMENT?

22 A. YES.

23 Q. WAS THIS DOCUMENT PREPARED APPROXIMATELY APRIL
24 22, 1980?

25 A. I WOULD ASSUME THAT.

1 Q. DID YOU PREPARE THIS DOCUMENT IN THE COURSE OF
2 YOUR REGULAR DUTIES WITH VANDERBILT?

3 A. YES.

4 Q. NOW, WHAT WAS THE PURPOSE OF PREPARING THIS
5 DOCUMENT?

6 A. TO RESPOND TO THE CONSUMER PRODUCT SAFETY
7 COMMISSION ADVANCED NOTICE PROPOSED RULE MAKING AND THEIR
8 SOLICITATION OF COMMENTS.

9 MS. EISENSTEIN: LET'S MARK THIS AS EXHIBIT 21.

10 (WHEREUPON THE DOCUMENT REFERRED TO WAS
11 MARKED AS PLAINTIFF'S EXHIBIT 21 FOR
12 IDENTIFICATION BY THE NOTARY PUBLIC AND
13 IS ATTACHED HERETO.)

14 BY MS. EISENSTEIN: Q. WHO IS MR. DAVID POMEROY?

15 A. I DON'T KNOW.

16 Q. SAYS CC MR. DAVID POMEROY AT THE BOTTOM.

17 A. I WAS LOOKING AT THAT AND I WAS WONDERING WHO
18 THAT WAS, BUT SINCE THIS HAPPENED SEVEN YEARS AGO, IT COULD
19 BE SOMEBODY WHOSE NAME NOW ESCAPES ME.

20 Q. PLEASE LOOK AT PAGE 2. DO YOU SEE IN THE LAST
21 FULL PARAGRAPH THERE ARE THREE WORDS UNDERLINED? THE
22 SENTENCE READS "THEREFORE, NO CONSUMER EXPOSURE," WHICH IS
23 UNDERLINED, "IS SOLD IN DRY FORM."

24 A. NO. YOU MISSED A LINE.

25 Q. I'M SORRY. "IS EXPECTED IN THE APPLICATIONS IN

1 WHICH OUR OR ANY OTHER TALC IS SOLD IN DRY FORM.

2 CONSEQUENTLY, NO EXPOSURE TO AIRBORNE PARTICLES WILL OCCUR."

3 AS YOU SIT HERE TODAY DO YOU BELIEVE THAT IS AN
4 ACCURATE STATEMENT?

5 A. LET ME JUST READ A LITTLE BIT.

6 Q. PLEASE.

7 A. IN THIS PARTICULAR CONTEXT I THINK THAT IS AN
8 ACCURATE STATEMENT.

9 Q. YOU WERE NOT MEANING TO INFER THAT THERE IS
10 NEVER A CONSUMER EXPOSURE TO VANDERBILT TALC IN DRY FORM,
11 WERE YOU?

12 A. NO. THIS REFERS TO THE MIXTURE OF TALC IN THESE
13 LOW TEMPERATURE CASTING BODIES.

14 Q. BUT THERE ARE SITUATIONS, ARE THERE NOT, WHERE
15 CONSUMER EXPOSURE WOULD BE EXPECTED IN THE APPLICATIONS OF
16 TALC?

17 MR. SMITH: COUNSEL, OBJECT, VAGUE AND AMBIGUOUS AS TO
18 WHAT YOU MEAN WHEN YOU ARE REFERRING TO APPLICATIONS. IF
19 YOU WANT TO TALK ABOUT A SPECIFIC USE, THEN WE WILL BE ABLE
20 TO UNDERSTAND WHAT YOU ARE TALKING ABOUT.

21 MS. EISENSTEIN: LET ME TRY AND CLEAN UP THAT SENTENCE.

22 Q. THERE ARE OCCASIONS WHERE CONSUMERS OF
23 VANDERBILT TALC IN USING THAT TALC WILL BE EXPOSED TO
24 AIRBORNE PARTICLES; IS THAT CORRECT?

25 A. NO, BECAUSE OUR TALC IS NOT USED PER SE BY ANY

1 CONSUMER THAT I KNOW OF. PRODUCTS CONTAINING OUR TALC ARE
2 USED BUT NOT THE TALC ITSELF.

3 Q. WELL, ARE THERE SITUATIONS WHERE A CONSUMER WILL
4 BE EXPOSED TO PRODUCTS CONTAINING YOUR TALC WHERE THAT TALC
5 IS IN A DRY FORM?

6 A. YOU MEAN WHEN THE FINAL PRODUCT IS IN -- THE
7 FINAL PRODUCT CONTAINING OUR TALC IS IN THE DRY FORM; IS
8 THAT WHAT YOU ARE SAYING?

9 MR. SMITH: I DON'T THINK THAT IS WHAT SHE MEANS.

10 THE WITNESS: SAY IT AGAIN, I'M CONFUSED HERE.

11 BY MS. EISENSTEIN: Q. AM I CORRECT THAT IN THIS
12 LETTER YOU SENT, THE LETTER WE ARE DISCUSSING, YOU ARE
13 RESPONDING TO A CONCERN THAT CONSUMERS MAY BE EXPOSED TO
14 TALC IN ITS DRY FORM?

15 MR. SMITH: COUNSEL, I THINK THE LETTER SPEAKS FOR
16 ITSELF. IT SPECIFICALLY REFERS TO CERAMIC TALCS IN HIGH
17 SCHOOLS, COLLEGES, ARTS AND ELEMENTARY SCHOOLS. THAT IS
18 WHAT HE IS REFERRING TO. YOU ARE TRYING TO TAKE A SENTENCE
19 OUT OF CONTEXT AND TRYING TO MAKE IT MEAN SOMETHING IT
20 DOESN'T MEAN.

21 MS. EISENSTEIN: THAT IS NOT WHAT I AM DOING, COUNSEL.

22 MR. SMITH: THE DOCUMENT SPEAKS FOR ITSELF.

23 THE WITNESS: I THINK IT SPEAKS FOR ITSELF, IT'S VERY
24 CLEAR TALKING ABOUT A PRODUCT CONTAINING OUR TALC
25 PERMANENTLY BONDED, THEREFORE THERE WOULD BE NO EXPOSURE

1 EVEN IN THE DRY FORM.

2 BY MS. EISENSTEIN: Q. CAN YOU ENVISION CIRCUMSTANCES
3 IN WHICH INDIVIDUALS WOULD BE EXPOSED TO VANDERBILT TALC,
4 WHETHER IT BE SEPARATELY OR IN COMBINATION WITH OTHER
5 MATERIALS, WHERE THAT TALC WOULD BE IN ITS DRY FORM?

6 MR. SMITH: THERE IS CLEARLY A PROBLEM HERE IN
7 UNDERSTANDING WHAT YOU MEAN WHEN YOU SAY DRY FORM, AND
8 MR. HARVEY ALREADY EXPRESSED HIS CONFUSION IN THAT REGARD,
9 WHETHER YOU MEAN THE FINAL PRODUCT HAS BEEN DRIED SUCH AS A
10 PILE THAT HAS BEEN GLAZED OR A WET PAINT OR A DRY PAINT.
11 IF YOU CAN CLEAN UP YOUR QUESTION, MAKE IT CLEAR, I THINK
12 YOU CAN GET AN ANSWER.

13 BY MS. EISENSTEIN: Q. DID YOU UNDERSTAND MY LAST
14 QUESTION, SIR?

15 A. NO, I REALLY DON'T. I DON'T KNOW WHERE YOU ARE
16 GOING. THIS SEEMS SO CLEAR RIGHT THERE.

17 Q. ASIDE FROM THIS DOCUMENT, CAN YOU ENVISION
18 SITUATIONS WHERE CONSUMERS OF VANDERBILT TALC WILL BE
19 EXPOSED TO AIRBORNE PARTICLES EMANATING FROM THAT TALC?

20 A. LET ME ASK YOU A QUESTION: WHAT DO YOU MEAN BY
21 CONSUMERS?

22 Q. ANYONE USING THAT TALC PRODUCT.

23 A. YOU MEAN AN EMPLOYEE OF ONE OF OUR
24 CUSTOMERS?

25 Q. YES.

1 A. YES, THE ANSWER IS YES.

2 Q. WHAT YEAR DID THIS WARNING "DO NOT BREATHE DUST.
3 PROLONGED INHALATION MAY CAUSE LUNG INJURY" FIRST APPEAR?

4 A. I BELIEVE JANUARY 1978.

5 Q. WAS THERE A WARNING LABEL THAT PRECEDED THIS ONE?

6 A. ON OUR TALC?

7 Q. YES.

8 A. NOT ON THE REGULAR PRODUCTS THAT DIDN'T COME
9 FROM NO. 3 MINE.

10 Q. WAS THERE ANY LABEL ON THE TALC PRODUCTS FROM
11 THE ONE AND TWO MINE THAT SAID THE WORD ASBESTOS?

12 A. NO.

13 Q. HAS THERE EVER BEEN?

14 A. NO.

15 Q. HAS THERE EVER BEEN ANY OTHER WORDING ON THE
16 WARNING LABEL OTHER THAN "DON'T BREATHE DUST. PROLONGED
17 INHALATION MAY CAUSE LUNG INJURY"?

18 A. AS FAR AS I KNOW THAT IS THE ORIGINAL WORDING
19 AND I DON'T THINK IT'S BEEN CHANGED.

20 Q. TO YOUR KNOWLEDGE WHAT KIND OF LUNG INJURY CAN
21 OCCUR BY PROLONGED INHALATION OF TALC?

22 MR. SMITH: I TRUST YOU ARE NOT LOOKING FOR A MEDICAL
23 OPINION HERE BUT ONLY HIS LAY OPINION?

24 BY MS. EISENSTEIN: Q. YES.

25 A. I HAVE SAID IT BEFORE, THAT IT HAS BEEN

1 DETERMINED THAT PROLONGED INHALATION OF OUR TALC CAN LEAD
2 TO NONMALIGNANT RESPIRATORY DISEASE. I SAID IT BEFORE.

3 Q. DO YOU BELIEVE THIS IS AN ADEQUATE WARNING LABEL?

4 A. YES, I DO.

5 Q. THERE ARE TWO OTHER PAGES ATTACHED TO THIS
6 LETTER. ARE THEY ATTACHED ON YOUR COPY?

7 A. YES.

8 Q. WERE THOSE TWO PAGES ATTACHED TO THE ORIGINAL,
9 TO YOUR KNOWLEDGE?

10 A. I WOULD ONLY ASSUME THAT THEY WOULD BE BUT I
11 CAN'T --

12 Q. THAT THEY WOULD BE?

13 A. I WOULD ASSUME THEY WERE ATTACHED OR THEY
14 WOULDN'T BE HERE.

15 Q. I WOULDN'T MAKE THAT ASSUMPTION.

16 HAVE YOU EVER SEEN THOSE TWO PAGES BEFORE?

17 A. YES.

18 Q. WHAT ARE THOSE, WHAT IS THAT?

19 A. DEFINITIONS OF ASBESTOS.

20 Q. DID YOU CREATE THESE DEFINITIONS ON THESE TWO
21 PAGES?

22 A. THEY LOOK LIKE REPRINTS OUT OF SOMETHING ELSE.
23 PROBABLY OUT OF A MINERALOGICAL TEXTBOOK. I CAN'T SAY FOR
24 SURE.

25 Q. BUT YOU HAD THEM INCLUDED IN THE LETTER YOU SENT

1 OFF FOR INFORMATIONAL PURPOSES?

2 A. JUDGING FROM THE CONTENT OF THIS LETTER, YES.

3 (RECESS.)

4 BY MS. EISENSTEIN: Q. MR. HARVEY, ARE YOU AWARE OF
5 INCIDENTS WHERE OSHA HAS CITED CUSTOMERS OF VANDERBILT TALC
6 FOR EXCEEDING THE ASBESTOS STANDARD?

7 A. THE VIOLATION OF THE ASBESTOS STANDARD?

8 Q. YES.

9 A. YES.

10 Q. HOW MANY TIMES ARE YOU AWARE OF CITATIONS HAVING
11 BEEN ISSUED BY OSHA TO CUSTOMERS OF VANDERBILT TALC?

12 A. APPROXIMATELY TEN TO 15 TIMES.

13 Q. DO YOU REMEMBER THE FIRST TIME YOU BECAME AWARE
14 OF THESE CITATIONS?

15 A. YES.

16 Q. WHEN WOULD THAT HAVE BEEN?

17 A. APPROXIMATELY 1974.

18 Q. DO YOU REMEMBER THE NAME OF THE CASE?

19 A. YES.

20 Q. WHAT WOULD THAT HAVE BEEN?

21 A. BORG-WARNER CASE.

22 Q. WAS BORG-WARNER THE CUSTOMER OF YOUR TALC?

23 A. YES.

24 Q. DO YOU KNOW WHAT THE OUTCOME OF THAT CASE WAS?

25 A. YES.

1 Q. WHAT WAS IT, SIR?

2 A. BORG-WARNER WAS FOUND GUILTY OF VIOLATING THE
3 ASBESTOS STANDARD.

4 Q. DID YOU PARTICIPATE IN THAT CASE IN ANY WAY?

5 A. ONLY AS AN OBSERVER.

6 Q. DID YOU PARTICIPATE AS AN ADVISOR?

7 A. TO WHOM?

8 Q. TO ANYONE IN PREPARATION OF THAT CASE?

9 A. YES, YOU COULD SAY THAT.

10 Q. WHO WERE YOU AN ADVISOR TO?

11 A. THE ATTORNEY FOR BORG-WARNER.

12 Q. WHAT WAS THAT ATTORNEY'S NAME?

13 A. MARK HARMS.

14 Q. WHAT TYPE OF ADVICE DID YOU GIVE MR. HARMS?

15 A. GENERAL ADVICE ON THIS SITUATION OF TALC VERSUS
16 ASBESTOS.

17 Q. DID YOU GIVE HIM ADVICE ON PREPARATION OF THE
18 DEFENSE OF HIS CASE?

19 A. MOST OF THE ADVICE I WOULD GIVE HIM WOULD
20 OBVIOUSLY BE FOR THE DEFENSE OF THE CASE. HE WOULDN'T ASK
21 ME THE QUESTION FIRST TO BEGIN WITH OTHERWISE.

22 Q. WERE YOU PRESENT AT ANY OF THE HEARINGS?

23 A. YES, ALL OF THEM.

24 Q. HOW MANY HEARINGS WERE THERE?

25 A. YOU MEAN DAYS OF HEARINGS?

1 Q. HOW MANY SEPARATE HEARINGS?

2 A. YOU MEAN IN SEPARATE CASES?

3 Q. WAS THERE MORE THAN ONE HEARING HELD IN THE

4 BORG-WARNER CASE?

5 A. WHAT DO YOU MEAN BY HEARING?

6 Q. WAS THERE A COURT HEARING OR ADMINISTRATIVE

7 HEARING?

8 A. YES, IT WAS A COURT CASE. LASTED FOUR DAYS.

9 Q. WERE YOU PRESENT FOR FOUR DAYS?

10 A. YES.

11 Q. WAS THERE AN APPEAL TAKEN?

12 A. YES.

13 Q. WAS THERE A HEARING HELD REGARDING THE APPEAL?

14 A. I DON'T THINK SO. I DON'T REMEMBER TOO MUCH ON

15 IT.

16 Q. DID YOU HAVE ANY CONVERSATIONS WITH ANYONE AT

17 VANDERBILT REGARDING THE BORG-WARNER CASE?

18 A. YES.

19 Q. WHO WOULD THOSE CONVERSATIONS HAVE BEEN WITH?

20 A. DR. THOMPSON.

21 Q. WHAT WOULD THE SUBSTANCE OF THAT CONVERSATION

22 HAVE BEEN?

23 A. HIS TESTIMONY AT THE CASE.

24 Q. HE TESTIFIED IN THE BORG-WARNER CASE?

25 A. YES.

1 Q. WAS HE AN EXPERT WITNESS FOR BORG-WARNER?

2 A. YES.

3 Q. AND WHAT WAS THE AREA OF EXPERTISE HE TESTIFIED
4 ON?

5 A. MINERALOGY.

6 Q. I WOULD LIKE TO SHOW YOU A DOCUMENT, THREE-PAGE
7 DOCUMENT AND ASK YOU IF YOU HAVE EVER SEEN IT BEFORE.

8 MR. JOHNSON: IS THERE A TITLE ON THAT DOCUMENT?

9 BY MS. EISENSTEIN: Q. I'M SORRY. THERE IS,
10 BORG-WARNER CASE.

11 A. I AM FAMILIAR WITH THIS.

12 Q. WHAT IS THAT DOCUMENT, SIR?

13 A. IT IS A MEMO PREPARED BY MYSELF.

14 Q. WHEN WAS IT PREPARED?

15 A. I DON'T KNOW BUT IT WOULD BE SOMETIME AFTER
16 AUGUST 5, 1976.

17 Q. WAS IT PREPARED IN THE COURSE OF YOUR DUTIES FOR
18 VANDERBILT?

19 A. YES.

20 Q. WAS IT DISTRIBUTED?

21 A. I DON'T KNOW.

22 Q. DO YOU KNOW WHY YOU PREPARED THAT MEMO?

23 A. I USUALLY PREPARE MEMOS TO RECORD INFORMATION
24 EITHER FOR MYSELF OR FOR OTHER PEOPLE.

25 Q. DO YOU KEEP THEM IN A FILE, YOUR MEMOS?

1 A. YES.

2 Q. DO YOU KEEP THEM IN A FILE PERTAINING TO THE
3 SUBJECT MATTER OF THE MEMO?

4 A. YES.

5 Q. WHAT FILE WOULD THAT MEMO HAVE COME FROM?

6 A. THE BORG-WARNER CASE FILE.

7 Q. LET'S MARK THAT AS, I BELIEVE, 22.

8 (WHEREUPON THE DOCUMENT REFERRED TO WAS
9 MARKED AS PLAINTIFF'S EXHIBIT 22 FOR
10 IDENTIFICATION BY THE NOTARY PUBLIC AND
11 IS ATTACHED HERETO.)

12 BY MS. EISENSTEIN: Q. DID YOU DISCUSS THE FINAL
13 OUTCOME OF THE BORG-WARNER CASE WITH THE PRESIDENT,
14 MR. VANDERBILT?

15 A. YES.

16 Q. WHAT WAS THE SUBSTANCE OF YOUR DISCUSSION WITH
17 HIM REGARDING THAT CASE?

18 A. I CAN'T REMEMBER.

19 Q. BUT YOU ARE AWARE OF THE FACT THAT HE WAS AWARE
20 OF THE FINAL OUTCOME OF THE BORG-WARNER CASE?

21 A. YES.

22 Q. YOU MENTIONED YOU WERE AWARE OF OTHER CASES IN
23 WHICH VANDERBILT CUSTOMERS WERE CITED BY OSHA?

24 A. YES.

25 Q. WHAT WERE THE NAMES OF SOME OF THE OTHER CASES,

1 IF YOU CAN REMEMBER?

2 A. LET'S SEE. THERE WAS THE CONSOLIDATED HULL,
3 BALDWIN AND MILLER CASE.

4 Q. WAS THAT ALL ONE CASE?

5 A. YES, CONSOLIDATED.

6 Q. WHEN DID THAT CASE OCCUR, APPROXIMATELY?

7 A. GUESSING AROUND '76, PLUS OR MINUS A YEAR OR TWO.

8 Q. LET ME BACK UP FOR A MINUTE ON THE BORG-WARNER
9 CASE, THAT WAS THE FIRST ONE?

10 A. YES.

11 Q. WERE YOU OF THE OPINION IN THAT CASE OSHA WAS
12 INCORRECT IN CITING BORG-WARNER?

13 A. YES.

14 Q. ARE YOU OF THAT OPINION TODAY?

15 A. YES.

16 Q. WHAT IS THE BASIS OF THAT OPINION?

17 A. ONE MAIN BASIS IS THE FACT TODAY THEY ARE THE
18 SAME PERSON WHO ANALYZED THAT TALC AND FINDS NO ASBESTOS IN
19 THE TALC.

20 Q. WHO IS THAT PERSON?

21 A. MR. WILLARD DIXON, D-I-X-O-N. HE IS NO LONGER
22 WITH THEM TODAY, BUT WHEN HE WAS LAST AT WORK IN HIS SALT
23 LAKE CITY LABORATORY, WHICH WAS A YEAR OR TWO AGO BEFORE HE
24 RETIRED, HE CHANGED HIS METHOD OF ANALYSIS AND IF HE HAD --
25 IF HE HAD DONE THE RIGHT ANALYSIS IN THE FIRST PLACE, WE

1 WOULD NEVER HAVE HAD THE CITATION.

2 Q. IS IT YOUR OPINION NOW HE USES THE CORRECT
3 METHOD OF ANALYSIS?

4 A. YES.

5 Q. BRIEFLY WHAT IS THAT METHOD?

6 A. THE METHOD HE USED IS A COMBINATION OF X-RAY
7 DEFRACTION AND POLARIZED LIGHT MICROSCOPY.

8 Q. WHAT METHOD DID HE USE IN THE BORG-WARNER CASE?

9 A. HE USED X-RAY DEFRACTION ALONE WITHOUT POLARIZED
10 LIGHT MICROSCOPY, WHICH IS KNOWN AS PLM.

11 Q. DO YOU BELIEVE PLM IS AN ACCURATE WAY OF
12 DETERMINING WHETHER FIBERS ARE PRESENT IN A GIVEN SUBSTANCE?

13 A. YES.

14 Q. DID ANYONE ELSE ASIDE FROM WILLARD DIXON ANALYZE
15 THE BORG-WARNER TALC?

16 A. I CAN'T REMEMBER.

17 Q. DID YOU PARTICIPATE IN ANY WAY IN THE HULL,
18 BALDWIN, MILLER CONSOLIDATED CASES?

19 A. I MAY HAVE. ONE OF THOSE CASES I WAS ON THE
20 STAND. I WAS DEPOSED TO BEGIN WITH IN ONE OF THE CASES AND
21 I THINK IT WAS IN THAT CASE I GAVE ON THE STAND ONE TIME
22 AND GAVE SOME TESTIMONY AT THE TRIAL -- HEARING, HEARING.

23 Q. YOU THINK IT MIGHT HAVE BEEN THOSE CASES?

24 A. I THINK SO.

25 Q. WHAT WAS THE NATURE OF YOUR TESTIMONY?

1 A. IT HAD TO DO WITH ESTABLISHING WHO WAS THE
2 AUTHOR OF ONE OF THE LETTERS TO OUR CUSTOMERS THAT WE HAD
3 SENT OUT.

4 Q. AND WERE YOU THE AUTHOR?

5 A. YES, I WAS.

6 Q. WHAT WAS THE SUBSTANCE OF THE LETTER?

7 A. I BELIEVE IT WAS A LETTER HAVING TO DO WITH
8 MATERIAL SAFETY DATA SHEET THAT WE ISSUED.

9 Q. AND WHAT WAS THE SIGNIFICANCE OF THAT MATERIAL
10 SAFETY DATA SHEET TO THE TRIAL?

11 A. WELL, IT DELINEATED AND SPELLED OUT EXACTLY WHAT
12 MATERIALS WERE IN OUR TALC AND HOW MUCH.

13 Q. DO YOU REMEMBER WHAT THAT MATERIAL SAFETY DATA
14 SHEET STATED THE MATERIALS WERE?

15 A. I CAN PRETTY WELL REMEMBER, YES.

16 Q. WHAT WAS IT?

17 A. WELL, ABOUT FIVE OR SIX MATERIALS LISTED IN
18 THERE IN THE ORDER OF THEIR PREDOMINANCE. SUCH AS
19 NONASBESTIFORM TREMOLITE AND ANTHOPHYLLITE 50 TO 60 PERCENT.
20 ANTIGORITE 10 OR 20 PERCENT. I SAY "OR" BECAUSE I'M NOT
21 SURE EXACTLY WHAT. THERE WERE ALWAYS LIMITS. WE NEVER HAD
22 21 OR 23. TALC, MINERAL TALC, 10 OR 15 PERCENT. AND
23 QUARTZ, I THINK THAT WAS LESS THAN 2 PERCENT.

24 Q. WAS THE TALC INVOLVED IN THE HULL, BALDWIN AND
25 MILLER CASE FROM EITHER MINE NO. 1 OR MINE NO. 2?

1 A. I THINK IN THOSE CASES ALL THE TALC CAME FROM
2 NO. 1 MINE.

3 Q. BORG-WARNER WAS ALSO FROM THE NO. 1 MINE?

4 A. YES.

5 Q. NOW, DID YOU TESTIFY IN THE HULL, BALDWIN,
6 MILLER CASE ON BEHALF OF THE CUSTOMER?

7 A. NO.

8 Q. WHO DID YOU TESTIFY ON BEHALF OF?

9 A. WELL, WE ENTERED THE CASE AS INTERVENORS. TOOK
10 OVER THE DEFENSE.

11 Q. I SEE. SO YOU HANDLED THE DEFENSE OF THE CASE?

12 A. YES.

13 Q. WHO WAS THE LAWYER WHO HANDLED IT FOR VANDERBILT?

14 A. AT THAT TIME MR. DRIVER.

15 Q. WHO ELSE FROM VANDERBILT TESTIFIED IN THAT HULL,
16 BALDWIN, MILLER CONSOLIDATED CASES?

17 A. I DON'T KNOW. I DON'T KNOW WHETHER DR. THOMPSON
18 TESTIFIED OR NOT. HE MAY NOT. I THINK I WAS THE ONLY ONE,
19 BUT I'M NOT SURE.

20 Q. DID YOU HAVE ANY OUTSIDE INDUSTRIAL HYGIENIST
21 TESTIFY?

22 A. I CAN'T REMEMBER.

23 Q. ANY MEDICAL DOCTORS?

24 A. I CAN'T REMEMBER THAT EITHER.

25 Q. DID YOU INTERVENE IN THE BORG-WARNER CASE?

1 A. NO.

2 Q. WHAT WAS THE FINAL OUTCOME OF THE HULL, BALDWIN
3 CONSOLIDATED CASES?

4 A. THE FINDING OF THE REVIEW COMMISSION WAS THAT
5 THE CITATION WAS NOT UPHELD BECAUSE THE BOARD -- THESE
6 PEOPLE, THE MILLER, HULL AND BALDWIN PEOPLE DID NOT KNOW
7 THAT MATERIAL CONTAINED ASBESTOS, WORDS TO THAT EFFECT.

8 Q. WHO WERE THE MILLER PEOPLE?

9 A. THEY WERE MILLER PEOPLE, WERE CERAMIC
10 MANUFACTURERS.

11 Q. AND WAS THE CASE DISMISSED?

12 MR. SMITH: IF YOU KNOW.

13 THE WITNESS: I DON'T KNOW. THERE WAS -- IT WENT --
14 IT WAS NOT DISMISSED. IT WENT TO THE HEARING AND THE JUDGE
15 RULED THAT THE CITATION BE DROPPED.

16 BY MS. EISENSTEIN: Q. I'M A LITTLE CONFUSED AS TO
17 WHY THE CITATION WAS DROPPED.

18 A. THE JUDGE RULED THAT MILLER, BALDWIN AND HULL
19 PEOPLE DID NOT KNOW THAT THE MATERIAL CONTAINED ASBESTOS,
20 THEREFORE THEY WERE NOT IN VIOLATION OF THE ASBESTOS
21 STANDARD BECAUSE THEY HAD BEEN INFORMED BY THE VANDERBILT
22 COMPANY THAT THE MATERIAL DIDN'T --

23 Q. DIDN'T CONTAIN ASBESTOS?

24 A. RIGHT. OKAY.

25 Q. SO THE DEFENDANTS IN THAT CASE WERE FOUND TO NOT

1 HAVE KNOWLEDGE THAT ASBESTOS EXISTED IN THE PRODUCT?

2 A. YES.

3 MR. SMITH: AT LEAST THAT IS YOUR UNDERSTANDING?

4 THE WITNESS: YES, MY UNDERSTANDING.

5 BY MS. EISENSTEIN: Q. BECAUSE THERE WAS NO LABEL; IS
6 THAT CORRECT, THAT SAID ASBESTOS?

7 A. NO, BECAUSE WE HAD GIVEN OUT A STATEMENT AT ONE
8 TIME THAT ACCORDING TO OUR ANALYSIS THE PRODUCT DID NOT
9 CONTAIN ASBESTOS AND WE GAVE THAT STATEMENT TO THOSE PEOPLE.

10 Q. DO YOU HAVE A COPY OF THAT STATEMENT?

11 A. I BELIEVE IT'S IN MY FILES WHERE I USED TO WORK.

12 Q. IF YOU WANTED TO FIND THAT STATEMENT, WHAT WOULD
13 IT BE ENTITLED, HOW WOULD I FIND THAT STATEMENT?

14 A. I DON'T KNOW EXACTLY. I DON'T KNOW EXACTLY WHAT
15 IT WOULD BE UNDER.

16 Q. BUT IT WOULD BE A STATEMENT THAT WAS ISSUED TO
17 CUSTOMERS?

18 A. YES.

19 Q. APPROXIMATELY WHAT TIME?

20 A. APPROXIMATELY 1974, JUST BEFORE THE BORG-WARNER --
21 JUST BEFORE THE BORG-WARNER TRIAL OR SOMEWHERE AROUND IN
22 THERE.

23 Q. AND DID THE STATEMENT BASICALLY SAY THERE WAS NO
24 ASBESTOS IN YOUR TALC PRODUCTS?

25 A. BASICALLY IT SAID THAT ACCORDING TO OSHA FIELD

1 MEMORANDUM 79, WHATEVER THAT NUMBER WAS I HAVE FORGOTTEN,
2 ACCORDING TO OSHA FIELD MEMORANDUM WHOSE NUMBER I FORGET,
3 THE -- WE HAVE BEEN -- THE SECRETARY OF LABOR HAS ALLOWED
4 US TO CERTIFY THAT OUR TALCS DON'T CONTAIN ASBESTOS.

5 Q. THE SECRETARY OF LABOR WAS STENDER AT THAT TIME?

6 A. YES. WORDS TO THAT EFFECT.

7 Q. THAT FIELD MEMORANDUM WAS SUBSEQUENTLY REVOKED;
8 IS THAT CORRECT?

9 A. THAT'S RIGHT.

10 Q. WHEN WAS THE NEXT CASE THAT YOU CAN REMEMBER
11 REGARDING AN OSHA VIOLATION OF ONE OF YOUR CUSTOMERS?

12 A. THE FLAMINGO CASE, FLAMINGO TILE COMPANY CASE.

13 Q. LET ME BACK UP FOR ONE SECOND. WHERE WAS THE
14 MILLER CASE, PHYSICALLY?

15 A. IT WAS IN COLUMBUS, OHIO.

16 Q. DO YOU REMEMBER THE LAWYER FOR OSHA?

17 A. I BELIEVE IT WAS RAPPAPORT.

18 Q. DO YOU KNOW THE FIRST NAME?

19 A. ALLEN.

20 Q. WHAT YEAR WAS FLAMINGO TILE?

21 A. I DON'T REMEMBER EXACTLY. COULD BE EITHER JUST
22 BEFORE OR JUST AFTER THE HULL CASE.

23 Q. APPROXIMATELY 1976?

24 A. '75 TO '77 SOMEWHERE.

25 Q. DID VANDERBILT INTERVENE IN THAT CASE?

1 A. YES.

2 Q. TOOK OVER THE DEFENSE?

3 A. AND TOOK OVER THE DEFENSE.

4 Q. DID YOU PARTICIPATE IN THE DEFENSE OF THAT CASE?

5 A. I PARTICIPATED UP UNTIL THE TIME THAT IT WAS

6 DISMISSED, YES.

7 Q. AND YOU ASSISTED THE DEFENSE IN THE CASE?

8 A. YES.

9 Q. WHO WAS THE LAWYER FOR OSHA IN THAT CASE?

10 A. I THINK THAT ALSO WAS RAPPAPORT.

11 Q. DO YOU KNOW WHERE HE WAS LOCATED, HIS OFFICE?

12 A. NO.

13 Q. NOW THAT CASE WAS DISMISSED?

14 A. YES.

15 Q. WHY WAS THAT CASE DISMISSED?

16 A. LACK OF EVIDENCE ON THE PART OF THE DEPARTMENT

17 OF LABOR, LACK OF EVIDENCE TO UPHOLD A CITATION FOR

18 VIOLATION OF THE ASBESTOS STANDARD.

19 Q. WHEN YOU SAY VIOLATION, CAN YOU BE MORE SPECIFIC

20 AS TO WHAT OCCURRED?

21 A. WILLARD DIXON WAS STARTING TO GET A LITTLE

22 EDUCATION IN THAT OFFICE AND WAS HAVING DIFFICULTY FINDING

23 ASBESTOS.

24 Q. WHERE WAS THE FLAMINGO TILE CASE?

25 A. FLAMINGO TILE COMPANY IS IN FLORIDA BUT IT

1 NEVER -- IT WAS DISMISSED BEFORE IT EVER GOT TO THE REVIEW
2 COMMISSION, HEARING.

3 Q. WAS IT FOUND THAT THE CHARGE LACKED SUFFICIENT
4 EVIDENCE TO SUPPORT THE CITATION?

5 A. YES. I THINK I SAID THAT, DIDN'T I?

6 Q. I THINK SO.

7 I'D LIKE TO SHOW YOU, SIR, A DOCUMENT. IT HAS A
8 DATE STAMP RECEIVED APRIL 7, 1977. IT'S ON THE LETTERHEAD
9 OF R.T. VANDERBILT COMPANY. IT'S THREE PAGES. LET'S MARK
10 THAT AS 23.

11 (WHEREUPON THE DOCUMENT REFERRED TO WAS
12 MARKED AS PLAINTIFF'S EXHIBIT 23 FOR
13 IDENTIFICATION BY THE NOTARY PUBLIC AND
14 IS ATTACHED HERETO.)

15 BY MS. EISENSTEIN: Q. HAVE YOU EVER SEEN THAT
16 DOCUMENT BEFORE, SIR?

17 A. YES.

18 Q. DID YOU PREPARE THAT DOCUMENT?

19 A. I'M NOT SURE WHETHER I PREPARED IT OR NOT.

20 Q. DID SOMEONE FROM VANDERBILT PREPARE THAT
21 DOCUMENT?

22 A. IT MAY HAVE BEEN PREPARED BY OUR LAWYER.

23 MR. SMITH: BEFORE YOU GO ANY FURTHER ON THIS, DID YOU
24 CALL THIS A TWO OR THREE-PAGE DOCUMENT?

25 MS. EISENSTEIN: THREE PAGE.

1 MR. SMITH: LET ME JUST ASK HIM A QUESTION THEN. IS
2 THIS THIRD PAGE, DO YOU THINK THIS WAS ORIGINALLY ATTACHED
3 TO THESE FIRST TWO PAGES?

4 THE WITNESS: NO, I DON'T KNOW WHERE THIS CAME FROM.

5 BY MS. EISENSTEIN: Q. IS THAT THIRD PAGE -- IT SAYS
6 FIBERTAL AT THE TOP. IS THAT THE NAME OF A PRODUCT?

7 A. THAT IS THE PRODUCT FROM THE NO. 3 MINE THAT HAD
8 THE ASBESTOS LABEL ON IT.

9 MS. EISENSTEIN: LET'S SEPARATE THIS AND HAVE THAT
10 MARKED AS 24.

11 MR. SMITH: IT'S A DATE THAT IS ABOUT TWO YEARS
12 DIFFERENT ON IT, TOO.

13 BY MS. EISENSTEIN: Q. LET'S JUST TALK ABOUT 23 NOW
14 WHICH IS A TWO-PAGE DOCUMENT.

15 A. OKAY.

16 Q. WHO IS THE ATTORNEY THAT WOULD HAVE CREATED THIS
17 DOCUMENT?

18 A. MAY HAVE BEEN MR. DRIVER.

19 Q. DID YOU SEE THIS AT APPROXIMATELY APRIL OF 1977?

20 A. I WOULD GATHER THAT FROM THE DATE.

21 Q. YOU DO REMEMBER HAVING SEEN IT IN THE PAST?

22 A. YES.

23 Q. AND WHAT WAS THE PURPOSE OF THIS DOCUMENT?

24 A. TO INFORM OUR CUSTOMERS OF THE -- KEEP THEM
25 UPDATED ON THE TALC-ASBESTOS CONTROVERSY.

1 Q. DO YOU BELIEVE THIS DOCUMENT IS AN ACCURATE
2 REPRESENTATION OF WHAT OCCURRED IN THE FLAMINGO CASE?

3 A. YES.

4 Q. NOW, EXHIBIT 24 IS A TECHNICAL DATA SHEET; IS
5 THAT RIGHT?

6 A. YES.

7 (WHEREUPON THE DOCUMENT REFERRED TO WAS
8 MARKED AS PLAINTIFF'S EXHIBIT 24 FOR
9 IDENTIFICATION BY THE NOTARY PUBLIC AND
10 IS ATTACHED HERETO.)

11 BY MS. EISENSTEIN: Q. AND THIS WOULD ACCOMPANY TALC
12 FROM THE NO. 3 MINE?

13 A. YES.

14 Q. WHICH NO LONGER IS BEING MANUFACTURED, RIGHT?

15 A. THAT'S RIGHT.

16 Q. IS ANYTHING GOING ON AT THAT NO. 3 MINE AT ALL?

17 A. NO.

18 Q. IT'S CLOSED DOWN?

19 A. YES, IT IS. CLOSED DOWN, THING FILLED UP WITH
20 WATER.

21 Q. DID YOU TESTIFY IN FLAMINGO?

22 A. NO, THERE WAS NO HEARING.

23 Q. WAS THERE A DEPOSITION?

24 A. NO.

25 Q. IS IT YOUR UNDERSTANDING THAT TALC WAS ANALYZED

1 BY MR. DIXON?

2 A. YES. WILLARD DIXON DID ALL THE ANALYSES OF TALC
3 FROM THE BORG-WARNER TRIAL ON THROUGH UNTIL TWO YEARS AGO
4 WHEN HE RETIRED, TWO OR THREE YEARS AGO.

5 Q. DID ANYONE ELSE ASIDE FROM HIM TO YOUR KNOWLEDGE
6 DO ANALYSIS OF THE TALC FOR OSHA?

7 A. EXCUSE ME, DID ANYONE WHAT?

8 Q. DID ANYONE ELSE AT OSHA DO AN ANALYSIS OF THE
9 TALC ASIDE FROM HIM?

10 A. LATER ON DAN CRANE BECAME HIS HELPER AND THEN
11 EVENTUALLY WHEN WILLARD DIXON QUIT, AS I SAY, ABOUT TWO
12 YEARS AGO, DAN TOOK OVER THE ASBESTOS-TALC MINERAL ANALYSIS
13 AREA.

14 Q. DO YOU KNOW A MR. KITS?

15 A. YES.

16 Q. WHO IS HE?

17 A. HE USED TO WORK FOR INTERNATIONAL TALC IN THE
18 LABORATORY.

19 Q. WHAT WAS HIS TITLE?

20 A. I DON'T KNOW REALLY.

21 Q. DO YOU KNOW WHERE HE IS NOW?

22 A. NO.

23 Q. WAS HE AN INDUSTRIAL HYGIENIST?

24 A. I HAVE NO IDEA WHAT HE WAS.

25 Q. WHEN WAS THE NEXT CASE, SIR, IN WHICH THERE WAS

1 AN OSHA VIOLATION CITED?

2 A. SOMETIME IN AND AROUND THERE, THERE WAS THE
3 WENCZEL TILE CASE AND THAT IS REFERRED TO IN THE NOTICE TO
4 THE CUSTOMERS, INCIDENTALLY.

5 Q. AND WHO WAS THE LAWYER THAT WORKED ON THAT FOR
6 OSHA, DO YOU KNOW?

7 A. I STILL THINK IT WAS RAPPAPORT.

8 Q. DID YOU INTERVENE IN THAT CASE?

9 A. YES. WE INTERVENED IN EVERY CASE AFTER THE
10 BORG-WARNER.

11 Q. WHAT WAS THE RESOLUTION OF THAT CASE?

12 A. THEY DISMISSED THE CITATION, THE ASBESTOS
13 CITATION AND ADDED -- BY AGREEMENT, BY AGREEMENT WITH THE
14 JUDGE THEY -- BEFORE THE TRIAL, BEFORE THE HEARING THEY
15 AGREED TO ACCEPT THE CITATION FOR EXCESS DUST OR SOMETHING
16 LIKE THAT BECAUSE IT WAS -- THERE REALLY WAS A VIOLATION OF
17 THE DUST STANDARDS WHICH WAS SO MANY MILLION PARTICLES PER
18 CUBIC FEET.

19 Q. WAS THERE A HEARING?

20 A. YES, THERE WAS A HEARING IN THAT ONE BEFORE A
21 JUDGE.

22 Q. DID YOU TESTIFY?

23 A. I DON'T THINK SO.

24 Q. DID ANYBODY FROM VANDERBILT TESTIFY?

25 A. I CAN'T REMEMBER.

1 Q. WHERE WAS THE WENCZEL TILE CASE?

2 A. TAMPA, FLORIDA.

3 Q. DO YOU KNOW WHAT YEAR THAT WAS?

4 A. I THINK IT WAS PRIOR TO THE DATE ON THAT MEMO
5 WE JUST LOOKED AT WHERE THEY REFER TO THE DROPPING OF A
6 CITATION AND CHANGING IT OVER TO SOMETHING ELSE.

7 Q. PRIOR TO APRIL OF 1977?

8 A. YES.

9 Q. WHEN WAS THE NEXT CASE?

10 A. I THINK THE NEXT CASE MIGHT HAVE BEEN THE DAP
11 CASE.

12 Q. AND WOULD THAT HAVE BEEN IN 1977?

13 A. ABOUT 1978, IN THERE SOMEWHERE.

14 Q. AND WHERE WAS THAT CASE?

15 A. THAT WAS IN DAYTON, OHIO, I THINK.

16 Q. WHAT WAS THE RESOLUTION OF THAT CASE?

17 A. SAME AS THE FLAMINGO, THEY DISMISSED IT FOR LACK
18 OF EVIDENCE TO SUPPORT THE CITATION.

19 Q. SO THERE WAS NO HEARING?

20 A. THE HEARING STARTED AND WE GOT AS FAR AS WILLARD
21 DIXON WHO WAS ON THE STAND ALL DAY AND WHEN HE GOT THROUGH,
22 THE SOLICITOR LABORER SUGGESTED MAYBE WE OUGHT TO DISMISS
23 THE CASE.

24 Q. DID YOU TESTIFY IN THAT CASE?

25 A. NO.

1 Q. WHO WAS THE LAWYER FOR OSHA IN THAT CASE?

2 A. IT WAS ANOTHER FELLOW WHOSE NAME ESCAPES ME.

3 Q. WHEN WAS THE NEXT CASE?

4 A. IN 1979 WE GOT OUR LAST TWO CITATIONS, AT LEAST
5 OUR CUSTOMERS GOT THEIR LAST TWO CITATIONS AND THEY WERE
6 BOTH IN INDIANAPOLIS, ONE WAS PERFECTION COLOR, A PAINT
7 COMPANY, AND THE OTHER WAS ELI LILLY, ANOTHER PAINT COMPANY.

8 Q. WERE THOSE CONSOLIDATED?

9 A. NO.

10 Q. LET'S TALK ABOUT PERFECTION COLOR FOR A MOMENT;
11 WHO WAS THE LAWYER FOR OSHA?

12 A. THERE WAS A FELLOW FROM CHICAGO ON BOTH OF THOSE.
13 I HAVE NO IDEA WHAT HIS NAME WOULD BE.

14 Q. DID YOU TESTIFY IN THE PERFECTION COLOR --

15 A. NO, THOSE CASES WERE DISMISSED ALMOST
16 IMMEDIATELY.

17 Q. WERE THEY DISMISSED FOR INSUFFICIENT EVIDENCE?

18 A. SAME THING, INSUFFICIENT EVIDENCE.

19 Q. THAT WAS THE SAME FOR THE LILLY CASE, AS WELL?

20 A. YES, AND THAT ENDED.

21 Q. THAT WAS IT?

22 A. YES.

23 Q. I'M GOING TO SHOW YOU A TWO-PAGE DOCUMENT FROM
24 THE U.S. DEPARTMENT OF LABOR DATED MARCH 26, 1980 TO JOHN
25 J. BORG, B-O-R-G-O, VICE-PRESIDENT E.E. ZIMMERMAN COMPANY,

1 AND ASK YOU IF YOU EVER SEEN THIS DOCUMENT BEFORE?

2 A. YES.

3 Q. LET'S MARK THAT AS 25.

4 (WHEREUPON THE DOCUMENT REFERRED TO WAS
5 MARKED AS PLAINTIFF'S EXHIBIT 25 FOR
6 IDENTIFICATION BY THE NOTARY PUBLIC AND
7 IS ATTACHED HERETO.)

8 BY MS. EISENSTEIN: Q. WHEN WAS THE FIRST TIME YOU
9 SAW THAT DOCUMENT, SIR?

10 A. IT WOULD BE SOMETIME SHORTLY AFTER MARCH 26,
11 1980.

12 Q. HOW DID YOU COME TO SEE THAT DOCUMENT?

13 A. IT WAS SENT TO US BY MR. BORGO.

14 Q. WHAT CASE WAS THAT INVOLVING?

15 A. THIS NEVER GOT TO BE A CASE. THIS WAS AS A
16 RESULT OF AN INSPECTION BY OSHA INSPECTORS WORKING OUT OF
17 THE PITTSBURG, PENNSYLVANIA OFFICE OF THE ZIMMERMAN COMPANY
18 WAREHOUSE WHERE OUR TALCS WERE STORED.

19 Q. WHAT WAS THE PROBLEM THERE TO YOUR KNOWLEDGE?

20 A. THE INSPECTORS HAD TAKEN A SAMPLE OF TALC FROM
21 ONE OF THE BAGS THAT WERE STORED THERE AND SENT IT TO THE
22 OSHA SALT LAKE CITY LABORATORY WHERE MR. WILLARD DIXON
23 ANALYZED IT.

24 Q. AS CONTAINING ASBESTOS?

25 A. NO. THIS IS HIS ANALYSIS RIGHT HERE.

1 Q. MAY I SEE THAT THEN FOR A MOMENT, PLEASE?

2 A. SURE.

3 Q. DID HE FIND THAT THE EXPOSURE LIMIT FOR DUST HAD
4 BEEN EXCEEDED IN THIS WAREHOUSE?

5 A. THERE WAS NO CITATION FOR THAT AS FAR AS I KNOW.

6 Q. WAS THIS AN ISSUE RAISED BY THE LETTER TO
7 JOHN J. BORGGO?

8 A. I DON'T KNOW IF IT WAS. ALL I KNOW IS THAT AS A
9 RESULT OF THAT INSPECTION THERE WAS NO CITATION INVOLVING
10 OUR TALC. I DON'T KNOW IF THERE IS ANYTHING ELSE.

11 Q. YOU SAW THIS LETTER SHORTLY AFTER MARCH 26, 1980?

12 A. YES.

13 Q. I'D LIKE TO SHOW YOU A ONE-PAGE DOCUMENT, IT
14 SAYS REPLY MESSAGE AND IT'S TO MR. ALLEN HARVEY AND IT
15 APPEARS TO BE FROM JOHN J. BORGGO AND I'D LIKE YOU TO LOOK
16 AT IT, PLEASE.

17 MR. JOHNSON: NO DATE ON THAT.

18 BY MS. EISENSTEIN: Q. HAVE YOU EVER SEEN THAT BEFORE,
19 SIR?

20 A. I CAN'T REMEMBER SEEING THAT.

21 Q. DO YOU HAVE ANY REASON TO BELIEVE YOU NEVER
22 RECEIVED IT?

23 A. NO. I COULD HAVE VERY EASILY. IT'S SO LONG AGO
24 I COULD HAVE FORGOTTEN IT. SMALL MEMO.

25 Q. MAY I SEE IT FOR A MOMENT, SIR.

1 IS IT YOUR UNDERSTANDING THAT THIS MEMO REFERRED
2 TO THE LETTER WE JUST DISCUSSED?

3 A. YES.

4 Q. IS IT YOUR UNDERSTANDING THAT THIS MEMO WAS SENT
5 WITH THAT LETTER TO YOU?

6 A. AS I SAID, I REMEMBER THE LETTER BUT I DON'T
7 REMEMBER THAT.

8 MS. EISENSTEIN: OFF THE RECORD.

9 (DISCUSSION OFF THE RECORD.)

10 BY MS. EISENSTEIN: Q. DO YOU HAVE ANY REASON TO
11 BELIEVE THAT THIS MEMO DID NOT ACCOMPANY THE LETTER?

12 A. NO, I DON'T HAVE ANY REASON TO BELIEVE IT.

13 Q. LET'S MARK THIS AS 26.

14 (WHEREUPON THE DOCUMENT REFERRED TO WAS
15 MARKED AS PLAINTIFF'S EXHIBIT 26 FOR
16 IDENTIFICATION BY THE NOTARY PUBLIC AND
17 IS ATTACHED HERETO.)

18 BY MS. EISENSTEIN: Q. DO YOU KNOW WHO A BENJAMIN
19 MINTZ IS?

20 A. YES.

21 Q. WHO IS THAT?

22 A. BENJAMIN MINTZ IS THE DEPARTMENT OF NAVY. HE
23 WAS IN CHARGE OF THE WHOLE LAW SECTION, I THINK.

24 Q. DID HE HAVE ANY INVOLVEMENT IN THE OSHA CASES?

25 A. YEAH, ALL OF THEM ESSENTIALLY UNDER HIM, ALL THE

1 LAWYERS THAT WORKED FOR OSHA WERE UNDER BENJAMIN.

2 Q. HAVE YOU HAD CONTACT WITH MR. DIXON SINCE HE
3 LEFT OSHA?

4 A. NO.

5 Q. DID YOU HAVE CONTACT WITH HIM WHILE HE WAS
6 WORKING FOR OSHA?

7 A. YES.

8 Q. OTHER THAN CONTACT JUST BY VIRTUE OF THE
9 LITIGATION?

10 A. YES.

11 Q. WHAT KIND OF CONTACT?

12 A. WE USED TO SEE HIM IN A LOT OF SCIENTIFIC
13 MEETINGS, AND WE WENT TO VISIT HIS LABORATORY ON TWO
14 OCCASIONS.

15 Q. HAS MR. DIXON EVER WORKED FOR R.T. VANDERBILT?

16 A. NO.

17 Q. DID YOU VISIT HIS LABORATORIES IN THE COURSE OF
18 THIS LITIGATION?

19 MR. SMITH: WHAT LITIGATION? THIS LITIGATION?

20 BY MS. EISENSTEIN: Q. THE OSHA LITIGATION.

21 MR. SMITH: WHAT LITIGATION?

22 THE WITNESS: WHICH LITIGATION?

23 BY MS. EISENSTEIN: Q. ANY OF THE CASES.

24 A. ANY OF THE CASES?

25 Q. YES.

1 A. WELL, AFTER HE MADE THE FIRST ANALYSIS IN THE
2 BORG-WARNER TRIAL, SOMETIME AFTER THAT WE VISITED HIM.

3 Q. SO DID YOU VISIT HIM WHILE CASES WERE PENDING
4 WITH OSHA?

5 A. I CAN REMEMBER THAT.

6 Q. DID YOU VISIT HIM PRIOR TO 1979?

7 A. PROBABLY.

8 Q. DO YOU KNOW A BOBBYE SPEARS?

9 A. I HAVE HEARD OF BOBBYE SPEARS. HE OR HER NAME
10 HAS BEEN ON THE ODD DOCUMENT COMING OUT OF OSHA.

11 Q. SO IT'S YOUR UNDERSTANDING THAT BOBBYE SPEARS
12 WORKED FOR OSHA?

13 A. I BELIEVE SO.

14 Q. I'D LIKE TO SHOW YOU A THREE-PAGE DOCUMENT, SIR.
15 HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

16 A. YES, I HAVE.

17 Q. WHEN WAS THE FIRST TIME YOU SAW IT?

18 A. IT WOULD BE AFTER THAT DATE, OBVIOUSLY, AND
19 AFTER THE DATE AUGUST 1978, AND THAT WOULD BE APPROXIMATELY
20 SOMETIME '78, '79.

21 Q. HOW DID YOU COME TO SEE THAT DOCUMENT?

22 A. THROUGH AN ACTUAL VISIT TO THE OSHA
23 DOCUMENTATION ROOM IN WASHINGTON, D.C.

24 Q. DID YOU WANT TO SEE WHAT DOCUMENTS OSHA HAD
25 PERTAINING TO YOUR COMPANY?

1 A. YES.

2 Q. DID YOU RECEIVE THOSE DOCUMENTS?

3 A. WE WERE ALLOWED TO LOOK OVER A LIST OF DOCUMENTS
4 THAT THEY HAD AND WE SELECTED A COUPLE.

5 Q. THAT WAS ONE OF THEM?

6 A. YES.

7 Q. WHAT IS THE SIGNIFICANCE OF THAT DOCUMENT, SIR?

8 A. SEEMS TO SAY THAT OSHA -- OSHA SHOULDN'T BE
9 CITING VANDERBILT'S CUSTOMERS BECAUSE THEY HAVEN'T GIVEN
10 THE PEOPLE WHO ARE USING OUR TALC A GOOD ENOUGH STANDARD TO
11 KNOW WHETHER OR NOT THEY ARE VIOLATING IT OR NOT.

12 Q. LET'S MARK THIS AS 27.

13 (WHEREUPON THE DOCUMENT REFERRED TO WAS
14 MARKED AS PLAINTIFF'S EXHIBIT 27 FOR
15 IDENTIFICATION BY THE NOTARY PUBLIC AND
16 IS ATTACHED HERETO.)

17 BY MS. EISENSTEIN: Q. HAVE YOU EVER HAD ANY PERSONAL
18 CONTACT WITH BOBBYE SPEARS?

19 A. NO.

20 Q. HOW ABOUT WITH BENJAMIN MINTZ?

21 A. BENJAMIN MINTZ WAS SITTING IN ON A MEETING THAT
22 WE HAD WITH ASSISTANT SECRETARY OF LABORER STENDER WAY BACK
23 IN 1972-'3, '4, BACK IN THERE SOMEWHERE. HE HAPPENED TO BE
24 SITTING AROUND A TABLE, ABOUT 20 OF US.

25 Q. WHY DID MR. STENDER LEAVE THE DEPARTMENT OF

1 LABOR?

2 MR. SMITH: OBJECTION, CALLS FOR SPECULATION.

3 BY MS. EISENSTEIN: Q. DO YOU KNOW?

4 A. NO.

5 Q. WERE YOU EVER IN CONTACT WITH HIM AFTER HE LEFT
6 THE DEPARTMENT OF LABOR?

7 A. I SAW HIM ONCE AT THE -- AFTER HE HAD LEFT, AT A
8 MEETING, BRIEFLY SAID HELLO AND NOT MUCH MORE.

9 Q. WHAT DID YOU DO WITH THIS DOCUMENT THAT YOU
10 OBTAINED FROM OSHA FILES?

11 A. I KEPT IT IN MY OWN FILES.

12 Q. WHAT WAS THE PURPOSE OF OBTAINING THIS DOCUMENT?

13 A. WELL, IT SEEMS TO BEAR WHAT WE HAD BEEN SAYING
14 ALL ALONG, THAT THE PROBLEM HERE -- OSHA ASBESTOS STANDARD
15 AND THEY DON'T -- THEY NEED A NEW DEFINITION OF ASBESTOS,
16 THEY NEED TO CLEAN UP THEIR ACT, IN OTHER WORDS. ONE GROUP
17 IS CITING WHILE ANOTHER GROUP -- ONE GROUP CITES OUR
18 CUSTOMERS AND THE SECOND GROUP CAN'T
19 UPHOLD A CITATION. IT'S COSTING OUR COMPANY A LOT OF MONEY,
20 THE GOVERNMENT A LOT OF MONEY AND A LOT OF BAD FEELINGS.

21 Q. DO YOU KNOW A COLA BINGHAM?

22 A. EULA.

23 Q. EULA? LOOKS LIKE A C HERE.

24 A. SURE, I KNOW EULA BINGHAM.

25 Q. WHO IS EULA BINGHAM?

1 A. ASSISTANT SECRETARY OF LABOR SOMETIME AFTER
2 STENDER.

3 Q. DID YOU EVER HAVE ANY CONTACT WITH HER?

4 A. NO.

5 Q. DID YOU EVER HAVE ANY CONTACT WITH A SENATOR
6 STONE, S-T-O-N-E?

7 A. STONE, NO, I NEVER HAD ANY CONTACT WITH STONE,
8 ALTHOUGH THE NAME SOUNDS FAMILIAR.

9 Q. DO YOU KNOW WHETHER ANYONE AT VANDERBILT HAD ANY
10 CONTACT WITH SENATOR STONE?

11 A. SOMEONE MIGHT HAVE.

12 MR. SMITH: DON'T SPECULATE IF YOU DON'T KNOW.

13 THE WITNESS: I DON'T KNOW REALLY.

14 BY MS. EISENSTEIN: Q. WAS THERE SOMEONE OTHER THAN
15 YOURSELF AT THE COMPANY THAT WOULD HAVE AS PART OF THEIR
16 DUTIES BEEN IN CONTACT WITH PEOPLE AT REGULATORY AGENCIES
17 OR LEGISLATORS?

18 A. MOSTLY EITHER ME OR THE OTHER LAWYER.

19 Q. LAWYER BEING WHO?

20 A. MR. DRIVER UP UNTIL FOUR YEARS AGO THEN MR. ACE.

21 Q. I'D LIKE TO SHOW YOU A FOUR-PAGE DOCUMENT ON THE
22 LETTERHEAD OF THE U.S. DEPARTMENT OF LABOR, OFFICE OF THE
23 ASSISTANT SECRETARY THERE IS A DATE STAMP OF APRIL 21, 1978.

24 (WHEREUPON THE DOCUMENT REFERRED TO WAS
25 MARKED AS PLAINTIFF'S EXHIBIT 28 FOR

1 IDENTIFICATION BY THE NOTARY PUBLIC AND
2 IS ATTACHED HERETO.)

3 BY MS. EISENSTEIN: Q. HAVE YOU EVER SEEN THIS
4 DOCUMENT BEFORE, SIR?

5 A. YES.

6 Q. WHEN WAS THE FIRST TIME YOU SAW IT?

7 A. PROBABLY SOMETIME AFTER THE DATE ON THIS THING.

8 Q. HOW DID YOU COME TO SEE IT?

9 A. BECAUSE IT WAS -- IT CROSSED MY DESK AND I DON'T
10 KNOW HOW.

11 Q. DO YOU BELIEVE IT CROSSED YOUR DESK IN
12 APPROXIMATELY 1978?

13 A. YES, OR AFTER. WITHIN THE YEAR OR SOMETHING.

14 Q. DID YOU EVER HAVE ANY CONVERSATIONS WITH ANYONE
15 REGARDING THIS LETTER?

16 A. YES.

17 Q. WHO WOULD THAT HAVE BEEN WITH?

18 A. MR. VANDERBILT.

19 Q. IS IT YOUR UNDERSTANDING THAT MR. VANDERBILT
20 SENT A LETTER TO SENATOR STONE?

21 A. YES.

22 Q. DO YOU KNOW WHAT THE SUBSTANCE OF THAT LETTER TO
23 SENATOR STONE WAS?

24 A. JUST IN A GENERAL WAY.

25 Q. WHAT WAS THAT?

1 A. A LETTER TO APPRISE ALL THE SENATORS -- WE WENT
2 TO EVERY SENATOR IN THE UNITED STATES -- OF THE SITUATION
3 IN REGARDS TO THE VANDERBILT COMPANY AND ITS PROBLEMS IT'S
4 HAVING WITH THE OSHA ADMINISTRATION.

5 Q. DID YOU TALK WITH ANYONE ELSE REGARDING THIS
6 LETTER?

7 A. I DON'T REMEMBER.

8 Q. I'M GOING TO READ TO YOU, SIR, FROM -- WELL, WHY
9 DON'T I MARK THIS FIRST. I WILL READ TO YOU FROM PAGE 3,
10 LAST PARAGRAPH. "THE TWO CASES CITED BY MR. VANDERBILT IN
11 WHICH THE ASBESTOS CITATIONS WERE DROPPED HAVE NO GENERAL
12 APPLICABILITY. IN USERY VERSUS WENCZEL TILE," THEN THERE
13 IS A DOCKET NUMBER, "THE ASBESTOS CITATION WAS WITHDRAWN
14 BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH A
15 VIOLATION OF THE ASBESTOS STANDARD. AS THE BORG-WARNER
16 CASE PROVED, THIS CANNOT BE INTERPRETED AS AN ADMISSION
17 OSHA'S METHOD FOR ANALYZING TALC FOR ITS ASBESTOS CONTENT
18 IS IMPROPER; NOR IS THIS A CONCESSION THAT VANDERBILT'S
19 TALC PRODUCTS DON'T CONTAIN ASBESTOS."

20 DO YOU AGREE WITH THAT STATEMENT?

21 A. NO.

22 Q. IN WHAT WAY DO YOU DISAGREE?

23 A. BECAUSE AS FAR AS I'M CONCERNED IN TALKING WITH
24 WILLARD DIXON, THE PEOPLE IN THE SALT LAKE CITY LABORATORY,
25 THEY COULD NOT FIND ASBESTOS IN THAT TALC. THAT WAS THE

1 REASON THAT THING -- THIS THING IS NOT RIGHT.

2 Q. DID YOU EVER BRING TO MISS BINGHAM'S ATTENTION
3 THIS LETTER WAS IN YOUR OPINION INACCURATE?

4 A. I CAN'T REMEMBER.

5 Q. DO YOU KNOW WHETHER ANYONE AT VANDERBILT DID?

6 A. I DON'T KNOW.

7 Q. I'M GOING TO CONTINUE, SIR, AND FINISH THIS
8 PARAGRAPH.

9 A. YES.

10 Q. "IN USERY VERSUS FLAMINGO TILE," THEN DOCKET
11 NUMBER, "ASBESTOS WAS DETECTED IN THE TALC PRODUCT. THE
12 ASBESTOS CITATION WAS DROPPED, HOWEVER, BECAUSE THE FIBERS
13 FOUND IN THE SAMPLES WERE SHORTER THAN FIVE MICRONS AND
14 THEREFORE DID NOT SATISFY THE CRITERION FOR FIBER LENGTH IN
15 OUR ASBESTOS STANDARD. IN EVERY OTHER RESPECT, THOUGH, THE
16 FIBERS DID MEET OSHA'S DEFINITION OF ASBESTOS."

17 DO YOU AGREE WITH THAT STATEMENT?

18 A. NO.

19 Q. IN WHAT WAY DO YOU DISAGREE?

20 A. I JUST CAN'T BELIEVE IT.

21 Q. WHY IS THAT?

22 A. WELL, HAVING TALKED WITH WILLARD DIXON WHO DID
23 THIS, I DON'T BELIEVE HE WOULD SAY THE SAME THING.

24 Q. YOU DON'T BELIEVE HE'D SAY THIS?

25 A. NO, ABSOLUTELY.

1 Q. DO YOU HAVE ANY DOCUMENTATION FROM WILLARD DIXON
2 STATING ANYTHING TO THE CONTRARY?

3 A. THE ONLY DOCUMENTATION WE CAN TRACE BACK TO
4 WILLARD DIXON -- OSHA IS VERY CAREFUL NOT TO PUT TOO MUCH
5 DOWN ON PAPER -- IS THE BORGO LETTER.

6 NOW, THAT ANALYSIS WOULD COME FROM WILLARD DIXON
7 OR HIS LABORATORY BECAUSE HE'S THE ONLY MAN WHO DOES THAT
8 KIND OF WORK FOR OSHA.

9 Q. SO YOU MAKE THE ASSUMPTION THAT THE INFORMATION
10 IN THAT LETTER WOULD HAVE COME FROM MR. DIXON'S LAB?

11 A. YES.

12 Q. HAVE YOU EVER HAD ANY CONTACT WITH BERT M.
13 CONCKLIN?

14 A. I THINK I MET HIM ONCE, BERT M. CONCKLIN.

15 Q. WHO WAS HE?

16 A. HE WAS A LABOR, U.S. LABOR DEPARTMENT OFFICIAL
17 IN OSHA BACK IN ABOUT 1972 AND FOR AWHILE THEREAFTER.

18 Q. WHAT WOULD THE NATURE OF YOUR CONTACT WITH HIM
19 HAVE BEEN?

20 A. I DON'T REMEMBER.

21 Q. I'M GOING TO SHOW YOU A ONE-PAGE DOCUMENT ON
22 R.T. VANDERBILT COMPANY LETTERHEAD DATED MARCH 14, 1977. I
23 ASK YOU TO REVIEW IT, PLEASE.

24 A. YES.

25 Q. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

1 A. YES.

2 Q. MAY I LOOK AT IT, SIR. I DON'T HAVE ANOTHER
3 COPY.

4 ARE YOU FAMILIAR WITH MR. VANDERBILT'S SIGNATURE?

5 A. YES.

6 Q. DOES THIS APPEAR TO BE HIS SIGNATURE?

7 A. YES.

8 Q. WHEN IS THE FIRST TIME YOU SAW THIS DOCUMENT?

9 A. PROBABLY RIGHT AFTER THE -- SOMETIME AROUND THE
10 DATE OF THE -- RIGHT AFTER THE DATE OF THE LETTER.

11 Q. AND HOW DID YOU COME TO SEE THIS LETTER?

12 A. HE WOULD NORMALLY SHOW ME A LETTER LIKE THAT
13 HAVING TO DO WITH THE WORK I'M DOING.

14 Q. WHAT IS YOUR UNDERSTANDING OF THE SUBSTANCE OF
15 THIS LETTER?

16 MR. SMITH: I'M AT A LOSS, COUNSEL. THE DOCUMENT
17 SPEAKS FOR ITSELF.

18 MS. EISENSTEIN: I WILL ASK MORE SPECIFICALLY.

19 Q. IS IT YOUR UNDERSTANDING THAT MR. VANDERBILT HAD
20 SOME CONTACT WITH BERT M. CONCKLIN?

21 A. I'M NOT AWARE OF HIM HAVING ANY PERSONAL CONTACT
22 WITH HIM.

23 Q. ANY WRITTEN CONTACT?

24 A. I'M NOT AWARE OF THAT EITHER.

25 MR. SMITH: OTHER THAN THE LETTER APPEARS TO HAVE BEEN

1 CC'D TO HIM.

2 MS. EISENSTEIN: WELL, THE FIRST SENTENCE READS
3 "MR. BERT M. CONKLIN, ACTING ASSISTING SECRETARY, HAS
4 RESPONDED TO MY ORIGINAL LETTER TO YOU OF JANUARY 31, 1977
5 IN REGARD TO DR. MORTON CORN'S ACTIONS AFFECTING OUR TALC
6 PRODUCTS."

7 HAVE YOU EVER HAD ANY CONTACT WITH THE
8 INDIVIDUAL TO WHICH THIS LETTER WAS SENT TO THE HONORABLE
9 F. RAY MARSHALL?

10 A. NO, I HAVE NEVER HAD ANY.

11 Q. HAVE YOU EVER HAD ANY PERSONAL CONTACT WITH
12 DR. CORN?

13 A. YES.

14 MR. SMITH: ARE YOU DONE WITH THIS.

15 MS. EISENSTEIN: I DON'T THINK IT'S BEEN MARKED.

16 (WHEREUPON THE DOCUMENT REFERRED TO WAS
17 MARKED AS PLAINTIFF'S EXHIBIT 29 FOR
18 IDENTIFICATION BY THE NOTARY PUBLIC AND
19 IS ATTACHED HERETO.)

20 BY MS. EISENSTEIN: Q. I DIDN'T HEAR YOUR ANSWER.

21 A. YES, I HAVE HAD PERSONAL CONTACT WITH MR. CORN.

22 Q. WHEN WAS THE FIRST TIME YOU HAD CONTACT WITH HIM?

23 A. BACK IN THE 1977 RANGE.

24 Q. WHAT WOULD BE THE NATURE OF THAT CONTACT?

25 A. WE HAD A GROUP OF OFFICIALS FROM THE VANDERBILT

1 COMPANY HAD A MEETING WITH DR. CORN AND SOME OF THE LABOR
2 DEPARTMENT OR OSHA OFFICIALS.

3 Q. WHAT WAS THE PURPOSE OF THAT MEETING?

4 A. TO TRY TO EXPLAIN -- TO TRY TO RESOLVE THE
5 TALC-ASBESTOS CONTROVERSY AS FAR AS OSHA RULES AND
6 REGULATIONS WERE CONCERNED.

7 Q. WERE YOU SUCCESSFUL, IN YOUR OPINION?

8 A. YES, I THINK SO, TO A -- NO. I SHOULD SAY TO A
9 CERTAIN EXTENT WE WERE SUCCESSFUL.

10 Q. TO WHAT EXTENT?

11 A. THE WHOLE THING IS NOT FINISHED YET.

12 Q. I UNDERSTAND.

13 A. WE WANTED TO ENCOURAGE HIM TO BRING THE
14 CONTROVERSY INTO THE NATIONAL BUREAU STANDARDS WHERE THEY
15 COULD LOOK INTO THE METHODS OF ANALYSIS THAT WERE BEING
16 USED BY -- THAT WERE BEING PROPOSED BY OSHA FOR ASBESTOS IN
17 TALC.

18 Q. WHAT SPECIFICALLY DID YOU WANT OSHA TO DO?

19 A. WE WANTED OSHA TO ADOPT SCIENTIFICALLY ACCURATE,
20 MINERALOGICALLY ACCURATE DEFINITIONS FOR ASBESTOS AND WE
21 WANTED THE NATIONAL BUREAU OF STANDARDS AND THEIR
22 SCIENTISTS TO HELP PUT TOGETHER A TECHNIQUE USING THOSE
23 DEFINITIONS THAT WOULD SOLVE THIS WHOLE CONTROVERSY.

24 Q. DID YOU HAVE A DEFINITION YOU WISHED THEM TO USE?

25 A. YES.

1 Q. I'D LIKE TO SHOW YOU A LETTER ON THE LETTERHEAD
2 OF U.S. DEPARTMENT OF LABOR DATED JANUARY 19, 1977 TO
3 MR. H. B. VANDERBILT, PRESIDENT, AND WE WILL MARK THIS AS 30.

4 (WHEREUPON THE DOCUMENT REFERRED TO WAS
5 MARKED AS PLAINTIFF'S EXHIBIT 30 FOR
6 IDENTIFICATION BY THE NOTARY PUBLIC AND
7 IS ATTACHED HERETO.)

8 BY MS. EISENSTEIN: Q. HAVE YOU EVER SEEN THAT LETTER
9 BEFORE?

10 A. YES.

11 Q. WHEN WAS THE FIRST TIME YOU SAW THAT LETTER?

12 A. IT WOULD BE SOMETIME AFTER JANUARY 19, 1977.

13 Q. HOW DID YOU COME TO SEE THAT LETTER?

14 A. A COPY WAS PASSED ALONG TO ME BY MR. VANDERBILT.

15 Q. WHEN YOU ARE FINISHED, COUNSEL, MAY I LOOK AT IT
16 FOR A MOMENT.

17 IS IT YOUR UNDERSTANDING THIS LETTER WAS
18 INFORMING YOU THAT THE FIELD MEMORANDUM SENT BY MR. STENDER
19 WAS BEING REVOKED OR THE LETTER SENT BY MR. STENDER WAS
20 BEING REVOKED?

21 A. WELL, THIS WAS A REVOCATION OF THE FIELD
22 MEMORANDUM. STENDER HAPPENED TO BE THE ASSISTANT SECRETARY
23 WHEN THAT MEMORANDUM CAME INTO BEING BUT THAT WAS A
24 STANDARD OFFICIAL OSHA MEMORANDUM ON THE BOOKS.

25 Q. THAT WAS REVOKED BY MARTIN CORN?

1 A. YES.

2 Q. ON BEHALF OF THE DEPARTMENT OF LABOR?

3 A. YES, YES.

4 Q. WAS THAT FIELD INFORMATION MEMORANDUM NUMBER
5 74-92 THAT WAS REVOKED?

6 MR. SMITH: IF YOU CAN RECOLLECT.

7 THE WITNESS: YES, IT WAS, I KNOW.

8 BY MS. EISENSTEIN: Q. DO YOU KNOW WHO A JAMES A.
9 MERCHANT IS?

10 A. YES.

11 Q. WHO IS THAT?

12 A. HE'S AN M.D. WHO USED TO WORK FOR NIOSH. I
13 DON'T KNOW WHO HE WORKS FOR NOW.

14 Q. HAVE YOU EVER HAD ANY CONTACT WITH HIM?

15 A. YES.

16 Q. WHEN WAS THE FIRST TIME YOU HAD CONTACT WITH HIM?

17 A. ABOUT 1975.

18 Q. AND WHAT WAS THE NATURE OF THAT CONTACT?

19 A. WE HAD A MEETING IN MORGANTOWN, WEST VIRGINIA
20 WITH DR. MERCHANT, WHO AT THAT TIME WAS HEAD OF THE NIOSH
21 MORGANTOWN FACILITY, AND SOME OF HIS PEOPLE WHO HAD ASKED
22 FOR PERMISSION TO COME TO OUR GOUVERNEUR FACILITIES TO
23 START THE NIOSH HEALTH STUDY.

24 Q. WHICH ENDED UP IN THE 1980 NIOSH STUDY?

25 A. RIGHT.

1 Q. I WOULD LIKE TO SHOW YOU A ONE-PAGE DOCUMENT
2 FROM THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE DATED
3 MARCH 1, 1977. AT THE BOTTOM IT LOOKS LIKE IT SAYS XC THEN
4 MR. ALLEN HARVEY AND DR. AUREL GOODIN?

5 A. GOODWIN. ACTUALLY IT SAYS GOODIN, BUT IT'S
6 SPELLED WRONG.

7 A. YES.

8 Q. HAVE YOU EVER SEEN THAT BEFORE?

9 A. YES.

10 Q. WHEN WAS THE FIRST TIME YOU SAW THAT LETTER?

11 A. PROBABLY AFTER MARCH 1, 1977.

12 Q. WHO IS AUREL GOODWIN?

13 A. THIS NAME IS AUREL GOODWIN. SHE LEFT THE W OFF,
14 I'M SURE IT'S THE SAME GUY.

15 Q. WHO IS THAT?

16 A. HE WORKS FOR MSHA. NOW MAYBE HE RETIRED.

17 Q. IS THAT LETTER IN REGARDS TO DATA YOU WERE GOING
18 TO SUPPLY OR YOU WERE SUPPLYING TO THE NIOSH PEOPLE?

19 A. YES. IT WAS ALL PART OF THE NIOSH STUDY.

20 MS. EISENSTEIN: THAT WILL BE 31.

21 (WHEREUPON THE DOCUMENT REFERRED TO WAS
22 MARKED AS PLAINTIFF'S EXHIBIT 31 FOR
23 IDENTIFICATION BY THE NOTARY PUBLIC AND
24 IS ATTACHED HERETO.)

25 BY MS. EISENSTEIN: Q. I WOULD LIKE TO SHOW YOU A

1 FIVE-PAGE DOCUMENT ENTITLED OSHA MINERAL REGULATION UPDATE
2 AND ASK YOU IF YOU HAVE EVER SEEN THIS BEFORE?

3 A. YES.

4 Q. IS THAT A COPY OF A PRESENTATION YOU MADE, SIR?

5 A. YES.

6 Q. MAY I SEE IT FOR JUST A MOMENT.

7 IS IT AN ACCURATE REPRESENTATION OF THE
8 PRESENTATION YOU GAVE?

9 A. IT APPEARS TO BE.

10 Q. IS VANDERBILT A MEMBER OF THE AMERICAN CERAMICS
11 SOCIETY?

12 A. YES.

13 Q. WHAT OCCASIONED THIS PRESENTATION THAT YOU GAVE?

14 A. THEY REQUESTED THAT SOMEBODY FROM THE VANDERBILT
15 COMPANY TO UPDATE THE ASBESTOS-TALC SITUATION AND THE
16 MINERAL LEGISLATIVE SITUATION FOR THE BENEFIT OF THE PEOPLE
17 ATTENDING THAT PARTICULAR CONVENTION, AND MY NAME CAME UP.

18 Q. HOW LONG HAS VANDERBILT BEEN A MEMBER OF THE
19 AMERICAN CERAMICS SOCIETY?

20 A. I DON'T KNOW.

21 Q. SINCE 1972?

22 A. I DON'T KNOW. PROBABLY A LONG TIME BEFORE.

23 Q. HAVE YOU GONE TO MORE THAN ONE MEETING OF THE
24 AMERICAN CERAMICS SOCIETY?

25 A. YES.

1 Q. ARE YOU THE REPRESENTATIVE OF THAT SOCIETY FOR
2 VANDERBILT?

3 A. NO.

4 Q. WHO'S THE REPRESENTATIVE, IF ANYONE IS?

5 MR. SMITH: NOW YOU MEAN?

6 THE WITNESS: TODAY?

7 BY MS. EISENSTEIN: Q. TODAY.

8 MR. SMITH: IF YOU KNOW?

9 THE WITNESS: MR. RIEGER.

10 BY MS. EISENSTEIN: Q. WHO WAS THE REPRESENTATIVE
11 BEFORE MR. RIEGER?

12 A. MR. CLARK.

13 Q. WHAT IS MR. CLARK'S FIRST NAME?

14 A. RICHARD.

15 Q. IS HE STILL WITH THE COMPANY?

16 A. NO.

17 Q. DO YOU KNOW WHERE HE LIVES?

18 A. NO, I DON'T KNOW.

19 Q. WHAT WAS HIS TITLE WHEN HE WAS REPRESENTATIVE?

20 A. HE WAS HEAD OF THE CERAMIC SALES FORCE.

21 Q. DO YOU KNOW WHO WAS REPRESENTATIVE BEFORE
22 MR. CLARK?

23 A. NO.

24 Q. APPROXIMATELY HOW MANY MEETINGS WOULD YOU HAVE
25 ATTENDED?

1 A. PROBABLY FOUR.

2 Q. WHY DID YOU ATTEND THOSE MEETINGS?

3 A. TWO CASES I GAVE PAPERS, ONE OF THEM IS THAT
4 PAPER. ONE OF THEM IS A SIMILAR PAPER. I THINK MAYBE
5 THREE CASES I GAVE PAPERS TO THE MEMBERSHIP, MOSTLY ON THE
6 SAME SUBJECT. MOSTLY UPDATES, AND I MIGHT HAVE ATTENDED A
7 FOURTH ONE MERELY TO MINGLE WITH THE CUSTOMERS.

8 Q. WOULD YOU HAVE COPIES OF THESE SPEECHES IN THOSE
9 FILES WE DISCUSSED EARLIER?

10 A. YES, THEY SHOULD BE THERE.

11 Q. WHERE EXACTLY IN THE FILES WOULD YOU LOOK FOR
12 COPIES OF THOSE SPEECHES?

13 A. I DON'T KNOW. I HAD VERY BAD FILES. I ADMIT IT.

14 Q. WOULD THEY BE UNDER THE AMERICAN CERAMIC SOCIETY?

15 A. THEY COULD BE.

16 Q. WHERE IS THE AMERICAN CERAMIC SOCIETY LOCATED?

17 A. I DON'T KNOW. YOU MEAN THE HEADQUARTERS?

18 Q. YES.

19 A. I REALLY DON'T KNOW.

20 Q. HAVE YOU EVER SEEN MINUTES FROM THAT SOCIETY OF
21 MEETINGS?

22 A. NO. I DON'T BELIEVE I HAVE.

23 MS. EISENSTEIN: LET'S MARK THIS AS 32.

24 (WHEREUPON THE DOCUMENT REFERRED TO WAS
25 MARKED AS PLAINTIFF'S EXHIBIT 32 FOR

1 IDENTIFICATION BY THE NOTARY PUBLIC AND
2 IS ATTACHED HERETO.)

3 BY MS. EISENSTEIN: Q. HAVE YOU EVER HEARD OF A
4 JAMES SCHIRRAPA?

5 A. YES.

6 Q. WHO IS JAMES SCHIRRAPA?

7 A. HE RUNS AN ANALYTICAL LABORATORY OR DID RUN AN
8 ANALYTICAL LABORATORY OUT IN LONG ISLAND SOMEWHERE.

9 Q. HAVE YOU EVER HAD PERSONAL CONTACT WITH HIM?

10 A. YES.

11 Q. WHAT IS THE NATURE OF THAT CONTACT?

12 A. HE HAD DONE AN ANALYSIS OF OUR TALC FOR ONE OF
13 OUR CUSTOMERS AT THE CUSTOMER'S REQUEST AND I SPOKE TO HIM
14 ABOUT THE ANALYSIS.

15 Q. DID YOU SPEAK WITH HIM PERSONALLY?

16 A. YES.

17 Q. DO YOU KNOW WHO THE CUSTOMER WAS?

18 A. YES. IT WAS A PAINT COMPANY IN NEW JERSEY WHOSE
19 NAME ESCAPES ME.

20 Q. WAS IT INTERNATIONAL PAINT COMPANY?

21 A. YES, I BELIEVE IT WAS.

22 Q. WERE YOU IN DISAGREEMENT WITH MR. SCHIRRAPA AS
23 TO THE RESULTS OF HIS ANALYSIS?

24 A. YES.

25 Q. IS IT YOUR UNDERSTANDING THAT HE FOUND

1 SUBSTANTIAL AMOUNTS OF ASBESTOS IN THE TALC?

2 A. YES.

3 Q. ASIDE FROM CONTACTING HIM PERSONALLY, DO YOU
4 KNOW WHETHER ANY OTHER ACTION WAS TAKEN BY VANDERBILT
5 REGARDING MR. SCHIRRAPA'S ANALYSIS?

6 A. NO. WE TOOK NO ACTION REGARDING HIS ANALYSIS.
7 YEAH, WE DID, IN A WAY. WE HAD A TALC SENT TO E.M.
8 VENTIONS, ANOTHER ANALYTICAL PLACE. WE SUGGESTED
9 INTERNATIONAL TALC COMPANY SEND THE SAME SAMPLE.

10 MR. SMITH: I THINK YOU MISSPOKE YOURSELF.

11 YOU MEAN INTERNATIONAL PAINT COMPANY?

12 THE WITNESS: YES. WE SUGGESTED THAT THE
13 INTERNATIONAL PAINT COMPANY SEND A SAMPLE OF THAT SAME TALC
14 TO E.M. VENTIONS, V-E-N-T-I-O-N-S, IN ROCKVILLE, MARYLAND
15 TO AN ANALYTICAL GROUP TO DO THE SAME TYPE OF ANALYSIS FOR
16 WHATEVER CONTENTS OF THE TALC WERE.

17 BY MS. EISENSTEIN: Q. WAS THE TALC SENT THERE FOR
18 ANALYSIS?

19 A. YES.

20 Q. DO YOU KNOW WHAT THE RESULT WAS?

21 A. YES.

22 Q. WHAT WAS THE RESULT?

23 A. NO ASBESTOS FOUND.

24 Q. WAS ANY OTHER ACTION TAKEN REGARDING
25 MR. SCHIRRAPA'S ANALYSIS?

1 A. WE TRIED VERY HARD TO GET IT TO VISIT OUR LABS,
2 BUT HE WOULDN'T DO IT. TRIED TO GET HIM TO SIT DOWN WITH
3 US AND HE WOULDN'T DO THAT. HE AVOIDED US.

4 Q. WAS A LAWSUIT FILED AGAINST MR. SCHIRRAPA?

5 A. I DON'T THINK SO.

6 Q. WAS THERE A DISCUSSION OF FILING A LAWSUIT
7 AGAINST HIM?

8 A. YES.

9 Q. AND WHY WAS A LAWSUIT BEING DISCUSSED?

10 A. WELL, HIS ANALYSIS WAS IN ERROR, IN OUR OPINION,
11 AND WE THOUGHT WE HAD GROUNDS FOR A SUIT BECAUSE OF THE
12 DAMAGE IT MIGHT DO TO OUR BUSINESS.

13 MR. SMITH: BEFORE YOU GO ANY FURTHER LET ME CAUTION
14 YOU NOT TO RELATE ANY CONVERSATIONS YOU MAY HAVE HAD WITH
15 YOUR ATTORNEYS REGARDING THAT SUIT, OKAY, BECAUSE THAT WILL
16 BE PRIVILEGED BY THE ATTORNEY-CLIENT PRIVILEGE.

17 MS. EISENSTEIN: WERE YOU CONSIDERING A DEFAMATION
18 LAWSUIT?

19 MR. SMITH: I THINK THAT RIGHT THERE GOES STRAIGHT TO
20 ATTORNEY-CLIENT PRIVILEGE. INSTRUCTION NOT TO ANSWER ON
21 THOSE GROUNDS.

22 BY MS. EISENSTEIN: Q. SIR, I'D LIKE TO SHOW YOU A
23 TWO-PAGE DOCUMENT ON THE LETTERHEAD OF BURKE & BURKE; DO
24 YOU KNOW WHO BURKE & BURKE ARE?

25 A. YES.

1 Q. WHO ARE THEY?

2 A. LAW FIRM IN NEW YORK.

3 Q. HAS VANDERBILT EVER RETAINED BURKE & BURKE?

4 A. YES.

5 Q. FOR PURPOSES OF THIS POTENTIAL LITIGATION
6 AGAINST MR. SCHIRRAPA?

7 A. THAT AND OTHER LEGAL MATTERS.

8 Q. I WOULD LIKE TO SHOW YOU A TWO-PAGE DOCUMENT
9 DATED JULY 30, 1980 TO MR. JAMES SCHIRRAPA.

10 HAVE YOU EVER SEEN THAT DOCUMENT BEFORE, SIR?

11 A. YES.

12 Q. WHEN WAS THE FIRST TIME YOU SAW THIS DOCUMENT?

13 A. THAT WOULD BE SOON AFTER THE DATE ON THAT
14 LETTERHEAD.

15 Q. HOW DID YOU COME TO SEE IT?

16 A. IT WAS PASSED ON TO ME BY THE RECIPIENT.

17 Q. PASSED ON TO YOU BY JAMES SCHIRRAPA?

18 A. NO, I'M SORRY. BY MR. VANDERBILT WHO WOULD GET
19 A COPY FROM MR. BURTON.

20 Q. ON THE SECOND PAGE IT SAYS CC P.T. VANDERBILT
21 COMPANY, INC., THEN BCC GUY F. DRIVER. WOULD MR. DRIVER
22 HAVE GIVEN YOU A COPY OF THAT?

23 A. I COULD HAVE GOTTEN A COPY FROM MR. DRIVER
24 AND/OR MR. VANDERBILT.

25 Q. WAS THIS MATTER RESOLVED?

1 A. ESSENTIALLY, YES.

2 Q. IN WHAT WAY WAS IT RESOLVED?

3 A. WE HEARD NO MORE FROM MR. SCHIRRAPA.

4 Q. HAS VANDERBILT CONSIDERED INITIATING SIMILAR
5 LEGAL PROCEEDINGS AGAINST OTHER INDIVIDUALS ASIDE FROM
6 MR. SCHIRRAPA BASED ON THEIR ANALYSIS OF VANDERBILT TALC?

7 MR. SMITH: AGAIN CAUTION YOU NOT TO RELATE ANY
8 INFORMATION YOU MAY HAVE HAD WITH ATTORNEYS FOR VANDERBILT
9 IN THIS REGARD.

10 MS. EISENSTEIN: CONVERSATIONS, YOU MEAN?

11 MR. SMITH: COMMUNICATIONS, WHATEVER I MAY HAVE SAID.

12 MS. EISENSTEIN: YOU SAID INFORMATION.

13 Q. YOU CAN ANSWER, SIR.

14 A. I DON'T KNOW.

15 Q. IS IT YOUR UNDERSTANDING THIS WAS THE ONLY
16 INCIDENT WHERE LEGAL ACTION WAS BEING CONSIDERED?

17 A. I DON'T KNOW THAT EITHER.

18 Q. I DON'T THINK I MARKED THIS ONE.

19 MR. SMITH: 33 IT WILL BE IF YOU MARK IT.

20 (WHEREUPON THE DOCUMENT REFERRED TO WAS
21 MARKED AS PLAINTIFF'S EXHIBIT 33 FOR
22 IDENTIFICATION BY THE NOTARY PUBLIC AND
23 IS ATTACHED HERETO.)

24 BY MS. EISENSTEIN: Q. I'D LIKE TO SHOW YOU A
25 SIX-PAGE DOCUMENT, SIR, ENTITLED ASBESTOS IN YOUR FUTURE.

1 A. YES.

2 Q. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

3 A. YES.

4 Q. DID YOU PARTICIPATE IN THE CREATION OF THAT
5 DOCUMENT?

6 A. YES.

7 Q. AND WHAT FORM DID YOUR PARTICIPATION TAKE?

8 A. GENERAL REVIEW OF THE WRITTEN DOCUMENT FOR
9 ACCURACY.

10 Q. WHEN WAS THIS DOCUMENT PREPARED?

11 A. ABOUT 1976.

12 Q. WHY WAS IT PREPARED?

13 A. WHY WAS IT PREPARED?

14 Q. YES.

15 A. IT WAS IN REQUEST BY THE AMERICAN MINING
16 CONGRESS FOR A PAPER TO BE DELIVERED AT ONE OF THEIR
17 MEETINGS BY VANDERBILT COMPANY ON THE TALC-ASBESTOS
18 CONTROVERSY, AS A RESULT OF WHICH DR. THOMPSON PUT THIS
19 PAPER TOGETHER, GAVE IT AND THEN HAD IT PRINTED.

20 Q. WAS IT DISTRIBUTED SUBSEQUENTLY TO ANY
21 INDIVIDUALS OTHER THAN THE ONES GIVEN IT AT THE CONFERENCE?

22 A. YES, BEING PART OF THE MINING CONGRESS JOURNAL
23 THAT GOES OUT TO ALL THE PEOPLE WHO ARE MEMBERS OF THE
24 AMERICAN MINING CONGRESS.

25 Q. ASIDE FROM THE AMERICAN MINING CONGRESS, WAS IT

1 SENT OUT TO ANY OTHER CUSTOMERS, TO YOUR KNOWLEDGE?

2 A. YES, MANY CUSTOMERS.

3 Q. WAS IT WENT OUT TO LEGISLATORS?

4 A. I DON'T KNOW.

5 Q. THAT WAS WRITTEN BY DR. THOMPSON?

6 A. YES.

7 Q. IS THERE AN ORGANIZATION CALLED THE AMERICAN
8 MINING CONGRESS?

9 A. YES.

10 Q. IS VANDERBILT A MEMBER?

11 A. YES.

12 Q. WHO IS, IF YOU KNOW, AT THE PRESENT TIME
13 REPRESENTATIVE TO THE AMERICAN MINING CONGRESS FROM
14 VANDERBILT?

15 A. DR. THOMPSON.

16 Q. HAVE YOU EVER ATTENDED ANY OF THEIR MEETINGS?

17 A. YES.

18 Q. HOW MANY WOULD YOU SAY YOU ATTENDED?

19 A. ABOUT A DOZEN.

20 Q. AND DURING WHAT TIME FRAME WOULD THAT HAVE BEEN,
21 THE ATTENDANCE OF THOSE MEETINGS?

22 A. AT LEAST TEN YEARS.

23 Q. FROM WHEN TO WHEN?

24 A. APPROXIMATELY 1975 TO 1986.

25 Q. DID YOU EVER SPEAK AT ANY OF THEIR MEETINGS?

1 A. I DON'T THINK I HAD GIVEN A FORMAL PRESENTATION
2 AT ANY OF THEIR MEETINGS.

3 Q. WHY DID YOU GO TO THEIR MEETINGS?

4 A. SINCE VANDERBILT COMPANY WAS A MEMBER, IT WAS
5 THE PRACTICE TO ATTEND THE MEETINGS WHERE OTHER MINING
6 COMPANIES WOULD GATHER TO EXCHANGE INFORMATION, WHATNOT.

7 Q. HAVE YOU EVER SEEN MINUTES FROM THOSE MEETINGS
8 THAT YOU ATTENDED?

9 A. I DON'T REMEMBER.

10 Q. DO YOU KNOW IF MINUTES ARE KEPT OF THE MEETINGS
11 OF THE AMERICAN MINING CONGRESS?

12 A. I DON'T KNOW THAT EITHER.

13 Q. WHERE ARE THEIR OFFICES?

14 A. IN WASHINGTON.

15 Q. WASHINGTON, D.C.?

16 A. YES.

17 Q. DO YOU KNOW WHO THEIR SECRETARY IS?

18 A. I DON'T KNOW WHO THE SECRETARY IS RIGHT NOW.

19 Q. DO YOU KNOW ANYONE IN AN EXECUTIVE CAPACITY AT
20 THE AMERICAN MINING CONGRESS?

21 A. YES.

22 Q. WHO WOULD THAT BE?

23 A. MR. HENRY CHAJET, C-H-A-J-E-T. HE'S THE SENIOR
24 COUNSEL.

25 Q. LET'S MARK THAT HAS 34.

1 (WHEREUPON THE DOCUMENT REFERRED TO WAS
2 MARKED AS PLAINTIFF'S EXHIBIT 34 FOR
3 IDENTIFICATION BY THE NOTARY PUBLIC AND
4 IS ATTACHED HERETO.)

5 BY MS. EISENSTEIN: Q. I WOULD LIKE TO SHOW YOU A
6 TWO-PAGE DOCUMENT ENTITLED OSHA'S TALC STANDARD IS 'TIME
7 BOMB' FOR INDUSTRY. I WOULD LIKE TO ASK YOU IF YOU HAVE
8 EVER SEEN THESE BEFORE?

9 A. YES.

10 Q. DID YOU PREPARE THAT DOCUMENT?

11 A. NO.

12 Q. WHO PREPARED IT?

13 A. SOMEBODY ELSE, I DON'T KNOW.

14 Q. WAS IT SOMEONE AT VANDERBILT, TO YOUR KNOWLEDGE?

15 A. TO MY KNOWLEDGE, NO.

16 Q. WHEN WAS THE FIRST TIME YOU SAW THAT DOCUMENT?

17 A. OH, SOMETIME PROBABLY AFTER JANUARY 1977 THIS
18 THING WAS PUT OUT.

19 Q. MAY I SEE IT AFTER YOU ARE FINISHED WITH IT, SIR?

20 A. JUST A SECOND.

21 Q. PLEASE, TAKE YOUR TIME.

22 HOW DID YOU COME TO SEE THIS DOCUMENT?

23 A. WELL, IT PASSED ACROSS MY DESK. WE SUBSCRIBE TO
24 THE CERAMICS SCOPE MAGAZINE. WHOEVER GETS IT WOULD XEROX
25 IT AND SEND IT AROUND.

1 Q. DID YOU PARTICIPATE IN ANY WAY IN THE CREATION
2 OF THIS DOCUMENT?

3 A. NO.

4 Q. DO YOU KNOW WHETHER THE WESTWOOD CERAMICS SUPPLY
5 COMPANY WAS A CUSTOMER OF VANDERBILT?

6 A. I DON'T KNOW.

7 Q. IS CERAMICS SCOPE MAGAZINE PUT OUT BY AN
8 ORGANIZATION?

9 A. I DON'T THINK SO.

10 Q. HAVE YOU EVER HAD ANY CONTACT WITH ANYONE FROM
11 CERAMIC SCOPE MAGAZINE?

12 A. I HAVE HAD TELEPHONE CONVERSATIONS WITH SOME
13 PEOPLE FROM THERE.

14 Q. REGARDING THE ASBESTOS-TALC CONTROVERSY?

15 A. YES.

16 MR. SMITH: I'M GOING TO MARK THIS ONE.

17 MS. EISENSTEIN: LET'S MARK IT AS 35.

18 (WHEREUPON THE DOCUMENT REFERRED TO WAS
19 MARKED AS PLAINTIFF'S EXHIBIT 35 FOR
20 IDENTIFICATION BY THE NOTARY PUBLIC AND
21 IS ATTACHED HERETO.)

22 BY MS. EISENSTEIN: Q. I WOULD LIKE TO SHOW YOU A
23 THREE-PAGE DOCUMENT ON THE LETTERHEAD OF R.T. VANDERBILT TO
24 DR. MURRAY, AND THE ONLY THING I CAN SEE IN TERMS OF A DATE
25 IS A DATE STAMP WHICH SAYS, LOOKS LIKE JANUARY 26, 1981 AND

1 ASK YOU TO LOOK AT THAT.

2 MR. SMITH: LET THE RECORD REFLECT MUCH OF THIS
3 DOCUMENT IS ILLEGIBLE, IT'S A VERY, VERY FAINT COPY.
4 CERTAINLY THE WITNESS CAN'T BE EXPECTED TO KNOW WHAT IT
5 SAYS IN ITS ENTIRETY.

6 THE WITNESS: YES.

7 BY MS. EISENSTEIN: Q. HAVE YOU HAD A CHANCE TO
8 REVIEW THE DOCUMENT, SIR?

9 A. YES.

10 Q. ARE YOU THE AUTHOR OF THAT DOCUMENT?

11 A. YES.

12 Q. DID YOU PREPARE THIS IN THE COURSE OF YOUR
13 DUTIES FOR VANDERBILT?

14 A. YES.

15 Q. WHAT YEAR DO YOU THINK YOU PREPARED THIS IN?

16 A. 1980.

17 Q. WHO IS ROBERT MURRAY?

18 A. HE'S A CONSULTANT IN OCCUPATIONAL INDUSTRIAL
19 HYGIENE.

20 Q. DID HE REVIEW THE TOMA STUDY?

21 A. YES.

22 Q. DID YOU REVIEW THE NIOSH STUDY?

23 A. YES.

24 Q. DID HE DO A STUDY OF HIS OWN?

25 A. NO.

1 Q. DID HE PROVIDE YOU WITH A REPORT ON HIS ANALYSIS
2 OF THE TWO STUDIES?

3 A. YES.

4 Q. DID YOU DO ANYTHING OTHER THAN PROVIDE YOU WITH
5 A REPORT?

6 A. YES. HE PARTICIPATED IN THAT FILM "A MATTER OF
7 FACT" THAT WE DISCUSSED EARLIER.

8 Q. WHAT WAS HIS PARTICIPATION IN THE FILM?

9 A. HE WAS INTERVIEWED BY MR. BOBKER ON HIS OPINION
10 OF THE NIOSH REPORT VERSUS THE TOMA REPORT.

11 Q. IS HE CURRENTLY EMPLOYED WITH VANDERBILT?

12 A. NO.

13 Q. DO YOU KNOW WHERE HE WORKS?

14 A. LAST TIME I KNOW HIS OFFICE OR STUDIO AND
15 WHATNOT WAS IN NEW YORK CITY.

16 Q. DO YOU KNOW HIS FIRST NAME?

17 A. LEE.

18 MR. SMITH: DO YOU WANT THIS MARKED AS 36?

19 MS. EISENSTEIN: PLEASE.

20 (WHEREUPON THE DOCUMENTS REFERRED TO WERE
21 MARKED AS PLAINTIFF'S EXHIBITS 36 AND 37 FOR
22 IDENTIFICATION BY THE NOTARY PUBLIC AND
23 ARE ATTACHED HERETO.)

24 BY MS. EISENSTEIN: Q. HOW DID YOU BECOME AWARE OF
25 DR. ROBERT MURRAY?

1 A. THROUGH DR. TABERSHAW.

2 Q. DID HE RECOMMEND HIM TO YOU?

3 A. YES.

4 Q. WERE THEY ASSOCIATED AT ANY TIME?

5 MR. SMITH: WELL, I OBJECT, CALLS FOR SPECULATION.

6 THE WITNESS: I DON'T KNOW.

7 BY MS. EISENSTEIN: Q. I'D LIKE TO SHOW YOU A
8 SIX-PAGE DOCUMENT ON WHAT APPEARS TO BE THE LETTERHEAD OF
9 ROBERT MURRAY ASSOCIATES TO MR. A. HARVEY DATED DECEMBER 18,
10 1980 AND ASK YOU PLEASE TO REVIEW IT.

11 A. YES.

12 Q. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

13 A. YES.

14 Q. IS THAT THE REPORT THAT DR. MURRAY DID FOR YOU
15 REGARDING THE NIOSH AND TOMA STUDIES?

16 A. YES.

17 MR. SMITH: LET ME POINT OUT THIS DOCUMENT CONSISTS OF
18 SIX PAGES INCLUDING A COVER LETTER. THERE SEEMS TO BE
19 EITHER A LINE MISSING ON THE LAST PAGE OR THERE ARE MORE
20 PAGES BECAUSE IT STOPS IN MID SENTENCE.

21 BY MS. EISENSTEIN: Q. IS IT YOUR UNDERSTANDING, SIR,
22 THERE ARE MORE PAGES TO THAT REPORT THAN EXIST AT THE
23 MOMENT?

24 A. IT WOULD APPEAR SOMETHING IS MISSING IN THE WAY
25 THAT THE LAST SENTENCE ENDS HERE, SO I DON'T KNOW.

1 Q. MAY I SEE THE DOCUMENT FOR A MINUTE, PLEASE.

2 DID YOU RECEIVE THIS DOCUMENT IN APPROXIMATELY
3 DECEMBER 1980?

4 A. YES.

5 Q. DID YOU HAVE ANY FURTHER WRITTEN CONTACT WITH
6 DR. MURRAY AFTER THIS?

7 A. I DON'T REMEMBER.

8 Q. ASIDE FROM THE PAGE OR SO, PAGES THAT MIGHT BE
9 MISSING, DOES THIS APPEAR TO BE A PART OF HIS FINAL REPORT
10 TO YOU?

11 A. YES.

12 Q. IS IT YOUR UNDERSTANDING THAT ANOTHER REPORT WAS
13 DONE AFTER THIS ONE BY HIM?

14 A. I DON'T KNOW.

15 Q. IS THIS THE ONLY ONE YOU ARE AWARE OF?

16 A. YES.

17 Q. HAS DR. MURRAY, ASIDE FROM ON THIS OCCASION,
18 BEEN RETAINED AS A CONSULTANT BY VANDERBILT?

19 A. OTHER THAN THIS AND HIS PERFORMANCE IN THE MOVIE,
20 NO.

21 MS. EISENSTEIN: I AM NOT SURE WHICH EXHIBIT THIS IS
22 BUT IT IS A PERFECTLY CLEAR COPY OF WHAT YOU HAVE NOT AS A
23 CLEAR COPY. DECEMBER 6, 1976 INTER-OFFICE MEMO FROM
24 MR. HARVEY.

25 Q. SIR, ARE YOU AWARE OF AN INSPECTION DONE BY OSHA

1 OF THE VERFLEX COMPANY IN CARLSDAD, NEW JERSEY?

2 A. THAT DOESN'T STRIKE A BELL WITH ME.

3 Q. LET ME SHOW YOU AN INTER-OFFICE --

4 A. I DON'T REMEMBER THAT ONE.

5 Q. LET ME SHOW YOU AN INTER-OFFICE MEMORANDUM DATED
6 SEPTEMBER 1, 1981 TO A.M. HARVEY FROM K.C. RIEGER?

7 A. OKAY.

8 Q. HAVE YOU EVER SEEN THAT BEFORE?

9 A. I DON'T RECOGNIZE IT.

10 Q. OKAY.

11 A. BUT IT'S A LONG TIME AGO.

12 Q. DO YOU HAVE ANY REASON TO BELIEVE YOU DIDN'T
13 RECEIVE THAT DOCUMENT?

14 A. NO.

15 Q. MAY I SEE IT FOR A MOMENT, PLEASE.

16 DID VANDERBILT EVER SEND WILLARD DIXON DIRECTLY
17 SAMPLES OF ITS PRODUCTS?

18 A. YES.

19 Q. AND IS THIS DURING THE PENDENCY OF LITIGATION
20 INVOLVING VANDERBILT CUSTOMERS AND OSHA?

21 A. I DON'T KNOW. JUST AT WILLARD DIXON'S REQUEST
22 SO I HAVE NO IDEA.

23 Q. WHO IS I. GIBBS?

24 A. I. GIBBS IS A VANDERBILT EMPLOYEE.

25 Q. WHAT IS HIS TITLE?

1 A. RIGHT NOW HE'S -- I DON'T KNOW WHAT HIS TITLE IS
2 BUT AT THE TIME OF THAT LETTER HE PROBABLY WAS RESEARCH
3 DIRECTOR.

4 Q. WHAT ABOUT G. O'BRIEN?

5 A. G. O'BRIEN IS A SALESMAN FOR VANDERBILT
6 COMPANY.

7 Q. HOW ABOUT R. ROSS?

8 A. HE'S HEAD OF SALES FOR THE PAINT DEPARTMENT, WAS
9 HEAD OF SALES OF THE PAINT DEPARTMENT PROBABLY AT THE TIME
10 THAT LETTER WAS WRITTEN.

11 Q. R. SMITH?

12 A. HE WORKS IN THE ORDER DEPARTMENT AT VANDERBILT
13 COMPANY.

14 Q. WHO IS THE ORDER DEPARTMENT?

15 A. THEY TAKE ORDERS FROM OUTSIDE PAINT OR TALC
16 ORDERS OR WHATEVER CHEMICALS.

17 MS. EISENSTEIN: I WILL MARK THIS AS 38.

18 (WHEREUPON THE DOCUMENT REFERRED TO WAS
19 MARKED AS PLAINTIFF'S EXHIBIT 38 FOR
20 IDENTIFICATION BY THE NOTARY PUBLIC AND
21 IS ATTACHED HERETO.)

22 BY MS. EISENSTEIN: Q. WHO IS DR. RUSSELL HARLEY?

23 A. HE'S AN M.D. OR MEDICAL-TYPE RESEARCHER.

24 Q. HAS HE --

25 A. FROM A UNIVERSITY DOWN SOUTH SOMEWHERE.

1 Q. HAVE YOU EVER HAD ANY CONTACT WITH HIM?

2 A. YES.

3 Q. WHAT KIND OF CONTACT HAVE YOU HAD WITH HIM?

4 A. I VISITED WITH HIM AND I THINK MR. DRIVER.

5 Q. WHY?

6 A. I CAN'T REMEMBER THE EXACT REASON.

7 Q. HAS HE EVER BEEN COMMISSIONED TO DO ANY WORK FOR
8 VANDERBILT?

9 A. NOT THAT I KNOW OF BUT I CAN'T RECALL.

10 Q. DID YOU EVER CONSIDER USING HIM FOR ANY WORK FOR
11 VANDERBILT?

12 A. YES, WE DID.

13 Q. AND WHAT WERE YOU GOING TO USE HIM FOR?

14 A. PROBABLY FOR AS A MEDICAL EXPERT.

15 Q. IN LITIGATION?

16 A. YES.

17 Q. WHICH CASE?

18 A. I DON'T KNOW.

19 Q. DID YOU MAKE THE DECISION NOT TO USE HIM?

20 A. I DIDN'T MAKE ANY DECISION.

21 Q. DID HE MAKE A DECISION?

22 A. WHO?

23 Q. DR. HARLEY?

24 A. I DON'T KNOW THAT. I CAN'T RECALL ANY OF THE
25 CIRCUMSTANCES ON THAT PARTICULAR CONTACT.

1 Q. I'D LIKE TO SHOW YOU A TWO-PAGE DOCUMENT ON R.T.
2 VANDERBILT COMPANY LETTERHEAD TO RUSSELL HARLEY, M.D. DATED
3 NOVEMBER 12, 1980. LET'S MARK THIS AS PLAINTIFF'S 39.

4 (WHEREUPON THE DOCUMENT REFERRED TO WAS
5 MARKED AS PLAINTIFF'S EXHIBIT 39 FOR
6 IDENTIFICATION BY THE NOTARY PUBLIC AND
7 IS ATTACHED HERETO.)

8 THE WITNESS: YES.

9 BY MS. EISENSTEIN: Q. ARE YOU THE AUTHOR OF THAT
10 LETTER?

11 A. YES.

12 Q. DID YOU DRAFT THIS LETTER IN APPROXIMATELY
13 NOVEMBER 12, 1980?

14 A. I WOULD SAY SO.

15 Q. AND IS THAT IN THE COURSE OF YOUR DUTIES FOR
16 VANDERBILT?

17 A. YES.

18 Q. THIS LETTER MAKES REFERENCE TO THE TWO SMITH
19 STUDIES WE HAVE TALKED ABOUT EARLIER; IS THAT RIGHT?

20 A. YES.

21 Q. LET ME ASK YOU, THE SMITH STUDY WHICH WAS
22 COMMISSIONED BY VANDERBILT, WHAT WAS THE LATENCY PERIOD IN
23 THAT STUDY? WHAT WAS THE PERIOD OF TIME FROM BEGINNING TO
24 END?

25 A. PERIOD OF TIME THAT THE HAMSTERS WERE ALIVE?

1 Q. YES.

2 A. 700 DAYS.

3 Q. AFTER THOSE 700 DAYS, WERE THE HAMSTERS KILLED?

4 A. YES, IF THEY WEREN'T ALREADY DEAD. SOME OF THEM
5 DIED BEFORE 700 DAYS OF NATURAL CAUSES.

6 MR. SMITH: AND OTHERS JUST LEFT TOWN.

7 THE WITNESS: THEY EAT EACH OTHER, I DON'T KNOW.
8 SOMEBODY STEPPED ON THEM.

9 BY MS. EISENSTEIN: Q. DO YOU KNOW WHETHER IN THE
10 FIRST STUDY DONE REGARDING FD-14, THAT SAMPLE, WHAT THE
11 TIME PERIOD WAS ON THAT STUDY?

12 A. PROBABLY THE SAME. THAT IS THE STANDARD. ONCE
13 THEY GET A STANDARD METHOD GOING, THEY USUALLY STAY WITH
14 THE SAME THING EVERY TIME.

15 Q. DO YOU KNOW WHETHER THE HAMSTERS WERE KILLED AT
16 THE END OF THAT STUDY?

17 A. I WOULD ASSUME THEY WOULD BE. THAT WAS PROTOCOL
18 SET UP BY MR. SMITH.

19 Q. I'D LIKE TO HAND YOU A SIX-PAGE DOCUMENT ON THE
20 LETTERHEAD OF THE U.S. DEPARTMENT OF LABOR MEMORANDUM FOR
21 REGIONAL ADMINISTRATORS AND AREA DIRECTORS, SUBJECT FIBROUS
22 TREMOLITIC TALC, SIGNED AT THE BOTTOM OF THE FIRST PAGE BY
23 MARTIN CORN, AND WE WILL MARK THIS AS 40.

24 (WHEREUPON THE DOCUMENT REFERRED TO WAS
25 MARKED AS PLAINTIFF'S EXHIBIT 40 FOR

1 IDENTIFICATION BY THE NOTARY PUBLIC AND
2 IS ATTACHED HERETO.)

3 BY MS. EISENSTEIN: Q. WOULD YOU PLEASE TAKE A LOOK
4 AT THIS DOCUMENT, SIR.

5 (OFF THE RECORD.)

6 BY MS. EISENSTEIN: Q. HAVE YOU HAD A CHANCE TO
7 REVIEW THAT DOCUMENT, SIR?

8 A. YES.

9 Q. HAVE YOU EVER SEEN IT BEFORE?

10 MR. SMITH: WHICH DOCUMENT ARE YOU REFERRING TO? YOU
11 ARE ASSUMING IT'S ALL ONE DOCUMENT, AND I DON'T THINK IT'S
12 A CORRECT ASSUMPTION AT THIS POINT.

13 BY MS. EISENSTEIN: Q. HAVE YOU EVER SEEN THE FIRST
14 PAGE, SIR?

15 A. FIRST PAGE, I DON'T RECALL SEEING THIS.

16 Q. YOU HAVE NEVER SEEN THIS BEFORE?

17 A. I DON'T RECALL SEEING IT.

18 Q. WHAT ABOUT THE SECOND PAGE?

19 A. I DON'T RECALL SEEING THAT ONE BEFORE.

20 Q. WHAT ABOUT THE THIRD PAGE?

21 A. I DON'T RECALL SEEING THAT ONE BEFORE.

22 Q. WHAT ABOUT THE FOURTH PAGE?

23 A. I DON'T RECALL SEEING THAT ONE BEFORE.

24 Q. WHAT DO YOU BELIEVE THE FOURTH PAGE TO BE?

25 A. I KNOW WHAT IT IS, IT'S A SAMPLE IDENTIFICATION

1 SHEET THAT WILLARD DIXON MAKES OUT EVERY TIME HE ANALYZES A
2 SAMPLE OF MINERALS, AND THIS ONE IS FOR THE BLANK THEY
3 ANALYZE TO SEE IF THERE IS ANY ASBESTOS ON IT IN CASE
4 ASBESTOS FLOATS IN THROUGH THE WINDOW YOU GOT TO KNOW WHAT
5 TO START WITH; I RECOGNIZE THIS.

6 Q. WHAT IS PAGE 5?

7 A. IT'S THE ACTUAL SAMPLE IDENTIFICATION SHEET FOR
8 THE ASBESTOS SAMPLE BY WILLARD DIXON.

9 Q. MAY I SEE THE DOCUMENT FOR A MOMENT, PLEASE.

10 MR. SMITH: COUNSEL, I'D LIKE TO POINT OUT FOUR OUT OF
11 FIVE OF THOSE DOCUMENTS BEAR DIFFERENT DATES. THE FIFTH
12 ONE DOESN'T BEAR A DATE.

13 MS. EISENSTEIN: WE CAN SEPARATE THEM, COUNSEL, THAT
14 IS NO PROBLEM. I JUST WOULD LIKE TO SEE IT FOR THE TIME
15 BEING.

16 LET'S SEPARATE THESE. THE FIRST PAGE IS THE
17 MEMORANDUM FOR REGIONAL ADMINISTRATORS AND AREA DIRECTORS.

18 LET'S MARK AS 41 U.S. DEPARTMENT OF LABOR
19 LETTERHEAD FEBRUARY 16, 1977 LETTER ADDRESSED TO
20 MR. GUY F. DRIVER.

21 (WHEREUPON THE DOCUMENT REFERRED TO WAS
22 MARKED AS PLAINTIFF'S EXHIBIT 41 FOR
23 IDENTIFICATION BY THE NOTARY PUBLIC AND
24 IS ATTACHED HERETO.)

25 BY MS. EISENSTEIN: Q. I BELIEVE YOU STATED, BUT

1 PLEASE LOOK AT IT AGAIN, THAT YOU HAVE NEVER SEEN THIS
2 DOCUMENT BEFORE?

3 A. I CAN'T RECALL SEEING THIS ONE.

4 Q. THEY MAKE REFERENCE IN THERE TO SOME ANALYSIS
5 WORKSHEETS?

6 A. YES.

7 Q. OKAY. I'M GOING TO HAND YOU A DOCUMENT SAMPLE
8 IDENTIFICATION SHEET AND ASK YOU WHETHER YOU KNOW THIS IS
9 AN ANALYSIS WORKSHEET?

10 A. THAT IS NOT AN ANALYSIS WORKSHEET, THAT IS A
11 SAMPLE IDENTIFICATION SHEET JUST LIKE IT SAYS.

12 Q. YOU BELIEVE THAT IS SOMETHING DIFFERENT THAN AN
13 ANALYSIS WORKSHEET?

14 A. YES.

15 Q. THAT IS FINE, THANK YOU, SIR.

16 LET'S MARK AS 42 THE JULY 13, 1976 LETTER ON THE
17 U.S. DEPARTMENT OF LABOR STATIONERY TO HOWARD STEPHENS. DO
18 YOU KNOW WHO HOWARD STEPHENS IS?

19 A. NO.

20 Q. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

21 A. I DON'T REMEMBER SEEING THAT BEFORE.

22 (WHEREUPON THE DOCUMENT REFERRED TO WAS
23 MARKED AS PLAINTIFF'S EXHIBIT 42 FOR
24 IDENTIFICATION BY THE NOTARY PUBLIC AND
25 IS ATTACHED HERETO.)

1 BY MS. EISENSTEIN: Q. MARK AS 43 SAMPLE
2 IDENTIFICATION SHEET WITH THE NAME OF THE ESTABLISHMENT
3 FLAMINGO TILE CORPORATION, LABORATORY NUMBER F 8388 AND ASK
4 YOU IF YOU HAVE EVER SEEN THAT BEFORE?

5 A. I CAN'T RECALL SEEING THIS BEFORE.
6 (WHEREUPON THE DOCUMENT REFERRED TO WAS
7 MARKED AS PLAINTIFF'S EXHIBIT 43 FOR
8 IDENTIFICATION BY THE NOTARY PUBLIC AND
9 IS ATTACHED HERETO.)

10 BY MS. EISENSTEIN: Q. MARK AS 44 SAMPLE
11 IDENTIFICATION SHEET WITH THE NAME OF THE ESTABLISHMENT
12 FLAMINGO TILE CORPORATION, LABORATORY COMPANY F-8389 AND
13 ASK IF YOU HAVE EVER SEEN THAT?

14 A. I CAN'T REMEMBER SEEING THIS BEFORE.

15 Q. THANK YOU.
16 (WHEREUPON THE DOCUMENT REFERRED TO WAS
17 MARKED AS PLAINTIFF'S EXHIBIT 44 FOR
18 IDENTIFICATION BY THE NOTARY PUBLIC AND
19 IS ATTACHED HERETO.)

20 MS. EISENSTEIN: I'D LIKE TO SHOW YOU A LETTER DATED
21 OCTOBER 9, 1974 -- WE WILL MARK THIS AS EXHIBIT 45 -- TO
22 MR. H. B. VANDERBILT FROM JOHN H. STENDER AND ASK YOU
23 WHETHER OR NOT YOU HAVE EVER SEEN THIS DOCUMENT BEFORE?

24 A. YES.

25 Q. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

1 A. YES.

2 Q. WHEN WAS THE FIRST TIME YOU SAW IT?

3 A. SOMETIME AFTER OCTOBER 1974.

4 Q. HOW DID YOU COME TO SEE IT?

5 A. PASSED ON TO ME BY MR. VANDERBILT.

6 Q. YOUR UNDERSTANDING IS THAT IT WAS RECEIVED BY

7 MR. VANDERBILT?

8 A. YES.

9 Q. AND THIS IS A LETTER FROM -- IS IT YOUR
10 UNDERSTANDING THAT MR. VANDERBILT COMMUNICATED WITH
11 MR. STENDER?

12 A. YES.

13 Q. REQUESTING RELIEF FROM THE ASBESTOS STANDARD?

14 A. YES.

15 Q. THANK YOU, SIR.

16 I'D LIKE TO SHOW YOU A DOCUMENT ON R.T.
17 VANDERBILT COMPANY LETTERHEAD DATED JANUARY 2, 1975.

18 (WHEREUPON THE DOCUMENT REFERRED TO WAS
19 MARKED AS PLAINTIFF'S EXHIBIT 45 FOR
20 IDENTIFICATION BY THE NOTARY PUBLIC AND
21 IS ATTACHED HERETO.)

22 THE WITNESS: YES.

23 BY MS. EISENSTEIN: Q. HAVE YOU EVER SEEN THIS
24 DOCUMENT BEFORE?

25 A. YES.

1 Q. WHEN WAS THE FIRST TIME YOU SAW THIS?

2 A. PROBABLY RIGHT AFTER JANUARY 2, 1975.

3 Q. AND HOW DID YOU COME TO SEE IT?

4 A. PASSED ON TO ME BY MR. HOWARD, THEN SALES
5 MANAGER OF THE PAINT AND PAPER DEPARTMENT.

6 MR. SMITH: (INAUDIBLE RESPONSE.)

7 MS. EISENSTEIN: PARDON?

8 Q. WHAT IS THE SIGNIFICANCE OF THIS DOCUMENT, SIR?

9 A. THE SIGNIFICANCE OF THIS DOCUMENT --

10 Q. I WOULD LIKE TO KNOW WHAT IT IS.

11 MR. SMITH: IT'S VAGUE AND AMBIGUOUS, OBJECT.

12 UNINTELLIGIBLE AS TO WHAT YOU MEAN "THE SIGNIFICANCE."

13 BY MS. EISENSTEIN: Q. WHAT DO YOU UNDERSTAND THE
14 MEANING OF THIS DOCUMENT TO BE?

15 MR. SMITH: THE DOCUMENT SPEAKS FOR ITSELF, COUNSEL.

16 BY MS. EISENSTEIN: Q. YOU CAN ANSWER, SIR.

17 A. IT'S AN ATTEMPT BY THE SALES MANAGER TO CONVINC
18 HIS CUSTOMERS THAT THEY HAVE NOTHING TO WORRY ABOUT BY
19 CONTINUED USE OF THESE MATERIALS, INsofar AS OSHA IS
20 CONCERNED.

21 Q. BY CERTIFY, WHAT SPECIFICALLY IS YOUR
22 UNDERSTANDING OF WHAT IS BEING CERTIFIED?

23 MR. SMITH: I OBJECT. WHOLLY IRRELEVANT WHAT HIS
24 UNDERSTANDING OF THIS DOCUMENT IS THAT HE NEITHER PREPARED
25 OR HAS HAD ANY CONTACT WITH PRIOR TO TODAY.

1 MS. EISENSTEIN: COUNSEL, IT WAS PREPARED BY HIS
2 COMPANY AND HE SAW IT IT AT APPROXIMATELY THIS TIME.

3 Q. WAS THERE A CERTIFICATION TO CUSTOMERS THAT
4 THESE PRODUCTS DID NOT CONTAIN ASBESTOS?

5 MR. SMITH: I OBJECT. IT'S VAGUE AND AMBIGUOUS AS TO
6 WHAT YOU MEAN BY CERTIFICATION.

7 MS. EISENSTEIN: IT'S IN THE DOCUMENT.

8 MR. SMITH: HE DIDN'T DRAFT THE DOCUMENT, COUNSEL.

9 BY MS. EISENSTEIN: Q. DO YOU HAVE AN UNDERSTANDING,
10 SIR, REGARDING WHAT THE TERM CERTIFIED MEANS IN THE CONTEXT
11 OF THIS DOCUMENT?

12 A. NO.

13 Q. WAS VANDERBILT IN 1975 CERTIFYING THAT CERTAIN
14 OF ITS TALC PRODUCTS DID NOT FALL WITHIN THE OSHA ASBESTOS
15 STANDARD?

16 MR. SMITH: OBJECT, THE DOCUMENT SPEAKS FOR ITSELF.

17 MS. EISENSTEIN: I'M NOT ASKING ABOUT THE DOCUMENT,
18 COUNSEL.

19 MR. SMITH: HE ALREADY SAID HE DOESN'T HAVE AN
20 UNDERSTANDING WHAT CERTIFIED MEANS, THEREFORE YOUR QUESTION
21 IS ALREADY ASSUMING SOMETHING HE SAID HE DIDN'T HAVE ANY
22 KNOWLEDGE ON.

23 MS. EISENSTEIN: I DIDN'T MAKE ONE REFERENCE TO THE
24 DOCUMENT, COUNSEL.

25 MR. SMITH: I DON'T NEED TO ARGUE WITH YOU ABOUT IT,

1 MY OBJECTION STANDS.

2 MS. EISENSTEIN: FINE.

3 MR. SMITH: I INSTRUCT HIM NOT TO ANSWER, HE SAYS HE'S
4 GOT NO KNOWLEDGE AS TO WHAT THEY MEAN BY CERTIFYING THAT
5 DOCUMENT.

6 BY MS. EISENSTEIN: Q. DID VANDERBILT AT ANY TIME TO
7 YOUR KNOWLEDGE REPRESENT TO CUSTOMERS THAT CERTAIN PRODUCTS
8 DID NOT FALL WITHIN THE OSHA ASBESTOS STANDARD?

9 A. PRODUCTS DON'T FALL WITHIN AN ASBESTOS STANDARD,
10 SO I CAN'T ANSWER THAT QUESTION.

11 Q. DID VANDERBILT REPRESENT TO ANY OF ITS CUSTOMERS
12 THAT CERTAIN PRODUCTS -- STRIKE THAT -- LET ME WITHDRAW THE
13 FIRST PART OF THAT QUESTION.

14 DID VANDERBILT CERTIFY ANY OF ITS PRODUCTS?

15 MR. SMITH: I OBJECT, IT'S VAGUE, AMBIGUOUS,
16 UNINTELLIGIBLE AS TO WHAT YOU MEAN BY "CERTIFY." AND I
17 INSTRUCT HIM NOT TO ANSWER ON THAT GROUNDS.

18 MS. EISENSTEIN: I'M SORRY, I'M GOING TO WANT ANSWERS
19 TO THESE QUESTIONS.

20 MR. SMITH: ASK A REASONABLE QUESTION, YOU WILL GET A
21 REASONABLE ANSWER.

22 MS. EISENSTEIN: THIS IS A DOCUMENT THAT HAS A WORD IN
23 IT, I WOULD LIKE TO KNOW WHAT THE WORD "CERTIFY" MEANS.

24 MR. SMITH: YOU SHOULD ASK THE PERSON THAT DRAFTED THE
25 DOCUMENT. HE SAID HE DIDN'T DRAFT THE DOCUMENT, AND HE

1 SAID HE DOESN'T HAVE ANY IDEA WHAT HE MEANS BY CERTIFY.
2 THIS IS NOT THE WITNESS TO ASK. I'M NOT GOING TO ALLOW HIM
3 TO SPECULATE AS TO WHAT THEY MEANT BY CERTIFY HERE.

4 BY MS. EISENSTEIN: Q. DO YOU HAVE ANY UNDERSTANDING
5 AS TO WHETHER OR NOT VANDERBILT CERTIFIED ANY PRODUCTS,
6 SENT OUT A CERTIFICATION OF ANY OF ITS PRODUCTS TO ITS
7 CUSTOMERS?

8 MR. SMITH: AGAIN I AM AT A LOSS AS TO WHAT YOU MEAN
9 BY CERTIFICATION. IF YOU HAVE SOME UNDERSTANDING OF THAT
10 TERM, YOU CAN ANSWER THE QUESTION. IF YOU DON'T, PLEASE
11 DON'T RESPOND TO THE QUESTION.

12 THE WITNESS: I DON'T.

13 BY MS. EISENSTEIN: Q. YOU HAVE NO UNDERSTANDING AS
14 TO WHAT THE TERM CERTIFICATION MEANS HERE?

15 A. NO, I DON'T.

16 Q. LET'S MARK THIS AS 46.

17 (WHEREUPON THE DOCUMENT REFERRED TO WAS
18 MARKED AS PLAINTIFF'S EXHIBIT 46 FOR
19 IDENTIFICATION BY THE NOTARY PUBLIC AND
20 IS ATTACHED HERETO.)

21 BY MS. EISENSTEIN: Q. DID VANDERBILT AT SOME TIME
22 REPRESENT TO ITS CUSTOMER THAT ITS PRODUCTS NYTAL 99,
23 NYTAL 100, NYTAL 100 HR, NYTAL 200, 300, 400 -- I DON'T
24 KNOW IF THESE ARE OTHER PRODUCTS X, 3X, 151A, 5X, FT, MSK,
25 325, 425, 10A, 10AC, HDT, 1R AND 1C DID NOT CONTAIN

1 ASBESTOS?

2 (RECORD READ.)

3 BY MR. EISENSTEIN: Q. DID NOT CONTAIN ASBESTOS IS MY
4 QUESTION.

5 A. YES, THEY DID.

6 Q. DO YOU BELIEVE THAT THE JANUARY 2, 1975 LETTER
7 MAKES THAT REPRESENTATION?

8 MR. SMITH: OBJECT IN THAT HIS BELIEF IS IRRELEVANT.

9 BY MS. EISENSTEIN: Q. YOU CAN ANSWER, SIR.

10 A. I DON'T KNOW.

11 Q. YOU HAVE NO UNDERSTANDING AS TO WHAT THIS LETTER
12 MEANS?

13 MR. SMITH: DOCUMENT SPEAKS FOR ITSELF.

14 MS. EISENSTEIN: I'M ASKING FOR HIS UNDERSTANDING.

15 THE WITNESS: I CAN'T TELL FROM THAT DOCUMENT.

16 BY MS. EISENSTEIN: Q. FINE.

17 WHO IS MR. HOWARD SHULTE?

18 A. HE WAS THE DEPUTY TO THE ASSISTANT SECRETARY OF
19 LABOR JOHN STENDER.

20 Q. PARDON, I DIDN'T HEAR THE LAST WORD?

21 A. JOHN STENDER.

22 Q. DID AT ANY TIME VANDERBILT HAVE A DISAGREEMENT
23 AS TO THE DEFINITIONS OF FIBERS WITH JOHNS-MANVILLE?

24 A. WHAT KIND OF FIBERS?

25 Q. DEFINITION AS TO WHAT A FIBER IS?

1 A. FIBER?

2 Q. YES.

3 A. NOT PER SE.

4 Q. I'D LIKE TO SHOW YOU, SIR, A TWO-PAGE LETTER ON
5 R.T. VANDERBILT COMPANY LETTERHEAD DATED MAY 20, 1975 AND
6 ASK YOU TO REVIEW IT.

7 A. YES.

8 Q. ARE YOU THE AUTHOR OF THIS LETTER?

9 A. YES.

10 Q. DID YOU PREPARE THIS LETTER AT APPROXIMATELY
11 MAY 20, 1975?

12 A. YES.

13 Q. IN THE COURSE OF YOUR DUTIES FOR VANDERBILT?

14 A. YES.

15 Q. WHO IS MR. MC CLURE?

16 A. MR. MC CLURE WORKED FOR THE DEPARTMENT OF LABOR,
17 OSHA ADMINISTRATION.

18 Q. ON THE FIRST PAGE, THE FURTHER PARAGRAPH DOWN IT
19 SAYS "WHETHER OR NOT THE VANDERBILT TALCS OR ANY OTHER
20 INDUSTRIAL MINERAL PRODUCT CONTAINS ASBESTOS IS IRRELEVANT
21 TO WITHDRAWAL OF THE MEMORANDUM. THE TRUE DEFINITION OF
22 ASBESTOS" -- I HAVE HERE "OR SHOULD NOT BE DEPENDENT UPON
23 THE CONTENTS OF ANY PARTICULAR MINERAL PRODUCT."

24 A. I THINK IT SHOULD BE FIBER. IT WAS XEROXED OFF
25 BECAUSE IT'S COCKEYED, AS YOU CAN SEE.

1 Q. ASBESTOS OR FIBER?

2 A. YES.

3 Q. WHAT WERE YOU REFERRING TO IN THAT PARAGRAPH?

4 MR. SMITH: COUNSEL, OBJECT, THE DOCUMENT SPEAKS FOR ITSELF.

5 ASK HIM A SPECIFIC QUESTION. IF YOU WANT HIM TO TELL YOU

6 SOMETHING, ASK HIM A SPECIFIC QUESTION, OTHERWISE YOUR QUESTION

7 WHAT WAS HE REFERRING TO, THE DOCUMENT SPEAKS FOR ITSELF.

8 BY MS. EISENSTEIN: Q. WAS THERE AN ISSUE REGARDING

9 SPECIFIC, A SPECIFIC TALC PRODUCT FROM VANDERBILT IN WHICH

10 YOU WERE RESPONDING IN THIS FOURTH PARAGRAPH?

11 A. NO.

12 Q. WHY IS IT THAT WHETHER OR NOT THE VANDERBILT

13 TALCS OR ANY OTHER INDUSTRIAL MINERAL PRODUCT CONTAINS

14 ASBESTOS IS IRRELEVANT TO WITHDRAWAL OF THE MEMORANDUM?

15 A. BECAUSE THE MEMORANDUM WAS AN ATTEMPT TO DEFINE

16 ASBESTOS FOR PURPOSES OF REGULATING IT BY THE STANDARD AND

17 IT HAD NOTHING TO DO WITH WHETHER A PRODUCT CONTAINS

18 ASBESTOS OR NOT. THEY ARE TWO DIFFERENT THINGS.

19 Q. WHY IS IT THAT THE TRUE DEFINITION OF ASBESTOS

20 OR FIBERS SHOULD NOT BE DEPENDENT UPON THE CONTENTS OF ANY

21 PARTICULAR MINERAL PRODUCT?

22 MR. SMITH: THE DOCUMENT SPEAKS FOR ITSELF, COUNSEL.

23 THIS IS SOME END RUN YOU ARE TRYING TO MAKE. READ THE

24 DOCUMENT AND SAY WHAT DOES IT MEAN. IT SPEAKS FOR ITSELF,

25 IT'S RIGHT THERE IN BLACK AND WHITE, YOU CAN READ IT.

1 BY MS. EISENSTEIN: Q. CAN YOU TELL ME WHY, SIR, I
2 GENUINELY WANT TO KNOW?

3 MR. SMITH: I INSTRUCT NOT TO ANSWER. THIS IS GETTING
4 RIDICULOUS, COUNSEL. WE ARE NOT HERE TO DO THIS. IF YOU
5 WANT TO ASK HIM A LEGITIMATE --

6 BY MS. EISENSTEIN: Q. SIR, DO YOU STILL AGREE WITH
7 THE STATEMENT IN PARAGRAPH 4 AS YOU SIT HERE TODAY?

8 A. YES, I AGREE WITH THEM.

9 Q. OKAY. PLEASE TURN TO THE SECOND PAGE, THE FIRST
10 PARAGRAPH, IT READS "WE ALSO ARE IN DISAGREEMENT WITH
11 JOHNS-MANVILLE'S DEFINITIONS OF FIBER AND AS A MATTER OF FACT,
12 WE HAVE DETECTED SERIOUS SHORTCOMINGS AND ERRORS IN THE DATA
13 ON VANDERBILT TALCS PRESENTED BY JOHNS-MANVILLE TO OSHA
14 PERSONNEL IN THEIR RECENT MEETINGS. OUR DATA HAS BEEN VERIFIED
15 BY TWO INDEPENDENT OUTSIDE ANALYTICAL LABORATORIES, AND WE
16 WOULD LIKE THE OPPORTUNITY TO PRESENT THIS DOCUMENTATION."

17 FIRSTLY, SIR, WHO WERE THOSE TWO INDEPENDENT
18 ANALYTICAL LABORATORIES?

19 A. ONE WAS MC CRONE ASSOCIATES, M-C C-R-O-N-E,
20 ASSOCIATES IN CHICAGO, AND THE OTHER ONE WAS E.M. VENTIONS
21 WHICH I MENTIONED IN ROCKVILLE, MARYLAND.

22 Q. WAS THE TASK GIVEN TO THOSE TWO LABORATORIES
23 TO DETERMINE WHETHER CRYSTOTILE EXISTED IN SAMPLES OF TALC?

24 A. YES.

25 Q. DID THEY HAVE ANY OTHER TASK OTHER THAN THAT?

1 A. I'M NOT SURE BECAUSE IT'S TOO LONG AGO.

2 Q. WERE THEY ASKED TO YOUR KNOWLEDGE TO DETERMINE
3 WHETHER OR NOT THERE WERE AMPHIBOLES IN THE TALC?

4 A. I DON'T REMEMBER THAT.

5 Q. WERE THEY ASKED TO YOUR KNOWLEDGE WHETHER THERE
6 WERE FIBERS PRESENT?

7 A. I DON'T KNOW EXACTLY WHAT THEY WERE
8 ASKED.

9 Q. BUT YOU DO KNOW THEY WERE ASKED TO DETERMINE
10 WHETHER OR NOT CRYSTOTILE WAS PRESENT?

11 A. YES, THAT WAS ONE OF THE ISSUES.

12 Q. THE FIRST SENTENCE MENTIONS A DISAGREEMENT WITH
13 JOHNS-MANVILLE'S DEFINITIONS OF FIBER. SPECIFICALLY WHAT
14 WAS THE NATURE OF THAT DISAGREEMENT?

15 A. IT WAS THE DISAGREEMENT OVER -- I SHOULD HAVE
16 PUT THE WORD ASBESTOS FIBER BECAUSE IT REALLY -- A FIBER
17 COULD BE ANYTHING. A DISAGREEMENT WAS OVER THE DEFINITION
18 OF THE ASBESTOS FIBER. THEY WENT ALONG WITH THE GOVERNMENT,
19 OSHA, IN THAT THERE WAS ONE CRITERIA FOR THE DEFINITION OF
20 FIBER. IT WAS THREE TIMES LONGER THAN IT WAS WIDE, AND OUR
21 DEFINITION WAS ENTIRELY DIFFERENT.

22 Q. YOUR DEFINITION WAS THAT A FIBER WAS --

23 A. AN ASBESTOS FIBER. IF I HAD TO REWRITE THAT, I
24 WOULD WRITE ASBESTOS BETWEEN THE WORD "OF" AND "FIBER." I
25 CAN'T BE PERFECT EVERY TIME I WRITE ONE OF THESE THINGS.

1 Q. DOES YOUR DEFINITION OF AN ASBESTOS FIBER HAVE A
2 DIFFERENT ASPECT RATIO THAN THE ONE THE GOVERNMENT AND
3 JOHNS-MANVILLE USED?

4 A. NOT NECESSARILY. THE RECOMMENDATION THAT WE HAD
5 GIVEN AND OF COURSE WHICH MOST MINERALOGISTS GIVE IS THAT
6 THERE ARE SEVERAL CRITERIA THAT DETERMINE WHETHER A
7 MATERIAL IS AN ASBESTOS FIBER OR NONASBESTOS MATERIAL, AND
8 AN ASPECT RATIO IS THE LEAST IMPORTANT ONE.

9 Q. WHAT IS THAT CRITERIA?

10 A. WELL, LET ME JUST SEE IF I CAN RECALL. THE MAIN
11 CRITERION WOULD BE THAT A FIBER, ASBESTOS FIBER HAS TO BE A
12 BUNDLE OF FIBRILES, MADE UP OF A BUNDLE OF FIBRILES RATHER
13 THAN ONE MATERIAL; AND SECONDLY, IT MUST SHOW -- IN OTHER
14 WORDS, BE A BUNDLE-OF-STICKS EFFECT. SECONDLY, IT MUST
15 SHOW GREAT ELONGATION.

16 Q. LONGER THAN FIVE MICRONS IN LENGTH?

17 A. THE ASBESTOS FIBER WHICH HAS AN ASPECT RATIO IN
18 THE RANGE OF 1,000 TO ONE -- SAY 100 TO 1 TO 1,000 TO 1 CAN
19 BE BROKEN UP INTO SMALL PIECES, BUT NORMALLY IN AN ASBESTOS
20 POPULATION YOU HAVE TO HAVE ASPECT RATIOS AROUND 100 TO 1
21 TO 1,000 TO 1 OR BETWEEN 100 -- THIRDLY, THEY MUST SHOW --
22 THEY USUALLY SHOW CURVATURE; AND FOURTHLY, HIGH TENSILE
23 STRENGTH, AND THERE MIGHT BE A COUPLE MORE THINGS. I CAN'T
24 REMEMBER THEM ALL RIGHT NOW. THE MAIN ONE IS IT IS
25 BUNDLE-OF-STATISTICS EFFECT, THE FIBRILES. THAT IS WHERE

1 WE DIFFERED FROM JOHNS-MANVILLE.

2 Q. THEY --

3 A. THEY USED ONE SINGLE CRITERIA, ANY ONE OF THE
4 SIX MINERALS OSHA LISTED HAD AN ASPECTS RATIO OF THREE TO
5 ONE WAS CONSIDERED AN ASBESTOS FIBER, AND THAT IS WHERE WE
6 DIFFERED.

7 Q. THE DIFFERENCE IS YOU BELIEVE THE FIBER SHOULD --

8 A. ASBESTOS FIBER.

9 Q. -- ASBESTOS FIBER IS LONGER AS A GENERAL RULE?

10 A. IT HAS A WHOLE SET OF CHARACTERISTICS THAT MUST
11 BE SATISFIED BEFORE YOU CAN CALL IT AN ASBESTOS FIBER.
12 THERE ARE TOO MANY OTHER PRODUCTS THAT ARE NOT ASBESTOS
13 FIBERS THAT WOULD QUALIFY IF YOU USE ONE SINGLE CRITERIA
14 WHICH IS THE THREE TO ONE, WHICH IS NOT REALLY A CRITERION
15 AT ALL.

16 MS. EISENSTEIN: THIS LETTER TO MR. SHULTE OF MAY 20,
17 1975 IS MARKED AS 47 TO THE DEPOSITION; IS THAT RIGHT?

18 (WHEREUPON THE DOCUMENT REFERRED TO WAS
19 MARKED AS PLAINTIFF'S EXHIBIT 47 FOR
20 IDENTIFICATION BY THE NOTARY PUBLIC AND
21 IS ATTACHED HERETO.)

22 (RECESS.)

23 MS. EISENSTEIN: LET'S RELIEVE THE COURT REPORTER OF
24 HER DUTY UNDER THE CODE AND THE TRANSCRIPT WILL BE SENT TO
25 THE OFFICES OF WARD SMITH WHO WILL FORWARD IT TO THE

1 WITNESS FOR REVIEW. THERE IS A TRIAL DATE IN THIS CASE.
2 THAT THE WITNESS WILL REVIEW THE DEPOSITION, MAKE ANY
3 CHANGES THAT HE DEEMS APPROPRIATE AND SIGN THE DEPOSITION
4 UNDER PENALTY OF PERJURY. IF THE DEPOSITION IS NOT SIGNED
5 WITHIN TWO WEEKS OF TRIAL, AN UNSIGNED COPY CAN BE USED
6 FOR ALL PURPOSES. PLAINTIFF'S COUNSEL WILL BE NOTIFIED
7 OF ANY CHANGES MADE IN THE DEPOSITION WITHIN A MONTH OF
8 MR. HARVEY'S REVIEW OF THE DEPOSITION.

9 MR. SMITH: 45 DAYS, IS THAT ALL RIGHT OF MY RECEIPT,
10 THEN I WILL SEND IT TO HIM, THAT WILL WORK OUT THE SAME.

11 MS. EISENSTEIN: FINE.

12 MR. SMITH: THE ORIGINAL AND A COPY.

13

14 I, ALLAN HARVEY, DECLARE UNDER PENALTY OF
15 PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE
16 FOREGOING IS TRUE AND CORRECT.

17

18

(DATE)

19

20

ALLAN HARVEY

21

22

23

24

25

1 STATE OF CALIFORNIA)
) SS.
2 COUNTY OF LOS ANGELES)

3

4 I, DIANNE JONES, CSR NO. 3328, REGISTERED PROFESSIONAL
5 REPORTER, A NOTARY PUBLIC IN AND FOR THE COUNTY OF LOS
6 ANGELES, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

7 THAT, PRIOR TO BEING EXAMINED, THE WITNESS NAMED IN
8 THE FOREGOING DEPOSITION, TO WIT, ALLAN HARVEY, WAS BY ME
9 DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH AND
10 NOTHING BUT THE TRUTH;

11 THAT SAID DEPOSITION WAS TAKEN DOWN BY ME IN SHORTHAND
12 AT THE TIME AND PLACE THEREIN NAMED AND THEREAFTER REDUCED
13 TO COMPUTERIZED TRANSCRIPTION UNDER MY DIRECTION.

14 I FURTHER CERTIFY THAT I AM NOT INTERESTED IN THE
15 EVENT OF THE ACTION.

16 WITNESS MY HAND AND SEAL THIS 8TH DAY OF JUNE, 1987.

17

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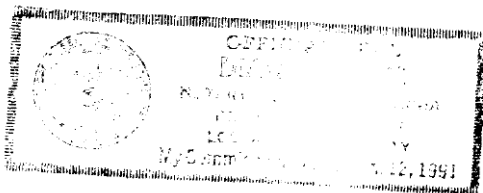
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Dianne Jones
NOTARY PUBLIC IN AND FOR THE COUNTY
OF LOS ANGELES, STATE OF CALIFORNIA.

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DEPOSITION SUMMARYSchwartz v. Union Carbide

Deposition of Allan Harvey

May 27, 1987

Volume 2, pages 228 - 429

<u>Page</u>	<u>Lines</u>	<u>Description</u>
234	8	Mr. Harvey has not had his deposition taken since October 9, 1986.
235	2-3	There are two working mines having to do with talc.
	8-13	Mine No. 1 was brought into production in approximately 1948; mine No. 2 has been worked by Vanderbilt since 1974.
	18	Mine No. 2 was purchased from the International Talc Company.
	24	Mr. Harvey is not aware of any closing of any of those mines.
236	6-9	Mine No. 3 was in operation after June or July of 1974, at which time it was purchased from the International Talc Company. It was in operation for a year and a half.
	14-15	Mine No. 3 was closed because the talc from that mine dropped off in sales volume.
237	15	Mr. Harvey cannot recall whether he ever stated publicly that the reason the third mine was closed was because asbestos was found to be present in the talc in that mine.
238	2-3	Mr. Harvey does not know whether there was asbestos in mine No. 3 or not.
	7	At some point in time it was Mr. Harvey's belief that there was asbestos in the talc from the third mine.
239	23-25	In the case of the products from mine No. 3, Mr. Harvey says he may have said that the warning label which indicates asbestos may have contributed to the lowering of the sales volume.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
240	3-4	In approximately 1976, a decision was made by the company to stop mining in mine No. 3.
	20-23	Mr. Harvey does not believe that mine No. 1 or No. 2 contained any fibrous material.
244	2	Mr. Harvey says that there is a difference between the composition of the talc in mine No. 1 and mine No. 2, but he is not qualified to go into the mineralogy of the two products.
	12	Mr. Harvey stopped working for the company October 31, 1986. Now he just works as a consultant.
243	22	According to Mr. Harvey's knowledge, mines No. 1 and 2 contained non-asbestos form minerals.
244	15	Mr. Harvey believes that he has stated publicly that mine No. 1 does not contain any significant amount of asbestos form materials.
	21	NIOSH covered products from both mines in their 1975 study.
245	5-6	The Industrial Hygiene study was done on the talc from both the No. 1 mine and the No. 2 mine.
	17	To Mr. Harvey's knowledge, about three studies have been done in which miners from mine No. 1 were included in a medical study of some sort.
	19-22	The first study was done by Dr. Kleinfeld, reported in his 1973 publication in the <u>Journal of Industrial Hygienists Association</u> .
246	13-16	Mr. Harvey says that they must have gotten permission from R. T. Vanderbilt if they made a study of workers from the mines.
	19	Mr. Harvey does not know who Dr. Kleinfeld contacted to get permission.
247	1-2	Mr. Harvey does not know who from Vanderbilt facilitated the study.
248	3	Mr. Harvey is sure that Mr. Vanderbilt was aware of the Kleinfeld study.
249	3	Mr. Harvey is also aware of Dr. Kleinfeld's having done studies on talc mines in New York State.
	6-10	Mr. Harvey understands that Dr. Kleinfeld did health studies on employees of several talc mines in New York.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
250	6-7	Dr. Kleinfeld did a talc study on mine No. 2 around 1952 or 1953.
	19-20	Dr. Kleinfeld had an ongoing study that was furnished with his report in 1974.
251	8	Mr. Harvey does not remember what the conclusions were.
	13	The study done on mine No. 1 in 1973 had a favorable conclusions to Vanderbilt.
252	6-7	Mr. Harvey had discussions with many different people at Vanderbilt regarding the 1974 study.
	18	Mr. Harvey does not know when was the first time he saw a published article by Dr. Kleinfeld on the talc miners of New York State.
253	11	The second study done on mine No. 1 was the NIOSH study, published in 1980.
	20-21	The third study was the Tabershaw study, done on the workers from both mines No. 1 and No. 2.
254	5-6	Mr. Harvey says that the Tabershaw study was not a response to the NIOSH study.
	8-11	The Tabershaw study was commissioned by Vanderbilt because they wanted to have a parallel study going on by people who Vanderbilt commissioned parallel to the NIOSH study.
256	5-7	The role of an industrial hygiene study was a gathering of information concerning the atmosphere that workers are exposed to while they are at work, which include air samples and bulk samples of talc.
	19	About 30 or 40 industrial hygiene studies have been done regarding mine No. 1.
257	2-3	The New York State Department of Industrial Hygiene was one of the organizations that did the industrial hygiene studies.
	16	NIOSH did an industrial hygiene study.
	23	Hartford insurance began the industrial hygiene studies on mine No. 1.
258	7	John Kelse at Vanderbilt was the one that conducted industrial hygiene studies.
	21-23	Mr. Harvey believes that about 30 or 40 industrial hygiene studies have been done on mine No. 2.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
259	23	About 10 analytical studies have been done in mine No. 1 or No. 2.
260	3-7	The only mineralogical study done on talc from R. T. Vanderbilt was done about 15 years ago by Dr. William Ashton.
	14-15	_____ were found in the talc from the original study.
	21	Fibrous tremolite was not found in this talc.
261	10	_____ Vanderbilt took Mr. Harvey's place as director of environmental affairs.
262	1-12	The next study that Mr. Harvey is aware of started in 1980, and reported in 1985 by Dr. James Dunn of Dunn Geoscience.
	18-19	Mr. Harvey commissioned the study in the early '80s because he wanted an in-depth study they had commissioned themselves on the mineral composition of the talc that they were selling.
263	1-5	The findings were that the talcs that they were mining and selling that came from No. 1 and No. 2 were a mixture of minerals, all of which were non-asbestos form in variety.
	11	Dr. Dunn did not find any asbestos form minerals in any of the talc products.
264	5	Dr. Steven Lamm has done medical studies regarding Vanderbilt talc.
	16-19	Dr. Lamm's study was commissioned as a supplement to the original Tabershaw study.
266	6-7	The Lamm study included an evaluation of the NIOSH study in Vermont.
	12-14	The new data that was prepared by or for Dr. Lamm for his study was that the data would extend to the time period of the study, so as to include workers who had worked after the cutoff date of the original Tabershaw study by a few years.
267	1-8	Two years ago, the Environmental Protection Agency, EPA, commissioned the McConnell study, which was an animal feeding study.
	16-17	Vanderbilt supplied a high concentration light ore from mine No. 1.
268	18-19	Dr. Thompson was involved in the study insofar as helping them collect and characterize the ore.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
	24-25	The results of the feeding study was that there was no cancer in the GI tract.
269	20-21	EPA was not looking for talc; they were looking for specific minerals.
270	5-6	Another study was conducted on R. T. Vanderbilt talc by W. E. Smith, where he made an interpleural injection into golden hamsters.
272	6-7	Mr. Harvey commissioned the second study from Dr. Smith because they were anxious to know of the health effects of the product that they were selling.
273	19-20	Mr. Merrill Stanton of the National Cancer Institute in Bethesda, Maryland, conducted an implantation study, where material was implanted near the lung, where it was determined would be a good place to determine whether that material could cause cancer.
	23	The finding of that study was that there was no tumor probability.
275	3	Vanderbilt did not participate in any way in the Stanton study.
	13-18	Mr. Harvey is familiar with a Dr. Clark Cooper, but he has never done any studies for Vanderbilt.
	23	Dr. Cooper was at one time an associate of Dr. Tabershaw.
276	15-16	Mr. Harvey attended a conference on the book <u>Dust and Diseases</u> because they knew that there would be some references to medical studies done on talcs made at the conference.
277	1-3	Mr. John Dement made a presentation regarding the NIOSH study that had been done on the Vanderbilt mine.
	12-13	Dr. Smith was presenting the findings of his studies at the conference.
	20	Dr. Lamm was also present at the conference.
278	9-10	The Tabershaw study was being done during the time of this conference.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
279	8-9	Mr. Harvey's understanding of the NIOSH study done on the Vermont mines was that in general there was an increase of non-malignant respiratory disease above that expected. There were also indications of excess lung cancer, but there was an unknown etiology.
284	9	Mr. Harvey's recollection was that the Vermont study did not say that lung cancer was not attributed to talc dust at the mine.
285	1	Mr. Harvey has seen a document entitled "Mortality Patterns Among Miners and Millers of Non Asbestos Form Talc; A Preliminary Report by Selevan, Dement, Wagoner and Froines.
	14-19	There was one health study done of the Vermont mines by NIOSH, just like there was one health study done by NIOSH on the _____ talc mines.
286	2	The increase in lung cancer that was found in the Vermont study was from the mortality study.
287	3-5	Mr. Harvey believes the Boundy study was done in conjunction with the mortality study by NIOSH.
288	16	The Boundy study was presented at the conference on dusts and diseases.
289	5-6	Mr. Harvey says that the plaintiff's Exhibit No. 11 was not a study commissioned by Vanderbilt.
	11-13	Plaintiff's Exhibit No. 11 is a study by Dr. Smith and co-workers of the results of injecting various forms of tremolite interpleurally into hamsters.
	17	It is Mr. Harvey's understanding that one of the samples that was injected into golden hamsters was tremolite supplied by Mr. Harvey to Dr. Smith.
290	14-18	Vanderbilt has never commissioned Dr. Smith or anyone else to do an interpleural injection, because he has already done that with talc that would be similar enough to Vanderbilt's talc, and Mr. Harvey didn't think it was worth the money to repeat it.
291	1-4	FD-14 is a sample of talc isolated from the No. 2 mine at _____.
	10-11	Dr. Smith reported that he found fibrous materials in FD-14.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
292	14-15	Mr. Harvey believes that at the conference Mr. John Dement made the accusation that Vanderbilt had supplied specifically tremolite and not the other components of their talc products to Dr. Smith.
	19	Mr. Harvey says that it was just tremolite that was supplied to Dr. Smith.
293	5	It is Mr. Harvey's understanding that the Smith study commissioned by Vanderbilt supports the position that Vanderbilt talc does not present a health hazard.
	9-10	Mr. Harvey's position is that Vanderbilt talc does not cause tumors.
294	14-15	Mr. Harvey did not discuss the Smith study with Dr. Dement.
296	2	Mr. Harvey was aware that the sample from mine No. 2 contained anthophyllite.
	24	Dr. Schepers also gave a presentation at the 1973 talc symposium, which involved the toxicity of various minerals.
297	11-12	The results of Dr. Schepers' paper was that there was no toxicity other than for any mineral dust.
298	12-15	The substance of Dr. Thompson's presentation at the symposium was in general that the talc that was being mined up there contained _____ such as tremolite, but none of these _____ was present in the asbestos form variety.
299	2	Mr. Harvey has seen plaintiff's document Exhibit No. 12 before. He received a copy of it after the symposium.
300		Dr. Kleinfeld also gave a presentation at the symposium, which included data from a Vanderbilt or International Talc mine.
	12-14	Mr. Harvey does not remember a presentation given by Dr. Langer.
302	8	Mr. Harvey does not remember if he has ever seen a study entitled "Stomach Cancer Among Rubber Workers, An Epidemiological Investigation".
303	2	Mr. Harvey does not think he has ever heard that there are those who believe rubber workers have a higher incidence of stomach cancer due to their exposure to talc.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
304	13-14	Dr. Gamble's study was an industrial hygiene study.
306	2-5	Mr. Harvey's understanding of the Gamble study is that it found there was an increase above expected of non-malignant respiratory disease brought about by the exposure to Vanderbilt talc.
309	3-4	Mr. Harvey first saw the study from Brown, Dement and Wagoner in 1978.
	15-16	There was evidence in this study of a higher risk of non-malignant respiratory diseases in the miners and millers.
310	11-13	Mr. Harvey did receive a preliminary report from John Dement prior to the conclusion of the report.
	24-25	The preliminary findings that John Dement sent in a letter were that he found asbestos in the talc and a higher than expected incidence of non-malignant respiratory disease and bronchogenic cancer.
311	6-7	John Dement sent Mr. Harvey the preliminary report for his comments.
	19	Mr. Harvey was the contact between NIOSH and the company for their study which began in 1977.
312	1-2	Mr. Harvey sent a letter back to Mr. Dement that objected strenuously to the allegation that Vanderbilt had asbestos in Vanderbilt's talc.
	8	Before Mr. Harvey sent the letter to Mr. Dement he met with Dr. Thompson.
	20-21	Mr. Harvey remembers discussing the preliminary findings with either Guy Driver or Paul Gibney.
313	6	Mr. Harvey cannot remember contacting anyone at TOMA regarding the preliminary findings.
315	2	Mr. Harvey has seen plaintiff's Exhibit #15 before.
316	12	Mr. Harvey does not remember if he mentioned to Mr. Dement the MESA report.
318	8	Mr. Harvey does not remember if he met with Dr. Tabershaw regarding the NIOSH report.
	20	Vanderbilt received some raw data from the NIOSH investigators in response to Dr. Tabershaw's advice.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
321	5	Mr. Harvey was concerned about the impact in terms of public opinion regarding the NIOSH medical report.
	7-8	The concern was that customers might get the wrong idea of the content of the talc, which would result in a loss of business to the company.
	19	Mr. Harvey believes there was no attempt by anyone at Vanderbilt to find gaps in the NIOSH medical report. Finding the gaps was left up to TOMA.
322	25	Mr. Harvey says that James Sharpe is a medical coordinator who worked in the TOMA operation in Maryland.
323	20-21	Mr. Harvey does not recall a meeting that took place at the TOMA offices on June 10, 1980.
325	24	Mr. Harvey believes that a mineralogical report was done in response to the NIOSH study.
326	14-18	Since 1975 Vanderbilt has issued odd and sundry mineralogical rebuttals, not only NIOSH, but anyone else who alleges that their talc contains asbestos, complete with any documents that they might have to support their case.
327	13-16	"Our White Paper" is a complete rebuttal of the NIOSH document and any other document having to do with asbestos in Vanderbilt's talcs or any allegation that workers have been exposed to an asbestos-related risk by working with the talc.
328	14	Mr. Harvey indicated his approval of the Stille-Tabershaw study paper.
330	7	He has seen plaintiff's Exhibit No. 18 before, although he did not prepare it himself.
	23-24	The purpose of this document was to secure statistical analytic critique of the NIOSH document.
332	8	Mr. Harvey does not remember if Vanderbilt initiated any press releases or any material for the media regarding a rebuttal to the NIOSH study.
	14	Mr. Harvey did appear on an NBC News program regarding the controversy surrounding talc.
333	2	Mr. Harvey believes that Coogie Kwan from OSHA also appeared on the show.
	14-15	He saw a typewritten transcript of the television news within a couple of weeks after the broadcast.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
334	22	Mr. Harvey discussed the NBC broadcast with Mr. Vanderbilt after it appeared on television,
337	1	It is Mr. Harvey's belief as he sits there today that there has never been asbestos found in any talc mine coming from either No. 1 or N. 2 mine according to <u>his</u> definition of asbestos.
	13	Mr. Harvey is not sure if he believes that asbestos was found in the third mine.
	20-24	On June 19, 1975, Mr. Harvey remembers making a presentation to the Assistant Secretary of Labor, Mr. John Stender.
	24-25	In that presentation he discussed the business of mining.
338	20-21	Mr. Harvey believes that each mineral has one composition.
339	12	Mr. Harvey does not agree with a statement he made in his first deposition.
341	18	Mr. Harvey disagreed with statements made by the OSHA representatives on the transcript of the news show.
342	1	Mr. Harvey has seen and helped create a document entitled "A Matter of Fact, The Truth About Tremolitic Talc".
	9-10	A film was made to accompany the "Matter of Fact" booklet. The title of the film is "A Matter of Fact".
343	2	Vanderbilt had this film commissioned.
	18-22	The purpose of making the film and preparing the document was to make a tool that Vanderbilt could use to explain a situation in the talc-asbestos controversial situation to a number of different people.
344	9-11	Vanderbilt sent the booklet out to many customers.
	18-19	Dr. Malcolm Ross is a mineralogist who works in the geological survey of the U.S. Bureau of Mines. He has never been commissioned to do any work for Vanderbilt.
345	12	He has copies of studies and articles done by Dr. Malcolm Ross.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
346	6-8	Mr. Harvey prepared a document (plaintiff's Exhibit No. 21) to respond to the Consumer Safety Commission advance notice proposed rule-making and their solicitation of comments.
349	25	Mr. Harvey can envision situations where consumers of Vanderbilt talc would be exposed to airborne particles emanating from that talc.
350	4	In January 1978 was the first time a warning that said "DO NOT BREATHE DUST. PROLONGED INHALATION MAY CAUSE LUNG INJURY."
	14	There has never been a warning label on talc products from the No. 1 and No. 2 mines that said the word asbestos.
351	1-2	Mr. Harvey says that it has been determined that prolonged inhalation of Vanderbilt talc can lead to non-malignant respiratory disease.
352	12	Mr. Harvey is aware of approximately ten to fifteen citations issued by OSHA to customers of Vanderbilt talc. He was first aware of them in 1974 with the Borg-Warner case.
353	2-3	Borg-Warner was found guilty of violating the asbestos standard.
	15-16	Mr. Harvey gave Mark Harms general advice on the situation of talc versus asbestos.
354	9	The Borg-Warner case lasted 4 days and Mr. Harvey attended all of the hearings.
	23	Mr. Harvey discussed the Borg-Warner case with Dr. Thompson.
355	13	Mr. Harvey prepared the memo marked as plaintiff's No. 22 by himself.
	23-24	He prepared this memo to record information either for himself or for other people.
356	15	Mr. Harvey did discuss the final outcome of the Borg-Warner case with Vanderbilt.
357	2-3	Mr. Harvey knows about the consolidated Hull Baldwin and Miller case.
	13	Mr. Harvey was of the opinion that OSHA was incorrect in citing Borg-Warner.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
358	9-10	Mr. Harvey believes that the OSHA employee Willard Dixon changed his methods. In the Borg-Warner case he used X-ray defraction alone without polarized light microscopy.
359	1-3	Mr. Harvey says he testified at a trial establishing who the author of one of the letters to our customers that they had sent out. He does not know what case it was.
360	1-2	Mr. Harvey believes that the talc involved in the Hull, Baldwin and Miller case came from mine No. 1.
	12	Mr. Harvey handled the defense for the Hull, Baldwin and Miller case.
361	4-7	The findings in the Hull, Baldwin consolidated case was that the citation was not upheld because the board did not know that material contained asbestos.
	17	The citation was dropped.
362	20-22	In approximately 1974, just before the Borg-Warner trial, Vanderbilt issued a statement to customers that basically said there was no asbestos in Vanderbilt's talc products.
363	3-4	Mr. Harvey says that a field memorandum said the Secretary of Labor allowed Vanderbilt to certify that their talcs don't contain asbestos.
	9	The field memorandum was revoked.
	12	The Flamingo Tile Company case was the next case regarding an OSHA violation around 1975-77.
364	3	Vanderbilt intervened and took over the defense.
	10	Rapport was the attorney for OSHA.
	16-18	The case was dismissed on grounds of lack of evidence.
365	17	
366	24	Mr. Harvey has seen plaintiff's Exhibit No. 23 before. The purpose of this document was to keep the customers updated on the talc-asbestos controversy.
367	19-20	Mine No. 3 is closed down completely.
368	2-3	Mr. Dixon did all the analysis of talc from the Borg-Warner case all the way through until he retired.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
	15	Mr. Harvey knew a Mr. Kits who used to work for International Talc in the laboratory.
369	3-4	The Wenczel case was the next case which involved OSHA citations.
	12-13	The citation was dismissed in the Wenczel case.
370	10-13	The next case was the DAP case in about 1978. They dismissed the citation for lack of evidence to support the citation.
371	10-11	The next case was about Perfection Color. It was dismissed for insufficient evidence. The Lilly case was also dismissed for insufficient evidence.
372	10-11	Mr. Harvey has seen plaintiff's No. 25 sometime after March 26, 1980. It was sent to him by Mr. Borgo.
374	12	Mr. Harvey does not remember a memo marked as Exhibit No. 26.
	22-23	Mr. Harvey does know who Benjamin Mintz is. He is in charge of the whole law section in the Department of Navy.
375	12-14	Vanderbilt used to use Mr. Dixon in a lot of scientific meetings.
	25	Mr. Harvey remembers visiting him in his laboratories in the course of any of the cases.
376	9	Mr. Harvey has heard of Bobbye Spears.
	22-23	Mr. Harvey came to see plaintiff's No. 27 on an actual visit to the OSHA documentation room in Washington, D.C.
377	8-11	The significance of the document says that OSHA shouldn't be citing Vanderbilt's customers because they haven't given the people using the talc a good enough standard to know whether or not they are violating it.
	19	He has never had any personal contact with Bobbye Spears.
379	1-2	Eula Bingham is the Assistant Secretary of Labor sometime after Stender.
	7-8	Mr. Harvey has never had any contact with Eula Bingham or a Senator Stone.
380	5	Mr. Harvey has seen plaintiff's Exhibit No. 28 before.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
	21	Mr. Harvey believes that Mr. Vanderbilt sent a letter to Senator Stone.
381	1-4	The letter was to apprise all the senators in the U.S. of the situation in regards to the Vanderbilt Company and its problems it's having with the OSHA administration.
382	18	Mr. Harvey does not believe some of the statements in plaintiff's Exhibit No. 28.
383	3-5	The only documentation from Willard Dixon stating anything contrary to what is in Exhibit No. 28 is the Borgo letter.
	16-17	Mr. Harvey remembers meeting a Bert M. Concklin once. He was a U.S. Labor Department official in OSHA in about 1972.
384	21-22	Mr. Harvey is not aware of Mr. Vanderbilt having any personal contact with Mr. Concklin.
385	10	He has had personal contact with Dr. Corn back around 1977.
	25	The nature of that contact was that a group of officials from the Vanderbilt Company had a meeting with Dr. Corn and some of the Labor Department officials.
386	4-6	The purpose of the meeting was to try to resolve the talc-asbestos controversy as far as OSHA rules and regulations were concerned.
	19-23	Vanderbilt wanted OSHA to adopt scientifically accurate, mineralogically accurate definitions for asbestos and they wanted the National Bureau of Standards and their scientists to help put together a technique using those definitions that would solve the whole controversy.
287	21-25	Mr. Harvey says that the document marked as plaintiff's No. 30 was a revocation of the field memorandum. Mr. Stender happened to be the assistant secretary when the memorandum came into being but that was a standard official OSHA memorandum on the books.
388	1-3	The memorandum was revoked by Martin Corn on behalf of the Labor Department.
	10-17	The first time Mr. Harvey had contact with James Merchant (an M.D. who used to work for NIOSH) was in 1975.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
	19-23	They had a meeting with Dr. Merchant and some of his people who had asked for permission to come to our Gouverneur facilities to start the NIOSH health study.
289	13-14	Mr. Harvey has seen Exhibit No. 31 before, probably after March 1, 1977.
	16	Aurel Goodwin works for MSHA.
390	12	Vanderbilt is a member of the American Ceramics Society.
	14-17	Mr. Harvey gave a presentation because it was requested that somebody from the Vanderbilt Company update the asbestos-talc situation and the mineral legislative situation for the benefit of the people attending that particular convention.
391	11	Mr. Reiger is Vanderbilt's representative to the American Ceramics Society.
392	1	Mr. Harvey attended four meetings of the American Ceramics Society.
393	7-8	Mr. Harvey has heard of a James Schirrapa before. He runs an analytical laboratory in Long Island.
	12-14	Mr. Harvey has had personal contact with James Schirrapa because he had done an analysis of Vanderbilt's talc for one of the customers at the customer's request and he spoke to Schirrapa about the analysis.
	20	The International Paint Company was the customer that requested the analysis.
	24-25	Mr. Harvey disagreed with Mr. Schirrapa's analysis because he found substantial amounts of asbestos in the talc.
394	12-15	Vanderbilt suggested that the International Paint Company send a sample of the talc to E. M. Ventions to an analytical group to do the same type of analysis.
	23	No asbestos was found in the talc sent to E. M. Ventions.
395	10-12	There was discussion about filing a lawsuit against Mr. Schirrapa because his analysis was in error, in Mr. Harvey's opinion, and they thought they had grounds for a suit because of the damage it may do to Vanderbilt's business.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
396	4	Vanderbilt has retained the law offices of Burke & Burke in various legal matters.
397	14	Mr. Harvey does not know if Vanderbilt considered initiating similar legal proceedings against other individuals based on their analysis of Vanderbilt talc.
398	6	Mr. Harvey did participate in the creation of "Asbestos In Your Future," which was prepared around 1976.
	15-19	This document was prepared in request by the American Mining Congress for a paper to be delivered at one of their meetings by Vanderbilt Company on the talc-asbestos controversy.
399	15	Dr. Thompson is Vanderbilt's representative to the American Mining Congress from Vanderbilt.
400	23-24	Mr. Harvey knows Mr. Henry Chajet, who is the Senior Counsel for the American Mining Congress.
401	9	Mr. Harvey has seen a document entitled "OSHA's Talc Standard is 'Time Bomb' for Industry."
402	6	Mr. Harvey does not know whether the Westwood Ceramics Supply Company was a customer of Vanderbilt.
403	6-16	Mr. Harvey is the author of plaintiff's Exhibit No. 36. He wrote the document in 1980.
	18-19	Mr. Murray is a consultant in occupational industrial hygiene.
404	6-7	Mr. Murray participated in the film "A Matter of Fact." He was interviewed by Mr. Bobker on his opinion of the NIOSH report versus the TOMA report.
405	14-15	Plaintiff's Exhibit No. 37 is the report that Dr. Murray did regarding the NIOSH and TOMA studies.
407	2	Mr. Harvey does not recall an inspection done by OSHA on the Verflex Company in Carlsdad, New Jersey.
	18	Vanderbilt has sent Willard Dixon directly samples of their products.
408	8-10	Mr. Ross is the head of sales for the paint department.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
	12-13	Mr. R. Smith works in the order department at Vanderbilt.
409	9	Dr. Russell Harley is a medical type researcher. Mr. Harvey believes that he and Mr. Driver visited Dr. Harley. Dr. Harley has never been commissioned to do any work for Vanderbilt.
410	11	Mr. Harvey is the author of a letter marked as plaintiff's Exhibit No. 39.
411	1	The hamsters in the Smith study were alive for 700 days.
412	15-22	Mr. Harvey has never seen pages 1-4 of plaintiff's Exhibit No. 40 before.
413	7-8	Mr. Harvey recognizes page 5 of that document as being the actual identification sheet for the asbestos sample by Willard Dixon.
414	19	Mr. Harvey does not know who Howard Stephens is.
	21	He cannot remember seeing Exhibit No. 42, 43, or 44 before.
415	24	Mr. Harvey has seen Exhibit No. 45 before, which is a letter to H. B. Vanderbilt from John Stender.
416	14	It is Mr. Harvey's believe that the above-mentioned letter was requesting relief from the asbestos standard.
417	17-20	Mr. Harvey believes that plaintiff's Exhibit No. 46 is an attempt by the sales manager to convince his customers that they have nothing to worry about by continued use of the materials, insofar as OSHA is concerned.
420	15	Mr. Harvey has no understanding as to what the term certification means in Exhibit No. 46.
421	5	At some time Vanderbilt did represent to its customers that its products NYTAL 99, 100, 100HR, 200, 300 . . . did not contain asbestos.
422	9	Mr. Harvey is the author of a letter dated May 20, 1975, on R. T. Vanderbilt Company letterhead.
	16-17	Mr. McClure worked for the Department of Labor, OSHA Administration.
423	15-18	The memorandum was an attempt to define asbestos for purposes of regulating it by the standard and it had nothing to do with whether a product contained asbestos or not.

<u>Page</u>	<u>Lines</u>	<u>Description</u>
424	24	The task of determining whether chrysotile existed in samples of talc was given to McCrone Associates and to E. M. Ventions.
425	17-18	There was a disagreement between Vanderbilt's definition and Johns-Manville definition of the asbestos fiber.
426	10-15	The criteria that Vanderbilt sets forth is that an asbestos fiber has to be a bundle of fibriles, made up of a bundle of fibriles rather than one material, and secondly it must show great elongation. Thirdly, they must show curvature. Fourthly, they must have high tensile strength.