
In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE No. 88062

JAMES SINNOTT, et al.,
Plaintiffs-Appellees,

v.

AMERICAN OPTICAL CORPORATION, PNEUMO ABEX LLC, successor in interest to
ABEX CORPORATION, and CBS CORPORATION, a Delaware Corporation, f/k/a Viacom,
Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a
WESTINGHOUSE ELECTRIC CORPORATION,
Defendants-Appellants,
and
AQUA-CHEM, INC., et al.,
Defendants.

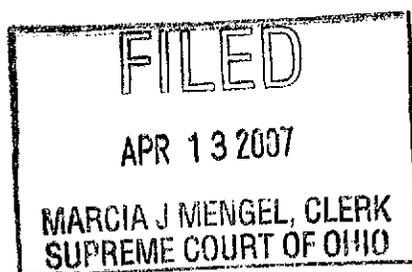
JOINT STIPULATION TO SUPPLEMENT RECORD (VOLUME 2 of 2)

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JOINT STIPULATION TO SUPPLEMENT RECORD

Introduction

The parties to the appeal agree that the trial court record as certified and filed is incomplete. Under S.Ct.Pract.R. V(6), they jointly request that this Court direct the Clerk of the Cuyahoga County Common Pleas Court to certify the appended documents and transmit them to this Court.

Relevant procedural history

Appellants in this asbestos products-liability case – American Optical Corporation (“AO”), Pneumo-Abex LLC, successor in interest to Abex Corporation (“Abex”), and Defendant-Appellant CBS Corp., f/k/a Viacom, Inc., successor by merger to CBS Corporation, f/k/a Westinghouse Electric Corp. (“Westinghouse”) – filed this appeal from an order of the Eighth Appellate District that dismissed their appeal as premature. The appeal involves an order issued by the Cuyahoga County Common Pleas Court’s asbestos docket – a docket dedicated solely to asbestos litigation.

All filings in asbestos’ cases at the trial court level -- including pleadings, motions, briefs, and judgment entries – are filed electronically through LexisNexis® File & Serve. See Asbestos Case Management Order (B)(2), Tab 1. Consequently, there is a limited hard-copy record in the trial court. Instead, the trial court and the parties access motions, briefs, and judgments electronically through LexisNexis® File & Serve.

Once a judgment rendered by the trial court is appealed to the Eighth Appellate District, the appellate court – by local rule – requires that the parties “recreate” a hard-copy record for review by that court. See Loc.App.R. 11. In addition to providing a signed and journalized copy of the judgment under appeal (Loc.App.R. 11(A)(2)), the parties are to prepare “stipulated paper

copies of the electronic trial court filings that the parties deem necessary to provide a record for appellate review.” Loc.App.R. 11(A)(3). Indeed, the parties are to “confer and agree to a reasonable stipulation of the filings necessary to comprise the record on appeal *** .” Loc.App.R. 11(B)(2).

The parties were in the midst of preparing this “stipulation of filings” at the time the appellate court dismissed the appeal. Because the parties could not compile the necessary electronic filings in hard-copy format before the appellate court dismissed the appeal, the trial court record as transmitted to this Court is incomplete.

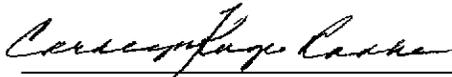
S.Ct.Pract.R. V(6) authorizes the parties – by stipulation – to request that this Court direct “that a supplemental record be certified and transmitted to the Clerk of the Supreme Court” when any part of the record is not transmitted to the Court and is necessary to the Court’s review. Here, the parties stipulate that the following appended documents are necessary to this Court’s review.

<u>Tab</u>	<u>Document Description</u>
1	Asbestos Case Management Order (filed 7/11/03)
2	Master Consolidated Complaint (filed 2/10/04)
3	Corrected Notice of Voluntary Dismissal (filed 4/8/04)
4	First Amended Complaint (filed 1/3/05)
5	Second Amended Complaint (filed 3/14/05)
6	Motion of Separate Defendants American Optical Corporation and A.W. Chesterton Co. to Administratively Dismiss (filed 4/26/05)
7	Plaintiff’s Memorandum in Opposition to Defendants’ Motion to Remove Case From Trial Schedule for Non-Compliance with H.B. 292 (filed 6/2/05)
8	Notice of Filing of Supplemental Medical Reports and Records (filed 7/21/05)
9	Reply to Plaintiff’s Opposition to Motion of Separate Defendants American Optical Corporation and A.W. Chesterton Co. to Administratively Dismiss (filed 9/6/05)

<u>Tab</u>	<u>Document Description</u>
10	Motion of Separate Defendant Pneumo Abex LLC, Successor-in-Interest to Abex Corporation, to Join in Motion of American Optical Corporation to Administratively Dismiss (filed 12/6/05)
11	Third Amended Complaint Substituting Plaintiff and Adding Wrongful Death Claim (filed 1/30/06)
12	Notice of Filing of Plaintiffs' Expert Report of Arthur L. Frank, M.D. and Report of Arthur L. Frank, M.D. (filed 2/22/06)
13	Trial Court's Order (journalized 3/21/06)
14	Notice of Filing Hearing Transcript of February 17, 2006 by Separate Defendant American Optical Corporation (filed 3/23/06)

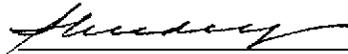
Because these documents are necessary to this Court's review, the parties to this appeal request that this Court direct that a supplemental record be certified and transmitted to the Clerk of the Supreme Court in accordance with S.Ct.Pract.R. V(6).

Respectfully submitted,

 (per consent)

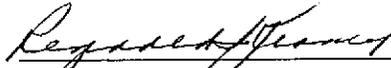
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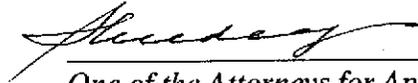
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CERTIFICATE OF SERVICE

A copy of the foregoing **Joint Stipulation to Supplement Record** has been served this 12th day of April, 2007, by U.S. Mail, postage prepaid, to all counsel of record to this appeal.



One of the Attorneys for Appellants American Optical Corporation, Pneumo Abex LLC, successor in interest to Abex Corporation, and CBS Corporation, a Delaware Corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation

TAB 9

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JAMES SINNOTT, <i>et al.</i>	)	CASE NO. 521874 (HICKEY 4)
)	
Plaintiffs,	)	JUSTICE FRANCIS E. SWEENEY
	)	JUDGE HARRY A HANNA
v.	)	JUDGE LEO M. SPELLACY
)	
AQUA-CHEM, INC., <i>et al.</i>,	)	ASBESTOS DOCKET
)	
Defendants.	)	REPLY TO PLAINTIFF'S OPPOSITION
	)	TO MOTION OF SEPARATE
	)	DEFENDANTS AMERICAN OPTICAL
	)	CORPORATION AND A.W.
	)	CHESTERTON CO. TO
	)	ADMINISTRATIVELY DISMISS

I. INTRODUCTION

Defendants AO and AWC request that this Court administratively dismiss this lawsuit under the provisions of Ohio's asbestos litigation reform act, RC 2307.91 *et seq.*, because plaintiff has failed to produce *prima facie* evidence under the law. In the months since AO and AWC filed their motion to administratively dismiss, plaintiff provided defendants with an additional expert report purporting to establish that asbestos was a substantial factor in causing his lung cancer. Because that report and plaintiff's medical records fail to satisfy the terms of RC 2307.91 *et seq.*, plaintiff's case should be administratively dismissed.

II. LAW AND ARGUMENT

A. RC 2307.91 *et seq.* is Prospectively Applied Here Because Plaintiff Commenced This Lawsuit Against AO and AWC After the Its Effective Date

1. Plaintiff Commenced His Case Against AO and AWC on January 3, 2005

AO and AWC's motion to administratively dismiss this case demonstrates that Ohio's asbestos litigation reform statute, RC 2307.91 *et seq.*, applies prospectively here because plaintiff commenced his case against them more than 4 months after the effective date of the statute. Plaintiff's opposition brief does not challenge the fact that he commenced this case after the effective date of the statute. Instead, plaintiff goes to great effort to argue that retroactive application of the statute in his case is unconstitutional. Plaintiff's constitutional argument is completely irrelevant and need not be considered by this Court because RC 2307.91 *et seq.* is applied prospectively to plaintiff's case against AO and AWC.

Plaintiff filed his initial complaint on February 10, 2004. At that time, AO was named as a defendant, but AWC was not. On April 8, 2004, plaintiff voluntarily dismissed AO from this lawsuit. After April 8, 2004¹, plaintiff had no claim pending against AO or AWC.

On September 2, 2005, Ohio's asbestos litigation reform act, RC 2307.91 *et seq.* went into effect. Ohio's asbestos litigation reform law requires that, within 30 days of filing a complaint or other initial pleading, plaintiffs must produce a written report establishing a *prima facie* claim under the statute. RC 2307.93(A)(1). If a plaintiff fails to establish a *prima facie* claim under the terms of the statute, the Court must administratively dismiss the case. RC 2307.93(C).

¹ On or about May 10, 2004, plaintiff filed a first amended complaint which named AO as a defendant. However, the Court's docket indicates that plaintiff made no attempt to serve the May 2004 amended complaint on AO, and, in fact, AO was never served with the May 2004 amended complaint. Therefore, the May 2004 amended complaint has no bearing on this motion.

Plaintiff amended his complaint to add approximately 30 additional defendants on January 3, 2005. Among the newly added defendants were AO and AWC. Only after plaintiff filed his amended complaint did he have a claim pending against AO and AWC. Thus, before January 3, 2005, AO and AWC had no ability or reason to defend themselves in plaintiff's lawsuit.

Plaintiff's *prima facie* report was due on February 2, 2005, 30 days after he commenced his case against AO and AWC. Plaintiff provided no evidence supporting his claim that his lung cancer was caused by his alleged exposure to asbestos. AO and AWC moved to administratively dismiss this case on April 26, 2005. Plaintiff later provided defendants with an additional expert report issued by Dr. Robert Altmeyer. Because plaintiff fails to establish a *prima facie* case that plaintiff's lung cancer was caused by his claimed exposure to asbestos, AO and AWC and request this Court administratively dismiss this case.

2. RC 2307.91 et seq. Provides that Amended Complaints Adding New Defendants Trigger a Plaintiff's Responsibility Under the Law

Ohio's asbestos litigation reform law requires that a plaintiff make a *prima facie* showing after any initial pleading, not just the initial complaint. In RC 2307.93(A)(1), the law requires a plaintiff to file his *prima facie* materials "within thirty days after filing the complaint **or other initial pleading...**" (Emphasis added.) Thus, the unambiguous terms of RC 2307.91 et seq. make clear that any initial pleading filed against a defendant in a lawsuit, not just the complaint, commences the plaintiff's case against that defendant. An amended complaint adding additional defendants to a case is clearly an "initial pleading" commencing an action. Because the amended complaint filed on January 3, 2005 added AO and AWC to the lawsuit, it is an "initial pleading" as contemplated under the statute. Plaintiff commenced his claims against AO and AWC with

his amended complaint on January 3, 2005. Because this is 4 months after RC 2307.91 *et seq.* went into effect, the statute is clearly applied prospectively and not retroactively.

3. Plaintiff's Amended Complaint Cannot Relate Back to His Initial Complaint Under the Ohio Rules of Civil Procedure

Plaintiff does not contest the fact that his case was commenced against AO and AWC after the effective date of RC 2307.91 *et seq.* However, he appears to assume that his amended complaint against AO and AWC relates back to his initial complaint. Plaintiff's amended complaint cannot relate back to his initial complaint under Ohio Rule of Civil Procedure Rule 15(C) and (D). Rule 15(C) provides that an amended complaint changing the parties of the lawsuit relates back only where the additional party

(1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and

(2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Civ.R. 15(C). Moreover, where an amendment is adding a previously unknown defendant, the summons must contain the words "name unknown" and must be personally served on the newly added defendant. Civ.R. 15(D).

Plaintiff's addition of AO to this case does not relate back to his initial complaint. Where an amended complaint adds a defendant which was previously voluntarily dismissed from the lawsuit, there is no mistake in the identity of the proper party, so the amended complaint cannot relate back. *Green v. Barrett* (Ohio App. 1995), 102 Ohio App.3d 525, 530. On facts nearly identical to AO's situation in this case, the 8th District Court of Appeals in *Green* held that plaintiff's amended complaint did not relate back to the initial pleading, explaining that the plaintiff failed to show that there was a mistake regarding the identity of the proper party in the

case as required by Civ.R. 15(C). *Id.* at 531. The same is true in this case. Plaintiff does not and cannot show that there was a mistake regarding the identity of AO in this case. Because plaintiff named AO in his initial complaint, voluntarily dismissed it, then commenced his action against it after the effective date of RC 2307.91 *et seq.*, his amended complaint cannot relate back to his initial pleading. Instead, his action was commenced against AO on January 3, 2005, after the effective date of RC 2307.91 *et seq.*

Likewise, plaintiff's adding AWC to this case does not relate back to his original complaint. When an amended complaint adds a new defendant, it does not relate back to the original pleading unless the plaintiff follows the specific requirements of Civ.R. 15(D): the summons must be served in person, and must contain the words "name unknown." *West v. Otis Elevator Co.* (Ohio App. 1997), 118 Ohio App.3d 763, 766-767. The record in this case plainly shows that plaintiff served his summons on AWC by certified mail, not in person. Moreover, the summons does not contain the words "name unknown." Clearly, the amended complaint against AWC does not relate back to the initial filing. So, plaintiff commenced his action against AWC four months after the effective date of RC 2307.91 *et seq.*

Courts are rarely asked to determine that an amended complaint commences an action against a new defendant after the effective date of a new statute. However, the U.S. District Court for the Western District of Kentucky recently faced exactly that question. It held that a new statute applied prospectively to an additional defendant added after the effective date of the statute. *Adams v. Federal Materials Company, Inc.*, W.D. Kentucky No. Civ.A. 5:05CV-90-R (July 28, 2005), 2005 WL 1862378.² *Adams* involved a class action suit originally filed in Kentucky state court on March 11, 2004. On February 18, 2005, Congress passed the Class

Action Fairness Act of 2005, which immediately went into effect. On April 1, 2005, the plaintiffs amended their complaint to add a new defendant, the Rogers Group. The Rogers Group used the provisions of the Class Action Fairness Act of 2005 to remove the case to the US District Court for the Western District of Kentucky. Plaintiffs moved for a remand, arguing that their case was commenced prior to the effective date of the new statute, and that their amended complaint did not commence a new claim. The Court in *Adams* denied the motion to remand.

In determining that the amended complaint does not relate back to the original filing, the *Adams* Court looked to Federal Rule of Civil Procedure Rule 15(C), which is substantially similar to Ohio's Civ.R. 15(C). Just like plaintiff in this case, the Court in *Adams* found that the plaintiffs did not satisfy the provisions of the rule. Moreover, the Court in *Adams* cited a century-old US Supreme Court case for the proposition that

a party brought into court by an amendment, and who has, for the first time, an opportunity to make defense to the action, has a right to treat the proceeding, as to him, as commenced by the process which brings him into court.

Adams, supra at *3, quoting *U.S. v. Martinez* (1904), 195 U.S. 469, 25 S.Ct. 80, 49 L.Ed. 282.

The *Adams* Court also relied on the text of the new law itself in determining that it should apply prospectively to defendants added by amended complaints filed after the effective date of the statute. Thus, on facts nearly identical to the facts in this case, the *Adams* Court held that the amended complaint adding the Rogers Group cannot relate back to the initial pleading.

Plaintiff commenced this case against AO and AWC with his amended complaint of January 3, 2005. This is nearly 4 months after the effective date of Ohio's asbestos litigation reform statute, RC 2307.91 *et seq.*, thus the terms of the statute apply prospectively here.

² A copy of the *Adams* case is attached as Exhibit 1 for the convenience of this Court.

Because plaintiff fails to establish a *prima facie* case under the terms of the statute, his case should be administratively dismissed.

B. Plaintiff Has Failed to Produce *Prima Facie* Evidence Meeting the Requirements of RC 2307.91 *et seq.*

Plaintiff alleges that his lung cancer was caused by asbestos exposure. Because plaintiff is a smoker as defined in RC 2307.91(DD)³, he is required to establish a *prima facie* claim that his cancer was, indeed, caused by asbestos exposure.

In his attempt to show a *prima facie* claim under RC 2307.91 *et seq.*, plaintiff relies on two expert reports produced by expert witness Dr. Robert Altmeyer⁴, as well as the medical records of his treating physicians at the Veteran's Administration hospital where he was treated for his lung cancer. None of these reports or records satisfies the requirements of the statute. Therefore, this Court should administratively dismiss plaintiff's claims.

1. Dr. Altmeyer is Not a Competent Medical Authority as Defined in RC 2307.91 *et seq.*

The expert a plaintiff relies on to establish a *prima facie* claim must be a competent medical authority as defined at RC 2307.91(Z). To be considered a competent medical authority, a doctor must (among other things)

- be a current or past treating doctor of the plaintiff, who either has or had a doctor-patient relationship with the plaintiff;

³ Plaintiff's status as a smoker under the statute is unchallenged. Not only did he testify that he smoked until 1995, as cited in AO's and AWC's motion to administratively dismiss, his Veteran's Administration hospital medical records indicate that he had a 60 pack-year smoking history and quit 8 years before his cancer diagnosis. See Exhibit B2 to plaintiff's opposition to AO's and AWC's motion to administratively dismiss at page 44.

⁴ Plaintiff, in his opposition brief, claims that Dr. Altmeyer was his treating physician. However, he does not set out any facts to support this assertion. Instead, the undisputed facts establish that Dr. Altmeyer had no doctor-patient relationship with plaintiff. These facts are set out in detail below.

- not rely on reports or opinions of any doctor, clinic or testing company that performed an examination of the plaintiff without establishing a doctor-patient relationship with the plaintiff; and
- not spend more than 25 percent of his time in professional practice as an expert witness in any type of tort action, and his medical group cannot derive more than 20 percent of its revenues from expert witness fees in tort actions.

Dr. Altmeyer does not meet any of these requirements. Therefore, his reports cannot be used to establish plaintiff's *prima facie* case.

First, the facts show that Dr. Altmeyer was never plaintiff's treating physician, and had no doctor-patient relationship with him. Although plaintiff asserts in his opposition brief that Dr. Altmeyer is a treating physician, plaintiff presents no facts to support this assertion. This is because, in fact, Dr. Altmeyer is not a treating physician of plaintiff's. At his deposition on November 17, 2004,⁵ plaintiff related his only experience with Dr. Altmeyer. See plaintiff's November 17, 2004 deposition at page 115 line 10 – page 116 line 24, attached as Exhibit 2. Plaintiff explained that he was screened for possible asbestosis at his union hall and met briefly with a doctor at that time. He could not recall the name, though when prompted he indicated it may have been Dr. Altmeyer. Plaintiff testified that Dr. Altmeyer told him

“There's a large mass in the upper portion of your right lung.” He said “I'm not going to venture to guess what it is, but I want you to go see your primary care people within the next two weeks.” And he said “Do not wait any longer. It's urgent.”

Id. at page 116 lines page 19 – 24. Plaintiff also testified that this is the one and only time he saw Dr. Altmeyer. See plaintiff's November 17, 2004 deposition at page 159 lines 13 – 17.

When plaintiff was asked to identify all of his treating doctors, he did not identify Dr. Altmeyer.

⁵ This deposition was taken before AO and AWC were parties to this case. They did not attend the deposition, nor did they have a right to.

See generally plaintiff's November 17, 2004 deposition transcript.

Likewise, Dr. Altmeyer indicates in his report, dated August 28, 2003, that he advised plaintiff to "see his personal physician within 2 weeks for follow up. He was given written notification of this to take to his own physician." *See* exhibit A to plaintiff's opposition brief at page 3. Moreover, Dr. Altmeyer testified on August 12, 2002, that he does not have a doctor-patient relationship with the people he examines as a part of asbestos screenings. *See* deposition of Dr. Robert Altmeyer taken in Goldberg Group 10 on August 12, 2002, at pages 73 – 75. A copy of Dr. Altmeyer's transcript is attached as Exhibit 3.

Plaintiff's testimony, Dr. Altmeyer's testimony in a past case, and Dr. Altmeyer's August 28, 2003 report in this case all indicate that Dr. Altmeyer has never been plaintiff's treating doctor, and has never had a doctor-patient relationship with plaintiff.⁶ For this reason alone, Dr. Altmeyer is not a competent medical authority under RC 2307.91(Z), and his reports in this case cannot be used to establish a *prima facie* case.

Second, Dr. Altmeyer relies on reports from an asbestos screening company in formulating his opinions in this case. Dr. Altmeyer states in both his August 28, 2003 report and his July 5, 2005 report that he relies on a pulmonary function test and chest x-ray performed by Respiratory Testing Services, Inc. In fact, he states in his August 28, 2003 report that he examined plaintiff at the request of Respiratory Testing Services, Inc. *See* Exhibit A to plaintiff's opposition brief. Moreover, the Respiratory Testing Service, Inc., documents attached to Dr. Altmeyer's August 28, 2003 report indicate that Dr. Altmeyer was the physician supervising the asbestos screening. *Id.* Because Dr. Altmeyer relies on the x-ray and pulmonary

⁶ AO and AWC reserve the right to depose Dr. Altmeyer regarding his relationship with plaintiff, if any, in order to establish facts sufficient for this Court to make a factual determination for this motion to administratively dismiss.

function test performed by Respiratory testing Services, Inc., he cannot be considered a competent medical authority as defined in RC 2307.91(Z). This is yet another reason plaintiff cannot rely on Dr. Altmeyer's reports to establish his *prima facie* case.

Third, Dr. Altmeyer derives more than 20 percent of his income from medical legal consulting work. See deposition of Dr. Robert Altmeyer taken on May 21, 2004 in Goldberg Group 18, at page 20, attached as Exhibit 4. In fact, Dr. Altmeyer testified that he earns 35 to 40 percent of his income doing medical legal consulting work. *Id.* This is still more proof that Dr. Altmeyer is not a competent medical authority under RC 2307.91(Z). Because Dr. Altmeyer is not a competent medical authority under the statute, his reports in this case cannot be used by plaintiff to establish a *prima facie* case. Therefore, plaintiff's case should be administratively dismissed.

2. Dr. Altmeyer's Report of July 5, 2005, Does Not Establish That Asbestos was a Substantial Factor in Causing Plaintiff's Cancer

Even assuming, for the sake of argument, that Dr. Altmeyer were a competent legal authority under the law, his opinion still fails to establish a *prima facie* case under RC 2307.91 *et seq.* In order to establish a *prima facie* claim under the statute, a plaintiff must do more than show that he had asbestos exposure and that he was diagnosed with lung cancer. A plaintiff must also establish, through a competent medical authority, that asbestos exposure was a predominant cause of his cancer, and that, but for his asbestos exposure, his cancer would not have occurred. RC 2307.92(C); 2307.91(FF). Dr. Altmeyer's opinion letter of July 5, 2005, expresses no such opinion. Therefore, even looking to Dr. Altmeyer's opinion, plaintiff has failed to establish a *prima facie* case.

According to Dr. Altmeyer's July 5, 2005, opinion letter,⁷ it is Dr. Altmeyer's opinion that plaintiff's "tobacco smoking and asbestos exposure were major contributing causes for the development of his lung cancer." See Dr. Altmeyer's July 5, 2005, letter at page 3. Dr. Altmeyer goes on to state that "both this man's tobacco smoking history and his asbestos exposure/asbestosis were both substantial contributing causes for the development of his lung cancer." See Dr. Altmeyer's July 5, 2005, letter at page 4. Dr. Altmeyer does not offer the opinion that plaintiff's claimed asbestos exposure was the predominant cause of his cancer. Dr. Altmeyer also does not offer the opinion that, but for his claimed asbestos exposure, plaintiff would not have developed his cancer. Dr. Altmeyer's opinion merely lists possible causes of plaintiff's cancer, without expressing an opinion sufficient to establish a *prima facie* case as required under RC 2307.91 *et seq.*

It is significant to note that Dr. Altmeyer's July 5, 2005, opinion letter at page 1 indicates he was first contacted by plaintiff for an opinion in this case on June 22, 2005. At that time, defendants AO and AWC had already filed their motion to dismiss this case, arguing that the statute applies prospectively here. Regardless, plaintiff apparently made no attempt to assure that Dr. Altmeyer's opinion satisfied the terms of the applicable statute. Instead, Dr. Altmeyer's opinion is insufficient, thus does not establish plaintiff's *prima facie* claim under the law. Therefore, plaintiff's case should be administratively dismissed.

3. The Veteran's Administration Hospital Records Do Not State that Asbestos was a Substantial Factor in Causing Plaintiff's Lung Cancer

Plaintiff also argues that his medical records from the Veterans' Administration Medical Center in Huntington, West Virginia, establish a *prima facie* claim under RC 2307.91 *et seq.*

⁷ Dr. Altmeyer's July 5, 2005, opinion letter is attached here as Exhibit 5.

There is no question that plaintiff's VA medical records establish that he was diagnosed with lung cancer by a treating physician. However, plaintiff's medical records do not establish a causative link between plaintiff's cancer and his claimed asbestos exposure.

In order to establish a *prima facie* claim under the statute, a plaintiff must establish that asbestos was a predominant cause of his cancer, and that, but for his asbestos exposure, his cancer would not have occurred. RC 2307.92(C); 2307.91(FF). Plaintiff's medical records make no such statements. Plaintiff's medical records indicate that he alleges exposure to asbestos, but nowhere in plaintiff's medical records does any competent medical authority state that asbestos was the predominant cause of his lung cancer, and that, but for his asbestos exposure, he would not have developed his lung cancer. Without this essential statement, this term of art, plaintiff's medical records fail to establish a causal link between his lung cancer and his alleged asbestos exposure. Therefore, plaintiff fails to establish a *prima facie* case with his medical records, and his case should be administratively dismissed.

III. CONCLUSION

In this case, Ohio's asbestos litigation reform statute, RC 2307.91 *et seq.*, applies prospectively because plaintiff commenced his action against AO and AWC on January 3, 2005, after the effective date of the statute. Plaintiff failed to make the required showing under the statute that his lung cancer was caused by his alleged asbestos exposure. He produced no opinion from a competent medical authority establishing that his lung cancer was caused by his claimed exposure to asbestos.

Plaintiff cannot rely on Dr. Altmeyer's reports because he is not a competent medical authority. Based on plaintiff's own testimony as well as Dr. Altmeyer's reports and prior testimony, it is clear that Dr. Altmeyer never had a doctor-patient relationship with plaintiff.

Moreover, Dr. Altmeyer relied on reports generated by an asbestos screening service, and also derives too high a percentage of his income from medical legal consulting. Even if Dr. Altmeyer were a competent medical authority, his reports do not offer the opinion that asbestos was a predominant cause of plaintiff's cancer, and that, but for his asbestos exposure, he would not have developed cancer.

Plaintiff also cannot rely on his medical records, because they do not contain the required language to establish a causal link between his claimed asbestos exposure and his lung cancer. For these reasons, AO and AWC respectfully request this Court administratively dismiss plaintiff's claim pursuant to RC 2307.93(C).

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Strike Plaintiff's Untimely Opposition Brief and Reply to Plaintiff's Opposition to Motion of Separate Defendants American Optical Corporation and A.W. Chesterton Co. to Administratively Dismiss was filed this 6th day of September, 2005.

/s/ Debra Csikos

One of the Attorneys for Defendants
American Optical Corporation and
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image.839176.1

EXHIBIT 1

Westlaw Attached Printing Summary Report for CSIKOS,DEBRA 4590618

Your Search:	"CLASS ACTION FAIRNESS ACT"
Date/Time of Request:	Wednesday, August 24, 2005 08:44:00 Central
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(Cite as: 2005 WL 1862378 (W.D.Ky.))**Motions, Pleadings and Filings**

Only the Westlaw citation is currently available.

United States District Court,
W.D. Kentucky.
James ADAMS, et al. Plaintiffs
v.
FEDERAL MATERIALS COMPANY, INC., et al.
Defendants
No. Civ.A. 5:05CV-90-R.

July 28, 2005.

Alexander Barnett, The Mason Law Firm, PC, Michael Flannery, The David Danis Law Firm, New York, NY, Daniel K. Bryson, Gary W. Jackson, Geoffrey S. Proud, Lewis & Roberts, Raleigh, NC, Gary E. Mason, The Mason Law Firm, PC, Washington, DC, John C. Whitfield, Whitfield & Cox PSC, Madisonville, KY, for Plaintiffs.

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MEMORANDUM OPINION

RUSSELL, J.

*1 This matter is before the Court on motion to remand (Dkt.# 22) of Plaintiffs James Adams, Anna Ray, Dean Ray, Doris York, and Wallace York ("Plaintiffs"). Defendant Federal Materials Company, Inc. ("Federal") responded (Dkt.# 23), as did Defendant Rogers Group, Inc. ("Rogers

Group") (Dkt.# 24) and Defendant Hanson Aggregates Midwest, Inc. ("Hanson") (Dkt.# 26). Plaintiffs replied (Dkt.# 31), Hanson and Rogers Group sur-replied (Dkt.# 35), and this matter is now ripe for adjudication. For the reasons that follow, the Court DENIES Plaintiffs' motion to remand.

BACKGROUND

On March 11, 2004, Plaintiffs filed this class action lawsuit against Defendants Federal and Hanson in Caldwell Circuit Court in Princeton, Kentucky. The complaint alleged that Federal operates a ready-mix concrete business and that it obtained at least some of the high-alkali reactive coarse aggregate used in that business from Hanson, which owns a quarry in Princeton. Plaintiffs are owners of buildings in that area which contain cement poured by Federal containing aggregate purchased from Hanson, and their suit was brought on behalf of themselves and all others similarly situated. Plaintiffs allege further that the aggregate was "inherently defective and/or deficient and not suitable for its intended use" and that "Federal and Hanson failed to inform Plaintiffs and the members of the class of this fact." (Complaint, Exhibit A to Defendants' Notice of Removal, Dkt. # 1, at 2.) On this basis, Plaintiffs (or a subclass thereof) sued: Federal for breach of contract and breach of express warranties, both Federal and Hanson for breach of implied warranties, and all defendants for negligence, negligence *per se*, and breach of Kentucky's building code.

On February 18, 2005, the United States Congress passed the "Class Action Fairness Act of 2005." (CAFA) which is applicable "to any civil action commenced on or after [February 18, 2005]." PL. 109-2, § 9, set out as a note to 28 U.S.C. A. § 1332, 119 Stat. 4 (2005). On February 25, 2005, Federal filed a third-party complaint against Rogers Group based on Rogers Group's alleged acquisition of the Princeton Quarry from Hanson in December, 2000. Then, on April 1, 2005, Plaintiffs filed an amended

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complaint which added Rogers Group as a defendant in the case. On May 2, 2005, Rogers Group, joined by Federal and Hanson, removed the case to this Court based on (i) 28 U.S.C. § 1332(d)(2)(A), alleging that the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and that the action "is a class action in which a class member is not a citizen of Kentucky, Tennessee or Indiana, the states of which Defendants are citizens" and (ii) 28 U.S.C. § 1332(d)(3) and (4) "because during the previous three-year period preceding the filing of this class action, one or more other class actions have been filed asserting the same or similar claims on behalf of other persons against Defendant Hanson" (Defendant's Notice of Removal, Dkt. # 1, at 3-4).

*2 Thereafter, on May 23, 2005, Plaintiffs filed a Motion to Remand arguing (i) that the CAFA does not apply to this action because it was commenced before February 18, 2005 and (ii) that more than two-thirds of the class members and the primary defendants (Federal and Hanson) are Kentucky citizens, meaning that this Court is required by 28 U.S.C. § 1332(d)(4)(B) to decline to exercise jurisdiction otherwise granted to it under § 1332(d)(2).

ANALYSIS

Plaintiffs' Motion to Remand requires the Court to interpret the newly-enacted CAFA to determine whether it has jurisdiction over this class action lawsuit or whether the jurisdictional statutes require remand to state courts for adjudication. If CAFA applies, the Court must then determine whether its provisions permit Rogers Group to remove to federal court. If CAFA does *not* apply, Rogers Group's removal is clearly improper because complete diversity does not exist. The relevant facts are fairly simple: the Plaintiffs are all citizens of Kentucky, and the citizens of the class are largely, if not all, citizens of Kentucky. Defendants Federal and Hanson are also citizens of Kentucky, and made no effort to remove the case to federal court when it was first filed. Defendant Rogers Group, however, is an Indiana corporation with its principal place of business in Tennessee and therefore diverse for jurisdictional purposes from Plaintiffs, meaning that

minimal diversity exists.

Applicability of the CAFA

Plaintiffs argue that the case was "commenced" for CAFA purposes when they filed it in Caldwell Circuit Court in March, 2004--well before the effective date of the CAFA. Defendants argue that, because the CAFA changes diversity requirements such that *any* diversity makes a case removable, the "commencement" provision of the CAFA should be interpreted to yield a different commencement date for a later-added defendant. [FN1] If the suit commenced as to the later-added defendant after February 18, 2005, Defendants argue, the later-added defendant's right to remove should be governed by the jurisdictional statutes as amended by the CAFA. [FN2] In this case, Defendant Rogers Group was brought into the case via a third-party complaint on February 25, 2005, and Plaintiff's amended their complaint to assert a claim against Rogers Group on April 1, 2005. On May 2, 2005, the thirtieth day after April 1 for purposes of the Federal Rules of Civil Procedure, Rogers Group filed its notice of removal in this court. [FN3]

FN1. Plaintiffs correctly noted that there is a presumption against a statute's being applied retroactively. *Landgraf v. USI Film Prods., Inc.*, 511 U.S. 244, 280, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). However, Defendants' argument for removal is not actually based upon a retroactive application of the statute; rather, it seeks to construe the commencement date in such a way as to bring the case within the *prospective* reach of the CAFA.

FN2. The Court notes that this appears to be somewhat different from the grounds for removal set forth in Defendants' Notice of Removal in which Defendants asserted that the action "is a class action in which a class member is not a citizen of Kentucky, Tennessee or Indiana, the states of which Defendants are citizens." Nevertheless, the argument as described in this paragraph

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has been developed in subsequent briefs responding to the Motion to Remand and Plaintiffs have had the opportunity adequately to respond to it.

FN3. FRCP 6 dictates that, if the suit was commenced as to Rogers Group on April 1, 2005, the 30-day period would begin on April 2 and run for 30 calendar days therefrom, not including May 1 because it was a Sunday.

Due to the CAFA's recent enactment, there is a relative dearth of case law interpreting its provisions. Plaintiffs rely upon a recent decision from the Tenth Circuit in which that Court was faced with a related issue: whether an action commenced, for jurisdictional purposes, as of its filing in state court or its removal to federal court. *Pritchett v. Office Depot, Inc.*, 404 F.3d 1232 (10th Cir.2005). In that case, the defendants sought to invoke the CAFA in order to effect removal of a class action which qualified as diverse under the CAFA rules but not under the pre-CAFA regime. The court in *Pritchett* held that "removal to federal court does not 'commence' an action for the purposes of the **Class Action Fairness Act of 2005.**" *Id.* at 1238.

*3 Defendants, however, cite a Seventh Circuit decision which deals with the possibility of exceptions to this general rule of interpretation, although ultimately rejecting the exception proposed by the defendants in that case. *Knudsen v. Liberty Mutual Insurance Co.*, 411 F.3d 805, 2005 WL 1389059 (7th Cir.2005). In that case, the defendant "contend[ed] that any substantial change to the class definition 'commences' a new case." *Id.* at *1. The *Knudsen* court, in rejecting a "significant change" test for determining whether or not a new case has commenced, drew a distinction between changes of the kind made by the plaintiffs in that case (changing the class definition) and changes that could in fact constitute a new case. It suggested that

a new claim for relief (a new 'cause of action' in state practice), the addition of a new defendant, or any other step sufficiently distinct that courts

would treat it as independent for limitations purposes, could well commence a new piece of litigation for federal purposes even if it bears an old docket number for state purposes.

Id. at *2. The *Knudsen* court further noted that "[r]emoval practice recognizes this point: an amendment to the pleadings that adds a claim under federal law (where only state claims had been framed before), or adds a new defendant, opens a new window of removal." *Id.*, citing 28 U.S.C. § 1446(b) and Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, 14C *Federal Practice & Procedure* § 3732 at 311-348 (3d ed.1998).

The general rule for statute of limitations purposes is that "a party brought into court by an amendment, and who has, for the first time, an opportunity to make defense to the action, has a right to treat the proceeding, as to him, as commenced by the process which brings him into court." *U.S. v. Martinez*, 195 U.S. 469, 473, 25 S.Ct. 80, 81, 49 L.Ed. 282 (1904) (citing *Miller v. McIntyre*, 6 Pet. 61, 8 L.Ed. 320 (1832)). Further, in the removal context, the Sixth Circuit has held that "a later-served defendant has 30 days *from the date of service* to remove a case to federal district court, with the consent of the remaining defendants." *Brierly v. Alususse Flexible Packaging, Inc.*, 184 F.3d 527, 533 (6th Cir.1999) (emphasis supplied). Similarly, Rule 15(e) of the Federal Rules of Civil Procedure, which governs relation back of amendments to the date of the original pleading, allows relation back of a change of party only when: (i) "the claim or defense asserted in the amended pleading arose out of conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading;" (ii) the party to be brought in "has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits;" (iii) the party to be brought in "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party;" and (iv) the requirements in (i) and (iii) were met within the applicable statutory limitations period.

*4 As suggested by the *Knudsen* court, then,

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Plaintiffs' decision to add Rogers Group as a defendant presents precisely the situation in which it can and should be said that a new action has "commenced" for purposes of removal pursuant to the CAFA. This is both a logical extension of pre-existing removal practice and in keeping with the general intent of Congress in passing the CAFA--that is, extending the privilege of removal to federal district courts to defendants in large class actions on the basis of minimal diversity.

In so holding, the Court is mindful of our sister court's opinion in *Norman v. Sundance Spas, Inc.*, upon which Plaintiffs rely, in which Judge Heyburn construed the phrase "commencement of the action" in the opposite manner. 844 F.Supp. 355 (W.D.Ky.1994). In that case, obviously governed by the removal statutes pre-CAFA, a later-joined defendant argued that, when calculating the one-year overall deadline for removal, "commencement of the action" should not be defined from the perspective of the plaintiff but from the perspective of each defendant as he is joined. [FN4] *Id.* at 357. The *Norman* court based its decision to construe the language from the plaintiff's perspective upon (i) the "plain meaning" of the language; (ii) the probable effect of a contrary reading on the overall statutory removal scheme; (iii) the consequences of application of the plain meaning for later-joined defendants; and (iv) the efficacy of a contrary reading in discouraging forum-shopping by plaintiffs. *Id.* at 357-360. Ultimately, it concluded, these factors supported a reading of the statute pursuant to which an action "commenced" when, and only when, the plaintiff initially filed the suit. *Id.*

FN4. The Court notes that the CAFA removed (for class actions to which it applies) the one-year deadline for removal, set forth in 28 U.S.C. § 1446(b), that was at issue in *Norman*. 28 U.S.C. § 1453(b).

The Court does not disagree with the reasoning in *Norman*, but believes that, in light of the significant changes in the law of removal with respect to class actions enacted in the CAFA, it is distinguishable from the case at bar. The most significant difference

with respect to the analysis of removal issues, of course, is the provision that eliminates the one-year deadline entirely, signaling Congress's belief that whatever benefit accrued from such a provision was outweighed by other considerations. Secondly, the CAFA removes the requirement that all defendants consent to removal. Finally, the *Norman* court saw its reading of the statute as being in accord with "a deliberate legislative trend to curtail federal suits between litigants of diverse citizenship." *Id.* at 359. Although such limits are by no means generally being reversed, in the particular situations addressed by the CAFA, it is clear that the opposite effect was intended; i.e., that an opening of federal courts to *more*, not fewer, litigants was the goal. The combination of these three considerations leads the Court to believe that Defendants' argument for a construction of the CAFA which defines the term "commenced" from the point of view of each defendant rather than the plaintiff is appropriate.

Jurisdiction under the CAFA

*5 Plaintiffs argue, in the alternative, that even if the CAFA applies, jurisdiction in this court is inappropriate because, they argue, 28 U.S.C. § 1332(d)(4)(B) requires that the Court decline to exercise jurisdiction. That provision requires remand where "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." Plaintiffs assert that "by definition, the proposed Class consists entirely of Kentucky citizens." (Plaintiffs' Motion to Remand, Dkt. # 22, at 7.) It is not clear to the Court that this is necessarily so--the class is defined in the Complaint as "all other similarly situated owners of structures in the Princeton, Kentucky area with cement poured by [Federal] containing aggregate from a quarry owned by [Hanson] and [Rogers Group]." It is likely, of course, that the owners of such buildings would be largely Kentucky citizens; in any case, it does not appear that Defendants contest this characterization of the class. Plaintiffs also assert that the primary Defendants are Kentucky citizens insofar as Federal and Hanson, both Kentucky corporations, are the primary defendants, whereas Rogers Group is a

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"secondary defendant."

In so arguing, Plaintiffs rely upon a distinction between "parties that are allegedly directly liable to the plaintiffs" and "those parties joined for purposes of contribution or indemnification." (Plaintiff's Reply, Dkt. # 31). Plaintiffs argue that, because Rogers Group initially entered the case as a third-party defendant to Federal's Third Party Complaint, it falls into the category of a "secondary defendant" because Federal brought it in for indemnity purposes.

As an initial matter, it is difficult to see how Hanson's liability, if any, to Plaintiffs could possibly be any different from Rogers Group's. Plaintiffs assert that "[t]he fact that Plaintiffs amended their complaint to add [Rogers Group] as a defendant does not change [Rogers Group's] status as a secondary defendant." It may be that Rogers Group will ultimately be liable to Federal on the basis of a theory of indemnification; this does not, however, negate the fact that Plaintiffs amended their complaint to assert Rogers Group's liability directly to Plaintiffs for its supply of allegedly defective aggregate to Federal. In fact, according to the Complaint, Count III includes claims by Plaintiffs directly against *all* defendants, including Rogers Group, on the basis of Plaintiffs' assertion that "[t]he cement sold to Plaintiffs and the other members of the Direct Purchasers Subclass did not satisfy the *Defendants'* implied warranties that the cement *and/or the aggregate* would satisfy applicable standards, including, but not limited to Kentucky state specifications, ASTM standards, and the Kentucky Building Code." (Plaintiffs' Amended Complaint, Exhibit A to Dkt. # 1, ¶ 56) (emphasis supplied). Not only, then, is Rogers Group's liability not distinguishable (except for by the date of its purchase of the quarry) from Hanson's liability, neither Rogers Group's nor Hanson's liability is limited to indemnification of Federal. In light of the lack of a principled distinction between the positions of Hanson and Rogers Group, and the fact that one count of Plaintiffs' complaint is directed against Hanson and Rogers explicitly, there is simply no basis for treating Rogers Group as a secondary defendant in

this case. Therefore, 28 U.S.C. § 1332(d)(4)(B) does not require that the Court decline to exercise jurisdiction.

CONCLUSION

*6 For the reasons outlined above, the Court DENIES Plaintiff's motion to remand.

An appropriate order shall issue.

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Motions, Pleadings and Filings (Back to top)

- 2005 WL 1514754 (Trial Motion, Memorandum and Affidavit) Memorandum in Support of Plaintiffs' Motion to Remand (May. 23, 2005)
- 2005 WL 1514753 (Trial Pleading) Answer to Amended Complaint (May. 17, 2005)

END OF DOCUMENT

EXHIBIT 2

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IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

IN RE: HICKEY GROUP 4
CIVIL ACTION - ASBESTOS

JAMES T. SINNOTT,

Plaintiff,

-vs-

JUDGE HANNA/SWEENEY
CASE NO. CV-04-521874

A-BEST PRODUCTS COMPANY,
et al.,

Defendants.

- - - -

Deposition of JAMES T. SINNOTT, taken as if
upon cross-examination before Lynn D. Thompson, a
Notary Public within and for the State of Ohio,
at the Ashland Plaza Hotel, One Ashland Plaza,
Ashland, Kentucky, at 10:00 a.m. on Wednesday,
November 17, 2004, pursuant to notice and/or
stipulations of counsel, on behalf of the
Defendants in this cause.

- - - -

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1 MR. MUSILLI: Before we swear him
2 in, for the people on the telephone, we've
3 got the telephone as close to the witness
4 as possible right now. I'm going to ask
5 the witness to just state his name, and let
6 me know if everybody on the phone can hear
7 him.

8 THE WITNESS: James T. Sinnott.
9 S-i-n-n-o-t-t.

10 MS. RANKE: Did everybody hear him
11 state his name and spell his last name?

12 VOICE: Yes.

13 MR. MUSILLI: And can everybody
14 hear me clearly?

15 VOICE: Yes.

16 JAMES T. SINNOTT, of lawful age, called
17 by the Defendants for the purpose of
18 cross-examination, as provided by the Rules of
19 Civil Procedure, being by me first duly sworn, as
20 hereinafter certified, deposed and said as
21 follows:

22 CROSS-EXAMINATION OF JAMES T. SINNOTT

23 BY MR. MUSILLI:

24 MR. MUSILLI: Before we have any
25 testimony here today, Ms. Ranke is here

1 for -- plaintiff's counsel here today, and
2 she informed me that Mr. Sinnott has some
3 breathing treatment that he takes about
4 every four hours and he may have to break
5 today at some point to take that breathing
6 treatment. Mr. Sinnott thinks that he took
7 that at about 8:00 this morning so we may
8 need to break around the noon hour, which
9 might be a good breaking time in any event.
10 To the extent that the breathing treatment
11 cuts into the amount of time that
12 Mr. Sinnott can testify today, Ms. Ranke
13 has informed me that she would be willing
14 to make him available prior to the video
15 deposition on December 1st so that we can
16 complete the discovery deposition at that
17 point and then proceed with the video
18 deposition.

19 MS. RANKE: That's correct.

20 MR. MUSILLI: With that statement,
21 if there's nothing else to be put on the
22 record before we start, I think we can
23 begin.

24 Q. Mr. Sinnott, can you state your full name for the
25 record.

- 1 A. James T., Thomas, Sinnott. S-i-n-n-o-t-t.
- 2 Q. Mr. Sinnott, have you ever given a deposition
3 prior to today?
- 4 A. On a back injury I had at the plant several years
5 back.
- 6 Q. Was that a workers' comp claim?
- 7 A. Yes. Yes, it is.
- 8 Q. How did you receive that injury or sustain that
9 injury?
- 10 A. Working on what they call a -- well, we called it
11 a cleaning machine, but it's a shot blast machine
12 where they use steel shot to clean the scale and
13 dust and stuff off of castings. And I slipped in
14 the shot and threw my back completely out of
15 place and done some damage there. And that was
16 in May of '94. And I finally -- they finally
17 come to the conclusion that I was permanently and
18 totally disabled last December.
- 19 Q. What type of injury did you receive to your back?
- 20 A. I tore all the muscles in my lower back and
21 threw the -- I can't remember. L4/S1 or
22 whatever it is down the lower part of your back.
23 I threw them all out of place. And finally, I
24 had back surgery in '97 and they had to do what
25 they called a decompression and laminectomy to

1 get the pressure off the nerve.

2 Q. It sounds like you never fully recovered from
3 that back injury?

4 A. No, I never did.

5 Q. We may get into that a little more in detail
6 later when we talk about your medical history.
7 Before we continue with today's deposition
8 though, I want to remind you of a few ground
9 rules that you may have gone over prior to your
10 last deposition but may have forgotten.

11 Sitting to your right is a court reporter.
12 He's going to take down everything that is said
13 today. It's important that you verbalize all of
14 your responses. He can't really note very well
15 nods of the head or hand gestures. So if you
16 would verbalize all your response, it would make
17 his job easier.

18 A. Okay.

19 Q. It's important also that you understand the
20 question that's being asked of you. If you allow
21 the attorneys to finish our questions before you
22 respond, we'll try to give you the same courtesy
23 and allow you to finish your response before we
24 go on to the next question.

25 A. Okay.

1 Q. If at any time, an attorney asks you a question
2 and you respond, we're going to assume that you
3 heard the question and that you understood the
4 question. And if at any time, you neither hear
5 nor understand a question, ask us to repeat or
6 rephrase it, and we will be happy to do so.

7 A. All right.

8 Q. If at any time today you need to take a break,
9 please feel free to let us know. We'll be happy
10 to accommodate you. The only request that I
11 would have is that if there's a question pending
12 that you answer the question before we take our
13 break.

14 A. Okay.

15 Q. Okay?

16 And, again, there are people on the
17 telephone. The room is a little bit large here,
18 not too big. If you could do your best to keep
19 your voice as loud as possible. Everyone has an
20 interest in what you have to say, and all I can
21 ask is that you do the best that you can with
22 that.

23 A. Okay.

24 Q. Okay?

25 A. I'll do the best I can.

- 1 Q. I understand your current address is 1525 Thomas
2 Street in Ironton, Ohio?
- 3 A. That's correct.
- 4 Q. And the ZIP code is 45638?
- 5 A. Yes. Dash 1176 on the end of it. I don't know
6 whether you really need that part or not.
- 7 Q. You've lived there since about 1998?
- 8 A. Yes. '97. I'd have to look at the loan papers
9 to be sure, but between '97 and '98.
- 10 Q. Okay. And I understand prior to that, you lived
11 at 519 Vesuvius Street in Ironton?
- 12 A. Yes, sir.
- 13 Q. Your date of birth is April 10th, 1939?
- 14 A. That's correct.
- 15 Q. And your Social Security number is 402-50-6326?
- 16 A. That's correct.
- 17 Q. What is the last year of formal education that
18 you received?
- 19 A. Half way through the second year of college.
- 20 Q. You're a high school graduate?
- 21 A. Oh, yes.
- 22 Q. Which high school did you graduate from?
- 23 A. St. Joseph's High School in Ironton, Ohio.
- 24 Q. And what year did you graduate?
- 25 A. 1958.

1 Q. After graduating from high school, you went to
2 college. Which college did you go to?

3 A. I didn't go to college for 11 years.

4 Q. Okay.

5 A. I went to Ashland Community College 11 years
6 later.

7 Q. You were approximately 29 or 30 years old when
8 you began then?

9 A. I'd say yes about that.

10 Q. And what classes did you take at Ashland
11 Community College?

12 A. Predental classes. I was taking predental,
13 whatever they were. English and history and
14 whatever the prerequisites were that you had to
15 take. Microbiology. Comparative anatomy. I
16 can't remember the rest of them. It's been too
17 long ago.

18 Q. It sounds like from your description that you did
19 not receive a degree from the community college?

20 A. No, no, no. I dropped out. I was working seven
21 days a week at the plant and had a new boy, and
22 the pressure just got to be too much.

23 Q. I understand.

24 Have you had any other type of formal
25 training, any type of apprenticeships or anything

1 along those lines?

2 A. I served -- went to vocational school over here
3 at Ashland for welding and blueprint reading and
4 hydraulic blueprint reading. And then while I
5 was in service, I had fundamentals of electronics
6 for radar technician. And then I served an
7 apprenticeship as a millwright with Dayton
8 Malleable Iron Company, and I worked that almost
9 ten years and bid into the electric department,
10 served an apprenticeship in there and worked
11 about 28 years as an electrician.

12 Of course, the plant I worked for has got
13 four different names from the time I started
14 there until they went out of business.

15 Q. And the plant that you are talking about is
16 Dayton Malleable?

17 A. I started out -- when I hired in in '59, it was
18 Dayton Malleable Iron Company, and later, they
19 changed it to Dayton Malleable, Incorporated.
20 And then they merged with Amcast Corporation.
21 And then they shut down in 1984, and we started
22 it back up as an employee-owned ESOP program in
23 '86. And then Intermet Corporation bought the
24 plant out I think it was 1988. And that was the
25 last owner of it.

1 Q. When we get to your work history here today, I'm
2 going to refer to this as Dayton Malleable, but
3 when I refer to it as Dayton Malleable, I want
4 you to understand that I don't care what the
5 actual name was at the time. I'm talking about
6 the facility that you worked at.

7 A. Yes. I understand.

8 Q. In any of your vocational training, your
9 apprenticeship or your training in the military,
10 did you ever have any training in the
11 identification of asbestos or asbestos fibers?

12 A. No. Back then, nobody -- I guess nobody -- maybe
13 they knew, but they didn't tell anybody.

14 Q. Did you have any special training in chemistry or
15 mineralogy?

16 A. No, sir.

17 Q. I understand that you are married?

18 A. Yes, sir.

19 Q. And your wife's name is Frieda Sinnott?

20 A. Frieda. Middle initial L.

21 Q. You were married in 1990?

22 A. Yes, sir.

23 Q. During the time that you've known her, has she
24 ever worked outside of the home?

25 A. Yes. She worked as a waitress part time.

1 Q. Any other jobs other than as a waitress?

2 A. No, sir.

3 Q. Does Frieda smoke cigarettes?

4 A. She did.

5 Q. Did she ever smoke cigarettes when you knew her?

6 A. Oh, yeah.

7 Q. When you said she did, it implies that she has

8 quit?

9 A. I think she's quit.

10 Q. Okay.

11 A. Now, you ask a question that's impossible for me

12 to answer because I'm not in her pocket 24 hours

13 a day.

14 Q. I understand that.

15 A. I pray that she's quit.

16 Q. I understand. When is the last time that you can

17 recall that you knew her as a smoker?

18 A. About three-and-a-half years ago, she had

19 pneumonia, and they told her then that she needed

20 to quit smoking. And she had a little touch of

21 asthma I guess, and like I said, I presume that

22 she took their advice. I haven't caught her

23 smoking or haven't seen her.

24 Q. Okay. Prior to three-and-a-half years ago, at

25 all other times that you knew Frieda, did you

1 know her to be a smoker?

2 A. Yes, sir.

3 Q. And I'm assuming she smoked cigarettes?

4 A. Yes, sir.

5 Q. Did she smoke in your presence?

6 A. Oh, yeah.

7 Q. Do you know approximately how many packs a day

8 she would smoke?

9 A. Probably a pack, pack-and-a-half. Maybe. Some

10 days. Some days not that much. Just depended on

11 whether she was at home or at work or whatever I

12 guess.

13 Q. And when I ask that question, I'm talking just on

14 an average.

15 A. Right. I'd say a pack-and-a-half average over

16 all.

17 Q. Is Frieda financially dependent upon you?

18 A. Yes, sir.

19 Q. I understand that you had a prior marriage to a

20 lady named Trudy Bond?

21 A. Yes, sir.

22 Q. I have as her address Ashland, Kentucky?

23 A. That's --

24 Q. The last one that you know of?

25 A. She still lives over here somewhere, but I'm not

1 familiar with it. I think the last time I seen
2 her, my oldest son, our son, her and I, had a
3 Thanksgiving dinner, and that was about seven or
4 eight years or nine years ago or something.

5 Q. I presume that that marriage terminated by
6 divorce?

7 A. Twice.

8 Q. How long were you married to Trudy?

9 MS. RANKE: The first time?

10 MR. MUSILLI: Yes, the first time.

11 Q. I guess when did you marry her and when did the
12 first marriage end?

13 A. Well, I'm not sure. We were married twice, and
14 we were married 10 years once and 12 years with a
15 three-year interlude. But we dated about three
16 years prior to getting married the first time.
17 So I'm not sure which was the 10-year or the
18 12-year journey. I told her one time one of us
19 must have been kind of hardheaded or dumb or
20 something.

21 Q. If there were two marriages of 10 and 12 years,
22 that's 22 years?

23 A. Right. Plus the three-year interlude between
24 plus three years that we dated before.

25 Q. So I have as the date of the termination of the

1 marriage -- I assume the second one is 1988?

2 A. Yes, sir.

3 Q. Approximately 25 years before that was when you

4 were first married to Trudy?

5 A. Right. 19 --

6 Q. So if my math is right, it would be 1963 or

7 thereabouts?

8 A. I was thinking it was '63. She graduated high

9 school in '62 I think, and we got married in '63.

10 Q. Did Trudy ever smoke cigarettes?

11 A. Yes, she did.

12 Q. Did she smoke throughout both of your marriages?

13 A. Yes.

14 Q. She smoked in your presence?

15 A. Oh, yeah.

16 Q. Can you estimate for me how many packs she smoked

17 on an average?

18 A. Probably -- I am just guessing a pack,

19 pack-and-a-half a day. At the most.

20 Q. As part of your divorce from Trudy, do you have

21 any financial obligations to her as part of the

22 decree?

23 A. No, sir. No. Our son was 21 when we got

24 divorced, and she was working making better money

25 than I was at the time so we just ended up

1 splitting up the property, and I took all the
2 bills, and she got the goodies.

3 Q. I want to talk a little bit about your family
4 beyond that then. I understand your father's
5 name was Chas. Was that a nickname for Charles?

6 A. Charles. Charles James.

7 Q. He was born in 1909?

8 A. November the 24th, 1909.

9 Q. And passed away in 1999?

10 A. 1999 on November the 17th.

11 Q. And I understand that was because of a heart
12 condition or a heart problem?

13 A. He -- just more or less old age. They called
14 it -- what do they call it when the water gets
15 around your heart? Congestive heart failure?

16 Q. He was 90 years old at the time of his death or
17 thereabouts?

18 A. One week.

19 Q. Other than the congestive heart failure, did your
20 father ever have any other type of heart problems
21 or heart condition?

22 A. He had had a heart attack sometime in his 60s.

23 And they determined that he had had several
24 before he had the one that knocked him down, but
25 he took medication for about a year, and they

1 said "You're heart's in better condition than
2 probably when you were 30 years old."

3 So he was a pretty tough old bird.

4 Q. Was he ever diagnosed with any type of

5 respiratory or breathing problems?

6 A. No, sir.

7 Q. Or any type of cancer?

8 A. Not that I know of.

9 Q. What did your father do for a living?

10 A. He was a machinist. First job I knew of, he
11 worked at the naval gun factory in Washington,
12 D.C. during the war, and then he came back to
13 Russell, Kentucky as a machinist in the railroad
14 roundhouse down at Russell, Kentucky. Later, he
15 was a machinist supervisor, and then he ended up
16 being what they call a roundhouse foreman that
17 took care of getting all the engines and stuff
18 ready to pull the trains in and out of the yard.

19 Q. And that was all at Russell, Kentucky?

20 A. Right.

21 Q. Did you ever work with your father?

22 A. No, sir.

23 Well, I did cutting grass and hoeing the
24 garden.

25 Q. Other than house chores and odd jobs around the

- 1 house?
- 2 A. No. No, sir.
- 3 Q. Your mother's name is Dorothy Sinnott?
- 4 A. Dorothy Evelyn.
- 5 Q. She was born in 1921?
- 6 A. Yes, sir.
- 7 Q. And she's currently still living?
- 8 A. Yes, sir.
- 9 Q. How would you characterize her health?
- 10 A. Physically, she's probably in better health than
- 11 90 percent of the people in this room. But she's
- 12 got -- she fell down the stairs about five years
- 13 ago and done some damage to the short-term memory
- 14 section of her brain, and she can remember
- 15 everything from five years back, but you tell her
- 16 something and you've got to tell her four or five
- 17 times, which I guess is symptoms of Alzheimer's
- 18 from what they say. But physically, she's in
- 19 great shape. I wished I was in half as good a
- 20 shape as she is.
- 21 Q. She's approximately 83 years old?
- 22 A. She's 84. She was 84 the 20th of October.
- 23 Q. Did your mother ever work outside of the home?
- 24 A. Yes. She worked as a waitress.
- 25 Q. Other than as a waitress, did she have any other

- 1 jobs that you can recall?
- 2 A. She sold Avon products for a while. And
- 3 basically, that's all I can ever remember her
- 4 doing.
- 5 Q. Has your mother ever been diagnosed with any type
- 6 of respiratory or breathing condition?
- 7 A. No.
- 8 Q. Any type of heart problems?
- 9 A. She's got an irregular heartbeat that I can't
- 10 tell you exactly what it is, but they've treated
- 11 her off and on for her to stabilize it.
- 12 Q. She's treated with medication?
- 13 A. Right.
- 14 Q. Other than the irregular heartbeat, has she ever
- 15 had any other type of heart condition?
- 16 A. No. Not that I know of.
- 17 Q. Do you know when she was diagnosed with the
- 18 irregular heartbeat?
- 19 A. No, sir. I have no idea.
- 20 Q. Has your mother ever been diagnosed with any type
- 21 of cancer?
- 22 A. No, sir.
- 23 Q. Did either your father or mother ever smoke
- 24 cigarettes?
- 25 A. My dad did. Smoked old Bull Durham in the bag.

- 1 Rolled his own.
- 2 Q. Did he smoke cigarettes when you lived in the
3 household with him when you were growing up?
- 4 A. Yeah. But he didn't smoke in the house much. He
5 done most of his smoking outside.
- 6 Q. Your mother did not smoke cigarettes?
- 7 A. Not that I -- not while I was living at home. I
8 think she may have later on. I can remember her
9 saying she'd buy a pack of cigarettes and have to
10 throw them away about 30 days later because she
11 didn't smoke them all. So she wasn't much of a
12 smoker. I think she was just a social smoker so
13 to speak.
- 14 Q. Okay. I understand that you have three siblings?
- 15 A. I've got two and a stepdaughter.
- 16 Q. And a stepdaughter. The oldest I have here is
17 Paul Sinnott?
- 18 A. That's my brother. My oldest son is James
19 Arnold.
- 20 Q. We're talking about your siblings, your
21 brothers --
- 22 A. Oh, siblings. I'm sorry. I got off track.
- 23 Q. That's okay.
- 24 A. Yes.
- 25 Q. Your oldest brother is Paul Sinnott?

- 1 A. Paul J.
- 2 Q. And he's about 63 years old?
- 3 A. He turned 63 the day after my mother's birthday.
- 4 Q. Where does he live?
- 5 A. Louisville, Kentucky.
- 6 Q. And what does he do?
- 7 A. He just took his retirement from the U.S. postal
8 service. I forgot how many years on active duty
9 in the Marine Corps, and when he got out of
10 there, he went to work for the postal service
11 down in Louisville.
- 12 Q. If my math is right, you're the oldest?
- 13 A. I'm the oldest, yes.
- 14 Q. He's a couple years younger than you?
- 15 A. Yes. Two-and-a-half years younger than me.
- 16 Q. Did you ever work with Paul outside of the home?
- 17 A. No. He went on to college when he got out of
18 high school, and I didn't know what I wanted to
19 do so I went to work.
- 20 Q. Does Paul smoke cigarettes?
- 21 A. Not that I ever knowed him to smoke.
- 22 Q. To your knowledge, has Paul ever been diagnosed
23 with any type of breathing problems or
24 respiratory problems?
- 25 A. No, not that I know of.

1 Q. Any type of heart condition?

2 A. Not that I know of.

3 Q. Or any type of cancer?

4 A. As far as I know, no. You know, I'm not sure.

5 Q. How would you characterize his health?

6 A. Well, up until three years ago, he was still
7 running marathons down in Louisville so I'd say
8 he's in pretty good physical condition.

9 Q. Sounds like it.

10 A. Yeah.

11 No. He spent all that time in the Marine
12 Corps, and he spent 36 months in Vietnam. I
13 think he picked up a little scrap metal over
14 there, but other than that, he's pretty well
15 physical condition and kept himself that way. He
16 still works out every day so to speak.

17 Q. Your youngest brother then is Anthony Sinnott?

18 A. Yes, sir. He's 47. He's currently in Bagdad.
19 He's a lieutenant colonel in the Marine Corps.
20 At least, that's where he was the last I heard
21 from him.

22 Q. Is he a full-time active duty marine?

23 A. He went through what they call platoon leader
24 school. My other brother did the same thing.
25 And then he went on active duty for so many

1 years, and then he was out on reserve duty, and
2 then he got called back up to go to Bosnia, and
3 then he got called back up to go to Sarajevo.
4 The field he's in must be pretty critical or
5 something. I don't know. He does not -- I don't
6 ask, and he don't tell.

7 Q. When he's not serving actively, what is his
8 occupation?

9 A. He worked for some strategic planning outfit on
10 Quantico marine base outside of Washington. And
11 I couldn't tell you what his job was there
12 either. The only thing I know is when 9-11
13 happened, he said they'd been telling them for
14 seven or eight months something was coming.

15 Q. Have you ever worked with Anthony at any
16 employment outside of the home?

17 A. No, sir.

18 Q. Does Anthony smoke cigarettes?

19 A. Not that I ever knew him to smoke.

20 Q. How would you characterize his health?

21 A. Big. He's six foot four and weighs about 235.
22 Bench presses around 500 and some pounds. So I'd
23 say he's pretty healthy. I know he said he
24 gained a little weight and his commanding officer
25 told him "You're going to have to trim down or

1 the Marines ain't going to keep you."

2 So he got back into working out and got back
3 to where he belonged.

4 Q. To your knowledge, has Anthony ever been
5 diagnosed with any type of breathing or
6 respiratory problems?

7 A. Not that I know of.

8 Q. Any type of heart condition?

9 A. Not that I know of.

10 Q. Or any type of cancer?

11 A. Not that I know of.

12 Q. And then you have a stepdaughter?

13 A. No. A sister.

14 Q. Or I'm sorry. A stepsister?

15 A. No. She's my sister. She's between Paul and
16 Anthony.

17 Q. Her name is Yvonne?

18 A. Yvonne DeKay.

19 Q. How old is she?

20 A. She was born in 1950 I think. '49 or '50.

21 Q. And where does she live?

22 A. She lives at home with my mother. She's got a
23 dancing studio in Ironton, Ohio is her
24 occupation. She teaches dancing.

25 Q. Other than teaching dancing, has she ever had any

- 1 other occupation outside of home?
- 2 A. She started doing that when she was about 12
- 3 years old. She's been doing it ever since.
- 4 Q. How would you characterize her health?
- 5 A. She's in relatively good health. A little on the
- 6 hefty side, but I think she and I took that after
- 7 the hefty side of the family. The other two
- 8 always kept trim and slim. Hard to believe a
- 9 year ago, I weighed 250 some pounds.
- 10 Q. To your knowledge, was she ever diagnosed with
- 11 any type of heart condition?
- 12 A. No.
- 13 Q. Any type of breathing or respiratory problems?
- 14 A. Not that I know of.
- 15 Q. Or any type of cancer?
- 16 A. Not that I know of.
- 17 Q. Is she a smoker?
- 18 A. Not that I know of. She never did smoke I don't
- 19 think.
- 20 Q. Have we now talked about all of your brothers and
- 21 sisters?
- 22 A. Right. That's all that I know of.
- 23 Q. I understand. I'm only asking about what you
- 24 know about.
- 25 A. Okay. That's all I can tell you.

- 1 Q. I understand that you have two children as well?
- 2 A. Yes.
- 3 Q. Two sons. The oldest is James?
- 4 A. Yes. James Arnold. He will be -- he was born in
- 5 1966 so he'll be 38 I guess, won't he? Yeah.
- 6 Thanksgiving Day I think he'll be 38.
- 7 And the youngest boy's 13. He'll be 14 in
- 8 February.
- 9 Q. Let's talk about James first. I understand he
- 10 lives in Georgia?
- 11 A. Yes, he does.
- 12 Q. Where in Georgia?
- 13 A. Either Covington or Conyers. They built a big
- 14 home, and then they moved to another one, and I'm
- 15 not sure which is which right now. I don't have
- 16 my address with me.
- 17 Q. And is he employed?
- 18 A. Yes. He works for General Mills Corporation.
- 19 Q. Has James ever worked with you outside of the
- 20 home?
- 21 A. No, sir.
- 22 Q. To your knowledge, has James ever been diagnosed
- 23 with any type of heart condition?
- 24 A. Not that I know of.
- 25 Q. Breathing or respiratory problems?

- 1 A. Not any that I know of.
- 2 Q. Or any type of cancer?
- 3 A. Not that I'm aware of, no, sir.
- 4 Q. Does James smoke?
- 5 A. Never did. Thank God.
- 6 Q. And how would you characterize James's health?
- 7 A. For a man his age, he's in pretty good condition
- 8 I guess as far as I know. I don't see him that
- 9 often, but -- he's put on a little extra
- 10 poundage, but other than that, he's pretty good
- 11 physical shape. He's got three stepsons and a
- 12 two-year-old daughter so he's got to stay on top
- 13 of things.
- 14 Q. Keeps him active?
- 15 A. I guess.
- 16 Q. Your other son is Steven?
- 17 A. Yes, sir. Steven T., Tyler.
- 18 Q. He lives in Ironton?
- 19 A. Yes. He lives with me and his mother. Or his
- 20 mother and I.
- 21 Q. And I think you said he was 13?
- 22 A. Yes. February the 25th.
- 23 Q. Has he ever been diagnosed with any type of heart
- 24 condition?
- 25 A. No.

- 1 Q. Breathing or respiratory problems?
- 2 A. Not that I know of.
- 3 Q. Or cancer?
- 4 A. Not that I know of.
- 5 Q. And I'm presuming he does not smoke?
- 6 A. He better not.
- 7 Q. You can send him the transcript.
- 8 A. I'll guarantee that kid will never smoke. He
- 9 hates cigarettes. He hates to smell them. And
- 10 he'll get up -- if somebody goes by with a
- 11 cigarette, he'll go around the block to keep from
- 12 passing them.
- 13 Now, if it's baseball, football, basketball,
- 14 he's guilty.
- 15 Q. I'm assuming that his health is good?
- 16 A. It better be because he does everything.
- 17 Q. Okay.
- 18 Are any of your -- either of your brothers or
- 19 your sister financially dependent upon you?
- 20 A. No.
- 21 Q. And of your two sons, only Steven is financially
- 22 dependent?
- 23 A. Yes, sir.
- 24 Q. Have we talked about all of your children now?
- 25 A. Those are the only two children. That's the only

1 two that I know of.

2 Q. You mentioned this briefly already. I want to go
3 back to it here. You mentioned that you were in
4 the military?

5 A. Yes, sir.

6 Q. What branch did you serve in?

7 A. Air Force.

8 Q. And when did you -- did you enlist?

9 A. Yes, sir.

10 Q. When did you enlist?

11 A. The 1st day of August, 1956.

12 Q. How long did you serve in the Air Force?

13 A. Just about a year.

14 Q. Discharged in the summer of '57?

15 A. May of '58.

16 Q. Okay. You served almost two years?

17 A. Yeah.

18 No. May of '57. I'm sorry. You're right.

19 I had to think a little bit. It was a long time
20 ago.

21 Q. Which reminds me. If at any time today, you
22 testify about something and you later realize
23 that it was incorrect, just let me know, and
24 we'll go back to that.

25 A. I will. I will. It was the 8th day of May, 1957

- 1 when I got out.
- 2 Q. You received an honorable discharge?
- 3 A. General discharge under honorable conditions.
- 4 Q. And what did you do in the Air Force?
- 5 A. It was kind of strange. They called it a fire
6 control systems mechanic, but it actually is
7 radar technician that maintained and took care of
8 the radar system that controlled the guns on the
9 interceptors. In other words, if the pilot was
10 flying the plane and he locked onto the enemy,
11 he'd push the button, and then the radar flew the
12 plane and shot the enemy down. So that was --
- 13 Q. At any time during your service in the Air Force,
14 do you believe you were ever exposed to any
15 asbestos or asbestos-containing products?
- 16 A. That's a good possibility. Because the old
17 barracks we lived in were built back in the late
18 '30s and early '40s and they done some work on
19 them, but I couldn't say that they were or were
20 not.
- 21 Q. What in the barracks would you believe contained
22 asbestos?
- 23 A. Probably the wallboard and ceiling boards and
24 stuff like that.
- 25 Q. Your thought is only based upon an assumption or

1 speculation?

2 A. That's just speculation. Because that was the
3 type of materials they were using back then to
4 build the buildings out of.

5 Q. You mentioned also that your wife and your
6 youngest son are financially dependent upon you?

7 A. Yes, sir.

8 Q. What are your current sources of income?

9 A. I draw Social Security disability, and in
10 December, I was awarded permanent total
11 disability compensation on my back injury.

12 Q. Approximately how much do you receive in Social
13 Security disability per month?

14 A. I get 1384 or 1386 a month, and my wife gets a
15 check for 544 on account of us having an underage
16 son, and then he gets a check for 544 per month.

17 Q. And those two 544 checks are both from Social
18 Security?

19 A. Right. Well, all three of the checks come from
20 Social Security.

21 Q. Right.

22 A. And, of course, when he turns 16, hers stops, and
23 I guess from what I understand, they raise his a
24 little bit till he's out of high school but then
25 that's the end of that.

- 1 Q. And how much do you receive on a medical basis
2 for your permanent total disability?
- 3 A. I just got a raise on that after August. I think
4 it's \$440 a week. I think.
- 5 Q. Per week?
- 6 A. Yes, sir.
- 7 Q. Okay.
- 8 A. I'm making more money now than I did working 40
9 years. And can't enjoy any of it.
- 10 Q. You've identified your two sources of income, the
11 Social Security and the permanent total. Your
12 wife has a Social Security --
- 13 A. No. I called the other day because she's got an
14 illness and seen if she -- to see if she could
15 get disability, and she hasn't worked enough
16 quarters since we've been married to entitle her
17 to Social Security.
- 18 Q. Okay. I understand though that you receive
19 Social Security disability. You also receive a
20 permanent total disability because of your back?
- 21 A. Right. That started in December last year.
- 22 Q. Your wife receives a Social Security check?
- 23 A. Yes.
- 24 Q. And your son does?
- 25 A. Right.

- 1 Q. Are there any other sources of income for your
2 family?
- 3 A. No, sir.
- 4 Q. I understand that you at one time were a
5 cigarette smoker?
- 6 A. Yes, sir.
- 7 Q. When did you begin smoking cigarettes?
- 8 A. Actually, I'm not sure. You know how kids are.
9 When you're young, you smoke one of dad's butts
10 or somebody's. But to be considered what you
11 consider full time smoking, I'd say 17, 18 years
12 old. About the time I went in the service.
- 13 Q. Okay.
- 14 A. And I never was really a heavy smoker. Maybe a
15 pack, pack-and-a-half a day. Sometimes two
16 packs. Depended on, you know, like if you're at
17 work or something. You light one. They call you
18 on a breakdown. Then you throw the cigarette
19 down, run to the breakdown. So I probably burned
20 up more of them on the floor than I smoked most
21 of the time.
- 22 Q. So you began smoking approximately 1956?
- 23 A. I'd say yes.
- 24 Q. And when did you stop smoking cigarettes?
- 25 A. Ten years ago. 1994, '95, along in there.

1 Q. During that approximate 40-year period when you
2 smoked cigarettes, was there any period of time
3 when you stopped smoking for any significant
4 period of time?

5 A. I quit for four years one time.

6 Q. And can you recall when that was?

7 A. Yeah. 1984.

8 Q. You picked it up again in about 1988?

9 A. Yeah. Got divorced and got to run -- carousing
10 around, chasing bars and everybody smoking. Just
11 a natural thing to pick up a cigarette and smoke
12 it.

13 Q. Other than that four-year period, were there any
14 other significant portions or timeframes when you
15 stopped smoking?

16 A. Not that I would consider having quit. I may
17 have went a week or two and didn't smoke for one
18 reason or another, but no.

19 Q. Did you smoke filtered or unfiltered cigarettes?

20 A. I smoked a little bit of everything.

21 Q. Okay.

22 A. Started with the first pack I ever bought was
23 Phillip Morris. Of course, most of you all ain't
24 old enough to remember little Johnnie, that "Call
25 for Phillip Morris!" You know, that's the thing.

1 It wasn't the cigarette brand because I didn't
2 know the difference.

3 But then I ended up with Lucky Strikes when I
4 went in the service. And then Pall Malls was the
5 thing in the service. Everybody smoked
6 Pall Mall. And then I got on Kools for a while,
7 and then I went to Herbert Tarrytons. I don't
8 know why that ever happened. And like I said, I
9 probably smoked a little bit of every brand at
10 one time or another.

11 Q. Did you ever smoke Kent cigarettes?

12 A. Yes. That was one of the last ones I did smoke.
13 Kent was the micronite filter.

14 Q. You said it was one of the last ones you smoked.
15 Do you recall when you began smoking the Kent
16 micronite filter?

17 A. I can't say for sure. Somewhere along about '88,
18 '89, along in there. About the time I picked it
19 up after that four-year interlude. Because a
20 friend of mine had had some respiratory problems,
21 and they told him if he had to smoke to smoke
22 Kents. So I don't know.

23 Q. You mentioned -- I asked earlier whether you
24 smoked filtered or unfiltered. You said you
25 smoked a little bit of everything, and then you

- 1 listed some brands.
- 2 A. Right.
- 3 Q. At any time, do you recall smoking unfiltered
4 cigarettes?
- 5 A. Lucky Strikes. Pall Malls. The old Kools.
6 Before they came out with filters. And that's
7 about the only ones that I ever smoked that
8 didn't have filters. Phillip Morris. Maybe one
9 or two packs of them, but that was when I was
10 just starting. Maybe one cigarette a day or so.
- 11 Q. Have any doctors informed you that you should
12 stop smoking cigarettes for health reasons?
- 13 A. No, sir.
- 14 Q. When you were smoking cigarettes, do you recall
15 seeing any warnings on the packages?
- 16 A. Not until the last two or three years prior to my
17 quitting.
- 18 Q. In 1994?
- 19 A. Yeah.
- 20 Q. So the first time you can recall seeing a warning
21 on a cigarette package is the early 1990s?
- 22 A. Yes, sir.
- 23 Q. Other than cigarettes, have you used any other
24 type of tobacco products?
- 25 A. Not -- well, used to chew a little back when I

1 was a freshman in high school when I was playing
2 football. That way, I could spit the tobacco
3 juice on the lineman across from me.

4 Q. Other than at that time, have you ever used any
5 other tobacco products?

6 A. No.

7 Yeah. Yeah. I smoked a pipe for about
8 three months one time.

9 Q. Do you recall when you smoked a pipe, what year
10 that was?

11 A. No, sir, I don't know. I know it took me about
12 three months to learn pipe wasn't my thing
13 because my tongue stayed blistered all the time.

14 Q. Can you recall about when it was? Was it in the
15 1950s, '60s?

16 A. No. It would have been in the early '60s I
17 think.

18 Q. And you stopped just because it sounds like you
19 didn't like the pipe?

20 A. I couldn't -- I never learned how to smoke a
21 pipe.

22 Q. Okay.

23 A. They always told me there was an art to it, but I
24 never can you tell on what the art was.

25 Q. Okay. Are you still fine to continue here or do

1 you need a break yet?

2 A. No. I'm doing all right right now.

3 Q. Okay. Getting ready to move into your work
4 history here, and it would have been a good
5 stopping point if you need it.

6 A. Well, you guys want to take a break, we can take
7 one but --

8 As long as you don't make me get up and jog
9 around the table.

10 Q. We won't make you do that.

11 Let's at least lay out your work history here
12 if we can.

13 A. Okay.

14 Q. You graduated high school in 1958. Prior to
15 graduating from high school in 1958, did you have
16 any jobs outside of the home?

17 A. No. Just piddling around the cars and junk. You
18 know how teenagers are. You get a car, you work
19 on it.

20 Q. Prior to graduating high school, you worked on
21 cars?

22 A. Yeah, my own and my buddies'. We all shared
23 working on them.

24 Q. Since that's prehigh school graduation, let's go
25 ahead and address that now.

- 1 A. Okay.
- 2 Q. What type of work did you do on the automobiles?
- 3 A. Well, we'd change the brake linings, brake shoes,
4 and we did cylinder repairs. And transmissions.
5 If you got into drag racing, you had to know how
6 to rebuild a transmission. And basically just
7 anything needed to be done to keep your car
8 running.
- 9 Q. Can you recall any of the types of cars that you
10 worked on?
- 11 A. Chevrolets. Fords. A buddy of mine had an old
12 Nash we worked on. And I worked on dad's cars.
13 He had Dodge, Chrysler products, and basically,
14 that's about it.
- 15 Q. How often would you work on the cars?
- 16 A. Any time something needed to be done. You know,
17 if you wore the brake linings down, you'd hear
18 them grinding, you pulled them off and turned the
19 rotors or -- turned -- rotors -- turned the drums
20 and replaced the brake shoes. And if you had a
21 king pin, a tie rod or -- well, back then, they
22 had king pins and bushings instead of ball
23 joints. Knock them out and change them.
- 24 Q. Where did you perform the automotive repair work?
- 25 A. In the driveway.

- 1 Q. Was it any particular driveway or was there
2 always one that you worked in?
- 3 A. Just whoever's car we was working on, we'd bring
4 our junk down there and work on it wherever it
5 was broke down.
- 6 Q. It sounds like if you did your work in the
7 driveway, it was all done outside?
- 8 A. Oh, yeah. Yeah. Yeah, every now and then,
9 somebody would have a garage that we pulled the
10 car in to work on. Most of the time, it was
11 outside.
- 12 Q. Most of the time, it was outside. Was most of
13 your work on cars done during the at least later
14 spring, early fall and summer months?
- 15 A. Absolutely.
- 16 Q. You didn't want to be changing any metal parts in
17 the dead of winter?
- 18 A. No. You didn't want to be lying on the ground in
19 the snow. If you tore one up in the middle of
20 winter, you just let her sit till spring.
- 21 Q. For any of your work that you did on automobiles,
22 do you believe you were exposed to any asbestos
23 or asbestos-containing products?
- 24 A. Probably from the brake linings and brake -- or
25 brake shoes on the -- yeah. Back then, we used a

1 lot of NAPA auto parts because you could buy them
2 parts cheaper than you could from the dealer.

3 Q. Before we get into that, let me just --

4 A. Oh.

5 Q. -- finish my last thought here. You mentioned
6 brake linings and brake shoes. Those are two
7 separate products; is that right?

8 A. Well, the lining on the brake shoes. It's a
9 metal shoe with an asbestos or some kind of fiber
10 composition material on the steel brake shoe.

11 Q. Can you identify for me any -- withdraw that.

12 Other than the brake linings and the brake
13 shoes, were there any other products that you
14 believe you worked with doing the automobile work
15 that exposed you to asbestos?

16 A. Not that I can say.

17 Q. Can you identify any manufacturers, suppliers,
18 distributors, brand names or tradenames of the
19 brake linings or brake shoes?

20 A. Well, we had Raybestos. And Delco-Rayme brands
21 of General Motors. Bought a lot of parts at NAPA
22 Auto Parts. I don't know who manufactured their
23 brake shoes. And probably -- seemed like there
24 was one called Victor.

25 Q. Any others that you can recall?

1 A. That's the best of my knowledge.

2 Q. We've talked about prior to 1958. After
3 graduating from high school, did you do any other
4 automobile repair work?

5 A. I work at a filling station for about a year.

6 Q. Other than working in an employment like that,
7 did you do any of this other work with your
8 friends in their driveways or anything like that?

9 A. No. Just on my own vehicles.

10 Q. And how long did you continue to work on your own
11 vehicles?

12 MS. RANKE: You mean over the
13 course of time?

14 Q. Over the course of your life, that's right.

15 MS. RANKE: Not just limited to
16 that time period.

17 A. Up until ten years ago. Until I got down in the
18 back and wasn't able to do it anymore.

19 Q. So up until about 1994?

20 A. Yeah, somewhere along in there. I got tired of
21 paying people to do a job and then have to go do
22 it myself anyway.

23 Q. Regarding your work on your own vehicles then --
24 and I'm going to characterize the timeframe from
25 1958 when you graduated high school until about

1 ten years ago.

2 A. Right.

3 Q. Do you believe you worked with or around any
4 asbestos-containing products doing work on your
5 own vehicle?

6 A. Primarily on the braking systems. That's the
7 only thing that I can recall that would have had
8 any asbestos in it.

9 Q. Was there at some point in time after or during
10 the 1958 to 1994 time when you believe the
11 braking systems did not contain any asbestos?

12 A. Later on in the '90s, early '90s, they seemed
13 like they switched to different composite
14 materials.

15 Q. Now, again limiting this question to your work on
16 your own vehicles from 1958 to 1994, can you
17 identify the manufacturer, supplier, distributor
18 or tradename or brand name of any of the braking
19 materials that you used on your own vehicle?

20 A. That would be Raybestos and NAPA Auto Parts and
21 Delco-Rayme. And like I said, it seemed like
22 there was one that was made by Victor. There
23 were probably others, but that's the ones that I
24 can recall.

25 Q. Okay.

- 1 A. Oh, there's another one. Dana Corporation. Dana
2 made brake drums. Or brake shoes.
- 3 Q. During what period of time do you recall the name
4 Dana?
- 5 A. That's the older -- up until 1994.
- 6 Q. How far back would that go? Would that go back
7 to your time in high school or was there some
8 later point?
- 9 A. Probably when I worked at the filling station on
10 up. As best I can remember.
- 11 Q. Some attorneys here might come back to some of
12 those products that you just named there, but I
13 want to now go forward to what I'll call your
14 formal work history when you were actually
15 employed by some outside entity. Starting after
16 high school, what was your first employment
17 outside of the home?
- 18 A. Worked at Dayton Malleable Iron Company.
- 19 Q. You began there in 1958?
- 20 A. 18th day of August, 1958.
- 21 Q. And when did you last work at Dayton Malleable?
- 22 A. April the 4th of 1997.
- 23 Q. During the time you were at Dayton Malleable Iron
24 Company, was there any period of time when you
25 worked at any other place outside of the home?

1 A. No.

2 Q. You mentioned already though that at some
3 point -- withdraw that.

4 Prior to graduating high school in 1958, you
5 did not work outside of the home?

6 A. No.

7 Q. I asked you what your first job was outside of
8 the home after graduating high school, and you
9 identified Dayton Malleable.

10 A. Well, I worked at that filling station.

11 Q. Okay. Was that prior to going to Dayton
12 Malleable?

13 A. Yes.

14 Q. When did you start working at the filling
15 station?

16 A. Right after graduation. Probably.

17 Q. Late spring of 1958?

18 A. Yeah. May, June, somewhere along in there.

19 Q. How long did you work at the filling station?

20 A. Until August of '59.

21 Q. August, 1959?

22 A. Yeah. 18th day of -- when did I say? I was -- I
23 am getting confused on my dates now.

24 Q. That's okay. Let's make sure we have them right
25 here.

- 1 A. Okay.
- 2 Q. Let me step back here.
- 3 A. Okay.
- 4 Q. You graduated high school in May or June of 1958?
- 5 A. Right.
- 6 Q. Your first job that you had after that was at the
7 filling station?
- 8 A. Right.
- 9 Q. When did you last work at the filling station?
- 10 A. Two weeks before I went to work at Dayton
11 Malleable.
- 12 Q. Okay. Did you start working at Dayton Malleable
13 in 1958 or 1959?
- 14 A. 18th day of August, 1959 I believe.
- 15 Q. So you worked at the filling station a little
16 over one year. Does that sound about right?
- 17 A. I'm not sure.
- 18 Q. Okay.
- 19 A. I can't remember whether I went to work at
20 Malleable in '58 or '59 now. Getting confused on
21 the dates. It's been a long time ago. 18th day
22 of August, 19 --
- 23 Q. Other than working at the filling station and at
24 Dayton Malleable, did you have any other
25 employment outside of the home?

1 A. No, sir.

2 Q. What was the name of the filling station?

3 A. It was Lonnie Lane's.

4 Q. Where was that located?

5 A. Ashland Oil station in Flatwoods, Kentucky.

6 Q. Let's do this. Let's take a short break now and
7 let you gather your thoughts here before I get
8 into your work history. Okay?

9 A. Yes.

10 MR. MUSILLI: We're off the
11 record.

12 - - - -

13 (Thereupon, a recess was had.)

14 - - - -

15 MR. MUSILLI: Let's go back on the
16 record.

17 Q. Mr. Sinnott, we just took a short break there,
18 and while we were taking the break, I went back
19 over my notes here to make sure we had some dates
20 correct here, and I want to let you know what my
21 understanding is. If it's correct, let me know
22 that. If I'm incorrect at all, let me know that
23 as well.

24 A. Yes, sir.

25 Q. As I understand it, you went into the military in

- 1 August of 1956?
- 2 A. That's correct.
- 3 Q. And you were discharged in May of 1957?
- 4 A. That's correct.
- 5 Q. And that was still prior to your graduation from
- 6 high school?
- 7 A. Correct. I went back to high school after that
- 8 to finish my school.
- 9 Q. Came back from the military. You went back and
- 10 finished high school?
- 11 A. Right.
- 12 Q. Graduating in the spring, May or June, of 1958?
- 13 A. That's correct.
- 14 Q. You worked at the filling station for a couple
- 15 months?
- 16 A. Yeah. Up until I hired -- about two weeks before
- 17 I hired into Malleable, which would have been
- 18 August of 1958. 18th day of August, 1958.
- 19 Q. Okay.
- 20 We've talked about your work doing automobile
- 21 work outside -- or around the home. We've talked
- 22 about the military and that already so we're
- 23 going to move next into your work at the filling
- 24 station. You were there just for a couple
- 25 months?

- 1 A. A couple, three months at the most.
- 2 Q. What did you do at the filling station?
- 3 A. Well, grease, oil. Changed spark plugs. Brake
4 jobs on cars and trucks. We did a lot of truck
5 work. Some of the bigger trucks.
- 6 Q. Did you do any automobile work? Was it strictly
7 the truck work?
- 8 A. Well, on the cars and trucks. But engine
9 tune-ups and redoing the brake systems. Back
10 then, you pulled the drum off, took your air hose
11 and blowed all the crap off so you could get to
12 everything. It was just dust I guess, but later
13 on, we found out it wasn't just dust.
- 14 Q. You mentioned greasing and oiling the cars,
15 working changing spark plugs, truck work and
16 automobile work, some of the brake work. Are
17 there any other types of jobs that you did at the
18 filling station? Did you pump gas?
- 19 A. Pumped gasoline, yes, sir. Washed cars. If we
20 didn't have anything in the automotive repair
21 section, we washed the vehicles.
- 22 Q. Was there one job that you did more often than
23 the other? In other words, were you primarily
24 pumping gas and --
- 25 A. No. I did them all. Whatever came up, that's

- 1 what you got.
- 2 Q. Can you estimate for us how much of your time
- 3 would have been spent doing brake work versus all
- 4 of the other work?
- 5 A. Probably 50 percent of the time.
- 6 Q. 50 percent of your time was doing?
- 7 A. Doing brake repair jobs. I was pretty proficient
- 8 at that.
- 9 Q. Did the filling station provide any training for
- 10 you?
- 11 A. No.
- 12 Q. Was your training based solely then upon the work
- 13 that you did around the home on automobiles?
- 14 A. Yeah. What I learned on my own. And motor
- 15 repair manuals. I can't remember the name of the
- 16 one that was most popular.
- 17 Q. Was there any particular type or make of car that
- 18 you worked on there?
- 19 A. Anything that came through the garage door.
- 20 Ford, General Motors products, Chrysler products,
- 21 Kaiser-Fraisers and Nashes. We even had an A
- 22 Model Ford for a service truck.
- 23 Q. The work that you did at the filling station,
- 24 when you actually worked on the automobiles, was
- 25 that inside of a bay of a garage or was it

- 1 outside?
- 2 A. Yes, it was in a stall.
- 3 Q. The work that you did was during the summertime
- 4 obviously?
- 5 A. Yes.
- 6 Q. I'm assuming that the bay doors were open?
- 7 A. Part of the time. You know, unless it was
- 8 raining really hard or something where it would
- 9 blow in.
- 10 Q. Assuming the weather was decent though, the doors
- 11 were open?
- 12 A. Right. That's correct.
- 13 Q. Was there any other ventilation in there? Were
- 14 there any windows within the garage?
- 15 A. It had an exhaust fan back around where the parts
- 16 cleaning tank was to pull the fumes off the
- 17 solvent and stuff in the tank. So basically
- 18 that's all.
- 19 Q. Were there any windows in the garage?
- 20 A. Yeah, but they didn't open.
- 21 Q. While working at the filling station, did you
- 22 ever work with or around any asbestos-containing
- 23 products?
- 24 A. Other than the brake linings on the brake
- 25 systems, that's the only ones that I would know

1 of.

2 Q. Can you identify the manufacturers, suppliers,
3 distributors, brand names or tradenames of the
4 brake linings that you used at the filling
5 station? I want you to limit your memory to the
6 filling station work you did.

7 A. It would have been Delco-Rayme products. NAPA
8 products. We bought a lot of parts from NAPA.

9 And probably Dana products. It seems like I
10 remember some of those coming from some of the
11 parts houses.

12 And then they had vendors that came around
13 that sold off of a truck, and I couldn't tell you
14 exactly what products they had.

15 Q. You next went to work at Dayton Malleable then?

16 A. Yes.

17 Q. Is there a reason that you left the filling
18 station to go to work at Dayton?

19 A. Money.

20 Q. Okay.

21 A. Like 25 dollars a week for 40 hours at the
22 filling station and like 22 dollars a day for
23 going to work at Dayton Malleable. Not quite
24 that much. It was \$1.39 an hour. But that's
25 quite a bit of difference in pay.

- 1 Q. You started there in August of 1958?
- 2 A. Yes, sir.
- 3 Q. What was your job when you hired in?
- 4 A. I hired in as just a general laborer, and they
- 5 put me in what they called the finish department
- 6 and assigned me to the casting processor, which
- 7 just depended on the type of castings they were
- 8 running that day. Sometimes, you'd have to grind
- 9 them a little bit. Sometimes, you'd have to bore
- 10 a hole through them and take a little chipping
- 11 hammer and peck the fins off of them.
- 12 Q. How long did you work as a general laborer?
- 13 A. Until 1960 sometime. I couldn't -- can't
- 14 remember. And then I bid into the maintenance
- 15 department on a millwright apprenticeship.
- 16 Q. That was in 1960?
- 17 A. I'm fairly certain it was 1960.
- 18 Q. As a millwright apprentice?
- 19 A. Millwright apprentice.
- 20 Q. Did you complete the apprenticeship?
- 21 A. Oh, yeah. We had what they called a four-year
- 22 apprenticeship, and you had automatic
- 23 progression. You'd have to take a test every six
- 24 months to see that you were proficient at that
- 25 level to move to the next level. And I stayed in

1 the maintenance department almost ten years.

2 Q. The entire time that you were in the maintenance
3 department, were you in the millwright
4 apprenticeship or a journeyman --

5 A. No. I was a journeyman. After four years, I was
6 a journeyman.

7 Q. But for the entire time you were in the
8 maintenance department, you were either an
9 apprentice or you were a journeyman millwright?

10 A. Yes, sir. That's correct.

11 Q. You didn't have any other title throughout the
12 time you were in the maintenance department?

13 A. No. They offered me a supervisor's job two or
14 three times, and I didn't see that I was old
15 enough at the time. I didn't feel like I should
16 be telling people who were 40 or 50-year-olds how
17 to do their job and I was only in my 20s.

18 Q. You said the apprenticeship was a four-year
19 program?

20 A. Yes, sir.

21 Q. Can you describe the steps for me through the
22 apprenticeship program?

23 A. We did pipe fitting, welding, acetylene welding.

24 Q. Before you get to that, did you start as a helper
25 or what was your level of apprenticeship?

1 MS. RANKE: You mean in terms of
2 titles?

3 MR. MUSILLI: Yes.

4 A. That's been so long ago. Seems like they started
5 you out as an apprentice third class and then
6 second class and then up to till you finally
7 ended up being a journeyman. But you went
8 through a progression every six months. And I
9 had -- for years, I carried a card that told me
10 what steps I had gotten when, but after 40 years,
11 that card probably -- like me, it's probably wore
12 out.

13 Q. Describe for me some of the duties that you did
14 in the apprentice program.

15 A. We did oven overhauls at annealing ovens. They
16 had what they called the annealing ovens, and
17 then they had what they called muffle ovens. And
18 when I was in there, first started on them, the
19 old muffle ovens were brick with a -- seemed like
20 they were a railroad rail framework. And them
21 had brick arches in them, and then you'd throw
22 the casting back in there. Then they had big
23 burner tubes in there that were lit on the
24 outside. And, of course, they were all lined
25 with some kind of gunite refractory they sprayed

1 inside. And they'd hold those castings in there
2 and set them down, and then they'd close the big
3 door and seal the door with a product. The one I
4 remember mainly was Eagle-Picher. And different
5 types of asbestos rope packing we'd put around
6 the doors to seal them. And, of course, then
7 we'd light the oven up, and they'd cook those
8 castings for so many hours and let them cool back
9 down and pull them out. And that was the older
10 muffle ovens.

11 Then we had these four annealing ovens, and I
12 can't remember the manufacturer of them at all.
13 But they was basically the same thing. We had
14 water-cooled bulkheads on each end of the ovens,
15 and when we'd overhaul the ovens, we'd have to
16 pull the bulkheads so they could get in there to
17 do the brickwork in there. Which we didn't do
18 the brickwork.

19 Q. You did some of the oven overhaul when you were
20 in the apprenticeship program?

21 A. Yes, sir. Yes, sir.

22 Q. You're answering some of my questions before I
23 finish. I want you to hear the whole question so
24 you know exactly what the question is.

25 A. All right. I'm sorry. Sorry.

1 Q. That's okay.

2 Other than performing oven overhauls, did you
3 do any other types of work as an apprentice, a
4 millwright apprentice?

5 A. Yeah. We did pipe work.

6 Q. Would that be installing the actual pipe?

7 A. Tearing out the old pipelines and replacing them
8 with new lines. And the old lines had probably
9 been in there 20 years maybe, and they had this
10 white jacketing on them. You'd strip all that
11 stuff off before you could burn the old pipes in
12 two and take them down.

13 Q. Other than oven overhauls and pipe work, did you
14 do any other work as an apprentice?

15 A. Welding and burning.

16 Q. Was the welding performed on the old pipework
17 that you just described or --

18 A. Some of it. Some of it was on the pipework.
19 Some of it was on the ovens. As a millwright in
20 a foundry, you do it as a jack of all trades.

21 Q. You mentioned some burning. What did you mean by
22 burning?

23 A. Oxyacetylene burning. I burned steel. When we'd
24 strip the insulation off the old pipes to cut
25 them down, because most of them was rusted out

1 anyway, we'd get a cutting torch and cut them and
2 dump them in the dumpsters.

3 Q. Were there any other types of jobs you performed
4 in the apprentice program?

5 A. Machinery overhauls.

6 Q. What type of machinery?

7 A. Molding machines.

8 Q. Molding?

9 A. Molding machines. Hydraulic cylinders. We
10 rebuilt the big cylinders underneath the big
11 molding machines. That involved pulling the
12 packing gland, putting new packing in them,
13 checking the cylinder rods to be sure they
14 weren't scored too deep. If they were, we'd get
15 a few -- we had cylinder rods that was that big
16 around then, and you'd use one-inch packing to
17 put in for a packing gland.

18 Q. You've mentioned oven overhauls, pipe work, some
19 welding, some burning and some machinery
20 overhauls--

21 A. Yes, sir.

22 Q. -- that you did when you were in the apprentice
23 program.

24 A. Right.

25 Q. Did you perform all of those duties or some of

- 1 those duties when you became a journeyman?
- 2 A. Oh, yes, sir.
- 3 Q. Were there any of those duties that you did not
- 4 perform as a journeyman?
- 5 A. No.
- 6 Q. Okay.
- 7 A. No. That was the -- what the apprenticeship
- 8 program was for was to work with the journeymen
- 9 to learn how to do it, and then I in turn or the
- 10 journeyman later would train the new apprentices
- 11 coming in.
- 12 Q. Were there any jobs that you performed as a
- 13 journeyman that you did not perform as an
- 14 apprentice in the millwright trade?
- 15 A. Probably. Not that I can think of.
- 16 Q. During your work -- from 1960 until approximately
- 17 1970 when you were a millwright at Dayton
- 18 Malleable, did you have any other position or
- 19 title other than being in the millwright program?
- 20 A. No, sir.
- 21 Q. During the 1960 to approximately 1970 timeframe
- 22 at Dayton Malleable, do you believe you were
- 23 exposed to any asbestos or asbestos-containing
- 24 products?
- 25 A. Lots of it.

1 Q. Can you identify any types of products?

2 A. Well, we had one called Eagle-Picher. We had
3 some Dow Corning stuff. Some asbestos
4 fiberboard. I'm not sure. It seemed like there
5 was one called -- well, I know there's a Dow
6 Corning or Owens Corning fiberboard.

7 Q. Let me interrupt you just for one second here.

8 A. Okay.

9 Q. When I am asking you about types of products, I
10 am asking you about what the product is and not
11 who made it. In other words, I'm asking you to
12 identify a car as opposed to a Toyota car.

13 A. I got you.

14 Q. Okay?

15 A. Well, we had asbestos rope packing. We used
16 quarter-inch all the way up to one-inch.
17 Asbestos blanketing to put around the hot casting
18 shakers.

19 Insulation on the pipes. And then while I
20 was still in the millwright program, we put in
21 some electric furnaces.

22 Q. And I want you to understand my question is
23 limited only to your work as a millwright.

24 A. Okay.

25 Q. You mentioned electric furnaces?

- 1 A. Right. They were Brown and Boveri furnaces.
- 2 Q. Any other types of asbestos-containing products
3 you worked with as a millwright?
- 4 A. We used a lot of asbestos millboard up there on
5 them furnaces and asbestos blanketing to wrap the
6 coils in.
- 7 Q. You've identified rope packing, blanketing, pipe
8 insulation, electric furnaces and millboard.
- 9 A. Right.
- 10 Q. Are there any other types of products that you
11 were exposed to that you believe contained
12 asbestos when you worked as a millwright at
13 Dayton Malleable?
- 14 A. Probably some of the lining material that -- the
15 gunite materials that they shot into the old
16 cupolas and used to line the furnaces with. It
17 had asbestos in it I'm certain. And there were
18 several different brands of it that I can recall.
- 19 Q. Okay. Before we get to the brand, is that all --
20 are those all of the products that you can
21 identify?
- 22 A. Well, unless it would have been some of the
23 insulating brick that they used in the furnace.
24 They may have contained some. I'm sure they
25 contained something in materials up to 2,000

1 degrees.

2 Q. Can you identify any of the manufacturers,
3 suppliers, distributors, brand names or
4 tradenames of the rope packing that you would
5 have worked with as a millwright?

6 A. Actually, I'm not sure about the rope packing.
7 I'd say maybe Garlock maybe was one. But I'm not
8 positive about who manufactured it because --

9 Q. And if you can't remember, that's fine. Just let
10 me know that. I don't want you speculating.

11 A. No. I'm not sure.

12 Q. Okay. What about the blanketing; can you
13 identify any manufacturers, suppliers,
14 distributors, tradenames or brand names of the
15 blanketing you used as a millwright?

16 A. Not really. Because they all came through a
17 supplier and we just checked it out of the
18 storeroom department. And sometimes it was in a
19 box and sometimes it wasn't.

20 Q. Can you identify any of the manufacturers,
21 suppliers, distributors, tradenames or brand
22 names of the pipe insulation?

23 A. Well, seems like there was some old Dow Corning
24 stuff on the old pipe insulation we were tearing
25 out. Might have been Owens-Illinois or one of

- 1 those. There was some that still had the brand
2 on it, but I couldn't swear to anything on that.
- 3 Q. Are there any others that you can recall?
- 4 A. Not that I can recall, no.
- 5 Q. You mentioned Brown and Boveri electric furnaces?
- 6 A. Yes.
- 7 Q. Were those the only -- was that a manufacturer?
- 8 A. Yes. That was a German manufacturer I think.
9 They made it in Germany.
- 10 Q. Were there any other manufacturers of the
11 electric furnaces?
- 12 A. Not those down there. Now, later on --
- 13 Q. My question only goes to your work as a
14 millwright.
- 15 A. Okay.
- 16 Q. Can you identify the manufacturer, supplier,
17 distributor, tradename or brand name of the
18 millboard that you worked with as a millwright?
- 19 A. Seemed like there was a Carey millboard. Owens.
20 I can't remember whether it was Owens-Illinois or
21 Owens Corning. I'm not positive. Because we'd
22 just go out and get a skid of it and bring it on
23 a forklift and bring it in and do what we had to
24 do with it.
- 25 Q. Any others of the millboard?

- 1 A. Not that I can think of offhand.
- 2 Q. Can you identify the manufacturers, suppliers,
3 distributors, tradenames or brand names of the
4 gunite or lining material?
- 5 A. There was a Narco product. I remember that
6 because it had a big Indian head on it. And then
7 there was a truck that came in there from Babcock
8 & Wilcox, a big tanker truck. They hauled it in.
9 And a Hill & Griffiths Company, they hauled that
10 in.
- 11 Q. Can you repeat that last one?
- 12 A. Hill & Griffiths.
- 13 Q. Hill & Griffiths?
- 14 A. Yeah. They hauled gunite in tanker trucks.
15 And then BMI, Blow Mix, Incorporated. That
16 was a gunite material that they shot in the
17 furnaces.
- 18 And offhand, that's -- right now, that's all
19 I can think of.
- 20 Q. Finally, the insulating brick. Can you identify
21 the manufacturer, supplier, distributor, brand
22 name or tradename of the insulating brick that
23 you used as a millwright?
- 24 A. Well, some of it was made by Louisville Firebrick
25 Company of Kentucky, and some of it was made

- 1 right there in Ironton. Ironton Firebrick
2 Company.
- 3 Q. Any others?
- 4 A. No. That's the only two names that pop into my
5 head right now.
- 6 Q. Okay. All of your millwright work was performed
7 in the maintenance department?
- 8 A. Yes, sir.
- 9 Q. Was that one particular area of the facility?
- 10 A. No. It was over the entire plant. We didn't --
11 I was what they called a journeyman general
12 millwright, and if they needed help in one
13 department, I'd go. They'd send me over there.
14 Some guys were assigned to specific departments,
15 but like I said, I was pretty versatile, and if
16 they needed help, I'd go there and over to the
17 other department, whatever they needed.
- 18 Q. Was there any time during the ten-year period
19 that you were a millwright where you were
20 assigned to one particular area more so than the
21 others?
- 22 A. Yes. I was down on the -- what we called the
23 Herman molding line.
- 24 Q. Herman molding line?
- 25 A. H-e-r-m-a-n.

1 Q. Of that ten-year period, how much of your time
2 would you have spent on the Herman molding line?

3 A. I was down there about a year.

4 Q. One year total?

5 A. Down on the --

6 Q. On the Herman molding line?

7 A. Yeah. I was assigned to that line for about a
8 year.

9 Q. Okay.

10 And what was done on the Herman molding line?

11 A. Overhauled cylinders. Rebuilt the molding
12 machine. Which is -- conveyor belts. Sand
13 equipment. Elevators. Just anything they had to
14 do on the line. Depended on what was broke down
15 that day.

16 Q. Other than the Herman molding line, was there any
17 other area within the plant that you worked at
18 primarily as a millwright?

19 A. No. The rest of the time, I was what they called
20 a floater I guess. Like I said, if somebody
21 needed help in this department, they'd send me
22 over there.

23 Q. Okay.

24 Basically, when you arrived at work, you
25 learned where you had to go?

- 1 A. Right. Yeah, all but that one -- I took a
2 midnight shift to help them out down there. They
3 were having some problems on that line.
- 4 Q. For your time at Dayton Malleable when you were a
5 millwright, was there one particular shift that
6 you worked more than the others or did you
7 rotate?
- 8 A. I rotated.
- 9 Q. I don't know if I asked you some questions when
10 you were a general laborer in the finishing
11 department. What were your job duties as a
12 general laborer?
- 13 A. Casting processes they called them. Just
14 depended on what run of castings they had going
15 on that day. And we took a little hand grinder
16 and ground some of the fins off. And some of
17 them you had to grind on the big grinding wheel.
18 Some of the -- of what they called universal
19 yoke, brought them over. You'd had to set them
20 up in the machine, run the big drill down through
21 them to cut the fins out. Basically, it was just
22 knocking the rough edges off the castings.
- 23 Q. Did you operate a machine that knocked the rough
24 edges off?
- 25 A. Right. Yes, sir.

- 1 Q. Was this finishing department one specific area
2 of the facility?
- 3 A. Right. Yes.
- 4 Q. Was all of your time as a general laborer spent
5 in the finishing department?
- 6 A. Yes.
- 7 Q. During your work as a general laborer, were you
8 exposed to any asbestos-containing products?
- 9 A. If I was, I don't recall.
- 10 Q. You said you worked as a millwright for about ten
11 years, which gets us until about 1970, so we'll
12 use that as a rough beginning period for this
13 next group.
- 14 A. Right.
- 15 Q. After you worked as a millwright in the
16 maintenance department, what was your next job?
- 17 A. I bid into the electrical department. And the
18 classification in there was called an electrical
19 millwright.
- 20 Q. Was this another apprenticeship program?
- 21 A. Yes, sir.
- 22 Q. How long did this apprenticeship run?
- 23 A. Four years.
- 24 Q. And at the end of the apprenticeship program,
25 were you a journeyman electrician?

- 1 A. Yes, sir.
- 2 Q. How long were you in the electrical department?
- 3 A. '70, '80, '90. From 1970 till 1997.
- 4 Q. You retired from the electrical department?
- 5 A. Right. I didn't retire. I was disabled from
- 6 the --
- 7 Q. Okay. You took disability.
- 8 A. Yes.
- 9 Q. Can you describe some of the jobs you performed
- 10 in the apprenticeship program in the electrical
- 11 department?
- 12 A. I just -- about like the maintenance department.
- 13 You just worked with the older electricians till
- 14 you learned the different jobs you were working
- 15 on. Like if we had a high-voltage contactor,
- 16 you'd work with him to learn how to tear it apart
- 17 and rebuild it. Or if you had running conduit,
- 18 you'd work with them until you learned how to do
- 19 that. It was an automatic progression thing just
- 20 like the other one. They would take you in and
- 21 ask you questions every six months, and if you
- 22 were satisfactory, you'd go to the next pay
- 23 grade.
- 24 Q. You mentioned running conduit, working on
- 25 conductors. Are there any other types of duties

1 that you had?

2 A. Oh, yeah.

3 MS. RANKE: I think he's asking
4 you about the particular job.

5 Q. The particular job that you did through the
6 apprenticeship program.

7 A. Oh. We overhauled the electric furnaces. In
8 conjunction with the millwrights. I just changed
9 hats more or less.

10 Q. Were those the same furnaces you identified?

11 A. Yeah. We put in two new ones.

12 Q. We'll get to those in a minute. What other types
13 of jobs did you have as an apprentice?

14 A. Well, like I said, you're working with the
15 journeyman, and as we overhaul a furnace or
16 something, they had what they called yokes around
17 the coils of one of the furnaces. There was like
18 22 of them. You had to pull them off, strip the
19 old asbestos sheeting off of them and reglue the
20 new one and then put the asbestos blanketing
21 around the outside of the coil and put the yokes
22 back up.

23 The high-voltage contactors all had arc
24 chutes they called it. And to get into the
25 contactor, you had to take the arc covers off.

1 And as far as I know, they had asbestos materials
2 in the arc chutes.

3 Q. Any other types of jobs?

4 A. I worked on a lot of what they called -- we
5 called them tap changers. That's where they
6 raised and lowered the voltage on the furnaces.
7 They were all high voltage. Went up to 12,800
8 volts. And we'd have to tear those apart every
9 six months or so and check inside of there, see
10 if anything was burnt. Anything was burnt we'd
11 replace.

12 And just anything electrical came along.
13 Tearing out old wiring that had been there for
14 years and years, high-voltage wiring. And
15 running new wiring. Of course, I worked on
16 anything from 110 volts to 12,5 so you get a
17 little nervous sometimes.

18 Q. Were there any jobs that you did as an apprentice
19 that you did not do as a journeyman electrician?

20 A. No.

21 Q. Were there any jobs as a journeyman electrician
22 that you did not do as an apprentice?

23 A. Other than train the next bunch of apprentices.
24 That was the only thing.

25 Q. During your work in the electrical department

1 from 1970 to 1997, did you work with or around
2 any asbestos or asbestos-containing products?

3 A. Yes, I did.

4 Q. Can you identify the types of asbestos-containing
5 products?

6 A. Asbestos millboard we used to reinsulate the
7 yokes. Asbestos blanketing we used to wrap
8 around the coils before we'd put the yokes back
9 on. And then the asbestos millboard they would
10 put down inside the furnace before they put the
11 refractory in to -- they put the asbestos
12 millboard in there against the coil, and then
13 they put a shell down in there, and then they
14 would blow the refractory down in between the
15 millboard and the liner shell what they called
16 it.

17 And then all our high-voltage contactors that
18 we worked on had asbestos arc chutes and covers.
19 That's because when you're drawing -- when you
20 pull the contactor that's got high voltage on it,
21 it usually draws a blue flame that's six, eight
22 inches, and you've got to have a high-voltage arc
23 chute cover to keep it from blowing up.

24 Q. You've mentioned millboard, blanketing and then
25 the arc chuting or covers. Are there any other

1 types of asbestos-containing products you worked
2 with or around in the electrical department from
3 1970 to 1997?

4 A. Probably some of the old high-voltage cable we
5 tore out. It had an asbestos-looking insulation
6 on it, but I couldn't tell you for sure.

7 Q. Anything else?

8 A. That's all I can think of offhand.

9 Q. Can you identify any of the manufacturers,
10 suppliers, distributors, brand names or
11 tradenames of the millboard?

12 A. Carey millboard. Dow Corning. I think it was
13 Owens Corning. I really don't know. Just
14 whatever they had in the storeroom, that's what
15 we got.

16 Q. Can you identify any of the manufacturers,
17 suppliers, distributors, tradenames or brand
18 names of the blanketing that you would have
19 worked with as an electrician?

20 A. Not other than the same stuff that we used as a
21 millwright. I'm not sure what the brand names
22 were.

23 Q. Can you identify the manufacturers, suppliers,
24 distributors, tradenames or brand names of the
25 arc chutes or the arc chute covers?

1 A. General Electric. Westinghouse. And Brown and
2 Boverly on the big ones up there. And they
3 specified what material you was supposed to use
4 to rebuild their furnaces with.

5 MR. KRAMER: I'm sorry. Who did?
6 Brown and Boverly?

7 THE WITNESS: Yes.

8 A. They sent technicians in from Germany and
9 Switzerland. The only thing I really remember
10 about them, they were very proficient at their
11 work and they griped because they didn't have
12 beer machines.

13 Q. Is it wise to drink beer and play with
14 electricity?

15 A. Not in my opinion, but like I said, I'm not from
16 over there, and I understand that they do have
17 that in --

18 Q. Cable. Can you identify the manufacturers,
19 suppliers, distributors, tradenames or brand
20 names of any of the asbestos cable?

21 A. That I can't. That was installed back in the
22 '30s and we were just tearing it out.

23 Q. You mentioned also that you overhauled some
24 electric furnaces?

25 A. Yes.

1 Q. You mentioned that there were two new furnaces
2 during the time you were in the electrical
3 department.

4 A. Yes.

5 Q. Do you have any knowledge as to whether those two
6 new furnaces would have exposed you to asbestos
7 abdomen?

8 A. The same as when I was in maintenance. They were
9 Brown and Boverly furnaces. They were just
10 upgraded a little.

11 Q. So the two new furnaces are not of a different
12 manufacturer; it's still the Brown and Boverly?

13 A. Right. Yes, sir.

14 Q. Do you know when that upgrade occurred timewise?

15 A. Sometime in the early '70s.

16 Q. And then in 1997, you took disability from Dayton
17 Malleable?

18 A. Right. Yes. Actually, Internet.

19 Q. And I understand that the name changed, but I'm
20 still referring to the same employer.

21 A. Yes. Dayton Malleable.

22 Q. Since 1997, have you had any employment?

23 A. No, sir.

24 Q. Since 1997, do you have any reason to believe you
25 were exposed to any asbestos or

1 asbestos-containing products?

2 A. No, sir. Not that I would know of.

3 Q. For your work history at Dayton Malleable, we

4 talked about your work as a general laborer, your

5 work through the entire millwright apprenticeship

6 up through journeyman millwright and then your

7 work through the electrician apprenticeship up

8 through the journeyman electrician?

9 A. Yes.

10 Q. Now, have we now talked about all the various job

11 titles or job positions you've had at Dayton

12 Malleable?

13 A. I worked -- got mad one time and bid out of the

14 electric department and went in the lab for about

15 30 days. Which was the sand analysis lab.

16 Q. What analysis?

17 A. Sand analysis.

18 Q. Do you recall when you did that, what year it

19 was?

20 A. No, sir. I don't know.

21 Q. You said about 30 days. I'm assuming after those

22 30 days, you went back to being a journeyman

23 electrician?

24 A. Right. If I'd have stayed the full 30 days, I'd

25 have been stuck.

1 Q. When you worked in the sand analysis lab, what
2 did you do?

3 A. Well, we got sand samples off the different
4 molding lines and put them in a little oven and
5 baked them and then tensile strength -- we had a
6 little machine you put the thing in, and it
7 tested the tensile strength of the sand that they
8 were putting in the molds to see that it would
9 hold together long enough to make the castings.

10 Q. Was this lab one particular area of the facility?

11 A. Yes, it was.

12 Q. Was it self-contained and away from all the other
13 manufacturing areas?

14 A. Yes. Yes.

15 Q. During your work in the sand analysis lab, were
16 you exposed to any asbestos or
17 asbestos-containing products?

18 A. Not that I know of in there. It was fairly
19 clean.

20 Q. Are there any other jobs you had at Dayton
21 Malleable that we haven't discussed already?

22 A. No, sir. That pretty well covers everything.

23 Q. Have we identified all the various types of
24 asbestos-containing products that you believe you
25 worked with or around at Dayton Malleable at any

- 1 time?
- 2 A. Well, I had some packing materials like cylinder
- 3 packing, valve packing.
- 4 Q. Is that the rope packing that you already talked
- 5 about?
- 6 A. No. No. No.
- 7 Q. Okay.
- 8 A. We had -- while I was still a millwright -- I
- 9 just happened to think when I said valves.
- 10 We overhauled big water valves and hydraulic
- 11 valves, and they were made by a company by the
- 12 name of Crane I believe.
- 13 Q. Are you talking about the valves were made by
- 14 Crane?
- 15 A. Yeah. The valves were made by Crane, and then
- 16 they made the packing kits that we had to rebuild
- 17 them with.
- 18 Q. And that was in your work as a millwright?
- 19 A. Yes.
- 20 Q. Did you work with this product as an electrician?
- 21 A. No. No. We didn't overhaul valves.
- 22 Q. Are there any other products that you can recall
- 23 that we haven't already discussed?
- 24 A. Other than did I mention Garlock packing?
- 25 Q. You mentioned rope packing earlier that you also

1 associated with the name Garlock but you weren't
2 sure.

3 A. Well, there's Garlock packing that we used to
4 repack those big cylinders with when I was in
5 maintenance. It had asbestos in it, but it also
6 had some lubricating stuff in it, too. So I'm
7 not sure exactly what it was.

8 Q. Okay. Have we now talked about all the various
9 types of asbestos-containing products you would
10 have worked with or around at Dayton Malleable at
11 any time during your work history?

12 A. As far as I can recall.

13 Q. And have we now talked about all the various
14 manufacturers, suppliers, distributors,
15 tradenames or brand names of asbestos-containing
16 products that you believe you worked with or
17 around at Dayton Malleable at any time?

18 A. I think so. I'd have to go back through your
19 notes with you.

20 Q. Everything that you can recall you've told us
21 about?

22 A. Right. Yes.

23 Q. I understand you were a member of a union at
24 Dayton Malleable?

25 A. Yes, sir.

- 1 Q. And was that the United Steelworkers of America?
- 2 A. Yes, sir. Local 3664.
- 3 Q. You joined the union when you began working at
- 4 Dayton Malleable?
- 5 A. Within 30 days.
- 6 Q. So by September of '58?
- 7 A. Right. That was a mandatory thing.
- 8 Q. You were still a member of the union when you
- 9 took disability in '97?
- 10 A. Yes, I was.
- 11 Q. Are you still a member of the union or --
- 12 A. Well, I don't think so because they don't send me
- 13 the magazine anymore. They might think I'm dead.
- 14 Q. You were obviously an active member of the union
- 15 up until your disability in 1997?
- 16 A. Right. Yes, sir. I was a shop steward, a
- 17 grievance man.
- 18 Q. I was going to ask you about some of that. Did
- 19 you ever hold an office in the union?
- 20 A. Yes. I was president for 18 months. In --
- 21 Intermet bought the plant in '88 so it would have
- 22 been 1988 and '89.
- 23 Q. Were you ever an officer at any other time?
- 24 A. Well, I was grievance man, which is departmental
- 25 grievance man in the electric department. And I

1 was a shop steward while I was in the maintenance
2 department.

3 Q. When did you serve as a grievance man in the
4 electrical department?

5 A. From about the fourth year I was in there.

6 Q. Approximately 1974?

7 A. Right. Until the plant shut down in '84.

8 Q. How long were you a shop steward in the
9 maintenance department?

10 A. Probably a year I'd say.

11 Q. Can you recall what year that was?

12 A. Towards the latter part of my time in there.

13 Q. Late 1960s?

14 A. Right. Yes, sir.

15 Q. Did you hold any other positions within the
16 union?

17 A. No.

18 Q. Throughout your union history, did you regularly
19 attend union meetings?

20 A. Oh, yeah.

21 Q. Were the meetings monthly?

22 A. Once a month, yes, sir. Unless they had a
23 special called meeting for something.

24 Q. Are you okay?

25 A. Yeah.

- 1 Q. Okay. We're going to try to take a break here in
2 about five minutes if we can.
- 3 A. Okay.
- 4 Q. During any of your union history, do you ever
5 recall any safety meetings sponsored by the union
6 or held by the union?
- 7 A. Yeah. We had safety meetings along with the
8 plant safety director about once every month or
9 so. That was the last ten years that the plant
10 was open. Prior to that, you didn't mention
11 safety.
- 12 Q. At any time throughout your union history, did
13 you ever attend a meeting where asbestos or any
14 potential hazards of asbestos were discussed?
- 15 A. Not until the latter years of plant operation.
- 16 Q. And what do you mean by the latter years? Can
17 you estimate the timeframe?
- 18 A. The last eight or nine years.
- 19 Q. During the 1990s?
- 20 A. Right. Actually, from 1986 on. That's when they
21 started telling everybody that asbestos was --
- 22 Q. Do you recall what you were told at these
23 meetings about asbestos?
- 24 A. That there was some potential hazards to having
25 lung problems. Could develop into various types

1 of cancers.

2 Q. Anything else?

3 A. That we should be checked every so often to be
4 sure that we didn't have it. And then they
5 started advising us then to -- when we were
6 working around where we knew it was to wear dust
7 masks. But prior to that, we were never offered
8 any dust masks or anything like that.

9 Q. Were any type of respiratory equipment or
10 protection ever made available at Dayton

11 Malleable?

12 A. Like I said, after the -- 1986 on about.

13 Q. But at no time prior to that?

14 A. No.

15 Q. Did you ever receive any publications at any time
16 as a union member?

17 A. The union, we got them. At the local union hall.
18 They sent bulletins out on various safety
19 features, and we'd discuss them at the union
20 meetings with the membership and then approach
21 the company about it to see what they had to say
22 about it, but they didn't usually reply very
23 well.

24 Q. Did you receive the union bulletins when you
25 hired in back in 1958?

- 1 A. No.
- 2 Q. When did the union bulletins begin being offered
3 to the membership?
- 4 A. Sometime in the '80s. '86, '87, somewhere along
5 there. After we started the plant back up and it
6 was employee owned.
- 7 Q. Do you recall receiving any publications, union
8 bulletins or otherwise, that would have addressed
9 asbestos or any potential hazards?
- 10 A. Not prior to 1986, no.
- 11 Q. Did you keep copies of these bulletins? Do you
12 have copies?
- 13 A. Not anymore. I cleaned out my drawers and file
14 cabinets about two years ago.
- 15 Q. Did you ever receive a publication called the
16 United Steelworkers Journal Monthly?
- 17 A. I think I did while I was president.
- 18 Q. Is that not a publication that would be given to
19 the membership as a whole?
- 20 A. I don't think so, no. I think it was primarily
21 for the officers and the international
22 representatives.
- 23 Q. Do you ever recall any articles in the Journal
24 Monthly that would have addressed asbestos or any
25 potential hazards?

1 A. There may have been, but I can't recall.

2 Q. Did anybody from the international ever advise
3 your local union of any potential hazards
4 regarding asbestos?

5 A. After 1986, we were advised.

6 Q. But no time prior to that?

7 A. No time that I can recall prior to that.

8 MR. MUSILLI: Let's go off the
9 record.

10 - - - -

11 (Thereupon, a recess was had.)

12 - - - -

13 MR. MUSILLI: Let's go back on the
14 record.

15 Q. Mr. Sinnott, we just took a little bit of an
16 extended break here to recover a little bit and
17 to get our thoughts forward so we can see if we
18 can finish the deposition here today. I have a
19 couple of quick follow-up questions about your
20 work at Dayton Malleable.

21 You mentioned that there were several name
22 changes for Dayton Malleable and there was some
23 point in the '80s where it went from a
24 company-owned to an employee-owned company on an
25 ESOP program?

- 1 A. For two years.
- 2 Q. Was there any period of time during that period
3 of time of that change from the company-owned
4 business to the employee-owned business where the
5 facility was closed down for an extended period?
- 6 A. It was closed down for two years.
- 7 Q. And from what year to what year was that?
- 8 A. 1984 to 1986. But I can't tell you the months.
9 I know after they closed the plant down, we
10 negotiated trying to buy it and get the moneys
11 together to buy it to reopen it.
- 12 Q. Was there any other period of time throughout
13 your work history at Dayton Malleable where there
14 was a shutdown like that?
- 15 A. A strike or two.
- 16 Q. Outside of strikes?
- 17 A. No. No.
- 18 Q. And that was going to be my next question then,
19 strikes. Were there any extended strikes that
20 you can recall during your work history that
21 would have lasted more than a month?
- 22 A. We had one sometime in the '70s that lasted about
23 three months.
- 24 Q. Were there any others?
- 25 A. No. Most of them were three or four days and it

1 was over with.

2 Q. Prior to 1994, was there any time that you had a
3 reason to be off of work at Dayton Malleable for
4 any extended period of time other than strikes or
5 during the closedown?

6 A. When I hurt my back in '94.

7 Q. I want to ask prior to 1994, was there any period
8 of time?

9 A. No, huh-uh. No.

10 Q. And we'll get to your back injury here shortly.

11 A. Okay.

12 Q. At any time during your lifetime, have you ever
13 done any home remodeling?

14 A. Do what?

15 Q. Any home remodeling?

16 A. No, sir.

17 Q. I next want to talk about your medical condition
18 and medical history a little bit. Do you have a
19 family doctor?

20 A. No. I go to the Veteran's Administration
21 Hospital. I've got a general care practitioner
22 up there.

23 Q. And where is that VA Hospital located?

24 A. Huntington, West Virginia. Spring Valley Drive.
25 I don't know the street number but --

- 1 Q. In your answers to interrogatories, you
2 identified for us some various facilities where
3 you've sought treatment. One was the VA Medical
4 Center?
- 5 A. Yes.
- 6 Q. Now, you identified on there lung cancer
7 treatment. Have you been treated for any other
8 reason by the VA Hospital other than for your
9 lung cancer?
- 10 A. Just general colds and various other things. I
11 went every three months or so for general
12 checkups. Sometimes, it would be six months.
13 Just depended on how busy they were.
- 14 Q. When you would go for checkups, what would they
15 do?
- 16 A. They'd take x-rays. Usually run an EKG. Just
17 give you a general physical.
- 18 Q. When you say x-rays, you're talking about chest
19 x-rays?
- 20 A. Chest x-rays.
- 21 Q. When did you begin having general checkups at the
22 VA Hospital?
- 23 A. Well, let's see. In '97. We had -- I'm trying
24 to think. I think I had 29 months that the
25 company had to carry me on their insurance

1 program and I could pay the same as if I was
2 working, and at the end of that 29 months, it was
3 going to be \$800 a month, and I went to the VA.

4 Q. So you began going to the VA about 29 months
5 after your disability in 1997?

6 A. Right. Somewhere along about there. I'd have to
7 go check the records up there to be sure.

8 Q. And we're talking either late 1999 or sometime in
9 2000 at some point?

10 A. Right. Yes, sir.

11 Q. Prior to going to the VA Hospital for general
12 checkups, did you ever receive general checkups
13 from any other provider?

14 A. Not for several years, no. Not just general
15 checkups, no, sir.

16 Q. You also indicated that you have been treated at
17 Good Samaritan Hospital in Lexington, Kentucky?

18 A. Yeah. I had a partial detachment of the retina
19 in my right eye, and that was in February.

20 Q. It looks like 1982 from your response to the
21 interrogatories.

22 A. I would say about then. I couldn't swear to it.
23 I know it was on Valentine's Day when they did
24 the surgery on me.

25 Q. Was the surgery successful?

- 1 A. Oh, yeah. Yeah. It's still holding together.
- 2 Q. You've had no postsurgery complications?
- 3 A. No, huh-uh.
- 4 Q. What caused the detached retina?
- 5 A. They didn't know. It was a real chilly morning,
6 and there was a skiff of snow on the car, and I
7 went out to sweep the snow off, and I thought
8 "Man, my glasses fogged up." Put them back on,
9 and "Man, my glasses are fogging up again."
- 10 Well, my glasses weren't fogging up. My eye
11 was blurry.
- 12 Q. But there was no trauma that occurred to the eye
13 that caused it?
- 14 A. No. The doctor determined it was just one of
15 them freaks of nature. Just a weak spot in the
16 retina I guess. Could have had something from
17 years before but --
- 18 Q. Is that the only treatment that you received at
19 Good Samaritan Hospital?
- 20 A. Yes, it was.
- 21 Q. You indicate you treated at Scioto Memorial
22 Hospital in Portsmouth in 1995 for a sinus
23 infection?
- 24 A. Right. I had a deviated septum in my nose that
25 had been that way for several years, and I kept

1 getting sinus infections so the little doctor
2 down at Portsmouth said "I can straighten that
3 out as soon as we get rid of this infection." So
4 he did.

5 Q. Did you have surgery?

6 A. Yeah.

7 Q. Was the surgery successful?

8 A. My nose is straight as a die now I guess. Unless
9 my wife's hit me lately.

10 Q. I'll let that go.

11 MS. RANKE: I object on her
12 behalf.

13 A. I take it back.

14 Q. Who was the doctor who treated you at Scioto
15 Memorial?

16 A. Dr. White. George White.

17 Q. Did he take any x-rays?

18 A. Not that I know of. Other than just general
19 information x-rays for the hospital prior to
20 surgery.

21 Q. I'm assuming those x-rays would be of your nose
22 and nasal cavity?

23 A. Right. Sinus cavity.

24 Q. Is that the only treatment you received at Scioto
25 Memorial Hospital for your sinus infection and

- 1 the surgery?
- 2 A. Yes, sir.
- 3 Q. You also identify Our Lady of Bellefonte Hospital
4 in Grayson, Kentucky?
- 5 A. Russell, Kentucky. It's Bellefonte.
- 6 Q. Okay. Were you there for a spinal infection?
- 7 A. No. Kidney infection. Kidney stone.
- 8 Q. The response to your discovery says in 1995, you
9 had a spinal infection. It says, parentheses,
10 cortisone and kidney stone.
- 11 A. No. I didn't have a spinal infection there. I
12 had cortisone shots in Ironton Hospital for my
13 back.
- 14 Q. Okay. Was the kidney stone treated at Bellefonte
15 Hospital?
- 16 A. Right. They did part of it there and part of it
17 up to Huntington. They did -- what do you call
18 that chair? Lithotripsy chair or something.
19 They put you in, and it feels like they're
20 beating you in the kidney with a sledgehammer.
- 21 Q. Your only treatment at Bellefonte Hospital was
22 for the kidney stone?
- 23 A. Right.
- 24 Q. And what did they do at Bellefonte Hospital for
25 your kidney stone?

- 1 A. Well, they went up in there as far as I know with
2 a laser and busted it up. It had pretty well
3 blocked off my -- it was between the kidney and
4 the urethra I think, and it had pretty well
5 plugged it up so they shattered it with a laser,
6 and then two weeks later, they had me to come up
7 there and bust the rest of it up to get rid of
8 it.
- 9 Q. Okay. Have you had any other treatment at
10 Bellefonte Hospital other than for the kidney
11 stone?
- 12 A. Well, let's see. Year-and-a-half, two years ago,
13 I had another round of cortisone injections in my
14 back, but I'm not sure when that was.
- 15 Q. Do you know who administered the cortisone?
- 16 A. Yes. Dr. David Herr.
- 17 Q. H-e-r-r?
- 18 A. Yes. David P. Herr. Orthopedic surgeon.
- 19 Q. Have you ever had any chest x-rays done at
20 Bellefonte Hospital?
- 21 A. If I did, I don't know. I don't remember.
22 Probably prior to admission to the hospital
23 whatever standard things they do.
- 24 Q. Okay. And finally, I have here -- first of all,
25 Cabell Huntington Hospital, you said you had to

1 go up there for treatment for the kidney stone?

2 A. Right.

3 No. I take that back. It was St. Mary's.

4 I'm sorry. St. Mary's Hospital.

5 Q. That's also in Huntington or near Huntington?

6 A. Right. It's in Huntington, yes.

7 Q. What type of treatment did you receive there?

8 A. That's what they called the Lithotripsy or
9 something. I know they put you in this big chair
10 and pinpoint where it's at, and it just feels
11 like getting you in the kidneys with a
12 sledgehammer and they crunch that stone up and
13 then feed you all kind of liquids to flush it
14 out.

15 Q. To your knowledge, did you ever have any chest
16 x-rays taken at St. Mary's Hospital?

17 A. Not that I know of.

18 Q. Finally, I see we have Lawrence County Medical
19 Center, and there are various procedures you had
20 there. I want to sort of step through those if I
21 can.

22 A. Okay.

23 Q. First, I have 1994 you had back surgery there?

24 A. No. 1994 I had a bilateral knee replacement.
25 December of '94. Dr. Herr's the one that did

1 that.

2 Q. David Herr?

3 A. Yes. I was going to him for my back problem at
4 the time, and I'd had problem with my knees for
5 several years, and I had him check them out, and
6 he said "You ain't got no knees." So I got two
7 titanium knees.

8 Q. Were those -- your knees, were they just worn
9 down from years of work?

10 A. Climbing, pounding concrete and so on, so forth.

11 Q. So in other words, there was no one incident that
12 caused the knees to give?

13 A. No. They just wore out.

14 Q. Were there things that you could do prior to your
15 knee surgery that you cannot do after your knee
16 surgery? Physical limitations?

17 A. No. Other than my back injury at that time.

18 Q. And I'm only talking about the knee injury.

19 A. No. When I went back to work, the guys said
20 "Well, you're better than you was ten years ago."

21 Q. Dr. Herr didn't give you any type of limitations
22 for your new knees?

23 A. No. I had a thorough rehabilitation job before I
24 went back to work.

25 Q. Okay. On your responses to discovery, it says

- 1 1997, knee replacement. That's just a typo?
- 2 A. Must be flip-flopped. Because I had the back
3 surgery in '97.
- 4 Q. Okay. 1995, you had foot surgery at Lawrence
5 County Medical Center?
- 6 A. Right. I had a heel spur that I stepped on and
7 unknown to me, but I'd stepped on something and
8 snapped the thing off inside of my foot, and they
9 had to excise it.
- 10 Q. Was the surgery successful?
- 11 A. Yes.
- 12 Q. Are there any physical limitations you have after
13 the foot surgery that --
- 14 A. No.
- 15 Q. -- you could perform prior to the surgery?
- 16 A. None that I know of.
- 17 Q. And then in 1997, you had your back surgery?
- 18 A. Right.
- 19 Q. How did you injure your back originally?
- 20 A. I slipped and fell working on the cleaning
21 machine.
- 22 Q. I think you mentioned that earlier.
- 23 A. Yes, I did.
- 24 Q. And that original injury was in 1994?
- 25 A. Yes. May the 26th I believe.

1 Q. The surgery that you had in 1997, who performed
2 it?

3 A. Dr. Herr, David Herr.

4 Q. Do you know what he did as part of his surgery?

5 A. He called it decompression laminectomy, and it
6 was in the lower part of the back. I don't
7 remember. S1/L4 and L5 or something like that he
8 called it. But I couldn't guarantee you that
9 that's the correct vertebrae or discs or
10 whatever.

11 Q. Was the surgery prior to or after your disability
12 that you received through Dayton Malleable?

13 A. It was because of.

14 Q. That's why you got disability?

15 A. The last day I worked was April the 4th of '97,
16 and we've been trying to get the company to
17 approve the surgery, and they kept denying it,
18 and I said "Well, while I've still got insurance,
19 let's do it, and then compensation and you can
20 fight with the state over it or whoever."

21 Q. All right. Do you have physical limitations
22 following the back surgery limiting activities
23 that you could do before the surgery?

24 A. I wasn't supposed to lift anything that weighed
25 over 50 pounds. And he advised me that I

1 shouldn't even consider going back to work.

2 Q. Are there any other physical limitations you had
3 as a result of your back injury?

4 A. No.

5 Q. Are there activities that you did prior to the
6 back injury in 1994 that you no longer did
7 after -- any hobbies, any things that you did
8 around the house that you used to that you can't
9 do because of your back injury?

10 A. Couldn't bend over. You know, like raise a
11 garden or -- couldn't bend over enough to work in
12 the garden more than maybe 10 or 15 minutes so I
13 just give that all up. But other than that, for
14 someone who was getting to be my age, I wasn't
15 too bad a physical condition.

16 Q. Were you still able to perform yard work at your
17 home?

18 A. Yeah. As long as I didn't have to bend over and
19 pick anything up. As long as I was standing up
20 or if something was on the table and I could pick
21 it up, I still had a lot of upper body strength,
22 but if I had to bend over, huh-uh.

23 Q. After your surgery in 1997, did you have any
24 physical therapy or continuing treatment that you
25 had as a result of the surgery?

1 A. Just my own -- I went to the Y, water walked and
2 rode a bicycle.

3 Q. Did you regularly see Dr. Herr or another doctor
4 as follow-up to the surgery?

5 A. I had been seeing him up until six months ago.

6 Q. Is that the last time you saw him or is that the
7 last time you will see him? In other words, is
8 he still treating you for it?

9 A. He has been, but I'm going to have to find a
10 local doctor. He's moving down to Georgetown,
11 Ohio, and I can't make that journey anymore.

12 Q. Sounds like you have not found a new doctor yet
13 to continue treatment?

14 A. I just got the application from the compensation
15 bureau two days ago. You have to fill that out,
16 and it all has to be approved before it can be
17 okayed.

18 Q. I realize we haven't talked about the lung cancer
19 yet. We will get to that in a second.

20 We've talked about the treatment you received
21 at Good Samaritan, Lawrence County, Scioto
22 Memorial, Our Lady of Bellefonte and St. Mary's
23 Hospital. Are there any other hospitals where
24 you've received treatment for any reason
25 throughout your lifetime?

- 1 A. What's the -- I had an operation on my left knee.
2 Lord, have mercy.
3 Riverside? Is there a hospital called
4 Riverside in Columbus?
5 Q. There is.
6 A. Okay. Dr. John Leach did the surgery on it. But
7 I couldn't tell you what year it was.
8 Q. Can you give me a decade?
9 A. In the '60s sometime. Let's see. My oldest boy
10 is 37. He was playing little league baseball.
11 He'd have been 12. So 30 years ago.
12 Q. Was that surgery successful?
13 A. Yeah. I had what they called a Baker's cyst in
14 my knee joint.
15 Q. Obviously, you've had that knee replaced since
16 then?
17 A. Since then, yes.
18 Q. Are there any other hospitals where you've
19 received treatment other than the ones we've
20 talked about?
21 A. Not that I know of or can think of offhand.
22 Well, when I was in the service.
23 Q. What type of treatment did you receive in the
24 service?
25 A. I had some respiratory problems in the service.

1 Had pneumonia a couple times. They had me at
2 Lowery Air Force Base Hospital for two weeks, and
3 they sent me over to Fitzsimmons Army Hospital
4 there in Denver. I was there 30 some days, and
5 they sent me back.

6 Q. To Lowery?

7 A. Yeah. That's where I was stationed at, Lowery
8 Air Force Base.

9 Q. You said breathing problems. Was that limited to
10 pneumonia or were there other problems as well?

11 A. The only thing they ever told me was just I had a
12 real severe case of pneumonia.

13 Q. Where is Lowery Air Force Base?

14 A. Denver, Colorado. That's where it was. It's
15 like a bunch of other things. It's gone. I
16 think Fitzsimmons Army Hospital is still out
17 there.

18 Q. And is that in Denver as well?

19 A. Yes, sir.

20 I don't know. One of them papers they had in
21 there said they wanted to get my military
22 records. I said good luck. I've been trying
23 since 1984 to get them. They said they all burnt
24 up.

25 Q. Other than the hospitals we have talked about and

1 now the two military centers, are there any other
2 places where you received medical treatment?

3 A. No.

4 Q. You've mentioned a Dr. Herr already?

5 A. Right.

6 Q. It looks like you've also received treatment from
7 Dr. White. That was for your sinus problems and
8 your nose surgery?

9 A. Yes.

10 Q. Does he treat you for anything else?

11 A. No. That's what I went to him for. He was an
12 ear, nose and throat specialist.

13 Q. It indicates that you saw him in 1995 and 1996.
14 Is that about the last time you saw him?

15 A. Probably, yes.

16 Q. Other than for treatment for your lung cancer,
17 have you seen any other doctors that you can
18 recall throughout your lifetime?

19 MS. RANKE: Other than the ones
20 he's named you mean?

21 MR. MUSILLI: The ones he's named
22 here today?

23 MS. RANKE: Yeah.

24 MR. MUSILLI: Yes.

25 MS. RANKE: Other than those.

1 Q. Other than the ones you've named here today and
2 other than the doctors who have treated you for
3 the lung cancer we will get to in a minute?

4 A. No.

5 Q. You indicate in your responses to interrogatories
6 that you were diagnosed with various conditions.
7 I just want to go over those quickly here.

8 One is bronchitis, and you said you were
9 diagnosed with that in 1984. Do you recall that?

10 A. Not really.

11 Q. Do you recall receiving any treatment for
12 bronchitis sometime in the 1980s?

13 A. No, I don't. Not in the 1980s. When I was a
14 kid, I had it. I don't recall having it in the
15 '80s any time.

16 Q. Do you recall how many times you were diagnosed
17 with bronchitis as a kid?

18 A. No. You're reaching back farther than my mind
19 will go.

20 Q. Do you know who treated your bronchitis when you
21 were a kid?

22 A. No, sir.

23 Q. You indicated you had pneumonia in 1956, 1957.
24 That sounds like the time about when you were in
25 the military?

- 1 A. When I was in the military, yes.
- 2 Q. You also indicate that you had arthritis that was
3 diagnosed in 1997?
- 4 A. Yes. That's in my lower back area. That
5 developed after my back injury.
- 6 Q. What do you take to treat the arthritis?
- 7 A. Nothing right now. Pain pills.
- 8 Q. You take pain medication?
- 9 A. I was taking Vioxx, but I don't think you're
10 allowed to take that anymore. At least, they
11 wouldn't refill my last prescription so --
- 12 Q. Do you experience constant pain as a result of
13 the arthritis in your back?
- 14 A. I have constant lower back pain, yes.
- 15 Q. Is it severe?
- 16 A. Tolerable. You learn to live with it.
- 17 Q. Does your lower back pain or your arthritis in
18 your lower back limit your physical activities in
19 any manner?
- 20 A. Other than what I've had ever since I had the
21 surgery. I just can't bend over and pick
22 anything up.
- 23 Q. You also identified some medication that you
24 take, and these are as of certain dates, and if
25 you no longer take these medications, let me

1 know.

2 First of all, beginning as of October 16th,
3 2003. Amitriptyline?

4 A. No, I don't take that anymore.

5 Q. When did you stop taking that?

6 A. I'm honestly can't tell you. They were giving me
7 that to help me sleep. I think that's what it
8 was for.

9 MS. RANKE: He's got a little
10 handwritten list of medications.

11 A. This one I'm not using anymore.

12 Q. I'll just go down the list from the discovery,
13 and if there's any more, we'll go from then.

14 Cyanocobalamin?

15 A. Yeah, I still take that. That's a Vitamin B-12.

16 Q. You take that once a day?

17 A. Yeah. 250 MCG, whatever that is.

18 Q. Flunisolide? I don't know if I'm mispronouncing
19 that or not.

20 A. That's a nasal spray. That's the same thing as
21 Flonase. I don't use that anymore.

22 Q. Do you know when you last took that?

23 A. A couple months ago. They put me on a different
24 one.

25 Q. Rabeprazole?

- 1 A. No, I don't take that. That was a stomach
2 medication.
- 3 Q. Why did you have to take a stomach medication?
- 4 A. Because of all the other stuff I was taking I
5 guess.
- 6 Q. It settled your stomach?
- 7 A. Right.
- 8 Q. Do you know when you last took that?
- 9 A. It's been over a year ago.
- 10 Q. Salsalate?
- 11 A. It's been over a year since I've taken any of
12 that.
- 13 Q. Do you know why you took it?
- 14 A. Well, I had the symptoms of what they called
15 fibromyalgia, and that's just -- I don't know
16 what it was, but that's what they gave me to try.
- 17 Q. Terazosin HCL?
- 18 A. That was for a puffy prostate gland. They told
19 me to quit taking that.
- 20 Q. Do you know when you last took that?
- 21 A. It's been over a year ago.
- 22 Q. Amitriptyline HCL?
- 23 A. Is that the one you asked me first?
- 24 Q. The first one didn't have the HCL. I don't know
25 if that makes a difference or not.

- 1 A. I think it's the same stuff.
- 2 Q. You no longer take that?
- 3 A. No.
- 4 Q. It says as of September 18th, 2003, ferrous
5 sulfate?
- 6 A. No. That's an iron pill. I don't take that
7 anymore.
- 8 Q. Do you know when you last took that?
- 9 A. Not really. Sometime within the last year, but
10 they told me I didn't need to take it anymore.
11 My iron content had got built back up.
- 12 Q. And then as of December 6, 2002, capsaicin?
- 13 A. Oh. That's a salve that you rub on -- when
14 you've got shingles breaking out, it helps stop
15 them.
- 16 Q. Do you have to take that anymore, apply that
17 anymore?
- 18 A. Every now and then when my shingles start flaring
19 up. That's just sort of an as-needed salve.
20 What it is, it's hot pepper. It's a spice mixed
21 in with the salve.
- 22 Q. Those are all the medications you had identified
23 for us that you take or have taken. Are there
24 any others that you currently take?
- 25 A. Well, I'm taking --

- 1 Q. And what I have, the only one that you still take
2 is this cyanocobalamin?
- 3 A. Right. That's the Vitamin B-12.
- 4 Q. Are there any others you still take?
- 5 A. I'm taking f-l-u-r-o-c-o-r-t-i-s-o-n-e acetate,
6 a-c-e-t-a-t-e, 0.1 milligrams. One per day.
7 That's to help boost my blood pressure. Since
8 I've had this problem, my blood pressure don't
9 want to stay up where it should.
- 10 Q. You take that once a day you said?
- 11 A. Once a day.
- 12 Q. Okay.
- 13 A. And I take Endocet for pain. That's oxycodone
14 with a-c-e-t-a-m-i-n-o-p-h-e-n. That's five
15 milligrams of oxycodone. 325 milligrams of
16 whatever that other this.
- 17 Q. The Endocet?
- 18 A. Yeah.
- 19 Q. Okay.
- 20 A. I take it once every six hours if needed.
- 21 Q. Any other medication?
- 22 A. Docusate, which is a stool softener.
- 23 Q. And that's all the prescription medications?
- 24 Okay.
- 25 A. But what -- I'm taking some antibiotics right

1 now, but I can't tell you the names of them.

2 MS. RANKE: What about your
3 inhalers?

4 THE WITNESS: Oh, yeah. It's a
5 good thing you mentioned that.

6 Q. I understand you take two different inhalers
7 which are part of the same treatment?

8 A. Right. This one's an albuterol aerosol, and the
9 other one is an Atrovent. A-t-r-o-v-e-n-t. And
10 then my breathing treatment at home on my
11 nebulizer machine is albuterol. And I'm supposed
12 to do that every four to six hours. These are
13 six hours or if I have an emergency, then I can
14 use them a little bit more often, but they don't
15 recommend using it more often.

16 Q. The breathing treatment you do at home, you can
17 administer that yourself, but it takes 20
18 minutes, a half an hour or so?

19 A. 20 minutes to a half-hour. And you've got to let
20 the machine run, be sure you get it all.

21 Q. Who has prescribed and monitored your inhaler
22 usage and the breathing treatment?

23 A. Dr. Allman is the one who prescribed it. She's
24 my doctor up at the VA Hospital. Or might have
25 been her nurse's assistant, a Dr. Dodd. She's

1 not a doctor. She's a nurse practitioner. I'm
2 not sure which one of them.

3 The inhalers were prescribed by a doctor in
4 the emergency room, and I couldn't tell you his
5 name at all.

6 Q. But those doctors are all with the VA Hospital?

7 A. Right. Yes, sir.

8 Q. In Huntington?

9 A. Yes, sir.

10 Q. Did you ever take part in an asbestos screening
11 or were you ever given a -- did you ever receive
12 a letter that asked you to go to a certain
13 location to get a chest x-ray or something?

14 A. They had a diagnostic truck at the plant. I
15 would think it was four or five years ago. And
16 then at that time, apparently nothing showed up.
17 But then last August, I got a call from the same
18 outfit that said they were going to be at the
19 local union hall in Charleston and would I be
20 interested in getting screened again, and I said
21 "Well" -- she said "Well, it doesn't cost you
22 nothing to come and find out."

23 And I said okay. So I went up, and they took
24 the chest x-rays, and, of course, they got a big
25 truck is what they've got and x-ray machines and

1 breathing machines, and they said "Well, go back
2 over to the union hall, and we'll let you know."

3 In about 30 minutes, they said "They want you
4 back over to the trailer."

5 So I go back over, and they take some more
6 chest x-rays, gave me a breathing treatment and
7 then took some more chest x-rays. And they had a
8 doctor with them, and when they got done, they
9 said "Well, go back to the union hall, and he'll
10 call you down. He wants to talk to you."

11 So I can't tell you the doctor's name. It's
12 on a form that come from that diagnostic company.

13 Q. Was it Dr. Altmeyer?

14 A. That's a possibility. I could not swear to it.
15 I've got a copy in my file at home, but I
16 couldn't tell you.

17 But anyhow, he gave me a form and informed me
18 that both lungs was full of asbestosis, and he
19 said "There's a large mass in the upper portion
20 of your right lung." He said "I'm not going to
21 venture to guess what it is, but I want you to go
22 see your primary care people within the next two
23 weeks." And he said "Do not wait any longer.
24 It's urgent."

25 So I was going to get some more medication

1 for this other fibromyalgia stuff so I gave it to
2 the little doctor, and she looked at it, and she
3 said "Well, I'll get some x-rays."

4 So they done some x-rays.

5 Q. Is it at the VA Hospital?

6 A. At the VA Hospital. Dr. Sara Joseph was the one
7 that she had them take some x-rays, and she come
8 back, and she said "Well, I'm going to schedule
9 you for a CT scan."

10 And this was on a Thursday I'm thinking. And
11 she said "If they haven't called you by Monday,
12 call the radiology department and see when
13 they're going to schedule you."

14 Well, I waited till noon like a dummy and
15 called at lunchtime. Everybody's gone to lunch.
16 So she called me back about 2:00 and said "We've
17 got an opening in the morning at 8:00 on a
18 Tuesday or Thursday."

19 And I said "Well, I'll come in in the
20 morning."

21 So they did the CT scan, and that was on a
22 Tuesday. Well, Sunday I was getting ready to
23 watch a stock car race, and the phone rang at
24 home, and the VA Hospital -- and this little
25 Dr. Joseph was working emergency room on Sunday

1 and she said she wanted me to come up. She had
2 something to tell me. So I went up, and she said
3 "Well, they're not sure what it is, but they want
4 to do a biopsy."

5 And I said "Well, what's -- when, how and
6 what?"

7 Well, 15 minutes later, they were putting me
8 in the hospital. So I was up there a whole week,
9 and they done bone scans, full body CT scans, did
10 the biopsy.

11 Q. Is this all administered by Dr. Joseph or at
12 her --

13 A. No. That was different doctors in the --
14 Dr. Munn was the lung specialist that did the
15 biopsy. M-u-n-n I think is the way you spell it.
16 And I don't know who the other doctors were.
17 They've got a medical school up there, and you
18 see a resident and then you'll see a dozen others
19 during the day.

20 Q. You mentioned that you went for the screening
21 last August. Did you mean August of 2003?

22 A. Yes, sir.

23 Q. Okay.

24 A. Yeah, this is 2004. Yes.

25 Q. And you mentioned some doctor as a result of the

1 screening -- it may be Dr. Altmeyer. It may not
2 be.

3 A. That sounds familiar.

4 Q. -- informed you you had a cyst in your lungs and
5 asked you to go get checked.

6 A. Right.

7 Q. Did any doctor at the VA Hospital diagnose you
8 with an asbestos-related disease?

9 A. Well, Dr. Munn said that the lung cancer was
10 probably associated with the asbestos. He said
11 in all probability.

12 Q. Had you provided Dr. Munn a work history, places
13 where you worked?

14 A. Yeah. They've got all that up there, yes.

15 Q. Did you also provide him your smoking history?

16 A. Yes. That's a she.

17 Q. Or she.

18 A. Dr. Munn's a female.

19 Q. Did you ever receive anything in writing, a
20 written report from Dr. Munn regarding her
21 findings?

22 A. No, I didn't. It's probably in the biopsy file.
23 I'm sure that I got a copy and it was forwarded
24 and all the information. But then they decided
25 that they couldn't do surgery on the lung cancer.

1 In October, they did what they call a PET scan.

2 Q. PET?

3 A. P-E-T. It's more in-depth than a CT scan from
4 what I understand.

5 And they decided that the thing was trying to
6 metastasize from the upper part of the right lung
7 over to the left side. So they decided that they
8 better not cut on it, that they would try to
9 shrink it with radiation and chemotherapy.

10 Q. As I understand it, Dr. Jeffrey Lopez
11 administered the radiation treatment?

12 A. Yes, sir. Had 35 radiation treatments.

13 Q. And Dr. Aron Kumar, K-u-m-a-r, and Dr. Arif,
14 A-r-i-f, administered the chemotherapy
15 treatments?

16 A. Right.

17 Q. Were there any other doctors who oversaw either
18 the radiation or the chemotherapy treatments?

19 A. Not that I could say, no. Dr. Lopez had a doctor
20 fill in for him for a week, but I can't remember
21 his name.

22 Q. You were still technically under the care of
23 Dr. Lopez the whole time?

24 A. Yes. Lopez and Kumar are my prime radiologists
25 and oncologists.

- 1 Q. Dr. Lopez, Dr. Kumar and Dr. Arif appear to be
2 associated with the VA Medical Center in
3 Huntington?
- 4 A. Yes. Dr. Arif Hussain of all names I believe was
5 his name. But he's not there anymore. He was on
6 loan from down in Tennessee, and they sent him
7 back to Tennessee.
- 8 Q. Okay. Dr. Lopez, I have an address of Ashland,
9 Kentucky for him. Is he at all associated with
10 the VA Hospital?
- 11 A. He does radiation treatments for them through
12 King's Daughters Medical Center over here.
- 13 Q. Does he have his own private practice in Ashland
14 as well?
- 15 A. I presume he does.
- 16 Q. King's Daughters is in Ashland?
- 17 A. Yes.
- 18 Q. Have they given you -- has any doctor given you a
19 prognosis as a result of your lung cancer?
- 20 A. Dr. Kumar said if I lived a year, I'd be lucky.
21 So I am a little beyond that.
- 22 Q. Do you have any scheduled -- you -- okay. Do you
23 need to take a break?
- 24 A. That's all right.
- 25 Q. Do you have any scheduled treatments with any of

1 the doctors who are treating you for your lung
2 cancer?

3 A. I've got a CT scan scheduled the 29th of this
4 month. And then they will determine.

5 Q. Is that the VA Hospital?

6 A. Yes.

7 MS. RANKE: He was just
8 hospitalized within the last couple weeks.
9 Do you want to ask him about that? It was
10 in my letter, but I just want to bring it
11 up.

12 MR. MUSILLI: That's true.

13 Q. Your deposition was scheduled for a couple weeks
14 ago and was cancelled, and as I understand it, it
15 was cancelled because you became hospitalized?

16 A. Yes. I got to where I couldn't breathe, and I
17 went to the emergency room, and they were
18 extremely busy that day. They were packed. And
19 the doctor in the emergency room gave me
20 antibiotics on a Monday. So by Wednesday, I had
21 to get somebody to take me back. And they put me
22 in the hospital and did a CT scan, and I had
23 pneumonia in my lungs. And they gave me liquid
24 antibiotics for three days and got the fever
25 broke and everything, and it was seeming to break

1 up, but I think it's finally losing the battle.

2 Q. Was that the VA Hospital?

3 A. Right. Yes.

4 Q. Who treated you for the pneumonia?

5 A. Dr. Jain.

6 Q. Jain?

7 A. J-a-i-n. That's his last name. I can't remember
8 his first name. He was my primary caretaker
9 while I was in the hospital.

10 Q. Do you continue to take any type of medication as
11 a result of the pneumonia?

12 A. Yes. I'm taking two different antibiotics right
13 now. And I have to go back Tuesday morning.
14 They want me to come back for a follow-up
15 checkup.

16 Q. Do you know what those antibiotics are? Do you
17 have those?

18 A. I don't have them with me. I didn't think to
19 write them down.

20 Q. If you could just provide those to your counsel
21 so they can provide that to us, we'd appreciate
22 it.

23 A. Right. I can do that. Yeah, that's one thing I
24 forgot to write down on my little list.

25 MS. RANKE: Are you all right?

1 THE WITNESS: Yeah, I'll be all
2 right.

3 Q. We've talked about various doctors, various
4 conditions and various hospitals where you've
5 received treatment. Have we now discussed all
6 the various hospitals or medical providers who
7 have provided any treatment to you that you can
8 recall?

9 A. Other than years ago, I had a family doctor, you
10 know, for just normal colds and stuff like that.

11 Q. Who were your family doctors that you can recall?

12 A. There was a John Jones and a Henry Jones in
13 Flatwoods, Kentucky.

14 Q. Do you recall when you saw them?

15 A. In the '60s to early '70s. As a matter of fact,
16 my oldest boy was the last baby Dr. Jones
17 delivered. He said that broke him.

18 Q. I'm sorry. Was that Flatwoods, Kentucky?

19 A. Yeah. That's where his office was.

20 Q. Do you know if they still practice?

21 A. I have no idea.

22 Q. Did you have a family practitioner after the
23 Dr. Joneses?

24 A. No.

25 Q. Do you have any hobbies that you do?

- 1 A. Not anymore.
- 2 Q. What were your hobbies?
- 3 A. I used to love to hunt, fish. Work on cars.
- 4 Q. When was the last time you went hunting?
- 5 A. Prior to hurting my back, about the time I hurt
6 my back in the early '90s.
- 7 Q. Is it true you stopped hunting because of your
8 back injury?
- 9 A. Yeah. You've got to be able to walk to hunt.
10 And to climb up and down hills when you've got a
11 bad back is not a very good thing.
- 12 Q. If you were successful, to be able to carry
13 whatever you got out of woods?
- 14 A. Right.
- 15 Q. What about fishing; when's the last time you went
16 fishing?
- 17 A. It's been a long time ago. When my oldest boy
18 was a kid, I used to take him fishing.
- 19 Q. Would that be back in the 1970s?
- 20 A. No. Probably -- when he was 12, 13. Probably 30
21 years ago. I never was a fisherman, but he
22 wanted to fish so --
- 23 Q. When was that last time you worked on cars?
- 24 A. Earlier '90s.
- 25 Q. Did you stop working on cars because of your back

1 injury?

2 A. Right. Hard to work on a car when you can't bend
3 over the engine.

4 Q. I understand.

5 A. And they're getting too complicated for one
6 thing.

7 Q. Too many computers involved with them, huh?

8 A. Amen.

9 Q. Are there any other hobbies that you used to do
10 that you can no longer do?

11 A. No. That was basically all the hobbies I had. I
12 didn't have time for anything else.

13 Q. What about vacations; do you take vacations?

14 A. Maybe once every two or three years.

15 Q. Is that sort of how you've done it throughout
16 your life or was there a time you did it more
17 often or --

18 A. No. Didn't have time for vacation. Didn't have
19 the money for them if you had the time so --

20 Q. What about your yard work or upkeep of the home;
21 do you do any of that work?

22 A. No. I hire my brother-in-law to do it.

23 Q. When is the last time you did the work around the
24 home or your yard work?

25 A. Almost a year-and-a-half ago. Maybe -- yeah, at

- 1 least a year-and-a-half ago.
- 2 Q. Why is it that you stopped doing your own yard
3 work?
- 4 A. Just can't do it anymore. Like walking around
5 the block. You've got to have air to do it.
- 6 Q. You said you hire your brother-in-law?
- 7 A. Yes. My wife's brother. He's a good worker.
8 She did most of it after I wasn't able to do it,
9 and then she got sick herself so I hire him to do
10 it. I just tell him what I want and sit down in
11 the Lazy Boy, and when he gets done, I pay him
12 and somebody takes him home.
- 13 Q. I just have one more area of questioning. I want
14 to jump back now, and I've left this portion
15 until now because I think it's going to flow well
16 with what others may ask you.
- 17 A. All right.
- 18 Q. You've identified some various products and some
19 manufacturers of products here today, and I want
20 to ask you about one of those.
- 21 A. All right.
- 22 Q. You indicated that when you did some of the
23 automobile repair work that you would have worked
24 with a product, a brake product that you would
25 associate with the name Victor?

- 1 A. Right.
- 2 Q. Do you know if Victor is the manufacturer name or
3 a tradename or how do you associate that name
4 with the product?
- 5 A. I remember it being on the boxes. I'm not sure
6 whether it was Victor Manufacturing Company or --
7 you know. That was back a long time ago.
- 8 Q. Can you recall when you first used a product that
9 came in a box that had the name Victor on it?
- 10 A. Probably when I first started changing brake
11 shoes and stuff on automobiles. As far as I can
12 remember.
- 13 Q. I think you said that would have been during your
14 high school years back probably in the early
15 1950s?
- 16 A. Right.
- 17 Q. When is the last time you would have used a
18 product where you recall seeing the name Victor
19 on it?
- 20 A. Probably middle '80s. Maybe after that, but I
21 just can't remember off hand.
- 22 Q. What type of box was it? Can you describe it for
23 me?
- 24 A. Just a box that your brake shoes come in.
- 25 Q. Can you give me an estimate of what you're doing

- 1 with your hands?
- 2 A. Probably 12 inches long. Maybe 15. By six
3 inches wide. It came with four brake shoes in
4 it. If you've got front ones. And if you got
5 rear ones, it had four.
- 6 Q. And those were brake shoes?
- 7 A. Yeah. That's on the old shoe-type brakes. I
8 don't remember ever using any on caliper brakes.
- 9 Q. Did you use the Victor brake shoes on any
10 particular type of automobile?
- 11 A. I'm not sure. I couldn't tell you that. Like I
12 said, I'd go to the parts house and tell them
13 what I wanted, and whatever is the most
14 economical, that's what we'd get.
- 15 Q. Do you recall the color of the box that these
16 Victor brakes came in?
- 17 A. No, sir. Back then, most of them were just brown
18 cardboard boxes with markings on them. That was
19 basically all of them.
- 20 Q. You said you saw the name "Victor." Do you
21 recall how it was on the boxes? Was it script?
22 Was it block lettering?
- 23 A. Seemed like it was a big V with block lettering,
24 but I couldn't swear to that.
- 25 Q. Do you recall what color the lettering was?

- 1 A. I believe it was black. I couldn't swear to that
2 for sure, but the best I can recall.
- 3 Q. Do you recall any logos or markings or anything
4 else on the boxes that you would associate with
5 the Victor brake shoes?
- 6 A. Probably not. Because I was just getting ready
7 to put them on. You had to put the old ones back
8 in the box and take it back to the parts house so
9 they could rebuild them again.
- 10 Q. Would these brake shoes be used on automobiles?
11 Or you mentioned also you worked on some trucks.
12 What types of vehicles?
- 13 A. On all -- small automobile -- just general
14 automobiles and small pickup trucks and stuff.
15 No big trucks. May have been some on big trucks,
16 but I don't remember what we used.
- 17 Q. As you sit here today, you don't recall using any
18 Victor brake shoes on any big trucks. Is that
19 true?
- 20 A. Not that I can recall.
- 21 Q. Can you recall any other writing on the box?
- 22 A. No.
- 23 Q. Do you recall seeing the word "asbestos" on the
24 box that contained the Victor brake shoes?
- 25 A. Honestly, I'm not positive.

- 1 Q. The brake shoes themselves, when you took them
2 out of the box, were they wrapped in anything?
3 Were they in another bag or did they just come
4 out of the box?
- 5 A. No. Just stacked in the box. Four in a box.
- 6 Q. Did the brake shoes come ready to mount onto the
7 car?
- 8 A. Yeah. Well, you had to take the little springs
9 and stuff off your old brake shoes and put on the
10 new ones, but other than that, they were ready to
11 go.
- 12 Q. You didn't have to drill any holes into the brake
13 shoes?
- 14 A. No. They were -- some of them were bonded
15 linings, and some of them riveted on. Depended
16 on the particular application that the
17 manufacturer called for.
- 18 Q. Do you recall if the Victor brake shoes were
19 bonded or riveted?
- 20 A. I'm not positive. I couldn't tell you that.
21 Like I said, I used too many of them over the
22 years that it's hard to recall which was which.
- 23 Q. Was there any marking on the shoe itself that
24 identified it as a Victor brake shoe?
- 25 A. Normally on the metal part, there was a stamping

1 on there that identified the manufacturer.

2 Q. Do you recall seeing the word "Victor" or
3 anything associated with the Victor brake shoes
4 stamped on the metal part?

5 A. Basically, that would be about it as far as I can
6 remember. Whatever was on the box was just a
7 small stamp on the metal part of the brake shoe.

8 Q. Was there any other writing on the metal part of
9 the brake shoe?

10 A. Part number.

11 Q. Did you ever see the word "asbestos" on the brake
12 shoe itself?

13 A. Not on the brake shoe itself, no.

14 Q. Were there any instructions on how to install the
15 brake shoes that came with the Victor brake shoe?

16 A. They just had a pictorial drawing on how to
17 unhook the springs and rehook them and make sure
18 that you've got this spring hooked this way and
19 this one hooked this way so that when your wheel
20 cylinder operated, it would operate the brake
21 shoes right.

22 Q. Was the picture on the box or was it on like a
23 piece of paper within the box?

24 A. A pamphlet inside the box.

25 Q. Can you estimate for me how many times you would

1 have used a Victor brake shoe throughout your
2 work history?

3 A. I wouldn't have any idea.

4 Q. You mentioned other names of brakes earlier
5 today?

6 A. Right.

7 Q. Is there a way that you can estimate how much of
8 the brake shoe work that you did would have been
9 Victor brake shoes versus all the other brakes?

10 A. Not really. I couldn't tell you that. Whatever
11 the boss brought to put on the vehicle, that's
12 what we had.

13 Q. The brake that you took off of the car, is there
14 any way to identify who manufactured that brake?

15 A. Well, the same way. They would have -- normally,
16 they'd have a part number and a stamp on there
17 who manufactured it, but later on, they got to
18 the point they just had a part number on them
19 with no manufacturer's name.

20 Q. You're talking on the metal portion of the brake?

21 A. Right.

22 Q. For all the brake work that you did, do you ever
23 recall taking a brake lining or a brake shoe off
24 of a car and seeing the word "Victor" stamped on
25 the metal portion of the brake?

1 A. I believe I have, but I couldn't swear to that.

2 Also, while you're talking about brakes, we
3 relined brakes on the cranes in the electric
4 department when I worked in maintenance.

5 Q. At Dayton Malleable?

6 A. At Dayton Malleable. Our big overhead cranes had
7 12, 15-inch brakes on them, and we actually
8 relined those brakes with new linings on those.

9 Q. Do you believe that those brakes on the cranes at
10 Dayton Malleable contained asbestos?

11 A. Yes, I do.

12 Q. We'll come back to that here shortly.

13 A. Okay.

14 Q. How long would it take to remove the old brake,
15 the used brake from the vehicle?

16 A. 30 minutes. Take it off and clean it up, get
17 ready to put the new one on. On one wheel now
18 I'm talking about.

19 Q. That would be 30 minutes to do everything, not
20 just remove the brake but to clean the wheel and
21 prepare it for the insertion of the new brake?

22 A. Right. Take your wire brush and clean any
23 accumulated dirt and dust out, take an air hose
24 and blow it all out good and lubricate your pins
25 and everything and put them back on.

- 1 Q. Then how long would it take to install the new
2 brake onto the vehicle?
- 3 A. Probably about 15 minutes. Put them on and
4 adjust them, get the self-adjuster set right and
5 all that.
- 6 Q. That would be basically a matter of inserting it
7 onto the wheel, making the adjustments and then
8 somehow affixing it to the --
- 9 A. Well, you put it on the wheel, and then you put
10 your drum on top of it. And the older brakes,
11 you had to go through the back with what they
12 called a brake spoon to adjust them. The newer
13 ones, you've got a self-adjuster on them, and you
14 set that to a preset specification, and when you
15 back the car up and pump the brakes, it racks
16 them out to the right spot.
- 17 Q. The Victor brake shoes, did they have the -- were
18 they the newer ones that had the preadjustment
19 with it?
- 20 A. I'm not positive. Probably both.
- 21 Q. What is your basis for believing that Victor
22 brake shoes contained asbestos?
- 23 A. Just standard brake shoes. Most of them had
24 asbestos in them.
- 25 Q. Why do you say that most of them had asbestos in

1 them? How do you know that?

2 A. Well, some of them was marked on the box. Some
3 of them just -- some of them seemed like they had
4 a warning on there not to work in an enclosed
5 area because of hazardous breathing stuff.

6 Q. Do you recall seeing a warning on any of the
7 boxes that you associate with the Victor brake
8 shoes?

9 A. I'm not positive.

10 Q. Do you recall seeing at least some boxes of brake
11 shoes that would have contained a warning at the
12 same time that you were using the Victor brake
13 shoes?

14 A. Probably, but I couldn't -- I never really
15 bothered to read the box, just to be sure I had
16 the right part.

17 Q. Do you have any recollection as to what the
18 warning said?

19 A. Not really, no.

20 Q. The work that you would have done with the Victor
21 brake shoes if I understand you correctly would
22 have been mostly outside work?

23 A. Well, that and while I was in the filling
24 station.

25 Q. Other than the work in the filling station, if I

1 remember correctly, your work was all out in a
2 driveway in the open?

3 A. Right. Sometimes, we'd work in somebody's
4 garage, but most of time -- you know how
5 teenagers are. You just jack it up where it's at
6 and work on it.

7 Q. Relative to the work that you would have done in
8 Dayton Malleable, would you say that the work
9 with the Victor brake shoes would have created --
10 would have caused you to work around more or less
11 dust than what you had in the Dayton Malleable
12 facility?

13 MS. RANKE: Objection. You can
14 answer.

15 A. I'm not sure. I don't -- you're asking a
16 question that I've got no way to even decipher.

17 Q. Because you don't know -- withdraw that.

18 You said that you thought some of the boxes
19 of the brake lining or brake shoes when you were
20 doing the automotive work -- some of the boxes
21 had the word "asbestos" on them?

22 A. I believe they probably did have, but I couldn't
23 swear which ones or what.

24 Q. You don't recall ever seeing the word "asbestos"
25 though on the Victor brake shoes; is that

1 correct?

2 A. I'm not positive.

3 MS. RANKE: You mean as a
4 specific recollection?

5 MR. MUSILLI: Yes.

6 A. I'm not positive at all.

7 Q. You also mentioned the name Dana when you were
8 talking about the brakes?

9 A. Right.

10 Q. Can you tell me what you associate that product
11 with?

12 A. Well, with the brake shoes and the brake drums,
13 and they made spindles. And various other things
14 for automotive components.

15 Q. What are the spindles?

16 A. It's what your brake drum and everything mounts
17 on. Of course, they were cast metal so they
18 probably didn't have any asbestos in those.

19 Q. That was going to be my next question.

20 The brake shoes that you associate with Dana,
21 do you recall how those were packaged?

22 A. Just a standard package. They all came about the
23 same way.

24 Q. Do you recall seeing the word "Dana" on any of
25 the packaging of the brake shoes?

- 1 A. Dana Corporation, yes. Or Dana Manufacturing
2 Corporation.
- 3 Q. Do you recall how that lettering appeared on the
4 box? Was it script or block or --
- 5 A. It was in a block lettering as best I can
6 remember.
- 7 Q. Do you recall what color the lettering was?
- 8 A. No idea.
- 9 Q. Do you recall the color of the box?
- 10 A. Like I say, most of them back then were just a
11 standard cardboard box as best I can remember.
- 12 Q. Do you recall any other wording on the box other
13 than Dana Corporation or Dana Manufacturing
14 Corp.?
- 15 A. No, not really.
- 16 Q. The brake drums that you associate with Dana,
17 would they be packaged the same way as the brake
18 shoes?
- 19 A. They would come in a big box, whatever size brake
20 drum you had. Of course, it was a cast metal
21 product, too, so there's no asbestos in that.
- 22 Q. On the brake drum?
- 23 A. Right. Your brake drum. See, you've got your
24 spindle, your backing plate, then you put your
25 brake shoes, and that's where your asbestos

1 products are, on the lining on the brake shoes.

2 Then you put your hub on the outside.

3 Q. The Dana brake shoes, when they came in the box,
4 was there any other packaging it was in? Was it
5 in a bag or anything?

6 A. Not that I recall. Most of them were just loose
7 in the box with a pictorial diagram on how to
8 install it. Back then.

9 Q. Do you recall seeing any warnings on the Dana
10 brake shoe box?

11 A. Not that I can recall.

12 Q. Or on the diagram?

13 A. Not that I can recall.

14 Q. Do you remember seeing the word "Dana," "Dana
15 Corporation," "Dana Manufacturing Corporation" on
16 the brake shoe itself?

17 A. Not really. There possibly was, but I couldn't
18 swear to that.

19 Q. Were these brake shoes also used for light truck
20 or automobile?

21 A. Yes.

22 Q. Is it true that you don't recall seeing Dana
23 brake shoes for use on any heavier duty truck?

24 A. It may have been, but I didn't really work on
25 that many of the big heavy trucks. We had a guy

1 that was -- that was his specialty.

2 Q. Okay. You were the light truck and automotive
3 guy?

4 A. Automotive guy. I was pretty quick at it. Most
5 people want them in and out as quick as they can
6 to save as much money as they can.

7 Q. I understand.

8 Was the Dana brake shoe also manufactured for
9 ready installation?

10 A. Yes. Basically, they're all that way.

11 Q. You didn't have to precut that to fit the wheel?

12 A. No, no, no. They're all -- they've already got
13 the lining either riveted or bonded to the shoe.
14 The one thing you have to do is clean the hard
15 wire they call it up and reinstall it. If it's
16 got a bad spring, you get a new spring.

17 Q. Do you know if the Dana brake shoe was riveted or
18 bonded to the line?

19 A. I couldn't tell you that.

20 Q. Do you recall seeing any brake shoe that you
21 removed from a car that would have had the name
22 Dana or associated the name Dana with the brake
23 shoe removed?

24 A. Not really that I can remember. Going back too
25 many years.

- 1 Q. You've given us some estimated times for removal
2 and installation of brake shoes for Victor.
3 Would the Dana brake shoe --
- 4 A. About the same time.
- 5 Q. -- be about the same timeframe?
- 6 A. Depending on what type of vehicle you were
7 working on. If you were working on a Ford
8 product, it may take a little longer because of
9 their setup or might be not as long depending on
10 the way they had their brake system set up.
- 11 Q. Would the Dana brake shoe be used on any
12 particular make or model of vehicle?
- 13 A. I couldn't tell you that.
- 14 Q. Did you buy that one based upon price as well?
- 15 A. When I was buying, I did. And the boss at the
16 filling station, when he's buying, I'm sure
17 that's the way he did. Because you could hear
18 him squeak coming down the street.
- 19 Q. What is the basis of your belief that the Dana
20 brake shoes contained asbestos?
- 21 A. Other than the fact that most brake shoes had
22 asbestos in them, I couldn't swear to anything
23 other than that.
- 24 Q. And you don't recall seeing the name "asbestos"
25 either on the box that the Dana brake shoes came

1 in or on the product itself. Is that true?

2 A. Possibility, but I couldn't swear to it.

3 MR. MUSILLI: Okay. I believe
4 those are all the questions I have for you
5 now. I appreciate your time and patience.
6 I know that some other attorneys either
7 here in the room or on the phone have some
8 questions. If you want to take a break
9 before we begin, we can. If you want to
10 continue, it's up to you.

11 THE WITNESS: Let's get it done.

12 - - - -

13 CROSS-EXAMINATION OF JAMES T. SINNOTT

14 BY MR. KRAMER:

15 Q. Mr. Sinnott, if you're ready to go, I think I
16 will ask my questions next. My name is Reg
17 Kramer, and I shouldn't be too long with you.

18 I want to talk to you first about the arc
19 chutes that you worked with as an electrician at
20 Dayton Malleable.

21 A. Right.

22 Q. First, am I clear in understanding your testimony
23 that on the Brown and Boverly furnaces, any arc
24 chutes you would have come in contact with would
25 have been manufactured or supplied by the Brown

- 1 and Boverly Company?
- 2 A. They were supplied by them, but I'm not sure
- 3 whether they manufactured them or not. Because
- 4 down in the basement where you step up and you've
- 5 got your capacitors to increase and decrease your
- 6 voltage, the big contactors there were
- 7 manufactured by General Electric, but I'm sure
- 8 that everything that Brown and Boverly -- when
- 9 they sent a technician in, he specified what
- 10 you're supposed to use.
- 11 Q. Well, do you know did the Brown and Boverly
- 12 technician ever specify General Electric arc
- 13 chutes?
- 14 A. I couldn't tell you that. You'd have to talk to
- 15 the head supervisor for that.
- 16 Q. And the same would be true of Westinghouse arc
- 17 chutes?
- 18 A. Right.
- 19 Q. Now, how often as an electrician would you
- 20 actually have to get inside the contactor and
- 21 change an arc chute?
- 22 A. About once every two or three weeks. See, when
- 23 they increase the voltage on the furnace, that
- 24 big contactor banks in and out, in and out.
- 25 Well, this one operates one bank of capacitors.

1 Another one operates another bank of capacitors.
2 So to increase your voltage, you use your
3 capacitors to take the initial surge, but the
4 contactor has to open and close. So you'd have
5 to wear them down at least once a week and open
6 them up to look at the contacts to be sure they
7 weren't burned up. But then all you had to do
8 was just raise the arc chutes up and look at it.
9 But then if you're going to have to tear the
10 contactor apart, then you'd have to disassemble
11 the whole thing.

12 Q. And you said you might do that job once every two
13 or three weeks?

14 A. Right.

15 Q. And that you would have the opportunity to change
16 out an arc chute and a contactor?

17 A. Right. If we had one that was burnt where it
18 looked like it was carboned up that it was going
19 to draw fire, we'd discard it.

20 Q. Now, in the lower voltage electrical equipment,
21 is it your belief that there was no asbestos
22 in --

23 A. Well, anything above 250 volts that had
24 contactors, there was arc chutes and stuff on
25 them. And I worked with anything -- like I said,

1 from, of course, 110 volts to 220, there's no
2 problem. You don't have any big problems with
3 that. But anything from there up, you've got to
4 have high-voltage insulation, and most of that
5 contained asbestos.

6 Q. At some point in time, did they change that
7 insulation to remove asbestos from it?

8 A. That's a possibility. I'm not sure.

9 Q. You don't know?

10 A. No, I couldn't swear to that. The last eight or
11 nine years, they revised and redone a whole lot
12 of things. I have no idea to tell you whether
13 they changed it or not.

14 Q. Did the arc chutes that you were using in the
15 1990s look any different than the ones you were
16 using, say, in the 1960s or '70s?

17 A. Some of them were different color. They changed
18 the color on them.

19 Q. But other than the color, they --

20 A. As far as I could tell in looking at the
21 materials, the composites that they were molded
22 out of, basically, they looked the same other
23 than the color.

24 Q. What were the colors of the earlier ones in the
25 '70 and '80s?

- 1 A. Kind of reddish-pink looking, and then some of
2 them were white.
- 3 Q. Do you associate a particular color with the GE
4 arc chutes?
- 5 A. I couldn't tell you for sure. I can't remember
6 that.
- 7 Q. How about the Westinghouse arc chutes?
- 8 A. Well, basically, they were almost the same, but I
9 couldn't tell you. With Westinghouse, the big
10 things on them was the tap changers. That's a
11 big transformer outside. And you had to pull the
12 bulkhead off to get inside of it. So I couldn't
13 tell you exactly what colors they were. It's
14 been so long. Hard to remember.
- 15 Q. Do you know who supplied the General Electric arc
16 chutes to the mill?
- 17 A. That came from the General Electric plant in
18 Cincinnati. As best I know. Because when we
19 would have a major overhaul where we were going
20 to revamp every contactor on one particular
21 furnace, they would send a couple technicians up
22 to work with us.
- 23 Q. How often did that happen?
- 24 A. About every six months or so.
- 25 Q. And do you know who supplied the Westinghouse arc

1 chutes?

2 A. I couldn't tell you that at all.

3 Q. So if you were going to characterize the work you
4 did as an electrician, the changing of arc chutes
5 would have constituted a very small part of your
6 duties; is that correct?

7 A. Well, when you get into the contactor, you've got
8 to take the arc chute off to overhaul the
9 contactor. And it would be -- it's not a small
10 part. They're pretty heavy. The things weighed
11 about 75, 80 pounds apiece.

12 Q. Well, how long would it take you to do a job
13 where you're changing an arc chute?

14 A. Take about four or five hours to completely --
15 not just change the arc chute but to rebuild the
16 contactor would take about four or five hours.

17 Q. But your work actually with the arc chute would
18 have been just a small piece of that?

19 A. Oh, probably an hour-and-a-half, two hours
20 altogether. By the time you strip it down, get
21 it off, check it, go to stores and get new ones
22 if you need them, be sure that what you've got is
23 the right thing. Probably an hour-and-a-half,
24 two hours.

25 Q. So over the course of your entire career as an

1 electrician at Dayton Malleable, can you give me
2 any estimate of percentage of time you would
3 spend working with arc chutes?

4 MS. RANKE: In the entire 20-year
5 period?

6 MR. KRAMER: Yes.

7 A. Oh, boy. That would be totally impossible to
8 estimate. I mean because, you know, you just --
9 I'd just be lying if I told you 10 percent of the
10 time or 20 percent of the time. No idea.

11 Q. But you had a number of other duties as an
12 electrician?

13 A. Oh, yes. Yes.

14 Q. And so again going back, it would seem to me
15 based on what you've told me that the actual
16 working with the arc chutes would have been a
17 fairly small part of your work as an electrician?

18 MS. RANKE: I'm going to object.
19 You can answer.

20 A. No. That was a major part of our job to keep
21 those furnaces running.

22 Q. Right.

23 A. If the contactors don't work, the furnace don't
24 melt no iron and you don't make no castings.

25 Q. Now, according to some information your attorneys

1 have provided us, the VA Hospital records
2 indicate that you have also been diagnosed with
3 chronic obstructive pulmonary disease at some
4 point in time or COPD. Are you aware of that?

5 A. Not that I know of.

6 Q. Has anyone ever told you you have emphysema?

7 A. No.

8 Q. So to your knowledge, you have never been treated
9 for COPD?

10 A. Not that I know of. Nothing that I saw in my
11 records.

12 Q. Okay. Also, the Dr. Altmeyer report that we have
13 indicates that you may have had pleurisy at some
14 time in the past.

15 A. A possibility. I have no idea.

16 Q. Do you know what pleurisy is?

17 A. Yes. It's an infection between the bone and the
18 muscle I think.

19 Q. Causes a great deal of pain when you breathe when
20 you suffer from it. Do you recall having
21 anything like that?

22 A. No.

23 Q. You grew up and -- you went to high school in
24 Ironton. Did you grow up in Ironton or in
25 Kentucky?

- 1 A. Grew up in Flatwoods, Kentucky. My dad was a
2 hardnosed Irish Catholic. You either go to
3 Catholic school or you don't eat.
- 4 Q. So that's why he sent you across the river?
- 5 A. That's why I went to school in Ironton.
- 6 Q. What type of environment was Flatwoods, Kentucky?
7 Was it rural or was there a mill there or
8 something?
- 9 A. No. It's just -- well, now I think it's got up
10 to 10,000 people, but back then, there was only
11 like maybe a thousand. I doubt that. There was
12 not that many people there. When we moved there
13 after the second world war, the main road was
14 still gravel.
- 15 Q. I'm not sure where it is. Is it on the Ohio
16 River?
- 17 A. No. It's -- you go from here down to Russell,
18 Kentucky and on top of what they call Wheeler
19 Hill. It's about eight miles down the road.
- 20 Q. And that's away from the river; is that correct?
- 21 A. Yeah. It's up on top of a hill away from the
22 river. Russell's on the river.
- 23 Q. Were there mines in Flatwoods, Kentucky?
- 24 A. No. A few farms.
- 25 Q. Now, according to Dr. Altmeyer's report, you told

1 him that you were exposed to silica sand every
2 day you worked at the Dayton Malleable foundry.
3 Is that correct?

4 A. I would say that's probably a good possibility.
5 That's what they made the molds out of.

6 Q. Have you ever been diagnosed with silicosis; do
7 you know?

8 A. No, sir.

9 Q. You also did some sandblasting at Dayton
10 Malleable?

11 A. No.

12 Q. So Dr. Altmeyer is wrong?

13 A. I don't recall.

14 MS. RANKE: Objection as to what
15 he knows about Dr. Altmeyer's report.

16 Q. If that were in his report, that would be
17 incorrect?

18 A. I've never seen his report. The only thing I had
19 was a piece of paper that told me to go see my
20 primary care doctor. So I have no idea what's in
21 his report.

22 Q. All right. Well, I just want for purposes of my
23 question -- and I'm sure your attorney can
24 provide you with a copy of the report. I just
25 want you to assume that contained in his report,

- 1 it says that you also did some sandblasting, at
2 which time you wore a paper mask. Would that be
3 inaccurate?
- 4 A. I'd say so. Because I never did any
5 sandblasting.
- 6 Q. His report also indicated that you did a lot of
7 grinding and chipping?
- 8 A. I did a little in the first -- when I was a
9 casting processor, yes.
- 10 Q. Did you indicate earlier that you did shot
11 blasting?
- 12 A. No. I worked on the shot blast machines.
- 13 Q. Repairing the machine?
- 14 A. Yes.
- 15 Q. As a millwright?
- 16 A. Millwright and electrician both.
- 17 Q. You didn't do shot blasting?
- 18 A. No, huh-uh.
- 19 Q. Were you around shot or sandblasting operations
20 at the mill when it was going on?
- 21 A. Yeah, when we were -- when the machine would
22 break down. Of course, you know, they had three
23 in one row and one over here and two more over
24 here. So -- and, of course, most of them had big
25 dust collectors to pull all the stuff out the

1 top. But they weren't the most efficient thing
2 in the world.

3 Q. But you did not wear a paper mask when you were
4 around those machines?

5 A. No. Nobody advised us to wear any type of masks.
6 If they'd have advised us and provided them, we'd
7 have wore them. Or I would have. I'll put it
8 that way.

9 Q. Going back to the arc chutes, how did they come
10 to you at the jobs? Did they come in packages or
11 did someone go bring them up just as a piece?

12 A. Well, we would go to the storeroom and get them.
13 They were already assembled. Individual arc
14 chutes, you had three contactors for each phase
15 of your high voltage, and they were usually
16 wrapped in a blasting wrapper to keep dirt and
17 contaminants off. Because you don't want any oil
18 or nothing on one. When you put it on there, you
19 hit it with 1,000 volts, you're going to go --
20 (indicating) when you put that on. Now, if you
21 tore the whole contactor down, that was a horse
22 of another color. You had to take all the parts
23 and assemble them. But the arc chutes
24 themselves, they were on a hinge pin, and you
25 would raise them up, unlatch them and pull them

1 off.

2 Q. And they were assembled, wrapped in plastic.

3 What would indicate to you, for example, that an

4 arc chute that you were getting out of the

5 storeroom was a General Electric arc chute as

6 opposed to --

7 A. It had "General Electric" marked on it.

8 Q. Marked on the chute itself?

9 A. Right. On the side of the chute.

10 Q. And how was it written; do you recall?

11 A. A circle with "GE" in it.

12 Q. And was that stamped on or was it --

13 A. Molded into the plastic as best I can remember.

14 Q. And the same question for Westinghouse arc

15 chutes. How did you identify those?

16 A. Those were basically marked the same way only --

17 I don't remember whether they had a big "W,"

18 but -- I don't remember. They had something

19 around them or square or something, but I

20 couldn't tell you for sure.

21 Q. Do you ever remember any warnings on the

22 packaging that -- the plastic packaging that

23 surrounded the arc chutes when you would pick

24 them up?

25 A. No. None whatsoever.

1 Q. Now, if I understand from your smoking history,
2 Mr. Sinnott, you continued to smoke, with the
3 exception of that four-year period when you
4 stopped, for approximately 30 years after the
5 surgeon general started warning people not to
6 smoke. Is that correct?

7 A. Possibly. I have no idea when they started
8 warning.

9 Q. Well, it was in the mid 1960s.

10 A. Yeah, probably. At least 20 years anyway.

11 Q. And you would look at those packs of cigarettes
12 when you'd buy them and see the warning on them,
13 correct?

14 A. No.

15 Q. You never saw a warning?

16 A. I have seen warnings on them, but I didn't read
17 every pack of cigarettes I got. Did you?

18 Q. When I smoked?

19 A. Yes.

20 Q. Yes, I did read the warnings on them. That's why
21 I don't smoke anymore.

22 But my question to you is this. Did you ever
23 read the warning on any of the cigarette packs
24 that you purchased?

25 A. When they first came out. They said cigarette

1 smoking may be hazardous to your health. But
2 then I didn't bother to read them every time I
3 bought a pack of cigarettes or opened it.

4 Q. Did you ever read a warning on a pack of
5 cigarettes that said cigarette smoking can cause
6 lung cancer?

7 A. No, I never recall seeing that.

8 Q. Has any doctor told you that your cigarette
9 smoking may have caused your lung cancer?

10 A. No.

11 Q. Do you have any reason to believe that your
12 cigarette smoking has caused or contributed to
13 your lung cancer?

14 A. No, sir.

15 Q. You had some condition where you had bleeding in
16 your lungs. Does that --

17 A. I never heard of that one either.

18 Q. Did you have a tear of your esophagus?

19 A. Yes. But not in my lungs.

20 Q. But did that lead to blood going down into your
21 lungs?

22 A. No. Went into my stomach.

23 Q. All right.

24 A. What they called a Mallory-Weiss tear.

25 Q. When you have your shingles, when they're active,

1 where do they attack your nervous system? What
2 main nerve root?

3 A. They start right below my left shoulder blade,
4 run down my spine across around to this side.

5 Q. Do you take antiviral medication when you get
6 that now?

7 A. They give me -- I can't remember the name of it,
8 but they give me a pill. I have to take five a
9 day. And I can't recall what the name of it is.
10 But if I -- when they first started, they'd itch
11 like a mosquito bite.

12 Q. Right.

13 A. And if I put that salve on them --

14 Q. Are you okay, sir?

15 A. I -- my ear's popping. Air conditioner or
16 something.

17 But then I will put that salve on. If I get
18 them when they first start, then it'll drive them
19 back in. But if I -- if they start to fester,
20 then it's a horse of another color.

21 Q. And how many times have you had attacks of
22 shingles that you recall?

23 A. I have no idea. First time, I was about 25 years
24 old.

25 Q. And the fibromyalgia that you talked about

1 before, is that related to the shingles; do you
2 know?

3 A. No. I don't know that I had it. I had symptoms
4 of it that some people say it's an imaginary
5 thing anyway. But it hurts. That's all I can
6 tell you.

7 MS. RANKE: How you doing?

8 MR. KRAMER: Need a break?

9 MS. RANKE: No. I'm just getting
10 him some water.

11 A. There we go. That made it pop.

12 Q. I'm almost done, sir.

13 Now, this doctor you saw when you went for
14 the screening in 2003, if his name was
15 Dr. Altmeyer or if it was something else, is that
16 the only one time you saw that doctor?

17 A. Yes.

18 Q. And you indicated you've never seen the report
19 that he issued?

20 A. No. The only thing I had was the paper he gave
21 me to take to my primary care doctor.

22 Q. And is it your testimony today that you've only
23 had one prior screening for asbestos before that?

24 A. I may have had one early on back in the '80s
25 sometime but --

1 Q. So one in the '80s, possibly one in the '90s and
2 then this one in 2003?

3 A. Right.

4 Q. And both the screenings in the '80s and the '90s
5 were negative, correct?

6 A. As far as I was told.

7 Q. As president of the local union, were you
8 involved in organizing the screenings for your
9 work force?

10 A. No. They did not start doing those till after I
11 was out of office. The ones that they brought
12 the diagnostic testing truck in, that was after I
13 was out of office.

14 Q. During your time as a departmental grievance man
15 in the electrical department, did anyone ever
16 file a grievance related to asbestos exposure
17 during that time?

18 A. Not that I can recall.

19 Q. When you were president of the union, were you
20 aware of any grievances being filed with respect
21 to asbestos exposure?

22 A. No.

23 MR. KRAMER: I think those are all
24 my questions, Mr. Sinnott. Thank you.

25 MR. MUSILLI: Actually, before we

1 go on, if I could ask about two or three
2 more questions here, for a minute here.

3 - - - -

4 FURTHER CROSS-EXAMINATION OF JAMES T. SINNOTT

5 BY MR. MUSILLI:

6 Q. One thing I mentioned I would follow up on is
7 that when I was asking you some questions about
8 brakes, you remembered that you had been around
9 some crane brakes at Dayton Malleable. I want to
10 go back to that because I forgot to. So I want
11 to go back to that just for a second.

12 What types of cranes were you referencing
13 when you said --

14 A. Bridge cranes. Overhead bridge cranes. Lift 12
15 to 15 tons.

16 Q. Did you ever change the brakes on those cranes?

17 A. Yes.

18 Q. And what was your position? Were you a
19 millwright or electrician or --

20 A. Electrician. Electricians maintained the
21 electrical brakes. The electrically-operated
22 brakes, we maintained them. The

23 hydraulically-operated brakes the millwrights
24 did. And I worked on both of them as both.

25 Q. Do you believe that the hydraulic brakes, the

1 crane brakes, contained asbestos?

2 A. Yes.

3 Q. Do you believe that the brakes that you worked
4 with when you were an electrician contained
5 asbestos?

6 A. Yes, sir. The lining. Some of them we had to
7 drill and put rivets in and put the lining on the
8 drums.

9 Q. When do you first recall installing crane brakes
10 or changing brakes at Dayton Malleable?

11 A. Late '60s, early '70s.

12 Q. When do you last recall changing brakes at Dayton
13 Malleable?

14 A. In the late '80s.

15 Q. Can you identify the manufacturers, suppliers,
16 distributors, tradenames or brand names of any of
17 the crane brakes?

18 A. Seems like Raybestos was the prime one. Because
19 you had to cut it to fit the brake drums and then
20 rivet it on.

21 Q. Are there any others that you can recall?

22 A. Offhand, no.

23 Q. I think I forgot to ask you this question about
24 Dayton Malleable as well. Do you recall seeing
25 any outside contractors at Dayton Malleable?

1 A. Oh, yes.

2 Q. Can you identify any for us?

3 A. Oh, lord have mercy.

4 Honestly, I can't tell you. They had
5 construction crews coming in on any new
6 projects they put in. In the early '80s
7 there, they put in -- they put in a new
8 cupola, and it was -- GHW was a big German
9 outfit. It was for a blast furnace, and
10 they put in new electric furnaces, but I
11 can't tell you what the names of them were
12 right now. I can't recall. They were what
13 they call channel furnaces. They had an
14 electric contactor on the bottom where
15 the iron flowed through the channel to
16 melt it.

17 Q. GHW was the contractor?

18 A. No. That was the manufacturer of the cupola.

19 Q. But as I understand it, you can't recall the
20 names of any outside contractors?

21 A. I'm trying to remember. It was a big
22 construction outfit that came in there. A guy by
23 the name of Frank Cooney was their engineer, but
24 I swear I cannot remember the name of the
25 company.

- 1 Q. Regarding the Dana brake shoes you discussed
2 earlier, can you recall the first time
3 approximately when you first used Dana brake
4 shoes?
- 5 A. I wouldn't have any idea of the first time.
- 6 Q. Can you estimate the last time you recall using
7 Dana brake shoes?
- 8 A. Probably in the middle '80s sometime.
- 9 Q. Did you say middle --
- 10 A. '80s.
- 11 Q. And finally, is there any doctor or medical
12 professional that you see on a regular basis that
13 treats you who has diagnosed you as having
14 asbestosis?
- 15 A. Other than Dr. Kumar.
- 16 Q. Dr. Kumar has diagnosed asbestosis?
- 17 A. He says that's what it shows up on the --
- 18 Q. Did you ever receive any written reports from
19 Dr. Kumar indicating that he diagnosed you with
20 asbestosis?
- 21 A. I got a copy of it and sent it to somebody. I'm
22 not positive.
- 23 And Dr. Lopez also said that I had
24 asbestosis.
- 25 Q. Do you know if Dr. Lopez has issued a report

1 regarding her diagnosis of asbestosis?

2 MS. RANKE: It's a he I think.

3 MR. MUSILLI: That's a he. Okay.

4 A. Yeah, he's a he. If you see him, you'll -- well,
5 the ladies would like him.

6 He's a nice looking guy. Don't get me wrong,
7 but he's the kind of guy that knows he's good
8 looking.

9 Q. Regardless of his looks, has he ever issued a
10 report that indicated to you that you were

11 diagnosed with asbestosis?

12 A. Not to me. He may have submitted it to the VA
13 after he done the radiation treatment. I
14 couldn't swear to that.

15 MR. MUSILLI: Those are all the
16 questions I have. Thank you again for your
17 time.

18 MS. RANKE: All right. I don't
19 think he's doing very well. If you're
20 talking about maybe five or ten minutes,
21 but then after that, we're going to have
22 to --

23 MR. ROONEY: I only have a
24 couple.

25 - - - -

1 CROSS-EXAMINATION OF JAMES T. SINNOTT

2 BY MR. ROONEY:

3 Q. Can you hear me okay?

4 A. Yes.

5 Q. My name is Dean Rooney, Jim. I'm an attorney for

6 one of the parties to this litigation. I only

7 have a couple of questions for you about a

8 company that you haven't referenced and I don't

9 think you know anything about. If that's the

10 case, I just need you to say that for the record.

11 A. Okay.

12 Q. Have you ever heard of a company called PR

13 Sussman Company or Sussman Asbestos Company?

14 A. Not that I can recall.

15 Q. So you wouldn't have any testimony about whether

16 they could have ever done anything to expose you

17 to asbestos, correct?

18 A. Unless they had a brand name on a box.

19 Q. I'm asking what you recall.

20 A. No.

21 Q. Do you recall anything about those companies?

22 A. No, I don't recall that.

23 Q. Do you have any knowledge of whether any of those

24 companies ever were present at any place you've

25 ever worked?

- 1 MS. RANKE: Companies plural?
- 2 You've only asked him about PR Sussman.
- 3 Q. PR Sussman or Sussman Asbestos Company?
- 4 A. No. I'm couldn't tell you that.
- 5 Q. So you have no testimony to offer as to whether
- 6 they could have ever done anything to expose you
- 7 to asbestos, correct?
- 8 A. That's correct. It's a possibility, but I
- 9 couldn't swear to either.
- 10 Q. Just from your knowledge. You have no knowledge,
- 11 correct?
- 12 A. Correct.

13 MR. ROONEY: Thank you. I don't

14 have any more questions.

15 MS. RANKE: Anyone else have like

16 a very quick --

17 MR. MANN: Yeah. I have only a

18 couple.

19 - - - -

20 CROSS-EXAMINATION OF JAMES T. SINNOTT

21 BY MR. MANN:

- 22 Q. Just to clarify, sir. Steve asked you about --
- 23 my name is Eric Mann. Forgive me -- about
- 24 outside contractors, and I believe you said that
- 25 there were some outside contractors who did the

1 construction in the building installing furnaces
2 that you mentioned, and I wasn't sure if that was
3 all you remembered about outside contractors at
4 Ironton. Were there any other sorts of outside
5 contractors who came in there while you were
6 and --

7 A. Oh, yeah. There was Nick Dinaco Construction
8 from up in Huntington.

9 Q. And what did they do?

10 A. Iron work primarily.

11 Q. Putting up structural steel?

12 A. Structural steel and stuff like that.

13 Q. And are there any others examples of outside
14 contractors that you remember? And if you don't
15 remember their names, can you tell me what they
16 did?

17 A. Well, they had some contractors came in when they
18 put those blast furnaces in that put the lining
19 in and the gunite and the blow mix and all that
20 stuff.

21 Q. And do you know the name of that outfit?

22 A. Honestly, I can't remember their name.

23 Q. All right. Do you know anything about them such
24 as where they were from or --

25 A. Seems like they were from out in Illinois

1 somewhere, but I'm not positive of that.

2 Q. Was this the only time you recall that outfit
3 coming in?

4 A. Oh, they were in and out of there several times
5 to work on -- when they'd tear one of the new
6 furnaces out, they'd bring them in to reline
7 them.

8 Q. And besides the ones you've talked about, are
9 there any other examples of outside contractors
10 that you remember?

11 A. Well, we had some electrical contractors come in
12 to help us. When we were doing the major
13 projects and we didn't have enough men to do it,
14 they would hire some electrical contractors to
15 come in and give us a hand.

16 Q. And I know you're getting tired, and I don't want
17 to ask you all those details about who those
18 people were and stuff like that --

19 A. I couldn't tell you.

20 Q. -- but do you remember besides the electrical
21 people and the others you mentioned any other
22 outside contractors that you haven't mentioned
23 today?

24 A. Oh, they had pipe fitters and welders and all
25 that come in when they were doing major

1 construction.

2 United Engineers. Frank Cooney was United
3 Engineers. They're the ones that put in the
4 cupola and in the last three furnace.

5 Q. They're the ones that put in the cupola on the
6 last three furnaces?

7 A. Right.

8 Q. That's different from the outfit that came in and
9 did the lining of the furnaces?

10 A. Yes.

11 Q. That's different?

12 A. They subcontracted the linings and stuff out to
13 somebody out of --

14 Q. Well, it sounds like I've blundered into an area
15 where you could have some more testimony to give,
16 and it sounds like I think your counsel would
17 like to wind down for today so I'm not going to
18 thrash any of the rest of this out for right now,
19 and I'll reserve my questions for another time.

20 MS. RANKE: All right. We'll take
21 a break, and then we'll finish up prior to
22 the video.

23

24

JAMES T. SINNOTT

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C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Lynn D. Thompson, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this _____ day of _____, A.D. 20_____.

Lynn D. Thompson, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires January 22, 2005

EXHIBIT 3

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COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

- - -

WILLIAM E. CARPENTER)	CASE NO. 293588-032
LEO HEAVENER	)	CASE NO. 293449-050
ROGER PROBST	)	CASE NO. 398381
THOMAS LUCAS,	)	CASE NO. 293526-094
(Goldberg 10))	
Plaintiffs,)	
	)	Judge Hanna
vs.)	
)	
A-BEST PRODUCTS COMPANY,)	
et al.,)	
Defendants.)	

- - -

Deposition of ROBERT ALTMAYER, M.D., a witness herein, taken by the Defendants as upon cross-examination and pursuant to the Ohio Rules of Civil Procedure and Notice as to time and place and stipulations hereinafter set forth, at the offices of Robert Altmeyer, M.D., 1131 National Road, Wheeling, West Virginia, August 12, 2002, at 8:30 a.m., before Jane Anne Fitch, a Notary Public within and for the State of Ohio.

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Witness:
ROBERT ALTMeyer, M.D.

Cross-Examination by:
Ms. Webb Lawton

Page:
6

Defendants' Exhibits:

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3

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S T I P U L A T I O N S

It is stipulated by and between counsel
for the respective parties that the deposition of ROBERT
ALTMAYER, M.D., a witness herein, called as upon
cross-examination by the Defendants may be taken at this
time and place pursuant to the Ohio Rules of Civil Procedure
and Notice and agreement of counsel as to time and place of
taking said deposition; that the qualifications of the court

9 reporter and her qualifications to be a Notary Public were
10 agreed to; and to be filed in the trial of this cause; that
11 the deposition was recorded in stenotype by the court
12 reporter, Jane Anne Fitch, and transcribed out of the
13 presence of the witness; and that said deposition is not to
14 be submitted to the witness for his examination and
15 signature.

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1 ROBERT ALTMAYER, M.D.,
2 of lawful age, a witness herein, was first duly sworn as
3 hereinafter certified, and examined and deposed as follows:

4 CROSS-EXAMINATION

5 BY MS. WEBB LAWTON:

6 Q Good morning, Dr. Altmeyer. My name is
7 Nina Webb Lawton, you and I had actually met in January of
8 this year.

9 Can you state your name and business
10 address for the record, please?

11 A Robert Altmeyer, 1131 National Road,
Page 5

12 wheeling, West Virginia.

13 Q Okay. Dr. Altmeyer, I know you've been
14 deposed before, let me just remind you of how this is going
15 to work. We have people on the phone and people here, so
16 you need to make all of your answers verbal. Gestures,
17 shakes of the head can't be taken down and won't be able to
18 be heard on the phone, is that okay?

19 A Okay.

20 Q If you don't understand a question, or
21 you can't hear a question, please tell me and I will either
22 restate or repeat it, okay?

23 A Okay.

24 Q If you answer a question, I'm going to
25 assume that you understood it, is that fair?

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1 A Fair.

2 Q I understand that you may need to take a
3 break; as long as we don't have a question pending, there is
4 no problem with taking a break. I don't think we'll be here
5 that long today.

6 My understanding, Dr. Altmeyer, is we're
7 here to talk about three cases, James Eddie, Lester Palmer,
8 and Thomas Lucas; is that correct, is that your
9 understanding?

10 A That's my understanding.

11 Q Okay. And I see here you have some
12 manila files regarding those cases, correct?

13 A Correct.

- 14 Q Are those your office files?
15 A Yes, they are.
16 Q we will probably take a break at some
17 point and I will look through those if that's all right,
18 since you said you have to make a phone call at some point,
19 we will try to do that then.
20 Do you have a copy of your current CV?
21 A Downstairs I do.
22 Q Has anything on your CV changed since we
23 spoke in January of 2002?
24 A A few minor things, no publications.
25 Q Okay. What types of things have

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- 1 changed?
2 A On there now is I was awarded top, best
3 doctors in the United States for this area.
4 Q Congratulations.
5 A Thank you.
6 Q Are your hospital affiliations all the
7 same?
8 A They may be more extensive, I go to five
9 hospitals now because I'm covering for another doctor.
10 Q Which hospitals do you go to?
11 A Ohio valley Medical Center in Wheeling
12 West Virginia, Wheeling Hospital, Wheeling, West Virginia,
13 East Ohio Regional Hospital in Martins Ferry, Ohio, Reynolds
14 Memorial Hospital in Glendale, West Virginia, and Belmont
15 Community Hospital in Ohio.
16 Q All right. Are you currently or have
Page 7

17 you ever conducted any academic research on asbestos or
18 asbestos-related diseases?

19 A No.

20 Q And you're not currently working on any
21 articles regarding asbestos?

22 A No.

23 Q If I understand correctly, Doctor, you
24 are Board certified in internal medicine?

25 A Correct.

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1 Q Pulmonary medicine?

2 A Correct.

3 Q And geriatric medicine?

4 A Correct.

5 Q And you were previously certified in
6 critical care medicine?

7 A That's correct.

8 Q And you have not kept that certification
9 up?

10 A No, I no longer do much critical care,
11 so I let it lapse.

12 Q Okay. You are currently a B-reader?

13 A That's right.

14 Q Okay. When you and I spoke in January,
15 your certification, you were due to take the recertification
16 in August of this year?

17 A Yes.

18 Q Have you taken the exam yet?

19 A Yes.
20 Q Have you received your results?
21 A Yes.
22 Q And did you pass?
23 A Yes.
24 Q Okay. When did you take the
25 recertification exam?

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1 A 4/8/02.
2 Q And you are not a radiologist, correct?
3 A Correct.
4 Q Okay. And I just briefly want to
5 confirm some things about your general views. What do you
6 require to diagnose asbestosis?
7 A I believe that the most important thing
8 is an exposure history with an adequate latent period --
9 adequate latency period, of the testing that can be done,
10 the chest x-ray, I believe, is the most important single
11 test that can be done.
12 Then I believe that there is other
13 things which, the more you have, the more likely the patient
14 is to have asbestosis. Such as crackles, reduction
15 diffusing capacity, reduction in the total lung capacity. I
16 don't require all of those.
17 I do require that the patient tell me
18 that they have an exposure, and I do require 1/0
19 predominantly irregular type of opacity in the lung basis.
20 And then I look for the other factors which I just alluded
21 to, reduction, past reduction of total lung capacity. There

22 are other times where I don't require any of those
23 whatsoever, that is if there is autopsy material or biopsy
24 material which shows the classic changes of asbestosis.

25 Q So if there is pathology showing

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1 interstitial fibrosis in the parenchyma?

2 A I would require interstitial fibrosis in
3 lung parenchyma with asbestos bodies embodied into the area
4 of asbestosis. Of course I rely on the pathologist for
5 that, because I'm not a pathologist.

6 Q Fair enough.

7 A But I would be leery if I -- if I didn't
8 have any clinical or history -- or clinical data or history
9 or laboratory studies to make a diagnosis of asbestosis only
10 on the basis of interstitial lung disease with no asbestos
11 bodies, I don't think I've ever done that.

12 Q You say that you require exposure
13 history from the patient, correct?

14 A That's correct.

15 Q What type of exposure do you require?

16 A That the patient has been in contact
17 with asbestos.

18 Q Is there any level of contact or dose of
19 contact that you require?

20 A I believe there is a dose response
21 relationship that exists between exposure to asbestos and
22 the subsequent development of it and probably the repetition
23 with which it develops.

24 Q Is there any minimum level of exposure
25 below which one won't develop asbestosis?

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1 A I think in an individual case, very
2 minimal exposures to asbestos can lead to asbestosis. In
3 fact, in my practice I've had people who have had relatively
4 trivial exposures many years before, who have biopsy proven
5 asbestosis, so, I believe there was no absolutely safe level
6 of asbestosis. I do believe that the lower the exposure,
7 the less likely there is to develop it.

8 I don't believe we're in too much risk
9 right now, we're in a building that's very old, I assume
10 there is probably asbestos in here, but I don't believe
11 we're at any risk right now. I don't believe in schools
12 where asbestos has been on some pipe and then it had been
13 coated with ceiling material, that the children are at any
14 risk, I think that would be an incredibly small risk.

15 I do believe where people who have
16 worked in areas where people have been using asbestos
17 products, even though they haven't used it themselves, they
18 may develop an asbestosis.

19 Q What latency period do you see?

20 A In medicine, there was, I believe that
21 15 years is a reasonable time. I have seen people develop
22 asbestosis in my own practice 70 years after they were
23 exposed and I think I've seen one at 10 years. But I think
24 that the general natural consensus is 15 to 20 years for
25 asbestosis.

1 Q And I just want to make sure I was
2 correct, on the chest x-ray, you require interstitial --
3 irregular opacities and a profusion of 1/0?

4 A That's correct, unless I have something
5 else, for example, realistically I made a definite diagnosis
6 of interstitial lung disease that wasn't asbestosis, but it
7 was a patient whose x-ray was clearly normal, had some
8 persistent crackles, little persistent cough that led to the
9 performances of a chest x-ray, which of course was normal,
10 but a chest x-ray was normal, but a high resolution CAT scan
11 with one millimeter cut through the basis, clearly showed
12 interstitial fibrosis which was biopsy proven.

13 So I think that a 1/0 x-ray is extremely
14 important, and for me to diagnose asbestosis without a 1/0
15 x-ray would take some unusual or extraordinary
16 circumstances.

17 Q So in your general practice you would
18 normally look for a 1/0 at least?

19 A Yes.

20 Q Okay.

21 A But what I'm trying to say is in
22 medicine nothing is so cut and dried or exact like that,
23 there was a large gray area and there is many exceptions to
24 the general rule in general medicine.

25 Q And you mentioned the high resolution CT

1 scan?

2 A Yes, I did.

3 Q Okay. Is that a technique that enables
4 you to see interstitial fibrosis more easily than with a
5 chest x-ray?

6 A Yes. It is possible to see interstitial
7 fibrosis by a high resolution CAT scan before it's visible
8 by plain chest radiography.

9 Q And if somebody has a high resolution
10 CAT scan and there's no evidence of interstitial fibrosis,
11 is that a good sign that there is no asbestosis?

12 A It depends on the quality of the high
13 resolution CAT scan and the type they do, but if I have a
14 very good high resolution CAT scan, very fine cuts through
15 the area in question where -- area in question on the chest
16 x-ray, I think that's pretty strong evidence that there is
17 not interstitial lung disease.

18 Q Okay.

19 A But what I would do is not just say no,
20 if I hear crackles and that area is negative, I would maybe
21 re-CAT scan the person in three to six months and see if
22 anything develops in that area, because something is causing
23 those abnormal sounds.

24 It's like the, the horse's hoofprint in
25 the snow, if you see the hoofprint but you don't see the

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1 horse, it doesn't mean the horse wasn't there. And if I
2 hear some abnormal sounds in the chest, and I can't see it

3 by chest x-ray or by CAT scanning, I will probably look at
4 that area again some months later to see if something will
5 develop in that area.

6 MS. WEBB LAWTON: Okay. Charlie, I
7 meant to do this when we started, let me just put
8 on the record now, as you know, there is some
9 confusion about whether my clients are in the
10 Thomas Lucas case or not. I'm going to depose Dr.
11 Altmeyer on the Thomas Lucas case while we're still
12 trying to figure that out. I'm not waiving any
13 rights by doing so.

14 MR. MCLEIGH: Sure, that's fine, I
15 appreciate that.

16 Q Doctor, I would like to talk to you just
17 a little bit about smoking. Is it fair to say that smoking
18 can cause a host of different medical problems?

19 A Yes.

20 Q It can cause chronic obstructive
21 pulmonary disease?

22 A Yes.

23 Q Emphysema?

24 A Yes.

25 Q Chronic bronchitis?

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1 A Yes.

2 Q Coronary artery disease?

3 A Yes.

4 Q Lung cancer?

5 A Yes.
6 Q Other sorts of cancers such as throat
7 cancer?
8 A Correct.
9 Q Peripheral vascular disease?
10 A Yes.
11 Q Okay. And can smoking decrease one's
12 life expectancy?
13 A Yes.
14 Q And would you agree that smoking is the
15 leading cause of lung cancer in this country?
16 A Yes.
17 Q Okay. In your practice, Doctor, do you
18 see a number of patients who have heavy smoking histories?
19 A Yes, I do.
20 Q In your practice, do you see patients
21 who have problems related to asbestos exposure?
22 A Yes, I do.
23 Q Let me back up just quickly. When we
24 spoke in January, 90 percent of your time was -- you spent
25 in your clinical practice?

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1 A Yes.
2 Q And approximately 10 percent doing
3 medical/legal consulting?
4 A Yes.
5 Q Is that still about the right
6 proportion?
7 A I was anticipating that question, I was
Page 15

8 thinking about it this morning, in time-wise, it is 7/8ths
9 with the clinical practice and 1/8th is spent in all kinds
10 of legal/workers' Comp/other types of cases like that.

11 Q Okay. So 7/8ths of your time is seeing
12 your regular patients?

13 A Yes.

14 Q Practicing medicine?

15 A Yes.

16 Q Okay. What percentage of the patients
17 that you see have a smoking history?

18 A In my office?

19 Q Yes.

20 A I would say the majority, I can't give
21 you an exact. Many people come in here with naturally
22 occurring asthma or other asthmas who never smoked. Most of
23 the patients that I see with the COPD or lung cancer, the
24 majority have been smokers, not all, but the majority.

25 Q Is secondhand smoke dangerous?

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1 A Yes, it is.

2 Q Can it cause COPD?

3 A Well, I'm not prepared to say right now
4 that it can cause COPD. I know for sure that it causes,
5 both parents smoke, the kids have many more ear infections,
6 sore throat, strept throat, they lose more school time, they
7 have more cough, things like that, and there is probably
8 about -- probably about 4,000 excess cancer deaths, lung
9 cancer deaths in the United States from secondhand smoking.

10 But I'm not really sure on the COPD
11 topic. I would have to do some research on that, and I
12 haven't looked into that in a while to see what the data is
13 on that. I have never seen anybody in my practice who had a
14 significant COPD from secondhand smoking, that I recognized,
15 anyway.

16 Q Would it be fair to say that if someone
17 is a smoker and also lives with another smoker, that that
18 would then -- the secondhand smoke would exacerbate any
19 problems that their own smoking caused?

20 MR. MCLEIGH: I'm going to object,
21 that's -- what's the fact basis there? I mean, we
22 don't have any evidence of that.

23 Q I'm trying to find out what his general
24 opinions on smoking are.

25 A I don't know, it's probably a relative

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19

1 thing. If someone is smoking three packs a day, adding a
2 little bit of more secondhand smoke may or may not be
3 relevant, and I just don't know that one way or the other.

4 Q Fair enough. What percentage of your
5 patients in your practice have been exposed to asbestos,
6 Doctor?

7 A I have no idea. Small percentage.

8 Q Do you -- are you currently treating any
9 patients in your practice who have asbestos-related
10 diseases?

11 A I have patients in my practice, but I'm
12 not treating them, because there is no specific treatment

13 for asbestosis.

14 Q Let me rephrase it then. Are you
15 currently seeing any patients in your practice who have
16 asbestos-related diseases?

17 A Yes, I am.

18 Q Okay. Approximately how many patients
19 do you currently see who have asbestos-related diseases?

20 A Couple hundred probably, I don't know,
21 maybe more, a lot.

22 Q When you first see a patient in your
23 practice, what is your -- who comes in with shortness of
24 breath, what do you normally do, do you take a history, do
25 you do --

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1 A Well, a new patient you mean?

2 Q Yes.

3 A Before they even come in, I get a chest
4 x-ray, as long as we're -- they haven't had an x-ray within
5 the preceding month and there is no chance that they can be
6 pregnant. We don't get x-rays on people unless we're sure
7 of that. There is a lot of younger people come in who are
8 short of breath who have asthma.

9 When they come in to see me as a new
10 patient, they have a chest x-ray, so then I take a history,
11 do a physical examination, review the x-ray and then likely,
12 if it's not readily apparent what's wrong with them, do
13 additional tests to evaluate the diseases in the
14 differential diagnoses of shortness of breath.

- 15 Q You do not have facilities to do chest
16 x-rays here; is that correct?
- 17 A No, I don't do any testing here at all.
- 18 Q Don't do any pulmonary function testing?
- 19 A No, I have that all done at the
20 hospital.
- 21 Q what hospital do you generally send
22 people to for those?
- 23 A Ohio valley Medical Center in wheeling,
24 west virginia and wheeling Hospital.
- 25 Q Okay. what information, what categories

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- 1 of information do you get in a history when you take a
2 history of a patient?
- 3 A I just first ask them what's wrong,
4 what's your understanding why you're here and let them speak
5 for 10 minutes. Generally patients will tell you what's
6 wrong with them if you can keep your mouth shut for ten
7 minutes, so I just let them talk for a little bit.
- 8 And then I go through, ask them, you
9 know, what the problem is and then I go through the cardinal
10 symptoms of lung disease, which is cough, wheezing,
11 shortness of breath, chest pain and hemiopsias, I ask them
12 for each of the positive ones, when it started, the
13 circumstances under which it occurs, what makes it better,
14 what makes it worse.
- 15 And then, for example, if a patient is
16 short of breath and it's not obvious, if it's they're chief
17 complaint, then I go ask them about other organ symptoms

18 which can cause shortness of breath, such as anemia,
19 hyperthyroidism, et cetera.

20 Many people can be short of breath with
21 no heart or lung disease. Anemia, for example, I have four
22 or five people who are so short of breath they can barely
23 move and their hemoglobin is five, four or five, as soon as
24 they get their blood normalized, they are no longer short of
25 breath.

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1 There were many organ systems which can
2 cause it, unless it's readily apparent, if someone walks in
3 my office and they're 18 years of age and they never smoked
4 and they're wheezing up a storm, they probably have asthma.
5 In that situation, it's apparent what they have.

6 Q Do you take a family history?

7 A I take a history of their medications, a
8 family history, an occupational history and then perform
9 physical examination.

10 Q Okay. When you then fill out your
11 medical record, you dictate your medical records, does the
12 whole history, the medical history, the family history, the
13 occupational history, is that all part of what you dictate?

14 A Yes. If I remember, I try to remember.
15 I do it immediately afterwards, I dictate immediately after
16 I see a patient. I don't write down during the physical
17 examination, I do take brief, you know, notes on their
18 history, and then I dictate it immediately so I don't
19 forget.

20 I ask them, by the way, the same
21 questions you ask me, if you can't hear me, tell me you
22 can't hear me, if you don't understand a question, repeat,
23 I'll repeat it for you, so I think that is important.
24 Q Right. Shortness of breath, that's a
25 pretty non-specific finding; is that correct?

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1 A It's a subjective symptom.
2 Q Okay. And I think you've alluded to
3 this, that there are many, many causes of shortness of
4 breath, correct?
5 A Right.
6 Q From pulmonary problems to anemia,
7 correct?
8 A Right.
9 Q COPD causes shortness of breath?
10 A Yes.
11 Q Coronary artery disease?
12 A Yes.
13 Q Obesity?
14 A Yes.
15 Q what I think I would like to do, Doctor,
16 is let's turn to the first of the cases. Lester Palmer, and
17 if I could look at your file for just a second before we
18 start this.
19 A Can you read that?
20 Q Actually, surprisingly I can. I'm
21 getting good at this.
22 A Last time you told me that you couldn't
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23 read it.

24 Q Really?

25 A Yeah.

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1 Q I have a couple questions, but I can
2 read most of it. Okay. Let me ask you just a few
3 questions, Doctor, about what's in that file. The first
4 thing in the file is a copy of your report, correct?

5 A Right.

6 Q The next thing, are those your
7 handwritten notes from your exam of Mr. Palmer?

8 A It's handwritten notes of the history,
9 but not the exam.

10 Q Okay. And that's your handwriting?

11 A Right.

12 Q Okay. Perhaps you could read them for
13 us, the notes?

14 A You want me to read the notes?

15 Q What I'm interested in, is you have a
16 smoking history down there, I think it's actually on the
17 front, there is something about quit three and a half years?

18 A I think it says quit smoking three and a
19 half years, has smoked since age 17, approximately three to
20 four packs per day, oh, let me see. If I can go back here,
21 because I would -- the history I obtained was quit smoking
22 three and a half years ago, but he had smoked up to two to
23 four packs -- up to three to four packs a day since he was
24 17, averaging about two packs of cigarettes a day.

25 Q Okay. And I did a little math, Doctor,

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1 and I came up with that being about a 34-pack year smoking
2 history, does that sound about right?

3 A Yeah, I think that's correct.

4 Q And if he averaged two packs a day,
5 that's a 68 pack year history?

6 A Well, I would have to figure it out.

7 Q Based --

8 A But I -- that sounds reasonable to me.

9 Q Okay. Is that a significant smoking
10 history?

11 A Yes, it is.

12 Q Okay. And would that smoking history
13 put Mr. Palmer at increased risk of disease?

14 A Yes.

15 Q Okay.

16 A Let's see, yes -- his risk of lung
17 cancer is still high, but he has reduced substantially his
18 risk of lung cancer by quitting three and a half years
19 previously. The risk gets to its lowest point about 13
20 years after an individual stops smoking, but most of the
21 reduction in the risk of smoking occurs in the first five to
22 eight years, something like that. So he is still at an
23 increase for lung cancer.

24 Q And is it fair to say that even 13 years
25 after quitting smoking, he still remains at risk for lung

1 cancer?

2 A 13 years after an individual stops
3 smoking, the risk is very slightly higher than individuals
4 who have never smoked, but that risk remains higher,
5 minimally higher the rest of their life. I think that's the
6 easiest way to say it, even after 13 years there is a very
7 minimal risk of developing lung cancer compared to never
8 smokers.

9 Q Okay. If you can -- well, I think what
10 we're going to do is, let's go ahead and mark this as
11 Exhibit 1. Whenever you need to take a break, Doctor, just
12 tell us.

13 (Whereupon, the document was marked as
14 Defendants' Exhibit 1, 2 and 3 for
15 identification).

16 Q Let me give you what's been marked as
17 Exhibit 1, can you identify that for us?

18 A That's a report sent to Mr. Jarsulic of
19 Goldberg Persky Jennings and White dated January 12th, 2001
20 of my examination of January 12th, 2001, on Lester W.
21 Palmer, Junior.

22 Q And is that a complete and accurate copy
23 of your report?

24 A Yes.

25 Q Okay. Have you authored or prepared any

1 supplemental reports since then?
2 A No.
3 Q Have you been asked to author or prepare
4 any supplemental reports?
5 A No.
6 Q Okay. I want to back up just a second,
7 Doctor, and ask you: Did you review any documents in
8 preparation for your deposition here today?
9 A Just these three charts.
10 Q Okay. Were you provided any additional
11 information from the Goldberg firm?
12 A No.
13 Q Okay. Is it fair to say, Doctor, you
14 did not review any medical records for Mr. Palmer?
15 A Correct.
16 Q Okay. So your report is based entirely
17 on your examination of him and your review of the chest
18 x-ray and the pulmonary function test?
19 A Right.
20 Q All right. How long does the average
21 exam take when you're examining someone for a litigation
22 case like Mr. Palmer?
23 A You mean when they come in the office?
24 Q Yes.
25 A The whole thing is probably, well, in

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1 these cases, probably 20 minutes, something like that. It
2 depends. Some of them are 15 minutes, some of them are an
3 hour, some people know their history, some people don't know
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4 their history, some people come with all their medicines
5 written down and their jobs are written down, and other
6 people come in and have no idea where they worked, when they
7 worked, hard of hearing.

8 So it's -- it's mainly, since I do
9 everything very much the same every time, the length of time
10 depends upon the patient.

11 Q Okay. But sort of on average it's about
12 a 20-minute procedure?

13 A Probably, yeah.

14 Q Okay. And that includes your taking the
15 history of the patient?

16 A Right, take the history, examining, look
17 at the x-rays, dictation.

18 Q Okay. How long does the physical
19 examination generally take?

20 A Probably, probably five to eight
21 minutes, because it's a focused, I'm not looking in the
22 retinas, I'm not doing a rectal exam, things like that which
23 are non-pertinent, the physical examination is directed at
24 cardiopulmonary disease, and then the other things that can
25 cause interstitial fibrosis, for example, I'm looking for

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1 the stigmatism rheumatoid arthritis, connective tissue
2 disease which can also cause interstitial lung disease which
3 can mimic asbestosis.

4 So I'm looking for, you know, but those
5 type of things are usually, you can see on the outside, the

6 conformity of the hands, or deviation of fingers, in between
7 nodules at the elbows, things like that which are very easy
8 to pick up.

9 Q Okay. In your report, Doctor, you refer
10 to an occupational history for Mr. Palmer, correct?

11 A Right.

12 Q All right. And that is from Mr. Palmer,
13 himself?

14 A Right.

15 Q You received this information?

16 A Right.

17 Q All right. You indicate that he had a
18 significant exposure to asbestos at Ormet, correct, do you
19 see that?

20 A Yes.

21 Q What types of exposure did Mr. Palmer
22 have?

23 A He said he worked in the pot room as a
24 carbon setter and in pot service. He tore out pots with
25 jackhammers in the 1970s and 1980s, he worked around the

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1 pots, he was a pot man, the last two years of employment he
2 worked as a welder.

3 Q Do you have an understanding of what
4 portions of that job involved a significant exposure to
5 asbestos?

6 A Well, the people -- the people who work
7 in pot service tell me, I can only tell you, I've never seen
8 it myself, but they tell me that when they repair the pots,

9 they actually have to jackhammer, you know, like inside the
10 pots and around the pots and try to remove all the
11 insulation.

12 welders often are working in areas where
13 other people are using asbestos products, sometimes they use
14 asbestos blankets and gloves and things like that. Now, I
15 don't know what as a welder he did.

16 Q Do you have an understanding of what
17 asbestos products Mr. Palmer worked with or around?

18 A No, I don't know any specific products.

19 Q Is it fair to say then that you also
20 don't know any specific manufacturers or brand names?

21 A That's correct.

22 Q Okay. When you say significant exposure
23 to asbestos there, whose term is significant?

24 A That's mine.

25 Q And on what did you base the

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1 determination his exposure was significant?

2 A Jackhammering out pots in '70s and '80s,
3 primarily.

4 Q Did you find out whether Mr. Palmer used
5 any respiratory protection?

6 A No, I may have -- I don't think I asked
7 him that. If I had, I probably would have put it in the
8 report.

9 Q Do you know whether there was ever a
10 point in time when Ormet ceased using asbestos?

11 A I don't know a specific date.

12 Q You indicate that Mr. Palmer was on
13 disability since 1991 because of lung disease, do you see
14 that?

15 A Yes.

16 Q what was your understanding of the
17 nature of the lung disease that had him -- caused him to be
18 on disability?

19 A I don't have a recollection right now
20 what he told me. I know that he had chronic obstructive
21 lung disease and he had non-diagnosed asbestosis, but I
22 don't have -- I didn't have any disability records.

23 The disability is not a medical
24 determination, it's a medical/legal association, and so you
25 have to look at the records from the people that are

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1 disabled.

2 Q And I just want to make sure I
3 understand, you don't recall as you sit here today, what he
4 told you about his lung disease in 1991, what the nature of
5 that lung disease was?

6 A No, I can't, I mean, I can look at my
7 records and guess, but I don't have a distinct recollection.

8 Q Okay. You indicate in the
9 cardiopulmonary history that he had a chronic cough with
10 sputum production, do you see that?

11 A Yes.

12 Q A chronic cough, a productive cough is
13 not generally related to asbestosis, is it?

14 A In the majority of people it's not, it's
15 a dry hacking cough; however, chronic cough which are
16 irritative cough to begin with, if they go on long enough,
17 actually can be productive. The majority of people it
18 doesn't when they have interstitial lung disease cough,
19 generally a dry cough.

20 Q Okay.

21 A And his improved since he stopped
22 smoking, so that is circumstantial evidence, I think, or,
23 you know, leads me to believe that the smoking had to at
24 least have been the major cause of the sputum production.

25 Q Okay. You also indicated that he had

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1 been on oxygen for the past three and a half years?

2 A Right.

3 Q Okay. What was your understanding as to
4 why he was placed on oxygen?

5 A Because of lung disease.

6 Q Okay. Did you have an understanding of
7 what type of lung disease he had been diagnosed with?

8 A No, I had no records, but I know he had
9 chronic obstructive lung disease because I knew that he was
10 taking Combivent and Slo-bid, on a continuous aerosol
11 machine, those are types of medications which would be used
12 to treat chronic obstructive lung disease.

13 Q You did not confer with any of Mr.
14 Palmer's treating physicians, did you?

15 A No.

16 Q You also indicated that he had
17 intermittent wheezing, correct?
18 A Right.
19 Q That is not an asbestos-related symptom,
20 is it?
21 A No.
22 Q wheezing is a smoking-related symptom,
23 generally?
24 A well, patients with COPD, asthma,
25 bronchitis, fibrosis foreign bodies, there was a lot of

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1 reasons why people wheeze, cardiac wheezing from congestive
2 heart failure, et cetera, people don't wheeze if they only
3 have asbestosis, they can wheeze if they have asbestosis and
4 another disease that causes wheezing.
5 Q Okay. Have you ever been to the Ormet
6 plant?
7 A No.
8 Q Okay. You indicated some familiarity
9 with the pot room, is that from talking to other people who
10 have worked there?
11 A Correct.
12 Q Do you have patients in your practice
13 who have worked at Ormet?
14 A Lots.
15 Q Okay. You listened to his lungs and
16 his chest, correct?
17 A Correct.
18 Q As part of your examination of him?

19 A Right.

20 Q Okay. You indicated that he had a
21 severely prolonged forced expiratory time, what does that
22 mean?

23 A That means that there was severe air
24 flow obstruction.

25 Q Air flow obstruction is not a symptom of

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1 asbestosis, is it?

2 A Well, not that you would pick up on
3 physical examination. There have been some reports of some
4 obstruction in small airways in patients with early
5 asbestosis, when they get some fibrosis initially starting
6 around the small airways and -- but it doesn't cause
7 wheezing.

8 Q Would a severely prolonged forced
9 expiratory time be something that would be related to
10 smoking?

11 A In his case I think it was.

12 Q Okay. That's related to his COPD?

13 A Right.

14 Q Okay. And you did not find any
15 clubbing, correct?

16 A No.

17 Q You did not have a pulmonary function
18 test performed for Mr. Palmer?

19 A Correct.

20 Q Okay. When you examine patients for

21 lawyers in asbestos cases, do you normally have a pulmonary
22 function test taken?

23 A Either we have it taken or they've had a
24 pulmonary function test which is sent to me, usually before
25 the exam, sometimes afterwards.

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1 Q Okay. I saw in your chart there that
2 you have a copy of some pulmonary function studies?

3 A That's right.

4 Q All right. Did you receive that prior
5 to examining Mr. Palmer?

6 A Yes.

7 Q Okay. And those were -- that's a
8 pulmonary function study that was dated January 16th, 1996?

9 A Right.

10 Q From Wetzel County Hospital?

11 A Correct.

12 Q That was not performed at your
13 instructions?

14 A No, it was not.

15 Q That showed that there was severe
16 obstruction, correct?

17 A Yes.

18 Q Okay. No restrictive impairment?

19 A No, however, there was no -- there was
20 no restrictive impairment by TLC testing, but that -- but to
21 be very careful what I'm saying, I'm not saying there isn't
22 a restrictive disease, I said there is no restrictive
23 impairment, two separate things.

24 Q Okay. What is the difference?

25 A Oh, an individual can have a restrictive

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1 disease and no impairment from it. In other words, if I
2 would get pulmonary fibrosis right now, early, and my total
3 lung capacity is 99 percent of predicted and three years
4 from now it is 85 percent of predicted, it has dropped like
5 a rock, it is going south fast; however, it's still not
6 below the requisite 80 percent of predicted, so I have a
7 severe fatal restrictive lung disease with no impairment
8 because it hasn't yet fallen to the point where it would
9 fall into the abnormal category by total lung capacity test.

10 Q And the only way to tell that would be
11 to have serial lung testing?

12 A To see if it's dropping and that's
13 exactly what we do.

14 Q In this case however, you only had the
15 one pulmonary function test?

16 A Right.

17 Q So you couldn't make any determination,
18 could you, as to whether his pulmonary function, his total
19 lung capacity was dropping or not?

20 A No, I just have one point in time. And
21 the other issue that I point out in a case like this, is
22 that the chronic obstructive pulmonary disease when it's
23 severe, moderately severe to severe increase the total lung
24 capacity, cause hyperinflation; other co-existing diseases
25 such as interstitial fibrosis tend to lower the total lung

1 capacity.

2 So it's like, you know, penalties in
3 football, offsetting penalties, you go back to the line of
4 scrimmage, in other words, if you have the one disease
5 that's raising the total lung capacity and the other disease
6 that is lowering the total lung capacity, and they may both
7 be severe, since they cancel out each other, the total lung
8 capacity will be perfectly normal in the presence of two
9 severe diseases.

10 Q All right. Is there any way from the
11 one study that you have there of determining whether there
12 was a restriction in the total lung capacity that may have
13 been balanced out by the COPD?

14 A I just know that he has an interstitial
15 fibrosis. You know, category, I think 1/ --

16 Q I think it's on the last page?

17 A 1/0, so he does have some interstitial
18 lung disease. I don't know, you know, I can't give a
19 percentage-wise, you're right, without having serial, I
20 can't tell if it's dropping or not without more than one
21 total lung capacity testing.

22 Q Okay. You also indicate that there is a
23 reduction in the specific diffusing capacity?

24 A Right.

25 Q And that's the diffusing capacity

1 corrected for after alveolar volumes?

2 A That's correct.

3 Q Can COPD cause a reduction in the
4 diffusing capacity?

5 A Yes.

6 Q Okay. Is there -- do you have an
7 opinion as to what caused the reduction in the diffusing
8 capacity in this case?

9 A I think both factors, I think his
10 asbestosis and pulmonary emphysema from smoking reduced his
11 diffusing capacity.

12 Q Are you able to say to -- to attribute
13 the reduction to any percentage for the COPD and any
14 percentage for the asbestosis?

15 A No, I wish somebody would do that study
16 and it would make -- I could have more exact reports. I'm
17 not aware of any particular study that's tried to apportion
18 these things or divide it up. In other diseases they've
19 done that, but in this one I'm not aware, the study being
20 done which would allow me to do that.

21 Q The air flow obstruction, the severe air
22 flow obstruction that Mr. Palmer had, and the smoking
23 history that you obtained from him, would those be
24 sufficient to cause a reduction in the diffusing capacity?

25 A Yes.

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1 Q If someone were to have those alone?

2 A Yes.
3 Q All right. You also reviewed a chest
4 x-ray; is that correct?
5 A Right.
6 Q Did Mr. Palmer bring that chest x-ray
7 with him?
8 A No, it was sent to me by Mr. Jarsulic.
9 Q Okay. And was that sent with -- sent to
10 you prior to Mr. Palmer's exam?
11 A Yes.
12 Q Okay.
13 A I'm almost -- I'm virtually sure of
14 that. I'm pretty sure of that.
15 Q Okay. And that was taken at City
16 Hospital in Bellaire, I think you refer to it in your report
17 if that helps, Page 3.
18 A Yes.
19 Q Now, Belmont County Hospital?
20 A Yeah, they changed the name.
21 Q Okay. Did you request any other chest
22 x-rays to review with respect to Mr. Palmer?
23 A No.
24 Q Okay. And you indicate this was a copy
25 film?

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1 A Correct.
2 Q Okay. My understanding is that under
3 the NIOSH guidelines, you can't do an official B-read on a
4 copy film; is that correct?

5 A I've had that question in the past and I
6 talked to Russell Morgan of Johns Hopkins who is, you know,
7 one of the people at that point in time of the B-reader
8 program, and what he told me was, if -- it's preferable not
9 to read copy films; however, if it's the only film available
10 and if it is of good quality, you can do a B-read on a copy
11 film. That doesn't say that in the B-reading book, though,
12 that's what Russell Morgan told me.

13 And of course, that's always been
14 curious to me that all of the standard films are copy films
15 that we compare our film to, but they have to make hundreds
16 of copies of it. But I would prefer if there is an original
17 film to read the original film, if it would be available.

18 Q Do you know whether the original film
19 for that August 10th, 1995 chest x-ray was available
20 anywhere?

21 A I don't know, I assume it wasn't,
22 because the majority of patients that I see for Mr.
23 Goldberg's law firm, they send me original films. If I
24 don't get an original film, I assume there is some reason.

25 Q Okay. Did you request any other

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1 original films?

2 A I just put in my report, if there are
3 any original films, I would prefer to read those, I would be
4 glad to read those if you forward them to me.

5 Q And you were not sent any?

6 A I don't think so, or I would have put a

Altmeyer August 12 2002.txt
7 supplemental report and that report would be in this folder
8 and there is no report in this folder.

9 Q And because it was a copy film, you
10 rated the film a quality two?

11 A Right, because it was a good quality
12 film, a good copy film. Most of the copy films I read, I
13 mark them as three, film quality three, this one I did two,
14 because it was a good copy film. In the report I said it
15 was an excellent copy film.

16 Q In order to determine the quality of the
17 copy film, don't you need to have seen the original film to
18 know whether it's under penetrated or over penetrated?

19 A No.

20 Q You can tell just from looking at the
21 copy?

22 A Right.

23 Q And you read this film as showing
24 irregular opacity shape and size t/t, correct?

25 A Correct.

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1 Q At a 1/0 profusion?

2 A Yes.

3 Q Okay. And that is the lowest profusion
4 to find asbestosis, correct?

5 A 1/0 is the lowest by chest x-ray, right.

6 Q Okay. And you did not find any pleural
7 abnormalities; is that correct?

8 A No.

9 Q Okay. And then you marked several

10 symbols in 4B, what symbols did you mark?

11 A The only one that I meant to mark would
12 be EM, that's the entry for emphysema.

13 Q And that's the COPD?

14 A Emphysema is one of the two diseases
15 under the category of COPD.

16 Q So the marking of O on the very
17 right-hand corner is a random marking?

18 A That's an error.

19 Q what does the O stand for?

20 A It normally means that there were no
21 other symbols, no other obliquator symbols.

22 Q Okay. I understand. You also -- you
23 refer to hyperinflation of the lung fields and stairstepping
24 of the diaphragms, what is stairstepping of the diaphragms?

25 A Stairstepping of the diaphragms occurs

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1 in patients who have hyperinflation, that means their lungs
2 are big, and the diaphragm is the muscular partition which
3 separates the chest from the abdomen and actually the muscle
4 that attaches onto the diaphragm from the chest wall is
5 usually very smooth; however, when the diaphragm gets pushed
6 down very far, from hyperinflation, the muscle slips, comes
7 off of the chest wall so you will -- so you can see shadows
8 from two or three or four maybe muscle slips, and you can
9 imagine them looking like stair steps as you go up one after
10 the other.

11 That by the way, having had

12 stairstepping, now that you bring that up, having had
13 stairstepping of the -- stairstepping of the diaphragm with
14 severe hyperinflation and with a total lung capacity of,
15 what was it, 85 percent of predicted, implies that there was
16 significant reduction in the lung capacity from interstitial
17 lung disease, because normally when you get stairstepping
18 and hyperinflation, the total lung capacity is very high,
19 often 100 percent of predicted.

20 I hadn't thought of that, this case is
21 only 80 percent, so something is occupying space within the
22 lungs and causing increased retraction of the lungs,
23 decreased lung compliance.

24 Q Is there any way to determine whether
25 there is restriction as well?

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1 A well, by pulmonary function test, the
2 only thing we can do is look for a reduction of the total
3 lung capacity, the reduction of total lung capacity is the
4 gold standard.

5 Q Okay.

6 A By which you diagnose a restrictive
7 impairment, but not a restrictive disease.

8 Q I guess what I'm trying to find out is,
9 it appears to be your opinion that he did have restriction
10 because his total lung capacity was reduced to 85 percent in
11 somebody who had hyperinflation?

12 A Yes.

13 Q All right. Is there any way to
14 determine that that is as a matter of fact the case, that

15 there was restriction counterbalancing the hyperinflation,
16 is there any testing that you can do to determine whether
17 there was any restriction?

18 A By restriction, you mean restrictive
19 impairment?

20 Q Yes.

21 A I don't think anybody can do it. I
22 think it's too complex. I think there is other tests that
23 you can do that are abnormal with, with restriction, but
24 when you have a COPD to this degree, I think it would be too
25 hard to separate everything out, at least I can't, maybe

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1 somebody else could.

2 Q Okay. When this chest x-ray was taken
3 in August of 1995, Mr. Palmer was still smoking; is that
4 correct?

5 A Yes, he would have still been smoking.

6 Q Okay. Asbestosis is a progressive
7 disease, correct, it doesn't get better?

8 A It doesn't get better, sometimes it
9 stays dormant for many years and doesn't progress, often it
10 does progress, it's considered a progressive disease, but it
11 never spontaneously gets better because it's structural
12 changes to the lungs.

13 Q So if three years later there was no
14 interstitial fibrosis, then that would not be something that
15 was related to asbestosis; is that correct?

16 A Right. If somehow the interstitial lung

17 disease cleared, you said, and went away, it could not have
18 been due to asbestosis.

19 Q Okay. And is that why often you want to
20 look at serial chest x-rays to see whether it's progressed
21 or gotten better?

22 A Well, with asbestosis, it never gets
23 better. The reason why we do it is to look for progression,
24 I mean, if there is a doubt about the diagnosis to begin
25 with, it could be something else, sure, I would check an

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1 x-ray again at different frequency, depending upon the
2 acuteness of it and the symptoms of the patient.

3 Q I think we can go to the next one, which
4 is going to be --

5 A Let me make one quick call.

6 Q Do you want to take a break now between
7 patients?

8 A It's just going to take one minute, too.
9 (Off-the-record discussion.)

10 Q Doctor, you have been handed what's been
11 marked as Exhibit 2, and that's for James Eddy.

12 A Oh, yeah.

13 Q Is that a copy of your January 5th, 2001
14 report in the James Eddy case?

15 A Yes, it is.

16 Q Is that a complete and accurate copy of
17 your report?

18 A Yes.

19 Q Okay. Have you drafted or prepared any
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20 supplemental reports in this case?

21 A No.

22 Q Have you been asked to draft or prepare
23 any supplemental reports in this case?

24 A No.

25 Q Okay. Now, my understanding, Doctor, is

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1 that Mr. Eddy is a former or current patient of yours; is
2 that correct?

3 A Current, I believe, I have three Eddy's
4 and yes, he is.

5 Q Okay. Is it normal, your normal
6 practice when you issue an expert report in a case where
7 someone is your patient to mention that in the report?

8 A No. In fact, it's improper for me to do
9 so, that would be releasing confidential information without
10 the patient's permission. The fact I'm even a patient's
11 doctor is something that you know it in this case, but I
12 don't even, you know, I don't even acknowledge that a
13 patient is a patient of mine without their permission.

14 Q Okay. In preparing your report in
15 Mr. Eddy's case that we have marked as Exhibit 2, did you
16 review any of his medical records from your treating file?

17 A I don't remember, honestly I don't
18 remember. I may have, but I just can't remember one way or
19 the other.

20 Q Okay. And there is no indication in
21 your report that you reviewed any of his medical records; is

22 that correct?

23 A You mean my medical records?

24 Q Yes.

25 A No, I wouldn't put that in the report

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1 unless it was something that the patient wanted me to do,
2 because I try to keep these very -- we don't even put this
3 in the same file because they are two separate things,
4 patient confidentiality and patient reports are kept totally
5 separate from anything else unless the patient wants them
6 mixed.

7 Q And did you review any other medical
8 records for Mr. Eddy prior to issuing your medical report?

9 A Yes, I did. Chest x-ray report of Ray
10 Herron, M.D. of 2/22/95 and spirometry by Ray Herron of
11 3/24/95.

12 Q And are those tracings that came with
13 the spirometry?

14 A Yes, there are two sheets of paper that
15 came with the spirometry.

16 Q And other than the two reports from
17 Dr. Herron, did you review any other medical records with
18 respect to Mr. Eddy?

19 A No, I think not.

20 Q Okay. And you took an occupational
21 history from Mr. Eddy himself?

22 A Yes, I did.

23 Q Okay. Do you have any understanding as
24 to the manufacturers, brand names or suppliers of any of the

25 asbestos-containing products Mr. Eddy may have worked with

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1 or around?

2 A No.

3 Q Okay. Do you have an understanding as
4 to the intensity or duration of Mr. Eddy's exposure to
5 asbestos?

6 A Well, just what's in the report there.
7 He worked around pots which were lined with asbestos, he
8 said that the side and end shields were made of asbestos,
9 there was an overhead crane operator was exposed to pipes
10 which were insulated with asbestos, he used asbestos
11 blankets, he was exposed to asbestos gaskets, asbestos
12 peephole covers and he wore asbestos gloves.

13 Q Okay. Do you have an understanding as
14 to the amount of asbestos fiber that would be released from
15 any of those products?

16 A I don't understand the question. Do you
17 mean how much comes off the surface?

18 Q Yes, how much fiber he would have been
19 exposed to from being around those products?

20 MR. MCLEIGH: Are you talking about one
21 product in particular or all of them?

22 Q All of them.

23 A I would think that from what he had told
24 me, that he had -- I would just say a significant exposure,
25 I mean, he used asbestos blankets and gloves and certainly

1 that's enough to be dangerous and can cause asbestosis.

2 So I can't put a, you know, a fibers per
3 unit area or anything like that, because I don't know that.

4 Q Okay. And you would agree with me that
5 asbestos is only dangerous if it's respirable and
6 respirated, correct?

7 MR. MCLEIGH: Objection.

8 A Patients can get skin lesions from
9 asbestos, and eye lesions without actually having inhaled
10 it, and they've now identified a higher risk of carcinoma of
11 the ovary in women who were exposed to talc contaminated
12 asbestos when they were babies, so that's not an inhalation,
13 so there are other ways that can do it.

14 Q How about asbestosis, though,
15 asbestosis, do you need to have inhalation of the fibers?

16 A For asbestosis, yes.

17 Q Okay. Do you have any understanding as
18 to how much fiber Mr. Eddy would have inhaled from the
19 products that he discussed?

20 MR. MCLEIGH: Objection. How are you
21 going to quantify fibers?

22 A On a scale of one to 10 or what?

23 Q Fibers per cubic centimeter?

24 A No, you would -- no, I can't answer that
25 one because that would require some sort of measuring

1 device.

2 Q Fair enough. He did not have a chronic
3 cough; is that correct?

4 A Right.

5 Q Okay. But he had intermittent cough?

6 A Right.

7 Q Okay. And he had that intermittent
8 cough over a course of years?

9 A Right.

10 Q Do you know how long he had had the
11 intermittent cough?

12 A For years, but I don't know how many
13 years, more than three, I would think.

14 Q Okay.

15 A Maybe much longer, I'm just guessing.

16 Q He had coronary artery disease, correct?

17 A Right.

18 Q In fact, he had two bypass operations?

19 A Right.

20 Q Two angioplasties and a stint?

21 A Right.

22 Q Okay. Can coronary artery disease cause
23 shortness of breath?

24 A Yes.

25 Q Shortness of breath on exertion?

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1 A Yes.

2 Q Okay. He also had hypertension; is that

3 correct?
4 A Yes.
5 Q Okay. Can hypertension -- does
6 hypertension increase the risk of other medical problems?
7 A Certain ones, yes, mainly peripheral
8 vascular disease, cardiac disease, stroke, coronary artery
9 disease.
10 Q And according to your report, he had
11 smoked one and a half to two packs of cigarettes a day for
12 40 years?
13 A Well, he had quit smoking two years
14 prior to this exam, but he had smoked one, one and a half to
15 two packs of cigarettes a day for 40 years.
16 Q So that would be about a 60- to 80-pack
17 year history?
18 A Right.
19 Q Okay. Is that a significant smoking
20 history?
21 A Yes.
22 Q Okay. And would a smoking history of
23 60- to 80-pack years increase the risk of disease?
24 A Yes.
25 Q Okay. And reduce the statistical life

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1 expectancy?
2 A Yes.
3 Q Okay. And a smoking history of 60- to
4 80-pack years can cause chronic obstructive pulmonary
5 disease?

6 A Yes, it does.
7 Q Emphysema?
8 A Yes.
9 Q And in fact, Mr. Eddy, you diagnosed
10 Mr. Eddy with chronic obstructive pulmonary disease, didn't
11 you?
12 A Yes.
13 Q And you treated him for a number of
14 years for that; is that correct?
15 A Yes, yes.
16 Q Okay. And in fact, Mr. Eddy was on a
17 number of different medications that you prescribed for him
18 for his chronic obstructive pulmonary disease, correct?
19 A Correct.
20 Q Okay. Mr. Eddy also had pneumonia on
21 two different occasions, correct?
22 A Are you reading that from my report?
23 Q The first paragraph of the, right above
24 smoking history, he had pneumonia as a child and in November
25 of 2000?

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1 A Yes.
2 Q So he had had pneumonia just two months
3 prior to seeing you; is that correct, you saw him in January
4 of 2001?
5 A Yeah, right.
6 Q All right. Can pneumonia cause pleural
7 thickening?

8 A It can.
9 Q And it causes pleural thickening in the
10 area where the pneumonia was?
11 A Only if the pneumonia involved the
12 pleural surface, the visceral pleura, or if pneumonia causes
13 a para pneumonic pleural effusion, sometimes there can be
14 thickening as a result of fluid having been in the pleural
15 space.
16 The majority of people though that have
17 pneumonia don't get any pleural thickening from it, but it
18 can happen, yes.
19 Q Did you treat Mr. Eddy for the pneumonia
20 in November of 2000?
21 A I can't remember.
22 Q You indicated that Mr. Eddy was taking
23 Synthroid, why was he taking Synthroid?
24 A For a thyroid disease of some type.
25 Q Okay. If you look down where you say

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1 review of symptoms, you say there is no history of thyroid
2 disease, would that then be an error?
3 A That's an error.
4 Q Okay. So he does have a history of
5 thyroid disease of some nature?
6 A He would have to if he is taking
7 Synthroid.
8 Q Okay.
9 A I don't know who put him on it, it
10 wasn't me, but to be on Synthroid, you have to have some
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11 thyroid problem of some type.
12 Q Okay. And you found mild crackles in
13 the axillary areas?
14 A Right.
15 Q And that's under the armpit in the side?
16 A Yes, that's a characteristic area where
17 asbestos-related crackles initially appear.
18 Q Okay. Were they an inspiratory
19 crackles?
20 A I did not record it one way or the
21 other.
22 Q Okay. And he had a prolonged forced
23 expiratory time?
24 A Minimally prolonged to normal, quote,
25 the forced expiratory time was minimally prolonged to

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1 normal, unquote.
2 Q Is that something that might be related,
3 would be related to the COPD?
4 A Yes.
5 Q Okay. And he had no clubbing?
6 A No clubbing.
7 Q All right. You reviewed a pulmonary
8 function test from Ray Herron, correct?
9 A Right.
10 Q Okay. And that pulmonary function test
11 indicated, first off, that was spirometry only, right?
12 A That's correct.

13 Q There were no lung volumes?
14 A Not that I had, no.
15 Q And no diffuse incapacity?
16 A Not that I would say.
17 Q Data you had did not include those?
18 A Correct.
19 Q And the FVC, FEV1 and ratio were all
20 normal, correct?
21 A Correct.
22 Q So based on the pulmonary function data
23 that you were given, Mr. Eddy --
24 A The FEV1 ratio was normal, I mean, that
25 only measures mechanical lung function.

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1 Q Okay.
2 A It doesn't measure the gaseous shape
3 properties of the lung.
4 Q And what I'm getting at, Doctor, is the
5 only data you were given regarding Mr. Eddy's lung
6 functioning showed normal lung function, correct?
7 A He had, again, he had normal FVC and
8 FEV1, so he had normal mechanical lung function and there is
9 no FEV 25, that 75, for example, which could indicate some
10 obstruction in small airways, that wasn't done, but the FVC
11 and FEV1 mechanical lung function is normal.
12 Q All right. And that's the only data you
13 had?
14 A Right.
15 Q So you can't say whether the diffusing
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16 capacity was normal?

17 A That's right.

18 Q And you can't say whether the lung
19 volumes were normal?

20 A Can't, although his FVC was normal which
21 argues against, I would be surprised if the total lung
22 capacity would be abnormal, could be, but probably would be
23 normal.

24 Q Do you have an opinion as to whether
25 Mr. Eddy had any impairment due to asbestosis, when I say

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1 impairment, I mean impairment in his lung functioning?

2 A I don't have enough data to say whether
3 he had impairment or not.

4 Q So you cannot express an opinion within
5 a reasonable degree of medical certainty either way?

6 A No.

7 Q Fair enough. You also reviewed a chest
8 x-ray?

9 A Right.

10 Q From Dr. Herron?

11 A Yes.

12 Q Or a chest x-ray from the Wetzel County
13 Hospital, correct?

14 A Well, let's see, right, it was taken at
15 Wetzel County Hospital on 11/25/93.

16 Q Now, is that the same chest x-ray that
17 Dr. Herron interpreted for which you had an ILO form?

18 A His x-ray was taken, or there are
19 actually two x-ray reports from Dr. Herron, one was from
20 1/10/95, apparently taken by Dr. Herron and another one --
21 Q Was that an x-ray or PFT that you're
22 looking at?
23 A This is a B-reading form from Dr.
24 Herron, 1/10/95 and then there is -- oh, yeah, yeah.
25 Q That's his PFT?

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1 A Yeah. Just the one.
2 Q Okay.
3 A And to answer your question, these were
4 different x-rays, because his x-ray report is from a film of
5 1/10/95 and I had reviewed one of 11/25/93.
6 Q You've not had an opportunity to review
7 the January, 1995 film that Dr. Herron reviewed, have you?
8 A No.
9 Q All right. And you read the November,
10 1993 film as being a quality one, correct?
11 A Correct.
12 Q All right. And you read it as showing
13 irregular opacity shape and size t/p?
14 A Right.
15 Q Okay. And 1/2 is the profusion,
16 correct?
17 A Correct.
18 Q You did not find any pleural changes?
19 A No.
20 Q And you found a granuloma?

21 A Right.
22 Q Okay. And then there is something else
23 written?
24 A Status post mediastinotomy, there is
25 wire internal sutures from his prior cardiac surgery.

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1 Q So his prior cardiac surgery, you can
2 see the results of that?
3 A Oh, wait a minute, there was, in the
4 body of my report, it said, there may be some isolated
5 pleural thickening along the right lateral chest wall.
6 Q And that was shown to you by Plaintiff's
7 counsel just now?
8 A Well, he showed me my own report, yes.
9 Q And I was going to raise that with you,
10 don't worry, Doctor. So we will just jump right to that.
11 You indicate that there may be some isolated pleural
12 thickening on the right lateral chest wall, what did you
13 mean by that?
14 A That I wasn't sure if it was present or
15 not and that's the only possible pleural thickening that I
16 saw.
17 Q Okay. It was not bilateral?
18 A No.
19 Q All right. And it wasn't sufficient for
20 you to note it on the ILO form, correct?
21 A It wasn't even definite enough for that.
22 Q Okay. So is it fair to say that you

23 would not be able to say within a reasonable degree of
24 medical certainty that there was pleural thickening?

25 A That's true.

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1 Q Okay. When Mr. Eddy first came to see
2 you, did you have a chest -- review any chest x-rays for him
3 or have any chest x-rays performed?

4 A No, the only x-ray I had was the one
5 that was sent to me.

6 Q Let me back up, when he first came to
7 see you as a patient?

8 A I can't tell you that. If you get some
9 permission from Mr. Eddy to discuss his own file I will do
10 it.

11 Q what is your office's practice in terms
12 of releasing medical records?

13 A We release medical records only if we
14 have a written release from the patient.

15 Q Okay.

16 A The only reason you get fired here is if
17 you embezzle money or if you release medical records without
18 the patient's permission, that same day you're gone.

19 Q Can cardiac surgery cause pleural
20 thickening?

21 A Yes.

22 Q Okay.

23 A Often along the left lateral chest wall.

24 Q All right. I think we can move on to
25 Mr. Lucas. You can just look at what was marked as Exhibit

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1 3, is that a copy of your December 18th, 2000 report in the
2 Thomas Lucas case?

3 A Yes.

4 Q And is it a complete and accurate copy
5 of that report?

6 A Right.

7 Q Have you prepared or are you preparing
8 any supplemental reports?

9 A No.

10 Q On. Have you been asked to prepare any?

11 A No.

12 Q Okay. And you examined Mr. Lucas in
13 your office on the same day that you dictated your report?

14 A Right. Let me see, I believe so, oh,
15 yes, I did dictate it.

16 Q Yes?

17 A Yes, I always do that.

18 Q So the date of the report is the same
19 day that you had examined him?

20 A Right.

21 Q And that's your normal practice?

22 A Yes.

23 Q Okay. You indicate an occupational
24 history in this report, that history came from Mr. Lucas
25 himself?

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2 brand name or supplier of any of the products that he worked
3 with?

4 A Correct.

5 Q Do you know whether he wore respiratory
6 protection?

7 A No.

8 Q You indicate that Mr. Lucas said that
9 the fumes from the pots would be liberated into the air, do
10 you have an understanding of what those fumes were?

11 A The specific fumes, no. I do know a
12 little about pot fume emission, but I don't know what
13 specific that comes out of the pots. There is a thing
14 called pot room asthma that workers get from emission from
15 the pots in the aluminum process, the smelting process.

16 Q What are the symptoms of pot room
17 asthma?

18 A Cough, wheezing, shortness of breath.

19 Q Mr. Lucas indicated that he had a cough
20 for a number of years, is a cough a non-specific finding?

21 A Yeah, the presence of a cough doesn't
22 tell you the particular disease that's causing it or problem
23 that's causing it, so in that sense it's non-specific, it is
24 a specific symptom, but the causes are non-specific, meaning
25 that there are many different causes.

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1 Q Okay. He did not have shortness of
2 breath?

3 A Correct.

4 Q All right. And he had a fairly remote
5 smoking history, correct, he had not smoked in 35 years?
6 A Right.
7 Q And he had only smoked 10 pack years?
8 A Right.
9 Q All right. Can that smoking history
10 still cause a cough?
11 A It's very unlikely 35 years later,
12 extremely unlikely, I would say in his case, no.
13 Q Okay.
14 A Very, very unlikely. When patients have
15 a smoking induced cough with sputum, most of the time the
16 chronic cough gears up within a year or so, some it never
17 does. They have an 80 percent chance that the cough will go
18 away, and a 20 percent chance that it will remain when it's
19 due to smoking.
20 Q All right.
21 A Emphysema, of course, that they have is
22 permanent, but we're talking about the cough.
23 Q Can a 10-pack year smoking history cause
24 damage to the lungs that will result in COPD or emphysema?
25 A Only under certain circumstances,

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1 individuals who have alpha one antitrypsin deficiency can get
2 hereditary emphysema even without smoking and even a small
3 smoking history can really make it a lot worse.

4 Like anything, I'm sure you can probably
5 find some person somewhere who has it with a 10-pack year
6 history, but not usually, it usually takes a 20-pack year

7 history, could be one pack a day for 20 years or two packs a
8 day for 10 years.

9 Q You indicate that he was on vioxx for
10 arthritis?

11 A Correct.

12 Q Was that a rheumatoid arthritis?

13 A No, he had osteoarthritis. I always try
14 to make sure I differentiate between those, too, because
15 osteoarthritis does not cause lung disease, rheumatoid
16 arthritis can cause lung disease.

17 Q You jumped right to my question, Doctor.

18 A Very important question.

19 Q You found mild crackles; is that
20 correct?

21 A Yes.

22 Q All right. And no clubbing?

23 A Right.

24 Q All right. And again, you had a
25 spirometry only from Dr. Herron?

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1 A Right.

2 Q And in this case you did not have the
3 tracings?

4 A Right.

5 Q All right. And that spirometry was an
6 FVC, FEV1 and the ratio was normal, correct?

7 A Correct.

8 Q That spirometry doesn't indicate what

9 norms Dr. Herron was using, does it?
10 A No, it doesn't.
11 Q Okay. And there is no -- you had no
12 lung volume information at all with respect to Mr. Lucas,
13 did you?
14 A Correct.
15 Q And you had no diffusing capacity
16 information?
17 A Correct.
18 Q Okay. And did you have a pulmonary
19 function test done on Mr. Lucas at your direction?
20 A That's correct.
21 Q And the data you received on Dr.
22 Herron's PFT shows that Mr. Lucas's lung functioning, at
23 least as far as that data indicates, is normal?
24 A Right.
25 Q Okay. So is it fair to say that you

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1 can't -- you cannot diagnose any impairment in Mr. Lucas'
2 lung functioning based on the data you have?
3 A Right.
4 Q You also read a 1993 chest x-ray from
5 Mr. Lucas?
6 A Yes.
7 Q Is that chest x-ray sent to you by the
8 Goldberg firm?
9 A Yes.
10 Q And you had received that prior to
11 examining Mr. Lucas?

12 A Yes.
13 Q Okay. Did you review the chest x-ray
14 prior to your exam or after your exam?
15 A Right before.
16 Q Okay.
17 A We do it backwards, most, for most
18 specialties you should examine the patient first, ask the
19 questions and then look at the data, but for lung disease
20 where you can actually look in and see if somebody has, for
21 example, a solitary pulmonary nodule, the question that I'm
22 going to then ask are going to be more directed towards that
23 than anything else, so it saves a lot of time by looking at
24 the x-ray first.
25 Q Okay. And that was a quality one x-ray?

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1 A Yes.
2 Q All right. And you read that as showing
3 irregular opacity of size and shape t/t and a profusion of
4 1/0?
5 A Right.
6 Q You did not find any pleural changes
7 with respect to Mr. Lucas, did you?
8 A No.
9 Q All right. And that is a nine-year-old
10 chest x-ray, approximately?
11 A Yes.
12 Q All right. You've not reviewed anymore
13 recent chest --

14 A It's nine years old now, it wasn't nine
15 years old when I did the report.

16 Q It was about seven years old when you
17 did the report?

18 A Correct.

19 Q You have not seen any more recent chest
20 x-rays for Mr. Lucas?

21 A No.

22 Q Okay. Doctor, I would like for you to
23 assume for the moment that Mr. Lucas was exposed to numerous
24 different sources of respirable asbestos fibers, okay?

25 A Uh-huh.

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1 Q All right. And assume for the moment
2 that one of those sources of respirable fibers were
3 automotive gaskets, all right?

4 A Uh-huh.

5 Q All right. And like all of your expert
6 opinions, I would like your opinion within a reasonable
7 degree of medical certainty; if Mr. Lucas had been exposed
8 to all those sources of asbestos fibers except the gaskets,
9 would he still have gotten asbestosis?

10 A What you're saying is if he had five
11 sources, and you eliminate one of the sources, would he
12 still get it?

13 Q Yes.

14 A I would answer that by saying he may
15 have gotten it or he may not have gotten it. He may have
16 got it from that one source and not the other ones, there is

17 no way to go back and separate those out, that would be
18 impossible.

19 Q Would that be your answer to Mr. Eddy
20 and Mr. Palmer as well?

21 A Right, there is no way to go back and
22 separate out what would have happened and what wouldn't have
23 happened. I just know what did happen, so I just put all of
24 his asbestos exposure together.

25 Q Doctor, how many cases have you reviewed

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1 as an expert in asbestos -- how many asbestos cases have you
2 reviewed as an expert for the Goldberg firm in the last
3 year?

4 A I don't know.

5 Q Your best estimate, I know you won't
6 know the exact number?

7 A Several hundreds, hundreds probably.

8 Q Do you review case, asbestos cases for
9 other law firms as well?

10 A Yes.

11 Q What other law firms do you review
12 asbestos cases for?

13 A I've done them in the past on, not so
14 much anymore, Hartley and O'Brien in Wheeling and I just
15 can't put my finger on any other ones. I've done a lot of
16 black lung cases, cases for other law firms. You're asking
17 me about just asbestos?

18 Q Right.

19 A There are some other ones, but I just
20 can't remember the names of them.

21 Q Are most of the asbestos cases that you
22 consult in as an expert from the Goldberg firm then?

23 A Yes, although I do some -- I do, for a
24 law firm that I do testing for, other testing entities, you
25 know, that aren't law firms.

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1 Q And I wanted to ask you about that.
2 Because you referred to that briefly when I talked to you in
3 January, what testing entities do you do testing for?

4 A Well, I've had patients with asbestos
5 sent to me from Workers' Comp in Ohio and West Virginia, and
6 Respiratory Testing, Inc. in Mobile, Alabama, no another.

7 They're not a law firm, but they do
8 occupational screenings. I've done Jackson and Kelly in
9 Charleston, but those are usually federal black lung claims
10 which some turned out to be asbestos over the years.

11 Q Do you do --

12 A I do B-readings for -- there is -- there
13 is no B-reader at Wheeling Hospital, so Wheeling Hospital
14 sends me x-rays to consult on through their occupational
15 lung center over there to do B-readings on. I have done
16 B-readings for Wheeling Pittsburgh Steel.

17 There was -- they're normally done by
18 the radiologist at OVMC, I'm not sure if they have a
19 B-reader at all, this was a few years ago, so I've done a
20 few B-readings for Pittsburgh Steel, I've done B-readings in
21 the past from PPG, Pittsburgh Plate Glass. I don't know,

22 there was probably a lot more over the years, I've been
23 doing this for 23 years now.

24 Q You indicated doing testing for
25 Respiratory Testing, Inc. in Mobile, is that a service that

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1 does like the union screenings?

2 A Yes.

3 Q Okay.

4 A Mainly union screenings, there is some
5 other things, but the ones that I've been involved with have
6 been union screenings.

7 Q And what do -- what testing do you do
8 for them?

9 A I read x-rays for them and I also on
10 positive x-ray -- I read x-rays that they have sent me, but
11 also I have done -- I do physical examinations and interpret
12 pulmonary function tests on patients with positive x-rays,
13 1/0 or higher or people with pleural thickening.

14 Q Okay.

15 A Or lung cancer if they think it's
16 necessary.

17 Q When you do the physical exams, do you
18 go down to Alabama?

19 A I go -- I've been to Alabama and Ohio
20 and several different states.

21 Q Are you licensed to practice medicine in
22 Alabama?

23 A No.

Altmeier August 12 2002.txt
24 Q You're licensed in Ohio, correct?
25 A Ohio, yeah.

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75

1 Q In fact, you do work at Ohio hospitals;
2 is that correct?
3 A Right. But I'm not -- I'm not required
4 to have a license, because there is no doctor/patient
5 relationship.
6 Q what do you charge to do an exam like
7 the exams that you did in these three cases?
8 A Am I required to disclose my own
9 financial data?
10 MR. MCLEIGH: Yes, you are.
11 A \$300.
12 Q Have you ever testified for an asbestos
13 manufacturer in an asbestos litigation case?
14 A Not that I know of. For a manufacturer,
15 I don't believe so. I've only actually testified in cases,
16 on a few times in asbestos, once in St. Marys, West Virginia
17 a few years ago and then one in wellsburg, one in wellsburg
18 last year or the year before, before Judge Risovich.
19 Q What percent of your income comes from
20 doing medical/legal consulting in asbestos cases?
21 A I really don't know. A significant --
22 less than half, but a significant proportion.
23 Q Okay. what do you charge to testify at
24 a deposition?
25 A I charge all different things really.

1 Usually I charge \$300 an hour. If the deposition -- it
2 depends on the ease with which it happens, if it's here in
3 my office, it's cheaper than if I have to go somewhere else.

4 Q Okay.

5 A Yeah.

6 Q I guess I could ask what are you going
7 to charge me for this deposition?

8 A I'm going to charge you \$300 an hour.

9 Q Fair enough.

10 A You didn't start until what, 8:30?

11 Q No. And what are your charges to appear
12 live at trial and testify?

13 A I don't know yet. I don't know yet,
14 because I have been asked to schedule time for Cleveland and
15 so I'm not sure.

16 Q Okay. And you did it again, you
17 anticipated my next question. You've been asked to appear
18 live in Cleveland at trial?

19 A Yes, but I don't know if it's about
20 these cases, these cases or not.

21 MR. MCLEIGH: It is.

22 Q What day have you been asked to appear?

23 A I don't know, we can find out on the way
24 out, I think we have to actually finalize the dates, we were
25 given some dates and asked to pick one of them.

1 Q All right. I think I may be done.

2 A Okay.

3 Q The one thing that I spoke with Mr.
4 McLeigh about is we would like to copy your three little
5 manila folders of information, because you have some stuff
6 in that that we don't have.

7 A They can copy it downstairs very easily.

8 Q I think what we would like them to do is
9 copy them and mark them as exhibits.

10 A Do you want the folder copied as well?

11 MS. WEBB LAWTON: Why don't we mark Mr.
12 Palmer as Exhibit 4, Mr. Eddy as Exhibit 5 and Mr.
13 Lucas as Exhibit 6. And if anybody else has
14 questions, I'll shut up and let other people ask
15 their questions. Anybody on the phone? You have
16 the opportunity to read, you have the opportunity
17 to read and review.

18 THE WITNESS: I will waive that
19 opportunity.

20 (whereupon, the documents were marked as
21 Defendants' Exhibits 4, 5 and 6 for
22 identification.)

23 (SIGNATURE EXPRESSLY WAIVED.)

24 ROBERT ALTMAYER, M.D.

25 (DEPOSITION CONCLUDED AT 10:20 A.M.)

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1 STATE OF OHIO) C E R T I F I C A T E
2) SS:
Page 71

3
4 I, Jane Anne Fitch, the undersigned, a duly
5 qualified and commissioned Notary Public within and for the
6 State of Ohio, do hereby certify that before the giving of
7 the aforesaid deposition, the said ROBERT ALTMAYER, M.D. was
8 by me first duly sworn to depose the truth, the whole truth
9 and nothing but the truth; that the foregoing deposition was
10 given at the said time and place and was taken in all
11 respects pursuant to agreement of counsel hereinbefore set
12 forth; and to be filed in the trial of this cause; that the
13 deposition was taken in stenotypy by me and transcribed
14 into typewritten form under my supervision; that the
15 transcribed deposition is not to be submitted to the witness
16 for his examination and signature, and that signature has
17 been expressly waived; that I am neither relative, attorney,
18 nor employee of any party or their counsel and have no
19 interest in the result of this pending action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and official seal of office at Hamilton, Ohio this
22 ____ day of _____, 2002.

23
24
25

My commission expires May 1, 2006

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EXHIBIT 4

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COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CASE NO. 499481

- - -

EUGENIA P. ROBERTS, -vs- A-BEST PRODUCTS,
etc., et al., CO., et al.
Plaintiffs, Defendants.

- - -

Deposition of ROBERT E. ALTMAYER, M.D., a
witness herein, taken by the Defendants as upon
cross-examination and pursuant to the Ohio Rules of
Civil Procedure and Notice as to time and place and
stipulations hereinafter set forth, at 1131 National
Road, Wheeling, West Virginia, 26003, on Friday, May
21th, 2004, at 8:30 a.m., before Deborah C. Furey, a
Notary Public within and for the State of Ohio.

- - -

2 Witness:
3 Robert B. Altmeyer, M.D.
4 Cross-Examination by: Page:
5 Ms. Lawton-Webb 9
6 Mr. Alexandersen 81

7
8 E X H I B I T S

9	Defendants	Marked
10	1, 2 and 3	10
11	4	12
12	5	14

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1 APPEARANCES: ALL COUNSEL APPEARING BY PHONE.
2 For the Plaintiff:
3 Terry O'Brien, Esq.
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Page 2

5 Altmeyer May 21 2004.txt
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6
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and Rubber Co., Foseco, Goodrich
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Union Carbide, Rust Engineering
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For the Defendant Viacom and
Fairmont Supply:

Jon Oldham, Esq.
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Oldham & Dowling
Page 5

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For the Defendant Pittsburgh Metals
Purifying Co.:

Teri Stanford, Esq.
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For the Defendants Martin Marietta and
Lockhed Marietta:

Frank Oliverio, Esq.
Of
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For the Defendant Pittsburgh
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Page 6

Altmeyer May 21 2004.txt
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For the Defendant John Crane:

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Of
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8

S T I P U L A T I O N S

It is stipulated by and between counsel
for the respective parties that the deposition of
Robert B. Altmeyer, M.D., a witness herein, called as
upon cross-examination by the Defendants, may be taken
at this time and place pursuant to the Ohio Rules of
Civil Procedure and Notice and agreement of counsel as
to time and place of taking said deposition; to be
filed in the trial of this cause; that the deposition
was recorded in stenotype by the court reporter,
Deborah C. Furey, and transcribed out of the presence
of the witness; that said deposition is not to be
submitted to the witness for his examination and
signature.

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9

1 ROBERT B. ALTMAYER, M.D.
2 of lawful age, a witness herein, was first duly
3 sworn as hereinafter certified and examined and
4 deposited as follows:

5 - - -o0o- - -

6 Thereupon, Defendants'
7 Exhibits 1, 2 and 3 were
8 marked for identification.

9 - - -o0o- - -

10 MS. LAWTON-WEBB: Hi, Dr. Altmeyer, this
11 is Nina Lawton-Webb from Vorys, Sater. How are you
12 today?

13 THE WITNESS: I'm here.

14 MS. LAWTON-WEBB: I'm sorry I'm not there
15 in person to say hello but it is a long drive.

16 THE WITNESS: Two hours. I've driven it
17 many times.

18 CROSS-EXAMINATION

19 BY MS. LAWTON-WEBB:

20 Q Can you state your name for
21 the record?

22 A Yes. Robert B. Altmeyer.

23 Q Dr. Altmeyer, we are here to
24 talk about Dan Romano; is that your understanding?
25 A Yes.

10

1 Q Okay. Can you state your
2 address for the record, as well?
3 A 1131 National Road, Wheeling,
4 West Virginia.
5 Q Okay. We marked as Exhibit 1,
6 Dr. Altmeyer, the notice of the deposition for
7 today. Have you seen that before?
8 A Actually, no.
9 Q Okay. It asks you to bring
10 some documents with you. Did you bring anything
11 with you today?
12 A I have with me a stack of
13 documents sent to me by Goldberg's law firm, which
14 are the ones which I reviewed previously.
15 Q Okay.
16 A They appear to be the same
17 ones that I have reviewed when I made one of my
18 reports.
19 Q Okay. They appear to be the
20 documents that are listed as items 1 through 7 on
21 your December 5th report?
22 A Yes.
23 Q About how thick is that stack
24 of documents?
25 A About, maybe, a little over an

1 inch, maybe an inch.

2 Q would you mind allowing the
3 court reporter to copy those so that we can mark
4 them as an exhibit and she'll return them to you?

5 A That's fine.

6 MS. LAWTON-WEBB: We're going to mark
7 those as Exhibit 4.

8 - - -o0o- - -

9 Thereupon, Defendants'
10 Exhibit 4 was
11 marked for identification.

12 - - -o0o- - -

13 BY MS. LAWTON-WEBB:

14 Q Did you just receive this
15 stack of documents recently, Doctor?

16 A Those particular ones. I had
17 received documents which I think were the same ones
18 previously, which was in another folder, which,
19 unfortunately, we couldn't find and I received this
20 stack sometime recently. I don't know.

21 I reviewed them for the first
22 time again last night, so it would be the first time
23 that I actually looked at this stack that I'm
24 looking at now last night but, actually, I think I
25 looked at the same ones on other pieces of paper on

1 December 5th or around December 5th, 2003.

2 Q That is what I'm getting at.
3 They sent you this particular set, this particular
4 copy, more recently with, respect to this
5 deposition?

6 A That's correct.

7 Q You reviewed those last night?

8 A Yes. I would say I reviewed
9 not every page of them. I, sort of, skimmed through
10 them because they're so thick.

11 Q I understand. Do you have any
12 other documents or any other things with you today,
13 other than that stack of documents?

14 A Yes, I do.

15 Q what else do you have?

16 A I have a copy of my curriculum
17 vitae and I have, sitting next to me, a textbook
18 which I am reading, "All Occupational Disorders of
19 the Lung: Recognition, Management, Prevention, by
20 David J. Hendrick, et al.

21 Q Is the textbook something you
22 intend to rely on this morning?

23 A I'm not sure. It depends on
24 what questions I'm asked.

25 Q Did you bring that to the

13

1 deposition today because you thought you might need
2 to rely on it or might want to refer to it?

3 A Yes.
Page 11

4 Q what is the date of the CV
5 that you have with you?

6 A January 27th, 2004.

7 Q Okay. Would you mind if we
8 marked that as an exhibit?

9 A Yes. This is my original copy
10 so we have to make a photocopy before it can be
11 marked.

12 MS. LAWTON-WEBB: That would be just
13 fine. After the deposition, if we can mark that as
14 Exhibit 5. I don't think I have an up-to-date copy
15 of your CV, Doctor.

16 - - -oOo- - -

17 Thereupon, Defendants'
18 Exhibit 5 was
19 marked for identification.

20 - - -oOo- - -

21 BY MS. LAWTON-WEBB:

22 Q Have we now talked about
23 everything that you brought with you this morning?

24 A Yes, for this deposition. I
25 brought things with me that are sitting on my desk,

14

1 which aren't related to this case.

2 Q All I care about is what you
3 brought with you for the deposition today.

4 A Right.

5 Q You indicated that you had a
6 file at one point. You're not able to locate that

7 in your office at the moment?

8 A Unfortunately not, because I
9 always like to look at my original stuff rather than
10 other things, to make sure that they're the same but
11 as of last night at 5:30 my secretary was unable to
12 locate that.

13 Q would your file have had any
14 notes in it that you drafted or wrote?

15 A No.

16 Q Okay. Did you take any notes
17 or write any notes while you were reviewing the
18 documents from the first time that you prepared your
19 report?

20 A No.

21 Q So would the office files
22 simply include a stack of documents?

23 A I believe so but I would
24 actually have to look at that stack and compare
25 document by document to what is in this folder to

15

1 make sure.

2 Q Okay. I understand. I will
3 request, Doctor, that if you are able to locate that
4 file prior to trial, that you provide a copy of it
5 to Mr. O'Brien so he can provide it to me.

6 A Right. And, in fact, they're
7 going to look again today.

8 Q Okay.

9 A We're not computerized here
Page 13

10 and we just have a lot of paper all over the place.
11 we try to keep it orderly but I haven't got to the
12 point where I can bring stuff up on a screen and
13 review documents that way.

14 Q Okay. what have you done to
15 prepare for your deposition here today? You
16 indicated that you looked at the documents that the
17 Goldberg firm sent to you.

18 A Yes.

19 Q How long did you spend doing
20 that?

21 A Last night, maybe half an
22 hour.

23 Q Other than that, what have you
24 done in preparation for your deposition today?

25 A Went and got a copy of my

16

1 curriculum vitae from the second floor, from where
2 we are now down to the first floor, while you were
3 talking to the court reporter and I looked up on
4 Page 360 of the textbook, which I just alluded to,
5 mesothelioma, fiber types.

6 Q Okay. Have you had anything
7 else that you've done in preparation for today?

8 A No.

9 Q Have you had any discussions
10 with anybody at Goldberg, Persky regarding this
11 deposition, other than purely scheduling issues?

12 A I talked to Terry O'Brien this
Page 14

13 morning for probably ten minutes.

14 Q And what did you and Terry
15 talk about?

16 A This upcoming deposition.

17 Q Okay. Did Terry provide you
18 any specific information about Mr. Romano's case
19 today?

20 A No, not that is not already, I
21 believe, in the records. I did ask a few questions
22 about things.

23 Q What did you ask Mr. O'Brien
24 about?

25 A I just wanted to know the

17

1 dates that he was a pipe fitter and I wanted to
2 confirm the date of death, because on the death
3 certificate that I have I have the year 200 and then
4 the fourth digit on the right-hand side was cut off
5 of my copy, so I didn't know if it was 2000, 2001,
6 2002 or three. I wasn't sure what the date was.

7 Q Okay. Anything else that you
8 asked him about?

9 A No. We just -- not that I
10 asked him.

11 Q Okay. Did he give you any
12 information about any of the defendants in the case?

13 A No.

14 Q Did he talk to you at all
15 about any of the products which Mr. Romano may have

16 been exposed to?

17 A No.

18 Q Okay. Other than talking to
19 Mr. O'Brien this morning for about ten minutes, have
20 you done anything else, had any other substantive
21 conversations with anybody at the Goldberg, Persky
22 firm about the Dan Romano case?

23 A No.

24 Q Okay. Have there been any
25 changes in your curriculum vitae since last year?

18

1 A I've added on a few medical
2 school, clinical faculties. I was selected as a
3 member of the Best Doctors in America 2003-2004.
4 That's about it.

5 Q What clinical faculties have
6 you been added to?

7 A West Virginia School of
8 Osteopathic Medicine, in Lewisburg, West Virginia
9 and I think it is Lake Erie College of Osteopathic
10 Medicine, in Lake Erie, Ohio.

11 Q Are you a doctor of
12 osteopathic medicine?

13 A No, I'm not.

14 Q I didn't think you were. Have
15 there been any changes in your licensing to practice
16 medicine? Are you still licensed in Ohio and West
17 Virginia?

18 A Yes, I am.
Page 16

19 Q Any other states?
20 A No.
21 Q Have there been any
22 disciplinary actions or suspensions of your license?
23 A No.
24 Q Okay. Last time I talked to
25 you I think you had privileges to practice medicine

19

1 at five hospitals.
2 A Right.
3 Q Is that still the case?
4 A Yes.
5 Q No changes there?
6 A No.
7 Q Are you preparing or have you
8 prepared any articles or done any research regarding
9 asbestos or asbestos-related diseases?
10 A No.
11 Q Okay. You are a B-reader,
12 correct?
13 A Yes.
14 Q When is your B-reader
15 certification due to be renewed?
16 A I believe August, 2006.
17 Q So you renewed about two years
18 ago?
19 A Yes. I may be able to look it
20 up for you. I was recertified September 1, 2004 --
21 excuse me -- September 1, 2002 for a period of four
Page 17

22 years.

23 Q Okay. Have you ever failed a
24 B-reader exam?

25 A No, I haven't.

20

1 Q Okay. You are not a
2 pathologist; is that correct?

3 A Correct.

4 Q All right. You are not a
5 radiologist?

6 A Correct.

7 Q Okay. Last time I talked to
8 you you were doing consulting in asbestos litigation
9 cases about 10 percent of the time; is that still
10 about accurate?

11 A Possibly 10 percent of the
12 time. I would say that that is probably correct,
13 yes.

14 Q About what percentage of your
15 income do you receive from medical/legal consulting?

16 A I would say about -- I would
17 say it is about 35 to 40 percent.

18 Q About how many depositions
19 have you given in 2004, in asbestos litigation?

20 A I'd say a handful of them. In
21 2004, probably -- maybe four to six, something like
22 that.

23 Q How many depositions do you
24 give a year?

25 A Just for asbestos or coworker

21

1 pneumoconiosis, silicosis, all of those other types
2 of occupational lung diseases?

3 Q Just asbestos.

4 A I would say, on the average,
5 maybe five or six. I certainly don't do one every
6 month.

7 Q Okay. Have you testified at
8 trial in any asbestos cases this year?

9 A No.

10 Q Did you testify at trial in
11 2003 in any asbestos cases?

12 A No. I've only testified,
13 twice, to my recollection, actually in a court of
14 law, for an asbestos case.

15 Q Okay. Do you remember which
16 law firms that was for?

17 A Many years ago it was for
18 Goldberg, Persky & White -- it may have been called
19 something else then, though -- in, I think,
20 Saint Mary, West Virginia, or Marysville
21 (Phonetic.), West Virginia, before a Judge Starcher,
22 I believe and then before a judge -- the second time
23 was several years ago -- before Judge Risovich, in
24 the northern panhandle of West Virginia, and I think
25 the law firm -- it was another law firm in

1 Pittsburgh -- I think, but I'm not sure -- it was
2 Pierce.

3 Q I think the last time I talked
4 to you you were charging about \$300 for a medical
5 exam in an asbestos case; is that about correct?

6 A It all depends on what I do.
7 If I am required to review records or to look at
8 multiple x-rays or review records in conjunction
9 with a physical exam, that's about what I still
10 charge; roughly, about \$300 an hour.

11 Q Let's focus on the Romano case
12 then. In the Romano case you reviewed some x-rays,
13 correct?

14 A Right.

15 Q Then you also reviewed some
16 records?

17 A Right.

18 Q You issued two separate
19 reports, correct?

20 A Right.

21 Q How much did you charge for
22 that?

23 A I have no idea, to tell you
24 the truth. I don't have any records of any bills
25 with me.

1 Q Okay.

2 A I mean, that could be looked
3 up when people get here but it wouldn't be easy to
4 dig out.

5 Q All right.

6 A Maybe Mr. O'Brien could tell
7 us.

8 Q I may ask him at some point.

9 MR. O'BRIEN: I would have to do some
10 digging myself.

11 BY MS. LAWTON-WEBB:

12 Q what do you charge per hour
13 for depositions?

14 A well, it depends on how easy
15 it is.

16 Q You know my depositions are
17 always simple.

18 A I don't mean in terms of
19 questions, I mean in terms of where it is, how much
20 work I have to cancel in my office.

21 Obviously, I have to recoup
22 the money which I would lose by not practicing
23 medicine. If it is in wheeling and it is in the
24 morning and I don't have to cancel the whole day, I
25 don't charge as much as if I have to cancel a whole

24

1 day.

2 Q How about for this deposition,
3 what do you expect you're going to charge me?

4 A How long do you think it will

5 be?

6 Q My goal is short. My goal is
7 a couple of hours at most.

8 A I would say probably -- I
9 don't know, maybe -- I don't know -- maybe \$750,
10 something like that.

11 Q So what you're telling me is
12 you don't have a set fee schedule?

13 A Oh, yeah, I don't have a set
14 schedule. For example, if a law firm sends me
15 records and they are all poorly photocopied, all out
16 of order, with the edges cut off and I have to sit
17 there and try to decipher it, actually, I charge
18 more than if a law firm sends me documents that are
19 nicely photocopied, that makes it easier for me
20 because it is less work.

21 I bill on the basis of the
22 hassle factor and the length of time.

23 Q Have you been asked to appear
24 at trial in this case?

25 A I think, if necessary, my

25

1 secretary said, but I'm not sure.

2 Q Okay. Dare I ask, do you know
3 what you will charge to appear in Cleveland for
4 trial?

5 A Is it a whole day?

6 Q Couldn't even begin to tell
7 you. Assume you have to take a day.

8 A If I have to take a day, it
9 will be about three to \$4,000.

10 Q Okay. why don't we move on to
11 some of the more interesting stuff in this case, all
12 right?

13 A I thought that was
14 interesting.

15 Q You and I talked on a number
16 of occasions about some of your general views. In
17 order to diagnose asbestosis, what is it that you
18 require?

19 A To make a diagnosis of
20 asbestosis I require that the patient has had an
21 exposure to asbestos, an appropriate latency period,
22 a chest x-ray showing 1/0 irregular opacities or
23 autopsy material confirming the presence of
24 asbestosis or biopsy material showing asbestosis.
25 Other things that enforce the

26

1 diagnosis are crackles which persist after coughing
2 and deep breathing, usually, initially in the
3 axillary area, subsequently in the bases but not
4 always.

5 Additional things that point
6 to the diagnosis but not required are restrictive
7 physiology by total lung capacity testing and a plus
8 or minus reduction in the single-breath carbon
9 monoxide diffusing capacity.

10 I not only look at, for

11 example the individual abnormalities, for example,
12 on -- excuse me -- I don't look at just the presence
13 or absence, for example, of an individual
14 abnormality but also the extent.

15 For example: Profuse velcro
16 crackles at lung bases is a more telling physical
17 finding than a rare velcro crackle; a reduction in
18 the diffusing capacity of a few percent in a
19 particular situation may be a lot less important
20 than a severe reduction in the diffusing capacity.

21 So we look at the presence or
22 absence of these things and also to the extent by
23 which they're present in trying to come up with a
24 determination of whether an individual has
25 asbestosis or not.

27

1 Q Fair enough. In this case
2 Mr. Romano had mesothelioma; is that correct?

3 A That's my understanding, by
4 review of the records.

5 Q All right. In your practice
6 do you diagnose mesothelioma?

7 A I generally have about -- on
8 the average, a couple patients a year that I
9 diagnose as having mesothelioma. By diagnosing
10 mesothelioma, I don't mean that I make the incision
11 or do the biopsy or that I interpret the slides,
12 what I mean is that patients are referred to me,
13 usually a few a year, that I subsequently start the

14 investigation which leads to a diagnosis of
15 mesothelioma and then I refer them, usually, to a
16 medical oncologist.

17 Q Okay. That goes to exactly
18 where I was going. You don't review any pathology
19 yourself in making the diagnosis?

20 A Often when I have a patient
21 with cancer, mesothelioma, any type of unusual thing
22 like that, I usually review the pathology with the
23 pathologist, for my own edification.

24 Q Okay.

25 A And I would defer to the

28

1 pathologist for the diagnosis certainly.

2 Q You don't do the immunohisto
3 chemical staining yourself, do you?

4 A No.

5 Q You would defer to the
6 pathologist whose specialty is doing that, in terms
7 of making the diagnosis?

8 A Of course, everything.

9 Q All right. What are the
10 causes of malignant mesothelioma?

11 A The number one cause is
12 asbestos exposure. I reviewed this a few years ago.
13 I haven't thought about it recently. There have
14 been a few cases of spontaneous mesothelioma in the
15 sense that there is no obvious exposure.

16 I believe there had been some

17 cases of mesothelioma from ionizing radiation and I
18 think that -- but by far, at least in my practice,
19 every patient that I've had with mesothelioma over
20 the years, has had a distinct exposure to asbestos.

21 Q When you say, "spontaneous
22 mesothelioma," is that the same thing as idiopathic?

23 A Yes.

24 Q What percentage of
25 mesothelioma in men are idiopathic?

29

1 A I'm not sure.

2 Q Okay. Is mesothelioma a
3 dose-response disease?

4 A I believe so.

5 Q And that means that the higher
6 the dose, the more likely the development of the
7 disease?

8 A Yes, but there is no -- to my
9 knowledge -- there is no threshold that has been
10 identified for the carcinogenic risk.

11 Q Okay. There is asbestos in
12 the ambient air in urban areas, correct?

13 A Yes.

14 Q Living in Wheeling, West
15 Virginia there is a level of asbestos in the ambient
16 air there?

17 A Yes, probably less than where
18 you are because you're in, probably, a more urban
19 environment than I am.

20 Q All right. The level of
21 asbestos in the ambient air, does that cause
22 mesothelioma?

23 A I think if it does, it would
24 be extremely unlikely. I would have to say no.

25 Q So if somebody is exposed to

30

1 asbestos below the levels that are normally found in
2 the ambient air, that wouldn't be a cause of
3 mesothelioma in your view?

4 A Again, I'm thinking about this
5 for the first time and I would say, to be consistent
6 with my first answer, it would have to be no. If
7 exposure to asbestos in the ambient urban air is not
8 likely to do it, then if the exposure is less than
9 that, then the answer would have to be no also.

10 Q Okay.

11 A However, you know, the reason
12 I'm thinking about this is -- I'm just thinking, I
13 don't have any literature on this but I'm sure
14 others have thought of this. You brought up the
15 topic of idiopathic mesothelioma. Maybe they're not
16 idiopathic, perhaps they're caused by ambient air
17 exposure.

18 Q We can't tell that sitting
19 here today, right?

20 A No, we can't tell that. That
21 would have to take extensive, I'm sure,
22 epidemiologic research, way beyond what I could do.

23 Q Okay. In order for asbestos
24 to cause mesothelioma, asbestos fibers actually have
25 to get to the mesothelial cells in the pleura; is

31

1 that correct?

2 A I believe so.

3 Q And the body has a number of
4 different defense mechanisms to deal with asbestos
5 fibers; is that correct, too?

6 A That's correct.

7 Q For instance, there are
8 mucociliary escalators?

9 A That's correct.

10 Q And macrophages?

11 A That's correct, alveolar
12 microphages.

13 Q So is it fair to say that of
14 the asbestos fibers that we might breathe in or that
15 a patient might breath in, the vast majority of them
16 would never even make it to the mesothelial cells?

17 A That is probably correct.
18 Again, I see no studies that look specifically at
19 that. The way I'm answering that question is just
20 from what I consider a logical thought process
21 rather than having seen a study which actually looks
22 at that in, for example, animals.

23 Q Do you have any opinion as to
24 the means or the method by which asbestos fibers are
25 transported to the pleura?

1 A You know, I think that you --
2 you sometimes can actually see the asbestos fibers
3 in the pleura and I think it may be -- I have always
4 thought that the most likely thing was direct
5 penetration.

6 Q Okay.

7 A It is possible that -- there
8 are lymphatics that can drain into that area and it
9 is perhaps possible that they get there by the
10 lymphatics.

11 I went to a lecture once where
12 they, you know, discussed and debated that exact
13 point and there were several different, varying
14 opinions.

15 Q Okay. What is the latency
16 period, in your opinion, for a mesothelioma?

17 A A very long time; 20, 40. The
18 longest latency period I have had is a patient who
19 got it -- not a patient, but a friend of mine who
20 worked for two summers in the northern panhandle, in
21 west Virginia, when he was in college and now he is
22 a professor of medicine, so he was probably 65 years
23 of age.

24 He just died three weeks ago
25 of mesothelioma. His only exposure was having

1 worked for two summers with asbestos, you know, I
2 would say probably 50 years before. He worked when
3 he was a teenager. So I believe it may take 40
4 years or more. I think there is a big variant
5 around that. It may be 40 plus or minus 20 or so.

6 Q Do you have any opinion as to
7 whether earlier exposures are more likely to cause
8 mesothelioma than later exposures to asbestos?

9 A What do you mean by that?
10 Early in the lifespan of the person?

11 Q Yes.

12 A You mean exposure at a younger
13 age?

14 Q Yeah.

15 A I don't have an opinion on
16 that. I don't know.

17 Q Fair enough. Do you have any
18 understanding about -- first off, do you have an
19 understanding about the different fiber types of
20 asbestos?

21 A I just went to a NIOSH course
22 where they spent some time talking about fibers just
23 a few weeks -- a few months ago, in Washington, D.C.

24 Q So you're aware there are
25 different types of asbestos?

34

1 A Yes, I'm aware of different
2 types of asbestos. I'm aware, to some extent, some
3 color variabilities; they have different tensile

4 strengths, different shapes, et cetera.

5 Q Okay. Do you have any opinion
6 as to whether the different fiber types can cause
7 mesothelioma?

8 A Yes. I believe that all fiber
9 types can cause mesothelioma.

10 Q what is the basis for that
11 opinion?

12 A The World Health Organization.

13 Q Okay. Is there any specific
14 publication from the world Health Organization?

15 A Yes. I don't have it with me.
16 If you look at -- you asked me earlier if I brought
17 any things with me and I said I brought the book
18 which I referred to by Hendrick.

19 Q Uh-huh.

20 A On Page 360 it says, quote,
21 "These concerns have been echoed by the
22 International Program on Chemical Safety of the
23 world Health Organization, which included that,
24 quote, 'exposure to crysotile poses increased risk
25 for asbestosis, lung cancer and mesothelioma, in a

35

1 dose-dependent manner, " unquote.

2 And, quotes, "No threshold has
3 been identified for carcinogenic risk," and they
4 then refer to the article.

5 Q Doctor?

6 A Yes.
Page 31

7 Q I thought we lost you for a
8 second.
9 A Okay.
10 Q Just wanted to make sure I
11 hadn't lost you. Have you finished your answer?
12 A Yes.
13 Q Okay. The basis for your
14 opinion comes from that quotation from the World
15 Health Organization, in the Hendrick's book?
16 A No. I've read other things.
17 I know there has been a debate about this over the
18 years and I'm sure there are people who say it can't
19 cause mesothelioma. I'm sure there are doctors who
20 will say that it can cause mesothelioma.
21 I, you know, just talking to
22 other doctors and, you know, going to meetings and
23 stuff, I believe, my general sense is that the trend
24 has now swung over to the fact that, in fact, it can
25 cause mesothelioma, although it may be less potent

36

1 in causing mesothelioma.

2 when I'm practicing medicine
3 in Wheeling, West Virginia, not doing research
4 myself, the only way I can obtain data is by reading
5 articles and some of the articles will be one way
6 and some articles the other way, then I believe that
7 the best way to get around that problem is to, sort
8 of, go by what the national or what the consensus
9 is. It is helpful for me if there are consensus

10 statements.

11 The World Health Organization,
12 of course, is one of the premier health
13 organizations that ever existed and when they make
14 that statement, that influences me.

15 Q Fair enough. You mentioned
16 potency. Do you have an opinion as to whether
17 chrysotile is less carcinogenic or less potent than
18 the amphibole asbestos?

19 A My feeling is that the
20 chrysotile is probably less potent than the fibrous
21 amphiboles. That is not to say that -- see, in an
22 individual person, once they get mesothelioma, to
23 them it doesn't matter if they were exposed to the
24 potentially more potent amphibole or the less potent
25 chrysotile. For them it is an all or none

37

1 phenomenon, so it is no reassurance to a individual
2 to say, hey, you got mesothelioma but yours came
3 from chrysotile which is less likely to cause cancer.

4 As a doctor, that is how I
5 look at it, as a practicing physician.

6 Q Okay. Are you familiar with
7 Dr. Victor Rogley (Phonetic.)?

8 A Yes. My only connection with
9 Dr. Rogley is that years ago I had a patient with
10 mesothelioma and he, in fact -- I believe he did
11 immunologic studies, histochemistry and perhaps even
12 histomicroscopy on a specimen to confirm the

13 presence of mesothelioma. I would say that may be
14 20 years ago. My recollection is he may have been
15 at Duke University at that point in time.

16 Q Have you read any of
17 Dr. Rogley's writings regarding mesothelioma?

18 A Probably not for -- I think I
19 have but not for years.

20 Q Okay. I think I then know the
21 answer to this: Do you consider him to be
22 authoritative with respect to his opinions on
23 mesothelioma?

24 A I would have to look at each
25 one of his specific opinions to tell you whether I

38

1 agree with them or do not agree with them.

2 Q Okay. Are you familiar with
3 Dr. Andrew Churg?

4 A Yes, I am.

5 Q Do you consider him to be an
6 authority on mesothelioma?

7 A Andrew Churg, I do. He is one
8 of the authors of the book I just quoted from.

9 Q Okay.

10 A I just got beeped. Can I take
11 this call?

12 Q Sure. You want to take a
13 couple-minute break?

14 A Probably two minutes.

15 (Recess taken from 9:12 a.m. until 9:15 a.m.)

16 BY MS. LAWTON-WEBB:

17 Q Why don't we move on, Doctor,
18 and talk specifically about Mr. Romano. If you
19 could look at what was marked as Exhibit 2.

20 A Okay.

21 Q I'm going to actually have you
22 look at Exhibit 3, as well.

23 A Okay.

24 Q Can you identify those for us?

25 A Right. Exhibit 2 is a report

39

1 which I authored, dated November 11th, 2003, to
2 Jennifer Damon, paralegal, Goldberg, Persky,
3 Jennings & White.

4 Exhibit Number 3 is a report
5 which I authored, dated December 5th, 2003, to
6 Jennifer Damon, paralegal, to Craig Vandergrift of
7 Goldberg's law firm.

8 Q Okay. Exhibit 2 is a two-page
9 written report with a one-page ILO chart on the
10 back; is that correct?

11 A Right.

12 Q And Exhibit 3 is a three-page
13 written report, correct?

14 A Right.

15 Q Okay. Are Exhibit 2 and
16 Exhibit 3 complete and accurate copies of your two
17 reports in this case?

18 A Yes.
Page 35

19 Q Have you prepared any
20 additional reports or any supplemental reports?
21 A Not to my knowledge.
22 Q Have you prepared any
23 amendments to your report?
24 A You know, I'm looking at my
25 Exhibit 2, Page 2, there is some handwriting at the

40

1 bottom.
2 Q Is that on yours?
3 A Yes, it is.
4 Q That's the only --
5 A It says, "Please make sure the
6 patient has follow-up of his lung lesions by his
7 personal physician." I'm not sure -- I suspect --
8 it must have been written before it was sent out.
9 Q Okay. Other than that have
10 you prepared any amendments or supplements to these
11 reports?
12 A I think not.
13 Q Okay. Do you have any drafts
14 of those reports or did you prepare any drafts?
15 A No, no drafts.
16 Q Have you been asked to
17 supplement your opinion in any way?
18 A No.
19 Q You've not been asked to do
20 any supplemental work on this case?
21 A On Dan Romano?
Page 36

22 Q Yeah.
23 A No.
24 Q Okay. Let's start with
25 Exhibit 2, dated November 11th, 2003. When were you

41

1 first contacted by the Goldberg firm regarding
2 Mr. Romano's case?
3 A I can't tell you because I
4 don't have, you know, my original folder and I don't
5 remember.
6 Q Okay.
7 A There could well be a note in
8 there.
9 Q Okay.
10 A You know, probably made by a
11 secretary or perhaps there was a letter that came
12 from Jennifer Damon. I'm just not sure.
13 Q All right. That really went
14 to my next question. Was there a cover letter or
15 anything that came with the radiology that you
16 received?
17 A I don't remember.
18 Q Okay. If there had been one,
19 would it be in this file that your office is looking
20 for?
21 A Yes, it would be. We never
22 remove anything.
23 Q Okay. Well, if and when you
24 do find your office file, I request that you provide
Page 37

25 Mr. O'Brien a copy of that letter so he can provide

42

1 it to me, any letters from the Goldberg, Persky firm
2 to you.

3 A Right. And if I can't find
4 them, I'm sure he has a copy.

5 MR. O'BRIEN: We go through this every
6 time, Nina.

7 MS. LAWTON-WEBB: I know.

8 MR. O'BRIEN: You think I would learn
9 and have it ready for you. I'll look that up.

10 MS. LAWTON-WEBB: Thank you.

11 BY MS. LAWTON-WEBB:

12 Q I think I know what your
13 answer to this is going to be. You indicate that
14 you did a B-read report on the most representative
15 x-ray. How many x-rays did you receive for the
16 Goldberg, Persky firm in review?

17 A I don't know.

18 Q Would that be reflected in
19 your file?

20 A No.

21 Q It would not?

22 A I don't think so.

23 Q Okay. Is there anywhere that
24 you would have written down with the dates of the
25 x-rays you were reviewing?

1 A No, but I can tell you in
2 general, if there are a bunch of x-rays, you know,
3 somebody asks me to do a B-reading on, I try to pick
4 the one that is the best quality to do the B-reading
5 on. In other words, assuming they are about the
6 same time, I try to go through -- now, they may say
7 do a B-reading on every one of those things and, of
8 course, if they are unreadable, there would be an
9 ILO form that says UR.

10 If I get a letter saying
11 please perform -- what is your B-reading or opinion
12 regarding these x-rays, then I try to find the one
13 that is the best x-ray to read to get the most
14 accurate reading. Often they are copy films, or
15 over or under penetrated, a number of reasons why
16 films are not good.

17 The film I picked is a quality
18 2 film, which is acceptable for B-reading with only
19 a relatively minor abnormality on it in terms of
20 quality issues.

21 Q If there were films from a
22 variety of periods of time, a variety of different
23 dates, would you have done a B-reading on more than
24 one film?

25 For instance, let me

1 explain: You did a B-reading on an April, 2002

2 film, correct?

3 A Right.

4 Q If you had received additional
5 films from, say, several years before 2002, would
6 you have chosen to do a B-read on an additional
7 film?

8 A Most likely, if the film was
9 good enough.

10 Q But sitting here today you
11 can't tell me whether you received films from, say,
12 several years before 2002?

13 A Right.

14 Q Okay. In fact, even if you
15 find the office file, there is no way for you to
16 verify which films you looked at?

17 A I can verify I looked at a
18 film of 4-2-02.

19 Q But if you looked at 15 other
20 films, there would be no list of them anywhere?

21 A No.

22 Q There would be no list unless
23 that was included in a cover letter from the
24 Goldberg firm; would that be fair to say?

25 A That would be fair. If it is

45

1 listed on the cover letter; it either is or isn't.

2 Q I understand that.

3 MS. LAWTON-WEBB: Terry I would request
4 that your office provide me with a list of which

Altmeier May 21 2004.txt
5 films you sent to Dr. Altmeier.

6 MR. O'BRIEN: I'll see if I can figure
7 that out.

8 BY MS. LAWTON-WEBB:

9 Q You indicated, Doctor, that
10 the April 2nd, 2002 film was also the most current
11 film in the folder of films that you received,
12 correct?

13 A Right.

14 Q Okay. In April of 2002
15 Mr. Romano had already been diagnosed with
16 mesothelioma; is that correct?

17 A He was diagnosed -- I'd have
18 to go back and review to get the date -- but if you
19 say he was, I'll take your word for it.

20 Q Okay. Just so you don't have
21 to take my word for it. If you'll look at Item 7,
22 Page 2 of your December 5th report.

23 A Item 2, December 5th report.

24 Q Page 2, Item 7; March, 2002
25 biopsy.

46

1 A Is that 3-13 or 8-13? I think
2 it is 3-13-02.

3 Q That's what mine looks like.

4 A Okay. That would be March,
5 '02.

6 Q So you're April, '02 film
7 would be one after Mr. Romano was already sick with

Altmeyer May 21 2004.txt
8 mesothelioma; is that fair to say?

9 A It would be within one month
10 after a diagnosis was made.

11 Q Okay. And, in fact,
12 Mr. Romano died in October of that year, correct?

13 A Well, I'm making that
14 assumption; the death certificate, the year is cut
15 off of my copy.

16 Q Okay. In terms of diagnosing
17 whether Mr. Romano had had asbestosis or not, would
18 it be helpful to have looked at an x-ray that was
19 taken prior to his diagnosis of mesothelioma?

20 A No, not in particular, because
21 mesothelioma is unilateral. When I looked at his
22 x-ray, there was not, like in some mesothelioma
23 cases, where there is a complete white-out of one
24 side -- he had a linular infiltrate. I was still
25 able to see all six lung zones.

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1 So, in this particular case,
2 no, it wouldn't be any additional benefit; in some
3 other cases with mesothelioma, it could be.

4 Q Okay. Asbestosis is generally
5 a progressive disease, correct?

6 A Generally, it is.

7 Q It never gets better?

8 A No, it never gets better. It
9 never gets better.

10 Q So once you have it, once

11 somebody develops interstitial fibrosis caused by
12 asbestos, that is not going to resolve or go away;
13 is that fair to say?

14 A If one develops asbestosis,
15 interstitial fibrosis, it doesn't go away.

16 Q Okay.

17 A There are other types of
18 fibrosis that fall under interstitial fibrosis,
19 idiopathic pulmonary fibrosis, which now can be
20 treated in early stages with Program Gamma
21 Interferon 1-B, which, in fact, may stabilize it and
22 prevent progression, but to my knowledge it hasn't
23 been used with asbestos at this time.

24 Q I'm talking specifically on
25 interstitial fibrosis caused by asbestosis.

48

1 A My opinion is it doesn't go
2 away once is it present.

3 Q Are serial chest x-rays then
4 helpful in diagnosing asbestosis?

5 A In a way; not really in
6 diagnosing it but helping to see if there is
7 radiographic progression or radiographic stability.

8 Q Is it helpful to have serial
9 chest x-rays in order to determine that interstitial
10 fibrosis that you see is not resolving and, thus,
11 not getting better?

12 A Well, if they truly have
13 interstitial fibrosis, I wouldn't expect it to be

14 getting better but there can be lung diseases, short
15 of pulmonary fibrosis, which can improve with
16 treatment.

17 So, in general, in clinical
18 practice, we always follow serial chest x-rays in
19 people with -- most of the interstitial lung
20 diseases, idiopathic pulmonary fibrosis, asbestosis
21 or sarcoidosis, along with other screening, includes
22 physical examination, serial defusing capacity
23 measurements, some cases even serial fibrotic
24 bronchoscopy, so these studies which are done
25 serially aren't specifically to diagnose the problem

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1 itself but to follow the course of the disease.

2 Q If there were radiological
3 marks, irregular opacities that went away, resolved
4 on serial x-rays, then it wouldn't be asbestosis,
5 correct?

6 A well, there are a couple
7 options. In reality pulmonary fibrosis does not go
8 away. One cannot compare x-ray report to x-ray
9 report because one is not looking at the actual
10 films.

11 If one had serial films which
12 are of good quality and equal quality and one has
13 them up on a view box, side by side, and then the
14 interstitial lung disease goes away clearly, by
15 direct vision, inspection of those side-by-side
16 x-rays of equal, good quality, then it couldn't be

17 asbestosis.

18 However, when one erroneously
19 falls into the trap that we always teach the medical
20 students not to do and that is to compare x-ray
21 report to x-ray report, diseases will appear to come
22 and go.

23 Q Right. I was focusing on
24 having actual chest x-rays for you to review,
25 reviewing a series of chest x-rays taken over a

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1 number of years. Is that something that is helpful
2 in determining that the radiological changes that
3 you are seeing are indeed interstitial fibrosis
4 caused by asbestosis as opposed to something else?

5 A Once you see -- we're not just
6 looking at a chest x-ray in isolation and I'm not
7 making -- I never make a diagnosis of asbestosis
8 solely by looking at an x-ray.

9 When I do a B-reading and
10 check -- for example, Box 2-B says, quote, "Any
11 parenchymal abnormalities consistent with
12 pneumoconiosis." I'm not only taking into account
13 the chest x-ray but the pattern of the pulmonary
14 function test, the physical examination, changes in
15 the diffusion capacity, total lung capacity with
16 time, changes in somatology, changes in physical
17 examination of the chest in particular; so you have
18 to take all of those things into account when you're
19 following a disease along.

20 If I had somebody that I was
21 convinced that -- if I had a patient that I was
22 convinced had pulmonary fibrosis, for example, from
23 whatever cause, by history, physical examination,
24 chest x-ray, pulmonary function test, et cetera, and
25 then that completely went away, then the patient

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1 must have had a reversible cause of interstitial
2 lung disease short of pulmonary fibrosis. I don't
3 know if I'm answering your question or not.

4 Q I understand what you're
5 saying.

6 A At any one point in time you
7 don't require prior x-rays to make a diagnosis of
8 attentive or presumed diagnosis of interstitial
9 fibrosis, if everything else fits.

10 Q Did you have any other
11 information about Mr. Romano, other than radiology,
12 when you authored your November 11th report?

13 A I can't say with 100 percent
14 but I think no.

15 Q Is that because you indicate
16 that if he had -- why do you think no, Doctor?

17 A Because I just read it and
18 there is no indication of any other documents which
19 I referred to on the November 2, '03 report.

20 Q And, in fact, in Paragraph 3
21 you indicate that if the patient had significant
22 exposure to asbestos; can we assume from that that

23 you had not been told what his exposure history was?

24 A I would say that is correct.

25 Q Okay. And because you didn't

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1 have an exposure history or a latency period, you
2 could not actually diagnose asbestosis at that point
3 in November; is that fair to say?

4 A That's correct. My B-reading
5 form reflected there were changes consistent with
6 pneumoconiosis and then because, again, you can't
7 make a diagnosis of pneumoconiosis just by looking
8 at an x-ray alone.

9 Q Okay. That's why you said,
10 that the film was only consistent with asbestosis,
11 in your written report; is that fair to say?

12 A Where are you reading that
13 from?

14 Q Paragraph 3, on Page 1.

15 A That's correct.

16 Q Okay.

17 A That would have been my
18 reasoning.

19 Q Okay. Let me ask you a few
20 questions -- and I think we talked about a couple of
21 them already -- about the B-read form. This was a
22 quality 2 film; is that correct?

23 A Right.

24 Q There was some scapular
25 overlay?

1 A Right.

2 Q There is a slash and then
3 there is another word that I can't read; does that
4 say "copy film"?

5 A Yes.

6 Q All right. What is NIOSH's
7 view on doing a B-read or an ILO form on copy films
8 at this point?

9 A At this point, as of two
10 months ago, that question arose at the NIOSH
11 national meeting, in terms of copy films, in terms
12 of digital films, et cetera.

13 NIOSH feels that if an
14 original film is available, it is always preferable
15 to reading a copy film and is preferable to reading
16 a digital film; it should be noted on the film
17 quality if it is a digital film; that even if it is
18 excellent quality, you put digital; if it is a copy
19 film, you put copy film, so everybody knows up front
20 you're reading a copy film; if the copy films are
21 the only films available and if it is good quality,
22 then you can read a copy film with the notation next
23 to it.

24 In fact, I asked this exact
25 question of Russell Morgan, who used to be very

1 involved in this, who was at Johns Hopkins, who was
2 one of the originators of the B-reading program and,
3 in fact, he told me just that: Is it best not to
4 read copy film, unless copy films are the only ones
5 available and if you feel in your own mind it is
6 acceptable, you can read a copy film but make a
7 notation somewhere on the film, under film quality
8 or other comments, is it a copy film.

9 Q In this case were there
10 original films available?

11 A Not to my knowledge.

12 Q Okay.

13 A I'm sure if they had original
14 films -- when they have sent me other films -- when
15 they have original films, they always send original
16 films.

17 Q If there had been some
18 original films in the films you received, would you
19 have done the B-read on an original film instead?

20 A That depends on the quality of
21 the original film.

22 Q Okay.

23 A If the copy film is a good
24 film, it can actually be better than a terrible
25 original film.

55

1 Q Okay. Is it fair to say that
2 the scapular overlay -- let me ask you this: Does a
3 scapular overlay cause any problems in reading the

4 film?

5 A No.

6 Q In this case you found small
7 opacities primary and secondary at four zones and
8 profusion of 1/0?

9 A Found them 1/0 in both mid
10 zones and both lower zones and not in the upper lung
11 zones.

12 Q Now 1/0 is the least or
13 mildest profusion that is consistent with asbestosis
14 in your view; is that correct?

15 A That's correct.

16 Q You also found some pleural
17 thickening; is that correct?

18 A I found -- let's see here --
19 yes, I found some pleural plaquing on the left
20 diaphragm, costophrenic angle blunting on the left
21 side and noted there was a lingular infiltrate and
22 there is a vague, oblong shaped density at the right
23 apex, which is the opposite side from the pleural
24 thickening.

25 Q Okay. In Paragraph 2 of the

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1 written report you describe the process in your
2 reading of the film. Is there somewhere in that
3 description that refers to the diaphragmatic plaque?

4 A No.

5 Q Okay. were there any pleural
6 abnormalities that were not part of the malignancy

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7 or not related to Mr. Romano's malignancy, that you
8 saw?

9 A well, I'm not sure what I saw
10 was the malignancy that was biopsied. I'm just
11 describing -- I'm just describing what I found on an
12 x-ray.

13 Q Okay.

14 A That is, sort of, reasoning
15 that assumes that I knew things when I read it which
16 I didn't, which I know now.

17 Q And that leads me to another
18 question. At the time that you read this x-ray you
19 did not know Mr. Romano had mesothelioma; is that
20 correct?

21 A I believe that is correct.

22 Q Okay. However, you did find
23 evidence on the x-ray that concerns you regarding a
24 possible malignancy; is that fair to say?

25 A Yes.

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1 Q Okay. Is there any way to
2 determine, from the radiology only, the chest x-ray
3 that you looked at, whether the diaphragmatic plaque
4 and the blunting of the costophrenic angle were due
5 to the malignancy or due to another process, a
6 benign process?

7 A No. You can only describe
8 what is there.

9 Q Okay. Is there a reason you
Page 51

10 asked the Goldberg firm to have Mr. Romano follow up
11 with his family doctor, given that he was deceased?

12 A I didn't know he was deceased.

13 Q Okay. It says deceased under
14 his name on the front page.

15 A Silly thing I did.

16 Q Okay. I just wanted to make
17 sure that it was simply that when you were finishing
18 the report you didn't realize he was deceased.

19 A It was not a good thing to
20 write. I hope it didn't go to his family.

21 Q why don't we move on to
22 Exhibit 3, which is your December 5th, 2003 report.
23 All right?

24 A Okay.

25 Q Do you have that in front of

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1 you?

2 A Yes, I do.

3 Q Okay. You indicate in that
4 that you received a letter, November 14th, 2003.

5 A Yes.

6 Q That would be in your office
7 files if it ever turns up?

8 A Yes.

9 Q Okay.

10 MS. LAWTON-WEBB: Terry, I will make a
11 request you provide me that letter.

12 MR. O'BRIEN: It is on my list already.
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13 BY MS. LAWTON-WEBB:

14 Q In your report you list seven
15 categories of documents or documents that you
16 reviewed. I know that you can't verify with your
17 office file at the moment but it is generally your
18 practice to list everything that you've reviewed?

19 A No. There are often things
20 which are totally not pertinent to the question at
21 hand. In other words, we're talking about a
22 mesothelioma case, there may be things about vision
23 problems or, you know -- not in this case in
24 particular but there are some things, everyone would
25 agree, which have nothing to do with the issue at

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1 hand.

2 Q okay.

3 A Just for time sake and to make
4 it a report dealing with what the issue is, I don't
5 put in, you know, that I reviewed this ophthalmology
6 report about a cataract or something like that.

7 Q Okay. So if they accidentally
8 sent you reports from his podiatrist, you didn't
9 list those?

10 A That would be true.

11 Q unless you state it?

12 A That's right and the redundant
13 things I don't. In other words, if there are three
14 copies of the same thing scattered within a stack of
15 documents and they are the identical ones, I don't

16 go over it. I try not to do that.

17 Q Fair enough. Did you receive
18 any information regarding Mr. Romano's occupational
19 history in connection with your preparation of the
20 December 5th report?

21 A You know, it could have been
22 in the letter that I got and -- yes, I think there
23 was a Trinity Health record indicating that -- I
24 believe it said he was a pipe fitter. I could go
25 through there and try to dig that out, if you want

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1 me to.

2 Q No, I don't think that is
3 necessary at this point.

4 A I'm pretty sure I knew he was
5 a pipe fitter.

6 Q That was where I was going.
7 It is your understanding that Mr. Romano was a pipe
8 fitter?

9 A That is my understanding.

10 Q Do you have an understanding
11 of where Mr. Romano worked?

12 A Not right off the top of my
13 head, right now.

14 Q Okay. Do you have any
15 understanding or knowledge regarding any asbestos
16 exposures that Mr. Romano may have had?

17 A I believe he was a pipe fitter
18 from 1948 to 1982.

19 Q where is that information
20 from, the dates?

21 A I asked Mr. O'Brien this
22 morning, prior to the deposition, if he knew the
23 dates that this individual was a pipe fitter.

24 Q okay. And are you assuming
25 then, that he had exposure to asbestos due to his

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1 job?

2 A Yes, I am.

3 Q Okay. The fact that he was a
4 pipe fitter is what is leading you to assume that he
5 had asbestos exposure?

6 A well, you know, that is one.
7 I have to go back, again, like I said when you asked
8 me at the beginning of this deposition did I read it
9 all and I said I skimmed it. There could be other
10 references in this inch-plus-thick stack of
11 documents about his occupational exposure which I
12 can't remember now.

13 Q All right. Fair enough.

14 A So I reserve the right, if you
15 want, for me to go back and look at all of these
16 again and see if there is anything else in this
17 book.

18 Q Do you have any understanding
19 or knowledge as to the specific products that
20 Mr. Romano may have been exposed to, that contained
21 asbestos?

22 A No, not at all.
23 Q Do you have any understanding
24 as to the specific duration or intensity of any
25 asbestos exposures that he had?

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1 A Well, if it was true, from
2 1948 to 1982, I would -- my opinion is that most
3 pipe fitters, particularly in the early years,
4 worked with asbestos. I can say that because I've
5 talked to probably hundreds of pipe fitters over the
6 years and I've yet to run into one who has not told
7 me that they've worked with asbestos, either, mainly
8 removing it.

9 Q Is it fair to say that you
10 don't have any specific knowledge regarding the
11 duration or the intensity of any exposure that
12 Mr. Romano had?

13 A Not in my head right now but
14 if I -- it may be in these records which you
15 forwarded to me. If by direct you mean reading from
16 a document as opposed to getting it from
17 Mr. O'Brien, I don't know if that is considered
18 direct, the date that I gave from 1948 to 1982, or
19 not.

20 Q Fair enough. Do you have any
21 information or understanding as to the fiber types
22 of asbestos that Mr. Romano was exposed to?

23 A No.

24 Q Just so we're clear: You also
Page 56

25 have no knowledge or understanding about the brand

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1 name, manufacturer or supplier of any products; is
2 that fair to say?

3 A That's correct.

4 Q Okay. You never treated
5 Mr. Romano, did you?

6 A No.

7 Q Did you ever have any
8 discussions with any of Mr. Romano's treating
9 physicians?

10 A No.

11 Q Ever have any discussions with
12 any family members for Mr. Romano?

13 A No.

14 Q Okay. In your December 5th,
15 2003 report you rendered two opinions, correct: One
16 that Mr. Romano had asbestosis and the other that he
17 had mesothelioma; is that fair to say?

18 A Yes.

19 Q Okay. Did you review any
20 pathology in this case?

21 A Look at slides, you mean?

22 Q Yes.

23 A No.

24 Q So in diagnosing mesothelioma
25 you're relying on the reports of other pathologists;

1 is that fair to say?

2 A Yes.

3 Q Did you see or review any
4 pulmonary function tests for Mr. Romano?

5 A I don't think so.

6 Q In this case your diagnosis of
7 asbestosis is based on the radiology, the latency
8 period and the exposure history; is that fair to
9 say?

10 A Plus the absence of other
11 known causes of interstitial fibrosis in the medical
12 literature. In medicine, even before a test is
13 done, the pretesting probability of a disease is
14 used in helping to make a subsequent diagnosis.

15 Q Okay.

16 A In other words, in an
17 individual who has never been exposed to asbestos at
18 all the pretesting probability of finding asbestosis
19 is zero.

20 In a patient population in
21 which individuals have had a significant exposure to
22 asbestos, the appropriate latency period, the
23 pretesting probability that the interstitial
24 fibrosis subsequently finds asbestos is much higher
25 in that subset of population than, for example, the

1 general population.

2 Q I understand and let me try
3 to -- so I can get you out of here and you can go
4 see your patients -- let me try to cut this back to
5 what I wanted to verify, which is: You had talked
6 about other things that you might look at, pulmonary
7 function testing, crackles, various other things
8 that you would look at in terms of diagnosing
9 asbestosis, if they were there.

10 In this case you do not
11 have any of those other physical findings; is that
12 fair to say?

13 A Well, no. If you go back and
14 read the question which you originally asked me,
15 which is what do I require.

16 Q Uh-huh.

17 A I put the requirements and
18 then I put other things that would enhance or help
19 with the diagnosis but not required.

20 Q Right. In this case you
21 didn't have some of those other physical findings
22 that might enhance your diagnosis?

23 A No, but I feel certain, from
24 looking at his x-ray and knowing that he was a pipe
25 fitter for many years, knowing my knowledge of

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1 exposures that pipe fitters have, having talked to
2 lot of them over the years, with the knowledge that
3 he subsequently, in fact, was found to have
4 mesothelioma, when you put that all together, I

5 think a reasonable person would make a diagnosis --
6 a reasonable, board certified pulmonologist would
7 make a diagnosis of asbestosis.

8 Q I understand. I was just
9 verifying that this diagnosis -- the pulmonary
10 functioning test, the presence of crackles, those
11 things were not factors in your diagnosis in this
12 particular case, that's all I was trying to verify.

13 A What I'm saying is that
14 doesn't -- that's correct but that doesn't mean that
15 if one goes through this big stack and looks at all
16 of the physical exams, that one couldn't find
17 crackles. I just couldn't say right now. I could
18 go back and find I missed that the patient had
19 crackles and I would say that fits with it, yeah.

20 Q Fair enough. Was there any
21 parenchymal tissue in the pathology report -- was
22 there any parenchymal tissue that was reviewed by
23 the pathologist, that was reflected in any of the
24 pathology reports that you reviewed?

25 A Not to my recollection.

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1 Q Did any of the pathologists
2 find any asbestos bodies or asbestos fibers that
3 you're aware of?

4 A I have to go back and look.
5 You mean in the mesothelioma tissue, itself?

6 Q In the pathology tissue that
7 was reviewed.

8 A I'd have to go back and look.

9 I don't remember.

10 Q Okay. Mr. Romano had some
11 other health issues; is that fair to say?

12 A Yes.

13 Q He had a history of colon
14 cancer?

15 A Right.

16 Q Is a history of colon cancer
17 something that could reduce one's life expectancy?

18 A Statistically, if you bunch
19 everybody together, it would but in an individual
20 patient, it may or may not.

21 I believe this man's colon
22 cancer was diagnosed in 1994 and I believe he died
23 of mesothelioma and its consequences in 2002, which
24 means that, in all likelihood, he was cured of his
25 colon cancer because of that long time span between

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1 the diagnosis and the time of death from another
2 cause.

3 So in his particular case, the
4 answer is: It is likely that it would not reduce
5 his life expectancy as opposed to the question about
6 whether colon cancer in a large population of
7 patients who are diagnosed at various stages, will
8 that reduce your life expectancy and I would have to
9 say yes on that.

10 Q Okay. Somebody who had colon

11 cancer eight years ago is at a higher risk of
12 reoccurrence of colon cancer than somebody who has
13 never had it or does he go back to the same risk as
14 the normal population?

15 A I'm not sure. I would think
16 it would still be higher and it may be slightly
17 higher and the other issue is whether people who
18 have colon cancer have a higher risk of a second
19 primary colon cancer and then there is the issue
20 that he, in fact, may have a higher risk of colon
21 cancer or a new one because of his asbestos
22 exposure.

23 Q That is one of the next
24 questions I was going to ask, Doctor. Are you
25 rendering any opinion in this case as to whether

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1 Mr. Romano's colon cancer in 1994 was due to
2 asbestos exposure?

3 MR. ALEXANDERSEN: Objection. I don't
4 believe that is set forth in any report and under
5 local rules I believe he is precluded from doing
6 that.

7 THE WITNESS: Do I answer the question
8 or not?

9 MR. ALEXANDERSEN: That is my objection,
10 Doctor, to protect the record.

11 BY MS. LAWTON-WEBB:

12 Q Let me ask the question
13 differently, Doctor. Have you been asked to render

14 any opinion as to whether Mr. Romano's colon cancer
15 in 1994 was related to asbestos exposure?

16 A No.

17 Q All right. That is fair
18 enough. Now, Mr. Romano also had a history of
19 melanoma; is that correct?

20 A Yes, that is correct.

21 Q Am I correct, that is what
22 they consider the bad skin cancer?

23 A Of the three common types it
24 is it the worst kind to get for sure.

25 Q Is that something that can

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1 reduce your life expectancy?

2 A Depending on the stage, yes.
3 Many people get a very tiny melanoma with a wide
4 excision and they're cured. Again, it is all
5 patient -- you know, large groups of patients who
6 have melanoma, there is no doubt about it, if you
7 lump those all together, some of them die quickly;
8 other patients who have an early-stage melanoma,
9 have a wide excision, et cetera and they're cured,
10 so it depends on the individual patient.

11 Q Is melanoma related to
12 asbestos exposure at all?

13 A Not that I know of.

14 Q Okay. Mr. Romano also had
15 approximately a 35 pack-year smoking history; is
16 that correct?

17 A I will take your word for
18 that. I don't have that knowledge in my head right
19 now. Yes, I found it right here, it is in the
20 October 12, 2002 report of Dr. Gress, G-r-e-s-s. He
21 states, "He smoked one pack of cigarettes per day
22 for 35 years, from 1940 until 1975, for a total of
23 35 pack-years of cigarette abuse," unquote.
24 Q Is that a significant smoking
25 history?

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1 A Yes.
2 Q That can increase one's risk
3 of cancer, correct?
4 A Oh, yes.
5 Q Increase one's risk of other
6 disease?
7 A Yes.
8 Q Okay. And a 35 pack-year
9 smoking history, smoking can damage some of the
10 body's natural pulmonary defense mechanisms; is that
11 fair to say?
12 A while you're smoking. I'd
13 like to clarify something that I answered yes to --
14 this man -- about the cancer issue -- this man has a
15 significant pack-year history of smoking but he quit
16 smoking in 1975.
17 Individuals who quit smoking
18 have a gradual reduction in the risk of lung cancer
19 until about year 13 after they stop smoking, then

20 their risk of getting lung cancer is only slightly
21 higher than that of the never-smoking population.

22 That slight risk extends for
23 the rest of their life, as far as defense mechanism
24 problems of the lungs with cigarette smoking. For
25 example, like you alluded to earlier, mucociliary

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1 clearance, that can improve with time. It depends
2 on the amount of damage which was done to the
3 airways from the smoking.

4 There are some individuals who
5 I think are genetically predisposed to get into
6 trouble that way and other individuals who are
7 relatively resistant, probably on a genetic basis.

8 Q Even if the mucociliary
9 escalator were to heal, for instance?

10 A Yes.

11 MS. LAWTON-WEBB: Off the record.

12 - - -o0o- - -

13 Thereupon, a discussion
14 was had off the record.

15 - - -o0o- - -

16 BY MS. LAWTON-WEBB:

17 Q Doctor, whether or not the
18 mucociliary escalator and other defense mechanisms
19 repair or heal themselves after cessation of
20 smoking, during a period when Mr. Romano was
21 smoking, would his smoking affect those defense
22 mechanisms or impair those defense mechanisms?

23 A Defense against infection or
24 defense against cancer?

25 Q well, let me ask it this way:

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1 would smoking impair his body's ability to clear
2 asbestos fibers that might be inhaled?

3 A You know, I'm not sure of the
4 answer to that, I'll tell you why and I'd have to
5 look that up. There has been some indication in old
6 literature that individuals who smoke, who have had
7 chronic bronchitis, in certain occupations, have
8 less a chance of getting lung cancer because they
9 cough all the time and cough up the carcinogens. I
10 don't know if that applies at all to asbestos. I
11 don't know the answer to your question, then.

12 Q Okay.

13 A That is something I would have
14 to look up.

15 Q Mr. Romano also had something
16 called Milroy's disease. Is that anything that
17 affects life expectancy?

18 A I don't know what Milroy's
19 disease is.

20 Q I was hoping you did. I
21 looked it up and I couldn't find it either. I don't
22 know.

23 A No, I don't know what it is.

24 Q I looked it up in my medical
25 dictionary, it wasn't there.

1 A That is like an acronym or
2 something, maybe if they used the actual medical
3 term I would know what it is. There are these old
4 names which are attached to a lot of diseases.

5 Q That way of referring to this
6 medical condition you're not familiar with?

7 A That's right and I don't know
8 if I would be familiar with it in any event. I
9 would have to know what it is.

10 Q Right. Fair enough. We
11 determined you have no specific information
12 regarding products to which Mr. Romano as exposed;
13 correct?

14 A Correct.

15 Q Okay. Are you able to say
16 that but for his exposure to a given product -- for
17 example, an asbestos-containing hose -- he would not
18 have developed mesothelioma?

19 A What do you mean?

20 Q Assume for the moment that
21 Mr. Romano was exposed to multiple sources of
22 friable asbestos fibers.

23 A Right.

24 Q Okay?

25 A Yes.

1 Q Assume for the moment that one
2 of those sources was an asbestos-containing hose.
3 Are you able to say that if he was not exposed to
4 that asbestos-containing hose, he would not have
5 developed mesothelioma?

6 A There is a lot of double nos
7 in there. What I can tell you is what I think. I
8 think when an individual develops mesothelioma or
9 asbestosis, that you can't separate out individual
10 exposures, it is the sum or total exposure which
11 caused the asbestosis or the mesothelioma.

12 Q If you were to take out an
13 exposure -- say, in this case, if you were to take
14 out the exposure to hoses but leave everything else
15 in, would he still get mesothelioma? Would he have
16 still gotten it?

17 MR. O'BRIEN: Objection. Calls for
18 speculation but you can answer, Doctor.

19 THE WITNESS: All I can say is, when an
20 individual -- I'm not trying to get around your
21 question but I'm telling you what I really think and
22 I really think that when an individual has worked at
23 one plant for a few years, worked with asbestos at
24 another plant for a few years and did another job
25 here and there, there is no way. I think it is the

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1 sum total of all of those exposures which caused the
2 illness, either asbestosis, mesothelioma, et cetera.

3 Q Are you able to say that if
Page 68

4 there were one fewer exposures, he would not have
5 gotten mesothelioma?

6 A If there were one fewer
7 exposures?

8 Q Yeah. You said it was the sum
9 total of all of the exposures, correct?

10 A Yes, I think it is all of
11 them.

12 Q what if we removed one of
13 those exposures, what if we found out there wasn't
14 one of those exposures?

15 A well, he does have
16 mesothelioma, we know it for a fact.

17 Q Okay.

18 A So when I come from the point
19 that he -- whatever exposures he had in total, in
20 fact, caused mesothelioma, in this particular case,
21 so I don't have to, you know, say if there was not
22 one exposure, this exposure, that exposure, it
23 wouldn't have happened because we know, in fact, it
24 did happen in this case.

25 Q I guess what I'm trying to

1 find out: when you say it is the sum of all of the
2 exposures, are they all necessary causes in the
3 development of the mesothelioma?

4 A I'm just saying that I think
5 that, you know -- all I can say is what I know and I
6 know that my feeling is that it is all of these when

7 they are lumped together.

8 If you took out one exposure,
9 maybe, you know, he may or may not have got it, I
10 don't know. I just know it is the sum exposure or
11 the total cumulative dust exposure which I believe
12 caused his mesothelioma.

13 Q Fair enough. Let me just ask
14 you: Mesothelioma is caused when there is a
15 mutation in the mesothelial cells, correct, that
16 causes them to become malignant?

17 A I am not prepared to talk
18 about that because I'm not an expert in mesothelial
19 cell mutations.

20 Q Okay. would you agree that
21 the malignancy starts developing or growing prior to
22 the time when the mesothelioma is generally
23 diagnosed?

24 A Yes. I mean, initially it has
25 to start out with one or a few bad cells and, of

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1 course, they are at a microscopic level which would
2 not produce any changes on an x-ray or fluid or
3 pleural thickening or anything like that, so at some
4 point in time the volume of malignant cells reaches
5 a point where a nodule or a spot or thickening
6 appears and when it gets big enough, it will appear
7 on a chest x-ray.

8 Q Okay. Once the malignancy
9 begins to develop, one is going to develop

10 mesothelioma at some point; is that fair to say? I
11 mean, once the malignancy, the cells become
12 malignant, you're going to develop the cancer; is
13 that fair to say?

14 A Once those individual cells
15 are malignant, you have malignancy at that point in
16 time.

17 Q Okay. How do asbestos
18 exposures after that point in time cause the
19 mesothelioma?

20 A I don't understand that
21 question. If the patient already has mesothelioma,
22 if they're exposed to more asbestos?

23 Q Yes.

24 A You mean could they get
25 another asbestosis or mesothelioma on the other

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1 side? I'm sure they could.

2 Q Okay. I guess what I'm trying
3 to get at: we know that the mesothelioma developed
4 years before it is actually diagnosed; is that fair
5 to say?

6 A I don't think that is fair to
7 say. I think that from the time -- mesothelioma is
8 a highly malignant disease. It is not like you have
9 malignant cells in your pleura for many years, lying
10 there malignant and then, after a period of many
11 years, you develop the overt disease which causes
12 signs and symptoms and radiographic abnormalities.

13 It is true, it may take a
14 while for one cell to go to two, two to four, eight
15 to sixteen, et cetera, like that but is it not a
16 period of many years, I don't believe.

17 Q Okay.

18 A It could be a period of a
19 year.

20 Q But there is a long latency
21 period from exposure to diagnosis?

22 A Right. But there is not a
23 latency period from the time malignancy develops
24 until the patient develops overt disease. The
25 latency period is a benign period until the point in

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1 time when the malignancy develops.

2 Q Okay. With respect to the
3 asbestosis that you diagnosed in this case, is it
4 also your opinion that every exposure is a causative
5 factor?

6 A I don't understand the
7 question.

8 Q Okay. You indicated, when we
9 were talking about the mesothelioma, that you
10 believe that every exposure to asbestos played a
11 roll in the development of the mesothelioma,
12 correct?

13 A Oh, I get your point. Yes, I
14 think that you can't separate out one versus the
15 other. From a medical standpoint, I think it is a

16 total or cumulative exposure which causes asbestosis
17 or the interstitial fibrosis.

18 Q Okay. In this case can you
19 say that Mr. Romano's asbestosis, separate from the
20 mesothelioma, caused him any physical or pulmonary
21 function impairment?

22 A I can't say right now. I
23 would have to look at any pulmonary function studies
24 which are in existence.

25 Q Okay. As you sit here right

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1 now, you are not aware of any pulmonary function
2 studies that you reviewed?

3 A That's correct.

4 MR. O'BRIEN: He is not going to be
5 asked to do that, Nina.

6 BY MS. LAWTON-WEBB:

7 Q I understand you're not
8 opining that the asbestosis that you diagnosed
9 caused Mr. Romano's death, are you?

10 A No.

11 MS. LAWTON-WEBB: Tell you what, Doctor,
12 I'm going to look through my notes and let some
13 other people talk to you for a minute.

14 MR. ALEXANDERSEN: Doctor, can you hear
15 me all right?

16 THE WITNESS: Yes, I can.

17 CROSS-EXAMINATION

18 BY MR. ALEXANDERSEN:

19 Q I'm going to jump around a
20 little bit. I want to ask you: I have a textbook
21 in front of me, it is "The Pathology of Asbestos,
22 Associated Diseases," by Victor L. Rogley, S. Donald
23 Greenburg and Phillip C. Baum (Phonetic.); are you
24 familiar with that book?

25 A No.

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1 Q So you don't have any opinion
2 either way whether or not this book is authoritative
3 or reliable in any manner?

4 A I don't have an opinion one
5 way or the other because I don't know the textbook.

6 Q So you've never read anything
7 from that book, as best you can recall today; is
8 that fair?

9 A I'm pretty sure I have never
10 read anything from that book.

11 Q Okay. I'm looking at another
12 pulmonary textbook here. Doctor, the textbook that
13 I'm looking at is the "Textbook of Pulmonary
14 Diseases," Fifth Edition, volume 1; Gerald L. Baum,
15 Emmanuel Wolinski (Phonetic.). Are you familiar
16 with that textbook?

17 A I have looked at that textbook
18 in the past. What is the year on that one?

19 Q This is the fifth edition, so
20 I believe it is the most recent volume. It is --
21 I'm looking here -- it's a 1994 edition.

22 A You know, I have looked at
23 Baum's Textbook of Pulmonary Medicine a number of
24 times over the years and I don't know if that is
25 the one I looked at or not.

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1 Q You would agree with me: This
2 is the fifth edition, there are several editions out
3 there?

4 A I'm taking your word for it.

5 Q Do you consider the
6 information contained in that book authoritative?

7 A You know, it is a standard
8 textbook and it may -- it depends on the definition
9 of authoritative. That doesn't mean it is not a
10 good text. Although I'm sure it is a good textbook,
11 that doesn't mean I would necessarily agree with
12 anything in it, because there may be other
13 authoritative books that say just the opposite. I
14 don't know.

15 Q That is fair. Would you
16 consider the information in the book reliable?

17 A well, I would consider it
18 reliable if I would look at -- if there was a
19 certain particular issue being looked at which is
20 consistent with other standard textbooks, which are
21 about, you know, current.

22 Q Okay. I understand that. As
23 we sit here today you may refer to that textbook in
24 the past in your practice but you don't know what

25 edition you may have looked at; is that fair?

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1 A Right. I don't think prior --
2 it was probably prior to that edition, I think.

3 Q Okay.

4 A Because --

5 Q Sitting here today you can't
6 recall specifically the edition; is that fair?

7 A No. I can't recall, no.

8 Q Okay. I want to talk a little
9 bit about your clinical practice, in that you do 10
10 percent medical/legal work. I take it that the
11 other 90 percent is in the clinical practice?

12 A 10 percent of my time.

13 Q The other 90 percent, is that
14 in the clinical practice?

15 A Yes, it is.

16 Q Can you give me a thumbnail
17 sketch of the types of patients that you currently
18 are treating, the types of disease processes?

19 A Right. Right. In the
20 hospital where I go every morning I see patients on
21 the general medical floors and in the intensive care
22 unit, so they often have respiratory failure which
23 I'm managing their mechanical ventilators for in the
24 intensive care unit on the general floor.

25 Most of the patients I'm

1 seeing have asthma, chronic obstructive pulmonary
2 disease, lung cancer and pneumonia and then various,
3 sundry other things.

4 In my office, where I am
5 usually from about 1:00 until 5:30 or six every day,
6 the main diseases I treat there are obstructive lung
7 diseases, cancer and interstitial lung diseases and
8 a few other oddball ones.

9 Q Doctor, can you ballpark for
10 me how many patients you have with smoking-related
11 pulmonary problems?

12 A I can't tell you the number.
13 I can say that probably a high percentage. I would
14 say virtually all of the patients who have had
15 chronic obstructive lung disease. By that I mean
16 most of the patients with chronic bronchitis and
17 almost all of the ones with pulmonary emphysema,
18 smoking is the cause of their emphysema.

19 Of the individuals who have
20 interstitial lung disease that is not related to
21 smoking, most of the patients I have with cancer
22 have a significant component of smoking as the cause
23 of their lung cancer.

24 Patients with lung cancer and
25 chronic obstructive lung disease are the two main

1 diseases in my office which are related to tobacco

2 smoking. Some of those people have other causes of
3 lung cancer but as far as the COPD is concerned, it
4 is cigarette related. The asthma I see is not
5 related to cigarettes smoking.

6 Q Doctor, you mentioned that you
7 treat people for interstitial lung disease. Do you
8 equate the interstitial lung disease with
9 interstitial fibrosis from various causes?

10 A Interstitial fibrosis is a
11 subset or subsection of the larger field of
12 interstitial lung disease. Some of the interstitial
13 lung diseases are reversible and are not actually
14 fibrotic and irreversible.

15 Q You would agree with me there
16 are many causes of interstitial fibrosis; is that
17 fair?

18 A Yes.

19 Q Doctor, are you of the opinion
20 that smoking causes interstitial fibrosis?

21 A Smoking can cause some dirty
22 looking lungs on an x-ray and smoking has been
23 reported in some studies to cause some lingular
24 changes on an x-ray but true interstitial fibrosis
25 as we mean in clinical practice, no.

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1 Q Is that point still being
2 researched, do you know?

3 A I'm sure there is research
4 being done on everything but the general consensus

5 is interstitial fibrosis in the United States, a
6 large section is idiopathic and another large
7 percentage is due to connective tissue disease;
8 other ones are due to drug-induced lung disease;
9 inhalants, dust, et cetera but when we think of the
10 diseases caused by cigarette smoking, we don't think
11 of significant interstitial fibrosis.

12 If one does a biopsy of a lung
13 in a smoker, certainly you can find areas of
14 fibrosis, et cetera, but it is not the real disease
15 we're treating.

16 Q It may be a component of
17 various disease processes?

18 A But it is not a -- excuse me?

19 Q The smoking may be a component
20 of various disease processes that you may be
21 treating in an individual?

22 A Smoking can cause a lot of
23 problems, yes.

24 Q Doctor, would you agree with
25 me, if there is sufficient lung tissue, that that

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1 would be the gold standard in diagnosing asbestosis?

2 A Yes, I would, if there is
3 sufficient -- if there is sufficient tissue. I
4 think directly looking at the tissue under the
5 microscope would be the ultimate way for diagnosing
6 or excluding asbestosis, particularly if it is read
7 by a pulmonary pathologist and not a general

8 pathologist.

9 Q Doctor, do you agree with me
10 that asbestosis is interstitial fibrosis in the
11 presence of asbestos fibers or bodies?

12 A Yes.

13 Q You mentioned in your earlier
14 examination about doing a B-read on a copy and I
15 wanted to know: Has the International Labor
16 Organization put anything out that specifically
17 talked about what you just discussed, that it is all
18 right to read a copy if the original is not
19 available?

20 A No, sir, but it is asked at
21 their courses and Russell Morgan -- you know, I have
22 that same concern. I never like to read a copy film
23 if the original is available and because of my
24 concern, some years ago I talked to Russell Morgan
25 who -- I think he was at Johns Hopkins -- and asking

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1 that same question and it is not -- I mean, if you
2 look, for example, at the NIOSH web site, they will
3 discuss not reading digital films but if you look at
4 that carefully, it is very confusing, if they're
5 talking about just reading digital films for
6 epidemiologic studies or for clinical practice and
7 the same thing applies with these copy films.

8 I've gone to a number of
9 B-reading courses over the years and I don't believe
10 I've ever gone to one where that question didn't

11 come up and the response is generally, you know, you
12 should -- you know, technically you shouldn't -- for
13 a government study.

14 Q Okay.

15 A You know, if you're going to
16 be doing, like, the coworker's surveillance study,
17 we're not reading copy films, however, in the real
18 world, if there are no original films left and the
19 copy film is a good copy film, and if it is all we
20 have to work with, then you can read it but always
21 put a disclaimer on there that it is a copy film.

22 Q So I understand you --

23 A I don't think that is in
24 writing.

25 Q Okay.

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1 A I don't think that -- it is
2 certainly not in there, you know, the booklet that
3 comes along with the B-reading films which you buy
4 and it is not in the old one and it is not addressed
5 in the new films, the booklet that comes along with
6 the new films, the year 2001's.

7 Q Okay. Are you aware that the
8 ILO has a web site?

9 A Yes.

10 Q I've gone on there.

11 A You can't find -- I have to --

12 Q I'm just saying that, just in
13 my mind's eye, just so I'm clear on this point. I

14 understand what you're saying. I understand what
15 the dialogue is in the scientific community from
16 your testimony but insofar as a written edict that
17 has been published by the ILO, you're unaware of
18 one?

19 A I think they are absolutely
20 silent on the issue.

21 Q Okay.

22 A They haven't come out in
23 writing one way or the other.

24 Q Okay.

25 A Frankly, I think they don't

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1 want to address it.

2 Q But you would agree with me
3 that even the ILO, if original films are available,
4 that is what you should read?

5 A Yes.

6 Q Doctor, I wanted to ask you --
7 and, again, I think you've already testified to this
8 but I just want to preface it so I can get to a
9 question -- you don't have any specific exposure
10 information concerning Mr. Romano, correct?

11 A You mean in terms of actual
12 amount of dust in the air?

13 Q No, not in those terms; where
14 he worked, what he did, you know, and what plants he
15 worked in, what activities, what type of work was
16 ongoing around him when he was performing his job

17 duties, things of that nature.
18 A The only real data I have
19 right now is I believe he was a pipe fitter.
20 Q I believe you indicated from
21 your previous work or your prior patients that you
22 had a body of knowledge concerning what a pipe
23 fitter does; is that fair?
24 A Yes.
25 Q And I believe you indicated

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1 that you have interviewed a large number of pipe
2 fitters; is that correct?
3 A Over the years, yeah.
4 Q Have you read peer review
5 studies concerning exposures of pipe fitters?
6 A Peer review?
7 Q Yeah?
8 A Which ones were those?
9 Q My understanding is there are
10 a great deal of peer-review articles discussing
11 exposure to pipe fitters. I can't specifically name
12 any. My question to you is, again: Do you recall
13 reading some peer-review studies concerning asbestos
14 exposure and asbestos-related diseases in pipe
15 fitters?
16 A Well, I have read textbooks, I
17 believe, which refer to studies and, generally, in
18 textbooks they don't use non-peer-reviewed articles.
19 If you, for example, pick up

20 any textbook and look at individuals at risk for
21 asbestos-related disease, you know, besides the
22 people who worked in the actual manufacturing of
23 asbestos products, you'll find pipe fitter at the
24 top of the list.

25 Q Okay. But as we sit here

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1 today you don't recall any specific -- outside of
2 the textbooks -- any specific peer-review literature
3 that you may have read?

4 A Well, I have read about pipe
5 fitters over the years.

6 Q Yeah.

7 A I can't, you know, off the top
8 of my head, you know, pull them out. I used to have
9 a large stack of articles, which I used to save, on
10 almost all medical topics, not only these but --
11 frankly, a lot of the information I get now is on
12 the internet, rather than reading journals or I read
13 the journals online.

14 Q I understand. You answered my
15 question. When you were talking in your earlier
16 examination you said -- and I am quoting here
17 because I wrote it down -- "In the pipe fitters that
18 you interviewed almost every one of them said that
19 they were removing pipe covering as part of their
20 job responsibilities"; do you recall that?

21 A Yeah, that's what they --

22 Q Why do you consider that to be

23 significant?

24 A well, the pipe fitters tell me
25 when they're pulling off, you know, asbestos -- they

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1 always tell me it is a dusty environment. Many of
2 them tell me, boy, I was pulling that asbestos off
3 the pipes and it was so dusty you couldn't see
4 anything, we looked like snowmen, those kind of
5 descriptions which people have told me over the
6 years and they're working -- they're often working
7 in areas where insulators, coverers, boilermakers
8 are working also.

9 Q I understand that. In the
10 scenario where you discussed, with these individuals
11 removing asbestos pipe covering and they indicated
12 that it was a very dusty procedure, that at times --
13 I believe your description was -- it was difficult
14 to see, they were covered.

15 A Yes.

16 Q In your view that would be a
17 substantial exposure; is that fair?

18 A Yes.

19 Q Okay. Insofar as the
20 specifics of Dan Romano, you couldn't -- because you
21 don't have the exposure information right now --
22 really quantify any of those exposures, correct?

23 A No, I can't quantify it but it
24 is my clinical judgment, based on talking to pipe
25 fitters.

1 Q Okay.

2 A And knowing that he was a pipe
3 fitter from the 1940s until 1980, I would be
4 extremely surprised if he didn't have -- if he was
5 alive -- he didn't describe a considerable exposure
6 to asbestos over the years. He would be, you know,
7 the first pipe fitter I ever talked to who would be
8 able to tell me that.

9 Q I understand. You're basing
10 that on, one, you have information they remove it,
11 they apply it and they work with it and, indeed, I
12 believe that when they are doing their job, there
13 might be other tradesmen in the area that may be
14 working with the product; is that fair?

15 A That's fair.

16 Q Okay. Let me ask you this,
17 Doctor -- I think you may have answered this -- when
18 was the last time you did a literature search
19 specifically to look at new articles on mesothelioma
20 or asbestos-related diseases?

21 A A literature search? You mean
22 a systematic one, going through --

23 Q Yeah. I mean, going on,
24 maybe, Medline or the search engines available to go
25 through.

1 A Yeah, yeah.
2 Q You have a catalog of --
3 whether it be foreign articles --
4 A Yeah, January, '04.
5 Q How did you come up with that
6 that quick?
7 A what?
8 Q How did you come up with that
9 that quick?
10 A It's inside my textbook.
11 Q what is noted on that; is
12 there anything else on that?
13 A Yes. In the back of it.
14 There are some articles stuck in the back of this
15 textbook which I looked at back in January, probably
16 the last time I looked at this textbook. wait.
17 There is something else stuck in here.
18 Q All right.
19 A It is a napkin.
20 Q Could you, maybe, read into
21 the record what those articles are, Doctor, if it is
22 not too cumbersome?
23 A These are printouts from the
24 National Institute of Health web site.
25 Q Okay.

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1 A It says -- at the bottom it
2 says on these www.ncbi.nlm.nih.gov forward slash
3 endres -- it is a big, long thing. You want the
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4 whole web site?

5 Q I don't need the web site.

6 A The first one is from the
7 American Journal of Industrial Medicine, October
8 1997. It is entitled "Radiographic asbestosis is
9 not a prerequisite for asbestos-associated lung
10 cancer in Ontario asbestos cement workers," by
11 Finkelstein, M.M. Finkelstein.

12 Q Okay. If you could just read
13 into the record those that you would have reviewed,
14 that were placed in the textbook, please.

15 A Okay. That one. There is one
16 from the American Journal of Industrial Medicine,
17 October 1996, "Lung cancer and asbestos exposure,
18 asbestosis is not necessary," from Brown University,
19 Providence, Rhode Island, by Engilman,
20 E-n-g-i-l-m-a-n.

21 The next one is entitled -- is
22 from the Scandinavia, Scand J Work Environ,
23 E-n-v-i-r-o-n, Health, February, 1994. Is it
24 entitled, "Is there an association between pleural
25 plaques and lung cancer without asbestosis?"

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1 There is one here from the
2 American Journal of Industrial Medicine, entitled,
3 "Occupational respiratory cancer and exposure to
4 asbestos: A case-controlled study in the cohort of
5 workers in the electricity and gas industry."

6 There is one here from the
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7 Archives of Chest Disease, entitled "Asbestos
8 exposure, lung cancer and asbestosis," by Billings,
9 B-i-l-l-i-n-g-s?

10 There is one entitled,
11 "Asbestos, asbestosis, pleural plaques and cancer,"
12 by Hillerdal, H-i-l-l-e-r-d-a-l, and Scand J work
13 Environ Health.

14 Those are the ones that were
15 stuck in the back of this book. At the time I'm
16 sure I had many more.

17 Q Okay.

18 A I went through -- you know,
19 you start printing out a whole bunch of them.

20 Q I understand. Doctor, just so
21 I'm clear: The last time you did a literature
22 search would have been in January of 2004; is that
23 fair?

24 A Yeah, maybe. Let's see.
25 Probably. I think that would probably be the last

99

1 time.

2 Q Typically, you do a search
3 once a year, is that your methodology or do you do
4 it more often?

5 A What I do is when I'm looking
6 online, I look at -- go online, maybe, every other
7 day and I go to some web sites which help summarize
8 what is going on in pulmonary medicine and often
9 some reviews.

10 Q Okay.

11 A And I go there and if I see
12 anything that I'm interested in -- for example, I'm
13 interested in occupational lung disease, I'm also
14 interested in asthma, for example, so, honestly, I
15 keep on tending to read the things I know most about
16 and read less about the things I don't know about
17 but I do it because I enjoy reading it, so I just,
18 you know.

19 I don't have any set time
20 saying, well, it is time to research this again. It
21 is just whenever I think about it or if I run into
22 one article which says something that is new to me,
23 I may try to find other articles to find out is this
24 real or not real, that kind of stuff.

25 I look in the literature about

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1 pulmonary medicine not every day but almost every
2 day and as I'm doing it more and more online and
3 less and less, you know, out of journals, except I
4 often read the journals, which are now online, like
5 New England Journal of Medicine.

6 MR. ALEXANDERSEN: I understand. That is
7 all I have. I appreciate your time. I'll turn it
8 over to anyone else.

9 THE WITNESS: Thank you.

10 MS. LAWTON-WEBB: Anybody have questions?

11 well, Doctor, hearing no
12 responses from anybody, I think we're probably done.

Altmeyer May 21 2004.txt

19 expressly waived; that I am neither relative,
20 attorney, nor employee of any party or their
21 counsel and have no interest in the result of this
22 pending action.

23 IN WITNESS WHEREOF, I have hereunto set my
24 hand and official seal of office at Rome, Ohio this
24th day of May, 2004.

25

My commission expires 1-11-06

EXHIBIT 5

Robert B. Altmeyer, M.D.

PULMONARY MEDICINE

DIPLOMATE AMERICAN BOARD OF INTERNAL MEDICINE

DIPLOMATE AMERICAN BOARD OF INTERNAL MEDICINE IN PULMONARY DISEASES

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WHEELING, WV 26003

(304) 243-1446

July 5, 2005

Carolyn Kaye Ranke
Brent Coon and Associates
1220 West 6th Street, Suite 303
Cleveland, OH 44113

RE: SINNOTT, JAMES
DOB: 04/10/39
SS#: 402-50-6326

Dear Ms. Ranke:

As requested by your letter to me of June 22, 2005, which I reviewed in its entirety, I reviewed various medical documents and other documents regarding James Sinnott. I will review these documents in the order that I received them and then answer the questions specifically posed by your letter to me. All of my opinions in this report are given within a reasonable degree of medical certainty. If you have any questions regarding this report, please call me in my office at (304) 243-1446.

Document 1: Your letter of June 22, 2005 indicates that Mr. Sinnott worked as a millwright in the maintenance department at Dayton Malleable Foundry from 1959 until the mid 1970's. After that period, your letter indicated that he was transferred into the electrical department at Dayton Malleable where he worked until his retirement in 1997. He further indicated that, "During the entire period of his employment, Mr. Sinnott was exposed to numerous asbestos containing products in and around the iron foundry which is the basis of his law suit." Your letter also indicated, "I had examined this man on August 23, 2003, made a diagnosis of asbestosis, found a mass in his right lung, and advised that he have follow up by his personal physician, which he apparently did, which lead to a diagnosis of lung cancer shortly thereafter by his physicians at the Huntington Veteran's Administration Hospital.

Carolyn Kaye Ranke
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RE: SINNOTT, JAMES
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Document 2: A report, which I authored entitled, "Asbestos Medical Evaluation," from my examination of this individual on 8/23/03. I examined this man in Kenova, West Virginia on 8/23/03 at the request of Respiratory Testing Services, Inc. I recount that his occupational exposure, as outlined on Page 1 of my report. He worked directly with asbestos insulation, pipe covering, transite, cloth, gloves, gaskets, valve packing, and fire brick. The report indicates that from 1950 until 1994 he smoked 1 1/2 packs of cigarettes a day. He complained of a chronic productive cough, chronic shortness of breath with exertion, and wheezing occasionally in the mornings, but no chest pain or hemoptysis. He had a history of myocardial infarction, esophageal junction tear, multiple episodes of pneumonia as a child, and a history of nasal allergies. He had no history of any connective tissue diseases. On physical examination of the chest, I noted that there were fine crackles in the axillary areas which persisted after repetitive deep breathing. The forced expiratory time was normal. There were no wheezes and no rhonchi. There was no peripheral edema, cyanosis, or clubbing. A pulmonary function study from that examination revealed mild restriction, no obstruction, and a mild reduction in the specific diffusing capacity at 77% of predicted. I interpreted a chest x-ray, at that time, as a NIOSH certified B reader, as showing category s/t, 1/1 in both mid and lower lung zones by the ILO International Classification of Radiographs of Pneumoconioses. There was a right upper lobe density adjacent to the superior mediastinum. I had noted that this could be an overlapping shadow or scarring, but I could not rule out a mass in that area. For that reason, I verbally and in writing, advised this man to see his personal physician within the next two weeks for follow up. He was also given written notification to take to his own physician. I made a diagnosis, with a reasonable degree of medical certainty, according to my report, of asbestosis. I made that diagnosis on the basis of interstitial changes radiographically consistent with asbestosis, persistent crackles on auscultation of the chest, a significant exposure to asbestos in the work place with an appropriate latency period, a reduction in the specific diffusing capacity, part of which was due to asbestosis and part of which was due to prior tobacco smoking. I reviewed my B reading report form as well as the pulmonary function studies from that examination.

Document 3: Records from the Huntington VAMC. A chest x-ray from that facility of September 17, 2003 indicated no evidence of pneumothorax. The patient was post bronchoscopy. A CT scan of the head was normal. A CT scan of the abdomen showed no discrete masses in the liver, tiny bi-basilar pleural effusions with associated atelectasis left greater than the right were noted by the

Carolyn Kaye Ranke
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RE: SINNOTT, JAMES
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interpreting staff radiologist. A bone scan showed no evidence of metastatic disease. The CT scan of the thorax showed, "Evidence of a large probably neoplastic mass lying anteriorly and medially in the right upper lobe, which is pleural based, which has minimal linear extension into the anterolateral portions of the right upper lobe." It also showed, "Small pulmonary nodule, which is probably also pleural based, lying anteriorly in the right upper lobe." A bronchoscopic biopsy of the right upper lobe showed, "Non-small cell carcinoma." A discharge summary from that institution signed 9/18/03 indicated, "Bronchoscopy results positive for non-small cell carcinoma, non-small cell lung cancer." A consultation report indicated that, "PET scan suspicious for metastatic disease to right peritracheal and tracheal space." A November 12, 2003 Huntington VAMC Spirometry Report showed that there was a normal FEV1/FVC ratio. Interpretation from that institution was, "Very mild restriction, no obstruction, no postbronchodilator response, normal diffusing capacity." I would note, however, that the single breath carbon monoxide diffusing capacity is recorded as being 26.40 with a predicted value of 37.89. The recorded percent predicted is 69.8, which would be in the mild reduction category. So, in that regard, I disagree with the "normal" diffusing capacity interpretation. Almost all authorities agree that a diffusing capacity less than 80% of predicted is abnormal. The total lung capacity was 76% of predicted, which was mildly reduced, indicating a mild restrictive ventilatory impairment. A past medical history from that institution from a pulmonary consultation stated, "Ex-smoker quit eight years ago." That means that he would have quit smoking cigarettes in 1995, which is roughly consistent with this man's testimony.

Document 4: A report by Nancy Munn, M.D., Chief Pulmonary Section, Huntington VAMC, signed on 9/15/03 indicated, "Right upper lobe lung mass with history of smoking and asbestos exposure make the patient high risk for lung cancer." There was no doubt that she made a correct assessment in that regard.

Based on my review of the above records, it is my opinion that this man's tobacco smoking and asbestos exposure were major contributing causes for the development of his lung cancer, which is documented in these records. The bronchoscopic biopsy revealed the presence of a non-small cell carcinoma. Non-small cell carcinomas of the lung are known to be caused by both tobacco smoking and asbestos exposure. Asbestos exposure, with or without asbestosis, is a known primary pulmonary carcinogen and there is ample scientific medical literature to support this generally agreed upon opinion.

Carolyn Kaye Ranke
Brent Coon and Associates
RE: SINNOTT, JAMES
Page 4

Individuals who have had a significant exposure to asbestos with an appropriate latency period have up to five times the risk of developing lung cancer compared to the never-having been exposed to asbestos population of individuals. Individuals who are long-term tobacco smokers, and particularly those who have smoked within the past 13 – 15 years, have an increased risk for developing lung cancer up to approximately 20 times the risk of individuals who have never smoked. Unfortunately, individuals who have had a significant exposure to asbestos with an appropriate latency period and have had a significant smoking history, have approximately 80 – 100 times the risk of developing lung cancer compared to the population of individuals who have never smoked tobacco and who have never been exposed to asbestos. This is the well known and universally accepted synergistic or multiplier effect that exists between asbestos exposure and tobacco smoking. Therefore, it is my opinion that both this man's tobacco smoking history and his asbestos exposure/asbestosis were both significant contributing causes for the development of his lung cancer.

If you have any questions regarding this report, please contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Altmeyer", written in a cursive style.

Robert B. Altmeyer, M.D.

RBA/jrd

TAB 10

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JAMES and FRED A SINNOTT,	)	CASE NO. 521874
)	
Plaintiffs,	)	JUDGE HARRY A. HANNA
	)	JUDGE LEO M. SPELLACY
v.	)	JUSTICE FRANCIS E. SWEENEY
	)	(Asbestos Docket)
AQUA-CHEM INC., et al.,	)	Hickey Group 4
)	
Defendants.)	

**MOTION OF SEPARATE DEFENDANT
PNEUMO ABEX LLC, SUCCESSOR-IN-INTEREST TO
ABEX CORPORATION, TO JOIN IN MOTION OF AMERICAN
OPTICAL CORPORATION TO ADMINISTRATIVELY DISMISS**

Separate defendant Pneumo Abex LLC, Successor-In-Interest to Abex Corporation ("Abex"), by and through counsel, moves to join in the Motion of American Optical Corporation to Administratively Dismiss under O.R.C. § 2307.91 *et seq.* and the corresponding Reply Brief previously filed in this matter. (See File&Serve ##5693519 and 6633933, respectively). Plaintiff has failed to provide an expert report supporting his claim that his lung cancer was caused by asbestos and was not related to his smoking history.

Abex, similar to American Optical, was a party to plaintiff's original Complaint filed on February 10, 2004. On or about April 4, 2004, plaintiff voluntarily dismissed Abex from this lawsuit. On or about December 22, 2004, plaintiff filed a Motion for Leave to File First Amended Complaint to add defendants. Plaintiff specifically stated that "plaintiff James Sinnott moves this Court for leave to amend this Complaint adding back defendants Pneumo-Abex Corporation...." (See File&Serve #4826475). As clearly outlined in American Optical's Motion and Reply Brief, O.R.C. § 2307.91 *et seq.* is prospectively applied here because the plaintiff commenced this lawsuit against Abex after the effective date of the statute.

For these reasons, Abex joins in American Optical Corporation's Motion to Administratively Dismiss, and believes that plaintiff's claims against Abex should likewise be administratively dismissed.

Respectfully submitted,

/s/ Christopher J. Caryl

JOSEPH J. MORFORD (0067103)

(jmorford@tuckerellis.com)

CHRISTOPHER J. CARYL (0069676)

(ccaryl@tuckerellis.com)

Tucker Ellis & West LLP

1150 Huntington Building

925 Euclid Avenue

Cleveland, Ohio 44115-1475

Telephone: (216) 592-5000

Facsimile: (216) 592-5009

*Attorneys for Separate Defendant Pneumo
Abex LLC, Successor-In-Interest to Abex Corporation*

CERTIFICATE OF SERVICE

The foregoing *Motion of Separate Defendant Pneumo Abex LLC, Successor-in-Interest to Abex Corporation, to Join in Motion of American Optical Corporation to Administratively Dismiss* was electronically filed with the Court this 6th day of December, 2005.

/s/ Christopher J. Caryl

JOSEPH J. MORFORD (0067103)

(jmorford@tuckerellis.com)

CHRISTOPHER J. CARYL (0069676)

(ccaryl@tuckerellis.com)

Tucker Ellis & West LLP

1150 Huntington Building

925 Euclid Avenue

Cleveland, Ohio 44115-1475

Telephone: (216) 592-5000

Facsimile: (216) 592-5009

*Attorneys for Separate Defendant Pneumo
Abex LLC, Successor-In-Interest to Abex Corporation*

TAB 11

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FREDA SINOTT)
INDIVIDUALLY AND AS)
EXECUTRIX OF THE ESTATE OF)
JAMES SINNOTT)
1525 THOMAS STREET)
IRONTON, OHIO 45638)

Plaintiff)

vs.)

DANA CORPORATION)
C/O CT CORPORATION SYSTEM, S.A.)
1300 EAST 9TH STREET, # 1010)
CLEVELAND, OH 44114)

GARLOCK SEALING)
TECHNOLOGIES LLC)
C.T. CORPORATION SYSTEM, S.A.)
1300 EAST NINTH STREET, # 1010)
CLEVELAND, OHIO 44114)

RAPID-AMERICAN CORP.)
IN ITS OWN RIGHT AND AS)
SUC. IN INT. TO AND LIABLE FOR)
PHILIP CAREY CORPORATION)
C/O CORPORATION SERVICE CO.)
2711 CENTERVILLE RD, # 400)
WILMINGTON, DE 19808)

CASE NO: CV-04-521874

JUDGE: ASBESTOS DOCKET
JURY TRIAL DEMANDED

THIRD AMENDED
COMPLAINT
SUBSTITUTING PLAINTIFF
AND ADDING WRONGFUL
DEATH CLAIM

BALA CYNWYD, PA 19004)
)
VIACOM, INC.)
SUCESSOR-IN-INTEREST)
TO CBS CORP)
F/K/A WESTINGHOUSE ELECTRIC)
CORPORATION)
1515 BROADWAY)
NEW YORK, NY 10036)
)
)
)
)
ROCKBESTOS SUPRENANT)
CABLE CORP.)
FKA ROCKBESTOS COMPANY)
A DELAWARE CORPORATION)
U.S. CORPORATION COMPANY, S.A.)
50 WEST BROAD STREET # 1800)
COLUMBUS, OHIO 43215)
)
)
HONEYWELL)
SUC. BY MERGER TO)
HONEYWELL AND)
ALLIED SIGNAL, INC.)
375 NORTH LAKE STREET)
BOYNE CITY, MI 49712)
)
)
JOHN DOES (1-200))
MANUFACTURERS, SELLERS,)
SUPPLIERS, INSTALLERS,)
PROMOTERS, COMPOUNDERS,)
OF ASBESTOS AND ASBESTOS-)
CONTAINING PRODUCTS)
AND MACHINERY USED, DESIGNED,)
INSTALLED, IN CONJUNCTION)
WITH AND)
OR FOR THE USE OF ASBESTOS)
AND OR)
ASBESTOS CONTAINING PRODUCTS)
REAL NAMES AND ADDRESSE)
)
)
)
)

PNEUMO-ABEX CORPORATION)
CORPORATION SERVICE CO.)
11 SOUTH 12TH STREET)
P.O. BOX 1463)
RICHMOND, VA 23218)

AMERICAN OPTICAL CORP.)
C/O CT CORPORATION SYSTEM, SA)
101 FEDERAL STREET, SUITE 300)
BOSTON, MA 02110)

GENERAL MOTORS CORPORATION)
C/O CT CORPORATION SYSTEM)
1300 EAST 9TH STREET, SUITE 1010)
CLEVELAND, OHIO 44114)

HONEYWELL INTERNATIONAL, INC.)
FKA ALLIED SIGNAL, INC.)
FKA BENDIX CORP.)
C/O CSC LAWYERS INCORPORATING)
SERVICES)
CORPORATION SERVICE CO.)
50 WEST BROAD STREET)
COLUMBUS, OH 43215)

GENUINE PARTS COMPANY)
INDIVIDUALLY AND AS)
AS ULTIMATE PARENT TO)
NAPA AUTO PARTS)
C/O GRANT MORRIS, S.A.)
2665 WEST DUBLIN GRANVLE ROAD)
COLUMBUS, OHIO 43235)

ALLIED SIGNAL, INC.)
375 NORTH LAKE STREET)
BOYNE CITY, MI 49712)

A.W. CHESTERTON COMPANY)
A MASSACHUSETTS CORPORATION)
MIDDLESEX INDUSTRIAL PARK)

ROUTE 93)
STONEHAM, MA 02180)

ANCHOR PACKING COMPANY)
A DELAWARE CORP.)
C/O CT CORPORATION SYSTEM)
1635 MARKET STREET)
PHILADELPHIA, PA 19103)

ATLANTA, GA 30303)

NAPA AUTO PARTS)
DAVIS AND WILMAR, INC.)
609 EPSILON DRIVE)
PITTSBURGH, PA 15238)

FORD MOTOR COMPANY)
CT CORPORATION SYSTEM, S.A.)
1300 EAST 9TH STREET, SUITE 1010)
CLEVELAND, OHIO 44114)

CAROL WIRE & CABLE COMPANY)
DBA CREST CO. & MILLER)
ELECTRIC COMPANY)
50 WEST BROAD STREET, STE. 1800)
COLUMBUS, OHIO 43215)

JOY GLOBAL INC.)
AS SUC. IN INTEREST TO P & H)
LEXIS DOCUMENT SERVICE INC.)
30 OLD RUDNICK LAND, SUITE 100)
DOVER, DELAWARE 19901)

JOHN DOES (1-200))
MANUFACTURERS, SELLERS,)
SUPPLIERS, INSTALLERS,)
PROMOTERS, COMPOUNDERS,)
OF ASBESTOS AND ASBESTOS-)

CONTAINING PRODUCTS)
 AND MACHINERY USED, DESIGNED,)
 INSTALLED, IN CONJUNCTION)
 WITH AND OR FOR THE USE OF)
 ASBESTOS AND OR)
 ASBESTOS CONTAINING PRODUCTS)
 REAL NAMES AND ADDRESSES)
 UNKNOWN)
)
)
)
 AJAX BOILER AND HEATER CO.)
 C/O FRANKLIN J. BRUMMETT, S.A.)
 111 WEST OCEAN BOULEVARD # 1300)
 LONG BEACH, CA 90802)
)
)
 DEFENDANTS)

FACTUAL BACKGROUND

1. Decedent James Sinnott, hereinafter “Decedent” worked at various job sites in Ohio with products manufactured, distributed, processed or sold from Ohio based companies or companies doing business in this state. Plaintiff Freda Sinnott, hereinafter “Plaintiff” is the surviving Spouse and the Executor of the Estate of decedent James Sinnott. James Sinnott died on August 25, 2005. Freda Sinnott was duly appointed Executrix of the Estate of James Sinnott on September 29, 2005.

2. Defendant corporations and companies or their predecessors-in-interest, and substituted New Party Defendants, (hereinafter “Defendants”) reside in this county, maintain offices in this State, have agents in this State, and/or have done and are doing business in this State.

3. Defendants were or are miners, manufacturers, processors, distributors, importers, converters, compounders, or merchants of asbestos, asbestos-containing products or machinery requiring the use of asbestos and/or asbestos-containing products.

4. Defendants, acting through their servants, employees, agents and representatives, caused asbestos and asbestos-containing materials to be placed in the stream of commerce to which Decedent were exposed during his employment.

5. The real names and addresses of Defendants John Does 1-100 have not been determined despite reasonable efforts of the Plaintiff to do so.

COUNT 1

6. Plaintiffs re-allege paragraphs 1 through 5 above as if fully rewritten herein.

7. Defendants negligently produced, sold or otherwise put into the stream of commerce asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products, which the Defendants knew or in the exercise of ordinary care, ought to have known were deleterious and highly harmful to Decedent's health.

8. As the designer, developer, manufacturer, distributor and seller of the above-described asbestos and asbestos-containing products, and/or machinery requiring the use of asbestos and/or asbestos-containing products, Defendants owed a duty to foreseeable users and handlers of said products, to use ordinary care in designing, manufacturing, marketing and selling said products in such a manner as to render them safe for their intended and foreseeable users.

9. Defendants negligently gave inadequate warning or instruction during and after the time of marketing in that Defendants knew or in the exercise of reasonable care should have known about the risks associated with their products and failed to provide reasonable and/or adequate warning or instructions in light of the likelihood that the asbestos, asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products would cause serious physical harm to Decedent.

10. Decedent James Sinnott, as a direct and proximate result of Defendants' conduct, have contracted and died from asbestos-related diseases, asbestosis and cancers and have suffered the injuries and damages as set forth herein.

COUNT II

11. Plaintiffs re-allege paragraphs 1 through 10 above as if fully rewritten herein.

12. Although Defendants knew or in the exercise of ordinary care ought to have known that their asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products were deleterious, and highly harmful to Decedent James Sinnott's health, Defendant nonetheless:

- a) Failed to advise or warn Decedent James Sinnott of the dangerous characteristics of their asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products;
- b) Failed to provide Decedent James Sinnott with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if any, to protect Decedent James Sinnott from being harmed by exposure to asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products;
- c) Failed to place any warnings on containers of said asbestos and asbestos-containing products alerting Decedent James Sinnott of the

dangers to health caused by contact with asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products; and

d) Failed to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and/or a safe method of handling and installing asbestos and asbestos-containing products, or utilizing the machinery requiring the use of asbestos and/or asbestos-containing products in a safe manner.

13. Defendants' products were defective due to inadequate warning or instruction during and after the time of marketing in that Defendants knew, or in the exercise of reasonable care, should have known about the risks associated with their products and failed to provide reasonable and/or adequate warning or instructions in light of the likelihood that the asbestos, asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products would cause serious physical harm to Decedent James Sinnott.

14. Decedent James Sinnott, as a direct and proximate result of Defendants' conduct, have contracted and died from asbestos-related diseases, asbestosis and cancers and have suffered the injuries and damages as set forth herein and Defendants are, therefore, liable, jointly and severally, to Plaintiff in strict liability for their failure to warn at common law and pursuant to R.C. 2307.71 et seq.

COUNT III

15. Plaintiffs re-allege paragraphs 1 through 14 above as if fully rewritten herein.

16. Defendants failed to design, manufacture, market, distribute and sell asbestos and asbestos-containing products and/or machinery requiring the use of asbestos

and/or asbestos-containing products in such a manner as to render them safe for their intended and foreseeable uses. By way of example and not limitation, Defendants:

- a) Failed to design, develop, manufacture and test the asbestos, asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products in such a manner as to render them safe for their intended and foreseeable users, when Defendants knew or should have known that the foreseeable use or intended purpose of their products was by persons, specifically Decedent James Sinnott who worked with and around said products;
- b) Marketed and sold said products while the same was in an inherently and unreasonably dangerous and defective condition, presenting an ultra-hazardous risk to the Decedent James Sinnott well being;
- c) Failed to recall or attempt to repair the defective products when Defendants were and had been aware of the propensity of said products to injure Decedent James Sinnott; and
- d) Failed to properly test said products to ensure that they were reasonably safe for use throughout their product lifetime.

17. Defendants violated the requirements of §402(A) of the Restatement of Torts, 2d, as adopted by the Supreme Court of the State of Ohio, all of which proximately resulted in the Decedent James Sinnott 's asbestos-related diseases and death.

18. Decedent James Sinnott as a direct and proximate result of Defendants' conduct, have contracted and died from asbestos-related diseases, asbestosis and cancers and have suffered the injuries and damages as set forth herein and Defendants are, therefore, liable, jointly and severally, to Plaintiffs in strict liability for defective design and manufacture and/or marketing, distributing and selling a defective product at common law and pursuant to R.C. 2307.71 et seq.

COUNT IV

19. Plaintiffs re-allege paragraphs 1 through 18 above as if fully rewritten herein.

20. Defendants impliedly warranted that their asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products were of good and merchantable quality and fit for the ordinary purposes for which the products are used.

21. Decedent James Sinnott worked in close proximity to the asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products of the Defendants, and Decedent James Sinnott's presence was known, or ought to have reasonably been anticipated by the Defendants.

22. The implied warranty made by the Defendants that their asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products were of merchantable quality and fit for their particular intended use was breached in that certain harmful matter was given off into the atmosphere where Decedent James Sinnott worked.

23. Decedent James Sinnott, as a direct and proximate result of said breach of warranties, have contracted and died from asbestos-related diseases, asbestosis and cancers and have suffered the injuries and damages as set forth herein.

COUNT V

24. Plaintiffs re-allege paragraphs 1 through 23 above as if fully rewritten herein.

25. Decedent James Sinnott's spouse and Plaintiff herein Freda Sinott have suffered injuries in their own right, namely, the loss of consortium as a direct and proximate result of Defendants' acts and omissions for which Defendants are liable.

COUNT VI

26. Plaintiffs re-allege paragraphs 1 through 25 above as if fully rewritten herein.

27. Defendants, individually and as a group, since 1929 have possessed medical and scientific data which clearly indicates that asbestos fibers and asbestos-containing products are hazardous to one's health. Defendants, prompted by pecuniary motives, individually and collectively, ignored and intentionally failed to act upon said medical and scientific data and conspired to deprive the public, and particularly the users of their products, including Decedent James Sinnott of said medical and scientific data, and therefore deprived Decedent James Sinnott of the opportunity of free choice as to whether or not to expose themselves to Defendants' asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products; and further, Defendants willfully, intentionally and wantonly failed to warn Decedent James Sinnott of the serious bodily harm which would result from the inhalation of the asbestos fibers and the dust from their products.

28. Plaintiff and Decedent James Sinott reasonably and in good faith relied upon the false and fraudulent representations, omissions and concealments made by the Defendants regarding the nature of their asbestos, asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products.

29. The award for this Count should be in such an amount as would act as a deterrent to Defendants and others from the future commission of like offenses and wrongs.

30. Decedent James Sinnott as a direct and proximate result of Defendants' conduct, has contracted and died from asbestos-related diseases, asbestosis and cancers and have suffered the injuries and damages as set forth herein.

COUNT VII

31. Plaintiffs re-allege paragraphs 1 through 30 above as if fully rewritten herein.

32. Defendants, collectively and individually, manufactured, designed, selected, assembled, inspected, tested, maintained for sale, marketed, distributed, sold, supplied delivered, and promoted asbestos-containing products which were generically similar and fungible in nature and place such material into the stream of interstate commerce.

33. Plaintiffs, thorough no fault of their own, may not be able to identify all of the manufacturers, marketers, sellers, distributors, or promoters of asbestos containing products to which they were exposed due to the generic similarity and fungible nature of such products as produced and promoted by Defendants.

34. Defendants are jointly and severally liable to the Plaintiffs for the injuries and damages sustained by Plaintiff and Decedent James Sinnott by virtue of industry-wide liability, enterprise liability.

35. (a) Alternatively, Defendants constitute a substantial share of the asbestos-containing product market where Decedent James Sinnott worked and were exposed to asbestos.

(b) Defendants manufactured, designed, selected, assembled, inspected, tested, maintained for sale, marketed, distributed, sold, supplied, delivered, and

promoted asbestos-containing products of the kind and nature to which Decedent James Sinnott were exposed during the period of their employment.

36. Defendants are severally liable to Plaintiff and Decedent James Sinnott based upon their pro-rata market share within the market described herein.

37. Decedent James Sinnott, as a direct and proximate result of Defendants' conduct, have contracted and died from asbestos-related diseases, asbestosis and cancers and have suffered the injuries and damages as set forth herein.

COUNT VIII

38. Plaintiffs re-allege paragraphs 1 through 38 above as if fully rewritten herein.

39. Defendants' actions, as stated herein, constitute a flagrant disregard for the rights and safety of Decedent James Sinnott and by engaging in such actions, Defendants acted with fraud, recklessness, willfulness, wantonness and/or malice and should be held liable in punitive and exemplary damages to Plaintiffs.

40. Decedent James Sinnott as a direct and proximate result of Defendants' conduct, have contracted and died from asbestos-related diseases, asbestosis and cancers and have suffered the injuries and damages as set forth herein.

COUNT IX

41. Plaintiffs re-allege paragraphs 1 through 40 above as if fully rewritten herein.

42. Defendants' actions, as stated herein, constitute a flagrant disregard for the rights and

safety of Plaintiff and Decedent James Sinnott and by engaging in such actions, Defendants acted with fraud, recklessness, willfulness, wantonness and/or malice and should be held liable in punitive and exemplary damages to Plaintiffs.

43. Decedent, James Sinnott, as a direct and proximate result of Defendants' conduct, contracted asbestos-related diseases, namely asbestos induced lung cancer and has suffered and died from injuries and damages as set forth herein.

44. The next-of-kin have suffered compensatory damages by reason of the death of James Sinnott, including loss of support from the reasonably expected earning capacity of the decedent; from loss of services; from loss of society, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education, together with the loss of prospective inheritance and the mental anguish incurred by the next-of-kin, and all other damages available at law.

45. Plaintiff Freda Sinnott, as executrix of the Estate of James Sinnott has incurred reasonable funeral and burial expenses in an amount not yet determined.

WHEREFORE: Decedent James Sinnott, as a direct and proximate result of the negligence and other conduct of each Defendant, suffer great pain, severe mental anguish and death. Further, this development of asbestos diseases caused Plaintiffs to endure great mental anguish.

Plaintiffs, as a direct and proximate result of the negligence of other conduct of each Defendant, have incurred expenses for medical, and/or hospital, and/or pharmaceutical, and/or surgical care and/or other expenses in an amount not yet determined, and will continue to incur such expenses into the future.

Plaintiffs and Decedent James Sinnott as a direct and proximate result of the negligence and other condition of each Defendant, have suffered lost wages and a progressive loss of earning capacity and other economic damages throughout their lifetimes.

The aforesaid acts and/or omissions of Defendants were wanton and willful and in reckless disregard of the safety of Decedent James Sinnott.

Plaintiffs demand judgment against Defendants, jointly and severally, in an amount in excess of Twenty-five Thousand Dollars (\$25,000.00) and an amount for punitive damages, plus interest, costs and such further relief to which Plaintiffs may be entitled.

A trial by jury is hereby demanded as to all counts.

Respectfully submitted,

/s/ Christopher J. Hickey
Christopher J. Hickey (0065416)
Brent Coon and Associates
Bradley Building, Suite # 303
1220 West 6th Street
Cleveland, Ohio 44113

Telephone: 216-241-1872
Facsimile: 216-241-1873
Email: chip@bcoonlaw.com

/s/ Carolyn Kaye Ranke
Carolyn Kaye Ranke (043735)
Brent Coon and Associates
The Bradley Building, # 303
1220 West 6th Street
Cleveland, OH 44113
Telephone: 216-241-1872
Facsimile: 216-241-1873
Email: kaye@bcoonlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of Plaintiff's Third Amended Complaint, was served on Cuyahoga County's File and Serve System this 30th day of January, 2006 and deemed served on all parties.

Respectfully submitted,

/s/ Carolyn Kaye Ranke
Carolyn Kaye Ranke (043735)
Brent Coon and Associates
The Bradley Building, # 303
1220 West 6th Street
Cleveland, OH 44113
Telephone: 216-241-1872
Facsimile: 216-241-1873
Email: chip@bcoonlaw.com

TAB 12

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ASBESTOS DOCKET

IN RE: HICKEY GROUP 4

FREDA SINNOTT, Individually	)	CASE NO. CV-04-521874
and as Executrix of the Estate of)	
JOHN SINNOTT	)	JUDGE HARRY A. HANNA
	)	JUDGE LEO M. SPELLACY
Plaintiffs,	)	JUSTICE FRANCIS SWEENEY
)	
vs.	)	<u>NOTICE OF FILING OF</u>
	)	<u>PLAINTIFFS' EXPERT REPORT</u>
	)	<u>OF ARTHUR L. FRANK, M.D.</u>
AQUA-CHEM, INC., et al.,)	
)	
)	
Defendants.)	

Now come Plaintiffs, by and through duly authorized counsel, and herein notice the filing of the expert report of Arthur L. Frank, M.D., Ph.D., dated February 15, 2006, to be used at the Trial of the within matter, a copy of which is attached hereto and incorporated herein.

Respectfully submitted,

/s/ Carolyn Kaye Ranke
CAROLYN KAYE RANKE (0043735)
Brent Coon & Associates
1220 West Sixth Street - Suite 303
Cleveland, Ohio 44113
Telephone: (216) 241-1872
Facsimile: (216) 241-1873
E-Mail: kayc@bcoonlaw.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing Notice of Filing of Plaintiffs' Expert Report of Arthur L. Frank, M.D. was electronically filed via the *LexisNexis* File and Serve System, this 22nd day of February, 2006 and deemed served on all parties of record pursuant to Cuyahoga County Rules of Court.

/s/ Carolyn Kaye Ranke
CAROLYN KAYE RANKE (0043735)

Attorney for Plaintiffs



School of Public Health

Arthur L. Frank, M.D., Ph.D.
Professor of Public Health
Chair, Department of Environmental and Occupational Health

February 15, 2006

Carolyn K. Ranke, Esq.
Brent Coon & Associates
1220 W. 6th Street, Suite 303
Cleveland, OH 44113

RE: James Sinnott

Dear Ms. Ranke:

I am in receipt of records in the case of Mr. Sinnott and have been asked by you to review them and render my judgment about the presence or absence of various asbestos related conditions. Also, there were questions put to me regarding his exposures to asbestos and their relationship to his medical conditions, and questions related to specific types of products.

Mr. Sinnott worked at a foundry between 1959 and 1995. During his work at the foundry he had numerous exposures to a wide variety of asbestos products. In addition, prior to work at the foundry, Mr. Sinnott was employed as a mechanic and did brake and clutch repairs. In addition, not connected with work, but as a hobby, he was also active in the repair of personal vehicles. He continued such brake and clutch work even during his years working at the foundry. Also while at the foundry, he was responsible for the maintenance of crane and lift brakes on the heavy machinery. Mr. Sinnott was also known to be a cigarette smoker for much of his life.

The records sent me document that Mr. Sinnott had changes on his X-ray characterized by irregular opacities in both lungs. Also, in August 2003 Mr. Sinnott was noted to have a mass in his right lung and this was further evaluated. It was found that he had developed a cancer of the lung. Although he was treated with chemotherapy, radiation, and other care, Mr. Sinnott died in August 2005.

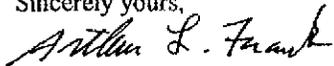
Based upon my review of the materials sent me, it is my opinion, held with a reasonable degree of medical certainty, that Mr. Sinnott developed two asbestos related conditions. First I believe he developed asbestosis as characterized by the radiologic changes, given his past history of exposures to asbestos. Secondly, and more importantly, he developed, and ultimately died of, a cancer of the lung due to his exposures to asbestos in combination with his cigarette smoking. It would further be my opinion that the scientific literature clearly documents that both asbestos and cigarettes, independently, can lead to the development of lung cancer, but that it is also well known that the addition of asbestos on top of cigarette smoking greatly increases the risk of developing lung cancer, far beyond that of cigarette smoking alone.

RE: James Sinnott
February 15, 2006
Page 2

In addition, it would further be my opinion that each and every exposure, to any and all products containing asbestos, of any and all fiber types, would have contributed to his developing both of these diseases. This would include his work at the foundry, as well as his many exposures to brake and clutch products.

Should you have any questions about this matter please feel free to contact me.

Sincerely yours,

A handwritten signature in cursive script that reads "Arthur L. Frank".

Arthur L. Frank, M.D, Ph.D.

ALF/bjh

TAB 13

3-2-06
8 15 06

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

James Sinnott,	)	Case No. CV-04-521874
)	
Plaintiff,)	
)	
v.	)	Judge Leo M. Spellacy
)	
Aqua-Chem, Inc., et al.)	
)	
Defendants	)	<u>ORDER</u>

Plaintiff filed his initial complaint on or about February 10, 2004. On April 8, 2004, plaintiff voluntarily dismissed without prejudice certain defendants from the lawsuit. On January 3, 2005, plaintiff amended his complaint to include certain defendants who had been dismissed on April 8, 2004.

House Bill 292, establishing minimum medical requirements for certain asbestos claims, including lung cancer, became effective on September 2, 2004. Plaintiff contends, however, that the new evidentiary standard contained in H.B. 292 does not apply in this case because the amended complaint “relates back” to the original filing by virtue of Civil Rule 15(C). Defendants argue that the “relation back” provision of Rule 15(C) does not apply because the April 8, 2004 dismissal was voluntary. Moreover, Defendants argue that there is no evidence of a mistake with regard to the identity of the parties involved in this case, and that for Rule 15(C) to apply, such a mistake must have occurred. This Court agrees that Civil Rule 15(C) governs the issue and finds that the amended complaint does not relate back to the original complaint because plaintiff was not mistaken as to the correct parties’ identities. Therefore, the parties added in the amended complaint fall under the provisions of HLB. 292.

In determining whether the plaintiff has satisfied the minimum medical requirements contained in H.B. 292, this Court finds that there is sufficient evidence that the treatment received at the Veterans Administration Hospital in Huntington, West Virginia satisfies the intent of the new statute.

At the time of trial for those cases filed after September 2, 2004, the Court will instruct the jury on the law of causation incorporated in H.B. 292.

The wrongful death claim filed after the enactment of H.B. 292 is subject to the provisions of R.C. 2307.91, et seq.

IT IS SO ORDERED.

Judge Leo M. Spellacy

March 2, 2006

TAB 14

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JAMES SINNOTT,)
) CASE NO. 521874
)
) Plaintiff,) JUSTICE FRANCIS E. SWEENEY
) JUDGE HARRY A. HANNA
)
) v.) JUDGE LEO M. SPELLACY
) (Asbestos Docket)
)
) AQUA-CHEM, INC., et al.,)
)
)
) Defendants.)
)

**NOTICE OF FILING HEARING TRANSCRIPT
OF FEBRUARY 17, 2006 BY SEPARATE DEFENDANT AMERICAN OPTICAL
CORPORATION**

Defendant American Optical, by and through counsel, hereby give notice to all parties of record that on the 23rd day of March, 2006, they filed with the Court the James Sinnott hearing transcript which took place on February 17, 2006.

Respectfully submitted,

Debra Csikos /s/

JEFFREY A. HEALY 0059833

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DEBRA CSIKOS 0063236

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Tucker Ellis & West LLP

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Telephone: 216.592.5000

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Attorneys for Defendant American Optical
Corp.

CERTIFICATE OF SERVICE

The foregoing Notice of Filing Hearing Transcript was electronically filed with the Court
this 23rd day of March, 2006.

Debra Csikos /s/
JEFFREY A. HEALY 0059833
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Attorneys for Defendant American Optical
Corp.

image.878459.1

1 THE STATE OF OHIO,)
) SS: SPELLACY, J.
2 COUNTY OF CUYAHOGA.)

3 IN THE COURT OF COMMON PLEAS

4 CIVIL DIVISION

5 JAMES SINNOT, et al.,)
)
6 Plaintiffs,)
)
7 -v-) Case No. 521874
)
8)
9 AQUA-CHEM, INC., et al.,)
)
10 Defendants.)

11 - - - -
TRANSCRIPT OF PROCEEDINGS
12 - - - -

13 APPEARANCES:

14 Brent Coon & Associates, by
15 MARY BRIGID SWEENEY, ESQ. and CAROLYN KAYE
16 RANKE, ESQ.,

17 on behalf of the Plaintiffs;

18 Tucker Ellis & West, by
19 DEBRA CSIKOS, ESQ.,

20 on behalf of the Defendants American Optical
21 and Abex Corporation.

22 Vorys, Sater, Seymour & Pease, by
23 STEPHEN C. MUSILLI, ESQ.,

24 on behalf of the Defendant Dana Corporation.

25 Kerry L. Paul, RMR
Official Court Reporter
Cuyahoga County, Ohio

1 THE STATE OF OHIO,)
) SS: SPELLACY, J.
2 COUNTY OF CUYAHOGA.)

3 IN THE COURT OF COMMON PLEAS

4 CIVIL DIVISION

5 JAMES SINNOT, et al.,)
)
6 Plaintiffs,)
)
7 -v-) Case No. 521874
)
8)
9 AQUA-CHEM, INC., et al.,)
)
10 Defendants.)

11 - - - -

12 TRANSCRIPT OF PROCEEDINGS

13 - - - -

14 BE IT REMEMBERED, that at the January
15 A.D., 2006 term of said Court, to-wit,
16 commencing on Friday, February 17, 2006, this
17 cause came on to be heard before the Honorable
18 Leo M. Spellacy, in Courtroom No. 3-B, Courts
19 Tower, Justice Center, Cleveland, Ohio.

20 - - - -

21
22
23
24
25

1 FRIDAY MORNING SESSION, FEBRUARY 17, 2006

2 THE COURT: Okay. Let's go
3 to Sinnot.

4 MS. CSIKOS: Good morning,
5 your Honor. I'm Debra Csikos. I'm here to
6 argue the House Bill 292 motion in the Sinnot
7 case this morning. My client, American
8 Optical, filed a motion to administratively
9 dismiss this case in April of 2005. It was
10 joined at a later date by my client Abex
11 Corporation.

12 This case does differ from many of
13 the other cases that this Court has heard as
14 far as administrative dismissal, because this
15 case filed by the plaintiff, Mr. Sinnot, was
16 filed against my two clients in January of
17 2005, which is after the effective date of
18 House Bill 292.

19 Now, this isn't different from all of
20 the cases that this Court has heard under
21 House Bill 292. Back in January, on the 12th
22 of January, this Court actually
23 administratively dismissed a case called
24 Halford Buffkin, H-a-l-f-o-r-d, B-u-f-f-k-i-n.
25 His case number is 554947. His case was an

1 asbestosis case, but his case was filed on
2 February 16, 2005, after the effective date of
3 the statute, and this Court administratively
4 dismissed.

5 Mr. Sinnot's case today is akin to
6 the Halford Buffkin case and also should be
7 administratively dismissed. It is my
8 understanding that there are other defendants
9 who filed motions to administratively dismiss
10 and they had issues of retroactive
11 application. This Court has already heard
12 those arguments. This Court has already made
13 those decisions, and it is my understanding
14 that those other defendants are submitting on
15 the briefs, so we will not be arguing that
16 issue today.

17 The plaintiff brought two kinds of
18 claims against my clients. There's a
19 survivorship claim pending and there's a
20 wrongful death claim pending. The
21 survivorship claim has a bit of a procedural
22 background that is confusing, so I want to set
23 it out for the Court, because it is important
24 to know what the procedural background was.

25 The plaintiff, Mr. Sinnot, filed his

1 initial complaint in this case in February of
2 2004. At that time both American Optical and
3 Abex were named in the original complaint.
4 However, the plaintiff voluntarily dismissed
5 both American Optical and Abex on April 8,
6 2004. That was with no contact from the
7 defendants to the plaintiff. The plaintiff
8 voluntarily dismissed. Frankly, I don't know
9 why.

10 House Bill 292 went into effect on
11 September 2, 2004. On that date the plaintiff
12 had no claims pending against either American
13 Optical or Abex.

14 On January 3rd of 2005, this Court
15 granted plaintiff's leave to amend their
16 complaint to add a large number of defendants
17 into this case and to re-add about half a
18 dozen defendants into this case, including
19 both my clients, American Optical and Abex,
20 and that January 3rd amended complaint of 2005
21 is the trigger date that we're looking at
22 here, because that is the date that the claims
23 that are currently pending against my client
24 were filed with this Court.

25 That amended complaint does not

1 relate back to the February, 2004 initial
2 filing. Civil Rule 15(C) governs relation
3 back of an amended complaint to the initial
4 filing, and Civil Rule 15(C) sets out three
5 things that must be met before an amended
6 complaint will relate back.

7 First, the facts underlying the
8 claims in the amended complaint have to be
9 from the same factual occurrences as the
10 claims pending in the original complaint.

11 Second, the defendant has to have
12 received notice of the original complaint. In
13 Mr. Sinnott's case, both of those standards
14 were met.

15 What we are looking at primarily is
16 the third standard, that the defendant would
17 have named -- excuse me, that the plaintiff
18 would have named the defendants named in the
19 amended complaint but for some sort of
20 mistaken identity, and that has not been met
21 in this case and that cannot be met in this
22 case. There was no mistaken identity. The
23 plaintiff did, in fact, name AO and Abex in
24 that initial complaint.

25 There's case law supporting this,

1 your Honor. In 1995 the Eighth District Court
2 of Appeals decided a case called Greene versus
3 Barrett. That's found at 102 Ohio App3d 525
4 and it had nearly identical facts to this
5 case.

6 THE COURT: That was 525?

7 MS. CSIKOS: 525. The
8 plaintiff in Greene brought a lawsuit against
9 a number of defendants, including a gentleman
10 named Mr. Guttman, G-u-t-t-m-a-n. The
11 plaintiff dismissed the case voluntarily
12 against Mr. Guttman and then at a later date
13 the plaintiff tried to amend Mr. Guttman back
14 into the case.

15 The Court found that Rule 15(C) did
16 not apply. Therefore, the amended complaint
17 did not relate back to the original filing,
18 because there was no evidence of mistaken
19 identity and because there could be no
20 evidence of mistaken identity where a
21 plaintiff had previously named a defendant and
22 then had voluntarily dismissed that defendant.

23 The exact same is true here. We're
24 talking about the same procedural facts where
25 the plaintiff named the defendants, the

1 plaintiff dismissed the defendants and the
2 plaintiff brought the defendants back in at a
3 later date.

4 There was no mistaken identity.
5 There could be no mistaken identity, so the
6 survivorship claim filed on January 3, 2005
7 does not relate back to the initial filing.

8 There's a second claim that is
9 pending against American Optical and Abex, and
10 this second claim is actually pending against
11 all defendants that remain in this case, and
12 that's the newly-filed wrongful death claim
13 that was filed on January 30, 2006, just a
14 couple of weeks ago.

15 This claim also does not relate back
16 to the initial filing in February of 2004
17 under Civil Rule 15(C). This time we are
18 looking at the first element under Civil
19 Rule 15(C). A wrongful death claim does not
20 arise out of the same facts as a survivorship
21 claim.

22 The Ohio Supreme Court in Thompson
23 versus Wing, that's a 1994 case found at 70
24 Ohio St.3d 176, found that a wrongful death
25 claim is an independent claim arising out of

1 the death of the plaintiff rather than out of
2 any underlying injury.

3 Thompson and its progeny make it
4 clear that wrongful death claims arise out of
5 death. They don't arise out of the underlying
6 injury. Therefore, the wrongful death claim
7 filed just a couple of weeks ago springs out
8 of different factual circumstances than the
9 survivorship claim that was initially filed in
10 2004.

11 For this reason the January 30, 2006
12 amended complaint also does not relate back,
13 because both of these claims pending against
14 my clients were filed after the effective date
15 of House Bill 292. The statute applies
16 prospectively rather than retroactively.

17 Your Honor, off of the procedural
18 issues and on to the meat of the issue, the
19 plaintiff has failed to produce the
20 prima facie evidence that is required under
21 House Bill 292. First of all, it is
22 undisputed that Mr. Sinnot was a smoker who
23 was diagnosed with lung cancer under the terms
24 of House Bill 292.

25 His medical records indicate that he

1 smoked a pack a day up until 1995, which was
2 approximately eight years before he was
3 diagnosed with his lung cancer. To be a
4 smoker under the statute, you had to have
5 smoked at least one pack a year within 15
6 years of your diagnosis, so he meets that
7 standard and that's not disputed.

8 Because he's a smoking lung cancer
9 case, there's a certain set of medical
10 criteria that he needs to prove in order to
11 show that he has a prima facie case of an
12 asbestos-related illness.

13 He must produce evidence from a
14 competent medical authority as defined under
15 the statute, he must establish primary lung
16 cancer, he must establish that asbestos is a
17 substantial contributing factor, as defined
18 under the statute, in causing the lung cancer,
19 and the plaintiff fails to produce any such
20 evidence.

21 When American Optical first filed the
22 motion to administratively dismiss, the
23 plaintiff had produced no evidence whatsoever
24 establishing a causal link between his
25 asbestos exposure and his lung cancer. It was

1 only after American Optical filed its motion
2 to administratively dismiss that the plaintiff
3 first produced a report stating that his lung
4 cancer was caused by his exposure to asbestos.

5 That was in July, 2005. Plaintiff
6 produced a report from Dr. Altmeyer. Just
7 last week plaintiff produced another report of
8 Dr. Frank. There's other defendants that have
9 moved to strike that report of Dr. Frank. I'm
10 not going to argue that today, but I would
11 like American Optical and Abex both to join in
12 that motion whenever this Court might decide
13 it.

14 Neither Dr. Altmeyer's report, nor
15 Dr. Frank's report satisfies the requirements
16 of House Bill 292. First, neither
17 Dr. Altmeyer nor Dr. Frank are competent
18 medical authorities under the bill. As
19 defined in RC 2307.91(Z), to be a competent
20 medical authority, among other things, a
21 doctor must be a past or current treating
22 physician with a doctor/patient relationship
23 with the plaintiff.

24 There is no evidence that either
25 Dr. Frank or Dr. Altmeyer had such a

1 doctor/patient relationship. Looking first at
2 Dr. Frank, there is no evidence that Dr. Frank
3 ever saw the plaintiff. There's no evidence
4 that Dr. Frank ever treated the plaintiff.
5 Dr. Frank is in Philadelphia. The plaintiff,
6 Mr. Sinnot, was in Portsmouth, Ohio.

7 There's just no evidence that
8 Mr. Sinnot ever traveled to Philadelphia or
9 that Dr. Frank ever traveled to Portsmouth.
10 The plaintiff testified on November 17, 2004
11 about his treatment for cancer. He didn't
12 mention Dr. Frank. He didn't mention going to
13 Philadelphia.

14 Likewise, Dr. Frank's affidavit
15 doesn't indicate in any way that there was a
16 doctor/patient relationship with the
17 plaintiff.

18 Turning to Dr. Altmeyer, the
19 plaintiff did indeed discuss Dr. Altmeyer at
20 his November 17, 2004 deposition, but all of
21 the evidence presented by the plaintiff is
22 that Dr. Altmeyer was not his treating
23 physician.

24 First of all, at page 115 and page
25 116 of the transcript, the plaintiff said that

1 he saw Dr. Altmeyer at an asbestos screening,
2 and that's the quote that he used, asbestos
3 screening. At that time Dr. Altmeyer read his
4 x-ray and saw something that concerned him.

5 The plaintiff testified that
6 Dr. Altmeyer told him that he should see his
7 primary care people, and that phrase clearly
8 implies that Dr. Altmeyer was not his doctor,
9 because Dr. Altmeyer told him to go see his
10 doctor. Also the plaintiff said at 159 in his
11 transcript that he only saw Dr. Altmeyer that
12 one time.

13 Finally, again, the plaintiff
14 testified about all of the doctors who had
15 treated him for his cancer and he did not list
16 Dr. Altmeyer and he didn't say that he had
17 gone to Wheeling, West Virginia for any kind
18 of treatment.

19 Clearly on these -- excuse me, these
20 facts are corroborated by Dr. Altmeyer's
21 report on asbestosis and the asbestosis
22 diagnosis. In that report Dr. Altmeyer noted
23 that Mr. Sinnot should go see his own
24 physician and he reiterated a couple of
25 paragraphs later that Mr. Sinnot should see

1 his personal physician.

2 If Dr. Altmeyer were a treating
3 doctor of Mr. Sinnot, he wouldn't have said go
4 see your own doctor, so clearly Dr. Altmeyer
5 did not have an understanding that he had a
6 patient/doctor relationship with Mr. Sinnot.

7 For these reasons, both
8 Dr. Altmeyer's reports and Dr. Frank's report
9 cannot be considered when determining whether
10 Mr. Sinnot had produced a prima facie case.
11 Neither is a competent medical authority as
12 defined under the statute, so on this ground
13 alone it is appropriate to administratively
14 dismiss this case.

15 Plaintiff's report from Dr. Altmeyer
16 and Dr. Frank also fail because they fail to
17 establish that asbestos was a substantial
18 factor as defined under the statute in causing
19 the plaintiff's cancer. The statute defines
20 substantial factor as requiring proximate
21 causation basically.

22 It is first year law school stuff.
23 The statute requires that a doctor's report
24 establish both that asbestos was a predominant
25 cause of the cancer and that without the

1 asbestos exposure the plaintiff would not have
2 developed the cancer. Neither Dr. Altmeyer
3 nor Dr. Frank makes this statement, neither
4 Dr. Altmeyer nor Dr. Frank comes to that
5 conclusion, whether they used the major
6 language or not.

7 Dr. Altmeyer indicates that both
8 tobacco smoking and asbestos exposures were
9 major contributing causes and significant
10 contributing causes, depending on which
11 paragraph you're looking at.

12 Dr. Altmeyer discusses the
13 synergistic effect between cigarette smoking
14 and asbestos exposure, but he does not state
15 that asbestos was a predominant cause of
16 Mr. Sinnot's cancer, nor does he state that
17 without the asbestos exposure that the
18 plaintiff would not have developed his cancer.

19 Likewise, Dr. Frank states that all
20 exposures to asbestos substantially contribute
21 to the plaintiff's disease. Like
22 Dr. Altmeyer, Dr. Frank refers to the synergy
23 between tobacco smoking and asbestos, but he
24 does not make the required conclusions that
25 asbestos was a predominant cause or that

1 without the asbestos exposure Mr. Sinnot would
2 not have developed his cancer.

3 For this reason also Dr. Altmeyer's
4 and Dr. Frank's reports fail to meet the
5 prima facie standards as set out under the
6 statute and, therefore, administrative
7 dismissal is appropriate.

8 To conclude, your Honor, the
9 plaintiff brought the claims pending against
10 AO and Abex, the survivorship claim on January
11 3, 2005 and the wrongful death claim on
12 January 30, 2006. Both clearly after the
13 effective date of the statute.

14 Like this Court has done in other
15 cases that were filed after the effective date
16 of the statute, American Optical and Abex
17 request that this Court administratively
18 dismiss this case, because the plaintiff did
19 not produce a report from a competent medical
20 authority stating that asbestos was a
21 substantial factor in causing his disease.

22 Thank you, sir.

23 THE COURT: Okay.

24 MR. MUSILLI: Good morning.

25 My name is Steve Musilli. I'm with Vorys,

1 Sater, Seymour & Pease. In the original
2 motion that was filed by Ms. Csikos, she
3 addressed the applicability of the medical
4 criteria issues. She did not address the
5 constitutional issues.

6 In plaintiff's response, they
7 addressed the constitutional issues. My
8 office on behalf of the clients I represent in
9 this case filed a reply as to the
10 constitutional issues and I'm just informing
11 the Court at this time that we will submit the
12 constitutional issues on brief. We won't
13 rehash those issues with the Court at this
14 time.

15 THE COURT: Okay.

16 MS. RANKE: Good morning,
17 your Honor, Kaye Ranke arguing on behalf of
18 plaintiff, James Sinnot, or rather the estate
19 of James Sinnot at the moment, since
20 Mr. Sinnot passed away in August of last year.

21 First of all, your Honor, I would
22 like to recall to the Court's attention the
23 fact that we actually on behalf of Ms. Csikos
24 and myself argued part of this before the
25 Court back in July of 2005 in connection with

1 a summary judgment and a motion to strike, so
2 it wasn't set solely on the 292 issues, but
3 some of the issues came into the argument with
4 regard to the procedural history of the case.

5 I do not dispute the procedural
6 history as outlined with regard to the timing
7 of when defendants were added back in. We
8 would agree that in Mr. Sinnot's case there
9 was an original complaint filed back in
10 February of 2004 that addressed Mr. Sinnot's
11 lengthy history of asbestos exposure and his
12 diagnosis of lung cancer, which had occurred
13 in September of 2003.

14 Certain defendants, including the
15 defendants arguing here today, which are Abex
16 and American Optical, were dismissed from the
17 complaint in April of 2004 and then added back
18 in in January of 2005. I will agree with that
19 procedural history.

20 However, that being said, I do not
21 agree that on the first step of the argument,
22 which is the procedural history, that
23 Rule 15(C) of the Ohio Rules of Civil
24 Procedure require that the statute applied to
25 Mr. Sinnot and these defendants.

1 First of all, your Honor, if you take
2 a look at Rule 15(C), it does say, "Relation
3 back of amendments. Whenever the claim or
4 defense asserted in the amended pleading arose
5 out of the conduct, transaction or occurrence
6 set forth or attempted to be set forth in the
7 original pleading, the amendment relates back
8 to the day of the original pleading."

9 If you take those words at face
10 value, it says that this case, the amended
11 complaint adding back in these defendants,
12 relates back to the original date, which is
13 February of 2004.

14 We believe that this case and the
15 defendants here arguing are subject to the law
16 prior to September of 2004, because we filed
17 this case and they were named in the complaint
18 and they were aware of the cause of action
19 that had occurred and accrued prior to the
20 enactment of House Bill 292. We believe that
21 15(C) applies specifically.

22 THE COURT: What about this
23 case that she said, Greene versus --

24 MS. RANKE: Your Honor, I
25 would like to address that. First of all,

1 when you read the facts of the case, it is a
2 little bit different. It is not simply
3 standing for the proposition that she states.
4 Mr. Guttman, who is an attorney that we know
5 or some of us know, was named in a lawsuit,
6 was dismissed from the lawsuit prior to the
7 statute of limitations running for that cause
8 of action that was filed.

9 I believe if you look at the facts,
10 the cause of action was filed prior to the
11 statute of limitations, which ran in March of
12 1991 I believe was the date. He was dismissed
13 prior to that time period and then added back
14 in after the statute ran in March of 1991, so
15 on the date that the statute of limitations
16 ran with regard to the one-year cause of
17 action that some plaintiff was trying to make,
18 there was no cause of action pending at the
19 date the statute ran.

20 It is very clear in Ohio law that
21 says if you dismiss a case, relying on the
22 saving statute 2305.10 that it does not -- it
23 is not going to save you if your statute of
24 limitations has not run yet. The saving
25 statute only applies if the statute of

1 limitations has already ran.

2 That's a very big procedural
3 difference in that case, and what they said in
4 that case was because this cause of action
5 accrued on March 26, 1990, Greene had until
6 March 26, 1991 to commence her malpractice
7 action.

8 When the action was timely filed, she
9 was named in Greene's initial complaint filed
10 in January 18, 1991. Barrett remained a
11 defendant throughout the action. Guttman was
12 also named as a defendant in the complaint
13 filed January 18, 1991.

14 However, on January 29, 1991, Guttman
15 was voluntarily dismissed without prejudice.
16 On March 26, 1991, the day the statute of
17 limitations ran out, there was no claim
18 against Guttman. On July 21, 1991, Greene
19 filed her amended complaint upon New Party
20 Defendant Robert Guttman.

21 She argues under Civil Rule 15(C)
22 that the amended complaint related back. We
23 disagree. That's completely different from
24 this situation. There was no statute of
25 limitations issue with regard to our case.

1 15(C) on its face says it relates back, and I
2 believe this (indicating) case stands for the
3 proposition that 15(C) does relate back, and
4 they say very specifically it doesn't relate
5 back in this case because your case is
6 time-barred under the statute of limitations.
7 Therefore, I don't believe it is binding upon
8 this Court in any way.

9 Your Honor, with regard to the issue
10 of mistaken identity -- identification of the
11 parties, I don't know what definition this
12 Court wants to use for the term mistaken. We
13 agree that we named them and alleged exposure
14 to asbestos products.

15 We dismissed defendants in this case,
16 American Optical and Abex. They were
17 identified by Mr. Sinnot at his first
18 deposition in November of 2004. It was a
19 mistake on our part to dismiss them from the
20 case. However, we were within our time period
21 to add them back in under the saving statute,
22 2305.10, which clearly relates back to the
23 original complaint.

24 Under 15(C) it says an amended
25 complaint will relate back to the original

1 cause of action, and there is no dispute that
2 with regard to the survivorship claims they
3 all are from the same cause of action, which
4 is Mr. Sinnot's occupational exposure to
5 asbestos throughout his lifetime which led to
6 his lung cancer.

7 We believe, therefore, that this case
8 and all of the survivorship claims with regard
9 to these defendants are under the prior law
10 prior to September of 2004, and we believe
11 your rulings are binding, therefore, saying
12 that it is unconstitutional to be
13 retroactively applied to Mr. Sinnot, just as
14 this Court has decided in the other cases.

15 Now, with regard to the wrongful
16 death action, the wrongful death action is a
17 new action; and if you take the defendants'
18 argument and the very language of the law, we
19 have 30 days in order to supply proof of a
20 connection with regard to the wrongful death
21 action, itself.

22 Therefore, we are within our time to
23 provide additional medical evidence with
24 regard to the wrongful death claim, if this
25 Court is viewing that as a new cause of

1 action, which I believe it is, the death as
2 opposed to the occupational exposure leading
3 up to the illness or injury.

4 Your Honor, I would submit to this
5 Court and as defendants are aware, because we
6 have had numerous conversations with regard to
7 Mr. Musilli, who is medical lead on behalf of
8 Mr. Sinnot's case, that Mr. Sinnot had an
9 autopsy. His wife asked for an autopsy to be
10 performed at the University of Kentucky.

11 We have been attempting to get
12 pathology of the actual tissue, in addition to
13 slides from the autopsy, itself. We have just
14 recently as of Monday of this week been able
15 to obtain that tissue, which will now be made
16 available not only to our expert pathologists,
17 as well as defense expert pathologists.

18 That is with regard to the wrongful
19 death case. That in no way -- we have not
20 missed any time period. We have not in any
21 way prejudiced the defendants with regard to
22 that matter. That is ongoing. We are within
23 our time and we will continue to produce and
24 provide additional medical evidence to the
25 defendants with regard to the wrongful death

1 claim, as we are required under law, and that
2 tissue will be available.

3 We believe once we have the expert
4 pathology completed, that process, that that
5 will be additional proof, which we will
6 supply. Unfortunately, your Honor, there is a
7 very detailed process in order to obtain
8 actual tissue once a person dies, and that is
9 something that we have been dealing with.

10 That is another reason why we waited
11 to amend the complaint and add in the wrongful
12 death case, because we were trying to get our
13 evidence. That's still in process. We ask
14 the Court to hold off any ruling with regard
15 to the wrongful death case, because it is not
16 ripe at this current moment.

17 Your Honor, with regard to the other
18 arguments, as to the merits of the application
19 of the statute in Mr. Sinnot's case, we
20 believe that, one, the new bill doesn't apply
21 to us, but, more importantly, we believe that
22 we have met our burden.

23 We disagree -- I disagree
24 wholeheartedly with regard to Ms. Csikos'
25 argument that we submitted absolutely no proof

1 of the link of the occupational exposure to
2 his lung cancer until after the motion to
3 administratively dismiss was filed.

4 That is actually incorrect. First of
5 all, when we designated this case for trial
6 purposes, which I believe, and I don't have
7 the exact date, was the beginning of April,
8 2004, we submitted what was then required in
9 the way of prima facie evidence to establish
10 the case, and that was, in addition to the
11 master answers to consolidated discovery
12 request for CDRs, we submitted medical records
13 from the Department of Veterans Affairs, the
14 VA hospital in Huntington, West Virginia where
15 Mr. Sinnot treated, including the pathology
16 reports that showed that he had a primary lung
17 cancer and all of the records.

18 In addition, we submitted a report, a
19 screening report, if this Court wants to use
20 that term, of Dr. Robert Altmeyer. That was
21 submitted way back in the beginning of 2004.
22 That in and of itself represented the type of
23 prima facie case that was required by this
24 Court in all of its previous orders and the
25 law at that time to allow a case to remain on

1 the trial docket and to establish the link
2 between lung cancer and occupational exposure.
3 We met our burden.

4 In that evidence we submitted the
5 initial report of Dr. Altmeyer. It is true
6 that Dr. Altmeyer saw Mr. Sinnot. He
7 conducted x-ray reports and read them while
8 physically examining Mr. Sinnot. He did a PFT
9 and read the results while physically
10 examining Mr. Sinnot, and he did, in fact, as
11 my co-counsel argued with regard to
12 Mr. Whipkey's case, he actually diagnosed the
13 upper right lobe lung mass and said, this is
14 cancer, you need to go and see somebody right
15 away for treatment of the lung cancer. Do not
16 wait. It is urgent.

17 That is what Dr. Altmeyer said in his
18 report, in his screening report and in his
19 subsequent report, and it is what he told
20 Mr. Sinnot, as evidenced by the deposition
21 pages that she read.

22 Mr. Sinnot immediately went, after he
23 left the screening, knowing that he had -- in
24 addition to asbestosis, he also knew that he
25 had now a lung mass and went immediately to

1 the VA. In fact, if you read the medical
2 records, he didn't even go to see a doctor,
3 because that's not how the VA treats. He went
4 to the emergency room and said, I have a right
5 upper lobe lung mass that just has been
6 diagnosed as cancer, I need to see somebody.
7 That set the stage in terms of the diagnosis
8 of the biopsy and the primary lung cancer,
9 which at that point had already spread.

10 So with regard to Dr. Altmeyer, it
11 isn't just he reviewed in some other place
12 medical records. He may not be his treating
13 physician, meaning ongoing seeing him, before,
14 after, but he physically examined him. He
15 took the test results, PFTs, and found that
16 there was restriction and obstruction, reduced
17 breathing capacity.

18 If you read the reports, which we
19 have submitted several times, he saw and read
20 the scarring in the lung, in the lung tissue.
21 When he listened to his lungs, he found
22 crackles. I'm going to read from his report.
23 "On physical examination of the chest, I noted
24 there were fine crackles in the axillary
25 areas, which persisted after repeated deep

1 breathing. A pulmonary function study from
2 that examination revealed mild restriction, no
3 obstruction, and a mild reduction in the
4 specific diffusing capacity at 77 percent of
5 predicted. I interpreted his chest x-ray at
6 that time as a NIOSH certified B reader," and
7 then goes on to find what his findings were,
8 "1/1 under the ILO."

9 He then specifically addresses the
10 issue of the radiological changes.
11 "Interstitial changes consistent with
12 asbestosis, persistent crackles, significant
13 exposure to asbestos in the workplace within
14 an appropriate latency period, a reduction in
15 the specific diffusing capacity, part of which
16 is due to asbestosis and part of which is due
17 to prior tobacco smoking." That is what
18 Dr. Altmeyer found when he diagnosed the lung
19 cancer.

20 Now, in addition, as I indicated, we
21 supplied the Court with the VA records, and
22 the defendants have them and I'm not going to
23 read all of them. I'm just going to point out
24 a few things that we believe reveal that we
25 have met our burden.

1 From September of 2003 they did a CT
2 scan, which there was confirmation of a
3 pleural base mass lesion lined anteriorly and
4 medially in the upper right lobe, which is,
5 again, confirming what Dr. Altmeyer said, that
6 you have a right upper lobe mass.

7 They did a biopsy. The clinical
8 history has evidence of a right upper lobe,
9 RUL, mass. On screening for asbestos, they
10 did a PA, which I believe is a portable of the
11 lateral chest. Comparison is made with a
12 prior study, chronic emphysematous changes
13 with scarring are noted at the lung bases and
14 lung apices, a-p-i-c-e-s. Vague opacity in
15 the right apex and may represent scarring.

16 THE COURT: Do any of the
17 doctors indicate that asbestos was the
18 dominant cause?

19 MS. RANKE: Your Honor, I
20 don't know how the Court wants to interpret
21 this. It doesn't say this is his only cause
22 of lung cancer. No, it doesn't say that,
23 because they are treating him for his lung
24 cancer, but what they do say throughout all of
25 these reports is significant exposure to

1 asbestos, all right?

2 It says scarring in his lungs, right
3 upper lobe mass with history of smoking and
4 asbestos exposure make the patient high risk
5 of lung cancer. That is from the treating
6 physician.

7 THE COURT: Who is the
8 treating physician?

9 MS. RANKE: Well, I don't
10 know how to answer that, Judge, because every
11 day he went to the VA.

12 THE COURT: You said it was
13 from the treating physician. I wanted to know
14 who it is.

15 MS. RANKE: Every day he
16 went to the VA he saw a different doctor, so
17 there are a number of doctors at the VA
18 hospital. Dr. Nancy Munn, M-u-n-n, was one of
19 the doctors. Another doctor is Dr. Ross.
20 Every day, depending on who was on duty, was a
21 different doctor, so there is not one doctor
22 that I can point to.

23 Dr. Ross under his notes and
24 examination, which was a pulmonary consult
25 that took place on September 15, 2003 says,

1 "This patient is a 64 year old white man with
2 a past medical history of smoking, COPD ? in
3 the past and significant asbestos exposure."
4 That's what the medical records say.

5 In addition, your Honor, when we
6 asked then for purposes of preparing our case
7 for trial Dr. Altmeyer to give us another
8 report, again, in preparation for trial,
9 Dr. Altmeyer went through the medical records
10 supplied to him, including all of the
11 treatment records from the VA, and he said in
12 his report, which we have supplied to the
13 Court, that Dr. Munn, which on a report -- and
14 Dr. Nancy Munn is the chief of the pulmonary
15 section at Huntington Veterans Administration
16 Medical Center, and this is a quote right out
17 of the medical records, "Right upper lobe mass
18 with history of smoking and asbestos exposure
19 make the patient high risk for lung cancer,"
20 so he's saying -- my expert is then
21 interpreting what they found with regard to
22 the findings.

23 We believe that is sufficient to meet
24 the burden under 292, which we don't believe
25 applies, but we will argue in the alternative.

1 We believe, your Honor, that the statute
2 doesn't say that it has to be a letter that
3 says, Dear Kaye Ranke, I believe that
4 Mr. Sinnot is at risk because he has both
5 asbestos exposures and smoking.

6 I don't believe that's what the law
7 requires. It says you're going to look at a
8 number of factors for a smoking lung cancer.
9 Those number of factors are exposure to
10 asbestos being one. They say he has a
11 significant asbestos exposure.

12 Now, in retrospect, do I wish the VA
13 when they were taking it and making their
14 findings would have said he has substantial
15 asbestos exposures instead of significant,
16 maybe so, given the way the defendants have
17 argued.

18 However, we believe that significant
19 asbestos exposure when they are considering
20 the treatment of his lung cancer is a link
21 that meets our burden under a prima facie
22 case. Moreover, they knew he had a smoking
23 history. Every single one of these records
24 from the VA hospital, as well as from
25 Dr. Altmeyer said he smoked. He had one pack

1 a year for 45 years and he quit approximately
2 eight years ago, so he is a smoking lung
3 cancer as defined under House Bill 292.

4 He had PFTs and x-rays taken. The
5 PFTs and x-rays show reduced capacities at the
6 VA hospital, just like Dr. Altmeyer. The
7 latency period that is required under the
8 bill, they address it. Significant past
9 asbestos exposure.

10 He's not somebody who came in and
11 said, by the way, I think I have a
12 relationship to asbestos because I was with it
13 yesterday. That is not the case, so the fact
14 that we don't have a letter from a doctor that
15 says, Dear Kaye Ranke, we believe we have met
16 our burden. It says significant asbestos
17 exposure and smoking history make this patient
18 high risk for lung cancer. That's what the
19 bill is about. We have met our burden with
20 regard to the VA.

21 Now, with regard to the term of art
22 that the defendants are asking this Court to
23 require that a plaintiff meet, that the doctor
24 has to say, it has to be substantial and not
25 significant or that they use this word and not

1 this word, I don't believe that that, once
2 again, is our burden.

3 What the statute requires is that we
4 show a link to asbestos exposure and that
5 asbestos exposure was a substantial cause.
6 Your Honor, when you read Dr. Altmeyer's
7 report, for example, he does talk about the
8 risk. Every single doctor, whether they are a
9 treating physician, whether they are a defense
10 expert, whether they are a plaintiff's expert
11 agrees that there is a synergistic effect
12 between smoking and lung cancer and asbestos.

13 That is something that we didn't just
14 make up or that Dr. Altmeyer just made up. By
15 the way, he's a licensed Ohio physician,
16 licensed in the state of West Virginia. He is
17 not somebody -- his practice is more than 25
18 percent. He is an expert as well, but he also
19 has an ongoing practice.

20 He is not some paid doctor that you
21 have heard about in other things. That isn't
22 Dr. Altmeyer. He physically examined him.
23 He's not his treating physician using the
24 specific magic term of art. However, he says
25 in his report, "Individuals who have had a

1 significant exposure to asbestos with an
2 appropriate latency period have up to five
3 times the risk of developing lung cancer
4 compared to never-having been exposed to
5 asbestos population of individuals."

6 All right. So if I have exposure to
7 asbestos versus someone who doesn't, right
8 there I have five times greater chance of
9 developing lung cancer. "Individuals who are
10 long-term tobacco smokers and particularly
11 those that smoked within the last 13 to 15
12 years," again, like Mr. Sinnot, "have an
13 increased risk for developing lung cancer up
14 to approximately 20 times the risk of
15 individuals who have never smoked.
16 Unfortunately individuals who have had a
17 significant exposure to asbestos with an
18 appropriate latency period and have had
19 significant smoking history have approximately
20 80 to 100 times the risk of developing lung
21 cancer."

22 Do you think that maybe those terms
23 that Dr. Altmeyer told me in the report are
24 exactly what the VA hospital was considering
25 when they said significant history of asbestos

1 exposure and a smoking period make this
2 patient high risk for developing lung cancer?
3 I submit to you that that's exactly what those
4 records say.

5 The fact that it didn't come in a
6 letter addressed to me does not mean that its
7 significance should be ignored by this Court,
8 as the defendants wish you to do.

9 Your Honor, I understand now, because
10 of the Court's ruling, that the other
11 defendants who aren't in this category of pre
12 and post bill who have always been in the case
13 aren't going to argue verbally, but I want the
14 Court to consider what they said in their
15 brief, because I believe it shows what the
16 defendants all want, which is to just remove
17 any case, despite whatever the merits are,
18 that if you don't add up two plus two in some
19 kind of magic formula, that somehow the case
20 has no merit.

21 Mr. Sinnot had lung cancer. He had
22 significant asbestos exposure to numerous
23 products, which nobody can deny, and yet in
24 their brief filed by Mr. Musilli, not him
25 personally, but his firm on behalf of all of

1 the other similarly-situated defendants, they
2 indicated that for a variety of reasons the
3 bill should apply and it has to be just this
4 way and not this way, but the ultimate thing
5 they said at page 16 of their brief is that
6 because no treating physician has ever stated
7 that Mr. Sinnot's lung cancer was caused by
8 exposure to asbestos as opposed to a smoking
9 history, his cause of action has not accrued
10 under Ohio Revised Code Section 2305.10 and
11 his case should be dismissed.

12 Here's a man that worked for 40 years
13 in various capacities being exposed to
14 asbestos. He retired, then quit smoking.
15 Then he got sick, was diagnosed with lung
16 cancer in 2003, filed his case within his time
17 period in 2004, had a report from a doctor
18 that was the law at the time that he went to
19 see -- when he filed his case.

20 Subsequently he was treated for two
21 plus years for his treatment, just about two
22 years. He died a little bit short of his
23 two-year anniversary, radiation, chemotherapy,
24 significant breathing problems and any defense
25 counsel who was at the saga of his depositions

1 could testify as to how ill Mr. Sinnot
2 actually was and as to his suffering, but
3 somehow because we didn't get that magic
4 letter, Dear Kaye Ranke, this is how it has to
5 be, that he hasn't really even been diagnosed
6 with lung cancer appropriately and he doesn't
7 really have a case, because it hasn't accrued.

8 Now he's passed away, so, guess what,
9 Mr. Sinnot cannot ever comply with the
10 statute, unless I personally go and track down
11 one of the doctors and say, by the way, when
12 you said he had significant occupational
13 exposure and smoking and high risk for lung
14 cancer, tell me that in a letter addressed to
15 me and then maybe I can get his case on the
16 trial docket.

17 That is not the law. I don't believe
18 that that is what any statute, no matter what
19 the date of it, contemplated and I don't
20 believe that that is the standard that this
21 Court should enforce. We have met our burden,
22 your Honor. We do not believe that this case
23 should be dismissed.

24 It is not set for trial currently,
25 because of the various timing of all of the

1 issues and filing all of the briefs by the
2 various defendants and the issues with regard
3 to the nonmalignance were taking precedence
4 over the application and retroactive nature of
5 the bill.

6 We ask that Mr. Sinnot's case be
7 allowed to remain on the trial docket. We ask
8 that a new trial date be set. We will supply
9 additional, including all of the tissue that
10 we get from the University of Kentucky
11 autopsy, so that no defendant is left short.

12 This is just a case, your Honor, that
13 needs to remain. The evidence is overwhelming
14 of his exposure to asbestos, the risks
15 associated with smoking. The fact that we
16 don't have some letter addressing it magically
17 because of his treating at a VA Medical Center
18 as opposed to one specific doctor, we don't
19 believe that that should be considered.

20 Lastly, your Honor, with regard to
21 the affidavit of Dr. Frank, that motion to
22 strike has been filed with regard to Garlock
23 with regard to their summary judgment
24 standard, which we argued their summary
25 judgment back in July 2005 and prevailed, so

1 they have no summary judgment issues.

2 Dr. Frank's affidavit I will address
3 in a formal response. I've been out of town
4 the last two days and did not have a chance to
5 argue it. However, we would submit that
6 Dr. Frank's affidavit is appropriate. It is
7 an expert opinion. He is not in any way
8 supposed to be deemed a treating physician.

9 It is corroborative evidence of an
10 expert that says Mr. Sinnot suffered from
11 asbestos-related lung cancer and he does say,
12 "It is my opinion that each and every
13 inhalation of asbestos fibers released from
14 any asbestos-containing product is a
15 substantial factor."

16 He then goes into the same risk
17 factors that Dr. Altmeyer said with regard to
18 the synergistic effect, but lastly he says,
19 "Therefore, based on current scientific and
20 medical knowledge, it is further my opinion
21 that all of Mr. Sinnot's exposures to asbestos
22 fibers substantially contributed to the
23 development of his lung cancer."

24 If we didn't like the word
25 significant, Dr. Frank uses the word

1 substantial. Thank you.

2 THE COURT: Your response.

3 MS. CSIKOS: I'll let her
4 move her book first.

5 Your Honor, Debra Csikos again.

6 There's just a few issues that I would like to
7 briefly touch on. First, looking at the
8 retroactive -- excuse me, looking at the
9 relation back issue in Greene versus Barrett,
10 Greene versus Barrett involved Rule 15(C). I
11 did a quick scan of it again just now, and I
12 do not see any argument regarding the saving
13 statute.

14 Greene versus Barrett involves an
15 amended complaint. In order to have an
16 effective claim bringing a case again under
17 the saving statute, you have to file another
18 new complaint. Also, more importantly, in
19 Greene versus Barrett, the Court sets out at
20 pages 530 and 531 the three standards that a
21 plaintiff has to meet for an amended complaint
22 to relate back under Rule 15(C); and if I can
23 give a rather lengthy quote about mistaken
24 identity, the Court stated "However, Greene
25 has not gone forward with sufficient evidence

1 to show that the failure to maintain her
2 claims against Guttman was due to a mistake
3 about the identity of the proper party.
4 Greene knew Guttman was the party who handled
5 Greene's divorce and named Guttman in her
6 initial complaint. Although Greene gives no
7 reason for dismissing Guttman, it is
8 undisputed that the dismissal was voluntary.
9 There is no evidence of a mistake with regard
10 to the identity of the parties involved in
11 this case."

12 The Court goes on for about a
13 paragraph to discuss Ohio Rule 15(C) again and
14 then finds a paragraph later "Because we find
15 the conditions for applying Civil Rule 15(C)
16 were not met in this case, we find that the
17 July 2, 1991 amended complaint did not relate
18 back to the filing date of the original
19 complaint."

20 Greene versus Barrett is squarely on
21 point with this case. Just in case this Court
22 might feel uncomfortable with dealing with a
23 statute of limitations issue like Greene
24 versus Barrett, there's a recently-decided
25 case cited in my briefs called Adams versus

1 Federal Materials Company, Inc. that was
2 decided in the Western District of Kentucky in
3 July of 2005. I have a slightly marked-on
4 copy and I also attached a copy to my
5 briefing. If you would like this copy, you're
6 welcome to it.

7 THE COURT: I did see that.
8 I think it is back in my chambers.

9 MS. CSIKOS: Okay. It
10 involved a class action suit and it involved
11 an amended complaint naming an additional
12 defendant to the class action suit. The
13 Western District of Kentucky looked at Federal
14 Rule 15(C), which is analogous to Ohio's
15 Rule 15(C), and determined that the amended
16 complaint in that case did not relate back to
17 the initial filing and that, therefore, the
18 newly-enacted Class Action Fairness Act of
19 2005 applied to the defendant that was named
20 in the amended complaint.

21 I don't remember the dates exactly,
22 your Honor, but it was a similar case to this.
23 The initial complaint was filed naming some
24 defendants. The new statute went into effect.
25 The amended complaint was filed naming an

1 additional defendant later, and the Court said
2 that as to that new defendant, the new statute
3 applied.

4 It is not a statute of limitations
5 case. It is exactly what I'm asking this
6 Court to do, which is look at the
7 applicability of Rule 15(C), determine that
8 the amended complaint does not relate back to
9 the additional complaint and apply the terms
10 of the newly-enacted law to the amended
11 complaint and to the two defendants that were
12 added and that I represent in the amended
13 complaint.

14 There was also an issue raised by the
15 plaintiff about Dr. Altmeyer and whether he
16 diagnosed the lung cancer. It is very clear,
17 based on Mr. Sinnot's testimony and
18 Dr. Altmeyer's report, that he did not
19 diagnose lung cancer. First, at page 116 of
20 Mr. Sinnot's transcript, he says what
21 Dr. Altmeyer says to him and Mr. Sinnot stated
22 at his deposition that Dr. Altmeyer said,
23 "'There's a large mass in the upper portion of
24 your right lung.' He said, 'I'm not going to
25 venture to guess what it is, but I want you to

1 go see your primary care people within the
2 next two weeks.' And he said 'Do not wait any
3 longer. It's urgent.'" That's what
4 Mr. Sinnot said that Dr. Altmeyer said.

5 Likewise, looking at Dr. Altmeyer's
6 asbestos report, Dr. Altmeyer says, "There was
7 a right upper lobe density adjacent to the
8 superior mediastinum." I'm not sure how to
9 pronounce it. "This could be overlapping
10 shadow or scarring, but I cannot rule out a
11 mass in that area. For that reason I verbally
12 and in writing advised this man to see his
13 personal physician within the next two weeks
14 for follow up."

15 He didn't say I see lung cancer. He
16 said I see something that might be a mass and
17 might be overlapping shadows, but he needs to
18 go see his doctor to check it out. That's the
19 closest he came to saying it was lung cancer.

20 Finally, your Honor, there was a long
21 discussion about significant versus
22 substantial and whether Mr. Sinnot's VA
23 records indicate significant asbestos exposure
24 or high risk of lung cancer and whether that
25 is good enough essentially to create a

1 prima facie claim.

2 It is not, because the one thing that
3 is missing from the VA records is the word
4 cause. There is nowhere in the VA records
5 that says that Mr. Sinnot's significant
6 asbestos exposure caused his lung cancer, and
7 cause is the key word. He was put at high
8 risk of cancer.

9 If I walk into my doctor, I can give
10 him reasons why I would be at high risk of
11 lung cancer, and I have no doubt that my chart
12 would indicate that I'm at high risk of lung
13 cancer, but that is completely different from
14 a statement saying that that factor caused my
15 lung cancer, and that's not only what House
16 Bill 292 requires, but we discussed this in
17 June at the summary judgment argument, that is
18 also what the prior law requires, actual
19 statements of causation, and the VA records
20 simply did not do that.

21 Your Honor, because the plaintiff
22 filed his actions against American Optical and
23 Abex after the effective date of the statute,
24 because those amended complaints don't relate
25 back, because he didn't produce a report from

1 a treating doctor who would be a competent
2 medical authority under the definition of the
3 statute and because he did not produce any
4 evidence stating that asbestos was the
5 predominant cause of his cancer and that
6 without the asbestos exposure he wouldn't have
7 developed his cancer, plaintiff didn't produce
8 a prima facie case and, therefore, this case
9 should be administratively dismissed. Thank
10 you, your Honor.

11 THE COURT: Mr. Musilli
12 wants to have a few words.

13 MR. MUSILLI: Your Honor, just
14 a couple minutes of the Court's time. A
15 couple of issues that arose during the earlier
16 arguments. One was the wrongful death issue
17 and whether that claim would relate back.
18 Since that cause of action was just filed a
19 few weeks ago, the defendants have not briefed
20 that, and I would just ask the Court if we
21 could get another chance to brief the wrongful
22 death issue to see whether it does relate back
23 or does not relate back and then have a
24 determination as to what the medical criteria
25 would be to see if this cause of action

1 survives.

2 The second issue that was addressed
3 by Ms. Ranke, in the defendant's reply brief
4 we addressed the issue that it is our position
5 that this cause of action has not accrued
6 under the statute. We are not here at this
7 point to argue whether lung cancer was
8 appropriately or properly diagnosed or not.

9 We were just addressing in the brief
10 that if the Court were to apply House Bill
11 292's criteria to the medical criteria that
12 needs to be in this case, then the plaintiff's
13 cause of action did not arise under that
14 statute, under House Bill 292.

15 I'm not here, again, to address the
16 constitutional issues at this point. We are
17 going to submit those on brief and we just
18 submit that to the Court for its
19 consideration.

20 THE COURT: Can I ask a
21 question?

22 Not of you, necessarily.

23 How many defendants were in the case
24 prior to the House Bill 292?

25 MS. RANKE: I would say over

1 two-thirds of the defendants that are involved
2 in this case now were prior to House Bill 292.
3 I believe there are five -- I may be wrong,
4 because I don't have that exact number. Two
5 of Ms. Csikos' defendants. I believe
6 Rockbestos was one that was dismissed -- named
7 and dismissed. General Motors is one that was
8 named and dismissed.

9 THE COURT: Ford?

10 MS. RANKE: I believe Ford
11 as well. I'm not positive, and all of the
12 remaining defendants were in this case prior,
13 so there are approximately five or six that
14 are defendants that were named and added back
15 in in January of 2005.

16 THE COURT: And all of them
17 are in the wrongful death case?

18 MS. RANKE: When we refiled
19 the wrongful death case, as the Court is
20 aware, there were actually 40 defendants in
21 this case; and because of the circumstances
22 surrounding his deposition -- in fact, we had
23 a hearing before Judge Hanna at the time of
24 the deposition with regard to how that would
25 take place, and the only defendants in this

1 case, notwithstanding outstanding arguments
2 for summary judgment that have now arisen on
3 behalf of General Motors and Ford, all of the
4 defendants named were at the deposition,
5 cross-examined Mr. Sinnott, and those are the
6 only defendants that we refiled the wrongful
7 death case, so we have refiled the wrongful
8 death case against the parties who we believe
9 we have evidence against, not reinitiating a
10 case against 60 people.

11 THE COURT: Anybody else
12 have anything to say on that? Okay.

13

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(Thereupon, Court was adjourned.)

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C E R T I F I C A T E

I, Kerry L. Paul, Official Court
Reporter for the Court of Common Pleas,
Cuyahoga County, Ohio, do hereby certify
that as such reporter I took down in
stenotype all of the proceedings had in
said Court of Common Pleas in the
above-entitled cause; that I have
transcribed my said stenotype notes into
typewritten form, as appears in the
foregoing Transcript of Proceedings; that
said transcript is a complete record of the
proceedings had in the trial of said cause
and constitutes a true and correct
Transcript of Proceedings had therein.

Kerry L. Paul, RMR
Official Court Reporter
Cuyahoga County, Ohio