

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Jean H. Toal, Acting Circuit Judge

Appellate Case No. 2017-002611

Beverly Dale Jolly and Brenda Rice Jolly, ... Respondents,
v.
General Electric Company, et al., ... Defendants,
Of whom Fisher Controls International LLC and Crosby
Valve, LLC are the..... Petitioner.

APPENDIX – VOLUME III

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In The Court of Appeals

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SC Court of Appeals

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Jean H. Toal, Circuit Court Judge

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Case No. 2016-CP-42-1592

Beverly Dale Jolly and Brenda Rice Jolly, ... Respondents,
v.
General Electric Company, et al., ... Defendants,
Of whom Fisher Controls International LLC and Crosby
Valve, LLC are the Appellants.

RECORD ON APPEAL
VOLUME III

C. Mitchell Brown A. Mattison Bogan James B. Glenn Nicholas A. Charles NELSON MULLINS RILEY & SCARBOROUGH LLP 1320 Main Street / 17th Floor Post Office Box 11070 (29211-1070) Columbia, SC 29201 (803) 799-2000 Attorneys for Appellants Fisher Controls International LLC and Crosby Valve LLC	Theile B. McVey, Esq. John D. Kassel, Esq. KASSEL McVEY ATTORNEYS AT LAW Post Office Box 1476 1330 Laurel Street (29201) Columbia, SC 29201 Jonathan M. Holder, Esq. Lisa White Shirley, Esq. (<i>Pro Hac Vice</i>) DEAN OMAR BRANHAM, LLP 302 North Market Street, Suite 300 Dallas, TX 75202 jholder@dobllp.com Attorneys for Respondents

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Certificate of Counsel

1 State of South Carolina
2 County of Spartanburg
3
4 Beverly Dale Jolly and
5 Brenda Rice Jolly,
6 Plaintiffs,
7 -vs-
8 Crosby Valve, LLC and
9 Fisher Controls
10 International, LLC,
11 Defendants.
12
13 In the Court of Common Pleas
14
15 2016-CP-42-1593
16 July 27, 2017
17 Volume 4 of 9
18 Pages 708 - 954
19
20 Transcript of Record
21
22
23
24
25

13 B E F O R E:

14 The Honorable Jean Hoefer Toal, Judge;
15 and a jury.

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E x h i b i t s

For the Plaintiffs:

Marked	Description	I.D.	Admitted
929	CV of Arnold Brody, Ph.D.		712
930	Slide presentation of Dr. Brody		730
940.1 through 940.362	Binder containing Fisher invoices Catawba plant		939

For the Defendants:

Marked	Description	I.D.	Admitted
None offered.			

ROA_00927

Appendix_00948

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:30 a.m.)

4 MR. McLEOD: We would prefer to finish Taylor, but
5 whatever the court wishes to do is fine.

6 THE COURT: We've broken him up already, so I
7 don't want to get into the situation we got into
8 yesterday with Dr. Frank where y'all feel rushed
9 because he's got to catch a plane or something. So if
10 you don't mind, we'll go ahead and put Dr. Brody up
11 first.

12 MS. McVEY: Thank you so much.

13 THE COURT: Anything else?

14 (WHEREUPON, the jury entered open court.)

15 THE COURT: Welcome. Where we are going to go
16 this morning. We of course have more of Mr. Taylor's
17 deposition to read, but we have an expert witness,
18 Dr. Brody, the plaintiffs are going to offer, and I
19 don't want to run into the same dilemma we had
20 yesterday where counsel felt rushed at the end because
21 Dr. Frank had a plane to catch. So we have agreed
22 we'll go forward with Dr. Brody this morning, who is an
23 expert witness.

24 Of course, expert witnesses, now you know they're
25 the only witnesses who can express an opinion. Of

ROA_00928

Appendix_00949

1 course, his background will be detailed for us, and
2 I'll make a ruling on whether he's qualified as an
3 expert, and then you will hear the testimony. Then
4 when we're complete with that, we'll go back and
5 complete the deposition of Mr. Taylor, and then we'll
6 go forward with the rest of the case. So that's where
7 we are kind of going this morning.

8 All right, plaintiffs. Ms. Farrise.

9 MS. FARRISE: Good morning, Your Honor.

10 Good morning, ladies and gentlemen.

11 Plaintiffs would call as the next witness for the
12 Jollys, Dr. Arnold Brody.

13 ARNOLD R. BRODY, Ph.D.,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE COURT: Good morning.

16 THE WITNESS: Good morning, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. FARRISE:

19 Q Dr. Brody, would you tell the jury what kind of a
20 doctor you are, what your field is.

21 A Sure. I'm a Ph.D. My doctorate is in cell
22 biology. Every living thing is made of cells. We need
23 to understand how cells function, and every disease has
24 a target cell from which that disease develops. And
25 that's where I've been working, in lung cell biology.

ROA_00929

Appendix_00950

1 for decades.

2 MS. FARRISE: Your Honor, I'm going to mark as
3 Plaintiffs' Exhibit 929, which is the curriculum vitae
4 or résumé of Dr. Arnold Brody, and the first page is
5 being displayed at this time.

6 THE COURT: Any objection from counsel?

7 MR. BOUCH: We have no objection. We have no
8 objection to Dr. Brody's qualifications as a cell
9 biologist Ph.D. We have known each other for years.

10 THE COURT: Very well. Of course, the plaintiff
11 will want to introduce him to some extent, but without
12 objection, he will be recognized as an expert witness
13 qualified to testify as to matters relating to cell
14 biology and the topic of asbestos.

15 (WHEREUPON, Plaintiffs' Exhibit Number 929 was
16 admitted into evidence.)

17 BY MS. FARRISE:

18 Q Dr. Brody, counsel said you have known each other
19 for years. Are you friends?

20 A I wouldn't say we're friends. I would say I
21 recognize the gentleman. I have seen him before, but
22 that's about all I know about him.

23 Q In courtrooms, just like this?

24 A Yes.

25 Q Tell the jury, since you're already accepted as an

ROA_00930

Appendix_00951

1 expert by agreement, really, about your background.

2 A Right. So I -- well, I guess it's up there, so we
3 can kind of follow that.

4 Q But if you would, give us just sort of the general
5 view. That's great. Point out the highlights but not
6 every detail.

7 A Right. So you can see, I did a bachelor of
8 science degree in zoology. That's the study of
9 animals. Then I went to the University of Illinois
10 where I received a Master of Science degree in anatomy,
11 animal anatomy, human anatomy, where we learn all of
12 our parts fit together -- muscles, joints, bones,
13 nerves, that sort of thing.

14 Then I went back to Colorado to do a doctorate, as
15 I told you, in cell biology. And this is a speciality,
16 ultrastructural cytology. That's studying cells using
17 an electron microscope so we can see the finest details
18 of these cells.

19 Then I did three years of postdoctoral study at
20 Ohio State University, and that's where you find out if
21 you're actually suited to be in a laboratory, do
22 experiments and that kind of thing. Then I started my
23 academic career in 1972. You can see I was an
24 assistant professor -- that's a beginning professor --
25 in the pathology department in the medical school at

ROA_00931

Appendix_00952

1 the University of Vermont, and I was there for six
2 years.

3 Q Let me stop you there. Are you a licensed medical
4 doctor? Did you go to medical school and graduate?

5 A No, not at all.

6 Q Why is it that they let you teach medical
7 students?

8 A Right. So go to any medical school in South
9 Carolina or anywhere across the country, and you will
10 find Ph.D.s like myself teaching in the medical school,
11 teaching the basic sciences for the students before
12 they go into their --- biochemical, molecular biology,
13 embryology, those things that every student needs to
14 understand before they become a medical doctor. So not
15 only do we teach, but we're also doing basic science
16 research in medical schools along with the medical
17 doctors side by side.

18 Q Dr. Brody, let's see if I can grab it here. Right
19 here in this time period at the very beginning of your
20 career, did you do any work having to do with asbestos
21 or asbestos-related disease topics?

22 A Yes. So in 1973 we had a visitor to the
23 department. His name was Dr. Wagner. It looks like
24 "Wagner," but he's from South Africa and pronounces his
25 name "Wagner." We're talking about mesothelioma here,

ROA_00932

Appendix_00953

1 so you've probably heard about Dr. Wagner.

2 Q They did yesterday. Why is he significant to
3 asbestos and our understanding of it?

4 A Well, he established, in 1960, in a small town in
5 South Africa where they were mining asbestos, that
6 asbestos causes this cancer, mesothelioma. And as I
7 say, he was a visitor to the department, and I had the
8 opportunity to sit and talk with Dr. Wagner. And he
9 saw the work that I was doing with electron microscopes
10 and human lungs, and he asked me to come to work with
11 him in Wales, in the United Kingdom, which is where he
12 moved to at the time.

13 Of course, that is a great opportunity for a young
14 scientist, so I packed up my small family, and off we
15 went to Wales, and I worked with Dr. Wagner for several
16 months. And he showed me a lot about the asbestos
17 diseases, all the asbestos varieties cause this
18 mesothelioma, that you can use animal models.

19 He showed when he exposed rats to asbestos, they
20 got asbestosis, scar tissue, lung cancer, and
21 mesothelioma. So I was able to take this model back to
22 my laboratory and ask some questions, answer questions
23 that had not yet been answered.

24 Q And, Dr. Brody, did Dr. Wagner answer the basic
25 question of will exposure to asbestos dust or

ROA_00933

Appendix_00954

1 asbestos-containing dust put human beings at risk for
2 diseases, or had that been answered by the time you
3 encountered him?

4 A Well, by the time I encountered him, we knew, so
5 the answer is yes, we knew that asbestos caused these
6 diseases. He was developing this animal model system
7 which allowed scientists like myself and other
8 scientists to answer fundamental questions about the
9 disease process.

10 Q And Dr. Arthur Frank was here yesterday. Are you
11 familiar with Dr. Frank as a scientist?

12 A Oh, sure. I know Dr. Frank.

13 Q And he told the jury that by the start of the
14 early part of the last century, in the 1900s,
15 scientists and the medical community understood that
16 being exposed to asbestos could cause harm to human
17 beings.

18 A Yeah. No question. Sure.

19 Q So you come along some 50 years later.

20 A That's right.

21 Q And to try to help the jury understand how your
22 work is different and what you're going to talk with
23 them about today, the question, Dr. Brody, when you
24 came along, was not if asbestos causes harm, right?

25 A That's correct.

ROA_00934

Appendix_00955

1 Q What was the question that you have spent your
2 career trying to resolve?

3 A Well, it's how. In other words, there are no --
4 still no effective treatments for any of the
5 asbestos-related diseases. Now, some treatments have
6 improved, but because we don't know all the answers to
7 how, like any other disease, in order to have an
8 effective treatment or cure, you have to know what's
9 going on. And you don't get to do that by watching
10 people because of this long latency of decades. By the
11 time you see a person's lung, it's decades after they
12 have been exposed, so you don't get to watch what's
13 going on. That's why scientists use these models in
14 animals and cells to understand how the disease
15 develops.

16 Q And Dr. Frank discussed yesterday that there is
17 this latency or incubation period that may be from ten
18 years to 70 years after exposure. How much of your
19 career, Dr. Brody, have you devoted to understanding
20 what's happening in the time from when a person is
21 actually exposed to when they present with cancer?

22 A So I published my first paper on asbestos disease
23 in 1981, published the most recent paper, I published
24 in this field in 2015, so those are the decades through
25 which I've been trying to answer a lot of questions

ROA_00935

Appendix_00956

1 about asbestos disease.

2 Q Well, the jury heard yesterday a little bit about
3 scientific publications, and you just mentioned that
4 you've been involved with a few. Let's start with how
5 many papers have you been an author/coauthor on,
6 contributed research to. I'm trying to find that page
7 of your CV, but I'll find it.

8 A So I have -- well, peer-reviewed papers. I guess
9 you have heard about peer-reviewed papers. So I have
10 154 peer-reviewed papers. Most of them, over one
11 hundred of them, deal directly with asbestos. The
12 others deal with other lung diseases that I studied
13 like asthma and viral diseases or basic lung cell
14 biology, how does a certain cell function. And then I
15 also have 55 book chapters, invited proceedings,
16 reviews that I have written, and also I have published
17 a book.

18 Q Tell us about the book.

19 A Okay. So the book is called *The Science Class You*
20 *Wish You Had*. It's been revised. I revised it most
21 recently in 2013. The subtitle is *The Seven Greatest*
22 *Scientific Discoveries in History and the People Who*
23 *Made Them*. So it's really a history of basic science.

24 The word "asbestos" isn't in the book, but it's in
25 five different languages, and it's used in different --

ROA_00936

Appendix_00957

1 as textbook and of interest around the world. And you
2 can find it in Amazon.com, by the way.

3 Q Thank you. You mentioned that you're -- and maybe
4 we will. You mentioned that your peer-reviewed
5 scientific papers at this point total 154, and I found
6 that section on your CV. And, yes, the jury did hear
7 generally what that is.

8 I want to ask you if there is any kind of a
9 ranking or prestige, if you will, to be published in
10 certain journals versus other journals in the
11 scientific community?

12 A Oh, sure.

13 Q Can you tell the jury about that?

14 A For example, there are two journals that everyone
15 would like to have their work in and a very small
16 percentage of people get to publish. They're called
17 *Science*, which is published in New York and Washington,
18 and *Nature*, which is published in London. So those are
19 the two top journals, and they cover the top science in
20 all fields -- physics, chemical, molecular biology,
21 biology of all kinds.

22 And as I say, everyone would like to have their
23 papers in there, but they accept about a tenth of one
24 percent of all the papers that are submitted for
25 publication.

ROA_00937

1 Q Sounds like Duke University admissions, but go
2 ahead.

3 A Something like that, sure. I have one paper in
4 *Science*. I have a letter and a comment in *Nature*, but
5 the people who publish in those journals are Nobel
6 laureates, are the very top of every field as
7 journalists.

8 Then you go down into what are called the
9 speciality journals. So each field, for example,
10 pathology. Pathology is the study of disease. There
11 is a top journal in pathology. It's called the
12 *American Journal of Pathology*. I'm on the editorial
13 board of that journal. I have published in that
14 journal many times. The lung field has the *American*
15 *Journal of Respiration and Critical Care Medicine*. I
16 have published many papers in that journal. So each
17 field has its own set of top journals.

18 Q And some of them are here. If it becomes
19 relevant, we can look at them later, the journal list,
20 and you mentioned the *American Journal of Pathology*, et
21 cetera.

22 Dr. Brody, because of the work that you have been
23 doing and the scientific discoveries that you have
24 uncovered, have you been asked to consult around the
25 world and in the United States with government

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1 entities?

2 A Yes, many times.

3 Q On the topics of asbestos and asbestos disease?

4 A Sure. I've been asked by the Environmental
5 Protection Agency, the World Health Organization. I
6 have testified in the congressional subcommittee in
7 front of congress. I have sat before the U.S. Supreme
8 Court while my testimony has been used in the supreme
9 court proceedings. Yes, I have done a lot of that.

10 Q Okay. And, obviously, you spend some part of your
11 time testifying as an expert witness in court cases;
12 otherwise, you wouldn't be here?

13 A Well, that's true, and I'm supposed to be retired.

14 Q I'm going to talk about that in a minute.

15 A I know. But, yes, I've done this many times.

16 Q But, Dr. Brody, do you testify on behalf of
17 companies that made and sold asbestos as well as people
18 who are claiming injury and disease?

19 A Well, yes. Typically, I testify in cases like
20 this where there's a personal injury, there is a
21 plaintiff. And so most of the cases I testify in,
22 probably 90 percent, are cases like this, but I testify
23 for a number of different companies.

24 Just two weeks ago I gave testimony for a big
25 conglomerate that was asking me to give exactly the

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1 same testimony that you've asked me to give here today.

2 Q That was really going to be my question. Does
3 your testimony change depending on whom brings you, if
4 you will?

5 A Of course not.

6 Q All right. In addition to testifying before
7 congress and being at the U.S. Supreme Court, have you
8 been asked to present to scientists around the world
9 your scientific discoveries?

10 A Yeah, many times. In fact -- well, two weeks ago,
11 I gave a talk to the medical school at the Cleveland
12 Clinic. I was invited by a physician to give a talk to
13 the university. Next week I'll be giving a talk at an
14 international conference, and my CV has a number of
15 pages of invited presentations.

16 Q But can you tell the jury why is that important,
17 that you are an invited speaker at scientific meetings?
18 Because, otherwise, it sounds like you're saying, "Hey,
19 I went there, travelled there."

20 A Well, I do that, but, I mean, you know, when
21 you're asked by your colleagues, by your peers, to
22 present your work to an audience of scientists and
23 others who have the opportunity to criticize you, then
24 it's an important part of your work. In other words,
25 you're putting out there what you do and what is

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1 current. I mean, the publications and reviews kind of
2 go back through what you've done. The presentations at
3 conferences are what's going on in the laboratory
4 today.

5 Q And if you go to these meetings and you present to
6 other scientists who have background similar to yours
7 and you say things that are wrong, there is at least
8 the possibility that someone may come up after and say,
9 "You know, Dr. Brody, what you said, that's just
10 wrong"?

11 A Well, that happens.

12 Q But you can talk about it scientist-to-scientist?

13 A Of course.

14 Q All right. I do want to cover your education
15 because you mentioned -- not your education, I'm sorry,
16 your professional career because you mentioned you're
17 retired.

18 So tell us how you got from working with
19 Dr. Wagner, taking your small family to Wales, and
20 being retired. What's the journey been like?

21 A Right. So I was in Vermont for six years. Then I
22 was offered a position at the National Institutes of
23 Health. You've probably heard of the National Cancer
24 Institute; Heart, Lung, and Blood Institute; Institute
25 of Allergy and Infectious Diseases. These are the

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1 institutes that make up the government agency known as
2 the National Institutes of Health. So that's right
3 here. And I was the head of pulmonary pathology.
4 That's lung pathology. Remember, pathology is the
5 study of disease. So I was the head of pulmonary
6 pathology at the National Institute of Environmental
7 Health Sciences. So that's one of these government
8 agencies or one of these institutes that make up the
9 NIH.

10 And during this time -- I was there for 15 years,
11 and they gave me this great opportunity to continue my
12 work on understanding asbestos diseases. And that's
13 where I published a lot of those 154 papers or were
14 done during the 15 years that I was at the Institute.
15 And while I was there, I had adjunct positions at Duke
16 University, University of North Carolina. So I
17 lectured -- I was not on the full faculty. I gave
18 lectures, and I had graduate students in my laboratory
19 from those universities. So I was there for 15 years.

20 And then in 1993, I was offered a position as full
21 professor again in the department of pathology. This
22 time at Tulane University Medical Center in New
23 Orleans. I was there -- you can see in 1999, I was
24 promoted to vice chairman of the pathology department
25 and was there right through Hurricane Katrina.

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1 Hurricane Katrina came in 2005, just shut
2 everything down, as I'm sure you remember. It closed
3 New Orleans. It closed the university. And there were
4 a lot of scientists like myself scattered around the
5 country.

6 Well, I was fortunate enough to have colleagues at
7 North Carolina State University. And the dean of the
8 Department of Molecular Biomedical Sciences saw my
9 grant portfolio, in other words, the research money
10 that I had collected from or had been awarded from
11 outside sources, and he said, "Well, why don't you just
12 do what you're doing here?" My wife was already a
13 professor at North Carolina State, so it was a
14 no-brainer.

15 So for the last five years of my career, as you
16 can see, from 2006 to 2011, I was a professor in the
17 Department of Molecular Biomedical Sciences at North
18 Carolina State. I retired in 2011. And in 2012, I was
19 honored with the position of professor emeritus.

20 Q I was going to ask you, because Dr. Frank was here
21 yesterday, and he, too, is a professor emeritus. What
22 does that mean?

23 A Oh, that's great. I didn't know Dr. Frank was
24 emeritus. That's great. Emeritus, it's from the Latin
25 "from merit" where you're offered the opportunity to

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1 maintain your academic association with the university.
2 And as I say, it's an honor. And Tulane offered me
3 that honor in 2012, and that's my current academic
4 position. As you saw from that last paper that we
5 published in 2015 that I'm still carrying on my work
6 with some of the scientists I actually hired when I was
7 there as a professor at Tulane.

8 Q Lastly, and then we'll get into it, you mentioned
9 this thing about a grant portfolio. What is that and
10 why is it important or significant, I guess is the
11 question?

12 A Sure. So when you go to the great schools across
13 the country like Tulane or South Carolina or Harvard,
14 UCLA, or anywhere across the country, the universities
15 provide professionals a place to do their work. But
16 they don't pay for equipment, supplies, students. The
17 professor has to find that money. And the best place
18 to fund basic science research is from the National
19 Institutes of Health. And they accept applications
20 every year. In the case of the kind of work I was
21 doing, it's every four or five years. You apply for
22 funding to carry out your work. And ten to 15 percent
23 of the tens of thousands of applications they receive,
24 ten to 15 percent are funded. So it's a very
25 competitive environment.

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1 Q What are the criteria?

2 A Well, the criteria are is your work going to
3 establish something new in this field that we don't
4 already know. Is that work going to allow us to
5 develop further understanding of this disease so that
6 we can get closer to a cure or a treatment. That's
7 what the National Institutes of Health is all about.

8 And so, you know, sometimes I'm asked what I feel
9 is the most important accomplishment of my career, and
10 I say it's the fact that I was supported without
11 interruption through my career by the National
12 Institutes of Health. Because it's so hard to do and
13 because the work that they fund is important, that, I
14 feel, is my most important accomplishment.

15 Q To clarify, it sounds like that's just a
16 recognition that you're on the cutting edge of whatever
17 your scientific field is?

18 A Well, the ten to 15 percent is understood to be
19 quote/unquote the best science that we have in this
20 country.

21 Q For instance, people who might be trying to figure
22 out cures for the flu or something like that, if
23 they're pushing the ball forward, then we, the U.S.
24 government, funds them?

25 A Exactly. For example, you probably heard about

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1 immunotherapy for cancer.

2 Q Actually, we have heard about it in this case.

3 The plaintiff in this case is undergoing an
4 experimental trial of an immunotherapy.

5 A Exactly. Well, the National Cancer Institute is
6 providing huge amounts of resource into that topic
7 because it's so promising.

8 Q Okay.

9 MS. FARRISE: Your Honor, I won't, obviously,
10 offer Dr. Brody as an expert.

11 THE COURT: I have qualified him as such.

12 MS. FARRISE: Thank you. I do want to jump right
13 in.

14 Q Dr. Brody, have you come to court ready to explain
15 to the jury how asbestos, after it gets -- it's inhaled
16 into the body, actually causes this cancer called
17 mesothelioma?

18 A Yes.

19 Q And have you brought with you some slides that
20 demonstrate that to help them understand that?

21 A Yeah, sure. These are slides, most of which are
22 pictures I've taken with different kinds of
23 microscopes. They're pictures from textbooks. I use
24 some of these slides when I teach the medical students.
25 I use some of these slides when I lectured to the

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1 Cleveland Clinic a few weeks ago. I'll use them next
2 week when I give a talk. So they're a combination of
3 things. There's really -- the only difference between
4 when I talk to an audience of scientists and the jury
5 is vocabulary. I'm going to try to use words that
6 everybody understands, and that's really the only
7 difference.

8 Q And we hope it will be the science class we wish
9 we had.

10 Tell us --

11 MS. FARRISE: We have put up, Your Honor, what we
12 have marked as Plaintiffs' Exhibit Number 930, and it
13 is a group of exhibits which are demonstrative slides.

14 And do we have a paper version?

15 We'll get a paper version. But for now, it's
16 being displayed electronically.

17 THE COURT: Very good.

18 Dr. Brody will use these as demonstrative
19 evidence.

20 And any objection, Counsel?

21 MR. BOUCH: Your Honor, it's been represented
22 these are the same slides Dr. Brody has used for
23 30 years in courtrooms. And if that's the
24 representation, correct, I have no objection.

25 THE COURT: Thank you so much. Without objection,

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1 they will be used as demonstrative to Dr. Brody's
2 testimony.

3 You may proceed.

4 (WHEREUPON, Plaintiffs' Exhibit Number 930 was
5 admitted into evidence.)

6 BY MS. FARRISE:

7 Q Dr. Brody, would you mind telling the jury what is
8 shown on the screen as Plaintiffs' Exhibit 930-1, how
9 that is relevant to helping them understand how does
10 asbestos cause disease?

11 A May I stand?

12 Q It's totally up to the judge.

13 THE WITNESS: If I keep twisting around, I won't
14 be able to sit.

15 THE COURT: Don't mind me here. Wherever you're
16 comfortable presenting, go right ahead.

17 THE WITNESS: Thank you, Your Honor.

18 Is it possible to get some of the lights down?

19 THE COURT: Yes. The lights can be lowered a
20 little bit.

21 THE WITNESS: If we can get those over there, that
22 would be great.

23 THE COURT: Is that too much?

24 THE WITNESS: Okay. I'm answering your question
25 now, Ms. Farrise.

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1 BY MS. FARRISE:

2 Q What is this and how does it relate to the
3 question, how does asbestos cause disease?

4 A Right. So this is, obviously, a diagram. And you
5 know where your lungs are. But I just want to remind
6 you, when you take a breath, the air comes down this
7 tube that we call the trachea or windpipe. And you can
8 feel the top of that in your Adam's apple right here.
9 And you take a breath, and the air comes down this
10 series of tubes that are called conducting airways
11 because they conduct air down into the lungs. And you
12 can see that black line runs around the outside of the
13 lung. That line represents the pleura -- pleura, very
14 thin Saran wrap-thin membrane, wraps around the outside
15 of the lungs and makes the lungs airtight.

16 There is a single layer of cells around the
17 outside of the pleura, and those cells are called
18 mesothelial cells. And if somebody has a cancer of the
19 mesothelial cells, it's called mesothelioma.

20 So I'm going to explain how the asbestos fibers
21 travel down the airways, land in the gas exchange area
22 where we exchange oxygen and carbon dioxide, and then
23 are transported to the target cell for mesothelioma,
24 which are these mesothelial cells on the outside of the
25 lung. And then I'll explain how, once the fiber gets

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1 there, how it causes the mesothelial cell to become a
2 cancer cell.

3 Q And, Dr. Brody, in your work over the various
4 decades, have you looked at whether all of the
5 commercial varieties of asbestos fiber, flavors, I
6 guess they have been called, chrysotile, amosite, and
7 crocidolite, do all of the asbestos varieties cause
8 disease in the way that you're going to demonstrate?

9 A Yes.

10 Q Okay.

11 A Yes. There is a consensus that all of the
12 asbestos varieties cause all of the asbestos diseases.
13 There are a few people who don't agree with that, but
14 there is a consensus.

15 Q Next is Plaintiffs' Exhibit 930-2.

16 Are you able to change it?

17 A I have it. So in order to see these different
18 structures in the lung, we use different kinds of
19 microscopes. So this is a microscope that is called an
20 electron microscope. And you can probably see I had
21 this microscope for a long time. This microscope was
22 actually a victim of Hurricane Katrina.

23 I can take a piece of tissue the size of a period
24 at the end of a sentence or as big as this device in my
25 hand, put that tissue into this door right here in

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1 front of me, and there is a vacuum in this column. And
2 at the top of the column, there is an electron gun that
3 generates electrons, and those electrons pass down
4 through the vacuum and strike whatever sample I put in
5 there.

6 So I put the sample in, turn on the electrons, and
7 the electrons pass over the surface of the sample and
8 re-create, with the finest ultrastructural detail, the
9 finest elements of that agent or that material that I
10 put into the microscope. Then I collect those
11 electrons, and in front of me on the screen is an
12 electron image of whatever I put in the microscope.

13 And then just off the screen is a camera so I can take
14 a permanent image of whatever it is we're looking at.

15 For example, if I cut a piece of tissue out of the
16 lung, and you can see the pleura going here and the
17 conducting airways. I cut this out, put it in the
18 microscope. You can see your lung look like a sponge.
19 Obviously, a sponge for air, not water.

20 Here are the conducting airways. You can see the
21 gas exchange area, and you can see the pleura. And you
22 can see, when I cut across the pleura, how thin the
23 pleura is.

24 The mesothelial cells are out here on the surface,
25 and we can talk about a few of our defense mechanisms.

ROA_00951

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1 Q Dr. Brody, can you compare or describe how an
2 electron microscope is different than sort of a light
3 microscope that we have found in high school science in
4 terms of magnification?

5 A Sure. Well, the fundamental difference is that --
6 is the source of illumination. So if you're using a
7 light microscope, you're using either the room light as
8 we did in school or a light bulb, a powerful light bulb
9 that illuminates the sample that you put in there. And
10 the magnification you can get from the very best light
11 microscope is about a thousand times.

12 The electron microscope uses electrons to
13 illuminate the sample, and the wavelength of electrons
14 is very short, and we can magnify things hundreds of
15 thousands of times. So I use -- both kinds of
16 microscopes are very important for the work. It
17 depends on what you need to see, and that's when you
18 decide what microscope you're going to use.

19 Q Okay. So would you continue on. We have the
20 tools under our belt.

21 MR. BOUCH: Your Honor, could I request that they
22 do it on a question-and-answer basis?

23 THE COURT: They're doing it that way.

24 MR. BOUCH: Well --

25 THE COURT: I perceive that they're doing it that

1 way, so overruled. I believe that's exactly what she's
2 doing.

3 MR. BOUCH: My objection was the last question
4 was, "Please continue," which doesn't give me an
5 opportunity, Your Honor --

6 THE COURT: I don't think she's leading him, I
7 think, because Dr. Brody is experienced enough to be
8 able to answer the question she's asked him.

9 BY MS. FARRISE:

10 Q Dr. Brody, we have Plaintiffs' Exhibit 930-3 being
11 displayed for the jury, which you have already
12 described. Can you tell the jury why this is
13 significant to the question of how does inhaled or how
14 do inhaled asbestos fibers cause disease?

15 A Sure. Let's start with what we call our defense
16 mechanisms. You've probably heard about some of these
17 things.

18 When we're walking around in an environment with
19 bacteria and pollen grains and a few asbestos fibers,
20 and these things typically don't make us sick because
21 we have very good defenses. We have moisture in the
22 back of our throat, and we have, leading down into our
23 airways, we have mucus and cilia. And I want to show
24 you what the surface of our airways looks like.

25 This could now be you, me, a rat, a cat, or a

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1 mouse or a giraffe. We all have these same defenses,
2 so I'm going to focus the microscope on the surface of
3 the airway, and I'm going to fill the screen with
4 what's in that red spot. Could be anywhere along here
5 any of the animals I named, so I'm going to focus the
6 microscope here, take a picture, and the surface of our
7 airway then looks like this.

8 And you can see it says "human bronchiole."
9 Bronchiole is a small airway, and lining our airways
10 are these very fine hairlike structures. They're not
11 hairs at all. They're extensions of the cell surface
12 called cilia. And they are constantly beating in a
13 synchronous wavelike fashion.

14 So if something lands -- something like a bacteria
15 or pollen lands on the surface of our cilia, it gets
16 swept up to our mouth where we swallow it or spit it
17 out. That's going on all the time.

18 Now, you can see that we have some cells that
19 don't have cilia. And those cells make mucus. And you
20 don't think much about mucus.

21 Q Until you think about it.

22 A Unless you have a cold or unless you're a smoker,
23 or a few weeks ago I had a viral infection and you're
24 still clearing the mucus out of your airways.

25 So, actually, this combining of mucus and cilia we

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1 call the mucociliary escalator because it escalates
2 things up to our mouth. And this is a very important
3 part of our defenses. In fact, what you're looking at
4 here actually are the target cell for the disease lung
5 cancer. Not mesothelioma, but lung cancer.

6 Q What does that mean, the target cell?

7 A That's the cell from which the disease develops.
8 So if a person is a cigarette smoker and gets a lung
9 cancer, this is the cell type from which that cancer
10 develops.

11 Okay. Now, down in the lower right-hand corner,
12 you can see this size marker. And this is useful to
13 help us understand how big and small these things are.
14 So this, as you can see, says 10 μ or microns. So this
15 bar represents 10 microns, but, of course, that doesn't
16 help you unless you know how big a micron is.

17 So let me tell you how big a micron is. Take your
18 thumb and forefinger and make a space you can just
19 barely see through with your naked eye, which means no
20 magnifying glass, no microscope. You can see the human
21 eye can see just about a millimeter. That's about a
22 millimeter.

23 Now, take that millimeter and divide it a thousand
24 times. So what you have done then is made a thousand
25 microns. So the human eye can see about a thousand

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1 microns. You, obviously, can't see ten. You can
2 barely see a thousand. But with the electron
3 microscope, it's easy to magnify this. It's easy to
4 see ten microns.

5 And, now, if you want to know how long these cilia
6 are, you stand this up in your mind's eye, and you can
7 see these are about eight to ten microns long. As we
8 go through the pictures, you will see these micron bars
9 to let you now how long the fibers are and the cells
10 are and that sort of thing.

11 Q Okay. I guess you have another slide which helps
12 you go from here in our journey of understanding to how
13 inhaled asbestos fibers do cause disease?

14 A Exactly. I'm going to go past -- so this is the
15 slide we have seen before. We're going to go past the
16 escalator now and out into the gas exchange area for a
17 minute. Now, this is where the disease asbestosis
18 develops. Scar tissue in the lungs from inhaling
19 asbestos.

20 But we're going to go out and look at a few of
21 these air spaces because I want you to see the cells on
22 which the asbestos lands on its journey to the pleura.

23 Q Dr. Brody, does asbestosis occur in the pleura as
24 a primary sort of spot where it starts?

25 A Sure. Not by definition. In other words,

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1 asbestosis is scar tissue in the gas exchange area, but
2 there is scarring that occurs from asbestos in the
3 pleura. And that can occur in two ways. It can be a
4 plural plaque, which is a concise area of scar tissue
5 or diffuse pleural thickening caused by asbestos.

6 Q And does asbestosis typically start, at least, and
7 grow in the lung?

8 A Sure, yeah. That's right. Asbestosis by
9 definition a disease of the lung. This is, obviously,
10 a normal lung, but we're going to see where that
11 happens because I want to show you the cells that line
12 all of our air spaces.

13 So we'll go out to the end of the airway where it
14 opens out into the gas exchange. And so here is the
15 end of the airway now, and now you can see a few of the
16 hundreds of millions of air spaces that make up our
17 lung. And when I open this lung up, you can see --
18 well, it's a little far away, but you can see some
19 holes in the walls of the air spaces. And that's where
20 the blood runs.

21 All the blood in our bodies has to run through our
22 lungs. Think of, for example, this room that we're
23 sitting in, standing or sitting, as an air space, just
24 as one of these air spaces. So take the ceiling off,
25 and we're now sitting in an air space. And you look

ROA_00957

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1 down, and I see a carpet. I think I see carpet
2 squares. If you think of each carpet square as a cell,
3 you have a concept of the billions of cells that line
4 all of our air spaces, go up over the wall into the
5 next air space and joined together. You will see in a
6 moment they're not squares at all. They're multiple
7 shapes.

8 But the concept, as I explained -- and we're going
9 to go into a single human air space now. So I'm going
10 to place the microscope over an air space and look down
11 at the carpet. I'm going to show you that because
12 asbestos fibers land on the carpet, and that's the
13 pathway to which they get to the pleura. That was a
14 discovery we made.

15 Q And published for other scientists to see?

16 A So I'm going to focus the microscope here on a
17 single human air space. Now, we're looking down on the
18 carpet, and I'm outlining here for you a single carpet
19 cell. And you can see nature really doesn't make
20 squares very well. Nature makes smooth surfaces.

21 So this is a carpet oval. There is another oddly
22 shaped cell here, and these carpet cells. I'll give
23 you the big word called epithelial cells. Epithelial
24 cells cover surfaces. Your skin is an epithelium. We
25 call it the epidermis. These big, flat cells are very

ROA_00958

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1 thin, allow the movement of oxygen and carbon dioxide
2 into the blood underneath, and then the blood goes into
3 your brain and muscles; you use it up, make carbon
4 dioxide. It comes back to the lungs, and you exhale
5 carbon dioxide.

6 If a rat or a mouse ran by here, it would be doing
7 exactly what you and I are doing, exactly these same
8 structures that I'm showing you. Then you notice -- so
9 we have these big, flat cells. Then you see there is
10 smaller cells with little bumps all over them. That's
11 another kind of epithelial cell. So if the big, flat
12 carpet cells get damaged, the smaller cells start to
13 divide and take their place.

14 So we all have a repair mechanism. We have to
15 have an intact carpet to allow oxygen and carbon
16 dioxide to move, and these cells allow that repair.

17 And we have one more line of defense.

18 Q Okay.

19 A That last line of defense can be found down on the
20 carpet, and you see the cell here with bumps all over
21 it. I'm going to focus right down here, and now you
22 can see the bumps. You can see the individual bumps.
23 I'll give you the big word for the bumps so you know
24 they have a name other than bumps. They're called
25 microvilli, and they increase the surface area of the

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1 cells.

2 So here is one of the cells sitting on the carpet.
3 Here is the carpet down here, and then there are the
4 other actors. There's this one that's kind of ruffled
5 not going anywhere, and then there's this cell that has
6 a tail end and a couple false feet out in front of it.
7 And I caught this cell in the act as it was going after
8 this pollen grain here.

9 Have we heard about macrophages yet?

10 Q Not at all. But my question is: Based on what
11 you're showing, cells can move and change shape and do
12 whatever it is they were designed to do?

13 A Exactly. These cells, this cell right here and
14 this cell right here sitting on the carpet are called
15 macrophages. Macro means big and phage means eater,
16 and these cells patrol our air space surfaces.

17 If you don't smoke, you have anywhere from one to
18 three macrophages that can move around the air space
19 surface, and if they detect, by chemical message, a
20 presentation of a foreign particle, they can move
21 toward that particle. And this lung, once belonging --
22 this air space once belonged to somebody who was killed
23 in a motorcycle accident. I was on the medical
24 examiner's autopsy call, and I went in and prepared
25 this person's lung within just a few hours after death.

ROA_00960

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1 We have this chemical fixative that fixes the lung in a
2 lifelike condition, and I was going from air space to
3 air space looking for interesting things to show the
4 medical students. I came across these two macrophages
5 and this one going after this pollen grain.

6 Now, as this person was riding along on his
7 motorcycle, he was inhaling a lots of things. One
8 thing we know he inhaled was this pollen grain. Now,
9 these macrophages have chemical detectors on their
10 membranes, on their outside membranes. In my
11 laboratory, we discovered the chemical signal that
12 attracts macrophages to asbestos. Because as I'm going
13 to show you in a minute, when the asbestos hits the
14 lung, I saw macrophages coming in and collecting around
15 the asbestos.

16 Well, nobody is telling them where to go. They
17 don't have eyes and ears, so they must have chemical
18 receptors that allow them to depict a specific signal,
19 and we covered what that signal was. It was in five
20 different papers. I'm not going to go into any detail
21 on that, but I understand that these cells can
22 recognize foreign agents. And this cell I caught as it
23 was about to pick up this pollen grain. Then the
24 macrophage moves up onto the escalator, and every time
25 you swallow, you swallow a few of your friends, these

ROA_00961

Appendix_00982

1 macrophages that are scouring in slow motion your air
2 space surfaces, picking up things that don't belong
3 there.

4 Q And, Dr. Brody, sort of more general, people who
5 have significant challenges, for instance, with
6 allergies, they have pollen grains and have a reaction,
7 does that tell you in some way they may not have all
8 those macrophages other people have?

9 A Well, it's not so much the macrophages that are
10 controlling that. It's another kind of white blood
11 cell that's controlling that. T cells, lymphocytes
12 they are called. But lymphocytes are another important
13 protection mechanism that we have that play a central
14 role in producing allergies.

15 Q Moving on to what we have marked as Plaintiffs'
16 Exhibit 930-8, your slide, unless you want to go back.

17 A No. We're fine. I just want to tell you that we
18 have seen all the cells that we need now to understand
19 what happens when asbestos gets into the lung, so we
20 can talk about asbestos.

21 Q What is depicted here and how does it fit into the
22 journey of how inhaled asbestos fibers do cause
23 disease?

24 A Okay. So this is chrysotile asbestos. I'm sure
25 you have heard chrysotile, crocidolite, amosite,

ROA_00962

Appendix_00983

1 chrysotile being about 95 percent of the world's use;
2 crocidolite and amosite make up about five percent of
3 the other world's use, and I have used all three of
4 those types in my laboratory, but I typically use
5 chrysotile because it's used most in the world.

6 And so this is a fiber bundle. Means there are a
7 lot of fibers stuck together into a bundle. There is a
8 one micron bar here. And the reason you can see a
9 micron is because I magnified this 4,300 times. And so
10 now you can see the individual fibers. And if you want
11 to know how long they are, you take this little bar,
12 and you can see that this fiber is probably about five
13 or six microns long. Some of these are hundreds of
14 microns long as they go up the screen. Some of them
15 start out as a micron, fracture down to half a micron
16 and fracture down to tenths of microns. And that's the
17 nature, particularly of chrysotile, is that it's
18 constantly breaking down and fractures into smaller and
19 thinner fibers. And that makes it easier for the
20 fibers to move around in the lung. And I'm going to
21 show you that as well.

22 (Witness coughing.)

23 Q Doctor, are you okay?

24 A You know, I'm working on this problem, but I'm
25 fine. I'm fine. Thank you.

ROA_00963

Appendix_00984

1 Q Dr. Brody, you said that the chrysotile asbestos
2 fibers can break down into smaller sizes, but can they
3 be destroyed?

4 A Well, some of them, some of the very smaller
5 fibers can be destroyed, but you never destroy them
6 all. I mean, they have what's called a half-life.
7 That means the time it takes for half of those fibers
8 to disappear. But, I mean, I have done studies looking
9 at what's in the lung after a person passes away, and
10 we have collected those fibers and categorized what
11 they are and how big they are. And there's chrysotile.
12 If a person is exposed to chrysotile, there are
13 chrysotile fibers found in the lung. Just like all the
14 other fiber types.

15 Q Okay.

16 A So if one -- just to understand the size here, if
17 one were to have a bundle like this floating by and the
18 light were just right, when you walk into a room and
19 it's dustier than you ever thought it could be because
20 the light is glancing off the dust particles, if this
21 fiber were floating by and the light were just right,
22 it would look like a spec of dust. But if you can see
23 it with your eye, it's too big to get past the
24 escalator.

25 It's the fibers that fracture off of the bundles

ROA_00964

Appendix_00985

1 that you cannot see under any lighting conditions, that
2 you need a microscope to see. Those are the ones that
3 get down into the lung. So we followed that. What we
4 did, taking my lessons from Dr. Wagner, we had these
5 chambers that are about six feet high, four feet wide
6 with an asbestos generator at the top. And it makes it
7 very dusty in the chamber. We put rats or mice in the
8 chambers, and I can expose them for an hour, I can
9 expose them for two hours, for five hours, days or
10 weeks or months, whatever the question is. If the
11 question is where do the fibers land in the lung, which
12 we didn't know. I mean, we knew that they got into the
13 lung, and we knew they caused disease, but when I went
14 to the library to try to find out where do they go in
15 this complex structure I just showed you, there was no
16 answer.

17 So I did an experiment where we exposed the
18 animals for a single hour in any asbestos, then you see
19 in the lung, after that hour, must have landed during
20 that first hour. So I'll show you a little bit about
21 that, and then I'll show where those fibers go.

22 Q And is that part of how you have helped, really,
23 science understand how asbestos, inhaled asbestos
24 fibers, do cause disease in human beings?

25 A Sure. That's part of the story. You know, the

ROA_00965

Appendix_00986

1 story has a lot of different parts, if I may. The
2 story starts with the human lung. What does it look
3 like? What diseases develop? And is there a cancer
4 there? Is there scar tissue there? So you start with
5 the human lung.

6 Then the next thing a scientist does is he
7 develops a model like this rat model -- I'm telling
8 you, rats and mice -- so you can re-create the process.
9 Then you take the cells out of the animals or the
10 people and study those individual cells. And then you
11 go to, as we're going to finish today with the
12 molecular biology, that is the genes and genetic
13 because cancer is a genetic disease.

14 So when you asked me is this part of the story,
15 absolutely. But those are the way the parts work, and
16 I really neglected the very first one, and that's the
17 epidemiology. Because the epidemiology is telling us
18 where, in what populations, the disease is actually
19 developing and how they develop. Okay. So I'm going
20 to -- so we made an aerosol of the dust. The animals
21 are in there for an hour. Take them out, give them an
22 overdose of anesthetic. And if you give them an
23 overdose of anesthetic and if -- obviously, overdose
24 means they don't wake up. So let me show you what that
25 looks like.

ROA_00966

Appendix_00987

1 So here is a structure now you're familiar with.
2 The end of the airway where it opens on out into the
3 gas exchange area. You can see, again, some holes in
4 the walls where the blood runs through the walls of the
5 air spaces. So the air can come down into this airway,
6 it can go up into here or here. And this is from an
7 animal -- now this is one of millions of spots like
8 this around the lung. And this is from a series of
9 experiments in a series of papers. I'm showing you one
10 example.

11 So I'm going to focus the microscope right down
12 here. So this black hole right here is this black hole
13 right here. So we're going to look at this area of the
14 lung immediately after the exposure to chrysotile
15 asbestos. And let's focus the microscope right here.
16 So there we are, and you can see there's carpet. Here
17 is a small blood vessel running here, and this is a ten
18 micron bar. So that means this fiber is about ten
19 microns long. There are some fibers that are 50 or
20 more microns long. You can see them winding up here.
21 There are some short fibers here, so the fibers are now
22 littering the carpet, right?

23 Q Dr. Brody, can I just ask a question since you
24 have this slide up because the jury has heard that
25 chrysotile asbestos, the type you're showing, is the

ROA_00967

Appendix_00988

1 serpentine variety like a snake. But there are some
2 straight pieces here?

3 A Well, here is the serpentine component, and there
4 are a lot of straight fibers and curly fibers. There
5 is a combination of straight and curly fibers, but
6 that's meaningless to telling you whether or not the
7 fibers get down into the lung. Because fibers, when
8 they're inhaled, line up with the flow. So you can get
9 a curly fiber. I've seen in human lungs curly fibers
10 hundreds of microns long. So telling you the fibers
11 are curly doesn't really tell you anything about where
12 they're going.

13 Q Okay.

14 A So here is the combination of curly fibers and
15 straight fibers, and they're now sitting on the carpet.
16 So I'm going to fast forward to what we're -- we're
17 going to fast forward to where they go because that was
18 the next question.

19 Okay. They land on the carpet. Where do they go?
20 And you can actually see that, starting within this
21 first hour, you can see the fibers here, but you can't
22 see them here. You can see fibers here, but you can't
23 see them here. It turns out that these epithelial
24 carpet cells respond very quickly to the presence of
25 the asbestos and come up over the top of the fibers and

ROA_00968

Appendix_00989

1 actually shove them under the carpet.

2 Q In the first hour?

3 A Starting in the first hour. And as long as there
4 are fibers there, that's going to happen to these
5 fibers.

6 Q Okay. What happens next, Dr. Brody?

7 A All right. And so in order to answer that
8 question, we had to do a series of experiments to prove
9 to my colleagues that, in fact, they're going into the
10 carpet and under the carpet, and that that's the
11 mechanism through which they get into what's called the
12 fluid flow of the lung.

13 The fluid flow of the lung goes to the pleura. So
14 the fluid flow of the lung has two compartments --
15 blood and lymph. Lymph is a clear fluid that runs from
16 our bodies from head to toe. Wherever blood flows,
17 there is lymph around.

18 So let's take a look at another experiment and
19 question where are the fibers going.

20 So, again, this is another concept here, another
21 experiment, another question, where do the fibers go.
22 This is one example of an experiment that we did.
23 There is an air space here, one here, and you can now
24 see the carpet. And notice these characters here that
25 look like donuts. You can see this is what our red

ROA_00969

Appendix_00990

1 blood cells look like. They look like donuts because
2 they have a depression in the center. Not a hole, but
3 a depression.

4 And you can see where the cells are flowing. Red
5 blood cells are flowing through the small vessels, and
6 you can see there is a fiber here moving into the blood
7 flow. You can see -- I'm sensing some other activity
8 going on.

9 Q I think the jury is signalling.

10 A I'm seeing signals and questions. I'm sorry.

11 THE COURT: All right. Turn the lights up.

12 JURY FORELADY: Your Honor, may we have a
13 two-minute break?

14 THE COURT: Certainly. The jury would like a
15 break, and you absolutely are going to have a break.
16 We'll have a ten-minute break for the jury. Very good.

17 Let the jury retire. You just keep signaling
18 until you get me. I'm sorry, I was busy looking at the
19 slide.

20 (WHEREUPON, the jury exited open court.)

21 THE COURT: All right. Be at ease.

22 Dr. Brody, don't discuss your testimony.

23 THE WITNESS: Sure.

24 (WHEREUPON, a recess was taken.)

25 THE COURT: Let me have a jury list. Lawyers,

1 listen up here. Diane, this will be on the record.

2 I'm informed by the bailiffs that one of our
3 jurors, it's Juror Number 231, Shamonte D. Littlejohn,
4 Mr. Littlejohn works at the Hot Spot, and his employer
5 is not being very cooperative with him, and, therefore,
6 he is working nights until about 2 o'clock in the
7 morning. And it makes him very sleepy. And I noticed
8 he was having trouble staying awake yesterday, and he's
9 having trouble today. He's trying his darndest, and I
10 don't want him to lose his job. Although I could
11 certainly send some messages to the employer, I don't
12 know how that's going to impact and I am inclined to
13 excuse him and seek the first alternate.

14 MS. FARRISE: No objection, Your Honor.

15 THE COURT: How do y'all feel about that, Yancey?

16 MR. McLEOD: If the court is inclined to dismiss
17 him.

18 THE COURT: All right. I'm going to ask him to
19 join us for a moment and see how he feels about that
20 because it will be his choice. But jobs are awfully
21 hard to come by, and I don't want this man to lose his
22 job.

23 MS. McVEY: Absolutely.

24 THE COURT: So, Maxey, will you bring us
25 Mr. Littlejohn.

ROA_00971

Appendix_00992

1 (WHEREUPON, Juror Number 231 entered the
2 courtroom.)

3 THE COURT: Good morning, Mr. Littlejohn. Please
4 sit right here for a minute just so you won't have to
5 be standing the whole time. Have a seat there.

6 I understand that you're having a hard time
7 because your Hot Spot employer is not being very
8 cooperative with you about attendance at this trial and
9 you're having to work nights until about 2 o'clock.

10 I understand that you're having to work pretty
11 late at night. Explain to me and to the lawyers what's
12 happening with you.

13 JUROR NUMBER 231: Well, I got a job at Hot Spot,
14 and my boss retired me to work at night so 10:00 p.m.,
15 but sometimes it's to be 10:00 a.m. It's about six
16 miles from home, so I sometimes get home at 1:00 a.m.

17 THE COURT: So that makes you really fight to stay
18 awake during the trial, doesn't it?

19 JUROR NUMBER 231: Yes, ma'am.

20 THE COURT: Well, I'm going to let it be your
21 choice, because jobs are hard to come by, and I'm
22 reluctant to contact your employer because I don't want
23 that to be something to where you have a problem with
24 your job. So I've got three alternates, and I can put
25 an alternate in your place, if that's what you would

ROA_00972

Appendix_00993

1 I like to do, or you can see how you get along. I'm
2 going to let you have the choice.

3 So you tell me what you want me to do.

4 JUROR NUMBER 231: I was going to try to handle
5 it. But if I feel I can't handle it, I want somebody
6 to have the opportunity to take my place.

7 THE COURT: What we'll do is this. I want you to
8 be in communication with your forelady of the jury, and
9 if you feel you've got a problem that you can't handle,
10 all you've got to do is tell her and I'll let you go.

11 JUROR NUMBER 231: Yes, ma'am.

12 THE COURT: It's going to be your choice.

13 JUROR NUMBER 231: Yes, ma'am.

14 THE COURT: Very good. Thank you so much. You
15 may return to the jury room.

16 (WHEREUPON, Juror Number 231 left the courtroom.)

17 THE COURT: All right. Any further questions,
18 dilemmas, or reactions from the lawyers?

19 MR. McLEOD: A little surprised by his response,
20 but no objection.

21 THE COURT: Exactly. If he thinks he can handle
22 it, I'm willing to let him give it a shot, but we'll
23 see how it goes. But we know if he notifies the
24 forelady it's more than he can handle, well, we'll cut
25 him loose and bring on one of the alternates.

ROA_00973

Appendix_00994

1 MS. McVEY: I'm impressed with him. That is a
2 hard-working guy.

3 THE COURT: We're very, very blessed with this
4 jury. This is a lot more alert and into it jury than a
5 lot of juries I've had, particularly on cases that
6 involve a lot of technical matters as this case does.

7 Very good then. Bring me the jury.

8 (WHEREUPON, the jury came into open court.)

9 THE COURT: Thank you, Ladies and gentlemen of the
10 jury. You may be seated.

11 And let me give you and the lawyers a little time
12 frame for me. I'm going to meet with Judge Keith Kelly
13 today at 12:45, so I plan to break then or a little bit
14 before then so that I can get with Judge Kelly. So
15 just so you know kind of time frames and what we're
16 doing here.

17 MS. FARRISE: Yes, ma'am.

18 THE COURT: All right. You may proceed,
19 Ms. Farrise. And, Ms. Farrise, let's be sure that we
20 do question and answer as has been requested.

21 MS. FARRISE: No problem, Your Honor.

22 THE COURT: Very good.

23 MS. FARRISE: If you can help us with the lights.

24 THE WITNESS: We need a slide up there too.

25 THE COURT: Frankly, I thought the lights were

ROA_00974

Appendix_00995

1 pretty good the way they had them a minute ago. I
2 thought it was a little too dark before, so let's go
3 slow with it. Put a slide up there so we can see how
4 it goes with that light.

5 MS. FARRISE: While we're waiting for our tech,
6 none of us know how to make that work.

7 THE COURT: Let's keep it right there if we can.
8 Some of us are making a note or two so this helps us be
9 able to do both those things.

10 I think we can deal with this level of light,
11 don't you, Dr. Brody?

12 THE WITNESS: Yes.

13 THE COURT: All right.

14 Ms. Farrise, you may proceed.

15 BY MS. FARRISE:

16 Q Let me start with -- Dr. Brody, is this where we
17 should start? You have a changer. Great. So here we
18 are in the red blood -- flow of the red blood cells and
19 the donuts which are actually not donuts but actual red
20 blood cells with depressions. How does this slide and
21 the ones that you will show after demonstrate how
22 asbestos, inhaled asbestos fibers, cause disease in
23 human beings?

24 A Right. So I was telling you about these
25 characters that look like donuts but they don't have a

ROA_00975

Appendix_00996

1 hole in the center, they have a depression, and that is
2 what our red blood cells look like as they move through
3 the small vessels. I said this is what our red blood
4 cells look like. This is the lung of a rat, but this
5 is exactly what our red blood cells look like -- yours,
6 mine, giraffes, everybody else; this is the size and
7 shape of red blood cells that work best for carrying
8 oxygen and carbon dioxide.

9 You can also see there is a fiber here moving into
10 the blood flow. We and other scientists have shown
11 that asbestos gets into the blood flow. So that's one
12 of the pathways of fluid flow I was telling you about.
13 The second pathway is lymph, l-y-m-p-h. Lymph is a
14 clear fluid that flows from head to toe in our bodies,
15 and it flows wherever blood flows. If I were to pull
16 back the carpet, as I was using the analogy for carpet
17 cells, if I were to pull it back, it's moist. And
18 that's because of lymph. Lymph is flowing through our
19 lungs. And lymph collects in some vessels. And I'm
20 going to show you that as asbestos collects in that
21 lymph flow --

22 Q Do you have something to demonstrate that?

23 A I do. I just want to point out -- so, see, here
24 is a fiber that's all the way underneath the carpet.
25 You can barely see its electron shadow. And there is a

ROA_00976

Appendix_00997

1 bundle here and single fiber. So there is an array of
2 fibers, types that have reached the surface, and
3 they're starting to move under the -- move into the
4 lymph flow and into the blood.

5 This is the pattern of lymph flow in the lung.
6 This is called a Nettergram. I don't know if you have
7 seen Nettergrams yet.

8 Q No.

9 A So Dr. Netter has given us atlases of the human
10 body in health and disease. We use Dr. Netter's
11 diagrams all the time. And here Dr. Netter is showing
12 you the pattern of lymph flow in the lung. And you can
13 see there are a number of smaller vessels that are
14 ending at the pleura. Here is the pleura, and you can
15 look at the surface of the human pleura, rat pleura,
16 mouse pleura. You can see there is a reticular pattern
17 where there is a series of smaller vessels that course
18 along the outside of the pleura, and those are lymph
19 vessels.

20 So if asbestos is carried in the lymph, then it
21 has a pathway to the pleura, to the target cell. The
22 mesothelial cells are lining the outside of the lung
23 and the outside of the pleura and also, of course, the
24 inside of the chest cavity, the inside of the ribcage.
25 So there is a double layer of mesothelial cells.

ROA_00977

Appendix_00998

1 And now we see that the lymphatic vessels go to
2 the pleura. So the question is, does asbestos travel
3 in the lymph? And the way to answer that is by looking
4 at what are called lymph nodes. You see these small
5 bundles of tissue around the lung --

6 Q They look like green peas, Dr. Brody.

7 A Well, lymph nodes are small bundles of tissue that
8 filter the lymph wherever it flows. So we have lymph
9 nodes around our neck and armpits and, as I showed you,
10 around our lung and also peritoneal cavity. Wherever
11 lymph flows; we have these nodes that filter the lymph.

12 Lymph really has two major functions. One is to
13 help us control the pressure of fluids in our blood
14 vessels, and the other is to carry cells of the immune
15 system. Sometimes if you are fighting a cold or have
16 inflammation, you can feel your lymph nodes swelling in
17 your neck or armpits or groin because they're cells of
18 the immune system that are involved in inflammatory
19 events, and you can feel that in your lymph nodes.

20 Well, some investigators asked if there was
21 asbestos -- not my work -- some investigators asked if
22 there was asbestos collecting in the lymph nodes around
23 the lung and in the peritoneal cavity. Now, the lung
24 is the likely place to get a mesothelioma, the pleural
25 surfaces around the lung. The second most likely place

ROA_00978

Appendix_00999

1 is the peritoneal cavity which holds your liver and
2 your intestines, and all those surfaces are lined by
3 mesothelial cells, the same cells that line the surface
4 of your lung. So the question was if there's asbestos
5 collecting in the lymph nodes, then that proves that
6 asbestos flows in the lymph because that's the only way
7 to get asbestos into a lymph node is to inhale it, get
8 it into the fluid flow, and then it would be collected
9 in the lymph node. So some investigators collected
10 these nodes, and they found, in people exposed to
11 asbestos, there was an increased number of fibers in
12 the lymph nodes.

13 Q Okay. And finding fibers in the lymph node tells
14 you someone was exposed to asbestos?

15 A Well, it does. I mean, you know, it's really the
16 amount of asbestos because we all have -- I suppose you
17 heard, we all have asbestos in our lungs.

18 Q A little bit.

19 A That's right. We all have some asbestos in our
20 lungs. Not enough to cause disease. So we all have a
21 few asbestos fibers in our lymph nodes for the same
22 reasons. But a person who's exposed occupationally at
23 levels above the background, they will have more
24 asbestos in their lymph nodes. So the point of the
25 lymph nodes really is to have you understand asbestos

ROA_00979

Appendix_01000

1 flows in the lymph. So we're able to use that to
2 understand the pathway from asbestos landing on the
3 carpet, getting picked up, shoved underneath in the
4 lymph flow, and now we have the asbestos at the target
5 cell.

6 And let me go back here for one second because I
7 want to digress for just a second and finish telling
8 you about these macrophages.

9 Q Okay. But I need to ask you a question.

10 A Please.

11 Q And before you get to what you want to talk about,
12 I have one question.

13 A Of course.

14 Q The asbestos fibers that collect in the lymph
15 which show the person was exposed, is there anything
16 about -- does finding fibers in the lymph tell you
17 where, when, how, and to what products a person was
18 exposed?

19 A No, not at all.

20 Q Okay. Dr. Brody, you have here on the screen what
21 we have marked as Plaintiffs' Exhibit 930-14. And what
22 is this? How does it fit in the picture of how inhaled
23 asbestos fibers do cause disease in human beings?

24 A I told you about the macrophages which we
25 discovered the mechanism on which they find the

ROA_00980

Appendix_01001

1 asbestos. Well, here is the carpet right here. And
2 this is an air space. And there are one, two, three,
3 four, five, six macrophages all collected around these
4 fibers. You see there is a fiber here, ten-micron bar.
5 There are some fibers here, kind of sharing fibers with
6 one another. The problem is that these macrophages are
7 dead. They have holes in them. They're flattened out.

8 Remember what the macrophages are supposed to look
9 like? Here, ruffled and kind of attractive. These are
10 dying, dead and dying. And they're dead and dying
11 because asbestos is toxic. All the asbestos varieties
12 kill macrophages.

13 And what happens is when macrophages die, they --
14 or are injured, they produce a series of what are
15 called growth factors. The big word is cytokines.
16 Those are chemicals through which cells communicate
17 with each other. And so we have published a whole
18 series of papers on macrophage-derived cytokines, and
19 one of the things that happens is some of those
20 cytokines cause cells to divide and make new cells.

21 Now, a cell that's dividing is more likely to
22 become a cancer cell. So that's part of this process
23 where the macrophages are coming in to clean up, but as
24 they're coming in to clean up, they're actually being
25 injured and participating in the disease process.

ROA_00981

Appendix_01002

1 So we can then finish this concept now by talking
2 about how these target mesothelial cells become cancer
3 cells.

4 Q For the record, this is Plaintiffs'
5 Exhibit 930-16.

6 Dr. Brody, what is this and how does it answer --
7 help us understand how you answer the question: How
8 does asbestos cause mesothelioma and other diseases?

9 A So this is another Netter diagram, but I'm showing
10 you, just so you recognize, a normal pleura. Thin,
11 shiny. That's the way it's supposed to look. It's
12 shiny because of lymph fluid out there and also because
13 of the secretions of normal mesothelial cells. As
14 you're sitting here breathing, your lungs are rubbing
15 up and down against the inside of your chest cavity,
16 and you don't feel that because of the secretions of
17 the mesothelial cells reduce any friction you might
18 have, so you don't feel it. And that's what the
19 mesothelial cells do.

20 Now, compare this very thin, shiny pleura to that
21 of a diffuse mesothelioma that's spread over the
22 surface of the lung, and it can migrate and spread into
23 the peritoneal cavity and into the lung. And that's a
24 typical diffuse mesothelioma.

25 Q Dr. Brody, you have not spoken about it, but let

ROA_00982

Appendix_01003

1 me ask you to assume in this case that the mesothelioma
2 has spread to the pericardium. Is that one of the ways
3 that mesothelioma, once it starts to grow, can spread?

4 A Yeah, absolutely. And that is this cavity right
5 here. The -- so in this particular case, there was no
6 spread, at least at this point, to the pericardium.
7 The pericardium, the sac that holds the heart, is also
8 lined by mesothelial cells. And, in fact, there have
9 been some primary pericardial mesotheliomas. So you
10 see where it's spread to the underside of the
11 diaphragm, this muscle that allows us to breathe.

12 Well, this is also lined by mesothelial cells.
13 And you see how the tumor has invaded the lung along
14 these crevices that are lined by mesothelial cells. So
15 the point is that the tumor spreads along these
16 mesothelial surfaces like on the pericardial surface.

17 Q So what's depicted here is the white portion that
18 looks like, I don't know, a rind or maybe fat on meat
19 or something. That's the mesothelioma tumor breaking
20 out?

21 A That's correct. Billions of cells making this up.

22 Q But how did the asbestos get there from the lymph
23 to make this tumor that you just depicted?

24 A Right. So the fibers, you could see, travel in
25 the lymph. We know they travel in the lymph. They get

ROA_00983

Appendix_01004

1 to the pleura, to the target cell, and now I'm going to
2 spend the rest of the time explaining how they interact
3 with the mesothelial cell to become a cancer cell.

4 Q Okay. And we have here what we have marked and
5 we'll offer as the series Plaintiffs' Exhibit 930-19.

6 How, Dr. Brody, does what you are showing here
7 answer the question of how inhaled asbestos causes
8 mesothelioma?

9 A Right. So we're moving now from what I've been
10 telling you about cells. Remember I told you about
11 cells. So this process of carcinogenesis -- that's
12 cancer formation. So this is the cover of a meeting I
13 was at where I gave a talk at this conference, and the
14 conference was focused on fibers, on how fibers cause
15 cancer, carcinogenesis. And you can talk about cells
16 and carcinogenesis, but you have to talk, when you talk
17 about carcinogenesis, you have to talk about the
18 molecular aspect.

19 Molecular biology is the study of genes and
20 genetics. Cancer is a genetic disease. Cancer is
21 caused when there are a series of errors in a gene, the
22 genes that control cell growth.

23 So let me give you the simplest definition of
24 cancer. Cancer is the loss of control of cell growth.
25 I'll say that again, and I'll explain it. Cancer is

ROA_00984

Appendix_01005

1 the loss of control of cell growth. So if I took a
2 piece of your skin and I put it under a microscope, I
3 can show you that about ten percent of your skin cells
4 are growing. You're always losing skin. You need to
5 make new skin cells.

6 So you have a layer -- the top layer is not
7 dividing, but there is a layer underneath the skin
8 that's always making, about ten percent, making new
9 skin cells. Now, humans have about -- I should say
10 your lung and your liver are about one percent, and
11 different tissues have different rates of growth.
12 Humans about have 25,000 or so genes, somewhere between
13 20- and 30,000 or so genes that make us what we are.
14 You can see what a few of those genes did. Hair color,
15 eye color, skin color, different sized people,
16 different constructs of people. That's all genetic.
17 About one hundred of those genes, somewhere between
18 100, 200 of those 30,000 genes are called growth
19 control genes.

20 Now, I told you that cancer is the loss of control
21 of cell growth. So you have growth control genes. We
22 all have growth control genes, including rats, mice,
23 giraffes, et cetera. Grasshoppers. We all have growth
24 control genes. When a series of these genes are
25 damaged by carcinogens -- that's what cancer-causing

ROA_00985

Appendix_01006

1 agents are, carcinogens -- when a carcinogen damages a
2 series of these genes, that opens the door to cancer.

3 Remember most people, no matter how much asbestos
4 they're exposed to, do not get mesothelioma. And
5 that's because we have a series of genetic defenses.
6 Some of these growth control genes, it's a big package,
7 it means many things, and one of the things that they
8 do is not only control cell growth, but protect us from
9 genetic damage.

10 So I'm going to talk about that a little bit as we
11 go along, our genetic defenses and susceptibility, why
12 some people are more susceptible than others.

13 Q Dr. Brody, the next slide I have is 930-20, if
14 you're ready to move on.

15 A I just want to talk about these cells for a
16 second.

17 Q What are we seeing here?

18 A One of the ways that we studied this concept is by
19 taking cells out of people, animals, put the cells in
20 the dish, give them the right nutrients, and those
21 cells will grow. And you can add the agents that
22 you're interested, and you can watch under a microscope
23 what these things are doing and how they are
24 interacting.

25 Here you can see two cells. I'm outlining one of

ROA_00986

Appendix_01007

1 them. And here is another one. Some fibers have been
2 added to this. You can see a long fiber here and a
3 short fiber. Those fibers are collected around the
4 center circle in the cell. And the center circle in
5 the cell is called the nucleus. And the nucleus holds
6 all of your genes, DNA. DNA just means your genetic
7 material. Our genes are short segments of DNA. And
8 the DNA is protected by a membrane around the nucleus
9 called the nuclear membrane. And the nuclear membrane
10 keeps anything that doesn't belong in the nucleus,
11 keeps it out.

12 Now, one of the things that scientists have known
13 for a long time is that when cells divide, they lose
14 that protective nuclear membrane. So we asked in my
15 laboratory with collaborating laboratories in our
16 institution, we asked what would happen if we added
17 asbestos and other agents when the cells were dividing.
18 So let's see what happens.

19 So this is what is supposed to happen when our
20 cells divide. Lung cells, skin cells, whatever. The
21 point is three cells -- one, two, three. The two cells
22 on the outside are not dividing. The nucleus is
23 intact. The DNA is stained blue so you can see where
24 it is, and the cell in the center is dividing. It's
25 received a signal to divide.

ROA_00987

Appendix_01008

1 Now, if it's a skin cell, for example, you might
2 have fallen down and scraped your skin and you need
3 those remaining cells to start growing and fill in the
4 wound, that's a signal that you got from the serum
5 that's in your blood to make new cells, if you cut or
6 damaged any part of your body and it needs to be
7 replaced. I may have added a growth hormone to get the
8 cells to grow and stim. Whatever we're doing is to
9 recondense the DNA.

10 These threads are called chromosomes. Chromosomes
11 are bands of condensed DNA. Now, the concept here is
12 to make a new set of chromosomes just like the
13 original, and then you will have two cells just like
14 the original.

15 So let me show you what our chromosomes look like.
16 So I can spread these chromosomes out. And humans have
17 23 pairs of chromosomes. You got one from your mother,
18 one from your father. And notice these light and dark
19 bands spreading across the chromosomes. That's where
20 all the 20,000 or so genes are distributed across our
21 chromosomes.

22 Now, one of the National Institutes of Health most
23 recent one is called the National Human Genome
24 Institute. And they're mapping where all of our genes
25 are, which chromosome and exactly where on the

1 chromosome is that gene. And the reason we want to
2 know that is because if a gene is not on the correct
3 chromosome and in the right place, that gene will not
4 function.

5 So I'll give you an example. I'll tell you about
6 one of the genes that we studied in my laboratory.
7 It's one of those growth control genes. It's called
8 p53. It was the molecule of the year in 1993. It
9 means it had its own cover on *Science* magazine. And --

10 Q That must have been very --

11 A And it is called the guardian of the genome. It
12 is damaged in about half of all human cancer. What it
13 does is, if there is a genetic error, if there is
14 damage to some of these genes or DNA, the p53 gene gets
15 activated and stops the cell from dividing. If it's
16 not dividing, it can't pass these mistakes on to the
17 new cells called daughter cells. I'll show you in a
18 second. It's a very important gene. And we have
19 several. We have backups.

20 Not only that, but the p53 gene controls what's
21 called a death pathway. So if you do start getting
22 genetic errors, the death pathway gets activated, the
23 cell dies, and you never hear about it again. Most of
24 us are not going to get cancer because of these genetic
25 defenses. The take-home from this slide is that if a

1 gene is not in the right place on the right chromosome,
2 it's not going to function.

3 So let's go on and finish this process of normal
4 cell division.

5 Q Let me ask you. You mentioned earlier that one of
6 the -- on the slide for normal cell division, that the
7 DNA material, I think it was stained blue. Do you
8 remember that?

9 A Here it's stained purple.

10 Q Here they're stained purple, right. So can you
11 explain that process? You have material on a slide and
12 you can make it a color if you want?

13 A Yeah, sure. I mean, exactly. Exactly that. When
14 we want to be able to identify certain components of
15 various cells or tissues, there are chemicals that
16 allow us to stain them to appear certain colors, and
17 that's for a light microscope. This is not an electron
18 microscope picture. This is a light microscope
19 picture. So we wanted to know where the chromosomes
20 are, so we stained them with a dye that binds
21 specifically to DNA.

22 Actually, I didn't produce this, but the
23 scientists who did this stained this specifically with
24 a dye that binds to DNA and has a purple color. Now,
25 the yellow color is what's called a cytoskeleton.

ROA_00990

Appendix_01011

1 Cells have a skeleton too. It's not bone. It's kind
2 of a connective tissue. And you can see that skeleton
3 around that tissue. And the skeleton is very
4 important, is binding to the DNA.

5 And here you can see the cell has completed, so
6 you have what's called faithful replication with all
7 the genes going on the right chromosomes, and then you
8 will end up with two cells just like the original,
9 called daughter cells. And that's the concept. That's
10 what's supposed to happen every time.

11 Q But they're not actually purple?

12 A They're not actually purple. They don't have much
13 of a color, actually.

14 Q What is that in development of aneuploidy, and how
15 does that help the jury understand how inhaled asbestos
16 fibers do cause mesothelioma?

17 A Right. So this is from an experiment that we did
18 where we added asbestos to these cells that are
19 dividing. Now, over here in Panel A, these cells --
20 and there are millions of cells in this experiment.
21 I'm showing you one. So this cell is dividing. Half
22 of the chromosomes go to one side, half to the other.
23 We'll get two daughter cells just like the original.
24 No asbestos. That's what's supposed to happen.

25 Now, over here, crocidolite asbestos has been

ROA_00991

Appendix_01012

1 added, and you can see the crocidolite fiber here.
2 It's about 30 microns long. You can barely see a
3 thousand. This fiber is about 20 microns. This one is
4 thin. These are short fibers here, about four or five,
5 six microns. Most of the DNA has moved to the newly
6 developing cells, but some of the DNA you can see is
7 bound to the surface of the asbestos.

8 Now, that results in this condition, aneuploidy,
9 and I just want to show you one more example of what
10 aneuploidy is and its significance. Then I have one
11 more slide.

12 So this is an aneuploidy produced by chrysotile
13 asbestos in mesothelial cells. These are mesothelioma
14 cells. Chrysotile asbestos has been added. There is a
15 normal mesothelial cell, no asbestos. After the fibers
16 go to one side, half to the other, we'll have two new
17 cells.

18 Over here the two cells have developed, but there
19 is a chrysotile fiber spanning the cells and some DNA
20 found on the surface of the fiber, again resulting in
21 aneuploidy, which means abnormal chromosome cell
22 separation. These are not cancer cells, but the door
23 has been opened. And the door has been opened because,
24 by definition, that means there's some DNA that's not
25 where it's supposed to be. And if you have been

ROA_00992

Appendix_01013

1 listening to me, you remember I said if a gene's not
2 where it's supposed to be on the right chromosome, it's
3 not going to work.

4 So what if in this DNA that's bound to the
5 chrysotile or this DNA bound to the crocidolite is the
6 p53 gene or any one of a hundred other genes that
7 protect us from getting cancer? The answer is those
8 genes will not function. And that, therefore, the door
9 to cancer is open.

10 Q Okay.

11 Dr. Brody, just to clarify, those protective p53
12 genes, if asbestos injures them or kills them, then
13 they're not where they're supposed to be when we are
14 next exposed or something else happens, and that is
15 why, as you're going to talk about in a minute,
16 finishing it off, cancer occurs?

17 A Yeah, exactly. When these molecular protective
18 mechanisms are not functioning, that increases our
19 susceptibility with every mistake; with every gene that
20 isn't repaired, it increases the likelihood of a cancer
21 forming.

22 Q And what do we have here in Plaintiffs'
23 Exhibit 930-25 that explains how inhaled asbestos
24 fibers do cause mesothelioma?

25 A Right. So this is the final slide. And what I

ROA_00993

Appendix_01014

1 want to do with this slide is I want you to understand
2 what was going on during that latency period, what's
3 happening during the decades before this person comes
4 to the clinic. But let's start with just a little
5 summary of what we've been talking about.

6 Here is a layer of cells. And this is a perfect
7 example of mesothelial cells, single cell layer, single
8 nucleus, covering hundreds of millions of these cells
9 sitting on the surface of the pleura. And the artist
10 has a couple of lightning bolts coming in and saying
11 "DNA damage." As far as I know, lightning doesn't
12 cause DNA. The point is there's something from the
13 environment has reached the DNA of the target cell and
14 produced damage in certain genes' DNA sequences.

15 Now, the artist has one of the daughter cells
16 going off into the upper left-hand corner and dying. I
17 told you about this death pathway. That's a very
18 predominant, very prominent result of DNA damage. You
19 go out and get a sunburn. UV radiation causes genetic
20 damage in your skin, but, typically, you don't get a
21 melanoma skin cancer because those cells with genetic
22 damage are killed by our genetic defenses. So -- but
23 the artist knows very well that there is a death
24 pathway, and he's got the DNA clumped up, and he's got
25 the cell bubbling up. There is actually a macrophage

ROA_00994

Appendix_01015

1 coming in here to clean up the mess. So that's going
2 on in all of us all the time.

3 But we're talking about a cancer. We have a
4 tumor, so we know that one of the daughter cells with
5 an error must have survived. And here is that daughter
6 cell right here. Now, you have this tumor with this
7 funny sort of, I don't know what color that is, sort of
8 green-brown. And all of the cells in that tumor have
9 the same color. And I'll tell you why in just a
10 second.

11 But between this first daughter cell with an error
12 and the tumor, you've got to give me about 50 years. I
13 don't know what the latency is in this case.

14 Q The claim is 30 to 35 years.

15 A Okay.

16 Q From exposure to manifestation of mesothelioma.

17 A I was going to say that the typical tumors develop
18 between 30 and 70 years. Any time in that period is a
19 typical latency.

20 Now, what's going on in those 30 years? That's
21 what I want to spend the rest of the time --

22 Q Dr. Brody, let me ask you that question. What is
23 going on in those 30 years or 30-plus years?

24 A Think about that mesothelial surface. You have a
25 cell with a genetic mutation, p53, or a number of other

ROA_00995

Appendix_01016

1 genes. I can give you a whole list. There is an
2 excellent paper published just this last year from a
3 Harvard professor who asked that question, what does
4 the list of genetic damage look like in people with
5 mesotheliomas, and it's a long list, and it has a lot
6 of different errors. Obviously, I'm not going to go
7 through that, but I just want to make that point.

8 So now there is a cell sitting there with an error
9 on a mesothelial surface. And that cell sits there,
10 sits there looking and acting like a normal mesothelial
11 cell for months. In fact, I told you skin is
12 ten-percent, lung is one-percent division. The
13 mesothelial cell surfaces have a rate of a tenth of one
14 percent. There is a very low background rate of
15 division. That's one of the reasons there isn't a lot
16 of mesotheliomas, actually. That's a whole other
17 story.

18 Q Let me stop you there. Dr. Brody, are you saying
19 that these particular cells, the mesothelial cells,
20 they don't divide anywhere near as rapidly as other
21 cells?

22 MR. BOUCH: Objection; leading, Your Honor.

23 THE WITNESS: That's exactly right.

24 MR. BOUCH: Objection; leading, Your Honor.

25 THE COURT: Don't lead, Ms. Farrise.

1 MR. BOUCH: Could we strike the answer and have it
2 reasked, please.

3 THE COURT: Reask the question, Ms. Farrise, in
4 the form of a question.

5 BY MS. FARRISE:

6 Q How does the rate of division of mesothelial cells
7 compare to other cells, Dr. Brody?

8 A As I say, it's much lower, ten percent in the
9 skin, one percent in the lung, and a tenth of one
10 percent in the mesothelial surfaces. So as I say, a
11 cell with a genetic error can sit there looking and
12 acting like a normal mesothelial cell for months, but
13 eventually it has to divide -- 2 cells, 4, 8, 16, 32,
14 64, making what's called a field of similar cells with
15 that error, passing on the error to the daughter cells.

16 Now, one or more cells in that field then gets hit
17 again. Another fiber causes another error in one or
18 more of those cells. So now you have one more, more
19 mesothelial cells with two errors in genes that control
20 growth. And that cell then sits there looking and
21 acting like a normal mesothelial cell for months. But
22 eventually it has to divide -- 2 cells, 4, 8 16, 32,
23 another field of mesothelial cells. One error is not
24 enough, two is not enough, three is not enough, four is
25 not enough. When you start getting in five or six, we

ROA_00997

1 don't know. That may be enough for some people, but
2 when you look -- I was telling you about this scientist
3 who made that list. It can be 15 to 20 different
4 errors in a mesothelial. Now -- in a tumor. Now, you
5 don't know if they were all necessary. Probably
6 weren't. So that's a really important field to study
7 right now, knowing just which genes are essential for
8 producing the mesothelioma.

9 Okay. So let's go back to where we are now.
10 We're up to three errors. Eventually it divides. I
11 can stand here and do that for decades, go through that
12 process for decades. Finally, a single cell with
13 sufficient errors and errors in the right combination
14 for that person grow out as a tumor. And that's why
15 they're all the same color. It's a clone. A single
16 cell has sufficient errors and in the right combination
17 for that person to grow it into a tumor decades after
18 those initial events. And as they added over time and
19 as the genetic errors accumulated, in this case
20 whatever it was, 35 years later, a tumor starts to
21 grow, and you can see now that there are multiple cells
22 dividing. And if you went in and looked at the errors
23 in this tumor, they would all be the same because they
24 all came from a single cell and brought the person to
25 the clinic.

ROA_00998

1 Q And brought the person to the clinic. Thank you,
2 Dr. Brody.

3 With this slide, yesterday the jury heard that
4 mesothelioma is a signal tumor for people living in
5 North America with prior asbestos exposure. Do you
6 know what I mean by that?

7 A Oh, sure.

8 Q So, for instance, if you were exposed to cotton
9 fibers, would they have the same impacts on the
10 mesothelial cells and cause a mesothelioma?

11 A No. Cotton fibers can't get to the mesothelial
12 surfaces.

13 Q So in your work, Dr. Brody, have you and other
14 scientists looked at whether or not there's other
15 things that can cause mesothelioma besides asbestos for
16 people living in North America?

17 A Well, that's the epidemiological question. I
18 mean, the epidemiologists are the ones who ask that
19 very question, and the answer is no. I mean, the only
20 thing that we know in North America that causes this
21 cancer is asbestos.

22 Now, we can take different agents into the
23 laboratory and do a number of different things with
24 them, but we know through epidemiology what causes
25 mesothelioma in populations of individuals.

ROA_00999

Appendix_01020

1 Q And what is that, Dr. Brody?

2 A It's asbestos. All the asbestos varieties.

3 Q And has there been a little or a lot -- can you
4 discuss for the jury how much study has gone into that,
5 answering that question?

6 A Oh, gosh. I mean, I don't know how many hundreds
7 of papers. Maybe thousands. I don't really know. I
8 have never counted, but there are many papers in which
9 the epidemiologists have looked at different
10 populations of individuals who have been exposed to
11 asbestos, different settings, different constellations
12 and have established without any doubt that asbestos
13 causes mesothelioma. And all of the asbestos
14 varieties.

15 Q And, Dr. Brody, do you have an opinion as to does
16 it matter whether or not the asbestos was liberated
17 from a gasket product or a floor tile or some other
18 kind of product in terms of whether that fiber can
19 cause mesothelioma?

20 A Right. So the lung does not discriminate. The
21 lung cannot determine or do anything different from a
22 fiber based on where -- on its origin. Asbestos is
23 asbestos.

24 Q Dr. Brody, let me -- strike that.

25 Do you have -- strike that.

ROA_01000

Appendix_01021

1 What is your opinion as to whether there is harm
2 done on a cellular and molecular level at the time of
3 exposure?

4 A Sure. So -- so when a person inhales asbestos,
5 whether it's the first exposure they have had or the
6 tenth exposure they have had, some proportion of those
7 fibers reach the target cell. Some proportion of them
8 are captured in the upper airways.

9 The ones that reach the target cells very quickly,
10 I mean, we have shown in the laboratory and other
11 scientists have shown this as well, very quickly, I
12 mean within hours, within days, there is a reaction, a
13 response, and there is a genetic response and genetic
14 damage caused by asbestos. Now, I call that harm.
15 Injury is a word I more typically use, but that's harm,
16 sure.

17 Q Okay. And so that cellular injury that happens at
18 or near the time of exposure, when the asbestos fibers
19 are inhaled, may or may not turn out to be a
20 mesothelioma or some of these other conditions you've
21 described later on?

22 A No. Of course, you may or may not get disease.
23 It depends on the dose, right? The dose -- we're
24 all -- as I already said, we're all exposed to
25 asbestos, but we're not going to get a disease from

ROA_01001

Appendix_01022

1 that because we're not getting a high enough dose. And
2 many people occupationally exposed get exposed and have
3 some harm or injury and don't necessarily get a
4 disease. Depends on dose and susceptibility.

5 Q That was going to be my question. Dr. Brody, what
6 is the threshold for asbestos exposure?

7 A Well, for causing mesothelioma, there is no
8 threshold that I know of. In other words, there's no
9 level, once you get above background, there's no level
10 that we know is safe or will not cause mesothelioma.

11 Q And how does that operate with the genetic
12 susceptibility part which you also mentioned?

13 A Well, susceptibility is based on how your genetic
14 defenses respond. So if somebody has a more stable p53
15 or a whole series of genes that protect them and send
16 cells down a death pathway, we have sets of genes that
17 are called DNA repair genes. That tells you something.
18 That means that these genes make enzymes that can
19 actually knit together damaged DNA. So if somebody has
20 a more active or more efficient set of DNA repair
21 enzymes, they would be less susceptible. So this
22 combination of dose and susceptibility dictate whether
23 or not a person is going to get a mesothelioma.

24 Q Is there, Dr. Brody, any one-size-fits-all dose
25 that would apply to a variety of human beings, for lack

ROA_01002

Appendix_01023

1 of a better word?

2 A Well, I just indicated the answer is no. I mean,
3 you don't know what a given individual -- you don't
4 know that individual's susceptibility. Now, once they
5 have the disease, you know they were susceptible.

6 Q Dr. Brody, all of the information that you've
7 shared with the jury today, have you shared that to a
8 reasonable degree of medical and scientific certainty?

9 A Yes.

10 Q Thank you so much.

11 A You're welcome.

12 MS. FARRISE: Your Honor, those are all the
13 questions I have right now.

14 THE COURT: Very good.

15 Get the lights up, if you would, please, sir.

16 Mr. Bouch, your witness.

17 MR. BOUCH: Your Honor, I have two matters of law
18 to take up with the court. I can do it at sidebar or
19 we could excuse the jury for ten minutes. The court's
20 pleasure.

21 THE COURT: Well, let's excuse the jury if it's
22 going to take that long.

23 Jury, you can go to your jury room for ten
24 minutes.

25 (WHEREUPON, the jury exited open court.)

ROA_01003

Appendix_01024

1 THE COURT: You can just sit at counsel table if
2 you want to, Dr. Brody.

3 MR. BOUCH: Your Honor, I apologize because I know
4 you want to get things going, and this will take just a
5 minute.

6 Dr. Brody, during qualification, made a specific
7 point on two occasions about he has been in the U.S.
8 Supreme Court and other courts listening to the
9 discussion of his testimony and indicated with some
10 degree of approval.

11 There was a previous motion in limine that we were
12 not allowed to question the doctor on the many courts
13 that have stricken his testimony, and I wish to ask him
14 about it. He has opened the door. Counsel has opened
15 the door, and I believe I have a right to ask him about
16 not only the U.S. Supreme Court and others where he's
17 been accepted but the others that he has not been
18 accepted.

19 THE COURT: Ms. Farrise.

20 MS. FARRISE: Your Honor, there's been no door
21 open. In terms of Dr. Brody's background, he was
22 discussing the places where he has been asked to come
23 and give the -- you know, his expertise as it relates
24 to asbestos. It's not a question of, "I've been
25 qualified as an expert a thousand times in a thousand

ROA_01004

Appendix_01025

1 courts." Certainly that wouldn't have been secret
2 after Mr. Bouch started off by saying, as it relates to
3 his qualifications, "Oh, I've known Dr. Brody for
4 30 years," indicating that, you know, he must testify
5 every day.

6 So to some extent there clearly is -- we don't
7 believe the door has been opened. We don't believe
8 that if it has, even in the slightest, unlike this
9 issue with the asbestos body and the fiber type, that
10 there would be any prejudice or that it even registered
11 with the jury. He talked about simply being called to
12 testify before congress, not in other lawsuits.

13 MR. BOUCH: Your Honor, he said he was called to
14 testify in the supreme court.

15 THE COURT: No, no. He did not say that. What he
16 said was that his scholarly information was information
17 that was in a transcript of material that was examined
18 by the supreme court, and he went to the supreme court
19 to hear whatever the discussion might have been about
20 material in the record that related to his scholarly
21 opinions. That is what I took from what he said.
22 Nobody testifies in front of the supreme court, as we
23 know.

24 MS. FARRISE: Thank you, Your Honor.

25 THE COURT: What he was talking about is material

ROA_01005

Appendix_01026

1 from him that was in a record. So that's what I took
2 from what was said.

3 MR. BOUCH: All right. Your Honor, the second
4 issue, and, again, I feel like I'm kicking a dead dog,
5 but Dr. Brody testified as to fibers in the lymph nodes
6 indicating exposures. We have had the discussion with
7 Dr. Frank that fibers in the lymph nodes, 96, that's my
8 number, he says it's less than that, but it's still
9 more likely than not the fiber type in asbestos bodies
10 are amphibole asbestos. Dr. Brody has published on
11 this, and it's -- in fact, Dr. Brody is cited in
12 Dr. Roggli and Dr. Oury's book. I want to ask him
13 about that, but I wanted to give the court a heads-up
14 so you didn't think I was trying to get around your
15 ruling on Dr. Oury.

16 THE COURT: Dr. Oury -- let me repeat this one
17 more time. The ruling about Dr. Oury has to do with
18 Dr. Oury's opinion about amphibole asbestos being in
19 the lymph nodes of Plaintiff Dale Jolly. And what I
20 excluded was his ability, Dr. Oury's ability, to
21 testify that amphibole asbestos was or was not in the
22 lymph nodes of Mr. Jolly, and I excluded that testimony
23 when we had pretrial hearings and repeated the ruling
24 since we have impaneled the jury because Dr. Oury, by
25 his own testimony, said that he could not tell whether

ROA_01006

Appendix_01027

1 they were amphibole or whether they were actually
2 amphibole asbestos fibers in the slide from Mr. Dale
3 Jolly that he had because he was not able to perform
4 some digestion tests that would have demonstrated
5 exactly what it was:

6 I have allowed Dr. Oury to testify just about what
7 percentage of folks have what kinds of asbestos in
8 their asbestos mesothelioma tumors. And he's going to
9 testify about that.

10 Similarly, Dr. Brody has not shown us any slides
11 with respect to Mr. Jolly. He is testifying about his
12 knowledge and is using slides and material from
13 textbooks and his own research to talk about how
14 asbestos, when it is inhaled, becomes the disease of
15 mesothelioma tumors. And I'm going to continue to
16 allow him to do that.

17 I am not going to permit any questions about
18 Dr. Brody along the lines that we talked about in our
19 motion-in-limine hearings that relates to the
20 accusations that were made that -- you made in those
21 hearings about him being disqualified or his opinions
22 being discounted or something of that nature, if that's
23 what you're aiming at.

24 MR. BOUCH: No, ma'am. No, ma'am.

25 THE COURT: He's not the doctor you fussed about

ROA_01007

Appendix_01028

1 with that?

2 MR. BOUCH: No, ma'am. No, ma'am. I'm merely
3 bringing this up because we have had several sidebars
4 on this.

5 THE COURT: So this is strictly related to what
6 he's going -- he's not accused of doing anything bad.

7 This is a question of whether or not he can talk
8 about -- whether you can ask him about those slides and
9 about amphibole?

10 MR. BOUCH: That's right.

11 THE COURT: I got the picture now, and I certainly
12 think you can do that subject to whatever objections
13 the plaintiff wants to make about that.

14 MR. BOUCH: It was the wrong doctor you're
15 referring to. That was another doctor.

16 THE COURT: I'm cool with where you're going now.
17 I noticed that you didn't use the word "amphibole," but
18 as you know, South Carolina is a very open
19 cross-examination state, and I'm going to allow him to
20 ask about amphiboles because it's all related to the
21 general overall topic that Dr. Brody has been
22 presenting on which is how does inhaled asbestos and
23 what kinds of inhaled asbestos creates mesothelioma.
24 So far he's testified all do.

25 MS. FARRISE: Yes.

ROA_01008

Appendix_01029

1 THE COURT: So I think that would include
2 amphibole asbestos, and you could certainly ask him
3 about that as long as you don't stray into asking him
4 what the slides related to Dale Jolly mean because he
5 hasn't presented anything along those lines, nor do I
6 think he knows anything along those lines.

7 MR. BOUCH: This is more a heads-up for the court
8 so it's not misinterpreted where I'm going. I
9 understand the court's ruling.

10 THE COURT: Very good.

11 MR. BOUCH: Finally --

12 MS. FARRISE: Excuse me. Before we move on, yet
13 the scrape-up, and I just want to make sure that we
14 don't have a replay or, you know, was that counsel
15 offered Mr. Jolly's -- the photo -- microphotographs of
16 Mr. Jolly slides and then went on to talk about general
17 topics which tied the two together.

18 THE COURT: I feel quite confident he's not going
19 to do that again.

20 MR. BOUCH: I am confident, Your Honor, after
21 28 years with Dr. Brody, he has probably seen President
22 Trump's income tax returns before he saw those
23 photographs, so I'm not going to bring that up.

24 THE COURT: I think we all -- whatever was your
25 third point, President Trump --

1 MR. BOUCH: No.

2 THE COURT: -- I don't think we need all that
3 throat clearing. We've got a trial to do, and we don't
4 need to be wasting time doing that.

5 Anything else?

6 MR. BOUCH: No. One thing, Your Honor. We move
7 to strike Dr. Oury's -- or Dr. Brody's testimony,
8 renewing our grounds that he testified as to each and
9 every exposure which may or may not be a valid medical
10 opinion, but it's certainly not a legal standard, and
11 we rely on the matters previously filed that each and
12 every exposure is an impermissible opinion on this
13 issue.

14 THE COURT: Well, I don't know where you're going
15 with it's not a legal standard. The *Henderson* case
16 talks about the importance of the exposure, but the
17 kind of exposure and what creates an important result
18 is what he and Dr. Frank have both testified to, and
19 that is something that is completely permitted by
20 *Henderson, Lohrmann* and all the cases. One has to do
21 with how much exposure, and the other has to do with
22 whether each -- what the significance and importance of
23 each exposure is. So I renew my overruling of the
24 motion to strike.

25 MR. BOUCH: Your Honor, again purely for the

ROA_01010

Appendix_01031

1 record, we're predicating this on your motion-in-limine
2 ruling was a final order, and this is a subsequent
3 motion to strike after the testimony to preserve that
4 record.

5 THE COURT: Very good. I think you preserved all
6 over the place.

7 MR. BOUCH: Thank you, Your Honor.

8 MS. FARRISE: I know we're going to start
9 cross-examination. Could I have 60 seconds just for --

10 THE COURT: Yes.

11 MS. FARRISE: Thank you.

12 MS. McVEY: Thank you, Your Honor.

13 (WHEREUPON, a recess was taken.)

14 THE COURT: Bring me the jury.

15 (WHEREUPON, the jury entered open court.)

16 THE COURT: We are now ready to proceed with the
17 cross-examination of Dr. Brody.

18 Mr. Bouch.

19 MR. BOUCH: Thank you, Your Honor. May it please
20 the court.

21 CROSS-EXAMINATION

22 BY MR. BOUCH:

23 Q Dr. Brody, good morning.

24 A Good morning.

25 Q Always nice to see you again.

ROA_01011

Appendix_01032

1 A Thank you.

2 Q We've done this for about 25 years, haven't we?

3 A I have seen you a few times in this period, yes,
4 sir.

5 Q California, Minnesota, Texas three or four times,
6 South Carolina?

7 A Well, you remember better than I.

8 Q That's disappointing. You hurt my feelings.

9 A Trying not to.

10 Q Dr. Brody, you have not met Mr. Jolly, have you?

11 A Correct.

12 Q Now, you have not met his family?

13 A That's right.

14 Q You have not spoken with his treating doctors?

15 A Right.

16 Q And really haven't spoken with any of the other
17 experts in the case, have you?

18 A Correct.

19 Q You have reviewed no medical records?

20 A Correct.

21 Q Do you know what type of mesothelioma, other than
22 pleural, that Mr. Jolly may be suffering from?

23 A I don't. I mean, it could be epithelioid or
24 sarcomatoid, but that wouldn't change anything I said.

25 Q And, Doctor, you had indicated that you believed

1 that chrysotile causes mesothelioma, and only a very
2 few researchers believe to the contrary?

3 A That's correct.

4 Q And one of those researchers who believed to the
5 contrary was Dr. Wagner with whom you studied?

6 A Well, that's actually not true. Dr. Wagner, when
7 I worked with him, was very clear that all the asbestos
8 varieties cause mesothelioma. He showed that in the
9 animal model. He exposed the animals to chrysotile and
10 they got mesothelioma, and he knew that it did. And
11 then as his career went on, he started being, shall we
12 say, under the influence of certain companies and
13 changed his mind.

14 Q He was corrupt?

15 A I didn't say that. I'm saying that he changed his
16 mind.

17 Q Do you have any evidence that he was unduly
18 influenced by anybody?

19 A Well, I don't have that evidence, but it's been
20 published. It's been written about that that happened.

21 Q It's been published by lawyers for the plaintiff,
22 hasn't it?

23 A Well, it's been published in a couple of different
24 places. But he certainly did change his mind I know
25 personally.

ROA_01013

Appendix_01034

1 Q Okay. You don't, as a Ph.D. biologist, treat
2 patients, do you?

3 A Of course not.

4 Q And when it comes to diagnostic criteria,
5 diagnostic decisions and opinions, you've told me in
6 the past you would defer to a qualified pathologist
7 such as Dr. Roggli, Dr. Crapo, Dr. Oury, and those
8 individuals?

9 A Of course.

10 Q And you've published with these doctors before?

11 A That's right.

12 Q Now, Doctor, I don't have many questions for you.

13 A Good.

14 Q Mr. Jolly does not have asbestosis, does he?

15 A I don't know that. I wasn't asked to assume he
16 does, so.

17 Q You have not been given any information that he
18 has?

19 A That is true.

20 Q Nor does he have pleural plaques?

21 A I don't know that.

22 Q Nor does he have diffuse fibrosis?

23 A Well, if he doesn't have asbestosis, he wouldn't
24 have diffuse fibrosis.

25 Q Nor does he have lung cancer?

ROA_01014

Appendix_01035

1 A Not that I know of.

2 Q Now, you showed the jury several slides, many of
3 which were rat tissues from your experiments?

4 A Sure. I went back and forth between human and
5 rat, absolutely.

6 Q And I think the first three or four were human,
7 and the rest of them were rats, if my memory serves me
8 correctly?

9 A Well, we could go through them, but there is a
10 balance there, and the concept is that the rats are
11 telling us about humans, so.

12 Q And I know in your studies, and you have published
13 many studies as a result of your experiments with these
14 rats, these rats are bred specifically to develop
15 disease, to be very susceptible to disease?

16 A Some are, but typically that's not true.
17 Typically, we have animals that develop the diseases
18 pretty much at the same rate as people. They're not
19 bred, in fact, to be susceptible. But we do -- in some
20 experiments, there are mice -- typically, we use mice
21 for that that have certain genes missing or knocked
22 out, as it's called, and they would be susceptible.

23 Q And you told the jury you created an aerosol of
24 asbestos dust in which you expose these rats in your
25 experiments?

ROA_01015

Appendix_01036

1 A Rats or mice, yes.

2 Q And this aerosol constitutes probably a thousand
3 fibers per cc or greater?

4 A Well, we have done that, sure.

5 Q And you've done that. And you have done it not
6 only for an hour, but for days, weeks, and months?

7 A Very dusty, that's right.

8 Q Very dusty. And, of course, the jury has heard
9 about the .1 fiber per cc over eight hours and that
10 sort of standard. This is ten thousand times the
11 exposure.

12 A Sure. But that's -- one thing has nothing to do
13 with the other. The .1 you're talking about is the
14 workplace attempt to protect people. We're trying to
15 make sure they have a disease process, so I'm not sure
16 why you're asking me about both of those.

17 Q Just to put in perspective the amount of dust you
18 were using with your rats in your experiment. That's
19 the only reason.

20 A It's not a perspective, but, yes, there is a
21 difference.

22 Q About ten thousand times what a working person
23 would be exposed to over an eight-hour day is what you
24 dose these rats with?

25 A Sure. And that doesn't help us understand

ROA_01016

Appendix_01037

1 anything, but you are correct.

2 Q You were using pure chrysotile in this?

3 A That's right, or crocidolite or amosite, depending
4 on what we're using.

5 Q But you used pure chrysotile at a thousand cc's or
6 greater on rats anywhere from an hour to days, weeks,
7 or months?

8 A That's right.

9 Q Okay. And while other experimenters or
10 investigators, you call them, have had other results,
11 you never were able to get a mesothelioma in a rat?

12 A Well, that's a mischaracterization of what we
13 actually did. Because that sounds like we tried and
14 failed. And I would say that that's wrong. Because
15 the experiments that we set out to do, we have certain
16 goals.

17 Never were our goals to produce a mesothelioma.
18 Number one, that had already been done. Other
19 investigators like Dr. Wagner and Dr. McCall and others
20 had already done that in the animal model. It takes
21 years of exposure through the lifespan of the animal.
22 Very expensive experiments, and only a small percentage
23 of the animals get a mesothelioma at the end of their
24 lifespan, just like people. So this was a non -- that
25 would have been, had we designed that, a non-payoff

ROA_01017

Appendix_01038

1 kind of experiment.

2 So we produced asbestosis, we produced lung
3 cancer, we produced the changes in the pleura that will
4 go on and produce a mesothelioma. So the way you put
5 it mischaracterizes what we did, so I hope I've
6 explained what we actually did.

7 Q Well, we certainly don't want to mischaracterize
8 it. Let me ask you directly. In your experiments
9 dosing rats with a thousand fibers per cc for hours,
10 days, to weeks to months, did you ever cause one to
11 have mesothelioma?

12 A No, because that wouldn't do it. Days to weeks to
13 months wouldn't produce a mesothelioma. You have to do
14 it through their lifespan, as I just described.

15 Q What is a lifespan of a lab rat?

16 A Two to three years.

17 Q And you exposed them to those fibers for that
18 long?

19 A I didn't, actually.

20 Q Doctor, you acknowledge that other studies on
21 primates have concluded no pathological finding --

22 A Those primates --

23 Q -- with low dose chrysotile?

24 A I mean, those primates were in pretty bad shape,
25 but I agree they didn't get mesotheliomas, that's true.

ROA_01018

Appendix_01039

1 Q And similar results to your studies have been
2 detected when they expose rats to other substances --
3 fiberglass, ceramic, metal, correct?

4 A That would be another mischaracterization because
5 the studies you're talking about are done by injection.
6 In other words, what I was doing was inhalation and
7 what Dr. Wagner did was inhalation. Inhaling the dust
8 like people do. So if you take substances like I named
9 and inject them directly onto the lung or the pleural
10 surfaces with none of these defenses I talked about,
11 yes, you produce mesotheliomas. And it's important
12 that the jury understand the difference in the way
13 those experiments are done.

14 Q Okay. Doctor, just one final thing. You talked
15 about you find asbestos fibers in lymph nodes?

16 A That's right.

17 Q And if you find asbestos fibers in lymph nodes,
18 it's indicative of exposure?

19 A Sure.

20 Q Okay. And that you also are aware that when you
21 find asbestos fibers in lymph nodes, a very high degree
22 of medical probability, if not certainty, of the type
23 of fiber underneath those -- that's coated on the
24 asbestos fiber is an amphibole such as amosite?

25 A I'm hearing two different things here. I'm

ROA_01019

Appendix_01040

1 hearing accumulation of fibers in a lymph node, then
2 I'm hearing about coated fibers. That's two completely
3 separate issues because --

4 Q Let me clarify --

5 A Excuse me --

6 Q Doctor --

7 THE COURT: Whoa, whoa, whoa. We're never going
8 to talk over each other. The jury can't understand
9 that, nor can the court reporter.

10 Now, Dr. Brody has asked to finish his answer, so
11 let's let him, and you ask him another question.

12 MR. BOUCH: Perfectly appropriate, Your Honor.

13 THE COURT: Go ahead and finish your answer.

14 THE WITNESS: The predominant fiber particularly
15 found in lymph nodes is chrysotile because it tends to
16 break down smaller, more easily transported around the
17 lung. That's the predominant fiber found.

18 Now, if you want to ask me about coated fibers,
19 please.

20 MR. BOUCH: That was how I was trying to clarify
21 it, Your Honor.

22 Q When someone finds a coated fiber, frequently
23 referred to as a ferruginous body or an asbestos body,
24 in a piece of tissue such as a lymph node, is the
25 prevailing opinion there is a high likelihood, if not

ROA_01020

Appendix_01041

1 medical certainty, that the core fiber in that
2 ferruginous body is an amphibole asbestos?

3 A So with the high likelihood, I absolutely agree
4 with you. Medical certainty, no, because Dr. Roggli
5 and I have published on asbestos bodies on chrysotile
6 fibers. So it's not a medical certainty, but it is the
7 predominant fiber type would be amphiboles that are
8 coated.

9 Q Right. And you're familiar with Dr. Roggli's
10 book, third edition?

11 A Sure.

12 Q And you're familiar with the graphs on Page 39
13 showing that 96 percent of the core of ferruginous
14 bodies are amphibole in origin?

15 A That's what I'm saying, sure.

16 Q 96 percent. And, of course, they cite your paper
17 as authority for that opinion?

18 A Good.

19 Q Thank you, sir.

20 No further questions.

21 A You're welcome.

22 THE COURT: Very good.

23 Redirect, Ms. Farrise?

24 MS. FARRISE: Briefly.

25 Can I have the book, please?

ROA_01021

Appendix_01042

1 What is it?

2 MR. BOUCH: 533.

3 REDIRECT EXAMINATION

4 BY MS. FARRISE:

5 Q You're familiar with this book?

6 A Yes.

7 Q Can I ask you to turn to Page 3.

8 A Not Roman Numeral III, Page 3?

9 Q No, Page 3.

10 A I have it.

11 Q And, see, I'm pointing to right by the spine,
12 three quarters of the way down?

13 A Okay.

14 Q There is a sentence that says --

15 MR. BOUCH: Your Honor, this is beyond the scope
16 of cross and I object.

17 THE COURT: All right. As you well know, we have
18 open redirect. We don't have those kind of
19 limitations. The book has been asked about. I'm going
20 to allow her to ask about it, what she wants to ask in
21 the book.

22 MS. FARRISE: I think a certain page was asked
23 about.

24 Q I'm going to ask you about Page 3. It indicates
25 in Dr. Roggli's book, quote, "The high tensile strength

ROA_01022

Appendix_01043

1 and extreme thermal stability of crocidolite allowed
2 its usage as insulation material at very high
3 temperatures as well as packings and gaskets." Did I
4 read that correctly?

5 A Yes.

6 Q Now, that's your understanding, that for gaskets,
7 crocidolite was used as well as chrysotile, correct?

8 A That's what I understand. I mean, that's what
9 I've read here and other places.

10 Q And Dr. Roggli has published that?

11 A Yes.

12 Q Thanks so much.

13 MR. BOUCH: No further questions, Your Honor.

14 THE COURT: No further questions? Very good.

15 Thank you very much, Dr. Brody, and you may come
16 down.

17 THE WITNESS: Thank you, Your Honor.

18 MR. BOUCH: Can I have my book back? They get
19 expensive.

20 THE COURT: It's not your book anymore. It's in
21 evidence right now.

22 MR. BOUCH: I think we have an agreement to
23 substitute copies.

24 THE COURT: Ms. Farrise, where do we go from here?

25 MS. FARRISE: I believe we were in the middle of

1 reading Mr. Taylor.

2 THE COURT: I think we're going to see if we can
3 bring that to a conclusion in this next 45 minutes.

4 Let's see. Who have we got as the reader?
5 Yancey, Mr. McLeod, thank you very much for helping us
6 out with this.

7 MR. McLEOD: Thank you, Your Honor.

8 THE COURT: Mr. McLeod, I marked as being at Page
9 359. Am I right?

10 MR. REID: By agreement between Mr. Holder and
11 myself, we're going to resume at 360, Line 5.

12 THE COURT: Very good.

13 MR. McLEOD: Trying to cut it short.

14 THE COURT: You may proceed, Mr. Reid.

15 MR. REID: Thank you, Your Honor.

16 Good morning.

17 THE COURT: Mr. Taylor is back on the witness
18 stand, and Mr. Reid and they are reading from his
19 deposition.

20 DAVID TAYLOR,
21 (via read deposition),

22 RESUMED TESTIMONY AS FOLLOWS:

23 Q Okay. Now, you had indicated when we first
24 started talking this morning, Mr. Taylor, about the
25 1984 document that you were shown, you had indicated

ROA_01024

Appendix_01045

1 you were not shown any others that were earlier than
2 that. I'm going to hand you what's been marked as
3 Exhibit 25.

4 Whereupon, Exhibit 25, a document whose subject is
5 Asbestos Insulation, File Number 100.48, dated May 4,
6 1977, was then received and marked for identification.

7 And there is a date here that says May 4, 1977.
8 Do you see that at the top?

9 A Yes.

10 Q And the subject is asbestos insulation, and there
11 is a File Number 100.48. Do you see that?

12 A Yes.

13 Q And the author of this memo says, "Gentlemen, the
14 Occupational Safety and Health Standards for general
15 industry as noted in Section 1910.1001 has set strict
16 guidelines for occupational exposure to asbestos
17 fibers." Do you see that?

18 A Yes, sir.

19 Q Then it goes on. It says, "I submit the attached
20 safe working procedures for asbestos. These procedures
21 shall be observed by all personnel who work with
22 asbestos insulation." Do you see that?

23 A Yes.

24 Q Were you aware of these procedures that existed in
25 the spring of 1977? Did you know that these existed?

ROA_01025

Appendix_01046

1 A No.

2 Q Did you know that Duke, in May of 1977, understood
3 that asbestos was listed as a carcinogen?

4 A Yes.

5 Q Okay. And we go to the next exhibit.

6 Mr. Taylor, you have been handed what's been
7 marked as Exhibit 26. And this -- again, do you see
8 the Duke Power Company Steam Production Department
9 title at the top?

10 A Yes.

11 Q And the date is June 14, 1977. You were employed
12 by Duke, correct?

13 A Yes.

14 Q And do you see that it's directed to all station
15 managers?

16 A Yes.

17 Q And the subject, again, is asbestos insulation,
18 and it has that 100.48 number. Do you see that?

19 A Yes.

20 Q And the memo says, "In order to assist you in your
21 efforts to comply with OSHA guidelines pertaining to
22 occupational exposure to asbestos fibers, the attached
23 information has been prepared," and then it gives two
24 titles. It says, "Safety proceedings for asbestos and
25 safe working practices when working with asbestos." Do

ROA_01026

Appendix_01047

1 you see that?

2 A Yes.

3 Q And if you go to the next page, it talks about the
4 purpose of the document. And the purpose of the
5 program, it says, is to provide guidance to Duke Power
6 employees who are exposed to asbestos when performing
7 maintenance work in the steam generating stations.
8 That would have included people like you, correct?

9 A Yes.

10 Q And it talks about -- about halfway down, it says,
11 "Engineering controls such as isolation, enclosure and
12 waste collection by vacuum or wet cleanup should be
13 used to meet exposure limits." Did you see those
14 procedures used in 1977?

15 A No.

16 Q If you go to the next page -- and this is probably
17 the last thing I'll ask you about this one. On the
18 next page towards the bottom, it talks about caution
19 labels. Do you see that?

20 A Yes.

21 Q It says, "Caution labels shall be placed on all
22 raw materials, fixtures, scrap, waste, debris, and
23 other products containing asbestos." It gives you the
24 wording that shall be printed on the labels, and it
25 lists it there, correct?

ROA_01027

Appendix_01048

1 A Yes.

2 Q Did you ever see those labels in 1977?

3 A No, sir..

4 Q The very last page of the document is the other
5 sort of procedure that they talk about in the memo
6 called safety procedures for asbestos. Do you see
7 that?

8 A Yes.

9 Q Did you ever see those procedures in 1977?

10 A No, sir.

11 Q And you see it talks about many of the same
12 things. Number 3, it talks about wet methods. Do you
13 see that?

14 A Yes.

15 Q Number 6 talks about using respirators, correct?

16 A Yes.

17 Q And Number 10 talks the caution labels, and it's
18 the same words that were in the other document?

19 A Yes.

20 Q You never saw any of those followed by Duke?

21 A No.

22 Q Mr. Taylor, you're being handed what's been marked
23 as Exhibit 27, and the date is October 12, 1981. And
24 if you look, it's got a couple of folks' name on there,
25 and there is a WG Itin. Do you see that?

ROA_01028

Appendix_01049

1 A Yes.

2 Q Okay. The subject is The Safe Working Practice
3 Manual Revision, and if you go to the third page, sir,
4 it talks -- third page, sir, it's additional asbestos
5 work practices. It talks about in 1981 using, under
6 Letter D, "appropriate personal protective equipment be
7 worn when handling asbestos." It says, "Including all
8 handling, i.e., preparation, installation, removal."
9 It talks about disposable and permeable coveralls. Did
10 you have those when you did your work in 1981?

11 A No, sir.

12 Q Yes. In 1981, were you ever issued a respirator
13 which involved medical clearance and fit testing back
14 in '81?

15 A No.

16 Q So if this came out at the end of '81, would you
17 have already been back at Ocone?

18 A Yes.

19 Q You can set that one off to the side. I have
20 already shown you the 1984 document. I may skip that
21 one, Mr. Taylor.

22 Given all the safety procedures that we have seen
23 that Duke had back in the '70s and the early '80s,
24 would you have expected Duke to have been following its
25 own procedures?

ROA_01029

Appendix_01050

1 A Yes.

2 Q Obviously, if Duke had prepared all of these
3 procedures and put them in place for handling asbestos
4 and then didn't enforce its own rules, is there anyone
5 you feel would be responsible for enforcing these rules
6 other than Duke at their own power plants?

7 A Could you say that again?

8 Q Sure. I mean, you were a Duke employee?

9 A Yes.

10 Q Working for a Duke supervisor?

11 A Yes.

12 Q At Duke's plants?

13 A Yes.

14 Q You took instruction from Duke people?

15 A Yes, sir.

16 Q Okay. Duke gave you the safety equipment that you
17 needed to do your job?

18 A Yes.

19 Q They gave you the tools?

20 A Yes.

21 Q And they gave you your assignment?

22 A Yes.

23 Q If Duke had all the procedures that we just took
24 time to go through about dealing with asbestos, and
25 Duke decided they weren't going to instruct their

ROA_01030

Appendix_01051

1 employees like you on how to follow them, is there
2 anybody other than Duke that would be responsible for
3 those?

4 A No.

5 MR. REID: The next part is what the plaintiff is
6 offering, Your Honor.

7 Q Do you know a Jimmy Freeman? I think it might be
8 James Allan Freeman.

9 A Yes.

10 Q How do you know Mr. Freeman?

11 A I just know working around him.

12 Q Can you tell me where you or when you worked
13 around him in your career?

14 A Well, probably '80s and '90s.

15 Q Do you recall which plant?

16 A Ocone.

17 Q And what was his trade or craft?

18 A He was like a pump -- a millwright or something
19 like that.

20 Q Okay. You might have seen him in passing? He
21 might have been working on something else in your
22 vicinity?

23 A Yes.

24 MR. REID: Back to what we're offering, Your
25 Honor. Page 387.

ROA_01031

Appendix_01052

1 Q Okay. Thanks. When you were asked questions by
2 your lawyer, you testified that you may have seen some
3 sort of dust from the gasket material when you were
4 doing all of that insulation material cleanup and work,
5 next to or around the insulators throughout whatever
6 plants you were working in. You would agree with me
7 that that insulation dust was much more dusty than any
8 gasket removing dust you would have seen?

9 A Yes.

10 Q I have heard insulation dust described as looking
11 like it's snowing there's so much dust in the air.

12 A Yes.

13 Q But that's not the case for gasket removal, right?

14 A No.

15 MR. REID: Your Honor, I'm just going to ask for
16 some direction from my colleague.

17 Are we going to read at 410?

18 MR. HOLDER: 410, 25.

19 MR. McLEOD: 410, 25 is what I have.

20 Q Let me ask the same line of questions. This is
21 for Crosby valves. How do you know a valve was made by
22 Crosby?

23 A It would be endorsed on the valve also.

24 Q What did it say?

25 A What's that?

ROA_01032

Appendix_01053

- 1 Q What did it say?
- 2 A Where it's at? On the body of the valve.
- 3 Q Right. What I was asking is what did you actually
- 4 see on the body of the valve?
- 5 A It would say "Crosby valve."
- 6 Q And two words, "Crosby" and "valve"?
- 7 A Yes.
- 8 Q Do you remember how that lettering appeared?
- 9 A No.
- 10 Q If I asked if it was cursive or capital letters,
- 11 can you give me that?
- 12 A It started out capitalized, "Crosby," and "valve"
- 13 next.
- 14 Q Was this information embossed on the side of the
- 15 valve, or was there a data plate or tag?
- 16 A On the side of the valve.
- 17 Q Do you remember any makes of any Crosby valves you
- 18 might have come across during your time at Duke?
- 19 Q Could you say that again?
- 20 Q Sure. Do you remember any of makes or models of
- 21 Crosby valves you might have come across at Duke?
- 22 A No.
- 23 Q Do you remember any model numbers of any Crosby
- 24 valves you may have come across at Duke?
- 25 A No.

ROA_01033

Appendix_01054

1 Q Do you remember any serial numbers you might have
2 come across at Duke?

3 A No.

4 Q Do you remember what kind of valves -- again, this
5 is a gate, a globe, a check, something like that, was
6 the variety of Crosby valves you came across at Duke?

7 A What now?

8 Q Do you remember what kind of valves these Crosby
9 valves were; what I mean is gate, globe, something like
10 that?

11 A No.

12 Q Do you know what they were made out of?

13 A No.

14 Q Do you associate any colors with Crosby valves?

15 A No.

16 Q Do you know any temperatures or pressure ratings
17 of these valves?

18 A No.

19 Q Do you know what on these -- I'm sorry. Do you
20 know on what lines these valves typically were used on?

21 A Main steam, but you're talking about -- I'm going
22 to back up on that too. Most of the valves is carbon
23 steel valve, you know.

24 Q And these were used primarily on steam lines?

25 A Not all the time. Feed water system.

ROA_01034

Appendix_01055

1 Q Any other lines in which you saw Crosby valves?

2 A That's about it.

3 Q Okay. Somebody with your background, you would
4 probably have seen a new valve before?

5 A Yes.

6 Q And when a new valve comes to a plant, how does it
7 arrive? Is it in a crate, in a box?

8 A It's in a crate.

9 Q And you've probably seen those crates at some
10 point?

11 A Yes.

12 Q And you've seen when they take the packaging off,
13 and then you just look at the valve sitting on the
14 crate?

15 A Yes.

16 Q When you look at a brand-new valve that just came
17 in, what you're looking at is just a piece of metal,
18 correct?

19 A Yes.

20 Q And it doesn't come with gaskets, correct?

21 A Correct.

22 MR. REID: This is what the plaintiffs offer, Your
23 Honor.

24 Q The gaskets that would be used to put the valve on
25 the line, these come from the warehouse, correct?

ROA_01035

Appendix_01056

1 A Well, it come from the warehouse (sic) to the
2 warehouse -- excuse me.

3 THE COURT: Whoa, whoa.

4 A Come from the manufacturer to the warehouse, and
5 then we have to pick it up from the warehouse.

6 Q And when you say it comes from the manufacturer,
7 what manufacturer sends it to the warehouse?

8 A Whatever the -- whoever was responsible for that
9 valve.

10 Q Okay. And then --

11 A Because they know the size of the flange and
12 everything. So it don't be a mismatch thing.

13 Q All right.

14 MR. REID: Back to what the defense is offering,
15 Your Honor, at Page 423.

16 MR. HOLDER: I had 417. Is that not right?

17 (WHEREUPON, an off-the-record discussion was held
18 between Mr. Reid and Mr. Holder.)

19 MR. REID: Your Honor, can I have a brief sidebar
20 with Mr. Yancey and Mr. Holder -- Mr. McLeod? Just a
21 little confusion about what goes on.

22 (WHEREUPON, a bench conference was held off the
23 record in the presence of the jury, but out of the
24 hearing of the jury.)

25 THE COURT: Where are you starting, Mr. Reid?

ROA_01036

Appendix_01057

1 MR. REID: 417, Line 11, Your Honor.

2 THE COURT: Very good. All right.

3 Q And when you're removing a gasket, would you agree
4 that you've got to be a little bit careful how hard you
5 scrape that flange because if you score it, you're
6 probably going to have another leak?

7 A You have a leak there. You create a leak.

8 Q And those surfaces are precisely maintained (sic)
9 so if you --

10 THE COURT: Machined. The surfaces are precisely
11 machined.

12 MR. REID: I'm sorry if I misspoke.

13 Q And those surfaces are precisely machined so that
14 if you score it, scratch it, dent it, you could have a
15 heck of a problem that next time the system turns on?

16 A Right. That's -- that's where if your scrape
17 blade don't -- if you ain't -- if you're not doing --
18 if your scrape blade don't clear and it's in the
19 groove, that's where the wire brush come in and get
20 it -- get it up out of the groove and get it all out.

21 Q What I'm talking about is a little bit different.
22 If you're scraping too hard or you want to hit the top
23 of the scraper with a sledge hammer, you've got to be
24 real careful?

25 A No, no, no. It ain't that physical.

ROA_01037

Appendix_01058

1 Q No. You don't want to be that physical because
2 you're not -- because you're going to score your
3 flange?

4 A That's right.

5 Q Yeah. For the Anchor/Darling and the Crosby
6 valves, after a valve has been taken down and put back
7 on the line, do you know the manufacturer of the
8 replacement gasket that you would put back into the
9 flange?

10 A No, unless I went back to the engineer.

11 Q And do you have any memory of going back to an
12 engineer and talking about that with respect to
13 Anchor/Darling or Crosby valves?

14 A We have in the past, you know. They -- they
15 called it a substitute, you know, we can't -- if we
16 don't have that in the warehouse, and if it's a wait
17 process, then we have to go and do -- find out what we
18 can substitute that gasket for. They would take the
19 engineer to look that up for us and whether it was a
20 substitute or a gasket.

21 MR. REID: That's a question.

22 MR. McLEOD: Oh, sorry.

23 Q And whether it was a substitute or a gasket that
24 wasn't a substitute, you don't know who made that
25 replacement gasket, correct?

ROA_01038

Appendix_01059

1 A Correct.

2 MR. REID: 420.

3 Q The internal components that were coming out of a
4 Crosby or Anchor/Darling valve, you don't know if they
5 contained asbestos?

6 A No.

7 Q You don't know?

8 A No.

9 Q Like you talked about with Mr. Traylor and some
10 other attorneys, you don't know the maintenance history
11 of any Anchor/Darling or Crosby valves that might have
12 been maintained by the valve crew?

13 A No.

14 Q And, in fact, those valves may have been
15 maintained numerous times before you even got there
16 that day?

17 A Yes.

18 Q Let me show you. Let's see if I can't completely
19 mess up the record here. Sir, this was Exhibit Number
20 9 that I think your attorney showed you, and I
21 apologize for my reach. Looking at what's in
22 Exhibit 9, sir, do you know if you worked with any of
23 the valves or components that are set forth in that
24 exhibit?

25 A Just on this?

ROA_01039

Appendix_01060

1 Q Yes, sir. Do you know if you worked with those
2 valves and those components listed there?

3 A I probably have, but it's hard for me to --
4 9/11/82. I say probably I -- I probably have because I
5 see something here that says three-inch inlet and
6 outlet safety relief valve. I know I worked on some
7 that were real small on the line, but I don't know how
8 small they were.

9 Q But do you know if the safety relief valve you
10 might have worked on was that valve referenced on that
11 sheet of paper which is the second page of Exhibit 9?

12 A Yes.

13 Q You can say that for certain that you know it, you
14 worked with that valve referenced on that page of that
15 exhibit?

16 A Well, I said that -- I ain't going to say that
17 particular one, no.

18 Q Uh-huh.

19 A But --

20 Q But you do have a memory of working on a safety
21 relief valve at some point during your time at Duke?

22 A Yes.

23 Q But do you know who manufactured it?

24 A No, I don't know.

25 Q During your time at Duke, do you remember

ROA_01040

Appendix_01061

1 consulting any manuals from Crosby valves?

2 A No.

3 Q Same question with Crosby. During your time at
4 Duke, do you have any memory of interacting with any
5 representatives of Crosby valve?

6 A No.

7 Q My understanding is, as you were installing new
8 pipe in the facilities, the insulators were following
9 you with insulating those same pipes?

10 A Yes.

11 Q And they were basically pushing you down the line?
12 When I say that, I mean were you working so that they
13 could keep working also?

14 A Most of the time the insulators come after the
15 pipe has been done completed and nobody -- you know, it
16 ain't going to be congested in there, you know.

17 Q Because there were times when the insulators were
18 working on a floor above you?

19 A They might be on the floor above me, yes.

20 Q When we talked about the snowing insulation, was
21 some of the insulation they were working on and cutting
22 on would be falling down on you guys too?

23 A No, sir. When you say a floor above me, you're
24 talking about -- it's like up on the next floor.

25 Q It was not a grated floor?

ROA_01041

Appendix_01062

1 A No, sir.

2 Q The snow effect of the insulation that the
3 insulators had, would that cloud your work area
4 sometimes?

5 A Well, a lot of times we won't be in there. See,
6 if it was an area that we going to be in there in the
7 near future and there was some pipe already run in
8 there, so they in there getting ready to mud this pipe,
9 but we had to go in and take measurements and stuff.
10 And we'd go in there and take measurements, and we'll
11 come out, and we might look back and see what they're
12 doing. And they'd be in there pouring them bags of
13 stuff in the bucket.

14 Q So as the insulators were working, you would be in
15 their workspace taking measurements?

16 A Sometimes.

17 Q For your pipe?

18 A Yes.

19 Q So would you go into the workplace that the
20 insulators had already started working in?

21 A And maybe gone.

22 Q And but even though they were gone, would it still
23 be cloudy in that workspace when you went in?

24 A Sometimes.

25 Q Some of the insulators, the dust that they would

ROA_01042

Appendix_01063

1 leave behind, did that settle on the different objects
2 in the room that you worked?

3 A That's what I'm saying. It settles everywhere.
4 You can't contain it. They couldn't contain it back
5 then.

6 Q And that would be from Kaylo pipe insulation?

7 A Yes.

8 Q Did some of that dust settle on the valves and
9 pumps on the room?

10 A Yes, yes.

11 Q And some of the insulation dust also settled on
12 the turbines --

13 A Yes.

14 Q -- in the turbine room?

15 A Yes.

16 Q The same safety and federal mandates that you
17 talked about to Mr. Joss earlier about the turbine room
18 and entering and going through there, did those rules
19 apply to all Duke Power sites?

20 A Yes.

21 Q You mentioned yesterday that you saw Westinghouse
22 turbines at the McGuire plant that you worked at?

23 A Yes.

24 Q Do you recall that? Do you have any idea what the
25 turbines were insulated with?

ROA_01043

Appendix_01064

1 A Only what they told us, that the shell parts at
2 McGuire and Catawba because it was insulated with
3 asbestos.

4 Q Who said that? Who told you that?

5 A Management.

6 Q From Duke Energy?

7 A Yes.

8 Q Or Duke Power, rather?

9 A Yes.

10 Q What exactly did they tell you about it?

11 A Well, they just told us that the inside the shell
12 part was shielded by asbestos insulation.

13 Q When -- I'm sorry?

14 A To help hold the heat down.

15 Q Because the turbine was hot when it ran?

16 A Exactly.

17 Q When did they tell you that?

18 A Well, when we started -- when I started -- when I
19 first started working at McGuire, went back to McGuire
20 my first trip back to McGuire, that's when they told us
21 about McGuire. I think I went back to McGuire in '87
22 or '88, something like that, to participate in an
23 outage. And they talked about -- and we had to do some
24 work up there. We was on like hanger support, blocking
25 spraying cans and stuff, and they told us not to get

ROA_01044

Appendix_01065

1 too close to the turbine shell, and we got there, it
2 was roped off, and some guys asked the question why.
3 And they were saying you don't want to go over there
4 because it got asbestos-containing material, that the
5 shell is, is lining with asbestos.

6 Q And this was at McGuire?

7 A At McGuire. That's my first trip back to McGuire
8 during that outage.

9 Q Okay.

10 A And then we come back down there, and then we know
11 about these here also at Oconee here was also lining
12 with asbestos.

13 Q So that was in the mid '80s you think that you
14 were at McGuire and you saw the Westinghouse turbine
15 roped off?

16 A Yes. Like '87, '88, something like that.

17 Q Can you describe this rope that you saw around it?

18 A Well, yellow.

19 Q Was it the same type of rope that you saw at the
20 Oconee plant?

21 A Yes.

22 Q And when people asked why is that roped off, you
23 already knew the answer to that, right?

24 A Yes.

25 Q You knew that was because there could be asbestos

ROA_01045

Appendix_01066

1 by it?

2 A Uh-huh.

3 Q You knew that asbestos was dangerous for you?

4 MR. HOLDER: I'll just note one small change. I
5 know it's a small detail. The color of the rope
6 actually says "yellow, magenta."

7 MR. REID: Sorry. That's correct. "Yellow,
8 magenta," whatever that is.

9 Back up to Line 17.

10 Q And you knew to stay away from the turbine because
11 if you breathed the air around it, you might inhale
12 asbestos dust?

13 A And once you go through, you don't want to be
14 inside that rope.

15 Q And you knew the rope was because if you go by the
16 turbine, you had the risk of inhaling asbestos dust?

17 A Yes.

18 MR. REID: 463.

19 Q Okay. How were you able to tell if gaskets were
20 made of asbestos or not, other than if it said it on
21 the box?

22 A Other than that, that's the only way.

23 Q So the only way you knew you were working with an
24 asbestos gasket is if you read it on the box first?

25 A Yes.

ROA_01046

Appendix_01067

1 MR. REID: Your Honor, 477, Line 12. This is
2 offered by the plaintiff.

3 Q And so you had -- and so you had said previously
4 that you thought that all the replacement materials
5 were coming from the manufacturer of the pump or valve.
6 What was the basis of your belief in that?

7 A To make sure you get it right.

8 Q No, but why did you think it was all supplied from
9 the manufacturer of the pump or valve?

10 A Because they're the one -- they're the ones --
11 they're the ones the pump come from, they the one that
12 got the gasket. They know the size of the --

13 MR. REID: Your Honor, 502.

14 Q So you know --

15 MR. HOLDER: Hold on. I have 483.

16 MR. REID: Yancey, 483, Line 5.

17 Q So you cannot testify to a reasonable certainty
18 that these gaskets were supplied by the manufacturer?

19 A Yeah.

20 Q So when you were working with the gaskets, I know
21 you said that when they came out, they would say
22 nonasbestos or they would say asbestos?

23 A Yes.

24 Q Did you ever receive any training to be able to
25 tell by yourself in looking at the materials if it

ROA_01047

Appendix_01068

1 contained gasket that contained asbestos or not?

2 A You can't tell with your eyes.

3 Q So you told us earlier when you saw the insulation
4 workers working with --

5 A That's a different type of stuff.

6 Q -- insulation --

7 A That's when they take a bag, and they dump the
8 stuff in there, and then it all comes up. A gasket is
9 not that big.

10 Q But when the insulation workers were working, you
11 could see visible dust in the air?

12 A Constantly because they constantly working in
13 there, and when you worked with removing gaskets, you
14 didn't see dust in the air.

15 MR. REID: Line 12.

16 A Not with my naked eye.

17 MR. REID: Mr. McLeod, if you could go to 485,
18 Line 5.

19 Q And when you were removing gasket material, there
20 wasn't anywhere where you could see who the
21 manufacturer was?

22 A No.

23 MR. REID: Now, Your Honor, to 494, Line 23.

24 Q And when you were removing the old gaskets when
25 you were at Ocone or when you were back at one of the

ROA_01048

Appendix_01069

1 other plants for a shutdown, you weren't able to see
2 any packaging or anything that said the name of that
3 gasket, correct?

4 A Correct.

5 Q And so when you were taking it out and you were
6 using your scraper brush and the wire, and the wire
7 brush, there was nothing that said that you could
8 read -- that said it contained asbestos?

9 A No.

10 Q Did you have any training specifically when
11 looking at old gasket material to see whether it
12 contained asbestos?

13 A No.

14 Q And when the pump and the valve teams were working
15 around you, taking out the old insulation and -- not
16 insulation, the old packing and internal gaskets, you
17 also had no training to tell that any of that material
18 contained asbestos when looking at it?

19 A No.

20 MR. REID: Your Honor, we were about the very last
21 passage, 362, 23. We were halfway through it. Can I
22 start at the beginning again since it's so short?

23 THE COURT: Sure. Go right ahead.

24 Q So you told us earlier when you saw the insulation
25 workers working with --

ROA_01049

Appendix_01070

1 A That's a different type of stuff.

2 Q -- insulation --

3 A That's when they take a bag and they dump -- dump
4 the stuff in there, and then -- then it all comes up.

5 A gasket is not that big.

6 Q But when the insulation workers were working, you
7 could see visible dust visibly in the air?

8 A Constantly because they were constantly working in
9 there, and when you worked with removing gaskets, you
10 didn't see dust in the air.

11 MR. REID: Line 12.

12 A Not with my naked eye.

13 Q Okay. And when the valve or pump team is working
14 near you removing internal gaskets or packing, were
15 removing that, did you see dust in the air from that?

16 A No.

17 MR. REID: That's all, Your Honor.

18 THE COURT: Very good.

19 Thank you, Mr. McLeod.

20 MR. HOLDER: Your Honor, the final part is -- I
21 know we need to take a break because you have a
22 meeting. The final portion is video, and it's
23 17 minutes and 30 seconds. So I know you need to go at
24 12:45. If you would like to do the 17-minute video to
25 complete the David Taylor deposition this afternoon, we

ROA_01050

Appendix_01071

1 can do that.

2 THE COURT: Very good. Let's break now, then, and
3 we'll complete the video this afternoon.

4 Ladies and gentlemen of the jury, please be back
5 at 2:00.

6 (WHEREUPON, the jury exited open court.)

7 THE COURT: All right. Now, we'll have the
8 Taylor -- completion of the Taylor deposition. Then
9 what happens?

10 MS. McVEY: Then Mr. Dumistra, I think, from
11 Fisher.

12 THE COURT: Mr. Dumistra from Fisher. And then
13 what happens?

14 MS. McVEY: And then that's probably going to end
15 the day, I would think.

16 THE COURT: Okay.

17 MR. REID: I'll introduce you to Mr. Dumistra in
18 the blue tie.

19 THE COURT: Mr. Dumistra, thank you so much for
20 being here, and we look forward to hearing your
21 testimony this afternoon and hope for completing it
22 this afternoon.

23 So that will be the schedule.

24 MR. DUMISTRA: Thank you.

25 THE COURT: All right. See you at 2:00.

ROA_01051

Appendix_01072

1 (WHEREUPON, lunch recess was taken from 12:40 p.m.
2 to 2:03 p.m.)

3 THE COURT: I'm bringing the jury in.

4 (WHEREUPON, the jury entered open court at
5 2:04 p.m.)

6 THE COURT: Thank you, ladies and gentlemen of the
7 jury. Please be seated.

8 As you may recall, we'll be hearing a video which
9 would complete the testimony of Mr. Taylor. So that
10 video will be played for us here in a moment. And then
11 we'll move to a witness, a live witness, that the
12 plaintiff will call.

13 I am aware that one of you has a 5:30 appointment,
14 and I will try to accommodate that. No worries, I
15 don't think.

16 Very well. Plaintiffs may commence.

17 MR. HOLDER: Plaintiff calls David Taylor to the
18 stand to complete his testimony by video.

19 DAVID TAYLOR,
20 (via video deposition),

21 RESUMED TESTIMONY AS FOLLOWS:

22 Q I understand at some point in the 1980s you
23 attended some trainings at Duke?

24 A Yes.

25 Q And that training -- those training sessions.

ROA_01052

Appendix_01073

1 included discussions about asbestos, about potential
2 hazards of asbestos, about the need to wear
3 respirators, to wet down asbestos, and other safety
4 procedures; is that right?

5 A Yeah. They talked -- they taught us the wet
6 method.

7 Q Right. And after that training that you received,
8 you agree that you were required to wear a respirator
9 when you worked with or around asbestos products,
10 weren't you, by Duke?

11 A Yes.

12 Q Now, I want to show you -- and you were required
13 to use wet-down methods, weren't you?

14 A Yes.

15 Q Now, I want to show you a document that you were
16 shown yesterday. I think your lawyer showed -- talked
17 to you about it, but you were also questioned about it
18 by another lawyer. Again, I apologize. I've got to
19 reach over here. I'm going to hand you that, what has
20 been marked as -- is it Exhibit 19?

21 A Yes.

22 Q And it's entitled -- well, it has a logo at the
23 top left. It says Duke Power Company Construction
24 Department. Do you see that?

25 A Yes.

ROA_01053

Appendix_01074

1 Q Okay. And it's entitled Asbestos, How to Protect
2 Yourself, and it's dated September 1984. Do you see
3 that on the front page?

4 A Yes.

5 Q And for any specific valve, you don't know the
6 composition of any packing or internal gasket that
7 might have been removed by the pump or valve
8 technician, do you?

9 A No.

10 Q Just a couple more questions. For any specific
11 valve or pump, you're not able to testify about the
12 maintenance history of that valve or pump prior to the
13 time you were around when the valve or pump was
14 repaired, are you?

15 A No.

16 Q And when the valve or pump technician was working
17 on a specific valve or pump, you weren't involved in
18 ordering new packing that might be used, were you?

19 A No.

20 Q , And you don't know how many times -- there would
21 be no way for you to know how many times the old
22 packing had been replaced prior to the time new packing
23 was put in; is that correct?

24 A Yes.

25 Q And you're not able to testify about how many

ROA_01054

Appendix_01075

1 times the flange gaskets had been removed or replaced
2 prior to the time you may have done it on any specific
3 valve or pump, are you?

4 A No.

5 Q And when you installed a new flange gasket, those
6 flange gaskets were precut, weren't they?

7 A Yes.

8 Q And they were preformed, right?

9 A Yes, sir.

10 Q And that means they had already been cut to size
11 and that the bolt holes had been cut, right?

12 A Yes.

13 Q And so you didn't have to use a scraper or a wire
14 brush doing that, did you?

15 A Not to put a new one in.

16 Q That's right. You put it in and you bolted it up?

17 A Yes, sir.

18 Q You'll recall yesterday I asked you questions
19 about Duke and their control of worksite, particularly
20 in a nuclear power setting. Do you recall those
21 questions?

22 A Yes.

23 Q Okay. And I showed you that Duke issued you your
24 tools and told you how to do your job, correct?

25 A Yes.

ROA_01055

Appendix_01076

1 Q They had a safety department and they were in
2 charge of safety at the plant?

3 A Yes.

4 Q You'll recall in their exhibits, and I'm not going
5 to go through these, I don't think, but we looked at
6 caution labels that were on Kaylo and Manville
7 insulation boxes. You told me you never had occasion
8 to read those labels, correct?

9 A Correct.

10 Q And none of the Duke insulators ever pointed it
11 out to you and said you should do anything?

12 A Correct.

13 Q We also looked at the different procedures that
14 Duke had in the 1970s and into the 1980s about working
15 in and around asbestos. Do you recall those?

16 A Yes.

17 Q And we also looked at the federal regulations,
18 OSHA regulations that came out either right before or
19 some other ones that came out right after you started
20 at Duke. Do you recall that discussion?

21 A Yes.

22 Q And it was your testimony that, to your knowledge,
23 Duke was supposed to follow those rules but didn't. Do
24 you remember that?

25 A Yes.

ROA_01056

Appendix_01077

1 Q And I asked you towards the end of my time talking
2 to you yesterday if Duke had these policies and failed
3 to follow them and failed to enforce them among its own
4 employees, that that's nobody's fault but Duke's. Do
5 you recall that?

6 A Yes.

7 Q And that's true, correct?

8 A Yes.

9 Q Okay. Mr. Taylor, this is Rachel, your lawyer. I
10 just have a few questions for you, and you should be
11 close to being done. Okay?

12 A Okay.

13 Q Are you pretty tired?

14 A Yes.

15 Q You have been asked questions for hours over the
16 course of three days?

17 A Yes.

18 Q How do you feel about some of the questions that
19 you've been asked?

20 A Pretty tough. A lot of them redundant, meaning
21 the same.

22 Q A lot of questions I'd like to come back to and
23 clarify, okay? First of all, I'd like to look at
24 Exhibit 19, which is the same one we've been looking at
25 today. This is the 1984 Duke training on asbestos. If

ROA_01057

Appendix_01078

1 we look at Page 3 of 9, could you read that entire top
2 paragraph for me, would you, please?

3 A Actual asbestos is very slow at Duke construction
4 today. Mostly to insulate electrical cap, packs,
5 valves. It is used in gasket material. Even so, the
6 asbestos in these jobs is bonded, which means it
7 produces virtually no dust. Virtually no dust.

8 Q Thank you. Did Duke make a distinction about
9 asbestos in insulation versus asbestos in things like
10 gaskets and packing?

11 A Yes.

12 Q So when the lawyers for the companies kept talking
13 to you about years you knew asbestos was hazardous, did
14 they make a distinction between insulation and gasket
15 and packing like Duke did?

16 A No.

17 Q When did you know that cloudlike dust that came
18 off of pipe insulation could be hazardous?

19 A When we started going through more training, and
20 they would give us more training on what to look for.

21 Q So years like '84 like what we just looked at?

22 A Yes.

23 Q When did you know that scraping off an asbestos
24 gasket could be dangerous?

25 A Probably '88, somewhere thereabout, early '90s

ROA_01058

Appendix_01079

1 somewhere, because that's when we -- that's when we cut
2 our -- all our completion of our schedule of training,
3 and then we started -- they started implementing to
4 wear -- requirement to wear a respirator in the early
5 '90s, '91, '92. Me personally, that's what I know.

6 Q So it was several years after Duke first started
7 talking about the asbestos in the insulation before you
8 started appreciating the dangers associated with
9 gaskets; is that fair?

10 A Yes.

11 Q So when was the first time that you, Mr. Taylor,
12 wore a respirator when you were removing an asbestos
13 gasket from a valve or a pump?

14 A For the first time? I'd say '91, '92.

15 Q And when is the first time you, Mr. Taylor, used
16 that spraydown to wet down a gasket before you removed
17 it?

18 A Probably same time, '91, '92.

19 Q Do you believe that you were exposed to any amount
20 of asbestos associated with installing new gaskets?

21 A Yes.

22 Q Why is that?

23 A Because any time you -- you mess with asbestos
24 fibers, you don't know did you disturb one little
25 particle or several particles. And once it gets in the

ROA_01059

Appendix_01080

1 air, you're going to have some kind of potential there.

2 You always have a potential.

3 Q A lot of the valves and pumps that you and your
4 team disconnected and reconnected were new; is that
5 right?

6 A Yes.

7 Q And you can't tell us for any individual pump
8 which one was new, but both McGuire and Oconee were new
9 facilities, right?

10 A Yes.

11 Q Do you believe that the outage in 1978 was the
12 first outage to take place at Oconee?

13 A Yes, that I participated in.

14 Q Do you know if there was an outage before the one
15 you participated in?

16 A That I know? No.

17 Q If Duke's records show us that '78 was the first
18 major outage at Oconee, all the pumps and valves that
19 you would have worked on during that time frame would
20 have been the first time that that pump or valve had
21 been worked on, right?

22 A Yes.

23 Q Did you also remove gaskets between pipes and
24 valves during that 1978 outage?

25 A Yes.

ROA_01060

Appendix_01081

1 Q Can you explain to the jury what you know about
2 the similarities or differences between the three
3 nuclear plants that you worked at, how they were built?

4 A To some extent.

5 Q You mentioned earlier that two of them were built
6 similarly and one was different. What did you mean by
7 that?

8 A Well, Oconee had three units. Each reactor, once
9 you go into it, it has an elevator. Okay. That's the
10 big difference. McGuire and Catawba is built alike.
11 They don't have an elevator. You have to crawl and
12 crawl and climb across pipes to get to where you're
13 going. Use ladders. You got ladders instead of
14 elevators.

15 Q Would the blueprint of McGuire and Catawba look
16 the same?

17 A Yes.

18 Q Do you have any knowledge about whether they used
19 the same types of equipment?

20 A Well, I would say they did if they built alike.

21 Q Now, for each of the valves and pumps that you've
22 discussed so far, the lawyers came up and asked you if
23 you knew the exact number of, for example, Goulds pumps
24 or Crane Co. Valves. You couldn't give us exact
25 numbers, right?

ROA_01061

Appendix_01082

1 A Correct.

2 Q Would it be a more fair question to ask you if you
3 could estimate the number of valves and pumps for each
4 brand?

5 A Yes.

6 Q Okay. Let's go through them then. Can you
7 estimate for the jury, if we're talking about Ocone
8 and McGuire collectively, at those two plants, roughly
9 how many Anchor/Darling valves there were?

10 A Probably hundreds.

11 Q And at those two plants, how many Crane Co. Valves
12 were there?

13 A Probably hundreds of valves.

14 Q Between McGuire and Ocone, how many Chapman
15 valves were there?

16 A It might be a thousand of them.

17 Q Between McGuire and Ocone, how many Crosby valves
18 were there?

19 A Probably hundreds.

20 Q Between McGuire and Ocone, how many Fisher valves
21 were there?

22 A Probably a hundred.

23 Q One hundred?

24 A Probably. Might be a little more.

25 Q Between McGuire and Ocone, how many Edward valves

ROA_01062

Appendix_01083

1 were there?

2 A Probably hundreds.

3 Q Between McGuire and Oconee, how many Grinnell
4 valves were there?

5 A Probably a thousand.

6 Q Between McGuire and Oconee, how many Grinnell
7 valves would you estimate?

8 A Probably hundreds.

9 Q Between McGuire and Oconee, how many Kennedy
10 valves were there?

11 A Probably several hundred.

12 Q Between McGuire and -- actually, Newco valves, you
13 told us that you just remember them at McGuire; is that
14 right?

15 A Yes.

16 Q Approximately how many Newco valves were at
17 McGuire?

18 A Probably a hundred.

19 Q One hundred or so?

20 A Yeah. Might be -- I might be off target a little
21 bit. I'd say at least a hundred.

22 Q One more valve. Between McGuire and Oconee, how
23 many Velan valves were there or Velan?

24 A Velan. Probably a couple hundred.

25 Q Let's talk about the pumps then. In general,

ROA_01063

Appendix_01084

1 there are less pumps at a nuclear plant than valves; is
2 that right?

3 A Yes.

4 Q Between McGuire and Ocone, roughly how many Byron
5 Jackson pumps do you recall being there?

6 A Probably a couple dozen.

7 Q Between McGuire and Ocone, how many Gardner
8 Denver pumps do you remember seeing there?

9 A Probably the same. About the same, about a couple
10 dozen, 24, something like that.

11 Q Between McGuire and Ocone, how many Goulds pumps
12 do you remember seeing there?

13 A A dozen.

14 Q So somewhat less than the other two?

15 A Yes.

16 Q Okay. Between McGuire and Ocone, how many
17 Ingersoll Rand pumps do you recall seeing?

18 A Probably a dozen.

19 Q And because these were the bigger pumps, right?

20 A Yes.

21 Q Between McGuire and Ocone, how many Warren pumps
22 do you remember seeing?

23 A Probably ten or 12.

24 Q You were asked a lot of questions about whether
25 you expected your employer to protect you. Do you

ROA_01064

Appendix_01085

1 remember that?

2 A Yes.

3 Q Do you also expect manufacturers to make safe
4 products?

5 A Yes.

6 Q Do you expect manufacturers of products to warn
7 you if there is a hazard associated with their product?

8 A Yes.

9 Q For any of the valves or the pumps that we've
10 talked about during your deposition, you were also
11 asked if there was any way you could say the exact
12 numbers of times that you disconnected them or
13 reconnected them. Do you remember that?

14 A Yes.

15 Q Do you think that's a reasonable question?

16 A No, because I worked on a routine basis -- because
17 I worked on them on a routine basis, it's hard for me
18 to distinguish and be specific how many times.

19 Q What's your favorite breakfast food?

20 A Probably grits, eggs, and bacon.

21 Q If I were to ask you how many times you ate grits,
22 eggs, and bacon in 1985, would you be able to tell me
23 exactly how many times you did it?

24 A No.

25 Q If I were to argue that that means you didn't do

ROA_01065

Appendix_01086

1 it, would that be logical?

2 A Yes.

3 Q Would that be illogical?

4 A Yes.

5 Q Do you, as a pipefitter that worked at these
6 plants for decades, have the knowledge and experience
7 to tell a jury what type of gaskets you worked with day
8 in and day out?

9 A Yes.

10 Q Do you know the difference between a cork gasket
11 and an asbestos gasket?

12 A Yes.

13 Q How can you tell the difference?

14 A Because a cork gasket is like brown and soft,
15 spongy like. And a Flexitallic gasket is more brittle,
16 hard and like --

17 Q Mr. Taylor, do you, as a career pipefitter, know
18 the difference between an asbestos gasket and a rubber
19 gasket?

20 A Yes.

21 Q And how do you know that?

22 A Because a rubber gasket will give a little bit and
23 a Flexitallic -- excuse me. An asbestos gasket is more
24 solid. It don't give a lot. It gives some but not
25 that much. It's hard.

ROA_01066

Appendix_01087

1 Q Okay. And for decades were you able to go into
2 the warehouse and get a box of gaskets that said
3 "asbestos" on it?

4 A Yes.

5 Q And then after you saw it labeled "asbestos," you
6 were able to look at the color and the feel and the
7 composition of it?

8 A Yes.

9 Q So when you gave testimony two days ago on video
10 about each of the brands and what types of gaskets they
11 used, what were you basing your testimony that they
12 were asbestos gaskets on?

13 A On my knowledge that I had through the years of my
14 career with Duke.

15 MS. McVEY: Your Honor, I think that concludes the
16 video.

17 THE COURT: Very good. If you will bring the
18 lights up. Thank you.

19 All right, Ms. Farrise.

20 MS. FARRISE: Thank you. Your Honor, at this time
21 plaintiffs would like to call Fisher, the defendant,
22 Fisher Controls, by whomever it designates to speak for
23 it.

24 MR. BOUCH: I think it's fairly clear we brought
25 Mr. Dumistra as a result of your orders which counsel

ROA_01067

Appendix_01088

1 knows. She knows his name.

2 THE COURT: Yes. Mr. Dumistra, you may come
3 around, please, sir.

4 RONALD DUMISTRA,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 MS. FARRISE: Give me just one moment, Your Honor.
7 We're going to be dealing with some documents so we
8 have tried very hard to --

9 DIRECT EXAMINATION

10 BY MS. FARRISE:

11 Q Good afternoon, Mr. Dumistra. That's how you
12 pronounce it?

13 A Yes, it is. Good afternoon.

14 Q And you and I have never met before today, right?

15 A I don't -- I don't believe so, no.

16 Q I don't believe so. This is our first discussion.

17 Okay. Well, I want to ask you a lot of questions
18 about valves and asbestos. Okay?

19 A I'll do my best.

20 Q Okay. We have been talking a lot about Mr. Jolly
21 in this trial.

22 THE COURT: Ms. Farrise, let's get established his
23 name, who he is, and who he represents first.

24 MS. FARRISE: Of course, Your Honor.

25 THE COURT: Just so the record will be clear when

ROA_01068

Appendix_01089

1 his testimony begins.

2 MS. FARRISE: Thank you.

3 Q Mr. Dumistra, you are, I believe, still an
4 employee of the defendant, Fisher Controls, correct?

5 A Yes.

6 Q And you started your career with Fisher Controls
7 in 1976, straight out of college, correct?

8 A That is correct.

9 Q And you are -- you have been chosen or designated
10 by the company to come and speak for it insofar as it
11 relates to this lawsuit, correct?

12 A Correct.

13 Q So something called a person most knowledgeable or
14 person most qualified or corporate designee, correct?

15 A Correct.

16 Q And it's your understanding that the testimony
17 that you're going to give the jury is as though there
18 was a Mr. or Mrs. Fisher who could come and talk;
19 because of your own experience, you've talked to people
20 who worked at Fisher over the years, correct?

21 A Correct.

22 Q You have reviewed numerous Fisher Controls
23 documents, correct?

24 A Yes.

25 Q And you have been designated to speak for the

ROA_01069

Appendix_01090

1 company in this fashion for more than ten years,
2 correct?

3 A Yes.

4 Q Okay.

5 A I believe that's true, yes.

6 Q So you've reviewed a lot of company documents
7 about valves and asbestos and related topics?

8 A Correct.

9 Q All right. Briefly, though, let's maybe talk
10 about -- I'm going to just get your work history out,
11 and then we're going to get a little bit more
12 background on the company, and then we're going to talk
13 about its products and how it intersects with
14 Mr. Jolly. Is that an okay plan?

15 A Sounds good, yes.

16 Q We'll see how it goes.

17 You started in 1976, straight out of college, as a
18 manufacturing engineer, correct?

19 A Correct.

20 Q And did you work at that time at the Marshalltown,
21 Iowa manufacturing plant of Fisher?

22 A Yes.

23 Q And they have an actual manufacturing plant there
24 where they make things, correct?

25 A Correct.

ROA_01070

Appendix_01091

1 Q After that, in 1978, you were promoted to a
2 manufacturing engineer second level but still working
3 at the Iowa manufacturing plant, correct?

4 A Yes.

5 Q Then you went on to become a senior manufacturing
6 engineer working, I believe, still at the manufacturing
7 plant?

8 A Correct.

9 Q In 1985 or so, you got the position of quality
10 assurance supervisor?

11 A Yes.

12 Q Then in '87 you became a supervisor of quality
13 codes and standards?

14 A Correct.

15 Q In 1990, you were the quality control manager of
16 the strategic manufacturing unit, correct?

17 A Yes.

18 Q So all of these positions have all been in
19 manufacturing, correct?

20 A Up until then, yes.

21 Q And then in 1995 you became a manager, quality
22 assurance, of the valve division of the Fisher Company,
23 correct?

24 A Correct.

25 Q And then you were product manager, engineering

ROA_01071

Appendix_01092

1 codes and standards, correct?

2 A It should say program manager.

3 Q Program manager?

4 A Yes. May have been that's just a typo.

5 Q And have you been promoted any further?

6 A No. That's still my current title.

7 Q No part of your job responsibilities, primary job
8 responsibilities, has ever included health or safety,
9 correct?

10 A No.

11 Q Yes, that's correct?

12 A No part of it included that responsibility,
13 specifically.

14 Q And your educational sort of background and
15 training is as an engineer?

16 A Correct.

17 Q Now, I want to ask you some questions about the
18 primary business of Fisher and the company. And we'll
19 just kind of start there, okay. Okay?

20 A Sure.

21 Q All right. Sir, in terms of the background of the
22 company that you have been employed by your entire
23 working career, that company was birthed in 1880,
24 correct?

25 A Yes.

ROA_01072

Appendix_01093

1 Q At this point it's 137 years old?

2 A Correct.

3 Q I'll just put F circle. That will be a little
4 easier.

5 The company has always been in the business of
6 manufacturing valves and related equipment, correct?

7 A Correct.

8 Q Over the years, its customers have become these
9 large industrial customers such as Duke Power that
10 we've been talking about in this case, right?

11 A Yes. That's one example, yes.

12 Q But the business of Fisher is also to sell -- make
13 and sell valves to oil refineries?

14 A Yes.

15 Q And other large industrial uses?

16 A Yes. It would be fine to say that. Could be
17 commercial as well.

18 Q Right. But I think we can't go to Ace Hardware
19 and buy a Fisher valve?

20 A That would be correct, yes.

21 Q Over the years, the Fisher valve company has been
22 a contractor selling its valves to the United States
23 Navy, the United States government, I guess I'll go
24 with that, correct?

25 A I don't have direct knowledge of that fact, but I

ROA_01073

Appendix_01094

1 won't dispute that. I mean, you say contractor. We
2 say manufacturer. Contractor has a different meaning
3 to me. I wouldn't disagree with that.

4 Q But you did just say something. We probably
5 should clear it up right now. I'm not asking for your
6 direct knowledge, sir. You have been designated as the
7 person who could collect the company's knowledge and
8 come to court and tell the jury what the company knows
9 so that we don't have to call a hundred people from the
10 company to tell us about Fisher. So all of my
11 questions to you are in your capacity as the Fisher
12 designated representative. Okay?

13 A Yeah. That's fine. But with the understanding
14 that I'm human, and to be able to respond to every
15 detailed question is going to be somewhat hard, but
16 I'll do my best with that understanding.

17 Q Your best is great. I take it that -- and let's
18 go back to that then.

19 The Fisher valve company, who you're here speaking
20 for, manufactured products that were sold to the United
21 States government?

22 A Yes. I believe you're correct there. I will
23 agree to that.

24 Q The Fisher valve company sold valves that were
25 used on military ships and the piping systems thereon,

ROA_01074

Appendix_01095

1 correct?

2 A Yes. That helps me remember that detail.

3 Q They weren't some little customer, were they?

4 A I don't know in terms of volume. I don't know
5 what the volume was, but it certainly was an important
6 contract in our history book. I remember seeing that.

7 Q Right. World War II, Fisher valves on a number of
8 Navy ships that were built during that time?

9 A Specialized valves, yeah.

10 Q Sir, over the years, the company has grown and
11 expanded its manufacturing capacity, correct?

12 A Certainly.

13 Q The factories today and over time are no longer
14 limited to just Iowa?

15 A Correct.

16 Q Can you tell the jury the various manufacturing
17 locations of Fisher valves?

18 A Sure. For Fisher valves, it would be Sherman,
19 Texas and Marshalltown, Iowa, and there are other sites
20 globally as well.

21 Q You made the distinction of the Fisher valves.
22 How about the other types of equipment, actuators --

23 A That would be the same when I say that. The
24 control valve is a complex piece of equipment including
25 the valve and the actuator, so I was including that in

ROA_01075

Appendix_01096

1 there.

2 Q And the company has never warned, did never warn
3 its customers that the use in terms of installation or
4 removal of asbestos-containing components associated
5 with valves could pose any health hazard, correct?

6 A Okay. We do very extensive evaluation of our
7 products, including warnings in our instruction manuals
8 pertaining to imminent or potential safety issues, so
9 the answer to that is yes, we did not warn with respect
10 to asbestos because it would not fit into that
11 category.

12 Q We're going to get to that. My simple question,
13 sir, on behalf of Fisher is: It never warned any of
14 its customers or users who would come in contact with
15 asbestos with its valves of any health hazards
16 associated with asbestos, correct?

17 A Correct.

18 Q It never told its customers, any of its customers,
19 that they should take or have their workers take any
20 kind of precautions to protect them from being exposed
21 to asbestos when doing any maintenance or installation
22 of valves, correct?

23 A Yes, that's correct, with the qualifier that we
24 did warn with respect to imminent safety issues, and
25 that was not in that category.

ROA_01076

Appendix_01097

1 Q So we have a very narrow case here, sir.

2 Mr. Jolly is claiming that he has mesothelioma from
3 exposure to asbestos. Do you understand that?

4 A Yes, I do.

5 Q He's not claiming that he got chlorine in his eye.
6 Do you understand that?

7 A Yes.

8 Q He's not claiming that a valve exploded. Do you
9 understand that?

10 A Yes.

11 Q So maybe if you could just stick with me to this
12 asbestos, that would make it go a little bit faster.
13 Can we agree on that?

14 A I prefer to answer the questions the way I like
15 to, if that's okay.

16 Q Well, it's not, actually, because our case is
17 about asbestos --

18 MR. BOUCH: Your Honor, I think counsel is being
19 argumentative.

20 THE COURT: We're not going to be argumentative
21 with the witness. Ask the witness a question, the
22 witness will answer, and we'll see where we go from
23 there.

24 BY MS. FARRISE:

25 Q Okay. Sir, to be clear, the Fisher valve or

ROA_01077

Appendix_01098

1 Fisher Controls Company, still today, on July -- I
2 think it's July 27, 2017, denies that any asbestos
3 related with its products, either internal components
4 or gaskets which would have been used with those
5 products, cause any disease, correct?

6 A Okay. With respect to gaskets that are used, like
7 pipeline gaskets, that sort of thing, we make no claim
8 with respect to that.

9 With respect to gaskets that are included or
10 packing that has asbestos-containing components, that
11 is correct. I will leave it to the experts in that
12 regard, but you're correct as far as we claim no
13 hazard, and that's why we didn't warn. And that's why
14 we currently do not warn in that respect.

15 Q Right, because you still have valves from Fisher
16 Controls that remain in service today in the United
17 States and around the world, correct?

18 A Certainly we have valves in service, yes.

19 Q And because of this position, which is an outright
20 denial that any exposure to asbestos causes any health
21 risks, asbestos associated with Fisher Controls, there
22 is no warning to anyone today still, right?

23 A I go back to my previous answer, which basically
24 is that there's no health risk, and, therefore, there
25 would be no reason to warn.

ROA_01078

Appendix_01099

1 Q Now, Fisher Controls, over the years, did employ
2 industrial hygienists and medical personnel, correct?

3 A Yes.

4 Q And Fisher Controls -- and when I say "Fisher
5 Controls," I mean Fisher valves. You understand that,
6 don't you --

7 A Correct.

8 Q -- never conducted a single test at a field
9 location or a job site where its valves were being --
10 undergoing maintenance to determine whether or not the
11 maintenance activities caused asbestos fibers to be
12 released into the air, correct?

13 A That would be correct.

14 Q And despite being 137 years old this year, Fisher
15 Controls began testing at its own facilities,
16 manufacturing facilities, for the very first time in
17 the mid 1980s to determine whether or not its employees
18 were being exposed to asbestos, correct?

19 A Yes, that is correct. I think there were some --
20 some interest with respect to OSHA compliance. So as a
21 workplace, we are a manufacturing -- as a manufacturer,
22 there is some implications with respect to testing in
23 the workplace. So, yeah, that seems a reasonable time
24 frame for that.

25 Q The first test at Fisher's manufacturing facility

ROA_01079

Appendix_01100

1 to determine if its own employees were being exposed to
2 asbestos occurred -- according to Fisher's sworn
3 discovery responses, interrogatories, which the jury is
4 somewhat familiar with now -- did not occur until the
5 mid 1980s. That's true, right?

6 A Yes, because of the fact that there was no known
7 safety hazard in that respect.

8 Q Now, the -- and I guess if I get what you're
9 saying, what you're saying on behalf of Fisher is,
10 there was no hazard then from asbestos in terms of
11 maintaining the Fisher valves, and there is none today,
12 correct?

13 A That is correct.

14 Q And so Duke Energy, in the context of our case,
15 was a customer of Fisher, correct?

16 A Yes.

17 Q So if the Fisher valves, in terms of asbestos,
18 posed no health hazard, there was nothing for the
19 customer of Fisher to do in terms of taking
20 precautions, correct?

21 A Well, again, they're the experts on their
22 manufacturing and their processing lines and that sort
23 of thing. So that would be a decision that they would
24 have to make. I can't be an expert in their practices.

25 Q But as to the internal components that were

ROA_01080

Appendix_01101

1 asbestos-containing and included within the Fisher
2 valve that was made in Iowa and sold to the Duke
3 plants, I'm just trying to be clear, is it Fisher's
4 contention that there was no health hazard and so there
5 was nothing for Duke to do?

6 A Yes, that would be correct.

7 Q Okay.

8 A No health hazards, yes.

9 Q So not giving anyone a respirator when they were
10 working with the internal components of Fisher
11 Controls, Duke can't be faulted for that, right?

12 A Again, I can't pass judgment on somebody else's
13 operation and the legalities of that. That's not for
14 me to comment on.

15 Q The Fisher control company had maintained a
16 library at its manufacturing facility and corporate
17 offices in Iowa since 1979, correct?

18 A Yes, that sounds correct.

19 Q None of the books at the library at the
20 manufacturing facility or the corporate offices dealt
21 with the subjects of industrial hygiene, medicine,
22 safety, occupational disease, or health hazards
23 associated with asbestos, correct?

24 A That would be correct. The library is devoted
25 primarily to technical, that is, the types of documents

ROA_01081

Appendix_01102

1 we need to design valves and test valves and that sort
2 of thing, along with lab reports that are involved in
3 the test process for our equipment. So it wouldn't be
4 pertaining to asbestos at all, no.

5 Q Or health?

6 A Well, the library is more for engineering
7 resource. If there was health-type documents, that
8 would be kept separate by the -- our safety department
9 or industrial hygiene department, like you mentioned
10 earlier.

11 Q Sir, in addition to being called to court if
12 necessary or to give a deposition, you have also, over
13 the years on behalf of this company, been designated to
14 review interrogatory responses and to verify that the
15 information in them were correct, right?

16 A Yes.

17 Q Okay. Let me hand you a copy --

18 MR. BOUCH: May I have a copy, please?

19 MS. FARRISE: Can you give him a copy?

20 Q -- of what we have marked as Plaintiffs' Exhibit
21 number -- I believe it's -- so I have handed you what
22 we'll mark as 1007.5.

23 Anyway, if I can ask you about what the jury, I'm
24 sorry, about already knows about. If I ask you to turn
25 over to Number 18, how about that?

ROA_01082

Appendix_01103

1 A Page 18?

2 Q Interrogatory Number 18, sir.

3 A Okay.

4 THE COURT: This is Exhibit Number 1725?

5 MS. FARRISE: This is Exhibit, Your Honor, 1007.5.

6 THE COURT: All right.

7 Q The question was put to Fisher about this library
8 issue. "Had this defendant, prior to 1973, ever
9 maintained a library or libraries which contained
10 books, articles, periodicals, journals and/or reference
11 materials that related to the subject of asbestos,
12 industrial hygiene, medicine, safety and/or
13 occupational disease. If so," state a bunch of stuff.

14 And the answers of Fisher -- these were answers
15 that were verified under oath by you, correct?

16 A Yes.

17 Q Was that, "Defendant has maintained a library at
18 its facility in Marshalltown, Iowa since 1979.
19 However, the books, articles, periodicals, journals,
20 and/or reference materials relate to various business
21 and engineering subjects as opposed to the subjects of
22 asbestos, industrial hygiene, medicine, safety and/or
23 occupational disease."

24 Did I read that correctly?

25 A Yes.

ROA_01083

Appendix_01104

1 MR. BOUCH: Your Honor, I object. That was not
2 inconsistent with his statement. It's an improper use
3 of the document. He said there weren't --

4 THE COURT: Wait a minute. Wait a minute. Whoa,
5 whoa. Let's be peaceful here for a minute.

6 First of all, let's not have a speaking objection
7 like that, Mr. Bouch. And she's asking him about a
8 document he's verified that he was the affiant on. I
9 don't think she's necessarily impeaching him. She
10 wouldn't have to be impeaching him to ask him about the
11 answers, so I'm going to permit the question. I don't
12 believe it's an improper use of the document.

13 MR. BOUCH: I still except to it, Your Honor. I
14 understand your ruling.

15 MS. FARRISE: It's a party admission, Your Honor.

16 THE COURT: You don't need to argue with me
17 either. I'm letting you do it.

18 MS. FARRISE: Thanks so much.

19 Q And, sir, earlier I was asking you about the
20 testing of your own employees.

21 A Excuse me. Did you ask me a question? I'm sorry.
22 We were interrupted. Did you ask me a question about
23 this?

24 Q Did I read it correctly?

25 A The question, the interrogatory?

ROA_01084

Appendix_01105

1 Q My question was, did I read it correctly?

2 A Was it the interrogatory you read? I'm sorry.

3 Q Yes.

4 A Okay, yes. You read the interrogatory correctly.

5 So I don't see any inconsistency at all, so.

6 Q When Fisher, for the very first time in the mid

7 1980s, did any testing of its own manufacturing

8 facilities in the -- in that time frame, it took air

9 samples of the air, correct?

10 A That sounds correct, yes. Best of my

11 recollection, yeah.

12 Q Well, let me ask you to turn to Interrogatory

13 Number 21 sworn as true by you. "Has this defendant

14 conducted or caused to be conducted tests and/or

15 studies of ambient asbestos dust created during the

16 manufacture, processing and/or assembling for sale of

17 asbestos-containing products? If so, state."

18 And the answer is, "Samples were collected in the

19 mid 1980s at defendant's main manufacturing facility in

20 Marshalltown, Iowa to measure levels of ambient dust

21 during the manufacturing process." Did I read that

22 correctly?

23 A Yes.

24 Q Okay.. Now, Fisher Controls was also asked to tell

25 us under oath whether or not it ever supplied,

ROA_01085

Appendix_01106

1 imported, distributed, or sold or manufactured
2 asbestos-containing products, correct?

3 A We were asked.

4 Q Sure. How about this. Turn to Number 30 of the
5 same interrogatory set. And when I say you verified
6 this, I don't mean you, Fisher, I mean you, Ronald
7 Dumistra, read these answers and provided a
8 verification under, I think it's called, pains and
9 penalty, that the information in here was correct?

10 THE COURT: I don't think you need to repeat that
11 every time. That is --

12 MS. FARRISE: Clear?

13 THE COURT: All these answers have been verified
14 by Mr. Dumistra under the conditions you specify so you
15 don't need to repeat it.

16 MS. FARRISE: Thank you, Your Honor. I won't.

17 Q The question was between 1930 and 1985, did you
18 ever engage in any of the activities listed below with
19 regard to asbestos-containing products? If so, state
20 the inclusive dates for such activity. And it's, A,
21 supply, importing, distribution, marketing, sale,
22 labeling, manufacturing, and brokering.

23 And the answer of Fisher was, "Defendant has never
24 designed, developed, or manufactured asbestos
25 materials." Let me stop there.

ROA_01086

Appendix_01107

1 MR. BOUCH: Your Honor, I believe -- I mean, it
2 ought to be complete. If she's going to impeach him
3 with something, it can't be a half a sentence.

4 MS. FARRISE: I'll read the whole thing, Your
5 Honor, but, you know.

6 THE COURT: That's fine. It is permissible to ask
7 about the answers. And as I understand it, that's what
8 she's doing. If you get into simply making him repeat
9 something he's already said yes to, that's a little
10 repetitive, but it's not -- this interrogatory may be
11 used for other purposes than simply impeachment, as I
12 understand the process, because it is a sworn statement
13 by him and he's the affiant, so he can be asked
14 questions about it. I don't think we need to have any
15 more speaking objections about that.

16 MR. BOUCH: Just ask for completeness, Your Honor.
17 That's all I ask for.

18 THE COURT: She can't do it all in one question,
19 but I'm sure he's going to be given a complete chance
20 to explain anything about these answers, and I
21 certainly hope you will do that, Ms. Farrise.

22 MS. FARRISE: I'm trying to, Your Honor.

23 THE COURT: Continue.

24 BY MS. FARRISE:

25 Q Sir, the question asked about asbestos-containing

ROA_01087

1 products, and the statement here is, "Defendant has
2 never designed, developed, or manufactured asbestos
3 materials." Do you see that?

4 A Yes. I have the copy right here in front of me,
5 yes.

6 Q Okay. One of the questions here was, "Has the
7 defendant ever supplied or sold or distributed
8 asbestos-containing products?" And I see that supply,
9 sale, and distribution were omitted from that answer.

10 So can we agree, sir, that Fisher Controls Company
11 did sell, supply, and distribute asbestos-containing
12 products?

13 A Okay, Counselor. If you read the balance of the
14 answer, it does clarify what we were in the business of
15 doing. So I believe the answer as printed and as
16 written I verified as a correct answer, and it is
17 accurate, so I don't think it's mischaracter -- you may
18 be mischaracterizing it for your purposes today, but
19 this is the answer, and it is complete, in my view.

20 THE COURT: And you can read it, if you would
21 like, Mr. Dumistra.

22 THE WITNESS: Correct, yeah. Basically, the
23 entire answer says, "Defendant has never designed,
24 developed, or manufactured asbestos materials. It
25 manufactures and has always manufactured industrial

ROA_01088

Appendix_01109

1 process control equipment. Prior to 1988, some of
2 defendant's valves, level controller, and regulator
3 products incorporated asbestos-containing components
4 that were manufactured by others. Whether these
5 products incorporated the asbestos-containing
6 components depended solely on the application and
7 customer request. Defendant supplied and sold the
8 aforesaid valve, level controller, and regulator
9 products directly through local business partners.
10 Defendant's component suppliers were located in the
11 United States such that defendant did not import these
12 materials." So we believe that answer to be complete
13 and accurate with respect to the A through H items of
14 interest.

15 Q So, there are -- there's the Fisher manufacturing
16 plant in Iowa, right?

17 A Yes. We talked about that earlier.

18 Q There are suppliers who supply various parts that
19 will go into what is manufactured at the Iowa plant,
20 correct?

21 A Yes, as it's stated here, yes.

22 Q And those suppliers, in part, supply asbestos that
23 goes into this manufacturing plant, right?

24 A Asbestos-containing components.

25 Q Right. Gaskets and packing, correct?

ROA_01089

1 A For internal parts to the valve, yes, as specified
2 by the end user, yes.

3 Q And then Fisher -- I'll just use Duke, for
4 example, as the customer -- sends to Duke its valve.
5 And this won't be pretty. I'll just do something
6 that's, you know, like got a belly. We'll get into
7 that later, but we'll call that this product it's
8 shipping to the company. And within that there is the
9 asbestos that Fisher purchased from suppliers, right?

10 A Yes. It's a bit of an oversimplification,
11 Counselor, because the process starts with Duke, not
12 with the suppliers. So Duke issues us a purchase order
13 for a complex piece of industrial control equipment, a
14 control valve in this case, and Duke has numerous
15 selections in terms of the material and the components
16 that go into this valve. So they're the ones that
17 expect to have the selection that matches up with their
18 process control conditions. Okay?

19 So the processes as Counselor has described here
20 is not entirely correct because the arrow should point
21 from Duke first to the manufacturing plant, and then
22 the suppliers would, in fact, provide those components
23 to us. We assemble them and build that valve unique
24 for that particular instance for that application as
25 Duke has specified to us. That makes it a little more

ROA_01090

Appendix_01111

1 complete.

2 Q So my simple question, sir, is that a valve
3 arrives at the customer's location -- we've heard in a
4 crate -- that has the Fisher name on it, and within
5 that valve are asbestos-containing components, correct?

6 A Correct. With the understanding that this is
7 something that Duke ordered from us, yes.

8 Q And Duke paid you for?

9 A Yes.

10 Q You didn't do it for free?

11 A No. We're not in the business to do things for
12 free, no.

13 Q The supplier didn't break into the manufacturing
14 facility and throw the asbestos in the valve before it
15 got shipped to Duke, right?

16 A No, Counselor.

17 Q Engineers like yourself who were manufacturing
18 engineers signed off on this product made at this
19 Fisher manufacturing plant being a product that could
20 go to a customer, right?

21 A With the understanding that Duke is the expert
22 with their process and their application. They're the
23 ones -- okay. Let me make it clear here because I
24 think it's important. Control valves are highly
25 engineered and unique pieces of equipment. You can't

ROA_01091

Appendix_01112

1 go to -- as Counselor pointed out, you can't go to an
2 Ace Hardware store and buy a control valve. Each
3 aspect of that valve must be specified by the customer.
4 It could be a large pipeline it goes into; it could be
5 a small one. Could be high pressure; could be low
6 pressure. Could be water; could be air; could be some
7 type of hydrocarbon, which means a gas or oil, that
8 sort of thing. So they're the experts with -- they
9 have process control engineers who that's their
10 business. They know what materials and what the
11 requirements for that type of equipment are. So they
12 select and specify the valve based upon their needs,
13 and that order then is routed through -- some are
14 independent sales offices and back to the plant to
15 satisfy that requirement.

16 So it's a very complex process, and I think that
17 your example here is vastly oversimplifying it,
18 Counselor.

19 Q Well, let me ask you the simple part of it then.
20 Fisher sends a bill to Duke, and Duke sends money back
21 to Fisher. That's how the transaction works, right?

22 A Yes, with the understanding they're buying a
23 complex piece of equipment so they have to pay for it,
24 yes.

25 Q And Fisher inserts -- and we'll talk about that in

ROA_01092

Appendix_01113

1 a moment -- the asbestos component parts of valves
2 within the manufacturing facility by Fisher employees,
3 manufacturing plant employees, correct?

4 A I'm sorry. It was kind of a run-on sentence. I'm
5 sorry. I didn't follow it. I apologize. Can you have
6 it read back to me?

7 Q I'll strike it and move on for time purposes.

8 Fisher first became aware that there is an
9 association between asbestos exposure and disease in
10 human beings, it says, in the 1970s from the OSHA
11 regulations, correct?

12 A Yes.

13 Q Has -- well, I'll move on. I'm trying to -- the
14 Fisher valves -- Fisher Controls has put out over the
15 years various publications about its products, one of
16 which is the control valve handbook of 1965, and then
17 there is a second edition from 1977, correct?

18 A Okay. This is -- a control valve handbook is put
19 together to represent the practices that were common in
20 the process control industry at the time, not
21 necessarily Fisher practices, but those that were
22 common in the industry at the time. So it was like for
23 a new process control engineer like we talked about
24 before, when they're in the business of learning
25 something new just fresh out of college or training,

ROA_01093

Appendix_01114

1 this is a reference that could be referred to in terms
2 of the common practices, not necessarily Fisher.
3 practices.

4 Q My question, sir, is Fisher put out this book?

5 A Yes, but you said something about Fisher products,
6 and I think that would be unfair to characterize it as
7 solely Fisher products.

8 Q I just asked the simple question, this is a book
9 that the Fisher Controls folks prepared and actually
10 sold, the Fisher Control -- Fisher valve handbook,
11 right?

12 A Yes.

13 Q And the first edition came out in 1965, right?

14 A Yes.

15 Q And the second edition came out in 1977, right?

16 A Yes, that sounds correct. But, again, I think you
17 characterized it as something about our products. But
18 it wasn't necessarily just our products. It was the
19 process control industry in general.

20 Q Okay.

21 A Are we done with this?

22 Q I don't know. Anyway, I have the book.

23 THE COURT: Why don't you turn up the lights a
24 little bit.

25 MS. FARRISE: I was going to put it on the

1 overhead thing.

2 THE COURT: Do you have to dim it in order to show
3 it on that overhead?

4 MS. FARRISE: Well, I don't have to dim it to show
5 it on the thing, which is why we tried to get
6 everything on the thing.

7 THE COURT: Just put it on the overhead projector.

8 JUROR: I can't see it if the lights are all the
9 way on.

10 THE COURT: You can't see it if the lights are all
11 the way up?

12 JUROR: Seems like I seen somebody raising the
13 brightness.

14 JUROR: Yes, it's the brightness on that thing.
15 It's the full bright.

16 THE COURT: The brightness on it is so high, if
17 you can lower it a little bit, that might be good.

18 MS. FARRISE: I think we got it going now, Your
19 Honor. We'll see.

20 Q While they're getting it going, I just want to ask
21 you. This was not just a manufacturing plant. There
22 was a research lab located at the facility in Iowa,
23 correct?

24 A Yes.

25 Q There was performance testing done on valves at

1 this facility in Iowa, correct?

2 A Yes. We want to make sure when we design and
3 manufacture a valve, it would be safe and properly
4 tested.

5 Q Right. So the testing that was done was to make
6 sure it performed in a certain way?

7 A Yes.

8 Q Not about health and safety?

9 A Yes. As I said, that was the -- yeah.

10 Q Okay.

11 A Performance and reliability of a valve. There's
12 quite a bit of testing that goes into it. Again, the
13 process conditions that we see in the industry are all
14 over the map, and some of them are very high pressure
15 with a lot of pressure inside a pipeline and also
16 inside a valve. It can be very dangerous, so we have
17 to test for that, do a very thorough job.

18 Q And, sir, you're not saying to this jury that the
19 asbestos-containing products that were included in
20 Fisher valves were not specifically approved for use by
21 Fisher, are you?

22 A Officially approved?

23 Q Yes. Fisher approved the use of
24 asbestos-containing products in its valves?

25 A Yes. To the extent they would work as well as

ROA_01096

Appendix_01117

1 other materials would work also, yes. So that was a
2 common type of gasket and packing material back in the
3 day that the process control industry was comfortable
4 with. And so, yes, we did incorporate them, and they
5 do work. And we tested them for sealability along with
6 the other nonasbestos alternatives, yes.

7 Q You tested them for sealability?

8 A Sealability, the ability for them to seal the
9 process pressure.

10 Q Okay. Fisher Corporation had manufacturing --
11 strike that.

12 Fisher had Fisher materials specifications,
13 correct? You know what that is?

14 A Yes.

15 Q Okay. And I'm trying to find mine. Hang on.

16 THE COURT: Just use the overhead projector then,
17 Ms. Farrise.

18 MS. FARRISE: I'm trying, Your Honor.

19 Unfortunately, I think mine might be all -- okay.

20 There we go. I'm getting there. I think I need help.

21 Can I have permission to have a lifeline from
22 someone who knows how to use the gizmo?

23 THE COURT: Sure.

24 BY MS. FARRISE:

25 Q Okay. Sir, do you recognize this type of

ROA_01097

1 document?

2 A Yes. It's a Fisher materials specification.

3 Q Okay. And so someone who was employed as an
4 employee of Fisher prepared this document, correct?

5 A Yes. Do you want me to explain the purpose of
6 this document --

7 Q I just want to go --

8 A -- thoroughly.

9 Q I have some questions, actually.

10 A Okay.

11 Q You know what, I think they're going to get to ask
12 you questions after.

13 A That's fine. I just want to be thorough, yes.

14 Q Okay. Great. So it does say Fisher. This is not
15 a Duke document?

16 A No. It's has our logo right there.

17 Q It's a material specification for high-grade,
18 long-fiber asbestos sheet gasket material, correct?

19 A Yes. That's the name we put on there. And as I
20 said, this type of document is needed to make sure that
21 when a customer such as Duke Power orders a gasket, or
22 in this case a gasket, the next time, for their
23 replacement part, that we order that gasket just like
24 they specified for the valve the first time from the
25 supplier as indicated on the chart, and it's a way of

ROA_01098

Appendix_01119

1 communicating that requirement to the supplier so they
2 get the same thing they ordered the first time. And
3 all we're doing here is putting on here the exact
4 details associated with that type of gasket material.
5 So all we do is pass it through that way.

6 Q The material specification is FMS, which stands
7 for Fisher Material Specification, Number 17A2,
8 correct?

9 A In this case, yes.

10 Q Yes. And in this case, it is Revision E because
11 there were revisions to it from when it was first
12 introduced, correct?

13 A Correct. That's the way of keeping track of the
14 as-built construction and, you know, the valves that go
15 into Duke's power plant and other customers, so we know
16 what variation of that gasket material might have been
17 applied in this case.

18 Q So in this particular case, if replacement parts
19 were sold to Duke or that call for the material that's
20 FMS17A2, Fisher knows that that material was an 80- to
21 85-percent asbestos fiber product, correct?

22 A Yes. That's, as I said before, that's the
23 constituency of that material, that is dependent upon
24 the maker of that material. And you will see that
25 listed on here who was approved in this case. At the

ROA_01099

Appendix_01120

1 bottom it says Durabla. So we put it on here in the
2 eventuality, like you mentioned, Duke orders
3 replacement parts from us, if that happens, that same
4 part would be used, the same specification would go to
5 the supplier each and every time.

6 MS. FARRISE: Your Honor, I'm going to move to
7 strike as nonresponsive.

8 THE COURT: I think it's responsive. I'm going to
9 let it stand.

10 MS. FARRISE: Okay.

11 Q The scope of the Fisher material specification is
12 that this specification lists the approved sources for
13 elastomer bound asbestos gasketing and describes the
14 composition of the approved sources.

15 Now, the approval of this material specification
16 is something that Fisher did, correct?

17 A Yes. As I said before, we take these gasket
18 materials, and the supplier of the material makes a
19 part that we have to test to make sure it properly
20 seals in the valve construction. There is a geometry
21 associated with these gaskets, too. Perhaps later I'll
22 be able to show that to you. And we have to make sure
23 that these things properly seal.

24 Once they're evaluated in our lab in terms of
25 their sealability, as I mentioned before, then we

ROA_01100

Appendix_01121

1 approve it, and that's how we document that it's been
2 done that way.

3 Q And where product Fisher Manufacturing
4 Specification 17A2 is found in invoices and purchase
5 orders, that would be an 85-percent asbestos product
6 through at least 1988, correct?

7 A Yes. That's prior to our elimination program.
8 You will see here that document is indicated obsolete.

9 Q In 1988?

10 A Yes.

11 Q So, anyway, where this is listed prior to '88, we
12 now know it's an 85-percent asbestos product?

13 A Yes.

14 Q Okay. Now, I believe we have a document -- are
15 you helping me now -- 1012-5.

16 MR. BOUCH: Is this an exhibit, ma'am? If so, the
17 number?

18 MS. FARRISE: Yes, it's an exhibit, 2006.0017.
19 It's a Fisher Controls document from the files of
20 Fisher.

21 MR. BOUCH: Thank you.

22 MS. FARRISE: Then we have Exhibit 1012.5 which I
23 believe is in evidence.

24 THE COURT: It's in evidence.

25 MS. FARRISE: Thank you. I'm so sorry about all

ROA_01101

Appendix_01122

1 these hiccups. We're getting there.

2 Q Okay. So, sir, this is a purchase order that
3 would be sent to Fisher Controls?

4 A Yes, appears to be.

5 Q To purchase replacement parts to be used at Ocone
6 Nuclear Station, correct?

7 A Yes.

8 Q The date here is 1982, right?

9 A Correct.

10 Q And it's calling for a replacement part with that
11 specification, the FMS17A2 that we just looked at,
12 correct?

13 A I see that there, and that supports my explanation
14 earlier, that that's important that they get exactly
15 the same thing each time that they order replacement
16 parts that they ordered the first time for the original
17 valve.

18 And I might add that our system is such that it
19 ties that FMS to the part number when it's appropriate.

20 Q So we now know that it's not just
21 an asbestos-containing gasket for a four-inch Fisher
22 globe valve at Ocone; we know it's an 85-percent
23 asbestos-containing product if we put it together with
24 the material specification, right?

25 A Yeah. That's what we talked about earlier. It's

ROA_01102

Appendix_01123

1 got asbestos-containing binders and that sort of thing.

2 Q And you were suggesting that that product, the
3 replacement product, also comes from the Iowa
4 manufacturing plant to Duke, right?

5 A Again, you see here how specific Duke has gotten
6 with their purchase orders. They want the exact same
7 thing, so they issue that purchase order to the
8 manufacturing plant. We get it from the supplier, just
9 the same route that we talked about earlier with the
10 original valve.

11 THE COURT: Mr. Dumistra.

12 THE WITNESS: Oh, I'm sorry.

13 THE COURT: I want you to do this for me. When
14 she asks you a question, go on and answer it first. If
15 you've got some additional explanation you want to
16 give, that's perfectly okay, but start off by answering
17 her question.

18 THE WITNESS: Okay. Sorry, Your Honor.

19 THE COURT: Yes, sir.

20 THE WITNESS: So the answer is yes, but with the
21 qualifier that it's, again, with the understanding that
22 they're ordering this to get the same thing they
23 ordered the first time.

24 BY MS. FARRISE:

25 Q The part number here is a Fisher Controls part

ROA_01103

Appendix_01124

1 number from the parts catalog, correct?

2 A Okay. We did not have parts catalogs, per se. We
3 had instruction manuals.

4 Q The part number is a Fisher Controls part number?

5 A Yes, it is, but you referenced catalog, so I
6 wanted to clarify. It's -- yes, it's a Fisher part
7 number.

8 Q And the Fisher part number for the 85-percent
9 asbestos-containing gasket was sent to Duke from
10 Fisher, correct?

11 A Yeah. We covered that, yes.

12 Q And this is a replacement part. We talked about
13 the original valves?

14 A Correct. And the same route for -- correct. And
15 it's the same route for replacement parts.

16 Q And the same thing happens with replacement parts.
17 Duke sends back to Fisher money for Fisher having sent
18 to Duke asbestos-containing replacement parts using a
19 Fisher part number, correct?

20 A Correct. According to their purchase order, yes.

21 Q Now, the simple reference to the part number,
22 Fisher knows what this part is, how big it's supposed
23 to be, where the holes go, that sort of thing, correct?

24 A Yes, but you say "holes" in the plural sense.

25 There should be only one hole in these parts.

ROA_01104

Appendix_01125

1 Q Okay. Now, I don't know if I have this or I need
2 some help. Let me show you another document from
3 Fisher's files, okay?

4 Let me move on to something else.

5 Sorry. These are the kind of things that
6 frustrate me greatly, and I'm not trying to be
7 frustrated.

8 Q There are other material specifications that call
9 for other kinds of asbestos yarns and patterns to be
10 used, right? Let me show you one.

11 This is another document created by Fisher
12 Governor Company, correct?

13 A Yes.

14 MS. FARRISE: And I need you, if you can, to blow
15 up this corner.

16 Q This is a product that was formed packing to be
17 made of metal particles, oil-proof binder, long-fiber
18 asbestos and must be suitable for use on oils and
19 petroleum distillates at temperatures up to
20 550 degrees, correct?

21 A Yes.

22 Q And this down here, the following materials have
23 been approved. That's John Crane Super Seal Number 3
24 for this Fisher Governor material specification,
25 correct?

ROA_01105

Appendix_01126

1 A Yes. This is similar to what we talked about
2 before.

3 Q Someone at Fisher actually goes through and
4 understands what this product is and what it's suitable
5 for and approves its use in Fisher valves, correct?

6 A Okay.

7 THE COURT: I know you're going to answer the
8 question first, Mr. Dumistra.

9 THE WITNESS: I know, but --

10 THE COURT: Thank you, sir.

11 THE WITNESS: Okay. To an extent, yes. To the
12 extent how it is used by the customer, we rely totally
13 on the supplier of the asbestos-containing material,
14 okay, because it talks about in this, it says oils and
15 petroleum distillates. We get that directly from the
16 supplier of the gasket material. With respect to its
17 ability to seal in the valve as we talked about before
18 and the geometry, the size and shape of the part, we
19 test for that, so it's a combination of those two
20 things that answer the question.

21 I'm sorry, it's not quite that simple, Your Honor.

22 Q So in some part it sounds like you're saying, "We
23 just pass on something that was supplied to us"?

24 A If it has to do with how that gasket will work
25 with certain process conditions, yes, that is true. On

ROA_01106

Appendix_01127

1 the other hand, we do test the material to make sure
2 they properly seal in our valve. We don't want the
3 valve to leak.

4 Q Okay. So this particular product is something
5 that is asbestos packing which we haven't talked a lot
6 about, correct?

7 A Counselor, you said "this product"?

8 Q Yeah.

9 A This really isn't a product.

10 Q It says, "Formed packing to be made of metal,
11 oil-proof," et cetera. It's a material that Fisher
12 approved, correct?

13 A This is a material specification, not really a
14 product per se.

15 Q It's a material that Fisher has approved for use
16 in its products, correct?

17 A To the extent it helps define what the material
18 will be made of, yes.

19 Q Okay. Let me just fool with this gizmo one more
20 time. I'm trying to get a picture of this product so
21 we can maybe make it work.

22 MS. FARRISE: You know what, Your Honor, even
23 though I'm frustrated, some part of it is just me, but
24 now I got it. Thank you. Okay. Lordy.

25 Q So this is what we were just -- the actual product

ROA_01107

Appendix_01128

1 that went with the document that we were just looking
2 at, right, the John Crane, who's the approved supplier,
3 Super Seal product, correct?

4 A Of course, there is a lot of detail associated
5 with these. They have model numbers and that type of
6 thing, so they may have that name applied to more than
7 one type of gasket -- excuse me, packing material, so
8 it's difficult for me to decipher that from here. I'm
9 sorry.

10 Q Does that help?

11 A It could be. I'm not going to say it's not.

12 Q It's the John Crane jacketed Super Seal packing,
13 and I think the approval for the specification was
14 Number 3, correct?

15 A If you can toggle back to that, I'll take a look
16 at it.

17 Q And here is Number --

18 A Oh, he's giving me this.

19 Q Oh, great. Here is Number 3 --

20 A Okay --

21 Q -- for pumps and valves handling petroleum
22 products, temperatures to 550 degrees?

23 MR. BOUCH: Your Honor, can he finish his prior
24 answer before they -- I'm guilty of it, and I
25 acknowledge it, Your Honor, but --

ROA_01108

Appendix_01129

1 THE COURT: I want him to answer the question, and
2 I'm wanting to be sure that he does answer the question
3 before we move on.

4 Now, he asked to go back and look at a particular
5 reference. I believe when you go back and look at that
6 reference, you're going to see that she's showing you
7 what that reference is.

8 THE WITNESS: She's asking me to connect the dots.
9 In order to do that, I have to have the prior. They
10 gave me this.

11 THE COURT: How about the prior thing? If he
12 needs to connect the dots, let's get it up here right
13 now.

14 MR. BOUCH: Thank you, Your Honor.

15 THE COURT: He's got a copy of it right there,
16 hasn't he?

17 THE WITNESS: I didn't pay that much attention to
18 the prior slide.

19 THE COURT: Well, I wrote it down.

20 THE WITNESS: I'll look at your notes then. Look
21 over there.

22 THE COURT: Says Number 3, Super Seal Number 3.
23 That's what I wrote down.

24 THE WITNESS: Okay. All right. Well, that's good
25 enough for me.

ROA_01109

Appendix_01130

1 THE COURT: Now, what would your answer be?

2 THE WITNESS: It may not be that simple because
3 this does say, Style 3J, which could mean something
4 different, Your Honor.

5 BY MS. FARRISE:

6 Q Okay. But I'm just trying to get the process.
7 Someone at Fisher --

8 A Yes, and by the way --

9 Q -- needs to look at various products and approve
10 them for use in valves that Fisher will make and sell,
11 right?

12 A Yes. In fact, this --

13 Q And they also -- yes, thank you. And they also
14 approve who the supplier will be, in this case, John
15 Crane Super Seal Number 3, right?

16 A Correct. This is a perfect example of what I
17 described earlier where we rely upon, in this case, a
18 Crane packing company document to tell what that's
19 capable of in terms of process, and then the industry
20 knows this style of John Crane packing will work for
21 their process. And what we do in this Fisher material
22 specification, we simply document it, again, so that
23 when Duke ordered that limited part number, this FMS is
24 structured against that part number, and they make sure
25 they get this style of John Crane packing the next time

ROA_01110

Appendix_01131

1 they order it from Fisher. So it really ties it
2 together. As I said, it's important for them to get
3 what they want each and every time.

4 Q And what they want in terms of asbestos packing
5 comes through the approved list that Fisher approves
6 and selects, correct?

7 A Yeah. We approve it on that basis, yes.

8 Q Now, this is John Crane asbestos valve stem
9 packing, and it is another sort of type of packing that
10 folks at Fisher evaluated and approved for use in
11 Fisher valves and as replacement parts, right?

12 A It's hard for me to make that determination here,
13 ma'am. I just can't without some additional background
14 documents like I had before.

15 (WHEREUPON, Mr. Holder handed the witness a
16 document.)

17 BY MS. FARRISE:

18 Q What's happening here?

19 A Is this different pages in the same exhibit?

20 MR. HOLDER: They're all different exhibits.

21 THE WITNESS: Again, I can't draw a conclusion to
22 that extent without seeing the prior reference.

23 Because this is the way we tie it together is with the
24 Fisher material specification.

25 BY MS. FARRISE:

ROA_01111

Appendix_01132

1 Q Right. You could go -- okay. Anyway, I want to
2 ask you about what this is, first of all. We have not
3 heard a lot about this. This thing here, those are
4 packing rings, right?

5 A Yes, yes.

6 Q And the packing rings here, these are, even though
7 it looks black, asbestos-containing materials, correct?

8 A I wouldn't be able to say on the basis of just
9 that photo.

10 THE COURT: Well, right below it, it says
11 "asbestos-containing materials," doesn't it?

12 THE WITNESS: Okay. If I could zero in on that
13 part.

14 MS. FARRISE: I think the judge is right.

15 THE COURT: "Braided asbestos jacket." And it
16 continues to describe each one of them and has asbestos
17 on -- I mean, I know you're trying to be very precise,
18 but we want to -- this information is in your
19 interrogatories. It's on this material here. It's a
20 part of what y'all produced, so let's try to kind of
21 concentrate on what it says.

22 THE WITNESS: Yeah, and I don't have a
23 disagreement with that. There is a lot of material
24 specifications in the vendor catalogs that we may have
25 not incorporated at all, so you're correct, Your Honor,

ROA_01112

Appendix_01133

1 I wanted to be precise, yes.

2 THE COURT: All right, sir.

3 BY MS. FARRISE:

4 Q So we don't have a disagreement now that these
5 rings here are asbestos-containing, right?

6 A It appears to be that way. I'm not going to
7 disagree with that on the basis of that being mentioned
8 there.

9 Q Well, it says, "All six styles of Super Seal" --
10 all six -- "shown on the foregoing pages can be
11 furnished with a braided asbestos jacket. The jacket
12 is securely vulcanized" -- and goes on to describe
13 that -- "for high pressures. The asbestos yarn and the
14 jacket can be reinforced with Monel wire. The wire is
15 in the center of each strand and cannot touch moving
16 parts." I read that correctly. Let's start there,
17 right?

18 A It appears you did, yes.

19 Q And so this type of packing, which is
20 asbestos-containing, they're describing that there is a
21 little wire that can go into it so that it's flexible
22 in the packing in the valve, and we're going to get to
23 that in a minute. And this is the type of valve
24 packing, and these things over here -- I was just
25 asking about the rings -- are what are referred to as

ROA_01113

Appendix_01134

1 packing rings, correct?

2 A Yes. I don't recall our packing specification
3 that included wire in the inside, but with that
4 exception, I mean, I'm not going to disagree these are
5 asbestos-containing packing rings. You referred to
6 Style 3 in the prior FMS. This refers to Style 3J.
7 There could be a difference. I'm just saying maybe
8 that's it. I don't know. But the document says what
9 it says.

10 Is this something that we produced, Counselor?

11 Q Yes, it is.

12 A Well, it would be in our vendor catalog. And,
13 again, it would not necessarily be something that we
14 ordered. We control it by virtue of the FMS. So with
15 that qualifier.

16 Q Do you have the book up here?

17 So getting back to the Fisher control handbook,
18 which I understand, even though it has Fisher's name on
19 it and is bound by Fisher and on the first page it says
20 it's copyrighted by Fisher, it's actually a book,
21 generally speaking, for the whole industry. You got
22 that book?

23 A Yes, I do. And that is discussed in the preface,
24 so it's not just my word. It's actually printed that
25 way.

ROA_01114

Appendix_01135

1 Q So if I ask you to turn over to page -- there's a
2 whole section on butterfly valves. You know what those
3 are, correct?

4 A Yes..

5 Q And the butterfly valve is a type of valve that
6 Fisher manufactured and sold to Duke with
7 asbestos-containing components, correct?

8 A It depends on the specification. It could go --
9 it could have asbestos-containing packing if they
10 ordered it that way. Typically, no gaskets in a
11 butterfly valve.

12 Q Okay. I'm just trying to get a handle, sir --

13 A In fact, I want to change my answer. To my
14 knowledge, no gaskets were ever incorporated in a
15 butterfly valve.

16 Q I'm going to look for what I'm looking for, but
17 let me go back. There is a basic page, I think it's in
18 the '65 catalog, that tells you what a valve is. Maybe
19 we should go back there.

20 JUROR: May we have a ten-minute break?

21 THE COURT: You certainly may. It's 3:30. Past
22 time to have one. Perhaps we can get these technical
23 matters straightened out. The jury will be on a break
24 for ten minutes. Very good.

25 (WHEREUPON, the jury exited open court at

ROA_01115

Appendix_01136

1 3:34 p.m.)

2 (WHEREUPON, a recess was taken from 3:34 p.m. to
3 3:46 p.m.)

4 (WHEREUPON, the jury entered open court at
5 3:46 p.m.)

6 THE COURT: Please be seated, ladies and gentlemen
7 of the jury.

8 And, Mr. Dumistra, please be seated.

9 Ladies and gentlemen of the jury, let me make a
10 correction to this record just so it will be clear
11 what's what, and it's my fault, not counsel's fault or
12 Mr. Dumistra's fault.

13 He was being examined on the material
14 specification sheet of Fisher. And within that
15 material specification sheet, which is
16 Exhibit 1008.1964, there was a document, a material
17 specification document, you may recall -- this one --
18 that talked about, "Formed packing to be made of metal
19 particles, oil-proof binder, long-fiber asbestos, and
20 must be suitable for use on oils and petroleum
21 distillates at temperatures up to 550 degrees
22 Fahrenheit." And then it says, "And the following
23 materials have been approved, Number 1, John Crane
24 Super Seal Number 3." Now, that is a Fisher document
25 that was produced by Fisher.

ROA_01116

Appendix_01137

1 Then counsel showed you document number
2 Plaintiffs' Exhibit 1013.13, and this is a Crane
3 packing company document that described, apparently,
4 the Fisher valve -- I mean the John Crane valve that is
5 referred to here. And it said --

6 MS. FARRISE: The John Crane Super Seal.

7 THE COURT: -- "Jacketed Super Seal packing." And
8 it said, "In this class are styles number," and one of
9 the numbers is 3J. And it said, "All six styles of the
10 Super Seal shown on the foregoing pages can be
11 furnished with a braided asbestos jacket. The jacket
12 is securely vulcanized or proper style of Super Seal
13 helps to retain its splendid resilience at high
14 temperatures." And for 3J, it says, "For pumps and
15 valves handling petroleum products, temperatures to
16 550 degrees Fahrenheit."

17 Now, I characterized that thing as a
18 Fisher-produced document. It's not a Fisher-produced
19 document. It's a document, gotten from other sources,
20 but it bears the logo of John Crane, but it apparently
21 does describe what is contained in this materials
22 specification sheet.

23 But I don't want you to think this is Fisher's
24 produced document. It's produced from another source.

25 THE WITNESS: With the exception, Your Honor, that

ROA_01117

Appendix_01138

1 this says J and this does not say J.

2 THE COURT: Right. And, frankly, since the
3 description is the very same description that's
4 contained there --

5 THE WITNESS: It could be.

6 THE COURT: -- it could well be.

7 THE WITNESS: Could well be, yes.

8 THE COURT: So, therefore, that's the explanation
9 I wanted to give you about that, and we'll resume our
10 examination of Mr. Dumistra.

11 MR. BOUCH: Your Honor, I think there was a second
12 Crane that looked like it had coils or something.

13 THE COURT: Same thing with that one that had
14 coils.

15 MR. BOUCH: It's not ours.

16 THE COURT: It describes certain styles of
17 materials, but the description and the pictures don't
18 come from Fisher; they come from, apparently, Crane.

19 Very good. All right. Now, you may proceed.

20 MS. FARRISE: Thank you, Your Honor. I'm going to
21 try.

22 Q Mr. Dumistra, looking at what is Exhibit 1013, I'm
23 actually trying to ask you about the type of products.
24 These are products that go into valves and are referred
25 to as valve packing, correct?

ROA_01118

Appendix_01139

1 A Yes, it's referred to as valve packing. Now, did
2 you say Fisher products? Because the one in the upper
3 right is a rope-style packing, and that was not
4 incorporated. The one immediately below it is a
5 precut, preformed type of packing, and that was.

6 I know Mr. Jolly referred to packing of a nature
7 that was depicted in the upper right-hand, that
8 rope-style packing. We never provided that. We
9 provided precut. You can see it in your cutting away a
10 little bit of the white one there. But the black ring,
11 the two rings there, and the white rings would be more
12 representative of how we ordered the packing, precut,
13 to make it easier for customers to install, not the
14 upper right.

15 Q Those are called packing rings; can we agree on
16 that?

17 A Correct.

18 Q And the diameter of the packing ring is going to
19 depend on the diameter of the valve it's used on,
20 correct?

21 A It's based upon the shaft or the valve stem, not
22 the line size of the valve, yes. To the extent there
23 is a size component to it, yes.

24 Q And in terms of just trying to get our bearings
25 with valves, because we haven't had a lot of that talk,

ROA_01119

Appendix_01140

1 let me ask you to take a look at what I hope you have,
2 Plaintiffs' Exhibit 948, and it is the Fisher Control
3 handbook. I'm going to try to put it up electronically
4 here.

5 A 947, so the next tab back. Okay. I have that
6 here.

7 Q It's 948, sir. Do you have 948?

8 A Yes. I found it the next tab back.

9 Q And if I could ask you to turn over to Page 2.

10 A Roman Numeral II or Number 2?

11 Q Page 2, and it looks like this.

12 A Okay. I see the pages are at the top, yes. Okay.
13 I have that.

14 Q And so here in the Fisher Control handbook, there
15 is a basic design of what we're even talking about. It
16 says, "Relationship of major components that make up a
17 control valve," correct?

18 A Yes.

19 Q And it indicates or shows here that for the Fisher
20 valves, Fisher's name appears on what is referred to as
21 the valve body, correct?

22 A Yes.

23 Q And before we had our break, I think you started
24 to mention something about gaskets. Do you recall
25 that?

ROA_01120

Appendix_01141

1 A With respect to butterfly valves.

2 Q Just -- okay. I'll withdraw then.

3 Can we agree, sir, that the Fisher basic valve
4 contains these kinds of metal flange faces that are
5 part of what is sold from Fisher to customers?

6 A This is a flanged globe-style sliding stem valve.

7 Q And it has a flange face?

8 A Yes.

9 Q And unless it is connected to a piping system, it
10 really doesn't have any purpose just sitting there,
11 correct?

12 A No. That's the purpose of a flange. See, valves
13 have to be connected to the pipeline, and so flanges
14 are one way to connect it to the pipeline. The
15 pipeline also has flanges, or in many cases, the valve
16 could be welded to the pipeline, which is not uncommon
17 either, in which case there's no flange.

18 So, again, in the case of butterfly valves, which
19 Counselor pointed out earlier, in those cases, there
20 would be no flanges typically on the butterfly valve.
21 It would be squeezed between two pipeline flanges. And
22 that's how they're held together, is the flange here,
23 flange here, butterfly valve in between. Very narrow,
24 much narrower than what's depicted for a sliding stem
25 valve, and then the customer installs it by squeezing

1 it together between pipelines.

2 Q Please take a look at Page 2, which you're on, and
3 let's talk about this basic valve product here. This
4 is a direct-acting actuator. That's something that was
5 made at the Fisher factory, correct?

6 A That's correct.

7 Q So just to kind of orient us, there is within
8 this, what? Is there a flange or packing on this? I
9 think I want the below one actually. Hang on.

10 So, now, this is one of the products as well that
11 Fisher made, correct?

12 A Yes. This is -- as I said, this is a detailed,
13 what's called a cross-sectional view. If you
14 physically cut the valve in half that was depicted in
15 the prior upper right-hand corner, this is an expanded
16 view of that same valve, and it's as if you would
17 imagine cutting it in half, and you see the internal
18 parts and the flange on each side. And the flow in
19 this case would be from where it says the word "cage,"
20 or the other side, and it would go up into the cage,
21 down and through and out that little port there. It's
22 called a port.

23 Q And at those two flange faces, there would be a
24 gasket to connect it to the piping system, correct,
25 depending on what kind of flange it was, right?

ROA_01122

Appendix_01143

1 A Yes. If they ordered this type of valve, there
2 would be -- the customer would have a requirement to
3 purchase and install a gasket on each side of that
4 valve to connect to the pipeline. A gasket is
5 basically a means by which two metal surfaces that may
6 have imperfections, and it provides a sealing, what's
7 called a static seal, and it allows the pressure to
8 stay inside. Squeeze that gasket together very
9 tightly, and it keeps the pressure from escaping that
10 joint.

11 Q And this is a product, the design of which design
12 engineers and manufacturing engineers at Fisher would
13 have made sure it was designed correctly and sold to
14 customers like Duke, correct?

15 A Yes. Again, as I said earlier, the various
16 components here can be made out of all kinds of
17 different materials, depending upon the process fluid
18 that's flowing through it. To be safe, the process
19 engineer has to make that selection. And even the
20 windows that are in the cage, even that's a selection.
21 So the flow will be characterized based on how much it
22 opens and closes. It's a very complicated and
23 technical selection process that the process engineers
24 in the field need to use.

25 Q There are, as part of that design, bonnet gaskets,

ROA_01123

Appendix_01144

1 correct?

2 A Yes.

3 Q There are these other gaskets, these spiral-wound
4 gaskets, correct?

5 A Yes.

6 Q There are cage gaskets, correct?

7 A Yeah. And I'll answer that yes, that's how it's
8 depicted here. Not every valve will look like this, so
9 not every valve will have all those components.

10 Depends on the specific valve.

11 Q It has seat ring gasket, the typical control valve
12 assembly, correct?

13 A In this case, yes.

14 Q So when we talk about the internal components that
15 Fisher included and before it's shipped to the
16 customer, these are the type of internal gaskets and
17 components that you were referring to, right?

18 A Yeah. Not just those, but all of them. I mean,
19 all the bolting, the bonnet material, the body
20 material, the seat ring material, all of that would be
21 part of that specification, yes.

22 Q And manufactured at the Iowa plant?

23 A Yes, in accordance with Duke specification, yes.

24 Q And in addition, there would be packing. We just
25 struggled our way through looking at the rope material

ROA_01124

Appendix_01145

1 and also the rings that go into the packing box, right?

2 A Yes. And packing is a little bit different to the
3 extent that packing has to provide what's called a
4 dynamic seal. And as I said, the fluid flows from one
5 side, through the cage, and back out through the other
6 side or the opposite direction, depending upon which
7 way the fluid is flowing. And the way it works is that
8 the stem will move a plug up and down inside there, and
9 depending upon how far up it is, the valve will open.
10 If it goes down further, the valve closes. So that
11 stem that was depicted here has to move, and that
12 pressure is allowed to get out, so you have to have
13 what's called a dynamic seal or a seal that will allow
14 movement.

15 So the packing is up in the upper area there.
16 It's hard for me to point to it. Those are the rings
17 that you saw in the other diagram. So they go in
18 there, they stack them in there, and they're compressed
19 so they provide that dynamic seal.

20 Q. And at some point those packing rings made of
21 asbestos wear out, correct?

22 A Depending upon the service that they're applied
23 in, yes, that could be anticipated. Depends, again, on
24 the service and the material selection and that sort of
25 thing.

ROA_01125

Appendix_01146

1 Q What is the life -- service life of a valve?

2 A Again, it depends on the service. That's entirely
3 a function of the user's practices and procedures.

4 There's no good way to predict.

5 Q Would you turn over to Page 28 of that same Fisher
6 Control valve -- I mean Fisher Control valve handbook.

7 Yes, that's what it is.

8 A Yes, I have that here.

9 (Microphone top fell off the microphone.)

10 THE WITNESS: Oh, here. Something fell.

11 JUROR: It's in your lap.

12 THE WITNESS: Oh, it is? Thank you.

13 BY MS. FARRISE:

14 Q Do you have that, sir?

15 A Yeah, sorry. I was distracted.

16 I have that here.

17 Q On Page 28 of the Fisher Control valve handbook,
18 it discusses this issue of what is to be used for valve
19 stem packing. And Fisher lists a number of valve
20 control valve packing in that section, and it lists a
21 number of asbestos-containing packings that would be
22 suitable to use in the valve, and, therefore, as well
23 in the replacement parts, correct?

24 A Yes. That is correct. They are listed on that
25 page, but the section actually starts on Page 27.

ROA_01126

Appendix_01147

1 Q So one of the types of packing is this
2 TFE-impregnated asbestos. Do you see that?

3 A Yes. The very first one is on the prior page.
4 It's TFE V-ring packing.

5 THE COURT: Mr. Dumistra, if you need to explain
6 more by going to a previous page, you can, but she's on
7 Page 28.

8 THE WITNESS: Thank you, Your Honor. The answer
9 is yes, it is described there.

10 BY MS. FARRISE:

11 Q And it's composed of braided asbestos fibers
12 impregnated with TFE. Is that Teflon?

13 A That is not purely Teflon. There is asbestos in
14 that as well as Teflon.

15 Q So TFE, when we see that designation, refers to a
16 material that is asbestos and Teflon?

17 A Yes. The TFE actually is abbreviation for
18 polytetrafluoroethylene, so it's a plastic.

19 Q And it's molded into rings with a square
20 cross-section. It's those rings we were just looking
21 at, right?

22 A Yes.

23 Q There's graphited-asbestos formed ring packing
24 composed of asbestos fiber, lead, wool, flake graphite,
25 metal particles, and a small amount of neoprene as a

ROA_01127

Appendix_01148

1 binder, correct?

2 A Correct.

3 Q So when this product we just -- the picture we
4 just saw looked like it was a black rope. But once you
5 mix the asbestos in with the neoprene and the graphite,
6 the color of it, just looking at it, does not
7 necessarily tell you whether it's asbestos-containing
8 or not. It might look like it's kind of a slick, oily
9 rope, right?

10 A Yeah. I don't think you can tell about the
11 material constituencies based upon the color. I don't
12 have that familiarity with it, to be honest with you.

13 Q And the way it's used, which is really what I was
14 trying to get to, if I ask you to turn over to that
15 butterfly valve -- let me look in the table of
16 contents.

17 A Would it be appropriate for me to point out that,
18 as I said earlier, that there's another type listed on
19 the prior page? Because that's where it talks about
20 pure TFE V-ring, and that's the most commonly specified
21 material, and it's not asbestos-containing at all. And
22 that's listed on the prior page, to be complete.

23 Q In terms of the type of valves, let's just see.
24 This book is in evidence, so I guess maybe we'll get it
25 together after you're gone. Do you have 96?

ROA_01128

Appendix_01149

1 Sir, can I ask you to turn over to Page 96 and see
2 if that is where our butterfly begins.

3 THE COURT: Ms. Farrise, it's going to be helpful
4 for the jury to talk to them when you ask these
5 questions. Which page are you having him turn to?

6 THE WITNESS: 96.

7 BY MS. FARRISE:

8 Q 96 of the 1965 book. Do you have that?

9 A Oh, so that's a different exhibit number?

10 Q Yeah, 947.

11 So this butterfly valve, that's a type of valve
12 that Fisher sold to Duke Power, correct?

13 A Yes. That does depict a butterfly valve. I'm not
14 sure if that was ever sold to Duke.

15 Q But we have the invoices and the sales and all of
16 that, so we can deal with that later.

17 But those rings that we've been looking at, the
18 packing rings, are one of the internal components of
19 those valves, that rope that we were looking at,
20 correct?

21 A It would be either the rope style or the
22 preformed-Teflon packing rings.

23 Q Okay.

24 A In fact, can I just explain to the jury, if you
25 don't mind, you will see the shaft going through there.

ROA_01129

Appendix_01150

1 and Counselor pointed to the packing. It is those
2 rings. And they're stacked in there. And the user of
3 this type of equipment will, before they start the
4 process, line up; they will tighten -- there is little
5 bolts or, excuse me, nuts on the end there, and they
6 tighten those nuts and it squeezes the packing and it
7 creates a force against the shaft, or in this case a
8 stem, and the other part, and it keeps the process
9 fluid from leaking around the shaft. It's important.

10 Q Okay.

11 A Teflon, by the way, was one of the most common,
12 and it's for an obvious reason, that is, because even
13 though that Teflon is slippery and Teflon packing was a
14 really good invention, it minimizes the stickiness of
15 that motion. In the case of a rotary valve, it's like
16 this. In the case of a sliding stem valve, it's up and
17 down like this. So the less stickiness you have, the
18 better control you get out of that control valve.

19 Q Can we agree, Mr. Dumistra, that the valve size is
20 determined by an analysis of the process service
21 conditions to see that the required flows can be
22 attained? You have to know where and what the
23 application is and setting the valve is going to be
24 used, correct?

25 A Yes. We talked about that earlier.

ROA_01130

Appendix_01151

1 Q It's not just an off-the-shelf product, which we
2 have been talking about, right?

3 A Correct.

4 Q And the butterfly valves, they can be rather
5 large, correct?

6 A Yes.

7 Q They are valves that, I think I read in here and
8 I'll find it if I need to, can have a length of
9 108 inches, right?

10 A The largest one we ever made, the internal
11 diameter was 108 inches across. It was quite rare.
12 But we were kind of happy and proud of the fact that
13 that's a very large valve. It would be nine feet in
14 diameter, but that's a rare occasion.

15 Q So that would be a valve that has a diameter of a
16 size that somebody like me, if I could, could sort of
17 walk into it and stand up from bottom to top; that's a
18 valve that Fisher Controls made, correct?

19 A Yes. Again, it's quite rare, but we made one
20 108 inches in diameter.

21 Q And in terms of what the internal components would
22 be, those are things that Fisher engineers, I think you
23 said, processed, designed; manufacturing engineers
24 would be involved in, correct?

25 A Of course, we decide all those components, and we

ROA_01131

Appendix_01152

1 build them uniquely for that particular application.

2 Q And there are at Fisher service engineers, people
3 who do service work in the field, not just at the
4 manufacturing plant?

5 A No.

6 Q Okay. Sir, I'd like to show you what we've marked
7 as Plaintiffs' Exhibit 1008. I believe it was a
8 deposition -- exhibit to a deposition that you gave
9 previously. Let me put it down on the Elmo. It's in
10 the Stroker case. It's Exhibit Number 8. Do you have
11 that transcript?

12 MR. BOUCH: No, ma'am. I was not in the Stroker
13 case.

14 MS. FARRISE: But we have a transcript for you.

15 Can I have one for Mr. -- can I have one for
16 Mr. Dumistra as well, if you have copies? I think --

17 MR. HOLDER: Yes. Thanks so much. Okay. Here's
18 your copy, Mr. Bouch.

19 MR. BOUCH: I just want a copy of the sheet of
20 paper you gave him.

21 MS. FARRISE: It's Exhibit 2 to his deposition.
22 And we're going to be referring to a couple of them, so
23 I'm giving you the whole transcript and the exhibits,
24 if that will make life easier.

25 Q I'm going to ask you questions probably about the

ROA_01132

Appendix_01153

1 exhibits, and they have this number down there. Okay?

2 A Oh, sure.

3 Q Mr. Dumistra, if you would take a look at a page
4 marked at the bottom right corner Dumistra 2006-0054.

5 And I also have it up here if it's too difficult --

6 A I have it.

7 Q Do you recognize this as an advertisement for
8 Fisher Controls that, in this case, was included in an
9 industry magazine? This is the type of advertising
10 that Fisher Controls did, correct?

11 A Yes. It appears to be a marketing brochure, yes.

12 Q And in the marketing brochure for purposes of
13 sales, Fisher says that it offers, "Professional sales
14 and service engineers located worldwide. There are 184
15 Fisher sales engineers located in 27 major U.S. coastal
16 cities, dozens more," blah, blah, blah, blah, blah.

17 Did I read that correctly?

18 A Yes.

19 Q Does that refresh your recollection that Fisher
20 Controls does -- do and have had service engineers who
21 were employees of Fisher Controls in the field?

22 A Okay. This -- my interpretation of this document
23 is that they're referring here to our independent sales
24 offices, and they service that client.

25 Q So your interpretation --

ROA_01133

Appendix_01154

1 A You said -- we agreed that it was a sales --

2 Q I know. So I'm looking for in the advertisement
3 that Fisher Controls puts out to the world, nowhere in
4 what I just read does it say these people are
5 independent actors; they are, as it indicates,
6 professional sales and service engineers located
7 worldwide, 184 Fisher sales engineers located in 27
8 major cities, correct?

9 A Right. And this is a marketing brochure, and
10 that's the way they described it here. But I explained
11 to you what my understanding of it is, and that's the
12 fact that it says 27 major U.S. cities, that implies
13 that they're not all our people. They're not our
14 people at all. In fact, they're the sales offices.

15 Q Someone reading that without being in this
16 courtroom or tracking you down in Marshalltown, Iowa
17 wouldn't exactly know that, correct?

18 A No, I can see where that might be misunderstood.
19 Again, it's a sales brochure.

20 Q Okay.

21 A And it's not particularly misleading in my
22 opinion, but I'll let your characterization stand.

23 Q When 108-inch butterfly valves are carted and
24 shipped to a customer site, for instance, and
25 installed, Fisher service engineers or Fisher engineers

ROA_01134

Appendix_01155

1 are on-site to help with that, correct?

2 A No.

3 Q Okay. You just put it in a box, put it on a
4 train, send it to the customer and they figure it out,
5 correct?

6 A Well, first of all, you said plural. I think we
7 only shipped one 108-inch; and, second of all, no, we
8 did not service a valve in that respect.

9 Q My question is when it is originally installed.

10 A Correct.

11 Q I just want to be clear about what your testimony
12 is. Your testimony on behalf of Fisher is that its
13 engineers do not do any field work; is that correct?

14 A Not to my knowledge, no. I mean, I'm not saying
15 we never visited any -- I'm not saying it never, ever
16 happened, but that would be quite unusual because,
17 again, they do the installation. They're responsible
18 for that.

19 Q Sir, among the types of asbestos-containing --
20 specific types of asbestos fiber used or approved for
21 use in Fisher products is the blue African asbestos,
22 correct?

23 A I have seen that specification only once, and, in
24 fact, I have never seen it or experienced a valve that
25 was shipped using that type of packing specification in

ROA_01135

Appendix_01156

1 44 years.

2 MS. FARRISE: Your Honor, I'm going to move to
3 strike as nonresponsive.

4 THE COURT: It isn't responsive. You have got to
5 respond to the question first, Mr. Dumistra, then you
6 can say what your experience is, so forth.

7 So the first question she asked was whether blue
8 African was used in any valves and specified for any
9 valves, and you said at least one. So you need to kind
10 of answer that first and then you can explain.

11 THE WITNESS: Very good. Let me clarify it this
12 way. Thank you, Your Honor.

13 I'm not aware of any valve that was shipped using
14 a specification that incorporated blue African packing.

15 BY MS. FARRISE:

16 Q Would you turn to Page 37 of the exhibits to the
17 deposition that you gave in 2006.

18 A Page 37.

19 Q And we're displaying it on the screen. For the
20 record, it's Exhibit 2006-0037. And this, again, is a
21 Fisher Governor Company document, correct?

22 A I'm trying to get to that exhibit.

23 Q Okay.

24 A I have it here.

25 Q This is a Fisher Governor document?

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Appendix_01157

1 A Yes, just like the one we talked about before.

2 Q It's a material specification, right?

3 A Yes.

4 Q And at the top, the description of the approved
5 material is packing to be square-braided blue African
6 asbestos impregnated with, it says TFE, which you
7 talked about earlier, and furnished in ring form with
8 bevel joint. Packing must be free of excessive
9 graphite and dirt. The following materials have been
10 approved, Johns Manville Style Number 2014 and Garlock
11 Inc., Number 5561. Did I read that correctly?

12 A Yes.

13 Q And this material, approved material, was at least
14 part of the approved material specification as late as
15 1982, correct?

16 A Yes. That's indicated here in terms of the
17 revision level.

18 Q And this specification, although it says inactive,
19 it's inactive as to size, correct? It's on the other
20 side. Size is inactive. Do you see that?

21 A Size?

22 Q It says, "Size inactive"?

23 A That's an unfortunate placement of a stamp. It
24 doesn't have anything to do with size. That just means
25 inactive. You see how it's stamped in other places on

ROA_01137

Appendix_01158

1 there; that just happened to be where they stamped it
2 when they made it inactive.

3 Q So this type of packing, this blue, square-braided
4 Africa asbestos impregnated with TFE in a ring form, I
5 guess it's your testimony that even though somebody at
6 Fisher evaluated the material, approved the material,
7 wrote a specification, a material specification on
8 Fisher drawings, that it was never sold or never
9 incorporated into a Fisher product?

10 A Correct. Not to my knowledge.

11 Q Can you turn to 1013.14, just so we have an idea
12 of what we're talking about? This is that product, at
13 least by description, right? It's a square-braided
14 asbestos packing?

15 MR. BOUCH: Your Honor, I object.

16 THE WITNESS: Where do I find that?

17 THE COURT: Wait a minute. The question is that
18 this appears to be, at least by appearance, a
19 square-braided material.

20 MS. FARRISE: That was it, yes.

21 THE COURT: And what is your objection to that
22 question?

23 MR. BOUCH: My objection is the Fisher document
24 that was up there before said Johns Manville and
25 Garlock. Did not say John Crane. There's been no

ROA_01138

Appendix_01159

1 foundation for that John Crane document, and I object.

2 THE COURT: And it's overruled. She's not asking
3 whether it's one of your specified products yet. She's
4 asking, to begin with, as I heard her, is this in
5 appearance a square-braided product. And she can ask
6 that. And certainly, if she goes any further with it,
7 other objections can be made or you, on
8 cross-examination, can clarify. But so far I do not
9 hear her asking anything that's improper.

10 MR. BOUCH: I have a different interpretation of
11 the question, Your Honor. I understand your ruling.
12 I've made my objection.

13 THE COURT: Very good. All right.
14 Go forward.

15 MS. FARRISE: Just to be clear, he's an adverse
16 witness, so I believe he's on cross-examination.

17 THE COURT: Well, he's going to get to --

18 MS. FARRISE: Talk to him, yes, for sure.

19 THE WITNESS: Okay. I don't have that exhibit
20 here.

21 BY MS. FARRISE:

22 Q Can you look at the screen, sir?

23 A Okay.

24 Q This is the type of product, excuse me, that's the
25 square-braided asbestos packing that was the type of

1 product referred to in the material specification the
2 jury just saw?

3 A In therms of square-braided packing?

4 Q Uh-huh.

5 A Yes.

6 Q Okay. And this particular supplier, who was John
7 Crane, Fisher approved for other types of products it
8 supplied, does describe this, I believe, as a blue --
9 pure blue cape asbestos fiber treated with a special
10 high-temperature acid-resistant lubricant and graphite.
11 That's the type of product we're talking about,
12 correct?

13 A That's what's indicated on the screen as you've
14 highlighted there, Counselor. But, again, I'm having
15 trouble connecting the dots, if that's your inference.

16 Q It's the type of product that Fisher had an
17 approved material specification for. That was my first
18 question, we agreed, I thought, and moved on.

19 A The type, yes. When I say generic type in terms
20 of rope-style packing, yes, but the style that's
21 indicated here is not connected necessarily back to the
22 other FMS.

23 Q It's a simple question. This is what square --

24 THE COURT: Don't argue with him, Ms. Farrise.

25 Just ask the question. He's answered one. Go on

ROA_01140

Appendix_01161

1 forward.

2 BY MS. FARRISE:

3 Q They mentioned a few styles, some of which have
4 the blue, which we have already highlighted, and some
5 of which have the Canadian asbestos, the Style 810,
6 correct?

7 A That's what's indicated here.

8 Q Okay. So a Fisher engineer who writes the
9 material specification would go to someone's catalog,
10 Garlock or whoever, evaluate the product to see whether
11 it will approve it for use, if applicable, in Fisher
12 valves? That's all I'm asking you.

13 MR. BOUCH: Objection; foundation, Your Honor.

14 THE COURT: Overruled. Go ahead.

15 BY MS. FARRISE:

16 Q That's true, right?

17 A Okay. There may have been another vendor catalog
18 that referenced blue African packing, perhaps. I don't
19 know. It certainly wasn't this one that I'm aware of
20 anyway. But as we talked before, the service
21 application, that gasket and packing material, in this
22 case packing can be applied in, is something we get
23 from the supplier of the material. And in terms of
24 blue African, the one that was the FMS there, as I
25 stated before, I have to believe is pretty rare. I

ROA_01141

Appendix_01162

1 have never seen or come -- encountered a valve that was
2 shipped with that type of packing in it. Pretty rare,
3 to my understanding.

4 Q Sir, let me have you to turn in your binder from
5 your deposition with the exhibits that were attached.
6 There is a material specification which has FC, Fisher
7 Control, 01965 at the bottom. Do you see that?

8 A Is there a Bates number?

9 Q That is the Bates number, FC01965.

10 A Oh.

11 Q Well, this one is actually -- we'll talk about
12 this.

13 MR. BOUCH: That's not the --

14 THE WITNESS: We had these marked as Dumistra
15 200600 --

16 BY MS. FARRISE:

17 Q So I'm asking you to look right here. Actually, I
18 had the wrong number. FC01974. And it also is marked
19 20060036, if that helps?

20 A I need to go by that.

21 THE COURT: Is that 0036?

22 MS. FARRISE: Yes, Your Honor.

23 Q And this is another materials -- Fisher Governor
24 Company materials specification of approved materials
25 for high-temperature packing, correct?

1 A Yes.

2 Q And what that means is that this material can be
3 selected for use in Fisher valves originally or as sold
4 material used to be included in replacement parts,
5 correct?

6 A Yes, just like we talked about.

7 Q Okay. And so this says use where packing
8 temperatures are in excess of 450F, recommended for
9 service to 900F. Packing shall consist of two types
10 of rings: One, metallic rings; and two, down here,
11 plastic rings, and then there is a description. Do you
12 see that?

13 A Yes.

14 Q Now, these are referred to as metallic rings and
15 plastic rings, and these are asbestos-containing rings,
16 correct?

17 Q I don't know if you can pull it out, but it says,
18 "Use one at the bottom of the box and one at the top.
19 If the lantern gland is furnished, use one on each
20 side," blah, blah, blah. "Metallic rings shall consist
21 of a high-grade asbestos core about which treated
22 crinkled aluminum alloy foil sheets are twisted." Did
23 I read that correctly?

24 A Yes, you did.

25 Q "Plastic rings shall consist of pure, long

ROA_01143

Appendix_01164

1 asbestos fibers and aluminum threads lubricated." Did
2 I read that correctly?

3 A Yes, you did.

4 Q So, sir, these parts that Fisher sold originally
5 and as replacement parts may be referred to in various
6 documents and drawings as being metallic or plastic,
7 but, in fact, if this particular approved material was
8 what was used, those would be asbestos-containing
9 products, and that wouldn't be readily apparent. Can
10 we agree on that?

11 A I don't think it's misleading because we have part
12 numbers that fully describe these things, as I said,
13 before. This FMS is structured -- that means it's
14 connected at the hip -- with an 11-digit part number.
15 So when they order that part number that was included
16 in their valve the first time, they're assured of
17 getting what they ordered the first time. So it's not
18 misleading to the extent that they're ordering the part
19 number, and it's the same part number. And it's all
20 controlled by that.

21 MS. FARRISE: I just want to move to strike as
22 nonresponsive because that wasn't my question.

23 THE COURT: Let's move on. I'm going to let the
24 answer stand, but I just ask you, Mr. Dumistra, to pay
25 attention to what Ms. Farrise is asking you.

ROA_01144

Appendix_01165

1 THE WITNESS: Sometimes it's confusing.

2 BY MS. FARRISE:

3 Q I asked you if the reference to a product and
4 reference describing it as a metal ring might not
5 immediately let somebody know this is an
6 asbestos-containing product?

7 A I don't think we ever misrepresented the
8 description of an asbestos-containing packing as
9 something that's purely metal. I don't think we've
10 done that. I mean, I don't know what you're getting
11 at. Are you saying -- do you have examples of that?

12 Q I was just asking if we could agree, sir, that a
13 reference to a product as a metal ring may not readily
14 be apparent to regular people that that is an
15 asbestos-containing product. Can we agree with that?

16 A I would tend to agree with that in general. I
17 don't know if it connects necessarily to this
18 particular circumstance, but.

19 Q And the reference to a plastic ring as a product
20 may not be readily apparent to a regular worker that a
21 plastic ring is an asbestos-containing product,
22 correct?

23 A Again, I don't think -- I think you're probably --
24 I'm going to agree it would appear as though it would
25 not be complete that way; but I don't think we ever

ROA_01145

Appendix_01166

1 referred to it that way, with that understanding.

2 Q Can I have -- if you can turn over nine pages back
3 to what is referred to as FC1965 and take away nine,
4 Your Honor. So 0027.

5 THE WITNESS: Forward or back?

6 THE COURT: Back. 0027.

7 BY MS. FARRISE:

8 Q Yes.

9 A I have that here.

10 Q Okay. So here again we have a Fisher material
11 specification, correct?

12 A Yes.

13 Q And it's prepared by folks at Fisher of approved
14 materials to be used in Fisher valves, correct?

15 A Yes.

16 Q It's another material specification for another
17 asbestos-containing product, right?

18 A Similar to what we discussed before.

19 MS. FARRISE: Are you able to blow this up at all
20 up at the top? Sorry.

21 Q Hard to read, but it says heavy-duty rubber
22 asbestos gasket material elastomer bound, correct?

23 A Right. And that elastomer bound means it's what's
24 called fully encapsulated. The fibers are in a rubber
25 or elastomer material to encapsulate them that way.

ROA_01146

Appendix_01167

1 Q But this product material is also an
2 asbestos-containing material, correct?

3 A Yes, similar to the way we described it before.

4 Q And the description, it seems, is nitrile
5 butadiene rubber binder. That's what's used?

6 A Nitrile, yes.

7 Q Nitrile. Thanks so much. And Fisher has approved
8 Armstrong, Acobest, and Cooper Manufacturing as the
9 folks that can supply that material to Fisher for
10 manufacturing or replacement part manufacturing,
11 correct?

12 A Correct. Armstrong, Acobest, and Cooper
13 Manufacturing, yes.

14 Q Okay. And so this nitrile rubber gasket, I think
15 we now agree is the type of material, asbestos with
16 that, that would be used as kind of the fabric to cut a
17 part, depending on the size of the valve and the
18 application of the valve, and it has a part number that
19 will go with a specific valve?

20 A Yes.

21 Q Right. So it's kind of like going to the sewing
22 store and you get silk or cotton or wool, and then you
23 cut a pattern out of it, and once you cut the pattern,
24 it becomes a part number, right?

25 A It's a little more complicated than that. It's

ROA_01147

Appendix_01168

1 not quite that simple. It's actually this constituent
2 materials are engineered by these companies, and the
3 composition is specified by these model numbers and
4 this specification, which is structured to our part
5 number so that when it's ordered the next time, same
6 with the original valve, but when it's ordered the next
7 time, they will get that exact same thing that they
8 wanted from the first time the valve was shipped.

9 Q Okay. But this material, as I said, it's as
10 though we were going to make a dress. We say we want
11 to make a dress out of silk. Here, the approved
12 material is this rubber asbestos for the material that
13 a gasket can be made out of to be used on a Fisher
14 valve, correct?

15 A Yes.

16 Q And so when you talk about moving from being a
17 material specification to a part number, basically they
18 take the fabric as though, in my mind you were making a
19 dress, and cut it in some precise fashion. They know
20 how big it's supposed to be, if there's supposed to be
21 holes in it, how big the hole is, that sort of thing,
22 correct?

23 A Yes. The part number as I described before, the
24 part number in our system refers to a drawing. That
25 first part of the part number is a drawing. It shows

ROA_01148

Appendix_01169

1 the size and shape of the part. In this case these
2 parts that she's describing are circular. They go
3 inside the valve. They have an example of the valve
4 there. They're round. They've a certain size. The
5 inside dimension might be like this, and the outside
6 dimension like this, so the whole inside isn't there.
7 It's like a ring, a donut that's smashed, only with a
8 smaller cross-section.

9 And so they have to fit inside our valves, which
10 are engineered, and they have to seal inside those
11 valves, so they have to be sized a certain shape. So
12 she's correct. When we order them, they get a drawing,
13 and they get this FMS, material specification, to make
14 sure we're ordering the right thing to match up with
15 the valve that was ordered the first time.

16 So we're just relating to them what's required to
17 satisfy that record in terms of the size, shape, and
18 material by this FMS.

19 Q The material is cut and fabricated to whatever
20 size at the Iowa manufacturing facility?

21 A No.

22 Q Someone else does that for --

23 A Yes, the supplier.

24 Q And then Fisher sells it to Duke, and Duke pays
25 Fisher, correct?

ROA_01149

Appendix_01170

1 A Yeah. When they're ordered as replacements.

2 Q And you were talking about this fabrication. We
3 don't know exactly what this fabric is, but somewhere,
4 if it was approved by Fisher, there's going to be a
5 material specification approving this type of 2150
6 fabric, correct?

7 MR. BOUCH: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury, but out of the
11 hearing of the jury.)

12 BY MS. FARRISE:

13 Q Mr. Dumistra, I'm going to put up what is an
14 admitted exhibit. It was one of the transactional
15 documents between Fisher Controls and the Ocone plant.
16 It's Exhibit 1012-5, and we were speaking a moment ago
17 about the nitrile, if you will, gaskets, on Page 2 --
18 3, I guess it is -- all right. Here we go -- of the
19 document.

20 There is this reference to a purchase by Duke from
21 Fisher Controls of a replacement part. It's sort of a
22 tiny, little replacement part, but my question is, this
23 reference here to nitrile -- nitrile, is that how you
24 say it?

25 A Nitrile.

ROA_01150

Appendix_01171

1 Q -- nitrile part number, and it has this part
2 number, that's a Fisher part number, correct?

3 A Yes.

4 Q And so looking merely at these invoices and
5 without having the material specification of the type
6 we have been looking at, would you be able to say, in
7 looking at the drawing for the part number and all of
8 that, that this is not an asbestos-containing product?

9 A Okay. One thing that I reviewed, a number --

10 THE COURT: Say whether you can say.

11 THE WITNESS: I can't say. I cannot say. And the
12 reason why, Your Honor, is because I looked at a number
13 of these exhibits that were presented on behalf of the
14 plaintiffs' case, and I came to the conclusion that the
15 description here is something that they have typed in.
16 And our description would be different than that. So
17 it's whatever they typed in to describe what they're
18 ordering from us. The key is the 11-digit part number
19 which does show up there, and that would provide the
20 necessary details associated with the part, the
21 geometry, FMS, all of that.

22 So they typed something in here, and I can't
23 comment in terms of its appropriateness or not other
24 than it says what it says and was typed in by someone.

25 THE COURT: Typed in by somebody with a Fisher

ROA_01151

Appendix_01172

1 part number on it?

2 THE WITNESS: Yes.

3 THE COURT: And when it gets to the Fisher plant,
4 they will know what part number that is, right?

5 THE WITNESS: That's correct, Your Honor, yes.

6 BY MS. FARRISE:

7 Q And when it gets to the Fisher plant and they know
8 what part number it is, they will also, the Fisher
9 folks, know exactly what the material or the fabric is
10 from which this part is to be cut, right?

11 A We basically order that part from the supplier,
12 and they provide it on the basis of us referencing in
13 that FMS the style of material that it is to be made
14 out of, and they make it in the geometry that's
15 necessary to support the drawing associated with that
16 part number.

17 Q I think I understand. Fisher will contact their
18 approved supplier, who probably already has the
19 information about the Fisher part number, and then
20 Fisher will sell it to Duke, and Duke will pay Fisher
21 money, right?

22 A Yes. That's the way it works.

23 Q And I think you're now saying something like the
24 description, for instance, the descriptions that say
25 asbestos, you don't necessarily agree with those,

ROA_01152

Appendix_01173

1 right?

2 A No, I'm not saying I agree or disagree. I'm not
3 trying to argue that point. I'm saying it's their
4 description.

5 Q But it's not a mystery to Fisher because Fisher
6 could take each and every one of these part numbers
7 from the Duke invoices and sort out which material it
8 approved for that part, right?

9 A Yes. That's part of the process, as we've
10 described before.

11 Q So, for instance, I have here a whole binder of
12 invoices or purchase orders and invoice-related
13 documents. Let me hand -- or my colleague, I guess, is
14 going to hand you the binder. I guess I have them
15 here.

16 THE COURT: Say what the binder is first.

17 MS. FARRISE: Yes, Your Honor. For the record, it
18 is a binder of Duke-produced documents which is a
19 compilation of purchase orders by Duke and/or its
20 purchasing agent Mill Supply, and Fisher invoices for
21 those purchases.

22 THE COURT: So these are all Duke-furnished
23 materials that are purchase orders to Fisher?

24 MS. FARRISE: Yes, Your Honor.

25 Q And so there is a Bates number on them as well at

ROA_01153

Appendix_01174

1 the bottom, sir. You will see -- strike that.

2 As to the ones that deal with --

3 THE COURT: Are these documents in evidence at the
4 present time?

5 MS. FARRISE: I'm offering them into evidence. I
6 thought the Duke documents were coming in.

7 THE COURT: Let's get them marked with an exhibit
8 number on them.

9 MS. FARRISE: Well, they are exhibit -- they're a
10 group exhibit, Number 940-1 through 940-0362. So it's
11 362 pages.

12 THE COURT: Get Mr. Dumistra; show it to him --
13 he's got a copy of it -- and ask him whether he can
14 identify it.

15 MR. BOUCH: Your Honor --

16 THE WITNESS: Okay. Did you say 940?

17 MR. BOUCH: Your Honor, there are many --

18 THE COURT: Just one moment, Mr. Bouch. I'm doing
19 just what you wanted done, which I am starting this off
20 by getting this document identified with an exhibit
21 number and then getting Mr. Dumistra to identify it,
22 then we will go to whether there's any problem with
23 what is going to be pointed out.

24 MR. BOUCH: Okay. Thank you, Your Honor.

25 THE COURT: So, Mr. Dumistra.

ROA_01154

Appendix_01175

1 THE WITNESS: Did you say it started with 9400001?

2 BY MS. FARRISE:

3 Q Yes.

4 A The first page of this, past the first tab, is
5 1012.2.

6 THE COURT: Look and you be sure.

7 MS. FARRISE: Actually, there's Ocone, McGuire,
8 and then there are Catawba. So right now I'm offering
9 the group of 362 invoices, purchase orders, and the
10 like having to do with the Catawba plant.

11 THE COURT: Is this the Catawba plant, Mr. Holder?

12 MR. HOLDER: Yes. There is a tab that says
13 "Fisher invoices," and behind that starts with the
14 0001.

15 THE COURT: First of all, she represents this is a
16 volume of Fisher invoices. It's been marked as a
17 plaintiffs' exhibit. She's going to draw your
18 attention to a particular page and ask if you can
19 identify it.

20 What page is that you are drawing his attention
21 to?

22 MS. FARRISE: Your Honor, they were produced by
23 Duke, and I'm going to offer them into evidence.

24 THE COURT: We're going to let him see if he can
25 identify them first.

ROA_01155

Appendix_01176

1 MS. FARRISE: Okay.

2 THE WITNESS: The very first page does indeed look
3 like a Fisher invoice. There are a number of other
4 types of documents in here, but I will just say the
5 first page and some of the succeeding pages do look
6 like --

7 THE COURT: Look like Fisher documents?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: And you're going to offer this with
10 the representation, Ms. Farrise, that this is a binder
11 of Fisher orders, Duke purchase orders for Fisher
12 products --

13 MS. FARRISE: And Fisher invoices.

14 THE COURT: And Fisher invoices for Fisher
15 products for the Catawba plant.

16 MS. FARRISE: And he's looking at 362 pages for
17 Catawba. There are also in there, which is what caused
18 the confusion, some from Ocone and some from McGuire,
19 but they're all of this flavor.

20 THE COURT: They're all the same thing that you
21 have admitted before?

22 MS. FARRISE: Well, we have not admitted any as to
23 Catawba yet, but the same type of documents.

24 THE COURT: It's the same type of thing we have
25 admitted before as purchase orders that we have been

ROA_01156

Appendix_01177

1 looking at here all day long in between Fisher and
2 Duke, right?

3 MS. FARRISE: Yes, Your Honor.

4 THE COURT: Any objection?

5 MR. BOUCH: No objection, Your Honor.

6 THE COURT: Very good. It's admitted.

7 (WHEREUPON, Plaintiffs' Exhibit Numbers 940-1
8 through 940-362 were admitted into evidence.)

9 THE COURT: Mr. Dumistra, now you're going to be
10 asked some questions about it.

11 BY MS. FARRISE:

12 Q Okay. I'm displaying 940-002. Do you have that,
13 sir?

14 A 2? Yes.

15 Q And, really, my simple question about these
16 various documents, if you go through them, is that
17 there is indicated information, part numbers and the
18 like, that would tell Fisher Controls -- strike that.

19 There are indicated throughout the documents
20 Fisher part numbers and the like which indicate to
21 someone at Fisher what the part is. Using the Fisher
22 material specifications, someone at Fisher could
23 determine whether it's called asbestos or rubber or
24 metallic or plastic, whether or not the material or the
25 fabric from which these products were cut were

ROA_01157

Appendix_01178

1 asbestos-containing, correct?

2 A Yes. There's an indication of material along with
3 the 11-digit part number. These, because they're
4 Fisher invoices, they reflect a Fisher part number, and
5 that part number has description in terms of the part
6 and the material associated with it. So it's all done
7 by computer. So this would be exactly describing
8 exactly what was provided when this part number was
9 referenced by the order. It's our own description, in
10 other words.

11 Q Right. So you know what you sold to Duke?

12 A That's exactly correct.

13 Q And valves have part numbers or factory numbers as
14 well, correct?

15 A Valve parts, yes.

16 Q Right. So someone at Fisher could go through and
17 come in here and give us a list of everything that
18 Fisher sold to Duke, right?

19 A Of course, those records are not retained in the
20 normal course of business.

21 Q What about the computer?

22 A It would be literally billions of records.

23 Q That's why you have the computer, right?

24 A Yeah, but today's computer has that capacity, but
25 our computers back in the day did not.

ROA_01158

Appendix_01179

1 Q So is it your sworn testimony to this jury --
2 strike that.

3 These valves for which Fisher was providing
4 replacement parts as indicated in the invoices and the
5 purchase orders from the 1980s, those valves are still
6 in service today at those Duke plants, aren't they?

7 A Yes. And we do have --

8 Q And people at Duke can still order --

9 MR. BOUCH: Your Honor, can he finish?

10 MS. FARRISE: He answered "yes."

11 MR. BOUCH: Well, I think --

12 THE WITNESS: I was going to expand to the extent
13 we do have as-built and as-sold records with respect to
14 the valves. But parts, we do not keep those records.
15 It wasn't something we kept.

16 Again, we go back to originally the way this
17 process works; if Duke wants a replacement part, they
18 would look at their serial card, which is as-built
19 records. They would decide what parts they are
20 initially specified on that valve. They had the serial
21 card or they could call for a serial card from us. We
22 keep those records all the time throughout the course
23 of history. We have 11 million plus serial cards. We
24 keep those records on file. If they have a question
25 about what they want or need to replace that exact same

ROA_01159

Appendix_01180

1 part, we would reference the serial card and let them
2 know the part number that's appropriate.

3 Q How many? 11 billion, did you say?

4 A Well, in terms of what? Records, serial card
5 records?

6 Q Yes.

7 A At last count it was over 11 million records.

8 Q And that would represent 11 million valves sold,
9 the serial cards?

10 A It could be more than that or less than that, yes.

11 Q So it's not the situation that Fisher has no idea
12 what it made, what it sold to Duke, and what the
13 products that it sold were actually made out of in
14 terms of material. There is information about that
15 within the Fisher Controls Company, correct?

16 A Yes. And as I said, the key to all of that is the
17 serial number on the valve. If Duke wants a
18 replacement gasket or packing for their original valve,
19 they look at the nameplate on that valve. They say,
20 "Mr. Fisher, I want a seat ring or a valve plug or stem
21 or gasket, whatever, for this valve that we installed
22 way back in the '50s or '60s. Can you give it to me?"
23 We would look up the constituent parts on that serial
24 card because we retain those records forever, and we
25 would give them that replacement part or the current

ROA_01160

Appendix_01181

1 equivalent of that replacement part.

2 Q In this case, Mr. Jolly worked at plants which
3 were constructed and brought online in the late --
4 middle '70s and the early '80s. So you have those
5 records?

6 A Only traceable in three different ways. Three
7 different ways, it's traceable. The serial number,
8 which they have to give us. And they could, actually,
9 if they're interested in this, they could go to a Duke
10 Power plant, write down the serial number, say this is
11 the valve we want the records from, and we could
12 provide that.

13 There are two other methods. They're a little
14 more convoluted, and I don't know if the judge wants me
15 to explain that, but it requires some additional
16 diligence on our part to look up the records, and it's
17 a lengthy process.

18 Q Mr. Dumistra, on behalf of Fisher, Fisher could at
19 any time command that asbestos not be used in the
20 material, in the fabric that it selected, correct?

21 A Yes. In fact, we did such a thing.

22 Q We have put up here -- and you still have the
23 binder of exhibits from your deposition?

24 A Yes.

25 Q Turn to Page 0035.

ROA_01161

Appendix_01182

1 A I hate to pass up an opportunity to explain to you
2 something about -- that I found in these exhibits.
3 Where a description does indeed refer to asbestos and
4 nitrile in a part number --

5 Q I just have a question about this document.

6 THE COURT: Let her ask you first.

7 THE WITNESS: Okay. Okay. I'm just trying to be
8 helpful here.

9 THE COURT: Yes, sir. I understand.

10 BY MS. FARRISE:

11 Q Can you --

12 A What's the number of this page? I'm sorry.

13 Q It's 0035. And this, again, is Fisher Controls
14 material specification for high-temperature aluminum
15 packing, correct?

16 A You're back to this other one. I'm sorry.

17 I have that. Thank you.

18 Q And this is a part, if we read this Fisher
19 document, that was made until 1986, correct?

20 A Yes.

21 Q And at 3.3, it says, "No asbestos in any form
22 shall be contained in either packing." Do you see
23 that?

24 A Yes.

25 Q So Fisher at all times had the ability to say stop

ROA_01162

Appendix_01183

1 including asbestos as an ingredient, in this case in
2 the metallic ring and the plastic rings, in terms of
3 the basic fabric, correct?

4 A Yes.

5 Q And it was substituted in 1986. The part
6 continued on with fiberglass, correct?

7 A You said fiberglass?

8 Q It says right here, "Lubricated aluminum foil
9 twisted over a resilient fiberglass core."

10 A I see that here, yes.

11 Q So this is an example of where Fisher Controls
12 made the decision that the fabric will now have
13 fiberglass in it?

14 A Yes.

15 Q And that's kind of all it took, right?

16 A Oh, no. There was testing involved. Again, back
17 to the situation that presents itself. We have to make
18 sure that these parts, in using the material that the
19 supplier provides us, are capable of sealing, either
20 the dynamic seal or the static seal. So it's not just
21 a simple matter of okay, let's call it something
22 different and we'll get something different.

23 Q Right. Fisher tested it and determined that it
24 will work for a valve that's already in service, and
25 we'll now start using it as the material for the

ROA_01163

Appendix_01184

1 replacement part as it's called for in whatever part
2 numbers, correct?

3 A Yes.

4 Q Right. So if Duke orders this part on April 1st,
5 1986, it's going -- I'm sorry; January 1st, 1986, it's
6 going to have an asbestos-containing core per the
7 material specification of Fisher Controls, and if it
8 orders it on June 1st, 1986, because of this change in
9 the material specification, it's now going to be the
10 same part as a replacement part for the same valve, a
11 nonasbestos product?

12 A That is correct in a general sense, yes, I'll
13 agree with that, yes.

14 Q And Duke didn't call you up and say on April 11,
15 1986, "Please stop selling the replacement part for the
16 same valve that we bought from you 20 years ago and now
17 sell us a fiberglass replacement part," right? Duke
18 didn't have anything to do with this decision?

19 A Duke may not have. In some cases some other
20 purchasers of our equipment may have. But you're
21 correct, I mean, we would provide the current
22 equivalent that works in that same geometry that we
23 talked about.

24 Q And all Duke would do is order the spare part?

25 A 11-digit part number or the current equivalent of

ROA_01164

Appendix_01185

1 that.

2 Q And they would know the current equivalent of that
3 part number because Fisher assigns these part numbers?

4 A Yes.

5 Q Now, Fisher, you talked about it a little earlier,
6 went about allegedly starting a project to eliminate
7 asbestos in 1985, correct?

8 A Yes.

9 Q And the reasons for that elimination were
10 liability concerns, right?

11 A No, it wasn't really liability. It had to do
12 with -- what stimulated it was we had a customer come
13 to us and say they wanted us to provide valves that
14 were asbestos-free. So that was the stimulation for
15 that whole process.

16 In conjunction with that, the suppliers of these
17 materials that we talked about, John Crane and others,
18 they put us on notice that they were getting out of
19 asbestos-containing material as well, so we had to come
20 up with generally acceptable replacement materials that
21 the suppliers of these components would recommend to us
22 as the proper replacements. So we had to test them.

23 Q Let's take the second part.

24 A Yes.

25 Q The companies that actually made the

ROA_01165

Appendix_01186

1 asbestos-containing gaskets and packing -- the fabric,
2 if you will, from which Fisher determined parts -- was
3 going out of business, multiple companies, of selling
4 to you -- strike that.

5 These companies, multiple companies, were ending
6 their asbestos-containing product line, and you didn't
7 have suppliers who you could buy it from, right?

8 A I believe that's a correct characterization, yes.

9 Q There is a letter -- there is a lot of letters,
10 but for this moment, this is a Fisher confidential
11 memorandum, correct?

12 A Yes.

13 Q It's about the asbestos elimination program,
14 right?

15 A Yes.

16 Q Someone at Fisher prepared this, right?

17 A Yes. Is there an exhibit number I can look at?
18 It's hard to see there.

19 Q Okay. Well, the part I want to ask you about in a
20 moment --

21 THE COURT: Tell him the exhibit number. We have
22 got it up on the screen now?

23 MS. FARRISE: And I just gave him a binder. It's
24 the very first document in your book.

25 THE WITNESS: Okay. There is an index.

ROA_01166

Appendix_01187

1 MR. HOLDER: 1008-9774.

2 THE WITNESS: I have it here.

3 BY MS. FARRISE:

4 Q And it's dated July 15, 1985, right?

5 A Yes.

6 Q And as I mentioned, it is confidential, but it's
7 from Fisher folks to plant coordinators, correct?

8 A Yes.

9 Q And they say to these folks -- I'm going to move
10 to the second paragraph, "The asbestos elimination
11 program was initiated as a result of the increasing
12 safety and liability concerns of our customers and
13 suppliers, many of whom have already eliminated
14 asbestos from their products. Our goal on this program
15 is to eliminate asbestos from all Fisher products by
16 the end of '1985." First of all, did I read that
17 correctly?

18 A Yes.

19 Q So the customers didn't just come to Fisher and
20 say, "We don't want asbestos anymore." They said, "We
21 don't want any asbestos anymore because we have safety
22 and health concerns about the asbestos-containing
23 products that Fisher is selling"?

24 A I don't characterize it that way. I characterize
25 it as the concern related to asbestos, the uncertainty

ROA_01167

Appendix_01188

1 with respect to other forms of asbestos or asbestos in
2 general; the word "asbestos," there was a lot of
3 uncertainty in that respect. That's the way I read
4 this. Anecdotally, I was aware of that elimination
5 program, and there was never a safety concern with
6 respect to asbestos-containing packing or
7 asbestos-containing gaskets and how we used them in any
8 way, shape, or form, or it would have been an all hands
9 on deck.

10 Q Fisher didn't eliminate asbestos from its products
11 by the end of 1985, did it?

12 A No, it did not. It took longer to find equivalent
13 replacement. It took longer. It was a highly
14 engineered product and took more testing than you could
15 imagine.

16 Q It took some years, in fact, before Fisher finally
17 phased out all the asbestos products?

18 A Yes, it did.

19 Q I think it was something like 1,500 part numbers
20 or materials that had asbestos?

21 A I have seen a list -- or I've heard it referenced
22 in some memos it was 1,300 part numbers. Of course,
23 part numbers do not necessarily refer to materials
24 because a certain material can be referenced to
25 literally hundreds of part numbers.

ROA_01168

Appendix_01189

1 Q And in response --

2 A By the way, Counselor, that's indication of how
3 complicated it is. Each one of those different part
4 numbers represents, perhaps, different geometry and how
5 complicated it can get.

6 Q I think I understand what you're saying. You're
7 saying Fisher didn't want to just stop selling
8 replacement parts with asbestos until it could do
9 engineering and performance testing and have a
10 nonasbestos replacement that it could sell to its
11 examiners, right?

12 A That's entirely correct, yes.

13 Q Great. And in the meantime while it continued to
14 make the asbestos-containing parts after its customers
15 came and said we're concerned about safety, it didn't
16 put a warning label on those products, did it?

17 A No, because they were not unsafe.

18 Q Right. It just continued --

19 MR. BOUCH: Your Honor, I object to that.

20 THE COURT: What's the basis of the objection?

21 MR. BOUCH: Well, just a remark by counsel
22 commenting on his answer, where he gave an answer in
23 all honesty, and she says, "Right." I object to that.
24 That's not fair.

25 THE COURT: Well, calm down. It's a little late,

ROA_01169

Appendix_01190

1 and we're all a little tired.

2 Be polite, Ms. Farrise. I insist on that. We all
3 have to be civil to each other.

4 MS. FARRISE: I apologize to the court and to the
5 jury if anyone was offended.

6 THE COURT: We all accept your apology and no
7 problem.

8 Thank you so much.

9 I tell you what, though. We're getting close.
10 We're past 5:00, and I made certain promises to the
11 jury, at least one member of the jury who has an
12 appointment at 5:30.

13 Are we at a good stopping point now?

14 MS. FARRISE: Yes, Your Honor, fine stopping
15 point.

16 THE COURT: Put the lights up, if you would,
17 Mr. Bailiff.

18 Ladies and gentlemen of the jury, hold for just a
19 second. It's been a long, hard day. And, again, I
20 just am amazed at the attention that's being paid and
21 the seriousness with which you are undertaking your
22 undertaking. And everyone has challenges, and I just
23 appreciate so much the sacrifices that you are making
24 in terms of other things you have to do in your jobs
25 and so forth to make this undertaking with me and with

ROA_01170

Appendix_01191

1 these good lawyers and the clients they represent.

2 Thank you so much.

3 Bless you. Have a good evening. And we will
4 begin tomorrow morning. I think 9:30 will still be
5 okay. There may come a time when we have to readjust,
6 but I believe 9:30 tomorrow morning will be fine. So
7 come in about 9:15 as you have been doing, and we'll
8 start at 9:30. Very good.

9 Let's let the jury retire.

10 (WHEREUPON, the jury exited open court at
11 5:05 p.m.)

12 THE COURT: Number one, Mr. Dumistra, of course,
13 you won't discuss your testimony with anyone tonight,
14 but you are a very experienced witness so you know
15 that. Just reminding you.

16 (WHEREUPON, proceedings adjourned at 5:06 p.m.)
17
18
19
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25

ROA_01171

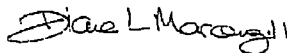
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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of a
portion of the proceedings had and evidence introduced
in the trial of the captioned case, relative to appeal,
in the Circuit Court for Spartanburg County, South
Carolina, on the 27th day of July 2017.

This transcript may contain quoted material. Such
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I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

November 4, 2017



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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Appendix_01193

1	State of South Carolina	
2	County of Spartanburg	In the Court of Common Pleas
3		
4	Beverly Dale Jolly and	)
5	Brenda Rice Jolly,	
6	Plaintiffs,	)
7	-vs-	
8	Crosby Valve, LLC and	)
9	Fisher Controls	
10	International, LLC,	)
11	Defendants.	
12		2016-CP-42-1593
13		July 28, 2017
14		Volume 5 of 9
15		Pages 955 - 1139
16		Transcript of Record

13 B E F O R E:

14 The Honorable Jean Hoefer Toal, Judge;
15 and a jury.

16 A P P E A R A N C E S:

17 Theile McVey, Esquire
18 Kassel McVey
19 Jonathan M. Holder, Esquire
20 Dean Omar Branham
21 Simona A. Farrise, Esquire
22 Farrise Law Firm
23 Attorneys for Plaintiffs

21 Timothy W. Bouch, Esquire
22 Yancey A. McLeod, Esquire
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24 Philip C. Reid, Esquire
25 Von Briesen & Roper
Attorneys for Defendants

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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I N D E X

Witnesses Page

RONALD DUMISTRA (Resumed)

Cross-Examination By Mr. Bouch	1079
Redirect Examination By Ms. Farrise	1122
Recross-Examination By Mr. Bouch	1134
Further Redirect Examination By Ms. Farrise	1135

E x h i b i t s

For the Plaintiffs:

Marked	Description	I.D.	Admitted
Fisher 133	Fisher documents		1070
Fisher 145	Binder of Fisher documents		962
966	Fisher Control 125-year history book		1005
1008.399	Memo dated 4/8/99 to Nelson Simmons from Forrest Watts	1011	1012
1008.341	Laboratory report dated 7/3/86	1074	1075

For the Defendants:

Marked	Description	I.D.	Admitted
Fisher 88	Photo - valve		1090
Fisher 88.1	Photo - valve (blowup)		1098
90.1	Photo - packing set		1088
Fisher 90	Photo - spiral-wound gasket		1105
Fisher 90.3	Photo - graphite gasket		1118

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:30 a.m.)

4 THE COURT: All in, please. Mr. Dumistra is here.
5 Good morning, sir.

6 THE WITNESS: Good morning, Your Honor.

7 THE COURT: Anything to be talked about or
8 discussed before I bring in the jury?

9 MS. McVEY: The only thing, we let defendants know
10 last night, Mr. Garza is not coming today. We're not
11 calling him today. It will just be the two corporate
12 representatives and depending on what time we have left
13 today.

14 THE COURT: All right. What we'll do, then, is
15 after the corporate representatives are finished, let's
16 have all of us, the lawyers and me, seance about how
17 the rest of the trial is going to go, about possible
18 charges, so that I can get some homework done this
19 weekend and we're not scrambling at the end to see
20 where we are. I think we pretty well know the
21 landscape now, and I think we could profitably begin to
22 talk about charges. And, as usual, as understaffed as
23 I am, I'm going to be counting on you lawyers to help
24 me navigate all this.

25 MS. McVEY: We'll probably send a copy of the

ROA_01175

Appendix_01196

1 charges and a copy to defense counsel probably tonight
2 after court.

3 MR. McLEOD: We're ready.

4 THE COURT: We'll talk about it some more and
5 anything else we need to talk about to see how things
6 are going to go from here. Great.

7 Bring me the jury, please, sir.

8 (WHEREUPON, the jury entered open court at
9 9:33 a.m.)

10 THE COURT: Good morning. Please have a seat, and
11 let me give you what I know about the landscape of
12 things today. And I hate to promise things that I
13 can't deliver, but here is what I think is going to
14 happen.

15 The plaintiffs have the end of the testimony of
16 Mr. Dumistra, of course, and then the cross-examination
17 of Mr. Dumistra, and then the redirect of Mr. Dumistra,
18 the corporate representative for Fisher. After that,
19 we will hear live testimony from the corporate
20 representative for Crosby, and that will conclude our
21 testimony today. So you can see where I'm heading.

22 My hope is that we might be able to have, maybe, a
23 little shorter than a full day today. And I'll do some
24 thinking with the lawyers about when we would commence
25 on Monday, and I'll profitably spend the rest of the

ROA_01176

Appendix_01197

1 time we have remaining without you going over matters
2 of charge and the other things it takes to move the
3 trial along.

4 So that's kind of the landscape. Now, you know,
5 things are unpredictable so we don't know what will
6 occur, but that's what I'm hoping.

7 Very good. All right. Ms. Farrise.

8 MS. FARRISE: I believe we need a witness, Your
9 Honor.

10 THE COURT: Well, your witness is standing right
11 in back of you.

12 THE COURT: Good morning, Mr. Dumistra.

13 THE WITNESS: Good morning.

14 THE COURT: Of course, you are still under oath,
15 as you surely recall.

16 THE WITNESS: Yes.

17 THE COURT: You may be seated.

18 THE WITNESS: May I take my jacket off?

19 THE COURT: Yes, you may.

20 THE WITNESS: It's warm in here.

21 THE COURT: People in South Carolina are a little
22 more used to that than in Marshalltown, Iowa.

23 THE WITNESS: That's true.

24 BY MS. FARRISE:

25 Q Good morning, Mr. Dumistra.

ROA_01177

Appendix_01198

1 A Good morning.

2 Q Let me jump right in and see if we can clarify a
3 couple of things from yesterday.

4 You were at the end of the day and everyone was
5 tired, but you were saying that Fisher does have a
6 computer system and has computerized records of sales
7 of valves and parts, correct?

8 A Not with respect to parts. And the computerized
9 records with respect to sales of units only goes back
10 to '91 time frame.

11 Q Okay. Let me hand you what is marked 145.

12 A Yes. And by the way --

13 Q My question is, can you take a look at it?

14 A Yes, I can take a look at it. I wanted to clarify
15 my prior response, if I may?

16 THE COURT: Mr. Dumistra, if you do question and
17 answer, that will be better. There will be times
18 when -- your lawyers for the company have got plenty of
19 time to bring out things that you may not have brought
20 out fully.

21 THE WITNESS: Yes. Thank you. I was just trying
22 to clarify my prior response.

23 THE COURT: Yes. Thank you.

24 BY MS. FARRISE:

25 Q Did you have a chance to look at it?

ROA_01178

Appendix_01199

1 A Yes.

2 Q And do these appear to you to be documents created
3 by the Fisher Controls Company and/or its lawyers as
4 Fisher 145?

5 A Yes.

6 MS. FARRISE: Your Honor, we would offer into
7 evidence Fisher Exhibit 145.

8 THE COURT: Let me see it.. You got it up on the
9 screen there?

10 MS. FARRISE: Yes, Your Honor.

11 THE COURT: Any objection?

12 MR. BOUCH: Well, is that the entire exhibit?

13 MS. FARRISE: No, that's the first page. It's the
14 whole binder is Fisher 145.

15 MR. BOUCH: May I see the binder?

16 MS. FARRISE: Well, it's Fisher 145, but sure.

17 Q Mr. Dumistra --

18 THE COURT: Wait a minute. I think we've seen
19 this before, but -- and that's one of your marked
20 exhibits, as I understand it.

21 MR. BOUCH: Your Honor, we produced a great number
22 of documents. I have no --

23 THE COURT: Mr. Bouch, let's not go back and
24 forth. Just take a look at it and see if you have any
25 objection.

ROA_01179

Appendix_01200

1 MR. BOUCH: That's what I'm trying to do.

2 MS. FARRISE: Can I ask about the first page?

3 THE COURT: Ms. Farrise, let's hold for a minute.
4 Let's do this in an orderly way.

5 All right. No objection. You may proceed.

6 (WHEREUPON, Plaintiffs' Exhibit Number Fisher 145
7 was admitted into evidence.)

8 MS. FARRISE: Thank you, Your Honor.

9 Q So, Mr. Dumistra, simply, what is this page?

10 A Okay. This page is a spreadsheet that I prepared
11 to provide the plaintiffs' side evidence of prior
12 shipments to the various Duke Power facilities.

13 Q And it actually has to do with Fisher valves sales
14 from Marshalltown -- that's the Iowa plant, correct --
15 to Catawba, McGuire, and Oconee plants, right? That's
16 what it says up at the top of the column of the chart
17 that you prepared?

18 A Yes.

19 Q And there are, at least as to the first page, a
20 number of pages. First set of pages like eight pages,
21 correct?

22 A There's like six and a half pages before you get
23 to the serial cards themselves.

24 Q Okay. And this over here is -- or, excuse me, are
25 the serial numbers of the precise valves that Fisher

ROA_01180

Appendix_01201

1 sold to Duke, and then where you could, you put "plant
2 site," correct?

3 A Yes.

4 Q Anyway, you mentioned that after --

5 THE COURT: Well, let me interrupt for a minute,
6 Ms. Farrise. Let me see if I understand this.

7 This is a spreadsheet of all the things that were
8 ever shipped to Duke for those three plants?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: So it -- just let me kind of -- all
11 I'm doing is identifying things. And it has serial
12 numbers there, and that includes valves, right?

13 THE WITNESS: Yes. Only valves.

14 THE COURT: There are no replacement parts in
15 this?

16 THE WITNESS: No. We don't have records with
17 respect to replacement parts going back over the course
18 of history at all.

19 THE COURT: So this spreadsheet does not include
20 the replacement parts and the gaskets and things of
21 that nature; it only includes the valves?

22 THE WITNESS: Correct.

23 THE COURT: Go forward, Ms. Farrise.

24 MS. FARRISE: Thank you, Your Honor. You raise a
25 great point.

ROA_01181

Appendix_01202

1 Q For every valve and serial number that's listed,
2 there could be, depending on the size of the valve, 500
3 other components -- gaskets, rings, metal parts,
4 screws, studs, et cetera, correct?

5 A 500 seems excessive in terms of the number of
6 parts that go into a valve. Seems a little bit
7 excessive. But there could be hundreds or a hundred.

8 Q So if I understood your testimony yesterday,
9 however, you could take this particular serial number,
10 one of these first ones -- one of these first ones, and
11 because you now have the serial number from the Fisher
12 records, go back to the file, look at the drawings,
13 figure out exactly what type of components, including
14 asbestos-containing components, each of the valves that
15 Fisher made and sold to Duke contained, right?

16 A Yes. That can, in fact, be done, and it's
17 represented in this document by a serial card.

18 Q My question, sir, is, you could go through your
19 list, your spreadsheet that you prepared of all of
20 these serial numbers, see if we can get them, and you
21 could have come in here and said to the jury, "Fisher
22 sold to Duke Energy at McGuire 10 valves, 20 valves.
23 They were butterfly valves or V valves or globe valves.
24 They were 4 inches or 102 or 108 inches," right?
25 Fisher has that information?

ROA_01182

Appendix_01203

1 A Yes. It's contained in this binder.

2 Q Let me get to some of the other type of documents
3 that are in the Fisher exhibits. Could you turn to
4 page, what is marked as Fisher 4094 at the bottom? And
5 it's right after what we were just looking at. It's a
6 different type of document.

7 A Yes, I have that here.

8 Q Okay. And this is a document that Fisher created,
9 correct?

10 A Yes..

11 Q And it has details about a particular valve that
12 Fisher sold to Duke at Catawba, correct?

13 A Yes.

14 Q And we can see here the date of sale, just to
15 orient ourselves, is 1977, correct?

16 A Yes. That's the order date, yes.

17 Q And, yesterday, you said something like the type
18 of descriptions that were on the Duke purchase orders,
19 you-all must have created. And you didn't mean to
20 suggest as in myself and my associates; you meant
21 Duke's purchasing department or its purchasing agent,
22 right?

23 A Yes. I'm sorry if I misrepresented that.

24 Q So Duke's purchase orders, if you look at them,
25 though, they kind of use the same kind of language that

ROA_01183

Appendix_01204

1 we see in terms of descriptions taken out of what
2 Fisher talks about. And if you go through -- and there
3 is a bunch of them -- they refer to gaskets; they have
4 a part number. In many cases, it's the listings, the
5 terms are exactly the same, right?

6 A In many -- it appears to be the case.

7 Q Okay. So what you said yesterday, you don't
8 really know that that was just a guess on your part?

9 MR. BOUCH: Objection --

10 THE WITNESS: No. I pretty well know that based
11 on what I observed, looking through some records that
12 were produced by your side.

13 BY MS. FARRISE:

14 Q Okay. So going through -- obviously, it's a big
15 binder there. There are pages and pages and pages and
16 pages of documents created by Fisher about particular
17 valves with descriptions of particular components, et
18 cetera, right?

19 A Yes.

20 Q All right. This is a different kind of document,
21 but it is a Fisher document, correct?

22 A Yes. Do you have a number? It's 4102?

23 Q Uh-huh.

24 A Is it?

25 Q Yes.

ROA_01184

Appendix_01205

1 A 4102? I have that here.

2 Q And this document is different, first of all,
3 right?

4 A Yeah. It's a --

5 Q It's just different. That's the question.

6 A It's different.

7 Q I'm going to get to what it is. It --

8 MR. BOUCH: Your Honor, I think the witness is
9 entitled to explain his answer. How different?

10 THE COURT: Mr. Bouch, Mr. Dumistra is a very
11 experienced witness, and --

12 MR. BOUCH: Your Honor, I object to that. There's
13 no foundation for that.

14 THE COURT: I don't want us to start out like
15 this, Mr. Bouch. The objection is overruled.

16 MR. BOUCH: Thank you, Your Honor.

17 THE COURT: She is asking a direct question to
18 him. He needs to give her a direct answer.

19 Go ahead, Ms. Farrise.

20 MS. FARRISE: Thank you, Your Honor.

21 Q Let's just clarify that, if we can. It actually
22 says what it is. List requisition material
23 requirements, correct?

24 A That's simply what I was going to say, Counselor.

25 Q Right. But it would go a little faster if I ask

ROA_01185

Appendix_01206

1 you a question and you answer. And I'm just saying
2 that because there is a lot of stuff I want to know and
3 other stuff I don't. But they're going to ask you
4 questions. Okay?

5 It's a list of materials that Fisher put together
6 of what would be included in terms of parts and
7 components in a valve that Fisher engineers in Iowa
8 designed, yes?

9 A Yes, with the explanation that not all parts are
10 included on this, just those that would be exceptional
11 to the standard, what's described on the requisition
12 here in the front. This is the second page, in some
13 cases, of the serial card that we looked at earlier.

14 Q So this is not a complete list; that's what you're
15 saying?

16 A Correct, yes.

17 Q So the type of materials that Fisher's list put
18 together and would send to Duke included a list of
19 things like packing, right?

20 A Yes.

21 Q And so this over here, though, do you know what
22 this is, the white room?

23 A Yes. Okay. So you'll see the top of that column,
24 if you want to expand that up above, the top of that
25 column simply gives the location where these parts are

ROA_01186

Appendix_01207

1 stocked at.

2 Q Right. So this tells us that some parts -- what
3 is like AA location? Is that a storeroom, inventory
4 and the like, right?

5 A Yes.

6 Q But the packing comes from the white room, right?

7 A In this example, yes. Not in every example, but
8 here, yes.

9 Q And the white room is located at the Iowa plant?

10 A Yes.

11 Q Do you know what the white room is?

12 A It's used for assembling nuclear valves. They
13 have particular cleanliness requirements that the
14 customers imposed upon us, so it had to be very tightly
15 controlled, atmosphere-controlled, positive pressure in
16 the room so when you come in there, you have to have
17 booties on and the whole nine yards to protect the
18 cleanliness of the nuclear valve.

19 Q Yeah, I was going to say this one that we've been
20 looking at has a stamp, as do many of these documents;
21 that this valve is part of an order for a nuclear
22 plant?

23 A Yes.

24 Q And that suggests, as you just described, has to
25 occur in the white room; that the parts at the factory

ROA_01187

Appendix_01208

1 have to be specifically identified that are going to
2 leave the factory for a nuclear plant, correct?

3 A Not all the parts, necessarily, but the unit as a
4 whole, yes.

5 Q The packing, actually, came from the white room?

6 A That's where it was stocked, yes.

7 Q Right. So the white room -- we talked yesterday
8 about these asbestos-containing components. The white
9 room and the packing for the valve, this very air
10 pressure room where you have to put on the special
11 suits and everything, that is where the
12 asbestos-containing packing is installed into the
13 valves that are going to go to Duke, right?

14 A Not necessarily. There's -- we have a standard
15 assembly area that would be used for standard valves.
16 As I said, sometimes nuclear utility customers would
17 impose special cleanliness requirements on us, and in
18 those cases, that assembly would be done in a white
19 room. I'm not sure if this packing in this case is
20 asbestos-containing or not, but whether it is or not,
21 they would simply, in this case, store that part in the
22 white room. That's all this is indicating here.

23 Q Actually, in the white room at the Iowa plant,
24 that -- where people had all the special clothing,
25 that's where they actually cut and package and handle

ROA_01188

Appendix_01209

1 asbestos-containing gaskets which would go into valves
2 which would go to Duke, right?

3 A Not -- not really, Counselor. There's maybe one
4 example where I understood that. In order to test the
5 valves -- if I could explain, Your Honor.

6 Q Well, I'm just asking about the room right now.

7 A Yes. I would say generally speaking, no, that
8 inference is not correct with the caveat I can explain,
9 if necessary.

10 Q Remember that binder I gave you yesterday of your
11 deposition in, I think it was, 2008, and there were
12 exhibits to it? Can you get that binder out, and if
13 you wouldn't mind turning to the page that's marked
14 2006.0158.

15 MS. FARRISE: And, Your Honor, do you still have
16 your binder or not, if you want it?

17 THE COURT: I do. But I'll gladly accept one if
18 you have it. I don't think I ever had one.

19 MS. FARRISE: Well, apparently today our
20 electronics are working. Today I'm prepared with paper
21 and electronics, Your Honor.

22 THE COURT: Good.

23 BY MS. FARRISE:

24 Q Do you have the Fisher document, sir?

25 A Yes.

ROA_01189

Appendix_01210

1 Q. And we talked about these yesterday, but this is a
2 material specification created by folks at Fisher for
3 special handling specification for low chloride gasket
4 material. And so it's saying that as to this
5 particular material, it even -- you have to handle it a
6 certain way, so we're going to create a specification
7 or procedure or process or rule, whatever is the right
8 word, right?

9 A This specification is just like the other.
10 specifications that we talked about yesterday, insofar
11 as we communicate with the suppliers with what we
12 expect in terms of the type of gasket material that
13 we're purchasing. And in the case of nuclear parts,
14 they have to be handled specially with respect to
15 cleanliness. So we see comments on here that indicate
16 to the supplier, when you cut these, you must wear
17 gloves. They can't be contaminated. They could cause
18 a problem with the nuclear application in service and
19 that sort of thing. So this is an instruction that we
20 have provided to the supplier of that part to make sure
21 they keep it clean while they're processing it and that
22 sort of thing. And that, by the way, Counselor, could
23 apply to asbestos-containing packing or gaskets as well
24 as non.

25 Q I'm just asking about the asbestos gaskets right

ROA_01190

Appendix_01211

1 now.

2 A That's fine.

3 Q The note says, "Sheet gasket material must be
4 handled similarly to that used for oxygen service.
5 Fisher shall keep material in the original wrapped roll
6 in the white room. The white room personnel shall cut,
7 package, and handle cut gaskets to prevent
8 contamination." First of all, did I read that
9 correctly?

10 A Yes.

11 Q Secondly, can we now agree that this white room
12 was not at the supplier's facility; it was at Fisher's
13 facility, "Fisher shall keep material in the original
14 wrapped roll in the white room"?

15 A Yes. And I'd like to explain that, if I could,
16 because I mentioned it a little bit earlier.

17 Because in the white room, the testing is done.
18 And in the process of testing a valve, you assemble it,
19 and then you put water in it, you pressurize that valve
20 in its entirety to make sure it handles the pressure
21 plus another 50-percent pressure to make sure they're
22 safe when they ship them.

23 In that process of putting water in there and
24 testing it under pressure, these gaskets will become
25 wet. So when we buy a gasket from a supplier, we don't

ROA_01191

Appendix_01212

1 want to test that -- we don't want to test and subject
2 the production gasket to wetness because, as I
3 mentioned, it's got to be clean when we ship it. So,
4 instead, we would, on rare occasion, in this case here,
5 we would certainly cut that replacement gasket
6 ourselves with the understanding it's not like the real
7 gasket that's going to be shipped to the end user. We
8 would cut those in the white room on occasion so we
9 could conduct a test and not contaminate the final
10 installation.

11 Q This specification, this document, doesn't say any
12 of that, does it?

13 A No, no.

14 Q It says -- excuse me, sir, I let you finish --
15 that, "Fisher shall keep material in the original
16 wrapped roll in the white room, and the white room
17 personnel shall cut, package, and handle cut gaskets to
18 prevent contamination." That's all it says?

19 A Yes.

20 Q And these people in the white room who are
21 handling and cutting the asbestos-containing gasket at
22 the Fisher plant in Iowa are wearing white protective
23 clothing, any breathing --

24 A No, because we're just trying to keep --

25 Q Any breathing protective equipment?

ROA_01192

Appendix_01213

1 A No, no. We're just trying to keep the valve from
2 becoming dirty in that room.

3 Q Actually, you're preventing the gasket material
4 from contamination?

5 A I disagree.

6 Q Okay.

7 A I've worked there 40 years, and I know why we do
8 that, why we dressed that way.

9 Q And since you've mentioned it, the only
10 professional job you have ever had to put food on your
11 table has been with the Fisher Controls Company, right?

12 A Yes.

13 Q Now, you mentioned the cutting -- or I mentioned
14 the cutting. Let me show you this. I think you saw it
15 yesterday, but there might have been a dust-up. So
16 here. If you wouldn't mind taking a look at this.

17 Your Honor, I have a copy for you.

18 THE COURT: All right. That's Plaintiffs'
19 Exhibit 1013.12?

20 MS. FARRISE: Yes, Your Honor. Or dash 12 or
21 whatever.

22 THE COURT: Show it to defense.

23 MS. FARRISE: We gave it to them yesterday, but I
24 have an extra copy. That's fine.

25 Have you got your copy from yesterday?

ROA_01193

1 MR. BOUCH: No. You took it back.

2 THE COURT: What I'm trying to get at, is this
3 document in evidence?

4 MS. FARRISE: No, Your Honor, I don't believe it
5 is.

6 THE COURT: Are you offering it?

7 MS. FARRISE: Yes, Your Honor, as an exemplar.

8 THE COURT: Well, ask some questions of
9 Mr. Dumistra to see if we're going to get it in
10 evidence.

11 BY MS. FARRISE:

12 Q Mr. Dumistra, I've shown you the exhibit that
13 we've marked. And I'm not asking you specifically of
14 that particular model. Generally speaking, is this the
15 type of gasket material that Fisher valves, Fisher
16 Controls, utilized in terms of its appearance as part
17 of its manufacture and production of valves?

18 A I honestly can't determine from this exhibit. I'm
19 sorry, I can't.

20 Q Okay.

21 THE COURT: All right, then. It's not been
22 sufficiently identified to be admitted.

23 BY MS. FARRISE:

24 Q If you look at the exhibit, there's two names
25 listed --

ROA_01194

Appendix_01215

1 MS. FARRISE: And we've heard this, Your Honor.

2 Q -- Crane Packing and John Crane. Those two
3 companies were suppliers --

4 A Yes.

5 Q -- of asbestos-containing products to Fisher
6 Controls, right?

7 A Yes. Asbestos-containing and I believe also some
8 nonasbestos-containing.

9 Q Right. And that's true for asbestos-containing
10 gaskets as well as packing. Yesterday we looked at the
11 catalog for the Super Seal Number 3, right?

12 A Yes.

13 Q Made by John Crane. There were other product
14 suppliers, and I just want to see if we can get a
15 decent working list before we move forward.

16 In addition to John Crane and Crane, the suppliers
17 of asbestos-containing gaskets and/or packing to Fisher
18 included Garlock?

19 A Yes.

20 Q Flexitallic?

21 A Yes.

22 Q Nicolet?

23 A I assume you have some record to that effect. I
24 don't seem to recall that one, but I'm not going to
25 disagree.

ROA_01195

Appendix_01216

1 Q I'll come back to that one.
2 A That's fine.
3 Q Johns Manville?
4 A Yes. I would say yes, I recognize that.
5 Q Durabla?
6 A Durabla, yes.
7 Q Argo Packing Company?
8 A Yes.
9 Q Okay. So going back to Nicolet, let me just see.
10 We had a document that I think we looked at yesterday.
11 In the binder that you have, would you turn to Page
12 2016-0022, sir.
13 A I see that mentioned here, Nicolet, yes. Thank
14 you. Refreshes my memory.
15 Q Right. For the jury's benefit, Fisher Controls
16 knows who it bought from in terms of
17 asbestos-containing products?
18 A Who we bought from?
19 Q Yes.
20 A We, meaning Fisher or --
21 Q Yes, we, you, as the Fisher company
22 representative.
23 A Yeah, that would be one of the suppliers.
24 Q And I'm guessing, given the nature of the business
25 and the like -- and then there's a couple pages,

ROA_01196

Appendix_01217

1 actually, I think, to this one. Maybe we looked at
2 this one yesterday. It's a three-page material
3 specification, correct?

4 A What page is that?

5 Q Well, it's the two following pages of the one we
6 just looked at, which shows that the suppliers include
7 Garlock. In here there is a particular style that's
8 being approved, for instance, right?

9 A Yes.

10 Q So, again, just to refresh, we could go to this
11 Fisher document. It tells us that this particular type
12 of high-temperature or low-temperature gasket or
13 packing can be cut from this particular fabric, which
14 is going to have been approved and will be coming from
15 Garlock, and it's going to be the Garlock Style
16 900/775, right?

17 A In this case, yes, that's correct.

18 Q Now, Mr. Dumistra, can we agree that Garlock's
19 supplier -- Fisher's suppliers such as Garlock send to
20 Fisher Material Safety Data Sheets about their
21 asbestos-containing products which revealed, at least
22 to Fisher, that these products could cause
23 mesothelioma?

24 A Not to my knowledge, no.

25 Q Let me ask you, then to -- you know what a

ROA_01197

Appendix_01218

1 Material Safety Data Sheet is, right?

2 A Yes.

3 Q Let me hand you what I have marked -- hopefully,
4 I've marked it. Let's see. Looks like I took it out
5 somewhere. Here it is. And why don't you take a look
6 at what I've marked as Plaintiffs' Exhibit 508-2.

7 MS. FARRISE: Here is a copy for Your Honor. I
8 have a copy for Mr. Bouch. Someone is giving it to
9 him. Thank you very much.

10 Q Are you familiar with Material Safety Data Sheets?

11 A In general, yes.

12 Q Does this comport in general with Material Safety
13 Data Sheets?

14 A I'm not intimately familiar with Material Safety
15 Data Sheets and the information, but it indicates that
16 on this sheet here, so I'm not going to disagree.

17 MS. FARRISE: Your Honor, I would offer.
18 Exhibit 508-2 in evidence.

19 MR. BOUCH: Objection, Your Honor. No foundation.
20 He's never seen it before. There's no indication it
21 went to Fisher. In fact, on the second page at the
22 bottom, it states where it did go.

23 THE COURT: Are you asking him whether this
24 Material Safety Data Sheet went to Fisher?

25 MS. FARRISE: No, I'm not asking him that. I'm

ROA_01198

Appendix_01219

1 asking him, for example, are these the type of Material
2 Safety Data Sheets. And then, generally speaking,
3 since it aligns with one of the products we are
4 specifically talking about, I was going to just
5 briefly --

6 THE COURT: Is this specific product one of the --

7 MS. FARRISE: Yes.

8 THE COURT: That's going to be the length, then.
9 Show him that particular sheet that contains this
10 product.

11 MS. FARRISE: I did, Your Honor. It was the
12 document that we just showed.

13 THE COURT: The one we saw previously that had
14 "Garlock" on it?

15 MS. FARRISE: Yes.

16 THE COURT: This is a Material Safety Data Sheet
17 for that particular product?

18 MS. FARRISE: Yes, it is, Your Honor.

19 THE COURT: All right.

20 MS. FARRISE: I can put it back on the Elmo
21 because I have it.

22 THE COURT: Put it back on there. He's looking at
23 it, so I think he can verify that it's -- if you ask
24 him whether that's the Material Safety Data Sheet for
25 that product.

ROA_01199

Appendix_01220

1 Can you do that, Mr. Dumistra?

2 THE WITNESS: Sure. In FMS17838, it says Garlock
3 Style 900/7735.

4 BY MS. FARRISE:

5 Q Right. And the Material Safety Data Sheet is for
6 Garlock 7735?

7 A And then it goes on for an additional description
8 there. So I'm not sure, to be honest with you,
9 Counselor, I don't know if it's a direct match. I do
10 not.

11 As we said yesterday, there are examples --

12 Q I'm sorry. There is no question --

13 A Okay. I'm just trying to explain.

14 MR. BOUCH: Your Honor, my objection --

15 THE COURT: Just a second, Mr. Bouch. I'm trying
16 to see whether he knows whether this data sheet is a
17 data sheet for this particular product.

18 THE WITNESS: No, I do not know that.

19 MS. FARRISE: And let me add, Your Honor --

20 THE COURT: You can ask him another question.

21 MS. FARRISE: I am.

22 Q Let me ask you to take a look at Plaintiffs'

23 Exhibit 508. You might want to keep the two.

24 508, for the record, is a Material Safety Data

25 Sheet for Garlock 900. Have you had a chance to review

ROA_01200

Appendix_01221

1 508?

2 A Yes.

3 Q And looking at 508, the Material Safety Data Sheet
4 for Garlock 900, 508.2 for Garlock 7735, those are the
5 same styles that are reflected in the Fisher Garlock --
6 Fisher material specification that approves the use of
7 those two styles in Fisher products, correct?

8 A Again, this is a technical -- could be technically
9 different, and --

10 THE COURT: Is that because of the HHP46E that is
11 to the right of Garlock 7735?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And that is the same thing -- that
14 HHP46E is also to the side of Garlock 900?

15 THE WITNESS: Yes. I see that.

16 THE COURT: And do you have any knowledge about
17 what that means?

18 THE WITNESS: No, I don't, and that's why I
19 hesitate identifying it as being connected to our spec.
20 I'm not intimately familiar with this type of document,
21 but that could be a modifier to that material, perhaps.

22 THE COURT: All right.

23 THE WITNESS: Or some type of material form.

24 THE COURT: Do you see that that same HHP46E is on
25 the margins of the first page there?

ROA_01201

Appendix_01222

1 THE WITNESS: Margins?

2 THE COURT: Yeah, the right margin if you turn it
3 on its side.

4 THE WITNESS: My copy doesn't have that, Your
5 Honor.

6 Oh, on one example it does.

7 THE COURT: The other one looks like it's
8 obscured, but in that one, you can see it.

9 THE WITNESS: That looks like that's some sort of
10 filing for the people who might have received this in
11 their record. I don't know. But, again, I can't make
12 that inference, Your Honor, I just can't.

13 THE COURT: You can't because -- only because of
14 this number that looks to you like a filing number?

15 THE WITNESS: It could be a filing number; it
16 could be a modification or a material form that's
17 associated with that type of material.

18 THE COURT: I understand. All right, Ms. Farrise.

19 MR. BOUCH: Your Honor, may I be heard?

20 THE COURT: It's not in yet, so you don't need to
21 do a thing, Mr. Bouch.

22 MR. BOUCH: I just wanted to put an objection on
23 the record.

24 THE COURT: Well, it's not in yet so I don't think
25 it's time for you to do that yet.

ROA_01202

Appendix_01223

1 Ms. Farrise, anything else you want to ask about
2 this to identify it? So far he states that he cannot
3 identify it.

4 BY MS. FARRISE:

5 Q Sir, if you look at the field that says
6 "identity," it also says, parenthesis, "As used on
7 label and list." Do you see that?

8 A Yes, I see that.

9 Q So the Garlock 7735 is what is going to be on the
10 label, and then that HHP -- the HHP part, which the
11 judge was asking you about, will go on the list,
12 presumably a parts list, right?

13 A I honestly don't know. I just do not know that to
14 make that determination. I'm not that familiar with
15 this type of document.

16 Q Right.

17 A And I've never seen this type of thing before.

18 Q Okay. So even though it says "Garlock 7735" and
19 "Garlock 900," you can't confirm specifically whether
20 or not the Material Safety Data Sheet that Fisher's
21 supplier prepared and apparently distributed ever was
22 distributed to Fisher, right?

23 A Correct.

24 Q Okay. So, as to the asbestos-containing packing
25 and gaskets that Fisher sold, just to be clear, you

ROA_01203

Appendix_01224

1 have not come prepared -- to court prepared on behalf
2 of Fisher -- to tell the jury whether it is true that
3 Fisher's suppliers sent to Fisher Material Safety Data
4 Sheets with its asbestos-containing products that
5 Fisher then simply did not transmit on to Fisher's
6 customers such as Duke? You don't know one way or
7 another?

8 MR. BOUCH: Objection, Your Honor. The preface to
9 that question, he did not come prepared. He wasn't
10 asked to come for any --

11 THE COURT: I'm going to permit the question.
12 Overruled.

13 Go ahead, Ms. Farrise.

14 THE WITNESS: Okay. So in terms of being
15 prepared, I have prepared for all types of questions
16 that might come up. I can honestly say that I've never
17 seen a document like this in my 40 years of Fisher.
18 Never seen it with respect to gasket and packing,
19 never. So I can answer the question I'm familiar with
20 Material Safety Data Sheets. We have them in the
21 factory for chemicals and substances, that sort of
22 thing. They're available to employees. I have never
23 seen a document like this in my history of working
24 there.

25 Q So the answer to my question is, "No, Ms. Farrise,

ROA_01204

Appendix_01225

1 I cannot say to this jury based on any knowledge on
2 behalf of Fisher that we didn't get Material Safety
3 Data Sheets which OSHA required by law about these
4 asbestos-containing components and simply did not pass
5 them on to customers such as Duke," right?

6 A That's kind of a long question. I think I
7 answered it previously that I've never seen these
8 documents in the course of my time at Fisher.

9 Q And there are Material Safety Data Sheets, it
10 sounds like, we did agree to, at the Fisher Iowa plant
11 or in the files or whatever it happens to be, and you
12 just don't know whether and if or how many or none of
13 these suppliers of asbestos-containing gaskets or
14 packing may have sent to Fisher?

15 A That would be correct, I don't know because I have
16 never become -- I've never encountered them. Let's put
17 it that way. So to that extent, I just -- I think I
18 would have seen or known about a Material Safety Data
19 Sheet like this had we received them.

20 Q Well, not really. You're a manufacturing
21 engineer, correct?

22 A Manufacturing, quality assurance, and design.

23 Q Right. You didn't work in the warehouse?

24 A No. I worked in the factory, and that's where I
25 would keep these parts.

ROA_01205

Appendix_01226

1 Q You didn't work in the warehouse?

2 A We don't have a warehouse.

3 Q You didn't work at the shipping dock?

4 A Quality assurance puts you in the shipping dock,
5 puts you in every part of the operations. We did at
6 one point have a warehouse so I take back my prior
7 comment. We did, and I did work there too.

8 Q Now you did have a warehouse?

9 A Yeah. We had a warehouse for raw castings. Huge,
10 large raw castings that we machined into valve bodies
11 and that sort of thing. I just want to be accurate.

12 Q Great. I need to turn the corner because the jury
13 has been lovely and patient, but can you pull out from
14 your exhibits 2006-0068.

15 MS. FARRISE: Your Honor, you don't have your
16 binder. I have an extra copy.

17 Q You recognize the page, the first page that starts
18 as 2016-0068?

19 A Yes. I can't say that I am -- I've seen it
20 before, but it looks like something that was put
21 together by Fisher. It's the same form, format, that
22 sort of thing.

23 Q Well, you see this little tag here. It's an
24 exhibit sticker of when there is a deposition. It
25 suggests that it was shown to you in 2006, on

ROA_01206

Appendix_01227

1 March 10th, in fact, at a deposition where you gave
2 testimony on behalf of Fisher. Does that refresh your
3 recollection as to whether or not this is something you
4 may have seen before?

5 A That's helpful, yes.

6 Q Okay. Now, first of all, this is a document that
7 Fisher puts out, correct?

8 A Yes. Like I said before, it does appear to be,
9 yes.

10 Q Through the Fisher Educational Services, correct?

11 A Yes.

12 Q Which is a branch of the company that trains
13 workers who are going to be operating or repairing or
14 maintaining Fisher valves that have been sold and are
15 out in the field, correct?

16 A It could be. It could be the technicians, yes, in
17 some cases.

18 Q Right. And Fisher, as part of the service --
19 well, and so this -- this is actually a multipage
20 document from the Fisher Educational Services where
21 someone from Fisher goes out and educates or trains
22 workers of customers at plant locations, right?

23 A In some cases, yes. And in some cases they come
24 to Marshalltown.

25 Q Right. That's why it says "student guide"?

ROA_01207

Appendix_01228

1 A Yes.

2 Q I was going to get to it. In addition to
3 having -- well, Fisher, since you mentioned
4 Marshalltown, Iowa, they have what they call a factory
5 school, right?

6 A Yes.

7 Q And so at the factory school in Iowa, workers,
8 let's say from Duke who need to or want to learn how to
9 or Duke decides they need to learn how to operate
10 Fisher valves or repair and maintain Fisher valves, can
11 go to Marshalltown and go to the factory school and be
12 trained by the experts at Fisher about its products,
13 right?

14 A Yes.

15 Q And Fisher is so generous that it will come to
16 your site and set up a factory school, right, if you
17 pay for it?

18 A Yes. That would be correct, yes.

19 Q Right. It will send its experts, its technicians,
20 and sit there and take a group of workers like
21 Mr. Jolly and his coworkers or whoever the maintenance
22 crew is and say, "Here, folks. Here is what is a
23 Fisher valve is. Here is how you need to maintain it.
24 Here is what you need to do to inspect it. Here is the
25 replacement parts you need to do any repairs," and on

ROA_01208

Appendix_01229

1 and on and on, right?

2 A Yes, with the clarification you said experts and
3 technicians. We didn't send technicians. There would
4 be people who would be trained instructors that would
5 go. You said technicians.

6 Q I'm sure I used the wrong label. My point was
7 people who were expert and had expert knowledge about
8 the valves, and if there was any question about what to
9 do or how to do it, those experts from Fisher could
10 answer the questions for the customers, correct?

11 A Yes.

12 Q And the Fisher folks were very specific that when
13 you, for instance, order any spare parts, you are to
14 refer to the Fisher manufacturing specifications and
15 see what exact part Fisher recommends, right?

16 A Are you referring to a certain page?

17 Q Sure. Why don't you turn over to Page 26 of the
18 Fisher Educational Instruction Guide.

19 A And the Bates number is?

20 THE COURT: It's 20060105.

21 THE WITNESS: 105?

22 THE COURT: That's Page 26 of the guide.

23 THE WITNESS: I was having trouble finding the
24 page numbers.

25 THE COURT: Page numbers on the left, others on

ROA_01209

Appendix_01230

1 the extreme lower right.

2 THE WITNESS: I have that here.

3 BY MS. FARRISE:

4 Q There is a section here, sir, in the Fisher
5 manual --

6 THE COURT: Is that the one you wanted,
7 Ms. Farrise?

8 MS. FARRISE: Yes. Right here.

9 Q This section that refers to "use only OEM parts,"
10 do you see that?

11 A Yes.

12 Q And what Fisher indicates is that, "Many
13 third-party parts manufacturers offer replacement parts
14 for all types of valves. However, without the
15 manufacturers' specifications for tolerances, material
16 specifications, heat-treating data, and so forth, use
17 these parts -- use of these parts generally introduces
18 a high-risk situation." Did I read that correctly?

19 A Yes.

20 Q So Fisher -- these manufacturing specifications
21 referred to specifications that Fisher and its folks
22 and its engineers would have created about its valves
23 that was made at the Iowa plant, some of which were cut
24 in the white room, right?

25 A As I said before, of the cutting of parts in the

ROA_01210

Appendix_01231

1 white room was a very unusual circumstance. It related
2 to nuclear valves that were tested in the white room,
3 and these parts that were cut in the white room would
4 not have found themselves in the hands of customers
5 because they are used to test the part, not destroy the
6 actual production part.

7 Q Sir, can you look a little further up? The
8 educational service of the Fisher folks, when they're
9 out teaching at sites or when they have crews of people
10 come to the Marshalltown valve school, they teach them
11 about Material Safety Data Sheets. And they say as to
12 the valves, "The Material Safety Data Sheet should be
13 obtained for the fluid flowing through each valve
14 serviced, and this document describes the nature of the
15 fluid," and so on and so forth, right?

16 A Yes. This lines up with what I said before in
17 terms of the chemicals and substances.

18 Q "Use care when removing these items," meaning
19 dealing with the fluid, right?

20 A When removing?

21 THE COURT: She's just looking at that paragraph,
22 Mr. Dumistra. It says, "Remember that soft parts such
23 as gaskets, packing, and other components can absorb
24 and retain hazardous fluids. Use care when removing
25 and handling these items." Do you see all that?

ROA_01211

Appendix_01232

1 THE WITNESS: Yes. Thank you, Your Honor. I see
2 that.

3 BY MS. FARRISE:

4 Q And tells them to go -- or maybe they're provided,
5 I'm not sure -- and refer to a Material Safety Data
6 Sheet, right?

7 A Yes, for the fluid that's going through the pipe,
8 yes, uh-huh.

9 Q Now, Fisher, as part of its education of workers
10 working on its valves, told workers to wire brush
11 gasket surfaces, correct?

12 A I don't think it's a typical instruction, but it
13 may have shown up in certain circumstances.

14 Q Let me ask you to turn over to Page 32, which is
15 Dumistra 2006-0111. In a section called "gasket
16 surfaces" --

17 A Yes, I see that.

18 Q So in the written materials that are given to
19 students either at the factory school or at the plant,
20 depending on what the customer pays for, they tell
21 folks to, "Carefully clean away any old gasket material
22 using a soft wire brush and make a close examination of
23 all serrated gasket surfaces. If these surfaces are
24 worn, gouged, or pitted, gasket leaks are probable."
25 Did I read that correctly?

ROA_01212

Appendix_01233

1 A Yes.

2 Q And that their factory-authorized -- down at the
3 bottom, last sentence -- service shop has the correct
4 machining tools for cleaning the serrations of the
5 gasket face in case they are damaged or not suitable in
6 some way, correct?

7 A Yes, that's what's written here.

8 Q That's kind of like if someone has to get their
9 brake drums on their car re-machined because the metal
10 is not correct, and so you can't just put a brake shoe
11 on it? If you know anything about cars. Maybe you
12 don't.

13 A No, I understand that. It's happened to me. I
14 have had to have my brake shoes re-machined, yes. Not
15 the shoes, but the drum.

16 Q Fisher recommends that any time a valve is
17 disassembled for any reason, that the gasket should be
18 changed, even if there's no repair, right?

19 A If you disassemble a valve, take the bonnet, in
20 the case of a sliding stem valve, take the bonnet
21 apart, then, yeah, you need to inspect that gasket and
22 the gasket surface and most likely have to replace that
23 gasket because it's already been sealed once and
24 created that seal. So, yeah, in those occasions where
25 you have to disassemble for some maintenance reason, I

ROA_01213

Appendix_01234

1 would guess yes.

2 Q Well, if it's disassembled merely for inspection,
3 not necessarily for maintenance, it needs to be
4 replaced; isn't that true?

5 A I would say most of the time, yes, but I'm not
6 going to say that would be the practice in every case
7 because I don't have that experience.

8 Q Okay. I'm going to ask you to turn over to Page
9 40 of the student guide. There is a section entitled,
10 "Assembly Considerations, Special Procedures, Reuse of
11 Parts, Gasket Considerations." Do you see that?

12 A Yes.

13 Q And under this reuse of parts here, Fisher says,
14 "Generally speaking, all soft parts should be replaced
15 whenever the control valve has been disassembled.
16 Packing seals, piston rings, and gaskets are very
17 inexpensive compared to the cost of bringing a process
18 down and reworking a repair." First of all, did I read
19 that correctly?

20 A Yes. And it lines up perfectly with what my prior
21 answer was.

22 Q And so it is Fisher's recommendation that whenever
23 a valve is disassembled, the gaskets and the packing
24 should be replaced?

25 A No. It says "generally speaking," just like I

ROA_01214

Appendix_01235

1 said earlier.

2 Q So someone reading these instructions wanting to
3 follow the directions so that they don't go to jail for
4 doing something wrong at a nuclear power plant, reading
5 these directions, might assume that any time the valve
6 is open, the gasket needs to be replaced. Can we agree
7 on that?

8 A I wouldn't have that experience to answer one way
9 or the other.

10 Q Sir, Fisher removed its gasket -- or asbestos from
11 the gaskets and the packing because of health hazards
12 associated with that material, correct?

13 A No, not to our knowledge, no.

14 Q Let me ask you to turn over to Page 12 of the
15 Fisher education student materials.

16 THE COURT: 0091.

17 THE WITNESS: Thank you, your Honor.

18 Yes.

19 BY MS. FARRISE:

20 Q Are you at Page 12, sir?

21 A Yes.

22 Q Do you see the section entitled "Packing
23 Material"?

24 A Yes.

25 Q It reads, "PTFE Teflon 1," whatever that tends to

ROA_01215

1 mean, "and various forms of graphite have proved to be
2 satisfactory for most packing applications.

3 Manufacturers have eliminated asbestos packing because
4 of health hazards associated with that material."

5 First of all, did I read that correctly?

6 A Yes. Now, if I could, Counselor, it says
7 manufacturers here, and we never manufactured these
8 types of components. This pertains to the manufacturer
9 of those components at the supplier, which is indicated
10 in the lower left of your chart. So they may have had
11 those concerns because they were stamping them out, and
12 they had the original form of asbestos fibers while it
13 was being bound together with this other binder and
14 elastomer material. So in the gasket form, it's my
15 understanding that there is no health hazards so this
16 statement lines up, again, with what I've said earlier.

17 Q So as I understand it, sir, and we just need to be
18 clear, you have come here to testify on behalf of
19 Fisher, and it is Fisher's testimony under oath that
20 when it writes in a Fisher instruction guide about the
21 maintenance and installation of valves, that
22 manufacturers have eliminated asbestos packing because
23 of health hazards associated with that material. Are
24 you following me?

25 A Yes.

ROA_01216

Appendix_01237

1 Q But that does not mean there is a health hazard is
2 Fisher's view?

3 A Correct.

4 Q Okay. And --(but that these suppliers to Fisher
5 have said to Fisher and Fisher has now passed on to the
6 workers in this format of its customers that there is a
7 health hazard with the material that we sold to Fisher,
8 right?

9 A In terms of their activity and how they're
10 punching the parts out and making the binder and adding
11 the asbestos to the binder and all that, yes, that's
12 correct.

13 Q Sir, Fisher had what is called factory service
14 centers, correct?

15 A No. It's a separate entity.

16 Q Let me ask you to turn to Page 34 of the guide,
17 the instruction guide. There is a section there about
18 machining. You see that, right?

19 A Yes.

20 Q At the bottom here?

21 A Uh-huh.

22 Q And then it indicates there that there's these
23 factory-authorized service centers. Do you see that?

24 A Yes.

25 Q "Note that leading manufacturers maintain

ROA_01217

Appendix_01238

1 factory-authorized service centers in various
2 locations. These centers come highly recommended as
3 they have expert knowledge of the products, access to
4 an extensive technical base, and a broad experience in
5 valve repair. Whenever repair questions arise,
6 factory-authorized service centers are a resource that
7 should be considered. Some of the more progressive
8 service centers offer onsite maintenance, in-line
9 diagnostics, and services including turnaround planning
10 and management." Did I read that correctly?

11 A Yes.

12 Q And this phrase here, "onsite maintenance," do you
13 see that?

14 A Yes.

15 Q That refers to where the factory-authorized folks
16 will come to the customer's site and engage in some
17 maintenance activities, correct?

18 A Yes, with the understanding that's not part of our
19 company. It's a separate company.

20 Q We'll get to that.

21 A Okay.

22 Q Now, turnaround, that's the same thing as an
23 outage or a shutdown, right?

24 A That would be an example of that, yes.

25 Q Right. So Mr. Jolly and his coworkers, for

ROA_01218

Appendix_01239

1 instance, describe that on some regular schedule the
2 plants, units, would be taken out of service, meaning
3 nonoperational, just like we take our car in, and there
4 would be an outage or a shutdown. And this word
5 "turnaround," that describes that as well, correct?

6 A It could be an example of that.

7 Q Now, let me just see. Oh, since we're on Page 40,
8 Fisher had approved maintenance manuals, instruction
9 manuals that it recommended its customers refer to any
10 time they were doing a repair on a Fisher valve?

11 A Okay. I'm going to turn to Page 40, then.

12 Q 41, I think. Do you have that?

13 A Yes.

14 Q Of the manual. Do you see that?

15 A Yes.

16 Q And on Page 41 of the manual, one of the things
17 that we have here at the top is someone installing a
18 gasket, right?

19 A No.

20 Q That doesn't look like a gasket to you?

21 A They are gaskets, but they're not installing.
22 They're just showing the orientation of the parts.

23 Q They're handling them with their hands?

24 A Yes.

25 Q They're not wearing gloves?

ROA_01219

Appendix_01240

1 A They wouldn't have to, no.

2 Q There's nothing over here saying this might be an
3 asbestos-containing part; you might need to wear a
4 respirator?

5 A Correct. There would be no safety issue.

6 Q Down here, Fisher says, "Always find and use the
7 appropriate instruction manual before beginning a
8 repair. Manuals give detailed views of the correct
9 orientation of parts. Simply assembling parts in the
10 order they were removed is not sound because the valve
11 may have been improperly assembled the last time it was
12 repaired. Manuals also give approved procedures,
13 torque values, clearances, and parts ordering
14 information." First, I read that correctly, right?

15 A Yes.

16 Q And the manual that's referred to here is a manual
17 that Fisher prepares about the Fisher valve that it
18 made and sold to customers, right?

19 A Yes.

20 Q And this picture here in connection with what I
21 just read, the use of instruction manuals, again shows
22 and depicts a person doing repair on a valve with the
23 instruction manual at the handy, right?

24 A I see that, yeah. I'm not sure what repair.

25 Looks like they might be measuring something on that

ROA_01220

Appendix_01241

1 part.

2 Q And there's no indication that any safety
3 precautions should be taken when repairing the internal
4 components or working on a Fisher valve, correct?

5 A No, not in this diagram, but it does reference the
6 manuals, and those safety precautions are included in
7 the manual.

8 Q And customers have to pay for those manuals,
9 right?

10 A No.

11 Q They're included with the valve; is that what you
12 mean?

13 A Yes. As long as I've worked there, they're
14 shipped with each valve.

15 Q Okay. So in the case of Duke, however many valves
16 there were, every single one of those serial numbers
17 would have come in a container that not only had a
18 valve but had an instruction manual which gives them
19 parts information, clearances, torque, all the kind of
20 things that were discussed there, right?

21 A Not clearances. Torque, yes. Parts, yes. And
22 not every -- sophisticated customers like Duke, for
23 example, I want to make it clear in this case, had the
24 option of not including an instruction manual for every
25 shipment because they just get overwhelmed with

ROA_01221

Appendix_01242

1 instruction manuals, and it's a waste of paper. So if
2 they order the same part or same valve a multitude of
3 different times, they could say no instruction manuals
4 included. So, generally, it's the other way. We
5 include instruction manuals with every valve. But they
6 could opt out, too, because the paperwork is just a
7 grind for some sophisticated customers.

8 Q And as you sit here today, you have no idea one
9 way or another whether instruction manuals were opted
10 out of; Duke said we don't want them; we'll do our own
11 thing, right?

12 A Right. I just wanted to clarify that point.

13 Q And, sir, we talked yesterday at the beginning of
14 your testimony about the fact that Fisher was birthed
15 137 years ago or so as a company, correct?

16 A Yes.

17 Q And so when they had their 125th company
18 anniversary, they wrote a book called *The Fisher Story*
19 *of Process Control Experience: 125 Years*, right?

20 A Yes.

21 Q And you know that book, right?

22 A Yes. I have a copy on my desk, yes.

23 Q And you have been asked about that book, right?

24 A Oh, yes.

25 Q And can I ask you to turn in your deposition in

ROA_01222

Appendix_01243

1 the exhibits to 2006.0154? This is a book prepared
2 by -- prepared for folks at Fisher authorized by the
3 Fisher company and experience, right?

4 A Yes.

5 MS. FARRISE: Your Honor, I would offer -- well,
6 let me see.

7 THE COURT: You're offering that into evidence?

8 MS. FARRISE: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. BOUCH: No objection.

11 (WHEREUPON, Plaintiffs' Exhibit Number 966 was
12 admitted into evidence.)

13 THE COURT: Go ahead.

14 MS. FARRISE: There it is.

15 Q I don't have a copy, but I'm guessing it's a big
16 book?

17 A It's about a half inch, maybe.

18 Q Among other things, the company goes through its
19 history in certain respects, right?

20 A Yes. That's really the purpose of the book, to
21 celebrate 125 years and write down some of the
22 significant events in that first 125 years.

23 Q And some of the ones that they point out that
24 Fisher Controls thought worth mentioning was that in
25 1974 Fisher opened a new manufacturing plant, 30,000

ROA_01223

Appendix_01244

1 square foot, in Japan, correct?

2 A Yes.

3 Q And we mentioned yesterday about the two plants in
4 the United States, and I maybe didn't ask the right
5 question. Fisher has manufacturing plants that
6 manufacture valves around the world, right?

7 A Yes.

8 Q And they did during -- before 1979, right?

9 A Yes. This is one example of that, yes.

10 Q And they started, according to their history, in
11 1972, opening service centers, right?

12 A Yes. Yes. That's the way it's indicated here,
13 and with the understanding that this one established
14 was a separate company per se.

15 Q That's not what they say. They say Fisher, us, we
16 established service centers?

17 A Yes. And when we're talking to employees, and
18 they would not make that distinction. It's just a
19 separate legal entity, though. So this is intended
20 just to describe the historical events and the general
21 course of the history and not to get to the level of
22 detail with respect to legal entities and that sort of
23 thing.

24 Q This service center, Fisher Service Center thing
25 that they brag about starting in 1972, Fisher Controls

ROA_01224

Appendix_01245

1 established, is what it says, "Its first valve repair
2 depot in Gonzales, Louisiana," someone reading this
3 would think it's Fisher Controls, part of their
4 business, right?

5 A Yeah, you would think that. But, again, I
6 clarified that this is intended as just a general
7 history of the overall organization and doesn't make a
8 distinction with respect to legal entities.

9 But, Counselor, you say "brag about." And
10 certainly that's something we're proud of, the history
11 of our company, so.

12 Q Right. Because this was a good thing. Like it
13 says here because you've now got these local service
14 centers, for instance, you can make equipment repair
15 services available to local customers which would
16 eliminate the long delays and costs associated with
17 sending products back to the factory. So if something
18 breaks at the Duke plants, they don't have to send it
19 back to Iowa. The service people can hopefully come
20 out and resolve the problem, correct?

21 A Yes. And if I could direct Counselor to another
22 paragraph on this same page, it says, "The Fisher
23 Service Company and its repair center." So that's the
24 separate legal entity we're dealing with here.

25 Q And then on the next section, talks about Fisher

ROA_01225

Appendix_01246

1 sales representatives could make referrals, sell the
2 service, earn a commission, and then they go on and
3 talk about a bunch of things, right?

4 A Yes.

5 Q And one of the things they talked about is they
6 also sell valves that have come out of service that
7 they have refurbished and remanufactured. And that
8 happens with like brake shoes or brake cores, right?

9 A I'm not sure about brake shoes.

10 Q These are not brand-new valves. These are valves
11 that were at one point brand-new. Now they have come
12 out of service, they have been remanufactured, and they
13 sell them under the brand Encore valves?

14 A Yes. That would be the service company
15 organization.

16 Q But there is a different product out in the world,
17 Encore valves, which are actually valves that Fisher
18 has remanufactured?

19 A Yes.

20 Q And so this business, though, became quite a big
21 part of the Fisher family, or so it brags, that it's
22 the largest, 52 service and repair facilities in North
23 America. It has six branch offices. Actually, they're
24 talking about Gonzales, Louisiana, right? If you go
25 back and read the whole thing, Gonzales, Louisiana?

ROA_01226

Appendix_01247

1 A Yeah, Gonzales is the location that does the
2 remanufacturing.

3 Q Today?

4 A For the service company.

5 Q The other part says, "Today Gonzales produces
6 Encore remanufactured valves and is the largest of 52
7 service and repair facilities in North America. It,"
8 meaning Gonzales, "has six branch offices in Mobile,
9 Alabama; Memphis, Tennessee; Decatur, Alabama; Lake
10 Charles, Louisiana, and Benton, Kentucky with 140,
11 employees and annual sales of more than \$31 million,"
12 correct?

13 A Yes.

14 Q So this is a big part of the company. These are
15 not people sitting at home waiting to have a referral
16 to go change a gasket. This is a big part of the
17 Fisher Company. That's why they included it in here
18 and that's why they brag about it, right?

19 A I think that's misrepresenting what I stated
20 earlier in that this is a separate company.

21 Q And nowhere in this book of Fisher Controls, our
22 first 125 years, is there an asterisk, a footnote, an
23 end note of everything I just read that says even
24 though it's in our book, it's really not us, right?

25 A No, I wouldn't say that. Again, that goes to the

ROA_01227

Appendix_01248

1 purpose of the book is just a general history of a
2 larger corporation.

3 Q And, Mr. Dumistra, Fisher advised and trained and
4 communicated and educated its own employees that
5 exposure to asbestos, including from
6 asbestos-containing valves and asbestos-containing
7 packing, could cause mesothelioma, didn't it?

8 A No, not to my knowledge.

9 MS. FARRISE: Your Honor, the next thing -- I see
10 that it's ten till. This is my last probably couple
11 questions. I'm just wondering if you wanted to take a
12 break.

13 THE COURT: Well, generally, we take a break at
14 11:00, so -- but if you're going to a new topic, we can
15 take a break now.

16 MS. FARRISE: Thanks so much.

17 THE COURT: Very good.

18 Ladies and gentlemen of the jury, let's take a
19 break until about five after 11:00.

20 (WHEREUPON, the jury exited open court at
21 10:50 a.m.)

22 (WHEREUPON, the jury entered open court at
23 11:09 a.m.)

24 THE COURT: Thank you. Members of the jury,
25 please be seated, and our direct examination of

ROA_01228

Appendix_01249

1 Mr. Dumistra will continue.

2 MS. FARRISE: Thanks so much, Your Honor.

3 Q Mr. Dumistra, we were just discussing that Fisher
4 Controls trained and educated its own employees that
5 exposure to asbestos from asbestos-containing packing
6 and valves during maintenance operations and other
7 activities with those products associated with valves
8 could cause mesothelioma. Do you recall that?

9 A Yes, I recall.

10 Q And Fisher Controls had a corporate industrial
11 hygiene department at Marshalltown, Iowa at the not
12 just manufacturing facility but at the company
13 headquarters, right?

14 A Yes. Not always, but yes.

15 Q Starting when, approximately?

16 A Probably -- the dates escape me, but I'm going to
17 say at least in the late '80s time frame.

18 Q Let me hand you what we are marking for
19 identification as Plaintiffs' Exhibit 1008-399.

20 (WHEREUPON, Plaintiffs' Exhibit Number 1008-399
21 was marked for identification.)

22 THE COURT: Are you offering this in evidence?

23 MS. FARRISE: Your Honor, it's a Fisher document.

24 THE COURT: Give a copy to --

25 MS. FARRISE: I did, Your Honor.

ROA_01229

Appendix_01250

1 THE COURT: Can you identify it, Mr. Dumistra?

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 Mr. Bouch, any objection?

5 MR. BOUCH: No, ma'am.

6 THE COURT: All right.

7 (WHEREUPON, Plaintiffs' Exhibit Number 1008-399
8 was admitted into evidence.)

9 MS. FARRISE: So I didn't have it in the gizmo,
10 Your Honor, so we're going to have to do it this way.

11 Let's see.

12 Q So this is a memorandum dated April 9, 1999, to
13 Nelson Simmons from a Mr. Forrest Watts on Fisher
14 Controls/Marshalltown, I guess, memorandum. Do you see
15 that?

16 A Yes.

17 Q This is something that would have been prepared
18 and created here at the Iowa -- Marshalltown is really
19 the headquarters or the home of Fisher Controls,
20 correct?

21 A I don't know if it was created there, but it says
22 what it says.

23 Q Well, it's a memorandum. I mean it references
24 Marshalltown, so it looks like sort of the, you know,
25 stationery as we used to call it back in the day,

ROA_01230

Appendix_01251

1 internal stationery, if you will, of Fisher Controls in
2 Marshalltown, right?

3 A Yes. It appears to be that way, yes.

4 Q And the subject is, "Results of Industrial Hygiene
5 Air Monitoring Performed at Your Work Location on
6 January 26, 1999, at the FSC Gonzales Facility." Do
7 you see that?

8 A Yes.

9 Q That's the same Fisher Service Center Gonzales,
10 Louisiana facility that we were just reading back in
11 the first 125 year book, right?

12 A Yes.

13 Q And so Mr. Watts to Mr. Simmons, you know, as
14 people in the same company can be nice enough, "I would
15 like to thank you again for your assistance during the
16 collection of industrial hygiene air samples at your
17 work location. Industrial hygiene air monitoring is
18 routinely performed at various Fisher Controls
19 locations in order to ensure that our associates are
20 able to perform their job functions in a safe and
21 healthy work environment. Listed below are the results
22 of the air monitoring performed at your work location.
23 In the event that the exposure levels to the
24 occupational contaminants evaluated exceed the
25 guidelines established are deemed to be an immediate

ROA_01231

Appendix_01252

1 point of concern, you will be contacted by the ESH" --
2 what's that, environmental safety and health --

3 A Correct.

4 Q -- "coordinator, Danny Richardson, at the Fisher
5 Gonzales facility. The purpose of this follow-up visit
6 will be to outline the control strategies to eliminate
7 the exposure problem identified with the initial
8 testing." Then it has, "Work area evaluated, Encore
9 teardown." And that's the remanufactured brand of
10 Fisher, right?

11 A Yes.

12 Q "Contaminants evaluated, asbestos fibers," right?

13 A Yes.

14 Q And then it has a sampling result and something
15 about the TLV and OSHA PEL, and this test came back
16 okay, right?

17 A Correct.

18 Q Now, could you tell the jury about all of the
19 safety and controls, ventilation-type things that
20 Fisher's industrial hygiene department installed at the
21 Gonzales, Louisiana facility to make sure its employees
22 who were remanufacturing these Encore valves would not
23 have any exposures from asbestos from that work?

24 A Okay. I'm not an expert in that area in terms of
25 what was in place at that time. I can tell you that,

ROA_01232

Appendix_01253

1 based on what I'm reading here, and I've seen this
2 document before, that the results of the air monitoring
3 were found to be acceptable, and I believe that was
4 before any -- there were any other measures taken to
5 minimize.

6 Q This is 1999.

7 A Yes. And so, thank you, Counselor, for pointing
8 that out because this type of program was implemented,
9 I believe, in response to workplace rules and making
10 sure that OSHA guidelines were followed and that sort
11 of thing, so I'm assuming that's why they did this
12 testing.

13 Q But what this guy is doing, his job, the work
14 practices, is he is actually engaged in an Encore
15 teardown, meaning he's taking an old valve and, I
16 guess, maybe opening it up, scraping out a gasket,
17 pulling out the packing, all the stuff we've been
18 talking about, right?

19 A Correct.

20 Q And the corporate industrial hygiene department,
21 this Mr. Forrest Watts, he's a CIH. You see that?

22 A Yes.

23 Q And that means Certified Industrial Hygienist.
24 The jury is probably going to hear more about that.
25 You agree with that?

ROA_01233

Appendix_01254

1 A I see that.

2 Q And Mr. Forrest Watts is the manager of the
3 corporate industrial hygiene department, which I'm
4 guessing you know since you have seen this document
5 before, and he also works in corporate in Iowa, right?

6 A I assume so. I'm not going to disagree with that.
7 I just don't know for certain, but -- I just don't know
8 for sure.

9 Q So for its own workers, Fisher Controls
10 implemented the OSHA requirements having to do with
11 asbestos for its own workers who were doing maintenance
12 on valves, right?

13 A Correct. As a manufacturer, we would make sure we
14 have a safe workplace. And in this case here, they
15 were tearing down a valve, reconditioning it to place
16 it in the Encore program. They did the necessary
17 background monitoring and found the results to be in
18 accordance with the OSHA requirements, and they were
19 acceptable. And that was -- would be what is expected
20 of all manufacturers.

21 Q Why didn't Fisher just go to OSHA and say, "Hey,
22 folks, our valves are safe. Our gaskets are safe. The
23 packing, the maintenance, all the foreseeable uses
24 having to do with our product will not expose someone
25 to any unsafe levels of asbestos, and, therefore, we

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1 shouldn't have to pay all this money to have a
2 corporate industrial hygiene department and put in
3 monitoring and 'stuff because we've got a safe product"?

4 A Okay. Each manufacturer is required to comply
5 with OSHA regulations. And so just like Fisher was
6 doing rework on this Encore valve to make sure -- and
7 doing that monitoring to make sure we were in
8 compliance, other locations such as was earlier
9 discussed in the prior deposition, monitoring of
10 workplace habits and that sort of thing is an
11 obligation of each of the manufacturers in these
12 production environments.

13 Now, I was going to make one other point here, and
14 I lost my train of thought.

15 Q Can I ask another question?

16 A Sure. Go ahead. If it comes to me.

17 Q Mr. Watts, the corporate industrial hygiene
18 manager at Fisher Controls, went around to the Fisher
19 Controls facilities and trained and communicated to
20 Fisher Controls employees that exposure to asbestos
21 from working with and removing asbestos-containing
22 packing and gaskets could cause mesothelioma, and that
23 is why they needed to work in protective environments,
24 correct?

25 A I don't have that understanding. I just don't.

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1 And to be more thorough in my prior answer, you
2 mentioned OSHA regulations. And OSHA, when they came
3 out with requirements associated with monitoring in
4 workplaces like this, they exempted components such as
5 packing and gaskets with respect to any requirements
6 because they were fully encapsulated, could not easily
7 become airborne. So you mentioned OSHA, so I wanted to
8 make that clear.

9 Q The jury and I, maybe when you're not here, just
10 for time purposes, will read OSHA together, but it said
11 for manufacturers who could demonstrate with testing
12 results that their products did not release asbestos.
13 If you could test your product and demonstrate no fiber
14 release, then you might be eligible for the exemption.
15 That's what it actually said, right?

16 A I'm not that familiar with it.

17 Q Anyway, back to Mr. Watts. Do you know what this
18 is?

19 A Yes.

20 Q Mr. Watts created a videotape as the corporate
21 industrial hygienist so that he wouldn't have to travel
22 all over the country. He could simply send the
23 videotape to the facilities, and they could pop it in,
24 and they could be trained about asbestos hazards. And
25 what he communicated to Fisher workers was that valves

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1 and packing and the asbestos in there causes
2 mesothelioma, right?

3 A I don't know. I do not have that familiarity with
4 any videotape. I have never seen such video.

5 MS. FARRISE: Your Honor, I would offer the Fisher
6 Controls corporate industrial hygiene videotape
7 prepared by Mr. Watts with those statements as
8 impeachment.

9 MR. BOUCH: Your Honor, I object. Corporate
10 representative says he's never seen it, never heard of
11 it, has nothing to do with it. If they want to bring
12 Mr. Watts to do it, fine.

13 MS. FARRISE: The corporation is saying they
14 didn't do it --

15 THE COURT: Just a second. The reason we have
16 corporate representatives, of course, is to have one
17 person identify corporate documents.

18 And where did you get that CD? This video, where
19 did you obtain it?

20 MR. HOLDER: It was produced with all of our
21 exhibits.

22 MS. FARRISE: We have a transcript of what it is
23 if Your Honor might like to see it.

24 THE COURT: Just come around to the side here.

25 (WHEREUPON, a bench conference was held on the

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1 record in the presence of the jury, but out of the
2 hearing of the jury as follows:)

3 THE COURT: All right. I'm looking at a
4 transcript of a video recording that has been prepared
5 by the plaintiffs with a transcription service. It's
6 not -- that's not an official thing from the defendant.

7 But the CD, where did that come from?

8 MS. McVEY: Your Honor, we found the video. We
9 put it on our exhibit list.

10 MS. FARRISE: Because they sell it --

11 THE COURT: Only one person can talk at a time.

12 MS. McVEY: Your Honor, we found this video. We
13 put it on our exhibit list. It's been on our exhibit
14 list. They have had a copy of it. It's a Fisher
15 Controls' video instructing their workers how to deal
16 safely with asbestos-containing gaskets and packing.

17 THE COURT: And he's objecting to it because
18 Dumistra can't identify it as a video created by
19 Fisher, as I understand it.

20 Is that right, Mr. Bouch? If we're going to get
21 into this now, everybody is going to be fed out of the
22 same spoon about this, but if that's what you're going
23 to do, I understand that, and we'll have some further
24 discussion of that when the jury is not here. I don't
25 want to hold them up.

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1 But as I understand the objection you have lodged,
2 you object to the admission of this because
3 Mr. Dumistra can't identify it as a Fisher Controls
4 document; is that correct?

5 MR. BOUCH: That's the first ground, Your Honor.
6 The second ground is, in response to your question
7 where did they get it, we don't know where they got it.

8 THE COURT: Well, we just learned where they got
9 it.

10 MR. BOUCH: Where did they get it?

11 THE COURT: Mr. Bouch, all I'm trying to establish
12 is that you're going to object to having this admitted
13 because you don't concede that it's a Fisher Controls
14 video.

15 MR. BOUCH: That's correct.

16 THE COURT: All right. That's all I need to know
17 right now. Let's go on to something else and we'll
18 straighten this out on a break.

19 MS. FARRISE: This is our last thing, Your Honor.
20 We are done after this.

21 THE COURT: Well, this is the kind of thing I had
22 thought when y'all exchanged exhibits that everyone had
23 agreed to other people's exhibits.

24 MS. McVEY: We did exchange the exhibit.

25 THE COURT: And it was your impression that they

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1 had no objections to your exhibits?

2 MS. McVEY: That was my -- I never heard an
3 objection to the exhibit.

4 THE COURT: All I'm trying to do is define the
5 landscaping. We will have a hearing.

6 MR. BOUCH: May I be heard on that?

7 THE COURT: No, not now. I'm not going to hold
8 this jury up any longer. You are going to be fully
9 heard, but I'm not going to do it at sidebar like this
10 with the jury sitting there.

11 This is the last thing on Mr. Dumistra before you
12 go to cross-examination?

13 MR. HOLDER: Just to clarify, since he's the
14 corporate witness, we are on cross-examination.

15 THE COURT: You are on direct examination but
16 permitted to ask cross-examination questions because
17 he's a hostile witness.

18 MS. FARRISE: You're correct. I just wanted to
19 make sure we're on the same page.

20 THE COURT: We're on the same page. I have let
21 you lead all along, but this is a direct examination of
22 your witness.

23 MS. McVEY: Your Honor, last thing. I know you
24 don't want to hold this up. The man on the video is
25 Forrest Watts, who he just identified as the industrial

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1 hygienist.

2 THE COURT: Right. And if we have to do it this
3 way, we'll do it that way, but I'm not going to take up
4 the jury's time.

5 (WHEREUPON, bench conference concluded.)

6 THE COURT: Ladies and gentlemen of the jury, we
7 have a little issue here with respect to the admission
8 of a piece of evidence, and I don't want to make y'all
9 sit here wondering what we're doing at sidebar and
10 sitting in your chairs, so I'm going to ask you to go
11 to your jury room. And if this is going to take any
12 extended length of time, you will have an early lunch,
13 and that's the way we'll handle it.

14 In fact, it's 11:30 now. I just don't know
15 exactly how long this is going to take. Let me send
16 you to lunch. This is not fair to you to have you sit
17 around. I'll send you to lunch now. It's 11:25. Be
18 back here at 1:00.

19 (WHEREUPON, the jury exited open court at
20 11:27 a.m.)

21 THE COURT: Now, where is that document? We're
22 having a discussion right now about an exhibit that the
23 plaintiff was offering during its examination of
24 Mr. Dumistra that it represents is a video created by
25 Fisher Controls and that it features -- what is the

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Appendix_01262

1 name of the person who is speaking?

2 MS. FARRISE: Forrest Watts, the manager of
3 industrial hygiene for Fisher Controls.

4 THE COURT: The video features a Mr. Forrest M.
5 Watts, who is the manager of industrial hygiene for
6 Fisher Controls.

7 We just finished examining Mr. Dumistra with
8 respect to a memorandum from Mr. Forrest Watts. That's
9 Plaintiffs' Exhibit 1008-399.

10 Mr. Dumistra has been examined on that memo from
11 Mr. Watts to Mr. Nelson Simmons. Ms. Farrise now
12 proposes to show a video and ask Mr. Dumistra some
13 questions about it. Mr. Dumistra declines to identify
14 this as a Fisher video at this time, and Mr. Bouch
15 objects to it because it cannot be verified as a Fisher
16 exhibit.

17 As I understand it, the exhibit was part of the
18 package of exhibits that the plaintiff sent to
19 defendants.

20 And this is where I want to go first in terms of
21 understanding what the landscape is. It was my
22 understanding that the parties exchanged a vast number
23 of exhibits that were proposed for use at the trial.
24 And it was my understanding that the parties would
25 propose to me objections to exhibits that they wanted

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1 to object to. And pursuant to that, we have had some
2 hearings about these exhibits and objections.

3 I had understood at the September 18th hearing --

4 MR. REID: Your Honor, I think you meant
5 July 18th.

6 THE COURT: Mr. Reid, I'm going to hear everyone.
7 I'm trying to set the stage for what I understand this
8 proceeding encompasses in terms of my rulings and where
9 this trial stands right now.

10 I am very disappointed to have to interrupt this
11 trial in this fashion. My understanding was that the
12 parties had exchanged exhibits and your exhibits were
13 good, and my exhibits are good, and we're going to go
14 forward. Most of these exhibits are exhibits that
15 emanate from one of the defendants. Sometimes they
16 have been introduced in other litigation rather than
17 this litigation. But my understanding is that unless I
18 was presented with some objections before the trial
19 started that we would not have the trial interrupted in
20 this fashion.

21 Now, the trial has been interrupted in this
22 fashion, and Mr. Bouch wants to put on the record his
23 objections to this video.

24 The first thing I want to ask is this: Before he
25 does that, one of the ways to solve this particular

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1 problem is to show some portions of this exhibit and
2 see if Mr. Dumistra, after he looks at portions of this
3 exhibit, can identify it as a Fisher Control video made
4 by Mr. Watts. If he can, then we will have solved this
5 problem. But I also want to solve the problem on a
6 going-forward basis because I don't want to have to
7 interrupt this trial if all we're doing is making
8 hypertechnical objections to exhibits that these
9 parties know well, have exchanged and so forth. So
10 that's what kind of got my goat a little bit as we move
11 forward.

12 Now, I first turn to Mr. Bouch for him to put on
13 the record completely what his concerns are.

14 MR. BOUCH: Your Honor, your recitation of the
15 exchange of exhibits is inaccurate in several respects,
16 and I'll recite those.

17 Pursuant to the standing order, we were -- we were
18 to exchange exhibit lists a week ago Sunday. We
19 received the plaintiffs' trial exhibit list -- I will
20 pass it up -- with 1,000 numbered exhibits. I received
21 it about 1:00 -- the e-mail was dated about 1 o'clock
22 in the morning Monday. I received it Monday morning.
23 I immediately asked Mr. Holder for a copy of those
24 exhibits.

25 Under my hotel room door this past Monday, a week

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1 later, when I woke up in the morning, there was a flash
2 drive purportedly with copies of their exhibits. I
3 haven't had a chance to review them all. In looking
4 through that list I just gave you, not only does the
5 exhibit numbering stop at 1,000 -- and I'll admit I
6 only was able to scan the list -- this particular
7 transcript or video I didn't see. Okay.

8 We have another list that apparently has been
9 given us -- I don't know whether it's in this case or
10 the Taylor case -- that goes to 6,720.

11 THE COURT: Yes, I'm familiar with that one.
12 That's one that a notebook was given to me also. It's
13 a lot of exhibits from the Taylor case. It was
14 proposed to use those exhibits in this case, so I'm
15 familiar with what you're talking about. And it was my
16 understanding that those were exhibits from the Taylor
17 case that were proposed to be used in this case.

18 MR. BOUCH: All it says is, "Fisher Controls
19 Asbestos Training Manual Videos." And, again, I do not
20 know if it was on that CD -- or not CD, that little
21 flash drive that was thrown under my door the day we
22 started trial or not. But I haven't seen it before.
23 I've asked Mr. Reid, who's been representing Mr. Fisher
24 for longer than the four weeks I have, he's never seen
25 it. Mr. Dumistra can't identify it. And as Your Honor

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1 has observed, he's been doing this for ten years. We
2 object to it.

3 THE COURT: That's fine. That's good. Anything
4 else you would like to add, Mr. Reid?

5 MR. REID: Your Honor, let me just apologize to
6 the court for interrupting. You simply misspoke and
7 said "September 18th" hearing. I think you meant
8 July 18th, so I apologize for interrupting. I just
9 wanted to correct that. I should have waited for you.

10 THE COURT: Appreciate the correction.

11 MR. REID: That's all I've got.

12 THE COURT: All right. Let me ask you this. Can
13 we solve this problem by playing this video, getting
14 Mr. Dumistra to look at it and seeing whether he can
15 identify it as a training video by Mr. Forrest Watts?

16 THE WITNESS: I might be able to do so.

17 THE COURT: Very good.

18 MS. McVEY: Your Honor --

19 THE COURT: I'm going to turn to you.

20 MS. McVEY: I'm sorry.

21 THE COURT: Everybody is going to have a full
22 chance. Now that we have had to interrupt this thing
23 and send the jury out, we're going to get to the bottom
24 of this.

25 But I want to ask Mr. Bouch, Mr. Bouch, we'll go

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1 back to all your complaints about when you received
2 things and when you didn't receive things because a
3 whole bunch of things got sent earlier; you allege you
4 didn't get them. That's why they have been re-sent.
5 We have gone through that before. And the various
6 explanations have been given that ya'll recently
7 substituted counsel, so forth and so on. We have
8 plowed that ground before. I just want to get on with
9 this trial --

10 MR. BOUCH: I understand.

11 THE COURT: -- with exhibits that, seems to me,
12 that the parties ought to be able to agree about and
13 move forward rather than interrupting this trial and
14 putting the jury in this kind of situation and me in
15 this kind of situation. That's where I'm coming from.
16 I'm not trying to cram anything down anybody's throats,
17 but most of the time after we fuss with these things,
18 when we look at them, it's pretty clear that they are
19 company documents and would come in.

20 With this particular document, if Mr. Dumistra can
21 identify this as a Fisher training video, that's all we
22 need to do with this one, right?

23 MR. BOUCH: I agree.

24 THE COURT: All right. Now, Ms. McVey.

25 MS. McVEY: I'm not going to get into when those

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Appendix_01268

1 exhibits were delivered. We disagree pretty strongly.

2 THE COURT: I know.

3 MS. McVEY: Fair enough.

4 THE COURT: I think there is a lot of smoke and
5 fire going on with all that.

6 MS. McVEY: Fair enough. Your Honor, this is
7 offered for impeachment evidence too, so it's not just
8 that he has to recognize it. The guy says, "Good
9 morning. My name is Forrest Watts. I'm the corporate
10 industrial hygiene manager for Fisher." The corporate
11 representative can't turn a blind eye to a video, a
12 training video, and then we don't get it in. It's a
13 Fisher document.

14 So he may be able to recognize it and it solves
15 the problem, but this is offered for impeachment. He
16 testified that, "We didn't warn about the dangers of
17 our product because they're not dangerous," right?

18 THE COURT: Right. And this is intended to
19 impeach that statement by him?

20 MS. McVEY: That's right.

21 THE COURT: All right. Without regard to whether
22 it's impeachment or direct evidence, because I want to
23 solve this problem, and because although you have the
24 right to impeach him because he's a hostile witness
25 even though you have him on direct examination, I'm

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1 going to have you play a little bit of this video and
2 let's see if he can identify the person that's talking
3 as someone who is Mr. Watts, the industrial hygienist
4 for Fisher.

5 So let's do that first.

6 MS. McVEY: Yes, ma'am.

7 (WHEREUPON, Plaintiffs' Exhibit 1015.2 is being
8 played.)

9 THE COURT: Stop the video there.

10 Mr. Dumistra, can you identify that as Mr. Forrest
11 Watts, the industrial hygienist for Fisher?

12 THE WITNESS: Yes.

13 THE COURT: Does this appear to be a training
14 video that he is making to discuss asbestos matters?

15 THE WITNESS: Yes, it does. This is this first
16 time I have seen the video. Yes. I have no
17 awareness -- I may have had awareness --

18 THE COURT: I'm not critical of you at all. You
19 can only identify what you have seen. Easy way to
20 solve it, this seems to be a training video of Fisher,
21 right?

22 THE WITNESS: Yes.

23 THE COURT: And they want to introduce it to speak
24 with you again about some of the things you've said
25 about the training of workers and the warning of

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1 workers at Fisher.

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 Now, Mr. Reid and Mr. Bouch, he's identified the
5 gentleman speaking as the industrial hygienist for
6 Fisher. Further objections?

7 MR. BOUCH: Yes, Your Honor. He said he was doing
8 it for Fisher Service Company, which is a separate
9 entity.

10 THE COURT: That's a related entity to Fisher
11 Controls, correct?

12 MR. BOUCH: Wholly-owned subsidiary, Your Honor,
13 no question, but different entity.

14 THE COURT: As I understood what Mr. Watts says,
15 he's the corporate industrial hygiene manager for
16 Fisher-Rosemount, and that's the Fisher Controls
17 outfit, is it not?

18 MR. REID: It gets complicated.

19 Ron, are you familiar with that?

20 THE WITNESS: Yes.

21 MR. REID: Your Honor, if Mr. Dumistra could
22 explain that to y'all, I'll defer to him.

23 THE COURT: Is it really necessary for this jury?
24 Isn't this a training video to train Fisher Controls'
25 workers?

ROA_01250

Appendix_01271

1 MR. BOUCH: Fisher Controls -- Fisher Service
2 Company employees, not Fisher Controls.

3 THE COURT: Right. But that's an allied company
4 of Fisher Controls, and its services are made available
5 to service valves like the ones sold to Duke, correct?

6 MR. BOUCH: I think the point is Fisher-Rosemount,
7 who the witness works for, is not Fisher Controls
8 either.

9 THE COURT: Right. But this video is intended to
10 instruct workers who service valves sold by Fisher
11 Controls, correct?

12 MR. BOUCH: No, ma'am. It's to train workers who
13 service valves that are refurbished and sold by Fisher
14 Service Company, which is a separate company.

15 THE COURT: This is a training video for people
16 who work on Fisher Controls valves within the
17 manufacturing process, correct?

18 MR. BOUCH: No, ma'am.

19 THE COURT: Well, a subsidiary of Fisher Controls?

20 MR. BOUCH: A separate company.

21 THE COURT: Separate company but an allied company
22 to Fisher Controls, correct?

23 MR. BOUCH: It's a subsidiary. It's a separate
24 company that's a subsidiary of Fisher Controls.

25 THE COURT: All right. Very good.

ROA_01251

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1 MR. BOUCH: As is Fisher-Rosemount, which is not
2 Fisher Controls.

3 THE COURT: Right. I understand it's got a
4 separate corporate identity, and it's an allied
5 corporation, right?

6 MR. BOUCH: I don't believe it's an allied
7 corporation as Your Honor is defining it.

8 THE COURT: How would you explain
9 Fisher-Rosemount's relationship to Fisher Controls?

10 MR. BOUCH: Well, Your Honor, we asked
11 Mr. Dumistra to explain it.

12 THE WITNESS: If I could do that.

13 THE COURT: Go on and do that.

14 THE WITNESS: Basically, it's Fisher; at one point
15 in time, when we were purchased by Emerson, they wanted
16 to build brand identity with the Rosemount portion of
17 the company that was part of Emerson prior to the
18 acquisition. And so Fisher-Rosemount is a combination
19 of Rosemount Corporation and Fisher Controls
20 Corporation so it was one entity then. But I want to
21 make the distinction with respect to Fisher Service
22 Company, which Tim is describing. It was a separate
23 legal entity and always has been.

24 THE COURT: The Fisher Service Center is the
25 entity that was referred to in the manuals that we

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1 laboriously looked at that were sent to Duke and other
2 customers who bought valves to tell them how to get the
3 valves serviced, correct?

4 THE WITNESS: Yes. The service instruction guide
5 that was discussed earlier.

6 THE COURT: Right. And this is a training video
7 that trains people that service those valves, correct?

8 THE WITNESS: For the Fisher Service Company, yes.

9 THE COURT: Which is the service company referred
10 to in the manuals, the customer manuals that were sent
11 to customers like Duke by Fisher Controls when they
12 sent the valves to them when they purchased the valves,
13 right?

14 THE WITNESS: I get what you're saying, Your
15 Honor, and --

16 THE COURT: I'm just asking if that is correct.

17 THE WITNESS: Yeah. I don't know if they're
18 referred to in the instruction manuals.

19 THE COURT: Well, you just read some.

20 THE WITNESS: That was a separate document that
21 was used in training, and I don't know if it referred
22 to Fisher service companies in our instruction booklets
23 that are sent with --

24 THE COURT: I think we just read one out of your
25 history that completes that loop, and you testified

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1 about it, right?

2 THE WITNESS: Yes. It was an associated legal
3 entity, yes. Yes.

4 THE COURT: Very good. I'm going to admit it on
5 the basis of this examination as a training video. And
6 I don't know that the jury needs all the distinctions.
7 I make the distinction in terms of the decision to
8 admit on the basis that this is a training video to
9 train service workers of Fisher's service entity, and
10 that service entity is referred to in the materials
11 that are sent to Fisher Controls' customers when that
12 manual -- when they sell them parts and when they sell
13 them valves. That's what I understand the situation to
14 be.

15 Mr. Reid, you got any problem with that?

16 MR. REID: Your Honor, just one other objection I
17 would lodge.

18 THE COURT: All right.

19 MR. REID: They're saying they're offering this
20 for impeachment purposes.

21 THE COURT: Yes.

22 MR. REID: It doesn't impeach. I am looking at
23 Page 6. Fortunately, in our case, since we are
24 handling primarily crocidolite, the development of
25 mesothelioma is not related to exposure to crocidolite.

ROA_01254

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1 THE COURT: Right. Well, it says whatever it
2 says, and we'll see how impeaching it is, but this is
3 offered as one of Fisher's allied company's documents,
4 and it's offered for purpose of impeachment, and I'm
5 going to admit it for those purposes.

6 MR. REID: I accept that. I misspoke. Can I just
7 read the sentence correctly for the record? It says,
8 "Fortunately, in our case, since we are handling
9 primarily chrysotile, the development of mesothelioma
10 is not related to exposure to chrysotile. So I just
11 wanted to correct myself.

12 THE COURT: Yes. All right. I think you got your
13 position on the record.

14 (WHEREUPON, Plaintiffs' Exhibit Number 1015.15 was
15 admitted into evidence.)

16 THE COURT: Very good. I've let them go until
17 1:00, so, of course, I'm going to let y'all go until
18 1:00.

19 Let me ask you this. Have we got any other snafus
20 and questions that are going to arise because I don't
21 want to have to go through this again with the jury. I
22 had understood the way Gary Hill has handled these
23 cases and the way exhibits are exchanged to be such
24 that you don't have these problems at trial, and the
25 big objection y'all have got all revolves around your

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Appendix_01276

1 late entry into this fray. But, to me, what I heard
2 was that the exhibits had been exchanged; there then
3 was some fuss about what you could open and what you
4 could not open. I had understood at the time we had
5 the hearing on the 18th of July that there wasn't going
6 to be any problem with company-type exhibits, and now
7 we have had battle royal about a lot of them. I don't
8 want that to go again if there's any way to avoid it.

9 If I have to make some kind of comprehensive
10 ruling about that, I will, but y'all help me out with
11 this. That's nitpicking kind of stuff.

12 MR. BOUCH: We have had these hearings before even
13 with Judge Hill, Your Honor. It is fair that the 6- or
14 so thousand exhibits they have and the several thousand
15 exhibits we have; probably 90 percent of them are well
16 known and there's no necessity for them to do it.

17 What we do object to are exhibits that have not
18 been used before that we have not seen before, which is
19 why we asked -- initially, the order --

20 THE COURT: Well, you have had these for a couple
21 of days, so I'm putting that right out the window. You
22 have had this for a couple of days. It's been in their
23 exhibit list. You either had them for a couple of days
24 or a week or two. I don't know. But you have had them
25 long enough to have looked at them and made some

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Appendix_01277

1 decisions about them. But we have gone through a
2 specific procedure about this CD and it's in over your
3 objection. The objection has been fully discussed and
4 put on the record. I don't want to have this happen
5 again if there's any way to avoid it, is all I'm
6 saying.

7 MR. BOUCH: Your Honor, I understand that. But I
8 cannot lodge an objection to an exhibit until it's
9 offered. If they say they're going to introduce 6,970
10 exhibits, so be it, but they have not indicated which
11 exhibits they will offer. Until they offer them, I
12 can't make an objection.

13 THE COURT: Don't raise your voice to me,
14 Mr. Bouch. That's not necessary.

15 MR. BOUCH: I don't believe I am, Your Honor, but
16 I apologize.

17 THE COURT: All right. Any exhibits that the
18 parties exchanged with each other, as I understand it,
19 are fair game to be offered as exhibits in this trial.

20 That's what I understand the purpose of the
21 exchange of exhibits to be. So please understand, both
22 sides, and that includes y'all too, that if the parties
23 have exchanged exhibits in big binders or flash drives
24 or however you have gotten them, they're all fair game
25 unless we have an objection, and I would much prefer

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1 that those objections be ventilated with me so I don't
2 have to interrupt the jury. That's the whole reason we
3 had the various proceedings we had.

4 So I'm just imploring you. It's not fair to me or
5 to this jury with a long, technical trial like this to
6 interrupt it for things that ought to be taken care of
7 beforehand.

8 Understood, both sides?

9 MS. McVEY: Yes.

10 MS. FARRISE: Yes.

11 MR. BOUCH: Yes, Your Honor.

12 THE COURT: With all due respect and love and
13 affection, I don't want to have to interrupt this trial
14 again. We'll see you at 1:00.

15 (WHEREUPON, lunch recess was taken from 11:50 a.m.
16 to 1:01 p.m.)

17 THE COURT: Ladies and gentlemen, we have our jury
18 complete, so I'm going to ask you to bring the jury to
19 me.

20 (WHEREUPON, the jury entered open court at
21 1:02 p.m.)

22 THE COURT: Please be seated, ladies and gentlemen
23 of the jury.

24 All right. We will proceed with the direct
25 testimony of Mr. Dumistra, and, of course, then it's

ROA_01258

Appendix_01279

1 cross-examination. Then we have one more witness, and
2 then we'll -- I think I can make good on my promise
3 that we'll conclude a little early this afternoon.

4 . All right. Ms. Farrise.

5 MS. FARRISE: Your Honor, I believe the last place
6 we were, I had offered Plaintiffs' Exhibit 1015.

7 THE COURT: Yes, and it's been admitted and all
8 objections duly noted and preserved.

9 MS. FARRISE: Okay. And with the court's
10 permission, Mr. Dumistra, we'd like to offer to play
11 the video, and then I'm going to have some questions.

12 THE COURT: Very good. Let's play the video
13 first, and then you can propound your questions to
14 Mr. Dumistra.

15 (WHEREUPON, Plaintiffs' Exhibit Number 1015.15 was
16 played for the jury as follows commencing at 1:03
17 p.m.:)

18 (Video recording begins.)

19 MR. WATTS: Good morning. My name is Forrest
20 Watts. I'm the corporate industrial hygiene manager
21 for Fisher-Rosemount, and today's training topic is
22 going to cover asbestos training, specifically asbestos
23 training for the Fisher Service Companies, that will be
24 addressing the requirements of 29 CFR 1926.1001, and
25 this is regarding the new asbestos standard.

ROA_01259

Appendix_01280

1 The areas that we're going to be covering today,
2 we're going to be talking about the types and uses and
3 physical characteristics of the asbestos material. We
4 are also going to be covering health effects, OSHA
5 regulations, engineering, and work practice controls
6 for the service sites, respiratory protection.

7 We're going to be talking about procedures for
8 handling valves with asbestos gasket and packing
9 materials, and we're also going to be addressing the
10 asbestos issues at customers' sites, getting into the
11 types, uses, and physical characteristics, the three
12 most common types of asbestos materials, chrysotile
13 being the most common, amosite, crocidolite. The valve
14 materials that we're most concerned with are primarily
15 chrysotile asbestos.

16 Okay. The next topic we're going to be covering
17 is the mechanisms associated with the release of
18 asbestos fibers. We have three primary mechanisms.

19 We have fallout, impact, and re-entrainment.
20 Fallout is essentially the result of the aging and
21 deterioration of the binding materials of the asbestos
22 insulation, fiber release, normally very low level,
23 very continuous. This is an issue that the associates
24 need to be aware of at customers' sites.

25 Again, an example of a fallout, we have a ceiling

ROA_01260

Appendix_01281

1 tile down in an office area. This is a very gross
2 example of a fallout problem. More typically, the
3 service locations, as you're at a customer's site,
4 you're primarily going to be concerned about the pipe
5 insulation, lagging, things like that falling down, as
6 we show here in this slide.

7 The next mechanism to be discussed is impact,
8 essentially the disturbance of the asbestos by cutting
9 or physically damaging the material. Activity may
10 cause a very occasional release of fibers, but the
11 fiber release is in a very high concentration. Again,
12 usage of grinders, blasting agents, this is an example
13 of causing impact and damage to the asbestos material.
14 Again, a sample here of an impact: We see a pipe. We
15 see a cutting away. This is air-cell pipe wrap, where
16 someone has physically tried to remove the insulation.

17 The last mechanism, in terms of causing asbestos
18 fiber release, is re-entrainment. This typically
19 occurs in building environments where custodial staffs
20 and people are sleeping, damaged insulation materials.
21 In the service company environment, this is more
22 typically caused if compressed air is being used for
23 cleaning of a valve where a gasket or packing has been
24 removed. So this needs to be avoided to prevent the
25 re-entrainment of asbestos materials.

ROA_01261

Appendix_01282

1 Uses of asbestos material: Very widespread,
2 primarily used in our environment for pipe and boiler
3 insulation, acoustical, fireproofing. I'll show some
4 examples of these later. But on our concern, our
5 primary issue, is valve gaskets and packing material.
6 An example here of a hot water tank wrapped with
7 asbestos materials. You've probably seen a lot of this
8 phenomena out on customer locations and sites.

9 Here we have insulation, primarily acoustical,
10 sprayed-on insulation, more typically seen in office
11 environments. Something that you will see,
12 particularly on buildings, is insulation of asbestos of
13 structural steel, essentially to preserve the integrity
14 of the steel in the event of a fire. And this is a
15 very good example of that phenomenon right here. And
16 one thing to do note on this slide: The material is in
17 a friable state.

18 Here is a blown-up slide of an actual asbestos
19 fiber. This is a very high magnification shot of an
20 asbestos fiber under a transmission electron
21 microscope. This is a shot of why the asbestos fiber
22 causes the damage it does. If we note: A very sharp
23 crystalline lattice structure. This is the mechanism
24 of the fiber that causes it to lodge down in the lungs
25 and essentially cannot be removed.

ROA_01262

Appendix_01283

1 Going into some of the asbestos diseases,
2 asbestosis, this is asbestos disease, typically related
3 to high fiber exposures over a long period of time.
4 The lungs are extensively scarred. We will not see
5 this typically in a service environment, due to the
6 fact that these are related to very high concentrations
7 of asbestos over a long period of time. The more
8 common disease that we're primarily concerned about is
9 going to be lung cancer. Latency period of the illness
10 is essentially 20 to 40 years after the exposure has
11 occurred. Individuals that smoke and handle asbestos
12 are typically at increased risk for disease
13 development.

14 Mesothelioma is a disease almost exclusively
15 associated with asbestos, cancer of the lung and
16 stomach lining unique to asbestos exposure. Disease is
17 the primary reason that no safe level of asbestos
18 exposure is known. Fortunately, in our case, since we
19 are handling primarily chrysotile, the development of
20 mesothelioma is not related to exposure to chrysotile.
21 It's primarily to crocidolite, so essentially an
22 illness that we probably will not need to worry about.

23 Talking a little bit about the relation of the
24 fiber size to disease development, essentially the
25 smaller the size, the higher the probability of

ROA_01263

Appendix_01284

1 retention in the lower respiratory system. The goal of
2 the asbestos abatement activity should always be to
3 remove the material intact and try to minimize the
4 release of very small asbestos fibers.

5 More health facts related to asbestos exposure:
6 Inhalation is the primary route of entry. We do see a
7 latency period associated with these diseases anywhere
8 from 20 to 40 years, and, essentially, this is the
9 period from the exposure to the development of the
10 disease, typically very long, and we will also see a
11 relationship between exposure level and the dose.

12 Talking now about the OSHA regulations: And these
13 are some of the very significant changes for us -- we
14 see the permissible exposure limit has been reduced to
15 0.1 fibers per cc. Gasket and packing removal is now
16 classified as a Level 3 abatement activity. So this
17 requires the service companies and myself to provide
18 more training and awareness and also some exposure
19 monitoring.

20 Other key definitions and terms: We're talking
21 about Class 1 asbestos work. This is the type
22 typically encountered at a customer location. This
23 involves the removal of thermal system insulation
24 surfacing materials. This is considered to be a very
25 high-risk activity. Typically, you'll see this

ROA_01264

Appendix_01285

1 performed at customer locations with contractors. An
2 example here of a Class 1 activity: It's very
3 important to note that the respirator and the wearing
4 of Tyvek protective clothing. Any time you're at a
5 customer's site and you see individuals in this level
6 of protection, very typically, this is considered Class
7 1 work.

8 Class 2 asbestos work is essentially the removal
9 of asbestos-containing construction materials.
10 Transite wallboard, not considered to be high risk,
11 but, again, something to be aware of if you are at a
12 customer's site. An example here of Class 2 work,
13 individuals removing Transite counters and laptops.

14 Our class, falling under Class 3, is involving the
15 repair and maintenance activities where various
16 asbestos-containing materials, ACM, or presumed
17 asbestos-containing materials are disturbed. All valve
18 teardown and disassembly is typically considered to be
19 a Class 3. Exposure risk should be very low if the job
20 is performed in a proper manner.

21 Definitions of the new standard: ACM refers to
22 any material containing more than one-percent asbestos.
23 PACM refers to material presumed to contain asbestos.
24 And we'll discuss in greater detail what these mean for
25 us. New procedures for PACM: All gaskets and packing

ROA_01265

Appendix_01286

1 will be classified as a PACM. The reason for this,
2 basically, unless we know the origin of the valve and
3 the material, it's very difficult for us to I.D. and
4 figure out how we're going to handle it.

5 Now, our procedures will be in place for looking
6 at the serial card of the valve, and if we are able to
7 track back to the origin of valve to later than
8 April of 1986, where Fisher went over to asbestos-free
9 gasket and packing material, we're able to determine
10 that it is nonasbestos, and we do not have to utilize
11 procedures. Anything older than 1986, we have to
12 presume it does contain asbestos.

13 If I want to rebut it, again, it requires the use
14 of an accredited lab to do a bulk sample to determine
15 that it does not contain asbestos. We may use the
16 serial card method of tracking the origin of the valve.
17 If it's been in for repair since 1986, it's been
18 replaced with nonasbestos materials. One thing I will
19 note, asbestos field bulk sample kits by FSC locations
20 are no longer going to be acceptable for asbestos
21 determination.

22 New definitions and terms we need to be aware of:
23 Employee exposure essentially means exposure to
24 asbestos without regarding the use of respirators. Due
25 to the physical state of the material and the type of

ROA_01266

Appendix_01287

1 material we're handling, these exposures should be very
2 low risk at our facilities.

3 Intact refers to the fact that the ACM or the PACM
4 has not been crumbled or damaged in a manner where we
5 could see a potential for exposure. That's why it's
6 very critical, when we're removing gasket and packing
7 materials, to remove them in a very intact state to
8 prevent this from occurring.

9 Negative exposure assessment is an assessment that
10 will be performed by the various loss prevention
11 contacts. It refers to an air sample where the LP
12 contact will be collecting a sample while an associate
13 is performing an abatement or removal of an asbestos
14 gasket to verify that we do not have an exposure. Once
15 we perform the negative exposure assessment, we will be
16 able to essentially confirm that our work practices and
17 our practitioners are indeed safe.

18 Regulated area: This refers to an area where the
19 airborne concentrations of asbestos material could
20 conceivably exceed the permissible exposure limit or
21 may have done so already. You will see a lot of these
22 on customer sites, and you are probably aware of
23 containments and isolation of work areas. Unlikely we
24 have to use this procedure at our locations, due to
25 limited exposure. This next slide shows a regulated

ROA_01267

Appendix_01288

1 area. We see the posting and the signage basically
2 restricting access to non-authorized personnel.

3 Permissible exposure limit for asbestos: The old
4 permissible exposure limit was 0.2 fibers per cc. The
5 new PEL has been reduced to 0.1. Fibers per cc is how
6 it's monitored and measured, and these samples, in
7 terms of determining the PEL, are collected with air
8 sampling pumps. In the hands-on portion of the
9 presentation, you will see an actual pump setup and an
10 associate performing a valve and a gasket abatement.

11 Respiratory protection: This is required if the
12 work practices being utilized are not adequate for
13 reducing the fiber concentrations below the permissible
14 exposure limit. Typically, this could be used also at
15 customer sites if we feel we are being exposed in the
16 event of a contractor in an emergency situation.

17 (Unintelligible) or respiratory protection for
18 asbestos is essentially a half-mask respirator with a
19 purple HEPA cartridge. These are high-efficiency
20 cartridges, and this is something that our personnel
21 will have access to, to do this type of abatement
22 activity. Respirators will be required and used until
23 we perform the negative exposure assessment to verify
24 that we are below the PEL. So it's very important to
25 get this done and document that we do not need to use

ROA_01268

Appendix_01289

1 respiratory protection for normal packing and gasket
2 removal.

3 Again Class 3 work, we're looking at developing a
4 negative exposure assessment. If we are out in the
5 field and we suspect that there could be asbestos
6 exposure from a contractor, this would also necessitate
7 the need of respiratory protection. Again a sample
8 here of respirators. This, unfortunately, is a sample
9 of improper storage. So it's very important, if you
10 are using a respirator or asbestos abatement
11 activities, not to leave your equipment and supplies
12 out in open areas. Respirators need to be provided and
13 stowed in bags when not in use.

14 Work practice controls: From our perspective,
15 we're going to be making use of wetting agents. We're
16 going to be looking at good housekeeping, proper
17 disposal procedures, and we're going to avoid using
18 hand-grinding operations that are being put to us at
19 risk of creating an exposure problem. Use of wetting
20 agents: Again, what we are trying to do is minimize
21 the potential for the generation of airborne fibers.
22 The types that we'll be using will be a water mister
23 bottle mixed with a soap or a commercially available
24 surfactant wetting agent.

25 Housekeeping: The general, overall rule of thumb

ROA_01269

Appendix_01290

1 is to immediately bag and dispose of any
2 asbestos-containing materials immediately after you do
3 the removal. Do not allow the material to dry out on a
4 workbench and do not dispose of the material in the
5 regular trash. There will be a container that will be
6 delegated and set up for this purpose.

7 Proper disposal practices: Again, we will be
8 providing the sites with some 1-by-1 disposal bags. By
9 doing this, it will be a labeled bag. You put your
10 gasket material, the waste, and the -- all the supplies
11 go in the bag, and then you basically put it in a
12 central collection point.

13 Prohibited removal practices: We will not be
14 using hand grinders for the removal of asbestos, nor
15 will we be using compressed air for cleaning. So it's
16 very important that the use of compressed air for
17 blowing down a valve after removal of a gasket or
18 packing is no longer going to be allowed. You'll need
19 to use wet methods.

20 Again, regulated areas, we're looking at something
21 that's going to be required in the event that the PEL
22 for asbestos could be exceeded. You should be aware of
23 seeing these types of situations at customer locations,
24 and I'll have some examples here and some slides about
25 regulated areas. This is a typical example of a

ROA_01270

Appendix_01291

1 regulated area. We note the plastic for the
2 containment. We see a negative air machine out front.
3 We see barrier tape. This means that you do not
4 proceed and work in this area until you receive
5 clearance from the contractor.

6 Now that you have seen a sample of a regulated
7 area, my next topic will be to discuss some procedures
8 that we need to be observing at customers' sites in the
9 event that we possibly run into these and see these
10 with contractors that are working in conjunction with
11 our service personnel. The first thing we need to be
12 aware of is to avoid entry into a regulated area.
13 These areas are typically distinguished by the presence
14 of barrier tape, signs. These are areas that are well
15 delineated for preventing entry of unauthorized
16 personnel. It is important that we do not perform any
17 valve repair or service activities until some assurance
18 that the area has been cleared with air monitoring.

19 Precautions: Again, not to enter the area if we
20 observe the presence of any bagged insulation or loose
21 insulation materials, if we see the area is still
22 posted with signs, we see personnel wearing or using
23 respiratory protection or clothing, or if the
24 contractor is not very forthcoming about the results of
25 the clearance testing. And by clearance sampling and

ROA_01271

Appendix_01292

1 testing, the purpose of this is to essentially
2 establish that the work area is, again, clean and that
3 the airborne concentrations of asbestos are at a very
4 low level and do not pose a threat to our personnel.

5 Before entering a regulated area, our personnel
6 need to obtain some assurances from the contractor that
7 this type of monitoring has indeed been performed
8 before entry and to perform valve repair. Again, an
9 example of an area that you need to be aware of: If
10 you run into an area looking like this, where we see
11 ACM up on the pipe, we see damaged material, there's a
12 very good, strong possibility that this has not been
13 cleared with the necessary type of monitoring, so this
14 would be an area to avoid entry into.

15 When we talk about collection of exposure data,
16 again, what we're trying to verify is that work
17 practices are effective and that the employees are not
18 being exposed to asbestos above the permissible
19 exposure limit. Also, the purpose is to determine if
20 respiratory protection is required, and it's also
21 providing us with documentation of the very important
22 negative exposure assessment that we need to obtain to
23 basically assure ourselves that we are performing the
24 valve gasket and packing removal properly.

25 Description of the procedure: All these samples

ROA_01272.

Appendix_01293

1 are personal samples. The sample is collected in the
2 employee's breathing zone, the sample collected during
3 an extensive amount of valve teardown and repair
4 activity, and very important is that we use wet methods
5 when we are doing the air monitoring. This is our
6 engineering work practice. It's verifying the success
7 of the control measure. We also need to sample the
8 entire shift.

9 In the upcoming hands-on section of the video, you
10 will see an associate wearing an air monitor so you'll
11 understand how to set up and use such a device.

12 Analysis of all air samples is performed by
13 (unintelligible). Sample filters are analyzed using
14 phase-contrast microscopy. Fibers are all counted as
15 asbestos fibers. This is OSHA's method of choice for
16 determining exposure to asbestos materials.

17 Notification of associates: Typically, the LP
18 contact will notify the individual verbally. I will
19 follow up with a letter after I've had a chance to
20 analyze the data, essentially to assure the individual,
21 that he has not been overexposed and that work
22 practices have been successful

23 Warning signs: Again, we mentioned some of these
24 when we talked about regulated areas. Again, this is a
25 typical warning sign dealing with asbestos, where it's

ROA_01273

Appendix_01294

1 pointing out the health hazard, the need for entry of
2 only authorized personnel, and the need for respirators
3 and protective clothing

4 Labels for waste containers: The label that we
5 will have on the storage container will be two. We
6 will have a DOT label. We will also have a label that
7 will identify the asbestos waste hazard. And, again,
8 the bags that we place the material in will also
9 possess labels.

10 The other section of the standard that it is going
11 to require us to do, the service company and the
12 manufacturing site, is the need for a building
13 inspection. It requires that we inspect for the
14 presence of ACM. I am in the process of doing this
15 right now at our various locations. It is something
16 that -- we're going to be looking at floor tile. We
17 are going to be looking at mastic, drywall, pipe
18 elbows, vinyl floor coverings. These are all
19 construction materials where the presence of asbestos
20 may be seen or found.

21 Again, a shot here showing a ceiling, acoustical
22 insulation material. We note how friable this material
23 is. This essentially is an asbestos construction
24 material in a very unstable and a very dangerous state.
25 Again, once the asbestos materials have been confirmed

ROA_01274

Appendix_01295

1 and identified, we will have to go back and label
2 appropriately what we feel is warranted to alert
3 contractors and other Fisher service personnel about
4 the presence of.

5 The purpose of it, again, is we are trying to
6 establish the presence and condition of the asbestos
7 materials. We are trying to provide information for
8 contractors that may have to come in and do work and
9 enhance employee awareness. And, again, the most
10 important reason is the corporate Emerson environmental
11 policy that these specifications be performed.

12 Criteria that I will be doing or looking at for
13 the various locations is an initial walk-through, a
14 development of a sampling plan. I will be doing a
15 friability and risk assessment, bulk sample collection,
16 and an analysis report development. And one thing in
17 the service company's favor, due to the recent
18 construction of many of the buildings, the inspection
19 process is relatively simple. Again, what I'm looking
20 for is a sample here of a ceiling tile where we see a
21 significant amount of water damage. We would be
22 bulk-sampling this material to establish whether or not
23 it is asbestos, and we also make an assessment of the
24 condition.

25 A sample here of asbestos packing gasket-type

ROA_01275

Appendix_01296

1 material; and, again, what we see now typically at the
2 service sites is the usage of asbestos-free packing and
3 gasket material. The purpose of bulk-sampling when I
4 do a building inspection is to determine the actual
5 presence of the asbestos. Again, the sample is looked
6 at under a polarized light microscope and, essentially,
7 we get a report back determining the composition of the
8 material.

9 The last section of the standard that is going to
10 have a very significant impact for us is going to be
11 the medical surveillance requirements. It's going to
12 be a requirement that a medical surveillance program be
13 implemented for all individuals performing Class 3
14 abatement activity for 30 or more days a year. So,
15 essentially, all our associates are covered by this.

16 Essential elements of the exam: A pulmonary
17 function test, a chest x-ray, a physical exam directed
18 to the pulmonary and gastrointestinal systems, an
19 initial and periodic medical questionnaire, and we will
20 also need a physician's written opinion provided within
21 30 days of receipt of the exam, letting the individual
22 know what the results of the physical are.

23 Pulmonary function exams are all right now
24 presently being done to assess the ability to use
25 respirators. The physician will now need to review the

ROA_01276

Appendix_01297

1 content of these tests and the physical exam to
2 determine the fitness for respirator usage and also to
3 identify the presence of possible lung disease. This
4 test consists of a forced vital capacity and a forced
5 expiratory volume, and the instrument that we typically
6 use for monitoring and measurement is a spirometer.

7 Chest x-ray will be administered at the discretion
8 of the physician. Interpretation and classification
9 will be provided to the associate. If you have not had
10 a recent chest x-ray, this will be part of the physical
11 process. The purpose of the x-ray is to look for lung
12 scarring or changes brought about by any previous
13 asbestos exposure, typically at a customer's site or
14 maybe at a previous job.

15 The biggest change that we will have to deal with
16 from the medical perspective is the initial and
17 periodic medical questionnaire. Again, the purpose is
18 to assist the physician in determining the need for
19 additional medical tests. It provides us with a
20 baseline of your current health status, and it
21 determines an occupational history of any previous
22 asbestos exposure, and it also lets the physician
23 assess the risk factors.

24 The physician's written opinion, again, will be
25 provided to the associate following the completion of

ROA_01277

Appendix_01298

1 the exam. It is very important that the LP contact
2 also instruct the physician not to reveal in the
3 written opinion specific findings and diagnoses
4 unrelated to occupational asbestos exposure. In
5 addition to the written opinion, the LP contact will
6 also be providing the associate information about
7 smoking cessation programs. This is also part of the
8 standard that will need to be addressed.

9 The content of the opinion is stated there, but,
10 again, it's a statement that the physician has gone
11 through the information, and he is satisfied with the
12 fact that there have not been any adverse health
13 effects brought about by potential asbestos past
14 exposures.

15 Recordkeeping: This is the final part of the
16 standard that we will be addressing. Air monitoring
17 records will need to be maintained for 30 years.
18 Medical records will need to be maintained for the
19 duration of employment, plus another 30 years beyond
20 that. Training records will need to be maintained one
21 year beyond the date of employment. However, all these
22 records will be maintained by Fisher, as will the
23 building inspection records, for an indefinite period.
24 Any industrial hygiene records that Fisher maintains,
25 typically, we maintain for an indefinite period. This

ROA_01278

Appendix_01299

1 is not only a Fisher policy, but is also an Emerson
2 corporate requirement.

3 If you have additional questions after you have
4 completed viewing this training tape, you may contact
5 your LP individual at your site. If he cannot answer
6 your questions, any of your questions will be referred
7 to my attention, and we will be in touch with
8 yourselves to hopefully provide you with some
9 satisfactory feedback.

10 I appreciate your time and attention, and, again,
11 if you have any further questions, please do not
12 hesitate to contact the loss prevention representative
13 at your facility. Thank you.

14 (Pause in video recording; then resumed.)

15 MR. WATTS: The purpose of this videotape training
16 segment is to provide guidelines for Fisher Service
17 Company compliance due to requirements of the new OSHA
18 asbestos standard. Under this standard, Fisher Service
19 Company personnel are classified as Class 3 repair
20 personnel. Due to the limited quantities of asbestos
21 material presently handled since the phaseout of
22 asbestos gasket and packing material, associate
23 exposures to this contaminant are expected to be
24 minimal.

25 In order to verify that the work procedures

ROA_01279

Appendix_01300

1 described are effective in minimizing the potential for
2 associate exposure, several personal air samples for
3 asbestos fibers were collected. Results obtained
4 produced a negative exposure determination or a
5 favorable result, which provided assurances that the
6 wet method procedure for packing and gasket removal was
7 indeed effective.

8 The first step in this procedure would require the
9 associate to review the serial card accompanying the
10 valve to determine if the potential exists for the
11 valve to contain asbestos gaskets or packing material.
12 Usage of asbestos gaskets and packing material was
13 discontinued by Fisher in 1987. If it is ascertained
14 that the material is in fact asbestos, prior to
15 removal, any air sources, such as fans, need to be
16 turned off to minimize the possibility of spreading
17 asbestos fibers.

18 The first step in minimizing the potential for
19 release of asbestos fibers is spraying all areas
20 containing gasket and packing material with amended
21 water. Amended water contains a wetting agent such as
22 soap which permits the water to saturate the gasket or
23 packing material, minimizing the possibility for fiber
24 release. This process can be accomplished by applying
25 the surfactant prior to disassembling the valve. This

ROA_01280

Appendix_01301

1 will allow time for the amended water to saturate these
2 materials and prevent possible release of asbestos
3 fibers. This approach may also be utilized for removal
4 of nonasbestos gaskets or packing material to
5 facilitate easier removal of these materials.

6 During the performance of any valve teardown
7 activity where the presence of asbestos material is
8 suspected, it is essential that associates not consume
9 any beverages, food, or tobacco products while the
10 activity is being performed. After the initial wetting
11 application has been performed, it is important to
12 continue to wet the material to prevent the possible
13 drying of the gasket or packing material. As long as
14 the material is handled in a wet state, the potential
15 for fiber release should be minimal. As the
16 disassembly process progresses, frequent misting of
17 components will be required.

18 As we look at the disassembly process in greater
19 detail, we note that this procedure applies for Fisher
20 valves older than 1987 without a documented history of
21 packing or gasket replacement, all competitor valves
22 without documented history of packing or gasket
23 replacement, and (unintelligible) valves without
24 histories of packing and gasket replacement. This
25 procedure will not need to be applied for Fisher valves

ROA_01281

Appendix_01302

1 manufactured after 1987 or any valves having service or
2 repair work performed after this date.

3 It is very important to use the proper gloves to
4 prevent contamination of leather gloves. The associate
5 shall utilize a neoprene or rubber glove when scraping
6 asbestos gasket material. The usage of this PPE will
7 permit the associate to wash off the glove's surface
8 with a surfactant water solution for use on another
9 teardown project during the same shift. If these
10 gloves are not to be used for additional teardowns
11 during the shift, they should be disposed of with the
12 gasket and asbestos packing material.

13 Following removal of the gasket material, it must
14 be placed in a labeled disposal bag provided for that
15 purpose. It is also very important, following the
16 scraping of the gasket material, to utilize a wet paper
17 towel to wipe the metal surfaces of the valve assembly
18 to remove any residual asbestos material. The towel
19 should be wetted with a surfactant water solution and
20 placed in the disposal bag along with the gasket
21 material.

22 We note the continued application of surfactant
23 throughout the process. This, again, minimizes the
24 possibility or potential for fiber release, again,
25 making sure all gaskets, potential contamination

ROA_01282

Appendix_01303

1 sources such as towels, be placed in the bag and not
2 allowed to dry out.

3 In order to remove stubborn residual material on
4 the surface of the body or component, it is essential
5 that the gasket or packing material adhering to the
6 metal surface be removed. In order to accomplish this,
7 a wire brush should not be used for this option, due to
8 the possibilities of generating airborne asbestos
9 fibers. A stiff bristle-type brush would be the most
10 useful tool for the removal of small amounts of
11 residual asbestos material on the surface of the
12 component.

13 After using a disposal paper towel for wet-wiping
14 surfaces, these materials will need to be disposed of
15 in the approved asbestos bag. In order to minimize the
16 volume of paper waste associated with this process, it
17 is essential that the associate utilize small
18 quantities of towels.

19 In order to remove the packing material inside the
20 valve upon the completion of the gasket removal
21 process, the first step involves applying liberal
22 quantities of surfactant in the packing area before
23 removing the packing material. Carefully remove the
24 wetted packing material, periodically applying
25 surfactant as needed to keep the material in a wet

ROA_01283

Appendix_01304

1 condition. This material should be placed in a
2 disposal bag along with other gasket material.

3 After completely removing the packing material, it
4 will now be necessary to wet-wipe all tools utilized
5 for the removal process. The towel used for this
6 application shall be disposed of as asbestos material.
7 Again, the usefulness of the surfactant and amended
8 water application is also useful, as seen here, for the
9 removal of gasket material not even considered asbestos
10 and will reduce the possibility of potential exposure
11 to mineral or nuisance ceramic fibers.

12 Continuing to clean the surface of the valve with
13 a bristle brush is essential to remove the residual
14 contamination. In order to minimize the volume of
15 waste associated with this procedure, the associate
16 shall use a single wetted towel for the completion of
17 any tool cleaning and wiping activity.

18 If the gloves are to be used for additional
19 asbestos gasket or packing removal during the work
20 shift, they should be rinsed with water and kept for
21 the next job. These gloves will be disposed of as
22 asbestos waste if this activity is the only type
23 performed during a work shift or if it is the last
24 abatement activity being performed. This practice will
25 minimize the volume of asbestos waste associated with

ROA_01284

Appendix_01305

1 these provisions.

2 Prior to disposing of any waste generated from the
3 process, it is essential that the FSC location follow
4 the disposal guidelines outlined by the various local
5 and state regulatory agencies and the vendor
6 responsible for handling hazardous waste at the FSC
7 location.

8 The final step in the abatement process involves a
9 thorough washing of hands to ensure that all potential
10 asbestos contamination is removed. Adherence to the
11 procedures described in the training videotape should
12 prevent inadvertent associate exposure to airborne
13 fibers and satisfy the requirements for a Level 3
14 repair operator under the new OSHA asbestos standard.

15 (Pause in video recording; then resumed.)

16 MR. WATTS: Remove the respirator. Remove the
17 filters from the respirator, disposing of the filters
18 as contaminated along with the paper towel, the gloves,
19 in the proper disposal bag. Place the disposal bag in
20 the asbestos container. The employees will wash hands
21 and face at the completion of the asbestos removal.

22 (End of video recording.)

23 BY MS. FARRISE:

24 Q Mr. Dumistra, some of the information that the
25 corporate industrial hygienist, Mr. Forrest Watts, gave

ROA_01285

Appendix_01306

1 to folks who would be encountering maintenance
2 activities of valves was inaccurate, correct?

3 A I don't think I'm -- I don't think I have the
4 qualifications to second-guess his information.

5 Q Well, for instance, part of what Fisher, through
6 Mr. Watts, relayed to these men who would be going out
7 on Fisher's behalf to work on valves was that Fisher
8 went to asbestos-free gasket and packing material by
9 April of 1986, and that's not true, is it?

10 MR. BOUCH: Objection, Your Honor.

11 THE COURT: I didn't hear it. What's the
12 objection?

13 MR. BOUCH: Preface of the question is Fisher
14 telling workers that were going to go out. This is
15 Fisher Service Company, which is a separate company.

16 THE COURT: Overruled.

17 THE WITNESS: Okay. The question has to do with
18 the timing of our elimination program? I think he
19 corrected that later on in the video.

20 BY MS. FARRISE:

21 Q And he said 1987?

22 A Yes.

23 Q And that's also not true, correct?

24 A It was the end of 1987. December 31, 1987.

25 Q After December 31, 1987, sir, there were material

ROA_01286

Appendix_01307

1 specifications that remained within the Fisher catalog
2 that called for asbestos, correct?

3 A I have encountered a few examples where there were
4 descriptions that were inaccurate, but the parts
5 themselves, I did an investigation of the parts
6 themselves that were not structured to
7 asbestos-containing material whenever those showed up.

8 Q Mr. Dumistra -- and we're almost done. Let me
9 give you what we have marked as Plaintiffs' Exhibit --
10 or it's actually Fisher Exhibit 133. It's rather
11 large. Did I give you -- no. I gave you 145.

12 Here's Fisher Exhibit 133. Can you take a look at
13 133 and confirm for us that those are Fisher documents?

14 A Yes.

15 MS. FARRISE: Your Honor, I have a copy of the
16 first 50 pages, which is really all I'm going to be
17 talking about, if you wanted to follow along.

18 THE COURT: Very good.

19 MS. FARRISE: And I won't be talking about all 50.

20 THE WITNESS: Yes, they appear to be Fisher
21 documents, yes.

22 MS. FARRISE: Okay. I would move 133 into
23 evidence, Your Honor.

24 THE COURT: Objection?

25 MR. BOUCH: No objection.

ROA_01287

Appendix_01308

1 THE COURT: No objection. Admitted.

2 (WHEREUPON, Plaintiffs' Exhibit Number Fisher 133
3 was admitted into evidence.)

4 BY MS. FARRISE:

5 Q If I can ask you, then, Mr. Dumistra, to turn to
6 what is marked as Fisher 00484. Are you there, sir?

7 A Yes.

8 Q So, again, and the jury probably now is quite
9 familiar with these, material specifications prepared,
10 for materials that would be used within Fisher's
11 gaskets for manufacturing and also for replacement
12 parts, correct?

13 A Yes.

14 Q And this particular material specification bears a
15 date -- at least that there was a revision in 1988,
16 correct?

17 A Yes.

18 Q And is this the revision, if you know, or does the
19 revision come later? I presume that this is the
20 revision, 1988.

21 A Um --

22 Q August 16, 1988.

23 A I think that -- okay. That would be the revision
24 to REV F as typed, but the revision to REV G would be
25 indicated down below, September 26, 1988.

ROA_01288

Appendix_01309

1 Q September 26th?

2 A Uh-huh.

3 Q The point, sir, though, I think what I'm really
4 trying to get at is this revision of August 16, 1988,
5 says, quote, "This specification covers elastomer-bound
6 high-temperature organic and/or inorganic fiber-based
7 flat sheet gasket materials.. These materials are used
8 for general purpose gasketing and are designed to
9 replace similar asbestos-based gasket materials. They
10 are typically used," and then it goes on.

11 So this is a Fisher materials specification where
12 the asbestos is being replaced, but that doesn't occur
13 until August 16, 1988, in the case of this standard or
14 general gasket material, correct?

15 A Yes. Now, as I said before, there were examples
16 where the paperwork -- this would be a document that
17 didn't catch up with the process of elimination.

18 Q On the general gasketing material?

19 A In some cases, yes. I've seen this before where
20 the paperwork did not catch up with the description
21 that's structured to the part number.

22 Q And the qualification testing, we hadn't talked
23 about it, so quickly, Number 5 indicates that the
24 vendor is not free, or the supplier, to change what it
25 is supplying to Fisher without approval from Fisher,

ROA_01289

Appendix_01310

1 right?

2 A Yes. That's the way it's stated there, yes.

3 Q So these suppliers have to make what Fisher has
4 approved, and they can't change their formula or
5 anything else unless Fisher agrees to that, correct?

6 A Yeah, that's correct, with the understanding that
7 there, no doubt, is communication with respect to
8 this -- the parts that these were structured against.

9 During the elimination process, there was pretty
10 close communication to the suppliers with respect to
11 the phase-in and phase-out. And so, yes, there was
12 some time period which some specifications were lagging
13 behind in terms of document. But it's all controlled
14 by our 11-digit part number system. The old part
15 numbers that were asbestos-containing could not be
16 ordered in our system. It simply could not be done.
17 That's the way it was controlled.

18 Q The new parts at times as well had new suppliers,
19 for instance, the one indicated here, that these parts
20 would be imported by suppliers in Mexico and Brazil,
21 correct?

22 A That's what's indicated here. Now, what we don't
23 see indicated is whether or not this FMS was structured
24 against a part like we talked before.

25 Q I'm just asking --

ROA_01290

Appendix_01311

1 A And, therefore, it may be not even used.

2 Q I'm just asking you, sir, as compared to all of
3 the other type of earlier materials specifications that
4 we saw, most of the suppliers were U.S. based, and in
5 or about this time when this nonasbestos project starts
6 to occur, the suppliers expand to include supply
7 sources from Mexico and Brazil and other international
8 places, correct?

9 A I don't think that can be represented that way in
10 this document, no. I think that's an incorrect
11 assumption.

12 Q Maybe we can agree that the approved supplier for
13 this change is Garlock de Mexico?

14 A Do you see that, Garlock de Mexico, here
15 someplace?

16 Q A.

17 A That says "Garlock" and that says "New York."

18 Q Sir? Mr. Dumistra?

19 A And then -- yeah, then it's revised, so that's
20 taken out of this document. If you said during the
21 asbestos elimination project, non-U.S. sources were
22 used, this was revised to delete that particular
23 reference. See the circle? That's part of the
24 revision.

25 Q My question is: This particular specification

ROA_01291

Appendix_01312

1 approves supply sources from Garlock de Mexico and also
2 from a company called Asberit SA in Rio de Janeiro,
3 Brazil, correct?

4 A I see that, correct.

5 Q As part of this elimination project, Fisher did
6 laboratory testing at its laboratory located at the
7 corporate headquarters in Iowa, and I'm handing you
8 what I should have had marked as 1008.341. Sorry about
9 that.

10 (WHEREUPON, Plaintiffs' Exhibit Number 1008.341
11 was marked for identification.)

12 BY MS. FARRISE:

13 Q Please take a look at that document and confirm
14 for the court and the jury, too, that that is a Fisher
15 document.

16 A Yes.

17 Q And it reflects -- take a moment if you need to --
18 it reflects the in-house laboratory testing that the
19 folks at Fisher did on performance to make decisions
20 about substitutes of asbestos-containing products,
21 correct?

22 A Yes, as we discussed previously yesterday.

23 MS. FARRISE: I would offer 1008-341 into
24 evidence.

25 THE COURT: Objection?

ROA_01292

Appendix_01313

1 MR. BOUCH: No objection, Your Honor.

2 THE COURT: No? Okay. Admitted.

3 (WHEREUPON, Plaintiffs' Exhibit Number 1008.341
4 was admitted into evidence.)

5 MS. FARRISE: Thank you, Your Honor.

6 Q Mr. Dumistra, can we agree that the testing date
7 to determine whether or not the contemplated substitute
8 materials will perform adequately didn't occur until
9 July 3, 1986, in this particular case?

10 A Yes. That's when this lab report was written.
11 I'm not sure if there's references to the actual
12 testing at another date. It may be contained in the
13 lab report further back in. I'm not sure, but the date
14 on the lab report anyway, I do know that the written
15 lab reports sometimes linger for a while until they're
16 officially written. But if that's what's indicated
17 here, official lab report.

18 Q And if what's indicated on the Fisher laboratory
19 report is correct as a date, then Mr. Watts' statement
20 to Fisher Service Company men that if they look at the
21 serial card and they encounter a valve which has had
22 products installed after April of 1986, those would be
23 nonasbestos-containing, that would be inaccurate
24 because this testing is to define a substitute for an
25 asbestos-containing part, correct?

ROA_01293

Appendix_01314

1 A Yeah. In fact, I think that his initial statement
2 in that video was somewhat inaccurate, and I think he
3 cleared it up later on being the end of '87.

4 Q Um --

5 A Because that's when the elimination program was
6 concluded.

7 Q And it's your understanding that the testing such
8 as the report that we have here was to have the valve
9 for performance purposes tested under what would be
10 normal and ordinary conditions, correct?

11 A Yes, for sealability, as we discussed yesterday.

12 Q Right. They wanted to know if we put this gasket
13 in and we run it on our lab under, sort of, field
14 conditions, is it going to perform like we want it to,
15 right?

16 A Well, under test conditions, not field conditions.

17 Q Well, aren't the test conditions meant to simulate
18 the field conditions?

19 A No. It's quite difficult to simulate all the
20 possible field conditions in a lab. We deal in our lab
21 typically with -- well, in terms of pressure testing,
22 it would be water or air because those are common
23 fluids, but we can't simulate every possible field
24 condition because it's just an infinite variety of
25 substances that our valves are used in. As I said,

ROA_01294

Appendix_01315

1 it's pretty complicated, the applications, so we do
2 testing based on some known evaluations that cannot
3 possibly simulate all possible combinations of field
4 conditions.

5 Q Sir, would you mind turning to the back of the
6 report. There is a document labeled Fisher 000, three
7 zeros, 363. There are some photographs about the
8 valves that -- and how -- I mean the valves that the
9 substitute material was inserted in and the testing
10 that occurred, correct?

11 A Yes. It appears to be -- it's not the entire
12 valve. It's just the bonnet of the valve, the top part
13 of the valve.

14 Q And I am displaying the photograph that some
15 Fisher folks took while they were doing this test, and
16 it indicates that the test units are being tested with
17 insulation blankets. Do you see that?

18 A Yes. The purpose of those blankets is to simply
19 keep the heat in so you can keep that packing at the
20 temperature which it would be exposed in the field.

21 Q Right. Because in the field, valves are insulated
22 with insulation or insulation blankets such as the test
23 conditions replicated here, correct?

24 A No. That would be incorrect assumption on the
25 basis of this picture totally.

ROA_01295

Appendix_01316

1 Q Well, I think you're taking issue with the state
2 of these insulation blankets though. No?

3 A No. No. Just the fact that this is used to
4 simulate temperature. It had nothing to do with
5 insulation or not insulation.

6 Q Right, because we want the valve to have --

7 A A high temperature. Has to be subjected to a high
8 temperature, yes.

9 Q Yes.

10 A This has nothing to do with field conditions,
11 absolutely nothing.

12 Q And if the insulation blanket is not used, then
13 the heat will escape from the valve, right?

14 A Only the test valve here, yes.

15 MS. FARRISE: Moving on quickly, Your Honor.

16 Q Sir, I think I forgot two suppliers, and I want to
17 have a complete list before I turn over. U.S. Rubber
18 Company was a supplier to Fisher?

19 A It sounds familiar.

20 Q And a company that made Goodyear -- made Goodyear,
21 right, which was a gasket?

22 A I -- honestly, again, this is one that's not
23 familiar to me. It could be that they provided some
24 other neoprene rubber material that's not related to
25 gasket. I honestly just do not know.

ROA_01296

Appendix_01317

1 Q Do you still have Exhibit 133 up there with you?

2 A Yes.

3 Q Can you turn to the first page of that exhibit,
4 please?

5 A Yes.

6 Q This, again, is a Fisher material specification?

7 A I see that here, Counselor. It's Number 2 here,
8 Goodyear, right, asbestos sheets, Style 104. I'll
9 concede.

10 Q Was an approved supplier of high-grade, long-fiber
11 asbestos sheets?

12 A Yes. It just simply didn't sound familiar to me.

13 MS. FARRISE: Mr. Dumistra, those are all the
14 questions I have for Fisher at this time, and your
15 counsel or Fisher's counsel will have some questions,
16 and I'll see where we are. Thanks so much for your
17 time over yesterday and today.

18 THE COURT: Very good.

19 Your witness, Mr. Bouch, or whoever for Fisher.

20 MR. BOUCH: May it please the court.

21 CROSS-EXAMINATION

22 BY MR. BOUCH:

23 Q Afternoon, Mr. Dumistra.

24 A Good afternoon.

25 Q Let's start here. We watched a 44-minute video.

ROA_01297

Appendix_01318

1 Do you know if that was ever sent to Duke?

2 A I do not know.

3 Q Do you know if Duke ever relied on it?

4 A I do not know.

5 Q The material, the information contained in that
6 video -- I know you weren't here. The jury is familiar
7 with it. I'm going to show you Exhibits 134, -35, -36
8 and -37. And to make it quicker, they begin on
9 June 1977 and go through January 1985. If you would
10 look at those real quick.

11 A Yes, I've looked them over.

12 Q And they involve safe work practices with asbestos
13 from Duke beginning 1977, correct?

14 A Yes.

15 Q And they discuss wetting down and proper disposal
16 and air monitoring in 1977, correct?

17 A Yes. It appears to be, yes.

18 Q All right. And the video that Mr. Watts gave to
19 Fisher supply company -- or Service Company, which is a
20 separate company, right?

21 A Yes.

22 Q Talked about how they had to institute these as a
23 result of the new OSHA regulations that have now
24 applied to a service company. Remember him saying
25 that?

ROA_01298

Appendix_01319

1 A Yes.

2 Q And those amendments did not occur until
3 August 10, 1994, didn't they?

4 A Yes. Well, I'm not expert on that. That's my
5 recollection that some of that abatement program was
6 somewhat later.

7 Q So Duke was already doing it because they were the
8 employer, correct?

9 A That appears to be the case, yes.

10 Q Okay. So the video in 19- -- after 1994 didn't
11 tell Duke or anybody else anything they didn't already
12 know?,

13 A That appears to be the case.

14 Q Okay. All right. Let's go back to the beginning
15 where I'd normally start. Okay? Mr. Dumistra, you
16 have been called up here in a little unusual situation.
17 Introduce yourself to the jury.

18 A Sure.

19 Q Your name, where you have been, your family, that
20 sort of thing.

21 A Sure.

22 MS. FARRISE: Your Honor, I'm just going to object
23 that his family is irrelevant to this proceeding.

24 THE COURT: Overruled.

25 THE WITNESS: Sure. My name, once again, is Ron

ROA_01299

Appendix_01320

1 Dumistra. Well, I'm known as Ron, but my legal name is
2 Ronald Earl Dumistra. Named after two uncles. Anyway,
3 I graduated from college back in 1976 with a Bachelor's
4 of Science in Mechanical Engineering. I went to a
5 small engineering college in my home state of South
6 Dakota. My degree was in mechanical engineering, and
7 shortly after graduating, I did interview with a number
8 of companies. Back then engineers were highly sought
9 after. Because I have a family, we wanted to stay
10 close in the Midwest and stay close to family, so,
11 consequently, I took a job with Fisher Controls Company
12 in Marshalltown, Iowa, which would have been easy
13 driving distance. Hometown, so to speak. Of course,
14 married. We have three daughters and two grandsons.
15 BY MR. BOUCH:

16 Q And you have worked for Fisher Controls ever
17 since?

18 A Yes.

19 Q In Marshalltown, Iowa?

20 A Yes. 41 years last month.

21 Q And you have had a variety of experiences through
22 the manufacturing, quality control, warranty, all
23 aspects of company?

24 A Yes, sir.

25 Q And you're here because you can explain Fisher

ROA_01300

Appendix_01321

1 Controls, what they make and how they make it?

2 A Correct.

3 Q Now, the jury's heard some indications about
4 Fisher valves, and can you take us through how do you
5 get a Fisher valve?

6 A Sure. As I mentioned yesterday in some of my
7 testimony, we serve a process control industry. And
8 the products that we make, design, and manufacture are
9 not an average product that you can go to a hardware
10 store or, let's say, pick a car out on the car lot,
11 that sort of thing. Instead, they're complex pieces of
12 equipment that have to be specialized for each given
13 application.

14 Valves, the simplest version of a valve is your
15 faucet on your sink or a hose bib to run your garden
16 hose. But that's absolutely the most simple version of
17 that. Our valves are much more complicated than that.

18 Q Do you make those kind of valves?

19 A No, we do not, no. Ours are much more complicated
20 than that. It requires the end user to tell us what
21 type of material the valve should be made out of, the
22 pressure it's capable of. All the materials that go
23 into that valve is highly dependent upon the
24 application because if you use a material that's not
25 compatible with their service, it can corrode and erode

ROA_01301

Appendix_01322

1 prematurely, and as a consequence, there could be
2 safety implications to that.

3 Q So does Fisher have like a big warehouse and
4 somebody calls up and they say, I want valve one, two,
5 three, and pick it off the shelf and ship it to them;
6 is that how it works?

7 A No, it does not. In fact, we have independent
8 sales offices that are businesses of their own located
9 around the country, and these companies deal directly
10 with the industries that they serve, call on the power
11 plants, pump and paper mills, chemical processing
12 companies, refineries and that sort of thing, and they
13 get acquainted with their customer base so the customer
14 or end user or, shall we say in some cases, the
15 engineering contractor that's doing work for that end
16 user that might be designing, might be involved in
17 designing that plant, they, as I said, they are
18 experts, and they work with the independent sales
19 office in selecting the exact types of material, and
20 then that order finds its way into our business.

21 Q So you sell valves to anything from Duke Power to
22 Anheuser-Busch brewery?

23 A Absolutely. And I've been there, and I've seen
24 them in service.

25 Q I missed that trip.

ROA_01302

Appendix_01323

1 So the customer tells you -- they don't tell you
2 just, I want model, they say, I want it made out of
3 stainless steel as opposed to carbon steel?

4 A Yes. That's important.

5 Q And I want it to be four inches or six inches or
6 eight inches or whatever?

7 A Correct.

8 Q And I want it to be controlled by air or a
9 computer or some sort of control?

10 A Yes.

11 MS. FARRISE: I'm just going to object, Your
12 Honor, that the questions are all leading, and I don't
13 want to keep interrupting, but maybe we can get to a
14 proper format.

15 THE COURT: Don't lead, Mr. Bouch.

16 MR. BOUCH: I'll do it. I'll change, Your Honor.
17 Just trying to get through it in a hurry.

18 Q Mr. Dumistra, who tells you what size of the valve
19 they want?

20 A Actually, the order we get from the LVP, or in
21 this case the independent sales office, and that is
22 coming from the customer.

23 Q The customer tells you how big?

24 A Correct.

25 Q So let's say the customer is Duke Power. Who

ROA_01303

Appendix_01324

1 tells you how big?

2 A It would be Duke Power.

3 Q Who tells you what the body is made out of?

4 A Duke Power.

5 Q Who tells you what the bonnet is made out of?

6 A Yes, that would be Duke Power.

7 Q Who tells you how the actuator is set up?

8 A Once again, the customer or Duke Power.

9 Q Who tells you what kind of gaskets to put in it?

10 A That would be depending upon the selection of the
11 valve, and it would be Duke Power.

12 Q Who tells you what kind of packing to put in it?

13 A That's a selection, again, by the customer, Duke
14 Power.

15 Q Is every gasket in a Fisher valve an
16 asbestos-containing gasket?

17 A No.

18 Q What other kinds of gaskets do customers ask for?

19 A Well, there could be included in our construction
20 in other nonasbestos gaskets would be like graphite or
21 grafoil. Spiral-wound gaskets would include a metal
22 or, in some cases, the gaskets could be all metal.
23 Particularly for high-pressure, high-temperature
24 applications, there's no soft parts at all. They
25 actually would be a metal gasket, which would have no

ROA_01304

Appendix_01325

1 asbestos component whatsoever, and that's over the
2 course of many years.

3 Q Is there more than one kind of packing?

4 A Certainly.

5 Q They all contain asbestos?

6 A No. The most common one that's selected by the
7 customer would be Teflon V-ring packing, and that's
8 been available since the '50s anyway, and it's
9 extremely good packing material, and that's most often
10 selected by customers.

11 Q And Duke Power is purchasing for a nuclear power
12 plant. Would they be, in your experience, particularly
13 discriminating on what they want?

14 A That's really more of a question for Duke Power.

15 Q Okay.

16 A Yes, entirely dependent upon what their particular
17 process engineers want.

18 Q Why would you use Teflon as opposed to asbestos?

19 A Teflon has properties that make the packing much
20 smoother. As you know about Teflon, it's a slippery
21 material. If you use it in a packing application, it's
22 a great invention for packing because it allows that
23 stem that we talked about earlier to move up and down
24 without much friction. And if you don't have friction,
25 that means the signal you get from the control room on

ROA_01305

Appendix_01326

1 that valve to move will automatically move as opposed
2 to jerking with a packing that's not quite as slick, so
3 it provides the control to be much more accurate and
4 much more responsive. Teflon is a plastic material
5 that has some incredible properties with regard to low
6 friction.

7 Q Mr. Dumistra, I'm going to show you a document,
8 ask you if you can identify this.

9 A Sure.

10 Yes. Looks like a label for some of our packing
11 or some of our material replacement parts materials.

12 Q Fisher Controls' packing set, correct?

13 A Yes, it is.

14 Q And that is exhibit number what?

15 A 90.1.

16 MR. BOUCH: Your Honor, I'd move for this
17 admission.

18 MS. FARRISE: My objection would be just lack of
19 foundation as to time, being relevant to this case.

20 MR. BOUCH: Demonstrative.

21 THE COURT: Overruled.

22 MR. BOUCH: Thank you, Your Honor.

23 (WHEREUPON, Defendant's Exhibit Number 90.1 was
24 admitted into evidence.)

25 BY MR. BOUCH:

ROA_01306

Appendix_01327

1 Q I'll give you the actual bag that this is a
2 picture of, just so you can demonstrate to the jury.

3 What is that material?

4 A This is an example, precise example, of the
5 material we discussed a little bit ago. This is Teflon
6 V-ring Chevron-style packing.

7 Q And that would be typically most commonly placed
8 in a Fisher valve?

9 A Yes. Certainly most commonly because it had the
10 advantages of low friction.

11 Q Okay. Whereas, if it was as asbestos packing,
12 what would it do?

13 A Well, any other packing has more friction and
14 affects the performance and the ability of the valve to
15 move in response to inputs.

16 Q So if you open or close it, it would be harder?

17 A Harder.

18 MR. BOUCH: Your Honor, may I publish this to the
19 jury?

20 THE COURT: You may.

21 BY MR. BOUCH:

22 Q Mr. Dumistra, I'll ask if you can identify that
23 particular picture.

24 A Sure. This, as shown on Fisher 88, is a picture
25 of a control valve. Very common.

ROA_01307

Appendix_01328

1 Q Is that product that is manufactured by Fisher?

2 A Yes.

3 Q Has it been manufactured for several years in
4 various forms? I know you say they're individual.

5 A Yes. It's pretty common construction that we see
6 indicated here.

7 MR. BOUCH: Your Honor, I'd move that
8 demonstrative exhibit into evidence.

9 THE COURT: Any objection?

10 MS. FARRISE: None, Your Honor.

11 THE COURT: Admitted.

12 (WHEREUPON, Defendant's Exhibit Number Fisher 88
13 was admitted into evidence.)

14 BY MR. BOUCH:

15 Q Mr. Dumistra, could you come off the stand. This
16 is a bigger picture of it. Might be easier for you to
17 point than to pass the picture around.

18 A Can I borrow a pen?

19 Q Okay. Now, this whole thing is called what?

20 A Well, the whole thing is called a control valve.

21 Q Okay. And what's special about this as opposed
22 to -- well, it's different than what I have on my
23 garden hose, so what's different about it?

24 A Okay. So the way this works on a control valve is
25 this is connected to the fluid. Fluid flows in one

ROA_01308

Appendix_01329

1 side, goes through a chamber, up and out the other
2 side. In this chamber is what's called a plug and a
3 cage. A plug will actually move up and down.
4 Depending upon its position, it will shut the fluid off
5 or, because it's a control valve, it will control the
6 amount of fluid that flows through the pipe.

7 Q Okay.

8 A All the way from one hundred percent open to
9 absolutely closed. And control valves being what they
10 are, highly engineered, most of the time they're partly
11 open and throttling, what we call throttling, moving up
12 and down all the time, so that's why this is important,
13 the packing.

14 Q Let me go back. When you receive an order for a
15 valve such as this from a customer such as Duke --

16 A Yes.

17 Q -- do you, again, pick them off the shelf, or do
18 you build them like they order?

19 A Yes. We saw examples of that when we looked at
20 the serial cards in one of the exhibits where it was a
21 very detailed explanation of what the customer
22 ordered -- the material of the valve, the material
23 inside, the packing. Even this is unique to the
24 application. This is a more recent addition to it, but
25 back in the day, this particular device is what sends a

ROA_01309

Appendix_01330

1 signal to open and close the valve. This is called a
2 positioner. And that simply positions the plug up and
3 down to open and close.

4 Q When Fisher builds valves, do they test it?

5 A Yes. It's tested for pressure. It's tested to
6 make sure it operates, and it's tested for leak to make
7 sure when it closes it will close. So it's seat-leak,
8 hydrotest, and operational.

9 Q Every valve built by Fisher is individually
10 tested, correct?

11 A Absolutely, yes.

12 Q It's kind of like going in and getting a custom
13 suit; it's just for you?

14 A Oh, yes. For that particular customer, yeah.

15 Q And it's tested. Now, this part, what's this
16 thing called?

17 A This, from here to here, is called the bonnet. We
18 saw that being tested in the lab a little bit ago, and
19 that's why we wanted to insulate to make sure -- these
20 can be subjected to temperature, and we want to make
21 sure this area and this area here was reaching a
22 temperature at which the fluid could potentially get to
23 some day. That's what we call the bonnet.

24 Q That's a bonnet. And what's that?

25 A This is the stem. It's connected to the plug.

ROA_01310

Appendix_01331

1 goes through the packing, connects to the plug, moves
2 up and down in that cage and opens and closes. So this
3 stem has to be connected to this. This is called an
4 actuator. And air is put in the top of here, and
5 there's a membrane there. When the air goes in here,
6 it moves that membrane. Just like a balloon. Air goes
7 in, the balloon expands, moves the plate, that plate
8 moves another stem inside here, pushes down and shuts
9 the valve off. So this tells the air, should I go in
10 here? It goes in, in what we call instrument air. All
11 these plants have instrument air, and that's used to
12 reliably stroke this actuator. So that causes the
13 valve to move up and down.

14 Q If you want to repair this valve, say this part,
15 do you have to disturb anything else?

16 A No. There's very little repair done to the
17 actuator, really. They're pretty reliable. Some
18 cases, you might take this off and change that
19 membrane. It's called the diaphragm.

20 Q Say you had to get into the body of the valve and
21 replace the plug. How do you do that?

22 A Simply remove these bolts, these nuts, off here.
23 Before you do that, you have to take the pressure off
24 and be safe about this, remove the pressure from the
25 line. You would be able to remove all of this from

ROA_01311

Appendix_01332

1 here on up and you can get all of these parts to access
2 those parts.

3 Q Now, some of these valves are pretty good size,
4 aren't they?

5 A Oh, yeah, sure.

6 Q How much do they weigh?

7 A Oh, this valve, this actual size valve, looks like
8 it could be a two-inch, so that would be maybe one
9 hundred pounds. But, of course, they range up from
10 there.

11 Q So like a six-inch valve would be a lot heavier?

12 A Oh, yeah. Six-inch, maybe 1,800 pounds.

13 Q Now, these things here, we've heard these called
14 flanges.

15 A Yes.

16 Q And they're connected to the pipes?

17 A Yes. These flanges are connected to the pipe by
18 virtue of these holes.

19 Q Now, are there gaskets on the end of these
20 flanges?

21 A No. There's not on the end of these flanges, no.
22 Eventually, the user would select a gasket and apply it
23 against this surface here, and there would be a similar
24 surface that the pipe would employ.

25 Q Does Fisher sell these gaskets?

ROA_01312

Appendix_01333

1 A No. No. These are called line gaskets. We were
2 never in the business, had nothing to do with line
3 gaskets.

4 Q Did Fisher ever recommend a type of line gasket?

5 A No. Not really, no.

6 Q Did Fisher ever require a line gasket?

7 A No. We didn't impose that upon them. I think
8 it's just a general practice. Again, process control
9 experts, they would select even what type of flange on
10 our valve to apply. We could accommodate that. And in
11 some cases, there are flanges like that that don't even
12 require gaskets. They could require a metal part that
13 goes in there. And other cases, not uncommon to have
14 actual welds here. A lot of power -- a lot of valves
15 in the power industry are actually welded. No flange.
16 They want no possibility of leak, so they weld that
17 construction right there to the pipe.

18 Q Have you had an opportunity to review Mr. Jolly's
19 testimony?

20 A Yes.

21 Q Did he indicate he was inspecting welded-in
22 valves?

23 MS. FARRISE: Your Honor, I'm going to object to
24 the leading format of these questions.

25 THE COURT: Don't lead, Mr. Bouch.

ROA_01313

Appendix_01334

1 BY MR. BOUCH:

2 Q What did Mr. Jolly say about his duties inspecting
3 these valves?

4 A He did indicate in his testimony in front of the
5 jury that he did inspect welds on valves, so that would
6 be indicative of a valve that was welded in the
7 pipeline as opposed to this type.

8 Q Why does Fisher not recommend the type of valves
9 that go on these flanges?

10 A Well, it's largely dependent upon, again, the
11 process engineering, their preferences for their power
12 plant or their refinery and that sort of thing.

13 We make these available in a whole variety of
14 constructions, materials, sizes, shapes. Even other
15 than this style of valve, we make two other types of
16 valves that don't even have this same type of movement.
17 They decide, based on their process conditions, what
18 type of valve they need.

19 Q So do they tell you necessarily what they're going
20 to use it for?

21 A Not always. We wouldn't necessarily have to have
22 that information.

23 Q Do they tell you where they're going to put it?

24 A No. Typically, no. Sometimes they ask for us to
25 tag it so it has some indication in their vernacular

ROA_01314

Appendix_01335

1 where it might go.

2 Q To the selection of, say, this bonnet gasket, who
3 would make that selection?

4 A Well, that's part of the overall construction.

5 Q Right.

6 A Yes.

7 Q And who would make the selection of the type of
8 gasket that would go on this bonnet?

9 A Again, part of the overall construction, would be
10 Duke Power.

11 MR. BOUCH: Your Honor, may I publish this picture
12 to the jury?

13 THE COURT: Certainly.

14 BY MR. BOUCH:

15 Q Just for completeness sake, Mr. Dumistra, can you
16 identify this document?

17 A Yes.

18 Q And what would that be?

19 A It's marked as Fisher Exhibit 88.1. It's a
20 facsimile of the same thing, only in sort of what we
21 call an exploded view where the parts are disassembled
22 and shown, described.

23 MR. BOUCH: Your Honor, I move that into evidence
24 as a demonstrative exhibit.

25 THE COURT: All right. Any objection?

ROA_01315

Appendix_01336

1 MS. FARRISE: No objection, Your Honor. It's
2 duplicative of what's in the valve handbook.

3 (WHEREUPON, Defendant's Exhibit Number Fisher 88.1
4 was admitted into evidence.)

5 BY MR. BOUCH:

6 Q Mr. Dumistra --

7 THE COURT: It's admitted.

8 MR. BOUCH: May I publish this to the jury while
9 he explains?

10 THE COURT: Yes.

11 BY MR. BOUCH:

12 Q Tell the jury what this is.

13 A Okay. This is another sketch. This is actually a
14 photograph of a valve. This is more of a rendering,
15 shall we say. It's something we did, perhaps on our
16 computer, to show the different parts.

17 So this is the valve, and you see the same thing
18 in the side view. That's more isometric, and then the
19 pipe would go through -- up, down, and through. Okay?
20 Shows the constituent parts. This is the actuator.

21 And, actually, it's instructive because it shows
22 the inside of an actuator, how this particular part, in
23 this case the air, comes into the bottom part, moves
24 this membrane up and causes the valve to open again,
25 shows you how complicated these can be because they

ROA_01316

Appendix_01337

1 even specify that, whether it's called air to open or
2 air to close.

3 You will see a spring here. They specify that
4 because if the air fails, the process engineer says,
5 hey, if I have electricity go off in my plant, this
6 thing fails, they want to know -- or the pump that runs
7 the air, if that fails, they want to know where should
8 it be, open or closed. In this case it will fail one
9 way or the other.

10 Q The power goes out in the power plant, we're all
11 in trouble.

12 A Yeah, that's true.

13 Q Now, does Fisher make any recommendations on
14 insulating these valves?

15 A No, we do not.

16 Q In your experience, is any of it ever insulated?

17 A Anecdotally, I know that it's not unheard of to
18 have insulation on piping. We saw evidence of that in
19 the demonstration.

20 Q That's this part, right?

21 A Yes.

22 Q This part, never insulated?

23 A Never.

24 Q Wouldn't work right?

25 A No, it wouldn't work right.

ROA_01317

Appendix_01338

1 Q If it's insulated at the bottom, do you have to
2 disturb the insulation to fix the valve?

3 A Not necessarily because it -- it depends on their
4 practices and how they have done it. But it could be
5 totally repaired from here on up. Again, it's a
6 function of how they have done this.

7 Q All right. Has Fisher ever made insulation?

8 A No.

9 Q Never sold it?

10 A No.

11 Q Have they ever recommended it?

12 A No.

13 Q Now, you have heard -- you have been asked
14 questions on something called a butterfly valve.

15 A Yes.

16 Q What's a butterfly valve?

17 A Okay. As I indicated when we were in front here,
18 there's two other types of valves, and butterfly valves
19 is one. Okay? This, the globe valve operates, opens
20 and closes, based upon a plug that goes up and down and
21 sits against the seat, and that causes obstruction in
22 the flow line and prevents the flow downstream.

23 Butterfly valves, if you can visualize just the
24 pipe being like here, a butterfly valve has a shaft
25 that rotates. And this would be closed. And you

1 rotate that shaft, now it's open. Perhaps some of
2 you -- maybe not -- but similar to a choke on, excuse
3 me, a carburetor where these things open and close.
4 Okay.

5 And so because of that action, it looks like
6 butterfly wings. So the shaft is here, and that
7 actuator is out here, and it would open and close just
8 by simply taking a disc and rotating it in front of the
9 pipe. That's oversimplification, but that's an
10 example.

11 Another, if you don't mind, Counselor, is a ball
12 valve that will rotate similar, but it's more like a
13 ball. A simplified version of that might be below your
14 sink, a shutoff valve for your sink supply line. A
15 ball valve is very simple, like we talked about you get
16 from the hardware. And they just rotate in front of
17 the line and shut the water or whatever it is, pulp and
18 paper, it shuts them off.

19 Q I think you may have said this before. Do
20 butterfly valves have any gaskets?

21 A No.

22 Q Mr. Dumistra, I'm going to give you a document.
23 It's a Duke document. It's been admitted. It's Crosby
24 Exhibit 1501. What's the date?

25 A November 4, 1969.

ROA_01319

Appendix_01340

1 Q Can you describe it?

2 A It's labeled as Specification Number OS-241, Duke
3 Power, Oconee Nuclear Station Units 1, 2 and 3,
4 specification for heat insulation excluding reactor
5 building equipment.

6 Q And is there a reference to a butterfly valve on
7 that document?

8 A Yes. I was just glancing through here. It's
9 under -- just before 4.3.2, it says the word "butterfly
10 valve."

11 Q What's it say?

12 A "Butterflies with integral expansion joints and
13 their matching flanges are not to be insulated."

14 Q Okay. So butterfly valves, you know don't have
15 gaskets, and per that Duke document, doesn't have any
16 insulation?

17 A That appears to be the case, yes.

18 Q Now, you have been asked several questions on
19 these Duke Power purchase orders.

20 A Yes.

21 Q Okay.

22 A I've seen them.

23 Q Let's get one thing straight. If Duke Power
24 ordered an asbestos gasket from Fisher after January 1,
25 1988, would Fisher have sent it to them?

ROA_01320

Appendix_01341

1 A No.

2 Q Well, what would you have done about it?

3 A Well, okay. So the way the system works is that

4 we have what's called a computer indicator. It's

5 called Obsolete C, so the computer would know that this

6 part number that's obsolete would be replaced by a new

7 part number. And in this case that new part number

8 would be considered an equivalent but it's not

9 asbestos. It's all handled by the computer once it's

10 loaded into the system.

11 Q I'll give you what's been marked as Plaintiffs'

12 Exhibit 1012.2 and tell the jury what date that is.

13 A This was issued 9/3/92.

14 Q Go to the last page.

15 A Okay.

16 Q At the bottom, what is Duke asking Fisher to sell

17 them?

18 A Yeah. This would say, "Quantity, 2; gasket size,

19 one-quarter thick; material, asbestos; application, for

20 Fisher Control pressure relief valve."

21 Q Okay. Would you have sold that asbestos relief --

22 A No.

23 Q I thought there was a gasket there.

24 A Yeah, it says gasket. I'm sorry. I said gasket,

25 yeah.

ROA_01321

Appendix_01342

- 1 Q Would Fisher have sold that gasket?
- 2 A No. Could not have.
- 3 Q Likewise, you were asked about something yesterday
- 4 called nitrile.
- 5 A Yes, nitrile.
- 6 Q Sorry. What is nitrile?
- 7 A It's a type of synthetic rubber.
- 8 Q And if I could make use of your Elmo, please.
- 9 Thank you.
- 10 Exhibit 1012.5, Page 3, you were asked about;
- 11 after being shown a specification that called for
- 12 nitrile and asbestos, you were shown this document. It
- 13 says "nitrile part." Does that have asbestos in it?
- 14 A No.
- 15 Q What is it?
- 16 A Nitrile is a --
- 17 Q No, no. What's the part?
- 18 A That's an o-ring.
- 19 Q An o-ring that like goes in your sink faucet?
- 20 A Yeah. It's much similar to that. It's round, and
- 21 a cross-section is circular as well and not like a
- 22 gasket. It doesn't function like a gasket, per se.
- 23 Q It has nothing to do with asbestos?
- 24 A No.
- 25 Q Okay. You were asked certain questions, and I

ROA_01322

Appendix_01343

1 will ask if you can identify this.

2 A Sure. This is a Fisher Exhibit Number 90, and it
3 looks like a photocopy of a spiral-wound gasket.

4 Q And we have seen references to spiral-wound
5 gaskets in various materials, right?

6 A Yes.

7 MR. BOUCH: Your Honor, I'd like to admit that as
8 a demonstrative exhibit.

9 THE COURT: All right. Objection?

10 MS. FARRISE: My only objection is there's no
11 foundation it's tied to Duke or the time period in
12 which it was created.

13 THE COURT: I notice a package date of 9/16/09; is
14 that correct?

15 MR. BOUCH: That's correct, Your Honor.

16 THE COURT: Does that solve the problem of linking
17 it to a time period?

18 MS. FARRISE: Yes, Your Honor.

19 THE COURT: Very good. It's admitted.

20 (WHEREUPON, Defendant's Exhibit Number Fisher 90
21 was admitted into evidence.)

22 BY MR. BOUCH:

23 Q Now, this is the hard copy. Tell us what that is,
24 Mr. Dumistra.

25 A Sure. This is called a spiral-wound gasket.

ROA_01323

Appendix_01344

1 Q Now, we have seen references -- well, what's a
2 spiral-wound gasket?

3 A Okay. Yes. As I said, there's quite a bit of
4 engineering goes into our design process. And as these
5 valves, as you start to move process fluid through the
6 valves, the temperature of the valve changes so all
7 substances will expand and contract based on their
8 temperature. So a valve, the parts inside a valve,
9 could be made out of a different type of material as
10 the body.

11 So we have to engineer a way that the gaskets will
12 properly seal regardless of that temperature expansion
13 and contraction. The spiral-wound gasket helps us with
14 that because it has a springiness component to it. And
15 it's consisting of metal. It actually starts out flat
16 metal parts that are wound. And in between those
17 windings is another material. In this case it was
18 graphite because I recognize that.

19 And then what happens is it also has a convolution
20 in there or sort of a -- if you look at this
21 cross-section, you would be able to see that it has an
22 indent. What happens is there is a lot of pressure; it
23 squeezes and will allow it to spring back. Squeeze and
24 bring back. And that's happening because of the
25 thermal coefficient of expansion, which is different

ROA_01324

Appendix_01345

1 between the body and the internal parts, but that's
2 very important because we want this to seal to keep the
3 steam or the water whatever it is from escaping to
4 atmosphere or to the environment.

5 Q Let me use a silly example. Would it be like a
6 ham sandwich, two pieces of bread with the ham?

7 A Yeah, in a simple sense, but it has to be springy
8 too. A ham sandwich, you would push it down and it
9 would stay down.

10 Q Maybe it's a panini.

11 Okay. That ham sandwich, now that one you say
12 graphite is the ham, and the metal is on the top or the
13 bottom?

14 A Actually, the graphite in this is interspersed
15 inside the spiral-wound. So the metal goes like this,
16 and in between that metal is the graphite, goes like
17 this.

18 Q We've seen references to spiral-wound asbestos
19 gasket. Would that be like the ham?

20 A Yeah, it would be in this spiral, yes.

21 THE COURT: Mr. Bouch, I'm going to let you hold
22 for a minute, if this is a convenient stopping point.
23 The jury has been at it about an hour and a half. I
24 want to give them a break at this time, and I see a
25 little interest perhaps in a break, so if it's okay

ROA_01325

Appendix_01346

1 with you, I'm going to give them a ten-minute break.

2 MR. BOUCH: That's fine. Hold that. We'll pass
3 that around when they come back.

4 THE COURT: Members of the jury, be back about ten
5 minutes of, if you would.

6 (WHEREUPON, the jury exited open court at
7 2:39 p.m.)

8 (WHEREUPON, a recess was taken from 2:39 p.m. to
9 2:58 p.m.)

10 (WHEREUPON, the jury entered open court at
11 2:58 p.m.)

12 THE COURT: Thank you, ladies and gentlemen. If
13 you would take your seat, I have some highly
14 satisfactory news.

15 We are going to complete Mr. Dumistra. And I'm
16 thinking that won't be any longer than maybe 4:00 at
17 the latest, might be earlier than that, and you will be
18 concluded for the week.

19 So hang on, be alert, and we'll move right along.

20 Thank you so much.

21 MR. BOUCH: Your Honor, may I publish this to the
22 jury?

23 THE COURT: This is the gasket that was in the
24 picture?

25 MS. FARRISE: I'm sorry, I didn't see it.

ROA_01326

Appendix_01347

1 MR. BOUCH: Oh, I'm sorry.

2 MS. FARRISE: I'm not handling it because I don't
3 know what it's made of.

4 THE COURT: He's going to testify to that. I
5 don't think anybody is going to have any trouble with
6 it.

7 Has it got any asbestos in it?

8 MR. BOUCH: Your Honor, as the witness said, it's
9 metal and graphite made in 2009.

10 THE COURT: All right. The gasket was shown in a
11 photograph that is in evidence, and you want to publish
12 the gasket itself to the jury. You see it there?

13 MS. FARRISE: I'm seeing it for the first time.
14 I'm just saying it was in packing, and I think it's
15 more appropriate to leave it in the packaging from
16 whence it came.

17 THE COURT: I'll overrule that. Do you have any
18 other objections?

19 MS. FARRISE: No, Your Honor.

20 THE COURT: Very good. It's admitted.

21 THE WITNESS: It's totally safe.

22 BY MR. BOUCH:

23 Q Mr. Dumistra, we talked earlier about
24 Exhibit 90.1, these Teflon packing rings. Is this the
25 shape of all of the packing supplied at customer

ROA_01327

Appendix_01348

1 request by Fisher?

2 A , Eventually that does take that shape. Some of it
3 is rope-style packing that's preformed into a ring and
4 then inserted into that same void between the stem and
5 the cavity in the bonnet, yes. Similar shape.

6 Q It's either a Life Saver or a Life Saver with a
7 cut in it?

8 A Yes. That's exactly correct.

9 Q I asked you before who specifies all the parts and
10 components of a valve, correct?

11 A Yes.

12 Q And that would be?

13 A In this case, Duke.

14 Q Duke Power, all right. And because Duke Power
15 specifies what's in the valve, they know what they're
16 getting?

17 A Yes.

18 THE COURT: And I know you won't lead, Mr. Bouch.

19 MR. BOUCH: Just kind of wanted to orient us back
20 to where we were.

21 Q Now, you were shown pictures yesterday of packing
22 that was coiled on spools. Did Fisher ever provide
23 that to a customer?

24 A No. Our packing was in preformed, beveled-cut
25 rings.

ROA_01328

Appendix_01349

1 Q Now, this came up yesterday too. You were asked
2 about crocidolite or blue asbestos.

3 A Yes.

4 Q And Fisher did have a specification for
5 crocidolite blue asbestos?

6 A Yes.

7 Q In your 41 years at Fisher, have you ever seen it
8 used?

9 A No.

10 Q Have you ever seen it shipped to a customer?

11 A No.

12 Q Have you ever seen it shipped to Duke?

13 A No.

14 Q In your review of Mr. Jolly, Mr. Freeman,
15 Mr. Simpson, Mr. Taylor, Mr. Rogers' depositions --
16 well, did you review those depositions?

17 A Yes.

18 Q In your review, did you see any indication of blue
19 crocidolite asbestos in any application?

20 A No, I did not.

21 Q Okay. Now, in your 41 years at Fisher, has Fisher
22 ever had a claim by an employee of an asbestos-related
23 disease?

24 MS. FARRISE: Your Honor, I'm going to object that
25 this lacks foundation, calls for speculation. We asked

ROA_01329

Appendix_01350

1 for this information. It was not provided.

2 THE COURT: Just one moment. I'm trying to
3 remember whether we had been over this arena of
4 evidence in our pretrial hearings.

5 MS. McVEY: Do you want us to come up?

6 THE COURT: Yes. Come to the side just for a
7 moment.

8 (WHEREUPON, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 THE COURT: Ladies and gentlemen of the jury, we
12 have had a consultation about evidence issues, and let
13 the record reflect that the last question to
14 Mr. Dumistra about employee claims, Fisher's employees'
15 claims against it, will be stricken and will not be
16 allowed to be pursued.

17 All right, Mr. Bouch. And that is over
18 Mr. Bouch's objection, and your rights are preserved in
19 that regard, Mr. Bouch.

20 MR. BOUCH: Thank you, Your Honor.

21 Q Mr. Dumistra, you were asked yesterday whether
22 Fisher maintained a library in Marshalltown, Iowa?

23 A Yes.

24 Q Would it be fair to say that's an engineering
25 library?

ROA_01330

Appendix_01351

1 A Yes, engineering library. I mentioned that there
2 were books and references pertaining to process control
3 industry, design of pressure equipment, as well as the
4 lab reports which we presented an example of earlier
5 this afternoon.

6 Q Okay. Does Fisher have files on safety,
7 industrial health, and medical issues?

8 A Safety, perhaps. The folks in E, S & H department
9 may. I'm not familiar with that. They may have some
10 reference material, but it wouldn't be part of --

11 Q Not part of the engineering library?

12 A Absolutely not, no.

13 Q But they have their files in the safety
14 department?

15 A I'm sure they do.

16 Q And they have industrial hygiene files?

17 A Yes.

18 Q Okay. You were shown Exhibit 145.

19 A Is it a big book?

20 THE COURT: Yes, it is.

21 BY MR. BOUCH:

22 Q It needs a warning label if you drop it on your
23 foot.

24 I believe one of the first pages of that is this
25 document here?

1 A Yes.

2 Q Valve orders for Catawba, McGuire, and Oconee?

3 A Yes.

4 Q Okay. And I believe there are three pages of that
5 listed?

6 A Yes.

7 Q Are all those asbestos-containing products?

8 A No. Not necessarily, no.

9 Q I mean, can you tell from just looking at that?

10 A No.

11 Q Okay. And then the last, oh, four pages, what are
12 these?

13 A Okay. You will see the serial numbers. And the
14 first pages were simply recorded as part of a reference
15 number, and they're not in sequence of serial numbers,
16 so I just simply took those numbers, put them in a
17 spreadsheet, had the computer sort them in order, put
18 them in order.

19 Q Okay. So these are just a regurgitation of the
20 first three or four pages?

21 A Yes. Just to reorder them.

22 Q What are serial cards?

23 A Okay. Serial cards, we referred to them earlier.

24 Each valve that we make, as I described -- we talked
25 about the special nature of these valves. When we ship

ROA_01332

Appendix_01353

1 a valve, we have what's called as-built construction
2 because it's so unique that we can refer back to or
3 provide information back to the customer, in this case
4 Duke Power, and give them that as-built construction
5 record. So we retain those indefinitely, and we have
6 those in your files, and they're accessible by virtue
7 of that serial number that was shown earlier.

8 Q Okay. And so who -- does Duke get the serial
9 card?

10 A They get a facsimile of the serial card, what's
11 called an acknowledgement copy, that goes to them, and
12 they have an opportunity to review that to verify that
13 this includes constituent parts that they order that
14 will work in their process. But the official copy
15 resides on microfilm in our factory going back over
16 time. Now it's more of an online version, but that
17 doesn't start until later.

18 Q This is a card. And does it reflect the valve
19 that Duke ordered?

20 A Yes.

21 Q And all of its parts?

22 A Yes. More or less, yes, uh-huh.

23 Q And what all the parts are made out of?

24 A Correct.

25 Q Whether it's carbon steel or nickel or asbestos or

ROA_01333

Appendix_01354

1 Teflon, it's on that card?

2 A Yes. To the extent that it's listed on that
3 serial card, you can look and refer to the constituent
4 parts, look them up.

5 Q And Duke gets a copy of that, basically?

6 A Yes. They would get an acknowledgement copy of
7 that. It won't be marked up. For example, plaintiffs'
8 counsel asked parts listed that are part the serial
9 card. We keep that in our record. It would not be on
10 the record that they get because that's where the
11 stockroom parts are located and that sort of thing.

12 Q Duke wants a replacement part. Would it go to
13 that card?

14 A Actually, the way the process works, Counselor, is
15 for them to contact their local sales representative,
16 tell them the serial number, and the sales office will
17 extract that information from that card.

18 Q Would Duke know what it was ordering?

19 A Oh, certainly, yes.

20 Q And so if it was an asbestos gasket, and they
21 wanted the same gasket, would they know it?

22 MS. FARRISE: Excuse me. It's leading.
23 Objection.

24 THE COURT: Yes.

25 BY MR. BOUCH:

ROA_01334

Appendix_01355

1 Q Would they know it?

2 MS. FARRISE: Objection, leading. I'm sorry, I
3 have an objection, Mr. Bouch.

4 THE COURT: She's making an objection. Settle for
5 a minute, Mr. Bouch. What's sauce for the goose is
6 sauce for the gander.

7 You object it's misleading.

8 Please don't lead.

9 BY MR. BOUCH:

10 Q Would Duke know what they were getting?

11 A Yes. They're ordering it. They would know what
12 they're getting, yes.

13 Q Finally, Mr. Dumistra, I'm going to ask if you can
14 identify this.

15 A Yes. That's basically a photocopy of a graphite
16 gasket, Fisher Exhibit 90.3.

17 Q Is that a gasket that's ordered by a customer and
18 supplied by Duke (sic)?

19 A It could be an example of one, yes.

20 MR. BOUCH: I'd move that into evidence as a
21 demonstrative exhibit, Your Honor.

22 THE COURT: It's ordered by -- I couldn't exactly
23 understand the question. It's late in the day and I'm
24 getting tired. Ordered by a customer and supplied by
25 Duke?

ROA_01335

Appendix_01356

1 MR. BOUCH: You're exactly correct. Let me start
2 back.

3 THE COURT: Start that one over.

4 BY MR. BOUCH:

5 Q Would this be something ordered by Duke and Fisher
6 would fill the order?

7 A It would be an example of that, yes, and I
8 understood it that way.

9 THE COURT: Very good. All right.

10 Any objection?

11 MS. FARRISE: Just that it has no reference to
12 time period, like did they order it yesterday or years
13 ago?

14 THE COURT: That might diminish the weight of the
15 evidence, perhaps, but if that's an objection,
16 overruled. It's admitted.

17 (WHEREUPON, Defendant's Exhibit Number Fisher 90.3
18 was admitted into evidence.)

19 MR. BOUCH: Your Honor, I have an actual copy of
20 it.

21 Q Is that what's depicted?

22 A Yes.

23 Q How long have you been offering those kind of
24 gaskets?

25 A Probably since the early '70s, late '60s.

1 MR. BOUCH: May I publish it to the jury, Your
2 Honor?

3 THE COURT: You may.

4 THE WITNESS: I meant to say late '60s, early
5 '70s.

6 THE COURT: That's what I understood.

7 THE WITNESS: I didn't know if I said it that way.

8 BY MR. BOUCH:

9 Q What is this, Mr. Dumistra?

10 A This would be a gasket, a flat sheet gasket,
11 similar to the other one, only this is made out of a
12 different rubber-like material.

13 Q Okay. And has this been supplied by Fisher at a
14 customer's request?

15 A It would be an example of that.

16 Q Okay. For how long about?

17 A Oh, I'm sure -- it's difficult to say. I'm not
18 sure exactly what this material is made out of, so
19 again, probably '80s time frame.

20 MR. BOUCH: Your Honor, I ask that that exhibit
21 number be admitted as a demonstrative exhibit.

22 THE COURT: Any objection, Ms. Farrise?

23 MS. FARRISE: Just the same ones I've been making.

24 THE COURT: Understood. And you want to preserve
25 your position. I agree. Overruled.

ROA_01337

Appendix_01358

1 It will come in for whatever weight it has.

2 MR. BOUCH: Thank you, Your Honor. May I publish
3 this to the jury also?

4 THE COURT: Yes, you may.

5 (Inaudible comment made by juror.)

6 THE WITNESS: It's not made out of asbestos. I'll
7 handle it, no problem. It's not -- I can guarantee
8 you --

9 THE COURT: I will make sure they don't give you
10 anything that has got asbestos in it.

11 THE WITNESS: I can guarantee it is not harmful
12 material. It comes in different forms of rubber, like
13 we talked about nitrile is a synthetic rubber. Could
14 be that. Could be other type of material. It's simply
15 not asbestos, I can guarantee you.

16 THE COURT: The jury may speak to me at any time
17 about any concerns you have. No worries.

18 BY MR. BOUCH:

19 Q Mr. Dumistra, two matters, I believe. You were
20 asked a series of questions about material that may
21 have contained asbestos that was cut by Fisher at
22 Marshalltown. Do you remember those questions?

23 A Yes.

24 Q And they involved testing?

25 A Yes. They were only cut to accommodate the

ROA_01338

Appendix_01359

1 testing so we wouldn't ruin the production gasket.

2 Q Was any asbestos product ever processed or cut by
3 Fisher and sent to a customer?

4 A No, not to my knowledge, never.

5 Q When you received materials from your suppliers
6 such as an asbestos gasket or asbestos packing, did you
7 ship it off, ship it on, throw it in the box, or did
8 you rip the labels off?

9 THE COURT: Mr. Bouch, I'm going to ask you to ask
10 the direct question. All you've got to do is ask him,
11 "What do you do with it," or something.

12 BY MR. BOUCH:

13 Q What did you do with the gaskets you received from
14 a supplier or packing you received from a supplier that
15 may have contained asbestos?

16 A Okay. It probably changed over time, but we did
17 have stockrooms, and all of our gaskets and packing
18 would be placed into a stockroom. So after inspection,
19 they would be placed in the stockroom. In some cases
20 they may have, just for the sake of not duplicating
21 effort, they came in packages of ten from the supplier,
22 whatever; we place those in the stockroom in packages
23 of ten. But it depends on the particular gasket. They
24 may have been taken out, put in a box and put on a
25 shelf so they can be accessed there. It's kind of all

ROA_01339

Appendix_01360

1 over the map, Counselor.

2 Q Okay. And my final question -- I lost my train of
3 thought, which happens at my age. I think I'm done.
4 Everybody has a boss, and I've got one too.

5 THE COURT: Certainly. Check with your
6 colleagues.

7 MR. BOUCH: Mr. Dumistra, thank you very much for
8 coming at their request, and I will pass the witness,
9 Your Honor.

10 THE COURT: Very good. All right. Anything in
11 redirect, Ms. Farrise?

12 MS. FARRISE: Tiny, little, quick things, Your
13 Honor.

14 REDIRECT EXAMINATION

15 BY MS. FARRISE:

16 Q Mr. Dumistra, just a couple little things. I
17 think you were asked if butterfly valves have gaskets.
18 Do you recall that?

19 A Yes.

20 Q Certainly, butterfly valves had a whole lot of
21 packing chucked in there before they got shipped out of
22 Marshalltown, correct?

23 A I'm unsure about your characterization of, what,
24 "whole lot"?

25 Q Whole lot of packing.

ROA_01340

Appendix_01361

1 A Not any more than any other valve., Depends on the
2 application and the pressure.

3 Q Okay.

4 A Again, they had options to select packing. The
5 amount of packing is certainly a function of the
6 pressure. If you can imagine more pressure in the
7 valve, more rings. That's something that they have to
8 understand that they would have more rings, yes.

9 Q The bigger the valve, the more rings, right?

10 A Not necessarily bigger. It's the pressure.

11 Q And some of these valves hold up to 50,000 pounds
12 in pressure?

13 A Very, very, very unusual. Pretty unusual to have
14 50,000, but it has happened, yes.

15 Q So the answer to my question is yes; some of these
16 valves can have pressures up to 50,000 pounds?

17 A Are you referring to Duke Power valves?

18 Q For the moment I'm just talking about what Fisher
19 sold and made.

20 A Very rare, yes.

21 Q Do you have the Fisher control valve handbook that
22 it put out in 1965 and then again in 1977? It was in a
23 binder behind you. It's Exhibit 947.

24 A I have it here.

25 Q Can I ask you to turn to page 21?

ROA_01341

Appendix_01362

1 A Of the first one or the second one?

2 Q The 1965 book. I'm not sure it's different, but
3 we'll go with 1965.

4 A That's page 21?

5 Q Uh-huh.

6 A Yes.

7 Q And so, first off, here's another depiction of
8 this butterfly valve, right?

9 A Yes.

10 Q And this is one of those valves that can go up to
11 108 inches or 9 feet across, right?

12 A Yeah. As I said in my prior testimony, I think I
13 remember one, and it was before my time, but they talk
14 about it all the time, 108 inch, yes. It's pretty
15 rare.

16 Q But they put in the book in their types of valves
17 they sell a whole section of a valve, and they point
18 out that they can go to 108 inches that you claim they
19 only sold one time in the entire history of the
20 company, correct?

21 A That's my understanding, yes.

22 Q Okay. And you said it didn't have a flange. It
23 has an end, correct?

24 MR. BOUCH: Objection, Your Honor. I believe that
25 misstates his testimony. It had no insulation.

ROA_01342

Appendix_01363

1 THE COURT: Let's just ask him again about it.

2 MS. FARRISE: Sure.

3 Q This butterfly valve connects to a piping system?

4 A Yes.

5 Q And the opening that it connects to, the end is a
6 flange end of some kind?

7 A Not always, but yes, sometimes.

8 Q And according to the book that is Fisher's, those
9 flange ends include bolted flanges, correct?

10 A Yes, that or welded.

11 Q Or screwed pipe threads, but bolted flanges?

12 A Yes. Screwed pipe threads would not apply to
13 butterfly valves, but welded or what we call wafer
14 would.

15 Q Bolted, gasketed flanges are appropriate to
16 connect a butterfly valve to a piping system?

17 A In some cases.

18 Q According to the Fisher control valve handbook,
19 correct?

20 A Yes, in some cases, yes.

21 Q So I'm guessing that because Fisher took the time
22 to include how you connect the end of these valves in
23 its printed control valve handbook, that Fisher was
24 aware that some people, customers, might connect their
25 butterfly valve with a bolted flange gasket, correct?

ROA_01343

Appendix_01364

1 A Yeah. That can be presumed. But, again, this is
2 all the selection that the customer makes.

3 Q You mentioned that, and I'm going to get to that
4 in a second.

5 Fisher's book goes through the trouble of pointing
6 out that you can actually have multiple types of
7 bolted, gasketed flange connections to connect the
8 valve to the piping system, correct?

9 A Yes. They're depicted there on the screen.

10 Q Right. We can have a flat face flange, right?

11 A Yes.

12 Q That takes a gasket, right?

13 A Yes.

14 Q There is the possibility in the designs to have a
15 raised face flange. That takes a gasket, right?

16 A Yes, that's -- yes. And then the last one is a
17 ring-type joint flange, and that's not a gasket at all.
18 That is actually a solid metal ring which is quite
19 common for high pressure.

20 Q And there was some testimony about Teflon, I
21 think. There is asbestos-impregnated Teflon and
22 asbestos-impregnated graphite and asbestos-impregnated,
23 semi-metallic packing products?

24 A Yes. We talked about that yesterday along with
25 solid TFE V-ring packing.

ROA_01344

Appendix_01365

1 Q So the only thing that separates the packing
2 that's Teflon, asbestos Teflon, asbestos graphite,
3 asbestos semi-metallic, is the other ingredient, not
4 the asbestos?

5 A I'm not sure I follow you.

6 Q So if you turn to page -- see what page this is --
7 26 of Fisher's control valve handbook. Let me know
8 when you're there.

9 A I have that here.

10 Q Yeah. You have it there. It's the same one. Do
11 you have it? Do you have page 26?

12 A Yes.

13 Q Okay. So in terms of this valve packing, there's
14 the Teflon-impregnated asbestos right there, right?

15 A Yes.

16 Q There's the graphited asbestos, right?

17 A Yes. I think this was reviewed yesterday, yes.

18 Q And there's the semi-metallic asbestos, right?

19 A Yeah. And, in addition, obviously, the one up
20 above, Teflon, we talked about that earlier, and that's
21 probably the most common because that's the
22 slipperiest.

23 Q I'm going to get to that in a second.

24 As to these three, Teflon-impregnated asbestos,
25 graphited-asbestos packing, and semi-metallic asbestos

1 packing, the only difference is the other ingredient,
2 Teflon, graphite, and semi-metallic? All of them have
3 asbestos, about 80 to 85 percent, according to the
4 material specs, right?

5 A I think that's a misrepresentation, saying those
6 are the only differences. There could be a difference,
7 in the way the parts are made as well.

8 Q Fair. But as to how it's referred to, there's
9 Teflon-impregnated, graphited asbestos, semi-metallic,
10 and then there it says that, too, is asbestos. Can we
11 at least agree on that; that it's the nonasbestos thing
12 that ends up in the name?

13 A I'm going to let this document speak for itself.
14 There is some description of the way the parts are
15 braided and that sort of thing, and it's a little more
16 complicated than the way you're describing it. In the
17 title, I get what you're saying, and I don't disagree.

18 Q So it sounds like to me it's like when you go to a
19 bakery and they have the same kind of cookies; some
20 have M&Ms; some have chocolate chips and butterscotch.
21 So the thing that distinguishes them is the other
22 ingredient because they're all cookies. See what I'm
23 saying?

24 A I see what you're saying, but I don't think that's
25 a good analogy here in this case.

ROA_01346

Appendix_01367

1 Q The Teflon V-ring, I told you we'd come back to
2 it?

3 A Yes.

4 Q I think, as I understood your testimony, what you
5 were seeking to say, in part, is this product has been
6 available since at least the 1960s, correct?

7 A Uh-huh.

8 Q And '50s, was it available in the '50s?

9 A I'm trying to recall here, and as I sit right
10 here, I believe it was in the '50s when it was first
11 developed. Certainly in the '60s.

12 Q And Fisher had this product available?

13 A Yes.

14 Q And I think what you're suggesting is it could
15 have been used instead of asbestos, correct?

16 A The customer could have ordered that as an option
17 clear back into the '60s, yes.

18 Q So I think, sir, we agree that the Fisher Control
19 valve company at all times had available to sell to its
20 customers packing and gaskets that were
21 nonasbestos-containing, right?

22 A Yes.

23 Q You also mentioned something about Duke being the
24 specifier of the valves, designer and all that, that
25 were used at Duke?

ROA_01347

Appendix_01368

- 1 A Not the designer, but the specifier.
- 2 Q Fisher was the designer?
- 3 A Yes.
- 4 Q Fisher was the manufacturer?
- 5 A Yes.
- 6 Q Fisher sold it to Duke?
- 7 A Yes.
- 8 Q Fisher got paid by Duke?
- 9 A Of course.
- 10 Q Duke was the customer?
- 11 A Yes.
- 12 Q Duke wasn't in the valve business?
- 13 A Correct.
- 14 Q Fisher's not in the electric business?
- 15 A No.
- 16 Q You also mentioned about the blue crocidolite,
- 17 that you have not ever seen it used, shipped, or seen
- 18 it at Duke, right?
- 19 A Correct.
- 20 Q You have never been to Duke Oconee plant, have
- 21 you?
- 22 A No.
- 23 Q You have never been to Duke Catawba plant, have
- 24 you?
- 25 A No.

ROA_01348

Appendix_01369

1 Q And you have never been to Duke McGuire plant?

2 A That's incorrect.

3 Q You went there once?

4 A Yes.

5 Q For what purpose?

6 A Just to -- I had never been in a power plant
7 before, so it was fun to see what's involved with a
8 power plant. In the early part of my career, I was
9 responsible for quality assurance and with particular
10 emphasis on nuclear. It's a nuclear power plant, and I
11 was able to get a tour. General interest, in other
12 words.

13 Q And when you went, just to be clear, you were a
14 Fisher employee?

15 A Yes.

16 Q Okay.

17 A Had to be in my 41-year career, yes.

18 Q You weren't there for any maintenance work to see
19 whether or not they were using blue crocidolite
20 asbestos gaskets or packing, correct?

21 A No. It was a general tour.

22 Q You've never seen it shipped. You didn't work at
23 the shipping/loading dock, did you?

24 A At Fisher?

25 Q Yes.

ROA_01349

Appendix_01370

1 A No, but I had responsibility for final inspection.

2 Q The question was whether you ever have seen it
3 shipped. It was a very precise question. So my
4 question was, you were not standing at the loading dock
5 at Fisher in Marshalltown watching every product that
6 got shipped and put on a truck, were you?

7 A Obviously, no.

8 Q So whether you have seen it shipped or not is
9 somewhat irrelevant, don't you think?

10 A I don't think it would be irrelevant. I would
11 have knowledge to the types of products that go in our
12 products.

13 Q The question was whether you have seen it shipped
14 with your own eyes, right?

15 A Yeah, and I never have seen it shipped.

16 Q You were followed up with a question about the
17 libraries. The question is not what type of libraries
18 you used. In a sworn interrogatory where you were the
19 person that Fisher chose to sign off for it, because
20 there's no Mr. and Mrs. Fisher in a corporate
21 structure, the company was asked, "Did you have any
22 libraries prior to 1973 that dealt with the subjects of
23 asbestos, industrial hygiene, medicine, safety, and
24 occupational disease," and the company said, no, we did
25 not.

ROA_01350

Appendix_01371

1 A I don't think that's what that says, Counselor.

2 Q Okay. It says, "Defendant has maintained a
3 library at its facilities in Iowa since 1979. However,
4 the books, articles, periodicals, journals and/or
5 reference materials relate to various business and
6 engineering subjects as opposed to subjects of
7 asbestos, industrial hygiene, medicine, safety and/or
8 occupational diseases." Did I read that correctly?

9 A Yes, you did, and that is precisely correct.

10 Q As it relates to this relationship between Duke
11 and Fisher -- are you following me?

12 A As what relates?

13 Q Duke as the customer, Fisher as the seller of a
14 product, a valve that Duke purchased.

15 A Yes.

16 Q The -- certainly, if we talk about the internal
17 components to a valve, it was Fisher and not Duke that
18 brought the carcinogens within this valve to the Duke
19 sites, right?

20 MR. BOUCH: Objection.

21 THE COURT: What's the objection?

22 MR. BOUCH: Carcinogen. It's argumentative.

23 THE COURT: What's that?

24 MR. BOUCH: Carcinogen. It's beyond the
25 qualifications of this witness. It's a 403 objection.

ROA_01351

Appendix_01372

1 THE COURT: I'll overrule it. If he can answer,
2 he can tell us, but everybody has been using the term
3 "carcinogen." I think if he knows, he'll tell us.

4 THE WITNESS: I really don't know. The word
5 "carcinogen," anecdotally, it might have something to
6 do with cancer-producing, but I don't relate it to what
7 counsel is --

8 THE COURT: All right.

9 BY MS. FARRISE:

10 Q And just to be clear, can we agree that it sounds
11 like it's the position of Fisher Control Valve Company
12 that since it had nonasbestos products like Teflon
13 available, according to you, since the '60s, there was
14 absolutely no reason that these men had to be exposed
15 to asbestos in Fisher valves because you could have
16 sold something else, right?

17 A Something else could have been selected, but
18 that's kind of a, perhaps, a legal argument.

19 MS. FARRISE: Thank you.

20 THE COURT: Very good.

21 All right. Mr. Bouch.

22 RECROSS-EXAMINATION

23 BY MR. BOUCH:

24 Q Just very briefly, Mr. Dumistra. Would you pick
25 up the '65 book that Ms. Farrise asked you about?

ROA_01352

Appendix_01373

1 A Sure.

2 Q And I believe she asked you about page 26, that we
3 were talking about different packings and whatnot?

4 A Yes.

5 Q On the very next page, at the top, what does it
6 say?

7 A On page?

8 Q 27.

9 A The very next page says, "Valve seal lubricant."
10 You want me to read that first paragraph or sentence?

11 Q Sure.

12 A "Teflon V-ring packing does not require a valve
13 seal lubricant. It is recommended, however, that each
14 piece of V-ring packing be sprayed with a suitable
15 silicone oil or coated with silicone grease on
16 assembly. The use of a valve seal lubricant with
17 Teflon-impregnated asbestos packing is optional but
18 recommended. The remaining common packings, graphited
19 asbestos, semi-metallic should always have a valve seal
20 lubricant added to the packing box."

21 MR. BOUCH: Thank you. That's all the questions.

22 FURTHER REDIRECT EXAMINATION

23 BY MS. FARRISE:

24 Q It says the lubricant is optional, not the
25 asbestos, right?

ROA_01353

Appendix_01374

1 MR. BOUCH: I didn't know we had re-redirect, Your
2 Honor.

3 THE COURT: Mr. Dumistra, answer that question.

4 THE WITNESS: Well, it says the word "lubricant"
5 in there.

6 BY MS. FARRISE:

7 Q And the thing that's optional is the lubricant,
8 not the asbestos?

9 A This is an indication, as we talked earlier, with
10 respect to the slippery nature of Teflon.

11 Q The thing that's optional, as you just read that
12 particular passage, is the lubricant?

13 A Yeah. I mean, that's the way it reads.

14 Q Thanks so much.

15 THE COURT: Very good.

16 MR. BOUCH: Thank you, Your Honor.

17 THE COURT: Is that all that we need from
18 Mr. Dumistra?

19 Mr. Dumistra, thanks so much, sir.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Now, where we stand is, Ms. Farrise,
22 is that your final witness for the day?

23 MS. FARRISE: Well, based on what we talked about,
24 there's someone here, but you said to the jury that
25 when Mr. Dumistra was done, you're going to have a

ROA_01354

Appendix_01375

1 short day, which is acceptable.

2 THE COURT: Let me get y'all over here.

3 Y'all be at ease for a second.

4 (WHEREUPON, a bench conference was held off the
5 record in the presence of the jury, but out of the
6 hearing of the jury.)

7 THE COURT: I don't break promises if I don't have
8 to, and I don't have to.

9 Ladies and gentlemen of the jury, you are
10 dismissed for the week. Please return Monday. We'll
11 start at the usual time of 9:30. So if you would be at
12 the assembly room about 9:15, that would be great.

13 Have a wonderful weekend. I am, again, and I had
14 a number of judges calling me. Asbestos trials always
15 attract a little bit of attention because they're a
16 little more lengthy than other trials, and I have told
17 them the thing I am the most impressed with, and there
18 are a lot of good lawyers here and a lot of very
19 interesting information, but I am so impressed with
20 you.

21 Thank you so much for staying to this task. This
22 is not an easy job. This is public service where you
23 will never be reimbursed what your hours are worth, but
24 thank you so much for making this system work. God
25 bless, and have a good evening.

ROA_01355

Appendix_01376

1 (WHEREUPON, the jury exited open court at
2 3:40 p.m.)
3 (WHEREUPON, proceedings adjourned at 3:40 p.m.)
4 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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ROA_01356

Appendix_01377

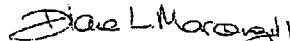
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of a
portion of the proceedings had and evidence introduced
in the trial of the captioned case, relative to appeal,
in the Circuit Court for Spartanburg County, South
Carolina, on the 28th day of July 2017.

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I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

November 4, 2017



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

ROA_01357

Appendix_01378

1	State of South Carolina	
2	County of Spartanburg	In the Court of Common Pleas
3		
4	Beverly Dale Jolly and	) 2016-CP-42-1593 July 31, 2017 Volume 6 of 9 Pages 1140 - 1367 Transcript of Record
5	Brenda Rice Jolly,	
6	Plaintiffs,	
7	-vs-	
8	Crosby Valve, LLC and	
9	Fisher Controls	
10	International, LLC,	
11	Defendants.	
12		
13		

13 B E F O R E:

14 The Honorable Jean Hoefer Toal, Judge;
15 and a jury.

16 A P P E A R A N C E S:

17 Theile McVey, Esquire
18 Kassel McVey
19 Jonathan M. Holder, Esquire
20 Dean Omar Branham
21 Simona A. Farrise, Esquire
22 Farrise Law Firm
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For the Plaintiffs:

Marked	Description	I.D.	Admitted
1008.10665	Letter from Paul Adams dated 7/9/80 to University Lab		1351
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945.3219	Operation/maintenance instructions Crosby Valve		1196
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1008.10670	Letter from Paul Adams dated 7/11/90 to University Lab		1349
6364.05	Photo - Crosby valve		1160
6364.06	Spreadsheet of Crosby valves	1166	1168
6364.07	Letter from James Marshall to Mill-Power Supply dated 4/3/80		1347

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Jolly v. Crosby Valve, LLC & Fisher Controls, LLC 2016-CP-42-1593

1 6395 Binder - Catawba Crosby 1353
2 valves (Duke-Crosby
3 invoices)

4 For the Defendants:

5 Marked	Description	I.D.	Admitted
6 72	Photo - blue valve		1260.

ROA_01360

Appendix_01381

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:28 a.m.)

4 (WHEREUPON, the jury entered open court at
5 9:28 a.m.)

6 THE COURT: Good morning, ladies and gentlemen of
7 the jury. I am delighted to see you looking so chipper
8 this morning. I don't know about your weekend, but
9 mine was a wonderful respite from court work. I had
10 the grandchildren and cooking for husband and babies,
11 so a good thing.

12 Please be seated. As you know, we're still in the
13 plaintiffs' case, and this morning we will commence
14 with live testimony from a representative, corporate
15 representative, for Crosby Valve, so plaintiffs will be
16 offering that witness this morning.

17 Ms. Farrise, good morning.

18 MS. FARRISE: Good morning, Your Honor.

19 Good morning, ladies and gentlemen. Happy Monday.

20 Plaintiff would call as their next witness the
21 Crosby Valve Company through its designated
22 representative, who I understand is a Mr. Robert
23 Martin.

24 THE COURT: Very good.

25 Mr. Martin, you may come around. Madam Clerk will

ROA_01361

Appendix_01382

1 give you the oath.

2 ROBERT JAMES MARTIN,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: State your full name for the record,

5 Mr. Martin.

6 THE WITNESS: My name is Robert James Martin.

7 THE COURT: And where do you reside?

8 THE WITNESS: I reside in North Carolina.

9 Southport, North Carolina.

10 THE COURT: All right, Ms. Farrise.

11 MS. FARRISE: All right.

12 DIRECT EXAMINATION

13 BY MS. FARRISE:

14 Q Good morning, sir.

15 A Good morning.

16 Q We can agree that it's your understanding and mine
17 that the defendant in this case, Crosby Valve, has
18 chosen you or designated you to speak on its behalf,
19 correct?

20 A That's correct.

21 Q And you have been the individual that the lawyers
22 for Crosby Valve have chosen to speak for it on
23 numerous occasions in lawsuits involving its asbestos
24 business, correct?

25 A That's correct.

ROA_01362

Appendix_01383

1 Q Earlier in the trial, last week, the jury had an
2 opportunity, what I'll call it, to hear the written
3 responses of the Crosby Valve Company read to it. It
4 took a while.

5 A I bet.

6 Q In this particular case, the interrogatories and
7 then the responses of Crosby. You know what I'm
8 talking about, right?

9 A I believe so, yes.

10 Q And you are the person who actually verified that
11 the information that was being provided in sworn
12 written testimony by Crosby was correct, right?

13 A Correct.

14 Q All right. Now, I'd like to just talk a little
15 bit about you quickly. You don't work for Crosby Valve
16 right now, do you?

17 A That's correct. I retired ten years ago.

18 Q And on this -- Crosby Valve Company continues to
19 exist today?

20 A It does.

21 Q It is a corporate sister or brother, sibling of
22 some sort, to the Fisher Valve Company, right?

23 MR. REID: Your Honor, just object as vague,
24 indefinite, and irrelevant.

25 THE COURT: Overruled.

ROA_01363

Appendix_01384

1 THE WITNESS: It was -- Crosby was recently
2 purchased by Emerson.

3 BY MS. FARRISE:

4 Q Okay. So in the Emerson family, there's Crosby,
5 and there's Fisher, right?

6 A I don't know all the members of the Emerson
7 family.

8 Q You don't know that Fisher is a corporate brother,
9 sibling, what have you, of Crosby valves?

10 A I know that Emerson purchased Crosby just
11 recently, earlier in this year, and I know that Fisher
12 is also an Emerson company, yes.

13 Q So they are corporate siblings?

14 A Okay.

15 Q I guess you don't dispute that; can we agree?

16 A I don't dispute that. They're both owned by
17 Emerson.

18 Q And we clarified, but the other gentleman. You
19 are here, Mr. Martin, to speak for Crosby in its
20 entirety, not based on anything you, Robert Martin,
21 personally did or did not do; they designated you for
22 this case to speak for Crosby, correct?

23 A That's correct.

24 Q And I think you mentioned you have been retired
25 for ten years, right?

ROA_01364

Appendix_01385

1 A Correct.

2 Q So, since 2007, you've been sort of called up into
3 service, if you will, to help the lawyers with
4 lawsuits?

5 A I've been called up to answer questions, yes.

6 Q Right. You've not been called up by the
7 engineering department to solve a design engineering
8 problem?

9 A No.

10 Q Crosby has not called you into service to help
11 with its marketing efforts, right?

12 A No.

13 Q And I take it, sir, that this retirement job that
14 you have working with Crosby's lawyers, they pay you
15 for that?

16 A That's correct.

17 Q What's your hourly rate?

18 A \$300 an hour.

19 Q So you were here on Friday, right?

20 A Yes.

21 Q And for whatever time it took to drive from
22 Southport, North Carolina and then back for the
23 weekends and all of that, you are being paid for your
24 time at the rate of \$300 an hour, correct?

25 A That's correct.

ROA_01365

Appendix_01386

1 MR. REID: Your Honor, I object. Mr. Martin was
2 subpoenaed, so I think this line of questioning is
3 irrelevant.

4 THE COURT: I didn't understand. Mr. Martin was
5 what?

6 MR. REID: Subpoenaed. We presented him pursuant
7 to the subpoena, and I think this is irrelevant.

8 THE COURT: Overruled.

9 BY MS. FARRISE:

10 Q And, sir, when you review the written sworn
11 answers of Crosby in interrogatories and some of the
12 other activities, you also are paid for your time by
13 the lawyers representing Crosby at \$300 an hour?

14 A That's correct.

15 Q Now, before you retired, your job that you had
16 within Crosby included being a salesman, right?

17 A When I retired, I was in marketing and sales, yes.

18 Q So some major primary function of your job when
19 you did actually work for Crosby prior to ten years ago
20 was to be a salesman for Crosby, right?

21 A Along with being an engineer, a salesman, yes.

22 Q I understand some part of your duty at some point
23 involved engineering?

24 A It did.

25 Q But some part of your duty involved being the

ROA_01366

Appendix_01387

1 Crosby salesman?

2 A Yes, it did.

3 Q Okay. And I'm guessing that the reason that they
4 took someone like you, who had an engineering
5 background and an engineering understanding of the
6 Crosby products, to then be a salesman is so that when
7 you are out in the world, talking to industrial
8 customers, you could talk to them with sufficient
9 technical specificity about the Crosby valves and their
10 needs, correct?

11 A That's correct.

12 Q Now, I want to talk a little bit about the primary
13 business of the company which, in this case -- this is
14 my Florida. Don't laugh. Florida down here. This
15 company was birthed in 1880?

16 A 1874.

17 Q 1874?

18 A Uh-huh.

19 Q In Wrentham, Massachusetts?

20 A It actually started in Boston but went to Wrentham
21 in 1949.

22 Q Thank you.

23 A You're welcome.

24 Q First it was in Boston, then it moved to Wrentham,
25 which is kind of in the same area, both in

ROA_01367

Appendix_01388

1 Massachusetts, right?

2 A Correct.

3 Q And the Crosby Valve Company had a factory where
4 valves were made in that area?

5 A In Wrentham, Massachusetts, yes.

6 Q Crosby Valve Company employed factory workers --

7 A Correct.

8 Q -- to work in that factory, right?

9 A Yes.

10 Q Has that been true since 1874 or only
11 1940-whatever, when it moved to Wrentham?

12 A It employed --

13 Q Has the factory always been in Wrentham, I'm
14 sorry?

15 A Since 1949, yes.

16 Q And before that, the factory was in Boston?

17 A Yes.

18 Q I see. And the factory at its height there
19 employed something like 650 people?

20 A That may be a little high, but I -- it could be
21 650.

22 Q Okay. 600 is not an unreasonable estimate of the
23 work force of Crosby?

24 A At its peak, yes.

25 Q Huh?

ROA_01368

Appendix_01389

1 A At its peak, yes.

2 Q Have you followed what has been happening with the
3 Crosby factory up in Wrentham, Massachusetts?

4 A Excuse me?

5 Q Have you followed what has been happening with the
6 building that was the Crosby factory up in Wrentham,
7 Massachusetts?

8 A Yes, I have.

9 Q Okay. So you know that in 2011 the Crosby Valve
10 Company building was closed and there was a concern as
11 to whether it could be demolished because of the
12 asbestos hazard there, correct?

13 A No, I'm not aware of that.

14 MR. REID: Object as vague, irrelevant, and a
15 waste of time.

16 THE COURT: Overruled.

17 BY MS. FARRISE:

18 Q Sir, let me hand you what we've marked as
19 Plaintiffs' Exhibit 945. It's a newspaper article from
20 *The Wrentham Times* that discusses this building in
21 Wrentham and the asbestos problem that it left behind.
22 Take a moment --

23 THE COURT: What is the date of that article?
24 Don't put it up.

25 MS. FARRISE: I was going to hand a copy to you.

ROA_01369

Appendix_01390

1 THE COURT: Thank you.

2 MS. FARRISE: You're welcome.

3 THE COURT: Ask him a question, Ms. Farrise.

4 MS. FARRISE: He's reading it, Your Honor, and
5 then I'm going to have a question.

6 THE WITNESS: Yes.

7 BY MS. FARRISE:

8 Q You have had a chance to read it?

9 A Yes.

10 Q Okay. Does that refresh your recollection, sir,
11 that the Crosby Valve factory building in Wrentham,
12 which was closed about nearly a decade ago, had an
13 issue as it relates to trying to demolish it because of
14 the significant asbestos contamination of that factory?

15 A That's what it says in this article, yes.

16 MS. FARRISE: Your Honor, I'd like permission to
17 display it, not offer it into evidence.

18 THE COURT: For demonstrative purposes, as a piece
19 of demonstrative evidence.

20 MR. REID: Just for the record, I object as I
21 don't think it's being used for impeachment.

22 THE COURT: I believe it is being used for
23 impeachment. He initially said that he wasn't aware of
24 this issue, and now she is using this article to
25 impeach him.

ROA_01370

Appendix_01391

1 MR. REID: Also object on the basis it's
2 irrelevant.

3 THE COURT: All right. Overruled.

4 BY MS. FARRISE:

5 Q So here we are, *The Wrentham Times*. And this is
6 the building -- let's see if I can blow it up -- where
7 there's 600 or so people who manufactured these valves
8 for Crosby starting in the 1949 time period, correct?

9 A Is that a question?

10 Q Yes. This is the building?

11 A That is the building, yes.

12 Q Do you recognize it as the building?

13 A Yes, I do.

14 Q Okay. Did you work at that building?

15 A I did.

16 Q How long did you work at that building?

17 A I worked there for 34 years.

18 Q What was your job when you worked there?

19 A My job consisted in the early days of engineering
20 then marketing and sales.

21 Q Okay. So this is where all the action occurred,
22 was really what I was hoping we could get to. And then
23 we talked about -- I don't guess it's a big deal now --
24 but close to 650 people worked there. And this woman,
25 as you read, is sort of commiserating the fact that the

ROA_01371

Appendix_01392

1 building -- that Crosby Valve was going to move, and,
2 therefore, the local businesses don't have all those
3 people, but that wasn't what I wanted to focus on. The
4 building --

5 MR. REID: Your Honor, move to strike the
6 commentary.

7 THE COURT: I'll strike that.

8 Ms. Farrise, don't make any comment about it.
9 Just ask him a question.

10 MS. FARRISE: Okay.

11 Q Sir, as reported in *The Wrentham Times*, the
12 building that we looked at does contain asbestos, and a
13 firm had been hired to monitor the air quality
14 throughout the area, and they were talking, of course,
15 about trying to demolish it, correct?

16 A Yes.

17 Q And they say that this asbestos problem is being
18 supervised by local and state government agencies in
19 addition to the abatement firm that was hired to try
20 and abate some of the asbestos, correct?

21 A That's what it says, yes.

22 Q Board of health, police, fire being supervised by
23 state agencies. Somehow, trying to remove the asbestos
24 from the Crosby factory causes this big concern of
25 keeping the water to the building operational because

ROA_01372

Appendix_01393

1 during the demolition, they want to be able to spray
2 water in case there's any dust release as part of the
3 demolition, right?

4 A That's what it looks like, yes.

5 Q So the removal of asbestos from this factory --
6 strike that.

7 Sir, can we agree that asbestos was used as part
8 of the manufacture of Crosby valves at the Wrentham,
9 Mass facility?

10 A No, we cannot.

11 Q I'm just going to put question mark then. At that
12 factory where you worked for 34 years, products were
13 developed?

14 A Yes.

15 Q And designed?

16 A Yes.

17 Q There was a laboratory that provided laboratory
18 and research services to support the design of product
19 development?

20 A We had no laboratories, no.

21 Q Okay. Sir, can we agree that Crosby never took
22 any air sampling at that factory to determine whether
23 or not its employees were being exposed to asbestos?

24 A Not that I'm aware of.

25 Q And we can agree that, in addition to not air

ROA_01373

Appendix_01394

1 sampling at its factory, Crosby never took an air
2 sample in the field where its valves were being
3 installed and maintained to determine whether or not
4 people were being exposed to asbestos as part of the
5 maintenance and work in the field, correct?
6 A No, we did not. I'm not aware of any requirement
7 to do that.
8 Q Okay. And even though we looked at the factory
9 here in Wrentham, let's take by 1960, Crosby, as a
10 company, had grown and had facilities in America as
11 well as in Europe and other locations, correct?
12 A That's correct.
13 Q By 1960, the Crosby Valve Company had grown to
14 include facilities in Paris, France?
15 A I believe it was a sales office.
16 Q London, England?
17 A Yes.
18 Q Sales offices in all the major cities -- Los
19 Angeles, New York, New Orleans, wherever, correct?
20 A A lot of major cities, yes.
21 Q I just want to talk a little bit about the
22 customer supply route, if we might, for a moment. In
23 this case, as you know, we're talking about Duke Power
24 power plants?
25 A Correct.

ROA_01374

Appendix_01395

1 Q And the valves that Crosby made in Wrentham, Mass
2 were sold to Duke and shipped to Duke?

3 A Some of those valves, yes.

4 Q Yeah. Not every valve they made. They had
5 customers other than Duke?

6 A Correct.

7 Q Right. They sold to other big power plants all
8 throughout the country?

9 A Yes.

10 Q They sold to power plants throughout the world?

11 A Yes.

12 Q They sold to oil and gas refineries?

13 A Yes.

14 Q Industrial sites, hospitals where a valve was
15 needed?

16 A Not too many industrial sites. Mostly big
17 projects.

18 Q Mostly big projects?

19 A Yes.

20 Q Okay. Anyway, so some of the valves come directly
21 from Wrentham. Now, in addition, Crosby had
22 relationships with other companies that sold big
23 equipment to big power plants like Duke, right?

24 A For instance?

25 Q Right. For instance, boiler manufacturers?

ROA_01375

Appendix_01396

1 A Yes.

2 Q Combustion engineering?

3 A Yes.

4 Q General Electric, who made turbines, those kind of
5 big Westinghouse companies that have something to do
6 with the making of a power plant?

7 A Yes.

8 Q And so the valve would either get there directly,
9 as we talked about, straight from the factory, or they
10 might get an order. Let's take General Electric, which
11 is really not over here, but Crosby valves might be
12 specified to be used on a General Electric turbine at
13 Duke. Are you following me?

14 A I am.

15 Q And, therefore, the sale of the Crosby valve in
16 that situation would go through GE, and GE might
17 furnish the valve to the Duke site, right?

18 A Yes.

19 Q So when the valve, if it needed any service or
20 repair, what have you, however, the customer and the
21 user, which is Duke, could call up Crosby and get these
22 spare parts, right?

23 A Yes.

24 Q Okay. And it didn't matter in terms of getting
25 the spare parts or the valve having the Crosby name or

ROA_01376

Appendix_01397

1 anything else whether it came indirectly through like a
2 GE who furnished the valve to Duke or directly from the
3 factory?

4 A State that again, please.

5 Q Let me ask a preliminary question. Crosby valves
6 had the name Crosby on the body?

7 A They did.

8 Q And it had the name Crosby on the body of the
9 valve whether it came directly from the factory or
10 whether it was furnished indirectly as part of a larger
11 order that one of these other equipment makers may have
12 provided?

13 A Yes.

14 Q Okay. And, obviously -- let's see if I have a
15 picture. Hang on.

16 MS. FARRISE: I have got a lot of stuff in here,
17 Your Honor. Doesn't mean it's going to take a lot of
18 time. Just got a lot of paper in here. Hang on.

19 Q Sir, let me show you what I'm marking as
20 Plaintiffs' Exhibit -- what am I marking it as? I'm
21 finding that out. Let me hand it up to you, see if you
22 recognize that.

23 MR. REID: Do you have a copy?

24 MS. FARRISE: Yes, I do.

25 Do you have an extra copy?

ROA_01377

Appendix_01398

1 I'd like to identify for the record 6364.05 which
2 is a photograph.

3 THE COURT: Say it again, 664.05?

4 MS. FARRISE: 6364.05.

5 THE COURT: All right.

6 MS. FARRISE: We don't have paper, Your Honor, but
7 we showed it to counsel electronically.

8 Q Sir, do you recognize 6364.05?

9 A I do.

10 MS. FARRISE: Your Honor, I would --

11 Q Do you recognize it as a Crosby VALVE?

12 A Yes. It says Crosby on the body.

13 MS. FARRISE: I'd like to move it into evidence.

14 THE COURT: It's admitted. Any objection?

15 MR. REID: No objection.

16 (WHEREUPON, Plaintiffs' Exhibit Number 6364.05 was
17 admitted into evidence.)

18 BY MS. FARRISE:

19 Q So maybe not the best picture, but we'll see.

20 This is a pretty typical Crosby valve with Crosby
21 stamped on the body of the metal, correct?

22 A It's not a typical Crosby valve. This is a
23 pilot-operated Crosby valve, and we did not make very
24 many of those, but it's a Crosby Valve.

25 Q Okay. This thing over here, what's that?

ROA_01378

Appendix_01399

1 A I assume you're referring to the outlet flange?

2 Q Yes, the outlet flange.

3 A Yeah.

4 Q The outlet flange, that's something that connects
5 to the piping system, correct?

6 A That's correct.

7 Q And the outlet flange was a portion of the valve
8 which was machined or manufactured at the Wrentham,
9 Mass plant, correct?

10 A That's correct.

11 Q And you called it an outlet valve because
12 something happens with valves, not necessarily -- not
13 limited to this one in particular, where -- strike
14 that.

15 Valves start and stop the flow of something,
16 generally speaking?

17 A These valves do not. They do not stop the flow.
18 These valves are safety valves.

19 Q This valve, safety valves, for instance, when the
20 pressure builds up -- we have talked with the jury
21 about it -- like a tea kettle, it pops off?

22 A That's what this valve does.

23 Q So in that case, pressure is accumulating in the
24 valve, and then it pops off. Something goes in and
25 something goes out, generally speaking about a valve,

ROA_01379

Appendix_01400

1 not this particular valve?

2 A Are you talking about a Crosby valve, or are you
3 talking about valves in general?

4 Q Talking about a Crosby valve.

5 A No. Our valves self-contained, and they only flow
6 when there is an emergency. When the vessel that's
7 reached design pressure, the valve opens and flows.

8 Q Well, you say they're self-contained, but this
9 thing there has to connect to something?

10 A I'm not sure what you're referring to there.

11 Q The flange.

12 A The outlet flange?

13 Q Yes.

14 A Yes, it connects to the downstream piping, yes.

15 Q Right. So it's not self-contained in the sense of
16 like we have today in the modern world. Maybe it's
17 wireless and it doesn't actually need to be connected
18 to the piping system. It works, and in the typical and
19 normal operation, it works in the context of being
20 connected to a piping system; can we agree on that?

21 MR. REID: Objection to the form of the question.

22 THE COURT: She can lead. This is -- she's
23 permitted to use cross-examination techniques with
24 defendant's corporate representative.

25 MR. REID: More specifically, Your Honor, my

ROA_01380

Appendix_01401

1 objection is it's an unintelligible question.

2 THE COURT: Please be specific about your
3 questions, Ms. Farrise. As I understand this question,
4 it relates to the flow of material through this outlet
5 valve, right, this outlet flange; is that what you're
6 asking?

7 MS. FARRISE: I'll withdraw, Your Honor.

8 THE COURT: All right.

9 BY MS. FARRISE:

10 Q Sir, if we had this valve here or set it on the
11 floor right here, or maybe we had a table, it wouldn't
12 function in terms of being a safety valve to detect
13 whether a piping system was becoming overpressurized,
14 correct?

15 A That's correct.

16 Q It would need to be connected to something?

17 A That's correct.

18 Q And for all of the valves that Crosby made and
19 sold, they don't function as an isolated piece of
20 equipment; they function when they are connected to
21 something?

22 A That's correct.

23 Q And the something is a piping system in some
24 setting, Duke Power, some other power plant, correct?

25 A It could be a boiler; it could be a vessel; it

ROA_01381

Appendix_01402

1 could be a pipe, anything that would overpressure, not
2 necessarily just a pipe.

3 Q And do valves connect directly to boilers without
4 a pipe --

5 A Sorry.

6 Q -- without a pipe to connect it?

7 A Yes.

8 Q And when valves made and sold by Crosby connect to
9 a boiler, that flange end that we just saw may connect
10 to a flange face that's directly on the boiler?

11 A Most times on the boiler, they're welded to the
12 boiler.

13 Q Okay.

14 Sir, moving off of what a valve is, and you talked
15 about the pressure, the risk there is if the valve is
16 not functioning correctly, the pressure builds up; it
17 can cause catastrophic results?

18 A That's correct.

19 Q So it can blow up, or the system it's attached to
20 can blow up?

21 A That's correct.

22 Q So it's a pretty important piece of equipment even
23 if it's not in a nuclear power facility?

24 A That's true.

25 Q And, sir, can we agree that Crosby manufactured

ROA_01382

Appendix_01403

1 valves that incorporated component parts that contained
2 asbestos?

3 A Some of our valves over a period of years used
4 gasket that did contain asbestos, yes.

5 Q And are those internal gaskets, sir?

6 A Those are internal gaskets.

7 Q And were they installed into the valve at the
8 Wrentham factory?

9 A That's correct.

10 Q And can we agree that the Crosby valves' internal
11 parts were installed per a design, valve design, for a
12 product created by Crosby personnel including
13 engineers?

14 A Yes.

15 Q Right. Duke people, Duke engineers, didn't run up
16 to the Wrentham factory and say, "No, no. Before you
17 close it, throw some asbestos in there," right?

18 A No, not that I'm aware of.

19 Q And the list of types of valves which the jury had
20 the pleasure of hearing about that had
21 asbestos-containing components is quite extensive,
22 correct?

23 A I'm not sure what you mean by extensive.

24 Q Okay. Let me hand you a chart that we've made,
25 and I'm going to mark it as Plaintiffs'.

ROA_01383

Appendix_01404

1 Exhibit 6364.06.

2 (WHEREUPON, Plaintiffs' Exhibit Number 6364.06 was
3 marked for identification.)

4 MR. REID: Is there a copy for defendants, Your
5 Honor?

6 MS. FARRISE: Yes, I have one.

7 Q Take a look at it and familiarize yourself with
8 it. And while you're doing that, sir, I'm going to ask
9 you some questions about it in a moment. I am putting
10 down what I think is 6357, but I could be wrong about
11 the number -- don't hold me to it -- which is the
12 interrogatory responses, the sworn responses of Crosby
13 Valve Company that the jury had the pleasure of having
14 read out loud to them with various subquestions last
15 week. And you're familiar with this document; you are
16 the one who verified it, correct?

17 A That looks familiar, yes.

18 Q Okay.

19 MS. FARRISE: So what we have done to try to bring
20 a little organization, Your Honor, to the information
21 was to take it and put it in chart form.

22 So, for instance, where Crosby JMB valve is asked
23 a certain question in sub (a), which is "What did you
24 make," and then in sub (b), number one was, you know,
25 "When did you first make it," and then sub (c) was,

ROA_01384

Appendix_01405

1 "When did you stop making it," for the same valve, we
2 sought to put that information, compile it into a
3 chart.

4 Q And is that what this exhibit appears to be to
5 you, Mr. Martin?

6 A It is what it appears to be. I would have to go
7 through it in great detail to say if it's accurate, but
8 yes, that's what it appears to be.

9 Q Okay. There was a lot of word processing that
10 went into that.

11 A I would imagine.

12 MS. FARRISE: Your Honor, may I have an
13 opportunity to display the chart, then I can ask him
14 about it?

15 THE COURT: What is the exhibit number?

16 MS. FARRISE: It's 6364.06.

17 THE COURT: All right. Any objection?

18 MR. REID: Yes, Your Honor. It's not -- he's not
19 had a chance to verify what's on that. From that
20 standpoint, I don't think there is a foundation.

21 THE COURT: She says the foundation is the
22 extensive reading of the interrogatory from last week,
23 and that this, she represents, is a summary of that
24 interrogatory in chart form.

25 MS. FARRISE: And the witness has agreed that it

ROA_01385

Appendix_01406

1 appears to be that.

2 THE COURT: And he agrees it appears to be that,
3 though he, like you, has not verified everything, so
4 we're relying on her representation as an attorney that
5 that's what they did.

6 MR. REID: I further object I don't think this
7 complies with Rule 1006, nor is there any tie between
8 what's on this chart and what may be at Duke.

9 THE COURT: All right. I don't think -- this is
10 your answers to interrogatories and her attempt to
11 chart them. I don't think we're into anything about
12 which ones were at Duke yet, so I will overrule that
13 objection. This is simply the interrogatories we've
14 already read, as I understand it, put up in chart form?

15 MS. FARRISE: Yes.

16 THE COURT: So I will admit them on the basis of
17 that representation.

18 (WHEREUPON, Plaintiffs' Exhibit Number 6364.06 was
19 admitted into evidence.)

20 MS. FARRISE: Painstakingly compiled by Ms. McVey.

21 THE COURT: Ms. Farrise, it's admitted. Go
22 forward.

23 MS. FARRISE: Thank you.

24 Q So, what we have here, just to orient everyone,
25 is, for instance, Number 1, in the list of products

ROA_01386

Appendix_01407

1 that Crosby answered yes to as being
2 asbestos-containing was this Crosby Valve JMB, JMAB,
3 JR, and then all of the information that the jury got
4 about that goes across, the start date and et cetera,
5 whatever.

6 So my question, I think, which is what started it,
7 sir, is that Crosby Valve Company, going back to the
8 1930s, has been making and selling valves that included
9 asbestos-containing components, correct?

10 A Yes.

11 Q And look at this, sir. Can we agree that the
12 categories are kind of like automobiles?

13 A I don't know how -- I'm not sure what you mean.

14 Q So for instance, if you have a Chevy Camaro,
15 that's a specific type of car and a specific type of
16 category, and then if you have a two-ton or a one-ton
17 pickup truck, that's another category of vessel, if you
18 will, or vehicle that company makes. Do you understand
19 what I mean?

20 A No, not specifically. I don't think I do.

21 Q What do you drive?

22 A I drive a Toyota.

23 Q Is it a sedan?

24 A It's a Highlander.

25 Q It's a big truck, an SUV?

ROA_01387

Appendix_01408

1 A No, no, no. It's an SUV.

2 Q So Toyota makes SUVs; they also make passenger
3 cars, and maybe they make -- I guess they do make a
4 pickup truck?

5 A I believe so.

6 Q Okay. So those are categories of vehicles that
7 this one company makes, right?

8 A And these are categories of valves that Crosby
9 made; is that where we're going?

10 Q For instance, you say Crosby Valve JMB, JMAB, JR
11 and whatever that group, and I assume that these valves
12 are similar in terms of basic style, size and,
13 function?

14 A No.

15 Q They're all different?

16 A They're all different. This first group of valves
17 you mentioned, Group Number 1, are very small valves.
18 Probably half-inch inlet, three-quarter-inch inlet,
19 might be eight inches tall, maybe four or five pounds.
20 Some of these valves weigh 5,000 pounds, so quite
21 different.

22 Q I was talking about this first category. I think
23 you said it's a small valve, half-inch inlet, might be
24 however much tall. And this category is all pretty
25 similar, this Number 1 here?

ROA_01388

Appendix_01409

1 A Oh, is that what you meant? Yes, that first
2 category is similar.

3 Q So if we go down here to the JA style, that
4 category, even though different ones might have
5 different bells and different whistles and all that,
6 that category, Number 2, is all pretty similar?

7 A Correct.

8 Q And that's how come Crosby can say with certainty
9 in sworn interrogatories that if you had a Crosby JA,
10 that it came on the market, meaning that model, in
11 about 1930; it was replaced and withdrawn from the
12 market in 1951; it did, that model, have asbestos
13 gaskets, and the physical appearance, which is in that,
14 had a closed bonnet valve, and the height was 5 inches
15 to 12 inches, mostly used in the processing industry
16 for fluid relief; asbestos was not altered or removed
17 before it was taken off the market; Crosby would say
18 that as to this model, chrysotile asbestos, you think,
19 was used -- we'll get to that -- and if we saw this in
20 the field, Crosby can even tell us it would be painted
21 silver or blue. Do you see what I mean?

22 A I do.

23 Q So in that sense, it's like a model?

24 A Okay.

25 Q Well, okay. It comes off the factory assembly

ROA_01389

Appendix_01410

1 line, just like a car, as a basic model, right --
2 strike that. It goes into the factory assembly --
3 strike that.

4 It goes into the design department as sort of a
5 basic product, and then, depending on who the customer
6 is, if it's Duke in a nuclear plant or Duke in a
7 non-nuclear plant or whatever it happens to be, it gets
8 modified and customized from there?

9 A No, not quite. Take the first category, for
10 instance. What you're looking at there is the result
11 of a catalog review. So that was a catalog valve. If
12 somebody wanted that valve, they could order it out of
13 the catalog, and it wouldn't get modified. It would be
14 the way it came out of the catalog.

15 Q So that's actually an off-the-shelf valve. We had
16 been told that there were no off-the-shelf valves.

17 A It's not off the shelf. It's ordered from the
18 catalog and then they make the valve. It's not off the
19 shelf. We don't make them and stock them.

20 Q Great. But you take the same design created by
21 Crosby design engineers or whoever designed the
22 product, same drawing, and you make the same product?

23 A That's correct.

24 Q And I think you're just saying no one came out in
25 this time period as a salesperson; you could just look

ROA_01390

Appendix_01411

1 in the Crosby book and say, "I want that one"?

2 A That's correct.

3 Q Kind of like ordering on Amazon today?

4 A Okay.

5 Q I want this fan; it has this specification; it's

6 this size; it's this tall, and then I say call -- I

7 don't really call up people; today we punch up people,

8 and somehow, I don't know how, it just lands at your

9 door, right?

10 A Yes.

11 Q So Crosby has one, two, the jury heard -- 17

12 different categories of valves. Can you flip through,

13 since I don't have it? Five are here. Five, six,

14 seven, eight -- keep going -- nine, ten -- keep

15 going -- all the way down to 17 models, if you will, of

16 valves that it has made over the years, correct?

17 A I didn't count them, but --

18 THE COURT: You can look at the last page,

19 Mr. Martin.

20 THE WITNESS: I will.

21 THE COURT: And you see that small --

22 THE WITNESS: I do. If that's correct, then

23 there's 17.

24 BY MS. FARRISE:

25 Q Okay. So if you looked at this, let's say Crosby

ROA_01391

Appendix_01412

1 Valve Model JA-6, per the Crosby design, it would be
2 your expectation, if you found it in the field, that
3 the original design would have called for an asbestos
4 gasket somewhere in the body of that valve?

5 A Correct.

6 Q And if the valve had to be maintained while it was
7 in service, then -- and if they followed the
8 instructions of Crosby in the instruction manual, the
9 replacement parts for that valve would -- for that
10 particular part, wherever it exists in the belly, would
11 also be an asbestos-containing --

12 A In that time frame, yes.

13 Q Right. Okay. Now, one of the things that Crosby
14 said in its discovery response that the jury had read
15 to it -- I apologize, by the way. It was really
16 painstaking -- is that the Crosby believes or said,
17 swears, that the type of asbestos in those valves, the
18 gaskets in the valves, was chrysotile. And you've
19 attested to that many times?

20 A That's what we believe, yes.

21 Q That's what you believe?

22 A Yes.

23 Q Right, because Crosby never actually did any
24 testing itself to this day to determine what the
25 asbestos type was in the components in the valves that

ROA_01392

Appendix_01413

1 it sold?

2 A We have never tested a gasket, no.

3 Q Right. Never have?

4 A No.

5 Q Do you know what a bulk sample is, sir?

6 A Vaguely, yes.

7 Q It's kind of the product equipment -- I mean
8 product equivalent, if you will, of having a piece of
9 tissue biopsied, right?

10 A I'm not familiar with tissue biopsies.

11 Q Well, let's just say I have a mole on my face, and
12 I go into surgery, and they take it off, and that's my
13 tissue, and then they send it down to the basement
14 usually, and the person who's in the basement is a
15 pathologist who looks at my tissue under the microscope
16 and says it's disease or no disease. Are you following
17 me?

18 A Yes.

19 Q That's a tissue biopsy.

20 A Okay.

21 Q Now, in the case of products like gaskets, they
22 take a little, bitty piece of gasket and they send it
23 off, usually not to the hospital in the basement, but
24 to a lab, and someone there -- we saw Dr. Brody --
25 might look at it under the microscope or, if necessary,

ROA_01393

Appendix_01414

1 put it into an electron microscope and say this is an
2 asbestos or not asbestos gasket, and the asbestos type
3 is chrysotile or something else. Do you know what I'm
4 talking about now when I say a bulk sample?

5 A I do.

6 Q Yes. So that second thing of the actual gaskets
7 which were actually installed at the Wrentham factory,
8 Crosby never took a little specimen, looked at it
9 itself under a microscope or sent it off to someone
10 else to look to say is this or is this not chrysotile?

11 A No, we did not.

12 Q And as far as you know, sir, that is still true in
13 2017; no one has taken a little specimen, put it under
14 the microscope and confirmed for Crosby that, in fact,
15 its internal asbestos component, gaskets, were always
16 chrysotile?

17 A 2017, I don't believe we buy any more
18 asbestos-containing gaskets.

19 Q My question is from 1874 to 2017, on not one
20 occasion has one person from Crosby ever taken a sample
21 of an asbestos-containing component part to determine
22 if, in fact, it's this chrysotile, which it continues
23 to swear is the case?

24 A We have not.

25 Q Huh?

ROA_01394

Appendix_01415

1 A We have not.

2 Q Let me show you -- and along the same lines --
3 just want to be clear, it's Crosby's contention that
4 today, in 2017, it does not know today and has never
5 sought to find out the percentage of asbestos in the
6 asbestos gaskets that it designed and included in the
7 valves that it sold from 1874 through today?

8 A We saw no reason to do that. We saw no danger
9 from the gasket and the way we use them. No, we did
10 not test them.

11 Q I'm actually asking you a very specific question.
12 You cannot say to this jury because you never tested
13 them, or at least that's the position, whether the
14 gaskets that were included in Crosby valves had
15 50-percent asbestos or 80- or 95-percent asbestos?

16 A No, I cannot.

17 Q Do you know, while I'm at it, a Jennifer Sahmel?

18 A I do not.

19 Q Right. You don't know a Jennifer Sahmel as anyone
20 who has ever worked at Crosby, correct?

21 A I do not.

22 Q Don't recognize her name from the design
23 department, right?

24 A I do not.

25 Q Don't even recognize her name from having worked

ROA_01395

Appendix_01416

1 on the projects you've been engaged in with the lawyers
2 for the last ten years, correct?

3 A I do not.

4 Q Never read any of her writings in the scientific
5 literature?

6 A Not that I'm aware of.

7 Q Wouldn't be able to recognize her if she ran you
8 over with her bicycle on the street?

9 A I might be able to recognize her then, but no.

10 Q Well, in terms of the names that Crosby went by, I
11 just want to make sure we have that clear. Crosby has
12 been known as Crosby Valves, as your discovery
13 responses say there. Crosby Valves, right?

14 A Yes.

15 Q There's -- is it Ashton or Acton?

16 A It was Ashton. Crosby-Ashton, A-s-h-t-o-n.

17 Q A-s-h-t-o-n. And is this the name that would
18 appear on the valve body like we saw before?

19 A Crosby merged with Ashton in the late 1800s. I
20 never saw an Ashton valve.

21 Q Okay. They just called themselves Crosby-Ashton?

22 A Yes.

23 Q Are you familiar with a company Continental?

24 A I am not.

25 Q The suppliers of Crosby or Crosby-Ashton, whatever

ROA_01396

Appendix_01417

1 it happens to be, you know who some of those are, don't
2 you?

3 A Suppliers?

4 Q Yeah, the people --

5 A Gasket --

6 Q Excuse me -- the companies that Crosby purchased
7 these asbestos-containing components from, which were
8 then included in the valve before it was sold?

9 A Some of the names, yes. Garlock. .

10 Q I'm sorry, Garlock?

11 A Garlock. Johns Manville. Sepco.

12 Q How do you spell that?

13 A S-e-p-c-o, I think, but I'm not sure.

14 Q Okay.

15 A And Flexitallic.

16 Q John Crane?

17 A I don't think we bought any gaskets from John
18 Crane Company.

19 Q My question, sir, was not limited to gaskets. In
20 terms --

21 A Sorry.

22 Q -- of the internal asbestos-containing components,
23 gaskets or packing --

24 A I'm not aware.

25 Q Let me show you -- I only have one copy that I

ROA_01397

Appendix_01418

1 didn't write on, so I'm going to show it to your
2 counsel, Mr. Reid.

3 Sir, let me ask you to take a look at an
4 interrogatory, sworn interrogatory response of Crosby
5 Valves. Just read it to yourself for the moment. And
6 there are a number of questions, but I've put a flag on
7 the question that asks about suppliers at sub (h). And
8 can you take a moment and review that and see if we can
9 then agree that John Crane --

10 A Which page are we referring to?

11 Q Where I put the tab. Right here. See?

12 A Yes, John Crane is mentioned.

13 Q And it says to the best of Crosby's knowledge, its
14 suppliers of asbestos gaskets and packing were Johns
15 Manville, Garlock, John Crane companies, correct?

16 A That's correct.

17 Q And John Crane was also a product line of Crane
18 Gaskets. Do you know whether y'all bought from John
19 Crane or from Crane or you just don't know?

20 A I don't know.

21 Q And do you know for the jury whether or not --
22 I'll put G for gasket and P for packing -- did Crosby
23 purchase gaskets and packing from Garlock or just
24 gaskets?

25 A I believe just gaskets.

ROA_01398

Appendix_01419

1 Q Did Crosby purchase and use gaskets and packing
2 from Johns Manville?

3 A I don't know.

4 Q Do you know if it used gaskets?

5 A I believe they used gaskets.

6 Q So it sounds like you know that all of these are
7 gaskets, and for some of them, you're not sure about
8 packing?

9 A That's correct.

10 Q Okay. How about Flexitallic?

11 A Just gaskets that I'm aware of.

12 Q Sepco, packing?

13 A Not that I'm aware of.

14 Q Johns Manville, packing? You didn't know?

15 A No.

16 Q Okay. And we had the chart, which one of the
17 questions included the -- or eliciting the information
18 of when the asbestos stopped being included. For
19 instance, here the response about these JMB-type valves
20 was that that valve was phased out in 1991. It was a
21 steel-jacketed asbestos component, which I think the
22 answer says it was a gasket, correct?

23 A Yes.

24 Q Okay. And I want to ask you about this, phased
25 out 1991. Phased out -- are you following me?

ROA_01399

Appendix_01420

1 A Yes.

2 Q Phased out 1991 refers to when the model of valve
3 was phased out --

4 A That's correct.

5 Q -- right? Like General Motors no longer makes the
6 Trans Am. At some point, it was phased out, for some
7 of us old enough to remember that?

8 A That's correct.

9 Q But the replacement parts for these
10 no-longer-manufactured valves continue to be made and
11 sold after a valve model is phased out?

12 A Not always. The valves that you're looking at at
13 Category I, they're very, very small valves, and they
14 probably would suggest rather than -- that they buy new
15 valves.

16 Q Fair enough. Some valves are actually replaced
17 with a new model?

18 A Correct.

19 Q But my question is: Suppose I happen to buy a
20 Category 1 valve for my company in 1990, and then in
21 1991 you phase it out, and then in 1992 it breaks down.
22 Are you following me?

23 A I am.

24 Q I need to be able to go back to you in 1992 and
25 get a replacement part?

ROA_01400

Appendix_01421

1 A And most likely you could.

2 Q And most likely I could. So this phase-out date
3 does not mean when the replacement part stopped; it
4 means when the factory stopped making that model of
5 valves?

6 A That is correct.

7 Q Got it. Another thing that Crosby says about its
8 asbestos-containing components is that they're like a
9 capsule; they're encapsulated, right? That's what
10 Crosby says, the asbestos that was within the gaskets,
11 within the products that we sold, was encapsulated?

12 A That's correct. The ones that we could dig down
13 to and find specific information on were encapsulated.

14 Q Like a capsule that goes into space. You put a
15 person in there; you close the capsule; you go into
16 space; no air gets in; no air gets out, right?

17 A I don't --

18 MR. REID: Your Honor, I object to the form of the
19 question.

20 THE WITNESS: It's not a question.

21 BY MS. FARRISE:

22 Q It's not quite like a capsule?

23 A That's not what we're saying. They were in a
24 rubber binder.

25 Q I see.

ROA_01401

Appendix_01422

- 1 A So the asbestos is encapsulated, yes.
- 2 Q Right. And Crosby tested that out?
- 3 A Crosby tested no gaskets.
- 4 Q Right. So when Crosby says our
- 5 asbestos-containing components were encapsulated, it
- 6 didn't actually go out to a site where Crosby valves
- 7 were inspected or maintained, and when the flange was
- 8 broken from the Crosby Valve, had somebody stand there
- 9 and do some air sampling to determine whether or not
- 10 there was asbestos being released as part of the
- 11 maintenance process?
- 12 A Are we talking internal gaskets or are we
- 13 talking --
- 14 Q Yes.
- 15 A No, we did not.
- 16 Q Because internal gaskets, just to be clear for the
- 17 jury, those get maintained and removed and replaced in
- 18 the field as well?
- 19 A Over their lifetime, yes.
- 20 Q They do not last forever?
- 21 A They do not.
- 22 Q And when you need a new one, you call up Crosby,
- 23 and they ship it to you, sell it to you, and whoever
- 24 they sell it to pays money, correct?
- 25 A Correct.

ROA_01402

Appendix_01423

1 Q And so at no time did anybody from Crosby ever
2 undertake any testing in the factory or the field or
3 anywhere else to determine whether, in fact, the
4 asbestos-containing components and the gaskets were
5 truly encapsulated, meaning nothing would be released
6 when those gaskets were handled, cut, or removed?

7 A That's correct.

8 Q In terms of Duke as a customer of Crosby, sir,
9 Crosby understood that Duke had three plants that were
10 nuclear-powered or fueled, correct?

11 A I think they have more than that, but yes.

12 Q Well, but in the -- for this case, Mr. Jolly, I'll
13 ask you to assume, and his coworkers who were there
14 testified that the three that Mr. Jolly was involved
15 with was the one at Oconee, near Seneca, South
16 Carolina, and McGuire, and Catawba. You're familiar
17 with those, correct?

18 A Yes, I am.

19 Q Were you an engineer at the time those were under
20 construction?

21 A I was an engineer at the time those were under
22 construction.

23 Q Were those your accounts and projects?

24 A No.

25 Q Have you ever set foot on any of those Duke --

ROA_01403

Appendix_01424

1 A I have not been to those plants.

2 Q Excuse me. Have you ever set foot in any of those
3 Duke power plants?

4 A No, I have not.

5 Q To your knowledge, has anybody from Crosby gone to
6 those power plants to try and see if they could figure
7 out which ones were blue in terms of valves, which ones
8 were silver, and which ones might be Crosby, just
9 visually speaking?

10 A No.

11 Q The paint color -- I'll just leave that.

12 We have in evidence Number 6359, I think it is.

13 MS. FARRISE: Your Honor, last week we offered
14 into evidence what were documents produced by Crosby
15 having to do with Duke, and I published one of them,
16 and I believe that the number was 6359 and it was
17 admitted. I would like an opportunity to publish the
18 documents and ask --

19 THE COURT: Let's see. Are you picking it up off
20 the exhibit table?

21 MS. FARRISE: No, I didn't. I just have my copy
22 here.

23 MR. HOLDER: 6359 was admitted, so it should be
24 there.

25 THE COURT: It's 6359?

ROA_01404

Appendix_01425

1 MS. FARRISE: Yes, Your Honor.

2 MR. HOLDER: It was admitted on 7/25.

3 MS. FARRISE: And it had some subnumbers. You
4 know how that goes.

5 (Off-record discussion with the court reporter.)

6 THE COURT: This has got an exhibit sticker on it.

7 MS. FARRISE: I know, but it's not the original, I
8 don't think. Unfortunately, there's --

9 MR. HOLDER: All of our stuff had yellow stickers,
10 at the request of defense counsel.

11 THE COURT: Well, let's make another copy for the
12 court reporter. She notes that it's in evidence. She
13 has 6359 as in evidence, and I remember this exhibit
14 myself. But let's get another copy for the court
15 reporter.

16 MS. FARRISE: No problem. Thank you, Your Honor.

17 MR. REID: Your Honor, I intend to use it. I made
18 four copies over the weekend.

19 THE COURT: Great. Wonderful. Why don't you send
20 it up to the court reporter right now. Does it have
21 your number?

22 MS. FARRISE: Can you give the witness a copy,
23 too?

24 MR. REID: It has their number. I'll give that
25 one to you. I'll get another one for the witness.

ROA_01405

Appendix_01426

1 THE COURT: Great.

2 MS. FARRISE: Mr. Martin, did you happen to get a
3 copy after all that?

4 THE WITNESS: Not yet.

5 MS. FARRISE: I think your counsel has a copy for
6 you.

7 THE WITNESS: Thank you.

8 BY MS. FARRISE:

9 Q Can you see this?

10 A I can.

11 Q And if you can't, sir, there is a number here at
12 the bottom, Crosby Duke 00002, but we'll look at it
13 together. This is a Crosby drawing for a Crosby valve,
14 correct?

15 A That's correct.

16 Q And just in terms of a little Drawing 101, we know
17 someone at Crosby in Wrentham, Mass prepared this
18 drawing for the valve that's styled JB-TD or the model,
19 correct?

20 A That's correct.

21 Q And if we do a little Drawing 101, every single
22 drawing that an engineer or someone creates at Crosby
23 and every other company has its own particular drawing
24 number, right?

25 A That's correct.

ROA_01406

Appendix_01427

1 Q And this R right here, revision?

2 A That's correct.

3 Q It actually looks like it says RFV, but it's
4 actually REV, right?

5 A I would assume it's REV.

6 Q And it's revision R, which means there was A
7 through Q in terms of revisions that occurred before
8 it?

9 A Correct.

10 Q And this, what we've been talking about, is not
11 particular to Crosby. That's just sort of Drawing 101,
12 and every engineering department at all of these
13 companies would be conducting themselves in the same
14 fashion. You learn that in engineering school, right?

15 A Yes.

16 Q Okay. And it could tell us, you know, someone who
17 knows what they're looking for could tell us who
18 prepared it, like that name right there, and a date so
19 we'll know when the drawing was initially prepared,
20 like if it was 50 years before and has had 35
21 revisions, this is what we would be able to know,
22 right?

23 A Correct.

24 Q It has been checked by someone who is, you know,
25 of some competency that they can say, yes, this is a

ROA_01407

Appendix_01428

1 good drawing, at Crosby, right?

2 A Correct.

3 Q And then somebody has to even certify a drawing to
4 say, you know, this is like --

5 A It's a second check.

6 Q But someone in management, right? You're not
7 going to have two brand-new engineers sign off on each
8 other's work for company products, will you?

9 A I don't believe it's somebody in management. I
10 believe it's somebody in engineering.

11 Q Okay. And in terms of just familiarizing
12 ourselves, of course, it's going to have some kind of a
13 schematic of what the drawing is all about, right?

14 A Correct.

15 Q And here it's telling us that this is sort of a
16 drawing of a valve, right?

17 A Yes.

18 Q And these are the internal components, so this is
19 like cut sideways?

20 A Correct.

21 Q And then like the inlet and things we were talking
22 about, some outlet that connects to the pipe, that's
23 going to be represented over there, right?

24 A Correct.

25 Q And then this thing here is going to tell us, just

ROA_01408

Appendix_01429

1 looking at it sideways, that there's some kind of
2 connection on the top of a top part to a bottom part,
3 and there's bolts that connect those two?

4 A That's correct.

5 Q Okay. And we haven't talked about valves much,
6 but this top part, usually when the stud is what it's
7 called, up to this thing that looks like it has a
8 little thing on the top and then all the way down, in
9 industry language, I think that's called a bonnet?

10 A Yes.

11 Q So it's kind of like a bonnet for a baby. So if
12 we looked at a million valve drawings, if they had a
13 bonnet, they would all look like that, right? Yes?

14 A No. Bonnets are different. Some of them are
15 open; some of them are closed, but that part of the
16 valve is called a bonnet, yes.

17 Q And like if we look right here, Number 21, that
18 has to do with the stud there, correct?

19 A Yes. That's a bolt, a nut, I believe.

20 Q A nut or bolt like on a tire of a car, right?

21 A On the wheel, yeah.

22 Q And if we wanted to know what that 21 went to, we
23 could look over here, and we could go down and say
24 Number 21, lo and behold, it's a nut, and this is a
25 list of various materials that are going to be used by

ROA_01409

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1 Crosby to build a valve that we saw depicted there?

2 A That's correct.

3 Q Okay. And so this here, which we've not talked at
4 all about with you but we did talk with the other young
5 man about, a material specification?

6 A Correct.

7 Q Right. So if we look at this drawing, and we have
8 access to other things, we could say, here's what the
9 valve is; here is the various component parts; and then
10 if we wanted to know what those components could be
11 made out of, what kind of fabric, if you will, if we're
12 talking about not a nut, then we can go to the
13 particular material specification and get particular
14 information on what that material is made out of?

15 A Correct.

16 Q So in the case of a nut, for instance, we could
17 find out if it's made out of stainless steel or cast
18 iron or blah, blah, blah, blah, blah, a bunch of other
19 stuff?

20 A That's correct.

21 Q We could find out who Crosby has approved to
22 supply that particular nut?

23 A You may not be able to determine that from that
24 list, no.

25 Q Not from this list, from the material

ROA_01410

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1 specification that precisely describes what the
2 material is and who the approved suppliers are?

3 A Yes.

4 Q So, for instance, when we were talking about the
5 approved supplier or the people who supply to Crosby
6 for the asbestos-containing gaskets, and maybe packing
7 in some cases, Crosby would have a material
8 specification for some kind of high-temperature gasket,
9 and the approved suppliers are whoever the approved
10 suppliers are?

11 A Yes.

12 Q And the way that these folks become approved
13 suppliers is that they send material to Crosby or
14 Crosby requests it, however, and Crosby tests that
15 material in the context of whether it's going to
16 perform with its valves under certain conditions, and
17 if it does, then it becomes an approved supplier for
18 high-temperature gaskets or --

19 A No, that's not what we do.

20 Q Okay. How does one become an approved supplier?

21 A Well --

22 Q Actually, let me withdraw that.

23 It's not the case that someone at Crosby is not
24 giving the approval, right?

25 A I'm sorry?

ROA_01411

Appendix_01432

1 Q For instance, Garlock doesn't just send you what
2 it has left over in the warehouse and say, "Here,
3 Crosby. Here is some gaskets. Use what we got"?

4 A No. When the designer designs the valves, he
5 decides he needs a gasket. He goes to the gasket
6 supplier's catalog, and he puts in the conditions that
7 he wants that gasket to meet -- certain size, certain
8 temperature, certain pressure, certain fluid, and he
9 selects a valve out of the Garlock catalog, the Sepco
10 catalog. And once that gasket comes into the company,
11 they verify the part number, and they put it in the
12 product.

13 Q Okay. So here, back to the drawing, earlier,
14 remember the chart that I had up there? Do you
15 remember the chart of the different --

16 A Yes.

17 Q Okay. So one of the categories in that chart was
18 that there are steel gaskets stuffed with asbestos in
19 the middle. Do you know what I mean, a steel asbestos
20 gasket?

21 A Yes, I think I do.

22 Q Okay. And so here, for instance, on the drawing,
23 there is this -- there's references to gasket, and then
24 there's a plug and seal, all that kind of thing, gasket
25 steel. In order to precisely know whether or not it's

ROA_01412

Appendix_01433

1 actually steel, steel or steel stuffed with asbestos in
2 terms of that gasket, the material specification would
3 reveal that information?

4 A That's correct.

5 Q In addition to -- let me just hand you what is
6 another document -- I'm sure there is a copy, and I'm
7 sure that we probably have -- let me hand you, and you
8 will tell me what the number is.

9 MR. HOLDER: 945.32.19.

10 BY MS. FARRISE:

11 Q I'm going to hand you a document whose exhibit
12 number I have actually forgotten, but why don't you
13 look at that.

14 MS. FARRISE: And we're handing one to Counsel,
15 Your Honor.

16 THE COURT: Now --

17 MS. FARRISE: For the record --

18 THE COURT: -- the number is?

19 MR. REID: 945.3219.

20 THE COURT: Are you offering that into evidence?

21 MS. FARRISE: First I've asked the witness to look
22 at it. It is a document produced by Crosby, and I will
23 offer it into evidence.

24 THE WITNESS: Yes, it is a Crosby document.

25 THE COURT: Have you shown it to the other side?

ROA_01413

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1 MS. FARRISE: They have a copy, Your Honor.

2 THE COURT: Any objection?

3 MR. REID: No objection.

4 THE COURT: Very good.

5 (WHEREUPON, Plaintiffs' Exhibit Number 945.3219
6 was admitted into evidence.)

7 BY MS. FARRISE:

8 Q Showing it to the jury, sir, you recognize this as
9 a Crosby -- and here it says Crosby-Ashton, all over
10 the world, instruction manual for instructions for
11 operation and maintenance of Crosby safety valves?

12 A I do.

13 Q And this type of literature, instructions, go to
14 customers such as Duke?

15 A Yes.

16 Q And it's Crosby's way of instructing Duke on how
17 to not only operate the valve, but how to maintain it
18 after it's sold, correct?

19 A This is a very old manual, so I'm not quite sure,
20 but it looks like that way.

21 Q But throughout the course of the company, they
22 give to the customers for each and every valve that
23 they sell these instructions for operation and
24 maintenance of their valves, right?

25 A Either this or something similar, yes.

ROA_01414

Appendix_01435

1 Q Right. Okay. Customers are not just out there
2 freestyling, "Hey, let me push this doohickey and pull
3 on that doohickey and see what works," right?

4 A One would hope so.

5 Q Because bad things will happen like an explosion,
6 right?

7 A That's correct.

8 Q Now, if the customer needs help, it says, "These
9 instructions are compiled to assist operating engineers
10 in the servicing of their valves." That means if
11 there's engineers at Duke who have a question, the
12 instruction is call Crosby if you have a question about
13 our valves?

14 A Correct.

15 Q By following these recommendations, it will be
16 found easy to keep the valves in good condition so they
17 will basically work, right?

18 A Yes.

19 Q The jury had an opportunity to see some invoices
20 where Crosby, if called upon, will actually send a
21 service engineer to the customer site?

22 A If requested, yes.

23 Q Right. And Crosby does that as a sort of -- the
24 customer pays for that?

25 A Yes.

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1 Q Okay. And so I think we have some -- and I won't
2 pull them out now -- invoices where a Crosby service
3 engineer is on-site at Ocone to assist with the
4 installation of a Crosby valve on the main steam line.
5 That's the type of things that Crosby service engineers
6 can be hired by a customer to come out and do?

7 A That's correct..

8 Q And is there also or has there also over the years
9 been some other kind of communication thing, like
10 sending a telegram or a telegraph in whatever relevant
11 period, or calling up on the phone when that came into
12 being, communication between Crosby and its customers?

13 A I don't understand that.

14 Q Yeah. So, for instance, Crosby was born before
15 there was telephones?

16 A Yes, I guess they were.

17 Q So at some point if you wanted to call up and
18 communicate with Crosby and find out like a question
19 about the valve, before there was telephones, you had
20 to do something else, teletype or telegram?

21 A Perhaps, yes.

22 Q Put a stamp on a letter, Heaven forbid, snail
23 mail, right? Right?

24 A Yeah, I guess so.

25 Q There has always been some system of communication

ROA_01416

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1 between Crosby and its customers; can we agree on that?

2 A I would believe so, yes.

3 Q In order for Crosby to give advice, direction,
4 answer questions about operation or maintenance of
5 Crosby valves?

6 A Correct.

7 Q Okay.

8 MS. FARRISE: Your Honor, I see that it's ten
9 till, and I'm not going to be done in like two minutes,
10 but I am going to turn to a very different topic, and
11 it's going to take us a while.

12 THE COURT: So this would be a good time to take a
13 break.

14 Members of the jury, why don't we take a break at
15 this time. It's ten of. Please be back at five after.

16 (WHEREUPON, the jury exited open court at
17 10:50 a.m.)

18 (WHEREUPON, a recess was taken from 10:50 a.m. to
19 11:06 a.m.)

20 THE REPORTER: Is this on the record?

21 MR. REID: -- tell the court that we've never had
22 a workers' comp claim related to asbestos as far as we
23 know. When I came here this morning, I anticipated the
24 court would not allow that consistent with the court's
25 ruling on the same question related to Fisher on

ROA_01417

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1 Friday.

2 Things have changed a little bit. I think the
3 questioning on the adverse examination has opened the
4 door to that question, so I would like to have the
5 court's permission to go down that path when I do my
6 examination.

7 THE COURT: What do you cite as the door-opening
8 questions? I'm not arguing with you. I'm interested.
9 I want to hear.

10 MR. REID: Right. You want to understand my
11 position.

12 THE COURT: Yes.

13 MR. REID: They have asked questions about the
14 building in Wrentham, about how it's being abated for
15 asbestos, and I think the insinuation there is that
16 must be gasket and packing material that is the focus
17 of the abatement. So I think the record is pregnant
18 with this suggestion that we've had asbestos problems
19 on account of the manufacturing process, and I think
20 that has opened the door to the question I'm proposing.

21 MR. McLEOD: Your Honor, I would just add to that
22 also that she made comments that Mr. Martin is now
23 involved purely in legal matters and suggested that
24 there's been many other lawsuits that he's testified
25 for. So, you know, in terms of --

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1 THE COURT: Y'all didn't object to that so it came
2 in. And you say it now lays the foundation for the
3 questions you want to ask?

4 MR. McLEOD: Certainly.

5 THE COURT: Of course, I'm a big what's sauce for
6 the goose is sauce for the gander type thing, and we
7 did not allow the jury to be told that Mr. Taylor was
8 suffering from mesothelioma, and that would have been
9 their way of showing the prevalence of asbestos
10 problems by showing that other coworkers have
11 contracted mesothelioma. So just saying if we open
12 this door, then other doors may be opened as well. So
13 just so you understand what's sauce for the goose is
14 sauce for the gander.

15 I'll turn to the plaintiffs, Ms. Farrise or
16 Ms. McVey.

17 MS. FARRISE: Your Honor, we think that,
18 consistent with the court's ruling, workers' comp
19 should be kept out, but we don't think we've opened the
20 door. That's our position. If this court were to rule
21 that the door has been opened and they want to try and
22 have this gentleman say that there have been no
23 workers' compensation claims, then that will open the
24 door to us being able to tell the jury that Mr. Taylor
25 also sued Crosby and claimed that they contributed to

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1 his mesothelioma and Mr. McSwain and a whole laundry
2 list of other people who worked with Crosby valves.

3 THE COURT: Let me ask this other question. Have
4 there been non-comp claims brought by anybody who
5 worked at Crosby, whether an employee or a
6 subcontractor or something else, or do you know?

7 THE WITNESS: I don't know the answer to that
8 question.

9 THE COURT: What I want to stay away from, and
10 here is the only thing that's running through my mind.
11 What I want to stay away from is treading in areas
12 about comp claims that *Machin vs. Carus Corporation* has
13 taught us we shouldn't get into. So that's -- I want
14 to make sure of that.

15 In this case, the defense has, in part, defended
16 on the basis that it's the employer's fault, and that
17 is going to -- the defendant will be able to make some
18 comments about employee claims regarding Duke because
19 that's the contention that it makes, and, of course,
20 that then leads to the kind of things that Justice
21 Kittredge directly said about those claims and the
22 limitations on them and so forth and so on.

23 So I just want to be sure this is an ancillary
24 matter, this doesn't have to do with the claims against
25 Duke, but once you get into comp, you're treading into

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1 some kind of uncertain ground.

2 But do I understand you not to be objecting,

3 Ms. Farrise?

4 MS. FARRISE: No, Your Honor. We would object.

5 That's our position. But if the court determines and

6 makes a ruling that the defendants will be allowed to

7 suggest that there were no comp claims through this

8 witness, then we would be offering and I'll be

9 questioning this witness about the affidavits and

10 whatnot and so on that he signed on behalf of Crosby as

11 the corporate representative in the Taylor case,

12 summary judgment motion in the McSwain case, summary

13 judgment motion, to establish that those men

14 specifically sued and claimed that Crosby hurt them in

15 the same manner they hurt Mr. Jolly.

16 THE COURT: I understand. I'm not asking Mr. Reid

17 to get into that quagmire prematurely, but I simply

18 said that to be sure that you understand that sometimes

19 things have consequences. But you're a good lawyer.

20 You understand those things.

21 It's rather attenuated to say that because they

22 had asbestos removal problems, it opens to door to

23 employee claims for asbestos-related lung diseases, but

24 I, frankly, think the door has been opened, and,

25 therefore, I'm going to allow Mr. Reid, if he desires,

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1 to ask questions along those lines.

2 Does everyone understand? That doesn't mean you
3 have to. I'm just saying if you decide that is the
4 road you want to go down, I'm going to allow it over
5 the objection of the plaintiffs. So the objection is
6 overruled.

7 MR. REID: Your Honor, let me put my full position
8 on the record. I think I'm being given a Hobson's
9 choice of some sort.

10 THE COURT: Well, lawsuits are like that.

11 MR. REID: I want to ask those questions because
12 they are specific to the Wrentham, Massachusetts
13 facility. So I don't think it should open the door to
14 anything else. If the court disagrees with me, I can
15 tell the court I'm not going to go there. I don't want
16 to insert into this case Mr. McSwain's claim,
17 Mr. Taylor's claim, or other claims, but I think the
18 difference is those have to do with Duke, which is the
19 facility we're talking about. Counsel's questions --

20 THE COURT: It's the same sort of logic. It's the
21 logic that says if there's an air quality problem in
22 your plant with respect to asbestos, I want to prove
23 that it wasn't a big problem by saying I never had any
24 comp claims.

25 Conversely, they claim that there was a big air

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1 quality problem at Duke, and they want to show that the
2 coworkers developed mesothelioma as a result of it.
3 And I've turned that over in my mind several times
4 since we had this initial battle, but I can certainly
5 tell you that if we go into what happened at the Crosby
6 valve factory with respect to claims, then I'm going to
7 be susceptible to the notion that we could explore the
8 claims of coworkers at Duke.

9 I'm not going to say that even if you don't, I
10 wouldn't revisit that, but at the present time, I kept
11 it out, even though y'all laid a fuss it came in
12 because it had Taylor versus whatnot on the screen. Of
13 course, nobody objected to that when the things were
14 put up, but they would be putting it up for, really,
15 the same kind of reasons you are. Yours is positive
16 logic and theirs is negative logic or vice versa.

17 MR. REID: I can tell the court that I won't go
18 there.

19 A related topic I then would like to ask
20 Mr. Martin, have him confirm that the abatement had to
21 do with building materials in the building and not with
22 the manufacturing process. I don't think that would
23 open the door to anything else, so I just want the
24 court's permission to go there without a ruling that
25 somehow that opens the door to some other issue.

ROA_01423

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1 THE COURT: Plaintiff?

2 MS. FARRISE: He doesn't have a foundation to know
3 that. His testimony --

4 THE COURT: Well, I think you have given him the
5 ability to go into what kind of abatement because you
6 brought out the fact that they had an abatement, so I'm
7 going to let him ask questions about the kind of
8 abatement.

9 So have we got everything done we need to have
10 done for the present?

11 MR. REID: Your Honor, just one other thing. I
12 would move to strike the questions about Mr. Martin's
13 activities as a corporate rep for the last ten years
14 because it raised questions about other litigation.

15 THE COURT: I had wondered why y'all didn't object
16 to that at the time. I was kind of wondering where we
17 were going, talking about his testifying in other
18 lawsuits and all this other kind of business myself.
19 But it got asked, and there was no objection to it so I
20 am -- I will decline to strike it because I don't think
21 I can go back after the fact and do that.

22 MS. FARRISE: Your Honor, it was actually very
23 cursory, and in respect of the court's ruling, I didn't
24 ask him, "You've testified you have been the corporate
25 rep in 25 other lawsuits." I simply said, "This has

ROA_01424

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1 been your role." In this particular context, in order
2 to show not only issues having to do with credibility
3 and bias, the fact that Crosby has chosen someone who
4 has had zero connection with the actual operation of
5 the company for ten years, and that his only connection
6 to the company has been litigation, is a big point of
7 bias and credibility that the jury ought to be able to
8 evaluate. We did not go through, "You've done that on
9 25 occasions," and, I mean --

10 THE COURT: Frankly, you got into it, and had they
11 objected, I would have sustained their objection
12 because we had decided we weren't going to go there.
13 But they didn't object, and there's where we are on
14 that particular issue. They did not object to
15 Mr. Martin's -- to several questions, both at the
16 beginning and the end of his first foray upon the
17 stand, so --

18 MR. REID: I apologize, Your Honor. I didn't mean
19 to interrupt. Are you finished? I had a little bit
20 more to add.

21 THE COURT: Yes, sir.

22 MR. REID: First, I just want to correct the
23 record. It's not like Mr. Martin sits at home and does
24 nothing. When there is a case like this, he's in touch
25 with people at Crosby and gets information from them

ROA_01425

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