

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 IV

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Case No. 2016-CP-42-1592

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RECORD ON APPEAL
VOLUME IV

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1 and confers with them, educates himself.

2 THE COURT: I don't see that that hurts you, quite
3 frankly. That's what you would normally do. The only
4 thing I had a little bit of unease about was getting
5 into the whole business of the volume of litigation.

6 MR. REID: I don't remember, frankly, but my
7 colleagues tell me I did object to that series of
8 questions.

9 THE COURT: Well, be that as it may, what I've
10 said to you is to give you the opportunity to go
11 forward. I'm not going to strike the testimony. If I
12 let it in, I let it in. I'm not going to strike it
13 now. I don't recall that, but I'm not going to dispute
14 your colleagues.

15 Now, have we put everything on the record we want
16 to put on the record?

17 Very good. Bring us the jury, please.

18 (WHEREUPON, the jury entered open court at
19 11:19 a.m.)

20 THE COURT: All right. Mr. Martin, please come to
21 the stand again.

22 Ms. Farrise, you may continue with the direct
23 examination of Mr. Martin.

24 MS. FARRISE: Thank you, Your Honor.

25 Q Mr. Martin, Crosby never warned about the health

ROA_01426

Appendix_01454

1 hazards and health danger associated with being exposed
2 to asbestos from any asbestos having to do with Crosby
3 valves?

4 A That's correct.

5 Q And it never, for instance, put a warning on a
6 package?

7 A No. We saw no need to.

8 Q Never put a warning about the health hazards of
9 asbestos in an instruction manual that told how to
10 maintain the valve?

11 A No. We saw no danger from our valves. No, we did
12 not.

13 Q Never sent anybody an e-mail, correct?

14 A No.

15 Q So the position of Crosby Valves today is that
16 there is no danger whatsoever from being exposed to
17 asbestos associated with valves and packing, correct?

18 A Our position is there's no danger associated with
19 our valves using gaskets the way we use them. That's
20 our position, yes.

21 Q So that's a little different. Is it the position
22 today of Crosby, will Crosby recognize today that being
23 exposed to asbestos that is liberated from an
24 asbestos-containing gasket that was used on the flange
25 of a valve and exposure occurred via removal, that that

ROA_01427

Appendix_01455

1 poses a health risk?

2 A Are we talking about external gaskets?

3 Q Talking about flange face gasket.

4 A External gasket. We did not supply those gaskets,
5 so we wouldn't warn anybody about those gaskets.

6 Q So my question now is not about warning.

7 A I thought it was.

8 Q Is it Crosby's position today that if a person is
9 exposed to asbestos because of inhaling asbestos that's
10 liberated from an asbestos gasket that came from the
11 flange face of the valve, that that exposure causes a
12 health risk?

13 A That's correct, it does.

14 Q It does?

15 A Yeah.

16 Q And can we agree that it is Crosby's position or
17 awareness today that, if a person is exposed to
18 asbestos that comes from the removal of
19 asbestos-containing packing used in a valve, that if
20 that exposure occurs, that that, too, poses a health
21 risk?

22 A That would seem reasonable, yes.

23 Q At the Wrentham plant, sir, manufacturing plant,
24 were rolls of sheet gasket material, first of all, at
25 that location?

ROA_01428

Appendix_01456

1 A No.

2 Q At the Wrentham location, was there already
3 fabricated sheet gasket material that was handled and
4 installed in valves that Crosby would sell?

5 A We bought preformed gaskets, and I don't know if
6 that's what you're alluding to or not.

7 Q Right. So preformed, I think we can agree, is
8 where there has been a sheet or roll of gasket
9 material, and according to the directions of Crosby,
10 holes have been punched, cut in it, depending on the
11 application, and it's been cut to some shape and size
12 to be used in the gasket; that's what you mean by
13 preform, right?

14 A We purchase the gaskets with holes in them formed
15 to our configuration. We bought them so you could just
16 put them in the valves.

17 Q Right. And the factory workers at the Wrentham
18 plant removed those preformed gaskets from the
19 packaging that it was sent in?

20 A I would believe so, yes.

21 Q The employees of Crosby at the Wrentham plant with
22 their own hands touched those gaskets when they
23 installed them into the valve?

24 A Yes, they did.

25 Q In the spare parts operation, did Crosby take into

ROA_01429

1 the factory asbestos-containing preformed gaskets?

2 A Yes.

3 Q And were they already packaged such that they had
4 to send them on to the customer, put them in their
5 inventory, or were they packaged by Crosby employees
6 with a Crosby packaging?

7 A I don't know the answer to that.

8 Q At any time, did you see the Crosby replacement
9 parts packaging for asbestos-containing gaskets to be
10 something that was shrinkwrapped, if you know what I
11 mean?

12 A I saw gaskets that were shrinkwrapped, yes. With
13 the asbestos-containing, I don't know.

14 Q You could look at the gasket see that it was
15 fabricated?

16 A Correct.

17 Q And on the gasket, there was written whatever the
18 type of gasket it was or number or whatever it happened
19 to be?

20 A It would have a number on it.

21 Q The gasket would have printed -- I'm sorry. The
22 gasket would have the number of whatever the gasket was
23 printed on it?

24 A No, on the package.

25 Q And if the gasket got loose from the package

ROA_01430

Appendix_01458

1 before it got to the customer, how would the customer
2 be able to verify that it was exactly the right gasket?

3 A I don't know the answer to that, but they were
4 packaged on a cardboard backing with a shrinkwrap over
5 it, and it's not likely that it would become separated.

6 Q And as I understand it, just so we're on the same
7 page, the packaging had the Crosby part number on the
8 packaging?

9 A Correct.

10 Q And the Crosby name?

11 A I don't know if the name would have been on the
12 gasket packaging, but it would have been on the package
13 that it was shipped in, yes.

14 Q And so this cardboard gasket shrinkwrap or
15 see-through plastic is how it went packaged?

16 A Most of the time, yes.

17 Q And nowhere on that packaging was there a sticker
18 or a label or anything that said -- would be construed
19 to be a warning about the hazards of asbestos?

20 A No. If we didn't receive something like that from
21 our supplier, we would not put anything like that on
22 there because we're not aware it's dangerous.

23 Q Do you know what a Material Safety Data Sheet is?

24 A I've seen some, yes.

25 Q And have you -- the suppliers that you discussed,

ROA_01431

Appendix_01459

1 to Crosby, they sent Material Safety Data Sheets for
2 their asbestos-containing gaskets, did they not?

3 A I never saw one for a gasket, no.

4 Q I'm sorry?

5 A I never saw one for a gasket.

6 Q Did you see one for packing?

7 A No.

8 Q Let me show you a Material Safety Data Sheet from
9 Crosby's suppliers. Here we go. Do you have 508? Let
10 me show you what has been marked Plaintiffs' Exhibit
11 508.2. For the record --

12 MR. REID: Your Honor, may we have a sidebar?

13 THE COURT: What's that?

14 MR. REID: May I have a sidebar with the court and
15 counsel?

16 THE COURT: Yes. Going to involve this exhibit?

17 MR. REID: Yes.

18 THE COURT: Ms. Farrise, bring it up with you when
19 you come up, please.

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

23 THE COURT: All right. This exhibit hadn't been
24 admitted, but Mr. Martin is examining it to see if he
25 can identify it.

ROA_01432

Appendix_01460

1 Ms. Farrise.

2 BY MS. FARRISE:

3 Q Have you had a chance to look at Exhibit 508?

4 A I looked at it.

5 Q Do you recognize it as a Material Safety Data
6 Sheet?

7 A That's what it says at the top of the sheet, yes.

8 Q Not just what it says. You said you're familiar
9 with the format. Is it consistent in terms of the
10 layout, the information, with what you understand a
11 Material Safety Data Sheet to be?

12 A No. This is not what I've seen as a Material
13 Safety Data Sheet.

14 Q So does looking at this refresh your recollection
15 that the suppliers to Crosby sent to it Material Safety
16 Data Sheets?

17 MR. REID: Your Honor, there's no foundation laid
18 yet.

19 THE COURT: Overruled. She's asking him
20 identification questions. It hasn't been admitted yet.
21 Those are legitimate identification questions.

22 All right. Go ahead, Mr. Martin.

23 THE WITNESS: I have not seen one of these before.

24 BY MS. FARRISE:

25 Q Okay. So it doesn't refresh your recollection?

ROA_01433

1 A No.

2 Q When were you at Crosby, your job did not include
3 being in the health and safety department, right?

4 A It did not.

5 Q Although, I think the interrogatories that we saw
6 or that we read to the jury last week from Crosby admit
7 that it never had a medical department?

8 A That's correct.

9 Q It never had an industrial hygiene department?

10 A That's correct.

11 Q It never maintained a library of materials having
12 to do with health and safety?

13 A That's correct.

14 Q I take it, sir, that there was never any training
15 about asbestos hazards and protection, respirator use
16 and the like having to do with asbestos for employees
17 of Crosby who worked at the Wrentham plant?

18 A Not that I'm aware of.

19 MR. REID: Your Honor, objection; relevance.

20 THE COURT: Repeat the question.

21 MS. FARRISE: That there was never any training
22 for the employees at the Crosby Wrentham factory about
23 the health hazards associated with asbestos, means of
24 protection, and including the use of a respirator to
25 protect themselves.

ROA_01434

Appendix_01462

1 THE COURT: And you object to that question?

2 MR. REID: Yes, for the reasons -- for relevance
3 and for the reasons we discussed at the break.

4 THE COURT: All right. Overruled.

5 THE WITNESS: No not that I'm aware of.

6 BY MS. FARRISE:

7 Q I just want to ask you briefly about this role
8 that you have. In this particular case, do you still
9 have Exhibit 6359? I think your counsel found you a
10 copy. It's a collection of documents that are labeled
11 "Crosby Duke."

12 A That's the first couple of them.

13 Q Looks like a drawing. Do you have that?

14 A I do.

15 Q And in connection with your position as a
16 representative for Crosby in this case, you have been
17 working on this case prior to Friday when you came to
18 court and today, right?

19 A That's correct.

20 Q You've been working with and reviewing documents
21 that you've been provided, correct?

22 A Yes.

23 Q And can you take a look at this set of 39
24 documents, which include various types of documents,
25 and tell me whether this is all you have reviewed for

ROA_01435

Appendix_01463

1 this particular case as it relates to Crosby and Duke?

2 A As it relates to this type of document?

3 Q No, as it relates to this case, Crosby and Duke.

4 Have you seen any other documents --

5 A Interrogatories.

6 Q -- about Crosby's products or role at Duke?

7 A I don't believe so.

8 Q Okay. And you mentioned interrogatories.

9 Obviously, you looked at the responses that Crosby
10 gave?

11 A Yes.

12 Q And you signed off on them?

13 A Yes.

14 Q Okay. So I just want to get the universe. Your
15 universe are these 39 documents and the interrogatories
16 which the jury had some portion of them read to them
17 last week, correct?

18 A Yes.

19 Q Nowhere in these 39 documents are Crosby material
20 specifications, correct?

21 A I believe this last document is a part card that
22 has material specifications on it.

23 Q Does it look like this?

24 THE COURT: Is this 0039?

25 THE WITNESS: 0039.

ROA_01436

Appendix_01464

1 BY MS. FARRISE:

2 Q So for the moment, other than this one document,
3 which I'm going to ask you about, have you been
4 provided for your review, for your work, for anything
5 you've testified about in this case any Crosby material
6 specifications?

7 A I don't believe so.

8 Q Okay. So this document -- I'll try to blow it up
9 a little -- is -- would correspond to some drawing that
10 has this number on it. We talked earlier about drawing
11 numbers, correct?

12 THE COURT: What page are you on?

13 MS. FARRISE: The very last one, 00039.

14 THE COURT: The very last page, all right.

15 BY MS. FARRISE:

16 Q Correct?

17 A It's -- is the question does Drawing Number SK5349
18 pertain to a valve? Is that the question?

19 Q No. The question is, this is a material
20 specification, right? Let's start with step one. We
21 agree on that, right?

22 A The card is a part card, and it does give you the
23 material of that part if you look down under materials,
24 yes.

25 Q Right. So it would tell us that this -- the name

ROA_01437

Appendix_01465

1 of the part is the gasket set screw, right?

2 A It's a set screw gasket.

3 Q Set screw gasket?

4 A Yes.

5 Q And it would tell us that this gasket used to be
6 Garlock Style 8740 --

7 THE COURT: 8.

8 BY MS. FARRISE:

9 Q -- 8 with nitrile, correct?

10 A Yes.

11 Q And at some point, because that's scratched out,
12 it became Sepco Style 6234 no asbestos, correct?

13 A Correct.

14 Q But this part number has a drawing that would go
15 through the revisions, and depending on the revision
16 date, it would tell us when it went from being an
17 asbestos-containing Garlock Style 8748 nitrile gasket
18 to being a Sepco Style 6234 nonasbestos-containing
19 gasket?

20 A No. That information is right there on that part
21 card. If you look, you see the A in a circle next to
22 Sepco?

23 Q I see it. Thank you. 1989?

24 A Yes.

25 Q What is TPV, the person who made the change?

ROA_01438

Appendix_01466

1 A That's the gentleman that made that change.

2 Q And does this -- and I don't know -- tell us that
3 it goes with the valve that's drawing number -- is it
4 SR5349?

5 A No. That's -- it's an SK5349. Means a sketch.
6 And what that has on it is a table of part numbers, and
7 it tells you what their dimensions are.

8 Q That particular drawing?

9 A Yeah.

10 Q So if we wanted to know if this were a gasket for
11 a one-inch or five-inch valve or however big the gasket
12 is, that drawing would tell us about the size of the
13 gasket?

14 A Yes. It will tell you the size of the gasket, and
15 it may give you a little more information on the
16 material on the gasket.

17 Q Okay. So this is the only, for instance, who the
18 supplier was?

19 A Correct.

20 Q Whether it was chrysotile or crocidolite?

21 A Won't say that on the SK. It would have to come
22 out of the part number. It's Sepco Style 6234. What
23 is that material; that's where we would get that.

24 Q What is that material after February of 1989?

25 A Right.

ROA_01439

Appendix_01467

1 Q And this is the only material specification that
2 Crosby has -- that you've seen having to do with the
3 Duke plants -- Ocone, McGuire and others?

4 A Yes. It's the only one I looked at, yes.

5 Q And then I really wanted to kind of get a look
6 briefly at the other documents.

7 This is a different kind of document. Can you
8 tell the jury what this is? This is 0038.

9 A Yes. That is a typical bill of material which
10 will tell you all the components of that particular
11 valve. It happens to be a one-and-a-half G
12 two-and-a-half. It's a JLT JOS35.

13 Q And that's the style which was partly what we
14 talked about earlier?

15 A Yes. That's the style, yes. The one-and-a-half G
16 two-and-a-half is the size. The inlet is a
17 one-and-a-half inch inlet. The G is the flow control
18 area. And the two-and-a-half is the outlet size.
19 That's probably where that gasket part number came
20 from, probably came off that bill.

21 Q And this here, assembly number, tells Crosby this
22 specific valve number?

23 A Yes, it does.

24 Q And so just because it's a lot of technical, Valve
25 Number 67261 at Duke that has these parts, one of those

ROA_01440

Appendix_01468

1 numbers, part numbers, has that material specification
2 that we just looked at?

3 A I believe that to be true.

4 Q And so let me see if I have a number. Well, the
5 number is 103 --

6 THE COURT: It's 0036, Ms. Farrise.

7 MS. FARRISE: No, no. The part number was --

8 THE COURT: 103027.

9 MS. FARRISE: 103027.

10 THE COURT: Right, 103027, and 103028 is what
11 you're looking at. Those two numbers are found on
12 Crosby Duke 00036, if you look down at the bottom.

13 THE WITNESS: Yes.

14 MS. FARRISE: Okay. I will, Your Honor. Thanks
15 so much.

16 Q This tells the jury, just in terms of trying to
17 figure out how to read these things, that the gasket
18 for the assembly -- it actually says Gasket Guide --
19 327 for the set screw for the valve, looks like
20 installed in September of 1977 at Duke, is an
21 asbestos-containing gasket, at least through 1989?

22 A That's correct.

23 Q So if we took all of these part numbers, and we
24 had these material specifications for the various
25 components of gaskets, really, and packing, we could

ROA_01441

Appendix_01469

1 know, yes or no, these were or were not
2 asbestos-containing and for how long?

3 A Correct.

4 Q And none of that information, save for the one
5 example we have just gone through, is what you have
6 reviewed in this case?

7 A Correct.

8 Q And based on your experience with Crosby, that
9 information is kept at the Crosby Valve engineering
10 department?

11 A Specifications department, yes.

12 Q Right, the specifications department. And that's
13 located up in Massachusetts at the new place of the new
14 corporate headquarters?

15 A Correct.

16 Q And as part of your work in this case, did you
17 travel up there to review with your eyes, even though
18 you don't have the documents, the specifications that
19 pertain to the gaskets for the valves that Crosby sold
20 to Duke?

21 A I'm a little lost on that one.

22 Q First of all, did you travel up to the
23 specifications department in Massachusetts?

24 A In reference to this case, no.

25 Q Yes. Did you or anyone else have the

ROA_01442

Appendix_01470

1 specifications accessible, whether that be by computer
2 screen, physical delivery, fax?

3 A I could contact the facility and get that
4 information, yes.

5 Q Okay. I understand what you can do. I'm just
6 trying to get a bound on in terms of the information
7 that you have. No one, to your knowledge, has done
8 that, or if they have done that, you've not been
9 provided that information?

10 A What we did was --

11 Q I'm sorry. I'm just asking about the
12 specifications. To your knowledge --

13 MR. REID: Your Honor, he's answering the
14 question. May he answer?

15 THE WITNESS: What we did --

16 THE COURT: Let me make this suggestion,
17 Mr. Martin. Answer her question, and then give your
18 further explanation if you like.

19 THE WITNESS: Please ask the question again.

20 BY MS. FARRISE:

21 Q To your knowledge, no one from the Crosby legal
22 team or otherwise has gathered from the specifications
23 department in Massachusetts the specifications that go
24 with the valves that Crosby sold to Duke?

25 A Correct. All the detailed specifications, no,

ROA_01443

1 they have not.

2 Q Okay, sir. Let me ask you to take a look at what
3 I'm going to mark as Plaintiffs' Exhibit 945.3232.

4 (WHEREUPON, Plaintiffs' Exhibit Number 945.3232
5 was marked for identification.)

6 BY MS. FARRISE:

7 Q And do you recognize that document as one created
8 by someone who is employed with Crosby Valve?

9 A No, I'm not familiar with this document.

10 Q Are you familiar with that type of document?

11 A No, I'm not.

12 MS. FARRISE: Your Honor, I would offer it into
13 evidence, given that it appears to be
14 self-authenticating as a Crosby Valve document.

15 MR. REID: Lack of foundation, Your Honor. Also
16 no showing of any relatedness to this case.

17 MS. FARRISE: It's produced in litigation, Your
18 Honor.

19 THE COURT: Where did you receive this document?

20 MS. FARRISE: Produced in discovery.

21 MR. REID: Not in this case.

22 THE COURT: In discovery by Crosby?

23 MS. FARRISE: Yes, Your Honor.

24 THE COURT: It will be admitted. Overruled.

25 (WHEREUPON, Plaintiffs' Exhibit Number 945.3232

ROA_01444

1 was admitted into evidence.)

2 MR. REID: Your Honor, just to clarify, it wasn't
3 produced in this case.

4 THE COURT: We've been down this road before. If
5 we're going to have an extended discussion of this
6 thing, then we need to have it. I think the ruling I'm
7 making here is consistent with the ruling that I've
8 made with respect to other documents for all the
9 parties.

10 Now, if there's something different from that with
11 this, I don't believe there is, so overruled. You're
12 protected. It's admitted.

13 BY MS. FARRISE:

14 Q Mr. Martin, start at the top -- strike that.

15 This sort of Crosby Valve & Gage Company,
16 Wrentham, Massachusetts, certification of blueprints
17 valves. Do you see that?

18 A I do.

19 Q We talked earlier about how Crosby would furnish
20 valves to another equipment maker, and then that
21 equipment maker might -- equipment would land at the
22 customer's site?

23 A Yes.

24 Q This is an example, for instance, of that kind of
25 transaction where Crosby Valve is dealing with

ROA_01445

1 Combustion Engineering, which is a boilermaker, right?

2 A Yes.

3 Q And the valve would end up at the site furnished
4 by Combustion Engineering?

5 A So this valve ended up at Duke; is that what we're
6 saying?

7 Q No. It would end up at the customer site
8 furnished by Combustion Engineering --

9 A But not Duke.

10 Q -- right?

11 A Yes.

12 Q It purports to be a certification of blueprints.
13 And if I now understand your testimony as an engineer
14 speaking for Crosby, you don't know what a
15 certification of blueprints is?

16 A I do. I'm not familiar with this form. I've
17 never seen it.

18 Q So you're familiar conceptually that when Crosby
19 prepares blueprints, that it certifies the correctness
20 of those blueprints?

21 A That's correct, yes.

22 Q Okay. Now, in terms of having as a customer Duke,
23 and for a nuclear facility, there are separate and
24 additional and extensive documentary requirements when
25 you sell products to be used at a nuclear facility,

ROA_01446

Appendix_01474

1 correct?

2 A If they're classified nuclear products, yes.

3 Q Right. And the company, Duke, if you will, relies
4 on the manufacturer of the products and equipment to
5 maintain that documentation?

6 A That's correct.

7 Q So Crosby, as a supplier to Duke for nuclear
8 service, would understand and comply with the extensive
9 documentary requirements to keep documentation about
10 the products it sold for the nuclear facilities?

11 A That's correct.

12 Q I want to show you 947, which is something we're
13 referring to as the Fisher Controls book. 947 is the
14 Fisher Controls valve handbook copyrighted in 1965.
15 Here is what it looks like as a little book.

16 MR. REID: Your Honor, before we continue, I'm
17 trying to see if I have a copy or if counsel has one
18 she can put up.

19 THE COURT: I can't hear that well.

20 MR. REID: I have not been handed a copy, so I
21 just would like --

22 THE COURT: This is that Fisher control handbook
23 y'all have been dealing with.

24 MR. REID: I'm just trying to find one. I
25 wouldn't expect Fisher to come up with Crosby --

ROA_01447

1 THE COURT: There we go.

2 Go forward, Ms. Farrise.

3 BY MS. FARRISE:

4 Q I see, Mr. Martin, that you are thumbing through
5 it?

6 A Yes.

7 Q Okay. And is it -- do you agree that the Fisher
8 Controls valve handbook is a general reference guide
9 for the valve industry?

10 A I wouldn't know that. I have never looked at it.

11 Q Well, there was some testimony that it doesn't
12 pertain really to Fisher; it's something that Fisher
13 made for the whole valve industry. And since Crosby is
14 in that industry, I'm just wondering if Crosby agrees
15 with that.

16 A I've never seen this document.

17 Q Okay. Then I won't ask you about it.

18 I will, however, turn and ask you if we can agree
19 that starting or at least by 1933, Crosby was a company
20 that had contracts with the United States government?

21 A We have supplied valves to the United States
22 government.

23 Q Right. The jury heard a response to interrogatory
24 last week that was written to them -- that was read to
25 them, sorry, that says that Crosby manufactured valves,

ROA_01448

Appendix_01476

1 for instance, that were used in 1933 aboard naval
2 vessels including the USS New Orleans, the USS
3 San Francisco, the USS Minneapolis, and the USS
4 Astoria. Are you familiar with that discovery response
5 on the interrogatories that you have --

6 A Yes, I am.

7 Q And those -- and what that means is that Crosby
8 made valves that were sold to the Navy, and they were
9 installed as part of the power systems of those ships,
10 correct?

11 A I believe so.

12 Q And that relationship of Crosby selling valves to
13 the United States government, in this instance, to be
14 used to repair or make Navy ships, that has -- that's
15 been a relationship that Crosby has maintained going
16 back to the early days of its history, correct?

17 A We have supplied a lot of valves to the Navy, yes.

18 Q And that goes back to the early days of its
19 history. This is 1933. Did it start there?

20 A I don't know when it started.

21 Q Okay. As a company that sold or had contracts
22 with the United States government valued at more than
23 \$10,000, the United States government informed Crosby
24 Valve and required that it take certain steps to
25 protect workers from exposure to hazardous things, and

ROA_01449

Appendix_01477

1 specifically including asbestos by 1952, correct?

2 A I'm not aware of that.

3 MR. REID: Objection; compound, foundation.

4 BY MS. FARRISE: I'm sorry?

5 A I'm not aware of that.

6 THE COURT: Just a moment, Ms. Farrise.

7 Overruled.

8 BY MS. FARRISE:

9 Q Sir, you are familiar or Crosby is familiar with
10 something referred to as the Walsh-Healey Act?

11 A I am not.

12 Q You're not?

13 A No.

14 Q So is it your testimony on behalf of Crosby that
15 no one at Crosby has ever heard of the Walsh-Healey Act
16 of the United States government?

17 A I have never addressed that with Crosby, and I
18 don't know the answer to that.

19 Q Okay. So if I asked you one way or another
20 whether or not Crosby complied with the Walsh-Healey
21 Act of 1952 or companies that had contracts with the
22 government valued at more than \$10,000 to supply
23 respirators, isolate work, do wet-down for asbestos in
24 particular, you don't know that and Crosby doesn't know
25 that?

ROA_01450

Appendix_01478

1 A Crosby may. I do not. I have not asked Crosby.

2 Q Sir, in the interrogatory responses, Crosby admits
3 and says that its knowledge about the relationship
4 between exposure to asbestos and disease was generally
5 known in the 1970s because of the OSHA standards,
6 correct?

7 A That's correct.

8 Q So you do know about the OSHA standard?

9 A The company knew about the OSHA standards, yes.

10 Q Starting in 1972?

11 A I don't know when it starts, but yes.

12 Q Now, let me hand you what we've marked as
13 Plaintiffs' Exhibit 155. Do you recognize 155 as the
14 June 1972 OSHA regulation relating to workplace
15 exposure to asbestos?

16 A I'm not personally familiar with this, no.

17 Q Is there anybody at Crosby who's familiar with the
18 OSHA standard?

19 A I assume there are.

20 Q As part of your designation and role as the voice
21 for Crosby in this case, is it Crosby's position that
22 it does not know about the 1972 OSHA standard?

23 MR. REID: Your Honor, I just object. Mr. Martin
24 is subpoenaed. There was no list of categories he was
25 supposed to address. I think it's an improper

ROA_01451

Appendix_01479

1 question.

2 THE COURT: Overruled.

3 BY MS. FARRISE:

4 Q Well, sir, getting back to the interrogatory
5 responses --

6 THE COURT: All right. Ms. Farrise, you asked him
7 a question; they objected; I overruled the objection!
8 Now, let's at least hear his answer.

9 MS. FARRISE: Thank you, Your Honor.

10 THE WITNESS: Would you repeat the question?

11 MS. FARRISE: Might I have the assistance of the
12 court reporter?

13 THE COURT: Yes. Diane, can you repeat that
14 question?

15 (WHEREUPON, the record was read.)

16 THE WITNESS: I do not know about it, and I did
17 not ask the company about it.

18 MS. FARRISE: One moment, Your Honor. Apologies,
19 Your Honor.

20 Q Sir, I have just the one page of a discovery
21 response verified by you -- trying to get the rest of
22 it -- that states, quote, Crosby became aware of the
23 relationship between asbestos exposure and disease
24 which evolved over time by, quote, the 1970s when OSHA
25 promulgated its standards.

ROA_01452

Appendix_01480

1 Do you recognize that as the type of a sworn,
2 written statement that Crosby interrogatories contain,
3 including in cases like this, and that you sign off on?

4 A Yes.

5 Q And is it your testimony now that, even though you
6 sign off on this statement that Crosby became aware
7 through OSHA, you don't know anything about OSHA and
8 what it said in the 1970s?

9 A What I'm saying is that the company made that
10 statement before I got involved in these
11 interrogatories, and I believe it to be true.

12 Q The company made that written statement in legal
13 documents, and you believe it to be true, so you signed
14 off on it?

15 A That's correct.

16 Q And as I'm hearing you, I guess we can agree that
17 you have done no investigation to find out what that
18 knowledge was, who it went to, and where it was
19 maintained?

20 A Personally, I have not.

21 Q Sir, can you say that Crosby, anyone at Crosby,
22 ever tested the asbestos-containing gaskets associated
23 with its valves to demonstrate that it would not
24 release any airborne asbestos as the OSHA regulations
25 require?

ROA_01453

Appendix_01481

1 A I don't believe they ever tested any gaskets.

2 Q For any purpose?

3 A For asbestos purposes.

4 Q Right. They tested them for performance purposes?

5 A Yes.

6 Q Sir, Crosby valves belonged to -- let me back up,
7 I'm sorry.

8 And if I ask you a variety of questions like about
9 the 1994 OSHA standard, is it also accurate that Crosby
10 valves, you don't know anything about that for Crosby
11 valves?

12 A Personally, I do not.

13 Q I'm sorry?

14 A I do not. I personally do not.

15 Q You do not?

16 A I do not.

17 Q Okay. And so you're not in a position to disagree
18 with OSHA's position that even at .1 fiber per cc, that
19 is not a safe level and cancer will still occur?

20 MR. REID: Your Honor, lack of foundation, calls
21 for expertise.

22 THE COURT: If he knows. Overruled.

23 THE WITNESS: I do not know.

24 BY MS. FARRISE:

25 Q Sir, you have also signed off on, under penalties

ROA_01454

Appendix_01482

1 of law, interrogatories that admit that Crosby Valve
2 personnel were members of the National Safety Council,
3 correct?

4 A Correct.

5 Q And the National Safety Council is a general
6 organization that does research and compiles
7 information about safety?

8 A I believe so.

9 Q And the National Safety Council goes back to the
10 time period around the beginning of the 1900s, at
11 least, when your company and other companies were
12 birthed, correct?

13 A I don't know the history.

14 Q I'm sorry?

15 A I do not know the history of the National Safety
16 Council.

17 Q Can we agree that, through publications of the
18 National Safety Council which were disseminated to its
19 members, that Crosby Valve received information back in
20 the 1930s specifically telling it that exposure to
21 asbestos was dangerous to health?

22 A No way that I'd be aware of that. I don't know
23 about that.

24 Q Let me hand you what we've marked as Plaintiffs'
25 Exhibit 102. I'll hand you 102.

ROA_01455

Appendix_01483

1 And I'm going to hand this to you Your Honor, but,
2 apparently, you can only peek at it because we don't,
3 have enough copies.

4 MR. REID: Your Honor, is there a copy for me?

5 THE COURT: She's saying that there isn't. Hang
6 on. Let me look at it for a minute, and I'll hand it
7 to you. This is 1934 transactions, National Safety
8 Council.

9 (Document handed to Mr. Reid.)

10 THE COURT: All right. Ms. Farrise, it's your
11 question.

12 MS. FARRISE: I know. Can I share your copy with
13 defense counsel?

14 First of all, I've handed it to you.

15 THE COURT: Right.

16 BY MS. FARRISE:

17 Q And my question is: Does this appear to be the
18 National Safety Council that your company says --
19 admits that its employees were members of?

20 A It appears to be.

21 Q And it's your understanding, is it not, that, for
22 instance, by the 1930s, companies could get safety and
23 health information including about toxins and how to
24 protect their workers from those toxins from the
25 National Safety Council?

ROA_01456

Appendix_01484

1 A I'm not aware of that, but I imagine if I read
2 this document, it will tell me that.

3 Q Well, you signed off, sir, on behalf of Crosby in
4 their sworn answers that the company got knowledge from
5 the National Safety Council.

6 A I signed off they were members of it.

7 Q And in the ten years or so that you've been
8 engaged in that work, you've gotten no more information
9 about the type of information that the National Safety
10 Council would provide to its members?

11 A No.

12 Q Do you know what the National Safety Council
13 Safety Congress is?

14 A I do not.

15 Q So as I understand it, sir, you cannot dispute on
16 behalf of Crosby that it knew about the dangers of
17 asbestos dust exposure to workers, and that it had
18 specific information about how to protect those workers
19 by virtue of its participation with the National Safety
20 Council by 1935, correct?

21 MR. REID: Object to form.

22 THE COURT: Just a second, Ms. Farrise.

23 Yes, sir.

24 MR. REID: No showing we were a member in the
25 '30s, and it's not our burden of proof to dispute; it's

ROA_01457

Appendix_01485

1 her burden of proof to demonstrate, so on those
2 grounds, I object.

3 THE COURT: Let me look at his answers to
4 interrogatories.

5 What number is it of the interrogatories does he
6 talk about the membership of the company?

7 All right. It says in Interrogatory Number 50,
8 "Please state the names of trade associations
9 periodicals to which you subscribed from 1928 to 1978;
10 state whether during said period you had any knowledge
11 of any articles printed in any industry trade journals,
12 essays, memorandum or other similar sources pertaining
13 to the hazard potential of asbestos. Please further
14 state which of such articles were received by you."

15 And the response Mr. Martin made on behalf of
16 Crosby was, "Crosby was a member of the National Safety
17 Council, the American Boilers Manufacturers
18 Association, Valve Manufacturers Association, American
19 Petroleum Institute, and the Chlorine Institute.
20 Further answering, Crosby may have received
21 publications from these organizations but has no record
22 of the publications it may have received. To the best
23 of Crosby's knowledge, it has never received any
24 material from the above-listed organizations related to
25 asbestos during the time period specified."

ROA_01458

Appendix_01486

1 All right. I am going to allow the document in on
2 the basis of the declaration that during the time
3 period specified, they were members of the National
4 Safety Council. So overruled.

5 MR. REID: Your Honor, just for the record, I
6 object. I don't think the answer says we were a member
7 that whole period, but just for the record make that
8 objection.

9 THE COURT: Well, you chose to answer it in the
10 way you did, and the answer certainly specifies a time
11 period and it refers to that time period in the rest of
12 the answer, so overruled.

13 (WHEREUPON, Plaintiffs' Exhibit Number 102 was
14 admitted into evidence.)

15 BY MS. FARRISE:

16 Q For the record, that was Exhibit 102 which we are
17 displaying here. This is the cover of the 1934
18 Transactions, National Safety Council, 23rd Annual
19 Safety CONGRESS. And if could I ask you, Mr. Martin,
20 to turn over to Page 25. And before we go, do you know
21 whether or not this is a recording of this meeting of
22 the Safety Congress, which is when they basically bring
23 people from across the United States to talk about
24 various issues of safety and industry?

25 A I have no idea.

ROA_01459

Appendix_01487

1 Q Okay. On Page 25 of the reported transactions of
2 the National Safety Council, under a section entitled
3 "Dust in Industry," part of what they address
4 specifically is asbestos, and they say, "The only other
5 type of dust which is generally recognized as a cause
6 of severe pulmonary injury is asbestos, a silicate of
7 magnesium." Did I read that correctly, Mr. Martin?

8 A I can't read that from here.

9 Q Hard to tell, okay. I appreciate that. That's
10 fair.

11 The same reporting of the information from the
12 National Safety Council Safety Congress in 1934
13 contains an article or writing, "Using Exhaust Systems
14 and Respiratory Equipment to Protect Workers Exposed to
15 Dust." This is, sir, an example of where, in this case
16 the Liberty Mutual Insurance Company, but folks
17 concerned with workplace accidents are not only
18 identifying what hazards are, but also disseminating
19 information about how to prevent exposure to asbestos
20 dust and other kinds of things that may hurt workers
21 from a safety perspective. Do you agree with that?

22 MR. REID: Objection; it's compound.

23 THE COURT: Overruled.

24 BY MS. FARRISE:

25 Q There is, by 1934, being reported in these trade

ROA_01460

1 journals -- if I ask you to turn over to Page 28 --
2 specifically the dissemination of information about
3 respirators. It's a little section here. They afford
4 the advantages of a pure air supply without something
5 weight and without the restriction to breathing that is
6 imposed by the filter respirator. Maybe there they're
7 talking about ventilation systems, it could be.

8 THE COURT: I think that's too unclear and vague
9 for him to be able to answer it. I will strike the
10 question, Ms. Farrise.

11 MS. FARRISE: Okay.

12 THE COURT: We have got a very poor copy here.
13 Unless we've got something that's a little better than
14 that, I think it's difficult for anybody to follow.
15 You're having trouble even identifying some of the
16 words here.

17 MS. FARRISE: No question, Your Honor. It's a
18 1934 document.

19 THE COURT: I understand that, but rather tenuous
20 connection anyway and exacerbated by the fact that it
21 can't be well read.

22 MS. FARRISE: You know, Your Honor, it's offered
23 and accepted into evidence, and his knowledge is
24 limited, so I'm going to move on from that.

25 THE COURT: Very good.

ROA_01461

Appendix_01489

1 BY MS. FARRISE:

2 Q Sir, the discovery response included information
3 that, in addition to the National Safety Council,
4 Crosby employees, engineers and the like were involved
5 in other professional trade organizations. I think
6 there was the Boiler Manufacturers Association, the
7 Chlorine Institute and the like?

8 A That's correct.

9 Q Have you or anyone, to your knowledge, undertaken
10 to determine what information about the hazards of
11 asbestos and ways to protect workers Crosby received
12 from being a member of those organizations?

13 A We were not able to determine if we received
14 anything from those organizations. We have no library
15 where we kept information like that.

16 Q At the Crosby facility?

17 A At the Crosby facility.

18 Q And, sir, can we agree that no one employed by
19 Crosby or hired by Crosby went to a medical library to
20 find that information about the hazards of asbestos and
21 ways to protect product users and workers at any time?

22 A That's correct.

23 Q I believe we agree that Crosby did nothing, to
24 your knowledge, to stay abreast of the state of medical
25 and scientific knowledge as it relates to whether and

ROA_01462

Appendix_01490

1 if there was a health hazard from being exposed to .
2 minimal amounts or any amounts of asbestos?

3 A Not to my knowledge.

4 MS. FARRISE: Your Honor, those are all the
5 questions that I have.

6 THE COURT: Very good.

7 Your witness, Mr. Reid.

8 Ms. Farrise, is this a copy?

9 MS. FARRISE: I just gave a copy to the court
10 reporter, Your Honor.

11 THE COURT: All right.

12 CROSS-EXAMINATION

13 BY MR. REID:

14 Q Good afternoon, Mr. Martin?

15 A Thank you.

16 Q You weren't here at this trial last week when
17 Mr. Jolly testified?

18 A I was not.

19 Q I have sent you a transcript of his testimony.

20 A Yes, you did.

21 Q You read a part of his trial testimony where his
22 attorney described a 65-bolt valve?

23 A I did.

24 Q Just so we're all oriented, do you have the
25 documents that are Bates-stamped 1 through 39 up there?

ROA_01463

Appendix_01491

1 A I think I do.

2 MR. REID: Trying to get rid of the tripping
3 hazard here first.

4 THE COURT: Are you talking about the Crosby Duke
5 documents, Mr. Reid?

6 MR. REID: Yes, Your Honor.

7 THE COURT: Mr. Martin, this is what you're
8 looking for.

9 THE WITNESS: Thank you.

10 THE COURT: Got all those valve drawings on it.

11 THE WITNESS: I have it. Thank you.

12 THE COURT: Great. All right.

13 BY MR. REID:

14 Q In fact, what I'm going to do, if you can start
15 with the Bates-stamped Page 04. Do you see that?

16 A I do.

17 Q And what is that page?

18 A That's a record of the valves that we have
19 installed at the Oconee Unit Number 1 nuclear plant.

20 Q What is Crosby's terminology for this document?

21 A It's called installation book, or in the local
22 terms, it's called a green book because it's in green
23 binders.

24 Q And in this particular case, this is for Duke's
25 Oconee Unit 1?

ROA_01464

Appendix_01492

1 A Unit 1, yes.

2 Q And if you will look at the next page, there is a
3 list of valves placed at Duke?

4 A Yes, at the Ocone plant.

5 Q Incidentally, a couple of these valves say
6 "factory consolidated." Is that a competitor of yours?

7 A Yes. This is a list put together by the sales
8 department, so what that's saying is the pressurized
9 safety valves were not awarded to Crosby; they were
10 awarded to Consolidated, a competitor of ours.

11 Q This list of main steam valves -- in fact, 16 of
12 them, apparently; is that correct?

13 A That's correct, 16 main steam valves.

14 Q And lists reheater valves?

15 MS. FARRISE: Your Honor, I'm going to object to
16 the leading form of these questions.

17 THE COURT: He gets to lead. He's on
18 cross-examination.

19 MS. FARRISE: Of his own witness?

20 THE COURT: Well, it is his own witness, but I
21 know he's going to be fine.

22 MR. REID: It's preliminary, Your Honor.

23 THE COURT: Y'all are nit-picking the leading
24 fairly well, but he's just trying to get the thing
25 moving. I don't think it's a problem.

ROA_01465

Appendix_01493

1 MS. FARRISE: Thank you.

2 BY MR. REID:

3 Q You recall in his testimony Mr. Jolly describing
4 being able to walk through a main steam pipe or valve?

5 A Yes.

6 Q And he described that steam went through it
7 constantly?

8 A Correct.

9 Q Is that Crosby's valve he was describing?

10 A No, not at all. The main steam valves on this
11 particular plant have a six-inch inlet and a ten-inch
12 outlet, and nobody is going to walk through that.

13 Q But what did you sell? Did you sell a main steam
14 pipeline, or did you sell a relief or pressure valve
15 attached to the main steam line?

16 A We sold safety valves attached to the main steam
17 line.

18 Q How was that attached? Was it welded? Was it
19 flanged? Was it threaded?

20 A In this case, for this plant, they're welded in.

21 Q Were there any asbestos-containing components in
22 the 16 main steam valves or six reheater valves that
23 Crosby sold and which were placed at Oconee Unit Number
24 2?

25 A No. In fact --

ROA_01466

Appendix_01494

- 1 Q Number 1, I'm sorry.
- 2 A Unit 1. In fact, there's no gaskets at all in the
- 3 16 main steam valves, and the gaskets in the reheater
- 4 valve, reheater safety valve, are metal gaskets.
- 5 Q Solid metal?
- 6 A Solid metal.
- 7 Q Was there any packing in any of these valves?
- 8 A No packing.
- 9 Q If you will turn the page to Bates-stamp 6. Got
- 10 that?
- 11 A Yes.
- 12 Q And that is -- show the Bates page there first,
- 13 Page 6. Is this Crosby's installation book for Duke's
- 14 Oconee Unit Number 2?
- 15 A It is.
- 16 Q And, again, you sold 16 main steam -- what's the
- 17 terminology?
- 18 A Safety valves.
- 19 Q Safety valves. Where it says size and style,
- 20 there's a designation HC?
- 21 A Yes, HC.
- 22 Q H is Crosby's designation for its series of safety
- 23 valves?
- 24 A Yes.
- 25 Q In any of the H valves that you sold to Duke, were

ROA_01467

1 there any asbestos components whatsoever?

2 A Yes. In the HB valves sold on one of the -- for
3 nuclear pressurizer application, it did have a gasket,
4 a couple gaskets, but they're not asbestos.

5 Q Where's the --

6 A At McGuire.

7 Q Those were not asbestos, you said?

8 A No, they're not asbestos.

9 Q And where is the pressurizer?

10 A The pressurizer valve is installed in containment
11 on the pressurizer vessel. It's highly radioactive.
12 Nobody usually goes in there. Only if the plant is
13 down.

14 Q If you go in there, would you be wearing
15 coveralls, radioactive mask, full outfit?

16 A Fully suited up.

17 MS. FARRISE: I'm sorry, Your Honor. I'm having
18 trouble following. I object to the leading nature.
19 And if it could be a question that's not leading and
20 answer as opposed to a conversation, I think that's
21 more appropriate.

22 THE COURT: Don't lead, Mr. Reid, please.

23 BY MR. REID:

24 Q Were there any asbestos-containing components in
25 the valves shown on the installation sheet that Crosby

1 showed to Duke for Ocone Unit Number 2?

2 A No, there were not.

3 THE COURT: And that's HC and JB?

4 THE WITNESS: That's correct.

5 THE COURT: Main steam and reheater turbine?

6 THE WITNESS: That's correct.

7 BY MR. REID:

8 Q By the way, I just want to ask you about your

9 efforts to gather information here. Who is Dave

10 Lombardi?

11 A Dave Lombardi is my contact in the engineering

12 specifications department.

13 Q And over the past couple of months, have you been

14 in contact with him about what your company placed at

15 Duke?

16 A Quite frequently.

17 Q Let me turn to you for a bit just so the jury has

18 a sense of who you are. You said you live in

19 Southport, North Carolina?

20 A Yes. Since I retired, I've lived in Southport,

21 North Carolina.

22 Q How old a man are you?

23 A 73.

24 Q Where did you grow up?

25 A I grew up in Attleboro, Massachusetts.

ROA_01469

1 Q Were you in the military?

2 A Yes. I was in the Navy for two years.

3 Q What were the years you were in the Navy?

4 A 1965 to 1967.

5 Q After you left the Navy, what did you do?

6 A I went to college on the GI Bill. I was
7 fortunate.

8 Q Where did you go to school?

9 A University of Mass.

10 Q And what did you obtain a degree in?

11 A Mechanical engineering.

12 Q Did you work for Crosby?

13 A I worked for Crosby from the time I got out of
14 college until the time I retired.

15 Q When did you start?

16 A 1973.

17 Q When did you retire?

18 A 19 -- 2007.

19 Q Can you just give us -- I don't want to keep the
20 jury here until 1 o'clock hearing about your
21 background, but can you give us a *Reader's Digest*
22 version of the position you held along the way while at
23 Crosby?

24 A Initially, when I went to work at Crosby, I
25 started as a service engineer. Did that for two or

ROA_01470

Appendix_01498

1 three years, then went into design engineering for four
2 years or so, and then I went into sales and marketing
3 and ended up selling large nuclear projects all over
4 the world, so.

5 Q Were you -- did you hold the title of nuclear
6 products manager for Crosby at one time?

7 A Yes, nuclear products manager. And, finally, last
8 title I had there was the power products manager, which
9 took in nuclear and fossil power.

10 Q Mr. Martin, just one caution. Let me finish my
11 question before you respond so the reporter can get
12 down everything.

13 Have you been in nuclear power plants across the
14 country?

15 A I've been in several.

16 Q Let's talk a little bit about Crosby. You said
17 before, it started in 1874?

18 A Correct.

19 Q What sort of things did it do at that time?

20 A Made steam whistles for locomotives, made safety
21 valves. It did lots of things, gauges.

22 Q When did it start to sell the types of valves
23 we're talking about in this case, safety valves and
24 relief valves?

25 A Probably started being one of the larger

ROA_01471

1 manufacturers in this marketplace sometime in the '40s,
2 and we were one of the first valve suppliers to supply
3 safety valves to the nuclear industry.

4 Q How many employees did it have at its peak during
5 your time in the company, '73 on?

6 A Peak. I read the article in the -- that was given
7 to me today. The peak seems to be about 600 or 650
8 people.

9 Q Let me turn to the types of valves Crosby made
10 from the, say, '60s forward. What types of valves did
11 it make?

12 A Pressure relief valves primarily, and that
13 consists of safety and relief valves. And also safety
14 relief valves, but primarily they are safety devices
15 that go on vessels. So when the vessel reaches its
16 design pressure, which it shouldn't exceed, the valve
17 opens and releases the fluid so the vessel does not
18 explode. Exploding vessels could cause a lot of
19 damage, could kill people, so it's safety equipment.

20 Q You're aware that various types of things pass
21 through pipelines -- water, steam, other materials?

22 A Yes.

23 Q Are those materials typically passing through the
24 type of valve that Crosby manufactures?

25 A No. The normal operating position of a Crosby

ROA_01472

1 safety or safety relief valve is closed. So the only
2 time that fluid passes through our valve is if there's
3 an overpressure situation. If the plant is in danger
4 and the valve has to open to relieve the pressure, then
5 fluid will throw through the valve. Other than that,
6 nothing flows through the valve.

7 Q We go off on one small tangent. We saw a video
8 last week of a witness named Mr. Taylor who testified
9 about working with Crosby gate valves. When is the
10 last decade the Crosby made gate valves?

11 A From review of the catalogs that we have
12 available, apparently in the '30s was the last time
13 Crosby made a gate valve.

14 Q Back to the types of valves we're talking about
15 here, safety and relief valves, is it fair to
16 characterize those as safety devices?

17 A Yes, absolutely.

18 Q How so? Can you explain a little bit more about
19 how they work?

20 A Yes. It's a self-contained valve. It's typically
21 a spring pushing down on a disc against a nozzle. So
22 when it sits on -- it's attached to the vessel it's
23 protecting. And when that vessel pressure raises, it
24 pushes up against this disc, and the spring will
25 release and open the valve. When the pressure reduces

ROA_01473

1 to a safe level, the spring takes over again and closes
2 the valve.

3 Q What kind of maintenance is typically required on
4 Crosby valves?

5 A That's a difficult question to answer. In the
6 case of a nuclear power plant, the NRC dictates how
7 frequently they test these valves. If they go in and
8 test a Crosby valve, and they test it for its set
9 pressure and seat leak and it performs adequately, they
10 don't do any more with it. They would not go in and
11 repair it because there's no need to repair it.

12 Q What's the term set pressure mean?

13 A That means that's the pressure at which the valve
14 is set to open up so that you ensure that it goes off
15 at the right pressure.

16 Q And when these valves are tested periodically
17 under the Nuclear Regulatory Code, is that the type of
18 test that is taking place?

19 A Yes. They verify set pressure so they're sure it
20 will open at the right pressure, and then they check it
21 for seat leakage. And if they pass both that criteria,
22 they don't do anything.

23 Q Is the risk of not having the set pressure
24 correctly calibrated that you will have an explosion on
25 the vessel?

ROA_01474

1 A That's a possibility, yes.

2 Q We have an exemplar valve here, and it's all
3 metal?

4 A Yes.

5 Q No asbestos parts in it?

6 A No.

7 Q I'm going to get that, and we can talk about it.

8 MS. FARRISE: Your Honor, I probably don't have
9 any objection. I just would like to mention I have not
10 been shown it or disclosed to me, so I probably would
11 like to have --

12 MR. REID: It's on our exhibit list, Your Honor.

13 THE COURT: That passed right over me. I didn't
14 hear what you said, nor did I hear Mr. Reid's answer.
15 Is this trying to get a copy of the exhibit?

16 MS. FARRISE: I thought -- well, I got a copy of a
17 picture.

18 THE COURT: Right.

19 MS. FARRISE: And --

20 THE COURT: I presume he intends to introduce this
21 through this witness.

22 Am I right, Mr. Reid?

23 MS. FARRISE: Yes. My --

24 THE COURT: Are you objecting?

25 MS. FARRISE: I'm really not, but there was a

ROA_01475

1 disclosure rule and it wasn't complied with. That's
2 all. I'm not objecting to this picture at all.

3 MR. REID: It absolutely --

4 THE COURT: Let's not get into a big argument
5 about it. If you're not objecting to it, wonderful.
6 It's coming in without objection.

7 MR. REID: Your Honor, with the court's
8 permission, I'm going to get an exemplar valve to use
9 as a demonstrative exhibit.

10 MS. FARRISE: So that I do have an objection to
11 just because I have not heard of it, seen it. Can we
12 talk about it before?

13 THE COURT: Mr. Reid, have y'all furnished this to
14 them before?

15 MR. REID: It's on our exhibit list. There was no
16 request to take a look at it.

17 MS. FARRISE: So I guess the answer is no.

18 THE COURT: Yes, but it was on their exhibit list.

19 MS. FARRISE: Actually, there is a piece of --
20 white piece of paper that says "exemplar." I looked on
21 their exhibits, and you did have a disclosure rule.
22 And I may not have any objections. I just want to look
23 at it not for first time with the jury, which I think
24 is fundamental fairness. There was a 24-hour
25 disclosure order as well. And we e-mailed them.

ROA_01476

Appendix_01504

1 yesterday saying, "What are you going to show?" I
2 probably don't have an objection, but I would just like
3 to be able to look at it before it's like show and tell
4 with the jury.

5 THE COURT: I think that's fair, Mr. Reid. And if
6 we've got any more exhibits like this, fairness
7 dictates that they have some idea about it before you
8 introduce it so they can take a look at it and ask
9 whatever questions they want to ask.

10 So what we're going to do is this. We're going to
11 let you examine on this thing, and then we may break
12 and let them have some time to examine the thing before
13 we take Mr. Martin down.

14 MS. FARRISE: It looks to me, Your Honor, like
15 we're going to have a lunch break. I'll examine it
16 whenever we have our lunch break.

17 THE COURT: That's good. All right. Go forward,
18 Mr. Reid, and y'all don't do that again, please.

19 MR. BOUCH: Your Honor, all these were disclosed.
20 Both sides --

21 THE COURT: Mr. Bouch. Mr. Bouch, there is no
22 need for any further argument at this time. This
23 matter is being introduced, and Mr. Martin is going to
24 be examined about it.

25 Go ahead, Mr. Reid.

ROA_01477

Appendix_01505

1 MR. REID: Thank you, Your Honor.

2 Your Honor, may I have Mr. Martin come down from
3 the witness stand?

4 THE COURT: Sure.

5 THE WITNESS: This is typical --

6 MR. REID: Bob, you have got to have a question.

7 THE COURT: Let him ask you some questions,
8 Mr. Martin, and then you can say what you want to say.

9 Stand there so you're looking at the jury and the
10 court reporter so they can hear what you're saying.

11 MR. REID: Your reporter asked me for the exhibit
12 number. It's Exhibit 72.

13 (WHEREUPON, Defendant's Exhibit Number 72 was
14 admitted into evidence.)

15 BY MR. REID:

16 Q Mr. Martin, what kind of valve is this?

17 A It's a pressure relief valve.

18 Q Can you describe where it would be attached to a
19 pressure vessel or pipe?

20 A Yes. We're responsible from the inlet to the
21 outlet. And this valve would be mounted on a vessel of
22 some sort. And this would be the inlet. So, it would
23 be mounted by this flange.

24 Q And in the event that there was an
25 overpressurization of what it's attached to, what would

ROA_01478

Appendix_01506

1 happen, and where would whatever is in the pressure
2 vessel go?

3 A With this mounted on the vessel, the connecting
4 fitting would be here, so the pressure, whatever is in
5 that vessel, would be pushing up on this disc in here.
6 And when the pressure got high enough, this spring
7 would compress, and this shaft would go up, and this
8 top section would lift up, and the fluid would come out
9 here. I'm wrecking your desk here. When the pressure
10 goes down and gets low enough, this spring takes over
11 and slams it shut and seals it off.

12 Q Can we see gaskets in this valve?

13 A There are gaskets in this particular valve.
14 That's why we cut it away so you can see them. They
15 would be up here on the cap, down here where this joint
16 goes together, and there would be two more gaskets
17 where these little set screws go into the valve.

18 Q And on this exemplar, are the gaskets all metal?

19 A These are all steel gaskets, soft steel gaskets.

20 Q And is this the size -- I'm looking at the middle
21 of the exemplar, which is shown in Exhibit 72. Is this
22 gasket representative of what one would find in the
23 field?

24 A Oh, absolutely. This is what you would find.
25 Small one here. This is the largest gasket that would

ROA_01479

Appendix_01507

1 be in there, and then these two real small gaskets that
2 go in the back over here.

3 Q That's all I've got about this. Thanks very much.

4 MR. REID: Your Honor, can I take a moment? I'm
5 not sure I want to hand this to the jury. It's heavy.
6 I don't want anybody to wake up with a broken foot.

7 THE COURT: Yes. You can walk in front of the
8 jury and hold it up for them to see.

9 (WHEREUPON, item published to the jury.)

10 BY MR. REID:

11 Q I want to talk about the subject of insulation for
12 a moment. Was it ever appropriate to insulate a Crosby
13 safety or relief valve?

14 A No, it's not.

15 Q Why not?

16 A These valves are all tested at the factory, and
17 the steam valve, we would mount fully. We have a large
18 steam facility. The valve would be mounted in our
19 steam facility, and they would actually bring up the
20 pressure and pop it and make it go off and seal it.

21 And what they do once they get it to what the
22 exact pressure should be, they seal wire it so nobody
23 can fool around with the settings. Now, that's tested
24 on our facility. If you take the valve and you bring
25 it into the field and insulate the valve, that

ROA_01480

Appendix_01508

1 pressure, the temperature is going to get higher than
2 it was tested at, and if the temperature goes up, the
3 spring can lose compression or pieces can grow to
4 affect the set pressure. So if you insulate it, what
5 you're going to do is you're going to affect the
6 pressure at which that valve opens, and now it becomes
7 a dangerous situation because it's not going to open at
8 the same pressure that you tested it. So, no. No
9 insulation.

10 Q Did you ever seen a Crosby valve insulated?

11 A I have not.

12 Q Have you dealt with dozens of Crosby customers
13 over the years?

14 A Yes, I have.

15 Q How would you describe them? Were they
16 sophisticated?

17 MS. FARRISE: I'm going to object that it's
18 overbroad, lacks foundation, calls for speculation,
19 irrelevant to this case unless we're talking about
20 Duke.

21 THE COURT: Yes. I would think you would want to
22 direct your attention to Duke in regard to that
23 question, Mr. Reid.

24 BY MR. REID:

25 Q Do you think Duke understood that valves sold to

ROA_01481

1 them by Crosby should not be insulated?

2 MS. FARRISE: Objection; lacks foundation, calls
3 for speculation.

4 THE COURT: Overruled.

5 THE WITNESS: Duke had a very highly regarded
6 engineering capability, as did Westinghouse and the
7 other major suppliers in the nuclear industry.

8 BY MR. REID:

9 Q Did Crosby ever sell insulation?

10 A No.

11 Q Did Crosby ever distribute insulation?

12 A No.

13 Q Recommend insulation?

14 A No.

15 Q Specify insulation?

16 A No.

17 Q I want to talk about the sales process, the
18 selling of Crosby valves. How did -- what was the
19 process that Crosby used to sell valves to nuclear
20 facilities such as Duke?

21 MS. FARRISE: I'm going to object, Your Honor,
22 that unless it is asked to Duke, it's irrelevant.

23 MR. REID: I strongly disagree, Your Honor.

24 THE COURT: You're wanting to know the general
25 process for selling valves to customers?

ROA_01482

Appendix_01510

1 MR. REID: Right. We're going to describe the
2 back-and-forth between Crosby and its customers.

3 THE COURT: That's fine.

4 Overruled.

5 THE WITNESS: For a nuclear valve, the customer
6 sends us a certified specification sheet that is
7 certified by a professional engineer, and it lists on
8 it the set pressure he wants that valve to go off at to
9 protect his system, the fluid that's going to pass
10 through the valve, the temperature, and what the
11 materials are of the major components. He specifies
12 the material for nozzle, the body, the bonnet, the
13 spring. And with that information he gives us, then we
14 design a valve to meet that need.

15 BY MR. REID:

16 Q Do you exchange drawings with the customer before
17 you begin to manufacture the valve?

18 A Yes. For a nuclear valve, we're required to
19 create the drawing, show all the materials that we're
20 going to use on that drawing and send it to the
21 customer for approval before we can manufacture the
22 valve. So in the case of Duke, we prepare the drawing
23 based on his certified data sheet; we'd send it to him,
24 and he would go through it and approve it, send it
25 back, either modify it because they don't like this or

ROA_01483

1 approve to be used.

2 Q What was the typical time range, the time that
3 that process would last, between the time you get the
4 specifications from the customer certified by a
5 professional engineer, exchange drawings, and are set
6 to start manufacture of the valve?

7 A Early on when they started building the nuclear
8 plants, it was a very long process. It was not unusual
9 for us to receive an order but not ship a valve for two
10 years. There would be that much upfront work before
11 everything happened and the product was finally
12 shipped.

13 Q Did those drawings that were exchanged back and
14 forth have to be finally approved by the customer
15 before you began your manufacturing process?

16 A Absolutely. They had to be approved.

17 Q Was there also an exchange of information about
18 procedures?

19 A The -- just about every procedure we used to
20 manufacture, assemble, and test that valve had to be
21 approved by the customer, yes.

22 Q Can you give the jury an understanding of some of
23 the specific types of procedures that we're talking
24 about?

25 A Yes. Even if -- these valves are built to the

ROA_01484

Appendix_01512

1 ASME code. The ASME code has different provisions or
2 sections. Section 1 is for boilers; Section 8 is for
3 unfired pressure vessels, and Section 3 is for nuclear.
4 And what they tell us as the manufacturer is if you're
5 going to supply a nuclear valve, you have to do certain
6 testing on the key components. Like the nozzle is a
7 very key component because that attaches to the vessel.
8 We would have to do some nondestructive test work on
9 that piece. We have to send those procedures to Duke
10 to get their approval that we can run that test on that
11 piece. We would have to get a cleaning procedure
12 approved so that Duke understood how we were cleaning
13 each and every piece before we put it in the valve.
14 That would have to be approved. The assembly procedure
15 would have to have approved by Duke. The test
16 procedure would have to be approved. The packaging
17 procedure all have to be approved by Duke before we can
18 ship them.

19 Q What's the purpose of those requirements under the
20 ASME code?

21 A The purpose of the requirements is to make sure
22 that the product conforms to the requirements of the
23 ASME, which are rather strict, and also that the
24 customer buys into the requirements.

25 Q Where did your responsibility under the ASME code

ROA_01485

1 with respect to your valves start and where did it end?

2 MS. FARRISE: I'm just going to object, Your
3 Honor, that it's irrelevant. It seems to perhaps call
4 for a professional opinion. This witness is not an
5 expert witness.

6 THE COURT: Overruled.

7 THE WITNESS: Our responsibility by code begins at
8 the inlet flange and ends at the outlet flange. Has
9 nothing to do with the connecting pipe.

10 MR. REID: Can I have the overhead projector?

11 THE COURT: What code are you talking about?

12 THE WITNESS: ASME, American Society of Mechanical
13 Engineers Section 3.

14 THE COURT: Right. The connections between -- you
15 obviously sold some asbestos-containing material
16 because you said that in your --

17 THE WITNESS: Internal gaskets, yes.

18 THE COURT: All right. Any of the connecting
19 material -- and you're saying your responsibility stops
20 at the flange, right?

21 THE WITNESS: Correct.

22 THE COURT: What I'm asking is, do any of the
23 valves you sold Duke have the necessity of having a
24 gasket attached to the flange rather than just being
25 welded together?

ROA_01486

Appendix_01514

1 THE WITNESS: We sold valves with outlet flanges
2 that the end user would be responsible for deciding
3 what gasket goes into that connection.

4 THE COURT: And did some of those gaskets -- were
5 some of those gaskets asbestos gaskets?

6 THE WITNESS: I don't know. I would think that
7 one of the standards at that time would be asbestos,
8 but there are other materials they could have used.

9 THE COURT: Right. And some of the materials in
10 this document we're looking at now, particularly right
11 there at the last, specified that there were some
12 gaskets that were asbestos, and then they were changed
13 for other kind of gaskets.

14 THE WITNESS: Those are internal gaskets.

15 THE COURT: Internal gaskets, not the flange
16 gaskets?

17 THE WITNESS: Not the flange gaskets at all.

18 THE COURT: Did y'all supply any flange gaskets?

19 THE WITNESS: To the best of my knowledge, no.

20 THE COURT: But the design was a flange that would
21 have to have a gasket?

22 THE WITNESS: Correct.

23 THE COURT: All right. I understand what you're
24 saying.

25 All right, Mr. Reid.

ROA_01487

1 BY MR. REID:

2 Q Mr. Martin, I'm showing you the document
3 Bates-stamped Page 21.

4 A Yes.

5 Q And I'm just pointing out to the jury where it
6 says, "Valve build to ASME Boiler and Pressure Vessel
7 Code 19727." Do you see that?

8 A Yes.

9 Q And that's the code we've been talking about,
10 correct?

11 A Yes, it is.

12 Q All right. You've worked for Crosby for 34 years?

13 A Yes.

14 Q You dealt regularly with Crosby customers?

15 A Yes.

16 Q Did customers come any more sophisticated than
17 Duke?

18 A No.

19 MS. FARRISE: I'm going to object -- excuse me.
20 I'm going to object that it lacks foundation, calls for
21 speculation as to Duke.

22 THE COURT: Very good. Overruled.

23 THE WITNESS: No. The big firms building nuclear
24 plants and the big suppliers to the nuclear plants,
25 like the Westinghouses and the GEs, had very, very good

ROA_01488

1 engineering firms. I mean, they had to. These are
2 very critical nuclear power plants.

3 BY MR. REID:

4 Q Would it be fair to characterize it as the best
5 and the brightest?

6 A I would have to believe so.

7 Q How could Crosby -- what were the various means in
8 which Crosby valves could be attached to pressure
9 vessels?

10 A They could be welded on. They could be flanged
11 mounted. And if they were real small valves, they
12 could be threaded. They would thread them to the
13 system.

14 Q Did I ask you to take a look at what was sold to
15 Duke to determine the percentage or proportion of the
16 valves Crosby sold that were welded?

17 A Yes.

18 Q And what was that proportion?

19 A It was about -- had to be -- it's about 48 out of
20 170, something like that.

21 Q Let's talk about the flange gaskets that go
22 between those valves that had flanges and the pressure
23 vessel. That would be this area at the base?

24 A Yes.

25 Q And it might be this area at the outlet?

ROA_01489

1 A Correct.

2 Q Did Crosby -- are you aware of any instance where
3 Crosby supplied those flanges gaskets?

4 A I am not.

5 Q If Duke had wanted to use metal or Teflon for --
6 or any other type of valve or I should say flange
7 gasket, would they be within their rights to do so?

8 A Yes. If they determined that was an appropriate
9 gasket for their system, yes.

10 Q Did Crosby have any role in determining what type
11 of gasket would be used on the flange?

12 A No, we did not.

13 Q Were there some internal flanges in Crosby valves?

14 A Yes, there are some internal flanges.

15 Q If there is a purchase order that references a
16 flange with Crosby selling a replacement part, would
17 that be a reference to the internal flanges or to
18 something else?

19 A In the few documents we've looked at, yes, that's
20 exactly what they were.

21 Q Such as a Belews flange?

22 A Yes.

23 Q What is a Belews flange?

24 A A Belews is an internal piece to the valve. If
25 the valve is discharging into a closed system,

ROA_01490

1 sometimes that system can impose a pressure back on the
2 outlet of the valve. If you don't do something with
3 that pressure, it can affect the point at which the
4 valve opens, so they put a Belegs in it, which is a
5 series of convolutions, and the pressure acts on that
6 Belegs, and the Belegs counteracts the effect of the
7 back pressure, and that little piece has a flange to
8 hold it in place.

9 Q Last week Mr. Jolly testified that he, in general
10 terms, relied on valve manufacturers to determine what
11 flange gaskets to use. My question to you is: Did
12 Crosby ever produce a manual that identified what
13 flange gaskets should be used to connect its valves to
14 pipes?

15 A It did not.

16 Q We talked about testing. I just want to have you
17 briefly describe the testing that took place before
18 Crosby shipped valves out.

19 A If I -- if it's a steam valve, it would go on a
20 large steam test facility, and we would set it and
21 verify that it opens at the design pressure of the
22 valve, make sure that it opens fully and closes and
23 make sure it seals off tight. So those are the types
24 of tests we ran.

25 Q Once a valve is in the field, would anyone not

ROA_01491

1 specifically trained to work on a safety relief valve
2 that Crosby sold be expected to work on those?

3 A No. I would say no.

4 Q Is that because of the sophistication needed to
5 determine the set pressures and things like that?

6 A Yes, because of the sophistication and the safety
7 implications if they do it wrong.

8 Q Meaning what?

9 A If it's improperly set, the vessel could explode.

10 MR. REID: Your Honor, I think this is an exhibit
11 used last week I think admitted. I'm not a hundred
12 percent sure.

13 THE COURT: Looks like Plaintiffs' Exhibit
14 6364.01.

15 Admitted, Diane?

16 THE REPORTER: 6364.01 is admitted on 7/25, yes.

17 THE COURT: It's an admitted exhibit. You may
18 examine on it.

19 Wait a minute. Ms. Farrise, have you got a copy
20 of the exhibit?

21 MS. FARRISE: Yes, Your Honor. Thank you.

22 BY MR. REID:

23 Q Mr. Martin, for the record, I just want to refer
24 to the fact that this is actually three exhibits, all
25 admitted last week, 6364.01, .02 and .03?

ROA_01492

Appendix_01520

1 A I've looked at them.

2 Q These are records that show that Crosby was at
3 Duke to inspect, repair and test some valves in 1973
4 and 1974?

5 A Yes.

6 Q And last month, did you look into the types of
7 valves referred to in these documents to determine
8 whether or not the components had asbestos?

9 A Yes..

10 Q And what did you find?

11 A These are main steam valves, and they're the H
12 series that we mentioned that never had any gaskets, so
13 no, they have no asbestos materials at all.

14 THE COURT: This is 6364.4. Is this in evidence,
15 Diane?

16 THE REPORTER: It is.

17 THE COURT: All right. You may examine, Mr. Reid.

18 BY MR. REID:

19 Q Mr. Martin, in this exhibit, if you could turn to
20 the third-to-the-last page. Do you see that where it
21 says "Item 7 through 12," a little more than halfway
22 down the page?

23 A Yes, I do.

24 Q And then following that, if you look in the item
25 number there in the left-hand column, there are numbers

ROA_01493

Appendix_01521

1 corresponding 7 through 12?

2 A Yes.

3 Q And each of those has reference to asbestos
4 gaskets?

5 A Yes, it does.

6 Q Now, let's take a look at the second-to-last page,
7 just as an example. You see Items 8, 9 and 10 there?

8 A I do.

9 Q Eight starts with the word "guide"?

10 A Correct.

11 Q Nine starts with the word "disc"?

12 A Yes.

13 Q Ten starts with the word "stem"?

14 A Yes.

15 Q All right. And then is the description after
16 those words the same description for Items 8, 9 and 10?

17 A Yes, it is.

18 Q What was being sold in Item 8?

19 A Item 8, it was a metal piece, a guide.

20 Q How about Item 9?

21 A Nine is a disc, which is another metal piece.

22 Q Item 10?

23 A Is a stem, which I call a spindle, but that's also
24 a metal piece.

25 Q Gaskets. Did Crosby ever make, manufacture

ROA_01494

Appendix_01522

1 gaskets?

2 A No, we did not.

3 Q We talked a little bit about where it obtained
4 them. Have you found anything in your -- or let me put
5 it this way. From either your days at Crosby or in the
6 work you've done for Crosby, have you seen anything
7 suggesting that the gasket suppliers to Crosby informed
8 or identified any hazards associated with the asbestos
9 gaskets?

10 A No, I have not.

11 Q When did Crosby stop using asbestos components?

12 A I think we found the latest date was 1989.

13 Q Have you looked into whether any of the valves
14 that Crosby sold to Duke contained packing?

15 A Yes.

16 Q What did you find?

17 A None contained packing.

18 Q Was that uncommon?

19 A No. It was very rare for Crosby to use asbestos
20 packing.

21 Q How about any packing at all?

22 A Very rare.

23 Q And is there something about the nature of Crosby
24 valves that did not call or have a need for packing?

25 A Yeah. Typically, packing is used on a gate or a

ROA_01495

Appendix_01523

1 globe valve where you actually have a handle and you're
2 turning the handle which turns a shaft which opens or
3 closes the valve. Our valves don't operate like that,
4 so we have very, very little need for packing or none,
5 essentially.

6 Q Counsel was asking you about this page
7 Bates-stamped Page 2. Do you have that?

8 A Just a second. Yes.

9 Q What type of valve is the subject of that drawing?

10 A That's a JB valve, and it's a large valve that's
11 used on the turbine section on the reheater section.

12 Q Says style JB- --

13 A -- TD, yes.

14 Q I want to show you the summary that counsel used.
15 Is there a Style JB on that summary?

16 A Yes, Style JB is on there.

17 Q When was that product phased out?

18 A That's -- this JB and this JB are two different
19 products.

20 Q Okay.

21 A This product has never been phased out.

22 Q All right. I'll take that back. By the way, this
23 summary had no H Series valves with the exception of --
24 bear with me -- HPV and HBV-ST?

25 A Correct.

ROA_01496

Appendix_01524

1 Q Is this a list of all the types of valves that
2 Crosby ever made?

3 A No.

4 Q It's just the ones that had asbestos components at
5 some point?

6 A Correct.

7 Q Just a couple other topics. We talked about the
8 Wrentham facility?

9 A Yes.

10 Q Do you know what kind of asbestos was being abated
11 from that facility?

12 A I have to believe it had to do with the
13 construction of the building. The building, Crosby
14 moved there in 1949, and the building was old then. So
15 when they decided to move out of the Wrentham facility
16 into a new facility, they had to tear down the
17 facility. And I believe what they're talking about is
18 old tiles in the roof construction, nothing to do with
19 gaskets and packing.

20 Q Do you have Exhibit 945.3219?

21 A I think I did have it somewhere. I saw it.

22 THE COURT: It is. It's back here.

23 THE WITNESS: I have it.

24 BY MR. REID:

25 Q Turn to the second page. And by the way, what

ROA_01497

- 1 type of valve is the subject of this document?
- 2 A These are H Series safety valves.
- 3 Q And it has a list of the various parts in these
- 4 diagrams?
- 5 A Yes, it does.
- 6 Q Is there any gasket or packing in these valves?
- 7 A No, there are not.
- 8 Q There was discussion about the National Safety
- 9 Council. Do you know when Crosby was first a member of
- 10 the --
- 11 A I have no idea, no.
- 12 Q Turn your attention to the back, to the
- 13 Bates-stamped documents. Do you have those?
- 14 A Yes.
- 15 Q If you look at Page 1, please.
- 16 A Yes.
- 17 Q This, in the upper right-hand corner, has a
- 18 listing of all the parts in this valve?
- 19 A That's correct.
- 20 Q And the name of that part? Column 2, name of
- 21 part?
- 22 A I'm sorry. I didn't --
- 23 Q Sure. Column 1 is the part number?
- 24 A Oh, yeah.
- 25 Q And that's all the parts in this valve?

ROA_01498

Appendix_01526

- 1 A Yes.
- 2 Q And Column 2 is the name of the part?
- 3 A Yes.
- 4 Q And are there any gaskets or packing?
- 5 A There are gaskets.
- 6 Q There's a material column?
- 7 A Yes.
- 8 Q What does SST stand for?
- 9 A Stainless steel...
- 10 Q Is that a completely metal, one hundred percent
- 11 metal --
- 12 A Yes.
- 13 Q -- stainless steel gasket?
- 14 A It is.
- 15 Q So there is a cap gasket?
- 16 A Yes.
- 17 Q Stainless steel?
- 18 A Yes.
- 19 Q What other gaskets?
- 20 A Let's just go down. Cap gasket, then a bonnet
- 21 gasket, and a set screw gasket.
- 22 Q If you look at Part 170, is that a gasket as well?
- 23 A 170 is, yes. It's a cap -- plug gasket.
- 24 Q What are those gaskets made out of?
- 25 A All stainless steel.

ROA_01499

Appendix_01527

- 1 Q I'd like you to look at Page Number 2.
- 2 A Yes.
- 3 Q I'm going to be a little challenged here
- 4 reading-wise because of the small print. Can you see
- 5 the print on the page in front of you?
- 6 A I can.
- 7 Q How many gaskets are in this JB-TD model?
- 8 A I have to count them. Looks like four.
- 9 THE COURT: I got five.
- 10 THE WITNESS: You win.
- 11 MR. REID: She does win, Mr. Martin.
- 12 Q Let's go through them. Line 5 is a gasket?
- 13 A Yes.
- 14 Q What's that made out of?
- 15 A Steel.
- 16 Q Line 25, what's that?
- 17 A That's steel also.
- 18 Q What part name is that?
- 19 A Says cap gasket.
- 20 Q Line 40, what kind of gasket do we have there?
- 21 A 40 is a shaft bearing gasket.
- 22 Q What's that made out of?
- 23 A That is steel.
- 24 Q Line 43?
- 25 A That is a cap top gasket.

ROA_01500

1 Q Made out of?

2 A Steel.

3 Q Line 48?

4 A Is a test rod gasket. Steel.

5 THE COURT: What did you say that one was made out

6 of?

7 THE WITNESS: Steel.

8 THE COURT: Steel? I got steel above. Must be a

9 hash mark.

10 THE WITNESS: Two little hash marks.

11 BY MR. REID:

12 Q If you go to Page 9, please. Mr. Martin, can you

13 please tell the jury what Page 9 is?

14 A That's valve style is HC.

15 Q Well, let's get a little more general than that.

16 This is a list. What do you call this list?

17 A Oh, it's a bill of material.

18 Q Does this list all the materials used in a

19 particular type of valve?

20 A Yes.

21 Q What type of valve?

22 A HC with a W after it means it has a welded inline.

23 Q So HC-65W indicates welded?

24 A Yes.

25 Q And what you're talking about is the connection

ROA_01501

1 between the valve and whatever vessel it's on?

2 A Correct.

3 Q Are there any gaskets or packing at all in this
4 type of valve?

5 A No, there is not.

6 Q Go to Page 18, please. What type of valve is
7 shown on this page?

8 A This is a style, looks like an HA valve. Yes,
9 it's a Style HA valve.

10 Q And it says Duke Power Company, McGuire Units 1 and
11 2?

12 A Yes.

13 Q That was the purchaser?

14 A Yes. Duke was the purchaser. These are main
15 steam valves.

16 Q Does this also have a list of materials?

17 A It does.

18 Q Any asbestos-containing components in this list?

19 A Not at all.

20 Q Go to Page 19. What type of valve do we have
21 here?

22 A That is, again, another HA style main steam valve
23 sold to Duke for McGuire.

24 Q Any gaskets or packing in that valve?

25 A No.

ROA_01502

Appendix_01530

1 Q Let's go with 21 next, if you would be so kind.

2 What type of valve is shown on Page 21?

3 A It's a little different. This is a vacuum relief
4 valve.

5 Q What is a vacuum relief valve?

6 A Vessels, in most parts, are designed to contain
7 internal pressure. So they're designed for pressure
8 inside the vessel. But if you take a vessel and you
9 empty it if it's full with liquid or anything, if you
10 empty it real quick, it could cause a vacuum in the
11 vessel, and the vessel is strong from the inside out,
12 but it's not strong from the outside in, and it could
13 crush. So these vacuum relief valves are set very low,
14 and when this vessel tries to crush, this vacuum relief
15 valve opens and lets in air so it doesn't happen. So
16 it works opposite of a pressure relief valve.

17 Q And what Duke plant did this product of Crosby go
18 to?

19 A This one goes to the McGuire plant.

20 Q Both Units 1 and 2?

21 A Yeah, I believe so. Yes, says on the drawing 1
22 and 2.

23 Q Is there a list of material for this valve?

24 A Yes, there is.

25 Q Any packing?

ROA_01503

Appendix_01531

1 A No packing.

2 Q Any gaskets?

3 A I'll have to look.

4 I don't see any gasket mentioned.

5 Q Any asbestos-containing components at all?

6 A No, there are not.

7 Q Did you and Mr. Lombardi make an effort to
8 determine how many or what proportion of the valves
9 that you sold to Duke either had no packing or gaskets
10 at all or had none that were asbestos-containing?

11 A We did tabulate up the valves from the three
12 plants that we found in this installation book, yes.

13 Q Did the majority have any asbestos-containing
14 components or not have asbestos-containing components?

15 A Not. Probably 85 percent did not have.

16 Q In terms of whether there is a health risk from
17 asbestos-containing gaskets or packing, is that
18 something that you defer to industrial hygienists and
19 medical experts on?

20 A Yes.

21 MR. REID: Your Honor, I think that's all I have.

22 THE COURT: Very good.

23 Ladies and gentlemen of the jury, we're going to
24 adjourn for lunch now. Let's see here. Let's be back
25 at 2:30.

ROA_01504

1 (WHEREUPON, the jury exited open court at
2 1:14 p.m.)

3 THE COURT: All right. Lunch break.

4 All right. Now, let me ask you this.

5 Mr. Martin, you can retire from the stand. Thank
6 you, sir.

7 There may be some redirect after lunch, but in the
8 meantime, I guess we'll go right into Maddox's, so
9 let's talk about Maddox. Can we talk about Maddox now
10 or do you want to wait to come in early?

11 MR. BOUCH: We can do it right now.

12 THE COURT: Mr. Martin, of course, you are an
13 experienced witness and know no discussion of your
14 testimony during lunch. But you can go to lunch with
15 him if you want to. All right.

16 I've read or the best way I could trying to listen
17 to testimony. I have read the Maddox deposition, and
18 all I see is objections to the form of the question.
19 This is a de bene esse deposition, is it not?

20 MS. McVEY: It is.

21 MR. BOUCH: The rule doesn't make any distinction,
22 and it limits me to those objections, Your Honor.

23 THE COURT: Well, I have looked at the form of
24 these various questions, and I do not see any dilemmas
25 with the form so point them out to me if you've got

ROA_01505

Appendix_01533

1 them.

2 Mr. Bouch.

3 MR. BOUCH: The hypothetical starts on Page 16 and
4 goes over to 17. I object to it as an improper and
5 incomplete hypothetical. It calls for each and every
6 exposure opinion. Make the same objection on --

7 THE COURT: Just a second.

8 Overruled.

9 MR. BOUCH: Same objection to Page 18, 19 and 20.

10 THE COURT: Overruled.

11 MR. BOUCH: 25, I make the same objection to
12 stated hypothetical on the grounds asserted earlier.

13 THE COURT: Overruled, but certainly the content
14 of the opinions expressed will be juxtaposed against
15 the content of the other testimony offered to determine
16 whether or not that expression of opinion by Dr. Maddox
17 is credible. I mean, he's speaking within the confines
18 of the hypothetical that was given to him. Y'all are
19 free to attack the content of that with other
20 witnesses, and you just put up a witness who's doing
21 just that, so I think -- I don't think the form of the
22 question is the problem, but it's the believability of
23 its content may well be, and if it is, you will be able
24 to make that to the jury.

25 MR. BOUCH: I understand your ruling.

ROA_01506

Appendix_01534

1 THE COURT: Anything further?

2 MS. McVEY: No, ma'am.

3 THE COURT: Very good. See you at 2:30.

4 (WHEREUPON, lunch recess was taken from 1:20 p.m.
5 to 2:38 p.m.)

6 (WHEREUPON, the jury entered open court at
7 2:38 p.m.)

8 THE COURT: Ladies and gentlemen, please be
9 seated.

10 We'll continue with the redirect of Mr. Martin,
11 and we'll have a short read deposition, and then we
12 will see where we go from there, but those are the
13 first two things that will take place this afternoon.

14 All right. Mr. Martin, you are still under oath,
15 as you know.

16 Ms. Farrise.

17 MS. FARRISE: Okay.

18 REDIRECT EXAMINATION

19 BY MS. FARRISE:

20 Q Mr. Martin, I need to clarify a few things about
21 how many valves we're talking about at the Duke
22 facilities. Okay?

23 A Okay.

24 Q Now, as I understand it, we've got Ocone. And do
25 you still have the packet of documents that Crosby has

ROA_01507

Appendix_01535

1 provided in this case up there?

2 A I should have.

3 Q If you go through that 39-page thing, there's
4 those green sheet or green book sheets, right?

5 A Yes.

6 Q And it's -- I went through and was able to find --
7 if you turn to, let's say, 005, and maybe it will be up
8 by the time you get there. Do you have that? So at
9 Oconee, there was a Number 1 unit that had Crosby
10 valves, right?

11 A Correct.

12 Q And if you turn to Page 005 of the green book,
13 which I hope will appear, there are listed, and counsel
14 just went through that, 16 Crosby valves; the location
15 of the Crosby valves at Unit Number 1 Oconee is the
16 main steam, correct?

17 A 16 main steam valves, that's correct.

18 Q Yes. And then on 007, there were 16 main steam
19 for Number 2, right?

20 A Yes.

21 Q And on Number 2, there are six reheaters, correct?

22 A Yes.

23 Q And those are valves that are on the reheater
24 turbine, I believe from memory, right?

25 A Yes, on the section of the valve called the

ROA_01508

Appendix_01536

1 reheater, yes.

2 Q And there is an assembly number for the reheater
3 turbine valves, right?

4 A Yes.

5 Q Can you tell me what that is?

6 A Yes. It looks like it's 51425.

7 Q Okay. And so this assembly number is a Crosby
8 number?

9 A That's correct.

10 Q And it means something to the folks at Crosby in
11 terms of -- let me find out what's happening. Let me
12 just put it up here. I need a clean copy. Here's the
13 paper. And this is where all this information comes
14 from.

15 There's 16 Crosby valves on the main steam that
16 have a Crosby subassembly number of 553932, and then
17 there were six Crosby valves on the turbine reheater
18 with the Crosby subassembly Model Number 51425, right?

19 A Yes.

20 Q Okay. And these other numbers, these documents
21 that Crosby has --

22 THE COURT: Ms. Farrise, are you looking at this
23 time at Unit 1 or 2? There are main steam for reheater
24 at each of those locations. There is a main steam 16
25 and a reheater 6 at Unit Number 1, and that's on Page

ROA_01509

1 005, and then there is another one.

2 MS. FARRISE: Yes.

3 THE COURT: Same number at Unit Number 2, 007.

4 Which one are you looking at?

5 MS. FARRISE: I'm looking at 007 Unit Number 2
6 right now, Your Honor. And I lost my pointer.

7 Q And the reason that you have these two models over
8 here is so that you will know what the assembly is for
9 these 16, correct?

10 A That's correct.

11 Q So like right here, it says "power cont"?

12 A Stands for power control.

13 Q Okay. Power control valves, factory number,
14 Consolidated?

15 A That was a competitor. They got that order. We
16 did not.

17 Q So why would it be in the Crosby green book?

18 A Because it was a green book for the sales
19 department. So it would be beneficial to know who got
20 which orders on that project.

21 Q So the fact that you got your number over here
22 tells you that those are Crosby and they're not
23 somebody else?

24 A Correct.

25 Q So that's what makes up the 22 turbines -- I mean

ROA_01510

Appendix_01538

1 the 22 valves right there. And if you turn back, Your
2 Honor's question, to Unit Number 1, the same
3 tabulation, we have this Crosby model number?

4 A Yes.

5 Q And a size and a style?

6 A Yes.

7 Q And even a factory number?

8 A Yes.

9 Q But we have no valves?

10 A Do you see the 6 at the end of the Crosby factory
11 number?

12 Q Uh-huh.

13 A It's out of place. Belongs with your yellow.

14 Q Six?

15 A Yeah.

16 Q I see. So we need to add six more reheater
17 turbine valves to Unit Number 1?

18 A Yes..

19 Q Okay. And so now we have a total of 22 -- we have
20 a total of 44 valves between Ocone Unit Number 1 and
21 Number 2?

22 A Correct.

23 Q How many Crosby valves on Ocone Number 3?

24 A The same number.

25 Q We don't have a sheet for that?

ROA_01511

Appendix_01539

1 A I'm sorry, but it's the same. I don't know why
2 you don't have it, but there is a sheet for it, and
3 they're exactly the same.

4 Q Do you have it?

5 A Not here. I have it at the office in my home.

6 Q And do you know why, when we asked Crosby for all
7 the documents it had about valves at these plants, we
8 didn't get the sheet for Number 3?

9 A I can't answer that question. They're all the
10 same.

11 Q Okay. So you're telling us now -- I'll put it in
12 green -- that it's 22 more. Okay. And then in terms
13 of the numbers, and just so we're clear, this is the
14 JB, the 6, anyway, it's the JB style and then the 16,
15 that's the HC style?

16 A Yes.

17 Q Okay. This is the JB right here, and this is the
18 HC. And when we say the JB and the HC, that may or may
19 not correspond to what was in the discovery response in
20 terms of the model which we talked about a little
21 earlier, right?

22 A Well, I don't believe you'll find any HCs in there
23 because they never had any gaskets.

24 Q But there was a JB in here?

25 A Yeah, there was the JB in there.

ROA_01512

Appendix_01540

1 Q Okay. And -- okay. And then on McGuire, you've
2 got -- did you see two sheets for both McGuire units?
3 I thought we only had one. McGuire Number 1 is at
4 0013, right?

5 THE COURT: 0015.

6 MS. FARRISE: Well, is the cover.

7 THE COURT: 0016 is Unit 2 McGuire.

8 MS. FARRISE: Right.

9 Q When this says "installed at," does that mean
10 Crosby installed it at?

11 A No, no. That means those valves were shipped
12 there. It just means --

13 Q Okay. And in the case of where Crosby is
14 furnishing a valve that's going to be at Duke, but
15 they're furnishing it indirectly to Westinghouse -- are
16 you following me -- and it's shipped to Westinghouse --

17 A Following you, yes.

18 Q -- and then it makes its way to Duke, is that
19 included in the count?

20 A Yes. This was a list put together by salespeople
21 for salespeople so that when they call on the plant,
22 they would have an idea of what valves we had there.

23 Q Okay. So as to -- sorry, Your Honor -- McGuire
24 Number 1, there were -- 23, 9, 30 -- 36 Crosby valves?

25 A That's what it looks like, yes, 36.

ROA_01513

Appendix_01541

1 Q And you think it's the same for Number 2 at
2 McGuire?
3 A Yes. The sheet looks the same.
4 Q And what model were those, as you have it?
5 A Those were HB-BPs.
6 Q HB?
7 A HB-BP-86, three of those. And there's eight
8 6U8HA65Ws.
9 Q Is that HA?
10 A Yes, it is.
11 Q Okay. 65Ws, uh-huh.
12 A And there's twelve 6R10HA75Ws.
13 Q Ten, okay.
14 A No, 12. It's 6R10, but there's 12 of them.
15 Q 12 of them. Sorry about that. Okay.
16 A And six 18AA24JPV8s.
17 Q How many of those?
18 A There are six.
19 Q And the same is true over here, right?
20 A Yes. What I read to you is Unit 2. Unit 1 is the
21 same.
22 Q And how about the two units at Catawba?
23 A Okay. Want me to read them off to you?
24 Q Yeah. First of all, how many and what page are
25 you looking at?

ROA_01514

Appendix_01542

1 A I'm looking at 25.
2 Q How many you got?
3 A There's six 18AA24JBT.
4 Q How many total, first of all?
5 A All right.
6 Q 18, right?
7 A Yes.
8 Q Okay. And what kind?
9 A There's six 18AA24JBTD.
10 Q Okay.
11 A There's four one-by-one vacuum relief, VR, valves.
12 And there's two four-by-four VR valves, slightly
13 larger. And two J025s. There are two JMB-WRs.
14 Q JM?
15 A JMB.
16 Q Okay.
17 A And there's two J025WRs. Different sizes, but the
18 same style as the first.
19 Q J0s, okay. And on this discovery response in the
20 chart, are these -- there's something referred to as
21 Sage and/or Crosby 400, 500 and 600 Series. Are those
22 different than those ones that you --
23 A Yes, they are.
24 Q And where is the exhibit that counsel had? Do you
25 still have -- maybe you never had -- a copy of

ROA_01515

Appendix_01543

1 Plaintiffs' Exhibit 6364.4?

2 A I don't recognize the number.

3 Q It was the purchase order to Crosby for
4 replacement parts from Mill Power. If not, I have an
5 extra.

6 Sir, we have in evidence the purchase order for
7 replacement parts to Crosby for some of these units or
8 for, I guess it is McGuire, let's say, either Unit
9 Number 1 or Unit 2; do you see that?

10 A I do.

11 Q So they are ordering, Mill Power on behalf of
12 Duke, replacement parts from Crosby for a Series 600
13 Sage safety relief valve?

14 A That is correct.

15 Q And do we add the Sage here? Wouldn't you presume
16 if they're ordering spare parts for a Sage valve that
17 they have a Sage valve?

18 A I would presume they have a Sage valve.

19 Q So just that little fact tells us that the
20 information from Crosby about the type of valves that
21 they have at these plants is not complete, right?

22 A Not really. What you have in the installation
23 books is valves sold by Crosby that we knew of to those
24 plants. This company, Sage, is a Houston company that
25 happens to be owned by Crosby, but we didn't keep

ROA_01516

Appendix_01544

1 records of where they sold their valves, and they would
2 be non-nuclear valves.

3 Q Sir, you verified discovery responses in this case
4 for Crosby where, when it was asked all of the names
5 it's gone by, among those was Crosby Sage, right?
6 Right?

7 A Yes.

8 Q So Crosby Sage is an alias of Crosby Valve; is
9 that what you're saying?

10 A No, it's a company that was owned by Crosby, but
11 it was located in Houston, Texas, and it was a
12 stand-alone company.. That's why they didn't make it
13 into that what we call a green book, because those
14 valves in the green book were manufactured by the
15 Crosby facility in Wrentham. So we would not have
16 known that Sage engineering out of Houston shipped
17 valves to that plant.

18 Q Mr. Martin, I think what I'm hearing you say --
19 okay. We don't have a disagreement, do we, Mr. Martin,
20 that these 600 Sage model and down valves are Crosby
21 valves?

22 A They were never stamped Crosby. The company Sage
23 was owned by Crosby. You don't find the Crosby name on
24 those valves, and that's why they're not on the list
25 that we called the installation list because we did not

ROA_01517

Appendix_01545

1 know that those valves were shipped to that plant.

2 Q So I just highlighted here Crosby Sage safety
3 relief valve. And if I understand what you're saying,
4 those valves, although they are from the Crosby
5 company -- can someone stop clicking their pen? Thank
6 you -- have the name Sage on the body of the valve?

7 A That's correct.

8 Q And this is an example of the Sage brand of
9 Crosby, an order for replacement parts for those
10 valves?

11 A Yes.

12 MR. REID: Objection to the form of the question,
13 Your Honor. First part of it is very unclear.

14 THE COURT: How about rephrase it, Ms. Farrise?
15 It's real simple. You know, did they order these Sage
16 replacement parts from Crosby Valve?

17 MS. FARRISE: I'm not sure that's the question.

18 THE COURT: Well, then, let's get a question out
19 where we can understand what you want.

20 BY MS. FARRISE:

21 Q First, the question is under the Crosby Valve
22 family, there is the Crosby brand of valves with a
23 "Crosby" on the bottom, correct?

24 A Correct.

25 Q And there is also the Sage valve with "Sage" on

ROA_01518

Appendix_01546

1 the valve?

2 A That's correct.

3 Q And your listings and the information that Crosby
4 provided, excluding the information about Number 3,
5 does not include the type or the number or any
6 information about the Crosby Sage valves?

7 A We would not know which Sage valves were shipped
8 to McGuire or Ocone. We would not have records of
9 that.

10 Q So the answer is no, this count does not include
11 Crosby Sage valves?

12 A It does not.

13 Q As you sit here, Mr. Martin, as the spokesperson
14 for Crosby, how many Crosby Sage valves were at Ocone
15 Number 1?

16 A We would have no way of knowing.

17 Q How many Crosby Sage valves at Ocone Number 2?

18 A We would have no way of knowing.

19 Q How many Crosby Sage valves at Ocone Number 3?

20 A Same answer.

21 Q How many Crosby Sage valves at McGuire Number 1?

22 A Don't know.

23 Q Number 2?

24 A Don't know.

25 Q Catawba Number 1?

ROA_01519

Appendix_01547

1 A Don't know.

2 Q Number 2?

3 A Don't know.

4 Q There's invoices for replacement parts for Crosby
5 Sage that call for asbestos gaskets?

6 A Okay.

7 Q Do you know where in the Crosby Sage valves the
8 gaskets are utilized?

9 A Internally, yes.

10 Q You have seen the drawings and the material
11 specifications all those types of documents for the
12 Sage valves?

13 A I've seen a catalog for the Sage valve.

14 Q And these two companies were related in business?

15 A Crosby owns Sage, yes.

16 Q And as part of your work in this case, have you
17 been -- have you sought out the Sage valve information?

18 A No. I didn't realize there were any Sage valves
19 at McGuire.

20 Q The invoice from Mills Supply, which I asked you
21 to look at to Crosby Valve & Gage, which is this
22 invoice to Crosby Valve & Gage, you weren't supplied
23 that as part of the work you were asked to do in this
24 case?

25 A That's a purchase order from Mill Power that

ROA_01520

Appendix_01548

1 Crosby Valve engaged through the representative of
2 Fluid Engineering Company. And if you look at the
3 bottom, it says "FOB Houston." So they placed that
4 directly on Sage.

5 Q May question, sir, is this the first time you have
6 seen --

7 A No. I've seen this.

8 Q So you were aware before you took the witness
9 stand that Crosby has this other line of valves, Sage,
10 which were present at Mr. Jolly's worksites?

11 A From this, yes.

12 Q Did you bring with you the material
13 specifications, drawings, and specific information
14 about the Sage valves that were at Mr. Jolly's worksite
15 that you learned about from having seen this document
16 before coming to court?

17 A We tried to find documentation for these valves,
18 but this line has been discontinued, and those
19 documents do not exist anymore.

20 Q The valves, the Sage valves, may continue to exist
21 at the Duke Oconee station, correct?

22 A They could, yes.

23 Q The service life of these valves can be 25, 30,
24 40 years, right?

25 A Can be.

ROA_01521

Appendix_01549

1 Q This plant and this unit, let's take McGuire, for
2 instance, was completed in the early 1980s. These
3 valves would still be in service today?

4 A They could be.

5 Q They could still be in service today?

6 A They could be.

7 Q And replacement parts for them required?

8 A Would not be available today.

9 Q In the interrogatory responses -- I think I put
10 mine under the table -- in the interrogatory responses
11 to Crosby, it lists and you sign off on this particular
12 type of valve, Sage and Crosby, as being one that has
13 asbestos-containing packing and gaskets, correct?

14 A I don't recall packing.

15 Q Well, it's going to say what it's going to say.
16 Asbestos-containing gaskets?

17 A Correct.

18 Q And that that line was phased out with the 400
19 Series and the 500 Series in 1991?

20 A Correct.

21 Q Have you brought any documents to demonstrate that
22 these lines ever went asbestos-free?

23 A No.

24 Q Sir, when you worked for the company, did you make
25 \$300 an hour?

ROA_01522

Appendix_01550

- 1 A No.
- 2 Q And in this particular case, just in terms of the
3 time you've spent, is it a reasonable estimate that
4 your bill may be \$20,000?
- 5 A I haven't added it up.
- 6 Q But that's not unreasonable, is it?
- 7 A It depends on how many hours I've put in, yes.
- 8 Q Well, you said you've talked with Mr. Lombardi,
9 right?
- 10 A Yes.
- 11 Q How many hours did you spend doing that?
- 12 A I don't know.
- 13 Q What's your estimate?
- 14 A I don't have one.
- 15 Q You reviewed 39 documents, right?
- 16 A Yes.
- 17 Q How long did you spend doing that?
- 18 A I don't know. I have it listed somewhere, but I
19 don't know.
- 20 Q You reviewed the interrogatories and signed off.
21 How long did you spend doing that?
- 22 A I don't know.
- 23 Q You drove here the other day, I guess, from
24 Southport?
- 25 A I do know. Five and a half hours.

ROA_01523

Appendix_01551

1 Q And then you drove back?
2 A Same.
3 Q So that's 11 hours, right?
4 A Yes.
5 Q And you get paid \$300 an hour to drive?
6 A I do.
7 Q Do you get paid \$300 an hour to stay overnight and
8 sleep?
9 A No..
10 Q So like a regular ten-hour day or something?
11 A Whatever I actually work.
12 Q And you drove back, and you're going to drive back
13 today, so that's another 11 hours of time driving,
14 right?
15 A Yes.
16 Q And is there any other prep, document review,
17 that's going to go into this bill?
18 A I don't know yet.
19 Q Okay. So by the time you add it all up, it could
20 be at least \$20,000 or more just for your work here?
21 A It's possible.
22 Q The valves -- do you still have that packet?
23 A I do.
24 Q If I ask you to turn over to Page 00021, do you
25 have that?

ROA_01524

Appendix_01552

1 A I believe so.

2 Q Okay.

3 A Yes.

4 Q It's a drawing for two vacuum relief valves that
5 were sold to McGuire Nuclear Station?

6 A That's correct.

7 Q And is it accurate, sir, that this, the weight of
8 these valves were like 17 pounds apiece, or does that
9 refer to something else?

10 A No. It should be on here.

11 Q See where I've highlighted?

12 A I'm sorry. Yes, that would be correct.

13 Q And so that's about the size of that exemplar that
14 I never got to look at, wherever it went?

15 A No. It's much smaller than that. This valve here
16 is nine inches tall. And that exemplar is a lot taller
17 than nine, and the valve, the exemplar, weighs a lot
18 more than 17 pounds.

19 Q But the valves that Crosby and/or Sage supplied to
20 Mr. Jolly's worksites, some of them were many multiples
21 of that in terms of the size of them, correct?

22 A I don't know where you're getting that
23 information.

24 Q Let me ask you to turn to the page that ends in
25 0017. 17.

ROA_01525

Appendix_01553

1 A Yes.

2 Q And this, for instance, is a valve that Crosby

3 sold to Duke Power McGuire 1 and 2, right?

4 A Yes.

5 Q And this valve is about 700 pounds?

6 A That's correct.

7 Q So that's quite a bit bigger than the 17 pounds?

8 A But that's not a Sage valve.

9 Q The weight of the valve is 700 pounds?

10 A You asked about a Sage valve.

11 Q No, I said Crosby or Sage.

12 A I'm sorry.

13 Q This is a Crosby valve that's 700 pounds?

14 A Absolutely.

15 Q But in terms of the valve supply, that's not

16 nearly the smallest one, right?

17 A It's not nearly the smallest or the largest.

18 Q Or the largest to Mr. Jolly's worksites?

19 A Correct.

20 Q There is, for instance, a valve from Crosby

21 that -- or at least two valves, actually, which are

22 1,150 pounds, correct?

23 A What number are you referring to?

24 Q 0019.

25 A Yes.

ROA_01526

Appendix_01554

1 Q And this says that it was for McGuire Units 1 and
2 2, so there would be one of these 1,150-pound valves at
3 McGuire 1 and an 1,150-pound Crosby Valve at McGuire 2?

4 A More than one, but yes, they would be there.

5 Q There would be more than one 1,150-pound valve?

6 A Oh, yeah.

7 Q How many of these are 1,150 pounds or more?

8 A Let's see. It would be the main steam valves at
9 McGuire.

10 Q There's three or is it the eight?

11 A It would be the 12. See the 12?

12 Q 12?

13 A Yes.

14 Q Main steam. Are they 1,150 pounds or larger?

15 A They're about 1,150 pounds.

16 Q And there would actually, therefore, be total at
17 McGuire 24 Crosby valves, each of which weighs, of the
18 main steam variety, 1,150 pounds?

19 A Yes.

20 Q And the 700-pound weighted one that we just looked
21 at, which valve was that?

22 A That's a pressurized safety valve, HB.

23 Q At McGuire?

24 A Tell you in a second.

25 Q Well, that's the only HB.

ROA_01527

Appendix_01555

1 A It's going to take more than a second.
2 Q It's okay. We can look at the drawing.
3 A Yeah, they're at McGuire.
4 Q They're at McGuire. So that's the three --
5 A Yes.
6 Q -- 700-pound valves, six total Crosby valves?
7 A Yes.
8 Q And if I were to ask you how big the Sage valves
9 of Crosby are in the 400 Series, for instance, how big
10 are those valves?
11 A Those are about seven pounds apiece.
12 Q Those are smaller valves?
13 A Smaller, real small.
14 Q You made a calculation, and I have to admit I
15 couldn't really hear what you were saying, but I think
16 you said that 85 percent of the valves, the Crosby
17 valves, at these three plants did not have
18 asbestos-containing components?
19 A That's from our list, our installation list, yes.
20 Q Right. But you don't know totally how many valves
21 were at Oconee, McGuire, and Catawba from Crosby or
22 Sage?
23 A Do not.
24 Q So, really, the 85 percent is not an accurate
25 number for all of the valves that the Crosby Valve

ROA_01528

Appendix_01556

1 Company is responsible for?

2 A It's accurate for the valves that we know are
3 there.

4 Q I'm sorry?

5 A It's accurate for the valves that we know are
6 there.

7 Q Okay. And of your calculation, I take it you must
8 have had some documents and information about precisely
9 which valve and which parts and how many asbestos
10 gaskets and all of that, right?

11 A Yes.

12 Q Right. Where is your calculation?

13 A I just looked at the drawings. The drawings tell
14 you what valves have asbestos in them and what valves
15 don't and I just added up the valves.

16 Q So there's no like show-your-work calculation that
17 we can see?

18 A No.

19 Q And we can't say of the 15 percent of the valves
20 that have the asbestos-containing gaskets, are those
21 the 1,150-pound valves or the 17-pound valves?

22 A They're not the 1,150-pound valves because those
23 are all H series and they have no gaskets at all.

24 Q Is there a drawing of them?

25 A Of the valves?

ROA_01529

Appendix_01557

1 Q Yes.

2 A Right in here.

3 Q Do they have a flange?

4 A They have a welded inlet and flanged outlet.

5 Q We'll look at the drawings ourselves since we have
6 a drawing.

7 And in terms of the various -- oh, there was a
8 parts list. Let's not leave that out. Do you have the
9 parts list?

10 A Is it -- what am I looking at?

11 Q If you look at 0009 of that same exhibit, this is
12 a parts list.

13 A It's a bill of materials.

14 Q For a particular valve?

15 A Yes, for one of the main steam valves.

16 Q Prepared by Crosby?

17 A Yes.

18 Q With those same part numbers that -- similar-type
19 part numbers that we looked at earlier?

20 A Correct.

21 Q So, for instance, if we were to know specifically
22 what items were made out of, we could go to a card like
23 we looked at earlier, a parts number card, and on that
24 card, it would have the information specifically about
25 what this part was made out of?

ROA_01530

Appendix_01558

1 A That's correct.

2 Q And these part numbers and the material
3 specifications of what they are made out of for all of
4 the valves at Mr. Jolly's worksites are not included in
5 these 39 pieces of paper that Crosby gave to us about
6 its connection to his worksites?

7 A We did not give you all the bills of material for
8 all the valves because some of them do not have any
9 asbestos in them. You can tell from the drawings. You
10 look at the drawing, the drawing lists the material.
11 If it doesn't say asbestos, then we didn't provide a
12 bill of materials.

13 Q Counsel asked you a bunch of questions about what
14 this gasket is made out of and what this gasket is made
15 out of. There is a document prepared by someone at
16 Crosby that says exactly what the gasket is made out
17 of?

18 A The drawing says that.

19 Q I understand you read steel. My -- there's a
20 material specification. The drawing is not a material
21 specification, is it, sir?

22 A It is not.

23 Q And there are material specifications for each of
24 those parts?

25 A There are.

ROA_01531

1 Q And you did not bring those to court?

2 A I did not.

3 MS. FARRISE: Your Honor, that's all we have on
4 redirect.

5 THE COURT: All right.

6 Anything further, Mr. Reid?

7 MR. REID: Very briefly, Your Honor.

8 RE CROSS-EXAMINATION

9 BY MR. REID:

10 Q Do you have their summary chart, the
11 Exhibit 6364.06?

12 A Yes.

13 Q If you look at the second page, last column, the
14 last line, that's where the Sage 400, 500, 600 valves
15 are listed?

16 A Yes.

17 Q And third column from the right, does that
18 identify when asbestos was removed from those products?

19 A It does.

20 Q Can you please read that?

21 A Says, "3/600 not altered or removed before the
22 products were discontinued. The 1986 and 1984 400/500
23 were removed in 1989 because of" -- that's when the
24 asbestos was removed.

25 Q Was the valves of the Sage company smaller?

ROA_01532

Appendix_01560

1 A Yes.

2 Q Counsel just asked you about Page 9 of our
3 Bates-stamped Duke documents.

4 A Yes.

5 Q Any packing or gaskets on the Style HC-65 welded
6 inlet Crosby Valve?

7 A No.

8 Q Any reason to look at a part card if there's no
9 packing or gaskets and no nonmetal pieces?

10 A No.

11 Q We talked in considerable length right now about
12 an 1,150-pound valve that's on Page 19.

13 A Yes.

14 Q Is there a list of material?

15 A Yes, there are.

16 Q Any packing or gaskets on the 1,150-pound valve
17 shown on that page?

18 A None whatsoever.

19 Q Talked about a 750-pound valve, I think, in the
20 pressurizer area. Is that containment?

21 A That is containment.

22 Q Radioactive?

23 A Very.

24 Q Nobody is going to be there unless they're fully
25 clothed, helmet included, breathing apparatus?

ROA_01533

Appendix_01561

1 A That's correct.

2 MR. REID: No further questions, Your Honor.

3 THE COURT: Mr. Martin, you may come down.

4 All right. Ms. Farrise, Ms. McVey.

5 MS. McVEY: At this time we call Dr. John Maddox
6 via deposition.

7 THE COURT: Very good. Who's going to read what?

8 MS. McVEY: I'm going to play me, and Jonathan is
9 going to play --

10 MR. HOLDER: I'll be the good doctor.

11 THE COURT: Come right on up.

12 Ladies and gentlemen, this is going to be the oral
13 deposition of Dr. Maddox, and it will be read to you.

14 JOHN MADDOX, M.D.

15 (Via read deposition)

16 TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. McVEY:

19 Q Good afternoon, Dr. Maddox. How are you?

20 A Good afternoon.

21 MS. McVEY: Go to Page 4. You can start at Line
22 16 at this point.

23 A Very well. Thank you. I just got back from
24 Washington, D.C. I've been up visiting my children,
25 and we literally just drove into the driveway at home.

ROA_01534

Appendix_01562

1 Q Thank you for fitting us in on a Sunday afternoon.

2 I appreciate it.

3 A Yes, ma'am.

4 Q Can you explain to the jury what you do for a
5 living?

6 A I'm a pathologist. I work in the pathology
7 department at a community hospital.

8 Q And what is it that a pathologist does? And what
9 is it that a pathologist does?

10 A A pathologist is a physician, an M.D., who assists
11 other physicians like surgeons or internal medicine
12 practitioners in making a diagnosis of disease in their
13 patients.

14 In other words, to give you an example, a surgeon
15 would take a patient to the operating room to biopsy a
16 lump. The surgeon would send that biopsy to a
17 pathologist. The pathologist would have microscopic
18 slides made so that he could examine those slides under
19 an optical microscope and figure out what it was. Is
20 it a tumor -- a benign tumor, a malignant tumor -- some
21 sort of an infection or so forth.

22 Sometimes -- sometimes we also help other doctors
23 evaluate clinical laboratory findings, things like
24 blood counts or serum chemistries that are abnormal or
25 various type of -- various types of lab tests that may

ROA_01535

1 indicate the presence or absence of disease.

2 Q And can you give the jury the benefit of your
3 educational background?

4 A Sure thing. I grew up in Charlottesville,
5 Virginia, where I attended the public schools. Then I
6 went to the University of Virginia and took a
7 Bachelor's degree in biology. I took that degree in
8 1972. Then I went to medical school also at the
9 University of Virginia, also in Charlottesville,
10 Virginia, and I took my M.D. degree in 1976.

11 After that, I did a total of six years of
12 residency training in pathology. The first three years
13 were spent at Stanford University, which is located in
14 Palo Alto, California. During that time, on and off
15 over a period of three years, I worked with Dr. Charles
16 Carrington, who at the time was the chairman of the
17 U.S. and Canadian mesothelioma panel. And that's where
18 I was introduced to the study of asbestos-related
19 diseases, particularly things like mesothelioma.

20 After I finished the three years at Stanford, then
21 I went to do a one-year fellowship at the MD Anderson
22 Cancer Center in Houston, Texas. While I was there, I
23 worked on and off with Dr. David Dail, who was the lung
24 pathologist at MD Anderson. And he is the coauthor of
25 one of the standard textbooks called Dail and Hammar's

ROA_01536

Appendix_01564

1 Pulmonary Pathology. It has a long section in there
2 about mesothelioma that was written by Dr. Sam Hammar,
3 the coauthor of that book.

4 Then after -- after spending a year at MD Anderson
5 Hospital, then I went to Virginia Commonwealth
6 University Medical College of Virginia in Richmond,
7 Virginia, where I studied clinical pathology for one
8 year and then hematology for a second year. At that
9 point, I took my board examinations in anatomic and
10 clinical pathology and began a private practice, a
11 community hospital practice of pathology at Riverside
12 Regional Medical Center here in Newport Beach,
13 Virginia.

14 Q And do you currently work at Riverside Hospital?

15 A Yes, ma'am. I'm the senior member of the
16 pathology department now. I've been in the same job
17 for almost 35 years.

18 Q Okay. Just a few years?

19 A Well --

20 Q As part of your experience working as a full-time
21 pathologist, how many people with mesothelioma have you
22 seen?

23 A We see a lot of people with malignant
24 mesothelioma. At the hospital, over the last -- over
25 the last 35 years, we have had over 500 patients with

ROA_01537

Appendix_01565

1 malignant mesothelioma. Back in the mid to late 1980s,
2 we were seeing up to 30 patients a year with malignant
3 mesothelioma. It's less than that now, and that's
4 partly because of the people with the older World War
5 II era exposures have died off, and also insurance
6 regulations have sent some of the patients to other
7 hospitals. But at one time, we were seeing almost one
8 percent of all mesotheliomas in the United States per
9 year.

10 Q And because of your experience with mesothelioma,
11 do other institutions seek out your expertise?

12 A Yes, ma'am. Over the years, I have received
13 consultations about mesothelioma and asbestos-related
14 disease from other physicians, from other hospitals,
15 from defense law firms, from plaintiffs' law firms, all
16 of the above over a 35-year period.

17 Q And do you charge for your time in cases like this
18 one?

19 A Yes, ma'am. When I receive a case for
20 medical-legal consult like this, Peninsula Pathology
21 Associates charges for my time spent on the case. They
22 charge \$500 per hour. I am a partner in that group,
23 and I would receive a little less than one fourth of
24 that, so, in other words, each hour I receive about
25 \$110.

ROA_01538

Appendix_01566

1 Q So you're hired by law firms representing folks
2 like Mr. Jolly, but have you also been hired by
3 companies that make asbestos-containing gaskets?

4 A Yes, I have. For example, we used to have an
5 electron microscope laboratory between the years 1985
6 and 2000. During that 15-year period of time, I
7 counted approximately 1,200 samples of lung tissue to
8 determine its asbestos content.

9 Now, not all of those were mesothelioma. Some of
10 them were lung cancer as well, but I would estimate
11 that about one third of the cases that came in during
12 that period of time were from defense law firms.

13 Q Dr. Maddox, I have marked as Exhibit 972 to your
14 deposition a CV of yours dated March 15, 2016. Would
15 that be the most recent CV?

16 A Yes, ma'am, that would be correct.

17 MS. McVEY: At this point, we move this into
18 evidence.

19 MR. BOUCH: I have no objection, Your Honor.

20 MS. McVEY: And we would also tender Dr. Maddox as
21 an expert in pathology, specifically as it relates to
22 asbestos and asbestos-related disease.

23 MR. BOUCH: Again, I have no objection.

24 THE COURT: No objection by either counsel, both
25 having reviewed the CV, I declare Dr. Maddox as a

ROA_01539

Appendix_01567

1 recognized expert witness in the subject pathology,
2 specifically as it relates to asbestos and
3 asbestos-related diseases.

4 MS. McVEY: Thank you, Your Honor.

5 Q Dr. Maddox, if you evaluate causation in a patient.
6 with mesothelioma, are there certain factors you
7 consider in determining that causation?

8 A Well, yes, ma'am. There are the criteria from the
9 document called "The Helsinki Criteria." The Helsinki
10 criteria for diagnosis and attribution of
11 asbestos-related diseases. I have tried to interpret
12 those in the form of six points that I may have listed
13 at the end of the report on Mr. Jolly.

14 Q Go ahead. I'm sorry.

15 A Oh, I'm sorry. It was quiet for a while. I just
16 wanted to make sure that we were still on the phone.

17 Q We are.

18 What are those six factors you considered?

19 A Well, let's see. In my report on Jolly, I listed
20 the six points that were actually in the Helsinki
21 article. And, number one, I said that the great
22 majority of mesotheliomas are due to asbestos exposure.
23 That's a quote from the article.

24 Number two, mesothelioma can occur in cases with
25 low asbestos exposure. However, very low background

ROA_01540

Appendix_01568

1 environmental exposures carry only extremely low risk.

2 Next point: About 80 percent of mesothelioma
3 patients have had some occupational exposure to
4 asbestos, and, therefore, a careful occupational and
5 environmental history should be taken.

6 Next point: An occupational history of brief or
7 low level of exposure should be considered sufficient
8 for mesothelioma to be designated as occupationally
9 related.

10 Next point: A minimum of ten years from the first
11 exposure is required to attribute the mesothelioma to
12 asbestos exposure, though in most cases, the latency
13 period is longer. For example, on the order of 30 to
14 40 years.

15 And last of these points is smoking has no
16 influence on the risk of mesothelioma.

17 Now, actually, during my deposition, I think I
18 mentioned the six points that are used that are
19 interpretations of the Helsinki criteria. May I list
20 those again for you?

21 Q No, I think we're good on that. Thank you.
22 Unless you'd like to. Do you want to list them again?

23 A I think I need to.

24 Q Okay. Please do.

25 A Number one, consideration should be given to real

ROA_01541

1 exposures. In other words, exposures that have some
2 factual basis to them. If they are witnessed by the
3 patient or the coworker, or if they're inevitable,
4 given the circumstances.

5 Number two, these exposures should be
6 significantly above normal background in air levels.
7 Now, the normal background and air levels that I use
8 are the ones that are in Dr. Roggli's textbook on
9 *Pathology of Asbestosis-Associated Diseases*, Second
10 Edition, on Page 26. The industrial hygienist that I
11 talked to have told me that they should be two orders
12 of magnitude above the average and at least one order
13 of magnitude above the upper limit of the normal range
14 so as to avoid any confusion with extremely low levels
15 that are still within the normal ambient air range.

16 The third point is you should consider how these
17 levels are known. It is because of the observation of
18 visible dust, which with the exposures that are
19 thousands or hundreds of thousands of times above
20 normal background ambient air levels, and it is by
21 reference to work studies that have been done, either a
22 simulated work study or an actual measurement of
23 somebody doing that type of work.

24 Point four is the exposure should be repetitive.
25 A single walk-by low level exposure, in my mind, would

ROA_01542

Appendix_01570

1 not suffice. I would tend to jump -- I'm sorry. I
2 would tend to just lump that back into background.

3 Number five is the exposures are dose response.
4 In other words, the bigger the cumulative dose to
5 asbestos, the bigger the cumulative risk of developing
6 mesothelioma. The -- well, a big component dose is a
7 big component risk. And small-components dose is a
8 small-component risk.

9 And then the final point, number six, would be the
10 exposures need to be within a reasonable latency period
11 which Helsinki defines as ten years, at least ten
12 years.

13 Q Okay. Dr. Maddox, did you have an opportunity to
14 evaluate the pathology for Mr. Jolly?

15 A Yes, ma'am, I certainly did. And I have discussed
16 that in my report, TL16-31, which was issued on
17 April of 2016.

18 Q And what did you determine after reviewing the
19 pathology?

20 A I determined that Mr. Jolly had a right pleural
21 malignant mesothelioma, epithelioid type.

22 Q And is that diagnosis, does that line up with what
23 his treaters believed his diagnosis to be?

24 A Yes, ma'am. At the hospital where he was treated,
25 the right pleural biopsy pathology was read as

ROA_01543

Appendix_01571

1 malignant mesothelioma, epithelioid type.

2 Q And do you have an opinion to a reasonable degree
3 of medical certainty whether or not that mesothelioma
4 was caused by his exposure to asbestos?

5 A Yes, ma'am. I believe that it was caused by his
6 cumulative asbestos exposure throughout his life, up
7 until the time the mesothelioma developed.

8 Q Dr. Maddox, what is epidemiology, and how does it
9 help doctors understand something like
10 asbestos-causative disease?

11 A Well, epidemiology is one way of determining what
12 causes. Now, what you generally do is take a group of
13 people, measure their exposure to something like, for
14 example, asbestos exposure, and then see what happens
15 to them over a period of time. A certain percentage of
16 the people exposed to asbestos will probably develop
17 mesothelioma.

18 Now, there's another way of conducting
19 epidemiological study called a case control study.
20 That's where you take a number of people that are found
21 to have mesothelioma, and then you retrospectively look
22 back and see what their exposures were. For example,
23 were all of them insulators? Were all of them shipyard
24 workers? Were some construction workers? Were some
25 household members of actual workers' families? You

ROA_01544

Appendix_01572

1 look at these different groups to see what the
2 association is between their exposure and the
3 development of mesothelioma.

4 Q Is there literature that examines at various
5 levels how many people in a group get mesothelioma
6 after being exposed to asbestos?

7 A Yes, ma'am, there are. There are a number of
8 papers. For example, there's one from a French
9 Mesothelioma Group -- I think the first author's last
10 name is Becklake -- where he looks at occupational
11 groups to see what their risk of mesothelioma is.

12 There's the health and safety executive from the
13 United Kingdom who did the same thing for several dozen
14 occupational classifications to see what they -- what
15 their risk of rate of developing malignant mesothelioma
16 is or was. There is a large study from Scandinavia by,
17 Pukkala, P-u-k-k-a-l-a, that does the same thing, and
18 what those studies show in general is that there are
19 occupations that have a relative high average exposure
20 to asbestos, and likewise, those occupational groups
21 have a high rate of developing malignant mesothelioma.

22 Q The studies in the lowest-exposed group and the
23 folks that have the lowest exposure, were people still
24 dying at increased rates after being exposed to
25 asbestos?

ROA_01545

Appendix_01573

1 A Yes. Some people, even in the low-exposure
2 groups, did develop malignant mesothelioma and die from
3 the disease. The rate was higher in the high-exposure
4 groups and lower in the low-exposure groups.

5 Q Okay. Dr. Maddox, based on your knowledge and
6 experience and the factors you used to evaluate
7 causation, I'd like to give you some hypotheticals.
8 Would that be okay?

9 A Yes, ma'am.

10 Q Okay. I want to you assume the following facts,
11 first about duration, that the exposure to Mr. Jolly
12 was the over three to four years in the early 1980s.

13 Okay?

14 A Yes, ma'am.

15 Q Assume that the exposures came from
16 asbestos-containing gaskets and packing used in some
17 but not all of the valves at a power plant during
18 outages and shutdowns at several plants which happened
19 as a regular part of his job. Are you with me?

20 A Yes, ma'am.

21 Q All right. Assume that the exposures were not
22 direction, but as an inspector, he was close enough to
23 see the dust, often working one to two feet from where
24 the work was being done.

25 A Yes, ma'am.

ROA_01546

Appendix_01574

1 Q Okay. And assume that this is an exposure that
2 resulted in visible dust from brushing grinders where
3 the jury has heard that the exposures were in the
4 hundreds or in the thousands to hundreds of thousands
5 to millions of times higher than background. Okay?

6 A Yes, ma'am.

7 Q And we spoke to an occupational medicine doctor
8 already, but I want to focus on epidemiology more than
9 industrial hygiene. Given those assumptions that I've
10 given you, is this exposure, as compared to low dose
11 exposures in epidemiology, significant and substantial?

12 A Yes, ma'am. I believe that would constitute a
13 significant exposure to asbestos because they were real
14 exposures that were witnessed; they were high enough to
15 provide visible dust; they were repetitive, and they
16 were within a reasonable latency period.

17 Q If this person came in with mesothelioma and this
18 was the only exposure, as I've described to you, would
19 it by itself be the cause of the disease?

20 A I believe that if the mesothelioma, if that was
21 the only known exposure to asbestos, then the
22 mesothelioma, then that would be considered a causation
23 of the malignant mesothelioma. That does not exclude
24 any other possible recognized or unrecognized causes,
25 but I believe that that exposure would be sufficient to

ROA_01547

Appendix_01575

1 deem that causative.

2 Q Okay, Dr. Maddox. Now I want you to assume that
3 Mr. Jolly had multiple exposures like that, like I've
4 described to you, from Fisher valves and Crosby valves
5 in addition to several other companies' equipment.

6 Will you assume that?

7 A Yes, ma'am.

8 Q In a situation where the exposure to Fisher valves
9 as I've described above is one of several exposures,
10 can you tell me if that exposure, given the facts about
11 dose, frequency, proximity and intensity was a
12 substantial contributing cause in Mr. Jolly's
13 development of mesothelioma?

14 A Yes, ma'am. I believe that the exposures as
15 described would be significant contributors to the
16 diagnosis and development of malignant mesothelioma.

17 Q And would that also be true if the valve at issue
18 came from Crosby?

19 A Yes.

20 Q And just -- I was just going after you.

21 Okay. One more hypothetical, Dr. Maddox. Can you
22 assume for me that Mr. Jolly had multiple significant
23 exposures, and you took away one of them, assume he no
24 longer had three or four years of exposure as I've
25 described from Crosby valves. Will you assume that?

ROA_01548

Appendix_01576

1 A Yes, ma'am.

2 Q Can you state to a reasonable degree of medical
3 certainty that but for that exposure to Crosby,
4 Mr. Jolly would get the same meso at the same time?

5 A I believe that he would not get the same
6 mesothelioma at the same time. I believe that he would
7 still have a risk of developing mesothelioma, but that
8 would be less than the risk that he had with his actual
9 cumulative exposure. If you subtract a component
10 exposure, that gives you a lower cumulative exposure,
11 and, therefore, your risk is lowered by the
12 dose-response principle.

13 Also, medical literature has shown very clearly
14 that if you have lower doses, lower cumulative doses of
15 asbestos, you're going to have a lower rate of
16 mesothelioma, and, conversely, the latency period
17 between the time of exposure and the time of
18 development of the disease is going to become longer.

19 Q And would that also be true if you took out the
20 exposures to Fisher valves?

21 A It would be the same if you took out any of the
22 component exposures that were significant to start
23 with. If you remove a significant component exposure,
24 you're going to lower the cumulative exposure. That
25 will lower your rate of mesothelioma in a population

ROA_01549

Appendix_01577

1 and increase the latency period for those mesotheliomas
2 that do eventually develop in that population.

3 Now, please understand that I'm making a
4 translation between the rate in a group of people and
5 the risk in an individual. An individual either has it
6 or doesn't. So you must talk about risk rather than
7 rate.

8 Q Okay. Dr. Maddox, let me follow up on one other
9 issue. You said that lower exposures had less disease.
10 Lower exposures to asbestos had less disease than
11 higher exposures. Are there studies where the
12 lowest-exposed group have more than double the risk of
13 the general population?

14 A Yes, ma'am. There are studies that attempt to
15 show the level of exposure, the lowest level of
16 exposure. Those include articles by Iwatsubo,
17 I-w-a-t-s-u-b-o, by Rodelsperger,
18 R-o-d-e-l-s-p-e-r-g-e-r, by Roland, and by LaCourt.

19 Q Can you give us, Dr. Maddox, an idea of how low
20 those lifetime exposures were in the lowest-exposed
21 group where there was more than a doubling of risk?

22 A Yes, ma'am. The studies have various levels of
23 the odds ratios that were found at the lowest levels of
24 exposure, but they were -- the lowest levels were in
25 the range of: For Iwatsubo, .5 fiber years; for

ROA_01550

Appendix_01578

1 Rodelsperger, .15; for LaCourt, .1 fiber years; and for
2 Roland, .07.

3 Now, none of those were actually the level where
4 there was 2. -- 2.0 increased risk. Some of those were
5 increased risk at 2.8 times or 4.3 times or even 7
6 times.

7 Q Dr. Maddox, we were talking about latency a moment
8 ago.. Is there an inverse relationship between dose and
9 latency of the disease?

10 A Yes, ma'am, there is.

11 Q Can you tell us about that?

12 A Yes, ma'am. There's an article that I would cite
13 by Bianchi, B-i-a-n-c-h-i, and other authors as well
14 titled *Latency Periods in Asbestos-Related Mesothelioma*
15 *of the Pleura*. It was published in the *European*
16 *Journal of Cancer Prevention*, Pages 162 through 166.

17 Now, in this paper, they looked at some high-level
18 exposure groups and some low-level exposure groups.
19 The high-level exposure groups includes insulators and
20 shipyard workers, which should have been shown by a
21 number of different studies to be high exposure or high
22 rate of mesothelioma groups.

23 They contrasted these groups with sailors and with
24 family members of asbestos workers from all the groups,
25 and they found that the latency periods were much

1 shorter for the high-exposure groups and much longer
2 for the low-exposure groups.

3 In fact, if I were to look at those levels, they
4 would be something like this: The insulators have a
5 mean latency period of 29.6 years. The dock workers
6 had a mean latency period of 35.4 years. The domestic
7 exposure family members had a mean latency period of
8 51.7 years, and the sailors had a mean latency period
9 of 56.2 years, so I believe that's a very significant
10 difference, and they did a statistical test called the
11 Anova test, A-n-o-v-a, which indicated a high degree of
12 statistical significance to the difference in those
13 numbers.

14 Q Okay. So is it typically the case that if you
15 have less exposure, the disease will present itself at
16 a later time for those who do get mesothelioma?

17 A Yes. If you have a low-exposure group, you'll get
18 fewer mesotheliomas and they will take longer to
19 develop. If you have a high-exposure group, you will
20 have a higher rate of mesothelioma, and they will
21 develop more quickly.

22 Q And is the exact amount of time lost associated
23 with each major exposure, is it known?

24 A You mean each of the component exposures?

25 Q Right. Can you give -- in other words, is it

ROA_01552

1 exact about how much time is lost from each -- how much
2 life is lost from each major exposure?

3 A Well, I would not be able to calculate that
4 because I think what you're talking about is more of an
5 industrial hygiene question as to the quantification of
6 level of exposure for each component. I have neither
7 the training nor the experience to do that.

8 Q Okay, Dr. Maddox. Do you have an opinion to a
9 reasonable degree of medical certainty that but for
10 each significant exposure some life is lost by
11 shortening the likely latency period?

12 A Yes, ma'am. I believe that that is correct. If
13 you subtract -- if you're able to retrospectively
14 subtract a component exposure, then that would give
15 less risk and a lower rate in a group of developing
16 mesothelioma and an increased length to the latency
17 period.

18 Q A few more questions, and I'll be through. One
19 more question on epidemiology studies. If you have a
20 10.8 or 7.8 increased risk, is that more than double
21 the risk?

22 A Yes, ma'am. Yes, ma'am. That would be
23 proportionately more than doubling the risk, depending
24 on the particular study.

25 Q Can you explain why?

ROA_01553

Appendix_01581

1 A Can I explain why what?

2 Q I'm sorry, Dr. Maddox. Last question. Would
3 exposures I've asked you to assume about Mr. Jolly to
4 Crosby valves over that three- to four-year period be
5 significant and substantial?

6 A Based on the hypothetical questions and parameters
7 that you expressed in your hypothetical question
8 earlier, I would say yes.

9 Q And the same would be true, based on the
10 hypothetical, about the valves that were the Fisher
11 valves?

12 A Once again, based on the parameters that you
13 expressed in the hypothetical question, I would say
14 yes.

15 Q Thank you, Dr. Maddox. Those are my questions.

16 A Yes, ma'am. Thank you.

17 CROSS-EXAMINATION

18 BY MR. BOUCH:

19 Q Dr. Maddox?

20 A Yes, sir.

21 Q Always good to hear your voice again. This is Tim
22 Bouch. I think we've known each other for 20 years or
23 so.

24 A Mr. Bouch, it's been something like that. It's
25 good to hear your voice as well.

ROA_01554

Appendix_01582

1 Q Dr. Maddox, I believe you were sent material
2 involving Mr. Jolly in early or late March 2016; is
3 that correct?

4 A Yes, sir. I received it on the 21st of
5 March 2016.

6 Q And you issued your report, oh, about three weeks
7 later?

8 A Yes, sir, that's correct.

9 Q And I believe your opinion at the time was that
10 Mr. Jolly, according to his medical records that you
11 received, worked at Duke Energy Company for over
12 30 years, with probable exposure to asbestos when
13 employed?

14 A Yes, sir. At the time that I issued my report,
15 that was the exposure history that I had received at
16 the time. And it was subsequently updated in a letter
17 from the plaintiffs' attorney. That letter was dated
18 June 12, 2017.

19 Q Well, I'll get there, Doctor, but my question is
20 this: Your report of April 13th, 2016, said, according
21 to the records you had at the time, he worked for Duke
22 Energy for over 30 years with probable exposure to
23 asbestos when employed. I'm quoting from the second
24 sentence of your report, correct?

25 A Yes, sir, that is correct.

ROA_01555

Appendix_01583

1 Q And I believe you found, as a result of that
2 information, based on the exposure history, Mr. Jolly's
3 cumulative exposure, asbestos exposure, caused his
4 malignant pleural mesothelioma?

5 A Yes, sir, that's correct.

6 Q And then about a year later, you received
7 additional information including the letter you
8 mentioned before of June 2017, a little over six weeks
9 ago from today, providing you information that
10 Mr. Jolly also worked for two years making deliveries
11 for a local lumber company in Gaffney, South Carolina
12 named Getty's Lumber Company. Do you remember that?

13 A Yes, sir. I see that in the more recent letter.

14 Q Okay. And then he would, during his couple of
15 years working for Getty's Lumber, he would deliver
16 joint compounds once or twice a week, including two or
17 three bags of joint compound or more for bigger
18 projects at each work stop, correct?

19 A Yes, sir. That's the history that was contained
20 in the letter.

21 Q All right. And that during his years, Mr. Jolly
22 estimated he was in the vicinity of construction
23 workers mixing joint compound and sanding the compound
24 20 to 25 percent of his time, correct?

25 A You know, I don't recall the exact estimate of

ROA_01556

Appendix_01584

1 that, but I am not disputing that. I simply don't
2 remember the precise number.

3 Q Do you have the letter in front of you?

4 A Oh, yes, sir. I can now -- the last -- I can see
5 now the last paragraph on the first page does use the
6 estimate of 20 to 25 percent. Pardon my error on that.

7 Q It's all right. Perfectly understandable. And
8 that the plaintiff recalled Georgia Pacific and Kaiser
9 Gypsum as the manufacturers of the joint compound he
10 delivered for Getty's Lumber?

11 A Yes, sir, that's correct.

12 Q And then we took your deposition a day later, on
13 June 13, 2017. It was your opinion to a reasonable
14 degree of medical certainty that the exposure to joint
15 compound by Georgia Pacific and Kaiser Gypsum in and of
16 itself was sufficient to cause his mesothelioma?

17 A Well, I said that, that would, if that was the
18 only exposure that would have been known, that I would
19 attribute the mesothelioma to those exposures because I
20 consider them to be significant exposures. However, if
21 there are other significant exposures as well, I would
22 certainly also include those in my causation statement.

23 Q Doctor, I believe you understand that Mr. Jolly
24 claims exposure to a variety of different asbestos
25 products?

ROA_01557

Appendix_01585

1 A Yes, sir, I do.

2 Q Have you attempted to determine a comparative dose
3 from one product to another?

4 A No, sir, I have not. That is the type of
5 procedure that's done by an industrial hygienist, and I
6 have neither the training nor the experience to do that
7 myself.

8 Q Okay. Doctor, there was some mention of
9 epidemiology during your discussion with Ms. McVey. Do
10 you recall that?

11 A Yes, sir.

12 Q You're not an epidemiologist, are you?

13 A That is correct. I'm not an epidemiologist, but
14 in the study of asbestos-related diseases, I have come
15 across many epidemiological articles that have
16 discussed exposures and attribution and so forth.

17 Q Okay. Now, Doctor, you have the opinion that work
18 with thermal insulation provides an extremely high rate
19 of mesothelioma in those that engage in that activity?

20 A Yes, sir, that's correct. It varies depending
21 upon -- upon the exposure of the people in that group.
22 People that have used some products for many years will
23 have a greater risk of mesothelioma than other people
24 that have used other products for a lesser period of
25 time. And I would agree that, overall, pipe insulation

ROA_01558

Appendix_01586

1 work, boiler insulation work does give a fairly high
2 risk of rate of mesothelioma.

3 Q In the past I've asked you that question, and you
4 have cited the work by Dr. Selikoff and others that
5 indicate almost a ten percent incidence of mesothelioma
6 in those workers?

7 A Yes, sir. In the insulators union group, people
8 that were doing insulation work of this sort, there is
9 an incidence of up to ten percent in the long term,
10 heavily exposed workers.

11 Q Okay. Doctor, you have not been asked to treat
12 Mr. Jolly or participate in his treatment, have you?

13 A No, sir, I have not.

14 Q And you have not met either Mr. Jolly or his
15 family?

16 A That's correct, sir.

17 Q And as far as this particular case goes, you have
18 had no discussion with any other expert, plaintiff or
19 defendant, about Mr. Jolly's case?

20 A That is correct, sir.

21 Q And all the exposure information you have been
22 given has been from the lawyers involved in the case;
23 is that correct?

24 A The exposure information that I've received has
25 been from the attorneys and also what little may have

ROA_01559

Appendix_01587

1 been in the medical records that I did review
2 personally.

3 Q Okay.

4 A I don't think there's -- there's not much detail.
5 in the records.

6 Q Fair enough. The medical records and the lawyers.
7 have provided you with what exposure information you
8 have been provided, correct?

9 A Yes, sir, that's correct.

10 Q And you have not reviewed Mr. Jolly's deposition
11 testimony, have you?

12 A I have not. I was not asked to be an exposure
13 witness in this case because I was told other people
14 were doing that.

15 Q You have not reviewed the depositions of
16 Mr. Taylor, Mr. Simpson, Mr. Freeman, or Mr. Rogers,
17 who have been identified as additional fact witnesses
18 on his exposure, have you?

19 A I do not recall reviewing their depositions.

20 Q And you have not reviewed Mr. Jolly's trial
21 testimony given in this case either, have you?

22 A No, sir, I have not.

23 Q Dr. Maddox, you and I have discussed this before
24 on several occasions. The jury has heard some
25 testimony that there is in the literature, and I

ROA_01560

Appendix_01588

1 believe you have expressed it in the past, that
2 exposure of even one day to asbestos could be
3 significant enough to cause mesothelioma, correct?

4 A Well, there have been a few case reports, reports
5 and individual cases that are in the medical literature
6 where extremely short exposures of a day or a week or a
7 month have been the only known exposures in some
8 malignant mesotheliomas; however, I would strongly
9 state that there is a dose response. The people with
10 larger cumulative exposures have a higher rate of
11 mesothelioma, and the people with very short exposures
12 have a very low rate of malignant mesothelioma.

13 Q And I believe you and I have discussed animal
14 studies in the past, and you have cited to me
15 Dr. Wagner's study of rats in support of your opinion
16 that high doses for short periods of time indicate a
17 causal relation of exposure to chrysotile in the
18 development of mesothelioma; is that not correct?

19 A Well, I don't recall the precise details of
20 Dr. Wagner's study, but I do know there are a number of
21 animal experiment studies out there where animals have
22 had an intraperitoneal injection of one type of
23 asbestos or another, and they have developed malignant
24 mesothelioma.

25 Q And the animal studies having inhalation of

ROA_01561

1 chrysotile by both Dr. Wagner and later by Dr. Brody in
2 which these animals were subjected to thousands of
3 fibers per cc over a period of six months, over seven
4 hours per day, those studies did not result in any
5 mesotheliomas as a result of that chrysotile exposure,
6 did they?

7 A You know, it would be difficult for me to recall
8 the exact results of those studies. My memory just
9 isn't sufficient to bring that information to my mind,
10 sir. I beg your pardon.

11 Q That's all the questions I have, Doctor. Thank
12 you.

13 REDIRECT EXAMINATION

14 BY MS. McVEY:

15 Q Dr. Maddox, just a couple of follow-ups if I
16 could.

17 A Yes, ma'am.

18 Q Do you routinely rely on epidemiological studies
19 and articles in your field, in your practice?

20 A Yes, ma'am.

21 Q And do others in your field routinely review and
22 rely on epidemiological studies?

23 A It's my belief that they do, yes, ma'am.

24 Q And, Dr. Maddox, does insulation need to have
25 asbestos in it to cause asbestos-related disease?

ROA_01562

Appendix_01590

1 A Well, yes, it does. I mean, there are some types
2 of insulation that just have calcium silicate binder in
3 it without having actual asbestos in it, and those have
4 not been shown to be causative of malignant
5 mesothelioma. Now --

6 Q Thank you, Dr. Maddox. Sorry.

7 A I was going to continue that the thought of --
8 with the thought that there's an old article by Balzer,
9 B-a-l-z-e-r, and Cooper in which they list the six
10 different types of thermal insulation that were used
11 back in the 1950s, '60s, '70s and '80s. And, you know,
12 some contained asbestos; some did not. Some had high
13 concentrations; some had low concentrations.

14 Q Typically, in order to cause asbestos-related
15 disease, the thermal insulation would need to have
16 asbestos in it, correct?

17 A Yes, ma'am. That would be part of the definition,
18 in my opinion.

19 Q Thank you, sir. Those are my questions.

20 RE CROSS-EXAMINATION

21 BY MR. BOUCH:

22 Q Doctor, I have one question. You still there?

23 A I am yes, sir. I'm right here.

24 Q Doctor, you mentioned the animal injection studies
25 when we spoke earlier. Do you recall that?

ROA_01563

1 A Yes, sir.

2 Q Those animal injection studies were also able to
3 create mesothelioma in those animals when injected with
4 nonasbestos substances such as fiberglass, ceramics,
5 things of that nature, correct?

6 A Yes, sir. Some mesotheliomas were observed with
7 other substances, generally in much lower rates, but
8 nonetheless, that is correct.

9 Q Thank you, sir. That's all I've got.

10 A Yes, sir. Thank you.

11 THE COURT: All right, Mr. Holder. You may step
12 down.

13 That concludes the deposition of Dr. Maddox.
14 Plaintiffs?

15 MS. FARRISE: Your Honor, plaintiffs would offer
16 into evidence a few more documents.

17 THE COURT: All right.

18 MS. FARRISE: Plaintiffs would offer
19 Exhibit 6364.07, which is a letter from Fisher Controls
20 to Mill Power Supply produced with the Duke documents.

21 THE COURT: All right.

22 Defendants?

23 MR. BOUCH: No objection, Your Honor.

24 THE COURT: No objection? Admitted, Plaintiffs'
25 6364.07.

ROA_01564

Appendix_01592

1 (WHEREUPON, Plaintiffs' Exhibit Number 6364.07 was
2 admitted into evidence.)

3 MS.. FARRISE: Thank you, Your Honor.

4 Plaintiffs would also offer what we've labeled as
5 1008.10670.

6 JUROR: Excuse me, Your Honor. May we have a
7 ten-minute break?

8 THE COURT: All right. Ms. Farrise, the jury has
9 requested that they be given a break right now.

10 MS. FARRISE: Certainly.

11 THE COURT: Absolutely, you may. Jury, we'll call
12 you back about 15 minutes after 4:00.

13 JUROR: Thank you so much.

14 (WHEREUPON, the jury exited open court at
15 4:03 p.m.)

16 THE COURT: You're probably right at the end of
17 putting in your documents.

18 MS. FARRISE: Just a few more.

19 THE COURT: Be that as it may.

20 (WHEREUPON, a recess was taken from 4:03 p.m. to
21 4:15 p.m.)

22 MR. McLEOD: Continuing objection to them entering
23 documents without a witness on the stand to lay the
24 foundation. In addition, we would move, just for the
25 record, to strike Maddox's testimony, Dr. Maddox's

ROA_01565

1 testimony, based on the same, every exposure and
2 reasons that we've already argued thoroughly in this
3 court.

4 THE COURT: Yes. Thank you, and you're protected
5 on the record on both of those points. No problem
6 about continuing to be sure. All of that is noted.

7 MR. McLEOD: And I would suppose the documents
8 that they're trying to admit, Fisher, the Fisher
9 representative was here.

10 THE COURT: I understand, and we've plowed that
11 ground, of course, before the Fisher representative
12 testified, and they're admitted over your objection,
13 and it's completely protected in the record. No
14 problem.

15 MR. McLEOD: Thank you, Your Honor.

16 (WHEREUPON, an off-the-record discussion was
17 held.)

18 (WHEREUPON, the jury entered open court at
19 4:18 p.m.)

20 THE COURT: Please be seated, ladies and gentlemen
21 of the jury. We have a few more documents to be
22 admitted by plaintiff, and then we'll kind of see where
23 we're going from there.

24 So, Ms. Farrise.

25 MS. FARRISE: Thank you, Your Honor.

ROA_01566

Appendix_01594

1 We had offered Exhibit 1008.10670. That's where
2 we are.

3 THE COURT: All right. If you just kind of come
4 up in this area right here as you begin to offer those
5 documents, I bet we can --

6 THE COURT: I gave you that one.

7 THE COURT: It's a letter on Fisher stationery, as
8 I call it.

9 MS. FARRISE: Dated July 1980.

10 THE COURT: I hope you have got your copy. I
11 don't know where exactly mine is.

12 This is Plaintiffs' 1008.10670 on Fisher Controls
13 Marshalltown, Iowa stationery, July 11, 1980, from Mr.
14 Paul S. Adams, Fisher Controls, to University Hygienic
15 Laboratory, Iowa City, Iowa?

16 Have you shown it to defendants?

17 MS. FARRISE: I have provided a copy.

18 THE COURT: Very good.

19 Defendants?

20 MR. BOUCH: Noted objection.

21 THE COURT: The noted objection.

22 MR. McLEOD: Yes, Your Honor.

23 THE COURT: Then overruled, and the document will
24 be admitted.

25 (WHEREUPON, Plaintiffs' Exhibit Number 1008.10670

ROA_01567

Appendix_01595

1 was admitted into evidence.)

2 MS. FARRISE: It says, "Dear Ivan; enclosed are
3 two gaskets for your use as bulk samples. As I stated
4 in our recent telephone conversation, I mailed four
5 asbestos samples to you for analysis. Sample 3 was
6 taken while flat black gaskets were being packed and
7 Number 4 while spiral-wound, parenthesis, blue, end
8 parenthesis, gaskets were being packed. Both gasket
9 types were being handled when Samples Number 1 and
10 Number 2 were taken. The asbestos types used on these
11 gaskets are probably chrysotile and crocidolite. More
12 specific information on the asbestos types used is not
13 readily available. Sincerely, Fisher Controls, Paul
14 Adams, facilities and equipment engineering."

15 And we would offer into evidence 100.10665. It's
16 a Fisher Controls letter dated July 9, 1980.

17 THE COURT: This is a letter, as you say, and
18 attached to it are Fisher Controls Control Sampling
19 Analysis Data Sheet 1, 2, 3, 4, and then another letter
20 dated July the 25th, 1980, from Mr. I.A. Schwabbauer,
21 chief of occupational health and air quality,
22 University of Iowa to Mr. Paul Adams, facilities and
23 equipment engineering, Fisher Controls Company,
24 Marshalltown, Iowa.

25 MS. FARRISE: Yes.

ROA_01568

Appendix_01596

1 THE COURT: Defense?

2 MR. BOUCH: Subject to our earlier objection, Your
3 Honor. Nothing further.

4 THE COURT: Very good. The documents will be
5 admitted.

6 (WHEREUPON, Plaintiffs' Exhibit Number 1008.10665
7 was admitted into evidence.)

8 MS. FARRISE: Just so the jury can see it. Fisher
9 Controls to University Hygienic Laboratory.

10 "Dear Ivan, enclosed are four samples requiring
11 analysis for asbestos. Accompanying these samples are
12 copies of the sampling analysis data sheets for your
13 reference and other information. Sincerely, Fisher
14 Controls, Paul Adams, equipment and facilities
15 engineering."

16 Your Honor, my colleague, Mr. Holder, has just a
17 couple more documents. I would offer to read one
18 single interrogatory from Crosby Valves, Number 31.
19 And not to even publish it, just to read it into the
20 record, the question and the answer.

21 THE COURT: These are interrogatories to Crosby
22 Valve, Inc., dated May 29th, 2008, verified by
23 Mr. Robert Martin, and Ms. Farrise is reading from
24 Interrogatory Number 31?

25 MS. FARRISE: A.

ROA_01569

Appendix_01597

1 THE COURT: A?

2 MS. FARRISE: Yes. "Question" --

3 MR. REID: Your Honor, can I just have a moment to
4 read it before --

5 THE COURT: Certainly. Certainly.

6 MR. REID: Which part is being offered?

7 MS. FARRISE: 31(a).

8 THE COURT: On Page 19.

9 MR. REID: Okay. Proceed.

10 MS. FARRISE: Interrogatory Number --

11 THE COURT: Hang on with me for a second. I'm
12 going to use this thing so I may snap them together
13 here.

14 All right, Ms. Farrise.

15 MS. FARRISE: Interrogatory Number 31 to Crosby
16 Valve: "Question, if your answer to any subpart of
17 Interrogatory Number 31 regarding asbestos-containing
18 products is in the affirmative, state: A, the trade
19 brand name and/or generic name of each such
20 asbestos-containing product marketed in any form or
21 quantity between 1930 and 1985."

22 Response to A: "The valves were manufactured
23 under the Crosby Valve, Ashton Valve, Sage and valve
24 trade names."

25 And that completes my offer, and my colleague,

ROA_01570

Appendix_01598

1 Mr. Holder, has a couple of things to offer.

2 MS. FARRISE: Thank you.

3 THE COURT: Mr. Holder.

4 MR. HOLDER: First is the last thing of Duke
5 invoices. Here it is. It's for Catawba for Crosby.
6 And it's Exhibit 6395. And I don't need to publish
7 them to the jury. We just want to admit them for the
8 jury because they have been referred to.

9 THE COURT: Counsel for the defense, take a moment
10 to look at that and see if there's any objection.

11 MR. BOUCH: I think just subject to our earlier
12 objections, Your Honor.

13 THE COURT: Your already stated objections.
14 Mr. Holder, they will be admitted.

15 (WHEREUPON, Plaintiffs' Exhibit Number 6395 was
16 admitted into evidence.)

17 MR. HOLDER: There were four exhibits that came in
18 and were shown as part of the David Taylor deposition
19 video, and I just wanted to enter those into evidence
20 officially, and I can show them.

21 THE COURT: Show them all to counsel, and we'll --

22 MR. HOLDER: I have copies for them.

23 THE COURT: I take it they're individually
24 numbered?

25 MR. HOLDER: Yes, ma'am.

ROA_01571

1 THE COURT: Good.

2 MR. HOLDER: Again, I think these have already
3 been shown to the jury during the deposition.

4 THE COURT: That is 943.4, an exhibit shown to
5 Mr. Taylor in his deposition.

6 Counsel, any objection?

7 MR. McLEOD: Your Honor, I think we've already
8 been over these. There's no objection other than --

9 THE COURT: Other than the standing objection
10 we've got.

11 (WHEREUPON, Plaintiffs' Exhibit Number 943.4 was
12 admitted into evidence.)

13 MR. HOLDER: The next one is a brush, 943.5.

14 THE COURT: That, of course, was also shown during
15 Mr. Taylor's deposition.

16 Same position by defense; the exhibit is admitted.

17 (WHEREUPON, Plaintiffs' Exhibit Number 943.5 was
18 admitted into evidence.)

19 MR. HOLDER: The next one is 943.6 and same --

20 THE COURT: And 943.6, again, this is out of the
21 Taylor deposition. This is a flange gasket.

22 MR. HOLDER: Yes, Your Honor.

23 THE COURT: And the same objection from defense,
24 and subject to that, it's admitted.

25 (WHEREUPON, Plaintiffs' Exhibit Number 943.6 was

ROA_01572

Appendix_01600

1 admitted into evidence.)

2 MR. HOLDER: Thank you, Your Honor.

3 MR. McLEOD: Thank you, Your Honor.

4 MR. HOLDER: The last one from Mr. Taylor's
5 deposition is 943.7.

6 THE COURT: A showing of gasketing material on a
7 flange, four-bolt flange.

8 Subject to the same objection, admitted.

9 (WHEREUPON, Plaintiffs' Exhibit Number 943.7 was
10 admitted into evidence.)

11 MR. McLEOD: Thank you, Your Honor.

12 MR. HOLDER: Thank you, Your Honor.

13 Finally, these are exemplars of the worksites.

14 MR. BOUCH: No problem with these, Your Honor.

15 THE COURT: No problem with those?

16 MR. BOUCH: No, ma'am.

17 THE COURT: Admitted. That's exemplar photographs
18 of Catawba.

19 (WHEREUPON, Plaintiffs' Exhibit Number 935.1 was
20 admitted into evidence.)

21 MR. HOLDER: This one is Oconee, 935.1.

22 THE COURT: Aerial photography of Oconee.

23 MR. HOLDER: 935.2.

24 THE COURT: 935.2.

25 MR. HOLDER: Is Catawba.

ROA_01573

Appendix_01601

1 THE COURT: Aerial photograph of Catawba.

2 MR. HOLDER: And 935.3 is McGuire.

3 THE COURT: 935.3. This is a frontal photograph
4 over a settling pond or body of water at the plant
5 looking at the Units 1 and 2 of McGuire.

6 MR. HOLDER: Yes, Your Honor.

7 MR. BOUCH: I think the one they have Catawba is
8 actually Cherokee, but I really don't care. It doesn't
9 matter.

10 MR. HOLDER: I thought it was Catawba.

11 MR. BOUCH: If they want to call it Catawba, they
12 can call it Catawba.

13 MR. HOLDER: It's plaintiffs' position that it's
14 Catawba. I'm kidding.

15 THE COURT: I just saw the three units there but
16 other than that, I take you generally at your word.

17 (WHEREUPON, Plaintiffs' Exhibit Number 935.2 was
18 admitted into evidence.)

19 (WHEREUPON, Plaintiffs' Exhibit Number 935.3 was
20 admitted into evidence.)

21 MR. HOLDER: Yes, Your Honor. The last thing that
22 plaintiffs would just like to do is that there's
23 been -- we got an exhibit list from the court reporter
24 today of exhibits that were identified and been entered
25 to date. There were several that were identified that

ROA_01574

Appendix_01602

1 have not been moved into evidence, and except for those
2 that you have actually made rulings upon that were
3 excluded or were specifically for identification and
4 specifically not to go back to the jury, for all the
5 others we would ask that those be admitted into
6 evidence that have been identified.

7 THE COURT: Those have been identified. They have
8 the same objection attached to them, and you're going
9 to give a list of them to Mr. McLeod?

10 MR. HOLDER: He's got the list.

11 MR. McLEOD: Your Honor, I don't know -- I'm not
12 exactly sure what he's talking about.

13 THE COURT: He's talking about exhibits that were
14 actually identified by someone, and they thought they
15 had been moved into evidence, but they're doing
16 housekeeping now, and they represent to the court that
17 these were documents that had been identified --

18 MR. McLEOD: The court reporter handed us a list
19 because there has been a lot of confusion as to which
20 exhibits and numbers, and we were trying to work with
21 her, of course, to figure out what exhibits had been
22 admitted. To the extent that --

23 MR. BOUCH: Your Honor, we can do this when the
24 jury is gone.

25 THE COURT: Certainly. We can do this when

ROA_01575

Appendix_01603

1 they're gone, and the two of y'all can work it out, and
2 the plaintiffs' case will remain open for the --
3 Mr. Bouch, Mr. McLeod, and Mr. Holder, the plaintiffs'
4 case, even after the plaintiff rests, will remain open
5 for the limited purpose of getting these exhibits
6 straight.

7 MR. BOUCH: Perfectly fine.

8 MR. McLEOD: Sure.

9 THE COURT: If there are dilemmas, why you can let
10 me know that tomorrow morning.

11 MR. HOLDER: Thank you, Your Honor.

12 THE COURT: All right.

13 Now, what say the plaintiff?

14 MR. HOLDER: The plaintiffs at this time rest
15 their case-in-chief, Your Honor.

16 THE COURT: Thank you, Ms. Farrise.

17 Ladies and gentlemen of the jury, plaintiffs have
18 now rested their case, and the next thing that will
19 happen is that the attorneys will speak with me about
20 various motions that will be made, and then the
21 defendants' case will commence.

22 I'm going to let y'all go for the day, and then
23 we'll start off fresh tomorrow morning with the
24 defendant, the beginning of the defendants' case.

25 I have a lot of things to talk with the lawyers

ROA_01576

Appendix_01604

1 about, some that relate to various motions, and others
2 relate to the issue of my charge to the jury, and both
3 sides have been submitting information to me about
4 that. And I may -- I'm going to have you come in at
5 9:30. I was thinking about earlier, but I'm going to
6 have you come in at 9:30 with the idea that I may meet
7 with the attorneys earlier about the charges.

8 So that's what we'll be doing. And I'll tell you,
9 your ears should be burning is all I have to say. My
10 husband is a lawyer, as am I. We graduated together
11 shortly after we were married 49 years ago, and married
12 the year before we graduated and then loosed upon the
13 world 49 years ago. And so, of course, I've told Bill
14 about y'all and how impressed I am. The two of us have
15 each had long careers trying cases in front of many,
16 many juries. This is such a technical matter, and I
17 just continue to be really so awed at the attention
18 that you are paying to this matter of great importance
19 to the parties who are bringing it to you. It just
20 proves once again to me the wonderful thing that we
21 have in this country of a jury trial. You're just
22 citizens of this county like I'm a citizen of Richland,
23 and we're together trying to create an atmosphere in
24 which this complex matter can be tried and a verdict
25 reached, and you're really taking it in the way that

ROA_01577

1 great Americans take it. You are the great Americans,
2 and I'm so impressed with you. Thank you so much.

3 Have a good evening.

4 (WHEREUPON, the jury exited open court at
5 4:35 p.m.)

6 THE COURT: All right. Who would like to begin?
7 Mr. Reid, would you speak first for the defense?

8 MR. REID: Yes, Your Honor. I have a written
9 motion for directed verdict.

10 THE COURT: Thank you. Wonderful.

11 MS. McVEY: Your Honor, I haven't seen that, so
12 it's hard for me to respond to it.

13 THE COURT: They're bringing it to you right now.

14 MS. McVEY: Your Honor, before you get started, I
15 assume they have had this all day. It's 35 pages long.

16 THE COURT: Well, I'm in the same boat you are,
17 which is that I'm just seeing it, and so what I propose
18 we do is hear from Mr. Reid at least briefly about it,
19 and we can do this one of two ways. We have got a lot
20 of work to do with those charges, and I want to spend
21 some time tomorrow doing that, but I really appreciate
22 the lengthy memorandum because it's going to give me a
23 chance to do a little cogitation rather than be
24 completely off the hip about it.

25 One thing that I would appreciate so much,

ROA_01578

Appendix_01606

1 Mr. Reid, or, Mr. McLeod, if you could e-mail me this
2 document so I will have it in e-mail form and I can
3 send it to Josh.

4 MR. REID: We'll do that, Your Honor.

5 THE COURT: And that will help me at least have
6 one other set of eyes upon it. And, obviously, you
7 would give a hard copy or e-mail to them as well.

8 Ms. McVey, what I propose to do is let them just
9 give me kind of a brief overview, and that gives you
10 some concept about kind of the general landscape, and
11 you can either respond to that now, or you can wait
12 until in the morning to respond to that. I'm,
13 obviously, going to study these materials and not going
14 to rule on it.

15 And, Mr. Reid, if you would prefer to wait until
16 tomorrow to make your presentation, that, of course, is
17 also very acceptable because I certainly do want to
18 have a chance to study these materials, and it might be
19 very well to simply study them and let you give a
20 complete projection tomorrow, that would at least give
21 Ms. McVey and her colleagues the chance to, A, decide
22 what they would want to say upon the record; and, B, if
23 they decide there's anything they want to file, why
24 they can do so.

25 So that would be my current plan unless either

ROA_01579

Appendix_01607

1 side has an objection to my handling it that way.

2 First you, Mr. Reid.

3 MR. REID: Thank you, Your Honor. I'm happy to
4 give the oral presentation right now. Whether I go
5 today or tomorrow, my intention is to have the brief
6 serve as the primary focus and to incorporate by
7 reference what we have there when I give you the verbal
8 presentation.

9 And if you would like, I could give mine today and
10 wait for them to speak to you tomorrow. That way, at
11 least, we'd fill the day. So I'm ready to proceed if
12 you would like me to address the issues we have.

13 THE COURT: I'm going to turn to Ms. McVey for a
14 minute.

15 Ms. McVey.

16 MS. McVEY: Your Honor, obviously, if you would
17 like a written response to this, we would like to get
18 one to you. I'm not even sure I can do it by the
19 morning, to be honest, to respond in this depth, but we
20 can do something. If the main points are those bullet
21 points found on Pages 1 and 2 --

22 THE COURT: That's what I take it to be, and I
23 have just done the quickest little flip-through you
24 have ever seen in your life. I am a speed reader, but
25 even I cannot pretend to be Ernest Connor in that

ROA_01580

Appendix_01608

1 regard, so I'm thinking these points are the points
2 that they wish to make, and they're made well enough
3 here that if you wanted to not truncate matters,
4 Mr. Reid, but rather start off fresh tomorrow, that
5 would be fine with me.

6 MR. REID: We could do it that way.

7 THE COURT: Here is what I suggest. Could we come
8 in at 8:30?

9 MS. McVEY: Sure.

10 THE COURT: Is that acceptable to everyone?

11 MR. REID: Yes.

12 THE COURT: I think that would be well. That
13 would give us all a chance to look at this and really
14 be honed in on the points of importance and me a chance
15 to look at the authorities and so forth and at least
16 try to be prepared to react in a good way.

17 So, let's do it that way, and that means we'll
18 adjourn now and be back here in this courtroom, Marcia,
19 if we may, at 8:30, if that's okay.

20 THE CLERK: Yes, Your Honor.

21 THE COURT: Very good. And then we'll move
22 forward from there.

23 Let's kind of see how we get along with this case
24 to decide when it is we're going to talk about the
25 charges. I won't force you to do that. We'll get the

ROA_01581

Appendix_01609

1 motions out of the way, and then your case, the defense
2 case, can proceed, and then we'll talk about when it is
3 we're going to put our heads together about the
4 charges.

5 Theile has just sent me her charges, and I'm sure
6 she's sent them to you as well, with headers on them so
7 I will be able to match them up with yours a little
8 more conveniently.

9 MR. McLEOD: Did you receive ours that we sent
10 earlier?

11 THE COURT: I did. Thanks very much, Yancey.
12 I've got all of that. I've got two things I'm wanting
13 to at least do a little bit of looking at tonight.

14 MS. McVEY: So in the morning we'll be prepared to
15 argue directed verdict at 8:30, and then at 9:30 the
16 jury is coming in, and I don't know what order, but we
17 have Dr. Oury's video. We have --

18 THE COURT: I think what he wants to do, now that
19 we've gone over the day, he wants to start with a
20 substantive in-person witness. Am I right, Mr. Bouch?

21 MR. BOUCH: We'll have one of our two witnesses up
22 first, then the video. Ms. Sahmel and Dr. Crapo, the
23 two live witnesses.

24 THE COURT: So you'll have your live witnesses,
25 and somewhere in that you'll put in the deposition of

ROA_01582

Appendix_01610

1 Dr. Oury. And then what else have we got?

2 MR. BOUCH: That's it.

3 THE COURT: Wonderful. That's going to give us --
4 thank you very much for that. That's very organized
5 and very well done. And we can see what we need to do
6 about post defendant's case motions, of course, as well
7 as spend a little bit of time on these charges.

8 MR. BOUCH: The only -- and I may be a little
9 early, Your Honor, but I'm optimistically thinking I'll
10 finish tomorrow. And I'm not asking them to commit,
11 but do the plaintiffs have any --

12 THE COURT: Have y'all got anything in reply that
13 you know about right now?

14 MS. McVEY: I don't -- we need to talk about it,
15 but nothing definite.

16 THE COURT: So it sounds more the answer is no
17 than the answer is yes, but we'll --

18 MR. BOUCH: I understand, Your Honor. I just
19 didn't know if there was something they had in mind.

20 THE COURT: I don't think they have got any
21 definite plans at the moment.

22 MR. BOUCH: Right now I'm more concerned about the
23 Marriott letting us stay past Wednesday than anything
24 else. That's all I'm concerned with.

25 THE COURT: Do they have a logjam?

ROA_01583

1 MR. BOUCH: I don't know if they have got a
2 logjam, but I haven't consulted with them yet, though
3 we've been a pretty good customer last couple of weeks.

4 MR. HOLDER: They got a lot of Panther's fans
5 coming in for the camp.

6 THE COURT: Okay. Thank you very much. And,
7 again, our thanks to all of you for the very
8 professional way you're handling this and handling your
9 jury. This is a very diverse group of people, but I am
10 impressed with the way in which they're handling this
11 matter and attentiveness. It's an awful lot for
12 laypeople to keep their attention on, but I think
13 they're making a valiant effort to be serious and
14 attentive as a tribute to y'all as well. So thank you
15 very much.

16 (WHEREUPON, proceedings adjourned at 4:44 p.m.)
17
18
19
20
21
22
23
24
25

ROA_01584

Appendix_01612

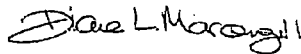
Certificate of Reporter

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 31st 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_01585

Appendix_01613

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		August 1, 2017
14		Volume 7 of 9
15		Pages 1368 - 1658
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
23 Leath, Bouch & Seekings
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

Motions

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JAMES CRAPO, M.D.

Direct Examination By Mr. Bouch

1404

Cross-Examination By Ms. Farrise

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Redirect Examination By Mr. Bouch

1530

Recross-Examination Ms. Farrise

1532

JENNIFER SAHMEL, MPH, CIH, CSP

Direct Examination By Mr. Bouch

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E x h i b i t s

For the Plaintiffs:

Marked

Description

I.D.

Admitted

6385 Biography of Dr. Crapo

1466

For the Defendants:

Marked

Description

I.D.

Admitted

Crosby 66 CV of Jennifer Sahmel,
MPH, CIH, CSP

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Crosby 69 CV of Dr. James Crapo,
M.D.

1405

Crosby 70 Report of Dr. Crapo
Fisher 74 University of Iowa Test
data from I.A.
Schwabbauer

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1642

ROA_01587

Appendix_01615

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 8:30 a.m.)

4 MR. REID: Good morning. And thank you, Your
5 Honor.

6 Just at the outset, I want to state that what I
7 think I'll do is incorporate my brief by reference.
8 I'm relying on that, don't want to waive anything by
9 not talking about it. I presume you have read it --

10 THE COURT: I have.

11 MR. REID: -- and don't need argument about every
12 point within the brief.

13 We have, I think, essentially seven motions within
14 the brief asking for a directed verdict on various
15 points. The first is for a directed verdict on the
16 failure to warn claim. There are various bases within
17 that, by reading the brief, we're asking for that
18 relief.

19 One is that the risk was open and obvious to
20 Mr. Jolly. He testified that he was aware of the
21 hazard of asbestos by virtue of it being posted by Duke
22 from the day he started at Duke and continually through
23 the time that he finished. The period of work that
24 we're focused on here, which is the 1980 to '84 period,
25 and under the case law, we think we're entitled to

ROA_01588

Appendix_01616

1 relief under his acknowledgement of the risk.

2 Secondly, we think the sophisticated intermediary
3 doctrine or rule applies here. We encourage the court
4 to adopt the elements of the Webb case. We note that
5 Duke was as sophisticated a customer as possible. This
6 was a nuclear power plant, after all. They had posted
7 warnings about asbestos before the period that
8 Mr. Jolly worked there, and as Dr. Frank acknowledged,
9 there was nothing we could tell them about asbestos
10 that they didn't already know.

11 There's also no proof that valves were in the same
12 condition as when shipped. At the time Mr. Jolly
13 encountered them, to the extent they -- I don't know if
14 the plaintiffs in this case are blaming insulation, but
15 at the time of their opening statement, they don't seem
16 to have done that, but to the extent they're suggesting
17 that our valves used insulation or employed flange
18 gaskets, neither of which our clients provided, and are
19 blaming for us for that, we think that principle that
20 we did not -- that the valves were not in the same
21 condition as when shipped would provide relief for us.

22 And then, of course, we also are asking the court
23 to grant relief on this duty to warn claim by virtue of
24 the fact that the plaintiffs have not proved that the
25 lack of a warning was a proximate cause of injury to

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1 Mr. Jolly.

2 And in that regard, I wanted to emphasize the
3 factors that we outlined at Pages 12 and 13 of our
4 brief. There's no proof about a warning -- what a
5 warning from either Fisher or Crosby should have said;
6 no proof about where such warning should have been
7 displayed; no proof about who would have seen it, which
8 I think is significant in Mr. Jolly's case since this
9 is a bystander case; no proof what any person would
10 have done in response to a warning; and no proof how it
11 would have impacted his alleged exposure or how he
12 would have responded to it.

13 In fact, one thing that I think was dramatic here
14 in a sense was there were no questions directed to
15 Mr. Jolly in this trial and no other proof submitted on
16 this point of what he would have done had he seen a
17 warning.

18 So that's as much as I wanted to add on the oral
19 record this morning on that point, Your Honor. I don't
20 know if you would prefer me to continue on to the other
21 specific motions we have or address them one by one.

22 THE COURT: Why don't we start with your first,
23 which is your failure to warn.

24 You have pointed out the case that I think
25 controls -- I know you do not -- but *Lawing vs. Univar*

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1 is the case that I think is the latest discussion by
2 the South Carolina Supreme Court about *Bragg* and how it
3 interacts with the sophisticated intermediary doctrine.

4 The focus is on labeling in *Lawing*, and that is
5 one of the contentions that is made here, and the
6 employer's knowledge about asbestos does not affect the
7 obligation of the supplier in that regard.

8 And here there is at least enough evidence to meet
9 the standard of looking at the evidence in the light
10 most favorable to the nonmoving party to suggest that
11 both these valve companies well knew that asbestos was
12 used in their products, that they either placed some of
13 the asbestos-containing materials in their products or
14 knew that the flanges on their products would have to
15 be insulated, and the real telling aspect of that is
16 that they, the valve companies, some evidence that they
17 at some points, particularly Fisher, supplied them with
18 the initial delivery of the valves, but in both the
19 Crosby and the Fisher case, the way the purchaser,
20 Duke, received replacement parts was to order them from
21 Crosby, and the fact that Crosby chose to use a
22 supplier to supply the materials it sent to Duke does
23 not absolve it of its failure to warn.

24 I think there's evidence to suggest that both
25 valve companies well knew that in the ordinary course

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1 of using these valves that takedowns would occur, and
2 the gaskets would be removed, and new gaskets would be
3 placed in the valves, and sometimes new packing, and
4 they well understood the methodology that would be used
5 to remove those gaskets that involved grinding and use
6 of brushes and even just using rubber gloves and
7 lifting the gaskets off. I thought the video was very
8 revealing that there was obvious flaking off and
9 flaking off of asbestos material from those ring valves
10 when the demonstration was made of how you removed
11 them, and that just sat there on the table and, you
12 know, that is what is contended was the problem here.
13 All right.

14 Mr. Jolly is not a simple bystander. He's a
15 participant in the process that involved the removal
16 and replacement of these valves, and the suggestion
17 that kind of a bare metal defense as a way of getting
18 out of having any responsibility for the designing and
19 supplying of asbestos-containing materials as a part of
20 the use of valves supplied by these two valve
21 manufacturers is not something that I would embrace.
22 Judge Hill and the cases that he has tried has not
23 embraced that defense. We had motions before the case
24 began about that, and I indicated that I would not
25 accept the concept of bare metal. Even Judge Norton,

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1 who initially accepted that notion, has retreated from
2 it in the federal venue.

3 So for all those reasons on this -- and I realize
4 some of the concepts I'm discussing will have impact on
5 some of the other rulings that have been made, but I
6 think failure to warn is not something I would grant a
7 directed verdict on, so that motion is denied on issue
8 number one.

9 MR. REID: Thank you, Your Honor.

10 Our second motion is a request for a directed
11 verdict on the design defect claim. The plaintiff is
12 obligated to show that our product is unreasonably
13 dangerous from 1977 forward. If there was a danger,
14 Duke well knew how to deal with it, and for that reason
15 and the reasons set forth in our brief, Your Honor, we
16 think we're entitled to a directed verdict on the
17 design defect claim.

18 THE COURT: This is a more sophisticated area, and
19 before I make any ruling on it, Ms. McVey, I want to
20 hear from you on this.

21 MS. McVEY: Your Honor, this is point two, and
22 what we would argue is that plaintiffs have, in fact,
23 met their burden on the design defect claim.

24 There are two points that they make. One is that
25 we have to prove alternative design under risk/utility.

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1 Point number one, and I don't know this even applies in
2 this case because not only did we prove there's an
3 alternative design, the corporate representatives came
4 in the courtroom and testified, of course, we had
5 alternatives. We had metal; we had rubber; we had all
6 sorts of things that would have worked in the '50s and
7 '60s in these valves and gaskets. The corporate rep
8 said that yesterday, and you're well aware of that,
9 Mr. Dumistra and Mr. Crosby -- I mean Mr. Martin, who
10 spoke for Crosby.

11 The other point I want to make is in a failure to
12 warn case, I don't know that the plaintiff always has
13 to prove an alternative design. And what I mean by
14 that is in, for example, in *Lawing*. With that case,
15 there are some products that cannot be made safer,
16 right, an explosive of some type. You cannot make a
17 stick of dynamite safer by providing a safer design.
18 It has to explode.

19 But what you can do is you can warn. And so in
20 this case, I don't think it matters because we have an
21 alternative design the defendants have said were
22 available long before Mr. Jolly ever got to the Duke
23 worksite. But, two, in a failure to warn case, I don't
24 think that's a requirement, Your Honor, so I would say
25 that.

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1 I can go through the testimony if you would like
2 of Mr. Dumistra and Mr. Crosby where they talk about
3 what was available and when, and I'm happy to do that,
4 but Mr. Dumistra in particular testified that in the
5 '50s and '60s alternative gaskets and packing were
6 available to consumers.

7 THE COURT: All right. I would not grant a motion
8 for directed verdict on design defect. I agree with
9 the discussion Ms. McVey has given of the *Brown* case
10 and the risk/utility doctrine in that regard. I'm
11 going to assume for purposes of my ruling that a
12 reasonable alternative design must be shown, so I'll
13 base my ruling on the fact that if a reasonable
14 alternative design must be shown, both Fisher and
15 Crosby's witnesses have shown it. Mr. Dumistra
16 testified, as you have pointed out, that alternatives
17 were available from a much earlier period than the sale
18 of these parts to Duke and Mr. Jolly's exposure
19 thereto.

20 But in addition to that, Mr. Martin testified at
21 length using the spreadsheets that indicated from his
22 interrogatory answers the kinds of valves that
23 contained asbestos and when the asbestos was removed,
24 and he -- the import of his testimony points to me, at
25 least minimally and maybe more, makes out the case that

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1 Crosby changed to no asbestos because the asbestos was
2 dangerous, too dangerous to use in these kind of
3 industrial settings. And they had the ability to
4 change because from way before they had other materials
5 that could have been used in these settings, so I will
6 deny that motion.

7 MR. REID: Your Honor, our third motion is for
8 directed verdict on the negligence claim. Of course,
9 the difference between that and a strict liability
10 claim is that in the negligence setting, the plaintiff
11 is required to prove the standard of care and that it
12 was breached.

13 I submit that on this record there is zero
14 evidence going to either one of those two things.
15 There's no evidence whatsoever. No expert testified
16 what the standard of care was for a valve maker at the
17 time in question; and, furthermore, no evidence from
18 any quarter that that standard was breached. There's
19 no evidence that warnings were the norm from valve
20 companies, that asbestos-free valves were the norm, or
21 that we in any way, shape, or form deviated from what
22 other companies did or what the norm in the industry
23 was, and so for that reason, we think both defendants
24 are entitled to a directed verdict on the negligence
25 claim.

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1 Again, as with all my arguments, we'll incorporate
2 what we have set forth in the brief on that issue.

3 THE COURT: Ms. McVey.

4 MS. McVEY: Your Honor, we would submit that the
5 defendants breached the standard of care in three
6 distinct areas. The first was in designing a valve
7 that contained asbestos products. As we've said
8 before, there were alternatives available, and as a
9 result of using asbestos-containing products, the
10 product was defective. And that's obvious. And these
11 alternatives were available in the '50s and '60s, as we
12 just went through.

13 The defendants also had a duty to warn of their
14 defective and dangerous product, and they admit today
15 that they have never, not one time, warned about the
16 dangers of this product. And, in fact, they say our
17 products don't need a warning. Didn't need it then and
18 don't need it now.

19 And, finally, Your Honor, they breached the
20 standard of care in failing to test their product. Our
21 case law says that a manufacturer has a duty to test
22 their product. And in this case, the defendants admit
23 that they never tested their product. And, in fact,
24 they want to rely on OSHA, but OSHA says you've got to
25 test your product to determine if the asbestos is

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1 friable. And if they had done that when Mr. Jolly was
2 being exposed, they would have realized, as all science
3 says, that the asbestos from the gaskets and packing
4 exceeded acceptable levels for OSHA. So they breached
5 their duty in failing to test their product and failing
6 to warn about their product and designing their product
7 with an asbestos gasket and packing.

8 MR. REID: Your Honor, if I may add one thing.

9 THE COURT: Yes, of course.

10 MR. REID: Of course, when questions were directed
11 to Dr. Maddox yesterday and the doctors last week, all
12 the causation questions were directed to the 1980 to
13 '84 time period. And I mention that simply because, of
14 course, nothing is relevant if it didn't cause injury,
15 so we're talking about conduct up to 1984 and not
16 later.

17 And there's certainly no evidence directed to any
18 of the points, particularly the requirement of warning
19 and alleged failure to test; that that was some
20 industry norm in 1984 or before.

21 THE COURT: All right.

22 Ms. McVey, address for a moment the contention
23 that you haven't established the standard of care. You
24 talked a lot about the beach in design, duty to warn,
25 failure to test. But how was the standard of care

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1 established? Mr. Reid relates it to -- I know you
2 can't listen to two people at one time.

3 Mr. Reid argues that the standard of care should
4 be established from what was the industry norm. How
5 did you establish the standard of care, and do you
6 agree that it's established by the industry norm?

7 MS. McVEY: Your Honor, I don't think the standard
8 requires what is the industry norm. In other words,
9 all the industry could bury their heads in the sand and
10 say, "We're not doing this testing; we're not warning."
11 That's not how you establish the standard of care.

12 Our law says what the standard of care is. It
13 says what the duty of a manufacturer is. And, Your
14 Honor, there have been witnesses in this case that have
15 talked about OSHA. And they have talked about the duty
16 to test; a product manufacturer has a duty to test.
17 And, Your Honor, I believe that establishes the
18 standard of care.

19 THE COURT: All right.

20 MS. McVEY: And, I'm sorry, Your Honor. And OSHA
21 says not only do you have to test, but you have to
22 label, you have to warn.

23 THE COURT: All right, Mr. McLeod.

24 MR. McLEOD: Your Honor, I just want to make sure
25 the record is clear. OSHA does not require us to test

1 to provide evidence -- to provide assurances that our
2 workers inside of the manufacturing plants are safe.
3 It does not require any duty for us to test some other
4 manufacturer's product we didn't make or supply that
5 went to Duke. OSHA requirements have to do with our
6 employees, not Mr. Jolly. He's not our employee, and
7 the record is clear on that.

8 THE COURT: Well, their argument is not an
9 argument based on Mr. Jolly's status as your employee.
10 It is argument based on their contention that the
11 asbestos gaskets were part of your design, a gasket was
12 required by your design, and that you supplied
13 asbestos-containing products in packing and in flange
14 gaskets, either in the initial manufacture or in
15 supplying replacement parts, that both Crosby and
16 Fisher did that. That's the contention. And I say
17 there is at least some evidence of that in the record
18 at this point.

19 Their basis of duty to warn is not based on the
20 employee status, but it is based on something you
21 disagree with, which is they contend this is a part of
22 your design and supply of the product you're supplying.

23 MS. McVEY: Your Honor, just to make the record
24 clear, OSHA, also in 1972, OSHA also applies to product
25 manufacturers. So I want to make sure that's clear.

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1 THE COURT: Right. What they're trying to do is
2 confine it to their own employees in their own plant.
3 I understand that argument. The contention is made
4 that these standards also apply to those who work in
5 plants where a manufacturer has supplied product, and I
6 understand you disagree with that, but I don't think we
7 need to get hung up on that.

8 I must say that none of you has analyzed,
9 discussed the very detailed analysis of negligence in
10 these type of cases that was made in the *Brown* case.
11 And I still got some cause for pause when I read
12 Justice Kittredge's opinion in that case.

13 So I'll say that my mind is certainly not made up
14 about this, but at the present time, I think there is
15 at least a bare minimum of information sufficient to
16 overcome a directed verdict, and I will deny the
17 directed verdict on negligence, but I may revisit that
18 at the end of the defendant's case before this matter
19 goes to the jury.

20 All right. Mr. Reid.

21 MR. REID: Your Honor, our next directed verdict
22 motion goes to the -- obviously, there has been
23 testimony in this case about insulation and flange
24 gaskets. And the court commented earlier on those
25 gaskets for internal use that would have been supplied

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1 by our clients. And we certainly know since we put
2 those replacement gaskets, to the extent the
3 replacement gaskets came from our clients, we bear
4 responsibilities for that, but I think the case law in
5 this state and the logical view of things is that we
6 bear responsibility only for those things we put in the
7 stream of commerce. So, in effect, we're asking the
8 court to rule, and this certainly will be something
9 discussed in the jury instruction conference, we ask
10 the court to rule now that we do not have
11 responsibility for those things our clients did not
12 place in the stream of commerce such as flange gaskets
13 and insulation.

14 Of course, this was extensively discussed on, I
15 think it was July 18th, at the motion in-limine motion,
16 summary judgment hearing that incorporated our
17 arguments there as well as those we have in the brief
18 on this point.

19 THE COURT: Yes, sir. And at least at the moment,
20 I will continue with my ruling that the bare metal type
21 approach to this matter is not one I will embrace, and
22 that at least for purposes of this motion, I continue
23 to believe that there is evidence that's been presented
24 to indicate that, both in terms of design and supply,
25 that these two valve companies placed in the stream of

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1 commerce asbestos-containing materials. So I will deny
2 that motion as it relates to the stream of commerce,
3 bare metal, et cetera.

4 All right, sir.

5 MR. REID: Next, Your Honor, we're seeking a
6 directed verdict based on causation. And, again, I'd
7 incorporate what we put in our brief. I think that
8 starts at Page 22 and goes on for some amount of time.

9 THE COURT: Yes, sir. I'm right there.

10 MR. REID: And there are various aspects to it,
11 but I think the one I would like to emphasize this
12 morning is the fact that all the testimony -- we've got
13 three doctors from the other side. Dr. Brody really
14 didn't get into specific causation, just gave a general
15 overview of things. So what I'm really focused on are
16 the opinions of Dr. Maddox and Dr. Frank.

17 The problem with their testimony is that it is the
18 each and every total cumulative dose evidence which has
19 been rejected by numerous courts. I don't know if the
20 court has had the opportunity to review the recent
21 decision of I think it's Judge Norton.

22 THE COURT: I have. I looked in detail. Of
23 course, I remembered it when it came out, and I have
24 reviewed it, just kind of in general preparation for
25 trying these cases, but I looked at it again yesterday

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1 evening.

2 MR. REID: I think the central point that I take
3 away from that case is that by virtue of saying that
4 anything above background contributes to mesothelioma,
5 these doctors' opinions are, in effect, eliminating the
6 word "substantial" from the requirement that there be
7 substantial -- that any party's exposure must be shown
8 to be a substantial contributing factor.

9 So, again, I'll rely on the arguments we made on
10 July 18th and those set forth in the brief. But that's
11 one of the essential points that I think ought to cause
12 the court to rule in our favor on this issue this
13 morning.

14 THE COURT: All right, sir.

15 We talked about each and every exposure, of
16 course, and we talked extensively about the *Lohrmann*
17 case and the *Henderson* case and our jurisprudence that
18 embraces *Lohrmann*.

19 Two things occur to me. One is that our knowledge
20 about the effects of exposure and the amount of
21 exposure to asbestos is growing and evolving, and it
22 has continued to do so since the *Lohrmann* and *Henderson*
23 decisions were issued in a context that was a little
24 simpler from a factual standpoint. But you do have
25 experts in this case that talk about what is known

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1 about mesothelioma specifically, and they seem to be
2 well aware of the requirement of substantial exposure
3 that is discussed in such detail in *Henderson* and in
4 *Lohrmann*. And I take away from their testimony that
5 their scientific investigation leads them to the
6 conclusion that every exposure is substantial if it's
7 beyond background and if it is an exposure in a factual
8 context like this one.

9 So to evaluate whether there is sufficient
10 testimony to at least go past summary judgment -- I
11 mean go past directed verdict on the issue of how much
12 exposure is needed to develop mesothelioma, the doctors
13 talk about the substantial nature of each exposure in
14 an industrial setting like this, whether exposure is
15 coming from grinding and release into the atmosphere of
16 asbestos-containing materials on these valves, and they
17 distinguish from ambient air regular asbestos -- I mean
18 regular normal background kind of exposure. And they
19 also make some distinctions in terms of the witnesses
20 make some distinctions factually in terms of
21 insulation-type material as opposed to these gaskets
22 and the intense exposure to dust from the grinding off
23 of those gaskets and the removing of the packing.

24 I think that is enough to go past a directed
25 verdict. Again, we will revisit this area again, and I

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1 haven't completely foreclosed, and I don't mean to
2 foreclose another discussion of this, but it seems to
3 me that if substantial is the test, as it is, and if
4 the experts say what they said, particularly the two
5 doctors, about the effects, that, combined with the
6 uncontested fact that this gentleman suffers from
7 mesothelioma, which can only, according to the experts,
8 be contracted by exposure to asbestos.

9 Now, we haven't heard the rest of the defendant's
10 case about asbestos and various kinds of asbestos and
11 so forth. So what I'm saying to you is I'm just going
12 on what's been presented in the plaintiffs' case so
13 far, and on that basis, I will deny the motion for
14 directed verdict on causation as it relates to the each
15 and every exposure issue.

16 If you have some other issues about causation,
17 then you certainly may address them, Mr. Reid.

18 MR. REID: And, Your Honor, we acknowledge the
19 court's ruling. I do want to just set forth for the
20 record that it's our position that, in effect, those
21 doctors are trying to supplant the legal standard set
22 forth in *Lohrmann* and *Henderson*. It's not an expert's
23 role to do that, and we think that's inappropriate, and
24 that's also a basis for our position.

25 THE COURT: All right, sir. And you're fully

1 protected on that. That's been a very consistent
2 theme, well discussed in briefing papers previously
3 submitted and well discussed in the memorandum that
4 you're relying on today.

5 MS. McVEY: Your Honor, I don't want to -- you
6 have already ruled, but I think the record is clear
7 that Dr. Frank and Dr. Maddox are not relying on each
8 and every exposure. It's a medical fact.

9 THE COURT: Yes. I understand. I was trying to
10 address what they have raised in this particular thing.
11 There's cumulative exposure -- there are many other
12 things were said, but they are focusing on if all that
13 is being contended is that each and every exposure is
14 substantial, they think that that is not appropriate.
15 And I want to preserve their ability to make that slice
16 of the contention and have me rule upon that, and
17 that's what I've done, I hope.

18 MS. McVEY: Thank you, ma'am.

19 THE COURT: Mr. Reid.

20 MR. REID: Your Honor, to the extent we have other
21 causation arguments, I'll just rely on what we've got
22 in the brief and argued on July 18th. So with that,
23 should I move on -- I think the court has ruled on all
24 aspects of our causation motion, or do you need us to
25 elucidate?

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1 THE COURT: I think you are completely protected.
2 You say it's speculative. You make a number of other
3 contentions about the causation testimony of these
4 experts, about the cumulative approach, and you rely on
5 Judge Norton's analysis of the cumulative approach and
6 in contending that they don't have strong probative
7 value, and in this -- and, of course, all in aid of
8 your argument that they can't prove causation under the
9 *Henderson, Lohrmann* standard.

10 And, again, I think that there is enough in the
11 cases as it stands at this point to support through
12 expert testimony as well as the testimony of lay
13 witnesses their arguments as to causation, and,
14 therefore, I will deny the motion.

15 MR. REID: Your Honor, I'm batting 0 for 5 so far.
16 Perhaps I can improve my batting average on the next
17 argument. In part, I'm going to direct this to
18 Ms. McVey.

19 We have seen their jury charges. Their jury
20 charges include claims for strict liability, breach of
21 warranty, and negligence. There was no proof offered
22 at trial that would support the premises liability and
23 fraudulent misrepresentation claim. I'm not sure if
24 those are being pursued at this point so I'll leave it
25 at that now.

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1 THE COURT: I'll hear you if there's anything you
2 would want to say, but I'll certainly grant his motion
3 unless you can explain to me why I should keep this in
4 the case.

5 MS. McVEY: I want everybody to be a winner today,
6 so I think you're right.

7 THE COURT: The motion is granted. Premises
8 liability and fraudulent misrepresentation are out of
9 the case.

10 MR. REID: Your Honor, just for the record, we did
11 also move for judgment on the loss of consortium claim.
12 I'll, again, leave the arguments as those we have set
13 forth in the brief in that regard.

14 MS. McVEY: Your Honor, I'm not sure this is -- I
15 mean, there is lots of evidence in this record from
16 both Tracy Pavlish and Mrs. Jolly about her loss of
17 consortium claim. I'm happy to go through that
18 evidence, but it's clear that she suffered extensive
19 damage as a result of Mr. Jolly's illness.

20 THE COURT: Yes. I thought about that a lot last
21 night when I was reading over the competing charges
22 with respect to consortium, and as we know, this is an
23 area that is not as measurable from a strictly
24 technical standpoint as other aspects of damages.

25 Services of a spouse are not measured in terms of

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1 a classic measure of services, but, rather, it's
2 companionship, it's other things that are in addition
3 to strictly numerically measured services that are
4 given and the loss of those services, though the
5 classic terminology for loss of consortium is loss of
6 services of the spouse.

7 I believe there is enough from the testimony of
8 Mr. Jolly, Mrs. Jolly, and the daughter to establish
9 the wife's -- to have the wife's claim for loss of
10 consortium survive a directed verdict, so I will deny.

11 MS. McVEY: Thank you, Judge.

12 MR. REID: And then, lastly, Your Honor, we have
13 got an argument relating to punitive damages. And
14 there are really two aspects of this.

15 The first part is this: Of course, as the court
16 knows, to prove punitive damages in this state, the
17 defendants (sic) must demonstrate that the defendants's
18 conduct was willful, wanton, or in reckless disregard
19 of the plaintiffs' rights. Again, I just want to focus
20 on the fact that in this case, we're talking about
21 conduct in 1984 or before.

22 And, Your Honor, I think it's fair to
23 characterize, accepting their arguments for the moment
24 about the conduct, the conduct that the plaintiffs are
25 relying on is conduct that I think that is

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1 appropriately characterized as omissions, not
2 commissions, not active conduct by the defendants.
3 And, certainly, I think the words "willful, wanton, and
4 reckless" have a conscious aspect to them, a conscious
5 failure to exercise due care. In fact, I think that's
6 the definition of recklessness. There is no proof of
7 any conduct like that, and for that reason, we think
8 the punitive damage claim should be missed at this
9 point.

10 There's also a second aspect to our claims set
11 forth in the brief, and, Your Honor, I recognize that
12 this may be something better addressed at the
13 instruction conference, but so no one suggests we
14 waived anything, I want to make the argument here.

15 Certainly, we believe that when it comes time to
16 structuring the verdict form, it will be appropriate to
17 put on the verdict all wrongdoers, those parties that
18 have settled out, those parties that were in bankruptcy
19 such as the insulation manufacturers. In order to
20 demonstrate -- well, here's the problem. If our
21 clients are the only ones on the verdict form, we think
22 that will provide an undue focus by the jury on their
23 behavior and not comparing it to the relative fault and
24 the behavior of other parties who contributed,
25 allegedly contributed, to Mr. Jolly's mesothelioma. If

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1 the jury believes we're at fault and gets to the
2 punitive damage part of the case, then their focus will
3 be as though we're the sole wrongdoers when, obviously,
4 even the plaintiffs have put in evidence that there
5 were exposures from numerous other sources. So as set
6 forth in the brief, we think that would be an
7 unconstitutional approach to having punitive damages
8 awarded by the jury.

9 THE COURT: Let me ask you one question about this
10 argument. Are you suggesting -- we, of course, know
11 what *Machin vs. Carus* says. Is your argument that,
12 when it comes to punitive damages, just looking at that
13 for a moment, that the verdict form ought to change and
14 you ought to have all other wrongdoers listed on the
15 verdict form?

16 MR. REID: Your Honor, I think either in that way
17 or on the first go-round. I come from Wisconsin where
18 we would have a series of, you know, every defendant
19 who contributed to a plaintiff's injury would be
20 listed. I think that would be appropriate to do that
21 here. It's probably more appropriate to do it on the
22 general verdict form rather than waiting until one gets
23 to a punitive damage aspect of things. But at least in
24 one of those ways, it ought to be done.

25 And, of course -- well, I'll leave it at that,

ROA_01612

Appendix_01640

1 Your Honor. .

2 THE COURT: I am looking once more at *Smith vs.*
3 *Tiffany* as well as *Machin vs. Carus Corporation* when I
4 tried to evaluate this. Going to let Ms. McVey reply,
5 but just to let you know, it's not just *Machin*; it's
6 both *Machin* and *Smith vs. Tiffany* that I'm looking at
7 trying to sort through the argument that has been put
8 before me.

9 Ms. McVey.

10 MS. McVEY: Your Honor, if I could, let me address
11 the first part about the punitive damages going to the
12 jury.

13 In this case, the jury has heard evidence that
14 neither Fisher nor Crosby has ever warned. They sold
15 these asbestos-containing products until 1989. We have
16 seen invoices from 1993 selling asbestos replacement
17 parts.

18 They didn't test their product before putting it
19 out. And even when they warned their own workers about
20 how to take the precautions, how to wet down that
21 gasket so you don't get dust flying up on that video,
22 they never warned any other users of their product.

23 Crosby, Mr. Martin got on the stand yesterday and
24 said, yes, asbestos gaskets and asbestos packing are
25 hazardous to health. That's what he said yesterday.

ROA_01613

Appendix_01641

1 Not the gaskets we put inside, not the asbestos gaskets
2 we put inside, just the ones that are on the flange.
3 That's the same gasket. That's reckless.

4 They know that they were supposed to be testing
5 and warning since 1972 about OSHA, and they never did.
6 And they, nevertheless, sold these asbestos products
7 for decades without warning, without testing. And
8 there is evidence in this record that their conduct,
9 their products substantially contributed to the
10 development of Mr. Jolly's disease. I think this is a
11 no-brainer on the punitive damages, assuming we get
12 that far.

13 One small point is that Fisher has given us net
14 worth of their company. Crosby has not. And, Your
15 Honor, if we were to get to the punitive damage phase,
16 we would request that net worth information so it can
17 be presented quickly, if that were the case.

18 As to the verdict form, you've already ruled under
19 *Smith vs. Tiffany* and the *Machin* case that no other
20 potential tortfeasors or settled defendants or bankrupt
21 defendants go on the verdict form. And those two cases
22 are brand new, and they're from our supreme court; and
23 they make it very clear only the defendants remaining
24 in the case go on the verdict form.

25 That analysis doesn't change if we get to the

ROA_01614

Appendix_01642

1 punitive damages because at that point, what we've
2 proven is that Fisher and Crosby were reckless. And at
3 that time, the jury is determining the recklessness of
4 Fisher and Crosby and no one else. And I don't even
5 think there is support in the law for the fact that, at
6 the punitive damages phase, other folks would go on the
7 verdict form.

8 THE COURT: Thank you, Ms. McVey.

9 Mr. Reid.

10 MR. REID: If I may, Your Honor. Just a few
11 points to make.

12 First of all, I think what has been described as
13 being the factual basis for the claim, again, is
14 something that can only be characterized as omissions,
15 which is not sufficient to support a punitive damage
16 award.

17 Then as to -- well, also generally, I don't
18 believe that conduct that is unrelated to damages can
19 support a punitive damage award. Your Honor, my
20 Wisconsin experience is we have a case there, and I
21 think the law is the same here in South Carolina, where
22 there was a car accident and one of the drivers fled
23 the scene. The courts in our state said that you can't
24 use that conduct to support punitive damage. And I
25 think the same holds true here. It's only

ROA_01615

Appendix_01643

1 damage-producing conduct which can support such an
2 award.

3 So when we talk about 1989 or we talk about the
4 Fisher video, Fisher Service Company video, those
5 things are irrelevant. In the case of the video
6 particularly because it's a different company.

7 There was a citation to Mr. Martin's testimony
8 yesterday. I disagree with the characterization. He
9 was talking about risk. He was also talking about the
10 present time.

11 And with respect to the unconstitutionality
12 argument, of course, I understand the case law here is
13 that there is a maximum of a nine-to-one ratio, but it
14 relates to actual damage caused by the conduct of the
15 defendant. The fact that we have joint and several
16 liability in this state does not or potentially does
17 not mean that the actor's conduct, our defendant's
18 conduct, caused all the damage.

19 Again, they pointed to numerous other exposures,
20 so a jury would have to have a vehicle by which to
21 limit punitives to the percentage of the fault
22 attributable to one actor and not base that on joint
23 and several liability concepts.

24 THE COURT: Well, I just point you to *Smith vs.*
25 *Tiffany*. This is at Headnote 11. As explained by this

ROA_01616

Appendix_01644

1 court in *Machin*, a plain reading of the words defendant
2 and defendants in the apportionment statute reveals the
3 legislature's intent to allow only a defendant or
4 defendants to be listed on the jury form and included
5 in the allocation of fault. In reaching this
6 conclusion, we examined the recent decision of *Walker*
7 *vs. Tensor Machinery Ltd.*, Georgia case, in which the
8 Supreme Court of Georgia held that a jury may assess a
9 percentage of fault to an immune nonparty.

10 "Critical to the *Walker* analysis was the language
11 of the relevant Georgia statute which provides in
12 assessing percentages of fault, the trier of fact shall
13 consider the fault of all persons or entities who
14 contributed to the alleged injury or damages,
15 regardless of whether the person or entity was or could
16 have been named as a party to the suit, citing the
17 Georgia statute. In light of this language, as we
18 observed in *Machin*, the result in *Walker* is
19 understandable based on the Georgia statute. However,
20 in stark contrast to the Georgia statute, our
21 legislature determined that fault may be allocated only
22 to the plaintiff and to the defendants and requires
23 that the total or percentages of fault attributed to
24 plaintiff and defendant must be one hundred percent.
25 Thus, guided by the language of the statute of the

ROA_01617

Appendix_01645

1 actor with respect to the legislature's prerogative,
2 this court held that fault may not be apportioned to an
3 immune nonparty under the act."

4 There's plenty of other analysis in here of what
5 can go on the verdict form. There's also plenty of
6 analysis of the use the term "tortfeasor" in the
7 evaluation of the empty chair as well as the plaintiff
8 chooses rule with respect to who are actually
9 defendants, so I'm sure we'll get into this more fully,
10 and you want to preserve your position on the verdict
11 form, and we're still a long way from deciding exactly
12 how that verdict form is going to be arranged.

13 But with respect to the motion for a directed
14 verdict on punitive damages, I am evaluating really
15 only the normal standards for the award of punitive
16 damages, and the contention of omission is not the only
17 contention made. The contention plaintiff makes and is
18 at least offered enough to survive directed verdict, in
19 my view, is based on recklessness on the notion that a
20 deliberate decision was made to omit warnings, testing
21 and so forth, and that that was a reckless decision.
22 On that basis, I think there is enough there to allow
23 the plaintiff to go forward.

24 We'll revisit all of these issues, of course,
25 after the case is fully tried, so I would deny the

ROA_01618

Appendix_01646

1 directed verdict motion on punitive damages at this
2 time.

3 All right. Does that take care of our directed
4 verdict motions, Mr. Reid?

5 MR. REID: Your Honor, I think it does, but let me
6 just check my notes.

7 I think that covers everything, Your Honor.

8 THE COURT: All right.

9 Ms. McVey.

10 MS. McVEY: Your Honor, just the other thing that
11 I raised is at some point we would like the Crosby net
12 worth information so that if we were to get to that
13 phase, it would be available.

14 THE COURT: Well, I understand that, and you're
15 letting them know what your expectations are, and I
16 presume those expectations are based on interrogatories
17 that have been propounded, and I would hope y'all could
18 get together on that with respect to the punitive phase
19 of the case.

20 MR. REID: Your Honor, just so the record is
21 clear, we have never been asked for that. I've not
22 asked the client because we have never been asked for
23 it.

24 THE COURT: Well, I'm not going to ventilate that
25 issue right now, but I don't want to delay this trial

ROA_01619

Appendix_01647

1 when it comes to that, so we're going to need to have
2 some discussion about that well before we get into
3 punitive damages. So I'm not going to -- that's not
4 the purpose of this hearing at the present time.

5 We're so close to the beginning of the
6 commencement of the defendant's case. You have all
7 your rights preserved. We're not discussing it at this
8 time and not waiving anything, but I can tell you,
9 we're going to settle that hash well before we reach
10 the stage when that evidence would be expected to be
11 produced. And if they haven't asked for it, why that
12 will bear very much on what I say about it, but I'm not
13 going to go there right now. So I'm making no decision
14 one way or another about who said what to whom and who
15 asked what of whom.

16 MS. McVEY: Fair enough.

17 THE COURT: All right. We have about five minutes
18 before we commence the defendant's case, so I'm going
19 to go to my office for a minute and be at ease, and
20 I'll be back shortly.

21 (WHEREUPON, a recess was taken from 9:26 a.m. to
22 9:37 a.m.)

23 THE COURT: All right. Bring the jury in.

24 (WHEREUPON, the jury entered open court at
25 9:38 a.m.)

ROA_01620

Appendix_01648

1 THE COURT: Good morning, ladies and gentlemen of
2 the jury. I hope you had a pleasant evening, and
3 please be seated.

4 As I explained yesterday, we are now going into
5 the defendant's case. So defendant will begin to
6 present its case this morning with some live witnesses,
7 and I think there may be some deposition witnesses as
8 well.

9 I turn now to Mr. Bouch.

10 Yes, Ms. Farrise.

11 MS. FARRISE: Your Honor, I sincerely apologize.
12 May we approach for a moment?

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury, but out of the
16 hearing of the jury.)

17 THE COURT: All right. Mr. Bouch.

18 Ladies and gentlemen, I might say we were just
19 facilitating the exchange of exhibits before they begin
20 the case. Just a few little technical things, then
21 they'll be ready to go.

22 MR. BOUCH: Your Honor, Fisher Controls and Crosby
23 Valve would offer Dr. James Crapo.

24 THE COURT: Doctor, come around, and you will be
25 administered the oath.

ROA_01621

Appendix_01649

1 JAMES CRAPO, M.D.,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:.

3 THE COURT: Have a seat in the witness box,
4 Doctor.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION

7 BY MR. BOUCH:

8 Q Doctor, would you introduce yourself to the jury.

9 A Yes. I'm Dr. James Crapo.

10 Q And where do you live?

11 A I live in Denver, Colorado.

12 Q Okay. Doctor, I'm going to hand you what has been
13 marked as Exhibit 69, ask you if you can identify that,
14 sir.

15 A Yes. This is a recent copy of my curriculum
16 vitae.

17 Q What is that?

18 A It's a résumé, summary of the work that I've done.

19 Q Your education, your books, that sort of thing?

20 A Yes.

21 Q Okay. Doctor, have I asked you to prepare a
22 PowerPoint summary to illustrate and demonstrate your
23 testimony?

24 A Yes.

25 Q And have you prepared such examples in the past

ROA_01622

Appendix_01650

1 including for these lawyers?

2 A I have.

3 Q Okay. And does it fairly and accurately represent
4 your opinions and the basis for your opinions you're
5 about to give?

6 A Yes.

7 MS. FARRISE: I'm sorry. Is that an exhibit?
8 It's this one here. Okay. Thank you.

9 BY MR. BOUCH:

10 Q Dr. Crapo, I will ask you if that is a printed out
11 copy of what you prepared at my request?

12 A Yes, it is.

13 Q Okay.

14 MR. BOUCH: Your Honor, I would move into evidence
15 Dr. Crapo's CV, Exhibit 69, and I would move into
16 evidence as a demonstrative exhibit Defendant's
17 Exhibit 1511, his PowerPoint slides.

18 THE COURT: First with respect to the CV, no
19 objection?

20 MS. FARRISE: No objection to the CV going into
21 evidence.

22 THE COURT: Right. That's all I'm establishing
23 right now. Crosby Exhibit 69 admitted.

24 (WHEREUPON, Defendant's Exhibit Number Crosby 69
25 was admitted into evidence.)

ROA_01623

Appendix_01651

1 THE COURT: Then we have Defendant's Exhibit 1511
2 for demonstrative purposes.

3 MS. FARRISE: I would object because the witness
4 has not yet been qualified and tendered as an expert,
5 and I'd like to voir dire.

6 THE COURT: Here is what I will do. I will
7 provisionally allow the document to be used to examine
8 Dr. Crapo, but we might want to just, as a matter of
9 housekeeping, do whatever you want to do by way of
10 qualifying him so that I can then rule on his
11 qualifications, Mr. Bouch.

12 MR. BOUCH: Your Honor, I'll be happy to do it in
13 the order you want. I'd like to display the first
14 slide and then go into qualification, if that is
15 satisfactory. If not --

16 THE COURT: Let's just qualify him first, and then
17 there's nobody looking over my shoulder to say that's
18 not the way you do it.

19 BY MR. BOUCH:

20 Q Dr. Crapo, can you give the jury the benefit of
21 your education and training?

22 A Yes. I went to college at Brigham Young
23 University, graduating in chemistry and English. I
24 then went to medical school at the University of
25 Rochester in New York, where I graduated with an M.D.

ROA_01624

Appendix_01652

1 in 1971.

2 After that, I went to Southern California, did a
3 year of medical internship at the Harbor General
4 Hospital, which is part of UCLA. And then following
5 that, I moved to North Carolina where I worked for the
6 National Institute of Environmental Health Sciences for
7 three years as a staff associate. That's where I
8 started doing research.

9 And following that, I moved to Duke University,
10 where I completed training in internal medicine and
11 pulmonary diseases and joined the faculty at Duke in
12 1976. I stayed on the faculty at Duke for about
13 20 years.

14 Q How did you progress through the hierarchy at Duke
15 University Medical Center?

16 A Well, after about three years there, I was
17 appointed the chief of the division of pulmonary and
18 critical care medicine, so I ran the program for
19 pulmonary diseases -- teaching, education, research,
20 patient care in intensive care and lung disease for
21 about 17 years. And that's where I started doing a lot
22 of research on asbestos, and I was an administrator, a
23 teacher, a clinician and research scientist during
24 those 20 years at Duke.

25 Q Did you perform any original research at Duke?

ROA_01625

Appendix_01653

1 A I did. I did. That was the primary thing that I
2 did. It did involve all kinds of exposures to the lung
3 by things you might breathe, including asbestos.

4 Q During this time, did you begin to consult with
5 lawyers on various medical-legal issues?

6 A At the very end of that. I guess the first time I
7 testified on a case was in the early 1990s, so it was
8 in the last few years that I was at Duke.

9 Q And what was your final position at Duke?

10 A I was professor of medicine and professor of
11 pathology, and I was the chief of the division of
12 pulmonary and critical care.

13 Q Well, you're not a pathologist. How did you get
14 to be a professor of pathology?

15 A A lot of my research was on pathology. I did a
16 lot of electromicroscopy on the study of lung. I
17 taught pathology, but I was a research pathologist, not
18 a clinical pathologist, so I had boards in internal
19 medicine and in pulmonary diseases, but I was never a
20 clinical pathologist.

21 But, nevertheless, I did teach lung disease and
22 lung pathology in the pathology department.

23 Q Who were some of the physicians you worked with at
24 Duke when you were doing your research of contaminants
25 to the lung including asbestos?

ROA_01626

Appendix_01654

1 A Well, Phil Pratt was one of the early ones, a very
2 well-known pathologist in the area. He taught me a lot
3 of pathology. Victor Roggli, Tim Oury. Tim Oury
4 trained, got his Ph.D. with me. I was his principal
5 supervisor. Victor Roggli was a very common colleague.

6 Q In addition to your M.D. agree, do you have a
7 Ph.D.?

8 A No, I don't.

9 Q Following your 20 years at Duke, where did you go?

10 A Well, I moved in 1996 to Denver, where I became
11 the chair of the medicine department and the executive
12 vice president for National Jewish Health, which is a
13 hospital that specializes in lung disease and is
14 affiliated with the University of Colorado.

15 Q Did you also have positions at the University of
16 Colorado?

17 A Yes. I still hold those, as a professor of
18 medicine.

19 Q Okay. And what have your positions at National
20 Jewish Hospital been through the years?

21 A Well, I started out as -- the primary one was the
22 chair of medicine, and I did that for just close to ten
23 years. I stepped down from that, as my other
24 administrative duties as the executive vice president,
25 which is a dean's kind of role. I stepped down in

ROA_01627

Appendix_01655

1 2004, 2005 from those roles, and so at this point,
2 after the last 12 years, I focused on doing research
3 and continued teaching and research, and I stopped
4 clinical practice, oh, I guess it's been five, six,
5 seven years ago.

6 Q Do you charge for your time, Doctor?

7 A I do.

8 Q What is your hourly rate?

9 A I charge \$600 an hour for any type of
10 medical-legal consulting.

11 Q Is that a rate paid for your answers or your time?

12 A It's paid for my time.

13 Q Okay. Do you derive income from this on an annual
14 basis?

15 A I do. It's been a significant source of income
16 for me over 20 years.

17 Q About how much?

18 A It varied. Started out much lower number, but the
19 last, I'd say, last three or four years, it's been
20 close to \$800,000 a year.

21 Q In your professional work, have you belonged to
22 professional organizations?

23 A Yes.

24 Q And give us an example that is listed on your CV.

25 A Well, there's quite a few, but the largest one is

ROA_01628

Appendix_01656

1 the American Thoracic Society. That's the major
2 professional society for lung disease in the United
3 States and worldwide.

4 Q About how big is it?

5 A It's about 15- to 20,000 people who are doctors or
6 Ph.D. scientists in areas of lung disease.

7 Q And what have your roles been with the American
8 Thoracic Society?

9 A Well, I served in many roles. I directed their
10 annual conference for four years. I was president of
11 the American Thoracic Society in the early 1990s, and
12 I've held many other positions with them.

13 Q Doctor, there is an organization called the
14 Fleishner Society on your CV. What is that?

15 A That's a very different society. It's a small
16 society of about 70 people. It was started about
17 50 years ago in the honor of Dr. Fleishner, who is the
18 physician who started the whole field of chest
19 radiology, sort of brought chest x-rays to the United
20 States, and it has about 70 people in it worldwide that
21 are invited, I'd say, two or three people are invited
22 once a year to join the society. It gives courses. It
23 teaches, and it writes position papers on lung disease
24 and lung -- in particular lung imaging. So I became a
25 member of the Fleishner Society in the early '90s.

ROA_01629

Appendix_01657

1 Q And have you held official roles with the
2 Fleishner Society since then?

3 A Yes. I've taken a number of roles with them,
4 including being president of the Fleishner Society.

5 Q Doctor, you indicated when you went to North
6 Carolina, you were involved with the National Institute
7 of -- I forget the whole title. What was that?

8 A National Institute of Environmental Health
9 Sciences.

10 Q Okay. And what is that?

11 A Well, the National Institutes of Health are the
12 primary government agency that funds health research.

13 Q Is that called NIH?

14 A NIH, right. And it's broken up into about 20
15 different divisions. One of those is the NIEHS, which
16 is located not only in the Washington area, but in
17 North Carolina, and it studies the environment and how
18 that affects your health. So it, basically, deals with
19 water and air and toxicology of things that you're
20 exposed to in water and air. So that field belongs to
21 the NIEHS in terms of U.S. funding for general
22 research.

23 Q What's their research budget?

24 A Actually, I don't know their research budget. I
25 primarily work today with the Heart, Lung, and Blood

ROA_01630

Appendix_01658

1 Institute, which has a research budget of about
2 \$3 billion a year.

3 Q Is that also part of NIH?

4 A That's part of NIH. And the NIEH is smaller. The
5 Heart, Lung, and Blood Institute is one of the three
6 largest institutes there.

7 Q Do you hold any roles with the Heart and Lung
8 Institute concerning approval of research?

9 A I do. I'm serving on their council right now,
10 which is the senior body of advisory people that makes
11 the final decision on how they administer their
12 \$3 billion of research across the United States. So
13 every grant comes before the council for final
14 approval.

15 Q So NIH, through their various sections and the one
16 that you're on the council of, contributes about
17 \$3 billion of research money a year?

18 A Yes.

19 Q Does that include asbestos?

20 A It does a little bit, but most of the asbestos
21 work would go through the NIEHS instead of the Heart,
22 Lung, and Blood Institute.

23 Q And there's something on your résumé called the
24 Clean Air Scientific Advisory Committee. What is that?

25 A Well, when the -- in the 1970s when the Clean Air

ROA_01631

Appendix_01659

1 Act was based by Congress, it mandated that the EPA
2 would set standards for the major pollutants in the
3 air. There are five criteria pollutants: Ozone, NO₂,
4 particulates, lead, and carbon monoxide. And they're
5 the major pollutants that we have in the air that we
6 breathe.

7 And the Clean Air Act mandated that a committee
8 called the Clean Air Scientific Advisory Committee
9 would review the quality of the air research every five
10 years and make recommendations if those standards
11 should be tightened or loosened. And there are six
12 members of the Clean Air Scientific Advisory Committee
13 mandated by Congress. I was asked to serve as one of
14 those six a few years ago. And for six years, I served
15 on the committee while we're reviewing the clean air
16 standards for all those pollutants, and we actually
17 tightened them for most of them during those six years,
18 so it was a period of time when we were really trying
19 to get cleaner air in the United States.

20 Q You mentioned particulates. Is asbestos one of
21 those particulates?

22 A Well, asbestos is a particulate, but the standard
23 we're talking about for clean air, there's very little
24 asbestos in the air. It's not one of the criteria
25 pollutants. The particulates are small particles.

ROA_01632

Appendix_01660

1 There's small and medium-sized particulates that are
2 usually kind of dust environments that are background,
3 and they are one of the major factors that causes
4 adverse human health. So asbestos would contribute to
5 it, but only to a very tiny degree.

6 Q There's also an item on your résumé, Asbestos
7 Panel for Risk Assessment. What's that?

8 A Well, after 9/11, a lot of focus was placed on
9 risk for asbestos in the air that could occur. And
10 Drs. Berman and Crump were asked by the EPA to do a
11 large study analyzing the risk of asbestos in various
12 kinds of exposures, and they brought their publication
13 forward in early 2000s, and they set up a panel to
14 review their work, and there are 13 members of that
15 panel. I was one of them. We met for several days in
16 San Francisco in open session and listened to all of
17 their research and made recommendations for how their
18 research report should be modified.

19 Q That was an EPA panel?

20 A Yes. It was an EPA panel, basically, set up by
21 the Eastern Research Group, which was a contract agency
22 for the EPA, and it was to do review of the Berman and
23 Crump report.

24 Q Doctor, have you published in the professional
25 literature during your career?

ROA_01633

Appendix_01661

1 A I have.

2 Q About how many are we talking about here?

3 A There's over 300 peer-reviewed publications in the
4 CV.

5 Q Does that include books?

6 A Yeah. There's about 50 book chapters and 10 or 12
7 textbooks.

8 Q And you say these 300 or better are peer reviewed?

9 A Yes.

10 Q What is that?

11 A Well, that means that you submit them to a journal
12 that sends them out to colleagues in a blinded fashion
13 and have them critique it and make recommendations for
14 changes and final recommendations for how -- whether it
15 should be accepted for publication or not.

16 Q Have you served as a peer reviewer?

17 A Yes, many times.

18 Q Have you been involved in the editing of any of
19 these professional journals?

20 A Yes. I have been an editor for several of the
21 journals. At the current time, I'm the editor for the
22 Journal of the COPD Foundation. So I actually started
23 the Journal of COPD about 10 or 12 years ago, and then
24 I transitioned it to be funded by the COPD Foundation,
25 and I serve as the editor for that journal today.

ROA_01634

Appendix_01662

1 Q Have you been editor of any other journals?

2 A I've been a coeditor of the Experimental Lung
3 Research is the other major one that I've been involved
4 with as an editor.

5 Q Now, Doctor, I know you have given up clinical
6 practice for the last several years and your asbestos
7 research for the last several years. What are your
8 current professional activities?

9 A I'm currently doing two things on the professional
10 side besides legal consulting. One of them, I'm the
11 principal -- one of the two principal investigators of
12 a big research project called COPD Gene. That stands
13 for Chronic Obstructive Pulmonary Disease Genetics.
14 And it's a study funded by the Heart, Lung, and Blood
15 Institute, and we have been funded for ten years, and
16 we started the last five years on it. It's a study of
17 10,000 people across the United States who are smokers
18 and are at risk of developing chronic lung disease.
19 You might think of it as emphysema. And we're studying
20 all the characteristics of that disease, and we're
21 doing the genetics on it. So we have collected the
22 blood from all the people, and we're analyzing the
23 entire human genome of all 10,000 people. We will have
24 that data completed by probably Christmas this year.

25 So we're trying to look at the genes that would

ROA_01635

Appendix_01663

1 tell you why one person would be exposed or, say,
2 smoked and develops bad lung disease and another one
3 doesn't and from that try to dissect out the pathways
4 that are protective for this disease and ultimately end
5 up looking for new medications and drugs and treatments
6 that would make a breakthrough and treat that disease.
7 It's actually the third leading cause of death in the
8 United States today.

9 Q Doctor --

10 A So that's half of what I do.

11 Q Okay. In your role as the -- what's the title on
12 that COPD Gene study?

13 A I'm the principal investigator at National Jewish.
14 I have a colleague who's also a co-principal
15 investigator at the Brigham Hospital in Boston, but the
16 two of us run the study, and there's about 200
17 investigators across the United States working on this
18 area.

19 Q Has this study generated any professional articles
20 in the professional and medical literature?

21 A It has. It's already published over 200 articles,
22 and it's changing the field of COPD. It's a very
23 exciting study.

24 Q What is a genome?

25 A Well, a genome means your DNA. It's your DNA,

ROA_01636

Appendix_01664

1 it's the genes in your body that determine your -- the
2 coding for all the things that happen in the human
3 body. Every single cell has two copies of your DNA.
4 Each piece of DNA is about three billion base pairs
5 long. So you have an enormous copy of DNA that codes
6 for how the body is formed. And that's the code that
7 we're decoding. One thing is we actually have
8 sequencers that can tell us the code all the way
9 through, but then you have to interpret it, and there
10 is a lot of work left to be done to understand it.

11 Q What else in your professional life occupies
12 significant pieces of your time?

13 A Well, the other thing that I've been doing, I
14 started it back when I was at Duke is I've been
15 studying antioxidant enzymes and trying develop a new
16 class of drugs that are very, very powerful
17 antioxidants and anti-inflammatory drugs that can be
18 used to treat diseases. I've been working on that for
19 almost 40 years.

20 In the last about six, seven years, we brought
21 them to the point where they're ready for human
22 clinical trial. We formed a small biotech company
23 that's sponsoring those, and we now have two of these
24 drugs in human clinical trials. One trial is for
25 patients with brain cancer glioblastoma, which you have

ROA_01637

1 heard about in the news recently, and another one is
2 for laryngeal cancer, which is cancer of larynx, and
3 the third one is for people with very inflammatory skin
4 diseases, atopic dermatitis or psoriasis. So we had
5 clinical trials in those areas that are taking place
6 today and hoping to show that they're going to be
7 really effective drugs to bring forward over the next
8 five or ten years.

9 Q Doctor, in the last 40 years, have you devoted
10 your professional life to the study of pulmonary
11 medicine and pathology?

12 A Yes. That's been the emphasis since the early
13 1970s.

14 Q And since the 1970s, has considerable time in your
15 professional career been devoted to the research,
16 knowledge, and etiology of asbestos and
17 asbestos-related diseases?

18 A Yes, it has. In the early '70s -- excuse me, late
19 '70s and all through the '80s I started studying how
20 asbestos could impact the lung. And that's been a
21 major interest of mine for all my career.

22 Q Have you maintained current interest in the state
23 of the science, the state of the literature, and the
24 state of research in asbestos and asbestos-related
25 diseases since that time?

ROA_01638

Appendix_01666

1 A Yes, I do. I -- actually, my research spanned
2 about 15 years from the late '70s to the early '90s.
3 But after I stopped research, I started doing some
4 testifying in the area, and I've continued to read all
5 the literature and stay abreast of the science as it's
6 moved forward since that time.

7 MR. BOUCH: Your Honor, we would offer Dr. Crapo
8 as an expert in pathology, pulmonary diseases, with an
9 emphasis on asbestos and asbestos research.

10 THE COURT: All right. I find that by --

11 MS. FARRISE: I just would like to lodge an
12 objection.

13 THE COURT: Yes, ma'am.

14 MS. FARRISE: The plaintiffs would just like to
15 object to Dr. Crapo being qualified in those areas, and
16 if the court would permit it to voir dire, but if not,
17 we'd like to lodge our objection.

18 THE COURT: Is there any particular area that
19 you're concerned about?

20 MS. FARRISE: Yes, Your Honor.

21 THE COURT: What is it?

22 MS. FARRISE: Asbestos.

23 THE COURT: All right. I find that by reason of
24 the training, education, and experience that Dr. Crapo
25 has, he's qualified as an expert under the guidelines

ROA_01639

Appendix_01667

1 I've explained to the jury previously, understanding
2 that plaintiff will have full ability to examine
3 Dr. Crapo in detail about the opinions he expresses
4 including opinions about asbestos. So this doesn't say
5 anything about the opinions he's going to express; it
6 simply qualifies him as an expert in those areas.

7 Very well. You may proceed, Mr. Bouch.

8 MR. BOUCH: Thank you, Your Honor.

9 Q Dr. Crapo, I think I have asked you to express
10 certain opinions, and I believe they're reflected on
11 your first slide. Can you show that to the jury,
12 please? Is that what I've asked you to do?

13 A Yes.

14 Q Okay. We're going to talk about the respiratory
15 defense system, correct?

16 A Yes.

17 Q I don't want to lead, but I want to get through
18 it.

19 THE COURT: Don't lead, Mr. Bouch.

20 MR. BOUCH: No, no. It's preliminary, Your Honor.

21 Q But as it's reflected, the fact that low-dose
22 chrysotile, do they cause or create risk for
23 mesothelioma?

24 A No. It's my opinion that low levels of chrysotile
25 exposure do not create risk for mesothelioma.

ROA_01640

Appendix_01668

1 Q And is it your opinion that mesothelioma can be
2 caused by amphibole exposure?

3 A Yes. It's well established that amphibole forms
4 of asbestos are a major risk factor for causing
5 mesothelioma. And it's possible that very, very
6 high-dose chrysotile like that experienced by a
7 chrysotile miner, for example, or an insulator would
8 develop mesothelioma from exposure.

9 Q And, Doctor, all the opinions that you have
10 expressed so far and will express this morning, are
11 they expressed to a reasonable degree of medical
12 certainty?

13 A Yes, they are.

14 Q And if we come to a fork in the road where you
15 cannot say that with certainty, will you let us know?

16 A I will.

17 Q Thank you. Now, I believe there are -- I think
18 you have expressed three issues, you know, on the way
19 we approach this. What are they?

20 A Well, the primary thing -- I don't think I put it
21 in that slide. The primary issues are the dose a
22 person receives, and it's the clearance of the fibers,
23 how many fibers remain in the lung, and then the impact
24 or the quality of those fibers on causing disease. So
25 I need to know -- the key to the whole thing is dose,

ROA_01641

Appendix_01669

1 and understanding how the body handles that dose
2 determines, ultimately determines, the risk that one
3 has.

4 Q Doctor, does the fiber size and the fiber type
5 have anything to do with your opinions?

6 A Absolutely. Fiber length and fiber type are
7 critical, as you understand those. So we need to know
8 which type of fiber it is and how long the fibers are,
9 and those are the elements that are used to ultimately
10 create the dose.

11 Q Doctor, let's talk a little bit about the
12 respiratory system. I believe that's your next group
13 of slides. Tell us how it works. How do we breathe?
14 How do we exist?

15 A This is a diagram, actually, from one of the
16 textbooks that I wrote about lung exposures. And it's
17 a cutaway of the upper and the lower respiratory tract.
18 The upper respiratory tract would be your head, the
19 nose, and the back of the throat. And when you breathe
20 in, the air that we breathe looks like it's clean in
21 this room, but it actually contains lots of things.
22 You only have to go out in the spring and react to all
23 the pollens in the air. You can't see them, but you
24 can tell that there is a lot there.

25 Well, in fact, a single cubic sonometer of gas,

ROA_01642

Appendix_01670

1 that much, tip of my finger, on the average contains a
2 hundred thousand particles in it. You can't see them
3 because they're so small, but they include pollutants,
4 allergens, as I said, proteins from animals and humans,
5 the cats and dogs that are around. Tobacco smoke is
6 there, dust, fibers are all in there.

7 And what happens is when you breathe those in, the
8 first thing they do is go into the nose and have to
9 make a right-hand corner to go down. And 90 percent
10 fall out in the nose. They hit the side of the nose or
11 the back of the throat. And that's the first clearance
12 system to clean the air that you breathe. And I would
13 say 90 percent do that. And -- but there is about ten
14 percent that will make the corner and start down at the
15 lung, and these are the lower respiratory tract.

16 Q How much do we breathe, take a deep breath? How
17 much?

18 A Well, an average breath, just sitting here
19 quietly, is a half a liter. And a big breath is
20 typically about a liter. So a liter is about a
21 quarter, about that much. And the average person, when
22 they're walking, would breathe about ten liters a
23 minute, in and out. If you're sitting quietly, it
24 might be six liters a minute. But you will increase
25 the depth of breath and the number of breaths as you

ROA_01643

Appendix_01671

1 exercise. So think of the breathing rate as being
2 between six and ten liters a minute, going in and out.

3 Q 24 hours a day our entire life?

4 A 24 hours a day.

5 Q Okay. The jury has heard testimony before about
6 ambient levels of asbestos. Can you tell us what that
7 is?

8 A Asbestos is part of our environment. I told you
9 it's a low concentration. Of a hundred thousand
10 particles, there's probably a very small number that
11 are asbestos. But, typically -- I'll come to that in a
12 slide and show you -- but, typically, in, say, New York
13 there might be three fibers in a liter on an average
14 out of the hundred thousand per sonometer.

15 There's actually -- a liter contains a thousand
16 milliliters. Each milliliter contains about a hundred
17 thousand particles. So the amount of asbestos is tiny
18 in the total, but it's still about three fibers per
19 liter in New York.

20 So, yes, you would be breathing those in. If you
21 breathe ten liters a minute in and out, you would be
22 breathing 30 fibers per minute in and out. And we've
23 got to talk about what happens to them.

24 Q Doctor, after the pollutants, the allergens, the
25 tobacco smoke, the fibers, including asbestos, the dust

ROA_01644

Appendix_01672

1 and minerals get into your nose and make the right
2 turn, the ten percent, what happens?

3 A Well, let's go on down and show what happens.
4 Let's take that part and blow it up and just take the
5 bottom part.

6 That's starting with the windpipe and going down.
7 So that's the trachea going down the throat and going
8 down the right side. You can see it divides about 20
9 times as it goes down. Each time the airstream
10 divides, the particles are being breathed in the middle
11 of that.

12 (Microphone top fell off microphone.)

13 Q I think we're tearing apart Spartanburg County's
14 equipment here, Doctor. You're not the first one to do
15 that.

16 A Okay.

17 THE COURT: Let's just not tear apart the jurors.
18 BY MR. BOUCH:

19 Q This looks like a very interesting model, Doctor.
20 What is this?

21 A Well, this is a model from a -- of the human lung.
22 It's one that we designed and drew, to correct. Let me
23 go on, and I'll show you a picture of where it actually
24 came from.

25 Q Go ahead.

ROA_01645

Appendix_01673

1 A But the important thing is right here is that
2 every time the airstream divides, the particles hit the
3 dividing point. That's the right upper lobe; this is
4 the right middle lobe, and it goes on down. So
5 there's -- I've told you that about 90 percent of the
6 particles come out in the head. Another 90 percent
7 come out on these branches of the airways going down.

8 So what happens is -- in fact, this is a picture
9 of it. This is a cast of a human lung that I made when
10 I was working with the EPA in the 1980s with other
11 people helping make this. Somebody donated their lungs
12 to science, and we filled the lungs with latex and let
13 it solidify and took the lungs away and just had a
14 latex cast of the inside of the lung.

15 Then what happened is we made the measurements of
16 the length and the branching angle for every one of
17 these branches here. And from that we draw diagrams of
18 the human lung and we calculated how particles would
19 distribute. And that thing I drew back here is an
20 exact drawing from that cast.

21 In fact, on this cast, it's that pathway right
22 down there like that, right down into here.

23 Q Okay. So just to keep the math straight, if we
24 breathed in a hundred particles of something,
25 90 percent of them would be caught in the nose?

ROA_01646

Appendix_01674

1 A Right. 90 would be in the head.

2 Q In the head. Ten would go down, and as they would
3 hit the branches, another nine would be caught by each
4 branch?

5 A By that whole system right there.

6 Q Okay. Then what happens?

7 A Well, then there would be one that would make it
8 all the way down. Let me first show you what happens
9 to the first part.

10 Q Okay.

11 A Take that part right there and blow it large, and
12 it looks like this. That's the surface of one of these
13 airways. And there's single cells in here. You see
14 these kind of cells with little knobs sticking up?
15 That's a ciliated cell -- excuse me, that's a Clara
16 cell that would secrete secretions of mucus onto the
17 surfaces of the lung. So you have a layer of liquid on
18 top of the lung. We washed that off to take this
19 picture. And the fibers would actually land on that
20 liquid.

21 Now, that's another cell there. It's called a
22 ciliated cell, and I'll blow that up. That's a single
23 cell, now. It's only about ten microns in diameter.
24 The top of it has all these little villi on it like
25 this sticking up, and they're beating like this all the

ROA_01647

Appendix_01675

1 time. There is a layer of liquid on top of it going
2 like this, shoving it to the back of your throat.

3 So if a fiber lands that that liquid, it will come
4 up to the back of your throat. And we have actually
5 done that. We've reached in with a bronchoscope and
6 put a little drop of India ink upside down here in the
7 lung, and it shows up at the back of the throat about
8 15 minutes later. And that clears the particles out.

9 We don't know it, but you make about a quart of
10 mucus a day in your lungs. And it's always coming up,
11 and you're always swallowing it. We swallow several
12 times a minute.

13 I just challenge you to not swallow for a minute
14 and see if you can do it. You will find that
15 unconsciously you are just cleaning your lungs all the
16 time.

17 Q Okay.

18 A But that actually means that all the fibers that
19 land in your head come back by mucus secretion and
20 movement to the back of the throat where they are
21 swallowed; all the fibers landing on the lung down here
22 come to the back of your throat and are swallowed. And
23 that handles 99 percent of all this stuff that we
24 breathe.

25 So the -- that's the incredible thing about the

ROA_01648

Appendix_01676

1 thing. It's really well designed to let us live in a
2 fairly polluted environment and have clean lungs for a
3 70-year lifespan.

4 Q Doctor, we talked about the body's defenses. Can
5 you continue on with how the respiratory system works?

6 A Okay. The problem is I made one percent of the
7 particles getting all the way down, didn't I? That's
8 where the toxicology comes in. So we take that area
9 and blow it up.

10 This is the end of each one of those airways. In
11 the lung, there's 20,000 of these units. There's
12 20,000 small airways, each opening up into a pattern
13 like this. Cut away on the slide and sort of
14 artistically drawn on this slide are little air sacs.
15 And particles do make it down here, but if they do,
16 they tend to land right there. They tend to -- that's
17 because you breathe in this far and you breathe out.
18 You don't breathe all the way like that because when
19 you breathe out, you don't exhale all the air in your
20 lungs, so you're breathing on the top, and the fresh
21 gas goes in about this far and goes out. So some
22 particles land there. And the question is, what
23 happens to them, just so you know.

24 Q What happens to them?

25 A What happens is this right here. Here is a

ROA_01649

1 picture of the one of those small airways. This is in
2 a rat. It's a small airway. You can see, it's opening
3 channels going across the lung very similar to what I
4 drew back here. That's the picture of this airway
5 right here opening. So now each one of these air sacs
6 has little cells in it called macrophages. And there's
7 an average of ten macrophages for every one of those
8 air sacs. And they're the cells that crawl around on
9 the surface, and they eat any particle that comes in.

10 Q Kind of like a PAC-MAN?

11 A Kind of like a PAC-MAN. I love that game, but
12 that's exactly what they do, and that's their job in
13 life, and they can then crawl up on the surface and
14 disappear from the lung or break the particle down.
15 But they're called macrophages. They're all through
16 the body, but there is a very specialized group that's
17 in the lung. And there's lot of them.

18 So the bottom line for the whole thing is that
19 when you breathe fibers in, there is a rapid clearance
20 mechanism right here. This is this upper airways that
21 I talked about with the cilia that are beating with the
22 mucus coat to the back of the throat. And then there
23 is a macrophage system down here that clean up the rest
24 of the particles, and they're very effective. But
25 those are the two defense pathways that we have.

ROA_01650

Appendix_01678

1 And the macrophages are slower. They take weeks
2 to months to clear things out. The mucous cilia
3 clearance is fast, but the macrophages do handle the
4 rest of it.

5 Q Doctor, is the lung designed to process and clear
6 inhaled pollutants?

7 A Yes, it is, and the whole risk -- the problem here
8 is to define at what level of exposure you finally
9 overwhelm that and then start to create disease.
10 That's the field of respiratory toxicology. So it can
11 handle lots of things. Where does it not handle it, is
12 the question.

13 Q Is there a threshold at which inhaled pollutants
14 can cause injury?

15 A Yes, there is. For every pollutant, there is a
16 threshold.

17 Q Let's talk about asbestos in a dose. What are we
18 talking about on this side here?

19 A Okay. Asbestos is a special process because the
20 fibers have long duration once they make it down there.
21 And so everybody -- to understand this field, the
22 standard is to calculate dose as the dose to the nose.
23 We don't really know how many exactly are cleared, so
24 you calculate the dose to the nose, and that's
25 calculated as the number of fibers per cc. A cc is

ROA_01651

Appendix_01679

1 that size. So fibers per cc times the number of
2 occupational years that you breathe it. And an
3 occupational year is 2,000 hours. There are 40 hours a
4 week for 50 weeks. So the dose to the nose would be
5 how many fibers in the gas that you're breathing while
6 you're working multiplied by years.

7 Let me give you an example of what this is. A
8 dose of one hundred fiber cc years would be
9 breathing -- well, you can get it by breathing five
10 fibers per cc. This is a cc. Five fibers per cc all
11 of your whole working lifetime for a total of 20 years,
12 then you would have a dose of one hundred fiber cc
13 years. Or you can breathe one fiber per cc for a
14 hundred years, theoretically, obviously, or you can
15 breathe 20 fibers per cc for five years and get that
16 dose. It's just a method of having everybody speak the
17 same language when we're talking about dose. That's
18 all this is.

19 Q And I believe your last example is .1 fiber per cc
20 for a thousand years?

21 A Well, that's the current standard for occupational
22 exposure. That's the PEL for current standards. And
23 you would have to breathe that for 1,000 years to get
24 that high, one hundred fiber cc years.

25 I actually put that illustration on here because,

ROA_01652

Appendix_01680

1 in my opinion, if chrysotile is a cause for
2 mesothelioma, it would take doses of at least one
3 hundred fiber cc years. Now, the people who got it
4 were the miners who got exposed like this, 20 fibers
5 per cc for five or ten years. But that's why this is
6 showing you what that illustration would be.

7 We need to talk about other ways you can cause
8 this disease.

9 Q We'll do that, Doctor. Just I digress a little
10 bit. The jury has heard that a cc is a sugar cube, but
11 they don't serve sugar cubes anymore. Is that why
12 you're making it the tip of your finger?

13 A Yeah. That's a sugar cube.

14 Q What is a dose-response curve?

15 A Well, once we start talking about dose, we need to
16 express how the dose relates to disease. And this is
17 called a dose-response curve. And this axis right
18 here, we calculate the amount of disease, the number of
19 cases, whatever you're measuring from. More cases goes
20 up. And on this side is exposure from very low
21 exposure, zero right here, to very high exposure.

22 So a typical dose-response curve for any substance
23 looks like this. It's an S-shaped curve, which means
24 that there is a portion of it where there's exposure
25 has no relationship to disease and then a threshold

ROA_01653

Appendix_01681

1 where you start to develop disease. And it comes up.

2 And it always curves off, and that's because
3 there's no such thing as an exposure that causes a
4 hundred percent of all deaths. There's many things in
5 life going on besides that. So it can increase, but it
6 can't ever be the only cause of death, in standard
7 toxicology terms.

8 But the real question is this area here. The
9 point I would make is every single substance we get
10 exposed to has a dose-response curve that looks
11 something like this. It even applies to water. I have
12 to drink that every day. But if I drank three to
13 four gallons of that right now, I would get very sick.
14 I would dilute my bloodstream. I could have seizures.
15 I could have death from water intoxication.

16 So there is a dose for every substance that's bad.
17 And from any substance, there is a dose that's very
18 good. But you need to understand that relationship of
19 this curve, how much of a substance you can take before
20 it starts to cause risk of disease.

21 Q Doctor, we mentioned asbestos in the ambient air
22 or in the everyday air before. Have you done any
23 research of the data on what we're talking about, what
24 we call ambient airborne asbestos?

25 A Yes. This highlights just a few of them. There

ROA_01654

Appendix_01682

1 are many, many studies reporting on the ambient air,
2 what's in it. There is a huge range. In rural parts
3 of the United States, it can be a really low number
4 like it's showing here. This is fibers per cc, and
5 there's four zeros before the one on the high end of
6 that. The EPA has reported -- I think that's supposed
7 to be EPA there -- has reported in the five major urban
8 zones is .004.

9 Now, to help translate that, let me translate some
10 other areas first. This is another government agency,
11 the Agency for Toxic Substance and Disease Registry,
12 said that in Midtown New York, a typical concentration
13 is 0.003.

14 Q I note that's the same upper limit as U.S.
15 schools.

16 A Yes. Some schools have had that high, right.
17 And, of course, using measurements made back in the
18 '80s, West Coast is maybe ten times higher than that.
19 And that's because there is a lot of serpentine-type
20 rock that makes chrysotile on the West Coast of the
21 United States.

22 Let me translate these crazy numbers because
23 you're seeing .0003, what does that mean. .003. Well,
24 a liter is that much, about a quart, and it contains a
25 thousand ccs. And that number is for numbers per cc,

ROA_01655

Appendix_01683

1 so if I have .003 -- excuse, me two zeros and a three,
2 that's three parts per thousand. Well, that would mean
3 that in a liter in New York City, you have three fibers
4 on the average in a liter of that much. And you would
5 breathe a liter with any large breath. Or walking
6 through New York, you would breathe ten liters a
7 minute.

8 So translating that data right there means that
9 walking through New York City, the average person, on
10 days like this, would breathe in 30 fibers -- they're
11 all chrysotile -- per minute while they're walking
12 through New York. That's to give you an idea of what
13 ambient air is. I don't want to say it's high because
14 I've told you already it's a tiny, tiny fraction of
15 what's in the air, but there are asbestos fibers in the
16 air. It could be that high in New York. It could be
17 ten times higher than that in San Francisco.

18 And the important thing to all this it's all
19 harmless. This is well within the body's capacity to
20 handle it. It does not cause disease. There's no risk
21 to anybody. The risk of incidence of disease like
22 mesothelioma in rural Iowa and San Francisco is the
23 same. There's no change in background grade. So
24 ambient air has been well studied. It does not cause
25 disease. I'm trying to give you a sense of what

ROA_01656

Appendix_01684

1 background is before we start making it higher
2 exposures and occupational disease.

3 Q Doctor, your next slide, I think you may have
4 already given that example of the drinking water, but
5 is there asbestos in our drinking water?

6 A There is. Every time it rains, the raindrops form
7 around the particles in the air, bring it down into the
8 water supply. The oceans and the water of the earth
9 contain asbestos and contain up to a million fibers per
10 liter. The average, by the EPA, is 32,000. They're so
11 tiny, they go right through the filter. That bottle
12 right there is not a liter, it's a half a liter, but on
13 the average, it contains 16,000 asbestos fibers.
14 They're harmless. They're part of our natural
15 environment. They have been there for years.

16 If you go to the North Pole and you take an ice
17 corer that goes all the way down that gets ice that's
18 10,000 years old, it still has asbestos in it at the
19 same concentration as the fresh ice.

20 Q Does everybody walking the streets in New York get
21 sick?

22 A It's part of our natural environment. I'm just
23 trying to describe the low levels that exist in water
24 and air as a platform now to understand where we
25 actually get disease.

ROA_01657

Appendix_01685

1 Q Doctor, are there different types of asbestos?

2 A Yes. That's important to understand. There
3 are -- I'd separate them into two big classes, one
4 called amphibole, of which the ones that are used, one
5 was used primarily for insulation in the United States
6 was amosite. And there is a similar one called
7 tremolite that is sometimes a contaminant of chrysotile
8 mines. They're a very low-level contaminant, and then
9 there's chrysotile.

10 And let me illustrate what they look like. That
11 is a picture of chrysotile asbestos from the work that
12 I did back in the '70s. It comes from one of the
13 biggest mines in Canada. You will notice that this is
14 a long fiber. This bar here is one micron. So a cell,
15 an average human cell, let's say a red blood cell, is
16 seven microns across. A macrophage would be about ten
17 microns. So a cell would be bigger than this whole
18 screen.

19 Now, this fiber here, look at the end of it how
20 it's splaying out like that. We'll go forward.
21 Chrysotile is actually made up of magnesium silicate,
22 which is a sheet. It crystalizes as a sheet like that,
23 and then that sheet rolls up, like you see in the
24 picture there, really fine. Forms like fibrils. And
25 so it's in a sheet form.

ROA_01658

Appendix_01686

1 And if I go back to this slide here, you see the
2 end of that breaking up. I brought a piece of, I'll
3 call it string, I guess. Notice how it's made up of
4 little fibers splaying out at the end like that?
5 That's what you're seeing on this fiber that's coming
6 down from here. Each one of these little fibers,
7 fibrils, let's call it, is made up of a rolled-up sheet
8 like that. It's all much finer than human hair. You
9 can't see a small one.

10 Now, what happens is it's held together by
11 magnesium. It's a metal. The macrophage would grab it
12 like that. It leaches out the magnesium over weeks.
13 Then the fibers separate like this, and then they break
14 down into little pieces. And you see the little pieces
15 all over this picture. See the little piece there,
16 little piece there, little pieces up there. That's how
17 the fiber, the macrophage breaks it down.

18 On the average, we say the average lifespan -- I
19 would say the average lifespan of a chrysotile fiber in
20 the body is about 90 days. It takes about three months
21 for the macrophages to totally break down half the
22 fibers.

23 Q Doctor --

24 A And they break it down into little tiny fibrils
25 like that.

ROA_01659

Appendix_01687

1 Q Have those fibrils been shown, through research,
2 to cause harm?

3 A No. The little fibrils are harmless. They're
4 mostly what's in water and air. They're everywhere.
5 They don't cause disease, and there's been no
6 correlation between the little fibrils and disease. So
7 the thing that causes disease is the long fiber. If
8 that long fiber can make it all the way and make it all
9 the way out to the pleura and stay there for decades,
10 it can cause mesothelioma. That's why I say, but the
11 little fibrils are everywhere. They're all through our
12 body right now. They're in any water-based media, and
13 they don't cause disease.

14 Q What's the difference between the chrysotile and
15 the amosite?

16 A So this is chrysotile. I'm going to show you
17 amosite. Amosites are very different. The magnesium
18 silicate, instead of being bonded in a sheet, it's
19 bonded like a little solid bar. I'll use my pen to
20 illustrate it. It's a solid bar like that, and it's
21 cross-linked all the way through it. It's held
22 together with iron and other metals. And the
23 macrophage that takes it can't extract from it because
24 it's so solidly bound together. So it's very hard for
25 the macrophage to break it down. If it does break it

ROA_01660

Appendix_01688

1 off, it breaks in small chunks. And you can see little
2 chunks on this slide here and here. It doesn't unwind
3 because it's not made that way. So it's a very
4 different fiber. It has magnesium and silicate and
5 metals in it like chrysotile, but they're structurally
6 different. One is soft and wavy like that, and one is
7 a hard, straight one. This one is broken down, and it
8 doesn't have the capacity to make it to the pleura and
9 stay there for months because it's broken down. Or
10 years, let's say.

11 But this one, the half-life of an amosite fiber is
12 probably best estimated to be about seven years, which
13 means that if you breathe in one hundred of these,
14 seven years later, you still got 50 of them, and
15 14 years later, you've still got 25 and so forth.

16 And these have the durability to migrate to the
17 lung and to reach the pleura and remain there for long
18 periods of time and cause mesothelioma. And so that's
19 going to be a scientific basis for why I would conclude
20 that the biggest risk is in exposure to amosite.

21 Q Is it the iron?

22 A Well, the iron is part of it. It's really the
23 length -- you need long fibers to do it, but the
24 iron -- iron can catalyze oxygen radicals and cause DNA
25 damage. So it could be that the iron that's carried

ROA_01661

Appendix_01689

1 with that is as part of disease. That's one of the
2 hypotheses that's being studied today, but it's the
3 length of the fiber and the iron content both combined
4 and the durability of this fiber to reach the pleura,
5 those all combined create risk for disease.

6 Q Doctor, you mentioned earlier when you were asked
7 by the EPA to review a Berman and Crump study. Can you
8 tell us about that?

9 A Sure. Berman and Crump reviewed all the
10 literature and looked for good-quality studies where
11 they could get the dose and the fiber type figured out
12 from the study.

13 Q I'm a victim of parochial schools. What does
14 cohort mean?

15 A Cohort means a group of people that share
16 something in common, like they worked in steel mills,
17 or they worked at a certain textile factory, they
18 worked at a mine. Something -- it could be anything.
19 It could be all women if you wanted to make a cohort of
20 women. But cohort just means a defined group of people
21 that have something in common. What these have in
22 common is where they worked. Like this cohort worked
23 in the Quebec mines, and this cohort worked at a plant
24 in Connecticut making friction materials and so forth.

25 Of the cohorts they looked at, some of them had

ROA_01662

Appendix_01690

1 only a little bit of amphibole, two to four percent,
2 and some of them had a lot of amphibole in them. You
3 see down here. Amphibole, in most cases in the United
4 States, means amosite.

5 Q Did your review include the conclusions of Berman
6 and Crump in evaluating these?

7 A I took part in the 2003 meeting that reviewed
8 their work. And I'm just going show -- one of their
9 conclusions from that report they gave to us was that,
10 "Our analysis indicates a substantial difference in the
11 relative potency of amphiboles and chrysotile toward
12 the induction of mesothelioma, with amphiboles
13 estimated as almost 1,000 times more potent than
14 chrysotile fiber for fiber."

15 Q Did they also have a conclusion regarding
16 chrysotile?

17 A Yes, they did.

18 They went further and they said, "Moreover, the
19 data are consistent with the hypothesis that chrysotile
20 has a zero potency toward the induction of
21 mesothelioma."

22 What they meant by that is that the increased risk
23 of chrysotile is sufficiently low and had large
24 boundaries that it could have been zero. But at the
25 very least, they said it was like a thousand times less

ROA_01663

Appendix_01691

1 than amphibole.

2 Q Doctor, have you done your own literature review
3 concerning the incidence of mesothelioma and
4 chrysotile?

5 A Right. They looked at 12 cohorts. I decided to
6 look at every cohort, even though some of them weren't
7 as well defined what the dose was.

8 Q When you say "every," what do you mean?

9 A I tried to read all the literature I could find
10 and read every group that was reported in the medical
11 literature that gave you data about mesothelioma and
12 fiber-type exposure. And by looking at everyone, if
13 they didn't have really good dose data, I still looked
14 at it. But I recognized that characteristic.

15 And I found that there were -- at the time I did
16 this was a few years ago, and there were 62 studies
17 reported then. There's been about another ten since
18 then.

19 Q Those ten inconsistent with what --

20 A Another ten or so show the same thing.

21 Q Describe the --

22 A I found 12 were high-dose chrysotile studies;
23 seven were low-dose chrysotile studies; 32 that had
24 mixed-fiber exposure; four that were primarily exposed
25 to amosite; and seven that were primarily exposed to

ROA_01664

Appendix_01692

1 crocidolite. I can't show you the data from all 62 at
2 a time here, but I can show you an example.

3 Q Okay.

4 A This is what I found. If there were high-dose
5 amphibole exposures -- and this is amosite, and those
6 are two crocidolite ones -- there is a very high risk
7 of mesothelioma, ranging from three to 18 percent of
8 deaths. If you think about it, take this 11 percent of
9 deaths here. This is mixed fibers that had very high
10 exposure, nine-percent deaths. That means if you had a
11 thousand people in the cohort, there were close to a
12 hundred dying of mesothelioma. This is a disease that
13 has a spontaneous rate that's only one or two or three
14 per million per year, so it's a dramatic increased risk
15 of mesothelioma when you're exposed to the amphiboles
16 here.

17 Q Doctor, just to put it in perspective, about how
18 many lung cancer cases do we have in the United States
19 a year?

20 A There's about 180,000, the last time I saw the
21 report, of lung cancers a year in the United States.

22 Q About how many mesothelioma cases do we have?

23 A Between 2,000 and 2,500. So it's -- there's about
24 a hundred times more lung cancer than there are
25 mesotheliomas.

ROA_01665

Appendix_01693

1 Q Now, Doctor, this particular slide, you focused on
2 the four cohorts to the right. How about the four
3 cohorts to the left?

4 A When I went to chrysotile, I found -- I looked at
5 high-dose chrysotile and low-dose chrysotile. For
6 low-dose chrysotile, there are a lot of reports of
7 industries that have a low dose, like auto mechanics,
8 who had automotive gaskets and things like that that
9 had some chrysotile in it, and there are many, many
10 studies of them showing that there's no increased risk
11 of mesothelioma, and they're done in five countries all
12 the around the world repetitively. Low-dose exposure
13 does not cause mesothelioma.

14 Q Okay.

15 A Then if you look at high-dose chrysotile, there is
16 a mixture. There were some sites -- like this is a
17 South African mine. There is a chrysotile mine in
18 South African reported by Reese, and there were no
19 mesotheliomas there, even though they were chrysotile
20 miners. And that's a chrysotile that was pure
21 chrysotile. And then you have -- but you move over to
22 Canada and look at the chrysotile miners in Quebec, and
23 you found -- well, there's about 11,000 workers that
24 have been studied there for many years, and after 8,000
25 of them had died, there were about 30, 36.

ROA_01666

Appendix_01694

1 mesotheliomas. So about one out of every 200 deaths
2 was a mesothelioma. So that raises the possibility
3 that high-dose chrysotile can cause mesothelioma.

4 Q Doctor --

5 A But you're talking about high doses. Hundreds --
6 a hundred or hundreds of fiber cc years before you see
7 a mesothelioma risk.

8 Q And, Doctor, in this case have you reviewed
9 Mr. Jolly's information concerning his exposure while
10 working for Duke Power?

11 A I have.

12 Q Where would Mr. Jolly fit on this scale?

13 A Well, he would have two kinds of exposure. He was
14 exposed to thermal insulation, amosite. There is a lot
15 of amosite insulation in the power plant. And in that
16 case -- he was an inspector, but he would have been in
17 the vicinity of people doing insulation repairs, and
18 that would put him, in amosite exposure, equivalent to
19 that group right there, but probably on the low end of
20 that group because he was an inspector but not the
21 actual insulator. But in the power plant, he would
22 have had four and a half years of exposure to
23 amosite-containing thermal insulation.

24 Now, in terms of chrysotile and gaskets and
25 packings, he would be more like -- actually be lower

ROA_01667

Appendix_01695

1 like this group over here. He would be -- the
2 chrysotile would be a very low-level exposure when
3 compared on this side. So I would say he would have
4 exposure comparable to this one and exposure group
5 comparable to that one.

6 Q Doctor, the studies you have cited here in the 62
7 studies on the prior slide, do these studies include
8 actual data?

9 A The studies that I've been giving you?

10 Q Yes, sir.

11 A Yes. I'm reading the actual results of what they
12 were exposed to and how much disease they had.

13 Q So they had fiber-dose measurements, they had
14 incidence of disease, actual numbers in these articles?

15 A Yes.

16 Q They weren't somebody's editorial opinion or
17 somebody's review of the literature or anything else
18 like that?

19 A That's correct. I think your decision should be
20 based on data.

21 Q Now, just to wrap up this slide, what do
22 amphiboles have to do with it?

23 A Well, the amphiboles are showing that -- exposure
24 to amphiboles carries a big risk for causation of
25 mesothelioma, even at fairly low levels of exposure.

ROA_01668

Appendix_01696

1 That's what I'm pointing out.

2 Q Okay. And for high-dose chrysotile and low-dose
3 chrysotile, what do you get?

4 A Well, for high-dose chrysotile, I'd say it may be
5 a cause of mesothelioma at very high dose. At low
6 doses, it's not a cause for mesothelioma.

7 Q Do you get that high dose in, typically, in
8 working with gaskets and packing, in your experience?

9 A No. Gaskets and packings are a very, very
10 low-level exposure. It's often even lower than what
11 you would find in ambient air in some parts of the
12 country.

13 Q Doctor, to sum up, mesothelioma risk for
14 amphiboles?

15 A Is high and can occur at low levels of dose, but
16 with a very, very high risk.

17 Q High-dose chrysotile?

18 A May be a cause of mesothelioma.

19 Q Low-dose chrysotile, such as packing and gaskets?

20 A Is not a cause for mesothelioma.

21 Q Doctor, one term that we may have come across in
22 this case is something called the regulatory model.
23 What is that? Almost through. Promise, I'm almost
24 through.

25 A It's a model of how -- when people are trying to

ROA_01669

Appendix_01697

1 regulate, it's a model they use to predict risk in a
2 way that's protective of the human health and
3 overestimates risk at low levels.

4 Q Could you go to your next group of slides.

5 A So the regulatory model was first developed for
6 asbestos in the 1980s, and the EPA did it first using
7 four studies by Finkelstein, Peto, Seidman, and
8 Selikoff, all of which had exposures to either a
9 combination of a chrysotile and an amphibole or to an
10 amphibole.

11 Q Were these high-dose studies?

12 A They were very, very high-dose studies. Then OSHA
13 came along shortly thereafter and added two studies,
14 they added Dement and Weill, which were primarily
15 chrysotile exposures. I think they added those because
16 they wanted some chrysotile exposures in the mix. But
17 those are the six. And if I graph them, it looks like
18 this. Those first four studies are right there.
19 There's no axis here because I want to just
20 conceptually show you what happened.

21 There are high levels of exposures. And exposures
22 here is on a log scale. So zero, ten, one hundred,
23 1,000, going across. And this is to show that these
24 are exposures in the somewhat -- between 50 and 100
25 fibers per -- some of these are getting closer to a

ROA_01670

Appendix_01698

1 thousand fiber cc years.

2 And they're red because they're primarily
3 amphibole. And these were the two highest, and these
4 were the two middle-sized exposure levels. And then
5 when they added the two more, the two chrysotile ones,
6 actually Weill was there and Dement was there. This is
7 a mesothelioma number here. They had very few, like
8 just one, two, or three mesotheliomas in that study and
9 this study. That's a cement plant here in South
10 Carolina, the Dement study. And these --

11 Q It was a textile mill in South Carolina.

12 A That's right. That's right.

13 Q Cement plant was in --

14 A Was in --

15 Q New Orleans.

16 A You corrected me on that.

17 Q I know my neighborhood.

18 A I know. That was a textile plant here. But this
19 was the actual data. And then when they drew the
20 regulatory curve, this is the curve right there. It's
21 a straight line, actually. You can see what it does.
22 They took the average of all of these. They ignored
23 that some were chrysotile and some were primarily
24 amphibole. And the regulatory thing is drawn straight
25 into zero, which means it predicts that there's disease

ROA_01671

Appendix_01699

1 down here, but there's no data down there.

2 Q That was going to be my question. Is there any
3 data to support that at all?

4 A No, no. The reason for doing it is that it's
5 protective of the human health. They use that to
6 gradually lower the standard to the current standard
7 down about here. But their goal is to regulate and
8 protect human health; their goal is not to tell you
9 what happens at low levels.

10 Q What does the data support?

11 A The data supports that amphiboles cause
12 substantial risk at high exposures, and there may be a
13 chrysotile risk at high exposure. It does support
14 that. There's no question it supports that. But it
15 doesn't tell us -- if you look at that curve, at this
16 line, it's really hard to say what the data would be
17 down here from that line.

18 Q Are there additional data points that you could
19 put to actually --

20 A Well, this is what's used regulatory by every
21 agency in the world, and they make all their statements
22 about this data. That's standard across the world.
23 But this is -- this doesn't make a difference between
24 chrysotile and amphibole, which we know -- I've shown
25 you data that shows the chrysotile has a much lower

ROA_01672

Appendix_01700

1 risk than amphibole.

2 So I ask, what would happen if you started looking
3 at chrysotile, if you made a curve. So first of all,
4 we have the Canadian miners in Canada. I showed you
5 that data a minute ago that had 30-some mesos out of
6 8,000 deaths. Then they have about close to a thousand
7 fiber cc years of exposure. That would put them about
8 right there on this curve.

9 Then there is a published paper about women who
10 live next to the mine, and they had seven -- they had
11 about 225 fiber cc years of exposure. And there was a
12 few mesotheliomas, about seven, found in the report of
13 those Canadian women. And they would be right there on
14 this curve.

15 And then you have all the ambient work that I've
16 talked about. The low-level chrysotile and the
17 ambients are down here with zero. So if I were to draw
18 a curve for chrysotile, I would draw it like this. I
19 think the red curve is a regulatory curve for all
20 asbestos without trying to separate fiber type. The
21 black curve I just drew is a curve that would reflect
22 what we know about chrysotile. And it may cause me to
23 fill in a little bit and doses that exceed a hundred
24 fiber cc years.

25 Q Okay. Doctor, I'll hand you what has been marked

ROA_01673

Appendix_01701

1 as Exhibit 70. Can you identify this?

2 A Yes. This is my report in Mr. Jolly's case.

3 Q And what is your opinion concerning the cause of
4 Mr. Jolly's mesothelioma?

5 A I think Mr. Jolly's mesothelioma was caused by his
6 work at the Duke Power Company where he was exposed to
7 thermal insulation containing amosite.

8 Q Okay. And is that based upon your review of
9 Mr. Jolly's information that's been presented to you?

10 A Yes.

11 Q Okay. And does that reflect the questions that
12 were asked you by the plaintiffs' lawyer when your
13 deposition was taken?

14 A Yes.

15 Q Do you have an opinion to a reasonable degree of
16 medical certainty whether exposure to packing and
17 gaskets had any role in the cause of Mr. Jolly's
18 mesothelioma?

19 A I do have an opinion.

20 Q And what is that opinion?

21 A His work or his exposure to gaskets and packings
22 from valves would have had no impact or risk factor in
23 his development of mesothelioma.

24 Q Thank you, Doctor.

25 MR. BOUCH: Your Honor, I pass the witness.

ROA_01674

Appendix_01702

1 THE COURT: All right. This is -- what are we
2 doing with this exhibit?

3 MR. BOUCH: I'm sorry. I would move it into
4 evidence, Your Honor.

5 THE COURT: All right.
6 Ms. Farrise, Crosby Exhibit 70?

7 MS. FARRISE: I object that it's hearsay.

8 THE COURT: Overruled.

9 (WHEREUPON, Defendant's Exhibit Number Crosby 70
10 was admitted into evidence.)

11 THE COURT: Now, jury, are you peaceful at the
12 present time? Very good. I'm mindful of the fact that
13 we generally break around 11:00. Let's see how we go
14 on cross-examination, but I won't leave you hanging.

15 Very good. Ms. Farrise.

16 MS. FARRISE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. FARRISE:

19 Q Hello. Good morning, Dr. Crapo.

20 A Good morning.

21 Q Not that it matters, but we have never met before?

22 A That's correct.

23 Q I'm going to start by asking you some questions
24 about your background. Okay?

25 A Sure.

ROA_01675

1 Q Dr. Crapo, we can agree that you last published a
2 paper having anything to do -- a scientific paper --
3 with asbestos about 25 years ago, since about 1990,
4 correct?

5 A Yes. I stopped doing work on asbestos in the
6 early 1990s.

7 Q And you have never, never in your career,
8 published a scientific paper on the subject of
9 mesothelioma, correct?

10 A That's correct.

11 Q Of the 300 published scientific articles that you
12 have, not a single one of them addresses the effects of
13 asbestos on humans?

14 A That's correct.

15 Q The word "mesothelioma" does not even appear in
16 any of the 300 articles that you have published?

17 A That's right. I have not done personal research
18 on mesothelioma.

19 Q Right. You have never conducted any clinical
20 research on mesothelioma, correct?

21 A That's correct.

22 Q You have never done any laboratory research,
23 including study laboratory animals, concerning
24 mesothelioma, correct?

25 A Well, I've never published on that, but the animal

ROA_01676

Appendix_01704

1 work I did, all of the animals were evaluated for
2 mesothelioma. Most of the -- I looked at the ones that
3 I studied, and the pathologist at the National
4 Institute of Environmental Science looked at other
5 animals in the group. And I participated in the
6 overall groups, but we didn't find any mesotheliomas,
7 and there's nothing published on it.

8 Q Your qualifications have been reviewed when you've
9 testified in court in other cases, correct?

10 A Yes.

11 Q I'm handing you a transcript of --

12 MR. BOUCH: May I have a copy, please?

13 Q -- testimony that you gave under oath in a
14 courtroom.

15 MR. BOUCH: Your Honor, I believe this is improper
16 impeachment.

17 THE COURT: I can't determine that at the present
18 time. It's sworn testimony, and she will point to
19 whatever she's going to point to, and I can then make
20 an evaluation. So noted, but I'm not in a position to
21 rule at this time.

22 MR. BOUCH: My objection goes to if he gives an
23 answer that's inconsistent, of course, she can impeach
24 him with it, but he hasn't given an answer --

25 THE COURT: Mr. Bouch, I don't think I need to say

ROA_01677

Appendix_01705

1 more at this time. Noted, but I'm not in a position to
2 make any determination until she asks him a question.

3 BY MS. FARRISE:

4 Q Hang on to that, Dr. Crapo. If I or anybody else
5 wanted to find out your opinions about mesothelioma in
6 human beings, and we went to a medical library or we
7 did an Internet search of the medical and scientific
8 library information, we would not find a single article
9 that you have authored on that topic?

10 A That's correct. I've not done personal research
11 on mesothelioma, other than screening the animals that
12 we did pathology on.

13 Q If we wanted to leave the confines of this
14 courtroom and find a book that relays your opinions
15 about mesothelioma in human beings, we could find no
16 book, correct?

17 A That's correct. I haven't written a book on this.

18 Q No book chapters?

19 A That's correct.

20 Q Not a paragraph?

21 A That's correct. I haven't written on
22 mesothelioma.

23 Q And you have done no original research on
24 mesothelioma?

25 A With the exception of screening my animals that

ROA_01678

Appendix_01706

1 were exposed, that's correct.

2 Q More than 25 years ago?

3 A That's right.

4 Q Now, in terms of your medical training, Doctor,
5 just to be clear, you are not board certified and don't
6 hold any degrees in epidemiology?

7 A That's correct.

8 Q You're not an epidemiologist?

9 A Well, I'm not a board certified epidemiologist. I
10 do direct the largest epidemiology study being done
11 today in lung disease called COPD Gene, so I do
12 epidemiology every day, but I don't have a degree. I
13 have a degree, a medical degree.

14 Q And your largest study has nothing to do with
15 asbestos disease?

16 A No. No. It deals with smoking-related chronic
17 lung disease.

18 Q You're not -- you don't practice in the area of
19 occupational medicine?

20 A That's correct.

21 Q You don't have any board certifications in
22 oncology or practice in that area?

23 A I do not.

24 Q You're not -- you talked about the minerals
25 here -- a geologist, a mineralogist, or material

ROA_01679

Appendix_01707

1 scientist?

2 A I don't have a degree in those areas.

3 Q In your particular field, I think you mentioned
4 that you were board certified in pulmonary medicine?

5 A Yes.

6 Q You failed the test the first time?

7 A Actually, I failed it two times. I thought I
8 could pass it without studying. I got humbled by that.

9 Q Three times the charm?

10 A Well, I studied the last time. I got pretty
11 embarrassed by that, but, yes, I did fail the pulmonary
12 boards.

13 Q Doctor, we can agree that you stopped studying
14 asbestos topics in the early 1990s when you left Duke
15 University?

16 A That's not true. I studied it consistently since
17 that time. My research stopped, but my reading of the
18 literature continued and actually increased because of
19 the work I do, medical-legal consulting.

20 Q I understand. Your work, not going and reading
21 other people's work. Your work stopped?

22 A My research on the topic stopped, that's correct.

23 Q Right. And when your research on the topic
24 stopped more than 25 years ago, that's when, about when
25 you started becoming an expert witness in courtrooms,

ROA_01680

Appendix_01708

1 correct?

2 A That's correct.

3 Q And your testimony in courtrooms has been
4 exclusively for defendants who made or sold asbestos
5 products?

6 A Yes. I've only been asked by defendants.

7 Q And in the 25 years that you have testified and
8 been asked by defendants to testify on their behalf in
9 courtrooms and after your own research stopped, you
10 have not published any of the opinions that you have
11 shared with juries like this to the scientific
12 community outside of this courtroom, right?

13 A That's correct. All of my publications deal with
14 research work that I did in my laboratory. So I would
15 not have published a topic like this since that wasn't
16 something I was actually doing research on in my
17 laboratory. Every one of my articles deal with
18 personal research in the laboratory, and that explains
19 the difference.

20 Q So this your summary of your opinions and the
21 things you told the jury about, how much chrysotile it
22 takes and all of those sorts of things, has not been
23 submitted to scientific review and sought to be
24 published in a peer-reviewed scientific journal,
25 correct?

ROA_01681

Appendix_01709

1 A Well, yes. I haven't submitted mine. All the
2 concepts that I give in there are based on data on
3 scientific papers that were peer reviewed, so I'm
4 simply describing what the literature tells you about
5 it. But because I didn't do the original research on
6 it, I didn't submit it as my own opinion for peer
7 review.

8 Q To be clear, you read the original research that
9 other people have done?

10 A That's correct, I have.

11 Q And then you formulated your opinions about what
12 other people's research means?

13 A I integrated the whole thing. And I've seen a lot
14 of patients. So the -- it's a totality of my
15 experience, at least as to the basis of my opinions.

16 Q The opinions you shared with the jury is your
17 opinion on what other people's research means, correct?

18 A Well, as well as my observation in many cases
19 myself, yes. It includes a lot of personal
20 observation.

21 Q And your opinions, Dr. Crapo, have never been
22 subjected or submitted for scientific review by your
23 peers in a peer-review process, correct?

24 A Well, as I told you, I have not -- this is not
25 original -- it's not original research on my part, so I

ROA_01682

Appendix_01710

1 have not submitted that for publication.

2 Q So if another scientist wanted to review the
3 opinions that you have given to this jury here, the
4 only way to do that would be to get a copy of this
5 transcript and see what you're saying to see whether or
6 not what you're saying is scientifically valid, junk
7 science, or something else, correct?

8 MR. BOUCH: Objection to that qualification, Your
9 Honor. That's completely argumentative.

10 THE COURT: Overruled.

11 THE WITNESS: If they want a printed copy, they
12 would have to get court transcripts or talk to me, yes.

13 BY MS. FARRISE:

14 Q Right. Now, Dr. Crapo, in terms of the hospital
15 work that you mentioned, you don't -- the type of work
16 you're doing here today, which is giving testimony to a
17 jury on behalf of a company alleged to have sold an
18 asbestos-containing product, you don't do that type of
19 work in the hospital, do you?

20 A No. No. Currently at the hospital, I manage the
21 COPD Gene epidemiology study.

22 Q And you mentioned that it's National Jewish
23 Hospital, correct?

24 A Yes.

25 Q And you have a biography on the hospital's

ROA_01683

Appendix_01711

1 website, right?

2 A Yes. There is a small biography that relates to
3 things that I do relative to the hospital.

4 MS. FARRISE: Your Honor, may I have permission
5 to --

6 MR. BOUCH: Can I see that?

7 THE COURT: Just a second. Let's be sure we're
8 looking at something here first.

9 THE COURT: Let me see what you've got there. Do
10 you need this?

11 MS. FARRISE: No.

12 Q We've marked your biography as Plaintiffs'
13 Exhibit 6385 from National Jewish Health.

14 I would move it into evidence.

15 THE COURT: All right. Mr. Bouch?

16 MR. BOUCH: Your Honor, I have no objection. She
17 might want to ask, for the record, if the doctor
18 recognizes it.

19 THE COURT: I'm sure she'll do that. I'm just
20 wondering whether you've got any objection, and if you
21 don't have any objection, it's admitted.

22 All right.

23 (WHEREUPON, Plaintiffs' Exhibit Number 6385 was
24 admitted into evidence.)

25 THE COURT: Ms. Farrise.

ROA_01684

1 Q Dr. Crapo, this is what appeared about an hour ago
2 on the website of National Jewish Hospital. Can we
3 agree that's your biography?

4 A Yeah. That's the one I put -- each person can
5 write their biography. I wrote one that was
6 appropriate for what I do at National Jewish.

7 Q And if you go to that hospital, there is a search
8 option to find people who are in certain medical
9 specialties; is that correct?

10 A That's correct.

11 Q And if you put in the search term "mesothelioma,"
12 your name won't come up?

13 A Yes. I don't do clinical practice, and I don't
14 want people to search me because I don't do clinical
15 practice. So I only list that I'm doing things in COPD
16 and chronic lung disease.

17 Q Right. There you are. And so if we went to the
18 website where you actually work, we would find that
19 your research area is COPD having to do with smoking
20 and --

21 A Yes.

22 Q -- emphysema, correct?

23 A Right.

24 Q Now, speaking of Jewish Hospital, National Jewish
25 Hospital, that's about 1,500 miles away from here?

ROA_01685

- 1 A About, yes.
- 2 Q That's where you live and work?
- 3 A Yes.
- 4 Q There are well-respected pulmonologists at Duke
- 5 University Medical Center?
- 6 A Yes, there are.
- 7 Q Well-respected pathologists at Duke University
- 8 Medical Center?
- 9 A Yes.
- 10 Q Counsel mentioned that you will be charging for
- 11 your time \$600 an hour, correct?
- 12 A Yes.
- 13 Q And that will include the time that you have spent
- 14 sitting on an airplane?
- 15 A Yes.
- 16 Q Going 1,500 miles to and from Colorado, right?
- 17 A Yes.
- 18 Q Do you have to stop over in Charlotte or do they
- 19 have a direct flight?
- 20 A We stopped in Charlotte.
- 21 Q So how many hours will you charge at \$600 just to
- 22 be in travel on this case?
- 23 A You know, I haven't done the full calculation, but
- 24 it took about six hours to travel here.
- 25 Q 15 hours?

ROA_01686

Appendix_01714

1 A About six hours.

2 Q \$9,000 just for the travel?

3 A Well, I said it was about six hours that I spent
4 travelling.

5 Q But you're going to go back?

6 A What?

7 Q I wanted you to finish. Are you finished?

8 A I said six hours.

9 Q And you're not planning to stay, so you're going
10 to return?

11 A Yes.

12 Q By the time all is said and done, there's at least
13 15 hours at \$300 an hour or about \$9,000, 10,000 maybe,
14 just to travel 1,500 miles from National Jewish
15 Hospital?

16 A Well, I wouldn't calculate it exactly that way,
17 but there will be a charge for travel and time to get
18 ready for the case that will be like that, yes.

19 Q How would you calculate the travel?

20 A Well, I'm going to calculate the total, but you
21 said \$300 an hour a minute ago, and you were
22 calculating -- so I don't know how you did your
23 calculation, but I'm not arguing I'm not going to be
24 well paid. I'm just -- and I did travel from Denver,
25 that's correct.

ROA_01687

Appendix_01715

1 Q Right. By the time this case is all said and
2 done, having reviewed depositions, Mr. Jolly's medical
3 records, come to court, testify, your bill in this case
4 could easily be \$50,000?

5 A No, it wouldn't be that high. I don't think I
6 have ever had a bill that high.

7 Q 30,000?

8 A That would be high, too. I would guess the total
9 cost for everything is going to be between 10- and
10 \$20,000.

11 Q Dr. Crapo, let me get to -- I'll come back to
12 that.

13 Patient care, you have not been involved in
14 patient care involving a patient with mesothelioma in
15 more than 25 years?

16 A Yes. I stopped doing that kind of work when I
17 left Duke, which was 1996.

18 Q You have not treated any patients with any
19 disease, including emphysema, in at least seven years?

20 A As a treating physician, I stopped clinical
21 practice. I still see friends and family, and a few
22 people ask for my consulting time. But in terms of a
23 practicing physician, I stopped about seven years ago.

24 Q And in terms of your opinion that you gave about
25 Mr. Jolly and whether or not his mesothelioma was

ROA_01688

Appendix_01716

1 related to any exposure from gaskets and packing, you
2 have given that exact opinion as to numerous people
3 numerous times, correct?

4 A Well, Mr. Jolly's exposure characteristics are
5 unique, so the exact opinion, that's not correct. But
6 I have testified multiple times that low-level
7 chrysotile does not cause disease and amphibole does,
8 and I have identified amphibole products and
9 manufacturers who would have created the risk.

10 So there's similarities in this case and many
11 others, you're right. But my testimony has always been
12 the same. I believe that low levels of chrysotile do
13 not cause mesothelioma.

14 Q You've testified as an expert witness on behalf of
15 a company that made gaskets, John Crane, correct?

16 A Yes.

17 Q John Crane and its lawyers have paid you more than
18 a million-and-a-half dollars to work on asbestos
19 litigation in the last 25 years, correct?

20 A I have never done that calculation, but I have
21 seen reports from their office side that indicates they
22 have paid me amounts like that, yes.

23 Q So a million-and-a-half dollars you don't
24 dispute could be --

25 A Well I --

ROA_01689

Appendix_01717

1 Q Excuse me -- in terms of what lawyers representing
2 John Crane only have paid to you to serve as an expert
3 witness?

4 A I think the correct answer is I can't dispute it.
5 It's not my calculation, but I can't dispute it.

6 Q You don't dispute it?

7 A No, I don't dispute it.

8 Q Okay. John Crane, as the jury already knows, made
9 and sold asbestos-containing gaskets and packing used
10 in, among other things, valves?

11 A That's correct.

12 Q It's your understanding that the gaskets that John
13 Crane made and sold, asbestos-containing gaskets that
14 they made and sold, were used as part of valves on the
15 flange side, correct?

16 A That was common, yes.

17 Q And, therefore, having looked at or having
18 evaluated gasket and packing exposure, having never
19 even heard of Beverly Dale Jolly in this case, it would
20 have been your opinion that, as soon as anybody said he
21 was exposed to gaskets and packing, that it would not
22 have been a cause of his mesothelioma, whether it was
23 Mr. Jolly or Mr. Happy or Mr. Smith or Mr. Jones or
24 Mr. Barnes, right?

25 A Well, the essence of what you're saying is

ROA_01690

Appendix_01718

1 correct. There is a lot of published literature
2 showing that gaskets and packings do not result in
3 significant exposure, and the type of gasket and
4 packing we're talking about would have contained
5 chrysotile. And the exposure levels would be really
6 low and not a level that would create disease, so yes,
7 I could reach that opinion about gaskets and packings
8 without knowing Mr. Jolly's case.

9 In his case, my key question was what did cause
10 his mesothelioma, and I needed to get his history to
11 assess that.

12 Q And you worked as an expert witness on behalf of a
13 company, Owens Corning Fiberglass and Owens Corning
14 Illinois, companies that manufactured and sold an
15 insulation product called Kaylo, correct?

16 A That's correct, but let me qualify it. I never
17 testified for those companies that their product did
18 not cause mesothelioma. In fact, I have testified
19 many, many times that Kaylo was a cause for
20 mesothelioma. So when I helped -- when I worked for
21 them, I was not dealing with mesothelioma; I was
22 dealing with a completely different issue, and I've
23 always been of the opinion that amosite and things like
24 Kaylo carry substantial risk of causing mesothelioma.

25 Q Given that you've worked as an expert witness for

ROA_01691

Appendix_01719

1 those companies, you certainly are aware that there was
2 a point in time when those companies took the asbestos
3 out of the insulation formulation?

4 A Yes..

5 Q That was 1972; correct?

6 A It would vary. '72 is when a lot of regulation
7 took place.

8 Q Certainly by 1975, there was no asbestos in Kaylo?

9 A I'm not the expert in industrial hygiene that
10 would tell you exactly when each company took the
11 asbestos out, so I defer that to someone qualified to
12 give a correct answer.

13 Q So in this particular case, you have not looked at
14 the issue of when this insulation that was installed at
15 Mr. Jolly's worksites actually went asbestos-free?

16 A I -- the years that he was there, there was a lot
17 of asbestos in place. And it's well known in cases and
18 literature and industrial hygiene I've seen, that power
19 plants like the ones he worked at had a lot of this
20 thermal insulation that contained amphibole. I think
21 that's very well established in the literature. I
22 don't think there's any doubt that he had a substantial
23 amphibole exposure.

24 Q Can you show me the literature where there has
25 been an evaluation of Duke's Oconee plant and whether

ROA_01692

Appendix_01720

1 or not the insulation there was asbestos?

2 A I don't have that literature, but I think that
3 literature exists. I think it can be provided by the
4 defense side.

5 Q We'll see.

6 A Okay.

7 Q There's no literature that you know of that looks
8 at whether or not the insulation at Duke McGuire plant
9 or Catawba plant contained asbestos?

10 A I have not personally researched those specific
11 plants. I have seen lots of cases in working in
12 similar kinds of nuclear power plants. And although
13 asbestos regulation started pushing towards
14 asbestos-free insulation in the '70s, there was lots of
15 asbestos in place, and those plants had -- substantial
16 abatement in those plants only took place in the '80s
17 and '90s, and the period of time which he worked there
18 would have been a period when there was lots of amosite
19 asbestos in those power plants.

20 Q Mr. Jolly started working at the Duke Oconee plant
21 after being a pipefitter doing metal work in a
22 different location in 1980.

23 A At which plant -- yes -- I'm -- I didn't look at
24 the exact dates that he worked there. It was the late
25 '70s or early '80s that he worked there, about four and

ROA_01693

Appendix_01721

1 a half years total, at multiple plants for Duke Power.

2 Q When did Mr. Jolly start working for Duke?

3 A Let me look at my report. I wrote down that he
4 started working for Duke Power in 1979, and he
5 continued working there, but he worked there formerly
6 for 2003 and then became an independent contractor
7 thereafter.

8 Q Right. And McGuire plant, when did he work there?

9 A Yes. I don't recall the exact dates he worked at
10 the McGuire plant.

11 Q When was the McGuire plant built?

12 A I'm not the industrial hygienist that will give
13 you the date on that plant. I can tell you that power
14 plants of the type that he worked in contained lots of
15 amosite through this period of time.

16 Q Well, Dr. Crapo, if there was a period in time in
17 the '70s when the government banned the use of asbestos
18 in insulation, and Mr. Jolly starts his job in 1979,
19 before you came in here and jumped in and opined that
20 he was exposed to asbestos from amosite, wouldn't you
21 want to confirm, in fact, that there was amosite at his
22 worksite?

23 A I don't think that's necessary. I've seen lots
24 and lots of cases. And even though you're saying that
25 the bans on asbestos started in the 1970s, asbestos

ROA_01694

Appendix_01722

1 abatement to remove the old asbestos did not take place
2 quickly. In fact, in some places, it's still taking
3 place.

4 The -- certainly there was no significant asbestos
5 abatement in nuclear power plants between early '70s
6 and early '80s. New asbestos put down may have been
7 asbestos-free. New insulation put down may have been
8 asbestos-free, but the workers would have been exposed
9 to massive amounts of thermal insulation throughout a
10 plant like that throughout the time period he worked.
11 And I've seen multiple cases, other cases, of people
12 with mesothelioma that had work exposures, not
13 necessarily at those plants, but at power plants,
14 during the '70s and the '80s, and so I -- I would defer
15 to an industrial hygienist to tell you exactly what was
16 there, but in my judgment, there's no -- it's without
17 question this man was exposed to amosite.

18 Q I think you said something we probably agree on.
19 As to new insulation material installed, let's just say
20 in 1980, new insulation, that would be asbestos-free?

21 A You still want to have someone re-evaluate it, see
22 where it came from, but the ban starting to demand
23 asbestos-free products began in the '70s.

24 Q In 1980, the new insulation would have been
25 asbestos-free, right?

ROA_01695

Appendix_01723

1 A I can't validate that for you because I don't know
2 for a fact. They may have used old insulation to
3 install. I'm only saying I agree that the bans were in
4 place at that time, but what they used, I'm not the
5 expert that can answer that question for you.

6 Q I think I understand what you're saying. Although
7 in the 1970s there was a ban, you can't make or sell
8 these products, you are not hypothesizing that maybe
9 there was like an inventory or stockpile somewhere that
10 Duke went and got the insulation from, so that by 1980,
11 after it was banned, they didn't put on what was being
12 made and sold, they put on the old product, which was
13 no longer legal; is that what you're saying?

14 A No, actually, I didn't say that. You're taking it
15 further than what I said. I said I didn't know what
16 they put on, and I stopped there.

17 One possible way they could have used it was they
18 used stockpiled asbestos, but I did decline to answer
19 the question that I knew that it was asbestos-free that
20 they installed in 1980. I don't know that.

21 Q And so as part of the work that you did in the
22 case after you traveled here, sitting on an airplane
23 from Colorado, certainly you had a chance to talk to
24 the lawyers representing Crosby and Fisher?

25 A I did..

ROA_01696

Appendix_01724

1 Q And when you talked to the lawyers representing
2 Crosby and Fisher, did they say to you, "Here,
3 Dr. Crapo, before we let you go into court and say
4 Mr. Jolly was exposed to asbestos from insulation 1980
5 and after, here is the actual evidence that we have
6 that those products were not asbestos-free by that time
7 period," right?

8 A I didn't have that conversation with them.

9 Q You didn't ask, and they didn't volunteer?

10 A I didn't have that conversation with them, no.

11 MS. FARRISE: Your Honor, it's 11:15.

12 THE COURT: Very good. I think this is a good
13 stopping point, so ladies and gentlemen of the jury,
14 I'm going to let you go to your jury room. Let's take
15 15 minutes so everyone can be refreshed. I'll call you
16 back at 11:30.

17 (WHEREUPON, the jury exited open court at
18 11:15 a.m.)

19 THE COURT: Counsel, keep your seat for a second.

20 I've just got one thing I want to remind -- I'm
21 going to be reminding you, too, of something, Doctor.
22 Keep your seat for a minute.

23 I noticed two things, and they're very minor, but
24 I just don't want them repeated.

25 When Dr. Crapo was on direct examination and

ROA_01697

1 talking about how the lungs work and how mucous, you
2 make a quart of mucous a day and so forth, he turned to
3 the jury and asked the jury to swallow. Don't do that.
4 We don't want to put the jury in any kind of position
5 that they're being put in the position of doing
6 anything but listening.

7 THE WITNESS: Don't address them directly, I
8 agree.

9 THE COURT: That's a no-no. It wasn't objected
10 to. I'm not trying to be harsh, but that's a no-no.
11 We don't do that.

12 The second thing is and just, again, kind of
13 inadvertent, but I want to be sure we don't do that.

14 Mr. Bouch, when you were on your direct
15 examination and Dr. Crapo had gone through a lot of
16 things, and you were now into gaskets and packing and
17 the level of exposure and had some documents, and you
18 turned to the jury and said -- apparently a juror was
19 reacting to some extent, and you said, "Well, I'm
20 almost through." Let's not address the jury in that
21 way. I just think it's real important to let the jury
22 function as the listeners and not being kind of golden
23 ruled into putting themselves in the position of being
24 anything other than an observer.

25 MR. BOUCH: I agree. While I looked at the jury,

ROA_01698

Appendix_01726

1 it was really directed to Dr. Crapo.

2 THE COURT: That's what I thought. And, again,
3 I'm not trying to take anybody to task. I'm just
4 reminding you of how we need to function with our jury.

5 All right. We'll be at ease until 11:30.

6 (WHEREUPON, a recess was taken from 11:18 a.m. to
7 11:32 a.m.)

8 THE COURT: Counsel, any dilemmas, any issues?

9 MS. McVEY: No, ma'am.

10 THE COURT: Bring me the jury, please.

11 (WHEREUPON, the jury entered open court at
12 11:33 a.m.)

13 THE COURT: Please be seated, ladies and gentlemen
14 of the jury.

15 All right. Cross-examination continues.

16 Ms. Farrise.

17 MS. FARRISE: Thank you, Your Honor.

18 Q Dr. Crapo, we were discussing insulation, right?
19 Do you recall that?

20 A Yes.

21 Q And at deposition in this case, you agreed that
22 valves are typically insulated, correct?

23 A I think that's correct for some types of valves.

24 Q Okay. Well, you mentioned beforehand that you
25 reviewed all these studies and power plants and all

ROA_01699

Appendix_01727

1 this such thing and so forth and so on, and it's your
2 understanding that valves also are insulated, right?

3 A I think that that's true for some valves. Some
4 valves are designed so they would not be insulated.

5 Q But it would not be unanticipated that a valve
6 might be insulated in the field, along with the piping
7 and the insulation that goes on that?

8 A I'm going to defer that to the industrial
9 hygienist that would tell you exactly, but it's typical
10 that the lines are insulated. And to the extent the
11 valve was in the line, it may have insulation on it,
12 but I'm not the expert in that area.

13 Q Dr. Crapo, this is not the first time you have
14 been hired to be an expert witness on behalf of Fisher
15 valves in a case where someone was claiming asbestos
16 injury; is that correct?

17 A That's correct.

18 Q You testified on Fisher's behalf on more than, I
19 think it was possible, ten occasions, but you weren't
20 sure?

21 A I don't know -- it's not a large number, but I
22 have testified before for Fisher.

23 Q And the cases all involved claims of asbestos
24 injury?

25 A Yeah. The issues would have been asbestos injury

ROA_01700

Appendix_01728

1 similar to the claim today.

2 Q Right. It wasn't that somebody got burned by a
3 valve or fell on their head; it was the same kind of
4 thing that Mr. Jolly is claiming, that, "I was exposed
5 to asbestos having to do with a Fisher product"?

6 A Yes. That would be a situation in which I might
7 be asked to testify.

8 Q Okay. And so we also mentioned your fees. Can we
9 agree that by 2015, in your sworn testimony, you agreed
10 that you wouldn't dispute that to that time period,
11 your billing for your work had been \$8.5 million to
12 lawyers representing companies who made or sold
13 asbestos products in terms of your expert work?

14 A I think that I would have testified that I -- I've
15 never made that calculation, but that I couldn't
16 dispute it.

17 Q Might be more?

18 A Well, I don't know the number because I have never
19 calculated it.

20 Q Okay. But you didn't dispute and you don't
21 dispute now that eight-and-a-half million by 2015 in
22 terms of your billings to lawyers for companies for
23 your expert work was eight-and-a-half-million dollars?

24 A That's correct. Again, it's not my calculation,
25 but I have no reason to dispute it.

ROA_01701

1 Q And unlike some of the others we've heard from,
2 the money is paid to you?

3 A That's correct.

4 Q It doesn't go to your hospital, right?

5 A That's correct.

6 Q It goes in your pocket?

7 A Yes.

8 Q And you told us on direct, I think, that nowadays
9 it's about 800,000 a year, right? That's what I wrote
10 down.

11 A Yes.

12 Q So we are more than halfway through 2017, so I'll
13 half the 800,000, and now I've got to do the math
14 again, which is where bad things start to happen.
15 9.7 million, approximately, in terms of your billings
16 that you have been paid by lawyers representing
17 companies that made and sold asbestos?

18 A Again, I've calculated on an annual basis. I have
19 never done totals, but I don't have any reason to
20 dispute that.

21 Q It might be ten million. We might be a couple
22 million short?

23 A I don't know the number exactly.

24 Q Okay. And in addition to your work for the
25 lawyers coming into court and giving these opinions,

ROA_01702

Appendix_01730

1 which are not submitted outside of court, you have also
2 trained lawyers representing companies who made and
3 sold asbestos about these asbestos topics over the last
4 20 years, correct?

5 A I don't know what you mean by training. I have
6 given a small number, two, three, four seminars, to
7 some in-house lawyers that wanted to understand the
8 issues their company was addressing. And that's
9 nothing in the last decade, but -- and I have given two
10 or three lectures to the -- what do you call it?

11 Q The company executives?

12 A No, no. To the -- I've never done that, that I
13 remember. I've lectured at one of their meetings. I'm
14 sure you'll ask me that question.

15 MR. BOUCH: DRI.

16 THE WITNESS: I've lectured three times to the
17 DRI.

18 BY MS. FARRISE:

19 Q And that's a group of lawyers representing
20 defendants in asbestos litigation?

21 A It's sponsored by defense lawyers, but when I gave
22 my lectures, there were plaintiff lawyers in the
23 audience as well...

24 Q But I'm asking about your lawyer classes. You
25 have given, in your career as an expert witness,

ROA_01703

Appendix_01731

1 classes, lectures, whatever you want to call them, to
2 lawyers who will then go into court and represent
3 asbestos companies, right?

4 A No. I wouldn't characterize that it way.
5 Probably two or three times, probably more than ten or
6 fifteen years ago I -- I met with some corporate
7 lawyers that were trying to address -- trying to
8 understand what their company -- what their company
9 should do, and they asked me to come and talk to them
10 for a couple of hours. It wasn't a class, and it
11 wasn't -- but it was a situation where a company was
12 trying to decide how they should handle asbestos
13 litigation that was coming in their direction.

14 Q And they called you in?

15 A They asked me to come and -- and answer their
16 questions and talk to them for an hour or two.

17 Q And you're not a lawyer?

18 A I'm not a lawyer.

19 Q I'm guessing they weren't talking to you about
20 legal strategy?

21 A They were talking to me about my opinions on
22 asbestos and its ability to cause disease.

23 Q And thereafter, after you gave them what your
24 opinions were about the propensity of asbestos to cause
25 disease, did those same lawyers or their group hire you

ROA_01704

1 as an expert witness to come into court on behalf of
2 the companies that they represented?

3 A It's been so long, and I don't remember which
4 companies it was, and I don't remember any specific
5 work for them. It could be. The company could have
6 hired me later, but I don't recall any connection
7 between the two.

8 Q Dr. Crapo, in this case, you have not been shown
9 any of the companies' documents, correct?

10 A That's correct.

11 Q In evidence --

12 Your Honor, may I display a document in evidence?

13 THE COURT: All right. Certainly.

14 MS. FARRISE: 1008.10670.

15 BY MS. FARRISE:

16 Q Anyway, Dr. Crapo, while we're figuring those
17 things out, you're probably the only one who has not
18 seen it, so why don't you take a look. I'm displaying
19 that document.

20 It is a letter dated July 11, 1980, from a
21 Mr. Paul Adams at Fisher Controls to University
22 Hygienic Laboratory, and it says, "Enclosed are two
23 gaskets for your use as a bulk sample."

24 First of all, a bulk sample in the context of a
25 product, you the know what that is, right?

ROA_01705

Appendix_01733

1 A Yes.

2 Q That's like where they take a gasket, let's say,
3 and a little piece from the specimen of the body and
4 take it into the lab and analyze what it's made out of?

5 A That's correct.

6 Q "And as I stated in our recent telephone
7 conversation, I mailed four asbestos samples to you for
8 analysis. Sample Number 3 was taken while flat black
9 gaskets were being packed and Number 4 while
10 spiral-wound, parenthesis, blue gaskets were being
11 packed. Both gasket types are being handled when
12 Sample Number 1 and 2 was taken."

13 So let me stop there. When there is a reference
14 to blue in the context of asbestos, that's crocidolite?
15 A Well, we know that crocidolite has a blue tint to
16 it, so it could mean that. But I don't know that for a
17 fact in this case.

18 Q Okay. Let's read on. "The asbestos types used on
19 the gaskets are probably chrysotile and crocidolite."

20 Does that suggest to you that the blue is a
21 crocidolite gasket?

22 A Well, he says that it's "are probably." I can
23 only read this, but you're correct, that person thinks
24 that he may have sent a crocidolite asbestos to them.

25 Q Right. So this person thinks that what they were

ROA_01706

Appendix_01734

1 sent from Fisher Controls to do a bulk sample on and
2 analyze what it's made out of was crocidolite?

3 A He's saying "are probably" is what he said,, yes.

4 Q And you talked a lot on direct examination in
5 terms of your views about chrysotile variety of
6 asbestos, correct?

7 A Yes.

8 Q We can agree, however, that as to the blue
9 crocidolite, it is your opinion that even at low
10 levels, crocidolite can contribute to the causation of
11 mesothelioma because it is the most potent form of
12 asbestos to be exposed to, right?

13 A That's correct. You still have to have a
14 sufficient dose, but it's a very low number.

15 Q A very low number?

16 A Yeah, but not as low as one gasket is. It's low,
17 but you have to define low and very low, I guess.

18 Q I just think we agree that if Mr. Jolly was
19 exposed to crocidolite gaskets from Fisher, the blue
20 ones, that it would be your opinion, Dr. Crapo, that it
21 would be a very low dose would put him at risk for
22 mesothelioma, right?

23 A You're taking me a little bit out of context here.
24 The crocidolite, I've told you that chrysotile takes
25 like a hundred or more fiber cc years to possibly

ROA_01707

1 create risk for mesothelioma. Crocidolite may do that
2 at one hundred or a thousand times less dose.

3 So it's a very potent fiber. But it doesn't do it
4 at extremely low levels. You still have to have some
5 dose. Working with one or two gaskets that were
6 crocidolite would not create enough dose to do
7 anything. It would be a million times less than I'm
8 talking about. It's just a really low level. So you
9 still take a certain amount.

10 And, finally, crocidolite gaskets were more
11 expensive and for use on acid lines like in a chemical
12 factory. If a Fisher Control valve was used in a
13 chemical factory, they may put a crocidolite gasket on
14 it. It's possible. But in a nuclear power plant, I'm
15 not aware of any appropriate use for a crocidolite
16 gasket.

17 Q I thought that wasn't your area.

18 A Well, I do read a lot about this, yes.

19 Q So as it relates to gaskets, it is your area, but
20 insulation is not your area?

21 A You asked me what I knew about it. I still would
22 defer to an industrial hygienist whose field this is,
23 actually, but I've read the reports, and I've read the
24 work on it, so I do have opinions on it. I'm just not
25 putting myself out as an expert for when gaskets are

1 used of certain types and certain not. I understand
2 their field, but I'm not the industrial hygienist.

3 Q How much asbestos in terms of a percentage is
4 contained in gaskets?

5 A Well, it would vary. Again, I'll defer to people
6 who do it. To me, the important issue is what the
7 exposure is, not what the content of the gasket was.
8 Because if it's sealed in a resin base, you have very
9 little release. That's very different from a fluffy
10 insulation that has a lot of release. It's not the
11 percent chrysotile or asbestos; it's the release that
12 creates risk for disease.

13 Q 80 to 85 percent of gaskets are asbestos, right?

14 A Well, again, I'm not the expert on the content,
15 but what I do know is the release factors. So I'm not
16 going to say that some gaskets couldn't have been made
17 with a lot or a little, but because when you make a
18 gasket, you put it in a resin base, it changes the
19 release of the fibers when it's worked with. And what
20 you need to study is the release.

21 An insulation typically has very loose asbestos in
22 it, and typically has much higher release than a gasket
23 would.

24 Q People have studied the release and they have
25 published their work for other folks to see. That's,

ROA_01709

Appendix_01737

1 in part, how you have this information?

2 A Yes. It's industrial hygiene reports.

3 Q Let me hand you what we've marked as Plaintiffs'
4 Exhibit 546, which is a paper that evaluated and
5 measured how much asbestos is released when certain
6 things are done to the gasket, like taking it out of
7 the package, using a wire brush, a scraper, those sorts
8 of routine activities, right?

9 A That's what industrial hygienists measure, yes.

10 Q This is a paper that was published in the
11 peer-reviewed literature. You have seen this?

12 A I have.

13 Q You're familiar with it, aren't you?

14 A I am.

15 MS. FARRISE: Your Honor, permission to display
16 it.

17 THE COURT: Any objection? No objection? It's
18 displayed.

19 MR. BOUCH: Well, wait. Excuse me, Your Honor.

20 THE COURT: This is a document that's in evidence
21 now, correct?

22 MR. BOUCH: No, ma'am.

23 THE COURT: 546 is not in evidence?

24 MS. FARRISE: No, Your Honor.

25 THE COURT: He's identified it as something he's

ROA_01710

Appendix_01738

1 familiar with, so she's offering it into evidence now.

2 Let's get that straight.

3 MS. FARRISE: Yes, Your Honor.

4 THE COURT: You object to it, Mr. Bouch?

5 MR. BOUCH: That's correct.

6 THE COURT: What's the grounds of the objection?

7 MR. BOUCH: Number one, I think the doctor has to
8 admit it's authoritative; and number two, it can only
9 be admitted under the learned treatise rule as a
10 demonstrative exhibit.

11 THE COURT: I think she's offering it as an
12 demonstrative exhibit.

13 And, Doctor, is this an authoritative article?

14 THE WITNESS: No.

15 THE COURT: It's not an authoritative article?

16 THE WITNESS: No. I would not consider this
17 article authoritative.

18 THE COURT: Sir?

19 THE WITNESS: I would not consider this article to
20 be authoritative.

21 MS. FARRISE: I'm offering it to impeach his views
22 about the release of gaskets. He's familiar with it,
23 and he's seen it.

24 THE COURT: All right. Then if she's offering it
25 to impeach, does that change your objection, Mr. Bouch?

ROA_01711

1 MR. BOUCH: She can impeach him all she wants, but
2 it can't be in evidence. That's the demonstrative
3 evidence rule, the learned treatise rule.

4 THE COURT: We are going to allow her to examine
5 him on this learned treatise, and it's not going to be
6 going to the jury as evidence. She's going to examine
7 him on this treatise, and she's going to put it up --

8 MR. BOUCH: That's what I object to. It can't be
9 shown to the jury unless it's in evidence in some way,
10 shape, or form. And the learned treatise rule requires
11 it to be acknowledged as a learned treatise, much as I
12 did with Dr. Frank on Dr. Roggli's book and
13 Dr. Selikoff's book. He acknowledged that he didn't
14 agree with a lot of it, but it was authoritative,
15 written by respected scientists. That's what the rule
16 requires.

17 THE COURT: Very good. All right.

18 Ms. Farrise, have you got any other examination of
19 Dr. Crapo on this article?

20 MS. FARRISE: Yes, Your Honor.

21 THE COURT: Well, first examine him on why he does
22 not acknowledge it as a learned treatise because we
23 have got to jump that hurdle before you can examine him
24 on the content of it.

25 BY MS. FARRISE:

ROA_01712

Appendix_01740

1 Q Well, Dr. Crapo, this is an article that's peer
2 reviewed in the scientific literature, available for
3 anyone outside of court to see -- let's start there --
4 correct?

5 A That's correct.

6 Q You have, it was your testimony, reviewed
7 literature extensively about the types of situations in
8 which people are exposed to asbestos, correct?

9 A I have, yes.

10 Q You have worked for John Crane, the maker of
11 gaskets that were used in a variety of circumstances
12 including in valves, correct?

13 A Yes.

14 Q I think we've talked about the fact that over the
15 course of your ten years as an expert witness, John
16 Crane and its lawyers have paid you a
17 million-and-a-half dollars, or at least you don't
18 dispute that, correct?

19 A Yes.

20 Q And, certainly, therefore, you have combed and
21 reviewed the literature, the published literature
22 that's available, as to what scientists and folks who
23 have analyzed how much asbestos is being released from
24 a gasket under just ordinary handling would create,
25 correct?

ROA_01713

1 A That's correct.

2 Q And I understand it sounds like you don't agree
3 with perhaps what other researchers who have published
4 their work have indicated, but you certainly have read
5 this article, right?

6 A I have read it.

7 Q You have reviewed it, correct?

8 A Yes.

9 Q You have been questioned about it in courts of law
10 on numerous occasions, correct?

11 A Yes.

12 Q And it's, I guess, your opinion that this article,
13 which does not support your view, is not a learned
14 treatise, correct?

15 A I don't consider this article authoritative.
16 Would you like to know why?

17 Q Well, I'm asking right now, the article that
18 doesn't support your view, you just don't consider it a
19 learned treatise?

20 A That's not the reason why I don't consider it --

21 Q I'm just asking you if you did or you don't.

22 A I don't consider this to be an authoritative
23 article.

24 Q And it's published in a scientific journal called
25 *Applied Occupational and Environmental Hygiene*?

ROA_01714

Appendix_01742

1 A Yes.

2 Q And it specifically goes through scientific
3 techniques and the like of people simulating the use of
4 gaskets and actually with scientific tools measuring
5 the airborne release level from those gaskets, correct?

6 A That's what it alleges in the methods, yes.

7 Q That is what it alleges. And that what it finds
8 is at odds with what you have testified to, which is
9 that these gaskets are bound in a rubber or whatever
10 the testimony was, correct?

11 A No, that's not the basis. I can explain the
12 basis, but that's not it.

13 THE COURT: Here's what we're going to do.

14 Jury, I'm going to ask you to go to your jury room
15 for a minute.

16 (WHEREUPON, the jury exited open court at
17 11:53 a.m.)

18 THE COURT: All right. Dr. Crapo, have a seat. I
19 want to understand from you why you don't acknowledge
20 that this is a learned treatise. This doesn't have
21 anything to do with whether you agree with the
22 conclusions expressed therein; it has to do with
23 whether this is a peer-reviewed scientific treatise
24 that can be regarded as a learned treatise for the
25 purpose of discussing opinions, scientific opinions,

ROA_01715

Appendix_01743

1 here, and I want to understand why you don't --

2 THE WITNESS: Okay. I don't really understand
3 fully what you mean by "learned treatise." I'm
4 answering the question about whether I consider it
5 authoritative.

6 One of the common principles in science is work
7 has to be reproducible, and it has to be validated and
8 consistent across other people's ability to reproduce
9 the results. And Dr. Longo's results are a major
10 outlier in this field. There are literally hundreds of
11 studies done in this field, and they establish very
12 clearly a range that is appropriate for this kind of
13 work.

14 Now, it's well known when you do a study on a
15 gasket, you can abuse it. I mean, you can do a
16 standard work on it like a workman does, or you can
17 actually just grind it all the way up and turn it into
18 dust. So it's possible to implement the procedure in
19 ways that produces extraordinary amounts that wouldn't
20 occur under normal conditions, which is the reason why
21 you look at a study to see if it's in the range of what
22 other people are able to reproduce.

23 In my opinion -- it's my opinion been being
24 asked -- it's an outlier way outside the range, so I
25 don't consider it authoritative. Now, if there is a

ROA_01716

Appendix_01744

1 definition of learned treatise that means it was
2 published in the right place, I don't have any argument
3 with that. I don't think the data is authoritative,
4 and it's not because it disagrees with me. I would --
5 I'm interested in data from every side to understand
6 the field. It's because it was not consistent with the
7 rest of the field.

8 THE COURT: All right. Are you aware of the
9 testimony that's been given by Mr. Jolly and Mr. Taylor
10 in this case regarding how these flange gaskets were
11 removed when the pipes were broken apart and they were
12 removing flange gaskets and putting in new ones?

13 THE WITNESS: Yes, I'm aware of that.

14 THE COURT: And are you aware of the testimony
15 that these gaskets were grinded with mechanical
16 grinding equipment and then brushes, metal brushes,
17 were used to brush them off so they were ground and
18 crushed during the process of the removal of these
19 gaskets at Duke when he worked there?

20 THE WITNESS: Yeah. The part of it is they scrape
21 it off and they grind and do that to the residual to
22 get it clear. I'm aware of that technique. I'm just
23 saying when other people have done that technique, they
24 get levels that are tens of hundreds times lower than
25 what Longo gets, so I don't consider Longo

ROA_01717

1 authoritative. Nothing more than that.

2 THE COURT: Ms. Farrise, anything further from
3 you?

4 MS. FARRISE: Yes, Your Honor. I believe that an
5 expert witness, although an expert under any state's
6 rules including South Carolina, can be cross-examined
7 for impeachment purposes. And here it would make no
8 sense that an expert witness, who has come on direct
9 examination and said something that the other side in
10 this case believes is inaccurate, that the other side
11 on cross-examination not be able to challenge the
12 expert simply because that expert has closed the door
13 by saying, "I don't consider it a learned treatise."

14 So when I look at the learned treatise rule, it's
15 one that is consistent really in this jurisdiction and
16 many others, which goes to basically reliability and
17 fairness. It's not fair that someone be cross-examined
18 with something they have not seen before, they have not
19 read. If they have read it and rejected it, which is
20 what he is saying, then he can say that and on redirect
21 say all the reasons why.

22 But there's no unfairness in cross-examining
23 someone with something that they have read and
24 considered in formulating their opinions, and the
25 things that they have rejected are more important in

ROA_01718

Appendix_01746

1 terms of cross-examination than the things that they
2 agree with. Otherwise, I would just be standing up
3 here cross-examining him with things that he agrees
4 with, which is not a challenge and does not fulfill the
5 purpose of cross-examination.

6 THE COURT: All right. Mr. Bouch.

7 MR. BOUCH: Your Honor, I will rely on my earlier
8 objection supplemented by Your Honor's opinion in
9 *Watson vs. Ford*. In addition, the opinion of the
10 Honorable George Hodges, bankruptcy judge for the
11 Western District of North Carolina, *In Re Garlock*, I'll
12 be glad to pass up a copy of that opinion. He
13 discusses Dr. Longo extensively beginning on Page 17
14 through 21, I believe, and he finds that Dr. Longo's
15 studies are neither probative nor reliable.

16 MS. FARRISE: Your Honor, I see you're reading.
17 It occurs to me that we, in part, treaded this ground
18 in motions in limine because one of the companies
19 wanted to exclude Dr. Longo's unpublished work, and the
20 ultimate ruling of the court was the unpublished work,
21 if the witnesses had seen it, could be discussed. This
22 was actually scientifically published work out in the
23 general domain.

24 MR. BOUCH: I think Your Honor ruled that you
25 weren't going to keep it out in limine; you were going

ROA_01719

Appendix_01747

1 to wait until a foundation was laid.

2 THE COURT: Tell you what I'm wrestling with here.
3 I rather precipitously declared Dr. Crapo as an expert
4 on asbestos. Certainly, there are some limitations on
5 his knowledge about asbestos, as has now been brought
6 out in examination. He hasn't done any research in the
7 area; he's not done anything with it except testify in
8 court for 25 years; he's not treated patients, et
9 cetera, et cetera. That's what got me a little bit
10 concerned about him opining on the authoritative nature
11 of a 2002 article in a mainstream industrial hygiene
12 publication. So that's what I'm wrestling with.

13 MR. BOUCH: Your Honor, I don't think there's been
14 a foundation that this is a mainstream publication. I
15 think Your Honor's characterization that all Dr. Crapo
16 has been doing for 25 years is testifying is --

17 THE COURT: No. I'm saying with respect --
18 Mr. Bouch, there's no sense in being impolite to me.

19 MR. BOUCH: I didn't mean it to be impolite.

20 THE COURT: I'm picking that up. I'm not
21 suggesting that he hadn't done anything for 25 years
22 except testify in court. I am simply saying that with
23 respect to asbestos, he has conducted no research,
24 written no articles, treated no patients for 25 years
25 in this area; and, therefore, what he has done is

ROA_01720

Appendix_01748

1 related to testifying in court in terms of asbestos.

2 That's all I'm saying.

3 That gives me a little bit of pause in terms of
4 his ability to be authoritative about more recent
5 research in the area of asbestos, and particularly by
6 industrial hygienists, because he has qualified his
7 answers consistently here by saying that there are
8 certain things he can't testify to because he's not an
9 industrial hygienist, and he is not familiar with that.
10 He's said that a good many times so far.

11 I am concerned, now that the testimony has been
12 elucidated, about him making such a blanket statement
13 about what is in Duke Power. She's asked him many
14 times to talk specifically about what he knows about
15 what is in the Duke power plant with respect to
16 insulation, and every single time he dodges the ball
17 and goes off on, you know, kind of what should be in
18 there and so forth. He hasn't demonstrated any direct
19 knowledge about how gaskets are used in the Duke, what
20 kind they are, how they were ground off or anything
21 like that. And she's now trying to test his expertise
22 with something that at least appears to me to be a
23 pretty mainstream article that's been jumped on by --
24 and I see this case that you've given me -- it had been
25 jumped on as not reliable by one judge.

ROA_01721

Appendix_01749

1 MR. BOUCH: Your Honor, again, I have cited the
2 *Watson* case which stands for the same proposition --

3 THE COURT: *Watson* is a very different thing. It
4 doesn't talk about this thing at all. I couldn't be
5 more familiar. It was the guy that was going to opine
6 on cruise control when he never even looked at the
7 cruise control mechanism, so I'm very familiar with
8 that.

9 MR. BOUCH: Your Honor, if I may be heard on it,
10 the rule provides it can be impeached if established as
11 reliable authority by the testimony or admission of the
12 witness or by other expert testimony or by judicial
13 notice.

14 There's no indication what kind of publication
15 this is, number one. There's no indication any other
16 expert relied upon it, and to the extent -- and Your
17 Honor is correct. He's not an industrial hygienist.
18 Ms. Sahmel, our next witness, is an industrial
19 hygienist, and she'll be happy to address these issues.
20 But to take a medical doctor through something by --
21 and Dr. Longo is a material scientist. He's not even
22 an industrial hygienist himself.

23 So our point is they can't lay a foundation for
24 this document with this witness to show the jury. She
25 can ask him questions about it. He can explain it, but

ROA_01722

Appendix_01750

1 I think it's incredibly prejudicial to put something
2 like this on the screen that can't be admitted as
3 evidence through this witness.

4 THE COURT: All right. He's made some -- he has
5 offered some strong opinions that say it's not possible
6 for Mr. Jolly to have contracted the mesothelioma that
7 he undoubtedly has -- that's not disputed -- from these
8 gaskets. He said that point-blank. And she is
9 attempting to test his opinion, not only by discussing
10 the foundation for it, which is in terms of his direct
11 experience is not strong. His experience is only by
12 reading a bunch of articles to make that opinion.
13 That's what he says. And his general understanding of
14 the pulmonary system and so forth. It is not based on
15 his direct experience with Duke's plant or with
16 asbestos or with Mr. Jolly.

17 MR. BOUCH: No question.

18 THE COURT: But he has made a very blanket
19 statement about the fact that, in his mind, Mr. Jolly
20 cannot have contracted mesothelioma from these gaskets,
21 so that's what she's attempting to test.

22 MR. BOUCH: Your Honor, I agree, and she can do
23 that. My objection goes to this document being
24 admitted into evidence for any purpose, including
25 demonstrative. That's my focus.

ROA_01723

Appendix_01751

1 She can ask him all these questions, and she can
2 probe into it, and she can kick him around from now
3 till suppertime, but my objection goes to this
4 document. It fails to have the foundation required
5 under the rule. I've given you authority on it.

6 THE COURT: That's fine. You have done everything
7 you need to do. But your opinion is that -- your
8 objection is to putting it up on the screen.

9 MR. BOUCH: Right.

10 THE COURT: Now, is your objection also going to
11 asking him anything about this article.

12 MR. BOUCH: No. She can ask him all she wants.

13 THE COURT: That I understand.

14 Ms. Farrise, I'm not going to delay this process
15 any longer. You can ask him about it, but you can't
16 display it.

17 MS. FARRISE: May I have just two things, Your
18 Honor? First of all, his testimony went further than
19 the court described. He said that the makeup of these
20 gaskets were such that they were in a rubber or how
21 they were made, and there would not be release of
22 fiber. And, therefore, he said one gasket wouldn't do
23 it or two gaskets wouldn't do it, suggesting to the
24 jury there's no fiber release. That's how we got into
25 it. That's the first thing.

ROA_01724

Appendix_01752

1 The second thing is Ms. Sahmel, who is coming
2 next, in terms of this being authoritative and
3 reliable, cites this particular paper. She prepared a
4 written report. She has an extensive reference list,
5 and this particular paper is on that reference list.

6 So for counsel to stand here and say that it's not
7 a learned treatise and if there's any dispute about
8 that among, in this case, industrial hygienists --

9 THE COURT: No, no. I don't think he's saying
10 that, although he doesn't like it and he's given me an
11 opinion that one judge didn't like it.

12 MR. BOUCH: If you want to read about Dr. Brody,
13 he's in there, too.

14 THE COURT: I flipped through it. He doesn't like
15 anybody. He's not even saying it's not authoritative.
16 He's saying one thing and one thing only, that
17 Dr. Crapo refuses to acknowledge that it's
18 authoritative. That's fine. We're going to move on.

19 You can -- when the other witness gets on, you can
20 certainly ask the other witness about its
21 authoritativeness and contrast that with what he says.
22 And you can certainly ask him about fiber release as
23 has been discussed in this thing. All you can't do is
24 put it up on the screen.

25 Do you understand the boundaries of what we're

ROA_01725

Appendix_01753

1 doing here?

2 MS. FARRISE: I believe so, Your Honor.

3 THE COURT: Very good.

4 Bring the jury in, please, sir.

5 (WHEREUPON, the jury entered open court at
6 12:12 p.m.)

7 THE COURT: Have a seat. We have had some
8 discussions about how to use a document. I'm not
9 admitting that document into evidence or putting it on
10 the screen. She may question him about this particular
11 article. So that is what will happen now.

12 Thank you very much.

13 All right. Ms. Farrise.

14 BY MS. FARRISE:

15 Q Dr. Crapo, do you have the paper that's marked as
16 Exhibit 546 entitled *Fiber Release During the Removal*
17 *of Asbestos-Containing Gaskets, a Work Practice*
18 *Simulation?*

19 A Yes.

20 Q And this was performed, the study, in a
21 laboratory?

22 A Yes.

23 Q There were participating in this study a material
24 scientist, a certified industrial hygienist -- actually
25 two certified industrial hygienists, Mr. Hatfield and

ROA_01726

Appendix_01754

1 Mr. Newton?

2 A Yes, that's what I understand.

3 Q And industrial hygienists, in part, may be
4 retained to study products, to study a workplace and
5 determine whether or not there's any risk or hazards
6 that might -- workers might suffer, correct?

7 A That's correct.

8 Q And their job, if they're doing it, is to identify
9 hazards that workers might be unaware of because they
10 don't have the background and training and for them to
11 then put methods in place to protect them, protect the
12 workers from whatever those hazards are; that's what
13 you understand that field of industrial hygiene to be?

14 A That's certainly a portion of that field, yes.

15 Q And these authors also engaged, after they
16 performed certain activities with the gaskets, they did
17 microscopic evaluation of the air and also of the
18 products that they were using, correct?

19 A Yes.

20 Q And you mentioned earlier in your qualifications
21 that, even though you're not a board certified
22 pathologist, you do do some part of your work, some
23 aspect involves pathology; is that correct?

24 A That's correct.

25 Q So I'm sure you know what I mean when I say PCM

ROA_01727

Appendix_01755

1 and TEM, right?

2 A I do, yes.

3 Q And then there is a whole other thing. So PCM,
4 the jury has heard a little bit about this, is
5 shorthand for a microscopic technique based on contrast
6 microscopy?

7 A Yes.

8 Q That's utilizing a light microscope?

9 A Yes.

10 Q TEM is transmission electron microscopy, which
11 uses an electron beam and an electron microscope,
12 correct?

13 A Yes.

14 Q And as to the evaluation that these folks
15 undertook, they found that hand wire brushing a small
16 valve -- I'm sorry, a small flange -- let me back up.
17 Strike that.

18 Part of what they evaluated is or what they
19 simulated was removing a gasket from a valve assembly
20 and a flanged end, correct?

21 A Yes.

22 Q And they looked at both what the fiber release
23 would be from a very small valve that had a small
24 flange, correct?

25 A I believe so yes.

ROA_01728

Appendix_01756

1 Q And a big valve that had a big flange, correct?

2 A I think that's correct, yes.

3 Q And they took -- they put on protective suits, and
4 they put a filter, collector, near the breathing zone
5 of the persons who were conducting this experiment,
6 correct?

7 A That's what I understand, yes.

8 Q And they took the air into the filter, and then
9 they took the filter into the lab and utilized these
10 microscopic techniques; they report what they found in
11 terms of the asbestos that was actually in the air from
12 the work that they had simulated, correct?

13 A Yeah. That's what I understand.

14 Q That's what they report in this paper, right?

15 A That's -- that's the method they describe, yes.

16 Q And they also looked at not just the worker,
17 meaning the person who was doing the actual work on the
18 smaller and the large flange to remove the gasket, they
19 had a filter to collect how much asbestos was in the
20 air from the person who was not doing the work but
21 standing at the ready and assisting the person who was
22 doing the work?

23 A That's correct, I think, yes.

24 Q And they report values for both, correct?

25 A Yes.

ROA_01729

Appendix_01757

1 Q And so the difference between the PCM, the light
2 microscope, and the electron microscope on the same
3 sample is that the electron microscope, by virtue of
4 its higher ability of magnification, is going to be
5 able to, number one, specifically identify if what
6 you're looking at is asbestos versus something else,
7 right?

8 A Yes. It will do that.

9 Q It's going to be able to very precisely tell you
10 that it's asbestos and how much, and there are some
11 limitations with the light microscope?

12 A That's correct.

13 Q So, for instance, if we pulled in some air that
14 had cotton fibers and asbestos fibers, a PCM would only
15 be able to count fibers and maybe not make the
16 distinction between what kind of fibers?

17 A That's correct.

18 Q Okay. And so these folks, that's the reason that
19 they went through and did the higher power electron
20 evaluation on the same sample. And they found that
21 when a worker was scraping and hand wire brushing a
22 gasket off of a small flange, that by TEM -- and they
23 took numerous samples -- they reported finding a range
24 of 29.9 to 144.2 fibers per cc of asbestos liberated
25 from that activity?

ROA_01730

Appendix_01758

1 A That's what they report in this paper.

2 Q And you were talking about it is the fiber per cc,
3 the sugar cube thing, right?

4 A Yes.

5 Q Correct. So like today, the level is .1 fiber per
6 cc, so you would need ten sugar cubes to have one
7 fiber?

8 A Yeah.

9 Q They reported that hand scraping and hand wire
10 brushing of a small flange as measured by TEM had 144
11 asbestos fibers in one sugar cube of air, right.

12 A Yeah. That's what this reports for the time that
13 they did the analysis.

14 Q For the worker. And for the assistant, the person
15 who is just standing there, the assistant to the
16 worker, I'll call it the AW, that person's asbestos
17 exposure from the hand scraping and hand wire brushing
18 of the small flange was 2.2 fibers per cc to 29.5
19 fibers per cc, correct?

20 A Yes. That's what's reported here.

21 Q And then when they went over and looked at a big
22 flange on a big valve assembly with a bigger gasket,
23 they made measurements of that both by PCM and TCM as
24 well, correct?

25 A Yes.

ROA_01731

1 Q Table 5. One of the things they reported,
2 however, was that some of the filters got so overloaded
3 with asbestos that they couldn't even make an
4 estimation, right?

5 A I don't recall those exact words, but -- so I
6 can't comment on it.

7 Q Okay. Well, moving on, the large flange, the
8 worker who they measured on the larger flange, they
9 report that that person's exposure to asbestos from
10 hand scraping and hand wire brushing was 199.6 to 842.7
11 asbestos fibers per cc of air, correct?

12 A That's what they report there, yes.

13 Q And that's for the worker. And, again, they
14 looked at the person not doing the work, just standing
15 in the area when someone is hand removing a gasket from
16 the large flange, the assistant, and they measured that
17 person's asbestos, airborne asbestos exposure, to be a
18 range of 13.6 fibers per cc to 101 asbestos fibers in a
19 sugar cube of air?

20 A That's what they report. And these are peak
21 levels, yes.

22 Q Right. When the work is occurring, right?

23 A Yes. It's a peak, not a time-weighted average.

24 Q Actually, they say they sample for 113 minutes,
25 right?

ROA_01732

Appendix_01760

1 A Well, they say they sampled that, but if you read
2 the methods, they say they took samples, they changed
3 every 15 to 30 minutes, and you're not sure how they
4 combined those. So we don't know the length of
5 sampling time on this. We know it's a peak level and
6 not a time-weighted average.

7 Q If you did a time-weighted average calculation on
8 108 fibers per cc, it would still blow out any legal
9 limit, wouldn't it?

10 A Yes, it would.

11 Q 842 fibers per cc on a time-weighted average would
12 blow out any legal limit at any time?

13 A I believe so.

14 Q Yes. So the calculation would you be take 842.7
15 fibers per cc divided by 480 minutes of time -- that's
16 eight hours, right?

17 A You have to multiply by the time in which that was
18 collected, but yes, then divide by the number of
19 minutes in eight hours, yes.

20 Q And so what would it be on a time-weighted average
21 basis?

22 A I don't know the number of minutes for the sample,
23 but it would still be a substantial number, I agree.

24 Q And you mentioned that, to some extent, you found
25 that these numbers as reported in this particular study

ROA_01733

1 were higher than some of the other papers that have
2 tried to -- or published and have tried to report on
3 it, right?

4 A Yeah. You're asking my opinion about that?

5 Q No. I'm saying that one of the things that I
6 understand is a concern to you is that these numbers
7 are high; some other folks have also done some
8 evaluations of gasket work, and their numbers were
9 lower?

10 A That's correct. This study is an outlier, in my
11 opinion, and not reproducible.

12 Q The other studies, however, in one instance, they
13 use wetting techniques, and they were wetting the
14 gasket the whole time. That was the Spence study,
15 correct?

16 A Yes. Some people used wetting.

17 Q And with wetting, they got lower numbers, right?

18 A That's correct.

19 Q The other papers, for instance, one by an author
20 Chang with the Chevron Company, didn't verify ahead of
21 time that the gaskets that were being removed were
22 actually asbestos-containing gaskets, right?

23 A You're going to need to provide these reports to
24 me if you want me to talk about specific studies.

25 Q We have an industrial hygienist coming --

ROA_01734

Appendix_01762

1 A I think you should have the industrial hygienists
2 address these issues.

3 Q In terms of what you do understand from your
4 25 years of work as an expert witness and including on
5 behalf of valve companies and companies that made and
6 sold asbestos-containing gaskets, and I think there's
7 some information about it here, the EPA, the
8 Environmental Protection Agency, who you indicated that
9 you had some association with?

10 A Yes.

11 Q Okay. And by the way, let's clarify that. The
12 EPA did not hire you to sit in a meeting with Berman
13 and Crump. You were hired by those authors who put
14 together a group, correct?

15 A That's not correct. The EPA contracted with
16 Eastern Research Group to put together the review
17 session, and I was asked to serve by Eastern Research
18 Group, which is a contract agency that arranges
19 conferences and manages it, sets it up, does the
20 minutes. But they did it on behalf of the EPA.

21 Q So between you and the EPA was this Eastern
22 Research Group?

23 A Well, between me. It's like a secretarial service
24 that sets the meeting up. They arrange the meeting
25 space, they take the minutes, they have the -- you

ROA_01735

Appendix_01763

1 know, they arrange the meeting, but they don't actually
2 conduct any of the science, and they're not responsible
3 for the science as discussed.

4 Q The EPA in 1989 announced a ban on the
5 manufacture, importation, processing and distribution
6 of asbestos-containing gaskets, and they were sued in
7 court, correct?

8 A That's my understanding, yes.

9 Q So it's not as though the EPA has not taken action
10 to try and ban these products; the courts have said
11 they could not?

12 A That's what I understand, yes.

13 Q And there was a loophole that if you were
14 importing asbestos gaskets during the time period that
15 the lawsuit was occurring, 1989 to 1991, that because
16 of the loophole, you could keep importing and selling
17 and making asbestos gaskets?

18 MR. BOUCH: Your Honor, I object to that
19 characterization. I object to the impeachment of the
20 doctor by a decision of the United States Court of
21 Appeals.

22 THE COURT: Sustained.

23 BY MS. FARRISE:

24 Q Doctor, in terms of the various government
25 agencies that put out regulations aimed at protecting

ROA_01736

Appendix_01764

1 worker and citizen health, they don't agree with the
2 opinions that you have expressed in this courtroom
3 about the safety or not of asbestos, correct?

4 A I think you're asking me in my presentation, I
5 talked about the regulatory pathway that was set up.
6 That's the one that was used by all the government
7 agencies.

8 Q No. The opinions that you have expressed here
9 that it takes a high dose of chrysotile asbestos to
10 cause mesothelioma, OSHA doesn't agree with that,
11 correct?

12 A First of all, I said it takes a high dose of
13 chrysotile. And OSHA hasn't separated the two fiber
14 types in making their opinions, so OSHA hasn't
15 addressed the question the way I have formed it. They
16 have simply combined all asbestos together as a single
17 thing and done a single regulation on it. And that's
18 what I illustrated with the regulatory curve. That's
19 exactly how it was done by OSHA.

20 Q So in terms of OSHA, trying to take them all
21 together, the Environmental Protection Agency, the
22 World Health Organization, the International Agency for
23 Research on Cancer, state governments, and any other
24 government agency that is charged with protecting
25 worker and citizen health; the position of those

ROA_01737

Appendix_01765

1 agencies is there is no safe level, no recognized safe
2 level below which people are not at risk for
3 mesothelioma?

4 A I would agree. That's the position of all
5 regulatory agencies, virtually all, and it follows the
6 regulatory curve that I explained. They don't separate
7 the fiber types, and they use a straight line
8 regulatory curve to extrapolate risks to low levels and
9 don't look at data on low levels, so I agree with that.

10 I'm explaining why it's not my scientific opinion
11 about risk for chrysotile, but it is the regulatory
12 position.

13 Q Which is in disagreement with your courtroom
14 opinion?

15 A Well, I don't think they have addressed the same
16 questions, so I don't think that's a correct way to
17 state it. I understand the regulatory position. I
18 have explained it. And I have explained why my opinion
19 about chrysotile wouldn't follow the exact regulatory
20 pattern.

21 In fact, there is no reported data of a
22 mesothelioma occurring at really, really low levels for
23 even amphiboles, but the regulatory curve would predict
24 a risk at low levels. They would predict that ambient
25 levels carry risk.

ROA_01738

Appendix_01766

1 In fact, if you ask any of these agencies if
2 ambient causes it, they say no. But their model would
3 predict that. And I'm just pointing out that flaw in
4 that model, and that's very important for this case.

5 Q One of the reasons we know what the regulatory
6 position is because we can go to the Internet or call
7 them up and it's printed, correct?

8 A Yes.

9 Q We can look at the studies that they have looked
10 at. They have big documents, for lack of a better
11 word. Where is my OSHA binder? We'll get it out
12 later.

13 Anyway, OSHA, for instance, doesn't just put out
14 regulations and say, "Here. Take our word for it."
15 Typically, as part of the rule-making or regulatory
16 process, they, number one, evaluate the same studies
17 that you have evaluated, correct?

18 A I think they evaluate only a very small number,
19 actually. If you look through their regulations -- in
20 fact, when they formed their first regulation, they
21 only considered six, and I put them on the slide and
22 showed you.

23 Q This is a 1994 regulation and the supporting
24 information having to do with asbestos. Do you want to
25 take a look at it?

ROA_01739

Appendix_01767

1 A I've seen it before.

2 Q They report on evaluating the data of risk from
3 animal studies?

4 A That's correct.

5 Q Epidemiological studies?

6 A Yes.

7 Q They have a companion called NIOSH, National
8 Institute for Occupational Safety and Health?

9 A Yes.

10 Q That part of the government employs scientists,
11 medical doctors, epidemiologists, toxicologists, et
12 cetera, correct?

13 A Yes.

14 Q And those folks do risk assessments on whether or
15 not there's going to be a disease incidence from
16 exposures to toxins, in this case asbestos, right?

17 A Yes.

18 Q And in the final analysis, at least let's just
19 take OSHA, even at .1 fiber per cc on a time-weighted
20 average basis, their risk estimates are that about
21 three workers in every 1,000 workers exposed only at
22 that level will develop cancer from that exposure,
23 right?

24 A I don't remember that exact comment, but seeing
25 somewhere in there, that takes from the regulatory

ROA_01740

Appendix_01768

1 curve. Experience shows that that's not correct. But
2 if you take that red line curve and take it to zero, it
3 will predict a disease at the very, very lowest level.
4 There's no question about that.

5 And I think the amazing thing on that document is
6 that they do all this work, but in no place in that
7 document do they separately analyze chrysotile and
8 amphibole and talk about the difference in the risk.
9 That's not in the document. From a regulatory point of
10 view, it's fine to combine them together and provide a
11 document that protects the human health, but it doesn't
12 address the science correctly.

13 Q Dr. Crapo, would you mind showing to this jury
14 your report and your assessment and evaluation that you
15 have prepared in writing on this topic?

16 A I haven't done one, but I would refer you to
17 Berman and Crump who did do it.

18 Q And Berman and Crump, by the way, was rejected by
19 the EPA --

20 A It was not --

21 Q -- excuse me. It's not the EPA policy, correct?

22 A Yeah. EPA never adopted their policy, but they
23 never rejected Berman and Crump.

24 Q Okay. So rejected or not adopted, whatever the
25 language is, the meeting that you participated in and

ROA_01741

Appendix_01769

1 the work that came out of it was not adopted by the EPA
2 as something it would put its name on, right?

3 A Well, it was never adopted as policy, you're
4 correct.

5 Q And your paper that is at odds with all of the
6 scientists at OSHA and at NIOSH and at EPA and the rest
7 of the world, have you sent it in to OSHA saying,
8 "Look, we're spending all this money protecting people,
9 giving them respirators, putting in ventilation, doing
10 wet-down, doing a lot of things that actually interfere
11 with people getting work done on a daily basis, and you
12 know what, you don't have to because here is my expert
13 analysis that shows you that you are wrong"? Have you
14 done that, Dr. Crapo?

15 A You're completely misstating my testimony.

16 Q Have you written to them a single letter --

17 A I told you that --

18 Q -- excuse me -- that says you got it wrong; your
19 linear model is wrong, and here is what my opinion is?

20 A I have already told you many times that I've not
21 done original research in this area, and, therefore,
22 would not publish in this area.

23 But you're not correct when you say that -- when I
24 tell you that -- to put words in my mouth that say that
25 the regulatory model is wrong. It's right for the

ROA_01742

Appendix_01770

1 purpose it serves. If I were on that regulatory
2 committee, I would have also voted for the same set of
3 standards, and I would have used the regulatory curve
4 to do estimates, and I would say that would be
5 protective of human health. That doesn't mean that I
6 would believe that three out of every thousand people
7 exposed to really low levels of asbestos are going to
8 get a disease like mesothelioma. There's no data. In
9 fact, there is lots of data to say that's not true.

10 But the regulatory model serves an important
11 purpose. And when I served on KASAK (phonetic), we had
12 to do regulatory elements for all the major air
13 pollutants, air pollution criteria -- ozone, CO₂, things
14 like that. And we used the regulatory model for that,
15 and we all discussed the fact that we knew it was
16 linear, and we knew it overestimated risk at low
17 levels, but we thought it was important to use such a
18 model to adequately protect human health and avoid --
19 err on the side of protecting health as opposed to
20 missing something.

21 So I'm trying to say that I'm not there in a
22 position of saying the governments are wrong. They're
23 right to set standards, and they set the standard of a
24 PEL of 1, which I agree with. So I just would like to
25 have my testimony be straight on what I think the

ROA_01743

Appendix_01771

1 correct answer is.

2 Q Sir, can we agree that in 1972, the very first
3 OSHA standard, it was not enacted or designed to
4 prevent cancer?

5 A I think when they first started out, they hadn't
6 really done adequate evaluation of that. The later
7 ones were designed to protect against cancer.

8 Q They write in 1972 that, "This standard hopefully
9 will reduce the cases of asbestosis, but it will not
10 protect against mesothelioma"?

11 A Well, they didn't really have the data at the time
12 to do that.

13 Q I'm asking you what they printed --

14 A Yes --

15 Q -- excuse me -- in the Federal Register for all of
16 the companies to see?

17 A Yeah. I agree that's what's in the Federal
18 Register, yes.

19 Q So in 1972, Crosby and Fisher Valve, if they did
20 nothing but read the words on the page, the federal
21 government said this standard for asbestos will not
22 protect against mesothelioma, right?

23 A That's what they would have read, yes.

24 Q Sir, I want to just see -- I think we agree about
25 a couple of things having to do with Mr. Jolly. You

ROA_01744

Appendix_01772

1 certainly agree that he has mesothelioma?

2 A I agree.

3 Q You certainly agree that it's caused by asbestos?

4 A I agree it was caused by asbestos, and I believe
5 it was the amphibole form.

6 Q As a typical clinical course, mesothelioma is
7 characterized by significant pain?

8 A It's common, yes. The two have bad pain.

9 Q And the closer one gets as the disease progresses,
10 the pain is such that narcotic, heavy doses of narcotic
11 medication, is necessary to try to control that pain?

12 A Yes. That's a very common experience.

13 Q A very common experience with mesothelioma is
14 significant breathlessness, correct?

15 A That's also correct.

16 Q You wrote in your report that you reviewed
17 Mr. Jolly's PFTs, which are pulmonary function tests,
18 right?

19 A Yes.

20 Q And that was the ones that were taken in January
21 of 2016, correct?

22 A Right. I think so. Let me check. Yes.

23 Q And that's kind of a test which, in simplified
24 form, says how are your lungs working. Try and blow as
25 hard as you can, and let's see how much air is going in

ROA_01745

Appendix_01773

1 and out, generally speaking?

2 A Yes.

3 Q And in Mr. Jolly's case, you noted in your report
4 that by January of 2016, his pulmonary function tests
5 indicated significant inability to breathe and
6 shortness of breath, correct?

7 A Well, what I said literally was they show mild
8 restriction in a low lung diffusing capacity.

9 Q Mesothelioma, as the disease progresses, the tumor
10 characteristically grows into what should be airspace?

11 A That's common that it does extend into the lung,
12 yes.

13 Q And death by suffocation is characteristic for
14 some people if something else doesn't kill them first,
15 correct?

16 A It's actually not the usual cause. There are many
17 causes of death, but usually it's one side, and they
18 have adequate ventilation on the other side. But in no
19 way do I want you to think it's a comfortable death.
20 It's a very bad tumor.

21 Q And in the case of Mr. Jolly, the tumor has
22 already spread to the pericardium, to the heart?

23 A Yeah. He has evidence of involvement of
24 pericardial diffusion and pelvic-abdominal involvement.

25 Q That one reasonable guess is he may go into

ROA_01746

Appendix_01774

1 cardiac failure because of the mesothelioma invading
2 his heart?

3 A I can't say -- I can't predict that far, but I
4 mean, it's possible. Mesothelioma can involve the
5 pericardium and cause cardiac restriction. It can also
6 involve the abdomen.

7 Q And a typical course in terms of the ways and the
8 complications that people expire is what?

9 A Usually, it's a very severe disease involving
10 lungs, the inability to breathe, and typical of most
11 cancers, it's a process that causes a wasting. A
12 classic cancer death. It's not a very good death.

13 Q But mesothelioma in particular is a particularly
14 ravaging cancer death; isn't that true?

15 A I hate to tell you, I've seen a lot of cancer
16 deaths, and they're all bad. Mesothelioma is not a
17 good one, but breast cancer can do the same thing.
18 Lung cancer does terrible things. Cancer is not -- a
19 bad, lethal cancer is a very bad experience. I -- I
20 would only say that mesothelioma is one of the more
21 aggressive cancers.

22 Q And you don't dispute the medical evidence that
23 before Mr. Jolly passes away, it would be highly
24 reasonable that he have more hospitalizations, correct?

25 A That's very likely.

ROA_01747

Appendix_01775

1 Q Become completely incapacitated and unable to care
2 for himself, even as to a basic of daily living?

3 A That's a likely outcome.

4 Q He will need supplemental oxygen?

5 A That's likely.

6 Q He will be in hospice, which will require
7 24-hour-a-day round-the-clock nursing care?

8 A I would say that's likely, too.

9 Q Among other things, right?

10 A It's a bad death, yes.

11 MS. FARRISE: That's all I have right now, Your
12 Honor.

13 THE COURT: All right.

14 Redirect.

15 MR. BOUCH: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BOUCH:

18 Q Dr. Crapo, is it your opinion that you have
19 received evidence from the American Cancer Society that
20 one in three Americans will be touched by cancer?

21 A Yes.

22 Q So regardless of it, cancer is a hard hand to be
23 dealt?

24 A It is. It's a huge tragedy. I have had several
25 in my family, and I appreciate how tragic it is for the

ROA_01748

Appendix_01776

1 individual who experiences it.

2 Q You have been asked a lot of opinions about
3 abatements and gaskets. Is that a role of an
4 industrial hygienist?

5 A It is, yes.

6 Q That's not medical?

7 A I read their literature. I understand it, but I
8 think that the industrial hygienist is in the best
9 position to describe the work and to answer those
10 questions.

11 Q Is your opinion for sale?

12 A No.

13 Q Is Dr. Brody's opinion for sale?

14 A I don't believe so.

15 Q Dr. Frank's opinion for sale?

16 A I don't believe so.

17 Q Kind of insulting, isn't it?

18 A I would say so.

19 Q The regulatory curve that you put up there, is
20 that supported by science or data?

21 A At the high end, it is. It's --

22 Q Can we put it back up there?

23 A I mean, there's data. There is a reason -- the
24 data allows you to put that curve on, but this is not a
25 curve. It's -- a straight line is a version of a curve

ROA_01749

Appendix_01777

1 with no bend. But there's no data at the low end, but
2 there is data to show you what's happening at higher
3 levels.

4 Q The left side of the Seidman study, is there any
5 data to support that line?

6 A No. At low levels there's no data to support
7 that.

8 Q Are your opinions supported by science and data?

9 A Yes.

10 Q Is it your opinion that Mr. Jolly's exposure to
11 gaskets and packing of chrysotile was not a substantial
12 cause of his mesothelioma?

13 A That is my opinion.

14 MR. BOUCH: That's all the questions I've got.

15 MS. FARRISE: Your Honor, may I have just three
16 minutes, please?

17 THE COURT: All right.

18 RECROSS-EXAMINATION

19 MS. FARRISE:

20 Q Dr. Crapo, cancer is a bad death?

21 A It is.

22 Q People who have mesothelioma, like many other
23 cancers, suffer extreme depression as they move toward
24 the end of their life?

25 A That's common.

ROA_01750

Appendix_01778

1 Q Can we agree, Dr. Crapo, that it's insulting to
2 move towards the end of your life and understand that
3 your death could have been prevented if people had
4 simply put a warning on a product?

5 MR. BOUCH: I object to that, Your Honor. That's
6 completely argumentative and improper.

7 THE COURT: Sustained.

8 MR. BOUCH: Thank you.

9 BY MS. FARRISE:

10 Q By the way, industrial hygienists, you work with
11 industrial hygiene data?

12 A Do I work with it?

13 Q Yes.

14 A Yes.

15 Q You rely on it?

16 A Yes.

17 Q You have been provided zero industrial hygiene
18 data from the industrial hygienist for the defendants,
19 Jennifer Sahmel, in this case, correct?

20 A I've seen her report.

21 Q Other than her report, is there any air sampling,
22 bulk sampling testing at Duke, anything?

23 A I think her work was done after this period of
24 time, like decades after, so it wouldn't be appropriate
25 to expect it to have data about his exposures in the

ROA_01751

Appendix_01779

1 early 1980s.

2 Q As I understand Ms. Sahmel's background, she was
3 born in 1970 and became a scientist seven years ago?

4 MR. BOUCH: Objection, Your Honor. This is
5 cross-examining -- pitting one witness against the
6 other. Ms. Sahmel will testify this afternoon.

7 THE COURT: I think you have brought out what you
8 need to, Ms. Farrise.

9 MS. FARRISE: Thanks so much, Your Honor.

10 THE COURT: Very good.

11 Ladies and gentlemen of the jury, that completes
12 Dr. Crapo's testimony.

13 Thank you, sir, very much.

14 Let's just be sure we know where we are. I think
15 we want to break for lunch now. Do we agree?

16 MR. BOUCH: Perfectly fine, Your Honor. We have
17 got about a 30-minute video.

18 THE COURT: I think it would be well to go on and
19 go to lunch now. It's a quarter of 1:00. Let's be
20 prepared to get started at 2 o'clock. Very good.

21 (WHEREUPON, the jury exited open court at
22 12:46 p.m.)

23 THE COURT: Coming back at 2:00 to begin the rest
24 of defendant's case. You've got your industrial
25 hygienists, and then you've got a video or you've got a

ROA_01752

Appendix_01780

1 video and then your industrial hygienist, whatever.

2 MR. BOUCH: I've got an industrial hygienist with
3 children at camp, so I may start with her.

4 THE COURT: All right.

5 (WHEREUPON, lunch recess was taken from 12:45 p.m.
6 to 2:01 p.m.)

7 MS. FARRISE: Your Honor, as you know, before we
8 took our lunch break, we asked to receive whatever was
9 going to be used with this expert, Ms. Sahmel.

10 I received Crosby Exhibit 1510, and I would move
11 to strike any use of 1510. It was, A, not on the
12 exhibit list, and, B, never provided to us until about
13 45 minutes ago, and I don't believe trial by surprise
14 is allowed.

15 THE COURT: Let me see it, and then I'll hear from
16 Mr. Bouch.

17 MR. BOUCH: It's demonstrative only. It's to
18 illustrate her testimony, prepared, just like
19 Dr. Brody's, which I didn't get and Dr. Frank, which I
20 didn't get.

21 MS. FARRISE: Okay. It was on the exhibit list --

22 THE COURT: Just a second.

23 MS. FARRISE: And you did get it.

24 MR. BOUCH: Well --

25 THE COURT: This may be late in the game to do

ROA_01753

1 this, but this kind of thing you have had for a while.

2 It needs to be given to them when you cook it up.

3 MR. BOUCH: She brought it last night.

4 THE COURT: Well, that should have been given to
5 them last night. This -- this is a lengthy thing. You
6 going to put up all this?

7 MR. BOUCH: Your Honor, I'm going to go
8 click-click-click as fast as I can. There's no
9 substance. It's purely demonstrative.

10 MS. FARRISE: I'm sorry, I can't hear what you're
11 saying up there.

12 THE COURT: Come on up here, then. What he's
13 saying is that it's purely demonstrative. It is her
14 qualifications and then her opinions displayed in a
15 PowerPoint fashion. I castigated him about not giving
16 it to you earlier. He says he just received it from
17 her last night.

18 I am, unless you can persuade me otherwise, I'm
19 going to allow him to use it.

20 MS. FARRISE: Well, it is a 104-slide PowerPoint.,

21 THE COURT: I know. That's very excessive, in my
22 view.

23 MS. FARRISE: And it is more than just her
24 qualification. And like every other witness, she can
25 testify to what her qualifications are. To put up the

ROA_01754

Appendix_01782

1 document, which is not demonstrative of anything, she's
2 going to say what her qualifications are, and then
3 they're going to put something up. It's actually, I
4 guess, hearsay. I wasn't allowed to put up an actual
5 learned treatise, but he wants to put up what is
6 essentially her opinion. And if you go through and you
7 look at it, there's charts, there's documents, there's
8 regulations, there's internal documents. It's
9 basically his closing argument. And I think to get it
10 45 minutes before when it was not on the exhibit list,
11 when they knew it wasn't on the exhibit list, and when
12 it was never provided, so, to me, somebody put it
13 together, and the moment they put it together, they
14 said, "Aha, this is not on our exhibit list," and
15 e-mail, and here it is for basic fundamental fairness.

16 I can't deal with this. This basically contains,
17 I don't know, 50 documents, studies. It has citations.
18 I can't -- so my request then will be if they're going
19 to be allowed to use it, that we be allowed to have a
20 recess overnight. Ms. Sahmel can come back, and we'll
21 cross-examination her tomorrow.

22 MR. BOUCH: Half of it is already in evidence,
23 Your Honor.

24 MS. FARRISE: I don't know because I just got it.

25 MR. BOUCH: Well, Your Honor --

ROA_01755

Appendix_01783

1 THE COURT: Here is one thing I do think. This is
2 awfully lengthy.

3 MR. BOUCH: I agree, Your Honor.

4 THE COURT: And I'm not a fan of having --

5 MR. BOUCH: I'm going to go through it, believe
6 me, Your Honor, and as my conduct in this trial has
7 demonstrated, I am going to do this very quickly.
8 She's not going to be up there on direct more than
9 45 minutes.

10 MS. FARRISE: Based on our existing plan, I just
11 will give the court a heads-up. There's no way we can
12 finish with her today. She has, as you can see from
13 the first slide, four distinct substantive areas, each
14 of which have a whole body of literature, statutes,
15 regulations, and the like. So there's no way --

16 MR. BOUCH: If she wants to come back tomorrow,
17 she can come back tomorrow.

18 MS. FARRISE: But we need overnight. I just think
19 fundamental fairness requires that he either not use it
20 and she testify like everybody else, or if he's going
21 to put up PowerPoints, that I have an opportunity to
22 study them, not 45 minutes before this expert witness
23 takes the stand who was deposed and did not disclose
24 that she had a PowerPoint presentation, that she was
25 going to prepare a PowerPoint presentation, and I'm

ROA_01756

Appendix_01784

1 sure the notice in discovery asked for her to produce
2 everything she was going to bring to trial including --

3 THE COURT: Wait. Wait one minute. We're going
4 to behave with civility to each other. When
5 Ms. Farrise is presenting her argument, we're not going
6 to be striding back and forth, pretending as if what
7 she has to say is of no value and we're going to
8 consult with our people. We're going to behave, now.

9 MS. FARRISE: And Crosby brought Motion in Limine
10 Number 9, which we stipulated to. I guess Number 9 is
11 they shouldn't be present in court. That's our second
12 thing. Ms. Sahmel, as I understand it, sat here during
13 Dr. Crapo's testimony. And that, too, based on a
14 motion brought by defendants, was improper, and they
15 should have instructed her that she was not to do that.

16 'So we have -- we want the rules to apply to
17 everybody, and we are prejudiced by it. Certainly by
18 this we are prejudiced.

19 THE COURT: Let me --

20 MR. BOUCH: Your Honor?

21 THE COURT: Yes.

22 MR. BOUCH: The fact that she was going to have a
23 PowerPoint was disclosed to them a week ago Monday.
24 It's Exhibit 37. It's on our list produced to them.

25 THE COURT: This document here?

ROA_01757

Appendix_01785

1 MR. BOUCH: I don't think this document.

2 THE COURT: I don't believe this document was
3 produced.

4 MR. BOUCH: The exhibit list was produced, just
5 like they did. And all I'm saying, Your Honor, and
6 it's been true in every trial I've been in, if you want
7 to see an individual exhibit, ask. They never asked.

8 THE COURT: Well, you wouldn't have been able to
9 give it to her anyway because you didn't get it until
10 yesterday.

11 MR. BOUCH: Then, her argument may have had
12 validity, but now, it doesn't.

13 MS. FARRISE: As I understand the order, it was
14 not just to put it on a list, but to exchange exhibits.
15 That was your beef earlier in the week. So we just got
16 it 45 minutes ago.

17 THE COURT: I'm not happy about something of this
18 length being sprung on somebody. That's the first
19 thing. The second thing is I noticed the references
20 being made to this witness while this other testimony
21 was going on. And, of course, you know, I don't
22 interpose objections; I rule on objections, but I
23 really wondered about her being in the courtroom.

24 MS. FARRISE: I don't know her. I have never seen
25 her. I just actually realized now.

ROA_01758

Appendix_01786

1 THE COURT: I knew who she was because Dr. Crapo
2 referred to her a couple of times and so did Mr. Bouch,
3 "Hey, we've got this industrial hygienist and so on and
4 so forth." And I don't understand why that was done
5 either, Mr. Bouch.

6 MR. BOUCH: Your Honor, if I made an error, I
7 apologize. The typical motion in that regard typically
8 refers to the fact that -- I realize the motion is not
9 specific to that.

10 THE COURT: We agreed to sequester everybody, and
11 I ruled on that.

12 MR. BOUCH: And all I can say is I asked
13 Ms. Sahmel to come earlier, and I think Ms. McVey can
14 testify or recite I asked how long she would be with
15 Dr. Crapo because I did not want to interrupt court and
16 say, "We have no witness. We have to go back to the
17 hotel and get her."

18 Same sort of thing. It's a different discipline
19 than Dr. Crapo. If they -- I haven't heard any
20 prejudice. If there is, they certainly can ask her
21 about it. "Anything Dr. Crapo say change your mind,
22 change your opinion, add to what you got to say," fair
23 game. But, you know, she was in here for the last
24 30 minutes or so and that was it, principally. And the
25 same thing. Dr. Brody was here when Dr. Frank was

ROA_01759

Appendix_01787

1 here.

2 MS. FARRISE: Your Honor, excuse me.

3 THE COURT: Wait a minute. I am not just going to
4 have a back-and-forth conversation that lasts forever.

5 MS. FARRISE: I was waiting for Mr. Bouch.

6 THE COURT: Ms. Farrise.

7 MS. FARRISE: Thank you, Your Honor. I don't know
8 Ms. Sahmel. I've never met her.

9 THE COURT: You've said that once. I'm not going
10 to have a repetitive argument.

11 MS. FARRISE: Crosby brought this motion, and they
12 said prejudice is presumed to have these nonparties.
13 We stipulated to that motion, and the court made a
14 court order. The fact that now Ms. Sahmel was here,
15 number one, which violates the court order; number two,
16 the fact that there were two different references to
17 her by Dr. Crapo as well as Mr. Bouch when, prior to
18 that, at the morning break, you had admonished both
19 Dr. Crapo as well as Mr. Bouch not to make those sort
20 of overtures -- for instance, your example was don't.
21 say hold your breath and whatever happens to be,
22 following that, they both did it. Our motion, coupled
23 with the prejudice of having a 104-slide PowerPoint, is
24 that Ms. Sahmel be excluded in her entirety.

25 MR. BOUCH: Your Honor, Mr. Reid informed me that

ROA_01760

Appendix_01788

1 during the motion, in limine hearing, discussions had
2 with plaintiffs' counsel -- Ms. Farrise was not
3 there -- the motion to sequester did not deal with
4 experts.

5 MS. FARRISE: Yes, I was.

6 THE COURT: That's not the way I remember it,
7 Mr. Reid.

8 MR. REID: We're looking at the transcript.

9 MR. BOUCH: I wasn't there, Your Honor.

10 THE COURT: Well, I was there.

11 MS. FARRISE: I was there, Your Honor.

12 MR. BOUCH: I'm not saying it was before the
13 court. I'm just reciting what counsel, in all good
14 faith, was reciting to me.

15 Ms. Sahmel was here for 30 minutes, and if it
16 violates the court order, I assert there has been
17 absolutely no prejudice.

18 THE COURT: There is prejudice from using this big
19 thing without having the other side see it, and that is
20 what I am weighing and worrying about, Mr. Bouch.

21 MR. BOUCH: Your Honor, everything in there is in
22 her report.

23 THE COURT: That's not the point. It's very, very
24 effective presentation. She's got things, questions
25 that should be asked, so forth and so on. It's not all

ROA_01761

Appendix_01789

1 just exhibits. It's her opinion, questions answered.

2 MS. FARRISE: It's closing argument, Your Honor.

3 MR. BOUCH: Your Honor, it is no different than
4 what Dr. Crapo put up. It's no different than what any
5 other expert has put up. This is summarily
6 demonstrative.

7 THE COURT: It's different in quantity by a very,
8 very big factor. It is an enormous document. It is
9 going to take a long time -- I don't care how quickly
10 you click through these exhibits, it's going to take a
11 long time to present it to the jury. It is going to
12 take a long time to cross-examine about it, and it
13 just --

14 MR. BOUCH: I will be shorter with Ms. Sahmel than
15 I was with Dr. Crapo, Your Honor. And if I'm delaying,
16 I'm happy to have the court admonishing, but I assure
17 you that this is going to be very quickly done. And
18 the idea that any of this is controversial, like I say,
19 there's probably 15 of these exhibits in here that are
20 already in evidence.

21 THE COURT: Yeah; but there are a lot of them that
22 are analogy use, including the development of the
23 seatbelt, the development of automobiles and all that
24 kind of thing that --

25 MR. BOUCH: That's state of the art, Your Honor.

ROA_01762

Appendix_01790

1 That's fair game.

2 THE COURT: I understand that's state of the art,
3 but we haven't had any discussion about whether state
4 of the art can include examples from a completely
5 different situation --

6 MR. BOUCH: Your Honor --

7 THE COURT: Mr. Bouch --

8 MR. BOUCH: I'm sorry. I thought you were
9 finished, Your Honor.

10 THE COURT: Well, I'm not finished yet.

11 MR. BOUCH: I thought you were finished, Your
12 Honor. I apologize.

13 THE COURT: I mean, I cannot fully evaluate this
14 thing without sitting down and looking at it myself a
15 little bit, but this is a lot of material, some of
16 which may be pertinent and some of which may not be
17 pertinent. It may not be proper.

18 And while you had the ability to thing by thing,
19 paper by paper assert your objections when they have
20 shown things to a witness, and now you're asking to
21 just have this all come in without further ado, and
22 it's not simply stuff that is in evidence, it's all
23 kind of other information in here.

24 MR. BOUCH: Can I do it this way, Your Honor?
25 I'll do it individually. I will lay the foundation. I

ROA_01763

Appendix_01791

1 will have the witness testify as to each slide
2 individually before it goes up on the screen, identify
3 it, lay the foundation. If Ms. Farrise has an
4 objection, she can make it, and the court can rule on
5 it.

6 THE COURT: Well, the point of the big exercise we
7 have been about is not to have to do that with a
8 100-plus page document midway through the trial and
9 having to send the jury in and out and all that kind of
10 thing. I don't think that's a good solution at all to
11 what we're facing.

12 MR. BOUCH: Your Honor, that's going to be the
13 testimony. And I believe I have a right to elicit the
14 testimony --

15 THE COURT: You can elicit the testimony from this
16 stand. The question is whether you're going to be able
17 to use this PowerPoint to do her testimony, and that's
18 what I'm trying to cogitate about.

19 MR. BOUCH: I'll be happy to do it, Your Honor.
20 You can rule on each and every one --

21 THE COURT: Or you can elicit her testimony
22 without using the PowerPoint, which is what I'm
23 considering right now.

24 MR. BOUCH: Again, we object. We think we have a
25 perfect right to use demonstrative exhibits, regardless

1 of what, and I believe if I lay a proper foundation,
2 they can make an objection or not, and we can go
3 forward, but --

4 THE COURT: Enough. That's not the point. The
5 point is you people agreed to exchange exhibits. And
6 this exhibit was simply listed as a shell exhibit and
7 was not exchanged.

8 Then it came to yesterday when you knew that this
9 witness was going to testify today, and still you did
10 not supply this or the PowerPoint for the previous
11 witness' testimony.

12 I decided to let Dr. Crapo's go, but I am deeply
13 concerned about prejudice that emanates from something
14 of this length being suddenly projected into this
15 thing. And you give me some very unappealing choices
16 in terms of the timing of this trial, and I am very
17 mindful of that. This is not a three-week trial. This
18 is a two-week trial, and any delay in it is going to be
19 the result of this very untimely exchange of
20 information.

21 There may be information in here that won't be
22 proper to be put up, even as demonstrative evidence. I
23 don't know that without taking a look at this thing.

24 MR. BOUCH: I'll be happy to lay that foundation.

25 THE COURT: It's just not timely.

ROA_01765

Appendix_01793

1 MR. BOUCH: Your Honor --

2 THE COURT: If I had had the chance and if they
3 had had the chance to take a look at this material,
4 that would be one thing. But to suddenly throw that
5 out here in the middle of a trial with a jury waiting
6 and with the huge effort we have made to come in here
7 early and deal with exhibits so we have a trial that
8 flows with some sort of smoothness is a very, very
9 concerning thing to me.

10 MR. BOUCH: Your Honor, may I be heard?

11 THE COURT: Yes, sir.

12 MR. BOUCH: Plaintiffs have taken six trial days
13 to put on their case. I'm going to do it in one day.
14 If they wish to have the witness come back, we'll do it
15 in a day and a half. I think the idea that I am trying
16 to delay this trial --

17 THE COURT: No. It's hiding the ball. It's not
18 delaying the trial; it's hiding the ball. That's what
19 got me concerned. It's violating the terms of the
20 order we had about exchanging these exhibits. That's
21 what's got me concerned. It has nothing to do with
22 whether you're delaying the trial or not, but the
23 effect of it is because it wasn't given in advance, is
24 that it has to be examined not just by plaintiff but by
25 me to be sure that I'm prepared to make any rulings

ROA_01766

Appendix_01794

1 that need to be made about it.

2 MR. BOUCH: I am prepared to go forward with the
3 direct examination of Ms. Sahmel. If I need to use the
4 demonstrative evidence, I will lay the foundation, and
5 the court can rule on it if objected to. If it comes
6 in, fine. If it doesn't come in, I can proceed
7 accordingly, Your Honor. That's all I'm asking.

8 MS. FARRISE: Your Honor, I would just like to say
9 the issue, as I know the court knows, is not just
10 foundation. It's the argumentative nature. It's the
11 direct examination. There are things that are
12 irrelevant. There is a whole host of legal objections
13 that of which trying to do it on the fly bells cannot
14 be unrung, and defendants created this prejudice, so
15 they can sit here and hem and haw and ooh and aah.
16 They created this prejudice. So we are standing here,
17 and they should not be rewarded for that. She can
18 testify just like every other expert witness. "Here is
19 where I went to school. Where is what degrees I have,"
20 or not. "Here is what I looked at," or not, and she
21 can be cross-examined just like everybody else. The
22 law does not require that people have a PowerPoint to
23 go with their words in case people, I guess, need to
24 look at it visually as well as audibly.

25 MR. BOUCH: And again, Your Honor, I'm prepared to

ROA_01767

1 do it one at a time, and if the court finds that
2 something is proper, it can come in after objection; if
3 the court finds as not, we can go on.

4 MS. FARRISE: And that will unduly consume time.

5 THE COURT: I've just got to think about this for
6 a minute. I think I've heard your positions very
7 completely.

8 MS. FARRISE: Thank you, Your Honor.

9 (Pause in proceedings from 2:19 p.m. to 2:29 p.m.
10 while the court reviews PowerPoint sides.)

11 THE COURT: All right. Here's what I'm going to
12 do. What I do will please no one, but this is what I'm
13 going to do.

14 I've gone through these PowerPoints, and I have
15 pulled out a bunch of them that I think are either not
16 reflected in the testimony or incorrectly reflect what
17 the testimony is, and I'm going to go through the
18 PowerPoint, the numbers I have excluded.

19 Have you got a copy of them, Ms. Farrise?

20 MS. FARRISE: No, Your Honor. You have my copy.

21 THE COURT: Well, then, get another one.

22 The pages that I have eliminated from this
23 PowerPoint because I think they are, given the lateness
24 of the exchange, either not reflective of the testimony
25 or too prejudicial: Page Number 3 is an example of

ROA_01768

Appendix_01796

1 several slides that are in here where, before she gives
2 the testimony, she outlines what her opinions are or
3 projects what her opinions are going to be. I think
4 that's too prejudicial at the beginning of her
5 testimony.

6 This Number 3 is "Questions: What did industrial
7 hygienists know about asbestos over time, especially
8 for end-user products for gaskets and packaging? When
9 and where and how much could Mr. Jolly could have been
10 exposed to asbestos from Fisher and Crosby?" We're
11 going to have to know a lot more than we know now to
12 cause her to even be able to opine about that.

13 "What was Mr. Jolly's exposure potential to
14 products known historically to contain amphibole
15 asbestos?" We're going to have to get from her what
16 she knows about that before she can testify to it.
17 "How do Mr. Jolly's exposures compare to known exposure
18 benchmarks?" Again, I know nothing about what she
19 knows about Mr. Jolly. That's way too suggestive on
20 the front end.

21 A couple of them are so repetitive that I'm
22 pulling them out in interest of time. 9 is one of
23 them. FMC agricultural products group is already
24 mentioned in another slide. NASA guided flight center,
25 Number 10. Environmental Protection Agency with this

ROA_01769

Appendix_01797

1 picture on it in Washington, D.C., Number 11. Number
2 12, the witness at some place out in a cabin or some
3 place doing some professional experience.

4 Number 13, evaluation of worker exposures. I
5 don't know where these things come from and what kind
6 of situation it is or what kind of pertinence it has,
7 but these pictures are not in evidence, and, therefore,
8 would be too prejudicial. 13 out.

9 Number 15, the AIH board of directors. She can
10 recite her board of director status without also having
11 this quote in here that discusses the opinion of
12 somebody else about Ms. Sahmel's professional status.

13 Number 23, questions answered. This is, again,
14 this series of questions that was put forth on Page 3
15 that suggests some knowledge that she may or may not
16 have. I wouldn't let it be put up on the front end.

17 Number 26, examples of paradigm shifts in science:
18 Seat belts, no seat belts, car seats, car seats
19 required. Number 27, improvements and safety standards
20 over time. How to harness a jack-in-the-box child,
21 1893 gasoline-powered car road tested by Duryea
22 brothers, Massachusetts, when Ford sold over a million
23 seat belts.

24 1930s and 1940s asbestos artificial snow with a
25 picture of Dorothy and the Cowardly Lion.

ROA_01770

Appendix_01798

1 MS. McVEY: What number?

2 THE COURT: Number 31. Article in the newspaper
3 about --

4 MR. McLEOD: Your Honor, just to be clear, we went
5 from 27 to 31? What was the page just before 31?

6 THE COURT: 27.

7 MR. McLEOD: Okay. Thank you.

8 THE COURT: 34, 1950s asbestos: The miracle
9 mineral, with some kind of -- you can't read the
10 article very well, but it's some kind of article about
11 the miracle mineral.

12 Evolution of knowledge and regulations concerning
13 asbestos, big chart. She's already been over that
14 once. I don't think you need the chart. That's
15 number -- it doesn't have a number on it, but it's
16 unnumbered on my version.

17 MR. BOUCH: Can I see it so I take it out?

18 THE COURT: What number is that?

19 MS. McVEY: Hold on.

20 THE COURT: It's evolution of knowledge and
21 regulations regarding asbestos. What number is that?

22 MR. BOUCH: I don't think it has a number.

23 MS. McVEY: Here's the problem. The slideshow
24 starts over numbered again.

25 MR. BOUCH: 61, corresponding cumulative exposures

ROA_01771

1 over time. I don't know what foundation there is for
2 it, but putting all that up without any kind of
3 foundation, prejudicial.

4 MR. BOUCH: I, of course, am going to lay a
5 foundation for every one of them, Your Honor.

6 THE COURT: I understand that.

7 63, the dose makes the poison. Way too
8 prejudicial a way to talk about all of that with
9 Paracelsus, 63.

10 One that says dose response for sun exposure:
11 Risk of cancer with sufficient sun exposure with a lady
12 and her child. Doesn't have a numbered page on it.

13 73, this is questions answered again. This is --
14 again, I don't know what she knows about Mr. Jolly and
15 his exposure, but I'm not going to let that be put up
16 on the front end to suggest she does know.

17 76, AIH exposure assessment strategy. This thing
18 is a chart that's in here several times. This one is
19 what are the products Mr. Jolly was exposed to. I
20 don't know what she knows about that, but that's not
21 going to come in like that.

22 81, caution labeling exemptions. Encapsulated
23 asbestos products were and still are exempt from OSHA
24 labeling requirement. It was reasonable for Fisher
25 Controls and Crosby Valve not to provide any warnings.

ROA_01772

Appendix_01800

1 I'm not going to let that be put up on a slide. If she
2 wants to testify to something about that, we'll see.

3 83, same AIHA exposure assessment strategy thing.

4 84, exposure assessment key factors: Duration,
5 frequency, intensity, how long, how often, at what
6 level.

7 85, Mr. Jolly pipefitter inspector. Urban and
8 rural classifications. Mr. Jolly, a pipefitter
9 inspector, did not personally work with any internal
10 valve gaskets or packing. She doesn't know that and --

11 MR. BOUCH: Your Honor, that's in evidence through
12 his testimony that she has reviewed.

13 THE COURT: I see the testimony citations, but I
14 don't know what she knows about that, and I'm not going
15 to let it be put up on a PowerPoint.

16 MS. McVEY: And this is his deposition testimony,
17 not trial testimony.

18 THE COURT: I understand all that.

19 Mr. Jolly, duration and frequency. There are
20 several like this I'm just not going to let it be done
21 like this. Mr. Jolly was a bystander working on Fisher
22 and Crosby valves. That's not what he said at all. He
23 was a worker bee right there. He was an inspector. He
24 was hip to hip with the people doing the grinding, and
25 his inspection work was just as important to getting

ROA_01773

Appendix_01801

1 these flanges off and getting the flanges cleaned up as
2 the grinding of the flanges was.

3 MR. BOUCH: What is the number?

4 THE COURT: The term "bystander" is a work of art
5 kind of term; it doesn't include Mr. Jolly, and *Lawing*
6 *vs. Univar* certainly indicates that a coworker like
7 this is not a bystander.

8 MR. BOUCH: What's the number, Your Honor?

9 THE COURT: 86.

10 87, types and total number of valves worked at
11 Duke. This has got a whole bunch of people we haven't
12 heard from yet. It's got Mr. Jolly, Mr. Rogers,
13 Mr. Taylor, Mr. Simpson, and all the recalls for
14 manufacturers and so forth, some other people we
15 haven't heard anything about, so this is possible other
16 involved folks involved with other defendants -- I mean
17 other plaintiffs that we don't know about.

18 MR. BOUCH: What is it?

19 THE COURT: 87, out.

20 92, gasket packing cumulative exposure potential.
21 Mr. Jolly's bystander exposure potential. Just not
22 going to let that be up there for the reasons I've
23 already stated.

24 MR. BOUCH: What's that number?

25 THE COURT: 92.

ROA_01774

1 93, gasket packing cumulative exposure potential.
2 A portion of Mr. Jolly's work with valves was related
3 to Fisher and Crosby specifically out of 17 different
4 manufacturers. I don't know what the testimony
5 reflects in that regard, but I'm not going to let it be
6 validated in that way.

7 94, questions asked. Same. We have commented on
8 that before.

9 95, bystander to insulation work. I'm not going
10 to let that bystander-type labeling be used here.

11 An unnumbered one that says, "Comparison of
12 insulation versus gasket packing exposures, full-shift
13 exposures, current OSHA direct." I don't know what
14 date we're talking about. It's a citation to a bunch
15 of people's studies. Too confusing for the jury.

16 99, Duke Power Company ongoing asbestos abatement.
17 I can hardly read it, but I haven't heard anything
18 about ongoing asbestos abatement. I don't know what
19 periods of time this covers.

20 MS. McVEY: I don't have 99.

21 THE COURT: Duke Power Company, ongoing abatement.

22 MS. McVEY: Mine says 100.

23 THE COURT: Mine says 99. 100 is questions asked
24 on mine.

25 MS. McVEY: That's 101 on mine. Okay.

ROA_01775

1 THE COURT: Well, you got it. Another one that
2 slipped in on me, maybe. Let me see it. I have 99, so
3 what's 98 in your book?

4 MS. McVEY: I don't have 98 or 99.

5 MR. BOUCH: We're not going to show either one,
6 98, 99.

7 MS. McVEY: But I don't have 98 or 99, I'm just
8 telling you.

9 THE COURT: 100, questions answered. That's that
10 same slide.

11 AIH exposure assessment strategy, same slide.

12 Gasket and packing comparative background
13 exposures. Don't know what that means or what it's
14 tied to, but not going to allow that.

15 MR. BOUCH: What's the number, Your Honor?

16 THE COURT: Number 105.

17 MS. McVEY: Mine is 103.

18 THE COURT: Well, you know what I got.

19 Weight of scientific evidence indicates no
20 increased risk of mesothelioma at background exposure
21 levels of asbestos with some names here. That's not
22 consistent with what we've heard from other people.
23 I'm not going to let a slide like that go up. If she
24 wants to say that based on her research, she should be
25 cross-examined about that, but I'm not going to let

ROA_01776

Appendix_01804

1 that slide up.

2 MS. FARRISE: Your Honor, I think the other issue
3 with that is she's not a medical doctor.

4 THE COURT: I get all that. Don't argue with
5 somebody who's ruling for you.

6 MS. McVEY: I'm so sorry, but I'm confused. I
7 want to make sure I've got it. Background,
8 concentration estimates, that comes in?

9 THE COURT: Let's see. I haven't seen that.
10 Bring it up here.

11 MS. McVEY: This is the issue. I think we have
12 got two different slides.

13 THE COURT: Bring that up here. Stand here by me
14 and be sure I'm getting them all.

15 Okay. I got background concentration estimates.
16 I think that one is further on in mine. 104.

17 Okay. 104, weight of scientific evidence --
18 excuse me. 104, background exposure to asbestos.

19 Then 105 is gasket packing and comparative
20 background exposure, and then 106 is the weight of
21 scientific evidence, I have them out of order.

22 MS. McVEY: So these are out?

23 THE COURT: That one is out.

24 Now, I don't have that one with the map on it.
25 Oh, yeah, I do, and I don't think I pulled that. 108.

ROA_01777

Appendix_01805

1 It isn't in my pile, but 108 is okay as far as I'm
2 concerned.

3 The OSHA, 109, is okay.

4 These numbers are different. The next one I've
5 got, 111 on this one and 109, employer responsibility
6 for testing with the Duke Power logo on it. I don't
7 know who's saying that or what that is, whether that's
8 OSHA, Duke Power or whatnot, but that's out.

9 MR. BOUCH: Your Honor, when you say these are
10 out, and I understand your ruling, if I lay the
11 foundation when I say, you know, "Whose is this?"

12 THE COURT: I'm not going to let you put these
13 slides up, period. She can testify --

14 MR. BOUCH: Even after she testifies?

15 MR. BOUCH: That is correct.

16 MR. BOUCH: Well, Your Honor and our --

17 THE COURT: That is partially because of the late
18 exchange of this information and partially because I
19 think they're too prejudicial, particularly when
20 they're put up there as fact before there's any
21 testimony, and I'm not going to at this point, because
22 of the late exchange, I'm not going to delay this trial
23 to have foundation laid for everything.

24 So for all those reasons, that's what I'm doing
25 here.

ROA_01778

Appendix_01806

1 MR. BOUCH: Your Honor, for the record, we accept
2 your ruling.

3 THE COURT: I got it.

4 MR. BOUCH: And we believe that the predicate for
5 it is incorrect.

6 THE COURT: I understand all that.

7 Then conclusions, no quantitative evidence in either
8 upper bound exposures associated with four and a half
9 years of daily personal gasket and packing work would
10 be associated with increased risk of mesothelioma; and,
11 conversely, Mr. Jolly and his coworkers describe
12 regular opportunities for exposure to
13 amphibole-containing insulation. I haven't heard any
14 testimony that there's amphibole in Duke's insulation
15 or anything like that, so that one is out.

16 Conclusions, 112. Again, that one is out as well.

17 And 114, which is not on my thing, but OSHA and
18 peak exposures, 1986. I'm not going to exclude that.

19 MS. McVEY: And the Duke Power employees?

20 THE COURT: That one is out.

21 MS. McVEY: Okay.

22 THE COURT: And did I -- am I sure that I've said
23 102 is gasket packing compared with OSHA PEL,
24 Mr. Jolly's bystander exposure potential.

25 MS. McVEY: That one's out.

ROA_01779

Appendix_01807

1 THE COURT: That one is out.

2 That is not a satisfactory to way to do this, but
3 it's the only way to keep this trial on track, so
4 that's what I've done, probably with the satisfaction
5 of no one, but nevertheless.

6 (WHEREUPON, the jury entered open court at
7 2:47 p.m.)

8 THE COURT: Ladies and gentlemen of the jury,
9 please have a seat. We had some things that came up,
10 and I had to resolve the matters in an individual way,
11 so that's what we've been doing. But we're ready to go
12 now, and this will be defendant's next expert,
13 industrial hygienist.

14 Mr. Bouch.

15 MR. BOUCH: Thank you, Your Honor.

16 Fisher Controls and Crosby Valve calls to the
17 stand Ms. Jennifer Sahmel.

18 THE COURT: Please come on up here, and we'll
19 administer the oath.

20 THE WITNESS: Thank you, Your Honor.

21 JENNIFER SAHREL, MPH, CIH, CSP,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. BOUCH:

25 Q Ms. Sahmel, I'm guilty of butchering everyone's

ROA_01780

Appendix_01808

1 last name but my own. So tell me exactly how you
2 pronounce it.

3 A Oh, no problem. It's Sahmel. I sometimes tell
4 people it's like saw mill. Sahmel.

5 Q Ms. Sahmel, what do you do for a living?

6 A I am an exposure scientist and industrial
7 hygienist.

8 Q Now, we haven't had an industrial hygienist here
9 before. Tell me, what is an industrial hygienist?

10 A It's an important question. It's not a very
11 commonly heard term. There's not a whole lot of us
12 around using that traditional terminology anymore, but
13 what an industrial hygienist does essentially is to
14 create safe work environments and safe environments for
15 people. So we test the air, we monitor for
16 radiological hazards, we monitor for safety issues,
17 physical hazards like noise to determine the
18 healthfulness and safety of environments where people
19 are.

20 Q We've heard a lot about dust counts. Are you the
21 guy that goes out and counts the dust?

22 A Yes, I certainly can do that.

23 Q That's part of what you do?

24 A That is a part of the practice of industrial
25 hygiene and exposure assessment.

ROA_01781

Appendix_01809

1 Q And that's exactly what -- that's what an
2 industrial hygienist does?

3 MS. FARRISE: Your Honor, I'm sorry, just because
4 if counsel could make the record reflect that something
5 is being displayed to the jury and the PowerPoint
6 slide, given our prior conversation.

7 THE COURT: Slide Number 4 is being displayed now.
8 BY MR. BOUCH:

9 Q As she said -- well, how did you get into this
10 line of work?

11 A Yeah. It's a field that a lot of people sort of
12 come into through various routes. I was personally
13 very interested in public health and environmental
14 health, and through that, through some research that I
15 was doing, I was working at the time for a company that
16 did work for the CDC, and I learned about the field of
17 exposure assessment --

18 Q Whoa, whoa, whoa. What's the CDC?

19 A I'm sorry. The Centers for Disease Control and
20 Prevention.

21 Q Okay.

22 A And so through that work that I was doing, some
23 research work, I found out about the field of exposure
24 science and toxicology and applied to some graduate
25 programs after my undergraduate degree.

ROA_01782

Appendix_01810

1 Q Could you put up Slide Number 5, please.

2 Is this your educational background?

3 A Yes, that's right. I, in fact, didn't study
4 science in my undergraduate degree. I was an
5 international studies major, which included a lot of
6 history, also economics, and then I really became
7 interested in some of the environmental health and
8 public health issues related to public and environment,
9 and from there went to the University of California at
10 Berkeley to get my graduate degree in environmental
11 health. And I'm currently working on my Ph.D. at the
12 University of Minnesota.

13 Q Says "estimated completion 2017." Are we close?

14 A I hope so. It's hard to rush research. It will
15 take the time it takes.

16 Q Okay.

17 Would you put up Slide Number 6, please.

18 You indicated before that an industrial hygienist
19 studies a safe environment. What is that?

20 A It's important to understand the terminology. The
21 word "safe," for example. In the context of risk
22 assessment and exposure -- and this definition appears
23 in a very standard, classic industrial hygiene
24 textbook. And the notion of safe, as it applies to
25 industrial hygiene and to exposure assessment, is not

ROA_01783

Appendix_01811

1 necessarily that something is free from all risk. And
2 I think we all kind of sense that that's really kind of
3 an impossibility, to be free from -- you know, zero
4 risk is very difficult to achieve. But free from
5 unacceptable risk is very important, and those risks
6 can be estimated and understood, and that is the
7 science of risk assessment.

8 Q Okay. Now, in the course of your work, have you
9 developed any industrial hygiene specialties?

10 A Yes. I personally focus on the science of
11 quantifying exposures. I do exposure assessments for
12 all types of different chemicals, whether they're gases
13 or particulates. And I have also developed a
14 specialty, as you noted from my undergraduate degree in
15 history and international studies, I have a special
16 interest in the history of industrial hygiene, so I
17 have studied that quite a bit as well, so those are
18 some of my specialties.

19 Q Put up Slide 7, please.

20 Does this reflect your work, your professional
21 work, currently?

22 A Yes, this does.

23 Q Okay. You identify a hazard, you assess risk, you
24 apply controls, and you review the effect, correct?

25 A That is the process of risk assessment, that's

ROA_01784

Appendix_01812

1 right.

2 Q Okay. Now, in addition to having a master's in
3 this and pursuing a Ph.D., what is your professional
4 experience in the field?

5 A So I've been fortunate to have the experience to
6 work in a number of different environments as an
7 industrial hygienist. I started off my career working
8 as a contractor for NASA's Goddard Space Flight Center,
9 and while I was there, I was a field industrial
10 hygienist. I went around to many different sites and
11 performed sampling for many different types of
12 hazards -- everything from noise hazards, welding and
13 sheet metal shops, to fairly complicated technical
14 operations like plating shops, and they even made their
15 own semiconductor chips at this facility, so we had an
16 semiconductor fabrication area where we performed
17 sampling where there are actually some pretty
18 potentially concerning hazards such as solvents
19 exposures and other things.

20 Q How long were you at NASA?

21 A I was there for about four years.

22 Q Then what did you do?

23 A Then after that, I took a position as a government
24 employee with the U.S. EPA. I was working at the EPA
25 in their office of pollution prevention and toxics in

ROA_01785

1 Washington, D.C. I was very fortunate to be able to
2 work on looking at national issues with respect to
3 exposure assessment, protecting the public.

4 While I was there, I really gained a significant
5 appreciation for the difficulty that regulatory
6 agencies can have in ensuring the protection of the
7 public from a whole host of hazards.

8 Q How long were you at the EPA?

9 A I was at the EPA for about three and a half years.

10 Q It's a long time in Washington. What did you do
11 then?

12 A After the EPA -- and, actually, I really did enjoy
13 Washington, although I was ready for a change and
14 decided to move out to Denver, I was fortunate to be
15 offered a job at the National Park Service. And at the
16 National Park Service --

17 Q Whoa, whoa, whoa. What does industrial hygiene
18 have to do with the National Park Service?

19 A We actually had a surprising number of pretty
20 concerning exposure questions that came up while I was
21 there. One, for example, that I was very surprised to
22 learn about is we had this wonderful trails crew who
23 builds the trails that we all go out to and hike on in
24 the parks. But in the Rocky Mountains, a lot of those
25 trails have, of course, granite rocks, and those

ROA_01786

1 granite rocks have a very high silica content.

2 So when the trails crew needs to either drill them
3 to blow them up -- they actually blow them up to get
4 them off the trail -- or to saw them up to move them
5 and make the trails, there is a significant silica
6 hazard for some areas for some workers. And being
7 outdoors, a lot of times they didn't necessarily think
8 about that until we did some sampling.

9 Q After the parks service, where did you go?

10 A After the National Park Service, I was traveling a
11 lot, and for family reasons, decided to take a position
12 doing some more research-based work. I also was very
13 interested at that point in more of the science and
14 research related to exposure assessment, and I started
15 doing some work with the American Industrial Hygiene
16 Association, which is the national professional
17 association for industrial hygiene.

18 Through that group, I was very fortunate to get
19 involved in a committee on exposure assessment, met a
20 lot of the luminaries of the profession and decided to
21 take my career in a little bit more of a research
22 focus.

23 Q Okay. Who did you go to work with?

24 A So at that point I was working for a company
25 called ChemRisk, which later became Cardno ChemRisk,

ROA_01787

Appendix_01815

1 and they are a consulting firm that works in exposure
2 assessment and public health and risk assessment.

3 Q And, most recently, you have done what?

4 A And most recently I have now left a larger firm
5 and work just on my own, mainly because I, of course,
6 need to finish my Ph.D., so I want to focus on that,
7 but also to have a little more control over my
8 schedule, so I work on my own on projects as they come
9 up, as I'm able to take them or as I think they're
10 appropriate projects; and work on my research for my
11 dissertation.

12 Q What is that venture called?

13 A Excuse me. That's called Insight Exposure and
14 Risk Sciences, but that's just me.

15 Q After your name, I notice on your résumé there are
16 certain initials. Can you tell us what those are?

17 That would be Slide Number 2, please.

18 A Oh, sure. So there are two certifications in the
19 field of human health and worker health protection.
20 One is called the CIH, which is the Certified
21 Industrial Hygienist. And that's someone who has
22 demonstrated, through both experience and examination,
23 a level of ability in industrial hygiene that requires
24 a pretty significant examination. At the time, it was
25 a two-day, so it's 16 hours of testing, as well as

ROA_01788

Appendix_01816

1 either four or five years of work experience, depending
2 on your educational background.

3 Q Okay. What is a CSP?

4 A And, similarly, a CSP is a Certified Safety
5 Professional. Similar in many ways, but focuses more
6 on some of the physical hazards in the work
7 environment. For example, the physics of fall
8 protection, walking and working surfaces, looking at
9 some more of the things we think of sort of an
10 immediate hazard, a tripping hazard or a falling hazard
11 in the, for example, in the work environment.

12 Q Okay. And then the American Industrial Hygiene
13 Association, what is that?

14 A The American Industrial Hygiene Association I
15 mentioned earlier is about, I think, a little under now
16 a 10,000-member national organization that's been
17 around since 1939 in the United States, and many
18 industrial hygienists are professional members of that
19 group. I was fortunate to be elected to the board of
20 directors for that group. Actually, I just rolled off.
21 This still says member. That's not quite correct. I
22 actually just finished my term in May of this year,
23 so -- but that was a very fortunate experience to have
24 to work with the organization at a national level.

25 Q In the practice of industrial hygiene, have you

ROA_01789

Appendix_01817

1 belonged to certain professional organization?

2 A Absolutely. I am a member of a number of
3 professional associations outside of the AIHA,
4 including the Society for Risk Analysis, the
5 International Society for Exposure Science, and, let's
6 see. There is a couple others as well, but I just
7 can't --

8 Q Number 14.

9 Let me ask you if this slide reflects your
10 current, Number 14, professional memberships of which
11 you are affiliated.

12 A Oh, yes. Thank you. Actually, an important one
13 that I didn't mention is the American Conference of
14 Governmental Industrial Hygienists. Now, that's
15 definitely a mouthful, but this group is very
16 important. They have been around for a long time.
17 They were started the year before the AIHA, and this
18 group has, over time historically in the United States
19 and also used around the world, developed recommended
20 exposure limits for chemicals for use in work
21 environments. And so this has been a very important
22 group in terms of helping industrial hygienists to
23 properly assess workplace exposures.

24 Q Do you serve on advisory panels?

25 A I have in the past, and I do still today.

ROA_01790

Appendix_01818

1 Q Number 16, please.

2 Would this be a representative sampling of some of
3 your work on these advisory panels?

4 A Yes. These are all some advisory panels that I've
5 served on. The NIOSH is the National Institute for
6 Occupational Safety and Health, and that is a group
7 that works very -- it's actually an arm of CDC that I
8 mentioned earlier, but they work very closely with OSHA
9 to make recommendations about health exposures and
10 other health and safety issues in the work environment.

11 So I've worked on a dermal exposure issues group
12 with them or have in the past. I'm currently on a --
13 the co-chair of a national group to establish -- help
14 establish or make recommendations for a research agenda
15 to improve our understanding and knowledge of certain
16 areas of occupational health like skin exposures,
17 immune exposures, and also infectious disease.

18 Q During your career, have you received honors and
19 awards?

20 A I have. I have been fortunate to be in some
21 places and do some really interesting projects.

22 Q Such as?

23 A Well, when I was at the EPA, I worked on several
24 really interesting projects that our groups were
25 fortunate to receive awards from the agency about.

ROA_01791

1 Looking at this voluntary children's chemical
2 evaluation program, so looking at exposures to children
3 and how we assess those, which was, in my opinion, a
4 very important effort. Also looking at at the time
5 that I was at EPA was right around 9/11, and we were
6 looking at developing a strategic plan for the Agency
7 on Homeland Security and Chemical Safety for the public
8 and around the country. And then also an interesting
9 project that we did which was called the Design for
10 Environment, which is to help small-scale solvent
11 workers, in this case it was automotive refinishing
12 shops, to make sure they're protected from some of the
13 products that can be of concern. For example, paints
14 that contain diisocyanates which can, through skin
15 exposure, can cause asthma, for example.

16 Q Okay. And have you been invited to present
17 material at conferences and other presentations?

18 A I have. On quite a number of occasions, I've been
19 invited to present my work around the world in various
20 places. I'll be going to Columbia in a few months to
21 present. I will -- you know, I get asked to present at
22 all sorts of conferences but always about the science.

23 So, for example, if I'm asked to present at a
24 legal conference, I may do that if I have time, but
25 it's always about the science and the research that I'm

ROA_01792

1 doing.

2 Q During your work, have you ever performed in the
3 role of training and instructing on exposure
4 assessment?

5 A I have done some training for a number of groups
6 on industrial hygiene and exposure assessment issues.
7 I have been invited to speak at NASA, at NIOSH, at the
8 United States Marine Corps as well, and some others,
9 too.

10 Q Have you published in the scientific literature?

11 A I have.

12 Q Have you authored scientific texts and articles in
13 journals?

14 A Yes. I have published, I think, over 20 articles
15 in the peer-reviewed literature on exposure assessment
16 topics.

17 Q Book chapters?

18 A And also book chapters on industrial hygiene and
19 exposure assessment.

20 Q Have you authored scientific pieces in the
21 literature on asbestos?

22 A Yes.

23 Q Are these peer reviewed?

24 A Yes. All of these were peer reviewed.

25 Q Can you give the jury an example of some of the

ROA_01793

1 publications on asbestos that you have authored?

2 A Sure. So I had published on a number of different
3 topics related to asbestos exposure in the
4 peer-reviewed literature. I have looked at the issue
5 of bystander exposure specifically and was a coauthor
6 on a peer-reviewed publication on that topic, which is
7 somebody who's not directly performing the work but may
8 be in the vicinity. I've looked at the issue of
9 take-home exposure potential, so in this case asbestos
10 that can get onto your clothing and be taken home to
11 your house and your household, and measured what those
12 exposures might be for certain situations. I've also
13 looked specifically at the history of industrial
14 hygiene knowledge about asbestos and how that played
15 into our role of developing the risk assessment process
16 for industrial hygiene.

17 Q You used a term in the title of one of your works,
18 "bystander."

19 A That's right.

20 Q Is "bystander" a term of art in the practice of
21 industrial hygiene?

22 A I would consider it to be. There are other terms
23 that may mean the same thing, which could be, I think,
24 a little more scientific in sort of name, but,
25 technically, a bystander will mean somebody who is not

ROA_01794

Appendix_01822

1 directly performing the work but is in the vicinity of
2 that work, whether that's adjacent to the person or
3 maybe 5, 10 feet, maybe 15, maybe 30 feet away.

4 Q Have you authored scientific articles on those
5 exposed to asbestos not directly hands-on changing the
6 gasket, for example?

7 A I have looked at hands-on exposures absolutely, so
8 in terms -- you mean in terms of actually measuring
9 exposures to somebody working with asbestos?

10 Q Yes, ma'am.

11 A Yes, absolutely. And so that, for example, the
12 studies we did on take-home exposures, we used actual
13 chrysotile asbestos in those studies to measure the
14 amount of exposure that the individual who was working
15 with it was exposed to and then shaking out the
16 clothing, what that corresponding exposure would be.

17 MR. BOUCH: Your Honor, we offer Ms. Sahmel as an
18 expert in industrial hygiene.

19 THE COURT: All right.

20 Ms. Farrise.

21 MS. FARRISE: I would object as it relates to
22 asbestos, Your Honor.

23 THE COURT: All right. Overruled. I find that by
24 reason of her training, education, and experience,
25 Ms. Sahmel is recognized in this trial as an expert on

ROA_01795

Appendix_01823

1 industrial hygiene and on matters related to asbestos
2 in connection with her specialty of industrial hygiene.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: And, of course, members of the jury,
5 you remember my instruction about how we use our
6 experts, and this is yet another expert.

7 BY MR. BOUCH:

8 Q Ms. Sahmel, I've given you what has been marked as
9 Exhibit 66. Can you tell the jury what that is?

10 A Sure. This is my résumé or CV.

11 Q Is it current and accurate?

12 A Yes, it should be. I believe it to be. I
13 mentioned earlier that I have just recently rolled off
14 the board of directors for AIH, but I think otherwise
15 it should be complete.

16 Q Does that reflect your training, education,
17 experience, and publications?

18 A Yes, to the best of my ability, it should.

19 MR. BOUCH: Move Exhibit 66 into evidence.

20 THE COURT: That would be Crosby Exhibit 66.

21 Ms. Farrise?

22 MS. FARRISE: Yes, Your Honor. I would just
23 object it's a hearsay document, and at this point it's
24 cumulative, given that we just heard the whole
25 recitation, and we have the PowerPoints.

ROA_01796

Appendix_01824

1 THE COURT: Very good. Overruled. It's admitted.
2 (WHEREUPON, Defendant's Exhibit Number Crosby 66
3 was admitted into evidence.)

4 MR. BOUCH: Thank you, Your Honor.

5 Q What does an industrial hygienist do, the core
6 disciplines of IH, what is that?

7 A So there are several scientific disciplines that
8 make up industrial hygiene. It is a multidisciplinary
9 practice, and so it includes the understanding, of
10 course, of exposure assessment, how to measure
11 exposures, and how to assess exposures, whether
12 qualitatively or quantitatively, depending on the need
13 and the situation, but it also includes an
14 understanding and knowledge, working knowledge, of
15 toxicology, epidemiology, and certainly risk assessment
16 as well. So understanding those multidisciplinary
17 fields and how they come together to protect workers in
18 the field.

19 Q And is that reflected accurately on Slide 22?

20 A I think more or less, yes.

21 Q Okay. Now, I asked you to do certain things in
22 this case, and are you prepared to answer these
23 questions and give opinions in support for your
24 opinions?

25 A Absolutely, based on the questions you originally

ROA_01797

Appendix_01825

1 asked me to evaluate.

2 Q Okay. Did I ask you to tell us what industrial
3 hygienists know about asbestos over time, especially
4 for end user products like gaskets and packing?

5 A Yes.

6 Q Did I ask you when, where, and how much could
7 Mr. Jolly have been exposed to asbestos from Fisher and
8 Crosby valves?

9 A Yes, you did.

10 Q Did I ask you what was Mr. Jolly's exposure
11 potential to products that were known to historically
12 contain amphibole asbestos?

13 A Yes, you did.

14 Q And did I ask you to compare Mr. Jolly's potential
15 exposures and how they compare with known exposure
16 benchmarks?

17 A Yes, that's correct.

18 Q Okay. Now, what is the term -- what is state of
19 the art?

20 A State of the art is a term that really applies to
21 the historic progression of knowledge or the current
22 state of knowledge. So an example I often will give is
23 the evolution, for example, of transportation. So when
24 we -- obviously, early humans walked everywhere, then
25 we were fortunate to have animals to use for

ROA_01798

1 transportation. Over time, we have developed the
2 automobile from a very kind of basic machine into a
3 very sophisticated piece of equipment and airplanes,
4 rockets. So it's understanding that process of a
5 particular area and the evolution over time.

6 Q And how -- give us an example of the evolution of
7 the car.

8 A Well, in cars, for example, one that I think is
9 helpful, especially from a safety perspective, is the
10 use of seat belts and car seats. You'll see pictures
11 from the early 1950s and into the '60s of people
12 riding -- the baby in the front seat, either with a
13 little harness or just lying on a pillow in the front
14 seat, and, certainly, we would never do that today. So
15 it's an evolution of the understanding of those issues.

16 Q Do you have any idea when seat belts first came
17 into common use?

18 A I think it was in the late 1960s. I think there
19 was, again, an evolution where some companies were
20 starting to use them, but I think it was into the late
21 1960s which was certainly much after the car was
22 invented.

23 Q Have you published a review of the history and
24 evolution of knowledge of asbestos?

25 A I have, yes.

ROA_01799

1 Q That would be Number 24; please.

2 Is this Slide 24 a picture of the cover of that
3 article?

4 A Yes. This is the front page of that article which
5 is in the peer-reviewed literature in which we really
6 tried to focus on -- there have been, certainly, other
7 reviews that have been done understanding the
8 toxicology and hazards of asbestos over time, but
9 really what was understood by the industrial hygiene
10 field with respect to exposure and risk and how those
11 played into the hazard and knowledge about asbestos,
12 issues like how we measure for it over time.

13 Q Let's go through the next, very quickly, because
14 the jury has heard what is asbestos. I'd like to get
15 it since we haven't heard from an industrial hygienist.

16 Tell us very briefly what is asbestos, the types
17 of fibers, and the asbestos product manufacturing in
18 mining exposures?

19 A Sure. Well, at its simplest term, asbestos is a
20 rock. It's a mineral silicate, and it occurs in a
21 number of different types of forms. There are several
22 that are kind of commercially significant that we see.
23 Those most common ones tend to be chrysotile, amosite
24 and crocidolite.

25 Q And would that be reflected on Slide 29?

ROA_01800

Appendix_01828

1 A Yeah, those are -- exactly. Those are pictures of
2 those. I think the most important distinction is that
3 chrysotile has a different chemical makeup. For
4 example, it does not contain iron, whereas the
5 crocidolite and amosite fibers do, and that causes the
6 physical properties to be different of those fibers.

7 So the chrysotile fibers are soft and curly,
8 whereas the amosite or crocidolite fibers are more
9 rod-like and spiky and a little bit harder.

10 Q In the early 1900s up through maybe about 1950,
11 were studies done concerning exposures to raw asbestos?

12 A Yes. There were studies done, essentially.

13 Q And this slide, Number 30, reflects -- well, it's
14 an asbestos textile card room?

15 A Yes, exactly. And early on, as asbestos began to
16 be used commercially, it was relatively quickly
17 understood that it was certainly a significant hazard
18 with respect to these large dust clouds and the fibers
19 which could cause a scarring of the lungs over time,
20 which came to be known as asbestosis.

21 Q And about mid century, maybe in the 1940s, were
22 there standards attempted to be set to prevent the
23 disease asbestosis from occurring in workers that were
24 exposed to raw asbestos?

25 A Yes, absolutely. The hazard was understood early

ROA_01801

1 on that there was for these very dusty environments,
2 and the American Conference of Governmental Industrial
3 Hygienists I mentioned earlier, the ACGIH, did
4 recommend a limit for asbestos exposure in the work
5 environment of five million particles per cubic foot in
6 the 1940s.

7 Q Now, you say ACGIH. Was that the government?

8 A They were not the government. As the name
9 suggests, they were a number of industrial hygienists
10 who worked in the government who are part of this
11 group, but it was really a volunteer group that was
12 working to try to help protect the workers in the
13 environments.

14 Q So they set it at five million particles per cubic
15 foot, and it remained in existence how long?

16 A A very long time. That particular level was in
17 place from 1946 all the way to 1968.

18 Q About this time, was there any study undertaken of
19 not just factory workers and miners making asbestos
20 products but those end users, the people who actually
21 used the products out in the field?

22 A There was an important distinction that a lot of
23 folks made from the visible dustiness of using or
24 working with raw asbestos, and the dusty material
25 versus a product that's already made or put together

ROA_01802

Appendix_01830

1 like insulation. And, yes, there was one study that
2 was done on insulation workers in the 1940s.

3 Q And would that be the Fleischer-Drinker study?

4 A I should clarify, that was published. Yes. This
5 was a study by Dr. Drinker and also Fleischer and
6 several other individuals who looked at the use of
7 insulation in a number of different environments and
8 measured the exposures to see what they were.

9 Q Study was primarily done in U.S. Navy shipyards
10 during the war, wasn't it?

11 A That's right.

12 Q And what was their conclusion on the use of
13 asbestos by insulation workers in 1946?

14 A So, interestingly, based on the work that they
15 did, they found that -- they believed that insulation
16 based on the their measurements did not pose an
17 exposure hazard to the workers because the levels were
18 below this level of five mppcf that had been set by
19 NIOSH in the great majority of instances that they
20 measured.

21 They did an assessment both of total dust and then
22 the percent asbestos found in the products, and they
23 hypothesized or they surmised that it was because of
24 the fact that the workers were not sitting, for
25 example, at a carding machine all day, but they were

ROA_01803

Appendix_01831

1 walking around doing other things. They would spend
2 some time cutting the insulation which could result in
3 an exposure, but then they would go and do other
4 things.

5 So at the time, based on that study, it was
6 believed that end user products did not pose a hazard
7 to workers and certainly not in the same way that the
8 mining, milling, and end user -- excuse me
9 manufacturing with raw asbestos would.

10 MR. BOUCH: Your Honor, just two seconds. Nothing
11 controversial.

12 (WHEREUPON, Mr. Bouch approached the bench.)

13 THE COURT: Yes, I'll let that in.

14 MR. BOUCH: Thank you.

15 MS. FARRISE: Can I see?

16 MR. BOUCH: I just asked if that was in or not.

17 Q It would be Exhibit 35.

18 Now, as of pre-1960, is this kind of the state of
19 the literature?

20 A I think this just shows -- it's really a diagram
21 to show where the industrial hygienists were focused in
22 their efforts on measuring worker exposure. You can
23 see for mining and manufacturing using raw asbestos, we
24 had a pretty significant number of studies that were
25 published, whereas those on end users were

ROA_01804

Appendix_01832

1 correspondingly a very small number, so there was not a
2 focus at this time partly because of the results of the
3 Fleischer study but also a belief that if this five
4 mppcf standard were met, which was quite a dusty
5 standard by today's standards, that there was not a
6 hazard to workers was the belief at that time.

7 Q Now, as an industrial hygienist, when someone says
8 they see visible dust in the air, does that reflect a
9 hazard of asbestos?

10 A So that does not necessarily reflect a hazard. I
11 think at the time there was a lot of discussion and
12 belief that it did. Now we know that the concerning or
13 hazardous elements of like a cloud of asbestos dust
14 are, in fact, those fibers that we cannot see. They
15 are too small to be seen by the human eye.

16 Q So the dust you see is not hazardous because you
17 can't breathe it in?

18 A Well, it's not quite that simple. So it depends
19 on how many of these very small fibers are present. So
20 because one sees a dust cloud doesn't automatically
21 mean that there is a hazard, and, conversely, because
22 one cannot see it, doesn't mean there's not a hazard.
23 It would have to be measured because it cannot be seen.

24 Q Going forward from 1960, there was a disease
25 called mesothelioma. Are you familiar with the

ROA_01805

1 development of asbestos knowledge and mesothelioma?

2 A Absolutely.

3 Q Slide 36, please.

4 And I believe the jury has heard this before, an
5 article by Dr. Wagner in 1960. What's the significance
6 of that?

7 A This was a very important study because it's the
8 first study that was published in the peer-reviewed
9 literature to demonstrate a number of cases of what was
10 at the time believed to be an almost nonexistent
11 disease, which was pleural mesothelioma. It was
12 observed in this study in South Africa amongst miners
13 and people who lived in and around and near these
14 mines, and it was specifically associated with the
15 crocidolite fiber that I mentioned.

16 Q Did Dr. Wagner later study not only just the
17 crocidolite miners on this but chrysotile miners?

18 A He did. He followed up -- I think this was a
19 pretty striking result at the time, and he followed up
20 with a second study in 1965 and found, interestingly,
21 that while he had seen these cases of mesothelioma with
22 crocidolite, at other mines in and around Africa, he
23 did not find the same -- in fact, he found no cases of
24 mesothelioma for either amosite or chrysotile mines.

25 Q Now, we looked at earlier the ACGIH, a voluntary

ROA_01806

Appendix_01834

1 group, set a five million particle limit, permissible
2 exposure limit, in 1946?

3 A That's right.

4 Q Did that subsequently change?

5 A It did. But as we saw earlier, not until much
6 later, until 1968, and there were some important
7 reasons for that.

8 Q Slide 43.

9 What were those reasons?

10 A So one of the most important reasons was that
11 until the discussion of mesothelioma became an
12 important part of the concern about the risk of
13 asbestos, it was believed still to that time that very
14 dusty environments, raw fibers, mining and milling were
15 where the hazards existed with respect to asbestos
16 exposure.

17 But in the 19- -- then with that, with that
18 development and then additional work by industrial
19 hygienists then to want to do more testing of asbestos
20 exposures, a new method was developed to measure the
21 exposures to asbestos. This was very significant
22 because, as I mentioned before, the five mppcf standard
23 was just measuring all particles in the environment,
24 whether they were asbestos or not, whether they were
25 fibers or not.

ROA_01807

Appendix_01835

1 And now for the first time, in 1968, a method was
2 published to allow industrial hygienists to collect
3 just the fibers which we now know are what we really
4 are concerned about when we talk about exposure to
5 asbestos.

6 Q Now, we talked a little bit about end users versus
7 miners. How did we get there?

8 I'm not there yet. Okay.

9 (Slide 43 is being viewed.)

10 Okay. How did you measure this asbestos exposure?
11 Let's do it this way.

12 A So asbestos exposure with this new method that was
13 developed, which I think you have heard a little bit
14 about before is fibers per cubic centimeter of air -- a
15 cubic centimeter is a pretty small volume of air -- and
16 how many fibers are present in that. And we test that
17 by collecting air onto a filter. We pull air through a
18 filter, it's a specially made filter that allows the
19 air to pull through without bunching up the filter.
20 Today we do that by having a little hand-held or
21 belt-held pump that can attach to the worker that has a
22 battery in it and pulls a constant stream of flow of
23 air through that filter. And we know how much air that
24 is, so that allows us to calculate how many fibers are
25 on the filter surface in a volume of air so that we can

ROA_01808

Appendix_01836

1 measure and report the airborne concentration of
2 fibers.

3 Q In reporting these concentrations, do you use a
4 term called TWA or time-weighted average?

5 A That is a very important term with respect to
6 understanding exposures because we, of course, could
7 measure an exposure instantaneously, which be could be
8 a second or a snapshot in time. What is the
9 concentration of air at this moment, right? But for
10 workers, what we really are most concerned about is
11 what happens over the workday. They're working
12 typically for eight hours. And, certainly, some people
13 work longer, and we can adjust our standards for those
14 longer work shifts or shorter work shifts, but the
15 eight-hour time is the most important time in terms of
16 characterizing exposure. And the reason for that is,
17 when you think about it, somebody might be working
18 doing something, and they might manipulate something
19 and create some exposure, but then they may need to
20 walk away and do something else associated with their
21 job, and then they come back and continue to do that,
22 so they may not have a continuous exposure associated
23 with a particular activity, and so we want to
24 understand how those peaks and valleys look over the
25 whole day.

ROA_01809

Appendix_01837

1 Q And is that illustrated on exhibit -- or, I'm
2 sorry, Slide Number 44?

3 A Yes, more or less. This is -- I think maybe a
4 better way to think about it would be if you're running
5 maybe like a 5k, a race, you might run the first
6 kilometer at a nine-minute mile, you might run the
7 second kilometer an eight-minute mile, and your average
8 might be an eight-and-a-half-minute mile throughout the
9 race. So that's what we're talking about is
10 understanding the average exposure over that eight-hour
11 period. We call that a time-weighted average or TWA.

12 Q Let's do an example that folks my age could
13 understand; you go on I-26 and you hit Spartanburg at
14 rush hour. You're only going 20 miles an hour.

15 A Right.

16 Q And after you get through that, as you go to
17 Clinton, you can go up to 70 miles an hour, right?

18 A Right. So your average speed over that time may
19 be 35 miles an hour. I didn't calculate that. It
20 depends on how long you're driving.

21 Q Have the permissible levels changed through the
22 years for asbestos?

23 A Absolutely, they have.

24 Q Is it illustrated on this slide, Number 45?

25 A Yes. This is just a graph to show, as we have

ROA_01810

Appendix_01838

1 learned more about asbestos over time and the hazards
2 of asbestos, those exposure limits have changed, as you
3 can see, dramatically. Up until 1960, '71, you can see
4 in the late 1960s, I talked about there is a lot of
5 development with a new sampling method. So in 1970,
6 OSHA is established, and in '71 they establish the
7 first legal work environment exposure limit which is
8 called a PEL or permissible exposure limit. And you
9 can see that with ongoing research at that time, the
10 additional focus, the exposure limits start to drop
11 precipitously through the 1970s. And today, of course,
12 we have an exposure limit, a TWA, eight-hour TWA, of .1
13 fibers per cubic centimeter over the eight-hour day.

14 Q So it started out at, basically, 12, dropped to
15 five, dropped to two, dropped to one, dropped to .1?

16 A Actually, it started out at 30. The equivalent,
17 the five mppcf through testing and peer-reviewed
18 publications that were done in the '60s, showed that
19 the belief at the time and is still used as a rough
20 conversion factor today depending on the situation was
21 as much as 30 fibers per cubic centimeter historically.

22 Q Now, I believe the jury has heard the term OSHA
23 was enacted in the very end of 1971?

24 A End of 1970.

25 Q '70, okay. And they came out with regulations in

ROA_01811

Appendix_01839

1 1972 regarding asbestos exposure?

2 A Actually, in '71 was their first asbestos
3 regulation.

4 Q Okay. Well, what's been marked as Exhibit 152,
5 I'll hand you up this exhibit. Did those regulations
6 apply to companies like manufacturing companies, or did
7 they apply to employers or who did it apply to?

8 A So what you've shown me here is the 1972 standard,
9 which was also a standard. There was an emergency
10 temporary standard in 1971 and then followed up with a
11 more robust standard in 1972. And, yes, that's
12 correct. This was a standard that applied to the
13 majority of workplaces in the country and outlined the
14 requirements for working with asbestos in those work
15 environments.

16 Q So if Duke Power Company were building and running
17 power companies, would this apply to them?

18 A Yes.

19 Q And what were they required to do?

20 A Well, you can see here that, in addition to the
21 permissible exposure limit, so keeping exposures below
22 a specific concentration in the workplace, there were
23 also requirements for other protection and protective
24 measures, and some of those had to do with if you did
25 exceed the exposure limits they had to go in place, and

ROA_01812

Appendix_01840

1 those included requiring the use of respiratory
2 protection or respirators that we sometimes see that
3 will cover your face and have filters to protect your
4 breathing; warning signs could be necessary with
5 certain requirements; dust samples would need to be
6 collected to show that exposures were below the
7 established permissible exposure limits; and also
8 making medical evaluations available for those who were
9 exposed above the exposure limit, and also maintaining
10 records.

11 Q Were these regulations amended and strengthened in
12 1976?

13 A They were.

14 Q And I think if you would flip the page, you will
15 see -- I think it's Slide Number 4 in that. There you
16 go. Okay -- and it reiterated the eight-hour
17 time-weighted average, did it not?

18 A Yes.

19 Q Five fibers -- no longer than five micrometers per
20 cubic centimeter, correct?

21 A Yes, that's correct.

22 Q And what were the methods of compliance? I
23 believe that's on the next slide.

24 A So, in this case you can see the methods of
25 compliance that were specified in the standard,

ROA_01813

Appendix_01841

1 included what's called engineering controls. What an
2 engineering control means is either a ventilation or
3 some other physical control, mechanical control that
4 can reduce the exposure or remove the exposure from the
5 worker. And ventilation is a great way to do that. If
6 we can suck away the air that has the dust in it from
7 the worker so they can't breathe it, that's preferable
8 to making our workers wear a bulky at the time, bulky
9 respirator that would be hot, depending on the
10 environment, and potentially less protective.

11 Q And they also enacted regulations on ventilation,
12 did they not?

13 A Well, there were some specifics about local
14 exhaust ventilation in the standard, and this is now a
15 1976, the update standard, in which there was a
16 requirement that where local exhaust ventilation was
17 required or needed, that it would be designed in
18 accordance with the American National Standards
19 fundamental governing exhaust, which was an ANSI,
20 American National Standards Institute, so that there
21 would be some specifications and minimum standards for
22 the proper design and use of those ventilation systems.

23 Q In 1976, were the regulations written to address
24 the use of tools in -- regarding asbestos work?

25 A In '76, yes, the tools were also addressed. So,

ROA_01814

Appendix_01842

1 for example, if power tools were going to be used and
2 it was known or demonstrated that exposures could
3 exceed the limit with those power tools, then
4 ventilation would be required on those tools to reduce
5 the exposure potential.

6 Q Okay. Did they adopt work methods involving
7 working around asbestos?

8 A There were certainly work methods as well that
9 were implemented at that time. For example, using wet
10 methods because wetting down materials is a great way
11 to reduce the dust potential.

12 Q Okay. And did they restrict the use of certain
13 products in how they are handled or removed from bags
14 and cartons and otherwise handled in the workplace?

15 A Absolutely. It was known by this time that
16 insulation materials, for example, were what we call
17 friable or could be pulverized -- they were dusty
18 materials -- so it was recognized that controls were
19 needed for handling those types of materials.

20 Q Now, in this case involving Mr. Jolly, have you
21 been provided with Mr. Jolly's deposition?

22 A Yes.

23 Q And have you read it?

24 A Yes.

25 Q Have you been provided with the transcript of

ROA_01815

Appendix_01843

1 Mr. Jolly's testimony here in this court last week?

2 A Yes, I have.

3 Q Have you had an opportunity to read it?

4 A Yes, I did.

5 Q Do you understand what plants Mr. Jolly may have
6 been employed at by Duke Power?

7 A Yes.

8 Q And I believe --

9 A It's my understanding it was quite a number of
10 different facilities where he described working for
11 different lengths of time but a number of different
12 places.

13 Q Is it your understanding he worked at the Catawba
14 Nuclear Station?

15 A Yes.

16 Q McGuire?

17 A Yes.

18 Q Ocone?

19 A Yes.

20 Q Belews Creek?

21 A Yes.

22 Q Riverbend?

23 A Yes.

24 Q Marshall?

25 A Yes.

ROA_01816

1 Q Buckstein?

2 A Yes..

3 Q Dan River?

4 A Yes..

5 Q Cliffside?

6 A Yes.

7 Q Okay. And I believe Lee?

8 A And Lee, I believe that was also mentioned.

9 Q Okay. I will hand you what has been marked
10 previously as Exhibit 134. Have you seen this document
11 before?

12 A Yes. This is a document from Duke Power with
13 their safety procedures for asbestos, and this one is
14 dated 1977.

15 Q I'm sorry. I get carried away. I talked over
16 you. What's the date?

17 A No problem. I apologize. It's June 14, 1977..

18 Q Okay. And what were they talking about?

19 A Well, what this letter talks about and then the
20 corresponding document is what safety practices were
21 needed and required at that time to work safety with
22 asbestos.

23 Q Okay. And this applied -- this was conforming
24 with the OSHA requirements in '76?

25 A It was, yes.

ROA_01817

Appendix_01845

1 Q Okay. And it applied to Duke Power for their
2 employees, correct?

3 A That's my understanding. And I should say that,
4 you know, there may be instances where I note that what
5 they have described here may not be identical with the
6 OSHA language, but certainly it was an intent to comply
7 with the OSHA standard at that time based on my
8 reading.

9 Q And I'm going to show you what has been marked as
10 Exhibit 135. Can you identify that for the jury?

11 A Yes. This is an updated version of the same
12 document, the safe work practices, which they called
13 "Safety Working Practice for Asbestos Exposure," and
14 this is dated May 28, 1982.

15 Q Okay. And I'll ask you if you have seen
16 Exhibit 136.

17 A This one, yes, I have.

18 Q And what is that?

19 A This is from September 1984, also looks like
20 related to their asbestos program. It's entitled
21 "Asbestos: How to Protect Yourself," and it looks like
22 it's an instructor's guide -- and I have seen this --
23 for an asbestos safety training program from Duke Power
24 Company.

25 Q Okay. And, finally, Exhibit 137. Have you seen

ROA_01818

Appendix_01846

1 this document?

2 A Yes, I have.

3 Q And what is it?

4 A This is the safe working practices for asbestos
5 exposure, the same policy or procedure document, and
6 this one is revised with a date of January 1st, 1985.

7 Q Okay. Now, what are these documents telling us?

8 A These documents outline the definition and
9 requirements for working with asbestos and what the
10 safe work practices are considered to be at Duke Power
11 and how they are going to manage exposure potential to
12 asbestos in their power plants.

13 Q Have you had an opportunity to review photographs
14 of the Duke Power facilities?

15 A Yes, I have.

16 Q I'll ask you to comment on have you seen
17 Exhibit 146?

18 A Yes, I have seen this picture before.

19 Q And what plant and what date is it talking about?

20 A This particular photo is from Oconee, and it's
21 from March of 1974.

22 Q Okay. And what does it depict?

23 A It seems to show two workers working on a large
24 pipe, and in the foreground here, we can see what looks
25 like a box of pipe insulation from 48, is the name of

ROA_01819

Appendix_01847

1 the company.

2 Q Okay. Exhibit 147. Have you seen that before,
3 ma'am?

4 A Yes, I have seen this picture as well.

5 Q Very similar to the document prior. I believe the
6 date might be cut off on that, but it's Ocone?

7 A This one is also Ocone, that's right.

8 Q Okay. And I'll just to speed up, 148 and 149,
9 what are those?

10 A These are also additional pictures of workers. In
11 particular, 149 is a picture of individuals applying
12 the insulation to a large pipe at the Ocone facility,
13 and this is from 1973.

14 Q Going forward, have you been provided other Duke
15 documents and pictures of plants?

16 A I have seen other pictures as well, that's right.

17 Q And can you describe this picture?

18 MS. FARRISE: Your Honor, I just have.

19 MR. BOUCH: Take it down. It's not been admitted
20 yet. That one is. That one is okay.

21 MS. FARRISE: This one is lack of foundation and
22 irrelevant to this case.

23 THE COURT: This is 149?

24 MR. BOUCH: No, no, no. We're not there.

25 MS. FARRISE: What he next has planned.

ROA_01820

Appendix_01848

1 MR. BOUCH: I can explain at a sidebar in ten
2 seconds, Your Honor.

3 THE COURT: Is this 1504?

4 MR. BOUCH: I'm going to offer that, Your Honor.

5 THE COURT: All right. Sure.

6 (WHEREUPON, a bench conference was held off the
7 record in the presence of the jury, but out of the
8 hearing of the jury.)

9 BY MR. BOUCH:

10 Q Now, Ms. Sahmel, I'm going to ask if you had an
11 opportunity to review Exhibits 140 through 143 that are
12 in evidence.

13 A Yes, I have seen these documents.

14 Q And what do those documents reflect?

15 A These documents have to do with correspondence
16 between the Covil insulation company and Duke Power
17 Company with respect to the purchase of insulation
18 including Kaylo and fiberglass in one example here from
19 1970 and --

20 Q And Johns Manville?

21 A And it looks like Johns Manville as well, that's
22 right.

23 Q And do you understand Covil was the insulation
24 contractor for the Oconee plant?

25 A That is my understanding.

ROA_01821

1 Q All right.

2 (Mr. Bouch approached the bench.)

3 MR. BOUCH: Would you put up 63 on mine.

4 THE COURT: 60, is what I've got. You've got 63?

5 MR. BOUCH: Yeah.

6 THE COURT: All right.

7 MR. BOUCH: The only thing that's lacking is the
8 decimal places to the right.

9 Q Now, Ms. Sahmel, I've asked you, as an industrial
10 hygienist, to talk about exposure, cumulative exposure,
11 and dose. What do those mean?

12 A So dose is what we often refer to as the total
13 exposure that somebody has received over some time
14 period, and that could be over your lifetime, or it
15 could be over your working lifetime, which we typically
16 say is about 45 years. So we want to understand the
17 total amount, like if you could think about it in terms
18 of each day contributes a little bit, but the total
19 amount that somebody receives over a specified period.
20 And for the case of workers, over about a 45-year
21 period.

22 Q A working life is 45 years?

23 A Working life is -- at least that's how OSHA has
24 defined it when I've even it in letters of
25 interpretation.

ROA_01822

Appendix_01850

1 Q I was going to say, the judge and I should have
2 quit 20 years ago.

3 I'm asking you at this time exposure, duration,
4 cumulative dose. It's a fairly simple formula on the
5 board. I think it's Slide Number 60. Is that what
6 we're talking about?

7 A That's right. This is a pretty standard metric in
8 understanding and comparing cumulative exposures, so we
9 want to know how many days and then how many years of
10 exposure that an individual had for a chronic exposure
11 hazard or concern. In this case, particularly with
12 cancer, we want to understand the total dose that
13 somebody received from day to day and year to year.

14 Q Okay. So but -- and the fibers per cc years, how
15 is that calculated?

16 A So it's really a very simple calculation. It's
17 multiplying the concentration, which often will be
18 that, what I talked about, the eight-hour time-weighted
19 average concentration, times the number of years of
20 working time that that individual had doing whatever
21 that activity was.

22 Q So --

23 A It's a quite simple calculation, although the
24 units look a little strange, but it's really the total
25 amount of asbestos exposure, for example, in this case.

ROA_01823

Appendix_01851

1 Q The next slide, does that demonstrate -- have you
2 done an example of, for example -- no. That's the
3 wrong one.

4 (Slide 89 is being viewed.)

5 Q So let me ask you to come down and --

6 A Sure. Do I need to bring a marker over there?

7 Q Yes. Maybe we can show the jury how the
8 permissible levels would go.

9 And so in 1971, the permissible exposure level was
10 12 fibers per cc. Write that down.

11 A I apologize for my handwriting in advance.

12 Q And you multiply that by 45 years?

13 A Uh-huh.

14 Q And that comes up to 540. I've got a cheat sheet
15 here.

16 A Yes.

17 Q Fiber per cc years.

18 A Right. So it's just 12 times 45, and this gives
19 you a sense of then the total, the total dose, if this
20 person were exposed every day for 45 years at 12 fibers
21 per cc for eight hours a day.

22 Q Was that the prevailing belief in 1971 that 540
23 fibers per cc years was okay?

24 A Well, that was the allowable exposure limit at the
25 time.

ROA_01824

Appendix_01852

1 Q And in '72 it went to five fibers?

2 A Correct.

3 Q And five times 45?

4 A I'll write smaller here. My first one is kind of
5 big.

6 Q And that equals 225?

7 A Yes, it does.

8 Q Okay. So in 1972, when OSHA did their emergency
9 standard, 225 was okay?

10 A So that was what was allowable then under the
11 standard over a working lifetime was 225 fiber cc
12 years.

13 Q Did it subsequently drop from five?

14 A Yes. As we saw in the chart, it's continued to
15 decline with additional research and knowledge about
16 asbestos and did get lower over time until today.

17 Q Well, let's go to two fibers, which was the '76.

18 A Sure.

19 Q You don't even need my cheat sheet for that one.
20 So 1976, it's 90 fiber years was the permissible limit?

21 A Would be the equivalent allowable exposure limit
22 at the eight-hour time-weighted average.

23 Q And that is probably decreased by at least a
24 factor of six from when they started?

25 A That's right. It's a significant decline just

ROA_01825

Appendix_01853

1 from 1971 down to 1976.

2 Q And now in 1986, it was .2 fibers, a change that
3 was lowered even further?

4 A That's right.

5 Q Nine?

6 A Yeah, 0.9.

7 Q No, no. Nine, just nine.

8 A Oh, yeah. Sorry.

9 Q So in 1986, the permissible standard was nine
10 fiber years. That was two years after Mr. Jolly went
11 from being an inspector to an instructor, right?

12 A Again, the equivalent allowable cumulative working
13 lifetime exposure based on the eight-hour time-weighted
14 average would be equivalent to nine fiber cc years over
15 a working lifetime.

16 Q And in 1994 -- this is the last one -- it was
17 dropped to .1; is that correct?

18 A That's correct.

19 Q So today, four and a half fiber years is the
20 permissible exposure limit?

21 A Well, it's the equivalent cumulative working
22 lifetime dose at the allowable OSHA limit.

23 Q Right. Over a lifetime, four and a half years,
24 fiber years, is the permissible limit?

25 A If one were to work for 45 years, which OSHA says

ROA_01826

Appendix_01854

1 is the typical working lifetime for an individual, at
2 their allowable limit of .1, it would be equivalent to
3 4.5 fiber cc years, that's right.

4 Q What is -- can you tell the jury --

5 Your Honor, I don't know when you want to -- I
6 know we were delayed starting, and I don't know the
7 idea. I'm about ready to shift gears into something.

8 THE COURT: I brought you in at quarter of 3:00.
9 Why don't we take a ten-minute break before we go to
10 the next topic Mr. Bouch wants to cover.

11 You may go to your jury room.

12 (WHEREUPON, the jury exited open court at
13 3:54 p.m.)

14 THE COURT: All right. We'll be at ease for a few
15 minutes.

16 MR. BOUCH: Can I proffer these things for two
17 seconds?

18 THE COURT: Certainly. I'm just telling the court
19 reporter. Diane, he's going to proffer some
20 photographs that are historical photographs from the
21 '50s and so forth with respect to various Duke plants
22 and piping situations and insulation situations. Is
23 that fair?

24 MR. BOUCH: Your Honor, I mean, I'll describe the
25 photographs.

ROA_01827

Appendix_01855

1 THE COURT: Very good.

2 Mr. McLeod, you got something before he does this?

3 MR. McLEOD: No, Your Honor. I just want to make
4 sure that the jury door was shut.

5 THE COURT: I think it is. I think we're good.

6 MR. BOUCH: We would proffer: Exhibit 1504
7 purports to be a photograph of the dock steam
8 generating plant dated October 2, 1953, illustrating
9 boxes of Johns Manville 85-percent magnesium and debris
10 on the factory floor.

11 We would proffer Exhibit 1505, a photograph of the
12 Marshall Plant 1 and 2 dated February 15, 1965,
13 describing insulation and debris scattered through the
14 plant site.

15 We would proffer Exhibit 1506, another photograph
16 of Marshall, February 3, 1966, showing insulation
17 pieces on the floor and boxes of Kaylo insulation.

18 We also proffer Exhibit 1507 of the Marshall
19 plant, March 1, 1966, with Kaylo insulation boxes
20 displayed on the floor of the plant.

21 We would proffer Crosby -- or Exhibit 1508 of
22 Belews, that's B-e-l-e-w-s -- pronouncing it wrong --
23 Creek October 29, 1975, indicating an insulation worker
24 and welder working on insulation in that plant.

25 And, finally, an undated photograph of the Allen

ROA_01828

Appendix_01856

1 plant in Exhibit 1509, again indicating presence of
2 Johns Manville pipe insulation and a picture of a steam
3 generator.

4 THE COURT: Thank you. And the court's ruling on
5 these proffered exhibits, the plaintiff has objected on
6 the basis of 401 and 403. Their relevance has not been
7 established, and to the extent they would be relevant,
8 it has not been established as to what they would be
9 probative of, and that would confuse the jury.

10 MR. BOUCH: Let me further indicate why they're
11 important, Your Honor. I believe they depict the
12 typical conditions of the power plant, both in
13 operation and construction, that has been described
14 through the years including the later years when
15 Mr. Jolly was there.

16 Mr. Jolly described the disposal of the insulation
17 on the floor of the plant. We have already in evidence
18 the documents showing the Kaylo and Johns Manville were
19 the insulation products used in Oconee, and, of course,
20 we believe these photographs establish that they were
21 the insulation installed in the other coal-fired steam
22 plants that Mr. Jolly also admitted he worked at
23 through the years. So that's why it's important.

24 THE COURT: Very good.

25 MS. McVEY: Can I just respond briefly to that?

ROA_01829

Appendix_01857

1 The first point is that Mr. Jolly was here, and he
2 was not asked whether or not these were fair and
3 representative of the conditions we saw when he was at
4 any of these plants to the extent he was at these
5 plants, and so we object on that basis, not during the
6 time periods he was there, and they're not fair and
7 accurate representations of the conditions he
8 experienced at the Duke power plants.

9 THE COURT: Very good.

10 MS. McVEY: Thank you, ma'am.

11 (WHEREUPON, a recess was taken from 3:59 p.m. to
12 4:14 p.m.)

13 (WHEREUPON, the jury entered open court at
14 4:14 p.m.)

15 THE COURT: Please be seated, ladies and
16 gentlemen, and we will continue with the direct
17 examination of Ms. Sahmel.

18 BY MR. BOUCH:

19 Q I want to talk to you now about risk assessment,
20 specifically human health risk assessment. Okay?

21 A Okay.

22 Q I have a slide up there. Could you describe the
23 elements of what we're talking about, but first tell us
24 what human health risk assessment is.

25 A Certainly. So human health risk assessment, as I

ROA_01830

Appendix_01858

1 alluded to earlier, is the process of determining and
2 quantifying or characterizing risk to various
3 situations, to chemical exposures, so that we have a
4 way to talk about what that risk means, like when we
5 say risk, what it means.

6 THE COURT: This is blocking the jury from
7 completely seeing your questioning, Mr. Bouch.

8 MR. BOUCH: It shows that I am completely
9 ineffective --

10 THE COURT: A lot of moving parts.

11 MR. BOUCH: Sorry about that.

12 Q Now, we heard an example earlier of water we
13 drink.

14 A Okay.

15 Q We drink a quart of water a day. That's pretty
16 good?

17 A Right.

18 Q We drink seven or eight gallons, we're stretched
19 out on the floor, right?

20 A Absolutely. So there's --

21 Q Is that what you're talking about when you say
22 risk assessment?

23 A That's certainly a risk assessment
24 characterization in terms of understanding how much of
25 an amount of something, whether it's water or salt or

ROA_01831

Appendix_01859

1 aspirin, how much of that is a safe dose or a lethal
2 dose, and there are lethal doses for many common
3 substances like water, like salt, like aspirin.

4 Q Would be one for aspirin?

5 A What would be what?

6 Q One for aspirin?

7 A What would be a lethal dose?

8 Q Right.

9 A I'm not sure what a lethal dose of aspirin would
10 be. It would be a pretty substantial dose. I think
11 it's probably maybe like 30, 40, maybe more. I can't
12 remember the exact amount, but it's enough that,
13 obviously, you have a health, you know, a healthy dose
14 or healthful, beneficial, potentially, dose at one
15 level, but if you take too much, you can go into a coma
16 and even die.

17 Water is the same thing. It seems like a crazy
18 thing, but people have finished a race, for example, or
19 some big event where they're very thirsty and drunk
20 enough water to actually cause their death. I think
21 that's about seven and a half gallons of water.

22 Q So if we take a couple aspirin, we're okay; if we
23 take a couple of bottles in one sitting, we're in
24 trouble?

25 A That's right.

ROA_01832

Appendix_01860

1 Q And I believe, just to keep it simple, if a real
2 scientist was going to photograph this, he would have a
3 graph here and a graph here and maybe one aspirin right
4 here and two bottles there, and this is the disease and
5 it would go like that?

6 A Well, yes. So more or less, exactly. As the
7 amount you take increases, the risk of having an effect
8 increases or the noticeable symptoms and severity of
9 those symptoms will increase with increased dose.

10 Q Okay. I think I've made my point. So you
11 identify a hazard; you have a dose response, which is
12 the aspirin thing?

13 A Right. So how much corresponds to what symptoms.
14 So, for example, one aspirin might be no effect; two
15 might be a beneficial pain reliever effect, and then
16 some amount might result in putting you into a coma,
17 and then there might be a fatal dose as well. I
18 believe there is a fatal dose.

19 Q And then you do an exposure assessment. What's
20 that?

21 A So as you can see here, the three kind of core
22 disciplines or pieces that go into a risk assessment or
23 risk characterization, which the risk characterization
24 is part of the risk assessment process, are
25 understanding is it a hazard, and if so, what kind of

ROA_01833

Appendix_01861

1 hazard. For example, is it a breathing hazard; is it a
2 skin exposure hazard. And then the dose response, how
3 much of it causes whatever those effects or symptoms or
4 outcomes is needed, and then, finally, how do we figure
5 out how much people have. So we have to measure that,
6 and that's called the exposure assessment.

7 Q Okay. Now, both EPA and OSHA have done these risk
8 assessments, have they not?

9 A Absolutely.

10 Q Could we put up 66.

11 It's similar to something we saw before where
12 there are, I think, EPA used four studies?

13 A OSHA used four studies in theirs, and EPA did as
14 well and then later added a couple of additional -- I
15 think the important thing to note about this particular
16 risk assessment that OSHA and also EPA did for asbestos
17 specifically, which was a very similar assessment, is
18 that they collected data or used data, which not
19 surprisingly, based on the studies that we talked about
20 earlier, were for very relatively high exposures and
21 very dusty environments, so manufacturing environments,
22 textile manufacturing, insulation use.

23 But because there were no real data at the lower
24 end, and they wanted to make sure that they protected
25 workers at all exposures, they extrapolated down from

ROA_01834

Appendix_01862

1 those high numbers where they had data down to an area
2 where there was no data, but they needed to have
3 something there in place because they didn't want to
4 leave it open.

5 So as a policy, OSHA has determined that when the
6 mode of action of a chemical is unknown or when
7 insufficient information is available, they will use
8 that approach, which is called a linear extrapolation,
9 where you basically draw a line from the known data
10 down to zero, and then that becomes your risk
11 characterization, your risk assessment.

12 It's absolutely appropriate for OSHA to use this
13 extrapolation approach because they want to protect the
14 public and protect the workers, so they have also,
15 based on their research, have understood that this is a
16 way to -- it's more likely to overprotect workers and
17 overprotect the public than underprotect, so it's a big
18 reason why they use this approach, and I think it's
19 appropriate.

20 Q Okay. Can you go back one slide?

21 So this part down here is more an -- or is this an
22 extrapolation for which there really is no data to
23 support that part of the line?

24 A That's right. When they first did their
25 assessment, there was no data in that region. They

ROA_01835

Appendix_01863

1 extrapolated from very high exposures, and those
2 cumulative exposures that they extrapolated from were
3 based on the chart we saw earlier. The ones that they
4 used were studies from, I think, about 50 fibers per cc
5 year up to 600 fiber per cc year, and they had nothing
6 below 50. Of course, now we see there is lots of types
7 of exposures and lots of questions about exposures at
8 much lower levels, so they used this extrapolation
9 model, extrapolated down, which gives a value for the
10 risk, but it's not a real number. It's an estimate
11 based on a model.

12 Q Number 71, please.

13 So the EPA's regulatory policy has been expressed
14 how?

15 A Oh, well, they have expressed it in many different
16 places. They have a chemical carcinogen policy, and
17 it's available today on their website. Any of you
18 could go and take a look at it, and they explain very
19 clearly what their policy is and how they use it, and
20 what the EPA says is when a mode of action of a
21 chemical is unknown, that they will use this linear
22 extrapolation approach because they believe that it
23 will not underestimate the risk to the public.

24 Q And at least in 1986, how did they explain their
25 use of linear extrapolation models?

1 A In one of their '86 documents, they said, and I
2 think this is a great way to understand it and
3 characterize it, is that linear extrapolation models do
4 not necessarily give a realistic prediction of the
5 risk, and the true value of the risk is unknown and may
6 be as low as zero in certain places on that line.

7 Q Now, exposure assessment. There's some key
8 factors you have to look at in that; is that not true?

9 A In exposure assessment?

10 Q Yes, ma'am.

11 A Absolutely.

12 Q Slide 74, please.

13 And would these be those key factors, Slide 74?

14 A That's right. At its most basic level, when we do
15 an exposure assessment, we want to know how long, how
16 often, and how much, right, of the exposure that
17 someone had, and that gets to that fiber per cc year
18 estimate. So these are the three questions that I will
19 ask if I'm doing an exposure assessment.

20 Q There's been some terms, friable versus
21 encapsulated or nonfriable. What are those?

22 Slide 77, please.

23 A Yes. Friable is really just a fancy term for
24 something that can be crumbled with your hands or
25 pulverized with your hands. So it's something that's

ROA_01837

Appendix_01865

1 crumbleable, if that's really a word -- probably not --
2 but can be made into a dust or powder with just the
3 pressure of a hand.

4 Q Have researchers commented on that through the
5 years?

6 A It's become a term that's used in -- a term of
7 art, I guess you would call it, in exposure assessment
8 when we talk about asbestos.

9 Q Okay. And we talk about encapsulated. Likewise,
10 have commentators written on that through the years as
11 appreciative of a hazard?

12 A Yes. It's become a term that's used in the OSHA
13 standard. For example, encapsulated material is
14 defined as something that's bound into a matrix or a
15 binder such that the fibers are not easily releasable.

16 Q For example, Dr. Selikoff in 1970?

17 A Yes. In 1970, for example, Dr. Selikoff did say
18 that when the asbestos is locked into a product that's
19 encapsulated, that he believed that there was no
20 significant release of asbestos fibers from those types
21 of materials.

22 Q And Dr. Ladell of the International Agency on
23 Research on Cancer?

24 A Yes. IARC also commented on encapsulated
25 products, and it specifically talked about gaskets, and

ROA_01838

1 they said there was no conceivable health risk
2 associated with gasket material, specifically
3 asbestos-based gasket material.

4 Q And Dr. Nicholson, a partner of Dr. Selikoff, in
5 1983?

6 A Yeah. I think this is an important quote here
7 because Dr. Nicholson was one of the chief industrial
8 hygienists at Mt. Sinai who worked with Dr. Selikoff
9 for many years, and he stated directly as well that
10 it's clear that the exposures from insulation or
11 removal of gasket materials would not lead to any
12 discernible disablement. He was talking about work
13 with gaskets at that time.

14 Q And Slide 82.

15 Even the materials you reviewed from Duke Power
16 Company appreciates the difference, do they not?

17 A They certainly did, according to their 1984
18 training document. And here they stated that at that
19 time, by '84, relatively little asbestos was used any
20 longer, which makes sense with the regulation, but that
21 they noted that it was still used in gasket material,
22 but that even so, the asbestos in these jobs, in these
23 using gaskets is bonded, which means it produces
24 virtually no dust, is the terminology that they used.

25 Q Now, Mr. Jolly, what was his occupation?

ROA_01839

Appendix_01867

1 A Mr. Jolly's occupation was an inspector.

2 Q Okay. Did he personally work with any internal
3 valve, gaskets, or packing?

4 A Well, I should clarify. For early in his career,
5 when he first started in '80 to '84, he described his
6 work as an inspector during that time.

7 Q Right?

8 A It's my understanding from my review of his
9 testimony, including when he was here at trial, that he
10 did not personally do work with valves.

11 Q Okay. Did he work with gaskets or packing
12 directly?

13 A He --

14 Q Personally.

15 A Based on my read of his testimony, he did not
16 describe doing routine, direct work with any gaskets or
17 packing that was hands-on himself.

18 Q Did Mr. Jolly himself describe himself as a
19 bystander?

20 A I don't recall if he used that term or not.

21 Q Okay. But what was he doing when work on valves
22 and pipes were being performed at the Duke Power
23 facility?

24 A What he described was working very closely and
25 regularly around individuals who were doing the work on

ROA_01840

Appendix_01868

1 valves inspecting them, but, although he -- it's my
2 understanding that his primary work had to do with the
3 pipe lengths and the flanges that connected to those
4 valves or connected to other piping, and that he was
5 looking at often the flange gasket and ensuring that
6 the work was done correctly because it's a very
7 scientifically accurate requirement to perform that
8 work and then that maintenance work.

9 Q In preparing for this case, Ms. Sahmel, were you
10 provided with Mr. Jolly's trial and deposition
11 testimony?

12 A Yes, I was.

13 Q Were you provided with the testimony of
14 Mr. Taylor, whose deposition was taken in this case?

15 A Yes, I was.

16 Q Were you provided with the deposition testimony of
17 Mr. Rogers that was taken in this case?

18 A Yes.

19 Q Were you provided the deposition of Mr. Simpson
20 who was taken -- which was taken in this case?

21 A Yes.

22 Q And did you look at that testimony and try to
23 identify the types and numbers of valves worked on at
24 Duke by all those people?

25 A Absolutely. That was a very important question

ROA_01841

1 for me to understand.

2 Q And did you provide -- did you come up with a
3 chart that would demonstrate what you found out of that
4 testimony?

5 A What I did, I did my best to try to take each
6 witness and each coworker and their descriptions as
7 they personally recalled and described the work and put
8 together a list of the total number of valve
9 manufacturers that they recalled at the Duke facilities
10 and how many valves they recalled of different kinds.

11 Q Okay. And there were a number of them, weren't
12 there?

13 A There were quite a few. As I recall, I believe 17
14 different valve manufacturers' products were recalled
15 by the four witnesses in total between their deposition
16 and trial testimony, and thousands of valves total at
17 the facility were recalled, I believe, by at least two
18 witnesses.

19 Q Okay. Now, at my request, have you reviewed the
20 peer-reviewed gasket and packing studies?

21 A Absolutely.

22 Q And are they exhibited on Slide Number 88?

23 A Yes. You can see here a list. This is a
24 comprehensive list of all of the peer-reviewed papers
25 that I was able to identify that had performed

ROA_01842

Appendix_01870

1 measurements, airborne quantitative exposure
2 measurements, on gasket and/or packing products.

3 MS. FARRISE: Your Honor, I'm just going to object
4 to the slide because it publishes inadmissible hearsay.

5 MR. BOUCH: I believe this is one you said was
6 okay, Your Honor.

7 THE COURT: I did. Noted.
8 Overruled.

9 MR. BOUCH: Thank you.

10 Q And had you drilled down -- have you gone through
11 these carefully to try and distinguish the gasket and
12 packing airborne concentration data involving the
13 intensity over an eight-hour time-weighted average?

14 A Yes, I have. It's very important when looking at
15 this exposure data, as one would for any body of data,
16 to understand important characteristics about that
17 dataset. So in this case, I wanted to understand
18 what's the range, what's the lowest measurement that's
19 been reported in the literature, and what's the
20 highest. I focused on the peer-reviewed literature.
21 There are many other studies that have been performed
22 on gaskets and packing because I wanted to look at
23 those studies as a body that have been reviewed by
24 other experts in the field and deemed appropriate for
25 publication, but then I personally also performed my

ROA_01843

Appendix_01871

1 own additional evaluation on those.

2 The kinds of things I am looking for are do all of
3 the values come -- are they all in a similar range, do
4 they make sense relative to each other, is there
5 anything unusual going on in this body of numbers, body
6 of data, about the exposures.

7 And then the other thing that was very important
8 to me to understand was there's lots of data that have
9 been collected over time on just the replacement, for
10 example, the exposure you might experience replacing
11 the gasket and packing in one valve. And while that's
12 certainly important and I want to make sure that that
13 data makes sense in the larger dataset, what is even
14 more important is what would a person typically do over
15 their day, and, for example, how many gaskets would
16 somebody realistically change, how many valves, because
17 that one that we talked about, the time-weighted
18 average, that one little piece of the data, so
19 30 minutes where you're in the valve actually the doing
20 the work, you might have a slightly higher peak there,
21 and then it might go back down while you're now putting
22 the valve back together. No less important work, just
23 different work with respect to exposure. So what
24 became most important to me is identifying full-shift,
25 eight-hour time-weighted average data in this body of

ROA_01844

Appendix_01872

1 literature.

2 Q Okay. Now, the articles listed on this slide, are
3 they the articles typically relied upon by industrial
4 hygienists in the field such as yourself?

5 A Well, I -- my personal philosophy, and I certainly
6 hope any well-qualified industrial hygienist, even if
7 something is published in the peer-reviewed literature,
8 would still look at the body of evidence and see, does
9 all this data make sense; are there things that are
10 missing.

11 For example, I might say, well, if somebody
12 collected an exposure measurement, but they didn't
13 report how long the sample was collected for, that data
14 is hard for me to use because I don't know what it
15 means. Was it a two-minute sample? Was it a 30-minute
16 sample? Was it a 400-minute sample?

17 And, similarly, if the intensities are off, then I
18 would want to drill into that to look. So I wouldn't
19 necessarily take every document at its word and say
20 that they're automatically reliable just because
21 they're peer reviewed.

22 Q But it's literature that experts such as yourself,
23 at least, take into consideration in formulating their
24 opinions?

25 A I would certainly always consider and review all

ROA_01845

Appendix_01873

1 of the peer-reviewed literature on the topic.

2 Q Could we go to Slide 89.

3 I asked you about eight-hour time-weighted average
4 studies. Are these the subset, if you will, of those
5 studies from the longer list that you looked at
6 initially?

7 A This is the subset of data from the larger list
8 that was shown on the previous slide. These ranges of
9 exposures are most importantly specific to gasket and
10 packing work. There were a couple of studies, for
11 example, that noted that they believe that some
12 insulation work may influenced the results, or that
13 some other things may have happened that were
14 unexpected in the study, or that they only collected
15 those short-term samples I talked about, maybe just a
16 30-minute or a 15-minute sample, which is very useful
17 to understand your exposure to a particular piece of
18 equipment, but not what your exposure might look like
19 day-to-day as you do your job which involves some of
20 that work but also some other important things.

21 Q Well, I notice that between this slide and the one
22 prior -- could we go back one -- you did not include
23 the Longo 2002 in your eight-hour time-weighted average
24 analysis, correct?

25 A That is correct, I did not.

ROA_01846

Appendix_01874

1 Q Why not?

2 A There are several specific reasons why I did not
3 include that particular study. That particular study
4 has, in my opinion, three major technical deficiencies.

5 The first of those deficiencies is that many of
6 the sample cassettes -- I talked about the filters
7 where we collect the fibers -- were overloaded. And
8 what that means is the microscopist, who's going to
9 take a microscope and look at that filter to count the
10 fibers, can't see them. They're clumped on top of each
11 other, and they're very difficult to see. So if
12 there's too much material on a filter, it can't be read
13 correctly. And there are very specific requirements
14 for the methods from NIOSH, for example, about the
15 loading of those filters.

16 The second major technical deficiency that I
17 determined in that particular study is that before the
18 study even started, the concentration in the chamber
19 where the study was performed was already higher than
20 the current OSHA PEL. It was over .1 fibers per cc,
21 and to me, that's a concern. It indicates a lack of
22 cleanliness, a lack of attention to detail, and a
23 concern because I knew that much of the other data was
24 below the current OSHA PEL, that it didn't seem to me
25 that a realistic measurement could be collected under

ROA_01847

Appendix_01875

1 those conditions.

2 The third major technical deficiency that I noted
3 in the Longo study was that, because their filters were
4 overloaded, they used what they called a modified
5 method, but in fact, it was just an unaccepted method.
6 It's a method to analyze the filter that was neither
7 accepted by NIOSH nor EPA, in which they took -- it's
8 called an indirect method. They took the fibers off
9 the filter and spread them out to look at them. But
10 what happens when you do that is you could artificially
11 spread things out and make them smaller so that they're
12 more easily breathable in in size when, in fact, they
13 were originally clumped together, so it would lead to,
14 in some cases, a much higher number of fibers than the
15 accepted, approved methods of reading those filters
16 would be.

17 So those were the three reasons why I did not
18 consider that study in my final eight-hour
19 time-weighted average list.

20 Q Has Dr. Longo's study ever been duplicated or
21 replicated?

22 A Not to my knowledge.

23 Q Why is replication or duplication important in
24 scientific research such as what you do?

25 A Oh, it's critically important. In fact, it's sort

ROA_01848

Appendix_01876

1 of a tenet of research, right. If your research isn't
2 replicatable, then it's really not an accepted
3 approach. And, you know, there could be reasons for
4 that. Maybe it's something very new, but in general,
5 scientists are skeptical of a study that is not
6 repeatable by somebody else.

7 Q So the five slides that you looked at or five
8 studies you looked at, what are the results in regards
9 to those studies as far as the current OSHA permissible
10 exposure limit or PEL of .1 fiber?

11 A For the studies which I determined have
12 appropriate data specific to gaskets and packing that
13 were full shifts, so long enough to really understand
14 the full workday, that's right. Those exposures ranged
15 from nondetectable up to an upper bound of 0.062 fibers
16 per cc as an eight-hour or a full-shift time-weighted
17 average, and, in fact, in this case, all of those
18 numbers were below the current OSHA PEL so it would be
19 allowable today in the workplace.

20 Q Now, you have reviewed the Duke Power safe working
21 practices, have you not?

22 A Yes, the ones we talked about earlier, yes.

23 Q And I'd like to ask you a couple questions.

24 And this would be Slide 96, please.

25 In 1982, what was Duke's opinion of the asbestos

1 insulation already in place in its plants?

2 A Yes. At the time, both in '82 and then in
3 subsequent versions of that document that we've talked
4 about earlier, Duke states very explicitly that their
5 policy is to leave those materials like insulation in
6 place unless there is some reason to disturb them, in
7 which case then they would be appropriately dealt with
8 in terms of limiting exposure and removing them safely.

9 But that was a very common policy at that time not
10 to go in and create a big additional hazard by ripping
11 out all of the insulation if it wasn't needed to be
12 ripped out. I know in AHERA there was a similar
13 approach that was followed in some cases, which would
14 be in schools, for example.

15 Q AHERA dealt with schools?

16 A Yes.

17 Q And there was a formula, unless you were
18 disturbing more than so many square feet or so many
19 linear feet, you left it alone?

20 A I don't recall the exact policy, but there was
21 certainly discussions in the standard about leaving
22 some friable materials or insulation materials alone
23 unless you really needed to disturb them.

24 Q Now, I believe you also looked at insulation
25 airborne concentration studies such as Nicholson and

ROA_01850

Appendix_01878

1 U.S. EPA.

2 Slide 97.

3 A Yes.

4 Q What does this slide tell us?

5 A So this study, as we talked about exposure
6 assessments for gaskets and packing, this is a summary
7 of some studies of full-shift again eight-hour
8 time-weighted average exposures that have been reported
9 in the literature for working with insulation. So this
10 is insulation that would be considered friable that
11 could generate dust pretty readily, and so not
12 surprisingly, those numbers are higher. But I want to
13 understand quantitatively the relative concentrations
14 in intensity of exposure for insulation over a full
15 shift when you have insulators working on insulation
16 materials compared to, for example, in this case gasket
17 and packing work.

18 Q And you also looked at background concentration
19 estimates throughout the United States?

20 A I have. I've done -- I've performed a study of an
21 analysis of the available literature on background
22 airborne fiber concentration.

23 Q This is Slide 103.

24 What does this tell us?

25 A What this slide tells us is the general ranges in

ROA_01851

Appendix_01879

1 the literature that have been reported for fibers that
2 are big enough to be considered relevant by OSHA and
3 EPA in their risk assessments, which is at least five
4 microns in length or longer, and we do see different
5 levels or different levels have been reported for
6 indoor and outdoor areas, and that will vary depending
7 upon the types of materials present. And so it's not a
8 given that you will have higher indoor exposures,
9 although that's suggested here, but you might in some
10 scenarios. So these are really the results of the data
11 that are reported by the U.S. Agency for Toxic
12 Substances and Disease Registry in their very detailed
13 review of this literature.

14 Q Have you also looked at the difference between
15 urban and rural mesothelioma background rates?

16 Slide 107.

17 A I have. So as you can see, the ATSDR reported in
18 their review of asbestos that they noted at least a
19 tenfold difference in background rates between urban
20 areas and rural areas. And that conceptually makes
21 sense because we've got more equipment, more buildings
22 and things in urban areas, so we might expect that that
23 would be true.

24 ATSDR has said that that is what they have
25 determined in their documents and their review. I was

ROA_01852

Appendix_01880

1 interested in understanding, given that known tenfold
2 difference in concentration just in the air that we're
3 all breathing from day-to-day in urban areas and rural
4 areas, does that also translate to a difference in
5 number of mesothelioma, pleural mesothelioma, cases
6 because if there is some evidence of a risk at
7 background levels for mesothelioma, we would expect to
8 see, based on that difference in ATSDR reports, more
9 cases of mesothelioma among women potentially who are a
10 background group who are less likely to be
11 occupationally exposed. We would expect to see maybe
12 more mesotheliomas in women who live in urban areas
13 than rural areas if, in fact, those very low exposures
14 are suggestive of an increased risk of disease.

15 So several colleagues and I have performed a study
16 that looked at the numbers of mesotheliomas in women in
17 urban areas and rural areas. And not only did we not
18 find a difference between the urban and rural areas in
19 terms of higher numbers in the urban, in fully half the
20 years we looked at, the numbers were higher in the
21 rural. And what that tells us, what it suggests is
22 that there's no evidence for increased risk over this
23 very large background concentration of asbestos that is
24 in the air that we can measure today.

25 Q Okay. Would you go to Slide 91.

ROA_01853

Appendix_01881

1 We've seen this one before. So here we go to
2 cumulative exposure or dose, exposure duration and
3 dose. Now, I'd ask you to come down and grab a pen.

4 A Sure.

5 Q Marker.

6 A I apologize for my handwriting again.

7 Q And I'll try to -- let's move this closer so they
8 can see. I'll try to do it without tripping.

9 A You and me both.

10 Q Blind leading the blind.

11 Have you been able to calculate Mr. Jolly's
12 theoretical exposure potential from gasket and packing
13 work associated with Fisher or Crosby valves?

14 A So, in order to understand quantitatively the
15 potential for Mr. Jolly's exposure to gasket and
16 packing work over this four-and-a-half-year period that
17 he's described that he worked regularly and close to
18 these valves, I wanted to look at -- it was difficult
19 for me to understand how to break out Crosby and Fisher
20 only from this large subset or large set of gaskets and
21 packing-containing equipment like valves that were
22 described in the testimony. So I decided to just look
23 at the entirety of exposures that anybody might have
24 experienced, and not just a bystander, but somebody who
25 had direct work with gasket and packing exposure.

ROA_01854

Appendix_01882

1 So as you saw from the literature that I reviewed,
2 I thought it would be appropriate, in order to
3 understand what the upper end of Mr. Jolly's exposure
4 might have been, to say what if he himself did that
5 work, and not only did he do it directly, but he did it
6 every day for that whole four-and-a-half-year period
7 that he was -- he described working as an inspector
8 where often, I think from his testimony, he was close
9 enough to be essentially almost a direct exposure,
10 almost doing the work himself, which makes sense for an
11 inspector.

12 If you take that number, if you take the highest
13 reported eight-hour time-weighted average number from
14 all those ranges of numbers that I looked at for the
15 long-term data in the literature -- and again, that
16 data is important because it tells us the
17 representative expose over a full day as opposed to
18 just a single job. If you take the highest number, and
19 that number was 0.062 fibers per cc, and again, that's
20 a direct exposure for somebody hands-on doing the work.

21 Q Is that over an eight-hour time-weighted average?

22 A This is an eight-hour time-weighted average. And
23 then you multiply that times the four and a half years
24 that Mr. Jolly described doing that work, then that
25 equals 0.28 fibers per cc year.

ROA_01855

Appendix_01883

1 Q And what is that in the universe of permissible
2 exposure for a working lifetime?

3 A Well, so once a number is calculated, we have to
4 do something with it, right. So there is a number.
5 It's been calculated. It's important to then compare
6 it to something meaningful with respect to risk or
7 exposure.

8 The first place that I, as an industrial
9 hygienist, will always go is to the OSHA exposures.
10 And as we talked about earlier, if you calculate an
11 equivalent cumulative exposure at the current OSHA PEL,
12 it's 4.5 fibers per cc year. So in this case you can
13 see that this number is well below 4.5 fibers per cc
14 year, so --

15 Q Would you write that down, 4.5.

16 A Oh, sure. Of course.

17 Q That is the OSHA permissible exposure?

18 A It's not an official OSHA number. It's an
19 equivalent, so if you were to work -- OSHA says
20 45 years is a working lifetime. So if you were to take
21 their exposure limit, which is a published number, and
22 look at exposure for 45 years, this is the number you
23 will get. So it wouldn't call it OSHA's number, but
24 certainly this is what they're saying, essentially, is
25 allowable under their standard. And, of course, here

ROA_01856

Appendix_01884

1 is what I've calculated for four and a half years of
2 gasket and packing work.

3 Q How does that compare with the indoor cumulative
4 background exposures in the U.S.?

5 A So according to the ATSDR, and I showed you their
6 numbers earlier, they also reported corresponding
7 indoor cumulative exposure range for a lifetime of
8 indoor -- basically indoor exposure to asbestos to
9 anybody in the general population. That's any of us
10 just walking around. And indoor is a good proxy for
11 all exposure because most of us spend about 20 hours a
12 day indoors, according to the EPA at least, the EPA
13 exposure factors handbook.

14 So the indoor exposure -- in fact, I have gone
15 back and done a validation of that range to see is it
16 also effective or acceptable if you also consider
17 outdoor exposure someone has. And based on the
18 measured literature, it is very similar. It's because
19 we spend so much time inside. So that range that the
20 U.S. ATSDR has reported for indoor exposures over a
21 70-year lifetime for anyone in the U.S. population is
22 0.002 fiber cc years up to as high as 0.4 fiber cc
23 years. This is just, you know, there's probably other
24 ways to calculate this. This is just what the U.S.
25 government is reporting as their number. You could

ROA_01857

Appendix_01885

1 probably calculate a little bit lower; you could
2 probably calculate it a little higher if you have
3 specific data from a particular place.

4 Q But as far as the ATSDR, just indoor exposures
5 over a 70-year life can be .4 fibers per cc?

6 A They're saying that that would be expected, that
7 they would expect to see cumulative 70-year lifetime
8 exposures in this range. So this is equivalent to
9 anybody's background exposure over their lifetime.

10 Q And is there any evidence in the literature of any
11 increased risk of disease on exposure to background
12 indoor ambient air?

13 MS. FARRISE: Excuse me, Your Honor. I have to
14 object on foundation because she is not a medical
15 doctor, and the question asks about disease.

16 THE COURT: Well, I will admit it on the basis
17 that she's speaking as an industrial hygienist, so
18 she's speaking in the light of her speciality.

19 THE WITNESS: Thank you, Your Honor.

20 BY MR. BOUCH:

21 Q Not asking you to diagnose anybody, it's just does
22 the literature reflect any increased disease as
23 exposure to the ATSDR background levels as measured as
24 you've indicated?

25 A Well, certainly I'm not a medical doctor, so

ROA_01858

Appendix_01886

1 absolutely I'm not going to opine about causation, but
2 I have reviewed the epidemiology literature with
3 respect to risk or lack thereof, what's been reported
4 by expert epidemiologists and published in the
5 literature, and in looking at that set of evidence,
6 those epidemiology studies, just broadly as a set, I am
7 not aware of any epidemiology studies that have
8 reported a statistically significant increased risk of
9 asbestos-related disease at background levels in the
10 United States.

11 Q Okay. Let's go back. One issue that's come up --
12 you can return to your seat.

13 A Thank you.

14 THE COURT: You might want to pull that thing.

15 MR. BOUCH: Well, I won't fool with it.

16 Q Ms. Sahmel, I'm going to hand you what has been
17 admitted into evidence as Exhibit 1008.10670. Can you
18 tell the jury what that is.

19 A It's a letter from the medical -- excuse me, the
20 University Hygienic Laboratory at the University of
21 Iowa to the Fisher Controls Company.

22 Q And let's see if we can -- is it possible to put
23 that up on the screen? Well let's do it this way.

24 MS. FARRISE: There is an AF which is auto focus
25 and then give it a minute.

ROA_01859

Appendix_01887

1 MR. BOUCH: Okay.. Still a little hard to read.

2 Okay.

3 Q Okay. Now, it looks like, "Enclosed are two
4 gaskets for use as bulk samples," correct?

5 A Exactly. That's right.

6 Q And you jump down in the paragraph, and it says
7 "Sample 3 was taken while flat black gaskets were being
8 packed and Number 4 while spiral-wound blue gaskets
9 were being packed." Is that what it says?

10 A Yes, I believe so.

11 Q I'd like to offer Fisher Exhibit Number 74. Can
12 you identify this, Ms. Sample?

13 MS. FARRISE: Your Honor, I'm going to have to
14 object that it lacks foundation, calls for speculation.
15 I'm not sure how she could identify it. She's never
16 worked for Fisher. And it's hearsay.

17 THE COURT: I can't really tell from this what
18 samples -- was that the previous letter that gave the
19 samples?

20 MR. BOUCH: Yes, ma'am.

21 THE COURT: Hadn't this thing been admitted?

22 MS. FARRISE: No, Your Honor.

23 THE COURT: It has not? I'll admit it.

24 (WHEREUPON, Defendant's Exhibit Number Fisher 74
25 was admitted into evidence.)

1 BY MR. BOUCH:

2 Q Now, I'll direct your attention, Ms. Sahmel, in
3 the previous letter, they talked about Sample Number 4
4 being the asbestos spiral-wound blue gaskets. What is
5 Sample Number 4? What is the result of the testing on
6 Sample Number 4 by the University Hygienic Library
7 (sic) at the University of Iowa?

8 A In those results, the Sample Number 4 is zero
9 fibers per cc.

10 Q Thank you. Ms. Sahmel, have the opinions I've
11 asked you today, have they all been to a reasonable
12 degree of scientific certainty?

13 A Yes.

14 Q Okay. In this case, have I asked you to do a
15 report both for Fisher and for Crosby on Mr. Jolly?

16 A Yes.

17 Q And are those copies marked Exhibits 66 and 67,
18 copies of those reports?

19 A Yes, these are my two reports.

20 Q Okay. And are they to express to a reasonable
21 degree of scientific certainty?

22 A Yes, they are.

23 Q Thank you so much. I have no further questions.

24 MR. BOUCH: I pass the witness, Your Honor.

25 THE COURT: One minute. Are these -- you are

ROA_01861

Appendix_01889

1 identifying these. Are you asking these be admitted?

2 MR. BOUCH: Yes, ma'am.

3 THE COURT: All right. Well, I want to look at
4 them for a minute before I make that determination.

5 Just hang on. Okay?

6 (Judge reviewing documents.)

7 THE COURT: Ms. Sahmel, I want to understand your
8 report.

9 THE WITNESS: Certainly.

10 THE COURT: You gave an estimate of what you felt
11 was Mr. Jolly's four-year exposure to asbestos in
12 connection with the removal of gaskets and the
13 replacement of gaskets at Duke, right?

14 THE WITNESS: So an estimate of what, based on all
15 of the best available published literature, would be
16 what one would expect somebody who did gasket and
17 packing work routinely day after day would experience
18 based on the measured peer-reviewed published data.

19 THE COURT: All right. And how many -- I take it
20 that the Longo study was not one that you used in the
21 peer-reviewed literature in making this calculation; am
22 I right?

23 THE WITNESS: Ultimately I did not. For the
24 reasons I explained, I did not use it.

25 THE COURT: Understood. How many of the other

ROA_01862

Appendix_01890

1 studies you used attempted to measure what was in the
2 air when employees dry removed asbestos-containing
3 gaskets with no local ventilation?

4 THE WITNESS: Many of them did.

5 THE COURT: All right. And that is one thing that
6 the Longo study also attempted to measure?

7 THE WITNESS: Yes, that's correct.

8 THE COURT: And when you say "many," I think it's
9 a finite number because you put it up on a graph.
10 Looks to me like it might have been nine or so?

11 THE WITNESS: Well, there are 11. That's the
12 totality of the peer-reviewed literature.

13 THE COURT: Right. You knocked out Longo. Did
14 you knock out any others?

15 THE WITNESS: I did. "Knock out" may not be the
16 right term, but in terms -- some of them my have, for
17 example, only reported in the short term.

18 THE COURT: Well .0062 you used as the driver of
19 the equation that came up with the four years of
20 exposure was from a smaller group than the total group
21 of studies you looked at, right?

22 THE WITNESS: The .062 -- sorry. Just to make
23 sure. It's not 00; it's 0, just so it's correct for
24 the record, is based on the studies that reported a
25 full shift or eight-hour exposure measurement. So

ROA_01863

Appendix_01891

1 there were other studies that reported. I talk about
2 the short-term or task-based measurements. I certainly
3 looked at the studies that I did use to understand that
4 their corresponding short-term exposures were
5 consistent with those short-term studies, and they were
6 in the vast majority of cases, but they just simply
7 didn't report what one would typically be exposed to
8 over a full day, full shift or eight hours. And I
9 thought that was really important to be representative.

10 THE COURT: Right. And of the ones you used, how
11 many of them measured the exposures based on this, the
12 type of removal that Mr. Jolly testified was used
13 there, which is dry removal, the use of grinding, the
14 use of a vibrating as well as stationary wire brushes?

15 THE WITNESS: Three of the studies, the first
16 three that I listed, all included power tool
17 manipulation of the gaskets and packing -- and/or
18 packing. Interestingly, though, the highest reported
19 number came from a study which did not. It was a hand
20 tool removal study. But encompassed in those five
21 studies, three of the five did specifically cite the
22 use of power tools.

23 THE COURT: All right. And you also -- you used
24 as your multiplier a figure for the entire day rather
25 than a figure for the period of time when the grinding

ROA_01864

Appendix_01892

1 and removal was actually taking place. You were
2 looking for an eight-hour figure and not a figure that
3 represents what's happening when you're grinding away
4 the asbestos?

5 THE WITNESS: That's correct. And the reason was
6 I couldn't, from the testimony, elucidate for
7 Mr. Jolly -- of course, it's been so long since he did
8 this. It's understandable. He didn't remember, other
9 folks didn't remember exactly what that number was, and
10 because there was no number, then, to me, the next best
11 representation is what a typical individual will with
12 do, how many valves they could reasonably work on if
13 they did that work regularly over a full-shift day.
14 And, in fact, two of those studies did indicate that
15 they calculated a worst case or upper bound, like the
16 maximum number of gasket replacement jobs or valve
17 replacement jobs that they believed could be reasonably
18 performed in an eight-hour day.

19 THE COURT: And as I understand, when you use an
20 entire eight-hour day, you diminish the amount of
21 exposure when you're actually grinding by the periods
22 of the day when you aren't grinding?

23 THE WITNESS: Absolutely. And that's very
24 important because you aren't there with the grinder
25 holding it for eight hours, right? In fact, that's

ROA_01865

1 oftentimes just a few minutes of that actual grinding
2 work. Sometimes it's 30 minutes, but it's not usually
3 an eight full hour activity. I know Mr. Jolly in his
4 testimony described the very large bolts that needed to
5 be removed and reattached, and that's an important part
6 of that work, and getting that very precisely
7 reattached together, that would be a significant part
8 of his workday that would not include an active
9 grinding task, for example.

10 THE COURT: Right. But when you're grinding and
11 that material is put into the atmosphere --

12 THE WITNESS: Absolutely.

13 THE COURT: -- you're receiving a great big dose
14 of it during that time period.

15 THE WITNESS: No question. Well, depending on the
16 material --

17 THE COURT: In this case the material is gasketing
18 with asbestos that's somewhere between 65 percent and
19 85 percent of the material.

20 THE WITNESS: Absolutely. So for that period of
21 time, you would most likely, if it's an
22 asbestos-containing gasket, you would measure asbestos
23 in the air during that active time. For some period
24 after as well.

25 THE COURT: But your report, this report where you

ROA_01866

Appendix_01894

1 opine about what you consider to be the exposure to
2 Mr. Jolly is driven by an attempt to put it in the
3 context of an eight-hour day rather than measure the
4 exposure during the time the grinding took place.

5 A That's correct, because it's just -- it would just
6 overestimate what actually happened in the workplace
7 for the vast majority of situations. I can't think of
8 a situation where somebody would be grinding for eight
9 straight hours for the whole day. It's -- it would be
10 unusual, if not unprecedented, to have that direct
11 exposure for that entire time. I mean, that would mean
12 you didn't take a break, you didn't go to lunch.

13 THE COURT: Yes. I'm not asking that question.
14 I'm asking about getting a measurement that reflects
15 what the impact or what the volume of material was that
16 was potentially inhaled during the time the grinding
17 actually took place. When you put it over an
18 eight-hour day, you diminish that figure, do you not?

19 THE WITNESS: You do because of the times it's
20 going up and down, that's right. So it's still very
21 much accounted for, and those short-term measurements
22 were very consistent in those studies with the other
23 short-term measurements in most of the other studies
24 that I looked at, they just were not that high for the
25 entire day.

ROA_01867

1 THE COURT: All right. I think I understand.

2 All right. Ms. Farrise?

3 MS. FARRISE: Your Honor, it's ten after 5:00.

4 What's the court's pleasure?

5 THE COURT: No, no, no. I'm still trying to
6 decide whether to admit her report, and that's why I
7 asked her those questions.

8 MS. FARRISE: I still object that it's hearsay,
9 that it may be inconsistent with her testimony, and
10 that at this point, I guess, it would be duplicative
11 and misleading because it's inconsistent with what she
12 testified to here.

13 MR. BOUCH: Goes to the weight, not the
14 admissibility, Your Honor, similar to the reports of
15 every other expert that's been admitted in the case.

16 MS. FARRISE: It's hearsay. It's hearsay. It's
17 an out-of-court statement that she wrote she's now
18 offering for the truth of the matter, and there is no
19 exception to the hearsay rule.

20 THE COURT: What do you say about that, Mr. Bouch?

21 MR. BOUCH: Well, Your Honor, let me look.

22 THE COURT: Tell you what we're going to do. All
23 right. We are at a stopping point, and Ms. Farrise is
24 going to commence her examination tomorrow. I'm not
25 going to keep the jury here while we talk about these

ROA_01868

Appendix_01896

1 fine points of evidence law.

2 Why don't we do this first. Let's allow the jury
3 to go. And we're at -- you just stay right there,
4 Ms. Sahmel.

5 THE WITNESS: Oh, certainly.

6 THE COURT: I'm going to stay with 9:30 again and
7 see if we can get other things resolved before that
8 time, so, again, this has been a long, long day, and
9 y'all are just great. My hat's off to you. Thank you
10 so much. God bless. Have a good evening. See you
11 tomorrow morning.

12 (WHEREUPON, the jury exited open court at
13 5:11 p.m.)

14 THE COURT: Mr. Bouch.

15 MR. BOUCH: Yes.

16 THE COURT: Have you cogitated the evidence rules
17 enough to tell or would you prefer to say something
18 about that tomorrow morning?

19 MR. BOUCH: I'll say it tomorrow morning, but it's
20 not hearsay. She's here. She says she's uttered those
21 opinions to a reasonable degree of medical certainty.
22 I asked her. She's validated those opinions throughout
23 her testimony today, and it reflects her articulation
24 of those opinions. It's not an out-of-court statement.

25 MS. FARRISE:) The writing is an out-of-court

ROA_01869

Appendix_01897

1 statement.

2 THE COURT: I'm going to give it a little thought
3 to that. I am worried about these charges and what
4 we're going to do about a charge conference, so y'all
5 help me with that.

6 MR. REID: We could be here at 8:30 in the
7 morning.

8 THE COURT: Do you think we can do it in an hour?

9 MS. McVEY: Let me ask this question. You know
10 when we gave you the --

11 THE COURT: I mean, frankly, I'm going to be able
12 to resolve a lot of things, Josh and I are, by looking
13 over these things and deciding what we're going to do.

14 MS. McVEY: I just want to make sure we're on the
15 same kind of page, and maybe we can refocus instead of
16 having the entire charge conference today. And we
17 don't have to do it right now, but my thought is in
18 handing you the *Garvin* charge, it was a negotiated
19 charge between plaintiff --

20 THE COURT: That's correct. I'm going to be
21 looking at that.

22 Yancey, I understand it's not negotiated in this
23 case. Don't jump in before she --

24 MR. McLEOD: Your Honor, I was in *Garvin*. I
25 remember having a long, long charge conference in

ROA_01870

Appendix_01898

1 *Garvin*.

2 THE COURT: I am looking at it as the charge Judge
3 Hill gave in that case, and that is what it impacts on
4 me. Strike for a moment that you agreed to it all or
5 you didn't agree to it all, negotiated. That was the
6 charge that was used. It's a very helpful tool for me
7 to have someone that has that kind of experience in
8 asbestos cases and to look at his charge and see what
9 was done.

10 So, naturally, that is a beginning point. It
11 doesn't mean I'm going to ignore the many projections
12 y'all have made about things you want that are
13 different. But, yes, the *Garvin* charge is something
14 that I'm aware of and going to be looking at very
15 carefully.

16 MS. McVEY: And my only point of that is not that
17 Mr. Bouch or Mr. McLeod agree with everything, nor did
18 we in the *Garvin* charge. That's what I meant by
19 negotiated, that there were things that both sides were
20 unhappy about.

21 By handing you that charge, my hope was we could
22 select out what the defendants disagreed with instead
23 of arguing every single charge all over again.

24 THE COURT: I hope that's going to be so, and what
25 I hope to say to you tomorrow kind of globally, what

ROA_01871

1 I'm thinking of doing on the front end so we don't have
2 to hassle over the same words. There are a lot of
3 things that cover the same topics in a slightly
4 different way. They rely very heavily on Anderson's
5 charge book. The Anderson charge book has got some
6 pluses and minuses in it in terms of how it's been
7 reviewed over the years by the supreme court, and I'm
8 going to take all of that into account as I look and
9 see what I think is the best way to examine some of
10 these topics that are common to both of you and are
11 simply rephrasing.

12 The ones I think that are the most important are
13 the ones that are a real clash on what ought to be
14 charged rather than a different way of saying the same
15 thing.

16 MS. McVEY: That's my point.

17 THE COURT: That's where I am. I think what we
18 want to spend our time on is those substantive things
19 where there is a very honest disagreement about things
20 that ought to be covered or things that ought to be
21 said. That's how I hope we would handle it.

22 MS. McVEY: There was one charge. They gave you a
23 *Manchin* charge which, obviously, was not in *Garvin*
24 because it's a new case. And there is a charge in that
25 case, Justice Kittredge gives us the charge, and their

ROA_01872

Appendix_01900

1 charge is not that charge. It changes the last two
2 lines, so I just took the charge --

3 THE COURT: Ms. McVey, I am very aware of that.

4 MS. McVEY: Okay. I'm sorry. We're not arguing
5 this now.

6 THE COURT: I try to do a little bit of studying,
7 I'm not perfect, and I was flying without any copilot.
8 I hope with Josh I'll do a little better job.

9 MS. McVEY: I didn't know if you wanted me to hand
10 that up now. That was my only point.

11 THE COURT: You can hand up anything you would
12 like right now.

13 Ms. Sahmel, you don't need to sit up here the
14 whole time. You're under oath. You're in the middle
15 of your testimony. You can socialize with these folks,
16 but don't talk about your testimony.

17 I know you're an experienced witness so you know
18 that.

19 All right. We've got that.

20 Anything else for the good of the order?

21 MS. McVEY: I was going to ask about timing.

22 MR. REID: I was going to ask about timing.

23 THE COURT: 8:30.

24 MS. McVEY: 8:30 for jury charge conference, and
25 then cross of Ms. Sahmel, and then Dr. Oury's video,

ROA_01873

Appendix_01901

1 and then directed verdict.

2 THE COURT: Right.

3 MS. McVEY: And then close.

4 THE COURT: Yes. I know that there's some
5 discussion about people that wish we would charge
6 before arguments are made, and I know that the supreme
7 court has given some discussion to that, but I feel
8 like it's above my pay grade to change the normal
9 course of things, so, yes, close and then charge would
10 be the way we would do it.

11 And on close, let's talk about timing.

12 MS. FARRISE: I need some.

13 THE COURT: Well, I understand all that. What are
14 we talking about in terms of time?

15 MS. FARRISE: Two hours.

16 THE COURT: I'm going to give some cogitation to
17 that. My feeling is an hour and a half and hour and a
18 half. You can split it up like you want to. You have
19 got the burden. You're going to want something in
20 reply out of that, but that would be my current
21 thinking of it.

22 MR. BOUCH: I will not need an hour and a half..

23 MS. FARRISE: Okay. I'll take a half an hour of
24 his time.

25 THE COURT: Anything else for the good of the

ROA_01874

Appendix_01902

1 order?

2 Mr. Reid?

3 MR. REID: No, 'ma'am. See you at 8:30.

4 THE COURT: Very good. See you at 8:30.

5 (WHEREUPON, proceedings adjourned at 5:18 p.m.)

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ROA_01875

Appendix_01903

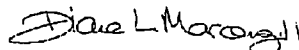
1 Certificate of Reporter

2
3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Spartanburg County, South
10 Carolina, on the 1st day of August 2017.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15 November 4, 2017

16
17 

18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

ROA_01876

Appendix_01904

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		August 2, 2017
14		Volume 8 of 9
15		Pages 1659 - 1995
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
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25 Von Briesen & Roper
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Circuit Court Reporter

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JENNIFER SAHMEL, MPH, CIH, CSP (Resumed)	
Cross-Examination By Ms. Farrise	1701
Redirect Examination By Mr. Bouch	1822
Recross-Examination By Ms. Farrise	1828
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Direct Examination By Mr. Bouch	1839
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E x h i b i t s

For the Plaintiffs:

Marked	Description	I.D.	Admitted
149	Walsh-Healey Public Contracts Act		1814
155	Federal Register Vol 37 No. 110 Rules and Regulations		1774
546	Article: Fiber Release During the Removal of Asbestos-Containing Gaskets: A Work Practice Simulation		1798

For the Defendants:

Marked	Description	I.D.	Admitted
56	CV of Tim Oury, M.D.		1862
153	Photo of microscopic image of asbestos body		1862
154	Photo of microscopic image of asbestos body		1862

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 8:42 a.m.)

4 THE COURT: I received a communication last night
5 regarding designation of deposition materials for Jolly
6 and two -- Mr. Holder, why don't you state the
7 objections y'all have to those designations.

8 MR. HOLDER: Thank you, Your Honor.

9 MR. REID: Your Honor, if you don't mind me going
10 first, I think it might shorten things up.

11 We have already decided not to use Simpson and
12 kind of borderline about the other two. If the court
13 is okay, we'll deal with it later.

14 THE COURT: I want to have it run smoothly. I
15 don't think this is going to take a great length of
16 time. Let's see if we can get to what we're getting
17 to.

18 MR. HOLDER: I have prepared a document for Your
19 Honor as well to follow along with the argument, but --
20 Jonathan Holder for the plaintiff.

21 As Your Honor prefaced, we received an e-mail last
22 night from defense counsel indicating three depositions
23 that they intended to read in page/line designations
24 from. This was the -- this was a change from what was
25 stated on the record yesterday in court where they said

ROA_01879

Appendix_01907

1 that the order of the witnesses was going to be finish
2 Ms. Sahmel, play the Oury deposition, and they would be
3 done.

4 So it was a bit of a surprise at 9:00 p.m. to get
5 this. So I went back to see now were these parts of
6 the designations that they had in this case or even the
7 witnesses. I started with the witness list. Only
8 Mr. Jolly, who has come and testified, is even
9 mentioned on either Crosby or Fisher Controls witness
10 list. There is no amended witness list that they have
11 provided to us at this time.

12 Secondly, the standing CMO for asbestos cases in
13 South Carolina, I have attached as a third document,
14 states on the third page that seven days before trial,
15 Part C, page and line designations to be exchanged.

16 The next document is the e-mail on the date of
17 July 17, 2017, seven days before trial, in which it had
18 the attachments of the page/line designations of
19 defendant Crosby Valve and defendant Fisher Controls.
20 The attachments listed there as well as the next three
21 documents are Donald Rogers page/line designations,
22 Dr. Oury page/line designations, and Beverly Dale Jolly
23 page/line designations.

24 So it is plaintiffs' position that we have this
25 setup in, an order so all parties know what witnesses

ROA_01880

Appendix_01908

1 the other party intends to bring to trial. Not only
2 was it not on their witness list, not only was it not
3 given to us in a page/line designation, these were
4 witnesses that we believed we were going to use, and
5 they did respond to our designations of Mr. Freeman and
6 Mr. Rogers. Doing counter designations to someone's
7 affirmative deposition that they claim to read is --
8 does not count as one of your witnesses and does not
9 provide you the ability to then call that witness in
10 your case-in-chief.

11 THE COURT: All right.

12 Mr. Reid.

13 MR. REID: Your Honor, everything we designated
14 last night, is -- well, if you have a list of what we
15 designated, I'm not going to use Mr. Simpson.

16 THE COURT: Very good.

17 MR. REID: Designated portions of Freeman, those
18 three were -- we did not designate those originally.
19 We designated them as counter designations.

20 THE COURT: When was that?

21 MR. HOLDER: I believe it was the Friday before
22 trial, on the 21st, Your Honor.

23 THE COURT: All right. And the counter
24 designations were pursuant to?

25 MR. HOLDER: In response --

ROA_01881

1 THE COURT: Whoa. He's making his presentation
2 now, Mr. Holder.

3 MR. HOLDER: I'm sorry, Your Honor.

4 THE COURT: Judge Hill's order that, as we all
5 know I'm going by, says seven days before trial,
6 parties to exchange page and line designation. Three
7 days before trial, parties to exchange any objections
8 and counter page designations.

9 So what you're saying is that the counter page
10 designations that you submitted on the Friday before
11 trial are the same as the ones you're offering now?

12 MR. REID: That's correct. Except for the very
13 last one, Volume 2 of Jolly, that was part of our
14 original designations.

15 THE COURT: Let me see, the one seven days
16 beforehand?

17 MR. REID: Yes, ma'am.

18 THE COURT: All right. I am looking at --

19 MR. HOLDER: I believe it's Document Number 6.
20 I'm sorry.

21 THE COURT: All right. I see page and line
22 designations, deposition two.

23 MR. REID: That would be the one 137 at 12 to 138
24 at 17.

25 THE COURT: And that's not listed on here, is it?

ROA_01882

Appendix_01910

1 It isn't.

2 MR. REID: Well, it was in our original
3 designations. I'm not sure I have our --

4 THE COURT: I'm looking at what you're
5 designating.

6 MR. REID: There were four volumes.

7 THE COURT: I'm looking at July 17th, right. That
8 was your designation.

9 MR. REID: Right. Is there part of that that
10 refers to Mr. Jolly, Your Honor?

11 THE COURT: It says, "Beverly Dale Jolly Trial
12 Preservation Deposition Number 2, defendants offer
13 these designations without waiving any objections they
14 may have. And then it gives Page 117, Line 1 to 127,
15 Line 12; 129 to 130; 131 to 149, and then 150 to 159.

16 MR. REID: So this would be within that but just a
17 much shorter part of Pages 137 and 138.

18 THE COURT: Okay. But the other ones, 161, 240,
19 248, those are not listed here.

20 MR. REID: Correct. Those were counter
21 designations.

22 THE COURT: Well, you can't offer these counter
23 designations this close to trial. You didn't offer
24 those until last night, as I understand it; isn't that
25 right?

ROA_01883

Appendix_01911

1 MR. REID: Well --

2 THE COURT: The counter designations were supposed
3 to be offered -- that's a designation. That's not a
4 counter designation. That's a designation of what you
5 want to put up in your case. You made that designation
6 here.

7 MR. REID: On July --

8 THE COURT: 17th and it didn't include those.

9 MR. REID: Right. Everything else was on July
10 21st in our counter designations.

11 THE COURT: Well, this is not in any counter
12 designations I see. This is coming up for the first
13 time yesterday evening.

14 LAW CLERK: Do you have a copy of the counter
15 designations?

16 MR. HOLDER: I only provided affirmative
17 designations, so I did not put the counters in your
18 packet. I didn't think those were relevant. I just
19 put the affirmative designations.

20 THE COURT: When you have already designated
21 something, then what you have --

22 MR. McLEOD: Your Honor, there's nothing new. We
23 counter designated all of this.

24 THE COURT: Please don't tell it to me like that.
25 Let me see the document, and we'll see what we've got

ROA_01884

1 here. There's no sense in just kind of arguing it like
2 that. If this comes up for the first time last night,
3 it's not coming in.

4 And, Matt, you're not arguing this; he is.

5 MR. REID: Your Honor, may I show you our
6 paralegal's laptop?

7 THE COURT: No. You show me what you sent to the
8 other side.

9 MR. REID: I don't have the piece of paper.

10 THE COURT: Let me just say this about all of this
11 stuff: None of the material is going to come in that
12 wasn't designated beforehand. The designations of what
13 you were going to use were made July the 17th. And
14 that's all I've got up here. And then I've got this
15 thing that you sent last night. And, frankly, I don't
16 know why you would have sent it last night if you had
17 already sent it, but that's up to y'all. You say it's
18 a cut-down of what you originally submitted. If all
19 you submitted was something saying all volumes or in
20 addition to this, all volumes, that's not going to cut
21 it. It's page and line designations, and those page
22 and line designations, there is a strict order of
23 things, and it does not include being a week and a half
24 into the trial before you designate material.

25 And so I'm just going to leave it there. We're

ROA_01885

1 going to go on to these other things, but I can tell
2 you, I'm not going to let anything be used out of
3 Freeman, Simpson, Jolly, or Rogers that wasn't
4 designated beforehand in the ordinary course of Judge
5 Hill's ruling.

6 MR. REID: Your Honor, may I approach? I think we
7 found the counter designations.

8 THE COURT: All right.

9 MR. REID: This is Volume 2, Your Honor, of
10 Mr. Freeman. And last night's e-mail, by the way --

11 THE COURT: Why did you not tell me yesterday
12 afternoon that you were going to do all this? We
13 talked about what was going to happen today, and none
14 of this was said.

15 MR. REID: Understood, Your Honor. It was an
16 after-court determination on my part.

17 THE COURT: Well, I understand that, and that's
18 just what we try to avoid.

19 MR. REID: In that volume, our counter
20 designations show 247, to 22 and 248, 11 to 20. I'm
21 sorry, I'm looking at the wrong --

22 THE COURT: Just a second. This is Mr. Jolly's
23 deposition, is what I'm looking at right now and
24 something taken out of his deposition, which you say is
25 a counter designation.

ROA_01886

1 MR. REID: Right.

2 THE COURT: This is Volume 2.

3 MR. REID: Discovery Volume 2.

4 THE COURT: That's this.

5 MR. REID: We're --

6 THE COURT: Just a second. Let me just explain
7 what I'm looking at now.

8 Mr. Holder, this is a document that was a counter
9 designation submitted July the 20th. How far before
10 trial was that? Three or four days.

11 MR. HOLDER: Yeah.

12 THE COURT: All right. Their counter designation
13 for Mr. Jolly on Page 3 of it designates out of
14 Mr. Jolly's deposition Volume 1, 161, 14 through 17.
15 So that includes that one. Then on Volume 2, it says
16 Volume 2, 240, 7 through 22. So that's there. Then
17 248, 11 through 20. That's on there. Then trial
18 Volume 2, 137 --

19 MR. REID: If I may save the court a moment.
20 That's the one we had in our original designation. I
21 think you confirmed that one already.

22 THE COURT: Yes. All right.

23 So, Mr. Holder, it looks like, from this document,
24 that they designated it.

25 MR. HOLDER: I would like to be heard in response

ROA_01887

1 to that, Your Honor.

2 THE COURT: Well, you can be heard, but, you know,
3 they brought me what I asked them. It's on there.
4 They counter designated it. About the only thing you
5 can say is, "They didn't tell me last night." I don't
6 like, that but they designated.

7 MR. HOLDER: Right. But counter designation, by
8 their very definition, are in response to designations
9 of another party.

10 Now that they want to play these counters,
11 plaintiffs have to go back, file objections and counter
12 designations.

13 THE COURT: No, it's too late for that.

14 MR. HOLDER: I know. That's what --

15 THE COURT: You got them on July the 20th before
16 the trial started. I'm not going to go back and do
17 that.

18 MR. HOLDER: I understand, Your Honor, but think
19 about the logic of this. For them to be able to only
20 play the counters out of context, isolated, completely
21 blurs the picture of what the testimony was from that
22 deposition. I mean, we --

23 THE COURT: I'm going to consider that,
24 Mr. Holder. I don't have that in front of me now, but
25 what I will tell you is these things have been in the

ROA_01888

Appendix_01916

1 mix for a while. This isn't a surprise. They gave you
2 these things on July the 20th.

3 MR. HOLDER: They told us last night that they
4 weren't calling these people.

5 THE COURT: That was last night. You had from the
6 20th on, you could have assumed they were going to play
7 these. And if you had some counter designations, you
8 could have made them.

9 MR. HOLDER: I did make counter designations to
10 those counters in the context of the entire designation
11 coming in.

12 THE COURT: Well, Mr. Holder, I'm not going to
13 take up any more time with this. If you have got some
14 other designations you want to make before these
15 materials are played, then let's see them, and let's
16 get them to the other side.

17 MR. HOLDER: Your Honor, I would also need to put
18 on the record that the plaintiff has appeared in this
19 case, and Mr. Reid himself cross-examined him for over
20 an hour, and we asked him, "Are you okay? Do you need
21 to leave?" And Mr. Jolly said, "No. I want to answer
22 the all the questions. I want to stay," so they're
23 getting two bites at the apple by doing this, and they
24 purposely, I believe, it's plaintiffs' position,
25 purposely omitted certain questions they didn't want to

ROA_01889

1 ask in front of the jury live because they didn't want
2 the answer, and now they want to back-door it in
3 through the reading of a deposition after he's off the
4 stand.

5 THE COURT: Well, I don't know what rules that
6 violates other than your sense of fairness about it,
7 but the point is they can call the plaintiff by
8 deposition in their case just like you can call some of
9 their people in your case. But you've got the ability
10 to --

11 MR. HOLDER: Call them in rebuttal to explain?

12 THE COURT: -- call the plaintiff in rebuttal.

13 MR. HOLDER: Thank you.

14 THE COURT: And if that is what you feel you need
15 to do, then I'm going to allow you to do that. Okay?

16 MR. HOLDER: Thank you, Your Honor.

17 THE COURT: That solves Jolly. Y'all tell me, are
18 these designations of Freeman and Simpson things that
19 were provided?

20 MR. REID: We won't use Simpson. I have handed
21 your clerk Freeman.

22 THE COURT: Help me out. I'm going to take some
23 representation on y'all's honor because I don't want to
24 spend a lot of time on this.

25 Were these designated the way these others were on

ROA_01890

Appendix_01918

1 your honor as a lawyer?

2 MR. REID: Yes.

3 MR. HOLDER: Counter to our designations.

4 THE COURT: I will allow you to do that,
5 Mr. Holder, but again, these things came to you on the
6 20th, and other than last night's random discussions
7 right at the end, you could have assumed that they were
8 going to put these things up.

9 MR. HOLDER: I didn't assume that because I
10 believed the representations of the officer of the
11 court they made on the record yesterday, Your Honor,
12 and I'm sorry.

13 THE COURT: They made several representations,
14 Mr. Bouch did, that they're not living up to now. I
15 don't like that, but in terms of designation of these
16 materials for their use, they have done what this order
17 requires. This order doesn't say anything about
18 in-court discussions about, "Hey, what does your case
19 look like," and I'm not going to go by that.

20 MS. McVEY: Your Honor, just really briefly. I
21 don't want to interrupt Mr. Holder. He's doing an
22 excellent job.

23 We had a rule in this case, motion in limine, that
24 24 hours before they call a witness, they're supposed
25 to disclose it to us. That's the rule we've all been

ROA_01891

1 living by. That's number one.

2 Number two, Mr. Freeman wasn't even on their
3 witness list.

4 THE COURT: That's true. He wasn't on their
5 witness list.

6 MR. McLEOD: Our witness list specifically said
7 that we reserve the right --

8 THE COURT: Mr. McLeod, when she finishes, I'm
9 going to come to you.

10 Now, I'm looking at the witness list, and it
11 doesn't have his name on it.

12 LAW CLERK: What document is that, Mr. Holder?

13 MR. HOLDER: Exhibit Number 1.

14 THE COURT: 1 and 2 have got what -- Defendant
15 Crosby Valve: Sahmel, Oury, Crapo, Martin, Jolly, and
16 Jolly. That was on July the 10th. Then Fisher
17 Controls: Sahmel, Oury, Crapo, Dumistra, Jolly, and
18 Jolly. None of these people were on that designation.
19 That is required. Then there are other things that are
20 required.

21 The final -- actually, your final list is supposed
22 to be exchanged 14 days before trial, and that says
23 July 10th, so they haven't complied with that. Then
24 seven days before trial, final exhibit list. Then
25 three days before trial, any objections. And one day

ROA_01892

Appendix_01920

1 before trial, counter page designations, so forth and
2 so on.

3 Now, nowhere in here does that allow for you to
4 add witnesses to your witness list, so explain that one
5 first to me. You've got Jolly on there, but you don't
6 have any of these coworkers.

7 MR. REID: Your Honor, that point, may I defer to
8 Mr. McLeod? I think he's better acquainted with what
9 we did.

10 THE COURT: All right. Mr. McLeod.

11 MR. McLEOD: I believe our witness list also lists
12 any witnesses that are listed by the plaintiffs.

13 THE COURT: This thing about you're reserving the
14 right is trumped by Judge Hill's order. Judge Hill's
15 order says that you're supposed to list all of your
16 witnesses or potential witnesses. That doesn't cut it.

17 How about the 24 hours for who you're going to
18 actually use because that's what that's for. This is
19 for anybody I'm thinking about using. Then 24 hours
20 beforehand, you're supposed to say this is who I am
21 going to use.

22 MR. REID: Your Honor, throughout this case, I
23 think we have been doing it the evening before.

24 THE COURT: Well, you didn't even list them
25 beforehand. That's the big hang-up I've got. They

ROA_01893

Appendix_01921

1 were not listed globally as somebody you were going to
2 call.

3 MR. McLEOD: Well, I think the reason for that is
4 the designations and that, you know, at that time,
5 there was another defendant in the case. We have all
6 designated.

7 And just for the record, Your Honor, I was
8 prepared to cross-examine both of these witnesses
9 because we were told they were coming live, so, you
10 know, and then I would just point out to the court --

11 THE COURT: Are you talking about something --
12 we're getting over to what they did?

13 MR. McLEOD: We were told they were coming live to
14 trial.

15 THE COURT: You were told by them that they were
16 going to bring these people?

17 MR. McLEOD: That's correct.

18 THE COURT: Well, that doesn't obviate the
19 necessity for you to make your witness list reflect
20 what you're going to do if they decide they're not
21 going to use a witness they list.

22 MR. McLEOD: I would finally point the court to
23 Rule 32(a)(3) that the deposition of a party can be
24 used for any purpose.

25 THE COURT: Well, that's trumped by Judge Hill's

ROA_01894

Appendix_01922

1 order, his standing order, which I'm going to go by.
2 That's an order that's been in place since 2015;
3 everybody knows about it; the supreme court, the chief
4 justices designated these asbestos cases from long
5 since, many different orders of chiefs, that these
6 cases are to be managed by a single judge, and that
7 procedural orders are to be issued. This procedural
8 order trumps that. All right? You can use them for
9 any purpose, but you can't use them unless you
10 designate them in the way that this order says. And
11 that has not been followed in this.

12 So here is what's going to happen. I'm going to
13 let in Jolly material because it was designated when it
14 was supposed to be. I'm going to consider what you all
15 offer as some designations, but I'm shaky-shaky on that
16 because you knew about this long before, and I
17 understand the arguments you're making, but they don't
18 have anything to do with compliance with this order,
19 and what's sauce for the goose is sauce for the gander.
20 You got those designations on July 20th. You should
21 have answered them long before now in terms of more
22 complete designations of material out of Jolly. If you
23 had done that, then I'll look at it. If it's just
24 going to come up right now, I won't look at it, so
25 that's where I'm standing.

ROA_01895

Appendix_01923

1 MR. HOLDER: Thank you, Your Honor. The only
2 clarification I wish to put on the record is we did
3 respond to them, but again, it was within the context
4 of the full designation, but we have those things and
5 we can get the documents to you. Thank you, Your
6 Honor.

7 THE COURT: I'm going to take a look at it, and
8 I'm going to take a look at what you offered them as
9 counter designations, and then we'll see where we are.

10 With respect to the coworkers, I am not going to
11 allow their depositions to be read because the rules
12 were not followed about putting them on the witness
13 list at the proper time under Judge Hill's order.

14 MR. REID: Very well, Your Honor.

15 May I retrieve my copies?

16 THE COURT: Yes.

17 MR. REID: Thank you.

18 THE COURT: Now, I have one more thing before we
19 go to the instructions. I am -- I have taken a lot of
20 time to look at the report that was prepared by
21 Ms. Sahmel who took the stand yesterday.

22 This report is an enormous compilation of her
23 opinions about depositions of many different people in
24 this case, some of which I'm not admitting into
25 evidence. It is a huge compilation of her opinions

ROA_01896

Appendix_01924

1 about the scholarship of people in the field. It is a
2 lot of hearsay within hearsay.

3 The court of appeals wrestled with this issue in
4 *Allegro vs. Scully*, a 2012 decision of the court of
5 appeals analyzing Rule 703 of the rules of evidence
6 which allows experts to give an opinion, to rely on
7 facts that are or data that are not admitted into
8 evidence or ever admissible. However, 703 does not
9 allow the admission of hearsay evidence simply because
10 an expert used it in preparing his opinion.

11 I don't see any exception in the rules of hearsay
12 for that. This -- that ruling was made in connection
13 with a written report that was ultimately found not
14 admissible for the reasons I have stated, and,
15 therefore, I am not going to admit this Fisher
16 Exhibit 66 into evidence relying on *Allegro*.

17 Before I finish with that, if y'all have anything
18 to say about that now or later, now is the time.

19 Mr. Reid.

20 MR. REID: Your Honor, I guess two points to make.
21 I think the expert reports of the other side came in.
22 I think it would be fair to have Ms. Sahmel's report
23 in, and the court can weigh it and the jury can weigh
24 it based on the proper considerations. Plus, I would
25 ask that if the court does not agree with me and sticks

ROA_01897

1 to its ruling, that that at least be conditional
2 because her testimony has not been completed yesterday?

3 THE COURT: All right. Well, for the present
4 time, then, that's the position I'm taking with respect
5 to Fisher Exhibit 66, but we'll put that in the
6 to-be-ultimately-decided category. And if in the
7 meantime you also think of other things you've got to
8 say about it, that's fine. As I say, I'm very
9 concerned about the volume of material that comments on
10 testimony that is not in evidence in this case, and
11 that is the reason that in the *Allegro* case the McHenry
12 report was not allowed in evidence. The opinions were
13 allowed to be expressed as she very fully expressed her
14 opinions yesterday, but the report was not allowed in,
15 and that's the concern I've got.

16 All right. Now --

17 MR. REID: Your Honor?

18 THE COURT: Yes.

19 MR. REID: One question. Looking ahead a little
20 bit, I anticipate we get a verdict this week.

21 THE COURT: Oh, yes, sir. I do, too.

22 MR. REID: I understand there are time limits for
23 motions after verdict. We'll have a winner; we'll have
24 a loser, but I think it would probably serve both sides
25 to have some idea of what time frame the court will

ROA_01898

Appendix_01926

1 impose on us.

2 THE COURT: We can talk about that, and y'all can
3 make some suggestions. We won't leave here before we
4 have a very firm idea of how that will work.

5 As I think I've explained to y'all in my part-time
6 capacity, I will be on vacation most of the month of
7 August in the Isle of Palms, but I have access to
8 everything in terms of if we want to defer a hearing on
9 posttrial motions, which is quite common in a complex
10 case like this, we'll pick a time when it's convenient
11 to both parties to conduct such a hearing, and we'll
12 set some deadlines before that time for you all to
13 submit material to me, memoranda, so I'll be fully
14 prepared when we actually conduct the hearing. So
15 don't worry about that. We're going to set some time
16 frames that accommodate both sides.

17 MR. REID: That's helpful to know, and I thank you
18 for that.

19 THE COURT: Yes, sir.

20 My law clerk is worrying about Rule 59(b). The
21 time for the motion has to be within ten days. I'm
22 going to note the motions, of course, as soon as the
23 trial is over, and then you're going to be permitted to
24 elucidate on them at a later time, but it will have --
25 your motions will be noted, and you'll have complete

ROA_01899

Appendix_01927

1 flexibility to bring up additional material and
2 additional information.

3 I think, as I construe the rule as I've always
4 construed it, you have to note the motion and at least
5 make some statement about what you base the motion on,
6 but beyond that, I'm going to be pretty flexible about
7 what you can say as long as it's exchanged with both
8 sides. So I think we can comply with the rule about
9 timeliness. Don't be frightened and worried about
10 that, either side.

11 MS. McVEY: Thank you.

12 THE COURT: All right. Now, here is where I want
13 to go about dealing with these charges. What I'd like
14 to do is go through Fisher's proposed jury charges.

15 I have gone through both jury charges at length,
16 and Josh and I have compared the two and tried to
17 figure out what's in both and so forth and so on. So I
18 am going to operate as if the baseline document is the
19 old *Garvin* charge as modified. Then I'm going to look
20 at each of the Fisher charges to see whether they
21 should be added to or substituted for the *Garvin*
22 charges.

23 Do you follow what I'm doing?

24 MR. REID: Yes..

25 MR. McLEOD: Yes, Your Honor.

ROA_01900

Appendix_01928

1 THE COURT: Okay. So I may say to you, to begin
2 with, Judge Anderson's style of charging is very
3 academic, and that is why a lot of circuit judges have
4 gone to a more colloquial form of charging, which is
5 reflected in the Hill charges. And I think well of
6 that.

7 So out of the introduction, fourth paragraph down,
8 the first page, "In deciding the facts of this case,
9 you must not be swayed by bias or prejudice or favor as
10 to any party. Our system of law does not permit jurors
11 to be governed by prejudice or sympathy or public
12 opinion." I will charge that. The rest of it on that
13 page, I think, is included in the *Garvin* charge.

14 I will also charge on Page 3 the first paragraph
15 at the top of page, "This case shall be considered and
16 decided by you as an action between persons of equal
17 standing in the community of equal worth and holding
18 the same or similar stations in life. A corporation is
19 entitled to a same fair trial as a private individual.
20 All individuals stand equal before the law and are to
21 be dealt with as equals in a court of justice." I will
22 charge that.

23 Any comment on Number 1?

24 MS. McVEY: It's fine with us, Your Honor. I
25 would say, I think the bias piece is already in there,

ROA_01901

1 but I'm happy. That language is fine with us.

2 THE COURT: All right.

3 Mr. McLeod?

4 MR. McLEOD: No, Your Honor..

5 THE COURT: All right.

6 Number 2, the burden of proof. The burden of
7 proof is, I think, adequately covered in the *Garvin*
8 charge. I don't see any need to add this one to it.
9 It's already in there.

10 Mr. McLeod?

11 MR. McLEOD: No objection.

12 THE COURT: Number 3, certainly I will charge
13 that. It's just been read in the first one, but I will
14 certainly emphasize to them that the verdict has got to
15 be supported by the evidence; can't be influenced by
16 passion, prejudice, or consideration not found in the
17 evidence.

18 All right. Direct or circumstantial evidence.
19 This circumstantial charge in Number 4 is a very
20 academic circumstantial evidence charge, but it also
21 suffers from a couple of other concerns.

22 Y'all may remember the time when circumstantial
23 evidence was the all roads lead to Rome charge where
24 you said that evidence had to be -- each piece of
25 evidence had to be proved to the standard of proof

ROA_01902

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1 required in the case, and then every piece of evidence
2 must point to a conclusion to the exclusion of all
3 other reasonable hypotheses.

4 Our supreme court at a certain point disapproved
5 that charge. And the reason was because it puts the
6 burden on the jury to be the provers rather than simply
7 the deciders, as our court saw it. Similarly, the
8 supreme court has banned charging on weighing and on
9 other burdens like that like search for the truth.
10 You've got to search the evidence. That again puts the
11 burden on the jury beyond what the supreme court
12 considers appropriate.

13 I worry about this circumstantial evidence charge
14 for that reason. I think the circumstantial evidence
15 charge in the Hill *Garvin* formulation is a more
16 colloquial way of doing it, and it really hits the
17 target of what kids now call connecting the dots. I
18 think it does a good job of that, so I will make that
19 charge.

20 Mr. McLeod?

21 MR. McLEOD: Just preserve our objection for the
22 record. We think our charge is proper, but --

23 THE COURT: I want to know now if you have an
24 objection to Number 4 not being charged, what is it
25 specifically that's not in the *Garvin* charge that you

ROA_01903

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1 think needs to be in there that is in Number 4 but not
2 in the charge as I propose to make it?

3 MR. McLEOD: Beg the court's indulgence.

4 Your Honor, we're okay.

5 THE COURT: All right. Expert witness testimony.
6 I think that's already covered both in the charge I
7 gave the jury before the witnesses were heard and in
8 the baseline *Garvin* charge.

9 Mr. McLeod?

10 MR. McLEOD: The court's going to charge the
11 *Garvin* expert witness?

12 THE COURT: Yes.

13 MR. McLEOD: I don't believe we have any
14 objections.

15 THE COURT: All right. Conflict of evidence and
16 the expert witness. I think this charge, out of the
17 Anderson charge book, was now been discredited by the
18 rulings of the supreme court. The business of you must
19 weigh one expert's opinion against the other and
20 declare a winner kind of an idea and you must search
21 puts the burden on the jury, requires the jury to pit
22 the witnesses. I don't think that would be approved by
23 the supreme court today, so I will not charge Number 6.

24 Mr. McLeod?

25 MR. McLEOD: Nothing, Your Honor.

ROA_01904

Appendix_01932

1 THE COURT: All right. Statements of counsel.
2 We'll certainly charge something like that.

3 MS. McVEY: Your Honor, I think that's in the
4 *Garvin* charge.

5 THE COURT: It is. I'll just look to see if there
6 is a better way of saying it than what's in here, but
7 we're certainly going to charge that.

8 MS. McVEY: Okay.

9 THE COURT: And same thing with Number 8,
10 objections. I think I said a little something to them
11 about not punishing counsel for making objections, and
12 I'm certainly going to emphasize that to them again.

13 Number 9, rejected or stricken evidence. I don't
14 recall any stricken evidence, but I'm going to ask
15 y'all whether you do.

16 MS. McVEY: There was one piece with the asbestos
17 bodies, the photograph for Dr. Frank.

18 THE COURT: Oh, during Dr. Frank's, that's right.

19 MR. McLEOD: Well --

20 MS. McVEY: But it's going to come in in Oury.

21 MR. McLEOD: It's a moot point because it's coming
22 in.

23 THE COURT: I wonder whether we just confuse them
24 if they're trying to think about --

25 MR. McLEOD: Yes, Your Honor. I didn't mean to

ROA_01905

1 interrupt. I'm sorry. There was one other strike to
2 the mention of bankruptcy in the Taylor matter.

3 THE COURT: Oh, that's right. I'll do something
4 with this.

5 MS. McVEY: Okay.

6 THE COURT: I'll do something with this.

7 MS. McVEY: It may be in *Garvin*. I can't remember
8 exactly.

9 THE COURT: Then Number 10, questions aren't
10 evidence. I'm going to charge that. I don't know that
11 it will be in exactly this form.

12 Number 11, unanimity of the verdict. I certainly
13 am going to charge that the verdict must be unanimous.
14 Don't know if I'm going to use this exact language.

15 Number 12 -- y'all just interrupt me if you want
16 to add anything to what I've said -- expert witnesses
17 and causation. That's certainly already covered in the
18 *Garvin-Hill*.

19 MR. REID: Your Honor?

20 THE COURT: Yes.

21 MR. REID: I don't know if you want to do this now
22 or later. Looking at that one last night, I thought of
23 a change that would fit this case. Do you want to hear
24 me on that?

25 THE COURT: All right, sir.

ROA_01906

Appendix_01934

1 MR. REID: Just the first sentence, I think might
2 be confusing because, of course, the injury here is the
3 disease. And so I would suggest that we substitute the
4 word "exposure" for "injury" in that second line.

5 MS. McVEY: It's not the same thing. Exposure is
6 not the same thing as injury. Exposure is what gives
7 rise to the injury. And it's covered in *Garvin*, Your
8 Honor.

9 THE COURT: Well, I'll give some consideration to
10 what you have to say, Mr. Reid. I'll look at it one
11 more time. But, certainly, the idea that the most
12 probably rule is in effect is something we're going to
13 let them know about.

14 Number 13, evidence. What are we getting at
15 there? Is that demonstrative evidence we're talking
16 about?

17 MS. McVEY: I think that -- and I could be wrong.
18 It's their charge, but for any documents, I'm trying to
19 remember if any have come in like that for purposes of
20 notice, rather than some other reason. I think it's in
21 *Garvin*, but I assume that's what they mean.

22 THE COURT: We'll certainly make clear that notice
23 documents are considered for that purpose or words to
24 that effect. I didn't note any limitation on the
25 offering of them when we were offering them. That's

ROA_01907

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1 all I'm trying to say. We either let them in or out.
2 I didn't make any ruling that, "This is admitted for
3 the limited purpose of showing notice," or something
4 like that. And, frankly, I didn't notice that ya'll
5 proffering them or offering them quite in that way.

6 MS. McVEY: I agree.

7 MR. McLEOD: I mean, it also has to do with
8 demonstratives.

9 THE COURT: If it's demonstrative evidence, that's
10 something that's different from this idea of notice.
11 And demonstrative evidence I'll tell them is just used
12 to demonstrate points made and is not going back to
13 them in the jury room, so I'll do something on
14 demonstrative evidence.

15 Products liability alternative theories. Now, let
16 me say this. I like the way the causes, the claims, I
17 like the way beginning on Page 6 that Gary Hill
18 outlines these issues of the claims. He starts out by
19 talking about the plaintiff's claims and the fact that
20 defendants have to be considered separately. Then he
21 talks about causation, and then he begins to discuss
22 strictly liability, design defects, failure to warn,
23 defective and unreasonably dangerous product, implied
24 breach of warranty, state of the art. Then he goes
25 into the negligence and its components. And then he

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1 goes into the duty and the breach of duty and
2 causation..

3 I like that setup rather than having to be
4 repetitive about the way these charges are set up and
5 repeat some things in each of the charges internally
6 to, again, emphasize burdens of proof, causation, and
7 things of that nature.

8 So the question I ask about Number 14, 15, 16, 17,
9 18, 19 and, 20 are what's the difference between those
10 and what's in *Garvin* or Hill *Garvin*? And so what --
11 I'm not asking you to detail all those right now.
12 We're obviously going to have to have a little bit of
13 additional cogitation, but I'm not inclined to use that
14 approach to it. I'm inclined to cover these topics as
15 they're covered in the Hill charges.

16 Mr. McLeod?

17 MR. McLEOD: Well, Your Honor, I would -- I can go
18 through my objections in detail to the Hill charge and
19 *Garvin* as we did when he made it. He changed the
20 charge somewhat in the next case, the *Muldoon*. That is
21 why we have submitted our charges separately and apart
22 from all of those. I'm happy to do whatever the court
23 wants.

24 THE COURT: I'm going to let you have a full
25 chance to do that. I'm mindful of the fact that we're

ROA_01909

Appendix_01937

1 about to get the jury back, but what I'm saying is
2 you're going to get a chance to outline that
3 completely. I want that on the record. And I may
4 change my mind about some of this. I'm just telling
5 you that those charges, my question about them is
6 aren't they already covered, and is there some legal
7 defect in how they were covered in *Garvin* that you want
8 to put on the record here, and I'm going to let you do
9 all that.

10 MR. McLEOD: Yes, there were. And to a certain
11 extent we're having this charge conference before,
12 obviously, the case is even over.

13 THE COURT: Exactly. You're not going to be
14 precluded. We're going to have a complete chance to
15 get everything on the record about what our positions
16 are about these things before the charge is made.

17 MR. McLEOD: I understand the jury is supposed to
18 be here at 9:30, so we've got five minutes. I'll do my
19 very best to go through those objections.

20 THE COURT: As I say, I may change my approach to
21 some of them. I'm just saying on those particular
22 ones, that's something we're going to spend some time
23 on.

24 MR. McLEOD: You want me to go through right now?

25 THE COURT: We're going to go through the rest of

ROA_01910

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1 these. I want you to at least know what I'm thinking
2 about these things. I think I can do it before we
3 bring the jury in. To the extent we can't get around
4 to arguing them completely right now, I want you to
5 know what my thoughts are so we can then zero in on
6 these things when we come back.

7 Are y'all following what I'm doing?

8 MR. McLEOD: Yes, Your Honor.

9 THE COURT: Okay. All right. Number 21, this
10 products liability charge on negligence does not
11 accommodate design and distribution, in my view. I
12 think -- and this is Anderson 32-18 as modified. I
13 will propose to charge Anderson 32-19, and you can take
14 a look at it, which I think more clearly drives that,
15 what we need to drive at with this particular charge.

16 Number 22, negligence. I think it's already
17 covered by the charge, by the Hill Garvin charge.

18 Same thing is true of 23, strict liability.
19 Again, I ask what is the difference and what is the
20 legal significance.

21 The same is true of 25 on Page 24. That's
22 products liability, design defect. I think that's
23 already in.

24 Number 26, this -- I'm not prepared to do this one
25 by itself until we talk about what is the bigger issue

ROA_01911

1 which is learned intermediary, so I've got questions
2 about that one.

3 MS. McVEY: Your Honor, I just know that's not the
4 full charge.

5 THE COURT: Yes, that is correct. That is
6 correct.

7 MS. McVEY: It's a partial sampling.

8 THE COURT: That's correct. But if I do it, I
9 would certainly do something that's a fuller use of
10 what was covered in 32-46 out of Anderson's charge
11 book.

12 MS. McVEY: By saying that, I'm not saying -- we
13 do object to this charge.

14 THE COURT: I understand, but it's not complete,
15 that's true.

16 Number 27 I would charge as stated there,
17 reasonable alternative design. I will charge that.

18 MS. McVEY: I don't know if you want our
19 objections now or you want to keep going.

20 THE COURT: You got objections to that?

21 MS. McVEY: My only objection to this is I
22 understand your ruling, but I want to point out for the
23 record that in a failure to warn case, I do not believe
24 the plaintiff always has to prove feasible alternative
25 design. In this case it's not an issue because it's

ROA_01912

Appendix_01940

1 there, but I am worried about in future cases this
2 idea --

3 THE COURT: Well, right now I'm just worried about
4 this case, and I would be prepared to charge it. I
5 think it's definitely an issue in this case.

6 MS. McVEY: Okay.

7 THE COURT: Number 28, this is the bare metal
8 approach. I didn't put it in the stream of commerce,
9 even though they ordered these replacement parts from
10 me. I'm not going to charge that.

11 MR. REID: Your Honor, obviously, we'll have
12 something to say about that. Do you want us to save
13 that?

14 THE COURT: I understand you want to preserve your
15 position.

16 MR. REID: Your Honor, just to be clear, you want
17 me to say that now or later in the day?

18 THE COURT: You can do either one. I mean, I
19 don't want your complete bare metal argument again. I
20 think we have had that on the record a good many times.

21 MR. REID: At least on the facts of this case, I
22 think, you know, we're not -- I don't like the term
23 "bare metal" because I don't think it captures what
24 we're saying. We're saying we only have responsibility
25 for those things that we place in the stream of

ROA_01913

Appendix_01941

1 commerce, so if we have a nonmetal gasket internal to
2 our valve, we take responsibility for that because we
3 put it in the stream of commerce. But without that
4 sort of charge, a jury may well think that we're
5 responsible for insulation or flange gaskets, and
6 neither Crosby or Fisher provided --

7 THE COURT: Yes. I'm targeting that specifically.
8 I regard the evidence as sufficient to suggest that,
9 particularly in the practice engaged in by both Fisher
10 and Duke of supplying replacement parts, that they do
11 place these flange gaskets and packing material in the
12 stream of commerce.

13 MR. REID: To the extent we -- well, I think the
14 record only reflects that we provided internal gaskets
15 or packing and, obviously, no packing in the case of
16 Crosby, but we acknowledge that to the extent a
17 replacement part came from our client, that's our
18 responsibility. But, certainly, we think the jury
19 needs to be instructed that insulation, which was never
20 provided by our clients, is not our responsibility and
21 the same for flange gaskets.

22 THE COURT: You're talking about insulation in the
23 factories, and that is something that is a factual
24 matter to be argued to the jury, but this thing has to
25 do with replacement parts. And you're saying defendant

ROA_01914

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1 is not liable for any injuries allegedly caused by
2 replacement parts such as gaskets, packing if the
3 plaintiff did not design, manufacture, or put in the
4 stream of commerce. It's prefaced by you can't be
5 liable for allegedly defect in product which it did not
6 design, manufacture, or put in the stream of commerce.

7 Those two juxtaposed to each other don't make any
8 sense. If you have got contentions to make about
9 insulation, that's a factual contention you're going to
10 make in argument to the jury, and they're going to have
11 to tie what was supplied to what your client, either by
12 the first order of the stream of commerce put into the
13 stream of commerce. And we're going to have some
14 charges that deal with putting things into the stream
15 of commerce, but I'm not going to charge this thing
16 this way.

17 MR. REID: We'll have some similar instructions
18 we'll get to.

19 THE COURT: Exactly.

20 MR. REID: But we do think the insulation question
21 is a question of law since there are no facts we
22 provided it.

23 THE COURT: What would you have me charge the
24 jury, there's a bunch of insulation in there that
25 you're not responsible for? That's a factual matter of

ROA_01915

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1 proof that you can argue to the jury. I can't charge
2 on the facts.

3 MR. REID: I think we have a later instruction
4 that deals with this, but what I'm saying is we need an
5 instruction that says our clients are not responsible
6 for things we did not put into the stream of commerce.

7 THE COURT: I'll figure out a way to say that, but
8 I'm not going to say it in a way that suggests more
9 than what we're talking about or give you the ability
10 to argue to the jury, "The judge says you can't
11 consider these flanges or these packing materials."
12 And that's been one of your big arguments, and it's one
13 that I reject because the proof in the case at least
14 gives the jury the option of deciding whether you're
15 responsible for the flange gaskets and the packing.
16 And I'm not going to make a charge that excludes that
17 from their consideration.

18 MR. REID: What we're trying to accomplish is
19 this: Having, whether it's by use of the terms
20 "insulation" or "gaskets" or by use of the term "stream
21 of commerce" to identify for the jury what they should
22 consider in assessing whether or not our clients should
23 be responsible. And we think there is a clear dividing
24 line between those things that came from our clients
25 such as the original internal gaskets or later

ROA_01916

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1 replacement gaskets on one hand, which we acknowledge
2 would be our responsibility if, in fact, there was
3 exposure to them, versus things that did not come from
4 us such as the flange gaskets, insulation, or
5 replacement parts that came from other sources.

6 THE COURT: Well, I regard the flange gaskets
7 which you supplied to be something that is part of your
8 design and your supplying, so I'm not going to exclude
9 that from their consideration.

10 With respect to insulation on the pipes and this
11 kind of thing, I'll think about that in terms of what
12 can be done, but I'm not going to comment on the facts.
13 If I start doing that, I'm going to comment on your
14 facts, too.

15 They get to argue to the jury, "We have proved
16 that part of their design was the flange gaskets as
17 well as the internal packing." I'm not going to
18 restrict them to just arguing that you're responsible
19 for the internal packing but not the flange gaskets.

20 I mean, they have the greater weight of proof on
21 that, but they have got plenty of information in
22 evidence, as I see it, to put that forward.

23 MR. REID: Your Honor, I understand what you're
24 saying. We do think that there's no proof -- we
25 certainly have some valves with flanges. But I think

ROA_01917

1 there's a complete absence of evidence that gaskets
2 used to connect those flanges to pipe flanges came from
3 us, so I'll leave it at that.

4 THE COURT: I think that's how the evidence --
5 well, we have got a number of other ones, so we'll stop
6 at Page 26 and return to this endeavor at a later time.

7 MS. McVEY: What did you say about Charge 29? I'm
8 sorry, Your Honor. Is that where we're stopping?

9 THE COURT: We're stopping at Page 25, excuse me.

10 MS. McVEY: Okay.

11 MR. BOUCH: Your Honor, Mr. McLeod indicated that
12 you are not going to admit Ms. Sahmel's report, and I
13 understand your ruling and, of course, except to it.

14 MR. McLEOD: I think she said she's going to wait.

15 THE COURT: I think you're premature about that.
16 At the present time, I am not going to admit that.
17 There's going to be other testimony, and we'll revisit
18 that, so I've got it up here to revisit. Based on what
19 I've heard so far, it's got way too much hearsay within
20 hearsay, reference to factual testimony that's not in
21 the record, et cetera, and it violates *Allegro vs.*
22 *Scully*, a court of appeals case, but we'll visit this
23 at the end.

24 MR. BOUCH: Okay.

25 MS. McVEY: Can we have two seconds before you

ROA_01918

Appendix_01946

1 bring the jury in?

2 THE COURT: Yes.

3 (WHEREUPON, a recess was taken from 9:33 a.m. to
4 9:39 a.m.)

5 THE COURT: Ms. Sahmel, please return to the
6 stand.

7 (WHEREUPON, the jury entered open court at
8 9:40 a.m.)

9 THE COURT: Good morning, ladies and gentlemen of
10 the jury. We will, of course, have you take your
11 seats. I hope you had a good evening. We are in the
12 midst of the defendant's case, as you know, and
13 Ms. Sahmel is now going to be cross-examined by
14 attorneys for the plaintiff.

15 All right. Ms. Sahmel, of course, you know you're
16 still under oath.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. Ms. Farrise.

19 CROSS-EXAMINATION

20 BY MS. FARRISE:

21 Q Good morning, Ms. Sahmel.

22 A Good morning, Ms. Farrise. How are you?

23 Q I'm okay.

24 I just wanted to get the court's official
25 exhibits.

ROA_01919

Appendix_01947

1 Let me start, if I might, with a smaller matter
2 you talked about yesterday. Take a look at Fisher
3 Exhibit 90.

4 A Okay.

5 Q It's in evidence. Can you turn it around and show
6 it to the jury?

7 A Oh, sure.

8 Q It's a picture of a -- and then there was, let's
9 see, this guy, Exhibit 90.1. Do you see that? Have
10 you seen that picture before?

11 A I don't believe so.

12 Q Yesterday you were talking about exhibit -- what
13 we've marked as 1008.10665, and I believe that it
14 probably got a new number yesterday from Fisher and
15 Crosby.

16 A Okay.

17 Q But there was a sample that was reported as being
18 zero. Do you know what I'm talking about?

19 A Yes, I do recall that.

20 Q Anyhow, you recall it was Sample Number 4,
21 correct?

22 A I believe that's correct.

23 Q Okay. And so there was more data about Sample
24 Number 4 that was taken, correct?

25 A Yes. I have seen this before as well.

ROA_01920

Appendix_01948

1 Q Okay. And just to orient maybe the jury on what
2 we're even talking about, in 1980, apparently, based on
3 these documents, Fisher conducted air sampling at its
4 factory in Iowa, right?

5 A That's my understanding.

6 Q Right. And so here's the Iowa factory of Fisher.
7 And, let's see. Duke, the customer, is down here,
8 which is not really true. But these documents that we
9 are looking at, someone like yourself, an industrial
10 hygienist, went into the Fisher Marshalltown, Iowa
11 factory, put some kind of a gizmo on a worker, filter,
12 right, and they sought to measure in 1980 whether those
13 folks were being exposed to asbestos from the
14 production process, correct?

15 A That's my understanding based on my review of the
16 materials and the best that I can elicit from what is
17 remaining of the documents and documentation.

18 Q Okay. And so there was this correspondence --
19 which maybe it will make more sense now -- back and
20 forth between Fisher, this Mr. Adams, Paul Adams, who
21 has some role at the Fisher plant, right?

22 A It appears to be so, that's right.

23 Q And Mr. Adams of Fisher Controls is sending the
24 air sample that was taken from a worker to a lab at the
25 University Hygienic Laboratory medical laboratory

ROA_01921

1 building in Iowa City, correct?

2 A That's my read of the document.

3 Q Okay. So what that tells us or not is that
4 whether the workers who were sampled were or were not
5 being exposed to asbestos as part of their work in 1980
6 at the Fisher plant, right?

7 A So they were part of an air sampling program,
8 that's right, that was undertaken to understand or
9 characterize the potential for exposure during a number
10 of different -- it looks like routine operations.

11 Q Four, right?

12 A In this particular instance, there were four.
13 There were other samples that were collected at other
14 times.

15 Q And you -- yesterday, there was a bulk sample that
16 was like the biopsy of the product, and then there were
17 four air samples from this time period, right?

18 A I don't recall. I need to look at the document to
19 confirm that. Do you have a copy that I might look at
20 a little closer?

21 Q I just want to ask you about Sample Number 4 which
22 is in evidence.

23 A Okay.

24 Q And so this zero, if it is a zero, has nothing to
25 do with what happened at Duke?

ROA_01922

Appendix_01950

1 A I don't know of any connection between those two.

2 Q But what the test does tell us, Number 4, there is
3 more information about what happened, which is that it
4 occurred in July of 1980. This Mr. Paul Adams was
5 somehow the supervisor in charge. It was, in fact,
6 sampling specifically for asbestos, and at the bottom,
7 it tells us, I guess, it was a 45-minute -- no, no. It
8 was a ten-minute sample -- no. I don't know. Whatever
9 it turns out to be. 31-minute sample, right?

10 A So I'm trying to read the notes at the bottom.
11 They're a little bit cut off.

12 Q I know. Right now I'm just asking about the
13 sampling time.

14 A Correct. The sampling time is just over
15 30 minutes.

16 Q Okay. And what they report -- let's get to
17 that -- is that ten minutes of the time, the worker,
18 who had the gizmo that they were measuring, was
19 actually on break, not doing anything, right? It says,
20 "Run time of test included a ten-minute break" -- it's
21 kind of cut off there -- "during which the operator
22 stayed at his workstation," right?

23 A It's very hard to read, but I think it certainly
24 appears that there's a ten-minute -- something is ten
25 minutes.

ROA_01923

Appendix_01951

1 Q Ten minutes of activity?

2 A Possibly. It's hard to tell from the writing
3 that's remaining.

4 Q Okay. Well, yesterday on direct, this document
5 was put in front of you and you said this is a zero
6 sample, and you knew all about it. So you have seen
7 this document before. I'm not just springing it on you
8 right now?

9 A In terms of the result, absolutely. I'm just
10 talking about these remarks.

11 Q But you saw these remarks when you did your work
12 in the case?

13 A I do recall seeing them. It's been a little
14 while, so I just wanted to make sure I could read them.

15 Q Okay. But what we know is the guy who is doing
16 21 minutes' -- or the woman -- worth of work is
17 putting, merely putting the spiral-wound gasket into
18 the box. That's all they're doing?

19 A That's right. That's what it looks like.

20 Q Right. And you, I think, don't know enough about
21 the packaging processes at Fisher in Iowa to be able to
22 say to the jury that they weren't putting something
23 that was already in plastic into a cardboard box for
24 shipping?

25 A That's right. I don't know that.

ROA_01924

Appendix_01952

1 Q Right. So the zero which was pointed out
2 yesterday could mean it's zero because this person's
3 job was to take a sealed plastic part or part sealed in
4 plastic or shrinkwrapped and simply put it into a
5 cardboard box?

6 A It's certainly possible. I don't know one way or
7 the other.

8 Q It has nothing to do with fiber release in the
9 field, right?

10 A In this particular case, it's not related to field
11 work with a gasket, although it's certainly relevant.

12 Q Yeah. It's relevant that Fisher had the capacity
13 and the ability and the availability of a lab by 1980
14 to do air sampling at its factories, correct?

15 A That's correct.

16 Q And in the field, had it chosen to do that, right?

17 A I believe it did for its own employees, that's
18 right.

19 Q You've seen field sampling for Fisher employees in
20 the field at customer sites?

21 A No, for their own employees at their sites.

22 Q Right. I'm talking about capacity, ma'am. There
23 could have been field air testing in the same easy way
24 that they did plant air sampling for asbestos when
25 someone's at the field using the product, removing the

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