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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Judge

Appellate Case No. 2016-000227
Case No. 2013-CP-42-3915

Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay,..... Respondents,

v.

CNA Holdings, LLC..... Appellant.

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VOLUME IV

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Certificate of Counsel

the morning. And we're closing in on it. It looks like we'll be able to get the case to you tomorrow. And you can probably start deliberating sometime in the early afternoon, it appears.

So see you back at 9:15. Don't talk about the case. Continue to keep an open mind. Don't do any outside research or investigation.

(WHEREUPON, the jury was excused from open court at approximately 4:44 p.m.)

THE COURT: All right.

MR. TIVIN: Your Honor, Mark Tivin on behalf of John Crane.

THE COURT: Yes, sir.

MR. TIVIN: I don't mean to be a pest about it, but I had spoken to you about Dr. Crapo being proffered as an expert. And the Court still hasn't accepted him.

THE COURT: Yes, you're right. I completely forgot about that. Well, I'll just tell the jury in the morning.

MR. TIVIN: It doesn't matter. I think as long as it's on the record -- I just need something on the record that says he's been accepted as an expert, or you can do it in the morning.

THE COURT: Just throw something at me if I don't do it in the morning first thing. All right.

MR. TIVIN: Sorry, Your Honor.

THE COURT: That's okay. It's my fault. I forgot about it.

MR. TIVIN: Can we take a five-minute break before we start any of this --

THE COURT: Yeah, sure.

(WHEREUPON, a break was taken.)

THE COURT: All right. Is everybody ready to get started?

MR. PANATIER: Oh, Your Honor, I forgot. I'm going to -- I'm going to offer Plaintiff's Exhibit No. 821 into evidence. It's the '63 memo.

MR. YOUNG: Okay. Judge, we -- where's Chris?

(Pause.)

THE COURT: Okay.

MR. YOUNG: Judge, can we wait on Mr. Collier for whatever objection he might have?

MR. PANATIER: I'll leave it right there.

THE COURT: Sure.

MR. YOUNG: I'm sure it's highly prejudicial or the Plaintiff's wouldn't move to admit it.

MR. TIVIN: Your Honor, is it my understanding what the only thing we're going to be doing is the jury instruction conference?

THE COURT: Is this some kind of precursor to you asking to be excused?

MR. TIVIN: Yes.

THE COURT: No.

MR. PANATIER: That's what happened last time, we had a fight over Jesus.

THE COURT: I'm just teasing you. If you don't think you need to be here, that's up to you, sir.

Okay. I've got a 20-page document. Is that what everybody is looking at?

MR. PANATIER: Yes, sir.

MR. ELLIOTT: Yes, sir.

Do you want to tell him what --

Your Honor, what we did, in case no one's advised you, is we took the Muldoon charge --

THE COURT: Okay.

MR. ELLIOTT: -- that you had given. And we all took a stab at making some redline changes. And then we exchanged that -- you know, our redline changes with each other. And then we discussed it and sort of agreed on some stuff, added stuff in, took it out by agreement.

And then I -- for John Crane, there are little notes that says, John Crane objects to this and -- or this language. And I assume there's some notes where other folks have objected to certain charges being added. That's how the document evolved.

MS. SHOFNER: Your Honor, I'm kind of behind the

easel.

I think that the highlights in yellow are the Plaintiff's, I think what they sort of changed and added. And then John Crane's are in red. And Celanese's are in blue, if that helps you as well with the key code.

THE COURT: Yes, ma'am.

Thank you.

MS. SHOFNER: And I tried to take out all of the things that we, actually, agreed could be removed from the Muldoon. But there may be a few that still need to be cleaned up, which I'm happy to do after this is over with.

MR. PANATIER: I think Page 5 is the first page where there are any --

THE COURT: Okay.

MR. PANATIER: -- issues.

THE COURT: Okay. So I think we can -- Plaintiff's are seeking to recover damages from personal injury and wrongful death arising from the alleged asbestos exposure of Dennis Seay.

MR. PANATIER: We're fine to stop it there. That's fine.

THE COURT: Does that suit everybody?

MR. PANATIER: Yeah. We'll stop it there. That's fine. And then start with "the mere fact" next.

THE COURT: Right.

MR. PANATIER: Yeah. That's fine.

THE COURT: Okay. And --

MR. ELLIOTT: Your Honor, paragraph five, we struck out the last portion, "or was used or altered in a reasonably foreseeable manner." It's mentioned several times throughout the charge.

THE COURT: How is that -- you know, what's -- that's not really an issue here, is it?

MR. PANATIER: Well, it is only because they could -- the jury could interpret it -- we propose that "or was used or altered in a reasonably foreseeable manner," because the jury could easily interpret that to say, I mean, they cooked on a flange and then they ground it off.

That is not how it was when it left the hands of the Defendant. And I've been burnt by that before where a jury said, no, it was cooked on. It wasn't like it was when the defendant sold it.

So "used or altered in a reasonably foreseeable manner" is consistent with the law. And it, also, avoids any confusion.

MR. ELLIOTT: Well, and I, also, think the charge is -- discussed reasonably -- used in a reasonably foreseeable manner later on as well in a more explanatory way.

MR. PANATIER: I prefer it here, instead -- I'd even

let it go later. But this right here, I think that -- if you stop right at "Defendant," I think it could really confuse the jury, Your Honor. And I don't think it causes any prejudice to John Crane to include our little phrase there.

THE COURT: I think it's a correct statement of law. We'll leave it in. Okay.

MR. PANATIER: Do you guys have an objection on the third paragraph up from the bottom still?

MR. ELLIOTT: We were just saying leave it in.

MR. PANATIER: Oh, hold on. Let me see.

That's fine. Okay.

I think then we're good on this page, Your Honor.

MR. ELLIOTT: Is this page just the risk-utility?

MR. PANATIER: Okay. Yeah. So, Your Honor, at the bottom of the page is -- Page 6 --

THE COURT: Yes.

MR. PANATIER: -- is the risk-utility test for a design defect. And we have -- we are only going to ask the jury to hold John Crane responsible under the negligence prong of product liability, not design defect. We're only going on warning and then under -- and negligence for John Crane. We're not alleging any design. And so we believe that under the -- under the case law -- Branham was one -- Branham that risk-utility shouldn't be

charged.

MR. ELLIOTT: I want to make sure I understand. Their claim against John Crane is that we didn't provide a proper warning, therefore, we're negligent or --

MR. PANATIER: And the product was defective. That's right.

MR. ELLIOTT: Because it didn't have a warning?

MR. PANATIER: Correct.

MR. ELLIOTT: Okay. And this is my issue with removing the risk-utility language.

Number one, there's a case, Holland v. Morbark, 407 SC 227. And it says risk-utility applies for any theory, including where the allegation is the failure to warn.

But I will admit, in that case, there was, also, an underlying product defect. And so the risk -- meaning not just the warning, but the manufacture and design of the product itself. Okay.

And throughout the charges, they include paragraphs about what I perceive to be charges on design and manufacturing defects. And so I don't think we should take out the risk-utility if we're going to leave in charges that, also, outline the law on defective manufacture and defective design.

And the paragraphs where I think that is still included, despite they only want a warnings charge, are

these. And there are six of them. On Page 7, the third paragraph starts with "To hold." Okay.

THE COURT: Okay.

MR. ELLIOTT: And the second paragraph, would be two paragraphs down, "In order for the plaintiffs to prove." Okay.

THE COURT: Okay.

MR. ELLIOTT: And the third is, "In evaluating whether the manufacturer." Do you see where that starts? It's the next paragraph. Sorry.

THE COURT: Yes.

MR. ELLIOTT: Are you with me?

THE COURT: Yes, sir.

MR. ELLIOTT: And then the next page, Page 8, Your Honor, the first paragraph, "But you must." Okay.

THE COURT: Right.

MR. ELLIOTT: And --

MR. PANATIER: I'm sorry. Which one on Page 8? The top?

MR. ELLIOTT: Yes, sir.

MR. PANATIER: Okay.

MR. ELLIOTT: And then if you go down five paragraphs, where "Now common manufacturer owes a duty." I'm looking on the left side. And then two paragraphs down, "If the seller had reason to know."

Are you with me?

THE COURT: Yes.

MR. ELLIOTT: And, by the way, some of it's a little nuancical, I guess -- if that's a word. But the -- the most illustrative is number -- on Page 7, the one I marked as 3.

THE COURT: Okay.

MR. ELLIOTT: "In evaluating whether the manufacturers met the standard of care with respect to designing their product, you must measure the product against the standard existing at the time of the manufacture itself. You may not evaluate or consider any evidence of knowledge, information obtained from the date of the manufacture and sale."

And my point is, each one of those charges I pointed -- I cited to have information about either a manufacturing defect or a design defect, rather than a warning.

THE COURT: What was the name of the case you mentioned?

MR. PANATIER: Holland.

THE COURT: Holland?

MR. ELLIOTT: Can I give it to him? Is that okay?

MR. PANATIER: Yeah.

MR. ELLIOTT: I don't have it turned to the right

page, but this is the case.

THE COURT: Okay.

MR. ELLIOTT: But my point is, overall, those six paragraphs, we think, also, include charges on design and manufacturing defect, and wouldn't be appropriate if they're only alleging a defective product because of the failure to warn.

MR. PANATIER: Can I interrupt?

MR. ELLIOTT: Yeah.

MR. PANATIER: I'll withdraw those paragraphs. We withdraw risk-utility. I'll pull all the ones you have an objection to.

MR. ELLIOTT: Okay.

MR. PANATIER: So, Your Honor, that would be the paragraph at the bottom of Page 6, continuing to the second paragraph of Page 7 is risk-utility. So that would come out.

And then I would agree to remove the third paragraph on Page 7, fifth paragraph on Page 7, sixth paragraph on Page 7, first paragraph on Page 8.

THE COURT: All right. Now, wait. Who's responsible for making all these --

MS. MCVEY: We are.

MR. PANATIER: I'm doing it right now. I'm doing it right now.

THE COURT: I understand you're doing it correctly. I was just curious.

MR. PANATIER: I think I'm doing it.

On Page 8, continuing, the fifth paragraph from the bottom, "Now a manufacturer."

Right? That was one you had an issue with; correct?

MR. ELLIOTT: Yes.

MR. PANATIER: And the third from the bottom.

MR. ELLIOTT: Yes.

MR. PANATIER: So those would -- we'll pull all of those out that I just mentioned that John Crane had an objection to. And that removes the last two paragraphs on Page 6 and the first two paragraphs on Page 7.

Are we good?

MR. ELLIOTT: Yes.

MR. PANATIER: Okay. Easy enough.

THE COURT: All right. Let the record reflect that the parties have agreed to remove the matter from the jury charge. And notify court administration as well of that.

MR. PANATIER: Before we move past these pages too much. Back on Page 7, Your Honor, the third paragraph from the bottom -- we're on now a different issue.

THE COURT: All right. What page are you on?

MR. PANATIER: Page 7. The third paragraph from the bottom. It starts with "JCI objects to removing this

language."

THE COURT: Right.

MR. PANATIER: The only -- the only problem I have with this is the second sentence. If you read it, it doesn't quite make sense. It says, "You should return a verdict in favor of the Plaintiff only if a due regard of the state of the art existing at the time the Defendants product was defective."

It seems to lack a clause. So we would object to that sentence as is. It's from Muldoon. It was said in Muldoon. There's no doubt. And so I just -- I think the sentence as in -- needs another clause that says what the state of the art says, or take it out.

Because, frankly, I don't -- we already have instructions on state of the art on the next page, which is on Page 8, paragraph three, "A manufacturer has the duty to stay aware of current standards," et cetera, et cetera, which is out of the pattern.

So we'd, actually, ask that you just remove the entire paragraph that starts with "JCI objects to removing this language." I don't think we need it.

MR. ELLIOTT: "You should return a verdict" -- I'm reading the second sentence. And I'm trying to see as to how I can make it make sense.

"You should return a verdict in favor of the

Plaintiff only if you give due regard to the state of the art existing at the time of the Defendants -- at the time the Defendants product was defective."

MR. YOUNG: No. I think it should say that "only if under the state of the art existing at the time you find Defendants product was defective."

MR. PANATIER: And that's on the next page. I mean --

MR. ELLIOTT: Which one are you looking at, Chris?

MR. PANATIER: On the next page, on Page 8, the second paragraph and third paragraph talk about state of the art. So this -- this seems a little bit -- it's tough to get through. And it all seems a little bit cumulative.

THE COURT: Yeah. I agree. I'm -- it appears whoever said that may have been the one who was defective.

MR. PANATIER: Your Honor, are you saying -- you're saying you'll take out that paragraph?

THE COURT: No. I would leave in the post-sale duty to warn.

MR. PANATIER: All right. But the second sentence comes out?

THE COURT: Yeah. I don't -- yeah.

MR. PANATIER: Okay. That's fine.

Do you guys have the next -- what's the next thing? Page 9?

MS. SHOFNER: I don't think there's anything on Page 9.

MR. PANATIER: Okay.

MS. SHOFNER: Is there?

MR. PANATIER: We've agreed to that.

MS. SHOFNER: Right -- no, no. There at the bottom of Page 9, "If there is not sufficient evidence." That's yours.

MR. PANATIER: Which one?

MS. SHOFNER: Page 9, "If there is not sufficient evidence."

MR. PANATIER: Oh, yeah.

Your Honor, so -- "but for" is three paragraphs over. This would be saying -- oh, Page 9. Sorry.

THE COURT: Okay.

MR. PANATIER: Page 9, I think Celanese wants --

MS. SHOFNER: No, no.

MR. PANATIER: I'm sorry, guys. John Crane. That's red. John Crane wants, "If there is not sufficient evidence to conclude that but for a Defendant's conduct the injury would not have occurred, then you," et cetera. That -- that is stated two paragraphs up already.

THE COURT: Yeah. I agree. I agree.

MR. YOUNG: All right. And, Judge, we don't think that's a proper charge for a premises case.

(Pause.)

THE COURT: Which one now are you talking about, Mr. Young?

MR. YOUNG: I guess -- Judge, this is my first premises case. And I won't say anything else about cause, because Mr. Panatier fussed at me. But I just don't see how -- I don't think that's a -- we just don't think that's applicable to this particular premises claim, the "but for."

But I understand you're going to give it, Judge, for the manufacturing claims. So I think the simplest thing to do is just to let us object.

THE COURT: I'm not sure what you're talking about. Now, the -- but for the causation?

MR. YOUNG: Well, I probably didn't explain it very well.

THE COURT: Well, no. I mean, you're saying "but for" causation doesn't apply to premises cases?

MR. YOUNG: Not in this type of situation, yes, sir. I can't give you a case that says that, Judge. But that's just --

THE COURT: Okay.

MR. YOUNG: -- if you read the -- all the law in its entirety, I just don't think -- I think that is intended to apply to something else, like a products liability

claim.

MR. PANATIER: I'd love to -- I'd love to agree with him. I think the law is "but for," plus concurrent cause, which is instructed on. I hate "but for" personally. But I think that's the law.

And it -- and it's given in -- it's given in two -- really, two kind of clauses. One is there's "but for." And then there's -- the subsequent paragraph says there can be more than one "but for" cause, which is a little bit confusing. But that's the law. And I think that's what it needs to be.

MR. YOUNG: Judge, I think you should just go ahead and leave it in where it is, and let us do whatever it is.

THE COURT: That's fine. Yes, sir.

MR. YOUNG: It's not a -- it's not a chest-beater type of objection.

THE COURT: Okay. I understand.

MR. PANATIER: But we're still taking it out where it's repeated the second time on Page 9.

MR. YOUNG: Well, I don't have a -- I don't -- that's a John Crane issue.

MR. PANATIER: Okay. I was just making --

MR. ELLIOTT: He's already said he's taking it out.

MR. PANATIER: Okay. I was just making sure.

MS. SHOFNER: So, Your Honor, I think the next issue

is on Page 10. And this was not marked, but I think all parties have agreed that the paragraph that starts "The Defendants claims of the Plaintiff's." It's in the middle, one, two, three, four paragraphs down.

THE COURT: Yes.

MS. SHOFNER: Do you see that?

We're going to move that paragraph to right after the paragraph in front of it, "A manufacturer has no duty." We're just going to move that paragraph down. And instead of "The," say "Both Defendants."

MR. PANATIER: On "Defendants claim"?

MS. SHOFNER: Yes. "Both Defendants claim of the Plaintiff's injuries were not proximately caused by the negligence of either Defendant, but were solely caused by the wrongful acts of a third party." That paragraph, we're just going to put above -- or right after "The manufacturer does not have a post-sale duty to warn."

That's where that comes in. Because the next paragraph will start "The premise liability," and -- the contractor charges.

MS. MCVEY: But we agree on that.

MS. SHOFNER: We agree. We agree. I just want you to know that -- that we're making that change.

MR. PANATIER: From now on, we'll let you know when we agree first.

MS. SHOFNER: I'm sorry. I thought I said that. We all agree to that.

THE COURT: All right. Thank you.

MS. SHOFNER: Okay.

MR. PANATIER: I think the next issue -- so we've taken the premises instructions out of the pattern -- the Anderson [phonetic] book. And that's what we have suggested. And we understand that, perhaps, Celanese has an objection to that.

MR. YOUNG: Yeah. I mean, Judge, this is what I was mentioning yesterday. All of these charges that the Plaintiff's have suggested, in Celanese's opinion, would apply if Mr. Seay had gone there as like a salesman, or something.

This is a totally different situation. And, happily, we were able to find this South Carolina case that there is a completely different applicable law when you're dealing with a general -- or an independent contractor like Celanese. And this is really the big issue in all the jury charges for Celanese is...

(WHEREUPON, there was an off-the-record discussion amongst the attorneys.)

MS. SHOFNER: It's on Page 13.

THE COURT: Okay.

MS. SHOFNER: Our -- CNA's jury charge number 16.

MR. YOUNG: And we think that that succinctly states the applicable law, Your Honor, for our case involving an employee of an independent contractor coming on to the premises to do work. And that's what that case says. And that's --

THE COURT: What case is it? 16 --

MR. YOUNG: Oh, sorry, Judge. It's -- we were, actually, prepared for this. It's Lanier Construction Company v. Bailey & Yobs, Inc., 384 SC 275. And I'm happy for y'all to take my copy, if you want it.

But that's a -- the charges we have are a direct quote from that case, Your Honor.

THE COURT: Where it says, "The contractor generally equates to an invitor" is a direct quote?

MS. SHOFNER: Yeah. Yes. It says that "The entire basis of an invitor's liability rests upon his superior knowledge of the dangers that causes the invitee's injury."

MR. YOUNG: Your Honor, I don't know what -- the page it is. It says, "Under a premises liability theory, a contractor generally equates to an invitor, and assumes the same duties that the landowner has, including the duty to warn of the dangers or defects known to him, but unknown to others."

MS. SHOFNER: And that exact phrasing is, also, cited

in the Sides v. Greenville Hospital System, at 362 SC 250, and, also, in the H.V. Larimore v. Carolina Power & Light, at 340 SC 438. And that's -- I think that exact statement is in all three of those cases, exactly like that.

MR. PANATIER: If I can, Your Honor, neither of these cases is this case. The premises law that we've -- that we've cited is the rule. These would be what seem to be fact-based exceptions.

In one case, you've got a homeowner, and a general contractor, and a subcontractor. The general contractor knows about a problem with the septic tank. Subcontractor's hurt. So the general contractor is held responsible.

In Sides, the other case, the -- it was lighting in the parking lot of a hospital. It was injury to a third person.

So you're not -- neither of these deals with an employee that is working for a premises owner. So in the hospital situation, you have an injury to a third party who's walking through the parking lot. And the court says, the hospital had superior knowledge, then the contractor. And so the hospital -- or I guess you could say the premises owner would be held responsible.

I don't think either of these are really on point. I think it kind of comes full circle. Because then there's

this case Simmons v. Tuomey Regional Medical Center. And in this one, it says, "The term 'nondelegable duty' is somewhat misleading. A person may delegate a duty to an independent contractor. But if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains liable for the breach.

"It's, actually, the liability, not the duty, that's delegable -- that is not delegable. The party which owes the nondelegable duty is vicariously liable for negligent acts of the independent contractor."

This would appear to be the situation, Your Honor, where this would -- this would be -- bring it really full circle. This says, look, under these situations, which I think contemplate injury to third parties for the most part. Under these situations, if you have an injury to a third party, this says, look, you still have -- the owner has nondelegable liability for the actions of the independent contractor, which, in our case, would seem to suggest that if Daniel breached its duties because it was brought in by Celanese that Celanese would have a nondelegable liability for the actions of the subcontractor.

So even if the jury found Daniels was responsible in some way, and they wanted to hold Daniels responsible, under this line of cases, the case law says, no, Celanese

still has responsibility for the non -- for the nondelegable liability, and any of the actions of the subcontractor.

I think this is not our case. I don't think any of these cases are our case. I think our case is very straightforward. It's an invitee. It's not an invitee of a subcontractor. It's not an invitee of a -- that's a third party. This is an employee of a contractor working on the premises. And I think the rule -- the standard jury charge that we've submitted is what the jury should be instructed on.

I think the instructions that Celanese are suggesting are extremely confusing. And I don't think that they're on point with the facts of this case.

THE COURT: Thank you.

MR. YOUNG: Judge --

THE COURT: Yes, sir, Mr. Young.

MR. YOUNG: -- I mean, there's no evidence in this case about any delegable or nondelegable duty. I mean, all the evidence has been is that OSHA put the duty on Daniel to provide a safe workplace. It wasn't anything that was delegated from Celanese.

And, Judge, I mean, the language is what it is. It, specifically, deals with a premises liability case and an independent contractor, just like we have here. And the

citations -- the premises liability charges that they have do not address that situation at all.

And, factually, our case is exactly like Lanier Construction Company v. Bailey & Yobs, because of the fact that Daniel -- everyone has agreed Daniel is an independent contractor. And we're being sued under premises liability in a case where Daniel was a contractor doing the work that's claimed to have caused the damage.

I mean, I -- I just really -- I don't see -- I don't see a -- really a legitimate legal argument to be made that this language shouldn't be charged, Judge, under the facts of this case and the exact language in those cases that Ms. Shofner found.

MR. PANATIER: Well, Your Honor, I would just say that based on the record we have in this case, this -- the Lanier case is based on the -- if you -- if you want to say that it's in any way applicable to our case, well, it's based on a showing that the contractor's potential liability was based on the notion that it had superior knowledge of the dangerous condition. There's been no showing of that in this case, that they had superior knowledge.

And that was taken -- that's on Page 3, second column over.

MR. YOUNG: Your Honor, we put a charge in there that

says, yeah, for this to apply, that's an issue. And I think that's an issue in this case. But, you know, all of the yackety-yak that he put up clearly shows that, I guess, everybody including Daniel knew or should have known about asbestos.

But, you know, we're going to hear tomorrow -- we've already heard they put the asbestos in, and they maintained it, and they were experts. And you're going to hear the same thing tomorrow. I mean, it's not like Mr. Buck's going to come in and say, you know, we had no idea what we were working with.

So it's -- it's premature to bring that issue up, because we haven't heard from the Daniel employee. But worst-case scenario, Judge, that's an issue of fact. It's not a reason not to give a charge, which seems to me to be extremely applicable to our case.

MR. PANATIER: I don't understand why our proposed isn't applicable. If anything -- if anything, you're not talking about taking out the entire standard charge. You're talking about adding a paragraph or two on independent contractor.

Because, obviously, the rule -- the general rule is completely applicable to this case. But I can understand if they want the Court to include an instruction on independent contractors and their employees. But I don't

think you exclude the entire section that comes from the patterns on 10, 11, and the top of 12.

MR. YOUNG: Judge, it's been so long since I had to do anything, maybe my brain is turned off. But that's the whole point, Judge, that there's two different situations. And our argument is -- is that the premises liability charge from the pattern is like the -- a slip-and-fall case. It's been given, I'm sure, a thousand times or 10,000 times in South Carolina.

But this is a case where a general contractor comes in and is doing the work that's claimed to be the hazardous work. And so we feel like the cases that deal with that situation establish the premises liability law in South Carolina for this case, as opposed to the traditional invitee-type situation where there's no general contractor at all. It's just like if somebody walks into the -- whatever -- subway and slips and falls. That law would be applicable.

THE COURT: Aren't y'all really saying the same thing? I mean --

MR. YOUNG: I think he's got a much easier burden under the other law. I assume he's trying to talk me into doing a horse trade here. And, Judge, I'm just -- I don't want to make this last forever, but I'm not going to be able to do that. As I told you a while back, you know,

I've got a hundred people looking over my shoulder. And this issue has already -- I just --

THE COURT: Okay.

MR. YOUNG: I'll try, Judge. But I just -- we feel like our law is the right law for this case.

THE COURT: So I'm trying to figure out what your law is, as opposed to -- it seems to me that there may be two issues. One is whether the jury should be charged about premises liability in terms of the invitee's -- or invitor's duty, how that duty is breached. And second is the independent contractor concept.

Aren't they completely different?

MR. YOUNG: That's our position, Judge. That's what I was trying to say.

THE COURT: And you're saying they're not different?

MR. PANATIER: I'm saying -- yeah -- yes, Your Honor. The fact that he's employed by an independent contractor is not a shield to the fact that he's still an invitee.

THE COURT: Right.

MR. PANATIER: And that's what the general patterns are talking about. He's an invitee, regardless of whether he was there invited without an employer or he had an employer. At best, they're talking about a situation where there's almost a rebuttal sort of liability presumption, or there's a shield to that potential

premises liability on the independent contractor front.

Again, I don't -- I don't think that's what's contemplated by this case. But certainly the premises liability applies to invitees, and that's what he is. And there's no dispute about that.

MR. YOUNG: And we have "invitee" in our charge, Judge. We don't dispute that. It's just -- it's a difference -- in my opinion, a different standard.

THE COURT: So your charge 16, Mr. Young, appears to be just talking about invitors. It would appear to me that 16A and 16B, though, were talking about --

MR. YOUNG: Judge, I'm -- contractor -- what that's saying in 16 is that contractor is generally the same as the premises owner.

THE COURT: Right, right.

MR. YOUNG: And assumes the same duties as the premises owner. If we can change it so it's clear.

THE COURT: Oh, okay. So Daniel is the premises owner now?

MR. YOUNG: Well, that's what this case says. It equates to the --

MR. PANATIER: If it has -- that's the thing. If it had superior knowledge in that case for injury to --

THE COURT: Okay. I'm with you.

MR. YOUNG: That's what the charge says.

THE COURT: I'm sorry. I was slow on the take-up there.

MR. YOUNG: It doesn't do us any good if we don't prove that -- that our knowledge was equal to or less than Daniel. So, I mean, that can still be argued. But I don't think that's any reason not to give the charge.

Basically, what these charges say, Judge, as I understand it, is the general contractor, when they come in to do the job, they take over the work area and, thus, they become, in essence, a premises owner.

And so then this -- this law applies, as opposed to the standard premises liability charge.

THE COURT: Well, it seems to me that the jury has to decide what duties are in effect once Mr. Seay stepped on Celanese's property. And in terms of Celanese's liability, that would appear to depend upon their finding of the facts related to the elements under the law of premises liability, specifically, what duties are owed to an invitee.

I think everybody agrees to that, don't they?

MR. YOUNG: I don't think so, Judge, because of the independent contractor aspect of the case. I don't think I'm explaining it very well, but.

THE COURT: But, I mean, the only reason this charge, 16, would be given to the jury is if they were going to

have something on their verdict form that would require them to determine what Daniel's duty to Mr. Seay was; right?

MR. YOUNG: No.

Judge, I think that -- that this -- this charge is directly applicable to their premises liability claim against Celanese. And it clearly says that when you have a contractor that they equate to the invitor of the premises owner and that we can't be liable, unless there is some showing that we had more knowledge of the dangers than Daniel did.

And I think that's an important part of our case. I don't think you would have to have any finding against Daniel at all. It's just a -- it's an issue of fact for the jury. But this language, to me, is absolutely applicable to our case.

And I don't want to get -- I don't think it would require any finding against Daniel at all on liability. It's just a question of kind of who knew what.

THE COURT: Right. Which is already something the jury's told about Celanese's position, whether there -- whether they -- whether they should have disclosed something about the property because they had knowledge of a latent or hidden condition. I mean --

MS. SHOFNER: That's a question mark, isn't it?

MR. YOUNG: Yeah.

I mean, Judge, I guess what I'm saying is you can't carve Daniel out of this under the applicable law in South Carolina and --

THE COURT: Well, they're not a party to the case. I mean, they've carved themselves out.

MR. YOUNG: I understand.

THE COURT: Didn't they?

MR. YOUNG: I'm talking about --

MS. SHOFNER: Under workers' comp claims, they can't be a party to this case. Under workers' comp claim --

MR. YOUNG: I'm talking about from the standpoint of the applicable law and how they fit into whether Celanese is liable or not. You don't have to have a finding of liability on Daniel for any of these charges to apply. They're just the law on what the Plaintiff has to show in a premises case where there's a general contractor involved that was involved in the alleged hazardous situation. I don't know.

THE COURT: All right. Well, I guess maybe I'm getting hung up on 16A. Because I just don't like that language because I don't know anybody who talks like that. But that's neither here nor there. I guess what I was trying to get to is --

MR. YOUNG: Well, we can take 16A out, Judge, if

that's --

THE COURT: I mean, I understand. I understand where you're coming from. But I think that there is a law about independent contractors. And if the jury finds that Celanese didn't have any control over Daniel, then 16A and 16B will kick in.

I mean, I don't -- why wouldn't the Plaintiff think that? I mean, it seems to me the jury has got to make two decisions. They've got to make a decision about premises liability. And then if they find, well, there was a latent defect or there's something that Celanese should have disclosed to Mr. Seay, then the question becomes, did they delegate all of that to Celanese and retain no control?

And as I understand it, Mr. Panatier, you're relying on the Simmons case saying they can't delegate that in the first case.

MR. PANATIER: Well, that's correct. But, also, I'd like to point out that in the cases that Celanese is relying upon, I believe everybody was a party to the case, the contractor, the independent -- the independent contractor, the owner, and the sub. And so it's almost -- it's almost like -- it's almost like a separate liability finding that Celanese is requiring against Daniel in the case as a shield to invitee premises liability.

And that's -- because I don't think -- I truly don't think that -- I don't think there's any -- I don't think the law, as in the regular pattern, contemplates any type -- any type of, you know, I'm -- it's almost like, like -- it's almost like a sole proximate cause-type argument where they're saying, look, if they -- if we prove that Daniel had superior knowledge, then the premises owner's off limits.

And I don't think that's what the law contemplates at all. It's almost a sole proximate cause-type argument. Even if -- even if it would allow us to prove that Celanese breached their duty -- in fact, that's the problem here. It could be the case that we could prove Celanese breached their duty.

THE COURT: How? I mean, just tell me --

MR. PANATIER: Sure.

THE COURT: -- how the record would --

MR. PANATIER: Sure.

We could show that Celanese breached their duty if they failed to let Mr. Seay know, who was an invitee, undisputedly, about the latent hazards of asbestos insulation in place, or the failure to properly advise him of that. Okay. So the jury could find they breached their duty. And then he -- they would be liable.

At the same time, they could, also, find that Daniels

had superior knowledge and that then under Celanese's instructions, Celanese has no liability.

So you would have -- you would have an inconsistent -- I believe it could lead to an inconsistent finding or lead the jury down an inconsistent path where, on the one hand under the premise of liability instruction, Celanese has liability. They could find that. They could, also, find that Daniel has superior knowledge. And there -- it's almost an affirmative defense.

THE COURT: Well --

MR. PANATIER: Yeah. And, of course -- and then, of course -- yeah, and then, of course --

Thank you, Thiele.

And then, of course, Simmons kicks in, which says -- which says, well, Celanese you've got a nondelegable duty anyway. So even if -- nondelegable liability. So even if Daniel is held -- has superior knowledge and then held to have breached its duty to Mr. Seay, well, then Celanese, you're liable anyway.

Again, I think this is a straightforward premises case. I think that if we go down the independent contractor route, then we get to Simmons, which takes us right back to Celanese.

MR. YOUNG: Judge, this case they keep talking about,

it says an employer has the nondelegable duty to employees. Okay.

That's what we're going to argue, Not in those terms. But it doesn't have anything to do with this case. And it's not -- I'm not following -- I mean, Judge, this is the law in South Carolina on a premises case where there's an independent contractor involved. And I just don't think it could be any clearer.

THE COURT: Well, isn't what you're really trying to get me to do is charge Section 416 of the Reese statement, which has not been adopted by South Carolina?

MR. YOUNG: I don't know what that is, Judge. So sorry. If it helps us, the answer is yes.

THE COURT: Well, fair enough. Fair enough.

MR. YOUNG: If it says what this says, then the answer is yes.

THE COURT: I mean, Simmons was somebody who went to the emergency room and was the victim of medical malpractice, and then tried to sue the hospital. And the hospital said, well, tough luck.

The doctor was an independent contractor; right?

MR. PANATIER: Yes.

THE COURT: All right. So --

MR. YOUNG: And we withdrew 17, Judge.

THE COURT: Okay.

MR. YOUNG: What we're really looking at as far as a charge, it includes the language in Lanier Construction. And Your Honor can pick -- I mean --

THE COURT: Well --

MR. YOUNG: 16A is something that we sort of cobbled together. But 16 is -- in some of the other ones are straight from a South Carolina case.

MR. PANATIER: See, I think 16 is straight-up -- is straight-up our hospital case.

THE COURT: That's the same thing as the premises liability. 16 is the same thing as an invitee, except -- well --

MR. PANATIER: Except that it's trying to impute it to the independent contractor for Mr. Seay.

MR. YOUNG: That's exactly what we're trying to do, Judge. That's what the case law says.

THE COURT: Yeah. Okay. Well, let me go back to what I was trying to say a minute ago.

In Simmons, the court adopted Section 429 of the Reese statement, which says, When an employees is an independent contractor performing services for another which are accepted in the reasonable belief that the services are being rendered by the employer or by its servants is subject to liability for physical harm caused by the negligence of the contractor to the same extent as

though the employer were supplying him himself.

And I paraphrased a bit there. But that's not this situation because the contractor here was Daniel. Their employee was Mr. Seay.

He didn't think he was employed by Celanese; right?

MS. SHOFNER: Correct.

MR. PANATIER: No. He didn't believe he was employed by Celanese.

THE COURT: So, I mean, I don't know of any law that -- it seems to me there's a duty. And, in fact, in Rock Hill v. Globe Communications, it lists the types of situations in which the nondelegable duty doctrine applies.

And the first one they list is an employer has a nondelegable duty to employees to provide a reasonably safe workplace with suitable tools, and remains vicariously liable for injuries caused by unsafe activities or tools under the employer's control. A landlord who undertakes repair of this property by use of a contractor has a nondelegable duty to see that the repair is done properly.

Now, how do y'all think those two situations apply, if at all, in this case?

MR. YOUNG: Well, he's definitely an employee of Daniel, so.

THE COURT: Okay.

MR. PANATIER: If the jury was being asked to evaluate the liability of Daniel, I think it would be relevant, but it's not. And the only way it would be relevant for the jury to consider would be as some sort of affirmative defense and as a sole cause, which isn't being asserted anymore because we, of course, have an indivisible injury case.

But it's not a -- it's not a defense to premises liability. It is a fact. It is a fact. But I think it's only a fact when you're assessing the employer's liability.

THE COURT: And that's why I come back to my original question, why aren't y'all saying the same thing?

You've got a duty to warn people on your premises, who come there for business, of latent conditions.

And even if you hire an independent contractor to come work there, you have that duty; right?

MR. PANATIER: Correct.

THE COURT: So why wouldn't --

MR. YOUNG: That's not what these -- these cases say.

THE COURT: So what? I'm asking you why -- why isn't what I'm saying --

MR. YOUNG: Because I don't think that's what this case says, Judge. It says that there's no responsibility,

unless the -- Celanese has a greater knowledge than Daniel.

THE COURT: Well, Celanese's responsibility doesn't change. They still have to provide a safe workplace, even if they -- I mean, I may be being too simple, but --

MR. YOUNG: Sir, are you saying that you think that both of them should be charged?

THE COURT: I'm just thinking out loud right now.

MR. PANATIER: Your Honor --

THE COURT: I'm trying to understand the distinction. I don't know of any -- I get the concept that if you hire an independent contractor, you -- and you give all control to that contractor to do a particular job, you're not liable for the contractor's negligence.

I, also, get that there can be a nondelegable duty because I think that's what Simmons requires me to do.

MR. YOUNG: Well, right, Judge. But that's why we went through it. I mean, it -- I mean, it says the employer has a nondelegable duty to employees to provide a reasonably safe workplace.

THE COURT: Right.

MR. YOUNG: And that that's Daniels.

MR. PANATIER: Your Honor, I think where you were going is correct, which is -- which is none of this changes Celanese's duty and the calculus that the jury has

to make on whether or not they have liability. None of it changes it.

And so even if an independent contractor has certain duties, nondelegable or not, to Mr. Seay, that is -- that's not the case. And that doesn't change any answers that a jury might give to that or any consideration that a jury might give to Daniel's fault, which they're free to argue their fault. It doesn't change Celanese's -- the calculation for Celanese's liability.

They're not being asked do that. If they were -- if they were asked to evaluate Daniel's liability, if we were able to bring such a case, I think all of this would be relevant.

MR. YOUNG: Judge, that's just not what this contractor case says. And I think it's directly on point.

THE COURT: Which one are you talking about? What -- what contractor case?

MR. YOUNG: Lanier.

THE COURT: Okay.

(Pause.)

MR. YOUNG: Judge.

THE COURT: Yes, sir.

MR. YOUNG: I -- I think that we can -- we can give the -- well, obviously, it's your decision. But if we go with the Plaintiff's premises liability charge, I'd just

like to have one -- one of the contractor charges just to put that principle in front of the jury.

THE COURT: Okay.

MR. YOUNG: And I just -- I don't want us to have to spend the night here arguing over this. And I think that either 14, 15, or 16 should be charged, and not -- 16A and 16B are from other jurisdictions, Judge. I mean, not that it matters, but this absolutely is the law in Georgia. And --

THE COURT: Well, that might be because y'all are corrupted by the Napoleonic code somewhat.

MR. YOUNG: Well, I think that probably 14 or 15 most accurately reflect the premise that we're seeking to get a charge on. So we could give 14 or 15. Then we would agree to their charge -- their premises liability charge.

THE COURT: Which one, sir?

MR. YOUNG: 14 or 15. Bottom of 12, top of 13.

I do think that's the law, Judge. I think I understand what you're saying now. And I think if you give them both, you're not going to be in any way adversely affecting the -- the question about the liability to begin.

THE COURT: Okay. What about that, Mr. Panatier?

MR. PANATIER: I'm looking at it right now, Your Honor. Just one moment, if that's okay.

THE COURT: Yes, sir.

(Pause.)

MR. PANATIER: Your Honor, I think the Plaintiff could agree to, on 15, the sentence -- the last sentence that begins, "Whether a premises owner owes an independent contractor or employees of the independent contractor a duty to warn of dangerous conditions on the premises turns on whether the owner at the time in question possesses superior knowledge or information, places him in a superior position to appreciate the risk posed to the contractor or its employees by the dangerous condition." I think I could agree to that, which -- which captures the superior -- or the superior knowledge point of the case law cited by Celanese.

THE COURT: Okay.

MR. PANATIER: I could agree to that sentiment, that sentence.

MS. SHOFNER: So you're agreeing to the "whether a premises owner" sentence?

MR. PANATIER: "Whether a premises owner" sentence, whether premises owes a duty. And then we would just ask that the nondelegable duty statement under Simmons be included.

THE COURT: Yeah. I think that is, in essence, what this case says, I mean, Holland v. Morbark -- no. Hold

on.

MR. YOUNG: Judge, if you're going to charge on Simmons, we need to have the employer as a nondelegable duty to employees, too. You can't have just have the goose and not the gander.

MR. PANATIER: I completely disagree. The gander isn't in the case, only the goose is.

MR. YOUNG: Sure it is.

THE COURT: Wait a minute. Wait a minute. Back up.

Oh, I'm sorry. Ignore my reference to Holland v. Morbark. I was talking about Lanier Construction Company v. Bailey, 384 SC 275. What that case is saying is that a contractor is equivalent to the owner in terms of a duty to warn.

So, I mean, I think the trouble I was having with 16 was that it appears to say that once an independent contractor came on-site, the landowner no longer had any premises liability.

MR. PANATIER: My understanding is they pulled 16.

THE COURT: I understand that.

MR. PANATIER: Okay.

THE COURT: I'm just telling you why I was having trouble with it.

MR. PANATIER: Oh, sorry.

MR. YOUNG: Well, that's not what we were trying to

say, Judge.

THE COURT: I understand that. And it's not material anymore because y'all withdrew it. But I don't think I was articulating what I was concerned about until I --

MR. YOUNG: Well, I figured it out.

THE COURT: Well, you're ahead of me then, which is not unusual. But if y'all agree on 15, I mean, I -- 14 is, basically, fleshing out the invitee standard and adding this concept of superior knowledge, which is, essentially, knowledge of the latent or hidden defect; right?

MR. YOUNG: Yeah.

That -- I mean, that's our -- our argument. And I understand what Your Honor is saying is that that is something that you feel like should be given or considered in addition to the standard premises charge.

THE COURT: So if y'all agree with 14 and 15 -- and I don't know about -- I mean, I think whether or not Celanese retains control is still a question for the jury.

MR. PANATIER: Yeah. And that's the reason that on 15, I couldn't agree to the first part.

THE COURT: Well, I figured that. So y'all can -- can't y'all agree on something that would --

MR. PANATIER: I can agree on the "whether a premises owner" sentence all the way to the end. And in 14, I

think it -- I think it just says the same thing. So I -- really, I think the -- the last sentence on 15 should cover it. And that's -- that's the crux of the issue as to whether or not the contractor is sort of vitiating the duty of the premises owner.

MR. YOUNG: I just -- Judge, I think 14 is a lot clearer.

THE COURT: I'll charge 14. I mean, I suspect they want to get that word in there, "superior knowledge."

MS. MCVEY: It's in 15.

MR. PANATIER: It is in 15. It's there. "Whether a premises owner" -- it's at -- it's right near the end -- "at the time in question possesses superior knowledge or information which places him in a superior position to appreciate the risk posed to the contractor or its employees by the dangerous condition."

The reason -- the reason we're advocating that sentence on 15 is because 14 does two things. One is it talks about whether or not -- it talks about liability. It doesn't establish it as a -- as a consideration.

And then, secondly, it says, "If you find that the Defendants knowledge of the risk of danger associated with asbestos-containing products used on the premises was equal to or less than a seasoned employer."

I don't think that's the law. I think it's -- I

think it's -- superior knowledge is how the courts have said it. And they said it in 15. I don't think we have to say it twice. And I think we should say it correctly, which I think to the extent we're going to talk -- we're going to include this language, it should be 15, "whether a premises owner" language.

MR. YOUNG: I mean, I just -- Judge, I think 14 -- we don't have to have them both. But I think 14 was an accurate statement of the law.

THE COURT: Well, I would -- I'll be glad to charge the first two sentences of 14 and leave out the third, and charge 15. And we'll probably have to tinker with this language, the first part of 15, unless y'all agree that just that last sentence is sufficient, but.

MR. PANATIER: So the first two sentences of 14, last sentence of 15?

THE COURT: Would that work?

MR. PANATIER: Well --

MR. YOUNG: Yeah. Yes. Sorry.

THE COURT: That's okay.

MR. PANATIER: Your Honor, I -- I think the second sentence of 14 is, basically, repeated in the last sentence of 15. That's the thing. It just says, "superior knowledge" twice. It says they don't have a duty to warn. And it says, again, whether or not a

premises owes a duty is based on superior knowledge. It just says it two times.

MR. YOUNG: Judge, a lot of stuff is repeated.

THE COURT: Yeah. I don't have a problem with repeating it. I mean, I think it's -- as has been said, a judge is presumed to know nothing about the facts of life, unless it's been repeated to him three times. The jury is the same way.

MR. PANATIER: Wait, wait, wait. Actually -- actually -- I'm sorry. It says, "If a premises owner does not have superior knowledge of the danger, then the premises owner does not have a duty to warn."

But that's different than what the law is. The law is, if the independent contractor has superior knowledge. And, see -- and that's -- that is a correct statement.

THE COURT: All right. Back up. Where are you?

MR. PANATIER: Okay. Second sentence of 14.

THE COURT: All right.

MR. PANATIER: It says, "If a premises owner does not have superior knowledge of the danger, then the premises owner does not have a duty to warn."

And that -- and that's not the calculus. The calculus is whether or not the independent contractor had superior knowledge, which is what 15 says. See, they're saying two different things. And they're inconsistent. I

think that the second sentence of 14 should come out. I think 15 is an accurate statement of the law. Because it says it two ways there.

MR. YOUNG: Judge, I'm sorry. I didn't -- I didn't follow that at all.

MR. PANATIER: Okay. I'm sorry. I'll --

THE COURT: Wait a minute. I think what he's saying is if we charge the jury the first sentence of 14 and the last sentence of 15, they're fine with that.

Is that right?

MR. PANATIER: That's correct.

MR. YOUNG: That's fine, Judge.

THE COURT: Okay.

MR. PANATIER: And, Your Honor, we'd ask for the Simmons charge then, for Simmons as the exception to the rule that the premises owner has a nondelegable duty on -- or -- I'm sorry -- nondelegable liability for the actions of the independent contractor.

MR. YOUNG: Judge, this doesn't -- it doesn't have anything to do with our case. But if he's going to charge that, he's going to have to charge that the employer has a nondelegable duty to employees. And that -- I just -- it's very confusing.

THE COURT: Yeah. I don't --

MR. PANATIER: Your Honor, I'll withdraw it. That's

fine. We'll stick with what we've got. Look at Lane. Look how happy he is.

MR. ELLIOTT: Your Honor, if y'all are done with premises liability --

MR. PANATIER: Well, hold on.

MR. ELLIOTT: Sorry.

MR. PANATIER: Because they -- okay.

Do we have issues with this?

Okay. So -- so under -- okay. So under 13, Your Honor, it's -- they've personalized it a little bit as to the state-of-the-art rules. In the second paragraph, under 13, it says, "A premises owner -- a premise owner's duty of care is not the same as a manufacturer of an asbestos-containing product."

That -- that's fine.

"The Plaintiff must first establish the duty of care owed by Celanese as a premise owner manufacturing polyester fibers." Which that's just self-serving. It's -- it's kind of --

MR. YOUNG: We can take that out, Judge.

MR. PANATIER: "As a premises owner." And secondly, "what would have been known as to the dangers of asbestos at the relevant times."

I mean, "in the polyester fiber industry" is extremely self-serving, too. And I don't think that's an

accurate statement. Their burden of knowledge is addressed in the general premises.

THE COURT: "What would have been known in the same industry as to the dangers of asbestos at the relevant times."

Does that work?

MR. PANATIER: Your Honor, there are -- they're already instructed on industry standards. So I'm -- I'm fine just saying "what would have been known as to the dangers of asbestos at the relevant times." Because they already receive an instruction about the industry.

MS. SHOFNER: But that's not -- that's not what our burden is as to what's known out there in the world.

THE COURT: Yeah. I can see -- I can see that.

MR. PANATIER: That's the next paragraph, though. See, they get that in the next paragraph.

THE COURT: Well, it's -- it's consistent. I think it just ought to say "in the same industry." Because I think that's fair.

MR. PANATIER: "In the same industry." Okay.

MS. SHOFNER: The jury charge number 11, do you have any problem with that?

MR. PANATIER: Well, hold on. I'm still on 13.

MS. SHOFNER: Sorry.

MR. PANATIER: Your Honor, on 13, you know, when a --

when a -- when a defendant has a duty to do something, we tell it to the jury. Like a product's manufacturer has a duty -- the duty of an expert.

I think it's -- it's certainly unorthodox to then charge the reverse of that for another party, to say they do not have a duty to stay abreast of the literature, they do not -- they are not held to a standard of an expert. And they've already said it once in the second paragraph of 13.

But then I think this is -- this is potentially confusing to the jury. They are told that John Crane is held to a standard of an expert. They are not told that Celanese is. But then they state the reverse of it here. And this seems to suggest that everything that I did today, which is relevant to what they knew or should have known, constructive knowledge, is somehow now just -- it doesn't really matter. They didn't have any duty to keep abreast of the literature.

MR. YOUNG: Well, Judge, if it was just us, what he said might be applicable. But it -- the flip side is if -- when they charge that Crane is held to the standard of an expert, then I think it's only fair to say that there's a different standard as to a premises owner.

MR. PANATIER: And that's already stated in the paragraph above.

MR. YOUNG: Where?

MR. PANATIER: That they don't have the same standard of care as a manufacturer. So that's clear. And then the jury is instructed on the standard of a manufacturer.

MR. YOUNG: Judge, I really -- I'm sorry. I don't see how anything in paragraph 2 says anything that's in paragraph 3. I mean, the --

MR. PANATIER: And I don't think --

THE COURT: Wait, wait. Where is the state of the art by Crane? What page is that on?

MR. PANATIER: Oh, it's in the beginning, Your Honor. It is on page --

THE COURT: On Page 8?

MS. SHOFNER: Yes, Page 8.

MR. YOUNG: Third paragraph.

MR. PANATIER: Yeah. There it is.

THE COURT: All right. So --

MR. ELLIOTT: That's not state of the art.

MR. PANATIER: And so it's stated there. But then, you know, the second sentence of that third paragraph, number 13, "Therefore, any state-of-the-art literature and testimony is not relevant and should not be considered in determining the duty of exercising reasonable or ordinary care for invitee's safety."

That's not an accurate statement of the law.

MR. YOUNG: How about on Page 8 -- I'm trying to think. We could say at the end of that sentence, Celanese, as a premises owner, does not have the same duty.

MR. PANATIER: Or how about, Celanese is not held to the standard of an expert? Or a premises owner is not held to the standard of an expert like a manufacturer.

MR. YOUNG: Well we can -- Judge, we can take the last sentence of 13 out.

THE COURT: Okay.

MR. YOUNG: -- and that should cure --

MR. PANATIER: Hold on.

MR. YOUNG: -- Mr. Panatier's concerns.

MR. PANATIER: Well --

MS. SHOFNER: "Therefore, any state of the art," we can take that out.

MR. PANATIER: Whoa. Hold on.

MR. YOUNG: Horse-trading with Panatier is tough, Judge.

MR. PANATIER: We're not horse-trading, man.

THE COURT: You've got to pack a lunch, don't you?

MR. PANATIER: Okay. Your Honor --

THE COURT: I've got to go pick up my kids. So I'm going to have to bug out of here. But go ahead.

MR. PANATIER: I was just going to say I just -- I

think it would be better to, on Page 8, just say, Unlike a manufacturer, a premises owner is not held to the standard of an expert.

MR. YOUNG: Well, Judge, we -- why don't we just take out the last sentence of 13?

THE COURT: Okay.

MR. YOUNG: And then it's in the place where it makes sense.

THE COURT: Well, it could make sense either place, I suppose.

MR. YOUNG: Yeah.

THE COURT: But -- I -- I don't think --

MR. YOUNG: It's not going to amount to a hill of beans, Judge.

THE COURT: You took the words right out of my mouth.

MR. YOUNG: I give you my proxy.

MR. ELLIOTT: Before you leave, I want to say that now that I've -- I didn't anticipate they would agree to pulling out all the sections that I had marked. When I'm reading back through the total charge with those sections out, some of it may not make sense.

Because in a later portion, you talk about the duty of care. And we pulled out a -- you know, the first -- the paragraph on Page 7, "To hold John Crane responsible, a product must have been in a condition not contemplated

by a user, which would be unreasonably dangerous to the user when the product was in a -- used in a foreseeable manner."

And so I think I'm going to -- we're going to have to read it as a whole. And a couple of paragraphs may have to go back in or it's not going to make any sense.

MR. PANATIER: Well, I think we can work that out.

MR. ELLIOTT: Let's work that out.

THE COURT: Okay.

MR. PANATIER: We can work that out.

The last one was the master and servant.

THE COURT: I don't have time to do it. Sorry. I have a master awaiting on me.

All right. I'll see y'all back at 9:15.

Thank you.

(WHEREUPON, the proceedings were concluded at approximately 6:14 p.m., to be reconvened on Thursday, October 8, 2016.)

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG ANGIE D. KEENE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DENNIS SEAY, DECEASED, AND LINDA SEAY, PLAINTIFF, vs. CNA HOLDINGS, LLC, AND JOHN CRANE INCORPORATED, DEFENDANTS.	COURT OF COMMON PLEAS 2013-CP-23-03915 ORIGINAL TRANSCRIPT OF RECORD **VOLUME IV**

October 8, 2015
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

A P P E A R A N C E S:

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HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Spartanburg County.

THURSDAY, OCTOBER 8, 2015

THE COURT: I'm out here early. I just wanted to see if we could finish up the jury charge.

MS. MCVEY: You want to do the jury charge?

THE COURT: If y'all want to. I mean, I just --

MS. MCVEY: Yeah.

MR. PANATIER: Let's do it.

(Pause.)

THE COURT: Okay.

MR. PANATIER: I think, Your Honor, we only have a few more issues to hash out with -- since you're standing with John Crane. John Crane, I think we're agreed on -- on most things.

There are -- I understand there are two paragraphs that you guys have an objection to.

MR. ELLIOTT: Well, let's --

MR. PANATIER: On Page 8?

MR. ELLIOTT: We do.

(WHEREUPON, the attorneys had an off-the-record discussion among themselves that was out of the hearing of the court reporter.)

MR. PANATIER: We'll provide you for -- for all our agreements, Your Honor, we'll provide you a new copy.

THE COURT: Okay.

Mr. PANATIER: But we'll need your guidance on a few

issues.

MR. ELLIOTT: Page 8, Your Honor.

MS. MCVEY: On the new one?

MR. ELLIOTT: On what I sent to Candace last night.

THE COURT: Well, we were on Page 14 last night.

MR. PANATIER: We thought there were some agreements.

MR. ELLIOTT: Your Honor, the difficulty has been working off of a complete charge in another case, at least, for me.

THE COURT: Okay.

MR. PANATIER: Anyway, it's paragraph one, two, three, four, five -- paragraph six and eight; right, that John Crane has an objection to?

MR. ELLIOTT: Yes. A seller owes the duty is six. And then in deciding whether a manufacturer had a duty.

MR. PANATIER: Yeah. So, Your Honor, our position is, of course, you know, this is a failure-to-warn case. And we have, obviously, got in evidence regarding their failure to test. Because the determination whether they warn would come from whether or not they tested. So -- but I understand that John Crane objects to those paragraphs.

MR. ELLIOTT: And our position is a failure-to-warn case only. And those two charges go to a design defect or manufacturing defect, and wouldn't be applicable in just a

failure to warn.

MR. PANATIER: Well, there's two components to the negligence claim. One is failure to warn, and one is failure to exercise ordinary care.

So, obviously, it would go to whether or not they would need to warn, testing, and, also, whether or not the jury would like to consider their failure to test as a failure to exercise ordinary care. So I don't think that that's in any way out of bounds.

MR. ELLIOTT: We think it's the same thing. Their allegation of negligence and failure of duty is on the warning. And these two paragraphs, causes don't go to failure of a duty to provide a warning.

THE COURT: So the paragraph above and below it that's highlighted in yellow, those are out? Everybody agrees they're out?

MR. PANATIER: Those are out, yeah.

THE COURT: All right.

MR. ELLIOTT: With these two charges, you're telling the jury this is the law. I mean, they can argue the basis for the negligence. But this is telling the jury this is what the law is and you have to follow it.

MR. PANATIER: It is the law, as far as we know, Your Honor.

MR. ELLIOTT: In a design and manufacturing defect

case.

MR. PANATIER: In a products liability case. There's several different ways you can have a products liability case. One of them is manufacturing defect. One is design defect. One is failure to warn. Testing is, obviously, relevant to failure to warn, and it's relevant to failure of due care.

MR. ELLIOTT: But just like risk utility, I mean, certain portions of product liability law change when you take out strict liability and implied warranty.

THE COURT: I'm confused on what -- what is going to be instructed up to that point. Because there's --

MR. PANATIER: Your Honor, do you show that the bottom of Page 6 and top of Page 7 are marked out, or are those just omitted?

THE COURT: Well --

MS. SHOFNER: Their copy does not have it marked out yet. We did this this morning, five minutes ago.

MR. PANATIER: Okay.

MS. SHOFNER: So I'm going to revise it and make sure that everyone has a clean copy.

MR. PANATIER: Okay. So the bottom three paragraphs on Page 6, Your Honor, are out.

THE COURT: Okay.

MR. PANATIER: The top two paragraphs of Page 6 -- 7

are out.

MR. ELLIOTT: Hold on. No -- yes, you're correct.

THE COURT: Okay.

MR. PANATIER: The third paragraph on Page 7 is in. And the fifth paragraph starting with --

THE COURT: That's the one that says, For the Plaintiffs to prove their case in their product liability action?

MR. PANATIER: Which paragraph are you looking at, Your Honor?

THE COURT: I'm sorry. That's the fourth -- fourth -- the third paragraph.

MR. PANATIER: Ah, yes.

THE COURT: Page 7.

Okay. What about the fourth --

MR. PANATIER: The paragraph, In order for Plaintiffs to prove, that's out.

THE COURT: Okay.

MR. PANATIER: The paragraph, Now something you must consider in assessing the Defendant's product and conduct --

THE COURT: Yeah.

MR. PANATIER: -- that's in.

THE COURT: Okay.

MR. PANATIER: Now, the state of the art below

includes all reasonably available, that's in.

THE COURT: What about the fifth paragraph?

MR. PANATIER: And in the fifth paragraph, the last sentence is in, You may not evaluate or consider any evidence, knowledge, or information obtained after date of sale. That's in, too.

The rest of that page is in. So all the negligence instructions starting with, Now, the state of the art, if the product was nondefective, now negligence focuses on the conduct of the Defendant, if you're having a hard time with the phrase negligence, but you must first determine, those are all in.

A manufacturer has the duty to stay aware, that's in. On the -- this is on the next page.

Although evidence of industry standards may be considered, that's in.

And the failure to use due care, even if no one in the industry does, does not excuse negligence, that's in.

So then the next one we're saying would -- that the Plaintiffs wish to be in would be, A seller owes a duty to conduct adequate tests. And then the following that we would like in is, In deciding whether a manufacturer has a duty to test.

MR. ELLIOTT: Those are the two we just argued.

MR. PANATIER: Yeah.

THE COURT: Okay. I'll charge those.

MR. PANATIER: And then, for CNA, we just reached an agreement on our last issue. So we're -- yeah, it would be -- it was the master servant. We just agreed to modify that one.

THE COURT: Okay.

MR. PANATIER: Page 12. We're just -- we're going to agree to charge the first -- the first sentence up to the word "appliances." And then we're going to take the rest out. So we'll provide a clean copy with --

THE COURT: Okay.

MR. PANATIER: -- that correct.

And then the -- the last issue as a matter of -- oh, oh. Your Honor, on Page -- this is going to be the same page, 16.

THE COURT: Yes.

MR. PANATIER: If you -- yeah. At the top, what you charged in Muldoon was, And, again, don't let your verdict on one influence your verdict on the other. Because you have to weigh them each separately and individually. We think that makes the point. Celanese has proposed the below paragraph, the five-line paragraph below. And we just think that that's excessive and that your previous instruction does the job.

MR. YOUNG: Well, Judge, in Muldoon, at least, as I

understand it, the defendants were much more similar than they are here. I mean, it's really like we've been trying two different cases. And I just think that it's -- I mean, I can't imagine --

THE COURT: I'll do it. I'll charge that.

MR. PANATIER: Okay. And then --

THE COURT: I'll charge the longer one.

MR. PANATIER: Okay. I think the last thing is -- and it depends on the verdict form, whether or not we give the instruction on punitive conduct. Because if it's charged in phase 1, we need the instruction. We don't -- we don't disagree on what the instruction is, just when it should be given.

So we believe that the most efficient way to charge the jury for the verdict form would be the basic negligence questions, was John Crane negligent? Was Celanese negligent? Damages, and then the clear and convincing on willful, wanton, and reckless for each Defendant. And I think you may have a copy of this. This is our proposed -- our proposed form.

THE COURT: Yes.

MR. PANATIER: The reason being that if there's no finding of recklessness for either of them, then there's -- we don't have an apportionment phase, right?

So we avoid -- we avoid an entire phase. If we do --

if we don't charge them on recklessness in phase 1, then we guarantee ourselves an apportionment phase or, at least, a third phase, as opposed to two total phases from our perspective. Because phase 1 for us would be liability, damages, recklessness. And phase 2 would be damages for recklessness, if they're found, and apportionment, if need be.

So there would really only be two phases. What the Defendants are proposing is, phase 1 is basic liability. Phase 2 is apportionment. Phase 3 is recklessness.

MR. TIVIN: The apportionment and recklessness, and then phase 3 would be --

MR. PANATIER: Oh, I'm sorry. Phase 1 is basic liability and damages. Phase 2 is apportionment and recklessness. Phase 3 would be amount of punitive damages, if there was a finding of recklessness.

So we just think it's much more efficient to charge recklessness -- the fundamental question on recklessness first, not only because it makes it more efficient, but because it's all the same evidence.

The evidence that we're using for fundamental liability is the same evidence we're using for recklessness. So that's our proposal.

And, also, we understand -- yesterday, Defendants gave us two versions of their proposed verdict form. The

first one was similar to ours. The second one, they've separated out negligence and proximate cause. And under South Carolina law, proximate cause is part of negligence.

And so, now, they're, basically, asking the Court to ask the jury two times proximate cause. Because negligence and proximate cause is one question. And then proximate cause would be a second bite at the apple. And we just don't think that's proper since proximate cause is part of negligence.

So we think there needs to be a negligence question and a damages question, not negligence, proximate cause, damages.

THE COURT: Thank you.

MR. ELLIOTT: Your Honor, if I could provide you a copy of the Defendants agreed proposed verdict form.

Mr. Panatier is correct in that the verdict form doesn't include clear and convincing or a finding of recklessness. And the reason being, if you read the statutes, the apportionment statute and the punitive damages statute, under the law, you never get to recklessness until there's a verdict against the defendants on compensatory damages.

Once you get to that stage, if the jury finds in favor of the plaintiff on compensatory damages under the statute, then we would move for apportionment. And at

that stage is where the jury would be provided the opportunity to consider the fault of the parties and apportion it. And then whether or not recklessness is involved, such that apportionment wouldn't be responsible -- excuse me -- wouldn't be applicable.

And then, if they find recklessness under the statute, that's when you move to the punitive damages stage. And that's exactly what the apportionment statute says and the punitive damages statute says when read together.

And as to the verdict form, I mean, this is simply what they have to conclude. They have to conclude that we are negligent or CNA was negligent, and that negligence was the proximate cause of the damages. It's a two-step process.

And then, if they get to that point, they can mark down a damages amount.

MS. SHOFNER: And, Your Honor, I think if you'll remember in Muldoon, we argued some of this issue in Muldoon when we asked to bifurcate the trial in Muldoon. And the verdict form in Muldoon as to the first phase did not include anything on willful, wanton, and reckless. And it -- and that question was not asked of the jury in the first phase.

And then what happens, if they did come back with a

finding of liability, I'm not sure we -- because we didn't get that far. But I'm not sure exactly what that -- we didn't -- we didn't reach an agreement on the verdict form for this -- for the phase 2 or phase 3 and how that was going to happen.

So your -- we didn't have to make -- we hadn't made any decision on how we were going to charge that. But in Muldoon, it was very clear the reckless, wanton, and willful part was not to be asked of the jury in this phase. And it was not to be included in any of the closing arguments.

THE COURT: Okay. I would submit a verdict form that is based on Plaintiffs language, questions 1, and 2, and 3. And I would -- if there is a verdict for the Plaintiff, then we would go back and ask the jury about willful, wanton, and reckless.

If they answer that in the affirmative, then we would have a punitive damages phase.

MR. YOUNG: Judge --

MR. PANATIER: Just -- I'm sorry.

Mr. YOUNG: Go ahead.

Mr. PANATIER: Would we add apportionment to phase 2?

MR. TIVIN: Yeah.

MR. PANATIER: Okay. So we do -- in phase 2, we would have then, recklessness, apportionment. And then if

we need to, a phase 3 --

MR. TIVIN: Right.

MR. PANATIER: -- correct.

MR. YOUNG: Judge, you know, the devil's in the details. But I've never seen a verdict form that says, We, the jury, find. I would really, really ask Your Honor to say, Do you find.

I mean, this -- I just don't think that's fair, Judge. They always say, Do you find, as opposed to, We, the jury, find. I just don't think that's the right way to do it.

I mean, they have the burden of proof, Judge. So I think our language is much fairer and more applicable under the law.

MR. PANATIER: I've seen it lots of times in this state, Your Honor. I don't think it's prejudicial. It's yes or no.

MR. YOUNG: We would object to this language, Your Honor.

THE COURT: Okay. Well, that's a novel argument, but I would decline to --

MR. TIVIN: We would join the objection.

THE COURT: -- accept it.

MR. TIVIN: But just so I'm clear, Your Honor. It would be 1, 2, and 3 of Plaintiffs proposed verdict form

for phase one?

MR. PANATIER: Yes.

We'll create -- we'll get Your Honor a clean set of instructions and a new verdict form.

MS. SHOFNER: And, Your Honor, so I believe that, because of the way the verdict form is coming in, that on Page 14, all of those punitive damages charges will come out and will not be argued or addressed. And I -- and I'm not sure that you've, actually -- or I have not, actually, looked at the punitive damage charge phases yet to see if we agree or not agree. I'm not sure there's a big issue --

MS. MCVEY: Why don't we wait until after --

MS. SHOFNER: Yeah. Right, right. Exactly. And we can certainly do that once --

MR. ELLIOTT: Well it was represented that we may have all agreed. And I think the position is we just -- we don't know that yet.

MS. SHOFNER: We don't know if we agree to the punitive damages charges. But they will come out of this jury charge form?

THE COURT: Right.

MS. SHOFNER: And we'll put that into a different form for phase two, if we need it.

And then the other thing, on Page 16, there was a --

they had included language about the jury questionnaire on punitive damages, and that will come out as well; correct?

MR. PANATIER: I'm sorry. Which one comes out?

MS. SHOFNER: 16, the -- about your -- we're going to ask you to answer this question on reckless, wanton, and willful --

MR. PANATIER: Yeah.

MS. SHOFNER: -- comes out. And then all of the punitive. So I will take all of that out and send you all a -- everyone a clean verdict --

MS. MCVEY: Sure.

MR. PANATIER: And we will print it.

MS. SHOFNER: -- form of the jury charges.

THE COURT: Okay.

MS. MCVEY: And I'll e-mail you a verdict form, the cleaned-up verdict form.

THE COURT: Okay. Thank you.

MR. ELLIOTT: Thank you, Your Honor.

MS. SHOFNER: Thank you, Your Honor.

MR. PANATIER: And then, just for the record, Plaintiff -- we've offered Plaintiff's Exhibit No. 821 into evidence.

MR. COLLIER: And, Your Honor, we would object to the entry of that exhibit into evidence under 401. If you go to Page -- Bates Number 2224 at the bottom, it's stated in

the objective section -- it relates exclusively to commercial hazards in the manufacturing and sale of Celanese's products. Additionally, Mr. Bowyer said yesterday that it was updated. And there's no evidence that this particular document was in effect in the 1970s.

And even if it is relevant under 401, it shouldn't come in under 403. Because the prejudicial effect of it outweighs any probative value, particularly on Page 2223, with respect to the interim [phonetic] communications section.

Like I said, it relates only to products that Celanese made. It doesn't have anything to do with products that were used on its premises. And we think that this document will only confuse the issues for the jury and would be highly prejudicial to Celanese.

THE COURT: All right. Overruled.

Thank you.

(WHEREUPON, Plaintiff's Exhibit No. 821 was marked for identification and admitted into evidence.)

MR. PANATIER: Thank you, Your Honor.

And subject to that -- subject to that, Plaintiffs rest.

MR. ELLIOTT: Your Honor, we would like to substitute the photo of this gasket with the original. Is that okay?

MR. PANATIER: Which is?

MR. ELLIOTT: I'm not sure.

MR. PANATIER: John Crane B?

MR. ELLIOTT: B.

MR. PANATIER: It looks like John Crane B.

MR. ELLIOTT: And then we need to mark the work history sheets.

(WHEREUPON, Defendant John Crane Exhibit No. 4 was marked for identification only.)

MR. COLLIER: Your Honor, at this time, we would offer into evidence exhibit -- I'm sorry. At this time, Celanese would offer into evidence Celanese Exhibit Nos. 1 and 2, which are the two maintenance contracts.

MR. PANATIER: No objection.

THE COURT: All right. They're in evidence.

(WHEREUPON, Defendant CNA Holdings Exhibit Nos. 1 and 2 were marked for identification and admitted into evidence.)

MR. PANATIER: And I have no objection to the work history sheet.

(WHEREUPON, Defendant John Crane Exhibit No. 4 was admitted into evidence.)

MR. TIVIN: Your Honor, we'd submitted a motion in limine. And I don't think it's going to be an issue, as long as [inaudible] here, about their religious and financial statements. It hasn't been ruled on --

THE COURT: Do you want me to make -- do you want me to instruct the jury on that?

MR. TIVIN: No. I don't think we need to instruct the jury. I think it's just a motion in limine. You're not going to --

Mr. PANATIER: I'm not going to --

Mr. TIVIN: -- go into their financial condition or the religious beliefs of either parties --

MR. PANATIER: I'm not. I'm not. And just so you guys know, I have a short clip of him talking about his pain. I cut it off before he talks -- it gets religious.

MR. TIVIN: Was that played already?

MR. PANATIER: It was played, yeah. But I just want you to not freak out when you see it and think that he's going to continue to on --

MR. ELLIOTT: When was it played?

MR. PANATIER: When was it played?

MR. ELLIOTT: Is it the --

MR. TIVIN: During his deposition --

MR. ELLIOTT: -- that video?

MR. PANATIER: Yes.

MR. ELLIOTT: I'm sorry. During the trial --

Mr. PANATIER: Yes.

MR. ELLIOTT: -- but he didn't talk?

MR. TIVIN: No. Wait. You're talking -- you're

playing a clip of his deposition?

MR. PANATIER: Yes.

MR. TIVIN: Okay. When you say a video, it -- we thought it was another --

MR. PANATIER: Yes -- no. I'm not playing any other videos other than from his deposition. And I cut it before he gets real --

MR. TIVIN: Are you allowed to play videos? I mean, I don't know what the law is. Some people do, some people don't. I don't know what the law is.

MR. PANATIER: Hey, I'm playing a one-minute clip that was played to the jury of his pain and suffering.

MR. ELLIOTT: I don't know that that's allowed. I mean, it's -- you're allowing a person to re-testify during your closing.

MR. PANATIER: It's just like reading of a document that came in. It's evidence the jury heard. And it's on pain and suffering. That's all I'm doing.

THE COURT: May I ask a question?

MR. PANATIER: Yes.

THE COURT: This is a clip of his deposition?

MR. PANATIER: Yes, Your Honor.

THE COURT: That was already played to the jury?

MR. PANATIER: Yes, Your Honor.

THE COURT: You can do that.

Mr. PANATIER: Okay. Thank you.

MR. YOUNG: Judge, Mott and Mr. Buck would like to have his testimony before we do directed verdict motions because they're not interested in that.

THE COURT: Okay.

MR. YOUNG: So could we just have everyone agree that we're not waiving our right to make a motion for directed verdict --

THE COURT: Sure.

MR. YOUNG: -- after the Plaintiff rested and we go ahead and put the last witness up? And then we can make it as if it was made when the Plaintiff rested.

THE COURT: Sure.

MR. YOUNG: Chris, is that --

MR. PANATIER: Check. Affirmative.

MR. YOUNG: Okay.

MR. PANATIER: Thank you.

MR. MCDONALD: And, Judge, I'd like to -- can I put briefly one thing on the record about Mr. Buck?

THE COURT: Sure.

MR. MCDONALD: Judge, Mr. Buck is here today under subpoena from CNA. And, of course, Daniel is not a party to this case. And Daniel is not going to have an opportunity to question him. He's here today -- I just want -- in case somebody gets this transcript in the

future, he's here today as an individual, you know, that worked many years at Daniel. But he's here as an individual. Daniel is not in the courtroom, if that makes sense.

THE COURT: Okay. He wasn't here yesterday. We know that.

MR. MCDONALD: That's right.

THE COURT: So we're glad he could accommodate us today.

MR. YOUNG: Judge, as it turns out, it's probably good he didn't come since we didn't finish with Mr. Bowyer until quarter till 5:00.

THE COURT: Okay. Anything else before we bring the jury in?

MR. TIVIN: No, Your Honor.

MR. PANATIER: No, Your Honor.

THE COURT: Okay. Yes, sir, bring them on in.

(WHEREUPON, the jury came into open court at approximately 9:40 a.m.)

THE COURT: All right. Ladies and gentlemen, one matter of housekeeping. You heard some testimony from a witness known as Dr. Crapo. I believe he appeared by video.

He was offered as an expert witness. He is an expert witness and is qualified as such. So just keep that in

mind. I don't think he was ever officially qualified in your presence, but I'm qualifying him. So he is qualified as an expert witness.

All right. Yes, sir, Mr. Young.

MR. YOUNG: Thank you, Your Honor.

Good morning, ladies and gentlemen.

You'll be glad to know this is the last witness. I haven't seen y'all in a while.

Your Honor, at this time, Celanese would call Don Buck.

THE CLERK: If you'll place your left hand on the Bible, and raise your right hand.

WHEREUPON,

DON BUCK,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. YOUNG:

Q Good morning, Mr. Buck.

A Good morning.

Q How are you?

A I'm good.

Q Good. Would you introduce yourself to the ladies and gentlemen of the jury and the Court, please?

A I'm Don Buck. I live in Greenville, South Carolina.

And I worked for Daniel Construction Company starting in 1974 and retired in 2000.

Q All right, sir. I never met you before this morning; is that right?

A That's right.

Q But you now know I'm Lane Young. And I'm one of Celanese's lawyers?

A Yes, sir.

Q And I'm going to ask you some questions about Daniel.

A Okay.

Q You understand that; right?

A Yes.

Q And, first of all, we aren't paying you to be here; correct?

A That's right.

Q Okay. And you do know that we're trying a case involving Mr. Seay, and Celanese, and John Crane?

A Yes.

Q Okay. And I think you just told the ladies and gentlemen of the jury that you earlier worked at Daniel?

A Yes, I did.

Q Okay. And so you know something about Daniel?

A Right.

Q And you know that Mr. Seay worked at Celanese for Daniel in the 70s?

A Yes.
Q Okay. I'm going to ask you some questions about Daniel and some of that. Is that okay?
A That's fine.
Q All right. Before we do that, I'd like for you to tell the ladies and gentlemen of the jury just a little bit about yourself. Can you tell them where you grew up?
A I grew up in Alabama.
Q Okay. And how old are you?
A I'm 70.
Q 70. Okay. And where did you go to college?
A I went to Vanderbilt University.
Q Okay. And you got a civil engineering degree?
A That's right.
Q Okay. Just briefly, what is civil engineering?
A They're the ones that do the design on the -- for the structural steel and the concrete, and the earth part work of the job, the civil part of the job.
Q After you graduated from Vanderbilt, I understand that you went in the Army --
A Yes.
Q -- is that correct?
And how long were you in the Army?
A Two years.
Q Okay. And then, as I understand it, you went to work

for a company called Ebasco?
A Yes, Ebasco Services.
Q Okay. And how long did you work there?
A About two years.
Q Okay. And was Ebasco one of the larger contractors in the country when you worked for them?
A Yes, it was.
Q Okay. Doing kind of the same type of work that Daniel --
A They did power plant construction.
Q Okay. But construction work?
A Yes.
Q Okay. And I'm sorry. What years did you work at Ebasco?
A It was around '68 to '70, that time frame.
Q And would Ebasco have been using asbestos-containing materials on some of their jobs then?
A Yes.
Q Okay. Back in those days, asbestos-containing insulation was sort of the industry standard for high temperature --
A That's right.
Q -- is that fair?
Okay. And I think after Ebasco, you went to work for a company called Aztec?

A Yes.
Q And what did they do?
A They were a small commercial contractor in Kansas City and built schools, grocery stores, light commercial construction.
Q Okay. And you worked there for, it looks, about three or four years?
A About two years, I think.
Q Two years. Okay. And then you worked for a company called Algernon Blair?
A Algernon Blair, industrial contractors.
Q So you pretty much were always in the construction contracting business?
A Yes.
Q Okay. And then you started work for Daniel in 1974 here in the Greenville-Spartanburg area?
A No. Actually, I went to work for them on a project in Fayetteville, North Carolina.
Q Okay. And that was in 1974?
A 1974, yes.
Q Okay. And, at some point, did you come down here to work?
A Yeah. I ran two or three projects in the field. And, at the end of 1979, the first part of '80, I moved to Greenville.

Q All right, sir. And I understand that in 1976, a company called Fluor purchased Daniel. Is that your recollection?
A That's right.
Q Okay. And I think you told us that you worked for Daniel or Fluor Daniel from 1974 to -- did you say 2000?
A 2000.
Q Okay. It's my understanding that during your work life that you did some work that involved the Greenville public schools; is that right?
A Yes. After I retired, the Greenville County public school system did a billion dollar school program to renovate or rebuild the schools in Greenville County. And I was the CEO of that organization.
Q Okay. And you got all that done?
A Got it -- yes.
Q And I understand that was a good thing for --
A A very good for Greenville County.
Q Okay. Can you tell the ladies and gentlemen of the jury -- just kind of walk us through. What was your first job at Daniel?
A My first -- I was an engineering manager on the Rohm and Haus project in Fayetteville, North Carolina.
Q Okay. And, just briefly, what does an engineering manager do on a project?

A An engineering manager does a lot of the liaison with the design engineer. He does a lot of the requisitions for material. He does a lot of the estimates, budgets, and schedules for the project.

Q Okay. So you're, I guess, closely involved in the project?

A Yes.

Q And how the work gets done?

A Yes.

Q And Rohm and Haus, they were making polyester chip --

A It was a polyester chip plant, yes.

Q Okay. And then you went to Millhaven Fibres in Canada?

A In Ontario.

Q Okay. And both of those places made products that were similar to what was made out here at Celanese?

A That's right.

Q Okay. And you know something about the history of Daniel from working there and studying on it; is that right?

A Yes.

Q Okay. And it's my understanding it was founded in 1934 --

A That's right.

Q -- is that right?

And, as of 1964, it would be fair to say that Daniel had constructed or built about 400 plants in 12 southern states?

A Yeah, more or less.

Q Okay. Well, I told the ladies and gentlemen of the jury in opening that Daniel wasn't some fly-by-night company that just showed up, you know, in a small truck or something. That would be fair, wouldn't it?

A That would be fair.

Q Okay. And in the 70s, Daniel was a well-qualified company to do construction work like -- and maintenance work like was done out at Celanese?

A Yes.

Q And they, actually, built the Celanese plant?

A Yes.

Q Okay. And, in the 70s, Daniel was, certainly, well qualified to do the maintenance work at Celanese properly and safely; correct?

A Yes.

Q Okay. And I think we'd be safe in telling the ladies and gentlemen of the jury that during -- certainly, during the 70s and all the time, Daniel was very interested in the health and safety of its employees like Mr. Seay?

A Yes.

Q Okay. And Daniel never did anything to suggest to

Celanese or any of its other customers that it wasn't going to provide a safe workplace for the Daniel employees?

A Oh, Daniel had a very strong safety culture and it goes back -- way back to the beginning of the company.

Q And, I mean, this sort of goes without saying, but if you don't take care of your workers, then you don't have anybody to do the work, so you can't have a company?

A That's true.

Q Is that fair?

A That's fair.

Q So they're the most important people on the whole --

A Yes.

Q -- in the whole deal?

A Yes.

Q Okay. My understanding is that it was about 1959 when Daniel started constructing textile plants like the -- or polyester fiber plants like the Celanese plant?

A I don't know whether it was plants like that. But they were, certainly, courting and -- the textile industry. All right.

Q And you do understand that Celanese was making polyester fiber at the place --

A Yes.

Q -- where Mr. Seay worked?

A Yes.
Q Okay. And Daniel provided maintenance services to that plant and a lot of other plants across the United States?
A That's correct.
Q Would that be fair?
A Sometimes, it was total maintenance and, sometimes, it was supplemental maintenance.
Q Okay. Well, the evidence in this case has been that Daniel, during the 70s when Mr. Seay was there, was doing all the maintenance and Celanese wasn't doing any. You don't have any information contrary to that, do you?
A No. It looks like that was the case.
Q That's what Mr. Bowyer said. And that's what Mr. Seay said.
A Right.
Q Okay. And Daniel would be doing insulation work as a part of its maintenance work at Celanese?
A Yes.
Q Okay. And we can, certainly, tell the ladies and gentlemen of the jury that Daniel, in the 70s, was qualified to do that maintenance work and that insulation work properly and safely?
A Yes.
Q Okay. And it was around 1971, the beginning of 1972

that OSHA was enacted. Do you recall that?
A That's right.
Q Okay. And as soon as OSHA was enacted -- well, let me show you what's been marked as Defendant's Exhibit No. 3.
A Yes, sir.
Q This is a memo -- Daniel memo to division managers -- well, you tell me what it is.
A Well, it's an executive memorandum from Buck Mickel, who was our president and CEO, to the company saying that OSHA had -- was passed, and that Daniel would fully comply with the requirements of OSHA.
MR. YOUNG: Okay. Your Honor, we would tender Defendant's Exhibit No. 3.
MR. PANATIER: No objection.
THE COURT: All right. It's in evidence.
(WHEREUPON, Defendant CNA Holdings Exhibit No. 3 was marked for identification and admitted into evidence.)
BY MR. YOUNG:
Q I think you just told the ladies and gentlemen of the jury this. But in June -- on June 11th, 1971, the president of Daniel sent out this memo saying, According to OSHA, we are obligated to furnish each of our project employees a work environment free from recognized hazards causing or likely to cause death or serious physical harm,

in addition to the specific duty of complying with safety and health standards promulgated under the act, which was OSHA?

A Yes.

Q Okay. And so that was the mandate from on high at Daniel starting about the time that Mr. Seay began work for Daniel at Celanese; correct?

A That's right.

Q Okay. And that was something that Daniel was going to do?

A Yes.

Q Okay. And if anybody had asked you are you going to follow OSHA and provide Mr. Seay a safe workplace, you would have said we, certainly, are?

A Sure.

Q Okay. And you never told anybody that you weren't going to do that?

A No, absolutely not.

Q Okay. I understand from looking at some stuff that once OSHA came out and Daniel decided properly that they were going to comply with OSHA on their jobs that some of that cost was, actually, passed along to your customers like Celanese?

A Yes.

Q Okay. And, basically, what you said was we're going

to comply with OSHA, but it's going to cost you a little extra money. Is that okay?
A Yes.
Q And, as far as you know, everybody said fine?
A Hoechst Celanese, yes, they were a safety conscious company, too.
Q All right. And, in the 70s, there were insulators working for Daniel; correct?
A Yes.
Q Okay. I mean, that was their actual job is to work with insulation?
A Yes.
Q And they were trained to work with insulation?
A Yes.
Q Okay. And trained to work with it safely?
A Yes, according to OSHA.
Q Right, according to OSHA. And some of the insulation that was used by Daniel, particularly in the early 70s, would have contained asbestos?
A Yes, it would have.
Q And that was what was needed and available at that time for these super-high temperature lines?
A Yes. It was the standard.
Q Right. And after OSHA came out, Daniel was aware that under certain circumstances that asbestos could be

hazardous?
A Yes.
Q Okay. And -- but if you used it properly and followed OSHA, it could be used safely?
A Yes, as long as you stayed below the PEL.
Q Okay. And, for example, you were talking about the PEL. Daniel would, actually, have folks, you know, on the job site like Celanese and they would be fabricating insulation that was put on later?
A Yes.
Q Okay. And Daniel was aware that OSHA required that there be some control over that dust?
A Yes. We were required to wet it down, to enclose the area with plastic to keep the dust from spreading, that type of thing.
Q Okay. And, certainly, Celanese understood that Daniel was going to follow those rules --
A Yes.
Q -- and do it right?
Okay. And Daniel would have a safety representative on a job like Mr. Seay's job at Celanese?
A Yeah. It was a large enough job that it would have a full-time safety manager.
Q And I assume it would be a man, but I don't know.
A I don't know.

Q It would -- a man or a lady, they'd be in charge of making sure all the work was done properly?
A Right.
Q And you agree that Daniel's responsibility on all the jobs, but in the 70s, was to provide its employees with a safe work environment?
A Yes.
Q And that would include Mr. Seay while he was working at Celanese?
A Yes.
Q Okay. And that's something that Daniel wanted to do as a good corporate citizen here and everywhere else?
A Sure.
Q Okay. And, certainly, Daniel wanted to accept responsibility for and provide a safe workplace to Mr. Seay while he worked for Daniel?
A Yes.

MR. YOUNG: Thank you, Mr. Buck.

I appreciate you coming.

MR. TIVIN: Your Honor.

THE COURT: Mr. Tivin.

CROSS-EXAMINATION

BY MR. TIVIN:

Q Good morning, sir.
A Good morning.

Q My name is Mark Tivin.

And I just have one or two questions for you.

A Sure.

Q You were asked about the safe work practices that -- regarding the work around insulation. Do you recall that?

A Uh-huh.

Q You're, also, aware that Daniel employees would, also, be working with gaskets?

A Yes.

Q And you would say that the work practices that they used with gaskets at the Celanese plant would have been below the PEL?

A I -- let me put it to you this way. When we started doing the -- when we did the air monitoring -- and I don't know. I don't have any records of air monitoring at this project site.

But on the other projects where I've researched and we've done the air monitoring, work like Mr. Seay would do where it would be a small exposure like a valve replacement, a pipe tie in, or something like that that, the air monitoring records would indicate that they would be below the PEL standards.

Q When you say "small exposure," what do you mean? As opposed to insulation, which could be a larger exposure?

A Well, if you're doing a large insulation job, you may

be running insulation on thousands of feet of pipe. And when you're talking about maintenance work, the maintenance person would go out and he would have to take a valve out of the line.

So you're not talking about thousands of feet. You're talking about just a -- maybe a three, or four, or five-foot space that he has to work in to get the insulation out of the way. If he was going to take the valve out, he'd need to get the insulation -- remove the insulation back away from the valve so that he could get the bolts out and remove the valve. And those were, basically -- and OSHA called them work that was minimal exposure to asbestos.

MR. TIVIN: Thank you, sir.

No further questions.

CROSS-EXAMINATION

BY MR. PANATIER:

Q Good morning, sir.

A Good morning.

Q We just met this morning, too?

A Yes.

Q All right. So let's -- I want to make sure we understand. You are not -- were you ever at the Spartanburg site from '71 to '80?

A No.

Q You were never there during that time, right?
A Never there.
Q And you don't have any -- really any records for safety and health activity conducted by Daniel or between Daniel and Celanese for that period of time for that site; correct?
A I'm just thinking a minute. Okay.
Q That's fine.
A I don't believe so, no.
Q All right. Now, you said that it was Celanese's understanding -- or Celanese -- you don't know much about Celanese's understanding probably, just Daniel's?
A Right.
Q It was Daniel's belief that if you were below the PEL, you -- then your workers were in a safe environment?
A Yes.
Q Have you heard the concept that the PEL doesn't protect against cancer?
A No, I don't guess so.
Q Okay. I want to show you a document that was shown to the jury yesterday with Mr. Bowyer. Do you know Mr. Bowyer?
A No.
Q This was a document that was received by Celanese in 1970. You've never seen that, have you?

A No.
Q Okay. This is an asbestos toxicology report --
MR. YOUNG: Your Honor, can we have the same objection to this one that we had yesterday?
THE COURT: Yes, sir, Mr. Young.
MR. YOUNG: And, I mean, this is, also -- it's -- I understand with Celanese, but I object to this being shown to this witness. It doesn't have anything to do with him.
MR. PANATIER: I'm going to ask if they knew this information.
THE COURT: Yes. You can ask him that.
Go ahead
BY MR. PANATIER:
Q This is -- do you see it says, "Asbestos Toxicology Report" --
MR. YOUNG: Judge, can we have our usual continuing objection?
THE COURT: Yes, you may.
BY MR. PANATIER:
Q Do you see it says, "Asbestos Toxicology Report"?
A Yes.
Q And it says -- now, this is -- you saw on the front 1970. It has been known for years that some persons working in asbestos production were prone to develop a disabling lung disease. In time, this condition became

known as asbestosis, and was related to exposure to high concentrations of asbestos dust. Through further experience, it was found that men could work with asbestos without development of lung disease if dust concentrations were kept below a certain level. A type of cancer named mesothelioma has been noted to be associated with asbestos exposure in recent years.

Now, as of 1970, can you testify that Daniel knew about the disease mesothelioma?

A No, I can't. I don't know that they did.

Q Okay. These tumors, while rather few in number to date, may occur in individuals with histories of only slight exposures and that as many as 20 to 40 years earlier.

Did Daniel -- to your knowledge, did Daniel have an understanding that there were reports of people with all these slight exposures developing mesothelioma?

A Let me clarify. Daniel was a construction company. All right. We build plants according to the specifications and the drawings that the owner and the engineer gives us. We do not go and research all the products that are called out in the specifications. That's a manufacturer's responsibility, and something that's not our responsibility. All right.

Q I hear you. And, to be clear, Celanese designed the

plant -- the Spartanburg plant; right?
A Yes.
Q They specified every bit of equipment and material that went in that plant?
A Right.
Q Right?
A Right.
Q Okay. And Daniel, as the contractor, was obliged to follow the designs --
A That's right.
Q -- and specifications of Celanese; is that fair?
A Yeah. And we were obligated to go by what OSHA said. All right.
Q I understand. And I'm just asking you -- I showed you that this --
A Right.
Q -- was provided to Celanese. I'm asking if Daniel knew -- was aware, in 1970, that individuals with only slight exposures could get mesothelioma?
A I would say, no, they were not aware.
Q Okay. There is considerable evidence that chrysolite is most frequently associated with mesotheliomas. From the data available, it appears that the TOV [phonetic] of five million particles per cubic is not low enough to protect against mesothelioma. And it is quite possible

that two million particles per cubic foot is not either. Research on the problem continues.

And did you -- as of 1970, to your knowledge, did Daniel have any inclination that threshold limit values at the time were not being protected for mesothelioma?

A No.

Q Okay. Daniel had -- I'm not going to really go through these with you. I'm just going to show you the -- Daniel had accident prevention meetings --

A Yes.

Q -- right?

A Tool box meetings on a weekly basis.

Q Tool box meetings. That's where everyone gets together and --

A Monday morning.

Q Right.

And they call them a tool box meeting, but sometimes there's no tool box there, but that's what they became called --

A Safety meetings is what they were.

Q You guys had accident prevention guidelines and --

A Yes.

Q -- sent memos around --

A Yes.

Q -- you guys sent memos around about occupational

safety and health regulations --
A Right.
Q -- and even attached the federal register; right?
A Yes.
Q You guys had accident prevention standards; correct?
A Yes.
Q Now, under the contracts that you had with Celanese -- and we won't talk, specifically, about the contract in this case. You weren't involved in it --
A Right.
Q But, generally speaking, Daniel's was obliged to follow not only it's own safety procedures, but those of the premises owner; correct?
A That's right.
Q And to the extent that the premises owner had safety standards that were more strict than Daniel's, you would adopt yours to fit theirs --
A That's right.
Q -- right?
I want you to assume that a fellow at Celanese went to a meeting in 1964 in New York about asbestos hazards. Okay. Can you see that --
A Yes. I see the book.
Q All right. I want to ask if Daniel was aware about this statement, just one sentence. We do not believe

there's any safe limit regarding asbestos. Were you aware that that was being discussed in 1964?

A No.

Q Okay. Do you have any information that Daniel's was aware of that in 1964?

A No -- let me -- we're talking about prior to '71. Okay. And prior to '71 -- prior to OSHA coming out, Daniel, on our projects, used the associated general contractors safety manual as its Bible. In fact, the whole construction industry did. All right.

And that manual was revised in 1958 and in '71. And in the revision in 1958, there's an acknowledgement section in that safety manual that -- thanking the organizations that helped revise the manual. And the organizations include the Corps of Engineering, the Department of Labor, the National Safety Council, the Department of -- the U.S. Public Health Service. And there's not one mention of asbestos in that 1958 revision.

Q Okay.

A And that was the Bible for the industry. All right. And then after OSHA came into existence, which is when Daniel really became aware that asbestos was a problem, we adopted the OSHA regs.

Q Let me ask you, was Daniel a member of the Industrial Hygiene Foundation?

A I'm not aware of it.
Q Can you testify that Daniel -- to your knowledge, did Daniel receive a periodical called the Industrial Hygiene Digest on a quarterly or monthly basis?
A I'm not aware of it.
Q So, to your knowledge, during the 1970s, Daniel was a maintenance contractor and a construction contractor, right?
A That's right.
Q And they held -- they built the Spartanburg plant. That would have been a construction contract?
A Yes.
Q Okay. And then they had a maintenance contract to maintain?
A That's right.
Q During the 1970s, at Spartanburg, was Daniel -- Daniel Construction, is that what the company was called --
A Yes, yeah.
Q Was Daniel Construction a certified asbestos abatement contractor?
A No, we were not.
Q Okay.
A And I don't even know that they had certified abatement contractors at that time. That came into being

later.
Q Okay. To your knowledge, Daniel, during the 1970s, would not have been hired to do asbestos abatement and remediation work --
A No.
Q -- at Spartanburg?
A No.
Q Okay. Do you have any evidence of any audits by Celanese of Daniel's safety and health program at Spartanburg in the 1970s?
A No, I don't.
Q Okay. You understand that that was something that Celanese was to do as part of the relationship between Daniel's and Celanese, correct?
A Yeah, and other research on other Daniel projects. There's a lot of evidence that the owners audited our safety programs and inspected our work.
Q And to the extent that there was any shortcomings in the safety either program or enforcement of the program --
A Right.
Q -- that would be something that those audits would be designed to uncover?
A That's right.
Q And remedy?
A Yes.

Q All right. Would it be fair to say that the safety of both the employees at the premises owner and those of the contractor was a cooperative effort? Correct?
A Yes, it was.
Q Okay. Let me ask you this. Would -- are you aware of any evidence that Celanese, during the 1970s, at Spartanburg went through and tagged for the workers asbestos versus non-asbestos insulation and so forth?
A I'm not aware of that.
Q Okay. Would that have been something that Daniel's would have welcomed?
A Oh, sure.
Q That information?
A Yeah.
Q Because then it's a heck of a lot easier to know whether or not you're in an area where you need to take precautions or not; correct?
A That's right.
Q And then I think you said Daniel relied on the product manufacturer for whatever products they were using to supply health and safety information to the extent that it was relevant for that product?
A That's right.
Q That would apply to a drill, insulation, gaskets, anything --

A Whatever.

MR. PANATIER: Thank you, sir.

THE WITNESS: Okay.

REDIRECT EXAMINATION

BY MR. YOUNG:

Q Mr. Buck, I just want to follow-up on one thing. Mr. Panatier asked you about labeling stuff. Daniel built the plant; right?

A Right.

Q And so to -- they put it in to begin with; right?

A Yes.

Q Okay. So they would know that -- what was, actually, put in when they put it in; right?

A When they put it in, yes.

Q Okay. And then they knew what they were replacing when they were doing maintenance, because they were doing the work?

A Right.

MR. YOUNG: Okay. Thank you, sir.

MR. TIVIN: One question.

RECROSS-EXAMINATION

BY MR. TIVIN:

Q Daniel didn't purchase any of the materials that were used in the Celanese plant; correct?

A Well, I don't know that. But they -- if we did, we

would probably would have purchased it as agents for the owner.

Q It was in the Celanese stockroom?

A Yes.

MR. TIVIN: Thank you.

MR. PANATIER: One follow-up.

RECROSS-EXAMINATION

BY MR. PANATIER:

Q Do you know when the Spartanburg plant was built?

A I think it was in the late 60s.

Q All right. So whenever it was, whatever products went in then went in then, and whoever installed them may have known exactly what was where; right?

A Yes.

Q But in order to preserve that knowledge, obviously, identification, labeling, or tagging would be something that would assist them in the future; fair enough?

A Yes.

MR. PANATIER: No further questions.

THE COURT: Thank you, Mr. Buck, for your time, sir.

Okay. I understand that -- was there a -- some kind of a read-in or something?

MR. PANATIER: No, Your Honor.

THE COURT: Okay.

MR. PANATIER: We dealt with that.

MR. YOUNG: Judge, we're going to rest.

THE COURT: Yeah. Do y'all both want to rest now, and then we'll let the jury have a break, I guess?

MR. TIVIN: Has the Plaintiff rested?

MR. PANATIER: Yes.

MR. TIVIN: One second, Your Honor.

(Pause.)

MR. TIVIN: We would rest. John Crane would rest, Your Honor.

MR. YOUNG: And Celanese, Judge.

I didn't mean to interrupt you. I just --

THE COURT: You're not interrupting me, no, sir.

MR. TIVIN: Your Honor, may I approach, for one second?

THE COURT: Sure.

(WHEREUPON, a bench conference was held.)

THE COURT: Okay. Ladies and gentlemen, the parties have rested. That means you've heard all the evidence you're going to hear in the case. There are some legal matters I've got to take up that may take a while to go through that. And then we're going to have the closing arguments. And then, after that, I'll give you the instruction on the law. And then the case will be in your hands for a decision and a verdict.

You already ordered lunch, I think. We'll coordinate

that to arrive, hopefully, about the time you're through listening to other people talk.

So if you'll just go back to the jury room. Don't talk about the case. And continue to keep an open mind. We'll have the opening -- excuse me -- the closing arguments as soon as we can.

All right. Thank you.

(WHEREUPON, the jury was excused from open court at approximately 10:16 a.m.)

MOTIONS

THE COURT: Any motions or matters at this time?

MR. ELLIOTT: Your Honor, John Crane has two motions for a directed verdict.

THE COURT: Okay.

MR. ELLIOTT: The first is on Plaintiffs cause of action for negligence. Your Honor, the evidence, as presented by the Plaintiff during their case, did not establish that John Crane was negligent, or that its negligence was the proximate cause of the Plaintiff's injury.

As Your Honor knows, negligence is only actionable if there's proximate cause. Proximate cause requires cause in fact, which requires that the jury conclude that but for the negligence of John Crane, the Plaintiff's injury would not have occurred. And in this case, there was no

such evidence.

In fact, as I recall, one of the Plaintiff's experts testified that he could not testify that but for the Plaintiff's exposure to a John Crane gasket -- his asbestos exposure through a John Crane gasket, he would not have developed the mesothelioma. And as a result, the Plaintiffs can't -- excuse me -- there's no evidence upon which a jury -- a reasonable jury could conclude that John Crane's gaskets were a proximate cause of Mr. Seay's disease.

And all the experts presented by the Plaintiff's confirmed that they could not determine that John Crane's -- the exposure to asbestos through a John Crane product was the proximate cause -- the but-for cause of the injury. And there's no reasonable inference that can be drawn from the testimony that was provided by the experts in the Plaintiff's case or any other witness, for that matter, in the Plaintiff's case.

Thank you.

THE COURT: All right.

MR. PANATIER: With regard to negligence, the first part of the argument, Plaintiffs introduced evidence that John Crane had either knew or should have known of asbestos hazards. We did a very extensive state-of-the-art portion of the case on "should have

known."

On known, for John Crane, we showed that they should have known about the Illinois occupational disease hazard statute in '36. Their president was a member of the American Society of Mechanical Engineers starting in the '30s where he received information on asbestos hazards. They, also, knew about OSHA starting in '72, which is near the beginning of this man's exposure.

With regard to causation, as Your Honor knows, we have agreed on instructions that say there can be more than one cause. I introduced with Dr. Kradin a concept that increased exposure has a direct effect on the latency period. And so that but for all of the exposures in this case, the mesothelioma would not have developed when it developed. So if you were to take out John Crane, you wouldn't have this mesothelioma. And we introduced that with Dr. Kradin.

Each of our experts testified that the occupational exposures were regular, frequent, and proximate. And that they occurred over a period of years. That the exposures were well in excess of background, thousands of times to tens of thousands or hundreds of times above background. And that each of those exposures would have been a substantial factor in the development of his mesothelioma.

THE COURT: Thank you.

MR. ELLIOTT: Briefly, Your Honor, the reports that counsel referred to with his experts did not indicate that there was a hazard relating to the work with asbestos-containing gaskets. Saying that -- if the experts say they can't separate the exposures and, therefore, can't determine the but-for cause, then they fail under South Carolina law. They've got to be able to say that "but for the exposure to a John Crane product, the disease would not have occurred."

And when talking about frequency, regularity, and proximity, we think back to our motions in limine when we discussed frequency, regularity, and proximity. Your Honor talked about that being a policy concern. And that's a -- it's a finding for the threshold for exposure to become actionable. It is not a proximate -- it's not a standard for proving proximate cause.

MR. PANATIER: Just one more point. We did introduce, if the Court is interested in any gasket-specific literature, 1932, that gaskets were inducing -- gaskets, among other products and operations dealing with gaskets, were inducing asbestosis. And then, in 1958, gaskets were, again, called out as a source of asbestos exposure that we addressed with Dr. Toca.

THE COURT: All right. I understand the Defense arguments and logic behind them.

I appreciate you making them, Mr. Elliott.

I do think there's sufficient evidence viewed in the light most favorable to Plaintiff, Ms. Keene, that would enable a jury to find in her favor. I can't weigh the evidence. I just have to determine if it exists at this point, and I find it does exist. And, therefore, I respectfully deny the motion.

MR. ELLIOTT: Yeah. This is a little bit procedurally difficult. But we've rested, and sort of the Plaintiffs rested at the same time. Can we just renew our motion, given that we've closed our case, in order to preserve the issue?

THE COURT: Certainly.

MR. ELLIOTT: And, Your Honor, briefly, we'd like to move for a directed verdict on the Plaintiff's claim for punitive damages.

And briefly, Your Honor, we don't believe the Plaintiffs have submitted sufficient evidence for the jury to conclude that John Crane was reckless or willful and wanton in their disregard for the rights of Mr. Seay, which is the standard in South Carolina to establish punitive damages. And you've got to establish that by clear and convincing evidence.

The evidence is that John Crane's gaskets were the state of the art at the time. The Plaintiffs presented

experts, including Dr. Brody, who reviewed publications of the most knowledgeable experts of the period, such as Dr. Selikoff, that the information concerned exposure to asbestos through -- through working with the product -- the raw materials, being milling or mining, and, perhaps, working with insulation.

However, the state of the art at the time, the information was not that working with gaskets created a hazard to the exposure to asbestos. Plaintiffs produced general knowledge of the hazards of asbestos during the '20s and '30s. However, again, it only concerned miners and millers and, perhaps, insulators. There was not thought there was any hazard relating to gaskets until the '80s, according to the state of the art of the witnesses.

As a result, we don't believe there's any evidence upon which a reasonable jury can conclude that John Crane was willful, wanton, or reckless, therefore -- by clearing and convincing evidence. Therefore, Plaintiffs cannot establish their burden and allow punitive damages to go to the jury.

THE COURT: I would respectfully deny that motion as well. I think there's evidence that would support a finding of punitive damages if it is believed by the jury.

MR. ELLIOTT: We would just renew the motion, as we've closed John Crane's case, Your Honor.

THE COURT: Yes, sir.

MR. ELLIOTT: And you would deny the motion?

THE COURT: Yes, sir.

Thank you.

MR. COLLIER: Your Honor, on behalf of Celanese, we, also, have a motion for directed verdict.

THE COURT: Yes, sir, Mr. Collier.

MR. COLLIER: On the issues of negligence, lack of superior knowledge, statutory employee, and punitive damages. The law applicable to this case is the premises law that involves an independent contractor. And under Lanier Construction, a general contractor like Daniel assumes the duties of the landowner. And that's the evidence that's been presented in this case with respect to Daniel and Celanese.

The evidence has been that all of Mr. Seay's work for Daniel at Celanese was under OSHA. And all the evidence in the case, contracts, the other documents, the testimony of Celanese, Daniel, and even Plaintiffs own expert, Dr. Holstein, is that Daniel had a duty to provide Mr. Seay a safe workplace.

There's been no similar evidence presented with respect to Celanese that there -- and there's been no evidence presented Celanese was negligent in hiring Daniel, a well -respected contractor, who were experts in

providing maintenance.

In addition, there's been no evidence presented that any alleged negligence of Celanese was a substantial contributing factor to Mr. Seay's mesothelioma.

The law is, also, clear that Plaintiff has to prove that Celanese had superior knowledge regarding asbestos hazards. And under the Lanier case, a premises owner can only be held liable for an invitee's injuries when the premises owner has superior knowledge of the danger or unsafe condition that caused the invitee's injuries.

If a premises owner does not have superior knowledge of the danger, then the premises owner does not have a duty to warn. There's been no evidence at all that Celanese had superior knowledge with Daniel about asbestos. In fact, the evidence has been that Daniel both installed and maintained all of the asbestos-containing materials in the plant. And Daniel's own witness just testified that their knowledge of asbestos came about with OSHA, which is consistent with what Mr. Bowyer testified to yesterday.

All of the evidence supports -- further supports our earlier claim in our motion to dismiss -- or motion for summary judgement that Mr. Seay was a statutory employee of Celanese. In short, under South Carolina law, Mr. Seay's recourse against Celanese is limited to a

workers' compensation claim.

Under South Carolina law, Mr. Seay's recourse against Celanese is limited to a workers' compensation claim under Voss, because Mr. Seay meets the test that qualifies a statutory employee.

The activity of Daniel and Mr. Seay was an important part of Celanese's trade or business. The activity performed by Daniel and Mr. Seay is a necessary, essential, and integral part of Celanese's business, or the identical activity performed by Daniel and Mr. Seay has been performed by the owners of Celanese.

All of the evidence in the case has been that, without the maintenance performed by Daniel and Mr. Seay, that Celanese wouldn't have been able to continue making polyester fiber. Rather than rearguing the rest of that motion, we would incorporate those arguments from our motion to dismiss, motion for summary judgment back in July in support of our motion for directed verdict.

Also, given that we've kind of got a broken-up directed verdict argument, the Plaintiffs can't consider any of Mr. Buck's testimony that was provided today in responding -- in responding to the directed verdict argument with respect to the superior knowledge issue.

And, finally, there's been no evidence presented to support a claim for punitive damages as to Celanese.

There's no clear and convincing evidence that Mr. Seay's injury was a result of any willful, wanton, or reckless conduct by Celanese.

Under Carter v. R.L. Jordan Oil Company, conduct is willful, wanton, or reckless when it's committed with a deliberate intention under such circumstances that a person of ordinary prudence would be conscious of it as an invasion of another's rights. And certainly that hasn't been shown as to Celanese in this case. And Celanese would submit that a directed verdict as to Celanese is proper at this point.

Thank you, Your Honor.

THE COURT: Thank you, sir.

So as to the statutory employee argument, I think I would stand by the ruling I made at the beginning of the case on that issue. There was no evidence admitted about -- in fact, the evidence was contrary, that Celanese didn't do their own maintenance. They didn't have anybody doing maintenance but Daniel. They weren't in the maintenance business.

I just don't think the spirit of the various cases, including the one that came out this summer from our Supreme Court about statutory employee, would allow that defense to be used under these circumstances and facts.

As to punitive damages, again, for the same reasons I

denied it as to John Crane, I think there's evidence which, if believed, would show conscious disregard for the rights of Mr. Seay.

Without making any credibility determinations whatsoever, I find there's evidence that would support a verdict in favor of Ms. Keene on the issues of premises liability. I don't believe the law is that a contractor steps in the shoes of a premises owner to the point that completely alleviates the premises owner from any duty or liability.

I understand this Americk [phonetic] case. I think it leaned very heavily on a case involving -- I believe it's called Williams. I don't have the case right in front of me. In that case, it was the contractor who was on the scene. A utility came up and did some work, it included the opening of a trench. I believe it was the contractor who fell into the trench and then tried to sue. And the Court said it was an open and obvious danger.

The landowner had no liability for such danger, and certainly the contractor didn't. Because the contractor had equal knowledge of the landowner under those circumstances.

I just think that it doesn't support the proposition that a contractor takes over all of the premises liability in a case once they step onto the property.

So I respectfully deny the motions.

MR. COLLIER: Your Honor, could we just renew the motion for purposes of after we closed our case?

THE COURT: Yes, sir. You may.

MR. COLLIER: Thank you, Your Honor.

THE COURT: And I deny it.

MR. COLLIER: Thank you.

MR. PANATIER: Can we have a quick break?

THE COURT: All right. Let me just get an idea of how long your closings are going to be, if you don't mind.

MR. PANATIER: Your Honor, I -- with the two Defendants, if I could have an hour 20 for closing, I would appreciate it, to address all the evidence. That includes rebuttal.

THE COURT: Oh, okay.

MR. PANATIER: That includes -- that's everything.

MR. YOUNG: Judge, I mean, it seems like we should stick to the rules.

THE COURT: What do they say? I can't remember. It's been --

MR. YOUNG: An hour.

THE COURT: An hour?

MR. YOUNG: Yes, sir.

MR. PANATIER: And, Your Honor, I'm aware of Your Honor's order on that. I'm asking for an extra 20 minutes

due to the -- I think we've given a lot of time back. And I promise to be diligent in just discussing the evidence. But there's a lot to discuss, especially after yesterday.

THE COURT: How about y'all's argument?

MR. TIVIN: It'll be roughly -- I have 40 slides. So it'll be roughly an hour. I tried to keep it within the Court's guidelines, realizing that there's no -- we're not going to be dealing with apportionment or punitives in this.

MR. YOUNG: Judge, I'm going to say 45 minutes. But I -- you know, a little bit of it depends on what Mr. Panatier says.

THE COURT: You know these TED Talks that are real popular? They strictly limit them to 18 minutes. Why do you think they do that?

MR. PANATIER: I know why they do it.

THE COURT: I mean, even Billy Graham stopped after 20 minutes.

MR. PANATIER: I hear you, Your Honor. And I understand it could potentially be at my own detriment. I just have a lot of evidence to discuss.

THE COURT: Well, I understand. It's easy for me to say. I'm not doing the hard work like y'all are. And I understand the struggles y'all are under.

So let's see here. So -- so this will be the plan,

will just to be to do the closing arguments and then let them eat lunch. And then they'll have to listen to me.

So that will be getting through at close to 2:00. We'll just have to see how it goes. Maybe y'all can do it quicker.

MR. TIVIN: You're right, Your Honor.

MR. PANATIER: Your Honor, so I don't step on the Court's toes, is that time limit okay? An hour to an hour and 20, including rebuttal for me?

MR. YOUNG: Judge, a lot of the testimony and evidence is -- I assume, he's going to use is pretty much the same. I just hate to be the 1:00 guy when there's no lunch.

MR. PANATIER: You got to open at 5:00.

MR. YOUNG: Yeah. You already made me open at 10 after 5:00.

THE COURT: Okay. We'll just have to do the best we can then, you know. If somebody goes substantially over their time limit, I'm just going to tell you, You've got five minutes left. If that won't throw anybody off their game.

MR. PANATIER: Okay.

THE COURT: Well, let's take about five minutes.

MR. YOUNG: Judge, the new verdict form is exactly like the old verdict form. And I thought Your Honor had

indicated that you were okay with it saying "do you find by unanimous consent that" blah-blah-blah, as opposed to "we, the jury, find by unanimous consent." I mean, they didn't change it at all.

MR. PANATIER: That's what -- it was denied. Your request was denied.

MR. YOUNG: Oh, I thought you said it was granted.

THE COURT: No, I didn't.

MR. YOUNG: Okay. I apologize.

THE COURT: That's okay.

MR. YOUNG: I thought it was a really good request.

THE COURT: It might have been.

(WHEREUPON, a break was taken.)

THE COURT: Okay. Are you ready?

(WHEREUPON, there was no response.)

THE COURT: Okay. We'll bring the jury on in, please.

(WHEREUPON, the jury came into open court at approximately 10:50 a.m.)

THE COURT: All right. Ladies and gentlemen, just to kind of let you know where we're going, we're going to have the closing arguments in just a moment. And we'll arrange to have the lunch sent in at some point. I was hopeful we would be able to get all the arguments and then my instruction to you before lunch, but it doesn't look

like we're going to be able to do that.

The closing arguments are an important part of the case. The lawyers are going to try to tell you what they think the evidence showed and what your verdict should be. And you should pay keen attention to it.

And, remember, though, that the lawyers aren't witnesses. And what they say is not evidence in itself, as I told you at the beginning.

So we do have excellent lawyers in this case, as I've already mentioned. And they've done an outstanding job trying to present things to you efficiently. They've been waiting a long time to get before a jury. And they have a lot of things they want to say.

So I am going to give them latitude to make their arguments, and do their job, and try to summarize what they think the important parts of the case are to you. And it may go on a while. But just keep in mind that everybody is doing their job, and they're trying to do it the best way they know how.

So, yes, sir. Mr. Panatier.

MR. PANATIER: May it please Court.

THE COURT: Yes, sir.

CLOSING ARGUMENT

MR. PANATIER: All right. Good morning, everybody.

The first thing I want to say is thank you so much

for paying attention. You guys were great. Regardless of what you do, whether you say the Seay family takes nothing or you give them compensation, I hope that you learned something, and you found it interesting, and you leave here saying, boy, jury service wasn't that bad.

But here's what I'm going to do. I'm trying to summarize all the evidence you've heard. And you've heard a whole lot of evidence. I told you at the beginning of the case that sometimes I might go long, because I'm trying to give you everything you need to find for the Seay family. So there's nothing when you go back to deliberate that you say, if only Chris had done X, Y, or Z."

So that's why -- if I'm overkilling some of it, that's why I'm doing it. So, please, just understand I'm just trying to give you everything you need to find for the Seay family in this case.

So that's where I'm going to start. Because we heard tons of science, corporate stuff, and all of that. But you heard -- you heard three people testify in this case. You heard Mr. Seay testify by video. You heard his wife and his daughter, Angie, testify. And this case is about people. And it's about something that a corporation or a few corporations did to these people.

So it's about the people. You don't just sue a

corporation for nothing. You do it because something happened to somebody. And it's about that man right there in the back and his almost hidden wife right next to him.

We have the burden of proof. As a jury, you have to decide unanimously the case. All of you have to agree. So when you go back there, certainly talk through the evidence as you recall it, and do your best to work together to come to an agreement. But we have the burden of proof, which is why I go first. So I have to tell you what evidence I believe supports the verdict. Okay.

The first issue I want to talk to you about is causation. Because we have to prove that these companies contributed to cause Mr. Seay's mesothelioma. So let's go through that a little bit.

First of all, I just want to say Dennis Seay was a good man who did nothing wrong. No one in this case said he wasn't safety-conscious, or anything like that. He said if he had known about these hazards, he would have taken precautions, but no one told him, not Celanese, not Daniel, not the manufacturers of the product. Okay.

Causation. So I'm going to give you a couple little blurbs of some of the instructions the judge will give you on the law you're to apply to the case. Okay. Plaintiff must prove that the exposure to the asbestos product was of such frequency, regularity, and duration that it was a

substantial factor in bringing about that disease or injury. So that's one of the things you have to consider.

Was this something that the man just did one time or two times, as opposed to doing over a 10-year period, which is what the case was here.

Proximate cause is something that produces a natural chain of events and in the end brings about an injury. And that is proven by showing the injury would not have occurred but for the Defendants negligence. And proximate cause does not mean the only cause. The Defendants act can be a proximate cause of the Plaintiff's injury if it was, at least, one of the direct concurring causes of the injury, and that is this.

This is what I showed you in openings; right? Where you can have the fish being poisoned by one factory and the fish gets sick. That factory is responsible for it. If he's poisoned by two or three, they all hold responsibility so long as it was a substantial exposure. And that's what you have here.

You have Mr. Seay being exposed from many different sources. One of the sources was John Crane gaskets. One of the sources was his work at Celanese, which would incorporate all of those asbestos exposures. So you have two primary exposures we're talking about in this case. And they're each a substantial factor in bringing about

his injury.

So I've got these little -- those are exhibit stickers. I just put exhibit stickers on the bottom to show you when I talk about a piece of evidence, this is where it's coming from. So you might think back and say, oh, I remember hearing that with Dr. Kradin or Dr. Holstein.

And so there's some facts in this case that are undisputed. He had mesothelioma. It was from occupational exposure to asbestos. And mesothelioma caused his death. Those are all undisputed in this case. And that smoking -- he was a smoker. But smoking has nothing to do with mesothelioma. It doesn't cause it. And all of these people agree.

We called Dr. Kradin. I just wanted to show you -- he looked at some of the stains where they take out a bit of the tumor, they stain it, and then they can tell what type of cancer it is. And it's very interesting. Because you can tell just by looking at a slide whether it's a mesothelioma, or a lung cancer, or a kidney cancer just by looking at the slide. You don't even have to know where in the body it came from. So they did that. And they confirmed it.

I want to remind you of some of the scientific and regulatory opinions on asbestos. And here's why, because

you heard in this case from our experts and you heard from Defense experts. And to the extent you're having trouble pitting one side against the other, I always say, well, let's look out in the real world. Let's see how the real world treats asbestos products.

And OSHA says there's no known safe level. OSHA says very low levels can cause the disease. There's no safe level.

The World Health Organization says the same thing. No threshold has been identified for the carcinogenic risk of asbestos, including chrysotile asbestos. This is the real world.

We showed you the American Industrial Hygiene Association. This was the organization that Dr. Toca, who was here two days ago, was the president of. And his organization says asbestos is a known human carcinogen with no known safe threshold of exposure.

So this is the real world. There is no magic number. There is no amount of asbestos that you have to breathe in before you're at risk for a disease, other than what's in that general background. It's sort of like saying we know that two beers gets you drunk. Well, it's different for everybody. For me, it's one beer. Okay. But it may be different for everybody. There is no magic number for the amount of asbestos that causes mesothelioma.

And all of these different regulatory and scientific bodies agree with that. There is no known safe level, and all fiber types cause mesothelioma.

So let's take this forward. We showed you all the way from inside the cell to the DNA and how asbestos causes cancer. This was one of the pictures Dr. Brody put up. He showed actual -- these were amphibole fibers. So these would be crocidolite or amosite, actually, interfering with the DNA in cell multiplication. He showed you the same thing for chrysotile.

And you, also, heard testimony from both Dr. Roggli and Dr. Brody that chrysotile asbestos, the asbestos that some of John Crane's experts says isn't so bad, it's kind of safe. They said that asbestos, when it goes into the lungs, it's the one that most preferentially, more often, translocates out to the pleura where mesothelioma occurs. So if it goes to the pleura, that's where it causes disease.

And here's a picture that Dr. Brody showed you of chrysotile asbestos fibers, actually, killing the macrophages. Those were the big eaters. Those were the cells in the lung that try to clean it up.

So you guys are well aware of what Mr. Seay's exposure was by this point. No other exposure outside of Hoechst Celanese. Early in the case -- and you'll see

this probably. We had work history sheets where early on we thought, perhaps, there was some exposure in Bristol. But it was vetted out in the deposition by all the lawyers that it was really just Hoechst Celanese for about 10 years.

What did he do? He worked on gaskets. He worked on insulation. And this was his testimony from his video. He was asked to look at this picture. And he said 90 percent of your gaskets, this is what they look like when you're replacing them, which is why it necessitated using a scraper, a wire brush, and a power wire brush.

Mr. Tivin has continued to say, Mr. Thompson said only 25 percent needed to be scraped or wire-brushed. And I showed you that testimony in the case. He said what he said, whether it was 25 percent or not. And if it was 25 percent, that's fine. One-quarter of the time having to scrape, wire brush, or power wire brush is plenty. But if you look at his next line, he says, Was it a lot? It was a lot.

The different brands identified were John Crane, Garlock, Armstrong, Flexitallic, and Cranite. There were five brands. They put in all five. And they took all five out. And they did that over 10 years. So to argue that there's no way that he could have pulled out John Crane, as opposed to Cranite or Flexitallic just doesn't

make sense. That somehow over 10 years he put these all in, but he just happened to miss all the John Crane gaskets when he pulled them out. That doesn't make sense. In all likelihood, he pulled out each one approximately an equal amount. So he had equal exposure to these.

John Crane is the only source of exposure to crocidolite asbestos. And Dr. Toca said crocidolite was a hundred times more potent. Dr. Roggli said it was -- he had different levels, but it was substantially more potent that chrysotile. John Crane 2112 gasket identified by Mr. Thompson is the only source of crocidolite exposure.

You heard from both Dr. Toca and Mr. Springs -- Mr. Springs was the corporate representative for John Crane -- say these were encapsulated products. And I showed this with several witnesses. These are photomicrographs taken from a microscope of unused an gasket. This is before it's ever cooked onto the flange and has to be scraped off. This is unused. That's all asbestos. There's a couple -- a little bit of nuggets of the rubber that holds it all together.

So, of course, when it's cooked onto a flange and you have to scrape it off, and wire-brush it, and power-wire-brush it, you're releasing all of this into the breathing zone. That is not encapsulated, and neither is that.

We showed you this picture of a tremolite fiber from a John Crane sheet gasket. And, again, I asked Dr. Toca, I said, Is that encapsulated?

He said, No, that is not.

And, of course, Dr. Roggli said, look, you get the tremolite from the chrysotile. It's a contamination of Canadian chrysotile. That's where they got their asbestos. That's where John Crane got their asbestos. So if you have tremolite exposure, it's from the chrysotile.

Dr. Holstein testified that, look, he wasn't over the limits every day. But the type of work he did would have put him over both the daily limit and the ceiling limit from time to time with gaskets and insulation. And the insulation exposure is certainly higher if you're banging insulation off a pipe, or you're cutting it.

And here's sort of a comparison. How do we weigh these? Can we say that insulation was more exposure or gaskets were less? Overall, I don't really think you can. Because when you kind of look at the percentages -- so the gaskets are 75 to 85 percent -- percent asbestos. Insulation is about 15 percent.

The gasket exposures are, typically, lower than the insulation exposures. So insulation is a little bit higher exposure there. And that's shown again with the background, up to 300,000 times above background, one

million-plus times above background for insulation.

Well, the gaskets had chrysotile and crocidolite, including a very potent type of crocidolite, as well as tremolite. The insulation had chrysotile and amosite. The gaskets were daily work. And the insulation was occasional work.

In the end, I think these are probably a wash. I think the exposure from both is probably about even. But it really doesn't matter at the end, because there is no known safe level. He had exposure from both. That's undeniable. And no one is going to ask you -- the judge isn't going to ask you to figure out how many fibers Mr. Seay breathed in from any of these. This is just for you to consider and evaluate in the overall exposure.

I want to talk a little bit about measured versus actual exposures. Remember, all of these numbers that we're talking about, all of these exposure limits come from the science class microscope, the light microscope, not from the electron microscope. And, remember, the testimony is whenever you see one fiber with a light microscope, there's many, many, many you're missing that you're not seeing that you would see with an electron microscope.

And we showed you that with Dr. Holstein where Dr. Longo did measurements with a light microscope. And

let's say he counted 14.9 to 31 fibers in a cubic -- in a sugar cube. And then he took the same and he looked at it with an electron microscope. And he got 877 to 1,600 fibers. So there's a lot you're not seeing when you do those measurements? That's the [inaudible] thing.

Mr. Seay testified he used a scraper, the wire brush, and the power wire brush all over that 10 years.

John Crane brought three medical experts -- well, an industrial hygiene and medical, Dr. Toca, Dr. Crapo, and Dr. Roggli. And what do they have all in common? They've all spoken at the Defense Research Institution a number of times, the voice of the defense bar.

Dr. Crapo talked about there's lots of asbestos in water. And now, I want to bring up something that Mr. Tivin said in opening statement. He said, Pay attention. Pay attention during the case. Don't let anybody hide the ball. That's a popular expression. I think it comes from that little game where you go like this with the cups. But he said, Don't let anybody hide the ball.

So there's the John Crane ball. Okay. And this is the first time I'm going to bring this up. Because what was the point in bringing up that there's asbestos in water, other than to suggest to you that maybe it's safe? Maybe it's safe. It's in our water. We drink water all

the time.

So that's an example of hiding the ball. Because Dr. Roggli said there's no problem with it. It doesn't cause anything. There's no problem with asbestos in the water. So why bring it up? That's the first time they hid the ball.

John Crane's paid Dr. Crapo -- look, all these experts make a lot of money. You guys heard those numbers. They all make a lot of money. But this is kind of interesting. John Crane alone has paid Dr. Crapo $1.6 million on top of his -- well, included in $8.5 million overall. That's a lot.

And Dr. Toca has testified for John Crane -- John Crane alone over a hundred times, not throughout history for everybody but just John Crane. And what did he say? He said it would take 5,000 years to get enough dose from gasket work to cause mesothelioma. There is a point where you say, at some point, does this have any scientific basis? 5,000 years. Think about that.

Dr. Roggli said that sounds high. He's their own witness. He was like, well, that doesn't sound right. And the reason it doesn't sound right is because I could have been around when they built the pyramids in 2500 BC, and started grinding asbestos gaskets. And then I could still be there today grinding off asbestos gaskets. And

Dr. Crapo would say, you're fine. 5,000 years. And I could sit here for another 500 years until I reach 5,000 years and still be fine.

Early on, it was one of the Defense experts who said, Don't check your common sense at the door. And I'm asking you to use your common sense. Could you really work with asbestos gaskets that are 85 percent asbestos for 5,000 years and be at no more risk for mesothelioma than me, who's never worked on a gasket in his life? That doesn't make sense. That doesn't make common sense.

And their own expert disagreed with that. He was off -- he said, No. I think that's 10 times too high, at least. Both of those witnesses testified only a little bit of crocidolite, the very potent form, can induce mesothelioma. Crapo said, I don't know what the threshold is. And Dr. Roggli said, I think it's .0155 per cc years. It only takes a little bit. And that's what John Crane made. There's no magic number.

And I put up the Helsinki consensus report. I talked to Dr. Roggli about this. This is the one that said, look, you can attribute mesothelioma to asbestos if you have a work history of asbestos exposure. And that's exactly what Dr. Roggli did in this case. You don't have to calculate numbers. You didn't have to say it was this much asbestos from one and this much from another. You

just have to know there's a work history of asbestos. And that's the real world. That's what the real world said.

And Dr. Roggli was a part of that organization. And they didn't go in and adopt his numbers on "you need this exact much to cause mesothelioma." No one has done that in the real world. The real-world scientific consensus is there is no known safe level.

Gasket and insulation exposure are a substantial factor in the development of Mr. Seay's mesothelioma. Those were his exposures. That's what he had. That's what caused his disease.

The next issue, were these Defendants negligent? You're not asked if Daniels was negligent. Okay. What is negligence? It's a failure to use reasonable care. That's what it is.

For John Crane, it's, did you fail to use reasonable care in making your product, selling it, researching it, testing it, et cetera -- okay -- failing to warn?

For Celanese is, did you exercise reasonable care in warning people, auditing, et cetera. And we'll get into that.

But you're not asked if Daniels is negligent. I'm going to tell you right now, I think they were negligent. Right? And we heard from the Daniels guy this morning. And he talked about all sorts of stuff he said they did.

The truth is, if anyone -- if these guys, Daniel and Celanese, all did what they said they did, Mr. Seay wouldn't have mesothelioma. Okay. I think they were negligent. And I say that as the lawyer that's saying, hold these guys responsible, too. I say that at my own peril.

I'm not trying to say Daniels is the only responsible party like Celanese is. This is a shared responsibility between an employer, a premises owner, and a manufacturer to warn these people of the dangers that they all know about. But you're not asked in this case if Daniels is negligent. You're only asked, is Celanese negligent? And is John Crane negligent?

And this is an important part. The judge is going to instruct you that the fact that the negligence of a third party -- if they say it's Daniels -- right -- occurred with Defendants own negligence to produce the harm does not relieve Defendant of liability. All right.

So if you -- if you think Daniels was negligent -- I think they were -- that doesn't mean that Celanese and John Crane walk out of the courtroom. You have to evaluate their negligence, which is the questions you're going to have.

You're going to have two first questions. Was John Crane negligent? Was Celanese negligent? Okay. So let's

talk about their negligence.

There's the John Crane ball again. Because I'm going to show you the ways they hid the ball. Okay. First, John Crane didn't test its asbestos products, and they didn't provide a warning. That's undisputed. Dr. Roggli, their own witness, said a company should test their products. And George Springs said we made 500 of them, didn't test a single one of them.

Where did they learn about asbestos hazards? They learned in 1936 from the laws of Illinois where they were headquartered. They learned in 1933. Their president was a member of the American Society of Mechanical Engineers and received this periodical, Mechanical Engineering, that discussed asbestos hazards.

Johns Manville, in '68, starts putting a warning on their raw asbestos. And this is important. Think about this. John Crane is using Johns Manville's raw asbestos. It comes into their plant what they're going to turn into a product. It has a warning on it. They put it in a product. And it leaves their plant with no warning. So John Crane's getting the warning, but the people that get their products are not.

And then, in 1970, another Johns Manville guy came in and gave a talk where he said asbestos can cause disease. And they learned it there as well. And then, of course,

they admit they learned it from OSHA. John Crane absolutely knew before Mr. Seay was ever exposed to their product.

This is in evidence. This is Exhibit 1109. These are three of the different types of gaskets you've heard from. The two main ones are 333 at the top, and 2112. And their own catalog says 75 percent asbestos. But I think they're hiding the ball here. And the reason I think they're hiding the ball is because George Springs came in and said, No, no, that's -- that's by weight. And I got a little confused. Because that's the first time I've ever heard that from him. He said, No. It's 52 percent.

So we looked at some other documents. We looked at these documents, 1184-A and 1184-B. These are the material safety data sheets that John Crane put out in 1981. And what do they say? First of all, they say, health hazard, asbestosis, and cancer. What do they tell you in this case? No problem. They don't cause disease. There's no problem.

When you want to know what the truth is, you look at what people do in the real world, not what they say in court. Look at what they do in the real world. What John Crane did in the real world was they said, Our product, Gasket 2150, causes asbestosis and cancer.

That product is the same as 333. But look at this, for 333, they say, Chronic exposure to asbestos dust can lead to asbestosis. Both put out in the same year. Both the same type of product. They say one causes cancer, and they don't include cancer on the other one. That's them hiding the ball in the real world.

But look at what else they say. 60 to 80 percent asbestos. Okay. Now, this is where things got interesting with George Springs. Remember what his testimony was? His testimony was, Oh, the first number, the 60 is weight. The 80 is volume. That makes no sense. And it's not true. He's -- he made that up to try to make it sound like they had less asbestos than they did.

I don't think it makes a difference. If it's a 50 percent product versus a 75 percent product, I don't think it makes a difference. But the attempt to try to deceive you is what upsets me --

MR. TIVIN: Objection.

MR. PANATIER: -- is that when you say it's 60 percent --

THE COURT: Hold on a second.

MR. PANATIER: Oh, sorry.

MR. TIVIN: Objection.

THE COURT: All right. I'll sustain the objection as to personal belief.

MR. PANATIER: The 60 to 80 percent is one unit. It's not weight and volume. We all know it's a range. And I don't know why he wouldn't just admit that.

Here he is again. He said, We complied with the 1936 law, but we didn't read it. Why? Because I showed you, if you read it, it says asbestosis is an occupational disease.

So Mr. Springs knows that if he says he read it, then he has to admit they knew about the disease. But he said, We complied with it without reading it. Again, they're hiding the ball.

You heard about this. You heard about this, the RitePack packing guide -- right -- where they said, Our nonasbestos packings are -- nonasbestos packings are longer-lasting, safer, and less abrasive, designed to meet existing OSHA requirements.

What does that mean? It means, without asbestos, it's safer. That's what it means. And he said -- he said, No. That has nothing to do with nonasbestos being safer than asbestos. And their other witness, George McKillop, who you saw on video, said the same thing. They're hiding the ball.

Dr. Roggli was asked at the very end of his testimony by Mr. Tivin, Were any of those articles on gaskets having to do with asbestos-causing -- gaskets causing disease,

the general state of the art? And he said, No, sir.

And then I showed him this, which talked about industries and processes in which asbestosis and disease occurs, and mentions jointings, which everyone agrees is gaskets at the end. Then he says, Oops, yes, that's true. That does mention gaskets causing disease. So, again, they're hiding the ball.

John Crane violated OSHA labeling. And the reason that George Springs said what he said was to avoid that conclusion. Do you remember what he said? He said, This labeling requirement is just talking about waste, not the product itself. Even though, remember, I showed him testimony where before he said, Yes, that's talking about the product.

But, now, he's changed his mind. Because he knows this, in 1981, if they admit the proper labels were required, then they should have been labeling all the way from 1972. They weren't. So if he admits that has to do with the product, then he's admitting they weren't labeling under federal law, and they weren't.

Why does this make no sense what he's saying? Because, up top, right above this section -- it's got a section -- and you guys will se this. This is in evidence. It's called, Waste disposal method. Sealed containers properly labeled as specified in 19101001, the

same one that they're talking about down here.

So why would you list how you dispose of waste two times, and the second time you do it not say this is waste? Because they're talking about labeling on the product.

This is George McKillop. You saw him. Here's what you can take away from John Crane. All right. What you heard from John Crane's corporate representatives was, part of it's advertising, and part of it's true.

(WHEREUPON, a short clip from a video was played in open court.)

MR. PANATIER: Let's talk a little bit about -- oh, and, lastly, Dr. Roggli said -- this was their own witness -- said, A product that releases respirable asbestos fibers and lacks a warning is unreasonably dangerous. That's John Crane's own product. It is unreasonably dangerous.

Let's talk about Celanese now, their negligence, failure to exercise reasonable care. They owned the plant. They owned the pipe, and the lines, and the equipment. They owned and purchased the insulation and gaskets. They specified what insulation and gaskets to use. They ordered all the products. They're in complete control of safety policy.

Remember Mr. Buck said, Hey, if theirs were more

stringent, we had to meet theirs. We had to modify our own safety policies. They were supposed to audit contract safety policies. There's no evidence in this case they ever did that. They had the ability to oversee all policies and contractor employees. And they controlled when the contractors worked, where they worked, what they did, and how they did it.

Now, what did they fail to do? They failed to conduct reasonable abatement until too late. And I want to stop there. Mr. Bowyer said Daniel was an abatement contractor. And Mr. Buck today said, No, we weren't. We were a construction and maintenance contractor.

They failed to investigate and purchase gasket substitutes. They failed to sample and tag asbestos versus nonasbestos. And again, this is something that Mr. Buck said, Yes, that, obviously, would have been helpful.

Okay. And I'm not saying Daniel did much right. I don't think they did. But this certainly would have helped those people. Because then the worker -- regardless of what the supervisor is telling them, the worker knows, I'm about to work on asbestos, or I'm not about to work on asbestos.

They failed to properly audit the safety program and compliance. We have no evidence they did that. Failed to conduct air monitoring. They failed to warn of asbestos

hazards. They failed to follow their own safety and health policies. Because, if they had, they would have conducted an audit of Daniel's as well.

They should have placed effective warning -- remember, they owned the walls, not Daniel. They should have labeled and tagged the asbestos. And they should have made the asbestos off limits, period, which we know they did 10 years after Mr. Seay left. Mr. Bowyer volunteered that. That should have been the policy all along. This is a specialized thing that someone with specialized training needs to handle.

So this is my paraphrase of what the law is. To recover for injuries sustained on Celanese's premises, we have to prove either they had actual knowledge of a dangerous condition or constructive knowledge. I'm going to prove -- forget about number 2. I'm going to prove they had actual knowledge. Okay. But I can prove it if they had constructive knowledge.

And then whether Celanese owes Daniels or its employees a duty to warn of dangerous conditions on the premises turns on whether Celanese possesses superior knowledge or information which places him in a superior position to appreciate the risk posed to Daniel employees by the dangerous conditions.

So, basically, I have to show that Celanese had

superior knowledge, which they did. And we saw that today. Remember, Mr. Buck said, Look, we learned about asbestos hazards with OSHA. And we thought the PEL was safe. And, ladies and gentlemen, you know from the extensive cross-examination of Mr. Bowyer yesterday that they knew the PEL wasn't protective. They knew that. They knew it didn't protect for all diseases. And they had far superior knowledge to Daniel.

Mr. Young said this in opening, They have to prove that our hiring Daniel, a large, well-respected, good contractor to come in and do the asbestos work was negligent. And that it was not something that an ordinary, prudent person would do. That's not the law. That's not what we have to prove.

So anytime you hear Mr. Young, if he says it again, say we have to prove -- the Plaintiff has to prove that they were negligent in hiring Daniel, that's not the question you're asked. The question is --

MR. YOUNG: Judge, I would object to this. The law comes from Your Honor.

THE COURT: Well, that is true. But I overrule the objection.

MR. PANATIER: The question is whether or not Celanese exercised ordinary care to Mr. Seay, who was an invitee on their premises. And we'll talk a little bit

about that.

So I thought to myself, I thought, you know, you might have heard the expression a red flag; right? So something that gives you a warning. Something might be a red flag. They used to say, you know, you send a canary down a coal mine. If it doesn't come back, you know there's dangerous gas down there. That would be a red flag; right?

A red flag is a warning. It may not be the end-all, be-all. But it's a warning. And this case for Celanese is full of red flags. I want to show you what they knew. I want you to appreciate truly the breadth of their knowledge, because they absolutely had it.

And so this may be a little cheesy, but I bought a box with some little red flags in it. Okay. So I want to show you their knowledge with these red flags. I'm going to make a little mess here. But 1951 -- 1951, this is the National Safety Council article on asbestos hazards.

Industrial Hygiene Foundation, this is 1953. There are three separate articles on asbestos hazards in that article, in that digest that they received and read. Mr. Laubly said, We got them, and we read them.

September 1955, one article on asbestos hazards.

February 1956, two articles on asbestos hazards.

The National Safety Council, 1956, one article on

asbestos hazards.

1956, the Industrial Hygiene Foundation, three articles on asbestos hazards.

April 1957, one article on asbestos hazards.

1958, Texas and New York safety regulations where Celanese had operations. That's two flags.

Dr. Selikoff, 1964, this is the biggest flag of all. There's dozens of articles in here. I'm not going to put dozens of flags on it. But I'm going to put one big flag. Because their safety director -- their medical director, Dr. Dixon, was there. He was at the conference.

May 1964, one article on asbestos hazards, the Industrial Hygiene Foundation.

January 1966 -- I don't know what I'm going to do with all these -- three articles on asbestos hazards.

May 1966, one article on asbestos hazards.

Charles Laubly, you saw his testimony. He was the older gentleman who was a corporate representative of Celanese. He said he knew in 1949. And he started at Celanese in 1966. So the second he walks on the premises, in 1966, he gives them knowledge. He was a corporate industrial hygienist.

August 1966, two more articles in the Industrial Hygiene Foundation digest.

September 1966, there's seven -- I'm not going to put

seven flags, but there's seven.

May I use this?

Thank you.

October 1966, six more articles. I'll put half the number of flags, because I think you get the point.

February 1967, four more articles received and read by Celanese about asbestos hazards.

And remember what some of these are. Some of these are saying it's not just people who are making asbestos products.

Now, in the 1960s, we're getting into people who are exposed environmentally. They may live a few miles away from the factory, or they're the spouse of a worker. So we're not just talking about people working with it directly.

August 1967, two more.

December 1967, two more.

March 1969, six more. I'll just put four.

The toxicology report from Union Carbide to Celanese in 1970. This is the one that I showed Mr. Buck this morning. This one's important. Because this one is the one where Union Carbide, another big company, tells Celanese the threshold limit values, they may not be safe. And, of course, they heard that in 1964, too. The values that the companies are setting may not be safe. So that's

1970. That's one year before Mr. Seay arrived.

And 1965, the National Safety Council.

So there were dozens of red flags for Celanese. This is the evidence you heard in this case. And I wanted you to be able to visualize it. Because it wasn't a company that just maybe heard something. This was a company that received and read this information. And they were active participants.

As much as Mr. Bowyer yesterday wanted to say, We just made polyester, they sure knew a lot about asbestos hazards. And even more importantly, starting right when Mr. Seay started, they started making their own asbestos products. And they made it into the 1980s. They weren't just a polyester manufacturer. They were an asbestos product manufacturer, too. All the more reason why all of this knowledge was relevant to them.

They had superior knowledge to Daniel. They had superior knowledge to everybody.

Going back to the 1940s -- I showed you this document. Celanese made the call that they would use asbestos gaskets because Teflon was too expensive. And we, also, noted they were still using asbestos gaskets in the 1980s.

I showed you this document yesterday with Mr. Bowyer. In the 1980s -- this is 1988 -- they're still using

asbestos gaskets. But they say in '88, we should find substitutes. We should use preformed gaskets. And they should not be modified. They shouldn't be cut by our personnel because of asbestos exposure; right?

And what I asked Mr. Bowyer -- I asked him one thing, Could all of these have been done in the '70s? Absolutely. Absolutely. The policies they put in in the 1980s could have been put in 17 years earlier when Mr. Seay was there, but they weren't, despite all of their knowledge.

1962, again, this was a practical piece of advice contained in their own manual. Let's involve the contractors in the safety meetings. And Mr. Bowyer said that wasn't, actually, the whole corporate policy. It was sort of hit or miss. If you wanted to, you could. Why wasn't it? Why wasn't it?

A corporate memo from 1980. At the very end, It's Celanese's policy to attempt to assure protection of health and safety not only of its employees, but, also, of the employees of operations or maintenance contractors who routinely perform services at Celanese facilities.

I agree with that. That is a good policy. It should have been the policy and the practice starting in the 1970s. Again, I'm not saying if we learned something in the year 2015, apply it to something back then. I'm

saying judge them based on what they knew back then, and the things that were possible back then. And every bit of this was possible to invest in the contractor's employees, as well as your own, and to involve them in the safety meetings.

It said, This policy shall be implemented by the operating companies through careful selection of contractors, dissemination of health and safety information to contractors, review of the contractors's health and safety program, which both Mr. Buck and Mr. Bowyer agreed they had to do, to make sure that the contractor was protecting its employees. Celanese took on the responsibility contractually to review their safety program.

In fact, remember, Mr. Bowyer said, We did this in 1991. And I'm sorry. I shrunk that. But the policy in '91 was, if you're a contractor, you don't touch the asbestos. You do not touch it. Celanese will have someone come in and remove it professionally.

They should have done that in the 1970s, especially when, in '73, they made the decision to go asbestos-free in insulation; right? They made the decision to go asbestos-free in insulation because it was unsafe. But they didn't follow up by saying, Let's remove the other stuff. Let's tag it, and all of that for those workers.

No one told Mr. Seay anything, whether it be Daniel or Celanese.

Now, I asked him, I said, Why couldn't you have done this in the '70s? And this guy is a certified industrial hygienist. Theoretically, those people are supposed to be protecting workers.

And I said, Why didn't you go and take a pinch of the insulation with tweezers, or whatever, or even when the guys are working on it, take a pinch, and then you would be able -- over a couple of years to be able to, basically, flag the whole plant anytime they worked on it. And they would know asbestos versus nonasbestos.

And he said, No. You don't take samples, because that causes exposure. So I assume you would never sample ever?

And I said, How did you do it?

He said, You do it with a drill.

You drill into the insulation? I don't know what to think about that. We don't sample. We don't do bulk samples, because you have to take a core sample.

This isn't ice in the Arctic. You take a sample of the asbestos in the material, and you see whether it contains asbestos.

He said they never conducted asbestos research, which is interesting because, of course, we know that they had

an asbestos product. And, nevertheless, even though they didn't actively conduct the research, they had all of this. They had all of this.

And then they said asbestos was a nuisance dust before OSHA. Despite all of this, they say with a straight face asbestos was a nuisance dust. And that's why, from the very beginning, the first witnesses in this case, I asked every one of them, Was asbestos a nuisance dust before OSHA? The answer is no. The only company that says it was is Celanese. And why? Why?

Again, because if they admitted that it was a hazard, they would admit to their knowledge. Why admit to their knowledge if they can, perhaps, avoid liability? Did any of these documents say asbestos was a nuisance dust that they had access to? No, they didn't. They said quite the opposite. It caused asbestosis and cancer.

That attitude towards asbestos, what does it tell us? It tells us they had a contract with Daniel. They said, You're responsible for your -- your employees. We'll audit you. And they never did it. They never did it. Neither side did it. They had their contracts to cover themselves, and that's it. They didn't do it.

Both the corporate reps came in here, and they both said the same thing. They said, oh, yes, we had all these procedures, and everything. Well, then why does Dennis

Seay have mesothelioma then? Why is he dead?

I think it's because of this attitude. Remember this with Mr. Bowyer? Interpretive information will be given to the plant manager before it's disseminated to employees. Monitoring, you interpret it for the plant manager before you give it to the employees.

And then Mr. Bowyer had the same policy, even worse. It is not considered to be a requirement to communicate the interpretation of monitoring results. This is the attitude that they had throughout the whole time, not to be open, but to conceal. If you tell the worker -- if you tell Mr. Seay, you tell a maintenance worker, you say, Your asbestos exposure is four fibers per cc. Congratulations. Here's your piece of paper that says that. What is he supposed to think?

And then this one from 1963. I asked this question, did Celanese have a culture of concern or concealment? I think we know, because the policy was set by the president of the company in 1963. And this is Plaintiff's Exhibit No. 821. It's in evidence. You'll have it to look at, if you want to look at it.

But remember this from yesterday? Written reports could be a serious legal hazard. Hazardous nature could be used against the corporation. Written communications, minimum, absolutely necessary. The latter will be

communicated orally. Communications concerning hazards, no other copy will be made. We'll have one copy. And we'll keep it in the legal department orally to advise.

I'm reading this and I'm thinking, who talks like that? Who goes outside to make a conversation so no one hears it? The Sopranos do. That's how gangsters communicate. They don't talk on the phone. They don't write anything down. They talk face to face.

That's exactly what he's saying they need to do for hazard communication. You make one copy. You make one copy and you keep it in the legal department. And that's signed by the president of the company. That's why there was this attitude all through the 1970s and the 1980s about communications of hazards. Cover yourself in a contract, but don't execute it. We're covered in a contract.

Mr. Bowyer said this. He agreed with this, Owners and contractors need to provide safe workplaces, and to protect the safety and health of their workforces, and the general public. When they work together to improve the safety and health of contractors, both benefit. That should be the way it is.

And everybody that testified in this case said this was a shared responsibility between the contractor and the premises owner. No one disputes that. If one falls, they

both do. And I think in this case the evidence is they both fell. And neither was paying attention to the other.

And legally, Celanese and John Crane do not avoid liability just because Daniels is negligent. I could get up here and say, hey, look, look, I showed you a big stack of documents this morning. I had a big stack with Mr. Buck -- right -- of all of Daniels safety policies having to do with their employees.

And I could say, look at this, ladies and gentlemen of the jury. Look at all these great policies they had. They're not negligent. I could try to argue that to you. But I'm not going to argue that to you. I don't think they enforced them. I don't think Daniel did their job. If I was dishonest, I would say they did their job and just these guys are responsible.

It's equally as intellectually dishonest to say Daniels bears the whole responsibility. Just as they were not doing the right thing with these workers, you can't say they bear the whole responsibility.

And I thought this was interesting this morning. Mr. Buck said, Daniels thought the PELs -- the OSHA PELs were protective of the workers, but Celanese knew they weren't. Celanese had superior information. Celanese knew those levels weren't going to protect all the workers.

This is what Mr. Seay said -- he was asked, Had you -- Had you have [sic] been told or informed that working with asbestos components can cause cancer, like what you have now, what would you have done?

Answer: I would have been told -- I -- had I been told, I would have quit immediately. And I wouldn't have -- I wouldn't have took a chance for no amount of money than what we get paid. I would have never took a chance of catching something like this for that little bit of money. I never would have done it.

They both say the same thing, Celanese and Daniels, we cared about safety. My question is how much? Did you exercise reasonable care? The evidence is they didn't. Neither of them did.

And so when you're asked in this case was Celanese negligent? The answer is, yes. Not just by a preponderance of the evidence, the civil standard. Beyond a reasonable doubt, they were negligent. There's not one iota of evidence in this case -- remember, their whole case, Celanese, their whole case was blame Daniel, their whole case. Not we did something right, but blame Daniel.

Remember, yesterday Mr. -- Mr. Bowyer was there and Mr. Collier was at the podium. And he said, Who had responsibility for this? Whose fault is this? Whose fault is -- Daniel, Daniel, Daniel, Daniel, Daniel,

Daniel, Daniel. Nothing about what they did, what their obligations were.

No one told Mr. Seay. If no one told him, then neither of them were doing their jobs. Neither Daniel nor Celanese were doing their jobs. Because Daniel had an obligation to educate him and warn him. And Celanese, per contract, had an obligation to audit the safety program of Daniels. And they clearly never did it.

Lastly, I'll talk about Daniel. And then I'll sit down. I'll pick up my flags.

This is a case -- I told you, in opening statement, it's a case we're here for -- we're asking for money damages. We're asking for a lot of money. I said 10 to 15 million in opening statement. And I said we would justify that.

Now, you're the judges of the facts. If you decide to give no money, $1, $100, a million, 10 million, whatever, that's up to you. I can only suggest to you what I think is fair, based on the scenario in this case.

And so I want to show you this picture. This is my favorite picture of Dennis Seay. Because he is dying of cancer, on oxygen, and he has the dignity to keep himself shaved. I just -- I just love that picture. And I want you to think about that. I want you to think about what this man went through at the end of his life. All the

surgeries. How his body wasted away. He died from a combination of suffocation, blood constriction, and wasting.

So when I throw out a serious number like 10 to 15 million, how do I justify that? If you think about -- if someone -- let's say someone is a victim of someone's negligence, they lose an arm -- okay -- for the rest of their life. I don't think anybody would balk and say a million dollars is, at least, fair compensation if you lose an arm, or if you lose both your legs. If you lose both your legs, $5 million is not out of this world. That's -- you might say that's fair if someone is harmed by someone's negligence.

So what if it you take a life? What if you not only take a life but you take it like this? That's where I'm coming from with that number. That's a serious number. But that's where I'm coming from. That's why I'm suggesting that the evidence supports 10 to 15 million.

So you're going to have to look at -- you're going to have blanks that look like this. A blank for actual damages for survival. Survival is -- it's the legal term for his pain and suffering, what he went through. That's what that means. And the wrongful death action are the damages of the family of what their loss is.

So when you see that on the form, survival is pain

and suffering, everything Mr. Seay went through. And the second one is the damages for the rest of the family, for -- for Linda Seay and the children.

And so I've told you -- I said, look, if someone loses an arm or a leg that's -- that -- millions of dollars are justified for that. Life is different. But how much life? Let's look at what happened at the end of it.

I showed you the pictures, but what happened to this man? He had a tube in his lung 11 times. His lungs collapsed 10 times. They had to break his ribs to get in there to do this. He had three surgeries. He was in pain 24 hours. He said he had 50-plus people coming over always trying to fill him up with food. And he had to throw it all up. Chemotherapy. And he died in hospice.

I want to play just a little clip. I think it's next. I want to play just a little clip of what Mr. Seay said in his own words. It's about 30 seconds to 40 seconds.

(WHEREUPON, a short clip from a video was played in open court.)

MR. PANATIER: That guy is not a whiner. So I want you to think about when a man like that gets to that point, what's he going through?

He should have lived another 13 years. Okay. He was

70. He lived a good life. He was in good shape. He had some health issues. They were under control. But the average life expectancy is another 13 years.

So we're not just talking about how he suffered and how the family suffered in his absence, but the fact that it's 13 years. Those little grandkids will be full grown and off to college. He should have been able to see that. But he wasn't able to, because he got this disease that was preventable.

So I'd ask that you use your judgment on damages and divide it up how you see fit. But when you think about the numbers in this case, think about this, this is the most serious type of case you're going to have.

That's -- that's who the guy was, and he should have been for another decade and three years. He was a good man who did nothing wrong.

I'll talk to you again here at the end after these guys talk.

Thank you for your attention.

And I know that whatever you decide, you're taking it very seriously.

So thank you.

THE COURT: All right. Mr. --

MR. TIVIN: I'm going to go first, Your Honor.

THE COURT: You're going to go first, Mr. Tivin.

MR. TIVIN: Do you want to get --

MR. PANATIER: Your Honor, do you want me to -- I can clear up some of these things.

(Pause.)

THE COURT: Mr. Tivin, go ahead, sir.

MR. TIVIN: May it please the Court.

Counsel.

As you know, and you've heard me talk for the last week and a half, my name is Mark Tivin. And I represent John Crane.

This has been a long case. And you guys have an important job. Mr. Panatier just gave a very moving -- a very moving closing statement. And you've gotten a lot of information here, but you've got a lot of conflicting testimony. People have said diametrically opposite things.

So what I'm going to do, first, is I'm going to try to recap what I think the testimony has shown, and what I believe the testimony said. You are, of course, the judges of the facts. Nothing that Mr. Panatier says, or what I say, or what any of the other lawyers say in here is evidence. It's what you recall the facts to be. If I say something that I believe the testimony showed and you're like, that isn't what happened, remember, you are the judges of the facts.

What have you heard the last week and a half? You heard Mr. Seay testify. And he testified two different ways. One way was very easy to pay attention, because you're watching on a video. The other way was much more difficult, because it was me reading testimony for several hours. That's not the most exciting way to hear evidence.

However, what the judge is going to tell you is that the evidence that was read carries the exact same weight as the evidence that was videotaped. They're both -- both of those things were his words under oath.

And what did he say? He testified a lot about insulation. Now, most of the insulation testimony that you heard wasn't on the video where he was being asked questions by Mr. Panatier and those counsel. A lot of it was on the other transcript that was read.

And what did he say? He worked around insulators removing, mixing, and applying thermal insulation. During the shutdowns, remember, he said he had to go into the vessels and chip it off with a screwdriver or a hammer. He cut insulation with a hacksaw.

But importantly, and I think this is -- I don't know what button it is -- he testified that every time he had to remove a gasket, they had to get the mud and cement off of the flange so he could access the bolts. And he would chip off the mud and the cement with a screwdriver. And

then he would take a wire brush to clean it off so he could access the bolts to open up the flange to change the gasket.

You heard when Mr. Panatier says he used insulation occasionally, what Mr. Seay says is he had to go through it every single day. If you want to say that he used gaskets daily, then he used insulation daily, because every single time.

Now, Mr. Seay, also, talked about using gaskets. And although I am the only manufacturer of gaskets sitting at the table, he testified that he used other manufacturers, and that they used them all equally. This isn't every gasket he ever did was John Crane. That's not the case.

Mr. Thompson said -- Mr. Seay said sometimes they were precut. Do you remember that? So if they were precut gaskets, all the experts agreed that when you install a precut gasket, there's no exposure to anything because it's already cut. You put it in there. You're done.

Mr. Seay didn't testify about any style numbers of John Crane. That wasn't him. And he, also, never testified, specifically, that this -- I knew that I removed a John Crane gasket. I knew I installed a gasket on this flange one time. And I knew I was the guy who came back and worked on it next.

They said they had no idea whose gasket it was when they removed it. Now, why is that important? And we're going to get to why that's important.

And this is briefly, you know, just a recap of where he said he was exposed during those years.

Now, remember, there was, also, a work history sheet. And we didn't make a big deal of it. This was signed by Mr. Seay saying that this was true and accurate. And you can see here that he said he was exposed to there five different gasket manufacturers that he worked with and around.

He, also, worked with -- see, it says, worked with -- and there are two X's. For pipe covering and block insulation, he worked with Johns Manville and with PABCO.

And he, also, worked on boilers, and everything else. The only other -- I'll call them fact witnesses, because they really testified about the facts surrounding what he did -- was Mr. Thompson. And one of the first things Mr. Thompson came and said when he sat down, he goes, I'm here to support Mr. Seay.

And that's what you'd expect. They're friends. He came here to do what he could to help Mr. Seay in his case. He identified Anchor. And he said, I remember the number. Well, the way it, actually, was was the attorney -- the plaintiff's attorney asked him the

question. He goes, Do you remember 2112?

And he goes, Yeah, I remember 2112.

And then later in the testimony, he goes, Yeah, it was 2112, 2012, something like that. I worked on them with condensers. He, also, said, I remember John Crane 750. Well, 750 wasn't a John Crane product. That was Garlock.

This is Mr. Thompson's testimony, We used copper gaskets, aluminum gaskets, asbestos gaskets, Flexitallic. There were a bunch of different manufacturers. We used precut gaskets 90 percent of the time. And we had no idea who it was when we were removing it. And importantly, he said only 25 percent of the time do you -- did they need to use tools.

This was someone who was coming to support Mr. Seay in his case and help him out. And he said he only used tools 25 percent of the time. Why is that important? And we're going to get to why it's important. Because when you heard the testimony of the only industrial hygienist who, actually, tested any products, and even Dr. Holstein pointed to, if you didn't need to use a tool, if the gasket just came out, there wasn't any exposure.

You heard from the corporate representative of Hoechst Celanese, Mr. Bowyer, yesterday. Remember, they showed him the specifications that Hoechst Celanese was

using. That added Belmont as a recommended gasket manufacturer. You didn't hear that from any of the -- you didn't hear that from Mr. Seay or Mr. Thompson, but Belmont.

On those specifications -- and this, we believe, is very important, because it ties right in to what Mr. Springs told you. The only John Crane gasket that was on that sheet that was specified was 888. Now, that contained chrysotile asbestos. And we -- like I told you in the opening, I'm not here to tell you that he was never -- that John Crane wasn't there.

But it's 888. 888 is chrysotile. Nowhere on the specifications for Celanese that the Plaintiff introduced to you here did it say 2112. Nowhere on the specifications that -- for Celanese did they show you that there was any crocidolite anything. Nowhere in the testimony from any of the witnesses did they ever say that they're working on acid lines. And that's what you used crocidolite gaskets for, high-acid or base lines with caustic materials.

It didn't exist -- it wasn't at this plant. The only thing that was specified was chrysotile. And we'll -- I'll get back to that in a moment.

Now, after that, we heard experts. And the first thing that -- I think it's in the attorney handbook that,

when you do a trial, that as soon as an expert gets on the stand, the very first thing you go is, You make a lot of money. How much money do you make? You want to make sure that you get it out. Because you know that your guys get paid. And you know that they made a lot of money. Dr. Crapo made a lot of money, you know. There's no doubt he makes -- he's made a lot.

And then Dr. Holstein -- Dr. Holstein -- and I'm just going to do the math here. He said he was making 700 bucks an hour. Remember that?

And I asked him, And you work about 20 hours a week? which is about half -- 20 hours a week, it's about half a week, he does this. And all his income is from testifying.

So the average work life is about -- work year, it's 2,000 hours. So I took it -- so he works a thousand hours a year doing this. He makes $700,000 a year. And he's been making that -- and he's being doing this for -- I don't know -- 20 years. He's an expert. They get paid. They make money.

I'm not saying because he makes money that his opinions aren't any good. I don't think his opinions are any good for a bunch of other reasons, but not because he gets paid.

Dr. Kradin's made $2 million or $3 million.

Dr. Brody has made a couple million bucks. Dr. Roggli makes $100,000 a year. And he's been doing this for however many years. Dr. Crapo has made $8 million. Dr. Toca has made -- I don't know -- a lot.

But the important thing is not that these people make money, because they all do. The important thing is, when you listen to the question to these people, how they answer them. What are they saying? And what is the basis of the opinion?

And you heard about one industrial hygienist. And then you heard from John Crane's corporate representatives. And because Mr. Buck went on this morning, I really couldn't go around and changes things a lot.

What did Dr. Brody say? Dr. Brody has written 200 articles. And all those articles deal with the same thing, how does asbestos cause mesothelioma? He studies animals. And it's how does it cause it, which is admirable.

Here's what Dr. Brody doesn't study, how much asbestos does it cause to make -- does it take to cause disease? I don't know if you recall me asking him, I go, That's outside of what your studies are? It's not important to him how much asbestos a product does or how -- what the dose is. He's more interested in the DNA

and the genes in doing that. He has no idea what the dose is.

And that's not anything that his research is focused on, or has ever focused on. And the one thing he did say is that you could have billions of fibers of asbestos in your lungs, and that's not going to do anything. That's not going to cause you any harm. It's not going to show you are at an increased risk of any harm.

Now, Dr. Holstein -- and I want to apologize for the cross of Dr. Holstein. Because there's no way on this -- that I should ever be talking for three hours in a row at any point in time, especially in a courtroom.

But Dr. Holstein, he's the jack-of-all-trades. He's the guy that hasn't practiced medicine in -- he doesn't see any patients. He doesn't -- what he does is he testifies for plaintiffs in asbestos medicine.

He came in here. And he's a doctor, but he's an industrial hygienist, too. And that was the whole end of the cross-examination. Remember, he was the industrial hygienist. And he could tell you how long the gaskets were on. And I'm like, Please, just admit that there's nothing in the record that said how long these gaskets were on. And he wouldn't do it because he's such an advocate.

He's never conducted any tests on products -- on any

products to see if they release. He's never written anything that talks about causation. He was the one who said each and every exposure is a substantial factor. And I'm like, Is that anywhere in the literature?

No.

He came and testified about the fiber release from different products. And he's the only expert out of any of them that said gaskets and insulation are the same. No one else said it. Brody didn't say it. Kradin didn't say it. Mr. Seay didn't say it. He said it was dustier. Mr. Thompson didn't say it. Dr. Toca didn't say it. Dr. Crapo didn't say it. Dr. -- only Dr. Holstein.

He's the guy that was still testifying when he didn't even have a license.

But even he acknowledged that exposure to insulation could be hundreds of fibers per cc. And I'm going to get into it a little bit later as to why that's important.

But here's something else that he was very specific -- and you're going to hear the Court instruct you on proximate cause. I believe and the judge is -- what the judge says about the law is correct. But without which the exposure to John Crane products, the disease would not have occurred.

Dr. Holstein, specifically, could not say that, if John Crane wasn't at Hoechst Celanese that he wouldn't

have gotten mesothelioma. He couldn't say it.

Dr. Kradin -- remember, I talked to Dr. Kradin. And I said -- and we're going to talk about background in a little bit. But I talked to Dr. Kradin. I'm like, Background levels never cause disease? And I kept harping on that. And it's really confusing when you hear threshold, background, no safe level, no threshold, nothing's been proven.

But, first of all, Dr. Kradin admitted that there are specific studies that link thermal insulation exposure such as cement, mud, block, that Mr. Seay testified, to mesothelioma. There's nothing that links gaskets to mesothelioma.

And you heard the doctors testify that you need epidemiology. And that's how you get causation between things and disease. And they did that with insulation. It's never been done with gaskets.

He also, specifically, said -- and these are the two doctors that were called. You can't take -- you can't say he wouldn't have gotten the disease if he wasn't -- if John Crane wasn't there. He couldn't say it. And it's the Plaintiffs burden that they have to say it.

Now, we, also, brought Dr. Toca. He's a past president of the American Industrial Hygiene Association, which is the largest association of industrial hygienists.

You remember Dr. Holstein thought it was the ACGIH. He thought that was the big one. Well, he was wrong.

Dr. Toca, he's had lifetime awards for his contributions to industrial hygiene. I say he was the only certified industrial hygiene expert. I know Mr. Bowyer was a certified industrial hygiene -- hygienist, but he was here as a corporate rep. He wasn't -- Dr. Toca was the only one who tested products. He had worked at Hoechst Celanese.

And what did he tell you? He told you about the no-effect level. He told you about how everything has a threshold.

And what else did he tell you? That the OSHA level of .1 fibers per cc does not create an increased risk of disease. And you're going to hear a little bit more about Dr. Crapo, because you hear a lot of policy statements about no safe threshold. But Dr. Crapo came in and described why that no safe threshold really is a policy statement and not grounded in science.

He tested the products. His -- the numbers that he got for his tests are consistent with the literature, except for Dr. Longo. And I asked about time-weighted averages. And that's important. Because remember how you can only compare numbers if they're time-weighted. They all have the same denominator. If they don't have the

same denominator, you can't -- you can't put them together.

The numbers cited by Dr. Holstein, the 31 fibers per cc that he put up as his big number for gasket, I don't know if you recall that. Well, they just showed you the chart. And I made sure I wrote it down.

In the chart that they showed you that had the 31, what they didn't mention was on the last column of the chart -- and I wish I had it up to tell you -- the time-weighted average on that 31 number is actually 2 -- 2.3 fibers per cc is the time-weighted average for Dr. Longo's 31 number.

The insulation numbers that Dr. Toca testified that he said were time-weighted averages so you could compare them, three dozen to into the hundreds. And why is that important? I'm going to get to why it's -- that's really important.

George Springs, he was the corporate representative. He was familiar with all the different types of products. And what did he say? Number 1, although the guy mentioned 2112, he had no -- he didn't say anything about Mr. Seay didn't remove the gaskets in a way that he -- anything in his testimony was odd, or anything like that. What he did say is this 2112 reference, there's no reason that there would ever be 2112 there. There are no acid lines. And

that was backed up by Hoechst Celanese's own gasket specifications, it turns out.

But he, also, said that 750 that was identified as a John Crane style was, actually, Garlock. And from our sales records, we don't have any sales from '77 to '08.

Now, we can't say what happened before 1977. And I'm not here to try to say it, because he testified, obviously, something got there somewhere. They were in the specifications. I can't say how much they bought or what they didn't buy. But what I can tell you is that we never -- 2112 wasn't there.

Dr. Crapo, he works at what's been described as the best lung hospital in the country, National Jewish out in Denver. And he, actually, did studies on chrysotile fibers. And he's the only doctor that showed you what the actual dose response curve looks like for asbestos.

And he showed you why the regulatory model was wrong. Because ambient air doesn't contribute and doesn't cause it. If you're going to say that a level doesn't cause something, you can't -- on one side of your mouth. On the other side of your mouth, you can't say the risk goes all the way to zero and there's no known safe -- there's no known safe level, except for this safe level. That's what they're saying. This level is safe, but there's no known safe level.

Dr. Roggli, he is the preeminent pathologist regarding asbestos-related diseases in this country. He's on the U.S. Canadian mesothelioma panel. He's respected enough that he's been retained by them over -- for 300 times. What did he say? The exposure described by Mr. Seay would not have been a factor in his disease. And the lowest epidemiologic study that, actually, showed causation and mesothelioma is five fiber years.

And then I added this one real fast, so that's why it doesn't look as nice as the other ones. Mr. Buck, he was there [sic] this morning. Remember, I got up there and I asked him, I'm like, Did anything that Mr. Seay did -- was it above the PEL?

And he's like, Not for the kind of work he was doing.

The kind of work he was doing regarding -- remember, the kind of work he was doing on the valves and maintenance work is minimal exposure, not like the exposure you would get from insulation.

Now, Mr. Panatier had a really nice PowerPoint with the ball moving all over the place. And I'll give him credit for that. But one of the important things is keep your eye on the ball as to why this case is important for John Crane.

Mr. Seay was a nice person. No one -- no one is saying he wasn't. No one is saying that he had a very bad

course of treatment. He had a very bad course of his disease, or that his family doesn't care for him, or he didn't care for his family. We're not here saying that.

There were other companies products. There's no question that he was exposed to many products. I'm only here to talk about John Crane, Inc.'s gaskets. Because that's the only thing that he said he used.

Removal of gaskets. Of course, he removed gaskets. And no one questions that some of those used a scraper, a wire brush, and a power wire brush. But keep your eye on the ball with regards -- and this applies only to John Crane. What evidence is there that he ever -- 75 percent of the gaskets fell out. No one knows -- no one could identify any of them.

You're going to hear that you're allowed reasonable inferences, but you're not allowed to speculate. That is to be -- no part of your deliberations is speculation and guessing about which ones were John Crane and which ones weren't. And it's based on the evidence.

All right. I pressed the wrong button here.

State of the art. There was a big thing about state of the art. There was a big pile of papers. And then there was a -- he talked about it. Here's -- I'm going to go backwards about state of the art. Because here's the information that I brought out. There's no question that

there are a bunch of articles that say mining, milling, and insulation work are dangerous and can cause disease, none of them about gaskets.

You heard about how it was so well known in the literature that everyone should have known by 1965. Remember, I showed Dr. Holstein the article in 1965 where they sprinkled the asbestos on the young girl's lungs. I didn't show him that article to prove that that was a good idea. Because I think we can all agree that it wasn't. But if the hazards of asbestos were so well known throughout the medical community, why is the preeminent medical journal saying this is something we should look at?

In 1978, it's either a year or two before Mr. Seay finished working at Hoechst Celanese. Dr. Selikoff, the preeminent writer about the hazards of asbestos -- Dr. Holstein mentioned that he wrote articles with Dr. Selikoff, and that he was the number one guy. And he brought it to the attention.

In 1978, in his book that I showed the witnesses, it said gaskets weren't a hazard. Prior to 1980, there was a big thing about showing the MSD sheets and the warning label about how John Crane knew it was breaking the law. It wasn't a secret that John Crane was selling asbestos-containing gaskets. They didn't do it -- it's

not like they made them and sold them out of the trunk of their car and -- they had a factory in Morton Grove where they manufactured packing and they sold gaskets.

And OSHA came to their plant. And OSHA talked to them. And not once did OSHA ever say you're doing anything wrong when it comes to asbestos. You'd think if OSHA thought that they should have been labeling their products, when they came out to the plant that they would've said, hey, that's a violation. Maybe you ought to label them. They didn't. They were manufacturing packing.

They monitored in their plant. There was never anything that was a violation of OSHA.

In 1994 -- I showed Dr. Holstein the article in 1994 where the EPA wrote, Prior to 1970, asbestos was considered nontoxic. And he's like, Well, that's wrong.

What was the state of the art? What did everyone know? What should they have known? We -- there's no safe threshold. Yet, the EPA still allows a level of asbestos in schools for children to go in. And do you remember what Dr. Holstein's response to that was? Because they'd have to tear down every school in the country and build a new one. That -- I submit to you that isn't a reasonable response. A more reasonable response is it's -- that level is okay. It doesn't do anything.

Linear dose response. And this is where we get to the background levels. And you've heard a lot of testimony about background levels, about .0004, .0001. Throughout history, background levels have never been shown to cause disease.

So what does that tell you? If you have background levels up to .02 like they were in San Francisco or Dr. Kradin even said .05 -- but I'll stick with .02. That's fine. If .02 has never caused or contributed to disease, of course .002 isn't going to do it. Of course .0001 isn't going to do it. Because you have to take the highest -- I mean, if you're trying to figure out what the threshold is, you take the highest one you know doesn't do anything. And that's the one you look at.

And what does that leave you once you take away these things where you've got to keep your eye on the ball? Any exposure Mr. Seay had to a John Crane product was not a proximate cause.

The linear dose response, it isn't based on science. And it just says -- and like I said before, and I'll go through it again. There's no safe level, except for this level that's safe. And when you have that sort of contradiction, you've got to get to what is the real dose response? And that's what Dr. Crapo talked about.

Here's why John Crane was not a proximate cause,

product type, the dose, the fiber type, and a comparison to what he worked with.

Product type. It's a gasket. This is 333. This is it. This is what a gasket looks like. There's no -- this isn't something you can crumble up in your hand. This isn't something that's falling apart. It's hard. This one isn't a precut gasket. But that's what it is. I mean, it's hard. There's nothing -- that's why everyone says there's no -- with a regular gasket that's new, there's no hazard. Everyone agrees that there's no hazard. This doesn't release fibers. Everyone has said it.

Insulation. And, plus, you've got to remember, gaskets are used inside the equipment. It's inside -- it's inside the valve. Although all of the testimony -- and I'm not going to say all of it, because you should never say all. You should never say never.

But the testimony in this case is the bonnet gaskets, the ones inside -- that's when we read all that testimony. And they said that was all of the valve repair kits. I don't know if you remember that. They kept talking about they got -- for the valve repair kits, they got the packing that went inside the pump or the valve. And they got the bonnet gasket.

So that wasn't John Crane. I don't know if you

remember, in Mr. Panatier's opening, he had a picture of a valve. And he had those red lines that said where the gaskets go. The top one was a red line and was a bonnet gasket. All the testimony was that was supplied by the manufacturer.

Thermal insulation is outside. It's subject -- it's subjected to whatever atmosphere is outside of the plant. It's friable. It's loose. You can crumble it with your hand. And it's associated with a very high fiber release, extremely high. Gaskets are zero, or next to zero.

And that brings you to the dose from John Crane. There are multiple manufacturers. 90 percent of them were precut. And the highest dose from Dr. Toca was .02 fibers per cc. Thermal insulation, hundreds of fibers per cc. And it's not just the thermal insulation when he was doing -- scraping off -- so every time he wanted to use a gasket, he had to go through thermal insulation.

But that isn't the only time he was exposed to thermal insulation. Because he talked about sawing with a hacksaw, chipping it off vessels. And then, also, remember, he testified because of the grates in the floor, the insulation, the dust would come up. It would come up and fall down. It was all over the place in there.

Fiber type. The gaskets that were specified in the documents that were used by the Plaintiff were chrysotile.

There's no evidence of any lines at that plant that would use crocidolite. It simply isn't there.

The asbestos-containing thermal insulation had amphiboles in it. And that has been, specifically, linked to the causation of mesothelioma.

Every now and then, he would be -- there would be a guy in a room, remember, and they would cut the gaskets for everyone. So I'll say occasionally, he may have cut -- out of the 10 percent of the gaskets that they weren't precut, maybe he cut some John Crane. But all the experts agree that cutting a gasket with a knife on a table, cutting -- is hundreds -- hundredths, .01 fibers per cc or less. And there's no appreciable exposure.

They only used tools 25 percent of the time, and not all the gaskets contained asbestos. That's what I showed you with -- when I talked about -- what are all the different types of gaskets. There's copper, silver, whatever. They weren't all asbestos.

But thermal insulation -- every single time he was working with a gasket, there was thermal insulation. In addition to him, there were other people at the plant doing the same thing with the thermal insulation, cutting it, installing it. So what does that leave you with?

Now, I overestimated the dose. Because I can only get it down to one percent in a graph.

Of the total dose -- all the insulation numbers are hundreds of times more than the gasket numbers. And that's for all the gaskets. That isn't for John Crane. Here are the ones that were identified. I didn't even include Belmont in there. So I just have them under others, because everyone says there were others. So, now, you're at 1/100 of a percent of the dose that Mr. Seay had.

75 percent of the time, the gaskets fell off. And everyone says there's no exposure. So that leaves you 25 percent of the time where there was exposure.

The total exposure to John Crane -- to Mr. Seay of his lifetime asbestos exposure was less than .035 percent of what he was exposed to there. That is not a proximate cause. That is not a substantial amount. That isn't a substantial factor.

The judge is going to tell you that you will -- you will have to find that but for the exposure to John Crane, he would not have gotten the disease.

If you took out .03 percent of his exposure, it wouldn't have made a difference. He had such a massive exposure to insulation there. Any exposure he had to John Crane was insignificant.

And I'm sure you're going to -- Mr. Panatier is going to come after me. And he's going to say you heard

Dr. Kradin that says they're all substantial, every exposure is -- every occupational exposure is substantial, because it's so many times above background. And you can't discount all occupational exposures.

You are the judges of the facts. It's up to you to decide what's substantial. What is substantial in the universe of Mr. Seay's dose of asbestos? That is what you have to find. But for the exposure to John Crane, he wouldn't have gotten the disease. If you had taken out .03 percent, it -- that's nothing.

And that's overestimating. That's overestimating the dose. Because if you use the number of .02 and you use the number of 50 fibers per cc, that's 30 to a hundred. Let's take 50. That's a thousand times as much every single time. And that doesn't even include all the other insulation jobs he did.

So, at the end, you're going to be asked to render a verdict. Obviously, that's why you're here. And I really appreciate you guys taking the time to listen to me.

It's not enough. You're going to hear instructions about concurrent factors. There can be more than one factor. There can be more than one cause. Every cause has to be a proximate cause. It's not enough to be a factor. That isn't enough. That isn't their burden.

What happened here? Tragically, Mr. Seay developed

mesothelioma because he was exposed to insulation and a lot -- a lot of it.

Now, this is the difficult portion of the closing. Because I just told you that you should check no for John Crane. And if you check no for John Crane, you have no occasion to consider damages. There's no reason. There is no reason. So why would I -- why would I even talk about damages? Because it's an important part of the case. And it's an important part of the testimony that you've heard.

The testimony that you've heard, it's been moving. There's -- there's no doubt it's been moving testimony. But just as I'm asking you to be impartial and view the scientific evidence without sympathy or bias, when it comes to damages, you're supposed to do the same thing.

And your -- any number that you come to on damages has to be reasonable and decided solely on the evidence, and not based on sympathy. And I'm sure that everyone in the courthouse would agree that that has no place in your -- that has no place in your deliberations.

If you feel, you know, sympathy or -- if you don't like me because you don't like the way I ask questions, you know, I apologize. I'm sorry if some of my objections might have gotten on someone's nerves, or made it look like we were here longer than we had to be. Just as if

you don't like me, don't hold that against John Crane. If you really like the Seay family, which I suggest to you, you have no reason not to, you can't let that influence your award either.

However, at the end of the day, when you're given the verdict form, it's going to say, Do you find that John Crane's negligence was a proximate cause of Mr. Seay's mesothelioma? Because they can't show the but-for or that it was substantial. And you're the judge to what's substantial.

Remember -- I would just say this. Whenever anyone says everything is substantial, then nothing is. And when you hear the Plaintiffs physicians, Dr. Holstein and Dr. Kradin, and they're like, Everything is always substantial. There's no such thing as factor. It's always a substantial factor. If everything's substantial, nothing is. Because the fact in this case is that he was exposed to probably 50,000 times more asbestos from insulation than he was to any John Crane product.

And because of that, we don't feel -- feel that you should return a verdict in favor of John Crane.

Thank you much for your time.

And, now, the other lawyers are going to talk. And when -- you know, I don't get to say anything else. And people are going to come -- I'm -- when other people

ask -- you know, the questions I would be asking is why is one -- 3/10 of a percent of his exposure a substantial amount? Why -- if there's crocidolite, if you're saying there's crocidolite, why did we show the specific sheet that only said chrysotile?

If you're afraid that saying this on the witness stand would subject you to violation of federal law, why didn't OSHA cite them when they came to their plants for these labeling things?

These are things that I think you -- questions that you should -- need to be answered. But it doesn't change the overall answer in that we weren't the proximate cause.

Thank you for your time.

THE COURT: Thank you, Mr. Tivin.

MR. YOUNG: Your Honor, is there any chance we could take a restroom --

THE COURT: Okay. Yeah. Sure.

We'll take about a five-minute recess. We'll let everybody get comfortable.

Don't talk about the case, ladies and gentlemen.

(WHEREUPON, the jury was excused from open court at approximately 12:35 p.m.)

(WHEREUPON, a lunch break was taken.)

THE COURT: All right. Is everybody ready for the jury?

(WHEREUPON, there was no response.)

THE COURT: Yes, sir. I'm sorry.

(WHEREUPON, the jury came into open court at approximately 1:25 p.m.)

THE COURT: Okay. Ladies and gentlemen, we're going to hear from Mr. Young, and then Mr. Panatier will follow up, and I'll give you the charge on the law.

So, yes, sir, Mr. Young.

MR. YOUNG: Thank you, Your Honor.

It's hard waiting, ladies and gentlemen, but I'm last again. So I guess that's the good news for everybody.

We were thinking about going straight through, and I had to sit and fidget for a while. But I just want to really start like everybody else did and thank you.

Remember, we said that this probably wasn't what you were thinking about doing for this two weeks, and it's hard. There's a lot of complicated stuff.

I can assure you that listening to somebody read a deposition is the worst. There's some good parts of the trial. And I agree with Mr. Panatier. I really hope that you learned something about the system, and that you had a good -- a reasonably good experience here.

But, you know, I told you at the beginning, without y'all we can't decide our dispute. You've heard we got sued for a heap of money. We claim we don't owe any. And

you guys decide that.

And it's funny how they call this closing argument, but we're not going to have an argument. Because, you know, I just am going to talk to you about why we feel like the evidence in this case shows that Mr. Panatier didn't meet his burden of proof, and why the truth of this case, ladies and gentlemen, which is what a verdict is, we believe supports you checking no, no liability for Celanese.

So let's just get right to it. I want to talk to you a minute about the parties in the case. And then I want to talk to you about the evidence. As you've heard, Celanese was a polyester fiber plant around here. And keep in mind, please, ladies and gentlemen, during the whole deliberation, we're talking about a company making polyester fiber in the 1970s, not yesterday. And they weren't making asbestos products. They were making polyester fiber.

And I want to be clear about something. We're not blaming Daniel. We're telling you -- sorry to get so excited. And I kept waiting for it the whole trial. Dr. Holstein, somebody. We went out and hired the best company that we could find to do the maintenance work. And not one single witness in this case has come in and said hiring Daniel is wrong. Hiring Daniel is not what a

reasonable polyester fiber manufacturer would do to make sure that working with insulation is safe and the maintenance is done right.

So y'all heard this. We, actually, called the Daniel employee, not the Plaintiffs. Daniel is a big company. And they built the plant in the 1960s. They built a ton of them. And you heard that they were experts in this type of work, experts in doing insulation, doing it safely, doing maintenance safely.

So, ladies and gentlemen -- and I'll mention this again before I quit -- think when you go back in the jury room if there was any evidence that, in the 1970s, hiring Daniel to do this work was not something an ordinarily prudent company would do.

And then, you know, we've mentioned this at the beginning. We have the Plaintiffs, and you met them. And Mrs. Seay says hello to me every morning. They're the nicest people that you'll ever meet.

But remember, too -- I'm going to mention that again in a minute. Ladies and gentlemen, the case started with 24 Defendants. Many, many, many companies, Mr. Panatier told you, made the products out there at Celanese. And they're not here. We're here defending because we believe we didn't owe any money.

Think about where these folks are when you get back

there in the deliberation room.

Remember, I told you at the beginning you have options when somebody sues you. We're here defending.

So, ladies and gentlemen, let's talk -- what I want to talk to you about is the undisputed facts in the case. And the judge mentioned this to you, and this is important. I had my first trial with Mr. Panatier a long time ago. I still didn't have any hair then. But he's a good lawyer. But he doesn't make the facts. Y'all remember the facts.

And we agree, Mr. Seay died from mesothelioma. And, ladies and gentlemen, we certainly believe that the Seays and their family are nice people. As I told you in opening, it wouldn't take us one second now to decide that, not two weeks.

And, ladies and gentlemen, one of the hardest things you'll ever do in your life is say no to them. But the law is if they didn't meet their burden of proof, and they didn't prove that Celanese was negligent, and that that was a substantial factor in causing Mr. Seay's injury, that's what you're supposed to do is say no.

And I didn't make that law. The judge gives you that law.

So let's look at some things that were undisputed no matter what kind of spin somebody tries to put on it. At

all times while Mr. Seay worked at Celanese, he was a Daniel employee. He told you himself that his work was significantly different than the Celanese work.

And, ladies and gentlemen, this is important, and this is why the judge tells you that what the lawyers say is not evidence. I could've heard it wrong, but I believe Mr. Panatier just told you that Celanese decided how Mr. Seay would do his work.

Well, ladies and gentlemen, Mr. Seay himself testified in the video deposition in this trial that it was Daniels who decided how his work was done. And, ladies and gentlemen, there is -- that's not controverted in the evidence in this case.

It's, also, not controverted, no matter how much Mr. Panatier tries to blur the lines, this is the evidence, ladies and gentlemen. Celanese in the 1970s did not have a maintenance department. Daniel did all of the work at Celanese that involved asbestos.

Celanese did not do any maintenance work, or work involving asbestos. Celanese was making polyester fiber. And this is important. Daniel and the Celanese employees did not work near each other.

Y'all probably don't remember this, but Mr. Panatier tried to get the witnesses to say that, and nobody ever said that. They had the maintenance, most of which was on

shutdown, and the polyester manufacturing.

And so, as you heard, Daniel is protecting their employees, and Celanese is protecting their employees, which is what you would expect in a situation like this.

Y'all are probably sick of me saying this, but this is -- you know, Daniel was a well respected construction company. And, you know, ladies and gentlemen, I try to think about the cases.

I don't look like it, but every night I try to go out and run a little bit. It's not working too good. But, you know, Mr. Seay was a longtime, respected employee of Daniel. They were in charge of what he did. Why in the world would anybody ever think that Daniel would not do what was right to protect Mr. Seay when he was working for them? It just doesn't make any sense, ladies and gentlemen.

It's like Mr. Buck told you this morning, the employees were the most important part of the company. Because without the employees, the company couldn't function. And so they wanted to take care of him. And they told the world, we're going to take care of them.

And, ladies and gentlemen, Daniel built the plant. It put whatever was asbestos in, took whatever was asbestos out. And they were required to do it safely by the law. So that's something that there's no dispute in

the evidence that Celanese believed that they would do.

And I thought this was interesting, ladies and gentlemen. Everybody agrees OSHA was in effect during the time Mr. Seay worked at Celanese for Daniel. All the witnesses said Daniel was required to provide a safe workplace for Mr. Seay, even Dr. Holstein, who was really the only expert witness that dealt with -- in any way at all with sort of safety of the employees. Yet, he was a doctor who -- who didn't really do that kind of work.

But Don Buck, who we called, ladies and gentlemen, not the Plaintiffs, said exactly the same thing. And this is important. Because there's all sorts of talk this morning about us putting things on the insulation, and all this kind of stuff. But Mr. Buck told you, Mr. Bowyer told you, OSHA required the Daniel employees working with asbestos to be trained, to know and follow the law. And there's no dispute in the evidence about that.

Ladies and gentlemen, you know, I was thinking, you know, there'd be somebody who would come and say, well, you know, we had these people over here working on the insulation, and it didn't look right. So we went and told Celanese, you know, y'all got to fix this.

But all we heard, ladies and gentlemen, is that they were experts. They knew what they were doing. And it was their intention to provide Mr. Seay a safe workplace. No

evidence at all that the people at Daniel, who were working with insulation, didn't know how to do it, or do it properly, or do it safely.

Dr. Holstein said, Daniel was obligated by OSHA to provide a safe workplace to Mr. Seay at Celanese. He never said, and, oh, yeah. And, oh, by the way, well, Celanese needs to check up on them, because it looked to me like maybe they weren't doing that. That never happened. He never said one single word about Celanese doing anything wrong with respect to Mr. Seay.

And I'm going to tell you something else that he said later in just a minute that I think is extremely important to the case. And I don't have 50 red flags, but this is one red flag. I just talked to you about that, that there wasn't any similar evidence from any witnesses regarding Celanese and Mr. Seay's working with insulation.

Now, ladies and gentlemen, he was just here, but I think what Mr. Buck said was important. Daniel was obligated to comply with OSHA. Daniel should provide a safe workplace. And that they should properly control dust from asbestos insulation.

He, also, said Daniel had a very strong safety culture. He never told anybody they weren't going to provide Mr. Seay with a safe workplace, according to OSHA standards. It's a safety-conscious company. And, ladies

and gentlemen, the insulators were trained to work safely with insulation, according to OSHA. And there's no evidence that Celanese thought that anything other than this is what was going to happen. And that's where you get to negligence. Hiring somebody that's not worth a toot, and they let bad things happen. There's just no evidence of that.

So, ladies and gentlemen, we feel like, based upon the undisputed evidence in the case, that there hasn't been any evidence presented that Celanese was negligent, certainly not that it was a substantial factor in bringing about Mr. Seay's illness.

And Mr. Panatier, he readily agreed to that in opening. If they don't meet their burden, the Plaintiffs don't recover. And, of course, he said that, ladies and gentlemen, because the judge is just fixing to tell you that, that that's the law.

So let's look and see, ladies and gentlemen, what evidence was, actually, presented in the case.

We hired Daniel because of its experience, knowledge, and expertise. We assumed Daniel would provide a safe workplace for all Daniel employees working at Celanese. And there's no evidence, ladies and gentlemen, that Celanese ever had any reason to believe Daniel would not protect its workers.

The contract between Celanese and Daniel required Daniel to comply with OSHA, and provide a safe workplace to its employees. It's in writing. It's in evidence. Y'all can see it in the jury room.

And I thought this was important. Y'all might have missed it, but -- just because it's been a long trial. But Daniel, actually, charged Celanese for the additional cost to comply with OSHA. So, obviously, Celanese was supporting that. They didn't say, oh, no, we're not paying that extra money. Don't -- don't let that get done.

In the 1970s, OSHA came out. Daniel said, we're going to comply. We're going to charge you extra. And Celanese said, fine. We're putting it in the contract. And this was a memo, about the time that Mr. Seay started work at Celanese, from the president of Daniel.

According to OSHA, we are obligated to furnish each of our project employees a work environment free from recognized hazards causing or likely to cause death or serious physical harm, in addition to the specific duty of complying with safety and health standards. That's their document. And I mentioned the contract.

So what is the -- I mean, given all that, ladies and gentlemen, why would Celanese ever believe that Daniel wasn't going to provide a safe workplace?

Here's the evidence presented about Daniel. Mr. Seay was an excellent employee. They wanted to protect their employees. They wanted to keep the employees work environment safe. And they couldn't function without their employees.

And, you know, there were a lot of witnesses. Mr. Thompson wasn't mentioned earlier today. But he was a Celanese employee that was friends with Mr. Seay. And he testified safety was important to Celanese. And his testimony wasn't equivocal.

Would you agree that Celanese was a safety-conscious company?

Yeah. I would say they were. Safety was important, yes. There was an emphasis placed. Celanese emphasized safety in the plant. Yes.

Ladies and gentlemen, this is not some guy that gets paid $700 an hour, or $600 an hour. This is one of Mr. Seay's coworkers, friends.

You don't have any reason to believe that Celanese withheld any information it had about asbestos from its employees, do you?

No.

Would there be occasions when just, generally speaking, the plant manager or executives would walk around the plant?

Yes.

Would they be wearing masks?

And the answer was, No.

So, ladies and gentlemen, they, obviously, thought that Mr. Seay's workplace was safe.

Sorry.

When they walked around, they walked around the same as other employees. And the insulators at the plant were Daniel employees with their own insulation shop.

So, ladies and gentlemen, the judge is going to talk to you about this. Mr. Panatier talked to you about it. But one of the laws in South Carolina is a premises owner can only be held liable for an invitee's injuries on the owner's property when the premises owner has superior knowledge of the danger or unsafe condition caused the invitee's injury.

And, ladies and gentlemen, what did you hear? There's some more of that charge, but it's too long. I'm not going to read that to you. The judge is going to read it to you, but it says, basically, the same thing.

The evidence in the case was that Daniel and Celanese knew, in 1971 when OSHA came out, that asbestos could be hazardous, the same year that Mr. Seay started working for Daniel at Celanese.

So, ladies and gentlemen, you can talk about

documents, all sorts of things, but that's the evidence in the case. Their knowledge was exactly the same. And, ladies and gentlemen, the real issue is, did Celanese know that Daniel wasn't going to do right by Mr. Seay? And there is no evidence of that at all. There was no evidence at all in this case that Celanese had any reason to believe that Daniel was going to allow asbestos to be used in a hazardous manner at Celanese.

They knew there was asbestos there. You had to use it on some of the really high heat lines. Daniel knew that. Celanese knew that.

So I hate to repeat myself. I get ahead sometimes. But we just think this is important evidence on the Plaintiff not meeting their burden of proof.

There was no testimony suggesting it was not proper for Celanese to hire Daniel. There's no evidence suggesting to Celanese that Daniel was not providing Mr. Seay a safe workplace. There's no evidence that Daniel told Celanese it was not going to provide a safe workplace. And that one misprinted. So I'm going to go on to the next one. I'm sorry. Sorry.

Actually, what that says is that there was no evidence that nonasbestos-containing products could have been used on the high heat lines out at Celanese in the early '70s. This evidence was, also, not presented.

Dr. Kradin didn't offer any opinions about Celanese. Dr. Holstein didn't offer any opinions about Celanese. None of Dr. Holstein's articles dealt with polyester fiber plant owners. Neither Dr. Kradin or Dr. Holstein made any investigation about Daniel and what their duties and obligations were.

You know, ladies and gentlemen, I would agree with Mr. Panatier that if somebody had said to Celanese, I'm not sure they're handling that asbestos right out there, then, yes, go out there and put something on it. Tell somebody. Fire 'em. But, ladies and gentlemen, there's no evidence in this case that that happened.

So, ladies and gentlemen, we don't believe the Plaintiff has presented you with sufficient evidence to meet the burden of proof that Celanese was negligent, or that we were a substantial factor to Mr. Seay's illness.

There's one other thing I want to talk to you about, and then we're going to go on down the road. Why, ladies and gentlemen, is OSHA compliance so important in this case? Daniel was required to comply. All asbestos diseases are dose-response diseases. The lower the dose, the less likely of contracting the disease.

This is my red flag, you know. You heard over and over and over again that people say there's no safe level now. But Dr. Holstein, intentionally or unintentionally,

talked about the amount of asbestos needed to cause disease, and it being a question he was studying in 1976 while he was at Mount Sinai.

And, ladies and gentlemen, that is slap dab in the middle of when Mr. Seay was working at Daniel -- working for Daniel at Celanese. And what did he say? This is Mr. Panatier asking the question, So what types of things were you learning about, and what types of research were you doing? The Plaintiffs main witness, 1976, Mount Sinai, 12 years after Dr. Selikoff's '64 conference.

I was -- personally was engaged in different kinds of research, mostly the kind that's called epidemiology. That's the study of the causes of diseases in people. And I participated, also, in trying to answer some very basic questions about asbestos, things such as how much exposure is required to cause people to get sick. Is it a lot, or is it a little?

And Mr. Panatier said something earlier that I agree with. These guys make a heap of money. And -- but what are they saying in the real world? That's what Mr. Panatier asked. And this, ladies and gentlemen, is what Dr. Holstein, who had the -- was saying in 1976 about asbestos. He did not say, well, there was no reason to study it, because there's no safe level. He did not say nobody should use asbestos-containing products. Everybody

was trying to figure out the permissible exposure level. OSHA, Dr. Holstein, Mount Sinai.

So this is what the real world is saying, not somebody that testifies 300 times for Mr. Panatier. And, ladies and gentlemen -- so in the final analysis, everybody agreed. There -- you can work safely with asbestos products. But you have to do it the right way. That's why -- do you remember Mr. Buck said, We cordoned it off, you know. We'd do air sampling? You know, there's reference earlier to giving folks respirators.

That's what the real world was doing in the '70s, ladies and gentlemen. The permissible exposure level was going down. But OSHA was telling people how to use asbestos so that they didn't believe it would harm people.

And Daniel was telling Celanese, we're following OSHA. We're going to do right by our employees. So I don't think it's fair to accept all that other stuff when this is what Dr. Holstein was saying right in the middle of the time period we're talking about.

So, ladies and gentlemen, I told you I run some. It doesn't do much good. But I was trying to think of, you know, an analogy in my life. I'm one of those folks that can barely put gas in my car. So if something breaks at my house, I have to call somebody. My wife laughs at me about that all the time.

And my dad, he could fix anything. He built our house. But the one thing he would never fool with was electricity. So let's just say my electricity goes out, and I call the folks we always call. We think they're the best electricity people around and never had any problems with them. Nothing's ever happened.

And they come out and they're working on the electricity. And their employee gets hurt. Is that my responsibility? That's what we tried to do, ladies and gentlemen, get the very best people out there to do the work safely.

So you're going to have to start deliberating soon. And I'm about done. But when you're back there in the jury room, I want you to think about -- this is, actually, sort of a David Letterman thing, but he's gone now. But think about the answers to these 10 questions.

Why were no articles, documents, or witnesses presented suggesting that Daniel was a company that would not protect its employees?

Why did all the witnesses agree it was Daniel's responsibility to provide Mr. Seay a safe workplace?

Why did Celanese, not the Plaintiff, call Don Buck from Daniel to testify?

Why did Don Buck agree that Daniel should provide a safe workplace to employees like Mr. Seay?

In the 1970s, why did OSHA put the responsibility for employee safety on the employer, not the premises owner? The answer to that is obvious.

Why did OSHA require people, actually, working with asbestos-containing products to be trained experts?

Why would anyone think, including Celanese, that Daniel, skilled in asbestos abatement, would not protect its employees like Mr. Seay?

Why did Ronnie Thompson, a coworker of Mr. Seay, testify that Celanese was a safety-conscious company?

Why was no evidence presented suggesting it was improper for Celanese to hire Daniel to do its maintenance work at the Spartanburg plant?

And, finally, why was no evidence presented that in any way suggested to Celanese that Daniel was not providing Mr. Seay a safe workplace? Which we believe, ladies and gentlemen, is the most important question.

All right. Thank you very much.

I know y'all are tired of hearing from lawyers. You can probably imagine that on the verdict form, I'm going to ask you to check no on the question of responsibility of Celanese.

And because he has the burden of proof, Mr. Panatier gets the last word. We don't get no more word. So if I jump up and say something, the judge is going to put me in

jail. But try to think about what we would say in response to what he says last, because we would have a response.

It was an honor to be here. I enjoyed it. And I look forward to your verdict.

Thank y'all.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Young.

Mr. Panatier.

MR. PANATIER: Thank you, Your Honor.

Okay. So we're almost done. So I'm going to respond to some of the things these fellows said.

So the first thing is, on damages, I forgot one element. It's called loss of consortium. And that's just the relationship between husband and wife. So you're asked to consider that. And the judge will give you specific instructions on the loss of that relationship. So I just wanted to make sure I mentioned that to you and didn't forget that.

Let's boil it down. John Crane, it's everybody else's fault. Celanese, it's Daniel's fault. That's what the case is about. And what I'm saying is, from an honesty standpoint, you can't take one out and say they're not responsible. If you showed that they knew or should have known about the hazards and they failed to act, then

they're responsible.

This case focuses on John Crane and Celanese. And I told you at the beginning of the case, there were other Defendants. You're here to -- the judge is asking you about two. Were either of these companies responsible?

Let's talk about John Crane first. Mr. Tivin has repeated this throughout this whole trial. There were five brands, and not -- there's not one eyewitness that can say, I know I pulled out a John Crane gasket. The main reason is they're all cooked onto the flange. You're not going to be able to read the logo anymore. But if you're putting five in for 10 years, you're pulling five out. There's no way that somehow you miss one brand. That just doesn't make any sense.

He brought up the 1962 specification. He said gasket model X, Y, Z is on there, gasket model X, Y -- A, B, C is not. That's a 1962 specification that, actually, had John Crane as a specified asbestos gasket for Celanese.

He talked about Dr. Crapo. Dr. Crapo's testimony is that all of these organizations are wrong, that chrysotile can't cause mesothelioma, that there's a safe level, even though he doesn't know what it is. But he does know you would need to work with gaskets for 5,000 years before you were at any risk. He knows that.

If you go to the website -- we showed you these

during his cross-examination. If you go to his own hospital's website, he doesn't even list himself as an expert in mesothelioma, in asbestosis, or asbestos.

They -- they went real hard after Dr. Holstein. Dr. Holstein is retired. He used to run a huge epidemiological study of workers exposed to asbestos that he still monitors. He's retired. And he testifies in courtroom now, a lot like Dr. Toca. But the bottom line is this fellow who works at this hospital and focuses on COPD doesn't do anything having to do with asbestos in the real world. He doesn't hold himself out as an expert in asbestos in the real world.

Mr. Tivin said Dr. Toca is the only expert who tested John Crane gaskets. Now, my first question is, why didn't John Crane test John Crane's gaskets? I think that's a good question for you guys to think about. Why didn't John Crane test John Crane's gaskets? The first time they were tested was after they got sued. They said, oh, we should test these.

And then what did they do? Now, Toca hasn't published anything. He didn't try to publish his tests. But I showed you these pictures with Dr. Toca. These are still photos from his study. And I said, Sir, if you wipe down a flange with a liquid, it's going to decrease the asbestos exposure?

He said, Yes, it would.

Then I showed him these. And he said, That's not a liquid falling off of that. That's just thread.

Folks, that's not a thread.

He said, The -- There is a no effect level for asbestos. And he showed you this curve, the Hatch curve. Mr. Hatch himself -- we showed you in the 1965 book -- he wouldn't have agreed that this was applicable. And Dr. Toca had nothing to do with cancer, this graph. He kind of just took an example of carbon monoxide and said it would be the same for anything, including cancer.

Mark -- Mr. Tivin showed you this slide. And this was their take on the evidence. Boy, if you just -- if you plug in the numbers, it look likes John Crane was .0035 percent responsible. But that's how you can mess with the numbers; right? Because if you want to take Dr. Toca's numbers and plug those in, that's what you get.

I think it looks more like this. You pick and choose data. You put it in. You put it in the John Crane calculator. And then you can say not guilty. It's just -- you can skew statistics however you want. Let's look at the real world.

The epidemiology, I showed this to Dr. Toca. Remember, he said the epidemiology says that levels created by gaskets can't hurt you. And I -- I gave him

three studies. He hadn't read any of them, three epidemiological studies. And I showed him this table. And, again, guys, I don't want to get too much into the numbers here, but at a very low level, zero to .15 fiber cc years.

So if you were exposed to .15 fiber cc's, 15 percent of one fiber per cubic centimeter for one year, your risk for mesothelioma is eight times someone who is not exposed.

And your overall risk is anywhere from two to 30. And he said, Well, I can't really comment on it. I haven't read it.

So is he a real expert in that area, or not? This is the real world. That's not any paid expert that published that study. It's no one that was called to testify. That's the real world.

And that backs up what the -- what OSHA, and NIOSH, and everybody is saying. There is no known safe level. Because what the epidemiology is showing is that, look, from zero to a very low level of .15, there's a huge increased risk for disease. So that's why I show you that.

Mr. Tivin showed you this little sample of 333, and he banged it, and said, Look, it's -- nothing comes off of it. I agree, nothing comes off of this, unless you cook

it in a flange for a few years. And then you have to grind it off. Then the 75 to 85 percent asbestos, or depending who you listen to, 52.5 percent asbestos, comes out of it into the breathing zone.

At least, half of this is asbestos. Think about that. How can that not release asbestos into the air if you're grinding this off? If we accept what George Springs said and half of this is asbestos, half of everything you see here is asbestos and the other half is rubber, and it is cooked onto a flange after a few years and you grind it off, how can there be no exposure? How can there be a super-low, non-important exposure? That does not make sense.

Mr. Tivin, also, said that -- remember this. This is at the very end of Dr. Holstein's testimony. Mr. Tivin said, How long were the gaskets in the flange? And Dr. Holstein at first said, Well, it doesn't -- it's not really important. What's important is are they -- are they adhered to the flange. That's really what we want to know."

Certainly, if you knew how long they were there or the pressure or the temperature, that would help you determine whether they're going to seal to the flange and you're going to have to grind them off. But, really, the important thing is were they on there, were they cooked

on. And over and over again, Mr. Tivin said, How long was the first gasket on that he removed? How long was the second gasket on? Well, the important thing is, did it look like that? Was it cooked onto the flange like Mr. Seay said it was? Or what the gasket's birthday was? Who cares? If the witnesses said it looked like this, then they had to scrape it off. And that is exactly what Mr. Seay said.

Guys, this is in evidence, the MSD sheets. OSHA required labels on these gaskets. They weren't there. That's negligence however way you look at it. It's negligence whether or not OSHA required it. Because what you're going to be told is, if a company knew or should have known of the hazard, they had a duty to warn, even outside of OSHA. Okay. But this is, also, during the time of OSHA. They knew about it. And they knew proper labels were required, but they didn't do it. They didn't put proper labels on their product.

And when you have a situation like this where an employer and the premises owner aren't doing everything they need to do to protect the worker, what's the last line of defense? That sheet of gasket the guy's about to cut. It's got John Crane's name all over it. It could easily have a warning on it. The last line of defense.

Now, let me go to what Mr. Young said. He said,

Let's look at the facts without spin. So we're going to go into Chris' no-spin zone. Okay. He quoted this, The amount of asbestos needed to cause disease was a question Dr. Holstein was studying in 1976 in Mount Sinai. He said that's a red flag.

Folks, we're studying that today. We're still trying to determine what the minimum level is. We're still trying to see if there is one. What we know is background doesn't cause it. But we're trying to determine if there is a level above background that does cause mesothelioma. So far the answer is, no, there isn't a level that we know.

So, of course, people are studying it. I don't see how that's a red flag at all.

He said not one witness has said our hiring Daniel was negligent. And that's what I told you in opening. You're going to get questions that say, was Celanese negligent. Not was Celanese negligent in hiring Daniels. Is he trying to change the playing field here? We're not saying they were negligent in hiring Daniels. What we're saying is, they were negligent by virtue of their own activities and their own failure to audit, et cetera, which I'll go through.

I already told you about this. There were 24 other Defendants. How does that help you decide whether or not

Celanese was negligent? Why do they say that? Why do they say that? Big, greedy Plaintiff's lawyers. We sued a lot of people.

They don't explain what happened in the lawsuit, what happened to those people, what happened by the virtue of the investigation we conducted. All they want to say is there were other people involved. So -- but that doesn't help you to answer the question this judge is going to ask you to answer, was Celanese negligent?

So that is a red herring. That's what that is. That's hiding the ball. Celanese took John Crane's ball, and now they're hiding it.

These are undisputed facts. They failed to conduct responsible abatement. They failed to investigate and purchase gasket substitutes. They failed to sample and tag asbestos versus nonasbestos. They failed to properly audit the safety program for compliance. That's a big one.

Because Mr. Bowyer said we had a duty to do that. We accepted that responsibility, to make sure they were doing the right thing for their guys. There's not one iota of evidence that ever happened. That was their own policy that they failed to follow up on.

We saw a lot of paper about it; right? I mean, yesterday, I was talking to Mr. Bowyer about it. They had

lots of paper, these were our policies. But they didn't follow up on them. They didn't conduct air monitoring or warn of the hazards.

Mr. Seay said Daniels decided how the work was done. And from his perspective, that's exactly right. His boss said you go here, and you do X, Y, Z. That is true. His boss did tell him where to go and what to do. But who told him? The guy who told Daniels everything was Celanese. Mr. Bowyer said they decided how, when, where, and what work was to be done.

And, lastly, Mr. Young said, If I hire an electrician and he gets hurt, how is that my responsibility? Well, if you knew of a particular hazard, if you knew that there was a danger, not just of general electricity; right, if you knew there was something that he didn't know, then you do have a responsibility.

And think about it in this case. Daniel was a maintenance contractor. They weren't the electrician. And they weren't an asbestos abatement contractor. And this is important, because this is the question -- this is a statement Mr. Young just put up. It was number seven on that list. I couldn't write them all down, but it was number seven.

Talk about a red herring. Why would anyone think, including Celanese, that Daniel, skilled in asbestos

abatement, would not protect its employees like Mr. Seay? Now, why is that a red herring? And why is that false? Because today, the gentleman who was called this morning, Mr. Buck, who was at Daniel, I said, Were you guys an asbestos abatement contractor?

No. No. We weren't.

The only guy to answer that question, him, said we were not. So why would Mr. Young suggest they were? Blame Daniel.

He, also, said their knowledge was exactly the same as ours on asbestos. Folks, if you believe that, go back there and say no on both questions and go home, please. If you believe that Celanese knew less or the same amount than Daniels about asbestos hazards, if you think that Daniels knew all of this stuff that Celanese knew and that they had a guy at this conference and that they were receiving these journals, if you think that, then, please, say no and go home.

But the answer to the question on were they negligent is absolutely yes. I showed you all of that knowledge. That was the point of the red flags. Those red flags were theirs. They were not Daniels.

And then, lastly, Mr. Thompson, one of Mr. Seay's coworkers, said Celanese was safe. Of course, he would say that. Of course, he would. Was he in the meeting in

1963 with the president where he said, Hey, keep hazard communications to a minimum? Was he in that meeting? Did the workers know what the executives knew? Of course not. Of course, he wants to think that they wouldn't hide anything from them.

You ask Mr. Seay the same question, he'd say, of course they didn't hide anything from me. That's what we would all think. Of course, they didn't. Why would they? But that was their policy.

So, lastly, before I -- before I sit down, you have an opportunity -- I want it to be clear there's no -- there's no occupational health police that are going to come address this case. You're it. This case is in front of you.

And did you ever think that you would have an opportunity to sit across the table from some big companies and they would have to listen to you? You may get another chance in your life, you may not. But right now, they have to listen to you. You get to judge them and say, you were negligent, or you were not.

And did you ever think you would have that opportunity? This is it. I want you to consider all of that evidence about what they had available to them and then the complete lack of regard for these workers safety, the fact that they papered it with contracts, but they

didn't act.

Thank you very much.

THE COURT: All right. Thank you, Mr. Panatier.

CHARGE ON THE LAW

THE COURT: All right. Ladies and gentlemen, you've heard all the evidence in the case, and you've heard the final arguments. And it's now my duty to instruct you on the law that applies to the facts of this case. And I'm going to charge you on that law.

And it's your duty to find the facts from the evidence. And to those facts, you must apply the law as I give it to you. And you should not be concerned with what the law should be but with what it is. And you must not be influenced in this case by any personal likes, or dislikes, or prejudice, or undue sympathy. And that means you must decide this case solely on the evidence and according to the law. And you recall, you took an oath to do just that when we began this case last week.

Now, in following my instructions, you must follow all of them and not single out some and ignore others, because they're all equally important. And do not read into these instructions or into anything I may have said or done during this trial as any indication as to what I think your verdict should be, or what I think the facts are. Because that is entirely your prerogative, according

to our Constitution, to determine what the facts are. I'm not going to intrude on your Constitutionally guaranteed right to determine what the facts are, just as I know you're not going to invade my Constitutional prerogative to tell you what the law is.

So how do you decide what the facts are? You do that by evaluating or weighing the evidence you've heard during this trial. It's a mental process. You certainly don't weigh and evaluate the evidence by putting it on a set of scales. That would be impractical, of course. It's a mental process. And you weigh and evaluate the evidence simply by using your good common sense, your sense of logic and reason, and your life experiences. And you bring those things to bear on the evidence you've heard during this trial.

Now, once you do that, you'll be able to determine the true facts of this case. And once you determine those facts, you take the law that I'm about to give to you and you apply it to those facts. And when you've done that, you'll be able to reach a verdict.

I told you at the beginning that the Plaintiff has the burden of proof. And that means, in a civil case, that they must, in order to prevail, prove their case by the greater weight of the evidence. And that means they must produce evidence that, when considered in light of

all the facts, leads you to believe that what they're trying to prove is more likely true than not true.

So a better way to visualize this is to envision a set of scales. And if you were to put the Plaintiff's and the Defendants evidence on opposite sides of the set of scales, in order for the Plaintiff to receive a verdict, the greater weight would have to be on the Plaintiff's side.

If after your weighing of the evidence, those scales remain equally balanced and there's not a greater weight on one side or the other, then your verdict would have to be for the Defendant, because there was no greater weight on either side. And in order to win, the Plaintiff must convince you that the greater weight is on her side.

Now, even if those scales tipped even slightly in the Plaintiff's favor, she has still carried her burden of proof and she would be entitled to a verdict. But if the scales tip in the Defense's side or if they remain evenly balanced after your weighing process, your verdict must be for the Defense.

So what you have to do, ladies and gentlemen, is mentally weigh the evidence and mentally place it on those scales and see which side has the greater weight in your mind.

You may decide that neither side has the greater

weight. And, therefore, the verdict would have to be for the Defendant, because, again, the Plaintiff would not have met her burden of proof. But if the scale's tipped even slightly in favor of the Plaintiff, she would be entitled to a verdict.

Now, you must engage in this weighing process separately as to each Defendant as to the evidence that relates to Celanese and John Crane. You must weigh their evidence separately and not let your influence on one influence your decision -- not let your decision on one influence your decision on the other. Because they are each entitled to separate and individual consideration.

Now, some of you may be familiar with the burden of proof in criminal cases. And I told you at the beginning that that's a higher burden of proof. That is proof beyond a reasonable doubt. That standard does not apply in this civil case. Again, the standard you must use is the burden of proof of the greater weight of the evidence.

Now, you must decide what the facts are from the evidence. And I told you at the beginning that evidence consists of two sources, sworn witness testimony and exhibits. We have had both in this case. And those are the only things you can use to determine what the facts are, the witness testimony and exhibits. Nothing else is evidence.

As I've told you repeatedly, what the lawyers say is not evidence, because they're not witnesses. And, likewise, anything you may have seen or heard when court is not in session is not evidence either. And you must confine your decision to the witness testimony and the exhibits.

Now, if the lawyers, in summarizing the testimony and evidence, said something about it that you believe was incorrect, you have your own memory of what the evidence and testimony is, and your memory controls.

Now, in any type of case, there are different types of evidence. And what I'm talking about now is direct and circumstantial evidence. You've probably heard these terms before. Direct evidence is defined as the testimony of someone who claims to have actual and direct knowledge of a fact. It is evidence that, if believed, immediately establishes a fact.

Another type of evidence that the law recognizes is circumstantial evidence. And I'm sure you've heard that term. But the law defines circumstantial evidence as indirect evidence. To put it another way, circumstantial evidence is proof that another fact exists, even though it has not been proven to you directly.

The law makes no distinction between the weight or value to be given to either direct or circumstantial

evidence. And you are entitled to consider both kinds, if you find they exist in this case.

As I told you at the beginning, you, as the judge of the facts, will have to, by necessity, determine the credibility of all the evidence. And I, also, told you -- gave you some general guidelines you can use to gauge credibility in the case of a witnesses testimony. I'm not going to go over that again, because I know you heard me the first time.

But I will tell you that you may consider and believe everything a witness says, or you may believe nothing a witness says. You may believe one witness over several, or several over one.

But you certainly don't decide this important matter of credibility by counting up the witnesses for one side or the other. Because your sole objective is to determine the truth of this case. And it does not matter to you whether that truth comes from a witness for the Plaintiff or one for the Defendants.

Now, you've been -- you've heard testimony from people who have been described and qualified as experts. I've already instructed you that their testimony allows them to give an opinion from facts they've observed or had made known to them.

And I, also, told you that your job with experts is

just like your job with all the other witnesses, and that is you have to decide their credibility. And you do not have to accept even the uncontradicted opinion testimony of an expert. You may accept it, or reject it, or give it whatever weight you think it deserves based on the evidence in the case.

Now, you have, also, heard testimony presented through depositions. And I'll just remind you deposition testimony is entitled to the same weight and value as any other testimony, and should be considered just like a person was here in the courtroom testifying.

Some of you have taken notes during the trial. And if you did that, remember the notes are for your own personal use. And they don't trump anyone's independent recollection of the evidence of record. And they are not to be used in place of your memory.

And I, also, want to remind you, as I told you at the beginning, that the lawyers take an oath when they become lawyers to do their jobs. And part of their jobs is to object to evidence they think is improper. So don't hold it against any lawyer for objecting to evidence during this trial. That's simply their job. And I know you won't hold it against them for doing that.

And I, also, don't want you to hold it against them for the length of this trial. If you want to hold that

against anybody, you can hold it against me. But the lawyers, I think, did a remarkable job with the incredible amount of evidence. And South Carolina has pretty short trials. Other states, not so much. One of them rhymes with California. But I'm not going to go into that.

But, nevertheless, don't hold that against them for any delays during the process. That's my responsibility. And if something upset you about that, you can take that up with me. But we tried to manage our time and your time and respect it as efficiently as possible. And I hope we did that in a reasonable basis.

Now, ladies and gentlemen, when a party relies on expert testimony to show a causal connection between an injury and a subsequent condition, the law requires the testimony to meet the "most probably" rule. It's not sufficient that the condition in question possibly or could have -- could have or might have resulted from the injury.

The expert must go further and testify that, taking into consideration all the facts, it is his or her professional opinion that the result in question most probably came from the cause alleged.

Now, this case is entitled, Angela Keene, Individually and as Personal Representative of the Estate of Dennis Seay and Linda Seay v. CNA Holdings, LLC and

John Crane, Incorporated.

Now, as you know, deceased persons are represented by personal representatives of their estate. The personal representative for Mr. Seay is his daughter, Angie Keene. And in this court, individuals, whether living or dead, and their heirs, and the corporations all have equal standing. The playing field is level just as the playing field is level as to the proof in this case when the trial began.

Parties have equal standing before the jury. And the law treats a corporation the same as a person for purposes of civil liability. Corporations can only operate, of course, through individuals who act as their agents. And the law makes no distinction between corporations and individuals for the purposes of civil liability.

Now, this claim for damages that the Plaintiff has brought stems from personal injury. And the Plaintiff has various theories or what are called causes of action. The Plaintiff is seeking to recover damages for personal injury and wrongful death arising out of the alleged negligence of the Defendants, arising out of Mr. Seay's asbestos exposure.

Now, the mere fact that an injury occurred or an accident happened, standing alone, does not permit you to draw a conclusion that such an injury or accident has been

caused by anyone's negligence or fault.

Now, the Plaintiff bases her claims on two theories. They have a products liability action against John Crane, Incorporated, and a premises liability action against Celanese.

To prevail on her product liability claim against John Crane, Incorporated, Ms. Keene must prove three things by the greater weight of the evidence. First, that Mr. Seay was injured by John Crane, Incorporated's gaskets. Second, that the injury occurred because the gaskets were in a defective condition. And, third, that the gaskets at the time of the accident were in, essentially, the same condition as when they left the hands of the Defendant, or they were used or altered in a reasonably foreseeable manner.

Now, Ms. Keene, the Plaintiff, must meet her burden of proof. And if you find that she did not, then the Defendants would be entitled to a verdict in their favor.

The Plaintiff must, also, prove damages, and that the damages were proximately caused by the manufacturer's negligence. And she must prove proximate cause by the greater weight of the evidence.

So before you can hold John Crane, Incorporated, liable, the Plaintiff must prove that the exposure to John Crane, Incorporated's asbestos-containing gaskets was of

such frequency, regularity, and duration and, but for that exposure, the disease or injury would not have occurred.

There can be more than one but-for cause. And the mere fact that an injury or accident occurred does not permit you to draw a conclusion that an injury or accident was caused by anyone's negligence.

As to the defective condition, the Plaintiff must first prove the manufacturer sold the product, and at the time of the sale, it was in a defective condition unreasonably dangerous to the user.

Now, regarding product defect, the product may be defective if the manufacturer fails to warn or failed to provide adequate instructions to the user. A product is not defective for failure to warn of the obvious.

If you determine the risk associated with the use of the manufacturer's products were open and obvious to Mr. Seay, you must find the product was not defective or unreasonably dangerous. A seller is not required to warn with respect to products when a danger or potential danger is generally known and recognized.

A product cannot be deemed either defective or unreasonably dangerous if the danger associated with the product is one that the product's users generally recognize. A product may by reason of its nature and use be unreasonably dangerous, unless proper instructions and

warnings are supplied for its intended use. In those cases, a seller or manufacturer must give an appropriate warning of any dangerous conditions likely to be encountered. The warning must be one that would cause a reasonable person to use caution when encountering the potential danger.

In deciding whether the warning was adequate, you should consider the likelihood of an accident taking place and the seriousness of the consequences. There is a particular need for sufficient warning when there is a representation that the product in question is not dangerous.

A product may be found defective if the product is unreasonably dangerous in the hands of a user without a suitable warning. A manufacturer or seller is not required to warn about the defects in a product, unless the manufacturer knew or should have known about the defect when the product was sold.

Do you need to get some water, ma'am?

(WHEREUPON, an unidentified juror responded in the affirmative.)

THE COURT: Now, where a warning is given, the manufacturer may reasonably assume that it will be read and followed. And a product that bears a warning that makes a product safe for use, if followed, is not defective or

unreasonably dangerous.

When a warning defect claim is made, the Plaintiff is alleging a failure to adequately warn of the dangers inherent in the product. And a Plaintiff in a failure-to-warn case must, also, establish the inadequacy of the warning was the proximate cause of the Plaintiff's injury. The Plaintiff has the burden of proving that a warning would have made a difference in the conduct of the person warned.

If you find it was probable that a user would be injured by the product and the injury was not reasonably foreseeable to the user, the product is defective. You cannot find the product defective, however, if it were only possible that such an injury would occur.

Ma'am, do you need to take a break?

UNIDENTIFIED JUROR: (Unidentified juror shook her head.)

THE COURT: Are you okay?

UNIDENTIFIED JUROR: Hopefully.

THE COURT: Well, if you do, just let me know.

UNIDENTIFIED JUROR: Okay.

THE COURT: In deciding whether a product is unreasonably dangerous and in a defective condition, you should consider the dangers that would be reasonably anticipated by a typical user of the product. Then you

should decide whether the particular product involved had a tendency for causing dangers beyond those an ordinary user with common knowledge of a product's characteristics would anticipate.

Something you must consider in deciding the Defendant's product and conduct is -- or excuse me -- in assessing the Defendant's product and conduct is the state of the art at the time the product left the Defendant's hands.

The issue of due care must be assessed in light of the circumstances existing at the time of the sale. You may not evaluate or consider any evidence of knowledge or information obtained after the date of manufacture and sale.

State of the art includes all of the reasonably available scientific knowledge on the subject at the given time. This includes scientific, medical, engineering, and other knowledge that may be available. State of the art includes the element of time, what is known, and when this knowledge was available.

If a product was nondefective under standards existing at the time of the manufacture or sale, the manufacturer does not have a post-sale duty to warn.

Negligence focuses on the Defendants conduct. To prevail on a negligence claim, the Plaintiff must prove by

the greater weight of the evidence that the Defendants failed to exercise due care in some respect. If you're having a hard time with the phrase "negligence," you can substitute carelessness, because it means the same thing. It means the failure to act as a reasonably prudent person would have acted under the same or similar circumstances, or it is doing something that a reasonably prudent person would not have done under the similar circumstances.

But you must first determine if the Defendants owed the Plaintiff a duty of care. A manufacturer will owe a Plaintiff a duty of care when the manufacturer knows of the risks of harm.

This is met by showing the manufacturer was aware of the danger and failed to take reasonable steps to correct it. Where a product is, actually, designed and manufactured by another company, the seller assumes the duty of the manufacturer and labels and sells the product as its own. A manufacturer is held to the skills of the expert in the field and is charged with the expert's knowledge of materials and processes used in the industry.

A manufacturer has a duty to stay aware of current standards and scientific knowledge in the industry. And, therefore, since the seller assumes the duties of the manufacturer, a seller is held to the skill of an expert in the field as well, and has a duty to stay aware of the

current standards and scientific knowledge in its industry.

Although evidence of industry standards may be considered as evidence of the standard of care, an industry cannot set its own unreasonable standards. An entire industry may lag behind in the adoption of new and available products or safety features. And the failure to use due care, even if no one in the industry does, does not excuse negligence.

It is for you to decide whether the standard of care was proper considering what a reasonable person would have done in similar circumstances.

A seller owes the duty to conduct adequate tests and inspections of its product to discover latent defects, or defects that are not visible or apparent on a reasonable inspection.

In deciding whether the manufacturer had a duty to test the product, you should consider the Defendant's ability to conduct tests at the time the product was sold. A seller of a defective product has a duty to warn users of a product and any dangers created by its product with which the manufacturer is or should be aware at the time the product is sold.

The supplier of a product who knew or should have known that the product is or might be dangerous during its

foreseeable use and had a reason to believe that the ultimate user would not appreciate the dangers has a duty to clearly and understandably warn the ultimate user of the dangers.

A seller is required only to warn about dangers that are unreasonable, which are dangerous beyond the expectation and general knowledge of the ordinary person who buys the product with the ordinary common knowledge about the product's characteristics. In other words, there's a duty to warn not when scientific certainty is established, but when a reasonable person would want to be informed of the risks.

In deciding whether directions or instructions are adequate, you should consider their location, language, and size.

And I've talked to you about the duty of care. And in a negligence case, if you find the manufacturer owed the Plaintiff a duty of care, the next thing you would decide is whether the manufacturer breached that duty of care by a negligent act or omission.

In deciding this, you would consider whether the manufacturer has followed normal and customary practice and procedures in their industry, as well as the Defendant's expertise and the ability to see and appreciate the problem that it caused. If the

manufacturer failed to exercise reasonable care to fulfill any of their duties, the Defendants would be responsible for the injuries to any person the manufacturer should expect to use its product, assuming they've been proven to have been proximately caused.

And, finally, in a negligence case, a Plaintiff must prove by the greater weight of the evidence something called proximate cause, that is, that the damages suffered were proximately caused by the Defendants breach of their duty of care.

Proximate cause is something that produces a natural chain of events and in the end brings about the injury. It is the direct cause of an injury.

To prove a Defendant's negligence proximately caused the Plaintiff's injury, the Plaintiff must first prove something called "causation and fact." And that is proven by showing that the injury would not have occurred but for the Defendant's negligence.

Now, the Plaintiff must, also, prove something called "legal cause." And that is proven by showing the injury was foreseeable. That means the injury occurred as a natural and probable consequence of the manufacturer's negligence.

Now, the Plaintiff must prove that some injury from the manufacturer's negligence was foreseeable. But she

does not have to prove that the particular injury that occurred was foreseeable. However, a manufacturer cannot be held responsible for something that could not have been expected to happen.

Proximate cause does not mean the only cause. A Defendant's act can be a proximate cause of the Plaintiff's injury if it was, at least, one of the direct concurring causes of the injury. Foreseeability is not judged by hindsight, but rather by the Defendant's perspective at the time of the conduct.

When two or more causes combine to produce an injury, a person is not relieved from liability for negligence because he is responsible for only one of them. It is sufficient that his negligence is a proximate cause without which the injury would not have resulted to a greater extent.

Consequently, if a person's negligence is the proximate cause of the injury to another, the fact that negligence of a third party occurred with his own negligence to produce the harm does not relieve him of liability. In such cases, each wrongdoer is in breach of the duty of care to the Plaintiff. And because the negligence of each occurred to produce the injury, they can all be held liable.

A manufacturer has no duty to notify previous

purchasers of its product about later-developed safety devices, or retrofit their products if products were nondefective under the standards existing at the time they were made or sold. A product's defectiveness must be measured against the standard existing at the time of manufacture or sale. And the manufacturer has no post-sale duty to warn.

Now, both Defendants claim that the Plaintiff's -- or Mr. Seay's injuries were not proximately caused by the negligence of either Defendant, but were solely caused by the wrongful acts of a third party. The Defendants do not have the burden of proving that the wrongful acts of the third party caused the Plaintiff's injuries. Instead, the burden remains on the Plaintiff to prove the negligence of one or both the Defendants was the proximate cause of the Plaintiff's injury.

Now, the claim against Celanese, the Plaintiff, Ms. Keene, has brought is based on premises liability. To prevail on this claim, Ms. Keene must prove by the greater weight of the evidence a duty of care owed by the Defendant to the Plaintiff. Second, the Defendant's breach of that duty by a negligent act, or a reckless act, or omission. Third, the Defendant's breach was the actual and proximate cause of the Plaintiff's injury. And, four, that the Plaintiff suffered the injury or damage.

In a premises liability action, the first element is the existence of a legal duty of care owed by the Defendant to the Plaintiff. The duty owed is determined by the status of the Plaintiff. That is, the duty of the owner or occupier toward a person to maintain his land in a certain condition depends upon the person's status.

In this case, the parties agree that Mr. Seay held the status of something the law calls an invitee on the premises owned by Celanese.

Second, Ms. Keene must prove by the greater weight of the evidence that the Defendant's breach of duty by a negligent or reckless act or omission, and this breach of duty exists when it is foreseeable that conduct may likely injure a person to whom a duty is owed.

For a Plaintiff to recover for injuries caused by a dangerous or defective condition on the Defendant's premises, the Plaintiff must show either the injury was caused by a specific act of the Defendant that created the condition, or the Defendant had actual knowledge of the condition and failed to remedy it, or -- finally, or third, that the Defendant had constructive knowledge of the condition and failed to remedy it. That is, that the Defendant should have known of the condition and failed to remedy it.

Now, in premises liability cases, the invitee is

offered and entitled to the utmost duty of care by the owner or occupier of the premises. The owner or occupier of the property owes an invitee or business visitor the duty of exercising reasonable or ordinary care for its safety and is liable for injuries resulting from the breach of this duty.

It is the duty of the owner or occupier to use reasonable care to prevent an invitee from suffering bodily injury. The owner or occupier has a duty to warn an invitee only of latent or hidden dangers of which the owner or occupier has knowledge or should have knowledge. That is to say, the Defendant must warn an invitee of any unsafe conditions of which the Defendant knew or should have known, and of which the invitee was reasonably unaware.

The owner or occupier owes a duty to have his premises in a reasonably safe condition and to give warning of latent or concealed perils.

A Defendant owes an invitee a duty of due care to discover risks and take safety precautions to warn of or eliminate foreseeable, unreasonable risks. An invitee is entitled to expect that the owner or occupier will take reasonable care to know the actual condition prevailing at the time the invitee is on the premises, and either make those conditions safe or warn the invitee of the dangerous

conditions. The degree of care required is equivalent with the particular circumstances involved, including the age, disability, impairment, or capacity of the invitee.

Now, an owner or occupier is not liable to his invitees for physical harm caused to them by any activity or condition on a land whose danger is known or obvious to them, unless the owner or occupier should anticipate the harm despite such knowledge or obviousness.

Accordingly, an owner or occupier is liable for injuries to an invitee despite an open and obvious defect if the owner or occupier should anticipate that the invitee will, nevertheless, encounter the condition or is likely to be distracted. An owner or occupier may be required to warn the invitee or take other reasonable steps to protect him if the owner or occupier has reason to expect that the invitee's attention may be distracted so that he will not discover what is obvious or fail to protect him against it.

In determining whether the owner or occupier should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of public land or the facilities of a public utility is a factor of importance indicating that the harm should be anticipated.

This duty is an active or affirmative duty. It includes refraining from any act that makes the invitee's

use of the premises dangerous or results in injury to him. It is not necessary that the precise manner in which the injuries were sustained be foreseeable. Rather, it is sufficient that there's a reasonable or generalized range of greater than ordinary dangers of injury and the sustaining of the injury was within this range.

Now, the owner or occupier of a premises is not required to make or keep the premises absolutely safe or in such condition that no accident can possibly occur. The owner or occupier is not an insurer of the safety of invitees. This duty is only to exercise reasonable care. Therefore, if there is no negligence on the part of the owner or occupier of a property, there is no liability. Thus, for example, if a reasonable person would not have been aware of the risk or if the risk was not unreasonable, there is no liability.

A latent defect is one which an owner or occupier has or should have knowledge of and of which the invitee is reasonably unaware. It is one which a reasonably careful inspection will not reveal.

To recover against Celanese, it must be proven by the greater weight of the evidence that Celanese was negligent, and that such negligence, if any, was a substantial factor in bringing about Mr. Seay's injury.

Substantial factor means an event or occurrence that

caused or was responsible for an injury, as opposed to an event or occurrence that had an insignificant or negligible effect. Conduct is not a substantial factor in causing injury if the same injury would have occurred without that conduct.

The focus of the case against Celanese must be whether they breached a duty of exercising reasonable or ordinary care for an invitee's safety.

A premises owner's duty of care is not the same as a manufacturer of an asbestos-containing product. The Plaintiff must first establish the duty of care owed by Celanese as the premise owner and, second, what would have been known in the same industry as to the dangers of asbestos at the relevant times. Unlike a manufacturer, a premises owner is not treated as an expert in a particular field -- in its particular field and has no continuing duty to keep abreast of the current state of knowledge with respect to asbestos dangers.

A premises owner can only be held liable for an invitee's injuries on the owner's properties when the premises owner has superior knowledge of the danger or unsafe condition that caused the invitee's injuries.

Whether a premises owner owes an independent contractor or employees of the independent contractor a duty to warn of dangerous conditions on the premises turns

on whether the owner at the time in question possesses superior knowledge or information that places him in a superior position to appreciate the risk posed to the contractor or its employees by the dangerous condition.

The duty of a master is to furnish its servant a reasonably safe place to work and reasonably safe and suitable tools and appliances.

Now, if you find the Plaintiffs have met their burden of proving by the greater weight of the evidence that either or both Defendants were negligent and their damages were proximately caused by the Defendants conduct or product, then you would move on to assess damages. And that is how much money the Defendants would be required to pay.

So the Plaintiff brought a case under the wrongful death and survival statutes of our state. And first, I will talk to you about the survival statute, which provides that a claim for injuries to a person survives that person's death. Any damages the Defendant proximately caused up to the date of death may be recovered by that person's estate. These damages may include conscious pain and suffering and mental distress that the deceased suffered up to the date of his death.

Pain and suffering is a recognized element of damages under the law. And it compensates the Plaintiff for

physical discomfort and the emotional response to the sensation of pain caused by the injury. There's no yardstick I can give you to measure and gauge these types of damages. You'll have to use your common sense, and life experiences, and reasonable judgment to determine them based on the evidence.

A party is, also, entitled to the loss of enjoyment of life that compensates a Plaintiff for limitations on the ability to participate in and derive pleasures from normal activities of daily life. Mental suffering is compensation for shock, anxiety, and emotional upset. Mental anguish is more than just mere disappointment, or anger, or worry, or embarrassment. It includes the mental sensation of pain resulting from painful emotions and may be composed of fright, grief, anxiety, and worry.

Now, Ms. Keene claims that her father suffered a wrongful death as a result of the acts and omissions of the Defendants. Whenever someone's death is proximately caused by the wrongful act or negligence of another, the law allows their heirs to recover. And the personal representative of the estate may bring an action for the wrongful death, and has a right to recover actual damages for this wrongful death. It is not necessary to show the money value of the deceased's life since the direct proof of the value of human life is not possible. What is

reasonable compensation is left to your sound discretion and judgment.

Our legislature has come up with a life expectancy table that may be considered by you, along with the other evidence in the case that you might believe bears on Mr. Seay's life expectancy, including his occupation, habits, and health at the time of his death. But that table states that his life expectancy at the time of his death for a 70-year-old male was 13 years.

Now, a wrongful death action, also, includes damages recoverable from mental shock and suffering, and wounded feelings, grief, and sorrow, loss of companionship, loss of the use and comfort of -- and society of the deceased, including loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries. It is not necessary to show the exact amount of damages suffered by the beneficiary or the beneficiary suffered a monetary loss.

In addition, the person for whose benefit the action is brought does not have to be dependent on the deceased for support in order to recover under the wrongful death statute. The companionship and society of a spouse or parent are not articles of commerce that can be weighed, or measured, bought, or sold. No one is competent to testify to their value. And there are no markets for

them. The amount of compensation is determined by you, based on your common sense and judgment after reviewing and weighing the evidence.

Now, neither the existence, causation, or amount of damages can be left to speculation or guesswork. The Plaintiff always bears the burden of proof as to damages to a reasonable degree of certainty, although she is not required to prove them to a mathematical certainty.

Now, the Plaintiff, Mrs. Seay, also, claims loss of consortium because of injuries received by her husband. The companionship for society of a spouse are, again, article -- not articles of commerce that can be weighed, or measured, or bought, or sold. No one is competent to testify to their value. There's no way we can determine the market price. And, again, the Plaintiff is entitled to compensation and money for their loss.

Loss of consortium includes services provided by the other spouse, love, companionship, affection, society, sexual relations, comfort, solace, and guidance. The Plaintiff is entitled to recover the value of those services of her spouse which were lost, including the loss of society and companionship in her home and for any expenses for the care and treatment to her spouse, including medical expenses reasonably incurred.

Now, that covers the entire law that's relevant to

this case. And I want to go over the verdict form with you.

If somebody will hand this down to Mr. Mason.

Thank you, sir.

All right. Before I go over that, let me just remind you that you weren't chosen to be jurors in this case -- when we spent about a whole day picking the jury. Neither John Crane, or Celanese, or Mrs. Seay picked y'all because they wanted you to be a partisan or advocate for them. They picked you because they believed you could be fair and you could decide this case without any kind of bias or prejudice.

So you are judges. You're judges of the facts. And your sole interest is to determine the facts from the evidence, take the law I just gave you, and apply it to those facts, and to reach a verdict. You aren't to be an advocate for anyone.

And if you went to the dictionary and looked up the word "jury," you would see it came from an old European word that meant a company of people sworn to render a true answer. So that's what you're here for is to render that true answer based on the evidence, determine whether the Plaintiff has met her burden of proof.

Now, the record in this case is closed. There's not going to be any more evidence. No more witnesses are

going to testify. You're going to have to rely on your memory of what the testimony was.

And there are not going to be any more exhibits. The exhibits will be back there with you. But this has been a fairly long trial. So if something was referred to during the case that you don't have back there with you, I can't give it to you, because the record is closed. All the exhibits have been admitted. And you'll have to base your decision on those exhibits and the testimony.

Now, the genius of our jury system is it allows 12 people from different backgrounds and walks of life to come together, hear the evidence, discuss it calmly and courteously, listen to each other and each other's points and points of view, and ultimately reach a verdict. You each have a vote, and your vote is just that. It's your vote and nobody else's.

So don't be afraid, however, if after discussion and you all are -- and some of you may be of a different mind to change your mind if the discussion persuades you that you should. But don't change your mind simply to get the case over with or to reach a unanimous verdict.

I know this has been a long trial. Everyone is ready for it to be concluded. But this is an important case for these parties, as you're well aware. And this is their day in court. And they are entitled to your fair and

impartial consideration.

Now, this verdict form, Mr. Foreman, you're only authorized to sign it when the verdict is unanimous. And it just has three questions on it. And it says, "We, the jury, find by unanimous consent that John Crane was negligent, and its negligence was the proximate cause of the Plaintiff's injuries and damages."

So if you find the Plaintiff carried her burden of proof on her negligence claim against John Crane, Incorporated, by the greater weight of the evidence, you would mark that yes. If you find that she did not, you would mark it no. And you would go through the same process with your answer to question number two.

And then if you have found either of the Defendants negligent, you would move on to question three. And as it says -- it says, "If your answer is yes as to one or both Defendants," and that's where you would list the damages if you find they've been proven by the greater weight of the evidence by the Plaintiff.

So that's the entire verdict form. It's pretty straightforward.

Don't start talking about the case until you get the exhibits. That'll be your signal you can finally start deliberating.

I thank you for your attention to me, and your

patience with all of us.

And I'll just ask the alternate to stick behind.

And hold on one second. It looks like they're coming up here to tell me I did something wrong.

(WHEREUPON, a bench conference was held.)

THE COURT: All right. Just to repeat --

(Pause.)

THE COURT: If you'll give the verdict form back to the bailiff, we're going -- we'll send that back with the exhibits.

All right. Let me just remind you that it's your duty to give separate, personal consideration to the case of each individual Defendant. And when you do so, you should analyze what the evidence in the case shows with respect to that individual Defendant leaving out of consideration entirely any evidence admitted solely against some other Defendant or Defendants.

Each Defendant is entitled to have its case determined from the evidence as to its own act, and statements, and conduct, and any other evidence in the case which may apply to it. So I think that covers everything I needed to tell you.

And if you'll just go back to the jury room, except the alternate who, I believe, is Mr. Duncan.

Is that right?

JUROR #52, DUSTIN DUNCAN: #52, yes, sir.
THE COURT: What did you say?
JUROR #52, DUSTIN DUNCAN: Juror #52.
THE COURT: Oh, okay. So you've already -- you refer to yourself as a number now?
JUROR #52, DUSTIN DUNCAN: Yes.
THE COURT: You're getting used to the process. Okay. Yeah.
All right. We'll send you the exhibits back and you can start deliberating.
Thank you.
You can ahead and go on back, ma'am.
JUROR #150, MATTIE MOATES: I'm the alternate.
THE COURT: No. You're a regular juror now. We had some people drop out.
(WHEREUPON, the jury was excused from open court at approximately 3:01 p.m.)
THE COURT: I -- am I -- does everybody agree he's the -- he was the third alternate?
MR. PANATIER: Yes.
THE COURT: I just wanted to make sure.
Okay. Mr. Duncan, thank you for your service.
The law doesn't allow you to go in the jury room right now. But you can stick around, if you want, and see what happens, or you're welcome to leave. It's up to you,

sir.

JUROR #52, DUSTIN DUNCAN: I guess I'll head home.

THE COURT: Okay. And you don't -- you don't have to talk to anybody about the case or your service. If someone approaches you or calls you, you don't have to talk to them.

JUROR #52, DUSTIN DUNCAN: Okay.

THE COURT: And if somebody bothers you, you just let me know.

Okay. But you can talk to them. But you don't have to. It's up to you.

JUROR #52, DUSTIN DUNCAN: Yes, sir.

THE COURT: Thank you.

(WHEREUPON, Juror #52, Dustin Duncan, exited the courtroom.)

THE COURT: Any objection to the charge?

MR. PANATIER: No objections to the charge, Your Honor.

MR. ELLIOTT: Your Honor, John Crane has two objections. The same objection that we had at the conference.

THE COURT: Sure.

MR. ELLIOTT: Your Honor charged, A seller owes a duty to conduct adequate tests and inspections of its products to discover latent defects, or defects that are

not visible or apparent on a reasonable inspection. And our objection is that that statement of the law does not apply when the Plaintiff's theory of liability in a products liability case is failure to warn only.

The next charge is, A seller of a defective product has the duty to warn users of a product and any dangers created by its product with which the manufacturer is or should be aware at the time the -- that's not right. Hold on.

THE COURT: Do you just want to -- I'll tell you what, you can make that sheet a Court's Exhibit.

MR. ELLIOTT: Correct. I'm sorry.

A seller of the defective product has the duty to warn users of the product and any dangers created by its product with which the manufacturer is or should be aware at the time the product is sold. And the same basis for the objection on that.

THE COURT: Okay.

MR. ELLIOTT: And I'll make this sheet -- it does have my handwriting on it.

Do they object? It's that okay.

THE COURT: That's fine.

MR. YOUNG: And I don't have the exact number that --

(WHEREUPON, there was a disruption in the courtroom.)

MR. YOUNG: Celanese -- and I object to number -- we

object to the Plaintiff's premises liability charge. I just still don't think it's adjusted to the evidence in the case. And we'll get the number, Judge.

THE COURT: Okay.

MR. YOUNG: And that's it.

MR. PANATIER: And then for the verdict form, the jury has no clue who CNA Holdings is. So we'd just like Celanese put in, instead of CNA Holdings, or CNA Holdings/Celanese. They've never heard who that is.

MR. YOUNG: That's -- I had, actually, told you that in voir dire, Judge. I'd be happy to leave that on there, but I think Celanese is much fairer to everybody.

MR. PANATIER: And then just remove Plaintiff's proposed verdict form. And I guess, up on the style, we might put Celanese in parentheses for CNA Holdings. I don't want them to think there's some mystery --

MR. YOUNG: Or you can just change it to Celanese.

MR. PANATIER: Or just change it to Celanese. That's fine.

THE COURT: All the exhibits -- is everybody clear on that?

MR. PANATIER: Yes.

Thank you.

THE COURT: Thank you.

(WHEREUPON, Court's Exhibit No. 9 was marked for

identification and admitted into evidence.)

(WHEREUPON, the proceedings were recessed at approximately 3:06 p.m.)

THE COURT: I believe we're waiting on Mr. Tivin.

(Pause.)

THE COURT: Well, while he's on the way, I'm going to make the note we got from the jury a part of the record where they asked for a copy of the law.

And off the record, are -- all the lawyers representing each party were present when we agreed to give the jury a copy of the charge.

Does that correctly state what happened?

MR. PANATIER: Yes, Your Honor.

MR. YOUNG: Yes, Your Honor.

THE COURT: I'll be glad to amend it.

(WHEREUPON, Court's Exhibit No. 10 was marked for identification and admitted into evidence.)

(Pause.)

THE COURT: Everybody is present.

Anything before we bring the jury in?

MR. PANATIER: No, Your Honor.

THE COURT: Okay. Well, obviously, I don't know what the verdict is. I just want to thank all the lawyers and the parties for their very civil conduct throughout the trial and your courtesies. And I think both sides were

represented by the best our profession has to offer. So it was enjoyable trying the case with you.

You can bring the jury in.

I'll make a copy of this charge that was sent back as a Court's Exhibit, too.

(WHEREUPON, Court's Exhibit No. 11 was marked for identification and admitted into evidence.)

(WHEREUPON, the jury came into open court at approximately 5:16 p.m.)

THE COURT: All right. Mr. Foreman, has the jury reached a unanimous verdict?

JUROR #130, MATTHEW MASON: Yes, sir, we have.

THE COURT: All right. If you'll hand it to the bailiff, we'll receive it and publish it.

Thank you.

JUROR #130, MATTHEW MASON: Thank you.

THE COURT: All right.

VERDICT

THE CLERK: For the State of South Carolina, County of Spartanburg, in the Court of Common Pleas, Angie Keene, Individual and as Personal Representative of the Estate of Dennis Seay, deceased, and Linda Seay v. Celanese and John Crane Incorporated, case number 2013-CP-42-3915. We, the jury, find by unanimous consent that John Crane was negligent and its negligence was a proximate cause for the

Plaintiff's injuries and damages: No.

We, the jury, find by unanimous consent that Celanese was negligent and its negligence was a proximate cause of the Plaintiff's injuries and damages: Yes.

If your answer is yes as to one or both Defendants, please, state the amount of actual damages that have been proven by the greater weight of evidence: $2 million actual damages for the survival action, $5 million actual damages for the wrongful death action, $5 million actual damages for loss of consortium action.

Signed by the Foreperson, Matthew Mason, on October the 8th, 2015.

Ladies and gentlemen of the jury, is this your verdict and still your verdict?

(WHEREUPON, all jurors said yes.)

THE CLERK: Your Honor, this is your verdict.

THE COURT: Any matters at this time for the jury as to this verdict?

MR. PANATIER: No, Your Honor.

THE COURT: Poll the jury? Anybody wish me to poll the jury?

(WHEREUPON, there was no response.)

THE COURT: All right. Ladies and gentlemen, I'll just ask you to go back to the jury room just for a few minutes. And we'll be back on the record in just a few

moments. I have to take something up with the lawyers.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 5:19 p.m.)

THE COURT: All right. So we'll proceed to the phase concerning willfulness and recklessness.

MR. PANATIER: Yes, Your Honor.

THE COURT: All right. Do y'all have a verdict form for that?

MR. PANATIER: Well, we just would have to tweak it to take out John Crane.

THE COURT: Right.

MR. PANATIER: Yeah.

THE COURT: Okay. So the actual charge to them on that would be...

MR. PANATIER: We did the initial -- the initial verdict form that we handed to the Court before had two --

THE COURT: Yeah.

MR. PANATIER: The last two pages of the instructions?

MS. MCVEY: Yes.

MR. PANATIER: The last two pages of the instruction are the punitive instructions.

MS. SHOFNER: And I don't -- we have not met or conferred about the punitive damage charges. So we

would -- we're not -- we would need to argue whether those come in, and if there's any additional ones that we had submitted.

THE COURT: Well, wait a minute, now. Do we really need to do a three-phase? Because -- since John Crane is no longer a party, we can just go right into punitive damages.

MR. PANATIER: We should be able to do reckless and punitive damages.

THE COURT: Well, that's what I'm saying. Why do we need to do reckless?

MR. PANATIER: I think there has to be a finding, clear and convincing, for reckless, willful -- right. It's all -- it's all at one time. That's what we're saying. There's only one more phase.

THE COURT: So we can -- we'll do the punitive damage phase now.

MR. PANATIER: Yeah. We can do it now.

THE COURT: And the charge --

Ms. Shofner, is there something about the charge you want to change, or do you just need to look at it --

MS. SHOFNER: Well, we submitted our own separate charges as to punitive damages. And I've been trying -- while we -- while they -- the jury was out, I've been trying to go through to see if there's any additional

charges.

And I think that there will be some additional charges from our charges that we would like to have either added -- I don't think there's anything wrong with those charges. I think there's just a few that we would request to be added --

THE COURT: Okay.

MS. SHOFNER: -- to that charge -- to those charges. And I think that -- I mean, I guess we're ready to argue those now. We certainly can.

THE COURT: Okay.

MR. TIVIN: Your Honor, at this time John Crane would ask that judgment be entered in its favor, and we'd be excused.

THE COURT: Is there any motions --

MR. PANATIER: To be totally -- I have no motions. To be totally candid, I don't know what the entering of judgment procedure would be. But I don't have an objection if they want to leave.

THE COURT: Okay.

(Pause.)

MR. PANATIER: Oh, can we have 10 days for post-trial motions as to John Crane, Your Honor?

THE COURT: Yes, sir.

MR. PANATIER: Okay.

THE COURT: So thank you.

MR. TIVIN: Thank you, Your Honor.

MS. SHOFNER: Do you all still have the copy of phase two that I gave you?

THE COURT: Yes, ma'am.

MS. SHOFNER: No. I had my individual charges for phase two.

THE COURT: Oh, okay. I don't know about that.

MS. SHOFNER: I think I just gave the Plaintiffs my last copy of those.

MS. MCVEY: Are there certain ones that you want out of those?

MS. SHOFNER: I think that there are. Let me --

MR. PANATIER: There's a lot.

MS. SHOFNER: I know. I know. And I'm not talking about all of them. I think we would ask that the charge on Page 3 be given to award -- whether the award of punitive damages is within the discretion of the jury. The imposition of punitive damages is not compulsory or required.

MR. PANATIER: That's fine.

MS. SHOFNER: We would ask that charge six be given, An aggregation of negligent acts or admissions does not equate to wilful, wanton, or reckless conduct. In other words, one [inaudible] the negligence cannot support an

award of punitive damages.

MR. PANATIER: I can't agree with that. Because you do use -- negligent conduct is -- may, also, form the basis of reckless conduct.

And, again, I haven't had a chance to -- I didn't know they were submitting all of these. But, obviously, you consider the same evidence that you relied upon for negligence for recklessness.

THE COURT: Okay. I probably wouldn't charge that number six.

MS. SHOFNER: I'm sorry. You would or would not?

THE COURT: I would not. I'm sorry.

I'll charge the other ones.

MS. SHOFNER: Okay.

THE COURT: I'm not keeping up with it. So if you --

MS. SHOFNER: Yeah. I --

THE COURT: -- because I don't have it. But -- and I'm not fussing. I'm just saying, if you can hand up what we -- what I ruled on.

MS. SHOFNER: Yes --

MR. PANATIER: Do you want my copy? This is the copy Elaine gave me. I have not -- I haven't been through it --

THE COURT: Okay.

MR. PANATIER: -- so I might just have to listen.

MS. SHOFNER: I'm sorry. I'm sorry. I thought I had it in the document. And then I shut this down, so.

THE COURT: That's okay.

MR. YOUNG: Judge, what is the procedure now?

THE COURT: Well, so bear with me one second.

We're going under 52 -- 15-32-520, which is the bifurcation of punitive damages. And this says in the second stage, The jury shall determine if the Defendant is liable for punitive damages. And if determined, the liable amount. I'm paraphrasing a bit. But that's all it is. And the charge is pretty straightforward on punitive damages.

MR. YOUNG: I didn't ask a very good question, Judge. Is there going to be another -- just a charge and more deliberation?

THE COURT: No. We're good. You can make any arguments you want to. And then we'll charge. I'll tell them what's going on. And you can have argument.

MS. SHOFNER: We would -- I'm sorry.

Okay. On Page 8, we would ask that the Plaintiff's charge of wanton, willful, or recklessness misconduct, which would support an award of punitive damages, is a far more serious charge than the Plaintiff's charge of negligence. Wanton, willfulness, and recklessly -- knowingly and intentionally doing a thing or wrongful act.

This mean actual knowledge or awareness on the part of the Defendant that its conduct was wrong and that the conduct is -- at issue was outrageous.

THE COURT: Okay.

MS. SHOFNER: You'll charge that one?

THE COURT: I'm sorry.

MS. SHOFNER: Yes?

MR. PANATIER: Your Honor, it's Plaintiff's position to just give the pattern.

THE COURT: I mean, I think -- I think the pattern charge covers the law. And that seems repetitive to me.

MS. SHOFNER: Okay.

MR. PANATIER: Your Honor, Theile just told me that what we handed you, the punitives, was the punitive charge that was given in Garvin. Ours, but --

THE COURT: Right.

MS. SHOFNER: All right. I think that's it then.

THE COURT: Okay.

MS. SHOFNER: And I think, based on what the Plaintiffs -- was part of the original charge from the Plaintiffs or that came from Garvin, that last paragraph, Before you can award punitive damages, you must find the Plaintiff's entitled to actual damages, that last paragraph can be taken out.

MS. MCVEY: Okay.

MS. SHOFNER: Because, obviously, that was charged at the same time as --

MS. MCVEY: Yeah. Yeah, I agree.

MS. SHOFNER: So the -- so you will additionally charge the first one, whether to award punitive damages is within the discretion of the jury. The imposition of punitive damages is not compulsory or required. I don't think that's part of the pattern charge.

THE COURT: Okay. Ms. Shofner, and that's Page 6?

MS. SHOFNER: That is Page 3.

THE COURT: Yeah. I'll charge that.

MS. SHOFNER: Okay. Thank you.

THE COURT: And --

MS. SHOFNER: All right. Then I think that that's...

THE COURT: So there's got to be the -- this doesn't seem to me to cover everything. I think probably the confusion stems from the fact that in Garvin we talked about punitive damages in the first phase, but we've got a standard charge.

MR. PANATIER: We're fine with standard.

THE COURT: That just, you know, tells them that they have to consider a reasonable ratio. They have to consider ability to pay, and so forth. That is under the Gore -- Gamble v. Stevenson.

MR. PANATIER: Your Honor, my -- my concern is, at

this point, is to introduce ability to pay, we would need to get -- introduce the net worth information, which we can pull straight off the Internet or get a stipulation from Celanese.

THE COURT: I mean, that's -- usually they handle that in discovery, but --

MR. YOUNG: Judge, neither one of those are something that I can in any way deal with at 5:30 in the afternoon. Obviously, we would object to pulling it off the Internet. And I certainly can't do any sort of stipulation.

THE COURT: Well --

MR. PANATIER: Your Honor, I want -- I want to finish. And, frankly, I would -- I would -- I'd be fine to go without it.

THE COURT: Okay.

MR. PANATIER: But my -- but my concern is -- my concern is that there is potentially error if I don't submit actual evidence of their net worth. That's my --

THE COURT: That's not the law in South Carolina.

MR. PANATIER: Okay.

THE COURT: You don't have to submit evidence.

MR. PANATIER: Okay. That's helpful.

Thank you.

Then I'm fine. I'm ready to go.

THE COURT: That's the Welch v. Epstein case.

So if you're willing to go forward without it--

MR. PANATIER: I'm ready to go.

THE COURT: Okay.

MS. MCVEY: I've got to get you a verdict form.

THE COURT: Okay.

MS. MCVEY: I'm sorry. I'm going to e-mail it to you, if that's okay.

(WHEREUPON, a bench conference was held.)

THE COURT: Okay. Are y'all ready for the jury?

MR. PANATIER: Yes, Your Honor.

MR. YOUNG: Yes, Your Honor.

THE COURT: Okay. You can bring the jury back in.

Now, this -- you know --

Hold them out there just one second, if you don't mind.

You know, I'm happy to charge them before y'all argue --

MR. PANATIER: Yeah. That's great.

THE COURT: -- so they know what to look for.

MR. YOUNG: That's fine, Judge.

THE COURT: All right.

(WHEREUPON, the jury came into open court at approximately 5:40 p.m.)

THE COURT: All right. Let's make sure we've got everybody here.

Okay. Since your verdict has been rendered and you found actual damages against Celanese, you may, also, consider an award of punitive damages. And so I'm going to instruct you on the law of punitive damages. Then the lawyers will make some brief arguments about it, and then you're going to deliberate about that. And that'll be the final thing you have to do.

CHARGE ON THE LAW (PUNITIVE DAMAGES)

THE COURT: So punitive damages are intended to punish a Defendant for extraordinary and outrageous misconduct, and to prevent the Defendant and others from committing similar acts in the future.

Punitive damages can only be awarded when conduct of the Defendant has been something more than mere negligence. The evidence must establish the Defendant's actual reckless, willful, and wanton, meaning there was a conscious failure to exercise due, care or a conscious indifference to the rights and safety of others, or a reckless disregard thereof.

Whether to award punitive damages is within the discretion of the jury. The imposition of punitive damages is not compulsory or required. But if you find the Defendant's conduct was willful, wanton, or reckless, you may award the Plaintiff punitive damages.

To support an award of punitive damages, the

Plaintiff must prove by clear and convincing evidence that the conduct complained of included a consciousness of wrongdoing at the time it occurred.

Clear and convincing is more than just the greater weight of the evidence. And as I told you, the greater weight of the evidence requires only proof that persuades you that a party's claim is more likely true than not true.

On the other hand, clear and convincing evidence is not as high a standard as the burden of proof in criminal cases, which is to proof beyond a reasonable doubt. Clear and convincing proof leaves no substantial doubt in your mind. It means the evidence is not ambiguous, doubtful, equivocal, or contradictory.

Convincing means persuading by proof or argument causing one to believe in the truth of what is asserted. Clear and convincing proof establishes in your mind not only that the fact is probable, but that it is highly probable.

Before awarding punitive damage, you must consider and weigh four elements that may or may not be pertinent to the facts of this case.

You must first consider the relationship between any punitive damage award and the harm caused. Any award of punitive damages should take into account the

reprehensibility of the conduct, the harm caused, the Defendant's awareness of the conduct's wrongfulness, the duration of the conduct, and any concealment.

Therefore, any award should bear a reasonable relationship to the nature and extent of the conduct and the harm caused, including the actual damage award made by you.

Second, any award should take into account as a mitigating factor any other penalty that may have been imposed or which may be imposed for the conduct involved, including any criminal or civil penalty, or other punitive damages award arising out of the same conduct.

Third, you should consider whether the award of and the amount of any punitive damage award may deprive the Defendant of any profits derived from the improper conduct, and whether the ill-gotten profits should be properly awarded to the Plaintiff.

Fourth and finally, any award of punitive damages must be limited to punishment, and thus, it may not effect economic bankruptcy. To this end, the Defendant's ability to pay any punitive damage award should be considered. However, the economic bankruptcy factor is not an absolute bar to an award of punitive damages.

Now, punitive damages may only be awarded for injuries the Defendant caused to the parties to this

action. Although it may be appropriate to consider the reasonableness of a punitive damage award in light of the potential harm the Defendant's conduct could have caused, that potential harm is harm potentially caused to the Plaintiff, not all other potential victims.

Now, that is the law of punitive damages. And, now, we'll have the argument -- I mean the arguments of the lawyers.

So, yes, sir. Mr. Panatier.

CLOSING ARGUMENT (PUNITIVE DAMAGES)

MR. PANATIER: Thank you, Your Honor.

All right. So the good news is that we just found out about your verdict, so I couldn't make a very long PowerPoint.

The first thing I want to say is we -- we, from the bottom of our hearts, appreciate what you did for this family.

This part is the part on your jury questionnaires very early -- when you filled out the jury questionnaires, there were questions about punitive damages. And maybe along the way you thought, where's the punitive damages part? This is it. It's a two-phase trial.

So this is the phase where you evaluate Celanese's conduct, and then you punish it. And this is -- punitive damages are designed to punish and deter the conduct.

If you find that a company is reckless, then you have to punish them. Otherwise, there is no reason to find that they were reckless. I'm going to show you three documents, and you know them well.

You know this document where they used asbestos gaskets, even though they knew there was a safer alternative. That's reckless. You know their failures that pertain to Daniel. That is reckless. And this document, you know very well. You just heard the judge charge you on the law of recklessness and punitive damages. And he used a word that is "concealment."

This memo that set forth the policy at Celanese about how they were going to treat toxic exposures talks to recklessness, wantonness, maliciousness, and concealment. And you know that that followed through into 1988 when Mr. Bowyer published his memo about the fact that they weren't going to give interpretive results.

I think I have two more slides.

So a conscious failure to exercise due care constitutes wilfulness. And saying you'll do something to protect worker safety and then not doing it, that's what this is. That's different from negligence.

Negligence, you may not make a commitment to do something to somebody, but you can still fail -- fail to use ordinary care, or fail to use reasonable care. In

this case, they promised to do something for worker safety. So they knew about it. They internalized it. They put it on paper, and then they didn't do it. So that's recklessness.

And then, how much? So what is the right number to punish and deter Celanese for this type of conduct? That's up to you. But one of the considerations was the duration of the conduct. And we know it lasted for many, many years. But I just want to focus on the years that Mr. Seay was at Celanese. He was there in '71, '2, '3, '4, '5, '6, '7, '8, '9, and 1980, 10 years.

And I don't want to just suggest to you and say award a bazillion million gajillion dollars. I don't want you to do that. There's an award you could make that would be absurd. And I don't want you to do that. I don't want you to make a giant award that people read about in the newspapers. I don't want you to do that.

What I want you to do is I want you to award punitive damages that give a specific number, that whenever Celanese is asked about it, they say, why did the jury put that number together? they'll have to answer, the jury gave punitive damages for the 10 years for this one man while these policies were in effect.

And what I want you to do -- I thought about saying, you know, I think a million dollars a year would be

justified. But instead, I want to make it a little bit more symbolic. The last two digits of each year '71, '72, '73, '74, et cetera, just add a zero. 710,000, 720,000, 730,000, 740, and so on, and add it up. And that way, it's symbolic of the years that Mr. Seay was there. And it's an amount that will be substantial enough to punish and deter Celanese.

The only way that the companies listen is if you hit them in the pocket, if you hit them in the wallet. And that's what you have to do. So whatever that number comes to is what I would suggest as the number that you award for punitive damages. Because, one, it does, actually, punish and deter. It's big enough to do that, but it's not a hundred million bazillion dollars.

But at the same time, if you then take those numbers, it is symbolic of the time Mr. Seay put in at Celanese.

We thank you very much for your time.

THE COURT: Thank you.

Yes, sir. Mr. Young.

MR. YOUNG: Ladies and gentlemen, the first thing that I'd like to say on behalf of Celanese is that we, obviously, have gotten a message already. $12 million is something that people are going to ask about all the time. And they're going to ask, you know, about that. And the message is very loud and very received, and a punishment

clearly in and of itself.

And I told you before, you know, we wanted the truth of the case. And we respect your verdict. I don't know if y'all noticed, but the video thing back here, the people at Celanese -- the people at Celanese already know what happened.

And what happened to Mr. Seay, as I told you the whole time, was bad. And we feel badly for him. And we're not arguing at all against the $12 million.

But, ladies and gentlemen, that is a big, big, giant wallop upside the head message that we've already gotten. And we apologize for everything that we did that gave rise to that.

And, you know, ladies and gentlemen, there is a difference between negligence and being willful, wanton, and malicious. And we accept full responsibility for what happened to Mr. Seay.

The people that were involved in all this and involved in asbestos are all dead. But I can tell you with absolute unequivocal certainty that a $12 million verdict in this case has sent a message to Celanese. And it's going to send a message to the highest, highest levels of Celanese. And they will know, without additional monies, to look at every single situation that comes up and look at it carefully.

So one of the things that the judge charged you is that one thing you should consider is how much money has already been awarded. And I would ask you to do that on my behalf and on behalf of the client, and tell you that we got the message. And Celanese is going to take it to heart and -- and do good things.

So we would ask that you not find an award of punitive damages.

Thank you very much.

THE COURT: Thank you, Mr. Young.

Mr. Panatier.

MR. PANATIER: Very briefly. I always get a rebuttal, but all I'm going to say is this, the reason you give -- you find recklessness and you give punitive damages is what you just saw, which is the first time Celanese acknowledged any responsibility, said the words, "I'm sorry," was after a jury said, you did something wrong. That's why you need punitive damages.

Thank you.

THE COURT: All right. Mr. Foreman, I've prepared a verdict form.

And let me just ask the lawyers one question up here real quick about this before I...

(WHEREUPON, a bench conference was held.)

THE COURT: All right. Just to clarify, the punitive

damages are only recoverable in a wrongful death claim by Ms. Angela Keene. Under South Carolina law, punitive damages are not recoverable on the loss of consortium claim that Ms. Linda Seay brought. So the only thing you're to concern yourself with is the wrongful death claim and whether punitive damages should be awarded on that.

So with that clarification, I'll hand that verdict form to the deputy to give Mr. Mason. Y'all can go start deliberating.

Thank you very much for your patience and cooperation.

(WHEREUPON, the jury was excused from open court at approximately 5:55 p.m.)

THE COURT: Okay. Any matters or motions at this stage?

I take it that Celanese wishes to have 10 days for any post-trial motions on the liability phase?

MS. SHOFNER: Yes, Your Honor.

THE COURT: Okay. We'll be in recess until we hear something.

(WHEREUPON, the proceedings were recessed at approximately 5:56 p.m.)

THE COURT: Anything before I bring the jury in?

MR. PANATIER: No, Your Honor.

THE COURT: Okay. Bring the jury in, please. Thank you.

(WHEREUPON, the jury came into open court at approximately 6:06 p.m.)

THE COURT: Okay. Mr. Foreman, has the jury reached a unanimous verdict?

JUROR #130, MATTHEW MASON: Yes, sir, we have.

THE COURT: If you'll hand it to Ms. Camp, we'll receive it and publish it.

Okay.

VERDICT (PUNITIVE DAMAGES)

THE CLERK: The State of South Carolina in the County of Spartanburg, the Court of Common Pleas, case number 2013-CP-42-3915, Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay v. Celanese and John Crane, Incorporated.

We, the jury, by unanimous consent find by clear and convincing evidence that Celanese was willful, wanton, and recklessness [sic]: Yes.

As to Plaintiff's claims against Celanese for punitive damages, we, the jury, by unanimous consent find by clear and convincing evidence for the Plaintiffs in the amount of $2 million punitive damages, signed by the Foreperson, Matthew Mason, on October the 8th, 2015.

Ladies and gentlemen of the jury, is this your

verdict and still your verdict?

(WHEREUPON, all jurors said yes.)

THE COURT: All right. Any matters before the jury is discharged?

MR. PANATIER: No, Your Honor.

MR. YOUNG: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, I'm going to thank you for your service. And I know you're ready for it to be over.

So I just want to take a minute and commend you for the conscientious effort in which you served. You know, we don't have professional jurors in this country. And we're one of the few countries in the world that has jury trials in civil cases.

And we have them for a reason. And it would be, I think, something that none of us would want if we were ever unfortunate enough to have to sit at one of these tables to come in and see that jury box filled with 12 people who didn't have anything better to do and that we just rounded up off the street.

I know you all have much going on in your lives. You have jobs, and your families, and other important aspects of your daily living that's -- that has been disrupted severely by this trial for a two-week period. And jury service is, in a sense, kind of the rent we pay to live in

a democracy.

And John Adams said that the right to a jury trial and the right to have a representative government were the heart and lungs of our democratic government. So I know the parties in this case are grateful for your service. And the court system certainly couldn't function without the willing participation of good citizens like yourselves.

So you'll get in a few weeks -- or a few days, rather, a check from the county for your service. And we appreciate your hard work and your patience. I know it's hard to sit back there for long periods of time and not really knowing what's going on when we have delays that we can't avoid.

But, again, our gratitude goes out to you. And have a good rest of the week.

And you have a three-year exemption from circuit court jury duty. So you've got that going for you.

Thank you very much.

MR. PANATIER: Are we free to talk to the jury?

THE COURT: Well, let me say something about that. I've told you throughout this -- you don't have to sit back down. I've told you throughout this -- believe me, I know what it's like to sit for long periods of time and listen.

But I've told you throughout this you don't -- not to talk to other people about the case. Your service is over. You're free to talk to whoever you want to about your experiences, but you don't have to talk to anybody.

If somebody approaches you and wants to talk about the case, and -- you know, that's the way the lawyers learn. They learn from the jurors experiences and perspectives. So they're trying to educate themselves.

You're free to talk to them, but you don't have to talk to them. If anybody gives you a hard time, just let me know and I'll take care of that.

But with that, have a good evening.

UNIDENTIFIED MALE: Can I talk to them?

THE COURT: No, sir. We're not going to -- you can talk to them individually. We're not going to do anything on the record. I appreciate your understanding.

(WHEREUPON, the jury was dismissed from open court at approximately 6:12 p.m.)

THE COURT: Okay. Any further matters or motions at this time?

MR. PANATIER: No, Your Honor.

THE COURT: Any party has 10 days to file any post-trial motions.

All right. Thank you very much.

**********END OF TRANSCRIPT OF RECORD**********

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	COURT OF COMMON PLEAS 2013-CP-23-03915
ANGIE D. KEENE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DENNIS SEAY, DECEASED, AND LINDA SEAY, PLAINTIFF, vs. 3M COMPANY, ET AL., DEFENDANTS.	TRANSCRIPT OF RECORD ORIGINAL

July 27, 2015
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

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Attorney for Defendant Spirax Sarco, Inc.

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: So this is Angela D. Keene, Individually and as Personal Representative of the Estate of Dennis Seay and Linda Seay --

Is it "See" or "Say"?

MR. PANATIER: "See."

THE COURT: Seay v. 3M Company and others, 2013-CP-42-03195.

And this is -- we're going to do the motion of CNA Holding, LLC's, to dismiss or for summary judgment, based on the statutory employer doctrine and --

Ms. Shofner.

MS. SHOFNER: Your Honor, I've lost Chris Collier from your chambers to here. He should be right here.

There he is.

THE COURT: Okay.

MS. SHOFNER: He's going to be handling the motion.

THE COURT: All right. Mr. Collier.

MR. COLLIER: Your Honor, do you want me at the podium here, or do you have a preference?

THE COURT: Wherever you want to be.

MR. COLLIER: Okay. Well, I'll come to the podium.

Good morning, Your Honor.

This is CNA's motion to dismiss or, in the alternative, motion for summary judgment, based on the

statutory employee doctrine. You've granted this motion in past asbestos cases involving similar facts and the same law --

THE COURT: Well, I mean, how -- was that really that similar?

I mean, that was DuPont. They had a construction division. They had a history of construction activity. And they were in the construction business, pretty much, building plants all over the country.

This is a far different situation, isn't it?

MR. COLLIER: Well, yes, Your Honor.

I was, actually, going to say that Mr. Seay's work at the Hoechst Celanese plant was even more necessary, essential, and integral. Because he was doing the daily maintenance on all of the equipment and systems in the plant.

THE COURT: So CNA is in the maintenance business?

MR. COLLIER: Well, Your Honor, CNA -- I mean, as you know, I believe is -- they manufactured polyester materials.

THE COURT: Are they in the construction business, construction maintenance business?

MR. COLLIER: Is CNA in the maintenance and construction business --

THE COURT: Right, when they were here in

Spartanburg.

MR. COLLIER: No, Your Honor.

They manufactured polyester materials. But it's our argument that you could not manufacture and continue manufacturing polyester or any other materials without the continual maintenance and upkeep work on the systems and the equipment --

THE COURT: All right.

MR. COLLIER: -- which, is what Mr. Seay did.

THE COURT: You probably couldn't stay in the fishing rod business too long either if you couldn't deliver your supplies by truck. But isn't that what the Court said in the Olmstead v. Shakespeare, that the delivery part of a business, such as Shakespeare, wasn't enough to make them a statutory employer of truck drivers?

MR. COLLIER: Well, yes, Your Honor. That is what was said in Olmstead.

But from the standpoint of, actually, manufacturing a product, being able to continue to manufacture a product, you have to have systems and equipment in place to be able to do that, and to -- you have to perform maintenance on those systems and equipment, or they're not going to continue to work after a period of time.

THE COURT: Well, that's true of every business.

MR. COLLIER: Well, it's true in certain businesses,

Your Honor.

THE COURT: Have they invented some maintenance-free business I'm not aware of?

MR. COLLIER: I wish my house were maintenance-free, but it's not.

THE COURT: Yeah, me, too.

MR. COLLIER: Your Honor, under 42-15-40, the South Carolina Workers' Compensation Act provides the exclusive remedy for employees injured in the scope of employment, and excludes all other rights and remedies. And South Carolina courts have held that this rule extends to workers who may not be directly employed, but who are considered statutory employees of an owner, such as Hoechst Celanese, who is contracted with an independent contractor, such as Daniel, under the Voss v. Ramco, 325 S.C. 560, case from 1997.

To obtain the protections of the South Carolina workers' compensation law, a company must subscribe to approved insurance as provided in 42-5-20. And Hoechst Celanese has provided copies of those policies.

The purpose of this legislation was described in Adams v. Davison-Paxon, 230 S.C. 532, from 1957 is protecting employees of irresponsible contractors who do not provide workers' comp coverage for their employees.

THE COURT: You're not saying Daniel Corporation was

irresponsible, are you, certainly?

MR. COLLIER: Your Honor, we actually -- we paid -- we reimbursed Daniel for the workers' compensation coverage on Mr. Seay. And so this is consistent with what Your Honor concluded in the 2010 Ewing case that the entire concept of statutory employment is designed to protect the employee by assuring that workmen's compensation coverage by either the subcontractor, or the general subcontractor, or the owner if the work is part of the owner's business.

And a worker's employment status, as it affects jurisdiction, is a matter of law for the Court. And any dispute and facts giving rise to the issue should be resolved by the Court and not a jury under Wheeler v. Morrison Machine, 313 S.C. 440, from 1993.

Under the Voss case, only one of the three following criteria must be met to conclude that the activity of an employee of a contractor is sufficient to make him a statutory employee. The first being that the activity of the subcontractor is an important part of the owner's trade or business, or the activity performed by the subcontractor is a necessary, essential, and integral part of the owner's business, or the identical activity performed by the subcontractor has been performed by employees of the owner.

And so if either one of those three tests is met, the individual is considered a statutory employee.

And Hoechst Celanese would submit that it meets all three of the tests, but, specifically, one and two. And, therefore, any doubt as to Mr. Seay's status is to be resolved in favor of coverage under the act.

Mr. Seay testified that he was responsible for repairs to and preventative maintenance on the equipment at Hoechst Celanese. And that he worked on this equipment on a daily basis, including pumps, and valves, and gearboxes that were used in the process and production lines.

He testified that the process lines were vital to the operation of Hoechst Celanese's business. He testified that each piece of equipment was essential to the manufacturing operation. And he testified that repairs and preventative maintenance he performed were necessary for the continued operation of the plant.

In short, he testified that the work that he was performing was necessary, essential, and an integral part of Hoechst Celanese's business. And other witnesses offered by the Plaintiff's, including Mr. Thompson, mirror that testimony.

Mr. Thompson confirmed that the purpose of Daniel's maintenance was to ensure that the Hoechst Celanese

production lines remained operational. He testified that keeping the production lines operating was important to Hoechst Celanese's manufacturing business.

And most telling is Mr. Seay's counsel's own question to Mr. Thompson during the Plaintiff's direct examination of him, "Do you believe that -- the work that Dennis and you all did at the Hoechst plant, do you believe that was an integral, important part of the operation of the plant to which, if it wasn't done, it could not function?"

And Mr. Thompson answered, "Yeah."

As was true in Wheeler, maintenance and repair of equipment was necessary to the continued production of materials at Hoechst Celanese.

And Hoechst Celanese's corporate representative, Bruce Bowyer -- who was deposed in this case and, also, offered an affidavit that's been attached to our motion. And he confirmed what both Mr. Seay and Mr. Thompson said, that it was essential for Hoechst Celanese to have maintenance workers on-site to maintain, repair, and replace equipment.

He testified that maintenance and upkeep of the production lines was a regular, ongoing part of Hoechst Celanese's business. And without the ongoing maintenance performed by Daniel millwrights, like Mr. Seay and Mr. Thompson, Mr. Bowyer testified that the Hoechst

Celanese facility could not have functioned properly, and would not have been able to continue to make products.

So Mr. Seay, Mr. Thompson, and Mr. Bowyer all agree with this because it makes sense. Without maintenance to the plant, it couldn't operate.

So Hoechst Celanese would submit that it meets the first and second test under Voss, such that the work that Mr. Seay performed was an important part of Hoechst Celanese's trade or business. And, also, the ongoing maintenance was a necessary, essential, and integral part of Hoechst Celanese's business under Voss.

And although I don't think it's necessary since the first and second tests are covered, but Hoechst Celanese would, also, submit that it meets the third test since Hoechst Celanese, ultimately, ended up hiring Daniel's maintenance workers as its own employees. This was some number of years after Mr. Seay left.

Your Honor, there are multiple cases that are cited in our brief that establish that South Carolina courts had concluded that cases involving maintenance workers are necessary, essential, and integral to an owner's business so as to conclude that the individuals were statutory employees.

And these cases include Smith v. T.H. Snipes, 306 S.C. 289, from 1991; Gentry v. Milliken, 307 S.C. 235,

from 1992; Marchbanks v. Duke Power, 190 S.C. 336, from 1939; Wheeler v. Morrison Machinery, 313 S.C. 440, from 1993; and Harrell v. Pineland Plantation, 337 S.C. 313, from 1999, among others.

And I'm sure you're familiar with those cases from prior statutory employee motions like those in Ewing and Bumgardner, so I'm not going to go through all of them, unless you want me to. But I'll note that two of the cases, Gentry and Wheeler, are particularly instructive here, based on the arguments that are contained in Plaintiff's response.

Hoechst Celanese was contractually obligated under the maintenance contract with Daniel to reimburse Daniel for workers' comp coverage. Exhibit J to our memo includes the contract provisions under Section 4(c) and, specifically, states that Hoechst Celanese is to reimburse Daniel for "workmen's comprehensive statutory employee liability insurance."

This is consistent with Mr. Bowyer's testimony that Hoechst Celanese paid Daniel for the workers' comp insurance.

Like Hoechst Celanese's payment to Daniel for workers' comp insurance for all millwrights that were used on its premises, Milliken, in the Gentry case, required the contractor working on its premises to obtain workers'

comp coverage. Also, like Milliken's payment to the contractor in Gentry for the workers' comp coverage, Hoechst Celanese reimbursed Daniel for all of its workers' comp coverage for the millwrights.

The Court in Gentry found Gentry to be a statutory employee of Milliken in connection with the maintenance work he was performing on-site by installing scouring equipment, which was determined to be necessary to Milliken's business, like the equipment that Mr. Seay worked on at Hoechst Celanese.

In Wheeler, the plaintiff was an asbestos abatement worker at a Springs textile mill. The Springs mill was not in the business of performing abatement work, but it was a vital component of the plant's maintenance plan.

Plaintiff's argument in this case is that Hoechst Celanese was not in the maintenance business and, thus, can't claim Mr. Seay as a statutory employee. But this flies in the face of Wheeler, where the Court concluded that the plaintiff was a statutory employee of Springs because the maintenance abatement work he was performing was a necessary part of an ongoing process at the textile mill, like Mr. Seay's work at Hoechst Celanese.

Plaintiff's response is an effort to try and get around your prior rulings in Ewing and Bumgardner.

The cases that are cited in Plaintiff's response

relate to delivery drivers and transportation of goods, like you mentioned a few minutes ago. And under this line of cases, if Mr. Seay had delivered materials to Hoechst Celanese or had taken finished materials from Hoechst Celanese, he could not be considered a statutory employee of Hoechst Celanese.

But this is a far cry from the necessary, essential, and integral nature of the maintenance work that Mr. Seay performed at this plant on a day-in and day-out basis to keep the equipment and production lines running.

Plaintiff's point to Harrell in an effort to defeat our motion. But Harrell, actually, supports the Hoechst Celanese motion in two ways. First, Harrell concluded that the responsibilities that the outside contractor had in relation to the property owner met both the first and second test of the statutory employee doctrine. Because the contractor maintained every aspect of the daily operations of the property owner's land, like Daniel did for Hoechst Celanese.

The Court stated that the first and second tests may be met if the owner, otherwise, "would have to -- would have had to hire direct employees to complete those duties." In fact, the Court stated that, "Their relationship is exactly the type that the statutory employer theory is meant to cover." This is the same

relationship between Hoechst Celanese and Daniel.

Second, Plaintiff misconstrues Harrell, its conclusion, with respect to an owner's workers' comp coverage requirements. In Harrell, Pineland did not provide any workers' comp coverage to protect Harrell. That's a 180 degrees difference from the facts that we have in this case where Hoechst Celanese was obligated under the contract to pay for Mr. Seay's workers' comp coverage.

Plaintiff's citations to Harrell were taken out of context and ignore that Hoechst Celanese reimbursed Daniel for workers' comp coverage, just like DuPont did in the Ewing and Bumgardner cases in which you determined that Mr. Ewing and Mr. Bumgardner were statutory employees of DuPont.

Moreover, Hoechst Celanese has produced policies showing that it maintained workers' compensation coverage during the time period at issue, thus, complying with Sections 42-5-10 and 42-5-20.

And, finally, Plaintiff's point to Section 42-11-70 in an effort to suggest to this Court that Plaintiff cannot file a workers' comp claim. Plaintiff's citation is incorrect, however, as 42-15-40 governs the time frame for filing a claim. And under 42-15-40, Plaintiff's have until August 8th of this year to file a workers' comp

claim.

This is a covered claim under the South Carolina Workers' Compensation Act. Mr. Seay was diagnosed with an occupational disease, which is covered under the Act. Nothing in 42-11-70 bars Plaintiff's from filing a workers' compensation claim here.

Plaintiff's have not even tried to file a workers' comp claim yet, to our knowledge, to be able to assert that they can't do it. They're jumping the gun by predicting what the commission would hold, rather than filing the claim and, actually, having it be denied.

This Court concluded that Mr. Ewing's and Mr. Bumgardner's claims were subject to the exclusive remedy provision of the South Carolina Workers' Compensation Act, and the same facts in law apply in this instance.

Even if you accept Plaintiff's interpretation of the interaction between 42-11-70 and 42-15-40, it does not excuse Plaintiff's from first filing the workers' comp claim. Even the commission decisions that they attach to their response support our position in that regard.

In the conclusions of law sections in those decisions, the commission states that it has jurisdiction over the claims. Nothing in either decision suggests that such claims are barred from being filed. And they,

certainly, don't confer jurisdiction to a civil court.

So as this Court found in the Ewing case in 2010 and in the Bumgardner case in 2011, that those gentlemen were statutory employees of DuPont, it should find that Mr. Seay is a statutory employee of Hoechst Celanese, thus, conferring exclusive jurisdiction to the South Carolina Industrial Commission.

Mr. Seay's work was necessary, essential, and integral to the maintenance, and upkeep, and continued production of the Hoechst Celanese plant. Any doubt is to be resolved in favor of coverage under the South Carolina workers' compensation law, as held in Revels. And under Gentry and Wheeler, this Court lacks jurisdiction over Plaintiff's workers' compensation claim. And the case should be dismissed as to Hoechst Celanese because it's barred by the exclusive remedy provisions of the South Carolina workers' compensation law.

Mr. Seay is a statutory employee of Hoechst Celanese. And Plaintiff's exclusive remedy is to pursue a workers' compensation claim. Whether or not coverage is granted as to Mr. Seay is a decision for the commission, not a decision for this Court. And it's the commission, not this Court, that has jurisdiction over the claim.

And because Plaintiff's common law claims are barred, any loss of consortium claim would, also, be barred under

Lowery v. Wade Hampton, 270 S.C. 194, from 1978. And CNA would, thus, submit -- thus, request that this Court grant its motion to dismiss or, in the alternative, motion for summary judgment.

THE COURT: All right. Thank you, sir.

MR. COLLIER: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. PANATIER: Your Honor, is it okay if I stand here?

THE COURT: Wherever you want.

MR. PANATIER: Okay. So, honestly, I think the best thing to do is start at the end.

The Truax case, which we attached to our last response -- and we went back and forth three or four times -- I think addresses this issue squarely with very little analysis of trying to determine subjective facts about statutory employer.

Truax was an asbestosis workers' compensation claim. This was 2009. I have a copy of the case. You may have it already, or I can --

THE COURT: I think we've got it, yes.

MR. PANATIER: Okay. So Truax -- this was the first one we're aware of where the Workers' Compensation Commission, actually, analyzed the statute for whether or not there was a cognizable claim for pulmonary injury that

was diagnosed more than two years after the exposure.

And they say, point blank, there is no claim. If a pulmonary disease occurs more than two years after, with the exception of ionizing radiation, that was the intent of the statute, to disallow the claim.

And this was a case of asbestosis. This man, his last exposure was 1972. He applied 32 years later. And they said, claim denied, very clearly, bright-line rule.

He could have filed under the statute of limitations. He would have had two years beyond the two years after his exposure. So he would have had four years after his exposure to file the claim. It would have been recognized at that point. But anything after four years -- the two years post-exposure, plus the statute of limitations -- is not going to be compensable.

And on -- it's a four-page decision. But on Page 4 under Findings, they state that under the plain-meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute.

42-11-70 is abundantly clear in its intent to disallow compensation for disability or death for an occupational disease of a pulmonary nature that is not contracted within two years of the date of the last injurious exposure. And the last injurious exposure in this case, depending on what records we look at, is either

going to be '79 or '80. And so Mr. Seay would have had two years to file a claim for a disease that had not manifested.

They go on to say, "Notwithstanding the latency period of asbestos-related diseases, such as asbestosis, the legislature has never amended this provision. And its intent is abundantly explicit. Any doubt as to the intent of the legislature to exclude any pulmonary-related diseases from compensation, unless contracted within two years of the claimant's last exposure, is removed when looking at the lone exception to this rule, that being for ionizing radiation."

And then they define what is contracted. "Under the plain language of 42-11-70, it is impossible to reconcile the 32-year gap in this case between the claimant's last date of employment, '72, and when he contracted his disease, i.e., became disabled in 2006."

He said -- later they say, "As a result, the claimant has not met his burden of proof in showing that the occupational disease was contracted within two years after his last exposure in '72 under 42-11-70. And his claim is denied."

Certainly, Your Honor is not here as part of the Workers' Compensation Commission. But you can determine whether or not there is a claim for this individual, and

whether or not he would have relief within the workers' compensation area. But he does not, obviously, under that part of the statute.

My next point goes to whether or not Celanese was even a subscriber. Now, in Harrell, Harrell makes it very clear that it doesn't matter if the man was able to recover workers' compensation from his direct employer, which he did. They both had a duty to, both the owner of the premises and his own contractor.

In this case, based on the contract, Daniel entered a good contract where they said, Celanese, you're going to pay our workers' compensation costs. That doesn't obviate Celanese's obligation to have workers' compensation.

And Harrell makes that very, very clear when they discuss the dissent in the case. They say, "The dissent mistakenly looks at Harrell's situation in hindsight, denying a tort suit against Pineland. Because, as it turns out, Harrell successfully recovered some compensation from Folk" -- that's the contractor, his employer -- "ignores the policy behind requiring a statutory employer, as well as the direct employer to secure payment of compensation in order to guarantee tort immunity. It is true that, in this situation, Harrell may recover in both tort and in workers' compensation. However, Harrell is recovering from two separate entities,

each that owed him a responsibility to secure compensation."

And they reiterate that two or three times in that case, that it doesn't matter whether or not the direct employer had workers' comp. Daniel did, and Celanese paid for it. But there's no case law to support their position that, because we reimbursed them for their costs, we no longer have an obligation to maintain workers' comp insurance.

And lastly on that issue, they don't have workers' comp insurance for the whole time, much less proof of it. What they have is they have located workers' comp insurance from 1968 through November of 1972, and, again, from May of '78 through May of '80. There is a five-and-a-half-year gap that Celanese has no proof they maintained this insurance for.

So at best -- at their best case is that there would be no claim up through '72 if Mr. Seay worked through November of '72, or if he worked after May of '78. But he worked the -- continuously during that period of time right there in the middle, five and a half years. And they've supplied their policies for the early period and the later period.

But there's a five-and-a-half-year gap that there is no proof. And that's undisputed. They have an affidavit

from an individual, Gary Allen, who says we believe we maintained it, but we don't have the actual proof. And Harrell says you have to maintain the actual records.

Lastly, on the issue of statutory employer. Most of the cases cited by Celanese on the issue of the three prongs of analysis for statutory employer are pre-Olmstead. And Olmstead made it clear, look, we can't just analyze this on whether it's important to the business.

Certainly -- and Plaintiff's agree -- the maintenance of the facility was extremely important to Celanese's business, but it wasn't part of the business. Celanese didn't have a construction division. They didn't do construction.

And all of these cases post-Olmstead have analyzed it in a way where they say, look, even though it's important, was it part of the business? And it was undisputed, not part of Celanese's business. And they didn't ever prior to that time -- prior to Mr. Seay's time do construction or maintenance. It was all done by Daniel people.

But that -- I think that that is a -- the three-prong thing is a much more subjective thing than just -- there is no claim under the workers' compensation statute of the two years. And then it's undisputed that Celanese doesn't have insurance for five and a half years.

THE COURT: Thank you.

MR. COLLIER: Your Honor, may I reply briefly?

THE COURT: Sure.

MR. COLLIER: As to Section 42-11-70, Plaintiff's are jumping the gun and misconstruing whether they can file a claim versus whether they can collect on a claim. Nothing in 42-11-70 bars them from filing a claim.

In the case law attached by the Plaintiff's to their response, the commission states that it has jurisdiction over the claims. While the commission denied coverage in two instances, it's awarded coverage in other instances where the last exposure occurred more than two years before the claim was filed. 42-11-70 doesn't authorize plaintiffs to file a civil suit because they think or are predicting the claim will be denied.

Truax doesn't say that you can file a civil suit. Plaintiff's are, essentially, asking this Court to conclude that the commission would deny their claim if they did file it. It would be like, you know, filing an appeal before you receive a decision from the trial court because you think it will be denied.

Both of the decisions cited by Plaintiff's, as well as the ones cited in our surreply, make it clear that the commission has the exclusive jurisdiction over these cases. It's for the commission to decide whether the

Plaintiff's have a compensable claim under the act. And this Court doesn't have that jurisdiction to make that decision.

If you accept their interpretation of the interaction between 42-11-70 and 42-15-40, for anyone in South Carolina to file a workers' comp claim today for a disease related to asbestos exposure, they would have had to have last been exposed to asbestos no earlier than July 27th of 2013. That would effectively abrogate any sort of workers' comp claim related to asbestos exposure in South Carolina.

In speaking with practitioners and the staff attorney at the workers' comp office, Plaintiff's interpretation that the claim must be filed within two years of the last exposure is not how the cases are reviewed and decided in South Carolina. And workers' comp claims for asbestos exposure are still being pursued under the proper jurisdiction of the commission.

It's not within this Court's jurisdiction to determine that workers' comp coverage doesn't exist, because 42-15-40 is what governs it.

As to Hoechst Celanese's workers' comp policies on our own employees, Plaintiff's are correct that we cannot produce every policy from 1968 until 1978. But we have produced the policies that were in place when Mr. Seay

started working at Hoechst Celanese and when he stopped working at Hoechst Celanese.

And, frankly, I'm somewhat surprised that we were able to find the ones that we did, given the passage of more than 40 years. But just because we can't find the remainder of them doesn't mean that they don't exist. It doesn't mean that we didn't have coverage during that period of time, as Mr. Allen stated in his affidavit.

Plaintiff's haven't put forth any evidence that we didn't have coverage during that period of time. And it should be reasonably construed that we wouldn't have just dropped workers' comp coverage for a period of five years.

Finally, you know, with respect to your prior rulings in the Ewing and the Bumgardner cases, I don't think that there's anything that could be more necessary, essential, and integral to a plant's operation than the maintenance of the equipment and the piping systems inside it.

Thank you, Your Honor.

THE COURT: Is there any evidence that Celanese employees ever did maintenance?

MR. COLLIER: They did do maintenance, yes, Your Honor, after -- we're not sure of the exact date. But at some point in time, the group of Daniels folks who were there doing the maintenance were hired on as Hoechst Celanese employees.

THE COURT: When was that?

MR. COLLIER: It was -- it was -- I don't know the exact date. It was sometime after Mr. Seay worked there. But it was in the -- it was either in the '80s -- '80s or '90s. And it hasn't been able to be clarified much further than that.

But, yes, Your Honor, at some point in time, all those Daniel employees were brought on the Hoechst Celanese payroll, and continued to do the maintenance and upkeep work of the -- of all the pumps, and valves, and piping systems just like they did while they were -- just wearing a different hard hat, basically.

THE COURT: Thank you.

All right. I'm persuaded by the Olmstead decision, which overruled quite a body of law about this statutory employer issue. And I don't find that the maintenance here was a part of the trade business or occupation of Celanese.

The underlying test is whether the activity is an important or an integral part or process of the business. But there is no evidence that the employer here performed maintenance while Mr. Seay was employed there on its own. So I don't believe it was part or process of Celanese's business.

If you look at cases around the country that have

grappled with this language, one of which is the Fourth Circuit, which is -- noted that with a surprising degree of harmony, courts have agreed upon a general rule of thumb that the statute covers all situations in which work is accomplished which this employer would ordinarily do through employees. And I'm paraphrasing, but that's Corollo v. S.S. Kresge Company, 456 F.2nd 306.

At 312, note eight, quoting Larson in workmen's compensation law, it was applying South Carolina law at the time and, also, relied on Chief Judge Sanders' opinion in Raines v. Gould, Inc., which was about the construction business.

But he points out that a, "Manufacturer must have a plant. But this fact alone does not make the work of constructing a plant a part of the trade or business of every manufacturer who engages a contractor to construct a plant. Otherwise, the employees of every contractor so engaged would be statutory employees of every such manufacturer. We are aware of no case in any jurisdiction holding this. And we do not believe this is what the legislature intended when it enacted the South Carolina Workers' Compensation Act."

Maintenance work equates with construction work in this context. So I don't see how it meets the plain language of the statute. Even if it did, I find there is

some question about the applicability of the workers' compensation coverage for Celanese. There's a gap in it. Therefore, they wouldn't qualify as a statutory employer.

As to the question of whether the Plaintiff here would have the right to pursue a workers' comp claim in light of Truax, I don't have any comment on that other than to say that it's not entering into my analysis here. I believe the statute says that the Workers' Compensation Act grants rights that -- I forget the exact phrasing the legislature used. But the idea being that if a person has rights under the Act, the statutory employer doctrine can apply.

So here, there's a question about whether such rights exist because of the gap in coverage. And finding that there is a substantive right is not something I can do. That's something the workers' compensation or some higher court would have to determine. So I'm not relying on that in reaching my decision.

Okay. So I respectfully deny the motion.

MS. SHOFNER: Your Honor, I think I understand your denial and your ruling.

THE COURT: Okay.

MS. SHOFNER: But we would -- we believe that under Code 1976, Section 14-3-330 that this is a final determination of a substantial matter or right as to

Celanese on the whole or part of this action. And we would like to have a direct appeal of this order.

THE COURT: Okay.

MS. SHOFNER: And, therefore, I think we need the Court -- we would request the Court to make a final -- to draft a final order as to this issue so that we may directly appeal it to the Court of Appeals.

THE COURT: Well, I'm, certainly, going to do whatever you need me to do to enable you to pursue your appellate rights. I don't know how quickly I can draft up an order when I'm getting ready to start a trial, though.

MS. SHOFNER: Well, and -- I mean, I guess that's the -- that's the issue here is, if it's directly appealable, then do we have to go through the trial as to us, for Celanese, while we're appealing this, since it's -- we feel it's a substantial -- it's a determination of a substantial matter for -- as to Celanese?

THE COURT: I don't know. That's an interesting question, one that's above my pay grade. I don't --

MS. SHOFNER: So -- and I guess if it is -- if it is a final order, then we can take a notice of appeal. I'm happy to draft that order for you to have tomorrow to take a look at so that we can then file our notice of appeal, and not have to go forward with the trial on this issue.

MR. PANATIER: And we -- and we'll do some research

to figure out whether or not it's an appealable issue at this point as well.

MR. TIVIN: Your Honor, Mark Tivin on behalf of John Crane.

If they're -- if Celanese is requesting to stay their portion -- in a sense, they're asking to stay their portion of the case, then John Crane would be severely prejudiced. The entire case has to be stayed at that point in time. Because it comes to questions of apportionment and other questions. And you can't do the trial half and not half. So if the stay is being granted --

MR. PANATIER: I totally disagree. There isn't any apportionment.

And so the case could be tried as to John Crane, or it could be tried as to Celanese. But if Celanese wants to appeal, and it's an appealable issue, then they can appeal. But I don't think that the Plaintiff's rights to their trial should be prejudiced because John Crane doesn't want to try the case anymore.

MR. TIVIN: That is -- that's incorrect. We have a right to apportion between all -- between the Defendants who are -- go to the jury. And if Celanese is -- if their portion of the action is stayed, we would not be able to apportion -- to waste the judicial resources because the

case should be tried one time.

And if -- when Celanese goes, if there's -- the apportionment could never work if you tried a case one at a time. Both the Defendants have to be there.

So if they're requesting a stay of this action so they can pursue the direct appeal, John Crane would request a stay so the entire matter could be tried at once for apportionment purposes.

If Your Honor chooses not to stay the action and continue on with the case with Celanese here, then obviously, we -- if they appeal after any verdict. But if they're appealing now in the middle of the case, it's a waste of judicial resources and prejudicial to John Crane of not having all the Defendants in the trial against which whom we could seek apportionment.

MR. PANATIER: Certainly, they could --

THE COURT: Oh, well, the plot thickens.

MR. PANATIER: I mean, obviously, they could put on any evidence they want to if Celanese is -- you know, call it causation to influence the juries ultimate decision. But if they're the only Defendant at trial, then it's not apportioned to anybody else. And they would be the only Defendant at trial because Celanese is gone.

So that would be -- that would be our position. But I think, obviously, we should probably look at the issue

and see if it really is an appealable issue at this point.

MR. TIVIN: Exactly, Your Honor. If Celanese appeals and loses their appeal, then John Crane is prejudiced because we would have been able to apportion with them at trial. And then we'd lose that right because there's an appellate case going on while we're sitting in the exact same action while we're trying the case.

THE COURT: I don't know if it's immediately appealable. Again, that's not my issue. I mean, that's something y'all will have to have ruled upon elsewhere.

But I know that if you're denied a mode of trial, such as jury versus nonjury, that's immediately appealable. And I'm just trying to think out loud in terms of --

MS. SHOFNER: The case law that I found that I believe supports our position that this is immediately appealable, it's Watson v. Underwood, 756 S.E.2d 155. It's a 2014 case. And it says that, "The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by Section 14-3-330 of the South Carolina code."

And an order -- and it involves -- "An order 'involves the merits' as the term is used under that section and is immediately appealable when it finally determines some substantial matter forming the whole or

part of some cause of action or defense."

So our defense is that we are a statutory employer. That's a substantial right. And you have denied that and said that we are not. And, therefore, we believe it's immediately appealable. And -- and we would need a final order in order to file our notice of appeal that we'd immediately take to the appellate court.

If you're saying that it's not your position to determine whether that is an appealable order and it's the Court of Appeals', then I think we have a right to the final order so we can appeal it. Because I don't know who else would make that determination or not, unless it was you or the Court of Appeals.

THE COURT: I don't think I can make that determination.

MS. SHOFNER: Okay. But, you know, you have indicated that you will give us a final order on this issue; correct?

THE COURT: I'll do whatever I can, Ms. Shofner, to help you efficiently pursue your appellate rights. And if you just need us to do a form order that says a formal order is going to follow so you can go ahead and take it up, I'll be happy to do that. I don't want to --

MS. SHOFNER: Okay.

THE COURT: But, you know, the problem is, once you

appeal it, I could lose jurisdiction of the issue. And if there's not a formal order out there, then the Court of Appeals is probably going to say, what are we looking at here?

So it seems to me the better thing to do would just be some short order that -- I mean, it's hard for me to do it. We have another motion by another Defendant, for instance. It's hard for me to do it efficiently. And maybe y'all can hammer it out amongst yourselves. And if it's something I agree with, I can sign it and then you can take it up to --

MR. ELLIOTT: Judge, this is James Elliott for John Crane.

THE COURT: Yes, sir, Mr. Elliott.

MR. ELLIOTT: Just briefly. We recently had a similar issue in the Shipwatch [phonetic] case with Judge Dennis down in Charleston --

THE COURT: Okay.

MR. ELLIOTT: -- where there was an appeal taken by one party. It was the Plaintiff. And Judge Dennis, likewise, says, I don't know if it's appealable or not. You've got to take that up with the appellate courts. And the appellate court, ultimately, made the decision as to whether or not it was a proper appeal.

But there was a motion to stay the case by the other

parties. And that was an issue for the trial judge to take up. It was that he had to determine whether or not that issue, which was being appealed, impacted the balance of the case, such that it had to be stayed.

So I think that, although the one issue about whether or not it's appealable is not your decision, but whether or not to stay the case, I believe, is a decision for Your Honor.

THE COURT: Well, what did he do?

MR. ELLIOTT: He stayed the whole case.

THE COURT: Did he?

MR. ELLIOTT: He did.

THE COURT: Did he issue an order or just --

MR. ELLIOTT: He -- For the stay?

THE COURT: Yes.

MR. ELLIOTT: Yes, he did.

I don't remember if it was a written order. I mean, it's been a few months. But I was just going to look at -- I was trying to remember the rule on what happens with a stay. And I'm just -- Sam just handed it to me.

And it says, "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree, or decision on appeal and to automatically stay the relief ordered. In the appeal order, judgment, or decree, this

automatic stay continues in effect for the duration of the appeal, unless lifted by order of the lower court, the administrative tribunal, appellate court, or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal."

And our argument would be we would be impacted. Because, regardless of whether they say we can apportion or not, we do have the right under the statute to argue apportionment. And if they're in the case, they'd be on the verdict form and we could, perhaps, gain apportionment.

But if they're not in the case, Your Honor might rule that they can't be on the verdict form because they're not a Defendant. And, therefore, they can't be apportioned any responsibility for any part of the verdict.

And so, clearly, we're directly impacted by that.

MR. TIVIN: And just as an aside, Your Honor. If you decide that you can apportion like you allow the case to go forward and we can apportion against Celanese and they win on their appeal, then the judgment -- the apportionment wouldn't stand, because they wouldn't have been a Defendant at the time of trial if they prevail on their appeal.

And on the flip side, if you don't allow -- if you

allow them to appeal and you have us go forward and you don't allow us to apportion and your order here is affirmed, then that other prior judgment, also, would be prejudicial to John Crane because we would have been able to apportion.

MR. PANATIER: I have an idea. How about this? In these -- you know, in a lot of these cases around the country where we can apportion to people who aren't there just so the jury can apportion it, then the only person who pays anything is the trial defendant.

I'll agree you can apportion to Celanese and it's not binding on Celanese. If they come back and we -- we're not going to argue it's res judicata.

So I'll agree. You can apportion to Celanese, try the case against Celanese, put on the case against Celanese. We'll try the case against you. And the jury can apportion between you and Celanese. And I'll agree it's not res judicata as to Celanese.

THE COURT: Who are you asking?

MR. PANATIER: I'm just saying -- I'm proposing that. I'm proposing that to the Court so that -- one, so that the Seay family gets the trial.

THE COURT: Yeah.

MR. PANATIER: So John Crane's concerns about apportionment are addressed. And Celanese's concerns

about being able to appeal without having some res judicata as to their apportionment is resolved.

So I think -- I think that's a proposal that would work. The only prejudiced party would be us, because we're agreeing to apportion to a non-defendant.

THE COURT: Well --

MR. TIVIN: And, Your Honor, that could lead to inconsistent verdicts.

THE COURT: Maybe I'm missing something. But what jumps out to me about that proposal is if Celanese is gone, how are they going to present their defense?

And is John Crane -- do they have the right to a stay, instead of having some empty chair that -- even though it's part of a proposal -- I don't know. It'd have to be by consent, obviously. But I'm having a hard time thinking that through.

MR. PANATIER: If it's by consent, I think that ends the discussion.

THE COURT: Well, it usually does.

MR. PANATIER: Unless Mark wants to try the case right now. But, anyway, I'm putting it out there as an option.

THE COURT: Well, I appreciate your creativity. Okay.

MR. PANATIER: So should we brief the issue on

appealability? I guess -- well, if you're saying it's not your call, I guess they're just going to appeal --

MS. SHOFNER: I -- I think what I will try to do is, today and tonight, to draft a final order, based on your ruling, and submit it to them to see if we can agree on it. And if we get close, we can submit it to you and see if you agree on it for a final resolution. And then we may file our notice of appeal once we get the final order signed by you.

Does that sound like a proper way to proceed at this point?

THE COURT: That's fine.

MR. TIVIN: Based on that, Your Honor, John Crane would make a motion to stay the proceedings until their appeal is handled, however the appeal gets handled.

MR. PANATIER: And just for clarification. Then I would just like to -- Ms. Shofner just said, "we may appeal." I think a motion for a stay would be ripe if you are appealing.

MS. SHOFNER: I mean, I think we're definitely appealing.

MR. PANATIER: Okay.

MS. SHOFNER: I think --

MR. PANATIER: I just wanted to -- all right.

Your Honor, could --

THE COURT: Go ahead. Yes.

MR. PANATIER: Okay. I'm thinking again. May I -- perhaps, I could take a shot in the dark at resolving with Celanese. So maybe I could just chat with their people and just see if there's a way to do it before any stay.

THE COURT: Yeah. Why don't you do that while we do Ms. Techman's motion.

MR. PANATIER: Okay.

THE COURT: Okay. Thank you.

(Pause.)

THE COURT: Well, I guess you can't. She's -- maybe that was --

MR. PANATIER: No, no.

MS. TECHMAN: Judge, this will be very brief.

THE COURT: Yes.

MS. TECHMAN: Jennifer Techman on behalf of Spirax Sarco.

Judge, I know the Court has our summary judgment motion. It is what we call a no-evidence motion in this litigation. Certainly, on the heels of what we just went through, this will look very, very -- pretty black and white to you.

In this case, we had testimony from Mr. Seay, and we had testimony from three of his former co-workers. None of those individuals gave any testimony regarding my

client. So what we don't have is direct or even circumstantial evidence that we're at the job site.

As the Court is aware, the Plaintiff's burden is to put forth evidence of exposure to the product. And the South Carolina Supreme Court has said that the exposure must be sufficient. The sufficiency is measured by the frequency, regularity, and proximity test.

Here, we have none of that. And I will save the remainder of my time for rebuttal.

THE COURT: Thank you, ma'am.

Mr. Paul.

MR. PAUL: Thank you, Your Honor.

What we have here is Mr. Seay was a millwright in the Spartanburg plant. As part of his responsibilities as a millwright, he was performing maintenance on pumps and valves, which were part of an entire steam system. There would have been thousands of steam traps located within the facility where he was doing maintenance on pumps and valves.

We have testimony from co-workers in a plant owned by Celanese in the Shelby, North Carolina, plant that put Spirax Sarco steam traps all throughout the plant. Although Mr. Seay did not directly work on steam traps, it's Plaintiff's allegations that he would have been with and around maintenance on the Spirax Sarco steam traps

throughout the plant for roughly the eight or nine years that he was at the plant.

THE COURT: All right. I'll grant the motion for summary judgment.

MS. TECHMAN: Thank you, Judge.

I have an order.

(Pause.)

MS. TECHMAN: I'll make sure that gets filed.

Thank you, Judge.

THE COURT: Okay. Good to see you.

All right. So why don't we just go ahead and break for lunch, and give you time to talk.

And do y'all -- is there any way you can find out if Judge Dennis --

MR. ELLIOTT: Issued a written order?

THE COURT: -- did a written order? Or if you've got any other authority about this stay.

MR. ELLIOTT: I can call the office. It might have been a verbal.

MS. NETTLES: We'll check.

THE COURT: He might have barked -- I mean, spoken that.

MR. ELLIOTT: It was a summary judgment motion against the plaintiff with one party. And the plaintiff appealed that. And he just -- it's similar. I mean, it

was the reverse, but similar to here, in that he granted it.

Does that make sense?

THE COURT: Okay. We'll just come back at 2:00.

Thank you.

**********END OF TRANSCRIPT OF RECORD**********

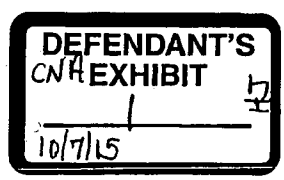
MAINTENANCE SERVICES CONTRACT

THIS AGREEMENT, made and entered into as of the 1st day of March, 1972, by and between HOECHST FIBERS INCORPORATED, a Delaware corporation, hereinafter referred to as the "Owner" and DANIEL CONSTRUCTION COMPANY MAINTENANCE AND MILLWRIGHT DIVISION, a South Carolina corporation, hereinafter referred to as the "Contractor".

WITNESSETH:

Section 1. Scope of Work. The Contractor shall furnish all necessary supervision, labor, equipment, tools, materials, supplies, and incidentals necessary to perform continuous routine maintenance; operation of utility equipment; and emergency, supplementary, or temporary maintenance services as may be required by the Owner.

Section 2. Owner's Representative. The Owner shall designate from time to time one or more individuals whom the Contractor shall be entitled to recognize and accept as the Owner's agent, with full power and authority to act for, and in the name, place, and stead of the Owner, for any of the purposes for which the Owner may or shall have authority as hereinafter provided. The Contractor shall be entitled to rely on such designation until revocation thereof and the designation of a different Owner's Representative is received by the Contractor.



Section 3. Payment. For performance of the maintenance services specified in Section 1, the Owner shall pay the Contractor the following fees:

(a) An annual fee of 6% based on gross payroll for all hours. This fee will be calculated and invoiced monthly on the calendar year.

(b) In addition to said fees, the Owner shall pay to Contractor its Reimbursable Costs incurred in the performance of the work as described in Section 4 below.

Section 4. Reimbursable Costs. Except as hereinafter provided, Reimbursable Costs shall consist of the following:

(a) Field Labor: Payroll costs for all personnel employed in the field in connection with the work, including required project managers, superintendents, foremen, timekeepers, clerks, accountants, purchasing agents, and such other personnel as may be necessary or desirable for the proper and efficient prosecution of the work. Hourly wage rates and overtime premiums will be paid at prevailing rates inaccordance with the schedule appended hereto as Appendix A. Salary rates, fringe benefits and incentives for the Project Manager, superintendent, timekeeper and other salary employees requested by the Owner shall be in accordance with the schedule appended hereto as Appendix B. Appendix A and B may be supplemented or revised from time to time by mutual agreement between the Contractor and the Owner or the Owner's Representative. The Contractor's regular sick leave and vacation policy shall apply to all salaried personnel employed in the field and the costs thereof shall be reimbursable.

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(b) Home Office Personnel: Payroll and other costs for personnel not employed in the field shall be reimbursed to the Contractor in accordance with the schedule appended hereto as Appendix C, which schedule may be supplemented or revised from time to time by mutual agreement between the Contractor and the Owner or the Owner's Representative.

(c) Payroll costs: (i) The Owner shall reimburse for workman's compensation, comprehensive general liability and comprehensive excess indemnity (umbrella) insurance at the Contractor's actual experience rates. (ii) The Owner shall reimburse the Contractor for payroll taxes and unemployment insurance at Contractor's actual cost.

(d) Rental Equipment: (i): The Contractor shall furnish in good operating condition such of its equipment as is from time to time available and necessary for the performance of the work with the prior approval of the Owner. Said equipment is hereinafter referred to as "Daniel Equipment". Rental for Daniel Equipment shall be reimbursed to the Contractor in accordance with the then current "Daniel Construction Company Schedule of Rental Equipment" (hereinafter referred to as the "Daniel Equipment Schedule"). A copy of the Daniel Equipment Schedule shall be furnished to the Owner upon request. Daniel Equipment shall not be subject to purchase by the Owner without the Contractor's consent. The Contractor also may rent equipment from third parties, if the Contractor's equipment is not available for the work or if the Contractor, with the Owner's approval, deems it advisable or more economical in the circumstances not to provide Daniel Equipment. (ii) The Contractor shall be reimbursed for the costs of transporting Daniel Equipment to the jobsite, f. o. b. points of origin, and the costs of returning such

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equipment to its points of origin or an amount equal thereto in the event the Contractor elects to direct the equipment to destinations other than the points of origin. Should the Contractor elect to replace a piece of Daniel Equipment requiring major repair or overhaul, the cost of transportation to and from the jobsite for such replacement piece shall not be reimbursed to the Contractor, but the cost of return transportation for the equipment being replaced shall be reimbursed as herein provided.

(e) Small Tools: Small tools are defined as hand tools having an initial value of less than $500 and do not include items such as office machines, engineering instruments and other items listed in the Daniel Equipment Schedule. The Daniel's craftsmen shall supply their hand tools as per list appended hereto as Appendix D. All special tools required in addition to Appendix D will be supplied by the Owner.

(f) Materials, Equipment, Supplies and Subcontracts: The invoiced price of all materials, equipment, supplies (including without limitation fuel and lubricants for rental equipment), and subcontracts purchased or let on a competitive or negotiated basis in accordance with procedures to be mutually agreed upon between the Contractor and the Owner or the Owner's Representative. Purchase orders shall be issued in the name of the Owner if so directed by the Owner or the Owner's Representative.

(g) Insurance and Bonds: (i) Premiums for equipment installation floater (rigging) insurance, subject to a deductible amount of $500 and a maximum limit of $750,000 for each occurence. Owner shall reimburse Contractor for any such deductible; and unless the

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Contractor has procured the equipment or has received from the Owner written notice of the replacement value thereof, the Owner shall be responsible for any loss in excess of $750,000. Any increase in insurance premiums to cover excess equipment values shall be reimbursed to Contractor. (ii) Premiums for any special insurance and any bonds required in connection with the performance of the work.

(h) Other Direct Costs: Contractor will be reimbursed for any other direct cost which it may incur in the performance of any work hereunder, including without limitation costs of utilities, taxes, licenses, fees, correction of minor defects in the work, third party rental equipment as required, expendable small tools, temporary structures, freight and transportation, travel expenses, legal costs and fees, payroll checks at the actual cost of each check, and any other cost directly arising out of the work.

Section 5. Owner's Property Insurance: Owner shall insure, or at its election self insure, for their full insurable value, existing facilities of Owner at or near the site of the work and the work itself. Such insurance shall provide coverage against all losses which might result from risks insurable by a combination of a fire and extended coverage policy, a boiler and machinery policy and an "All Risks" difference in conditions policy. Owner hereby waives all right of recovery against Contractor for any loss, including loss of use, resulting from risks insurable under such policies.

Section 6. Contractor's Accounts: The Contractor shall check all materials purchased by Contractor and all labor entering into

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the work and shall keep such full and detailed accounts of same and other costs of performing the work as shall be necessary for the proper administration of this contract. The Owner and the Owner's Representative shall be afforded access to the work and to all of the Contractor's accounting records, receipts, vouchers, etc. relating to the performance of the work during the course of work and for a period of 120 days after work ceases.

Section 7. Reimbursements: (a) Payment to the Contractor for payroll shall be made weekly upon receipt by the Owner of the Owner's Representative of the Contractor's invoice therefor.

(b) Payment of all other Reimbursable Costs shall be made periodically, but not less frequently than monthly, upon receipt by the Owner of the Owner's Representative of the Contractor's invoice therefor.

(c) Upon final completion of the work, any monies due to the Contractor under this contract and not theretofore paid shall be paid to the Contractor.

(d) All invoices for payments to be made to the Contractor as provided in Sections 3 and 7 shall be due and payable upon receipt thereof by the Owner or the Owner's Representative, and all payments shall be made within thirty days of receipt, subject to post audit by Owner.

Section 8. Installed Equipment. Under no circumstances shall Contractor be responsible for operation of Owner's equipment, unless it is expressly agreed in writing that the Contractor shall

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supervise its personnel in the performance of such services. Equipment installed by the Contractor shall not be operated by the Contractor, unless and until a signed acceptance thereof and release of responsibility for further operation has been furnished to the Contractor. Under no circumstances shall the Contractor be responsible for the actual capacity, productivity, or suitability for its intended use of mechanical, process, or production equipment.

Section 9. Duration of Contract. This contract shall remain effective for a period of three years. It may be terminated by the Owner at any time by giving the Contractor written notice six months prior to the desired termination. Written termination notice will be delivered to the Contractor's Supervisor in charge of the work or will be mailed, postage prepaid, to the Contractor at The Daniel Building, Greenville, South Carolina 29602. In the event of such termination by Owner, the Contractor shall be entitled to reimbursement for all costs theretofore incurred or accrued hereunder and payment of all fees attributable thereto.

In the event the contract is terminated, the Owner shall have the right to hire any of the Contractor's on-site employees it so desires. The Contractor will not transfer from this job any of its employees during this six months period.

Section 10. Transfers. The Contractor agrees to use its best efforts to avoid, or minimize transfers of its employees from the Owners plant site. Transfers shall not exceed a total of 3% in

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any craft during a one year period. Normal payroll attrition such as R.O.F., voluntary quit, fires, and promotional transfers will be excluded from the 3% maximum.

Section 11. Personnel Policies. The Contractor has full and complete control over their employees and their job tenure. The Contractor shall furnish to the Owner a copy of their personnel policies and regulations. The Contractor's employees or subcontractor's employees will abide by all of the Owners safety regulations.

Section 12. Secrecy Agreement. All Contractor's employees shall sign a Secrecy Agreement. A copy of the agreement is appended hereto as Appendix E.

Section 13. Wage Rates. Should there be a general raise in the Contractor's Contruction rates, the Contractor will request a review with the Owner to determine whether to maintain initial scale and risk jeopardizing the retainage of qualified personnel or to conform to the new scale. In the event the Contractor pays additional fringe benefits in lieu of a wage increase, the total economic package shall not cost the Owner more than the corresponding Daniel's rate. The wages for this job will not exceed any other Daniel rates in South Carolina.

Section 14. Subcontractors. This contract will cover all of the Contractor's Subcontractors and they will be governed by the

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same accounting and pay procedures as the prime Contractor.

Section 15. (a) Overtime: Premium time at the rate of one and one-half times the regular rate will be paid for all hours in excess of 40 hours in each payroll week, which begins 0700 hours Monday to 0700 hours the following Monday. When it is necessary to supplement the basic work force for short periods from other jobs, any time an individual works over 40 hours will be chargeable to the job causing the overtime. Also, when supplemental short term labor is required and an individual works on this job and then works 40 hours on his regular assignment, he will be paid premium time for the time on this job-site during the same pay period, since it will be the causing factor for the overtime. The Contractor will notify the Owner when men from other jobs will be on overtime on the Owner's short term project.

(b) Timekeeping and Payroll Preparation: The Daniel Superintendent will be responsible for supervision of the timekeeping and payroll preparation. These functions will be accomplished using applicable Daniel procedures and Hoechst Fibers maintenance cost accounting procedures.

(c) Vacations: Only salaried personnel are given paid vacations. Eligible employees with less than ten years company service earn 5/6 days vacation per month, and those with over ten years service 1 1/4 days vacation per month. Vacation schedules will be approved by Owner. Vacation time allowed but not earned at employees termination will be deducted from employee's last salary check.

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Vacation time earned but not taken will be paid the employee upon his termination at Owner's job-site. (Reimbursable Cost)

(d) Sick Leave: Salaried personnel will be paid for reasonable time lost due to sickness, but not to exceed two (2) two weeks. (Reimbursable Cost).

(e) Call-In Duty: Daniel will be responsible to have men available for off hour coverage. When it is necessary for hourly employees to be called in for unschedule work for short periods of time a minimum of two (2) hours will be paid.

(f) Hiring and Terminating: The Contractor has full and complete control over their employees and their job tenure. Employees will be assigned to work with the concurrence of the Owner and will be removed from the job-site when requested by the Owner, except that in both instances the Contractor will comply with all applicable laws and regulations.

(g) Orientation and Preparation: The Contractor will furnish personnel fully qualified in their craft to man job requirments as demonstrated by pre-employment testing and careful screening. Where specialized skills or training are required in addition to the normal craft, the Contractor will make every effort to provide personnel who have previous experience in the particular requirement. However, should specialized training be required, the Contractor will bear the cost of such training except that wages paid to Contractor personnel while training are reimbursable to the Contractor by the Owner.

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(h) Construction Equipment, Small Tools and Supplies: The Owner will have the option of providing construction equipment, small tools and supplies or requesting the Contractor to provide them. Should the Contractor be requested to provide these items, the terms and conditions of the Contract in Section 4 (d) will apply.

Rental of equipment will be at rates most advantageous to the Owner after giving consideration to distance, availability and condition of equipment. Equipment rental terms for Contractor owned equipment are set forth in the Daniel Construction Company Schedule of Rental Equipment.

(i) Short Term Projects: Craftsmen reporting from a distance greater than 60 miles for a plant shutdown or short term project which provides them less than 60 hours work during the period, shall be paid $.12 per mile for one trip to and from their previous location and $8.00 lodging for each day or shift worked on the project. Craftsmen who quit or are fired before working the 60 hours receive no travel benefits. Mileage will normally be calculated from center of town to center of town for convenience. All salaried field personnel are reimbursed their reasonable expenses for the shutdown including mileage, meals, lodging, telephone, and incidentals.

(j) Holiday Policy: Salaried personnel will observe all Hoechst holidays with pay. All hourly employees will observe Hoechst holidays. In order to compensate maintenance personnel for time worked during Hoechst Fiber's holidays, the craftsmen will be paid time and one-half for all hours worked on an emergency basis on

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scheduled holidays. The holidays will be the calendar holidays and are further defined from 0700 hours to 0700 hours.

The following nine holidays will be observed each year on their respective calendar day, not any other day related to that holiday: New Year's - January, Good Friday, Memorial Day - May 30, Independence Day - July 4, Labor Day - First Monday in September, Thanksgiving Day, Day after Thanksgiving, Day prior to Christmas - December 24, Christmas Day - December 25.

It is to be re-emphasized that this premium pay is for emergency and unscheduled work only. Should any scheduled work be made for these days, this time would be exempt from this policy.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives as of the day and year first above written.

WITNESS:

3-24-72

HOECHST FIBERS INCORPORATED

By _____
(Title)
Henry J. Dekker
V.P. of Hoechst Fibers Inc.

WITNESS:

DANIEL CONSTRUCTION COMPANY
MAINTENANCE & MILLWRIGHT DIVISION

By _____
(Title)
John A. Wood
Div. Mgr. & Attorney in Fact

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POSITION DESCRIPTION

GENERAL PROJECT ENGINEER

Salary: $1,350.00 to $1,750.00 per month

PRIMARY FUNCTION:

To administer, coordinate and control all activities relating to Maintenance and Engineering within the plant to obtain maximum effective utilization of all resources.

DUTIES AND RESPONSIBILITIES:

Because of the wide variety of problems and the broad scope of many assignments given to the Owners engineering and maintenance organization, the Project Engineer may be required to perform, as requested by the Owner, any or all of the following functions:

1. Assist Owner in the preparation of necessary industrial, mechanical, electrical and chemical engineering design, required for plant maintenance, construction, new installations and remodeling. This may be done by himself, others in his group under his supervision, or by others on sub-contract to the plant under his supervision.
2. Develop and administer building and facility improvement programs.
3. Support plant engineering cost control systems.
4. Estimate necessary facility and building costs.
5. Direct and supervise general mechanics or specialist, such as electricians, carpenters, sheet metal workers, machinists, janitors, laborers, etc.
6. Handle sub-contractor problems related to plant engineering projects.

7. Aid in the disposal of surplus equipment.

8. Assist in maintaining good storeroom controls.

9. Participate in facility record keeping, including related maintenance costs.

10. Assure compliance with all control phases of plant work order system.

11. Participate in development and operation of Preventive Maintenance Program.

12. Analyze costs and report on required corrective action.

13. Develop and administer training programs for new employees and upgrading of incumbent employees.

14. Assist in formulation and review of procedures for Owner regarding air and water pollution to insure compliance with municipal, state, and/or federal laws.

15. Assist in administration of a maintenance related safety program.

16. Review and analyze costs of purchased utility services.

17. Perform other duties assigned by the Owner.

AUTHORITY:

Within reasonable limits as indicated by Owner and established Daniel policies and procedures, authority is considered sufficient to discharge assigned responsibilities. This includes authority to hire, train and initiate personnel changes of subordinate employees, initiate maintenance improvement programs and establish work schedules for maintenance employees.

RELATIONSHIPS:

Position requires cooperation and work with both management and operating personnel of the plant.

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A line relationship exists between the Project Engineer, his subordinates and his supervisor.

A staff relationship exists between the Project Engineer and other plant departments which requires mutual assistance and cooperation.

A special staff relationship exists between the Project Engineer, the Daniel Maintenance Manager, and Daniel Engineering in project administration, equipment selection, plant and ship layouts and other general engineering services necessary for efficient operation of the facility.

REPORTS TO:

The Owners Central Facilities Area Engineer

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APPENDIX B

SCHEDULE OF WEEKLY SALARY RATES,
FRINGE BENEFITS AND INCENTIVES

FOR

PROJECT PERSONNEL

AT

HOECHST FIBERS

Salaries:

Project Engineer	$310-$410
Maintenance Superintendent	$285-$385
Timekeeper	$165-$250

Fringe Benefits:

Vacation - Three weeks annually for 10 year employees
Two weeks annually for others

Paid Holidays - New Year's Day
July Fourth
Labor Day
Thanksgiving Day
Friday Following Thanksgiving
Christmas Day

Holidays falling on Saturday are taken on Friday preceding the Holiday.

Sick Leave - Not to exceed two weeks per year without approval

Appendix C

SCHEDULE OF HOURLY RATES
for
OFFICE EMPLOYEES FOR TIME DEVOTED TO PROJECT

Maintenance and Millwright Division:

Project Manager	$ 12.50
Estimator	8.00
Timekeeper	5.00

Daniel Engineers (10-1-70):

Director of Engineering	30.00
Assistant Director of Engineering	25.00
Project Engineer	22.00
Project Coordinator	20.00
Engineering Department Manager	17.00
Architectural Department Manager	17.00
Architect	16.00
Engineer	16.00
Senior Designer	15.00
Designer	12.00
Senior Draftsman	10.50
Draftsman	9.00
Engineering Accountant	12.00
Engineering Secretary	6.00
Clerk	4.50

Travel expenses of these personnel are reimbursable to Contractor, including cost of meals, lodging, telephone, incidentals, public transportation, Contractor's aviation charges or automobile mileage at $.12 per mile.

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-APPENDIX D-

THE CRAFTSMEN WILL BE REQUIRED TO FURNISH ONE OF THE FOLLOWING:

ELECTRICIANS

Leather Pouch
Electricians Skinning Knife
10" Adjustable Wrench w/insulated Handles
Channel Lock Pliers w/insulated Handles
Heavy Duty Diagonals w/insulated Handles
Pair long noes Pliers
Pair Lineman's Pliers
Electrician's Tool Belt
Fuse Puller
Crimping Pliers
Wedge Type Screwdriver
Tool Box
Ball Peen Hammer
12" Screwdriver
6" Screwdriver
1 1/2" Screwdriver
6" Thin Blade Screwdriver
3" Thin Blade Screwdriver
6" Phillips Head Screwdriver
Set Allen Head Wrenches
1/2" to 9/16" Box Wrenches
3/8" to 7/16" Box Wrenches
Burnishing Tool
8" Adjustable Wrench
4" Adjustable Wrench
8" Screwdriver
2 1/2" Long Screw Starter
5 1/4" Long Screw Starter
9 1/2" Long Screw Starter
Set Ignition Wrenches
10" Wedge Screw Holder
Midget Fuse Puller

MILLWRIGHTS

8" Adjustable Wrench
3" Screwdriver
10" Screwdriver
6" Phillips Screwdriver
Pair Channel Lock Pliers
Set Allen Wrenches
Pair 8" Diagonal Pliers
6 Ft. Folding rule
6" Scale
Torpedo Level
Feeler Cage
Cotter Key Extractor
Ball Peen Hammer
Pry Bar
Hacksaw Frame
Line Level
Plumb Bob
Chisel and Punch Set
Pair Visegrip Pliers
Set Combination Wrenches to 1¼
Dial Indicator
Set Calipers
Set Micrometers to 2"
Thread Cage
Set Dividers
Packing Remover
Socket Set up to 1 1/4"

-APPENDIX E-

INDIVIDUAL SECRECY AGREEMENT

Recognizing the fact that my employer, Daniel Construction Company, is engaged in the maintenance of Hoechst Fibers Inc. Spartanburg, South Carolina, facility which is used for the manufacture of dimethylterephthalate and polyester fibers, which manufacturing processes and techniques are confidential and are not known to the general public and in consideration of my employment with Daniel Construction Company at this installation, I hereby agree that at all times both during my employment and after the termination of my employment I will maintain in secrecy all processes, techniques, know-how and other information which are revealed to me as a result of my employment with Daniel Construction Company at Hoechst Fibers Inc. Spartanburg, South Carolina, facility. I agree that I will not disclose or make known any information relating to processes, techniques or know-how without the authorization of Hoechst Fibers Inc. I further agree that any change or changes in my employment or in the duty, salary or compensation of my job shall in no way affect or impair the validity of this agreement or any other obligation here under.

I hereby expressly state that I intend to be legally bound by the terms of this secrecy agreement to both Hoechst Fibers Inc. and Daniel Construction Company.

WITNESSES:

_____ _____
Signature

_____ _____
Title

_____
Date

193-6227

MAINTENANCE SERVICES CONTRACT

THIS AGREEMENT, MADE AND ENTERED INTO AS OF THE 24TH DAY OF JUNE, 1975, BY AND BETWEEN HOECHST FIBERS INDUSTRIES, A DIVISION OF AMERICAN HOECHST CORPORATION, HEREINAFTER REFERRED TO AS THE ''OWNER'' AND THE MAINTENANCE AND MILLWRIGHT DIVISION OF DANIEL INTERNATIONAL CORPORATION, A SOUTH CAROLINA CORPORATION, HEREINAFTER REFERRED TO AS THE ''CONTRACTOR''.

WITNESSETH:

SECTION 1. SCOPE OF WORK. THE CONTRACTOR SHALL FURNISH ALL NECESSARY SUPERVISION, LABOR, EQUIPMENT, TOOLS, MATERIALS, SUPPLIES, AND INCIDENTALS NECESSARY TO PERFORM CONTINUOUS ROUTINE MAINTENANCE; OPERATION OF UTILITY EQUIPMENT; AND EMERGENCY, SUPPLEMENTARY, OR TEMPORARY MAINTENANCE SERVICES AS MAY BE REQUIRED BY THE OWNER.

SECTION 2. OWNER'S REPRESENTATIVE. THE OWNER SHALL DESIGNATE FROM TIME TO TIME ONE OR MORE INDIVIDUALS WHOM THE CONTRACTOR SHALL BE ENTITLED TO RECOGNIZE AND ACCEPT AS THE OWNER'S AGENT, WITH FULL POWER AND AUTHORITY TO ACT FOR, AND IN THE NAME, PLACE, AND STEAD OF THE OWNER, FOR ANY OF THE PURPOSES FOR WHICH THE OWNER MAY OR SHALL HAVE AUTHORITY AS HEREINAFTER PROVIDED. THE CONTRACTOR SHALL BE ENTITLED TO RELY ON SUCH DESIGNATION UNTIL REVOCATION THEREOF AND THE DESIGNATION OF A DIFFERENT OWNER'S REPRESENTATIVE IS RECEIVED BY THE CONTRACTOR.

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cc: M&M file
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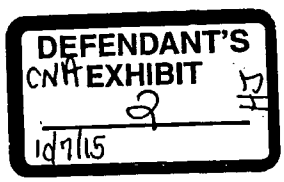

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SECTION 3. PAYMENT. FOR PERFORMANCE OF THE MAINTENANCE SERVICES SPECIFIED IN SECTION 1, THE OWNER SHALL PAY THE CONTRACTOR THE FOLLOWING FEES:

(A) AN ANNUAL FEE OF 6% BASED ON GROSS PAYROLL FOR ALL HOURS. THIS FEE WILL BE CALCULATED AND INVOICED WEEKLY WITH THE PAYROLL INVOICE.

(B) IN ADDITION TO SAID FEES, THE OWNER SHALL PAY TO CONTRACTOR ITS REIMBURSABLE COSTS INCURRED IN THE PERFORMANCE OF THE WORK AS DESCRIBED IN SECTION 4 BELOW.

SECTION 4. REIMBURSABLE COSTS. EXCEPT AS HEREINAFTER PROVIDED, REIMBURSABLE COSTS SHALL CONSIST OF THE FOLLOWING:

(A) FIELD LABOR: PAYROLL COSTS FOR ALL PERSONNEL EMPLOYED IN THE FIELD IN CONNECTION WITH THE WORK, INCLUDING REQUIRED PROJECT MANAGERS, SUPERINTENDENTS, FOREMEN, TIMEKEEPERS, CLERKS, ACCOUNTANTS, PURCHASING AGENTS, AND SUCH OTHER PERSONNEL AS MAY BE NECESSARY OR DESIRABLE FOR THE PROPER AND EFFICIENT PROSECUTION OF THE WORK. HOURLY WAGE RATES AND OVERTIME PREMIUMS WILL BE PAID AT PREVAILING RATES IN ACCORDANCE WITH THE SCHEDULE APPENDED HERETO AS APPENDIX A. SALARY RATES, FRINGE BENEFITS AND INCENTIVES FOR THE PROJECT MANAGER, SUPERINTENDENT, TIMEKEEPER AND OTHER SALARY EMPLOYEES REQUESTED BY THE OWNER SHALL BE IN ACCORDANCE WITH THE SCHEDULE APPENDED HERETO AS APPENDIX B. APPENDIX A AND B MAY BE SUPPLEMENTED OR REVISED FROM TIME TO TIME BY MUTUAL AGREEMENT BETWEEN THE CONTRACTOR AND THE OWNER OR THE OWNER'S REPRESENTATIVE. THE CONTRACTOR'S REGULAR SICK LEAVE AND VACATION POLICY SHALL APPLY TO ALL SALARIED PERSONNEL EMPLOYED IN THE FIELD AND THE COSTS THEREOF SHALL BE REIMBURSABLE.

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(B) HOME OFFICE PERSONNEL: PAYROLL AND OTHER COSTS FOR PERSONNEL NOT EMPLOYED IN THE FIELD SHALL BE REIMBURSED TO THE CONTRACTOR IN ACCORDANCE WITH THE SCHEDULE APPENDED HERETO AS APPENDIX C, WHICH SCHEDULE MAY BE SUPPLEMENTED OR REVISED FROM TIME TO TIME BY MUTUAL AGREEMENT BETWEEN THE CONTRACTOR AND THE OWNER OR THE OWNER'S REPRESENTATIVE.

(C) PAYROLL COSTS: (I) THE OWNER SHALL REIMBURSE FOR WORKMANS' COMPENSATION, COMPREHENSIVE GENERAL LIABILITY, COMPREHENSIVE EXCESS INDEMNITY (UMBRELLA) INSURANCE, AND AUTOMOBILE LIABILITY INSURANCE AT THE CONTRACTOR'S ACTUAL EXPERIENCE RATES. THE AFOREMENTIONED CHARGES SHOULD BE PROVIDED FOR THE FOLLOWING MINIMUM LIMITS OF LIABILITY:

(I) WORKMANS' COMPREHENSIVE - STATUTORY
EMPLOYEE LIABILITY - $100,000.00

(II) COMPREHENSIVE GENERAL LIABILITY
A) BODILY INJURY - $250,000 EACH PERSON
$500,000 EACH OCCURENCE
B) PROPERTY DAMAGE-$100,000 EACH OCCURENCE
C) EXCESS UMBRELLA-$2,000,000 EACH OCCURENCE
$2,000,000 AGGRAGATE

(III) AUTOMOTIVE LIABILITY -
A) BODILY INJURY - $250,000 EACH PERSON
$500,000 EACH OCCURENCE
B) PROPERTY DAMAGE-$100,000 EACH OCCURENCE

(D) RENTAL EQUIPMENT: (I) THE CONTRACTOR SHALL FURNISH IN GOOD OPERATING CONDITION SUCH OF ITS EQUIPMENT AS IS FROM TIME TO TIME AVAILABLE AND NECESSARY FOR THE PERFORMANCE OF THE WORK WITH THE PRIOR APPROVAL OF THE OWNER. SAID EQUIPMENT IS HEREINAFTER REFERRED TO AS ''DANIEL EQUIPMENT''. RENTAL FOR DANIEL EQUIPMENT SHALL BE REIMBURSED TO THE CONTRACTOR IN ACCORDANCE WITH THE THEN CURRENT ''DANIEL CONSTRUCTION COMPANY SCHEDULE OF RENTAL

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EQUIPMENT'' (HEREINAFTER REFERRED TO AS THE ''DANIEL EQUIPMENT SCHEDULE''). A COPY OF THE DANIEL EQUIPMENT SCHEDULE SHALL BE FURNISHED TO THE OWNER UPON REQUEST. DANIEL EQUIPMENT SCHEDULE SHALL NOT BE SUBJECT TO PURCHASE BY THE OWNER WITHOUT THE CONTRACTOR'S CONSENT. THE CONTRACTOR ALSO MAY RENT EQUIPMENT FROM THIRD PARTIES, IF THE CONTRACTOR'S EQUIPMENT IS NOT AVAILABLE FOR THE WORK OR IF THE CONTRACTOR, WITH THE OWNERS APPROVAL, DEEMS IT ADVISABLE OR MORE ECONOMICAL IN THE CIRCUMSTANCES NOT TO PROVIDE DANIEL EQUIPMENT. (II) THE CONTRACTOR SHALL BE REIMBURSED FOR THE COSTS OF TRANSPORTING DANIEL EQUIPMENT TO THE JOBSITE, F.O.B. POINTS OF ORIGIN AND THE COSTS OF RETURNING SUCH EQUIPMENT TO ITS POINTS OF ORIGIN OR AN AMOUNT EQUAL THERETO IN THE EVENT THE CONTRACTOR ELECTS TO DIRECT THE EQUIPMENT TO DESTINATIONS OTHER THAN THE POINTS OF ORIGIN. SHOULD THE CONTRACTOR ELECT TO REPLACE A PIECE OF DANIEL EQUIPMENT REQUIRING MAJOR REPAIR OR OVERHAUL, THE COST OF TRANSPORTATION TO AND FROM THE JOBSITE FOR SUCH REPLACEMENT PIECE SHALL NOT BE REIMBURSED TO THE CONTRACTOR, BUT THE COSTS OF RETURN TRANSPORTATION FOR THE EQUIPMENT BEING REPLACED SHALL BE REIMBURSED AS HEREIN PROVIDED.

(E) SMALL TOOLS: SMALL TOOLS ARE DEFINED AS HAND TOOLS HAVING AN INITIAL VALUE OF LESS THAN $500 AND DO NOT INCLUDE ITEMS SUCH AS OFFICE MACHINES, ENGINEERING INSTRUMENTS AND OTHER ITEMS LISTED IN THE DANIEL EQUIPMENT SCHEDULE. THE DANIEL'S CRAFTSMEN SHALL SUPPLY THEIR HAND TOOLS AS PER LIST APPENDED HERETO AS APPENDIX D. ALL SPECIAL TOOLS REQUIRED IN ADDITION TO APPENDIX D WILL BE SUPPLIED BY THE OWNER.

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SECTION 5. OWNER'S PROPERTY INSURANCE. THE OWNER SHALL ASSUME (AND AT ITS ELECTION MAY INSURE) ALL INSURABLE RISKS OF LOSS OR PHYSICAL DAMAGE TO EXISTING FACILITIES AND OTHER PROPERTY OF OWNER AT OR NEAR THE SITE OF THE WORK AND TO THE WORK ITSELF. (AS USED IN THE PRECEDING SENTENCE "THE WORK" SHALL INCLUDE, WITHOUT LIMITATION, ALL MATERIAL, SUPPLIES AND EQUIPMENT FOR INCORPORATION IN THE WORK WHILE IN TRANSIT TO, OR STORED ON, THE SITE OF THE WORK, ALL TEMPORARY CONSTRUCTION ON THE SITE AND ANY ITEMS OF EQUIPMENT OF OWNER BORROWED BY THE CONTRACTOR OR ITS EMPLOYEES AND USED BY THEM IN PERFORMANCE OF THE WORK.) RISKS ASSUMED HEREUNDER SHALL INCLUDE, WITHOUT LIMITATION, THE FULL AMOUNT OF ALL LOSSES WHICH WOULD BE INSURABLE UNDER ANY COMBINATION OF THE FOLLOWING: AN ALL RISK BUILDER'S RISK POLICY, A FIRE AND EXTENDED COVERAGE POLICY, A BOILER AND MACHINERY POLICY, A BUSINESS INTERRUPTION POLICY, AND OCEAN AND AIR TRANSIT POLICY, OR AN EQUIPMENT OR INSTALLATION FLOATER POLICY, AND AN ALL RISK DIFFERENCE-IN-CONDITIONS POLICY. THE OWNER HEREBY WAIVES ALL RIGHT OF RECOVERY AND AGREES TO OBTAIN A WAIVER OF ANY SUBROGATION RIGHTS OF ITS INSURERS, AGAINST CONTRACTOR FOR ANY LOSS, INCLUDING WITHOUT LIMITATION, LOSS OF USE AND ALL CONSEQUENTIAL DAMAGES THEREOF, RESULTING FROM RISKS ASSUMED BY OWNER HEREUNDER.

UNGUTIG! Grund: as P.R. Longaker NOV 1 5 1975 Name: D.C.

SECTION 6. CONTRACTOR'S ACCOUNTS. THE CONTRACTOR SHALL CHECK ALL MATERIALS PURCHASED BY CONTRACTOR AND ALL LABOR ENTERING INTO THE WORK AND SHALL KEEP SUCH FULL AND DETAILED ACCOUNTS OF SAME AND OTHER COSTS OF PERFORMING THE WORK AS SHALL BE NECESSARY FOR THE PROPER ADMINISTRATION OF THIS CONTRACT. THE OWNER AND THE OWNER'S REPRESENTATIVE SHALL BE AFFORDED ACCESS TO THE WORK AND TO ALL OF THE CONTRACTOR'S ACCOUNTING RECORDS, RECEIPTS, VOUCHERS, ETC. RELATING TO THE PERFORMANCE OF THE WORK DURING THE COURSE OF WORK AND FOR A PERIOD OF 120 DAYS AFTER WORK CEASES.

OWNER

OWNER

(F) MATERIALS, EQUIPMENT, SUPPLIES AND SUBCONTRACTS: THE INVOICED PRICE OF ALL MATERIALS, EQUIPMENT, SUPPLIES (INCLUDING WITHOUT LIMITATION FUEL AND LUBRICANTS FOR RENTAL EQUIPMENT), AND SUBCONTRACTS PURCHASED OR LET ON A COMPETITIVE OR NEGOTIATED BASIS IN ACCORDANCE WITH PROCEDURES TO BE MUTUALLY AGREED UPON BETWEEN THE CONTRACTOR AND THE OWNER OR THE OWNER'S REPRESENTATIVE. PURCHASE ORDERS SHALL BE ISSUED IN THE NAME OF THE OWNER IF SO DIRECTED BY THE OWNER OR THE OWNER'S REPRESENTATIVE.

(G) INSURANCE AND BONDS: (I) PREMIUMS FOR EQUIPMENT INSTALLATION FLOATER (RIGGING) INSURANCE, SUBJECT TO A DEDUCTIBLE AMOUNT OF $500 AND A MAXIMUM LIMIT OF $750,000 FOR EACH OCCURENCE. OWNER SHALL REIMBURSE CONTRACTOR FOR ANY SUCH DEDUCTIBLE; AND UNLESS THE CONTRACTOR HAS PROCURED THE EQUIPMENT OR HAS RECEIVED FROM THE OWNER WRITTEN NOTICE OF THE REPLACEMENT VALUE THEREOF, THE OWNER SHALL BE RESPONSIBLE FOR ANY LOSS THEREOF IN EXCESS OF $750,000. ANY INCREASE IN INSURANCE PREMIUMS TO COVER EXCESS EQUIPMENT VALUES SHALL BE REIMBURSED TO CONTRACTOR. (II) PREMIUMS FOR ANY SPECIAL INSURANCE AND ANY BONDS REQUIRED IN CONNECTION WITH THE PERFORMANCE OF THE WORK.

(H) OTHER DIRECT COSTS: CONTRACTOR WILL BE REIMBURSED FOR ANY OTHER DIRECT COST WHICH IT MAY INCUR IN THE PERFORMANCE OF ANY WORK HEREUNDER, INCLUDING WITHOUT LIMITATION COSTS OF UTILITIES, TAXES, LICENSES, FEES, CORRECTION OF MINOR DEFECTS IN THE WORK, THIRD PARTY RENTAL EQUIPMENT AS REQUIRED, EXPENDABLE SMALL TOOLS, TEMPORARY STRUCTURES, FREIGHT AND TRANSPORTATION, TRAVEL EXPENSES, PAYROLL CHECKS AT THE ACTUAL COST OF EACH CHECK, COSTS REFERRED TO IN SECTION 15, AND ANY OTHER COST DIRECTLY ARISING OUT OF THE WORK.

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SECTION 5. OWNER'S PROPERTY INSURANCE. OWNER ASSUMES ALL INSURABLE RISKS OF LOSS OR DAMAGE (WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL) TO, AND AT ITS ELECTION MAY INSURE FOR THEIR FULL INSURABLE VALUE, EXISTING FACILITIES AND PROPERTY OF OWNER AT OR NEAR THE SITE OF THE WORK AND THE WORK ITSELF. OWNER HEREBY WAIVES ALL RIGHT OF RECOVERY AGAINST CONTRACTOR FOR ANY LOSS OR DAMAGE (WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL), INCLUDING LOSS OF USE, RESULTING FROM SUCH RISKS.

SECTION 6. CONTRACTOR'S ACCOUNTS. THE CONTRACTOR SHALL CHECK ALL MATERIALS PURCHASED BY CONTRACTOR AND ALL LABOR ENTERING INTO THE WORK AND SHALL KEEP SUCH FULL AND DETAILED ACCOUNTS OF SAME AND OTHER COSTS OF PERFORMING THE WORK AS SHALL BE NECESSARY FOR THE PROPER ADMINISTRATION OF THIS CONTRACT. THE OWNER AND THE OWNER'S REPRESENTATIVE SHALL BE AFFORDED ACCESS TO THE WORK AND TO ALL OF THE CONTRACTOR'S ACCOUNTING RECORDS, RECEIPTS, VOUCHERS, ETC. RELATING TO THE PERFORMANCE OF THE WORK DURING THE COURSE OF WORK AND FOR A PERIOD OF 120 DAYS AFTER WORK CEASES.

OWNER

CONTRACTOR

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SECTION 7. REIMBURSEMENTS. (A) PAYMENT TO THE CONTRACTOR FOR PAYROLL SHALL BE MADE WEEKLY UPON RECEIPT BY THE OWNER OR THE OWNER'S REPRESENTATIVE OF THE CONTRACTOR'S INVOICE THEREFORE.

(B) PAYMENT OF ALL OTHER REIMBURSABLE COSTS SHALL BE MADE PERIODICALLY, BUT NOT LESS FREQUENTLY THAN MONTHLY, UPON RECEIPT BY THE OWNER OR THE OWNER'S REPRESENTATIVE OF THE CONTRACTOR'S INVOICE THEREFORE.

(C) UPON FINAL COMPLETION OF THE WORK, ANY MONIES DUE TO THE CONTRACTOR UNDER THIS CONTRACT AND NOT THERETOFORE PAID SHALL BE PAID TO THE CONTRACTOR.

(D) ALL INVOICES FOR PAYMENTS TO BE MADE TO THE CONTRACTOR AS PROVIDED IN SECTIONS 3 AND 7 SHALL BE DUE AND PAYABLE UPON RECEIPT THEREOF BY THE OWNER OR THE OWNER'S REPRESENTATIVE, AND ALL PAYMENTS SHALL BE MADE WITHIN 30 DAYS OF RECEIPT, SUBJECT TO POST AUDIT BY OWNER.

SECTION 8. INSTALLED EQUIPMENT. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE RESPONSIBLE FOR OPERATION OF OWNER'S EQUIPMENT, UNLESS IT IS EXPRESSLY AGREED IN WRITING THAT THE CONTRACTOR SHALL SUPERVISE ITS PERSONNEL IN THE PERFORMANCE OF SUCH SERVICES. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR BE RESPONSIBLE FOR THE ACTUAL CAPACITY, PRODUCTIVITY, OR SUITABILITY FOR ITS INTENDED USE OF MECHANICAL, PROCESS, OR PRODUCTION EQUIPMENT.

SECTION 9. DURATION OF CONTRACT. THIS CONTRACT SHALL REMAIN EFFECTIVE FOR A PERIOD OF THREE YEARS. IT MAY BE TERMINATED BY THE OWNER OR THE CONTRACTOR AT ANY TIME BY GIVING THE OTHER PARTY WRITTEN NOTICE SIX MONTHS PRIOR TO THE DESIRED TERMINATION. WRITTEN

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TERMINATION NOTICE WILL BE DELIVERED TO THE CONTRACTOR'S SUPERVISOR IN CHARGE OF THE WORK OR WILL BE MAILED, POSTAGE PREPAID, TO THE CONTRACTOR AT THE DANIEL BUILDING, GREENVILLE, SOUTH CAROLINA 29602. IN THE EVENT OF SUCH TERMINATION BY OWNER, THE CONTRACTOR SHALL BE ENTITLED TO REIMBURSEMENT FOR ALL COSTS THERETOFORE INCURRED OR ACCRUED HEREUNDER AND PAYMENT OF ALL FEES ATTRIBUTABLE THERETO.

IN THE EVENT THE CONTRACT IS TERMINATED, THE OWNER SHALL HAVE THE RIGHT TO HIRE ANY OF THE CONTRACTOR'S ON-SITE EMPLOYEES IT SO DESIRES. THE CONTRACTOR WILL NOT TRANSFER FROM THIS JOB ANY OF ITS EMPLOYEES DURING THIS SIX MONTHS PERIOD.

SECTION 10. TRANSFERS. THE CONTRACTOR AGREES TO USE ITS BEST EFFORTS TO AVOID, OR MINIMIZE TRANSFERS OF ITS EMPLOYEES FROM THE OWNERS PLANT SITE. TRANSFERS SHALL NOT EXCEED A TOTAL OF 3% IN ANY CRAFT DURING A ONE YEAR PERIOD. NORMAL PAYROLL ATTRITION SUCH AS R.O.F., VOLUNTARY QUIT, FIRES, AND PROMOTIONAL TRANSFERS WILL BE EXCLUDED FROM THE 3% MAXIMUM.

SECTION 11. PERSONNEL POLICIES. THE CONTRACTOR HAS FULL AND COMPLETE CONTROL OVER THEIR EMPLOYEES AND THEIR JOB TENURE. THE CONTRACTOR SHALL FURNISH TO THE OWNER A COPY OF THEIR PERSONNEL POLICIES AND REGULATIONS. THE CONTRACTOR'S EMPLOYEES OR SUBCONTRACTOR'S EMPLOYEES WILL ABIDE BY ALL OF THE OWNERS SAFETY REGULATIONS.

SECTION 12. SECRECY AGREEMENT. ALL CONTRACTOR'S EMPLOYEES SHALL SIGN A SECRECY AGREEMENT. A COPY OF THE AGREEMENT IS APPENDED HERETO AS APPENDIX E.

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SECTION 13. WAGE RATES. SHOULD THERE BE A GENERAL RAISE IN THE CONTRACTOR'S CONSTRUCTION RATES, THE CONTRACTOR WILL REQUEST A REVIEW WITH THE OWNER TO DETERMINE WHETHER TO MAINTAIN INITIAL SCALE AND RISK JEOPARDIZING THE RETAINAGE OF QUALIFIED PERSONNEL OR TO CONFORM TO THE NEW SCALE. IN THE EVENT THE CONTRACTOR PAYS ADDITIONAL FRINGE BENEFITS IN LIEU OF A WAGE INCREASE, THE TOTAL ECONOMIC PACKAGE SHALL NOT COST THE OWNER MORE THAN THE CORRESPONDING DANIEL'S RATE. THE WAGES FOR THIS JOB WILL NOT EXCEED THOSE OUTLINED IN APPENDIX A.

SECTION 14. SUBCONTRACTORS. THIS CONTRACT WILL COVER ALL OF THE CONTRACTOR'S SUBCONTRACTORS AND THEY WILL BE GOVERNED BY THE SAME ACCOUNTING AND PAY PROCEDURES AS THE PRIME CONTRACTOR.

SECTION 15. (A) OVERTIME. PREMIUM TIME AT THE RATE OF ONE AND ONE-HALF TIMES THE REGULAR RATE WILL BE PAID FOR ALL HOURS IN EXCESS OF 40 HOURS IN EACH PAYROLL WEEK, WHICH BEGINS 0700 HOURS MONDAY TO 0700 HOURS THE FOLLOWING MONDAY. WHEN IT IS NECESSARY TO SUPPLEMENT THE BASIC WORK FORCE FOR SHORT PERIODS FROM OTHER JOBS, ANY TIME AN INDIVIDUAL WORKS OVER 40 HOURS WILL BE CHARGEABLE TO THE JOB CAUSING THE OVERTIME. ALSO, WHEN SUPPLEMENTAL SHORT TERM LABOR IS REQUIRED AND AN INDIVIDUAL WORKS ON THIS JOB AND THEN WORKS 40 HOURS ON HIS REGULAR ASSIGNMENT, HE WILL BE PAID PREMIUM TIME FOR THE TIME ON THIS JOB-SITE DURING THE SAME PAY PERIOD, SINCE IT WILL BE THE CAUSING FACTOR FOR THE OVERTIME. THE CONTRACTOR WILL NOTIFY THE OWNER WHEN MEN FROM OTHER JOBS WILL BE ON OVERTIME ON THE OWNER'S SHORT TERM PROJECT.

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(B) TIMEKEEPING AND PAYROLL PREPARATION. THE DANIEL SUPERINTENDENT WILL BE RESPONSIBLE FOR SUPERVISION OF THE TIME-KEEPING AND PAYROLL PREPARATION. THESE FUNCTIONS WILL BE ACCOMPLISHED USING APPLICABLE DANIEL PROCEDURES AND HOECHST FIBERS MAINTENANCE COST ACCOUNTING PROCEDURES.

(C) VACATIONS. ONLY SALARIED PERSONNEL ARE GIVEN PAID VACATIONS. ELIGIBLE EMPLOYEES WITH LESS THAN TEN YEARS COMPANY SERVICE EARN 5/6 DAYS VACATION PER MONTH, AND THOSE WITH OVER TEN YEARS SERVICE 1 1/4 DAYS VACATION PER MONTH. VACATION SCHEDULES WILL BE APPROVED BY OWNER. VACATION TIME ALLOWED BUT NOT EARNED AT EMPLOYEES TERMINATION WILL BE DEDUCTED FROM EMPLOYEE'S LAST SALARY CHECK. VACATION TIME EARNED BUT NOT TAKEN WILL BE PAID THE EMPLOYEE UPON HIS TERMINATION AT OWNER'S JOB-SITE. (REIMBURSABLE COST)

(D) SICK LEAVE. SALARIED PERSONNEL WILL BE PAID FOR REASONABLE TIME LOST DUE TO SICKNESS, BUT NOT TO EXCEED TWO (2) WEEKS. (REIMBURSABLE COST)

(E) CALL-IN DUTY. DANIEL WILL BE RESPONSIBLE TO HAVE MEN AVAILABLE FOR OFF HOUR COVERAGE. WHEN IT IS NECESSARY FOR HOURLY EMPLOYEES TO BE CALLED IN FOR UNSCHEDULED WORK FOR SHORT PERIODS OF TIME A MINIMUM OF THREE (3) HOURS WILL BE PAID.

(F) HIRING AND TERMINATING. THE CONTRACTOR HAS FULL AND COMPLETE CONTROL OVER THEIR EMPLOYEES AND THEIR JOB TENURE. EMPLOYEES WILL BE ASSIGNED TO WORK WITH THE CONCURRENCE OF THE OWNER AND WILL BE REMOVED FROM THE JOB-SITE WHEN REQUESTED BY THE OWNER, EXCEPT THAT IN BOTH INSTANCES THE CONTRACTOR WILL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS.

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(G) ORIENTATION AND PREPARATION. THE CONTRACTOR WILL FURNISH PERSONNEL FULLY QUALIFIED IN THEIR CRAFT TO MAN JOB REQUIREMENTS AS DEMONSTRATED BY PRE-EMPLOYMENT TESTING AND CAREFUL SCREENING. WHERE SPECIALIZED SKILLS OR TRAINING ARE REQUIRED IN ADDITION TO THE NORMAL CRAFT, THE CONTRACTOR WILL MAKE EVERY EFFORT TO PROVIDE PERSONNEL WHO HAVE PREVIOUS EXPERIENCE IN THE PARTICULAR REQUIREMENT.

(H) SAFETY. THE OWNER AND CONTRACTOR AGREE TO COMPLY WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT AS WELL AS ALL OTHER INDUSTRIAL SAFETY CODES AND REGULATIONS. THE CONTRACTOR AGREES TO COMPLY WITH THE OWNER'S SAFETY HANDBOOK AND SUPPLEMENTS THERETO. THE CONTRACTOR MAY SURVEY THE WORK CONDITIONS OF HIS EMPLOYEES AT HIS OWN EXPENSE AND IN A MANNER NOT TO CONFLICT WITH PRODUCTION ACTIVITIES OF THE OWNER.

HEALTH AND SAFETY LAWS. (I) ALL COSTS OF COMPLIANCE WITH THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND ANY FEDERAL OR STATE REGULATION PROMULGATED IN ACCORDANCE WITH SAID ACT, AND WITH ANY SIMILAR FEDERAL OR STATE SAFETY AND HEALTH LEGISLATION OR REGULATION GOVERNING PERFORMANCE OF THE WORK; AND (II) COST OF ANY CITATION OR PENALTY WHICH MAY BE IMPOSED UPON CONTRACTOR PURSUANT TO ANY SUCH LEGISLATION TO THE EXTENT THAT SUCH CITATION OR PENALTY IS BASED UPON ANY ACT OR OMISSION OF THE OWNER OR OF ANY PERSON NOT SUBJECT TO CONTRACTOR'S CONTROL (INCLUDING, WITHOUT LIMITATION, ACTS OR OMISSIONS WITH RESPECT TO DESIGN OF

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THE WORK AND DESIGN, CONSTRUCTION, MAINTENANCE, OR OPERATION OF ANY EXISTING FACILITY OF THE OWNER IN WHICH THE WORK IS TO BE PERFORMED). PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL RELIEVE CONTRACTOR FROM RESPONSIBILITY FOR PAYMENT OF ANY CITATION OR PENALTY IMPOSED AS THE RESULT OF AN ACT OR OMISSION BY CONTRACTOR, OR ITS EMPLOYEES, SUBCONTRACTORS OR AGENTS, IN VIOLATION OF THE ''SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION'' PROMULGATED UNDER THE AFORESAID ACT OR OF ANY SIMILAR REGULATION DIRECTLY APPLICABLE TO THE PERFORMANCE OF THE WORK BY CONTRACTOR.

(I) CONSTRUCTION EQUIPMENT, SMALL TOOLS AND SUPPLIES. THE OWNER WILL HAVE THE OPTION OF PROVIDING CONSTRUCTION EQUIPMENT, SMALL TOOLS AND SUPPLIES OR REQUESTING THE CONTRACTOR TO PROVIDE THEM. SHOULD THE CONTRACTOR BE REQUESTED TO PROVIDE OR PROCURE THESE ITEMS, THE TERMS AND CONDITIONS OF THE CONTRACT IN SECTION 4 (D) AND 4 (E) WILL APPLY.

RENTAL OF EQUIPMENT WILL BE AT RATES MOST ADVANTAGEOUS TO THE OWNER AFTER GIVING CONSIDERATION TO DISTANCE, AVAILABILITY AND CONDITION OF EQUIPMENT. EQUIPMENT RENTAL TERMS FOR CONTRACTOR OWNED EQUIPMENT ARE SET FORTH IN THE DANIEL CONSTRUCTION COMPANY SCHEDULE OF RENTAL EQUIPMENT.

(J) SHORT TERM PROJECTS. CRAFTSMEN REPORTING TO A SHORT TERM PROJECT WILL RECEIVE A $20.00 PER DIEM ALLOWANCE FOR THE DURATION OF THE PROJECT. (FOR PROJECTS OF LESS THAN 2 DAY DURATION, 2 DAYS PER DIEM WILL BE PAID). SINCE THE PER DIEM REIMBURSEMENT IS INTENDED TO COVER MEALS, LODGING, AND TRANS-

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PORTATION, NO SEPARATE MILEAGE ALLOWANCE IS AUTHORIZED.

ANY EMPLOYEE WHO QUITS OR IS FIRED FOR CAUSE BY THE COMPANY DURING A SHORT TERM PROJECT IS NOT ENTITLED TO PER DIEM PAYMENTS FOR THE WEEK IN WHICH TERMINATION OCCURRED.

FOR THE PURPOSE OF THIS POLICY ''SHORT TERM PROJECTS'' ARE DEFINED AS THOSE OF 30 CALENDAR DAYS OR LESS DURATION WHICH REQUIRE A PLANT SHUTDOWN FOR MODIFICATIONS OR REPAIRS OR THOSE WHICH REQUIRE ADDITIONAL PERSONNEL TO MEET SURGE MANPOWER REQUIREMENTS.

IN THE EVENT A JOB IS POSTPONED OR CANCELLED WITHOUT ADEQUATE TIME TO CONTACT PERSONNEL BEFORE SCHEDULED WORK TIME, COMPENSATION FOR EACH EMPLOYEE SHALL BE AS FOLLOWS:

1. FOUR (4) HOURS PAY PLUS MARKUP AS STATED IN SECTION 3(A).

2. TRAVEL BENEFITS. CONTRACTOR SHALL MAKE REASONABLE EFFORT TO CONTACT PERSONNEL IN ANY CIRCUMSTANCE.

(K) HOLIDAY POLICY. SALARIED PERSONNEL WILL OBSERVE ALL HOECHST HOLIDAYS WITH PAY. ALL HOURLY EMPLOYEES WILL OBSERVE HOECHST HOLIDAYS. IN ORDER TO COMPENSATE MAINTENANCE PERSONNEL FOR TIME WORKED DURING HOECHST FIBER'S HOLIDAYS, THE CRAFTSMEN WILL BE PAID TIME AND ONE-HALF FOR ALL HOURS WORKED ON AN EMERGENCY BASIS ON SCHEDULED HOLIDAYS. THE HOLIDAYS WILL BE THE CALENDAR HOLIDAYS AND ARE FURTHER DEFINED FROM 0700 HOURS TO 0700 HOURS.

THE FOLLOWING NINE HOLIDAYS WILL BE OBSERVED EACH YEAR ON THEIR RESPECTIVE CALENDAR DAY, NOT ANY OTHER DAY RELATED TO THAT HOLIDAY: NEW YEAR'S-JANUARY 1ST, GOOD FRIDAY, MEMORIAL DAY - MAY 30TH,

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INDEPENDENCE DAY, - JULY 4TH, LABOR DAY - FIRST MONDAY IN SEPTEMBER, THANKSGIVING DAY, DAY AFTER THANKSGIVING, DAY PRIOR TO CHRISTMAS - DECEMBER 24TH, CHRISTMAS DAY - DECEMBER 25TH.

IT IS TO BE RE-EMPHASIZED THAT THIS PREMIUM PAY IS FOR EMERGENCY AND UNSCHEDULED WORK ONLY. SHOULD ANY SCHEDULED WORK BE MADE FOR THESE DAYS, THIS TIME WOULD BE EXEMPT FROM THIS POLICY.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS CONTRACT TO BE EXECUTED BY THEIR DULY AUTHORIZED OFFICERS OR REPRESENTATIVES AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

WITNESS:

HOECHST FIBERS INDUSTRIES
DIVISION OF AMERICAN HOECHST CORP.

BY: _____
DR. P. F. FOERSTER
V. P. OF HOECHST FIBERS DIVISION

WITNESS:

DANIEL CONSTRUCTION COMPANY
MAINTENANCE & MILLWRIGHT DIVISION

BY: _____
JOHN A. WOOD
DIV. MGR. & ATTORNEY IN FACT

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APPENDICES TO AGREEMENT

A = HOURLY RATES AND OVERTIME

B = SALARIES

C = HOME OFFICE RATES

D = TOOLS

E = SECRECY AGREEMENT

Effective July 7, 1975

WAGE PROGRESSION CHART FOR 1975
(Note 8)

GRADE (Note 7)	MECHANIC				CRAFTSMAN - (Note 5)				
	PLANT (Note 1)	CIVIL (Note 2)	E & I (Note 3)	UTILITY (Note 4)	LABOR	PIPE/WELD	CARP.	PAINTER	INSUL
A	6.50	6.50	6.50	6.50	-	6.50	-	-	6.50
B	5.90	5.90	5.90	5.90	-	5.90	6.05	-	5.90
C	5.30	5.30	5.30	5.30	-	5.30	5.30	5.30	5.30
D	4.80	4.80	4.80	4.80	-	4.80	4.80	4.80	4.80
E	4.30	4.30	4.30	4.30	-	4.30	4.30	4.30	4.30
F	3.80	3.80	3.80	3.80	-	3.80	3.80	3.80	3.80
G	-	-	-	3.25	3.25	-	-	-	-

NOTE
1. Plant Mechanic is an employee trained in two or more crafts (Pipe/Welder/Millwright/Machinist/Sheet Metal).
2. Civil Mechanic is an employee trained in two or more crafts (Carp/Insulator/Painter).
3. E&I Mechanic is an employee trained in two or more crafts (Elec/Instr/Other).
4. Utility Mechanic is either a beginner in Plant, Civil or E&I with no previous schooling, or is an employee advanced from Labor pool (he can also be an equipment operator).
5. Craftsmen are employees not cross-trained, but are craftsmen in one craft.
6. Foreman rate is $.75 above craft rate.
7. The rates for the above Grades "A" thru "G" are ranges; for example, a Grade "D" employee's range is from $4.80 to $5.30, Grade "C" is from $5.30 to $5.90.
8. A trainee will enter the program as a Grade "F" Mechanic (assuming he has no related training or experience). A minimum of six months later, after satisfactorily completing training, will be advanced to Grade "E" Trainee. From there his pay progression will generally follow the formula: Rate = Present Rate + $\frac{A - E}{4}$

Notation: Refer to Note 8. Change to "a trainee will enter the program as a grade "G" . . ."

Appendix

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SCHEDULE OF WEEKLY SALARY RATES
FRINGE BENEFITS AND INCENTIVES FOR
PROJECT PERSONNEL

SALARIES:

Project Manager, Field	$310-575
Maintenance Superintendent	$325-475
Maintenance Supervisor	$270-380
Office Manager	$250-350
Engineer	$250-370
Planners/Schedulers	$240-350
Purchasing Agent	$225-350
Timekeeper	$210-300
Warehouseman	$250-350
Clerical	$140-220

FRINGE BENEFITS:

Vacation — Only salaried personnel are given paid vacations each calander year. Eligible employees with less than 10 years company services earn 5/6 days vacation per month, and those with over 10 years service earn 1¼ days vacation per month. Vacation schedules will be approved by Owner. Vacation time allowed but not earned at employees termination will be deducted from employee's last salary check. Vacation time earned but not taken will be paid the employee upon his termination at Owner's job site.

Paid Holidays

New Years Day	Thanksgiving Day
Good Friday	Friday Following Thanksgiving
Memorial Day	Day Before Christmas
July Fourth	Christmas Day
Labor Day	

Holidays falling on Saturdays are taken on Friday preceding the holiday.

Sick Leave — Salaried personnel will be paid for reasonable time lost due to sickness, but not to exceed two (2) weeks without the specific approval of Owner.

Appendix B

APPENDIX B continued -

Transportation

The Owner will assign one vehicle to the Contractor Project Manager which use shall be restricted to the on-site administrative activities of this contract.

Holiday Overtime Pay

Premium pay will be paid to all contract personnel required to perform unscheduled (call-in) work on an authorized holiday.

Example Calculation

		S	M	T	W	T	F	S	Total
A.	Total Time Worked Per Day	-	8	8	8	8	13	-	45
B.	Holiday "call-in" Time	-	-	-	-	-	13	-	13
C.	Time Worked Over 40 Hrs/Wk	-	-	-	-	-	5	-	5

1. Total Hours Worked = A = 45
2. Straight Time Hours = A-(B+C)=45-(13+5)=27
3. Premium Time Hours = B+C = 13+5 = 18

Rate = $6.00

Wages=	$6.00 X 27 =	$162.00	
	$9.00 X 13 =	$117.00	Holiday "call-in"
	$9.00 X 5 =	$ 45.00	Overtime
		$324.00	Total Wages

Employees scheduled to work on holiday will not receive holiday "call-in" pay.

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POSITION DESCRIPTIC

GENERAL PROJECT ENGINEER

Salary: $1,590.00 to $2,300.00 per month

PRIMARY FUNCTION:

To administer, coordinate and control all activities relating to Maintenance and Engineering within the plant to obtain maximum effective utilization of all resources.

DUTIES AND RESPONSIBILITIES:

Because of the wide variety of problems and the broad scope of many assignments given to the Owners engineering and maintenance organization, the Project Engineer may be required to perform, as requested by the Owner, any or all of the following functions:

1. Assist Owner in the preparation of necessary industrial, mechanical, electrical and chemical engineering design, required for plant maintenance, construction, new installations and remodeling. This may be done by himself, others in his group under his supervision, or by others on sub-contract to the plant under his supervision.
2. Develop and administer building and facility improvement programs.
3. Support plant engineering cost control systems.
4. Estimate necessary facility and building costs.
5. Direct and supervise general mechanics or specialist, such as electricians, carpenters, sheet metal workers, machinists, janitors, laborers, etc.
6. Handle sub-contractor problems related to plant engineering projects.

Appendix B

7. Aid in the disposal of surplus equipment.

8. Assist in maintaining good storeroom controls.

9. Participate in facility record keeping, including related maintenance costs.

10. Assure compliance with all control phases of plant work order system.

11. Participate in development and operation of Preventive Maintenance Program.

12. Analyze costs and report on required corrective action.

13. Develop and administer training programs for new employees and upgrading of incumbent employees.

14. Assist in formulation and review of procedures for Owner regarding air and water pollution to insure compliance with municipal, state, and/or federal laws.

15. Assist in administration of a maintenance related safety program.

16. Review and analyze costs of purchased utility services.

17. Perform other duties assigned by the Owner.

AUTHORITY

Within reasonable limits as indicated by Owner and established Daniel policies and procedures, authority is considered sufficient to discharge assigned responsibilities. This includes authority to hire, train and initiate personnel changes of subordinate employees, initiate maintenance improvement programs and establish work schedules for maintenance employees.

RELATIONSHIPS

Position requires cooperation and work with both management and operating personnel of the plant.

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A line relationship exists between the Project Engineer, his subordinates and his supervisor.

A staff relationship exists between the Project Engineer and other plant departments which requires mutual assistance and cooperation.

A special staff relationship exists between the Project Engineer, the Daniel Maintenance Manager, and Daniel Engineering in project administration, equipment selection, plant and ship layouts and other general engineering services necessary for efficient operation of the facility.

REPORTS TO

The Owners Central Facilities Area Engineer

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APPENDIX C

SCHEDULE OF HOURLY RATES

FOR

HOME OFFICE EMPLOYEES FOR TIME DEVOTED TO PROJECT

Maintenance and Millwright Division

Project Manager	$	17.50
Timekeeper		7.50

Daniel Engineers

Division Manager	37.00
Department Manager	31.00
Project Engineer	25.00
Senior Engineer	25.00
Engineer II	22.50
Engineer I	19.50
Estimator	19.50
Senior Designer	18.50
Designer	14.50
Senior Draftsman	13.00
Draftsman	11.00
Engineer Accountant	18.50
Clerical	7.00

Reasonable travel expenses of these personnel are reimbursable to Contractor, including cost of meals, lodging, telephone, incidentals, public transportation, Contractor's aviation, charges or automobile mileage at rate per mile paid to Daniel employees.

Appendix C

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The Craftsmen will be required to furnish one of the following:

MACHINIST

Machinist Tool Chest
Vernier Caliper
General Protractor
Inside-Outside Spring Caliper
Divider Caliper
Telescope Gauges 1/32 - 6"
60° Center Gauge
Edge Finder
Thread Gauge
10" Tape
Scribe
Assorted Screw Drivers
Assorted Cresent Wrenches
Wire Snips
Combination Wrenches 1 set
Ball Peen Hammer
Tap Handles - 1 Small, 1 Large
Feeler Gauges
6" Scale
12" Scale
150 mm Scale
0 - 1", 1" - 2", 2" - 3"
Micro Set

CARPENTER

2 Ft. Level
Claw Hammer
Tri-Square
Framing Square
Plumb Bob
Hand Axe
Brace
Set of Bits - 3/16" to 1"
Adjustable Bit (bores hole from 1-1/8 to 2-1/2")
Set of Wood Chisels ¼" to 1-3/4"
Chalk Line
#8 or #10 Handsaw (for Framing)
#12 Handsaw (for finish work)
Nail Set
Crow Bar
Screw Drivers (Phillips & Straight)
Key-Hole Saw
Coping Saw
6 Ft. Folding Rule
50 Ft. Measuring Tape
Hand Plane
Block Plane (small)

SHEET METAL MECHANIC

Aviation Snips (right & Left hand)
Bulldog Snips
Screw Drivers - Assortment
Adjustable Wrench - 6", 8", 10"
Pliers, Channel-lock
Hammer, Sheet Metal Type
Hacksaw
Tape Rule, 6', 8', or 10'
Folding Rule - 6' or 8'
Tape Rule - 25', 50' or 100'
Dividers - 10" and 6"
Trammel Points - 1 set
Combination Square
Vice Grips
Turning Tongs
Torpedo Level
Plumb Bob
Chalk Line
Allen Key - 1 set
Scratch Awl
Rivet Set - 3 sizes 0, 1, 2
Hand Grover (pipe)
Tap Handle
Open End Wrenches - 1/8" to 3/4"

SEAY_HAMMETT000186

APPENDIX D

The craftsmen will be required to furnish one of the following:

ELECTRICIANS

Leather Pouch
Electricians Skinning Knife
10" Adjustable Wrench w/insulated Handles
Channel Lock Pliers w/insulated Handles
Heavy Duty Diagonals w/insulated Handles
Pair long nose Pliers
Pair Lineman's Pliers
Electrician's Tool Belt
Fuse Puller
Crimping Pliers
Wedge Type Screwdriver
Tool Box
Ball Peen Hammer
12" Screwdriver
6" Screwdriver
1 ½" Screwdriver
6" Thin Blade Screwdriver
3" Thin Blade Screwdriver
6" Phillips Head Screwdriver
Set Allen Head Wrenches
½" to 9/16" Box Wrenches
3/8" to 7/16" Box Wrenches
Burnishing Tool
8" Adjustable Wrench
4" Adjustable Wrench
8" Screwdriver
2½" Long Screw Starter
5¼" Long Screw Starter
9½" Long Screw Starter
Set Ignition Wrenches
10" Wedge Screw Holder
Midget Fuse Puller

MILLWRIGHTS

8" Adjustable Wrench
3" Screwdriver
10" Screwdriver
6" Phillips Screwdriver
Pair Channel Lock Pliers
Set Allen Wrenches
Pair 8" Diagonal Pliers
6 Ft. Folding rule
6" Scale
Torpedo Level
Feeler Cage
Cotter Key Extractor
Ball Peen Hammer
Pry Bar
Hacksaw Frame
Line Level
Plumb Bob
Chisel and Punch Set
Pair Visegrip Pliers
Set Combination Wrenches to 1¼"
Dial Indicator
Set Calipers
Set Micrometers to 2"
Thread Cage
Set Dividers
Packing Remover
Socket Set up to 1¼"

The Craftsmen will be required to furnish one each of the following:

AIR CONDITIONING MECHANIC

Leather Pouch
10" Adjustable Wrench w/insulated Handles
Channel Lock Pliers w/insulated Handles
Heavy Duty Diagonals w/insulated Handles
Pair Long Nose Pliers
Tool Box
Ball Peen Hammer
12" Screwdriver
6" Screwdriver
1½" Screwdriver
3" Thin Blade Screwdriver
6" Phillips Head Screwdriver
Set Allen Head Wrenches
8" Adjustable Wrench
4" Adjustable Wrench
5¼" Long Screw Starter
10" Screwdriver
Set Allen Wrenches
6' Folding Rule
Cotter Key Extractor
Hacksaw Frame
Pair Vise Grip Pliers
Set Combination Wrenches to 1¼"
Set Calipers
Socket Set up to 1¼"

SEAY_HAMMETT000188

APPENDIX E

INDIVIDUAL SECRECY AGREEMENT

RECOGNIZING THE FACT THAT MY EMPLOYER, DANIEL INTERNATIONAL CORPORATION IS ENGAGED IN THE MAINTENANCE OF HOECHST FIBERS INDUSTRIES, SPARTANBURG, SOUTH CAROLINA, FACILITY WHICH IS USED FOR THE MANUFACTURE OF DIMETHYLTEREPHTHALATE AND POLYESTER FIBERS, WHICH MANUFACTURING PROCESSES AND TECHNIQUES ARE CONFIDENTIAL AND ARE NOT KNOWN TO THE GENERAL PUBLIC, AND IN CONSIDERATION OF MY EMPLOYMENT WITH DANIEL INTERNATIONAL CORPORATION AT THIS INSTALLATION, I HEREBY AGREE THAT AT ALL TIMES BOTH DURING MY EMPLOYMENT AND AFTER THE TERMINATION OF MY EMPLOYMENT I WILL MAINTAIN IN SECRECY ALL SUCH PROCESSES, TECHNIQUES, KNOW-HOW AND OTHER INFORMATION WHICH ARE REVEALED TO ME AS A RESULT OF MY EMPLOYMENT WITH DANIEL INTERNATIONAL CORPORATION AT HOECHST FIBERS INDUSTRIES, SPARTANBURG, SOUTH CAROLINA, FACILITY. I AGREE THAT I WILL NOT DISCLOSE OR MAKE KNOWN ANY INFORMATION RELATING TO SUCH PROCESSES, TECHNIQUES OR KNOW-HOW WITHOUT THE AUTHORIZATION OF HOECHST FIBERS INDUSTRIES. I FURTHER AGREE THAT ANY CHANGE OR CHANGES IN MY EMPLOYMENT OR IN THE DUTY, SALARY OR COMPENSATION OF MY JOB SHALL IN NO WAY AFFECT OR IMPAIR THE VALIDITY OF THIS AGREEMENT OR ANY OTHER OBLIGATION HEREUNDER.

I HEREBY EXPRESSLY STATE THAT I INTEND TO BE LEGALLY BOUND BY THE TERMS OF THIS SECRECY AGREEMENT TO BOTH HOECHST FIBERS INDUSTRIES AND DANIEL INTERNATIONAL CORPORATION.

WITNESSES:

_____ _____

SIGNATURE

_____ _____

TITLE

SEAY_HAMMETT000189

DANIEL INTERNATIONAL CORPORATION

EXECUTIVE MEMORANDUM

TO: Division Managers, Project Managers, Superintendents and Safety Engineers

FROM: Buck Mickel

SEQUENCE NUMBER: 2-10

SUBJECT: Occupational Safety and Health Act of 1970

DATE: 6-11-71

COPIES TO:

REFERENCE:

Effective August 27, 1971, all Daniel projects in the United States and Puerto Rico will be subject to the provisions of the Occupational Safety and Health Act (OSHA) of 1970. The OSHA contains detailed safety specifications for every type construction activity. For example - an iron worker performing a task sixty feet off the ground must have a safety net no more than twenty-five feet beneath him or be secured by a safety belt and lifeline. Federal inspectors from the Department of Labor will conduct periodic inspections of our projects in order to enforce the Act and if we do not conform exactly to specific safety specifications, we could possibly be fined and in some cases, company officers might be imprisoned.

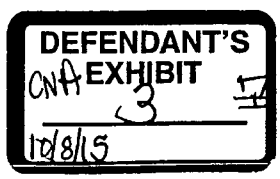
According to OSHA we are obligated to furnish each of our project employees a work environment free from recognized hazards causing or likely to cause death or serious physical harm in addition to the specific duty of complying with safety and health standards promulgated under the Act.

Every employee has the right to notify the Department of Labor anytime if in his judgement he has to work under hazardous conditions. Upon receipt of an employee complaint, the Department of Labor inspector must conduct an immediate inspection of the hazardous condition and the entire project site. Of course, we cannot and will not censure any employee who may contact the Labor Department about hazardous working conditions.

In order to familiarize management personnel with OSHA, The Manager, Safety and Training is arranging for distribution of copies of the specific regulations which pertain to construction.

Questions pertaining to safety should be addressed to Arnold Runion, Manager, Safety and Training, Daniel International Corporation, Daniel Building, Greenville, South Carolina 29602. Arnold's telephone extension is 487.

Buck Mickel
President



Daniel1023

Dennis Seay

Seay, Dennis (Vol. 01) - 01/17/2014 — 1 CLIP (RUNNING 01:24:09.476)

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DS001 — 71 SEGMENTS (RUNNING 01:24:09.476)

1. PAGE 7:02 TO 23:19 (RUNNING 00:23:41.525)

Q. Could you please introduce yourself to the Jury.
A. I'm Dennis Seay.
Q. And how old are you?
A. I'm 69. I will soon be 70 the 28th of January.
Q. Where do you live?
A. I live in Spartanburg, South Carolina, 630 Overhill Drive.
Q. How long have you lived in Spartanburg?
A. All my life.
Q. Did you grow up here?
A. I grew up here.
Q. And, sir, are you married?
A. Yes, ma'am.
Q. Who are you married to?
A. I'm married to Linda Seay. She was a McMahan, Linda McMahan.
Q. Now, I won't put you on the spot, but do you recall when you guys got married?
A. Yes, I do. It's been some 37 years ago. Oh, yeah, 37, I believe.
(Exhibit No. 1 was marked for identification.)

00008:01 Q. And, sir, I'm going to mark or hand you what I have marked as Exhibit 1, and this is -- could you take a look at this and then show this to the Jury, please?
A. Yes. That's a picture of my wife and me back in my younger days when I was young.
Q. Looks like that's around Christmas.
A. Yeah, it is Christmastime.
Q. Sir, do you and your wife have any children?
A. Yes, we do.
Q. How many kids do you have?
A. We have three.
Q. Do they live in the area?
A. Yes, ma'am; they live in Spartanburg.
Q. Do you have any grandkids?
A. I have six, six girls.
Q. Houseful of girls.
A. Houseful.
(Exhibit No. 2 was marked for identification.)
Q. Sir, you have given me some photos. I'm going to show you another one. Could you please take a look at this and -- and tell the Jury what we're looking at?
A. Yes. That's me and one of my grandkids

00009:01 there where we were having an outing. We get together and have outings pretty often as a family.
Q. That photo looks like it's at a soccer game; is that right?
A. Yes, it is. Yes, it is. I believe it is.

Courts EXHIBIT 1 9/30/15

Q. Would you consider your family to be a close family?
A. Very close. It's unusual. I was thinking -- thinking last night when I went to bed, I don't guess we have ever had a -- and it's unusual -- never had a cross word with my in-laws or son-in-law in any way whatsoever, and that's -- I think that's sort of unusual. We have never had a family fuss or parent and son and daughter-in-law fuss. We -- we've been extremely, extremely close -- close-related family.
Q. Are you close with your grandkids?
A. Very close. My grandkids is number one.
Q. What types of activities do you do with your grandkids?
A. Me and my grandkids used to go fishing. We would go to the beach and fly kites. We would get down on the beach -- I've had two or three kites, and we would fly those and we would go out fishing, find a fishing -- good fishing spot, and we would go fishing about every other day and play ball and everything else. We just did all kinds of things.
Q. Did you go to their dance recitals?
A. Go to their dance recitals and soccer games, basketball games and soccer games.
(Exhibit No. 5 was marked for identification.)
Q. Sir, I'm going to hand you Exhibit 5, which is another photo that you guys have given us. Would you take a look at that.
A. Yes. That's another photo that was taken up at my son's house when we were having a get-together eating.
Q. And could you go through and introduce to the Jury who we're looking at, this family of girls?
A. Yes. That's Pressley there. She's -- she's been with us since she was a little bitty baby. And, man, she is -- she loves me to death. And I love all my grandkids, but if -- I can't say I got a special grandkid, but if I did have, it would have to be that little Pressley.
Q. Well, sir, you're under oath today, so -- I will ask --
A. And this is Emmy, one of my other granddaughters; she's very special to me. And this is my newest one, is Savanna; she's two years old. And I've been telling her for the last year, I would put my finger up like that and I said, Poppa and Savanna. So they came to visit us the night before last, and they was sitting over there in that chair, and my wife got her and put up her two fingers, she said, Savanna, Mamaw. Little Savanna said, huh-uh, Savanna, Poppa.
And this is my wife, and that's Bella over here, my other -- barely have got her in the picture. Bella, my other granddaughter. And they all are very, very, very special to me. I wished I had 50 more years to spend with them, I really do. I -- I love them dearly, and they love me dearly.
Q. Sir, could you tell the Jury why we're sitting here in your home taking your deposition today?
A. I -- I got sick and I came down -- I -- I've been going to the doctor -- you want me to tell the whole story?
Q. Sure. How about this, sir: Have you been

Dennis Seay

diagnosed with a cancer?
A. Ma'am?
Q. Have you been diagnosed with a cancer?
A. Yes, I have. I have been diagnosed with a cancer with -- that asbestos cancer, I can't hardly pronounce it -- mesothelioma.
Q. Mesothelioma?
A. Right. And --
Q. Do you recall when you were diagnosed with mesothelioma?
A. I was diagnosed with that here back, I believe it was in August, this past August. But I've been going to the doctors for years with the same symptoms, and they --
Q. Could you just describe to the Jury your symptoms that you had leading up to your diagnosis?
A. Leading up to it, I have been having a lot of pain in here, right here, and I'd describe it pain, right here, every time I went to the doctor. And they would X-ray me and -- and check me and -- and they would diagnose it as COPD or -- or congestive heart failure is their only -- after a long period of time, their only conclusion that they could come up with. Do you want me to continue on that line?
Q. Sure. So after you first started seeing doctors, did any of your symptoms change leading up to your diagnosis in August of 2013?
A. No, they were all the same. Just for the last four, five years, been the same symptoms when I went to the doctor.
Q. Can you show the Jury, just generally in your body, where is your cancer?
A. It's -- right now it's all in here, over here.
Q. And did you ever have fluid in your lungs at any point?
A. Yes. They drew off fluids several times.
Q. Can you explain to the Jury the procedure that they did to drain that fluid from your lungs?
A. They would cut my side and put a tube in and drain it in this container.
Q. Do you recall on how many occasions you have had to do that?
A. Roughly, counting the last three that I had in me at one time in my side, there's been 11 times, I think, that I have had tubes put in my side. I'm sitting here now with two broke ribs that can't be fixed because they don't want to go in there and cut me no more. And so I'm sitting with two broke ribs right now on account of that.
Q. Sir, did you ever have any surgeries relating to your cancer?
A. I've had three lung surgeries.
Q. And can you explain to the Jury a little bit about what those surgeries were?
A. Well, the first one -- like I say, I kept complaining of these same symptoms. So I was at the emergency room complaining with the same symptom, and they X-rayed me and it showed a -- a very, very small pneumothorax, and they put a tube in me and sent me home. I came home with it in me and kept -- kept it there for 12 days. Well, they took it out, and I kept having the same symptoms.
So I went to a lung doctor, Mendoza, and he X-rayed me and he said my lung was -- he showed me

it was very, very small, just barely could tell, pneumothorax. So he sent me back to the doctor. Well, he sent me to the doctor and the doctor decided to operate on me.

So he operated on me and he told me that -- took a biopsy while he was in there. He said, sir, you don't have cancer, that's one thing you don't have to worry about. And he inflated my lung back up, and I came back home.

Well, about three weeks later it was collapsed again. So they put a tube in for 14 more days, and it was still showing a small thorax, so he operated on me again. And he said for sure that time -- he took another biopsy and said, sure, that I wouldn't have to worry about my lung no more as long as I live. And the second biopsy, he said, no cancer. He said, you can feel good about that. Well, I did feel good about that, but my symptoms kept on along that line.

And I had an appointment with a lung specialist at Emory University in Georgia. He had did some 30 -- does some 30 lung transplants a year. So I went down there to the lung doctor down there, and he checked me for COPD. He said I didn't have COPD. He says, A, you hardly have any -- anything concerning that. So he sent me to a lung surgeon.

I went to the lung surgeon, and he -- he decided he was going to have to -- under his determination, he said that somewhere along the line they used what they called talc on my lung, and it had frozen my lung in a collapsed position like an umbrella, and my lung wouldn't function, and I couldn't inhale or exhale because my lungs froze there. So he operated on me and straightened that out. And he came to me the day we was leaving, he said, sir, he says, I started to come tell you last night but I didn't want to ruin your night, he said, you have got asbestos cancer, and he says, if you get treatment, you've got 12 to 18 months to live.

Q. How did that news make you feel?

A. Oh, it hit me like a tractor and trailer truck had run over me or something. Because, see, I had been told -- I been -- I'd done went through two bad lung operations and was told both times that's one thing I didn't have to worry about and that was cancer, and then hit with a -- hit with something like that afterwards and tell me my lifespan was that short, it was a terrific blow.

(Exhibit No. 4 was marked for identification.)

Q. And I'm going to show you a photo that you have given, and if you can take a look at that, it's Exhibit 4.

A. Yes, that's where -- that's just in that one area there where they cut me. There's a whole lot more than that, but that's one area right there, the last -- last surgery I had right there.

Q. So that's a scar that you have on the side of your body?

A. Right.

Q. Sir, since your diagnosis, have you had any treatments for your cancer?

A. Yes. I've had chemo. I started taking -- I started taking chemo in -- at Emory. And it was so hard driving down there and spending the night down there and -- and sick, getting sick and all of that,

you know, so I asked the doctor down there at Emory would it be all right to transfer those treatments up here. So after two treatments down there, I came up here and started my treatments up here.

Q. How did the chemotherapy, how did that make you feel?

A. Oh, it made me terribly sick. And in fact, it's been going on five weeks now since I had any chemo. We just put it off and probably will stop it completely now. But I haven't had a chemo treatment now in five weeks because of that.

I've been -- I've been going to the hospital, started out two times a week getting fluids, then I had to go in there and they had to give me a pint of blood, and then they increased the fluid. I've been going three times a week on Monday, Wednesday and Fridays and giving me fluids, and it seems to help giving me those fluids, keeps me from dehydrating that bad, and it seems to help some.

Q. Sir, you have recently had some hospitalizations; is that true?

A. Yes. I've been in the hospital, in the last month or two, maybe three times.

Q. And what were those hospitalizations for?

A. Dehydration. I was dehydrated.

Q. Sir, you had a doctor's appointment this morning; is that right?

A. Yes, I did.

Q. You had a doctor's appointment yesterday morning; is that right?

A. Yes, I did.

Q. What news did the doctor give you yesterday?

A. The doctor yesterday told me that he recommended stopping any and all X-rays. It's unusual, just completely stopping anything. And he was going to call hospice -- hospice, and turn me over to them, in which they have already called and they're supposed to come out and see me Monday. That was his recommendation.

Q. Sir, on a daily basis, can you describe for the Jury, how do you feel?

A. Well, on a daily basis, since my last operation, I haven't recovered from it, I haven't been able to do anything. Up 'til that point, I was able to maybe get out and walk to the mailbox and walk around a little bit and sort of enjoy the warmth out there and the green grass and all of that. But in the last couple of months, I haven't had no life other than sitting in this chair and going to the doctor and laying in the bed.

Q. Sir, are you in pain?

A. I stay in pain all the time.

Q. How has your appetite been?

A. I've lost my appetite. I get so hungry and -- it's been unbelievable. There's probably been 50 people bring every kind of food imaginable to this house two or three times a week, and here I am, every time I take a bite of something, I get sick as you can get. And it just lays in my stomach and turns and turns and turns until I throw it up, and then I get hungry again and go through the same cycle again. And they just keep bringing that food in here and -- and enticing me to eat, but I just hadn't had no appetite.

Q. Have you lost weight since your diagnosis?

A. I have lost -- I was up to about 240, and

Dennis Seay

I'm down to about -- I got down to about 217. And all these people bring this food here like I'm talking about, I'm back up -- and taking all these fluids on top of that, I'm back up to about 226 now. So I have gained, in the last two or three weeks, a little bit of weight on account of taking all these fluids.

Q. Sir, how has your sleeping changed as a result of your cancer?

A. Well, I go to bed at night, I'm hurting so bad, I -- I take pain medication but it don't ease it. And I lay there 'til 1:00 or 2:00 in the morning and I doze off.

And it's -- trying to lay in bed, I've got so much scar tissue from this -- these surgeries I've had. I haven't laid on this side in over a year. I can't lay on this side. And there's so much scar tissue everywhere from all that surgery, because they cut me three times and all three times they cut in the same area, and there's so much scar tissue there, can't get comfortable in the bed. You just lay there and suffer until you just get numb, and once you get numb you might doze off a little while. It's -- it's been pretty bad.

Q. We've talked a little bit about how your life is today. Prior to your cancer, can you explain to the Jury a little bit about what your life was like?

A. Prior to the cancer, I -- I retired right before I was 65. And the company I was working for, after I retired for two months and I drawed two Social Security checks, the company come out and asked me would I come back and work another year. So I paid Social Security back, the money they had paid me, and I went back and worked another year.

And since that point, they had told me to come in and work any and all I wanted to work after retirement. Well, I went in and worked every year the limit of what I could make. I would work from December to June, somewhere like that. And then I got so bad with this, I couldn't do that no more.

And I was enjoying going fishing. I bought me a boat. And I enjoy fishing. I bought me a big -- big bass boat. And got to where I couldn't -- couldn't take my boat and unload it and load it back, and couldn't sit in the boat that long. So I just sold my boat here about six months ago. And I've had no life of activities since.

I mean, I enjoy life. I enjoy getting out and working in the yard and -- and all of that. And I just don't have that kind of life no more. And I miss it and I wished I had it back.

Q. How many times were you able to go fishing on your boat?

A. I went maybe, in a year's time, maybe three or four times.

Q. And other than fishing, you mentioned your garden. I understand that your neighbors have talked to you about how well you kept up your garden in the past.

A. Yes, I kept a garden around back. And I worked -- and you wouldn't believe it now, looking out there now, but I worked in the yard, and every -- every -- all the neighbors and everybody's always coming over here and telling me how pretty my yard looked. It stayed green; just full, thick coat. And

in the wintertime I would sow rye everywhere, and I had pretty green-staying grass in the wintertime, and everybody would stop, coming up.

And I had flowers set out everywhere. I'd set flowers out front and got hanging baskets everywhere and -- and then people would just stop out there on the side of the road and tell me how beautiful it looked down through there. But you wouldn't believe it today because I've got -- been sick, and I dropped all of that, and it don't look like anybody lives here that's got any interest in the outside now, but I did have.

Q. Other than being active and going fishing and working outside, could you tell the Jury, generally, how was your health prior to your diagnosis?

A. Prior to my -- prior to I come down with this, I could -- not exaggerating or bragging -- but I could pick up 200 pounds, and walk to here -- I would walk 100 yards with it if I wanted to. I mean, I was just strong, and I thought I was the healthiest man in the world. And I made the statement several times, I never was going to get old. But how wrong I was. I was terribly wrong.

Q. Sir, did any of your doctors tell you what they thought caused your cancer?

A. They said it was from asbestos.

Q. Since hearing that, have you thought back in your life to the times where you believe you were exposed to asbestos?

A. Yes, I have.

Q. Generally, can you tell the Jury, when in your life do you believe you were exposed to asbestos?

2. PAGE 23:21 TO 24:09 (RUNNING 00:00:37.976)

THE WITNESS: I thought back, and the only place -- the only place that I worked around asbestos or was exposed to it, I believe, was Hoechst Fibers, which is Hoechst Celanese, same thing.

BY MS. PRYOR:

Q. Sir, I'm going to ask you a few questions about that.

A. Yeah.

Q. Did you want to take a break or are you okay to continue?

A. No, go ahead, I'm okay.

Q. Sir, did you ever work directly for Hoechst?

A. No. I worked for Daniels Construction.

3. PAGE 24:14 TO 27:15 (RUNNING 00:04:15.590)

Q. While you were working for Daniels Construction, what locations or facilities did you work?

A. I worked in Staple A, stretch line, PIV and pump shaft, pump shop, and then on crimpers out in the new lines on -- on Staple B.

Q. So correct me if I'm wrong, but it sounds like when you were working for Daniels, the site or facility that you did work at was for Hoechst Celanese or Hoechst Fibers; is that right?

A. Yes.

Q. Other than Hoechst, did you work at any other facilities while you were working for Daniels?

A. No.
Q. Sir, what type of facility was the Hoechst Fibers facility?
A. It made fiber. It made fiber. It's -- looks like a cotton material that they mixed with cotton to make different -- different clothing and all those stuff and everything out of it.
Q. And what was Daniels, what was their role over at Hoechst?
A. Daniels' role was to maintain equipment and keep the equipment running.
Q. What job titles did you have while you worked for Daniels?
A. I started out at Hoechst as a millwright helper, but I was only like that for about four, five months, and they moved me up to a millwright. Then again, I'm not bragging, but after about two years -- they classified you over there, they would do a job study of you, and I was classified out of 400 and something millwrights on that job -- in the mid '70s I was classified as the number one millwright on that job site.
Q. So for the first four to five months you were a millwright's helper --
A. Yes.
Q. -- and then for the remainder of the period that you worked for Daniels you were a millwright; is that right?
A. Right.
Q. Generally, can you explain to the Jury what your job duties were as a millwright's helper?
A. As a millwright's helper, I worked with a millwright out there on the job site; whatever he tells me to do or whatever he needs to do, I would help him or he would show me how to do it.
Q. What were your hours when you worked as a millwright's helper?
A. It was from -- I believe it was, back then, it was from 7:00 to 3:30 or 4:00.,
Q. How many days a week would that be?
A. Five days a week. But there was a lot of overtime involved on account of breakdowns and shutdowns and all of that.
Q. So the minimum amount of time you were there would be from 7:00 to 3:30?,
A. Right.
Q. Five days a week, sometimes more?
A. (Witness nodded head.)
Q. Sir, when you were a millwright, generally, what were your job duties?
A. My job duties was anything concerning equipment out on the floor that tears up or needs preventative maintenance pulled on it or whatever. And that was basically anywhere in the plant site there.
Q. Did you have the same hours when you were a millwright as you had --
A. Yes.
Q. -- when you were a millwright's helper?
A. Yes.
Q. Sir, how do you believe you were exposed to asbestos when you were either a millwright's helper or a millwright working and performing maintenance on the equipment?

Dennis Seay

4. PAGE 27:17 TO 28:23 (RUNNING 00:01:54.936)

THE WITNESS: After thinking back, when you -- when you went in the plant over there, all your -- all your steam lines and Dowtherm lines and all that was insulated with asbestos. And all these gaskets on all your piping was asbestos gaskets.

And the reason I was -- I believed the reason I was exposed to it most of all is these gaskets sticking to the surface of flanges and all, and you're having to chisel and sand and -- and take wire brushes and brush it off and all of that, so hard to get it off most of the time. I believe I was exposed pretty bad from that, that way.

BY MS. PRYOR:

Q. And, sir, let me jump in there.

As you were a millwright's helper and millwright, you said you were working on equipment. What -- can you give the Jury an idea of what types of equipment you would be working on?

A. Oh, we would work on valves, we would work on -- well, they had degassers in there, extruders in there, if you want a name, reactors, all kind of PIVs. You had crimpers, you had what you call set techs up on stretch line -- that's where you stretch the material -- and then you had these cutters, your balers. It was a pretty -- pretty big operation.

Q. And you mentioned one of the ways that you thought you were exposed to asbestos was from working with gaskets. Would those be gaskets associated with those pieces of equipment?

A. Yes.

5. PAGE 29:01 TO 30:02 (RUNNING 00:01:42.265)

Q. Sir, could you explain to the Jury, who may not be familiar, just generally, what is a gasket?

A. A gasket is a type of material that you use to seal an area to keep it from leaking any fluids or air or steam or whatever out of it. That's mostly what it's for.

Q. Other than asbestos gaskets, were there different -- different materials that gaskets were made out of?

A. Sure, there was different materials. But, for instance, on -- on the degasser, we had this compartment up here, it required a silver tone gasket which was made out of silver, and it was sort of air -- air compressed to whether it's tighten it up, torque it in, you could draw in on that surrogated (sic) surface seal. We did have some gaskets like that, but they were made out of silver -- silver -- silver tone.

Q. And other than silver gaskets, were there some copper-type gaskets?

A. Yes, there was a very few, not many. I may have used one or two, not -- not -- it wasn't -- most of my gasket working was made from gasket material, if I made the gaskets myself.

Q. And I guess my point is, is: Could you tell the difference between different types of gasket material by looking at them?

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6. PAGE 30:05 TO 30:06 (RUNNING 00:00:03.141)

Q. Whether it be copper or silver or asbestos?
A. Oh, yes.

7. PAGE 30:08 TO 30:08 (RUNNING 00:00:01.888)

THE WITNESS: Very definitely so.

8. PAGE 30:10 TO 31:17 (RUNNING 00:01:47.435)

Q. Now, the asbestos gaskets, what form were they in? Can you explain to the Jury what they looked like?
A. Well, some of it was whitish, some of it was dark gray color, deep gray color. It was -- most of it was sort of white, cream colored to a dark gray color.
Q. Sir, did the gasket material, what -- what form did they come in as far as -- can you explain to the Jury what they looked like?
A. The gasket material itself?
Q. Yes.
A. It came in sheets. Most of the time we would get a four-by -- four-by-six or four-by-seven or whatever sheets at a time.
Q. And from those sheets, did you have to make gaskets?
A. Yes. We would cut flange gaskets out of it or whatever.
Q. Can you explain just generally to the Jury how you went about making gaskets out of that gasket sheet material?
A. Well, we had a -- we had -- it was a four-inch flange or a six-inch flange, it had, say, four bolt holes and some of them half-inch bolt holes -- I believe it's half-inch on your four-inch flange. You get up there a little bigger, you've got three-quarter-inch bolts in it. We had different patterns that we already had made up that we used to stamp out the gaskets with.
Q. Sir, do you recall the brand name or manufacturer name of any of the gasket material that you worked with?

9. PAGE 31:20 TO 32:24 (RUNNING 00:01:35.710)

THE WITNESS: We used -- we used Armstrong and Garlock and John Crane and -- there was one or two more. I can't think of them right now, but there's one or two more.
BY MS. PRYOR:
Q. And how did you know that that gasket material was manufactured by either Armstrong or Garlock or John Crane?
A. Their name was on it.
(Exhibit No. 14 was marked for identification.)
Q. I'm going to show you what I marked as Exhibit 14, if you will take a look at this.
A. Yes.
Q. Sir, could you show that to the Jury. What is it that you're showing to the Jury?
A. That is a flange gasket that's -- looks like it's been a homemade cutout there. And it's a Garlock -- Garlock gasket made from a -- this sheet of material that I was telling you that we get.
Q. And, sir, that's a photo that I have

provided to you. That's not a photo that you have or you took while you worked at the Celanese facility; is that true?
A. No, no.
Q. Is that similar to the type of gasket material, asbestos gasket material, that you recall working with --
A. Yes.
Q. -- while you worked at --

10. PAGE 33:03 TO 33:11 (RUNNING 00:00:11.736)

Q. -- Hoechst?
A. Yes.
Q. And, sir, sometimes I will refer to it as Hoechst, sometimes I have referred to it as Celanese --
A. Yes.
Q. -- and I will try to stay streamlined with it.
A. Well, it was Hoechst when I worked there.

11. PAGE 33:12 TO 34:10 (RUNNING 00:01:33.847)

Q. Sir, can you -- well, sir, what is packing?
A. Packing is -- is a type of material that you use. It's a gasket -- not a gasket but a -- it's either roping or square. You get -- you get some that's in a rope form, that's on a roll, and you get some that's in boxes, that would be square. When I say "square," four corners like 5/16ths or 3/8ths or whatever diameter you need. It's a -- it's a material that you use to seal an area around a shaft or whatever.
Q. And you explained just generally, but why would you need packing to seal an area around a shaft?
A. To keep leaks and -- if you're sealing off an area to keep leak -- water leaks or any kind of chemical leak or whatever from coming out of the vessel or box or whatever you're working on.
Q. Did you work with packing while you worked for Daniels at Hoechst?
A. Yes.
(Exhibit No. 12 was marked for identification.)
Q. I'm going to show you what I have marked as Exhibit 12. Would you take a look at that, sir.

12. PAGE 34:11 TO 35:16 (RUNNING 00:01:29.330)

A. Yes.
Q. And, sir, could you show that to the Jury.
A. (Witness complied.)
Q. And what is -- what is that? Can you explain what's in the picture?
A. That is the packing that we used on a lot, lot of our equipment as far as sealing off the areas like I was talking about.
Q. And again, that's a picture that I have provided, but does that look the same or similar to some of the packing that you worked with --
A. Yes.
Q. -- at Hoechst?
A. Yes. Yes, it is. In fact, it might have been about a 3/8th square packing there.
Q. And you say "square packing." What are you referring to when you say --

A. That right there is -- I call it square packing. I don't know the proper name, because it's four corners, and then you can get it, according to what area you got, you can get it 5/16th thick, 3/8th of an inch thick or whatever, you know. It's not no one certain size, it's just whatever size you need for that particular job.
Q. And other than square packing, were there different types of packing that you worked with?
A. Yes. You had round, roll -- rope packing. You had different -- different kind.
Q. Sir, what types of equipment utilized asbestos gaskets or packing that we just talked about?

13. PAGE 35:18 TO 37:14 (RUNNING 00:02:25.245)

THE WITNESS: Okay. We had reactors, and reactors I'm talking about -- and degassers, I'm talking about these huge vessels, almost half as big as this room, that your polymer goes into, your melted chips go into, and you've got your drive shafts and all that coming out each end, and you probably got 14, 16 inches long journal (phonetic) coming out. And it's got to be chill water cooled out here to keep from burning the bearing and your packing up, I guess. And you got your packing, packing all the way around that shaft back through there, and then you got your packing gland that goes on and your nuts that you tighten up with to seal the area off where no -- one thing, no air can get in there in that -- and into the particles that's in the degasser and -- to seal it off.
BY MS. PRYOR:
Q. And other than the degasser, were there other types of equipment that used gaskets and packing?
A. Yes. Most all your pumps used it. Some pumps used, you know, rubber gaskets. But most of them required either square or rope packing in it.
Q. With -- did pumps require -- that you worked on -- at least some of the pumps require asbestos gaskets or packing?
A. Yes, yes. Ones that was pumping special, like I was talking about Dowtherm, and most all of your pumps down there at the DMT plant was pumping chemicals and different type chemicals, and you had to have a better gasket than a regular gasket for that particular operation.
Q. You say a "better gasket." What do you mean by that? A stronger gasket?
A. Yes.
Q. Because the chemicals can be abrasive?
DEFENSE ATTORNEY: Object to form.
BY MS. PRYOR:
Q. Is that --
A. Yes.
Q. Sir, did valves -- you mentioned earlier that one of the pieces of equipment that you worked on were valves.
A. Yes.
Q. Did valves require or use asbestos gaskets or packing?

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14. PAGE 37:16 TO 37:22 (RUNNING 00:00:11.902)

THE WITNESS: Well, that's what we used.

(Exhibit No. 13 was marked for identification.)

BY MS. PRYOR:

Q. I'm going to show you what's been marked as Exhibit 13. Could you take a look at that, sir.

15. PAGE 37:25 TO 38:15 (RUNNING 00:00:35.411)

THE WITNESS: Yes.

BY MS. PRYOR:

Q. Sir, can you describe to the Jury what that is a picture of?

A. That's a valve, a portion up here where your bonnet and packing is located on it.

Q. Can you point to the Jury where there would be asbestos gaskets in that picture?

A. You would have one here, and then your packing would be right in here.

Q. I'm going to ask you if you can hold it right here so that they can see it.

A. (Witness complies.)

Q. All right. Can you point where the asbestos gaskets would be?

A. You've got one here --

16. PAGE 38:18 TO 38:22 (RUNNING 00:00:07.034)

THE WITNESS: Your packing's in here.

BY MS. PRYOR:

Q. Gotcha. Would there be gaskets anywhere else other than right here?

17. PAGE 38:24 TO 39:07 (RUNNING 00:00:17.973)

THE WITNESS: Possibly. You would have gaskets here and here.

BY MS. PRYOR:

Q. So there would be -- so, sir, there would be gaskets where there -- where the valve would be connected to line, and those are those side gaskets --

A. Right.

Q. -- is that right?

18. PAGE 39:11 TO 39:15 (RUNNING 00:00:05.723)

Q. And then there would be gaskets on that top material which you refer to as --

A. Yes.

Q. -- the bonnet?

A. Yes.

19. PAGE 39:18 TO 39:19 (RUNNING 00:00:04.363)

Q. And packing would be -- can you point one more time where packing would be?

20. PAGE 39:22 TO 40:06 (RUNNING 00:00:23.589)

THE WITNESS: Right in here on this one here.

BY MS. PRYOR:

Q. Sir, you mentioned earlier when I asked you generally how you believe you were exposed to asbestos, and the -- one of the ways you said is when

removing asbestos gaskets and packing from equipment. Can you explain to the Jury, generally, what was your process for removing gaskets from a piece of equipment?

21. PAGE 40:23 TO 42:17 (RUNNING 00:02:39.588)

THE WITNESS: Most of the time you would use a -- according on where you're removing it from, you can use a screw to screw into a packing and pull it out, or a pick. And then the other way is using a scrape or anything to get it off, and then you would use a brush. And it was a pretty hard process of getting it off.

BY MS. PRYOR:

Q. And we'll talk about packing in a second. But why would the gasket -- why would it be a hard process to remove an asbestos gasket from a piece of equipment like a pump or a valve?

A. Because when it gets dried out and gets embedded, most of -- most flanges has a surrogated surface on it, and you put that gasket material in there and you tighten down on it, it gets embedded in that surrogated surface, it gets just like almost -- steel is steel. And then when you go to change that gasket, you want to get it as clean as you can to where when you put a new one in and tighten it up, it won't be, you know, having a leak or something there. So that surrogated surface, you have to scrape and scrape and scrape, and then you brush and brush and brush to get the old gasket off.

(Exhibit Nos. 7 and 8 were marked for identification.)

Q. And you said "scrape." I'm going to show you what I marked as Exhibit 7 and 8. Could you take a look at these two pictures, sir.

A. Yes.

Q. And, sir, again, these are photos that I provided you, but could you explain to the Jury what those are?

A. Well, you've got a putty knife there and you've got a -- looks like a homemade scrape over here made out of a -- looks like it may have been made out of a file. You've got a sharp point on this end, it's been ground down on this end. It's an instrument to remove that packing.

Q. And, sir, did you use tools like a scraper when you were --

A. Yes.

Q. -- trying to remove gaskets from surfaces that had been -- well, let me rephrase that. Did you use a scraper --

22. PAGE 42:19 TO 42:22 (RUNNING 00:00:04.623)

THE WITNESS: Yes.

BY MS. PRYOR:

Q. -- or tools similar to that when you removed gaskets from a piece of equipment?

23. PAGE 42:24 TO 42:24 (RUNNING 00:00:01.280)

THE WITNESS: Yes.

24. PAGE 43:01 TO 43:08 (RUNNING 00:00:15.019)

Q. And, sir, I may not have asked, but when we were looking at the picture of the valve, this is a

picture that I have provided to you, but is this the same or similar to types of valves that you worked on --
A. Yes.
Q. -- when you worked at Hoechst?
A. Yes.

25. PAGE 43:14 TO 43:20 (RUNNING 00:00:16.363)

Q. Sir, you mentioned using a wire brush to remove gasket materials from pieces of equipment like pumps and valves. Can you take a look at what I have marked as Exhibit 9?
A. Yes.
Q. And can you explain to the Jury what that is?

26. PAGE 43:22 TO 44:06 (RUNNING 00:00:22.064)

THE WITNESS: That is a wire brush. It's -- it's basically a -- they call it a welder's brush. Welders use it a lot when they weld, but it's also a very handy instrument when you're changing gaskets.
BY MS. PRYOR:
Q. And how would you use a wire brush to remove gasket material from --
A. You would scrape --
Q. -- pumps or valves?

27. PAGE 44:08 TO 44:16 (RUNNING 00:00:21.753)

THE WITNESS: You would scrape your surface and brush off all the material that you could that's left on your flange or wherever you're changing it at.
BY MS. PRYOR:
Q. Did you ever have need to use a mechanical wire brush or a power wire brush --
A. Yes.
Q. -- to remove gasket material?

28. PAGE 44:18 TO 45:04 (RUNNING 00:00:25.677)

THE WITNESS: Yes, I have had to use -- they make wire brushes with a little stem on it you put in drill motors, and I have used them a good bit putting it in a drill motor and brushing the surface real good.
(Exhibit No. 10 was marked for identification.)
BY MS. PRYOR:
Q. I'm going show you what I have mark as Exhibit 10. Would you take a look at that?
A. Yes.
Q. Can you explain to the Jury --

29. PAGE 45:07 TO 45:19 (RUNNING 00:00:29.680)

Q. -- what that is a picture of?
A. That is a -- it's not a drill motor. That's some other type instrument other than a drill motor, but it's got a wire brush on it like I used in a drill motor.
Q. So it's not exactly the same to the one that you used, but would you say that that's similar in that it was a mechanical wire brush --
A. Yes.
DEFENSE ATTORNEY: Object to form.

BY MS. PRYOR:
Q. -- that required power?
A. Yes.

30. PAGE 45:21 TO 46:02 (RUNNING 00:00:13.669)

(Exhibit No. 11 was marked for identification.)
BY MS. PRYOR:
Q. And to give the Jury an idea of -- of what a surface with a gasket that had been adhered to it looks like, I want to show you what's Exhibit -- marked as Exhibit 11.

31. PAGE 46:06 TO 46:09 (RUNNING 00:00:14.372)

Q. Could you take a look at that, sir.
A. Yes. That's -- that's a good example of what 90 percent of your gaskets looked like when you're replacing them.

32. PAGE 46:16 TO 46:20 (RUNNING 00:00:14.611)

Q. So when you were at Hoechst and you're talking about removing gaskets with either a scraper or a wire brush or a mechanical wire brush, that would be the example of at least what a gasket would look like that you would have to remove?

33. PAGE 46:22 TO 46:22 (RUNNING 00:00:00.659)

THE WITNESS: Yes.

34. PAGE 46:25 TO 47:06 (RUNNING 00:00:12.775)

Q. And again, this is -- this is a picture that I have provided to you.
A. Yes.
Q. But is it the same or similar to what the conditions of gaskets that had adhered to the surface looked at -- looked like when you were at Hoechst?
A. Yes.

35. PAGE 47:10 TO 47:15 (RUNNING 00:00:10.655)

Q. Sir, what conditions were created when you were removing gasket material that had adhered to the surface of either pumps or valves --
DEFENSE ATTORNEY: Objection.
BY MS. PRYOR:
Q. -- when you would be removing it?

36. PAGE 47:17 TO 48:09 (RUNNING 00:00:56.018)

THE WITNESS: You would have a whole lot of dust, and not only -- not only fine dust from the gasket itself, but you -- you would be brushing on a -- if it wasn't stainless steel, you would be brushing on a steel part that had rust on it. So you would be brushing the rust off the surface as well as the gasket material.
BY MS. PRYOR:
Q. And we discussed a little bit about gaskets with valves, but, generally, where were gaskets located on pumps that you worked on?
A. Most of the time it was just around your shaft, drive shaft.
Q. And did you have to remove gasket material from pumps in the same way that you described --
A. Yes.

Q. -- removing gasket materials for other equipment and valves?

37. PAGE 48:10 TO 48:10 (RUNNING 00:00:01.126)

A. Yes.

38. PAGE 48:15 TO 48:22 (RUNNING 00:00:17.638)

Q. Sir, do you recall the manufacturer name of any of the valves that you removed gasket material from?
A. And we're talking about what now?
Q. Sure. Do you recall the brand name or manufacturer name of any of the valves that you recall removing asbestos gaskets from?
A. Yes.

39. PAGE 48:25 TO 50:11 (RUNNING 00:01:49.420)

Q. And what are some of those brand names that you recall?
A. Some of them was Powell valves. And you had -- I can't think right now. I've lost my train of thought. The gentleman sitting over there, his valves.
Q. Let the record reflect he is referring to --
A. Well, I have totally lost my whole train of thought.
Q. Sure.
A. I can't think right now.
Q. Other than Powell valves, there were other brands of valves that you --
A. Yes, yes, lots of them.
Q. Sir, do you recall working on Crane valves?
A. Yes. That's my gentleman right over there, Crane valves.
Q. Sir, you had started talking about it earlier, but what tool did you use to remove packing from valves?
A. We had a screw, screw-type little ol' thing that we would go in there and try to screw it into the packing itself and pull it out, and then we had a pick with a sharp point on it, we would use it to go in there and try to pick it out that way.
(Exhibit No. 6 was marked for identification.)
Q. Can you take a look at what I've marked as Exhibit 6.
A. Yes, that's the type we used to go in there and screw into the gasket itself and pull it out.
Q. The tool you used to help remove the packing?
A. Yes.
Q. Sir, did you ever use any compressed air when you were removing packing from the valve stem?
A. Yeah --

40. PAGE 50:13 TO 51:01 (RUNNING 00:00:37.659)

THE WITNESS: We would -- you know, you had small dusty type material left down in there between -- especially on valves on your stem. You would go in there and blow it out before you started your packing in there.
BY MS. PRYOR:
Q. When you would use that tool to remove packing from a valve stem, did it come out in one

piece?
A. Sometimes and sometimes not.
Q. On the occasions that it didn't, is that the occasion that you would use compressed air or did you use it as a matter of practice?
00051:01 A. No.

41. PAGE 51:03 TO 51:13 (RUNNING 00:00:28.112)

THE WITNESS: If it -- if you was -- had to scrape that material out, you pulled it out, you had -- still had your stem in there and all, you would -- I would take it and blow it off, you know, enough that I could get my packing back in there and it wouldn't be nothing to upset it in any kind of way.
BY MS. PRYOR:
Q. What conditions were created, generally, when you were removing this -- this asbestos packing from the valve stem?

42. PAGE 51:16 TO 52:16 (RUNNING 00:01:23.313)

THE WITNESS: You just had a lot of small pieces and dust from it.
BY MS. PRYOR:
Q. Sir, how did the process -- well, first, was there any packing associated with pumps?
A. Yes.
Q. And how did the process of removing packing from pumps differ from that of removing it from valves, if any?
A. It was a little, little easier removing it
00052:01 from pumps than it was valves, I thought, but it was basically the same.
Q. Do you recall the manufacturer or brand name of any of the pumps that you worked on when you were at Hoechst?
A. I have worked on Ingersoll pumps and -- Lord, there was four, five, six different brands I worked on. My train of thought today, ma'am, is not with me for some reason.
Q. You're -- you're doing just fine. If you want to take a break, just let me know at any time. Okay?
A. (Witness nodded head.)
Q. So you tell me.
Sir, do you recall working on any Pacific pumps --

43. PAGE 52:19 TO 52:21 (RUNNING 00:00:03.446)

Q. -- when you worked at Hoechst?
A. Any what?
Q. Pacific pumps.

44. PAGE 52:23 TO 54:03 (RUNNING 00:01:28.169)

THE WITNESS: Yes, we had -- we had some, yes.
BY MS. PRYOR:
00053:01 Q. Do you recall working on those --
A. Yes.
Q. -- during your time working at Hoechst?
A. Yes.
Q. Now, to give the Jury an appreciation, are you able to estimate how many valves were at the entire Hoechst facility?

A. How many valves? Oh, probably, not exaggerating in any way whatsoever, between 2,000 and 3,000, maybe more.
Q. And similar with pumps, as you sit here today, are you able to offer any estimation as to how many pumps would be present at the Hoechst facility?
A. It would run in a couple hundred, probably.
Q. Now, this entire period that you were working for Daniels at Hoechst, were you the only employee performing maintenance work on pumps or valves or any pieces of equipment there?
A. No.
Q. So there were other employees also working on those pieces of equipment?
A. Yes.
Q. Would you -- would there be occasions that you would be working in a close vicinity to other Daniels co-workers who would be working on asbestos gaskets or packing associated --
A. Yes.
Q. -- with pumps or valves?

45. PAGE 54:05 TO 54:05 (RUNNING 00:00:01.012)

THE WITNESS: Yes.

46. PAGE 54:07 TO 54:11 (RUNNING 00:00:12.489)

Q. Over that period of time that, I believe it was a nine-year or so period of time, would there be occasions where you worked on a pump or a valve more than one time?
A. Yes.

47. PAGE 54:22 TO 54:25 (RUNNING 00:00:15.357)

Q. Now, when you had to work on pumps and valves, and you had to replace the asbestos gaskets or packing, where did you go about to get those replacement parts?

48. PAGE 55:02 TO 56:14 (RUNNING 00:02:05.810)

THE WITNESS: To the supply room.
BY MS. PRYOR:
Q. And can you explain to the Jury just generally how you went about figuring out what parts needed to go with which particular pump or valve?
A. Ma'am, would you bring the question back again?
Q. Sure. Can you explain to the Jury just generally how you went about figuring out which parts were particular to a certain pump or valve that you were working on?
A. We would use -- especially now that we built the shop or PIVs and valves and -- not necessarily valves but PIVs and pumps and gear boxes; they would come -- I wouldn't go out in the field and take them out. They would come to me already took out and tagged out what was wrong with them; if it was leaking around the packing or whatever. And I would get the tag -- tag off from it, and I would look -- look in the book. We had books in there. And I would pull the drawing on it and -- pull the drawing on it, and with the drawing it would have a parts list, and I would go to the supply room and give them that identification number, and they would give me a repair kit. Or if I was specifying whatever for it,

they would give me that and I would take it back and install it. And I would use the blueprint -- I would use the blueprint or the parts list print that explained to you exactly how to put the part in and everything. That's what I used to do it with.

Q. Where did those replacement kits come from?

A. Come from the manufacturey (sic).

Q. So, for example, if you were working on a Crane valve and you needed replacement parts for that, you went to the supply room and matched up the numbers to a replacement kit that was provided by Crane?

A. Right.

49. PAGE 56:18 TO 57:01 (RUNNING 00:00:18.022)

Q. And would that be similar to other manufacturers? So if you went in looking for replacement parts for an Ingersoll Rand pump, you would go in and you would figure out where -- where the I.D. number was?

A. Yes.

Q. And then you would get the replacement parts that Ingersoll Rand would provide?

A. Yes.

50. PAGE 57:04 TO 57:07 (RUNNING 00:00:07.468)

Q. Was this a matter of practice that you did and was in place for all the pieces of equipment that were at the facility?

A. Yes.

51. PAGE 57:09 TO 58:01 (RUNNING 00:01:18.903)

THE WITNESS: That was -- that was a matter of practice for everybody on the job site. They would -- we -- we -- we didn't -- we didn't pre-fab any -- any gaskets that we needed or packing or anything as far as it being on a valve or a pump or -- or a PIV or whatever. We didn't manufacture it there at the shop unless there were no kit or anything available, and then you would, you know, resort to making it yourself.

But that was already preset in the supply room. Everything was set up and everything had two or three -- at least three -- spare samples of this one particular item to where they don't ever run out, and -- and that was just practice for the whole -- whole plant site. It was a very, very huge supply room, and they had a huge inventory of spare parts.

52. PAGE 58:19 TO 58:22 (RUNNING 00:00:11.304)

Q. Sir, you mentioned that some of the piping at the Hoechst facility was -- had asbestos insulation around that. Do you recall that, sir?

A. Yes.

53. PAGE 58:25 TO 59:03 (RUNNING 00:00:06.344)

Q. Were you ever around insulators when they would be insulating pipe --

A. Yes.

Q. -- at the Hoechst facility?

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54. PAGE 59:05 TO 59:24 (RUNNING 00:01:06.257)

THE WITNESS: Yes. When we were working in there and insulators was working, there was no -- no separation in there. You're liable to be -- you're liable to be in there working, the insulators working here, you're liable to have sheet metal workers right over here, you would have three or four different -- different crews of people working in the same general area at one time.

BY MS. PRYOR:

Q. And generally, what would they be insulating?

A. Insulating either a vessel or -- or a shaft or a pump under some of these vessels, and the vessels their self or insulating pipe where somebody has tore the insulation off.

Q. You -- you've described work as far as insulators insulating different pieces of equipment and other co-workers removing and replacing gasket material from pieces of equipment.

55. PAGE 60:02 TO 60:05 (RUNNING 00:00:07.557)

Q. Generally, what are -- what were the conditions of the facility when everybody was doing that kind of work?

A. It was pretty --

56. PAGE 60:07 TO 60:20 (RUNNING 00:00:40.122)

THE WITNESS: -- pretty dusty.

BY MS. PRYOR:

Q. And what was the flooring made out of at that facility?

A. Part of it was -- part of it was cement and then part of it was grating, a grated floor.

Q. And which floors were grated?

A. From the second -- second, third and fourth floor had grating on part of it.

Q. So if someone was working on a piece of equipment on the second floor or the third floor, if material or debris from that equipment or from that insulation or from those gaskets or packing were falling down, where would they go?

57. PAGE 60:22 TO 64:02 (RUNNING 00:04:04.572)

THE WITNESS: Oh, well, most of the time the -- the -- where the grating was, most of the time it was a vacuum upward. And if you was working -- if somebody was working on the second floor and working on something creating dust, and you was working on the third floor right above them there, you would be getting the full wind of it because -- seemed like when you got that grating floor and different stories high, it's always like a chimney, you know, it's -- everything is rising in the air.

BY MS. PRYOR:

Q. And, sir, when you're working on pumps and valves on occasions when maybe that work was necessary, so emergency repairs, is that one type of occasion?

A. Yes.

Q. You also mentioned preventative maintenance. Can you explain to the Jury what that is?

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A. Preventative maintenance, we would have it pretty often on -- on an individual line. We would -- we would -- they would come around the day before or we would go around the day before and we would look at different pieces of equipment and see what looks like it might, in the near future, require something done to it. And we would shut that line down and we would do our regular routine maintenance on that line, but we would catch these things that we thought in the near future would -- would mess up, so we would catch them while the line was down, and that was for preventative maintenance right there.

Q. Were there also occasions where shutdown would occur?

A. Yes.

Q. And generally, what is a shutdown?

A. When -- shutdown is when they shut the line down, and you start in the basement on that particular line, and you -- you pretty well go all the way out on it, repairing any and everything that you think needs repairing and -- and replacing almost everything on the -- on the line.

Q. How often would shutdowns occur?

A. Shutdowns on a complete line like that couldn't require -- wouldn't happen maybe every two or three years on a complete shutdown. Preventative maintenance, maybe once every -- every six months to a year. But a complete shutdown on a line, it would, you know, happen maybe every two or three years.

Q. What would be your hours, on average, during a complete shutdown?

A. On a complete -- complete shutdown, it would run probably 100, 105 hours a week.

Q. And how many weeks did a shutdown last, on average?

A. They would just last -- most of the time, most I have seen it last would be down at the DMT plant, it would last sometimes a week.

Q. During those shutdowns, would you work on equipment like pumps or valves more often than you would on a normal basis?

DEFENSE ATTORNEY: Objection.

THE WITNESS: Yes.

BY MS. PRYOR:

Q. During a shutdown, generally, what -- what was the condition of the Hoechst facility?

A. Ma'am?

Q. During a shutdown when you have both yourself and other co-workers working on all the equipment, can you explain to the Jury what the conditions were of the facility?

A. It was pretty dirty and nasty. Everybody -- you had sheet metal workers in there, you had electricians, you had millwrights, and you had every -- every type craft there were on the job site in there in that one particular area working at the same time. It was pretty -- pretty dusty, nasty condition.

Q. Outside of the shutdowns, on a regular basis, would you say that working -- your work on equipment like pumps and valves, that was pretty regular?

58. PAGE 64:05 TO 64:13 (RUNNING 00:00:20.478)

THE WITNESS: Yes.

BY MS. PRYOR:

Q. Sir, did you ever see a warning on any of the pieces of equipment that you worked on while working at Hoechst that informed you that working with components, asbestos components associated with that equipment, could cause the cancer that you have now?
A. No.

59. PAGE 64:16 TO 64:21 (RUNNING 00:00:19.949)

Q. At any point in time, did you see any warnings around any of the pipe insulation or from any of the Hoechst employees that informed you that exposure to asbestos from either insulation or working with any asbestos components would cause the cancer that you have now?

60. PAGE 64:23 TO 65:02 (RUNNING 00:00:11.091)

THE WITNESS: No.
BY MS. PRYOR:
Q. Had you have been told or informed that working with asbestos components can cause cancer like what you have now, what would you have done?

61. PAGE 65:04 TO 65:10 (RUNNING 00:00:25.858)

THE WITNESS: Had I been told, I would have quit immediately. And I wouldn't have -- I wouldn't have took a chance for no amount of money than what we get paid, I would have never took a chance of catching something like this for that little bit of money. I never would have done it.

62. PAGE 65:24 TO 66:18 (RUNNING 00:00:58.298)

Q. Sir, I just have a few more questions about your work when you were working for Daniels.
During the entire time that you worked at the Hoechst facility, you were actually an employee of Daniels Construction; is that true?
A. That's true.
Q. Who was in charge of writing your paycheck?
A. Daniels.
Q. Who was the company that could fire you if that occasion arose?
A. Daniels.
Q. Who would be in charge of your day-to-day duties?
A. We had a lead man -- Hoechst Fiber supervisor would tell the lead man what he wanted done for that day, and he would instruct us what to do.
Q. After being told what task to do by a Hoechst employee, did Daniels have the ability or the means to figure out how that should be getting done?

63. PAGE 66:20 TO 68:22 (RUNNING 00:02:35.808)

THE WITNESS: Yes.
BY MS. PRYOR:
Q. So if the Hoechst man said we need to fix, you know, this pump or this valve or this line, it was actually Daniels who decided how that work went about getting done; is that true?
A. Yes.
Q. Did Hoechst have its own maintenance division?

A. No.
Q. Did Hoechst have its own construction division?
A. No.
Q. Is maintenance on equipment like pumps or valves that you described earlier, is that the type of work that Hoechst employees were expected to do?
A. No, they didn't do nothing like that.
Q. What was the role of the Hoechst employees at that facility?
A. Hoechst just was strictly production workers. They maintained the lines running the material through; that's all they did.
Q. And again, generally, what was the role of the Daniels' employees at the facility?
A. What we did is maintained equipment to keep it running as far as working on it, repairing it or whatever or installing new equipment.
Q. And so as far as kind of a division, Hoechst employees were in charge of the actual operation or production of either the fibers or the chemicals, and Daniels employees were in charge of the maintenance; is that --
A. Correct.
Q. -- accurate?
Did you participate in the operation of any of the equipment?
A. No.
Q. Would you say that the work that Daniels performed at Hoechst, would you say that that's significantly different than what the role and the work of the Hoechst employees were?
A. Yes.
Q. You have had a previous deposition in this case, and in that deposition you were asked about whether or not entire lines were needing to be shut down during times of maintenance. Do you recall those questions?
A. Yes.
Q. Would there be auxiliary lines at the facility so that if there was a shutdown on a particular line, the process moved through an auxiliary line while work was being done on this line?

64. PAGE 68:24 TO 69:23 (RUNNING 00:00:58.718)

THE WITNESS: No. It was -- when you shut a line down, that line -- if you're shutting a whole complete line down, I'm talking about from spinning, you continued running the stretch line, you wasn't shutting it down. But if you was shutting spinning down to do preventative maintenance, you would want to shut that whole line down and do it on from spinning through stretch to where you wouldn't have two shutdowns, you would only have the one.
BY MS. PRYOR:
Q. And I guess my question is: Would you agree that maintenance and work on equipment was occurring on a continual basis --
A. Yes.
Q. -- at the facility?
Would you also agree that if everything had to be shut down during the times of maintenance that there would be zero production ever, if that was the case?

A. Yes.
Q. So there were times where you could work on equipment and the entire facility wouldn't be shut down when that work was happening?
A. Correct.

65. PAGE 70:01 TO 73:18 (RUNNING 00:05:31.106)

Q. Because that would be inefficient --
A. Right.
Q. -- and nothing would ever get done.
A. (Witness nodded head.)
Q. Sir, you mentioned that you were working at the time of your diagnosis.
A. Yes.
Q. Where were you working?
A. Precision Bearing.
Q. And how many hours a week did you work?
A. I was working 40 hours a week.
Q. And --
A. Not the complete year. After I retired, and I said previously that they called and wanted me to come back to work and work another year, and I did. After that, I would work 40 hours a week until I drew all I could draw, the government would allow me to draw, then I would retire 'til the next year. And I did that up 'til -- right up until a couple of weeks before I had this operation, I mean.
Q. And earlier you said you were working about six months a year; is that about accurate?
A. Yes.
Q. At 40 hours a week?
A. Yes.
Q. Do you recall how much you were making?
A. They were -- they were paying me $20 an hour, and I went to them there the last year I was working and I told them to -- if they would, cut it back to 16, because I'm getting old and my job wasn't as -- I wasn't producing as -- as much as I was earlier. So they didn't do it on their own. I asked them would they cut me from 20 to 16 because I felt like, you know, they were overpaying me.
Q. So you were -- you were keeping everybody honest?
A. Yes.
Q. Sir, how long did you plan on -- prior to getting this cancer, how long did you plan on continuing to work that six months a year?
A. I was planning on working up until I got totally disabled. And had I not come down with this cancer, I would be working today.
Q. Was there ever an age that you had planned on retiring or stopping work completely?
A. No, not being as I had it set up to where I could work, you know, three months a year or six months a year or whatever I wanted to work. I was intending to do that until I died, if I was able.
Q. Sir, I just have a few more questions.
We talked a little bit earlier about how mesothelioma has affected you and how you're feeling. How has your diagnosis affected your family?
A. It has affected us terribly, terribly bad, just -- just like yesterday, my daughter, she went to the doctor's office with us yesterday, and she was sitting there in the doctor's office when the doctors told us to stop everything and that he was turning me over to hospice. She busted out crying. And she was

real, real upset yesterday.
And she stays upset a lot because she's asked me, I don't know how many times this year, Daddy, can we just go to the mountains? We'll take care of you and we can -- we always went to the mountains every December as a whole family, our whole family. And then every year when we took a vacation, we would go to Myrtle Beach and rent a big house on the -- on the water itself. And we did that every year, every single year we went to the mountains and the beach or wherever as a whole, complete family.
And it's affected my whole family, bad. They -- they -- we all enjoyed one another's company and being around one another. And my grandkids, it's -- it's affected them. And they come to me and Poppa, Poppa, let's go to the beach, because we always -- we always played -- took horseshoes and took those -- two sets of those balls that you roll and hit one another -- I done forgot now what you call it. We always took them. I've still -- I've got two sets here. And we took those. We was always doing something like that all the time.
And it's -- like I say, it's -- my grandkids tell me all the time, they come up to me, Poppa, when we going to the mountains? When we going to the mountains? And I miss it. And my wife misses it. And my whole family misses it. And I wished it wasn't like that. I wished it wasn't.
But the good Lord's in control, and I have left it up to him. And I'm praying that he will heal me. I hope and pray he does. I hope and I'm praying every day that the Lord will heal me. And I have been believing strongly that he will. And I'm hoping yet that he will.

66. PAGE 74:06 TO 74:22 (RUNNING 00:00:40.601)

All right. Mr. Seay, hi. We have talked to you, as you know, we talked to you yesterday.
A. Yes, sir.
Q. And we talked to you, I guess a couple of months ago. And just the same as today in the sense that we had a court reporter writing down everything that we said, but in -- in the last two times we didn't have a video camera, so --
A. Yes, sir.
Q. -- just because we've got the movie camera on, I don't necessarily want to go through every little bit again.
A. Yes, sir.
Q. So let me just tag off on -- you know, on all three occasions, I know you have told us the truth.
A. Yes, sir.

67. PAGE 75:07 TO 75:15 (RUNNING 00:00:29.423)

Q. We have talked about -- in many cases we talked about your memory or in other cases about your best estimates, right?
A. Yes, sir.
Q. And just for the sake of the video camera, if we took those things that were written down from those other depositions and put them on a screen over your head, you would stand by them today?
A. I believe I would.

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68. PAGE 76:14 TO 76:24 (RUNNING 00:00:28.094)

Q. You talked about working for Daniel.
A. Yes, sir.
Q. And Daniel, my understanding is that Daniel was the on-site maintenance company at Hoechst; is that correct?
A. Correct.
Q. And so if there was something that broke, it would be a Daniel employee that fixed it, right?
A. Yes.
Q. And the repairs that you made, were those important to the continued operation of Hoechst?

69. PAGE 77:01 TO 77:12 (RUNNING 00:00:23.171)

THE WITNESS: Yes, it was.
BY MR. HAWKINS:
Q. And you talked about some preventative maintenance. Was that preventative maintenance necessary to the continued operation of the plant?
A. Very much so.
Q. Okay. And you talked about a supply room, I believe. Is that what you called it?
A. Yes.
Q. And the parts that were in that supply room, were they essential to the -- allow you to make your repairs to equipment?

70. PAGE 77:14 TO 77:14 (RUNNING 00:00:01.048)

THE WITNESS: Yes, sir.

71. PAGE 78:02 TO 80:10 (RUNNING 00:03:56.308)

Q. Sir, I just have one more question for you. This time a year ago, did you ever imagine that you would be diagnosed with a fatal cancer?
A. No, I certainly didn't.
Q. What's the hardest part about having mesothelioma?
A. Well, the hardest part about it is knowing -- the very hardest part about it is knowing that you're going to leave here, definitely going to leave here, and you know it's going to be soon. You don't know when. And you try your best to keep your hopes up and be strong for your family and grandkids and all. It's hard. It's hard.
Hurt, hurt 24 hours. I don't know about these other cancers, I don't know how they are, but this cancer is in my lining, I believe it's all in my stomach now, and when they cut on me over here so much, it's got over in that area now. And -- and, you know, some -- some -- some doctors will tell you that this cancer is only in your lungs. That's not so. Nowhere near is that so. It can get spread in other areas from operation, when you're operated on.
And I have terrible, terrible pains, and I have terrible, terrible scar tissue problems. I have like marbles that big around all in my back that I lay down on every night. And I can't lay on this side, period. Not any -- I haven't laid on it. From all those operations. And lay on this one side, trying to get comfortable, and you get on your back, and it's like you have laid down on a bunch of marbles. It's been a terrible, terrible year.
I mean, one day I'm hoping, praying the Lord to go ahead and take me home today, don't -- just

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don't let me suffer no more; take me home today. And then I get to thinking about my family and my grandkids and all, then I'm praying to the good Lord to just heal me, let me stay here a little longer where I can enjoy my grandkids and all just a little more.

And I'm not just saying this because these -- y'all are here or they're taking video. I'm as -- I'm as truthful as I can be about it. I've got to be. Because they ain't but two places I'm going: That's either up or down. And they ain't no amount of money on this earth would -- would -- would allow me, and believe you me I'm telling you the truth, they ain't no amount of money would allow me to sit here and tell you a lie for any amount of money to keep me out of heaven up there, because that's my only hope. That's the only hope for all of you sitting in here is for one day you're going somewhere. If you believe in eternity, you're going somewhere. You're either going up or you're going down. And like I say, I want to go up.

And I'm -- I know I'm close. I know I'm close. And I'm praying today, give me some more time, Lord. But when I'm laying in there hurting real bad, I'm praying, Lord, go ahead and take me on home. I'm ready to come, I'm ready to come and --

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:24:09.476)

Dennis Seay

Thompson, Ronnie (Vol. 01) - 06/27/2014 — 1 CLIP (RUNNING 01:10:17.339)

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RT001 — 159 SEGMENTS (RUNNING 01:10:17.339)

1. PAGE 10:25 TO 11:16 (RUNNING 00:00:35.640)

Q. Good morning. How are you doing?
A. Doing good.
Q. Can you introduce yourself to the jury, please?
A. Yes. I'm Ronnie Thompson.
Q. Okay.
A. I worked down there from '71 -- I'm talking about the Hoechst property. I worked down there from '71 until 2004.
Q. Okay. Very good. We'll get to all that.
First, I want to ask you some general introduction questions just to, you know, introduce you to the jury here, and then we'll get into the meat and potatoes in not too long.
Have you ever given a deposition before?
A. No.
Q. This is your first time?
A. This is the first time.

2. PAGE 14:17 TO 15:09 (RUNNING 00:00:38.934)

Q. Okay. And little questions about you, how old are you, Ronnie?
A. I'm 67.
Q. 67. I should have said how young are you then.
Where do you currently live?
A. At 263 Gardner Road, Chesnee. It's about a 12 minute ride from here.
Q. Okay. Right down 221; right?
A. Right.
Q. It's a pretty little drive.
How long have you lived over in Chesnee for?
A. All my life.
Q. Okay. Are you married, Mr. Thompson?
A. Divorced.
Q. Okay. You live alone then?
A. I got one child, you know, that lives with me part of the time.

3. PAGE 15:13 TO 15:24 (RUNNING 00:00:25.064)

Do you have any children? I know you mentioned one that lives with you, but how many children do you have?
A. I have two, a son and a daughter.
Q. How many grandchildren?
A. Four.
Q. Four grandkids.
Now, what do you -- are you currently employed right now?
A. No. I'm retired.
Q. When did you retire?
A. 65, which was two years ago.

EXHIBIT 2 9/30/15

Dennis Seay

4. PAGE 16:15 TO 18:17 (RUNNING 00:01:56.918)

sitting behind me here? Do you know why you're here today?
A. Yes.
Q. And why is that?
A. To support what Dennis Seay had said about the type of work he done and what he worked on and the areas that he worked in.
Q. Okay. And we'll get to that.
How long have you known Dennis for?
A. Well, I've known him since '73, 1973.
Q. Okay.
00017:01 A. The reason I know, I was in one department and was transferred into their department, and that's how I met him whenever I went in his department.
Q. And that leads me to my next question. Did you work with Dennis?
A. Yes.
Q. And where did you work with Dennis?
A. Staple A spinning.
Q. Okay. And what was the name of the company that you-all worked for?
A. At that time it was Hoechst.
Q. Okay.
A. Well, I take that back. We were working for Daniel when I first went over there.
Q. So you worked for Daniel's?
A. Worked for Daniel's.
Q. But you were at the Hoechst plant; right?
A. But at the Hoechst plant, right.
Q. Okay. Did you have the occasion to work side by side with Dennis?
A. Yes.
Q. And what were the specific years that you worked side by side with him?
A. From 1973 until '75.
Q. Okay. Did you have occasion to work around him
00018:01 after 1975?
A. No, but we walked through the area going from one job to the other, might stop and say hello whenever he would be working in the pump shop.
Q. Okay. And we'll get to that whole pump shop pretty soon.
Do you know when Dennis stopped working at the Hoechst plant?
A. I don't know. I don't know.
Q. Okay. I'm going to represent to you that he testified that he left the plant in 1978. Does that sound about right to you?
A. Yeah, that sounds about right.
Q. Okay. So you-all worked together.
Let's talk about the Hoechst plant a little bit. What type of materials did the Hoechst plant manufacture?

5. PAGE 18:19 TO 18:19 (RUNNING 00:00:01.182)

A. Polyester.

6. PAGE 18:23 TO 19:14 (RUNNING 00:00:35.287)

Q. And what would polyester be used for? I'm just curious.
A. Clothing.
00019:01 Q. Okay. Now, you mentioned that you and Dennis at the time, '73 to '75, both worked for a company called

Dennis Seay

Daniel's?
A. Correct.
Q. But you were at the Hoechst plant?
A. Right.
Q. Did you work for Daniel's the entire time frame that Dennis worked at the plant, or did you move on somewhere?
A. I worked with Daniel's from '71 until '75.
Q. Okay.
A. Then I switched over to Hoechst.
Q. Can you explain the relationship between Daniel's and Hoechst?

7. PAGE 19:16 TO 20:04 (RUNNING 00:00:31.588)

A. Well, Daniel's was a subcontractor. They're the ones that actually built the building.
BY MR. PAUL:
Q. Okay.
A. And you had two groups. They had a group that worked construction. They had a group of men that worked on the maintenance within the areas.
Q. Okay. And that was the Daniel's --
A. That was all Daniel's. It was like two groups. One of them was construction crews. The others were maintenance crews.
Q. Was Daniel's a completely separate company from Hoechst?
A. Yes.

8. PAGE 21:14 TO 21:18 (RUNNING 00:00:15.141)

Do you believe that the work, and we'll get into this, too, in a little bit, that Dennis and you-all did for the Hoechst plant, do you believe that that was an integral important part of the operation of the plant to which if it wasn't done it could not function?

9. PAGE 21:20 TO 21:20 (RUNNING 00:00:00.995)

A. Yeah.

10. PAGE 22:19 TO 23:20 (RUNNING 00:01:02.493)

What was Dennis's job title when he worked for Daniel's at this Hoechst plant in Spartanburg?
A. Millwright.
Q. A millwright.
Did he work in that capacity the entire time frame that he worked at the plant?
A. Yes, as far as I know.
Q. And for the purposes of the jury, can you explain the types of things that a millwright does on a typical job?
A. Well, they'll change out a pump or a motor or a gearbox. Sometimes they would rebuild the gearbox or the pump.
Q. Okay.
A. Repair flanges where they had been leaking.
Q. Okay. Sounds to me like general maintenance --
A. Yes.
Q. -- of the machinery in the plant. Is that right?
A. Correct.
Q. Did that entail any work on valves?
A. Yeah, we had to.
Q. Did that entail any work on condensers?
A. Yes.

Q. Okay.
A. And worked on vacuum systems where the condensers go.

11. PAGE 24:08 TO 24:11 (RUNNING 00:00:07.722)

Q. Do you believe that Dennis worked around any asbestos containing materials while he worked for Daniel's as a millwright at the Hoechst plant?
A. Yes.

12. PAGE 24:16 TO 25:17 (RUNNING 00:00:58.143)

Q. Because you worked side by side with him; right?
A. Right.
Q. And you -- you're a witness to what he did. Is that correct?
A. (The witness nodded affirmatively.)
Q. What types of materials do you think that Dennis worked with that contained asbestos containing component parts or that contained asbestos at all?
A. Well, you had the insulation that was around your heated pipes.
Q. Okay.
A. They said it was asbestos, the insulators did. Then you had your gaskets.
Q. Okay.
A. Then you had your gasket material. You could get a sheet of it out of the supply room and cut your own gaskets.
Q. Okay. Did you-all work around any packing?
A. Yes.
Q. Was that part of Dennis's job?
A. Yes, it was.
Q. We'll get to that.
Where would -- the gasket and packing, where would they go into?
A. Well, your gaskets go on the housing and the pipe that's coming into it and the pipe going out of it. They required gaskets also.

13. PAGE 25:20 TO 27:09 (RUNNING 00:01:51.671)

Was there a specific type of machinery that the gasket and the packing would go into? And maybe I'll just say it this way. Would the gaskets and packing be involved with pumps and valves?
A. Yeah.
Q. Okay. I think you were implying that, and I just wanted to clarify.
Let's talk a bit about pumps. As a millwright you mentioned Dennis did maintenance work. Is that correct?
A. Yes.
Q. With the pumps, what type of work would Dennis do with the pumps at the Hoechst plant?
A. Well, he would tear the pumps down, put a new impeller on it if it needed it, put all new gaskets in it and then repack the bonnet on it.
Q. Okay. Where did he do this type of work? Did he do it in the field, or did he do it in a room?
A. Most of the time it was in the shop, but occasionally if they had one out there that was leaking real bad, they would switch to the spare pump and they would pack the one that was leaking. They would pack it and do it in the field, so to speak.
Q. Okay. And between 1973 and 1975, did you have the occasion to work with him in both the field and the

pump room?
A. Yes.
Q. Okay. Do you know what specific area Dennis worked at during the time frame that you worked with him at the plant?
A. Now, he worked in staple A spinning from the time that he went to work up until '75. Then he went to the new addition, which was right beside the side (sic), which they called it staple A spinning. He went over there with Grady Moore, who was his supervisor.
Q. Okay.
A. He worked with him until, like you said, '78. That's about right.
Q. When he bolted?
A. Right.

14. PAGE 27:13 TO 27:15 (RUNNING 00:00:04.596)

Q. Would you-all ever get called out to work in other areas of the plant?
A. Yeah.

15. PAGE 27:19 TO 30:16 (RUNNING 00:02:28.309)

cut you off. He would get called out in the other areas of the plant?
A. Yes. Well, say if you was on spinning and stretching area, you know, they would loan people from one department to another. There would be four or five departments, maintenance departments, and they would loan people out, especially if you had a shutdown, because it just required more people if you're running a shutdown.
Q. I gotcha.
Let's talk about that, the shutdowns. How often would shutdowns occur?
A. There would be a shutdown just about every month.
Q. Really?
A. Yeah, really.
Q. And what would go on during a shutdown?
A. Well, you would pull valves out, clean them where the polymer and everything had got to it, clean the vacuum system separators, and you might even have to -- well, you have to rattle the vapor lines. That's clean the vapor lines. And if there's a bad gearbox or something, you would have to change them out and just put new bushings in the gearboxes.
Q. Sounds to me like general maintenance throughout the whole plant during shutdown; right?
A. Through that department. Now, sometimes,if you shut one spinning line down,it would affect maybe two stretch lines. So you would have two departments down, or not two departments, but what they call two lines down.
Q. Would Dennis have the occasion to work on these shutdowns when they occurred?
A. Yes.
Q. And would he be doing the same type maintenance as a millwright --
A. Yes.
Q. -- that you described earlier?
A. Right.
Q. Let's talk about pumps. This might be a little difficult question. In this plant, I know it's pretty large, but can you estimate how many pumps were located in the entire plant?
A. There's no way. There ain't no way.

Q. And why is that?
A. There's hundreds of them.
Q. Okay. A lot?
A. A lot, yes.
Q. Now, Dennis didn't work on all these pumps. Right?
A. No, he didn't work on all of them.
Q. There were other millwrights. Correct?
A. Right.
Q. There was other pump guys; --
A. Yes.
Q. -- correct?
Did each section of the plant have their own pump guy and millwright?
A. Most of them.
Q. But that was Dennis's specialty in his specific area --
A. Yes.
Q. -- that he worked at. Correct?
A. Yes.
Q. Did he have the -- did he work on pumps throughout the entire course of his career?
A. Most of the time, --
Q. Okay.
A. -- but he would build gear boxes also.
Q. Gear boxes.
You mentioned valves. Did he work on valves throughout the entire portion of his career working at the Hoechst plant?
A. Yes.

16. PAGE 30:17 TO 30:21 (RUNNING 00:00:14.490)

Q. And did he work with the condensers throughout the entire portion of his career at Hoechst?
A. Well, the only time I -- not all the time. Because whenever he went up on the stretch line area, I don't know if they had condensers up there or not.

17. PAGE 30:25 TO 31:02 (RUNNING 00:00:05.701)

Q. Okay. Do you know when he left staple A and moved to the other area?
A. 1975.

18. PAGE 31:09 TO 34:12 (RUNNING 00:03:13.722)

You mentioned gaskets and packing, correct, on pumps?
A. Right.
Q. First of all, can you explain to the jury what a gasket is?
A. Its what seals two your flanges together. You put the gasket in there to seal the product that's inside the system to keep it from leaking; and then the pump, you put a gasket between the bonnet and the housing.
Q. Okay. Did every pump have gaskets?
A. Yeah, --
Q. Okay.
A. -- to my knowledge.
Q. And we're only here to talk about the stuff that you worked with and you saw Dennis work with. So --
What about packing? Can you explain to the jury what packing is used for?
A. Well, it goes around your shaft to keep whatever you're pumping, keep it in, keep it contained.
Q. Okay. Was packing involved in all the pumps and valves that you worked with with Dennis?

A. Yes, all except ones that had mechanical seals.
Q. And when was the first time you saw a pump or valve with a mechanical seal? Was it in the '80s?
A. Well, yeah, probably was. Yes.
Q. Okay. So that would have been after the time that Dennis left?
A. Yeah, because they had --
Q. Correct?
A. Right.
Q. Okay. Now, you mentioned Dennis had to remove and replace gaskets from the pumps that he worked on. And I think you already said it, but why would he have to remove these gaskets from those pumps again?
A. Well, the gaskets, some of them would be stuck on there. Especially with a heated pump, they would be stuck on there. And if you couldn't get it off with a putty knife, you would have to take a wire brush --
Q. Okay.
A. -- or an air grinder with a wire brush on it --
Q. Okay.
A. -- and buff it up.
00033:01 Q. So you would have to remove these gaskets from the pumps. Can you estimate how many -- the percentage of time that the gaskets would not just come out of a pump easily that he had to use the putty knife and the wire brush?
A. 25 percent of the time.
Q. Was it -- I mean, it was a lot? I mean, would the -- was it a lot?
A. Yeah, it was a lot.
Q. Okay. Let's talk about this putty knife and wire brush. Can you explain exactly how he would remove these gasket materials on the flange just for the jury?
A. Well, like I said, if a putty knife wouldn't take it off, you would take an air grinder, which has got a 3 inch wire brush on the end of it, and you would literally buff it to get rid of the gasket material that was on it --
Q. Okay.
A. -- so you would have a good seal.
Q. And you mentioned that this was stuck to the flanges of the pumps?
A. Yeah, to the flanges.
Q. Okay. How long would that take?
A. Probably 10 minutes, 15 at the most.
Q. The point was to get a smooth surface so you
00034:01 could put a new gasket in there and put it back together?
A. Right.
Q. Is that correct?
When Dennis used his putty knife and the wire brush, he was scraping all that gasket material off the flanges. Correct?
A. (The witness nodded affirmatively.)
Q. What conditions were created at that point?
A. Well, there would be a little bit of dust.
Q. Is that because the particles were getting scraped --
A. Right.

19. PAGE 34:21 TO 34:24 (RUNNING 00:00:06.132)

Q. So this particles and dust in the air, do you believe Dennis breathed the dust created when he did that?
A. Yes.

Dennis Seay

20. PAGE 35:06 TO 35:19 (RUNNING 00:00:33.183)

When he was working on the pumps, where would he do primarily the most of his work on pumps?
A. In the shop.
Q. Okay. So he's removed the gaskets now; Right?
A. Right.
Q. Where would Dennis go to get the new gaskets to replace the old gaskets?
A. Well, he would go to the supply room. If he didn't have it already in the shop, he would go to the supply room.
Q. Okay. Were these replacement gaskets manufactured by the same manufacturers of the pumps that he would remove those gaskets from?
A. Most all of them.

21. PAGE 35:22 TO 36:07 (RUNNING 00:00:20.728)

Q. Okay. And how do you know that?
A. Well, the name was on the boxes --
Q. Okay.
A. -- that you get out of the supply room. They would have the factory, you know.
Q. Was that specific to each different type of pump and valve that he worked on?
A. Yes.
Q. Would you call that specific name like a replacement kit or --
A. You're talking about the gaskets?

22. PAGE 36:12 TO 36:15 (RUNNING 00:00:11.382)

names in a second. I was just meaning as far as you mentioned that the materials came -- the materials that replaced old materials came from the same manufacturer of the pumps and the valves that he worked on, and I just --

23. PAGE 36:19 TO 38:11 (RUNNING 00:01:47.066)

Q. Would you call that a replacement kit?
A. Yes.
Q. Okay. What would come in a typical replacement kit for the pumps and the valves?
A. The packing.
Q. Uh-huh.
A. And O-rings, if it had O-rings, you would have it in there.
Q. Okay. Any gaskets in there?
A. Yes, the gaskets for the bonnet.
Q. Okay. Let's talk about the packing now because you said that packing would be in the replacement kits also. Right?
A. Right.
Q. Okay. Packing work on pumps, would Dennis ever have to replace and remove packing from the pumps that he worked on?
A. Yes, --
Q. Okay.
A. -- done that. That was routine.
Q. How would Dennis remove the packing, and what would he use to remove that packing from the pumps?
A. He would use a packing puller.
Q. Okay. Can you explain to the jury what a packing puller is?
A. Something like a cork screw. You just back off off your packing flange, and then it had that little cork screw shape on the end of a rod, a flexible rod most of

the time, and all you do is just screw it in. You might have to put one on each side and then just manually pull the packing out of it. Most of the time it would have three to four pieces of packing in it. And then clean it up. After you got the packing out, then you would clean it up and put your new packing back in with a wooden dowel I call it, a piece of homemade wood.
Q. When he's cleaning it up and you're cleaning up the packing, would you-all use any compressed area to blow out the area?
A. Yes, use a wire brush or air grinder.
Q. When you're using these materials after you've removed the packing, were there any conditions created when you used that air compressor?
A. Well, there would be a little bit of dust.

24. PAGE 38:19 TO 39:22 (RUNNING 00:01:10.050)

Q. Do you believe that Dennis breathed that dust?
A. Yes.
Q. Now, how often would Dennis have to replace gaskets and packing on pumps?
A. Well, he done it -- eventually he done it every day.
Q. Every day?
A. Yeah.
Q. That was his job; right?
A. Yes, that was his job. He was a pump man, so to speak.
Q. He would also do the same work with valves though. Correct?
A. Yes.
Q. Okay. Do you recall any of the manufacturers of the pumps that Dennis worked on while he worked at the Hoechst plant?
A. He had Aurora, Ingersoll-Rand, Durco. Goulds, had it.
Q. Were there any other ones?
A. Had Barmary (phonetic) pumps, but they were from Germany. Most all them were gear or product pumps.
Q. Okay. So there's more, but those --
A. Yes, there were more.
Q. Were those the primary pumps that --
A. Yes.
Q. -- you recall him working on?
And you recall those names because you worked with Dennis side by side. Is that correct?

25. PAGE 39:24 TO 40:08 (RUNNING 00:00:14.767)

A. For two years.
BY MR. PAUL:
Q. Okay.
A. Not every day, but I worked out of the same shop.
Q. Yeah. Obviously, you-all would be pulled to other areas of the plant. I understand.
But you saw him work on all those pumps. Correct?
A. Yes.

26. PAGE 41:17 TO 42:04 (RUNNING 00:00:33.819)

Q. But you do know that Dennis worked on all those products that you just manufactured; correct?
A. Right.
Q. Okay. Did Dennis perform the same type of gasket and packing maintenance that you described on all

those pumps just now?
A. Yes.
Q. Okay. Is there a manufacturer of pump that Dennis worked on the most?
A. There's a lot of Ingersoll-Rand pumps.
Q. Okay. And all the manufacturers of pump provided replacement kits. Is that correct?
A. Yes.

27. PAGE 42:22 TO 43:06 (RUNNING 00:00:24.239)

Q. Okay. Now, you also mentioned that as a millwright Dennis worked on valves. Is that correct?
A. Yes.
Q. Okay. Can you explain to the jury what a valve is and what it's used for?
A. It's used to cut off the product, whether it's pressure or vacuum.
Q. Okay. How many total valves can you estimate that were at the entire Hoechst plant?
A. Thousands of them.

28. PAGE 43:09 TO 45:01 (RUNNING 00:01:53.124)

Dennis, obviously, wouldn't have to work on all those valves. Correct?
A. No. No.
Q. He would be required to work on the valves in his specific area that he worked in. Correct?
A. Right.
Q. Okay. What type of maintenance work would Dennis have to do with those valves?
A. Repack them.
Q. Would he have to do anything else?
A. Some of them, especially the large valves, they would have to clean them. That was the product. When it was through, they would have to clean them. They would have -- if it was a real large valve, they would do it in place. They would tear it down out there on the floor and clean it, check the seats on the valve, see if it's, you know, sealing okay and then put new gaskets and packing back in it.
Q. Okay. Let's talk about the packing. Why would packing have to be replaced from a valve?
A. Well, if it's heat -- working on a vessel, all of it is heated. It just gets hard and starts leaking externally.
Q. Do you recall how often packing would need to be replaced or taken out of a valve?
A. Well, on the ones in line, the Dowtherm, they would do it about every year.
Q. Okay. Can you explain to the jury where the packing would go within a typical valve that you-all worked on?
A. The packing goes in around the stem. The stem is what goes in and out whenever you open and close it.
Q. And you personally saw Dennis working on packing with valves. Correct?
A. Yeah.
Q. Did Dennis remove the packing from the valves in the same manner as you described him removing the packing from the pumps?
A. Right.
Q. Did he use the same type of tool to remove that packing?
A. Yes.
Q. Were the same conditions created when he did so?

Dennis Seay

29. PAGE 45:03 TO 45:09 (RUNNING 00:00:05.434)

A. Yes.
BY MR. PAUL:
Q. Did he use compressed air afterwards to blow out
--
A. Yeah.
Q. -- the valves?
A. Yeah.

30. PAGE 45:12 TO 45:16 (RUNNING 00:00:08.537)

Q. And when he used that compressed air, you mentioned the same conditions were created. What conditions were created?
A. There was dust.
Q. And did he have occasion to breathe that dust?

31. PAGE 45:18 TO 46:01 (RUNNING 00:00:13.855)

A. Yes.
BY MR. PAUL:
Q. The new packing for the valves, you mentioned that packing with the pumps was bought at the supply house in the plant. Is that correct?
A. Right.
Q. Would Dennis also get the replacement packing from the supply room at the Hoechst plant?
00046:01 A. Yes.

32. PAGE 46:03 TO 46:08 (RUNNING 00:00:10.230)

Was that packing provided in the same replacement kits as you've described earlier in your deposition?
A. Yes.
Q. And did those replacement kits come from the same manufacturers of valves that Dennis was working on?

33. PAGE 46:10 TO 46:10 (RUNNING 00:00:01.027)

A. Yes.

34. PAGE 46:14 TO 47:07 (RUNNING 00:00:46.398)

You mentioned gaskets on the valve. Where were the gaskets located on a valve?
A. On the bonnet, between the bonnet and the housing.
Q. Well, let's get there. Is that on the inside of the valve?
A. Yes.
Q. So in order to change the gasket on a valve, would Dennis have to open up the valve?
A. Yes.
Q. Okay. How many gaskets were on a typical valve that Dennis would work on?
00047:01 A. Well, you would have the one for the bonnet.
Q. Okay.
A. And it depended on how many lines come in to it. There would be one or two on it and then your exit side of your pump.
Q. Okay. So can you estimate a number?
A. Three.

35. PAGE 48:03 TO 48:04 (RUNNING 00:00:03.823)

Q. To your knowledge, did Hoechst purchase all of the materials that belonged at the plant?

Dennis Seay

36. PAGE 48:06 TO 48:09 (RUNNING 00:00:04.905)

A. Yes. I would say they did. They purchased it.
BY MR. PAUL:
Q. Because they owned the plant; correct?
A. Right.

37. PAGE 48:12 TO 50:13 (RUNNING 00:01:38.256)

Q. You mentioned gasket removal on these valves. Did Dennis remove the gaskets from the valves in the same manner as you described him removing gaskets from the pumps?
A. Yeah.
Q. Would he use the same materials to remove those gaskets?
A. Yes.
Q. Okay. And why would he have to use materials to remove gaskets from the valves?
A. Because they got hard, especially heated pumps, I mean, the heated ones.
Q. Okay. And valves?
A. Yeah, and valves.
00049:01 Q. So this is for pumps and valves. Correct?
A. Yeah.
Q. So what would he do to a gasket that would require you have to used some sort of material to get that gasket off?
A. He would use a putty knife.
Q. Okay. Would he use a -- and you mentioned earlier that he used a wire brush also?
A. Yeah.
Q. He also used that. I have pictures of putty knives and wire brushes, but I don't think I need to show you any of those.
A. No, you don't.
Q. It's pretty basic stuff.
When he was using the putty knife and the wire brush to scrape the flanges of the valves off, were there any conditions created then?
A. Well, there was dust.
Q. Do you believe Dennis breathed that dust?
A. Yes.
Q. About how long would it take him to use the putty knife and the wire brush to scrape the flanges off the valves?
A. Maybe 15 minutes.
Q. Is that because he wanted to get the flange
00050:01 completely clean?
A. Right.
Q. And then he would replace that area with a new gasket. Correct?
A. Yes.
Q. And would he use the gaskets from the replacement kits to replace those gaskets --
A. Yes.
Q. -- on the valves?
A. Yes.
Q. Were those replacement kits provided by the same manufacturers of valves that you've described today?
A. Yes.

38. PAGE 50:14 TO 50:16 (RUNNING 00:00:06.868)

Q. You mentioned Crane and Powell. Are those the only manufacturers of valves that you recall Dennis working on?

Dennis Seay

39. PAGE 50:18 TO 50:24 (RUNNING 00:00:10.936)

A. Well, like I said, that Klinger valve, --
BY MR. PAUL:
Q. Klinger. Sorry.
A. -- German valve.
Q. So Klinger, Crane and Powell. Correct?
A. Yeah. And there was some Smith valves, but they didn't work on them too much.

40. PAGE 51:15 TO 51:17 (RUNNING 00:00:06.411)

Q. Okay. Crane, Powell and Klinger. Do you recall any other manufacturers of valves that Dennis would have worked on at the plant?

41. PAGE 51:19 TO 52:17 (RUNNING 00:00:49.639)

A. I can't think of any right now.
BY MR. PAUL:
Q. Okay. Did he perform the same type of gasket and packing maintenance on all the valves that you've just mentioned? That includes -- did he do the same type of gasket and packing work on the Crane valves?
A. Yeah.
00052:01 Q. Did he do the same type of gasket and packing work on the Powell valves?
A. Yes.
Q. Did he do the same type of gasket and packing work on the Klinger valves?
A. Yes.
Q. So it's pretty -- it's a universal --
A. Right.
Q. -- process. Is that correct?
And all the valve manufacturers provided replacement kits that contained the gaskets and packing for replacement. Is that correct?
A. Right.
Q. You mentioned some condensers earlier. What's a condenser, and what is it used for?
A. Well, in that application they used it, which is to condense steam going into the condenser.

42. PAGE 53:11 TO 53:18 (RUNNING 00:00:15.193)

Were there any condensers in the area where Dennis worked and you worked?
A. Yes. There's 15 of them.
Q. There's 15?
A. There's 15 of them.
Q. Do you recall who the manufacturer of the condensers were?
A. No, I don't. They were German.

43. PAGE 53:24 TO 54:24 (RUNNING 00:01:02.646)

Q. Okay. Did you and Dennis ever have the occasion to do any work on these condensers?
00054:01 A. Yes, --
Q. Okay.
A. -- once a week anyway.
Q. Okay. And what type of work would you do on the condensers?
A. You would clean the system out. See, they would have a spare vacuum system sitting beside it. They would switch over to the spare. Then they would shift the main down. When they shut it down, you would tear the piping, not tear, but disconnect all the piping going to it and manually clean it.

Q. Manually clean it. How did that occur? I know it sounds really basic, but how did you-all clean those?
A. With putty knives and brushes.
Q. Okay.
A. Now, the condenser itself, all you had to do is put some soap in it and brush it out and put a new gasket on the condenser.
Q. And that leads me to my next question. Where was the gasket located on the condenser?
A. Right on top of the condenser.
Q. Okay. Did you-all, you and Dennis, have to replace the gasket on the top of these condensers every single time?

44. PAGE 55:01 TO 55:21 (RUNNING 00:00:49.804)

A. Yes. You didn't want no vacuum leaks.
BY MR. PAUL:
Q. Okay. And I'll -- 15 condensers, how often would these 15 condensers need to be cleaned out?
A. They would clean one a day.
Q. One a day?
A. Yes.
Q. Okay. So was it on kind of a cycle?
A. Right. It would be every two to three weeks. They would move the schedule around a little bit if there was a shutdown was coming.
Q. Okay. And every time -- so one a day, would you say twice a month the condensers needed to be cleaned or once every three weeks?
A. Once every three weeks.
Q. Fair enough.
Every time that you-all, you and Dennis, cleaned a condenser, did Dennis have to replace a gasket on that condenser?
DEFENSE: Object to form.
A. Yes.

45. PAGE 55:23 TO 56:07 (RUNNING 00:00:25.592)

Q. Okay. How big were the gaskets that went on the condensers?
A. It was about 24 inches in diameter.
Q. Okay.
A. Then the inside dimension was probably around 22.
Q. Okay. And every time -- you testified every time you cleaned them you had to put a new gasket in these condensers. Where did you and Dennis get the replacement gasket from?

46. PAGE 56:10 TO 56:17 (RUNNING 00:00:17.134)

A. Well, we always kept the gasket material in the shop, which comes from the supply room, the gasket material does.
BY MR. PAUL:
Q. Now, you mentioned earlier that every time y'all cleaned the condenser that the gasket needed to be changed. Correct?
A. Yes.

47. PAGE 56:20 TO 56:22 (RUNNING 00:00:10.110)

Q. Okay. Did the condensers need to be -- did the condensers require a gasket to be installed every time that you and Dennis worked on them and cleaned them?

48. PAGE 56:24 TO 59:14 (RUNNING 00:02:26.176)

A. Yes.
BY MR. PAUL:
Q. Okay. Fair enough.
A. If you run out of gasket material, you could use the old one, but if you had the gasket material, you would put a new gasket on every time.
Q. Okay. And you testified earlier that there was a supply room at the Hoechst plant. Right?
A. Right.
Q. Okay. Where would you and Dennis get the replacement gaskets for these condensers?
A. Well, we would get the material out of the supply room, --
Q. Okay.
A. -- carry it back to the shop and then put the gasket material on the cutting board, take a gasket cutter and cut it out.
Q. And we'll get to that.
The -- you mentioned replacement kits with pumps and valves. With the condensers, do you recall the manufacturer of the gaskets that went on those condensers?
A. Well, the material that we used was John Crane 333.
Q. And 333, how do you know it was John Crane 333?
A. Because it was on it, marked on it, painted on it, stamped on it.
Q. Okay. Were these sheet gaskets or precut gaskets?
A. Sheet.
Q. Sheet.
And this is only in regards to the condensers. Is that correct?
A. Pardon?
Q. This is only in regards to the condensers. Is that correct?
A. Correct.
Q. You mentioned cutting these John Crane No. 333 gaskets. Is that correct?
A. Yes.
Q. Did you ever have the occasion to see Dennis cutting those John Crane 333 gaskets?
A. Yeah.
Q. Where would he have to cut these John Crane No. 333 gaskets at?
A. Well, most of the time you used a piece of plywood to put the material down on, and then you would find your center of your gasket and then you would take a little -- a pen or either a nail and prick the center of it. Then take that gasket cutter and cut your OD out and then your ID out.
Q. And this -- did this occur every single time that Dennis had to replace a gasket on a condenser?
A. Yes.
Q. And he used the same John Crane No. 333 gasket, --
A. Yes.
Q. -- sheet gasket that you just described?
A. Yes.
Q. Okay. When he was cutting this John Crane No. 333 sheet gasket material, were there any conditions created?
A. Well, yeah, there would be a little bit of fiber, you know.

Q. Okay. Do you believe that Dennis would have breathed that fiber when he was cutting it?

49. PAGE 59:16 TO 60:02 (RUNNING 00:00:18.329)

A. Yes.
BY MR. PAUL:
Q. Now, he cut it on plywood. Is that correct?
A. Yes.
Q. After he picked up the gaskets, would he, you know, brush off his area?
A. Well, sometimes he would, yeah.
Q. Do you think that that created a dusty condition?
A. Oh, yeah. Yeah.
Q. Do you believe that he breathed the dust created from those John Crane No. 333 sheet gaskets?

50. PAGE 60:04 TO 60:16 (RUNNING 00:00:26.753)

A. Yes.
BY MR. PAUL:
Q. How close was Dennis's face to the John Crane No. 333 sheet gaskets when he was doing this work?
A. Well, within 3 foot, so maybe even closer than that.
Q. Okay. So you mentioned every -- you know, once every three weeks these condensers needed to be cleaned out.
A. Yes.
Q. Do you believe that Dennis worked on the condensers up until the time that you worked with him?
A. Yes.

51. PAGE 60:23 TO 61:17 (RUNNING 00:00:57.395)

Q. Okay. When did you start working at the plant?
~~I can't remember.~~
A. I started with Daniel's in '71.
Q. '71.
Okay. Now, we've talked about gaskets a lot, pretty exciting stuff, you know. Can you tell the jury the different types, and I don't mean manufacturers, different types of gaskets that there were at the plant in total?
A. Well, we used copper, aluminum, asbestos. Flexitallic, we used them. And we used -- on the reactor, we would use a -- they called it an industrial silver gasket. It was a large gasket. It might be 3 foot in diameter.
Q. Okay. Any Teflon gaskets?
A. Yeah, and Teflon.
Q. Okay. Are you able to differentiate an asbestos gasket from a Teflon, metallic, rubber, Flexitallic gasket?
A. Yes.

52. PAGE 61:20 TO 62:07 (RUNNING 00:00:24.162)

Q. What does an asbestos gasket look like?
A. Most of them was gray --
Q. Okay.
A. -- or almost black.
Q. You mentioned that like with the John Crane gaskets it actually had the name stamped on them. Is that correct?
A. Yeah.
Q. It also had the number 333 stamped on them?

A. Yes. They had some more that had different numbers that come from John Crane.
Q. Do you recall a John Crane No. 2112 gasket by any chance?

53. PAGE 62:09 TO 63:01 (RUNNING 00:00:28.381)

A. Yeah.
BY MR. PAUL:
Q. Did Dennis work --
A. And there was a 750, too, I believe.
Q. Okay. Did Dennis have the occasion to work with those John Crane 2112 gaskets?
A. Yes.
Q. And were those sheet gaskets?
A. Yes.
Q. And did he have to cut those gaskets?
A. Just like he did the other ones.
Q. The exact same manner as you described the John Crane No. 333 gaskets; right?
A. Yes.
Q. Thank you.
Were asbestos gaskets used on the majority of the pumps, valves and condensers that you worked on?
A. Yes.

54. PAGE 63:04 TO 63:05 (RUNNING 00:00:05.185)

Q. Were asbestos gaskets used on every condenser that you-all worked on?

55. PAGE 63:07 TO 63:17 (RUNNING 00:00:13.841)

A. I would say yes, --
BY MR. PAUL:
Q. Okay.
A. -- unless they was water. They wouldn't have been on water.
Q. But the condensers, --
A. The condensers, yes.
Q. Specifically in regards to condensers?
A. Right.
Q. Were they all asbestos containing gaskets --
A. Yes.

56. PAGE 63:21 TO 63:23 (RUNNING 00:00:09.289)

Q. Okay. You mentioned insulation earlier. Did the millwrights, you and Dennis, have to insulate any of the machinery that you-all worked on?

57. PAGE 63:25 TO 64:01 (RUNNING 00:00:07.531)

A. No, we didn't have to insulate, but if there were removable type insulation on it, --

58. PAGE 64:04 TO 64:05 (RUNNING 00:00:06.253)

A. -- we would occasionally take it off and put it back on, especially if it was a heated pump.

59. PAGE 64:10 TO 64:15 (RUNNING 00:00:11.942)

Q. Who would do the actual insulation work?
A. The insulators.
Q. Were the insulators employees of Daniel's or Hoechst?
A. Daniel's.
Q. Who supplied the insulation?

60. PAGE 64:17 TO 64:17 (RUNNING 00:00:01.644)

A. Hoechst.

61. PAGE 64:19 TO 64:21 (RUNNING 00:00:07.069)

Q. Did that come from the supply room?
A. Yes. Most of the time they just dropped it off at the insulation shop.

62. PAGE 65:02 TO 65:05 (RUNNING 00:00:07.556)

Q. Were you and Dennis around any of the insulators when they were installing the insulation to the various areas and materials?
A. Yes.

63. PAGE 65:07 TO 65:15 (RUNNING 00:00:12.283)

A. Yes, --
BY MR. PAUL:
Q. Okay.
A. -- on a shutdown especially.
Q. Yeah.
Were you-all around the insulators when they were removing any insulation from the materials that that insulation was worked on and applied to?
A. Yes.

64. PAGE 65:18 TO 65:21 (RUNNING 00:00:08.706)

Q. When you-all were working on pumps and valves, did you have any occasion to disturb any insulation on those pumps and valves?
A. Yes.

65. PAGE 65:22 TO 66:04 (RUNNING 00:00:23.877)

Q. And why -- why is that and how so?
A. Well, if you're changing it out, you know, you would have to get down where the pump was at, and then, you know, if you hit that insulation and it was old insulation especially, it would fly off of it.
Q. Okay. Do you recall the manufacturer Owens-Corning by any chance in regards to insulation?
A. Yes.

66. PAGE 66:06 TO 66:09 (RUNNING 00:00:03.941)

A. Yeah.
BY MR. PAUL:
Q. That's what Hoechst purchased, Owens-Corning --
A. Yes.

67. PAGE 66:11 TO 66:21 (RUNNING 00:00:17.082)

Q. -- insulation?
A. Yeah.
BY MR. PAUL:
Q. Do you think they purchased different types of insulation?
A. Yeah.
Q. And they supplied it all. Correct?
A. Yes. Well, I believe there was a Kako, I believe was the name of it.
Q. Okay. Supplied by Hoechst?
A. Yes.

68. PAGE 66:25 TO 67:02 (RUNNING 00:00:02.119)

Q. Was it supplied by Hoechst?

00067:01 DEFENSE: Object to the last question.
02 A. Yes.

69. PAGE 68:07 TO 68:09 (RUNNING 00:00:08.734)

07 Q. Did anyone at Hoechst ever advise you and Dennis
08 that a mask or respirator should be worn when working
09 with and around asbestos containing products?

70. PAGE 68:12 TO 68:13 (RUNNING 00:00:04.334)

12 Q. I'm talking about the time that Dennis worked at
13 the plant only.

71. PAGE 68:15 TO 68:23 (RUNNING 00:00:13.218)

15 A. That was after -- I would say probably around
16 1980.
17 BY MR. PAUL:
18 Q. Okay. I'll represent Dennis left in '78. Do
19 you believe that anyone at Hoechst ever advised him about
20 the hazards of asbestos while he was working at the
21 plant?
22 DEFENSE: Object to form.
23 A. I don't think so.

72. PAGE 69:04 TO 69:08 (RUNNING 00:00:08.891)

04 Q. Did Dennis ever wear a mask while he performed
05 any maintenance work at the Hoechst plant?
06 A. No, I can't say that.
07 Q. Okay.
08 A. I would say no.

73. PAGE 71:02 TO 71:19 (RUNNING 00:00:39.865)

02 Q. When was the last time you talked with Dennis?
03 A. Oh, it's been whenever he called me and told me
04 he had the cancer, which is probably about two months
05 ago.
06 Q. Have you talked with me about Dennis's work
07 history?
08 A. Yes.
09 Q. How many times?
10 A. One time.
11 Q. Did we meet yesterday?
12 A. Yes, we did.
13 Q. What did we talk about?
14 A. The type of work that Dennis done, what pieces
15 of equipment he worked on.
16 Q. Did I show you any pictures of anything?
17 A. No.
18 Q. We just talked. Correct?
19 A. Right.

74. PAGE 74:14 TO 75:17 (RUNNING 00:00:48.442)

14 CROSS EXAMINATION BY MR. LUDWIG:
15 Q. Mr. Thompson, good morning. My name is Eric
16 Ludwig.
17 A. Good morning.
18 Q. Can you hear me okay?
19 A. Yeah.
20 Q. Do you have any hearing problems, sir, or am I
21 speaking --
22 A. Yeah. I have problems with this ear, and this
23 one is starting to give me trouble.
24 Q. Okay. I'll do my best to keep my voice up.
25 Okay?

00075:01 A. Okay.
02 Q. If at any point you don't hear or understand my
03 question, please let me know though. All right?
04 A. Right.
05 Q. We're continuing on from what Kevin was talking
06 about, and I'll be kind of skipping around, but I do want
07 to get a little bit more about your background
08 information.
09 And do you go by any nicknames?
10 A. R.T.
11 Q. R.T.?
12 A. Yes.
13 Q. I think I can figure out why that would be.
14 What is your date of birth?
15 A. 12/11 of '46.
16 Q. And you said you're 67 years old?
17 A. Yes.

75. PAGE 81:02 TO 81:08 (RUNNING 00:00:18.430)

02 Q. You became an employee of Celanese or Hoechst in
03 '75?
04 A. August 28th I believe was the hire date.
05 Q. And how long did you stay there in that
06 position?
07 A. Until 2000, at that one site stayed there until
08 2004.

76. PAGE 83:22 TO 84:21 (RUNNING 00:00:57.025)

22 Q. Okay. Now, we talked earlier you worked out at
23 the Hoechst plant -- if I say Hoechst or Celanese, do you
24 know I'm talking about the same facility?
25 A. Yeah. It was Hoechst, and then I think Celanese
00084:01 joined with them, Hoechst Celanese. It's been about five
02 different companies.
03 Q. Is it fair to say you can't give me information
04 about the corporate history as far as how these things
05 worked?
06 A. No.
07 Q. okay. But if I say Hoechst or Celanese, you
08 know I'm talking about the same facility. Right?
09 A. Right.
10 Q. Okay. And what years did you work out at that
11 plant?
12 A. You're talking about for Hoechst or with
13 Daniel's included?
14 Q. The total time you were out there.
15 A. From '71 until 2004.
16 Q. What month did you start in '71?
17 A. September.
18 Q. What month did you retire in 2004?
19 A. What month? February the 29th.
20 Q. Leap year.
21 A. Right.

77. PAGE 84:22 TO 85:03 (RUNNING 00:00:13.796)

22 Q. Now, during the years when you were employed by
23 Daniel's, did you work exclusively at the Hoechst
24 Celanese plant?
25 A. Yes.
00085:01 Q. Okay. And this is the Spartanburg plant we're
02 talking about. Correct?
03 A. Right.

78. PAGE 89:09 TO 89:22 (RUNNING 00:00:24.514)

Q. In preparation for this meeting with Kevin, did you go back and look at any old information you may have?
A. Old information?
Q. And I don't know what you may have. Let's put it this way, sir. We've never met before. Right?
A. No.
Q. And you've had an opportunity to at least meet with Mr. -- with Kevin for -- three times you've had prior conversations.
A. Right.
Q. So I don't have as much information as he does. So I'm not trying to be rude. I'm just trying to find out as much as I can.
A. I understand.

79. PAGE 90:08 TO 90:18 (RUNNING 00:00:22.882)

So in preparation for your meeting with Kevin, did you review any documents beforehand?
A. No.
Q. Did you do any research or put any thought into the meeting?
A. No.
Q. Just showed up and started talking?
A. Well, now, I mean, he had his questions and answers. I didn't have nothing except what knowledge I've got, you know, of the pumps that Dennis worked on and the valves.

80. PAGE 90:19 TO 90:25 (RUNNING 00:00:11.188)

Q. Did he have a list of questions already made to ask you?
A. Yeah, he had a list.
Q. Okay. Did you-all look at that list together?
A. Yeah.
Q. Did you look at that list together?
A. (The witness nodded affirmatively.)

81. PAGE 91:03 TO 91:04 (RUNNING 00:00:02.386)

Q. You nodded your head yes.
A. Yes.

82. PAGE 91:05 TO 91:12 (RUNNING 00:00:24.592)

Q. Now, you started out at the Hoechst Celanese plant in 1971. Is it fair to say you don't have any personal knowledge of what Mr. Seay worked with or around before 1971 since you weren't there?
A. No, I wouldn't have.
Q. Now, when you started out there, what was your first job title?
A. Millwright.

83. PAGE 92:22 TO 93:11 (RUNNING 00:00:32.327)

Q. You were a millwright the entire time you worked for Daniel's?
A. Correct, up until '65.
Q. Did you continue --
00093:01 A. Excuse me, '75. I keep getting that mixed up.
Q. Did you continue as a millwright when you started receiving your paycheck from Celanese, or did you go into production?
A. I was a maintenance supervisor.
Q. So you became a supervisor?

07 A. Right.
08 Q. And what year was that?
09 A. Pardon?
10 Q. What year was that?
11 A. It was -- hire date was September of '75.

84. PAGE 93:12 TO 93:14 (RUNNING 00:00:04.998)

12 Q. When you became a supervisor, did you stop
13 working with your -- with tools?
14 A. Yes.

85. PAGE 93:15 TO 93:23 (RUNNING 00:00:28.540)

15 Q. Who were you supervising?
16 A. You're talking about the men?
17 Q. What were you supervising? You said you became
18 a supervisor. What were you --
19 A. On maintenance of staple A spinning. I
20 supervised the mechanics.
21 Q. Was Mr. Seay one of the mechanics you
22 supervised?
23 A. No.

86. PAGE 94:03 TO 94:09 (RUNNING 00:00:14.376)

03 Q. So the time period that you really worked with
04 Mr. Seay is about '71 to '75?
05 A. From '73, September of '73 --
06 Q. I'm sorry.
07 A. -- until '75.
08 Q. So just two years?
09 A. Two years. That was it.

87. PAGE 94:10 TO 94:18 (RUNNING 00:00:17.594)

10 Q. After you became a supervisor, you didn't
11 supervise his work and you don't know really what he was
12 doing --
13 A. No.
14 Q. -- on a day-to-day basis. Is that correct?
15 A. Well, if I went to his area, you know, I would
16 speak to him and maybe chitchat for about 15 or 20
17 minutes. That's the only acquaintance I had with him
18 after he left.

88. PAGE 96:01 TO 96:25 (RUNNING 00:01:02.179)

00096:01 Q. So the only time you worked with Mr. Seay would
02 have been --
03 A. From '73 until '75.
04 Q. And that was only in staple A?
05 A. All of it was at staple A spinning.
06 Q. What does staple A spinning make?
07 A. They make staple fiber.
08 Q. What does that mean?
09 A. Well, staple, you use it to blend in with
10 different materials. See, they would run it through the
11 spinning area, and then they would send it to the stretch
12 line where they would stretch it over rollers and put
13 finish on it. Then it would go into the cutters. They
14 would cut it up, then fell down into the baler chambers.
15 Then they would bale it, and then it would go out into
16 the warehouse.
17 Q. And so generally speaking, staple A is a
18 production of these fiber strands or --
19 A. Yes.
20 Q. -- fiber material?
21 A. Yeah.

Q. That's the purpose -- all this equipment and all the stuff that you were working around, the purpose was to produce fiber?
A. Correct.

89. PAGE 97:06 TO 97:09 (RUNNING 00:00:07.059)

Q. Well, my question though is, when maintenance was happening out there, the purpose of it was to keep those production lines in operation?
A. Correct.

90. PAGE 97:10 TO 97:25 (RUNNING 00:00:38.115)

Q. And when things were down, then production couldn't really proceed if things aren't working correctly?
A. Right.
Q. That would include the lines, the pumps, valves, whatever it may be?
A. Right. But, now, when they were down, that's when you done a lot of your maintenance work.
Q. Uh-huh.
And so the lines, keeping this stuff operating was important to Celanese. Correct?
A. Yes.
Q. And you made these -- you did this maintenance stuff in order to -- because it was important to Hoechst to keep the lines operating. Correct?
A. Right.

91. PAGE 98:01 TO 99:15 (RUNNING 00:01:25.742)

Q. During this '73 to '75 period where you worked with Mr. Seay, you were a Daniel employee the entire time?
A. Correct.
Q. And did Daniel employees take care of the maintenance in the plant?
A. Yes. Yeah.
Q. That was all the maintenance in the plant. Correct?
A. All of it, but some later on period of time, and I don't remember the year, they hired over some of the Daniel's mechanics onto Hoechst payroll.
Q. I'm glad you brought that up, and I'm going to cover that real quickly. What year did that happen?
A. I don't remember.
Q. Would it have been the '90s, 2000s, '80s, do you know?
A. It was probably around in the mid '80s, and the reason they hired them so they could get them because a lot of the Daniel's boys was going to Duke Power at that time.
Q. Okay. So it sounds like the Daniel's employees who knew all the maintenance, who did all the maintenance, they were leaving to go somewhere else --
A. Right.
Q. -- and Hoechst wanted to keep them --
A. They wanted to keep so many anyway.
Q. Because they had knowledge about the plant?
A. Correct.
Q. They didn't have to go back and train new people to do the work. Correct?
A. Yeah, so they wouldn't have to retrain them.
Q. And so you mentioned earlier that there was a -- so Hoechst had its own maintenance department. That didn't happen until later on after Mr. Seay left.

A. Right, that happened afterwards.
Q. Huh-uh.
So during the time Mr. Seay was there, Daniel's handled all the maintenance at the plant?
A. Correct.

92. PAGE 100:08 TO 101:15 (RUNNING 00:01:31.976)

Q. Now, these maintenance people, they performed those repairs so that the Hoechst employees could get back and do the production work. Correct?
A. Correct.
Q. I think I've already asked this, but if something was broken and needed maintenance, it was the Daniel's people who would go in and fix it for the Hoechst people?
A. Yeah.
Q. Who would give the assignment? Would it come from Daniel's? Like for you as a millwright, how would you get your assignment for the day?
A. Well, we always made schedules out, and then, you know, go over the schedule each morning with the men because you would have to talk about the job, just give the jobs out. If you had 12 men in there, you would generally pair them up, and you would go to six different jobs.
Q. Okay. Who would make that schedule?
A. The supervisor and the planner.
Q. And who did they work for?
A. The planner? I believe they worked -- they started with Daniel's, and I don't -- but I'm sure they switched over, but I don't know.
Q. Okay. So just to be clear, Daniel's -- Daniel's planned out the job. Daniel's employees would plan out the job. You said there was a planner and a supervisor. They would make the schedule up.
A. Well, now, the supervisor, he would be a Hoechst employee.
Q. Okay.
A. And then the planner, I know whenever they started out they were with Daniel's.

93. PAGE 101:16 TO 102:05 (RUNNING 00:00:42.695)

Q. You mentioned when talking with Kevin earlier that there was some insulation out at the plant. And would this insulation be like on the pipelines?
A. Yes. See, in the spinning area there they used Dowtherm to heat their vessels with, and you had to have insulation to keep anybody from getting burned, plus hold the temperature in.
Q. Okay. And you raise an important point I believe. So the insulation served two purposes, to keep the lines warm, to keep the product going through the lines warm.
A. Right.
Q. And also it served as safety for the employees so that they wouldn't get burned being in the area.
A. Correct.

94. PAGE 102:15 TO 102:19 (RUNNING 00:00:13.162)

Q. Did -- let me ask you this. If you're looking at the line, what would be the appearance of the line, the Dowtherm line, for example?
A. Well, you would probably see a set of flanges, and the rest of it would be covered up with insulation.

Dennis Seay

95. PAGE 102:20 TO 103:08 (RUNNING 00:00:22.331)

Q. Was there anything on that insulation? Was it painted or covered in cloth or anything else?
A. Yeah. They paint them with some kind of something.
Q. Okay.
A. Looks like, you know, white paint that they paint it. I think it's more or less of a sealer.
Q. Okay. And so the insulation was sealed with some type of material, some type of liquid, paint or sealant?
A. Yes. Yes.
Q. And would that give like sort of a harder surface to it?
A. It would.

96. PAGE 103:16 TO 103:18 (RUNNING 00:00:04.322)

Q. But, just generally speaking, the lines were protected, the insulation was protected?
A. Yes.

97. PAGE 103:19 TO 104:16 (RUNNING 00:01:09.164)

Q. And this sealant, paint, whatever you want to call it, that would prevent dust, just generally speaking, from being created?
A. Right.
Q. And, once again, it also served the -- it also served the purpose of protecting you the employees from being burned when you're walking by?
A. Yes.
Q. Did Daniel's have a safety department?
A. They did over there at Greenville, but I don't believe they had anything set up down here.
Q. Did Daniel's have any safety meetings?
A. Yeah, they did.
Q. And how often would those be?
A. I would say about once a month, but the superintendent, he's the one that conducted that.
Q. And who was the superintendent?
A. Ray Oliver.
Q. Was he a Daniel employee?
A. Yes.
Q. Was asbestos ever discussed in those safety meetings?
A. I wouldn't know about that.

98. PAGE 104:21 TO 105:01 (RUNNING 00:00:17.742)

Q. And we've -- as I said, I don't want to confuse cases, but we've heard from some gentlemen earlier in another plant, and they described the Celanese safety department as being "fanatical about safety". Would you agree with that statement, that the Celanese safety department was fanatical about safety?

99. PAGE 105:03 TO 105:03 (RUNNING 00:00:03.870)

A. No, I wouldn't say that.

100. PAGE 105:05 TO 105:06 (RUNNING 00:00:03.105)

Q. Would you agree that Celanese was a safety conscious company?

101. PAGE 105:08 TO 105:17 (RUNNING 00:00:26.369)

A. Yeah, I would say they were.

09 BY MR. LUDWIG:
10 Q. Safety was important to Celanese?
11 A. Yes.
12 Q. There was an emphasis placed -- Celanese
13 emphasized safety in the plant?
14 A. Yes.
15 Q. You don't have any reason to believe that
16 Celanese withheld any information it had about asbestos
17 from employees; do you?

102. PAGE 105:19 TO 105:19 (RUNNING 00:00:00.982)

19 A. No.

103. PAGE 105:21 TO 106:04 (RUNNING 00:00:20.221)

21 Q. Would there be occasions when, just generally
22 speaking, that the plant manager or executives would walk
23 around the plant?
24 A. Yes.
25 Q. Would they be wearing masks when they did that?
00106:01 A. No.
02 Q. So when they walked around, they walked around
03 the same as the other employees?
04 A. Correct.

104. PAGE 106:05 TO 106:15 (RUNNING 00:00:23.454)

05 Q. You mentioned earlier that there was some
06 insulators at the plant. Were those Daniel employees?
07 A. Yes.
08 Q. Did they have their own insulation shop?
09 A. Yes.
10 Q. And I take it you were never an insulator?
11 A. No.
12 Q. Mr. Seay was never an insulator?
13 A. No.
14 Q. But Daniel's had full-time insulators out there?
15 A. Yes.

105. PAGE 107:05 TO 107:08 (RUNNING 00:00:14.102)

05 Q. Do you know who manufactured any of the
06 insulation out there?
07 A. Owens-Corning, Owens-Corning and Kaylo I believe
08 was the name of that other company.

106. PAGE 107:09 TO 107:14 (RUNNING 00:00:15.683)

09 Q. Do you have any personal information that the
10 insulation out there contained asbestos?
11 A. No.
12 Q. Is it fair to say you've never been trained in
13 identifying asbestos containing products? Is that fair?
14 A. No, I haven't been trained.

107. PAGE 107:22 TO 107:24 (RUNNING 00:00:07.591)

22 Are you aware that insulation could or
23 could not contain asbestos? In other words, there were
24 alternatives to asbestos --

108. PAGE 108:01 TO 108:03 (RUNNING 00:00:07.616)

00108:01 BY MR. LUDWIG:
02 Q. -- insulation. Correct?
03 A. Yeah, there was some alternatives.

109. PAGE 108:05 TO 108:09 (RUNNING 00:00:15.513)

Did you ever see any warning signs on the insulation that was brought into the facility?
A. No.
Q. So did you ever see the packaging how it came?
A. No. All we seen was the boxes of the material.

110. PAGE 108:12 TO 108:20 (RUNNING 00:00:14.611)

Q. Did you ever see the word asbestos on those boxes?
A. No.
Q. Did you ever see any warnings on those boxes?
A. No.
Q. Those would be the same boxes that the people at Celanese and Daniel's -- it was in the exact same box. Correct?
A. Right.

111. PAGE 108:21 TO 109:06 (RUNNING 00:00:34.421)

Q. Now, you mentioned on some occasions you would have to come in maybe remove some insulation. Now, would it be your goal to remove as much ins -- as little insulation as possible?
A. Well, say if a pump went out in the middle of the night, they wasn't going to call no insulators. They would call the mechanics to change out the pump. Well, it might be 12, 1:00 at night. And we would go ahead and remove the removables. That's all we would remove, take them off to the side, stack them up so we could get to the flanges, start taking that pump out.

112. PAGE 109:07 TO 109:14 (RUNNING 00:00:12.462)

Q. I think I understand it.
And so would you agree that your purpose is though really to remove as little as possible so you don't have to come back and -- your purpose is to do as little work as possible. Right?
A. Right.
Q. And remove as little insulation as required?
A. Correct. Yes.

113. PAGE 109:15 TO 109:17 (RUNNING 00:00:04.203)

Q. Did you ever use any water to wet down the insulation beforehand?
A. No.

114. PAGE 109:18 TO 109:22 (RUNNING 00:00:06.177)

Q. It was never your job to install insulation?
A. No.
Q. It was never Mr. Seay's job to install insulation?
A. No.

115. PAGE 109:23 TO 110:05 (RUNNING 00:00:18.524)

Q. I believe in response to some questions Kevin asked you you said there was times when you worked around insulators.
A. Yes, during a shutdown.
Q. Okay. When that was happening, would you try to avoid that area?
A. Well, yeah, we tried to avoid it. Sometimes you couldn't avoid it.

116. PAGE 112:02 TO 112:10 (RUNNING 00:00:16.872)

Sir, you mentioned -- earlier you talked about doing some work on pumps, valves and other equipment. And, along the same line as the questions I asked you earlier, when those would go down, it's important to get those things repaired as quickly as possible?
A. Right.
Q. In order to keep production moving?
A. Correct.

117. PAGE 113:14 TO 113:16 (RUNNING 00:00:03.987)

Q. You said you didn't work with Mr. Seay every week. Is that right?
A. No, --

118. PAGE 113:18 TO 115:05 (RUNNING 00:01:09.780)

A. -- sure didn't.
BY MS. NETTLES:
Q. Okay. How often every week -- would you work with Mr. Seay every week?
A. I would probably work with him about once a week.
Q. Once a week.
And for how many hours once a week would you work with Mr. Seay?
A. Eight hours.
Q. Eight hours.
And during that eight hour period what exactly would you guys be doing together?
A. Well, we would be either cleaning those vacuum systems, --
Q. Uh-huh.
A. -- or we would be changing out a pump or rebuilding a pump.
Q. So what you did during those eight hour periods would vary depending on what assignment you had that day. Is that right?
A. Right.
Q. So every time you guys worked together, you weren't, say, for instance repacking a pump. Right?
A. No, not every time, --
Q. Right.
A. -- but we would be replacing some gaskets.
Q. Right.
Sometimes you would be replacing gaskets. Sometimes you would be dealing with packing material, but that's not all you did. Right?
A. No. No.
Q. You worked on a lot of different types of products; right, together?
A. Yes.
Q. And only a portion of that work would be related to gasket and packing material. Right?
A. Right.

119. PAGE 115:11 TO 115:13 (RUNNING 00:00:05.343)

Q. Okay. So while he was doing his work, where were you?
A. Doing another job.

120. PAGE 115:16 TO 115:18 (RUNNING 00:00:05.681)

Q. And in those instances, would that be in the same eight hour period?

A. Yes.

121. PAGE 116:25 TO 117:02 (RUNNING 00:00:04.992)

So you talked a little bit about John Crane gasket material.
A. Right.

122. PAGE 117:03 TO 117:09 (RUNNING 00:00:19.891)

Q. And I want to know, can you please describe to me what that John Crane gasket material looked like?
A. Well, it would be sheets of it.
Q. Okay. And what color were the sheets?
A. It was dark gray or almost a black.
Q. Okay. And did it have any words on it?
A. It had numbers on it, John-Mansville 333.

123. PAGE 117:12 TO 119:12 (RUNNING 00:02:07.533)

Q. Okay. Did it -- and do you only remember seeing the 333 version written on the gasket material itself?
A. There was other numbers, 2012 or something or other like that.
Q. Okay.
A. It seems like there was maybe a 750.
Q. Okay. When you went to -- I take it you went to the supply room to obtain the gasket material that you would be using?
A. Sometimes we did. Sometimes they would bring it to us.
Q. Okay. When you had a chance to go to the supply room, did you ever see any sort of packaging or boxes of the specific sheet gasket material that you would use?
A. No.
Q. So you never saw any sort of box coloring or packaging, coloring or logos. Right?
A. No.
Q. And you wouldn't have had the opportunity to see any warnings as to dangers of asbestos that may or may not have been on that packaging material. Is that right?
A. Right.
Q. And when you went to obtain the gasket material from the supply room, what did you ask for?
A. Well, you had a number to go by.
Q. Uh-huh.
A. A supply room number.
Q. Okay.
A. You looked it up in a catalog.
Q. Okay.
A. You would take that number down there to them. They would go back in the back and get the material.
Q. Okay. And what kind of catalog would you be looking in to see that number? Was it a factory catalog, or was it a brand name manufacturer catalog? Was it a product catalog? Where did you get that?
A. Supply room furnished it.
Q. Okay.
A. They had their own system down there.
Q. Okay. So the supply room actually drafted and supplied you with that catalog?
A. Correct. Yes.
Q. All right. And so you would ask for a specific number of gasket material. Is that right?
A. Yes.
Q. Would you ask for it by brand name or just the number?
A. Just the number.

Q. Okay. So you don't know --
A. But you have to look it up in the catalog to know what you would get.

124. PAGE 119:14 TO 119:22 (RUNNING 00:00:20.184)

But no one told -- no one told you, okay, here's your brand name specific product that you asked for. They just said, okay, here's your sheet gasket material. Right?
A. Yes.
Q. Okay. There were a number of different brands of sheet gasket material that you used at Celanese. Isn't that right?
A. Yes.

125. PAGE 119:25 TO 120:09 (RUNNING 00:00:23.203)

Q. Okay. And just because you named John Crane doesn't mean that there weren't a number of other different brand names that you used on a regular basis. Is that right?
A. Right.
Q. Okay. Can you pinpoint any specific brand name that you used more than any others, or do you just know that possibly one particular brand may have been at this site?
A. Maybe Anchor.

126. PAGE 120:10 TO 120:13 (RUNNING 00:00:09.190)

Q. Okay. Can you tell me that you used one particular brand name of sheet gasket material over another?
A. We always used that John Crane.

127. PAGE 120:15 TO 120:17 (RUNNING 00:00:04.167)

But you can't tell me that you used John Crane more than any other particular brand. Right?
A. No.

128. PAGE 120:19 TO 120:19 (RUNNING 00:00:00.962)

A. No.

129. PAGE 120:21 TO 121:24 (RUNNING 00:00:55.922)

Q. Okay. What size were the sheet gasket material?
A. 4 foot x 4 foot.
Q. Were they all 4 x 4?
A. Yes.
Q. Okay. And where did you go to actually cut out gaskets?
A. To the shop. We had a piece of plywood up there to cut it out on.
Q. Okay. And you described to me how you cut them out before. So I'm not going to go back through that. But how long did it take you to cut out a new gasket?
A. Well, depended on the size of it.
Q. Okay. Can you give me a range, small to large, how long it took you?
A. Well, a large one, it might take you 15 minutes.
Q. Uh-huh.
A. Now, the small one, it would take you about the same thing, --
Q. Uh-huh.
A. -- about 15 minutes.
Q. Okay.

A. I'm talking about down to about an inch and a half.
Q. Okay. Were all -- was all the sheet gasket material the same thickness?
A. No.
Q. Okay. Can you describe the range of thickness it was?
A. Well, you get 1/16, 3/16, but 1/8 was common.

130. PAGE 121:25 TO 122:13 (RUNNING 00:00:30.989)

Q. Did you ever use any rubber gasket material?
A. No. All we used was silicone.
Q. And how often did you use silicone?
A. Maybe once a month.
Q. Did you use precut gaskets as well?
A. Yes, we did.
Q. How often did you use precut?
A. You're talking about on one particular machine or --
Q. As opposed to sheet gaskets. Did you use more precut gasket?
A. More precut.
Q. More precut.
A. It was easier, quicker.

131. PAGE 122:14 TO 122:16 (RUNNING 00:00:03.004)

Q. Who -- what color was the precut gasket material?
A. Dark gray.

132. PAGE 122:17 TO 123:07 (RUNNING 00:00:33.631)

Q. Dark gray.
Do you know who made that?
A. Well, sometimes -- well, some of them would be so small you couldn't see nothing on it. There might be a half of a word on it.
Q. Okay. But you don't know the brand names or manufacturers of the precut gasket material?
A. No.
Q. Okay. You would use more precut gasket material because it just cut out a lot of time for you. Right?
A. Right. Plus, it saved material also.
Q. And you would prefer to use precut gasket material; is that right?
A. Right.
Q. Can you tell me a percentage of how much you used precut gasket material versus sheet gasket material?

133. PAGE 123:09 TO 123:10 (RUNNING 00:00:07.144)

A. Oh, you would use -- precut gaskets you would use probably 90 percent of the time.

134. PAGE 123:12 TO 123:15 (RUNNING 00:00:12.421)

Q. Okay. When you removed gasket material when you were doing the repairs, can you tell what brand name or manufacturer the gasket material you were removing was?
A. No, you can't.

135. PAGE 123:16 TO 123:24 (RUNNING 00:00:40.598)

Q. Okay. We talked about cutting gaskets on the 10 percent of the sheet gasket material you used, and we talked about with the other lawyer removing gaskets and you talked -- you said that there were some fiber or some

dust sometimes. Comparing the fibers or dust related to sheet gasket material or precut gasket material, either one, versus the insulation material removal, can you tell me whether the insulation material was more dusty than the gasket material used?

136. PAGE 124:01 TO 124:01 (RUNNING 00:00:02.539)

A. No, I don't know.

137. PAGE 124:03 TO 124:04 (RUNNING 00:00:03.527)

Q. The insulation removal was dusty. Right?
A. Right.

138. PAGE 124:07 TO 124:09 (RUNNING 00:00:08.199)

Q. Would you say that the insulation removal dust was much more than the dust --
A. Yes. I see what you're saying. Yes.

139. PAGE 124:14 TO 124:16 (RUNNING 00:00:09.940)

So the insulation removal dust was -- created a lot more dust than any sort of work that you did with gasket material. Is that right?

140. PAGE 124:18 TO 124:18 (RUNNING 00:00:00.847)

A. Yes.

141. PAGE 124:20 TO 124:23 (RUNNING 00:00:21.768)

Q. Okay. How often did you or your job title, including times when you worked with Mr. Seay, include removal of insulation material?
A. 50 percent of the time.

142. PAGE 124:25 TO 125:03 (RUNNING 00:00:07.991)

So when somebody else didn't come in before you guys 50 percent of the time to remove the insulation material, you guys would have to do it. Right?
A. Right.

143. PAGE 125:04 TO 125:07 (RUNNING 00:00:17.709)

Q. Okay. Can you tell me whether you used a John Crane gasket material on any particular area that you may have worked on?
A. On those vacuum condensers.

144. PAGE 125:12 TO 125:16 (RUNNING 00:00:18.478)

All right. So you think you used John Crane gasket material on the vacuum condensers. Is there any other application where you know you used John Crane gasket material on any of the product or --
A. No. No, I don't believe so.

145. PAGE 125:17 TO 126:05 (RUNNING 00:00:41.150)

Q. Okay. Did you ever see Mr. Seay use specifically the John Crane gasket material during the course of assignments you had with him?
A. Yes.
Q. Okay. And was that in the year -- in the two years that you worked alongside him?
A. Yes.
Q. Can you tell me that you saw him use John Crane gasket materials on the vacuum condensers?
A. Yes.

Q. Can you tell me how often that was?
A. Well, you cleaned your condensers, it would be every three weeks, but there was 15 of them that had to be cleaned. So there would be one every day.

146. PAGE 126:06 TO 126:23 (RUNNING 00:00:42.561)

Q. But he wasn't always assigned to do the cleaning of the vacuum condensers. Right?
A. No. No.
Q. So you don't -- and how many millwrights were there during those two year periods you worked with Mr. Seay?
A. There was probably -- there was about eight of us.
Q. Eight. So between the eight of you, any --
A. Eight to ten.
Q. Between the eight to ten of you, any one of you could have been assigned to clean out the -- or repair and clean out the vacuum condensers. Right?
A. Yes.
Q. So you don't know specifically whether Mr. Seay was actually assigned to do the repairs or clean out of the vacuum condensers once or every three weeks or at any particular time. Right?

147. PAGE 126:25 TO 126:25 (RUNNING 00:00:00.507)

A. Right.

148. PAGE 127:02 TO 127:06 (RUNNING 00:00:09.296)

Q. And do you -- can you actually recall doing work with Mr. Seay on a vacuum condenser?
A. Yeah.
Q. Okay.
A. He and I worked together.

149. PAGE 127:07 TO 127:09 (RUNNING 00:00:05.123)

Q. Okay. Okay. But you can't tell me how many times he did that work. Right?
A. No, I can't tell you that.

150. PAGE 127:10 TO 127:11 (RUNNING 00:00:04.076)

Q. Okay.
A. I would say it would be once a week anyway.

151. PAGE 127:12 TO 127:16 (RUNNING 00:00:12.988)

Q. And you think that because that's probably -- that's something that you recall being a regular maintenance item, but you don't know that his schedule included cleaning out vacuum condensers every week. Right?

152. PAGE 127:18 TO 127:18 (RUNNING 00:00:01.153)

A. Right.

153. PAGE 127:20 TO 127:24 (RUNNING 00:00:14.814)

Q. Okay. During the entire two year period you worked with Mr. Seay, was that job of cleaning the vacuum condensers always in your rotation, or was it just maybe a six month period of that two year time?
A. Always.

154. PAGE 135:16 TO 136:03 (RUNNING 00:00:37.206)

So even though you were -- there were two mechanics assigned to the packing or gasket replacement job, not both of you would actually be doing the removal. It would be kind of a teamwork gasket removal done by one guy, the other guy would go get the new gasket ready?
A. Right.
Q. Right.
So when -- for instance, when you were teamed up with Mr. Seay, one or both of you would be -- excuse me, one or the other of you would be working on the, for instance, gasket removal while the other one was getting the gasket to be put back on. Right?
A. Right.

155. PAGE 136:06 TO 136:08 (RUNNING 00:00:09.428)

Q. So you wouldn't be standing over Mr. Seay while he was doing some gasket removal. Right?
A. Right.

156. PAGE 138:11 TO 138:19 (RUNNING 00:00:22.243)

through my notes. In preparation for your deposition today or in any of your conversations previously relating to Mr. Seay's case, were you shown any lists of product types or names?
A. No.
Q. Were you shown any photos or pictures?
A. No.
Q. Did anybody try to jog your memory on brand names or manufacturers?

157. PAGE 138:21 TO 139:05 (RUNNING 00:00:23.956)

A. No.
BY MS. NETTLES:
Q. No.
Did you do anything to try to jog your own memory about brand names or manufacturers?
A. Well, I tried to remember.
Q. Okay. Besides just looking in your own brain and trying to remember what went on, did you look at any other outside source, maybe a legal document or online?
A. No.

158. PAGE 164:22 TO 165:08 (RUNNING 00:00:44.213)

In terms of the insulation that was used out there to hold heat in on pipes and systems in general, you talked about removing what you called the removables from a pump or a valve. Right?
A. Right.
Q. And this is just something that's fabricated by the insulation workers. Some of them called them cozies, like your old grandmama's tea cozy. But they called them a cozy or a removable, and basically you would unlace that and it came off all of a piece. When you took it off the valve or the pump, you set it aside. Right?
A. Right.

159. PAGE 165:11 TO 166:06 (RUNNING 00:00:54.212)

Q. And then you would put it back on and wire it back on. Right?
A. Right.
Q. Some of them laced. Some of them wired.
A. Then you might have some removables that are

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solid, you know. They wouldn't be flexible like you're talking about.
Q. Oh, understood.
A. You would remove them so you could get to the flanges.
Q. And those might be cut out of a hard material and then put together so you could just lift it off?
A. Yes.
Q. And that was so that you could remove the external insulation from a valve or a pump without
00166:01 disturbing it so you could put it back on and reuse it?
A. Yes.
Q. Makes sense.
You plan for the fact that you're going to have to get into that pump or valve?
A. Right.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:10:17.339)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

DENNIS SEAY and LINDA SEAY, Plaintiffs,	)	
vs.	)	C/A NO.: 2013-CP-42-03915
3M COMPANY a/k/a Minnesota Mining & Manufacturing Company, et al., Defendants.	)	

DEPOSITION OF EDWIN HOLSTEIN, M.D.

Long Beach, California

Friday, December 12, 2014

Volume I

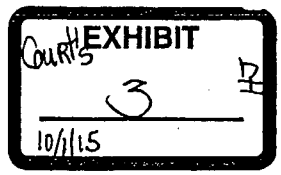
Reported by:

LISA ANDREASEN

CSR No. 9584

Job No. 1980209

PAGES 1 - 151



people exposed to asbestos from that and not exposed to asbestos in any other way. But the short answer to your question is that I agree.

Q You've testified in the past that there are some gasket studies that show air concentrations that are very, very low; is that correct?

A Yes, there are.

Q You're familiar with IARC?

A I am. I-A-R-C.

Q Right. I'm sorry. And in 1972, IARC published that there's no conceivable health risk in the use of asbestos-based gasket material; is that correct?

MS. DEAN: Objection. Form, misleading, inaccurate, misstates testimony.

BY MR. ULLOA:

Q You can answer.

A I think that statement was made by a particular individual author in a publication that was published by IARC. I'm not sure that represents the views of IARC itself.

Q This is a question I don't really even know. Was Mr. Seay a smoker during his exposure period?

A Now, wait a minute. You're telling me all the questions you've been asking me for an hour and a

half you already knew the answer to?

Q Can I get paid, then?

A It's not up to me.

Okay. So let me just clear my memory here. The question is whether he was a smoker while he was employed at or by Daniels?

Q That's correct.

A I believe the answer is yes.

Q Okay. And is there any information as to pack years or pack per day or anything like that?

A They vary from 30 pack years to 45 pack years, and all of the records say that he had stopped smoking somewhere between 10 and 20 years before the onset of his malignant mesothelioma.

Q Okay. I think we've talked about this before in the past, but would you degree that the act of smoking somewhat impairs the body's mucociliary escalator?

A Just to refine --

Q Please. I'm sorry.

A -- my answer to your previous question, here's a record that says that it was almost 30 years prior to the onset of his malignant mesothelioma that he stopped smoking just to --

Q Right, I understand.

A -- complete that answer. And now the pending question, sir? I'm sorry.

Q Sure. And, again, I refer to us discussing this in the past, that it's true that the act of smoking -- act of smoking impairs the body's mucociliary escalator?

A Yes.

Q And the mucociliary escalator is in part responsible or is able to expel some of the asbestos fibers that an individual inhales at any particular time; correct?

A That's true.

Q And I think in the past you've told me, then, that an individual who smokes will retain more asbestos fibers as a result of that smoking and the damages to the body's natural defenses at that time.

A Compared to a nonsmoker?

Q Yes.

A Yes, that's correct.

Q So it would be fair to say that the act of smoking during an individual's exposure opportunity would result in the higher retention of asbestos fibers during that period of time?

A Yes.

Q And that resulting higher retention would

increase that individual's dose of asbestos fibers during the time they were smoking?

A If one defines dose as the internal dose, that's correct.

MR. ULLOA: You know, I think I'm going to look at your Dr. Robb's report, but while I do that, I'm going to go ahead and tender the witness to additional questions. Thank you for your time, Doctor.

THE WITNESS: Thank you, sir.

MR. ULLOA: I might have some at the end on this report. Thank you.

MS. DEAN: Guys, if you can't give it, that's absolutely fine but -- let's go off the record for a second.

MR. ULLOA: Off the record.

(A discussion was held off the record.)

MS. DEAN: This is Jessica Dean. I represent the Seay family. There are some defendants that have -- that are on the phone including Higbee, Inc., FMC as it relates to Link-Belt and York where Dr. Holstein at this time does not intend to give any specific opinions as to any exposures relating to those particular companies or entities. If that were to change, we would make him available again, and

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Laubly, Charles (Vol. 01) - 12/13/2002

1 CLIP (RUNNING 00:16:49.945)

10012015_edited

CL001 — 36 SEGMENTS (RUNNING 00:16:49.945)

1. PAGE 4:19 TO 4:21 (RUNNING 00:00:06.300)

Q. Sir, can you please state your full name for the record?
A. Charles S. Laubly, Sr.

2. PAGE 5:06 TO 5:09 (RUNNING 00:00:08.514)

Q. How long have you lived here in Tucson?
A. Since 1979.
Q. That's the year you retired from Celanese?
A. Yes.

3. PAGE 7:18 TO 8:05 (RUNNING 00:00:27.276)

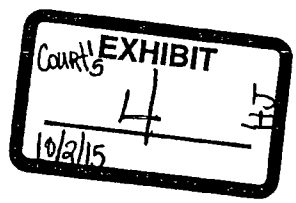
Q. Sir, where did you attend college?
A. Georgia Tech.
Q. The Yellow Jackets?
A. Yes.
Q. Did you graduate in 1949?
A. Yes.
Q. During some of the time that you were in college, you were working for American Can; is that correct?
A. Yes.
Q. And I understand they made cans?
A. Yes.
Q. Okay.

4. PAGE 8:23 TO 9:10 (RUNNING 00:00:45.806)

Q. What was your job at American Can during college?
A. One summer I went back to Illinois and worked at the research division there in their industrial hygiene group. Prior to that I had worked for that group just after I got out of the Army, and then I also worked at the Atlanta plant between semesters.
Q. Was that when you were actually doing labor work?
A. I was doing labor work then.
Q. I understand you may have done some insulation work; is that true?
A. Yes.

5. PAGE 10:10 TO 11:08 (RUNNING 00:01:10.335)

Q. So your involvement with insulation was simply the asbestos cement?
A. Or mud that you might call it.
Q. Okay. So the mud. Were you the person actually mixing the mud?
A. Yes.
Q. You have to mix a powder with water; is that true?
A. Yes.
Q. And during that process you believe that you were exposed to asbestos?
A. Asbestos was there, yes.



Dennis Seay

Q. Do you believe you breathed in the asbestos from the powder?
A. Well, I must have. I was close to it.
Q. What year did you leave American Can?
A. Well, the last time I left American Can was 1947.
Q. And then after college, you went to an insurance company; is that true?
A. That's true.
Q. What was the name of that insurance company?
A. It was Lumbermen's Mutual Casualty Company. It was part of the Kemper Group.

6. PAGE 11:12 TO 11:15 (RUNNING 00:00:24.584)

Q. How long did you work for Kemper?
A. Seventeen years.
Q. Does that put you leaving Kemper in 1966?
A. 1966, March 14th.

7. PAGE 16:17 TO 17:03 (RUNNING 00:00:30.357)

receiving if they stayed there. Did you throw away your journals or did you send them on to the library at Celanese?
A. The only journal that I kept in my office was the AIHA journal.
Q. The other journals you received, I imagine, and then you forwarded them on?
A. Yes.
Q. Where did you forward the journals to?
A. Eventually to the library in our department.
Q. Was that the library in New York City?
A. Yes.

8. PAGE 17:14 TO 18:12 (RUNNING 00:01:23.370)

Q. When did you first have a librarian, to your knowledge, at Celanese?
A. Three or four years later, I would say.
Q. So potentially late '60s, 1970, around there?
A. Yes.
Q. Prior to having a librarian, you still had a library, though; isn't that true?
A. Well, you might have called it a library.
Q. A place where books and journals were placed?
A. Yes. Yes.
Q. Was anybody in the New York City office free to go by and consult any of the materials in the library?
A. Yes.
Q. If Celanese employees from other plants and other locations happened to be in the New York City office, were they free to go look at the library?
A. Yes.
Q. Okay. We have talked about the American Industrial Hygiene Association and the ACS. What other organizations were you a member of while you were at Kemper?
A. No other organizations.
Q. Were you ever a member of the IHF?
A. That was a corporate membership.

9. PAGE 18:15 TO 19:03 (RUNNING 00:00:29.567)

Q. Did you receive the Industrial Hygiene Digest or the digest of the IHF?
A. Yes.
Q. Did you read that digest?

A. Yes.
Q. Did you read it as it came in from 1949 until 1966?
A. Yes.
Q. You're aware that the digest of the IHF routinely contained numerous abstracts from medical literature?
A. Yes.
Q. And did you read through those abstracts?
A. Yes.

10. PAGE 21:25 TO 22:08 (RUNNING 00:00:44.012)

Q. You were aware that asbestos could cause asbestosis while you were at Kemper; is that true?
A. Yes.
Q. And you were aware that asbestos -- let me rephrase that. You were aware that asbestosis could be a disabling disease at the time you were at Kemper; is that true?
A. I was aware that workers that had exposures to asbestos could possibly have asbestosis.

11. PAGE 23:02 TO 24:04 (RUNNING 00:01:28.602)

Q. Okay. So in 1998 when you were asked if you knew that certain pneumonoconioses could be fatal, you answered that, yes, you did know in 1949?
A. Yes.
Q. Now that you have had a chance to read that, is that your recollection is what you knew in 1949?
A. Yeah.
Q. And you also knew that it could be -- I'm sorry. I just asked you -- you also knew certain pneumonoconioses could be disabling in 1949?
A. Yes.
Q. Okay. So your recollection has been refreshed then that you did know those two things were true?
A. Yes.
Q. While you were with Kemper, is it true that you did some work sampling asbestos at the Mastic Tile corporation?
A. Yes.
Q. And you were using the Midget Impinger during that period of time?
A. Yes.
Q. Did you find any excessive asbestos exposures at the Mastic Tile corporation, to your recollection?
A. Yes.
Q. What did you recommend they do as a result of those excessive exposures?
A. I recommended that they install local exhaust ventilation at the mixer.

12. PAGE 26:16 TO 27:12 (RUNNING 00:01:09.699)

Q. Do you agree that one way to contain a hazard is to isolate it?
A. Yes.
Q. And do you agree that for industrial dust it was known that insulation was a way of avoiding wide-ranging exposures in the 1950s?
A. Local exhaust ventilation was recommended.
Q. And local exhaust ventilation was known as a way to address industrial dust in the 1950s?
A. Yes.
Q. Sir, you are familiar with maximum allowable concentrations, correct?

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A. Yes.
Q. And you learned about MACs in the 19 -- in 1949 and 1950; is that right?
A. That's right.
Q. You were aware that there was an MAC for asbestos during that period of time?
A. Yes.
Q. Who developed MACs?
A. The American Conference of Governmental Industrial Hygienists.

13. PAGE 28:11 TO 28:16 (RUNNING 00:00:13.082)

Q. Okay. But from reading your past deposition, it's your belief that Celanese was a member of the IHF?
A. I believe -- I believe so.
Q. And you believe that they received the digest of the IHF?
A. Yes.

14. PAGE 29:07 TO 29:12 (RUNNING 00:00:13.870)

Q. Was Celanese a member of the National Safety Council while you were there?
A. Yes.
Q. Did Celanese receive the National Safety News and the Transactions of the NSC?
A. Yes.

15. PAGE 29:19 TO 29:21 (RUNNING 00:00:07.283)

Q. Do you know who at Celanese received those two periodicals?
A. Probably the safety director.

16. PAGE 29:24 TO 30:11 (RUNNING 00:00:27.960)

Q. Who would that be?
A. That was Glen Flemming.
Q. Glen Flemming. And my understanding is that Glen Flemming was also relatively active in the National Safety Council?
A. Yes.
Q. Was Mr. Flemming at Celanese when you arrived in 1966?
A. Yes.
Q. And, in fact, you had met Mr. Flemming a few years prior while you were still working for Kemper; is that true?
A. Yes.

17. PAGE 31:01 TO 31:04 (RUNNING 00:00:09.149)

Q. To your knowledge, Mr. Flemming then stayed a member of the NSC throughout the time that you were at Celanese?
A. Yes.

18. PAGE 33:23 TO 34:01 (RUNNING 00:00:07.499)

Q. Having a library was a way to stay abreast of the changing issues in industrial hygiene and safety; is that true?
A. Yes.

19. PAGE 37:24 TO 38:01 (RUNNING 00:00:05.631)

Q. So you personally, though, would acknowledge asbestos as a workplace hazard then in the 1950s, wouldn't you?

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20. PAGE 38:04 TO 38:07 (RUNNING 00:00:08.839)

A. I recognized it as a dust hazard.
Q. In the 1950s you personally recognized asbestos as a dust hazard?
A. Yes.

21. PAGE 43:23 TO 44:15 (RUNNING 00:00:57.717)

Q. If you had an industrial hygiene question, what were the first resources you would consult while you were at Celanese?
00044:01 A. The first resource?
Q. Right. What was the primary resource you would go to first?
A. The publication by Frank Patty.
Q. And is that Patty's Industrial Manual?
A. I don't know what it's called now.
Q. Do you remember specifically what it was called then when you were at Celanese?
A. I had a copy of it with me all the time, but I don't recall the exact title.
Q. Was there a copy of Patty's in the library as well?
A. At Celanese?
Q. Yes.
A. Yes.

22. PAGE 48:18 TO 48:20 (RUNNING 00:00:11.160)

Q. Did you ever talk to Dr. Dixon about attending the New York Academy of Sciences meeting in 1964?
A. No.

23. PAGE 49:11 TO 49:17 (RUNNING 00:00:19.429)

Q. Sir, you were asked: Now, did you or anybody that you know of from Kemper attend the New York Academy of Sciences meeting in 1964 that dealt with asbestos and asbestos diseases? And you answered: I didn't attend. I understand that Dr. Dixon did. He was a member of the academy at the time.
Do you remember talking about that?

24. PAGE 49:19 TO 50:02 (RUNNING 00:00:22.315)

A. Yes.
Q. Okay. So to your recollection, did Dr. Dixon attend the New York Academy of Sciences meeting addressing asbestos in 1964?
A. I had heard that he had attended. I don't know the specifics.
Q. Okay. So to your belief he did attend, but you 00050:01 don't know really much more than that?
A. That's all.

25. PAGE 64:12 TO 64:20 (RUNNING 00:00:31.382)

Q. In the past have you said that the action level was defined as one half of the maximum allowable concentration or the TLV?
A. Yes, that's -- I believe that's the wording.
Q. So if during your monitoring you found a level of some air contaminant that was above one half of the maximum allowable concentration or TLV, you would take some action on that?
A. Yes.

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26. PAGE 71:23 TO 72:06 (RUNNING 00:00:29.870)

Q. As far as you know, was there any program at Celanese to educate workers about dust hazards prior to 1966?
A. I don't know that.
Q. You're not aware of any?
A. I'm not aware of.
Q. Are you aware of any program to educate Celanese workers about dust hazards after 1966?
A. When it appeared in the federal register, yes.

27. PAGE 78:13 TO 78:17 (RUNNING 00:00:15.561)

Q. Okay. Do you believe that there was a companywide policy or standard for handling asbestos-containing materials in the 1960s?
A. I don't know if there was a standard. I think there was a practice of doing that.

28. PAGE 79:05 TO 79:10 (RUNNING 00:00:11.176)

Q. Do you know if there was a standard that was companywide for the removal or installation of asbestos-containing materials?
A. I don't know that.
Q. You're not aware of any?
A. No.

29. PAGE 83:10 TO 83:13 (RUNNING 00:00:07.864)

Q. Sir, is it true that prior to OSHA you don't know what was being done at Celanese to be sure that workers were not being exposed to asbestos dust in the air?

30. PAGE 83:16 TO 83:23 (RUNNING 00:00:33.095)

A. Prior to OSHA?
Q. Prior to OSHA.
A. I don't remember the specific dates when asbestos was checked.
Q. But you never checked it until the '70s; isn't that true?
A. That's -- I'm not sure the exact date that I checked. It was probably in the '70s.

31. PAGE 83:24 TO 83:25 (RUNNING 00:00:03.868)

Q. Sir, I'm going to read you one question and one answer from your deposition.

32. PAGE 84:04 TO 84:19 (RUNNING 00:00:40.403)

Q. And just ask you if this refreshes your recollection about what you knew. The question is: And what precisely was it that Celanese did in the years you were visiting the company and working with the company to be sure that its maintenance employees, including boiler markers and pipe fitters were not being exposed to asbestos dust in the air?
And your answer was: Well, until the OSHA levels were introduced, I don't know what was being done. And you say: Here again, this was up to the safety supervisor for respirator program. How well informed he or they were, I don't know. But the first part of your answer is: Well, until OSHA levels were introduced, I don't know what was being done.
Is that true to your recollection, sir, you don't know what was being done prior to OSHA?

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33. PAGE 84:22 TO 84:23 (RUNNING 00:00:13.962)

A. Well, I think I realized something was being done, but I don't know exactly when it started.

34. PAGE 99:22 TO 100:03 (RUNNING 00:00:25.743)

Q. Do you know when Celanese decided to stop using asbestos-containing insulation in its plants?
A. It would be contained in that memorandum that was sent out, the exact date.
Q. And I'll look at that. Do you know why that decision was made?
A. They wanted to eliminate asbestos.

35. PAGE 100:23 TO 101:06 (RUNNING 00:00:32.199)

Q. When did you first receive copies of the Federal Register?
A. Prior to OSHA.
Q. How long prior to OSHA?
A. Probably when we heard that OSHA was going to be involved.
Q. Would that be within the few years prior to the OSHA Act being passed?
A. Yes.

36. PAGE 106:11 TO 106:19 (RUNNING 00:00:32.466)

When you arrived at Celanese, you already knew that asbestos could cause asbestosis, correct?
A. Based on the two studies I did, yes.
Q. And so knowing that asbestos-containing materials could cause this disease, asbestosis, did you take any steps to look into whether or not asbestos-containing materials could be removed at Celanese?
A. No, I did not.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:16:49.945)

Dennis Seay

Kradin, Richard L. (Vol. 01) - 07/15/2015 — 1 CLIP (RUNNING 01:42:11.083)

edited 10012015

RK001 — 87 SEGMENTS (RUNNING 01:42:11.083)

1. PAGE 7:09 TO 11:20 (RUNNING 00:04:04.052)

Q. Sir, can you go ahead and introduce yourself to the ladies and gentlemen of the jury?
A. My name is Richard Lawrence Kradin.
Q. Are you a doctor?
A. I am.
Q. Can you tell them what type of doctor you are?
A. My career is a little bit unusual. I'm two types of doctors. I'm a pulmonologist, which is a fancy word for a lung doctor, and I'm also a pathologist, which is someone who looks at tissues under the microscope.
Q. All right. So why is that unusual?
A. Because usually one is one or the other, and it takes a long time to train in both areas.
Q. And so you've trained in both areas. Have you practiced in both areas?
A. I have trained in both areas, and I continue to practice in both areas.
Q. All right. We'll talk a little bit more about that in a minute, but I presume you went to college?
A. I did.
Q. Where did you go to college?
A. New York University.
Q. And did you get a degree?
A. I did.
Q. What was that in?
A. It was in chemistry.
Q. After that -- about when did you graduate from undergrad?
A. I graduated in 1971.
Q. Then did you go on and get an advanced degree?
A. I did. I got a master's in physical chemistry in 1972. The same place.
Q. And then at some point, you went into medicine, true?
A. Right after that, I went to medical school at Thomas Jefferson in Philadelphia. I got my M.D. in '76.

(Exhibit No. 1, Curriculum Vitae, marked for identification)

BY MR. PANATIER:
Q. Okay. Now, your resume, which I have here, which we'll mark as Exhibit 1, it has some other degrees here. Then some decades later you got what's called an MLA from Harvard. What's that?
A. That's a master's of liberal arts.
Q. Okay. And then a DTM&H from the London School of Hygiene & Tropical Medicine?
A. That's a diplomat in tropical medicine and

COURT'S EXHIBIT 5 10/2/15

hygiene.
Q. Now, do you work at a hospital?
A. I do.
Q. What hospital do you work at?
A. I work at the Massachusetts General Hospital in Boston, Massachusetts.
Q. Can you go through, just give us a thumbnail sketch of your role at that hospital?
A. Yes. I am in the departments of both medicine and pathology where I practice, and as part of my duties, in addition to seeing patients and looking at biopsy materials, I teach. I teach medical students. I teach residents in pathology and medicine. I teach fellows in pulmonary medicine and in pathology. So I have a whole spectrum of teaching responsibilities.
Q. All right. Now, do you also treat and help diagnose patients?
A. I do.
Q. Okay. Can you tell the jury what your role is in actually treating and diagnosing patients?
A. Well, again, it depends on which hat I'm wearing. As a pulmonologist, I see patients in the office. I take a history from them. I do a physical examination. I order x-rays and blood tests, and then I formulate a diagnosis and treat them based on that diagnosis.
As a pathologist, I don't see patients per se, but I do see biopsies from patients and other tissues that are removed at the time of surgery or at the time of autopsy, and in that role I look at these tissues under the microscope. I make a diagnosis, and I share that diagnosis with my clinical colleagues.
Q. So you play a role in the diagnosis of the patient by looking at the tissue?
A. Yes.
Q. Okay. And that's the pathologist role?
A. That's my pathology role.
Q. Now, as a pathologist, have you diagnosed mesothelioma before?
A. I have.
Q. Okay. And, generally, how do you do that from the pathologist perspective?
A. Well, basically one learns as a pathologist how to recognize the appearance of tumors under the microscope. So the major aspect of the diagnostic approach is to recognize what these tumors look like. For the case of mesothelioma, there are also ancillary studies. Other studies such as what we call immunological stains, immunostains, which are other types of specialized markers that help us decide whether a tumor is a mesothelioma, for instance, or another type of tumor.
Q. Okay. So you actually apply different types of chemical stains to the tissue sample, and based on how those stains read, you can make a diagnosis?

2. PAGE 12:02 TO 15:03 (RUNNING 00:02:49.979)

A. Okay. What we do is we make a diagnosis largely based on what we see under the microscope with the standard sections, and then we try to confirm it or refute it using these immunostains which we apply based on a panel that we choose.
Q. Okay. And how does the result of the

immunohistochemical stains actually tell you what disease you're looking at or what cancer you're looking at?
A. Well, again, we know that for certain tumors there are a variety of different stains that are likely to be positive for that type of tumor and negative for that tumor or another tumor. So we have experience based on the medical literature and our own experience as to what these tumors should stain like.
Q. So if you have a tumor that was taken from somebody's chest, do those stains help you distinguish between mesothelioma and other types of cancer?
A. They can, yes.
Q. Okay. Now, I'm going to talk to you a little bit more about your background, but I may ask you opinion questions and conclusions that call for
00013:01 an expert opinion. Can you keep all of your opinions to a reasonable degree of medical probability?
A. Yes, sir.
Q. Going on in your training, are you licensed to practice medicine?
A. I am.
Q. Okay. And are you board-certified?
A. I am. I'm board-certified in internal medicine, pulmonary medicine, and pathology.
Q. Okay. What does it mean to have a board certification?
A. Board certification means that you've gone through a standardized period of training, after which you sat and taken a standardized examination, and if you pass all of those different elements, then you are considered board-certified.
Q. Okay. You've received funding from the Centers for Disease Control and the National Institute of Health for your research; is that fair?
A. I have, yes.
Q. Okay. And then in turning through your resume, let me just go to the article section. Have you published peer-reviewed articles?
A. I've published approximately 200 peer-reviewed articles.
00014:01 Q. All right. Have any of those been on asbestos or mesothelioma?
A. Yes. A subset have been on asbestos and a subset of those on mesothelioma.
Q. Okay. Have you also -- I show about 17 or so book chapters; is that right?
A. That's probably right.
Q. Okay. Have you published in books as well?
A. Yes, I have.
Q. Okay. Are you charging for your time today?
A. I am.
Q. Okay. And what is the rate that you charge for your time?
A. Five hundred dollars an hour.
Q. Okay. Is testifying in asbestos cases something that you've done over the years?
A. Yes, it is.
Q. Okay. And have you typically testified on the plaintiff's side like you have -- or at the request of the plaintiff as you are today?
A. Yes.

Q. All right. Now, are any of your opinions any different than when you are testifying in a court case than they would be in your teaching setting or anything like that?
A. I would say no, and I hope not.

3. PAGE 15:04 TO 16:04 (RUNNING 00:00:50.792)

Q. Okay. All right. I'm going to start at the end and go backwards. Did you review medical records for Mr. Seay?
A. I did.
Q. Did you review three volumes of his deposition?
A. I did.
Q. Did you review the deposition of Ronnie Thompson?
A. I did.
Q. Okay. And what disease was Mr. Seay diagnosed with?
A. Mr. Seay ultimately had a malignant mesothelioma of the right chest that went on to cause his death.
Q. Was it a mesothelioma of the pleura?
A. Yes.
Q. Okay. And do you have an opinion as to what caused his mesothelioma?
A. His mesothelioma was caused by his cumulative occupational exposures to asbestos.
Q. Were you able to tell from reading the deposition testimony in the case that he had a history of occupational exposure to asbestos?
A. Yes. Mr. Seay had a clear history of exposure to asbestos from many years.

4. PAGE 16:05 TO 16:07 (RUNNING 00:00:02.982)

Q. Okay. He worked at a place called Celanese, right?
A. Yes.

5. PAGE 16:11 TO 16:13 (RUNNING 00:00:04.536)

Q. And were you able to determine whether or not he had occupational exposure while working at Celanese?

6. PAGE 16:16 TO 18:04 (RUNNING 00:01:32.443)

A. In his deposition, he reported that he worked at Celanese from the late 1960s through the 1970s, and that during that time he was exposed to asbestos.
Q. Generally speaking, what was your understanding of what he did?
A. He worked as -- largely as a maintenance worker for what was called Daniel Construction, and he worked with a variety of asbestos-containing products, which are listed in my report, including gaskets and valves, pumps. Material like that.
Q. Okay. And you're making reference to your report there, correct?
A. I am, yes.
Q. All right. Now, you're not an industrial hygienist, right?
A. No, I am not.
Q. Okay. You're a medical doctor, true?
A. I am.

Q. Okay. You're not Mr. Seay's medical doctor, right?
A. No.
Q. Okay. Now, from your review of the -- well, let me ask you. Do you have a general understanding of the literature as it pertains to the ability of different types of products to release asbestos into the air?
A. I do.
Q. Okay. And why have you -- why have you stayed up on that literature?
A. In large measure because it's been important to know that for these types of proceedings, but in general, again, it just speaks to the science of asbestos-related diseases.
Q. And from that, are occupational exposures
00018:01 to asbestos from gaskets, packing, and insulation all types of exposures that have been shown in the literature to release asbestos?
A. Yes.

7. PAGE 18:21 TO 18:23 (RUNNING 00:00:09.248)

to address the objection. Do you have an opinion as to the level of exposure one can expect from working with gaskets, packing, and insulation?

8. PAGE 19:01 TO 19:14 (RUNNING 00:00:34.603)

00019:01 A. I do.
Q. And what is that opinion?
A. My opinion, as I mentioned, is that there is, depending on the way the gaskets are worked with and packing is worked with, that there's going to be release of fibers in almost all cases above background levels, and in some cases, depending, again, on how the machines are used to remove this material, orders of magnitude higher than background levels.
Q. And for -- for instance, for gasket work, scraping off of gaskets, wire brushing, and power wire brushing, are those the types of activities that, in your opinion, can release asbestos?

9. PAGE 19:17 TO 19:24 (RUNNING 00:00:23.572)

A. Work with gaskets is one of the things that has been studied, and, again, gaskets are often removed either through -- with the use of wire brushes, through the use of powered brushes, and scraped away. That type of work, particularly if the gaskets are tightly adhered to the material, is going to release fibers well in excess of the ambient levels of background.

10. PAGE 20:03 TO 20:15 (RUNNING 00:00:27.154)

Q. And were you able to determine from information that you were provided, the depositions and so forth, that Mr. Seay had a working history with gaskets and packing?
A. Yes, he did.
Q. And were you able to see that he had a history of scraping off, wire brushing, and power wire brushing those products?
A. That is what he described, yes.
Q. Do you have an opinion as to whether or not those types of exposures would have been a

substantial factor in the development of his mesothelioma?

11. PAGE 20:17 TO 20:25 (RUNNING 00:00:22.971)

A. The answer to that is yes.
Q. Okay. What is that opinion?
A. My opinion is that that type of work would have released asbestos in a way that would have made those exposures substantial contributory factors.
Q. Okay. And do you consider occupational -- each occupational exposure that is above background to be a substantial factor in the development of mesothelioma?

12. PAGE 21:02 TO 21:17 (RUNNING 00:00:54.149)

A. I consider all of these types of work that release fibers above ambient levels to be exposures that lead to the cumulative dose that increase the risk of the development of a tumor.
Q. Now, as a pathologist or as a pulmonologist, are you aware of any scientific way that you can take one aspect of a person's exposure history to asbestos and say this doesn't count?
A. No. I think the history of an individual at the workplace or elsewhere is as it is. It stands as was given. For instance, in this case, Mr. Seay's deposition. So all of his exposures are the exposures that he sustained during his lifetime.
Q. Are there any -- to your knowledge, sir, do you have an opinion as to whether or not there is a known safe level of exposure to asbestos?

13. PAGE 21:20 TO 22:08 (RUNNING 00:00:34.089)

A. I think the medical literature increasingly suggests that there is no threshold level for the development of disease certainly with respect to mesothelioma. The only level that I currently assume to be safe, and it's an assumption, are ambient background levels.
Q. Okay. Background levels not related to occupational exposure?
A. Right. Not related to occupational exposures.
Q. And do articles such as the Iwatsubo article, Rodelsperger, and LaCourt support your opinion regarding the no known threshold aside from background?

14. PAGE 22:11 TO 23:16 (RUNNING 00:01:24.967)

A. There are three published epidemiological studies in the literature that look at low dose exposures to asbestos with respect to the risk of developing malignant mesothelioma. I think you've noted the names of the three. They're by Iwatsubo, Rodelsperger, and LaCourt. And they all essentially show that very low levels of exposure can increase statistically the risk of developing mesothelioma.
Q. Do you rely upon those articles?
A. I do.
Q. What is "latency" in terms of mesothelioma?
A. Latency is the period of time between which one is exposed -- or I should say after which one is exposed to asbestos in this case and the

00023:01 development of a malignant mesothelioma. So for
02 malignant mesothelioma as well as for all of the
03 other asbestos-related disease there is a substantial
04 time interval that elapses after exposure and prior
05 to the development of disease.
06 Q. And is there an average range for that
07 latency period for mesothelioma?
08 A. I'd say the shortest latency period that
09 is generally accepted would be 10 years. More --
10 usually, it's in the range of 20, 30, 40 years before
11 one develops the disease.
12 Q. And generally speaking, Doctor, do you
13 agree that the greater a person's exposure, the
14 shorter the latency period, and the less the
15 exposure, the longer the latency period, generally
16 speaking?

15. PAGE 23:18 TO 24:25 (RUNNING 00:01:37.198)

18 A. The latency periods have been looked at
19 historically in the early days of asbestos exposure
20 when there were no limits of its use in the
21 workplace. Very high exposures were associated with
22 a basically small latency period.
23 At this point in time, as exposures have become
24 less due to regulations, the latency period has
25 become increasingly prolonged.
00024:01 Q. Okay. Do you have an opinion as to the
02 relative potency of asbestos fibers between
03 serpentine fibers and amphibole fibers?
04 A. There are two major categories of fibers.
05 As you noted, the serpentine fibers are chrysotile
06 fibers and the amphibole fibers, which includes
07 predominantly amosite and crocidolite asbestos, but
08 also some other commercial brands.
09 Most of the literature would suggest that the
10 amphiboles are more potent on a per fiber basis in
11 the development of disease as causing disease than
12 are the serpentine fibers. However, again, this is
13 on a per fiber basis, and the disease basically
14 ultimately depends on the cumulative dose.
15 Q. Okay. So do you have an opinion as to
16 whether or not all of the different fibers,
17 chrysotile, amosite, crocidolite, tremolite,
18 actinolite, anthophyllite can cause mesothelioma?
19 A. I think the majority of the medical
20 literature would support the fact that all forms of
21 asbestos cause asbestos-related diseases, including
22 mesothelioma.
23 Q. Okay. And would it be your opinion that
24 that is a consensus when you consider all of the
25 medical literature, sir?

16. PAGE 25:03 TO 25:21 (RUNNING 00:00:44.784)

03 A. It would be my opinion; that is the
04 prevalent opinion.
05 Q. Okay. All right. Does smoking cause
06 mesothelioma?
07 A. No. Smoking causes a lot of bad things,
08 but one of the things it doesn't cause is
09 mesothelioma.
10 Q. Is there any support in the literature
11 you're aware of that smoking causes mesothelioma?
12 A. No. There's no literature that I'm aware
13 of, epidemiologically or otherwise, that indicates
14 that smoking is a risk factor for the development of

mesothelioma.
Q. I have a couple more general questions for you. Do you rely upon the findings of various regulatory and scientific bodies such as the EPA, OSHA, NIOSH, the National Cancer Institute, the World Health Organization for their conclusions regarding asbestos?

17. PAGE 25:23 TO 26:04 (RUNNING 00:00:18.143)

A. I think the major regulatory agencies generally take into account the consensus of the science of the time, and so at some level I think they are secondarily reliable sources for opinions.
Q. Okay. And do you rely upon them for their opinions that there is no known safe level of exposure to asbestos?

18. PAGE 26:07 TO 26:13 (RUNNING 00:00:19.009)

A. I think their opinion reflects, again, the opinion of many medical scientists in this area that have concluded that there is no safe level of asbestos, particularly with respect to mesothelioma.
Q. And do you rely upon those regulatory and scientific bodies for their conclusions that all fiber types can cause mesothelioma?

19. PAGE 26:15 TO 27:01 (RUNNING 00:00:30.967)

A. Again -- once again, I think the regulatory agencies reflect the medical literature in that regard. They're in concordance.
Q. Okay. Do you have an opinion as to whether or not Mr. Seay had substantial exposures to gaskets and packing, sir?
A. My opinion is based on his deposition testimony. The answer is yes.
Q. Okay. And do you have an opinion as to whether or not each of those exposures would be a substantial factor in the development of his mesothelioma?

20. PAGE 27:05 TO 27:08 (RUNNING 00:00:08.538)

A. I think, as he describes his work, that all exposures that would have released fibers into the ambient air above background would have been substantial causes.

21. PAGE 28:09 TO 28:15 (RUNNING 00:00:20.174)

Q. Doctor, let me ask -- let me ask you to assume at trial that the testimony will be from an industrial hygiene perspective and an occupational medicine perspective that Mr. Seay had exposure to gaskets and packing on Crane Co. valves. Can you assume that?
A. Yes.

22. PAGE 28:19 TO 28:20 (RUNNING 00:00:06.345)

Q. And that that exposure was far in excess of background. Can you assume that?

23. PAGE 28:25 TO 28:25 (RUNNING 00:00:00.809)

A. Yes.

24. PAGE 29:05 TO 29:16 (RUNNING 00:00:27.519)

Q. Sir, based on that hypothetical, would exposure to asbestos from Crane Co. valves be a substantial factor in the development of Mr. Seay's mesothelioma?
A. The answer is yes.
Q. Okay. I want you to assume that the testimony will be that Mr. Seay worked on Durco pumps repeatedly and frequently and that his exposure to gaskets and packing from those pumps would have been far in excess of background levels. Can you assume that?
A. Yes.

25. PAGE 29:20 TO 29:24 (RUNNING 00:00:10.039)

Q. And based on that, sir, would it be your opinion that his exposure to Durco pumps would have been a substantial factor in the development of his mesothelioma?
A. Yes.

26. PAGE 30:03 TO 30:19 (RUNNING 00:00:36.465)

Q. Sir, I want you to assume that the testimony at trial will be that Mr. Seay worked repeatedly and frequently on William Powell valves. Can you assume that?
A. Yes.
Q. And can you assume, sir, that the testimony will be that by virtue of his work on William Powell valves, Mr. Seay was exposed to asbestos far in excess of background. Can you assume that, sir?
A. Yes.
Q. Based on those assumptions, can you testify as to whether or not Mr. Seay's exposure to William Powell valves would be a substantial factor in the development of his mesothelioma?
A. It would have been.
Q. Okay.

27. PAGE 30:22 TO 30:24 (RUNNING 00:00:09.750)

Q. I want you to assume that at trial the testimony will be that Mr. Seay worked repeatedly and frequently with John Crane gaskets and packing. Can

28. PAGE 30:24 TO 31:10 (RUNNING 00:00:19.048)

frequently with John Crane gaskets and packing. Can you assume that?
A. Yes.
Q. And that his exposure to asbestos from those products would have been far in excess of background. Can you assume that, sir?
A. Yes.
Q. Based on that, would his exposure to John Crane gaskets and packing have been a substantial factor in the development of his mesothelioma?
MR. TIVIN: Objection to form.
A. The answer is yes.

29. PAGE 31:11 TO 31:22 (RUNNING 00:00:25.450)

Q. Okay. Did you also see, in addition to his gasket and packing work, that Mr. Seay had an exposure history that included insulation while

working at Celanese?
A. Yes.
Q. Okay. And is it your -- well, what's your opinion as to whether or not he had a substantial exposure to insulation?
A. My opinion is that he did.
Q. Okay. And, sir, would that insulation exposure also have been a substantial factor in the development of his mesothelioma?

30. PAGE 31:25 TO 31:25 (RUNNING 00:00:02.016)

A. The answer is yes, it would have been.

31. PAGE 32:01 TO 34:21 (RUNNING 00:03:32.375)

Q. Okay. Can you take us through how Mr. Seay -- how his treating physicians diagnosed him with mesothelioma?
A. Mr. Seay presented to Emery Health Care back in November of 2012. At that time, he had chest pain and was found to have an accumulation of air around the lung, which we refer to as a pneumothorax. He then went on to suffer -- he had suffered at least eight episodes of these types of pneumothoraces with air collecting around his lung.
For that problem he was treated. A chest tube was placed to evacuate the air and a so-called talc pleurodesis was performed, which is a methodology of essentially closing off the space around the lung, the pleural space.
Subsequently, however, he had an examination of the pleura through a VATS procedures that showed a diffuse malignant mesothelioma. He was treated with decortication, which is the removal of the pleural lining of the lung, and also treated with chemotherapy. Unfortunately, he went on to die in December of 2014.
Q. Okay. So I have a few questions based on that. First of all, is there any medical dispute that he actually had mesothelioma?
A. None that I'm aware of, no.
Q. Okay. And did you look at the staining done by his treating physicians?
A. Yes, I did.
Q. Okay. And were you able to arrive at a conclusion regarding his diagnosis?
A. Mr. Seay had a type of mesothelioma which is highly characteristic of that entity. It was what we call a biphasic malignant mesothelioma, which, simply put, means that it had two types of growth patterns that were discernable under the microscope. What we call epithelioid and sarcomatoid growth pattern. This pattern is generally referred to by pathologists as biphasic. There are very few other tumors that give you this appearance. So even without the additional application of immunostains, the diagnosis was fairly clear-cut.
He did, however, have the immunostains, which are done fairly routinely these days, and the staining pattern, based on what was applied, was characteristic of what one sees in a malignant mesothelioma. So there really was, I think, no doubt either on the part of the treating physicians or any other pathologists who would have reviewed these slides subsequently that this was a malignant mesothelioma.

Q. Okay. And for his treatments and the procedures he underwent for his diagnosis, was there anything that you saw in the medical records that would say -- that you would say this was not reasonable and necessary for his treatment?
A. No. Again, he was treated in a fairly standard way for this disease, which is essentially incurable. So all of his treatment was, for all intents and purposes, what we call palliative, which is just meant to make him more comfortable and extend his life by a short period of time.
So he had a talc pleurodesis, as mentioned. He had chest tubes placed. He had several pneumothoraces, as I've already noted. He had the decortication procedure. He then had chemotherapy. All of these things were meant to reduce his pain, help prolong his life, but ultimately he died as would be expected from this disorder.
Q. Okay. And these are out of order, but Kradin 4 and 5, I'm going to hand these to you.

32. PAGE 35:05 TO 39:04 (RUNNING 00:04:50.435)

Q. All right. So those are just two of a number of shots we have. Can you go ahead and hold up 4 for the jury and just explain what that is?
A. Sure. Yeah. These are two photomicrographs. That is basically pictures taken through a camera attached to a microscope showing what we see under the microscope when we look at it.
This is the kind of characteristic appearance of the type of tumor that Mr. Seay had. It is what we call, again, a biphasic mesothelioma. There are tumor cells growing through the soft tissues of the test. And in this other slide here, again, we can see more of this kind of spindle cell pattern of tumor growth as well as evidence of talc having been placed in the pleural space, and, again, in order to try to basically close that space so air or fluid can no longer accumulate.
Q. Can you just hold that up just for a second for the camera so we can get a good shot of that?
A. Yeah. The crystals of the talc are actually up here on the top of the slide. The tumor is on the bottom.
Q. Okay. All right. So the talc pleurodesis, they put -- they actually put talc into the -- into the chest. Why is that?
A. The talc produces a fibrotic response in the tissues, and so it tends to close off that space with a scar so that air or fluid can no longer accumulate in that space.
Q. All right. You also said he had a VATS procedure. What does that mean?
A. That's a video-assisted thoracoscopic surgery, and, again, it's a standard form of surgery these days for pleural disease, and one does it through the introduction of a tube into the chest that also has the ability to visualize what's going on through laser capability, and the surgeries are actually done through this scope.
Q. Okay. So they actually put the scope into the chest?
A. They put the scope into the chest. They look around, and then they biopsy what they see.
Q. So they actually -- with that scope, they

can actually pull a piece of tissue?
A. Yes.
Q. And for that stain you showed us, would that have been a piece of tissue that was biopsied?
A. Yes.
Q. Okay. You also mentioned pleural decortication?
A. Yes.
Q. And I think you said they actually peel off or remove part of the pleura?
A. Yes. Normally, the pleura is essentially invisible to the naked eye. It's two to three cells thick under the microscope, so one doesn't see it, but in cases of malignant mesothelioma, the pleura is involved and the pleura becomes markedly thickened and shaggy and scarred, and so at that point it's possible for the surgeons to identify the areas that are involved by the malignant process and to make a cleavage plane, if you will, between the pleura and the underlying lung, again, in a way to help reduce the constriction of the underlying lung as well as to reduce the tumor burden in the patient.
Q. It's not to cure them?
A. No. There is really no cure for this disease.
Q. Okay. Generally speaking, from your experience, what is the typical time from diagnosis to when mesothelioma actually takes someone's life?
A. Prior to the introduction of combination chemotherapies that have some effect against this disease, the answer used to be six months. Now the answer is probably somewhere between one year to two years, which is essentially what Mr. Seay survived.
Q. Okay. He had chemotherapy; is that right?
A. He did.
Q. But that was -- I take it, that was not to try to cure him?
A. No. Again, the role of chemotherapy in this disorder is essentially for pain reduction as well as to modestly prolong life. Again, we're talking about in the range of several months, and other than that, chemotherapy has no efficacy.
Q. Okay. He also had a thoracentesis?
A. Thoracentesis is a procedure in which fluid is removed from the pleural space. Mesotheliomas, in addition to being a space-occupying mass, tend to produce an inordinate amount of fluid as they grow, and this often requires multiple procedures to remove the fluid in order to make it more comfortable for the patient to breathe as the fluid tends to collapse the underlying lung.
So in this case, multiple thoracentesis were performed. Multiple efforts at evacuating air, which had ruptured into the pleural space had been performed, and ultimately there were efforts to close the pleural space by the talc pleurodesis.

33. PAGE 42:01 TO 43:20 (RUNNING 00:01:52.562)

aside. Sir, approximately how old was Mr. Seay when he died from mesothelioma?
A. My understanding was he was 70 years old.
Q. Okay. He was 70. And did he have any other health problems or health issues as a 70-year-old man?
A. He had high blood pressure. He had some degree of coronary artery disease. My review of the

chart would suggest that both of those conditions were controlled, and he was in no imminent danger of death from either of those disorders.
Q. And do you have any opinion as to whether or not either of those, as they were treated, would have adversely affected his life expectancy otherwise?
A. I think as they were treated, as long as they were stable, there would not have been in this day and age any substantial effect.
Q. Have you had an opportunity to review the Center for Disease Control's life expectancy tables?
A. I have seen them.
Q. And have you relied upon those for the life expectancy -- the average life expectancy for American white males?
A. Again, they're actuarial tables. They give you the best estimate as to how long an individual in this country will live once they've achieved a certain age.
Q. Now, do those life expectancy tables take only into account just the healthy people?
A. No.
Q. Who does it take into account?
A. It's general population, and it's based on age.
Q. And were you able to review the life expectancy tables for someone who was at the -- in the second half of their seventieth year?
A. I have.
Q. Okay. And what would have Mr. Seay's live expectancy have been if he did not have mesothelioma?
A. I think the study that I saw last was, I think from 2009, but what it indicated is that in the United States of America if you survive to the age of 70, your chances of living another 14 years are what would be expected.

34. PAGE 44:05 TO 44:19 (RUNNING 00:00:37.796)

Q. Okay. Doctor, Exhibit 6, I'm going to hold it up. Is that what you reviewed?
A. Yes.
Q. Okay. And that one is dated September 28, 2011, and I'm going to hand it to you. There's a highlight across the top there, and that says -- does that say 13.8 years would be the --
A. Yeah. I was pretty close. It's 13.8 years.
Q. Okay, sir. Thank you very much. So the average person from age 70, absent any other intervening cause of death, would expect to live another 13.8, or as you said, approximately 14 years. Is that fair?
A. That's the prediction.

35. PAGE 44:20 TO 44:25 (RUNNING 00:00:12.606)

Q. Okay. But Mr. Seay died on December 29, 2014, correct?
A. Yes.
Q. Okay. And what did he die from?
A. He died from complications of malignant mesothelioma.

36. PAGE 45:11 TO 48:09 (RUNNING 00:03:07.447)

Q. And that's Mr. Seay's death certificate.

Have you seen that?
A. Yes.
Q. And it says -- it's got a section that's highlighted there. What is that section?
A. It says, "cause of death, part one."
Q. Okay. And what is listed as the cause of death?
A. It lists two things. It says, "Cardiorespiratory arrest," which is how basically everyone dies because they stop breathing and their heart stops, so that's not very helpful, but the next line says, "Malignant mesothelioma with metastasis."
Q. Can you -- you can set that aside, sir. And do you agree with that cause of death, sir?
00046:01 A. Yes.
Q. Okay. Can you explain to the jury how the mesothelioma tumor actually -- actually kills somebody?
A. There are many ways in which malignant mesothelioma contributes to one's death. Again, probably the primary mode is through suffocation. So as we've mentioned, the tumor grows around the lung. It grows pretty much as a rind, very much like an orange peel around the pulp of an orange, and it becomes increasingly thickened, and as a result, the underlying lung becomes constricted, and the individual has increasing difficulties with shortness of breath and breathing.
In addition, like other forms of cancer, patients tend to lose weight. Their appetite is poor. The chemotherapies and other treatments they use for pain relief also diminish an individual's appetite. There's a wasting phenomena that occurs with cancer. There's a phenomena of the tumor becoming -- encroaching on the large vessels of the chest, including the aorta and the vena cava, so they interfere with circulation. So all of these things contribute ultimately to the demise in patients who have this disease.
00047:01 Q. You said there's a wasting. What are you referring to?
A. Wasting is the same phenomena that one sees in anybody who has a longstanding malignancy. People lose weight. It's a term we refer to as cachexia. So their appetite is diminished, and even when they do eat, they tend to lose weight because there's a wasting syndrome that occurs as a result of having a malignancy. So, essentially, the individual's body becomes increasingly debilitated.

(Exhibit No. 7, Photograph of Mr. Seay, marked for identification)

BY MR. PANATIER:
Q. Okay. Sir, I'm going to hand you Exhibit 7, and that's a picture of Mr. Seay as he's far along in the disease. Can you hold that up for the jury to see?
A. Sure. I think what the jury can probably recognize, even without being a medical professional, this is an individual who has a chronic disease. He's lying in bed. He's wasted, as we've mentioned. He's extremely thin, and he seems to be, as best as one can make out, not terribly comfortable.
00048:01 Q. Okay. You can set that aside, sir. To a reasonable degree of medical probability, sir, what

was the cause of Mr. Seay's mesothelioma?
A. His mesothelioma was caused by his exposures to asbestos.
Q. And to a reasonable degree of medical probability, sir, what caused Mr. Seay's death?
A. His death was caused by mesothelioma. His mesothelioma was caused by asbestos.

37. PAGE 48:20 TO 51:12 (RUNNING 00:02:22.409)

Q. All right. Good afternoon, Dr. Kradin. How are you?
A. Good afternoon.
Q. You're not aware of any publications in the medical or scientific literature of individuals who developed mesothelioma from working only around
00049:01 equipment or machinery that contained asbestos, packing, and gaskets, correct?
A. I don't think there's any literature on that topic largely because most people who work with those types of materials also work with other materials, so it would be hard to identify such a cohort.
Q. And you're not aware of any studies that discuss the potential level of asbestos dust released from gaskets or packing used in equipment or machinery, correct?
A. I have seen studies that have reconstructed the levels of dust of asbestos released through the use of gaskets and packing, yes.
Q. All right. We'll get back to that. You confirmed this earlier, but you're not Mr. Seay's treating physician, correct?
A. No, I'm not.
Q. You were retained by his lawyers?
A. I was.
Q. All right. And you never spoke with Mr. Seay?
A. I did not.
Q. And you never spoke to any of Mr. Seay's family members?
00050:01 A. I did not.
Q. And you never spoke to any of his physicians, correct?
A. No.
Q. And, now, you've testified in asbestos litigation dating back to 1985; is that right?
A. Yes.
Q. And nearly all of your litigation work that you've done has been for plaintiffs; is that correct?
A. That's correct.
Q. You have said that you review around 50 to 75 cases per year for plaintiffs' lawyers in asbestos cases; is that right?
A. That's correct.
Q. And you charge $500 an hour to testify in asbestos cases?
A. Correct.
Q. And, in fact, the $500 that you charge, that also includes the review of the material that's sent to you by plaintiffs' lawyers?
A. It does.
Q. And I think you've told us that last year you made approximately $250,000 working in asbestos cases, correct?
00051:01 A. That's correct.

Q. And that was true for the year before?
A. Probably, yes.
Q. Okay. Now, Mr. Panatier talked a little bit about your background. It's true that you haven't published any articles on whether chrysotile asbestos causes mesothelioma, correct?
A. Not specifically, no.
Q. Okay. And you haven't published any articles on whether gasket or gasket exposures cause mesothelioma?
A. Not specifically, no.

38. PAGE 51:13 TO 51:18 (RUNNING 00:00:13.452)

Q. And those aren't areas that you've specifically researched, correct?
A. Those are not areas that I've published on. There are times, as I've said, that I've seen the literature in these areas. So it depends what you mean by "research."

39. PAGE 51:23 TO 54:06 (RUNNING 00:02:14.627)

Q. And you're not -- you don't hold yourself out as an expect in industrial hygiene?
A. No, I don't.
Q. And you're not an epidemiologist either, correct?
A. No.
Q. And you haven't done any sort of formal study or survey of epidemiological literature discussing asbestos-related diseases, correct?
A. No.
Q. Okay. Now, mesothelioma -- let's try that again. Mesothelioma is a dose-response disease; is that right?
A. Correct. Yes.
Q. And that means the greater the dose of asbestos that one receives, the greater his or her risk of developing mesothelioma?
A. That's correct.
Q. And it also means that the lower the dose of asbestos one receives, the lower his or her risk is of developing mesothelioma?
A. Theoretically, yes.
Q. And the principle of dose response, that's not unique to asbestos, right?
A. That's correct.
Q. Okay. And every day we're exposed to chemicals or substances that are capable of causing injury?
A. Yes.
Q. And -- but we're not injured as a result of being exposed to these chemicals?
A. Well, we may not be injured at levels that we are aware of, yes.
Q. That's fair. And I just wanted to throw out an example. Carbon monoxide as an example. A small exposure of carbon monoxide, that could be harmless, correct?
A. It can be.
Q. But a large exposure can be fatal?
A. Yes.
Q. And we're all exposed to asbestos in the ambient air during the course of our lifetime; is that right?
A. Yes.

Dennis Seay

Q. And -- but most people who are exposed to asbestos never develop an asbestos-related disease?
A. That's correct.
Q. All right. We can agree that the amounts of asbestos we are exposed to in the ambient air have not been shown to cause mesothelioma; is that right?
A. Yes.
Q. So exposure at those levels pose no risk?
A. Currently, I think we -- we assume that
00054:01 exposures at those levels are not a cause of disease.
Q. And exposure -- and that just leads to the next question. That exposures at those levels don't cause mesothelioma, correct?
A. That's the -- that's the general working assumption.

40. PAGE 54:07 TO 54:15 (RUNNING 00:00:24.656)

Q. Okay. And I think you said this before, but you believe there is a level of asbestos exposure below which mesothelioma will not occur; is that right?
A. Well, again, taking -- making the assumption that background levels are safe, I would have to follow that up by saying that the assumption is that those levels are levels at which mesothelioma likely will not occur.

41. PAGE 54:16 TO 54:20 (RUNNING 00:00:12.509)

Q. Now, the threshold level below which asbestos does not cause meso, and this has not been quantified yet? That's your opinion, right?
A. Well, I think it's not just my opinion. It's the general opinion.

42. PAGE 54:21 TO 57:02 (RUNNING 00:02:14.166)

Q. Okay. Fair. But your opinion is that the threshold level is somewhere above background?
A. Yes.
Q. Okay. So any given encounter with asbestos, you wouldn't consider that exposure to be
00055:01 part of a cause of a person's mesothelioma unless that exposure was above background?
A. Yes.
Q. Okay. Now, it's your opinion that each exposure above background increases the risk of developing disease, correct?
A. Yes.
Q. But -- now, that's not the same as saying that each exposure above background actually causes the disease, correct?
A. That's correct.
Q. All right. In fact, I think you've said before that your position is you cannot say which exposure actually caused the disease. You had told me, in fact, that's anybody's guess?
A. That's correct. It's anybody's guess.
Q. All right. And we can agree that medical science does not know all there is to know about how mesothelioma is caused?
A. That's true as well.
Q. All right. And we know that there are exposures to asbestos that don't have the potential of causing disease?
A. I'm not sure what you mean by that. You'll have to be more specific.

00056:01 Q. Well, you had mentioned a level below -- a
02 level below background, you don't believe that has
03 the ability to cause disease?
04 A. Right. As long as you qualify it, the
05 answer is yes.
06 Q. Sure. But you would agree that not all
07 exposures to asbestos are equal?
08 A. Well, not all exposures to asbestos are
09 equal. In a variety of ways they can be quantitated.
10 You know, each exposure is different in terms of the
11 fiber proximity, regularity. You know, so --
12 Q. Fair enough. The exposures can differ in
13 intensity, fiber type, duration?
14 A. Yes.
15 Q. Correct?
16 A. Yes.
17 Q. Now, all things being equal, the removal
18 of one asbestos gasket, that's going to impart far
19 less risk than spending a year working and ripping
20 out asbestos pipe insulation, right?
21 A. All things being equal, the answer would
22 be yes.
23 Q. And all things being equal, you had talked
24 a little bit earlier about the different fiber types,
25 and we'll get into that. Exposure to amphiboles
00057:01 imparts a greater risk than exposure to chrysotile?
02 A. That appears to be the case.

43. PAGE 57:03 TO 57:07 (RUNNING 00:00:15.567)

03 Q. So as an example, if someone worked with
04 gaskets or packing a number of times during a career
05 as a laborer, you wouldn't be able to say whether the
06 work with the gaskets or packing would have made a
07 difference if that person developed mesothelioma?

44. PAGE 57:09 TO 64:12 (RUNNING 00:07:09.238)

09 A. If that person develops a malignant
10 mesothelioma, my opinion would be all of the
11 exposures, including the exposures you just noted,
12 would be contributory causes to the development of
13 that disease.
14 Q. You can't break them out at all?
15 A. I don't see how you could.
16 Q. You talked about this a little bit before
17 when Mr. Panatier was questioning you. There are
18 three different forms of asbestos widely used in
19 commercial settings, right?
20 A. Yes.
21 Q. Crocidolite, amosite, and chrysotile,
22 correct?
23 A. Yes.
24 Q. And chrysotile is a member of a different
25 mineral group than amosite and crocidolite; is that
00058:01 true?
02 A. They're all different mineral groups and
03 when you look at their actual chemical constituents,
04 there's a different morphology, if you will, to the
05 serpentine chrysotile asbestos.
06 Q. Physically and chemically, and I think
07 this is what you're getting at, chrysotile is
08 different from crocidolite and amosite?
09 A. Yes. They're all different from each
10 other.
11 Q. And chrysotile clears the body faster than
12 crocidolite and amosite?

A. Chrysotile clears the lung faster, at least, than the crocidolite and amosite. It's not that clear as to whether or not the same is true for the pleura.
Q. And chrysotile cleared -- fibers, they're cleared from the body in a matter of weeks or months?
A. They're cleared from the lungs.
Q. The lungs. And amosite, though, that could take years to clear --
A. Yes.
Q. -- from the lungs? And asbestos fibers that remain in the body longer are more likely to cause mesothelioma, correct?
A. You know, I don't -- that's been an assumption made by some. I'm -- I think it's true, but maybe not in the way that's been classically assumed. Again, the disease mesothelioma is a disease that occurs in the pleural space, so the fibers that are in the lung may or may not have anything directly to do with what's going on in the pleural space.
Q. All right.
A. So I think what may be more critical for pleura mesotheliomas is what is present in the pleura.
Q. All right. Fair enough. Though the body's defense mechanisms, they're better able to clear chrysotile from the body than amosite, correct?
A. Again, from the lungs.
Q. You were talking a little bit before how the fiber types of chrysotile versus the amphiboles are a bit different, and one theory is that amphiboles contain iron in their chemical makeup and chrysotile does not, and it may be that the lack of iron in the molecular structure makes it less or noncarcinogenic; is that right?
A. Yes. And these are all theories, and there may -- there may be some validity to these theories, but, frankly, they are theories that none of them have really been proven. So there is some suggestion the superoxide generation plays a role in cancer formation. The Haber-Weiss reaction related to iron in certain fibers may play a role there. But, frankly, we don't know the answer.
Q. There's a lot about mesothelioma we don't know?
A. That's correct.
Q. All right. Now, you're familiar with a study written by Hodgson and Darnton in 2000 --
A. Yes.
Q. -- correct? And those authors reviewed a number of epidemiological studies of mesothelioma risk and concluded that crocidolite is roughly 500 times more potent than chrysotile in causing mesothelioma and roughly a hundred times more potent than amosite -- excuse me -- that amosite is roughly one hundred times more potent than chrysotile in causing mesothelioma. Again, this is the 2000 study.
A. That's the 2000 study, and as you know, subsequently, they had another study indicating that that was still true in terms of order of magnitude but changed by a factor of --
Q. Right. Right. There was a 2010 study, and that's what you're getting at, that crocidolite is -- they concluded is 50 times more potent than chrysotile and amosite 14 times more potent?

A. Correct.
Q. Is that -- that's your understanding, right?
A. That's my understanding, but I think the internal discrepancy, I think, raises questions about whether or not we can speak intelligently at this point about the quantitative differences between the fibers.
Q. Okay. That's fair. But you do agree, right, yourself that there's a different potency around chrysotile, amosite, and crocidolite, right?
A. Yes. I think all the literature would suggest that's the case, but what the quantitative differences are, I think, is anybody's guess at this point.
Q. Right. So even putting aside Hodgson and Darnton's numbers, you agree that the relative order is probably correct?
A. Probably correct.
Q. Okay. And so in terms of causing mesothelioma, you believe crocidolite is the most potent of the asbestos varieties followed by amosite?
A. On a per fiber basis, yes.
Q. Okay. And chrysotile is the least potent form of asbestos in terms of causing mesothelioma on a per fiber basis?
A. That's correct.
Q. And you agree that there are reputable scientists who conclude that for chrysotile to cause mesothelioma, there must be a very high exposure dose of 10 to 25 fibers per cubic centimeter years?
A. Once again, I think there are reputable scientists, but not all scientists, who would insist that one needs a much higher exposure. I don't know that anybody has the answer to that at this point.
Q. All right. Again, a lot is not known?
A. Yes.
Q. And there are reputable scientists who conclude that mesothelioma cases that are thought to be caused by chrysotile were actually attributable to prior amphibole exposures or to contamination of chrysotile with amphiboles?
A. That's one of the arguments that's been put forward.
Q. And, in fact, there are reputable scientists who believe that chrysotile is harmless; is that true?
A. I don't know that many reputable scientists at this point that I would consider reputable who would come to that conclusion, but I'm sure there are still some holdouts.
Q. You're familiar with the work of Dr. Andrew Churg?
A. I am.
Q. And Dr. Churg is a pathologist on the U.S. Canadian Mesothelioma Panel, correct?
A. He is.
Q. And the U.S. Canadian Mesothelioma Panel is a well-respected group of pathologists who specialize in reviewing cases of mesothelioma?
A. Yes.
Q. And Dr. Churg is respected in his field, right? You would agree with that?
A. Overall, yes.
Q. Okay. And he's published extensively on the subject of asbestos-related disease?

A. Yes, he has.
Q. In fact, I think you told me once before that you've used Dr. Churg's publications in some classes that you've taught?
A. I may have, yes.
Q. All right. And you're familiar with
00064:01 Dr. Churg's text, Pathology of Occupational Lung Disease?
A. Yes. I did a review of it at one point.
Q. Do you know it to be a reliable and authoritative text?
A. Once again, like almost anything in the medical literature, it's -- there's much in it I would agree with. There is some conclusions that Dr. Churg has come through during the course of his career that I would take issue with. So overall he's authoritative, but I don't agree with everything he says.

45. PAGE 66:21 TO 72:10 (RUNNING 00:05:50.264)

Q. What I've handed you is an excerpt from a book titled Pathology of the Lung by William Thurlbeck and Andrew Churg. You're familiar with this book, correct?
A. I am.
00067:01 Q. And you have used this book in your practice, correct?
A. I have at times referred to this book, yes.
Q. And you know it to be a reliable and authoritative text, fair?
A. Again, within the context of what I've just described about authoritative and reliable text and articles. There are things that I agree with. Things that I don't necessarily agree with.
Q. So I just want to read a portion of the book. If you turn to page 1087.
A. Yes.
Q. The third paragraph.
MR. PANATIER: Real quick before you start, which edition is this or which year?
MR. YOUMAN: It's 1995, second edition.
BY MR. YOUMAN:
Q. And it reads: "Although the association of asbestos exposure with both pleural and peritoneal mesotheliomas is well established, it has become increasingly clear that there are major differences in disease potential between chrysotile and the commercial amphiboles amosite and crocidolite.
Table 30-7 shows the percentage of deaths due to
00068:01 mesothelioma in various occupationally exposed populations, and it is evident that chrysotile exposure is associated with a much lower mesothelioma rate than is amosite or crocidolite exposure. Indeed, in some populations with heavy exposure to pure crocidolite, as many as 18 percent of deaths have been caused by mesothelioma.
A corollary of these observations is that the greatest number of mesotheliomas are now seen in persons who worked as asbestos insulators, in asbestos production and manufacturer, and shipbuilding or repair, particularly during World War II. Trades in which heavy amphibole exposure was common, in contrast, mesotheliomas are rare in workforces exposed only to chrysotile. For example, textile and friction products manufacture. And then

there are now several reports of working populations with no mesothelioma deaths after pure chrysotile exposure. There is no evidence of an increased risk for garage mechanics despite exposure to chrysotile brake dust."

Now, let me just go on to the next paragraph. "These observations have led some to question whether chrysotile asbestos actually produces mesothelioma at all in humans and is generally agreed on the basis of epidemiological investigations that asbestos-induced peritoneal mesothelioma is only associated with heavy exposure to amosite and crocidolite and is not caused by chrysotile exposure." Right? I read that correctly?

A. Yes, you read it correctly.

Q. That's my only -- that's my only question.

A. That you read it correctly?

Q. Did I read it correctly?

A. Yes, you read it correctly.

Q. And in the book on page 1087 there's a table 30-7, and it's a set of epidemiological studies that focused on workers working only with chrysotile versus workers working with amphiboles, correct?

A. Yes.

Q. And if you look at the table, you can see the number of studies of people exposed only to chrysotile is either zero or close to zero were caused -- were deaths caused by mesothelioma?

A. Yes. But now I don't think I can just let you read it correctly, for the sake of the jury.

Q. Well, what I will say is that Mr. Panatier will have a chance to redirect after and can bring you -- and can bring out whatever he'd like to.

A. Okay.

Q. But on the other end of the table you have studies of people exposed to a lot of amosite or crocidolite, correct?

A. Yes.

Q. Okay. And there's a very high percentage of deaths among people who were exposed to amosite or crocidolite?

A. In this selected table, yes.

Q. All right. Fair enough. And you personally believe that amosite and crocidolite fibers are more capable of causing mesothelioma than chrysotile fibers?

A. I am of that opinion.

Q. Okay. Just focusing on Mr. Seay's case for one moment.

A. Sure.

Q. You haven't attempted to quantify Mr. Seay's total exposure to asbestos, correct?

A. No, I haven't.

Q. Or his exposure from any particular product?

A. No, I have not done any quantitation. That's all for an industrial hygienist.

Q. And you haven't attempted to determine his exposure dose from a Crane Co. product, correct?

A. I have not done it.

Q. And you are not aware of any epidemiological study that connects the development of mesothelioma to work solely with gaskets, true?

A. Once again, I don't think that study is -- exists, and I doubt that study will ever be done because there are very few people who work solely

with gaskets.
Q. And you agree that Mr. Seay worked with and around a number of different types of insulation products in his work life?
A. Yes, he did.
Q. And those insulation products exposed him to asbestos, true?
A. They would have, yes.
Q. And he was around insulators when he worked at the Celanese plant, right?
A. Yes.
Q. And you believe those insulation products would have contained asbestos?
A. Yes.
Q. And you believe that every occupational exposure that Mr. Seay had was a substantial factor in causing his disease, right?
A. Well, the occupational exposures as I've
00072:01 defined them as exposures would have released fibers into the ambient area above background, yes, those are occupational exposures.
Q. And that's your opinion? So if the jury hears evidence that a product released asbestos that Mr. Seay breathed, the jury should conclude, in your opinion, that that product was a substantial cause --
A. They should, yes.
Q. -- of his disease?
A. Yes.

46. PAGE 73:03 TO 75:18 (RUNNING 00:02:22.228)

Q. My name is Mark Tivin, and I represent a company called John Crane, Inc. I don't believe we've met before. I'm going to jump around a little bit because counsel covered a lot of questions. Okay?
A. Okay.
Q. You were shown an exhibit -- to start off, you were shown an Exhibit Number 2, which was a material safety data sheet, weren't you?
A. I was.
Q. Had you seen that before today?
A. No, I had not.
Q. Do you know under what circumstances it was created?
A. No, I do not.
Q. Do you know what year it was created in?
A. Unless it says so on the sheet, I do not know.
Q. If you look at the second page, I think it's dated.
A. Let's see.
Q. '81, I think. The very bottom.
A. Oh, 4/14/81, yes.
00074:01 Q. Was that after Mr. Seay had left work?
A. My assumption is yes.
Q. Do you know the regulations that are required for creating this document?
A. No, I do not.
Q. Do you have any idea -- you mentioned an industrial hygienist in talking about fiber release from gaskets and packing. Are you familiar with Dr. Frederick Toca?
A. I've heard the name. I don't know him.
Q. Do you recognize him as a past president of the American Industrial Hygiene Association?
A. Again, I don't know him.

Q. Are you familiar with any of his tests regarding the fiber release from gaskets or packing?
A. I don't believe so.
Q. Are you familiar with Amy Model? Dr. Amy Model?
A. I've heard the name, yes.
Q. And have you reviewed any of her studies regarding the release of gaskets and packing?
A. I think at some point in my career I have, but I don't recall the specifics.
Q. Do you ever -- have you ever heard of a Carl Mangold?
A. Yes.
Q. Have you ever reviewed any of his tests regarding the fiber release of gaskets and packing?
A. It's the same answer.
Q. Have you ever heard of Dr. Bolter?
A. Yes.
Q. Have you ever read any of his tests regarding the fiber release from gaskets and packing?
A. I have.
Q. And do you know what those results were?
A. I don't recall the specifics. I do recall that the tests were, I think, paid for by the Garlock gasket company.
Q. That's fine. They were paid by -- so you rely on a Dr. -- Dr. Longo?
A. I have seen Dr. Longo's studies.
Q. And his tests were paid for by plaintiffs' attorneys?

47. PAGE 75:20 TO 76:14 (RUNNING 00:00:44.903)

A. That I do not know.
Q. If his tests were paid for by plaintiffs' attorneys, would that take your -- would that lessen your reliance on his article?
A. Not necessarily.
Q. Well, does the fact that Dr. Bolter's test was paid for by Garlock, does that lessen your reliance on that article?
A. Not necessarily.
Q. Do you rely on Dr. Bolter's article regarding fiber release?
A. There are a number of studies on fiber release, as you've just mentioned. You know, Dr. Longo, Dr. Millette, Dr. Bolter, et cetera. There's a fair amount of variation in the studies, so I've looked at all the studies, and, again, it's the circumstances of the studies, the circumstances of the gaskets appear to differ within the studies, so it is difficult sometimes to compare them head to head.

48. PAGE 76:18 TO 77:23 (RUNNING 00:01:12.836)

Q. I guess my question is, do you rely on Dr. Bolter's study in your formulation of your opinion on fiber release from the use of gaskets?
A. It's one of the pieces of information that I have seen, and in part, you know, I would say I rely upon it, but no more or less than other studies that I've seen to that effect.
Q. And do you rely on Dr. Toca's studies?
A. I don't recall the specifics of Dr. Toca's studies.
Q. Have you ever seen any fiber release

studies -- well, strike that.
What Dr. Longo study do you rely on?
A. Dr. Longo, I think, had a series of studies, and, again, I don't even recall the very specifics of Dr. Longo's numbers, but I do recall that they were in excess of .1 fiber per cc, and in some cases in excess of one fiber per cc.
Q. And the .1 fiber per cc, that's important to you because you've mentioned governmental regulations already, and that's the OSHA level?
A. That's the OSHA level of a PEL for an eight-hour time-weighted average, yes.
A. Yes.
Q. And that's getting a little far afield of your specialty, correct?
A. It is.
Q. That's more -- if I wanted to do that, we should talk with an industrial hygienist?
A. It probably would be a good idea to speak to them.

49. PAGE 78:01 TO 81:09 (RUNNING 00:03:47.850)

00078:01 You've testified previously that -- we've bandied about the term "background numbers" and "ambient numbers," haven't we?
A. Yes.
Q. And you've testified previously that one of the background numbers that you've used is .0004; is that correct?
A. I think the number that I usually use is .0001, but I wouldn't argue with .0004. I think Dr. Churg's article that was pointed out to me today uses a comparable number.
Q. And what does he use?
A. Well, I think .0002 perhaps. I think the .0001 is probably an article -- a number that I've seen either in Dr. Churg's texts or in Dr. Roggli's texts.
Q. But you've testified to .0004 before? You wouldn't quibble with that, would you?
A. No, I'm not going to quibble with that.
Q. And you would agree with me that historically, no one has ever shown exposures at background levels to be increasing someone's risk for developing mesothelioma, correct?
A. That's correct.
Q. And you would agree with me that
00079:01 background numbers used to be higher in the past than they are today?
A. Yes.
Q. And you would agree with me that background numbers in urban areas are higher than they are in rural areas as a general proposition?
A. Yes.
Q. And if we knew that a background number was generated that was .05, for example --
A. Yes.
Q. -- you would agree that that number had never -- has never been shown to increase someone's risk of mesothelioma, assuming that's correct?
A. Again, there have been no studies. It would be extremely difficult technically to perform a study of background levels because of the numbers of individuals would have to be part of that study. So there have been no real controlled studies of background levels. We just know that we've not seen

cases of mesothelioma presumably from background incidences.
Q. And that's why you make the assumption that you do?
A. That's why I make the assumption like I do.
Q. And you would agree that if there had been a background number that was reported that was as high as .05, that it would make sense that .0004 also wouldn't cause it, correct, because that's --
A. Presumably, if it's less than that, it wouldn't, yes.
Q. So if someone was looking at what the background numbers would be as opposed to what science has been able to show, you should look at the largest background number you can because that would be the highest threshold that science has been able to determine, correct?
A. I'm not sure that the threshold has been determined, and, you know, seeing a background level of .05, and no definite increase incidence doesn't really establish a background, but that's really hardly the point. If you want to take .0001 or .0004 or even as high as .05, it's still considerably less in terms of magnitudes than the exposures that one incurs in the occupational setting.
Q. Now, you had also mentioned that each and every exposure on an occupational setting would be a substantial factor in the development of the disease. Did I get your opinion correct?
A. Yes.
Q. In your opinion as a pathologist, is it possible for something -- someone to be occupationally exposed and be a factor and not a substantial factor?
A. You'd have to define "substantial factor" or "nonsubstantial factor." You would have to be more specific. There's a difference between the language that's used in medical science and the language that's used in a medical/legal situation.

50. PAGE 81:14 TO 82:05 (RUNNING 00:00:47.255)

What is your definition of "substantial" in your use of the term "substantial factor"?
A. My definition of "substantial" for the purposes of these exercises is any exposure above background.
Q. So would it be possible for an occupational exposure to be a factor and not a substantial factor using your definitions of the words that you've just told the ladies and gentlemen of the jury?
A. It would have to be an exposure that somehow produced a level of fiber release that was below background.
Q. Okay. And I'm correct in saying that you can't say, but for the exposure to any product, that the -- Mr. Seay's disease would not have occurred, correct?

51. PAGE 82:07 TO 85:18 (RUNNING 00:03:31.997)

A. I think it be wild speculation for me to try to sort out and remove various exposures and say these don't count.
Q. That would be beyond your expertise and

beyond what science -- your opinion beyond what science knows right now?
A. It would be beyond anybody's honest expertise.
Q. When you were asked earlier by Mr. Panatier regarding -- you were asked the question, was his exposure to gaskets, packing, and insulation a substantial factor in the development of Mr. Seay's disease, you only answered the question with regards to gaskets. Is there any special reason why you left out packing and insulation?
A. I don't recall answering it that way, but if I did, there would be no reason. I think I've made it very clear in these proceedings that my definition is anything above background is a substantial contributing cause, irrespective of the source.
Q. And your -- you testified that you're generally familiar with the industrial hygiene literature because that's one of the things you need to look at as being a pathologist and also being an expert in this litigation, correct?
A. Well, I think that's one of the reasons one needs to be acquainted with it, but the other reason is that, you know, in terms of asbestos-related diseases, it probably is important to some degree to know what's going on in the industrial hygiene world.
Q. And so you're generally familiar that asbestos insulation in the late '60s and early '70s, a lot of it contained amosite, correct?
A. Yes.
Q. And some of it contained chrysotile and some contained a mix?
A. Yes.
Q. Are you familiar with the fiber release numbers for the use of insulation?
A. I've seen fiber release numbers for the use of insulation from various industrial hygienists. Again, they're quite variable, but they're often quite high.
Q. And when you say "quite high," is that -- are they bigger than it is for gaskets?
A. Yes.
Q. What about packing? What studies do you rely on to talk about packing?
A. Again, I think similar studies done by various industrial hygienists, but I'm not as acquainted with the packing numbers as I am with the gaskets.
Q. Do you know how packing numbers relate to gaskets numbers, if at all?
A. Not really.
Q. Do you know if packing numbers are below .05?
A. If -- again, if they are -- point 05 is not my definition of background.
Q. I just said a number.
A. Again, it would depend on the study, and I -- you would have to ask an industrial hygienist for the details.
Q. So that would be beyond your expertise to know what the fiber release -- as we sit here right now, it's beyond your expertise to know what the fiber release is from the use of packing?
A. Well, my understanding of the fiber

release is that it's going to be certainly above background. It's certainly included as one of the components of exposures in many individuals who have worked in these fields. So, you know, what the numbers are in the industrial hygiene studies, I don't have the numbers at my fingertips.
Q. I mean, how do you know if it was above background if you don't know what the numbers are?
A. I'm pretty sure it's above background. I'm pretty sure other people could testify to that effect.
Q. Right. But we should talk to somebody else?
A. You should speak to the industrial hygienist.
MR. TIVIN: Uh-huh. Thank you, sir. That's all the questions I have for you right now.

52. PAGE 89:02 TO 92:18 (RUNNING 00:03:23.031)

Q. I'm Al Parnell, as you know. Good to see you again. I've got to repeat a little bit of the questions, and I apologize.
A. Sure.
Q. You've testified that your hourly rate is $500 an hour, correct?
A. Correct.
Q. You testified that you began testifying in the early '80s; is that correct?
A. Correct.
Q. You testified that you reviewed 50 to 80 cases a year; is that correct?
A. Correct.
Q. In previous depositions, you said that you give somewhere between 20 and 30 depositions a year?
A. That's approximately right, yes.
Q. And you do between five and 10 trials a year all for the plaintiff; is that correct?
A. That's correct.
Q. Now, my understanding is that 30 to 40 percent of your total income is related specifically to testifying in asbestos litigation principally on behalf of plaintiffs' lawyers who call you?
A. That's correct.
Q. All right, sir. Now, I've done some adding. You've said that you make roughly $250,000 a year for the last 10 years, which is two and a half million; is that correct?
A. Yup.
Q. And then I believe that covers us through 2005, but if I take 1985 forward, your testimony has been in the range from somewhere below $70,000 to somewhere above $100,000; is that fair?
A. That's probably right.
Q. So over that total, it would be about four and a half million dollars; is that correct?
A. It's probably right. I'd like to know where the money is, but --
Q. Well, I don't know who spends it in your family --
A. It's me.
Q. -- but I'm sure you've reported it appropriately.
A. It's me.
Q. Okay. Now, having said that correct, you -- I believe that's in excess of any expenses that you incur? Like when you fly to a trial, I'm sure

someone else pays the expenses and your hourly fee is on top of that?
A. That's correct.
Q. Now, do you have a set day fee?
A. Day fee? My day fee for a trial that takes me out of my office and brings me back to my office in 24 hours is roughly $8,000.
Q. Okay. So let me just follow up. We could pick a state. We could pick a city. Chicago. So you would typically leave the day before you were scheduled to testify; is that correct?
A. That's correct.
Q. And then you would pay -- you would charge for your travel for whatever your reasonable travel was; is that correct?
A. That's correct.
Q. And then to the extent that you're in trial all day or half a day -- well, in that circumstance because you take the whole day, either a day or travel, you would charge for a full day; is that correct?
A. Yes.
Q. All right, sir. Now I'm going to change gears. In the course of your review of the testimony, did you learn that Mr. Seay worked on the premises of Hoechst Celanese?
A. Yes.
Q. Did you learn that Mr. Seay worked actually for a company called Daniels Construction?
A. Yes.
Q. Did you take any time to research the status of Daniel Construction during the period of time that Mr. Seay was employed by them as to how large they were, how many people they were employing, et cetera?
A. No. That's really beyond the scope of my --
Q. You've never been -- I'm sorry. I didn't mean to -- go ahead. I apologize. You've never been to the Hoechst Celanese facility; is that correct?
A. No.
Q. You've never seen -- had any personal knowledge of that facility; is that correct?
A. No.

53. PAGE 93:04 TO 94:19 (RUNNING 00:01:36.700)

Q. Now, there's been some mention of discussion about insulation. You don't know -- Mr. Seay never personally installed insulation; isn't that correct?
A. That's my understanding.
Q. His only exposure, to the extent that he might have had exposure, would have been as a coworker or a bystander; is that correct?
A. That's correct.
Q. You have not prepared any kind of dose assessment; is that correct?
A. Once again, that's not my role.
Q. I understand. I just want to be sure in relating to my defendant that that's true.
A. Sure. That's correct.
Q. So even to the extent that Mr. Seay has indicated that he worked for Daniel Construction, he hasn't testified as an example how far he was away each time someone may or may not have been working on

insulation; isn't that correct?
A. Not that I recall the details of, as I said.
Q. In the course of your testimony in the past, you have testified, I believe, that from the point source of the use of any product to a distant point there's a dissipation of the amount of that particulate in the air; is that right?
A. That's correct.
Q. And that would be true here?
A. Yes.
Q. And you've already gone through the fact that you haven't seen him, known him, talked to family, talked to a treating physician, or done any of that, correct?
A. That's true.
Q. Do you generally talk about state of the art, or not?
A. I generally do not.
Q. Okay. Now, let me just ask you this. You work at Mass. General?
A. Yes.

54. PAGE 97:05 TO 97:14 (RUNNING 00:00:24.538)

Q. You would also have already testified that the current OSHA limit is .1 fiber cc; is that correct?
A. That's correct.
Q. So that over the working life -- 40-year working life, that would mean that OSHA currently allows an exposure to asbestos of 4 fibers cc; isn't that correct?
A. If you do the math, that would be the case.

55. PAGE 98:07 TO 101:07 (RUNNING 00:02:55.968)

Q. You have testified already that most of us -- all of us in this room have asbestos in our lungs; is that correct?
A. Yes.
Q. Are you familiar with Dr. Churg's literature in the early '70s when he looked at 456 consecutive autopsies in Vancouver, British Columbia, and every one of them had asbestos fibers in their lungs?
A. Yes.
Q. So it would not surprise you in an area like Boston as an example or New York or even areas where Mr. Seay worked, though it may have not been the same -- exactly the same, that he would have had asbestos fibers in his lungs just from being there?
A. That's correct.
Q. Now, that means, at least in theory, that there are some level of exposure which does not cause mesothelioma in most people?
A. Well, again, presumably, that is the case. And, again, I've taken that hypothetically to be the ambient levels that are prevalent in the area at any given time --
Q. Okay.
A. -- until there's evidence to the contrary.
Q. All right. So let me move, if I can, to just one other thing that is clearly in your area, and that is the current theories about the modalities of cancer.

A. Okay.
Q. And you would agree that cancer is a group of diseases that is characterized by the uncontrolled growth and spread of abnormal cells?
A. That's correct.
Q. And you'd agree that they all involve the malfunction of genes that control growth and division?
A. Yes.
Q. So let's stop right there. On a regular basis in every human, the cells which we have, irrespective of cell type, reproduce and produce daughter cells; is that correct?
A. Correct.
Q. And each cell that reproduces reproduces
00100:01 two daughter cells, correct?
A. Yes.
Q. And as each daughter cell is reproduced, on occasion there's a malfunction?
A. Yes.
Q. And as a matter of fact, it's been written that by the time you're 15 there have been about a trillion malfunctions that have occurred in the human body?
A. I'm not sure if a trillion is correct, but probably a large number.
Q. A substantial number?
A. Yes.
Q. And that happens in every one of us here in this room; isn't that correct?
A. Yes.
Q. All right. Now, as we have those defects, they can be caused by anything. And by "anything," I mean this. They could be caused just naturally because of the genetic makeup from our parents, or could have been caused by a hit from benzene or any other toxic agent or anything in the atmosphere; isn't that correct?
A. Well, I think to say they're caused by anything is probably overreaching.
00101:01 Q. Okay. Well, correct me. You're the physician.
A. Okay. Then I shall. I think there are certainly genetic features in some individuals. There are clearly toxic factors that are carcinogenic in the environment, but I'm not sure that everything out there is carcinogenic.

56. PAGE 102:18 TO 102:21 (RUNNING 00:00:10.511)

Q. And there are about 1.6 million new cancer cases in 2014?
A. Yes. And the vast majority of those cases actually are more or less trivial skin cancers.

57. PAGE 102:25 TO 103:05 (RUNNING 00:00:12.353)

Q. You agree that the American Cancer Society
00103:01 has estimated that 585,000 Americans were expected to die in 2014 from cancer?
A. That's correct.
Q. And that's more than 1,600 people a day?
A. Yes.

58. PAGE 103:24 TO 104:02 (RUNNING 00:00:11.296)

Q. Now, because of the whole cancer process and the mutation process we've talked about, there is

00104:01 a degree of individual susceptibility as it relates
02 to the demise from cancer; isn't that correct?

59. PAGE 104:03 TO 104:08 (RUNNING 00:00:09.809)

03 A. Yes.
04 Q. Tom Munson in 2003 reported that there
05 were 50 trillion cells in the human body. Would you
06 agree?
07 A. I haven't counted them, but that sounds
08 roughly correct.

60. PAGE 104:15 TO 104:18 (RUNNING 00:00:07.326)

15 Q. All right. Let me ask you. You read some
16 medical, I believe; is that correct? Medical
17 articles?
18 A. Yes.

61. PAGE 105:06 TO 105:08 (RUNNING 00:00:04.927)

06 Q. I'm going to show a document, which has
07 been marked as Kradin Number 9, sir.
08 A. Yeah.

62. PAGE 105:09 TO 106:16 (RUNNING 00:01:17.719)

09 Q. Do you recall reading in Mr. Seay's
10 deposition where he testified under oath that he
11 smoked a pack of day for 20 years?
12 A. I believe that's correct.
13 Q. All right, sir. Let me ask you about
14 this. This is a document that is dated
15 January 12, 1993; is that correct?
16 A. Yes.
17 Q. And it's from the Cardiology Consultants
18 in Spartanburg, South Carolina; is that correct?
19 A. Yes.
20 Q. And he was being seen at this time because
21 there was a concern about his heart; is that correct?
22 A. Yes.
23 Q. All right. And this document is page 1, I
24 believe, of a document, and let me ask you about
25 that. His chest was clear?
00106:01 A. Yes.
02 Q. Do you see that? So would you have
03 believed that during this cardiology examination that
04 they would have listened to and examined his chest?
05 A. Yes.
06 Q. And they found that -- by saying "clear"
07 that were no rales? There were no other kinds of
08 sounds from the chest; is that correct?
09 A. Yes.
10
11 (Exhibit No. 10, Pulmonary Evaluation
12 dated 12/30/09, marked for identification)
13
14 BY MR. PARNELL:
15 Q. All right. I'll show you a document,
16 which I'm marking as Exhibit 10. Now, this is from

63. PAGE 106:17 TO 107:06 (RUNNING 00:00:34.799)

17 -- marked as 1 of 3 pages, is that correct, on the
18 first page, and then there's a second and a third
19 page?
20 A. Yes.
21 Q. And this is from Dennis Seay -- for Dennis
22 Seay; is that correct?

A. That's what it says.
Q. All right, sir. Now, this is a pulmonary evaluation; is that correct?
A. Yes.
Q. If you would look down at the chest examination, that revealed there were no wheezes, no rales, no rhonchi, clear breath sounds; is that correct?
A. Correct.

64. PAGE 107:13 TO 108:14 (RUNNING 00:00:56.501)

Q. The date of this was 12/30/2009; is that correct?
A. That's correct.
Q. Would you turn to the second page. This says "Assessments." Can you tell me what an "assessment" means in this term or as you interpret it so I can ask the question.
A. My assumption is that these are the diagnoses that he was considered to carry.
Q. And one is COPD; is that correct?
A. That's what it says.
Q. And that would be chronic obstructive pulmonary disease; that is correct?
A. Yes.
Q. All right, sir. And in addition, he is said to have ischemic heart disease; is that correct?
A. Yes.
Q. Is that CHD? Is ischemic heart disease the same as CHD, or do you -- can you tell me --
A. Yes, I think so. Coronary heart disease, if that's how they're using it.

(Exhibit No. 11, Note from Spartanburg Regional Medical Center dated 4/30/01, marked for identification)

BY MR. PARNELL:

65. PAGE 108:15 TO 108:16 (RUNNING 00:00:05.626)

Q. All right, sir. I'm going to hand you Exhibit 11. Now, this is a note dated

66. PAGE 108:17 TO 109:09 (RUNNING 00:00:53.569)

April 30, 2001, and it's from the Spartanburg Regional Medical Center; is that correct?
A. Yes.
Q. And you recall from your review of the medical that he received a lot of treatment from the Spartanburg Medical Center; is that correct?
A. Yes, sir.
Q. All right, sir. Let me ask you if you can refer down to the social history?
A. Okay.
Q. What does that say?
A. It says, "45-pack-year history of smoking. None in the last 12 years."
Q. All right, sir. Forty-five years of smoking history would be different than the 20 that was testified under oath in his deposition; is that correct?
A. Well --

67. PAGE 109:11 TO 109:21 (RUNNING 00:00:21.015)

A. -- once again, if you've been in this field as long as I have --
Q. Would you just answer my question first, and then if you need to explain it. It's different than what was in the testimony, wasn't it?
A. I don't remember what the testimony was.
Q. Did you not remember earlier testifying in this deposition that you thought you recalled that he testified to a 20-pack-year history?
A. If he -- if he -- he may have. I don't recall. It's not in my note.

68. PAGE 109:22 TO 110:01 (RUNNING 00:00:09.661)

Q. All right. Now, you may follow up. I don't mean to cut you off.
A. All I wanted to say is that smoking histories are notoriously variable within medical records, so --

69. PAGE 110:16 TO 111:04 (RUNNING 00:00:34.609)

Q. So people either can mistake what they did, misremember what they did, intentionally lie about what they did, or forget about what they did? Are those four legitimate things that you have found in your history about taking smoking histories?
A. Let me answer you more directly, if you don't mind.
Q. Please. I'm happy to have it.
A. I assume that whoever took this 45-pack-year history of smoking got this information from the patient and not from anybody else, so --
Q. Okay.
A. -- I doubt he's lying about his smoking history, if this is accurate.

70. PAGE 111:24 TO 112:06 (RUNNING 00:00:22.050)

Q. I'm going to hand you a document which I have marked as Exhibit 12, Dr. Kradin. And I'm going to ask you to hand it back to me so I can make sure that I've got the right one on my list.
A. You want it back right now?
Q. Would you, yeah, just so I can make sure I've got the right one. All right. I've got it now. Thank you, sir.

71. PAGE 112:11 TO 113:02 (RUNNING 00:00:46.874)

Q. Now, this is a report dated 12/15 of '09; is that correct?
A. Yes.
Q. And if you turn to what I'll call page 3, this is a history from -- are -- of his hospital course, and that would be Mr. Seay; is that correct?
A. That's correct.
Q. His primary diagnosis was coronary artery disease, CHD; is that correct?
A. Yes.
Q. All right, sir. And he had end-stage angina pectoris. What does "end-stage angina pectoris" mean?
A. Well, I don't know what that means actually. It's not a terminology that we normally use. I assume it meant that at some point it was severe.

72. PAGE 113:03 TO 113:22 (RUNNING 00:00:50.947)

Q. All right, sir. Now, he had -- is it fair to say from this note and just from your knowledge, that he went to a physician. The physician noticed that there were difficulties with his heart, asked for and assented to an immediate catheterization, and that he had a catheterization done at the hospital?
A. He did.
Q. Would you mind explaining to the jury so they will simply understand what a catheterization is?
A. A catheterization is a dye x-ray, if you will, that looks at the -- whether or not the vessels that are supplying the heart are open and the blood is flowing normally or not.

(Exhibit No. 13, Holter Monitor Report Dated 10/17/09, marked for identification)

BY MR. PARNELL:
Q. All right, sir. And let me mark this one

73. PAGE 113:23 TO 113:23 (RUNNING 00:00:02.575)

for you, sir. This is Exhibit 13. Exhibit 13 is the

74. PAGE 113:24 TO 114:02 (RUNNING 00:00:13.683)

Holter Monitor Report, and that report is simply a report of what the heart examinations were about; is that fair?
A. Correct.

75. PAGE 114:13 TO 114:13 (RUNNING 00:00:02.255)

Q. Here is Exhibit 14, sir. Would you look

76. PAGE 114:14 TO 115:19 (RUNNING 00:01:31.588)

-- this is from Cardiology Consultants?
A. Yeah.
Q. It is a 12/15/2009 office visit; is that correct?
A. Yes.
Q. And he presented for evaluation, correct?
A. Yes.
Q. And if you look down under "risk factors," it's got tobacco use previous years, quit 20, dash, 25 times, 30 years. Pack per year, one and a half packs per day." Is that correct?
A. That's what it says.
Q. All right, sir. And if you would turn to the second page, it also repeats under "Chest," "no intercostal retraction or use of accessory muscles. No rales, no rhonchi, or wheezes." Is that correct?
A. That's correct.
Q. All right, sir. In all your medical records, you did not -- putting aside the diagnosis for a moment of pleural -- pleural mesothelioma, you did not find any record whatsoever of the presence of calcified bilateral pleural plaques; is that correct?
A. That's correct.
Q. You did not find any evidence of asbestosis; is that correct?
A. That's correct.
Q. And you did not find any evidence of a restrictive respiratory component as evidenced by the fact that there were no wheezes, rales, or rhonchi;

isn't that correct?
A. That's correct.

77. PAGE 116:06 TO 119:15 (RUNNING 00:03:34.695)

Q. Doctor, you would agree that there are multiple particles of all kinds that we breathe every day that are invisible to the naked eye; is that correct?
A. That's correct.
Q. Carbon monoxide? Silica? I mean, I can't even begin to name all of them, correct?
A. Carbon monoxide is not a particle, but silica is.
Q. Okay. And we live in this urban environment where those kinds of particles are just there to be breathed all the time, correct?
A. Yeah. Yes.
Q. Now, as we look at the breathing, the body has a way to take care of or try to defend against those particles getting from the outside air into the furthest reaches of the lung; isn't that correct?
A. The body does what it can.
Q. Okay. So the first part of the defense mechanism is the nose; isn't that correct?
A. That's the first part, starting from the nose.
Q. Okay. It starts from the nose, so in other words, as a person breathes, assuming they're not breathing through their mouth but breathing through their nose, they are breathing through nose hairs. To the extent that a barber hasn't cut them off or something, that will intercept or guard against all the particles coming in; isn't that correct?
A. Yes.
Q. Okay. And the nose is also -- has a bend in it so that it can go down the windpipe, correct?
A. Yes.
Q. And as the -- that bend comes, because the particulate matters in the air, it begins to fall out onto the sides of the windpipe; isn't that correct?
A. Yes.
Q. And so it's been said that only about five percent of a particulate matter that you begin to breathe actually gets to the interior of the lung. Would you agree with that?
A. Roughly.
Q. All right. One of the defense mechanisms that prevents the particulate matter from getting to the lung is something that some people, at least, refer to as the mucociliary escalator; is that correct?
A. Yes.

(Exhibit No. 15, Diagram by Mr. Parnell, marked for identification)

BY MR. PARNELL:
Q. Now, I have drawn, perhaps not very artfully --
A. Would the jury like to see this?
Q. Yes. And that's two epithelial cells that have a little squiggly thing. That's my intention at least. Is that --
A. Yes. You want to connect them, though.
Q. All right. And the purpose is that the

windpipe is lined by millions of those cells; isn't that correct?
A. Yes.
Q. And the little squiggly thing that I've drawn is called a cilia; is that correct?
A. Yes.
Q. And so that -- those cells, each one also produces some level of mucus; isn't that correct?
A. Yes.
Q. So what happens is as we are breathing in and fibers or particles fall out, the mucociliary esco -- this cilia, this little whip-like thing, is beating this path of mucus back up into the mouth or into the lung; is that correct? Out of the lung?
A. Yes.
Q. All right. So what happens when that happens is that whatever the particulate matter is, whether it's silica or whatever, as it gets on this river of -- and "river" is a loose term -- but this pathway of mucus and liquid that this cilia is beating up so it gets up into the mouth, you either spit it out or you swallow it?
A. Correct.

78. PAGE 121:17 TO 121:20 (RUNNING 00:00:06.960)

Q. A person who has a 25- to 45-pack-year history has a significant smoking history; isn't that correct?
A. Yes.

79. PAGE 126:08 TO 126:17 (RUNNING 00:00:28.510)

Q. All right, sir. Now, with respect to his -- I believe you testified that if Mr. Seay had lived, and if he had maintained his treatment, and if he had done everything the doctor said, that you do not believe that his life expectancy would have been shortened. Did I say that correctly?
A. I believe that if his conditions were well controlled, that his life expectancy would not have been significantly shortened.
Q. All right, sir. Did you do any research

80. PAGE 126:18 TO 127:19 (RUNNING 00:00:57.511)

on Dr. Mendosa?
A. Who is Dr. Mendosa?
Q. Dr. Mendosa is the doctor who -- who diagnosed him with COPD.
A. No. I would have no reason to do research on Dr. Mendosa.
Q. All right. Dr. Mendosa is board-certified in critical med -- critical care of medicine, internal medicine, pulmonology, and sleep medicine. Would you please assume that?
A. Okay.
Q. And to the extent he would be in pulmonology, that's the same board certification that you have, correct?
A. Yes.
Q. Which means he's a lung doctor, right?
A. Correct.
Q. Would you have expected a man such as Dr. Mendosa who is, in fact, board-certified in pulmonology to have made a diagnosis of COPD without documenting it?
A. If he documented it, I think that's great.

I haven't seen a documentation.
Q. Have you seen all the medical records in the case?
A. I believe I have, but I don't recall seeing that.

81. PAGE 130:21 TO 131:16 (RUNNING 00:01:02.057)

Q. Okay. You were asked about different ailments that Mr. Seay may or may not have had. Ischemic heart disease, COPD, et cetera, right?
A. Yes.
Q. Okay. Do any of those cause mesothelioma?
00131:01 A. No. None of those cause mesothelioma, and, again, I was handed a number of documents related to Mr. Seay's medical care, and what was not elicited as part of my answer was the fact that Mr. Seay was being treated with a variety of medications.
When he first presented, he had high blood pressure. By the time he was seen years later his blood pressure was well controlled. His heart rate was well controlled. He had coronary disease that had been treated. He had had a bypass graft. There was no evidence that his coronary disease was imminently going to cause a decrease in his life expectancy. So the point is that Mr. Seay did have other medical conditions, but those medical conditions were being treated.

82. PAGE 133:04 TO 133:19 (RUNNING 00:00:42.571)

question in light of the objection. Does one need to have a diagnosis of asbestosis first or pleural plaques or pleural thickening before a physician such as yourself or a doctor can say that this person's mesothelioma is from asbestos?
A. No. The answer is simply no, and the only thing that one needs to have is a mesothelioma, which Mr. Seay clearly had. There's no argument about that. And an exposure to asbestos at the workplace, in this case which he had, and I don't think anybody will argue that he was exposed to asbestos.
Q. Okay. To your knowledge, Doctor, have scientists found a level of exposure to asbestos above background that doesn't increase the risk of mesothelioma?
A. Not that's been established, no.

83. PAGE 134:17 TO 136:18 (RUNNING 00:02:14.551)

Q. Okay. By the way, is Mass. General related to Harvard in any way?
A. Yes.
Q. Okay. And how?
A. It's the primary teaching hospital for the Harvard Medical School.
Q. Have any of the higher-ups at Harvard ever come to you and said, hey, Dr. Kradin, Harvard believes there is a safe level of asbestos exposure?
00135:01 Has that ever happened?
A. It's never happened. Again, I direct a postgraduate course that's sponsored by Harvard Medical School, in which case we have repeatedly suggested that there is no safe level of asbestos. Harvard has never come by and said you need to change that.
Q. Now, you were asked a lot of questions

about background, and I want to make it very clear. You have said -- correct me if I'm wrong -- that you don't believe right now there's a scientific basis to say background levels increase the risk of mesothelioma?

A. Right now there's no scientific basis for that statement.

Q. Now, you've also been asked whether or not levels of asbestos that would be similar to background, whether they can cause mesothelioma. So here's what I want to ask you. If you have somebody who is living in the United States, let's say, for instance, they're exposed to background asbestos, and then they have an occupational exposure to asbestos that approaches background levels, do you now ignore the initial background, or do you have to add them together to say that's what the person's actual exposure is?

A. The actual exposure obviously includes the background as well. The exposure that seems to be important in the biomedical sense with respect for developing disease appears to be those exposures above background.

Q. Okay. So if a person has exposure in a occupational setting to asbestos, that would be in addition to whatever the background is?

A. Absolutely. And, you know, I think the point is you need to have some sense of the magnitude of occupational exposures and background levels.

Virtually all occupational exposures are thousands of times higher than what we breathe in the background level. So we're not talking about one or two asbestos fibers. We're talking about tens of thousands to millions of asbestos fibers in what we call an occupational exposure.

84. PAGE 137:01 TO 137:06 (RUNNING 00:00:17.606)

from your review of the literature, your general understanding of the literature and your own review of depositions of individuals who have done this work, can you give us a characterization of background levels in terms of fibers generally versus occupational levels?

85. PAGE 137:08 TO 141:22 (RUNNING 00:05:11.484)

A. A background level of exposure, as we've defined it here, and it is basically defined in the literature, consists of a fiber of asbestos in a -- a tenth of a fiber of asbestos in a cubic centimeter of air.

An occupational exposure, even what we would call a relatively trivial occupational exposure, is virtually always magnitudes higher than that. So we're talking about almost always thousands to ten thousands to millions of times higher when we talk about occupational exposures to asbestos.

So it's -- it's -- they're two different categories of magnitude. The occupational level is much higher than the background level that we all breathe on a daily basis.

Q. And I want to make sure I heard that right. Did you say background was a tenth of a fiber per centimeter?

A. Yeah.

Q. Okay. Because I think you had said that

your opinion on background before was less than a tenth?
A. It was .0001 per cc.
Q. Okay. That's not --
A. Right. I'm sorry. It's a .0001 per cc.
Q. That would be tenths, hundredths, thousandths -- that would be ten -- one ten thousandth?
A. Ten thousandth, yes.
Q. To be clear, not one-tenth of a cc, one one thousandth of a cc?
A. Correct my arithmetic. One ten thousandth.
Q. Okay. That's okay. When chrys -- you were asked all these questions about chrysotile clearing from the body, and you kept saying clearing from the lung. Now, why did you clarify clearing from the lung as opposed to clearing from the body?
A. Because I -- I think there is a general sense in the older literature in particular that the fibers that go into the lung are the same fibers that physically cause mesothelioma, and there may be some basis for that theory, but I think what's
00139:01 increasingly been shown over the last 20 years is
02 that these fibers don't stay in the lung and they go
03 elsewhere, and many of the fibers, particularly of
04 chrysotile seem to wind up in the pleura where these
05 mesotheliomas develop. So not finding them in the
06 lung may be meaningless if they're now sitting and
07 living in the pleura where the disease is being
08 caused.
09 Q. Okay. You were asked about -- I think
10 that you have the article right there to your left
11 under the sheet of paper. And you were asked some
12 questions about that article. That's from Churg in
13 1995?
14 A. Yeah.
15 Q. And the question you were specifically
16 asked was, was it read to you correctly, and you
17 wanted to add something else to that. What did you
18 want to add?
19 A. Well, what I wanted to add was -- I'm not
20 taking any exception to the reading. Everyone reads
21 very well here, but this article was from a textbook
22 that was published in the 1995. That's a while ago,
23 so we're talking about almost 30 years ago now, and
24 since that time there's been substantial literature
25 showing that chrysotile produces mesothelioma both in
00140:01 mines that tend to be chrysotile alone that is not
02 contaminated theoretically and just in the general
03 population.
04 So we're seeing more -- as time goes on, we're
05 seeing more of these lower dose exposures to
06 predominantly chrysotile producing the disease
07 malignant mesothelioma. So, you know, what was said
08 here back in 1995 may no longer be the case.
09 Q. Okay. And are you aware as to whether or
10 not Dr. Churg typically testifies for defendants in
11 asbestos litigation?
12 A. Dr. Churg, I think, typically testifies
13 for defendants. Dr. Churg has some prejudices about
14 chrysotile. He's also from Canada where chrysotile
15 is mined, but that's hardly here nor there. I think
16 even Dr. Churg would agree if he was sitting here
17 that chrysotile is a cause of mesothelioma.
18 Q. Okay. To your knowledge, has any -- in

light of what Churg said in '95, to your knowledge, has any scientific or regulatory body in the world concluded that there is a known safe level of asbestos exposure?
A. No. They've not -- they've not concluded there's a safe level of asbestos nor have they concluded that chrysotile is a safe form of asbestos. So everybody seems to be on the same page in that regard that all forms of asbestos can produce mesothelioma and that there is no safe level.
Q. Okay. Now, you were asked the question whether you believed that each and every occupational exposure increases the risk to mesothelioma. Now, is that different than saying each and every exposure?
A. Yes.
Q. Okay. And how is it different?
A. Well, it's as we've just talked about. Occupational exposures generally are a magnitude higher to what one would expect from background levels of exposure. They're not trivial. They're not -- we're not talking about having one or two fibers of asbestos released into your breathing zone. We're talking about having tens of thousands to millions of fibers released into your breathing zone, if not more. And so there's a major categorical difference in the magnitude of these exposures.
Q. And to be clear, am I correct that you are not saying that any exposure from any source can cause mesothelioma, are you?

86. PAGE 141:24 TO 142:21 (RUNNING 00:01:15.735)

A. Absolutely not. Again, you know, one can pass by an area where asbestos is in disrepair and just walk by it. I think your risk of developing mesothelioma from that type of exposure would have to be trivial, but if you're working in a workplace in a factory where these products are being used and cut and manipulated in ways where dust is being released that is often visible dust, these are major league exposures.
Q. Now, to your knowledge -- you were asked about the current OSHA -- you were asked about the current OSHA PEL of .1 fiber per cc. Do you recall that?
A. Yes.
Q. To your knowledge, has OSHA ever said that the current PEL is safe in protecting people from mesothelioma?
A. The answer to that is they -- when they issue their PEL limit, they -- there was a document that was also issued at the same time which indicated that there was going to be an expected increased incidence of malignant mesothelioma even at this new regulatory standard. OSHA realized that.

87. PAGE 143:13 TO 143:17 (RUNNING 00:00:10.504)

Q. Okay. And has OSHA even stated that they still expect excess mesotheliomas at the current OSHA PEL?
A. They expect approximately 200 or more cases a year at the current PEL.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:42:11.083)