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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

1 the morning. And we're closing in on it. It looks like
2 we'll be able to get the case to you tomorrow. And you
3 can probably start deliberating sometime in the early
4 afternoon, it appears.
5 So see you back at 9:15. Don't talk about the case.
6 Continue to keep an open mind. Don't do any outside
7 research or investigation.
8 (WHEREUPON, the jury was excused from open court at
9 approximately 4:44 p.m.)
10 THE COURT: All right.
11 MR. TIVIN: Your Honor, Mark Tivin on behalf of John
12 Crane.
13 THE COURT: Yes, sir.
14 MR. TIVIN: I don't mean to be a pest about it, but I
15 had spoken to you about Dr. Crapo being proffered as an
16 expert. And the Court still hasn't accepted him.
17 THE COURT: Yes, you're right. I completely forgot
18 about that. Well, I'll just tell the jury in the morning.
19 MR. TIVIN: It doesn't matter. I think as long as
20 it's on the record -- I just need something on the record
21 that says he's been accepted as an expert, or you can do
22 it in the morning.
23 THE COURT: Just throw something at me if I don't do
24 it in the morning first thing. All right.
25 MR. TIVIN: Sorry, Your Honor.

1 THE COURT: That's okay. It's my fault. I forgot
2 about it.
3 MR. TIVIN: Can we take a five-minute break before we
4 start any of this --
5 THE COURT: Yeah, sure.
6 (WHEREUPON, a break was taken.)
7 THE COURT: All right. Is everybody ready to get
8 started?
9 MR. PANATIER: Oh, Your Honor, I forgot. I'm going
10 to -- I'm going to offer Plaintiff's Exhibit No. 821 into
11 evidence. It's the '63 memo.
12 MR. YOUNG: Okay. Judge, we -- where's Chris?
13 (Pause.)
14 THE COURT: Okay.
15 MR. YOUNG: Judge, can we wait on Mr. Collier for
16 whatever objection he might have?
17 MR. PANATIER: I'll leave it right there.
18 THE COURT: Sure.
19 MR. YOUNG: I'm sure it's highly prejudicial or the
20 Plaintiff's wouldn't move to admit it.
21 MR. TIVIN: Your Honor, is it my understanding what
22 the only thing we're going to be doing is the jury
23 instruction conference?
24 THE COURT: Is this some kind of precursor to you
25 asking to be excused?

1 MR. TIVIN: Yes.
2 THE COURT: No.
3 MR. PANATIER: That's what happened last time, we had
4 a fight over Jesus.
5 THE COURT: I'm just teasing you. If you don't think
6 you need to be here, that's up to you, sir.
7 Okay. I've got a 20-page document. Is that what
8 everybody is looking at?
9 MR. PANATIER: Yes, sir.
10 MR. ELLIOTT: Yes, sir.
11 Do you want to tell him what --
12 Your Honor, what we did, in case no one's advised
13 you, is we took the Muldoon charge --
14 THE COURT: Okay.
15 MR. ELLIOTT: -- that you had given. And we all took
16 a stab at making some redline changes. And then we
17 exchanged that -- you know, our redline changes with each
18 other. And then we discussed it and sort of agreed on
19 some stuff, added stuff in, took it out by agreement.
20 And then I -- for John Crane, there are little notes
21 that says, John Crane objects to this and -- or this
22 language. And I assume there's some notes where other
23 folks have objected to certain charges being added.
24 That's how the document evolved.
25 MS. SHOFNER: Your Honor, I'm kind of behind the

1 easel.
2 I think that the highlights in yellow are the
3 Plaintiff's, I think what they sort of changed and added.
4 And then John Crane's are in red. And Celanese's are in
5 blue, if that helps you as well with the key code.
6 THE COURT: Yes, ma'am.
7 Thank you.
8 MS. SHOFNER: And I tried to take out all of the
9 things that we, actually, agreed could be removed from the
10 Muldoon. But there may be a few that still need to be
11 cleaned up, which I'm happy to do after this is over with.
12 MR. PANATIER: I think Page 5 is the first page where
13 there are any --
14 THE COURT: Okay.
15 MR. PANATIER: -- issues.
16 THE COURT: Okay. So I think we can -- Plaintiff's
17 are seeking to recover damages from personal injury and
18 wrongful death arising from the alleged asbestos exposure
19 of Dennis Seay.
20 MR. PANATIER: We're fine to stop it there. That's
21 fine.
22 THE COURT: Does that suit everybody?
23 MR. PANATIER: Yeah. We'll stop it there. That's
24 fine. And then start with "the mere fact" next.
25 THE COURT: Right.

1 MR. PANATIER: Yeah. That's fine.
2 THE COURT: Okay. And --
3 MR. ELLIOTT: Your Honor, paragraph five, we struck
4 out the last portion, "or was used or altered in a
5 reasonably foreseeable manner." It's mentioned several
6 times throughout the charge.
7 THE COURT: How is that -- you know, what's -- that's
8 not really an issue here, is it?
9 MR. PANATIER: Well, it is only because they could --
10 the jury could interpret it -- we propose that "or was
11 used or altered in a reasonably foreseeable manner,"
12 because the jury could easily interpret that to say, I
13 mean, they cooked on a flange and then they ground it off.
14 That is not how it was when it left the hands of the
15 Defendant. And I've been burnt by that before where a
16 jury said, no, it was cooked on. It wasn't like it was
17 when the defendant sold it.
18 So "used or altered in a reasonably foreseeable
19 manner" is consistent with the law. And it, also, avoids
20 any confusion.
21 MR. ELLIOTT: Well, and I, also, think the charge
22 is -- discussed reasonably -- used in a reasonably
23 foreseeable manner later on as well in a more explanatory
24 way.
25 MR. PANATIER: I prefer it here, instead -- I'd even

1 let it go later. But this right here, I think that -- if
2 you stop right at "Defendant," I think it could really
3 confuse the jury, Your Honor. And I don't think it causes
4 any prejudice to John Crane to include our little phrase
5 there.
6 THE COURT: I think it's a correct statement of law.
7 We'll leave it in. Okay.
8 MR. PANATIER: Do you guys have an objection on the
9 third paragraph up from the bottom still?
10 MR. ELLIOTT: We were just saying leave it in.
11 MR. PANATIER: Oh, hold on. Let me see.
12 That's fine. Okay.
13 I think then we're good on this page, Your Honor.
14 MR. ELLIOTT: Is this page just the risk-utility?
15 MR. PANATIER: Okay. Yeah. So, Your Honor, at the
16 bottom of the page is -- Page 6 --
17 THE COURT: Yes.
18 MR. PANATIER: -- is the risk-utility test for a
19 design defect. And we have -- we are only going to ask
20 the jury to hold John Crane responsible under the
21 negligence prong of product liability, not design defect.
22 We're only going on warning and then under -- and
23 negligence for John Crane. We're not alleging any design.
24 And so we believe that under the -- under the case law --
25 Branham was one -- Branham that risk-utility shouldn't be

1 charged.

2 MR. ELLIOTT: I want to make sure I understand.

3 Their claim against John Crane is that we didn't provide a

4 proper warning, therefore, we're negligent or --

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

6 right.

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

8 MR. PANATIER: Correct.

9 MR. ELLIOTT: Okay. And this is my issue with

10 removing the risk-utility language.

11 Number one, there's a case, Holland v. Morbark, 407

12 SC 227. And it says risk-utility applies for any theory,

13 including where the allegation is the failure to warn.

14 But I will admit, in that case, there was, also, an

15 underlying product defect. And so the risk -- meaning not

16 just the warning, but the manufacture and design of the

17 product itself. Okay.

18 And throughout the charges, they include paragraphs

19 about what I perceive to be charges on design and

20 manufacturing defects. And so I don't think we should

21 take out the risk-utility if we're going to leave in

22 charges that, also, outline the law on defective

23 manufacture and defective design.

24 And the paragraphs where I think that is still

25 included, despite they only want a warnings charge, are

1 these. And there are six of them. On Page 7, the third
2 paragraph starts with "To hold." Okay.
3 THE COURT: Okay.
4 MR. ELLIOTT: And the second paragraph, would be two
5 paragraphs down, "In order for the plaintiffs to prove."
6 Okay.
7 THE COURT: Okay.
8 MR. ELLIOTT: And the third is, "In evaluating
9 whether the manufacturer." Do you see where that starts?
10 It's the next paragraph. Sorry.
11 THE COURT: Yes.
12 MR. ELLIOTT: Are you with me?
13 THE COURT: Yes, sir.
14 MR. ELLIOTT: And then the next page, Page 8, Your
15 Honor, the first paragraph, "But you must." Okay.
16 THE COURT: Right.
17 MR. ELLIOTT: And --
18 MR. PANATIER: I'm sorry. Which one on Page 8? The
19 top?
20 MR. ELLIOTT: Yes, sir.
21 MR. PANATIER: Okay.
22 MR. ELLIOTT: And then if you go down five
23 paragraphs, where "Now common manufacturer owes a duty."
24 I'm looking on the left side. And then two paragraphs
25 down, "If the seller had reason to know."

1 Are you with me?
2 THE COURT: Yes.
3 MR. ELLIOTT: And, by the way, some of it's a little
4 nuancical, I guess -- if that's a word. But the -- the
5 most illustrative is number -- on Page 7, the one I marked
6 as 3.
7 THE COURT: Okay.
8 MR. ELLIOTT: "In evaluating whether the
9 manufacturers met the standard of care with respect to
10 designing their product, you must measure the product
11 against the standard existing at the time of the
12 manufacture itself. You may not evaluate or consider any
13 evidence of knowledge, information obtained from the date
14 of the manufacture and sale."
15 And my point is, each one of those charges I
16 pointed -- I cited to have information about either a
17 manufacturing defect or a design defect, rather than a
18 warning.
19 THE COURT: What was the name of the case you
20 mentioned?
21 MR. PANATIER: Holland.
22 THE COURT: Holland?
23 MR. ELLIOTT: Can I give it to him? Is that okay?
24 MR. PANATIER: Yeah.
25 MR. ELLIOTT: I don't have it turned to the right

1 page, but this is the case.
2 THE COURT: Okay.
3 MR. ELLIOTT: But my point is, overall, those six
4 paragraphs, we think, also, include charges on design and
5 manufacturing defect, and wouldn't be appropriate if
6 they're only alleging a defective product because of the
7 failure to warn.
8 MR. PANATIER: Can I interrupt?
9 MR. ELLIOTT: Yeah.
10 MR. PANATIER: I'll withdraw those paragraphs. We
11 withdraw risk-utility. I'll pull all the ones you have an
12 objection to.
13 MR. ELLIOTT: Okay.
14 MR. PANATIER: So, Your Honor, that would be the
15 paragraph at the bottom of Page 6, continuing to the
16 second paragraph of Page 7 is risk-utility. So that would
17 come out.
18 And then I would agree to remove the third paragraph
19 on Page 7, fifth paragraph on Page 7, sixth paragraph on
20 Page 7, first paragraph on Page 8.
21 THE COURT: All right. Now, wait. Who's responsible
22 for making all these --
23 MS. MCVEY: We are.
24 MR. PANATIER: I'm doing it right now. I'm doing it
25 right now.

1 THE COURT: I understand you're doing it correctly.
2 I was just curious.
3 MR. PANATIER: I think I'm doing it.
4 On Page 8, continuing, the fifth paragraph from the
5 bottom, "Now a manufacturer."
6 Right? That was one you had an issue with; correct?
7 MR. ELLIOTT: Yes.
8 MR. PANATIER: And the third from the bottom.
9 MR. ELLIOTT: Yes.
10 MR. PANATIER: So those would -- we'll pull all of
11 those out that I just mentioned that John Crane had an
12 objection to. And that removes the last two paragraphs on
13 Page 6 and the first two paragraphs on Page 7.
14 Are we good?
15 MR. ELLIOTT: Yes.
16 MR. PANATIER: Okay. Easy enough.
17 THE COURT: All right. Let the record reflect that
18 the parties have agreed to remove the matter from the jury
19 charge. And notify court administration as well of that.
20 MR. PANATIER: Before we move past these pages too
21 much. Back on Page 7, Your Honor, the third paragraph
22 from the bottom -- we're on now a different issue.
23 THE COURT: All right. What page are you on?
24 MR. PANATIER: Page 7. The third paragraph from the
25 bottom. It starts with "JCI objects to removing this

1 language."
2 THE COURT: Right.
3 MR. PANATIER: The only -- the only problem I have
4 with this is the second sentence. If you read it, it
5 doesn't quite make sense. It says, "You should return a
6 verdict in favor of the Plaintiff only if a due regard of
7 the state of the art existing at the time the Defendants
8 product was defective."
9 It seems to lack a clause. So we would object to
10 that sentence as is. It's from Muldoon. It was said in
11 Muldoon. There's no doubt. And so I just -- I think the
12 sentence as in -- needs another clause that says what the
13 state of the art says, or take it out.
14 Because, frankly, I don't -- we already have
15 instructions on state of the art on the next page, which
16 is on Page 8, paragraph three, "A manufacturer has the
17 duty to stay aware of current standards," et cetera, et
18 cetera, which is out of the pattern.
19 So we'd, actually, ask that you just remove the
20 entire paragraph that starts with "JCI objects to removing
21 this language." I don't think we need it.
22 MR. ELLIOTT: "You should return a verdict" -- I'm
23 reading the second sentence. And I'm trying to see as to
24 how I can make it make sense.
25 "You should return a verdict in favor of the

1 Plaintiff only if you give due regard to the state of the
2 art existing at the time of the Defendants -- at the time
3 the Defendants product was defective."
4 MR. YOUNG: No. I think it should say that "only if
5 under the state of the art existing at the time you find
6 Defendants product was defective."
7 MR. PANATIER: And that's on the next page. I
8 mean --
9 MR. ELLIOTT: Which one are you looking at, Chris?
10 MR. PANATIER: On the next page, on Page 8, the
11 second paragraph and third paragraph talk about state of
12 the art. So this -- this seems a little bit -- it's tough
13 to get through. And it all seems a little bit cumulative.
14 THE COURT: Yeah. I agree. I'm -- it appears
15 whoever said that may have been the one who was defective.
16 MR. PANATIER: Your Honor, are you saying -- you're
17 saying you'll take out that paragraph?
18 THE COURT: No. I would leave in the post-sale duty
19 to warn.
20 MR. PANATIER: All right. But the second sentence
21 comes out?
22 THE COURT: Yeah. I don't -- yeah.
23 MR. PANATIER: Okay. That's fine.
24 Do you guys have the next -- what's the next thing?
25 Page 9?

1 MS. SHOFNER: I don't think there's anything on Page
2 9.
3 MR. PANATIER: Okay.
4 MS. SHOFNER: Is there?
5 MR. PANATIER: We've agreed to that.
6 MS. SHOFNER: Right -- no, no. There at the bottom
7 of Page 9, "If there is not sufficient evidence." That's
8 yours.
9 MR. PANATIER: Which one?
10 MS. SHOFNER: Page 9, "If there is not sufficient
11 evidence."
12 MR. PANATIER: Oh, yeah.
13 Your Honor, so -- "but for" is three paragraphs over.
14 This would be saying -- oh, Page 9. Sorry.
15 THE COURT: Okay.
16 MR. PANATIER: Page 9, I think Celanese wants --
17 MS. SHOFNER: No, no.
18 MR. PANATIER: I'm sorry, guys. John Crane. That's
19 red. John Crane wants, "If there is not sufficient
20 evidence to conclude that but for a Defendant's conduct
21 the injury would not have occurred, then you," et cetera.
22 That -- that is stated two paragraphs up already.
23 THE COURT: Yeah. I agree. I agree.
24 MR. YOUNG: All right. And, Judge, we don't think
25 that's a proper charge for a premises case.

1 (Pause.)
2 THE COURT: Which one now are you talking about,
3 Mr. Young?
4 MR. YOUNG: I guess -- Judge, this is my first
5 premises case. And I won't say anything else about cause,
6 because Mr. Panatier fussed at me. But I just don't see
7 how -- I don't think that's a -- we just don't think
8 that's applicable to this particular premises claim, the
9 "but for."
10 But I understand you're going to give it, Judge, for
11 the manufacturing claims. So I think the simplest thing
12 to do is just to let us object.
13 THE COURT: I'm not sure what you're talking about.
14 Now, the -- but for the causation?
15 MR. YOUNG: Well, I probably didn't explain it very
16 well.
17 THE COURT: Well, no. I mean, you're saying "but
18 for" causation doesn't apply to premises cases?
19 MR. YOUNG: Not in this type of situation, yes, sir.
20 I can't give you a case that says that, Judge. But that's
21 just --
22 THE COURT: Okay.
23 MR. YOUNG: -- if you read the -- all the law in its
24 entirety, I just don't think -- I think that is intended
25 to apply to something else, like a products liability

1 claim.

2 MR. PANATIER: I'd love to -- I'd love to agree with

3 him. I think the law is "but for," plus concurrent cause,

4 which is instructed on. I hate "but for" personally. But

5 I think that's the law.

6 And it -- and it's given in -- it's given in two --

7 really, two kind of clauses. One is there's "but for."

8 And then there's -- the subsequent paragraph says there

9 can be more than one "but for" cause, which is a little

10 bit confusing. But that's the law. And I think that's

11 what it needs to be.

12 MR. YOUNG: Judge, I think you should just go ahead

13 and leave it in where it is, and let us do whatever it is.

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

15 MR. YOUNG: It's not a -- it's not a chest-beater

16 type of objection.

17 THE COURT: Okay. I understand.

18 MR. PANATIER: But we're still taking it out where

19 it's repeated the second time on Page 9.

20 MR. YOUNG: Well, I don't have a -- I don't -- that's

21 a John Crane issue.

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

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

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

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

1 is on Page 10. And this was not marked, but I think all
2 parties have agreed that the paragraph that starts "The
3 Defendants claims of the Plaintiff's." It's in the
4 middle, one, two, three, four paragraphs down.
5 THE COURT: Yes.
6 MS. SHOFNER: Do you see that?
7 We're going to move that paragraph to right after the
8 paragraph in front of it, "A manufacturer has no duty."
9 We're just going to move that paragraph down. And instead
10 of "The," say "Both Defendants."
11 MR. PANATIER: On "Defendants claim"?
12 MS. SHOFNER: Yes. "Both Defendants claim of the
13 Plaintiff's injuries were not proximately caused by the
14 negligence of either Defendant, but were solely caused by
15 the wrongful acts of a third party." That paragraph,
16 we're just going to put above -- or right after "The
17 manufacturer does not have a post-sale duty to warn."
18 That's where that comes in. Because the next
19 paragraph will start "The premise liability," and -- the
20 contractor charges.
21 MS. MCVEY: But we agree on that.
22 MS. SHOFNER: We agree. We agree. I just want you
23 to know that -- that we're making that change.
24 MR. PANATIER: From now on, we'll let you know when
25 we agree first.

1 MS. SHOFNER: I'm sorry. I thought I said that. We
2 all agree to that.
3 THE COURT: All right. Thank you.
4 MS. SHOFNER: Okay.
5 MR. PANATIER: I think the next issue -- so we've
6 taken the premises instructions out of the pattern -- the
7 Anderson [phonetic] book. And that's what we have
8 suggested. And we understand that, perhaps, Celanese has
9 an objection to that.
10 MR. YOUNG: Yeah. I mean, Judge, this is what I was
11 mentioning yesterday. All of these charges that the
12 Plaintiff's have suggested, in Celanese's opinion, would
13 apply if Mr. Seay had gone there as like a salesman, or
14 something.
15 This is a totally different situation. And, happily,
16 we were able to find this South Carolina case that there
17 is a completely different applicable law when you're
18 dealing with a general -- or an independent contractor
19 like Celanese. And this is really the big issue in all
20 the jury charges for Celanese is...
21 (WHEREUPON, there was an off-the-record discussion
22 amongst the attorneys.)
23 MS. SHOFNER: It's on Page 13.
24 THE COURT: Okay.
25 MS. SHOFNER: Our -- CNA's jury charge number 16.

1 MR. YOUNG: And we think that that succinctly states
2 the applicable law, Your Honor, for our case involving an
3 employee of an independent contractor coming on to the
4 premises to do work. And that's what that case says. And
5 that's --
6 THE COURT: What case is it? 16 --
7 MR. YOUNG: Oh, sorry, Judge. It's -- we were,
8 actually, prepared for this. It's Lanier Construction
9 Company v. Bailey & Yobs, Inc., 384 SC 275. And I'm happy
10 for y'all to take my copy, if you want it.
11 But that's a -- the charges we have are a direct
12 quote from that case, Your Honor.
13 THE COURT: Where it says, "The contractor generally
14 equates to an invitor" is a direct quote?
15 MS. SHOFNER: Yeah. Yes. It says that "The entire
16 basis of an invitor's liability rests upon his superior
17 knowledge of the dangers that causes the invitee's
18 injury."
19 MR. YOUNG: Your Honor, I don't know what -- the page
20 it is. It says, "Under a premises liability theory, a
21 contractor generally equates to an invitor, and assumes
22 the same duties that the landowner has, including the duty
23 to warn of the dangers or defects known to him, but
24 unknown to others."
25 MS. SHOFNER: And that exact phrasing is, also, cited

1 in the Sides v. Greenville Hospital System, at 362 SC 250,
2 and, also, in the H.V. Larimore v. Carolina Power & Light,
3 at 340 SC 438. And that's -- I think that exact statement
4 is in all three of those cases, exactly like that.
5 MR. PANATIER: If I can, Your Honor, neither of these
6 cases is this case. The premises law that we've -- that
7 we've cited is the rule. These would be what seem to be
8 fact-based exceptions.
9 In one case, you've got a homeowner, and a general
10 contractor, and a subcontractor. The general contractor
11 knows about a problem with the septic tank.
12 Subcontractor's hurt. So the general contractor is held
13 responsible.
14 In Sides, the other case, the -- it was lighting in
15 the parking lot of a hospital. It was injury to a third
16 person.
17 So you're not -- neither of these deals with an
18 employee that is working for a premises owner. So in the
19 hospital situation, you have an injury to a third party
20 who's walking through the parking lot. And the court
21 says, the hospital had superior knowledge, then the
22 contractor. And so the hospital -- or I guess you could
23 say the premises owner would be held responsible.
24 I don't think either of these are really on point. I
25 think it kind of comes full circle. Because then there's

1 this case Simmons v. Tuomey Regional Medical Center. And
2 in this one, it says, "The term 'nondelegable duty' is
3 somewhat misleading. A person may delegate a duty to an
4 independent contractor. But if the independent contractor
5 breaches that duty by acting negligently or improperly,
6 the delegating person remains liable for the breach.
7 "It's, actually, the liability, not the duty, that's
8 delegable -- that is not delegable. The party which owes
9 the nondelegable duty is vicariously liable for negligent
10 acts of the independent contractor."
11 This would appear to be the situation, Your Honor,
12 where this would -- this would be -- bring it really full
13 circle. This says, look, under these situations, which I
14 think contemplate injury to third parties for the most
15 part. Under these situations, if you have an injury to a
16 third party, this says, look, you still have -- the owner
17 has nondelegable liability for the actions of the
18 independent contractor, which, in our case, would seem to
19 suggest that if Daniel breached its duties because it was
20 brought in by Celanese that Celanese would have a
21 nondelegable liability for the actions of the
22 subcontractor.
23 So even if the jury found Daniels was responsible in
24 some way, and they wanted to hold Daniels responsible,
25 under this line of cases, the case law says, no, Celanese

1 still has responsibility for the non -- for the
2 nondelegable liability, and any of the actions of the
3 subcontractor.
4 I think this is not our case. I don't think any of
5 these cases are our case. I think our case is very
6 straightforward. It's an invitee. It's not an invitee of
7 a subcontractor. It's not an invitee of a -- that's a
8 third party. This is an employee of a contractor working
9 on the premises. And I think the rule -- the standard
10 jury charge that we've submitted is what the jury should
11 be instructed on.
12 I think the instructions that Celanese are suggesting
13 are extremely confusing. And I don't think that they're
14 on point with the facts of this case.
15 THE COURT: Thank you.
16 MR. YOUNG: Judge --
17 THE COURT: Yes, sir, Mr. Young.
18 MR. YOUNG: -- I mean, there's no evidence in this
19 case about any delegable or nondelegable duty. I mean,
20 all the evidence has been is that OSHA put the duty on
21 Daniel to provide a safe workplace. It wasn't anything
22 that was delegated from Celanese.
23 And, Judge, I mean, the language is what it is. It,
24 specifically, deals with a premises liability case and an
25 independent contractor, just like we have here. And the

1 citations -- the premises liability charges that they have
2 do not address that situation at all.
3 And, factually, our case is exactly like Lanier
4 Construction Company v. Bailey & Yobs, because of the fact
5 that Daniel -- everyone has agreed Daniel is an
6 independent contractor. And we're being sued under
7 premises liability in a case where Daniel was a contractor
8 doing the work that's claimed to have caused the damage.
9 I mean, I -- I just really -- I don't see -- I don't
10 see a -- really a legitimate legal argument to be made
11 that this language shouldn't be charged, Judge, under the
12 facts of this case and the exact language in those cases
13 that Ms. Shofner found.
14 MR. PANATIER: Well, Your Honor, I would just say
15 that based on the record we have in this case, this -- the
16 Lanier case is based on the -- if you -- if you want to
17 say that it's in any way applicable to our case, well,
18 it's based on a showing that the contractor's potential
19 liability was based on the notion that it had superior
20 knowledge of the dangerous condition. There's been no
21 showing of that in this case, that they had superior
22 knowledge.
23 And that was taken -- that's on Page 3, second column
24 over.
25 MR. YOUNG: Your Honor, we put a charge in there that

1 says, yeah, for this to apply, that's an issue. And I
2 think that's an issue in this case. But, you know, all of
3 the yackety-yak that he put up clearly shows that, I
4 guess, everybody including Daniel knew or should have
5 known about asbestos.
6 But, you know, we're going to hear tomorrow -- we've
7 already heard they put the asbestos in, and they
8 maintained it, and they were experts. And you're going to
9 hear the same thing tomorrow. I mean, it's not like
10 Mr. Buck's going to come in and say, you know, we had no
11 idea what we were working with.
12 So it's -- it's premature to bring that issue up,
13 because we haven't heard from the Daniel employee. But
14 worst-case scenario, Judge, that's an issue of fact. It's
15 not a reason not to give a charge, which seems to me to be
16 extremely applicable to our case.
17 MR. PANATIER: I don't understand why our proposed
18 isn't applicable. If anything -- if anything, you're not
19 talking about taking out the entire standard charge.
20 You're talking about adding a paragraph or two on
21 independent contractor.
22 Because, obviously, the rule -- the general rule is
23 completely applicable to this case. But I can understand
24 if they want the Court to include an instruction on
25 independent contractors and their employees. But I don't

1 think you exclude the entire section that comes from the
2 patterns on 10, 11, and the top of 12.
3 MR. YOUNG: Judge, it's been so long since I had to
4 do anything, maybe my brain is turned off. But that's the
5 whole point, Judge, that there's two different situations.
6 And our argument is -- is that the premises liability
7 charge from the pattern is like the -- a slip-and-fall
8 case. It's been given, I'm sure, a thousand times or
9 10,000 times in South Carolina.
10 But this is a case where a general contractor comes
11 in and is doing the work that's claimed to be the
12 hazardous work. And so we feel like the cases that deal
13 with that situation establish the premises liability law
14 in South Carolina for this case, as opposed to the
15 traditional invitee-type situation where there's no
16 general contractor at all. It's just like if somebody
17 walks into the -- whatever -- subway and slips and falls.
18 That law would be applicable.
19 THE COURT: Aren't y'all really saying the same
20 thing? I mean --
21 MR. YOUNG: I think he's got a much easier burden
22 under the other law. I assume he's trying to talk me into
23 doing a horse trade here. And, Judge, I'm just -- I don't
24 want to make this last forever, but I'm not going to be
25 able to do that. As I told you a while back, you know,

1 I've got a hundred people looking over my shoulder. And
2 this issue has already -- I just --
3 THE COURT: Okay.
4 MR. YOUNG: I'll try, Judge. But I just -- we feel
5 like our law is the right law for this case.
6 THE COURT: So I'm trying to figure out what your law
7 is, as opposed to -- it seems to me that there may be two
8 issues. One is whether the jury should be charged about
9 premises liability in terms of the invitee's -- or
10 invitor's duty, how that duty is breached. And second is
11 the independent contractor concept.
12 Aren't they completely different?
13 MR. YOUNG: That's our position, Judge. That's what
14 I was trying to say.
15 THE COURT: And you're saying they're not different?
16 MR. PANATIER: I'm saying -- yeah -- yes, Your Honor.
17 The fact that he's employed by an independent contractor
18 is not a shield to the fact that he's still an invitee.
19 THE COURT: Right.
20 MR. PANATIER: And that's what the general patterns
21 are talking about. He's an invitee, regardless of whether
22 he was there invited without an employer or he had an
23 employer. At best, they're talking about a situation
24 where there's almost a rebuttal sort of liability
25 presumption, or there's a shield to that potential

1 premises liability on the independent contractor front.
2 Again, I don't -- I don't think that's what's
3 contemplated by this case. But certainly the premises
4 liability applies to invitees, and that's what he is. And
5 there's no dispute about that.
6 MR. YOUNG: And we have "invitee" in our charge,
7 Judge. We don't dispute that. It's just -- it's a
8 difference -- in my opinion, a different standard.
9 THE COURT: So your charge 16, Mr. Young, appears to
10 be just talking about invitors. It would appear to me
11 that 16A and 16B, though, were talking about --
12 MR. YOUNG: Judge, I'm -- contractor -- what that's
13 saying in 16 is that contractor is generally the same as
14 the premises owner.
15 THE COURT: Right, right.
16 MR. YOUNG: And assumes the same duties as the
17 premises owner. If we can change it so it's clear.
18 THE COURT: Oh, okay. So Daniel is the premises
19 owner now?
20 MR. YOUNG: Well, that's what this case says. It
21 equates to the --
22 MR. PANATIER: If it has -- that's the thing. If it
23 had superior knowledge in that case for injury to --
24 THE COURT: Okay. I'm with you.
25 MR. YOUNG: That's what the charge says.

1 THE COURT: I'm sorry. I was slow on the take-up
2 there.
3 MR. YOUNG: It doesn't do us any good if we don't
4 prove that -- that our knowledge was equal to or less than
5 Daniel. So, I mean, that can still be argued. But I
6 don't think that's any reason not to give the charge.
7 Basically, what these charges say, Judge, as I
8 understand it, is the general contractor, when they come
9 in to do the job, they take over the work area and, thus,
10 they become, in essence, a premises owner.
11 And so then this -- this law applies, as opposed to
12 the standard premises liability charge.
13 THE COURT: Well, it seems to me that the jury has to
14 decide what duties are in effect once Mr. Seay stepped on
15 Celanese's property. And in terms of Celanese's
16 liability, that would appear to depend upon their finding
17 of the facts related to the elements under the law of
18 premises liability, specifically, what duties are owed to
19 an invitee.
20 I think everybody agrees to that, don't they?
21 MR. YOUNG: I don't think so, Judge, because of the
22 independent contractor aspect of the case. I don't think
23 I'm explaining it very well, but.
24 THE COURT: But, I mean, the only reason this charge,
25 16, would be given to the jury is if they were going to

1 have something on their verdict form that would require
2 them to determine what Daniel's duty to Mr. Seay was;
3 right?
4 MR. YOUNG: No.
5 Judge, I think that -- that this -- this charge is
6 directly applicable to their premises liability claim
7 against Celanese. And it clearly says that when you have
8 a contractor that they equate to the invitor of the
9 premises owner and that we can't be liable, unless there
10 is some showing that we had more knowledge of the dangers
11 than Daniel did.
12 And I think that's an important part of our case. I
13 don't think you would have to have any finding against
14 Daniel at all. It's just a -- it's an issue of fact for
15 the jury. But this language, to me, is absolutely
16 applicable to our case.
17 And I don't want to get -- I don't think it would
18 require any finding against Daniel at all on liability.
19 It's just a question of kind of who knew what.
20 THE COURT: Right. Which is already something the
21 jury's told about Celanese's position, whether there --
22 whether they -- whether they should have disclosed
23 something about the property because they had knowledge of
24 a latent or hidden condition. I mean --
25 MS. SHOFNER: That's a question mark, isn't it?

1 MR. YOUNG: Yeah.
2 I mean, Judge, I guess what I'm saying is you can't
3 carve Daniel out of this under the applicable law in South
4 Carolina and --
5 THE COURT: Well, they're not a party to the case. I
6 mean, they've carved themselves out.
7 MR. YOUNG: I understand.
8 THE COURT: Didn't they?
9 MR. YOUNG: I'm talking about --
10 MS. SHOFNER: Under workers' comp claims, they can't
11 be a party to this case. Under workers' comp claim --
12 MR. YOUNG: I'm talking about from the standpoint of
13 the applicable law and how they fit into whether Celanese
14 is liable or not. You don't have to have a finding of
15 liability on Daniel for any of these charges to apply.
16 They're just the law on what the Plaintiff has to show in
17 a premises case where there's a general contractor
18 involved that was involved in the alleged hazardous
19 situation. I don't know.
20 THE COURT: All right. Well, I guess maybe I'm
21 getting hung up on 16A. Because I just don't like that
22 language because I don't know anybody who talks like that.
23 But that's neither here nor there. I guess what I was
24 trying to get to is --
25 MR. YOUNG: Well, we can take 16A out, Judge, if

1 that's --

2 THE COURT: I mean, I understand. I understand where

3 you're coming from. But I think that there is a law about

4 independent contractors. And if the jury finds that

5 Celanese didn't have any control over Daniel, then 16A and

6 16B will kick in.

7 I mean, I don't -- why wouldn't the Plaintiff think

8 that? I mean, it seems to me the jury has got to make two

9 decisions. They've got to make a decision about premises

10 liability. And then if they find, well, there was a

11 latent defect or there's something that Celanese should

12 have disclosed to Mr. Seay, then the question becomes, did

13 they delegate all of that to Celanese and retain no

14 control?

15 And as I understand it, Mr. Panatier, you're relying

16 on the Simmons case saying they can't delegate that in the

17 first case.

18 MR. PANATIER: Well, that's correct. But, also, I'd

19 like to point out that in the cases that Celanese is

20 relying upon, I believe everybody was a party to the case,

21 the contractor, the independent -- the independent

22 contractor, the owner, and the sub. And so it's almost --

23 it's almost like -- it's almost like a separate liability

24 finding that Celanese is requiring against Daniel in the

25 case as a shield to invitee premises liability.

1 And that's -- because I don't think -- I truly don't
2 think that -- I don't think there's any -- I don't think
3 the law, as in the regular pattern, contemplates any
4 type -- any type of, you know, I'm -- it's almost like,
5 like -- it's almost like a sole proximate cause-type
6 argument where they're saying, look, if they -- if we
7 prove that Daniel had superior knowledge, then the
8 premises owner's off limits.
9 And I don't think that's what the law contemplates at
10 all. It's almost a sole proximate cause-type argument.
11 Even if -- even if it would allow us to prove that
12 Celanese breached their duty -- in fact, that's the
13 problem here. It could be the case that we could prove
14 Celanese breached their duty.
15 THE COURT: How? I mean, just tell me --
16 MR. PANATIER: Sure.
17 THE COURT: -- how the record would --
18 MR. PANATIER: Sure.
19 We could show that Celanese breached their duty if
20 they failed to let Mr. Seay know, who was an invitee,
21 undisputedly, about the latent hazards of asbestos
22 insulation in place, or the failure to properly advise him
23 of that. Okay. So the jury could find they breached
24 their duty. And then he -- they would be liable.
25 At the same time, they could, also, find that Daniels

1 had superior knowledge and that then under Celanese's
2 instructions, Celanese has no liability.
3 So you would have -- you would have an
4 inconsistent -- I believe it could lead to an inconsistent
5 finding or lead the jury down an inconsistent path where,
6 on the one hand under the premise of liability
7 instruction, Celanese has liability. They could find
8 that. They could, also, find that Daniel has superior
9 knowledge. And there -- it's almost an affirmative
10 defense.
11 THE COURT: Well --
12 MR. PANATIER: Yeah. And, of course -- and then, of
13 course -- yeah, and then, of course --
14 Thank you, Thiele.
15 And then, of course, Simmons kicks in, which says --
16 which says, well, Celanese you've got a nondelegable duty
17 anyway. So even if -- nondelegable liability. So even if
18 Daniel is held -- has superior knowledge and then held to
19 have breached its duty to Mr. Seay, well, then Celanese,
20 you're liable anyway.
21 Again, I think this is a straightforward premises
22 case. I think that if we go down the independent
23 contractor route, then we get to Simmons, which takes us
24 right back to Celanese.
25 MR. YOUNG: Judge, this case they keep talking about,

1 it says an employer has the nondelegable duty to
2 employees. Okay.
3 That's what we're going to argue, Not in those terms.
4 But it doesn't have anything to do with this case. And
5 it's not -- I'm not following -- I mean, Judge, this is
6 the law in South Carolina on a premises case where there's
7 an independent contractor involved. And I just don't
8 think it could be any clearer.
9 THE COURT: Well, isn't what you're really trying to
10 get me to do is charge Section 416 of the Reese statement,
11 which has not been adopted by South Carolina?
12 MR. YOUNG: I don't know what that is, Judge. So
13 sorry. If it helps us, the answer is yes.
14 THE COURT: Well, fair enough. Fair enough.
15 MR. YOUNG: If it says what this says, then the
16 answer is yes.
17 THE COURT: I mean, Simmons was somebody who went to
18 the emergency room and was the victim of medical
19 malpractice, and then tried to sue the hospital. And the
20 hospital said, well, tough luck.
21 The doctor was an independent contractor; right?
22 MR. PANATIER: Yes.
23 THE COURT: All right. So --
24 MR. YOUNG: And we withdrew 17, Judge.
25 THE COURT: Okay.

1 MR. YOUNG: What we're really looking at as far as a
2 charge, it includes the language in Lanier Construction.
3 And Your Honor can pick -- I mean --
4 THE COURT: Well --
5 MR. YOUNG: 16A is something that we sort of cobbled
6 together. But 16 is -- in some of the other ones are
7 straight from a South Carolina case.
8 MR. PANATIER: See, I think 16 is straight-up -- is
9 straight-up our hospital case.
10 THE COURT: That's the same thing as the premises
11 liability. 16 is the same thing as an invitee, except --
12 well --
13 MR. PANATIER: Except that it's trying to impute it
14 to the independent contractor for Mr. Seay.
15 MR. YOUNG: That's exactly what we're trying to do,
16 Judge. That's what the case law says.
17 THE COURT: Yeah. Okay. Well, let me go back to
18 what I was trying to say a minute ago.
19 In Simmons, the court adopted Section 429 of the
20 Reese statement, which says, When an employees is an
21 independent contractor performing services for another
22 which are accepted in the reasonable belief that the
23 services are being rendered by the employer or by its
24 servants is subject to liability for physical harm caused
25 by the negligence of the contractor to the same extent as

1 though the employer were supplying him himself.
2 And I paraphrased a bit there. But that's not this
3 situation because the contractor here was Daniel. Their
4 employee was Mr. Seay.
5 He didn't think he was employed by Celanese; right?
6 MS. SHOFNER: Correct.
7 MR. PANATIER: No. He didn't believe he was employed
8 by Celanese.
9 THE COURT: So, I mean, I don't know of any law
10 that -- it seems to me there's a duty. And, in fact, in
11 Rock Hill v. Globe Communications, it lists the types of
12 situations in which the nondelegable duty doctrine
13 applies.
14 And the first one they list is an employer has a
15 nondelegable duty to employees to provide a reasonably
16 safe workplace with suitable tools, and remains
17 vicariously liable for injuries caused by unsafe
18 activities or tools under the employer's control. A
19 landlord who undertakes repair of this property by use of
20 a contractor has a nondelegable duty to see that the
21 repair is done properly.
22 Now, how do y'all think those two situations apply,
23 if at all, in this case?
24 MR. YOUNG: Well, he's definitely an employee of
25 Daniel, so.

1 THE COURT: Okay.
2 MR. PANATIER: If the jury was being asked to
3 evaluate the liability of Daniel, I think it would be
4 relevant, but it's not. And the only way it would be
5 relevant for the jury to consider would be as some sort of
6 affirmative defense and as a sole cause, which isn't being
7 asserted anymore because we, of course, have an
8 indivisible injury case.
9 But it's not a -- it's not a defense to premises
10 liability. It is a fact. It is a fact. But I think it's
11 only a fact when you're assessing the employer's
12 liability.
13 THE COURT: And that's why I come back to my original
14 question, why aren't y'all saying the same thing?
15 You've got a duty to warn people on your premises,
16 who come there for business, of latent conditions.
17 And even if you hire an independent contractor to
18 come work there, you have that duty, right?
19 MR. PANATIER: Correct.
20 THE COURT: So why wouldn't --
21 MR. YOUNG: That's not what these -- these cases say.
22 THE COURT: So what? I'm asking you why -- why
23 isn't what I'm saying --
24 MR. YOUNG: Because I don't think that's what this
25 case says, Judge. It says that there's no responsibility,

1 unless the -- Celanese has a greater knowledge than
2 Daniel.
3 THE COURT: Well, Celanese's responsibility doesn't
4 change. They still have to provide a safe workplace, even
5 if they -- I mean, I may be being too simple, but --
6 MR. YOUNG: Sir, are you saying that you think that
7 both of them should be charged?
8 THE COURT: I'm just thinking out loud right now.
9 MR. PANATIER: Your Honor --
10 THE COURT: I'm trying to understand the distinction.
11 I don't know of any -- I get the concept that if you hire
12 an independent contractor, you -- and you give all control
13 to that contractor to do a particular job, you're not
14 liable for the contractor's negligence.
15 I, also, get that there can be a nondelegable duty
16 because I think that's what Simmons requires me to do.
17 MR. YOUNG: Well, right, Judge. But that's why we
18 went through it. I mean, it -- I mean, it says the
19 employer has a nondelegable duty to employees to provide a
20 reasonably safe workplace.
21 THE COURT: Right.
22 MR. YOUNG: And that that's Daniels.
23 MR. PANATIER: Your Honor, I think where you were
24 going is correct, which is -- which is none of this
25 changes Celanese's duty and the calculus that the jury has

1 to make on whether or not they have liability. None of it
2 changes it.
3 And so even if an independent contractor has certain
4 duties, nondelegable or not, to Mr. Seay, that is --
5 that's not the case. And that doesn't change any answers
6 that a jury might give to that or any consideration that a
7 jury might give to Daniel's fault, which they're free to
8 argue their fault. It doesn't change Celanese's -- the
9 calculation for Celanese's liability.
10 They're not being asked do that. If they were -- if
11 they were asked to evaluate Daniel's liability, if we were
12 able to bring such a case, I think all of this would be
13 relevant.
14 MR. YOUNG: Judge, that's just not what this
15 contractor case says. And I think it's directly on point.
16 THE COURT: Which one are you talking about? What --
17 what contractor case?
18 MR. YOUNG: Lanier.
19 THE COURT: Okay.
20 (Pause.)
21 MR. YOUNG: Judge.
22 THE COURT: Yes, sir.
23 MR. YOUNG: I -- I think that we can -- we can give
24 the -- well, obviously, it's your decision. But if we go
25 with the Plaintiff's premises liability charge, I'd just

1 like to have one -- one of the contractor charges just to
2 put that principle in front of the jury.
3 THE COURT: Okay.
4 MR. YOUNG: And I just -- I don't want us to have to
5 spend the night here arguing over this. And I think that
6 either 14, 15, or 16 should be charged, and not -- 16A and
7 16B are from other jurisdictions, Judge. I mean, not that
8 it matters, but this absolutely is the law in Georgia.
9 And --
10 THE COURT: Well, that might be because y'all are
11 corrupted by the Napoleonic code somewhat.
12 MR. YOUNG: Well, I think that probably 14 or 15 most
13 accurately reflect the premise that we're seeking to get a
14 charge on. So we could give 14 or 15. Then we would
15 agree to their charge -- their premises liability charge.
16 THE COURT: Which one, sir?
17 MR. YOUNG: 14 or 15. Bottom of 12, top of 13.
18 I do think that's the law, Judge. I think I
19 understand what you're saying now. And I think if you
20 give them both, you're not going to be in any way
21 adversely affecting the -- the question about the
22 liability to begin.
23 THE COURT: Okay. What about that, Mr. Panatier?
24 MR. PANATIER: I'm looking at it right now, Your
25 Honor. Just one moment, if that's okay.

1 THE COURT: Yes, sir.
2 (Pause.)
3 MR. PANATIER: Your Honor, I think the Plaintiff
4 could agree to, on 15, the sentence -- the last sentence
5 that begins, "Whether a premises owner owes an independent
6 contractor or employees of the independent contractor a
7 duty to warn of dangerous conditions on the premises turns
8 on whether the owner at the time in question possesses
9 superior knowledge or information, places him in a
10 superior position to appreciate the risk posed to the
11 contractor or its employees by the dangerous condition."
12 I think I could agree to that, which -- which captures the
13 superior -- or the superior knowledge point of the case
14 law cited by Celanese.
15 THE COURT: Okay.
16 MR. PANATIER: I could agree to that sentiment, that
17 sentence.
18 MS. SHOFNER: So you're agreeing to the "whether a
19 premises owner" sentence?
20 MR. PANATIER: "Whether a premises owner" sentence,
21 whether premises owes a duty. And then we would just ask
22 that the nondelegable duty statement under Simmons be
23 included.
24 THE COURT: Yeah. I think that is, in essence, what
25 this case says, I mean, Holland v. Morbark -- no. Hold

1 on.

2 MR. YOUNG: Judge, if you're going to charge on

3 Simmons, we need to have the employer as a nondelegable

4 duty to employees, too. You can't have just have the

5 goose and not the gander.

6 MR. PANATIER: I completely disagree. The gander

7 isn't in the case, only the goose is.

8 MR. YOUNG: Sure it is.

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

10 Oh, I'm sorry. Ignore my reference to Holland v.

11 Morbark. I was talking about Lanier Construction Company

12 v. Bailey, 384 SC 275. What that case is saying is that a

13 contractor is equivalent to the owner in terms of a duty

14 to warn.

15 So, I mean, I think the trouble I was having with 16

16 was that it appears to say that once an independent

17 contractor came on-site, the landowner no longer had any

18 premises liability.

19 MR. PANATIER: My understanding is they pulled 16.

20 THE COURT: I understand that.

21 MR. PANATIER: Okay.

22 THE COURT: I'm just telling you why I was having

23 trouble with it.

24 MR. PANATIER: Oh, sorry.

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

1 say, Judge.
2 THE COURT: I understand that. And it's not material
3 anymore because y'all withdrew it. But I don't think I
4 was articulating what I was concerned about until I --
5 MR. YOUNG: Well, I figured it out.
6 THE COURT: Well, you're ahead of me then, which is
7 not unusual. But if y'all agree on 15, I mean, I -- 14
8 is, basically, fleshing out the invitee standard and
9 adding this concept of superior knowledge, which is,
10 essentially, knowledge of the latent or hidden defect,
11 right?
12 MR. YOUNG: Yeah.
13 That -- I mean, that's our -- our argument. And I
14 understand what Your Honor is saying is that that is
15 something that you feel like should be given or considered
16 in addition to the standard premises charge.
17 THE COURT: So if y'all agree with 14 and 15 -- and I
18 don't know about -- I mean, I think whether or not
19 Celanese retains control is still a question for the jury.
20 MR. PANATIER: Yeah. And that's the reason that on
21 15, I couldn't agree to the first part.
22 THE COURT: Well, I figured that. So y'all can --
23 can't y'all agree on something that would --
24 MR. PANATIER: I can agree on the "whether a premises
25 owner" sentence all the way to the end. And in 14, I

1 think it -- I think it just says the same thing. So I --
2 really, I think the -- the last sentence on 15 should
3 cover it. And that's -- that's the crux of the issue as
4 to whether or not the contractor is sort of vitiating the
5 duty of the premises owner.
6 MR. YOUNG: I just -- Judge, I think 14 is a lot
7 clearer.
8 THE COURT: I'll charge 14. I mean, I suspect they
9 want to get that word in there, "superior knowledge."
10 MS. MCVEY: It's in 15.
11 MR. PANATIER: It is in 15. It's there. "Whether a
12 premises owner" -- it's at -- it's right near the end --
13 "at the time in question possesses superior knowledge or
14 information which places him in a superior position to
15 appreciate the risk posed to the contractor or its
16 employees by the dangerous condition."
17 The reason -- the reason we're advocating that
18 sentence on 15 is because 14 does two things. One is it
19 talks about whether or not -- it talks about liability.
20 It doesn't establish it as a -- as a consideration.
21 And then, secondly, it says, "If you find that the
22 Defendants knowledge of the risk of danger associated with
23 asbestos-containing products used on the premises was
24 equal to or less than a seasoned employer."
25 I don't think that's the law. I think it's -- I

1 think it's -- superior knowledge is how the courts have
2 said it. And they said it in 15. I don't think we have
3 to say it twice. And I think we should say it correctly,
4 which I think to the extent we're going to talk -- we're
5 going to include this language, it should be 15, "whether
6 a premises owner" language.
7 MR. YOUNG: I mean, I just -- Judge, I think 14 -- we
8 don't have to have them both. But I think 14 was an
9 accurate statement of the law.
10 THE COURT: Well, I would -- I'll be glad to charge
11 the first two sentences of 14 and leave out the third, and
12 charge 15. And we'll probably have to tinker with this
13 language, the first part of 15, unless y'all agree that
14 just that last sentence is sufficient, but.
15 MR. PANATIER: So the first two sentences of 14, last
16 sentence of 15?
17 THE COURT: Would that work?
18 MR. PANATIER: Well --
19 MR. YOUNG: Yeah. Yes. Sorry.
20 THE COURT: That's okay.
21 MR. PANATIER: Your Honor, I -- I think the second
22 sentence of 14 is, basically, repeated in the last
23 sentence of 15. That's the thing. It just says,
24 "superior knowledge" twice. It says they don't have a
25 duty to warn. And it says, again, whether or not a

1 premises owes a duty is based on superior knowledge. It
2 just says it two times.
3 MR. YOUNG: Judge, a lot of stuff is repeated.
4 THE COURT: Yeah. I don't have a problem with
5 repeating it. I mean, I think it's -- as has been said, a
6 judge is presumed to know nothing about the facts of life,
7 unless it's been repeated to him three times. The jury is
8 the same way.
9 MR. PANATIER: Wait, wait, wait. Actually --
10 actually -- I'm sorry. It says, "If a premises owner does
11 not have superior knowledge of the danger, then the
12 premises owner does not have a duty to warn."
13 But that's different than what the law is. The law
14 is, if the independent contractor has superior knowledge.
15 And, see -- and that's -- that is a correct statement.
16 THE COURT: All right. Back up. Where are you?
17 MR. PANATIER: Okay. Second sentence of 14.
18 THE COURT: All right.
19 MR. PANATIER: It says, "If a premises owner does not
20 have superior knowledge of the danger, then the premises
21 owner does not have a duty to warn."
22 And that -- and that's not the calculus. The
23 calculus is whether or not the independent contractor had
24 superior knowledge, which is what 15 says. See, they're
25 saying two different things. And they're inconsistent. I

1 think that the second sentence of 14 should come out. I
2 think 15 is an accurate statement of the law. Because it
3 says it two ways there.
4 MR. YOUNG: Judge, I'm sorry. I didn't -- I didn't
5 follow that at all.
6 MR. PANATIER: Okay. I'm sorry. I'll --
7 THE COURT: Wait a minute. I think what he's saying
8 is if we charge the jury the first sentence of 14 and the
9 last sentence of 15, they're fine with that.
10 Is that right?
11 MR. PANATIER: That's correct.
12 MR. YOUNG: That's fine, Judge.
13 THE COURT: Okay.
14 MR. PANATIER: And, Your Honor, we'd ask for the
15 Simmons charge then, for Simmons as the exception to the
16 rule that the premises owner has a nondelegable duty on --
17 or -- I'm sorry -- nondelegable liability for the actions
18 of the independent contractor.
19 MR. YOUNG: Judge, this doesn't -- it doesn't have
20 anything to do with our case. But if he's going to charge
21 that, he's going to have to charge that the employer has a
22 nondelegable duty to employees. And that -- I just --
23 it's very confusing.
24 THE COURT: Yeah. I don't --
25 MR. PANATIER: Your Honor, I'll withdraw it. That's

1 fine. We'll stick with what we've got. Look at Lane.
2 Look how happy he is.
3 MR. ELLIOTT: Your Honor, if y'all are done with
4 premises liability --
5 MR. PANATIER: Well, hold on.
6 MR. ELLIOTT: Sorry.
7 MR. PANATIER: Because they -- okay.
8 Do we have issues with this?
9 Okay. So -- so under -- okay. So under 13, Your
10 Honor, it's -- they've personalized it a little bit as to
11 the state-of-the-art rules. In the second paragraph,
12 under 13, it says, "A premises owner -- a premise owner's
13 duty of care is not the same as a manufacturer of an
14 asbestos-containing product."
15 That -- that's fine.
16 "The Plaintiff must first establish the duty of care
17 owed by Celanese as a premise owner manufacturing
18 polyester fibers." Which that's just self-serving.
19 It's -- it's kind of --
20 MR. YOUNG: We can take that out, Judge.
21 MR. PANATIER: "As a premises owner." And secondly,
22 "what would have been known as to the dangers of asbestos
23 at the relevant times."
24 I mean, "in the polyester fiber industry" is
25 extremely self-serving, too. And I don't think that's an

1 accurate statement. Their burden of knowledge is
2 addressed in the general premises.
3 THE COURT: "What would have been known in the same
4 industry as to the dangers of asbestos at the relevant
5 times."
6 Does that work?
7 MR. PANATIER: Your Honor, there are -- they're
8 already instructed on industry standards. So I'm -- I'm
9 fine just saying "what would have been known as to the
10 dangers of asbestos at the relevant times." Because they
11 already receive an instruction about the industry.
12 MS. SHOFNER: But that's not -- that's not what our
13 burden is as to what's known out there in the world.
14 THE COURT: Yeah. I can see -- I can see that.
15 MR. PANATIER: That's the next paragraph, though.
16 See, they get that in the next paragraph.
17 THE COURT: Well, it's -- it's consistent. I think
18 it just ought to say "in the same industry." Because I
19 think that's fair.
20 MR. PANATIER: "In the same industry." Okay.
21 MS. SHOFNER: The jury charge number 11, do you have
22 any problem with that?
23 MR. PANATIER: Well, hold on. I'm still on 13.
24 MS. SHOFNER: Sorry.
25 MR. PANATIER: Your Honor, on 13, you know, when a --

1 when a -- when a defendant has a duty to do something, we
2 tell it to the jury. Like a product's manufacturer has a
3 duty -- the duty of an expert.
4 I think it's -- it's certainly unorthodox to then
5 charge the reverse of that for another party, to say they
6 do not have a duty to stay abreast of the literature, they
7 do not -- they are not held to a standard of an expert.
8 And they've already said it once in the second paragraph
9 of 13.
10 But then I think this is -- this is potentially
11 confusing to the jury. They are told that John Crane is
12 held to a standard of an expert. They are not told that
13 Celanese is. But then they state the reverse of it here.
14 And this seems to suggest that everything that I did
15 today, which is relevant to what they knew or should have
16 known, constructive knowledge, is somehow now just -- it
17 doesn't really matter. They didn't have any duty to keep
18 abreast of the literature.
19 MR. YOUNG: Well, Judge, if it was just us, what he
20 said might be applicable. But it -- the flip side is
21 if -- when they charge that Crane is held to the standard
22 of an expert, then I think it's only fair to say that
23 there's a different standard as to a premises owner.
24 MR. PANATIER: And that's already stated in the
25 paragraph above.

1 MR. YOUNG: Where?
2 MR. PANATIER: That they don't have the same standard
3 of care as a manufacturer. So that's clear. And then the
4 jury is instructed on the standard of a manufacturer.
5 MR. YOUNG: Judge, I really -- I'm sorry. I don't
6 see how anything in paragraph 2 says anything that's in
7 paragraph 3. I mean, the --
8 MR. PANATIER: And I don't think --
9 THE COURT: Wait, wait. Where is the state of the
10 art by Crane? What page is that on?
11 MR. PANATIER: Oh, it's in the beginning, Your Honor.
12 It is on page --
13 THE COURT: On Page 8?
14 MS. SHOFNER: Yes, Page 8.
15 MR. YOUNG: Third paragraph.
16 MR. PANATIER: Yeah. There it is.
17 THE COURT: All right. So --
18 MR. ELLIOTT: That's not state of the art.
19 MR. PANATIER: And so it's stated there. But then,
20 you know, the second sentence of that third paragraph,
21 number 13, "Therefore, any state-of-the-art literature and
22 testimony is not relevant and should not be considered in
23 determining the duty of exercising reasonable or ordinary
24 care for invitee's safety."
25 That's not an accurate statement of the law.

1 MR. YOUNG: How about on Page 8 -- I'm trying to
2 think. We could say at the end of that sentence,
3 Celanese, as a premises owner, does not have the same
4 duty.
5 MR. PANATIER: Or how about, Celanese is not held to
6 the standard of an expert? Or a premises owner is not
7 held to the standard of an expert like a manufacturer.
8 MR. YOUNG: Well we can -- Judge, we can take the
9 last sentence of 13 out.
10 THE COURT: Okay.
11 MR. YOUNG: -- and that should cure --
12 MR. PANATIER: Hold on.
13 MR. YOUNG: -- Mr. Panatier's concerns.
14 MR. PANATIER: Well --
15 MS. SHOFNER: "Therefore, any state of the art," we
16 can take that out.
17 MR. PANATIER: Whoa. Hold on.
18 MR. YOUNG: Horse-trading with Panatier is tough,
19 Judge.
20 MR. PANATIER: We're not horse-trading, man.
21 THE COURT: You've got to pack a lunch, don't you?
22 MR. PANATIER: Okay. Your Honor --
23 THE COURT: I've got to go pick up my kids. So I'm
24 going to have to bug out of here. But go ahead.
25 MR. PANATIER: I was just going to say I just -- I

1 think it would be better to, on Page 8, just say, Unlike a
2 manufacturer, a premises owner is not held to the standard
3 of an expert.
4 MR. YOUNG: Well, Judge, we -- why don't we just take
5 out the last sentence of 13?
6 THE COURT: Okay.
7 MR. YOUNG: And then it's in the place where it makes
8 sense.
9 THE COURT: Well, it could make sense either place, I
10 suppose.
11 MR. YOUNG: Yeah.
12 THE COURT: But -- I -- I don't think --
13 MR. YOUNG: It's not going to amount to a hill of
14 beans, Judge.
15 THE COURT: You took the words right out of my mouth.
16 MR. YOUNG: I give you my proxy.
17 MR. ELLIOTT: Before you leave, I want to say that
18 now that I've -- I didn't anticipate they would agree to
19 pulling out all the sections that I had marked. When I'm
20 reading back through the total charge with those sections
21 out, some of it may not make sense.
22 Because in a later portion, you talk about the duty
23 of care. And we pulled out a -- you know, the first --
24 the paragraph on Page 7, "To hold John Crane responsible,
25 a product must have been in a condition not contemplated

1 by a user, which would be unreasonably dangerous to the
2 user when the product was in a -- used in a foreseeable
3 manner."
4 And so I think I'm going to -- we're going to have to
5 read it as a whole. And a couple of paragraphs may have
6 to go back in or it's not going to make any sense.
7 MR. PANATIER: Well, I think we can work that out.
8 MR. ELLIOTT: Let's work that out.
9 THE COURT: Okay.
10 MR. PANATIER: We can work that out.
11 The last one was the master and servant.
12 THE COURT: I don't have time to do it. Sorry. I
13 have a master awaiting on me.
14 All right. I'll see y'all back at 9:15.
15 Thank you.
16 (WHEREUPON, the proceedings were concluded at
17 approximately 6:14 p.m., to be reconvened on
18 Thursday, October 8, 2016.)
19
20
21
22
23
24
25

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.

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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.

1 THURSDAY, OCTOBER 8, 2015

2 THE COURT: I'm out here early. I just wanted to see
3 if we could finish up the jury charge.
4 MS. MCVEY: You want to do the jury charge?
5 THE COURT: If y'all want to. I mean, I just --
6 MS. MCVEY: Yeah.
7 MR. PANATIER: Let's do it.
8 (Pause.)
9 THE COURT: Okay.
10 MR. PANATIER: I think, Your Honor, we only have a
11 few more issues to hash out with -- since you're standing
12 with John Crane. John Crane, I think we're agreed on --
13 on most things.
14 There are -- I understand there are two paragraphs
15 that you guys have an objection to.
16 MR. ELLIOTT: Well, let's --
17 MR. PANATIER: On Page 8?
18 MR. ELLIOTT: We do.
19 (WHEREUPON, the attorneys had an off-the-record
20 discussion among themselves that was out of the hearing
21 of the court reporter.)
22 MR. PANATIER: We'll provide you for -- for all our
23 agreements, Your Honor, we'll provide you a new copy.
24 THE COURT: Okay.
25 Mr. PANATIER: But we'll need your guidance on a few

1 issues.
2 MR. ELLIOTT: Page 8, Your Honor.
3 MS. MCVEY: On the new one?
4 MR. ELLIOTT: On what I sent to Candace last night.
5 THE COURT: Well, we were on Page 14 last night.
6 MR. PANATIER: We thought there were some agreements.
7 MR. ELLIOTT: Your Honor, the difficulty has been
8 working off of a complete charge in another case, at
9 least, for me.
10 THE COURT: Okay.
11 MR. PANATIER: Anyway, it's paragraph one, two,
12 three, four, five -- paragraph six and eight, right, that
13 John Crane has an objection to?
14 MR. ELLIOTT: Yes. A seller owes the duty is six.
15 And then in deciding whether a manufacturer had a duty.
16 MR. PANATIER: Yeah. So, Your Honor, our position
17 is, of course, you know, this is a failure-to-warn case.
18 And we have, obviously, got in evidence regarding their
19 failure to test. Because the determination whether they
20 warn would come from whether or not they tested. So --
21 but I understand that John Crane objects to those
22 paragraphs.
23 MR. ELLIOTT: And our position is a failure-to-warn
24 case only. And those two charges go to a design defect or
25 manufacturing defect, and wouldn't be applicable in just a

1 failure to warn.

2 MR. PANATIER: Well, there's two components to the

3 negligence claim. One is failure to warn, and one is

4 failure to exercise ordinary care.

5 So, obviously, it would go to whether or not they

6 would need to warn, testing, and, also, whether or not the

7 jury would like to consider their failure to test as a

8 failure to exercise ordinary care. So I don't think that

9 that's in any way out of bounds.

10 MR. ELLIOTT: We think it's the same thing. Their

11 allegation of negligence and failure of duty is on the

12 warning. And these two paragraphs, causes don't go to

13 failure of a duty to provide a warning.

14 THE COURT: So the paragraph above and below it

15 that's highlighted in yellow, those are out? Everybody

16 agrees they're out?

17 MR. PANATIER: Those are out, yeah.

18 THE COURT: All right.

19 MR. ELLIOTT: With these two charges, you're telling

20 the jury this is the law. I mean, they can argue the

21 basis for the negligence. But this is telling the jury

22 this is what the law is and you have to follow it.

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

24 Honor.

25 MR. ELLIOTT: In a design and manufacturing defect

1 case.

2 MR. PANATIER: In a products liability case. There's

3 several different ways you can have a products liability

4 case. One of them is manufacturing defect. One is design

5 defect. One is failure to warn. Testing is, obviously,

6 relevant to failure to warn, and it's relevant to failure

7 of due care.

8 MR. ELLIOTT: But just like risk utility, I mean,

9 certain portions of product liability law change when you

10 take out strict liability and implied warranty.

11 THE COURT: I'm confused on what -- what is going to

12 be instructed up to that point. Because there's --

13 MR. PANATIER: Your Honor, do you show that the

14 bottom of Page 6 and top of Page 7 are marked out, or are

15 those just omitted?

16 THE COURT: Well --

17 MS. SHOFNER: Their copy does not have it marked out

18 yet. We did this this morning, five minutes ago.

19 MR. PANATIER: Okay.

20 MS. SHOFNER: So I'm going to revise it and make sure

21 that everyone has a clean copy.

22 MR. PANATIER: Okay. So the bottom three paragraphs

23 on Page 6, Your Honor, are out.

24 THE COURT: Okay.

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

1 are out.
2 MR. ELLIOTT: Hold on. No -- yes, you're correct.
3 THE COURT: Okay.
4 MR. PANATIER: The third paragraph on Page 7 is in.
5 And the fifth paragraph starting with --
6 THE COURT: That's the one that says, For the
7 Plaintiffs to prove their case in their product liability
8 action?
9 MR. PANATIER: Which paragraph are you looking at,
10 Your Honor?
11 THE COURT: I'm sorry. That's the fourth --
12 fourth -- the third paragraph.
13 MR. PANATIER: Ah, yes.
14 THE COURT: Page 7.
15 Okay. What about the fourth --
16 MR. PANATIER: The paragraph, In order for Plaintiffs
17 to prove, that's out.
18 THE COURT: Okay.
19 MR. PANATIER: The paragraph, Now something you must
20 consider in assessing the Defendant's product and
21 conduct --
22 THE COURT: Yeah.
23 MR. PANATIER: -- that's in.
24 THE COURT: Okay.
25 MR. PANATIER: Now, the state of the art below

1 includes all reasonably available, that's in.
2 THE COURT: What about the fifth paragraph?
3 MR. PANATIER: And in the fifth paragraph, the last
4 sentence is in, You may not evaluate or consider any
5 evidence, knowledge, or information obtained after date of
6 sale. That's in, too.
7 The rest of that page is in. So all the negligence
8 instructions starting with, Now, the state of the art, if
9 the product was nondefective, now negligence focuses on
10 the conduct of the Defendant, if you're having a hard time
11 with the phrase negligence, but you must first determine,
12 those are all in.
13 A manufacturer has the duty to stay aware, that's in.
14 On the -- this is on the next page.
15 Although evidence of industry standards may be
16 considered, that's in.
17 And the failure to use due care, even if no one in
18 the industry does, does not excuse negligence, that's in.
19 So then the next one we're saying would -- that the
20 Plaintiffs wish to be in would be, A seller owes a duty to
21 conduct adequate tests. And then the following that we
22 would like in is, In deciding whether a manufacturer has a
23 duty to test.
24 MR. ELLIOTT: Those are the two we just argued.
25 MR. PANATIER: Yeah.

1 THE COURT: Okay. I'll charge those.
2 MR. PANATIER: And then, for CNA, we just reached an
3 agreement on our last issue. So we're -- yeah, it would
4 be -- it was the master servant. We just agreed to modify
5 that one.
6 THE COURT: Okay.
7 MR. PANATIER: Page 12. We're just -- we're going to
8 agree to charge the first -- the first sentence up to the
9 word "appliances." And then we're going to take the rest
10 out. So we'll provide a clean copy with --
11 THE COURT: Okay.
12 MR. PANATIER: -- that correct.
13 And then the -- the last issue as a matter of -- oh,
14 oh. Your Honor, on Page -- this is going to be the same
15 page, 16.
16 THE COURT: Yes.
17 MR. PANATIER: If you -- yeah. At the top, what you
18 charged in Muldoon was, And, again, don't let your verdict
19 on one influence your verdict on the other. Because you
20 have to weigh them each separately and individually. We
21 think that makes the point. Celanese has proposed the
22 below paragraph, the five-line paragraph below. And we
23 just think that that's excessive and that your previous
24 instruction does the job.
25 MR. YOUNG: Well, Judge, in Muldoon, at least, as I

1 understand it, the defendants were much more similar than
2 they are here. I mean, it's really like we've been trying
3 two different cases. And I just think that it's -- I
4 mean, I can't imagine --
5 THE COURT: I'll do it. I'll charge that.
6 MR. PANATIER: Okay. And then --
7 THE COURT: I'll charge the longer one.
8 MR. PANATIER: Okay. I think the last thing is --
9 and it depends on the verdict form, whether or not we give
10 the instruction on punitive conduct. Because if it's
11 charged in phase 1, we need the instruction. We don't --
12 we don't disagree on what the instruction is, just when it
13 should be given.
14 So we believe that the most efficient way to charge
15 the jury for the verdict form would be the basic
16 negligence questions, was John Crane negligent? Was
17 Celanese negligent? Damages, and then the clear and
18 convincing on willful, wanton, and reckless for each
19 Defendant. And I think you may have a copy of this. This
20 is our proposed -- our proposed form.
21 THE COURT: Yes.
22 MR. PANATIER: The reason being that if there's no
23 finding of recklessness for either of them, then
24 there's -- we don't have an apportionment phase, right?
25 So we avoid -- we avoid an entire phase. If we do --

1 if we don't charge them on recklessness in phase 1, then
2 we guarantee ourselves an apportionment phase or, at
3 least, a third phase, as opposed to two total phases from
4 our perspective. Because phase 1 for us would be
5 liability, damages, recklessness. And phase 2 would be
6 damages for recklessness, if they're found, and
7 apportionment, if need be.
8 So there would really only be two phases. What the
9 Defendants are proposing is, phase 1 is basic liability.
10 Phase 2 is apportionment. Phase 3 is recklessness.
11 MR. TIVIN: The apportionment and recklessness, and
12 then phase 3 would be --
13 MR. PANATIER: Oh, I'm sorry. Phase 1 is basic
14 liability and damages. Phase 2 is apportionment and
15 recklessness. Phase 3 would be amount of punitive
16 damages, if there was a finding of recklessness.
17 So we just think it's much more efficient to charge
18 recklessness -- the fundamental question on recklessness
19 first, not only because it makes it more efficient, but
20 because it's all the same evidence.
21 The evidence that we're using for fundamental
22 liability is the same evidence we're using for
23 recklessness. So that's our proposal.
24 And, also, we understand -- yesterday, Defendants
25 gave us two versions of their proposed verdict form. The

1 first one was similar to ours. The second one, they've
2 separated out negligence and proximate cause. And under
3 South Carolina law, proximate cause is part of negligence.
4 And so, now, they're, basically, asking the Court to
5 ask the jury two times proximate cause. Because
6 negligence and proximate cause is one question. And then
7 proximate cause would be a second bite at the apple. And
8 we just don't think that's proper since proximate cause is
9 part of negligence.
10 So we think there needs to be a negligence question
11 and a damages question, not negligence, proximate cause,
12 damages.
13 THE COURT: Thank you.
14 MR. ELLIOTT: Your Honor, if I could provide you a
15 copy of the Defendants agreed proposed verdict form.
16 Mr. Panatier is correct in that the verdict form
17 doesn't include clear and convincing or a finding of
18 recklessness. And the reason being, if you read the
19 statutes, the apportionment statute and the punitive
20 damages statute, under the law, you never get to
21 recklessness until there's a verdict against the
22 defendants on compensatory damages.
23 Once you get to that stage, if the jury finds in
24 favor of the plaintiff on compensatory damages under the
25 statute, then we would move for apportionment. And at

1 that stage is where the jury would be provided the
2 opportunity to consider the fault of the parties and
3 apportion it. And then whether or not recklessness is
4 involved, such that apportionment wouldn't be
5 responsible -- excuse me -- wouldn't be applicable.
6 And then, if they find recklessness under the
7 statute, that's when you move to the punitive damages
8 stage. And that's exactly what the apportionment statute
9 says and the punitive damages statute says when read
10 together.
11 And as to the verdict form, I mean, this is simply
12 what they have to conclude. They have to conclude that we
13 are negligent or CNA was negligent, and that negligence
14 was the proximate cause of the damages. It's a two-step
15 process.
16 And then, if they get to that point, they can mark
17 down a damages amount.
18 MS. SHOFNER: And, Your Honor, I think if you'll
19 remember in Muldoon, we argued some of this issue in
20 Muldoon when we asked to bifurcate the trial in Muldoon.
21 And the verdict form in Muldoon as to the first phase did
22 not include anything on willful, wanton, and reckless.
23 And it -- and that question was not asked of the jury in
24 the first phase.
25 And then what happens, if they did come back with a

1 finding of liability, I'm not sure we -- because we didn't
2 get that far. But I'm not sure exactly what that -- we
3 didn't -- we didn't reach an agreement on the verdict form
4 for this -- for the phase 2 or phase 3 and how that was
5 going to happen.
6 So your -- we didn't have to make -- we hadn't made
7 any decision on how we were going to charge that. But in
8 Muldoon, it was very clear the reckless, wanton, and
9 willful part was not to be asked of the jury in this
10 phase. And it was not to be included in any of the
11 closing arguments.
12 THE COURT: Okay. I would submit a verdict form that
13 is based on Plaintiffs language, questions 1, and 2, and
14 3. And I would -- if there is a verdict for the
15 Plaintiff, then we would go back and ask the jury about
16 willful, wanton, and reckless.
17 If they answer that in the affirmative, then we would
18 have a punitive damages phase.
19 MR. YOUNG: Judge --
20 MR. PANATIER: Just -- I'm sorry.
21 Mr. YOUNG: Go ahead.
22 Mr. PANATIER: Would we add apportionment to phase 2?
23 MR. TIVIN: Yeah.
24 MR. PANATIER: Okay. So we do -- in phase 2, we
25 would have then, recklessness, apportionment. And then if

1 we need to, a phase 3 --
2 MR. TIVIN: Right.
3 MR. PANATIER: -- correct.
4 MR. YOUNG: Judge, you know, the devil's in the
5 details. But I've never seen a verdict form that says,
6 We, the jury, find. I would really, really ask Your Honor
7 to say, Do you find.
8 I mean, this -- I just don't think that's fair,
9 Judge. They always say, Do you find, as opposed to, We,
10 the jury, find. I just don't think that's the right way
11 to do it.
12 I mean, they have the burden of proof, Judge. So I
13 think our language is much fairer and more applicable
14 under the law.
15 MR. PANATIER: I've seen it lots of times in this
16 state, Your Honor. I don't think it's prejudicial. It's
17 yes or no.
18 MR. YOUNG: We would object to this language, Your
19 Honor.
20 THE COURT: Okay. Well, that's a novel argument, but
21 I would decline to --
22 MR. TIVIN: We would join the objection.
23 THE COURT: -- accept it.
24 MR. TIVIN: But just so I'm clear, Your Honor. It
25 would be 1, 2, and 3 of Plaintiffs proposed verdict form

1 for phase one?
2 MR. PANATIER: Yes.
3 We'll create -- we'll get Your Honor a clean set of
4 instructions and a new verdict form.
5 MS. SHOFNER: And, Your Honor, so I believe that,
6 because of the way the verdict form is coming in, that on
7 Page 14, all of those punitive damages charges will come
8 out and will not be argued or addressed. And I -- and I'm
9 not sure that you've, actually -- or I have not, actually,
10 looked at the punitive damage charge phases yet to see if
11 we agree or not agree. I'm not sure there's a big
12 issue --
13 MS. MCVEY: Why don't we wait until after --
14 MS. SHOFNER: Yeah. Right, right. Exactly. And we
15 can certainly do that once --
16 MR. ELLIOTT: Well it was represented that we may
17 have all agreed. And I think the position is we just --
18 we don't know that yet.
19 MS. SHOFNER: We don't know if we agree to the
20 punitive damages charges. But they will come out of this
21 jury charge form?
22 THE COURT: Right.
23 MS. SHOFNER: And we'll put that into a different
24 form for phase two, if we need it.
25 And then the other thing, on Page 16, there was a --

1 they had included language about the jury questionnaire on
2 punitive damages, and that will come out as well; correct?
3 MR. PANATIER: I'm sorry. Which one comes out?
4 MS. SHOFNER: 16, the -- about your -- we're going to
5 ask you to answer this question on reckless, wanton, and
6 willful --
7 MR. PANATIER: Yeah.
8 MS. SHOFNER: -- comes out. And then all of the
9 punitive. So I will take all of that out and send you
10 all a -- everyone a clean verdict --
11 MS. MCVEY: Sure.
12 MR. PANATIER: And we will print it.
13 MS. SHOFNER: -- form of the jury charges.
14 THE COURT: Okay.
15 MS. MCVEY: And I'll e-mail you a verdict form, the
16 cleaned-up verdict form.
17 THE COURT: Okay. Thank you.
18 MR. ELLIOTT: Thank you, Your Honor.
19 MS. SHOFNER: Thank you, Your Honor.
20 MR. PANATIER: And then, just for the record,
21 Plaintiff -- we've offered Plaintiff's Exhibit No. 821
22 into evidence.
23 MR. COLLIER: And, Your Honor, we would object to the
24 entry of that exhibit into evidence under 401. If you go
25 to Page -- Bates Number 2224 at the bottom, it's stated in

1 the objective section -- it relates exclusively to
2 commercial hazards in the manufacturing and sale of
3 Celanese's products. Additionally, Mr. Bowyer said
4 yesterday that it was updated. And there's no evidence
5 that this particular document was in effect in the 1970s.
6 And even if it is relevant under 401, it shouldn't
7 come in under 403. Because the prejudicial effect of it
8 outweighs any probative value, particularly on Page 2223,
9 with respect to the interim [phonetic] communications
10 section.
11 Like I said, it relates only to products that
12 Celanese made. It doesn't have anything to do with
13 products that were used on its premises. And we think
14 that this document will only confuse the issues for the
15 jury and would be highly prejudicial to Celanese.
16 THE COURT: All right. Overruled.
17 Thank you.
18 (WHEREUPON, Plaintiff's Exhibit No. 821 was marked for
19 identification and admitted into evidence.)
20 MR. PANATIER: Thank you, Your Honor.
21 And subject to that -- subject to that, Plaintiffs
22 rest.
23 MR. ELLIOTT: Your Honor, we would like to substitute
24 the photo of this gasket with the original. Is that okay?
25 MR. PANATIER: Which is?

1 MR. ELLIOTT: I'm not sure.
2 MR. PANATIER: John Crane B?
3 MR. ELLIOTT: B.
4 MR. PANATIER: It looks like John Crane B.
5 MR. ELLIOTT: And then we need to mark the work
6 history sheets.
7 (WHEREUPON, Defendant John Crane Exhibit No. 4 was
8 marked for identification only.)
9 MR. COLLIER: Your Honor, at this time, we would
10 offer into evidence exhibit -- I'm sorry. At this time,
11 Celanese would offer into evidence Celanese Exhibit Nos.
12 1 and 2, which are the two maintenance contracts.
13 MR. PANATIER: No objection.
14 THE COURT: All right. They're in evidence.
15 (WHEREUPON, Defendant CNA Holdings Exhibit Nos. 1 and 2
16 were marked for identification and admitted into
17 evidence.)
18 MR. PANATIER: And I have no objection to the work
19 history sheet.
20 (WHEREUPON, Defendant John Crane Exhibit No. 4 was
21 admitted into evidence.)
22 MR. TIVIN: Your Honor, we'd submitted a motion in
23 limine. And I don't think it's going to be an issue, as
24 long as [inaudible] here, about their religious and
25 financial statements. It hasn't been ruled on --

1 THE COURT: Do you want me to make -- do you want me
2 to instruct the jury on that?
3 MR. TIVIN: No. I don't think we need to instruct
4 the jury. I think it's just a motion in limine. You're
5 not going to --
6 Mr. PANATIER: I'm not going to --
7 Mr. TIVIN: -- go into their financial condition or
8 the religious beliefs of either parties --
9 MR. PANATIER: I'm not. I'm not. And just so you
10 guys know, I have a short clip of him talking about his
11 pain. I cut it off before he talks -- it gets religious.
12 MR. TIVIN: Was that played already?
13 MR. PANATIER: It was played, yeah. But I just want
14 you to not freak out when you see it and think that he's
15 going to continue to on --
16 MR. ELLIOTT: When was it played?
17 MR. PANATIER: When was it played?
18 MR. ELLIOTT: Is it the --
19 MR. TIVIN: During his deposition --
20 MR. ELLIOTT: -- that video?
21 MR. PANATIER: Yes.
22 MR. ELLIOTT: I'm sorry. During the trial --
23 Mr. PANATIER: Yes.
24 MR. ELLIOTT: -- but he didn't talk?
25 MR. TIVIN: No. Wait. You're talking -- you're

1 playing a clip of his deposition?
2 MR. PANATIER: Yes.
3 MR. TIVIN: Okay. When you say a video, it -- we
4 thought it was another --
5 MR. PANATIER: Yes -- no. I'm not playing any other
6 videos other than from his deposition. And I cut it
7 before he gets real --
8 MR. TIVIN: Are you allowed to play videos? I mean,
9 I don't know what the law is. Some people do, some people
10 don't. I don't know what the law is.
11 MR. PANATIER: Hey, I'm playing a one-minute clip
12 that was played to the jury of his pain and suffering.
13 MR. ELLIOTT: I don't know that that's allowed. I
14 mean, it's -- you're allowing a person to re-testify
15 during your closing.
16 MR. PANATIER: It's just like reading of a document
17 that came in. It's evidence the jury heard. And it's on
18 pain and suffering. That's all I'm doing.
19 THE COURT: May I ask a question?
20 MR. PANATIER: Yes.
21 THE COURT: This is a clip of his deposition?
22 MR. PANATIER: Yes, Your Honor.
23 THE COURT: That was already played to the jury?
24 MR. PANATIER: Yes, Your Honor.
25 THE COURT: You can do that.

1 Mr. PANATIER: Okay. Thank you.
2 MR. YOUNG: Judge, Mott and Mr. Buck would like to
3 have his testimony before we do directed verdict motions
4 because they're not interested in that.
5 THE COURT: Okay.
6 MR. YOUNG: So could we just have everyone agree that
7 we're not waiving our right to make a motion for directed
8 verdict --
9 THE COURT: Sure.
10 MR. YOUNG: -- after the Plaintiff rested and we go
11 ahead and put the last witness up? And then we can make
12 it as if it was made when the Plaintiff rested.
13 THE COURT: Sure.
14 MR. YOUNG: Chris, is that --
15 MR. PANATIER: Check. Affirmative.
16 MR. YOUNG: Okay.
17 MR. PANATIER: Thank you.
18 MR. MCDONALD: And, Judge, I'd like to -- can I put
19 briefly one thing on the record about Mr. Buck?
20 THE COURT: Sure.
21 MR. MCDONALD: Judge, Mr. Buck is here today under
22 subpoena from CNA. And, of course, Daniel is not a party
23 to this case. And Daniel is not going to have an
24 opportunity to question him. He's here today -- I just
25 want -- in case somebody gets this transcript in the

1 future, he's here today as an individual, you know, that
2 worked many years at Daniel. But he's here as an
3 individual. Daniel is not in the courtroom, if that makes
4 sense.
5 THE COURT: Okay. He wasn't here yesterday. We know
6 that.
7 MR. MCDONALD: That's right.
8 THE COURT: So we're glad he could accommodate us
9 today.
10 MR. YOUNG: Judge, as it turns out, it's probably
11 good he didn't come since we didn't finish with Mr. Bowyer
12 until quarter till 5:00.
13 THE COURT: Okay. Anything else before we bring the
14 jury in?
15 MR. TIVIN: No, Your Honor.
16 MR. PANATIER: No, Your Honor.
17 THE COURT: Okay. Yes, sir, bring them on in.
18 (WHEREUPON, the jury came into open court at
19 approximately 9:40 a.m.)
20 THE COURT: All right. Ladies and gentlemen, one
21 matter of housekeeping. You heard some testimony from a
22 witness known as Dr. Crapo. I believe he appeared by
23 video.
24 He was offered as an expert witness. He is an expert
25 witness and is qualified as such. So just keep that in

1 mind. I don't think he was ever officially qualified in
2 your presence, but I'm qualifying him. So he is qualified
3 as an expert witness.
4 All right. Yes, sir, Mr. Young.
5 MR. YOUNG: Thank you, Your Honor.
6 Good morning, ladies and gentlemen.
7 You'll be glad to know this is the last witness. I
8 haven't seen y'all in a while.
9 Your Honor, at this time, Celanese would call Don
10 Buck.
11 THE CLERK: If you'll place your left hand on the
12 Bible, and raise your right hand.
13 WHEREUPON,
14 DON BUCK,
15 after first having been duly sworn, testified as follows:
16 THE CLERK: Thank you.
17 DIRECT EXAMINATION
18 BY MR. YOUNG:
19 Q Good morning, Mr. Buck.
20 A Good morning.
21 Q How are you?
22 A I'm good.
23 Q Good. Would you introduce yourself to the ladies and
24 gentlemen of the jury and the Court, please?
25 A I'm Don Buck. I live in Greenville, South Carolina.

1 And I worked for Daniel Construction Company starting in
2 1974 and retired in 2000.
3 Q All right, sir. I never met you before this morning;
4 is that right?
5 A That's right.
6 Q But you now know I'm Lane Young. And I'm one of
7 Celanese's lawyers?
8 A Yes, sir.
9 Q And I'm going to ask you some questions about Daniel.
10 A Okay.
11 Q You understand that; right?
12 A Yes.
13 Q And, first of all, we aren't paying you to be here;
14 correct?
15 A That's right.
16 Q Okay. And you do know that we're trying a case
17 involving Mr. Seay, and Celanese, and John Crane?
18 A Yes.
19 Q Okay. And I think you just told the ladies and
20 gentlemen of the jury that you earlier worked at Daniel?
21 A Yes, I did.
22 Q Okay. And so you know something about Daniel?
23 A Right.
24 Q And you know that Mr. Seay worked at Celanese for
25 Daniel in the 70s?

1 A Yes.
2 Q Okay. I'm going to ask you some questions about
3 Daniel and some of that. Is that okay?
4 A That's fine.
5 Q All right. Before we do that, I'd like for you to
6 tell the ladies and gentlemen of the jury just a little
7 bit about yourself. Can you tell them where you grew up?
8 A I grew up in Alabama.
9 Q Okay. And how old are you?
10 A I'm 70.
11 Q 70. Okay. And where did you go to college?
12 A I went to Vanderbilt University.
13 Q Okay. And you got a civil engineering degree?
14 A That's right.
15 Q Okay. Just briefly, what is civil engineering?
16 A They're the ones that do the design on the -- for the
17 structural steel and the concrete, and the earth part work
18 of the job, the civil part of the job.
19 Q After you graduated from Vanderbilt, I understand
20 that you went in the Army --
21 A Yes.
22 Q -- is that correct?
23 And how long were you in the Army?
24 A Two years.
25 Q Okay. And then, as I understand it, you went to work

1 for a company called Ebasco?
2 A Yes, Ebasco Services.
3 Q Okay. And how long did you work there?
4 A About two years.
5 Q Okay. And was Ebasco one of the larger contractors
6 in the country when you worked for them?
7 A Yes, it was.
8 Q Okay. Doing kind of the same type of work that
9 Daniel --
10 A They did power plant construction.
11 Q Okay. But construction work?
12 A Yes.
13 Q Okay. And I'm sorry. What years did you work at
14 Ebasco?
15 A It was around '68 to '70, that time frame.
16 Q And would Ebasco have been using asbestos-containing
17 materials on some of their jobs then?
18 A Yes.
19 Q Okay. Back in those days, asbestos-containing
20 insulation was sort of the industry standard for high
21 temperature --
22 A That's right.
23 Q -- is that fair?
24 Okay. And I think after Ebasco, you went to work for
25 a company called Aztec?

1 A Yes.
2 Q And what did they do?
3 A They were a small commercial contractor in Kansas
4 City and built schools, grocery stores, light commercial
5 construction.
6 Q Okay. And you worked there for, it looks, about
7 three or four years?
8 A About two years, I think.
9 Q Two years. Okay. And then you worked for a company
10 called Algernon Blair?
11 A Algernon Blair, industrial contractors.
12 Q So you pretty much were always in the construction
13 contracting business?
14 A Yes.
15 Q Okay. And then you started work for Daniel in 1974
16 here in the Greenville-Spartanburg area?
17 A No. Actually, I went to work for them on a project
18 in Fayetteville, North Carolina.
19 Q Okay. And that was in 1974?
20 A 1974, yes.
21 Q Okay. And, at some point, did you come down here to
22 work?
23 A Yeah. I ran two or three projects in the field.
24 And, at the end of 1979, the first part of '80, I moved to
25 Greenville.

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

1 A An engineering manager does a lot of the liaison with
2 the design engineer. He does a lot of the requisitions
3 for material. He does a lot of the estimates, budgets,
4 and schedules for the project.
5 Q Okay. So you're, I guess, closely involved in the
6 project?
7 A Yes.
8 Q And how the work gets done?
9 A Yes.
10 Q And Rohm and Haus, they were making polyester chip --
11 A It was a polyester chip plant, yes.
12 Q Okay. And then you went to Millhaven Fibres in
13 Canada?
14 A In Ontario.
15 Q Okay. And both of those places made products that
16 were similar to what was made out here at Celanese?
17 A That's right.
18 Q Okay. And you know something about the history of
19 Daniel from working there and studying on it; is that
20 right?
21 A Yes.
22 Q Okay. And it's my understanding it was founded in
23 1934 --
24 A That's right.
25 Q -- is that right?

1 And, as of 1964, it would be fair to say that Daniel
2 had constructed or built about 400 plants in 12 southern
3 states?
4 A Yeah, more or less.
5 Q Okay. Well, I told the ladies and gentlemen of the
6 jury in opening that Daniel wasn't some fly-by-night
7 company that just showed up, you know, in a small truck or
8 something. That would be fair, wouldn't it?
9 A That would be fair.
10 Q Okay. And in the 70s, Daniel was a well-qualified
11 company to do construction work like -- and maintenance
12 work like was done out at Celanese?
13 A Yes.
14 Q And they, actually, built the Celanese plant?
15 A Yes.
16 Q Okay. And, in the 70s, Daniel was, certainly, well
17 qualified to do the maintenance work at Celanese properly
18 and safely; correct?
19 A Yes.
20 Q Okay. And I think we'd be safe in telling the ladies
21 and gentlemen of the jury that during -- certainly, during
22 the 70s and all the time, Daniel was very interested in
23 the health and safety of its employees like Mr. Seay?
24 A Yes.
25 Q Okay. And Daniel never did anything to suggest to

1 Celanese or any of its other customers that it wasn't
2 going to provide a safe workplace for the Daniel
3 employees?
4 A Oh, Daniel had a very strong safety culture and it
5 goes back -- way back to the beginning of the company.
6 Q And, I mean, this sort of goes without saying, but if
7 you don't take care of your workers, then you don't have
8 anybody to do the work, so you can't have a company?
9 A That's true.
10 Q Is that fair?
11 A That's fair.
12 Q So they're the most important people on the whole --
13 A Yes.
14 Q -- in the whole deal?
15 A Yes.
16 Q Okay. My understanding is that it was about 1959
17 when Daniel started constructing textile plants like the
18 -- or polyester fiber plants like the Celanese plant?
19 A I don't know whether it was plants like that. But
20 they were, certainly, courting and -- the textile
21 industry. All right.
22 Q And you do understand that Celanese was making
23 polyester fiber at the place --
24 A Yes.
25 Q -- where Mr. Seay worked?

1 A Yes.
2 Q Okay. And Daniel provided maintenance services to
3 that plant and a lot of other plants across the United
4 States?
5 A That's correct.
6 Q Would that be fair?
7 A Sometimes, it was total maintenance and, sometimes,
8 it was supplemental maintenance.
9 Q Okay. Well, the evidence in this case has been that
10 Daniel, during the 70s when Mr. Seay was there, was doing
11 all the maintenance and Celanese wasn't doing any. You
12 don't have any information contrary to that, do you?
13 A No. It looks like that was the case.
14 Q That's what Mr. Bowyer said. And that's what
15 Mr. Seay said.
16 A Right.
17 Q Okay. And Daniel would be doing insulation work as a
18 part of its maintenance work at Celanese?
19 A Yes.
20 Q Okay. And we can, certainly, tell the ladies and
21 gentlemen of the jury that Daniel, in the 70s, was
22 qualified to do that maintenance work and that insulation
23 work properly and safely?
24 A Yes.
25 Q Okay. And it was around 1971, the beginning of 1972

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

1 in addition to the specific duty of complying with safety
2 and health standards promulgated under the act, which was
3 OSHA?
4 A Yes.
5 Q Okay. And so that was the mandate from on high at
6 Daniel starting about the time that Mr. Seay began work
7 for Daniel at Celanese; correct?
8 A That's right.
9 Q Okay. And that was something that Daniel was going
10 to do?
11 A Yes.
12 Q Okay. And if anybody had asked you are you going to
13 follow OSHA and provide Mr. Seay a safe workplace, you
14 would have said we, certainly, are?
15 A Sure.
16 Q Okay. And you never told anybody that you weren't
17 going to do that?
18 A No, absolutely not.
19 Q Okay. I understand from looking at some stuff that
20 once OSHA came out and Daniel decided properly that they
21 were going to comply with OSHA on their jobs that some of
22 that cost was, actually, passed along to your customers
23 like Celanese?
24 A Yes.
25 Q Okay. And, basically, what you said was we're going

1 to comply with OSHA, but it's going to cost you a little
2 extra money. Is that okay?
3 A Yes.
4 Q And, as far as you know, everybody said fine?
5 A Hoechst Celanese, yes, they were a safety conscious
6 company, too.
7 Q All right. And, in the 70s, there were insulators
8 working for Daniel; correct?
9 A Yes.
10 Q Okay. I mean, that was their actual job is to work
11 with insulation?
12 A Yes.
13 Q And they were trained to work with insulation?
14 A Yes.
15 Q Okay. And trained to work with it safely?
16 A Yes, according to OSHA.
17 Q Right, according to OSHA. And some of the insulation
18 that was used by Daniel, particularly in the early 70s,
19 would have contained asbestos?
20 A Yes, it would have.
21 Q And that was what was needed and available at that
22 time for these super-high temperature lines?
23 A Yes. It was the standard.
24 Q Right. And after OSHA came out, Daniel was aware
25 that under certain circumstances that asbestos could be

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

1 Q It would -- a man or a lady, they'd be in charge of
2 making sure all the work was done properly?
3 A Right.
4 Q And you agree that Daniel's responsibility on all the
5 jobs, but in the 70s, was to provide its employees with a
6 safe work environment?
7 A Yes.
8 Q And that would include Mr. Seay while he was working
9 at Celanese?
10 A Yes.
11 Q Okay. And that's something that Daniel wanted to do
12 as a good corporate citizen here and everywhere else?
13 A Sure.
14 Q Okay. And, certainly, Daniel wanted to accept
15 responsibility for and provide a safe workplace to
16 Mr. Seay while he worked for Daniel?
17 A Yes.
18 MR. YOUNG: Thank you, Mr. Buck.
19 I appreciate you coming.
20 MR. TIVIN: Your Honor.
21 THE COURT: Mr. Tivin.
22 CROSS-EXAMINATION
23 BY MR. TIVIN:
24 Q Good morning, sir.
25 A Good morning.

1 Q My name is Mark Tivin.
2 And I just have one or two questions for you.
3 A Sure.
4 Q You were asked about the safe work practices that --
5 regarding the work around insulation. Do you recall that?
6 A Uh-huh.
7 Q You're, also, aware that Daniel employees would,
8 also, be working with gaskets?
9 A Yes.
10 Q And you would say that the work practices that they
11 used with gaskets at the Celanese plant would have been
12 below the PEL?
13 A I -- let me put it to you this way. When we started
14 doing the -- when we did the air monitoring -- and I don't
15 know. I don't have any records of air monitoring at this
16 project site.
17 But on the other projects where I've researched and
18 we've done the air monitoring, work like Mr. Seay would do
19 where it would be a small exposure like a valve
20 replacement, a pipe tie in, or something like that that,
21 the air monitoring records would indicate that they would
22 be below the PEL standards.
23 Q When you say "small exposure," what do you mean? As
24 opposed to insulation, which could be a larger exposure?
25 A Well, if you're doing a large insulation job, you may

1 be running insulation on thousands of feet of pipe. And
2 when you're talking about maintenance work, the
3 maintenance person would go out and he would have to take
4 a valve out of the line.
5 So you're not talking about thousands of feet.
6 You're talking about just a -- maybe a three, or four, or
7 five-foot space that he has to work in to get the
8 insulation out of the way. If he was going to take the
9 valve out, he'd need to get the insulation -- remove the
10 insulation back away from the valve so that he could get
11 the bolts out and remove the valve. And those were,
12 basically -- and OSHA called them work that was minimal
13 exposure to asbestos.
14 MR. TIVIN: Thank you, sir.
15 No further questions.
16 CROSS-EXAMINATION
17 BY MR. PANATIER:
18 Q Good morning, sir.
19 A Good morning.
20 Q We just met this morning, too?
21 A Yes.
22 Q All right. So let's -- I want to make sure we
23 understand. You are not -- were you ever at the
24 Spartanburg site from '71 to '80?
25 A No.

1 Q You were never there during that time, right?
2 A Never there.
3 Q And you don't have any -- really any records for
4 safety and health activity conducted by Daniel or between
5 Daniel and Celanese for that period of time for that site,
6 correct?
7 A I'm just thinking a minute. Okay.
8 Q That's fine.
9 A I don't believe so, no.
10 Q All right. Now, you said that it was Celanese's
11 understanding -- or Celanese -- you don't know much about
12 Celanese's understanding probably, just Daniel's?
13 A Right.
14 Q It was Daniel's belief that if you were below the
15 PEL, you -- then your workers were in a safe environment?
16 A Yes.
17 Q Have you heard the concept that the PEL doesn't
18 protect against cancer?
19 A No, I don't guess so.
20 Q Okay. I want to show you a document that was shown
21 to the jury yesterday with Mr. Bowyer. Do you know
22 Mr. Bowyer?
23 A No.
24 Q This was a document that was received by Celanese in
25 1970. You've never seen that, have you?

1 A No.
2 Q Okay. This is an asbestos toxicology report --
3 MR. YOUNG: Your Honor, can we have the same
4 objection to this one that we had yesterday?
5 THE COURT: Yes, sir, Mr. Young.
6 MR. YOUNG: And, I mean, this is, also -- it's -- I
7 understand with Celanese, but I object to this being shown
8 to this witness. It doesn't have anything to do with him.
9 MR. PANATIER: I'm going to ask if they knew this
10 information.
11 THE COURT: Yes. You can ask him that.
12 Go ahead
13 BY MR. PANATIER:
14 Q This is -- do you see it says, "Asbestos Toxicology
15 Report" --
16 MR. YOUNG: Judge, can we have our usual continuing
17 objection?
18 THE COURT: Yes, you may.
19 BY MR. PANATIER:
20 Q Do you see it says, "Asbestos Toxicology Report"?
21 A Yes.
22 Q And it says -- now, this is -- you saw on the front
23 1970. It has been known for years that some persons
24 working in asbestos production were prone to develop a
25 disabling lung disease. In time, this condition became

1 known as asbestosis, and was related to exposure to high
2 concentrations of asbestos dust. Through further
3 experience, it was found that men could work with asbestos
4 without development of lung disease if dust concentrations
5 were kept below a certain level. A type of cancer named
6 mesothelioma has been noted to be associated with asbestos
7 exposure in recent years.
8 Now, as of 1970, can you testify that Daniel knew
9 about the disease mesothelioma?
10 A No, I can't. I don't know that they did.
11 Q Okay. These tumors, while rather few in number to
12 date, may occur in individuals with histories of only
13 slight exposures and that as many as 20 to 40 years
14 earlier.
15 Did Daniel -- to your knowledge, did Daniel have an
16 understanding that there were reports of people with all
17 these slight exposures developing mesothelioma?
18 A Let me clarify. Daniel was a construction company.
19 All right. We build plants according to the
20 specifications and the drawings that the owner and the
21 engineer gives us. We do not go and research all the
22 products that are called out in the specifications.
23 That's a manufacturer's responsibility, and something
24 that's not our responsibility. All right.
25 Q I hear you. And, to be clear, Celanese designed the

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

1 that two million particles per cubic foot is not either.
2 Research on the problem continues.
3 And did you -- as of 1970, to your knowledge, did
4 Daniel have any inclination that threshold limit values at
5 the time were not being protected for mesothelioma?
6 A No.
7 Q Okay. Daniel had -- I'm not going to really go
8 through these with you. I'm just going to show you the --
9 Daniel had accident prevention meetings --
10 A Yes.
11 Q -- right?
12 A Tool box meetings on a weekly basis.
13 Q Tool box meetings. That's where everyone gets
14 together and --
15 A Monday morning.
16 Q Right.
17 And they call them a tool box meeting, but sometimes
18 there's no tool box there, but that's what they became
19 called --
20 A Safety meetings is what they were.
21 Q You guys had accident prevention guidelines and --
22 A Yes.
23 Q -- sent memos around --
24 A Yes.
25 Q -- you guys sent memos around about occupational

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

1 there's any safe limit regarding asbestos. Were you aware
2 that that was being discussed in 1964?
3 A No.
4 Q Okay. Do you have any information that Daniel's was
5 aware of that in 1964?
6 A No -- let me -- we're talking about prior to '71.
7 Okay. And prior to '71 -- prior to OSHA coming out,
8 Daniel, on our projects, used the associated general
9 contractors safety manual as its Bible. In fact, the
10 whole construction industry did. All right.
11 And that manual was revised in 1958 and in '71. And
12 in the revision in 1958, there's an acknowledgement
13 section in that safety manual that -- thanking the
14 organizations that helped revise the manual. And the
15 organizations include the Corps of Engineering, the
16 Department of Labor, the National Safety Council, the
17 Department of -- the U.S. Public Health Service. And
18 there's not one mention of asbestos in that 1958 revision.
19 Q Okay.
20 A And that was the Bible for the industry. All right.
21 And then after OSHA came into existence, which is when
22 Daniel really became aware that asbestos was a problem, we
23 adopted the OSHA regs.
24 Q Let me ask you, was Daniel a member of the Industrial
25 Hygiene Foundation?

1 A I'm not aware of it.
2 Q Can you testify that Daniel -- to your knowledge, did
3 Daniel receive a periodical called the Industrial Hygiene
4 Digest on a quarterly or monthly basis?
5 A I'm not aware of it.
6 Q So, to your knowledge, during the 1970s, Daniel was a
7 maintenance contractor and a construction contractor,
8 right?
9 A That's right.
10 Q And they held -- they built the Spartanburg plant.
11 That would have been a construction contract?
12 A Yes.
13 Q Okay. And then they had a maintenance contract to
14 maintain?
15 A That's right.
16 Q During the 1970s, at Spartanburg, was Daniel --
17 Daniel Construction, is that what the company was
18 called --
19 A Yes, yeah.
20 Q Was Daniel Construction a certified asbestos
21 abatement contractor?
22 A No, we were not.
23 Q Okay.
24 A And I don't even know that they had certified
25 abatement contractors at that time. That came into being

1 later.
2 Q Okay. To your knowledge, Daniel, during the 1970s,
3 would not have been hired to do asbestos abatement and
4 remediation work --
5 A No.
6 Q -- at Spartanburg?
7 A No.
8 Q Okay. Do you have any evidence of any audits by
9 Celanese of Daniel's safety and health program at
10 Spartanburg in the 1970s?
11 A No, I don't.
12 Q Okay. You understand that that was something that
13 Celanese was to do as part of the relationship between
14 Daniel's and Celanese, correct?
15 A Yeah, and other research on other Daniel projects.
16 There's a lot of evidence that the owners audited our
17 safety programs and inspected our work.
18 Q And to the extent that there was any shortcomings in
19 the safety either program or enforcement of the program --
20 A Right.
21 Q -- that would be something that those audits would be
22 designed to uncover?
23 A That's right.
24 Q And remedy?
25 A Yes.

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

1 A Whatever.
2 MR. PANATIER: Thank you, sir.
3 THE WITNESS: Okay.
4 REDIRECT EXAMINATION
5 BY MR. YOUNG:
6 Q Mr. Buck, I just want to follow-up on one thing.
7 Mr. Panatier asked you about labeling stuff. Daniel built
8 the plant; right?
9 A Right.
10 Q And so to -- they put it in to begin with; right?
11 A Yes.
12 Q Okay. So they would know that -- what was, actually,
13 put in when they put it in; right?
14 A When they put it in, yes.
15 Q Okay. And then they knew what they were replacing
16 when they were doing maintenance, because they were doing
17 the work?
18 A Right.
19 MR. YOUNG: Okay. Thank you, sir.
20 MR. TIVIN: One question.
21 RECROSS-EXAMINATION
22 BY MR. TIVIN:
23 Q Daniel didn't purchase any of the materials that were
24 used in the Celanese plant; correct?
25 A Well, I don't know that. But they -- if we did, we

1 would probably would have purchased it as agents for the
2 owner.
3 Q It was in the Celanese stockroom?
4 A Yes.
5 MR. TIVIN: Thank you.
6 MR. PANATIER: One follow-up.
7 RECROSS-EXAMINATION
8 BY MR. PANATIER:
9 Q Do you know when the Spartanburg plant was built?
10 A I think it was in the late 60s.
11 Q All right. So whenever it was, whatever products
12 went in then went in then, and whoever installed them may
13 have known exactly what was where; right?
14 A Yes.
15 Q But in order to preserve that knowledge, obviously,
16 identification, labeling, or tagging would be something
17 that would assist them in the future; fair enough?
18 A Yes.
19 MR. PANATIER: No further questions.
20 THE COURT: Thank you, Mr. Buck, for your time, sir.
21 Okay. I understand that -- was there a -- some kind
22 of a read-in or something?
23 MR. PANATIER: No, Your Honor.
24 THE COURT: Okay.
25 MR. PANATIER: We dealt with that.

1 MR. YOUNG: Judge, we're going to rest.
2 THE COURT: Yeah. Do y'all both want to rest now,
3 and then we'll let the jury have a break, I guess?
4 MR. TIVIN: Has the Plaintiff rested?
5 MR. PANATIER: Yes.
6 MR. TIVIN: One second, Your Honor.
7 (Pause.)
8 MR. TIVIN: We would rest. John Crane would rest,
9 Your Honor.
10 MR. YOUNG: And Celanese, Judge.
11 I didn't mean to interrupt you. I just --
12 THE COURT: You're not interrupting me, no, sir.
13 MR. TIVIN: Your Honor, may I approach, for one
14 second?
15 THE COURT: Sure.
16 (WHEREUPON, a bench conference was held.)
17 THE COURT: Okay. Ladies and gentlemen, the parties
18 have rested. That means you've heard all the evidence
19 you're going to hear in the case. There are some legal
20 matters I've got to take up that may take a while to go
21 through that. And then we're going to have the closing
22 arguments. And then, after that, I'll give you the
23 instruction on the law. And then the case will be in your
24 hands for a decision and a verdict.
25 You already ordered lunch, I think. We'll coordinate

1 that to arrive, hopefully, about the time you're through
2 listening to other people talk.
3 So if you'll just go back to the jury room. Don't
4 talk about the case. And continue to keep an open mind.
5 We'll have the opening -- excuse me -- the closing
6 arguments as soon as we can.
7 All right. Thank you.
8 (WHEREUPON, the jury was excused from open court at
9 approximately 10:16 a.m.)
10 MOTIONS
11 THE COURT: Any motions or matters at this time?
12 MR. ELLIOTT: Your Honor, John Crane has two motions
13 for a directed verdict.
14 THE COURT: Okay.
15 MR. ELLIOTT: The first is on Plaintiffs cause of
16 action for negligence. Your Honor, the evidence, as
17 presented by the Plaintiff during their case, did not
18 establish that John Crane was negligent, or that its
19 negligence was the proximate cause of the Plaintiff's
20 injury.
21 As Your Honor knows, negligence is only actionable if
22 there's proximate cause. Proximate cause requires cause
23 in fact, which requires that the jury conclude that but
24 for the negligence of John Crane, the Plaintiff's injury
25 would not have occurred. And in this case, there was no

1 such evidence.

2 In fact, as I recall, one of the Plaintiff's experts

3 testified that he could not testify that but for the

4 Plaintiff's exposure to a John Crane gasket -- his

5 asbestos exposure through a John Crane gasket, he would

6 not have developed the mesothelioma. And as a result, the

7 Plaintiffs can't -- excuse me -- there's no evidence upon

8 which a jury -- a reasonable jury could conclude that John

9 Crane's gaskets were a proximate cause of Mr. Seay's

10 disease.

11 And all the experts presented by the Plaintiff's

12 confirmed that they could not determine that John

13 Crane's -- the exposure to asbestos through a John Crane

14 product was the proximate cause -- the but-for cause of

15 the injury. And there's no reasonable inference that can

16 be drawn from the testimony that was provided by the

17 experts in the Plaintiff's case or any other witness, for

18 that matter, in the Plaintiff's case.

19 Thank you.

20 THE COURT: All right.

21 MR. PANATIER: With regard to negligence, the first

22 part of the argument, Plaintiffs introduced evidence that

23 John Crane had either knew or should have known of

24 asbestos hazards. We did a very extensive

25 state-of-the-art portion of the case on "should have

1 known."

2 On known, for John Crane, we showed that they should
3 have known about the Illinois occupational disease hazard
4 statute in '36. Their president was a member of the
5 American Society of Mechanical Engineers starting in the
6 '30s where he received information on asbestos hazards.
7 They, also, knew about OSHA starting in '72, which is near
8 the beginning of this man's exposure.

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

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

25 THE COURT: Thank you.

1 MR. ELLIOTT: Briefly, Your Honor, the reports that
2 counsel referred to with his experts did not indicate that
3 there was a hazard relating to the work with
4 asbestos-containing gaskets. Saying that -- if the
5 experts say they can't separate the exposures and,
6 therefore, can't determine the but-for cause, then they
7 fail under South Carolina law. They've got to be able to
8 say that "but for the exposure to a John Crane product,
9 the disease would not have occurred."
10 And when talking about frequency, regularity, and
11 proximity, we think back to our motions in limine when we
12 discussed frequency, regularity, and proximity. Your
13 Honor talked about that being a policy concern. And
14 that's a -- it's a finding for the threshold for exposure
15 to become actionable. It is not a proximate -- it's not a
16 standard for proving proximate cause.
17 MR. PANATIER: Just one more point. We did
18 introduce, if the Court is interested in any
19 gasket-specific literature, 1932, that gaskets were
20 inducing -- gaskets, among other products and operations
21 dealing with gaskets, were inducing asbestosis. And then,
22 in 1958, gaskets were, again, called out as a source of
23 asbestos exposure that we addressed with Dr. Toca.
24 THE COURT: All right. I understand the Defense
25 arguments and logic behind them.

1 I appreciate you making them, Mr. Elliott.
2 I do think there's sufficient evidence viewed in the
3 light most favorable to Plaintiff, Ms. Keene, that would
4 enable a jury to find in her favor. I can't weigh the
5 evidence. I just have to determine if it exists at this
6 point, and I find it does exist. And, therefore, I
7 respectfully deny the motion.
8 MR. ELLIOTT: Yeah. This is a little bit
9 procedurally difficult. But we've rested, and sort of the
10 Plaintiffs rested at the same time. Can we just renew our
11 motion, given that we've closed our case, in order to
12 preserve the issue?
13 THE COURT: Certainly.
14 MR. ELLIOTT: And, Your Honor, briefly, we'd like to
15 move for a directed verdict on the Plaintiff's claim for
16 punitive damages.
17 And briefly, Your Honor, we don't believe the
18 Plaintiffs have submitted sufficient evidence for the jury
19 to conclude that John Crane was reckless or willful and
20 wanton in their disregard for the rights of Mr. Seay,
21 which is the standard in South Carolina to establish
22 punitive damages. And you've got to establish that by
23 clear and convincing evidence.
24 The evidence is that John Crane's gaskets were the
25 state of the art at the time. The Plaintiffs presented

1 experts, including Dr. Brody, who reviewed publications of
2 the most knowledgeable experts of the period, such as
3 Dr. Selikoff, that the information concerned exposure to
4 asbestos through -- through working with the product --
5 the raw materials, being milling or mining, and, perhaps,
6 working with insulation.
7 However, the state of the art at the time, the
8 information was not that working with gaskets created a
9 hazard to the exposure to asbestos. Plaintiffs produced
10 general knowledge of the hazards of asbestos during the
11 '20s and '30s. However, again, it only concerned miners
12 and millers and, perhaps, insulators. There was not
13 thought there was any hazard relating to gaskets until the
14 '80s, according to the state of the art of the witnesses.
15 As a result, we don't believe there's any evidence
16 upon which a reasonable jury can conclude that John Crane
17 was willful, wanton, or reckless, therefore -- by clearing
18 and convincing evidence. Therefore, Plaintiffs cannot
19 establish their burden and allow punitive damages to go to
20 the jury.
21 THE COURT: I would respectfully deny that motion as
22 well. I think there's evidence that would support a
23 finding of punitive damages if it is believed by the jury.
24 MR. ELLIOTT: We would just renew the motion, as
25 we've closed John Crane's case, Your Honor.

1 THE COURT: Yes, sir.
2 MR. ELLIOTT: And you would deny the motion?
3 THE COURT: Yes, sir.
4 Thank you.
5 MR. COLLIER: Your Honor, on behalf of Celanese, we,
6 also, have a motion for directed verdict.
7 THE COURT: Yes, sir, Mr. Collier.
8 MR. COLLIER: On the issues of negligence, lack of
9 superior knowledge, statutory employee, and punitive
10 damages. The law applicable to this case is the premises
11 law that involves an independent contractor. And under
12 Lanier Construction, a general contractor like Daniel
13 assumes the duties of the landowner. And that's the
14 evidence that's been presented in this case with respect
15 to Daniel and Celanese.
16 The evidence has been that all of Mr. Seay's work for
17 Daniel at Celanese was under OSHA. And all the evidence
18 in the case, contracts, the other documents, the testimony
19 of Celanese, Daniel, and even Plaintiffs own expert,
20 Dr. Holstein, is that Daniel had a duty to provide
21 Mr. Seay a safe workplace.
22 There's been no similar evidence presented with
23 respect to Celanese that there -- and there's been no
24 evidence presented Celanese was negligent in hiring
25 Daniel, a well -respected contractor, who were experts in

1 providing maintenance.
2 In addition, there's been no evidence presented that
3 any alleged negligence of Celanese was a substantial
4 contributing factor to Mr. Seay's mesothelioma.
5 The law is, also, clear that Plaintiff has to prove
6 that Celanese had superior knowledge regarding asbestos
7 hazards. And under the Lanier case, a premises owner can
8 only be held liable for an invitee's injuries when the
9 premises owner has superior knowledge of the danger or
10 unsafe condition that caused the invitee's injuries.
11 If a premises owner does not have superior knowledge
12 of the danger, then the premises owner does not have a
13 duty to warn. There's been no evidence at all that
14 Celanese had superior knowledge with Daniel about
15 asbestos. In fact, the evidence has been that Daniel both
16 installed and maintained all of the asbestos-containing
17 materials in the plant. And Daniel's own witness just
18 testified that their knowledge of asbestos came about with
19 OSHA, which is consistent with what Mr. Bowyer testified
20 to yesterday.
21 All of the evidence supports -- further supports our
22 earlier claim in our motion to dismiss -- or motion for
23 summary judgement that Mr. Seay was a statutory employee
24 of Celanese. In short, under South Carolina law,
25 Mr. Seay's recourse against Celanese is limited to a

1 workers' compensation claim.

2 Under South Carolina law, Mr. Seay's recourse against

3 Celanese is limited to a workers' compensation claim under

4 Voss, because Mr. Seay meets the test that qualifies a

5 statutory employee.

6 The activity of Daniel and Mr. Seay was an important

7 part of Celanese's trade or business. The activity

8 performed by Daniel and Mr. Seay is a necessary,

9 essential, and integral part of Celanese's business, or

10 the identical activity performed by Daniel and Mr. Seay

11 has been performed by the owners of Celanese.

12 All of the evidence in the case has been that,

13 without the maintenance performed by Daniel and Mr. Seay,

14 that Celanese wouldn't have been able to continue making

15 polyester fiber. Rather than rearguing the rest of that

16 motion, we would incorporate those arguments from our

17 motion to dismiss, motion for summary judgment back in

18 July in support of our motion for directed verdict.

19 Also, given that we've kind of got a broken-up

20 directed verdict argument, the Plaintiffs can't consider

21 any of Mr. Buck's testimony that was provided today in

22 responding -- in responding to the directed verdict

23 argument with respect to the superior knowledge issue.

24 And, finally, there's been no evidence presented to

25 support a claim for punitive damages as to Celanese.

1 There's no clear and convincing evidence that Mr. Seay's
2 injury was a result of any willful, wanton, or reckless
3 conduct by Celanese.
4 Under Carter v. R.L. Jordan Oil Company, conduct is
5 willful, wanton, or reckless when it's committed with a
6 deliberate intention under such circumstances that a
7 person of ordinary prudence would be conscious of it as an
8 invasion of another's rights. And certainly that hasn't
9 been shown as to Celanese in this case. And Celanese
10 would submit that a directed verdict as to Celanese is
11 proper at this point.
12 Thank you, Your Honor.
13 THE COURT: Thank you, sir.
14 So as to the statutory employee argument, I think I
15 would stand by the ruling I made at the beginning of the
16 case on that issue. There was no evidence admitted
17 about -- in fact, the evidence was contrary, that Celanese
18 didn't do their own maintenance. They didn't have anybody
19 doing maintenance but Daniel. They weren't in the
20 maintenance business.
21 I just don't think the spirit of the various cases,
22 including the one that came out this summer from our
23 Supreme Court about statutory employee, would allow that
24 defense to be used under these circumstances and facts.
25 As to punitive damages, again, for the same reasons I

1 denied it as to John Crane, I think there's evidence
2 which, if believed, would show conscious disregard for the
3 rights of Mr. Seay.
4 Without making any credibility determinations
5 whatsoever, I find there's evidence that would support a
6 verdict in favor of Ms. Keene on the issues of premises
7 liability. I don't believe the law is that a contractor
8 steps in the shoes of a premises owner to the point that
9 completely alleviates the premises owner from any duty or
10 liability.
11 I understand this Americk [phonetic] case. I think
12 it leaned very heavily on a case involving -- I believe
13 it's called Williams. I don't have the case right in
14 front of me. In that case, it was the contractor who was
15 on the scene. A utility came up and did some work, it
16 included the opening of a trench. I believe it was the
17 contractor who fell into the trench and then tried to sue.
18 And the Court said it was an open and obvious danger.
19 The landowner had no liability for such danger, and
20 certainly the contractor didn't. Because the contractor
21 had equal knowledge of the landowner under those
22 circumstances.
23 I just think that it doesn't support the proposition
24 that a contractor takes over all of the premises liability
25 in a case once they step onto the property.

1 So I respectfully deny the motions.
2 MR. COLLIER: Your Honor, could we just renew the
3 motion for purposes of after we closed our case?
4 THE COURT: Yes, sir. You may.
5 MR. COLLIER: Thank you, Your Honor.
6 THE COURT: And I deny it.
7 MR. COLLIER: Thank you.
8 MR. PANATIER: Can we have a quick break?
9 THE COURT: All right. Let me just get an idea of
10 how long your closings are going to be, if you don't mind.
11 MR. PANATIER: Your Honor, I -- with the two
12 Defendants, if I could have an hour 20 for closing, I
13 would appreciate it, to address all the evidence. That
14 includes rebuttal.
15 THE COURT: Oh, okay.
16 MR. PANATIER: That includes -- that's everything.
17 MR. YOUNG: Judge, I mean, it seems like we should
18 stick to the rules.
19 THE COURT: What do they say? I can't remember.
20 It's been --
21 MR. YOUNG: An hour.
22 THE COURT: An hour?
23 MR. YOUNG: Yes, sir.
24 MR. PANATIER: And, Your Honor, I'm aware of Your
25 Honor's order on that. I'm asking for an extra 20 minutes

1 due to the -- I think we've given a lot of time back. And
2 I promise to be diligent in just discussing the evidence.
3 But there's a lot to discuss, especially after yesterday.
4 THE COURT: How about y'all's argument?
5 MR. TIVIN: It'll be roughly -- I have 40 slides. So
6 it'll be roughly an hour. I tried to keep it within
7 the Court's guidelines, realizing that there's no -- we're
8 not going to be dealing with apportionment or punitives in
9 this.
10 MR. YOUNG: Judge, I'm going to say 45 minutes. But
11 I -- you know, a little bit of it depends on what
12 Mr. Panatier says.
13 THE COURT: You know these TED Talks that are real
14 popular? They strictly limit them to 18 minutes. Why do
15 you think they do that?
16 MR. PANATIER: I know why they do it.
17 THE COURT: I mean, even Billy Graham stopped after
18 20 minutes.
19 MR. PANATIER: I hear you, Your Honor. And I
20 understand it could potentially be at my own detriment. I
21 just have a lot of evidence to discuss.
22 THE COURT: Well, I understand. It's easy for me to
23 say. I'm not doing the hard work like y'all are. And I
24 understand the struggles y'all are under.
25 So let's see here. So -- so this will be the plan,

1 will just to be to do the closing arguments and then let
2 them eat lunch. And then they'll have to listen to me.
3 So that will be getting through at close to 2:00.
4 We'll just have to see how it goes. Maybe y'all can do it
5 quicker.
6 MR. TIVIN: You're right, Your Honor.
7 MR. PANATIER: Your Honor, so I don't step on
8 the Court's toes, is that time limit okay? An hour to an
9 hour and 20, including rebuttal for me?
10 MR. YOUNG: Judge, a lot of the testimony and
11 evidence is -- I assume, he's going to use is pretty much
12 the same. I just hate to be the 1:00 guy when there's no
13 lunch.
14 MR. PANATIER: You got to open at 5:00.
15 MR. YOUNG: Yeah. You already made me open at 10
16 after 5:00.
17 THE COURT: Okay. We'll just have to do the best we
18 can then, you know. If somebody goes substantially over
19 their time limit, I'm just going to tell you, You've got
20 five minutes left. If that won't throw anybody off their
21 game.
22 MR. PANATIER: Okay.
23 THE COURT: Well, let's take about five minutes.
24 MR. YOUNG: Judge, the new verdict form is exactly
25 like the old verdict form. And I thought Your Honor had

1 indicated that you were okay with it saying "do you find
2 by unanimous consent that" blah-blah-blah, as opposed to
3 "we, the jury, find by unanimous consent." I mean, they
4 didn't change it at all.
5 MR. PANATIER: That's what -- it was denied. Your
6 request was denied.
7 MR. YOUNG: Oh, I thought you said it was granted.
8 THE COURT: No, I didn't.
9 MR. YOUNG: Okay. I apologize.
10 THE COURT: That's okay.
11 MR. YOUNG: I thought it was a really good request.
12 THE COURT: It might have been.
13 (WHEREUPON, a break was taken.)
14 THE COURT: Okay. Are you ready?
15 (WHEREUPON, there was no response.)
16 THE COURT: Okay. We'll bring the jury on in,
17 please.
18 (WHEREUPON, the jury came into open court at
19 approximately 10:50 a.m.)
20 THE COURT: All right. Ladies and gentlemen, just to
21 kind of let you know where we're going, we're going to
22 have the closing arguments in just a moment. And we'll
23 arrange to have the lunch sent in at some point. I was
24 hopeful we would be able to get all the arguments and then
25 my instruction to you before lunch, but it doesn't look

1 like we're going to be able to do that.
2 The closing arguments are an important part of the
3 case. The lawyers are going to try to tell you what they
4 think the evidence showed and what your verdict should be.
5 And you should pay keen attention to it.
6 And, remember, though, that the lawyers aren't
7 witnesses. And what they say is not evidence in itself,
8 as I told you at the beginning.
9 So we do have excellent lawyers in this case, as I've
10 already mentioned. And they've done an outstanding job
11 trying to present things to you efficiently. They've been
12 waiting a long time to get before a jury. And they have a
13 lot of things they want to say.
14 So I am going to give them latitude to make their
15 arguments, and do their job, and try to summarize what
16 they think the important parts of the case are to you.
17 And it may go on a while. But just keep in mind that
18 everybody is doing their job, and they're trying to do it
19 the best way they know how.
20 So, yes, sir. Mr. Panatier.
21 MR. PANATIER: May it please Court.
22 THE COURT: Yes, sir.
23 CLOSING ARGUMENT
24 MR. PANATIER: All right. Good morning, everybody.
25 The first thing I want to say is thank you so much

1 for paying attention. You guys were great. Regardless of
2 what you do, whether you say the Seay family takes nothing
3 or you give them compensation, I hope that you learned
4 something, and you found it interesting, and you leave
5 here saying, boy, jury service wasn't that bad.
6 But here's what I'm going to do. I'm trying to
7 summarize all the evidence you've heard. And you've heard
8 a whole lot of evidence. I told you at the beginning of
9 the case that sometimes I might go long, because I'm
10 trying to give you everything you need to find for the
11 Seay family. So there's nothing when you go back to
12 deliberate that you say, if only Chris had done X, Y, or
13 Z."
14 So that's why -- if I'm overkilling some of it,
15 that's why I'm doing it. So, please, just understand I'm
16 just trying to give you everything you need to find for
17 the Seay family in this case.
18 So that's where I'm going to start. Because we heard
19 tons of science, corporate stuff, and all of that. But
20 you heard -- you heard three people testify in this case.
21 You heard Mr. Seay testify by video. You heard his wife
22 and his daughter, Angie, testify. And this case is about
23 people. And it's about something that a corporation or a
24 few corporations did to these people.
25 So it's about the people. You don't just sue a

1 corporation for nothing. You do it because something
2 happened to somebody. And it's about that man right there
3 in the back and his almost hidden wife right next to him.
4 We have the burden of proof. As a jury, you have to
5 decide unanimously the case. All of you have to agree.
6 So when you go back there, certainly talk through the
7 evidence as you recall it, and do your best to work
8 together to come to an agreement. But we have the burden
9 of proof, which is why I go first. So I have to tell you
10 what evidence I believe supports the verdict. Okay.
11 The first issue I want to talk to you about is
12 causation. Because we have to prove that these companies
13 contributed to cause Mr. Seay's mesothelioma. So let's go
14 through that a little bit.
15 First of all, I just want to say Dennis Seay was a
16 good man who did nothing wrong. No one in this case said
17 he wasn't safety-conscious, or anything like that. He
18 said if he had known about these hazards, he would have
19 taken precautions, but no one told him, not Celanese, not
20 Daniel, not the manufacturers of the product. Okay.
21 Causation. So I'm going to give you a couple little
22 blurbs of some of the instructions the judge will give you
23 on the law you're to apply to the case. Okay. Plaintiff
24 must prove that the exposure to the asbestos product was
25 of such frequency, regularity, and duration that it was a

1 substantial factor in bringing about that disease or
2 injury. So that's one of the things you have to consider.
3 Was this something that the man just did one time or
4 two times, as opposed to doing over a 10-year period,
5 which is what the case was here.
6 Proximate cause is something that produces a natural
7 chain of events and in the end brings about an injury.
8 And that is proven by showing the injury would not have
9 occurred but for the Defendants negligence. And proximate
10 cause does not mean the only cause. The Defendants act
11 can be a proximate cause of the Plaintiff's injury if it
12 was, at least, one of the direct concurring causes of the
13 injury, and that is this.
14 This is what I showed you in openings, right? Where
15 you can have the fish being poisoned by one factory and
16 the fish gets sick. That factory is responsible for it.
17 If he's poisoned by two or three, they all hold
18 responsibility so long as it was a substantial exposure.
19 And that's what you have here.
20 You have Mr. Seay being exposed from many different
21 sources. One of the sources was John Crane gaskets. One
22 of the sources was his work at Celanese, which would
23 incorporate all of those asbestos exposures. So you have
24 two primary exposures we're talking about in this case.
25 And they're each a substantial factor in bringing about

1 his injury.
2 So I've got these little -- those are exhibit
3 stickers. I just put exhibit stickers on the bottom to
4 show you when I talk about a piece of evidence, this is
5 where it's coming from. So you might think back and say,
6 oh, I remember hearing that with Dr. Kradin or
7 Dr. Holstein.
8 And so there's some facts in this case that are
9 undisputed. He had mesothelioma. It was from
10 occupational exposure to asbestos. And mesothelioma
11 caused his death. Those are all undisputed in this case.
12 And that smoking -- he was a smoker. But smoking has
13 nothing to do with mesothelioma. It doesn't cause it.
14 And all of these people agree.
15 We called Dr. Kradin. I just wanted to show you --
16 he looked at some of the stains where they take out a bit
17 of the tumor, they stain it, and then they can tell what
18 type of cancer it is. And it's very interesting. Because
19 you can tell just by looking at a slide whether it's a
20 mesothelioma, or a lung cancer, or a kidney cancer just by
21 looking at the slide. You don't even have to know where
22 in the body it came from. So they did that. And they
23 confirmed it.
24 I want to remind you of some of the scientific and
25 regulatory opinions on asbestos. And here's why, because

1 you heard in this case from our experts and you heard from
2 Defense experts. And to the extent you're having trouble
3 pitting one side against the other, I always say, well,
4 let's look out in the real world. Let's see how the real
5 world treats asbestos products.
6 And OSHA says there's no known safe level. OSHA says
7 very low levels can cause the disease. There's no safe
8 level.
9 The World Health Organization says the same thing.
10 No threshold has been identified for the carcinogenic risk
11 of asbestos, including chrysotile asbestos. This is the
12 real world.
13 We showed you the American Industrial Hygiene
14 Association. This was the organization that Dr. Toca, who
15 was here two days ago, was the president of. And his
16 organization says asbestos is a known human carcinogen
17 with no known safe threshold of exposure.
18 So this is the real world. There is no magic number.
19 There is no amount of asbestos that you have to breathe in
20 before you're at risk for a disease, other than what's in
21 that general background. It's sort of like saying we know
22 that two beers gets you drunk. Well, it's different for
23 everybody. For me, it's one beer. Okay. But it may be
24 different for everybody. There is no magic number for the
25 amount of asbestos that causes mesothelioma.

1 And all of these different regulatory and scientific
2 bodies agree with that. There is no known safe level, and
3 all fiber types cause mesothelioma.
4 So let's take this forward. We showed you all the
5 way from inside the cell to the DNA and how asbestos
6 causes cancer. This was one of the pictures Dr. Brody put
7 up. He showed actual -- these were amphibole fibers. So
8 these would be crocidolite or amosite, actually,
9 interfering with the DNA in cell multiplication. He
10 showed you the same thing for chrysotile.
11 And you, also, heard testimony from both Dr. Roggli
12 and Dr. Brody that chrysotile asbestos, the asbestos that
13 some of John Crane's experts says isn't so bad, it's kind
14 of safe. They said that asbestos, when it goes into the
15 lungs, it's the one that most preferentially, more often,
16 translocates out to the pleura where mesothelioma occurs.
17 So if it goes to the pleura, that's where it causes
18 disease.
19 And here's a picture that Dr. Brody showed you of
20 chrysotile asbestos fibers, actually, killing the
21 macrophages. Those were the big eaters. Those were the
22 cells in the lung that try to clean it up.
23 So you guys are well aware of what Mr. Seay's
24 exposure was by this point. No other exposure outside of
25 Hoechst Celanese. Early in the case -- and you'll see

1 this probably. We had work history sheets where early on
2 we thought, perhaps, there was some exposure in Bristol.
3 But it was vetted out in the deposition by all the lawyers
4 that it was really just Hoechst Celanese for about 10
5 years.
6 What did he do? He worked on gaskets. He worked on
7 insulation. And this was his testimony from his video.
8 He was asked to look at this picture. And he said
9 90 percent of your gaskets, this is what they look like
10 when you're replacing them, which is why it necessitated
11 using a scraper, a wire brush, and a power wire brush.
12 Mr. Tivin has continued to say, Mr. Thompson said
13 only 25 percent needed to be scraped or wire-brushed. And
14 I showed you that testimony in the case. He said what he
15 said, whether it was 25 percent or not. And if it was
16 25 percent, that's fine. One-quarter of the time having
17 to scrape, wire brush, or power wire brush is plenty. But
18 if you look at his next line, he says, Was it a lot? It
19 was a lot.
20 The different brands identified were John Crane,
21 Garlock, Armstrong, Flexitallic, and Cranite. There were
22 five brands. They put in all five. And they took all
23 five out. And they did that over 10 years. So to argue
24 that there's no way that he could have pulled out John
25 Crane, as opposed to Cranite or Flexitallic just doesn't

1 make sense. That somehow over 10 years he put these all
2 in, but he just happened to miss all the John Crane
3 gaskets when he pulled them out. That doesn't make sense.
4 In all likelihood, he pulled out each one approximately an
5 equal amount. So he had equal exposure to these.
6 John Crane is the only source of exposure to
7 crocidolite asbestos. And Dr. Toca said crocidolite was a
8 hundred times more potent. Dr. Roggli said it was -- he
9 had different levels, but it was substantially more potent
10 that chrysotile. John Crane 2112 gasket identified by
11 Mr. Thompson is the only source of crocidolite exposure.
12 You heard from both Dr. Toca and Mr. Springs --
13 Mr. Springs was the corporate representative for John
14 Crane -- say these were encapsulated products. And I
15 showed this with several witnesses. These are
16 photomicrographs taken from a microscope of unused an
17 gasket. This is before it's ever cooked onto the flange
18 and has to be scraped off. This is unused. That's all
19 asbestos. There's a couple -- a little bit of nuggets of
20 the rubber that holds it all together.
21 So, of course, when it's cooked onto a flange and you
22 have to scrape it off, and wire-brush it, and
23 power-wire-brush it, you're releasing all of this into the
24 breathing zone. That is not encapsulated, and neither is
25 that.

1 We showed you this picture of a tremolite fiber from
2 a John Crane sheet gasket. And, again, I asked Dr. Toca,
3 I said, Is that encapsulated?
4 He said, No, that is not.
5 And, of course, Dr. Roggli said, look, you get the
6 tremolite from the chrysotile. It's a contamination of
7 Canadian chrysotile. That's where they got their
8 asbestos. That's where John Crane got their asbestos. So
9 if you have tremolite exposure, it's from the chrysotile.
10 Dr. Holstein testified that, look, he wasn't over the
11 limits every day. But the type of work he did would have
12 put him over both the daily limit and the ceiling limit
13 from time to time with gaskets and insulation. And the
14 insulation exposure is certainly higher if you're banging
15 insulation off a pipe, or you're cutting it.
16 And here's sort of a comparison. How do we weigh
17 these? Can we say that insulation was more exposure or
18 gaskets were less? Overall, I don't really think you can.
19 Because when you kind of look at the percentages -- so the
20 gaskets are 75 to 85 percent -- percent asbestos.
21 Insulation is about 15 percent.
22 The gasket exposures are, typically, lower than the
23 insulation exposures. So insulation is a little bit
24 higher exposure there. And that's shown again with the
25 background, up to 300,000 times above background, one

1 million-plus times above background for insulation.
2 Well, the gaskets had chrysotile and crocidolite,
3 including a very potent type of crocidolite, as well as
4 tremolite. The insulation had chrysotile and amosite.
5 The gaskets were daily work. And the insulation was
6 occasional work.
7 In the end, I think these are probably a wash. I
8 think the exposure from both is probably about even. But
9 it really doesn't matter at the end, because there is no
10 known safe level. He had exposure from both. That's
11 undeniable. And no one is going to ask you -- the judge
12 isn't going to ask you to figure out how many fibers
13 Mr. Seay breathed in from any of these. This is just for
14 you to consider and evaluate in the overall exposure.
15 I want to talk a little bit about measured versus
16 actual exposures. Remember, all of these numbers that
17 we're talking about, all of these exposure limits come
18 from the science class microscope, the light microscope,
19 not from the electron microscope. And, remember, the
20 testimony is whenever you see one fiber with a light
21 microscope, there's many, many, many you're missing that
22 you're not seeing that you would see with an electron
23 microscope.
24 And we showed you that with Dr. Holstein where
25 Dr. Longo did measurements with a light microscope. And

1 let's say he counted 14.9 to 31 fibers in a cubic -- in a
2 sugar cube. And then he took the same and he looked at it
3 with an electron microscope. And he got 877 to 1,600
4 fibers. So there's a lot you're not seeing when you do
5 those measurements? That's the [inaudible] thing.
6 Mr. Seay testified he used a scraper, the wire brush,
7 and the power wire brush all over that 10 years.
8 John Crane brought three medical experts -- well, an
9 industrial hygiene and medical, Dr. Toca, Dr. Crapo, and
10 Dr. Roggli. And what do they have all in common? They've
11 all spoken at the Defense Research Institution a number of
12 times, the voice of the defense bar.
13 Dr. Crapo talked about there's lots of asbestos in
14 water. And now, I want to bring up something that
15 Mr. Tivin said in opening statement. He said, Pay
16 attention. Pay attention during the case. Don't let
17 anybody hide the ball. That's a popular expression. I
18 think it comes from that little game where you go like
19 this with the cups. But he said, Don't let anybody hide
20 the ball.
21 So there's the John Crane ball. Okay. And this is
22 the first time I'm going to bring this up. Because what
23 was the point in bringing up that there's asbestos in
24 water, other than to suggest to you that maybe it's safe?
25 Maybe it's safe. It's in our water. We drink water all

1 the time.

2 So that's an example of hiding the ball. Because

3 Dr. Roggli said there's no problem with it. It doesn't

4 cause anything. There's no problem with asbestos in the

5 water. So why bring it up? That's the first time they

6 hid the ball.

7 John Crane's paid Dr. Crapo -- look, all these

8 experts make a lot of money. You guys heard those

9 numbers. They all make a lot of money. But this is kind

10 of interesting. John Crane alone has paid Dr. Crapo $1.6

11 million on top of his -- well, included in $8.5 million

12 overall. That's a lot.

13 And Dr. Toca has testified for John Crane -- John

14 Crane alone over a hundred times, not throughout history

15 for everybody but just John Crane. And what did he say?

16 He said it would take 5,000 years to get enough dose from

17 gasket work to cause mesothelioma. There is a point where

18 you say, at some point, does this have any scientific

19 basis? 5,000 years. Think about that.

20 Dr. Roggli said that sounds high. He's their own

21 witness. He was like, well, that doesn't sound right.

22 And the reason it doesn't sound right is because I could

23 have been around when they built the pyramids in 2500 BC,

24 and started grinding asbestos gaskets. And then I could

25 still be there today grinding off asbestos gaskets. And

1 Dr. Crapo would say, you're fine. 5,000 years. And I
2 could sit here for another 500 years until I reach 5,000
3 years and still be fine.
4 Early on, it was one of the Defense experts who said,
5 Don't check your common sense at the door. And I'm asking
6 you to use your common sense. Could you really work with
7 asbestos gaskets that are 85 percent asbestos for
8 5,000 years and be at no more risk for mesothelioma than
9 me, who's never worked on a gasket in his life? That
10 doesn't make sense. That doesn't make common sense.
11 And their own expert disagreed with that. He was
12 off -- he said, No. I think that's 10 times too high, at
13 least. Both of those witnesses testified only a little
14 bit of crocidolite, the very potent form, can induce
15 mesothelioma. Crapo said, I don't know what the threshold
16 is. And Dr. Roggli said, I think it's .0155 per cc years.
17 It only takes a little bit. And that's what John Crane
18 made. There's no magic number.
19 And I put up the Helsinki consensus report. I talked
20 to Dr. Roggli about this. This is the one that said,
21 look, you can attribute mesothelioma to asbestos if you
22 have a work history of asbestos exposure. And that's
23 exactly what Dr. Roggli did in this case. You don't have
24 to calculate numbers. You didn't have to say it was this
25 much asbestos from one and this much from another. You

1 just have to know there's a work history of asbestos. And
2 that's the real world. That's what the real world said.
3 And Dr. Roggli was a part of that organization. And
4 they didn't go in and adopt his numbers on "you need this
5 exact much to cause mesothelioma." No one has done that
6 in the real world. The real-world scientific consensus is
7 there is no known safe level.
8 Gasket and insulation exposure are a substantial
9 factor in the development of Mr. Seay's mesothelioma.
10 Those were his exposures. That's what he had. That's
11 what caused his disease.
12 The next issue, were these Defendants negligent?
13 You're not asked if Daniels was negligent. Okay. What is
14 negligence? It's a failure to use reasonable care.
15 That's what it is.
16 For John Crane, it's, did you fail to use reasonable
17 care in making your product, selling it, researching it,
18 testing it, et cetera -- okay -- failing to warn?
19 For Celanese is, did you exercise reasonable care in
20 warning people, auditing, et cetera. And we'll get into
21 that.
22 But you're not asked if Daniels is negligent. I'm
23 going to tell you right now, I think they were negligent.
24 Right? And we heard from the Daniels guy this morning.
25 And he talked about all sorts of stuff he said they did.

1 The truth is, if anyone -- if these guys, Daniel and
2 Celanese, all did what they said they did, Mr. Seay
3 wouldn't have mesothelioma. Okay. I think they were
4 negligent. And I say that as the lawyer that's saying,
5 hold these guys responsible, too. I say that at my own
6 peril.
7 I'm not trying to say Daniels is the only responsible
8 party like Celanese is. This is a shared responsibility
9 between an employer, a premises owner, and a manufacturer
10 to warn these people of the dangers that they all know
11 about. But you're not asked in this case if Daniels is
12 negligent. You're only asked, is Celanese negligent? And
13 is John Crane negligent?
14 And this is an important part. The judge is going to
15 instruct you that the fact that the negligence of a third
16 party -- if they say it's Daniels -- right -- occurred
17 with Defendants own negligence to produce the harm does
18 not relieve Defendant of liability. All right.
19 So if you -- if you think Daniels was negligent -- I
20 think they were -- that doesn't mean that Celanese and
21 John Crane walk out of the courtroom. You have to
22 evaluate their negligence, which is the questions you're
23 going to have.
24 You're going to have two first questions. Was John
25 Crane negligent? Was Celanese negligent? Okay. So let's

1 talk about their negligence.
2 There's the John Crane ball again. Because I'm going
3 to show you the ways they hid the ball. Okay. First,
4 John Crane didn't test its asbestos products, and they
5 didn't provide a warning. That's undisputed. Dr. Roggli,
6 their own witness, said a company should test their
7 products. And George Springs said we made 500 of them,
8 didn't test a single one of them.
9 Where did they learn about asbestos hazards? They
10 learned in 1936 from the laws of Illinois where they were
11 headquartered. They learned in 1933. Their president was
12 a member of the American Society of Mechanical Engineers
13 and received this periodical, Mechanical Engineering, that
14 discussed asbestos hazards.
15 Johns Manville, in '68, starts putting a warning on
16 their raw asbestos. And this is important. Think about
17 this. John Crane is using Johns Manville's raw asbestos.
18 It comes into their plant what they're going to turn into
19 a product. It has a warning on it. They put it in a
20 product. And it leaves their plant with no warning. So
21 John Crane's getting the warning, but the people that get
22 their products are not.
23 And then, in 1970, another Johns Manville guy came in
24 and gave a talk where he said asbestos can cause disease.
25 And they learned it there as well. And then, of course,

1 they admit they learned it from OSHA. John Crane
2 absolutely knew before Mr. Seay was ever exposed to their
3 product.
4 This is in evidence. This is Exhibit 1109. These
5 are three of the different types of gaskets you've heard
6 from. The two main ones are 333 at the top, and 2112.
7 And their own catalog says 75 percent asbestos. But I
8 think they're hiding the ball here. And the reason I
9 think they're hiding the ball is because George Springs
10 came in and said, No, no, that's -- that's by weight. And
11 I got a little confused. Because that's the first time
12 I've ever heard that from him. He said, No. It's 52
13 percent.
14 So we looked at some other documents. We looked at
15 these documents, 1184-A and 1184-B. These are the
16 material safety data sheets that John Crane put out in
17 1981. And what do they say? First of all, they say,
18 health hazard, asbestosis, and cancer. What do they tell
19 you in this case? No problem. They don't cause disease.
20 There's no problem.
21 When you want to know what the truth is, you look at
22 what people do in the real world, not what they say in
23 court. Look at what they do in the real world. What John
24 Crane did in the real world was they said, Our product,
25 Gasket 2150, causes asbestosis and cancer.

1 That product is the same as 333. But look at this,
2 for 333, they say, Chronic exposure to asbestos dust can
3 lead to asbestosis. Both put out in the same year. Both
4 the same type of product. They say one causes cancer, and
5 they don't include cancer on the other one. That's them
6 hiding the ball in the real world.
7 But look at what else they say. 60 to 80 percent
8 asbestos. Okay. Now, this is where things got
9 interesting with George Springs. Remember what his
10 testimony was? His testimony was, Oh, the first number,
11 the 60 is weight. The 80 is volume. That makes no sense.
12 And it's not true. He's -- he made that up to try to make
13 it sound like they had less asbestos than they did.
14 I don't think it makes a difference. If it's a
15 50 percent product versus a 75 percent product, I don't
16 think it makes a difference. But the attempt to try to
17 deceive you is what upsets me --
18 MR. TIVIN: Objection.
19 MR. PANATIER: -- is that when you say it's 60
20 percent --
21 THE COURT: Hold on a second.
22 MR. PANATIER: Oh, sorry.
23 MR. TIVIN: Objection.
24 THE COURT: All right. I'll sustain the objection as
25 to personal belief.

1 MR. PANATIER: The 60 to 80 percent is one unit.
2 It's not weight and volume. We all know it's a range.
3 And I don't know why he wouldn't just admit that.
4 Here he is again. He said, We complied with the 1936
5 law, but we didn't read it. Why? Because I showed you,
6 if you read it, it says asbestosis is an occupational
7 disease.
8 So Mr. Springs knows that if he says he read it, then
9 he has to admit they knew about the disease. But he said,
10 We complied with it without reading it. Again, they're
11 hiding the ball.
12 You heard about this. You heard about this, the
13 RitePack packing guide -- right -- where they said, Our
14 nonasbestos packings are -- nonasbestos packings are
15 longer-lasting, safer, and less abrasive, designed to meet
16 existing OSHA requirements.
17 What does that mean? It means, without asbestos,
18 it's safer. That's what it means. And he said -- he
19 said, No. That has nothing to do with nonasbestos being
20 safer than asbestos. And their other witness, George
21 McKillop, who you saw on video, said the same thing.
22 They're hiding the ball.
23 Dr. Roggli was asked at the very end of his testimony
24 by Mr. Tivin, Were any of those articles on gaskets having
25 to do with asbestos-causing -- gaskets causing disease,

1 the general state of the art? And he said, No, sir.
2 And then I showed him this, which talked about
3 industries and processes in which asbestosis and disease
4 occurs, and mentions jointings, which everyone agrees is
5 gaskets at the end. Then he says, Oops, yes, that's true.
6 That does mention gaskets causing disease. So, again,
7 they're hiding the ball.
8 John Crane violated OSHA labeling. And the reason
9 that George Springs said what he said was to avoid that
10 conclusion. Do you remember what he said? He said, This
11 labeling requirement is just talking about waste, not the
12 product itself. Even though, remember, I showed him
13 testimony where before he said, Yes, that's talking about
14 the product.
15 But, now, he's changed his mind. Because he knows
16 this, in 1981, if they admit the proper labels were
17 required, then they should have been labeling all the way
18 from 1972. They weren't. So if he admits that has to do
19 with the product, then he's admitting they weren't
20 labeling under federal law, and they weren't.
21 Why does this make no sense what he's saying?
22 Because, up top, right above this section -- it's got a
23 section -- and you guys will se this. This is in
24 evidence. It's called, Waste disposal method. Sealed
25 containers properly labeled as specified in 19101001, the

1 same one that they're talking about down here.
2 So why would you list how you dispose of waste two
3 times, and the second time you do it not say this is
4 waste? Because they're talking about labeling on the
5 product.
6 This is George McKillop. You saw him. Here's what
7 you can take away from John Crane. All right. What you
8 heard from John Crane's corporate representatives was,
9 part of it's advertising, and part of it's true.
10 (WHEREUPON, a short clip from a video was played in
11 open court.)
12 MR. PANATIER: Let's talk a little bit about -- oh,
13 and, lastly, Dr. Roggli said -- this was their own
14 witness -- said, A product that releases respirable asbestos
15 fibers and lacks a warning is unreasonably dangerous.
16 That's John Crane's own product. It is unreasonably
17 dangerous.
18 Let's talk about Celanese now, their negligence,
19 failure to exercise reasonable care. They owned the plant.
20 They owned the pipe, and the lines, and the equipment. They
21 owned and purchased the insulation and gaskets. They
22 specified what insulation and gaskets to use. They ordered
23 all the products. They're in complete control of safety
24 policy.
25 Remember Mr. Buck said, Hey, if theirs were more

1 stringent, we had to meet theirs. We had to modify our own
2 safety policies. They were supposed to audit contract
3 safety policies. There's no evidence in this case they ever
4 did that. They had the ability to oversee all policies and
5 contractor employees. And they controlled when the
6 contractors worked, where they worked, what they did, and
7 how they did it.
8 Now, what did they fail to do? They failed to conduct
9 reasonable abatement until too late. And I want to stop
10 there. Mr. Bowyer said Daniel was an abatement contractor.
11 And Mr. Buck today said, No, we weren't. We were a
12 construction and maintenance contractor.
13 They failed to investigate and purchase gasket
14 substitutes. They failed to sample and tag asbestos versus
15 nonasbestos. And again, this is something that Mr. Buck
16 said, Yes, that, obviously, would have been helpful.
17 Okay. And I'm not saying Daniel did much right. I
18 don't think they did. But this certainly would have
19 helped those people. Because then the worker --
20 regardless of what the supervisor is telling them, the
21 worker knows, I'm about to work on asbestos, or I'm not
22 about to work on asbestos.
23 They failed to properly audit the safety program and
24 compliance. We have no evidence they did that. Failed to
25 conduct air monitoring. They failed to warn of asbestos

1 hazards. They failed to follow their own safety and
2 health policies. Because, if they had, they would have
3 conducted an audit of Daniel's as well.
4 They should have placed effective warning --
5 remember, they owned the walls, not Daniel. They should
6 have labeled and tagged the asbestos. And they should
7 have made the asbestos off limits, period, which we know
8 they did 10 years after Mr. Seay left. Mr. Bowyer
9 volunteered that. That should have been the policy all
10 along. This is a specialized thing that someone with
11 specialized training needs to handle.
12 So this is my paraphrase of what the law is. To
13 recover for injuries sustained on Celanese's premises, we
14 have to prove either they had actual knowledge of a
15 dangerous condition or constructive knowledge. I'm going
16 to prove -- forget about number 2. I'm going to prove
17 they had actual knowledge. Okay. But I can prove it if
18 they had constructive knowledge.
19 And then whether Celanese owes Daniels or its
20 employees a duty to warn of dangerous conditions on the
21 premises turns on whether Celanese possesses superior
22 knowledge or information which places him in a superior
23 position to appreciate the risk posed to Daniel employees
24 by the dangerous conditions.
25 So, basically, I have to show that Celanese had

1 superior knowledge, which they did. And we saw that
2 today. Remember, Mr. Buck said, Look, we learned about
3 asbestos hazards with OSHA. And we thought the PEL was
4 safe. And, ladies and gentlemen, you know from the
5 extensive cross-examination of Mr. Bowyer yesterday that
6 they knew the PEL wasn't protective. They knew that.
7 They knew it didn't protect for all diseases. And they
8 had far superior knowledge to Daniel.
9 Mr. Young said this in opening, They have to prove
10 that our hiring Daniel, a large, well-respected, good
11 contractor to come in and do the asbestos work was
12 negligent. And that it was not something that an
13 ordinary, prudent person would do. That's not the law.
14 That's not what we have to prove.
15 So anytime you hear Mr. Young, if he says it again,
16 say we have to prove -- the Plaintiff has to prove that
17 they were negligent in hiring Daniel, that's not the
18 question you're asked. The question is --
19 MR. YOUNG: Judge, I would object to this. The law
20 comes from Your Honor.
21 THE COURT: Well, that is true. But I overrule the
22 objection.
23 MR. PANATIER: The question is whether or not
24 Celanese exercised ordinary care to Mr. Seay, who was an
25 invitee on their premises. And we'll talk a little bit

1 about that.
2 So I thought to myself, I thought, you know, you
3 might have heard the expression a red flag; right? So
4 something that gives you a warning. Something might be a
5 red flag. They used to say, you know, you send a canary
6 down a coal mine. If it doesn't come back, you know
7 there's dangerous gas down there. That would be a red
8 flag; right?
9 A red flag is a warning. It may not be the end-all,
10 be-all. But it's a warning. And this case for Celanese
11 is full of red flags. I want to show you what they knew.
12 I want you to appreciate truly the breadth of their
13 knowledge, because they absolutely had it.
14 And so this may be a little cheesy, but I bought a
15 box with some little red flags in it. Okay. So I want to
16 show you their knowledge with these red flags. I'm going
17 to make a little mess here. But 1951 -- 1951, this is the
18 National Safety Council article on asbestos hazards.
19 Industrial Hygiene Foundation, this is 1953. There
20 are three separate articles on asbestos hazards in that
21 article, in that digest that they received and read.
22 Mr. Laubly said, We got them, and we read them.
23 September 1955, one article on asbestos hazards.
24 February 1956, two articles on asbestos hazards.
25 The National Safety Council, 1956, one article on

1 asbestos hazards.
2 1956, the Industrial Hygiene Foundation, three
3 articles on asbestos hazards.
4 April 1957, one article on asbestos hazards.
5 1958, Texas and New York safety regulations where
6 Celanese had operations. That's two flags.
7 Dr. Selikoff, 1964, this is the biggest flag of all.
8 There's dozens of articles in here. I'm not going to put
9 dozens of flags on it. But I'm going to put one big flag.
10 Because their safety director -- their medical director,
11 Dr. Dixon, was there. He was at the conference.
12 May 1964, one article on asbestos hazards, the
13 Industrial Hygiene Foundation.
14 January 1966 -- I don't know what I'm going to do
15 with all these -- three articles on asbestos hazards.
16 May 1966, one article on asbestos hazards.
17 Charles Laubly, you saw his testimony. He was the
18 older gentleman who was a corporate representative of
19 Celanese. He said he knew in 1949. And he started at
20 Celanese in 1966. So the second he walks on the premises,
21 in 1966, he gives them knowledge. He was a corporate
22 industrial hygienist.
23 August 1966, two more articles in the Industrial
24 Hygiene Foundation digest.
25 September 1966, there's seven -- I'm not going to put

1 seven flags, but there's seven.
2 May I use this?
3 Thank you.
4 October 1966, six more articles. I'll put half the
5 number of flags, because I think you get the point.
6 February 1967, four more articles received and read
7 by Celanese about asbestos hazards.
8 And remember what some of these are. Some of these
9 are saying it's not just people who are making asbestos
10 products.
11 Now, in the 1960s, we're getting into people who are
12 exposed environmentally. They may live a few miles away
13 from the factory, or they're the spouse of a worker. So
14 we're not just talking about people working with it
15 directly.
16 August 1967, two more.
17 December 1967, two more.
18 March 1969, six more. I'll just put four.
19 The toxicology report from Union Carbide to Celanese
20 in 1970. This is the one that I showed Mr. Buck this
21 morning. This one's important. Because this one is the
22 one where Union Carbide, another big company, tells
23 Celanese the threshold limit values, they may not be safe.
24 And, of course, they heard that in 1964, too. The values
25 that the companies are setting may not be safe. So that's

1 1970. That's one year before Mr. Seay arrived.
2 And 1965, the National Safety Council.
3 So there were dozens of red flags for Celanese. This
4 is the evidence you heard in this case. And I wanted you
5 to be able to visualize it. Because it wasn't a company
6 that just maybe heard something. This was a company that
7 received and read this information. And they were active
8 participants.
9 As much as Mr. Bowyer yesterday wanted to say, We
10 just made polyester, they sure knew a lot about asbestos
11 hazards. And even more importantly, starting right when
12 Mr. Seay started, they started making their own asbestos
13 products. And they made it into the 1980s. They weren't
14 just a polyester manufacturer. They were an asbestos
15 product manufacturer, too. All the more reason why all of
16 this knowledge was relevant to them.
17 They had superior knowledge to Daniel. They had
18 superior knowledge to everybody.
19 Going back to the 1940s -- I showed you this
20 document. Celanese made the call that they would use
21 asbestos gaskets because Teflon was too expensive. And
22 we, also, noted they were still using asbestos gaskets in
23 the 1980s.
24 I showed you this document yesterday with Mr. Bowyer.
25 In the 1980s -- this is 1988 -- they're still using

1 asbestos gaskets. But they say in '88, we should find
2 substitutes. We should use preformed gaskets. And they
3 should not be modified. They shouldn't be cut by our
4 personnel because of asbestos exposure, right?
5 And what I asked Mr. Bowyer -- I asked him one thing,
6 Could all of these have been done in the '70s?
7 Absolutely. Absolutely. The policies they put in in the
8 1980s could have been put in 17 years earlier when
9 Mr. Seay was there, but they weren't, despite all of their
10 knowledge.
11 1962, again, this was a practical piece of advice
12 contained in their own manual. Let's involve the
13 contractors in the safety meetings. And Mr. Bowyer said
14 that wasn't, actually, the whole corporate policy. It was
15 sort of hit or miss. If you wanted to, you could. Why
16 wasn't it? Why wasn't it?
17 A corporate memo from 1980. At the very end, It's
18 Celanese's policy to attempt to assure protection of
19 health and safety not only of its employees, but, also, of
20 the employees of operations or maintenance contractors who
21 routinely perform services at Celanese facilities.
22 I agree with that. That is a good policy. It should
23 have been the policy and the practice starting in the
24 1970s. Again, I'm not saying if we learned something in
25 the year 2015, apply it to something back then. I'm

1 saying judge them based on what they knew back then, and
2 the things that were possible back then. And every bit of
3 this was possible to invest in the contractor's employees,
4 as well as your own, and to involve them in the safety
5 meetings.
6 It said, This policy shall be implemented by the
7 operating companies through careful selection of
8 contractors, dissemination of health and safety
9 information to contractors, review of the contractors's
10 health and safety program, which both Mr. Buck and
11 Mr. Bowyer agreed they had to do, to make sure that the
12 contractor was protecting its employees. Celanese took on
13 the responsibility contractually to review their safety
14 program.
15 In fact, remember, Mr. Bowyer said, We did this in
16 1991. And I'm sorry. I shrunk that. But the policy in
17 '91 was, if you're a contractor, you don't touch the
18 asbestos. You do not touch it. Celanese will have
19 someone come in and remove it professionally.
20 They should have done that in the 1970s, especially
21 when, in '73, they made the decision to go asbestos-free
22 in insulation, right? They made the decision to go
23 asbestos-free in insulation because it was unsafe. But
24 they didn't follow up by saying, Let's remove the other
25 stuff. Let's tag it, and all of that for those workers.

1 No one told Mr. Seay anything, whether it be Daniel or
2 Celanese.
3 Now, I asked him, I said, Why couldn't you have done
4 this in the '70s? And this guy is a certified industrial
5 hygienist. Theoretically, those people are supposed to be
6 protecting workers.
7 And I said, Why didn't you go and take a pinch of the
8 insulation with tweezers, or whatever, or even when the
9 guys are working on it, take a pinch, and then you would
10 be able -- over a couple of years to be able to,
11 basically, flag the whole plant anytime they worked on it.
12 And they would know asbestos versus nonasbestos.
13 And he said, No. You don't take samples, because
14 that causes exposure. So I assume you would never sample
15 ever?
16 And I said, How did you do it?
17 He said, You do it with a drill.
18 You drill into the insulation? I don't know what to
19 think about that. We don't sample. We don't do bulk
20 samples, because you have to take a core sample.
21 This isn't ice in the Arctic. You take a sample of
22 the asbestos in the material, and you see whether it
23 contains asbestos.
24 He said they never conducted asbestos research, which
25 is interesting because, of course, we know that they had

1 an asbestos product. And, nevertheless, even though they
2 didn't actively conduct the research, they had all of
3 this. They had all of this.
4 And then they said asbestos was a nuisance dust
5 before OSHA. Despite all of this, they say with a
6 straight face asbestos was a nuisance dust. And that's
7 why, from the very beginning, the first witnesses in this
8 case, I asked every one of them, Was asbestos a nuisance
9 dust before OSHA? The answer is no. The only company
10 that says it was is Celanese. And why? Why?
11 Again, because if they admitted that it was a hazard,
12 they would admit to their knowledge. Why admit to their
13 knowledge if they can, perhaps, avoid liability? Did any
14 of these documents say asbestos was a nuisance dust that
15 they had access to? No, they didn't. They said quite the
16 opposite. It caused asbestosis and cancer.
17 That attitude towards asbestos, what does it tell us?
18 It tells us they had a contract with Daniel. They said,
19 You're responsible for your -- your employees. We'll
20 audit you. And they never did it. They never did it.
21 Neither side did it. They had their contracts to cover
22 themselves, and that's it. They didn't do it.
23 Both the corporate reps came in here, and they both
24 said the same thing. They said, oh, yes, we had all these
25 procedures, and everything. Well, then why does Dennis

1 Seay have mesothelioma then? Why is he dead?
2 I think it's because of this attitude. Remember this
3 with Mr. Bowyer? Interpretive information will be given
4 to the plant manager before it's disseminated to
5 employees. Monitoring, you interpret it for the plant
6 manager before you give it to the employees.
7 And then Mr. Bowyer had the same policy, even worse.
8 It is not considered to be a requirement to communicate
9 the interpretation of monitoring results. This is the
10 attitude that they had throughout the whole time, not to
11 be open, but to conceal. If you tell the worker -- if you
12 tell Mr. Seay, you tell a maintenance worker, you say,
13 Your asbestos exposure is four fibers per cc.
14 Congratulations. Here's your piece of paper that says
15 that. What is he supposed to think?
16 And then this one from 1963. I asked this question,
17 did Celanese have a culture of concern or concealment? I
18 think we know, because the policy was set by the president
19 of the company in 1963. And this is Plaintiff's Exhibit
20 No. 821. It's in evidence. You'll have it to look at, if
21 you want to look at it.
22 But remember this from yesterday? Written reports
23 could be a serious legal hazard. Hazardous nature could
24 be used against the corporation. Written communications,
25 minimum, absolutely necessary. The latter will be

1 communicated orally. Communications concerning hazards,
2 no other copy will be made. We'll have one copy. And
3 we'll keep it in the legal department orally to advise.
4 I'm reading this and I'm thinking, who talks like
5 that? Who goes outside to make a conversation so no one
6 hears it? The Sopranos do. That's how gangsters
7 communicate. They don't talk on the phone. They don't
8 write anything down. They talk face to face.
9 That's exactly what he's saying they need to do for
10 hazard communication. You make one copy. You make one
11 copy and you keep it in the legal department. And that's
12 signed by the president of the company. That's why there
13 was this attitude all through the 1970s and the 1980s
14 about communications of hazards. Cover yourself in a
15 contract, but don't execute it. We're covered in a
16 contract.
17 Mr. Bowyer said this. He agreed with this, Owners
18 and contractors need to provide safe workplaces, and to
19 protect the safety and health of their workforces, and the
20 general public. When they work together to improve the
21 safety and health of contractors, both benefit. That
22 should be the way it is.
23 And everybody that testified in this case said this
24 was a shared responsibility between the contractor and the
25 premises owner. No one disputes that. If one falls, they

1 both do. And I think in this case the evidence is they
2 both fell. And neither was paying attention to the other.
3 And legally, Celanese and John Crane do not avoid
4 liability just because Daniels is negligent. I could get
5 up here and say, hey, look, look, I showed you a big stack
6 of documents this morning. I had a big stack with
7 Mr. Buck -- right -- of all of Daniels safety policies
8 having to do with their employees.
9 And I could say, look at this, ladies and gentlemen
10 of the jury. Look at all these great policies they had.
11 They're not negligent. I could try to argue that to you.
12 But I'm not going to argue that to you. I don't think
13 they enforced them. I don't think Daniel did their job.
14 If I was dishonest, I would say they did their job and
15 just these guys are responsible.
16 It's equally as intellectually dishonest to say
17 Daniels bears the whole responsibility. Just as they were
18 not doing the right thing with these workers, you can't
19 say they bear the whole responsibility.
20 And I thought this was interesting this morning.
21 Mr. Buck said, Daniels thought the PELs -- the OSHA PELs
22 were protective of the workers, but Celanese knew they
23 weren't. Celanese had superior information. Celanese
24 knew those levels weren't going to protect all the
25 workers.

1 This is what Mr. Seay said -- he was asked, Had
2 you -- Had you have [sic] been told or informed that
3 working with asbestos components can cause cancer, like
4 what you have now, what would you have done?
5 Answer: I would have been told -- I -- had I been
6 told, I would have quit immediately. And I wouldn't
7 have -- I wouldn't have took a chance for no amount of
8 money than what we get paid. I would have never took a
9 chance of catching something like this for that little bit
10 of money. I never would have done it.
11 They both say the same thing, Celanese and Daniels,
12 we cared about safety. My question is how much? Did you
13 exercise reasonable care? The evidence is they didn't.
14 Neither of them did.
15 And so when you're asked in this case was Celanese
16 negligent? The answer is, yes. Not just by a
17 preponderance of the evidence, the civil standard. Beyond
18 a reasonable doubt, they were negligent. There's not one
19 iota of evidence in this case -- remember, their whole
20 case, Celanese, their whole case was blame Daniel, their
21 whole case. Not we did something right, but blame Daniel.
22 Remember, yesterday Mr. -- Mr. Bowyer was there and
23 Mr. Collier was at the podium. And he said, Who had
24 responsibility for this? Whose fault is this? Whose
25 fault is -- Daniel, Daniel, Daniel, Daniel, Daniel,

1 Daniel, Daniel. Nothing about what they did, what their
2 obligations were.
3 No one told Mr. Seay. If no one told him, then
4 neither of them were doing their jobs. Neither Daniel nor
5 Celanese were doing their jobs. Because Daniel had an
6 obligation to educate him and warn him. And Celanese, per
7 contract, had an obligation to audit the safety program of
8 Daniels. And they clearly never did it.
9 Lastly, I'll talk about Daniel. And then I'll sit
10 down. I'll pick up my flags.
11 This is a case -- I told you, in opening statement,
12 it's a case we're here for -- we're asking for money
13 damages. We're asking for a lot of money. I said 10 to
14 15 million in opening statement. And I said we would
15 justify that.
16 Now, you're the judges of the facts. If you decide
17 to give no money, $1, $100, a million, 10 million,
18 whatever, that's up to you. I can only suggest to you
19 what I think is fair, based on the scenario in this case.
20 And so I want to show you this picture. This is my
21 favorite picture of Dennis Seay. Because he is dying of
22 cancer, on oxygen, and he has the dignity to keep himself
23 shaved. I just -- I just love that picture. And I want
24 you to think about that. I want you to think about what
25 this man went through at the end of his life. All the

1 surgeries. How his body wasted away. He died from a
2 combination of suffocation, blood constriction, and
3 wasting.
4 So when I throw out a serious number like 10 to 15
5 million, how do I justify that? If you think about -- if
6 someone -- let's say someone is a victim of someone's
7 negligence, they lose an arm -- okay -- for the rest of
8 their life. I don't think anybody would balk and say a
9 million dollars is, at least, fair compensation if you
10 lose an arm, or if you lose both your legs. If you lose
11 both your legs, $5 million is not out of this world.
12 That's -- you might say that's fair if someone is harmed
13 by someone's negligence.
14 So what if it you take a life? What if you not only
15 take a life but you take it like this? That's where I'm
16 coming from with that number. That's a serious number.
17 But that's where I'm coming from. That's why I'm
18 suggesting that the evidence supports 10 to 15 million.
19 So you're going to have to look at -- you're going to
20 have blanks that look like this. A blank for actual
21 damages for survival. Survival is -- it's the legal term
22 for his pain and suffering, what he went through. That's
23 what that means. And the wrongful death action are the
24 damages of the family of what their loss is.
25 So when you see that on the form, survival is pain

1 and suffering, everything Mr. Seay went through. And the
2 second one is the damages for the rest of the family,
3 for -- for Linda Seay and the children.
4 And so I've told you -- I said, look, if someone
5 loses an arm or a leg that's -- that -- millions of
6 dollars are justified for that. Life is different. But
7 how much life? Let's look at what happened at the end of
8 it.
9 I showed you the pictures, but what happened to this
10 man? He had a tube in his lung 11 times. His lungs
11 collapsed 10 times. They had to break his ribs to get in
12 there to do this. He had three surgeries. He was in pain
13 24 hours. He said he had 50-plus people coming over
14 always trying to fill him up with food. And he had to
15 throw it all up. Chemotherapy. And he died in hospice.
16 I want to play just a little clip. I think it's
17 next. I want to play just a little clip of what Mr. Seay
18 said in his own words. It's about 30 seconds to 40
19 seconds.
20 (WHEREUPON, a short clip from a video was played in
21 open court.)
22 MR. PANATIER: That guy is not a whiner. So I want you
23 to think about when a man like that gets to that point,
24 what's he going through?
25 He should have lived another 13 years. Okay. He was

1 70. He lived a good life. He was in good shape. He had
2 some health issues. They were under control. But the
3 average life expectancy is another 13 years.
4 So we're not just talking about how he suffered and how
5 the family suffered in his absence, but the fact that it's
6 13 years. Those little grandkids will be full grown and off
7 to college. He should have been able to see that. But he
8 wasn't able to, because he got this disease that was
9 preventable.
10 So I'd ask that you use your judgment on damages and
11 divide it up how you see fit. But when you think about the
12 numbers in this case, think about this, this is the most
13 serious type of case you're going to have.
14 That's -- that's who the guy was, and he should have
15 been for another decade and three years. He was a good man
16 who did nothing wrong.
17 I'll talk to you again here at the end after these guys
18 talk.
19 Thank you for your attention.
20 And I know that whatever you decide, you're taking it
21 very seriously.
22 So thank you.
23 THE COURT: All right. Mr. --
24 MR. TIVIN: I'm going to go first, Your Honor.
25 THE COURT: You're going to go first, Mr. Tivin.

1 MR. TIVIN: Do you want to get --
2 MR. PANATIER: Your Honor, do you want me to -- I can
3 clear up some of these things.
4 (Pause.)
5 THE COURT: Mr. Tivin, go ahead, sir.
6 MR. TIVIN: May it please the Court.
7 Counsel.
8 As you know, and you've heard me talk for the last
9 week and a half, my name is Mark Tivin. And I represent
10 John Crane.
11 This has been a long case. And you guys have an
12 important job. Mr. Panatier just gave a very moving -- a
13 very moving closing statement. And you've gotten a lot of
14 information here, but you've got a lot of conflicting
15 testimony. People have said diametrically opposite
16 things.
17 So what I'm going to do, first, is I'm going to try
18 to recap what I think the testimony has shown, and what I
19 believe the testimony said. You are, of course, the
20 judges of the facts. Nothing that Mr. Panatier says, or
21 what I say, or what any of the other lawyers say in here
22 is evidence. It's what you recall the facts to be. If I
23 say something that I believe the testimony showed and
24 you're like, that isn't what happened, remember, you are
25 the judges of the facts.

1 What have you heard the last week and a half? You
2 heard Mr. Seay testify. And he testified two different
3 ways. One way was very easy to pay attention, because
4 you're watching on a video. The other way was much more
5 difficult, because it was me reading testimony for several
6 hours. That's not the most exciting way to hear evidence.
7 However, what the judge is going to tell you is that
8 the evidence that was read carries the exact same weight
9 as the evidence that was videotaped. They're both -- both
10 of those things were his words under oath.
11 And what did he say? He testified a lot about
12 insulation. Now, most of the insulation testimony that
13 you heard wasn't on the video where he was being asked
14 questions by Mr. Panatier and those counsel. A lot of it
15 was on the other transcript that was read.
16 And what did he say? He worked around insulators
17 removing, mixing, and applying thermal insulation. During
18 the shutdowns, remember, he said he had to go into the
19 vessels and chip it off with a screwdriver or a hammer.
20 He cut insulation with a hacksaw.
21 But importantly, and I think this is -- I don't know
22 what button it is -- he testified that every time he had
23 to remove a gasket, they had to get the mud and cement off
24 of the flange so he could access the bolts. And he would
25 chip off the mud and the cement with a screwdriver. And

1 then he would take a wire brush to clean it off so he
2 could access the bolts to open up the flange to change the
3 gasket.
4 You heard when Mr. Panatier says he used insulation
5 occasionally, what Mr. Seay says is he had to go through
6 it every single day. If you want to say that he used
7 gaskets daily, then he used insulation daily, because
8 every single time.
9 Now, Mr. Seay, also, talked about using gaskets. And
10 although I am the only manufacturer of gaskets sitting at
11 the table, he testified that he used other manufacturers,
12 and that they used them all equally. This isn't every
13 gasket he ever did was John Crane. That's not the case.
14 Mr. Thompson said -- Mr. Seay said sometimes they
15 were precut. Do you remember that? So if they were
16 precut gaskets, all the experts agreed that when you
17 install a precut gasket, there's no exposure to anything
18 because it's already cut. You put it in there. You're
19 done.
20 Mr. Seay didn't testify about any style numbers of
21 John Crane. That wasn't him. And he, also, never
22 testified, specifically, that this -- I knew that I
23 removed a John Crane gasket. I knew I installed a gasket
24 on this flange one time. And I knew I was the guy who
25 came back and worked on it next.

1 They said they had no idea whose gasket it was when
2 they removed it. Now, why is that important? And we're
3 going to get to why that's important.
4 And this is briefly, you know, just a recap of where
5 he said he was exposed during those years.
6 Now, remember, there was, also, a work history sheet.
7 And we didn't make a big deal of it. This was signed by
8 Mr. Seay saying that this was true and accurate. And you
9 can see here that he said he was exposed to there five
10 different gasket manufacturers that he worked with and
11 around.
12 He, also, worked with -- see, it says, worked with --
13 and there are two X's. For pipe covering and block
14 insulation, he worked with Johns Manville and with PABCO.
15 And he, also, worked on boilers, and everything else.
16 The only other -- I'll call them fact witnesses, because
17 they really testified about the facts surrounding what he
18 did -- was Mr. Thompson. And one of the first things
19 Mr. Thompson came and said when he sat down, he goes, I'm
20 here to support Mr. Seay.
21 And that's what you'd expect. They're friends. He
22 came here to do what he could to help Mr. Seay in his
23 case. He identified Anchor. And he said, I remember the
24 number. Well, the way it, actually, was was the
25 attorney -- the plaintiff's attorney asked him the

1 question. He goes, Do you remember 2112?
2 And he goes, Yeah, I remember 2112.
3 And then later in the testimony, he goes, Yeah, it
4 was 2112, 2012, something like that. I worked on them
5 with condensers. He, also, said, I remember John Crane
6 750. Well, 750 wasn't a John Crane product. That was
7 Garlock.
8 This is Mr. Thompson's testimony, We used copper
9 gaskets, aluminum gaskets, asbestos gaskets, Flexitallic.
10 There were a bunch of different manufacturers. We used
11 precut gaskets 90 percent of the time. And we had no idea
12 who it was when we were removing it. And importantly, he
13 said only 25 percent of the time do you -- did they need
14 to use tools.
15 This was someone who was coming to support Mr. Seay
16 in his case and help him out. And he said he only used
17 tools 25 percent of the time. Why is that important? And
18 we're going to get to why it's important. Because when
19 you heard the testimony of the only industrial hygienist
20 who, actually, tested any products, and even Dr. Holstein
21 pointed to, if you didn't need to use a tool, if the
22 gasket just came out, there wasn't any exposure.
23 You heard from the corporate representative of
24 Hoechst Celanese, Mr. Bowyer, yesterday. Remember, they
25 showed him the specifications that Hoechst Celanese was

1 using. That added Belmont as a recommended gasket
2 manufacturer. You didn't hear that from any of the -- you
3 didn't hear that from Mr. Seay or Mr. Thompson, but
4 Belmont.
5 On those specifications -- and this, we believe, is
6 very important, because it ties right in to what
7 Mr. Springs told you. The only John Crane gasket that was
8 on that sheet that was specified was 888. Now, that
9 contained chrysotile asbestos. And we -- like I told you
10 in the opening, I'm not here to tell you that he was
11 never -- that John Crane wasn't there.
12 But it's 888. 888 is chrysotile. Nowhere on the
13 specifications for Celanese that the Plaintiff introduced
14 to you here did it say 2112. Nowhere on the
15 specifications that -- for Celanese did they show you that
16 there was any crocidolite anything. Nowhere in the
17 testimony from any of the witnesses did they ever say that
18 they're working on acid lines. And that's what you used
19 crocidolite gaskets for, high-acid or base lines with
20 caustic materials.
21 It didn't exist -- it wasn't at this plant. The only
22 thing that was specified was chrysotile. And we'll --
23 I'll get back to that in a moment.
24 Now, after that, we heard experts. And the first
25 thing that -- I think it's in the attorney handbook that,

1 when you do a trial, that as soon as an expert gets on the
2 stand, the very first thing you go is, You make a lot of
3 money. How much money do you make? You want to make sure
4 that you get it out. Because you know that your guys get
5 paid. And you know that they made a lot of money.
6 Dr. Crapo made a lot of money, you know. There's no doubt
7 he makes -- he's made a lot.
8 And then Dr. Holstein -- Dr. Holstein -- and I'm just
9 going to do the math here. He said he was making 700
10 bucks an hour. Remember that?
11 And I asked him, And you work about 20 hours a week?
12 which is about half -- 20 hours a week, it's about half a
13 week, he does this. And all his income is from
14 testifying.
15 So the average work life is about -- work year, it's
16 2,000 hours. So I took it -- so he works a thousand hours
17 a year doing this. He makes $700,000 a year. And he's
18 been making that -- and he's being doing this for -- I
19 don't know -- 20 years. He's an expert. They get paid.
20 They make money.
21 I'm not saying because he makes money that his
22 opinions aren't any good. I don't think his opinions are
23 any good for a bunch of other reasons, but not because he
24 gets paid.
25 Dr. Kradin's made $2 million or $3 million.

1 Dr. Brody has made a couple million bucks. Dr. Roggli
2 makes $100,000 a year. And he's been doing this for
3 however many years. Dr. Crapo has made $8 million.
4 Dr. Toca has made -- I don't know -- a lot.
5 But the important thing is not that these people make
6 money, because they all do. The important thing is, when
7 you listen to the question to these people, how they
8 answer them. What are they saying? And what is the basis
9 of the opinion?
10 And you heard about one industrial hygienist. And
11 then you heard from John Crane's corporate
12 representatives. And because Mr. Buck went on this
13 morning, I really couldn't go around and changes things a
14 lot.
15 What did Dr. Brody say? Dr. Brody has written 200
16 articles. And all those articles deal with the same
17 thing, how does asbestos cause mesothelioma? He studies
18 animals. And it's how does it cause it, which is
19 admirable.
20 Here's what Dr. Brody doesn't study, how much
21 asbestos does it cause to make -- does it take to cause
22 disease? I don't know if you recall me asking him, I go,
23 That's outside of what your studies are? It's not
24 important to him how much asbestos a product does or
25 how -- what the dose is. He's more interested in the DNA

1 and the genes in doing that. He has no idea what the dose
2 is.
3 And that's not anything that his research is focused
4 on, or has ever focused on. And the one thing he did say
5 is that you could have billions of fibers of asbestos in
6 your lungs, and that's not going to do anything. That's
7 not going to cause you any harm. It's not going to show
8 you are at an increased risk of any harm.
9 Now, Dr. Holstein -- and I want to apologize for the
10 cross of Dr. Holstein. Because there's no way on this --
11 that I should ever be talking for three hours in a row at
12 any point in time, especially in a courtroom.
13 But Dr. Holstein, he's the jack-of-all-trades. He's
14 the guy that hasn't practiced medicine in -- he doesn't
15 see any patients. He doesn't -- what he does is he
16 testifies for plaintiffs in asbestos medicine.
17 He came in here. And he's a doctor, but he's an
18 industrial hygienist, too. And that was the whole end of
19 the cross-examination. Remember, he was the industrial
20 hygienist. And he could tell you how long the gaskets
21 were on. And I'm like, Please, just admit that there's
22 nothing in the record that said how long these gaskets
23 were on. And he wouldn't do it because he's such an
24 advocate.
25 He's never conducted any tests on products -- on any

1 products to see if they release. He's never written
2 anything that talks about causation. He was the one who
3 said each and every exposure is a substantial factor. And
4 I'm like, Is that anywhere in the literature?
5 No.
6 He came and testified about the fiber release from
7 different products. And he's the only expert out of any
8 of them that said gaskets and insulation are the same. No
9 one else said it. Brody didn't say it. Kradin didn't say
10 it. Mr. Seay didn't say it. He said it was dustier.
11 Mr. Thompson didn't say it. Dr. Toca didn't say it.
12 Dr. Crapo didn't say it. Dr. -- only Dr. Holstein.
13 He's the guy that was still testifying when he didn't
14 even have a license.
15 But even he acknowledged that exposure to insulation
16 could be hundreds of fibers per cc. And I'm going to get
17 into it a little bit later as to why that's important.
18 But here's something else that he was very
19 specific -- and you're going to hear the Court instruct
20 you on proximate cause. I believe and the judge is --
21 what the judge says about the law is correct. But without
22 which the exposure to John Crane products, the disease
23 would not have occurred.
24 Dr. Holstein, specifically, could not say that, if
25 John Crane wasn't at Hoechst Celanese that he wouldn't

1 have gotten mesothelioma. He couldn't say it.
2 Dr. Kradin -- remember, I talked to Dr. Kradin. And
3 I said -- and we're going to talk about background in a
4 little bit. But I talked to Dr. Kradin. I'm like,
5 Background levels never cause disease? And I kept harping
6 on that. And it's really confusing when you hear
7 threshold, background, no safe level, no threshold,
8 nothing's been proven.
9 But, first of all, Dr. Kradin admitted that there are
10 specific studies that link thermal insulation exposure
11 such as cement, mud, block, that Mr. Seay testified, to
12 mesothelioma. There's nothing that links gaskets to
13 mesothelioma.
14 And you heard the doctors testify that you need
15 epidemiology. And that's how you get causation between
16 things and disease. And they did that with insulation.
17 It's never been done with gaskets.
18 He also, specifically, said -- and these are the two
19 doctors that were called. You can't take -- you can't say
20 he wouldn't have gotten the disease if he wasn't -- if
21 John Crane wasn't there. He couldn't say it. And it's
22 the Plaintiffs burden that they have to say it.
23 Now, we, also, brought Dr. Toca. He's a past
24 president of the American Industrial Hygiene Association,
25 which is the largest association of industrial hygienists.

1 You remember Dr. Holstein thought it was the ACGIH. He
2 thought that was the big one. Well, he was wrong.
3 Dr. Toca, he's had lifetime awards for his
4 contributions to industrial hygiene. I say he was the
5 only certified industrial hygiene expert. I know
6 Mr. Bowyer was a certified industrial hygiene --
7 hygienist, but he was here as a corporate rep. He
8 wasn't -- Dr. Toca was the only one who tested products.
9 He had worked at Hoechst Celanese.
10 And what did he tell you? He told you about the
11 no-effect level. He told you about how everything has a
12 threshold.
13 And what else did he tell you? That the OSHA level
14 of .1 fibers per cc does not create an increased risk of
15 disease. And you're going to hear a little bit more about
16 Dr. Crapo, because you hear a lot of policy statements
17 about no safe threshold. But Dr. Crapo came in and
18 described why that no safe threshold really is a policy
19 statement and not grounded in science.
20 He tested the products. His -- the numbers that he
21 got for his tests are consistent with the literature,
22 except for Dr. Longo. And I asked about time-weighted
23 averages. And that's important. Because remember how you
24 can only compare numbers if they're time-weighted. They
25 all have the same denominator. If they don't have the

1 same denominator, you can't -- you can't put them
2 together.
3 The numbers cited by Dr. Holstein, the 31 fibers per
4 cc that he put up as his big number for gasket, I don't
5 know if you recall that. Well, they just showed you the
6 chart. And I made sure I wrote it down.
7 In the chart that they showed you that had the 31,
8 what they didn't mention was on the last column of the
9 chart -- and I wish I had it up to tell you -- the
10 time-weighted average on that 31 number is actually 2 --
11 2.3 fibers per cc is the time-weighted average for
12 Dr. Longo's 31 number.
13 The insulation numbers that Dr. Toca testified that
14 he said were time-weighted averages so you could compare
15 them, three dozen to into the hundreds. And why is that
16 important? I'm going to get to why it's -- that's really
17 important.
18 George Springs, he was the corporate representative.
19 He was familiar with all the different types of products.
20 And what did he say? Number 1, although the guy mentioned
21 2112, he had no -- he didn't say anything about Mr. Seay
22 didn't remove the gaskets in a way that he -- anything in
23 his testimony was odd, or anything like that. What he did
24 say is this 2112 reference, there's no reason that there
25 would ever be 2112 there. There are no acid lines. And

1 that was backed up by Hoechst Celanese's own gasket
2 specifications, it turns out.
3 But he, also, said that 750 that was identified as a
4 John Crane style was, actually, Garlock. And from our
5 sales records, we don't have any sales from '77 to '08.
6 Now, we can't say what happened before 1977. And I'm
7 not here to try to say it, because he testified,
8 obviously, something got there somewhere. They were in
9 the specifications. I can't say how much they bought or
10 what they didn't buy. But what I can tell you is that we
11 never -- 2112 wasn't there.
12 Dr. Crapo, he works at what's been described as the
13 best lung hospital in the country, National Jewish out in
14 Denver. And he, actually, did studies on chrysotile
15 fibers. And he's the only doctor that showed you what the
16 actual dose response curve looks like for asbestos.
17 And he showed you why the regulatory model was wrong.
18 Because ambient air doesn't contribute and doesn't cause
19 it. If you're going to say that a level doesn't cause
20 something, you can't -- on one side of your mouth. On the
21 other side of your mouth, you can't say the risk goes all
22 the way to zero and there's no known safe -- there's no
23 known safe level, except for this safe level. That's what
24 they're saying. This level is safe, but there's no known
25 safe level.

1 Dr. Roggli, he is the preeminent pathologist
2 regarding asbestos-related diseases in this country. He's
3 on the U.S. Canadian mesothelioma panel. He's respected
4 enough that he's been retained by them over -- for 300
5 times. What did he say? The exposure described by
6 Mr. Seay would not have been a factor in his disease. And
7 the lowest epidemiologic study that, actually, showed
8 causation and mesothelioma is five fiber years.
9 And then I added this one real fast, so that's why it
10 doesn't look as nice as the other ones. Mr. Buck, he was
11 there [sic] this morning. Remember, I got up there and I
12 asked him, I'm like, Did anything that Mr. Seay did -- was
13 it above the PEL?
14 And he's like, Not for the kind of work he was doing.
15 The kind of work he was doing regarding -- remember,
16 the kind of work he was doing on the valves and
17 maintenance work is minimal exposure, not like the
18 exposure you would get from insulation.
19 Now, Mr. Panatier had a really nice PowerPoint with
20 the ball moving all over the place. And I'll give him
21 credit for that. But one of the important things is keep
22 your eye on the ball as to why this case is important for
23 John Crane.
24 Mr. Seay was a nice person. No one -- no one is
25 saying he wasn't. No one is saying that he had a very bad

1 course of treatment. He had a very bad course of his
2 disease, or that his family doesn't care for him, or he
3 didn't care for his family. We're not here saying that.
4 There were other companies products. There's no
5 question that he was exposed to many products. I'm only
6 here to talk about John Crane, Inc.'s gaskets. Because
7 that's the only thing that he said he used.
8 Removal of gaskets. Of course, he removed gaskets.
9 And no one questions that some of those used a scraper, a
10 wire brush, and a power wire brush. But keep your eye on
11 the ball with regards -- and this applies only to John
12 Crane. What evidence is there that he ever -- 75 percent
13 of the gaskets fell out. No one knows -- no one could
14 identify any of them.
15 You're going to hear that you're allowed reasonable
16 inferences, but you're not allowed to speculate. That is
17 to be -- no part of your deliberations is speculation and
18 guessing about which ones were John Crane and which ones
19 weren't. And it's based on the evidence.
20 All right. I pressed the wrong button here.
21 State of the art. There was a big thing about state
22 of the art. There was a big pile of papers. And then
23 there was a -- he talked about it. Here's -- I'm going to
24 go backwards about state of the art. Because here's the
25 information that I brought out. There's no question that

1 there are a bunch of articles that say mining, milling,
2 and insulation work are dangerous and can cause disease,
3 none of them about gaskets.
4 You heard about how it was so well known in the
5 literature that everyone should have known by 1965.
6 Remember, I showed Dr. Holstein the article in 1965 where
7 they sprinkled the asbestos on the young girl's lungs. I
8 didn't show him that article to prove that that was a good
9 idea. Because I think we can all agree that it wasn't.
10 But if the hazards of asbestos were so well known
11 throughout the medical community, why is the preeminent
12 medical journal saying this is something we should look
13 at?
14 In 1978, it's either a year or two before Mr. Seay
15 finished working at Hoechst Celanese. Dr. Selikoff, the
16 preeminent writer about the hazards of asbestos --
17 Dr. Holstein mentioned that he wrote articles with
18 Dr. Selikoff, and that he was the number one guy. And he
19 brought it to the attention.
20 In 1978, in his book that I showed the witnesses, it
21 said gaskets weren't a hazard. Prior to 1980, there was a
22 big thing about showing the MSD sheets and the warning
23 label about how John Crane knew it was breaking the law.
24 It wasn't a secret that John Crane was selling
25 asbestos-containing gaskets. They didn't do it -- it's

1 not like they made them and sold them out of the trunk of
2 their car and -- they had a factory in Morton Grove where
3 they manufactured packing and they sold gaskets.
4 And OSHA came to their plant. And OSHA talked to
5 them. And not once did OSHA ever say you're doing
6 anything wrong when it comes to asbestos. You'd think if
7 OSHA thought that they should have been labeling their
8 products, when they came out to the plant that they
9 would've said, hey, that's a violation. Maybe you ought
10 to label them. They didn't. They were manufacturing
11 packing.
12 They monitored in their plant. There was never
13 anything that was a violation of OSHA.
14 In 1994 -- I showed Dr. Holstein the article in 1994
15 where the EPA wrote, Prior to 1970, asbestos was
16 considered nontoxic. And he's like, Well, that's wrong.
17 What was the state of the art? What did everyone
18 know? What should they have known? We -- there's no safe
19 threshold. Yet, the EPA still allows a level of asbestos
20 in schools for children to go in. And do you remember
21 what Dr. Holstein's response to that was? Because they'd
22 have to tear down every school in the country and build a
23 new one. That -- I submit to you that isn't a reasonable
24 response. A more reasonable response is it's -- that
25 level is okay. It doesn't do anything.

1 Linear dose response. And this is where we get to
2 the background levels. And you've heard a lot of
3 testimony about background levels, about .0004, .0001.
4 Throughout history, background levels have never been
5 shown to cause disease.
6 So what does that tell you? If you have background
7 levels up to .02 like they were in San Francisco or
8 Dr. Kradin even said .05 -- but I'll stick with .02.
9 That's fine. If .02 has never caused or contributed to
10 disease, of course .002 isn't going to do it. Of
11 course .0001 isn't going to do it. Because you have to
12 take the highest -- I mean, if you're trying to figure out
13 what the threshold is, you take the highest one you know
14 doesn't do anything. And that's the one you look at.
15 And what does that leave you once you take away these
16 things where you've got to keep your eye on the ball? Any
17 exposure Mr. Seay had to a John Crane product was not a
18 proximate cause.
19 The linear dose response, it isn't based on science.
20 And it just says -- and like I said before, and I'll go
21 through it again. There's no safe level, except for this
22 level that's safe. And when you have that sort of
23 contradiction, you've got to get to what is the real dose
24 response? And that's what Dr. Crapo talked about.
25 Here's why John Crane was not a proximate cause,

1 product type, the dose, the fiber type, and a comparison
2 to what he worked with.
3 Product type. It's a gasket. This is 333. This is
4 it. This is what a gasket looks like. There's no -- this
5 isn't something you can crumble up in your hand. This
6 isn't something that's falling apart. It's hard. This
7 one isn't a precut gasket. But that's what it is. I
8 mean, it's hard. There's nothing -- that's why everyone
9 says there's no -- with a regular gasket that's new,
10 there's no hazard. Everyone agrees that there's no
11 hazard. This doesn't release fibers. Everyone has said
12 it.
13 Insulation. And, plus, you've got to remember,
14 gaskets are used inside the equipment. It's inside --
15 it's inside the valve. Although all of the testimony --
16 and I'm not going to say all of it, because you should
17 never say all. You should never say never.
18 But the testimony in this case is the bonnet gaskets,
19 the ones inside -- that's when we read all that testimony.
20 And they said that was all of the valve repair kits. I
21 don't know if you remember that. They kept talking about
22 they got -- for the valve repair kits, they got the
23 packing that went inside the pump or the valve. And they
24 got the bonnet gasket.
25 So that wasn't John Crane. I don't know if you

1 remember, in Mr. Panatier's opening, he had a picture of a
2 valve. And he had those red lines that said where the
3 gaskets go. The top one was a red line and was a bonnet
4 gasket. All the testimony was that was supplied by the
5 manufacturer.
6 Thermal insulation is outside. It's subject -- it's
7 subjected to whatever atmosphere is outside of the plant.
8 It's friable. It's loose. You can crumble it with your
9 hand. And it's associated with a very high fiber release,
10 extremely high. Gaskets are zero, or next to zero.
11 And that brings you to the dose from John Crane.
12 There are multiple manufacturers. 90 percent of them were
13 precut. And the highest dose from Dr. Toca was .02 fibers
14 per cc. Thermal insulation, hundreds of fibers per cc.
15 And it's not just the thermal insulation when he was
16 doing -- scraping off -- so every time he wanted to use a
17 gasket, he had to go through thermal insulation.
18 But that isn't the only time he was exposed to
19 thermal insulation. Because he talked about sawing with a
20 hacksaw, chipping it off vessels. And then, also,
21 remember, he testified because of the grates in the floor,
22 the insulation, the dust would come up. It would come up
23 and fall down. It was all over the place in there.
24 Fiber type. The gaskets that were specified in the
25 documents that were used by the Plaintiff were chrysotile.

1 There's no evidence of any lines at that plant that would
2 use crocidolite. It simply isn't there.
3 The asbestos-containing thermal insulation had
4 amphiboles in it. And that has been, specifically, linked
5 to the causation of mesothelioma.
6 Every now and then, he would be -- there would be a
7 guy in a room, remember, and they would cut the gaskets
8 for everyone. So I'll say occasionally, he may have
9 cut -- out of the 10 percent of the gaskets that they
10 weren't precut, maybe he cut some John Crane. But all the
11 experts agree that cutting a gasket with a knife on a
12 table, cutting -- is hundreds -- hundredths, .01 fibers
13 per cc or less. And there's no appreciable exposure.
14 They only used tools 25 percent of the time, and not
15 all the gaskets contained asbestos. That's what I showed
16 you with -- when I talked about -- what are all the
17 different types of gaskets. There's copper, silver,
18 whatever. They weren't all asbestos.
19 But thermal insulation -- every single time he was
20 working with a gasket, there was thermal insulation. In
21 addition to him, there were other people at the plant
22 doing the same thing with the thermal insulation, cutting
23 it, installing it. So what does that leave you with?
24 Now, I overestimated the dose. Because I can only
25 get it down to one percent in a graph.

1 Of the total dose -- all the insulation numbers are
2 hundreds of times more than the gasket numbers. And
3 that's for all the gaskets. That isn't for John Crane.
4 Here are the ones that were identified. I didn't even
5 include Belmont in there. So I just have them under
6 others, because everyone says there were others. So, now,
7 you're at 1/100 of a percent of the dose that Mr. Seay
8 had.
9 75 percent of the time, the gaskets fell off. And
10 everyone says there's no exposure. So that leaves you 25
11 percent of the time where there was exposure.
12 The total exposure to John Crane -- to Mr. Seay of
13 his lifetime asbestos exposure was less than .035 percent
14 of what he was exposed to there. That is not a proximate
15 cause. That is not a substantial amount. That isn't a
16 substantial factor.
17 The judge is going to tell you that you will -- you
18 will have to find that but for the exposure to John Crane,
19 he would not have gotten the disease.
20 If you took out .03 percent of his exposure, it
21 wouldn't have made a difference. He had such a massive
22 exposure to insulation there. Any exposure he had to John
23 Crane was insignificant.
24 And I'm sure you're going to -- Mr. Panatier is going
25 to come after me. And he's going to say you heard

1 Dr. Kradin that says they're all substantial, every
2 exposure is -- every occupational exposure is substantial,
3 because it's so many times above background. And you
4 can't discount all occupational exposures.
5 You are the judges of the facts. It's up to you to
6 decide what's substantial. What is substantial in the
7 universe of Mr. Seay's dose of asbestos? That is what you
8 have to find. But for the exposure to John Crane, he
9 wouldn't have gotten the disease. If you had taken
10 out .03 percent, it -- that's nothing.
11 And that's overestimating. That's overestimating the
12 dose. Because if you use the number of .02 and you use
13 the number of 50 fibers per cc, that's 30 to a hundred.
14 Let's take 50. That's a thousand times as much every
15 single time. And that doesn't even include all the other
16 insulation jobs he did.
17 So, at the end, you're going to be asked to render a
18 verdict. Obviously, that's why you're here. And I really
19 appreciate you guys taking the time to listen to me.
20 It's not enough. You're going to hear instructions
21 about concurrent factors. There can be more than one
22 factor. There can be more than one cause. Every cause
23 has to be a proximate cause. It's not enough to be a
24 factor. That isn't enough. That isn't their burden.
25 What happened here? Tragically, Mr. Seay developed

1 mesothelioma because he was exposed to insulation and a
2 lot -- a lot of it.
3 Now, this is the difficult portion of the closing.
4 Because I just told you that you should check no for John
5 Crane. And if you check no for John Crane, you have no
6 occasion to consider damages. There's no reason. There
7 is no reason. So why would I -- why would I even talk
8 about damages? Because it's an important part of the
9 case. And it's an important part of the testimony that
10 you've heard.
11 The testimony that you've heard, it's been moving.
12 There's -- there's no doubt it's been moving testimony.
13 But just as I'm asking you to be impartial and view the
14 scientific evidence without sympathy or bias, when it
15 comes to damages, you're supposed to do the same thing.
16 And your -- any number that you come to on damages
17 has to be reasonable and decided solely on the evidence,
18 and not based on sympathy. And I'm sure that everyone in
19 the courthouse would agree that that has no place in
20 your -- that has no place in your deliberations.
21 If you feel, you know, sympathy or -- if you don't
22 like me because you don't like the way I ask questions,
23 you know, I apologize. I'm sorry if some of my objections
24 might have gotten on someone's nerves, or made it look
25 like we were here longer than we had to be. Just as if

1 you don't like me, don't hold that against John Crane. If
2 you really like the Seay family, which I suggest to you,
3 you have no reason not to, you can't let that influence
4 your award either.
5 However, at the end of the day, when you're given the
6 verdict form, it's going to say, Do you find that John
7 Crane's negligence was a proximate cause of Mr. Seay's
8 mesothelioma? Because they can't show the but-for or that
9 it was substantial. And you're the judge to what's
10 substantial.
11 Remember -- I would just say this. Whenever anyone
12 says everything is substantial, then nothing is. And when
13 you hear the Plaintiffs physicians, Dr. Holstein and
14 Dr. Kradin, and they're like, Everything is always
15 substantial. There's no such thing as factor. It's
16 always a substantial factor. If everything's substantial,
17 nothing is. Because the fact in this case is that he was
18 exposed to probably 50,000 times more asbestos from
19 insulation than he was to any John Crane product.
20 And because of that, we don't feel -- feel that you
21 should return a verdict in favor of John Crane.
22 Thank you much for your time.
23 And, now, the other lawyers are going to talk. And
24 when -- you know, I don't get to say anything else. And
25 people are going to come -- I'm -- when other people

1 ask -- you know, the questions I would be asking is why is
2 one -- 3/10 of a percent of his exposure a substantial
3 amount? Why -- if there's crocidolite, if you're saying
4 there's crocidolite, why did we show the specific sheet
5 that only said chrysotile?
6 If you're afraid that saying this on the witness
7 stand would subject you to violation of federal law, why
8 didn't OSHA cite them when they came to their plants for
9 these labeling things?
10 These are things that I think you -- questions that
11 you should -- need to be answered. But it doesn't change
12 the overall answer in that we weren't the proximate cause.
13 Thank you for your time.
14 THE COURT: Thank you, Mr. Tivin.
15 MR. YOUNG: Your Honor, is there any chance we could
16 take a restroom --
17 THE COURT: Okay. Yeah. Sure.
18 We'll take about a five-minute recess. We'll let
19 everybody get comfortable.
20 Don't talk about the case, ladies and gentlemen.
21 (WHEREUPON, the jury was excused from open court at
22 approximately 12:35 p.m.)
23 (WHEREUPON, a lunch break was taken.)
24 THE COURT: All right. Is everybody ready for the
25 jury?

1 (WHEREUPON, there was no response.)
2 THE COURT: Yes, sir. I'm sorry.
3 (WHEREUPON, the jury came into open court at
4 approximately 1:25 p.m.)
5 THE COURT: Okay. Ladies and gentlemen, we're going
6 to hear from Mr. Young, and then Mr. Panatier will follow
7 up, and I'll give you the charge on the law.
8 So, yes, sir, Mr. Young.
9 MR. YOUNG: Thank you, Your Honor.
10 It's hard waiting, ladies and gentlemen, but I'm last
11 again. So I guess that's the good news for everybody.
12 We were thinking about going straight through, and I
13 had to sit and fidget for a while. But I just want to
14 really start like everybody else did and thank you.
15 Remember, we said that this probably wasn't what you
16 were thinking about doing for this two weeks, and it's
17 hard. There's a lot of complicated stuff.
18 I can assure you that listening to somebody read a
19 deposition is the worst. There's some good parts of the
20 trial. And I agree with Mr. Panatier. I really hope that
21 you learned something about the system, and that you had a
22 good -- a reasonably good experience here.
23 But, you know, I told you at the beginning, without
24 y'all we can't decide our dispute. You've heard we got
25 sued for a heap of money. We claim we don't owe any. And

1 you guys decide that.
2 And it's funny how they call this closing argument,
3 but we're not going to have an argument. Because, you
4 know, I just am going to talk to you about why we feel
5 like the evidence in this case shows that Mr. Panatier
6 didn't meet his burden of proof, and why the truth of this
7 case, ladies and gentlemen, which is what a verdict is, we
8 believe supports you checking no, no liability for
9 Celanese.
10 So let's just get right to it. I want to talk to you
11 a minute about the parties in the case. And then I want
12 to talk to you about the evidence. As you've heard,
13 Celanese was a polyester fiber plant around here. And
14 keep in mind, please, ladies and gentlemen, during the
15 whole deliberation, we're talking about a company making
16 polyester fiber in the 1970s, not yesterday. And they
17 weren't making asbestos products. They were making
18 polyester fiber.
19 And I want to be clear about something. We're not
20 blaming Daniel. We're telling you -- sorry to get so
21 excited. And I kept waiting for it the whole trial.
22 Dr. Holstein, somebody. We went out and hired the best
23 company that we could find to do the maintenance work.
24 And not one single witness in this case has come in and
25 said hiring Daniel is wrong. Hiring Daniel is not what a

1 reasonable polyester fiber manufacturer would do to make
2 sure that working with insulation is safe and the
3 maintenance is done right.
4 So y'all heard this. We, actually, called the Daniel
5 employee, not the Plaintiffs. Daniel is a big company.
6 And they built the plant in the 1960s. They built a ton
7 of them. And you heard that they were experts in this
8 type of work, experts in doing insulation, doing it
9 safely, doing maintenance safely.
10 So, ladies and gentlemen -- and I'll mention this
11 again before I quit -- think when you go back in the jury
12 room if there was any evidence that, in the 1970s, hiring
13 Daniel to do this work was not something an ordinarily
14 prudent company would do.
15 And then, you know, we've mentioned this at the
16 beginning. We have the Plaintiffs, and you met them. And
17 Mrs. Seay says hello to me every morning. They're the
18 nicest people that you'll ever meet.
19 But remember, too -- I'm going to mention that again
20 in a minute. Ladies and gentlemen, the case started with
21 24 Defendants. Many, many, many companies, Mr. Panatier
22 told you, made the products out there at Celanese. And
23 they're not here. We're here defending because we believe
24 we didn't owe any money.
25 Think about where these folks are when you get back

1 there in the deliberation room.
2 Remember, I told you at the beginning you have
3 options when somebody sues you. We're here defending.
4 So, ladies and gentlemen, let's talk -- what I want
5 to talk to you about is the undisputed facts in the case.
6 And the judge mentioned this to you, and this is
7 important. I had my first trial with Mr. Panatier a long
8 time ago. I still didn't have any hair then. But he's a
9 good lawyer. But he doesn't make the facts. Y'all
10 remember the facts.
11 And we agree, Mr. Seay died from mesothelioma. And,
12 ladies and gentlemen, we certainly believe that the Seays
13 and their family are nice people. As I told you in
14 opening, it wouldn't take us one second now to decide
15 that, not two weeks.
16 And, ladies and gentlemen, one of the hardest things
17 you'll ever do in your life is say no to them. But the
18 law is if they didn't meet their burden of proof, and they
19 didn't prove that Celanese was negligent, and that that
20 was a substantial factor in causing Mr. Seay's injury,
21 that's what you're supposed to do is say no.
22 And I didn't make that law. The judge gives you that
23 law.
24 So let's look at some things that were undisputed no
25 matter what kind of spin somebody tries to put on it. At

1 all times while Mr. Seay worked at Celanese, he was a
2 Daniel employee. He told you himself that his work was
3 significantly different than the Celanese work.
4 And, ladies and gentlemen, this is important, and
5 this is why the judge tells you that what the lawyers say
6 is not evidence. I could've heard it wrong, but I believe
7 Mr. Panatier just told you that Celanese decided how
8 Mr. Seay would do his work.
9 Well, ladies and gentlemen, Mr. Seay himself
10 testified in the video deposition in this trial that it
11 was Daniels who decided how his work was done. And,
12 ladies and gentlemen, there is -- that's not controverted
13 in the evidence in this case.
14 It's, also, not controverted, no matter how much
15 Mr. Panatier tries to blur the lines, this is the
16 evidence, ladies and gentlemen. Celanese in the 1970s did
17 not have a maintenance department. Daniel did all of the
18 work at Celanese that involved asbestos.
19 Celanese did not do any maintenance work, or work
20 involving asbestos. Celanese was making polyester fiber.
21 And this is important. Daniel and the Celanese employees
22 did not work near each other.
23 Y'all probably don't remember this, but Mr. Panatier
24 tried to get the witnesses to say that, and nobody ever
25 said that. They had the maintenance, most of which was on

1 shutdown, and the polyester manufacturing.
2 And so, as you heard, Daniel is protecting their
3 employees, and Celanese is protecting their employees,
4 which is what you would expect in a situation like this.
5 Y'all are probably sick of me saying this, but this
6 is -- you know, Daniel was a well respected construction
7 company. And, you know, ladies and gentlemen, I try to
8 think about the cases.
9 I don't look like it, but every night I try to go out
10 and run a little bit. It's not working too good. But,
11 you know, Mr. Seay was a longtime, respected employee of
12 Daniel. They were in charge of what he did. Why in the
13 world would anybody ever think that Daniel would not do
14 what was right to protect Mr. Seay when he was working for
15 them? It just doesn't make any sense, ladies and
16 gentlemen.
17 It's like Mr. Buck told you this morning, the
18 employees were the most important part of the company.
19 Because without the employees, the company couldn't
20 function. And so they wanted to take care of him. And
21 they told the world, we're going to take care of them.
22 And, ladies and gentlemen, Daniel built the plant.
23 It put whatever was asbestos in, took whatever was
24 asbestos out. And they were required to do it safely by
25 the law. So that's something that there's no dispute in

1 the evidence that Celanese believed that they would do.
2 And I thought this was interesting, ladies and
3 gentlemen. Everybody agrees OSHA was in effect during the
4 time Mr. Seay worked at Celanese for Daniel. All the
5 witnesses said Daniel was required to provide a safe
6 workplace for Mr. Seay, even Dr. Holstein, who was really
7 the only expert witness that dealt with -- in any way at
8 all with sort of safety of the employees. Yet, he was a
9 doctor who -- who didn't really do that kind of work.
10 But Don Buck, who we called, ladies and gentlemen,
11 not the Plaintiffs, said exactly the same thing. And this
12 is important. Because there's all sorts of talk this
13 morning about us putting things on the insulation, and all
14 this kind of stuff. But Mr. Buck told you, Mr. Bowyer
15 told you, OSHA required the Daniel employees working with
16 asbestos to be trained, to know and follow the law. And
17 there's no dispute in the evidence about that.
18 Ladies and gentlemen, you know, I was thinking, you
19 know, there'd be somebody who would come and say, well,
20 you know, we had these people over here working on the
21 insulation, and it didn't look right. So we went and told
22 Celanese, you know, y'all got to fix this.
23 But all we heard, ladies and gentlemen, is that they
24 were experts. They knew what they were doing. And it was
25 their intention to provide Mr. Seay a safe workplace. No

1 evidence at all that the people at Daniel, who were
2 working with insulation, didn't know how to do it, or do
3 it properly, or do it safely.
4 Dr. Holstein said, Daniel was obligated by OSHA to
5 provide a safe workplace to Mr. Seay at Celanese. He
6 never said, and, oh, yeah. And, oh, by the way, well,
7 Celanese needs to check up on them, because it looked to
8 me like maybe they weren't doing that. That never
9 happened. He never said one single word about Celanese
10 doing anything wrong with respect to Mr. Seay.
11 And I'm going to tell you something else that he said
12 later in just a minute that I think is extremely important
13 to the case. And I don't have 50 red flags, but this is
14 one red flag. I just talked to you about that, that there
15 wasn't any similar evidence from any witnesses regarding
16 Celanese and Mr. Seay's working with insulation.
17 Now, ladies and gentlemen, he was just here, but I
18 think what Mr. Buck said was important. Daniel was
19 obligated to comply with OSHA. Daniel should provide a
20 safe workplace. And that they should properly control
21 dust from asbestos insulation.
22 He, also, said Daniel had a very strong safety
23 culture. He never told anybody they weren't going to
24 provide Mr. Seay with a safe workplace, according to OSHA
25 standards. It's a safety-conscious company. And, ladies

1 and gentlemen, the insulators were trained to work safely
2 with insulation, according to OSHA. And there's no
3 evidence that Celanese thought that anything other than
4 this is what was going to happen. And that's where you
5 get to negligence. Hiring somebody that's not worth a
6 toot, and they let bad things happen. There's just no
7 evidence of that.
8 So, ladies and gentlemen, we feel like, based upon
9 the undisputed evidence in the case, that there hasn't
10 been any evidence presented that Celanese was negligent,
11 certainly not that it was a substantial factor in bringing
12 about Mr. Seay's illness.
13 And Mr. Panatier, he readily agreed to that in
14 opening. If they don't meet their burden, the Plaintiffs
15 don't recover. And, of course, he said that, ladies and
16 gentlemen, because the judge is just fixing to tell you
17 that, that that's the law.
18 So let's look and see, ladies and gentlemen, what
19 evidence was, actually, presented in the case.
20 We hired Daniel because of its experience, knowledge,
21 and expertise. We assumed Daniel would provide a safe
22 workplace for all Daniel employees working at Celanese.
23 And there's no evidence, ladies and gentlemen, that
24 Celanese ever had any reason to believe Daniel would not
25 protect its workers.

1 The contract between Celanese and Daniel required
2 Daniel to comply with OSHA, and provide a safe workplace
3 to its employees. It's in writing. It's in evidence.
4 Y'all can see it in the jury room.
5 And I thought this was important. Y'all might have
6 missed it, but -- just because it's been a long trial.
7 But Daniel, actually, charged Celanese for the additional
8 cost to comply with OSHA. So, obviously, Celanese was
9 supporting that. They didn't say, oh, no, we're not
10 paying that extra money. Don't -- don't let that get
11 done.
12 In the 1970s, OSHA came out. Daniel said, we're
13 going to comply. We're going to charge you extra. And
14 Celanese said, fine. We're putting it in the contract.
15 And this was a memo, about the time that Mr. Seay started
16 work at Celanese, from the president of Daniel.
17 According to OSHA, we are obligated to furnish each
18 of our project employees a work environment free from
19 recognized hazards causing or likely to cause death or
20 serious physical harm, in addition to the specific duty of
21 complying with safety and health standards. That's their
22 document. And I mentioned the contract.
23 So what is the -- I mean, given all that, ladies and
24 gentlemen, why would Celanese ever believe that Daniel
25 wasn't going to provide a safe workplace?

1 Here's the evidence presented about Daniel. Mr. Seay
2 was an excellent employee. They wanted to protect their
3 employees. They wanted to keep the employees work
4 environment safe. And they couldn't function without
5 their employees.
6 And, you know, there were a lot of witnesses.
7 Mr. Thompson wasn't mentioned earlier today. But he was a
8 Celanese employee that was friends with Mr. Seay. And he
9 testified safety was important to Celanese. And his
10 testimony wasn't equivocal.
11 Would you agree that Celanese was a safety-conscious
12 company?
13 Yeah. I would say they were. Safety was important,
14 yes. There was an emphasis placed. Celanese emphasized
15 safety in the plant. Yes.
16 Ladies and gentlemen, this is not some guy that gets
17 paid $700 an hour, or $600 an hour. This is one of
18 Mr. Seay's coworkers, friends.
19 You don't have any reason to believe that Celanese
20 withheld any information it had about asbestos from its
21 employees, do you?
22 No.
23 Would there be occasions when just, generally
24 speaking, the plant manager or executives would walk
25 around the plant?

1 Yes.
2 Would they be wearing masks?
3 And the answer was, No.
4 So, ladies and gentlemen, they, obviously, thought
5 that Mr. Seay's workplace was safe.
6 Sorry.
7 When they walked around, they walked around the same
8 as other employees. And the insulators at the plant were
9 Daniel employees with their own insulation shop.
10 So, ladies and gentlemen, the judge is going to talk
11 to you about this. Mr. Panatier talked to you about it.
12 But one of the laws in South Carolina is a premises owner
13 can only be held liable for an invitee's injuries on the
14 owner's property when the premises owner has superior
15 knowledge of the danger or unsafe condition caused the
16 invitee's injury.
17 And, ladies and gentlemen, what did you hear?
18 There's some more of that charge, but it's too long. I'm
19 not going to read that to you. The judge is going to read
20 it to you, but it says, basically, the same thing.
21 The evidence in the case was that Daniel and Celanese
22 knew, in 1971 when OSHA came out, that asbestos could be
23 hazardous, the same year that Mr. Seay started working for
24 Daniel at Celanese.
25 So, ladies and gentlemen, you can talk about

1 documents, all sorts of things, but that's the evidence in
2 the case. Their knowledge was exactly the same. And,
3 ladies and gentlemen, the real issue is, did Celanese know
4 that Daniel wasn't going to do right by Mr. Seay? And
5 there is no evidence of that at all. There was no
6 evidence at all in this case that Celanese had any reason
7 to believe that Daniel was going to allow asbestos to be
8 used in a hazardous manner at Celanese.
9 They knew there was asbestos there. You had to use
10 it on some of the really high heat lines. Daniel knew
11 that. Celanese knew that.
12 So I hate to repeat myself. I get ahead sometimes.
13 But we just think this is important evidence on the
14 Plaintiff not meeting their burden of proof.
15 There was no testimony suggesting it was not proper
16 for Celanese to hire Daniel. There's no evidence
17 suggesting to Celanese that Daniel was not providing
18 Mr. Seay a safe workplace. There's no evidence that
19 Daniel told Celanese it was not going to provide a safe
20 workplace. And that one misprinted. So I'm going to go
21 on to the next one. I'm sorry. Sorry.
22 Actually, what that says is that there was no
23 evidence that nonasbestos-containing products could have
24 been used on the high heat lines out at Celanese in the
25 early '70s. This evidence was, also, not presented.

1 Dr. Kradin didn't offer any opinions about Celanese.
2 Dr. Holstein didn't offer any opinions about Celanese.
3 None of Dr. Holstein's articles dealt with polyester fiber
4 plant owners. Neither Dr. Kradin or Dr. Holstein made any
5 investigation about Daniel and what their duties and
6 obligations were.
7 You know, ladies and gentlemen, I would agree with
8 Mr. Panatier that if somebody had said to Celanese, I'm
9 not sure they're handling that asbestos right out there,
10 then, yes, go out there and put something on it. Tell
11 somebody. Fire 'em. But, ladies and gentlemen, there's
12 no evidence in this case that that happened.
13 So, ladies and gentlemen, we don't believe the
14 Plaintiff has presented you with sufficient evidence to
15 meet the burden of proof that Celanese was negligent, or
16 that we were a substantial factor to Mr. Seay's illness.
17 There's one other thing I want to talk to you about,
18 and then we're going to go on down the road. Why, ladies
19 and gentlemen, is OSHA compliance so important in this
20 case? Daniel was required to comply. All asbestos
21 diseases are dose-response diseases. The lower the dose,
22 the less likely of contracting the disease.
23 This is my red flag, you know. You heard over and
24 over and over again that people say there's no safe level
25 now. But Dr. Holstein, intentionally or unintentionally,

1 talked about the amount of asbestos needed to cause
2 disease, and it being a question he was studying in 1976
3 while he was at Mount Sinai.
4 And, ladies and gentlemen, that is slap dab in the
5 middle of when Mr. Seay was working at Daniel -- working
6 for Daniel at Celanese. And what did he say? This is
7 Mr. Panatier asking the question, So what types of things
8 were you learning about, and what types of research were
9 you doing? The Plaintiffs main witness, 1976, Mount
10 Sinai, 12 years after Dr. Selikoff's '64 conference.
11 I was -- personally was engaged in different kinds of
12 research, mostly the kind that's called epidemiology.
13 That's the study of the causes of diseases in people. And
14 I participated, also, in trying to answer some very basic
15 questions about asbestos, things such as how much exposure
16 is required to cause people to get sick. Is it a lot, or
17 is it a little?
18 And Mr. Panatier said something earlier that I agree
19 with. These guys make a heap of money. And -- but what
20 are they saying in the real world? That's what
21 Mr. Panatier asked. And this, ladies and gentlemen, is
22 what Dr. Holstein, who had the -- was saying in 1976 about
23 asbestos. He did not say, well, there was no reason to
24 study it, because there's no safe level. He did not say
25 nobody should use asbestos-containing products. Everybody

1 was trying to figure out the permissible exposure level.
2 OSHA, Dr. Holstein, Mount Sinai.
3 So this is what the real world is saying, not
4 somebody that testifies 300 times for Mr. Panatier. And,
5 ladies and gentlemen -- so in the final analysis,
6 everybody agreed. There -- you can work safely with
7 asbestos products. But you have to do it the right way.
8 That's why -- do you remember Mr. Buck said, We cordoned
9 it off, you know. We'd do air sampling? You know,
10 there's reference earlier to giving folks respirators.
11 That's what the real world was doing in the '70s,
12 ladies and gentlemen. The permissible exposure level was
13 going down. But OSHA was telling people how to use
14 asbestos so that they didn't believe it would harm people.
15 And Daniel was telling Celanese, we're following
16 OSHA. We're going to do right by our employees. So I
17 don't think it's fair to accept all that other stuff when
18 this is what Dr. Holstein was saying right in the middle
19 of the time period we're talking about.
20 So, ladies and gentlemen, I told you I run some. It
21 doesn't do much good. But I was trying to think of, you
22 know, an analogy in my life. I'm one of those folks that
23 can barely put gas in my car. So if something breaks at
24 my house, I have to call somebody. My wife laughs at me
25 about that all the time.

1 And my dad, he could fix anything. He built our
2 house. But the one thing he would never fool with was
3 electricity. So let's just say my electricity goes out,
4 and I call the folks we always call. We think they're the
5 best electricity people around and never had any problems
6 with them. Nothing's ever happened.
7 And they come out and they're working on the
8 electricity. And their employee gets hurt. Is that my
9 responsibility? That's what we tried to do, ladies and
10 gentlemen, get the very best people out there to do the
11 work safely.
12 So you're going to have to start deliberating soon.
13 And I'm about done. But when you're back there in the
14 jury room, I want you to think about -- this is, actually,
15 sort of a David Letterman thing, but he's gone now. But
16 think about the answers to these 10 questions.
17 Why were no articles, documents, or witnesses
18 presented suggesting that Daniel was a company that would
19 not protect its employees?
20 Why did all the witnesses agree it was Daniel's
21 responsibility to provide Mr. Seay a safe workplace?
22 Why did Celanese, not the Plaintiff, call Don Buck
23 from Daniel to testify?
24 Why did Don Buck agree that Daniel should provide a
25 safe workplace to employees like Mr. Seay?

1 In the 1970s, why did OSHA put the responsibility for
2 employee safety on the employer, not the premises owner?
3 The answer to that is obvious.
4 Why did OSHA require people, actually, working with
5 asbestos-containing products to be trained experts?
6 Why would anyone think, including Celanese, that
7 Daniel, skilled in asbestos abatement, would not protect
8 its employees like Mr. Seay?
9 Why did Ronnie Thompson, a coworker of Mr. Seay,
10 testify that Celanese was a safety-conscious company?
11 Why was no evidence presented suggesting it was
12 improper for Celanese to hire Daniel to do its maintenance
13 work at the Spartanburg plant?
14 And, finally, why was no evidence presented that in
15 any way suggested to Celanese that Daniel was not
16 providing Mr. Seay a safe workplace? Which we believe,
17 ladies and gentlemen, is the most important question.
18 All right. Thank you very much.
19 I know y'all are tired of hearing from lawyers. You
20 can probably imagine that on the verdict form, I'm going
21 to ask you to check no on the question of responsibility
22 of Celanese.
23 And because he has the burden of proof, Mr. Panatier
24 gets the last word. We don't get no more word. So if I
25 jump up and say something, the judge is going to put me in

1 jail. But try to think about what we would say in
2 response to what he says last, because we would have a
3 response.
4 It was an honor to be here. I enjoyed it. And I
5 look forward to your verdict.
6 Thank y'all.
7 Thank you, Your Honor.
8 THE COURT: Thank you, Mr. Young.
9 Mr. Panatier.
10 MR. PANATIER: Thank you, Your Honor.
11 Okay. So we're almost done. So I'm going to respond
12 to some of the things these fellows said.
13 So the first thing is, on damages, I forgot one
14 element. It's called loss of consortium. And that's just
15 the relationship between husband and wife. So you're
16 asked to consider that. And the judge will give you
17 specific instructions on the loss of that relationship.
18 So I just wanted to make sure I mentioned that to you and
19 didn't forget that.
20 Let's boil it down. John Crane, it's everybody
21 else's fault. Celanese, it's Daniel's fault. That's what
22 the case is about. And what I'm saying is, from an
23 honesty standpoint, you can't take one out and say they're
24 not responsible. If you showed that they knew or should
25 have known about the hazards and they failed to act, then

1 they're responsible.

2 This case focuses on John Crane and Celanese. And I

3 told you at the beginning of the case, there were other

4 Defendants. You're here to -- the judge is asking you

5 about two. Were either of these companies responsible?

6 Let's talk about John Crane first. Mr. Tivin has

7 repeated this throughout this whole trial. There were

8 five brands, and not -- there's not one eyewitness that

9 can say, I know I pulled out a John Crane gasket. The

10 main reason is they're all cooked onto the flange. You're

11 not going to be able to read the logo anymore. But if

12 you're putting five in for 10 years, you're pulling five

13 out. There's no way that somehow you miss one brand.

14 That just doesn't make any sense.

15 He brought up the 1962 specification. He said gasket

16 model X, Y, Z is on there, gasket model X, Y -- A, B, C is

17 not. That's a 1962 specification that, actually, had John

18 Crane as a specified asbestos gasket for Celanese.

19 He talked about Dr. Crapo. Dr. Crapo's testimony is

20 that all of these organizations are wrong, that chrysotile

21 can't cause mesothelioma, that there's a safe level, even

22 though he doesn't know what it is. But he does know you

23 would need to work with gaskets for 5,000 years before you

24 were at any risk. He knows that.

25 If you go to the website -- we showed you these

1 during his cross-examination. If you go to his own
2 hospital's website, he doesn't even list himself as an
3 expert in mesothelioma, in asbestosis, or asbestos.
4 They -- they went real hard after Dr. Holstein.
5 Dr. Holstein is retired. He used to run a huge
6 epidemiological study of workers exposed to asbestos that
7 he still monitors. He's retired. And he testifies in
8 courtroom now, a lot like Dr. Toca. But the bottom line
9 is this fellow who works at this hospital and focuses on
10 COPD doesn't do anything having to do with asbestos in the
11 real world. He doesn't hold himself out as an expert in
12 asbestos in the real world.
13 Mr. Tivin said Dr. Toca is the only expert who tested
14 John Crane gaskets. Now, my first question is, why didn't
15 John Crane test John Crane's gaskets? I think that's a
16 good question for you guys to think about. Why didn't
17 John Crane test John Crane's gaskets? The first time they
18 were tested was after they got sued. They said, oh, we
19 should test these.
20 And then what did they do? Now, Toca hasn't
21 published anything. He didn't try to publish his tests.
22 But I showed you these pictures with Dr. Toca. These are
23 still photos from his study. And I said, Sir, if you wipe
24 down a flange with a liquid, it's going to decrease the
25 asbestos exposure?

1 He said, Yes, it would.
2 Then I showed him these. And he said, That's not a
3 liquid falling off of that. That's just thread.
4 Folks, that's not a thread.
5 He said, The -- There is a no effect level for
6 asbestos. And he showed you this curve, the Hatch curve.
7 Mr. Hatch himself -- we showed you in the 1965 book -- he
8 wouldn't have agreed that this was applicable. And
9 Dr. Toca had nothing to do with cancer, this graph. He
10 kind of just took an example of carbon monoxide and said
11 it would be the same for anything, including cancer.
12 Mark -- Mr. Tivin showed you this slide. And this
13 was their take on the evidence. Boy, if you just -- if
14 you plug in the numbers, it look likes John Crane
15 was .0035 percent responsible. But that's how you can
16 mess with the numbers; right? Because if you want to take
17 Dr. Toca's numbers and plug those in, that's what you get.
18 I think it looks more like this. You pick and choose
19 data. You put it in. You put it in the John Crane
20 calculator. And then you can say not guilty. It's
21 just -- you can skew statistics however you want. Let's
22 look at the real world.
23 The epidemiology, I showed this to Dr. Toca.
24 Remember, he said the epidemiology says that levels
25 created by gaskets can't hurt you. And I -- I gave him

1 three studies. He hadn't read any of them, three
2 epidemiological studies. And I showed him this table.
3 And, again, guys, I don't want to get too much into the
4 numbers here, but at a very low level, zero to .15 fiber
5 cc years.
6 So if you were exposed to .15 fiber cc's, 15 percent
7 of one fiber per cubic centimeter for one year, your risk
8 for mesothelioma is eight times someone who is not
9 exposed.
10 And your overall risk is anywhere from two to 30.
11 And he said, Well, I can't really comment on it. I
12 haven't read it.
13 So is he a real expert in that area, or not? This is
14 the real world. That's not any paid expert that published
15 that study. It's no one that was called to testify.
16 That's the real world.
17 And that backs up what the -- what OSHA, and NIOSH,
18 and everybody is saying. There is no known safe level.
19 Because what the epidemiology is showing is that, look,
20 from zero to a very low level of .15, there's a huge
21 increased risk for disease. So that's why I show you
22 that.
23 Mr. Tivin showed you this little sample of 333, and
24 he banged it, and said, Look, it's -- nothing comes off of
25 it. I agree, nothing comes off of this, unless you cook

1 it in a flange for a few years. And then you have to
2 grind it off. Then the 75 to 85 percent asbestos, or
3 depending who you listen to, 52.5 percent asbestos, comes
4 out of it into the breathing zone.
5 At least, half of this is asbestos. Think about
6 that. How can that not release asbestos into the air if
7 you're grinding this off? If we accept what George
8 Springs said and half of this is asbestos, half of
9 everything you see here is asbestos and the other half is
10 rubber, and it is cooked onto a flange after a few years
11 and you grind it off, how can there be no exposure? How
12 can there be a super-low, non-important exposure? That
13 does not make sense.
14 Mr. Tivin, also, said that -- remember this. This is
15 at the very end of Dr. Holstein's testimony. Mr. Tivin
16 said, How long were the gaskets in the flange? And
17 Dr. Holstein at first said, Well, it doesn't -- it's not
18 really important. What's important is are they -- are
19 they adhered to the flange. That's really what we want to
20 know."
21 Certainly, if you knew how long they were there or
22 the pressure or the temperature, that would help you
23 determine whether they're going to seal to the flange and
24 you're going to have to grind them off. But, really, the
25 important thing is were they on there, were they cooked

1 on. And over and over again, Mr. Tivin said, How long was
2 the first gasket on that he removed? How long was the
3 second gasket on? Well, the important thing is, did it
4 look like that? Was it cooked onto the flange like
5 Mr. Seay said it was? Or what the gasket's birthday was?
6 Who cares? If the witnesses said it looked like this,
7 then they had to scrape it off. And that is exactly what
8 Mr. Seay said.
9 Guys, this is in evidence, the MSD sheets. OSHA
10 required labels on these gaskets. They weren't there.
11 That's negligence however way you look at it. It's
12 negligence whether or not OSHA required it. Because what
13 you're going to be told is, if a company knew or should
14 have known of the hazard, they had a duty to warn, even
15 outside of OSHA. Okay. But this is, also, during the
16 time of OSHA. They knew about it. And they knew proper
17 labels were required, but they didn't do it. They didn't
18 put proper labels on their product.
19 And when you have a situation like this where an
20 employer and the premises owner aren't doing everything
21 they need to do to protect the worker, what's the last
22 line of defense? That sheet of gasket the guy's about to
23 cut. It's got John Crane's name all over it. It could
24 easily have a warning on it. The last line of defense.
25 Now, let me go to what Mr. Young said. He said,

1 Let's look at the facts without spin. So we're going to
2 go into Chris' no-spin zone. Okay. He quoted this, The
3 amount of asbestos needed to cause disease was a question
4 Dr. Holstein was studying in 1976 in Mount Sinai. He said
5 that's a red flag.
6 Folks, we're studying that today. We're still trying
7 to determine what the minimum level is. We're still
8 trying to see if there is one. What we know is background
9 doesn't cause it. But we're trying to determine if there
10 is a level above background that does cause mesothelioma.
11 So far the answer is, no, there isn't a level that we
12 know.
13 So, of course, people are studying it. I don't see
14 how that's a red flag at all.
15 He said not one witness has said our hiring Daniel
16 was negligent. And that's what I told you in opening.
17 You're going to get questions that say, was Celanese
18 negligent. Not was Celanese negligent in hiring Daniels.
19 Is he trying to change the playing field here? We're not
20 saying they were negligent in hiring Daniels. What we're
21 saying is, they were negligent by virtue of their own
22 activities and their own failure to audit, et cetera,
23 which I'll go through.
24 I already told you about this. There were 24 other
25 Defendants. How does that help you decide whether or not

1 Celanese was negligent? Why do they say that? Why do
2 they say that? Big, greedy Plaintiff's lawyers. We sued
3 a lot of people.
4 They don't explain what happened in the lawsuit, what
5 happened to those people, what happened by the virtue of
6 the investigation we conducted. All they want to say is
7 there were other people involved. So -- but that doesn't
8 help you to answer the question this judge is going to ask
9 you to answer, was Celanese negligent?
10 So that is a red herring. That's what that is.
11 That's hiding the ball. Celanese took John Crane's ball,
12 and now they're hiding it.
13 These are undisputed facts. They failed to conduct
14 responsible abatement. They failed to investigate and
15 purchase gasket substitutes. They failed to sample and
16 tag asbestos versus nonasbestos. They failed to properly
17 audit the safety program for compliance. That's a big
18 one.
19 Because Mr. Bowyer said we had a duty to do that. We
20 accepted that responsibility, to make sure they were doing
21 the right thing for their guys. There's not one iota of
22 evidence that ever happened. That was their own policy
23 that they failed to follow up on.
24 We saw a lot of paper about it; right? I mean,
25 yesterday, I was talking to Mr. Bowyer about it. They had

1 lots of paper, these were our policies. But they didn't
2 follow up on them. They didn't conduct air monitoring or
3 warn of the hazards.
4 Mr. Seay said Daniels decided how the work was done.
5 And from his perspective, that's exactly right. His boss
6 said you go here, and you do X, Y, Z. That is true. His
7 boss did tell him where to go and what to do. But who
8 told him? The guy who told Daniels everything was
9 Celanese. Mr. Bowyer said they decided how, when, where,
10 and what work was to be done.
11 And, lastly, Mr. Young said, If I hire an electrician
12 and he gets hurt, how is that my responsibility? Well, if
13 you knew of a particular hazard, if you knew that there
14 was a danger, not just of general electricity; right, if
15 you knew there was something that he didn't know, then you
16 do have a responsibility.
17 And think about it in this case. Daniel was a
18 maintenance contractor. They weren't the electrician.
19 And they weren't an asbestos abatement contractor. And
20 this is important, because this is the question -- this is
21 a statement Mr. Young just put up. It was number seven on
22 that list. I couldn't write them all down, but it was
23 number seven.
24 Talk about a red herring. Why would anyone think,
25 including Celanese, that Daniel, skilled in asbestos

1 abatement, would not protect its employees like Mr. Seay?
2 Now, why is that a red herring? And why is that false?
3 Because today, the gentleman who was called this morning,
4 Mr. Buck, who was at Daniel, I said, Were you guys an
5 asbestos abatement contractor?
6 No. No. We weren't.
7 The only guy to answer that question, him, said we
8 were not. So why would Mr. Young suggest they were?
9 Blame Daniel.
10 He, also, said their knowledge was exactly the same
11 as ours on asbestos. Folks, if you believe that, go back
12 there and say no on both questions and go home, please.
13 If you believe that Celanese knew less or the same amount
14 than Daniels about asbestos hazards, if you think that
15 Daniels knew all of this stuff that Celanese knew and that
16 they had a guy at this conference and that they were
17 receiving these journals, if you think that, then, please,
18 say no and go home.
19 But the answer to the question on were they negligent
20 is absolutely yes. I showed you all of that knowledge.
21 That was the point of the red flags. Those red flags were
22 theirs. They were not Daniels.
23 And then, lastly, Mr. Thompson, one of Mr. Seay's
24 coworkers, said Celanese was safe. Of course, he would
25 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

1 didn't act.
2 Thank you very much.
3 THE COURT: All right. Thank you, Mr. Panatier.
4 CHARGE ON THE LAW
5 THE COURT: All right. Ladies and gentlemen, you've
6 heard all the evidence in the case, and you've heard the
7 final arguments. And it's now my duty to instruct you on
8 the law that applies to the facts of this case. And I'm
9 going to charge you on that law.
10 And it's your duty to find the facts from the
11 evidence. And to those facts, you must apply the law as I
12 give it to you. And you should not be concerned with what
13 the law should be but with what it is. And you must not
14 be influenced in this case by any personal likes, or
15 dislikes, or prejudice, or undue sympathy. And that means
16 you must decide this case solely on the evidence and
17 according to the law. And you recall, you took an oath to
18 do just that when we began this case last week.
19 Now, in following my instructions, you must follow
20 all of them and not single out some and ignore others,
21 because they're all equally important. And do not read
22 into these instructions or into anything I may have said
23 or done during this trial as any indication as to what I
24 think your verdict should be, or what I think the facts
25 are. Because that is entirely your prerogative, according

1 to our Constitution, to determine what the facts are. I'm
2 not going to intrude on your Constitutionally guaranteed
3 right to determine what the facts are, just as I know
4 you're not going to invade my Constitutional prerogative
5 to tell you what the law is.
6 So how do you decide what the facts are? You do that
7 by evaluating or weighing the evidence you've heard during
8 this trial. It's a mental process. You certainly don't
9 weigh and evaluate the evidence by putting it on a set of
10 scales. That would be impractical, of course. It's a
11 mental process. And you weigh and evaluate the evidence
12 simply by using your good common sense, your sense of
13 logic and reason, and your life experiences. And you
14 bring those things to bear on the evidence you've heard
15 during this trial.
16 Now, once you do that, you'll be able to determine
17 the true facts of this case. And once you determine those
18 facts, you take the law that I'm about to give to you and
19 you apply it to those facts. And when you've done that,
20 you'll be able to reach a verdict.
21 I told you at the beginning that the Plaintiff has
22 the burden of proof. And that means, in a civil case,
23 that they must, in order to prevail, prove their case by
24 the greater weight of the evidence. And that means they
25 must produce evidence that, when considered in light of

1 all the facts, leads you to believe that what they're
2 trying to prove is more likely true than not true.
3 So a better way to visualize this is to envision a
4 set of scales. And if you were to put the Plaintiff's and
5 the Defendants evidence on opposite sides of the set of
6 scales, in order for the Plaintiff to receive a verdict,
7 the greater weight would have to be on the Plaintiff's
8 side.
9 If after your weighing of the evidence, those scales
10 remain equally balanced and there's not a greater weight
11 on one side or the other, then your verdict would have to
12 be for the Defendant, because there was no greater weight
13 on either side. And in order to win, the Plaintiff must
14 convince you that the greater weight is on her side.
15 Now, even if those scales tipped even slightly in the
16 Plaintiff's favor, she has still carried her burden of
17 proof and she would be entitled to a verdict. But if the
18 scales tip in the Defense's side or if they remain evenly
19 balanced after your weighing process, your verdict must be
20 for the Defense.
21 So what you have to do, ladies and gentlemen, is
22 mentally weigh the evidence and mentally place it on those
23 scales and see which side has the greater weight in your
24 mind.
25 You may decide that neither side has the greater

1 weight. And, therefore, the verdict would have to be for
2 the Defendant, because, again, the Plaintiff would not
3 have met her burden of proof. But if the scale's tipped
4 even slightly in favor of the Plaintiff, she would be
5 entitled to a verdict.
6 Now, you must engage in this weighing process
7 separately as to each Defendant as to the evidence that
8 relates to Celanese and John Crane. You must weigh their
9 evidence separately and not let your influence on one
10 influence your decision -- not let your decision on one
11 influence your decision on the other. Because they are
12 each entitled to separate and individual consideration.
13 Now, some of you may be familiar with the burden of
14 proof in criminal cases. And I told you at the beginning
15 that that's a higher burden of proof. That is proof
16 beyond a reasonable doubt. That standard does not apply
17 in this civil case. Again, the standard you must use is
18 the burden of proof of the greater weight of the evidence.
19 Now, you must decide what the facts are from the
20 evidence. And I told you at the beginning that evidence
21 consists of two sources, sworn witness testimony and
22 exhibits. We have had both in this case. And those are
23 the only things you can use to determine what the facts
24 are, the witness testimony and exhibits. Nothing else is
25 evidence.

1 As I've told you repeatedly, what the lawyers say is
2 not evidence, because they're not witnesses. And,
3 likewise, anything you may have seen or heard when court
4 is not in session is not evidence either. And you must
5 confine your decision to the witness testimony and the
6 exhibits.
7 Now, if the lawyers, in summarizing the testimony and
8 evidence, said something about it that you believe was
9 incorrect, you have your own memory of what the evidence
10 and testimony is, and your memory controls.
11 Now, in any type of case, there are different types
12 of evidence. And what I'm talking about now is direct and
13 circumstantial evidence. You've probably heard these
14 terms before. Direct evidence is defined as the testimony
15 of someone who claims to have actual and direct knowledge
16 of a fact. It is evidence that, if believed, immediately
17 establishes a fact.
18 Another type of evidence that the law recognizes is
19 circumstantial evidence. And I'm sure you've heard that
20 term. But the law defines circumstantial evidence as
21 indirect evidence. To put it another way, circumstantial
22 evidence is proof that another fact exists, even though it
23 has not been proven to you directly.
24 The law makes no distinction between the weight or
25 value to be given to either direct or circumstantial

1 evidence. And you are entitled to consider both kinds, if
2 you find they exist in this case.
3 As I told you at the beginning, you, as the judge of
4 the facts, will have to, by necessity, determine the
5 credibility of all the evidence. And I, also, told you --
6 gave you some general guidelines you can use to gauge
7 credibility in the case of a witnesses testimony. I'm not
8 going to go over that again, because I know you heard me
9 the first time.
10 But I will tell you that you may consider and believe
11 everything a witness says, or you may believe nothing a
12 witness says. You may believe one witness over several,
13 or several over one.
14 But you certainly don't decide this important matter
15 of credibility by counting up the witnesses for one side
16 or the other. Because your sole objective is to determine
17 the truth of this case. And it does not matter to you
18 whether that truth comes from a witness for the Plaintiff
19 or one for the Defendants.
20 Now, you've been -- you've heard testimony from
21 people who have been described and qualified as experts.
22 I've already instructed you that their testimony allows
23 them to give an opinion from facts they've observed or had
24 made known to them.
25 And I, also, told you that your job with experts is

1 just like your job with all the other witnesses, and that
2 is you have to decide their credibility. And you do not
3 have to accept even the uncontradicted opinion testimony
4 of an expert. You may accept it, or reject it, or give it
5 whatever weight you think it deserves based on the
6 evidence in the case.
7 Now, you have, also, heard testimony presented
8 through depositions. And I'll just remind you deposition
9 testimony is entitled to the same weight and value as any
10 other testimony, and should be considered just like a
11 person was here in the courtroom testifying.
12 Some of you have taken notes during the trial. And
13 if you did that, remember the notes are for your own
14 personal use. And they don't trump anyone's independent
15 recollection of the evidence of record. And they are not
16 to be used in place of your memory.
17 And I, also, want to remind you, as I told you at the
18 beginning, that the lawyers take an oath when they become
19 lawyers to do their jobs. And part of their jobs is to
20 object to evidence they think is improper. So don't hold
21 it against any lawyer for objecting to evidence during
22 this trial. That's simply their job. And I know you
23 won't hold it against them for doing that.
24 And I, also, don't want you to hold it against them
25 for the length of this trial. If you want to hold that

1 against anybody, you can hold it against me. But the
2 lawyers, I think, did a remarkable job with the incredible
3 amount of evidence. And South Carolina has pretty short
4 trials. Other states, not so much. One of them rhymes
5 with California. But I'm not going to go into that.
6 But, nevertheless, don't hold that against them for
7 any delays during the process. That's my responsibility.
8 And if something upset you about that, you can take that
9 up with me. But we tried to manage our time and your time
10 and respect it as efficiently as possible. And I hope we
11 did that in a reasonable basis.
12 Now, ladies and gentlemen, when a party relies on
13 expert testimony to show a causal connection between an
14 injury and a subsequent condition, the law requires the
15 testimony to meet the "most probably" rule. It's not
16 sufficient that the condition in question possibly or
17 could have -- could have or might have resulted from the
18 injury.
19 The expert must go further and testify that, taking
20 into consideration all the facts, it is his or her
21 professional opinion that the result in question most
22 probably came from the cause alleged.
23 Now, this case is entitled, Angela Keene,
24 Individually and as Personal Representative of the Estate
25 of Dennis Seay and Linda Seay v. CNA Holdings, LLC and

1 John Crane, Incorporated.

2 Now, as you know, deceased persons are represented by
3 personal representatives of their estate. The personal
4 representative for Mr. Seay is his daughter, Angie Keene.
5 And in this court, individuals, whether living or dead,
6 and their heirs, and the corporations all have equal
7 standing. The playing field is level just as the playing
8 field is level as to the proof in this case when the trial
9 began.

10 Parties have equal standing before the jury. And the
11 law treats a corporation the same as a person for purposes
12 of civil liability. Corporations can only operate, of
13 course, through individuals who act as their agents. And
14 the law makes no distinction between corporations and
15 individuals for the purposes of civil liability.

16 Now, this claim for damages that the Plaintiff has
17 brought stems from personal injury. And the Plaintiff has
18 various theories or what are called causes of action. The
19 Plaintiff is seeking to recover damages for personal
20 injury and wrongful death arising out of the alleged
21 negligence of the Defendants, arising out of Mr. Seay's
22 asbestos exposure.

23 Now, the mere fact that an injury occurred or an
24 accident happened, standing alone, does not permit you to
25 draw a conclusion that such an injury or accident has been

1 caused by anyone's negligence or fault.
2 Now, the Plaintiff bases her claims on two theories.
3 They have a products liability action against John Crane,
4 Incorporated, and a premises liability action against
5 Celanese.
6 To prevail on her product liability claim against
7 John Crane, Incorporated, Ms. Keene must prove three
8 things by the greater weight of the evidence. First, that
9 Mr. Seay was injured by John Crane, Incorporated's
10 gaskets. Second, that the injury occurred because the
11 gaskets were in a defective condition. And, third, that
12 the gaskets at the time of the accident were in,
13 essentially, the same condition as when they left the
14 hands of the Defendant, or they were used or altered in a
15 reasonably foreseeable manner.
16 Now, Ms. Keene, the Plaintiff, must meet her burden
17 of proof. And if you find that she did not, then the
18 Defendants would be entitled to a verdict in their favor.
19 The Plaintiff must, also, prove damages, and that the
20 damages were proximately caused by the manufacturer's
21 negligence. And she must prove proximate cause by the
22 greater weight of the evidence.
23 So before you can hold John Crane, Incorporated,
24 liable, the Plaintiff must prove that the exposure to John
25 Crane, Incorporated's asbestos-containing gaskets was of

1 such frequency, regularity, and duration and, but for that
2 exposure, the disease or injury would not have occurred.
3 There can be more than one but-for cause. And the
4 mere fact that an injury or accident occurred does not
5 permit you to draw a conclusion that an injury or accident
6 was caused by anyone's negligence.
7 As to the defective condition, the Plaintiff must
8 first prove the manufacturer sold the product, and at the
9 time of the sale, it was in a defective condition
10 unreasonably dangerous to the user.
11 Now, regarding product defect, the product may be
12 defective if the manufacturer fails to warn or failed to
13 provide adequate instructions to the user. A product is
14 not defective for failure to warn of the obvious.
15 If you determine the risk associated with the use of
16 the manufacturer's products were open and obvious to
17 Mr. Seay, you must find the product was not defective or
18 unreasonably dangerous. A seller is not required to warn
19 with respect to products when a danger or potential danger
20 is generally known and recognized.
21 A product cannot be deemed either defective or
22 unreasonably dangerous if the danger associated with the
23 product is one that the product's users generally
24 recognize. A product may by reason of its nature and use
25 be unreasonably dangerous, unless proper instructions and

1 warnings are supplied for its intended use. In those
2 cases, a seller or manufacturer must give an appropriate
3 warning of any dangerous conditions likely to be
4 encountered. The warning must be one that would cause a
5 reasonable person to use caution when encountering the
6 potential danger.
7 In deciding whether the warning was adequate, you
8 should consider the likelihood of an accident taking place
9 and the seriousness of the consequences. There is a
10 particular need for sufficient warning when there is a
11 representation that the product in question is not
12 dangerous.
13 A product may be found defective if the product is
14 unreasonably dangerous in the hands of a user without a
15 suitable warning. A manufacturer or seller is not
16 required to warn about the defects in a product, unless
17 the manufacturer knew or should have known about the
18 defect when the product was sold.
19 Do you need to get some water, ma'am?
20 (WHEREUPON, an unidentified juror responded in the
21 affirmative.)
22 THE COURT: Now, where a warning is given, the
23 manufacturer may reasonably assume that it will be read and
24 followed. And a product that bears a warning that makes a
25 product safe for use, if followed, is not defective or

1 unreasonably dangerous.
2 When a warning defect claim is made, the Plaintiff is
3 alleging a failure to adequately warn of the dangers
4 inherent in the product. And a Plaintiff in a
5 failure-to-warn case must, also, establish the inadequacy of
6 the warning was the proximate cause of the Plaintiff's
7 injury. The Plaintiff has the burden of proving that a
8 warning would have made a difference in the conduct of the
9 person warned.
10 If you find it was probable that a user would be
11 injured by the product and the injury was not reasonably
12 foreseeable to the user, the product is defective. You
13 cannot find the product defective, however, if it were only
14 possible that such an injury would occur.
15 Ma'am, do you need to take a break?
16 UNIDENTIFIED JUROR: (Unidentified juror shook her
17 head.)
18 THE COURT: Are you okay?
19 UNIDENTIFIED JUROR: Hopefully.
20 THE COURT: Well, if you do, just let me know.
21 UNIDENTIFIED JUROR: Okay.
22 THE COURT: In deciding whether a product is
23 unreasonably dangerous and in a defective condition, you
24 should consider the dangers that would be reasonably
25 anticipated by a typical user of the product. Then you

1 should decide whether the particular product involved had
2 a tendency for causing dangers beyond those an ordinary
3 user with common knowledge of a product's characteristics
4 would anticipate.
5 Something you must consider in deciding the
6 Defendant's product and conduct is -- or excuse me -- in
7 assessing the Defendant's product and conduct is the state
8 of the art at the time the product left the Defendant's
9 hands.
10 The issue of due care must be assessed in light of
11 the circumstances existing at the time of the sale. You
12 may not evaluate or consider any evidence of knowledge or
13 information obtained after the date of manufacture and
14 sale.
15 State of the art includes all of the reasonably
16 available scientific knowledge on the subject at the given
17 time. This includes scientific, medical, engineering, and
18 other knowledge that may be available. State of the art
19 includes the element of time, what is known, and when this
20 knowledge was available.
21 If a product was nondefective under standards
22 existing at the time of the manufacture or sale, the
23 manufacturer does not have a post-sale duty to warn.
24 Negligence focuses on the Defendants conduct. To
25 prevail on a negligence claim, the Plaintiff must prove by

1 the greater weight of the evidence that the Defendants
2 failed to exercise due care in some respect. If you're
3 having a hard time with the phrase "negligence," you can
4 substitute carelessness, because it means the same thing.
5 It means the failure to act as a reasonably prudent person
6 would have acted under the same or similar circumstances,
7 or it is doing something that a reasonably prudent person
8 would not have done under the similar circumstances.
9 But you must first determine if the Defendants owed
10 the Plaintiff a duty of care. A manufacturer will owe a
11 Plaintiff a duty of care when the manufacturer knows of
12 the risks of harm.
13 This is met by showing the manufacturer was aware of
14 the danger and failed to take reasonable steps to correct
15 it. Where a product is, actually, designed and
16 manufactured by another company, the seller assumes the
17 duty of the manufacturer and labels and sells the product
18 as its own. A manufacturer is held to the skills of the
19 expert in the field and is charged with the expert's
20 knowledge of materials and processes used in the industry.
21 A manufacturer has a duty to stay aware of current
22 standards and scientific knowledge in the industry. And,
23 therefore, since the seller assumes the duties of the
24 manufacturer, a seller is held to the skill of an expert
25 in the field as well, and has a duty to stay aware of the

1 current standards and scientific knowledge in its
2 industry.
3 Although evidence of industry standards may be
4 considered as evidence of the standard of care, an
5 industry cannot set its own unreasonable standards. An
6 entire industry may lag behind in the adoption of new and
7 available products or safety features. And the failure to
8 use due care, even if no one in the industry does, does
9 not excuse negligence.
10 It is for you to decide whether the standard of care
11 was proper considering what a reasonable person would have
12 done in similar circumstances.
13 A seller owes the duty to conduct adequate tests and
14 inspections of its product to discover latent defects, or
15 defects that are not visible or apparent on a reasonable
16 inspection.
17 In deciding whether the manufacturer had a duty to
18 test the product, you should consider the Defendant's
19 ability to conduct tests at the time the product was sold.
20 A seller of a defective product has a duty to warn users
21 of a product and any dangers created by its product with
22 which the manufacturer is or should be aware at the time
23 the product is sold.
24 The supplier of a product who knew or should have
25 known that the product is or might be dangerous during its

1 foreseeable use and had a reason to believe that the
2 ultimate user would not appreciate the dangers has a duty
3 to clearly and understandably warn the ultimate user of
4 the dangers.
5 A seller is required only to warn about dangers that
6 are unreasonable, which are dangerous beyond the
7 expectation and general knowledge of the ordinary person
8 who buys the product with the ordinary common knowledge
9 about the product's characteristics. In other words,
10 there's a duty to warn not when scientific certainty is
11 established, but when a reasonable person would want to be
12 informed of the risks.
13 In deciding whether directions or instructions are
14 adequate, you should consider their location, language,
15 and size.
16 And I've talked to you about the duty of care. And
17 in a negligence case, if you find the manufacturer owed
18 the Plaintiff a duty of care, the next thing you would
19 decide is whether the manufacturer breached that duty of
20 care by a negligent act or omission.
21 In deciding this, you would consider whether the
22 manufacturer has followed normal and customary practice
23 and procedures in their industry, as well as the
24 Defendant's expertise and the ability to see and
25 appreciate the problem that it caused. If the

1 manufacturer failed to exercise reasonable care to fulfill
2 any of their duties, the Defendants would be responsible
3 for the injuries to any person the manufacturer should
4 expect to use its product, assuming they've been proven to
5 have been proximately caused.
6 And, finally, in a negligence case, a Plaintiff must
7 prove by the greater weight of the evidence something
8 called proximate cause, that is, that the damages suffered
9 were proximately caused by the Defendants breach of their
10 duty of care.
11 Proximate cause is something that produces a natural
12 chain of events and in the end brings about the injury.
13 It is the direct cause of an injury.
14 To prove a Defendant's negligence proximately caused
15 the Plaintiff's injury, the Plaintiff must first prove
16 something called "causation and fact." And that is proven
17 by showing that the injury would not have occurred but for
18 the Defendant's negligence.
19 Now, the Plaintiff must, also, prove something called
20 "legal cause." And that is proven by showing the injury
21 was foreseeable. That means the injury occurred as a
22 natural and probable consequence of the manufacturer's
23 negligence.
24 Now, the Plaintiff must prove that some injury from
25 the manufacturer's negligence was foreseeable. But she

1 does not have to prove that the particular injury that
2 occurred was foreseeable. However, a manufacturer cannot
3 be held responsible for something that could not have been
4 expected to happen.
5 Proximate cause does not mean the only cause. A
6 Defendant's act can be a proximate cause of the
7 Plaintiff's injury if it was, at least, one of the direct
8 concurring causes of the injury. Foreseeability is not
9 judged by hindsight, but rather by the Defendant's
10 perspective at the time of the conduct.
11 When two or more causes combine to produce an injury,
12 a person is not relieved from liability for negligence
13 because he is responsible for only one of them. It is
14 sufficient that his negligence is a proximate cause
15 without which the injury would not have resulted to a
16 greater extent.
17 Consequently, if a person's negligence is the
18 proximate cause of the injury to another, the fact that
19 negligence of a third party occurred with his own
20 negligence to produce the harm does not relieve him of
21 liability. In such cases, each wrongdoer is in breach of
22 the duty of care to the Plaintiff. And because the
23 negligence of each occurred to produce the injury, they
24 can all be held liable.
25 A manufacturer has no duty to notify previous

1 purchasers of its product about later-developed safety
2 devices, or retrofit their products if products were
3 nondefective under the standards existing at the time they
4 were made or sold. A product's defectiveness must be
5 measured against the standard existing at the time of
6 manufacture or sale. And the manufacturer has no
7 post-sale duty to warn.
8 Now, both Defendants claim that the Plaintiff's -- or
9 Mr. Seay's injuries were not proximately caused by the
10 negligence of either Defendant, but were solely caused by
11 the wrongful acts of a third party. The Defendants do not
12 have the burden of proving that the wrongful acts of the
13 third party caused the Plaintiff's injuries. Instead, the
14 burden remains on the Plaintiff to prove the negligence of
15 one or both the Defendants was the proximate cause of the
16 Plaintiff's injury.
17 Now, the claim against Celanese, the Plaintiff,
18 Ms. Keene, has brought is based on premises liability. To
19 prevail on this claim, Ms. Keene must prove by the greater
20 weight of the evidence a duty of care owed by the
21 Defendant to the Plaintiff. Second, the Defendant's
22 breach of that duty by a negligent act, or a reckless act,
23 or omission. Third, the Defendant's breach was the actual
24 and proximate cause of the Plaintiff's injury. And, four,
25 that the Plaintiff suffered the injury or damage.

1 In a premises liability action, the first element is
2 the existence of a legal duty of care owed by the
3 Defendant to the Plaintiff. The duty owed is determined
4 by the status of the Plaintiff. That is, the duty of the
5 owner or occupier toward a person to maintain his land in
6 a certain condition depends upon the person's status.
7 In this case, the parties agree that Mr. Seay held
8 the status of something the law calls an invitee on the
9 premises owned by Celanese.
10 Second, Ms. Keene must prove by the greater weight of
11 the evidence that the Defendant's breach of duty by a
12 negligent or reckless act or omission, and this breach of
13 duty exists when it is foreseeable that conduct may likely
14 injure a person to whom a duty is owed.
15 For a Plaintiff to recover for injuries caused by a
16 dangerous or defective condition on the Defendant's
17 premises, the Plaintiff must show either the injury was
18 caused by a specific act of the Defendant that created the
19 condition, or the Defendant had actual knowledge of the
20 condition and failed to remedy it, or -- finally, or
21 third, that the Defendant had constructive knowledge of
22 the condition and failed to remedy it. That is, that the
23 Defendant should have known of the condition and failed to
24 remedy it.
25 Now, in premises liability cases, the invitee is

1 offered and entitled to the utmost duty of care by the
2 owner or occupier of the premises. The owner or occupier
3 of the property owes an invitee or business visitor the
4 duty of exercising reasonable or ordinary care for its
5 safety and is liable for injuries resulting from the
6 breach of this duty.
7 It is the duty of the owner or occupier to use
8 reasonable care to prevent an invitee from suffering
9 bodily injury. The owner or occupier has a duty to warn
10 an invitee only of latent or hidden dangers of which the
11 owner or occupier has knowledge or should have knowledge.
12 That is to say, the Defendant must warn an invitee of any
13 unsafe conditions of which the Defendant knew or should
14 have known, and of which the invitee was reasonably
15 unaware.
16 The owner or occupier owes a duty to have his
17 premises in a reasonably safe condition and to give
18 warning of latent or concealed perils.
19 A Defendant owes an invitee a duty of due care to
20 discover risks and take safety precautions to warn of or
21 eliminate foreseeable, unreasonable risks. An invitee is
22 entitled to expect that the owner or occupier will take
23 reasonable care to know the actual condition prevailing at
24 the time the invitee is on the premises, and either make
25 those conditions safe or warn the invitee of the dangerous

1 conditions. The degree of care required is equivalent
2 with the particular circumstances involved, including the
3 age, disability, impairment, or capacity of the invitee.
4 Now, an owner or occupier is not liable to his
5 invitees for physical harm caused to them by any activity
6 or condition on a land whose danger is known or obvious to
7 them, unless the owner or occupier should anticipate the
8 harm despite such knowledge or obviousness.
9 Accordingly, an owner or occupier is liable for
10 injuries to an invitee despite an open and obvious defect
11 if the owner or occupier should anticipate that the
12 invitee will, nevertheless, encounter the condition or is
13 likely to be distracted. An owner or occupier may be
14 required to warn the invitee or take other reasonable
15 steps to protect him if the owner or occupier has reason
16 to expect that the invitee's attention may be distracted
17 so that he will not discover what is obvious or fail to
18 protect him against it.
19 In determining whether the owner or occupier should
20 anticipate harm from a known or obvious danger, the fact
21 that the invitee is entitled to make use of public land or
22 the facilities of a public utility is a factor of
23 importance indicating that the harm should be anticipated.
24 This duty is an active or affirmative duty. It
25 includes refraining from any act that makes the invitee's

1 use of the premises dangerous or results in injury to him.
2 It is not necessary that the precise manner in which the
3 injuries were sustained be foreseeable. Rather, it is
4 sufficient that there's a reasonable or generalized range
5 of greater than ordinary dangers of injury and the
6 sustaining of the injury was within this range.
7 Now, the owner or occupier of a premises is not
8 required to make or keep the premises absolutely safe or
9 in such condition that no accident can possibly occur.
10 The owner or occupier is not an insurer of the safety of
11 invitees. This duty is only to exercise reasonable care.
12 Therefore, if there is no negligence on the part of the
13 owner or occupier of a property, there is no liability.
14 Thus, for example, if a reasonable person would not have
15 been aware of the risk or if the risk was not
16 unreasonable, there is no liability.
17 A latent defect is one which an owner or occupier has
18 or should have knowledge of and of which the invitee is
19 reasonably unaware. It is one which a reasonably careful
20 inspection will not reveal.
21 To recover against Celanese, it must be proven by the
22 greater weight of the evidence that Celanese was
23 negligent, and that such negligence, if any, was a
24 substantial factor in bringing about Mr. Seay's injury.
25 Substantial factor means an event or occurrence that

1 caused or was responsible for an injury, as opposed to an
2 event or occurrence that had an insignificant or
3 negligible effect. Conduct is not a substantial factor in
4 causing injury if the same injury would have occurred
5 without that conduct.
6 The focus of the case against Celanese must be
7 whether they breached a duty of exercising reasonable or
8 ordinary care for an invitee's safety.
9 A premises owner's duty of care is not the same as a
10 manufacturer of an asbestos-containing product. The
11 Plaintiff must first establish the duty of care owed by
12 Celanese as the premise owner and, second, what would have
13 been known in the same industry as to the dangers of
14 asbestos at the relevant times. Unlike a manufacturer, a
15 premises owner is not treated as an expert in a particular
16 field -- in its particular field and has no continuing
17 duty to keep abreast of the current state of knowledge
18 with respect to asbestos dangers.
19 A premises owner can only be held liable for an
20 invitee's injuries on the owner's properties when the
21 premises owner has superior knowledge of the danger or
22 unsafe condition that caused the invitee's injuries.
23 Whether a premises owner owes an independent
24 contractor or employees of the independent contractor a
25 duty to warn of dangerous conditions on the premises turns

1 on whether the owner at the time in question possesses
2 superior knowledge or information that places him in a
3 superior position to appreciate the risk posed to the
4 contractor or its employees by the dangerous condition.
5 The duty of a master is to furnish its servant a
6 reasonably safe place to work and reasonably safe and
7 suitable tools and appliances.
8 Now, if you find the Plaintiffs have met their burden
9 of proving by the greater weight of the evidence that
10 either or both Defendants were negligent and their damages
11 were proximately caused by the Defendants conduct or
12 product, then you would move on to assess damages. And
13 that is how much money the Defendants would be required to
14 pay.
15 So the Plaintiff brought a case under the wrongful
16 death and survival statutes of our state. And first, I
17 will talk to you about the survival statute, which
18 provides that a claim for injuries to a person survives
19 that person's death. Any damages the Defendant
20 proximately caused up to the date of death may be
21 recovered by that person's estate. These damages may
22 include conscious pain and suffering and mental distress
23 that the deceased suffered up to the date of his death.
24 Pain and suffering is a recognized element of damages
25 under the law. And it compensates the Plaintiff for

1 physical discomfort and the emotional response to the
2 sensation of pain caused by the injury. There's no
3 yardstick I can give you to measure and gauge these types
4 of damages. You'll have to use your common sense, and
5 life experiences, and reasonable judgment to determine
6 them based on the evidence.
7 A party is, also, entitled to the loss of enjoyment
8 of life that compensates a Plaintiff for limitations on
9 the ability to participate in and derive pleasures from
10 normal activities of daily life. Mental suffering is
11 compensation for shock, anxiety, and emotional upset.
12 Mental anguish is more than just mere disappointment, or
13 anger, or worry, or embarrassment. It includes the mental
14 sensation of pain resulting from painful emotions and may
15 be composed of fright, grief, anxiety, and worry.
16 Now, Ms. Keene claims that her father suffered a
17 wrongful death as a result of the acts and omissions of
18 the Defendants. Whenever someone's death is proximately
19 caused by the wrongful act or negligence of another, the
20 law allows their heirs to recover. And the personal
21 representative of the estate may bring an action for the
22 wrongful death, and has a right to recover actual damages
23 for this wrongful death. It is not necessary to show the
24 money value of the deceased's life since the direct proof
25 of the value of human life is not possible. What is

1 reasonable compensation is left to your sound discretion
2 and judgment.
3 Our legislature has come up with a life expectancy
4 table that may be considered by you, along with the other
5 evidence in the case that you might believe bears on
6 Mr. Seay's life expectancy, including his occupation,
7 habits, and health at the time of his death. But that
8 table states that his life expectancy at the time of his
9 death for a 70-year-old male was 13 years.
10 Now, a wrongful death action, also, includes damages
11 recoverable from mental shock and suffering, and wounded
12 feelings, grief, and sorrow, loss of companionship, loss
13 of the use and comfort of -- and society of the deceased,
14 including loss of his experience, knowledge, and judgment
15 in managing the affairs of himself and his beneficiaries.
16 It is not necessary to show the exact amount of damages
17 suffered by the beneficiary or the beneficiary suffered a
18 monetary loss.
19 In addition, the person for whose benefit the action
20 is brought does not have to be dependent on the deceased
21 for support in order to recover under the wrongful death
22 statute. The companionship and society of a spouse or
23 parent are not articles of commerce that can be weighed,
24 or measured, bought, or sold. No one is competent to
25 testify to their value. And there are no markets for

1 them. The amount of compensation is determined by you,
2 based on your common sense and judgment after reviewing
3 and weighing the evidence.
4 Now, neither the existence, causation, or amount of
5 damages can be left to speculation or guesswork. The
6 Plaintiff always bears the burden of proof as to damages
7 to a reasonable degree of certainty, although she is not
8 required to prove them to a mathematical certainty.
9 Now, the Plaintiff, Mrs. Seay, also, claims loss of
10 consortium because of injuries received by her husband.
11 The companionship for society of a spouse are, again,
12 article -- not articles of commerce that can be weighed,
13 or measured, or bought, or sold. No one is competent to
14 testify to their value. There's no way we can determine
15 the market price. And, again, the Plaintiff is entitled
16 to compensation and money for their loss.
17 Loss of consortium includes services provided by the
18 other spouse, love, companionship, affection, society,
19 sexual relations, comfort, solace, and guidance. The
20 Plaintiff is entitled to recover the value of those
21 services of her spouse which were lost, including the loss
22 of society and companionship in her home and for any
23 expenses for the care and treatment to her spouse,
24 including medical expenses reasonably incurred.
25 Now, that covers the entire law that's relevant to

1 this case. And I want to go over the verdict form with
2 you.
3 If somebody will hand this down to Mr. Mason.
4 Thank you, sir.
5 All right. Before I go over that, let me just remind
6 you that you weren't chosen to be jurors in this case --
7 when we spent about a whole day picking the jury. Neither
8 John Crane, or Celanese, or Mrs. Seay picked y'all because
9 they wanted you to be a partisan or advocate for them.
10 They picked you because they believed you could be fair
11 and you could decide this case without any kind of bias or
12 prejudice.
13 So you are judges. You're judges of the facts. And
14 your sole interest is to determine the facts from the
15 evidence, take the law I just gave you, and apply it to
16 those facts, and to reach a verdict. You aren't to be an
17 advocate for anyone.
18 And if you went to the dictionary and looked up the
19 word "jury," you would see it came from an old European
20 word that meant a company of people sworn to render a true
21 answer. So that's what you're here for is to render that
22 true answer based on the evidence, determine whether the
23 Plaintiff has met her burden of proof.
24 Now, the record in this case is closed. There's not
25 going to be any more evidence. No more witnesses are

1 going to testify. You're going to have to rely on your
2 memory of what the testimony was.
3 And there are not going to be any more exhibits. The
4 exhibits will be back there with you. But this has been a
5 fairly long trial. So if something was referred to during
6 the case that you don't have back there with you, I can't
7 give it to you, because the record is closed. All the
8 exhibits have been admitted. And you'll have to base your
9 decision on those exhibits and the testimony.
10 Now, the genius of our jury system is it allows 12
11 people from different backgrounds and walks of life to
12 come together, hear the evidence, discuss it calmly and
13 courteously, listen to each other and each other's points
14 and points of view, and ultimately reach a verdict. You
15 each have a vote, and your vote is just that. It's your
16 vote and nobody else's.
17 So don't be afraid, however, if after discussion and
18 you all are -- and some of you may be of a different mind
19 to change your mind if the discussion persuades you that
20 you should. But don't change your mind simply to get the
21 case over with or to reach a unanimous verdict.
22 I know this has been a long trial. Everyone is ready
23 for it to be concluded. But this is an important case for
24 these parties, as you're well aware. And this is their
25 day in court. And they are entitled to your fair and

1 impartial consideration.
2 Now, this verdict form, Mr. Foreman, you're only
3 authorized to sign it when the verdict is unanimous. And
4 it just has three questions on it. And it says, "We, the
5 jury, find by unanimous consent that John Crane was
6 negligent, and its negligence was the proximate cause of
7 the Plaintiff's injuries and damages."
8 So if you find the Plaintiff carried her burden of
9 proof on her negligence claim against John Crane,
10 Incorporated, by the greater weight of the evidence, you
11 would mark that yes. If you find that she did not, you
12 would mark it no. And you would go through the same
13 process with your answer to question number two.
14 And then if you have found either of the Defendants
15 negligent, you would move on to question three. And as it
16 says -- it says, "If your answer is yes as to one or both
17 Defendants," and that's where you would list the damages
18 if you find they've been proven by the greater weight of
19 the evidence by the Plaintiff.
20 So that's the entire verdict form. It's pretty
21 straightforward.
22 Don't start talking about the case until you get the
23 exhibits. That'll be your signal you can finally start
24 deliberating.
25 I thank you for your attention to me, and your

1 patience with all of us.
2 And I'll just ask the alternate to stick behind.
3 And hold on one second. It looks like they're coming
4 up here to tell me I did something wrong.
5 (WHEREUPON, a bench conference was held.)
6 THE COURT: All right. Just to repeat --
7 (Pause.)
8 THE COURT: If you'll give the verdict form back to
9 the bailiff, we're going -- we'll send that back with the
10 exhibits.
11 All right. Let me just remind you that it's your
12 duty to give separate, personal consideration to the case
13 of each individual Defendant. And when you do so, you
14 should analyze what the evidence in the case shows with
15 respect to that individual Defendant leaving out of
16 consideration entirely any evidence admitted solely
17 against some other Defendant or Defendants.
18 Each Defendant is entitled to have its case
19 determined from the evidence as to its own act, and
20 statements, and conduct, and any other evidence in the
21 case which may apply to it. So I think that covers
22 everything I needed to tell you.
23 And if you'll just go back to the jury room, except
24 the alternate who, I believe, is Mr. Duncan.
25 Is that right?

1 JUROR #52, DUSTIN DUNCAN: #52, yes, sir.
2 THE COURT: What did you say?
3 JUROR #52, DUSTIN DUNCAN: Juror #52.
4 THE COURT: Oh, okay. So you've already -- you refer
5 to yourself as a number now?
6 JUROR #52, DUSTIN DUNCAN: Yes.
7 THE COURT: You're getting used to the process.
8 Okay. Yeah.
9 All right. We'll send you the exhibits back and you
10 can start deliberating.
11 Thank you.
12 You can ahead and go on back, ma'am.
13 JUROR #150, MATTIE MOATES: I'm the alternate.
14 THE COURT: No. You're a regular juror now. We had
15 some people drop out.
16 (WHEREUPON, the jury was excused from open court at
17 approximately 3:01 p.m.)
18 THE COURT: I -- am I -- does everybody agree he's
19 the -- he was the third alternate?
20 MR. PANATIER: Yes.
21 THE COURT: I just wanted to make sure.
22 Okay. Mr. Duncan, thank you for your service.
23 The law doesn't allow you to go in the jury room
24 right now. But you can stick around, if you want, and see
25 what happens, or you're welcome to leave. It's up to you,

1 sir.

2 JUROR #52, DUSTIN DUNCAN: I guess I'll head home.

3 THE COURT: Okay. And you don't -- you don't have to

4 talk to anybody about the case or your service. If

5 someone approaches you or calls you, you don't have to

6 talk to them.

7 JUROR #52, DUSTIN DUNCAN: Okay.

8 THE COURT: And if somebody bothers you, you just let

9 me know.

10 Okay. But you can talk to them. But you don't have

11 to. It's up to you.

12 JUROR #52, DUSTIN DUNCAN: Yes, sir.

13 THE COURT: Thank you.

14 (WHEREUPON, Juror #52, Dustin Duncan, exited the

15 courtroom.)

16 THE COURT: Any objection to the charge?

17 MR. PANATIER: No objections to the charge, Your

18 Honor.

19 MR. ELLIOTT: Your Honor, John Crane has two

20 objections. The same objection that we had at the

21 conference.

22 THE COURT: Sure.

23 MR. ELLIOTT: Your Honor charged, A seller owes a

24 duty to conduct adequate tests and inspections of its

25 products to discover latent defects, or defects that are

1 not visible or apparent on a reasonable inspection. And
2 our objection is that that statement of the law does not
3 apply when the Plaintiff's theory of liability in a
4 products liability case is failure to warn only.
5 The next charge is, A seller of a defective product
6 has the duty to warn users of a product and any dangers
7 created by its product with which the manufacturer is or
8 should be aware at the time the -- that's not right. Hold
9 on.
10 THE COURT: Do you just want to -- I'll tell you
11 what, you can make that sheet a Court's Exhibit.
12 MR. ELLIOTT: Correct. I'm sorry.
13 A seller of the defective product has the duty to
14 warn users of the product and any dangers created by its
15 product with which the manufacturer is or should be aware
16 at the time the product is sold. And the same basis for
17 the objection on that.
18 THE COURT: Okay.
19 MR. ELLIOTT: And I'll make this sheet -- it does
20 have my handwriting on it.
21 Do they object? It's that okay.
22 THE COURT: That's fine.
23 MR. YOUNG: And I don't have the exact number that --
24 (WHEREUPON, there was a disruption in the courtroom.)
25 MR. YOUNG: Celanese -- and I object to number -- we

1 object to the Plaintiff's premises liability charge. I
2 just still don't think it's adjusted to the evidence in
3 the case. And we'll get the number, Judge.
4 THE COURT: Okay.
5 MR. YOUNG: And that's it.
6 MR. PANATIER: And then for the verdict form, the
7 jury has no clue who CNA Holdings is. So we'd just like
8 Celanese put in, instead of CNA Holdings, or CNA
9 Holdings/Celanese. They've never heard who that is.
10 MR. YOUNG: That's -- I had, actually, told you that
11 in voir dire, Judge. I'd be happy to leave that on there,
12 but I think Celanese is much fairer to everybody.
13 MR. PANATIER: And then just remove Plaintiff's
14 proposed verdict form. And I guess, up on the style, we
15 might put Celanese in parentheses for CNA Holdings. I
16 don't want them to think there's some mystery --
17 MR. YOUNG: Or you can just change it to Celanese.
18 MR. PANATIER: Or just change it to Celanese. That's
19 fine.
20 THE COURT: All the exhibits -- is everybody clear on
21 that?
22 MR. PANATIER: Yes.
23 Thank you.
24 THE COURT: Thank you.
25 (WHEREUPON, Court's Exhibit No. 9 was marked for

1 identification and admitted into evidence.)
2 (WHEREUPON, the proceedings were recessed at
3 approximately 3:06 p.m.)
4 THE COURT: I believe we're waiting on Mr. Tivin.
5 (Pause.)
6 THE COURT: Well, while he's on the way, I'm going to
7 make the note we got from the jury a part of the record
8 where they asked for a copy of the law.
9 And off the record, are -- all the lawyers
10 representing each party were present when we agreed to
11 give the jury a copy of the charge.
12 Does that correctly state what happened?
13 MR. PANATIER: Yes, Your Honor.
14 MR. YOUNG: Yes, Your Honor.
15 THE COURT: I'll be glad to amend it.
16 (WHEREUPON, Court's Exhibit No. 10 was marked for
17 identification and admitted into evidence.)
18 (Pause.)
19 THE COURT: Everybody is present.
20 Anything before we bring the jury in?
21 MR. PANATIER: No, Your Honor.
22 THE COURT: Okay. Well, obviously, I don't know what
23 the verdict is. I just want to thank all the lawyers and
24 the parties for their very civil conduct throughout the
25 trial and your courtesies. And I think both sides were

1 represented by the best our profession has to offer. So
2 it was enjoyable trying the case with you.
3 You can bring the jury in.
4 I'll make a copy of this charge that was sent back as
5 a Court's Exhibit, too.
6 (WHEREUPON, Court's Exhibit No. 11 was marked for
7 identification and admitted into evidence.)
8 (WHEREUPON, the jury came into open court at
9 approximately 5:16 p.m.)
10 THE COURT: All right. Mr. Foreman, has the jury
11 reached a unanimous verdict?
12 JUROR #130, MATTHEW MASON: Yes, sir, we have.
13 THE COURT: All right. If you'll hand it to the
14 bailiff, we'll receive it and publish it.
15 Thank you.
16 JUROR #130, MATTHEW MASON: Thank you.
17 THE COURT: All right.
18 VERDICT
19 THE CLERK: For the State of South Carolina, County
20 of Spartanburg, in the Court of Common Pleas, Angie Keene,
21 Individual and as Personal Representative of the Estate of
22 Dennis Seay, deceased, and Linda Seay v. Celanese and John
23 Crane Incorporated, case number 2013-CP-42-3915. We, the
24 jury, find by unanimous consent that John Crane was
25 negligent and its negligence was a proximate cause for the

1 Plaintiff's injuries and damages: No.
2 We, the jury, find by unanimous consent that Celanese
3 was negligent and its negligence was a proximate cause of
4 the Plaintiff's injuries and damages: Yes.
5 If your answer is yes as to one or both Defendants,
6 please, state the amount of actual damages that have been
7 proven by the greater weight of evidence: $2 million
8 actual damages for the survival action, $5 million actual
9 damages for the wrongful death action, $5 million actual
10 damages for loss of consortium action.
11 Signed by the Foreperson, Matthew Mason, on October
12 the 8th, 2015.
13 Ladies and gentlemen of the jury, is this your
14 verdict and still your verdict?
15 (WHEREUPON, all jurors said yes.)
16 THE CLERK: Your Honor, this is your verdict.
17 THE COURT: Any matters at this time for the jury as
18 to this verdict?
19 MR. PANATIER: No, Your Honor.
20 THE COURT: Poll the jury? Anybody wish me to poll
21 the jury?
22 (WHEREUPON, there was no response.)
23 THE COURT: All right. Ladies and gentlemen, I'll
24 just ask you to go back to the jury room just for a few
25 minutes. And we'll be back on the record in just a few

1 moments. I have to take something up with the lawyers.
2 Thank you.
3 (WHEREUPON, the jury was excused from open court at
4 approximately 5:19 p.m.)
5 THE COURT: All right. So we'll proceed to the phase
6 concerning willfulness and recklessness.
7 MR. PANATIER: Yes, Your Honor.
8 THE COURT: All right. Do y'all have a verdict form
9 for that?
10 MR. PANATIER: Well, we just would have to tweak it
11 to take out John Crane.
12 THE COURT: Right.
13 MR. PANATIER: Yeah.
14 THE COURT: Okay. So the actual charge to them on
15 that would be...
16 MR. PANATIER: We did the initial -- the initial
17 verdict form that we handed to the Court before had two --
18 THE COURT: Yeah.
19 MR. PANATIER: The last two pages of the
20 instructions?
21 MS. MCVEY: Yes.
22 MR. PANATIER: The last two pages of the instruction
23 are the punitive instructions.
24 MS. SHOFNER: And I don't -- we have not met or
25 conferred about the punitive damage charges. So we

1 would -- we're not -- we would need to argue whether those
2 come in, and if there's any additional ones that we had
3 submitted.
4 THE COURT: Well, wait a minute, now. Do we really
5 need to do a three-phase? Because -- since John Crane is
6 no longer a party, we can just go right into punitive
7 damages.
8 MR. PANATIER: We should be able to do reckless and
9 punitive damages.
10 THE COURT: Well, that's what I'm saying. Why do we
11 need to do reckless?
12 MR. PANATIER: I think there has to be a finding,
13 clear and convincing, for reckless, willful -- right.
14 It's all -- it's all at one time. That's what we're
15 saying. There's only one more phase.
16 THE COURT: So we can -- we'll do the punitive damage
17 phase now.
18 MR. PANATIER: Yeah. We can do it now.
19 THE COURT: And the charge --
20 Ms. Shofner, is there something about the charge you
21 want to change, or do you just need to look at it --
22 MS. SHOFNER: Well, we submitted our own separate
23 charges as to punitive damages. And I've been trying --
24 while we -- while they -- the jury was out, I've been
25 trying to go through to see if there's any additional

1 charges.

2 And I think that there will be some additional

3 charges from our charges that we would like to have either

4 added -- I don't think there's anything wrong with those

5 charges. I think there's just a few that we would request

6 to be added --

7 THE COURT: Okay.

8 MS. SHOFNER: -- to that charge -- to those charges.

9 And I think that -- I mean, I guess we're ready to argue

10 those now. We certainly can.

11 THE COURT: Okay.

12 MR. TIVIN: Your Honor, at this time John Crane would

13 ask that judgment be entered in its favor, and we'd be

14 excused.

15 THE COURT: Is there any motions --

16 MR. PANATIER: To be totally -- I have no motions.

17 To be totally candid, I don't know what the entering of

18 judgment procedure would be. But I don't have an

19 objection if they want to leave.

20 THE COURT: Okay.

21 (Pause.)

22 MR. PANATIER: Oh, can we have 10 days for post-trial

23 motions as to John Crane, Your Honor?

24 THE COURT: Yes, sir.

25 MR. PANATIER: Okay.

1 THE COURT: So thank you.
2 MR. TIVIN: Thank you, Your Honor.
3 MS. SHOFNER: Do you all still have the copy of phase
4 two that I gave you?
5 THE COURT: Yes, ma'am.
6 MS. SHOFNER: No. I had my individual charges for
7 phase two.
8 THE COURT: Oh, okay. I don't know about that.
9 MS. SHOFNER: I think I just gave the Plaintiffs my
10 last copy of those.
11 MS. MCVEY: Are there certain ones that you want out
12 of those?
13 MS. SHOFNER: I think that there are. Let me --
14 MR. PANATIER: There's a lot.
15 MS. SHOFNER: I know. I know. And I'm not talking
16 about all of them. I think we would ask that the charge
17 on Page 3 be given to award -- whether the award of
18 punitive damages is within the discretion of the jury.
19 The imposition of punitive damages is not compulsory or
20 required.
21 MR. PANATIER: That's fine.
22 MS. SHOFNER: We would ask that charge six be given,
23 An aggregation of negligent acts or admissions does not
24 equate to wilful, wanton, or reckless conduct. In other
25 words, one [inaudible] the negligence cannot support an

1 award of punitive damages.
2 MR. PANATIER: I can't agree with that. Because you
3 do use -- negligent conduct is -- may, also, form the
4 basis of reckless conduct.
5 And, again, I haven't had a chance to -- I didn't
6 know they were submitting all of these. But, obviously,
7 you consider the same evidence that you relied upon for
8 negligence for recklessness.
9 THE COURT: Okay. I probably wouldn't charge that
10 number six.
11 MS. SHOFNER: I'm sorry. You would or would not?
12 THE COURT: I would not. I'm sorry.
13 I'll charge the other ones.
14 MS. SHOFNER: Okay.
15 THE COURT: I'm not keeping up with it. So if you --
16 MS. SHOFNER: Yeah. I --
17 THE COURT: -- because I don't have it. But -- and
18 I'm not fussing. I'm just saying, if you can hand up what
19 we -- what I ruled on.
20 MS. SHOFNER: Yes --
21 MR. PANATIER: Do you want my copy? This is the copy
22 Elaine gave me. I have not -- I haven't been through
23 it --
24 THE COURT: Okay.
25 MR. PANATIER: -- so I might just have to listen.

1 MS. SHOFNER: I'm sorry. I'm sorry. I thought I had
2 it in the document. And then I shut this down, so.
3 THE COURT: That's okay.
4 MR. YOUNG: Judge, what is the procedure now?
5 THE COURT: Well, so bear with me one second.
6 We're going under 52 -- 15-32-520, which is the
7 bifurcation of punitive damages. And this says in the
8 second stage, The jury shall determine if the Defendant is
9 liable for punitive damages. And if determined, the
10 liable amount. I'm paraphrasing a bit. But that's all it
11 is. And the charge is pretty straightforward on punitive
12 damages.
13 MR. YOUNG: I didn't ask a very good question, Judge.
14 Is there going to be another -- just a charge and more
15 deliberation?
16 THE COURT: No. We're good. You can make any
17 arguments you want to. And then we'll charge. I'll tell
18 them what's going on. And you can have argument.
19 MS. SHOFNER: We would -- I'm sorry.
20 Okay. On Page 8, we would ask that the Plaintiff's
21 charge of wanton, willful, or recklessness misconduct,
22 which would support an award of punitive damages, is a far
23 more serious charge than the Plaintiff's charge of
24 negligence. Wanton, willfulness, and recklessly --
25 knowingly and intentionally doing a thing or wrongful act.

1 This mean actual knowledge or awareness on the part of the
2 Defendant that its conduct was wrong and that the conduct
3 is -- at issue was outrageous.
4 THE COURT: Okay.
5 MS. SHOFNER: You'll charge that one?
6 THE COURT: I'm sorry.
7 MS. SHOFNER: Yes?
8 MR. PANATIER: Your Honor, it's Plaintiff's position
9 to just give the pattern.
10 THE COURT: I mean, I think -- I think the pattern
11 charge covers the law. And that seems repetitive to me.
12 MS. SHOFNER: Okay.
13 MR. PANATIER: Your Honor, Theile just told me that
14 what we handed you, the punitives, was the punitive charge
15 that was given in Garvin. Ours, but --
16 THE COURT: Right.
17 MS. SHOFNER: All right. I think that's it then.
18 THE COURT: Okay.
19 MS. SHOFNER: And I think, based on what the
20 Plaintiffs -- was part of the original charge from the
21 Plaintiffs or that came from Garvin, that last paragraph,
22 Before you can award punitive damages, you must find the
23 Plaintiff's entitled to actual damages, that last
24 paragraph can be taken out.
25 MS. MCVEY: Okay.

1 MS. SHOFNER: Because, obviously, that was charged at
2 the same time as --
3 MS. MCVEY: Yeah. Yeah, I agree.
4 MS. SHOFNER: So the -- so you will additionally
5 charge the first one, whether to award punitive damages is
6 within the discretion of the jury. The imposition of
7 punitive damages is not compulsory or required. I don't
8 think that's part of the pattern charge.
9 THE COURT: Okay. Ms. Shofner, and that's Page 6?
10 MS. SHOFNER: That is Page 3.
11 THE COURT: Yeah. I'll charge that.
12 MS. SHOFNER: Okay. Thank you.
13 THE COURT: And --
14 MS. SHOFNER: All right. Then I think that that's...
15 THE COURT: So there's got to be the -- this doesn't
16 seem to me to cover everything. I think probably the
17 confusion stems from the fact that in Garvin we talked
18 about punitive damages in the first phase, but we've got a
19 standard charge.
20 MR. PANATIER: We're fine with standard.
21 THE COURT: That just, you know, tells them that they
22 have to consider a reasonable ratio. They have to
23 consider ability to pay, and so forth. That is under the
24 Gore -- Gamble v. Stevenson.
25 MR. PANATIER: Your Honor, my -- my concern is, at

1 this point, is to introduce ability to pay, we would need
2 to get -- introduce the net worth information, which we
3 can pull straight off the Internet or get a stipulation
4 from Celanese.
5 THE COURT: I mean, that's -- usually they handle
6 that in discovery, but --
7 MR. YOUNG: Judge, neither one of those are something
8 that I can in any way deal with at 5:30 in the afternoon.
9 Obviously, we would object to pulling it off the Internet.
10 And I certainly can't do any sort of stipulation.
11 THE COURT: Well --
12 MR. PANATIER: Your Honor, I want -- I want to
13 finish. And, frankly, I would -- I would -- I'd be fine
14 to go without it.
15 THE COURT: Okay.
16 MR. PANATIER: But my -- but my concern is -- my
17 concern is that there is potentially error if I don't
18 submit actual evidence of their net worth. That's my --
19 THE COURT: That's not the law in South Carolina.
20 MR. PANATIER: Okay.
21 THE COURT: You don't have to submit evidence.
22 MR. PANATIER: Okay. That's helpful.
23 Thank you.
24 Then I'm fine. I'm ready to go.
25 THE COURT: That's the Welch v. Epstein case.

1 So if you're willing to go forward without it--
2 MR. PANATIER: I'm ready to go.
3 THE COURT: Okay.
4 MS. MCVEY: I've got to get you a verdict form.
5 THE COURT: Okay.
6 MS. MCVEY: I'm sorry. I'm going to e-mail it to
7 you, if that's okay.
8 (WHEREUPON, a bench conference was held.)
9 THE COURT: Okay. Are y'all ready for the jury?
10 MR. PANATIER: Yes, Your Honor.
11 MR. YOUNG: Yes, Your Honor.
12 THE COURT: Okay. You can bring the jury back in.
13 Now, this -- you know --
14 Hold them out there just one second, if you don't
15 mind.
16 You know, I'm happy to charge them before y'all
17 argue --
18 MR. PANATIER: Yeah. That's great.
19 THE COURT: -- so they know what to look for.
20 MR. YOUNG: That's fine, Judge.
21 THE COURT: All right.
22 (WHEREUPON, the jury came into open court at
23 approximately 5:40 p.m.)
24 THE COURT: All right. Let's make sure we've got
25 everybody here.

1 Okay. Since your verdict has been rendered and you
2 found actual damages against Celanese, you may, also,
3 consider an award of punitive damages. And so I'm going
4 to instruct you on the law of punitive damages. Then the
5 lawyers will make some brief arguments about it, and then
6 you're going to deliberate about that. And that'll be the
7 final thing you have to do.
8 CHARGE ON THE LAW (PUNITIVE DAMAGES)
9 THE COURT: So punitive damages are intended to
10 punish a Defendant for extraordinary and outrageous
11 misconduct, and to prevent the Defendant and others from
12 committing similar acts in the future.
13 Punitive damages can only be awarded when conduct of
14 the Defendant has been something more than mere
15 negligence. The evidence must establish the Defendant's
16 actual reckless, willful, and wanton, meaning there was a
17 conscious failure to exercise due, care or a conscious
18 indifference to the rights and safety of others, or a
19 reckless disregard thereof.
20 Whether to award punitive damages is within the
21 discretion of the jury. The imposition of punitive
22 damages is not compulsory or required. But if you find
23 the Defendant's conduct was willful, wanton, or reckless,
24 you may award the Plaintiff punitive damages.
25 To support an award of punitive damages, the

1 Plaintiff must prove by clear and convincing evidence that
2 the conduct complained of included a consciousness of
3 wrongdoing at the time it occurred.
4 Clear and convincing is more than just the greater
5 weight of the evidence. And as I told you, the greater
6 weight of the evidence requires only proof that persuades
7 you that a party's claim is more likely true than not
8 true.
9 On the other hand, clear and convincing evidence is
10 not as high a standard as the burden of proof in criminal
11 cases, which is to proof beyond a reasonable doubt. Clear
12 and convincing proof leaves no substantial doubt in your
13 mind. It means the evidence is not ambiguous, doubtful,
14 equivocal, or contradictory.
15 Convincing means persuading by proof or argument
16 causing one to believe in the truth of what is asserted.
17 Clear and convincing proof establishes in your mind not
18 only that the fact is probable, but that it is highly
19 probable.
20 Before awarding punitive damage, you must consider
21 and weigh four elements that may or may not be pertinent
22 to the facts of this case.
23 You must first consider the relationship between any
24 punitive damage award and the harm caused. Any award of
25 punitive damages should take into account the

1 reprehensibility of the conduct, the harm caused, the
2 Defendant's awareness of the conduct's wrongfulness, the
3 duration of the conduct, and any concealment.
4 Therefore, any award should bear a reasonable
5 relationship to the nature and extent of the conduct and
6 the harm caused, including the actual damage award made by
7 you.
8 Second, any award should take into account as a
9 mitigating factor any other penalty that may have been
10 imposed or which may be imposed for the conduct involved,
11 including any criminal or civil penalty, or other punitive
12 damages award arising out of the same conduct.
13 Third, you should consider whether the award of and
14 the amount of any punitive damage award may deprive the
15 Defendant of any profits derived from the improper
16 conduct, and whether the ill-gotten profits should be
17 properly awarded to the Plaintiff.
18 Fourth and finally, any award of punitive damages
19 must be limited to punishment, and thus, it may not effect
20 economic bankruptcy. To this end, the Defendant's ability
21 to pay any punitive damage award should be considered.
22 However, the economic bankruptcy factor is not an absolute
23 bar to an award of punitive damages.
24 Now, punitive damages may only be awarded for
25 injuries the Defendant caused to the parties to this

1 action. Although it may be appropriate to consider the
2 reasonableness of a punitive damage award in light of the
3 potential harm the Defendant's conduct could have caused,
4 that potential harm is harm potentially caused to the
5 Plaintiff, not all other potential victims.
6 Now, that is the law of punitive damages. And, now,
7 we'll have the argument -- I mean the arguments of the
8 lawyers.
9 So, yes, sir. Mr. Panatier.
10 CLOSING ARGUMENT (PUNITIVE DAMAGES)
11 MR. PANATIER: Thank you, Your Honor.
12 All right. So the good news is that we just found
13 out about your verdict, so I couldn't make a very long
14 PowerPoint.
15 The first thing I want to say is we -- we, from the
16 bottom of our hearts, appreciate what you did for this
17 family.
18 This part is the part on your jury questionnaires
19 very early -- when you filled out the jury questionnaires,
20 there were questions about punitive damages. And maybe
21 along the way you thought, where's the punitive damages
22 part? This is it. It's a two-phase trial.
23 So this is the phase where you evaluate Celanese's
24 conduct, and then you punish it. And this is -- punitive
25 damages are designed to punish and deter the conduct.

1 If you find that a company is reckless, then you have
2 to punish them. Otherwise, there is no reason to find
3 that they were reckless. I'm going to show you three
4 documents, and you know them well.
5 You know this document where they used asbestos
6 gaskets, even though they knew there was a safer
7 alternative. That's reckless. You know their failures
8 that pertain to Daniel. That is reckless. And this
9 document, you know very well. You just heard the judge
10 charge you on the law of recklessness and punitive
11 damages. And he used a word that is "concealment."
12 This memo that set forth the policy at Celanese about
13 how they were going to treat toxic exposures talks to
14 recklessness, wantonness, maliciousness, and concealment.
15 And you know that that followed through into 1988 when
16 Mr. Bowyer published his memo about the fact that they
17 weren't going to give interpretive results.
18 I think I have two more slides.
19 So a conscious failure to exercise due care
20 constitutes wilfulness. And saying you'll do something to
21 protect worker safety and then not doing it, that's what
22 this is. That's different from negligence.
23 Negligence, you may not make a commitment to do
24 something to somebody, but you can still fail -- fail to
25 use ordinary care, or fail to use reasonable care. In

1 this case, they promised to do something for worker
2 safety. So they knew about it. They internalized it.
3 They put it on paper, and then they didn't do it. So
4 that's recklessness.
5 And then, how much? So what is the right number to
6 punish and deter Celanese for this type of conduct?
7 That's up to you. But one of the considerations was the
8 duration of the conduct. And we know it lasted for many,
9 many years. But I just want to focus on the years that
10 Mr. Seay was at Celanese. He was there in '71, '2, '3,
11 '4, '5, '6, '7, '8, '9, and 1980, 10 years.
12 And I don't want to just suggest to you and say award
13 a bazillion million gajillion dollars. I don't want you
14 to do that. There's an award you could make that would be
15 absurd. And I don't want you to do that. I don't want
16 you to make a giant award that people read about in the
17 newspapers. I don't want you to do that.
18 What I want you to do is I want you to award punitive
19 damages that give a specific number, that whenever
20 Celanese is asked about it, they say, why did the jury put
21 that number together? they'll have to answer, the jury
22 gave punitive damages for the 10 years for this one man
23 while these policies were in effect.
24 And what I want you to do -- I thought about saying,
25 you know, I think a million dollars a year would be

1 justified. But instead, I want to make it a little bit
2 more symbolic. The last two digits of each year '71, '72,
3 '73, '74, et cetera, just add a zero. 710,000, 720,000,
4 730,000, 740, and so on, and add it up. And that way,
5 it's symbolic of the years that Mr. Seay was there. And
6 it's an amount that will be substantial enough to punish
7 and deter Celanese.
8 The only way that the companies listen is if you hit
9 them in the pocket, if you hit them in the wallet. And
10 that's what you have to do. So whatever that number comes
11 to is what I would suggest as the number that you award
12 for punitive damages. Because, one, it does, actually,
13 punish and deter. It's big enough to do that, but it's
14 not a hundred million bazillion dollars.
15 But at the same time, if you then take those numbers,
16 it is symbolic of the time Mr. Seay put in at Celanese.
17 We thank you very much for your time.
18 THE COURT: Thank you.
19 Yes, sir. Mr. Young.
20 MR. YOUNG: Ladies and gentlemen, the first thing
21 that I'd like to say on behalf of Celanese is that we,
22 obviously, have gotten a message already. $12 million is
23 something that people are going to ask about all the time.
24 And they're going to ask, you know, about that. And the
25 message is very loud and very received, and a punishment

1 clearly in and of itself.

2 And I told you before, you know, we wanted the truth

3 of the case. And we respect your verdict. I don't know

4 if y'all noticed, but the video thing back here, the

5 people at Celanese -- the people at Celanese already know

6 what happened.

7 And what happened to Mr. Seay, as I told you the

8 whole time, was bad. And we feel badly for him. And

9 we're not arguing at all against the $12 million.

10 But, ladies and gentlemen, that is a big, big, giant

11 wallop upside the head message that we've already gotten.

12 And we apologize for everything that we did that gave rise

13 to that.

14 And, you know, ladies and gentlemen, there is a

15 difference between negligence and being willful, wanton,

16 and malicious. And we accept full responsibility for what

17 happened to Mr. Seay.

18 The people that were involved in all this and

19 involved in asbestos are all dead. But I can tell you

20 with absolute unequivocal certainty that a $12 million

21 verdict in this case has sent a message to Celanese. And

22 it's going to send a message to the highest, highest

23 levels of Celanese. And they will know, without

24 additional monies, to look at every single situation that

25 comes up and look at it carefully.

1 So one of the things that the judge charged you is
2 that one thing you should consider is how much money has
3 already been awarded. And I would ask you to do that on
4 my behalf and on behalf of the client, and tell you that
5 we got the message. And Celanese is going to take it to
6 heart and -- and do good things.
7 So we would ask that you not find an award of
8 punitive damages.
9 Thank you very much.
10 THE COURT: Thank you, Mr. Young.
11 Mr. Panatier.
12 MR. PANATIER: Very briefly. I always get a
13 rebuttal, but all I'm going to say is this, the reason you
14 give -- you find recklessness and you give punitive
15 damages is what you just saw, which is the first time
16 Celanese acknowledged any responsibility, said the words,
17 "I'm sorry," was after a jury said, you did something
18 wrong. That's why you need punitive damages.
19 Thank you.
20 THE COURT: All right. Mr. Foreman, I've prepared a
21 verdict form.
22 And let me just ask the lawyers one question up here
23 real quick about this before I...
24 (WHEREUPON, a bench conference was held.)
25 THE COURT: All right. Just to clarify, the punitive

1 damages are only recoverable in a wrongful death claim by
2 Ms. Angela Keene. Under South Carolina law, punitive
3 damages are not recoverable on the loss of consortium
4 claim that Ms. Linda Seay brought. So the only thing
5 you're to concern yourself with is the wrongful death
6 claim and whether punitive damages should be awarded on
7 that.
8 So with that clarification, I'll hand that verdict
9 form to the deputy to give Mr. Mason. Y'all can go start
10 deliberating.
11 Thank you very much for your patience and
12 cooperation.
13 (WHEREUPON, the jury was excused from open court at
14 approximately 5:55 p.m.)
15 THE COURT: Okay. Any matters or motions at this
16 stage?
17 I take it that Celanese wishes to have 10 days for
18 any post-trial motions on the liability phase?
19 MS. SHOFNER: Yes, Your Honor.
20 THE COURT: Okay. We'll be in recess until we hear
21 something.
22 (WHEREUPON, the proceedings were recessed at
23 approximately 5:56 p.m.)
24 THE COURT: Anything before I bring the jury in?
25 MR. PANATIER: No, Your Honor.

1 THE COURT: Okay. Bring the jury in, please.
2 Thank you.
3 (WHEREUPON, the jury came into open court at
4 approximately 6:06 p.m.)
5 THE COURT: Okay. Mr. Foreman, has the jury reached
6 a unanimous verdict?
7 JUROR #130, MATTHEW MASON: Yes, sir, we have.
8 THE COURT: If you'll hand it to Ms. Camp, we'll
9 receive it and publish it.
10 Okay.
11 VERDICT (PUNITIVE DAMAGES)
12 THE CLERK: The State of South Carolina in the County
13 of Spartanburg, the Court of Common Pleas, case number
14 2013-CP-42-3915, Angie Keene, Individually and as Personal
15 Representative of the Estate of Dennis Seay, Deceased, and
16 Linda Seay v. Celanese and John Crane, Incorporated.
17 We, the jury, by unanimous consent find by clear and
18 convincing evidence that Celanese was willful, wanton, and
19 recklessness [sic]: Yes.
20 As to Plaintiff's claims against Celanese for
21 punitive damages, we, the jury, by unanimous consent find
22 by clear and convincing evidence for the Plaintiffs in the
23 amount of $2 million punitive damages, signed by the
24 Foreperson, Matthew Mason, on October the 8th, 2015.
25 Ladies and gentlemen of the jury, is this your

1 verdict and still your verdict?
2 (WHEREUPON, all jurors said yes.)
3 THE COURT: All right. Any matters before the jury
4 is discharged?
5 MR. PANATIER: No, Your Honor.
6 MR. YOUNG: No, Your Honor.
7 THE COURT: All right. Ladies and gentlemen, I'm
8 going to thank you for your service. And I know you're
9 ready for it to be over.
10 So I just want to take a minute and commend you for
11 the conscientious effort in which you served. You know,
12 we don't have professional jurors in this country. And
13 we're one of the few countries in the world that has jury
14 trials in civil cases.
15 And we have them for a reason. And it would be, I
16 think, something that none of us would want if we were
17 ever unfortunate enough to have to sit at one of these
18 tables to come in and see that jury box filled with 12
19 people who didn't have anything better to do and that we
20 just rounded up off the street.
21 I know you all have much going on in your lives. You
22 have jobs, and your families, and other important aspects
23 of your daily living that's -- that has been disrupted
24 severely by this trial for a two-week period. And jury
25 service is, in a sense, kind of the rent we pay to live in

1 a democracy.
2 And John Adams said that the right to a jury trial
3 and the right to have a representative government were the
4 heart and lungs of our democratic government. So I know
5 the parties in this case are grateful for your service.
6 And the court system certainly couldn't function without
7 the willing participation of good citizens like
8 yourselves.
9 So you'll get in a few weeks -- or a few days,
10 rather, a check from the county for your service. And we
11 appreciate your hard work and your patience. I know it's
12 hard to sit back there for long periods of time and not
13 really knowing what's going on when we have delays that we
14 can't avoid.
15 But, again, our gratitude goes out to you. And have
16 a good rest of the week.
17 And you have a three-year exemption from circuit
18 court jury duty. So you've got that going for you.
19 Thank you very much.
20 MR. PANATIER: Are we free to talk to the jury?
21 THE COURT: Well, let me say something about that.
22 I've told you throughout this -- you don't have to sit
23 back down. I've told you throughout this -- believe me, I
24 know what it's like to sit for long periods of time and
25 listen.

1 But I've told you throughout this you don't -- not to
2 talk to other people about the case. Your service is
3 over. You're free to talk to whoever you want to about
4 your experiences, but you don't have to talk to anybody.
5 If somebody approaches you and wants to talk
6 about the case, and -- you know, that's the way the
7 lawyers learn. They learn from the jurors experiences
8 and perspectives. So they're trying to educate themselves.
9 You're free to talk to them, but you don't have to talk
10 to them. If anybody gives you a hard time, just let me know
11 and I'll take care of that.
12 But with that, have a good evening.
13 UNIDENTIFIED MALE: Can I talk to them?
14 THE COURT: No, sir. We're not going to -- you can
15 talk to them individually. We're not going to do anything
16 on the record. I appreciate your understanding.
17 (WHEREUPON, the jury was dismissed from open court at
18 approximately 6:12 p.m.)
19 THE COURT: Okay. Any further matters or motions at
20 this time?
21 MR. PANATIER: No, Your Honor.
22 THE COURT: Any party has 10 days to file any
23 post-trial motions.
24 All right. Thank you very much.
25 **********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.)

1 P R O C E E D I N G S

2 THE COURT: So this is Angela D. Keene, Individually

3 and as Personal Representative of the Estate of Dennis

4 Seay and Linda Seay --

5 Is it "See" or "Say"?

6 MR. PANATIER: "See."

7 THE COURT: Seay v. 3M Company and others,

8 2013-CP-42-03195.

9 And this is -- we're going to do the motion of CNA

10 Holding, LLC's, to dismiss or for summary judgment, based

11 on the statutory employer doctrine and --

12 Ms. Shofner.

13 MS. SHOFNER: Your Honor, I've lost Chris Collier

14 from your chambers to here. He should be right here.

15 There he is.

16 THE COURT: Okay.

17 MS. SHOFNER: He's going to be handling the motion.

18 THE COURT: All right. Mr. Collier.

19 MR. COLLIER: Your Honor, do you want me at the

20 podium here, or do you have a preference?

21 THE COURT: Wherever you want to be.

22 MR. COLLIER: Okay. Well, I'll come to the podium.

23 Good morning, Your Honor.

24 This is CNA's motion to dismiss or, in the

25 alternative, motion for summary judgment, based on the

1 statutory employee doctrine. You've granted this motion
2 in past asbestos cases involving similar facts and the
3 same law --
4 THE COURT: Well, I mean, how -- was that really that
5 similar?
6 I mean, that was DuPont. They had a construction
7 division. They had a history of construction activity.
8 And they were in the construction business, pretty much,
9 building plants all over the country.
10 This is a far different situation, isn't it?
11 MR. COLLIER: Well, yes, Your Honor.
12 I was, actually, going to say that Mr. Seay's work at
13 the Hoechst Celanese plant was even more necessary,
14 essential, and integral. Because he was doing the daily
15 maintenance on all of the equipment and systems in the
16 plant.
17 THE COURT: So CNA is in the maintenance business?
18 MR. COLLIER: Well, Your Honor, CNA -- I mean, as you
19 know, I believe is -- they manufactured polyester
20 materials.
21 THE COURT: Are they in the construction business,
22 construction maintenance business?
23 MR. COLLIER: Is CNA in the maintenance and
24 construction business --
25 THE COURT: Right, when they were here in

1 Spartanburg.

2 MR. COLLIER: No, Your Honor.

3 They manufactured polyester materials. But it's our

4 argument that you could not manufacture and continue

5 manufacturing polyester or any other materials without the

6 continual maintenance and upkeep work on the systems and

7 the equipment --

8 THE COURT: All right.

9 MR. COLLIER: -- which, is what Mr. Seay did.

10 THE COURT: You probably couldn't stay in the fishing

11 rod business too long either if you couldn't deliver your

12 supplies by truck. But isn't that what the Court said in

13 the Olmstead v. Shakespeare, that the delivery part of a

14 business, such as Shakespeare, wasn't enough to make them

15 a statutory employer of truck drivers?

16 MR. COLLIER: Well, yes, Your Honor. That is what

17 was said in Olmstead.

18 But from the standpoint of, actually, manufacturing a

19 product, being able to continue to manufacture a product,

20 you have to have systems and equipment in place to be able

21 to do that, and to -- you have to perform maintenance on

22 those systems and equipment, or they're not going to

23 continue to work after a period of time.

24 THE COURT: Well, that's true of every business.

25 MR. COLLIER: Well, it's true in certain businesses,

1 Your Honor.
2 THE COURT: Have they invented some maintenance-free
3 business I'm not aware of?
4 MR. COLLIER: I wish my house were maintenance-free,
5 but it's not.
6 THE COURT: Yeah, me, too.
7 MR. COLLIER: Your Honor, under 42-15-40, the South
8 Carolina Workers' Compensation Act provides the exclusive
9 remedy for employees injured in the scope of employment,
10 and excludes all other rights and remedies. And South
11 Carolina courts have held that this rule extends to
12 workers who may not be directly employed, but who are
13 considered statutory employees of an owner, such as
14 Hoechst Celanese, who is contracted with an independent
15 contractor, such as Daniel, under the Voss v. Ramco, 325
16 S.C. 560, case from 1997.
17 To obtain the protections of the South Carolina
18 workers' compensation law, a company must subscribe to
19 approved insurance as provided in 42-5-20. And Hoechst
20 Celanese has provided copies of those policies.
21 The purpose of this legislation was described in
22 Adams v. Davison-Paxon, 230 S.C. 532, from 1957 is
23 protecting employees of irresponsible contractors who do
24 not provide workers' comp coverage for their employees.
25 THE COURT: You're not saying Daniel Corporation was

1 irresponsible, are you, certainly?

2 MR. COLLIER: Your Honor, we actually -- we paid --

3 we reimbursed Daniel for the workers' compensation

4 coverage on Mr. Seay. And so this is consistent with what

5 Your Honor concluded in the 2010 Ewing case that the

6 entire concept of statutory employment is designed to

7 protect the employee by assuring that workmen's

8 compensation coverage by either the subcontractor, or the

9 general subcontractor, or the owner if the work is part of

10 the owner's business.

11 And a worker's employment status, as it affects

12 jurisdiction, is a matter of law for the Court. And any

13 dispute and facts giving rise to the issue should be

14 resolved by the Court and not a jury under Wheeler v.

15 Morrison Machine, 313 S.C. 440, from 1993.

16 Under the Voss case, only one of the three following

17 criteria must be met to conclude that the activity of an

18 employee of a contractor is sufficient to make him a

19 statutory employee. The first being that the activity of

20 the subcontractor is an important part of the owner's

21 trade or business, or the activity performed by the

22 subcontractor is a necessary, essential, and integral part

23 of the owner's business, or the identical activity

24 performed by the subcontractor has been performed by

25 employees of the owner.

1 And so if either one of those three tests is met, the
2 individual is considered a statutory employee.
3 And Hoechst Celanese would submit that it meets all
4 three of the tests, but, specifically, one and two. And,
5 therefore, any doubt as to Mr. Seay's status is to be
6 resolved in favor of coverage under the act.
7 Mr. Seay testified that he was responsible for
8 repairs to and preventative maintenance on the equipment
9 at Hoechst Celanese. And that he worked on this equipment
10 on a daily basis, including pumps, and valves, and
11 gearboxes that were used in the process and production
12 lines.
13 He testified that the process lines were vital to the
14 operation of Hoechst Celanese's business. He testified
15 that each piece of equipment was essential to the
16 manufacturing operation. And he testified that repairs
17 and preventative maintenance he performed were necessary
18 for the continued operation of the plant.
19 In short, he testified that the work that he was
20 performing was necessary, essential, and an integral part
21 of Hoechst Celanese's business. And other witnesses
22 offered by the Plaintiff's, including Mr. Thompson, mirror
23 that testimony.
24 Mr. Thompson confirmed that the purpose of Daniel's
25 maintenance was to ensure that the Hoechst Celanese

1 production lines remained operational. He testified that
2 keeping the production lines operating was important to
3 Hoechst Celanese's manufacturing business.
4 And most telling is Mr. Seay's counsel's own question
5 to Mr. Thompson during the Plaintiff's direct examination
6 of him, "Do you believe that -- the work that Dennis and
7 you all did at the Hoechst plant, do you believe that was
8 an integral, important part of the operation of the plant
9 to which, if it wasn't done, it could not function?"
10 And Mr. Thompson answered, "Yeah."
11 As was true in Wheeler, maintenance and repair of
12 equipment was necessary to the continued production of
13 materials at Hoechst Celanese.
14 And Hoechst Celanese's corporate representative,
15 Bruce Bowyer -- who was deposed in this case and, also,
16 offered an affidavit that's been attached to our motion.
17 And he confirmed what both Mr. Seay and Mr. Thompson said,
18 that it was essential for Hoechst Celanese to have
19 maintenance workers on-site to maintain, repair, and
20 replace equipment.
21 He testified that maintenance and upkeep of the
22 production lines was a regular, ongoing part of Hoechst
23 Celanese's business. And without the ongoing maintenance
24 performed by Daniel millwrights, like Mr. Seay and
25 Mr. Thompson, Mr. Bowyer testified that the Hoechst

1 Celanese facility could not have functioned properly, and
2 would not have been able to continue to make products.
3 So Mr. Seay, Mr. Thompson, and Mr. Bowyer all agree
4 with this because it makes sense. Without maintenance to
5 the plant, it couldn't operate.
6 So Hoechst Celanese would submit that it meets the
7 first and second test under Voss, such that the work that
8 Mr. Seay performed was an important part of Hoechst
9 Celanese's trade or business. And, also, the ongoing
10 maintenance was a necessary, essential, and integral part
11 of Hoechst Celanese's business under Voss.
12 And although I don't think it's necessary since the
13 first and second tests are covered, but Hoechst Celanese
14 would, also, submit that it meets the third test since
15 Hoechst Celanese, ultimately, ended up hiring Daniel's
16 maintenance workers as its own employees. This was some
17 number of years after Mr. Seay left.
18 Your Honor, there are multiple cases that are cited
19 in our brief that establish that South Carolina courts had
20 concluded that cases involving maintenance workers are
21 necessary, essential, and integral to an owner's business
22 so as to conclude that the individuals were statutory
23 employees.
24 And these cases include Smith v. T.H. Snipes, 306
25 S.C. 289, from 1991; Gentry v. Milliken, 307 S.C. 235,

1 from 1992; Marchbanks v. Duke Power, 190 S.C. 336, from
2 1939; Wheeler v. Morrison Machinery, 313 S.C. 440, from
3 1993; and Harrell v. Pineland Plantation, 337 S.C. 313,
4 from 1999, among others.
5 And I'm sure you're familiar with those cases from
6 prior statutory employee motions like those in Ewing and
7 Bumgardner, so I'm not going to go through all of them,
8 unless you want me to. But I'll note that two of the
9 cases, Gentry and Wheeler, are particularly instructive
10 here, based on the arguments that are contained in
11 Plaintiff's response.
12 Hoechst Celanese was contractually obligated under
13 the maintenance contract with Daniel to reimburse Daniel
14 for workers' comp coverage. Exhibit J to our memo
15 includes the contract provisions under Section 4(c) and,
16 specifically, states that Hoechst Celanese is to reimburse
17 Daniel for "workmen's comprehensive statutory employee
18 liability insurance."
19 This is consistent with Mr. Bowyer's testimony that
20 Hoechst Celanese paid Daniel for the workers' comp
21 insurance.
22 Like Hoechst Celanese's payment to Daniel for
23 workers' comp insurance for all millwrights that were used
24 on its premises, Milliken, in the Gentry case, required
25 the contractor working on its premises to obtain workers'

1 comp coverage. Also, like Milliken's payment to the
2 contractor in Gentry for the workers' comp coverage,
3 Hoechst Celanese reimbursed Daniel for all of its workers'
4 comp coverage for the millwrights.
5 The Court in Gentry found Gentry to be a statutory
6 employee of Milliken in connection with the maintenance
7 work he was performing on-site by installing scouring
8 equipment, which was determined to be necessary to
9 Milliken's business, like the equipment that Mr. Seay
10 worked on at Hoechst Celanese.
11 In Wheeler, the plaintiff was an asbestos abatement
12 worker at a Springs textile mill. The Springs mill was
13 not in the business of performing abatement work, but it
14 was a vital component of the plant's maintenance plan.
15 Plaintiff's argument in this case is that Hoechst
16 Celanese was not in the maintenance business and, thus,
17 can't claim Mr. Seay as a statutory employee. But this
18 flies in the face of Wheeler, where the Court concluded
19 that the plaintiff was a statutory employee of Springs
20 because the maintenance abatement work he was performing
21 was a necessary part of an ongoing process at the textile
22 mill, like Mr. Seay's work at Hoechst Celanese.
23 Plaintiff's response is an effort to try and get
24 around your prior rulings in Ewing and Bumgardner.
25 The cases that are cited in Plaintiff's response

1 relate to delivery drivers and transportation of goods,
2 like you mentioned a few minutes ago. And under this line
3 of cases, if Mr. Seay had delivered materials to Hoechst
4 Celanese or had taken finished materials from Hoechst
5 Celanese, he could not be considered a statutory employee
6 of Hoechst Celanese.
7 But this is a far cry from the necessary, essential,
8 and integral nature of the maintenance work that Mr. Seay
9 performed at this plant on a day-in and day-out basis to
10 keep the equipment and production lines running.
11 Plaintiff's point to Harrell in an effort to defeat
12 our motion. But Harrell, actually, supports the Hoechst
13 Celanese motion in two ways. First, Harrell concluded
14 that the responsibilities that the outside contractor had
15 in relation to the property owner met both the first and
16 second test of the statutory employee doctrine. Because
17 the contractor maintained every aspect of the daily
18 operations of the property owner's land, like Daniel did
19 for Hoechst Celanese.
20 The Court stated that the first and second tests may
21 be met if the owner, otherwise, "would have to -- would
22 have had to hire direct employees to complete those
23 duties." In fact, the Court stated that, "Their
24 relationship is exactly the type that the statutory
25 employer theory is meant to cover." This is the same

1 relationship between Hoechst Celanese and Daniel.
2 Second, Plaintiff misconstrues Harrell, its
3 conclusion, with respect to an owner's workers' comp
4 coverage requirements. In Harrell, Pineland did not
5 provide any workers' comp coverage to protect Harrell.
6 That's a 180 degrees difference from the facts that we
7 have in this case where Hoechst Celanese was obligated
8 under the contract to pay for Mr. Seay's workers' comp
9 coverage.
10 Plaintiff's citations to Harrell were taken out of
11 context and ignore that Hoechst Celanese reimbursed Daniel
12 for workers' comp coverage, just like DuPont did in the
13 Ewing and Bumgardner cases in which you determined that
14 Mr. Ewing and Mr. Bumgardner were statutory employees of
15 DuPont.
16 Moreover, Hoechst Celanese has produced policies
17 showing that it maintained workers' compensation coverage
18 during the time period at issue, thus, complying with
19 Sections 42-5-10 and 42-5-20.
20 And, finally, Plaintiff's point to Section 42-11-70
21 in an effort to suggest to this Court that Plaintiff
22 cannot file a workers' comp claim. Plaintiff's citation
23 is incorrect, however, as 42-15-40 governs the time frame
24 for filing a claim. And under 42-15-40, Plaintiff's have
25 until August 8th of this year to file a workers' comp

1 claim.

2 This is a covered claim under the South Carolina

3 Workers' Compensation Act. Mr. Seay was diagnosed with an

4 occupational disease, which is covered under the Act.

5 Nothing in 42-11-70 bars Plaintiff's from filing a

6 workers' compensation claim here.

7 Plaintiff's have not even tried to file a workers'

8 comp claim yet, to our knowledge, to be able to assert

9 that they can't do it. They're jumping the gun by

10 predicting what the commission would hold, rather than

11 filing the claim and, actually, having it be denied.

12 This Court concluded that Mr. Ewing's and

13 Mr. Bumgardner's claims were subject to the exclusive

14 remedy provision of the South Carolina Workers'

15 Compensation Act, and the same facts in law apply in this

16 instance.

17 Even if you accept Plaintiff's interpretation of the

18 interaction between 42-11-70 and 42-15-40, it does not

19 excuse Plaintiff's from first filing the workers' comp

20 claim. Even the commission decisions that they attach to

21 their response support our position in that regard.

22 In the conclusions of law sections in those

23 decisions, the commission states that it has jurisdiction

24 over the claims. Nothing in either decision suggests that

25 such claims are barred from being filed. And they,

1 certainly, don't confer jurisdiction to a civil court.
2 So as this Court found in the Ewing case in 2010 and
3 in the Bumgardner case in 2011, that those gentlemen were
4 statutory employees of DuPont, it should find that
5 Mr. Seay is a statutory employee of Hoechst Celanese,
6 thus, conferring exclusive jurisdiction to the South
7 Carolina Industrial Commission.
8 Mr. Seay's work was necessary, essential, and
9 integral to the maintenance, and upkeep, and continued
10 production of the Hoechst Celanese plant. Any doubt is to
11 be resolved in favor of coverage under the South Carolina
12 workers' compensation law, as held in Revels. And under
13 Gentry and Wheeler, this Court lacks jurisdiction over
14 Plaintiff's workers' compensation claim. And the case
15 should be dismissed as to Hoechst Celanese because it's
16 barred by the exclusive remedy provisions of the South
17 Carolina workers' compensation law.
18 Mr. Seay is a statutory employee of Hoechst Celanese.
19 And Plaintiff's exclusive remedy is to pursue a workers'
20 compensation claim. Whether or not coverage is granted as
21 to Mr. Seay is a decision for the commission, not a
22 decision for this Court. And it's the commission, not
23 this Court, that has jurisdiction over the claim.
24 And because Plaintiff's common law claims are barred,
25 any loss of consortium claim would, also, be barred under

1 Lowery v. Wade Hampton, 270 S.C. 194, from 1978. And CNA
2 would, thus, submit -- thus, request that this Court grant
3 its motion to dismiss or, in the alternative, motion for
4 summary judgment.
5 THE COURT: All right. Thank you, sir.
6 MR. COLLIER: Thank you, Your Honor.
7 THE COURT: Yes, sir.
8 MR. PANATIER: Your Honor, is it okay if I stand
9 here?
10 THE COURT: Wherever you want.
11 MR. PANATIER: Okay. So, honestly, I think the best
12 thing to do is start at the end.
13 The Truax case, which we attached to our last
14 response -- and we went back and forth three or four
15 times -- I think addresses this issue squarely with very
16 little analysis of trying to determine subjective facts
17 about statutory employer.
18 Truax was an asbestosis workers' compensation claim.
19 This was 2009. I have a copy of the case. You may have
20 it already, or I can --
21 THE COURT: I think we've got it, yes.
22 MR. PANATIER: Okay. So Truax -- this was the first
23 one we're aware of where the Workers' Compensation
24 Commission, actually, analyzed the statute for whether or
25 not there was a cognizable claim for pulmonary injury that

1 was diagnosed more than two years after the exposure.
2 And they say, point blank, there is no claim. If a
3 pulmonary disease occurs more than two years after, with
4 the exception of ionizing radiation, that was the intent
5 of the statute, to disallow the claim.
6 And this was a case of asbestosis. This man, his
7 last exposure was 1972. He applied 32 years later. And
8 they said, claim denied, very clearly, bright-line rule.
9 He could have filed under the statute of limitations.
10 He would have had two years beyond the two years after his
11 exposure. So he would have had four years after his
12 exposure to file the claim. It would have been recognized
13 at that point. But anything after four years -- the two
14 years post-exposure, plus the statute of limitations -- is
15 not going to be compensable.
16 And on -- it's a four-page decision. But on Page 4
17 under Findings, they state that under the plain-meaning
18 rule, it is not the Court's place to change the meaning of
19 a clear and unambiguous statute.
20 42-11-70 is abundantly clear in its intent to
21 disallow compensation for disability or death for an
22 occupational disease of a pulmonary nature that is not
23 contracted within two years of the date of the last
24 injurious exposure. And the last injurious exposure in
25 this case, depending on what records we look at, is either

1 going to be '79 or '80. And so Mr. Seay would have had
2 two years to file a claim for a disease that had not
3 manifested.
4 They go on to say, "Notwithstanding the latency
5 period of asbestos-related diseases, such as asbestosis,
6 the legislature has never amended this provision. And its
7 intent is abundantly explicit. Any doubt as to the intent
8 of the legislature to exclude any pulmonary-related
9 diseases from compensation, unless contracted within two
10 years of the claimant's last exposure, is removed when
11 looking at the lone exception to this rule, that being for
12 ionizing radiation."
13 And then they define what is contracted. "Under the
14 plain language of 42-11-70, it is impossible to reconcile
15 the 32-year gap in this case between the claimant's last
16 date of employment, '72, and when he contracted his
17 disease, i.e., became disabled in 2006."
18 He said -- later they say, "As a result, the claimant
19 has not met his burden of proof in showing that the
20 occupational disease was contracted within two years after
21 his last exposure in '72 under 42-11-70. And his claim is
22 denied."
23 Certainly, Your Honor is not here as part of the
24 Workers' Compensation Commission. But you can determine
25 whether or not there is a claim for this individual, and

1 whether or not he would have relief within the workers'
2 compensation area. But he does not, obviously, under that
3 part of the statute.
4 My next point goes to whether or not Celanese was
5 even a subscriber. Now, in Harrell, Harrell makes it very
6 clear that it doesn't matter if the man was able to
7 recover workers' compensation from his direct employer,
8 which he did. They both had a duty to, both the owner of
9 the premises and his own contractor.
10 In this case, based on the contract, Daniel entered a
11 good contract where they said, Celanese, you're going to
12 pay our workers' compensation costs. That doesn't obviate
13 Celanese's obligation to have workers' compensation.
14 And Harrell makes that very, very clear when they
15 discuss the dissent in the case. They say, "The dissent
16 mistakenly looks at Harrell's situation in hindsight,
17 denying a tort suit against Pineland. Because, as it
18 turns out, Harrell successfully recovered some
19 compensation from Folk" -- that's the contractor, his
20 employer -- "ignores the policy behind requiring a
21 statutory employer, as well as the direct employer to
22 secure payment of compensation in order to guarantee tort
23 immunity. It is true that, in this situation, Harrell may
24 recover in both tort and in workers' compensation.
25 However, Harrell is recovering from two separate entities,

1 each that owed him a responsibility to secure
2 compensation."
3 And they reiterate that two or three times in that
4 case, that it doesn't matter whether or not the direct
5 employer had workers' comp. Daniel did, and Celanese paid
6 for it. But there's no case law to support their position
7 that, because we reimbursed them for their costs, we no
8 longer have an obligation to maintain workers' comp
9 insurance.
10 And lastly on that issue, they don't have workers'
11 comp insurance for the whole time, much less proof of it.
12 What they have is they have located workers' comp
13 insurance from 1968 through November of 1972, and, again,
14 from May of '78 through May of '80. There is a
15 five-and-a-half-year gap that Celanese has no proof they
16 maintained this insurance for.
17 So at best -- at their best case is that there would
18 be no claim up through '72 if Mr. Seay worked through
19 November of '72, or if he worked after May of '78. But he
20 worked the -- continuously during that period of time
21 right there in the middle, five and a half years. And
22 they've supplied their policies for the early period and
23 the later period.
24 But there's a five-and-a-half-year gap that there is
25 no proof. And that's undisputed. They have an affidavit

1 from an individual, Gary Allen, who says we believe we
2 maintained it, but we don't have the actual proof. And
3 Harrell says you have to maintain the actual records.
4 Lastly, on the issue of statutory employer. Most of
5 the cases cited by Celanese on the issue of the three
6 prongs of analysis for statutory employer are
7 pre-Olmstead. And Olmstead made it clear, look, we can't
8 just analyze this on whether it's important to the
9 business.
10 Certainly -- and Plaintiff's agree -- the maintenance
11 of the facility was extremely important to Celanese's
12 business, but it wasn't part of the business. Celanese
13 didn't have a construction division. They didn't do
14 construction.
15 And all of these cases post-Olmstead have analyzed it
16 in a way where they say, look, even though it's important,
17 was it part of the business? And it was undisputed, not
18 part of Celanese's business. And they didn't ever prior
19 to that time -- prior to Mr. Seay's time do construction
20 or maintenance. It was all done by Daniel people.
21 But that -- I think that that is a -- the three-prong
22 thing is a much more subjective thing than just -- there
23 is no claim under the workers' compensation statute of the
24 two years. And then it's undisputed that Celanese doesn't
25 have insurance for five and a half years.

1 THE COURT: Thank you.
2 MR. COLLIER: Your Honor, may I reply briefly?
3 THE COURT: Sure.
4 MR. COLLIER: As to Section 42-11-70, Plaintiff's are
5 jumping the gun and misconstruing whether they can file a
6 claim versus whether they can collect on a claim. Nothing
7 in 42-11-70 bars them from filing a claim.
8 In the case law attached by the Plaintiff's to their
9 response, the commission states that it has jurisdiction
10 over the claims. While the commission denied coverage in
11 two instances, it's awarded coverage in other instances
12 where the last exposure occurred more than two years
13 before the claim was filed. 42-11-70 doesn't authorize
14 plaintiffs to file a civil suit because they think or are
15 predicting the claim will be denied.
16 Truax doesn't say that you can file a civil suit.
17 Plaintiff's are, essentially, asking this Court to
18 conclude that the commission would deny their claim if
19 they did file it. It would be like, you know, filing an
20 appeal before you receive a decision from the trial court
21 because you think it will be denied.
22 Both of the decisions cited by Plaintiff's, as well
23 as the ones cited in our surreply, make it clear that the
24 commission has the exclusive jurisdiction over these
25 cases. It's for the commission to decide whether the

1 Plaintiff's have a compensable claim under the act. And
2 this Court doesn't have that jurisdiction to make that
3 decision.
4 If you accept their interpretation of the interaction
5 between 42-11-70 and 42-15-40, for anyone in South
6 Carolina to file a workers' comp claim today for a disease
7 related to asbestos exposure, they would have had to have
8 last been exposed to asbestos no earlier than July 27th of
9 2013. That would effectively abrogate any sort of
10 workers' comp claim related to asbestos exposure in South
11 Carolina.
12 In speaking with practitioners and the staff attorney
13 at the workers' comp office, Plaintiff's interpretation
14 that the claim must be filed within two years of the last
15 exposure is not how the cases are reviewed and decided in
16 South Carolina. And workers' comp claims for asbestos
17 exposure are still being pursued under the proper
18 jurisdiction of the commission.
19 It's not within this Court's jurisdiction to
20 determine that workers' comp coverage doesn't exist,
21 because 42-15-40 is what governs it.
22 As to Hoechst Celanese's workers' comp policies on
23 our own employees, Plaintiff's are correct that we cannot
24 produce every policy from 1968 until 1978. But we have
25 produced the policies that were in place when Mr. Seay

1 started working at Hoechst Celanese and when he stopped
2 working at Hoechst Celanese.
3 And, frankly, I'm somewhat surprised that we were
4 able to find the ones that we did, given the passage of
5 more than 40 years. But just because we can't find the
6 remainder of them doesn't mean that they don't exist. It
7 doesn't mean that we didn't have coverage during that
8 period of time, as Mr. Allen stated in his affidavit.
9 Plaintiff's haven't put forth any evidence that we
10 didn't have coverage during that period of time. And it
11 should be reasonably construed that we wouldn't have just
12 dropped workers' comp coverage for a period of five years.
13 Finally, you know, with respect to your prior rulings
14 in the Ewing and the Bumgardner cases, I don't think that
15 there's anything that could be more necessary, essential,
16 and integral to a plant's operation than the maintenance
17 of the equipment and the piping systems inside it.
18 Thank you, Your Honor.
19 THE COURT: Is there any evidence that Celanese
20 employees ever did maintenance?
21 MR. COLLIER: They did do maintenance, yes, Your
22 Honor, after -- we're not sure of the exact date. But at
23 some point in time, the group of Daniels folks who were
24 there doing the maintenance were hired on as Hoechst
25 Celanese employees.

1 THE COURT: When was that?
2 MR. COLLIER: It was -- it was -- I don't know the
3 exact date. It was sometime after Mr. Seay worked there.
4 But it was in the -- it was either in the '80s -- '80s or
5 '90s. And it hasn't been able to be clarified much
6 further than that.
7 But, yes, Your Honor, at some point in time, all
8 those Daniel employees were brought on the Hoechst
9 Celanese payroll, and continued to do the maintenance and
10 upkeep work of the -- of all the pumps, and valves, and
11 piping systems just like they did while they were -- just
12 wearing a different hard hat, basically.
13 THE COURT: Thank you.
14 All right. I'm persuaded by the Olmstead decision,
15 which overruled quite a body of law about this statutory
16 employer issue. And I don't find that the maintenance
17 here was a part of the trade business or occupation of
18 Celanese.
19 The underlying test is whether the activity is an
20 important or an integral part or process of the business.
21 But there is no evidence that the employer here performed
22 maintenance while Mr. Seay was employed there on its own.
23 So I don't believe it was part or process of Celanese's
24 business.
25 If you look at cases around the country that have

1 grappled with this language, one of which is the Fourth
2 Circuit, which is -- noted that with a surprising degree
3 of harmony, courts have agreed upon a general rule of
4 thumb that the statute covers all situations in which work
5 is accomplished which this employer would ordinarily do
6 through employees. And I'm paraphrasing, but that's
7 Corollo v. S.S. Kresge Company, 456 F.2nd 306.
8 At 312, note eight, quoting Larson in workmen's
9 compensation law, it was applying South Carolina law at
10 the time and, also, relied on Chief Judge Sanders' opinion
11 in Raines v. Gould, Inc., which was about the construction
12 business.
13 But he points out that a, "Manufacturer must have a
14 plant. But this fact alone does not make the work of
15 constructing a plant a part of the trade or business of
16 every manufacturer who engages a contractor to construct a
17 plant. Otherwise, the employees of every contractor so
18 engaged would be statutory employees of every such
19 manufacturer. We are aware of no case in any jurisdiction
20 holding this. And we do not believe this is what the
21 legislature intended when it enacted the South Carolina
22 Workers' Compensation Act."
23 Maintenance work equates with construction work in
24 this context. So I don't see how it meets the plain
25 language of the statute. Even if it did, I find there is

1 some question about the applicability of the workers'
2 compensation coverage for Celanese. There's a gap in it.
3 Therefore, they wouldn't qualify as a statutory employer.
4 As to the question of whether the Plaintiff here
5 would have the right to pursue a workers' comp claim in
6 light of Truax, I don't have any comment on that other
7 than to say that it's not entering into my analysis here.
8 I believe the statute says that the Workers' Compensation
9 Act grants rights that -- I forget the exact phrasing the
10 legislature used. But the idea being that if a person has
11 rights under the Act, the statutory employer doctrine can
12 apply.
13 So here, there's a question about whether such rights
14 exist because of the gap in coverage. And finding that
15 there is a substantive right is not something I can do.
16 That's something the workers' compensation or some higher
17 court would have to determine. So I'm not relying on that
18 in reaching my decision.
19 Okay. So I respectfully deny the motion.
20 MS. SHOFNER: Your Honor, I think I understand your
21 denial and your ruling.
22 THE COURT: Okay.
23 MS. SHOFNER: But we would -- we believe that under
24 Code 1976, Section 14-3-330 that this is a final
25 determination of a substantial matter or right as to

1 Celanese on the whole or part of this action. And we
2 would like to have a direct appeal of this order.
3 THE COURT: Okay.
4 MS. SHOFNER: And, therefore, I think we need the
5 Court -- we would request the Court to make a final -- to
6 draft a final order as to this issue so that we may
7 directly appeal it to the Court of Appeals.
8 THE COURT: Well, I'm, certainly, going to do
9 whatever you need me to do to enable you to pursue your
10 appellate rights. I don't know how quickly I can draft up
11 an order when I'm getting ready to start a trial, though.
12 MS. SHOFNER: Well, and -- I mean, I guess that's
13 the -- that's the issue here is, if it's directly
14 appealable, then do we have to go through the trial as to
15 us, for Celanese, while we're appealing this, since
16 it's -- we feel it's a substantial -- it's a determination
17 of a substantial matter for -- as to Celanese?
18 THE COURT: I don't know. That's an interesting
19 question, one that's above my pay grade. I don't --
20 MS. SHOFNER: So -- and I guess if it is -- if it is
21 a final order, then we can take a notice of appeal. I'm
22 happy to draft that order for you to have tomorrow to take
23 a look at so that we can then file our notice of appeal,
24 and not have to go forward with the trial on this issue.
25 MR. PANATIER: And we -- and we'll do some research

1 to figure out whether or not it's an appealable issue at
2 this point as well.
3 MR. TIVIN: Your Honor, Mark Tivin on behalf of John
4 Crane.
5 If they're -- if Celanese is requesting to stay their
6 portion -- in a sense, they're asking to stay their
7 portion of the case, then John Crane would be severely
8 prejudiced. The entire case has to be stayed at that
9 point in time. Because it comes to questions of
10 apportionment and other questions. And you can't do the
11 trial half and not half. So if the stay is being
12 granted --
13 MR. PANATIER: I totally disagree. There isn't any
14 apportionment.
15 And so the case could be tried as to John Crane, or
16 it could be tried as to Celanese. But if Celanese wants
17 to appeal, and it's an appealable issue, then they can
18 appeal. But I don't think that the Plaintiff's rights to
19 their trial should be prejudiced because John Crane
20 doesn't want to try the case anymore.
21 MR. TIVIN: That is -- that's incorrect. We have a
22 right to apportion between all -- between the Defendants
23 who are -- go to the jury. And if Celanese is -- if their
24 portion of the action is stayed, we would not be able to
25 apportion -- to waste the judicial resources because the

1 case should be tried one time.

2 And if -- when Celanese goes, if there's -- the

3 apportionment could never work if you tried a case one at

4 a time. Both the Defendants have to be there.

5 So if they're requesting a stay of this action so

6 they can pursue the direct appeal, John Crane would

7 request a stay so the entire matter could be tried at once

8 for apportionment purposes.

9 If Your Honor chooses not to stay the action and

10 continue on with the case with Celanese here, then

11 obviously, we -- if they appeal after any verdict. But if

12 they're appealing now in the middle of the case, it's a

13 waste of judicial resources and prejudicial to John Crane

14 of not having all the Defendants in the trial against

15 which whom we could seek apportionment.

16 MR. PANATIER: Certainly, they could --

17 THE COURT: Oh, well, the plot thickens.

18 MR. PANATIER: I mean, obviously, they could put on

19 any evidence they want to if Celanese is -- you know, call

20 it causation to influence the juries ultimate decision.

21 But if they're the only Defendant at trial, then it's not

22 apportioned to anybody else. And they would be the only

23 Defendant at trial because Celanese is gone.

24 So that would be -- that would be our position. But

25 I think, obviously, we should probably look at the issue

1 and see if it really is an appealable issue at this point.
2 MR. TIVIN: Exactly, Your Honor. If Celanese appeals
3 and loses their appeal, then John Crane is prejudiced
4 because we would have been able to apportion with them at
5 trial. And then we'd lose that right because there's an
6 appellate case going on while we're sitting in the exact
7 same action while we're trying the case.
8 THE COURT: I don't know if it's immediately
9 appealable. Again, that's not my issue. I mean, that's
10 something y'all will have to have ruled upon elsewhere.
11 But I know that if you're denied a mode of trial,
12 such as jury versus nonjury, that's immediately
13 appealable. And I'm just trying to think out loud in
14 terms of --
15 MS. SHOFNER: The case law that I found that I
16 believe supports our position that this is immediately
17 appealable, it's Watson v. Underwood, 756 S.E.2d 155.
18 It's a 2014 case. And it says that, "The determination of
19 whether a party may immediately appeal an order issued
20 before or during trial is governed primarily by Section
21 14-3-330 of the South Carolina code."
22 And an order -- and it involves -- "An order
23 'involves the merits' as the term is used under that
24 section and is immediately appealable when it finally
25 determines some substantial matter forming the whole or

1 part of some cause of action or defense."
2 So our defense is that we are a statutory employer.
3 That's a substantial right. And you have denied that and
4 said that we are not. And, therefore, we believe it's
5 immediately appealable. And -- and we would need a final
6 order in order to file our notice of appeal that we'd
7 immediately take to the appellate court.
8 If you're saying that it's not your position to
9 determine whether that is an appealable order and it's the
10 Court of Appeals', then I think we have a right to the
11 final order so we can appeal it. Because I don't know who
12 else would make that determination or not, unless it was
13 you or the Court of Appeals.
14 THE COURT: I don't think I can make that
15 determination.
16 MS. SHOFNER: Okay. But, you know, you have
17 indicated that you will give us a final order on this
18 issue; correct?
19 THE COURT: I'll do whatever I can, Ms. Shofner, to
20 help you efficiently pursue your appellate rights. And if
21 you just need us to do a form order that says a formal
22 order is going to follow so you can go ahead and take it
23 up, I'll be happy to do that. I don't want to --
24 MS. SHOFNER: Okay.
25 THE COURT: But, you know, the problem is, once you

1 appeal it, I could lose jurisdiction of the issue. And if
2 there's not a formal order out there, then the Court of
3 Appeals is probably going to say, what are we looking at
4 here?
5 So it seems to me the better thing to do would just
6 be some short order that -- I mean, it's hard for me to do
7 it. We have another motion by another Defendant, for
8 instance. It's hard for me to do it efficiently. And
9 maybe y'all can hammer it out amongst yourselves. And if
10 it's something I agree with, I can sign it and then you
11 can take it up to --
12 MR. ELLIOTT: Judge, this is James Elliott for John
13 Crane.
14 THE COURT: Yes, sir, Mr. Elliott.
15 MR. ELLIOTT: Just briefly. We recently had a
16 similar issue in the Shipwatch [phonetic] case with Judge
17 Dennis down in Charleston --
18 THE COURT: Okay.
19 MR. ELLIOTT: -- where there was an appeal taken by
20 one party. It was the Plaintiff. And Judge Dennis,
21 likewise, says, I don't know if it's appealable or not.
22 You've got to take that up with the appellate courts. And
23 the appellate court, ultimately, made the decision as to
24 whether or not it was a proper appeal.
25 But there was a motion to stay the case by the other

1 parties. And that was an issue for the trial judge to
2 take up. It was that he had to determine whether or not
3 that issue, which was being appealed, impacted the balance
4 of the case, such that it had to be stayed.
5 So I think that, although the one issue about whether
6 or not it's appealable is not your decision, but whether
7 or not to stay the case, I believe, is a decision for Your
8 Honor.
9 THE COURT: Well, what did he do?
10 MR. ELLIOTT: He stayed the whole case.
11 THE COURT: Did he?
12 MR. ELLIOTT: He did.
13 THE COURT: Did he issue an order or just --
14 MR. ELLIOTT: He -- For the stay?
15 THE COURT: Yes.
16 MR. ELLIOTT: Yes, he did.
17 I don't remember if it was a written order. I mean,
18 it's been a few months. But I was just going to look
19 at -- I was trying to remember the rule on what happens
20 with a stay. And I'm just -- Sam just handed it to me.
21 And it says, "As a general rule, the service of a
22 notice of appeal in a civil matter acts to automatically
23 stay matters decided in the order, judgment, decree, or
24 decision on appeal and to automatically stay the relief
25 ordered. In the appeal order, judgment, or decree, this

1 automatic stay continues in effect for the duration of the
2 appeal, unless lifted by order of the lower court, the
3 administrative tribunal, appellate court, or justice of
4 the appellate court. The lower court or administrative
5 tribunal retains jurisdiction over matters not affected by
6 the appeal."
7 And our argument would be we would be impacted.
8 Because, regardless of whether they say we can apportion
9 or not, we do have the right under the statute to argue
10 apportionment. And if they're in the case, they'd be on
11 the verdict form and we could, perhaps, gain
12 apportionment.
13 But if they're not in the case, Your Honor might rule
14 that they can't be on the verdict form because they're not
15 a Defendant. And, therefore, they can't be apportioned
16 any responsibility for any part of the verdict.
17 And so, clearly, we're directly impacted by that.
18 MR. TIVIN: And just as an aside, Your Honor. If you
19 decide that you can apportion like you allow the case to
20 go forward and we can apportion against Celanese and they
21 win on their appeal, then the judgment -- the
22 apportionment wouldn't stand, because they wouldn't have
23 been a Defendant at the time of trial if they prevail on
24 their appeal.
25 And on the flip side, if you don't allow -- if you

1 allow them to appeal and you have us go forward and you
2 don't allow us to apportion and your order here is
3 affirmed, then that other prior judgment, also, would be
4 prejudicial to John Crane because we would have been able
5 to apportion.
6 MR. PANATIER: I have an idea. How about this? In
7 these -- you know, in a lot of these cases around the
8 country where we can apportion to people who aren't there
9 just so the jury can apportion it, then the only person
10 who pays anything is the trial defendant.
11 I'll agree you can apportion to Celanese and it's not
12 binding on Celanese. If they come back and we -- we're
13 not going to argue it's res judicata.
14 So I'll agree. You can apportion to Celanese, try
15 the case against Celanese, put on the case against
16 Celanese. We'll try the case against you. And the jury
17 can apportion between you and Celanese. And I'll agree
18 it's not res judicata as to Celanese.
19 THE COURT: Who are you asking?
20 MR. PANATIER: I'm just saying -- I'm proposing that.
21 I'm proposing that to the Court so that -- one, so that
22 the Seay family gets the trial.
23 THE COURT: Yeah.
24 MR. PANATIER: So John Crane's concerns about
25 apportionment are addressed. And Celanese's concerns

1 about being able to appeal without having some
2 res judicata as to their apportionment is resolved.
3 So I think -- I think that's a proposal that would
4 work. The only prejudiced party would be us, because
5 we're agreeing to apportion to a non-defendant.
6 THE COURT: Well --
7 MR. TIVIN: And, Your Honor, that could lead to
8 inconsistent verdicts.
9 THE COURT: Maybe I'm missing something. But what
10 jumps out to me about that proposal is if Celanese is
11 gone, how are they going to present their defense?
12 And is John Crane -- do they have the right to a
13 stay, instead of having some empty chair that -- even
14 though it's part of a proposal -- I don't know. It'd have
15 to be by consent, obviously. But I'm having a hard time
16 thinking that through.
17 MR. PANATIER: If it's by consent, I think that ends
18 the discussion.
19 THE COURT: Well, it usually does.
20 MR. PANATIER: Unless Mark wants to try the case
21 right now. But, anyway, I'm putting it out there as an
22 option.
23 THE COURT: Well, I appreciate your creativity.
24 Okay.
25 MR. PANATIER: So should we brief the issue on

1 appealability? I guess -- well, if you're saying it's not
2 your call, I guess they're just going to appeal --
3 MS. SHOFNER: I -- I think what I will try to do is,
4 today and tonight, to draft a final order, based on your
5 ruling, and submit it to them to see if we can agree on
6 it. And if we get close, we can submit it to you and see
7 if you agree on it for a final resolution. And then we
8 may file our notice of appeal once we get the final order
9 signed by you.
10 Does that sound like a proper way to proceed at this
11 point?
12 THE COURT: That's fine.
13 MR. TIVIN: Based on that, Your Honor, John Crane
14 would make a motion to stay the proceedings until their
15 appeal is handled, however the appeal gets handled.
16 MR. PANATIER: And just for clarification. Then I
17 would just like to -- Ms. Shofner just said, "we may
18 appeal." I think a motion for a stay would be ripe if you
19 are appealing.
20 MS. SHOFNER: I mean, I think we're definitely
21 appealing.
22 MR. PANATIER: Okay.
23 MS. SHOFNER: I think --
24 MR. PANATIER: I just wanted to -- all right.
25 Your Honor, could --

1 THE COURT: Go ahead. Yes.
2 MR. PANATIER: Okay. I'm thinking again. May I --
3 perhaps, I could take a shot in the dark at resolving with
4 Celanese. So maybe I could just chat with their people
5 and just see if there's a way to do it before any stay.
6 THE COURT: Yeah. Why don't you do that while we do
7 Ms. Techman's motion.
8 MR. PANATIER: Okay.
9 THE COURT: Okay. Thank you.
10 (Pause.)
11 THE COURT: Well, I guess you can't. She's -- maybe
12 that was --
13 MR. PANATIER: No, no.
14 MS. TECHMAN: Judge, this will be very brief.
15 THE COURT: Yes.
16 MS. TECHMAN: Jennifer Techman on behalf of Spirax
17 Sarco.
18 Judge, I know the Court has our summary judgment
19 motion. It is what we call a no-evidence motion in this
20 litigation. Certainly, on the heels of what we just went
21 through, this will look very, very -- pretty black and
22 white to you.
23 In this case, we had testimony from Mr. Seay, and we
24 had testimony from three of his former co-workers. None
25 of those individuals gave any testimony regarding my

1 client. So what we don't have is direct or even
2 circumstantial evidence that we're at the job site.
3 As the Court is aware, the Plaintiff's burden is to
4 put forth evidence of exposure to the product. And the
5 South Carolina Supreme Court has said that the exposure
6 must be sufficient. The sufficiency is measured by the
7 frequency, regularity, and proximity test.
8 Here, we have none of that. And I will save the
9 remainder of my time for rebuttal.
10 THE COURT: Thank you, ma'am.
11 Mr. Paul.
12 MR. PAUL: Thank you, Your Honor.
13 What we have here is Mr. Seay was a millwright in the
14 Spartanburg plant. As part of his responsibilities as a
15 millwright, he was performing maintenance on pumps and
16 valves, which were part of an entire steam system. There
17 would have been thousands of steam traps located within
18 the facility where he was doing maintenance on pumps and
19 valves.
20 We have testimony from co-workers in a plant owned by
21 Celanese in the Shelby, North Carolina, plant that put
22 Spirax Sarco steam traps all throughout the plant.
23 Although Mr. Seay did not directly work on steam traps,
24 it's Plaintiff's allegations that he would have been with
25 and around maintenance on the Spirax Sarco steam traps

1 throughout the plant for roughly the eight or nine years
2 that he was at the plant.
3 THE COURT: All right. I'll grant the motion for
4 summary judgment.
5 MS. TECHMAN: Thank you, Judge.
6 I have an order.
7 (Pause.)
8 MS. TECHMAN: I'll make sure that gets filed.
9 Thank you, Judge.
10 THE COURT: Okay. Good to see you.
11 All right. So why don't we just go ahead and break
12 for lunch, and give you time to talk.
13 And do y'all -- is there any way you can find out if
14 Judge Dennis --
15 MR. ELLIOTT: Issued a written order?
16 THE COURT: -- did a written order? Or if you've got
17 any other authority about this stay.
18 MR. ELLIOTT: I can call the office. It might have
19 been a verbal.
20 MS. NETTLES: We'll check.
21 THE COURT: He might have barked -- I mean,
22 spoken that.
23 MR. ELLIOTT: It was a summary judgment motion
24 against the plaintiff with one party. And the plaintiff
25 appealed that. And he just -- it's similar. I mean, it

1 was the reverse, but similar to here, in that he granted
2 it.
3 Does that make sense?
4 THE COURT: Okay. We'll just come back at 2:00.
5 Thank you.
6 **********END OF TRANSCRIPT OF RECORD**********
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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.

DEFENDANT'S EXHIBIT
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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 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

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

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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.

-APPENDIX D-

THE CRAFTSMEN WILL BE REQUIRED TO FURNISH ONE OF THE FOLLOWING:

ELECTRICIANS	MILLWRIGHTS
Leather Pouch	8" Adjustable Wrench
Electricians Skinning Knife	3" Screwdriver
10" Adjustable Wrench w/insulated Handles	10" Screwdriver
Channel Lock Pliers w/insulated Handles	6" Phillips Screwdriver
Heavy Duty Diagonals w/insulated Handles	Pair Channel Lock Pliers
Pair long noes Pliers	Set Allen Wrenches
Pair Lineman's Pliers	Pair 8" Diagonal Pliers
Electrician's Tool Belt	6 Ft. Folding rule
Fuse Puller	6" Scale
Crimping Pliers	Torpedo Level
Wedge Type Screwdriver	Feeler Cage
Tool Box	Cotter Key Extractor
Ball Peen Hammer	Ball Peen Hammer
12" Screwdriver	Pry Bar
6" Screwdriver	Hacksaw Frame
1 1/2" Screwdriver	Line Level
6" Thin Blade Screwdriver	Plumb Bob
3" Thin Blade Screwdriver	Chisel and Punch Set
6" Phillips Head Screwdriver	Pair Visegrip Pliers
Set Allen Head Wrenches	Set Combination Wrenches to 1¼
1/2" to 9/16" Box Wrenches	Dial Indicator
3/8" to 7/16" Box Wrenches	Set Calipers
Burnishing Tool	Set Micrometers to 2"
8" Adjustable Wrench	Thread Cage
4" Adjustable Wrench	Set Dividers
8" Screwdriver	Packing Remover
2 1/2" Long Screw Starter	Socket Set up to 1 1/4"
5 1/4" Long Screw Starter	
9 1/2" Long Screw Starter	
Set Ignition Wrenches	
10" Wedge Screw Holder	
Midget Fuse Puller	

-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

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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.

Orig & 1: GAV
cc: M&M file
B. Witherspoon
Yalo Inc

DEFENDANT'S EXHIBIT
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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.

(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.

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

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Grund: as p.R. Longgaker NOV 15 1975 Name:

(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

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

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 PLANT (Note 1)	MECHANIC CIVIL (Note 2)	MECHANIC E & I (Note 3)	MECHANIC UTILITY (Note 4)	CRAFTSMAN - (Note 5) LABOR	CRAFTSMAN PIPE/WELD	CRAFTSMAN CARP.	CRAFTSMAN PAINTER	CRAFTSMAN 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

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

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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.

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

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

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"

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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 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"

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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

Form 2 (Rev 3-71)

DANIEL INTERNATIONAL CORPORATION

EXECUTIVE MEMORANDUM

TO: Division Managers, Project Managers, Superintendents and Safety Engineers

SEQUENCE NUMBER: 2-10

FROM: Buck Mickel

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

DEFENDANT'S EXHIBIT
CNA 3
10/8/15

Daniel1023

Dennis Seay

Seay, Dennis (Vol. 01) - 01/17/2014

1 CLIP (RUNNING 01:24:09.476)

092915_checked

DS001 71 SEGMENTS (RUNNING 01:24:09.476)

1. PAGE 7:02 TO 23:19 (RUNNING 00:23:41.525)

02 Q. Could you please introduce yourself to the
03 Jury.
04 A. I'm Dennis Seay.
05 Q. And how old are you?
06 A. I'm 69. I will soon be 70 the 28th of
07 January.
08 Q. Where do you live?
09 A. I live in Spartanburg, South Carolina,
10 630 Overhill Drive.
11 Q. How long have you lived in Spartanburg?
12 A. All my life.
13 Q. Did you grow up here?
14 A. I grew up here.
15 Q. And, sir, are you married?
16 A. Yes, ma'am.
17 Q. Who are you married to?
18 A. I'm married to Linda Seay. She was a
19 McMahan, Linda McMahan.
20 Q. Now, I won't put you on the spot, but do you
21 recall when you guys got married?
22 A. Yes, I do. It's been some 37 years ago.
23 Oh, yeah, 37, I believe.
24 (Exhibit No. 1 was marked for
25 identification.)
00008:01 Q. And, sir, I'm going to mark or hand you what
02 I have marked as Exhibit 1, and this is -- could you
03 take a look at this and then show this to the Jury,
04 please?
05 A. Yes. That's a picture of my wife and me
06 back in my younger days when I was young.
07 Q. Looks like that's around Christmas.
08 A. Yeah, it is Christmastime.
09 Q. Sir, do you and your wife have any children?
10 A. Yes, we do.
11 Q. How many kids do you have?
12 A. We have three.
13 Q. Do they live in the area?
14 A. Yes, ma'am; they live in Spartanburg.
15 Q. Do you have any grandkids?
16 A. I have six, six girls.
17 Q. Houseful of girls.
18 A. Houseful.
19 (Exhibit No. 2 was marked for
20 identification.)
21 Q. Sir, you have given me some photos. I'm
22 going to show you another one. Could you please take
23 a look at this and -- and tell the Jury what we're
24 looking at?
25 A. Yes. That's me and one of my grandkids
00009:01 there where we were having an outing. We get
02 together and have outings pretty often as a family.
03 Q. That photo looks like it's at a soccer game;
04 is that right?
05 A. Yes, it is. Yes, it is. I believe it is.

Court's EXHIBIT
1
9/8/15

06 Q. Would you consider your family to be a close
07 family?
08 A. Very close. It's unusual. I was
09 thinking -- thinking last night when I went to bed, I
10 don't guess we have ever had a -- and it's unusual --
11 never had a cross word with my in-laws or son-in-law
12 in any way whatsoever, and that's -- I think that's
13 sort of unusual. We have never had a family fuss or
14 parent and son and daughter-in-law fuss. We -- we've
15 been extremely, extremely close -- close-related
16 family.
17 Q. Are you close with your grandkids?
18 A. Very close. My grandkids is number one.
19 Q. What types of activities do you do with your
20 grandkids?
21 A. Me and my grandkids used to go fishing. We
22 would go to the beach and fly kites. We would get
23 down on the beach -- I've had two or three kites, and
24 we would fly those and we would go out fishing, find
25 a fishing -- good fishing spot, and we would go
00010:01 fishing about every other day and play ball and
02 everything else. We just did all kinds of things.
03 Q. Did you go to their dance recitals?
04 A. Go to their dance recitals and soccer games,
05 basketball games and soccer games.
06 (Exhibit No. 5 was marked for
07 identification.)
08 Q. Sir, I'm going to hand you Exhibit 5, which
09 is another photo that you guys have given us. Would
10 you take a look at that.
11 A. Yes. That's another photo that was taken up
12 at my son's house when we were having a get-together
13 eating.
14 Q. And could you go through and introduce to
15 the Jury who we're looking at, this family of girls?
16 A. Yes. That's Pressley there. She's -- she's
17 been with us since she was a little bitty baby. And,
18 man, she is -- she loves me to death. And I love all
19 my grandkids, but if -- I can't say I got a special
20 grandkid, but if I did have, it would have to be that
21 little Pressley.
22 Q. Well, sir, you're under oath today, so -- I
23 will ask --
24 A. And this is Emmy, one of my other
25 granddaughters; she's very special to me. And this
00011:01 is my newest one, is Savanna; she's two years old.
02 And I've been telling her for the last year, I would
03 put my finger up like that and I said, Poppa and
04 Savanna. So they came to visit us the night before
05 last, and they was sitting over there in that chair,
06 and my wife got her and put up her two fingers, she
07 said, Savanna, Mamaw. Little Savanna said, huh-uh,
08 Savanna, Poppa.
09 And this is my wife, and that's Bella over
10 here, my other -- barely have got her in the picture.
11 Bella, my other granddaughter. And they all are
12 very, very, very special to me. I wished I had 50
13 more years to spend with them, I really do. I -- I
14 love them dearly, and they love me dearly.
15 Q. Sir, could you tell the Jury why we're
16 sitting here in your home taking your deposition
17 today?
18 A. I -- I got sick and I came down -- I -- I've
19 been going to the doctor -- you want me to tell the
20 whole story?
21 Q. Sure. How about this, sir: Have you been

22 diagnosed with a cancer?
23 A. Ma'am?
24 Q. Have you been diagnosed with a cancer?
25 A. Yes, I have. I have been diagnosed with a
00012:01 cancer with -- that asbestos cancer, I can't hardly
02 pronounce it -- mesothelioma.
03 Q. Mesothelioma?
04 A. Right. And --
05 Q. Do you recall when you were diagnosed with
06 mesothelioma?
07 A. I was diagnosed with that here back, I
08 believe it was in August, this past August. But I've
09 been going to the doctors for years with the same
10 symptoms, and they --
11 Q. Could you just describe to the Jury your
12 symptoms that you had leading up to your diagnosis?
13 A. Leading up to it, I have been having a lot
14 of pain in here, right here, and I'd describe it
15 pain, right here, every time I went to the doctor.
16 And they would X-ray me and -- and check me and --
17 and they would diagnose it as COPD or -- or
18 congestive heart failure is their only -- after a
19 long period of time, their only conclusion that they
20 could come up with. Do you want me to continue on
21 that line?
22 Q. Sure. So after you first started seeing
23 doctors, did any of your symptoms change leading up
24 to your diagnosis in August of 2013?
25 A. No, they were all the same. Just for the
00013:01 last four, five years, been the same symptoms when I
02 went to the doctor.
03 Q. Can you show the Jury, just generally in
04 your body, where is your cancer?
05 A. It's -- right now it's all in here, over
06 here.
07 Q. And did you ever have fluid in your lungs at
08 any point?
09 A. Yes. They drew off fluids several times.
10 Q. Can you explain to the Jury the procedure
11 that they did to drain that fluid from your lungs?
12 A. They would cut my side and put a tube in and
13 drain it in this container.
14 Q. Do you recall on how many occasions you have
15 had to do that?
16 A. Roughly, counting the last three that I had
17 in me at one time in my side, there's been 11 times,
18 I think, that I have had tubes put in my side. I'm
19 sitting here now with two broke ribs that can't be
20 fixed because they don't want to go in there and cut
21 me no more. And so I'm sitting with two broke ribs
22 right now on account of that.
23 Q. Sir, did you ever have any surgeries
24 relating to your cancer?
25 A. I've had three lung surgeries.
00014:01 Q. And can you explain to the Jury a little bit
02 about what those surgeries were?
03 A. Well, the first one -- like I say, I kept
04 complaining of these same symptoms. So I was at the
05 emergency room complaining with the same symptom, and
06 they X-rayed me and it showed a -- a very, very small
07 pneumothorax, and they put a tube in me and sent me
08 home. I came home with it in me and kept -- kept it
09 there for 12 days. Well, they took it out, and I
10 kept having the same symptoms.
11 So I went to a lung doctor, Mendoza, and he
12 X-rayed me and he said my lung was -- he showed me

13 it was very, very small, just barely could tell,
14 pneumothorax. So he sent me back to the doctor.
15 Well, he sent me to the doctor and the doctor decided
16 to operate on me.
17 So he operated on me and he told me that --
18 took a biopsy while he was in there. He said, sir,
19 you don't have cancer, that's one thing you don't
20 have to worry about. And he inflated my lung back
21 up, and I came back home.
22 Well, about three weeks later it was
23 collapsed again. So they put a tube in for 14 more
24 days, and it was still showing a small thorax, so he
25 operated on me again. And he said for sure that
00015:01 time -- he took another biopsy and said, sure, that I
02 wouldn't have to worry about my lung no more as long
03 as I live. And the second biopsy, he said, no
04 cancer. He said, you can feel good about that.
05 Well, I did feel good about that, but my symptoms
06 kept on along that line.
07 And I had an appointment with a lung
08 specialist at Emory University in Georgia. He had
09 did some 30 -- does some 30 lung transplants a year.
10 So I went down there to the lung doctor down there,
11 and he checked me for COPD. He said I didn't have
12 COPD. He says, A, you hardly have any -- anything
13 concerning that. So he sent me to a lung surgeon.
14 I went to the lung surgeon, and he -- he
15 decided he was going to have to -- under his
16 determination, he said that somewhere along the line
17 they used what they called talc on my lung, and it
18 had frozen my lung in a collapsed position like an
19 umbrella, and my lung wouldn't function, and I
20 couldn't inhale or exhale because my lungs froze
21 there. So he operated on me and straightened that
22 out. And he came to me the day we was leaving, he
23 said, sir, he says, I started to come tell you last
24 night but I didn't want to ruin your night, he said,
25 you have got asbestos cancer, and he says, if you get
00016:01 treatment, you've got 12 to 18 months to live.
02 Q. How did that news make you feel?
03 A. Oh, it hit me like a tractor and trailer
04 truck had run over me or something. Because, see, I
05 had been told -- I been -- I'd done went through two
06 bad lung operations and was told both times that's
07 one thing I didn't have to worry about and that was
08 cancer, and then hit with a -- hit with something
09 like that afterwards and tell me my lifespan was that
10 short, it was a terrific blow.
11 (Exhibit No. 4 was marked for
12 identification.)
13 Q. And I'm going to show you a photo that you
14 have given, and if you can take a look at that, it's
15 Exhibit 4.
16 A. Yes, that's where -- that's just in that one
17 area there where they cut me. There's a whole lot
18 more than that, but that's one area right there, the
19 last -- last surgery I had right there.
20 Q. So that's a scar that you have on the side
21 of your body?
22 A. Right.
23 Q. Sir, since your diagnosis, have you had any
24 treatments for your cancer?
25 A. Yes. I've had chemo. I started taking -- I
00017:01 started taking chemo in -- at Emory. And it was so
02 hard driving down there and spending the night down
03 there and -- and sick, getting sick and all of that,

04 you know, so I asked the doctor down there at Emory
05 would it be all right to transfer those treatments up
06 here. So after two treatments down there, I came up
07 here and started my treatments up here.
08 Q. How did the chemotherapy, how did that make
09 you feel?
10 A. Oh, it made me terribly sick. And in fact,
11 it's been going on five weeks now since I had any
12 chemo. We just put it off and probably will stop it
13 completely now. But I haven't had a chemo treatment
14 now in five weeks because of that.
15 I've been -- I've been going to the
16 hospital, started out two times a week getting
17 fluids, then I had to go in there and they had to
18 give me a pint of blood, and then they increased the
19 fluid. I've been going three times a week on Monday,
20 Wednesday and Fridays and giving me fluids, and it
21 seems to help giving me those fluids, keeps me from
22 dehydrating that bad, and it seems to help some.
23 Q. Sir, you have recently had some
24 hospitalizations; is that true?
25 A. Yes. I've been in the hospital, in the last
00018:01 month or two, maybe three times.
02 Q. And what were those hospitalizations for?
03 A. Dehydration. I was dehydrated.
04 Q. Sir, you had a doctor's appointment this
05 morning; is that right?
06 A. Yes, I did.
07 Q. You had a doctor's appointment yesterday
08 morning; is that right?
09 A. Yes, I did.
10 Q. What news did the doctor give you yesterday?
11 A. The doctor yesterday told me that he
12 recommended stopping any and all X-rays. It's
13 unusual, just completely stopping anything. And he
14 was going to call hospice -- hospice, and turn me
15 over to them, in which they have already called and
16 they're supposed to come out and see me Monday. That
17 was his recommendation.
18 Q. Sir, on a daily basis, can you describe for
19 the Jury, how do you feel?
20 A. Well, on a daily basis, since my last
21 operation, I haven't recovered from it, I haven't
22 been able to do anything. Up 'til that point, I was
23 able to maybe get out and walk to the mailbox and
24 walk around a little bit and sort of enjoy the warmth
25 out there and the green grass and all of that. But
00019:01 in the last couple of months, I haven't had no life
02 other than sitting in this chair and going to the
03 doctor and laying in the bed.
04 Q. Sir, are you in pain?
05 A. I stay in pain all the time.
06 Q. How has your appetite been?
07 A. I've lost my appetite. I get so hungry
08 and -- it's been unbelievable. There's probably been
09 50 people bring every kind of food imaginable to this
10 house two or three times a week, and here I am, every
11 time I take a bite of something, I get sick as you
12 can get. And it just lays in my stomach and turns
13 and turns and turns until I throw it up, and then I
14 get hungry again and go through the same cycle again.
15 And they just keep bringing that food in here and --
16 and enticing me to eat, but I just hadn't had no
17 appetite.
18 Q. Have you lost weight since your diagnosis?
19 A. I have lost -- I was up to about 240, and

20 I'm down to about -- I got down to about 217. And
21 all these people bring this food here like I'm
22 talking about, I'm back up -- and taking all these
23 fluids on top of that, I'm back up to about 226 now.
24 So I have gained, in the last two or three weeks, a
25 little bit of weight on account of taking all these
00020:01 fluids.
02 Q. Sir, how has your sleeping changed as a
03 result of your cancer?
04 A. Well, I go to bed at night, I'm hurting so
05 bad, I -- I take pain medication but it don't ease
06 it. And I lay there 'til 1:00 or 2:00 in the morning
07 and I doze off.
08 And it's -- trying to lay in bed, I've got
09 so much scar tissue from this -- these surgeries I've
10 had. I haven't laid on this side in over a year. I
11 can't lay on this side. And there's so much scar
12 tissue everywhere from all that surgery, because they
13 cut me three times and all three times they cut in
14 the same area, and there's so much scar tissue there,
15 can't get comfortable in the bed. You just lay there
16 and suffer until you just get numb, and once you get
17 numb you might doze off a little while. It's -- it's
18 been pretty bad.
19 Q. We've talked a little bit about how your
20 life is today. Prior to your cancer, can you explain
21 to the Jury a little bit about what your life was
22 like?
23 A. Prior to the cancer, I -- I retired right
24 before I was 65. And the company I was working for,
25 after I retired for two months and I drawed two
00021:01 Social Security checks, the company come out and
02 asked me would I come back and work another year. So
03 I paid Social Security back, the money they had paid
04 me, and I went back and worked another year.
05 And since that point, they had told me to
06 come in and work any and all I wanted to work after
07 retirement. Well, I went in and worked every year
08 the limit of what I could make. I would work from
09 December to June, somewhere like that. And then I
10 got so bad with this, I couldn't do that no more.
11 And I was enjoying going fishing. I bought
12 me a boat. And I enjoy fishing. I bought me a
13 big -- big bass boat. And got to where I couldn't --
14 couldn't take my boat and unload it and load it back,
15 and couldn't sit in the boat that long. So I just
16 sold my boat here about six months ago. And I've had
17 no life of activities since.
18 I mean, I enjoy life. I enjoy getting out
19 and working in the yard and -- and all of that. And
20 I just don't have that kind of life no more. And I
21 miss it and I wished I had it back.
22 Q. How many times were you able to go fishing
23 on your boat?
24 A. I went maybe, in a year's time, maybe three
25 or four times.
00022:01 Q. And other than fishing, you mentioned your
02 garden. I understand that your neighbors have talked
03 to you about how well you kept up your garden in the
04 past.
05 A. Yes, I kept a garden around back. And I
06 worked -- and you wouldn't believe it now, looking
07 out there now, but I worked in the yard, and every --
08 every -- all the neighbors and everybody's always
09 coming over here and telling me how pretty my yard
10 looked. It stayed green; just full, thick coat. And

11 in the wintertime I would sow rye everywhere, and I
12 had pretty green-staying grass in the wintertime, and
13 everybody would stop, coming up.
14 And I had flowers set out everywhere. I'd
15 set flowers out front and got hanging baskets
16 everywhere and -- and then people would just stop out
17 there on the side of the road and tell me how
18 beautiful it looked down through there. But you
19 wouldn't believe it today because I've got -- been
20 sick, and I dropped all of that, and it don't look
21 like anybody lives here that's got any interest in
22 the outside now, but I did have.
23 Q. Other than being active and going fishing
24 and working outside, could you tell the Jury,
25 generally, how was your health prior to your
00023:01 diagnosis?
02 A. Prior to my -- prior to I come down with
03 this, I could -- not exaggerating or bragging -- but
04 I could pick up 200 pounds, and walk to here -- I
05 would walk 100 yards with it if I wanted to. I mean,
06 I was just strong, and I thought I was the healthiest
07 man in the world. And I made the statement several
08 times, I never was going to get old. But how wrong I
09 was. I was terribly wrong.
10 Q. Sir, did any of your doctors tell you what
11 they thought caused your cancer?
12 A. They said it was from asbestos.
13 Q. Since hearing that, have you thought back in
14 your life to the times where you believe you were
15 exposed to asbestos?
16 A. Yes, I have.
17 Q. Generally, can you tell the Jury, when in
18 your life do you believe you were exposed to
19 asbestos?

2. PAGE 23:21 TO 24:09 (RUNNING 00:00:37.976)

21 THE WITNESS: I thought back, and
22 the only place -- the only place that I worked
23 around asbestos or was exposed to it, I believe,
24 was Hoechst Fibers, which is Hoechst Celanese,
25 same thing.
00024:01 BY MS. PRYOR:
02 Q. Sir, I'm going to ask you a few questions
03 about that.
04 A. Yeah.
05 Q. Did you want to take a break or are you okay
06 to continue?
07 A. No, go ahead, I'm okay.
08 Q. Sir, did you ever work directly for Hoechst?
09 A. No. I worked for Daniels Construction.

3. PAGE 24:14 TO 27:15 (RUNNING 00:04:15.590)

14 Q. While you were working for Daniels
15 Construction, what locations or facilities did you
16 work?
17 A. I worked in Staple A, stretch line, PIV and
18 pump shaft, pump shop, and then on crimpers out in
19 the new lines on -- on Staple B.
20 Q. So correct me if I'm wrong, but it sounds
21 like when you were working for Daniels, the site or
22 facility that you did work at was for Hoechst
23 Celanese or Hoechst Fibers; is that right?
24 A. Yes.
25 Q. Other than Hoechst, did you work at any
00025:01 other facilities while you were working for Daniels?

02 A. No.
03 Q. Sir, what type of facility was the Hoechst
04 Fibers facility?
05 A. It made fiber. It made fiber. It's --
06 looks like a cotton material that they mixed with
07 cotton to make different -- different clothing and
08 all those stuff and everything out of it.
09 Q. And what was Daniels, what was their role
10 over at Hoechst?
11 A. Daniels' role was to maintain equipment and
12 keep the equipment running.
13 Q. What job titles did you have while you
14 worked for Daniels?
15 A. I started out at Hoechst as a millwright
16 helper, but I was only like that for about four, five
17 months, and they moved me up to a millwright. Then
18 again, I'm not bragging, but after about two years --
19 they classified you over there, they would do a job
20 study of you, and I was classified out of 400 and
21 something millwrights on that job -- in the mid '70s
22 I was classified as the number one millwright on that
23 job site.
24 Q. So for the first four to five months you
25 were a millwright's helper --
00026:01 A. Yes.
02 Q. -- and then for the remainder of the period
03 that you worked for Daniels you were a millwright; is
04 that right?
05 A. Right.
06 Q. Generally, can you explain to the Jury what
07 your job duties were as a millwright's helper?
08 A. As a millwright's helper, I worked with a
09 millwright out there on the job site; whatever he
10 tells me to do or whatever he needs to do, I would
11 help him or he would show me how to do it.
12 Q. What were your hours when you worked as a
13 millwright's helper?
14 A. It was from -- I believe it was, back then,
15 it was from 7:00 to 3:30 or 4:00.,
16 Q. How many days a week would that be?
17 A. Five days a week. But there was a lot of
18 overtime involved on account of breakdowns and
19 shutdowns and all of that.
20 Q. So the minimum amount of time you were there
21 would be from 7:00 to 3:30?,
22 A. Right.
23 Q. Five days a week, sometimes more?
24 A. (Witness nodded head.)
25 Q. Sir, when you were a millwright, generally,
00027:01 what were your job duties?
02 A. My job duties was anything concerning
03 equipment out on the floor that tears up or needs
04 preventative maintenance pulled on it or whatever.
05 And that was basically anywhere in the plant site
06 there.
07 Q. Did you have the same hours when you were a
08 millwright as you had --
09 A. Yes.
10 Q. -- when you were a millwright's helper?
11 A. Yes.
12 Q. Sir, how do you believe you were exposed to
13 asbestos when you were either a millwright's helper
14 or a millwright working and performing maintenance on
15 the equipment?

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?

6. PAGE 30:05 TO 30:06 (RUNNING 00:00:03.141)

05 Q. Whether it be copper or silver or asbestos?
06 A. Oh, yes.

7. PAGE 30:08 TO 30:08 (RUNNING 00:00:01.888)

08 THE WITNESS: Very definitely so.

8. PAGE 30:10 TO 31:17 (RUNNING 00:01:47.435)

10 Q. Now, the asbestos gaskets, what form were
11 they in? Can you explain to the Jury what they
12 looked like?
13 A. Well, some of it was whitish, some of it was
14 dark gray color, deep gray color. It was -- most of
15 it was sort of white, cream colored to a dark gray
16 color.
17 Q. Sir, did the gasket material, what -- what
18 form did they come in as far as -- can you explain to
19 the Jury what they looked like?
20 A. The gasket material itself?
21 Q. Yes.
22 A. It came in sheets. Most of the time we
23 would get a four-by -- four-by-six or four-by-seven
24 or whatever sheets at a time.
25 Q. And from those sheets, did you have to make
00031:01 gaskets?
02 A. Yes. We would cut flange gaskets out of it
03 or whatever.
04 Q. Can you explain just generally to the Jury
05 how you went about making gaskets out of that gasket
06 sheet material?
07 A. Well, we had a -- we had -- it was a
08 four-inch flange or a six-inch flange, it had, say,
09 four bolt holes and some of them half-inch bolt
10 holes -- I believe it's half-inch on your four-inch
11 flange. You get up there a little bigger, you've got
12 three-quarter-inch bolts in it. We had different
13 patterns that we already had made up that we used to
14 stamp out the gaskets with.
15 Q. Sir, do you recall the brand name or
16 manufacturer name of any of the gasket material that
17 you worked with?

9. PAGE 31:20 TO 32:24 (RUNNING 00:01:35.710)

20 THE WITNESS: We used -- we used
21 Armstrong and Garlock and John Crane and -- there
22 was one or two more. I can't think of them right
23 now, but there's one or two more.
24 BY MS. PRYOR:
25 Q. And how did you know that that gasket
00032:01 material was manufactured by either Armstrong or
02 Garlock or John Crane?
03 A. Their name was on it.
04 (Exhibit No. 14 was marked for
05 identification.)
06 Q. I'm going to show you what I marked as
07 Exhibit 14, if you will take a look at this.
08 A. Yes.
09 Q. Sir, could you show that to the Jury. What
10 is it that you're showing to the Jury?
11 A. That is a flange gasket that's -- looks like
12 it's been a homemade cutout there. And it's a
13 Garlock -- Garlock gasket made from a -- this sheet
14 of material that I was telling you that we get.
15 Q. And, sir, that's a photo that I have

16 provided to you. That's not a photo that you have or
17 you took while you worked at the Celanese facility;
18 is that true?
19 A. No, no.
20 Q. Is that similar to the type of gasket
21 material, asbestos gasket material, that you recall
22 working with --
23 A. Yes.
24 Q. -- while you worked at --

10. PAGE 33:03 TO 33:11 (RUNNING 00:00:11.736)

03 Q. -- Hoechst?
04 A. Yes.
05 Q. And, sir, sometimes I will refer to it as
06 Hoechst, sometimes I have referred to it as
07 Celanese --
08 A. Yes.
09 Q. -- and I will try to stay streamlined with
10 it.
11 A. Well, it was Hoechst when I worked there.

11. PAGE 33:12 TO 34:10 (RUNNING 00:01:33.847)

12 Q. Sir, can you -- well, sir, what is packing?
13 A. Packing is -- is a type of material that you
14 use. It's a gasket -- not a gasket but a -- it's
15 either roping or square. You get -- you get some
16 that's in a rope form, that's on a roll, and you get
17 some that's in boxes, that would be square. When I
18 say "square," four corners like 5/16ths or 3/8ths or
19 whatever diameter you need. It's a -- it's a
20 material that you use to seal an area around a shaft
21 or whatever.
22 Q. And you explained just generally, but why
23 would you need packing to seal an area around a
24 shaft?
25 A. To keep leaks and -- if you're sealing off
00034:01 an area to keep leak -- water leaks or any kind of
02 chemical leak or whatever from coming out of the
03 vessel or box or whatever you're working on.
04 Q. Did you work with packing while you worked
05 for Daniels at Hoechst?
06 A. Yes.
07 (Exhibit No. 12 was marked for
08 identification.)
09 Q. I'm going to show you what I have marked as
10 Exhibit 12. Would you take a look at that, sir.

12. PAGE 34:11 TO 35:16 (RUNNING 00:01:29.330)

11 A. Yes.
12 Q. And, sir, could you show that to the Jury.
13 A. (Witness complied.)
14 Q. And what is -- what is that? Can you
15 explain what's in the picture?
16 A. That is the packing that we used on a lot,
17 lot of our equipment as far as sealing off the areas
18 like I was talking about.
19 Q. And again, that's a picture that I have
20 provided, but does that look the same or similar to
21 some of the packing that you worked with --
22 A. Yes.
23 Q. -- at Hoechst?
24 A. Yes. Yes, it is. In fact, it might have
25 been about a 3/8th square packing there.
00035:01 Q. And you say "square packing." What are you
02 referring to when you say --

03 A. That right there is -- I call it square
04 packing. I don't know the proper name, because it's
05 four corners, and then you can get it, according to
06 what area you got, you can get it 5/16th thick, 3/8th
07 of an inch thick or whatever, you know. It's not no
08 one certain size, it's just whatever size you need
09 for that particular job.
10 Q. And other than square packing, were there
11 different types of packing that you worked with?
12 A. Yes. You had round, roll -- rope packing.
13 You had different -- different kind.
14 Q. Sir, what types of equipment utilized
15 asbestos gaskets or packing that we just talked
16 about?

13. PAGE 35:18 TO 37:14 (RUNNING 00:02:25.245)

18 THE WITNESS: Okay. We had
19 reactors, and reactors I'm talking about -- and
20 degassers, I'm talking about these huge vessels,
21 almost half as big as this room, that your
22 polymer goes into, your melted chips go into, and
23 you've got your drive shafts and all that coming
24 out each end, and you probably got 14, 16 inches
25 long journal (phonetic) coming out. And it's got
00036:01 to be chill water cooled out here to keep from
02 burning the bearing and your packing up, I guess.
03 And you got your packing, packing all the way
04 around that shaft back through there, and then
05 you got your packing gland that goes on and your
06 nuts that you tighten up with to seal the area
07 off where no -- one thing, no air can get in
08 there in that -- and into the particles that's in
09 the degasser and -- to seal it off.
10 BY MS. PRYOR:
11 Q. And other than the degasser, were there
12 other types of equipment that used gaskets and
13 packing?
14 A. Yes. Most all your pumps used it. Some
15 pumps used, you know, rubber gaskets. But most of
16 them required either square or rope packing in it.
17 Q. With -- did pumps require -- that you worked
18 on -- at least some of the pumps require asbestos
19 gaskets or packing?
20 A. Yes, yes. Ones that was pumping special,
21 like I was talking about Dowtherm, and most all of
22 your pumps down there at the DMT plant was pumping
23 chemicals and different type chemicals, and you had
24 to have a better gasket than a regular gasket for
25 that particular operation.
00037:01 Q. You say a "better gasket." What do you mean
02 by that? A stronger gasket?
03 A. Yes.
04 Q. Because the chemicals can be abrasive?
05 DEFENSE ATTORNEY: Object to form.
06 BY MS. PRYOR:
07 Q. Is that --
08 A. Yes.
09 Q. Sir, did valves -- you mentioned earlier
10 that one of the pieces of equipment that you worked
11 on were valves.
12 A. Yes.
13 Q. Did valves require or use asbestos gaskets
14 or packing?

14. PAGE 37:16 TO 37:22 (RUNNING 00:00:11.902)

16 THE WITNESS: Well, that's what we
17 used.
18 (Exhibit No. 13 was marked for
19 identification.)
20 BY MS. PRYOR:
21 Q. I'm going to show you what's been marked as
22 Exhibit 13. Could you take a look at that, sir.

15. PAGE 37:25 TO 38:15 (RUNNING 00:00:35.411)

25 THE WITNESS: Yes.
00038:01 BY MS. PRYOR:
02 Q. Sir, can you describe to the Jury what that
03 is a picture of?
04 A. That's a valve, a portion up here where your
05 bonnet and packing is located on it.
06 Q. Can you point to the Jury where there would
07 be asbestos gaskets in that picture?
08 A. You would have one here, and then your
09 packing would be right in here.
10 Q. I'm going to ask you if you can hold it
11 right here so that they can see it.
12 A. (Witness complies.)
13 Q. All right. Can you point where the asbestos
14 gaskets would be?
15 A. You've got one here --

16. PAGE 38:18 TO 38:22 (RUNNING 00:00:07.034)

18 THE WITNESS: Your packing's in
19 here.
20 BY MS. PRYOR:
21 Q. Gotcha. Would there be gaskets anywhere
22 else other than right here?

17. PAGE 38:24 TO 39:07 (RUNNING 00:00:17.973)

24 THE WITNESS: Possibly. You would
25 have gaskets here and here.
00039:01 BY MS. PRYOR:
02 Q. So there would be -- so, sir, there would be
03 gaskets where there -- where the valve would be
04 connected to line, and those are those side
05 gaskets --
06 A. Right.
07 Q. -- is that right?

18. PAGE 39:11 TO 39:15 (RUNNING 00:00:05.723)

11 Q. And then there would be gaskets on that top
12 material which you refer to as --
13 A. Yes.
14 Q. -- the bonnet?
15 A. Yes.

19. PAGE 39:18 TO 39:19 (RUNNING 00:00:04.363)

18 Q. And packing would be -- can you point one
19 more time where packing would be?

20. PAGE 39:22 TO 40:06 (RUNNING 00:00:23.589)

22 THE WITNESS: Right in here on
23 this one here.
24 BY MS. PRYOR:
25 Q. Sir, you mentioned earlier when I asked you
00040:01 generally how you believe you were exposed to
02 asbestos, and the -- one of the ways you said is when

03 removing asbestos gaskets and packing from equipment.
04 Can you explain to the Jury, generally, what was your
05 process for removing gaskets from a piece of
06 equipment?

21. PAGE 40:23 TO 42:17 (RUNNING 00:02:39.588)

23 THE WITNESS: Most of the time you
24 would use a -- according on where you're removing
25 it from, you can use a screw to screw into a
00041:01 packing and pull it out, or a pick. And then the
02 other way is using a scrape or anything to get it
03 off, and then you would use a brush. And it was
04 a pretty hard process of getting it off.
05 BY MS. PRYOR:
06 Q. And we'll talk about packing in a second.
07 But why would the gasket -- why would it be a hard
08 process to remove an asbestos gasket from a piece of
09 equipment like a pump or a valve?
10 A. Because when it gets dried out and gets
11 embedded, most of -- most flanges has a surrogated
12 surface on it, and you put that gasket material in
13 there and you tighten down on it, it gets embedded in
14 that surrogated surface, it gets just like almost --
15 steel is steel. And then when you go to change that
16 gasket, you want to get it as clean as you can to
17 where when you put a new one in and tighten it up, it
18 won't be, you know, having a leak or something there.
19 So that surrogated surface, you have to
20 scrape and scrape and scrape, and then you brush and
21 brush and brush to get the old gasket off.
22 (Exhibit Nos. 7 and 8 were marked for
23 identification.)
24 Q. And you said "scrape." I'm going to show
25 you what I marked as Exhibit 7 and 8. Could you take
00042:01 a look at these two pictures, sir.
02 A. Yes.
03 Q. And, sir, again, these are photos that I
04 provided you, but could you explain to the Jury what
05 those are?
06 A. Well, you've got a putty knife there and
07 you've got a -- looks like a homemade scrape over
08 here made out of a -- looks like it may have been
09 made out of a file. You've got a sharp point on this
10 end, it's been ground down on this end. It's an
11 instrument to remove that packing.
12 Q. And, sir, did you use tools like a scraper
13 when you were --
14 A. Yes.
15 Q. -- trying to remove gaskets from surfaces
16 that had been -- well, let me rephrase that.
17 Did you use a scraper --

22. PAGE 42:19 TO 42:22 (RUNNING 00:00:04.623)

19 THE WITNESS: Yes.
20 BY MS. PRYOR:
21 Q. -- or tools similar to that when you removed
22 gaskets from a piece of equipment?

23. PAGE 42:24 TO 42:24 (RUNNING 00:00:01.280)

24 THE WITNESS: Yes.

24. PAGE 43:01 TO 43:08 (RUNNING 00:00:15.019)

00043:01 Q. And, sir, I may not have asked, but when we
02 were looking at the picture of the valve, this is a

03 picture that I have provided to you, but is this the
04 same or similar to types of valves that you worked
05 on --
06 A. Yes.
07 Q. -- when you worked at Hoechst?
08 A. Yes.

25. PAGE 43:14 TO 43:20 (RUNNING 00:00:16.363)

14 Q. Sir, you mentioned using a wire brush to
15 remove gasket materials from pieces of equipment like
16 pumps and valves. Can you take a look at what I have
17 marked as Exhibit 9?
18 A. Yes.
19 Q. And can you explain to the Jury what that
20 is?

26. PAGE 43:22 TO 44:06 (RUNNING 00:00:22.064)

22 THE WITNESS: That is a wire
23 brush. It's -- it's basically a -- they call it
24 a welder's brush. Welders use it a lot when they
25 weld, but it's also a very handy instrument when
00044:01 you're changing gaskets.
02 BY MS. PRYOR:
03 Q. And how would you use a wire brush to remove
04 gasket material from --
05 A. You would scrape --
06 Q. -- pumps or valves?

27. PAGE 44:08 TO 44:16 (RUNNING 00:00:21.753)

08 THE WITNESS: You would scrape
09 your surface and brush off all the material that
10 you could that's left on your flange or wherever
11 you're changing it at.
12 BY MS. PRYOR:
13 Q. Did you ever have need to use a mechanical
14 wire brush or a power wire brush --
15 A. Yes.
16 Q. -- to remove gasket material?

28. PAGE 44:18 TO 45:04 (RUNNING 00:00:25.677)

18 THE WITNESS: Yes, I have had to
19 use -- they make wire brushes with a little stem
20 on it you put in drill motors, and I have used
21 them a good bit putting it in a drill motor and
22 brushing the surface real good.
23 (Exhibit No. 10 was marked for
24 identification.)
25 BY MS. PRYOR:
00045:01 Q. I'm going show you what I have mark as
02 Exhibit 10. Would you take a look at that?
03 A. Yes.
04 Q. Can you explain to the Jury --

29. PAGE 45:07 TO 45:19 (RUNNING 00:00:29.680)

07 Q. -- what that is a picture of?
08 A. That is a -- it's not a drill motor. That's
09 some other type instrument other than a drill motor,
10 but it's got a wire brush on it like I used in a
11 drill motor.
12 Q. So it's not exactly the same to the one that
13 you used, but would you say that that's similar in
14 that it was a mechanical wire brush --
15 A. Yes.
16 DEFENSE ATTORNEY: Object to form.

17 BY MS. PRYOR:
18 Q. -- that required power?
19 A. Yes.

30. PAGE 45:21 TO 46:02 (RUNNING 00:00:13.669)

21 (Exhibit No. 11 was marked for
22 identification.)
23 BY MS. PRYOR:
24 Q. And to give the Jury an idea of -- of what a
25 surface with a gasket that had been adhered to it
00046:01 looks like, I want to show you what's Exhibit --
02 marked as Exhibit 11.

31. PAGE 46:06 TO 46:09 (RUNNING 00:00:14.372)

06 Q. Could you take a look at that, sir.
07 A. Yes. That's -- that's a good example of
08 what 90 percent of your gaskets looked like when
09 you're replacing them.

32. PAGE 46:16 TO 46:20 (RUNNING 00:00:14.611)

16 Q. So when you were at Hoechst and you're
17 talking about removing gaskets with either a scraper
18 or a wire brush or a mechanical wire brush, that
19 would be the example of at least what a gasket would
20 look like that you would have to remove?

33. PAGE 46:22 TO 46:22 (RUNNING 00:00:00.659)

22 THE WITNESS: Yes.

34. PAGE 46:25 TO 47:06 (RUNNING 00:00:12.775)

25 Q. And again, this is -- this is a picture that
00047:01 I have provided to you.
02 A. Yes.
03 Q. But is it the same or similar to what the
04 conditions of gaskets that had adhered to the surface
05 looked at -- looked like when you were at Hoechst?
06 A. Yes.

35. PAGE 47:10 TO 47:15 (RUNNING 00:00:10.655)

10 Q. Sir, what conditions were created when you
11 were removing gasket material that had adhered to the
12 surface of either pumps or valves --
13 DEFENSE ATTORNEY: Objection.
14 BY MS. PRYOR:
15 Q. -- when you would be removing it?

36. PAGE 47:17 TO 48:09 (RUNNING 00:00:56.018)

17 THE WITNESS: You would have a
18 whole lot of dust, and not only -- not only fine
19 dust from the gasket itself, but you -- you would
20 be brushing on a -- if it wasn't stainless steel,
21 you would be brushing on a steel part that had
22 rust on it. So you would be brushing the rust
23 off the surface as well as the gasket material.
24 BY MS. PRYOR:
25 Q. And we discussed a little bit about gaskets
00048:01 with valves, but, generally, where were gaskets
02 located on pumps that you worked on?
03 A. Most of the time it was just around your
04 shaft, drive shaft.
05 Q. And did you have to remove gasket material
06 from pumps in the same way that you described --
07 A. Yes.

08 Q. -- removing gasket materials for other
09 equipment and valves?

37. PAGE 48:10 TO 48:10 (RUNNING 00:00:01.126)

10 A. Yes.

38. PAGE 48:15 TO 48:22 (RUNNING 00:00:17.638)

15 Q. Sir, do you recall the manufacturer name of
16 any of the valves that you removed gasket material
17 from?
18 A. And we're talking about what now?
19 Q. Sure. Do you recall the brand name or
20 manufacturer name of any of the valves that you
21 recall removing asbestos gaskets from?
22 A. Yes.

39. PAGE 48:25 TO 50:11 (RUNNING 00:01:49.420)

25 Q. And what are some of those brand names that
00049:01 you recall?
02 A. Some of them was Powell valves. And you
03 had -- I can't think right now. I've lost my train
04 of thought. The gentleman sitting over there, his
05 valves.
06 Q. Let the record reflect he is referring to --
07 A. Well, I have totally lost my whole train of
08 thought.
09 Q. Sure.
10 A. I can't think right now.
11 Q. Other than Powell valves, there were other
12 brands of valves that you --
13 A. Yes, yes, lots of them.
14 Q. Sir, do you recall working on Crane valves?
15 A. Yes. That's my gentleman right over there,
16 Crane valves.
17 Q. Sir, you had started talking about it
18 earlier, but what tool did you use to remove packing
19 from valves?
20 A. We had a screw, screw-type little ol' thing
21 that we would go in there and try to screw it into
22 the packing itself and pull it out, and then we had a
23 pick with a sharp point on it, we would use it to go
24 in there and try to pick it out that way.
25 (Exhibit No. 6 was marked for
00050:01 identification.)
02 Q. Can you take a look at what I've marked as
03 Exhibit 6.
04 A. Yes, that's the type we used to go in there
05 and screw into the gasket itself and pull it out.
06 Q. The tool you used to help remove the
07 packing?
08 A. Yes.
09 Q. Sir, did you ever use any compressed air
10 when you were removing packing from the valve stem?
11 A. Yeah --

40. PAGE 50:13 TO 51:01 (RUNNING 00:00:37.659)

13 THE WITNESS: We would -- you
14 know, you had small dusty type material left down
15 in there between -- especially on valves on your
16 stem. You would go in there and blow it out
17 before you started your packing in there.
18 BY MS. PRYOR:
19 Q. When you would use that tool to remove
20 packing from a valve stem, did it come out in one

21 piece?
22 A. Sometimes and sometimes not.
23 Q. On the occasions that it didn't, is that the
24 occasion that you would use compressed air or did you
25 use it as a matter of practice?
00051:01 A. No.

41. PAGE 51:03 TO 51:13 (RUNNING 00:00:28.112)

03 THE WITNESS: If it -- if you
04 was -- had to scrape that material out, you
05 pulled it out, you had -- still had your stem in
06 there and all, you would -- I would take it and
07 blow it off, you know, enough that I could get my
08 packing back in there and it wouldn't be nothing
09 to upset it in any kind of way.
10 BY MS. PRYOR:
11 Q. What conditions were created, generally,
12 when you were removing this -- this asbestos packing
13 from the valve stem?

42. PAGE 51:16 TO 52:16 (RUNNING 00:01:23.313)

16 THE WITNESS: You just had a lot
17 of small pieces and dust from it.
18 BY MS. PRYOR:
19 Q. Sir, how did the process -- well, first, was
20 there any packing associated with pumps?
21 A. Yes.
22 Q. And how did the process of removing packing
23 from pumps differ from that of removing it from
24 valves, if any?
25 A. It was a little, little easier removing it
00052:01 from pumps than it was valves, I thought, but it was
02 basically the same.
03 Q. Do you recall the manufacturer or brand name
04 of any of the pumps that you worked on when you were
05 at Hoechst?
06 A. I have worked on Ingersoll pumps and --
07 Lord, there was four, five, six different brands I
08 worked on. My train of thought today, ma'am, is not
09 with me for some reason.
10 Q. You're -- you're doing just fine. If you
11 want to take a break, just let me know at any time.
12 Okay?
13 A. (Witness nodded head.)
14 Q. So you tell me.
15 Sir, do you recall working on any Pacific
16 pumps --

43. PAGE 52:19 TO 52:21 (RUNNING 00:00:03.446)

19 Q. -- when you worked at Hoechst?
20 A. Any what?
21 Q. Pacific pumps.

44. PAGE 52:23 TO 54:03 (RUNNING 00:01:28.169)

23 THE WITNESS: Yes, we had -- we
24 had some, yes.
25 BY MS. PRYOR:
00053:01 Q. Do you recall working on those --
02 A. Yes.
03 Q. -- during your time working at Hoechst?
04 A. Yes.
05 Q. Now, to give the Jury an appreciation, are
06 you able to estimate how many valves were at the
07 entire Hoechst facility?

08 A. How many valves? Oh, probably, not
09 exaggerating in any way whatsoever, between 2,000 and
10 3,000, maybe more.
11 Q. And similar with pumps, as you sit here
12 today, are you able to offer any estimation as to how
13 many pumps would be present at the Hoechst facility?
14 A. It would run in a couple hundred, probably.
15 Q. Now, this entire period that you were
16 working for Daniels at Hoechst, were you the only
17 employee performing maintenance work on pumps or
18 valves or any pieces of equipment there?
19 A. No.
20 Q. So there were other employees also working
21 on those pieces of equipment?
22 A. Yes.
23 Q. Would you -- would there be occasions that
24 you would be working in a close vicinity to other
25 Daniels co-workers who would be working on asbestos
00054:01 gaskets or packing associated --
02 A. Yes.
03 Q. -- with pumps or valves?

45. PAGE 54:05 TO 54:05 (RUNNING 00:00:01.012)

05 THE WITNESS: Yes.

46. PAGE 54:07 TO 54:11 (RUNNING 00:00:12.489)

07 Q. Over that period of time that, I believe it
08 was a nine-year or so period of time, would there be
09 occasions where you worked on a pump or a valve more
10 than one time?
11 A. Yes.

47. PAGE 54:22 TO 54:25 (RUNNING 00:00:15.357)

22 Q. Now, when you had to work on pumps and
23 valves, and you had to replace the asbestos gaskets
24 or packing, where did you go about to get those
25 replacement parts?

48. PAGE 55:02 TO 56:14 (RUNNING 00:02:05.810)

02 THE WITNESS: To the supply room.
03 BY MS. PRYOR:
04 Q. And can you explain to the Jury just
05 generally how you went about figuring out what parts
06 needed to go with which particular pump or valve?
07 A. Ma'am, would you bring the question back
08 again?
09 Q. Sure. Can you explain to the Jury just
10 generally how you went about figuring out which parts
11 were particular to a certain pump or valve that you
12 were working on?
13 A. We would use -- especially now that we built
14 the shop or PIVs and valves and -- not necessarily
15 valves but PIVs and pumps and gear boxes; they would
16 come -- I wouldn't go out in the field and take them
17 out. They would come to me already took out and
18 tagged out what was wrong with them; if it was
19 leaking around the packing or whatever. And I would
20 get the tag -- tag off from it, and I would look --
21 look in the book. We had books in there. And I
22 would pull the drawing on it and -- pull the drawing
23 on it, and with the drawing it would have a parts
24 list, and I would go to the supply room and give them
25 that identification number, and they would give me a
00056:01 repair kit. Or if I was specifying whatever for it,

02 they would give me that and I would take it back and
03 install it. And I would use the blueprint -- I would
04 use the blueprint or the parts list print that
05 explained to you exactly how to put the part in and
06 everything. That's what I used to do it with.
07 Q. Where did those replacement kits come from?
08 A. Come from the manufacturey (sic).
09 Q. So, for example, if you were working on a
10 Crane valve and you needed replacement parts for
11 that, you went to the supply room and matched up the
12 numbers to a replacement kit that was provided by
13 Crane?
14 A. Right.

49. PAGE 56:18 TO 57:01 (RUNNING 00:00:18.022)

18 Q. And would that be similar to other
19 manufacturers? So if you went in looking for
20 replacement parts for an Ingersoll Rand pump, you
21 would go in and you would figure out where -- where
22 the I.D. number was?
23 A. Yes.
24 Q. And then you would get the replacement parts
25 that Ingersoll Rand would provide?
00057:01 A. Yes.

50. PAGE 57:04 TO 57:07 (RUNNING 00:00:07.468)

04 Q. Was this a matter of practice that you did
05 and was in place for all the pieces of equipment that
06 were at the facility?
07 A. Yes.

51. PAGE 57:09 TO 58:01 (RUNNING 00:01:18.903)

09 THE WITNESS: That was -- that was
10 a matter of practice for everybody on the job
11 site. They would -- we -- we -- we didn't -- we
12 didn't pre-fab any -- any gaskets that we needed
13 or packing or anything as far as it being on a
14 valve or a pump or -- or a PIV or whatever. We
15 didn't manufacture it there at the shop unless
16 there were no kit or anything available, and then
17 you would, you know, resort to making it
18 yourself.
19 But that was already preset in the
20 supply room. Everything was set up and
21 everything had two or three -- at least three --
22 spare samples of this one particular item to
23 where they don't ever run out, and -- and that
24 was just practice for the whole -- whole plant
25 site. It was a very, very huge supply room, and
00058:01 they had a huge inventory of spare parts.

52. PAGE 58:19 TO 58:22 (RUNNING 00:00:11.304)

19 Q. Sir, you mentioned that some of the piping
20 at the Hoechst facility was -- had asbestos
21 insulation around that. Do you recall that, sir?
22 A. Yes.

53. PAGE 58:25 TO 59:03 (RUNNING 00:00:06.344)

25 Q. Were you ever around insulators when they
00059:01 would be insulating pipe --
02 A. Yes.
03 Q. -- at the Hoechst facility?

54. PAGE 59:05 TO 59:24 (RUNNING 00:01:06.257)

05 THE WITNESS: Yes. When we were
06 working in there and insulators was working,
07 there was no -- no separation in there. You're
08 liable to be -- you're liable to be in there
09 working, the insulators working here, you're
10 liable to have sheet metal workers right over
11 here, you would have three or four different --
12 different crews of people working in the same
13 general area at one time.
14 BY MS. PRYOR:
15 Q. And generally, what would they be
16 insulating?
17 A. Insulating either a vessel or -- or a shaft
18 or a pump under some of these vessels, and the
19 vessels their self or insulating pipe where somebody
20 has tore the insulation off.
21 Q. You -- you've described work as far as
22 insulators insulating different pieces of equipment
23 and other co-workers removing and replacing gasket
24 material from pieces of equipment.

55. PAGE 60:02 TO 60:05 (RUNNING 00:00:07.557)

02 Q. Generally, what are -- what were the
03 conditions of the facility when everybody was doing
04 that kind of work?
05 A. It was pretty --

56. PAGE 60:07 TO 60:20 (RUNNING 00:00:40.122)

07 THE WITNESS: -- pretty dusty.
08 BY MS. PRYOR:
09 Q. And what was the flooring made out of at
10 that facility?
11 A. Part of it was -- part of it was cement and
12 then part of it was grating, a grated floor.
13 Q. And which floors were grated?
14 A. From the second -- second, third and fourth
15 floor had grating on part of it.
16 Q. So if someone was working on a piece of
17 equipment on the second floor or the third floor, if
18 material or debris from that equipment or from that
19 insulation or from those gaskets or packing were
20 falling down, where would they go?

57. PAGE 60:22 TO 64:02 (RUNNING 00:04:04.572)

22 THE WITNESS: Oh, well, most of
23 the time the -- the -- where the grating was,
24 most of the time it was a vacuum upward. And if
25 you was working -- if somebody was working on the
00061:01 second floor and working on something creating
02 dust, and you was working on the third floor
03 right above them there, you would be getting the
04 full wind of it because -- seemed like when you
05 got that grating floor and different stories
06 high, it's always like a chimney, you know,
07 it's -- everything is rising in the air.
08 BY MS. PRYOR:
09 Q. And, sir, when you're working on pumps and
10 valves on occasions when maybe that work was
11 necessary, so emergency repairs, is that one type of
12 occasion?
13 A. Yes.
14 Q. You also mentioned preventative maintenance.
15 Can you explain to the Jury what that is?

16 A. Preventative maintenance, we would have it
17 pretty often on -- on an individual line. We
18 would -- we would -- they would come around the day
19 before or we would go around the day before and we
20 would look at different pieces of equipment and see
21 what looks like it might, in the near future, require
22 something done to it. And we would shut that line
23 down and we would do our regular routine maintenance
24 on that line, but we would catch these things that we
25 thought in the near future would -- would mess up, so
00062:01 we would catch them while the line was down, and that
02 was for preventative maintenance right there.
03 Q. Were there also occasions where shutdown
04 would occur?
05 A. Yes.
06 Q. And generally, what is a shutdown?
07 A. When -- shutdown is when they shut the line
08 down, and you start in the basement on that
09 particular line, and you -- you pretty well go all
10 the way out on it, repairing any and everything that
11 you think needs repairing and -- and replacing almost
12 everything on the -- on the line.
13 Q. How often would shutdowns occur?
14 A. Shutdowns on a complete line like that
15 couldn't require -- wouldn't happen maybe every two
16 or three years on a complete shutdown. Preventative
17 maintenance, maybe once every -- every six months to
18 a year. But a complete shutdown on a line, it would,
19 you know, happen maybe every two or three years.
20 Q. What would be your hours, on average, during
21 a complete shutdown?
22 A. On a complete -- complete shutdown, it would
23 run probably 100, 105 hours a week.
24 Q. And how many weeks did a shutdown last, on
25 average?
00063:01 A. They would just last -- most of the time,
02 most I have seen it last would be down at the DMT
03 plant, it would last sometimes a week.
04 Q. During those shutdowns, would you work on
05 equipment like pumps or valves more often than you
06 would on a normal basis?
07 DEFENSE ATTORNEY: Objection.
08 THE WITNESS: Yes.
09 BY MS. PRYOR:
10 Q. During a shutdown, generally, what -- what
11 was the condition of the Hoechst facility?
12 A. Ma'am?
13 Q. During a shutdown when you have both
14 yourself and other co-workers working on all the
15 equipment, can you explain to the Jury what the
16 conditions were of the facility?
17 A. It was pretty dirty and nasty. Everybody --
18 you had sheet metal workers in there, you had
19 electricians, you had millwrights, and you had
20 every -- every type craft there were on the job site
21 in there in that one particular area working at the
22 same time. It was pretty -- pretty dusty, nasty
23 condition.
24 Q. Outside of the shutdowns, on a regular
25 basis, would you say that working -- your work on
00064:01 equipment like pumps and valves, that was pretty
02 regular?

58. PAGE 64:05 TO 64:13 (RUNNING 00:00:20.478)

05 THE WITNESS: Yes.
06 BY MS. PRYOR:

07 Q. Sir, did you ever see a warning on any of
08 the pieces of equipment that you worked on while
09 working at Hoechst that informed you that working
10 with components, asbestos components associated with
11 that equipment, could cause the cancer that you have
12 now?
13 A. No.

59. PAGE 64:16 TO 64:21 (RUNNING 00:00:19.949)

16 Q. At any point in time, did you see any
17 warnings around any of the pipe insulation or from
18 any of the Hoechst employees that informed you that
19 exposure to asbestos from either insulation or
20 working with any asbestos components would cause the
21 cancer that you have now?

60. PAGE 64:23 TO 65:02 (RUNNING 00:00:11.091)

23 THE WITNESS: No.
24 BY MS. PRYOR:
25 Q. Had you have been told or informed that
00065:01 working with asbestos components can cause cancer
02 like what you have now, what would you have done?

61. PAGE 65:04 TO 65:10 (RUNNING 00:00:25.858)

04 THE WITNESS: Had I been told, I
05 would have quit immediately. And I wouldn't
06 have -- I wouldn't have took a chance for no
07 amount of money than what we get paid, I would
08 have never took a chance of catching something
09 like this for that little bit of money. I never
10 would have done it.

62. PAGE 65:24 TO 66:18 (RUNNING 00:00:58.298)

24 Q. Sir, I just have a few more questions about
25 your work when you were working for Daniels.
00066:01 During the entire time that you worked at
02 the Hoechst facility, you were actually an employee
03 of Daniels Construction; is that true?
04 A. That's true.
05 Q. Who was in charge of writing your paycheck?
06 A. Daniels.
07 Q. Who was the company that could fire you if
08 that occasion arose?
09 A. Daniels.
10 Q. Who would be in charge of your day-to-day
11 duties?
12 A. We had a lead man -- Hoechst Fiber
13 supervisor would tell the lead man what he wanted
14 done for that day, and he would instruct us what to
15 do.
16 Q. After being told what task to do by a
17 Hoechst employee, did Daniels have the ability or the
18 means to figure out how that should be getting done?

63. PAGE 66:20 TO 68:22 (RUNNING 00:02:35.808)

20 THE WITNESS: Yes.
21 BY MS. PRYOR:
22 Q. So if the Hoechst man said we need to fix,
23 you know, this pump or this valve or this line, it
24 was actually Daniels who decided how that work went
25 about getting done; is that true?
00067:01 A. Yes.
02 Q. Did Hoechst have its own maintenance
03 division?

04 A. No.
05 Q. Did Hoechst have its own construction
06 division?
07 A. No.
08 Q. Is maintenance on equipment like pumps or
09 valves that you described earlier, is that the type
10 of work that Hoechst employees were expected to do?
11 A. No, they didn't do nothing like that.
12 Q. What was the role of the Hoechst employees
13 at that facility?
14 A. Hoechst just was strictly production
15 workers. They maintained the lines running the
16 material through; that's all they did.
17 Q. And again, generally, what was the role of
18 the Daniels' employees at the facility?
19 A. What we did is maintained equipment to keep
20 it running as far as working on it, repairing it or
21 whatever or installing new equipment.
22 Q. And so as far as kind of a division, Hoechst
23 employees were in charge of the actual operation or
24 production of either the fibers or the chemicals, and
25 Daniels employees were in charge of the maintenance;
00068:01 is that --
02 A. Correct.
03 Q. -- accurate?
04 Did you participate in the operation of any
05 of the equipment?
06 A. No.
07 Q. Would you say that the work that Daniels
08 performed at Hoechst, would you say that that's
09 significantly different than what the role and the
10 work of the Hoechst employees were?
11 A. Yes.
12 Q. You have had a previous deposition in this
13 case, and in that deposition you were asked about
14 whether or not entire lines were needing to be shut
15 down during times of maintenance. Do you recall
16 those questions?
17 A. Yes.
18 Q. Would there be auxiliary lines at the
19 facility so that if there was a shutdown on a
20 particular line, the process moved through an
21 auxiliary line while work was being done on this
22 line?

64. PAGE 68:24 TO 69:23 (RUNNING 00:00:58.718)

24 THE WITNESS: No. It was -- when
25 you shut a line down, that line -- if you're
00069:01 shutting a whole complete line down, I'm talking
02 about from spinning, you continued running the
03 stretch line, you wasn't shutting it down. But
04 if you was shutting spinning down to do
05 preventative maintenance, you would want to shut
06 that whole line down and do it on from spinning
07 through stretch to where you wouldn't have two
08 shutdowns, you would only have the one.
09 BY MS. PRYOR:
10 Q. And I guess my question is: Would you agree
11 that maintenance and work on equipment was occurring
12 on a continual basis --
13 A. Yes.
14 Q. -- at the facility?
15 Would you also agree that if everything had
16 to be shut down during the times of maintenance that
17 there would be zero production ever, if that was the
18 case?

19 A. Yes.
20 Q. So there were times where you could work on
21 equipment and the entire facility wouldn't be shut
22 down when that work was happening?
23 A. Correct.

65. PAGE 70:01 TO 73:18 (RUNNING 00:05:31.106)

00070:01 Q. Because that would be inefficient --
02 A. Right.
03 Q. -- and nothing would ever get done.
04 A. (Witness nodded head.)
05 Q. Sir, you mentioned that you were working at
06 the time of your diagnosis.
07 A. Yes.
08 Q. Where were you working?
09 A. Precision Bearing.
10 Q. And how many hours a week did you work?
11 A. I was working 40 hours a week.
12 Q. And --
13 A. Not the complete year. After I retired, and
14 I said previously that they called and wanted me to
15 come back to work and work another year, and I did.
16 After that, I would work 40 hours a week until I drew
17 all I could draw, the government would allow me to
18 draw, then I would retire 'til the next year. And I
19 did that up 'til -- right up until a couple of weeks
20 before I had this operation, I mean.
21 Q. And earlier you said you were working about
22 six months a year; is that about accurate?
23 A. Yes.
24 Q. At 40 hours a week?
25 A. Yes.
00071:01 Q. Do you recall how much you were making?
02 A. They were -- they were paying me $20 an
03 hour, and I went to them there the last year I was
04 working and I told them to -- if they would, cut it
05 back to 16, because I'm getting old and my job wasn't
06 as -- I wasn't producing as -- as much as I was
07 earlier. So they didn't do it on their own. I asked
08 them would they cut me from 20 to 16 because I felt
09 like, you know, they were overpaying me.
10 Q. So you were -- you were keeping everybody
11 honest?
12 A. Yes.
13 Q. Sir, how long did you plan on -- prior to
14 getting this cancer, how long did you plan on
15 continuing to work that six months a year?
16 A. I was planning on working up until I got
17 totally disabled. And had I not come down with this
18 cancer, I would be working today.
19 Q. Was there ever an age that you had planned
20 on retiring or stopping work completely?
21 A. No, not being as I had it set up to where I
22 could work, you know, three months a year or six
23 months a year or whatever I wanted to work. I was
24 intending to do that until I died, if I was able.
25 Q. Sir, I just have a few more questions.
00072:01 We talked a little bit earlier about how
02 mesothelioma has affected you and how you're feeling.
03 How has your diagnosis affected your family?
04 A. It has affected us terribly, terribly bad,
05 just -- just like yesterday, my daughter, she went to
06 the doctor's office with us yesterday, and she was
07 sitting there in the doctor's office when the doctors
08 told us to stop everything and that he was turning me
09 over to hospice. She busted out crying. And she was

10 real, real upset yesterday.
11 And she stays upset a lot because she's
12 asked me, I don't know how many times this year,
13 Daddy, can we just go to the mountains? We'll take
14 care of you and we can -- we always went to the
15 mountains every December as a whole family, our whole
16 family. And then every year when we took a vacation,
17 we would go to Myrtle Beach and rent a big house on
18 the -- on the water itself. And we did that every
19 year, every single year we went to the mountains and
20 the beach or wherever as a whole, complete family.
21 And it's affected my whole family, bad.
22 They -- they -- we all enjoyed one another's company
23 and being around one another. And my grandkids,
24 it's -- it's affected them. And they come to me and
25 Poppa, Poppa, let's go to the beach, because we
00073:01 always -- we always played -- took horseshoes and
02 took those -- two sets of those balls that you roll
03 and hit one another -- I done forgot now what you
04 call it. We always took them. I've still -- I've
05 got two sets here. And we took those. We was always
06 doing something like that all the time.
07 And it's -- like I say, it's -- my grandkids
08 tell me all the time, they come up to me, Poppa, when
09 we going to the mountains? When we going to the
10 mountains? And I miss it. And my wife misses it.
11 And my whole family misses it. And I wished it
12 wasn't like that. I wished it wasn't.
13 But the good Lord's in control, and I have
14 left it up to him. And I'm praying that he will heal
15 me. I hope and pray he does. I hope and I'm praying
16 every day that the Lord will heal me. And I have
17 been believing strongly that he will. And I'm hoping
18 yet that he will.

66. PAGE 74:06 TO 74:22 (RUNNING 00:00:40.601)

06 All right. Mr. Seay, hi. We have talked to
07 you, as you know, we talked to you yesterday.
08 A. Yes, sir.
09 Q. And we talked to you, I guess a couple of
10 months ago. And just the same as today in the sense
11 that we had a court reporter writing down everything
12 that we said, but in -- in the last two times we
13 didn't have a video camera, so --
14 A. Yes, sir.
15 Q. -- just because we've got the movie camera
16 on, I don't necessarily want to go through every
17 little bit again.
18 A. Yes, sir.
19 Q. So let me just tag off on -- you know, on
20 all three occasions, I know you have told us the
21 truth.
22 A. Yes, sir.

67. PAGE 75:07 TO 75:15 (RUNNING 00:00:29.423)

07 Q. We have talked about -- in many cases we
08 talked about your memory or in other cases about your
09 best estimates, right?
10 A. Yes, sir.
11 Q. And just for the sake of the video camera,
12 if we took those things that were written down from
13 those other depositions and put them on a screen over
14 your head, you would stand by them today?
15 A. I believe I would.

68. PAGE 76:14 TO 76:24 (RUNNING 00:00:28.094)

14 Q. You talked about working for Daniel.
15 A. Yes, sir.
16 Q. And Daniel, my understanding is that Daniel
17 was the on-site maintenance company at Hoechst; is
18 that correct?
19 A. Correct.
20 Q. And so if there was something that broke, it
21 would be a Daniel employee that fixed it, right?
22 A. Yes.
23 Q. And the repairs that you made, were those
24 important to the continued operation of Hoechst?

69. PAGE 77:01 TO 77:12 (RUNNING 00:00:23.171)

00077:01 THE WITNESS: Yes, it was.
02 BY MR. HAWKINS:
03 Q. And you talked about some preventative
04 maintenance. Was that preventative maintenance
05 necessary to the continued operation of the plant?
06 A. Very much so.
07 Q. Okay. And you talked about a supply room, I
08 believe. Is that what you called it?
09 A. Yes.
10 Q. And the parts that were in that supply room,
11 were they essential to the -- allow you to make your
12 repairs to equipment?

70. PAGE 77:14 TO 77:14 (RUNNING 00:00:01.048)

14 THE WITNESS: Yes, sir.

71. PAGE 78:02 TO 80:10 (RUNNING 00:03:56.308)

02 Q. Sir, I just have one more question for you.
03 This time a year ago, did you ever imagine that you
04 would be diagnosed with a fatal cancer?
05 A. No, I certainly didn't.
06 Q. What's the hardest part about having
07 mesothelioma?
08 A. Well, the hardest part about it is
09 knowing -- the very hardest part about it is knowing
10 that you're going to leave here, definitely going to
11 leave here, and you know it's going to be soon. You
12 don't know when. And you try your best to keep your
13 hopes up and be strong for your family and grandkids
14 and all. It's hard. It's hard.
15 Hurt, hurt 24 hours. I don't know about
16 these other cancers, I don't know how they are, but
17 this cancer is in my lining, I believe it's all in my
18 stomach now, and when they cut on me over here so
19 much, it's got over in that area now. And -- and,
20 you know, some -- some -- some doctors will tell you
21 that this cancer is only in your lungs. That's not
22 so. Nowhere near is that so. It can get spread in
23 other areas from operation, when you're operated on.
24 And I have terrible, terrible pains, and I
25 have terrible, terrible scar tissue problems. I have
00079:01 like marbles that big around all in my back that I
02 lay down on every night. And I can't lay on this
03 side, period. Not any -- I haven't laid on it. From
04 all those operations. And lay on this one side,
05 trying to get comfortable, and you get on your back,
06 and it's like you have laid down on a bunch of
07 marbles. It's been a terrible, terrible year.
08 I mean, one day I'm hoping, praying the Lord
09 to go ahead and take me home today, don't -- just

Dennis Seay

10 don't let me suffer no more; take me home today. And
11 then I get to thinking about my family and my
12 grandkids and all, then I'm praying to the good Lord
13 to just heal me, let me stay here a little longer
14 where I can enjoy my grandkids and all just a little
15 more.
16 And I'm not just saying this because
17 these -- y'all are here or they're taking video. I'm
18 as -- I'm as truthful as I can be about it. I've got
19 to be. Because they ain't but two places I'm going:
20 That's either up or down. And they ain't no amount
21 of money on this earth would -- would -- would allow
22 me, and believe you me I'm telling you the truth,
23 they ain't no amount of money would allow me to sit
24 here and tell you a lie for any amount of money to
25 keep me out of heaven up there, because that's my
00080:01 only hope. That's the only hope for all of you
02 sitting in here is for one day you're going
03 somewhere. If you believe in eternity, you're going
04 somewhere. You're either going up or you're going
05 down. And like I say, I want to go up.
06 And I'm -- I know I'm close. I know I'm
07 close. And I'm praying today, give me some more
08 time, Lord. But when I'm laying in there hurting
09 real bad, I'm praying, Lord, go ahead and take me on
10 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)

09302015_checked

RT001 159 SEGMENTS (RUNNING 01:10:17.339)

1. PAGE 10:25 TO 11:16 (RUNNING 00:00:35.640)

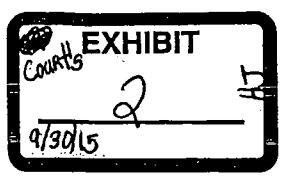
25 Q. Good morning. How are you doing?
00011:01 A. Doing good.
02 Q. Can you introduce yourself to the jury, please?
03 A. Yes. I'm Ronnie Thompson.
04 Q. Okay.
05 A. I worked down there from '71 -- I'm talking
06 about the Hoechst property. I worked down there from '71
07 until 2004.
08 Q. Okay. Very good. We'll get to all that.
09 First, I want to ask you some general
10 introduction questions just to, you know, introduce you
11 to the jury here, and then we'll get into the meat and
12 potatoes in not too long.
13 Have you ever given a deposition before?
14 A. No.
15 Q. This is your first time?
16 A. This is the first time.

2. PAGE 14:17 TO 15:09 (RUNNING 00:00:38.934)

17 Q. Okay. And little questions about you, how old
18 are you, Ronnie?
19 A. I'm 67.
20 Q. 67. I should have said how young are you then.
21 Where do you currently live?
22 A. At 263 Gardner Road, Chesnee. It's about a 12
23 minute ride from here.
24 Q. Okay. Right down 221; right?
25 A. Right.
00015:01 Q. It's a pretty little drive.
02 How long have you lived over in Chesnee
03 for?
04 A. All my life.
05 Q. Okay. Are you married, Mr. Thompson?
06 A. Divorced.
07 Q. Okay. You live alone then?
08 A. I got one child, you know, that lives with me
09 part of the time.

3. PAGE 15:13 TO 15:24 (RUNNING 00:00:25.064)

13 Do you have any children? I know you
14 mentioned one that lives with you, but how many children
15 do you have?
16 A. I have two, a son and a daughter.
17 Q. How many grandchildren?
18 A. Four.
19 Q. Four grandkids.
20 Now, what do you -- are you currently
21 employed right now?
22 A. No. I'm retired.
23 Q. When did you retire?
24 A. 65, which was two years ago.



4. PAGE 16:15 TO 18:17 (RUNNING 00:01:56.918)

15 sitting behind me here? Do you know why you're here
16 today?
17 A. Yes.
18 Q. And why is that?
19 A. To support what Dennis Seay had said about the
20 type of work he done and what he worked on and the areas
21 that he worked in.
22 Q. Okay. And we'll get to that.
23 How long have you known Dennis for?
24 A. Well, I've known him since '73, 1973.
25 Q. Okay.
00017:01 A. The reason I know, I was in one department and
02 was transferred into their department, and that's how I
03 met him whenever I went in his department.
04 Q. And that leads me to my next question. Did you
05 work with Dennis?
06 A. Yes.
07 Q. And where did you work with Dennis?
08 A. Staple A spinning.
09 Q. Okay. And what was the name of the company that
10 you-all worked for?
11 A. At that time it was Hoechst.
12 Q. Okay.
13 A. Well, I take that back. We were working for
14 Daniel when I first went over there.
15 Q. So you worked for Daniel's?
16 A. Worked for Daniel's.
17 Q. But you were at the Hoechst plant; right?
18 A. But at the Hoechst plant, right.
19 Q. Okay. Did you have the occasion to work side by
20 side with Dennis?
21 A. Yes.
22 Q. And what were the specific years that you worked
23 side by side with him?
24 A. From 1973 until '75.
25 Q. Okay. Did you have occasion to work around him
00018:01 after 1975?
02 A. No, but we walked through the area going from
03 one job to the other, might stop and say hello whenever
04 he would be working in the pump shop.
05 Q. Okay. And we'll get to that whole pump shop
06 pretty soon.
07 Do you know when Dennis stopped working at
08 the Hoechst plant?
09 A. I don't know. I don't know.
10 Q. Okay. I'm going to represent to you that he
11 testified that he left the plant in 1978. Does that
12 sound about right to you?
13 A. Yeah, that sounds about right.
14 Q. Okay. So you-all worked together.
15 Let's talk about the Hoechst plant a little
16 bit. What type of materials did the Hoechst plant
17 manufacture?

5. PAGE 18:19 TO 18:19 (RUNNING 00:00:01.182)

19 A. Polyester.

6. PAGE 18:23 TO 19:14 (RUNNING 00:00:35.287)

23 Q. And what would polyester be used for? I'm just
24 curious.
25 A. Clothing.
00019:01 Q. Okay. Now, you mentioned that you and Dennis at
02 the time, '73 to '75, both worked for a company called

03 Daniel's?
04 A. Correct.
05 Q. But you were at the Hoechst plant?
06 A. Right.
07 Q. Did you work for Daniel's the entire time frame
08 that Dennis worked at the plant, or did you move on
09 somewhere?
10 A. I worked with Daniel's from '71 until '75.
11 Q. Okay.
12 A. Then I switched over to Hoechst.
13 Q. Can you explain the relationship between
14 Daniel's and Hoechst?

7. PAGE 19:16 TO 20:04 (RUNNING 00:00:31.588)

16 A. Well, Daniel's was a subcontractor. They're the
17 ones that actually built the building.
18 BY MR. PAUL:
19 Q. Okay.
20 A. And you had two groups. They had a group that
21 worked construction. They had a group of men that worked
22 on the maintenance within the areas.
23 Q. Okay. And that was the Daniel's --
24 A. That was all Daniel's. It was like two groups.
25 One of them was construction crews. The others were
00020:01 maintenance crews.
02 Q. Was Daniel's a completely separate company from
03 Hoechst?
04 A. Yes.

8. PAGE 21:14 TO 21:18 (RUNNING 00:00:15.141)

14 Do you believe that the work, and we'll get
15 into this, too, in a little bit, that Dennis and you-all
16 did for the Hoechst plant, do you believe that that was
17 an integral important part of the operation of the plant
18 to which if it wasn't done it could not function?

9. PAGE 21:20 TO 21:20 (RUNNING 00:00:00.995)

20 A. Yeah.

10. PAGE 22:19 TO 23:20 (RUNNING 00:01:02.493)

19 What was Dennis's job title when he worked
20 for Daniel's at this Hoechst plant in Spartanburg?
21 A. Millwright.
22 Q. A millwright.
23 Did he work in that capacity the entire
24 time frame that he worked at the plant?
25 A. Yes, as far as I know.
00023:01 Q. And for the purposes of the jury, can you
02 explain the types of things that a millwright does on a
03 typical job?
04 A. Well, they'll change out a pump or a motor or a
05 gearbox. Sometimes they would rebuild the gearbox or the
06 pump.
07 Q. Okay.
08 A. Repair flanges where they had been leaking.
09 Q. Okay. Sounds to me like general maintenance --
10 A. Yes.
11 Q. -- of the machinery in the plant. Is that
12 right?
13 A. Correct.
14 Q. Did that entail any work on valves?
15 A. Yeah, we had to.
16 Q. Did that entail any work on condensers?
17 A. Yes.

18 Q. Okay.
19 A. And worked on vacuum systems where the
20 condensers go.

11. PAGE 24:08 TO 24:11 (RUNNING 00:00:07.722)

08 Q. Do you believe that Dennis worked around any
09 asbestos containing materials while he worked for
10 Daniel's as a millwright at the Hoechst plant?
11 A. Yes.

12. PAGE 24:16 TO 25:17 (RUNNING 00:00:58.143)

16 Q. Because you worked side by side with him; right?
17 A. Right.
18 Q. And you -- you're a witness to what he did. Is
19 that correct?
20 A. (The witness nodded affirmatively.)
21 Q. What types of materials do you think that Dennis
22 worked with that contained asbestos containing component
23 parts or that contained asbestos at all?
24 A. Well, you had the insulation that was around
25 your heated pipes.
00025:01 Q. Okay.
02 A. They said it was asbestos, the insulators did.
03 Then you had your gaskets.
04 Q. Okay.
05 A. Then you had your gasket material. You could
06 get a sheet of it out of the supply room and cut your own
07 gaskets.
08 Q. Okay. Did you-all work around any packing?
09 A. Yes.
10 Q. Was that part of Dennis's job?
11 A. Yes, it was.
12 Q. We'll get to that.
13 Where would -- the gasket and packing,
14 where would they go into?
15 A. Well, your gaskets go on the housing and the
16 pipe that's coming into it and the pipe going out of it.
17 They required gaskets also.

13. PAGE 25:20 TO 27:09 (RUNNING 00:01:51.671)

20 Was there a specific type of machinery that the gasket
21 and the packing would go into? And maybe I'll just say
22 it this way. Would the gaskets and packing be involved
23 with pumps and valves?
24 A. Yeah.
25 Q. Okay. I think you were implying that, and I
00026:01 just wanted to clarify.
02 Let's talk a bit about pumps. As a
03 millwright you mentioned Dennis did maintenance work. Is
04 that correct?
05 A. Yes.
06 Q. With the pumps, what type of work would Dennis
07 do with the pumps at the Hoechst plant?
08 A. Well, he would tear the pumps down, put a new
09 impeller on it if it needed it, put all new gaskets in it
10 and then repack the bonnet on it.
11 Q. Okay. Where did he do this type of work? Did
12 he do it in the field, or did he do it in a room?
13 A. Most of the time it was in the shop, but
14 occasionally if they had one out there that was leaking
15 real bad, they would switch to the spare pump and they
16 would pack the one that was leaking. They would pack it
17 and do it in the field, so to speak.
18 Q. Okay. And between 1973 and 1975, did you have
19 the occasion to work with him in both the field and the

20 pump room?
21 A. Yes.
22 Q. Okay. Do you know what specific area Dennis
23 worked at during the time frame that you worked with him
24 at the plant?
25 A. Now, he worked in staple A spinning from the
00027:01 time that he went to work up until '75. Then he went to
02 the new addition, which was right beside the side (sic),
03 which they called it staple A spinning. He went over
04 there with Grady Moore, who was his supervisor.
05 Q. Okay.
06 A. He worked with him until, like you said, '78.
07 That's about right.
08 Q. When he bolted?
09 A. Right.

14. PAGE 27:13 TO 27:15 (RUNNING 00:00:04.596)

13 Q. Would you-all ever get called out to work in
14 other areas of the plant?
15 A. Yeah.

15. PAGE 27:19 TO 30:16 (RUNNING 00:02:28.309)

19 cut you off. He would get called out in the other areas
20 of the plant?
21 A. Yes. Well, say if you was on spinning and
22 stretching area, you know, they would loan people from
23 one department to another. There would be four or five
24 departments, maintenance departments, and they would loan
25 people out, especially if you had a shutdown, because it
00028:01 just required more people if you're running a shutdown.
02 Q. I gotcha.
03 Let's talk about that, the shutdowns. How
04 often would shutdowns occur?
05 A. There would be a shutdown just about every
06 month.
07 Q. Really?
08 A. Yeah, really.
09 Q. And what would go on during a shutdown?
10 A. Well, you would pull valves out, clean them
11 where the polymer and everything had got to it, clean the
12 vacuum system separators, and you might even have to --
13 well, you have to rattle the vapor lines. That's clean
14 the vapor lines. And if there's a bad gearbox or
15 something, you would have to change them out and just put
16 new bushings in the gearboxes.
17 Q. Sounds to me like general maintenance throughout
18 the whole plant during shutdown; right?
19 A. Through that department. Now, sometimes,if you
20 shut one spinning line down,it would affect maybe two
21 stretch lines. So you would have two departments down,
22 or not two departments, but what they call two lines
23 down.
24 Q. Would Dennis have the occasion to work on these
25 shutdowns when they occurred?
00029:01 A. Yes.
02 Q. And would he be doing the same type maintenance
03 as a millwright --
04 A. Yes.
05 Q. -- that you described earlier?
06 A. Right.
07 Q. Let's talk about pumps. This might be a little
08 difficult question. In this plant, I know it's pretty
09 large, but can you estimate how many pumps were located
10 in the entire plant?
11 A. There's no way. There ain't no way.

12 Q. And why is that?
13 A. There's hundreds of them.
14 Q. Okay. A lot?
15 A. A lot, yes.
16 Q. Now, Dennis didn't work on all these pumps.
17 Right?
18 A. No, he didn't work on all of them.
19 Q. There were other millwrights. Correct?
20 A. Right.
21 Q. There was other pump guys; --
22 A. Yes.
23 Q. -- correct?
24 Did each section of the plant have their
25 own pump guy and millwright?
00030:01 A. Most of them.
02 Q. But that was Dennis's specialty in his specific
03 area --
04 A. Yes.
05 Q. -- that he worked at. Correct?
06 A. Yes.
07 Q. Did he have the -- did he work on pumps
08 throughout the entire course of his career?
09 A. Most of the time, --
10 Q. Okay.
11 A. -- but he would build gear boxes also.
12 Q. Gear boxes.
13 You mentioned valves. Did he work on
14 valves throughout the entire portion of his career
15 working at the Hoechst plant?
16 A. Yes.

16. PAGE 30:17 TO 30:21 (RUNNING 00:00:14.490)

17 Q. And did he work with the condensers throughout
18 the entire portion of his career at Hoechst?
19 A. Well, the only time I -- not all the time.
20 Because whenever he went up on the stretch line area, I
21 don't know if they had condensers up there or not.

17. PAGE 30:25 TO 31:02 (RUNNING 00:00:05.701)

25 Q. Okay. Do you know when he left staple A and
00031:01 moved to the other area?
02 A. 1975.

18. PAGE 31:09 TO 34:12 (RUNNING 00:03:13.722)

09 You mentioned gaskets and packing, correct,
10 on pumps?
11 A. Right.
12 Q. First of all, can you explain to the jury what a
13 gasket is?
14 A. Its what seals two your flanges together. You
15 put the gasket in there to seal the product that's inside
16 the system to keep it from leaking; and then the pump,
17 you put a gasket between the bonnet and the housing.
18 Q. Okay. Did every pump have gaskets?
19 A. Yeah, --
20 Q. Okay.
21 A. -- to my knowledge.
22 Q. And we're only here to talk about the stuff that
23 you worked with and you saw Dennis work with. So --
24 What about packing? Can you explain to the
25 jury what packing is used for?
00032:01 A. Well, it goes around your shaft to keep whatever
02 you're pumping, keep it in, keep it contained.
03 Q. Okay. Was packing involved in all the pumps and
04 valves that you worked with with Dennis?

05 A. Yes, all except ones that had mechanical seals.
06 Q. And when was the first time you saw a pump or
07 valve with a mechanical seal? Was it in the '80s?
08 A. Well, yeah, probably was. Yes.
09 Q. Okay. So that would have been after the time
10 that Dennis left?
11 A. Yeah, because they had --
12 Q. Correct?
13 A. Right.
14 Q. Okay. Now, you mentioned Dennis had to remove
15 and replace gaskets from the pumps that he worked on.
16 And I think you already said it, but why would he have to
17 remove these gaskets from those pumps again?
18 A. Well, the gaskets, some of them would be stuck
19 on there. Especially with a heated pump, they would be
20 stuck on there. And if you couldn't get it off with a
21 putty knife, you would have to take a wire brush --
22 Q. Okay.
23 A. -- or an air grinder with a wire brush on it --
24 Q. Okay.
25 A. -- and buff it up.
00033:01 Q. So you would have to remove these gaskets from
02 the pumps. Can you estimate how many -- the percentage
03 of time that the gaskets would not just come out of a
04 pump easily that he had to use the putty knife and the
05 wire brush?
06 A. 25 percent of the time.
07 Q. Was it -- I mean, it was a lot? I mean, would
08 the -- was it a lot?
09 A. Yeah, it was a lot.
10 Q. Okay. Let's talk about this putty knife and
11 wire brush. Can you explain exactly how he would remove
12 these gasket materials on the flange just for the jury?
13 A. Well, like I said, if a putty knife wouldn't
14 take it off, you would take an air grinder, which has got
15 a 3 inch wire brush on the end of it, and you would
16 literally buff it to get rid of the gasket material that
17 was on it --
18 Q. Okay.
19 A. -- so you would have a good seal.
20 Q. And you mentioned that this was stuck to the
21 flanges of the pumps?
22 A. Yeah, to the flanges.
23 Q. Okay. How long would that take?
24 A. Probably 10 minutes, 15 at the most.
25 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?
02 A. Right.
03 Q. Is that correct?
04 When Dennis used his putty knife and the
05 wire brush, he was scraping all that gasket material off
06 the flanges. Correct?
07 A. (The witness nodded affirmatively.)
08 Q. What conditions were created at that point?
09 A. Well, there would be a little bit of dust.
10 Q. Is that because the particles were getting
11 scraped --
12 A. Right.

19. PAGE 34:21 TO 34:24 (RUNNING 00:00:06.132)

21 Q. So this particles and dust in the air, do you
22 believe Dennis breathed the dust created when he did
23 that?
24 A. Yes.

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20. PAGE 35:06 TO 35:19 (RUNNING 00:00:33.183)

06 When he was working on the pumps, where
07 would he do primarily the most of his work on pumps?
08 A. In the shop.
09 Q. Okay. So he's removed the gaskets now; Right?
10 A. Right.
11 Q. Where would Dennis go to get the new gaskets to
12 replace the old gaskets?
13 A. Well, he would go to the supply room. If he
14 didn't have it already in the shop, he would go to the
15 supply room.
16 Q. Okay. Were these replacement gaskets
17 manufactured by the same manufacturers of the pumps that
18 he would remove those gaskets from?
19 A. Most all of them.

21. PAGE 35:22 TO 36:07 (RUNNING 00:00:20.728)

22 Q. Okay. And how do you know that?
23 A. Well, the name was on the boxes --
24 Q. Okay.
25 A. -- that you get out of the supply room. They
00036:01 would have the factory, you know.
02 Q. Was that specific to each different type of pump
03 and valve that he worked on?
04 A. Yes.
05 Q. Would you call that specific name like a
06 replacement kit or --
07 A. You're talking about the gaskets?

22. PAGE 36:12 TO 36:15 (RUNNING 00:00:11.382)

12 names in a second. I was just meaning as far as you
13 mentioned that the materials came -- the materials that
14 replaced old materials came from the same manufacturer of
15 the pumps and the valves that he worked on, and I just --

23. PAGE 36:19 TO 38:11 (RUNNING 00:01:47.066)

19 Q. Would you call that a replacement kit?
20 A. Yes.
21 Q. Okay. What would come in a typical replacement
22 kit for the pumps and the valves?
23 A. The packing.
24 Q. Uh-huh.
25 A. And O-rings, if it had O-rings, you would have
00037:01 it in there.
02 Q. Okay. Any gaskets in there?
03 A. Yes, the gaskets for the bonnet.
04 Q. Okay. Let's talk about the packing now because
05 you said that packing would be in the replacement kits
06 also. Right?
07 A. Right.
08 Q. Okay. Packing work on pumps, would Dennis ever
09 have to replace and remove packing from the pumps that he
10 worked on?
11 A. Yes, --
12 Q. Okay.
13 A. -- done that. That was routine.
14 Q. How would Dennis remove the packing, and what
15 would he use to remove that packing from the pumps?
16 A. He would use a packing puller.
17 Q. Okay. Can you explain to the jury what a
18 packing puller is?
19 A. Something like a cork screw. You just back off
20 off your packing flange, and then it had that little cork
21 screw shape on the end of a rod, a flexible rod most of

22 the time, and all you do is just screw it in. You might
23 have to put one on each side and then just manually pull
24 the packing out of it. Most of the time it would have
25 three to four pieces of packing in it. And then clean it
00038:01 up. After you got the packing out, then you would clean
02 it up and put your new packing back in with a wooden
03 dowel I call it, a piece of homemade wood.
04 Q. When he's cleaning it up and you're cleaning up
05 the packing, would you-all use any compressed area to
06 blow out the area?
07 A. Yes, use a wire brush or air grinder.
08 Q. When you're using these materials after you've
09 removed the packing, were there any conditions created
10 when you used that air compressor?
11 A. Well, there would be a little bit of dust.

24. PAGE 38:19 TO 39:22 (RUNNING 00:01:10.050)

19 Q. Do you believe that Dennis breathed that dust?
20 A. Yes.
21 Q. Now, how often would Dennis have to replace
22 gaskets and packing on pumps?
23 A. Well, he done it -- eventually he done it every
24 day.
25 Q. Every day?
00039:01 A. Yeah.
02 Q. That was his job; right?
03 A. Yes, that was his job. He was a pump man, so to
04 speak.
05 Q. He would also do the same work with valves
06 though. Correct?
07 A. Yes.
08 Q. Okay. Do you recall any of the manufacturers of
09 the pumps that Dennis worked on while he worked at the
10 Hoechst plant?
11 A. He had Aurora, Ingersoll-Rand, Durco. Goulds,
12 had it.
13 Q. Were there any other ones?
14 A. Had Barmary (phonetic) pumps, but they were from
15 Germany. Most all them were gear or product pumps.
16 Q. Okay. So there's more, but those --
17 A. Yes, there were more.
18 Q. Were those the primary pumps that --
19 A. Yes.
20 Q. -- you recall him working on?
21 And you recall those names because you
22 worked with Dennis side by side. Is that correct?

25. PAGE 39:24 TO 40:08 (RUNNING 00:00:14.767)

24 A. For two years.
25 BY MR. PAUL:
00040:01 Q. Okay.
02 A. Not every day, but I worked out of the same
03 shop.
04 Q. Yeah. Obviously, you-all would be pulled to
05 other areas of the plant. I understand.
06 But you saw him work on all those pumps.
07 Correct?
08 A. Yes.

26. PAGE 41:17 TO 42:04 (RUNNING 00:00:33.819)

17 Q. But you do know that Dennis worked on all those
18 products that you just manufactured; correct?
19 A. Right.
20 Q. Okay. Did Dennis perform the same type of
21 gasket and packing maintenance that you described on all

22 those pumps just now?
23 A. Yes.
24 Q. Okay. Is there a manufacturer of pump that
25 Dennis worked on the most?
00042:01 A. There's a lot of Ingersoll-Rand pumps.
02 Q. Okay. And all the manufacturers of pump
03 provided replacement kits. Is that correct?
04 A. Yes.

27. PAGE 42:22 TO 43:06 (RUNNING 00:00:24.239)

22 Q. Okay. Now, you also mentioned that as a
23 millwright Dennis worked on valves. Is that correct?
24 A. Yes.
25 Q. Okay. Can you explain to the jury what a valve
00043:01 is and what it's used for?
02 A. It's used to cut off the product, whether it's
03 pressure or vacuum.
04 Q. Okay. How many total valves can you estimate
05 that were at the entire Hoechst plant?
06 A. Thousands of them.

28. PAGE 43:09 TO 45:01 (RUNNING 00:01:53.124)

09 Dennis, obviously, wouldn't have to work on
10 all those valves. Correct?
11 A. No. No.
12 Q. He would be required to work on the valves in
13 his specific area that he worked in. Correct?
14 A. Right.
15 Q. Okay. What type of maintenance work would
16 Dennis have to do with those valves?
17 A. Repack them.
18 Q. Would he have to do anything else?
19 A. Some of them, especially the large valves, they
20 would have to clean them. That was the product. When it
21 was through, they would have to clean them. They would
22 have -- if it was a real large valve, they would do it in
23 place. They would tear it down out there on the floor
24 and clean it, check the seats on the valve, see if it's,
25 you know, sealing okay and then put new gaskets and
00044:01 packing back in it.
02 Q. Okay. Let's talk about the packing. Why would
03 packing have to be replaced from a valve?
04 A. Well, if it's heat -- working on a vessel, all
05 of it is heated. It just gets hard and starts leaking
06 externally.
07 Q. Do you recall how often packing would need to be
08 replaced or taken out of a valve?
09 A. Well, on the ones in line, the Dowtherm, they
10 would do it about every year.
11 Q. Okay. Can you explain to the jury where the
12 packing would go within a typical valve that you-all
13 worked on?
14 A. The packing goes in around the stem. The stem
15 is what goes in and out whenever you open and close it.
16 Q. And you personally saw Dennis working on packing
17 with valves. Correct?
18 A. Yeah.
19 Q. Did Dennis remove the packing from the valves in
20 the same manner as you described him removing the packing
21 from the pumps?
22 A. Right.
23 Q. Did he use the same type of tool to remove that
24 packing?
25 A. Yes.
00045:01 Q. Were the same conditions created when he did so?

29. PAGE 45:03 TO 45:09 (RUNNING 00:00:05.434)

03 A. Yes.
04 BY MR. PAUL:
05 Q. Did he use compressed air afterwards to blow out
06 --
07 A. Yeah.
08 Q. -- the valves?
09 A. Yeah.

30. PAGE 45:12 TO 45:16 (RUNNING 00:00:08.537)

12 Q. And when he used that compressed air, you
13 mentioned the same conditions were created. What
14 conditions were created?
15 A. There was dust.
16 Q. And did he have occasion to breathe that dust?

31. PAGE 45:18 TO 46:01 (RUNNING 00:00:13.855)

18 A. Yes.
19 BY MR. PAUL:
20 Q. The new packing for the valves, you mentioned
21 that packing with the pumps was bought at the supply
22 house in the plant. Is that correct?
23 A. Right.
24 Q. Would Dennis also get the replacement packing
25 from the supply room at the Hoechst plant?
00046:01 A. Yes.

32. PAGE 46:03 TO 46:08 (RUNNING 00:00:10.230)

03 Was that packing provided in the same
04 replacement kits as you've described earlier in your
05 deposition?
06 A. Yes.
07 Q. And did those replacement kits come from the
08 same manufacturers of valves that Dennis was working on?

33. PAGE 46:10 TO 46:10 (RUNNING 00:00:01.027)

10 A. Yes.

34. PAGE 46:14 TO 47:07 (RUNNING 00:00:46.398)

14 You mentioned gaskets on the valve. Where
15 were the gaskets located on a valve?
16 A. On the bonnet, between the bonnet and the
17 housing.
18 Q. Well, let's get there. Is that on the inside of
19 the valve?
20 A. Yes.
21 Q. So in order to change the gasket on a valve,
22 would Dennis have to open up the valve?
23 A. Yes.
24 Q. Okay. How many gaskets were on a typical valve
25 that Dennis would work on?
00047:01 A. Well, you would have the one for the bonnet.
02 Q. Okay.
03 A. And it depended on how many lines come in to it.
04 There would be one or two on it and then your exit side
05 of your pump.
06 Q. Okay. So can you estimate a number?
07 A. Three.

35. PAGE 48:03 TO 48:04 (RUNNING 00:00:03.823)

03 Q. To your knowledge, did Hoechst purchase all of
04 the materials that belonged at the plant?

36. PAGE 48:06 TO 48:09 (RUNNING 00:00:04.905)

06 A. Yes. I would say they did. They purchased it.
07 BY MR. PAUL:
08 Q. Because they owned the plant; correct?
09 A. Right.

37. PAGE 48:12 TO 50:13 (RUNNING 00:01:38.256)

12 Q. You mentioned gasket removal on these valves.
13 Did Dennis remove the gaskets from the valves in the same
14 manner as you described him removing gaskets from the
15 pumps?
16 A. Yeah.
17 Q. Would he use the same materials to remove those
18 gaskets?
19 A. Yes.
20 Q. Okay. And why would he have to use materials to
21 remove gaskets from the valves?
22 A. Because they got hard, especially heated pumps,
23 I mean, the heated ones.
24 Q. Okay. And valves?
25 A. Yeah, and valves.
00049:01 Q. So this is for pumps and valves. Correct?
02 A. Yeah.
03 Q. So what would he do to a gasket that would
04 require you have to used some sort of material to get
05 that gasket off?
06 A. He would use a putty knife.
07 Q. Okay. Would he use a -- and you mentioned
08 earlier that he used a wire brush also?
09 A. Yeah.
10 Q. He also used that. I have pictures of putty
11 knives and wire brushes, but I don't think I need to show
12 you any of those.
13 A. No, you don't.
14 Q. It's pretty basic stuff.
15 When he was using the putty knife and the
16 wire brush to scrape the flanges of the valves off, were
17 there any conditions created then?
18 A. Well, there was dust.
19 Q. Do you believe Dennis breathed that dust?
20 A. Yes.
21 Q. About how long would it take him to use the
22 putty knife and the wire brush to scrape the flanges off
23 the valves?
24 A. Maybe 15 minutes.
25 Q. Is that because he wanted to get the flange
00050:01 completely clean?
02 A. Right.
03 Q. And then he would replace that area with a new
04 gasket. Correct?
05 A. Yes.
06 Q. And would he use the gaskets from the
07 replacement kits to replace those gaskets --
08 A. Yes.
09 Q. -- on the valves?
10 A. Yes.
11 Q. Were those replacement kits provided by the same
12 manufacturers of valves that you've described today?
13 A. Yes.

38. PAGE 50:14 TO 50:16 (RUNNING 00:00:06.868)

14 Q. You mentioned Crane and Powell. Are those the
15 only manufacturers of valves that you recall Dennis
16 working on?

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.

12 Q. Manually clean it. How did that occur? I know
13 it sounds really basic, but how did you-all clean those?
14 A. With putty knives and brushes.
15 Q. Okay.
16 A. Now, the condenser itself, all you had to do is
17 put some soap in it and brush it out and put a new gasket
18 on the condenser.
19 Q. And that leads me to my next question. Where
20 was the gasket located on the condenser?
21 A. Right on top of the condenser.
22 Q. Okay. Did you-all, you and Dennis, have to
23 replace the gasket on the top of these condensers every
24 single time?

44. PAGE 55:01 TO 55:21 (RUNNING 00:00:49.804)

00055:01 A. Yes. You didn't want no vacuum leaks.
02 BY MR. PAUL:
03 Q. Okay. And I'll -- 15 condensers, how often
04 would these 15 condensers need to be cleaned out?
05 A. They would clean one a day.
06 Q. One a day?
07 A. Yes.
08 Q. Okay. So was it on kind of a cycle?
09 A. Right. It would be every two to three weeks.
10 They would move the schedule around a little bit if there
11 was a shutdown was coming.
12 Q. Okay. And every time -- so one a day, would you
13 say twice a month the condensers needed to be cleaned or
14 once every three weeks?
15 A. Once every three weeks.
16 Q. Fair enough.
17 Every time that you-all, you and Dennis,
18 cleaned a condenser, did Dennis have to replace a gasket
19 on that condenser?
20 DEFENSE: Object to form.
21 A. Yes.

45. PAGE 55:23 TO 56:07 (RUNNING 00:00:25.592)

23 Q. Okay. How big were the gaskets that went on the
24 condensers?
25 A. It was about 24 inches in diameter.
00056:01 Q. Okay.
02 A. Then the inside dimension was probably around
03 22.
04 Q. Okay. And every time -- you testified every
05 time you cleaned them you had to put a new gasket in
06 these condensers. Where did you and Dennis get the
07 replacement gasket from?

46. PAGE 56:10 TO 56:17 (RUNNING 00:00:17.134)

10 A. Well, we always kept the gasket material in the
11 shop, which comes from the supply room, the gasket
12 material does.
13 BY MR. PAUL:
14 Q. Now, you mentioned earlier that every time y'all
15 cleaned the condenser that the gasket needed to be
16 changed. Correct?
17 A. Yes.

47. PAGE 56:20 TO 56:22 (RUNNING 00:00:10.110)

20 Q. Okay. Did the condensers need to be -- did the
21 condensers require a gasket to be installed every time
22 that you and Dennis worked on them and cleaned them?

48. PAGE 56:24 TO 59:14 (RUNNING 00:02:26.176)

24 A. Yes.
25 BY MR. PAUL:
00057:01 Q. Okay. Fair enough.
02 A. If you run out of gasket material, you could use
03 the old one, but if you had the gasket material, you
04 would put a new gasket on every time.
05 Q. Okay. And you testified earlier that there was
06 a supply room at the Hoechst plant. Right?
07 A. Right.
08 Q. Okay. Where would you and Dennis get the
09 replacement gaskets for these condensers?
10 A. Well, we would get the material out of the
11 supply room, --
12 Q. Okay.
13 A. -- carry it back to the shop and then put the
14 gasket material on the cutting board, take a gasket
15 cutter and cut it out.
16 Q. And we'll get to that.
17 The -- you mentioned replacement kits with
18 pumps and valves. With the condensers, do you recall the
19 manufacturer of the gaskets that went on those
20 condensers?
21 A. Well, the material that we used was John Crane
22 333.
23 Q. And 333, how do you know it was John Crane 333?
24 A. Because it was on it, marked on it, painted on
25 it, stamped on it.
00058:01 Q. Okay. Were these sheet gaskets or precut
02 gaskets?
03 A. Sheet.
04 Q. Sheet.
05 And this is only in regards to the
06 condensers. Is that correct?
07 A. Pardon?
08 Q. This is only in regards to the condensers. Is
09 that correct?
10 A. Correct.
11 Q. You mentioned cutting these John Crane No. 333
12 gaskets. Is that correct?
13 A. Yes.
14 Q. Did you ever have the occasion to see Dennis
15 cutting those John Crane 333 gaskets?
16 A. Yeah.
17 Q. Where would he have to cut these John Crane No.
18 333 gaskets at?
19 A. Well, most of the time you used a piece of
20 plywood to put the material down on, and then you would
21 find your center of your gasket and then you would take a
22 little -- a pen or either a nail and prick the center of
23 it. Then take that gasket cutter and cut your OD out and
24 then your ID out.
25 Q. And this -- did this occur every single time
00059:01 that Dennis had to replace a gasket on a condenser?
02 A. Yes.
03 Q. And he used the same John Crane No. 333 gasket,
04 --
05 A. Yes.
06 Q. -- sheet gasket that you just described?
07 A. Yes.
08 Q. Okay. When he was cutting this John Crane No.
09 333 sheet gasket material, were there any conditions
10 created?
11 A. Well, yeah, there would be a little bit of
12 fiber, you know.

13 Q. Okay. Do you believe that Dennis would have
14 breathed that fiber when he was cutting it?

49. PAGE 59:16 TO 60:02 (RUNNING 00:00:18.329)

16 A. Yes.
17 BY MR. PAUL:
18 Q. Now, he cut it on plywood. Is that correct?
19 A. Yes.
20 Q. After he picked up the gaskets, would he, you
21 know, brush off his area?
22 A. Well, sometimes he would, yeah.
23 Q. Do you think that that created a dusty
24 condition?
25 A. Oh, yeah. Yeah.
00060:01 Q. Do you believe that he breathed the dust created
02 from those John Crane No. 333 sheet gaskets?

50. PAGE 60:04 TO 60:16 (RUNNING 00:00:26.753)

04 A. Yes.
05 BY MR. PAUL:
06 Q. How close was Dennis's face to the John Crane
07 No. 333 sheet gaskets when he was doing this work?
08 A. Well, within 3 foot, so maybe even closer than
09 that.
10 Q. Okay. So you mentioned every -- you know, once
11 every three weeks these condensers needed to be cleaned
12 out.
13 A. Yes.
14 Q. Do you believe that Dennis worked on the
15 condensers up until the time that you worked with him?
16 A. Yes.

51. PAGE 60:23 TO 61:17 (RUNNING 00:00:57.395)

23 Q. Okay. When did you start working at the plant?
24 I can't remember.
25 A. I started with Daniel's in '71.
00061:01 Q. '71.
02 Okay. Now, we've talked about gaskets a
03 lot, pretty exciting stuff, you know. Can you tell the
04 jury the different types, and I don't mean manufacturers,
05 different types of gaskets that there were at the plant
06 in total?
07 A. Well, we used copper, aluminum, asbestos.
08 Flexitallic, we used them. And we used -- on the
09 reactor, we would use a -- they called it an industrial
10 silver gasket. It was a large gasket. It might be 3
11 foot in diameter.
12 Q. Okay. Any Teflon gaskets?
13 A. Yeah, and Teflon.
14 Q. Okay. Are you able to differentiate an asbestos
15 gasket from a Teflon, metallic, rubber, Flexitallic
16 gasket?
17 A. Yes.

52. PAGE 61:20 TO 62:07 (RUNNING 00:00:24.162)

20 Q. What does an asbestos gasket look like?
21 A. Most of them was gray --
22 Q. Okay.
23 A. -- or almost black.
24 Q. You mentioned that like with the John Crane
25 gaskets it actually had the name stamped on them. Is
00062:01 that correct?
02 A. Yeah.
03 Q. It also had the number 333 stamped on them?

04 A. Yes. They had some more that had different
05 numbers that come from John Crane.
06 Q. Do you recall a John Crane No. 2112 gasket by
07 any chance?

53. PAGE 62:09 TO 63:01 (RUNNING 00:00:28.381)

09 A. Yeah.
10 BY MR. PAUL:
11 Q. Did Dennis work --
12 A. And there was a 750, too, I believe.
13 Q. Okay. Did Dennis have the occasion to work with
14 those John Crane 2112 gaskets?
15 A. Yes.
16 Q. And were those sheet gaskets?
17 A. Yes.
18 Q. And did he have to cut those gaskets?
19 A. Just like he did the other ones.
20 Q. The exact same manner as you described the John
21 Crane No. 333 gaskets; right?
22 A. Yes.
23 Q. Thank you.
24 Were asbestos gaskets used on the majority
25 of the pumps, valves and condensers that you worked on?
00063:01 A. Yes.

54. PAGE 63:04 TO 63:05 (RUNNING 00:00:05.185)

04 Q. Were asbestos gaskets used on every condenser
05 that you-all worked on?

55. PAGE 63:07 TO 63:17 (RUNNING 00:00:13.841)

07 A. I would say yes, --
08 BY MR. PAUL:
09 Q. Okay.
10 A. -- unless they was water. They wouldn't have
11 been on water.
12 Q. But the condensers, --
13 A. The condensers, yes.
14 Q. Specifically in regards to condensers?
15 A. Right.
16 Q. Were they all asbestos containing gaskets --
17 A. Yes.

56. PAGE 63:21 TO 63:23 (RUNNING 00:00:09.289)

21 Q. Okay. You mentioned insulation earlier. Did
22 the millwrights, you and Dennis, have to insulate any of
23 the machinery that you-all worked on?

57. PAGE 63:25 TO 64:01 (RUNNING 00:00:07.531)

25 A. No, we didn't have to insulate, but if there
00064:01 were removable type insulation on it, --

58. PAGE 64:04 TO 64:05 (RUNNING 00:00:06.253)

04 A. -- we would occasionally take it off and put it
05 back on, especially if it was a heated pump.

59. PAGE 64:10 TO 64:15 (RUNNING 00:00:11.942)

10 Q. Who would do the actual insulation work?
11 A. The insulators.
12 Q. Were the insulators employees of Daniel's or
13 Hoechst?
14 A. Daniel's.
15 Q. Who supplied the insulation?

60. PAGE 64:17 TO 64:17 (RUNNING 00:00:01.644)

17 A. Hoechst.

61. PAGE 64:19 TO 64:21 (RUNNING 00:00:07.069)

19 Q. Did that come from the supply room?
20 A. Yes. Most of the time they just dropped it off
21 at the insulation shop.

62. PAGE 65:02 TO 65:05 (RUNNING 00:00:07.556)

02 Q. Were you and Dennis around any of the insulators
03 when they were installing the insulation to the various
04 areas and materials?
05 A. Yes.

63. PAGE 65:07 TO 65:15 (RUNNING 00:00:12.283)

07 A. Yes, --
08 BY MR. PAUL:
09 Q. Okay.
10 A. -- on a shutdown especially.
11 Q. Yeah.
12 Were you-all around the insulators when
13 they were removing any insulation from the materials that
14 that insulation was worked on and applied to?
15 A. Yes.

64. PAGE 65:18 TO 65:21 (RUNNING 00:00:08.706)

18 Q. When you-all were working on pumps and valves,
19 did you have any occasion to disturb any insulation on
20 those pumps and valves?
21 A. Yes.

65. PAGE 65:22 TO 66:04 (RUNNING 00:00:23.877)

22 Q. And why -- why is that and how so?
23 A. Well, if you're changing it out, you know, you
24 would have to get down where the pump was at, and then,
25 you know, if you hit that insulation and it was old
00066:01 insulation especially, it would fly off of it.
02 Q. Okay. Do you recall the manufacturer
03 Owens-Corning by any chance in regards to insulation?
04 A. Yes.

66. PAGE 66:06 TO 66:09 (RUNNING 00:00:03.941)

06 A. Yeah.
07 BY MR. PAUL:
08 Q. That's what Hoechst purchased, Owens-Corning --
09 A. Yes.

67. PAGE 66:11 TO 66:21 (RUNNING 00:00:17.082)

11 Q. -- insulation?
12 A. Yeah.
13 BY MR. PAUL:
14 Q. Do you think they purchased different types of
15 insulation?
16 A. Yeah.
17 Q. And they supplied it all. Correct?
18 A. Yes. Well, I believe there was a Kako, I
19 believe was the name of it.
20 Q. Okay. Supplied by Hoechst?
21 A. Yes.

68. PAGE 66:25 TO 67:02 (RUNNING 00:00:02.119)

25 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)

09 Q. In preparation for this meeting with Kevin, did
10 you go back and look at any old information you may have?
11 A. Old information?
12 Q. And I don't know what you may have. Let's put
13 it this way, sir. We've never met before. Right?
14 A. No.
15 Q. And you've had an opportunity to at least meet
16 with Mr. -- with Kevin for -- three times you've had
17 prior conversations.
18 A. Right.
19 Q. So I don't have as much information as he does.
20 So I'm not trying to be rude. I'm just trying to find
21 out as much as I can.
22 A. I understand.

79. PAGE 90:08 TO 90:18 (RUNNING 00:00:22.882)

08 So in preparation for your meeting with
09 Kevin, did you review any documents beforehand?
10 A. No.
11 Q. Did you do any research or put any thought into
12 the meeting?
13 A. No.
14 Q. Just showed up and started talking?
15 A. Well, now, I mean, he had his questions and
16 answers. I didn't have nothing except what knowledge
17 I've got, you know, of the pumps that Dennis worked on
18 and the valves.

80. PAGE 90:19 TO 90:25 (RUNNING 00:00:11.188)

19 Q. Did he have a list of questions already made to
20 ask you?
21 A. Yeah, he had a list.
22 Q. Okay. Did you-all look at that list together?
23 A. Yeah.
24 Q. Did you look at that list together?
25 A. (The witness nodded affirmatively.)

81. PAGE 91:03 TO 91:04 (RUNNING 00:00:02.386)

03 Q. You nodded your head yes.
04 A. Yes.

82. PAGE 91:05 TO 91:12 (RUNNING 00:00:24.592)

05 Q. Now, you started out at the Hoechst Celanese
06 plant in 1971. Is it fair to say you don't have any
07 personal knowledge of what Mr. Seay worked with or around
08 before 1971 since you weren't there?
09 A. No, I wouldn't have.
10 Q. Now, when you started out there, what was your
11 first job title?
12 A. Millwright.

83. PAGE 92:22 TO 93:11 (RUNNING 00:00:32.327)

22 Q. You were a millwright the entire time you worked
23 for Daniel's?
24 A. Correct, up until '65.
25 Q. Did you continue --
00093:01 A. Excuse me, '75. I keep getting that mixed up.
02 Q. Did you continue as a millwright when you
03 started receiving your paycheck from Celanese, or did you
04 go into production?
05 A. I was a maintenance supervisor.
06 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.

22 Q. That's the purpose -- all this equipment and all
23 the stuff that you were working around, the purpose was
24 to produce fiber?
25 A. Correct.

89. PAGE 97:06 TO 97:09 (RUNNING 00:00:07.059)

06 Q. Well, my question though is, when maintenance
07 was happening out there, the purpose of it was to keep
08 those production lines in operation?
09 A. Correct.

90. PAGE 97:10 TO 97:25 (RUNNING 00:00:38.115)

10 Q. And when things were down, then production
11 couldn't really proceed if things aren't working
12 correctly?
13 A. Right.
14 Q. That would include the lines, the pumps, valves,
15 whatever it may be?
16 A. Right. But, now, when they were down, that's
17 when you done a lot of your maintenance work.
18 Q. Uh-huh.
19 And so the lines, keeping this stuff
20 operating was important to Celanese. Correct?
21 A. Yes.
22 Q. And you made these -- you did this maintenance
23 stuff in order to -- because it was important to Hoechst
24 to keep the lines operating. Correct?
25 A. Right.

91. PAGE 98:01 TO 99:15 (RUNNING 00:01:25.742)

00098:01 Q. During this '73 to '75 period where you worked
02 with Mr. Seay, you were a Daniel employee the entire
03 time?
04 A. Correct.
05 Q. And did Daniel employees take care of the
06 maintenance in the plant?
07 A. Yes. Yeah.
08 Q. That was all the maintenance in the plant.
09 Correct?
10 A. All of it, but some later on period of time, and
11 I don't remember the year, they hired over some of the
12 Daniel's mechanics onto Hoechst payroll.
13 Q. I'm glad you brought that up, and I'm going to
14 cover that real quickly. What year did that happen?
15 A. I don't remember.
16 Q. Would it have been the '90s, 2000s, '80s, do you
17 know?
18 A. It was probably around in the mid '80s, and the
19 reason they hired them so they could get them because a
20 lot of the Daniel's boys was going to Duke Power at that
21 time.
22 Q. Okay. So it sounds like the Daniel's employees
23 who knew all the maintenance, who did all the
24 maintenance, they were leaving to go somewhere else --
25 A. Right.
00099:01 Q. -- and Hoechst wanted to keep them --
02 A. They wanted to keep so many anyway.
03 Q. Because they had knowledge about the plant?
04 A. Correct.
05 Q. They didn't have to go back and train new
06 people to do the work. Correct?
07 A. Yeah, so they wouldn't have to retrain them.
08 Q. And so you mentioned earlier that there was a --
09 so Hoechst had its own maintenance department. That
10 didn't happen until later on after Mr. Seay left.

11 A. Right, that happened afterwards.
12 Q. Huh-uh.
13 So during the time Mr. Seay was there,
14 Daniel's handled all the maintenance at the plant?
15 A. Correct.

92. PAGE 100:08 TO 101:15 (RUNNING 00:01:31.976)

08 Q. Now, these maintenance people, they performed
09 those repairs so that the Hoechst employees could get
10 back and do the production work. Correct?
11 A. Correct.
12 Q. I think I've already asked this, but if
13 something was broken and needed maintenance, it was the
14 Daniel's people who would go in and fix it for the
15 Hoechst people?
16 A. Yeah.
17 Q. Who would give the assignment? Would it come
18 from Daniel's? Like for you as a millwright, how would
19 you get your assignment for the day?
20 A. Well, we always made schedules out, and then,
21 you know, go over the schedule each morning with the men
22 because you would have to talk about the job, just give
23 the jobs out. If you had 12 men in there, you would
24 generally pair them up, and you would go to six different
25 jobs.
00101:01 Q. Okay. Who would make that schedule?
02 A. The supervisor and the planner.
03 Q. And who did they work for?
04 A. The planner? I believe they worked -- they
05 started with Daniel's, and I don't -- but I'm sure they
06 switched over, but I don't know.
07 Q. Okay. So just to be clear, Daniel's -- Daniel's
08 planned out the job. Daniel's employees would plan out
09 the job. You said there was a planner and a supervisor.
10 They would make the schedule up.
11 A. Well, now, the supervisor, he would be a Hoechst
12 employee.
13 Q. Okay.
14 A. And then the planner, I know whenever they
15 started out they were with Daniel's.

93. PAGE 101:16 TO 102:05 (RUNNING 00:00:42.695)

16 Q. You mentioned when talking with Kevin earlier
17 that there was some insulation out at the plant. And
18 would this insulation be like on the pipelines?
19 A. Yes. See, in the spinning area there they used
20 Dowtherm to heat their vessels with, and you had to have
21 insulation to keep anybody from getting burned, plus hold
22 the temperature in.
23 Q. Okay. And you raise an important point I
24 believe. So the insulation served two purposes, to keep
25 the lines warm, to keep the product going through the
00102:01 lines warm.
02 A. Right.
03 Q. And also it served as safety for the employees
04 so that they wouldn't get burned being in the area.
05 A. Correct.

94. PAGE 102:15 TO 102:19 (RUNNING 00:00:13.162)

15 Q. Did -- let me ask you this. If you're looking
16 at the line, what would be the appearance of the line,
17 the Dowtherm line, for example?
18 A. Well, you would probably see a set of flanges,
19 and the rest of it would be covered up with insulation.

95. PAGE 102:20 TO 103:08 (RUNNING 00:00:22.331)

20 Q. Was there anything on that insulation? Was it
21 painted or covered in cloth or anything else?
22 A. Yeah. They paint them with some kind of
23 something.
24 Q. Okay.
25 A. Looks like, you know, white paint that they
00103:01 paint it. I think it's more or less of a sealer.
02 Q. Okay. And so the insulation was sealed with
03 some type of material, some type of liquid, paint or
04 sealant?
05 A. Yes. Yes.
06 Q. And would that give like sort of a harder
07 surface to it?
08 A. It would.

96. PAGE 103:16 TO 103:18 (RUNNING 00:00:04.322)

16 Q. But, just generally speaking, the lines were
17 protected, the insulation was protected?
18 A. Yes.

97. PAGE 103:19 TO 104:16 (RUNNING 00:01:09.164)

19 Q. And this sealant, paint, whatever you want to
20 call it, that would prevent dust, just generally
21 speaking, from being created?
22 A. Right.
23 Q. And, once again, it also served the -- it also
24 served the purpose of protecting you the employees from
25 being burned when you're walking by?
00104:01 A. Yes.
02 Q. Did Daniel's have a safety department?
03 A. They did over there at Greenville, but I don't
04 believe they had anything set up down here.
05 Q. Did Daniel's have any safety meetings?
06 A. Yeah, they did.
07 Q. And how often would those be?
08 A. I would say about once a month, but the
09 superintendent, he's the one that conducted that.
10 Q. And who was the superintendent?
11 A. Ray Oliver.
12 Q. Was he a Daniel employee?
13 A. Yes.
14 Q. Was asbestos ever discussed in those safety
15 meetings?
16 A. I wouldn't know about that.

98. PAGE 104:21 TO 105:01 (RUNNING 00:00:17.742)

21 Q. And we've -- as I said, I don't want to confuse
22 cases, but we've heard from some gentlemen earlier in
23 another plant, and they described the Celanese safety
24 department as being "fanatical about safety". Would you
25 agree with that statement, that the Celanese safety
00105:01 department was fanatical about safety?

99. PAGE 105:03 TO 105:03 (RUNNING 00:00:03.870)

03 A. No, I wouldn't say that.

100. PAGE 105:05 TO 105:06 (RUNNING 00:00:03.105)

05 Q. Would you agree that Celanese was a safety
06 conscious company?

101. PAGE 105:08 TO 105:17 (RUNNING 00:00:26.369)

08 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)

05 Did you ever see any warning signs on the
06 insulation that was brought into the facility?
07 A. No.
08 Q. So did you ever see the packaging how it came?
09 A. No. All we seen was the boxes of the material.

110. PAGE 108:12 TO 108:20 (RUNNING 00:00:14.611)

12 Q. Did you ever see the word asbestos on those
13 boxes?
14 A. No.
15 Q. Did you ever see any warnings on those boxes?
16 A. No.
17 Q. Those would be the same boxes that the people at
18 Celanese and Daniel's -- it was in the exact same box.
19 Correct?
20 A. Right.

111. PAGE 108:21 TO 109:06 (RUNNING 00:00:34.421)

21 Q. Now, you mentioned on some occasions you would
22 have to come in maybe remove some insulation. Now, would
23 it be your goal to remove as much ins -- as little
24 insulation as possible?
25 A. Well, say if a pump went out in the middle of
00109:01 the night, they wasn't going to call no insulators. They
02 would call the mechanics to change out the pump. Well,
03 it might be 12, 1:00 at night. And we would go ahead and
04 remove the removables. That's all we would remove, take
05 them off to the side, stack them up so we could get to
06 the flanges, start taking that pump out.

112. PAGE 109:07 TO 109:14 (RUNNING 00:00:12.462)

07 Q. I think I understand it.
08 And so would you agree that your purpose is
09 though really to remove as little as possible so you
10 don't have to come back and -- your purpose is to do as
11 little work as possible. Right?
12 A. Right.
13 Q. And remove as little insulation as required?
14 A. Correct. Yes.

113. PAGE 109:15 TO 109:17 (RUNNING 00:00:04.203)

15 Q. Did you ever use any water to wet down the
16 insulation beforehand?
17 A. No.

114. PAGE 109:18 TO 109:22 (RUNNING 00:00:06.177)

18 Q. It was never your job to install insulation?
19 A. No.
20 Q. It was never Mr. Seay's job to install
21 insulation?
22 A. No.

115. PAGE 109:23 TO 110:05 (RUNNING 00:00:18.524)

23 Q. I believe in response to some questions Kevin
24 asked you you said there was times when you worked around
25 insulators.
00110:01 A. Yes, during a shutdown.
02 Q. Okay. When that was happening, would you try to
03 avoid that area?
04 A. Well, yeah, we tried to avoid it. Sometimes you
05 couldn't avoid it.

116. PAGE 112:02 TO 112:10 (RUNNING 00:00:16.872)

02 Sir, you mentioned -- earlier you talked
03 about doing some work on pumps, valves and other
04 equipment. And, along the same line as the questions I
05 asked you earlier, when those would go down, it's
06 important to get those things repaired as quickly as
07 possible?
08 A. Right.
09 Q. In order to keep production moving?
10 A. Correct.

117. PAGE 113:14 TO 113:16 (RUNNING 00:00:03.987)

14 Q. You said you didn't work with Mr. Seay every
15 week. Is that right?
16 A. No, --

118. PAGE 113:18 TO 115:05 (RUNNING 00:01:09.780)

18 A. -- sure didn't.
19 BY MS. NETTLES:
20 Q. Okay. How often every week -- would you work
21 with Mr. Seay every week?
22 A. I would probably work with him about once a
23 week.
24 Q. Once a week.
25 And for how many hours once a week would
00114:01 you work with Mr. Seay?
02 A. Eight hours.
03 Q. Eight hours.
04 And during that eight hour period what
05 exactly would you guys be doing together?
06 A. Well, we would be either cleaning those vacuum
07 systems, --
08 Q. Uh-huh.
09 A. -- or we would be changing out a pump or
10 rebuilding a pump.
11 Q. So what you did during those eight hour periods
12 would vary depending on what assignment you had that day.
13 Is that right?
14 A. Right.
15 Q. So every time you guys worked together, you
16 weren't, say, for instance repacking a pump. Right?
17 A. No, not every time, --
18 Q. Right.
19 A. -- but we would be replacing some gaskets.
20 Q. Right.
21 Sometimes you would be replacing gaskets.
22 Sometimes you would be dealing with packing material, but
23 that's not all you did. Right?
24 A. No. No.
25 Q. You worked on a lot of different types of
00115:01 products; right, together?
02 A. Yes.
03 Q. And only a portion of that work would be related
04 to gasket and packing material. Right?
05 A. Right.

119. PAGE 115:11 TO 115:13 (RUNNING 00:00:05.343)

11 Q. Okay. So while he was doing his work, where
12 were you?
13 A. Doing another job.

120. PAGE 115:16 TO 115:18 (RUNNING 00:00:05.681)

16 Q. And in those instances, would that be in the
17 same eight hour period?

18 A. Yes.

121. PAGE 116:25 TO 117:02 (RUNNING 00:00:04.992)

25 So you talked a little bit about John Crane
00117:01 gasket material.
02 A. Right.

122. PAGE 117:03 TO 117:09 (RUNNING 00:00:19.891)

03 Q. And I want to know, can you please describe to
04 me what that John Crane gasket material looked like?
05 A. Well, it would be sheets of it.
06 Q. Okay. And what color were the sheets?
07 A. It was dark gray or almost a black.
08 Q. Okay. And did it have any words on it?
09 A. It had numbers on it, John-Mansville 333.

123. PAGE 117:12 TO 119:12 (RUNNING 00:02:07.533)

12 Q. Okay. Did it -- and do you only remember seeing
13 the 333 version written on the gasket material itself?
14 A. There was other numbers, 2012 or something or
15 other like that.
16 Q. Okay.
17 A. It seems like there was maybe a 750.
18 Q. Okay. When you went to -- I take it you went to
19 the supply room to obtain the gasket material that you
20 would be using?
21 A. Sometimes we did. Sometimes they would bring it
22 to us.
23 Q. Okay. When you had a chance to go to the supply
24 room, did you ever see any sort of packaging or boxes of
25 the specific sheet gasket material that you would use?
00118:01 A. No.
02 Q. So you never saw any sort of box coloring or
03 packaging, coloring or logos. Right?
04 A. No.
05 Q. And you wouldn't have had the opportunity to see
06 any warnings as to dangers of asbestos that may or may
07 not have been on that packaging material. Is that right?
08 A. Right.
09 Q. And when you went to obtain the gasket material
10 from the supply room, what did you ask for?
11 A. Well, you had a number to go by.
12 Q. Uh-huh.
13 A. A supply room number.
14 Q. Okay.
15 A. You looked it up in a catalog.
16 Q. Okay.
17 A. You would take that number down there to them.
18 They would go back in the back and get the material.
19 Q. Okay. And what kind of catalog would you be
20 looking in to see that number? Was it a factory catalog,
21 or was it a brand name manufacturer catalog? Was it a
22 product catalog? Where did you get that?
23 A. Supply room furnished it.
24 Q. Okay.
25 A. They had their own system down there.
00119:01 Q. Okay. So the supply room actually drafted and
02 supplied you with that catalog?
03 A. Correct. Yes.
04 Q. All right. And so you would ask for a specific
05 number of gasket material. Is that right?
06 A. Yes.
07 Q. Would you ask for it by brand name or just the
08 number?
09 A. Just the number.

10 Q. Okay. So you don't know --
11 A. But you have to look it up in the catalog to
12 know what you would get.

124. PAGE 119:14 TO 119:22 (RUNNING 00:00:20.184)

14 But no one told -- no one told you, okay,
15 here's your brand name specific product that you asked
16 for. They just said, okay, here's your sheet gasket
17 material. Right?
18 A. Yes.
19 Q. Okay. There were a number of different brands
20 of sheet gasket material that you used at Celanese.
21 Isn't that right?
22 A. Yes.

125. PAGE 119:25 TO 120:09 (RUNNING 00:00:23.203)

25 Q. Okay. And just because you named John Crane
00120:01 doesn't mean that there weren't a number of other
02 different brand names that you used on a regular basis.
03 Is that right?
04 A. Right.
05 Q. Okay. Can you pinpoint any specific brand name
06 that you used more than any others, or do you just know
07 that possibly one particular brand may have been at this
08 site?
09 A. Maybe Anchor.

126. PAGE 120:10 TO 120:13 (RUNNING 00:00:09.190)

10 Q. Okay. Can you tell me that you used one
11 particular brand name of sheet gasket material over
12 another?
13 A. We always used that John Crane.

127. PAGE 120:15 TO 120:17 (RUNNING 00:00:04.167)

15 But you can't tell me that you used John
16 Crane more than any other particular brand. Right?
17 A. No.

128. PAGE 120:19 TO 120:19 (RUNNING 00:00:00.962)

19 A. No.

129. PAGE 120:21 TO 121:24 (RUNNING 00:00:55.922)

21 Q. Okay. What size were the sheet gasket material?
22 A. 4 foot x 4 foot.
23 Q. Were they all 4 x 4?
24 A. Yes.
25 Q. Okay. And where did you go to actually cut out
00121:01 gaskets?
02 A. To the shop. We had a piece of plywood up there
03 to cut it out on.
04 Q. Okay. And you described to me how you cut them
05 out before. So I'm not going to go back through that.
06 But how long did it take you to cut out a new gasket?
07 A. Well, depended on the size of it.
08 Q. Okay. Can you give me a range, small to large,
09 how long it took you?
10 A. Well, a large one, it might take you 15 minutes.
11 Q. Uh-huh.
12 A. Now, the small one, it would take you about the
13 same thing, --
14 Q. Uh-huh.
15 A. -- about 15 minutes.
16 Q. Okay.

17 A. I'm talking about down to about an inch and a
18 half.
19 Q. Okay. Were all -- was all the sheet gasket
20 material the same thickness?
21 A. No.
22 Q. Okay. Can you describe the range of thickness
23 it was?
24 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)

25 Q. Did you ever use any rubber gasket material?
00122:01 A. No. All we used was silicone.
02 Q. And how often did you use silicone?
03 A. Maybe once a month.
04 Q. Did you use precut gaskets as well?
05 A. Yes, we did.
06 Q. How often did you use precut?
07 A. You're talking about on one particular machine
08 or --
09 Q. As opposed to sheet gaskets. Did you use more
10 precut gasket?
11 A. More precut.
12 Q. More precut.
13 A. It was easier, quicker.

131. PAGE 122:14 TO 122:16 (RUNNING 00:00:03.004)

14 Q. Who -- what color was the precut gasket
15 material?
16 A. Dark gray.

132. PAGE 122:17 TO 123:07 (RUNNING 00:00:33.631)

17 Q. Dark gray.
18 Do you know who made that?
19 A. Well, sometimes -- well, some of them would be
20 so small you couldn't see nothing on it. There might be
21 a half of a word on it.
22 Q. Okay. But you don't know the brand names or
23 manufacturers of the precut gasket material?
24 A. No.
25 Q. Okay. You would use more precut gasket material
00123:01 because it just cut out a lot of time for you. Right?
02 A. Right. Plus, it saved material also.
03 Q. And you would prefer to use precut gasket
04 material; is that right?
05 A. Right.
06 Q. Can you tell me a percentage of how much you
07 used precut gasket material versus sheet gasket material?

133. PAGE 123:09 TO 123:10 (RUNNING 00:00:07.144)

09 A. Oh, you would use -- precut gaskets you would
10 use probably 90 percent of the time.

134. PAGE 123:12 TO 123:15 (RUNNING 00:00:12.421)

12 Q. Okay. When you removed gasket material when you
13 were doing the repairs, can you tell what brand name or
14 manufacturer the gasket material you were removing was?
15 A. No, you can't.

135. PAGE 123:16 TO 123:24 (RUNNING 00:00:40.598)

16 Q. Okay. We talked about cutting gaskets on the 10
17 percent of the sheet gasket material you used, and we
18 talked about with the other lawyer removing gaskets and
19 you talked -- you said that there were some fiber or some

20 dust sometimes. Comparing the fibers or dust related to
21 sheet gasket material or precut gasket material, either
22 one, versus the insulation material removal, can you tell
23 me whether the insulation material was more dusty than
24 the gasket material used?

136. PAGE 124:01 TO 124:01 (RUNNING 00:00:02.539)

00124:01 A. No, I don't know.

137. PAGE 124:03 TO 124:04 (RUNNING 00:00:03.527)

03 Q. The insulation removal was dusty. Right?
04 A. Right.

138. PAGE 124:07 TO 124:09 (RUNNING 00:00:08.199)

07 Q. Would you say that the insulation removal dust
08 was much more than the dust --
09 A. Yes. I see what you're saying. Yes.

139. PAGE 124:14 TO 124:16 (RUNNING 00:00:09.940)

14 So the insulation removal dust was --
15 created a lot more dust than any sort of work that you
16 did with gasket material. Is that right?

140. PAGE 124:18 TO 124:18 (RUNNING 00:00:00.847)

18 A. Yes.

141. PAGE 124:20 TO 124:23 (RUNNING 00:00:21.768)

20 Q. Okay. How often did you or your job title,
21 including times when you worked with Mr. Seay, include
22 removal of insulation material?
23 A. 50 percent of the time.

142. PAGE 124:25 TO 125:03 (RUNNING 00:00:07.991)

25 So when somebody else didn't come in before
00125:01 you guys 50 percent of the time to remove the insulation
02 material, you guys would have to do it. Right?
03 A. Right.

143. PAGE 125:04 TO 125:07 (RUNNING 00:00:17.709)

04 Q. Okay. Can you tell me whether you used a John
05 Crane gasket material on any particular area that you may
06 have worked on?
07 A. On those vacuum condensers.

144. PAGE 125:12 TO 125:16 (RUNNING 00:00:18.478)

12 All right. So you think you used John
13 Crane gasket material on the vacuum condensers. Is there
14 any other application where you know you used John Crane
15 gasket material on any of the product or --
16 A. No. No, I don't believe so.

145. PAGE 125:17 TO 126:05 (RUNNING 00:00:41.150)

17 Q. Okay. Did you ever see Mr. Seay use
18 specifically the John Crane gasket material during the
19 course of assignments you had with him?
20 A. Yes.
21 Q. Okay. And was that in the year -- in the two
22 years that you worked alongside him?
23 A. Yes.
24 Q. Can you tell me that you saw him use John Crane
25 gasket materials on the vacuum condensers?
00126:01 A. Yes.

02 Q. Can you tell me how often that was?
03 A. Well, you cleaned your condensers, it would be
04 every three weeks, but there was 15 of them that had to
05 be cleaned. So there would be one every day.

146. PAGE 126:06 TO 126:23 (RUNNING 00:00:42.561)

06 Q. But he wasn't always assigned to do the cleaning
07 of the vacuum condensers. Right?
08 A. No. No.
09 Q. So you don't -- and how many millwrights were
10 there during those two year periods you worked with Mr.
11 Seay?
12 A. There was probably -- there was about eight of
13 us.
14 Q. Eight. So between the eight of you, any --
15 A. Eight to ten.
16 Q. Between the eight to ten of you, any one of you
17 could have been assigned to clean out the -- or repair
18 and clean out the vacuum condensers. Right?
19 A. Yes.
20 Q. So you don't know specifically whether Mr. Seay
21 was actually assigned to do the repairs or clean out of
22 the vacuum condensers once or every three weeks or at any
23 particular time. Right?

147. PAGE 126:25 TO 126:25 (RUNNING 00:00:00.507)

25 A. Right.

148. PAGE 127:02 TO 127:06 (RUNNING 00:00:09.296)

02 Q. And do you -- can you actually recall doing work
03 with Mr. Seay on a vacuum condenser?
04 A. Yeah.
05 Q. Okay.
06 A. He and I worked together.

149. PAGE 127:07 TO 127:09 (RUNNING 00:00:05.123)

07 Q. Okay. Okay. But you can't tell me how many
08 times he did that work. Right?
09 A. No, I can't tell you that.

150. PAGE 127:10 TO 127:11 (RUNNING 00:00:04.076)

10 Q. Okay.
11 A. I would say it would be once a week anyway.

151. PAGE 127:12 TO 127:16 (RUNNING 00:00:12.988)

12 Q. And you think that because that's probably --
13 that's something that you recall being a regular
14 maintenance item, but you don't know that his schedule
15 included cleaning out vacuum condensers every week.
16 Right?

152. PAGE 127:18 TO 127:18 (RUNNING 00:00:01.153)

18 A. Right.

153. PAGE 127:20 TO 127:24 (RUNNING 00:00:14.814)

20 Q. Okay. During the entire two year period you
21 worked with Mr. Seay, was that job of cleaning the vacuum
22 condensers always in your rotation, or was it just maybe
23 a six month period of that two year time?
24 A. Always.

154. PAGE 135:16 TO 136:03 (RUNNING 00:00:37.206)

16 So even though you were -- there were two
17 mechanics assigned to the packing or gasket replacement
18 job, not both of you would actually be doing the removal.
19 It would be kind of a teamwork gasket removal done by one
20 guy, the other guy would go get the new gasket ready?
21 A. Right.
22 Q. Right.
23 So when -- for instance, when you were
24 teamed up with Mr. Seay, one or both of you would be --
25 excuse me, one or the other of you would be working on
00136:01 the, for instance, gasket removal while the other one was
02 getting the gasket to be put back on. Right?
03 A. Right.

155. PAGE 136:06 TO 136:08 (RUNNING 00:00:09.428)

06 Q. So you wouldn't be standing over Mr. Seay while
07 he was doing some gasket removal. Right?
08 A. Right.

156. PAGE 138:11 TO 138:19 (RUNNING 00:00:22.243)

11 through my notes. In preparation for your deposition
12 today or in any of your conversations previously relating
13 to Mr. Seay's case, were you shown any lists of product
14 types or names?
15 A. No.
16 Q. Were you shown any photos or pictures?
17 A. No.
18 Q. Did anybody try to jog your memory on brand
19 names or manufacturers?

157. PAGE 138:21 TO 139:05 (RUNNING 00:00:23.956)

21 A. No.
22 BY MS. NETTLES:
23 Q. No.
24 Did you do anything to try to jog your own
25 memory about brand names or manufacturers?
00139:01 A. Well, I tried to remember.
02 Q. Okay. Besides just looking in your own brain
03 and trying to remember what went on, did you look at any
04 other outside source, maybe a legal document or online?
05 A. No.

158. PAGE 164:22 TO 165:08 (RUNNING 00:00:44.213)

22 In terms of the insulation that was used
23 out there to hold heat in on pipes and systems in
24 general, you talked about removing what you called the
25 removables from a pump or a valve. Right?
00165:01 A. Right.
02 Q. And this is just something that's fabricated by
03 the insulation workers. Some of them called them cozies,
04 like your old grandmama's tea cozy. But they called them
05 a cozy or a removable, and basically you would unlace
06 that and it came off all of a piece. When you took it
07 off the valve or the pump, you set it aside. Right?
08 A. Right.

159. PAGE 165:11 TO 166:06 (RUNNING 00:00:54.212)

11 Q. And then you would put it back on and wire it
12 back on. Right?
13 A. Right.
14 Q. Some of them laced. Some of them wired.
15 A. Then you might have some removables that are

Dennis Seay

16 solid, you know. They wouldn't be flexible like you're
17 talking about.
18 Q. Oh, understood.
19 A. You would remove them so you could get to the
20 flanges.
21 Q. And those might be cut out of a hard material
22 and then put together so you could just lift it off?
23 A. Yes.
24 Q. And that was so that you could remove the
25 external insulation from a valve or a pump without
00166:01 disturbing it so you could put it back on and reuse it?
02 A. Yes.
03 Q. Makes sense.
04 You plan for the fact that you're going to
05 have to get into that pump or valve?
06 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

EXHIBIT

Court's 3

10/1/15

1 people exposed to asbestos from that and not exposed
2 to asbestos in any other way. But the short answer to
3 your question is that I agree.
4 Q You've testified in the past that there are
5 some gasket studies that show air concentrations that
6 are very, very low; is that correct?
7 A Yes, there are.
8 Q You're familiar with IARC?
9 A I am. I-A-R-C.
10 Q Right. I'm sorry. And in 1972, IARC
11 published that there's no conceivable health risk in
12 the use of asbestos-based gasket material; is that
13 correct?
14 MS. DEAN: Objection. Form, misleading,
15 inaccurate, misstates testimony.
16 BY MR. ULLOA:
17 Q You can answer.
18 A I think that statement was made by a
19 particular individual author in a publication that was
20 published by IARC. I'm not sure that represents the
21 views of IARC itself.
22 Q This is a question I don't really even know.
23 Was Mr. Seay a smoker during his exposure period?
24 A Now, wait a minute. You're telling me all
25 the questions you've been asking me for an hour and a

1 half you already knew the answer to?
2 Q Can I get paid, then?
3 A It's not up to me.
4 Okay. So let me just clear my memory here.
5 The question is whether he was a smoker while he was
6 employed at or by Daniels?
7 Q That's correct.
8 A I believe the answer is yes.
9 Q Okay. And is there any information as to
10 pack years or pack per day or anything like that?
11 A They vary from 30 pack years to 45 pack
12 years, and all of the records say that he had stopped
13 smoking somewhere between 10 and 20 years before the
14 onset of his malignant mesothelioma.
15 Q Okay. I think we've talked about this before
16 in the past, but would you degree that the act of
17 smoking somewhat impairs the body's mucociliary
18 escalator?
19 A Just to refine --
20 Q Please. I'm sorry.
21 A -- my answer to your previous question,
22 here's a record that says that it was almost 30 years
23 prior to the onset of his malignant mesothelioma that
24 he stopped smoking just to --
25 Q Right, I understand.

1 A -- complete that answer. And now the pending
2 question, sir? I'm sorry.
3 Q Sure. And, again, I refer to us discussing
4 this in the past, that it's true that the act of
5 smoking -- act of smoking impairs the body's
6 mucociliary escalator?
7 A Yes.
8 Q And the mucociliary escalator is in part
9 responsible or is able to expel some of the asbestos
10 fibers that an individual inhales at any particular
11 time; correct?
12 A That's true.
13 Q And I think in the past you've told me, then,
14 that an individual who smokes will retain more
15 asbestos fibers as a result of that smoking and the
16 damages to the body's natural defenses at that time.
17 A Compared to a nonsmoker?
18 Q Yes.
19 A Yes, that's correct.
20 Q So it would be fair to say that the act of
21 smoking during an individual's exposure opportunity
22 would result in the higher retention of asbestos
23 fibers during that period of time?
24 A Yes.
25 Q And that resulting higher retention would

1 increase that individual's dose of asbestos fibers
2 during the time they were smoking?
3 A If one defines dose as the internal dose,
4 that's correct.
5 MR. ULLOA: You know, I think I'm going to
6 look at your Dr. Robb's report, but while I do that,
7 I'm going to go ahead and tender the witness to
8 additional questions. Thank you for your time,
9 Doctor.
10 THE WITNESS: Thank you, sir.
11 MR. ULLOA: I might have some at the end on
12 this report. Thank you.
13 MS. DEAN: Guys, if you can't give it, that's
14 absolutely fine but -- let's go off the record for a
15 second.
16 MR. ULLOA: Off the record.
17 (A discussion was held off the record.)
18 MS. DEAN: This is Jessica Dean. I represent
19 the Seay family. There are some defendants that
20 have -- that are on the phone including Higbee, Inc.,
21 FMC as it relates to Link-Belt and York where
22 Dr. Holstein at this time does not intend to give any
23 specific opinions as to any exposures relating to
24 those particular companies or entities. If that were
25 to change, we would make him available again, and

Dennis Seay

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)

19 Q. Sir, can you please state your full name for the
20 record?
21 A. Charles S. Laubly, Sr.

2. PAGE 5:06 TO 5:09 (RUNNING 00:00:08.514)

06 Q. How long have you lived here in Tucson?
07 A. Since 1979.
08 Q. That's the year you retired from Celanese?
09 A. Yes.

3. PAGE 7:18 TO 8:05 (RUNNING 00:00:27.276)

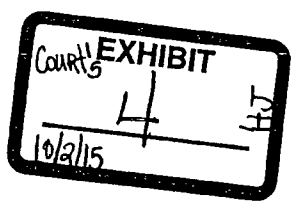
18 Q. Sir, where did you attend college?
19 A. Georgia Tech.
20 Q. The Yellow Jackets?
21 A. Yes.
22 Q. Did you graduate in 1949?
23 A. Yes.
24 Q. During some of the time that you were in
25 college, you were working for American Can; is that
00008:01 correct?
02 A. Yes.
03 Q. And I understand they made cans?
04 A. Yes.
05 Q. Okay.

4. PAGE 8:23 TO 9:10 (RUNNING 00:00:45.806)

23 Q. What was your job at American Can during
24 college?
25 A. One summer I went back to Illinois and worked at
00009:01 the research division there in their industrial hygiene
02 group. Prior to that I had worked for that group just
03 after I got out of the Army, and then I also worked at
04 the Atlanta plant between semesters.
05 Q. Was that when you were actually doing labor
06 work?
07 A. I was doing labor work then.
08 Q. I understand you may have done some insulation
09 work; is that true?
10 A. Yes.

5. PAGE 10:10 TO 11:08 (RUNNING 00:01:10.335)

10 Q. So your involvement with insulation was simply
11 the asbestos cement?
12 A. Or mud that you might call it.
13 Q. Okay. So the mud. Were you the person actually
14 mixing the mud?
15 A. Yes.
16 Q. You have to mix a powder with water; is that
17 true?
18 A. Yes.
19 Q. And during that process you believe that you
20 were exposed to asbestos?
21 A. Asbestos was there, yes.



22 Q. Do you believe you breathed in the asbestos from
23 the powder?
24 A. Well, I must have. I was close to it.
25 Q. What year did you leave American Can?
00011:01 A. Well, the last time I left American Can was
02 1947.
03 Q. And then after college, you went to an insurance
04 company; is that true?
05 A. That's true.
06 Q. What was the name of that insurance company?
07 A. It was Lumbermen's Mutual Casualty Company. It
08 was part of the Kemper Group.

6. PAGE 11:12 TO 11:15 (RUNNING 00:00:24.584)

12 Q. How long did you work for Kemper?
13 A. Seventeen years.
14 Q. Does that put you leaving Kemper in 1966?
15 A. 1966, March 14th.

7. PAGE 16:17 TO 17:03 (RUNNING 00:00:30.357)

17 receiving if they stayed there. Did you throw away your
18 journals or did you send them on to the library at
19 Celanese?
20 A. The only journal that I kept in my office was
21 the AIHA journal.
22 Q. The other journals you received, I imagine, and
23 then you forwarded them on?
24 A. Yes.
25 Q. Where did you forward the journals to?
00017:01 A. Eventually to the library in our department.
02 Q. Was that the library in New York City?
03 A. Yes.

8. PAGE 17:14 TO 18:12 (RUNNING 00:01:23.370)

14 Q. When did you first have a librarian, to your
15 knowledge, at Celanese?
16 A. Three or four years later, I would say.
17 Q. So potentially late '60s, 1970, around there?
18 A. Yes.
19 Q. Prior to having a librarian, you still had a
20 library, though; isn't that true?
21 A. Well, you might have called it a library.
22 Q. A place where books and journals were placed?
23 A. Yes. Yes.
24 Q. Was anybody in the New York City office free to
25 go by and consult any of the materials in the library?
00018:01 A. Yes.
02 Q. If Celanese employees from other plants and
03 other locations happened to be in the New York City
04 office, were they free to go look at the library?
05 A. Yes.
06 Q. Okay. We have talked about the American
07 Industrial Hygiene Association and the ACS. What other
08 organizations were you a member of while you were at
09 Kemper?
10 A. No other organizations.
11 Q. Were you ever a member of the IHF?
12 A. That was a corporate membership.

9. PAGE 18:15 TO 19:03 (RUNNING 00:00:29.567)

15 Q. Did you receive the Industrial Hygiene Digest or
16 the digest of the IHF?
17 A. Yes.
18 Q. Did you read that digest?

19 A. Yes.
20 Q. Did you read it as it came in from 1949 until
21 1966?
22 A. Yes.
23 Q. You're aware that the digest of the IHF
24 routinely contained numerous abstracts from medical
25 literature?
00019:01 A. Yes.
02 Q. And did you read through those abstracts?
03 A. Yes.

10. PAGE 21:25 TO 22:08 (RUNNING 00:00:44.012)

25 Q. You were aware that asbestos could cause
00022:01 asbestosis while you were at Kemper; is that true?
02 A. Yes.
03 Q. And you were aware that asbestos -- let me
04 rephrase that. You were aware that asbestosis could be a
05 disabling disease at the time you were at Kemper; is that
06 true?
07 A. I was aware that workers that had exposures to
08 asbestos could possibly have asbestosis.

11. PAGE 23:02 TO 24:04 (RUNNING 00:01:28.602)

02 Q. Okay. So in 1998 when you were asked if you
03 knew that certain pneumonoconioses could be fatal, you
04 answered that, yes, you did know in 1949?
05 A. Yes.
06 Q. Now that you have had a chance to read that, is
07 that your recollection is what you knew in 1949?
08 A. Yeah.
09 Q. And you also knew that it could be -- I'm sorry.
10 I just asked you -- you also knew certain
11 pneumonoconioses could be disabling in 1949?
12 A. Yes.
13 Q. Okay. So your recollection has been refreshed
14 then that you did know those two things were true?
15 A. Yes.
16 Q. While you were with Kemper, is it true that you
17 did some work sampling asbestos at the Mastic Tile
18 corporation?
19 A. Yes.
20 Q. And you were using the Midget Impinger during
21 that period of time?
22 A. Yes.
23 Q. Did you find any excessive asbestos exposures at
24 the Mastic Tile corporation, to your recollection?
25 A. Yes.
00024:01 Q. What did you recommend they do as a result of
02 those excessive exposures?
03 A. I recommended that they install local exhaust
04 ventilation at the mixer.

12. PAGE 26:16 TO 27:12 (RUNNING 00:01:09.699)

16 Q. Do you agree that one way to contain a hazard is
17 to isolate it?
18 A. Yes.
19 Q. And do you agree that for industrial dust it was
20 known that insulation was a way of avoiding wide-ranging
21 exposures in the 1950s?
22 A. Local exhaust ventilation was recommended.
23 Q. And local exhaust ventilation was known as a way
24 to address industrial dust in the 1950s?
25 A. Yes.
00027:01 Q. Sir, you are familiar with maximum allowable
02 concentrations, correct?

03 A. Yes.
04 Q. And you learned about MACs in the 19 -- in 1949
05 and 1950; is that right?
06 A. That's right.
07 Q. You were aware that there was an MAC for
08 asbestos during that period of time?
09 A. Yes.
10 Q. Who developed MACs?
11 A. The American Conference of Governmental
12 Industrial Hygienists.

13. PAGE 28:11 TO 28:16 (RUNNING 00:00:13.082)

11 Q. Okay. But from reading your past deposition,
12 it's your belief that Celanese was a member of the IHF?
13 A. I believe -- I believe so.
14 Q. And you believe that they received the digest of
15 the IHF?
16 A. Yes.

14. PAGE 29:07 TO 29:12 (RUNNING 00:00:13.870)

07 Q. Was Celanese a member of the National Safety
08 Council while you were there?
09 A. Yes.
10 Q. Did Celanese receive the National Safety News
11 and the Transactions of the NSC?
12 A. Yes.

15. PAGE 29:19 TO 29:21 (RUNNING 00:00:07.283)

19 Q. Do you know who at Celanese received those two
20 periodicals?
21 A. Probably the safety director.

16. PAGE 29:24 TO 30:11 (RUNNING 00:00:27.960)

24 Q. Who would that be?
25 A. That was Glen Flemming.
00030:01 Q. Glen Flemming. And my understanding is that
02 Glen Flemming was also relatively active in the National
03 Safety Council?
04 A. Yes.
05 Q. Was Mr. Flemming at Celanese when you arrived in
06 1966?
07 A. Yes.
08 Q. And, in fact, you had met Mr. Flemming a few
09 years prior while you were still working for Kemper; is
10 that true?
11 A. Yes.

17. PAGE 31:01 TO 31:04 (RUNNING 00:00:09.149)

00031:01 Q. To your knowledge, Mr. Flemming then stayed a
02 member of the NSC throughout the time that you were at
03 Celanese?
04 A. Yes.

18. PAGE 33:23 TO 34:01 (RUNNING 00:00:07.499)

23 Q. Having a library was a way to stay abreast of
24 the changing issues in industrial hygiene and safety; is
25 that true?
00034:01 A. Yes.

19. PAGE 37:24 TO 38:01 (RUNNING 00:00:05.631)

24 Q. So you personally, though, would acknowledge
25 asbestos as a workplace hazard then in the 1950s,
00038:01 wouldn't you?

Dennis Seay

20. PAGE 38:04 TO 38:07 (RUNNING 00:00:08.839)

04 A. I recognized it as a dust hazard.
05 Q. In the 1950s you personally recognized asbestos
06 as a dust hazard?
07 A. Yes.

21. PAGE 43:23 TO 44:15 (RUNNING 00:00:57.717)

23 Q. If you had an industrial hygiene question, what
24 were the first resources you would consult while you were
25 at Celanese?
00044:01 A. The first resource?
02 Q. Right. What was the primary resource you would
03 go to first?
04 A. The publication by Frank Patty.
05 Q. And is that Patty's Industrial Manual?
06 A. I don't know what it's called now.
07 Q. Do you remember specifically what it was called
08 then when you were at Celanese?
09 A. I had a copy of it with me all the time, but I
10 don't recall the exact title.
11 Q. Was there a copy of Patty's in the library as
12 well?
13 A. At Celanese?
14 Q. Yes.
15 A. Yes.

22. PAGE 48:18 TO 48:20 (RUNNING 00:00:11.160)

18 Q. Did you ever talk to Dr. Dixon about attending
19 the New York Academy of Sciences meeting in 1964?
20 A. No.

23. PAGE 49:11 TO 49:17 (RUNNING 00:00:19.429)

11 Q. Sir, you were asked: Now, did you or anybody
12 that you know of from Kemper attend the New York Academy
13 of Sciences meeting in 1964 that dealt with asbestos and
14 asbestos diseases? And you answered: I didn't attend.
15 I understand that Dr. Dixon did. He was a member of the
16 academy at the time.
17 Do you remember talking about that?

24. PAGE 49:19 TO 50:02 (RUNNING 00:00:22.315)

19 A. Yes.
20 Q. Okay. So to your recollection, did Dr. Dixon
21 attend the New York Academy of Sciences meeting
22 addressing asbestos in 1964?
23 A. I had heard that he had attended. I don't know
24 the specifics.
25 Q. Okay. So to your belief he did attend, but you
00050:01 don't know really much more than that?
02 A. That's all.

25. PAGE 64:12 TO 64:20 (RUNNING 00:00:31.382)

12 Q. In the past have you said that the action level
13 was defined as one half of the maximum allowable
14 concentration or the TLV?
15 A. Yes, that's -- I believe that's the wording.
16 Q. So if during your monitoring you found a level
17 of some air contaminant that was above one half of the
18 maximum allowable concentration or TLV, you would take
19 some action on that?
20 A. Yes.

26. PAGE 71:23 TO 72:06 (RUNNING 00:00:29.870)

23 Q. As far as you know, was there any program at
24 Celanese to educate workers about dust hazards prior to
25 1966?
00072:01 A. I don't know that.
02 Q. You're not aware of any?
03 A. I'm not aware of.
04 Q. Are you aware of any program to educate Celanese
05 workers about dust hazards after 1966?
06 A. When it appeared in the federal register, yes.

27. PAGE 78:13 TO 78:17 (RUNNING 00:00:15.561)

13 Q. Okay. Do you believe that there was a
14 companywide policy or standard for handling
15 asbestos-containing materials in the 1960s?
16 A. I don't know if there was a standard. I think
17 there was a practice of doing that.

28. PAGE 79:05 TO 79:10 (RUNNING 00:00:11.176)

05 Q. Do you know if there was a standard that was
06 companywide for the removal or installation of
07 asbestos-containing materials?
08 A. I don't know that.
09 Q. You're not aware of any?
10 A. No.

29. PAGE 83:10 TO 83:13 (RUNNING 00:00:07.864)

10 Q. Sir, is it true that prior to OSHA you don't
11 know what was being done at Celanese to be sure that
12 workers were not being exposed to asbestos dust in the
13 air?

30. PAGE 83:16 TO 83:23 (RUNNING 00:00:33.095)

16 A. Prior to OSHA?
17 Q. Prior to OSHA.
18 A. I don't remember the specific dates when
19 asbestos was checked.
20 Q. But you never checked it until the '70s; isn't
21 that true?
22 A. That's -- I'm not sure the exact date that I
23 checked. It was probably in the '70s.

31. PAGE 83:24 TO 83:25 (RUNNING 00:00:03.868)

24 Q. Sir, I'm going to read you one question and one
25 answer from your deposition.

32. PAGE 84:04 TO 84:19 (RUNNING 00:00:40.403)

04 Q. And just ask you if this refreshes your
05 recollection about what you knew. The question is: And
06 what precisely was it that Celanese did in the years you
07 were visiting the company and working with the company to
08 be sure that its maintenance employees, including boiler
09 markers and pipe fitters were not being exposed to
10 asbestos dust in the air?
11 And your answer was: Well, until the OSHA
12 levels were introduced, I don't know what was being done.
13 And you say: Here again, this was up to the safety
14 supervisor for respirator program. How well informed he
15 or they were, I don't know. But the first part of your
16 answer is: Well, until OSHA levels were introduced, I
17 don't know what was being done.
18 Is that true to your recollection, sir, you
19 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)

22 A. Well, I think I realized something was being
23 done, but I don't know exactly when it started.

34. PAGE 99:22 TO 100:03 (RUNNING 00:00:25.743)

22 Q. Do you know when Celanese decided to stop using
23 asbestos-containing insulation in its plants?
24 A. It would be contained in that memorandum that
25 was sent out, the exact date.
00100:01 Q. And I'll look at that. Do you know why that
02 decision was made?
03 A. They wanted to eliminate asbestos.

35. PAGE 100:23 TO 101:06 (RUNNING 00:00:32.199)

23 Q. When did you first receive copies of the Federal
24 Register?
25 A. Prior to OSHA.
00101:01 Q. How long prior to OSHA?
02 A. Probably when we heard that OSHA was going to be
03 involved.
04 Q. Would that be within the few years prior to the
05 OSHA Act being passed?
06 A. Yes.

36. PAGE 106:11 TO 106:19 (RUNNING 00:00:32.466)

11 When you arrived at Celanese, you already
12 knew that asbestos could cause asbestosis, correct?
13 A. Based on the two studies I did, yes.
14 Q. And so knowing that asbestos-containing
15 materials could cause this disease, asbestosis, did you
16 take any steps to look into whether or not
17 asbestos-containing materials could be removed at
18 Celanese?
19 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)

09 Q. Sir, can you go ahead and introduce
10 yourself to the ladies and gentlemen of the jury?
11 A. My name is Richard Lawrence Kradin.
12 Q. Are you a doctor?
13 A. I am.
14 Q. Can you tell them what type of doctor you
15 are?
16 A. My career is a little bit unusual. I'm
17 two types of doctors. I'm a pulmonologist, which is
18 a fancy word for a lung doctor, and I'm also a
19 pathologist, which is someone who looks at tissues
20 under the microscope.
21 Q. All right. So why is that unusual?
22 A. Because usually one is one or the other,
23 and it takes a long time to train in both areas.
24 Q. And so you've trained in both areas. Have
25 you practiced in both areas?
00008:01 A. I have trained in both areas, and I
02 continue to practice in both areas.
03 Q. All right. We'll talk a little bit more
04 about that in a minute, but I presume you went to
05 college?
06 A. I did.
07 Q. Where did you go to college?
08 A. New York University.
09 Q. And did you get a degree?
10 A. I did.
11 Q. What was that in?
12 A. It was in chemistry.
13 Q. After that -- about when did you graduate
14 from undergrad?
15 A. I graduated in 1971.
16 Q. Then did you go on and get an advanced
17 degree?
18 A. I did. I got a master's in physical
19 chemistry in 1972. The same place.
20 Q. And then at some point, you went into
21 medicine, true?
22 A. Right after that, I went to medical school
23 at Thomas Jefferson in Philadelphia. I got my M.D.
24 in '76.
25
00009:01 (Exhibit No. 1, Curriculum Vitae, marked
02 for identification)
03
04 BY MR. PANATIER:
05 Q. Okay. Now, your resume, which I have
06 here, which we'll mark as Exhibit 1, it has some
07 other degrees here. Then some decades later you got
08 what's called an MLA from Harvard. What's that?
09 A. That's a master's of liberal arts.
10 Q. Okay. And then a DTM&H from the London
11 School of Hygiene & Tropical Medicine?
12 A. That's a diplomat in tropical medicine and

13 hygiene.
14 Q. Now, do you work at a hospital?
15 A. I do.
16 Q. What hospital do you work at?
17 A. I work at the Massachusetts General
18 Hospital in Boston, Massachusetts.
19 Q. Can you go through, just give us a
20 thumbnail sketch of your role at that hospital?
21 A. Yes. I am in the departments of both
22 medicine and pathology where I practice, and as part
23 of my duties, in addition to seeing patients and
24 looking at biopsy materials, I teach. I teach
25 medical students. I teach residents in pathology and
00010:01 medicine. I teach fellows in pulmonary medicine and
02 in pathology. So I have a whole spectrum of teaching
03 responsibilities.
04 Q. All right. Now, do you also treat and
05 help diagnose patients?
06 A. I do.
07 Q. Okay. Can you tell the jury what your
08 role is in actually treating and diagnosing patients?
09 A. Well, again, it depends on which hat I'm
10 wearing. As a pulmonologist, I see patients in the
11 office. I take a history from them. I do a physical
12 examination. I order x-rays and blood tests, and
13 then I formulate a diagnosis and treat them based on
14 that diagnosis.
15 As a pathologist, I don't see patients per se,
16 but I do see biopsies from patients and other tissues
17 that are removed at the time of surgery or at the
18 time of autopsy, and in that role I look at these
19 tissues under the microscope. I make a diagnosis,
20 and I share that diagnosis with my clinical
21 colleagues.
22 Q. So you play a role in the diagnosis of the
23 patient by looking at the tissue?
24 A. Yes.
25 Q. Okay. And that's the pathologist role?
00011:01 A. That's my pathology role.
02 Q. Now, as a pathologist, have you diagnosed
03 mesothelioma before?
04 A. I have.
05 Q. Okay. And, generally, how do you do that
06 from the pathologist perspective?
07 A. Well, basically one learns as a
08 pathologist how to recognize the appearance of tumors
09 under the microscope. So the major aspect of the
10 diagnostic approach is to recognize what these tumors
11 look like. For the case of mesothelioma, there are
12 also ancillary studies. Other studies such as what
13 we call immunological stains, immunostains, which are
14 other types of specialized markers that help us
15 decide whether a tumor is a mesothelioma, for
16 instance, or another type of tumor.
17 Q. Okay. So you actually apply different
18 types of chemical stains to the tissue sample, and
19 based on how those stains read, you can make a
20 diagnosis?

2. PAGE 12:02 TO 15:03 (RUNNING 00:02:49.979)

02 A. Okay. What we do is we make a diagnosis
03 largely based on what we see under the microscope
04 with the standard sections, and then we try to
05 confirm it or refute it using these immunostains
06 which we apply based on a panel that we choose.
07 Q. Okay. And how does the result of the

08 immunohistochemical stains actually tell you what
09 disease you're looking at or what cancer you're
10 looking at?
11 A. Well, again, we know that for certain
12 tumors there are a variety of different stains that
13 are likely to be positive for that type of tumor and
14 negative for that tumor or another tumor. So we have
15 experience based on the medical literature and our
16 own experience as to what these tumors should stain
17 like.
18 Q. So if you have a tumor that was taken from
19 somebody's chest, do those stains help you
20 distinguish between mesothelioma and other types of
21 cancer?
22 A. They can, yes.
23 Q. Okay. Now, I'm going to talk to you a
24 little bit more about your background, but I may ask
25 you opinion questions and conclusions that call for
00013:01 an expert opinion. Can you keep all of your opinions
02 to a reasonable degree of medical probability?
03 A. Yes, sir.
04 Q. Going on in your training, are you
05 licensed to practice medicine?
06 A. I am.
07 Q. Okay. And are you board-certified?
08 A. I am. I'm board-certified in internal
09 medicine, pulmonary medicine, and pathology.
10 Q. Okay. What does it mean to have a board
11 certification?
12 A. Board certification means that you've gone
13 through a standardized period of training, after
14 which you sat and taken a standardized examination,
15 and if you pass all of those different elements, then
16 you are considered board-certified.
17 Q. Okay. You've received funding from the
18 Centers for Disease Control and the National
19 Institute of Health for your research; is that fair?
20 A. I have, yes.
21 Q. Okay. And then in turning through your
22 resume, let me just go to the article section. Have
23 you published peer-reviewed articles?
24 A. I've published approximately 200
25 peer-reviewed articles.
00014:01 Q. All right. Have any of those been on
02 asbestos or mesothelioma?
03 A. Yes. A subset have been on asbestos and a
04 subset of those on mesothelioma.
05 Q. Okay. Have you also -- I show about 17 or
06 so book chapters; is that right?
07 A. That's probably right.
08 Q. Okay. Have you published in books as
09 well?
10 A. Yes, I have.
11 Q. Okay. Are you charging for your time
12 today?
13 A. I am.
14 Q. Okay. And what is the rate that you
15 charge for your time?
16 A. Five hundred dollars an hour.
17 Q. Okay. Is testifying in asbestos cases
18 something that you've done over the years?
19 A. Yes, it is.
20 Q. Okay. And have you typically testified on
21 the plaintiff's side like you have -- or at the
22 request of the plaintiff as you are today?
23 A. Yes.

24 Q. All right. Now, are any of your opinions
25 any different than when you are testifying in a court
00015:01 case than they would be in your teaching setting or
02 anything like that?
03 A. I would say no, and I hope not.

3. PAGE 15:04 TO 16:04 (RUNNING 00:00:50.792)

04 Q. Okay. All right. I'm going to start at
05 the end and go backwards. Did you review medical
06 records for Mr. Seay?
07 A. I did.
08 Q. Did you review three volumes of his
09 deposition?
10 A. I did.
11 Q. Did you review the deposition of Ronnie
12 Thompson?
13 A. I did.
14 Q. Okay. And what disease was Mr. Seay
15 diagnosed with?
16 A. Mr. Seay ultimately had a malignant
17 mesothelioma of the right chest that went on to cause
18 his death.
19 Q. Was it a mesothelioma of the pleura?
20 A. Yes.
21 Q. Okay. And do you have an opinion as to
22 what caused his mesothelioma?
23 A. His mesothelioma was caused by his
24 cumulative occupational exposures to asbestos.
25 Q. Were you able to tell from reading the
00016:01 deposition testimony in the case that he had a
02 history of occupational exposure to asbestos?
03 A. Yes. Mr. Seay had a clear history of
04 exposure to asbestos from many years.

4. PAGE 16:05 TO 16:07 (RUNNING 00:00:02.982)

05 Q. Okay. He worked at a place called
06 Celanese, right?
07 A. Yes.

5. PAGE 16:11 TO 16:13 (RUNNING 00:00:04.536)

11 Q. And were you able to determine whether or
12 not he had occupational exposure while working at
13 Celanese?

6. PAGE 16:16 TO 18:04 (RUNNING 00:01:32.443)

16 A. In his deposition, he reported that he
17 worked at Celanese from the late 1960s through the
18 1970s, and that during that time he was exposed to
19 asbestos.
20 Q. Generally speaking, what was your
21 understanding of what he did?
22 A. He worked as -- largely as a maintenance
23 worker for what was called Daniel Construction, and
24 he worked with a variety of asbestos-containing
25 products, which are listed in my report, including
00017:01 gaskets and valves, pumps. Material like that.
02 Q. Okay. And you're making reference to your
03 report there, correct?
04 A. I am, yes.
05 Q. All right. Now, you're not an industrial
06 hygienist, right?
07 A. No, I am not.
08 Q. Okay. You're a medical doctor, true?
09 A. I am.

10 Q. Okay. You're not Mr. Seay's medical
11 doctor, right?
12 A. No.
13 Q. Okay. Now, from your review of the --
14 well, let me ask you. Do you have a general
15 understanding of the literature as it pertains to the
16 ability of different types of products to release
17 asbestos into the air?
18 A. I do.
19 Q. Okay. And why have you -- why have you
20 stayed up on that literature?
21 A. In large measure because it's been
22 important to know that for these types of
23 proceedings, but in general, again, it just speaks to
24 the science of asbestos-related diseases.
25 Q. And from that, are occupational exposures
00018:01 to asbestos from gaskets, packing, and insulation all
02 types of exposures that have been shown in the
03 literature to release asbestos?
04 A. Yes.

7. PAGE 18:21 TO 18:23 (RUNNING 00:00:09.248)

21 to address the objection. Do you have an opinion as
22 to the level of exposure one can expect from working
23 with gaskets, packing, and insulation?

8. PAGE 19:01 TO 19:14 (RUNNING 00:00:34.603)

00019:01 A. I do.
02 Q. And what is that opinion?
03 A. My opinion, as I mentioned, is that there
04 is, depending on the way the gaskets are worked with
05 and packing is worked with, that there's going to be
06 release of fibers in almost all cases above
07 background levels, and in some cases, depending,
08 again, on how the machines are used to remove this
09 material, orders of magnitude higher than background
10 levels.
11 Q. And for -- for instance, for gasket work,
12 scraping off of gaskets, wire brushing, and power
13 wire brushing, are those the types of activities
14 that, in your opinion, can release asbestos?

9. PAGE 19:17 TO 19:24 (RUNNING 00:00:23.572)

17 A. Work with gaskets is one of the things
18 that has been studied, and, again, gaskets are often
19 removed either through -- with the use of wire
20 brushes, through the use of powered brushes, and
21 scraped away. That type of work, particularly if the
22 gaskets are tightly adhered to the material, is going
23 to release fibers well in excess of the ambient
24 levels of background.

10. PAGE 20:03 TO 20:15 (RUNNING 00:00:27.154)

03 Q. And were you able to determine from
04 information that you were provided, the depositions
05 and so forth, that Mr. Seay had a working history
06 with gaskets and packing?
07 A. Yes, he did.
08 Q. And were you able to see that he had a
09 history of scraping off, wire brushing, and power
10 wire brushing those products?
11 A. That is what he described, yes.
12 Q. Do you have an opinion as to whether or
13 not those types of exposures would have been a

14 substantial factor in the development of his
15 mesothelioma?

11. PAGE 20:17 TO 20:25 (RUNNING 00:00:22.971)

17 A. The answer to that is yes.
18 Q. Okay. What is that opinion?
19 A. My opinion is that that type of work would
20 have released asbestos in a way that would have made
21 those exposures substantial contributory factors.
22 Q. Okay. And do you consider occupational --
23 each occupational exposure that is above background
24 to be a substantial factor in the development of
25 mesothelioma?

12. PAGE 21:02 TO 21:17 (RUNNING 00:00:54.149)

02 A. I consider all of these types of work that
03 release fibers above ambient levels to be exposures
04 that lead to the cumulative dose that increase the
05 risk of the development of a tumor.
06 Q. Now, as a pathologist or as a
07 pulmonologist, are you aware of any scientific way
08 that you can take one aspect of a person's exposure
09 history to asbestos and say this doesn't count?
10 A. No. I think the history of an individual
11 at the workplace or elsewhere is as it is. It stands
12 as was given. For instance, in this case, Mr. Seay's
13 deposition. So all of his exposures are the
14 exposures that he sustained during his lifetime.
15 Q. Are there any -- to your knowledge, sir,
16 do you have an opinion as to whether or not there is
17 a known safe level of exposure to asbestos?

13. PAGE 21:20 TO 22:08 (RUNNING 00:00:34.089)

20 A. I think the medical literature
21 increasingly suggests that there is no threshold
22 level for the development of disease certainly with
23 respect to mesothelioma. The only level that I
24 currently assume to be safe, and it's an assumption,
25 are ambient background levels.
00022:01 Q. Okay. Background levels not related to
02 occupational exposure?
03 A. Right. Not related to occupational
04 exposures.
05 Q. And do articles such as the Iwatsubo
06 article, Rodelsperger, and LaCourt support your
07 opinion regarding the no known threshold aside from
08 background?

14. PAGE 22:11 TO 23:16 (RUNNING 00:01:24.967)

11 A. There are three published epidemiological
12 studies in the literature that look at low dose
13 exposures to asbestos with respect to the risk of
14 developing malignant mesothelioma. I think you've
15 noted the names of the three. They're by Iwatsubo,
16 Rodelsperger, and LaCourt. And they all essentially
17 show that very low levels of exposure can increase
18 statistically the risk of developing mesothelioma.
19 Q. Do you rely upon those articles?
20 A. I do.
21 Q. What is "latency" in terms of
22 mesothelioma?
23 A. Latency is the period of time between
24 which one is exposed -- or I should say after which
25 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

15 mesothelioma.
16 Q. I have a couple more general questions for
17 you. Do you rely upon the findings of various
18 regulatory and scientific bodies such as the EPA,
19 OSHA, NIOSH, the National Cancer Institute, the World
20 Health Organization for their conclusions regarding
21 asbestos?

17. PAGE 25:23 TO 26:04 (RUNNING 00:00:18.143)

23 A. I think the major regulatory agencies
24 generally take into account the consensus of the
25 science of the time, and so at some level I think
00026:01 they are secondarily reliable sources for opinions.
02 Q. Okay. And do you rely upon them for their
03 opinions that there is no known safe level of
04 exposure to asbestos?

18. PAGE 26:07 TO 26:13 (RUNNING 00:00:19.009)

07 A. I think their opinion reflects, again, the
08 opinion of many medical scientists in this area that
09 have concluded that there is no safe level of
10 asbestos, particularly with respect to mesothelioma.
11 Q. And do you rely upon those regulatory and
12 scientific bodies for their conclusions that all
13 fiber types can cause mesothelioma?

19. PAGE 26:15 TO 27:01 (RUNNING 00:00:30.967)

15 A. Again -- once again, I think the
16 regulatory agencies reflect the medical literature in
17 that regard. They're in concordance.
18 Q. Okay. Do you have an opinion as to
19 whether or not Mr. Seay had substantial exposures to
20 gaskets and packing, sir?
21 A. My opinion is based on his deposition
22 testimony. The answer is yes.
23 Q. Okay. And do you have an opinion as to
24 whether or not each of those exposures would be a
25 substantial factor in the development of his
00027:01 mesothelioma?

20. PAGE 27:05 TO 27:08 (RUNNING 00:00:08.538)

05 A. I think, as he describes his work, that
06 all exposures that would have released fibers into
07 the ambient air above background would have been
08 substantial causes.

21. PAGE 28:09 TO 28:15 (RUNNING 00:00:20.174)

09 Q. Doctor, let me ask -- let me ask you to
10 assume at trial that the testimony will be from an
11 industrial hygiene perspective and an occupational
12 medicine perspective that Mr. Seay had exposure to
13 gaskets and packing on Crane Co. valves. Can you
14 assume that?
15 A. Yes.

22. PAGE 28:19 TO 28:20 (RUNNING 00:00:06.345)

19 Q. And that that exposure was far in excess
20 of background. Can you assume that?

23. PAGE 28:25 TO 28:25 (RUNNING 00:00:00.809)

25 A. Yes.

24. PAGE 29:05 TO 29:16 (RUNNING 00:00:27.519)

05 Q. Sir, based on that hypothetical, would
06 exposure to asbestos from Crane Co. valves be a
07 substantial factor in the development of Mr. Seay's
08 mesothelioma?
09 A. The answer is yes.
10 Q. Okay. I want you to assume that the
11 testimony will be that Mr. Seay worked on Durco pumps
12 repeatedly and frequently and that his exposure to
13 gaskets and packing from those pumps would have been
14 far in excess of background levels. Can you assume
15 that?
16 A. Yes.

25. PAGE 29:20 TO 29:24 (RUNNING 00:00:10.039)

20 Q. And based on that, sir, would it be your
21 opinion that his exposure to Durco pumps would have
22 been a substantial factor in the development of his
23 mesothelioma?
24 A. Yes.

26. PAGE 30:03 TO 30:19 (RUNNING 00:00:36.465)

03 Q. Sir, I want you to assume that the
04 testimony at trial will be that Mr. Seay worked
05 repeatedly and frequently on William Powell valves.
06 Can you assume that?
07 A. Yes.
08 Q. And can you assume, sir, that the
09 testimony will be that by virtue of his work on
10 William Powell valves, Mr. Seay was exposed to
11 asbestos far in excess of background. Can you assume
12 that, sir?
13 A. Yes.
14 Q. Based on those assumptions, can you
15 testify as to whether or not Mr. Seay's exposure to
16 William Powell valves would be a substantial factor
17 in the development of his mesothelioma?
18 A. It would have been.
19 Q. Okay.

27. PAGE 30:22 TO 30:24 (RUNNING 00:00:09.750)

22 Q. I want you to assume that at trial the
23 testimony will be that Mr. Seay worked repeatedly and
24 frequently with John Crane gaskets and packing. Can

28. PAGE 30:24 TO 31:10 (RUNNING 00:00:19.048)

24 frequently with John Crane gaskets and packing. Can
25 you assume that?
00031:01 A. Yes.
02 Q. And that his exposure to asbestos from
03 those products would have been far in excess of
04 background. Can you assume that, sir?
05 A. Yes.
06 Q. Based on that, would his exposure to John
07 Crane gaskets and packing have been a substantial
08 factor in the development of his mesothelioma?
09 MR. TIVIN: Objection to form.
10 A. The answer is yes.

29. PAGE 31:11 TO 31:22 (RUNNING 00:00:25.450)

11 Q. Okay. Did you also see, in addition to
12 his gasket and packing work, that Mr. Seay had an
13 exposure history that included insulation while

14 working at Celanese?
15 A. Yes.
16 Q. Okay. And is it your -- well, what's your
17 opinion as to whether or not he had a substantial
18 exposure to insulation?
19 A. My opinion is that he did.
20 Q. Okay. And, sir, would that insulation
21 exposure also have been a substantial factor in the
22 development of his mesothelioma?

30. PAGE 31:25 TO 31:25 (RUNNING 00:00:02.016)

25 A. The answer is yes, it would have been.

31. PAGE 32:01 TO 34:21 (RUNNING 00:03:32.375)

00032:01 Q. Okay. Can you take us through how
02 Mr. Seay -- how his treating physicians diagnosed him
03 with mesothelioma?
04 A. Mr. Seay presented to Emery Health Care
05 back in November of 2012. At that time, he had chest
06 pain and was found to have an accumulation of air
07 around the lung, which we refer to as a pneumothorax.
08 He then went on to suffer -- he had suffered at least
09 eight episodes of these types of pneumothoraces with
10 air collecting around his lung.
11 For that problem he was treated. A chest tube
12 was placed to evacuate the air and a so-called talc
13 pleurodesis was performed, which is a methodology of
14 essentially closing off the space around the lung,
15 the pleural space.
16 Subsequently, however, he had an examination of
17 the pleura through a VATS procedures that showed a
18 diffuse malignant mesothelioma. He was treated with
19 decortication, which is the removal of the pleural
20 lining of the lung, and also treated with
21 chemotherapy. Unfortunately, he went on to die in
22 December of 2014.
23 Q. Okay. So I have a few questions based on
24 that. First of all, is there any medical dispute
25 that he actually had mesothelioma?
00033:01 A. None that I'm aware of, no.
02 Q. Okay. And did you look at the staining
03 done by his treating physicians?
04 A. Yes, I did.
05 Q. Okay. And were you able to arrive at a
06 conclusion regarding his diagnosis?
07 A. Mr. Seay had a type of mesothelioma which
08 is highly characteristic of that entity. It was what
09 we call a biphasic malignant mesothelioma, which,
10 simply put, means that it had two types of growth
11 patterns that were discernable under the microscope.
12 What we call epithelioid and sarcomatoid growth
13 pattern. This pattern is generally referred to by
14 pathologists as biphasic. There are very few other
15 tumors that give you this appearance. So even
16 without the additional application of immunostains,
17 the diagnosis was fairly clear-cut.
18 He did, however, have the immunostains, which are
19 done fairly routinely these days, and the staining
20 pattern, based on what was applied, was
21 characteristic of what one sees in a malignant
22 mesothelioma. So there really was, I think, no doubt
23 either on the part of the treating physicians or any
24 other pathologists who would have reviewed these
25 slides subsequently that this was a malignant
00034:01 mesothelioma.

02 Q. Okay. And for his treatments and the
03 procedures he underwent for his diagnosis, was there
04 anything that you saw in the medical records that
05 would say -- that you would say this was not
06 reasonable and necessary for his treatment?
07 A. No. Again, he was treated in a fairly
08 standard way for this disease, which is essentially
09 incurable. So all of his treatment was, for all
10 intents and purposes, what we call palliative, which
11 is just meant to make him more comfortable and extend
12 his life by a short period of time.
13 So he had a talc pleurodesis, as mentioned. He
14 had chest tubes placed. He had several
15 pneumothoraces, as I've already noted. He had the
16 decortication procedure. He then had chemotherapy.
17 All of these things were meant to reduce his pain,
18 help prolong his life, but ultimately he died as
19 would be expected from this disorder.
20 Q. Okay. And these are out of order, but
21 Kradin 4 and 5, I'm going to hand these to you.

32. PAGE 35:05 TO 39:04 (RUNNING 00:04:50.435)

05 Q. All right. So those are just two of a
06 number of shots we have. Can you go ahead and hold
07 up 4 for the jury and just explain what that is?
08 A. Sure. Yeah. These are two
09 photomicrographs. That is basically pictures taken
10 through a camera attached to a microscope showing
11 what we see under the microscope when we look at it.
12 This is the kind of characteristic appearance of
13 the type of tumor that Mr. Seay had. It is what we
14 call, again, a biphasic mesothelioma. There are
15 tumor cells growing through the soft tissues of the
16 test. And in this other slide here, again, we can
17 see more of this kind of spindle cell pattern of
18 tumor growth as well as evidence of talc having been
19 placed in the pleural space, and, again, in order to
20 try to basically close that space so air or fluid can
21 no longer accumulate.
22 Q. Can you just hold that up just for a
23 second for the camera so we can get a good shot of
24 that?
25 A. Yeah. The crystals of the talc are
00036:01 actually up here on the top of the slide. The tumor
02 is on the bottom.
03 Q. Okay. All right. So the talc
04 pleurodesis, they put -- they actually put talc into
05 the -- into the chest. Why is that?
06 A. The talc produces a fibrotic response in
07 the tissues, and so it tends to close off that space
08 with a scar so that air or fluid can no longer
09 accumulate in that space.
10 Q. All right. You also said he had a VATS
11 procedure. What does that mean?
12 A. That's a video-assisted thoracoscopic
13 surgery, and, again, it's a standard form of surgery
14 these days for pleural disease, and one does it
15 through the introduction of a tube into the chest
16 that also has the ability to visualize what's going
17 on through laser capability, and the surgeries are
18 actually done through this scope.
19 Q. Okay. So they actually put the scope into
20 the chest?
21 A. They put the scope into the chest. They
22 look around, and then they biopsy what they see.
23 Q. So they actually -- with that scope, they

24 can actually pull a piece of tissue?
25 A. Yes.
00037:01 Q. And for that stain you showed us, would
02 that have been a piece of tissue that was biopsied?
03 A. Yes.
04 Q. Okay. You also mentioned pleural
05 decortication?
06 A. Yes.
07 Q. And I think you said they actually peel
08 off or remove part of the pleura?
09 A. Yes. Normally, the pleura is essentially
10 invisible to the naked eye. It's two to three cells
11 thick under the microscope, so one doesn't see it,
12 but in cases of malignant mesothelioma, the pleura is
13 involved and the pleura becomes markedly thickened
14 and shaggy and scarred, and so at that point it's
15 possible for the surgeons to identify the areas that
16 are involved by the malignant process and to make a
17 cleavage plane, if you will, between the pleura and
18 the underlying lung, again, in a way to help reduce
19 the constriction of the underlying lung as well as to
20 reduce the tumor burden in the patient.
21 Q. It's not to cure them?
22 A. No. There is really no cure for this
23 disease.
24 Q. Okay. Generally speaking, from your
25 experience, what is the typical time from diagnosis
00038:01 to when mesothelioma actually takes someone's life?
02 A. Prior to the introduction of combination
03 chemotherapies that have some effect against this
04 disease, the answer used to be six months. Now the
05 answer is probably somewhere between one year to two
06 years, which is essentially what Mr. Seay survived.
07 Q. Okay. He had chemotherapy; is that right?
08 A. He did.
09 Q. But that was -- I take it, that was not to
10 try to cure him?
11 A. No. Again, the role of chemotherapy in
12 this disorder is essentially for pain reduction as
13 well as to modestly prolong life. Again, we're
14 talking about in the range of several months, and
15 other than that, chemotherapy has no efficacy.
16 Q. Okay. He also had a thoracentesis?
17 A. Thoracentesis is a procedure in which
18 fluid is removed from the pleural space.
19 Mesotheliomas, in addition to being a space-occupying
20 mass, tend to produce an inordinate amount of fluid
21 as they grow, and this often requires multiple
22 procedures to remove the fluid in order to make it
23 more comfortable for the patient to breathe as the
24 fluid tends to collapse the underlying lung.
25 So in this case, multiple thoracentesis were
00039:01 performed. Multiple efforts at evacuating air, which
02 had ruptured into the pleural space had been
03 performed, and ultimately there were efforts to close
04 the pleural space by the talc pleurodesis.

33. PAGE 42:01 TO 43:20 (RUNNING 00:01:52.562)

00042:01 aside. Sir, approximately how old was Mr. Seay when
02 he died from mesothelioma?
03 A. My understanding was he was 70 years old.
04 Q. Okay. He was 70. And did he have any
05 other health problems or health issues as a
06 70-year-old man?
07 A. He had high blood pressure. He had some
08 degree of coronary artery disease. My review of the

09 chart would suggest that both of those conditions
10 were controlled, and he was in no imminent danger of
11 death from either of those disorders.
12 Q. And do you have any opinion as to whether
13 or not either of those, as they were treated, would
14 have adversely affected his life expectancy
15 otherwise?
16 A. I think as they were treated, as long as
17 they were stable, there would not have been in this
18 day and age any substantial effect.
19 Q. Have you had an opportunity to review the
20 Center for Disease Control's life expectancy tables?
21 A. I have seen them.
22 Q. And have you relied upon those for the
23 life expectancy -- the average life expectancy for
24 American white males?
25 A. Again, they're actuarial tables. They
00043:01 give you the best estimate as to how long an
02 individual in this country will live once they've
03 achieved a certain age.
04 Q. Now, do those life expectancy tables take
05 only into account just the healthy people?
06 A. No.
07 Q. Who does it take into account?
08 A. It's general population, and it's based on
09 age.
10 Q. And were you able to review the life
11 expectancy tables for someone who was at the -- in
12 the second half of their seventieth year?
13 A. I have.
14 Q. Okay. And what would have Mr. Seay's live
15 expectancy have been if he did not have mesothelioma?
16 A. I think the study that I saw last was, I
17 think from 2009, but what it indicated is that in the
18 United States of America if you survive to the age of
19 70, your chances of living another 14 years are what
20 would be expected.

34. PAGE 44:05 TO 44:19 (RUNNING 00:00:37.796)

05 Q. Okay. Doctor, Exhibit 6, I'm going to
06 hold it up. Is that what you reviewed?
07 A. Yes.
08 Q. Okay. And that one is dated
09 September 28, 2011, and I'm going to hand it to you.
10 There's a highlight across the top there, and that
11 says -- does that say 13.8 years would be the --
12 A. Yeah. I was pretty close. It's 13.8
13 years.
14 Q. Okay, sir. Thank you very much. So the
15 average person from age 70, absent any other
16 intervening cause of death, would expect to live
17 another 13.8, or as you said, approximately 14 years.
18 Is that fair?
19 A. That's the prediction.

35. PAGE 44:20 TO 44:25 (RUNNING 00:00:12.606)

20 Q. Okay. But Mr. Seay died on
21 December 29, 2014, correct?
22 A. Yes.
23 Q. Okay. And what did he die from?
24 A. He died from complications of malignant
25 mesothelioma.

36. PAGE 45:11 TO 48:09 (RUNNING 00:03:07.447)

11 Q. And that's Mr. Seay's death certificate.

12 Have you seen that?
13 A. Yes.
14 Q. And it says -- it's got a section that's
15 highlighted there. What is that section?
16 A. It says, "cause of death, part one."
17 Q. Okay. And what is listed as the cause of
18 death?
19 A. It lists two things. It says,
20 "Cardiorespiratory arrest," which is how basically
21 everyone dies because they stop breathing and their
22 heart stops, so that's not very helpful, but the next
23 line says, "Malignant mesothelioma with metastasis."
24 Q. Can you -- you can set that aside, sir.
25 And do you agree with that cause of death, sir?
00046:01 A. Yes.
02 Q. Okay. Can you explain to the jury how the
03 mesothelioma tumor actually -- actually kills
04 somebody?
05 A. There are many ways in which malignant
06 mesothelioma contributes to one's death. Again,
07 probably the primary mode is through suffocation. So
08 as we've mentioned, the tumor grows around the lung.
09 It grows pretty much as a rind, very much like an
10 orange peel around the pulp of an orange, and it
11 becomes increasingly thickened, and as a result, the
12 underlying lung becomes constricted, and the
13 individual has increasing difficulties with shortness
14 of breath and breathing.
15 In addition, like other forms of cancer, patients
16 tend to lose weight. Their appetite is poor. The
17 chemotherapies and other treatments they use for pain
18 relief also diminish an individual's appetite.
19 There's a wasting phenomena that occurs with cancer.
20 There's a phenomena of the tumor becoming --
21 encroaching on the large vessels of the chest,
22 including the aorta and the vena cava, so they
23 interfere with circulation. So all of these things
24 contribute ultimately to the demise in patients who
25 have this disease.
00047:01 Q. You said there's a wasting. What are you
02 referring to?
03 A. Wasting is the same phenomena that one
04 sees in anybody who has a longstanding malignancy.
05 People lose weight. It's a term we refer to as
06 cachexia. So their appetite is diminished, and even
07 when they do eat, they tend to lose weight because
08 there's a wasting syndrome that occurs as a result of
09 having a malignancy. So, essentially, the
10 individual's body becomes increasingly debilitated.
11
12 (Exhibit No. 7, Photograph of Mr. Seay,
13 marked for identification)
14
15 BY MR. PANATIER:
16 Q. Okay. Sir, I'm going to hand you Exhibit
17 7, and that's a picture of Mr. Seay as he's far along
18 in the disease. Can you hold that up for the jury to
19 see?
20 A. Sure. I think what the jury can probably
21 recognize, even without being a medical professional,
22 this is an individual who has a chronic disease.
23 He's lying in bed. He's wasted, as we've mentioned.
24 He's extremely thin, and he seems to be, as best as
25 one can make out, not terribly comfortable.
00048:01 Q. Okay. You can set that aside, sir. To a
02 reasonable degree of medical probability, sir, what

03 was the cause of Mr. Seay's mesothelioma?
04 A. His mesothelioma was caused by his
05 exposures to asbestos.
06 Q. And to a reasonable degree of medical
07 probability, sir, what caused Mr. Seay's death?
08 A. His death was caused by mesothelioma. His
09 mesothelioma was caused by asbestos.

37. PAGE 48:20 TO 51:12 (RUNNING 00:02:22.409)

20 Q. All right. Good afternoon, Dr. Kradin.
21 How are you?
22 A. Good afternoon.
23 Q. You're not aware of any publications in
24 the medical or scientific literature of individuals
25 who developed mesothelioma from working only around
00049:01 equipment or machinery that contained asbestos,
02 packing, and gaskets, correct?
03 A. I don't think there's any literature on
04 that topic largely because most people who work with
05 those types of materials also work with other
06 materials, so it would be hard to identify such a
07 cohort.
08 Q. And you're not aware of any studies that
09 discuss the potential level of asbestos dust released
10 from gaskets or packing used in equipment or
11 machinery, correct?
12 A. I have seen studies that have
13 reconstructed the levels of dust of asbestos released
14 through the use of gaskets and packing, yes.
15 Q. All right. We'll get back to that. You
16 confirmed this earlier, but you're not Mr. Seay's
17 treating physician, correct?
18 A. No, I'm not.
19 Q. You were retained by his lawyers?
20 A. I was.
21 Q. All right. And you never spoke with
22 Mr. Seay?
23 A. I did not.
24 Q. And you never spoke to any of Mr. Seay's
25 family members?
00050:01 A. I did not.
02 Q. And you never spoke to any of his
03 physicians, correct?
04 A. No.
05 Q. And, now, you've testified in asbestos
06 litigation dating back to 1985; is that right?
07 A. Yes.
08 Q. And nearly all of your litigation work
09 that you've done has been for plaintiffs; is that
10 correct?
11 A. That's correct.
12 Q. You have said that you review around 50 to
13 75 cases per year for plaintiffs' lawyers in asbestos
14 cases; is that right?
15 A. That's correct.
16 Q. And you charge $500 an hour to testify in
17 asbestos cases?
18 A. Correct.
19 Q. And, in fact, the $500 that you charge,
20 that also includes the review of the material that's
21 sent to you by plaintiffs' lawyers?
22 A. It does.
23 Q. And I think you've told us that last year
24 you made approximately $250,000 working in asbestos
25 cases, correct?
00051:01 A. That's correct.

02 Q. And that was true for the year before?
03 A. Probably, yes.
04 Q. Okay. Now, Mr. Panatier talked a little
05 bit about your background. It's true that you
06 haven't published any articles on whether chrysotile
07 asbestos causes mesothelioma, correct?
08 A. Not specifically, no.
09 Q. Okay. And you haven't published any
10 articles on whether gasket or gasket exposures cause
11 mesothelioma?
12 A. Not specifically, no.

38. PAGE 51:13 TO 51:18 (RUNNING 00:00:13.452)

13 Q. And those aren't areas that you've
14 specifically researched, correct?
15 A. Those are not areas that I've published
16 on. There are times, as I've said, that I've seen
17 the literature in these areas. So it depends what
18 you mean by "research."

39. PAGE 51:23 TO 54:06 (RUNNING 00:02:14.627)

23 Q. And you're not -- you don't hold yourself
24 out as an expect in industrial hygiene?
25 A. No, I don't.
00052:01 Q. And you're not an epidemiologist either,
02 correct?
03 A. No.
04 Q. And you haven't done any sort of formal
05 study or survey of epidemiological literature
06 discussing asbestos-related diseases, correct?
07 A. No.
08 Q. Okay. Now, mesothelioma -- let's try that
09 again. Mesothelioma is a dose-response disease; is
10 that right?
11 A. Correct. Yes.
12 Q. And that means the greater the dose of
13 asbestos that one receives, the greater his or her
14 risk of developing mesothelioma?
15 A. That's correct.
16 Q. And it also means that the lower the dose
17 of asbestos one receives, the lower his or her risk
18 is of developing mesothelioma?
19 A. Theoretically, yes.
20 Q. And the principle of dose response, that's
21 not unique to asbestos, right?
22 A. That's correct.
23 Q. Okay. And every day we're exposed to
24 chemicals or substances that are capable of causing
25 injury?
00053:01 A. Yes.
02 Q. And -- but we're not injured as a result
03 of being exposed to these chemicals?
04 A. Well, we may not be injured at levels that
05 we are aware of, yes.
06 Q. That's fair. And I just wanted to throw
07 out an example. Carbon monoxide as an example. A
08 small exposure of carbon monoxide, that could be
09 harmless, correct?
10 A. It can be.
11 Q. But a large exposure can be fatal?
12 A. Yes.
13 Q. And we're all exposed to asbestos in the
14 ambient air during the course of our lifetime; is
15 that right?
16 A. Yes.

17 Q. And -- but most people who are exposed to
18 asbestos never develop an asbestos-related disease?
19 A. That's correct.
20 Q. All right. We can agree that the amounts
21 of asbestos we are exposed to in the ambient air have
22 not been shown to cause mesothelioma; is that right?
23 A. Yes.
24 Q. So exposure at those levels pose no risk?
25 A. Currently, I think we -- we assume that
00054:01 exposures at those levels are not a cause of disease.
02 Q. And exposure -- and that just leads to the
03 next question. That exposures at those levels don't
04 cause mesothelioma, correct?
05 A. That's the -- that's the general working
06 assumption.

40. PAGE 54:07 TO 54:15 (RUNNING 00:00:24.656)

07 Q. Okay. And I think you said this before,
08 but you believe there is a level of asbestos exposure
09 below which mesothelioma will not occur; is that
10 right?
11 A. Well, again, taking -- making the
12 assumption that background levels are safe, I would
13 have to follow that up by saying that the assumption
14 is that those levels are levels at which mesothelioma
15 likely will not occur.

41. PAGE 54:16 TO 54:20 (RUNNING 00:00:12.509)

16 Q. Now, the threshold level below which
17 asbestos does not cause meso, and this has not been
18 quantified yet? That's your opinion, right?
19 A. Well, I think it's not just my opinion.
20 It's the general opinion.

42. PAGE 54:21 TO 57:02 (RUNNING 00:02:14.166)

21 Q. Okay. Fair. But your opinion is that the
22 threshold level is somewhere above background?
23 A. Yes.
24 Q. Okay. So any given encounter with
25 asbestos, you wouldn't consider that exposure to be
00055:01 part of a cause of a person's mesothelioma unless
02 that exposure was above background?
03 A. Yes.
04 Q. Okay. Now, it's your opinion that each
05 exposure above background increases the risk of
06 developing disease, correct?
07 A. Yes.
08 Q. But -- now, that's not the same as saying
09 that each exposure above background actually causes
10 the disease, correct?
11 A. That's correct.
12 Q. All right. In fact, I think you've said
13 before that your position is you cannot say which
14 exposure actually caused the disease. You had told
15 me, in fact, that's anybody's guess?
16 A. That's correct. It's anybody's guess.
17 Q. All right. And we can agree that medical
18 science does not know all there is to know about how
19 mesothelioma is caused?
20 A. That's true as well.
21 Q. All right. And we know that there are
22 exposures to asbestos that don't have the potential
23 of causing disease?
24 A. I'm not sure what you mean by that.
25 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?

13 A. Chrysotile clears the lung faster, at
14 least, than the crocidolite and amosite. It's not
15 that clear as to whether or not the same is true for
16 the pleura.
17 Q. And chrysotile cleared -- fibers, they're
18 cleared from the body in a matter of weeks or months?
19 A. They're cleared from the lungs.
20 Q. The lungs. And amosite, though, that
21 could take years to clear --
22 A. Yes.
23 Q. -- from the lungs? And asbestos fibers
24 that remain in the body longer are more likely to
25 cause mesothelioma, correct?
00059:01 A. You know, I don't -- that's been an
02 assumption made by some. I'm -- I think it's true,
03 but maybe not in the way that's been classically
04 assumed. Again, the disease mesothelioma is a
05 disease that occurs in the pleural space, so the
06 fibers that are in the lung may or may not have
07 anything directly to do with what's going on in the
08 pleural space.
09 Q. All right.
10 A. So I think what may be more critical for
11 pleura mesotheliomas is what is present in the
12 pleura.
13 Q. All right. Fair enough. Though the
14 body's defense mechanisms, they're better able to
15 clear chrysotile from the body than amosite, correct?
16 A. Again, from the lungs.
17 Q. You were talking a little bit before how
18 the fiber types of chrysotile versus the amphiboles
19 are a bit different, and one theory is that
20 amphiboles contain iron in their chemical makeup and
21 chrysotile does not, and it may be that the lack of
22 iron in the molecular structure makes it less or
23 noncarcinogenic; is that right?
24 A. Yes. And these are all theories, and
25 there may -- there may be some validity to these
00060:01 theories, but, frankly, they are theories that none
02 of them have really been proven. So there is some
03 suggestion the superoxide generation plays a role in
04 cancer formation. The Haber-Weiss reaction related
05 to iron in certain fibers may play a role there.
06 But, frankly, we don't know the answer.
07 Q. There's a lot about mesothelioma we don't
08 know?
09 A. That's correct.
10 Q. All right. Now, you're familiar with a
11 study written by Hodgson and Darnton in 2000 --
12 A. Yes.
13 Q. -- correct? And those authors reviewed a
14 number of epidemiological studies of mesothelioma
15 risk and concluded that crocidolite is roughly 500
16 times more potent than chrysotile in causing
17 mesothelioma and roughly a hundred times more potent
18 than amosite -- excuse me -- that amosite is roughly
19 one hundred times more potent than chrysotile in
20 causing mesothelioma. Again, this is the 2000 study.
21 A. That's the 2000 study, and as you know,
22 subsequently, they had another study indicating that
23 that was still true in terms of order of magnitude
24 but changed by a factor of --
25 Q. Right. Right. There was a 2010 study,
00061:01 and that's what you're getting at, that crocidolite
02 is -- they concluded is 50 times more potent than
03 chrysotile and amosite 14 times more potent?

04 A. Correct.
05 Q. Is that -- that's your understanding,
06 right?
07 A. That's my understanding, but I think the
08 internal discrepancy, I think, raises questions about
09 whether or not we can speak intelligently at this
10 point about the quantitative differences between the
11 fibers.
12 Q. Okay. That's fair. But you do agree,
13 right, yourself that there's a different potency
14 around chrysotile, amosite, and crocidolite, right?
15 A. Yes. I think all the literature would
16 suggest that's the case, but what the quantitative
17 differences are, I think, is anybody's guess at this
18 point.
19 Q. Right. So even putting aside Hodgson and
20 Darnton's numbers, you agree that the relative order
21 is probably correct?
22 A. Probably correct.
23 Q. Okay. And so in terms of causing
24 mesothelioma, you believe crocidolite is the most
25 potent of the asbestos varieties followed by amosite?
00062:01 A. On a per fiber basis, yes.
02 Q. Okay. And chrysotile is the least potent
03 form of asbestos in terms of causing mesothelioma on
04 a per fiber basis?
05 A. That's correct.
06 Q. And you agree that there are reputable
07 scientists who conclude that for chrysotile to cause
08 mesothelioma, there must be a very high exposure dose
09 of 10 to 25 fibers per cubic centimeter years?
10 A. Once again, I think there are reputable
11 scientists, but not all scientists, who would insist
12 that one needs a much higher exposure. I don't know
13 that anybody has the answer to that at this point.
14 Q. All right. Again, a lot is not known?
15 A. Yes.
16 Q. And there are reputable scientists who
17 conclude that mesothelioma cases that are thought to
18 be caused by chrysotile were actually attributable to
19 prior amphibole exposures or to contamination of
20 chrysotile with amphiboles?
21 A. That's one of the arguments that's been
22 put forward.
23 Q. And, in fact, there are reputable
24 scientists who believe that chrysotile is harmless;
25 is that true?
00063:01 A. I don't know that many reputable
02 scientists at this point that I would consider
03 reputable who would come to that conclusion, but I'm
04 sure there are still some holdouts.
05 Q. You're familiar with the work of
06 Dr. Andrew Churg?
07 A. I am.
08 Q. And Dr. Churg is a pathologist on the U.S.
09 Canadian Mesothelioma Panel, correct?
10 A. He is.
11 Q. And the U.S. Canadian Mesothelioma Panel
12 is a well-respected group of pathologists who
13 specialize in reviewing cases of mesothelioma?
14 A. Yes.
15 Q. And Dr. Churg is respected in his field,
16 right? You would agree with that?
17 A. Overall, yes.
18 Q. Okay. And he's published extensively on
19 the subject of asbestos-related disease?

20 A. Yes, he has.
21 Q. In fact, I think you told me once before
22 that you've used Dr. Churg's publications in some
23 classes that you've taught?
24 A. I may have, yes.
25 Q. All right. And you're familiar with
00064:01 Dr. Churg's text, Pathology of Occupational Lung
02 Disease?
03 A. Yes. I did a review of it at one point.
04 Q. Do you know it to be a reliable and
05 authoritative text?
06 A. Once again, like almost anything in the
07 medical literature, it's -- there's much in it I
08 would agree with. There is some conclusions that
09 Dr. Churg has come through during the course of his
10 career that I would take issue with. So overall he's
11 authoritative, but I don't agree with everything he
12 says.

45. PAGE 66:21 TO 72:10 (RUNNING 00:05:50.264)

21 Q. What I've handed you is an excerpt from a
22 book titled Pathology of the Lung by William
23 Thurlbeck and Andrew Churg. You're familiar with
24 this book, correct?
25 A. I am.
00067:01 Q. And you have used this book in your
02 practice, correct?
03 A. I have at times referred to this book,
04 yes.
05 Q. And you know it to be a reliable and
06 authoritative text, fair?
07 A. Again, within the context of what I've
08 just described about authoritative and reliable text
09 and articles. There are things that I agree with.
10 Things that I don't necessarily agree with.
11 Q. So I just want to read a portion of the
12 book. If you turn to page 1087.
13 A. Yes.
14 Q. The third paragraph.
15 MR. PANATIER: Real quick before you
16 start, which edition is this or which year?
17 MR. YOUMAN: It's 1995, second edition.
18 BY MR. YOUMAN:
19 Q. And it reads: "Although the association
20 of asbestos exposure with both pleural and peritoneal
21 mesotheliomas is well established, it has become
22 increasingly clear that there are major differences
23 in disease potential between chrysotile and the
24 commercial amphiboles amosite and crocidolite.
25 Table 30-7 shows the percentage of deaths due to
00068:01 mesothelioma in various occupationally exposed
02 populations, and it is evident that chrysotile
03 exposure is associated with a much lower mesothelioma
04 rate than is amosite or crocidolite exposure.
05 Indeed, in some populations with heavy exposure to
06 pure crocidolite, as many as 18 percent of deaths
07 have been caused by mesothelioma.
08 A corollary of these observations is that the
09 greatest number of mesotheliomas are now seen in
10 persons who worked as asbestos insulators, in
11 asbestos production and manufacturer, and
12 shipbuilding or repair, particularly during World War
13 II. Trades in which heavy amphibole exposure was
14 common, in contrast, mesotheliomas are rare in
15 workforces exposed only to chrysotile. For example,
16 textile and friction products manufacture. And then

17 there are now several reports of working populations
18 with no mesothelioma deaths after pure chrysotile
19 exposure. There is no evidence of an increased risk
20 for garage mechanics despite exposure to chrysotile
21 brake dust."
22 Now, let me just go on to the next paragraph.
23 "These observations have led some to question whether
24 chrysotile asbestos actually produces mesothelioma at
25 all in humans and is generally agreed on the basis of
00069:01 epidemiological investigations that asbestos-induced
02 peritoneal mesothelioma is only associated with heavy
03 exposure to amosite and crocidolite and is not caused
04 by chrysotile exposure." Right? I read that
05 correctly?
06 A. Yes, you read it correctly.
07 Q. That's my only -- that's my only question.
08 A. That you read it correctly?
09 Q. Did I read it correctly?
10 A. Yes, you read it correctly.
11 Q. And in the book on page 1087 there's a
12 table 30-7, and it's a set of epidemiological studies
13 that focused on workers working only with chrysotile
14 versus workers working with amphiboles, correct?
15 A. Yes.
16 Q. And if you look at the table, you can see
17 the number of studies of people exposed only to
18 chrysotile is either zero or close to zero were
19 caused -- were deaths caused by mesothelioma?
20 A. Yes. But now I don't think I can just let
21 you read it correctly, for the sake of the jury.
22 Q. Well, what I will say is that Mr. Panatier
23 will have a chance to redirect after and can bring
24 you -- and can bring out whatever he'd like to.
25 A. Okay.
00070:01 Q. But on the other end of the table you have
02 studies of people exposed to a lot of amosite or
03 crocidolite, correct?
04 A. Yes.
05 Q. Okay. And there's a very high percentage
06 of deaths among people who were exposed to amosite or
07 crocidolite?
08 A. In this selected table, yes.
09 Q. All right. Fair enough. And you
10 personally believe that amosite and crocidolite
11 fibers are more capable of causing mesothelioma than
12 chrysotile fibers?
13 A. I am of that opinion.
14 Q. Okay. Just focusing on Mr. Seay's case
15 for one moment.
16 A. Sure.
17 Q. You haven't attempted to quantify
18 Mr. Seay's total exposure to asbestos, correct?
19 A. No, I haven't.
20 Q. Or his exposure from any particular
21 product?
22 A. No, I have not done any quantitation.
23 That's all for an industrial hygienist.
24 Q. And you haven't attempted to determine his
25 exposure dose from a Crane Co. product, correct?
00071:01 A. I have not done it.
02 Q. And you are not aware of any
03 epidemiological study that connects the development
04 of mesothelioma to work solely with gaskets, true?
05 A. Once again, I don't think that study is --
06 exists, and I doubt that study will ever be done
07 because there are very few people who work solely

08 with gaskets.
09 Q. And you agree that Mr. Seay worked with
10 and around a number of different types of insulation
11 products in his work life?
12 A. Yes, he did.
13 Q. And those insulation products exposed him
14 to asbestos, true?
15 A. They would have, yes.
16 Q. And he was around insulators when he
17 worked at the Celanese plant, right?
18 A. Yes.
19 Q. And you believe those insulation products
20 would have contained asbestos?
21 A. Yes.
22 Q. And you believe that every occupational
23 exposure that Mr. Seay had was a substantial factor
24 in causing his disease, right?
25 A. Well, the occupational exposures as I've
00072:01 defined them as exposures would have released fibers
02 into the ambient area above background, yes, those
03 are occupational exposures.
04 Q. And that's your opinion? So if the jury
05 hears evidence that a product released asbestos that
06 Mr. Seay breathed, the jury should conclude, in your
07 opinion, that that product was a substantial cause --
08 A. They should, yes.
09 Q. -- of his disease?
10 A. Yes.

46. PAGE 73:03 TO 75:18 (RUNNING 00:02:22.228)

03 Q. My name is Mark Tivin, and I represent a
04 company called John Crane, Inc. I don't believe
05 we've met before. I'm going to jump around a little
06 bit because counsel covered a lot of questions.
07 Okay?
08 A. Okay.
09 Q. You were shown an exhibit -- to start off,
10 you were shown an Exhibit Number 2, which was a
11 material safety data sheet, weren't you?
12 A. I was.
13 Q. Had you seen that before today?
14 A. No, I had not.
15 Q. Do you know under what circumstances it
16 was created?
17 A. No, I do not.
18 Q. Do you know what year it was created in?
19 A. Unless it says so on the sheet, I do not
20 know.
21 Q. If you look at the second page, I think
22 it's dated.
23 A. Let's see.
24 Q. '81, I think. The very bottom.
25 A. Oh, 4/14/81, yes.
00074:01 Q. Was that after Mr. Seay had left work?
02 A. My assumption is yes.
03 Q. Do you know the regulations that are
04 required for creating this document?
05 A. No, I do not.
06 Q. Do you have any idea -- you mentioned an
07 industrial hygienist in talking about fiber release
08 from gaskets and packing. Are you familiar with
09 Dr. Frederick Toca?
10 A. I've heard the name. I don't know him.
11 Q. Do you recognize him as a past president
12 of the American Industrial Hygiene Association?
13 A. Again, I don't know him.

14 Q. Are you familiar with any of his tests
15 regarding the fiber release from gaskets or packing?
16 A. I don't believe so.
17 Q. Are you familiar with Amy Model? Dr. Amy
18 Model?
19 A. I've heard the name, yes.
20 Q. And have you reviewed any of her studies
21 regarding the release of gaskets and packing?
22 A. I think at some point in my career I have,
23 but I don't recall the specifics.
24 Q. Do you ever -- have you ever heard of a
25 Carl Mangold?
00075:01 A. Yes.
02 Q. Have you ever reviewed any of his tests
03 regarding the fiber release of gaskets and packing?
04 A. It's the same answer.
05 Q. Have you ever heard of Dr. Bolter?
06 A. Yes.
07 Q. Have you ever read any of his tests
08 regarding the fiber release from gaskets and packing?
09 A. I have.
10 Q. And do you know what those results were?
11 A. I don't recall the specifics. I do recall
12 that the tests were, I think, paid for by the Garlock
13 gasket company.
14 Q. That's fine. They were paid by -- so you
15 rely on a Dr. -- Dr. Longo?
16 A. I have seen Dr. Longo's studies.
17 Q. And his tests were paid for by plaintiffs'
18 attorneys?

47. PAGE 75:20 TO 76:14 (RUNNING 00:00:44.903)

20 A. That I do not know.
21 Q. If his tests were paid for by plaintiffs'
22 attorneys, would that take your -- would that lessen
23 your reliance on his article?
24 A. Not necessarily.
25 Q. Well, does the fact that Dr. Bolter's test
00076:01 was paid for by Garlock, does that lessen your
02 reliance on that article?
03 A. Not necessarily.
04 Q. Do you rely on Dr. Bolter's article
05 regarding fiber release?
06 A. There are a number of studies on fiber
07 release, as you've just mentioned. You know,
08 Dr. Longo, Dr. Millette, Dr. Bolter, et cetera.
09 There's a fair amount of variation in the studies, so
10 I've looked at all the studies, and, again, it's the
11 circumstances of the studies, the circumstances of
12 the gaskets appear to differ within the studies, so
13 it is difficult sometimes to compare them head to
14 head.

48. PAGE 76:18 TO 77:23 (RUNNING 00:01:12.836)

18 Q. I guess my question is, do you rely on
19 Dr. Bolter's study in your formulation of your
20 opinion on fiber release from the use of gaskets?
21 A. It's one of the pieces of information that
22 I have seen, and in part, you know, I would say I
23 rely upon it, but no more or less than other studies
24 that I've seen to that effect.
25 Q. And do you rely on Dr. Toca's studies?
00077:01 A. I don't recall the specifics of Dr. Toca's
02 studies.
03 Q. Have you ever seen any fiber release

04 studies -- well, strike that.
05 What Dr. Longo study do you rely on?
06 A. Dr. Longo, I think, had a series of
07 studies, and, again, I don't even recall the very
08 specifics of Dr. Longo's numbers, but I do recall
09 that they were in excess of .1 fiber per cc, and in
10 some cases in excess of one fiber per cc.
11 Q. And the .1 fiber per cc, that's important
12 to you because you've mentioned governmental
13 regulations already, and that's the OSHA level?
14 A. That's the OSHA level of a PEL for an
15 eight-hour time-weighted average, yes.
16 A. Yes.
17 Q. And that's getting a little far afield of
18 your specialty, correct?
19 A. It is.
20 Q. That's more -- if I wanted to do that, we
21 should talk with an industrial hygienist?
22 A. It probably would be a good idea to speak
23 to them.

49. PAGE 78:01 TO 81:09 (RUNNING 00:03:47.850)

00078:01 You've testified previously that -- we've bandied
02 about the term "background numbers" and "ambient
03 numbers," haven't we?
04 A. Yes.
05 Q. And you've testified previously that one
06 of the background numbers that you've used is .0004;
07 is that correct?
08 A. I think the number that I usually use is
09 .0001, but I wouldn't argue with .0004. I think
10 Dr. Churg's article that was pointed out to me today
11 uses a comparable number.
12 Q. And what does he use?
13 A. Well, I think .0002 perhaps. I think the
14 .0001 is probably an article -- a number that I've
15 seen either in Dr. Churg's texts or in Dr. Roggli's
16 texts.
17 Q. But you've testified to .0004 before? You
18 wouldn't quibble with that, would you?
19 A. No, I'm not going to quibble with that.
20 Q. And you would agree with me that
21 historically, no one has ever shown exposures at
22 background levels to be increasing someone's risk for
23 developing mesothelioma, correct?
24 A. That's correct.
25 Q. And you would agree with me that
00079:01 background numbers used to be higher in the past than
02 they are today?
03 A. Yes.
04 Q. And you would agree with me that
05 background numbers in urban areas are higher than
06 they are in rural areas as a general proposition?
07 A. Yes.
08 Q. And if we knew that a background number
09 was generated that was .05, for example --
10 A. Yes.
11 Q. -- you would agree that that number had
12 never -- has never been shown to increase someone's
13 risk of mesothelioma, assuming that's correct?
14 A. Again, there have been no studies. It
15 would be extremely difficult technically to perform a
16 study of background levels because of the numbers of
17 individuals would have to be part of that study. So
18 there have been no real controlled studies of
19 background levels. We just know that we've not seen

20 cases of mesothelioma presumably from background
21 incidences.
22 Q. And that's why you make the assumption
23 that you do?
24 A. That's why I make the assumption like I
25 do.
00080:01 Q. And you would agree that if there had been
02 a background number that was reported that was as
03 high as .05, that it would make sense that .0004 also
04 wouldn't cause it, correct, because that's --
05 A. Presumably, if it's less than that, it
06 wouldn't, yes.
07 Q. So if someone was looking at what the
08 background numbers would be as opposed to what
09 science has been able to show, you should look at the
10 largest background number you can because that would
11 be the highest threshold that science has been able
12 to determine, correct?
13 A. I'm not sure that the threshold has been
14 determined, and, you know, seeing a background level
15 of .05, and no definite increase incidence doesn't
16 really establish a background, but that's really
17 hardly the point. If you want to take .0001 or .0004
18 or even as high as .05, it's still considerably less
19 in terms of magnitudes than the exposures that one
20 incurs in the occupational setting.
21 Q. Now, you had also mentioned that each and
22 every exposure on an occupational setting would be a
23 substantial factor in the development of the disease.
24 Did I get your opinion correct?
25 A. Yes.
00081:01 Q. In your opinion as a pathologist, is it
02 possible for something -- someone to be
03 occupationally exposed and be a factor and not a
04 substantial factor?
05 A. You'd have to define "substantial factor"
06 or "nonsubstantial factor." You would have to be
07 more specific. There's a difference between the
08 language that's used in medical science and the
09 language that's used in a medical/legal situation.

50. PAGE 81:14 TO 82:05 (RUNNING 00:00:47.255)

14 What is your definition of "substantial" in your
15 use of the term "substantial factor"?
16 A. My definition of "substantial" for the
17 purposes of these exercises is any exposure above
18 background.
19 Q. So would it be possible for an
20 occupational exposure to be a factor and not a
21 substantial factor using your definitions of the
22 words that you've just told the ladies and gentlemen
23 of the jury?
24 A. It would have to be an exposure that
25 somehow produced a level of fiber release that was
00082:01 below background.
02 Q. Okay. And I'm correct in saying that you
03 can't say, but for the exposure to any product, that
04 the -- Mr. Seay's disease would not have occurred,
05 correct?

51. PAGE 82:07 TO 85:18 (RUNNING 00:03:31.997)

07 A. I think it be wild speculation for me to
08 try to sort out and remove various exposures and say
09 these don't count.
10 Q. That would be beyond your expertise and

11 beyond what science -- your opinion beyond what
12 science knows right now?
13 A. It would be beyond anybody's honest
14 expertise.
15 Q. When you were asked earlier by
16 Mr. Panatier regarding -- you were asked the
17 question, was his exposure to gaskets, packing, and
18 insulation a substantial factor in the development of
19 Mr. Seay's disease, you only answered the question
20 with regards to gaskets. Is there any special reason
21 why you left out packing and insulation?
22 A. I don't recall answering it that way, but
23 if I did, there would be no reason. I think I've
24 made it very clear in these proceedings that my
25 definition is anything above background is a
00083:01 substantial contributing cause, irrespective of the
02 source.
03 Q. And your -- you testified that you're
04 generally familiar with the industrial hygiene
05 literature because that's one of the things you need
06 to look at as being a pathologist and also being an
07 expert in this litigation, correct?
08 A. Well, I think that's one of the reasons
09 one needs to be acquainted with it, but the other
10 reason is that, you know, in terms of
11 asbestos-related diseases, it probably is important
12 to some degree to know what's going on in the
13 industrial hygiene world.
14 Q. And so you're generally familiar that
15 asbestos insulation in the late '60s and early '70s,
16 a lot of it contained amosite, correct?
17 A. Yes.
18 Q. And some of it contained chrysotile and
19 some contained a mix?
20 A. Yes.
21 Q. Are you familiar with the fiber release
22 numbers for the use of insulation?
23 A. I've seen fiber release numbers for the
24 use of insulation from various industrial hygienists.
25 Again, they're quite variable, but they're often
00084:01 quite high.
02 Q. And when you say "quite high," is that --
03 are they bigger than it is for gaskets?
04 A. Yes.
05 Q. What about packing? What studies do you
06 rely on to talk about packing?
07 A. Again, I think similar studies done by
08 various industrial hygienists, but I'm not as
09 acquainted with the packing numbers as I am with the
10 gaskets.
11 Q. Do you know how packing numbers relate to
12 gaskets numbers, if at all?
13 A. Not really.
14 Q. Do you know if packing numbers are below
15 .05?
16 A. If -- again, if they are -- point 05 is
17 not my definition of background.
18 Q. I just said a number.
19 A. Again, it would depend on the study, and I
20 -- you would have to ask an industrial hygienist for
21 the details.
22 Q. So that would be beyond your expertise to
23 know what the fiber release -- as we sit here right
24 now, it's beyond your expertise to know what the
25 fiber release is from the use of packing?
00085:01 A. Well, my understanding of the fiber

02 release is that it's going to be certainly above
03 background. It's certainly included as one of the
04 components of exposures in many individuals who have
05 worked in these fields. So, you know, what the
06 numbers are in the industrial hygiene studies, I
07 don't have the numbers at my fingertips.
08 Q. I mean, how do you know if it was above
09 background if you don't know what the numbers are?
10 A. I'm pretty sure it's above background.
11 I'm pretty sure other people could testify to that
12 effect.
13 Q. Right. But we should talk to somebody
14 else?
15 A. You should speak to the industrial
16 hygienist.
17 MR. TIVIN: Uh-huh. Thank you, sir.
18 That's all the questions I have for you right now.

52. PAGE 89:02 TO 92:18 (RUNNING 00:03:23.031)

02 Q. I'm Al Parnell, as you know. Good to see
03 you again. I've got to repeat a little bit of the
04 questions, and I apologize.
05 A. Sure.
06 Q. You've testified that your hourly rate is
07 $500 an hour, correct?
08 A. Correct.
09 Q. You testified that you began testifying in
10 the early '80s; is that correct?
11 A. Correct.
12 Q. You testified that you reviewed 50 to 80
13 cases a year; is that correct?
14 A. Correct.
15 Q. In previous depositions, you said that you
16 give somewhere between 20 and 30 depositions a year?
17 A. That's approximately right, yes.
18 Q. And you do between five and 10 trials a
19 year all for the plaintiff; is that correct?
20 A. That's correct.
21 Q. Now, my understanding is that 30 to 40
22 percent of your total income is related specifically
23 to testifying in asbestos litigation principally on
24 behalf of plaintiffs' lawyers who call you?
25 A. That's correct.
00090:01 Q. All right, sir. Now, I've done some
02 adding. You've said that you make roughly $250,000 a
03 year for the last 10 years, which is two and a half
04 million; is that correct?
05 A. Yup.
06 Q. And then I believe that covers us through
07 2005, but if I take 1985 forward, your testimony has
08 been in the range from somewhere below $70,000 to
09 somewhere above $100,000; is that fair?
10 A. That's probably right.
11 Q. So over that total, it would be about four
12 and a half million dollars; is that correct?
13 A. It's probably right. I'd like to know
14 where the money is, but --
15 Q. Well, I don't know who spends it in your
16 family --
17 A. It's me.
18 Q. -- but I'm sure you've reported it
19 appropriately.
20 A. It's me.
21 Q. Okay. Now, having said that correct, you
22 -- I believe that's in excess of any expenses that
23 you incur? Like when you fly to a trial, I'm sure

24 someone else pays the expenses and your hourly fee is
25 on top of that?
00091:01 A. That's correct.
02 Q. Now, do you have a set day fee?
03 A. Day fee? My day fee for a trial that
04 takes me out of my office and brings me back to my
05 office in 24 hours is roughly $8,000.
06 Q. Okay. So let me just follow up. We could
07 pick a state. We could pick a city. Chicago. So
08 you would typically leave the day before you were
09 scheduled to testify; is that correct?
10 A. That's correct.
11 Q. And then you would pay -- you would charge
12 for your travel for whatever your reasonable travel
13 was; is that correct?
14 A. That's correct.
15 Q. And then to the extent that you're in
16 trial all day or half a day -- well, in that
17 circumstance because you take the whole day, either a
18 day or travel, you would charge for a full day; is
19 that correct?
20 A. Yes.
21 Q. All right, sir. Now I'm going to change
22 gears. In the course of your review of the
23 testimony, did you learn that Mr. Seay worked on the
24 premises of Hoechst Celanese?
25 A. Yes.
00092:01 Q. Did you learn that Mr. Seay worked
02 actually for a company called Daniels Construction?
03 A. Yes.
04 Q. Did you take any time to research the
05 status of Daniel Construction during the period of
06 time that Mr. Seay was employed by them as to how
07 large they were, how many people they were employing,
08 et cetera?
09 A. No. That's really beyond the scope of
10 my --
11 Q. You've never been -- I'm sorry. I didn't
12 mean to -- go ahead. I apologize. You've never
13 been to the Hoechst Celanese facility; is that
14 correct?
15 A. No.
16 Q. You've never seen -- had any personal
17 knowledge of that facility; is that correct?
18 A. No.

53. PAGE 93:04 TO 94:19 (RUNNING 00:01:36.700)

04 Q. Now, there's been some mention of
05 discussion about insulation. You don't know --
06 Mr. Seay never personally installed insulation; isn't
07 that correct?
08 A. That's my understanding.
09 Q. His only exposure, to the extent that he
10 might have had exposure, would have been as a
11 coworker or a bystander; is that correct?
12 A. That's correct.
13 Q. You have not prepared any kind of dose
14 assessment; is that correct?
15 A. Once again, that's not my role.
16 Q. I understand. I just want to be sure in
17 relating to my defendant that that's true.
18 A. Sure. That's correct.
19 Q. So even to the extent that Mr. Seay has
20 indicated that he worked for Daniel Construction, he
21 hasn't testified as an example how far he was away
22 each time someone may or may not have been working on

23 insulation; isn't that correct?
24 A. Not that I recall the details of, as I
25 said.
00094:01 Q. In the course of your testimony in the
02 past, you have testified, I believe, that from the
03 point source of the use of any product to a distant
04 point there's a dissipation of the amount of that
05 particulate in the air; is that right?
06 A. That's correct.
07 Q. And that would be true here?
08 A. Yes.
09 Q. And you've already gone through the fact
10 that you haven't seen him, known him, talked to
11 family, talked to a treating physician, or done any
12 of that, correct?
13 A. That's true.
14 Q. Do you generally talk about state of the
15 art, or not?
16 A. I generally do not.
17 Q. Okay. Now, let me just ask you this. You
18 work at Mass. General?
19 A. Yes.

54. PAGE 97:05 TO 97:14 (RUNNING 00:00:24.538)

05 Q. You would also have already testified that
06 the current OSHA limit is .1 fiber cc; is that
07 correct?
08 A. That's correct.
09 Q. So that over the working life -- 40-year
10 working life, that would mean that OSHA currently
11 allows an exposure to asbestos of 4 fibers cc; isn't
12 that correct?
13 A. If you do the math, that would be the
14 case.

55. PAGE 98:07 TO 101:07 (RUNNING 00:02:55.968)

07 Q. You have testified already that most of us
08 -- all of us in this room have asbestos in our lungs;
09 is that correct?
10 A. Yes.
11 Q. Are you familiar with Dr. Churg's
12 literature in the early '70s when he looked at 456
13 consecutive autopsies in Vancouver, British Columbia,
14 and every one of them had asbestos fibers in their
15 lungs?
16 A. Yes.
17 Q. So it would not surprise you in an area
18 like Boston as an example or New York or even areas
19 where Mr. Seay worked, though it may have not been
20 the same -- exactly the same, that he would have had
21 asbestos fibers in his lungs just from being there?
22 A. That's correct.
23 Q. Now, that means, at least in theory, that
24 there are some level of exposure which does not cause
25 mesothelioma in most people?
00099:01 A. Well, again, presumably, that is the case.
02 And, again, I've taken that hypothetically to be the
03 ambient levels that are prevalent in the area at any
04 given time --
05 Q. Okay.
06 A. -- until there's evidence to the contrary.
07 Q. All right. So let me move, if I can, to
08 just one other thing that is clearly in your area,
09 and that is the current theories about the modalities
10 of cancer.

11 A. Okay.
12 Q. And you would agree that cancer is a group
13 of diseases that is characterized by the uncontrolled
14 growth and spread of abnormal cells?
15 A. That's correct.
16 Q. And you'd agree that they all involve the
17 malfunction of genes that control growth and
18 division?
19 A. Yes.
20 Q. So let's stop right there. On a regular
21 basis in every human, the cells which we have,
22 irrespective of cell type, reproduce and produce
23 daughter cells; is that correct?
24 A. Correct.
25 Q. And each cell that reproduces reproduces
00100:01 two daughter cells, correct?
02 A. Yes.
03 Q. And as each daughter cell is reproduced,
04 on occasion there's a malfunction?
05 A. Yes.
06 Q. And as a matter of fact, it's been written
07 that by the time you're 15 there have been about a
08 trillion malfunctions that have occurred in the human
09 body?
10 A. I'm not sure if a trillion is correct, but
11 probably a large number.
12 Q. A substantial number?
13 A. Yes.
14 Q. And that happens in every one of us here
15 in this room; isn't that correct?
16 A. Yes.
17 Q. All right. Now, as we have those defects,
18 they can be caused by anything. And by "anything," I
19 mean this. They could be caused just naturally
20 because of the genetic makeup from our parents, or
21 could have been caused by a hit from benzene or any
22 other toxic agent or anything in the atmosphere;
23 isn't that correct?
24 A. Well, I think to say they're caused by
25 anything is probably overreaching.
00101:01 Q. Okay. Well, correct me. You're the
02 physician.
03 A. Okay. Then I shall. I think there are
04 certainly genetic features in some individuals.
05 There are clearly toxic factors that are carcinogenic
06 in the environment, but I'm not sure that everything
07 out there is carcinogenic.

56. PAGE 102:18 TO 102:21 (RUNNING 00:00:10.511)

18 Q. And there are about 1.6 million new cancer
19 cases in 2014?
20 A. Yes. And the vast majority of those cases
21 actually are more or less trivial skin cancers.

57. PAGE 102:25 TO 103:05 (RUNNING 00:00:12.353)

25 Q. You agree that the American Cancer Society
00103:01 has estimated that 585,000 Americans were expected to
02 die in 2014 from cancer?
03 A. That's correct.
04 Q. And that's more than 1,600 people a day?
05 A. Yes.

58. PAGE 103:24 TO 104:02 (RUNNING 00:00:11.296)

24 Q. Now, because of the whole cancer process
25 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?

23 A. That's what it says.
24 Q. All right, sir. Now, this is a pulmonary
25 evaluation; is that correct?
00107:01 A. Yes.
02 Q. If you would look down at the chest
03 examination, that revealed there were no wheezes, no
04 rales, no rhonchi, clear breath sounds; is that
05 correct?
06 A. Correct.

64. PAGE 107:13 TO 108:14 (RUNNING 00:00:56.501)

13 Q. The date of this was 12/30/2009; is that
14 correct?
15 A. That's correct.
16 Q. Would you turn to the second page. This
17 says "Assessments." Can you tell me what an
18 "assessment" means in this term or as you interpret
19 it so I can ask the question.
20 A. My assumption is that these are the
21 diagnoses that he was considered to carry.
22 Q. And one is COPD; is that correct?
23 A. That's what it says.
24 Q. And that would be chronic obstructive
25 pulmonary disease; that is correct?
00108:01 A. Yes.
02 Q. All right, sir. And in addition, he is
03 said to have ischemic heart disease; is that correct?
04 A. Yes.
05 Q. Is that CHD? Is ischemic heart disease
06 the same as CHD, or do you -- can you tell me --
07 A. Yes, I think so. Coronary heart disease,
08 if that's how they're using it.
09
10 (Exhibit No. 11, Note from Spartanburg
11 Regional Medical Center dated 4/30/01,
12 marked for identification)
13
14 BY MR. PARNELL:

65. PAGE 108:15 TO 108:16 (RUNNING 00:00:05.626)

15 Q. All right, sir. I'm going to hand you
16 Exhibit 11. Now, this is a note dated

66. PAGE 108:17 TO 109:09 (RUNNING 00:00:53.569)

17 April 30, 2001, and it's from the Spartanburg
18 Regional Medical Center; is that correct?
19 A. Yes.
20 Q. And you recall from your review of the
21 medical that he received a lot of treatment from the
22 Spartanburg Medical Center; is that correct?
23 A. Yes, sir.
24 Q. All right, sir. Let me ask you if you can
25 refer down to the social history?
00109:01 A. Okay.
02 Q. What does that say?
03 A. It says, "45-pack-year history of smoking.
04 None in the last 12 years."
05 Q. All right, sir. Forty-five years of
06 smoking history would be different than the 20 that
07 was testified under oath in his deposition; is that
08 correct?
09 A. Well --

67. PAGE 109:11 TO 109:21 (RUNNING 00:00:21.015)

11 A. -- once again, if you've been in this
12 field as long as I have --
13 Q. Would you just answer my question first,
14 and then if you need to explain it. It's different
15 than what was in the testimony, wasn't it?
16 A. I don't remember what the testimony was.
17 Q. Did you not remember earlier testifying in
18 this deposition that you thought you recalled that he
19 testified to a 20-pack-year history?
20 A. If he -- if he -- he may have. I don't
21 recall. It's not in my note.

68. PAGE 109:22 TO 110:01 (RUNNING 00:00:09.661)

22 Q. All right. Now, you may follow up. I
23 don't mean to cut you off.
24 A. All I wanted to say is that smoking
25 histories are notoriously variable within medical
00110:01 records, so --

69. PAGE 110:16 TO 111:04 (RUNNING 00:00:34.609)

16 Q. So people either can mistake what they
17 did, misremember what they did, intentionally lie
18 about what they did, or forget about what they did?
19 Are those four legitimate things that you have found
20 in your history about taking smoking histories?
21 A. Let me answer you more directly, if you
22 don't mind.
23 Q. Please. I'm happy to have it.
24 A. I assume that whoever took this
25 45-pack-year history of smoking got this information
00111:01 from the patient and not from anybody else, so --
02 Q. Okay.
03 A. -- I doubt he's lying about his smoking
04 history, if this is accurate.

70. PAGE 111:24 TO 112:06 (RUNNING 00:00:22.050)

24 Q. I'm going to hand you a document which I
25 have marked as Exhibit 12, Dr. Kradin. And I'm going
00112:01 to ask you to hand it back to me so I can make sure
02 that I've got the right one on my list.
03 A. You want it back right now?
04 Q. Would you, yeah, just so I can make sure
05 I've got the right one. All right. I've got it now.
06 Thank you, sir.

71. PAGE 112:11 TO 113:02 (RUNNING 00:00:46.874)

11 Q. Now, this is a report dated 12/15 of '09;
12 is that correct?
13 A. Yes.
14 Q. And if you turn to what I'll call page 3,
15 this is a history from -- are -- of his hospital
16 course, and that would be Mr. Seay; is that correct?
17 A. That's correct.
18 Q. His primary diagnosis was coronary artery
19 disease, CHD; is that correct?
20 A. Yes.
21 Q. All right, sir. And he had end-stage
22 angina pectoris. What does "end-stage angina
23 pectoris" mean?
24 A. Well, I don't know what that means
25 actually. It's not a terminology that we normally
00113:01 use. I assume it meant that at some point it was
02 severe.

72. PAGE 113:03 TO 113:22 (RUNNING 00:00:50.947)

03 Q. All right, sir. Now, he had -- is it fair
04 to say from this note and just from your knowledge,
05 that he went to a physician. The physician noticed
06 that there were difficulties with his heart, asked
07 for and assented to an immediate catheterization, and
08 that he had a catheterization done at the hospital?
09 A. He did.
10 Q. Would you mind explaining to the jury so
11 they will simply understand what a catheterization
12 is?
13 A. A catheterization is a dye x-ray, if you
14 will, that looks at the -- whether or not the vessels
15 that are supplying the heart are open and the blood
16 is flowing normally or not.
17
18 (Exhibit No. 13, Holter Monitor Report
19 Dated 10/17/09, marked for identification)
20
21 BY MR. PARNELL:
22 Q. All right, sir. And let me mark this one

73. PAGE 113:23 TO 113:23 (RUNNING 00:00:02.575)

23 for you, sir. This is Exhibit 13. Exhibit 13 is the

74. PAGE 113:24 TO 114:02 (RUNNING 00:00:13.683)

24 Holter Monitor Report, and that report is simply a
25 report of what the heart examinations were about; is
00114:01 that fair?
02 A. Correct.

75. PAGE 114:13 TO 114:13 (RUNNING 00:00:02.255)

13 Q. Here is Exhibit 14, sir. Would you look

76. PAGE 114:14 TO 115:19 (RUNNING 00:01:31.588)

14 -- this is from Cardiology Consultants?
15 A. Yeah.
16 Q. It is a 12/15/2009 office visit; is that
17 correct?
18 A. Yes.
19 Q. And he presented for evaluation, correct?
20 A. Yes.
21 Q. And if you look down under "risk factors,"
22 it's got tobacco use previous years, quit 20, dash,
23 25 times, 30 years. Pack per year, one and a half
24 packs per day." Is that correct?
25 A. That's what it says.
00115:01 Q. All right, sir. And if you would turn to
02 the second page, it also repeats under "Chest," "no
03 intercostal retraction or use of accessory muscles.
04 No rales, no rhonchi, or wheezes." Is that correct?
05 A. That's correct.
06 Q. All right, sir. In all your medical
07 records, you did not -- putting aside the diagnosis
08 for a moment of pleural -- pleural mesothelioma, you
09 did not find any record whatsoever of the presence of
10 calcified bilateral pleural plaques; is that correct?
11 A. That's correct.
12 Q. You did not find any evidence of
13 asbestosis; is that correct?
14 A. That's correct.
15 Q. And you did not find any evidence of a
16 restrictive respiratory component as evidenced by the
17 fact that there were no wheezes, rales, or rhonchi;

18 isn't that correct?
19 A. That's correct.

77. PAGE 116:06 TO 119:15 (RUNNING 00:03:34.695)

06 Q. Doctor, you would agree that there are
07 multiple particles of all kinds that we breathe every
08 day that are invisible to the naked eye; is that
09 correct?
10 A. That's correct.
11 Q. Carbon monoxide? Silica? I mean, I can't
12 even begin to name all of them, correct?
13 A. Carbon monoxide is not a particle, but
14 silica is.
15 Q. Okay. And we live in this urban
16 environment where those kinds of particles are just
17 there to be breathed all the time, correct?
18 A. Yeah. Yes.
19 Q. Now, as we look at the breathing, the body
20 has a way to take care of or try to defend against
21 those particles getting from the outside air into the
22 furthest reaches of the lung; isn't that correct?
23 A. The body does what it can.
24 Q. Okay. So the first part of the defense
25 mechanism is the nose; isn't that correct?
00117:01 A. That's the first part, starting from the
02 nose.
03 Q. Okay. It starts from the nose, so in
04 other words, as a person breathes, assuming they're
05 not breathing through their mouth but breathing
06 through their nose, they are breathing through nose
07 hairs. To the extent that a barber hasn't cut them
08 off or something, that will intercept or guard
09 against all the particles coming in; isn't that
10 correct?
11 A. Yes.
12 Q. Okay. And the nose is also -- has a bend
13 in it so that it can go down the windpipe, correct?
14 A. Yes.
15 Q. And as the -- that bend comes, because the
16 particulate matters in the air, it begins to fall out
17 onto the sides of the windpipe; isn't that correct?
18 A. Yes.
19 Q. And so it's been said that only about five
20 percent of a particulate matter that you begin to
21 breathe actually gets to the interior of the lung.
22 Would you agree with that?
23 A. Roughly.
24 Q. All right. One of the defense mechanisms
25 that prevents the particulate matter from getting to
00118:01 the lung is something that some people, at least,
02 refer to as the mucociliary escalator; is that
03 correct?
04 A. Yes.
05
06 (Exhibit No. 15, Diagram by Mr. Parnell,
07 marked for identification)
08
09 BY MR. PARNELL:
10 Q. Now, I have drawn, perhaps not very
11 artfully --
12 A. Would the jury like to see this?
13 Q. Yes. And that's two epithelial cells that
14 have a little squiggly thing. That's my intention at
15 least. Is that --
16 A. Yes. You want to connect them, though.
17 Q. All right. And the purpose is that the

18 windpipe is lined by millions of those cells; isn't
19 that correct?
20 A. Yes.
21 Q. And the little squiggly thing that I've
22 drawn is called a cilia; is that correct?
23 A. Yes.
24 Q. And so that -- those cells, each one also
25 produces some level of mucus; isn't that correct?
00119:01 A. Yes.
02 Q. So what happens is as we are breathing in
03 and fibers or particles fall out, the mucociliary
04 esco -- this cilia, this little whip-like thing, is
05 beating this path of mucus back up into the mouth or
06 into the lung; is that correct? Out of the lung?
07 A. Yes.
08 Q. All right. So what happens when that
09 happens is that whatever the particulate matter is,
10 whether it's silica or whatever, as it gets on this
11 river of -- and "river" is a loose term -- but this
12 pathway of mucus and liquid that this cilia is
13 beating up so it gets up into the mouth, you either
14 spit it out or you swallow it?
15 A. Correct.

78. PAGE 121:17 TO 121:20 (RUNNING 00:00:06.960)

17 Q. A person who has a 25- to 45-pack-year
18 history has a significant smoking history; isn't that
19 correct?
20 A. Yes.

79. PAGE 126:08 TO 126:17 (RUNNING 00:00:28.510)

08 Q. All right, sir. Now, with respect to his
09 -- I believe you testified that if Mr. Seay had
10 lived, and if he had maintained his treatment, and if
11 he had done everything the doctor said, that you do
12 not believe that his life expectancy would have been
13 shortened. Did I say that correctly?
14 A. I believe that if his conditions were well
15 controlled, that his life expectancy would not have
16 been significantly shortened.
17 Q. All right, sir. Did you do any research

80. PAGE 126:18 TO 127:19 (RUNNING 00:00:57.511)

18 on Dr. Mendosa?
19 A. Who is Dr. Mendosa?
20 Q. Dr. Mendosa is the doctor who -- who
21 diagnosed him with COPD.
22 A. No. I would have no reason to do research
23 on Dr. Mendosa.
24 Q. All right. Dr. Mendosa is board-certified
25 in critical med -- critical care of medicine,
00127:01 internal medicine, pulmonology, and sleep medicine.
02 Would you please assume that?
03 A. Okay.
04 Q. And to the extent he would be in
05 pulmonology, that's the same board certification that
06 you have, correct?
07 A. Yes.
08 Q. Which means he's a lung doctor, right?
09 A. Correct.
10 Q. Would you have expected a man such as
11 Dr. Mendosa who is, in fact, board-certified in
12 pulmonology to have made a diagnosis of COPD without
13 documenting it?
14 A. If he documented it, I think that's great.

15 I haven't seen a documentation.
16 Q. Have you seen all the medical records in
17 the case?
18 A. I believe I have, but I don't recall
19 seeing that.

81. PAGE 130:21 TO 131:16 (RUNNING 00:01:02.057)

21 Q. Okay. You were asked about different
22 ailments that Mr. Seay may or may not have had.
23 Ischemic heart disease, COPD, et cetera, right?
24 A. Yes.
25 Q. Okay. Do any of those cause mesothelioma?
00131:01 A. No. None of those cause mesothelioma,
02 and, again, I was handed a number of documents
03 related to Mr. Seay's medical care, and what was not
04 elicited as part of my answer was the fact that
05 Mr. Seay was being treated with a variety of
06 medications.
07 When he first presented, he had high blood
08 pressure. By the time he was seen years later his
09 blood pressure was well controlled. His heart rate
10 was well controlled. He had coronary disease that
11 had been treated. He had had a bypass graft. There
12 was no evidence that his coronary disease was
13 imminently going to cause a decrease in his life
14 expectancy. So the point is that Mr. Seay did have
15 other medical conditions, but those medical
16 conditions were being treated.

82. PAGE 133:04 TO 133:19 (RUNNING 00:00:42.571)

04 question in light of the objection. Does one need to
05 have a diagnosis of asbestosis first or pleural
06 plaques or pleural thickening before a physician such
07 as yourself or a doctor can say that this person's
08 mesothelioma is from asbestos?
09 A. No. The answer is simply no, and the only
10 thing that one needs to have is a mesothelioma, which
11 Mr. Seay clearly had. There's no argument about
12 that. And an exposure to asbestos at the workplace,
13 in this case which he had, and I don't think anybody
14 will argue that he was exposed to asbestos.
15 Q. Okay. To your knowledge, Doctor, have
16 scientists found a level of exposure to asbestos
17 above background that doesn't increase the risk of
18 mesothelioma?
19 A. Not that's been established, no.

83. PAGE 134:17 TO 136:18 (RUNNING 00:02:14.551)

17 Q. Okay. By the way, is Mass. General
18 related to Harvard in any way?
19 A. Yes.
20 Q. Okay. And how?
21 A. It's the primary teaching hospital for the
22 Harvard Medical School.
23 Q. Have any of the higher-ups at Harvard ever
24 come to you and said, hey, Dr. Kradin, Harvard
25 believes there is a safe level of asbestos exposure?
00135:01 Has that ever happened?
02 A. It's never happened. Again, I direct a
03 postgraduate course that's sponsored by Harvard
04 Medical School, in which case we have repeatedly
05 suggested that there is no safe level of asbestos.
06 Harvard has never come by and said you need to change
07 that.
08 Q. Now, you were asked a lot of questions

09 about background, and I want to make it very clear.
10 You have said -- correct me if I'm wrong -- that you
11 don't believe right now there's a scientific basis to
12 say background levels increase the risk of
13 mesothelioma?
14 A. Right now there's no scientific basis for
15 that statement.
16 Q. Now, you've also been asked whether or not
17 levels of asbestos that would be similar to
18 background, whether they can cause mesothelioma. So
19 here's what I want to ask you. If you have somebody
20 who is living in the United States, let's say, for
21 instance, they're exposed to background asbestos, and
22 then they have an occupational exposure to asbestos
23 that approaches background levels, do you now ignore
24 the initial background, or do you have to add them
25 together to say that's what the person's actual
00136:01 exposure is?
02 A. The actual exposure obviously includes the
03 background as well. The exposure that seems to be
04 important in the biomedical sense with respect for
05 developing disease appears to be those exposures
06 above background.
07 Q. Okay. So if a person has exposure in a
08 occupational setting to asbestos, that would be in
09 addition to whatever the background is?
10 A. Absolutely. And, you know, I think the
11 point is you need to have some sense of the magnitude
12 of occupational exposures and background levels.
13 Virtually all occupational exposures are
14 thousands of times higher than what we breathe in the
15 background level. So we're not talking about one or
16 two asbestos fibers. We're talking about tens of
17 thousands to millions of asbestos fibers in what we
18 call an occupational exposure.

84. PAGE 137:01 TO 137:06 (RUNNING 00:00:17.606)

00137:01 from your review of the literature, your general
02 understanding of the literature and your own review
03 of depositions of individuals who have done this
04 work, can you give us a characterization of
05 background levels in terms of fibers generally versus
06 occupational levels?

85. PAGE 137:08 TO 141:22 (RUNNING 00:05:11.484)

08 A. A background level of exposure, as we've
09 defined it here, and it is basically defined in the
10 literature, consists of a fiber of asbestos in a -- a
11 tenth of a fiber of asbestos in a cubic centimeter of
12 air.
13 An occupational exposure, even what we would call
14 a relatively trivial occupational exposure, is
15 virtually always magnitudes higher than that. So
16 we're talking about almost always thousands to ten
17 thousands to millions of times higher when we talk
18 about occupational exposures to asbestos.
19 So it's -- it's -- they're two different
20 categories of magnitude. The occupational level is
21 much higher than the background level that we all
22 breathe on a daily basis.
23 Q. And I want to make sure I heard that
24 right. Did you say background was a tenth of a fiber
25 per centimeter?
00138:01 A. Yeah.
02 Q. Okay. Because I think you had said that

03 your opinion on background before was less than a
04 tenth?
05 A. It was .0001 per cc.
06 Q. Okay. That's not --
07 A. Right. I'm sorry. It's a .0001 per cc.
08 Q. That would be tenths, hundredths,
09 thousandths -- that would be ten -- one ten
10 thousandth?
11 A. Ten thousandth, yes.
12 Q. To be clear, not one-tenth of a cc, one
13 one thousandth of a cc?
14 A. Correct my arithmetic. One ten
15 thousandth.
16 Q. Okay. That's okay. When chrys -- you
17 were asked all these questions about chrysotile
18 clearing from the body, and you kept saying clearing
19 from the lung. Now, why did you clarify clearing
20 from the lung as opposed to clearing from the body?
21 A. Because I -- I think there is a general
22 sense in the older literature in particular that the
23 fibers that go into the lung are the same fibers that
24 physically cause mesothelioma, and there may be some
25 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

19 light of what Churg said in '95, to your knowledge,
20 has any scientific or regulatory body in the world
21 concluded that there is a known safe level of
22 asbestos exposure?
23 A. No. They've not -- they've not concluded
24 there's a safe level of asbestos nor have they
25 concluded that chrysotile is a safe form of asbestos.
00141:01 So everybody seems to be on the same page in that
02 regard that all forms of asbestos can produce
03 mesothelioma and that there is no safe level.
04 Q. Okay. Now, you were asked the question
05 whether you believed that each and every occupational
06 exposure increases the risk to mesothelioma. Now, is
07 that different than saying each and every exposure?
08 A. Yes.
09 Q. Okay. And how is it different?
10 A. Well, it's as we've just talked about.
11 Occupational exposures generally are a magnitude
12 higher to what one would expect from background
13 levels of exposure. They're not trivial. They're
14 not -- we're not talking about having one or two
15 fibers of asbestos released into your breathing zone.
16 We're talking about having tens of thousands to
17 millions of fibers released into your breathing zone,
18 if not more. And so there's a major categorical
19 difference in the magnitude of these exposures.
20 Q. And to be clear, am I correct that you are
21 not saying that any exposure from any source can
22 cause mesothelioma, are you?

86. PAGE 141:24 TO 142:21 (RUNNING 00:01:15.735)

24 A. Absolutely not. Again, you know, one can
25 pass by an area where asbestos is in disrepair and
00142:01 just walk by it. I think your risk of developing
02 mesothelioma from that type of exposure would have to
03 be trivial, but if you're working in a workplace in a
04 factory where these products are being used and cut
05 and manipulated in ways where dust is being released
06 that is often visible dust, these are major league
07 exposures.
08 Q. Now, to your knowledge -- you were asked
09 about the current OSHA -- you were asked about the
10 current OSHA PEL of .1 fiber per cc. Do you recall
11 that?
12 A. Yes.
13 Q. To your knowledge, has OSHA ever said that
14 the current PEL is safe in protecting people from
15 mesothelioma?
16 A. The answer to that is they -- when they
17 issue their PEL limit, they -- there was a document
18 that was also issued at the same time which indicated
19 that there was going to be an expected increased
20 incidence of malignant mesothelioma even at this new
21 regulatory standard. OSHA realized that.

87. PAGE 143:13 TO 143:17 (RUNNING 00:00:10.504)

13 Q. Okay. And has OSHA even stated that they
14 still expect excess mesotheliomas at the current OSHA
15 PEL?
16 A. They expect approximately 200 or more
17 cases a year at the current PEL.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:42:11.083)